

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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SC Court of Appeals

Clayton B. McCullough, Esquire, Special Referee

Case No.: 2016-000063

Ex parte: Nationwide Mutual Fire Insurance Company Appellant

In Re: Anna Angelacci, as guardian of K.B., a minor Respondent

v.

E.U., a minor, Travis O. Felkel, and Ginger G. Ulery Defendants

**RECORD ON APPEAL
VOLUME II OF II**

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STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) CASE NO. 2014-CP-08-2494

ANNA ANGELACCI, AS GUARDIAN)
OF K.B., A MINOR,)

Plaintiff,)

vs.)

E.U. A MINOR, TRAVIS O.)
FELKEL, and GINGER G. ULREY,)

Defendants.)

Scanned Exhibits
on Attached CD

COPY

* * * * *

HEARING ON MOTION TO INTERVENE and MOTION TO
LIFT/SET ASIDE DEFAULT JUDGMENTS

DATE TAKEN: Monday, December 7, 2015

TIME: 10:00 a.m.

PLACE: McCullough Khan
359 King Street, Suite 200
Charleston, South Carolina

REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote
Reporter and Notary Public

* * * * *

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SPECIAL REFEREE: Good morning. Clay

McCullough, the Special Referee. Let's just go around, everybody put their name in the record and who you're on behalf of, and we'll get started.

MR. YARBOROUGH: David Yarborough and Lydia Applegate on behalf of the Plaintiff, Anna Angelacci, as guardian of K.B., a minor.

MS. FARNOLI: Christy Farnoli and Sam Clawson on behalf of Nationwide Insurance Company.

MR. SLIGH: David Sligh on behalf of Nationwide.

MS. JONES: Shannon Jones. I'm the guardian ad litem for the minor Defendant, E.U.

MS. DECKER: I'm Maggie Decker,
Shannon's associate.

SPECIAL REFEREE: Okay. I'll do my best to -- I have reviewed everything. Everything is in the record. Although if you all need to mark -- all of this has been filed, correct?

MR. YARBOROUGH: It has.

SPECIAL REFEREE: I did go through everything that everybody submitted, and it

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REPORTER'S CERTIFICATE 69

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has certainly been very well briefed. I'm familiar with the background. I tell you that just because you don't need to go into too, too much detail. I think we can cut to the chase here and figure out -- really, two questions that I've got -- and I'm not cutting you off. We can go into as much detail as you feel you need to.

But on the Motion to Intervene, my big question really is -- and I do some of this work -- to figure out why that's a fight here versus on the bad faith dec action, why Nationwide should have a direct voice here. And I've looked at the memo, but I want to talk about that.

And then the second prong would be on the Motion to Set Aside, really just focusing on you all's position as to the mistake, inadvertence, surprise or excusable neglect. Or are you arguing that a different standard applies?

So with that, just note that those are my two primary questions, which are pretty obvious questions, and I'll turn it back over to you. And these are your motions.

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1 MS. FARGNOLI: So I assume we're
2 starting with the Motion to Intervene?

3 SPECIAL REFEREE: Yeah.

4 MS. FARGNOLI: Well, I appreciate it.
5 And, like you said, our Motion -- our memo is
6 incorporated, so I'm not going to go through
7 the argument in extreme detail, because it was
8 a pretty long memo. It sounds like to me --
9 first and foremost, we're obviously seeking to
10 intervene in this action for the purpose of
11 attempting to set aside the judgments in
12 excess of \$5,000,000.

13 The first issue I'll raise, which is
14 also a separate Motion, but I'll raise it with
15 respect to this Motion is, we believe that
16 having a Special Referee hear this motion
17 exceeds the power and the scope and the intent
18 of Rule 53 and of the Order itself. We think
19 this issue is separate and apart from the Rule
20 60(b) Motion and apart from any Motions that
21 involve the judgment itself. And as we've
22 said in our Motion, of course, we request that
23 it be removed and heard by a Circuit Court
24 Judge.

25 SPECIAL REFEREE: Can I ask a question

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1 on that? Not to interrupt. In the e-mail --
2 I want to make sure -- you all asked Judge
3 Dennis to hear both Motions, and then -- was
4 he aware that the Motion to Intervene was part
5 of that and then sent it back here?

6 MS. FARGNOLI: I think so. And I've got
7 a copy of his e-mail response. I think I said
8 that in my initial e-mail to him; I think I
9 listed all the motions that were pending. So
10 I believe he was aware of that Motion. And,
11 of course, it was filed as well. But, of
12 course, that -- again, that's a separate
13 Motion, but I just wanted to raise that while
14 we're on the subject.

15 But it appears from David's memo that
16 his primary action is the second prong of the
17 test on the Motion to Intervene, an interest
18 relating to the property or transaction which
19 is the subject of the action. Of course, we
20 take the position that Nationwide has a
21 substantial interest in the underlying action.
22 There's a \$5.1 million judgment pending
23 against its insureds and a bad faith suit
24 pending.

25 Your question that you raised a few

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1 minutes ago is, why here instead of in the Bad
2 Faith Action? I don't think that the Bad
3 Faith Action gives Nationwide a procedural
4 mechanism to try to unwind the judgment for
5 any type of procedural defects. You know,
6 service of process issues and things like
7 that; certainly if Nationwide is successful in
8 that suit -- and I'm not very well-versed on
9 that suit, to be honest, because I'm not
10 representing Nationwide in that suit. But if
11 they were to prevail, they could prevail in
12 the sense and say their actions were
13 reasonable for one reason or another and
14 they're not responsible for the judgment, but
15 it doesn't unwind the judgment itself. And I
16 think that this action is the only opportunity
17 Nationwide has to address that issue,
18 unwinding the judgment.

19 Clearly, it's got a substantial
20 financial interest in the outcome of this
21 litigation, as every carrier has in the
22 outcome of litigation involving its insureds.
23 We take the position that Nationwide is
24 actually the real party in interest, because
25 everyone is looking to Nationwide to pay the

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1 judgment; that's whether it was a default
2 judgment or whether it's a judgment in -- they
3 defended the case, and it was just a judgment
4 rendered like in every other case.

5 There isn't much case law concerning
6 insurer's wish to intervene under facts
7 similar to this case. I think us and David
8 have cited the McClurg versus Deaton case.
9 And in that case, our Court of Appeals
10 recognized that a financial interest is a
11 proper consideration to satisfy the second
12 prong of that test.

13 In that case, it was a trucking
14 accident, where suit was brought only against
15 the driver of the truck and not against his
16 employer. The suit went into default. The
17 employer sought to intervene to attempt to set
18 aside the judgment, and the employer took the
19 position that it wanted to intervene because
20 it was, quote, Vulnerable to being responsible
21 for the entire judgment. The Motion to
22 Intervene was granted because of its, quote,
23 Large financial interest in the action and the
24 possible responsibility for paying the entire
25 judgment, which is the same situation here.

3 (Pages 6 to 9)

1 Of course, that was an employer; we're
2 talking about a carrier, but it's the same --
3 it's the same type of a financial interest
4 involved. We believe Nationwide has valid,
5 legitimate questions concerning the judgments
6 in the underlying case, and those are set
7 forth obviously in our memos in support of our
8 Motion to Set Aside. But they involve serious
9 issues like service of process, notice, due
10 process.

11 And the problem here is that Nationwide
12 should be granted this opportunity because
13 there is no other party that can adequately
14 protect its interests. And at the end of the
15 day, Nationwide is being asked to pay the
16 judgments. And as the case stands now, for
17 example, if this Motion is denied, Nationwide
18 loses all opportunity to be able to raise
19 those arguments and challenge the judgments.

20 David also cited the GEICO -- I think
21 it's GEICO versus Goethe case, which is
22 another case obviously involving a Motion to
23 Intervene. That case involved a family court
24 action to obtain an order of common law
25 marriage. In that case, the Court held GEICO

1 when you file a lawsuit, that's what you
2 expect to happen in the first place. We
3 believe there's no prejudice because of that.
4 Cases in other jurisdictions have recognized
5 the importance of intervention under similar
6 circumstances and have allowed carriers to
7 intervene. Ross versus Marshall is a Fifth
8 Circuit case; the case is 426 F.3d 745.

9 Allstate sought to intervene to
10 challenge a \$10,000,000 judgment. The Motion
11 to Intervene was denied by the trial court.
12 The Court of Appeals reversed that, holding
13 that Allstate's interest in protecting itself
14 was, quote, Strong, and that it would suffer,
15 quote, Considerable prejudice if not permitted
16 to intervene. The Court stated that without
17 question an insurer has a financial stake in
18 a favorable outcome for its insured.

19 It also stated that Allstate had a
20 second interest in that case, which was to
21 minimize its potential exposure to a bad faith
22 case, which is similar to this case.

23 David cited a couple of cases, Travelers
24 versus Dingwell, and Restor-A-dent versus
25 Certified Alloy Products. We believe these

1 did not have interest in that action because
2 the sole purpose of the action was simply to
3 establish whether there was a common law
4 marriage in the family court. We believe this
5 is a totally different situation. We're not
6 seeking to intervene in a tangential action;
7 we're seeking to intervene in the tort action,
8 which is the action that Nationwide
9 essentially wants to unwind the judgment and
10 defend that action. It's not a tangential
11 action or any type of procedural issue. It is
12 the tort action itself. So I believe that
13 case is distinguishable.

14 Our Courts have said that Motions to
15 Intervene should be liberally construed, and
16 that Courts should consider the pragmatic
17 consequences of permitting or denying such
18 motions. The pragmatic consequence of denying
19 this Motion is that it's stuck with the
20 judgment with no avenue to challenge it or to
21 otherwise -- as I said, there are so many
22 issues we've raised, and there's just no other
23 way we can raise those issues without
24 intervening here. We simply want to unwind it
25 to defend the merits of the case, which is,

1 cases are distinguishable. In those cases, I
2 believe the insurers were seeking to intervene
3 to assert coverage issues. We're not seeking
4 to do that. We're seeking to intervene to
5 challenge the judgments and potentially defend
6 the action. The reasoning in the Travelers
7 case and Restor-A-dent case -- that it was
8 denied, I think, was because the carrier
9 always has another avenue to assert a coverage
10 issue, and that's a DJ action. We don't have
11 that here. I mean, we can't assert a DJ
12 action, I don't think, in our situation to
13 challenge a judgment that has already been
14 entered. So we believe that Nationwide has no
15 other remedy, has no other way to protect its
16 interests, which are substantial, and we're
17 asking to be able to intervene in this
18 underlying case.

19 SPECIAL REFEREE: To the extent -- I do
20 think, because it's an insurance company
21 moving to intervene, I think it's appropriate
22 to ask questions that would normally not be
23 asked in this type of case. And maybe the
24 last point you raised is the first question
25 I'd like to ask. And I don't know your

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1 involvement in the under -- the bad faith
2 claim. Has there been a dec action brought as
3 part of that claim as presumably a
4 counterclaim or something along those lines?

5 MR. YARBOROUGH: I can answer that.
6 David Yarborough on behalf of the Plaintiff,
7 if I may.

8 MS. FARGNOLI: Sure.

9 MR. YARBOROUGH: There is a declaratory
10 judgment action pending as part of the
11 Plaintiff's -- one of the Plaintiff's causes
12 of action. And Nationwide's counsel who is
13 here present, David Sligh, in that action
14 defending it, contacted me about a month ago,
15 a month and a half ago, to ask if I would
16 consent to an amendment of their Answer. They
17 didn't initially plead it, but they've asked
18 my permission to consent to them amending it
19 to add the declaratory judgment action, which
20 I indicated I would consent to. And so I
21 expect that is forthcoming.

22 And so that is the answer to your
23 question, yes, there is another -- and I was a
24 little confused when Christy said that there
25 isn't an opportunity for them to address that

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1 I guess that's really my question. I'm
2 not quarreling with you, as much as, what is
3 your position on that, if those issues are
4 raised in either presumably the reservation of
5 rights and the declaratory judgment action,
6 which would essentially be putting Nationwide
7 in the position -- granted, it probably would
8 have been better to do it before a judgment is
9 entered certainly. Does that not give them
10 the opportunity to fight this fight?

11 MS. FARGNOLI: I don't think it -- I
12 hear what you're saying. And my understanding
13 of the declaratory action that may or may not
14 be filed is to address coverage issues. The
15 purpose of my seeking to intervene is not to
16 address any coverage issues at all. It's
17 simply to get this case back to square one and
18 defend it like every other lawsuit, to get
19 this judgment off the backs of the insureds
20 and off the backs of Nationwide, quite
21 frankly, and simply defend the action and --
22 on its merits, as was intended when the
23 Complaint was initially filed. To the extent
24 there are any coverage issues involved, I'm
25 not seeking to intervene to assert any of

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1 in a declaratory judgment action, because
2 counsel for Nationwide just called me and
3 asked me if I would consent to them raising
4 those issues. And they've also pointed all
5 those out, as I'll -- when I have a chance to
6 respond -- in their reservation to rights
7 letter.

8 SPECIAL REFEREE: David, you nodded. Is
9 that --

10 MR. SLIGH: That is currently how it's
11 postured. And depending on the outcome of --
12 and how the underlying case is situated, then
13 we'll determine what issues come up in the DJ.

14 SPECIAL REFEREE: I'm not looking to
15 interject in that lawsuit. But, obviously, I
16 do think it kind of obviously is part of -- I
17 do clearly think Nationwide will have an
18 opportunity to object to basically, A, whether
19 or not there's coverage, and, B, I would
20 certainly assume if we get through all of this
21 today, that Nationwide -- and presumably in
22 its letter, said something about either
23 failure to participate on behalf of the
24 insured as a possible reason for denial, and,
25 not to mention, just basic coverage.

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1 those issues.

2 SPECIAL REFEREE: But would they be --
3 and maybe this is an unfair question. If I'm
4 in your position, I would want to know what I
5 was thinking, and so I'm just going to tell
6 you.

7 MS. FARGNOLI: I appreciate it. Thank
8 you.

9 SPECIAL REFEREE: I'm normally in your
10 shoes. This is my first job as Special
11 Referee and probably my last. But improper
12 service or, more importantly, if -- it seems
13 that some of the issue with Nationwide will be
14 the Plaintiff's failure to protect the
15 interest by forwarding it and whether or not
16 service on the Nationwide agent was proper
17 service and the inactivity of the guardians to
18 protect the interest of the minor, and I would
19 think that all of that would be in a
20 declaratory judgment as part of the
21 requirement of an insured to participate in
22 the defense and to keep the insured --
23 insurance company adequately advised and
24 things like that. Certainly you give --

25 MS. FARGNOLI: Sounds reasonable.

5 (Pages 14 to 17)

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1 SPECIAL REFEREE: -- some of your
2 rights. And I hear you. It's always better
3 to be back before the default is entered. But
4 would you not anticipate that a lot of those
5 issues will be a part of -- the fact that
6 there is a judgment entered certainly does not
7 make Nationwide on the hook yet. There's got
8 to be another finding that the insured did
9 what they were supposed to do and that there's
10 coverage. I looked at this pretty closely
11 because I think it's a pretty interesting
12 argument. I just don't see how -- I'm not
13 cutting you off, but there's no reason
14 honestly -- I don't see a scenario at this
15 point that would allow you in, although I
16 certainly can see one heck of a fight on the
17 dec action.

18 And that being said, I actually do
19 definitely want to hear the second piece of
20 the argument on the mistake, inadvertence.
21 And I know, technically, we don't get there,
22 but I'd like to hear everything before I make
23 any decisions. I just want you to know, my
24 thought on this is it's probably very
25 appropriate for a dec action. I'm

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1 uncomfortable allowing Nationwide to come in
2 under this fact pattern to intervene. But I'm
3 not ruling at this point. That's just kind of
4 my feeling.

5 MS. FARGNOLI: Sure. I would just
6 reiterate that I think the distinction is the
7 DJ action doesn't give Nationwide the
8 opportunity to potentially void the judgment
9 completely --

10 SPECIAL REFEREE: Sure.

11 MS. FARGNOLI: -- and that being the
12 difference. It doesn't give Nationwide every
13 avenue to intervene in this case as
14 Nationwide.

15 SPECIAL REFEREE: I agree with that.

16 MS. FARGNOLI: Sure.

17 SPECIAL REFEREE: And I cut both of you
18 all off. And we can spend more time on that.
19 Actually, I'd like to get into some of the
20 specifics on the other Motion, understanding
21 that you wouldn't get there, but I do, for the
22 record, want to kind of work through some of
23 this and make sure I have the full picture.
24 Do you want to say anything on the
25 intervening?

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1 MR. YARBOROUGH: Thank you. David
2 Yarbrough, may it please the Court. The one
3 thing I did want to do -- we're comfortable
4 standing on our brief, and we believe very
5 firmly that the Nationwide trend of cases is
6 not to allow insurers to intervene in
7 situations like this one; that South Carolina
8 courts have not allowed them to intervene in
9 cases like this one. And in that district
10 court case that was -- the Lewis versus Excel
11 Mechanical case, that it was -- it was a very
12 close set of circumstances to this, where the
13 insured has reserved its rights, as they have
14 in this case.

15 And the one thing I did want to do is
16 mark as an additional exhibit to this hearing
17 -- because I didn't include it as an exhibit
18 to our brief -- is a copy of the Reservation
19 of Rights Letter that Nationwide sent out, and
20 I'm going to mark that as Exhibit 1 to this
21 hearing --

22 (Exhibit No. 1, Reservation of Rights
23 Letter, was marked for identification.)

24 MR. YARBOROUGH: -- in opposition to our
25 Motion to Intervene. And that's it. Thank

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1 you.

2 SPECIAL REFEREE: I cut you off. Is
3 there anything else you want to say on that?

4 MS. FARGNOLI: No.

5 SPECIAL REFEREE: It was actually very
6 well briefed, and I'm not going to make a
7 decision on that. I'd like to hear the second
8 Motion.

9 MS. FARGNOLI: Sure.

10 SPECIAL REFEREE: And we were laughing
11 before we started, but I would like to hear on
12 a couple of specifics, and I'll shut up and
13 listen to you. The issue of a final judgment,
14 when the judgment was entered against the two
15 guardians and then the guardian was appointed,
16 I'm interested --

17 MR. YARBOROUGH: You mean the two
18 parents? I'm sorry.

19 SPECIAL REFEREE: Yeah. Excuse me.
20 And, also, I'd like to focus -- I do think
21 David is right in their argument as to the
22 standard. And so I'd like you to highlight
23 your argument on mistake, inadvertence,
24 surprise or excusable neglect.

25 MS. FARGNOLI: Sure. As to the first

6 (Pages 18 to 21)

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1 issue, which I'm assuming you're talking about
2 the Rule 54 --

3 SPECIAL REFEREE: Right.

4 MS. FARGNOLI: -- issue that we talked a
5 little bit about before the hearing started.
6 I think, like I said, we've briefed it. We
7 rely on Rule 54 in the Frow case and all the
8 cases that follow the Frow case. Rule 54 says
9 essentially that issuing a judgment against
10 one defendant before the judgment -- before
11 all the rest of the defendants is not proper,
12 unless there's an expressed determination as
13 to why the -- why there's no just reason for a
14 delay.

15 Here, we don't think that there was ever
16 a reason expressed and that there was no
17 reason to be expressed. The caselaw
18 interpreting this Rule unequivocally shows
19 that under these facts, there was a just
20 reason for delay. The Frow case is a United
21 States Supreme Court case. And it held that a
22 final decree on the merits could not be made
23 separately against one defendant, where a
24 joint charge was still pending against others.

25 Here, the judgment against the parents

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1 the actor in this case. I mean, it seems to
2 me that the parents were essentially sued in a
3 vicarious capacity. The only allegations
4 against them were simply that they were his
5 parents. There's no separate causes of action
6 or anything like that outlined in the
7 Complaint.

8 And so to enter a judgment against them
9 before the minor, to me, without an expressed
10 reason stating why that was done, and
11 certainly there was no -- I mean, there was no
12 time issue there; I mean, I don't know what
13 the rush was. But I think, under Rule 54, the
14 judgments against Felkel and Ulery should be
15 set aside for that reason. And to the extent
16 the Court finds that's proper, I think that
17 the judgment against the minor should be also
18 set aside, because the judgment against him
19 merely adopts all the findings that were made
20 against the parents. And so it's sort of a
21 circular problem there.

22 SPECIAL REFEREE: Does it get remedied
23 by the subsequent -- I would agree it's not a
24 final -- and as we laughed, Mr. Domin educated
25 me to some degree.

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1 was rendered prior to the judgment against the
2 minor. And that's because I think at the
3 hearing you found that a guardian had not yet
4 been appointed for the minor and so a judgment
5 couldn't be rendered against him.

6 The Court went ahead and entered a
7 judgment against the parents; held sort of at
8 abeyance the one for the minor until the
9 guardian was appointed; the guardian was
10 appointed and then it was entered. It is our
11 position that that was improper under Rule 54,
12 based on the language of the Rule and based on
13 the Frow cases and all the following cases.
14 In fact, I think Frow applies even when
15 codefendants are alleged to be closely
16 interrelated. I don't think that that gets
17 you past Rule 54 or the Frow case. That was
18 stated in a Fourth Circuit case, which is the
19 United States versus Peerless Insurance
20 Company.

21 Here, I just don't see that the record
22 reflects any logical, practical or compelling
23 reason to proceed against Felkel and Ulery and
24 enter judgments against them prior to entering
25 a judgment against the minor, the minor being

Page 25

1 MS. FARGNOLI: He educates me every day.

2 SPECIAL REFEREE: I've got several
3 hundred pages of memos on this. Isn't it
4 finalized at the time the judgment was
5 entered -- the subsequent judgment against the
6 minor was entered? And that was an issue we'd
7 had and -- candidly, and that Clawson &
8 Staubes had the defense in that case, and it
9 was a very similar situation. Once the
10 judgment is entered, aren't any issues with
11 regards to whether the first judgment was
12 final, aren't those resolved?

13 MS. FARGNOLI: I don't know that there's
14 a rule or a case that says that. I can
15 understand the question, certainly.

16 SPECIAL REFEREE: For instance, if they
17 were pursuing a judgment just on a finding
18 against a parent or a stepparent without a
19 subsequent finding, isn't that the issue? But
20 once there's a subsequent finding against the
21 minor, doesn't that resolve the issue that
22 it's not final but it has since become final?

23 MS. FARGNOLI: Sure. I guess my
24 argument in this situation would be that there
25 was no significant subsequent finding specific

7 (Pages 22 to 25)

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1 to the minor. Under Rule 54, the initial
2 ruling against Felkel and Ulery, in my view,
3 was improper. And then {E.U.}'s ruling, which
4 was a month or two later, simply adopted the
5 prior findings and conclusions, which should
6 have been void (ph) under Rule 54.

7 And so I think had there been specific
8 findings and specific rulings maybe against
9 the minor -- I understand where you're coming
10 from, but it sounds like it simply adopted the
11 prior findings, the prior Order. I don't
12 think -- unless I'm wrong, and someone can
13 correct me if I am -- that there was ever even
14 a hearing, at least there's no transcript of a
15 hearing as to the minor. I think it was just
16 -- I don't know what happened, quite frankly.

17 SPECIAL REFEREE: What -- we did have a
18 hearing, and there wasn't a court reporter for
19 the second prong of that, and it was after a
20 guardian had been appointed, and it was the
21 intent -- there was a full hearing at the
22 initial Motion, and because the minor wasn't
23 represented by the guardian, there was an
24 opportunity made, a guardian was appointed, a
25 subsequent hearing. Anyway, I appreciate

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1 that.

2 Let's, I guess, turn, then, to frankly
3 the meat of your argument on this Motion on
4 the --

5 MR. YARBOROUGH: May I -- is it
6 appropriate, just before I forget about it?
7 Our position is and always has been, first of
8 all, that at the first damages hearing, he was
9 represented here by his mother, who he was --
10 she received -- his natural parent and his
11 guardian, his mother. And while you sent me
12 away to go -- on his behalf, I still take the
13 position that it was appropriate; he was
14 represented here that day. He had notice of
15 that initial damages and default judgment
16 hearing, the child did, by service on his
17 mother, that she, as his natural parent and
18 guardian, was appropriate -- I think that the
19 Rule contemplates maybe a minor that doesn't
20 have a parent present or doesn't have a parent
21 that's also involved in the suit.

22 But our position has always been that by
23 her appearance that day on behalf of herself
24 and on behalf of her child -- minor child,
25 that all of the requirements for service and

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1 notice were met and that a final judgment
2 could have and should have been entered
3 against the minor child at that point. You
4 felt otherwise, and we went back and we went
5 through the process of having that guardian ad
6 litem appointed and then reappeared so that
7 that essentially procedural step could occur,
8 in which, you know, she appeared, Ms. Jones,
9 and then the judgment was entered. And then
10 she was given an opportunity to protect her
11 ward, which she did. And so she did her job,
12 which was protect her ward from adverse
13 financial consequences. And that's all I care
14 to say on that.

15 The one other thing, actually, with
16 regard to what was said already, there were
17 independent allegations of negligence against
18 the parents in the original Complaint. It was
19 not simply a vicarious allegation. South
20 Carolina, as we know, is a notice pleadings
21 state, not a fact pleadings state, and there
22 was one paragraph in particular that refers to
23 the negligence of the parents in addition to
24 the child being the cause of my client, K.B.'s
25 damages.

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1 And so it wasn't simply vicarious
2 liability. And there were -- there were
3 enough no bare allegations -- there were
4 enough in that initial Complaint to be
5 considered negligence allegations against the
6 parent and the stepparent in addition to the
7 child.

8 And, frankly, with regard to the -- what
9 is it? -- Rule 54, as you pointed out, none of
10 the judgments were inconsistent, and we
11 believe 54(b) has no applications to the
12 judgments in this case.

13 MS. FARGNOLI: I think we are a fact
14 pleadings state. And so I would just point
15 out that briefly, and we just sort of -- with
16 that issue as to whether it's a vicarious
17 liability suit or not against the parents, I
18 would just rely on the language of the
19 Complaint. I think the only allegation
20 against them was that they were parents. I
21 don't think there was any allegation of
22 negligent supervision or anything.

23 SPECIAL REFEREE: I've cut you off a
24 number of times, so I'm going to stop. You
25 all did such a good job -- and this isn't just

8 (Pages 26 to 29)

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1 smoke and mirrors. You all did a very good
2 job explaining this, and I'm pretty clear
3 where you all are coming from. Tell me your
4 position, if Nationwide is allowed in this
5 case, why the judgment should be set aside.

6 MS. FARGNOLI: Sure. Not to try to
7 shortcut that, but, certainly, I would rely on
8 the arguments in the brief. I don't want to
9 go through those in excruciating detail like
10 we did in the brief. But the first issue is
11 we believe there was a lack of proper service
12 on the minor. I think that's the first issue
13 cited in the brief.

14 At the damages hearing, his mother
15 testified that the minor moved out of their
16 residence on Holly Avenue when he turned 17,
17 which was approximately two months prior to
18 the time he was purportedly served. And
19 because of that, we believe service on the
20 minor, {E.U.}, was not proper. There is no
21 allegation or anything in the record that he
22 was ever served at his grandmother's address.
23 That's where she said that he had moved. I
24 think she said something like, Since he turned
25 17, he doesn't think he has to listen to us,

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1 and moved in with his grandma.

2 And based on her sworn testimony, that
3 he was at the grandmother's house at or around
4 that time, we believe he wasn't served. And
5 certainly if that's the case, then the
6 judgment should be set aside.

7 The Plaintiff submitted a couple of
8 Affidavits last week, one of which was Mike
9 Lamont, who I believe was the process server.
10 First, I'd ask that the Court not -- consider
11 the Affidavit as inadmissible hearsay. But to
12 the extent the Court wishes to consider that
13 Affidavit, it doesn't really -- all it says, I
14 believe, is that -- well, it says that {E.U.}
15 indicated that he lived there. Again, I
16 believe that's inadmissible hearsay. We've
17 never had an opportunity to test that, to
18 depose Mr. Lamont or anything else, and it's
19 certainly inconsistent with the testimony of
20 his own mother.

21 The Affidavit of Travis Felkel was also
22 submitted I believe on this issue of service.
23 And he essentially says he was confused about
24 the dates at the damages hearing, but he's not
25 the one that testified as to the dates in the

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1 damages hearing. I believe it was Ginger
2 Ulery, the mother, and not Travis Felkel.

3 Based on the sworn testimony of Ginger
4 Ulery, we believe that {E.U.} was residing at
5 a different address at the time he was
6 purportedly served. At the very -- you know,
7 at the most, I think these Affidavits create
8 an issue of fact as to the service of process
9 issue. And in the interest of justice, due
10 process and fairness to the minor, the
11 judgment against him should be set aside so
12 that Nationwide can be given the opportunity
13 to defend him and attempt to have this
14 \$5,000,000 judgment against him set aside.

15 And I don't know if you want me to kind
16 of go through all our arguments or let him
17 respond to each one or how you want to handle
18 that.

19 SPECIAL REFEREE: Just go ahead. If
20 this weren't fresh -- I mean, if I hadn't
21 looked at it all, I would go one by one,
22 but -- and I would like you to touch on --
23 they go into pretty specific details about --
24 is it Herndon?

25 MS. FARGNOLI: Sure.

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1 SPECIAL REFEREE: Mr. Herndon. I guess
2 your position on maybe his role with
3 Nationwide or to the extent, you know,
4 excusable neglect, that entire argument with
5 his conduct, just what Nationwide's position
6 on Mr. Herndon and what his role with
7 Nationwide would be.

8 MS. FARGNOLI: It's my understanding
9 that Mr. Herndon is a Nationwide agent. I
10 can't dispute that. As to the service issue,
11 I would say, first of all, if the suit wasn't
12 properly served on {E.U.}, the John Herndon
13 issue as to {E.U.} is irrelevant.

14 SPECIAL REFEREE: Absolutely. Got it.

15 MS. FARGNOLI: But assuming he was
16 properly served and that is an issue, he is an
17 agent of Nationwide. We take the position
18 that -- I guess, at the least, there was maybe
19 confusion at that point. Right? Travis
20 Felkel testifies that he brings the papers in
21 to John Herndon, and that -- under Travis
22 Felkel's own testimony, that Herndon told him
23 -- he says -- Felkel testified that, the agent
24 accepted the suit papers and told me he would
25 hold on to it and wait until I made the --

9 (Pages 30 to 33)

1 filed the claim in the corporate office.
2 Travis Felkel admits that he never called
3 Nationwide, never filed a claim with the
4 corporate office or anything like that.

5 So it's our position that Felkel didn't
6 do what he was supposed to do. He never -- he
7 was explicitly instructed to call the claims
8 office, I believe he was given the number, and
9 never did so, much like at the damages hearing
10 when he was instructed to do the same thing, I
11 think by you, and he still never did it. And
12 I think, at the very least, that is excusable
13 neglect on the part of Nationwide. But
14 certainly John Hemdon was an agent, and I
15 don't think that -- I don't think it's
16 disputed that Felkel brought him the papers.

17 You know, in addition to that, I would
18 say that I believe that the damages hearing
19 and the exhibits to the damages hearing show
20 that the Plaintiff's counsel sent numerous
21 letters to the Felkels prior to the time suit
22 was even filed, asking them to contact them.
23 I'm not exactly sure what all the letters
24 said. But there were numerous opportunities
25 before the suit was filed, when the suit was

1 highlight? I hear you on the service issues.
2 Anything else that you want to talk about
3 before I turn it over to David?

4 MS. FARGNOLI: Sure. I'll touch on each
5 of the remaining arguments in the memo. We
6 believe the judgment as to the minor is void
7 because he was not given proper notice at the
8 damages hearing as well. Rule 55(b)(2) states
9 that notice of the -- a hearing on
10 unliquidated damages shall also be given to
11 the parties in default by First Class Mail to
12 the last known address.

13 Our Courts require strict compliance
14 with that rule, as stated in McCall versus
15 IKON. And in that case, the case was sent
16 back for a damages hearing when it was found
17 that the minor was not given that notice
18 directly, as is required by Rule 55. I don't
19 see any -- I don't see anything in our record
20 that shows that {E.U.} was sent notice of the
21 damages hearing by First Class Mail to his
22 last known address, which when you go back to
23 the damages transcript -- damages hearing
24 transcript, it appears to be his grandmother's
25 address. And I don't even know what address

1 filed, after it was purportedly served, for
2 them to call the corporate office, call the
3 claims office, put them on notice of this
4 suit, and they didn't do it.

5 I have filed -- and I don't know if you
6 have it, but I filed an Affidavit.

7 MR. YARBOROUGH: I've got a copy.

8 MS. FARGNOLI: I've got one here too.
9 I'll go ahead and make it an exhibit. Have
10 you seen this? It's the Affidavit of Joy
11 Kennedy from Nationwide.

12 SPECIAL REFEREE: I don't think so.

13 MS. FARGNOLI: Joy is an employee of
14 Nationwide Insurance. Conducted a search of
15 all of their various claims systems to attempt
16 to determine when Nationwide corporate --
17 Nationwide claims was first put on notice of
18 this suit. Based on her investigation, the
19 date was July 29, 2015. And there's -- there
20 was no notice to Nationwide prior to that
21 date.

22 And I'd like to make this an exhibit as
23 well. I'll number that in a minute (sic).

24 SPECIAL REFEREE: Okay. Anything that
25 you want to -- again, anything you want to

1 that is. But I see no proof that that was
2 done. To the extent that's true, that's
3 another ground that we believe that the
4 judgment should be set aside on.

5 To the extent that the judgment against
6 -- that you find that the judgment against
7 {E.U.} is void, we believe that that also
8 voids the judgment against the parents.
9 Again, we believe that they were sued in a
10 vicarious capacity. And that if there's no
11 judgment against him, there can be no judgment
12 against them.

13 We also believe that pursuant to 63-5-60
14 of the South Carolina Code, that there's a cap
15 on their damages of \$5,000. That statute
16 states that a parent is liable only to the
17 extent of \$5,000 for the actions of their
18 children, of course unless they are
19 independently negligent in some way.
20 Certainly, that would constitute surprise,
21 mistake or excusable neglect as -- I don't
22 think that they would expect that they could
23 be held liable for a \$5,000,000 judgment when
24 there's a statute stating otherwise.

25 And, additionally, it should be noted

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1 that Mr. Felkel is not {E.U.}'s parent or his
2 legal guardian, which was stated at the
3 damages hearing, so there's no legal basis for
4 a judgment against him at all.

5 You know, we just believe that the
6 action and, more importantly, the inaction of
7 Travis Felkel and Ginger Ulery constitutes
8 mistake, inadvertence, surprise and excusable
9 neglect on the part of Nationwide for the
10 reasons I've discussed and that is in the
11 brief.

12 As to whether the minor was properly
13 represented by the guardian, again, because
14 there's no transcript of this hearing, some of
15 my arguments on that issue may be cured
16 without -- with someone just telling you what
17 happened. But from what is in the record that
18 I have, it seems to suggest that {E.U.} wasn't
19 given proper notice of that hearing; that --
20 I'm not sure whether he was even at the
21 hearing. I don't know whether the guardian
22 ever met with {E.U.}, as required by 63-3-830,
23 and all the requirements in those statutes.
24 The record at this point is devoid of any
25 evidence that the guardian ever met with

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1 {E.U.}, spoke to {E.U.} or otherwise discussed
2 this very serious issue with him. Certainly,
3 at the point at which the guardian was
4 appointed, the only thing that had been
5 rendered against the minor was an entry of
6 default, which, obviously, is a much lower
7 standard -- it's a good call standard.

8 At that point, it's my understanding
9 that no counsel was ever hired for him by
10 anyone; Nationwide was not contacted by
11 anyone. There are lots of things that could
12 have been done at that point, probably easier
13 than they are now, that weren't done. But
14 it's our position that the guardian simply
15 allowed a \$5,000,000 judgment be taken against
16 him in exchange for an assignment, which
17 really provides him with no guaranteed
18 protection.

19 In the interest of ensuring that his
20 rights are protected and that he is afforded
21 due process, we believe the judgment should be
22 set aside for that reason as well.

23 SPECIAL REFEREE: David --

24 MR. YARBOROUGH: I've forgotten all my
25 arguments I was going to make now.

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1 SPECIAL REFEREE: The ones I'd like to
2 hear from you --

3 MR. YARBOROUGH: Sure.

4 SPECIAL REFEREE: -- number one, any
5 service issues with the minor.

6 MR. YARBOROUGH: Right.

7 SPECIAL REFEREE: Number two -- I think
8 you've talked about the \$5,000 cap in your
9 brief sufficiently. Talk about notice to the
10 minor, service on the minor and the notice of
11 the damages hearing through the guardian ad
12 litem. I think those are the issues that are
13 probably most critical.

14 MR. YARBOROUGH: Sure. And if I may,
15 I'd just also start out by saying -- and I
16 notified Christy of this after I received her
17 brief, and I understand -- this is not a
18 criticism of Christy. It's a criticism of
19 Nationwide and how reckless they're being with
20 this whole thing, where they've come in and
21 made factual allegations in their brief that
22 they filed with the Court that there's just no
23 basis for. And those -- I don't know whether
24 those made any difference here today. But,
25 like, for instance, in the factual background

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1 portion, they go on talking about how {E.U.}
2 Ulery was the -- or E.U. --

3 For the purposes of this, if we mention
4 his name, just use the initials.

5 SPECIAL REFEREE: I will tell you that
6 at this point in default -- how that happened,
7 how -- I didn't -- I read it. It's not -- it
8 doesn't bear on the outcome of this case,
9 because I don't think it can. I understand
10 your concern.

11 MR. YARBOROUGH: I appreciate that. But
12 we all know where this is headed. So for the
13 record, for down the road, as part of the
14 record I would just like to mention that, you
15 know, they make all sorts of allegations in
16 here about E.U. being attacked with a baseball
17 bat, which is just completely not true. And
18 there's no basis for it. They took a document
19 in which -- a police report or an accident
20 report in which initials had been whited out,
21 and then substituted these names in for the
22 blanks, that there's absolutely no basis for.

23 So I just wanted to make a record of
24 that and say that -- and it may not bear on
25 today's proceedings, but I think it's

11 (Pages 38 to 41)

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1 important.

2 With regard to the service on the minor
3 issue of December 2nd, the mom did say that in
4 fact {E.U.} moved out after his 17th birthday.
5 Well, his birthday is December the 9th. They
6 were served on December the 2nd with a copy of
7 the Summons and Complaint of the lawsuit. And
8 so he was there. The process server -- you
9 know, we took extra care when we served this
10 lawsuit to make sure that it was properly
11 served and that everyone was home and that
12 everyone had notice of it.

13 And so both his stepdad, who has raised
14 him since he was a baby and has been
15 essentially his de facto guardian -- I don't
16 know what the correct definition of a legal
17 guardian is in South Carolina, but I think the
18 mother testified at the hearing that Travis
19 Felkel has been {E.U.}'s -- has raised him
20 since he was born. So they've all lived there
21 at Holly Avenue. In fact, we served the
22 mother -- as we pointed out in our brief, we
23 served the mother properly, which is service
24 -- which is the same as service on the child
25 for the purposes of this. All along nobody

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1 understand what -- service might be an issue
2 if we were talking about, you know, a coverage
3 issue or whatever from Nationwide's
4 perspective. But, here, they received the
5 lawsuit timely. There's no -- neither one of
6 the parents are challenging that. And they
7 took it to their -- hand-delivered the lawsuit
8 to their Nationwide agent, as they were
9 instructed to do in the policy, and as Travis
10 (sic) Herndon has admitted that they were
11 supposed to do; he was their designated agent.

12 Travis (sic) Herndon testified in his
13 deposition, I am Nationwide. I have their
14 power of attorney; I have their ability to
15 bind them; I am designated by the policy and
16 by practice as the person to serve lawsuits
17 on.

18 And we've attached his testimony to our
19 brief as well.

20 And so, you know, Travis Felkel -- their
21 whole argument about, well, whose fault it was
22 that it didn't ultimately make it to defense
23 counsel, you know, that doesn't really matter.
24 It was one of their faults. Our position is
25 Felkel is a layperson. He didn't know. He

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1 here has suggested that they had any
2 alternative address for E.U. up until today.
3 And so the last -- with regard to the damages
4 hearing and all of that, the last known
5 address for him has always been the Holly
6 Avenue address.

7 And with regard to service of the
8 hearings and the damages hearings and that
9 sort of thing, we served him in advance of the
10 damages hearing; she brought up, you served it
11 by First Class Mail. I made it exhibits to
12 our brief. We served them by First Class
13 Mail; we served the mother as guardian for
14 E.U.; we served them by process server of the
15 notice of the damages hearing, both -- both
16 ways, First Class Mail and process server.
17 I'm jumping around.

18 Going back to the whole service issue,
19 he's not here today contesting service. In
20 fact, the lawsuit which was taken and
21 reviewed, as Travis Felkel said, by all of
22 them in their home, and it was turned over to
23 their Nationwide agent. So had Nationwide
24 done what they were supposed to do and
25 answered the lawsuit, you know, I don't

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1 dropped off those papers. Yeah, he said, I'm
2 supposed to go call a claim number. That
3 didn't -- he didn't -- and he's put in an
4 Affidavit -- another Affidavit that was
5 previously submitted that, I didn't think that
6 a judgment was going to be entered against me.
7 I didn't know what was supposed to happen. I
8 didn't know that that was going to create some
9 legal liability on my part.

10 And, frankly, in his deposition, I asked
11 John Herndon about that. I said, You know
12 Travis Herndon (sic), right?

13 Yes.

14 I mean -- I'm sorry -- Travis Felkel?

15 Yes.

16 Was he a sophisticated person?

17 No.

18 He admits, he is not a sophisticated
19 person at all, as Your Honor probably saw that
20 day that he was here in front of you. These
21 are not sophisticated people. These are folks
22 that apparently have a hard time getting out
23 of bed in the morning. You know, it's amazing
24 that he did in fact -- that the lawsuit was
25 hand-delivered to his agent within a timely

12 (Pages 42 to 45)

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1 manner. But we all know that it was, and it
2 was up to John Hemdon, as the professional
3 and as Nationwide's designated agent, to
4 protect him and to act, and he didn't. So
5 that's with regard to that.

6 The Joy Kennedy Affidavit, again, is
7 another reckless attempt by Nationwide to --
8 it's false. It's -- to suggest that
9 Nationwide didn't have notice is -- I mean,
10 John Hemdon has admitted, he is Nationwide,
11 and he's got a big sign and he had a big sign
12 in front of his office; the policy says, this
13 is who you're supposed to contact with any
14 questions about your policy. It says, this is
15 who you're supposed to deliver notice of
16 claims to. And they did that in a timely
17 manner.

18 And so while the claims department may
19 not have had notice of it, serving the matter
20 on John Hemdon was sufficient. And
21 Nationwide, as an entity, had notice of the
22 lawsuit.

23 I've already addressed the issue with
24 regard to the process server and the First
25 Class Mail and the notice of hearing being

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1 delivered to -- on behalf of the minor, the
2 last known address. It's a Holly Avenue
3 address.

4 SPECIAL REFEREE: One of the things that
5 I do think -- I would like to hear from you on
6 -- I know I made you go get a guardian ad
7 litem. Walk me through -- let's talk about
8 the second damages hearing, your position on
9 service and notice --

10 MR. YARBOROUGH: Sure.

11 SPECIAL REFEREE: -- to the minor of
12 that hearing and in anticipation of the
13 guardian and just your position on that.

14 MR. YARBOROUGH: Sure. Our position is
15 that -- first of all, it's really -- our
16 position is that the second hearing was more
17 of a default -- just a default judgment
18 hearing, not a damages -- because there was no
19 testimony regarding damages at that point. In
20 advance of that -- our position is the damages
21 hearing was really the first hearing, and that
22 unliquidated damages -- as I said, everyone
23 was given proper notice of that; that the
24 child was properly represented there as well.
25 But that at that hearing, the testimony was

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1 taken and unliquidated damages were
2 established. Okay?

3 In advance, after we applied for a
4 guardian ad litem to be appointed and one was
5 appointed, in preparation of the following
6 hearing, we sent a copy of the complete
7 damages transcript and all exhibits to the
8 guardian ad litem and said, Please -- you
9 know, Here is the record that has been made;
10 here are the damages; here is what we're
11 seeking to do to enter a default judgment
12 against the minor.

13 And so we gave -- obviously, as soon as
14 that next hearing was set by you, we gave her
15 notice of that hearing. We, again, sent
16 notice of that hearing to the child at the
17 last known address via his mother, and to both
18 of the parents, the stepfather and the mother,
19 and I think we've marked those as exhibits.
20 We filed our Affidavits of Service with regard
21 to that.

22 And so everything was done to give
23 proper notice. We appeared here, the guardian
24 appeared. My understanding is, from things
25 that have been produced in this case, she made

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1 every effort to reach out to the child in
2 advance of the hearing, e-mails to the
3 parents, phone calls, a letter. And so I
4 think everything was done that could be done
5 to give proper notice. I think that the
6 statutes that -- and we briefed this. The
7 statutes that Ms. Farnoli refers to are
8 inapplicable to a guardian ad litem being
9 appointed in a civil case as opposed to a
10 child custody issue case and having to meet
11 with the child and all of that. Those are
12 inapplicable to this set of circumstances.

13 And as I mentioned earlier, to further
14 add, you know, and in response to Ms.
15 Farnoli's position that, had something been
16 done earlier, there would have only been an
17 entry of default, the Sundown case and PV (ph)
18 Holdings case are both very clear. Under the
19 relaxed 55(c) standard, there's no way
20 Nationwide is able to set aside -- or that the
21 individual Defendants are able to set aside an
22 entry of default under the satisfactory
23 explanation, which is the correct analysis;
24 Nationwide's analysis in their brief I believe
25 was misplaced. But even using that relaxed

13 (Pages 46 to 49)

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1 analysis under an entry of default standard
2 55(c), both of those Courts have held that an
3 insurance agent's negligence is imputed to the
4 insured and does not constitute a satisfactory
5 explanation for setting aside the default. So
6 you never even get to the "Wham factors."

7 So under the relaxed standard here,
8 whether it's negligence on the part of Travis
9 for believing that his agent was going to do
10 the right thing and follow through and hire
11 defense counsel or whether it's on the part of
12 the agent for thinking that Travis was going
13 to go file the claim and for holding the
14 papers, regardless of which of their
15 negligence it was, neither one of them meets
16 the standard for setting aside an entry of
17 default under the 55(c) standard. So it
18 wouldn't have mattered at that point. There
19 would have still been the same result.

20 So we believe we have proper service; we
21 believe that the guardian did everything that
22 she was supposed to do to protect the minor.
23 And then subsequently signing -- you know,
24 executing an assignment in exchange for a
25 covenant not to execute judgment against the

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1 minor. And so -- and especially in light of
2 this letter that they got from Nationwide
3 which says, Hey, we're reserving our rights;
4 we're going to deny coverage, and blaming --
5 you know, the other important thing to note is
6 that John Herndon admitted he received notice
7 of this lawsuit timely. He never did anything
8 to follow up with Ginger Ulery or with {E.U.}
9 himself to make sure that they were protected.
10 And he had a duty to do that under the
11 severability clause of the insurance policy.

12 So given Nationwide's position in this
13 now, the child would actually be at more risk
14 of prejudice in having this judgment set
15 aside, because Nationwide has declared their
16 intent to deny coverage if we went back to
17 square zero, as Ms. Fagnoli suggests
18 Nationwide would prefer. You know why they
19 would prefer that? Because they're going to
20 turn around and try and deny coverage on --
21 claiming that this was an assault of some
22 kind, and saying that, We don't have a duty to
23 defend, we don't have a duty to indemnify.

24 So as it stands right now, the minor is
25 protected from the judgment so long as

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1 Nationwide ends up on the hook, which we
2 believe is a foregone conclusion in this
3 matter. I mean, it's --

4 SPECIAL REFEREE: If there's no
5 coverage, they don't have to pay anything
6 anyway. The fact that there's a default
7 doesn't change that, does it?

8 MR. YARBOROUGH: The fact that there's a
9 default?

10 SPECIAL REFEREE: All the default does
11 is establish the amount that the Defendants
12 are responsible to pay to the Plaintiff. It
13 doesn't do anything to make Nationwide pay it,
14 does it?

15 MR. YARBOROUGH: Only if Nationwide was
16 responsible for it.

17 SPECIAL REFEREE: But that doesn't have
18 anything to do with what is in front of me.

19 MR. YARBOROUGH: It doesn't.

20 SPECIAL REFEREE: That's part of the Bad
21 Faith Action.

22 MR. YARBOROUGH: Correct. It doesn't.
23 Again --

24 SPECIAL REFEREE: My point is,
25 everything in -- whether or not -- everything

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1 in Exhibit No. 1, to the extent Mr. Herndon
2 did or didn't do what he was supposed to do,
3 to the extent that there are coverage issues,
4 to the extent that the Defendants didn't
5 adequately participate by submitting what they
6 needed to participate, all that would mean,
7 Nationwide doesn't have to pay this judgment.
8 That's not part of what is before me.
9 Nationwide still has a good clean fight in
10 front of them.

11 MR. YARBOROUGH: Of course they do.
12 They've hired two law firms and have indicated
13 their willingness and desire to fight that in
14 the other action. So I don't believe that
15 this is the appropriate venue -- court for
16 them to make those arguments in or action for
17 them to make those arguments in. And we
18 believe, as we've talked about in our
19 opposition to their Motion to Intervene, that
20 it's -- that's for another lawsuit.

21 And going back to -- let me make sure I
22 mentioned everything that I did.

23 The one other thing is we did bring an
24 Order. I do believe that in Judge Dennis'
25 e-mail back to us, he said that you should --

14 (Pages 50 to 53)

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1 that you, as the Special Referee, should be
2 the one to rule on their Motion to remove the
3 case from yourself. So I did bring an Order
4 denying Nationwide's Motion to remove the case
5 from the Special Referee, that you, the
6 Special Referee, are supposed to rule on,
7 according to Judge Dennis.

8 Is that how you read that?

9 MS. FARNOLI: Yeah. I read it as if he
10 wasn't denying the Motion; he was saying that
11 Clay has to hear the Motion.

12 MR. YARBOROUGH: In other words, you
13 would be the one to rule on whether to return
14 the case to the Circuit Court or not. So, I
15 guess, for the purposes of having everything
16 ruled on -- and I didn't speak to that
17 earlier, but, obviously, we've had this
18 hearing, so I assume you're denying their
19 Motion. But there's no legal authority for
20 their position there.

21 And, honestly, there's no legal
22 authority, in my opinion, for anything that
23 Nationwide is seeking to do here today.
24 They've not cited any South Carolina case that
25 allows them to return this to the Circuit

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1 file to sending correspondence and things like
2 that to the grandmother's address, at least at
3 some point, so I would point that out. And
4 I'd also like to make this file an exhibit to
5 today's hearing, and I'll mark it.

6 (Exhibit No. 2, Guardian ad litem's
7 file, was marked for identification.)

8 SPECIAL REFEREE: Can I ask you a
9 question on that? Because I definitely was
10 intrigued by your argument. And, again, these
11 aren't loaded questions; I'm actually curious
12 on your position on this. Over their vehement
13 objection, I made them get a guardian. And
14 the guardian appears to have made efforts
15 through the mom, stepfather, last known
16 address through the grandmother. And is it
17 your position that that's not enough, or is it
18 your position that, for whatever reason, it
19 just wasn't successful in this case? What
20 should have been done, I guess is -- to --

21 MS. FARNOLI: Good question.

22 SPECIAL REFEREE: Yeah. Because -- I
23 will say on the record, I thought she did what
24 she was supposed to do, a more than adequate
25 job of trying -- and presented that -- to the

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1 Court; they've not cited any South Carolina
2 case that allows them to intervene in this
3 matter. And they have not cited any South
4 Carolina case that allows them or would
5 justify setting aside the default judgment in
6 this case, even if they were allowed to
7 intervene. They have not cited any South
8 Carolina case or Rule that gives them any
9 relief on the service issue, on the
10 guardianship issue, on any of the notice
11 issues or anything else.

12 They've -- Christy -- Ms. Farnoli has
13 done a wonderful job of doing her best with
14 what's out there, but the problem is the
15 caselaw -- it just isn't there to support
16 them. The Rules just aren't there to support
17 them under these circumstances. It's very
18 clear that the Plaintiffs prevail on all of
19 these issues under our law.

20 SPECIAL REFEREE: I'll let you respond.

21 MS. FARNOLI: I'll respond. I'm going
22 to kind of jump around a little bit. As to
23 the service issue and where {E.U.} was
24 residing, we were given a copy of the
25 guardian's file, and there is reference in the

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1 extent it wasn't in the record, I did ask her
2 in this room, whenever that was conducted,
3 What efforts have you made? And it was beyond
4 what was submitted. And she described for me
5 the efforts that she had made and the
6 communications that she had. And so, you
7 know, I do think she did a good job of trying
8 to track him down and trying to put everybody
9 on notice. And I guess I'm asking, what else
10 should have been done, in your opinion, if
11 this was not enough?

12 MS. FARNOLI: Certainly I'm only aware
13 of what I can read in the documents. Because
14 there's no transcript of that hearing, I
15 wasn't privy to her telling you what all was
16 done. I think the statute requires strict
17 compliance. I think she was required to meet
18 with the minor. Certainly, it sounds like he
19 was giving her a hard time and refusing to
20 meet with her. Under that situation, I'll say
21 I don't think it was proper to enter into an
22 agreement, without his consent, for him to
23 take a \$5,000,000 judgment against him, which
24 provides him less than guaranteed protection.
25 I mean, if you read the assignment, the way

15 (Pages 54 to 57)

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1 it's written, it's certainly possible that
2 he's going to be responsible for this
3 \$5,000,000 judgment, or a portion of it, at
4 some point.

5 And I guess that's my position, is
6 you've got a minor who -- I believe was 17 at
7 the time. He's got a \$5,000,000 judgment
8 entered against him with some type of consent
9 with someone he's never spoken with, something
10 that he's going to be responsible for
11 potentially or partially for a long time.
12 There was no real defense put up at any point
13 that I can see. And I don't disagree that she
14 was in a tough position.

15 SPECIAL REFEREE: But what about to
16 David's point of, you know, with the
17 Reservation of Rights Letter, with the
18 possibility -- let's say we go back to square
19 one, the default is wiped off the face of the
20 earth, you still have significant injuries,
21 you still have significant damages, and
22 there's certainly the potential of no
23 coverage.

24 MS. FARGNOLI: It's my understanding
25 there's a Reservation of Rights Letter now.

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1 There was no Reservation of Rights Letter at
2 that point in the case. I'd also say, I mean,
3 he wasn't represented in any capacity at the
4 damages hearing in the sense of defending the
5 amount. I mean, I don't agree with Mr.
6 Yarborough that the first damages hearing
7 essentially set the damages for everybody
8 involved. I think that had the minor wanted
9 to put up a fight and have his own damages
10 hearing, to set a different amount, he could
11 have done that, and maybe the outcome would
12 have been different. The medical bills are
13 \$85,000. And maybe testimony and
14 cross-examination could have been put up at a
15 damages hearing that demonstrated that that
16 amount was too much.

17 SPECIAL REFEREE: You would have to
18 agree that there was every effort to get him
19 here to do just that, and nobody seemed to be
20 willing to undertake that exercise?

21 MS. FARGNOLI: I can only agree with
22 what I see in the file. Again, I don't know
23 what it was that you all discussed at that
24 hearing because there's no transcript of it.

25 SPECIAL REFEREE: I'm not quarreling

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1 with you.

2 MS. FARGNOLI: Sure. Me either.
3 Absolutely. As to Mr. Yarborough's point that
4 after the entry of default -- at the point in
5 time when the guardian was appointed, there
6 was only an entry of default against {E.U.},
7 and that nothing really could have been done
8 at that point to remedy the situation because
9 of service on the agent. I think that was
10 David's position.

11 I would say that at the very least, kind
12 of like I said a minute ago, he could have
13 been defended at the damages hearing. He
14 could have put up some Cross-Examination. I
15 do believe he was entitled to his own separate
16 damages hearing. Especially if Plaintiff
17 takes the position that this wasn't a
18 vicarious type suit and there were separate
19 causes of action against parents and minor, I
20 even more so believe that he was entitled to
21 his own damages hearing and his own set
22 amount.

23 You know, lastly, on the Motion to
24 remove the case from yourself, I would -- I do
25 have the e-mail from Judge Dennis, which I'll

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1 also make an exhibit, and I will make the
2 Order referring the case to the Special
3 Referee an exhibit to this hearing as well, to
4 the extent it's not been made an exhibit
5 already.

6 (Exhibit No. 3, Motion and Order
7 Information Form and Coversheet with other
8 documents, was marked for identification.)

9 (Exhibit No. 4, E-mail referring case to
10 Clay McCullough as Special Referee with other
11 e-mail chains, was marked for identification.)

12 In support of that Motion, I would argue
13 that Nationwide has raised valid concerns with
14 service of process issues and due process issues
15 and other procedural defects in the underlying
16 tort case. To the extent the Court finds, for
17 example, that {E.U.} was never properly served,
18 then the Entry of Default and Order of Reference
19 to the Special Master as to him should be void as
20 well, and the case should be removed from the
21 Special Referee and referred back to the Circuit
22 Court. The same is true with the Order of
23 Reference as to Felkel and Ulery, because they
24 were being sued in a vicarious capacity.

25 So that's sort of the crux of my

16 (Pages 58 to 61)

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1 argument on that issue, is to say, if we're
2 correct that there were some service issues in the
3 beginning of this, that also affects the Order
4 referring to the Special Referee.

5 Again, I would point out that Nationwide
6 did not have notice of this suit until July
7 2015 -- at least that is our position; I
8 understand Mr. Yarborough's position -- well after
9 the conclusion of the damages hearing. Nationwide
10 had no notice of the suit at the time the Order of
11 Reference was issued and should not be bound by
12 that Order. It's entitled to have its motions
13 heard by a Circuit Court Judge; it wishes to set
14 aside these judgments, defend the suit and request
15 a jury trial, just to defend this action, like I
16 said, as it was intended when the suit was brought
17 in the beginning.

18 And if our Motion to Intervene is
19 granted, I would argue that Nationwide is a party
20 to this suit that did not consent to the Order of
21 Reference and was not a party at the time of the
22 Order and should not be bound by the Order.

23 MR. YARBOROUGH: Just briefly, Rule 53
24 governs the Order of Reference. There's --
25 Nationwide has no standing to challenge that.

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1 They're not a party. As I have -- they
2 haven't been granted the right to intervene.
3 So they can't even -- in my position, they
4 have moved, but they can't. It's not a valid
5 Motion, because they're not a party, to have
6 it returned to the Circuit Court, and for the
7 reasons that we put in the brief. There's no
8 caselaw to support them and -- it would
9 obviate Rule 53 -- the Special Referee portion
10 of Rule 53 to allow that.

11 SPECIAL REFEREE: Well, the good news is
12 Judge Dennis has given me an advisory opinion
13 on this one. And out of all the things that
14 have become easy, I am not about to tell him
15 he's wrong. So I am going to grant my own
16 authority. I'm going to frame this
17 (indicating). So I do believe it's
18 appropriately and properly before me.

19 I am going to go back through this one
20 more time, take it under advisement, and then
21 I will e-mail you and ask one of you to
22 prepare an Order. Everything that you want in
23 the record can go in the record, to the extent
24 you haven't already done so. And unless
25 anybody has anything else to say?

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1 MR. YARBOROUGH: No. Just that we've
2 actually prepared a Consent Order that we --
3 we would be happy to submit.

4 SPECIAL REFEREE: A Consent Order?

5 MR. YARBOROUGH: I'm sorry. A proposed
6 -- apparently, I don't know the difference
7 between fact pleadings and notice pleadings in
8 the state either, so that was wishful
9 thinking. But we have a proposed Order that
10 we've been working on, and so I was just going
11 to say, you know, either way. We're glad to
12 take that on and convert it to whatever
13 rulings that you make.

14 SPECIAL REFEREE: You all have truly
15 done a very good job briefing this. I want to
16 make sure -- I'm pretty clear; I want to go
17 back through one more time, and then I'll
18 shoot you an e-mail. Don't double up work;
19 don't do anything until I e-mail everybody.
20 If anything pops up -- and I'm not suggesting
21 more briefing. But if you have anything you
22 want to include in the record that is not in
23 the record, it gets in for as long as you all
24 need to do so -- well, the next 24 hours, let
25 us know and we'll submit it and then I'll let

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1 everybody know my decision.

2 Anything else anybody else wants to say?

3 MS. JONES: Yes.

4 MR. SLIGH: I was going to clarify my
5 appearance, but go ahead.

6 MS. JONES: I just wanted -- I know you
7 got all the information that I submitted, even
8 though we didn't have the court reporter, and
9 you got the copies with the Subpoena. But Mr.
10 Sligh sent to me, and I provided those
11 documents, of all the different attempts to
12 reach my ward and meet with my ward. I do
13 tend to agree that the statute that you cited
14 in your brief doesn't apply in this context
15 because those are all under the children's
16 code, and those are all in reference to family
17 court. The majority of my practice is in
18 family court, and I've probably been a
19 guardian ad litem in over a hundred family
20 court cases and only a handful of civil cases.

21 So every time, it's a little different
22 role. But I did make every attempt, because I
23 think it's a good idea to meet, especially the
24 age of this ward, if I could have, and tried.

25 But also on the notice, as to that

17 (Pages 62 to 65)

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1 issue, because of my practice in family
2 court -- you know, the mother has custody of
3 this child. She's the one with the legal
4 responsibility to E.U. And you know, if the
5 child -- the child wants to move in with the
6 grandmother for a little while, I don't know
7 that -- you know, from my point of view, I
8 didn't think that would change the child's
9 legal residence, because the child could have
10 come right back. But the mother, as long as
11 the mother has custody and the grandmother
12 doesn't, that's the legal custodian of the
13 child, then I think that's the address that I
14 need to be using. But I did try to find him
15 as best I could.

16 I did make a change to the assignment of
17 claims different than what E.U.'s parents
18 signed. It was minor. But I felt -- you
19 know, again, in that role, if I'm the
20 guardian, I'm not his attorney, but I am
21 charged with representing his best interest
22 and doing what I need to do to advance his
23 best interest.

24 So I had changed paragraph 2 where there
25 was the language that "unless the judgment was

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1 (Exhibit No. 7, Exhibits to deposition
2 of Jamie Richardson, 11/10/15, was marked for
3 identification.)

4 (The hearing concluded at 11:20 a.m.)
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1 satisfied to the agreement of the Plaintiff,"
2 which I thought really gave them additional
3 room to demand that they had more than maybe
4 the judgment even supplied and asked that it
5 be taken out, and that was taken out of the
6 assignment of claims that I signed on behalf
7 of E.U. So I just wanted to make that clear.

8 SPECIAL REFEREE: Okay. Anything else?

9 MR. SLIGH: Just -- I said on behalf of
10 Nationwide at the beginning, just -- I didn't
11 anticipate speaking at this, but I did. But
12 I'm counsel for Nationwide in a separate
13 lawsuit. I was just here today. I'm not
14 counsel of record in this case. I'm just here
15 today as an observer.

16 SPECIAL REFEREE: All right. Mr.
17 Clawson?

18 MR. CLAWSON: It was very well argued,
19 and I have nothing to add.

20 (Exhibit No. 5, Exhibits to Default
21 Damages Hearing 4/21/15, was marked for
22 identification.)

23 (Exhibit No. 6, Deposition of John T.
24 Hemdon, III, 11/10/15, was marked for
25 identification.)

18 (Pages 66 to 68)

C E R T I F I C A T E

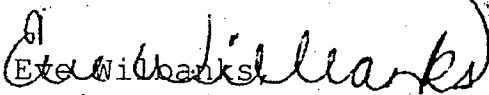
STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, EVE WILBANKS, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing hearing; and that the transcript is a true record of the statements given by the said parties.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 5th day of January, 2016, in the City of Charleston, County of Charleston, State of South Carolina.


Eve Wilbanks
Registered Professional Reporter
and Notary Public



My commission expires:
November 18, 2024

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Mary Green

From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) <MDennisLC@sccourts.org>
Sent: November 20, 2015 2:44 PM
To: Shannon Jones; David Yarborough
Cc: Christy Fagnoli; Douglas Jennings; tthames@wjlaw.net; Sam Clawson; Mary Green; Lydia Applegate; William Applegate
Subject: RE: Anna Angelacci v. Travis Felkel 2014-CP-08--2494

All:

I discussed this with Judge Dennis and he agreed that pursuant to the rule, Mr. McCullough as special referee is the person with authority to hear the motion to refer back to circuit court. If you have further questions, just let me know—thanks.

Lindsey M. Coffey

Law Clerk to the Honorable R. Markley Dennis, Jr.
100 Broad Street, Suite 439
Charleston, SC 29401
Phone: (843)958-5062
Email: MDennisLC@sccourts.org

From: Shannon Jones [mailto:shannon@shannonjoneslaw.com]
Sent: Monday, November 16, 2015 10:37 AM
To: David Yarborough
Cc: Christy Fagnoli; Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey); Douglas Jennings; tthames@wjlaw.net; Sam Clawson; Mary Green; Lydia Applegate; William Applegate
Subject: Re: Anna Angelacci v. Travis Felkel 2014-CP-08--2494

Dear All,

I am under an Order of Protection signed by Judge Dennis for December. I have reserved the December 7th date, but agreed to that before I was reminded by my staff about the Order of Protection. I will honor it since I already agreed to that date and it was my mistake.

Sincerely,
Shannon Jones

On Mon, Nov 16, 2015 at 9:33 AM, David Yarborough <david@yarboroughapplegate.com> wrote:

Lindsey,

I represent the plaintiff and it is our position that there should be no hearing on this matter (or if there is it should be summarily denied) for the following reasons: (1) Nationwide absolutely has no standing to file this motion or be heard because they are not a party to this action (2) the Circuit Court is without jurisdiction to hear this matter because it has been referred to a special referee and (3) there is no legal authority or rule of civil

procedure to support Nationwide's motion. The special referee, Clay McCullough, who also entered the default judgment, has already set a hearing to rule on Nationwide's Motion to Intervene and Set Aside Default for Dec. 7. The Order of Reference in this case and Rule 53 specifically states that the special referee retains jurisdiction to hear these exact motions. I have attached the Entry of Default, Order of Reference and the Default Judgment for your ease of reference.

With that said, if Judge Dennis is inclined to have a hearing on this Motion at all, we agree that it would be most helpful to have it expedited and would waive any notice requirements. I will make myself available anytime by phone or in person to appear before Judge Dennis on this.

Thank you.

David B. Yarborough, Jr.

YARBOROUGH APPLGATE, LLC

291 East Bay Street, second floor

Charleston, South Carolina 29401

david@yarboroughapplegate.com

o. [\(843\) 972-0150](tel:(843)972-0150) / c. [\(843\) 814-0221](tel:(843)814-0221)

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www.YarboroughApplegate.com

From: Christy Fagnoli [<mailto:CFagnoli@clawsonandstaubes.com>]

Sent: Monday, November 16, 2015 9:11 AM

To: Lindsey Coffey <mdennisl@sccourts.org>

Cc: David Yarborough <david@yarboroughapplegate.com>; Douglas Jennings <douglas@yarboroughapplegate.com>; shannon@shannonjoneslaw.com; tthames@wjlaw.net; Sam Clawson <sclawson@clawsonandstaubes.com>; Mary Green <mgreen@clawsonandstaubes.com>

Subject: Anna Angelacci v. Travis Felkel 2014-CP-08--2494

Lindsey -

I am representing Nationwide Insurance in this action. We have a pending Motion to Intervene and Motion to Set Aside Default Judgment. Prior to the time the Default Judgment was entered (and prior to the time Nationwide became involved), this case was referred to a Special Referee. Nationwide has filed a Motion to Remove the Case from the Special Referee and Refer Back to a Circuit Court Judge (attached). Nationwide believes its pending Motions should be heard by a Circuit Court Judge, rather than the Special Referee.

The Special Referee has set a hearing for our Motions for 12/7/15. If at all possible, I wanted to see if Judge Dennis could hear Nationwide's Motion to Remove the Case from the Special Referee and Refer Back to a Circuit Court Judge prior to 12/7/15. I realize that with the holidays and short notice that may not be possible, but wanted to check with you. If this is something that could fit into Judge Dennis' schedule, I would anticipate this to be a pretty short hearing. I have copied all counsel on this e-mail.

Thank you, and please don't hesitate to let me know if you or Judge Dennis have any questions or wish to discuss.

-Christy



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AND
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STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY  
ANNA ANGELACCI, as guardian of  
K. B., a minor,  
Plaintiff,  
v.  
E. U., a minor, Travis O. Felkel, and  
Ginger G. Ulery,  
Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-08-2494

ORDER DENYING NATIONWIDE'S  
MOTION TO REMOVE CASE FROM  
SPECIAL REFEREE

FILED  
15 DEC 11 AM 9:59  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

This matter came before me on Nationwide Mutual Fire Insurance Company, Inc.'s ("Nationwide") motion to remove case from special referee and transfer case to the circuit court. Although Nationwide is not a party to this action, it filed a motion to have the case removed from me as Special Referee and transferred to the circuit court.<sup>1</sup> Nationwide has not cited any authority for its motion, and the Order of Referral appointing me as Special Referee states that I am to retain jurisdiction to hear motions to set aside entry of default and default judgment and any other challenges to the validity of the judgment. As such, I have jurisdiction to hear Nationwide's motions to intervene and set aside the default pursuant to the Order of Referral. Moreover, as a non-party Nationwide lacks standing to file motions in this case. For these reasons, I deny Nationwide's motion to remove case from special referee.

Dennis F, 2015  
Charleston, South Carolina

IT IS SO ORDERED

Clayton B. McCullough  
Clayton B. McCullough, Esquire  
Special Referee  
Ninth Judicial Circuit

<sup>1</sup> Nationwide requested that the chief administrative judge schedule its motion for a hearing in the circuit court, but the parties have informed me that Judge Dennis declined to hear the motion on grounds that the Special Referee was the person with authority to hear the motion.

STATE OF SOUTH CAROLINA )

COUNTY OF BERKELEY )

ANNA ANGELACCI, as guardian of )  
K. B., a minor, )  
Plaintiff, )  
v. )  
E. U., a minor, Travis O. Felkel, and )  
Ginger G. Ulery, )  
Defendants. )

IN THE COURT OF COMMON PLEAS )

FOR THE NINTH JUDICIAL CIRCUIT )  
CASE NO.: 2014-CP-08-2494 )

ORDER DENYING )  
NATIONWIDE MUTUAL FIRE )  
INSURANCE COMPANY'S MOTION )  
TO INTERVENE AND MOTION TO )  
SET ASIDE DEFAULT JUDGMENT )

This matter came before me on Nationwide Mutual Fire Insurance Company, Inc.'s ("Nationwide") motion to intervene in this action and motion to set aside the default judgment. Nationwide and Plaintiffs briefed the motions extensively, and I presided over a hearing on December 7, 2015, and heard arguments from counsel for Plaintiffs and Nationwide and considered exhibits submitted by both parties. In addition, the minor defendant's guardian ad litem appeared on his behalf. After considering the written submissions and oral arguments of Nationwide and Plaintiffs, for the reasons set forth below, I find that Nationwide has not established a right to intervene in this litigation, and, therefore, deny its motion to intervene. Although I am denying its motion to intervene, which automatically precludes success on the motion to set aside default judgment and entry of default, for the sake of judicial economy, I have considered that motion on the merits, and find that even if Nationwide were allowed to intervene, it cannot meet its burden to set aside default judgment or entry of default, and, therefore, I deny its motion to set aside default on that basis as well.

Yarborough  
Appellate  
CPP

### FACTUAL BACKGROUND

E.U., a minor over the age of fourteen, Travis Felkel (E.U.'s stepfather) and Ginger Ulery (E.U.'s mother) (hereinafter "Ulery-Felkel family") are the named defendants in this lawsuit. The Ulery-Felkel defendants were insured by Nationwide through a homeowners insurance policy sold to them by John T. Herndon, III at the Herndon Insurance Agency. Herndon was a captive agent for Nationwide, and was specifically named in the Policy as Nationwide's agent, to whom notice of loss claims could be provided by the insured. *See* Deposition of John Herndon.

According to Affidavits of Service that were originally filed with the Affidavit of Default, subsequent Affidavits of Travis Felkel and the process server, the Ulery-Felkel Defendants were served on December 2, 2014. Shortly thereafter, Travis Felkel personally delivered the Summons and Complaint to John Herndon at his Charleston office. Herndon admits that Felkel hand-delivered the lawsuit to him before Christmas, and that he made a copy of the lawsuit papers.

Despite having notice of the lawsuit through its agent John Herndon, Nationwide did not defend or investigate the lawsuit, and failed to advise its insureds that it would not be defending the lawsuit. The lawsuit was never answered, the clerk of court signed an entry of default and referral to a special referee was ordered. The Special Referee entered default judgments against each of the three defendants, jointly and severally, in the amount of \$5,150,000 in favor of Plaintiffs Anna Angelacci and K.B., a minor over the age of fourteen.

After default judgments were entered against the Ulery-Felkel defendants, they assigned any and all claims they may have against Nationwide for mishandling of the lawsuit to the Plaintiffs. Thereafter, on July 27, 2015, the Plaintiffs, in their own right and as assignees of Travis Felkel, Ginger Ulery and E.U., filed suit against John T. Herndon, Herndon Insurance Agency, Inc., Nationwide Mutual Ins. Co., and Nationwide Mutual Fire Ins. Co. alleging

negligence, bad faith, breach of contract and misrepresentation arising out of Nationwide's failure to defend its insureds in this action.<sup>1</sup> Nationwide was served with this bad faith lawsuit on July 28, 2015. Nationwide issued a full reservation of rights letter to its insureds and then moved to intervene and set aside default. The individual defendants have not moved to set aside the default judgment nor have they challenged service of process or the validity of the judgments in any way.

## **LEGAL ANALYSIS**

### **I. MOTION TO INTERVENE**

Nationwide is not a party to this action. Nationwide's insureds hand-delivered a copy of the lawsuit to Nationwide's designated agent within thirty days of being served, but Nationwide failed to file an Answer on their behalf. This failure resulted in entry of default and default judgment against its insureds. As a non-party, Nationwide has no standing to challenge this default and so it has moved to intervene in the action.

Intervention is a procedural device whereby a third party who is not a named party in an existing lawsuit, but who has an interest in its outcome, may become a party to the action. *Ex Parte Horry County State Bank*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004)(citing *Black's Law Dictionary* 826 (7<sup>th</sup> ed. 1999)). Intervention may be of right or permissive, and is governed respectively by Rule 24(a) and (b), SCRCP, both of which are modeled after the federal rule 24. *Id.* Generally, intervention should be liberally granted, but "this does not mean that intervention should always be granted." *Id.* at 507, 604 S.E.2d at 725. Instead, the court must consider the

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<sup>1</sup> See *Anna Angelacci, individually and as guardian of K.B., a minor over the age of fourteen, as assignee of Travis Felkel, Ginger Ulery and E.U., a minor over the age of fourteen, by his Guardian ad Litem Shannon P. Jones v. John T. Herndon, III, Herndon Insurance Agency, INC. Nationwide Mutual Insurance Company, and Nationwide Mutual Fire Insurance Company*, Case No. 2015-CP-08-1759. For ease of reference, this lawsuit will be referred to as the bad faith litigation.

pragmatic consequences of a decision to permit or deny intervention, and must examine each case in the context of its unique facts and circumstances. *Id.* (citing *Berkeley Elec. Coop, Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d 712(1990)). A majority of jurisdictions refuse to allow insurers to intervene in the underlying tort suit against their insureds because other mechanisms, like declaratory judgment actions, exist to protect the insurers' rights vis-à-vis coverage issues. 1 *Law and Prac. of Ins. Coverage Litig.* § 12:17. Based on applicable case law and the specific facts of this case, I find that Nationwide has not established a right under Rule 24, SCRCP, and so deny its motion to intervene.

**A. Intervention as of Right Under Rule 24(a)**

The courts have established a four-part test for intervention under Rule 24(a)(2). A party must establish each of the following: (1) timely application; (2) an interest relating to the property or transaction which is the subject of the action; (3) that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) that its interest is inadequately represented by the parties. *Ex Parte Horry County State Bank*.

The majority of courts that have analyzed the ability of an insurer to intervene in underlying tort litigation pending against their insureds under this test have denied insurers motions to intervene based on the second prong, which requires that the insurer have an "interest" in the litigation. The Supreme Court of South Carolina has followed this trend. In 2007, our Court denied an insurer's motion to intervene in an "underlying suit" on grounds that the insurer could not satisfy the second prong of the above cited test, as it did not have "an interest relating to the property or transaction which is the subject of the action" as required by Rule 24(a)(2). *Ex Parte Government Employee's Insurance Company*, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007) (citing *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994)).

In that case, GEICO moved to intervene in a family court action instituted to obtain an order validating the common law marriage of an individual, Ronnie Cooper, to a GEICO insured driver, Yolanda Goethe. *Id.* at 134, 644 S.E.2d at 700. Cooper was injured in an accident and sought to stack underinsured motorist coverage provided by Goethe's GEICO policy on grounds that he was a Class I insured as Goethe's common law spouse. *Id.* After GEICO denied Cooper's claim to stack coverage, Cooper filed the family court action seeking an order validating his common law marriage to Goethe. *Id.* Upon review, the Supreme Court denied GEICO's motion to intervene, holding that GEICO "has no real interest in whether Cooper and Goethe have a valid common law marriage." *Id.* at 138, 644 S.E.2d at 702. Significantly, the Court went on to explain, "GEICO's interest is in the financial implications of the family court's decision, which is peripheral to the subject matter before the court." *Id.* at 138-39, 644 S.E.2d at 702 (emphasis added). Thus, even though GEICO argued that the decision of the family court "would impact GEICO's ability to protect its interests under the insurance policy issued to Goethe," the Supreme Court found any such interest was not "sufficiently related to the subject matter of the action" to warrant intervention. *Id.* at 134-35, 139, 644 S.E.2d at 700, 703.

The South Carolina Supreme Court's holding in the GEICO case is in line with the majority of federal courts, including the District of South Carolina among others, which have denied insurers the right to intervene in underlying tort suits on grounds that the insurers' interests are not sufficient to support intervention under Rule 24(a)(2), FRCP,<sup>2</sup> particularly where the insurer has reserved the right to deny coverage. See, e.g., *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629 (1<sup>st</sup> Cir. 1989); *Restor-A-dent Dental Laboratories, Inc. v. Certified Alloy*

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<sup>2</sup> Rule 24, SCRCF, was based on the federal rule, and the language of both rules is identical. See Notes to Rule 24, SCRCF.

*Products, Inc.*, 725 F.2d 871 (2d Cir. 1984); *Lewis v. Excel Mechanical, LLC*, 2013 WL 3762904 (D.S.C. 2013).

In the First Circuit's *Travelers* case, Travelers' insured, Richard Dingwell, owned and operated a plant in the business of cleaning petroleum and chemical storage tanks. Dingwell received a notice from the EPA that his plant was being shut down for illegal dumping at the site. *Travelers*, 884 F.2d at 631. In addition, Dingwell was notified, along with the generators and transporters of the waste to his facility, that he and his customers were Potentially Responsible Parties ("PRPs") under CERCLA, and were strictly, jointly and severally liable for all costs incurred in site investigation and clean up. *Id.* Travelers agreed to pay Dingwell's legal expenses in connection with these administrative proceedings, but expressly reserved their right to deny indemnification for any and all damages. *Id.* To avoid protracted litigation, Dingwell and the other PRPs signed a proposed consent decree with the EPA in which they were obligated to spend roughly \$12.5 million in the clean-up effort. Some of the PRPs then sought to negotiate a settlement of their claims for contribution and indemnity against Dingwell. *Id.* Dingwell's insurers refused to participate in the negotiations, and reiterated their reservation of rights to deny coverage. *Id.* at 632. The negotiations went forward and Dingwell and the group of PRPs reached an agreement: Dingwell would assume 65% of the clean-up costs, join the Consent Decree and assign to the PRPs his indemnification rights against his insurers. *Id.* In return, the PRPs agreed to seek satisfaction of Dingwell's obligations solely from assets that might be available under his insurance policies. *Id.*

Subsequently, the PRPs filed suit against Dingwell, and the PRPs moved for consent judgment against him pursuant to the terms of their settlement agreement with him. Dingwell planned to consent to judgment, and the insurers filed a motion to intervene in order to oppose the entry of judgment. *Id.* at 632. The district court denied the insurers' motion to intervene

both as of right and permissively, and the First Circuit affirmed that decision on appeal. In affirming the denial of the motion to intervene, the First Circuit held “[w]e agree with the district court’s conclusion that the insurers failed to satisfy the second requirement – an interest relating to the property or transaction which is the subject of the action.” *Id.* at 638. Although the court recognized that the insurers had a potential interest in minimizing Dingwell’s liability to the PRPs, it was a *contingent* interest. “When the insurer offers to defend the insured but reserves the right to deny coverage, . . . the insurer’s interest in the liability phase of the proceeding is contingent on the resolution of the coverage issue.” *Id.* at 639. As it was merely contingent, the First Circuit found it was “not cognizable for the purposes of Rule 24(a)(2).” *Id.*

Significantly, the First Circuit found the insurers’ interest to be “contingent” even though its insured was consenting to judgment and the amount of damages would thereby be fixed, just as damages would be for a party in default. The “contingency” lies in whether or not an insurer, which has reserved its rights to deny coverage, will be obligated to pay those damages under the terms of its policy, and that question is appropriately addressed in separate coverage litigation, not in the underlying tort suit.

Recently, the District of South Carolina followed this line of cases when it denied an insurer’s motion to intervene in an underlying tort suit on the same grounds after the insurer reserved its rights to deny coverage, finding that the insurer’s interests in the tort litigation were contingent on the outcome of the coverage dispute and thereby insufficient. *Lewis. v. Excel Mechanical, LLC*, 2013 WL 3762904 (D.S.C. 2013).

Penn National does not have an interest in the subject matter of this action, that is, [Defendant’s] allegedly negligent operation of the Boat, that, in turn, led to [Plaintiff’s] tort claim for damages against Defendants. Instead, Penn National’s interest is in the amount it may have to pay . . . if Plaintiff wins. Stated differently, Penn National’s interest is in how much of any future award may be attributable to damages contemplated by the policy.

*Id.* at 2 (emphasis added). The district court found the above-described interest was not cognizable for purposes of Rule 24.

In this case, I find that Nationwide is situated similarly to the insurers in the cases discussed herein. Nationwide's interest in the underlying tort action is not in the subject matter of that action, which relates to the negligence of its insured that caused injury to the plaintiff, but in the amount it *may* have to pay *if* its insureds prevail in the bad faith litigation. Because Nationwide has reserved its right to deny coverage altogether, its interest in the underlying litigation is contingent on the resolution of the coverage issue, just as the insurers' interest was contingent in *Travelers*, where the insurer had reserved its right to deny coverage. The fact that the amount of the judgment has been determined here by means of a default does not affect the contingency, just as the fact that the insurer had entered into a consent judgment did not affect the contingency of *Travelers*' interest in the underlying litigation. Similarly, as GEICO's interest in the *Goethe* case was in the financial implications of the family court's decision to recognize common law marriage, and, as such, was peripheral to the subject matter of the family court action and insufficient to warrant intervention, Nationwide's interest in the financial implications of the underlying suit here is peripheral and insufficient to warrant intervention.<sup>3</sup>

Based on the South Carolina authority and authority from the federal courts cited, Nationwide cannot meet its burden to establish it has a sufficient interest in the subject matter of this tort litigation to support intervention of right under Rule 24(a)(2).

#### **B. Permissive Intervention under Rule 24(b), SCRPC**

<sup>3</sup> Significantly, Nationwide has failed to cite a single South Carolina case in which the court has allowed an insurer to intervene in an underlying tort case. Nationwide cites to *McClurg v. Deaton*, 380 S.C.563, 671 S.E.2d 87 (Ct. App. 2008). In that case, the *employer* of the individual defendant (not the "carrier") moved to intervene because the employer was vicariously liable for the defendant employee's negligence, and both the employee and the employer then moved to set aside default. Accordingly, *McClurg* does not stand for the proposition that an insurer has a sufficient interest to intervene in an underlying tort suit.

Under Rule 24(b)(2), permissive intervention is appropriate where (1) "an applicant's claim or defense and the main action have a question of law or fact in common" and (2) intervention does not "unduly delay or prejudice" the rights of the original parties. Rule 24(b), SCRPC. The court has broad discretion in granting or declining to grant permissive intervention, and reversal of a denial of permissive intervention on grounds of abuse of discretion "is so unusual to be unique." *Travelers*, 884 F.2d at 641 (citations omitted); see also *Excel Mechanical*, 2013 WL 3762904 (holding that the court enjoys broad discretion on the issue of permissive intervention).

Here, there is no question of law or fact in the underlying tort litigation that is common to Nationwide's claim that its policy does not cover Plaintiff's injuries. Nationwide is already a party to the bad faith litigation instituted by its insureds and will litigate any coverage defenses it has in that case. Just as its financial interest is "peripheral" to the underlying tort claims, so is any claim that Nationwide shares common questions of law or fact with those raised in the underlying suit.

Moreover, allowing Nationwide to intervene, after liability and damages have already been determined, would prejudice plaintiffs and, potentially, Nationwide's own insureds, as it could force them to oppose the insurer who may be inclined to contest their factual assertions to the extent those assertions impacted the insurer's coverage. See *Excel Mechanical*. In order to avoid this possibility as well as the injection of issues of insurance coverage into this underlying action, I exercise my discretion to deny permissive intervention as the courts did in *Travelers* and *Excel Mechanical* when faced with similar factual scenarios.

## **II. MOTION TO SET ASIDE DEFAULT**

As discussed at-length above, I am denying Nationwide's motion to intervene. In light of that ruling, Nationwide has no standing to file a motion to set aside default, and, accordingly, its motion to set aside default is also denied. As the motion to set aside default was fully briefed and argued, however, for the sake of judicial economy, I have considered that motion on its merits regardless. Based on the facts presented, I find that Nationwide cannot meet the standard to set aside either default judgment under Rule 60(b) or entry of default under Rule 55(c), and, therefore, deny its motion to set aside default judgment and entry of default.

**A. Nationwide Cannot Meet The Rigorous Rule 60(b) Standard For Setting Aside A Default Judgment When Its Agent Received The Summons and Complaint But Failed To Hire Counsel Or File An Answer On Behalf of Its Insured.**

Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRPC. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c) for an entry of default. *Sundown Operating Company, Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 681 S.E. 2d 885 (2009). The Rule 55(c) "good cause" standard for relief from entry of default requires the applicant to provide an explanation for the default and the reasons why vacation of the entry of default would serve the interests of justice. "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Sundown*, 383 S.C. 607-08, 681 S.E.2d at 888 (emphasis added)(citing *Wham v. Shearson Lehman Bros., Inc.* 298 S.C. 462, 381 S.E.2d 499 (Ct.App. 1989)(hereinafter referred to as the "Wham factors"). It is not necessary for the trial court to make specific findings of fact for each factor if there is sufficient evidentiary support for the finding of lack of good cause. *Id.* (citations omitted).

After a default judgment has been entered, however, Rule 60(b) requires "a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or "other misconduct of an adverse party." *Id.* at 608, 681 S.E. 2d at 888-89. Indeed, "the different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default." *Id.* As noted in *Sundown*, if no satisfactory explanation is given, then there is no need to conduct the "good cause" analysis in the case of an entry of default or the more rigorous 60(b) factors in the case of a default judgment. *Sundown*. A motion to set aside default is addressed to the sound discretion of the trial court. *Id.*

In *Sundown*, the corporate defendant was served on August 28, 2001, notified its insurance agent of the lawsuit by phone on September 14, 2001, and sent its agent a copy of the lawsuit on October 1, 2001, after the Answer had become due. On October 2nd, the insurance agent requested an extension of time to respond to the complaint, but he was too late and default was entered that day. The defendant then moved to set aside entry of default, arguing that it had established "good cause" by showing that the default was caused by the negligence of its insurance agent and because (1) it promptly moved for relief; (2) it had a meritorious defense; and (3) plaintiffs would suffer no prejudice if the court set aside entry of default. *Sundown* (citing *Wham* factors).

The Supreme Court denied Defendant's motion to set aside the mere entry of default, holding that the insurance agent's negligence could not be a satisfactory explanation for the default based on the long-standing principle that the insurance company's negligence is imputed to the client: "the law is clear that an insurance company's misconduct is imputable to the client." *Id.* at 609, 681 S.E. 2d at 889. Based on these facts, the Court found that the defendant

did not meet "even the most minimal showing of good cause." *Id.* at 607, 681 S.E.2d at 888. The Court did not make specific findings regarding each of the three *Wham* factors, as a trial court is not required to do so "if there is sufficient evidentiary support [in] the record for the finding of lack of good cause." *Id.* at 608, 681 S.E.2d at 888.

Within a week of deciding the *Sundown* case, in *Richardson v. P.V., Inc.*, 383 S.C. 610, 682 S.E. 2d 263 (2009), the Court re-emphasized its holding that negligence of an insurance company to timely retain defense counsel and answer a complaint is imputed to a defaulting litigant and cannot constitute good cause to relieve the litigant from an entry of default under Rule 60(b). See also *Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct.App.1987) (observing that the "courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant") and *Williams v. Vanvolkenburg*, 312 S.C. 373, 440 S.E.2d 408 (Ct.App. 1994) (imputing an attorney's negligence to a defaulting litigant).

In the present case, I find the insurer's conduct was at least as deficient as in *Sundown*. In *Sundown*, the insured placed the insurer on verbal notice of the lawsuit but did not provide a copy to the insurer until after the due date for the Answer had passed. Here, the insured hand-delivered a copy of the lawsuit to his Nationwide insurance agent John Herndon after he was served on December 2, 2014 sometime before Christmas, which would have been a week or more before an Answer was due.<sup>4</sup> Mr. Herndon testified that he was Nationwide's agent, that he made a copy of the lawsuit papers, and that delivery of the lawsuit constituted proper notice by the insured under the terms of the policy. He also testified that Nationwide owed separate duties to each of the insureds under the Severability clause of the policy and that after being served

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<sup>4</sup> The factual findings in this section are based on the deposition testimony of Nationwide's agent John Herndon, which was made part of the record by Plaintiffs.

with the lawsuit on behalf of all three of the insureds who were living in the household he never took any steps to inform any of them that the lawsuit wasn't being defended or to protect them.

*Sundown* makes clear that under the circumstances before me, the test for relief is from entry of default, not the test for relief from default judgment. ("The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality.").

Even under the less rigorous standard for motions to set aside entries of default, under facts that are very similar to those of this case, our Supreme Court found the defendant could not establish the good cause necessary to set aside entry of default. *Sundown*. Likewise, I find that Nationwide's failure to answer the Complaint after the Complaint was hand-delivered to its captive agent was negligent, which is imputed to its insured, and that Nationwide has not provided a "satisfactory explanation" for default, as required by Rule 55(c) and *Sundown*. As Nationwide cannot satisfy even Rule 55's lesser "good cause" standard, I find that Nationwide has not established the more rigorous Rule 60(b) standard of "mistake, inadvertence, surprise or excusable neglect."<sup>5</sup>

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<sup>5</sup> In an attempt to show "surprise" under Rule 60(b), Nationwide argues that Defendants Travis and Ginger Ulery-Felkel were "surprised" by the default judgment against them because of language in S.C. Code Ann. 63-5-60, entitled "Parental civil liability for damage to State property." Nationwide argues that this section limits recovery of damages from the parents of a minor who causes personal injury to \$5,000. This Code section, however, is very limited in its application as it only applies to malicious or willful conduct by minors and does not encompass the *negligent* actions of the children or of the parents as it relates to the supervision of their children. Indeed, the plain language of this section provides that "[t]he liability of this section is in addition to and not in lieu of other liability which may exist by law." (emphasis added). Plaintiffs' Complaint paragraphs 9 and 10 alone contain sufficient allegations of negligent acts or omissions of "Defendants" which is enough to sustain judgments under a negligence cause of action against all three defendants individually when admitted by default. Accordingly, this argument is without merit.

**B. NATIONWIDE IS NOT ENTITLED TO RELIEF UNDER RULE 60(b)(4)**

Rule 60(b)(4), SCRCP, allows for relief from a judgment if the judgment is void. "The definition of 'void' under the rule only encompasses judgments from courts which failed to provide due process...or lacked subject matter jurisdiction or personal jurisdiction." *Linda Mc Co. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010). Here, Nationwide argues that the judgment against Minor Defendant E.U. is void for lack of personal jurisdiction, for lack of due process, and pursuant to Rule 54(b). For the reasons explained below, I find that the minor was served on December 2, 2014, and that due process was afforded to the parties.

**1. Minor Defendant E.U. was properly served and the court had personal jurisdiction over him.**

Rule 4, SCRCP serves at least two purposes. "It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." *Fassett v. Evans*, 364 S.C. 42, 46, 610 S.E.2d 841, 843 (Ct.App. 2005) (citing *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996)). "Exacting compliance with the rules is not required to effect service of process. Rather, inquiry must be made as to whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Id.* Further, an officer's return of process creates the legal presumption of process that cannot be impeached by the mere denial of service by the defendant. *Id.* (citations omitted); *McClurg v. Deaton*, 380 S.C. 563, 579, 671 S.E.2d 87,96 (2008).

Rule 4(d)(1), SCRCP, provides the method for proper service on individuals.

**Upon an individual** other than a minor under the age of 14 years or an incompetent person, **by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein**, or by a copy to an agent authorized by appointment or by law to receive service of process.

(emphasis added). For minors between the ages of 14 and 18, who live with a parent or guardian, such as defendant minor E.U., Rule 4(d)(2) provides further that "a copy of the summons and complaint shall likewise be served upon said parent or guardian." (emphasis added).

In this case, service was perfected on Defendant Minor E.U. pursuant to both Rule 4(d)(1) and (2) when the summons and complaint was hand-delivered to Defendant Travis Felkel on December 2, 2014 at his home, which was also the home of his wife, Ginger Ulery, and step-son Minor Defendant E.U. Indeed, Nationwide does not dispute that service was proper on both Travis and Ginger on December 2, 2014, as Travis Felkel is a person of suitable age and discretion to accept service on his wife and step-son's behalf. Nationwide also does not dispute that Ginger is the parent and legal guardian of Minor E.U. Accordingly, E.U.'s parent, Ginger, was "served" with a copy of the summons and complaint when her husband opened the door and accepted the summons and complaint from the process server. It follows, then, that Minor Defendant E.U.'s parent was "served" for purposes of Rule 4(d)(2).

Nationwide's only remaining argument regarding service is that Minor Defendant E.U. was not served at his "dwelling place or usual place of abode." As a preliminary matter, this is not a case in which the defendant himself denies service. Rather, Nationwide's argument is based entirely on the statement of Ms. Ulery-Felkel at the damages hearing that her son started living with his grandmother sometime following this incident. The damages hearing occurred on April 21, 2015, almost six months after the date of service. Ms. Ulery-Felkel first said that her son moved out in September, then she said October, and Mr. Felkel never said when the minor moved out. Now, Mr. Felkel has clarified by Affidavit that E.U. was "home" with he and his wife on December 2, 2014, when Mr. Felkel accepted service, and that all three of them

reviewed the lawsuit papers that night. *See Felkel Affidavit*. Moreover, the process server has testified via Affidavit that the minor answered the door at the family home on December 1, 2014, the day before service was effectuated. *See Lamont Affidavit*. Accordingly, the only evidence in the record is that the minor was at home on the day before and day of service, and that he received actual notice of the lawsuit on the night it was served. *See Felkel Affidavit*.

Further, as acknowledged by Nationwide, one's dwelling or place of abode for purposes of Rule 4 is determined by the particularized facts of each case. *Fassett v. Evans*, 364 S.C 42, 610 S.E.2d 841 (Ct.App. 2005). In the *Fasset* case, the defendant claimed he became separated from his wife and had moved out of the marital home shortly before his wife accepted service on his behalf at their marital home. Despite this testimony, the court found that the marital abode remained his usual place of abode for purposes of Rule 4 because of the presumption created when the sheriff's deputy left the complaint with defendant's wife, and the lack of evidence that he had established a new permanent dwelling place or that he had no intention to return to the marital home. Similarly, here, there is no evidence that the minor defendant intended to establish a new permanent residence at his grandparents' home or that he had no intention of returning to his parents' home, even if he was even staying with his grandparents at the relevant times. Moreover, there is no testimony from the minor defendant himself to contradict the Affidavit that he was "home" with his mother and step-father at the time of service, or to contradict the statement that he received actual notice of the lawsuit. *See Felkel and Lamont Affidavits*. Nationwide's argument is based entirely on off the cuff testimony at the damages hearing regarding dates, that was not provided by the minor defendant himself, and which has now been clarified by specific testimony in the context of the date of service. This speculation, raised by Nationwide, not the actual defendant who was served, is insufficient to rebut the presumption of

proper service and the presumption that his mother's home remained his "usual place of abode" for purposes of service as that term has been defined by case law. *See Fasset*.

Because service was affected properly on the minor defendant, Nationwide's argument that the judgment against him is void for lack of personal jurisdiction is without merit.

**2. All Three Defendants Were in Default and Were Afforded the Due Process To Which They Were Entitled as Parties in Default Who Had Not Appeared in The Action**

Nationwide argues that the Guardian-ad-litem appointed for minor defendant E.U. failed to comply with the responsibilities for Guardians provided under S.C. Code Ann. § 63-3-380. Nationwide's reliance on this Code section is misguided, however, as this section applies to custody and visitation proceedings in family court. Section 63-3-810 makes clear that it regulates the appointment of guardians "[i]n a private action before the family court in which custody or visitation of a minor child is an issue." Section 63-3-820 lays out the "Qualifications" for guardians appointed under this Section, and § 63-3-830, upon which Nationwide relies, lists the "Responsibilities" for guardians appointed under this Article. As this action is not pending in Family Court and does not involve the custody or visitation of a minor child, Section 63-3-380 does not apply to this civil suit pending in Circuit Court.<sup>6</sup>

A guardian was appointed for minor defendant E.U. in this case pursuant to Rule 55(b)(2), SCRCP, which requires that a guardian ad litem be appointed to represent minors or incompetents prior to entry of a default judgment. In this case, Shannon Jones, Esquire, was appointed to act as guardian ad litem for defendant minor E.U. and she appeared at the damages hearing on his behalf. Accordingly, the guardianship requirements of Rule 55(b)(2) were met in

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<sup>6</sup> Indeed, the only case cited by Nationwide as applying Section 63-3-830 was a child custody dispute in Family Court. *See Simcox-Adams v. Adams*, 408 S.C. 252, 758 S.E.2d 206 (2014).

this case: "no judgment by default shall be entered against a minor or incompetent person unless represented in an action by a guardian ad litem who has appeared herein." (emphasis added).

Nationwide also argues that the judgment against minor defendant E.U. should be set aside because notice of the damages hearing was not mailed to him at his "last known address," which Nationwide argues was his grandparents' house. Nationwide's argument fails, however, for several reasons. First, none of the defendants, including the minor E.U., claim that he did not receive notice of the April or the June hearing. Second, there is no evidence that E.U. was living with his grandparents at the time of the June hearing or that his grandparents' house constitutes his "last known address," or that his grandparents' address was "known" to Plaintiffs. Finally, it is undisputed that notice of the hearing was mailed to the minor's court-appointed guardian ad litem as well as to him at his mother's home, and that his mother attended the April damages hearing on his behalf and that the guardian ad litem attended the June hearing on his behalf.

In support of its argument, Nationwide cites to *McCall v. IKON*, 363 S.C. 646, 611 S.E.2d 315 (2005). The *IKON* case is easily distinguishable from the case at hand, however, in at least two major particulars: (1) the defendant itself asserted that it did not receive notice of the damages hearing; and (2) the defendant did not show up for the damages hearing. *Id.* Here, as stated above, the minor defendant does not assert that he did not receive notice. To the contrary, his step-father has attested that all three defendants received notice of the damages hearing. In addition, and perhaps most importantly, the court-appointed guardian ad litem **appeared** at the damages hearing on the minor defendant's behalf, and this is not a case, like *IKON*, where no one appeared at the damages hearing to represent the defaulting defendant's interests due to lack of notice. As such, I find notice of the damages and default hearings were provided to minor defendant E.U. in compliance with Rule 55(b)(2).

### 3. Rule 54(b), SCRCP, Has No Application To The Judgments In This Case

Nationwide argues that the default Judgments against Travis Felkel and Ginger Ulery-Felkel and Minor Defendant E.U. are void because they were not all entered on the same day. In support of this argument, Nationwide points to Rule 54(b), but Rule 54(b) has no application in this case where the judgments rendered against all three defendants, each of whom was properly in default, are joint and several and equal. Rule 54(b) is intended to prevent "inconsistent judgments," and there are no inconsistent judgments against the defendants here.

Rule 54(b), SCRCP, provides

any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights of all the parties.

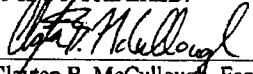
According to the plain language of Rule 54(b), then, at best, the judgments against Travis Felkel and Ginger Ulery-Felkel, which were filed on April 28, 2015, "did not terminate the action" and were "subject to revision at any time prior to the entry of judgment" against the remaining defendant, minor defendant E.U. While the judgments against Travis and Ginger were arguably subject to revision prior to entry of judgment against their son E.U., consistent, joint and several, judgments against all three defendants in default have now been entered. As noted in Nationwide's own brief, the purpose of this rule is to prevent "logically inconsistent judgments resulting from an answering defendant's success on the merits and another defendant's suffering of a default judgment." See Nationwide's Memorandum in Support of Motion to Set Aside Default, at p. 17 (citing *Jefferson v. Briner, Inc.*, 461 F.Supp.2d 430, 434-35 (E.D.Va. 2006)(discussing *Frow v. De La Vega*, 82 U.S. 552 (1872))). Here, with all three defendants in default, and a joint and several judgment existing against all three defendants, there are no

inconsistent judgments or partial judgments to which Rule 54(b) could apply. Accordingly, Rule 54(b) does not provide a basis for relief from the default judgments in this case.

**CONCLUSION**

For the foregoing reasons, I deny Nationwide's Motion to Intervene, and Nationwide's Motion to Set Aside Default Judgment under Rule 60(b) as well as Entry of Default under Rule 55(c).

IT IS SO ORDERED.

  
Clayton B. McCullough, Esquire  
Special Referee  
Ninth Judicial Circuit

1-3, 2016  
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

JAN 13 2016

SC Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Clayton B. McCullough, Esquire, Special Referee

Case No. 2014-CP-08-2494

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY.....Appellant

ANNA ANGELACCI, AS GUARDIAN OF K.B., A MINOR.....Respondents

E.U., A MINOR, TRAVIS O. FELKEL, AND GINGER G. ULERY.....Defendants

NOTICE OF APPEAL

Nationwide Mutual Fire Insurance Company appeals the Order of Special Referee Clayton B. McCullough dated December 7, 2015 denying Nationwide's Motion to Remove Case from Special Referee. Nationwide received written notice of this Order on December 10, 2015.

NIC



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Attorneys for Nationwide Mutual Fire Insurance  
Company

Charleston, South Carolina

January 11, 2016

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY  
ANNA ANGELACCI, as guardian of  
K. B., a minor,  
Plaintiff,  
v.  
E. U., a minor, Travis O. Felkel, and  
Ginger G. Ulery,  
Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-08-2494

JAN 13 2016

SC Court of Appeals

ORDER DENYING NATIONWIDE'S  
MOTION TO REMOVE CASE FROM  
SPECIAL REFEREE

DAVID P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

15 DEC 11 AM 9:55

FILED

This matter came before me on Nationwide Mutual Fire Insurance Company, Inc.'s ("Nationwide") motion to remove case from special referee and transfer case to the circuit court. Although Nationwide is not a party to this action, it filed a motion to have the case removed from me as Special Referee and transferred to the circuit court.<sup>1</sup> Nationwide has not cited any authority for its motion, and the Order of Referral appointing me as Special Referee states that I am to retain jurisdiction to hear motions to set aside entry of default and default judgment and any other challenges to the validity of the judgment. As such, I have jurisdiction to hear Nationwide's motions to intervene and set aside the default pursuant to the Order of Referral. Moreover, as a non-party Nationwide lacks standing to file motions in this case. For these reasons, I deny Nationwide's motion to remove case from special referee.

December 7, 2015  
Charleston, South Carolina

IT IS SO ORDERED

Clayton B. McCullough  
Clayton B. McCullough, Esquire  
Special Referee  
Ninth Judicial Circuit

<sup>1</sup> Nationwide requested that the chief administrative judge schedule its motion for a hearing in the circuit court, but the parties have informed me that Judge Dennis declined to hear the motion on grounds that the Special Referee was the person with authority to hear the motion.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Clayton B. McCullough, Esquire, Special Referee

Case No.: 2014-CP-08-02494

RECEIVED

JAN 13 2016

SC Court of Appeals

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY.....Appellant

ANNA ANGELACCI, AS GUARDIAN OF K.B., A MINOR.....Respondents

E.U., A MINOR, TRAVIS O. FELKEL, AND GINGER G. ULERY.....Defendants

PROOF OF SERVICE OF NOTICE OF APPEAL

I certify that I have served the Notice of Appeal on Respondents and Defendants above-named by depositing a copy of it in the United States Mail, postage prepaid, on January 11, 2016, addressed to their attorneys of record:

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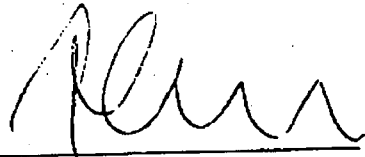
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Insurance Company

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

Anna Angelacci, as guardian of K.B.,  
minor,

Plaintiff,

vs.

E.U., a minor, Travis O. Felkel, and Ginger  
G. Ulery,

Defendant.

**FILED**  
JAN 13 2016

CASE NO. 2014-CP-08-02494  
MARY P. BROWN, CLERK OF COURT  
BERKELEY COUNTY, SC

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-08-02494

**NATIONWIDE MUTUAL FIRE  
INSURANCE COMPANY'S RULE 59  
MOTION TO RECONSIDER, ALTER,  
OR AMEND THE ORDER DENYING  
MOTION TO INTERVENE AND MOTION  
TO SET ASIDE DEFAULT JUDGMENTS**

**TO: DAVID B. YARBOROUGH, JR. & DOUGLAS E. JENNINGS, ATTORNEYS  
FOR PLAINTIFF**

**PLEASE TAKE NOTICE** that Nationwide Mutual Fire Insurance Company ("Nationwide"), by and through its undersigned counsel, shall, and hereby does, respectfully move this Court to reconsider, alter, or amend the Order Denying Nationwide's Motion to Intervene and Motion to Set Aside Default Judgments pursuant to Rule 59 of the South Carolina Rules of Civil Procedure.

First, Nationwide requests that this Court reconsider, alter, or amend its findings and rulings concerning its Motion to Intervene and Motion to Set Aside Default Judgments and issue an Order granting said Motions for the reasons set forth in its previously filed Memoranda in support of said Motions and the arguments raised in the hearing on these Motions. In the interest of brevity, Nationwide incorporates by reference its previously filed Memorandum in Support of Motions to Intervene and Memorandum in Support of Motion to Set Aside Judgments and accompanying exhibits.

Additionally, Nationwide requests that the Court alter or amend its Order to include rulings on the following issues. These issues were raised by Nationwide in its

Memorandum in Support of Motion to Set Aside Default Judgments and at the hearing, but they do not appear to be addressed in the Order:

- I. **The Judgments Against Travis Felkel and Ginger Ulery Should be Set Aside Because There is No Basis in the Pleadings or SC Law to Have Rendered These Judgments. Any Judgments Against Them Come by Way of Surprise, Mistake or Excusable Neglect.**

Plaintiffs' Complaint contains no facts showing that they are entitled to relief against Felkel and Ulery. The only time Felkel and Ulery are mentioned or referenced in the Complaint is in paragraph 3 which states "That upon information and belief, Defendants Travis O. Felkel and Ginger G. Ulery are the parents or natural guardians of E.U., a minor, and are residents of Berkeley County, South Carolina." This is the only factual allegation against Felkel and Ulery. Thus, this is the only allegation they are deemed to admit pursuant to an Entry of Default. This allegation is insufficient to put them on notice that they would or could be personally susceptible to a monetary judgment for E.U.'s actions (which occurred at school) because, by defaulting, they have only admitted to being E.U.'s parents. Because the only action committed by these Defendants on the date of the incident was sending their teenage child to high school, something required by law, pursuant to South Carolina Code of Laws 59-65-10, *et seq.*, these Defendants cannot be reasonably deemed to have been on notice that they would be susceptible to receiving a \$5,000,000 judgment against them.

Furthermore, the only theory of liability in South Carolina by which Felkel and Ulery can be held personally responsible for E.U.'s actions in this instance merely for being his "parents or guardians" is pursuant to S.C. Code Ann. § 63-5-60. This statute provides as follows:

an individual . . . is entitled to recover damages in an amount not to exceed five thousand dollars in a civil action in a court of competent jurisdiction from the parents or legal guardian of the person of a minor under the age of eighteen years and residing with the parents or the legal guardian of the person who maliciously or wilfully causes personal injury to the individual . . . .

S.C. Code Ann. § 63-5-60 (emphasis added). "Citizens are presumed to know the law," Am. Legion Post 15 v. Horry County, 381 S.C. 576, 674 S.E.2d 181, (Ct. App. 2009).

This statute caps the available damages pursuant to a civil action under these circumstances at five thousand dollars (\$5,000). Therefore, Felkel and Ulery could not have expected a judgment against them one thousand and thirty times (1030 x) greater than the statutorily prescribed limits, and were certainly surprised at the outcome. Thus, the judgment against Felkel and Ulery should be set aside on the grounds that this issue constitutes surprise, mistake, and/or excusable neglect because it is inconsistent with the allegations set forth in the pleadings and South Carolina law.

Additionally, it should be noted that Travis Felkel, per his admission, is neither E.U.'s parent nor his guardian. (Exhibit F, Transcript of Damages Hearing, pp. 55-6). At the damages hearing, Felkel testified, "I'm not custodial parent . . . I am his step father by marriage, but I have no custody[.]" (Exhibit F, Transcript of Damages Hearing, p. 56). Yet, despite this testimony, which is undisputed, a substantial judgment was rendered against Felkel. In addition to the issues set forth above, the judgment against Felkel should be set aside because he is not E.U.'s parent or guardian and there is no theory of liability in South Carolina by which a step-father can or should be held legally responsible for a \$5,000,000 judgment due to the actions of his step-son.

Therefore, whether the court decides that the judgment awarded against these Defendants is relieved by reason of surprise, mistake, or excusable neglect, this judgment was awarded in error and, pursuant to Rule 60(b)(1), should be set aside. Additionally, if the judgments against Felkel and Ginger Ulery are set aside, the judgment against EU should also be set aside because the judgment against him merely incorporates the findings from the prior judgment against Felkel and Ulery, which should be void for the reasons stated above.

**II. The Action (and, More Importantly, Inaction) of Defendants Travis Felkel and Ginger Ulery Constitutes Mistake, Inadvertence, Surprise, and/or Excusable Neglect on the Part of Nationwide.**

Nationwide never received notice of this suit due to the actions or inactions of Defendants Felkel and Ulery and such constitutes mistake, inadvertence, surprise, and/or excusable neglect on the part of Nationwide and the Defendants. Upon being served, Defendant Travis Felkel claims that sometime "before Christmas," he took a copy of the Summons and Complaint to his local insurance agent, John Herndon. (Ex. F, Transcript of Damages Hearing, pp. 35-6). Felkel claims he provided a copy to Mr. Herndon and that in response, Mr. Herndon "told me I needed to have [E.U.] get on the phone with the corporate office." (Ex. F, Transcript of Damages Hearing, p. 36). When questioned whether he ever had E.U. communicate with Nationwide's corporate office, Felkel admitted that he "failed to make that happen." (Ex. F, Transcript of Damages Hearing, p. 36). Felkel also failed to communicate directly with Nationwide, despite explicit instructions from Herndon to do so. (Ex. F, Transcript of Damages Hearing, p. 36). Herndon made photocopies of the Summons and Complaint when Felkel brought them to him, but Herndon also deliberately and explicitly made clear to Felkel that he

was simply going to hold onto them, not do anything with them, and wait until Felkel filed the claim with the corporate office before acting on this information. (Ex. F, Transcript of Damages Hearing, p. 36). Specifically, Felkel testified:

MR. JENNINGS: And you provided him [John Herndon] with a copy of it [Summons and Complaint]?

MR. FELKEL: Yes.

MR. JENNINGS: What did he do in response?

MR. FELKEL: He told me I needed to have Evan get on the phone with the corporate office?

MR. JENNINGS: Did Evan do that?

MR. FELKEL: I failed to make that happen, yes.

...

MR. JENNINGS: Did he [John Herndon] ask you to leave a copy [of the Summons and Complaint] with him?

MR. FELKEL: He made copies of the paperwork and told me he would hold onto it and wait until I made the – filed the claim with the corporate office.

(Ex. F, Transcript of Damages Hearing, p. 36) (emphasis added). Felkel never contacted Nationwide. Thus, the undisputed testimony demonstrates that Mr. Herndon specifically told Felkel that he would hold onto the Summons and Complaint until such time as Felkel notified Nationwide's corporate claims office. It is further undisputed that, despite these instructions, Felkel failed to ever attempt to contact Nationwide's corporate claims office.

As noted above, the first time Nationwide heard a word about this incident and suit was from a paralegal working with Plaintiff's counsel on July 27, 2015. Nationwide had no notice whatsoever until this date. The testimony and exhibits at the damages

hearing suggests that Plaintiffs' counsel made several attempts to contact Defendants Travis Felkel and Ginger Ulery throughout this process, even before filing suit. Multiple letters were sent to them prior to the filing of the action requesting them to contact Plaintiff's counsel. When these attempts to communicate failed, Plaintiffs ultimately brought suit against the Defendants. Thus, not only did Felkel and Ulery fail to notify Nationwide after suit was filed, they had multiple opportunities to do so prior to suit being filed and failed to take any action whatsoever.

Therefore, the following is undisputed and constitutes mistake, inadvertence, surprise, and/or excusable neglect on the part of Nationwide: Felkel and Ulery did not contact Nationwide prior to suit being filed, despite receiving multiple letters from Plaintiffs' counsel. Felkel and Ulery did not contact Nationwide after Herndon explicitly instructed them to. Felkel and Ulery did not retain counsel or contact Nationwide after accepting service of process. Felkel and Ulery did not answer the Complaint. Felkel and Ulery, upon receiving notice of the Entry of Default in the mail, did nothing. Upon being served with notice of the damages hearing, Felkel and Ulery, for the first time, decided to act in this case. Unfortunately, they did not take the action of notifying Nationwide. Instead, they acted too late and arrived late to the damages hearing, thereby losing any chance they had to cross-examine the Plaintiff and witnesses. At the hearing, Felkel and Ulery, were told repeatedly to contact Nationwide. They, again, failed to act and did not contact Nationwide.

Even at such a late hour in the lawsuit, had Felkel and Ulery contacted Nationwide after their damages hearing, minor Defendant E.U. would have been represented by counsel appointed by Nationwide before his default judgment hearing

and before default judgment was entered against him. Surprisingly, they failed to take action even after explicitly being told by the Special Referee to promptly contact Nationwide – an action which could have resulted in the Entry of Default against E.U. being set aside or, at the very least, representation of E.U. at his damages hearing, including an opportunity to cross examine witnesses. Specifically, the relevant testimony is as follows:

MR. MCULLOUGH: . . . And I do think, again prompt communications with Nationwide to figure out what happened would be warranted here.

MS. ULERY- FELKEL: We should have been more proactive about that.

(Ex. F, Transcript of Damages Hearing, p. 45) (emphasis added). Incredibly, even after Ulery's admission that she and Felkel should have been "more proactive" in contacting Nationwide, they again failed to contact Nationwide after the April 21, 2015 damages hearing. Instead, Nationwide was not notified of any of this until an inconvenient 32 days after default judgment was entered against E.U. and Nationwide was never notified by Felkel and/or Ulery despite explicit, unambiguous instructions to do so by their agent, Mr. Herndon, and by the Special Referee.

The above clearly establishes mistake, inadvertence, surprise, and/or excusable neglect on the part of Nationwide. Additionally, even if Nationwide is responsible for any neglect in this case, imputed to it through its agent John Herndon (which is denied), this neglect is clearly excusable. At the most, there was a misunderstanding between Herndon and Felkel, as the undisputed testimony clearly demonstrates that Herndon specifically told Felkel to call the corporate claims office and that Herndon would hold onto the suit papers until such time as Felkel completed this task. Instead, Defendants

Felkel and Ulery did everything in their power not to notify Nationwide about this matter, despite being instructed to do so by everyone they talked to about it. And, as discussed above, it remains unclear whether the minor Defendant E.U. ever knew about any of this.

Nationwide submits that the judgments and damages awards should be set aside and that this case be decided on its merits, as the above demonstrates and establishes mistake, inadvertence, surprise, and/or excusable neglect under Rule 60(b)1).

### CONCLUSION

For the reasons set forth above, Nationwide Mutual Fire Insurance Company requests that this Court reconsider, alter, or amend its Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

CLAWSON AND STAUBES, LLC



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Attorney for Nationwide Mutual Fire Insurance  
Company

Charleston, South Carolina

January 11, 2016

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Nationwide Mutual Fire Insurance Company's Rule 59 Motion to Reconsider, Alter, or Amend the Order Denying Motion to Intervene and Motion to Set Aside Default Judgments was served upon the following parties on the 11<sup>th</sup> day of January, 2016, via:

|   |                              |
|---|------------------------------|
| X | United States Postal Service |
|   | Facsimile                    |
|   | Electronic Email             |
|   | Via Hand Delivery            |

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Mary M. Green, Paralegal

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF BERKELEY

CASE NO.: 2014-CP-08-02494

Anna Angelacci, as guardian of K.B., a minor

Plaintiff,

vs.

E.U., a minor, Travis O. Felkel, and Ginger G  
Ulery

Defendant.

MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET

**FILED**  
JAN 13 2016  
MARY P. BROWN, CLERK OF COURT  
BERKELEY COUNTY, SC

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Plaintiff's Attorney: Douglas Jennings,<br>Bar No.<br>Address: Yarborough Applegate LLC<br>291 E Bay St 2nd Flr<br>Charleston, SC 29401-1604<br>Phone: (843) 972-0150 Fax (843) 277-6691<br>E-mail: douglas@yarboroughapplegate.com Other:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Defendant's Attorney: Samuel R. Clawson<br>Bar No. 1268<br>Address: CLAWSON and STAUBES, LLC<br>126 Seven Farms Drive, Suite 200<br>Charleston, South Carolina 29492-<br>8144<br>Phone: (843) 577-2026 Fax: (843) 722-2867<br>E-mail: sclawson@clawsonandstaubes.com |
| <input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)<br><input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)<br><input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                      |
| <b>SECTION I: Hearing Information</b><br>Nature of Motion: Motion to Reconsider and Set Aside Default Judgments<br>Estimated Time Needed: 15 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                      |
| <b>SECTION II: Motion/Order Type</b><br><input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                      |
| Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                      |
| <b>SECTION III: Motion Fee</b><br><input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00<br><input type="checkbox"/> EXEMPT:<br>(check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: _____<br><input type="checkbox"/> Other: _____ |                                                                                                                                                                                                                                                                      |
| <b>JUDGE'S SECTION</b><br><input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | JUDGE CODE _____<br>Date: _____                                                                                                                                                                                                                                      |
| <b>CLERK'S VERIFICATION</b><br>Collected by: _____ Date Filed: _____<br><input type="checkbox"/> MOTION FEE COLLECTED: \$ _____<br><input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                      |

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

ANNA ANGELACCI, as guardian of  
K. B., a minor,

Plaintiff,

v.  
E. U., a minor, Travis O. Felkel, and  
Ginger G. Ulery,

Defendants.

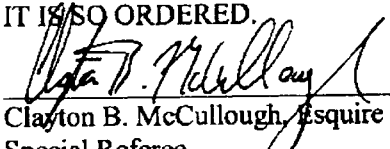
IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-08-2494

ORDER DENYING NATIONWIDE'S  
MOTION TO RECONSIDER, ALTER  
OR AMEND

This matter came before me on Nationwide Mutual Fire Insurance Company, Inc.'s ("Nationwide") Rule 59 motion to reconsider, alter or amend the Order denying Nationwide's Motion to Intervene and Motion to Set Aside Default Judgments entered on January 3, 2016 and filed on January 5, 2016. Having carefully considered the brief filed by Nationwide on the issue of reconsideration, Nationwide's Motion is DENIED without a hearing pursuant to Rule 59(f), SCRCP.

1.14, 2016  
Charleston, South Carolina

IT IS SO ORDERED.

  
Clayton B. McCullough, Esquire  
Special Referee  
Ninth Judicial Circuit

2016 JAN 20 AM 10:06  
CLAYTON B. MCCULLOUGH  
CLERK OF COURT  
BERKELEY COUNTY, SC

134

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Clayton B. McCullough, Esquire, Special Referee

---

Case No. 2014-CP-08-2494

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NATIONWIDE MUTUAL FIRE INSURANCE COMPANY.....Appellant

ANNA ANGELACCI, AS GUARDIAN OF K.B., A MINOR.....Respondents

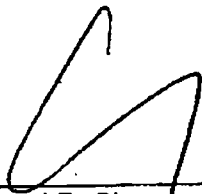
E.U., A MINOR, TRAVIS O. FELKEL, AND GINGER G. ULERY.....Defendants

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NOTICE OF APPEAL

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Nationwide Mutual Fire Insurance Company appeals Special Referee Clayton B. McCullough's Order Denying Nationwide Mutual Fire Insurance Company's Motion to Intervene and Motion to Set Aside Default Judgment dated January 3, 2016 and subsequent Order Denying Nationwide's Motion to Reconsider, Alter, or Amend dated January 14, 2016



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Attorneys for Nationwide Mutual Fire Insurance  
Company

Charleston, South Carolina

February 2, 2016

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
 )  
ANNA ANGELACCI, as guardian of )  
K. B., a minor, )  
 )  
Plaintiff, )  
 )  
v. )  
E. U., a minor, Travis O. Felkel, and )  
Ginger G. Ulery, )  
 )  
Defendants. )

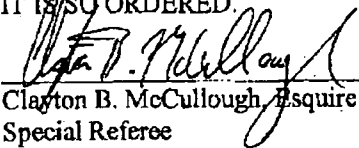
IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-08-2494

ORDER DENYING NATIONWIDE'S  
MOTION TO RECONSIDER, ALTER  
OR AMEND

This matter came before me on Nationwide Mutual Fire Insurance Company, Inc.'s ("Nationwide") Rule 59 motion to reconsider, alter or amend the Order denying Nationwide's Motion to Intervene and Motion to Set Aside Default Judgments entered on January 3, 2016 and filed on January 5, 2016. Having carefully considered the brief filed by Nationwide on the issue of reconsideration, Nationwide's Motion is DENIED without a hearing pursuant to Rule 59(f), SCRPC.

1-14, 2016  
Charleston, South Carolina

IT IS SO ORDERED.

  
Clayton B. McCullough, Esquire  
Special Referee  
Ninth Judicial Circuit

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

2016 JAN 20 AM 10:06

FILED

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STATE OF SOUTH CAROLINA 16 JAN -5 AM 9:28  
COUNTY OF BERKELEY CLARY P. BROWN IN THE COURT OF COMMON PLEAS  
BERKELEY COUNTY, S.C. CLERK OF COURT FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-08-2494

ANNA ANGELACCI, as guardian of  
K. B., a minor,

Plaintiff,

v.

E. U., a minor, Travis O. Felkel, and  
Ginger G. Ulery,

Defendants.

ORDER DENYING  
NATIONWIDE MUTUAL FIRE  
INSURANCE COMPANY'S MOTION  
TO INTERVENE AND MOTION TO  
SET ASIDE DEFAULT JUDGMENT

This matter came before me on Nationwide Mutual Fire Insurance Company, Inc.'s ("Nationwide") motion to intervene in this action and motion to set aside the default judgment. Nationwide and Plaintiffs briefed the motions extensively, and I presided over a hearing on December 7, 2015, and heard arguments from counsel for Plaintiffs and Nationwide and considered exhibits submitted by both parties. In addition, the minor defendant's guardian ad litem appeared on his behalf. After considering the written submissions and oral arguments of Nationwide and Plaintiffs, for the reasons set forth below, I find that Nationwide has not established a right to intervene in this litigation, and, therefore, deny its motion to intervene. Although I am denying its motion to intervene, which automatically precludes success on the motion to set aside default judgment and entry of default, for the sake of judicial economy, I have considered that motion on the merits, and find that even if Nationwide were allowed to intervene, it cannot meet its burden to set aside default judgment or entry of default, and, therefore, I deny its motion to set aside default on that basis as well.

### **FACTUAL BACKGROUND**

E.U., a minor over the age of fourteen, Travis Felkel (E.U.'s stepfather) and Ginger Ulery (E.U.'s mother) (hereinafter "Ulery-Felkel family") are the named defendants in this lawsuit. The Ulery-Felkel defendants were insured by Nationwide through a homeowners insurance policy sold to them by John T. Herndon, III at the Herndon Insurance Agency. Herndon was a captive agent for Nationwide, and was specifically named in the Policy as Nationwide's agent, to whom notice of loss claims could be provided by the insured. *See* Deposition of John Herndon.

According to Affidavits of Service that were originally filed with the Affidavit of Default, subsequent Affidavits of Travis Felkel and the process server, the Ulery-Felkel Defendants were served on December 2, 2014. Shortly thereafter, Travis Felkel personally delivered the Summons and Complaint to John Herndon at his Charleston office. Herndon admits that Felkel hand-delivered the lawsuit to him before Christmas, and that he made a copy of the lawsuit papers.

Despite having notice of the lawsuit through its agent John Herndon, Nationwide did not defend or investigate the lawsuit, and failed to advise its insureds that it would not be defending the lawsuit. The lawsuit was never answered, the clerk of court signed an entry of default and referral to a special referee was ordered. The Special Referee entered default judgments against each of the three defendants, jointly and severally, in the amount of \$5,150,000 in favor of Plaintiffs Anna Angelacci and K.B., a minor over the age of fourteen.

After default judgments were entered against the Ulery-Felkel defendants, they assigned any and all claims they may have against Nationwide for mishandling of the lawsuit to the Plaintiffs. Thereafter, on July 27, 2015, the Plaintiffs, in their own right and as assignees of Travis Felkel, Ginger Ulery and E.U., filed suit against John T. Herndon, Herndon Insurance Agency, Inc., Nationwide Mutual Ins. Co., and Nationwide Mutual Fire Ins. Co. alleging

negligence, bad faith, breach of contract and misrepresentation arising out of Nationwide's failure to defend its insureds in this action.<sup>1</sup> Nationwide was served with this bad faith lawsuit on July 28, 2015. Nationwide issued a full reservation of rights letter to its insureds and then moved to intervene and set aside default. The individual defendants have not moved to set aside the default judgment nor have they challenged service of process or the validity of the judgments in any way.

### LEGAL ANALYSIS

#### **I. MOTION TO INTERVENE**

Nationwide is not a party to this action. Nationwide's insureds hand-delivered a copy of the lawsuit to Nationwide's designated agent within thirty days of being served, but Nationwide failed to file an Answer on their behalf. This failure resulted in entry of default and default judgment against its insureds. As a non-party, Nationwide has no standing to challenge this default and so it has moved to intervene in the action.

Intervention is a procedural device whereby a third party who is not a named party in an existing lawsuit, but who has an interest in its outcome, may become a party to the action. *Ex Parte Horry County State Bank*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004)(citing *Black's Law Dictionary* 826 (7<sup>th</sup> ed. 1999)). Intervention may be of right or permissive, and is governed respectively by Rule 24(a) and (b), SCRCP, both of which are modeled after the federal rule 24. *Id.* Generally, intervention should be liberally granted, but "this does not mean that intervention should always be granted." *Id.* at 507, 604 S.E.2d at 725. Instead, the court must consider the

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<sup>1</sup> See *Anna Angelacci, individually and as guardian of K.B., a minor over the age of fourteen, as assignee of Travis Felkel, Ginger Ulery and E.U., a minor over the age of fourteen, by his Guardian ad Litem Shannon P. Jones v. John T. Herndon, III, Herndon Insurance Agency, INC. Nationwide Mutual Insurance Company, and Nationwide Mutual Fire Insurance Company*, Case No. 2015-CP-08-1759. For ease of reference, this lawsuit will be referred to as the bad faith litigation.

pragmatic consequences of a decision to permit or deny intervention, and must examine each case in the context of its unique facts and circumstances. *Id.* (citing *Berkeley Elec. Coop, Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d 712(1990)). A majority of jurisdictions refuse to allow insurers to intervene in the underlying tort suit against their insureds because other mechanisms, like declaratory judgment actions, exist to protect the insurers' rights vis-à-vis coverage issues. 1 *Law and Prac. of Ins. Coverage Litig.* § 12:17. Based on applicable case law and the specific facts of this case, I find that Nationwide has not established a right under Rule 24, SCRPC, and so deny its motion to intervene.

#### A. Intervention as of Right Under Rule 24(a)

The courts have established a four-part test for intervention under Rule 24(a)(2). A party must establish each of the following: (1) timely application; (2) an interest relating to the property or transaction which is the subject of the action; (3) that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; *and* (4) that its interest is inadequately represented by the parties. *Ex Parte Horry County State Bank*.

The majority of courts that have analyzed the ability of an insurer to intervene in underlying tort litigation pending against their insureds under this test have denied insurers motions to intervene based on the second prong, which requires that the insurer have an "interest" in the litigation. The Supreme Court of South Carolina has followed this trend. In 2007, our Court denied an insurer's motion to intervene in an "underlying suit" on grounds that the insurer could not satisfy the second prong of the above cited test, as it did not have "an interest relating to the property or transaction which is the subject of the action" as required by Rule 24(a)(2). *Ex Parte Government Employee's Insurance Company*, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007) (citing *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994)).

In that case, GEICO moved to intervene in a family court action instituted to obtain an order validating the common law marriage of an individual, Ronnie Cooper, to a GEICO insured driver, Yolanda Goethe. *Id.* at 134, 644 S.E.2d at 700. Cooper was injured in an accident and sought to stack underinsured motorist coverage provided by Goethe's GEICO policy on grounds that he was a Class I insured as Goethe's common law spouse. *Id.* After GEICO denied Cooper's claim to stack coverage, Cooper filed the family court action seeking an order validating his common law marriage to Goethe. *Id.* Upon review, the Supreme Court denied GEICO's motion to intervene, holding that GEICO "has no real interest in whether Cooper and Goethe have a valid common law marriage." *Id.* at 138, 644 S.E.2d at 702. Significantly, the Court went on to explain, "GEICO's interest is in the financial implications of the family court's decision, which is peripheral to the subject matter before the court." *Id.* at 138-39, 644 S.E.2d at 702 (emphasis added). Thus, even though GEICO argued that the decision of the family court "would impact GEICO's ability to protect its interests under the insurance policy issued to Goethe," the Supreme Court found any such interest was not "sufficiently related to the subject matter of the action" to warrant intervention. *Id.* at 134-35, 139, 644 S.E.2d at 700, 703.

The South Carolina Supreme Court's holding in the GEICO case is in line with the majority of federal courts, including the District of South Carolina among others, which have denied insurers the right to intervene in underlying tort suits on grounds that the insurers' interests are not sufficient to support intervention under Rule 24(a)(2), FRCP,<sup>2</sup> particularly where the insurer has reserved the right to deny coverage. See, e.g., *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629 (1<sup>st</sup>. Cir. 1989); *Restor-A-dent Dental Laboratories, Inc. v. Certified Alloy*

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<sup>2</sup> Rule 24, SCRCF, was based on the federal rule, and the language of both rules is identical. See Notes to Rule 24, SCRCF.

*Products, Inc.*, 725 F.2d 871 (2d Cir. 1984); *Lewis v. Excel Mechanical, LLC*, 2013 WL 3762904 (D.S.C. 2013).

In the First Circuit's *Travelers* case, Travelers' insured, Richard Dingwell, owned and operated a plant in the business of cleaning petroleum and chemical storage tanks. Dingwell received a notice from the EPA that his plant was being shut down for illegal dumping at the site. *Travelers*, 884 F.2d at 631. In addition, Dingwell was notified, along with the generators and transporters of the waste to his facility, that he and his customers were Potentially Responsible Parties ("PRPs") under CERCLA, and were strictly, jointly and severally liable for all costs incurred in site investigation and clean up. *Id.* Travelers agreed to pay Dingwell's legal expenses in connection with these administrative proceedings, but expressly reserved their right to deny indemnification for any and all damages. *Id.* To avoid protracted litigation, Dingwell and the other PRPs signed a proposed consent decree with the EPA in which they were obligated to spend roughly \$12.5 million in the clean-up effort. Some of the PRPs then sought to negotiate a settlement of their claims for contribution and indemnity against Dingwell. *Id.* Dingwell's insurers refused to participate in the negotiations, and reiterated their reservation of rights to deny coverage. *Id.* at 632. The negotiations went forward and Dingwell and the group of PRPs reached an agreement: Dingwell would assume 65% of the clean-up costs, join the Consent Decree and assign to the PRPs his indemnification rights against his insurers. *Id.* In return, the PRPs agreed to seek satisfaction of Dingwell's obligations solely from assets that might be available under his insurance policies. *Id.*

Subsequently, the PRPs filed suit against Dingwell, and the PRPs moved for consent judgment against him pursuant to the terms of their settlement agreement with him. Dingwell planned to consent to judgment, and the insurers filed a motion to intervene in order to oppose the entry of judgment. *Id.* at 632. The district court denied the insurers' motion to intervene

both as of right and permissively, and the First Circuit affirmed that decision on appeal. In affirming the denial of the motion to intervene, the First Circuit held “[w]e agree with the district court’s conclusion that the insurers failed to satisfy the second requirement – an interest relating to the property or transaction which is the subject of the action.” *Id.* at 638. Although the court recognized that the insurers had a potential interest in minimizing Dingwell’s liability to the PRPs, it was a *contingent* interest. “When the insurer offers to defend the insured but reserves the right to deny coverage, . . . the insurer’s interest in the liability phase of the proceeding is contingent on the resolution of the coverage issue.” *Id.* at 639. As it was merely contingent, the First Circuit found it was “not cognizable for the purposes of Rule 24(a)(2).” *Id.*

Significantly, the First Circuit found the insurers’ interest to be “contingent” even though its insured was consenting to judgment and the amount of damages would thereby be fixed, just as damages would be for a party in default. The “contingency” lies in whether or not an insurer, which has reserved its rights to deny coverage, will be obligated to pay those damages under the terms of its policy, and that question is appropriately addressed in separate coverage litigation, not in the underlying tort suit.

Recently, the District of South Carolina followed this line of cases when it denied an insurer’s motion to intervene in an underlying tort suit on the same grounds after the insurer reserved its rights to deny coverage, finding that the insurer’s interests in the tort litigation were contingent on the outcome of the coverage dispute and thereby insufficient. *Lewis v. Excel Mechanical, LLC*, 2013 WL 3762904 (D.S.C. 2013).

Penn National does not have an interest in the subject matter of this action, that is, [Defendant’s] allegedly negligent operation of the Boat, that, in turn, led to [Plaintiff’s] tort claim for damages against Defendants. Instead, Penn National’s interest is in the amount it may have to pay . . . if Plaintiff wins. Stated differently, Penn National’s interest is in how much of any future award may be attributable to damages contemplated by the policy.

*Id.* at 2 (emphasis added). The district court found the above-described interest was not cognizable for purposes of Rule 24.

In this case, I find that Nationwide is situated similarly to the insurers in the cases discussed herein. Nationwide's interest in the underlying tort action is not in the subject matter of that action, which relates to the negligence of its insured that caused injury to the plaintiff, but in the amount it *may* have to pay *if* its insureds prevail in the bad faith litigation. Because Nationwide has reserved its right to deny coverage altogether, its interest in the underlying litigation is contingent on the resolution of the coverage issue, just as the insurers' interest was contingent in *Travelers*, where the insurer had reserved its right to deny coverage. The fact that the amount of the judgment has been determined here by means of a default does not affect the contingency, just as the fact that the insurer had entered into a consent judgment did not affect the contingency of *Travelers*' interest in the underlying litigation. Similarly, as GEICO's interest in the *Goethe* case was in the financial implications of the family court's decision to recognize common law marriage, and, as such, was peripheral to the subject matter of the family court action and insufficient to warrant intervention, Nationwide's interest in the financial implications of the underlying suit here is peripheral and insufficient to warrant intervention.<sup>3</sup>

Based on the South Carolina authority and authority from the federal courts cited, Nationwide cannot meet its burden to establish it has a sufficient interest in the subject matter of this tort litigation to support intervention of right under Rule 24(a)(2).

#### **B. Permissive Intervention under Rule 24(b), SCRPC**

<sup>3</sup> Significantly, Nationwide has failed to cite a single South Carolina case in which the court has allowed an insurer to intervene in an underlying tort case. Nationwide cites to *McClurg v. Deaton*, 380 S.C.563, 671 S.E.2d 87 (Ct. App. 2008). In that case, the *employer* of the individual defendant (not the "carrier") moved to intervene because the employer was vicariously liable for the defendant employee's negligence, and both the employee and the employer then moved to set aside default. Accordingly, *McClurg* does not stand for the proposition that an insurer has a sufficient interest to intervene in an underlying tort suit.

Under Rule 24(b)(2), permissive intervention is appropriate where (1) "an applicant's claim or defense and the main action have a question of law or fact in common" and (2) intervention does not "unduly delay or prejudice" the rights of the original parties. Rule 24(b), SCRCF. The court has broad discretion in granting or declining to grant permissive intervention, and reversal of a denial of permissive intervention on grounds of abuse of discretion "is so unusual to be unique." *Travelers*, 884 F.2d at 641 (citations omitted); see also *Excel Mechanical*, 2013 WL 3762904 (holding that the court enjoys broad discretion on the issue of permissive intervention).

Here, there is no question of law or fact in the underlying tort litigation that is common to Nationwide's claim that its policy does not cover Plaintiff's injuries. Nationwide is already a party to the bad faith litigation instituted by its insureds and will litigate any coverage defenses it has in that case. Just as its financial interest is "peripheral" to the underlying tort claims, so is any claim that Nationwide shares common questions of law or fact with those raised in the underlying suit.

Moreover, allowing Nationwide to intervene, after liability and damages have already been determined, would prejudice plaintiffs and, potentially, Nationwide's own insureds, as it could force them to oppose the insurer who may be inclined to contest their factual assertions to the extent those assertions impacted the insurer's coverage. See *Excel Mechanical*. In order to avoid this possibility as well as the injection of issues of insurance coverage into this underlying action, I exercise my discretion to deny permissive intervention as the courts did in *Travelers* and *Excel Mechanical* when faced with similar factual scenarios.

## II. MOTION TO SET ASIDE DEFAULT

As discussed at-length above, I am denying Nationwide's motion to intervene. In light of that ruling, Nationwide has no standing to file a motion to set aside default, and, accordingly, its motion to set aside default is also denied. As the motion to set aside default was fully briefed and argued, however, for the sake of judicial economy, I have considered that motion on its merits regardless. Based on the facts presented, I find that Nationwide cannot meet the standard to set aside either default judgment under Rule 60(b) or entry of default under Rule 55(c), and, therefore, deny its motion to set aside default judgment and entry of default.

**A. Nationwide Cannot Meet The Rigorous Rule 60(b) Standard For Setting Aside A Default Judgment When Its Agent Received The Summons and Complaint But Failed To Hire Counsel Or File An Answer On Behalf of Its Insured.**

Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c) for an entry of default. *Sundown Operating Company, Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 681 S.E. 2d 885 (2009). The Rule 55(c) "good cause" standard for relief from entry of default requires the applicant to provide an explanation for the default and the reasons why vacation of the entry of default would serve the interests of justice. "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Sundown*, 383 S.C. 607-08, 681 S.E.2d at 888 (emphasis added)(citing *Wham v. Shearson Lehman Bros., Inc.* 298 S.C. 462, 381 S.E.2d 499 (Ct.App. 1989)(hereinafter referred to as the "Wham factors"). It is not necessary for the trial court to make specific findings of fact for each factor if there is sufficient evidentiary support for the finding of lack of good cause. *Id.* (citations omitted).

After a default judgment has been entered, however, Rule 60(b) requires "a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or "other misconduct of an adverse party." *Id.* at 608, 681 S.E. 2d at 888-89. Indeed, "the different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default." *Id.* As noted in *Sundown*, if no satisfactory explanation is given, then there is no need to conduct the "good cause" analysis in the case of an entry of default or the more rigorous 60(b) factors in the case of a default judgment. *Sundown*. A motion to set aside default is addressed to the sound discretion of the trial court. *Id.*

In *Sundown*, the corporate defendant was served on August 28, 2001, notified its insurance agent of the lawsuit by phone on September 14, 2001, and sent its agent a copy of the lawsuit on October 1, 2001, after the Answer had become due. On October 2nd, the insurance agent requested an extension of time to respond to the complaint, but he was too late and default was entered that day. The defendant then moved to set aside entry of default, arguing that it had established "good cause" by showing that the default was caused by the negligence of its insurance agent and because (1) it promptly moved for relief; (2) it had a meritorious defense; and (3) plaintiffs would suffer no prejudice if the court set aside entry of default. *Sundown* (citing *Wham* factors).

The Supreme Court denied Defendant's motion to set aside the mere entry of default, holding that the insurance agent's negligence could not be a satisfactory explanation for the default based on the long-standing principle that the insurance company's negligence is imputed to the client: "the law is clear that an insurance company's misconduct is imputable to the client." *Id.* at 609, 681 S.E. 2d at 889. Based on these facts, the Court found that the defendant

did not meet "even the most minimal showing of good cause." *Id.* at 607, 681 S.E.2d at 888. The Court did not make specific findings regarding each of the three *Wham* factors, as a trial court is not required to do so "if there is sufficient evidentiary support [in] the record for the finding of lack of good cause." *Id.* at 608, 681 S.E.2d at 888.

Within a week of deciding the *Sundown* case, in *Richardson v. P.V., Inc.*, 383 S.C. 610, 682 S.E. 2d 263 (2009), the Court re-emphasized its holding that negligence of an insurance company to timely retain defense counsel and answer a complaint is imputed to a defaulting litigant and cannot constitute good cause to relieve the litigant from an entry of default under Rule 60(b). See also *Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct.App.1987) (observing that the "courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant") and *Williams v. Vanvolkenburg*, 312 S.C. 373, 440 S.E.2d 408 (Ct.App. 1994) (imputing an attorney's negligence to a defaulting litigant).

In the present case, I find the insurer's conduct was at least as deficient as in *Sundown*. In *Sundown*, the insured placed the insurer on verbal notice of the lawsuit but did not provide a copy to the insurer until after the due date for the Answer had passed. Here, the insured hand-delivered a copy of the lawsuit to his Nationwide insurance agent John Herndon after he was served on December 2, 2014 sometime before Christmas, which would have been a week or more before an Answer was due.<sup>4</sup> Mr. Herndon testified that he was Nationwide's agent, that he made a copy of the lawsuit papers, and that delivery of the lawsuit constituted proper notice by the insured under the terms of the policy. He also testified that Nationwide owed separate duties to each of the insureds under the Severability clause of the policy and that after being served

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<sup>4</sup> The factual findings in this section are based on the deposition testimony of Nationwide's agent John Herndon, which was made part of the record by Plaintiffs.

with the lawsuit on behalf of all three of the insureds who were living in the household he never took any steps to inform any of them that the lawsuit wasn't being defended or to protect them.

*Sundown* makes clear that under the circumstances before me, the test for relief is from entry of default, not the test for relief from default judgment. ("The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality.").

Even under the less rigorous standard for motions to set aside entries of default, under facts that are very similar to those of this case, our Supreme Court found the defendant could not establish the good cause necessary to set aside entry of default. *Sundown*. Likewise, I find that Nationwide's failure to answer the Complaint after the Complaint was hand-delivered to its captive agent was negligent, which is imputed to its insured, and that Nationwide has not provided a "satisfactory explanation" for default, as required by Rule 55(c) and *Sundown*. As Nationwide cannot satisfy even Rule 55's lesser "good cause" standard, I find that Nationwide has not established the more rigorous Rule 60(b) standard of "mistake, inadvertence, surprise or excusable neglect."<sup>5</sup>

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<sup>5</sup> In an attempt to show "surprise" under Rule 60(b), Nationwide argues that Defendants Travis and Ginger Ulery-Felkel were "surprised" by the default judgment against them because of language in S.C. Code Ann. 63-5-60, entitled "Parental civil liability for damage to State property." Nationwide argues that this section limits recovery of damages from the parents of a minor who causes personal injury to \$5,000. This Code section, however, is very limited in its application as it only applies to malicious or willful conduct by minors and does not encompass the *negligent* actions of the children or of the parents as it relates to the supervision of their children. Indeed, the plain language of this section provides that "[t]he liability of this section is in addition to and not in lieu of other liability which may exist by law." (emphasis added). Plaintiffs' Complaint paragraphs 9 and 10 alone contain sufficient allegations of negligent acts or omissions of "Defendants" which is enough to sustain judgments under a negligence cause of action against all three defendants individually when admitted by default. Accordingly, this argument is without merit.

**B. NATIONWIDE IS NOT ENTITLED TO RELIEF UNDER RULE 60(b)(4)**

Rule 60(b)(4), SCRCP, allows for relief from a judgment if the judgment is void. "The definition of 'void' under the rule only encompasses judgments from courts which failed to provide due process...or lacked subject matter jurisdiction or personal jurisdiction." *Linda Mc Co. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010). Here, Nationwide argues that the judgment against Minor Defendant E.U. is void for lack of personal jurisdiction, for lack of due process, and pursuant to Rule 54(b). For the reasons explained below, I find that the minor was served on December 2, 2014, and that due process was afforded to the parties.

1. **Minor Defendant E.U. was properly served and the court had personal jurisdiction over him.**

Rule 4, SCRCP serves at least two purposes. "It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." *Fassett v. Evans*, 364 S.C. 42, 46, 610 S.E.2d 841, 843 (Ct.App. 2005) (citing *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996). "Exacting compliance with the rules is not required to effect service of process. Rather, inquiry must be made as to whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Id.* Further, an officer's return of process creates the legal presumption of process that cannot be impeached by the mere denial of service by the defendant. *Id.* (citations omitted); *McClurg v. Deaton*, 380 S.C. 563, 579, 671 S.E.2d 87,96 (2008).

Rule 4(d)(1), SCRCP, provides the method for proper service on individuals.

Upon an individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by a copy to an agent authorized by appointment or by law to receive service of process.

(emphasis added). For minors between the ages of 14 and 18, who live with a parent or guardian, such as defendant minor E.U., Rule 4(d)(2) provides further that "a copy of the summons and complaint shall likewise be served upon said parent or guardian." (emphasis added).

In this case, service was perfected on Defendant Minor E.U. pursuant to both Rule 4(d)(1) and (2) when the summons and complaint was hand-delivered to Defendant Travis Felkel on December 2, 2014 at his home, which was also the home of his wife, Ginger Ulery, and step-son Minor Defendant E.U. Indeed, Nationwide does not dispute that service was proper on both Travis and Ginger on December 2, 2014, as Travis Felkel is a person of suitable age and discretion to accept service on his wife and step-son's behalf. Nationwide also does not dispute that Ginger is the parent and legal guardian of Minor E.U. Accordingly, E.U.'s parent, Ginger, was "served" with a copy of the summons and complaint when her husband opened the door and accepted the summons and complaint from the process server. It follows, then, that Minor Defendant E.U.'s parent was "served" for purposes of Rule 4(d)(2).

Nationwide's only remaining argument regarding service is that Minor Defendant E.U. was not served at his "dwelling place or usual place of abode." As a preliminary matter, this is not a case in which the defendant himself denies service. Rather, Nationwide's argument is based entirely on the statement of Ms. Ulery-Felkel at the damages hearing that her son started living with his grandmother sometime following this incident. The damages hearing occurred on April 21, 2015, almost six months after the date of service. Ms. Ulery-Felkel first said that her son moved out in September, then she said October, and Mr. Felkel never said when the minor moved out. Now, Mr. Felkel has clarified by Affidavit that E.U. was "home" with he and his wife on December 2, 2014, when Mr. Felkel accepted service, and that all three of them

reviewed the lawsuit papers that night. *See Felkel Affidavit*. Moreover, the process server has testified via Affidavit that the minor answered the door at the family home on December 1, 2014, the day before service was effectuated. *See Lamont Affidavit*. Accordingly, the only evidence in the record is that the minor was at home on the day before and day of service, and that he received actual notice of the lawsuit on the night it was served. *See Felkel Affidavit*.

Further, as acknowledged by Nationwide, one's dwelling or place of abode for purposes of Rule 4 is determined by the particularized facts of each case. *Fassett v. Evans*, 364 S.C. 42, 610 S.E.2d 841 (Ct.App. 2005). In the *Fasset* case, the defendant claimed he became separated from his wife and had moved out of the marital home shortly before his wife accepted service on his behalf at their marital home. Despite this testimony, the court found that the marital abode remained his usual place of abode for purposes of Rule 4 because of the presumption created when the sheriff's deputy left the complaint with defendant's wife, and the lack of evidence that he had established a new permanent dwelling place or that he had no intention to return to the marital home. Similarly, here, there is no evidence that the minor defendant intended to establish a new permanent residence at his grandparents' home or that he had no intention of returning to his parents' home, even if he was even staying with his grandparents at the relevant times. Moreover, there is no testimony from the minor defendant himself to contradict the Affidavit that he was "home" with his mother and step-father at the time of service, or to contradict the statement that he received actual notice of the lawsuit. *See Felkel and Lamont Affidavits*. Nationwide's argument is based entirely on off the cuff testimony at the damages hearing regarding dates, that was not provided by the minor defendant himself, and which has now been clarified by specific testimony in the context of the date of service. This speculation, raised by Nationwide, not the actual defendant who was served, is insufficient to rebut the presumption of

proper service and the presumption that his mother's home remained his "usual place of abode" for purposes of service as that term has been defined by case law. *See Fassett*.

Because service was affected properly on the minor defendant, Nationwide's argument that the judgment against him is void for lack of personal jurisdiction is without merit.

**2. All Three Defendants Were in Default and Were Afforded the Due Process To Which They Were Entitled as Parties in Default Who Had Not Appeared in The Action**

Nationwide argues that the Guardian-ad-litem appointed for minor defendant E.U. failed to comply with the responsibilities for Guardians provided under S.C. Code Ann. § 63-3-380. Nationwide's reliance on this Code section is misguided, however, as this section applies to custody and visitation proceedings in family court. Section 63-3-810 makes clear that it regulates the appointment of guardians "[i]n a private action before the family court in which custody or visitation of a minor child is an issue." Section 63-3-820 lays out the "Qualifications" for guardians appointed under this Section, and § 63-3-830, upon which Nationwide relies, lists the "Responsibilities" for guardians appointed under this Article. As this action is not pending in Family Court and does not involve the custody or visitation of a minor child, Section 63-3-380 does not apply to this civil suit pending in Circuit Court.<sup>6</sup>

A guardian was appointed for minor defendant E.U. in this case pursuant to Rule 55(b)(2), SCRCP, which requires that a guardian ad litem be appointed to represent minors or incompetents prior to entry of a default judgment. In this case, Shannon Jones, Esquire, was appointed to act as guardian ad litem for defendant minor E.U. and she appeared at the damages hearing on his behalf. Accordingly, the guardianship requirements of Rule 55(b)(2) were met in

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<sup>6</sup> Indeed, the only case cited by Nationwide as applying Section 63-3-830 was a child custody dispute in Family Court. *See Simcox-Adams v. Adams*, 408 S.C. 252, 758 S.E.2d 206 (2014).

this case: "no judgment by default shall be entered against a minor or incompetent person unless represented in an action by a guardian ad litem who has appeared herein." (emphasis added).

Nationwide also argues that the judgment against minor defendant E.U. should be set aside because notice of the damages hearing was not mailed to him at his "last known address," which Nationwide argues was his grandparents' house. Nationwide's argument fails, however, for several reasons. First, none of the defendants, including the minor E.U., claim that he did not receive notice of the April or the June hearing. Second, there is no evidence that E.U. was living with his grandparents at the time of the June hearing or that his grandparents' house constitutes his "last known address," or that his grandparents' address was "known" to Plaintiffs. Finally, it is undisputed that notice of the hearing was mailed to the minor's court-appointed guardian ad litem as well as to him at his mother's home, and that his mother attended the April damages hearing on his behalf and that the guardian ad litem attended the June hearing on his behalf.

In support of its argument, Nationwide cites to *McCall v. IKON*, 363 S.C. 646, 611 S.E.2d 315 (2005). The *IKON* case is easily distinguishable from the case at hand, however, in at least two major particulars: (1) the defendant itself asserted that it did not receive notice of the damages hearing; and (2) the defendant did not show up for the damages hearing. *Id.* Here, as stated above, the minor defendant does not assert that he did not receive notice. To the contrary, his step-father has attested that all three defendants received notice of the damages hearing. In addition, and perhaps most importantly, the court-appointed guardian ad litem **appeared** at the damages hearing on the minor defendant's behalf, and this is not a case, like *IKON*, where no one appeared at the damages hearing to represent the defaulting defendant's interests due to lack of notice. As such, I find notice of the damages and default hearings were provided to minor defendant E.U. in compliance with Rule 55(b)(2).

### 3. Rule 54(b), SCRCP, Has No Application To The Judgments In This Case

Nationwide argues that the default Judgments against Travis Felkel and Ginger Ulery-Felkel and Minor Defendant E.U. are void because they were not all entered on the same day. In support of this argument, Nationwide points to Rule 54(b), but Rule 54(b) has no application in this case where the judgments rendered against all three defendants, each of whom was properly in default, are joint and several and equal. Rule 54(b) is intended to prevent "inconsistent judgments," and there are no inconsistent judgments against the defendants here.

Rule 54(b), SCRCP, provides

any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights of all the parties.

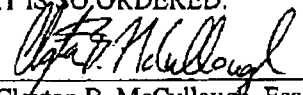
According to the plain language of Rule 54(b), then, at best, the judgments against Travis Felkel and Ginger Ulery-Felkel, which were filed on April 28, 2015, "did not terminate the action" and were "subject to revision at any time prior to the entry of judgment" against the remaining defendant, minor defendant E.U. While the judgments against Travis and Ginger were arguably subject to revision prior to entry of judgment against their son E.U., consistent, joint and several, judgments against all three defendants in default have now been entered. As noted in Nationwide's own brief, the purpose of this rule is to prevent "logically inconsistent judgments resulting from an answering defendant's success on the merits and another defendant's suffering of a default judgment." See Nationwide's Memorandum in Support of Motion to Set Aside Default, at p. 17 (citing *Jefferson v. Briner, Inc.*, 461 F.Supp.2d 430, 434-35 (E.D.Va. 2006)(discussing *Frow v. De La Vega*, 82 U.S. 552 (1872)). Here, with all three defendants in default, and a joint and several judgment existing against all three defendants, there are no

inconsistent judgments or partial judgments to which Rule 54(b) could apply. Accordingly, Rule 54(b) does not provide a basis for relief from the default judgments in this case.

**CONCLUSION**

For the foregoing reasons, I deny Nationwide's Motion to Intervene, and Nationwide's Motion to Set Aside Default Judgment under Rule 60(b) as well as Entry of Default under Rule 55(c).

IT IS SO ORDERED.

  
Clayton B. McCullough, Esquire  
Special Referee  
Ninth Judicial Circuit

1-3, 2016  
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Clayton B. McCullough, Esquire, Special Referee

Case No.: 2014-CP-08-2494

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY.....Appellant

ANNA ANGELACCI, AS GUARDIAN OF K.B., A MINOR.....Respondents

E.U., A MINOR, TRAVIS O. FELKEL, AND GINGER G. ULERY.....Defendants

PROOF OF SERVICE OF NOTICE OF APPEAL

I certify that I have served the Notice of Appeal on Respondents and Defendants above-named by depositing a copy of it in the United States Mail, postage prepaid, on February 3, 2016, addressed to their attorneys of record:

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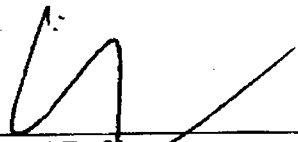
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February 3, 2016

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February 02, 2016

File No.: 20151603.000

The Honorable Mary Brown  
Berkeley County Clerk of Court  
300-B California Ave  
Moncks Corner, SC 29461-4036

Re: Anna Angelacci, as guardian of K.B., a minor vs. E.U., a minor, Travis O. Felkel,  
and Ginger G. Ulery  
Case No.: 2014-CP-08-02494  
Claim No.:

Dear Ms. Brown:

Enclosed for filing please find Notices of Appeal that have been served and filed in the  
above-referenced matter.

Very truly yours,

CLAWSON and STAUBES, LLC

Christy R. Fargnoli

CRF  
Enclosures

cc: Shannon Jones, Esq.  
Clayton B. McCullough, Esq.  
G. Troy Thames, Esq.  
Mark B. Tinsley, Esq.  
David Yarborough, Esq.  
(all via US Mail w/enc)

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AGENCY I.D.  
SC0080300

# INCIDENT REPORT

CASE NUMBER

2014-3788

NOIC

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AGENCY I.D.  
SC0080300

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

2014-3788

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| <input type="checkbox"/> MODIFIED ORIGINAL          | <input type="checkbox"/> CASE STATUS CHANGE  | <input type="checkbox"/> ADDITIONAL OFFENDERS | <input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY |                   |

|                                                                                      |             |                                                                                                                                      |        |                                                                                                                          |       |                                                                                                        |              |                                                                                                                                                                    |               |        |      |  |
|--------------------------------------------------------------------------------------|-------------|--------------------------------------------------------------------------------------------------------------------------------------|--------|--------------------------------------------------------------------------------------------------------------------------|-------|--------------------------------------------------------------------------------------------------------|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|--------|------|--|
| VICTIM #1<br>SUBJECT #1<br>WANTED<br>WARRANT<br>ARREST<br>JAIL<br>SUMMONS<br>WITNESS | COMPLAINANT | NAME (LAST, FIRST, MIDDLE)<br>WHITEHEAD, DANIEL KELLY                                                                                |        | VICTIM RELATIONSHIP TO SUBJECT<br>#1 #2 #3                                                                               |       | RESIDENT                                                                                               | RACE         | SEX                                                                                                                                                                | AGE           | D.O.B. | ETH. |  |
|                                                                                      | SUBJECT #   | HEIGHT                                                                                                                               | WEIGHT | HAIR                                                                                                                     | EYES  | FACIAL HAIR, SCARS, TATTOOS, GLASSES, PHYSICAL PECULIARITIES, ETC.                                     |              |                                                                                                                                                                    |               |        |      |  |
|                                                                                      | RUNAWAY     | 509                                                                                                                                  | 180    | BRO                                                                                                                      | BRO   |                                                                                                        |              |                                                                                                                                                                    |               |        |      |  |
|                                                                                      | WANTED      | ADDRESS                                                                                                                              |        | CITY                                                                                                                     | STATE | ZIP CODE                                                                                               | LOCATION NO. | DAYTIME PHONE                                                                                                                                                      | EVENING PHONE |        |      |  |
|                                                                                      | WARRANT     | 314 CLARINE DR                                                                                                                       |        | GOOSE CREEK                                                                                                              | SC    | 29445                                                                                                  |              | 843-557-7551                                                                                                                                                       | 843-557-7551  |        |      |  |
|                                                                                      | ARREST      | <input type="checkbox"/> VICTIM NO. <input type="checkbox"/> VISIBLE INJURY <input type="checkbox"/> NO <input type="checkbox"/> YES |        | <input type="checkbox"/> COMPLAINT OF ANY NON-VISIBLE INJURIES: <input type="checkbox"/> NO <input type="checkbox"/> YES |       | <input type="checkbox"/> VICTIM USING ALCOHOL <input type="checkbox"/> NO <input type="checkbox"/> YES |              | <input type="checkbox"/> TWO-MAN VEH. <input type="checkbox"/> DETECTIVE / SPLASHMT. <input type="checkbox"/> ALONE                                                |               |        |      |  |
|                                                                                      | JAIL        | EXPLAIN -                                                                                                                            |        | <input type="checkbox"/> NO <input type="checkbox"/> YES                                                                 |       | <input type="checkbox"/> DRUGS <input type="checkbox"/> NO <input type="checkbox"/> YES                |              | <input type="checkbox"/> TYPE: <input type="checkbox"/> UNK <input type="checkbox"/> ONE-MAN VEH. <input type="checkbox"/> OTHER <input type="checkbox"/> ASSISTED |               |        |      |  |
|                                                                                      | SUMMONS     | <input checked="" type="checkbox"/> SUBJECT NO. 2                                                                                    |        | USING ALCOHOL: <input type="checkbox"/> NO <input type="checkbox"/> YES                                                  |       | USING DRUGS: <input type="checkbox"/> NO <input type="checkbox"/> YES                                  |              | TYPE: <input type="checkbox"/> UNK                                                                                                                                 |               |        |      |  |
|                                                                                      | WITNESS     | 1                                                                                                                                    |        |                                                                                                                          |       |                                                                                                        |              |                                                                                                                                                                    |               |        |      |  |

|                                                                                      |             |                                                                                                                                      |        |                                                                                                                          |       |                                                                                                        |              |                                                                                                                                                                    |               |        |      |  |
|--------------------------------------------------------------------------------------|-------------|--------------------------------------------------------------------------------------------------------------------------------------|--------|--------------------------------------------------------------------------------------------------------------------------|-------|--------------------------------------------------------------------------------------------------------|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|--------|------|--|
| VICTIM #2<br>SUBJECT #2<br>WANTED<br>WARRANT<br>ARREST<br>JAIL<br>SUMMONS<br>WITNESS | COMPLAINANT | NAME (LAST, FIRST, MIDDLE)<br>CRUZ, DANIEL                                                                                           |        | VICTIM RELATIONSHIP TO SUBJECT<br>#1 #2 #3                                                                               |       | RESIDENT                                                                                               | RACE         | SEX                                                                                                                                                                | AGE           | D.O.B. | ETH. |  |
|                                                                                      | SUBJECT #   | HEIGHT                                                                                                                               | WEIGHT | HAIR                                                                                                                     | EYES  | FACIAL HAIR, SCARS, TATTOOS, GLASSES, PHYSICAL PECULIARITIES, ETC.                                     |              |                                                                                                                                                                    |               |        |      |  |
|                                                                                      | RUNAWAY     | 508                                                                                                                                  | 143    | BLK                                                                                                                      | BRO   |                                                                                                        |              |                                                                                                                                                                    |               |        |      |  |
|                                                                                      | WANTED      | ADDRESS                                                                                                                              |        | CITY                                                                                                                     | STATE | ZIP CODE                                                                                               | LOCATION NO. | DAYTIME PHONE                                                                                                                                                      | EVENING PHONE |        |      |  |
|                                                                                      | WARRANT     | 315 RAYMOND DR                                                                                                                       |        | LADSON                                                                                                                   | SC    | 29456                                                                                                  |              | 843-471-6177                                                                                                                                                       | 843-471-6177  |        |      |  |
|                                                                                      | ARREST      | <input type="checkbox"/> VICTIM NO. <input type="checkbox"/> VISIBLE INJURY <input type="checkbox"/> NO <input type="checkbox"/> YES |        | <input type="checkbox"/> COMPLAINT OF ANY NON-VISIBLE INJURIES: <input type="checkbox"/> NO <input type="checkbox"/> YES |       | <input type="checkbox"/> VICTIM USING ALCOHOL <input type="checkbox"/> NO <input type="checkbox"/> YES |              | <input type="checkbox"/> TWO-MAN VEH. <input type="checkbox"/> DETECTIVE / SPLASHMT. <input type="checkbox"/> ALONE                                                |               |        |      |  |
|                                                                                      | JAIL        | EXPLAIN -                                                                                                                            |        | <input type="checkbox"/> NO <input type="checkbox"/> YES                                                                 |       | <input type="checkbox"/> DRUGS <input type="checkbox"/> NO <input type="checkbox"/> YES                |              | <input type="checkbox"/> TYPE: <input type="checkbox"/> UNK <input type="checkbox"/> ONE-MAN VEH. <input type="checkbox"/> OTHER <input type="checkbox"/> ASSISTED |               |        |      |  |
|                                                                                      | SUMMONS     | <input checked="" type="checkbox"/> SUBJECT NO. 3                                                                                    |        | USING ALCOHOL: <input type="checkbox"/> NO <input type="checkbox"/> YES                                                  |       | USING DRUGS: <input type="checkbox"/> NO <input type="checkbox"/> YES                                  |              | TYPE: <input type="checkbox"/> UNK                                                                                                                                 |               |        |      |  |
|                                                                                      | WITNESS     | 2                                                                                                                                    |        |                                                                                                                          |       |                                                                                                        |              |                                                                                                                                                                    |               |        |      |  |

09-07-2014 at 1631 hours, I responded to the area of Stephanie Drive and Amy Drive (Boulder Bluff), in reference to an assault and battery by a mob incident.

Investigation:

Upon my arrival, I made contact with (victim) [REDACTED] who was sitting in the yard of 301 Amy Drive. [REDACTED] was shaken up, however, he was responsive. [REDACTED] stated that he was walking down Stephanie Drive with his friend when three white males began chasing him and one of them had a baseball bat. [REDACTED] further stated that at Stephanie Drive and

|                                                 |                                                    |
|-------------------------------------------------|----------------------------------------------------|
| JURISDICTION OF THEFT<br>LAW ENFORCEMENT AGENCY | JURISDICTION OF RECOVERY<br>LAW ENFORCEMENT AGENCY |
|-------------------------------------------------|----------------------------------------------------|

|                     |                                    |                                                      |                        |                               |
|---------------------|------------------------------------|------------------------------------------------------|------------------------|-------------------------------|
| VEH. / GUN / ETC. 1 | STATUS                             | TYPE                                                 | VIN AND/OR LICENSE NO. | BOAT HULL NO. AND/OR REG. NO. |
|                     | <input type="checkbox"/> STOLEN    | <input type="checkbox"/> VEHICLE                     |                        |                               |
|                     | <input type="checkbox"/> RECOVERED | <input type="checkbox"/> GUN                         |                        |                               |
|                     | <input type="checkbox"/> FOUND     | <input type="checkbox"/> BOAT                        |                        |                               |
|                     | <input type="checkbox"/> SEIZED    | <input type="checkbox"/> VEHICLE PARTS & ACCESSORIES |                        |                               |
|                     | <input type="checkbox"/> SUSPECT   | <input type="checkbox"/> SECURITIES / BOND, STOCKS   |                        |                               |
|                     | <input type="checkbox"/> VICTIM    | <input type="checkbox"/> ARTICLE                     |                        |                               |
|                     |                                    |                                                      | MISCELLANEOUS          |                               |
|                     |                                    |                                                      |                        |                               |
|                     |                                    |                                                      |                        |                               |

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|--------------|--|--|--|--|--|--|--|--|--|-------------|
| TYPE (GROUP) |  |  |  |  |  |  |  |  |  | TOTAL VALUE |
| STOLEN       |  |  |  |  |  |  |  |  |  |             |
| DAMAGED      |  |  |  |  |  |  |  |  |  |             |
| BURNED       |  |  |  |  |  |  |  |  |  |             |
| RECOVERED    |  |  |  |  |  |  |  |  |  |             |
| SEIZED       |  |  |  |  |  |  |  |  |  |             |

|                                                                                                                                                                                                                                                                                  |                                                                     |                                    |                                                                     |                                               |                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|------------------------------------|---------------------------------------------------------------------|-----------------------------------------------|-----------------------------------------------|
| SUBJECT IDENTIFIED                                                                                                                                                                                                                                                               | SUBJECT LOCATED                                                     | ACTIVE                             | ADM. CLOSED                                                         | ARRESTED UNDER 18                             | EX-CLEAR UNDER 18                             |
| <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                                              | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | <input type="checkbox"/> UNFOUNDED | <input checked="" type="checkbox"/>                                 | <input type="checkbox"/> ARRESTED 18 AND OVER | <input type="checkbox"/> EX-CLEAR 18 AND OVER |
| REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRADITION DENIED 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION 5. <input type="checkbox"/> JUVENILE - NO CUSTODY |                                                                     |                                    |                                                                     |                                               |                                               |
| REPORTING OFFICER                                                                                                                                                                                                                                                                | DATE                                                                | UNIT NUMBER                        | APPROVING OFFICER                                                   | DATE                                          | UNIT NUMBER                                   |
| SCEIVOUR, J                                                                                                                                                                                                                                                                      | 09/07/2014                                                          | 404                                |                                                                     |                                               |                                               |
| FOLLOW-UP INVESTIGATION                                                                                                                                                                                                                                                          |                                                                     |                                    | OFFICER                                                             |                                               |                                               |
|                                                                                                                                                                                                                                                                                  |                                                                     |                                    | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |                                               |                                               |

AGENCY I.D.  
SC0080300

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER  
2014-3788

NOIC  
INQ. ENTD.

|                                                                                                   |  |                                                                                             |  |                                                                                              |  |                                                                                                               |  |                   |  |
|---------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------|--|-------------------|--|
| <input checked="" type="checkbox"/> ORIGINAL REPORT<br><input type="checkbox"/> MODIFIED ORIGINAL |  | <input type="checkbox"/> SUPPLEMENTAL REPORT<br><input type="checkbox"/> CASE STATUS CHANGE |  | <input type="checkbox"/> ADDITIONAL VICTIMS<br><input type="checkbox"/> ADDITIONAL OFFENDERS |  | <input type="checkbox"/> ADDITIONAL STOLEN PROPERTY<br><input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY |  | PAGE 3 OF 4 PAGES |  |
|---------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------|--|-------------------|--|

|                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                |                                            |                     |           |          |           |                      |           |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|---------------------|-----------|----------|-----------|----------------------|-----------|--|
| VICT/SUBJ ID OVERFLOW<br><input type="checkbox"/> COMPLAINT<br><input type="checkbox"/> VICTIM #<br><input type="checkbox"/> SUBJECT #<br><input type="checkbox"/> RUNAWAY<br><input type="checkbox"/> WANTED<br><input type="checkbox"/> WARRANT<br><input type="checkbox"/> ARREST<br><input type="checkbox"/> JAIL<br><input type="checkbox"/> SUMMONS<br><input type="checkbox"/> OTHER | NAME (LAST, FIRST, MIDDLE)<br>ULERY, MARILYN KAY                                                                                                                                                                                                                                                                                               | VICTIM RELATIONSHIP TO SUBJECT<br>#1 #2 #3 | RESIDENT<br>J O U W | RACE<br>F | SEX<br>F | AGE<br>38 | D.O.B.<br>02/19/1975 | ETH.<br>N |  |
|                                                                                                                                                                                                                                                                                                                                                                                             | HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATTOOS, GLASSES, PHYSICAL PECULIARITIES, ETC.<br>506 150 BRO BRO                                                                                                                                                                                                                                  |                                            |                     |           |          |           |                      |           |  |
|                                                                                                                                                                                                                                                                                                                                                                                             | ADDRESS CITY STATE ZIP CODE LOCATION NO. DAYTIME PHONE EVENING PHONE<br>9 GUERRY CIR GOOSE CREEK SC 29445 843-781-9025 843-781-9025                                                                                                                                                                                                            |                                            |                     |           |          |           |                      |           |  |
|                                                                                                                                                                                                                                                                                                                                                                                             | VICTIM NO. VISIBLE INJURY COMPLAINT OF ANY NON-VISIBLE INJURIES VICTIM USING ALCOHOL VICTIM USING DRUGS<br><input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES |                                            |                     |           |          |           |                      |           |  |
|                                                                                                                                                                                                                                                                                                                                                                                             | EXPLAIN - <input type="checkbox"/> SUBJECT NO. 4 USING ALCOHOL USING DRUGS: TYPE:                                                                                                                                                                                                                                                              |                                            |                     |           |          |           |                      |           |  |
|                                                                                                                                                                                                                                                                                                                                                                                             | NAME (LAST, FIRST, MIDDLE) VICTIM RELATIONSHIP TO SUBJECT RESIDENT RACE SEX AGE D.O.B. ETH.<br>J S O U                                                                                                                                                                                                                                         |                                            |                     |           |          |           |                      |           |  |
|                                                                                                                                                                                                                                                                                                                                                                                             | HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATTOOS, GLASSES, PHYSICAL PECULIARITIES, ETC.                                                                                                                                                                                                                                                     |                                            |                     |           |          |           |                      |           |  |
|                                                                                                                                                                                                                                                                                                                                                                                             | ADDRESS CITY STATE ZIP CODE LOCATION NO. DAYTIME PHONE EVENING PHONE                                                                                                                                                                                                                                                                           |                                            |                     |           |          |           |                      |           |  |
|                                                                                                                                                                                                                                                                                                                                                                                             | VICTIM NO. VISIBLE INJURY COMPLAINT OF ANY NON-VISIBLE INJURIES VICTIM USING ALCOHOL VICTIM USING DRUGS                                                                                                                                                                                                                                        |                                            |                     |           |          |           |                      |           |  |
|                                                                                                                                                                                                                                                                                                                                                                                             | EXPLAIN - <input type="checkbox"/> SUBJECT NO. USING ALCOHOL USING DRUGS: TYPE:                                                                                                                                                                                                                                                                |                                            |                     |           |          |           |                      |           |  |

Jean Wells Drive they caught up to him and struck him several times on the leg with the baseball bat. [redacted] advised that he continued running until his current location where they tackled him and started hitting him in the back with the baseball bat. [redacted] further advised that the subject also kicked him all over and stomped on his head. [redacted] stated that when witnesses began to arrive the subjects ran off towards Highway 52. [redacted] informed me that his friend ran away when the subjects began to chase him. [redacted] further informed me that his friend had no part in the incident and did not see what occurred due to him fleeing.

[redacted] informed me that he had some words with one of the unknown subjects while at school the other day (Goose Creek

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                                                                                                 |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| STATUS TYPE<br><input type="checkbox"/> STOLEN <input type="checkbox"/> VEHICLE<br><input type="checkbox"/> RECOVERED <input type="checkbox"/> GUN<br><input type="checkbox"/> FOUND <input type="checkbox"/> BOAT<br><input type="checkbox"/> SEIZED <input type="checkbox"/> VEHICLE PARTS & ACCESSORIES<br><input type="checkbox"/> SUSPECT <input type="checkbox"/> SECURITIES / BOND, STOCK<br><input type="checkbox"/> VICTIM <input type="checkbox"/> ARTICLE |  | VIN AND/OR LICENSE NO. BOAT HULL NO. AND/OR REG. NO.<br>SERIAL AND/OR OWNER APPLIED NO. STATE<br>YEAR OF REGISTRATION YEAR OF EXPIRATION YEAR MAKE TYPE<br>MODEL STYLE COLOR BRAND NAME CALIBER<br>N/C NO. DENOMINATION ISSUER SECURITIES DATE<br>MISCELLANEOUS |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

|                                                                    |  |  |  |  |  |             |
|--------------------------------------------------------------------|--|--|--|--|--|-------------|
| TYPE (GROUP)<br>STOLEN<br>DAMAGED<br>BURNED<br>RECOVERED<br>SEIZED |  |  |  |  |  | TOTAL VALUE |
|--------------------------------------------------------------------|--|--|--|--|--|-------------|

|                                                                                                                                                                                                                      |            |                                                                                                                                                                          |                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| SUBJECT IDENTIFIED YES NO <input checked="" type="checkbox"/><br>REASON FOR EXCEPTIONAL CLEARANCE: 1. OFFENDER DEATH 2. NO PROSECUTION 3. EXTRADITION DENIED 4. VICTIM DECLINES COOPERATION 5. JUVENILE - NO CUSTODY |            | SUBJECT LOCATED YES NO <input checked="" type="checkbox"/><br>ACTIVE UNFOUNDED ADM. CLOSED ARRESTED UNDER 18 ARRESTED 18 AND OVER EX-CLEAR UNDER 18 EX-CLEAR 18 AND OVER |                   |
| REPORTING OFFICER                                                                                                                                                                                                    | DATE       | UNIT NUMBER                                                                                                                                                              | APPROVING OFFICER |
| SCEVIOUR, J                                                                                                                                                                                                          | 09/07/2014 | 404                                                                                                                                                                      |                   |
| FOLLOW-UP INVESTIGATION                                                                                                                                                                                              |            | OFFICER YES NO <input checked="" type="checkbox"/>                                                                                                                       |                   |

AGENCY I.D.  
SC0080300

# SUPPLEMENTARY REPORT

CASE NUMBER  
2014-3788

NOIC  
INC. EXT.

☒ ORIGINAL  
REPORT  
☐ MODIFIES  
ORIGINAL

☐ SUPPLEMENTAL  
REPORT  
☐ CASE STATUS  
CHANGE

☐ ADDITIONAL  
VICTIMS  
☐ ADDITIONAL  
OFFENDERS

☐ ADDITIONAL  
STOLEN PROPERTY  
☐ ADDITIONAL  
RECOVERED PROPERTY

PAGE 4 OF 4 PAGES

High School). [REDACTED] was unable to inform me of a description or any suspect information. I observed a red marking on the left side of [REDACTED] neck as well as multiple welts across [REDACTED] back consistent with being struck with a bat. I then obtained photographs of the injuries to [REDACTED] person, which were uploaded into RMS.

I then met with (complainant) Michael Heitzler, who stated that he was driving on Stephanie Drive when he observed three white males chasing a fourth. Heitzler further stated that when the suspects caught up the victim, they began to strike the victim with a baseball bat as well as kick and punch the victim. Heitzler informed that the suspect began to walk, then run away. Heitzler advised he stopped to see if the victim was okay and instructed the victim to stay where he was for medical attention.

I then spoke with (witness #1) Daniel Whitehead, who confirmed Heitzler's statement, but added that he observed a blue SUV pick up two of the three suspects. Whitehead informed that the subject holding a red baseball bat was wearing khaki shorts and a white T-shirt, standing approximately five feet nine inches tall. Whitehead further informed that one of the other two suspects was approximately five feet eight inches tall, wearing dark colored shorts and a green shirt. Whitehead was unable to provide a better description of the vehicle or its license plate.

(Witness #2) Daniel Cruz confirmed the above statements. All parties provided a written statement and were provided with information on how to obtain a copy of the report. [REDACTED] was transported to Trident Hospital by medics for treatment of his injuries. During my investigation PFC Derrick responded to the area and attempted to locate the suspects but met with negative results.

I then made contact with [REDACTED] mother, (other) Marilyn Ulery at Trident Hospital. I informed Marilyn of the incident. [REDACTED] stated that he did not wish to pursue criminal charges. Marilyn advised that if [REDACTED] did not wish to pursue criminal charges then she will not pursue criminal charges on his behalf. I provided all parties with the case number and information on how to obtain a copy of the report.

## Recommendation:

No further action by this agency.

## Disposition:

Case administratively closed.

NARRATIVE

|                |                                                                                           |            |                                                                                        |                                            |                                                |                                                                                |                                                                    |                                                                    |
|----------------|-------------------------------------------------------------------------------------------|------------|----------------------------------------------------------------------------------------|--------------------------------------------|------------------------------------------------|--------------------------------------------------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------------------|
| ADMINISTRATIVE | SUBJECT IDENTIFIED<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |            | SUBJECT LOCATED<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |                                            | <input type="checkbox"/> ACTIVE<br>UNFOUNDED   | <input checked="" type="checkbox"/> ADM. CLOSED                                | <input type="checkbox"/> ARRESTED UNDER 18<br>ARRESTED 18 AND OVER | <input type="checkbox"/> EX-CLEAR UNDER 18<br>EX-CLEAR 18 AND OVER |
|                | REASON FOR EXCEPTIONAL CLEARANCE                                                          |            | 1. <input type="checkbox"/> OFFENDER DEATH                                             | 2. <input type="checkbox"/> NO PROSECUTION | 3. <input type="checkbox"/> EXTRADITION DENIED | 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION                        | 5. <input type="checkbox"/> JUVENILE - NO CUSTODY                  |                                                                    |
|                | REPORTING OFFICER                                                                         | DATE       | UNIT NUMBER                                                                            | APPROVING OFFICER                          |                                                | DATE                                                                           | UNIT NUMBER                                                        |                                                                    |
|                | SCEVOUR, J                                                                                | 09/07/2014 | 404                                                                                    | FOLLOW-UP<br>INVESTIGATION                 |                                                | OFFICER<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |                                                                    |                                                                    |

# JUVENILE INCIDENT REPORT

**FACTS**

2 0 1 4 0 9 0 4 2 7 2 4

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|                      |                                         |
|----------------------|-----------------------------------------|
| REPORT               | COMP                                    |
| RECEIVED SEP 15 2014 | <input checked="" type="checkbox"/> YES |
|                      | <input type="checkbox"/> YES            |
|                      | <input type="checkbox"/> YES            |

# JUVENILE

AGENCY I.D.  
SC0080000

## SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

201409042724

NCIC

INC. ENT.  
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|                                                                                     |  |                                                                                             |  |                                                                                              |  |                                                                                                               |  |                   |  |
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| <input type="checkbox"/> ORIGINAL REPORT<br><input type="checkbox"/> MOVED ORIGINAL |  | <input type="checkbox"/> SUPPLEMENTAL REPORT<br><input type="checkbox"/> CASE STATUS CHANGE |  | <input type="checkbox"/> ADDITIONAL VICTIMS<br><input type="checkbox"/> ADDITIONAL OFFENDERS |  | <input type="checkbox"/> ADDITIONAL STOLEN PROPERTY<br><input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY |  | PAGE 2 of 2 PAGES |  |
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|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|--------------------------------------------------|------|------------------------------|------|-----------------------------|-------------------------------------------------------------------------------|------------------------------------|-----------------------------|-----------------------------------------------|--------------------------------|-----------------------------------------------|--|-------------------------------|--|------|--|-----|-------------|-------------|--|--------|--|-----|--|
| VICT/SUBJ. I.D. OVERFLOW     | COMPLAINANT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | NAME (LAST, FIRST, MIDDLE) |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               | VICTIM RELATIONSHIP TO SUBJECT |                                               |  | RESIDENT                      |  | RACE |  | SEX |             | AGE         |  | D.O.B. |  | EIN |  |
|                              | VICTIM #                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | SUBJECT #                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | HEIGHT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | WEIGHT                     |                                                  | HAIR |                              | EYES |                             | FACIAL MARKS, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | WANTED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
| VICT/SUBJ. I.D. OVERFLOW     | WARRANT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | ARREST                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | INJ.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | SUMMONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
| VICT/SUBJ. I.D. OVERFLOW     | COMPLAINANT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | NAME (LAST, FIRST, MIDDLE) |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               | VICTIM RELATIONSHIP TO SUBJECT |                                               |  | RESIDENT                      |  | RACE |  | SEX |             | AGE         |  | D.O.B. |  | EIN |  |
|                              | VICTIM #                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | SUBJECT #                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | HEIGHT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | WEIGHT                     |                                                  | HAIR |                              | EYES |                             | FACIAL MARKS, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | WANTED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
| VICT/SUBJ. I.D. OVERFLOW     | WARRANT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | ARREST                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | INJ.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | SUMMONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
| NARRATIVE                    | SAYING IN AN EXCITED UTTERANCE THAT HE BEAT UP FROM HIS GYM CLASS BECAUSE<br>ROBBED HIM AT GUN POINT PRIOR TO THAT AND TOOK \$210. DUE TO THESE OTHER CRIMES HAPPENING IN<br>GOOSE CREEK CITY, I NOTIFIED DETECTIVE MCWILLIAMS OF THESE SITUATIONS. I THEN FOLLOWED UP WITH<br>WHO WAS GIVEN MIRANDA AND STATED THAT GOT INTO HIS FACE SO HE PICKED HIM UP AND<br>DROPPED HIM WAS THEN CHARGED WITH ASSAULT AND BATTERY AND WAS LATER RELEASED TO HIS<br>MOTHER WITH A CUSTODIAL RELEASE. PRINCIPAL MCBRIDE WAS PRESENT FOR INTERVIEW.<br>WAS TAKEN TO THE DOCTOR BY HIS MOTHER. |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
| VEH./GUN/ETC. 1              | STATUS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                            | TYPE                                             |      | VIN AND/OR LICENSE NO.       |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  | BOAT HULL NO. AND/OR REG. NO. |  |      |  |     |             |             |  |        |  |     |  |
|                              | <input type="checkbox"/> STOLEN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            | <input type="checkbox"/> VEHICLE                 |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | <input type="checkbox"/> RECOVERED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                            | <input type="checkbox"/> GUN                     |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | <input type="checkbox"/> FOUND                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                            | <input type="checkbox"/> BOAT                    |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | <input type="checkbox"/> TOWED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                            | <input type="checkbox"/> LICENSE PLATE           |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | <input type="checkbox"/> SUSPECT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                            | <input type="checkbox"/> SECURITIES/BOND, STOCKS |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | <input type="checkbox"/> VICTIM                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            | <input type="checkbox"/> ARTICLE                 |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | MISCELLANEOUS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
| ADMINISTRATIVE PROPERTY EST. | TYPE (GROUP)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                            | TOTAL VALUE                                      |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | STOLEN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | DAMAGED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | BURNED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | RECOVERED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | SEIZED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | SUBJECT IDENTIFIED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                            | SUBJECT LOCATED                                  |      | ACTIVE                       |      | ADJ. CLOSED                 |                                                                               | ARRESTED UNDER 18                  |                             | EX-CLEAR UNDER 18                             |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | <input type="checkbox"/> YES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                            | <input type="checkbox"/> NO                      |      | <input type="checkbox"/> YES |      | <input type="checkbox"/> NO |                                                                               | <input type="checkbox"/> UNFOUNDED |                             | <input type="checkbox"/> ARRESTED 18 AND OVER |                                | <input type="checkbox"/> EX-CLEAR 18 AND OVER |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH. 2. <input type="checkbox"/> NO PROSECUTION. 3. <input type="checkbox"/> EXTRADITION DENIED. 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION. 5. <input type="checkbox"/> JUVENILE - NO CUSTODY                                                                                                                                                                                                                                                                                             |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
|                              | REPORTING OFFICER/ES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                            |                                                  |      |                              |      |                             |                                                                               |                                    |                             | DATE                                          |                                |                                               |  |                               |  |      |  |     |             | UNIT NUMBER |  |        |  |     |  |
| TRAYNOR, WILLIAM             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    | 09/08/14                    |                                               |                                |                                               |  |                               |  |      |  |     | 241         |             |  |        |  |     |  |
| APPROVING OFFICER            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    | DATE                        |                                               |                                |                                               |  |                               |  |      |  |     | UNIT NUMBER |             |  |        |  |     |  |
| DUNN, JOHN                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    | 09/10/14                    |                                               |                                |                                               |  |                               |  |      |  |     | 26          |             |  |        |  |     |  |
| FOLLOWUP INVESTIGATION       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    | OFFICER                     |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |
| <input type="checkbox"/> YES |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |                                                  |      |                              |      |                             |                                                                               |                                    | <input type="checkbox"/> NO |                                               |                                |                                               |  |                               |  |      |  |     |             |             |  |        |  |     |  |

# JUVENILE

AGENCY I.D.  
SC0080000

## SUPPLEMENTARY REPORT

CASE NUMBER

201409042734

NOI

|     |       |
|-----|-------|
| NOI | ENTD. |
| N   | N     |

|                                           |                                                         |                                               |                                                        |                   |
|-------------------------------------------|---------------------------------------------------------|-----------------------------------------------|--------------------------------------------------------|-------------------|
| <input type="checkbox"/> ORIGINAL REPORT  | <input checked="" type="checkbox"/> SUPPLEMENTAL REPORT | <input type="checkbox"/> ADDITIONAL VICTIMS   | <input type="checkbox"/> ADDITIONAL STOLEN PROPERTY    | PAGE 1 of 1 PAGES |
| <input type="checkbox"/> ADOPTEE ORIGINAL | <input type="checkbox"/> CASE STATUS CHANGE             | <input type="checkbox"/> ADDITIONAL OFFENDERS | <input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY |                   |

RE: ASSAULT

LOCATION: 1137 RED BANK ROAD

VICTIM:

ON 9/9/14, I WAS FOLLOWING UP WITH MOTHER TO LET HER KNOW THAT THERE WAS AN ARREST IN THIS CASE. I WAS THEN ADVISED THAT HAD A FRACTURE ON HIS SKULL AND BLEEDING ON HIS BRAIN ALONG WITH TWO BROKEN TOES. MOTHER ALSO STATED THAT SHE WAS ADVISED BY FRIENDS THAT WAS BEAT WITH A BASEBALL BAT ON SUNDAY AND SHE WANTED TO CLARIFY THAT DID NOT USE A BASEBALL BAT IN HIS ASSAULT. I THEN NOTIFIED CAPTAIN BRABHAM OF THIS INFORMATION SO THAT A DETECTIVE COULD BE NOTIFIED DUE TO THE SEVERITY OF THE INJURIES. DUE TO THE ASSAULT THAT WAS REFERENCED TO HAPPENED IN THE CITY I ONCE MORE CALLED OFFICER MCWILLIAMS FROM GOOSE CREEK CITY TO PASS THIS INFORMATION ALONG. I WAS ALSO ADVISED THAT THE ARMED ROBBERY REPORT WAS FILED BY MOTHER THROUGH GOOSE CREEK CITY.

CTY: 241

DEPUTY: W. TRAYNOR

ADMINISTRATIVE

|                                                                                           |                                                                                        |                                                                                              |                                                                                             |                                                                    |
|-------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| SUBJECT IDENTIFIED<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | SUBJECT LOCATED<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | ACTIVE <input checked="" type="checkbox"/> ADJ. CLOSED<br><input type="checkbox"/> UNFOUNDED | ARRESTED UNDER 18<br><input type="checkbox"/> ARRESTED 18 AND OVER                          | EX-CLEAR UNDER 18<br><input type="checkbox"/> EX-CLEAR 18 AND OVER |
| REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH              | 2. <input type="checkbox"/> NO PROSECUTION                                             | 3. <input type="checkbox"/> EXTRADITION DENIED                                               | 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION                                     | 5. <input type="checkbox"/> JUVENILE - NO CUSTODY                  |
| REPORTING OFFICER(S)                                                                      | DATE                                                                                   | UNIT NUMBER                                                                                  | APPROVING OFFICER                                                                           | DATE                                                               |
| TRAYNOR, WILLIAM                                                                          | 09/09/14                                                                               |                                                                                              | DUNN, JOHN                                                                                  | 09/10/14                                                           |
|                                                                                           |                                                                                        |                                                                                              | OFFICER                                                                                     | 26                                                                 |
|                                                                                           |                                                                                        |                                                                                              | FOLLOW-UP INVESTIGATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |                                                                    |

AGENCY I.D.  
SC0080000

**JUVENILE**  
SUPPLEMENTARY REPORT

CASE NUMBER

201409042724

NCIC

INC. EXT.  
N N

☐ ORIGINAL REPORT ☒ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIM ☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY  
☐ MODIFIED ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS PAGE 2 of 2 PAGES.

RE: ASSAULT

LOCATION: 1137 RED BANK ROAD

VICTIM:

ON 9/12/14 I SPOKE WITH MOTHER WHO WAS ASKED ABOUT HEALTH PRIOR TO AND AFTER THIS ASSAULT. MOTHER STATED THAT WAS IN GOOD HEALTH PRIOR TO THIS ASSAULT AND HAD NO COMPLAINTS OF HIS HEAD HURTING. SENSE THE ASSAULT HE HAS HAD NUMEROUS COMPLAINTS OF HIS HEAD HURTING AND HAS BEEN SEEN BY DOCTORS TO HELP HIM IN THIS SITUATION. MOTHER THEN ADVISED MY THAT SHE WOULD HAVE THE DOCTORS FAX ME A COPY OF THE MEDICAL RECORDS AS THEY PERTAIN TO THIS CASE. AS OF THE TIME OF THIS REPORT I HAVE NOT RECEIVED A COPY OF THESE REPORTS, HOWEVER I WILL KEEP IN TOUCH WITH MOTHER UNTIL THE RECORDS ARE SENT.

DEPUTY: W. TRAYNOR

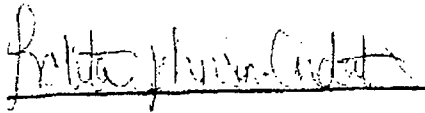
CTY: 241

RECEIVED SEP 15 2014

|                                                                                                                                                                                                                                                                                  |  |                                                                                        |  |                                                                                                                    |  |                                                                                                     |  |                                                                                          |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------|--|
| SUBJECT IDENTIFIED<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                        |  | SUBJECT LOCATED<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |  | <input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOUNDED |  | <input checked="" type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> ARRESTED 18 AND OVER |  | <input type="checkbox"/> EX-CLEAR UNDER 18 <input type="checkbox"/> EX-CLEAR 18 AND OVER |  |
| REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRADITION DENIED 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION 5. <input type="checkbox"/> JUVENILE - NO CUSTODY |  |                                                                                        |  |                                                                                                                    |  |                                                                                                     |  |                                                                                          |  |
| REPORTING OFFICER(S)<br>TRAYNOR, WILLIAM                                                                                                                                                                                                                                         |  | DATE<br>09/12/14                                                                       |  | UNIT NUMBER                                                                                                        |  | APPROVING OFFICER<br>DUNN, JOHN                                                                     |  | DATE<br>09/12/14                                                                         |  |
|                                                                                                                                                                                                                                                                                  |  |                                                                                        |  |                                                                                                                    |  | FOLLOW-UP INVESTIGATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO         |  | UNIT NUMBER<br>26                                                                        |  |

## Certification

I, Lolita Johnson-Ondatto, as a duly authorized Nationwide Insurance associate entrusted with oversight of the system of record from which this copy was produced, based upon information and belief, certify under penalty of perjury that this attached copy of policy **6139HO 708143** was made at or near the time of certification, as part of regularly conducted business activities, and is a true and accurate copy of the official record kept as part of regular business activities.



Signature

Date: August 3, 2015

Lolita Johnson-Ondatto

Print Name

Sr. Processor, Imaging

Title



JOHN T HERNDON  
SUITE B  
1200 SAM RITTENBERG BLVD  
CHARLESTON SC 29407

## HOMEOWNER CUSTOMER NOTICE

Policy Number  
61 39 HO 708143

Date Prepared  
JUL 11, 2014

### How to Contact Us

#### Nationwide Representative:

JOHN T HERNDON  
AGENT NUMBER : 0014635  
843-556-8088

TRAVIS O FELKEL  
339 HOLLY AVE  
GOOSE CREEK SC 29445-3051

See back of your statement for important phone numbers and other information about your insurance.

#### Note:

Enclosed is your Homeowner Policy Renewal Declarations for property described on the Declarations.

Please read it carefully. The Mortgagee has been billed for the amount listed below. Thank you for insuring with Nationwide.

Total Billed To MORTGAGEE

\$ 1,891.00

RETAIN THIS PORTION FOR YOUR RECORDS

At Nationwide, customer service is a top priority. Whether you are a long time customer or new, we want you to know the high value we place on your business. We consider it a privilege to serve you.

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY

\*\*\*\*\*THIS IS NOT A BILL\*\*\*\*\*

## **NATIONWIDE 24-HOUR CLAIMS NUMBER: 1-800-421-3535**

### **IMPORTANT INFORMATION:**

Nationwide now has a new homeowners program. Policyholders may or may not receive lower rates in this new homeowners program. Please contact your Nationwide Agent if you are interested in further details.

Your credit report will only be ordered at the start of your policy with Nationwide unless you request an update. You may request a new credit-based insurance score once each year to be used to rate your policy. To request an updated insurance score, please contact us at 1-877-669-6877.

### **\*\*\*\*\* SPECIAL NOTICE \*\*\*\*\***

Please notify your agent immediately if the mortgage company shown on the Declarations is not correct.

### **A Message From Your Nationwide Agent:**

Your policy does not cover flood loss. You can get protection through the National Flood Insurance Program. If you wish to find out more about this protection, please contact your Nationwide Agent.

Your policy premium may be reduced by \$ 190.00 if you were to insure your Auto with a qualifying Nationwide Auto policy. Please contact your Nationwide Agent.

Your premium may be reduced, if you have a qualifying Nationwide Life/Annuity policy. Please contact your Nationwide Agent for more information.

Nationwide values your business. Our first priority is to serve you. As your insurance provider, we like to keep you informed. With this renewal you will notice a change in your premium. Premium changes vary based on factors such as the amount for which homes are insured and discounts that may apply. Your Nationwide Agent is available to answer any questions you may have about the change in your premium. Thank you for choosing Nationwide as your insurance provider.

**Life comes at you fast<sup>SM</sup> — be ready with Nationwide<sup>®</sup>.**

**For Questions About Your Insurance, Call Your Nationwide Agent: JOHN T HERNDON**  
843-556-6088

**For Hearing Impaired: TTY 1-800-622-2421**

**AGENT NUMBER 14635**

**Nationwide Regional Office: 1-877-669-6877**



# HOMEOWNER POLICY DECLARATIONS

Non-Assessable

Page 1 of 3

These Declarations are a part of the policy named above and identified by policy number below. They supersede any Declarations issued earlier. Your Homeowner Policy will provide the insurance described in this policy in return for the premium and compliance with all applicable policy provisions. See policy for details regarding the other coverages and additional coverage options.

**Policy Number:**

61 39 HO 708143

**Issued:**

JUL 11, 2014

**Policyholder:**

(Named Insured)

TRAVIS O FELKEL

339 HOLLY AVE

GOOSE CREEK SC 29445-3051

**Policy Period From:**

AUG 10, 2014 to AUG 10, 2015 but only if the required premium for this period has been paid, and only for annual renewal periods if premiums are paid as required. Each period begins and ends at 12:01 A.M. standard time at the Residence Premises.

**The Following Change(s) Have Been Made To Your Policy:**

You may notice a change in premium since your last billing. Residence Premises Information has been changed.

The deductible for your policy Section I Property Coverage is revised.

The limit of liability for Section I Coverage A Dwelling is revised.

Limits of Liability for Policy Option Q Earthquake is changed.

**THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE OR WIND/HAIL LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU. THE EXAMPLE ON PAGE A1 OF YOUR POLICY ILLUSTRATES HOW THE DEDUCTIBLE MIGHT AFFECT YOU.**

**Residence Premises Information:**

339 HOLLY AVE  
GOOSE CREEK  
SC 294453051

ONE FAMILY  
MASONRY VENEER DWELLING  
YEAR OF CONSTRUCTION 1971

PROTECTION CLASS 2  
TAX CODE 00013  
FD GOOSE CREEK  
FS GOOSE CREEK FS 1  
PROTECTION TERRITORY 059  
BERKELEY COUNTY

**SECTION I**

| Property Coverages           | Limits Of Liability | Deductible: \$1,500 ALL PERILS                                                                                                |
|------------------------------|---------------------|-------------------------------------------------------------------------------------------------------------------------------|
| COVERAGE-A-DWELLING          | \$ 141,200          | In case of a loss under Section I, we cover only that part of each loss over the deductible stated.                           |
| COVERAGE-B-OTHER STRUCTURES  | \$ 14,120           |                                                                                                                               |
| COVERAGE-C-PERSONAL PROPERTY | \$ 103,925          | <b>EXCEPTIONS</b>                                                                                                             |
| COVERAGE-D-LOSS OF USE       | \$ 141,200          | 3% WIND AND HAIL DEDUCTIBLE                                                                                                   |
|                              |                     | 10% EARTHQUAKE DEDUCTIBLE APPLIES SEPARATELY TO EACH SECTION I COVERAGE LIMIT OF LIABILITY WITH A MINIMUM DEDUCTIBLE OF \$250 |

H5300

**HOMEOWNER POLICY DECLARATIONS**

Page 2 of 3

**SECTION II**

| Liability Coverages                                                                           | Limits Of Liability |
|-----------------------------------------------------------------------------------------------|---------------------|
| COVERAGE-E-PERSONAL LIABILITY<br>FOR EACH OCCURRENCE:<br>PROPERTY DAMAGE AND<br>BODILY INJURY | \$ 100,000          |
| COVERAGE-F-MEDICAL PAYMENTS<br>TO OTHERS EACH PERSON                                          | \$ 1,000            |

**OTHER COVERAGES/OPTIONS APPLICABLE**

See Policy or Endorsements for details regarding the Other Coverages and Options that apply to your policy.

| Other Coverages                             | Limits of Liability |
|---------------------------------------------|---------------------|
| INFLATION PROTECTION<br>BOECKH INDEX 0735.8 | APPLIES             |
| BIOLOGICAL DETERIORATION/DAMAGE CLEAN UP    | \$ 5,000            |
| FIRE DEPARTMENT SERVICE CHARGE              | \$ 500              |
| CREDIT CARD - FORGERY                       | \$ 1,000            |

| Options Applicable                                                                                                                       |          |
|------------------------------------------------------------------------------------------------------------------------------------------|----------|
| OPTION-J-EXTENDED REPLACEMENT COST<br>PERSONAL PROPERTY (BRAND NEW BELONGINGS)                                                           | APPLIES  |
| OPTION-K-REPLACEMENT COST PLUS<br>DWELLING                                                                                               | APPLIES  |
| OPTION-L-PROTECTIVE DEVICE CREDIT<br>LOCAL FIRE OR SMOKE ALARM SYSTEMS<br>FIRE EXTINGUISHERS<br>DEADBOLT LOCKS ON ALL EXTERIOR ENTRYWAYS | APPLIES  |
| OPTION-Q-EARTHQUAKE                                                                                                                      | APPLIES  |
| OPTION-R-BROAD WATER BACKUP<br>WATER BACKUP DEDUCTIBLE \$1500                                                                            | \$ 5,000 |

**SPECIAL PROVISIONS**

STATE OF SOUTH CAROLINA VALUATION CLAUSE, VALUE OF DWELLING IS \$ 141,200

**PREMIUM SUMMARY**

| Premium Based On       | Premium Amount |
|------------------------|----------------|
| POLICY PREMIUM         | \$ 1,457.00    |
| EARTHQUAKE             | \$ 417.00      |
| WATER BACKUP           | \$ 17.00       |
| Annual Renewal Premium | \$ 1,891.00    |

Annual Renewal Premium Includes Discounts For:

LONG TERM  
HOME PROTECTIVE DEVICE

**IMPORTANT NOTICE**

The property insured on this policy is located in territory 059. The average percent of the premium in this territory that is related to the perils of wind and hail (including tornado and hurricane) is 76.2%. This information is provided in accordance with the South Carolina Act 290, the Insurance Modernization Act, of 2004.

**FORMS and ENDORSEMENTS MADE PART OF POLICY**

HO 39-A

Homeowners Policy



## HOMEOWNER POLICY DECLARATIONS

Non-Assessable  
Page 3 of 3

Policy Number:  
61 39 HO 708143

Policyholder:  
(Named Insured)  
TRAVIS FELKEL

Issued:  
JUL 11, 2014

Policy Period From:  
AUG 10, 2014 TO AUG 10, 2015

H-8178-A

Amendatory Endorsement (South Carolina)

### ADDITIONAL INTERESTS

#### FIRST MORTGAGEE

SOUTH CAROLINA STATE  
HOUSING FIN  
AUTHORITY ATTN: MRTG  
SERVICING/ESCROW  
ISAOA ATIMA  
300 OUTLET POINTE  
BLVD STE C  
COLUMBIA SC 29210-5652  
LOAN #17041

Issued By: NATIONWIDE MUTUAL FIRE INSURANCE COMPANY  
Countersigned At: RALEIGH, NC  
Prior Declaration Issued: JUL 11, 2013

Home Office -- Columbus, Ohio  
By: JOHN T HERNDON

### IMPORTANT PHONE NUMBERS

Nationwide 24-Hour Claims Number: 1-800-421-3535

For QUESTIONS About Your Policy, Call Your NATIONWIDE AGENT: JOHN T HERNDON  
843-556-6088

For Hearing Impaired: TTY 1-800-622-2421

Nationwide Regional Office: 1-877-669-6877



## Amendatory Endorsement (South Carolina)

Please attach this important addition to your policy.

It is agreed that the policy is amended as follows:

Under the **Insuring Agreement**, the second paragraph is deleted and replaced by the following:

The applicable limits of liability and optional coverages you have chosen are shown on the Declarations. We may change the amount of coverage shown on the Declarations Page to reflect current costs and values when reconstruction cost estimates are conducted or when the policy renews. To maintain an appropriate amount of coverage, it is your duty to advise us of additions, alterations, or renovations to your dwelling. This policy applies only to loss which occurs while the policy is in force.

Under **General Policy Conditions, 4. NON-RENEWAL** b. is deleted and replaced by:

- b) If we elect not to renew, we will mail written notice to the named insured, at the address shown in this policy at least:
  - (1) 60 days before the expiration date of this policy if such date is on or after November 1 and before June 1; or
  - (2) 90 days before the expiration date of this policy if such date is on or after June 1 and before November 1.

The notice will include the precise reason for nonrenewal. Proof of mailing shall be proof of notice.

Under **General Policy Conditions, 5. CANCELLATION DURING POLICY PERIOD** b. and c. are deleted and replaced by:

- b) When this policy has been in effect less than 120 days and is not a renewal with us, we may cancel for any reason by giving notice at least 30 days before cancellation takes effect.
- c) When this policy has been in effect 120 days or more, or at any time if it is a renewal, we may cancel if:
  - (1) there has been a material misrepresentation of fact which if known to us would have caused us not to issue this policy, or caused us to issue or renew this policy at a higher premium;
  - (2) the risk has changed substantially since the policy was issued; or
  - (3) there have been substantial breaches of contractual duties, conditions, or warranties; or
  - (4) there has been a loss of our reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil our solvency or place us in violation of the laws of South Carolina.

This can be done by giving notice at least 30 days before cancellation takes effect.

All other provisions of the policy apply.

This endorsement is issued by the company shown on the Declarations as the issuing company.

**Nationwide Mutual Insurance Company and Affiliated Companies**  
One Nationwide Plaza Columbus, OH 43215-2220  
Hearing or Voice Impaired: 1-800-622-2421 (TTY only)  
nationwide.com

Nationwide and the Nationwide framework are federally registered service marks of Nationwide Mutual Insurance Company.

H-6178-A

THIS POLICY MAY CONTAIN A SEPARATE DEDUCTIBLE FOR HURRICANE OR WIND/HAIL LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU. THE EXAMPLE ON PAGE A1 ILLUSTRATES HOW THE DEDUCTIBLE MIGHT AFFECT YOU.

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HO-39-A

## ***How Your Wind/Hail or Hurricane Deductible is Applied***

The wind/hail deductible or hurricane deductible is on your Declarations page if it applies to this policy.

If you have a wind/hail deductible, the events that trigger application of this deductible are: wind, wind gust, hail, rain, tornadoes, cyclones, or snow.

If you have a hurricane deductible, the events that trigger application of this deductible are a hurricane, as defined in the Hurricane Coverage and Deductible Provision endorsement.

The hurricane deductible does not apply to any storm not declared by the National Hurricane Center/Tropical Prediction Center.

The deductible is based on a percentage of your Coverage A dwelling limit. Your deductible amount is determined by multiplying the percentage deductible by the Coverage A-Dwelling limit of liability at the time of loss. The resulting dollar amount is your deductible. The deductible applies to the total of all covered loss under Coverage A-Dwelling, Coverage B-Other Structures, Coverage C-Personal Property, and Other Coverages.

As mentioned earlier, the percentage deductible is on the Declarations page. The following are examples of how the deductible is applied:

**These examples assume that at the time of loss, the Coverage A-Dwelling limit of liability is \$100,000 and the percentage deductible is 1%, with the resulting deductible amount being \$1000 (1% X \$100,000).**

- Your dwelling loss is \$15,000 and your personal property loss is \$5,000 for a total loss of \$20,000. You are responsible for the first \$1000 of the loss due to the deductible. Nationwide is responsible for the balance of the loss or \$19,000.
- Your dwelling loss is \$500 and there is no personal property loss. You are responsible for the first \$1000 of the loss. Since the total loss amount is less than the deductible, you would be responsible for the loss.

This example is the same whether your policy has a Hurricane Deductible or a Wind/Hail Deductible.

## ***Insuring Agreement***

We will provide the insurance described in this policy, which includes the Declarations and attached endorsements or schedules, in return for the premium and fees, and compliance with all the policy provisions.

The applicable limits of liability and optional coverages you have chosen are shown on the Declarations. This policy applies only to loss which occurs while the policy is in force.

## ***Definitions***

Certain words and phrases used in this policy are defined as follows:

1. "WE", "US" and "OUR" refer to the company shown on the Declarations as the issuing company.
2. "YOU" and "YOUR" refer to the named **insured** shown in this policy who resides at the **residence premises**. These terms also mean your spouse who resides at the same **residence premises**.
3. "BUSINESS" includes trade, profession, occupation, or employment including self-employment, performed on a full-time, part-time, or temporary basis. **Business** also includes any occasional **business** pursuits of an **insured**, including ownership of rental property. It includes home care services regularly provided to a person or persons, other than **insureds** or **insureds'** relatives, for which there is monetary or other compensation. A mutual exchange of home care services is not considered compensation. Exceptions, if any, are noted on the Declarations.

4. "INSURED" means you and the following if residents of your household at the residence premises:
  - a) your relatives.
  - b) any other person under age 21 and in the care of you or your relatives.
5. "INSURED LOCATION" means:
  - a) the residence premises.
  - b) the part of any other premises, structures, and grounds used by you as a residence and shown in the policy; also any of these acquired by you during the policy period for your use as a residence.
  - c) a premises you use with premises defined in 5. a) or 5. b).
  - d) a part of a premises, not owned by an insured, where an insured is temporarily living.
  - e) vacant land, other than farm land, owned by or rented to an insured.
  - f) land, other than farm land, owned by or rented to an insured on which a one or two-family dwelling is being built as a residence for an insured.
  - g) cemetery plots or burial vaults of an insured.
  - h) a part of a premises rented on occasion to an insured for purposes other than business.
6. "MOTOR VEHICLE" means:
  - a) a motorized land vehicle or conveyance, including motorized bicycles or mopeds, designed for travel on public roads or subject to motor vehicle registration.
  - b) a trailer or semi-trailer designed for travel on public roads and subject to motor vehicle registration.
  - c) any vehicle while being towed by or carried on a vehicle defined in 6. a) or 6. b).
7. "RESIDENCE PREMISES" means the one, two, three or four-family dwelling, other structures and grounds located at the mailing address shown on the Declarations unless otherwise indicated.
8. "AIRCRAFT" means any machine or device capable of atmospheric flight, except models.
9. "ACTUAL CASH VALUE" means the amount it would cost to repair or replace covered property with material of like kind and quality, less allowance for physical deterioration and depreciation, including obsolescence.
10. "FOUNDATION" means a building's substructure including substructural walls, i.e., basement walls, crawl space walls, etc.
11. "BIOLOGICAL DETERIORATION OR DAMAGE" meaning damage or decomposition, breakdown, and/or decay of manmade or natural material due to the presence of fungi, algae, lichens, slime, mold, bacteria, wet or dry rot, and any by-products of these organisms, however produced. Fungi as used above include, but are not limited to: yeasts, mold, mildew, rust, smuts, or fleshy fungi such as mushrooms, puffballs and coral fungi.

Other words are also defined. All defined words are in bold print.



## **Section I** **Property Coverages**

---

### **Coverage Agreements**

#### **COVERAGE A – DWELLING**

**We cover:**

1. the dwelling on the **residence premises** used mainly as your private residence, including attached structures and attached wall-to-wall carpeting.
2. materials or supplies on or adjacent to the **residence premises** for use in construction, alteration or repair of:
  - a) the dwelling; or
  - b) Coverage B – Other Structures.

**We do not cover** land or the replacement, rebuilding, restoration, stabilization or value of such land.

#### **COVERAGE B – OTHER STRUCTURES**

**We cover** other structures on the **residence premises**. They must be separated from the dwelling by clear space. Structures connected to the dwelling by only a fence, utility line, or similar connection are considered other structures.

**We do not cover:**

1. other structures used in whole or in part for **business** purposes.
2. other structures rented or held for rental to anyone, unless used solely as a private garage.
3. land or the replacement, rebuilding, restoration, stabilization or value of such land.

#### **COVERAGE C – PERSONAL PROPERTY**

**We cover** personal property owned or used by an **insured** at the **residence premises**. At your request, we will cover personal property owned by others. It must be on the part of the **residence premises** occupied by an **insured**. This extension of coverage does not increase the limit of liability.

**Our limit of liability** for personal property while away from the **residence premises** is 10 percent of the limit of liability for Coverage C or \$1,000, whichever is greater. This 10 percent limitation does not apply to personal property:

1. removed from the **residence premises** due to a covered loss;
2. in transit to and from, or while in a newly acquired principal residence for 30 days. The 30 days start right after you begin to move the property; or
3. stored in a commercial storage facility up to 180 days. The 180 days start when you begin to move the property. A commercial storage facility does not include a self-storage unit.

**SPECIAL LIMITS OF LIABILITY.** Certain property is subject to special limits which do not increase the personal property limits of liability. The special limit, shown below for each numbered category, is the total limit for each loss for all property in that category.

Section I - Property Coverages

---

The following special limits apply only to theft losses:

1. \$1,000 for jewelry, watches, furs, and precious and semi-precious stones.
2. \$1,000 for guns, including accessories.
3. \$1,000 for cameras (film, digital or video), including accessories. It does not include cameras used in **business**.
4. \$2,500 for silverware, silver-plated ware, goldware, gold-plated ware, and pewterware.
5. \$1,000 for tools not used in **business**. This limit does not apply to lawn and garden tools used to service the **residence premises**.

The following special limits apply to all covered losses:

6. \$200 for money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum, coins, stored value cards, smart cards, gift certificates and medals.
7. \$1,000 for securities, accounts, bills, deeds, documents, evidences of debt, letters of credit, notes other than bank notes, passports, stamps and tickets.
8. \$3,000 for computers, including hardware and software accessories, operating software, application software or other similar software, which can be replaced with like kind and quality on the retail market. This includes electronic storage media such as, but not limited to, tapes or diskettes. Stored data is not covered.
9. \$500 for **business** property on the **residence premises** except computers including their hardware and software described above.
10. \$1,000 for watercraft and outboard motors, including trailers, furnishings and equipment.
11. \$1,000 for utility type trailers not used with watercraft.
12. \$1,000 for manuscripts, regardless of the medium.

**PROPERTY NOT COVERED.** We do not cover:

1. articles separately described and specifically insured in this or any other insurance.
2. animals, birds or fish.
3. house or travel trailers.
4. **motor vehicles** or all other motorized land conveyances including the following, whether furnished by the manufacturer or an individual:
  - a) their parts or equipment, whether attached to or separated from the **motor vehicle** or motorized land conveyance; or
  - b) accessory equipment; or
  - c) any device or instrument, including accessories or antennas, for the transmitting, receiving, recording or reproduction of sound or picture which can be operated by the power from the electrical system of the **motor vehicle** or motorized land conveyance. Tapes, discs, reels, cassettes or similar items, including carrying cases for any of these, while in a motorized land vehicle shall not be considered accessory equipment. The most we will pay is \$200 in any one loss, regardless of the number of such items. The loss must be caused by a covered peril.

We do cover vehicles or conveyances not subject to motor vehicle registration which are:

- a) used solely to service the insured's residence;
  - b) designed to assist the handicapped; or
  - c) a motorized golf cart while being operated to or from, or on the premises of a golf course.
5. **aircraft** and parts.
  6. property of roomers, boarders, and other tenants. Personal property, at the **residence premises**, belonging to roomers and boarders related to an insured is covered.

7. property in an apartment regularly rented or held for rental to others by an insured.
8. property rented or held for rental to others away from the **residence premises**.
9. **business** property away from the **residence premises**.

#### COVERAGE D – LOSS OF USE

We cover, subject to the coverage limit which is the total limit, all of the following:

1. **Additional Living Expense.** If a covered loss requires you to leave the **residence premises**, we will pay the required increase in living expenses you incur to maintain your normal standard of living. Payment will be for the shortest time required to repair or replace the premises; or, if you permanently relocate, for the shortest time required for your household to settle elsewhere. Payment will not exceed the limit of liability shown on the Declarations or 12 months, whichever occurs first. This period of time is not limited by the end of the policy period; and
2. **Fair Rental Value.** If a loss covered under this section requires occupants to leave that part of the **residence premises** rented to others or held for rental, we will pay its fair rental value. Payment will be for the shortest time required to repair or replace this part of the premises. This does not include expense that does not continue while the part of the **residence premises** is uninhabitable. Payment will not exceed the limit of liability shown on the Declarations or 12 months, whichever occurs first. This period of time is not limited by the end of the policy period; and
3. **Prohibited Use.** If a civil authority prohibits your use of the **residence premises** because of direct damage to neighboring premises by a peril insured against in this policy, we will pay the resulting loss, for up to two weeks while use is prohibited, for:
  - a) Additional Living Expense; and
  - b) Fair Rental Value.

We do not cover loss or expense due to cancellation of a lease or agreement.

This coverage does not apply to an insured's **business**, whether conducted on or off any insured location.

No deductible applies to this coverage.

### *Additional Property Coverages*

These additional property coverages are subject to the policy deductible except as noted. In no event will the deductible be applied more than once to any one loss.

1. **Debris Removal.** We will pay reasonable expense you incur removing debris of covered property, if the peril causing the loss is covered. This includes debris of trees that cause damage to covered property or covered structures, or that obstruct access to covered structures if such access is necessary to repair or replace the structure. We will pay only to move away from, or off of, covered property or covered structures, the debris of trees that cause damage to covered property or restrict access. An additional five (5) percent of the limit of liability for the damaged property will be available when the amount payable for the property loss plus the debris removal expense exceeds the limit of liability.
2. **Live Tree Debris Removal.** In the event of a loss, we will also pay the reasonable expense you incur for the removal of live tree debris from the **residence premises**, that does not cause damage to covered property or covered structures. The most we will pay is \$500, regardless of the number of trees requiring removal, for any one loss. Loss must be the result of a Coverage C Perils Insured Against. This is an additional amount of coverage.

3. **Reasonable Repairs.** We will pay reasonable cost you incur for necessary repairs made solely to protect covered property from further damage, if the peril causing the loss is covered. This expense is included in the limit of liability applying to the damaged property.

4. **Trees, Shrubs, Plants, and Lawns.** We cover trees, shrubs, plants, or lawns on the residence premises for loss caused by the following perils: fire and lightning; explosion; riot and civil commotion; aircraft; vehicles not owned or operated by a resident of the residence premises; vandalism or malicious mischief; collapse of a building; or, theft. Liability is limited to five (5) percent of the Coverage A limit of liability for all trees, shrubs, plants and lawns. It is limited to \$500 for one tree, shrub or plant. This coverage may increase the limit of liability.

We do not cover property grown for business purposes.

5. **Fire Department Service Charge.** We will pay up to the amount stated on the Declarations for your liability under contract or agreement for customary fire department charges. This applies when the charges result from the fire department being called to save or protect covered property from a covered peril. No deductible applies to this coverage.

6. **Property Removed.** Covered property removed from a premises because it is in danger from a covered peril is covered for direct loss from any cause. The property is covered while being removed and for 30 days while removed. After 30 days the property is covered for direct loss from a peril insured against. This does not change the coverage limit.

7. **Credit Card, Electronic Fund Transfer Card, Access Device and Forgery Coverage.** We will pay up to the amount stated on the Declarations for:

a) the legal obligation of an insured to pay theft or unauthorized use of credit cards (including Electronic Fund Transfer Cards or Access Devices) issued to or registered in an insured's name. However, we do not cover use by a resident of your household, a person entrusted with the credit card (Electronic Fund Transfer Card or Access Device), or any person if an insured has not complied with all terms and conditions under which the credit card (Electronic Fund Transfer Card or Access Device) is issued.

b) loss to an insured caused by forgery or alteration of a check or negotiable instrument.

c) loss to an insured through good faith acceptance of counterfeit United States or Canadian paper currency.

All losses resulting from a series of acts committed by any one person or groups of persons or in which any one person or groups of persons is concerned or implicated is considered one loss. This is regardless of the period of time over which the acts occur.

We do not cover loss arising out of the business pursuits, or dishonesty of an insured. We do not cover loss arising out of identity theft or identity fraud including a covered act as outlined in subsections a), b), or c) of this section.

No deductible applies to this coverage.

We may make any investigation and settle any claim or suit as we decide is appropriate. Our obligation to defend a claim or suit ends when the amount we pay for the loss equals our limit of liability.

If a claim is made or a suit is brought against an insured for liability under the Credit Card, Electronic Fund Transfer Card, Access Device and Forgery Coverage, we will provide defense at our expense by counsel of our choice.

We may defend at our expense an insured or an insured's bank against a suit for the enforcement of payment under the forgery coverage.

Our duty to defend does not apply to identity theft or identity fraud.

8. **Inflation Protection Coverage.** If the Declarations show this coverage applies, we will adjust the limit of liability on the Declarations for Section I – Coverages. The limit of liability will change as the appropriate index, shown on the Declarations, changes.

We will compare the latest available index to the index as of the effective date of this policy. We will adjust the limit of liability by the percentage change in the index. It is further agreed that the premium for this policy at the next anniversary date shall be for the adjusted limits of liability.

If you request a change in the dwelling limit of liability, the effective date of this coverage will be amended to the effective date of that change.

This coverage will not reduce our limit of liability during the current policy period below that for which premium has been paid.

9. **Consequential Loss.** We cover insured personal property in a building at the residence premises for loss due to temperature change resulting from power interruption. There must be damage to the residence premises caused by a covered peril.

10. **Refrigerated Property.** If a power interruption occurs, off the residence premises, we will pay up to a maximum of \$500 for loss of contents in a freezer or refrigerator due to temperature changes. You must use all reasonable means to protect the covered property from damage or this coverage is void.

11. **Lock Replacement.** We will pay up to \$100 to replace the exterior door locks on your residence premises with deadbolt locks or to rekey the lock cylinders of existing deadbolt locks, whichever is less. This coverage applies only if the keys to your residence premises are stolen.

No deductible applies to this coverage.

12. **Collapse.** We cover direct physical loss to covered property described in Coverages A, B and C caused by the complete collapse of a building structure or any part of a building structure. **Collapse** means an abrupt falling down or caving in of a building or other structure or any part of a building or other structure with the result that it cannot be occupied for its intended purpose. A building or other structure or part of a building or other structure is not considered in a state of collapse if:

- a) it is standing but in danger of falling down or caving in;
- b) it is standing but has separated from any other part of the building;
- c) it is standing even if it shows signs of settling, cracking, shifting, bulging, sagging, bowing, bending, leaning, shrinkage, or expansion.

The collapse must be sudden and accidental and caused by one or more of the following:

- a) one of the Coverage C – Personal Property perils insured against;
- b) hidden decay of a supporting or weight bearing building structural member;
- c) hidden insect or vermin damage of a supporting or weight bearing building structural member;
- d) weight of:
  - (1) contents, equipment, animals or people; or
  - (2) rain, ice, sleet or snow which collects on the roof; or
- e) defective material or methods used in the construction, repair or remodeling or renovation if the collapse occurs in the course of work being done.

The presence of any decay, insect or vermin damage must be unknown to an insured prior to collapse.

Loss to an awning, fence, patio, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf, or dock is not included under items b), c), d), or e) unless the loss is a direct result of the collapse of a building.

The limit of liability applying to the covered property is not increased by this coverage.

13. **Household Supplies.** We will pay up to a maximum of five (5) percent of the Coverage A – Dwelling coverage limit for direct physical loss to property described in Coverages A and B arising out of any interior or exterior presence, use, discharge, dispersal, release, migration, seepage, leakage, or escape of household supplies on the **residence premises**. Household supplies includes items currently in use or in your possession at the **residence premises**, in normal household quantities such as household cleaning supplies, pesticides, and other similar items.

**Section I – Property Exclusion 1.j)** does not apply to any loss covered under this **Additional Property Coverage, Household Supplies**. In no event, however, will we ever cover:

- a) loss arising out of materials containing asbestos, lead, formaldehyde, fuel or petroleum products; or
  - b) any fee, assessment or expense of any governmental authority; or
  - c) loss arising out of household supplies possessed or used:
    - (1) for **business** purposes;
    - (2) for **illegal** purposes;
    - (3) by contractors; or
    - (4) on driveways or walkways.
14. **Biological Deterioration or Damage Clean Up and Removal.** In the event that a covered cause of loss results in **biological deterioration or damage** to property covered under Coverages A, B, and C, we will pay, up to the amount shown on the Declarations, for:
- a) the cost to clean up, remove and dispose of the **biological deterioration or damage** to covered property;
  - b) the cost to tear out and replace any part of the building or other covered property needed to gain access to the **biological deterioration or damage**;
  - c) the cost of testing which is performed in the course of clean up and removal of the **biological deterioration or damage** from the **residence premises**; and
  - d) additional living expenses you may incur, as outlined under Coverage D, that results from items a), b) or c) above.

The coverage amount shown on the Declarations for this Additional Property Coverage is the most we will pay for all loss or costs payable under this Additional Coverage. Such costs are payable only if you report the **biological deterioration or damage** to us within 180 days of having first discovered the **biological deterioration or damage**.

The covered cause of loss that causes or results in **biological deterioration or damage** to covered property must have occurred during the policy period.

This is an additional amount of coverage.

# *Perils Insured Against*

(Section I)

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## *Covered Causes of Loss*

### **COVERAGE A – DWELLING and COVERAGE B – OTHER STRUCTURES**

We cover accidental direct physical loss to property described in Coverages A and B except for losses excluded under Section I – Property Exclusions.

### **COVERAGE C – PERSONAL PROPERTY**

We cover accidental direct physical loss to property described in Coverage C caused by the following perils except for losses excluded under Section I – Property Exclusions:

1. fire or lightning.
2. windstorm or hail.  
Direct loss caused by rain, snow, sleet, sand or dust driven through roof or wall openings made by direct action of wind, hail, or other insured peril is covered. This peril includes loss to:
  - a) rowboats and canoes inside or outside a building.
  - b) other watercraft and outboard motors, including their trailers, furnishings, and equipment, while inside a fully enclosed building.
3. explosion.
4. riot or civil commotion.
5. aircraft, missiles propelled and spacecraft.
6. vehicles.
7. sudden and accidental damage from smoke. This does not include loss due to smoke from farm or industrial operations.
8. vandalism and malicious mischief.  
This peril does not include loss to property on the **residence premises** if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling under construction is not considered vacant.
9. theft, including attempted theft. Loss of property from a known location when it is likely the property was stolen is covered. Loss of precious or semi-precious stones from their settings is not covered. This peril does not include loss caused by any theft:
  - a) committed by an **insured**.
  - b) in or to a dwelling under construction, or of materials and supplies for use in the construction, until the dwelling is completed and occupied.
  - c) of money, securities, stamps, jewelry, watches, gems, articles of gold, silver, or platinum from any part of a **residence premises** usually occupied solely by an **insured** while rented to other than an **insured**.

Section I - Perils Insured Against

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This peril does not include loss caused by theft that occurs away from the residence premises of:

- a) property while at any other residence owned by, rented to, or occupied by an insured, except while an insured is temporarily living there. Property of an insured student is covered at a residence away from home if the student has been there within 45 days prior to the loss.
- b) trailers and campers.
- c) watercraft and outboard motors, including their furnishings and equipment.

10. falling objects. This peril does not include loss to:

- a) property in a building, unless the roof or an exterior wall of the building is first damaged by a falling object.
- b) the falling object itself.

11. weight of ice, snow, or sleet which causes damage to property in a building.

12. accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance. This peril does not include loss:

- a) caused by or resulting from water that backs up from outside the dwelling's plumbing system and enters through sewers or drains; or water entering or overflowing a sump pump, sump pump well or other system designed to remove subsurface water drained from the foundation area except as may be provided elsewhere in this policy or by endorsement.
- b) due to continuous or repeated seepage or leakage of water, steam or moisture which occurs over a period of time and results in deterioration, corrosion, or rust.
- c) due to freezing except as provided by the peril of freezing.
- d) to the system or appliance from which the water, steam or moisture escaped.

13. accidental electrical damage to electrical appliances, devices, fixtures and wiring. This peril does not include loss to transistors and tubes including picture tubes.

14. sudden and accidental tearing apart, cracking, bursting, burning or bulging of:

- a) a steam or water heating system.
- b) a fire protective sprinkler system.
- c) an air conditioning system.
- d) an appliance for heating water.

Freezing is not covered under this peril.

15. freezing of a plumbing, heating, air conditioning, or automatic fire protective sprinkler system or of a household appliance. This peril does not include loss on the residence premises while unoccupied, vacant or under construction unless you have used reasonable care to:

- a) maintain heat in the building; or
- b) shut off the water supply and drain the system and appliances of water.

# Property Exclusions

## (Section I)

1. **We** do not cover loss to any property resulting directly or indirectly from any of the following. Such a loss is excluded even if another peril or event contributed concurrently or in any sequence to cause the loss.

- a) **Earth Movement and Volcanic Eruption.** Earth movement means: earth movement due to natural or unnatural causes, including mine subsidence; earthquake; landslide; mudslide; earth shifting, rising or sinking. Volcanic eruption means: eruption; or discharge from a volcano.

Resulting direct loss by fire, explosion, theft or breakage of glass which is part of the building is covered.

- b) **Water or damage caused by water-borne material.** Loss resulting from water or water-borne material damage described below is not covered even if other perils contributed, directly or indirectly to cause the loss. Water and water-borne material damage means:

(1) flood, surface water, waves, tidal waves, overflow of a body of water, spray from these, whether or not driven by wind.

(2) water or water-borne material which:

(a) backs up through sewers or drains from outside the dwelling's plumbing system; or

(b) overflows a sump pump, sump pump well or other system designed to remove subsurface water or water-borne material from the foundation area.

(3) water or water-borne material below the surface of the ground, including water or water-borne material which exerts pressure on, seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool, or other structure.

Resulting direct loss by fire, explosion, or theft is covered.

- c) **Neglect,** meaning neglect of the insured to use all reasonable means to save and preserve property at the time of and after a loss, or when property is endangered by a covered peril.

- d) **War or Warlike Acts.** This includes insurrection, rebellion or revolution. Discharge of a nuclear weapon is considered a warlike act even if accidental.

- e) **Nuclear Hazard,** meaning any nuclear reaction, discharge, radiation, or radioactive contamination, all whether controlled or not or however caused, and any consequence of any of these. Loss caused by nuclear hazard is not considered loss caused by fire, smoke, or explosion, whether these perils are specifically named in or otherwise included as a covered peril in Section I.

- f) **Increased Hazard,** meaning any loss occurring while hazard is increased by a means within the control and knowledge of an insured.

- g) **Intentional Acts,** meaning loss resulting from an act committed by or at the direction of an insured that may reasonably be expected to result from such acts, or is the intended result from such acts. Intentional acts include criminal acts. Such acts exclude coverage for all insureds.

- h) **Ordinance or Law,** meaning enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure.

- i) **Collapse,** except as provided by Section I — Additional Property Coverages — Collapse.

Section I – Property Exclusions

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- j) Contamination or Pollution, meaning any interior or exterior presence or use, discharge, dispersal, release, migration, seepage, leakage, or escape of:
    - (1) solid, liquid, gaseous, or thermal irritants or contaminants, except smoke arising solely from a hostile fire or the sudden and accidental discharge from a fireplace or furnace;
    - (2) vapors, soot, fumes, acids, alkalis, toxic chemicals, toxic liquids, toxic gases, or waste;
    - (3) fuel oil and other petroleum products; or
    - (4) any other waste materials or other irritants, contaminants or pollutants.
  - k) Loss Assessments, unless, optional loss assessment coverage is purchased; and then only up to the limit of liability shown for that optional coverage.
  - l) Government Acts, meaning any loss caused by seizure, destruction, or confiscation by order of any government or public entity.

Loss caused by acts ordered by any government or public entity at the time of a fire to prevent its spread is covered if the loss caused by fire would be covered under this policy.
  - m) **Biological deterioration or damage**, except as provided by Section I – Additional Property Coverages – **Biological Deterioration or Damage Clean Up and Removal**.
2. We do not cover loss to any property resulting directly or indirectly from the following if another excluded peril contributes to the loss:
- a) A fault, weakness, defect or inadequacy in the:
    - (1) specifications, planning, zoning;
    - (2) design, workmanship, construction, materials;
    - (3) surveying, grading, backfilling;
    - (4) development or maintenance;of any property on or off the residence premises, whether intended or not.
  - b) Acts or decisions of any person, group, organization or governmental body, whether intentional, negligent, wrongful or without fault. This includes the conduct or failure to act or decide by any of the aforementioned.
  - c) Weather conditions, if contributing in any way with an exclusion listed in paragraph 1. of this Section.
3. We do not cover loss to property described in Coverages A and B resulting directly from any of the following:
- a) freezing of a plumbing, heating, air conditioning or automatic fire protection sprinkler system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing.

This exclusion applies only while the dwelling is vacant, unoccupied or being constructed unless you have used reasonable care to:

    - (1) maintain heat in the building; or
    - (2) shut off the water supply and drained the system and appliance of water.
  - b) freezing, thawing, pressure or weight of water, snow or ice, whether driven by wind or not, to a:
    - (1) fence, pavement, patio or swimming pool;
    - (2) foundation, retaining wall, or bulkhead; or
    - (3) pier, wharf or dock.

- c) theft in or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is completed and occupied.
- d) vandalism and malicious mischief or breakage of glass and safety glazing materials if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling under construction is not considered vacant.
- e) continuous or repeated seepage or leakage of water or steam over a period of time from a heating, air conditioning or automatic protective sprinkler system; household appliance; or plumbing system that results in deterioration or rust. Continuous or repeated seepage or leakage from, within, or around any shower stall, shower tub, tub installation or other plumbing fixture, including their walls, ceilings or floors, is also excluded.

If loss caused by water or steam is not otherwise excluded, we will cover the cost of tearing out and replacing any part of the building necessary to repair or replace the system or appliance. We do not cover loss to the system or appliance from which the water or steam escaped.

- f)
  - (1) wear and tear, marring, deterioration;
  - (2) inherent vice, latent defect, mechanical breakdown;
  - (3) smog, rust;
  - (4) smoke from agricultural smudging or industrial operations;
  - (5) release, discharge, or dispersal of contaminants or pollutants;
  - (6) settling, cracking, shrinking, bulging or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings;
  - (7) birds, vermin, rodents, insects or domestic animals. Resulting breakage of glass constituting part of a covered building is covered;
  - (8) root growth, movement or action;
  - (9) mismatch of color between undamaged material and new material used to replace faded, weathered or oxidized damaged material; or
  - (10) mismatch between undamaged material and new material used to repair or replace damaged material due to outdated, obsolete or discontinued products.

If any of items f)(1) through (8) cause water to escape from a plumbing, heating, air conditioning or fire protective sprinkler system or household appliance, we cover loss caused by the water not otherwise excluded. We also cover the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which the water escaped.

Under exclusions 3.a) through 3.f), any loss that follows is covered unless it is specifically excluded.

# Property Conditions

## (Section I)

1. **Insurable Interest and Limit of Liability.** Even if more than one person has an Insurable Interest in the property covered, we will not be liable:
  - a) to the insured for more than the insured's interest.
  - b) for more than the limit of liability.
2. **Deductible.** The deductible amount shown on the Declarations or endorsements attached to this policy is the amount of loss paid by the insured. We pay for covered loss above the deductible amount.
3. **Your Duties after Loss.** In case of loss, you must:
  - a) give immediate notice to us or our agent; and also to the police in case of theft. In case of loss under the credit card coverage, also notify the credit card (Electronic Fund Transfer Card) company. If loss is caused by or results from the peril of hail, loss must be reported to us or our agent within 6 months of the loss event.
  - b) protect the property from further damage. You must make repairs required to protect the property and keep a record of repair expenses.
  - c) as often as we reasonably require:
    - (1) show us the damaged property; and
    - (2) provide records and documents we request and permit us to make copies.
    - (3) submit to examinations under oath and sign same. At your or our request, the exams will be conducted separately and not in the presence of any other persons except legal representation.
  - d) submit to us, within 60 days after we request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
    - (1) the time and cause of loss.
    - (2) interest of the insured and all others in the property involved and all liens on the property.
    - (3) other insurance that may cover the loss.
    - (4) changes in title or occupancy of the property during the term of the policy.
    - (5) specifications of any damaged property and detailed estimates for repair of damage.
    - (6) a list of damaged personal property showing in detail the quantity, description, actual cash value, and amount of loss. Attach all bills and receipts that support the figures.
    - (7) receipts for additional living expenses and records supporting the fair rental value loss.
    - (8) evidence or affidavit supporting a claim under the Credit Card, Electronic Fund Transfer Card, Access Device and Forgery Coverage. It should state the amount and cause of loss.
4. **Loss Settlement.** Covered losses will be settled, up to the applicable limit of liability, by us paying:
  - a) actual cash value at the time of loss, the amount not to exceed actual cash value, needed to repair or replace:
    - (1) personal property and structures that are not buildings;
    - (2) carpeting (including wall-to-wall) and cloth awnings;

- (3) outdoor antennas, whether or not attached to the building;
- (4) home appliances, unless built in as a part of the dwelling.
- b) the cost to repair or replace without deduction for depreciation for buildings in Coverage A or B based on equivalent construction and use on the same premises except:
  - (1) we will pay no more than the **actual cash value** of the damage until the repair or replacement is made when the cost to repair or replace the damage is more than \$1,000 or more than 5 percent of the amount of insurance in this policy on the building, whichever is less.
  - (2) when you claim loss or damage to buildings on an **actual cash value** basis. You may make claim within 180 days after the loss for any added loss based on the cost to repair or replace.
  - (3) if you choose not to repair or replace, we will pay only the **actual cash value** of the damaged building, not to exceed the applicable limit of liability.
- 5. **Loss Payment.** We will pay all losses as outlined in the above Loss Settlement Condition 4, subject to the following:
  - a) in case of loss to a pair or set, we may elect to:
    - (1) repair or replace a part to restore the pair or set to its value before the loss; or
    - (2) pay the difference between **actual cash value** of the property before and after the loss.
  - b) At our option, we may repair or replace any part of the damaged property with equivalent property, providing we give you written notice within 30 days after receiving your signed, sworn proof of loss.
  - c) We will pay you unless some other person is named in this policy to receive payment. Payment will be made within 60 days after we receive your proof of loss and:
    - (1) reach agreement with you; or
    - (2) there is an entry of a final judgment; or
    - (3) there is a filing of an appraisal award with us.
  - d) After we have paid for a loss by theft or disappearance of covered property, we have the right to all or part of any recovered property. You must protect these rights and inform us of any recovery. If you wish to retain the recovered property, our loss payment will be adjusted by the value of such property.
  - e) After we have paid for a loss, we have the right to all or part of any salvageable property. We may permit you to keep the damaged property but we will reduce the amount of the loss paid to you by the value of the retained damaged property.
- 6. **Appraisal.** If you and we fail to agree on the amount of loss, either can demand that the amount be set by appraisal. If either makes a written demand for appraisal, each will select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers will then select a competent, impartial umpire. If the two appraisers cannot agree on an umpire within 15 days, you or we can ask a judge of a court of record in the state where the **residence premises** is located to select a competent, impartial umpire.

The appraisers will then set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of the loss. If the appraisers fail to agree within a reasonable time, they will submit their differences to the umpire. Written agreement signed by any two of these three will set the amount of the loss. Each appraiser will be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire

will be paid equally by you and us. Any fees for expert witnesses or attorneys will be paid by the party who hires them. Neither the umpire nor the appraisers will have a financial interest that is conditioned on the outcome of the specific matter for which they are called to serve.

This is not a provision providing for or requiring arbitration. The appraisers and umpire are only authorized to determine the actual cash value, replacement cost, or cost to repair the property that is the subject of the claim. They are not authorized to determine coverage, exclusions, conditions, forfeiture provisions, conditions precedent, or any other contractual issues that may exist between you and us. The appraisal award cannot be used by either you or us in any proceeding concerning coverage, exclusions, forfeiture provisions, conditions precedent, or other contractual issues. However, once contractual liability is admitted or determined, the appraisal award is binding upon you and us. This appraisal process and authority granted to the appraisers and the umpire can only be expanded or modified by written mutual consent signed by you and us.

7. **Other Insurance.** If a loss covered by this policy is also covered by other insurance, we will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss.
8. **Suit Against Us.** No action can be brought against us unless there has been full compliance with the policy provisions. Any action must be started within three years after the date of loss or damage.
9. **Abandonment of Property.** We need not accept property abandoned by an insured.
10. **Mortgage Clause.** The word "mortgagee" includes trustee. If a mortgagee is named in this policy, a loss payable under Coverage A or B will be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order or precedence of the mortgages. If we deny your claim, that denial will not apply to a valid claim of the mortgagee. If the mortgagee:
  - a) notifies us of change in ownership, occupancy, or substantial change in risk of which the mortgagee is aware.
  - b) pays premium due under this policy on our demand, if you neglected to pay the premium.
  - c) submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to Your Duties after Loss, Loss Payment, Appraisal, and Suit Against Us apply to the mortgagee.If we cancel the policy, we will notify the mortgagee at least 10 days before the cancellation takes effect. If we pay the mortgagee for loss and deny payment to you:
  - a) we are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
  - b) at our option, we may pay to the mortgagee the whole principal on the mortgage plus accrued interest. In this event, we will receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.
11. **No Benefit to Bailee.** This insurance does not benefit a person or organization that is caring for or handling your property for a fee.
12. **Glass Replacement.** We will replace covered glass using safety glazing materials when required by ordinance or law.



## *Section II*

### *Liability Coverages*

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#### **ADDITIONAL DEFINITIONS APPLICABLE TO THESE COVERAGES**

For purposes of these coverages only:

1. "BODILY INJURY" means bodily harm, including resulting care, sickness or disease, loss of services or death. **Bodily injury** does not include emotional distress, mental anguish, humiliation, mental distress or injury, or any similar injury unless the direct result of bodily harm.
2. "PROPERTY DAMAGE" means physical injury to or destruction of tangible property. This includes its resulting loss of use.
3. "RESIDENCE EMPLOYEE" means an employee of an **insured** who performs duties in connection with maintenance or use of the **residence premises**. This includes household or domestic services or similar duties elsewhere not in connection with the **business** of an **insured**.
4. "OCCURRENCE" means **bodily injury** or **property damage** resulting from an accident, including continuous or repeated exposure to the same general condition. The **occurrence** must be during the policy period.
5. "INSURED" means you and the following persons if residents of your household at the **residence premises**:
  - a) **your** relatives;
  - b) any other person under age 21 and in the care of **you** or **your** relatives;
  - c) a person or entity legally responsible for animals or covered watercraft that are either owned by or in the custody of an **insured**. A person or entity using or having custody of these animals or watercraft in the course of **business**, or without permission of the owner, is not an **insured**.
  - d) any person operating, utilizing, or maintaining a covered vehicle while engaged in **your** employment or that of an **insured**.

## *Coverage Agreements*

#### **COVERAGE E – PERSONAL LIABILITY**

We will pay damages an **insured** is legally obligated to pay due to an **occurrence** resulting from negligent personal acts or negligence arising out of the ownership, maintenance or use of real or personal property. We will provide a defense at our expense by counsel of our choice. We may investigate and settle any claim or suit. Our duty to defend a claim or suit ends when the amount we pay for damages equals our limit of liability.

This coverage is excess over other valid and collectible insurance. It does not apply to insurance written as excess over the applicable limits of liability.

### **COVERAGE F — MEDICAL PAYMENTS TO OTHERS**

We will pay the necessary medical and funeral expenses incurred within three years after an accident causing **bodily injury**. This coverage does not apply to you. It does not apply to regular residents of your household. It does apply to **residence employees**. Payment under this coverage is not an admission of our or an insured's liability. This coverage applies as follows:

1. to a person on the **insured location** with consent of an **insured**.
2. to a person off the **insured location**, if the **bodily injury**:
  - a) arises out of a condition in the **insured location**.
  - b) is caused by the activities of an **insured**.
  - c) is caused by a **residence employee** of an **insured**.
  - d) is caused by an animal owned by or in the care of an **insured**.

### ***Additional Liability Coverages***

We will pay the following in addition to the limits of liability. These additional coverages are not subject to the Section II Liability Exclusions.

1. **Claims Expenses.** We will pay:
  - a) expenses we incur and costs taxed against an **insured** in a legal action we defend.
  - b) premiums on bonds required in a suit we defend. This does not include bond amounts greater than the Coverage E limit of liability. We are not obligated to apply for or furnish a bond.
  - c) reasonable expenses incurred by an **insured** at our request. This includes actual loss of earnings (but not loss of other income) up to \$100 per day for assisting us in the defense of a claim or suit.
  - d) post-judgment interest. This must accrue after entry of the judgment. It must accrue before we pay or deposit in court that part of the judgment which does not exceed the coverage that applies.
2. **First Aid Expenses.** We will pay expenses for first aid to others incurred by an **insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **insured**.
3. **Damage to Property of Others.** We will pay for property damage to property of others caused by an **insured** regardless of legal liability. We will pay up to \$1,000 per occurrence, but not more than the smallest of the replacement cost or the cost to repair the damaged property. We will not pay for property damage:
  - a) to property covered under Section I.
  - b) caused intentionally by an **insured** who is age 13 or older.
  - c) to property owned by or rented to an **insured**, a tenant of an **insured**, or a resident in your household.
  - d) arising out of:
    - (1) **business pursuits**.
    - (2) an act or omission in connection with a premises owned, rented, or controlled by an **insured**, other than an **insured location**.
    - (3) the ownership, maintenance or use of a motor vehicle, aircraft, or watercraft.

# *Liability Exclusions*

(Section II)

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1. Coverage E – Personal Liability and Coverage F – Medical Payments to Others do not apply to **bodily injury or property damage**:

- a) caused intentionally by or at the direction of an **insured**, including willful acts the result of which the **insured** knows or ought to know will follow from the **insured's** conduct.

This exclusion 1.a) does not apply to corporal punishment of pupils.

- b) caused by or resulting from an act or omission which is criminal in nature and committed by an **insured**.

This exclusion 1.b) applies regardless of whether the **insured** is actually charged with, or convicted of a crime.

- c) arising out of **business** pursuits of an **insured**.

This exclusion 1.c) does not apply to:

- (1) activities normally considered non-**business**.
- (2) occasional or part time self-employed **business** pursuits of an **insured** under age 19 years old (age 23 if a full-time student).
- (3) an office, school, studio, barber or beauty shop on the **residence** premises if noted on the Declarations.
- (4) home care services provided by or at the direction of an **insured** on or from the **residence** premises if noted on the Declarations.

- d) arising out of the rental or holding for rental of any part of any premises by an **insured**. Exceptions, if any, are noted on the Declarations.

This exclusion 1.d) does not apply to the rental or holding for rental of part of **your residence** premises:

- (1) occasionally for the exclusive use as a residence.
- (2) unless intended as a residence by more than two roomers or boarders.
- (3) as a private garage.

- e) arising out of any professional liability except teaching.

- f) arising out of premises owned or rented to an **insured** but not an **insured** location.

This exclusion 1.f) does not apply to **bodily injury** to any **residence** employee arising out of and in the course of employment by an **insured**.

- g) arising out of the ownership, maintenance or use of, or loading or unloading of; entrustment or the negligent supervision by an **insured** of; or statutorily imposed liability on an **insured** related to the use of:

- (1) an **aircraft**.
- (2) a **motor vehicle** or all other motorized land conveyance owned by or operated by, or rented or loaned to an **insured**.

This exclusion 1.g)(2) does not apply to:

- (a) a vehicle owned by an **insured** and designed for recreation off public roads while on an **insured** location.

- (b) a motorized golf cart while being operated to or from, or on the premises of a golf course.
- (c) a vehicle not subject to motor vehicle registration which is:
  - i) used to service an insured's residence; or
  - ii) designed for assisting the handicapped.
- (d) a vehicle in dead storage on an insured location. Dead storage means physically prepared for long term storage.
- (e) a boat, camp, home or utility trailer not being towed or carried on a vehicle defined in general Definition 6.a).
- (f) **bodily injury** to any **residence employee** arising out of and in the course of employment by an insured.
- (3) a watercraft owned or operated by, or rented or loaned to an insured:
  - (a) if the watercraft is a personal watercraft powered by an internal combustion engine and utilizing a water jet pump or has inboard, inboard-outdrive or outboard motor power of more than 50 horsepower.
  - (b) if it is a sailing vessel, with or without auxiliary power, 26 feet or more in overall length.
  - (c) while rented to others.
  - (d) while being used to carry persons or property for a fee.
  - (e) while being used without an insured's permission.
  - (f) while being used in an official race or speed test. This exclusion does not apply to sailboats.
  - (g) if it is an airboat, air cushion or similar type watercraft.

This exclusion 1.g)(3) does not apply:

- (1) while the watercraft is stored.
- (2) when an insured rents or borrows a nonowned outboard motor boat for eight (8) or less consecutive days.
- (3) to **bodily injury** to any **residence employee** arising out of and in the course of employment by an insured.
- h) caused by war or warlike acts, including insurrection, rebellion or revolution. Discharge of a nuclear weapon is a warlike act, even if accidental.
- i) resulting from an insured transmitting a communicable disease.
- j) arising from the ingestion, inhalation or absorption of lead or lead compounds.
- k) arising out of any interior or exterior presence, use, discharge, dispersal, release, migration, seepage or escape of:
  - (1) solid, liquid, gaseous, or thermal irritants or contaminants, including smoke (except smoke arising solely from a hostile fire or the sudden and accidental discharge from a fireplace or furnace), vapors, soot, fumes, acids, alkalis, toxic chemicals and wastes, toxic liquids or toxic gases;
  - (2) fuel oil and other petroleum products; or
  - (3) any other waste materials or other irritants, contaminants or pollutants.

This exclusion 1.k) does not apply to **bodily injury** arising out of routine lawn and garden care of an insured location.

- l) resulting from acts or omissions relating directly or indirectly to sexual molestation, physical or mental abuse, harassment, including sexual harassment, whether actual, alleged or threatened.

- m) resulting from the use, sale, manufacture, delivery, transfer or possession by a person of a controlled substance(s) as defined by Federal Food and Drug Law (21 U.S.C.A Sections 811 and 812). Controlled substances include but are not limited to: cocaine; LSD; marijuana; and all narcotic drugs.

This exclusion 1.m) does not apply to the legitimate use of prescription drugs by a person following orders of a licensed physician.

- n) **bodily injury** to a person eligible to receive any benefits required to be provided or voluntarily provided by any **Insured** under:

- (1) a workers' compensation;
  - (2) an unemployment compensation;
  - (3) a non-occupational or occupational disease;
  - (4) a disability benefits;
- or any similar law.

- o) caused by any of the following animals owned by or in the care of an **insured**:

- (1) the following types of pure bred dogs or a mix breed including one of these types:
  - (a) American Staffordshire Terriers, American Pit Bull Terriers, or Staffordshire Bull Terriers, all commonly known as Pit Bulls;
  - (b) Doberman Pinschers;
  - (c) Rottweilers;
  - (d) Chow Chows; or
  - (e) Presa Canarios;
- (2) wolf hybrids;
- (3) dogs that have been trained to attack persons, property or other animals; or dogs that have been trained to guard persons or property.
- (4) any dog, used in any manner, as a fighting dog or bred specifically for fighting.
- (5) any dog with a prior history of:
  - (a) causing **bodily injury** to a person; or
  - (b) attacking or biting another animal;established through insurance claims records, or through the records of local public safety, law enforcement or other similar regulatory agency.

- p) arising out of **biological deterioration or damage**.

2. Coverage E – Personal Liability does not apply to:

- a) liability under any loss assessment contract or agreement unless optional loss assessment coverage is purchased; and then only up to the limit of liability shown for that optional coverage.
- b) liability assumed under any unwritten contract or agreement, or by contract or agreement in connection with any **business** of an **insured**.
- c) **property damage** to property owned, produced or distributed by an **insured**.
- d) **property damage** to property rented to, occupied or used by, or in the care of an **insured**.

This exclusion 2.d) does not apply to **property damage**:

- (1) caused by fire, smoke, or explosion; or
- (2) to house furnishings or premises rented to, occupied or used by or in the care of an **insured** for which the **insured** is legally liable.

*Section II – Liability Exclusions* \_\_\_\_\_

- e) **bodily injury or property damage** for which an **insured** under this policy is also an **insured** under a nuclear energy liability policy; or would be an **insured** but for its termination upon exhaustion of its limit of liability.
  - f) **bodily injury** to an **insured** as defined in Section II – Liability Definitions 5.a) and 5.b).
3. Coverage F – Medical Payments to Others does not apply to **bodily injury**:
- a) to a **residence employee** if it occurs off the **insured location**. It does apply if the **bodily injury** arises out of the **residence employee's** employment by an **insured**.
  - b) from a nuclear reaction, radiation or radioactive contamination, or a consequence of any of these. It does not matter that these are controlled or uncontrolled.

# Liability Conditions

(Section II)

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1. **Limits of Liability.** Our total liability under Coverage E for all damages resulting from one occurrence will not exceed the limit for Coverage E shown on the Declarations. This is true regardless of the number of insureds, claims made or persons injured.  
Our total liability under Coverage F for all medical expense for bodily injury to one person resulting from one accident will not exceed the limit for Coverage F shown on the Declarations.
2. **Severability of Insurance.** This insurance applies separately to each insured. This condition does not increase our limit of liability for one occurrence.
3. **Duties after Loss.** In case of a loss, you must perform the following duties. You must cooperate with us in seeing that these duties are performed.
  - a) give notice to us or our agent as soon as practicable setting forth:
    - (1) identity of the policy and insured.
    - (2) time, place, and facts of the accident or occurrence.
    - (3) names and addresses of the claimants and witnesses.
  - b) immediately forward to us every document relating to the accident or occurrence.
  - c) at our request, assist in:
    - (1) making settlement.
    - (2) enforcing a right of contribution or indemnity against a person or entity who may be liable to an insured.
    - (3) conducting suits, and attending hearings and trials.
    - (4) giving evidence and asking witnesses to attend.
  - d) under the coverage — Damage to Property of Others:
    - (1) submit to us, within 60 days after the loss, a sworn proof of loss; and
    - (2) exhibit the damaged property, if within the insured's control.
  - e) the insured shall not, except at the insured's own cost, voluntarily make a payment, assume an obligation, or incur an expense other than for first aid to others at the time of the bodily injury.
4. **Duties of an Injured Person — Coverage F — Medical Payments to Others.** The injured person or someone on behalf of the injured person will:
  - a) give us written proof of claim, under oath if required, as soon as possible.
  - b) authorize us to obtain copies of medical reports and records. The injured person will submit to physical examination by a physician we select. This may be as often as we require with good reason.
5. **Suit Against Us.** No action can be brought against us unless there has been full compliance with the policy provisions. No one has a right to join us as party to an action against an insured. No action with respect to Coverage E can be brought against us until the obligation of the insured has been determined by final judgment or agreement signed by us.
6. **Bankruptcy of an Insured.** Bankruptcy or insolvency of an insured will not relieve us of our obligations under this policy.

## Policy Coverage Options

The following options apply only if they are indicated on the Declarations. They are subject to all provisions of this policy except as modified herein.

**Option A. Jewelry.** The coverage for jewelry, watches and furs is amended as follows:

We will pay for accidental direct physical loss except that caused by:

1. wear and tear or mechanical breakdown.
2. gradual deterioration or inherent vice.
3. insects or vermin.
4. losses excluded under Section I — Property Exclusions that apply to personal property.

**Option B. Guns.** The coverage for guns, including accessories is amended as follows:

We will pay for accidental direct physical loss except that caused by:

1. wear and tear, mechanical breakdown or gradual deterioration.
2. insects or vermin.
3. refinishing, renovating or repairing.
4. dampness or temperature extremes, rust, fouling or explosion.
5. inherent defect or faulty manufacture.
6. breakage, marring, scratching, tearing, or denting; unless caused by fire, thieves or vehicular accident.
7. losses excluded under Section I — Property Exclusions that apply to personal property.

**Option C. Cameras.** The coverage for cameras (film, digital or video), including accessories, is amended as follows:

We will pay for accidental direct physical loss except that caused by:

1. wear and tear, mechanical breakdown or gradual deterioration.
2. renovating or repairing, rust, dampness or temperature extremes.
3. inherent defect or faulty manufacture, insect or vermin.
4. breakage, marring, scratching, tearing, or denting; unless caused by fire, thieves or vehicular accident.
5. losses excluded under Section I — Property Exclusions that apply to personal property.

The limits of liability for property covered by Options A, B or C are amended as follows:

The option's limit of liability is shown on the Declarations. Other than loss by theft, it is in addition to the Coverage C — Personal Property limit of liability for losses by a Coverage C — Personal Property Perils Insured Against. It is the total limit, with a \$1,000 maximum for any one item, for loss by:

1. theft; or
2. a covered peril other than the Coverage C — Personal Property Perils Insured Against.

**Option D. Silverware.** The coverage and limits of liability for silverware, silver-plated ware, goldware, gold-plated ware and pewterware is amended as follows:

We will pay for accidental direct physical loss except that caused by:

1. wear and tear, mechanical breakdown or gradual deterioration.
2. renovating or repairing, rust, dampness or temperature extremes.
3. Inherent defect or faulty manufacture, insect or vermin.
4. breakage, marring, scratching, or denting; unless caused by fire, thieves or vehicular accident.
5. losses excluded under Section I – Property Exclusions that apply to personal property.

This option's limit of liability is shown on the Declarations. Other than loss by theft, it is in addition to the Coverage C – Personal Property limit of liability for losses by a Coverage C – Personal Property Perils Insured Against. It is the total limit for loss by:

1. theft; or
2. a covered peril other than the Coverage C – Personal Property Perils Insured Against.

**Option E. Tools.** The special limit of liability applying to tools is increased to the amount shown on the Declarations.

**Option F. Money.** The special limit of liability on money, bank notes, bullion, gold (other than goldware), silver (other than silverware), platinum, coins, stored value cards, smart cards, gift certificates and medals is increased to the amount shown on the Declarations.

**Option G. Securities.** The special limit of liability on securities, accounts, bills, deeds, documents, evidences of debt, letters of credit, notes other than bank notes, passports, stamps and tickets is increased to the amount shown on the Declarations.

**Option H. Computers.** The special limit of liability on computers, including hardware and software accessories is increased to the amount shown on the Declarations.

**Option I. Business Property.** The special limit of liability on business property is increased to the amount shown on the Declarations. It includes up to \$250 of coverage for business property off the residence premises.

**Option J. Extended Replacement Cost Coverage.** Option J does not increase the policy's limit of liability.

1. Loss to the following property shall be settled at replacement cost or the full cost to repair without deduction for depreciation:

- a) property covered under Coverage C – Personal Property.
- b) outdoor antennas, carpeting (including wall-to-wall), home appliances, and awnings.

“Replacement cost” means the cost, at the time of loss, of a new article identical to the one damaged or stolen. When the identical article is no longer available, replacement cost shall mean the cost of a new article similar to that damaged or stolen. It must be of comparable quality and usefulness.

Our liability for loss under this coverage shall be the lesser of:

- a) replacement cost at the time of loss;
- b) full cost of repair;

- c) any special limits of liability described in this policy or attached by endorsement; or
- d) our cost to repair or replace any part of the damaged or stolen property with equivalent property.

We will not pay more than the **actual cash value** of the damaged or stolen property until it has been repaired or replaced.

2. You may elect not to repair or replace some or all of the damaged or stolen property. In this event, settlement will be based on the smallest of the repair cost, **replacement cost**, any special limit of liability that applies or the **actual cash value** of those items. If you later decide to repair or replace those items, you may make an additional claim within 180 days after the loss for any difference between the amount paid and the amount payable if repaired or replaced. The actual repair or replacement of the property need not be completed within the 180 days, but payment will not be made until proof of repair or replacement is provided to us.
3. This coverage does not apply to:
  - a) manuscripts, antiques or fine arts which by their inherent nature cannot be replaced with new articles.
  - b) memorabilia, souvenirs, collectors' items, and other items whose age and history contribute substantially to their value.
  - c) property not maintained in good or workable order.
  - d) property which is obsolete or useless to you at the time of loss.

The **actual cash value** provisions of this policy apply to the preceding items 3.a) through 3.d).

**Option K. Replacement Cost Plus (Dwelling) (Increased Coverage A Limit).** When a loss covered by this policy occurs to the dwelling in which you live, located at the **residence premises**, we will settle losses, subject to applicable deductibles, according to the policy provisions.

If the amount actually and necessarily spent to repair or replace the dwelling is more than the Coverage A — Dwelling Limit of Liability, we will pay up to a maximum of an additional 20% of the Coverage A limit for the additional cost. This additional amount applies only to the dwelling insured under this policy identified as the **residence premises** on the Declarations. This coverage does not increase or affect any other coverage limit or limit of liability in this policy. This additional payment is subject to the following provisions:

**SPECIAL CONDITIONS:**

You must:

1. insure the dwelling in which you live, located at the **residence premises**, to 100% of the cost to repair or replace it; and
2. accept the annual adjustment in the Coverage A — Dwelling Limit of Liability due to Inflation Protection Coverage and pay the premium charged; and
3. notify us within 90 days of the start of any physical improvements or additions which increase the replacement cost value of your dwelling by \$5,000 or more and pay any additional premium due.

You must comply with these special conditions or we will pay no more than the policy limit in effect on the date of loss, less applicable deductibles.

**ORDINANCE OR LAW EXCLUSION**

The additional amount provided by this option does not cover any increased cost resulting from enforcement of any ordinance or law regulating the construction, use or repair of any property, or requiring the tearing down of any property, including the cost of removing such debris.

- Option L. Protective Device Credit.** For a premium credit, we acknowledge the installation of qualified protection devices on the residence premises.

You agree to:

1. maintain these devices in working order; and
2. notify us promptly, of any changes made in the devices or if they are removed.

- Option M. Personal Injury Coverage under Coverage E – Personal Liability,** the definition of bodily injury is amended to include personal injury.

**Personal Injury** means injury as a result of:

1. false arrest, false imprisonment, wrongful eviction, or wrongful entry;
2. wrongful detention, malicious prosecution, or humiliation;
3. libel, slander, defamation of character; or
4. invasion of rights of privacy.

Section II – Liability Exclusions do not apply to personal injury. Personal injury coverage does not apply to:

1. liability assumed by an insured under a contract or agreement;
2. injury caused by violation of a penal law or ordinance if committed by or with the knowledge or consent of an insured;
3. injury sustained by a person as a result of an offense directly or indirectly related to that person's employment by the insured;
4. injury arising out of or in connection with business pursuits of an insured;
5. injury arising out of any professional liability;
6. injury resulting from an insured transmitting a communicable disease, including injury arising from the possibility of such transmission;
7. civic or public activities performed for pay, other than reimbursement of expenses, by an insured; or
8. injury to an insured as defined in general Definitions 4.a) and 4.b).

- Option N. Loss Assessment Coverage.**

We agree to pay your share of an assessment charged against all members of the Association. "Association" means the management body of the property owners. They must have common property interest with you. The common property must be part of the housing development where you live, as shown on the Declarations. We will pay up to the limit, shown for this option on the Declarations, in effect at the time of the loss which results in an assessment.

The assessment must be the result of:

1. a direct loss to property collectively owned by the Association. It must be caused by a peril covered under Section I of this policy;

2. an event of the type covered by Section II of this policy; or
3. damages the Association is legally obligated to pay due to personal injury as a result of:
  - a) false arrest, false imprisonment, wrongful eviction, or wrongful entry;
  - b) wrongful detention, malicious prosecution, misrepresentation, or humiliation;
  - c) libel, slander, defamation of character, or
  - d) invasion of rights of privacy.

This coverage is excess over other valid and collectible insurance covering the Association. Loss under subparagraph 1. is subject to the Section I deductible shown on the Declarations.

**Option O. Building Ordinance or Law Coverage.**

We agree to cover the increased cost resulting from any ordinance or law regulating the:

1. construction;
2. repair;
3. renovation;
4. remodeling; or
5. demolition;

of covered building structures damaged by a Peril Insured Against.

**LIMIT OF PAYMENT**

The amount of ordinance or law coverage is shown on the Declarations. It is a percentage of the Coverage A — Limit of Liability shown on the Declarations at the time of loss. This is additional coverage.

The damaged or destroyed building structure must be repaired or replaced at the residence premises.

**SPECIAL EXCLUSIONS**

We will not pay costs:

1. required to replace, repair, regrade, remove, stabilize, change the contour of, or otherwise alter land, unless under or immediately surrounding the damaged building structure;
2. resulting from the enforcement of any ordinance or law involving construction, repair, remodeling or demolition of that portion of the undamaged building structure.

However, this exclusion does not apply if the total damage to the covered building structure is more than 50% of the building's replacement cost, less any ordinance or law expenses, at the time of the loss.

**Option P. Limited Water Back up of Sewers or Drains Coverage. We will pay up to a maximum of \$5,000 for all damage to:**

1. the Coverage A — Dwelling; and
2. the following personal property:
  - a) clothes washers and dryers;
  - b) food freezers and the food in them;
  - c) refrigerators;

- d) ranges;
- e) portable dishwashers; and
- f) dehumidifiers;

caused by or resulting from water or water-borne material which:

- a) backs up through sewers or drains from outside the dwelling's plumbing system; or
- b) overflows from a sump pump, sump pump well or other system designed to remove subsurface water or water-borne material from the foundation area.

#### EXCLUSIONS

We do not cover:

- 1. other personal property not specified above;
- 2. loss caused by the negligence of an insured; or
- 3. if the loss occurs or is in progress within the first five (5) days of the inception of this coverage unless added at renewal.

All other damage resulting from water or water-borne material not mentioned above is excluded as stated in Section I — Property Exclusion 1.b).

#### DEDUCTIBLE

We will pay for that part of the covered loss that is above the Section I — Deductible shown on the Declarations, or \$500, whichever is greater.

All other provisions of this policy, including Section I — Deductible, apply.

**Option Q. Earthquake and Volcanic Eruption Coverage.** We insure for direct physical loss to property covered under Section I — Property Coverages caused by earthquake or volcanic eruption. Volcanic eruption means:

- 1. eruption;
- 2. explosion; or
- 3. discharge;

from a volcano.

One or more earthquake shocks or volcanic eruptions that occur within a 72-hour period will constitute a single earthquake or volcanic eruption.

This coverage does not increase the limits of liability stated in the policy.

#### DEDUCTIBLE

The earthquake and volcanic eruption deductibles are shown on the Declarations. It replaces any other deductible provision in this policy for covered earthquake and volcanic eruption loss.

We will pay only that part of the loss over the earthquake deductible percentage shown on the Declarations. The percent deductible applies separately to each coverage limit and applies separately to loss under each Section I coverage. This includes Building Additions and Alterations Coverage if included in the policy. The deductible amount will not be less than the earthquake dollar deductible on the Declarations for any one loss.

### **SPECIAL EXCLUSIONS**

We do not cover loss resulting directly or indirectly from flood of any nature or tidal wave, whether caused by, resulting from, contributed to, or aggravated by earthquake or volcanic eruption.

**Option R. Broad Water Back up of Sewers or Drains Coverage.** We will pay up to the limit of liability, shown on the Declarations for this option, at the time of loss, for direct damage to covered property caused by or resulting from water or water-borne material which:

1. backs up through sewers or drains from outside the dwelling's plumbing system; or
2. overflows from a sump pump, sump pump well or other system designed to remove subsurface water or water-borne material from the foundation area.

This is the most we will pay for all covered property under Coverage A — Dwelling, Coverage B — Other Structures and Coverage C — Personal Property.

### **EXCLUSIONS**

We do not cover:

1. loss caused by the negligence of an insured; or
2. If the loss occurs or is in progress within the first five days of the inception of this coverage unless added at renewal.

All other damage resulting from water or water-borne material not mentioned above is excluded as stated in Section I — Property Exclusion 1.b).

### **DEDUCTIBLE**

We will pay for that part of the covered loss that is above the Section I — Deductible shown on the Declarations or \$500, whichever is greater.

All other provisions of this policy, including Section I — Deductible, apply.



## *General Policy Conditions*

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### **1. HOW YOUR POLICY MAY BE CHANGED**

- a) Any part of this policy, which may be in conflict with statutes of the state in which this policy is issued, is hereby amended to conform.
- b) Any **insured** will automatically have the benefit of any broadening of coverage in this policy, as of the effective date of the change, provided it does not require more premium.
- c) A waiver or change of a part of this policy must be in writing by **us** to be valid. Our request for an appraisal or examination does not waive our rights.
- d) The premium for the coverage provided by this policy and attached endorsements is based on information in **our** possession. Any change or correction in this information will allow **us** to make an adjustment of the premium.

### **2. CONCEALMENT OR FRAUD**

- a) This policy is void as to all **insureds** if **you** or any other **insured** has intentionally misrepresented any material fact or circumstance which would have caused **us** not to issue or renew this policy.
- b) This policy does not provide coverage for all **insureds** if **you** or any other **insured**, either before or after a loss, has:
  - (1) intentionally concealed or misrepresented any material fact or circumstance; or
  - (2) committed any fraud or made false statements relating to such loss.

### **3. RENEWAL**

This policy is written for a specific policy period as shown on the Declarations. We will renew it for successive policy periods subject to the following conditions:

- a) Renewal will be in accordance with the policy forms, rules, rates and rating plan in use by **us** at the time.
- b) All premiums, premium installment payments and fees must be paid when due.
- c) Prior to the expiration of a policy period for which premium has been paid, **we** will mail a notice to the named **insured** for the premium required to renew or maintain the policy in effect. **We** will mail this notice to the address last known to **us**.
- d) **You** agree to an interior inspection of **your** home by one of **our** representatives to determine **your** continued eligibility. Such inspection will not be performed more than once a year with prior advance notice. Failure to allow an interior inspection in accordance with these terms may result in nonrenewal of **your** policy.

### **4. NON-RENEWAL**

- a) At the end of each policy period, **we** will have the right to refuse to renew this policy.
- b) If **we** elect not to renew, **we** will mail written notice to the named **insured**, at the address shown in this policy, at least 30 days before the renewal date of this policy. The notice will include the precise reason for nonrenewal. Proof of mailing shall be proof of notice.
- c) For nonpayment of renewal premium, coverage will terminate without notice at the end of the last policy period for which premium was paid.

### **5. CANCELLATION DURING POLICY PERIOD**

Any named **insured** may cancel this policy at any time by returning it to **us** or by notifying **us** in writing of the future date cancellation is to take effect.

**We** may cancel this policy only for the reasons stated in this condition by notifying the named **insured** in writing of the date cancellation takes effect. This cancellation notice will be mailed to the named **insured** at the address shown in the policy. The notice will include the precise reason for cancellation. Proof of mailing will be proof of notice.

- a) When premium has not been paid, whether payable to us or our agent or under a finance or credit plan, we may cancel at any time by giving notice at least 10 days before cancellation takes effect.
- b) When this policy has been in effect 90 days or less and is not a renewal with us, we may cancel for any reason by giving notice at least 30 days before cancellation takes effect.
- c) When this policy has been in effect for more than 90 days, or at any time if it is a renewal, we may cancel if:
  - (1) there has been a material misrepresentation of fact which if known to us would have caused us not to issue this policy, or caused us to issue or renew this policy at a higher premium;
  - (2) the risk has changed substantially since the policy was issued; or
  - (3) the property or other interest has been transferred to another person, unless the transfer is permissible under the terms of this policy.
  - (4) there have been substantial breaches of contractual duties, conditions, or warranties; or
  - (5) there has been a loss of our reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil our solvency or place us in violation of the laws of South Carolina.

This can be done by giving notice at least 30 days before cancellation takes effect.

- d) When this policy is written for a period longer than one year, we may cancel for any reason at its anniversary by giving notice at least 30 days before cancellation takes effect.

When this policy is cancelled, the premium for the period from the date of cancellation to the premium payment date will be refunded. The return premium will be pro rata. If the return premium is not refunded with the notice of cancellation or when the policy is returned to us, we will refund it within a reasonable time after cancellation takes effect.

#### 6. POLICY TRANSFER

This policy may be transferred to another only with our written consent.

#### 7. SUBROGATION

- a) When we have paid you for a loss covered under this policy and you also receive payment for the same loss from another person, entity or organization, the amount received will be held by you in trust for us and reimbursed to us to the extent of our payment.
- b) An insured may, before loss occurs, waive in writing all rights of recovery against any person. The insured will provide us with proof of the waiver, when requested by us. If not waived, when we pay a loss, an insured's right to recover from someone else becomes ours up to the amount we paid. An insured must protect these rights and help us enforce them. This condition does not apply to "Medical Payments to Others" or the "Damage to Property of Others" protection.

#### 8. DEATH

If you die, we continue to insure:

- a) the legal representative of the deceased, only with respect to the premises and property of the deceased covered under this policy at the time of death.
- b) a member of your household who is an insured at the time of death, but only while a resident of the residence premises.
- c) with respect to your property, the person having proper custody of the property until appointment of a legal representative.

#### 9. ADDITIONAL INSURED - NON OCCUPANT

An additional insured may be named in this policy. The additional insured's interest in the residence premises is protected under Coverage A and Coverage B. The additional insured is also protected under Coverage E for liability from the ownership, maintenance, or use of the residence premises. This provision does not increase the amount of insurance.

#### 10. OPTIONAL PAYMENT OF PREMIUM IN INSTALLMENTS

The first named **insured** may pay the premium for this policy in installments, under the terms and conditions approved where required by the Department of Insurance. For each separate installment payment there is an installment premium payment charge. Your agent or sales representative can provide more information.

#### 11. DIVIDENDS

The first named **insured** is entitled to any dividends which are declared by the Board of Directors and are applicable to coverages in this policy.

#### MUTUAL POLICY CONDITIONS

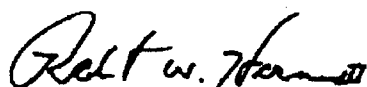
(Applicable only to policies issued by Nationwide Mutual Insurance Company -- Nationwide Mutual Fire Insurance Company.)

If this policy is issued by Nationwide Mutual Insurance Company or Nationwide Mutual Fire Insurance Company, the first named **insured** is a member of the company issuing the policy while this or any other policy issued by one of these two companies is in force. While a member, the first named **insured** is entitled to one vote only -- regardless of the number of policies issued to the first named **insured** -- either in person or by proxy at meetings of members of said company.

The annual meeting of members of the Nationwide Mutual Insurance Company will be held at the Home Office at Columbus, Ohio, at 10 a.m. on the first Thursday of April. The annual meeting of members of the Nationwide Mutual Fire Insurance Company will be held at the Home Office at Columbus, Ohio, at 9:30 a.m. on the first Thursday in April. If the Board of Directors of either of the above companies should elect to change the time or place of meeting, that company will mail notice of the change to the first named **insured** at the address last known to it. The company will mail this notice at least 10 days in advance of the meeting date.

This policy is non-assessable, meaning the first named **insured** is not subject to any assessment beyond the premiums the above companies require for each policy term.

**IN WITNESS WHEREOF:** Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, or Nationwide Property and Casualty Insurance Company, whichever is the issuing company as shown in the Declarations, has caused this policy to be signed by its President and Secretary, and countersigned as may be required by a duly authorized representative of the company.



Secretary

Nationwide Mutual Insurance Company  
Nationwide Mutual Fire Insurance Company



President

Nationwide Mutual Insurance Company  
Nationwide Property & Casualty Insurance Company  
Nationwide Mutual Fire Insurance Company



Secretary

Nationwide Property & Casualty Insurance Company



Nationwide Mutual Insurance Company  
Nationwide Mutual Fire Insurance Company  
Nationwide Property and Casualty Insurance Company  
Home Office: Columbus, Ohio 43215-2220



**YARBOROUGH  
APPLEGATE**

ATTORNEYS AT LAW

David B. Yarborough, Jr.  
[david@yarboroughapplegate.com](mailto:david@yarboroughapplegate.com)

September 18, 2014

Ms. Ginger Ulery-Felkel  
339 Holly Ave.  
Goose Creek, SC 29445

Re: Kyle Bierlair

Dear Ms. Ulery-Felkel:

It is my understanding that you are the mother of Evan Ulery. I am an attorney who has been retained to represent Kyle Bierlair for an incident that occurred at Goose Creek High School on September 8, 2014. Kyle is a 15-year-old sophomore who suffered a serious brain injury and has accumulated more than \$100,000 in medical bills as a result of this incident. It is very important that you contact me immediately upon receipt of this letter to provide me with your homeowners insurance information, including the name of your agent and your policy number. We would like very much to resolve this matter privately with your insurance company and allow them to protect you and your family from a civil monetary judgment by settling this claim without the need for a lawsuit. In order for this to happen, I need you to provide me with the requested information upon receipt of this letter. Please call me or have your personal attorney call me to discuss further.

Kind regards,

Sincerely,

David B. Yarborough, Jr.



**YARBOROUGH  
APPLEGATE**  
ATTORNEYS AT LAW

David B. Yarborough, Jr.  
[david@yarboroughapplegate.com](mailto:david@yarboroughapplegate.com)

October 23, 2014

Ms. Ginger Ulery-Felkel  
339 Holly Ave.  
Goose Creek, SC 29445

Re: Kyle Bierlair

Dear Ms. Ulery-Felkel:

I am following up with you on my letter of September 18, 2014 of which I have not yet received a response. In addition to the letter I previously sent, I have attempted to have an investigator reach you on numerous occasions but you have not returned his phone calls. Again, it is my understanding that you are the mother of Evan Ulery. I am an attorney who has been retained to represent Kyle Bierlair for an incident that occurred at Goose Creek High School on September 8, 2014. Kyle is a 15-year-old sophomore who suffered a serious brain injury and has accumulated more than \$100,000 in medical bills as a result of this incident. It is very important that you contact me immediately upon receipt of this letter to provide me with your homeowners insurance information, including the name of your agent and your policy number. We would like very much to resolve this matter privately with your insurance company and allow them to protect you and your family from a civil monetary judgment by settling this claim without the need for a lawsuit. In order for this to happen, I need you to provide me with the requested information upon receipt of this letter. Please call me or have your personal attorney call me to discuss further.

I have enclosed a copy of a Summons and Complaint which I am prepared to file in the Berkeley County Court of Common Pleas if I do not hear back from you, your personal attorney, or your insurance company by Friday, October 31, 2014.

Kind regards,

Sincerely,

David B. Yarborough, Jr.

Enclosures as stated

291 East Bay Street / Floor 2 / Charleston, SC 29401 / Phone: 843.972.0150 / Fax: 843.277.6691  
[www.yarboroughapplegate.com](http://www.yarboroughapplegate.com)



**YARBOROUGH  
APPLEGATE**  
ATTORNEYS AT LAW

David B. Yarborough, Jr.  
[david@yarboroughapplegate.com](mailto:david@yarboroughapplegate.com)

February 12, 2015

Mr. Evan Ulery  
339 Holly Ave.  
Goose Creek, SC 29445

Re: Kyle Bierlair

Dear Mr. Ulery:

I have enclosed an Order for entry of default against you. As I informed you on multiple occasions, your failure to turn the lawsuit over to your homeowners' insurance company, a lawyer, or personally respond has resulted in a determination by the court of liability against you. The case has now been referred to a special referee who will act as the judge and jury and determine the amount of damages that you all will be required to pay. I will send you notice of the hearing once it is scheduled. Once I receive a judgment against all of you I will have no choice but to execute that judgment through the Sheriff's office seeking the sale of your personal assets to pay off the judgment.

Again, it is not my desire to cause you all personal financial harm or to force the sale of your personal assets. However, your refusal to cooperate in this matter has left me with no choice. Again, I implore you to contact me and provide me with your homeowners' insurance information or to contact your insurance company and have them get in touch with me immediately. If you have already turn this matter over to your homeowners' insurance company and they failed to respond on your behalf, then they may be responsible for the judgment in any amounts owed by you in the future. If you take no action, I will seek to obtain a judgment against all three of you in excess of \$1 million. Please contact me at your earliest convenience to see if we could reach some resolution to this matter.

Kind regards,

Sincerely,

David B. Yarborough, Jr.

Enclosures as stated

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[www.yarboroughapplegate.com](http://www.yarboroughapplegate.com)

1 page of that. It looks like 49, page 1 of 2, at  
2 least -- is that one of the addendums, Agent  
3 Growth Plus Addendum?

4 A. Yes. And that was -- yes.

5 Q. Were both addendums similar to this  
6 Agent Growth Plus Addendum?

7 A. I don't remember.

8 Q. Okay. Under this Agent's Agreement,  
9 Nationwide appoints you as its agent to represent  
10 Nationwide Insurance Company in South Carolina,  
11 correct?

12 A. Say that one more time.

13 Q. Under this Agent's Agreement, Nationwide  
14 was appointing you as their agent or  
15 representative in South Carolina to sell and  
16 service their insurance policies, correct?

17 A. Correct.

18 Q. And you were a captive agent?

19 A. Correct.

20 Q. All right. Exclusive to Nationwide?

21 A. No.

22 Q. Or Nationwide companies?

23 A. No.

24 Q. What does it mean that you were a  
25 captive agent?

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1 should deliver a lawsuit to in the event that they  
2 were served, correct?

3 MR. MURPHY: Object to the form of the  
4 question.

5 MR. SLIGH: Object to the form.

6 Q. Let me strike that. You would agree  
7 that you were Nationwide's designated  
8 representative and agent to receive notice of  
9 claims or lawsuits from your policyholders in  
10 the --

11 MR. SLIGH: Object to the form.

12 Q. -- in the event that they were served,  
13 correct?

14 A. That's not my job.

15 Q. Well, we just --

16 A. That may be a portion of my job, but  
17 that is not my job, no.

18 Q. Would you agree that one of your job  
19 duties and a portion of your job is to serve as  
20 Nationwide's agent and representative to accept  
21 notice of claims or notice of lawsuits that are  
22 served upon your policyholders?

23 A. If they bring it to me, yes.

24 Q. Okay. And in this instance, with Mr.  
25 Felkel, he brought you that lawsuit that was

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1 served upon he and his family and delivered it to  
2 you in December of 2014, correct?

3 A. Correct.

4 Q. And he actually physically brought the  
5 papers to your office and handed them to you,  
6 correct?

7 A. That is correct.

8 Q. And so he did what had been instructed  
9 to him by his policy and what he was required to  
10 do by Nationwide in serving you, Nationwide's  
11 agent, with the notice of claim?

12 MR. SLIGH: Object to the form of the  
13 question.

14 Q. Correct?

15 A. You need to -- give me that question one  
16 more time so I answer it correctly.

17 THE COURT REPORTER: "And so he did what  
18 had been instructed to him by his policy and what  
19 he was required to do by Nationwide in serving  
20 you, Nationwide's agent, with the notice of  
21 claim?"

22 A. He has -- that is one of the options,  
23 yeah, that's correct.

24 Q. Okay. And when he brought you those  
25 papers -- do you know the exact date that he

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1 brought you those papers?

2 A. No.

3 Q. All right. But you do know that it was  
4 in December, before Christmas, correct?

5 A. As much as I remember, yes.

6 Q. All right. And that was -- if he was  
7 served with the lawsuit around December the 2nd,  
8 that would have been within the 30-day time period  
9 to answer the lawsuit, correct?

10 A. That is correct.

11 Q. And you understand that, that once  
12 someone is served with a lawsuit, they have 30  
13 days to respond, correct?

14 A. That is correct.

15 Q. And it's Nationwide's responsibility  
16 during that time period, once the papers are  
17 served upon them, to investigate and, if  
18 appropriate, to defend those claims, correct?

19 A. If they were served -- if they got  
20 notification, yes.

21 Q. Right, right. And you, as their  
22 representative and as their agent, are, as we  
23 talked about, aware of the consequences of failing  
24 to answer a lawsuit, correct?

25 A. That is correct.

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1 Q. You know that if Nationwide fails to  
2 respond or if the insured fails to respond to the  
3 lawsuit, then they're -- they can be put into  
4 default and that all of the allegations of the  
5 Complaint are deemed admitted, correct?

6 A. That is correct.

7 Q. And that after that -- I'm sorry?

8 A. I do know that you have to report it in  
9 30 days -- or you have to answer the suit in 30  
10 days. All this other you were saying, I'm not --  
11 terminology, I'm not real sure of.

12 Q. Sure. But you understand that the  
13 financial consequences for the insured are  
14 enormous if they fail to --

15 A. I don't understand that, no. I don't  
16 know about enormous.

17 Q. All right. Do you understand that a  
18 default judgment could be entered against your  
19 insureds if they don't respond to their lawsuits?

20 A. I know there can be a default judgment,  
21 yes.

22 Q. Okay. All right. After Mr. Felkel  
23 delivered the lawsuit to you, you never forwarded  
24 that notice of claim or lawsuit to Nationwide's  
25 claims department, did you?

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1 A. No.

2 Q. And the lawsuit that we're referring to  
3 is --

4 (Plaintiff's Exhibit No. 6, Civil Action  
5 Coversheet, was marked for identification.)

6 Q. -- marked as Plaintiff's Exhibit 6. Do  
7 you agree --

8 A. Yes.

9 Q. -- with that?

10 A. I haven't read it, but, yeah, this is  
11 the paperwork.

12 Q. That's the paperwork that Travis Felkel  
13 served -- or brought to you and provided you a  
14 copy of in December of 2014, correct?

15 A. I made my own copy, but, yes.

16 Q. All right. And in that lawsuit, not  
17 only was Travis named as a Defendant, but his  
18 wife, Ginger, was named as a Defendant and his  
19 son, {E.U.}, was named as a Defendant, correct?

20 A. Correct.

21 Q. All right. And you understood that at  
22 the time you looked at it and you saw that there  
23 were three separate Defendants, correct?

24 A. Yes. I mean, there's three separate  
25 Defendants.

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1 Q. Right. And each of those people are  
2 separate insureds under the policy of insurance  
3 that you sold to them, correct?

4 A. They are insureds under the policy.  
5 It's according to the way the policy should read,  
6 yes --

7 Q. Right.

8 A. -- if they live in the household.

9 Q. Right. And you understand the  
10 severability of insurance provision of the policy,  
11 correct?

12 A. The what-ability?

13 Q. Severability.

14 A. Give me that as another word.

15 Q. Sure. The severability clause is -- I  
16 believe it's under section J. Let me ask you  
17 this -- I'll go ahead and mark this as Exhibit 7.

18 (Plaintiff's Exhibit No. 7, Travis  
19 Felkel policy, was marked for identification.)

20 Q. Is Exhibit 7 a copy of the insurance  
21 policy that was in place back in 2014 -- December  
22 of 2014?

23 A. I would say so, yes. You got this from  
24 Nationwide?

25 Q. Yes, sir. There's -- actually, if you

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1 look at that certification on the front --

2 A. Okay. Yes.

3 Q. All right. And if you look at section  
4 J-1 --

5 A. Okay.

6 Q. -- "Severability of Insurance," No. 2,  
7 what does that say?

8 A. "Severability of Insurance: This  
9 insurance applies separately to each insured.  
10 This condition does not increase our limit of  
11 liability for one occurrence." So in other words,  
12 all of them are insured, yes.

13 Q. All of them are insured, and Nationwide  
14 owes separate duties and independent duties to  
15 each one of them, correct?

16 A. By what that says, yes.

17 Q. All right. And when that lawsuit was  
18 brought to you by Mr. Felkel, it was being  
19 delivered to you and obviously put you on notice  
20 and -- as Nationwide's representative that the  
21 lawsuit had been brought against each of those  
22 Defendants, correct?

23 A. He wanted to know what he should do.

24 Q. Correct.

25 A. That's what -- when he brought it to me,

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1           A.    Now, wait a minute.  I don't know that.  
2    I know him when he walks in the office, makes his  
3    payment.  Other than that, I don't know how  
4    sophisticated he is.

5           Q.    And is he actually one of those people  
6    that makes their payment by dropping it off at the  
7    office?

8           A.    No.  He had it in escrow.

9           Q.    Okay.  But -- so -- but not a person  
10   that you would consider terribly sophisticated?

11          A.    I probably haven't seen Travis since he  
12   bought that policy -- three times.

13          Q.    So, again, one of those things that, not  
14   knowing that, all the more important for you, as  
15   the agent, to make sure that he's protected,  
16   correct?

17          A.    I am to give him the information that I  
18   have, what I suggest that he do.

19          Q.    Right.  But, again, you were Nationwide,  
20   and you were designated --

21          A.    I am Nationwide.

22          Q.    -- by Nationwide to accept his notice of  
23   claims and notice of lawsuit, correct?

24               MR. SLIGH:  Object to the form.

25          A.    Yes.

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1 A. It's not my responsibility.

2 Q. Even though the policy designates you as  
3 the person to report these claims to?

4 MR. SLIGH: Object to the form.

5 A. I'm not designated as the person to  
6 report those claims to. I'm one of the options.  
7 They can call the 800 number.

8 Q. Okay. All right. But you are one of  
9 the options?

10 A. You've got it, yeah.

11 Q. And as we've already talked about, Mr.  
12 Felkel, he complied with the term of the policy  
13 under that option, the option of giving the  
14 lawsuit and reporting the claim to you, correct?

15 MR. SLIGH: Object to the form.

16 A. He complied partially, yes.

17 Q. Okay. And then once you got it, you  
18 made a copy of it, and you uploaded it into your  
19 computer system, correct?

20 A. Uploaded it into EasyFile, yes.

21 Q. And then you did nothing else, correct?

22 A. No.

23 Q. Is that correct?

24 A. That is correct.

25 Q. All right. And you did nothing to

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1 question.

2 A. Well, they're insureds.

3 Q. They're insureds, correct?

4 A. That is correct.

5 Q. Right. And once Nationwide is on notice  
6 of a claim, Nationwide has a duty to respond and  
7 to act, correct?

8 A. That is correct.

9 Q. And to protect them, correct?

10 A. That is correct.

11 Q. And you are Nationwide for the purposes  
12 of service; that's part of your job, correct?

13 MR. MURPHY: Objection to form.

14 A. Rephrase that again.

15 Q. You are Nationwide for purposes of  
16 reporting claims under the policy?

17 A. I was a representative of Nationwide as  
18 an agent, yes.

19 Q. That's correct. And you were designated  
20 as the person that those insureds are to report  
21 claims to as one of their options, correct?

22 A. As one of their options.

23 Q. And as we've talked about already, by  
24 hand-delivering a copy of that Complaint to you,  
25 each of those insureds -- through Travis Felkel,

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Anna Angelacci, as guardian of K.B., a  
minor,

Plaintiff,

vs.

E.U., a minor, Travis O. Felkel, and Ginger  
G. Ulery,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-08-02494

AFFIDAVIT OF JOY KENNEDY

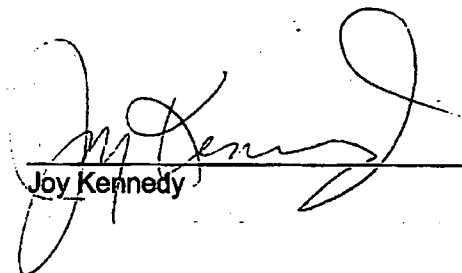
2015 NOV -2 PM 2:19  
MARY P. BROWN  
CLERK OF COURT  
NINTH JUDICIAL CIRCUIT

The affiant, Joy Kennedy, deposes and says as follows:

1. My name is Joye Kennedy and I am a casualty field representative for Nationwide Insurance Company.
2. I recently conducted a search of our Class System, Claims Center System, and our Work Bench System. I also called our Policy Service Center.
3. The purpose of conducting these searches was to determine when Nationwide claims first received notice of a September 8, 2014 incident involving insureds Travis Felkel, Ginger Ulery, and/or E.U.
4. The searches revealed only three claims involving these insureds: (a) a water damage claim presented on September 15, 1999; (b) a water damage claim presented on August 14, 2015; and (c) an assault claim reported on July 29, 2015.
5. The assault claim reported on July 29, 2015 concerns the incident that occurred on September 8, 2014.
6. Based upon my searches of Nationwide's various claims systems, the assault claim was first reported to Nationwide claims on July 29, 2015.

[signature page follows]

  
\_\_\_\_\_  
Notary Public of South Carolina

  
\_\_\_\_\_  
Joy Kennedy

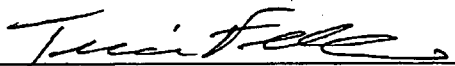
Subscribed to me and sworn this  
27, day of 2015

My Commission Expires: 1/20/19

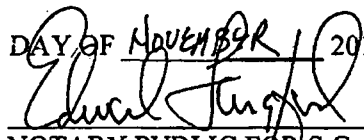
### AFFIDAVIT OF TRAVIS FELKEL

I, Travis O. Felkel, am over the age of eighteen, have been duly sworn, and swear to the following:

1. Me, Ginger and my step-son Evan were served with the lawsuit by Kyle Bierlair and his guardian Anna Angelacci on December 2, 2014 at my house at 339 Holly Ave., Goose Creek, SC. On that day all three of us were home and all three of us received and looked at the lawsuit.
2. When I delivered the lawsuit to my Nationwide Agent John Herndon in December I did so on behalf of myself, Evan and Ginger.
3. When I was at the damages hearing in April, I was confused on some of the dates that were being mentioned about when Evan moved in with his grandparents. We all received notice of the April damages hearing that was sent to us so Ginger and I went to appear there for all of us.

  
Travis Felkel

SWORN TO ME BEFORE THIS 24

DAY OF NOVEMBER 2015,  
 (SEAL)  
NOTARY PUBLIC FOR S.C.  
COMMISSION EXPIRES: \_\_\_\_\_

My Commission Expires 9/7/2017



SWORN TO ME BEFORE THIS 25<sup>th</sup>

DAY OF November 2015,

Dora Y. Ruiz (SEAL)

NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 3/17/2021

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Anna Angelacci, individually and as guardian  
of K. B., a minor over the age of fourteen, as  
assignee of Travis Felkel, Ginger Ulery and  
E.U., a minor over the age of fourteen, by his  
Guardian ad Litem Shannon P. Jones,

Plaintiff,

vs.

John T. Herndon, III, Herndon Insurance  
Agency, Inc., Nationwide Mutual Insurance  
Company, and Nationwide Mutual Fire  
Insurance Company,

Defendants.

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT  
) CASE NO.: 2015-CP-\_\_\_\_\_-\_\_\_\_\_  
)

**AFFIDAVIT OF LINDSEY RASH**

I, Lindsey Rash, am over the age of eighteen, am of sound mind, and swear to the following:

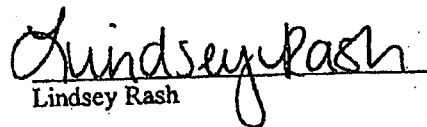
1. I am a paralegal employed with the law firm Yarborough Applegate LLC in Charleston, South Carolina.

2. On July 27, 2015, I called Herndon Insurance Agency at (843) 556-6088 to find out what happened to the lawsuit captioned Anna Angelacci, as guardian of K.B., a minor v. E.U., a minor, Travis O. Felkel, and Ginger G. Ulery, Case No. 2014-CP-08-2494 that was allegedly delivered by Nationwide's insured Travis Felkel to John T. Herndon, III in December 2014.

3. Jamie Richardson of Nationwide Sales Solutions Agency answered the call. Mr. Richardson informed me that he was with Nationwide corporate and that Mr. Herndon had

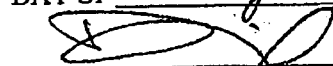
retired in March 2015. He further informed me that they had taken over the majority of Mr. Herndon's policies and files, including Travis Felkel's Policy No. 61HO708143.

4. I provided Jamie Richardson the date of loss, and he performed a search on his computer which revealed that the Summons and Complaint for the above-referenced lawsuit had in fact been uploaded into Nationwide's computer system. After pausing, he stated that it appeared that the lawsuit never was transferred to the claims department. He also said that since they have taken over Mr. Herndon's files, "Johnny's documents have a tendency to not show up where they should sometimes." He then stated that he was going to turn this over to Nationwide's legal department to handle.

  
Lindsey Rash

SWORN TO ME BEFORE THIS 27<sup>th</sup>

DAY OF July 2015,

 (SEAL)

NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 10-18-2021

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-08-2494

## ASSIGNMENT OF CLAIMS

This is an assignment of all causes of action or claims, now or in the future vested in Travis O. Felkel and Ginger G. Ulery and E.U. a minor ("Defendants") against any individual, insurance company, insurance agency or agent or insurance broker, arising out of an incident that occurred on September 8, 2014 and a subsequent lawsuit filed against Defendants on November 10, 2014 by Anna Angelacci, as guardian of K.B., a minor ("Plaintiff").

### Recitals

WHEREAS, on December 2, 2014, Defendants were personally served with a Summons and Complaint filed by the Plaintiff alleging negligence against the Defendants. Defendant Travis O. Felkel promptly took the Summons and Complaint to his local Nationwide agent John Herndon who had sold him his homeowners insurance coverage. According to Felkel, Mr. Herndon at the Nationwide agency made a copy of the paperwork and said he would forward it to Nationwide for claims handling. No defense counsel appeared on behalf of the Defendants, the Complaint was not timely answered, and an Entry of Default was ordered on February 4, 2015.

WHEREAS, on April 21, 2015, a damages hearing was held with the Defendants having been given proper notice.

WHEREAS, on April 23, 2015 special referee Clayton B. McCullough ordered a default judgment in the amount of \$5,150,000 in favor of the Plaintiff against Defendants Travis O. Felkel and Ginger G. Ulery.

WHEREAS, now, for good and valuable consideration in the form of Plaintiff's agreement not to immediately execute judgment against the Defendants and to seek satisfaction of the judgment from any party who may be responsible for indemnifying Defendants, the receipt and sufficiency of which is hereby acknowledged, the Plaintiff and Defendants agree as follows:

1. That Plaintiff will stay execution of this judgment until all claims that may be brought by or on behalf of Plaintiff or Defendants related to this incident are resolved by a settlement or verdict or otherwise resolved or abandoned.

2. That if and when, and only if and when, Defendants' insurance carrier, agent, or any other responsible party pays and satisfies to the agreement of Plaintiff the judgment against the Defendants, Plaintiff will mark any judgment as satisfied and agree never to enforce, execute, or levy upon Defendants' personal assets for any judgment.

3. Whereas, the Defendants believe they have causes of action against Nationwide, the John Herndon Nationwide Agency, and/or their employees or affiliated companies for the financial harm and judgment caused by the following acts and/or omissions:

- a. failure to provide coverage for the acts alleged in the underlying tort complaint;

- b. failure to provide a defense for the acts alleged in the underlying tort complaint and protect its insured from financial harm;
- c. failure to notify its insureds that it was not defending the lawsuit;
- d. failure to comply with their contractual duties with and duty of good faith and fair dealing to the insured;
- e. failure of the insurance agent to properly handle receipt of the Summons and Complaint and properly advise the Defendants.

4. Therefore, the Defendants hereby assign and transfer all claims or causes of action, which are now possessed by the Defendants arising from the above-described events against any party, to the Plaintiff who shall have the right to prosecute the same to satisfy the judgment that is held against the Defendants and to collect all other actual and punitive damages and attorneys' fees that the Defendants may have a right to claim (1) against any and all parties as a result of the judgment entered against them in the above-captioned case (2) as to any other matters related to the claim which resulted in the judgment being entered against the Defendants and (3) for any claims that may arise out of any liability insurance coverage for the Defendants, and their relationship to the insurance agency or sales agent and carriers. Execution of this assignment shall bestow upon Plaintiff each and every right presently, or in the future, held by the Defendants arising from these claims, including the right to prosecute any action against any party in the name of the Defendants. The Defendants have an ongoing obligation to cooperate with counsel for the Plaintiff by providing truthful information concerning any and all communications they have had with Nationwide, its agents or affiliates related to these claims and to make themselves available to give sworn testimony by Affidavit, in deposition and at trial.

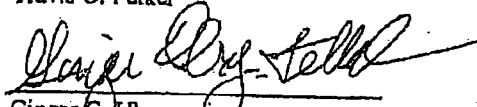
  
Travis O. Felkel

\_\_\_\_\_  
Ginger G. Ulery

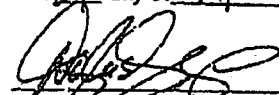
SWORN TO AND SUBSCRIBED before me  
this 24<sup>th</sup> day of April, 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 10/24/21

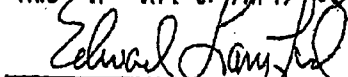
  
Travis O. Felkel

  
Ginger G. Ulery

SWORN TO AND SUBSCRIBED before me  
this 24<sup>th</sup> day of April, 2015.

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 10/24/21

SWORN TO AND SUBSCRIBED BEFORE ME  
this 4<sup>th</sup> DAY OF MAY, 2015

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires 9/7/2017

Anna Angelacci  
Anna Angelacci

SWORN TO AND SUBSCRIBED before me  
this 22 day of June, 2015.

Michelle Hester  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 10/16/16



made a copy of the lawsuit and said he would forward it to Nationwide for claims handling. No defense counsel appeared on behalf of the Defendant E.U., the Complaint was not timely answered, and an Entry of Default was ordered on February 4, 2015.

WHEREAS, on April 21, 2015, a damages hearing was held with the Defendants having been given proper notice.

WHEREAS, on June 8, 2015 Special Referee Clayton B. McCullough ordered appointment of Shannon P. Jones, Esquire, to serve as guardian ad litem for E.U.

WHEREAS on June 25, 2015 Special Referee Clayton B. McCullough ordered that the default judgment in the amount of \$5,150,000 be entered in favor of the Plaintiffs against Defendants Travis O. Felkel and Ginger G. Ulery on April 23, 2015 was jointly and severally to also be entered against E.U. a minor.

WHEREAS, now, for good and valuable consideration in the form of Plaintiffs' agreement not to immediately execute judgment against the Defendant E.U. and to later, upon satisfaction of the judgment, to mark it as satisfied, the receipt and sufficiency of which is hereby acknowledged, the Plaintiffs and Defendant E.U., through and by his guardian ad litem, agree and contract as follows:

1. That Plaintiffs will stay execution of this judgment until all claims that may be brought by or on behalf of Plaintiff or Defendants related to this incident are resolved by a settlement or verdict or otherwise resolved or abandoned in a manner that is satisfactory to Plaintiff.

2. That if and when, and only if and when, Defendant's insurance carrier, agent, or any other responsible party pays and satisfies the judgment plus any applicable accumulated

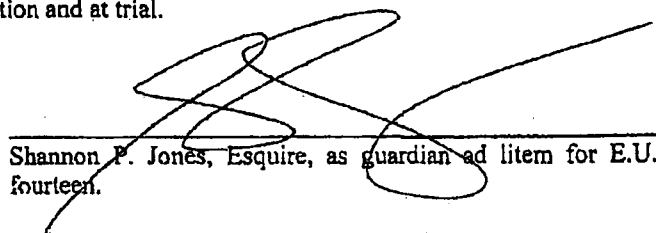
interest, costs and fees against the Defendant, Plaintiffs will mark any judgment as satisfied and agree never to enforce, execute, or levy upon Defendant's personal assets for any judgment.

3. Whereas, the GAL for the Defendant believes there exist causes of action against Nationwide, the John Herndon Nationwide Agency, and/or their employees or affiliated companies for the financial harm and judgment caused by the following acts and/or omissions:

- a. failure to accept that it should provide coverage for the acts alleged in the underlying tort complaint;
- b. failure to provide a defense for the acts alleged in the underlying tort complaint and protect its insured from financial harm;
- c. failure to notify its insureds that it was not defending the lawsuit;
- d. failure to comply with their contractual duties with and duty of good faith and fair dealing to the insured;
- e. failure of the insurance agent to properly handle receipt of the Summons and Complaint and properly advise the Defendant.

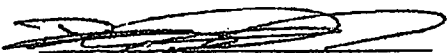
4. Therefore, the GAL for minor Defendant hereby assigns and transfer all claims or causes of action, of which are now possessed by the Defendant E.U. arising from the above-described events against any party, to the Plaintiffs who shall have the right to prosecute the same to satisfy the judgment that is held against the Defendant and to collect all other actual and punitive damages and attorneys' fees that the Defendant may have a right to claim (1) against any and all parties as a result of the judgment entered against them in the above-captioned case (2) as to any other matters related to the claim which resulted in the judgment being entered against the Defendant and (3) for any claims that may arise out of any liability insurance coverage for the Defendant, and their relationship to the insurance agency or insurance agent and

carriers. Execution of this assignment shall bestow upon Plaintiffs each and every right presently, or in the future, held by the Defendant E.U. arising from these claims, including the right to prosecute any action against any party in the name of E.U., either independently, through his GAL or the assignee, to retain the proceeds of any and all verdicts or settlements and to fully release and all claims against any party. The Defendant E.U. and his GAL have an ongoing obligation to cooperate with counsel for the Plaintiffs by providing truthful information related to these claims and to make themselves available to give sworn testimony by Affidavit, in deposition and at trial.



Shannon P. Jones, Esquire, as guardian ad litem for E.U. a minor over the age of fourteen.

SWORN TO AND SUBSCRIBED before me  
this 25 day of June, 2015.



NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 2023

Anna Angelacci

Anna Angelacci, as Guardian for K.B., a minor over the age of fourteen,

SWORN TO AND SUBSCRIBED before me  
this 25 day of Jun, 2015.

Michelle Holden  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 10/16/16



On Your Side®

Nationwide Insurance  
Allied Insurance  
Nationwide Agribusiness  
Titan Insurance  
Victoria Insurance

Shannon Jones Shannon Jones Law Firm,  
LLC

Shannon Jones as GAL for Evans Ulery  
Shannon Jones Law Firm, LLC  
3 State Street  
Charleston, SC 29401

Date prepared September 2, 2015  
Claim number 61 39 HO 708143  
09082014 02

Questions? Contact Claims Associate  
Donna Neal  
Neald@Nationwide.com  
Phone (803)727-4538

CERTIFIED MAIL

#### Claim details

Insurer: Nationwide Mutual Fire Insurance Company  
Policyholder: Travis O Felkel  
Claimant: Kyle Beirlar  
Claim number: 61 39 HO 708143 09082014 02  
Loss date: 09-08-2014  
Loss location: Goose Creek High School

Dear Ms. Jones as Guardian ad Litem for Evans Ulery, a minor,

We are writing to you in reference to Nationwide Mutual Fire Insurance Company ("Nationwide") insurance policy numbered 61 39 HO 708143 ("the Policy"), issued to Travis Felkel ("the named Insured") regarding the above referenced matter. The Policy provides Property Coverages and Liability Coverages, subject to terms, conditions and certain exclusions stated in the policy, on an occurrence basis. The Policy period is 8/10/2014 through 8/10/2015 (the "Policy Period").

As you are aware, a lawsuit was filed in Berkeley County, South Carolina, on or about November 10, 2014, bearing docket number 2014-CP-08-2494, entitled Anna Angelacci, as guardian of K.B., a minor, Plaintiff vs. E.U., a minor, Travis O. Felkel, and Ginger G. Ulery, Defendants ("the lawsuit" or "the Complaint").

Nationwide has learned that a default judgment ("the Judgment") has been entered against the Defendants. We are writing this letter to advise Travis Felkel, Ginger Ulery, and Shannon Jones, as guardian ad litem for E.U. (collectively "Defendants") that Nationwide is pursuing an investigation of this matter and will provide legal counsel to Defendants during the pendency of its investigation into the facts and circumstances of the default, as well as the allegations of the lawsuit. Please note however, that the provision of counsel by Nationwide is subject to a full reservation of all rights that Nationwide has under the Policy and applicable law. Existing law allows us to send this letter, which is known as a "reservation of rights" letter. A reservation of rights letter is not an attempt on the part of Nationwide to avoid its responsibilities under the Policy, but to advise of its obligations and rights. You should review the subject Policy along with this letter. Nothing in this letter modifies the terms and conditions of the Policy.

Nationwide has assigned Mr. Troy Thames with the law firm of Willson Jones Carter & Baxley, P.A. to this matter. Please provide Mr. Thames and his firm with your utmost cooperation as required under the terms of the Policy. Any action taken by either Nationwide or Mr. Thames in the investigation of this matter is not to be construed as a waiver of any of the terms and conditions of the policy.

The Complaint and subsequent Judgment seek money damages against the Defendants. The Policy provides personal liability coverage with a limit of \$100,000.00 per occurrence. The Policy is an occurrence policy, and coverage is provided only if there is an occurrence to which coverage applies during the Policy Period. "Occurrence" is defined as "bodily injury or property damage resulting from an accident, including continuous or repeated exposure to the same general condition." Under the terms of the Policy, any damages awarded in excess of the policy are the responsibility of the insured and/or party against who the judgment is or may be rendered. If you have other insurance coverage that may apply to this claim, you



Nationwide Insurance  
Allied Insurance  
Nationwide Agribusiness  
Titan Insurance

On Your Side® Victoria Insurance

should notify that insurance carrier to further protect your interests. If you desire to retain personal counsel other than Mr. Thames and his firm to participate in addressing the Complaint and the Judgment rendered against you, it is your right to do so at your own expense.

The lawsuit alleges that Travis O. Felkel and Ginger G. Ulery are the parents or natural guardians of E.U., a minor, and that E.U. injured the minor Plaintiff at Goose Creek High School during gym class causing him to suffer a traumatic brain injury. The Complaint does not set forth any specific facts or allegations concerning any responsibility on the part of Travis Felkel or Ginger Ulery for this incident.

The Policy may not provide coverage to Defendants for some, all, or any of the allegations of the Complaint. We recognize that the allegations contained in the Complaint are unsubstantiated contentions at this time, to the extent that they constitute a contention at all. Nothing in this letter is intended to suggest or imply that these allegations have any legal or factual merit. Nevertheless, Nationwide reserves its right to decline coverage in the event that it is determined that any of the terms, conditions and exclusions set forth in the Policy, the endorsements to the Policy, or any other provision of the Policy prove to be applicable such that coverage is not provided under the Policy.

Below we quote pertinent provisions of the Policy. Nationwide reserves its right to rely upon other terms and provisions of the Policy which are not quoted below in support of its coverage position. This recitation of the Policy provisions herein is not intended to be, nor should it be construed as, an exhaustive listing of the Policy terms or provisions. Please consult your Policy for the complete terms and provisions.

## SECTION II

### LIABILITY COVERAGE

1. "Bodily Injury" means bodily harm, including resulting care, sickness or disease, loss of services or death. Bodily injury does not include emotional distress, mental anguish, humiliation, mental distress or injury, or any similar injury unless the direct result of bodily harm.

...

4. "Occurrence" means bodily injury or property damage resulting from an accident, including continuous or repeated exposure to the same general condition. The occurrence must be during the policy period.

5. "INSURED" means you and the following persons if residents of your household at the residence premises:

- a) your relatives;
- b) any other person under age 21 and in the care of you or your relatives;

...

### Coverage Agreements

#### Coverage E – Personal Liability

We will pay damages an insured is legally obligated to pay due to an occurrence resulting from negligent personal acts or negligence arising out of the ownership, maintenance, or use of real or personal property. We will provide a defense at our expense by counsel of our choice. We may investigate and settle any claim or suit. Our duty to defend a claim or suit ends when the amount we pay for damages equals our limit of liability. This coverage is excess over other valid and collectible insurance.

...

### Liability Exclusions



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Nationwide Insurance  
Allied Insurance  
Nationwide Agribusiness  
Titan Insurance  
Victoria Insurance

1. Coverage E – Personal Liability and Coverage F – Medical payments to Others do not apply to bodily injury or property damage:

a) caused intentionally or at the direction of an insured, including willful acts the result of which the insured knows or ought to know will follow from the insured's conduct. This exclusion 1.a) does not apply to corporal punishment of pupils.

b) caused by or resulting from an act or omission which is criminal in nature and committed by an insured.

This exclusion 1.b) applies regardless of whether the insured is actually charged with, or convicted of a crime.

#### Liability Conditions

1. Limits of Liability. Our total liability under Coverage E for all damages resulting from one occurrence will not exceed the limit for Coverage E shown on the Declarations. This is true regardless of the number of insureds, claims made or persons injured.

3. Duties after Loss. In case of a loss, you must perform the following duties. You must cooperate with us in seeing that these duties are performed.

a) give notice to us or our agent as soon as practicable setting forth:

- (1) Identity of the policy and insured
- (2) time, place, and facts of the accident or occurrence.
- (3) names and addresses of the claimants and witnesses.

b) immediately forward to us every document relating to the accident or occurrence.

c) at our request, assist in:

- (1) making settlement
- (2) enforcing a right of contribution or indemnity against a person or entity who may be liable to an insured
- (3) conducting suits, and attending hearings and trials.
- (4) giving evidence and asking witnesses to attend.

e) the insured shall not, except at the insured's own cost, voluntarily make a payment, assume an obligation, or incur an expense other than for first aid to others at the time of the bodily injury.

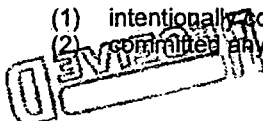
5. Suits Against Us. No action can be brought against us unless there has been full compliance with the policy provisions. No one has a right to join us as a party to an action against an insured. No action with respect to Coverage E can be brought against us until the obligation of the insured has been determined by final judgment or agreement signed by us.

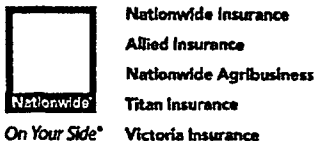
#### General Policy Conditions

##### 2. CONCEALMENT OR FRAUD

b) This policy does not provide coverage for all insureds if you or any other insured, either before or after a loss, has:

- (1) intentionally concealed or misrepresented any material fact or circumstance; or
- (2) committed any fraud or made false statements relating to such loss.





Nationwide's investigation to date indicates that the acts which caused injury to the plaintiff may have been intentional and/or criminal in nature. Therefore, there may not have been an "occurrence" under the policy. If there was an occurrence under the policy, then coverage may be excluded under the intentional acts and/or criminal acts exclusions set forth above.

Nationwide's investigation to date indicates that a default judgment has been entered against the Defendants. While Nationwide is attempting to have these judgments set aside while it continues to investigate this matter, Nationwide may not have received documents relating to this loss in a timely manner which has potentially prejudiced both Nationwide and Defendants. Thus, Defendants may have violated certain conditions of the policy as set forth above.

Nationwide's investigation of these allegations and any subsequent claims arising from the incident referenced herein is subject to this reservation of rights and all the terms and conditions of the Policy, at law and/or in equity, including, but not limited to, the specific terms, exclusions, endorsements and conditions referenced in this letter, whether or not specifically mentioned herein. Any action taken in the investigation of the lawsuits is not to be construed as a waiver of any of the terms and conditions of the Policy.

Nationwide reserves the right to deny coverage and/or rescind the Policy upon any terms, conditions, exclusions, endorsements, and other provisions of the Policy, including statements, declarations, and omissions made in connection with the application therefore as may apply.

Nationwide also reserves the right to withdraw, amend, supplement, or revise this reservation of rights at any time in the future. Nationwide further reserves the right to seek reimbursement of all costs and attorney's fees incurred in defense of the Complaint. In the event that you disagree with Nationwide's position as set forth in this letter, or should you possess any further information which you believe would impact Nationwide's coverage position, please notify us immediately.

Should you have any questions concerning the coverage available under the Policy, or the matters raised in this letter, please contact the undersigned at any time.

**For more information**

If you have any questions or concerns, please contact me at (803)727-4538 or Neald@Nationwide.com.

Sincerely,

Donna Neal  
Nationwide Mutual Fire Insurance Company  
P.O. Box 10405  
NCRO Class Claims Dept 5582  
Des Moines, IA 50306-9475

RECEIVED  
10.4.15  
CL

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

Anna Angelacci, individually and as guardian of  
K. B., a minor over the age of fourteen, as assignee  
of Travis Felkel, Ginger Ulery and E.U., a minor  
over the age of fourteen, by his Guardian ad Litem  
Shannon P. Jones,

Plaintiff(s)

vs.

John T. Herndon, III, Herndon Insurance Agency,  
Inc., Nationwide Mutual Insurance Company, and  
Nationwide Mutual Fire Insurance Company,

Defendant(s)

Submitted By: David B. Yarborough, Jr., Esquire  
Yarborough Applegate LLC  
291 East Bay Street, Floor 2  
Charleston, SC 29401

Address:

SC Bar #: 15515

Telephone #: (843) 972-5015

Fax #: (843) 277-6691

Other:

E-mail:

david@yarboroughapplegate.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action Is Judgment/Settlement do not complete

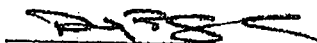
- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Contracts</b><br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input checked="" type="checkbox"/> Fraud/Bad Faith (150)<br><input type="checkbox"/> Failure to Deliver/<br>Warranty (160)<br><input type="checkbox"/> Employment Discrim (170)<br><input type="checkbox"/> Employment (180)<br><input type="checkbox"/> Other (199) | <b>Torts - Professional Malpractice</b><br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20 -NI-<br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)                                                 | <b>Torts - Personal Injury</b><br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Assault/Battery (370)<br><input type="checkbox"/> Slander/Libel (380)<br><input type="checkbox"/> Other (399)                                                                                                                                                           | <b>Real Property</b><br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)                                                                                                                                                  |
| <b>Inmate Petitions</b><br><input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)                                                                                                                                                                                                                                                                                           | <b>Administrative Law/Relief</b><br><input type="checkbox"/> Reinstate Drv. License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899) | <b>Judgments/Settlements</b><br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured<br>Settlement Payment Rights<br>Application (760)<br><input type="checkbox"/> Confession of Judgment (770)<br><input type="checkbox"/> Petition for Workers<br>Compensation Settlement<br>Approval (780)<br><input type="checkbox"/> Other (799) | <b>Appeals</b><br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Comm. (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) |
| <b>Special/Complex /Other</b><br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699)<br><input type="checkbox"/> Sexual Predator (510)                                                                                                                                                                                                                        | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in<br>an Out-of-County Action (660)<br><input type="checkbox"/> Pre-Suit Discovery (670)                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

SCCA / 234 (06/2015)

Page 1 of 3

Submitting Party Signature: 

Date: July 27, 2015

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Anna Angelacci, individually and as guardian  
of K. B., a minor over the age of fourteen, as  
assignee of Travis Felkel, Ginger Ulery and  
E.U., a minor over the age of fourteen, by his  
Guardian ad Litem Shannon P. Jones,

Plaintiff,

vs.

John T. Herndon, III, Herndon Insurance  
Agency, Inc., Nationwide Mutual Insurance  
Company, and Nationwide Mutual Fire  
Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2015-CP-081759

SUMMONS

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

2015 JUL 27 PM 3:14

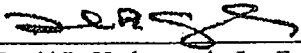
FILED

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,  
a copy of which is herewith served upon you, and to serve a copy of your answer to the said  
Complaint on the subscribers at their office at 291 East Bay Street, Floor 2, Charleston, South  
Carolina 29401 within thirty (30) days after the service hereof, exclusive of the day of such  
service; and, if you fail to appear and defend by filing an answer to the Complaint within the  
time aforesaid, judgment by default will be rendered against you for the relief demanded in the  
Complaint.

*Signature on following page.*

Yarborough Applegate LLC  
291 East Bay Street, Floor 2  
Charleston, SC 29401  
843-972-0150 office  
843-277-6691 fax

  
David B. Yarborough, Jr., Esquire  
Douglas E. Jennings, Esquire

ATTORNEYS FOR THE PLAINTIFF

July 27, 2015  
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Anna Angelacci, individually and as guardian  
of K. B., a minor over the age of fourteen, as  
assignee of Travis Felkel, Ginger Ulery and  
E.U., a minor over the age of fourteen, by his  
Guardian ad Litem Shannon P. Jones,

Plaintiff,

vs.

John T. Herndon, III, Herndon Insurance  
Agency, Inc., Nationwide Mutual Insurance  
Company, and Nationwide Mutual Fire  
Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2015-CP-08-1759

COMPLAINT

(Bad Faith)

(Breach of Contract)

(Negligence)

(Declaratory Judgment)

(Negligent Misrepresentation)

(Jury Trial Demanded)

2015 JUL 27 PM 3:14

CLERK OF COURT  
BERKELEY COUNTY, SC

FILED

SUMMARY OF THE CASE

This action includes claims of negligence, bad faith, breach of contract, negligent misrepresentation and a declaratory judgment against John T. Herndon, III (hereinafter "Herndon" or "John Herndon"), Herndon Insurance Agency, Inc., Nationwide Mutual Insurance Company, and Nationwide Mutual Fire Insurance Company for wrongful conduct in their mishandling of an insurance claim and failure to defend a personal injury lawsuit entitled Anna Angelacci, as guardian of K.B., a minor v. E.U., a minor, Travis O. Felkel, and Ginger G. Ulery, Case No. 2014-CP-08-2494, which was filed in the Berkeley County Court of Common Pleas. (Lawsuit as Exhibit A.)

E.U., a minor over the age of fourteen, Travis Felkel (E.U.'s stepfather) and Ginger Ulery (E.U.'s mother) (hereinafter "Ulery-Felkel family") were named defendants in the underlying negligence lawsuit and were properly served on December 2, 2014. The Ulery-Felkel

family was insured by Nationwide through a homeowners insurance policy sold to them by John Herndon at the Nationwide Herndon Insurance Agency. Herndon is an authorized Nationwide agent and the homeowners policy instructs its insured to report claims and lawsuits to him. Shortly after being served with the lawsuit, Travis Felkel, on behalf of himself and his family, personally delivered the Summons and Complaint to his Nationwide agent John Herndon at the Nationwide Herndon Insurance Agency. (Affidavit of Felkel as Exhibit B.) Herndon made a copy of the lawsuit papers and indicated he would see that the matter was taken care of and gave Felkel a copy of his business card. (Business card as Exhibit C.)

Herndon had a duty to file the claim with the claims department at Nationwide and forward the lawsuit to them. Nationwide had a duty to investigate and defend the lawsuit and protect its insureds, which would include E.U., a minor over the age of fourteen, Travis Felkel and Ginger Ulery. Nationwide did not defend the lawsuit, nor advise its insureds that it was not defending the lawsuit. (Affidavit of Lindsey Rash as Exhibit C-1.) The lawsuit was not timely answered, an entry of default and referral to a special referee was ordered, damages and default hearings were held and default judgments were entered against the Ulery-Felkel family, jointly and severally, in the amount of \$5,150,000 in favor of Anna Angelacci and K.B., a minor over the age of fourteen. (Felkel, Ulery Judgment as Exhibit D and E.U. Judgment as Exhibit E.)

After judgments were entered against the Ulery-Felkel family, they each assigned to Anna Angelacci and K.B. all rights, claims and causes of actions then possessed by them against any insurance company or agent for mishandling of the lawsuit in the underlying action in exchange for not having the judgments immediately executed against them and the possibility of having the judgments vacated if satisfied by the above-named defendants. (Felkel, Ulery Assignments as Exhibit F and E.U. Assignment as Exhibit G). This action is being brought by

assignee and judgment creditor Anna Angelacci, individually, as guardian of K.B., a minor over the age of fourteen, and as assignee of Travis Felkel, Ginger Ulery and E.U., a minor over the age of fourteen, by his Guardian ad Litem Shannon P. Jones.

### THE COMPLAINT

NOW COMES THE PLAINTIFF complaining of the above-named Defendants, hereby alleging unto this Honorable Court as follows:

### JURISDICTION AND VENUE

1. Plaintiff is a resident of the State of South Carolina.
2. Defendant John Herndon is a resident of the State of South Carolina and was at all times relevant hereto acting within the course and scope of his employment as an employee of Defendant Herndon Insurance Agency, Inc. and as an agent for Defendant Nationwide Mutual Insurance Company.
3. Defendant Herndon Insurance Agency, Inc. (hereinafter "Herndon Insurance Agency") is an insurance company organized and existing under the laws of the State of South Carolina and is located in Charleston, South Carolina.
4. Defendants Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company (hereafter referred to jointly as "Nationwide") are affiliated domestic corporations which operate as one company under the Nationwide Mutual Insurance umbrella. Both companies are incorporated under the laws of the State of Ohio with their principal places of business in Columbus, Ohio. Nationwide Mutual Insurance Company, through its subsidiaries, operates insurance companies throughout the United States, including in South Carolina. Nationwide Mutual Fire Insurance Company is the entity which actually writes homeowners insurance. The underlying lawsuit which Nationwide failed to defend was pending

in Berkeley County. The default judgments were entered in Berkeley County. The policy of insurance issued and breached by Nationwide in this case insured the Ulery-Felkel home which is located in Berkeley County.

5. This Court has personal jurisdiction over the parties hereto and subject matter jurisdiction over the causes of action set forth herein. Venue is proper in Berkeley County.

**FOR A FIRST CAUSE OF ACTION**  
**AS TO NATIONWIDE DEFENDANTS**  
**(Bad Faith)**

6. The allegations stated in Paragraphs 1 through 5 above are repeated and realleged as if fully set forth verbatim herein.

7. In December 2014, husband Travis Felkel and wife Ginger Ulery, along with Ginger's sixteen year old son, E.U., lived in a home owned by Travis and Ginger located at 339 Holly Avenue, Goose Creek, South Carolina. The home was insured by Nationwide, and the policy had been sold to Felkel by John Herndon of Herndon Insurance Agency, Inc. which, upon information and belief, is an exclusive Nationwide insurance agency.

8. On December 2, 2014, the Ulery-Felkel family was served with a lawsuit filed by Anna Angelacci, as guardian of K.B., a minor, alleging negligence by Travis Felkel, Ginger Ulery, and E.U. that caused serious injuries to K.B.

9. Travis Felkel, on behalf of himself and his family, promptly took the Summons and Complaint to his local Nationwide Insurance Agent John Herndon who sold him his homeowners insurance coverage.

10. Defendant John Herndon, acting as an employee of Herndon Insurance Agency, Inc. and agent of Defendant Nationwide and within the course and scope of his employment and agency, made a photocopy of the Summons and Complaint and advised Felkel that he would

forward it to the claims department and that they would handle it and gave him a copy of his business card.

11. Upon receipt of the Summons and Complaint, Defendant Nationwide, by and through its agent John Herndon, owed a duty of good faith and fair dealing to its insureds under the policy, as well as a duty to investigate and defend the action filed against its insureds.

12. Defendant Nationwide breached its duty owed to its insureds by failing to investigate or defend the underlying action, Case No. 2014-CP-08-2494, filed by Anna Angelacci as guardian of K.B., a minor, in this Court.

13. As a direct and proximate result of Defendant Nationwide's failure to investigate and defend the action, and as a direct and proximate result of its breach of its duty of good faith and fair dealing, Default Judgments were entered against Travis Felkel and Ginger Ulery on April 23, 2015 and against E.U. on June 25, 2015.

14. Defendant Nationwide acted by and through its exclusive Nationwide agency, Herndon Insurance Agency, Inc. and its employees and agent, Defendant John Herndon, who acted within the course and scope of his employment and/or agency with all implied, inherent, apparent, and express authority so as to bind both Herndon Insurance Agency, Inc. and Nationwide and by his acts and/or omissions thereby making Defendant Nationwide vicariously liable for the same under the principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or respondeat superior.

**FOR A SECOND CAUSE OF ACTION**  
**AS TO NATIONWIDE DEFENDANTS**  
**(Breach of Contract)**

15. The allegations stated in Paragraphs 1 through 14 above are repeated and realleged as if fully set forth verbatim herein.

16. The Ulery-Felkel family and Defendants had a contract of insurance whereby Defendants were not only obligated to insure the Ulery-Felkel family against loss under their homeowners insurance policy, but were also obligated to defend and investigate any claims filed against the Ulery-Felkel family as their insureds.

17. The Ulery-Felkel family fully performed and delivered consideration under the contract by promptly and continuously paying Defendants' insurance premiums for their homeowners insurance coverage.

18. Defendants' failure to investigate and defend the aforesaid action against the Ulery-Felkel family in this Court constitutes a failure to perform their obligation, and thus, a breach of contract by Defendants.

19. As a direct and proximate result of this breach, the Ulery-Felkel family has suffered serious actual and consequential damages of \$5,150,000 in judgments entered against them, for which they are now personally liable.

20. Anna Angelacci holds a judgment and is a creditor in the amount of \$150,000 plus interest against the Ulery-Felkel family. Anna Angelacci, as guardian for K.B, a minor over the age of fourteen, holds a judgment and is a creditor in the amount of \$5,000,000 plus interest against the Ulery-Felkel family.

**FOR A THIRD CAUSE OF ACTION**  
**AGAINST ALL DEFENDANTS**  
**(Negligence/Professional Negligence)**

The allegations stated in Paragraphs 1 through 20 above are repeated and realleged as if fully set forth verbatim herein.

21. Defendants owed the Ulery-Felkel family certain duties, to properly handle and defend claims brought against them, arising out of the special relationship and confidence of

trust placed in them, and the covenant and duty of good faith and fair dealing implied as a matter of law in contracts of insurance.

22. Defendants were negligent, reckless, grossly negligent, willful and wanton in their investigation and handling of the lawsuit brought against the Ulery-Felkel family in one or more of the following particulars:

- a. In the failure and professional negligence of John Herndon and his employees to notify the claims department of Nationwide that a lawsuit had been filed against its insureds;
- b. In the failure and professional negligence of John Herndon and his employees to deliver a copy of the lawsuit to the Nationwide claims department;
- c. In the failure and professional negligence of the Herndon Insurance Agency and its owner and employees to follow industry standards and its own policies of reporting claims brought to their attention by their insureds;
- d. In the failure and professional negligence of the Herndon Insurance Agency to have proper safeguards in place to protect its insureds from the damages they suffered in this case due to failure to report a claim/lawsuit;
- e. In the failure and professional negligence of John Herndon to advise the Ulery-Felkel family to hire counsel to answer the Complaint because Nationwide would not be defending the lawsuit;
- f. In the failure and professional negligence of John Herndon to advise the Ulery-Felkel family of the consequences of failing to answer the Complaint within 30 days;
- g. In failing to investigate the lawsuit;
- h. In failing to provide a defense to the lawsuit or to advise their insureds that the claim was being denied, that the insureds needed to secure their own counsel and that Nationwide was not going to hire counsel to file an Answer;
- i. In lulling Travis Felkel into a belief that the claim against him and his family was going to be investigated and defended by Nationwide;
- j. In failing to protect the Ulery-Felkel family from an excess judgment

against them in the amount of \$5,150,000 plus post judgment interest that is accruing daily;

- k. In failing to evaluate or properly evaluate the claim given the information then available;
- l. In failing to make any effort whatsoever to settle the claim;
- m. Upon information and belief, in violating their own policies, procedures, and/or guidelines regarding the investigation and handling of liability claims;
- n. In failing to exercise the degree of care, caution, and good faith that a reasonably prudent insurance carrier, manager or adjuster would exercise under the same or similar circumstances;
- o. In placing their own interests ahead of those of the insureds; and
- p. In failing to place the insureds' interests ahead of those of Defendants.

23. By reason of Defendants' negligence, recklessness, gross negligence, willfulness, and wantonness, the Ulery-Felkel family directly and proximately suffered actual damages.

24. Plaintiff is entitled to a judgment against Defendants for the full amount of the judgments entered against Ulery-Felkel family, interest accruing on the judgments, and punitive damages.

**FOR A FOURTH CAUSE OF ACTION**  
**AS TO NATIONWIDE DEFENDANTS**  
**(Declaratory Judgment and Attorneys' Fees)**

25. The allegations stated in Paragraphs 1 through 23 above are repeated and realleged as if fully set forth verbatim herein.

26. Pursuant to the South Carolina Uniform Declaratory Judgment Act, Plaintiff seeks a declaration that:

- (a) Travis Felkel properly notified Nationwide of the claim by delivering a copy of the lawsuit to Nationwide agent John Herndon as required by Section J-1

or other sections of the homeowners policy and that by doing so Nationwide's duty to protect its insureds by investigating and defending the claim was triggered.

(b) Nationwide failed to comply with its duties and obligations under the policy of insurance and that its insureds were harmed as a result of these breaches.

(c) Nationwide is liable for the entire amount of the judgments, plus post judgment interest as a result of Nationwide's conduct.

(d) Plaintiff as assignee is entitled to attorney's fees pursuant to S.C. Code Ann. § 38-59-40 (1976, as amended).

**FOR A FIFTH CAUSE OF ACTION**  
**AS TO ALL DEFENDANTS**  
**(Negligent Misrepresentation)**

27. The allegations stated in Paragraphs 1 through 25 above are repeated and realleged as if fully set forth verbatim herein.

28. Defendant John Herndon made a false representation to Travis Felkel that he would pass along the lawsuit to Nationwide and that it would be taken care of by Nationwide. Upon belief, Herndon did not pass along the lawsuit to Nationwide and/or it was not taken care of by Nationwide, and default judgments were entered against the Ulery-Felkel family.

29. Defendant Herndon had a pecuniary interest in the matter as he gave this information in the course of his employment, business and profession.

30. Defendant Herndon owed a duty to communicate truthful information to Felkel and breached that duty by failing to do so.

31. Felkel relied on Herndon's representation that the lawsuit would be passed along to Nationwide and taken care of by Nationwide, and he and his family suffered damages as a

result of his reliance on the representation.

32. Herndon Insurance Agency, Inc. and the Nationwide defendants are vicariously liable for the negligent misrepresentations of its owner, agent and employee John Herndon who was acting in the course and scope of his business when he made these negligent misrepresentations.

WHEREFORE, Plaintiff prays for a trial and for the following:

- i. Judgment against Defendants, jointly and severally, for a declaratory judgment, and actual and punitive damages in an amount to be determined by a jury;
- ii. For the costs of this action; and
- iii. For such other and further relief as this court deems just and proper.

Yarborough Applegate LLC  
291 East Bay Street, Floor 2  
Charleston, SC 29401  
843-972-0150 office  
843-277-6691 fax

  
David B. Yarborough, Jr., Esquire  
Douglas E. Jennings, Esquire

ATTORNEYS FOR THE PLAINTIFF

July 27, 2015  
Charleston, South Carolina

2015/603 CCF

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

ANNA ANGELACCI, as guardian of K.B., a minor,  
Plaintiff(s)

vs.

E.U., a minor, TRAVIS O. FELKEL, and GINGER  
G. ULERY,  
Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP-08 - 2494

Submitted By: Douglas E. Jennings  
Address: Yarborough Applegate LLC  
291 East Bay Street, Floor 2, Charleston, SC 29401

SC Bar #: 100137  
Telephone #: 843-972-0000  
Fax #: 843-277-6000  
Other:  
E-mail:

2014 NOV 14 PM 2:45  
FILED  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

NOTE: This coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Contracts</b></p> <p><input type="checkbox"/> Construction (100)<br/><input type="checkbox"/> Debt Collection (110)<br/><input type="checkbox"/> Employment (120)<br/><input type="checkbox"/> General (130)<br/><input type="checkbox"/> Breach of Contract (140)<br/><input type="checkbox"/> Other (199)</p> | <p><b>Torts - Professional Malpractice</b></p> <p><input type="checkbox"/> Dental Malpractice (200)<br/><input type="checkbox"/> Legal Malpractice (210)<br/><input type="checkbox"/> Medical Malpractice (220)<br/>Previous Notice of Intent Case #<br/>20 -CP- -<br/><input type="checkbox"/> Notice/ File Med Mal (230)<br/><input type="checkbox"/> Other (299)</p>                                              | <p><b>Torts - Personal Injury</b></p> <p><input type="checkbox"/> Assault/Slander/Label (300)<br/><input type="checkbox"/> Conversion (310)<br/><input type="checkbox"/> Motor Vehicle Accident (320)<br/><input type="checkbox"/> Premises Liability (330)<br/><input type="checkbox"/> Products Liability (340)<br/><input checked="" type="checkbox"/> Personal Injury (350)<br/><input type="checkbox"/> Wrongful Death (360)<br/><input type="checkbox"/> Other (399)</p>                                                                                                                                                                                | <p><b>Real Property</b></p> <p><input type="checkbox"/> Claim &amp; Delivery (400)<br/><input type="checkbox"/> Condemnation (410)<br/><input type="checkbox"/> Foreclosure (420)<br/><input type="checkbox"/> Mechanic's Lien (430)<br/><input type="checkbox"/> Partition (440)<br/><input type="checkbox"/> Possession (450)<br/><input type="checkbox"/> Building Code Violation (460)<br/><input type="checkbox"/> Other (499)</p>                                                                                                                                                 |
| <p><b>Inmate Petitions</b></p> <p><input type="checkbox"/> PCR (500)<br/><input type="checkbox"/> Mandamus (520)<br/><input type="checkbox"/> Habeas Corpus (530)<br/><input type="checkbox"/> Other (599)</p>                                                                                                        | <p><b>Administrative Law/Relief</b></p> <p><input type="checkbox"/> Reinstatement License (800)<br/><input type="checkbox"/> Judicial Review (810)<br/><input type="checkbox"/> Relief (820)<br/><input type="checkbox"/> Permanent Injunction (830)<br/><input type="checkbox"/> Forfeiture-Petition (840)<br/><input type="checkbox"/> Forfeiture-Consent Order (850)<br/><input type="checkbox"/> Other (899)</p> | <p><b>Judgments/Settlements</b></p> <p><input type="checkbox"/> Death Settlement (700)<br/><input type="checkbox"/> Foreign Judgment (710)<br/><input type="checkbox"/> Magistrate's Judgment (720)<br/><input type="checkbox"/> Minor Settlement (730)<br/><input type="checkbox"/> Transcript Judgment (740)<br/><input type="checkbox"/> Lis Pendens (750)<br/><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)<br/><input type="checkbox"/> Confession of Judgment (770)<br/><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)<br/><input type="checkbox"/> Other (799)</p> | <p><b>Appeals</b></p> <p><input type="checkbox"/> Arbitration (900)<br/><input type="checkbox"/> Magistrate-Civil (910)<br/><input type="checkbox"/> Magistrate-Criminal (920)<br/><input type="checkbox"/> Municipal (930)<br/><input type="checkbox"/> Probate Court (940)<br/><input type="checkbox"/> SCDOT (950)<br/><input type="checkbox"/> Worker's Comp (960)<br/><input type="checkbox"/> Zoning Board (970)<br/><input type="checkbox"/> Public Service Comm. (990)<br/><input type="checkbox"/> Employment Security Comm (991)<br/><input type="checkbox"/> Other (999)</p> |
| <p><b>Special/Complex /Other</b></p> <p><input type="checkbox"/> Environmental (600)<br/><input type="checkbox"/> Automobile Arb. (610)<br/><input type="checkbox"/> Medical (620)<br/><input type="checkbox"/> Other (699)</p>                                                                                       | <p><input type="checkbox"/> Pharmaceuticals (630)<br/><input type="checkbox"/> Unfair Trade Practices (640)<br/><input type="checkbox"/> Out-of State Depositions (650)<br/><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)<br/><input type="checkbox"/> Sexual Predator (670)</p>                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

Submitting Party Signature: \_\_\_\_\_

Date: November 6, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



**FOR MANDATED ADR COUNTIES ONLY**

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note:** You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

ANNA ANGELACCI, as guardian of  
K. B., a minor,

Plaintiff,

v.

E. U., a minor, Travis O. Felkel, and  
Ginger G. Ulery,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-08 - 2494

SUMMONS  
(Jury Trial Demanded)

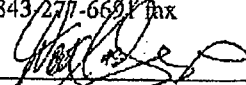
2014 NOV 10 PM 2:15  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED

TO: THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the subscribers at their office located at 291 East Bay Street, 2<sup>nd</sup> Floor, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will move for entry of Default Judgment and apply to the Court for the relief sought therein.

Yarborough Applegate LLC  
291 East Bay Street, 2<sup>nd</sup> Floor  
Charleston, SC 29401  
843-973-0150 office  
843-277-6691 fax

  
David B. Yarborough, Jr., Esquire  
Douglas E. Jennings, Esquire

Attorneys for the Plaintiff

11-5, 2014  
Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

ANNA ANGELACCI, as guardian of  
K. B., a minor,

Plaintiff,

v.

E. U., a minor, Travis O. Felkel, and  
Ginger G. Ulery,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-08 - 2494

COMPLAINT  
(Jury Trial Demanded)

2014 NOV 10 PM 2:45  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED

NOW COMES THE PLAINTIFF by and through his undersigned attorneys, complaining  
of the above-named Defendants, hereby alleges unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. That Plaintiff, a minor, is a resident of Berkeley County, South Carolina.
2. That upon information and belief, the Defendant E. U., a minor, is a resident of Berkeley County, South Carolina.
3. That upon information and belief, Defendants Travis O. Felkel and Ginger G. Ulery are the parents or natural guardians of E. U., a minor, and are residents of Berkeley County, South Carolina.
4. That the Court has personal jurisdiction over the parties hereto and subject matter jurisdiction over the causes of action set forth herein. Venue is proper in Berkeley County.

CAUSE OF ACTION

(Negligence/Gross Negligence/Recklessness)

5. The allegations stated in Paragraphs 1 through 4 above are repeated and realleged as if fully set forth verbatim herein.
6. That on September 8, 2014, the Defendant E. U. injured Plaintiff at Goose Creek High School during gym class causing him to suffer a traumatic brain injury.

7. That Plaintiff suffered extensive and severe injuries as a result of Defendant's actions.

8. The force of impact fractured Plaintiff's skull and caused a traumatic brain injury which required surgical intervention.

9. That the personal injuries sustained by the Plaintiff were proximately caused by the willful, wanton, reckless, grossly negligent, and negligent acts of the Defendants.

10. That as a direct and proximate cause of the acts and omissions, or both, of Defendants, the Plaintiff suffered severe and extensive injuries, which have caused, and in the future will cause, the Plaintiff to suffer one or more of the following elements of damage:

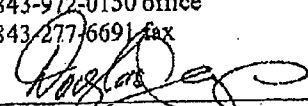
- a) physical pain;
- b) suffering;
- c) emotional distress;
- d) loss of the Plaintiff's enjoyment of life;
- e) increased susceptibility to future injury;
- f) substantial past and future expenses for medical services; and
- g) permanent scarring.

11. That due to the reckless, willful, and wanton acts and/or omissions of the Defendant, as well his violation of South Carolina statutes, the Plaintiff is entitled to actual and recover punitive damages in whatever amount the finder of fact determines.

WHEREFORE, Plaintiff prays for a trial and for the following:

- i. Judgment against Defendant for actual and punitive damages in an amount to be determined;
- ii. For the costs of this action; and
- iii. For such other and further relief as this court deems just and proper.

Yarborough Applegata LLC  
291 East Bay Street, 2<sup>nd</sup> Floor  
Charleston, SC 29401  
843-972-0150 office  
843-277-6691 fax

  
\_\_\_\_\_  
David B. Yarborough, Jr., Esquire  
Douglas E. Jennings, Esquire

*Attorneys for the Plaintiff*

11-5, 2014  
Charleston, South Carolina

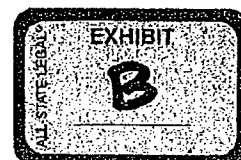
### AFFIDAVIT OF TRAVIS FELKEL

I, Travis O. Felkel, am over the age of eighteen, have been duly sworn, and swear to the following:

1. I was served with a Summons and Complaint in which my family and I were sued by Kyle Bierlair and his guardian Anna Angelacci on December 2, 2014.
2. I had Nationwide homeowners insurance coverage on my house at 339 Holly Ave., Goose Creek where I lived with my wife Ginger and my stepson Evan. Within two (2) weeks of getting it, I took the lawsuit to my Nationwide Agent John Herndon. I gave Mr. Herndon the lawsuit and he took it and made a copy of it. He told me that Evan may need to give a recorded statement to a claims person about what happened and that he would pass along the lawsuit.
3. I thought by giving a copy of the lawsuit to my Nationwide Agent that the matter would be taken care of and I would not go into default.

Travis Felkel  
Travis Felkel

SWORN TO ME BEFORE THIS 2  
DAY OF JUNE (21) 2015,  
[Signature] (SEAL)  
NOTARY PUBLIC FOR S.C.  
COMMISSION EXPIRES: \_\_\_\_\_  
My Commission Expires 9/7/2017





Johnny Herndon  
Herndon Insurance Agency  
Nationwide Insurance

On Your Side®

1200 B Sam Rittenberg Blvd  
Charleston, SC 29407

Tel 843-556-4088  
Fax 843-556-9015  
herndonj@nationwide.com

An equal opportunity employer

Nationwide®  
One Nationwide Plaza  
Columbus, OH 43215-2220  
nationwide.com  
24-Hour Claims: 800-421-3535

Products underwritten by Nationwide Mutual Insurance Company  
and Affiliated Companies. Life Insurance issued by  
Nationwide Life Insurance Company  
Home Office: Columbus, OH 43215-2220

6110708143



STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Anna Angelacci, individually and as guardian  
of K. B., a minor over the age of fourteen, as  
assignee of Travis Felkel, Ginger Ulery and  
E.U., a minor over the age of fourteen, by his  
Guardian ad Litem Shannon P. Jones,

Plaintiff,

vs.

John T. Herndon, III, Herndon Insurance  
Agency, Inc., Nationwide Mutual Insurance  
Company, and Nationwide Mutual Fire  
Insurance Company,

Defendants.

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT  
) CASE NO.: 2015-CP- \_\_\_\_\_

) **AFFIDAVIT OF LINDSEY RASH**

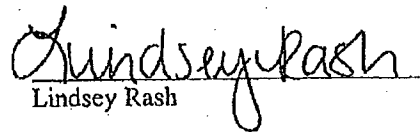
I, Lindsey Rash, am over the age of eighteen, am of sound mind, and swear to the following:

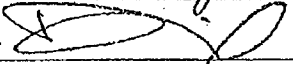
1. I am a paralegal employed with the law firm Yarborough Applegate LLC in Charleston, South Carolina.
2. On July 27, 2015, I called Herndon Insurance Agency at (843) 556-6088 to find out what happened to the lawsuit captioned Anna Angelacci, as guardian of K.B., a minor v. E.U., a minor, Travis O. Felkel, and Ginger G. Ulery, Case No. 2014-CP-08-2494 that was allegedly delivered by Nationwide's insured Travis Felkel to John T. Herndon, III in December 2014.
3. Jamie Richardson of Nationwide Sales Solutions Agency answered the call. Mr. Richardson informed me that he was with Nationwide corporate and that Mr. Herndon had



retired in March 2015. He further informed me that they had taken over the majority of Mr. Herndon's policies and files, including Travis Felkel's Policy No. 61HO708143.

4. I provided Jamie Richardson the date of loss, and he performed a search on his computer which revealed that the Summons and Complaint for the above-referenced lawsuit had in fact been uploaded into Nationwide's computer system. After pausing, he stated that it appeared that the lawsuit never was transferred to the claims department. He also said that since they have taken over Mr. Herndon's files, "Johnny's documents have a tendency to not show up where they should sometimes." He then stated that he was going to turn this over to Nationwide's legal department to handle.

  
Lindsey Rash

SWORN TO ME BEFORE THIS 27<sup>th</sup>  
DAY OF July 2015,  
 (SEAL)  
NOTARY PUBLIC FOR S.C.  
COMMISSION EXPIRES: 10-18-2021

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

ANNA ANGELACCI, as guardian of  
K. B., a minor,

Plaintiff,

v.

E. U., a minor, Travis O. Felkel, and  
Ginger G. Ulery,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-08-2494

ORDER OF DEFAULT JUDGMENT  
AGAINST DEFENDANTS TRAVIS  
FELKEL AND GINGER ULERY

FILED  
2015 APR 28 AM 9:19  
CLERK OF COURT  
BERKELEY COUNTY, SC

HEARING DATE:

April 21, 2014

PRESIDING JUDGE:

Special Referee Clayton B. McCullough,  
Esq.

PLAINTIFFS' ATTORNEYS:

David B. Yarborough, Jr.  
Douglas E. Jennings, Esq.

DEFENDANTS' ATTORNEYS:

None Present.

THIS MATTER comes before this Court on referral by the Clerk of Court following an Entry of Default for a Damages Hearing Pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure ("SCRCP"). A damages hearing was held on April 21, 2015 at 10:00 a.m.

The Civil Action Coversheet, Summons and Complaint in this action were filed on November 10, 2014, and Defendants were each served via process server. The Affidavits of Service for Defendants have all been filed with this Court.

Having failed to answer or otherwise defend the Complaint, Defendants E.U., a minor, Travis Felkel and Ginger Ulery (the "Defendants in Default") were declared in default by Order of this Court dated February 4, 2015 and filed on that same day. Thereafter, Plaintiff's served

-1 of 9-



their Notice of Damages Hearing upon Defendants, pursuant to Rule 55(b)(2), SCRCP on April 11, 2015, via process server. The Notice and Affidavit of Service were marked as exhibits during the hearing.

With the Defendants Travis Folkel and Ginger Ulery in Default and having been duly served with all pleadings as well as the notice of this hearing, this matter is now properly before the Court to determine Plaintiffs' damages as prayed for in the Complaint. As for E.U. a minor, Rule 55(b)(2), SCRCP requires that a guardian ad litem be appointed for a minor before any default judgment is entered against him. It does not appear that a guardian ad litem has been appointed for E.U., a minor, and therefore the damages award will be reserved as to E.U. until such time as a guardian ad litem is appointed and appears on his behalf. The damages hearing proceeded against Defendants Travis Folkel and Ginger Ulery.

The Plaintiffs were present and represented by Douglas E. Jennings, Esq. of the law firm Yarrowborough Applegate, LLC. Testimony was taken, evidence has been received, and having considered the entire record of this case, I make the following Findings of Fact and Conclusions of Law as required by Rule 52, SCRCP. Any Finding of Fact, which is more appropriately denominated as a Conclusion of Law shall be treated as such, and vice-versa.

This Court heard testimony from Plaintiff K.B., Anna Angelacci (the minor Plaintiff's grandmother and legal guardian), Tina Maunon (the minor Plaintiff's mother), and Patricia Coleman (the minor Plaintiff's aunt who is a Registered Nurse). All four witnesses provided extensive testimony as to the Plaintiff K.B.'s damages, the permanency of his injuries, the nature of his medical treatment, and the need and desire for future medical treatment.

After the conclusion of the damages hearing and after the Plaintiffs had departed, Defendants Travis Felkel and Ginger Ulery, parents of E.U. a minor, appeared at the hearing location. The court reporter was asked to return and a record was made where these Defendants were given the opportunity to explain their absence from the damages hearing and contest the damages. They were allowed adequate time to review all of the medical records, medical bills, and correspondence that were marked as exhibits and given the opportunity to provide testimony on the record.

#### FINDINGS OF FACT

1. I FIND that each of the above sentences in this Order are incorporated herein by reference as if they were reproduced verbatim, and that each are deemed to be findings of fact by this Court.
2. I FIND that the parties hereto and the subject matter hereof are within the jurisdiction of this Court.
3. I FIND that the Plaintiffs are all residents of the State of South Carolina and were so residing at the commencement of this action.
4. I FIND that Defendants are all residents of the State of South Carolina and were so residing at the commencement of this action.
5. I FIND that service of process of the Summons and Complaint was proper as to all Defendants.
6. I FIND that Defendants failed to timely respond and that the Entry of Default was proper.
7. I FIND that this damages hearing was properly noticed and served upon Defendants and that it satisfies the requirements of Rule 55(b)(2), SCRPC.

8. I FIND that, based on the medical bills and records for Plaintiff that he sustained the following injuries and damages:

- a. Plaintiff K.B. was injured on September 8, 2014 when his head struck a concrete floor;
- b. Plaintiff underwent a CT Scan of his brain, \$1,988.00, which revealed a right temporal subdural hematoma;
- c. Plaintiff underwent an MRI of the brain, \$898.00;
- d. Plaintiff underwent 4 CT scans of his head and brain without contrast, \$1,384.00;
- e. Plaintiff underwent an X-Ray of his cervical spine, 2 views, \$84.00;
- f. Plaintiff was admitted to the pediatric ICU at MUSC for ten days following the injury;
- g. Plaintiff's brain was bleeding in two locations following the injury;
- h. Plaintiff underwent anesthesia \$3,120.00;
- i. Plaintiff underwent a right temporal craniotomy for evacuation of the epidural hematoma, his head was shaved, a linear incision was made and a skull fracture was revealed, active bleeding noted, the epidural blood clot was resected, two pieces of skull were reattached using titanium plates and screws, sutures were applied and Plaintiff's head was wrapped in a pressure bandage to prevent any postoperative hematoma, \$74,323.00;
- j. Plaintiff continues to suffer from a traumatic brain injury;
- k. Plaintiff continues to suffer severe cognitive impairments following the injury;
- l. Plaintiff suffers daily headaches which have prevented him from returning to school;

- m. Plaintiff is now home-schooled;
- n. Plaintiff suffers a future loss of earning capacity and will be challenged in finding gainful employment;
- o. Plaintiff exhibits emotional and behavioral impairments following the injury that were not present prior to the injury;
- p. Plaintiff has short-term memory loss;
- q. Plaintiff will require and benefit from future medical care;
- r. Plaintiff is currently 16 years of age; and
- s. As a result of the injury, Plaintiff will require, among other things, future neurological evaluation and treatment, future neuropsychological evaluation and treatment, future imaging studies, future medications, future therapy and behavioral counseling, and future surgery to readjust the hardware in his skull.

9. I FIND that the Plaintiffs filed the Complaint to seek redress for the personal injuries suffered as a result of Defendants' actions.

10. I FIND that, as a result of the Entry of Default, the Plaintiffs are entitled to recover the following damages prayed for in their Complaint: (a) actual damages, (b) special damages, (c) consequential damages sufficient to compensate them fully for all losses and damages, past, present, and future.

11. I FIND that, based on the medical bills and other bills entered into evidence, Plaintiff Anna Angelacci, guardian of K.B. minor, incurred the following medical bills, medication, and expenses related to personal injuries to K.B. and the actions of the Defendants in Default:

Trident Medical Center

\$5,344.00

Medical University of SC

|                     |             |
|---------------------|-------------|
| Children's Hospital | \$79,809.00 |
| TOTAL               | \$85,153.00 |

12. I FIND that the Plaintiffs have proven by a preponderance of evidence that they are entitled to damages for their personal injuries and other expenses already incurred connected to the actions of the Defendants in Default.

13. I FIND that both the past medical treatment and bills were reasonable and necessary based on the injuries sustained by Plaintiff.

14. I FIND that substantial expenses related to the cost of future medical care more likely than not will be incurred and that Plaintiff would benefit from future medical care.

15. I FIND that Plaintiff K.B. has proven by a preponderance of evidence that he is entitled to recover for future loss of earning capacity, permanent impairment to his brain and skull that results in severe cognitive and behavioral defects, permanent and persistent pain and suffering, past and future loss of enjoyment of life, and mental suffering due to the negligence of the Defendants in Default, and that the Plaintiff has offered testimony and presented evidence in support of same.

#### CONCLUSIONS OF LAW

1. "[B]y suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and have conceded liability." Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 319 (Ct. App. 2004) (quoting Roche v. Young Bros., 332 S.C. 75, 81 (1998)). Therefore, since the Defendants in Default have been entered into Default by this Court, all of the Plaintiff's factual allegations of the Complaint (and all exhibits thereto) relating to their liability as well as all causes of action directed at the Defendants in Default must be taken as

true. Additionally, it appears to this Court that by a preponderance of the evidence, the Defendants in Default proximately caused the injuries and damages to the Plaintiff set forth above.

2. Finding that the essential elements of Plaintiff's claim for negligent conduct has been established as to the Defendants in Default, the Court now addresses the amount of damages to fairly compensate the Plaintiff for the injuries suffered. As set forth above, the evidence shows that the Plaintiff was injured as a result of Defendants' conduct. As such, this Court concludes that the Plaintiff's injuries, the attendant pain and suffering, and the Plaintiff's incurring medical expenses for past and future treatment all result from the Defendants in Default's negligence.

3. "The purpose of actual or compensatory damages is to compensate a party for injuries suffered or losses sustained. The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position her or she was in before the wrongful injury occurred." Clark v. Cantrell, 339 S.C. 369, 378 (2000).

4. The Plaintiff, a minor, has incurred medical expenses totaling \$85,153.00. K.B.'s guardian, Anna Angelacci, is responsible for these charges and the future expenses until he is eighteen (18) years old.

5. The South Carolina Supreme Court has held as follows regarding future damages: "an injured party may also recover for such future damages as it is reasonably certain will of necessity result from the injury received. The principal underlying compensation for future damages is that only one action can be brought, and, therefore, only one recovery had. It is proper to include in the estimate of future damages compensation for pain and suffering which will with reasonable certainty result." Boan v. Blackwell, 343 S.C. 498, 500 (2001).

6. Plaintiff is also entitled to damages for "loss of enjoyment of life" and "pain and suffering." See Boan v. Blackwell, 343 S.C. 498, 499 (2001). These are two separately compensable elements of damages. See, id. "Pain and suffering compensates the plaintiff for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself." Id. at 501-502. Damages for loss of enjoyment of life, "compensate for the limitations, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activity of daily life, or for the individual's ability to pursue his talents, recreational interests, hobbies, or avocations." Id. at 502. Recovery for mental suffering is also recoverable. Holtzsoeiter v. Thompson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998). There is no definite standard by which to compensate a Plaintiff for loss of enjoyment of life, pain and suffering, and mental suffering. The Court must award damages that are just and reasonable in light of the testimony and evidence presented.

7. Given the foregoing, a preponderance of the evidence convinces this Court that the injuries and damages sustained by the Plaintiff were a direct and proximate result of the negligence of the Defendants in Default and that the amounts reasonably required to fairly and justly compensate the Plaintiffs for actual and noneconomic damages are as follows:

BASED UPON THE FOREGOING,

IT IS ORDERED, ADJUDGED and DECREED that the Plaintiff Anna Angelacci should be, and is hereby awarded judgment against Defendants Travis Felkel and Ginger Ulery, jointly and severally, in the total amount of \$150,000.

IT IS ORDERED, ADJUDGED and DECREED that the Plaintiff K.B. should be, and is hereby awarded judgment against Defendants Travis Felkel and Ginger Ulery, jointly and severally, in the total amount of \$5,000,000.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Clerk of this Court shall enter judgment in the foregoing amount against Travis Felkel and Ginger Ulery in the Judgment Rolls of Berkeley County, South Carolina.

AND IT IS SO ORDERED.

  
Clayton B. McCullough Esquire  
Special Referee  
Ninth Judicial Circuit

DATE: 4-23-15  
Charleston, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-08-2494

ANNA ANGELACCI, as guardian of K.B., a minor,

E.U., a minor, Travis O. Felkel, and Ginger  
G. Ulery

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David B. Yarborough, Jr.

Attorney for: ☒ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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: A Guardian ad Litem now having been appointed and appeared at the Default Judgment hearing for [REDACTED] a minor over the age of fourteen, I adopt the findings of fact and conclusions of law set forth in my Order of Default Judgment Against Travis Felkel and Ginger Ulery signed on April 23, 2016, and for the same reasons, enter judgment against [REDACTED] in the amount \$5,150,000. The Defendants Travis Felkel, Ginger Ulery and [REDACTED] are now jointly and severally responsible for the entire judgment.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Anna Angelacci                               | [REDACTED]                               | \$150,000.00                                             |
| K.B., a minor                                | [REDACTED]                               | \$5,000,000.00                                           |
|                                              |                                          | \$                                                       |

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 by the court.

SCRPC Form 4C (03/2013)



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.

*Art B. McElroy*  
Circuit Court Judge  
*Squid Return*

Judge Court

6-25-15  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 25 day of June, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 25 day of June, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

David B. Yarborough, Jr.

201 East Bay Street, Floor 2

Charleston, S.C. 29401

ATTORNEY(S) FOR THE PLAINTIFF(S)

Shannon P. Jones, as GAL for [REDACTED]

3 State Street

Charleston, SC 29401

ATTORNEY(S) FOR THE DEFENDANT(S)

*Shannon P. Jones*  
CLERK OF COURT

**Court Reporter:**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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**FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE**  
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.  
  
The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.
3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-08-2494

ANNA ANGELACCI, as guardian of K.B., a minor,

E.U., a minor, Travis O. Felkel, and Ginger G. Ulery

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David B. Yarbrough, Jr.

Attorney for: ☒ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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 JUDGMENT 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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Anna Angelacci                               | Travis Felkel and Ginger Ulery           | \$150,000.00                                             |
| K.B., a minor                                | Travis Felkel and Ginger Ulery           | \$5,000,000.00                                           |
|                                              |                                          | \$                                                       |

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

4-29-15

This judgment was entered on the 30 day of 4, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 30 day of 4, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE DEFENDANT(S)  
Manly P. Brown  
 CLERK OF COURT

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\*\*\*\*\*

**FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE**  
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The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.
3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
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6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIB system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



WHEREAS, on April 21, 2015, a damages hearing was held with the Defendants having been given proper notice.

WHEREAS, on April 23, 2015 special referee Clayton B. McCullough ordered a default judgment in the amount of \$5,150,000 in favor of the Plaintiff against Defendants Travis O. Felkel and Ginger G. Ulery.

WHEREAS, now, for good and valuable consideration in the form of Plaintiff's agreement not to immediately execute judgment against the Defendants and to seek satisfaction of the judgment from any party who may be responsible for indemnifying Defendants, the receipt and sufficiency of which is hereby acknowledged, the Plaintiff and Defendants agree as follows:

1. That Plaintiff will stay execution of this judgment until all claims that may be brought by or on behalf of Plaintiff or Defendants related to this incident are resolved by a settlement or verdict or otherwise resolved or abandoned.

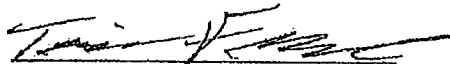
2. That if and when, and only if and when, Defendants' insurance carrier, agent, or any other responsible party pays and satisfies to the agreement of Plaintiff the judgment against the Defendants, Plaintiff will mark any judgment as satisfied and agree never to enforce, execute, or levy upon Defendants' personal assets for any judgment.

3. Whereas, the Defendants believe they have causes of action against Nationwide, the John Herndon Nationwide Agency, and/or their employees or affiliated companies for the financial harm and judgment caused by the following acts and/or omissions:

- a. failure to provide coverage for the acts alleged in the underlying tort complaint;

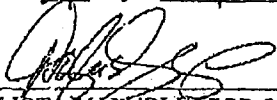
- b. failure to provide a defense for the acts alleged in the underlying tort complaint and protect its insured from financial harm;
- c. failure to notify its insureds that it was not defending the lawsuit;
- d. failure to comply with their contractual duties with and duty of good faith and fair dealing to the insured;
- e. failure of the insurance agent to properly handle receipt of the Summons and Complaint and properly advise the Defendants.

4. Therefore, the Defendants hereby assign and transfer all claims or causes of action, which are now possessed by the Defendants arising from the above-described events against any party, to the Plaintiff who shall have the right to prosecute the same to satisfy the judgment that is held against the Defendants and to collect all other actual and punitive damages and attorneys' fees that the Defendants may have a right to claim (1) against any and all parties as a result of the judgment entered against them in the above-captioned case (2) as to any other matters related to the claim which resulted in the judgment being entered against the Defendants, and (3) for any claims that may arise out of any liability insurance coverage for the Defendants, and their relationship to the insurance agency or sales agent and carriers. Execution of this assignment shall bestow upon Plaintiff each and every right presently, or in the future, held by the Defendants arising from these claims, including the right to prosecute any action against any party in the name of the Defendants. The Defendants have an ongoing obligation to cooperate with counsel for the Plaintiff by providing truthful information concerning any and all communications they have had with Nationwide, its agents or affiliates related to these claims and to make themselves available to give sworn testimony by Affidavit, in deposition and at trial.

  
Travis O. Felkel

\_\_\_\_\_  
Ginger G. Ulery

SWORN TO AND SUBSCRIBED before me  
this 24<sup>th</sup> day of April, 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 10/24/21

Travis O. Felkel  
Travis O. Felkel

Ginger G. Ulery  
Ginger G. Ulery

SWORN TO AND SUBSCRIBED before me  
this 24<sup>th</sup> day of April, 2015.

[Signature]  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 10/24/21

SWORN TO AND SUBSCRIBED BEFORE ME  
this 4<sup>th</sup> DAY OF MAY, 2015

Edward Langford  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires 9/7/2017

Anna Angelacci  
Anna Angelacci

SWORN TO AND SUBSCRIBED before me  
this 25 day of June, 2015.

Michelle Hooper  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 10/16/16



made a copy of the lawsuit and said he would forward it to Nationwide for claims handling. No defense counsel appeared on behalf of the Defendant E.U., the Complaint was not timely answered, and an Entry of Default was ordered on February 4, 2015.

WHEREAS, on April 21, 2015, a damages hearing was held with the Defendants having been given proper notice.

WHEREAS, on June 8, 2015 Special Referee Clayton B. McCullough ordered appointment of Shannon P. Jones, Esquire, to serve as guardian ad litem for E.U.

WHEREAS on June 25, 2015 Special Referee Clayton B. McCullough ordered that the default judgment in the amount of \$5,150,000 be entered in favor of the Plaintiffs against Defendants Travis O. Felkel and Ginger G. Ulery on April 23, 2015 was jointly and severally to also be entered against E.U. a minor.

WHEREAS, now, for good and valuable consideration in the form of Plaintiffs' agreement not to immediately execute judgment against the Defendant E.U. and to later, upon satisfaction of the judgment, to mark it as satisfied, the receipt and sufficiency of which is hereby acknowledged, the Plaintiffs and Defendant E.U., through and by his guardian ad litem, agree and contract as follows:

1. That Plaintiffs will stay execution of this judgment until all claims that may be brought by or on behalf of Plaintiff or Defendants related to this incident are resolved by a settlement or verdict or otherwise resolved or abandoned in a manner that is satisfactory to Plaintiff.
2. That if and when, and only if and when, Defendant's insurance carrier, agent, or any other responsible party pays and satisfies the judgment plus any applicable accumulated

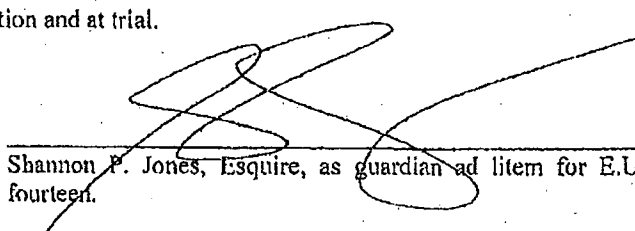
interest, costs and fees against the Defendant, Plaintiffs will mark any judgment as satisfied and agree never to enforce, execute, or levy upon Defendant's personal assets for any judgment.

3. Whereas, the GAL for the Defendant believes there exist causes of action against Nationwide, the John Herndon Nationwide Agency, and/or their employees or affiliated companies for the financial harm and judgment caused by the following acts and/or omissions:

- a. failure to accept that it should provide coverage for the acts alleged in the underlying tort complaint;
- b. failure to provide a defense for the acts alleged in the underlying tort complaint and protect its insured from financial harm;
- c. failure to notify its insureds that it was not defending the lawsuit;
- d. failure to comply with their contractual duties with and duty of good faith and fair dealing to the insured;
- e. failure of the insurance agent to properly handle receipt of the Summons and Complaint and properly advise the Defendant.

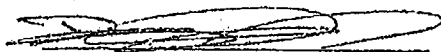
4. Therefore, the GAL for minor Defendant hereby assigns and transfer all claims or causes of action, of which are now possessed by the Defendant E.U. arising from the above-described events against any party, to the Plaintiffs who shall have the right to prosecute the same to satisfy the judgment that is held against the Defendant and to collect all other actual and punitive damages and attorneys' fees that the Defendant may have a right to claim (1) against any and all parties as a result of the judgment entered against them in the above-captioned case (2) as to any other matters related to the claim which resulted in the judgment being entered against the Defendant and (3) for any claims that may arise out of any liability insurance coverage for the Defendant, and their relationship to the insurance agency or insurance agent and

carriers. Execution of this assignment shall bestow upon Plaintiffs each and every right presently, or in the future, held by the Defendant E.U. arising from these claims, including the right to prosecute any action against any party in the name of E.U., either independently, through his GAL or the assignee, to retain the proceeds of any and all verdicts or settlements and to fully release and all claims against any party. The Defendant E.U. and his GAL have an ongoing obligation to cooperate with counsel for the Plaintiffs by providing truthful information related to these claims and to make themselves available to give sworn testimony by Affidavit, in deposition and at trial.



Shannon P. Jones, Esquire, as guardian ad litem for E.U. a minor over the age of fourteen.

SWORN TO AND SUBSCRIBED before me  
this 25 day of June, 2015.



NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 2023

Anna Angelacci  
Anna Angelacci, as Guardian for K.B., a minor over the age of fourteen,

SWORN TO AND SUBSCRIBED before me  
this 25<sup>th</sup> day of June, 2015.

Michelle Hester  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 10/16/16

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY )

Civil Action No. 2015-CP-08-1759

Anna Angelacci, individually and as )  
guardian of K.B., a minor over the age of )  
fourteen, as assignee of Travis Felkel, )  
Ginger Ulery and E.U., a minor over the age )  
of fourteen, by his Guardian ad Litem )  
Shannon P. Jones, )

Plaintiff, )

vs. )

John T. Herndon, III, Herndon Insurance )  
Agency, Inc., and Nationwide Mutual Fire )  
Insurance Company, )

Defendants. )

**AMENDED ANSWER AND  
COUNTERCLAIM OF NATIONWIDE  
MUTUAL FIRE INSURANCE COMPANY**

The Defendant Nationwide Mutual Fire Insurance Company ("NMFIC"), answering the Complaint of the Plaintiffs, would show to the Court:

**FOR A FIRST DEFENSE**  
(Response to Plaintiffs' "Summary of the Case")

1. In response to Plaintiffs' "Summary of the Case," Defendant would respectfully show that this "section" of Plaintiffs' Complaint violates the provisions of Rule 8(a) and (e), South Carolina Rules of Civil Procedure, in that this "summary" does not meet the requirement of "short and plain statement(s) of the grounds, including facts and statutes upon which the Court's jurisdiction depends..." and is not a "short and plain statement of the facts showing that the pleader is entitled to relief" as required under Rule 8(a), nor does this "summary" comply with the provisions of Rule 8(e) requiring "each averment of a pleading [2] be simple, concise and direct." Defendant would respectfully object to any attempt by Plaintiffs to read or otherwise disclose this section of the Complaint to the jury as it contains redundant, immaterial and

TPGL 6578851v1/TPGL 6634616v1

impertinent allegations. Subject to the foregoing objection, Defendant denies that this section of the Complaint accurately and fully sets forth the facts of this matter and, therefore, denies same, demanding strict proof thereof.

**FOR A SECOND DEFENSE**  
(**"Failure to State a Claim for Relief"**)

2. Each and every allegation of the preceding defense not inconsistent herewith is re-alleged and adopted for purposes of this defense.

3. Defendant alleges that the Complaint fails to state facts sufficient to constitute claims for relief against this Defendant and that Defendant is entitled to dismissal of the Complaint as a matter of law pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure, and other applicable legal authorities.

**FOR A THIRD DEFENSE**  
(**"Jurisdiction and Venue"**)

4. Each and every allegation of the preceding defenses not inconsistent herewith is re-alleged and adopted for purposes of this defense.

5. Admits the allegations of Paragraph 1 of the Complaint.

6. Admits so much of Paragraph 2 of the Complaint as alleges that Defendant Herndon is a resident of this State and, for a portion of the relevant time period alleged by Plaintiffs in this Complaint was an employee of Defendant Herndon Insurance Agency, Inc. as an insurance agent for Nationwide Mutual Fire Insurance Company, as the company that issued the policy at issue in this action.

7. Admits on information and belief so much of Paragraph 3 of the Complaint as alleges that "Herndon Insurance Agency, Inc." is a corporation organized and existing under the laws of the State of South Carolina and was located in Charleston, South Carolina.

8. Defendant admits so much of Paragraph 4 of the Complaint as alleges that Defendant Nationwide Mutual Fire Insurance Company was and is duly authorized to transact insurance business in the State of South Carolina, including, the issuance of the homeowners insurance policy allegedly at issue in this case. The remaining allegations of Paragraph 4 as pertain to this Defendant is denied.

9. Paragraph 5 of the Complaint sets forth matters of law as to which no response is required from this Defendant. To the extent a response is required, however, those allegations are denied.

**FOR A FOURTH DEFENSE**

("Bad Faith")

10. Each and every allegation of the preceding defenses not inconsistent herewith is re-alleged and adopted for purposes of this defense.

11. In response to the allegations of Paragraph 6 of the Complaint, Defendant adopts and reiterate its response to Plaintiffs' "Summary of the Case" and Paragraphs 1 through 5 as set out above as fully as if repeated verbatim herein.

12. In response to Paragraph 7 of the Complaint, Defendant would show that Nationwide Mutual Fire Insurance Company issued a policy of homeowners insurance no. 6139HO 708143, with the named insured being Travis O. Felkel, 339 Holly Avenue, Goose Creek, South Carolina 29445-3051. By way of further response to Paragraph 7 of the Complaint, Defendants would respectfully show that the policy was issued through John T. Herndon, Suite A, 1200 Sam Rittenberg Blvd., Charleston, SC with effective dates of August 10, 2014, to August 10, 2015.

13. By way of response to Paragraph 8 of the Complaint, Defendant would allege that it has insufficient information upon which to base a belief as to the truth or falsity of the

allegations of Paragraph 8 alleging that proper service of the "underlying Berkeley County lawsuit" was had on the "Ulery-Felkel family" on December 2, 2014, and, therefore, denies same, demanding strict proof thereof. Further responding to Paragraph 8, Defendant would crave reference to the allegations of the "underlying Berkeley County lawsuit" for its contents.

14. In response to Paragraph 9 of the Complaint, Defendant would show, on information and belief, that Felkel took the suit papers in the underlying Berkeley County suit to the office of Defendant Herndon sometime after Felkel obtained a copy of those papers.

15. Defendant denies the allegations of Paragraph 10 of the Complaint.

16. The allegations of Paragraph 11 of the Complaint state legal conclusions as to which no response is required from the Defendant. However, to the extent as response is required, this Defendant denies the allegations of Paragraph 11 of the Complaint and demands strict proof thereof.

17. Defendant denies the allegations of Paragraph 12 of the Complaint.

18. Defendant denies the allegations of Paragraph 13 of the Complaint.

19. The allegations of Paragraph 14 of the Complaint set out conclusions of law as to which no response is required from this Defendant. To the extent a response is required, the allegations of Paragraph 14 are denied.

**FOR A FIFTH DEFENSE**  
(Breach of Contract)

20. Each and every allegation of the preceding defenses not inconsistent herewith is re-alleged and adopted for purposes of this defense.

21. In response to Paragraph 15 of the Complaint, Defendant adopts and reiterates its response to Plaintiffs' "Summary of the Case" and Paragraphs 1-14 above as fully as if set forth verbatim herein.

22. In response to Paragraph 16 of the Complaint, Defendant would respectfully crave reference to the revisions of Nationwide Mutual Fire Insurance Company policy no. 6139HO 708143 (Exhibit 1) for its terms and provisions and denies the allegations of Paragraph 16 of the Complaint as written.

23. In response to the allegations of Paragraph 17 of the Complaint, Defendant craves reference to the homeowners policy in questions for its terms, conditions and provisions. By way of further response to Paragraph 17, Defendants do not deny that Travis O. Felkel, the named insured, paid the necessary policy premiums to keep the homeowners' policy at issue in force, but Defendant denies that the insured "fully performed and delivered" his/their obligations under the policy at issue and once again craves reference to that policy for its terms, provisions and conditions.

24. Defendant denies the allegations of Paragraph 18 of the Complaint.

25. Defendant denies the allegations of Paragraph 19 of the Complaint.

26. In response to Paragraph 20 of the Complaint, Defendant would crave reference to the public records of Berkeley County, South Carolina, as well as all documents pertinent to the underlying Berkeley County lawsuit. By way of further response to Paragraph 20 of the Complaint, Defendant would respectfully show upon information and belief that any and all judgments rendered against the "Ulery-Felkel family" are, as a legal matter, null and void as a matter of law.

**FOR A SIXTH DEFENSE**  
(**"Negligence/Professional Negligence"**)

27. Each and every allegation of the preceding defenses not inconsistent herewith is re-alleged and adopted for purposes of this defense.

28. Defendant denies the allegations of Paragraph 21 of the Complaint.

29. Defendant denies the allegations of Paragraph 22 of the Complaint.
30. Defendant denies the allegations of Paragraph 23 of the Complaint.
31. Defendant denies the allegations of Paragraph 24 of the Complaint.

**FOR A SEVENTH DEFENSE**  
(Declaratory Judgment and Attorneys' Fees)

32. Each and every allegation of the preceding defenses not inconsistent herewith is re-alleged and adopted for purposes of this defense.

33. Defendant denies the allegations of Paragraph 26 of the Complaint.

**FOR AN EIGHTH DEFENSE**  
(Negligent Misrepresentation)

34. Each and every allegation of the preceding defenses not inconsistent herewith is re-alleged and adopted for purposes of this defense.

35. Defendant denies the allegations of Paragraph 28 of the Complaint.

36. Defendant denies the allegations of Paragraphs 29, 30, 31 and 32 of the Complaint.

**FOR A NINTH DEFENSE**  
(Contributory/Comparative Negligence)

37. Each and every allegation of the preceding defenses not inconsistent herewith is re-alleged and adopted for purposes of this defense.

38. Defendant denies that it was negligent, reckless, grossly negligent, willful or wanton as alleged in the Complaint, but, solely for the purposes of alleging this affirmative defense, Defendant alleges that even if it was guilty of such conduct, which conduct is once again denied, Plaintiff's putative assignors were likewise negligent, reckless, grossly negligent, willful and wanton, and the conduct of the Plaintiff's assignors, which is imputed to Assignee, combining and concurring with any such conduct on the part of this Defendant, which is once

again denied, in proximately causing the injuries and damages, if any, incurred by Plaintiff's assignors and purportedly assigned to Plaintiff. The contributory conduct of Plaintiff's assignors, imputed to the Plaintiff, when compared to that of this Defendant, exceeded Defendant's conduct both in kind and degree, the Plaintiff's contributory conduct acting as an absolute bar to any recovery in this action.

**FOR A TENTH DEFENSE**  
(Plaintiff's Breach of Contractual Terms)

39. Each and every allegation of the preceding defenses not inconsistent herewith is realleged and adopted for the purposes of this defense.

40. Defendant would show that Plaintiff's assignors, whose conduct is imputed to Plaintiff, failed to comply with their obligations under the Policy to provide necessary information to Defendant in this matter, including, but not limited to, failure to follow the specific instructions of Defendant Herndon to properly report the facts and claims in the underlying Berkeley County lawsuit to Defendant's claims department; failure to notify Defendant Herndon or Nationwide that they had failed to follow Defendant Herndon's specific instructions concerning the claim; failing to provide Defendant with any notice whatsoever that Plaintiffs had failed to protect his interests or those of Defendant in the lawsuit, despite Felkel having consulted legal counsel, and had allowed the lawsuit to not only go into default; failing to notify Defendant upon receipt of the notice of entry of default; failure to notify Defendant of the hearing on the default judgment; and failing to take any actions whatsoever following the entry of judgment to notify Nationwide in a timely manner of the existence of the default judgment; and in such other particulars as may be ascertained from a review of the terms, conditions and provisions of the Policy.

**FOR AN ELEVENTH DEFENSE**

41. Each and every allegation of the preceding defenses not inconsistent herewith is realleged and adopted for the purposes of this defense.

42. Defendant pleads the doctrine of laches as a defense to this action.

**FOR A TWELFTH DEFENSE**

(Waiver and Estoppel)

43. Each and every allegation of the preceding defenses not inconsistent herewith is realleged and adopted for the purposes of this defense.

44. Defendant pleads the doctrines of waiver and estoppel as a complete defense to this action.

**FOR A THIRTEENTH DEFENSE**

(Unclean Hands)

45. Each and every allegation of the preceding defenses, not inconsistent herewith, is realleged and adopted for the purposes of this defense.

46. Defendant pleads the doctrine of unclean hands as a complete defense to this action.

**FOR A FOURTEENTH DEFENSE**

(Breach of Implied Covenant of Good Faith)

47. Each and every allegation of the preceding defenses, not inconsistent herewith, is realleged and adopted for the purposes of this defense.

48. Defendant would show that Plaintiff, through her assignors, breached the covenant of good faith and fair dealing implied in the underlying contract of insurance.

**FOR A FIFTEENTH DEFENSE**

(Invalidity of Assignments)

49. Each and every allegation of the preceding defenses not inconsistent herewith is realleged and adopted for the purposes of this defense.

50. Defendant alleges that the purported assignments of putative claims against Defendants by Plaintiff's assignors are invalid as a matter of law.

**FOR A SIXTEENTH DEFENSE**  
(Failure to Mitigate Damages)

51. Each and every allegation of the preceding defenses not inconsistent herewith is realleged and adopted for the purposes of this defense.

52. Defendant would show that Plaintiff, through their assignors, failed to mitigate their alleged damages.

**FOR A SEVENTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM**  
(Declaratory Judgment)

53. Nationwide Mutual Fire Insurance Company, seeking a declaratory judgment against the Plaintiff pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.*, and Rule 57 of the *South Carolina Rules of Civil Procedure*, would respectfully show unto this Court as follows:

54. Nationwide seeks declaratory relief herein respecting an insurance contract made and to be performed in Berkeley County, South Carolina. Plaintiff and Plaintiff's purported assignors are residents of Berkeley County, South Carolina. The property allegedly insured under the insurance contract is located in Berkeley County, South Carolina.

55. Nationwide Mutual Fire Insurance Company issued homeowners policy number 61 39 HO 708143 (the "Policy") to Travis O. Felkel with a policy period of August 10, 2014 to August 10, 2015. (attached as Exhibit A).

56. On or about November 10, 2014, Plaintiff filed a lawsuit in the Berkeley County Court of Common Pleas against Travis Felkel, Ginger Ulery, and E.U., a minor at civil action

number 2014-CP-08-2494 ("Underlying Suit"). A copy of the Complaint from the Underlying Suit was attached to Plaintiff's Complaint in this action as Exhibit A.

57. The Underlying Suit involves allegations of acts or omissions that took place on September 8, 2014 which was within the policy period of the Policy.

58. Travis O. Felkel is the named insured under the Policy and Ginger Ulery and E.U. purport to be "Insureds" as defined in the Policy by virtue of their residence at the premises insured under the Policy and Ginger Ulery's purported marriage to Travis O. Felkel.

59. The Underlying Suit arises from an assault and battery committed by minor E.U. against K.B., the minor plaintiff in the Underlying Suit.

60. The insuring clause for the Personal Liability coverage (Coverage E) in the Policy provides:

We will pay damages an **insured** is legally obligated to pay due to an **occurrence** resulting from negligent personal acts or negligence arising out of the ownership, maintenance, or use of real or personal property. We will provide a defense at our expense by counsel of our choice. We may investigate and settle any claim or suit. Our duty to defend a claim or suit ends when the amount we pay for damages equals our limit of liability. This coverage is excess over other valid and collectible insurance.

61. The Policy defines an "occurrence" as: "bodily injury or property damage resulting from an accident, including continuous or repeated exposure to the same general condition."

62. The Policy further contains exclusions for the Personal Liability coverage that read:

Coverage E – Personal Liability and Coverage F – Medical payments to Others do not apply to bodily injury or property damage:

a) caused intentionally or at the direction of an insured, including willful acts the result of which the insured knows or ought to know will follow from the insured's conduct. This exclusion 1.a) does not apply to corporal punishment of pupils.

b) caused by or resulting from an act or omission which is criminal in nature and committed by an insured.

This exclusion 1.b) applies regardless of whether the insured is actually charged with, or convicted of a crime.

63. The Policy further contains conditions that state:

1. Limits of Liability. Our total liability under Coverage E for all damages resulting from one occurrence will not exceed the limit for Coverage E shown on the Declarations. This is true regardless of the number of insureds, claims made or persons injured.

3. Duties after Loss. In case of a loss, you must perform the following duties. You must cooperate with us in seeing that these duties are performed.

a) give notice to us or our agent as soon as practicable setting forth:

- (1) Identity of the policy and insured
- (2) time, place, and facts of the accident or occurrence.
- (3) names and addresses of the claimants and witnesses

b) immediately forward to us every document relating to the accident or occurrence.

c) at our request, assist in:

- (3) conducting suits, and attending hearings and trials.

64. That the allegations asserted in the Underlying Suit do not describe any covered losses under the Policy.

65. That even if the allegations asserted in the Underlying Suit do describe a covered loss under the Policy, that such losses are excluded by the terms of the Policy.

66. That even if the allegations asserted in the Underlying Suit do describe a covered loss under the Policy, Travis Felkel, E.U., (the "Insureds") failed to meet the required conditions of the Policy including providing timely notice of the loss, cooperating with Nationwide in the conduction of the defense, and immediately forwarding every document relating to the loss to

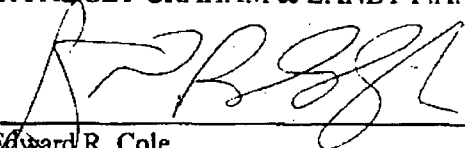
Nationwide which has prejudiced Nationwide. Specifically, the Insureds failed to provide notice of the loss to Nationwide, failed to notify Nationwide of the Underlying Suit, failed to provide Nationwide with notice of an entry of default, failed to provide Nationwide with notice of a damages hearing, and failed to provide Nationwide with notice of the default judgment.

67. That even if the allegations in the Underlying Suit do describe a covered loss under the Policy that is not excluded, Nationwide's duty to indemnify for monetary damages arising out of the Underlying Suit is limited to the policy limits of \$100,000.

WHEREFORE, Defendants, having answered the Complaint of the Plaintiff, pray that the same be dismissed; for the costs of this action; and for such other and further relief as to the Court may seem just and proper. Additionally, Defendant Nationwide prays for an Order from the Court pursuant to S.C. Code Ann. § 15-53-10 et seq., and Rule 57 of the South Carolina Rules of Civil Procedure declaring that the allegations asserted in the Underlying Suit are not covered under Nationwide Mutual Fire Insurance Company Policy number 61 39 HO 708143, or alternatively such losses are excluded by the terms of the policy, or alternatively that the insureds have violated the conditions set forth in the policy, and that Nationwide Mutual Fire Insurance Company has no duty to defend or indemnify Travis O. Felkel, Ginger Ulery, or E.U. under this policy with respect to the Underlying Suit.

TURNER PADGET GRAHAM & LANEY P.A.

By:

  
Edward R. Cole

[ecole@turnerpadget.com](mailto:ecole@turnerpadget.com)

David R. Sligh

[dsligh@turnerpadget.com](mailto:dsligh@turnerpadget.com)

P.O. Box 2116

Myrtle Beach, South Carolina 29578

Telephone: (843) 213-5500

Fax: (843) 213-5555

ATTORNEYS FOR DEFENDANT

NATIONWIDE MUTUAL FIRE INSURANCE  
COMPANY

January 6, 2016

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-C0-08-1759

Anna Angelacci, individually and as )  
guardian of K.B., a minor over the age of )  
fourteen, as assignee of Travis Felkel, )  
Ginger Ulery and E.U., a minor over the age )  
of fourteen, by his Guardian ad Litem )  
Shannon P. Jones, )

Plaintiff, )

vs. )

John T. Herndon, III, Herndon Insurance )  
Agency, Inc., and Nationwide Mutual Fire )  
Insurance Company, )

Defendants. )

**CERTIFICATE OF MAILING**

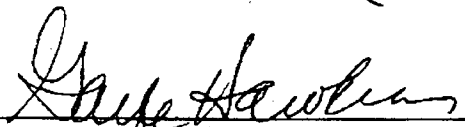
This is to certify that copies of the below-listed documents have been served upon counsel of record, by placing same in the United States mail, first class postage prepaid, on this 6<sup>th</sup> day of January, 2016, and addressed as shown below:

**Document(s) Served:**

1. Summons to Counterclaim; and
2. Amended Answer and Counterclaim of Nationwide Mutual Fire Insurance Company

**Addressed to:**

David B. Yarborough, Esquire  
Yarborough Applegate  
291 East Bay St., Floor 2  
Charleston, SC 29401

  
Gayle Hawkins

TPGL 6701703v1

# Turner | Padget

David R. Sligh

REPLY TO:

E-Mail: DSligh@TurnerPadget.com  
Writer's Direct Dial: (843) 213-5519  
Writer's Direct Fax: (843) 213-5619

January 6, 2016

The Hon. Mary Brown  
Berkeley County Clerk of Court  
P.O. Box 219  
Moncks Corner, SC 29461

Re: Anna Angelacci, etc., et al. v. John T. Herndon Insurance Agency, Inc.  
and Nationwide Mutual Fire Insurance Company  
C.A. No. 2015-CP-08-1759  
Court of Common Pleas for Berkeley County  
Our Matter # 00490.01477

Dear Mrs. Brown:

Enclosed are the original and one copy of the following:

- (1) Summons to Counterclaim;
- (2) Amended Answer and Counterclaim of Nationwide Mutual Fire Insurance Company; and
- (3) Certificate of Mailing.

Please file the originals of these documents and return the copies file-stamped in the envelope provided.

With kind regards,

Yours very truly,

David R. Sligh

DRS:gh  
Enclosures

cc: David B. Yarborough, Jr., Esquire (w/Enclosures)



**YARBOROUGH  
APPLEGATE**  
ATTORNEYS AT LAW

[david@yarboroughapplegate.com](mailto:david@yarboroughapplegate.com)

June 15, 2015

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ms. Ginger Ulery  
339 Holly Ave.  
Goose Creek, SC 29445

Re: *Anna Angelacci as guardian of K.B., a minor v. E.U. a minor, Travis O Felkel  
and Ginger G. Ulery*  
Case No.: 2014-CP-08-2494

Dear Ms. Ulery-Felkel:

Enclosed please find a Motion for Default Judgment and Notice of Hearing in the above-referenced matter. Please note a hearing has been scheduled in this matter for June 25, 2015 at 10:00 a.m. at the office of Clayton McCullough, 359 King Street, Ste 200, Charleston, South Carolina. Should you have any questions or concerns please feel free to contact me.

With kind regards, I am

Sincerely,

Michelle Helscher,  
Paralegal to David B. Yarborough, Jr.

Enclosures as stated

291 East Bay Street / Floor 2 / Charleston, SC 29401 / Phone: 843.972.0150 / Fax: 843.277.6691  
[www.yarboroughapplegate.com](http://www.yarboroughapplegate.com)

COUNTY OF BERKELEY

Plaintiff,

**vs.**

**Defendants.**

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-08-2494

**MOTION FOR DEFAULT  
JUDGMENT AGAINST E.U., A MINOR  
OVER THE AGE OF FOURTEEN AND  
NOTICE OF HEARING**

TO: E.U. A MINOR AND HIS GUARDIAN AD LITEM SHANNON JONES; TRAVIS  
FELKEL; AND GINGER ULERY

The Plaintiffs, by and through their undersigned attorneys, hereby move the Special Referee of the Berkeley County Court of Common Pleas for an Order of Default Judgment against E.U., a minor over the age of fourteen, who has now been appointed a Guardian ad Litem, pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. The Entry of Default against E.U., which was entered by this court on February 4, 2015, and a damages hearing, was held on April 21, 2015 at which time judgment against E.U. was reserved until a Guardian ad Litem could be appointed for E.U. due to the fact that he is a minor over the age of fourteen. On June 8, 2015 a Guardian ad Litem was appointed by this court and Plaintiffs now request judgment be entered against E.U.

Plaintiffs also hereby give notice to Defendants that a hearing on this matter will occur at the office of Clayton B. McCullough, Special Referee for Berkeley County, located at 359 King Street, Ste. 200, Charleston, South Carolina on June 25, 2015 at 10:00 a.m.

A copy of this Notice and Motion has been served upon Shannon Jones, the Guardian ad Litem for E.U., as well as his co-defendants and parents Travis Felkel and Ginger Ulery.

Yarborough Applegate LLC  
291 East Bay Street, Floor 2  
Charleston, SC 29401  
843-972-0150 office  
843-277-6691 fax

  
David B. Yarborough, Jr., Esquire  
Douglas E. Jennings, Esquire

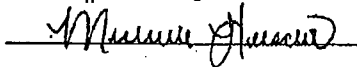
*Attorneys for the Plaintiff*

June 9, 2015  
Charleston, South Carolina

**CERTIFICATE OF SERVICE**

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 9th day of June, 2015



## CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 17, 2016



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Attorneys for Appellant

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Clayton B. McCullough, Esquire, Special Referee

Case No.: 2016-000063

**RECEIVED**

AUG 19 2016

SC Court of Appeals

Ex parte: Nationwide Mutual Fire Insurance Company..... Appellant

In Re: Anna Angelacci, as guardian of K.B., a minor.....Respondent

v.

E.U., a minor, Travis O. Felkel, and Ginger G. Ulery.....Defendants

**PROOF OF SERVICE OF RECORD ON APPEAL**

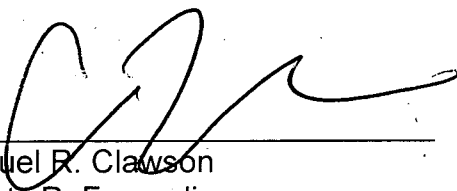
I certify that I have served the Record on Appeal on Respondent and Defendants above-named by depositing a copy of it in the United States Mail, postage prepaid, on August 18, 2016, addressed to their attorneys of record:

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