

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM JASPER COUNTY  
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

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Case No. 2013-CP-27-577

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Mary Wiggins, as Personal  
Representative of Kelvin  
Marquise Wiggins,

Appellant,

v.

Enterprise Leasing Company –  
South East, LLC

Respondent.

---

RECORD ON APPEAL

---

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Attorneys for Appellant

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SC Court of Appeals

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF JASPER )  
 )  
 Mary Wiggins, as Personal Representative )  
 of Kelvin Marquise Wiggins, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Enterprise Leasing Company- )  
 SouthEast LLC, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 DOCKET NO.: 13-CP-27-577

ORDER

This matter is before the Court on Enterprise Leasing Company—SouthEast, LLC’s (“Defendant Enterprise”) motion for summary judgment. The Court heard oral argument on August 13, 2015. Defendant Enterprise supported their motion with written memoranda. Plaintiff filed memoranda in opposition. After hearing oral argument from counsel and reviewing the parties’ submissions, the Court hereby grants summary judgment to Defendant Enterprise and dismisses with prejudice this case in its entirety.

**Legal Standard**

A court should grant a motion for summary judgment when it is apparent that “there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Rule 56, SCRPC. When a court rules on a motion for summary judgment, the evidence and the inferences reasonably to be drawn from that evidence must be viewed in a light most favorable to the non-moving party. Id. However, a party bearing the burden of proof on a particular claim must factually support each element of that claim and a “complete failure of proof concerning an essential element [of that claim] necessarily renders all other facts immaterial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 320 (1986).

TPGL 6612976v1

**POSTED**  
DATE 10-8-15

### Findings of Facts

On October 5, 2011 Kelvin Marquise Wiggins was the driver of Defendant Enterprise's rental vehicle traveling southbound on Deerfield Road in Hardeeville, South Carolina. An unknown, John Doe, driver passed Wiggins's vehicle in the northbound lane of Deerfield Road and fired several shots into Wiggins's vehicle, striking Wiggins in the head. Wiggins died as a result of the gunshot wound. Approximately a week before the incident, Shala Kelly rented the vehicle driven by Wiggins from the Enterprise Rental branch located in Bluffton, South Carolina. Enterprise Leasing Company owned the vehicle. Kelly signed an Enterprise Rental Agreement that reflects no additional authorized drivers are permitted without the owner's written approval. Moreover, Kelly did not request Enterprise's permission to allow additional drivers. She understood she was not allowed to give other drivers permission to operate the vehicle. However, Kelly gave the vehicle to her cousin Travis Wiggins. Travis Wiggins then gave the vehicle to Kelvin Marquis Wiggins. The owner did not give Kelvin Marquis Wiggins permission to use the vehicle.

### Applicable Law

Defendant Enterprise is a self-insured company pursuant to S.C. Code Ann. § 56-9-60. As a self-insured company, Enterprise provides the minimum liability limits required by § 38-77-140 on each vehicle it owns and leases to customers. A self-insurer holds a dual role as insurer and insured. *Collins Cadillac, Inc. v. Bigelow-Sanford, Inc.*, 276 S.C. 465, 467, 279 S.E.2d 611, 612, 1981 S.C. LEXIS 388, 3 (S.C. 1981). The burden is on the party seeking coverage to establish that permission was given by the named insured. *Liberty Mutual Insurance Company and S & S Leasing d/b/a/ Holiday Rent A Car v. Lisa G. Edwards, et al.*, 294 S.C. 368, 364 S.E.2d 750 (S. C. 1988) (citing *Allstate Insurance Co. v. Federated Mutual Implement and*

*Hardware Insurance Co.*, 251 S.C. 203, 161 S.E.2d 240 (1968)). If the named insured has expressly prohibited a permittee from allowing a third party to operate the vehicle, a third party driver is not a permissive user and therefore not an insured. *Id.* (see also, *Keeler v. Allstate Insurance Co.*, 261 S.C. 151, 198 S.E.2d 793 (1973); *Southern Farm Bureau Casualty Insurance Co. v. Hartford Accident and Indemnity Co.*, 255 S.C. 427, 179 S.E.2d 454 (1971); *Dearybury v. New Hampshire Insurance Co.*, 255 S.C. 398, 179 S.E.2d 206 (1971)). Additionally, S.C. Code Ann. § 38-77-140 mandates liability coverage, including uninsured motorist coverage, but only to insure against “damages arising out of the ownership, maintenance, or use” of a motor vehicle.

**I. Plaintiff failed to establish Kelvin Wiggins was an insured.**

South Carolina law requires the party seeking coverage to establish permission was given, to the operator, by the named insured. *Liberty Mutual Insurance Company and S & S Leasing d/b/a/ Holiday Rent A Car v. Lisa G. Edwards, et al.*, 294 S.C. 368, 364 S.E.2d 750 (S. C. 1988) (citing *Allstate Insurance Co. v. Federated Mutual Implement and Hardware Insurance Co.*, 251 S.C. 203, 161 S.E.2d 240 (1968)). Defendant Enterprise is a self-insured company. See S.C. Code Ann. § 56-9-60 (2015). A self-insurer holds a dual role as insurer and insured. *Collins*, 276 S.C. at 467, 279 S.E.2d at 612. There is no evidence Defendant Enterprise, the named insured, gave Kelvin Wiggins permission to operate the vehicle.

**II. Plaintiff failed to establish the injury arose out of the ownership, maintenance, or use of the automobile.**


South Carolina law mandates liability coverage, including uninsured motorist coverage, but only to insure against “damages arising out of the ownership, maintenance, or use” of a motor vehicle. S.C. Code Ann. § 38-77-140 (2015) South Carolina employs a three-part test for whether an injury arises out of the ownership, maintenance, or use of an automobile. This test requires that:

1. There exists a *causal connection* between the vehicle and the injury; and
2. No act of independent significance breaks the causal link; and
3. The vehicle is being used for transportation at the time of the assault.

*State Farm v. Aytes*, 332 S.C. 30, 502 S.E.2d 744 (1998) (see *Holmes v. Allstate*, 786 F.Supp.2d 1022 (D.S.C. 2009); see also, *State Farm v. Bookert*, 337 S.C. 291, 523 S.E.2d 181 (1999)). The shooting of Kelvin Wiggins by John Doe did not arise out of the ownership, maintenance or use of Defendant Enterprise's vehicle or of the John Doe vehicle. There is no causal connection between Kelvin Wiggins' injury and either vehicle because the vehicles were not an active accessory to the injury. The injury sustained by Wiggins was neither foreseeably identifiable with the normal use of an automobile, nor were the vehicles more than simply the site from which John Doe's wrongful actions emanated and where Wiggins was located when he was injured.

NOW, THEREFORE, Defendant, Enterprise Leasing Company—SouthEast, LLC's Motion for Summary Judgment is granted and all claims are hereby dismissed with prejudice.

AND IT IS SO ORDERED!



The Honorable Carmen T. Mullen  
Presiding Judge  
Fourteenth Judicial Circuit

September 30, 2015  
Beaufort, South Carolina

COUNTY OF JASPER

MARY WIGGINS, as Personal Representative of: KELVIN MARQUISE WIGGINS,

Plaintiff(s)

vs.

Enterprise Leasing Company-SouthEast LLC

Defendant(s)

(Please Print)

Submitted By: DARRELL THOMAS JOHNSON, JR. Address: 300 MAIN STREET/P. O. BOX 1125 HARDEEVILLE, SC 29927

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 27

577 MARGARET BOSTICK CLERK OF COURT JASPER COUNTY SC 29905

2013 NOV 14 AM 10:06

FILED

SC Bar #:

Telephone #: 843-784-2142

Fax #: 843-784-5770

Other:

E-mail: tdljohnson@hargray.com

NOTE: The cover sheet 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 cover sheet 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)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -CP- -, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Other (799)
Administrative Law/Relief: Reinstatement Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

[Handwritten Signature]

Date: 11-13-13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous

STATE OF SOUTH CAROLINA )

COUNTY OF JASPER )

MARY WIGGINS, as Personal )  
Representative of: )  
KELVIN MARQUISE WIGGINS, )

Plaintiff, )

vs. )

Enterprise Leasing Company-, )  
SouthEast LLC )

Defendant(s). )

) IN THE COURT OF COMMON PLEAS  
) FOURTEENTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO: 2013-CP-27

MARGARET BOSTICK  
CLERK OF COURT  
JASPER COUNTY SC

2013 NOV 14 AM 10:06

FILED

SUMMONS

TO THE DEFENDANT ABOVE NAMED:

You are hereby summoned and required to answer the allegations of the Plaintiff's Complaint, a copy of which is hereby served upon you, and to serve a copy of your answer on the Plaintiff's attorney shown below within thirty (30) days after service hereof, excluding the date of service, and if you fail to do so, then you will be deemed to have admitted the allegations of the Plaintiff's Complaint and the Plaintiff will apply to the Court for the relief requested in the Complaint.

Respectfully submitted.

LAW OFFICE OF DARRELL THOMAS  
JOHNSON, JR. L.L.C.

BY: \_\_\_\_\_

Darrel Thomas Johnson, Jr.  
Warren Paul Johnson  
Post Office Box 1125  
Hardeeville, South Carolina 29927  
843-784-2142 (phone)  
843-784-5770 (facsimile)  
Attorneys for Plaintiff

Dated: November 13, 2013

FILED

2013 NOV 14 AM 10:06

MARGARET BOSTICK  
CLERK OF COURT  
JASPER COUNTY SC

STATE OF SOUTH CAROLINA )  
 COUNTY OF JASPER )  
 MARY WIGGINS, as Personal )  
 Representative of: )  
 KELVIN MARQUISE WIGGINS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Enterprise Leasing Company-, )  
 SouthEast LLC )  
 Defendant(s). )

) IN THE COURT OF COMMON PLEAS  
 ) FOURTEENTH JUDICIAL CIRCUIT  
 ) CIVIL ACTION NO: 2013-CP-27

**COMPLAINT**  
**(DECLARATORY JUDGMENT)**

**TO THE DEFENDANT ABOVE NAMED:**

NOW COMES NOW the Plaintiff, Mary Wiggins, as Personal Representative of: Kelvin Marquise Wiggins, (hereinafter "Plaintiff"), complaining of the Defendant above-named, would respectfully show unto this Honorable Court.

1. That the Defendant is, on information and belief, a corporation organized and existing under the laws of a State other than South Carolina, owning property, doing business, and maintaining agents, in the County of Jasper, State of South Carolina, and issuing self-insurance coverage.
2. That a Third Party contracted with Defendant to provide insurance coverage and provide a rental vehicle for her use.
3. That at all times relevant hereto, the insurance policy or self- insurance- arrangement aforementioned was in full force and effect and all premium payments were current and provided liability insurance for the accident of October 05, 2011, among others to, Kelvin Marquise Wiggins a passenger of the permissive driver.

4. That both prior to and during the trial of the action, the Plaintiff offered to settle the claim for the amount of said policy limits on the required limits in SC, but The Defendants on each and every occasion refused to accept the settlement offer.

5. That the Defendant has refused to pay the amount of its policy limits to the Plaintiff. Additionally, the Defendant has failed and refused to pay the balance of the judgments.

6. That at all times hereinafter mentioned, Defendant Enterprise Leasing Company-SouthEast LLC through it's servants and/or employees investigated, evaluated and adjusted Plaintiffs' claim for losses due, and were doing business in Jasper County, South Carolina and owned contractual property rights in said County and State by virtue of said claim.

7. That by virtue of the insurance policy provisions, Defendant has breached its insurance contract and is indebted to the Plaintiff in the sum of the relevant judgments, or relevant coverage.

8. That a justicible controversy exists.

9. That Plaintiff is informed and believes she is entitled to a determination as to the rights of the parties relative to the aforementioned insurance policy pursuant to S.C. Code 15-53-10, et. Seq., declaring the policy to afford the mandatory liability coverage required in South Carolina.

WHEREFORE, the Plaintiff prays for judgment against the Defendant declaring the policy to afford the mandatory liability coverage required in South Carolina and such other and further relief as the Court deems just and proper, but in no event to exceed the cumulative total of \$75,000.

LAW OFFICE OF DARRELL THOMAS  
JOHNSON, JR. L.L.C.

BY: 

Darrel Thomas Johnson, Jr.

Warren-Paul Johnson

Post Office Box 1125

Hardeeville, South Carolina 29927

843-784-2142 (phone)

843-784-5770 (facsimile)

Attorneys for Plaintiff

Dated: November <sup>13</sup>~~12~~, 2013

STATE OF SOUTH CAROLINA )

COUNTY OF JASPER )

MARY WIGGINS, as Personal )  
Representative of: )  
KELVIN MARQUISE WIGGINS, )

Plaintiff, )

vs. )

Enterprise Leasing Company )  
SouthEast LLC )  
Defendant(s). )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO: 2013-CP-27-

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing *Civil Action Coversheet, Sumons and Complaint* by placing a copy of same on November 13, 2013, in the US Mail, with sufficient postage attached, and addressed as follows:

Enterprise Leasing Company-southeast LLC  
300 Arbor Lake Drive, Suite 1300  
Columbia, SC 29223

Claudia Cartier  
Claudia Cartier  
Legal Assistance.

2013 NOV 14 AM 10:06  
MARGARET BOSTICK  
CLERK OF COURT  
JASPER COUNTY SC

FILED

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF JASPER )  
 )  
 Mary Wiggins, as Personal )  
 Representative of Kelvin Marquise )  
 Wiggins, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Enterprise Leasing Company- )  
 SouthEast LLC, )  
 )  
 Defendant. )  
 )

IN THE COURT OF COMMON PLEAS  
 DOCKET NO.: 13-CP-27-577

ANSWER OF DEFENDANT  
 ENTERPRISE LEASING COMPANY-  
 SOUTHEAST LLC

The Defendant, Enterprise Leasing Company-SouthEast LLC, answers the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. As to the allegations contained in paragraph 1 of the Complaint, the Defendant admits that it is a corporation organized and existing under the laws of a state other than South Carolina, and that it transacts business within the State of South Carolina. However, any remaining allegations of said paragraph are hereby denied.

2. As to the allegations contained in paragraph 2 of the Complaint, the Defendant admits that it contracted with a third party who is neither the Plaintiff nor the Plaintiff's decedent to provide a rental vehicle. However, all remaining allegations of said paragraph are denied.

3. The Defendant denies the allegations contained in paragraph 3 of the Complaint.

4. As to the allegations contained in paragraph 4 of the Complaint, the Defendant admits that the Plaintiff demanded payment of the policy limits on the rental vehicle in which the decedent was, upon information and belief, driving at the time of his death. The Defendant

admits that because the decedent was neither a party to the rental contract for the vehicle, nor was the decedent listed as a permissive driver of the vehicle, the Defendant has denied payment of Plaintiff's demand.

5. The Defendant admits the allegations contained in paragraph 5 of the Complaint as there was no contractual agreement for the decedent to operate the rental vehicle as either a party to the contract or a permissive driver of the rental vehicle. Therefore, the Plaintiff has no legal or equitable right to receive policy limits on the vehicle.

6. The Defendant denies the allegations contained in paragraph 6 of the Complaint.

7. The Defendant denies the allegations contained in paragraph 7 of the Complaint.

8. The Defendant denies the allegations contained in paragraph 8 of the Complaint.

9. The Defendant denies the allegations contained in paragraph 9 of the Complaint.

**FOR A SECOND DEFENSE**  
**No Privity of Contract**

10. The Defendant reincorporates and realleges paragraph 1 through 9 of its Answer as if fully repeated herein.

11. The Defendant entered into a contract for the rental use of the Defendant's vehicle by a third party, Shayla Kelly, who was neither the Plaintiff nor the Plaintiff's decedent. The decedent, Kelvin Wiggins, was not listed as an additional authorized driver on the rental agreement made between the Defendant and Shayla Kelly.

12. On October 5, 2011, Kelvin Wiggins was shot and killed while driving the Defendant's vehicle on Highway 321 in Jasper County, South Carolina. Kelvin Wiggins was operating the Defendant's vehicle without the express or implied permission of the Defendant.

13. The rental agreement entered into between the Defendant and Shayla Kelly provides coverage only for contractually listed authorized drivers.

14. As the decedent, Kelvin Wiggins, was neither in privity of contract with the Defendant, nor was he listed as an additional authorized driver on the rental agreement entered into between the Defendant and Shayla Kelly, Kelvin Wiggins is not an insured person under the terms of the rental agreement and insurance contract concerning the Defendant's vehicle.

**FOR A THIRD DEFENSE**  
**S.C. Code Ann. §38-77-140**

15. The Defendant reincorporates and realleges paragraph 1 through 14 its Answer as if fully repeated herein.

16. The injuries and resulting death suffered by the decedent, Kelvin Wiggins, do not arise out of the ownership maintenance or use of an uninsured vehicle pursuant to S.C. Code Ann. §38-77-140.

17. Accordingly, the insurance contract in place on the Defendant's vehicle on October 5, 2011 does not provide coverage on the decedent, Kelvin Wiggins, under South Carolina law.

Florence, South Carolina

TURNER, PADGET, GRAHAM & LANEY, P.A.

December 9, 2013

BY: R. Heath Atkinson

R. Heath Atkinson  
P.O. Box 5478  
Florence, SC 29502-5478  
(843) 656-4427 (direct dial)

Attorneys for Defendant

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF JASPER )

IN THE COURT OF COMMON PLEAS  
DOCKET NO.: 13-CP-27-577

Mary Wiggins, as Personal )  
Representative of Kelvin Marquise )  
Wiggins, )  
 )  
Plaintiff, )

vs. )

CERTIFICATE OF SERVICE

Enterprise Leasing Company - )  
SouthEast LLC, )  
 )  
Defendant. )  
\_\_\_\_\_ )

I hereby certify that I have this \_\_\_\_\_ day of December, 2013, served copies of the foregoing *Answer of Defendant Enterprise Leasing Company-SouthEast, LLC* on counsel of record by mailing copies of the same, postage prepaid, to:

Darrell Thomas Johnson, Jr., Esquire  
Warren Paul Johnson  
P.O. Box 1125  
Hardeeville, SC 29927

\_\_\_\_\_  
Secretary to R. Heath Atkinson

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF JASPER )

IN THE COURT OF COMMON PLEAS  
CASE NUMBER 2013-CP-27-577

MARY WIGGINS, AS PERSONAL )  
REPRESENTATIVE OF KELVIN )  
MARQUISE WIGGINS, )  
 )  
PLAINTIFFS, )

-VS-

ENTERPRISE LEASING COMPANY )  
SOUTHEAST, LLC, )  
 )  
DEFENDANTS. )  
\_\_\_\_\_ )

 ORIGINAL

**DEPOSITION OF SHALA KELLY**

The Deposition of SHALA KELLY  
is taken before Carolyn S. Kelly, a Notary Public in and  
for the State of South Carolina, at the Law Office of Darrell  
T. Johnson, Jr., 300 Main Street, Hardeeville, South  
Carolina, on Thursday, April 10, 2014, commencing at  
1:12 P.M.

**APPEARANCES:**

**FOR THE PLAINTIFF:**

LAW OFFICE OF DARRELL T. JOHNSON, JR.  
300 Main Street  
Post Office Box 1125  
Hardeeville, South Carolina 29927  
BY: DARRELL T. JOHNSON, JR., ESQUIRE

**FOR THE DEFENDANT,  
VIA TELEPHONE:**

TURNER, PADGET, GRAHAM & LANEY, P.A.  
319 South Irby Street  
Post Office Box 5478  
Florence, South Carolina 29501  
BY: KEITH ATKINSON, ESQUIRE

**PRESENT:**

LILLY KELLY  
KELVIN WIGGINS  
MARY WIGGINS

\* \* \* \* \*

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CROSS EXAMINATION BY MR. ATKINSON - - - - - PAGE 11  
CERTIFICATE OF REPORTER - - - - - PAGE 14

\* \* \* \* \*

INDEX TO EXHIBITS

PLAINTIFF'S:

1. Copy of an Enterprise Rental Agreement to  
Shala Kelly, dated September 27, 2011.  
1 page - - - - - PAGE 5

\* \* \* \* \*

1 SHALA KELLY, HAVING BEEN FIRST DULY SWORN, TESTIFIED:

2 ON DIRECT EXAMINATION BY DARRELL T. JOHNSON, JR., ESQUIRE:

3 Q Give us your name, please, ma'am?

4 A Shala Kelly.

5 Q And where do you live, Ms. Kelly?

6 A Hardeeville on Walsh Drive.

7 (NOTE: WHEREUPON, a copy of a Rental Agreement from  
8 Enterprize to Shala Kelly, dated September 27, 2011, was  
9 admitted in evidence without objection and marked,  
10 "Plaintiff's Exhibit #1, S. Kelly, 1 page")

11 Q And there is a document in front of you  
12 marked "Plaintiff's Exhibit #1," are you the Shala Kelly  
13 that was involved in that transaction?

14 A Yes, sir.

15 Q All right. And do you recognize that  
16 document?

17 A Yes, sir.

18 Q What is the nature of that document?

19 A Basically this is a copy from Enterprize  
20 leasing me the Rental Car Agreement.

21 Q And tell us if you would about renting that  
22 car whatever you remember about it?

23 A Well, I did rent the car, and eventually I  
24 was going to use the car whenever, but I allowed my cousin  
25 to drive the car.

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Q All right.

A And, you know, I knew my cousin was going to have the car. I know that, but I didn't know that all of these things were going to happen, you know, in the car or whatever.

Q Right. And who is the cousin that you refer to?

A I'm referring to Travis Wiggins.

Q Okay. And was it your understanding that the car was covered by insurance?

A No, sir. Well, when I went there and got the rental car, I remember that they basically told me they tried to use my insurance and they told me that my insurance would not cover the car so that means I had to pay additional insurance from Enterprise.

Q Okay. And do you know how much you had to pay extra for insurance from Enterprise?

A No, sir. I don't remember that.

Q Okay.

A But I do remember they told me my insurance wouldn't cover it.

Q Okay. And did you have insurance?

A Yes, sir.

Q And who is your insurance with?

A I had this place in Beaufort at the time,

1 A Yes.

2 Q And do you see the box directly above your  
3 signature, do you see that?

4 A Yes.

5 Q Okay. I'm just going to read it and want  
6 you to read along with me and make sure I read it  
7 correctly. Okay?

8 A (No response)

9 Q Can you hear me?

10 A Yes.

11 Q Okay. I'm going to read it and I want you  
12 to make sure I read it correctly. It says, "Additional  
13 Authorized Drivers - Except as required by law, none  
14 permitted without owner's written approval." Next line,  
15 "I request owner's permission to allow" and then there's a  
16 box that says "No other drivers permitted." Do you see  
17 that?

18 A Yes.

19 Q Okay. And were you not aware that you were  
20 not allowed to give other drivers permission to operate  
21 enterprise vehicles?

22 A I do understand that, yes.

23 Q Okay. Well, thank you very much. That's  
24 all I have. Thank you very much.

25 ATTORNEY JOHNSON: Bear with me

1 it was a local place, I really don't remember. I had a  
2 Malibu back then, I really don't remember the insurance  
3 company, the name of it.

4 A All right. But I know it was a little  
5 place in Beaufort.

6 Q Do you remember not the people that sold it  
7 to you but the company itself?

8 A Right. But I know where it's at in  
9 Beaufort like you coming into Beaufort and you get to that  
10 stop light right there where the McDonald's at and you  
11 bear off to the right and once you get to that first light  
12 right there where that Chinese place at, it's right in  
13 that square. It's like the second building right there  
14 behind the Chinese Restaurant right there next to that  
15 Cash Check place or something like that. I don't remember  
16 what it was, I don't remember.

17 Q Okay. And was it your understanding that  
18 the car was covered by at least whatever insurance South  
19 Carolina requires?

20 A Yes, sir.

21 Q Okay. All right. Come on forward from  
22 there and tell us what you know about a tragedy involving  
23 Kelvin Wiggins?

24 A Well, honestly, I don't know anything but  
25 what I've heard because I was at work when this happen. I

1 was at work on my job when I got a phone call from my  
2 sister. I didn't know what was going on or nothing, I  
3 just basically got a phone call from my sister and the  
4 phone called stated, you know, something happen to  
5 Marquise. And I just hung up on her or whatever, I just  
6 hung up on the phone on her and was like, you know, "Stop  
7 playing," so I hung up. She called me right back and she  
8 was like, "I ain't playing with you, you know, something  
9 happened to Marquise in the rental car." And that's all I  
10 remember.

11 Q All right. And when you say "Marquise,"  
12 that's - -

13 A Kelvin.

14 Q Kelvin; Marquise is his middle name?

15 A Yes.

16 Q I'm a Jr., too, that's how I get called by  
17 my middle name, so I understand that.

18 A Yes.

19 Q But the daddy is referred to as Kelvin and  
20 the son is Marquise?

21 A Yes.

22 Q Okay. And when was the last you saw of the  
23 car before the event involving Marquise?

24 A The day before, like that night sometime I  
25 saw it. We was all at my mama house in her yard just

1 lollygagging like we normally do, and we all was together  
2 then and I basically left and went home, you know, to go  
3 to bed and get ready for work the next day.

4 Q All right. And who had the car?

5 A Travis.

6 Q And did he have the car with your  
7 permission?

8 A Yes.

9 Q Who was paying - - was he paying you back  
10 for using the car, or was this just the goodness of your  
11 heart?

12 A Honestly, it was just my cousin asked me  
13 could I get him a rental car and I got it for him.

14 Q Okay.

15 A Actually, him and Taj asked me to get the  
16 rental car, but the only reason why I got it is because  
17 Travis asked me and that was my cousin.

18 Q All right. Do you know anything about  
19 this, or has Travis told you what happened to Marquise?

20 A No, sir.

21 Q Did Taj tell you what happened to Marquise?

22 A (Witness shakes head negatively)

23 Q Did anybody that was there ever tell you  
24 what happened to Marquise?

25 A No, sir. I've tried to ask questions, you

1 know, but Travis and them really don't talk about  
2 anything, you know. When little Marion was there, he a  
3 little bit more - -

4 Q Who?

5 A My cousin, Marion Barbie, he was in the  
6 car, too.

7 Q Okay.

8 A He was a little bit more talkative, but he  
9 never state that he knew what happened or anything. He  
10 just stated that they was just riding down the road, they  
11 had just left from out the yard and they had just got on  
12 the main highway. And they say they just heard a pop and  
13 the next thing you know when they heard that pop  
14 everything just basically went crazy. You know, from what  
15 he could see in the back seat, he was just like next thing  
16 you know Marquise was like over a little bit on Travis or  
17 whatever, and Travis had to grab the emergency brakes or  
18 whatever to stop the car from crashing or whatever.

19 Q Did he tell you what the other car that did  
20 the shooting looked like?

21 A I asked that and they say they really  
22 didn't pay any attention to the other car, it happened so  
23 quick, you know, they didn't pay attention to really none  
24 of that.

25 Q Okay. All right. That's all I have for

1 now. Please answer any questions Mr. Atkinson has.

2 A Okay.

3 **CROSS EXAMINATION BY KEITH ATKINSON, ESQUIRE:**

4 Q Ms. Kelly, can you hear me?

5 A Yes.

6 Q My name is Keith Atkinson and I represent  
7 Enterprise. How are you?

8 A I'm doing pretty good and yourself?

9 Q Okay.

10 ATTORNEY ATKINSON: Tom, do I  
11 understand you have a copy of the rental contract?

12 ATTORNEY JOHNSON: Yes, and we  
13 went ahead and marked it as "Exhibit 1."

14 Q Ms. Kelly, how about direct your attention  
15 to "Exhibit 1," the rental contract with Enterprise. Do  
16 you see that?

17 A Okay. Yes.

18 Q And in the middle of it there's "Renter"  
19 and there's an "x" by the name it looks like Shala Kelly,  
20 is that you?

21 A Yes.

22 Q Is that your signature?

23 A Yes, sir.

24 Q And is this the rental contract that you  
25 signed at Enterprise?

1 just a minute.

2 Q Thank you, Ms. Kelly. I have nothing  
3 further.

4 ATTORNEY JOHNSON: Let me put on  
5 the record that we had sent Subpoenas to both the Sheriff  
6 and the private investigator, none of them have been  
7 served. Ms. Kelly had heard about it and was decent  
8 enough to come when she heard about it secondhand. The  
9 next deponent, Taj Garvin, was shot to death here  
10 recently. The next deponent, Travis Wiggins, is in jail  
11 charged with the murder of Taj Garvin, and while he was  
12 served, he is represented by an attorney who obviously  
13 doesn't want him talking about anything to do with  
14 shootings. And the final deponent has not been served in  
15 spite of a lot of effort in that regard. So that  
16 concludes the depositions that we will have for today.

17 ATTORNEY ATKINSON: Thank you,  
18 Tom.

19 (WHEREUPON, THE DEPOSITION WAS CONCLUDED AT 1:25 P.M.)

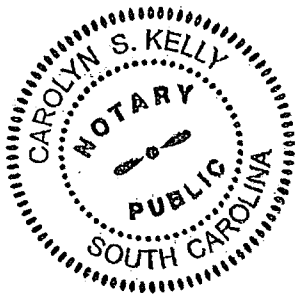
STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF JASPER            )

CERTIFICATE OF REPORTER

I, Carolyn S. Kelly, do hereby certify that I did have SHALA KELLY appear before me at the Law Office of Darrell T. Johnson, Jr., 300 Main Street, Hardeeville, South Carolina, on Thursday, April 10, 2014, commencing at 1:25 P.M.; that the witness was first duly sworn by me; that the foregoing pages constitute a true, accurate and complete transcript of her testimony given at that time and place.

I FURTHER CERTIFY that I am neither of counsel nor kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

I HEREBY CERTIFY that I have set my Hand and Seal, this the 14th day of April, 2014.



*Carolyn S. Kelly*  
\_\_\_\_\_  
CAROLYN S. KELLY, VCR  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 12/14/22



Dexter

MO 8:00 AM - 6:00 PM TU 8:00 AM - 6:00 PM WE 8:00 AM - 6:00 PM  
TH 8:00 AM - 6:00 PM FR 8:00 AM - 6:00 PM SA 9:00 AM - 12:00 PM  
SU CLOSED

OWNER OF VEHICLE: ENTERPRISE LEASING COMPANY - SOUTHEAST, LLC  
RANCH ADDRESS: 22 PLANTATION PARK DR, BLUFFTON, SC, 29910-070 (843) 796-2650

712873

RENTAL TYPE		RETAIL	SOURCE #	RETAIL-266	ID #	699	RENTAL AGREEMENT	NO	1FC123
09/27/2011		RENTER		KELLY	SHALK		PERIOD		
START CHARGES IF DIFFERENT		ADDRESS		167 WALSH DR APT B4		HOME PHONE		12437 784	
ORIGINAL VEHICLE		CITY		HARDEEVILLE		STATE		SC ZIP 29927 OFFICE PHONE 18437 815 7890	
COLOR SILVE		LICENSE NO		DOB		EMPLOYER		RIGHT @ HOME	
MODEL FORD		ECAR#		DRIVERS LICENSE NO		STATE		EXPIRES 09/11/2019	
MILE-AGE		IN		BILL TO		COMPANY		NO CHARGE MILEAGE	
OUT		7921		ATTN		PHONE		EXT	
DRIVEN		REFERENCE NUMBER		ADDITIONAL AUTHORIZED DRIVER(S) - EXCEPT AS REQUIRED BY LAW, NONE PERMITTED WITHOUT OWNER'S WRITTEN APPROVAL. I REQUEST OWNER'S PERMISSION TO ALLOW		AGE		DRIVERS LICENSE NO	
CONDITION AND FUEL X LEVEL AGRED TO		RENTER		STATE		EXP.		WHO IS UNDER MY CONTROL AND DIRECTION TO DRIVE VEHICLE FOR ME AND ON MY BEHALF I AM RESPONSIBLE FOR THEIR ACTS WHILE THEY ARE DRIVING, AND FOR FULFILLING TERMS AND CONDITIONS OF THIS RENTAL AGREEMENT (AGREEMENT) USE OF VEHICLE BY AN UNAUTHORIZED DRIVER WILL AFFECT MY LIABILITY AND RIGHTS UNDER THIS AGREEMENT.	
NO DAMAGE		RENTER		K. Shala Kelly		PERMISSION GRANTED TO OPERATE VEHICLE ONLY IN THE STATE OF RENTAL AND THE FOLLOWING STATE(S)		SC GA	
OUT		E 1/8 1/4 3/8 1/2 5/8 3/4 7/8 F		OPERATION IN ANY OTHER STATE OR COUNTRY WILL AFFECT YOUR LIABILITY AND RIGHTS UNDER THIS AGREEMENT		RENTER DECLINES OPTIONAL DAMAGE WAIVER (DW) AT FEE SHOWN IN COLUMN TO RIGHT. SEE NOTICE TO LEFT AND PARAGRAPH 16. DAMAGE WAIVER IS NOT INSURANCE.		RENTER X ACCEPTS DW	
IN		E 1/8 1/4 3/8 1/2 5/8 3/4 7/8 F		RENTER DECLINES OPTIONAL PERSONAL ACCIDENT INSURANCE (PAI) SEE PARAGRAPH 18.		RENTER ACCEPTS OPTIONAL PERSONAL ACCIDENT INSURANCE (PAI) AT FEE SHOWN IN COLUMN TO RIGHT. SEE PARAGRAPH 18.		RENTER X ACCEPTS PAI	
OPTIONAL PRODUCTS NOTICE: WE OFFER FOR AN ADDITIONAL CHARGE THE FOLLOWING OPTIONAL PRODUCTS: DAMAGE WAIVER; PERSONAL ACCIDENT INSURANCE; SUPPLEMENTAL LIABILITY PROTECTION AND ROADSIDE ASSISTANCE PROTECTION. BEFORE DECIDING TO PURCHASE ANY OF THESE PRODUCTS, YOU MAY WISH TO DETERMINE WHETHER YOUR PERSONAL INSURANCE, CREDIT CARD OR OTHER COVERAGE PROVIDES YOU PROTECTION DURING THE RENTAL PERIOD. THE PURCHASE OF ANY OF THESE PRODUCTS IS NOT REQUIRED TO RENT VEHICLE.		RENTER		RENTER DECLINES OPTIONAL SUPPLEMENTAL LIABILITY PROTECTION (SLP) SEE PARAGRAPH 17.		RENTER ACCEPTS OPTIONAL SUPPLEMENTAL LIABILITY PROTECTION (SLP) AT FEE SHOWN IN COLUMN TO RIGHT. SEE PARAGRAPH 17.		RENTER X ACCEPTS SLP	
No Gasoline Refunds		RENTER		RENTER DECLINES OPTIONAL ROADSIDE ASSISTANCE PROTECTION (RAP) SEE PARAGRAPH 19.		RENTER ACCEPTS OPTIONAL ROADSIDE ASSISTANCE PROTECTION (RAP) AT FEE SHOWN IN COLUMN TO RIGHT. SEE OPTIONAL PRODUCTS NOTICE TO LEFT AND PARAGRAPH 19.		RENTER X ACCEPTS RAP	
ACKNOWLEDGMENT OF THE ENTIRE AGREEMENT WHICH CONSISTS OF PAGES 1 THROUGH 4. I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS ON PAGES 1 THROUGH 4 OF THIS AGREEMENT AND BY MY SIGNATURE BELOW I AM THE RENTER UNDER THIS AGREEMENT. BY SIGNING BELOW, I AM AUTHORIZING OWNER TO PROCESS CHARGES ON MY CREDIT CARDS AND/OR CREDIT CARDS FOR ADVANCE DEPOSITS, INCREMENTAL AUTHORIZATIONS, DEPOSITS, AND CHARGES INCURRED, AS WELL AS PAYMENTS REFUSED BY A THIRD PARTY TO WHICHA BILLING WAS DIRECTED. I CERTIFY THAT THE DRIVER'S LICENSE(S) PRESENTED IS CURRENTLY VALID AND IS NOT SUSPENDED, EXPIRED, REVOKED, CANCELLED OR SURRENDERED.		RENTER		RENTER		RENTER		RENTER	
REPLACEMENT VEHICLE		RENTER		K. Shala Kelly		DATE		09/27/2011	
COLOR		LICENSE NO		OWNER		EMPL #		E68738	
MODEL		ECAR#		I WILL RETURN CAR BY:		DEPOSIT(S):		SALES TAX 7.00%	
MILE-AGE		IN		DATE		TIME		AMOUNT PAID BY	
OUT		7921		10/09/2011		2:00 PM		629.57 SPECI/CASH 09/27/2011	
DRIVEN		NO DAMAGE		ADDITIONAL INFORMATION		TOTAL CHARGES		DEPOSITS	
CONDITION AND FUEL X LEVEL AGRED TO		RENTER		No Smoking No Pets		REFUNDS		AMOUNT DUE	
NO DAMAGE		RENTER		PLAINTIFF'S EXHIBIT		CLOSED BY		PAID BY	
OUT		E 1/8 1/4 3/8 1/2 5/8 3/4 7/8 F		1. S. Kelly		CASH		CHECK	
IN		E 1/8 1/4 3/8 1/2 5/8 3/4 7/8 F		4-10-14		CASH		CHARGE	
No Gasoline Refunds		RENTER		RECEIPT OF CASH REFUND		DATE		AMOUNT RECEIVED BY	

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF JASPER )

DOCKET NO.: 13-CP-27-577

Mary Wiggins, as Personal )  
Representative of Kelvin )  
Marquise Wiggins, )

Plaintiff, )

vs. )

Enterprise Leasing Company- )  
SouthEast LLC, )

Defendant. )

DEFENDANT ENTERPRISE LEASING )  
COMPANY-SOUTHEAST LLC'S )  
NOTICE AND MEMORANDUM )  
IN SUPPORT OF MOTION FOR )  
SUMMARY JUDGMENT )

YOU WILL PLEASE TAKE NOTICE that, ten (10) days henceforth, or as soon thereafter as counsel may be heard the Defendant, Enterprise Leasing Company-SouthEast LLC, through its undersigned attorneys, will move the Court pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting summary judgment in favor of the Defendant, Enterprise Leasing Company-SouthEast LLC ("Enterprise").

The grounds for this Motion are that decedent Kelvin Marquise Wiggins ("Wiggins") was not a permissive user of Enterprise's rental vehicle. Enterprise, therefore, moves for an Order granting summary judgment in favor of Enterprise.

**STATEMENT OF THE FACTS**

On October 5, 2011 Wiggins was the driver of an Enterprise rental vehicle traveling southbound on Deerfield Road in Hardeeville, South Carolina. An unknown John Doe driver passed Wiggins's vehicle in the northbound lane of

essential element [of that claim] necessarily renders all other facts immaterial.”  
Celotex Corp. v. Catrett, 477 U.S. 317, 320 (1986).

### ANALYSIS

“The burden of proving coverage is upon the person seeking coverage. Liberty Mutual Insurance Company v. Edwards, 294 S.C. 368, 364 S.E.2d 750 (1988). The claimant must prove that permission for the operation of the insured vehicle actually existed under the facts and circumstances of the case at the time he received bodily injury. Rakestraw v. Allstate Insurance Company, 238 S.C. 217, 119 S.E.2d 746 (1961).

In Liberty, the South Carolina Supreme Court stated a rental car’s insurance company did not have to provide liability coverage in an accident involving a rental vehicle because the driver was not listed as a permissive user on the rental contract and, therefore, the driver did not have the owner’s permission to use the car when the rental agreement stated on its face that “only licensed drivers named on this agreement are insured.” Liberty at 370.

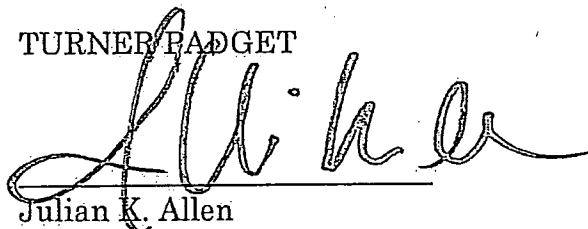
Wiggins claims he is entitled to uninsured motorist coverage but the only authorized driver on the rental agreement with Enterprise was Kelly. Kelly was not involved in the subject incident. Therefore, as in Liberty, Wiggins is not entitled to uninsured motorist benefits.

### CONCLUSION

Wiggins was not a listed driver on the Enterprise Rental Agreement. As a result, he is excluded as a permissive driver and is not entitled to uninsured

motorist coverage. Enterprise therefore respectfully requests this Court grant its Motion for Summary Judgment.

TURNER PADGET

A handwritten signature in cursive script, appearing to read "Julian K. Allen", written over a horizontal line.

Julian K. Allen

P.O. Box 22129

Charleston, South Carolina 29413

Telephone: (843) 579-8305

Fax: (843) 577-1661

E-mail: [jallen@turnerpadget.com](mailto:jallen@turnerpadget.com)

November 18, 2014

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF JASPER )

DOCKET NO.: 13-CP-27-577

Mary Wiggins, as Personal Representative of Kelvin Marquise Wiggins, )

Plaintiff, )

vs. )

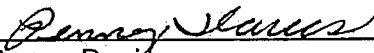
Enterprise Leasing Company-SouthEast LLC, )

Defendant. )

CERTIFICATE OF SERVICE

I hereby certify that on this 18<sup>th</sup> day of November, 2014 a copy of the above and foregoing Notice and Memorandum in Support of Motion for Summary Judgment has been mailed to all counsel of record, postage prepaid and properly addressed as follows:

Darrell Thomas Johnson, Jr.  
Warren Paul Johnson  
P. O. Box 1125  
Hardeeville, SC 29927

  
\_\_\_\_\_  
Penny Davis  
Assistant to Julian K. Allen

STATE OF SOUTH CAROLINA  
14TH JUDICIAL CIRCUIT  
COUNTY OF JASPER  
COURT OF COMMON PLEAS  
CASE NUMBER 2013-CP-27-00577

MARY WIGGINS, AS PERSONAL  
REPRESENTATIVE OF KELVIN  
MARQUISE WIGGINS

PLAINTIFF

VERSUS

COPY

AUGUST 13, 2015

TRANSCRIPT OF HEARING  
RIDGELAND, SOUTH CAROLINA

ENTERPRISE LEASING COMPANY-  
SOUTHEAST, LLC

DEFENDANT

---

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M  
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF PLAINTIFF  
MARY WIGGINS, AS PERSONAL  
REPRESENTATIVE OF KELVIN  
MARQUISE WIGGINS:

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dtjohnson1@hargray.com

ON BEHALF OF DEFENDANT  
ENTERPRISE LEASING COMPANY-  
SOUTHEAST, LLC:

HON. BRITTANY BOYKIN  
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EXHIBITS

No exhibits were admitted.

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BEGINNING 1:20 P.M.

BY THE COURT:

MS. BOYKIN: Brittany Boykin, your Honor, for Enterprise Leasing Company. The overarching issue in this motion, your Honor, is that it is our position that the plaintiff's not an insured. And I'll go through the facts and give you some more information about it.

THE COURT: Okay.

MS. BOYKIN: The vehicle was leased to Shayla Kelly.

THE COURT: Okay.

MS. BOYKIN: And I don't know if you have a copy, but I can hand one up of the contract.

THE COURT: I've got -- the contract? Let me look.

MS. BOYKIN: Well, I'm sorry.

THE COURT: Why don't you just put it up to me because I -- well, yes, I do.

MS. BOYKIN: You've got it?

THE COURT: I got it.

MS. BOYKIN: Okay.

THE COURT: Thank you. Okay.

MS. BOYKIN: The section of the rental agreement that indicates that, when asked whether or not there will be any other users, it's indicated that there will be no other drivers permitted to use the vehicle.

1 Obviously, Enterprise is a self-insured, so we want to  
2 know who's using the vehicles.

3 THE COURT: Right.

4 MS. BOYKIN: Ms. Kelly then gives permission to her  
5 cousin, Travis Wiggins. And it is our position, of  
6 course, that, that non-permissive permission, if you  
7 will, puts him outside the scope of coverage, and so, he  
8 is not an insured. But the issue in this case is, then,  
9 Travis Wiggins gives the vehicle to Marquise Wiggins, I  
10 believe.

11 THE COURT: Okay.

12 MS. BOYKIN: And he is actually who's driving.  
13 Ultimately, he is shot several times while operating the  
14 vehicle, and that's the basis for the claim.

15 THE COURT: Okay.

16 MS. BOYKIN: Your Honor, it's our position, based  
17 on the contract that Ms. Kelly signed and the law in  
18 *Liberty versus Edwards* that there is no coverage for a  
19 non-insured person using the vehicle.

20 THE COURT: Okay. Yes, sir.

21 MR. JOHNSON: Please the Court. I'll hand up  
22 another memorandum I did, but also, we have a couple of  
23 simple responses, and then, one that's not quite so  
24 simple. First of all, the permission requirement isn't  
25 permission from the owner; it's permission from the

1       insured. The customer was the insured. Enterprise  
2       Leasing sold her insurance and charged her for it. If  
3       the entire four-page contract is before you, it  
4       discusses that she doesn't -- they don't -- and in her  
5       deposition, they don't accept whatever insurance she  
6       has. She has to pay for insurance. She is the insured.  
7       And the test for uninsured and liability is not  
8       identical. Obviously, liability insurance, it might  
9       matter who is driving. Under-insured has no relation.  
10      That takes the place of somebody else's insurance.  
11      There's no under-riding reason, no logical sentence why  
12      it matters. And there is no logical reason why the  
13      seating position in the car should matter when you are  
14      the victim of some third party.

15             And this is distinguishable from the case primarily  
16      relied on, *Liberty Mutual versus Edwards*. In that case,  
17      the owner of the car was also the insured. So, we have  
18      the distinction between liability and the uninsured. We  
19      have the distinction between permission of the owner and  
20      permission of the insured. And on a slightly more  
21      complicated level, the *Edwards* case, a close reading of  
22      the *Edwards* case, reveals that it only deals with the  
23      issue of implied permission and whether the implied  
24      permission is adequate. That's not the question here.

25             The other thing is it addresses public policy only

1 to the limited extent that it -- there, apparently, was  
2 an argument whether there ought to be some large print  
3 or some conspicuous notice that are not -- but it does  
4 not address the public policy of the fact that it's well  
5 established that mandatory insurance is for the benefit  
6 of not just an indemnity of the insured, but for the  
7 benefit of the public.

8 THE COURT: What happened in this case? So, Ms.  
9 Shay [sic] loaned the vehicle to someone else, who  
10 loaned the vehicle to someone else, who got shot at? Is  
11 that what happened?

12 MS. BOYKIN: That's correct, your Honor.

13 THE COURT: And he deceased as a result of it.

14 MS. BOYKIN: That's right, your Honor.

15 THE COURT: Okay.

16 MR. JOHNSON: Ms. Shay [sic] had cousins, Travis  
17 and Kelvin.

18 THE COURT: Okay.

19 MR. JOHNSON: Travis, -- I'm probably straying from  
20 any record, but Travis is kind of a rogue who is -- and  
21 Kelvin was the honor student who was his cousin. Kelvin  
22 and Travis and others were riding down the road, and an  
23 unidentified car ran them down and sprayed the car with  
24 gunfire and killed -- killed, and missed Travis.

25 And I'm sure your Honor doesn't need the citation,

1 but in *Factory Mutual versus Kennedy*, the Court  
2 reiterate -- specifically expressed the fact that  
3 mandatory insurance is for the benefit of the public, as  
4 well as the protection of assets of the potential  
5 tortfeasor. And further held a requirement of  
6 prejudiced where there's a mere technical violation.  
7 And here, the seating position does in no way relate to  
8 any risk or any conduct that might be involved here. He  
9 could have been just as dead if he'd been in the back  
10 seat.

11 THE COURT: Okay. Ms. Boykin, do you have another  
12 copy of your memorandum?

13 MS. BOYKIN: Yes, your Honor.

14 THE COURT: Do you mind giving that to me.

15 MR. JOHNSON: And you think that they also would be  
16 estopped to argue what the terms of a non-existent  
17 policy might say. The coverage might be greater than  
18 the minimum required by statute. Most of those policies  
19 are. And then, finally, we submit, your Honor, that, if  
20 there's an ambiguity in the policy, it's for the jury to  
21 decide, and I can't conceive of a more ambiguous policy  
22 than the one that's not reduced to writing.

23 THE COURT: Okay. Yes, ma'am.

24 MS. BOYKIN: Thank you, your Honor. If I may, I'd  
25 like to encourage the Court to take a look at a section,

1 a cite, actually, in the *Liberty versus Edwards*. When I  
2 started the argument, the issue in this case is whether  
3 or not the plaintiff is an insured, period.

4 THE COURT: Right.

5 MS. BOYKIN: I don't think there's any dispute that  
6 Ms. Kelly signed this agreement indicating that there  
7 would be no other drivers using the vehicle. But if I  
8 can call your attention to a cite for *Keller versus*  
9 *Allstate*. And may I read it, your Honor?

10 THE COURT: Certainly. Do you have any extra  
11 copies of either the *Liberty* case or this one?

12 MS. BOYKIN: I have a copy of the *Liberty* case,  
13 your Honor.

14 THE COURT: Okay. Thank you. Okay. So, this is  
15 *Keller* that you're citing from. Okay.

16 MS. BOYKIN: Yes, ma'am.

17 THE COURT: Okay.

18 MS. BOYKIN: It's the same case as the *Liberty*  
19 case.

20 THE COURT: Okay.

21 MS. BOYKIN: It's the named insured is expressly  
22 prohibited affirmatively from allowing a third party to  
23 operate the vehicle. A third-party driver is not a  
24 permissive used, and therefore, not an insured.

25 Your Honor, this is good law. I pulled this, this

1 morning just to make sure. That is the issue here. A  
2 permittee, who is Ms. Kelly, gave unauthorized -- gave  
3 permission to someone else, who then, without  
4 authorization, gave permission to someone else, who used  
5 the vehicle. And so, the vehicle is -- the operator of  
6 the vehicle is, therefore, uninsured. I don't think  
7 there's any dispute to any of those facts. The opinion  
8 does discuss public policy, but it pushes that to the  
9 legislature, and none of that is what's at issue in this  
10 case.

11 THE COURT: Give me one second.

12 Okay, I am concerned about the *Liberty* case. It  
13 appears that, in that case, the insurance company -- it  
14 says insurance company and insured. I mean, this was a  
15 state between the insurance company and -- I kind of  
16 understand what Mr. Johnson is saying. He's saying that  
17 the insured in this case to give permission is not  
18 Enterprise. The insured is the person that rented the  
19 car.

20 MS. BOYKIN: Your Honor, I understand your point,  
21 but if you take a look at the agreement, the insured has  
22 knowledge that she is not to permit someone else to use  
23 the vehicle. And she testified to that in her  
24 deposition.

25 THE COURT: I understand that, but that's between

1     you and her. That just means that, if you have to pay  
2     out on her behalf, you can sue her. But he isn't a  
3     party to your contract.

4           MS. BOYKIN: Right, so there's no direct action  
5     from him from the plaintiff to the insurance company,  
6     because there is no contract between us. We have no  
7     obligation to provide him with insurance.

8           THE COURT: But insurance follows the car.

9           MS. BOYKIN: But there was no permission to use the  
10    vehicle. I guess there was --

11          THE COURT: There was, by Ms. Kayla Shay [sic],  
12    though, who is the insured. That's where I'm missing  
13    it.

14          MS. BOYKIN: And your Honor, if I could submit  
15    additional case law, I --

16          THE COURT: What do you have besides *Liberty*? And  
17    I want to read the whole thing. And I'm going to tell  
18    you, I haven't read any of the briefs ahead of time, so  
19    I do not know, but I'm still having an issue. I mean,  
20    I'm just going to have to read it. I'm going to tell  
21    you, you both have thoroughly confused me at this point.  
22    Is there anything I need to read as far as other than  
23    the *Liberty* case?

24          MS. BOYKIN: Your Honor, if you'd allow me and Mr.  
25    Johnson, sounds like he would like to do the same thing,

1 if I could -- sounds like I understand the issue that  
2 you're concerned with. If I could submit something to  
3 the Court for your consideration, I'll appreciate it.

4 THE COURT: Sure. If you all just could get me  
5 something maybe by tomorrow afternoon, if not, I'm going  
6 to tell you, I'm going to do my own independent research  
7 on this, because there's got to be case law on this, I  
8 mean, I'm sure, other than *Liberty*.

9 MS. BOYKIN: And there is an additional cite in the  
10 brief, your Honor, and I could --

11 THE COURT: Okay. I can pull that up, as well.

12 MR. JOHNSON: We cited a couple cases, as well as  
13 the code section, and I'll send those to you, your  
14 Honor.

15 THE COURT: Let me just look at it. I'm sorry, you  
16 all, it's been a long day, but I just need to look at  
17 it.

18 MS. BOYKIN: Thank you, Judge. Appreciate it.

19 THE COURT: Thank you.

20 MR. JOHNSON: Thank you.

END PROCEEDING 1:35 P.M.

CERTIFICATE OF REPORTER

AUGUST 13, 2015 TRANSCRIPT OF HEARING

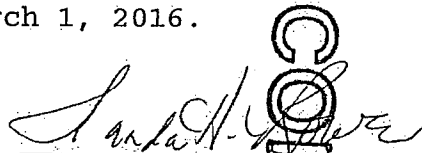
STATE OF SOUTH CAROLINA

COUNTY OF JASPER

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing August 13, 2015 Transcript of Hearing is a true, accurate, and complete record of the proceedings had on said date, in the case of Wiggins, et al, versus Enterprise Leasing, Jasper County, South Carolina, Court of Common Pleas, Case Number 2013-CP-27-00577; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

THIS CERTIFICATE OF REPORTER IS ATTACHED TO A COPY OF THE ORIGINAL OF THIS TRANSCRIPT AND CONTAINS MY ORIGINAL SIGNATURE. PURSUANT TO SCACR 607, REQUESTS FOR COPIES OF THIS TRANSCRIPT MUST BE MADE TO THE COURT REPORTER. UNAUTHORIZED COPYING OF THIS TRANSCRIPT IS PROHIBITED.

Witness my signature March 1, 2016.

  
 Wanda H. Rowe, CVR-M  
 Official Court Reporter

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF JASPER	)	DOCKET NO.: 13-CP-27-577
	)	
Mary Wiggins, as Personal Representative	)	
of Kelvin Marquise Wiggins,	)	
	)	
Plaintiff,	)	SUPPLEMENTAL MEMORANDUM
	)	IN SUPPORT OF DEFENDANT'S
vs.	)	MOTION FOR SUMMARY JUDGMENT
	)	
Enterprise Leasing Company-	)	
SouthEast LLC,	)	
	)	
Defendant.	)	
	)	

Defendant Enterprise Leasing Company-SouthEast, LLC, hereby submits this supplemental memorandum in support of its motion for summary judgment.

The issue before the court is whether Kelvin Wiggins is covered by the rental contract for the subject vehicle. It is not disputed that Wiggins was not a party to the agreement nor was he disclosed as an additional driver on the agreement. Additionally, it is not disputed that there is no evidence of any contractual relationship between Wiggins and Enterprise. It is undisputed that Enterprise did not give Wiggins permission to use the rental vehicle.

Enterprise Leasing Company—Southeast, LLC (hereinafter “Enterprise”) is a self-insured company pursuant to S.C. Code Ann. Section 56-9-60. As a self-insured company, Enterprise provides the minimum liability limits required by Section 38-77-140 on each vehicle it owns and leases to customers. A self-insurer holds a dual role as insurer and insured. *Collins Cadillac, Inc. v. Bigelow-Sanford, Inc.*, 276 S.C. 465, 467, 279 S.E.2d 611, 612, 1981 S.C. LEXIS 388, 3 (S.C. 1981).

The burden is on the party seeking coverage to establish that permission was given by the named insured. *Liberty Mutual Insurance Company and S & S Leasing d/b/a/ Holiday Rent A Car v. Lisa G. Edwards, et al.*, 294 S.C. 368, 364 S.E.2d 750 (S. C. 1988) (citing *Allstate Insurance Co. v. Federated Mutual Implement and Hardware Insurance Co.*, 251 S.C. 203, 161 S.E.2d 240 (1968)). If the named insured has expressly prohibited a permittee from allowing a third party to operate the vehicle, a third party driver is not a permissive user and therefore not an insured. *Id.* (see also, *Keeler v. Allstate Insurance Co.*, 261 S.C. 151, 198 S.E.2d 793 (1973));

*Southern Farm Bureau Casualty Insurance Co. v. Hartford Accident and Indemnity Co.*, 255 S.C. 427, 179 S.E.2d 454 (1971); *Dearybury v. New Hampshire Insurance Co.*, 255 S.C. 398, 179 S.E.2d 206 (1971).

Enterprise contracted with Shala Kelly to provide the subject rental vehicle and permitted Kelly to use its vehicle subject to the terms of the contract. However, there was no insurer-insured relationship between Enterprise and Kelly. Kelly, as a permissive user, had no authority to give permission to use Enterprise's vehicle to any driver not disclosed on the rental agreement. Kelvin Wiggins was a non-permissive user at the time of the loss. Because Wiggins did not have express or implied permission from Enterprise to drive the vehicle at the time of this incident, the self-insured uninsured motorist coverage normally provided by Enterprise is not applicable.

Alternatively, even if Kelvin Wiggins is determined to have been an insured at the time of the injury, he is not entitled to uninsured motorist coverage from Enterprise because his injuries did not arise out of the ownership, maintenance or use of an uninsured motor vehicle. S.C. Code Ann. Section 38-77-140 mandates liability coverage, including uninsured motorist coverage, but only to insure against "damages arising out of the ownership, maintenance, or use" of a motor vehicle. Based on South Carolina case law, Wiggins' damages in this case did not arise out of the ownership, maintenance or use of Enterprise's motor vehicle.

South Carolina employs a three-part test for whether an injury arises out of the ownership, maintenance, or use of an automobile. This test requires that:

1. There exists a *causal connection* between the vehicle and the injury; and
2. No act of independent significance breaks the causal link; and
3. The vehicle is being used for transportation at the time of the assault.

*State Farm v. Aytes*, 332 S.C. 30, 502 S.E.2d 744 (1998). The South Carolina Supreme Court in *Aytes* further examined the "causal connection" requirement and adopted an additional three-part test for that element. To establish a causal connection between the vehicle and the injury, one must show:

- a. that the vehicle was an active accessory to the assault; and
- b. something less than proximate cause but more than the mere site of the injury; and
- c. that the injury was foreseeably identifiable with the normal use of the automobile.

*Id.*

The South Carolina Supreme Court applied these factors in *State Farm v. Bookert* to determine that an injury did not arise out of the ownership, maintenance or use of a motor

vehicle where an assailant, while inside a moving vehicle, shot and injured Bookert, a pedestrian. *Bookert*, 337 S.C. 291, 523 S.E.2d 181 (1999). In its opinion, the Supreme Court found that Bookert's injuries were not covered because the injuries were not "foreseeably identifiable with the normal use of an automobile" and thus failed the test for causal connection established in *Aytes*.

Providing additional support to the argument that there should be no coverage in the present case is the South Carolina District Court's decision in *Holmes v. Allstate*, 786 F.Supp.2d 1022 (D.S.C. 2009). That court found that no coverage was available for injuries sustained by the Plaintiff for a gunshot wound in a situation even more similar to the case before the court. In *Holmes* the assailant drove his vehicle to the victim's location and found her in her vehicle parked on the side of the road. The assailant pulled up beside the victim's car window, stopped his vehicle, and shot her several times before immediately fleeing the scene. *Id.* at 1024. Holmes sought coverage for her injuries pursuant to her auto liability insurance policy. The district court held there was no coverage because the injuries did not arise out of the ownership, maintenance, or use of either plaintiff's vehicle or the shooter's vehicle. *Id.* at 1025.

The *Holmes* court analyzed whether Holmes' injuries arose out of the use of any involved vehicle – either the one she was occupying at the time she was shot or the assailant's vehicle. The court found that the injury did not arise out of Holmes' ownership, maintenance, or use of her vehicle as it was merely the site of the shooting. This failed to meet the requirement of the second element of the three-part "causal connection" test. The court also found that the shooter's vehicle was not an active accessory and that the shooter's use of his car did not increase the severity of the harm inflicted. "[The assailant] merely used his car to approach Plaintiff, stopped his car next to her parked car, fired several gunshots at Plaintiff and drove off." *Id.* at 1027. Going further, the court held that even if the shooter's vehicle could be considered an active accessory to the injury, there was still no coverage because there was no causal connection between the vehicle and the injury, per *Aytes*, as the shooter merely used the vehicle to "locate plaintiff, to position himself next to plaintiff's vehicle, and to leave the scene of the crime." *Id.*

Enterprise is asking the court to follow the precedent of *Liberty Mutual Insurance Company and S & S Leasing d/b/a/ Holiday Rent A Car v. Lisa G. Edwards, et al.*, 294 S.C. 368, 364 S.E.2d 750 (S. C. 1988). It is clear that Kelvin Wiggins was not a permissive user of Enterprise's vehicle and accordingly was not an insured at the time of his injury. Kelly, the

renter, entered into an agreement to use the vehicle and gave the vehicle to a non-disclosed driver. These are the same facts that were before the court in *Liberty*. The South Carolina Supreme Court upheld the denial of coverage in *Liberty* finding that the renter did not have the authority to give permission to the driver. The basis of the finding was the same rental agreement in the present matter. The rental company in *Liberty* expressly prohibited use by non-disclosed drivers. The same prohibition was made by Enterprise to the renter in the present matter. South Carolina's statutory and common law recognizes Enterprise to be its own insurer and also the insured. Enterprise did not give permission to Kelvin Wiggins to use its vehicle and therefore there is no coverage.

Additionally and alternatively, the clear line of cases including *Aytes*, *Bookert*, and *Holmes* provide an additional and alternative basis for this Court to conclude, in harmony with judicial precedent, that Kelvin Wiggins is not entitled to coverage for his injuries. The shooting of Kelvin Wiggins by John Doe did not arise out of the ownership, maintenance or use of Enterprise's vehicle or of the John Doe vehicle. There is no causal connection between Kelvin Wiggins' injury and either vehicle because the vehicles were not an active accessory to the injury, the injury sustained by Wiggins was not foreseeably identifiable with the normal use of an automobile, and the vehicles were nothing more than the sites from which John Doe's wrongful actions emanated and where Wiggins was located when he was injured.

For all of these reasons, Enterprise is entitled to summary judgment as to Plaintiff's claims as a matter of law.

TURNER PADGET

 on behalf of

Brittany Boykin  
P.O. Box 22129  
Charleston, South Carolina 29413  
Telephone: (843) 576-2825  
E-mail: bboykin@turnerpadget.com

August 14, 2014

ATTORNEYS FOR DEFENDANT



Dexter



OWNER OF VEHICLE:  
BRANCH ADDRESS:

ENTERPRISE LEASING COMPANY - SOUTHEAST, LLC  
22 PLANTATION PARK DR, BLUFFTON, SC, 29910-0070 (843) 796-2650

MO 8:00 AM - 6:00 PM TU 8:00 AM - 6:00 PM WE 8:00 AM - 6:00 PM  
TH 8:00 AM - 6:00 PM FR 8:00 AM - 6:00 PM SA 9:00 AM - 12:00 PM  
SU CLOSED

713873

RENTAL TYPE		RETAIL	SOURCE #	RETAIL-266	ID #	699	RENTAL AGREEMENT	NO	150132				
DATE		09/27/2011	TIME	2:18:00	RENTER	KELLY	SHALA	VEHICLE \$12.37 HOUR					
START CHARGES IF DIFFERENT		ADDRESS		167 WALSH DR APT B4		HOME PHONE		12437 784					
ORIGINAL VEHICLE		CITY		HARDEEVILLE		STATE		SC ZIP 29927					
COLOR		LICENSE NO		DOB		EMPLOYER		RIGHT @ HOME					
MODEL		ECAR#		DRIVERS LICENSE NO		STATE		EXPIRES					
MILE-AGE		IN		BILL TO		COMPANY		NO CHARGE MILEAGE					
DRIVEN		OUT		ATTN		PHONE		EXT					
CONDITION AND FUEL X LEVEL AGREED TO		RENTER		REFERENCE NUMBER		ADDITIONAL AUTHORIZED DRIVER(S) - EXCEPT AS REQUIRED BY LAW, NONE PERMITTED WITHOUT OWNER'S WRITTEN APPROVAL		REQUEST OWNERS PERMISSION TO ALLOW					
NO DAMAGE		NO GASOLINE REFUNDS		PERMISSION GRANTED TO OPERATE VEHICLE ONLY IN THE STATE OF RENTAL AND THE FOLLOWING STATE(S)		OPERATION IN ANY OTHER STATE OR COUNTRY WILL AFFECT YOUR LIABILITY AND RIGHTS UNDER THIS AGREEMENT		YOUNG DRIVER \$10.00/DAY					
OPTIONAL PRODUCTS NOTICE: WE OFFER FOR AN ADDITIONAL CHARGE THE FOLLOWING OPTIONAL PRODUCTS: DAMAGE WAIVER; PERSONAL ACCIDENT INSURANCE; SUPPLEMENTAL LIABILITY PROTECTION AND ROADSIDE ASSISTANCE PROTECTION. BEFORE DECIDING TO PURCHASE ANY OF THESE PRODUCTS, YOU MAY WISH TO DETERMINE WHETHER YOUR PERSONAL INSURANCE, CREDIT CARD OR OTHER COVERAGE PROVIDES YOU PROTECTION DURING THE RENTAL PERIOD. THE PURCHASE OF ANY OF THESE PRODUCTS IS NOT REQUIRED TO RENT VEHICLE.		RENTER DECLINES OPTIONAL DAMAGE WAIVER (DW) AND ASSUMES DAMAGE RESPONSIBILITY. SEE PARAGRAPH 1		RENTER ACCEPTS OPTIONAL DAMAGE WAIVER (DW) AT FEE SHOWN IN COLUMN TO RIGHT. SEE NOTICE TO LEFT AND PARAGRAPH 16. DAMAGE WAIVER IS NOT INSURANCE.		RENTER X DW		DW OR CDW \$16.99/DAY					
		RENTER X DECLINES DW		RENTER ACCEPTS OPTIONAL PERSONAL ACCIDENT INSURANCE (PAI) AT FEE SHOWN IN COLUMN TO RIGHT. SEE PARAGRAPH 18		RENTER X PAI		PAI \$2.99/DAY					
		RENTER X DECLINES PAI		RENTER ACCEPTS OPTIONAL SUPPLEMENTAL LIABILITY PROTECTION (SLP) AT FEE SHOWN IN COLUMN TO RIGHT. SEE PARAGRAPH 17		RENTER X SLP		SLP \$12.00/DAY					
		RENTER X DECLINES SLP		RENTER ACCEPTS OPTIONAL ROADSIDE ASSISTANCE PROTECTION (RAP) AT FEE SHOWN IN COLUMN TO RIGHT. SEE OPTIONAL PRODUCTS NOTICE TO LEFT AND PARAGRAPH 19		RENTER X RAP		RAP \$3.99/DAY					
		RENTER X DECLINES RAP		ACKNOWLEDGMENT OF THE ENTIRE AGREEMENT WHICH CONSISTS OF PAGES 1 THROUGH 4. I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS ON PAGES 1 THROUGH 4 OF THIS AGREEMENT AND BY MY SIGNATURE BELOW I AM THE RENTER UNDER THIS AGREEMENT. I AM AUTHORIZING OWNER TO PROCESS CHARGES ON MY CREDIT CARDS AND/OR DEBIT CARDS FOR ADVANCE DEPOSITS, INCREMENTAL AUTHORIZATIONS, DEPOSITS AND CHARGES INCURRED, AS WELL AS PAYMENTS REFUSED BY A THIRD PARTY TO WHOM BILLING WAS DIRECTED. I CERTIFY THAT THE DRIVERS LICENSE(S) PRESENTED IS CURRENTLY VALID AND IS NOT SUSPENDED, EXPIRED, REVOKED, CANCELLED OR SURRENDERED.		RENTER		DATE		09/27/2011		FUEL CHARGE \$5.00/GALLON	
REPLACEMENT VEHICLE		RENTER		OWNER REP		DATE		09/27/2011		SALES TAX 7.00%			
COLOR		LICENSE NO		EMPL #		E68738		SC RENTAL SURCHARGE 3.00%					
MODEL		ECAR#		I WILL RETURN CAR BY:		DEPOSIT(S):							
MILE-AGE		IN		DATE		TIME		AMOUNT		PAID BY			
DRIVEN		OUT		10/04/2011		2:00 PM		\$529.59		CHECK/CASH			
CONDITION AND FUEL X LEVEL AGREED TO		RENTER		ADDITIONAL INFORMATION		NO SMOKING NO PETS		TOTAL CHARGES					
NO DAMAGE		NO GASOLINE REFUNDS		DEPOSITS				REFUNDS					
				AMOUNT DUE				CLOSED BY					
				PAID BY		CASH		CHECK		CHARGE			
				RECEIPT OF CASH REFUND		DATE		AMOUNT		RECEIVED BY			

COPY

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF JASPER )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO: 2013-CP-27-577

MARY WIGGINS, as Personal )  
Representative of: )  
KELVIN MARQUISE WIGGINS, )  
 )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Enterprise Leasing Company )  
SouthEast LLC )  
Defendant(s). )

PLAINTIFF'S RESPONSE TO  
DEFENDANT'S SUPPLEMENTAL  
MEMORANDUM

FILED  
2013 OCT 15 11:56  
CLERK OF COURT

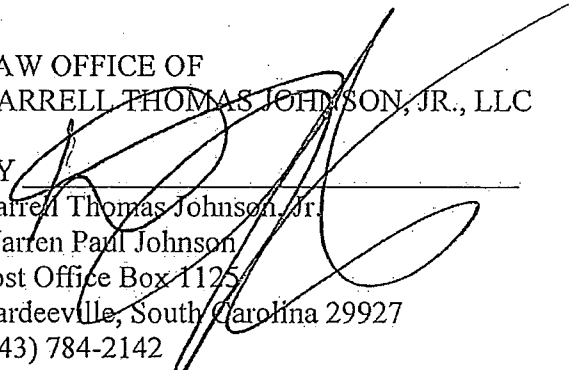
Defendant sought summary judgment on the grounds that “the decedent Kelvin M. Wiggins was not a permissive user....”. The assertions relative to the *Howser* issues were not before the Court. However, the merits of the case could not be closer on point to *Howser*, and further from the *Holmes* case cited by Defendant. As in *Wausau Underwriters Insurance Company v. Nancy Reece Howser* 309 S.C. 269 (1992) 422 S.E. 2d 106 the two vehicles were both traveling on the roadway when shots from one vehicle hit an occupant of the other (see police report attached). *Holmes*, cited by Defendant, involved a shooting in a parking lot.

The case cited by Defendant, *Collins Cadillac v. Bigelow-Sanford, Inc.*, 276 S.C. 465, 467, 279 S.E.2d 611, 612 (1981) actually supports the Plaintiff's position. In that case, the Supreme Court did hold that a self-insurer is both an insurer and an insured, however, it also held that the other party was also an insured. Most auto policies have multiple insureds, i.e., the lienholder, the co-owner, etc. This case simply affirms that the customer, was also an insured. The statutory requirement of coverage relates, not to permission of the owner, but permission of

the insured, Ms. Kelly.

Respectfully Submitted,

LAW OFFICE OF  
DARRELL THOMAS JOHNSON, JR., LLC

BY   
Darrell Thomas Johnson, Jr.  
Warren Paul Johnson  
Post Office Box 1125  
Hardeeville, South Carolina 29927  
(843) 784-2142  
(843) 784-5770 (facsimile)  
tdjohnson1@hargray.com

ATTORNEYS FOR PLAINTIFF

August 20, 2015

Hardeeville, South Carolina

## Jasper County Sheriff's Office Detail

Print Date/Time: 04/19/2012 11:04  
 Login ID: ebuckner  
 Case Number: 2011-00002857

Jasper County Sheriff's Office  
 ORI Number: SC0270000

**Case Details:**

---

Case Number:	2011-00002857	Incident Type:	Homicide
Location:	DEERFIELD RD / WHYTE HARDEE BLVD Hardeeville, SC 29927	Occured From:	10/05/2011 17:47
		Occured Thru:	10/05/2011 17:47
		Reported Date:	10/05/2011 17:47 Wednesday
Reporting Officer ID:	579753-Jennings	Status:	Active
		Status Date:	10/05/2011
Assigned Bureau:	Patrol Div		

**Case Assignments:**

Assigned Officer	Assignment Date/Time	Assignment Type	Assigned By Officer	Due Date/Time
1053-Crosby	10/06/2011 00:00	Lead Investigator	5040-Hipp	

<u>Associated Cases</u>	<u>Status</u>	<u>Assigning ORI</u>	<u>Role</u>
2011-00002858	Active		

<u>Modus Operandi</u>	<u>Solvability Factors</u>	<u>Weight</u>
		Total:

**Offenses**

No.	Group/ORI	Crime Code	Statute	Description	Counts
1	State	09A	16-3-10	MURDER	1

# Jasper County Sheriff's Office

## Detail

Print Date/Time: 04/19/2012 11:04  
 Login ID: ebuckner  
 Case Number: 2011-00002857

Jasper County Sheriff's Office  
 ORI Number: SC0270000

**Offense # 1**

Group/ORI: State	Crime Code: 09A	Statute: 16-3-10	Counts: 1	Attempt/ Commit Code: Commit (C)
Description: MURDER				Offense Date: 10/05/2011
NCIC Code:	Scene Code:	Highway/Road/Street		Blas/Motivation: NO Hate/Bias
		Valley (13)		Motivation (88)
Offense Status: Open	Status Date:	10/05/2011		Occupancy Code:
Arson Code:	Domestic Code:			Child Abuse:
Gang Related:	Aiding/Abetting:			Sub-Code:
# of Adults:	# of Juveniles:			IBR Seq. No: 1
Property Damage Amt:	Abandoned Structure:			Household Status:
Domestic Circumstance:	Carjacking:			Premise Code:
Accosting Situation:	Hate Bias Indicator:			Prior Inv - Victim:
Gambling Motivated:	Order of Protection:			Cargo Theft:
Prior Inv - Offender:	Anti-reproductive rights crime:			
Special Circumstances:	Proscribing Event:			

**Offender Suspected of Using**

Alcohol: Unknown  
 Drugs: Unknown  
 Computer: Unknown  
 Aggravated Assault/ Homicide Unknown Circumstances (10)  
 Circumstances #1:  
 Aggravated Assault/ Homicide Remarks #1:  
 Justifiable Homicide Circumstances:  
 Method of Entry Type:  
 Point of Entry:  
 Method of Exit Type:  
 Point of Exit:  
 Direction of Travel:  
 Counterfeit Type:  
 Evidence Collected:

**Victim Suspected of Using**

Alcohol: Unknown  
 Drugs: Unknown  
 Computer: Unknown  
 Aggravated Assault/ Homicide Circumstances #2:  
 Aggravated Assault/ Homicide Remarks #3:  
 Larceny Type:  
 Method of Entry:  
 # of Premises Entered:  
 Method of Exit:  
 How Left Scene:

**Counterfeit Status:**

**Criminal Activity**  
 No Gang Involvement (N)

**Tools Used**

**Counterfeit Amount:**  
**Security Systems**

**Weapon Code : Firearm (11)**

Feature:	Caliber:	Caliber Other:	Weapon Length:
Weapon Gauge:	Gauge Other:	Weapon Grips:	Weapon Finish:
Weapon Finish Other:		Weapon Other:	

**Subjects**

Type	No.	Name	Address	Phone	Race	Sex	DOB/Age
Witness	1	WIGGINS, TRAVIS	91 JACKSON LOOP Hardeeville, SC 29927	(843)258-8358	Black	Male	03/10/1991 20
Witness	2	Loury, Marion	806 STINEY RD Hardeeville, SC 29927	(843)295-5383	Black	Male	11/11/1993 17
Witness	3	KENNEDY, KATHERINE MIRANDA	679 HANDSOME OAK	(843)227-2210	White	Female	10/20/1985
Suspect (S)	1	UNKNOWN	HARDEEVILLE, SC 29927 UNKNOWN UNKNOWN		Unknown	Unknown	25
Victim (V)	1	WIGGINS, KELVIN MARQUIS, Jr.	95 JACKSON LOOP Hardeeville, SC 29927		Black	Male	04/27/1986 25

Jasper County Sheriff's Office  
Detail

Print Date/Time: 04/19/2012 11:04  
Login ID: ebuckner  
Case Number: 2011-00002857

ORI Number: Jasper County Sheriff's Office  
SC0270000

Subject # 1-Witness

Primary: No	Race: Black	Sex: Male	DOB: 03/10/1991
Name: WIGGINS, TRAVIS	Height: 5ft 9in	Weight: 200.0 lbs.	Build:
Address: 91 JACKSON LOOP	Eyes: BRO	Hair: BLK	Age: 20
Hardeeville SC 29927	SSN:	DVL #: 0101076865	State: SC
Primary Phone: (843)258-8358	Resident Status: Jurisdiction (J)	Statement Type: Written	
Resident Type: County	Date:	Custody Status:	
Disposition:			

Related Offenses

Related Weapons

Victim/Offender Relationship

Transported By:	Extent of Injury:	Hospital:
Domestic Violence:	Domestic Violence Referrals:	Federal Agencies Involved:
Condition:	Medical Treatment:	

Injury Types

Modus Operandi

Missing Person Information

Subject # 2-Witness

Primary: No	Race: Black	Sex: Male	DOB: 11/11/1993
Name: Loury, Marlon	Height: 5ft 9in	Weight: 135.0 lbs.	Build:
Address: 806 STINEY RD	Eyes: BRO	Hair: BLK	Age: 17
Hardeeville SC 29927	SSN:	DVL #:	State:
Primary Phone: (843)295-5383	Resident Status: Jurisdiction (J)	Statement Type: Written	
Resident Type: County	Date:	Custody Status:	
Disposition:			

Related Offenses

Related Weapons

Victim/Offender Relationship

Transported By:	Extent of Injury:	Hospital:
Domestic Violence:	Domestic Violence Referrals:	Federal Agencies Involved:
Condition:	Medical Treatment:	

Injury Types

Modus Operandi

Missing Person Information

# Jasper County Sheriff's Office

## Detail

Print Date/Time: 04/19/2012 11:04  
Login ID: ebuckner  
Case Number: 2011-00002857

ORI Number: Jasper County Sheriff's Office  
SC0270000

a house so he grabbed the steering wheel and used the emergency brake to stop the vehicle.

### Interview with Witness # 2 Mr. Marion Loury

Mr. Loury stated in a written and verbal statement that he had been in the vehicle seated in the rear and observed a brown late model vehicle possibly a Honda travelling north on Deer Field Road and as the vehicle passed he heard a "BOW" and then saw that his cousin Kelvin Wiggins who had been driving the vehicle he was in start bleeding from the head.

### Interview with Witness # 3 Mrs. Katherine Kennedy

Mrs. Kennedy stated in a written and verbal statement that she had been sitting on the porch of a brick residence #815 Deer Field Road when she heard one single gun shot. Mrs. Kennedy further states that she observed a red car travelling south go by with people she knew in it and then saw the car pull over to the right side of the road. Mrs. Kennedy then went to the vehicle to see if everyone was ok.

### Officer's Actions/ Observations

I arrived on scene along with Sgt. Detective Crosby and observed a red vehicle parked on the south bound side of Deer Field Road near the intersection of Youmans Estate Road. I observed several subjects around the vehicle and several more in the roadway yelling for an ambulance. I pulled my patrol car in behind the red vehicle a red Ford Focus with GA Tag of BSQ-1824. I walked up to the vehicle and observed two subjects that Detective Crosby was talking to. The first subject was a black male wearing a black dew rag, white T-shirt with large what appeared to be blood stains on it and dark pants. The second subject was a black male wearing a black T-shirt with light blue denim shorts with what appeared to be small blood stains on the right leg area.

I asked both subjects to return to my vehicle so I could take statements from each of them. The witnesses Mr. Travis Wiggins and Mr. Marion Loury were filling out voluntary forms when a Mrs. Katherine Kennedy a white female with long brown hair in a pony tail wearing a lime green tank-top shirt and blue jeans with dirt on her pants, shirt and arms came up to me and advised me of her observations. I issued a voluntary statement for to her to fill out. I collected the statement forms from the witnesses. I then assisted Detective Morris in recording measurements of the scene. I collected the white T-shirt that Mr. Travis Wiggins had been wearing and placed it in a brown paper Evidence bag and submitted it to Sgt. Detective Crosby.

I request that the next wrecker on rotation be dispatched to the scene and to advise the wrecker company that the vehicle would be transported to the Jasper County Impound Yard. I filled out the impound sheet and issued a copy to the driver of Franklins Towing.

I was requested by Sgt. Detective Crosby to transport Mr. Marion Loury to the Detectives Office for an interview. I advised dispatch that I would be transporting Mr. Loury to that location. I also escorted Franklin's towing vehicle with the Red Ford Focus to the Jasper County Impound Yard.

I arrived at the Detective Office without incident and escorted Mr. Loury into the Office where I was met by Lt. Hipp. I was advised that I could clear from the call and I returned to patrolling the southern area.

### Vehicle Information

2012 Red Ford Focus  
Georgia Tag BSQ-1824  
Vin# 1FAHP3F2XCL115934  
Registered to Ean Holding Company  
6929 North Lakewood  
Tulsa, OK 74117

# Jasper County Sheriff's Office

## Detail

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Login ID: ebuckner  
Case Number: 2011-00002857

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Jasper County Sheriff's Office  
SC027000

Attachments:  
Written statements  
Impound Sheet

Deputy Jennings

Investigation #1:

Ref. case #11-2857 / Det. Jeff Crosby

On October 5, 2011 at approximately 1730 hours I overheard a radio transmission from Jasper County Dispatch to the Hardeeville Police Department officers to be on the lookout for a shooting victim around the Deerfield Road and Whyte Hardee Blvd. intersection. While searching for the Victim, Dispatch advised that they had received information that the Victim was located at the intersection of Deerfield Road and Youmans Estate Road in a Red Ford Escort.

Upon arrival at the intersection of Deerfield Road and Youmans Estate Road I located a Red in color Ford Escort parked on the South bound shoulder of Deerfield Road surrounded by a large group of people. As I approached the vehicle I noticed a Black male subject seated in the driver's seat and laying across the seat onto the passenger's seat. I was then advised by an unknown Black female subject that she could not locate a pulse on the Victim.

I then reached through the driver's side front door and checked the Victim for a pulse on his left wrist. After finding no pulse I radioed dispatch and advised them that the scene was secure for Jasper County Emergency Medical Services to respond. I was also assisted by several Hardeeville Police Department officers as well as other units from the Jasper County Sheriff's Office.

While EMS was tending to the Victim I requested officer of the Hardeeville Police Department to secure the crime scene with Crime Scene Tape. I then received word from EMS personal that the Victim was in fact deceased.

I then processed the vehicle for evidence while Jasper County Detective Morris recorded measurements of the crime scene. I noted the following:

The vehicle is a Red in color Ford Focus four doors bearing a Georgia License plate of BSQ-1824 and a V.I.N of 1AFHP3F2XCL115934. The vehicle is parked on the south bound shoulder of Deerfield Road almost in front of the residence located at 681 Deerfield Road.

I discovered there were three subjects in the vehicle, the Victim who was identified as one KELVIN MARQUIS WIGGINS II, one MARION RUSHAWN LOURY, and one TRAVIS WIGGINS.

I then photographed the exterior and interior of the vehicle with the Victim in place. I noted that the Victim was dressed in a White in color Tee shirt over a Blue Tee shirt and Blue jean pants. The Victim was seated in the Driver's side front seat and laying over into the Passenger's front seat. The Victim also appeared to have a large amount of blood around his head and face area.

Inside the vehicle there appeared to be a large amount of blood on the center console, passenger's side front seat, on the inside of the passenger's side front door, passenger's side front door jamb, the passenger's side front and rear floor boards, and the blood on the inside of the rear passenger's side door.

After photographing the vehicle I collected the following swabs as evidence:

# Jasper County Sheriff's Office

## Detail

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- #1: Two swabs from inside the Driver's side front door panel at approximately 1815 hours.
- #2: Two swabs from the front of the dash on the driver's side next to the turn signal lever at approximately 1845 hours.
- #3: Two swabs from the arm rest on the inside of the passenger's side front door at approximately 1900 hours.
- #4: Two swabs from the headliner on the front driver's side at approximately 1950 hours.
- #5: Two swabs from the back rest on the rear driver's side seat at approximately 2000 hours.

After processing the vehicle, Deputy Jasper County Coroner Vagnaur responded and took possession of Victim Wiggins. I advised Deputy Coroner Vagnaur that I would meet with him at the Jasper County Morgue where I would perform a Gun Shot Residue Kit on the Victim's hands.

I then met with Jasper County Deputy Jennings who reported that he had received written statements from TRAVIS WIGGINS and MARION LOURY. Deputy Jennings reported he had learned that the Victim and the two witnesses were traveling south on Deerfield Road when they were passed by another vehicle that was possibly Brown or Bronze in color when they heard what sounded like a gun shot. Deputy Jennings reported that according to TRAVIS WIGGINS and MARION LOURY they seen that the Victim had been shot and stopped the vehicle after almost having a wreck.

I then requested that Deputy Jennings transport LOURY and TRAVIS WIGGINS to the Jasper County Sheriff's Office Detective Division so that I could interview them. I then learned that TRAVIS WIGGINS had left the scene. MARION LOURY was then transported by Deputy Jennings.

On October 5, 2011 at approximately 2030 hours I met with Deputy Coroner Vagnaur at the Jasper County Morgue where I performed a Gun Shot Residue Kit on Victim Wiggins.

While clearing up from the Jasper County Morgue, I received a telephone call from an unidentified male subject that advised me that the shooter in the case was one SAMMY CHISOLM a.k.a. "BLACK". The unknown caller also advised that SAMMY CHISOLM was traveling with VINCENT GLOVER, RODNEY CHISOLM a.k.a. "PIPE", and DAQWAN CHISOLM. The caller also stated the four suspects were traveling in VINCENT GLOVER's Bronze in color vehicle. This caller would not release his name or his telephone number and also would not tell me how he received my mobile telephone number.

I then met with LOURY at the Detective Division for a tape recorded interview. After the interview I received a telephone call from Jasper County Deputy C. Williams who advised that he was dispatched to a residence located at 709 Church Road for a shooting incident. Deputy Williams reported this was the residence of DAQWAN CHISOLM, (see J.C.S.O. case #11-2858).

Deputy Williams also reported he received information from DAQWAN that TRAVIS WIGGINS was the shooter. Deputy Williams reported no one was hit in the shooting but the residence at 709 Church Road had been struck several times. Deputy Williams reported one of the fired bullets when through a side window, through an interior wall, and then busted a sliding glass door.

### Attempted Interview with DAQWAN CHISOLM:

On October 6, 2011 at approximately 1030 hours I went to the residence of DEQUAN CHISOLM on Church Road in an attempt to question him about the murder. I received no answer at the residence after knocking on the door. As I was walking away from the door a female subject pulled into the yard and stated that she was the Aunt of DAQWAN CHISOLM and telephone DAQUAN's mother BENNETT for me.

BENNETT advised that she has not stayed at her residence since it was shot up, (See J.C.S.O. case #11-2858). I advised BENNETT that I needed to speak with DAQUAN at my office in order to get a tape recorded statement from him about her residence being shot up. BENNETT stated she would bring him to my office for the interview.

# Jasper County Sheriff's Office

## Detail

Print Date/Time: 04/19/2012 11:04  
Login ID: ebuckner  
Case Number: 2011-00002857

ORI Number:

Jasper County Sheriff's Office  
SC0270000

### Attempted Interview with SAMMY CHISOLM:

On October 10, 2011 at approximately 1530 hours I along with Detective Morris and Lieutenant Jenkins of the Sheriff's Office went to the residence of SAMMY CHISOLM on McElwe Estates Road in the Hardeeville area of Jasper County in an attempt to speak with CHISOLM in reference to the murder.

After I knocked on the front door, I could hear a female subject talking to a male subject through the Storm door window that was open. I then was greeted by a Black female. I asked the female subject if SAMMY was home. The female was extremely rude and asked if I had a Warrant. I told the female that I did not and advised her that I just needed to speak with him. The female then asked what I wanted with him. I then asked her how old SAMMY was. The female stated he was 21. I then advised her that he was adult over the age of 17 that I would discuss it with him. The female subject again asked me if I had a Warrant. I then told her that I knew he was there and that he needed to come to the door.

The female subject then went to the rear of the residence where I could hear her whispering to a male subject. A few minutes later SAMMY came out of the residence and sat on the front steps and asked what I wanted. I asked SAMMY if he would ride with me to the office so I could speak with him. SAMMY then stated, "You got a mother fucking Warrant". I told SAMMY that I did not have a Warrant but I needed to speak with him about something. SAMMY then stated, "I ain't done shit, I was told not to leave this house".

I then told SAMMY that I needed to speak with him in reference to a murder. SAMMY stated, "A murder, I been no where I been right here". SAMMY then telephoned someone on his mobile telephone and I could over hear him say, "They said they want to talk to me about a mother fucking murder and shit. These mother fuckers got all the dam police in the yard".

SAMMY then moved the telephone from his ear and stated, "MY mother told me not to leave the house. She is on her way from Bluffton".

I then waited in the yard with Detective Morris and Lieutenant Jenkins for approximately twenty or thirty minutes for SAMMY's mother to arrive. After she did not arrive, I told SAMMY and his Grandmother that I would return later and then left the residence.

### NOTE:

"As I was speaking with SAMMY I noticed that he was extremely nervous. I could see his hands shaking and even see his pulse rate in his neck".

### Attempted Contact with TAJ GARVIN #1:

I went to the residence of TAJ GARVIN located at 486 Shady Oak Circle in the Levy area of Jasper County. When I knocked on the door I was greeted by a female subject who identified herself as the mother of TAJ. The female advised that TAJ no longer lived at the residence. I then gave her my business card and asked her if she could get in touch with TAJ and have him call me. I also advised her that I did not have an Arrest Warrant for him.

# Jasper County Sheriff's Office

## Detail

Print Date/Time: 04/19/2012 11:04  
Login ID: ebuckner  
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ORI Number:

Jasper County Sheriff's Office  
SC0270000

### Receipt of Evidence:

On October 7, 2011 at approximately 2000 hours I met with Jasper County Deputy Coroner VENAUGH and received the following items that were recovered from Victim WIGGINS during the autopsy:

- Item #1: Two Black shoes.
- Item #2: Two Black socks.
- Item #3: One Brown hat.
- Item #4: One Brown towel.
- Item #5: One pair of jeans.
- Item #6: One belt.
- Item #7: One pair of underwear.
- Item #8: One White Tee shirt.
- Item #9: Two earrings with clear stones.
- Item #10: One Blue Tank top.
- Item #11: Pulled scalp hair.
- Item #12: Bullet with jacket.
- Item #13: Blood spot.

### Anonymous Tip #1:

On October 6, 2011 at approximately 0945 hours I received a telephone call from an unknown subject who stated that on Sunday October 2, 2011 SAMMY CHISOLM robbed a subject known as "TAJ". The caller stated this incident occurred at the residence of ROOSEVELT BROWN which is located at the corner of Deerfield Road and Jackson Loop.

The caller also reported on the same afternoon, "TAJ" returned to the BROWN residence where he robbed SAMMY CHISOLM. The caller stated CHISOLM asked "TAJ" if the thirty dollars he had in his pocket was worth him dying over then go ahead. The caller stated "TAJ" robbed CHISOLM anyway.

The caller then reported, later on in the afternoon someone rode by the BROWN's residence and fired several shots at it. The caller stated he did not know if the residence was hit with any rounds. The caller also stated "TAJ" was the intended target and not Victim WIGGINS.

This caller would not leave his name and also called from a restricted telephone number.

# Jasper County Sheriff's Office

## Detail

Print Date/Time: 04/19/2012 11:04  
Login ID: ebuckner  
Case Number: 2011-00002857

ORI Number: Jasper County Sheriff's Office  
SC0270000

### S.L.E.D. Evidence Submission:

Ref. case #11-2857 / Det. Jeff Crosby

On November 29, 2011 at approximately 0959 hours I submitted the small white plastic bag containing the four live rounds and the spent bullet and bullet jacket recovered during the autopsy, to the South Carolina Law Enforcement Division's Forensic Services Laboratory for analysis.

### S.L.E.D. Evidence Submission #2:

Ref. case #11-2857 / Det. Jeff Crosby

On March 28, 2012 at approximately 1502 hours I submitted the spent round recovered from the wall at the residence of 961 Deer Field Road to the South Carolina Law Enforcement Division's Forensics Services Laboratory for examination.

Also on March 28, 2012 at approximately 1644 hours I re-submitted the spent round that was recovered during the autopsy of Victim Wiggins, as well as the bullet jacket that was recovered during the autopsy of Victim Wiggins for comparison to the bullet recovered from the wall of the residence at 961 Deer Field Road in Hardeeville.

### Routing:

- Chief
- Sheriff
- File



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	Civil Action No.: 2013-CP-27-577
Mary Wiggins, as Personal Representative	)	
Of Kelvin Marquise Wiggins,	)	
	)	
Plaintiff,	)	Motion to Alter or Amend Judgment
	)	
vs.	)	
	)	
Enterprise Leasing Company -	)	
South East, LLC,	)	
	)	
Defendant.	)	
	)	

The Plaintiff, Mary Wiggins (hereinafter, "Ms. Wiggins"), moves this Honorable Court to amend its judgment and to grant Ms. Wiggins a new trial in the above captioned matter. Defendant Enterprise Leasing Company-Southeast, LLC (hereinafter, "Enterprise"), moved for Summary Judgment and the Court heard oral argument in this matter on August 13, 2015. The Court granted Enterprise's Motion for Summary Judgment and dismissed the Plaintiff's action with prejudice. In its motion to Amend Judgment, the Plaintiff would respectfully show unto this Court as follows:

**Legal Standard**

Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56 SCRCP. Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence.

*Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326 (2009). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. See eg. *Froneberger v. Smith*, 406 S.C. 37, 748 S.E.2d 625 (S.C.App. 2013) *other cit's omitted*.

### Statement of the Facts

On October 5, 2011, Kelvin Marquis Wiggins was the driver of Enterprise's rental vehicle traveling south on Deerfield Road in Hardeeville, South Carolina. While still traveling south, Mr. Wiggins's vehicle passed a vehicle traveling in the opposite direction, north, on Deerfield Road. While both vehicles were still in motion, passing each other, the driver of the vehicle traveling north, an unknown John Doe, fired several shots into Wiggins's vehicle. Mr. Wiggins was struck in the head by one of the rounds and died of the gunshot wound. The vehicle driven by Mr. Wiggins was rented from Enterprise by Wiggins's cousin Shala Kelly. At the time she rented the vehicle from Enterprise, who is self-insured, Shala Kelly purchased additional insurance from Enterprise to cover additional damages not covered by Enterprise or her insurance. Prior to the incident resulting Mr. Wiggins's death, Shala Kelly gave Mr. Travis Wiggins and Mr. Kelvin Wiggins permission to operate the vehicle.

### Argument

#### **I. Plaintiff established that Kelvin Wiggins was insured as a permissive user**

Respectfully, the Circuit Court erroneously concluded that Enterprise was entitled to summary judgment in this matter when it held that Plaintiff failed to establish that Kelvin Wiggins was an insured. As mentioned above, Enterprise is a self-insured owner under S.C. Code Ann. §56-9-60. A self-insurer is said to hold a dual role as an insurer and an insured. *Collins Cadillac, Inc. v. Bigelow-Sanford, Inc.*, 276 S.C. 465, 467. A self-insured vehicle owner must provide the same minimum protection to the public as the minimum limits required by a statutory liability

policy. *Wright v. North Area Taxi, Inc.*, 268 S.C. 472 (Ct. App. 1999); *Southern Home Ins. Co. v. Burdette's Leasing Service, Inc.*, 268 S.C. 472, 476 (1977).

The Defendant argued and the Court held that Enterprise was the insured as to the vehicle involved in the incident leading to Mr. Wiggins's death, and that because Enterprise was the insured, Ms. Kelly was not the insured, but only a lessee. The Court held that as the only named insured, Enterprise gave Ms. Kelly permission to operate the automobile, and that Ms. Kelly was a permissive user of the automobile. The Court further held that Mr. Wiggins was not a covered permissive user of the automobile because Enterprise did not authorize Mr. Wiggins, or anyone besides Ms. Kelly, to use the automobile.

The Court mischaracterized the relationship between the parties involved in this action. The Supreme Court of South Carolina has held that a self-insured lessor of rental vehicles must provide coverage for persons using its rental automobile with its express or implied consent. *Southern Home Ins. Co.*, 268 S.C. at 475. As a self-insured owner of the vehicle, Enterprise expressly or implicitly provided coverage to Ms. Kelly in the lease agreement. Enterprise also acted as an insurer when it sold Ms. Kelly insurance to cover any damages in excess of those covered by her insurance or Enterprise, and Ms. Kelly was a named insured as to the automobile leased to her by Enterprise. Mr. Wiggins has, therefore, met his burden of proving that he was a permissive user of the automobile and is entitled to uninsured motorist coverage because he has shown that Ms. Kelly, as a named insured, gave him express or implied permission to use the automobile.

Additionally, the Court erred in ruling upon the issue of whether Mr. Wiggins's death arose out of the use of the vehicle. The first time this issue was brought to the Court's attention was in Defendant's Supplemental Memorandum in Support of Defendant's Motion for Summary

Judgment, and Ms. Wiggins's attorney was not given the opportunity to argue this issue before the Court. Therefore, the Court's decision on the issue is premature.

Assuming *arguendo* that the Court properly decided this issue, the Court further erred in holding that Ms. Wiggins failed to establish that Mr. Wiggins's death arose out of the use of the automobile. Liability coverage and uninsured motorist coverage are mandated under South Carolina law to insure against "damages arising out of the ownership, maintenance, or use" of a motor vehicle. S.C. Code Ann. 38-77-140 (2015). In determining whether damages arise out of the ownership, maintenance, or use of an automobile, Courts in South Carolina require that:

1. There exists a causal connection between the vehicle and the injury;
2. No act of independent significance breaks the causal link; and
3. The vehicle is being used for transportation at the time of the assault.

*State Farm Mutual Automobile Ins. Co. v. Bookert*, 337 S.C. 291 (1999); *State Farm v. Aytes*, 332 S.C. 30, 33 (1998). In situations where the vehicle is used in connection with an assault, it may be shown that a causal connection exists between the vehicle and the injury if the vehicle was an "active accessory" to the assault. *Wausau Underwriters Ins. Co. v. Howser*, 309 S.C. 269, 273 (1992).

In *Howser*, the Court emphasized the fact that "[a]lthough the assault, not the use of the vehicle, was the cause of the insured's injuries" that a court may find the use of the vehicle causally contributed to the claimant's injuries. *Id.* at 273; *See also Coletrain v. Coletrain*, 238 S.C. 555 (1961). In this case, the claimant was the driver of an automobile that was pursued by an unknown John Doe. The John Doe pulled alongside the claimant's vehicle and pointed a gun at the claimant's vehicle, causing her to make a quick turn, after which the John Doe fired several shots, injuring the claimant. In holding that the claimant's injuries arose out of John Doe's use of his automobile, the Court differentiated this case from cases in which "the assailant merely used the

vehicle to provide transportation to the situs of the shooting.” *Id*; *See Nationwide Mut. Ins. Co. v. Brown*, 779 F.2d 984 (4th Cir. 1985). The Court reasoned that “only through use of his vehicle was the assailant able to closely pursue Howser, thereby enabling him to carry out a pistol assault,” and that “[t]he gunshot was the culmination of an ongoing assault, in which the vehicle played an essential and integral part.” The Court further noted that only a motor vehicle could have given the assailant the means to escape the scene so quickly.

The circumstances surrounding Mr. Wiggins’s injury and subsequent death are very similar to those involved in the injury of the claimant in *Howser*. Much like the claimant in *Howser*, Mr. Wiggins’s gunshot wounds were caused by an unknown motorist who utilized his vehicle to carry out a shooting attack. Mr. Wiggins’s assailant did not merely use his vehicle to provide transportation to the site of the accident. Rather, the unknown assailant used his vehicle as an active accessory to the assault, and without the vehicle, he would not have been able to carry out the assault. Therefore, Mr. Wiggins’s injuries arose out of the unknown assailant’s use of his automobile, and his injuries should be covered under Enterprise’s uninsured motorist coverage.

Additionally, the Court’s holding seems to erroneously rely upon non-binding authority from the District Court of South Carolina. Specifically, the Court cited *Holmes v. Allstate*, 786 F.Supp.2d 1022 (D.S.C. 2009), wherein the claimant was assaulted by a motorist in an adjacent vehicle while the motorists were stationary in a parking lot. The holding in *Holmes* could not be further from the merits of the present case, because rather than using the automobile as an accessory or instrumentality of his assault, it was merely coincidental that he and the victim were inside the automobiles at the time of the shooting.

Therefore, the Court erred in holding that the Mr. Wiggins failed to meet his burden of proving that he was a permissive user of the automobile. The Court further erred in deciding the

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF JASPER )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO: 2013-CP-27-00577

MARY WIGGINS, as Personal )  
Representative of the Estate )  
KELVIN MARQUISE WIGGINS, )

Plaintiff, )

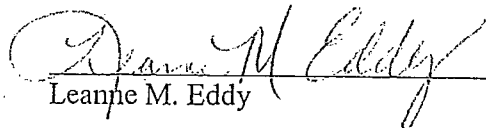
vs. )

Enterprise Leasing Company )  
South East LLC, )  
Defendant(s). )

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of October, 2015, placed a true and correct copy of Motion and Order Information Form and Coversheet and a Motion to Alter or Amend by depositing the same in the United States Mail, with sufficient postage attached thereto, and addressed to the following:

Brittany Boykin, Esquire  
TUNER PADGET GRAHAM & LANEY, P.A  
Post Office Box 22129  
Charleston, South Carolina 29413

  
\_\_\_\_\_  
Leanne M. Eddy

Hardeeville, South Carolina