

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Bharatbhai Patel,)

Case No.: 2011-CP-29-1340

Plaintiff,)

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v.)

SC Court of Appeals

**ORDER GRANTING MOTION
TO STRIKE ANSWER
OF TRAVELERS**

South Carolina Department)
of Public Safety,)

Defendant.)

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OF COURT
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LANCASTER, SC

This matter came before the Court on Tuesday, September 4, 2012, during a regularly scheduled term of Common Pleas Non-Jury in Lancaster, South Carolina. Plaintiff has moved to strike the filed Answer of Travelers, the underinsured motorist insurance ("UIM") carrier in this case. Travelers is not a named party.

This case arises from an automobile accident. The at-fault party is the South Carolina Department of Public Safety ("SCDPS"), and has paid its available coverage to Plaintiff. Travelers provides UIM to the Plaintiff through the Plaintiff's own policy. After considering oral arguments from the Plaintiff, Defendant SCDPS, and Travelers, the Court notes that an internal dispute exists between SCDPS and the UIM carrier regarding control of the defense in this case. Specifically, SCDPS argues that their primary insurance coverage was paid in this case under a Covenant Not to Execute, whereas the UIM carrier contends that the settlement document is actually a release. SCDPS filed an Answer on behalf of itself, and now Travelers has sought to intervene by filing its own Answer, but has refused to take responsibility for assuming the defense of the underinsured motorist.

A review of the pertinent facts reveals that, through error acknowledged by both Plaintiff and Defendant SCDPS, the underlying claim in this case against SCDPS was resolved by the inadvertent signing of a release by Plaintiff, which when discovered by counsel for both parties, was recognized as a mutual mistake and rescinded, with a Covenant Not to Execute being substituted therefor. Thus, SCDPS declined to amend its Answer in this case to allege the affirmative defense of Release. When SCDPS

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tendered the defense of the case to Travelers, Travelers refused to accept responsibility for defending the case, but then sought to interpose its own Answer to assert the Release defense.

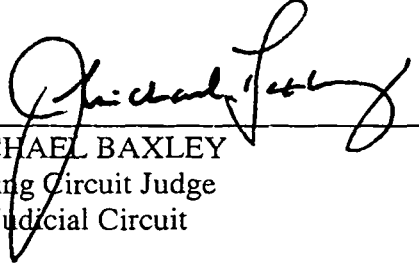
In submitting its own Answer, Travelers seeks to assert a defense for itself without assuming responsibility for the underinsured motorist or becoming a party to this action. The Court can find no precedent permitting this course of action. As a practical matter, if the Court permits the UIM carrier to submit its own Answer without assuming responsibility for control of the case, the Court would be unable to determine who was responsible for questioning witnesses on behalf of the named Defendant, developing strategy and tactics, and generally defending the matter. This is particularly true where the two parties on the defense side of the case have antagonistic positions over core issues of the defense.

Consequently, the Court orders that the Answer of Travelers be and is hereby stricken from the record since the Defendant had previously filed an Answer and the UIM carrier has refused to take responsibility for the defense.

IT IS SO ORDERED.

September 24, 2012

Hartsville, South Carolina



J. MICHAEL BAXLEY
Presiding Circuit Judge
Sixth Judicial Circuit