

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge
Jocelyn Newman, Circuit Court Judge

RECEIVED

NOV 29 2016

SC Court of Appeals

Appellate Case No.: 2016-000986

Porthemos Curry.....Respondent/Appellant,

v.

Carolina Insurance Group of SC, Inc. and Maurice
Derrick.....Appellants/Respondents.

**RESPONDENT/APPELLANT’S REPLY TO APPELLANTS/RESPONDENTS’
RETURN**

Pursuant to Rule 240(f), SCACR, Respondent/Appellant Porthemos Curry (hereafter “Mr. Curry”) hereby briefly replies to the *Return of Appellants/Respondents*, filed on November 23, 2016.

It is undisputed that the letter from J.R. Murphy dated November 25, 2015 did not indicate that the enclosures being sent to Attorney Peavy (i.e. the Scottsdale Release and the Stipulation of Dismissal) were also being sent to Attorney Peel, as the “cc:” portion of the letter did not indicate such an enclosure. Accordingly, counsel was mistaken when she represented to the trial court that Attorney Peel, as counsel for Appellants/Respondents, did not receive the Scottsdale Release in November 2015. This representation was

obviously incorrect; however, Attorney Peel did not attempt to correct this error with the trial court.

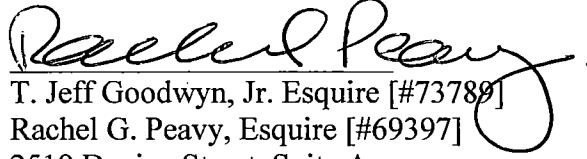
The *gravamen* of Mr. Curry's position, as articulated more fully in the underlying motions, is that such a fact would have been material to the trial court's analysis of whether to grant the Agency's motion to amend its answer, on the first day of trial, to assert the affirmative defense of release. By failing to correct the trial court's impression and/or belief of when Agency's counsel had a chance to review the terms and conditions of the Scottsdale Release, whether executed or not, the trial court was not possessed of all relevant facts.

Furthermore, Counsel is mindful of the Rules of Professional Conduct and has made no allegation of "fraud" on the part of opposing counsel, who is a learned and respected member of the Bar. However, the date when Attorney Peel was able to review the terms and conditions of the Scottsdale Release was material to the trial court's determination and should have been fully disclosed at the hearing, by way of opposing counsel acknowledging to the trial court his receipt of the unsigned Scottsdale Release on November 30, 2015. The trial court could then have determined whether the receipt of the unsigned Release on November 30, 2015 was material, and therefore relevant, to its analysis of the pending motion to amend.

For all the reasons contained in the underlying motions, Respondent/Appellant respectfully requests that his motions be granted, the appeal stayed, and the matter returned to the trial court for further determination.

-signature page to follow-

GOODWYN LAW FIRM, LLC



T. Jeff Goodwyn, Jr. Esquire [#73789]

Rachel G. Peavy, Esquire [#69397]

2519 Devine Street, Suite A

Columbia, SC 29205

(803) 251-4517

Jgoodwyn@Goodwynlaw.com

Attorneys for the Respondent/Appellant

Dated: November 29, 2016

Other Counsel of Record:

Wesley R. Peel, Esq.

Bryan M.J. Triplett

PO Box 61110

Columbia, SC 29260-1110

Attorneys for Appellants/Respondents

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No.: 2016-0006986

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SC Court of Appeals

Porthemos Curry,.....Respondent/Appellant,

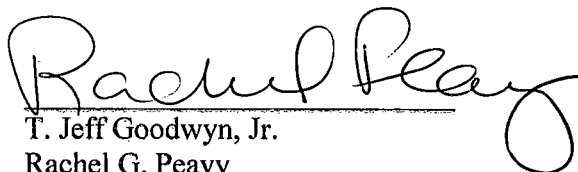
v.

Carolina Insurance Group of SC, Inc. and Maurice
Derrick.....Appellants/Respondents.

PROOF OF SERVICE

I certify that I have served the **Respondent/Appellant's Reply to Appellants/Respondents' Return** upon Wesley D. Peel, Esquire and Bryan M. J. Triplett, Esquire, Attorneys for the Appellants/Respondents, at the address listed below by delivering a copy of same via hand delivery, on November 29, 2016.

Wesley D. Peel, Esquire
Bryan M. J. Triplett, Esquire
Bruner Powell Wall & Mullins, LLC
1735 St. Julian Place
Columbia, SC 29204



T. Jeff Goodwyn, Jr.
Rachel G. Peavy
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, South Carolina 29205
(803) 251-4517
Attorneys for Respondent

November 29, 2016

GOODWYN LAW FIRM, LLC

T. Jeff Goodwyn, Jr.*
Christopher J. Archer

Special Counsel:
Rachel G. Peavy

Of Counsel:
E. Crosby Lewis

*Also Licensed in Georgia

Reply to:
2519 Devine Street
Suite A
Columbia, South Carolina 29205

111-B Congress Street
Winnsboro, South Carolina 29180

Tel. (803) 251-4517 (Columbia)
Fax (803) 251-4527

Tel. (803) 635-1920 (Winnsboro)
Fax (803) 635-2100

Email: Contact@Goodwynlaw.com
Web: www.GoodwynLaw.com

November 29, 2016

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

RE: *Porthemos Curry v. Carolina Insurance Group of SC, Inc. and Maurice Derrick*
Appellate Case No.: 2016-000986
Our File No.: 3000-0106

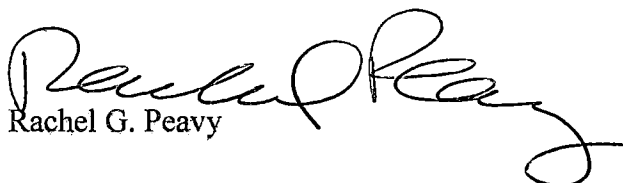
Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of the **Respondent/Appellant's Reply to Appellants/Respondents' Return** along with the Proof of Service, in regard to the above-referenced matter.

By copy of this letter and as evidenced by the attached Proof of Service, I am serving a copy of same upon Wesley D. Peel, Esquire, and Bryan M. J. Triplett, Esquire, attorneys for the Appellants/Respondents.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,


Rachel G. Peavy

RGP/msb
Enclosures

cc: Wesley D. Peel, Esquire (w/encl.) (via Hand Delivery)
Bryan M. J. Triplett, Esquire (w/encl.) (via Via Hand Delivery)
Porthemos Curry (w/encl.) (via US Mail)