

IN 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

Case No. 2014-CP-40-04661

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SC Court of Appeals

Porthemos Curry.....Respondent/Appellant,

v.

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

CONSOLIDATED RECORD ON APPEAL
Volume I of II

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Certificate of Counsel

The undersigned hereby certifies that the Consolidated Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 16, 2016

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff(s),

vs.

Carolina Insurance Group of SC, Inc.
and Maurice Derrick,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-04661

ORDER

RICHLAND COUNTY
FILED
2016 MAY 29 AM 10:08
JENNIFER L. BROWN

This matter came before the Court on Defendants' Motion for Summary Judgment, as amended, filed April 15, 2016, and the Plaintiff's cross-motion for summary judgment, as to the affirmative defense of release.² A hearing was held on April 26, 2016, with Wesley R. Peel, Esq. appearing on behalf of the Defendants and Rachel G. Peavy, Esq. and T. Jeff Goodwyn, Jr., Esq. appearing on behalf of the Plaintiff.¹ Both parties waived 10 days' notice of hearing.

Oral argument was heard, and both parties submitted memorandum of law in support of their respective positions. Furthermore, the testimony of Plaintiff and Defendants was before the Court, along with affidavits of Plaintiff's counsel. The Court denied the Defendants' Motion from the bench, and took Plaintiff's cross-motion under advisement.

After careful review of the evidence and applicable law, the Court, as discussed in further detail below, hereby grants the Plaintiff's Cross-Motion for Summary Judgment as to the affirmative defense of release, finding that there was no genuine

¹ Defendants' counsel withdrew his Motion for Sanctions, filed April 25th, during the course of oral argument.

issue of material fact as to whether the Defendants were "released" from liability in this lawsuit by way of a settlement agreement entered into between Plaintiff and Scottsdale Insurance Company, a prior defendant in this same matter. The Court, having previously denied the Defendants' Motion from the bench, incorporates such denial into this Order, as outlined below.

Undisputed Facts

This lawsuit arises out of the alleged negligent failure to procure insurance coverage for a vacant structure. Initially, Plaintiff brought claims against Scottsdale Insurance Company, the issuer of the policy, for breach of contract; statutory bad faith; and common law bad faith. The Plaintiff brought claims against Carolina Insurance Group and Maurice Derrick for negligence, later amending the pleading to add claims for gross negligence as against Carolina Insurance Group and Mr. Derrick.

The Second Amended Complaint, filed October 1, 2015, alleges that "Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale." Amend. Compl. at ¶134.

It is undisputed that the Defendants have consistently denied that they were agents of Scottsdale in both their Answer to the Second Amended Complaint, filed October 28, 2015, and in their Amended Answer filed April 18, 2016. See ¶14 of Answer and Amended Answer. Furthermore, the 30(b)(6) testimony of Carolina Insurance Group and Maurice Derrick is that there is no agency relationship, or any relationship, between Scottsdale Insurance and Carolina Insurance Group, as excerpted below:

Q. Okay. What's the relationship between Carolina Insurance and Scottsdale?

A. We don't have a relationship –

Q. Okay.

A. With them.

Q. So, you have no relationship with Scottsdale, no authority to bind Scottsdale, and any conduct of you or the agents on your behalf is not the conduct of Scottsdale, is it?

A. Correct.

Q. You have not relationship with Scottsdale Insurance Company?

A. Correct.

Dep. Tr. of Carolina Insurance Group at pp. 26 -27, pp. 76-77.

Q. Okay. Mr. Derrick, you're not employed by Scottsdale Insurance Company or any of its affiliates, are you?

A. Correct.

Q. In fact, you have no direct relationship with Scottsdale Insurance Company as a producing agent in this case?

A. I do not.

Q. You have no authority to issue a policy on behalf of Scottsdale?

A. I do not.

Q. You have no authority to bind Scottsdale to a policy?

A. I do not.

Q. . . . [I]n this transaction . . . you represented the interest of Mr. Curry?

A. Correct.

Q. And in doing this, you dealt with Tapco, who in turn represented the interest of Scottsdale?

A. Correct.

Derrick Dep. Tr. at pp. 90-91

In September 2015, the parties participated in a mediation conference. At that time, Scottsdale Insurance was still a defendant in the case. As a result of the mediation and subsequent negotiations, Plaintiff reached a settlement agreement with Scottsdale Insurance Company.

On November 25, 2015, counsel for Scottsdale, J.R. Murphy, wrote a letter to Plaintiff's counsel whereby he wrote that he was enclosing a check, along with a Release (hereafter "the Release") and Stipulation of Dismissal for signature. Wesley Peel, Esq. was copied on the letter; however, a copy of the Release and Stipulation were not provided to Mr. Peel at that time. Plaintiff did not receive a request for a copy of the Release from Mr. Peel until April 8, 2016. It is undisputed that the Defendants did not contribute any money to the Scottsdale settlement, and it is further undisputed that there is no mention of either Carolina Insurance Group of SC, Inc. or Maurice Derrick in the Release.

Plaintiff executed the Release. Counsel for Carolina Insurance Group and Maurice Derrick executed the Stipulation of Dismissal as to Defendant Scottsdale

Insurance Company. The Stipulation provided that *"the Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal."* The Stipulation was filed with the Court on December 30, 2015.

Discovery continued in the case following Scottsdale's dismissal. With a date certain trial set for April 18, 2016, Defendants' counsel contacted Plaintiff's counsel to explore a possible settlement of the matter.

The parties thereafter commenced settlement negotiations. On the morning of Friday, April 8th, Mr. Peel requested that Plaintiff's counsel provide him with a copy of the Release, which was promptly provided to him later that day. Thereafter, the parties continued their settlement negotiations; however, by the end of business Friday, they had apparently reached a stalemate. The parties proceeded to depose expert witnesses on April 11th and prepared for a date certain trial on April 18th. On April 15th, Defendants filed a motion for summary judgment, asserting the defense of release. On April 18th, Defendants moved to amend their answer to assert the affirmative defense of release; the motion to amend was granted by the Honorable Jocelyn Newman over Plaintiff's objection.

Legal Standard

"Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. 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 in order to withstand a motion for summary judgment." *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009) (internal citations omitted).

I. The Scottsdale Release Does Not Release These Defendants

Defendants argue that they are entitled to summary judgment on two (2) separate grounds: first, that they were released in the Scottsdale release by virtue of language releasing Scottsdale "and its agents"; and, second that they were released under a joint tortfeasor theory of liability. In denying Defendants' motions under Rule 56, SCRPC, the Court addresses each of these arguments in turn.

Defendants Are Not "Agents" of Scottsdale

The Release provides that "Porthemos Curry, in consideration of the sum of \$85,000, the receipt of which from Scottsdale Insurance Company is hereby acknowledged, does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions, causes of actions, demands and/or claims of whatsoever kind . . ."

Defendants argue that because Plaintiff's complaints alleged that the Defendants were "agents" of Scottsdale, the language of the Release was intended to release not just Scottsdale, but these Defendants as well. As previously noted, it is undisputed that the Defendants denied this allegation in both their answers and their deposition testimony.

Defendants' argument fails as a matter of law because "[a]llegations in a complaint denied in answer are evidence of nothing." *Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301, 307 (Ct. App. 1999). Only "facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the

action." *Elrod v. W.W. All*, 243 S.C. 425, 134 S.E.2d 410, 416 (1964). Furthermore, "a party to an action is bound by the testimony of his own witnesses where he does not prove the facts to be otherwise than as such witnesses testified them to be." *Id.* (citing *Rakestraw v. Allstate Ins. Co.*, 238 S.C. 217, 119 S.E.2d 746 (1961)).

"Once a contract is before the court for interpretation, the paramount concern of the court is to give effect to the intention of the parties." *Middleborough Horizontal Property Regime v. Montedison S.p.A.*, 320 S.C. 470, 465 S.E.2d 765, 770 (Ct. App. 1995). "The purpose of all rules of contract construction is to ascertain the intention of the parties to the contract." *Parker v. Byrd*, 309 S.C. 189, 420 S.E.2d 850, 852 (1992); See also *Columbia East Associates vs. Bi-Lo, Inc.*, 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989) (noting "the main concern of the court is to give effect to the intention of the parties.")

A party "cannot create ambiguity when it does not exist within the four corners....words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed." *Silver v. Abstract Pools*, 376 S.C. 585, 658 S.E.2d 539, 542 (Ct. App. 2008) (citing *McPherson v. J.E. Serrine & Co.*, 206 S.C. 183, 33 S.E.2d 501 (1945)) (emphasis added).

"It is a question of law for the court whether the language of a contract is ambiguous. In determining as a matter of law whether a contract is ambiguous, the court must consider the contract as a whole, rather than deciding whether phrases in isolation could be interpreted in various ways: [o]ne may not, by pointing out a single sentence or clause, create an ambiguity. Whether a contract is ambiguous is to be

determined from the entire contract and not from isolated portions of the contract.”
Silver, supra.

Looking at the Release as a whole, the Court finds that the plain language of the Release shows that it clearly and unambiguously releases only Scottsdale (and its agents and employees) and not these Defendants, and further finds that the intent of the parties was that it was to only encompass claims against Scottsdale. There is no mention of Carolina Insurance Group or Maurice Derrick in the Release.

Furthermore, there is no evidence in the record that Carolina Insurance Group or Maurice Derrick are “agents, servants, or employees” of Scottsdale. In fact, the testimony of both Defendants is that there was no agency relationship between Carolina Insurance and Scottsdale whatsoever. Finally, Defendants’ counsel executed a Stipulation of Dismissal in December 2015, upon receiving notice that Plaintiff had settled with Scottsdale, which specifically stated that “the Plaintiff’s case against the remaining Defendants shall not be affected by this Dismissal.” The Court finds that the intent of the parties to the Release, and the intent of the non-parties (here Carolina Insurance Group and Mr. Derrick), could not be more clear.

Defendants’ reliance upon the case of *Postal v. Mann*, 308 S.C. 385, 418 S.E.2d 322 (Ct. App. 1992) is unpersuasive, given that in that case, a party sought to offer testimony at trial that differed from his previous admission in his answer. There, the Court of Appeals held that the party was judicially bound by the admitted allegation.

Again, the only “evidence” that Defendants rely upon in making this argument is a denied allegation in the Plaintiff’s pleadings. Defendants’ reliance upon a theory of

"judicial admission" espoused by the Federal courts of appeals in the Second, Fifth, Seventh, and Eighth circuits is unpersuasive.²

The Court of Appeals in *Vermeer* succinctly stated the law of South Carolina. Plaintiff made a mere allegation in his complaint; the Defendants denied it. If the Defendants had admitted the allegation, that arguably could be deemed a "judicial admission"; however, the Defendants denied it repeatedly. The Court is mindful that "[a]ll pleadings shall be so construed as to do substantial justice to all parties." Rule 8(f), SCRPC. Here, there is a mere allegation denied by the Defendants - accordingly, I find no "admission" under South Carolina law and hereby deny Defendants' Motion for Summary Judgment.

Defendants are Not Discharged Under a Joint Tortfeasor Theory

Defendants argue that they are entitled to summary judgment as "joint tortfeasors" of Scottsdale Insurance Company. In support of this position, they rely upon the language of the Release, wherein Plaintiff acknowledged that **"the consideration expressed herein constitutes full payment for all damages, losses, or injuries . . . for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from the loss aforesaid."** (emphasis added).

According to the position advanced by the Defendants, this language means that Mr. Curry received "full payment" for all damages recoverable in this lawsuit when he settled with only Scottsdale, and therefore cannot recover any additional damages - on his

² The Court has taken notice of the Federal opinions submitted by Defendants' counsel at the hearing, as well as those cited in Defendants' Amended Memorandum of Law.

separate negligence claims – against Carolina Insurance Group and/or Maurice Derrick.³ The Court finds this argument without merit. The Plaintiff's claims against Scottsdale were distinct from those pending against these Defendants, and could result in an award of different types of damages.⁴ Defendants' belief that the amount recovered by Plaintiff from Scottsdale represents the exact same damages Plaintiff seeks from them, and thereby entitles them to judgment in their favor, is not supported by the common law and fails as a matter of law under the *South Carolina Contribution Among Tortfeasors Act*, S.C. Code Ann. §15-38-10, et seq., which provides a mechanism for "set-off", not discharge.

In 1988, the Legislature codified the equitable principles of joint tortfeasor set-offs by passing the South Carolina Contribution Among Tortfeasors Act (the "Act"). S.C. Code Ann. §15-38-10 -70.

Specifically, Section 15-38-50 provides: "When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or same wrongful death: (1) **it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide**, but it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant or in the amount of consideration paid for it, whichever is greater, and (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor." (emphasis added)

The Supreme Court recently held that "... the Act represents the Legislature's determination of the proper balance between preventing double-recovery and South

³ The *gravamen* of Defendants' arguments appears to be that they are the fortunate, if unintended, beneficiary of Scottsdale's settlement agreement, in that they are entitled to reap the rewards of Scottsdale's settlement (i.e. a complete release) without having paid any monies towards such settlement.

⁴ For instance, a claim for statutory bad faith, under S.C. Code Ann. 38-59-40, provides for an award of attorney's fees in an amount not to exceed one-third the amount of any judgment.

Carolina's 'strong public policy favoring the settlement of disputes'." *Riley v. Ford Motor Co.*, 414 S.C. 185, 195; 777 S.E. 2d 824, 830 (2015) (citing *Chester v. S.C. Dep't of Pub. Safety*, 338 S.C. 343, 698 S.E.2d 559 (2010)).

Defendants rely upon the case of *Bartholomew v. McCartha*, 255 S.C. 489, 179 S.E.2d 912 (1971) for the proposition that the release of one tortfeasor releases others who wrongfully contributed to the plaintiff's injuries where the release "reflects the intention of the parties or unless plaintiff has, in fact, received full compensation amounting to a satisfaction." *Id.* at 914.

Again, there is no evidence that the Plaintiff received "full compensation amounting to a satisfaction"; in fact, Plaintiff's own testimony is that "the amount I received from Scottsdale did not cover all of my damages in the case". See Affidavit of Porthemos Curry at ¶6.

Defendants argue that the Release constitutes a "full compensation amounting to a satisfaction" under *Ecclesiastes Prod. Ministries v. Outparcel Assoc. LLC*, 374 S.C. 483, 649 S.E.2d 494, 496 (2007). However, the Court in *Ecclesiastes* clearly stated that a "satisfaction is generally defined as the discharge of an obligation *by paying a party* what is due to him", and as noted by the Court, it is undisputed that the Defendants here have not paid any monies to the Plaintiff.

Accordingly, the Court finds that the Release, and the Uniform Contribution Among Tortfeasors Act, does not serve to discharge these Defendants, but merely provides for a means for the Defendants to assert a "set-off" argument at the post-

verdict stage of trial in the event they are successful in asserting that they are "joint tortfeasors" under the Act.⁵ For these reasons, the Defendants' Motion is denied.

There is No Genuine Issue of Material Fact as to the Defense of Release

After careful review, I hereby find as a matter of law that the Release is neither ambiguous nor capable of any construction other than the one apparent on its face – that it explicitly releases Scottsdale Insurance Company and solely Scottsdale Insurance Company, and that it is a contract clearly and solely between Porthemos Curry and Scottsdale Insurance Company. Accordingly, the Court finds that the Plaintiff is entitled to summary judgment as to the affirmative defense of release. See Middleborough Horiz. Prop. Regime, supra ("Once a contract is before the court for interpretation, the paramount concern of the court is to give effect to the intention of the parties.")

"Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *McCune v. Myrtle Beach Indoor*, 364 S.C. 242, 612 S.E.2d 462, 464 (Ct. App. 2005) (internal citations omitted).

"Common sense and good faith are the leading touchstones of the construction of a contract and contracts are to be so construed as to avoid an absurd result. Where one construction would make a contract unusual or extraordinary and another, equally

⁵ The Court makes no ruling as to whether the Defendants are "joint tortfeasors" with Scottsdale; however, the Court specifically holds that, having ruled in favor of the Plaintiff on his cross-motion, these Defendants cannot rely upon the Release, at the post-verdict stage, in an attempt to argue that their liability was resolved under a joint tortfeasor theory of liability by way of language contained in the Release. The Court makes no finding as to whether Defendants are entitled to a "set-off" in light of the Supreme Court's ruling in *Riley v. Ford Motor Company*.

consistent, would make the contract reasonable, fair and just, the latter construction will prevail." *Id.* at 465. (citing *Georgetown Mfg. v. S.C. Dept. of Agric.*, 301 S.C. 514, 392 S.E.2d 801 (Ct. App. 1990) (citing *C.A.N. Enters., Inc. v. S.C. Health & Human Servs.*, 296 S.C. 373, 373 S.E.2d 584 (1988))). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 607 S.E.2d 362 (Ct. App. 2004).

The language of the Release clearly and unambiguously provide for a settlement agreement between Mr. Curry and Scottsdale Insurance Company. The evidence before the Court, outlined above, overwhelming indicates that both the Plaintiff and these Defendants did not intend for the Scottsdale Release to encompass the pending claims; the opposing party has presented no specific facts that show a genuine issue of fact for trial as to this affirmative defense. The Court finds that any ruling denying summary judgment as to this affirmative defense would produce "an absurd result" in contravention of longstanding South Carolina law.

ACCORDINGLY, the Court hereby DENIES the Defendants' Motion for Summary Judgment, as amended, and GRANTS the Plaintiff's cross-motion for summary judgment as to the affirmative defense of release.

AND IT IS SO ORDERED.

Robert E. Hood

The Honorable Robert E. Hood

Dated:

5/6/16

At:

Columbia

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff,

v.

Carolina Insurance Group of S.C., Inc.; and
Maurice Derrick,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-40-4661

**ORDER GRANTING DEFENDANTS' MOTION TO
AMEND ANSWER**

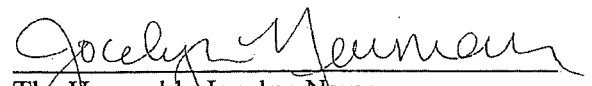
This matter came before the Court on Defendants' Motion to Amend their Answer, which was filed on April 18, 2016 pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure. A hearing was conducted on the same day, immediately prior to the anticipated commencement of the "date certain" jury trial in this case.

After hearing the arguments of all parties, the Court found that the basis of Defendants' proposed amendment was a document which, despite earlier written requests for the same, was provided to Defendants by Plaintiff only ten days before trial. Further the proposed defense was one that Plaintiff could have anticipated.

Rule 15(a) of the South Carolina Rules of Civil Procedure provides that "...leave [to amend pleadings] shall be freely given when justice so requires and does not prejudice any other party." While Plaintiff argued that the amendment would be prejudicial, the Court found that the timing of Defendants' motion was a direct result of Plaintiff's delay in providing necessary documents to Defendants.

IT IS THEREFORE ORDERED that Defendants' Motion to Amend is GRANTED.

AND IT IS SO ORDERED.


The Honorable Jocelyn Newman

May 24, 2016
Columbia, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 14-CP-_____

Porthemos Curry,)
Plaintiff,)

COMPLAINT
(Jury Trial Requested)

vs.)

Scottsdale Insurance Company,)
Carolina Insurance Group of SC, Inc., and)
Maurice Derrick,)

Defendants.)

The Plaintiff, Porthemos Curry, complaining of the Defendants, would show as follows:

Parties

1. Plaintiff is a citizen and resident of Richland County who is the owner of a vacant structure located at 1001 Pineland Drive, Columbia, SC 29203 (hereafter "the Property").
2. Defendant Scottsdale Insurance Company ("Scottsdale") is a foreign corporation doing business in the State of South Carolina, including Richland County.
3. Defendant Carolina Insurance Group of South Carolina, Inc. is a corporation with an office located at Two Notch Road in Richland County, South Carolina.
4. Defendant Maurice Derrick is a citizen of the State of South Carolina who, upon information and belief, resides in Richland County.
5. On or about August 21, 2013, Defendants Carolina Insurance Group and Derrick sold Plaintiff a 3-month vacant structure policy with Lloyd's of London, with an expiration date of November 21, 2013.

6. Between the dates of November 22, 2013 and December 1, 2013, there was no insurance coverage on the Property.
7. On or about December 2, 2013, Defendant Derrick telephoned the Plaintiff to inquire as to whether he still needed vacant structure coverage for the Property, and Plaintiff told Derrick that he did.
8. On December 2, 2013, Defendant Derrick offered to place another vacant structure policy on the property, to which Plaintiff agreed.
9. On December 2, 2013, Plaintiff paid the premium amount of \$344.50 by utilizing his Bank of America account to transfer payment to TAPCO Underwriters, the underwriter for Defendant Scottsdale.

For a First Cause of Action
Breach of Contract

10. The Preceding allegations are incorporated herein as if repeated verbatim.
11. Defendant Scottsdale is an insurer offering, among other things, policies to cover vacant structures.
12. Plaintiff procured vacant structure insurance ("the Policy") from Defendant Scottsdale, which coverage included loss by vehicle or by fire.
13. While the Policy was in force, a white vehicle collided with the Property on February 21, 2014, prior to midnight, as evidenced by the affidavits attached hereto as Exhibit A.
14. The collision resulted in a fire being ignited at the Property, causing severe damage as a result.
15. Plaintiff provided to Defendant Scottsdale the information regarding the accident and the Policy.

16. This loss was covered by the Policy.
17. Plaintiff timely reported the loss to the Defendants.
18. Defendant Scottsdale has refused to pay the claim, and refuses to acknowledge that the Policy was in effect on February 22, 2014.
19. Defendant Scottsdale has further refused to pay the claim by asserting that the Policy was somehow "backdated" to November 21, 2013 and had therefore lapsed by the time the fire department responded to calls in the early morning of February 22, 2014, despite the fact that the agent did not even bind coverage on the Property until December 2013.
20. Defendant Scottsdale's failure to pay the claim and failure to cover the loss are breaches of the insurance contract entitling the Plaintiff to recover such amount as established at trial.

For a Second Cause of Action
Statutory Bad Faith

21. The preceding allegations are incorporated herein.
22. Defendant Scottsdale has failed to pay the sum due and owing within 90 days.
23. Defendant has failed to pay any amounts to Plaintiff due under the Policy.
24. Defendant Scottsdale has failed to discharge its statutory and contractual obligations in good faith and has acted without reasonable cause in failing to pay covered losses within 90 days.
25. Pursuant to S.C. Code Ann. 38-59-40, Plaintiff is entitled to an award of attorney's fees of one third of the judgment entered in his action.

For a Third Cause of Action
Common Law Bad Faith

26. The preceding allegations are incorporated herein as if repeated verbatim.
27. Defendant Scottsdale had a duty to act in good faith which required it to use due care not to deprive Plaintiff of his rights under the Policy.
28. Defendant Scottsdale's explanation of delay in processing Plaintiff's claim was based on a lack of knowledge of the Policy terms and conditions and is nonsensical.
29. Defendant Scottsdale has forced Plaintiff to pursue litigation in order to obtain payment for the loss covered by the Policy.
30. Defendant Scottsdale's failure to properly adjust Plaintiff's claim and failure to make payment as required by the terms of the Policy was the result of bad faith and the reckless and/or intentional disregard for Plaintiff's rights under the Policy.
31. Defendant Scottsdale's acts entitle Plaintiff to an award of punitive damages in an amount to be determined at trial.

For a Fourth Cause of Action
Negligence

32. To the extent not inconsistent, the preceding allegations are incorporated herein.
33. Defendant Maurice Derrick is an insurance broker employed by Defendant Carolina Insurance Group of SC, Inc.
34. Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale.

35. In addition to other activities, Defendants Derrick and Carolina Insurance submit applications for coverage with Scottsdale, receive premiums on behalf of Scottsdale, and deliver and present insurance contracts on behalf of Scottsdale.
36. Because Plaintiff had no special knowledge in the area of vacant coverage insurance, Plaintiff engaged Defendants Derrick and Carolina Insurance to procure vacant property coverage for the Property for the appropriate period of time while the Property was under renovation.
37. Plaintiff was assured by Defendants Derrick and Carolina Insurance that they offered coverage at competitive prices and that Defendants were well suited to work with a customer such as Plaintiff.
38. Defendants Derrick and Carolina Insurance undertook to procure insurance coverage for Plaintiff at two (2) different periods of time; first, in August 2013, when Plaintiff first began renovating the Property, and second, in December 2013, when Defendants inquired as to whether the Property was still under renovation and informed the Plaintiff that he needed a new policy, as the Lloyd's of London policy had expired.
39. In accepting the Scottsdale Policy procured by Defendants Derrick and Carolina Insurance in December 2013, Plaintiff, in reliance upon the knowledge, experience, and expertise of all of the Defendants, believed the Defendants would procure coverage sufficient to protect Plaintiff against the foreseeable insurance risk exposures faced by Plaintiff's Property for three (3) months.

40. According to positions taken by Defendant Scottsdale with respect to Plaintiff's loss that is the subject of this action, Plaintiff's loss is excluded from coverage under the terms of the Policy.
41. Prior to being informed of Scottsdale's position, Plaintiff had never been informed by any of the Defendants that the Policy was "backdated" and therefore the policy premium which was paid for in December 2013 actually was not a "three month policy" and did not cover the Property for 3 months.
42. As now relied upon by Defendant Scottsdale, the Policy is rendered materially deficient and insufficient to protect the Plaintiff.
43. Had the Defendants informed Plaintiff that the three month policy he was paying for provided less than 3 months of coverage, Plaintiff could have sought suitable insurance from another carrier.
44. In permitting the Policy to be "shortened" in essence, without informing Plaintiff of this material limitation, Defendants failed to exercise the duty of ordinary care applicable to insurance carriers and professionals.
45. As a result of the Defendants' failure to exercise ordinary care and failure to inform Plaintiff that the three month Policy was, in effect, 2 months plus 20 days, Plaintiff has been damaged in the amount of its losses to the Property.

WHEREFORE, Plaintiff prays for a trial by jury and judgment as follows:

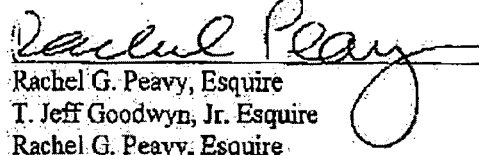
As against Defendant Scottsdale, an award of damages in the amount of his unpaid losses as established at trial; attorney's fees in an amount of one third of the judgment under his statutory bad faith claim; and an award of punitive damages in an amount to be determined by the jury;

As against all Defendants, judgment in the amount of Plaintiff's unpaid losses as established at trial, and all incidental and consequential damages;

Prejudgment interest and costs against all Defendants; and

For such other and further relief as the Court deems just and proper.

GOODWYN LAW FIRM, LLC



Rachel G. Peavy, Esquire

T. Jeff Goodwyn, Jr. Esquire

Rachel G. Peavy, Esquire

Suite A

Columbia, SC 29205

(803) 251-7517

(803) 251-7527 (f)

JGoodwyn@Goodwynlaw.com

Attorneys for Plaintiff

Columbia, South Carolina
July 24th 2014

STATE OF SOUTH CAROLINA)

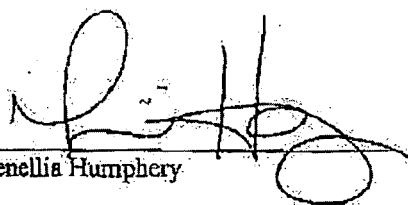
COUNTY OF RICHLAND)

AFFIDAVIT

Personally appeared before the undersigned Notary Public, Tenellia Humphery, who, being duly sworn, does hereby testify as follows:

1. My name is Tenellia Humphery, I am over the age of eighteen (18), and a citizen and resident of South Carolina and make this Affidavit upon personal knowledge and belief.
2. On February 21, 2014, at approximately 11:35 p.m., I was driving to pick up a friend who lives near 1001 Pineland Drive.
3. I was conscious of the time because I was due to arrive at a certain pool hall prior to midnight.
4. At about the same date and time, I happened to drive by a home owned by Porthemos Curry at 1001 Pineland Drive which was on the way to the pool hall.
5. While I was driving, at or around 11:35 p.m., I observed a white vehicle pinned up against Mr. Curry's house, which appeared to be disabled.
6. At the same date and time, I observed two (2) men with the car that was pinned up against the house, and the men appeared to be trying to pull the car out.
7. Due to the darkness, I could not tell whether the car was smoking or a fire had started somewhere in the car.

THE AFFIANT FURTHER SAYETH NAUGHT.


Tenellia Humphery

SWORN TO BEFORE ME

This 1st day of June, 2014


Notary Public for South Carolina

My commission expires: 10-19-2019



STATE OF SOUTH CAROLINA)

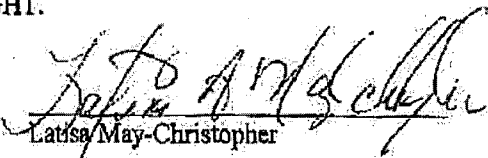
COUNTY OF RICHLAND)

AFFIDAVIT

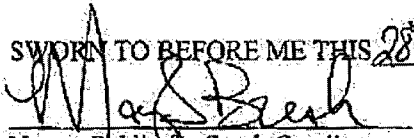
Personally appeared before the undersigned Notary Public, Latisa May-Christopher, who, being duly sworn, does hereby testify as follows:

1. My name is Latisa May-Christopher, I am over the age of eighteen (18), and a citizen and resident of Richland County, South Carolina and make this Affidavit upon personal knowledge and belief.
2. On February 21, 2014, at or about approximately 11:00 p.m., I was dropping a friend off in the neighborhood of 1001 Pineland Drive.
3. I was conscious of the time because I was trying to get to a bingo hall that closed at midnight and did not want to miss out.
4. At about the same date and time, I happened to drive by a home owned by Porthemos Curry at 1001 Pineland Drive.
5. While I was driving, at or about 11:00 p.m., I observed a vehicle pinned up against Mr. Curry's house, which appeared to be disabled. The car appeared to be a white sedan model.
6. At the same date and time, I observed one (1) man with the car that was pinned up against the house.
7. Due to the darkness, I could not tell whether the car was smoking or a fire had started somewhere in the car.

THE AFFIANT FURTHER SAYETH NAUGHT.


Latisa May-Christopher

SWORN TO BEFORE ME THIS 28th DAY OF MAY, 2014


Notary Public for South Carolina

My commission expires: 10-19-2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2014-CP-40-04661
	)	
Porthemos Curry,	)	
	)	
Plaintiff,	)	ANSWER ON BEHALF OF
vs.	)	DEFENDANTS CAROLINA
	)	INSURANCE GROUP OF SC
Scottsdale Insurance Company, Carolina	)	INC. AND MAURICE
Insurance Group of SC, Inc. and Maurice	)	DERRICK
Derrick,	)	
Defendants.	)	

The Defendants, Carolina Insurance Group of SC, Inc ("Carolina") and Maurice Derrick ("Derrick"), referred to collectively as the Defendants, answer the allegations of the complaint as follows:

FOR A FIRST DEFENSE
(General Denial)

1. The Defendants deny each and every allegation of the complaint not otherwise admitted, qualified, or explained herein.
2. The Defendants admit the allegations of Paragraphs 1, 2, 3, 4, and 5.
3. The Defendants deny the allegations of Paragraphs 6
4. The Defendants would show that, with respect to the allegations of Paragraph 7, that on December 2, 2014, the plaintiff contacted Derrick to renew the policy; the remaining allegations of Paragraph are denied and strict proof is demanded thereof.
5. The Defendants deny the allegations of Paragraph 8.
6. The Defendants admit the allegations of Paragraph 9.
7. Paragraph 10 does not make any allegations against the Defendants and does not require a response from the Defendants; but to the extent that Paragraph 10 may be construed to

contain allegations against the Defendants, said allegations are denied and strict proof is demanded thereof.

8. The Defendants admit the allegations of Paragraph 11.

9. The Defendants admit the allegation of Paragraph 12 that the plaintiff procured vacant structure insurance from defendant Scottsdale Insurance Company ("Scottsdale"). The remaining allegations of Paragraph 12 are denied, and the Defendants crave reference to said policy (policy number CPS 18884774).

10. The Defendants deny the allegations of paragraphs 13 and 14.

11. The Defendants are without sufficient information to admit or deny the allegations set for in Paragraph 15 of the complaint; therefore, the allegations in Paragraph 15 are denied and strict proof is demanded thereof.

12. The allegations of Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 are allegations against other defendants and do not make any allegations against the Defendants. However, to the extent any allegations in Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 may be construed as allegations against the Defendants, said allegations are denied and strict proof demanded thereof.

13. Paragraph 32 do not make any allegations against the Defendants and does not require a response from the Defendants. To the extent that Paragraph 32 may be construed to contain allegations against the Defendants, said allegations are denied and strict proof is demanded thereof.

14. Defendants admit the allegations of Paragraph 33.

15. Defendants deny the allegations of Paragraphs 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45 of the complaint.

FOR A SECOND DEFENSE
(Failure to State a Claim)

16. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

17. The complaint fails to state a claim on which relief can be granted and, accordingly, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Contributory Negligence)

18. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

19. The Defendants affirmatively allege that any injury sustained by the plaintiff, as alleged in his complaint, occurred as a direct result of plaintiff's negligent failure to exercise ordinary care, in that the plaintiff failed to read the policy of insurance. Therefore, plaintiff's alleged losses were caused in whole or in part, or were contributed to, by the plaintiff's own negligence, and not by any negligence of the Defendants.

FOR A FOURTH DEFENSE
(Lack of Proximate Cause)

20. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

21. The Defendants would show the Court that no act or omission of the Defendants, agents or servants, proximately caused any injuries to the plaintiff, which therefore bars any recovery from the Defendants.

22. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR A FIFTH DEFENSE
(Failure to Mitigate Damages)

23. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

24. The plaintiff failed to purchase insurance coverage for the alleged losses in the complaint and, therefore, has failed to mitigate his damages. The Defendants accordingly plead the failure to mitigate damages as an affirmative defense to the plaintiff's complaint.

FOR A SIXTH DEFENSE
(Set-Off)

25. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

26. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR AN SEVENTH DEFENSE
(Estoppel)

27. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

28. The plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

FOR AN EIGHTH DEFENSE
(Unclean Hands)

29. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

30. The plaintiff's claims are barred by virtue of the doctrine of unclean hands.

FOR A NINTH DEFENSE
(Failure of Proximate Cause)

31. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses

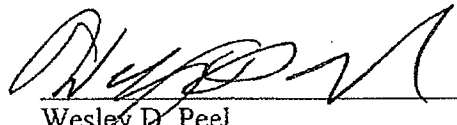
32. The plaintiff's claims against this defendant are barred in whole or in part by the fact that no action or inaction of the Defendants constituted the proximate cause of any injury or damage alleged by plaintiff.

FOR A TENTH DEFENSE
(Reservation of Rights)

33. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

34. The Defendants reserve the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

WHEREFORE, having fully answered, the Defendants pray for judgment in their favor, for costs, and for such other and further relief as the Court finds just and fair.



Wesley D. Peel
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
(803) 252-7693
Fax (803) 726-9049
Wpeel@brunerpowell.com

Columbia, South Carolina

September 22, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

v.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

**ANSWER ON BEHALF OF DEFENDANT
SCOTTSDALE INSURANCE COMPANY**

**TO: RACHEL G. PEAVY, ESQUIRE, ATTORNEY FOR PLAINTIFF AND TO THE
PLAINTIFF ABOVE NAMED:**

The Defendant, Scottsdale Insurance Company (hereinafter "Scottsdale"), answering the Plaintiff's Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

1. This Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.
2. Paragraph one (1) is admitted upon information and belief.
3. Paragraph two (2) is admitted.
4. Paragraphs three (3), four (4) and five (5) are admitted upon information and belief.
5. As to paragraphs six (6), seven (7), eight (8) and nine (9), Scottsdale would show that on or about December 2, 2013, the Plaintiff was issued a policy that provided coverage from November 21, 2013 at 12:01 a.m. until February 21, 2014 at 12:01 a.m. and would crave reference to the policy for all the terms, conditions and provisions therein; Scottsdale also admits that Plaintiff paid the premium due for the policy issued by Scottsdale; otherwise, paragraphs six (6), seven (7), eight (8) and nine (9) are denied.

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6. In response to paragraph ten (10), Scottsdale reiterates its response to paragraphs one (1) through nine (9) above as if fully set forth verbatim herein.

7. As to paragraphs eleven (11) and twelve (12), Scottsdale admits that it is an insurer authorized to transact business and write insurance policies in South Carolina and that it issued a policy to the Plaintiff, policy number CPS1884774; Scottsdale craves reference to its policy for all the terms, conditions and provisions therein; otherwise, paragraphs eleven (11) and twelve (12) are denied.

8. As to paragraphs thirteen (13) and fourteen (14), Scottsdale would show that the policy expired at 12:01 a.m. on February 21, 2014 and therefore, the policy was not in effect at the time that a vehicle collided with the property and subsequently caught fire; otherwise, paragraphs thirteen (13) and fourteen (14) are denied.

9. Paragraph fifteen (15) is admitted.

10. Paragraph sixteen (16) is denied.

11. Paragraph seventeen (17) is admitted.

12. As to paragraph eighteen (18), Scottsdale would show that the policy was not in effect at the time of the loss and therefore it was unable to pay the claim submitted by Plaintiff; otherwise, paragraph eighteen (18) is denied.

13. As to paragraph nineteen (19), Scottsdale would show that the policy declarations indicated that the policy incepted at 12:01 a.m. on November 21, 2013 and expired at 12:01 a.m. on February 21, 2013; otherwise, paragraph nineteen (19) is denied.

14. Paragraph twenty (20) is denied.



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FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

15. In response to paragraph twenty-one (21), Scottsdale reiterates its response to paragraphs one (1) through twenty (20) above as if fully set forth verbatim herein.

16. As to paragraphs twenty-two (22) and twenty-three (23), Scottsdale would show that no sums are due under the policy; otherwise, paragraphs twenty-two (22) and twenty-three (23) are denied.

17. Paragraphs twenty-four (24) and twenty-five (25) are denied.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

18. In response to paragraph twenty-six (26), Scottsdale reiterates its response to paragraphs one (1) through twenty-five (25) above as if fully set forth verbatim herein.

19. As to paragraph twenty-seven (27), Scottsdale would show that no response is required as paragraph twenty-seven (27) attempts to set forth a legal duty; however, to the extent that it can be inferred from paragraph twenty-seven (27) that any legal duty which may be owed by Scottsdale to Plaintiff was breached, paragraph twenty-seven (27) is denied.

20. Paragraphs twenty-eight (28), twenty-nine (29), thirty (30) and thirty-one (31) are denied.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

21. In response to paragraph thirty-two (32), Scottsdale reiterates its response to paragraphs one (1) through thirty-one (31) above as if fully set forth verbatim herein.

22. Scottsdale is without sufficient knowledge and information to either admit or deny the allegations of paragraphs thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38) and thirty-nine (39), Scottsdale would show that neither of the Co-Defendants are agents, servants or employees of Scottsdale, are not entitled to bind or



issue policies on behalf of Scottsdale and serve as producing agents employed by the Plaintiff who transacted a policy through Scottsdale's general agent, TAPCO; otherwise, paragraphs thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38) and thirty-nine (39) are denied.

23. As to paragraph forty (40), Scottsdale would show that the policy issued to Plaintiff expired at 12:01 a.m. on February 21, 2014 and therefore, it was not in effect at the time of the loss submitted; otherwise, paragraph forty (40) is denied.

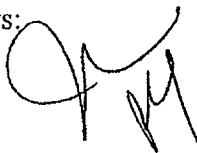
24. Paragraph forty-one (41) is denied as Scottsdale would show that the policy declarations clearly indicate the policy period with an inception date and time of 12:01 a.m. on November 21, 2013 and an expiration date and time of 12:01 a.m. on February 21, 2014; otherwise, paragraph forty-one (41) is denied.

25. As to paragraph forty-two (42), Scottsdale would show that the policy issued to Plaintiff was not in effect at the time of the loss set forth in the Complaint; otherwise, paragraph forty-two (42) is denied.

26. Paragraphs forty-three (43), forty-four (44) and forty-five (45) are denied.

FOR A SECON DEFENSE

27. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to his own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred; such negligent, careless, reckless and grossly negligent acts or omissions on the part of the Plaintiff being more particularly set forth as follows:



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a. In failing to read his existing policy;

b. In failing to purchase or procure additional coverage upon expiration of the Scottsdale policy;

c. In failing to exercise that degree of care or caution a reasonable and prudent would have under the same or similar circumstances and in such other ways as may be shown through discovery and at trial;

all of which were the direct and proximate cause of any injuries or damages sustained by the Plaintiff and the Defendant pleads such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would ask that this court compare the negligence of the Plaintiff and the Defendant and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendant, then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A THIRD DEFENSE

28. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff, which are specifically denied, were the result of the acts or omissions of others not in the employ or control of this Defendant and, therefore, the Plaintiff cannot recover from this Defendant in any sum whatsoever.



FOR A FOURTH DEFENSE

29. This Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

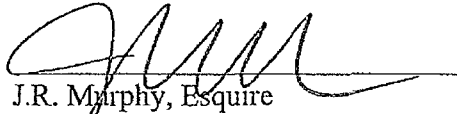
FOR A FIFTH DEFENSE

30. Scottsdale would show, upon information and belief, that the loss or damage sustained by the Plaintiff occurred after the expiration of the policy issued by Scottsdale to the Plaintiff and therefore, the Plaintiff cannot recover any sum whatsoever from Scottsdale pursuant to the terms of the policy or on any other basis asserted in the Complaint.



WHEREFORE, having fully answered, Scottsdale prays that the Plaintiff's Complaint
be dismissed with costs.

MURPHY & GRANTLAND, P.A.



J.R. Murphy, Esquire

PO Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for the Defendant Scottsdale Insurance
Company

Columbia, South Carolina
September 3, 2014

PT

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

v.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

**AMENDED
ANSWER ON BEHALF OF DEFENDANT
SCOTTSDALE INSURANCE COMPANY**

**TO: RACHEL G. PEAVY, ESQUIRE, ATTORNEY FOR PLAINTIFF AND TO THE
PLAINTIFF ABOVE NAMED:**

The Defendant, Scottsdale Insurance Company (hereinafter "Scottsdale"), answering the Plaintiff's Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

1. This Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.
2. Paragraph one (1) is admitted upon information and belief.
3. Paragraph two (2) is admitted.
4. Paragraphs three (3), four (4) and five (5) are admitted upon information and belief.
5. As to paragraphs six (6), seven (7), eight (8) and nine (9), Scottsdale would show that on or about December 2, 2013, the Plaintiff was issued a policy that provided coverage from November 21, 2013 at 12:01 a.m. until February 21, 2014 at 12:01 a.m. and would crave reference to the policy for all the terms, conditions and provisions therein; Scottsdale also admits that Plaintiff paid the premium due for the policy issued by Scottsdale; otherwise, paragraphs six (6), seven (7), eight (8) and nine (9) are denied.

6. In response to paragraph ten (10), Scottsdale reiterates its response to paragraphs one (1) through nine (9) above as if fully set forth verbatim herein.

7. As to paragraphs eleven (11) and twelve (12), Scottsdale admits that it is an insurer authorized to transact business and write insurance policies in South Carolina and that it issued a policy to the Plaintiff, policy number CPS1884774; Scottsdale craves reference to its policy for all the terms, conditions and provisions therein; otherwise, paragraphs eleven (11) and twelve (12) are denied.

8. As to paragraphs thirteen (13) and fourteen (14), Scottsdale would show that the policy expired at 12:01 a.m. on February 21, 2014 and therefore, the policy was not in effect at the time that a vehicle collided with the property and subsequently caught fire; otherwise, paragraphs thirteen (13) and fourteen (14) are denied.

9. Paragraph fifteen (15) is admitted.

10. Paragraph sixteen (16) is denied.

11. Paragraph seventeen (17) is admitted.

12. As to paragraph eighteen (18), Scottsdale would show that the policy was not in effect at the time of the loss and therefore it was unable to pay the claim submitted by Plaintiff; otherwise, paragraph eighteen (18) is denied.

13. As to paragraph nineteen (19), Scottsdale would show that the policy declarations indicated that the policy incepted at 12:01 a.m. on November 21, 2013 and expired at 12:01 a.m. on February 21, 2014; otherwise, paragraph nineteen (19) is denied.

14. Paragraph twenty (20) is denied.

A handwritten signature in black ink, appearing to be 'J. M. P.', is located below the list of numbered paragraphs.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

15. In response to paragraph twenty-one (21), Scottsdale reiterates its response to paragraphs one (1) through twenty (20) above as if fully set forth verbatim herein.

16. As to paragraphs twenty-two (22) and twenty-three (23), Scottsdale would show that no sums are due under the policy; otherwise, paragraphs twenty-two (22) and twenty-three (23) are denied.

17. Paragraphs twenty-four (24) and twenty-five (25) are denied.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

18. In response to paragraph twenty-six (26), Scottsdale reiterates its response to paragraphs one (1) through twenty-five (25) above as if fully set forth verbatim herein.

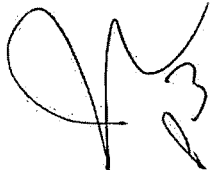
19. As to paragraph twenty-seven (27), Scottsdale would show that no response is required as paragraph twenty-seven (27) attempts to set forth a legal duty; however, to the extent that it can be inferred from paragraph twenty-seven (27) that any legal duty which may be owed by Scottsdale to Plaintiff was breached, paragraph twenty-seven (27) is denied.

20. Paragraphs twenty-eight (28), twenty-nine (29), thirty (30) and thirty-one (31) are denied.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

21. In response to paragraph thirty-two (32), Scottsdale reiterates its response to paragraphs one (1) through thirty-one (31) above as if fully set forth verbatim herein.

22. Scottsdale is without sufficient knowledge and information to either admit or deny the allegations of paragraphs thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38) and thirty-nine (39), Scottsdale would show that neither of the Co-Defendants are agents, servants or employees of Scottsdale, are not entitled to bind or



issue policies on behalf of Scottsdale and serve as producing agents employed by the Plaintiff who transacted a policy through Scottsdale's general agent, TAPCO; otherwise, paragraphs thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38) and thirty-nine (39) are denied.

23. As to paragraph forty (40), Scottsdale would show that the policy issued to Plaintiff expired at 12:01 a.m. on February 21, 2014 and therefore, it was not in effect at the time of the loss submitted; otherwise, paragraph forty (40) is denied.

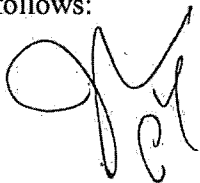
24. Paragraph forty-one (41) is denied as Scottsdale would show that the policy declarations clearly indicate the policy period with an inception date and time of 12:01 a.m. on November 21, 2013 and an expiration date and time of 12:01 a.m. on February 21, 2014; otherwise, paragraph forty-one (41) is denied.

25. As to paragraph forty-two (42), Scottsdale would show that the policy issued to Plaintiff was not in effect at the time of the loss set forth in the Complaint; otherwise, paragraph forty-two (42) is denied.

26. Paragraphs forty-three (43), forty-four (44) and forty-five (45) are denied.

FOR A SECON DEFENSE

27. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to his own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred; such negligent, careless, reckless and grossly negligent acts or omissions on the part of the Plaintiff being more particularly set forth as follows:



a. In failing to read his existing policy;

b. In failing to purchase or procure additional coverage upon expiration of the Scottsdale policy;

c. In failing to exercise that degree of care or caution a reasonable and prudent would have under the same or similar circumstances and in such other ways as may be shown through discovery and at trial;

all of which were the direct and proximate cause of any injuries or damages sustained by the Plaintiff and the Defendant pleads such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would ask that this court compare the negligence of the Plaintiff and the Defendant and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendant, then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A THIRD DEFENSE

28. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff, which are specifically denied, were the result of the acts or omissions of others not in the employ or control of this Defendant and, therefore, the Plaintiff cannot recover from this Defendant in any sum whatsoever.

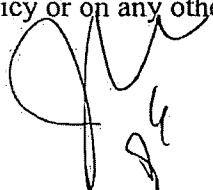


FOR A FOURTH DEFENSE

29. This Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

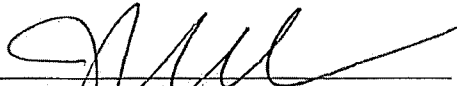
FOR A FIFTH DEFENSE

30. Scottsdale would show, upon information and belief, that the loss or damage sustained by the Plaintiff occurred after the expiration of the policy issued by Scottsdale to the Plaintiff and therefore, the Plaintiff cannot recover any sum whatsoever from Scottsdale pursuant to the terms of the policy or on any other basis asserted in the Complaint.



WHEREFORE, having fully answered, Scottsdale prays that the Plaintiff's Complaint
be dismissed with costs.

MURPHY & GRANTLAND, P.A.



J.R. Murphy, Esquire

PO Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for the Defendant Scottsdale Insurance
Company

Columbia, South Carolina
September 11, 2014

p7

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company,
Carolina Insurance Group of SC, Inc., and
Maurice Derrick,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 14-CP-40-4661

AMENDED COMPLAINT
(Jury Trial Requested)

RICHLAND COUNTY
FILED
2015 MAY 28 PM 9:50
JANETTE W. MCGRATH
CLERK & C.S.

The Plaintiff, Porthemos Curry, complaining of the Defendants, would show as follows:

1. Plaintiff is a citizen and resident of Richland County who is the owner of a vacant structure located at 1001 Pineland Drive, Columbia, SC 29203 (hereafter "the Property").
2. Defendant Scottsdale Insurance Company ("Scottsdale") is a foreign corporation doing business in the State of South Carolina, including Richland County.
3. Defendant Carolina Insurance Group of South Carolina, Inc. is a corporation with an office located at Two Notch Road in Richland County, South Carolina.
4. Defendant Maurice Derrick is a citizen of the State of South Carolina who, upon information and belief, resides in Richland County.
5. On or about August 21, 2013, Defendants Carolina Insurance Group and Derrick sold Plaintiff a 3-month vacant structure policy with Scottsdale Insurance Company, Policy No. CPS1816463, with an expiration date of November 21, 2013. A copy of this Scottsdale policy is attached as **Exhibit A**.

6. Between the dates of November 22, 2013 and December 1, 2013, there was no insurance coverage on the Property.
7. On or about December 2, 2013, Defendant Derrick telephoned the Plaintiff to inquire as to whether he still needed vacant structure coverage for the Property, and Plaintiff told Derrick that he did.
8. On December 2, 2013, Defendant Derrick offered to place another vacant structure policy on the property, to which Plaintiff agreed.
9. As part of the underwriting process, Defendants Derrick and Carolina Insurance Group submitted an Application for a Vacant Structures Policy, a copy of which is attached hereto as **Exhibit B**. Upon approval, TAPCO prepared a Binder Summary Sheet which was forwarded to Defendants Derrick and Carolina Insurance Group and is attached hereto as **Exhibit C**. Defendant Scottsdale thereafter issued Policy No. CPS1884774 to the Plaintiff and a copy of the Policy is attached as **Exhibit D**.
10. On December 2, 2013, Plaintiff paid the premium amount of \$344.50 by utilizing his Bank of America account to transfer payment to TAPCO Underwriters, the underwriter for Defendant Scottsdale.

For a First Cause of Action
Breach of Contract

11. The Preceding allegations are incorporated herein as if repeated verbatim.
12. Defendant Scottsdale is an insurer offering, among other things, policies to cover vacant structures.
13. Plaintiff procured vacant structure insurance ("the Policy") from Defendant Scottsdale, which coverage included loss by vehicle or by fire.

14. While the Policy was in force, a white vehicle collided with the Property on February 21, 2014, prior to midnight, as evidenced by the affidavits attached hereto as **Exhibit E**.
15. The collision resulted in a fire being ignited at the Property, causing severe damage as a result.
16. Plaintiff provided to Defendant Scottsdale the information regarding the accident and the Policy.
17. This loss was covered by the Policy.
18. Plaintiff timely reported the loss to the Defendants.
19. Defendant Scottsdale has refused to pay the claim, and contends that the Policy expired at 12:01 a.m. on February 21, 2014, as evidenced by the letter attached hereto as **Exhibit F**. Defendant Scottsdale has further refused to pay the claim by asserting that the Policy was somehow "backdated" to November 21, 2013 and had therefore lapsed by the time the fire department responded to calls in the early morning of February 22, 2014, despite the fact that the agent did not even bind coverage on the Property until December 2013.
20. Defendant Scottsdale's failure to pay the claim and failure to cover the loss are breaches of the insurance contract entitling the Plaintiff to recover such amount as established at trial.

For a Second Cause of Action
Statutory Bad Faith

21. The preceding allegations are incorporated herein.
22. Defendant Scottsdale has failed to pay the sum due and owing within 90 days.
23. Defendant has failed to pay any amounts to Plaintiff due under the Policy.

24. Defendant Scottsdale has failed to discharge its statutory and contractual obligations in good faith and has acted without reasonable cause in failing to pay covered losses within 90 days.
25. Pursuant to S.C. Code Ann. 38-59-40, Plaintiff is entitled to an award of attorney's fees of one third of the judgment entered in this action.

For a Third Cause of Action
Common Law Bad Faith

26. The preceding allegations are incorporated herein as if repeated verbatim.
27. Defendant Scottsdale had a duty to act in good faith which required it to use due care not to deprive Plaintiff of his rights under the Policy.
28. Defendant Scottsdale's explanation of delay in processing Plaintiff's claim was based on a lack of knowledge of the Policy terms and conditions and is nonsensical.
29. Defendant Scottsdale has forced Plaintiff to pursue litigation in order to obtain payment for the loss covered by the Policy.
30. Defendant Scottsdale's failure to properly adjust Plaintiff's claim and failure to make payment as required by the terms of the Policy was the result of bad faith and the reckless and/or intentional disregard for Plaintiff's rights under the Policy.
31. Defendant Scottsdale's acts entitle Plaintiff to an award of punitive damages in an amount to be determined at trial.

For a Fourth Cause of Action
Negligence

32. To the extent not inconsistent, the preceding allegations are incorporated herein.
33. Defendant Maurice Derrick is an insurance broker employed by Defendant Carolina Insurance Group of SC, Inc.

34. Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale.
35. In addition to other activities, Defendants Derrick and Carolina Insurance submit applications for coverage with Scottsdale, receive premiums on behalf of Scottsdale, and deliver and present insurance contracts on behalf of Scottsdale.
36. Because Plaintiff had no special knowledge in the area of vacant coverage insurance, Plaintiff engaged Defendants Derrick and Carolina Insurance to procure vacant property coverage for the Property for the appropriate period of time while the Property was under renovation.
37. Plaintiff was assured by Defendants Derrick and Carolina Insurance that they offered coverage at competitive prices and that Defendants were well suited to work with a customer such as Plaintiff.
38. Defendants Derrick and Carolina Insurance undertook to procure insurance coverage for Plaintiff at two (2) different periods of time; first, in August 2013, when Plaintiff first began renovating the Property, and second, in December 2013, when Defendants inquired as to whether the Property was still under renovation and informed the Plaintiff that he needed a new policy, as the Lloyd's of London policy had expired.
39. In accepting the Scottsdale Policy procured by Defendants Derrick and Carolina Insurance in December 2013, Plaintiff, in reliance upon the knowledge, experience, and expertise of all of the Defendants, believed the Defendants would procure coverage sufficient to protect Plaintiff against the foreseeable insurance risk exposures faced by Plaintiff's Property for three (3) months.

40. According to positions taken by Defendant Scottsdale with respect to Plaintiff's loss that is the subject of this action, Plaintiff's loss is excluded from coverage under the terms of the Policy.
41. Prior to being informed of Scottsdale's position, Plaintiff had never been informed by any of the Defendants that the Policy was "backdated" and therefore the policy premium which was paid for in December 2013 actually was not a "three month policy" and did not cover the Property for 3 months.
42. As now relied upon by Defendant Scottsdale, the Policy is rendered materially deficient and insufficient to protect the Plaintiff.
43. Had the Defendants informed Plaintiff that the three month policy he was paying for provided less than 3 months of coverage, Plaintiff could have sought suitable insurance from another carrier.
44. In permitting the Policy to be "shortened" in essence, without informing Plaintiff of this material limitation, Defendants failed to exercise the duty of ordinary care applicable to insurance carriers and professionals.
45. As a result of the Defendants' failure to exercise ordinary care and failure to inform Plaintiff that the three month Policy was, in effect, 2 months plus 20 days, Plaintiff has been damaged in the amount of its losses to the Property, plus such other and further damages as may be proved at trial, to include but not limited to, lost profits and income due to the destruction of the property; damage to credit rating; damage to reputation; and additional interest paid on credit cards due to failure to complete renovation and sale of the home.

WHEREFORE, Plaintiff prays for a trial by jury and judgment as follows:

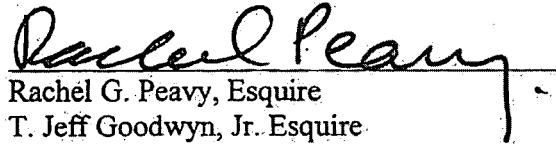
As against Defendant Scottsdale, an award of damages in the amount of his unpaid losses as established at trial; attorney's fees in an amount of one third of the judgment under his statutory bad faith claim; and an award of punitive damages in an amount to be determined by the jury;

As against all Defendants, judgment in the amount of Plaintiff's unpaid losses as established at trial, and all incidental and consequential damages as may be shown at trial;

Prejudgment interest and costs against all Defendants; and

For such other and further relief as the Court deems just and proper.

GOODWYN LAW FIRM, LLC



Rachel G. Peavy, Esquire
T. Jeff Goodwyn, Jr. Esquire

2519 Devine Street

Suite A

Columbia, SC 29205

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(803) 251-7527 (f)

JGoodwyn@Goodwynlaw.com

Attorneys for Plaintiff

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Porthemos Curry,)
)
Plaintiff,)
vs.)
)
Scottsdale Insurance Company, Carolina)
Insurance Group of SC, Inc. and Maurice)
Derrick,)
Defendants.)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2014-CP-40-04661

ANSWER ON BEHALF OF
DEFENDANTS CAROLINA
INSURANCE GROUP OF SC,
INC. AND MAURICE
DERRICK TO AMENDED
COMPLAINT

RICHLAND COUNTY
FILED
2015 JUN -4 AM 9:49
JEANETTE W. HERRICK
C.C.P. & C.S.

The Defendants, Carolina Insurance Group of SC, Inc ("Carolina") and Maurice Derrick ("Derrick"), referred to collectively as the Defendants, answer the allegations of the complaint as follows:

FOR A FIRST DEFENSE
(General Denial)

1. The Defendants deny each and every allegation of the complaint not otherwise admitted, qualified, or explained herein.
2. The Defendants admit the allegations of Paragraphs 1, 2, 3, 4, and 5.
3. The Defendants deny the allegations of Paragraphs 6.
4. The Defendants would show that, with respect to the allegations of Paragraph 7, that on December 2, 2014, the plaintiff contacted Derrick to renew the policy; the remaining allegations of Paragraph are denied and strict proof is demanded thereof.
5. The Defendants deny the allegations of Paragraph 8, as the Plaintiff requested to renew the existing coverage.
6. The Defendants admit the allegations of Paragraph 9.

7. As to the allegations of Paragraph 10, the Defendants admit that the Plaintiff paid the premium required for the policy.

8. The Defendants admit the allegations of Paragraph 12.

9. The Defendants admit the allegation of Paragraph 13 that the plaintiff procured vacant structure insurance from defendant Scottsdale Insurance Company ("Scottsdale"). The remaining allegations of Paragraph 13 are denied, and the Defendants crave reference to said policy (policy number CPS 18884774).

10. The Defendants deny the allegations of paragraphs 14 and 15.

11. The allegations of Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 are allegations against other defendants and do not make any allegations against the Defendants. However, to the extent any allegations in Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 may be construed as allegations against the Defendants, said allegations are denied and strict proof demanded thereof.

12. Paragraph 32 do not make any allegations against the Defendants and does not require a response from the Defendants. To the extent that Paragraph 32 may be construed to contain allegations against the Defendants, said allegations are denied and strict proof is demanded thereof.

13. Defendants admit the allegations of Paragraph 33.

14. Defendants deny the allegations of Paragraphs 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45 of the complaint.

FOR A SECOND DEFENSE
(Failure to State a Claim)

15. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

16. The complaint fails to state a claim on which relief can be granted and, accordingly, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Contributory Negligence)

17. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

18. The Defendants affirmatively allege that any injury sustained by the plaintiff, as alleged in his complaint, occurred as a direct result of plaintiff's negligent failure to exercise ordinary care, in that the plaintiff failed to read the policy of insurance. Therefore, plaintiff's alleged losses were caused in whole or in part, or were contributed to, by the plaintiff's own negligence, and not by any negligence of the Defendants.

FOR A FOURTH DEFENSE
(Lack of Proximate Cause)

19. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

20. The Defendants would show the Court that no act or omission of the Defendants, agents or servants, proximately caused any injuries to the plaintiff, which therefore bars any recovery from the Defendants.

21. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR A FIFTH DEFENSE
(Failure to Mitigate Damages)

22. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

23. The plaintiff failed to purchase insurance coverage for the alleged losses in the complaint and, therefore, has failed to mitigate his damages. The Defendants accordingly plead the failure to mitigate damages as an affirmative defense to the plaintiff's complaint.

FOR A SIXTH DEFENSE
(Set-Off)

24. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

25. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR AN SEVENTH DEFENSE
(Estoppel)

26. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

27. The plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

FOR AN EIGHTH DEFENSE
(Unclean Hands)

28. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses..

29. The plaintiff's claims are barred by virtue of the doctrine of unclean hands.

FOR A NINTH DEFENSE
(Failure of Proximate Cause)

30. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses

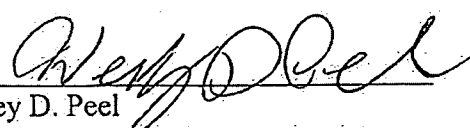
31. The plaintiff's claims against this defendant are barred in whole or in part by the fact that no action or inaction of the Defendants constituted the proximate cause of any injury or damage alleged by Plaintiff.

FOR A TENTH DEFENSE
(Reservation of Rights)

32. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

33. The Defendants reserve the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

WHEREFORE, having fully answered, the Defendants pray for judgment in their favor, for costs, and for such other and further relief as the Court finds just and fair.


Wesley D. Peel
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Fax (803) 252-7693
Wpeel@brunerpowell.com

Columbia, South Carolina

June 2, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

v.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

**AMENDED ANSWER ON
BEHALF OF DEFENDANT
SCOTTSDALE INSURANCE COMPANY**

**TO: RACHEL G. PEAVY, ESQUIRE, ATTORNEY FOR PLAINTIFF AND TO THE
PLAINTIFF ABOVE NAMED:**

The Defendant, Scottsdale Insurance Company (hereinafter "Scottsdale"), answering the Plaintiff's Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

1. This Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.

2. Paragraph one (1) is admitted upon information and belief.

3. Paragraph two (2) is admitted.

4. Paragraphs three (3), four (4) and five (5) are admitted upon information and belief.

5. As to paragraphs six (6), seven (7), eight (8) and nine (9), Scottsdale would show that on or about December 2, 2013, the Plaintiff was issued a policy that provided coverage from November 21, 2013 at 12:01 a.m. until February 21, 2014 at 12:01 a.m. and would crave reference to the policy for all the terms, conditions and provisions therein; Scottsdale also admits

that Plaintiff paid the premium due for the policy issued by Scottsdale; otherwise, paragraphs six (6), seven (7), eight (8) and nine (9) are denied.

6. In response to paragraph ten (10), Scottsdale reiterates its response to paragraphs one (1) through nine (9) above as if fully set forth verbatim herein.

7. As to paragraphs eleven (11) and twelve (12), Scottsdale admits that it is an insurer authorized to transact business and write insurance policies in South Carolina and that it issued a policy to the Plaintiff, policy number CPS1884774; Scottsdale craves reference to its policy for all the terms, conditions and provisions therein; otherwise, paragraphs eleven (11) and twelve (12) are denied.

8. As to paragraphs thirteen (13) and fourteen (14), Scottsdale would show that the policy expired at 12:01 a.m. on February 21, 2014 and therefore, the policy was not in effect at the time that a vehicle collided with the property and subsequently caught fire; otherwise, paragraphs thirteen (13) and fourteen (14) are denied.

9. Paragraph fifteen (15) is admitted.

10. Paragraph sixteen (16) is denied.

11. Paragraph seventeen (17) is admitted.

12. As to paragraph eighteen (18), Scottsdale would show that the policy was not in effect at the time of the loss and therefore it was unable to pay the claim submitted by Plaintiff; otherwise, paragraph eighteen (18) is denied.

13. As to paragraph nineteen (19), Scottsdale would show that the policy declarations indicated that the policy incepted at 12:01 a.m. on November 21, 2013 and expired at 12:01 a.m. on February 21, 2014; otherwise, paragraph nineteen (19) is denied.

14. Paragraph twenty (20) is denied.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

15. In response to paragraph twenty-one (21), Scottsdale reiterates its response to paragraphs one (1) through twenty (20) above as if fully set forth verbatim herein.

16. As to paragraphs twenty-two (22) and twenty-three (23), Scottsdale would show that no sums are due under the policy; otherwise, paragraphs twenty-two (22) and twenty-three (23) are denied.

17. Paragraphs twenty-four (24) and twenty-five (25) are denied.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

18. In response to paragraph twenty-six (26), Scottsdale reiterates its response to paragraphs one (1) through twenty-five (25) above as if fully set forth verbatim herein.

19. As to paragraph twenty-seven (27), Scottsdale would show that no response is required as paragraph twenty-seven (27) attempts to set forth a legal duty; however, to the extent that it can be inferred from paragraph twenty-seven (27) that any legal duty which may be owed by Scottsdale to Plaintiff was breached, paragraph twenty-seven (27) is denied.

20. Paragraphs twenty-eight (28), twenty-nine (29), thirty (30) and thirty-one (31) are denied.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

21. In response to paragraph thirty-two (32), Scottsdale reiterates its response to paragraphs one (1) through thirty-one (31) above as if fully set forth verbatim herein.

22. Scottsdale is without sufficient knowledge and information to either admit or deny the allegations of paragraphs thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38) and thirty-nine (39), Scottsdale would show that neither of the Co-Defendants are agents, servants or employees of Scottsdale, are not entitled to bind or

issue policies on behalf of Scottsdale and serve as producing agents employed by the Plaintiff who transacted a policy through Scottsdale's general agent, TAPCO; otherwise, paragraphs thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38) and thirty-nine (39) are denied.

23. As to paragraph forty (40), Scottsdale would show that the policy issued to Plaintiff expired at 12:01 a.m. on February 21, 2014 and therefore, it was not in effect at the time of the loss submitted; otherwise, paragraph forty (40) is denied.

24. Paragraph forty-one (41) is denied as Scottsdale would show that the policy declarations clearly indicate the policy period with an inception date and time of 12:01 a.m. on November 21, 2013 and an expiration date and time of 12:01 a.m. on February 21, 2014; otherwise, paragraph forty-one (41) is denied.

25. As to paragraph forty-two (42), Scottsdale would show that the policy issued to Plaintiff was not in effect at the time of the loss set forth in the Complaint; otherwise, paragraph forty-two (42) is denied.

26. Paragraphs forty-three (43), forty-four (44) and forty-five (45) are denied.

FOR A SECOND DEFENSE

27. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to his own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred; such negligent, careless, reckless and grossly negligent acts or omissions on the part of the Plaintiff being more particularly set forth as follows:

a. In failing to read his existing policy;

b. In failing to purchase or procure additional coverage upon expiration of the Scottsdale policy;

c. In failing to exercise that degree of care or caution a reasonable and prudent would have under the same or similar circumstances and in such other ways as may be shown through discovery and at trial;

all of which were the direct and proximate cause of any injuries or damages sustained by the Plaintiff and the Defendant pleads such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would ask that this court compare the negligence of the Plaintiff and the Defendant and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendant, then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A THIRD DEFENSE

28. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff, which are specifically denied, were the result of the acts or omissions of others not in the employ or control of this Defendant and, therefore, the Plaintiff cannot recover from this Defendant in any sum whatsoever.

FOR A FOURTH DEFENSE

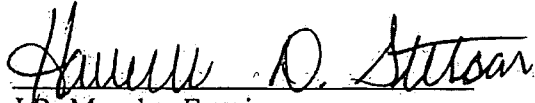
29. This Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

FOR A FIFTH DEFENSE

30. Scottsdale would show, upon information and belief, that the loss or damage sustained by the Plaintiff occurred after the expiration of the policy issued by Scottsdale to the Plaintiff and therefore, the Plaintiff cannot recover any sum whatsoever from Scottsdale pursuant to the terms of the policy or on any other basis asserted in the Complaint.

WHEREFORE, having fully answered, Scottsdale prays that the Plaintiff's Complaint
be dismissed with costs.

MURPHY & GRANTLAND, P.A.

A handwritten signature in black ink, appearing to read "Hannah D. Stetson".

J.R. Murphy, Esquire

Hannah D. Stetson, Esquire

PO Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for the Defendant Scottsdale Insurance
Company

Columbia, South Carolina
June 5, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

v.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

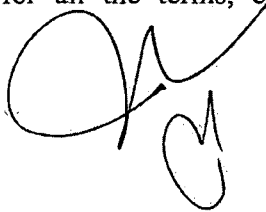
**AMENDED ANSWER ON BEHALF OF
DEFENDANT
SCOTTSDALE INSURANCE COMPANY
TO PLAINTIFF'S AMENDED
COMPLAINT**

**TO: RACHEL G. PEAVY, ESQUIRE, ATTORNEY FOR PLAINTIFF AND TO THE
PLAINTIFF ABOVE NAMED:**

The Defendant, Scottsdale Insurance Company (hereinafter "Scottsdale"), answering the Plaintiff's Amended Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

1. This Defendant denies each and every allegation of the Plaintiff's Amended Complaint not hereinafter specifically admitted.
2. Paragraph one (1) is admitted upon information and belief.
3. Paragraph two (2) is admitted.
4. Paragraphs three (3), four (4) and five (5) are admitted upon information and belief.
5. As to paragraphs six (6), seven (7), eight (8) and nine (9) and ten (10), Scottsdale would show that on or about December 2, 2013, the Plaintiff was issued a policy that provided coverage from November 21, 2013 at 12:01 a.m. until February 21, 2014 at 12:01 a.m. and would crave reference to the policy for all the terms, conditions and provisions therein;



Scottsdale also admits that Plaintiff paid the premium due for the policy issued by Scottsdale; otherwise, paragraphs six (6), seven (7), eight (8) and nine (9) are denied.

6. In response to paragraph eleven (11), Scottsdale reiterates its response to paragraphs one (1) through ten (10) above as if fully set forth verbatim herein.

7. As to paragraphs twelve (12) and thirteen (13), Scottsdale admits that it is an insurer authorized to transact business and write insurance policies in South Carolina and that it issued a policy to the Plaintiff, policy number CPS1884774; Scottsdale craves reference to its policy for all the terms, conditions and provisions therein; otherwise, paragraphs twelve (12) and thirteen (13) are denied.

8. As to paragraphs fourteen (14) and fifteen (15), Scottsdale would show that the policy expired at 12:01 a.m. on February 21, 2014 and therefore, the policy was not in effect at the time that a vehicle collided with the property and subsequently caught fire; otherwise, paragraphs fourteen (14) and fifteen (15) are denied.

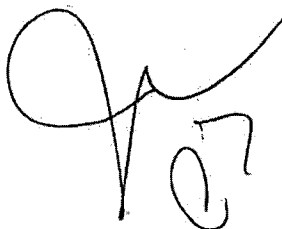
9. Paragraph sixteen (16) is admitted.

10. Paragraph seventeen (17) is denied.

11. Paragraph eighteen (18) is admitted.

12. As to paragraph nineteen (19), Scottsdale would show that the policy was not in effect at the time of the loss and therefore it was unable to pay the claim submitted by Plaintiff, as the policy declarations indicated that the policy incepted at 12:01 a.m. on November 21, 2013 and expired at 12:01 a.m. on February 21, 2014; otherwise, paragraph nineteen (19) is denied.

14. Paragraph twenty (20) is denied.

A handwritten signature in black ink, appearing to be 'J. 07', is written over the bottom of the text area.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

15. In response to paragraph twenty-one (21), Scottsdale reiterates its response to paragraphs one (1) through twenty (20) above as if fully set forth verbatim herein.

16. As to paragraphs twenty-two (22) and twenty-three (23), Scottsdale would show that no sums are due under the policy; otherwise, paragraphs twenty-two (22) and twenty-three (23) are denied.

17. Paragraphs twenty-four (24) and twenty-five (25) are denied.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

18. In response to paragraph twenty-six (26), Scottsdale reiterates its response to paragraphs one (1) through twenty-five (25) above as if fully set forth verbatim herein.

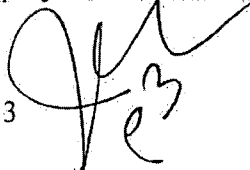
19. As to paragraph twenty-seven (27), Scottsdale would show that no response is required as paragraph twenty-seven (27) attempts to set forth a legal duty; however, to the extent that it can be inferred from paragraph twenty-seven (27) that any legal duty which may be owed by Scottsdale to Plaintiff was breached, paragraph twenty-seven (27) is denied.

20. Paragraphs twenty-eight (28), twenty-nine (29), thirty (30) and thirty-one (31) are denied.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

21. In response to paragraph thirty-two (32), Scottsdale reiterates its response to paragraphs one (1) through thirty-one (31) above as if fully set forth verbatim herein.

22. Scottsdale is without sufficient knowledge and information to either admit or deny the allegations of paragraphs thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38) and thirty-nine (39), Scottsdale would show that neither of the Co-Defendants are agents, servants or employees of Scottsdale, are not entitled to bind or

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issue policies on behalf of Scottsdale and serve as producing agents employed by the Plaintiff who transacted a policy through Scottsdale's general agent, TAPCO; otherwise, paragraphs thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38) and thirty-nine (39) are denied.

23. As to paragraph forty (40), Scottsdale would show that the policy issued to Plaintiff expired at 12:01 a.m. on February 21, 2014 and therefore, it was not in effect at the time of the loss submitted; otherwise, paragraph forty (40) is denied.

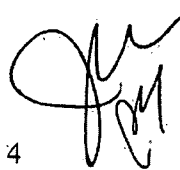
24. Paragraph forty-one (41) is denied as Scottsdale would show that the policy declarations clearly indicate the policy period with an inception date and time of 12:01 a.m. on November 21, 2013 and an expiration date and time of 12:01 a.m. on February 21, 2014; otherwise, paragraph forty-one (41) is denied.

25. As to paragraph forty-two (42), Scottsdale would show that the policy issued to Plaintiff was not in effect at the time of the loss set forth in the Complaint; otherwise, paragraph forty-two (42) is denied.

26. Paragraphs forty-three (43), forty-four (44) and forty-five (45) are denied.

FOR A SECON DEFENSE

27. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to his own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred; such negligent, careless, reckless and grossly negligent acts or omissions on the part of the Plaintiff being more particularly set forth as follows:

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a. In failing to read his existing policy;

b. In failing to purchase or procure additional coverage upon expiration of the Scottsdale policy;

c. In failing to exercise that degree of care or caution a reasonable and prudent would have under the same or similar circumstances and in such other ways as may be shown through discovery and at trial;

all of which were the direct and proximate cause of any injuries or damages sustained by the Plaintiff and the Defendant pleads such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would ask that this court compare the negligence of the Plaintiff and the Defendant and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendant, then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A THIRD DEFENSE

28. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff, which are specifically denied, were the result of the acts or omissions of others not in the employ or control of this Defendant and, therefore, the Plaintiff cannot recover from this Defendant in any sum whatsoever.

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FOR A FOURTH DEFENSE

29. This Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

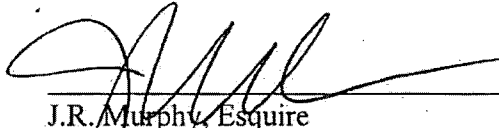
FOR A FIFTH DEFENSE

30. Scottsdale would show, upon information and belief, that the loss or damage sustained by the Plaintiff occurred after the expiration of the policy issued by Scottsdale to the Plaintiff and therefore, the Plaintiff cannot recover any sum whatsoever from Scottsdale pursuant to the terms of the policy or on any other basis asserted in the Complaint.



WHEREFORE, having fully answered, Scottsdale prays that the Plaintiff's Amended Complaint be dismissed with costs.

MURPHY & GRANTLAND, P.A.



J.R. Murphy, Esquire

Hannah D. Stetson, Esquire

PO Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for the Defendant Scottsdale Insurance Company

Columbia, South Carolina
June 16, 2015



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 14-CP-40-4661

Porthemos Curry,)
Plaintiff,)
vs.)
Scottsdale Insurance Company,)
Carolina Insurance Group of SC, Inc., and)
Maurice Derrick,)
Defendants.)

AMENDED COMPLAINT
(Jury Trial Requested)

FILED
OCT - 1 AM 11:28
CLERK OF COURT
C.C.P. 2013

The Plaintiff, Porthemos Curry, complaining of the Defendants, would show as follows:

1. Plaintiff is a citizen and resident of Richland County who is the owner of a vacant structure located at 1001 Pineland Drive, Columbia, SC 29203 (hereafter "the Property").
2. Defendant Scottsdale Insurance Company ("Scottsdale") is a foreign corporation doing business in the State of South Carolina, including Richland County.
3. Defendant Carolina Insurance Group of South Carolina, Inc. is a corporation with an office located at Two Notch Road in Richland County, South Carolina.
4. Defendant Maurice Derrick is a citizen of the State of South Carolina who, upon information and belief, resides in Richland County.
5. On or about August 21, 2013, Defendants Carolina Insurance Group and Derrick sold Plaintiff a 3-month vacant structure policy with Scottsdale Insurance Company, Policy No. CPS1816463, with an expiration date of November 21, 2013. A copy of this Scottsdale policy is attached as **Exhibit A**.

6. Between the dates of November 22, 2013 and December 1, 2013, there was no insurance coverage on the Property.
7. On or about December 2, 2013, Defendant Derrick telephoned the Plaintiff to inquire as to whether he still needed vacant structure coverage for the Property, and Plaintiff told Derrick that he did.
8. On December 2, 2013, Defendant Derrick offered to place another vacant structure policy on the property, to which Plaintiff agreed.
9. As part of the underwriting process, Defendants Derrick and Carolina Insurance Group submitted an Application for a Vacant Structures Policy, a copy of which is attached hereto as **Exhibit B**. Upon approval, TAPCO prepared a Binder Summary Sheet which was forwarded to Defendants Derrick and Carolina Insurance Group and is attached hereto as **Exhibit C**. Defendant Scottsdale thereafter issued Policy No. CPS1884774 to the Plaintiff and a copy of the Policy is attached as **Exhibit D**.
10. On December 2, 2013, Plaintiff paid the premium amount of \$344.50 by utilizing his Bank of America account to transfer payment to TAPCO Underwriters, the underwriter for Defendant Scottsdale.

For a First Cause of Action
Breach of Contract

11. The Preceding allegations are incorporated herein as if repeated verbatim.
12. Defendant Scottsdale is an insurer offering, among other things, policies to cover vacant structures.
13. Plaintiff procured vacant structure insurance ("the Policy") from Defendant Scottsdale, which coverage included loss by vehicle or by fire.

14. While the Policy was in force, a white vehicle collided with the Property on February 21, 2014, prior to midnight, as evidenced by the affidavits attached hereto as Exhibit E.
15. The collision resulted in a fire being ignited at the Property, causing severe damage as a result.
16. Plaintiff provided to Defendant Scottsdale the information regarding the accident and the Policy.
17. This loss was covered by the Policy.
18. Plaintiff timely reported the loss to the Defendants.
19. Defendant Scottsdale has refused to pay the claim, and contends that the Policy expired at 12:01 a.m. on February 21, 2014, as evidenced by the letter attached hereto as Exhibit F. Defendant Scottsdale has further refused to pay the claim by asserting that the Policy was somehow "backdated" to November 21, 2013 and had therefore lapsed by the time the fire department responded to calls in the early morning of February 22, 2014, despite the fact that the agent did not even bind coverage on the Property until December 2013.
20. Defendant Scottsdale's failure to pay the claim and failure to cover the loss are breaches of the insurance contract entitling the Plaintiff to recover such amount as established at trial.

For a Second Cause of Action
Statutory Bad Faith

21. The preceding allegations are incorporated herein.
22. Defendant Scottsdale has failed to pay the sum due and owing within 90 days.
23. Defendant has failed to pay any amounts to Plaintiff due under the Policy.

24. Defendant Scottsdale has failed to discharge its statutory and contractual obligations in good faith and has acted without reasonable cause in failing to pay covered losses within 90 days.
25. Pursuant to S.C. Code Ann. 38-59-40, Plaintiff is entitled to an award of attorney's fees of one third of the judgment entered in this action.

For a Third Cause of Action
Common Law Bad Faith

26. The preceding allegations are incorporated herein as if repeated verbatim.
27. Defendant Scottsdale had a duty to act in good faith which required it to use due care not to deprive Plaintiff of his rights under the Policy.
28. Defendant Scottsdale's explanation of delay in processing Plaintiff's claim was based on a lack of knowledge of the Policy terms and conditions and is nonsensical.
29. Defendant Scottsdale has forced Plaintiff to pursue litigation in order to obtain payment for the loss covered by the Policy.
30. Defendant Scottsdale's failure to properly adjust Plaintiff's claim and failure to make payment as required by the terms of the Policy was the result of bad faith and the reckless and/or intentional disregard for Plaintiff's rights under the Policy.
31. Defendant Scottsdale's acts entitle Plaintiff to an award of punitive damages in an amount to be determined at trial.

For a Fourth Cause of Action
Negligence and Gross Negligence

32. To the extent not inconsistent, the preceding allegations are incorporated herein.
33. Defendant Maurice Derrick is an insurance broker employed by Defendant Carolina Insurance Group of SC, Inc.

34. Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale.
35. In addition to other activities, Defendants Derrick and Carolina Insurance submit applications for coverage with Scottsdale, receive premiums on behalf of Scottsdale, and deliver and present insurance contracts on behalf of Scottsdale.
36. Because Plaintiff had no special knowledge in the area of vacant coverage insurance, Plaintiff engaged Defendants Derrick and Carolina Insurance to procure vacant property coverage for the Property for the appropriate period of time while the Property was under renovation.
37. Plaintiff was assured by Defendants Derrick and Carolina Insurance that they offered coverage at competitive prices and that Defendants were well suited to work with a customer such as Plaintiff.
38. Defendants Derrick and Carolina Insurance undertook to procure insurance coverage for Plaintiff at two (2) different periods of time; first, in August 2013, when Plaintiff first began renovating the Property, and second, in December 2013, when Defendants inquired as to whether the Property was still under renovation and informed the Plaintiff that he needed a new policy, as the Lloyd's of London policy had expired.
39. In accepting the Scottsdale Policy procured by Defendants Derrick and Carolina Insurance in December 2013, Plaintiff, in reliance upon the knowledge, experience, and expertise of all of the Defendants, believed the Defendants would procure coverage sufficient to protect Plaintiff against the foreseeable insurance risk exposures faced by Plaintiff's Property for three (3) months.

40. According to positions taken by Defendant Scottsdale with respect to Plaintiff's loss that is the subject of this action, Plaintiff's loss is excluded from coverage under the terms of the Policy.
41. Prior to being informed of Scottsdale's position, Plaintiff had never been informed by any of the Defendants that the Policy was "backdated" and therefore the policy premium which was paid for in December 2013 actually was not a "three month policy" and did not cover the Property for 3 months.
42. As now relied upon by Defendant Scottsdale, the Policy is rendered materially deficient and insufficient to protect the Plaintiff.
43. Had the Defendants informed Plaintiff that the three month policy he was paying for provided less than 3 months of coverage, Plaintiff could have sought suitable insurance from another carrier or, in the alternative, sought to renew the Policy after the alleged expiration date of February 21st.
44. In permitting the Policy to be "shortened" in essence, without informing Plaintiff of this material limitation, Defendants failed to exercise the duty of ordinary care applicable to insurance carriers and professionals and such failure was, in fact, grossly negligent, reckless, and in contravention of the duties and standards imposed upon insurance professionals in similar situations.
45. As a result of the Defendants' failure to exercise ordinary care and failure to inform Plaintiff that the three month Policy was, in effect, 2 months plus 20 days, and willful or reckless failure to renew or seek to renew the Policy after the February loss, Plaintiff has been damaged in the amount of its losses to the Property, plus such other and further damages, including punitive damages, as may be proved at

trial, to include but not limited to, lost profits and income due to the destruction of the property; damage to credit rating; damage to reputation; and additional interest paid on credit cards due to failure to complete renovation and sale of the home.

WHEREFORE, Plaintiff prays for a trial by jury and judgment as follows:

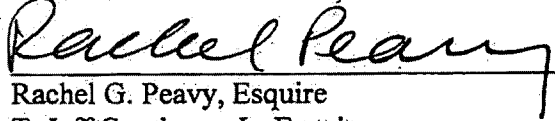
As against Defendant Scottsdale, an award of damages in the amount of his unpaid losses as established at trial; attorney's fees in an amount of one third of the judgment under his statutory bad faith claim; and an award of punitive damages in an amount to be determined by the jury;

As against all Defendants, judgment in the amount of Plaintiff's unpaid losses as established at trial, and all incidental, punitive, and consequential damages as may be shown at trial;

Prejudgment interest and costs against all Defendants; and

For such other and further relief as the Court deems just and proper.

GOODWYN LAW FIRM, LLC



Rachel G. Peavy, Esquire

T. Jeff Goodwyn, Jr. Esquire

2519 Devine Street

Suite A

Columbia, SC 29205

(803) 251-7517

(803) 251-7527 (f)

JGoodwyn@Goodwynlaw.com

Attorneys for Plaintiff

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-40-04661

Porthemos Curry,)
Plaintiff,)
vs.)
Scottsdale Insurance Company, Carolina)
Insurance Group of SC, Inc. and Maurice)
Derrick,)
Defendants.)

ANSWER ON BEHALF OF
DEFENDANTS CAROLINA
INSURANCE GROUP OF SC,
INC. AND MAURICE
DERRICK TO SECOND
AMENDED COMPLAINT

The Defendants, Carolina Insurance Group of SC, Inc ("Carolina") and Maurice Derrick ("Derrick"), referred to collectively as the Defendants, answer the allegations of the complaint as follows:

FOR A FIRST DEFENSE
(General Denial)

1. The Defendants deny each and every allegation of the complaint not otherwise admitted, qualified, or explained herein.

2. The Defendants admit the allegations of Paragraphs 1, 2, 3, 4, and 5.

3. The Defendants deny the allegations of Paragraphs 6.

4. The Defendants would show that, with respect to the allegations of Paragraph 7, that on December 2, 2014, the plaintiff contacted Derrick to renew the policy; the remaining allegations of Paragraph are denied and strict proof is demanded thereof.

5. The Defendants deny the allegations of Paragraph 8, as the Plaintiff requested to renew the existing coverage.

6. The Defendants admit the allegations of Paragraph 9.

7. As to the allegations of Paragraph 10, the Defendants admit that the Plaintiff paid the premium required for the policy.

8. The Defendants admit the allegations of Paragraph 12.

9. The Defendants admit the allegation of Paragraph 13 that the plaintiff procured vacant structure insurance from defendant Scottsdale Insurance Company ("Scottsdale"). The remaining allegations of Paragraph 13 are denied, and the Defendants crave reference to said policy (policy number CPS 18884774).

10. The Defendants deny the allegations of paragraphs 14 and 15.

11. The allegations of Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 are allegations against other defendants and do not make any allegations against the Defendants. However, to the extent any allegations in Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 may be construed as allegations against the Defendants, said allegations are denied and strict proof demanded thereof.

12. Paragraph 32 do not make any allegations against the Defendants and does not require a response from the Defendants. To the extent that Paragraph 32 may be construed to contain allegations against the Defendants, said allegations are denied and strict proof is demanded thereof.

13. Defendants admit the allegations of Paragraph 33.

14. Defendants deny the allegations of Paragraphs 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45 of the complaint.

FOR A SECOND DEFENSE
(Failure to State a Claim)

15. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

16. The complaint fails to state a claim on which relief can be granted and, accordingly, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Contributory Negligence)

17. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

18. The Defendants affirmatively allege that any injury sustained by the plaintiff, as alleged in his complaint, occurred as a direct result of plaintiff's negligent failure to exercise ordinary care, in that the plaintiff failed to read the policy of insurance. Therefore, plaintiff's alleged losses were caused in whole or in part, or were contributed to, by the plaintiff's own negligence, and not by any negligence of the Defendants.

FOR A FOURTH DEFENSE
(Lack of Proximate Cause)

19. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

20. The Defendants would show the Court that no act or omission of the Defendants, agents or servants, proximately caused any injuries to the plaintiff, which therefore bars any recovery from the Defendants.

21. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR A FIFTH DEFENSE
(Failure to Mitigate Damages)

22. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses:

23. The plaintiff failed to purchase insurance coverage for the alleged losses in the complaint and, therefore, has failed to mitigate his damages. The Defendants accordingly plead the failure to mitigate damages as an affirmative defense to the plaintiff's complaint.

FOR A SIXTH DEFENSE
(Set-Off)

24. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

25. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR AN SEVENTH DEFENSE
(Estoppel)

26. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

27. The plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

FOR AN EIGHTH DEFENSE
(Unclean Hands)

28. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

29. The plaintiff's claims are barred by virtue of the doctrine of unclean hands.

FOR A NINTH DEFENSE
(Failure of Proximate Cause)

30. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses

31. The plaintiff's claims against this defendant are barred in whole or in part by the fact that no action or inaction of the Defendants constituted the proximate cause of any injury or damage alleged by Plaintiff.

FOR A TENTH DEFENSE
(Reservation of Rights)

32. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

33. The Defendants reserve the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

FOR A ELEVENTH DEFENSE
(Illegality)

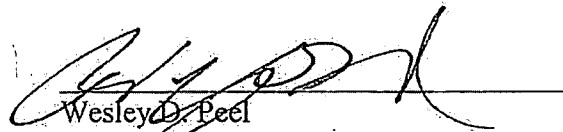
34. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

35. The plaintiff's claims are barred by virtue of the doctrine of illegality.

(SIGNATURE PAGE TO FOLLOW)

WHEREFORE, having fully answered, the Defendants pray for judgment in their favor,
for costs, and for such other and further relief as the Court finds just and fair.

Bruner, Powell, Wall & Mullins, LLC



Wesley D. Peel
P.O. Box 61110
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Fax (803) 254-5719
wpeel@brunerpowell.com

Columbia, South Carolina

October 28, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2014-CP-40-04661

Porthemos Curry,)
Plaintiff,)
vs.)
Scottsdale Insurance Company, Carolina)
Insurance Group of SC, Inc. and Maurice)
Derrick,)
Defendants.)

AMENDED ANSWER ON
BEHALF OF DEFENDANTS
CAROLINA INSURANCE
GROUP OF SC, INC. AND
MAURICE DERRICK

The Defendants, Carolina Insurance Group of SC, Inc ("Carolina") and Maurice Derrick ("Derrick"), referred to collectively as the Defendants, answer the allegations of the complaint as follows:

FOR A FIRST DEFENSE
(General Denial)

1. The Defendants deny each and every allegation of the complaint not otherwise admitted, qualified, or explained herein.
2. The Defendants admit the allegations of Paragraphs 1, 2, 3, 4, and 5.
3. The Defendants deny the allegations of Paragraphs 6.
4. The Defendants would show that, with respect to the allegations of Paragraph 7, that on December 2, 2014, the plaintiff contacted Derrick to renew the policy; the remaining allegations of Paragraph are denied and strict proof is demanded thereof.
5. The Defendants deny the allegations of Paragraph 8, as the Plaintiff requested to renew the existing coverage.
6. The Defendants admit the allegations of Paragraph 9.

7. As to the allegations of Paragraph 10, the Defendants admit that the Plaintiff paid the premium required for the policy.

8. The Defendants admit the allegations of Paragraph 12.

9. The Defendants admit the allegation of Paragraph 13 that the plaintiff procured vacant structure insurance from defendant Scottsdale Insurance Company ("Scottsdale"). The remaining allegations of Paragraph 13 are denied, and the Defendants crave reference to said policy (policy number CPS 18884774).

10. The Defendants deny the allegations of paragraphs 14 and 15.

11. The allegations of Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 are allegations against other defendants and do not make any allegations against the Defendants. However, to the extent any allegations in Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 may be construed as allegations against the Defendants, said allegations are denied and strict proof demanded thereof.

12. Paragraph 32 do not make any allegations against the Defendants and does not require a response from the Defendants. To the extent that Paragraph 32 may be construed to contain allegations against the Defendants, said allegations are denied and strict proof is demanded thereof.

13. Defendants admit the allegations of Paragraph 33.

14. Defendants deny the allegations of Paragraphs 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45 of the complaint.

FOR A SECOND DEFENSE
(Failure to State a Claim)

15. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

16. The complaint fails to state a claim on which relief can be granted and, accordingly, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Contributory Negligence)

17. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

18. The Defendants affirmatively allege that any injury sustained by the plaintiff, as alleged in his complaint, occurred as a direct result of plaintiff's negligent failure to exercise ordinary care, in that the plaintiff failed to read the policy of insurance. Therefore, plaintiff's alleged losses were caused in whole or in part, or were contributed to, by the plaintiff's own negligence, and not by any negligence of the Defendants.

FOR A FOURTH DEFENSE
(Lack of Proximate Cause)

19. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

20. The Defendants would show the Court that no act or omission of the Defendants, agents or servants, proximately caused any injuries to the plaintiff, which therefore bars any recovery from the Defendants.

21. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR A FIFTH DEFENSE
(Failure to Mitigate Damages)

22. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

23. The plaintiff failed to purchase insurance coverage for the alleged losses in the complaint and, therefore, has failed to mitigate his damages. The Defendants accordingly plead the failure to mitigate damages as an affirmative defense to the plaintiff's complaint.

FOR A SIXTH DEFENSE
(Set-Off)

24. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

25. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR AN SEVENTH DEFENSE
(Estoppel)

26. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

27. The plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

FOR AN EIGHTH DEFENSE
(Unclean Hands)

28. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

29. The plaintiff's claims are barred by virtue of the doctrine of unclean hands.

FOR A NINTH DEFENSE

(Failure of Proximate Cause)

30. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses

31. The plaintiff's claims against this defendant are barred in whole or in part by the fact that no action or inaction of the Defendants constituted the proximate cause of any injury or damage alleged by Plaintiff.

FOR A TENTH DEFENSE

(Reservation of Rights)

32. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

33. The Defendants reserve the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

FOR A ELEVENTH DEFENSE

(Illegality)

34. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

35. The plaintiff's claims are barred by virtue of the doctrine of illegality.

FOR A TWELTH DEFENSE

(Release)

36. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

37. The Defendants were expressly released from any alleged liability to the plaintiff. Defendants accordingly plead release as an affirmative defense to plaintiff's complaint.

(SIGNATURE PAGE TO FOLLOW)

WHEREFORE, having fully answered, the Defendants pray for judgment in their favor,
for costs, and for such other and further relief as the Court finds just and fair.

Bruner, Powell, Wall & Mullins, LLC



Wesley D. Peel
P.O. Box 61110
Columbia, South Carolina 29260
(803) 252-7693
Fax (803) 254-5719
wpeel@brunerpowell.com

Columbia, South Carolina

April 19, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

v.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

ANSWER TO AMENDED COMPLAINT

**TO: RACHEL G. PEAVY, ESQUIRE, ATTORNEY FOR PLAINTIFF AND TO THE
PLAINTIFF ABOVE NAMED:**

The Defendant, Scottsdale Insurance Company (hereinafter "Scottsdale"), answering the
Plaintiff's Amended Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

1. This Defendant denies each and every allegation of the Plaintiff's Amended
Complaint not hereinafter specifically admitted.

2. Paragraph one (1) is admitted upon information and belief.

3. Paragraph two (2) is admitted.

4. Paragraphs three (3), four (4) and five (5) are admitted upon information and
belief.

5. As to paragraphs six (6), seven (7), eight (8) and nine (9) and ten (10), Scottsdale
would show that on or about December 2, 2013, the Plaintiff was issued a policy that provided
coverage from November 21, 2013 at 12:01 a.m. until February 21, 2014 at 12:01 a.m. and
would crave reference to the policy for all the terms, conditions and provisions therein;
Scottsdale also admits that Plaintiff paid the premium due for the policy issued by Scottsdale;
otherwise, paragraphs six (6), seven (7), eight (8) and nine (9) are denied.

6. In response to paragraph eleven (11), Scottsdale reiterates its response to paragraphs one (1) through ten (10) above as if fully set forth verbatim herein.

7. As to paragraphs twelve (12) and thirteen (13), Scottsdale admits that it is an insurer authorized to transact business and write insurance policies in South Carolina and that it issued a policy to the Plaintiff, policy number CPS1884774; Scottsdale craves reference to its policy for all the terms, conditions and provisions therein; otherwise, paragraphs twelve (12) and thirteen (13) are denied.

8. As to paragraphs fourteen (14) and fifteen (15), Scottsdale would show that the policy expired at 12:01 a.m. on February 21, 2014 and therefore, the policy was not in effect at the time that a vehicle collided with the property and subsequently caught fire; otherwise, paragraphs fourteen (14) and fifteen (15) are denied.

9. Paragraph sixteen (16) is admitted.

10. Paragraph seventeen (17) is denied.

11. Paragraph eighteen (18) is admitted.

12. As to paragraph nineteen (19), Scottsdale would show that the policy was not in effect at the time of the loss and therefore it was unable to pay the claim submitted by Plaintiff, as the policy declarations indicated that the policy incepted at 12:01 a.m. on November 21, 2013 and expired at 12:01 a.m. on February 21, 2014; otherwise, paragraph nineteen (19) is denied.

14. Paragraph twenty (20) is denied.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

15. In response to paragraph twenty-one (21), Scottsdale reiterates its response to paragraphs one (1) through twenty (20) above as if fully set forth verbatim herein.

16. As to paragraphs twenty-two (22) and twenty-three (23), Scottsdale would show that no sums are due under the policy; otherwise, paragraphs twenty-two (22) and twenty-three (23) are denied.

17. Paragraphs twenty-four (24) and twenty-five (25) are denied.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

18. In response to paragraph twenty-six (26), Scottsdale reiterates its response to paragraphs one (1) through twenty-five (25) above as if fully set forth verbatim herein.

19. As to paragraph twenty-seven (27), Scottsdale would show that no response is required as paragraph twenty-seven (27) attempts to set forth a legal duty; however, to the extent that it can be inferred from paragraph twenty-seven (27) that any legal duty which may be owed by Scottsdale to Plaintiff was breached, paragraph twenty-seven (27) is denied.

20. Paragraphs twenty-eight (28), twenty-nine (29), thirty (30) and thirty-one (31) are denied.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

21. In response to paragraph thirty-two (32), Scottsdale reiterates its response to paragraphs one (1) through thirty-one (31) above as if fully set forth verbatim herein.

22. Scottsdale is without sufficient knowledge and information to either admit or deny the allegations of paragraph thirty-three (33)/

23. Paragraph thirty-four (34) and thirty-five (35) are denied.

24. Paragraphs thirty-six (36), thirty-seven (37), thirty-eight (38) and thirty-nine (39) are denied upon information and belief.

25. As to paragraph forty (40), this Defendant would show that the loss alleged in the Complaint occurred after the expiration of the Scottsdale policy issued to Plaintiff; otherwise, paragraph forty (40) is denied.

26. As to paragraph forty-one (41), this Defendant would show that the policy application, binder and declarations page show the effective dates of the policy; otherwise, paragraph forty-one (41) is denied.

27. Paragraph forty-two (42) is denied.

28. Paragraphs forty-three (43), forty-four (44) and forty-five (45) are denied.

FOR A SECON DEFENSE

29. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to his own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred; such negligent, careless, reckless and grossly negligent acts or omissions on the part of the Plaintiff being more particularly set forth as follows:

- a. In failing to read his existing policy;
- b. In failing to purchase or procure additional coverage upon expiration of the Scottsdale policy;

c. In failing to exercise that degree of care or caution a reasonable and prudent would have under the same or similar circumstances and in such other ways as may be shown through discovery and at trial;
all of which were the direct and proximate cause of any injuries or damages sustained by the Plaintiff and the Defendant pleads such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would ask that this court compare the negligence of the Plaintiff and the Defendant and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendant, then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A THIRD DEFENSE

30. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff, which are specifically denied, were the result of the acts or omissions of others not in the employ or control of this Defendant and, therefore, the Plaintiff cannot recover from this Defendant in any sum whatsoever.

FOR A FOURTH DEFENSE

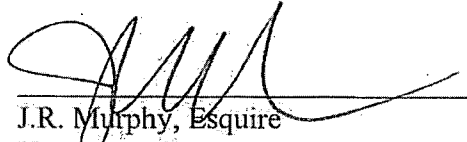
31. This Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

FOR A FIFTH DEFENSE

32. Scottsdale would show, upon information and belief, that the loss or damage sustained by the Plaintiff occurred after the expiration of the policy issued by Scottsdale to the Plaintiff and therefore, the Plaintiff cannot recover any sum whatsoever from Scottsdale pursuant to the terms of the policy or on any other basis asserted in the Complaint.

WHEREFORE, having fully answered, Scottsdale prays that the Plaintiff's Amended Complaint be dismissed with costs.

MURPHY & GRANTLAND, P.A.

A handwritten signature in black ink, appearing to be 'JRM', is written over a horizontal line.

J.R. Murphy, Esquire

Hannah D. Stetson, Esquire

PO Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for the Defendant Scottsdale Insurance Company

Columbia, South Carolina
October 22, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Porthemos Curry,)
)
)
Plaintiff,)
)
vs.)
)
Scottsdale Insurance Company, Carolina)
Insurance Group of SC, Inc. and Maurice)
Derrick,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2014-CP-40-04661

NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT

RICHLAND COUNTY
FILED
2016 APR 15 PM 3:08
JEANETTE W. HOUDE
CLERK, P. & G.S.

TO: RACHEL G. PEAVY, ESQUIRE, ATTORNEY FOR PLAINTIFF PORTHEMOS CURRY

YOU WILL PLEASE TAKE NOTICE THAT the Defendants, Carolina Insurance Group of SC and Maurice Derrick (collectively referred to hereinafter as "Defendants"), through their undersigned attorneys, hereby move for an Order granting the Defendants summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

Under South Carolina law, when a party releases one joint tortfeasor and receives "full compensation amounting to a satisfaction", all other joint tortfeasors are released from liability. See *Bartholomew v. McCarthy*, 255 S.C. 489, 492, 179 S.E.2d 912, 914 (1971). The law is based upon the principle that there can be only one compensation for a joint wrong. See *Ecclesiastes Prod. Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 493, 649 S.E.2d 494, 499 (Ct. App. 2007).

Here, the Plaintiff entered into a Release with the Defendant Scottsdale Insurance Company ("Scottsdale") which states "[t]he consideration expressed herein constitutes full payment for all damages losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages..." The copy of the release between

the Plaintiff and Scottsdale is attached hereto as **Exhibit A**. The Release clearly and unequivocally states that the settlement amount paid by Defendant Scottsdale "constitutes full payment for all damages losses or injuries...."

Our Courts have defined a "satisfaction" as "the performance of a substituted obligation in return for the discharge of the original obligation." *See Ecclesiastes*, 374 S.C. at 496, 649 S.E.2d at 501. The Plaintiff entered into a Release whereby it expressly agreed that the amount it received from Scottsdale constituted "full payment for all damages, losses or injuries". "Where, as here, a party accepts a full and final compromise adjustment and settlement of any and all claims, such amounts to a *Bartholomew* satisfaction **thereby extending the preclusive effect of the release to nonparties to the instrument.**" *Id.* at 496-97, 649 S.E.2d at 501.

Plaintiff's claim against Defendants is for negligent procurement of an insurance policy. While our courts recognize a cause of action for negligent procurement, the Plaintiff's damages are limited to the amount that would have been due under the policy if the agent obtained the desired coverage. *See Riddle-Duckworth, Inc. v. Sullivan*, 253 S.C. 411, 421, 171 S.E.2d 486, 491 (1969). Here, the Plaintiff agreed that the amount received from Scottsdale represented the full amount of the policy benefits. The Plaintiff is precluded from claiming additional damages after accepting an amount which he agreed constituted "full payment for all damages losses or injuries." An award of damages exceeding the policy benefits would constitute an impermissible "double recovery." Based on the foregoing, Defendants Carolina Insurance Group of SC, Inc. and Maurice Derrick are entitled to summary judgment as a matter of law.

[Signature Page Follows]

BRUNER, POWELL, WALL & MULLINS, LLC



Wesley D. Peel

1735 St. Julian Place, Suite 200

P.O. Box 61110

Columbia, SC 29260-1110

(803) 252-7693

Attorneys for Defendants

Carolina Insurance Group of SC, Inc.

and Maurice Derrick

Columbia, South Carolina

April 15, 2016

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) R E L E A S E

KNOW ALL MEN BY THESE PRESENTS that the undersigned, Porthemos Curry, in consideration of the sum of Eighty Five and 00/100 (\$85,000.00) Dollars, the receipt of which from Scottsdale Insurance Company is hereby acknowledged, does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions, causes of action, demands and/or claims of whatsoever kind or nature prior to and including the date hereof growing out of any property coverage which may apply under policy number CPS1884774 issued by Scottsdale Insurance Company to Porthemos Curry, on account of or in any way growing out of a loss which occurred on or about February 21, 2014, when a vehicle ran into a vacant structure owned by Curry and located at 1001 Pineland Drive, Columbia, South Carolina, including any and all claims arising from the investigation, adjustment and handling of the loss by Scottsdale Insurance Company, and any claim which was or could have been asserted against Scottsdale Insurance Company in the case of Porthemos Curry v Scottsdale et. al., C.A. No. 2014-CP-40-04661, Court of Common Pleas, Richland County, South Carolina. The consideration expressed herein constitutes full payment for all damages, losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from the loss aforesaid.

The undersigned expressly represent and warrants that he has consulted with his attorney and understands the effect of the things herein agreed to and that no statement or representations made by the persons released or by their agents, representatives and attorneys have influenced him or induced him to execute and deliver this Release.

I have read the foregoing Release and understand it to be a full, final and binding agreement.

IN WITNESS WHEREOF, U have hereunto set my hand and seal this 10 day of

December, 2015.

WITNESSES:

Rachel J. Peavy

Porthmos Curry (SEAL)
Porthmos Curry

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Porthemos Curry,)

Plaintiff,)

vs.)

Scottsdale Insurance Company, Carolina)

Insurance Group of SC, Inc. and Maurice)

Derrick,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-40-04661

AMENDED NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT

RICHLAND COUNTY
FILED
2016 APR 18 AM 8:57
JEANETTE W. MCBRIDE
CLERK

TO: RACHEL G. PEAVY, ESQUIRE, ATTORNEY FOR PLAINTIFF PORTHEMOS CURRY

YOU WILL PLEASE TAKE NOTICE THAT the Defendants, Carolina Insurance Group of SC and Maurice Derrick (collectively referred to hereinafter as "Defendants"), through their undersigned attorneys, hereby move for an Order granting the Defendants summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

Under South Carolina law, when a party releases one joint tortfeasor and receives "full compensation amounting to a satisfaction", all other joint tortfeasors are released from liability. See *Bartholomew v. McCartha*, 255 S.C. 489, 492, 179 S.E.2d 912, 914 (1971). The law is based upon the principle that there can be only one compensation for a joint wrong. See *Ecclesiastes Prod. Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 493, 649 S.E.2d 494, 499 (Ct. App. 2007).

Here, the Plaintiff entered into a Release with the Defendant Scottsdale Insurance Company ("Scottsdale") which states "[t]he consideration expressed herein constitutes full payment for all damages losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages...." (emphasis added). The copy of

the release between the Plaintiff and Scottsdale is attached hereto as **Exhibit A**. The Release clearly and unequivocally states that the settlement amount paid by Defendant Scottsdale “constitutes full payment for all damages losses or injuries....” (emphasis added).

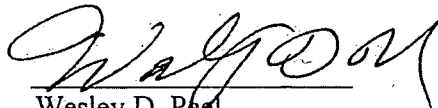
Our Courts have defined a “satisfaction” as “the performance of a substituted obligation in return for the discharge of the original obligation.” *See Ecclesiastes*, 374 S.C. at 496, 649 S.E.2d at 501. The Plaintiff entered into a Release whereby it expressly agreed that the amount it received from Scottsdale constituted “full payment for all damages, losses or injuries”. “Where, as here, a party accepts a full and final compromise adjustment and settlement of any and all claims, such amounts to a *Bartholomew* satisfaction **thereby extending the preclusive effect of the release to nonparties to the instrument.**” *Id.* at 496-97, 649 S.E.2d at 501.

Plaintiff’s claim against Defendants is for negligent procurement of an insurance policy. While our courts recognize a cause of action for negligent procurement, the Plaintiff’s damages are limited to the amount that would have been due under the policy if the agent obtained the desired coverage. *See Riddle-Duckworth, Inc. v. Sullivan*, 253 S.C. 411, 421, 171 S.E.2d 486, 491 (1969). Here, the Plaintiff agreed that the amount received from Scottsdale represented the full amount of the policy benefits. The Plaintiff is precluded from claiming additional damages after accepting an amount which he agreed constituted “full payment for all damages losses or injuries.” An award of damages exceeding the policy benefits would constitute an impermissible “double recovery.”

“A release is a contract and contract principles of law should be used to determine what the parties intended.” *Ecclesiastes*, 374 S.C. at 497, 649 S.E.2d at 501. “The parties intention must, in the first instance, be derived from the language of the [release].” *Id.* Here, the language of the Release indicates that the Plaintiff intended to release Carolina Insurance and Derrick in

addition to Scottsdale. The Release states that the Plaintiff “does hereby release and forever discharge Scottsdale Insurance Company, **its agents**, servants, employees, successors and assigns of and from any and all actions cause of action demands and/or claims of whatsoever kind or nature....growing out of any property coverage which may apply under policy number CPS1884774....” (emphasis added). Paragraph 34 of the Plaintiff’s Amended Complaint (filed on October 1, 2015) states “Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale.” Clearly, the Plaintiff believed that Derrick and Carolina Insurance are agents of Scottsdale.¹ This belief coupled with the plain language of the Release demonstrates that the Plaintiff, in releasing Scottsdale’s “agents”, also intended to release Defendants Carolina Insurance and Derrick from liability. Any argument otherwise goes directly against the allegations plead in the Amended Complaint and the plain language of the Release. Based on the foregoing, Defendants Carolina Insurance Group of SC, Inc. and Maurice Derrick are entitled to summary judgment as a matter of law.

BRUNER, POWELL, WALL & MULLINS, LLC



Wesley D. Peel

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Columbia, SC 29260-1110

(803) 252-7693

Attorneys for Defendants

Carolina Insurance Group of SC, Inc.

and Maurice Derrick

Columbia, South Carolina

April 17, 2016

¹ All statements made in pleadings are subject to the obligations set forth in Rule 11, SCRCP. See Rule 8(e), SCRCP.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-40-04661

**AMENDED
MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

2016 APR 26 PM 1:53
CCP

COMES NOW, the Defendants Carolina Insurance Group of SC, Inc. ("Carolina Insurance") and Maurice Derrick ("Derrick") (hereinafter collectively "the Agency Defendants"), by and through their undersigned attorney, submit this memorandum of law in support of its Motion for Summary Judgment. Defendants request this Court grant Summary Judgment as to all claims against them pursuant to Rule 56, SCRPC. Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." SCRPC 56(c).

FACTUAL BACKGROUND

This lawsuit arose out of Plaintiff's renewal of a vacant structure insurance policy procured by Carolina Insurance, which covered losses to a vacant house owned by the Plaintiff from November 21, 2013 through February 21, 2014. After the policy expired, the house was damaged and Plaintiff made a claim under the policy. The carrier, Scottsdale Insurance Company ("Scottsdale") denied the Plaintiff's claim.

On July 24, 2014, the Plaintiff filed a Summons and Complaint against Scottsdale, Carolina Insurance and Derrick. The Plaintiff alleges causes of action of breach of contract and bad faith against Scottsdale, and negligence against the Agency Defendants. On May 28, 2015, the Plaintiff amended his Complaint. On October 1, 2015, after the depositions of all of the Defendants, the Plaintiff again amended his Complaint to assert punitive damages against the Agency Defendants. In all three complaints, the Plaintiff, in Paragraph 34, alleged that "Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale,;

On December 10, 2015, the Plaintiff entered into a release (the "Release") with Scottsdale whereby the Plaintiff expressly agreed to "release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions cause of action demands and/or claims of whatsoever kind or nature...growing out of any property coverage which may apply under policy number CPS1884774...." (emphasis added). The Release further states that "[t]he consideration expressed herein constitutes full payment for all damages, losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages...." (emphasis added). A copy of the Release is attached hereto as Exhibit A. The language of the Release clearly indicates that the Plaintiff received full compensation for any and all losses suffered. The Release also evidences the Plaintiff's intent to release Carolina Insurance and Derrick from liability. For these reasons, Carolina Insurance and Derrick are entitled to summary judgment as a matter of law.

On December 30, a Stipulation of Dismissal was filed dismissing Scottsdale from this matter. Notably, despite the requirements of SCRCP Rule 5, the Agency defendants were not served with the Stipulation of Dismissal when it was sent to the court. Additionally, the filed

dismissal or the executed Release were never served upon the Agency Defendants. In fact, the executed Release was not given to the Agency Defendants until April 8, 2016, then counsel for the Agency Defendants specifically requested it from counsel. The Plaintiff was under a duty to provide a copy of the Release as the Agency Defendants through their original discovery requests served on September 22, 2014, requested "all emails, correspondence, receipts bills, invoices, statements, between you and your agents, or you and any other party . . ." and "all documents in the care, custody, or control of the Plaintiff related to the events alleged in the Complaint."

Plaintiff asserts that this motion is untimely as the Release was executed on December 10, 2015 and the Agency Defendants were aware of the settlement. As stated above, the executed settlement documents were never served upon the Agency Defendants. In any event there can be no prejudice as to this motion as this was a document executed by the Plaintiff and in his custody,

ARGUMENTS

- I. Plaintiff received "full compensation amounting to a satisfaction" for any and all damages suffered. Therefore, Plaintiff is barred from receiving any additional compensation.

Under South Carolina law, when a party releases one joint tortfeasor and receives "full compensation amounting to a satisfaction", all other joint tortfeasors are released from liability. See *Bartholomew v. McCartha*, 255 S.C. 489, 492, 179 S.E.2d 912, 914 (1971). The law is based upon the principle that there can be only one compensation for a joint wrong. See *Ecclesiastes Prod. Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 493, 649 S.E.2d 494, 499 (Ct. App. 2007). The General Assembly incorporated this common law rule into the Uniform

Contribution Among Tortfeasors Act ("UCATA") thereby statutorily mandating its application. See *Bowers v. Dept. of Transp.*, 360 S.C. 149, 155, 600 S.E.2d 543 (Ct. App. 2004); see also S.C. Code § 15-38-50.

The Release entered into between the Plaintiff and Defendant Scottsdale Insurance Company ("Scottsdale") and signed by the Plaintiff and his counsel, states "[t]he consideration expressed herein constitutes full payment for all damages, losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from this loss aforesaid." (emphasis added). By accepting "full payment for all damages, losses or injuries...", the Plaintiff received "full compensation amounting to a satisfaction." See *Bartholomew*, 255 S.C. at 492, 179 S.E.2d at 914.

It is relevant that Plaintiff's claim against Carolina Insurance and Derrick is for negligent procurement of an insurance policy and Plaintiff's settled claim with Scottsdale alleged bad-faith failure to pay. Under the negligent procurement cause of action, the Plaintiff is entitled to the amount that would have been due under the policy had the agent obtained the desired coverage as well as any consequential damages the Plaintiff can prove at trial. See *Republic Textile Equipment Co. of South Carolina, Inc. v. Aetna Insurance Company*, 293 S.C. 381, 389, 360 S.E.2d 540, 544-45 (Ct. App. 1987). For bad-faith failure to pay, the Plaintiff is entitled to the policy benefits and consequential damages stemming from the insurer's failure to pay. *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 340, 306 S.E.2d 616, 619 (1983). Under both negligent procurement and bad-faith failure to pay, the Plaintiff is entitled to the same damages.

In this case, there is one house, one fire, one policy of insurance and one injury.

This precludes the Plaintiff from arguing that it can seek additional damages from Carolina Insurance and Derrick. In accepting "full payment...for policy benefits or consequential damages..." from Scottsdale, the Plaintiff received "full compensation" for all damages to which he is entitled. An award of additional damages would constitute an impermissible "double recovery." The Plaintiff, as a matter of law, cannot recover any additional damages after accepting an amount agreed to be "full payment for all damages losses or injuries."

The argument that the Plaintiff did not receive "full compensation amounting to a satisfaction" because he settled for an amount under the policy limits is without merit. First, the policy at issue is a vacant structure builder's risk policy. Under such a policy, the insured is compensated for the value of the structure at the time of the loss, up to the policy limits. Here, the structure was not completed when the loss occurred. As such, the value of the structure at the time of the loss was less than the policy limits. Under these circumstances, Plaintiff was not entitled to the full policy benefits. Second, South Carolina courts define "satisfaction" as "the performance of a substituted obligation in return for the discharge of the original obligation." *See Ecclesiastes*, 374 S.C. at 496, 649 S.E.2d at 501. In cases where the amount owed to a party is in dispute, "the parties will reach an 'accord' whereby one of the parties agrees to accept as 'satisfaction' of the disputed claim some performance or undertaking different from that which he considers himself entitled." *Id.* (emphasis added).

A satisfaction is "the performance of a substituted obligation in return for the discharge of the original obligation. *Id.* Parties frequently reach compromise settlements due to the unpredictability of continued litigation and trial. *See id.* The Plaintiff entered into a Release

whereby it expressly agreed that the amount it received from Scottsdale constituted "full payment for all damages, losses or injuries". In doing so, the Plaintiff accepted that amount as "satisfaction" for all damages, as there are no other damages than payment under the insurance policy and consequential damages resulting from not receiving the policy benefits.. The fact that the settlement amount is less than the policy limits is irrelevant. "Where, as here, a party accepts a full and final compromise adjustment and settlement of any and all claims, such amounts to a *Bartholomew* satisfaction thereby extending the preclusive effect of the release to nonparties to the instrument." *Id.* at 496-97, 649 S.E.2d at 501.

Importantly, there is no limited language in the release as to any other claims, injuries, or parties, which could have been easily added if that was the intent.

II. The language of the Release evidences the Plaintiff's intent to release Carolina Insurance and Derrick in addition to Scottsdale.

The release of one tortfeasor does not release another tortfeasor unless it is the intention of the parties. *See Bartholomew*, 255 S.C. at 491, 179 S.E.2d at 913; *see also* S.C. Code § 15-38-50. "A release is a contract and contract principles of law should be used to determine what the parties intended." *Eccelesiastes*, 374 S.C. at 497, 649 S.E.2d at 501. "The parties intention must, in the first instance, be derived from the language of the [release]. *Id.*

The language of the Release indicates that the Plaintiff intended to release Carolina Insurance and Derrick in addition to Scottsdale. The Release states that the Plaintiff "does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions cause of action demands and/or claims of whatsoever kind or nature...growing out of any property coverage which may apply under policy number CPS1884774...." (emphasis added). The Plaintiff's intent to release

Carolina Insurance and Derrick is further supported by the absence of any language reserving rights and remedies against Carolina Insurance and Derrick.

Because the Plaintiff has consistently plead that the Agency Defendants were agents of Scottsdale, there can be no doubt as to their intention. The Plaintiff made this statement in of his Complaints and most notably in his second Amended Complaint, after all of the party witnesses had been deposed.

Normally, factual assertions in pleadings and pretrial orders are considered to be judicial admissions conclusively binding on the party who made them. Myers v. Manchester Insurance & Indemnity Co., 572 F.2d 134 (5th Cir.1978); State Farm Mutual Auto Insurance Co. v. Worthington, 405 F.2d 683, 686 (8th Cir.1968); Mull v. Ford Motor Co., 368 F.2d 713, 716 (2d Cir.1966). Factual admissions made by an attorney in pleadings are judicial admissions binding that party. See Davis v. A.G. Edwards and Sons, Inc., 823 F.2d 105, 108 (5th Cir. 1987).

A. A party is bound by its pleadings

"It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action."

Postal v. Mann, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992)

A plaintiff can "plead himself out of court by alleging facts which show that he has no claim, even though he was not required to allege those facts." *Jackson v. Marion County*, 66 F.3d 151, 153 (7th Cir.1995). We have applied this rule on numerous occasions in the past, see,

e.g., *Warzon v. Drew*, 60 F.3d 1234, 1240 (7th Cir.1995); *Conn v. GATX Terminals Corp.*, 18 F.3d 417, 419 (7th Cir.1994), and although the rule smacks of legalism, judicial efficiency demands that a party not be allowed to controvert what it has already unequivocally told a court by the most formal and considered means possible.

"The Soo has fallen victim to the well-settled rule that a party is bound by what it states in its pleadings. 'Judicial admissions are formal concessions in the pleadings, or stipulations by a party or its counsel, that are binding upon the party making them' *Keller v. United States*, 58 F.3d 1194, 1198 n. 8 (7th Cir.1995); see also *Schott Motorcycle Supply, Inc. v. American Honda Motor Co.*, 976 F.2d 58, 61-62 (1st Cir.1992); *Bellefonte Re Ins. Co. v. Argonaut Ins. Co.*, 757 F.2d 523, 528 (2d Cir.1985); *Freedom Nat'l Bank v. Northern Ill. Corp.*, 202 F.2d 601, 605 (7th Cir.1953).

"[J]itigants may plead themselves out of court by alleging facts that establish defendants' entitlement to prevail." *Bennett v. Schmidt*, 153 F.3d 516, 518 (7th Cir.1998); *Soo Line R.R. Co. v. St. Louis S.W.Ry. Co.*, 125 F.3d 481, 483 (7th Cir.1997) (A "plaintiff can plead himself out of court by alleging facts which show that he has no claim, even though he was not required to allege those facts."). The court is not " 'obliged to ignore any facts set forth in the complaint [or its attached exhibits, see Fed.R.Civ.P. 10(c)] that undermine the plaintiff's claim.' " *Hamilton v. O'Leary*, 976 F.2d 341, 343 (7th Cir.1992) (quoting *R.J.R. Services, Inc. v. Aetna Casualty & Surety Co.*, 895 F.2d 279, 281 (7th Cir.1989)). "[J]udicial efficiency demands that a party not be allowed to controvert what it has already unequivocally told a court by the most formal and considered means possible."

Soo Line R. Co. v. St. Louis Sw. Ry. Co., 125 F.3d 481, 483 (7th Cir. 1997)

"The doctrine of Judicial Admissions has long had a large future before it, if judges would but use it adequately. In the first place, the judge could apply it to all informal, as well as formal, admissions by counsel during trial It is easy to see how large a mass of needless skirmishing can thereby be eliminated, how much time would be saved, and how much confusion of the jury would be avoided. And this would be attained by the mere application of an existing principle."

9 WIGMORE, *supra* note 25, § 2597 at 851-52.

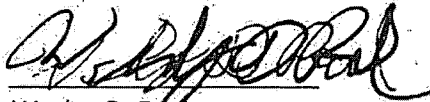
"Judicial admissions" are formal concessions in pleadings, or stipulations by party and its counsel, that are binding upon party making them; judicial admissions may not be controverted at trial or on appeal, and are not evidence at all but rather have effect of withdrawing fact from contention. *Keller v. United States*, 58 F.3d 1194 (7th Cir. 1995).

The Plaintiff's allegations against Carolina Insurance and Derrick are based upon principles of agency law. The Complaint alleges that Carolina Insurance and Derrick, acting on behalf of and as agents for Scottsdale, caused the Plaintiff to suffer damages. There is no dispute that the Plaintiff considers Carolina Insurance and Derrick to be "agents" of Scottsdale. In Paragraph 34 of the Plaintiff's Amended Complaint, which was filed on October 1, 2015, the Plaintiff states "Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale." Notably, even after conducting nearly all of the discovery in this case, the Plaintiff continued to allege that Carolina Insurance and Derrick were agents of Scottsdale. The Plaintiff had the opportunity to recant that allegation when he filed the Amended Complaint on October 1, 2015 but failed to do so. Any argument to the contrary contradicts the Plaintiff's entire theory of the case and is an admission to violating Rule 8(e), SCRCP which states that all statements made in pleadings are subject to the obligations set forth in Rule 11, SCRCP. Pursuant to Rule 11, the signature of an attorney on any document filed with the court is an

affirmative representation that there is "good ground" to support the allegations or statements in the documents. See Rule 11, SCRPC.

The Plaintiff's belief that Carolina Insurance and Derrick were agents of Scottsdale along with the plain language of the Release demonstrates that the Plaintiff, in releasing Scottsdale's "agents", also intended to release Defendants Carolina Insurance and Derrick from liability. The Plaintiff cannot label Carolina Insurance and Derrick as agents of Scottsdale when it is beneficial to his case and then make an entirely different argument when that characterization hurts his case. Any argument that Carolina Insurance and Derrick are not agents of Scottsdale directly contradicts the allegations plead in the Amended Complaint.

BRUNER, POWELL, WALL & MULLINS, LLC



Wesley D. Peel

1735 St. Julian Place, Suite 200

P.O. Box 61110

Columbia, SC 29260-1110

(803) 252-7693

Attorneys for Defendants

Carolina Insurance Group of SC, Inc.

and Maurice Derrick

Columbia, South Carolina

April 19, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) **RELEASE**

KNOW ALL MEN BY THESE PRESENTS that the undersigned, Porthemos Curry , in consideration of the sum of Eighty Five and 00/100 (\$85,000.00) Dollars, the receipt of which from Scottsdale Insurance Company is hereby acknowledged, does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions, causes of action, demands and/or claims of whatsoever kind or nature prior to and including the date hereof growing out of any property coverage which may apply under policy number CPS1884774 issued by Scottsdale Insurance Company to Porthemos Curry, on account of or in any way growing out of a loss which occurred on or about February 21, 2014, when a vehicle ran into a vacant structure owned by Curry and located at 1001 Pineland Drive, Columbia, South Carolina, including any and all claims arising from the investigation, adjustment and handling of the loss by Scottsdale Insurance Company, and any claim which was or could have been asserted against Scottsdale Insurance Company in the case of Porthemos Curry v Scottsdale et. al., C.A. No. 2014-CP-40-04661, Court of Common Pleas, Richland County, South Carolina . The consideration expressed herein constitutes full payment for all damages, losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from the loss aforesaid.

The undersigned expressly represent and warrants that he has consulted with his attorney and understands the effect of the things herein agreed to and that no statement or representations made by the persons released or by their agents, representatives and attorneys have influenced him or induced him to execute and deliver this Release.

I have read the foregoing Release and understand it to be a full, final and binding agreement.

IN WITNESS WHEREOF, U have hereunto set my hand and seal this 10 day of

December, 2015.

WITNESSES:

Rachel J. Peavy

Porthemos Curry (SEAL)
Porthemos Curry

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Porthemos Curry,)

Plaintiff(s),)

vs.)

Carolina Insurance Group of SC, Inc.)
and Maurice Derrick,)

Defendant(s).)

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-04661

**PLAINTIFF'S MOTION
FOR
SUMMARY JUDGMENT
AS TO DEFENDANTS'
AFFIRMATIVE DEFENSE OF
RELEASE**

TO: WESLEY PEEL, ESQUIRE, COUNSEL FOR DEFENDANTS:

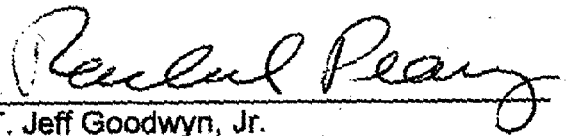
Subject to Plaintiff's previously stated objection to Defendants' Motion for Summary Judgment being served less than 10 days prior to the time of the hearing of such Motion, the Plaintiff hereby moves for summary judgment under Rule 56, SCRCP, on the affirmative defense of release, asserted by the Defendants in their amended answer filed on April 18, 2016.

The grounds for the Motion are that the Release, attached as Exhibit A, is unambiguous as a matter of law and only releases Scottsdale Insurance Company. Specifically, the Release only releases Scottsdale Insurance Company, its agents, servants, employees, successors and assigns. There is no evidence in the record that Carolina Insurance Group or Maurice Derrick are "agents, servants, or employees" of Scottsdale; in fact, the evidence reflects the opposite: the Defendants have denied that they were agents of Scottsdale in their Answers filed with this Court, which are expressly incorporated herein;

must consider the contract as a whole, rather than deciding whether phrases in isolation could be interpreted in various ways: [o]ne may not, by pointing out a single sentence or clause, create an ambiguity. Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract." Silver v. Abstract Pools, 376 S.C. 585, 658 S.E.2d 539 (Ct. App. 2008) (holding that it was reversible error for the court to find the terms of the contract ambiguous).

Wherefore, Plaintiff respectfully requests that this Court grant his Motion for Summary Judgment on the affirmative defense of Release, and for such other and further relief as the Court deems just and proper.² Plaintiff reserves the right to file with the Court such memorandum of law, or affidavit testimony, in advance of any hearing on this matter.

Respectfully submitted,



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

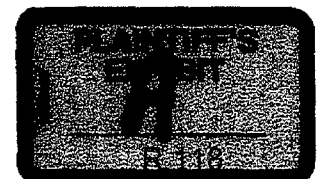
April 18, 2016

² Plaintiff does not waive, and specifically reserves and restates, its objection to the granting of Defendants' motion, filed April 18, 2016, to amend their answer to assert the affirmative defense of Release.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) **RELEASE**

KNOW ALL MEN BY THESE PRESENTS that the undersigned, Porthemos Curry , in consideration of the sum of Eighty Five and 00/100 (\$85,000.00) Dollars, the receipt of which from Scottsdale Insurance Company is hereby acknowledged, does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions, causes of action, demands and/or claims of whatsoever kind or nature prior to and including the date hereof growing out of any property coverage which may apply under policy number CPS1884774 issued by Scottsdale Insurance Company to Porthemos Curry, on account of or in any way growing out of a loss which occurred on or about February 21, 2014, when a vehicle ran into a vacant structure owned by Curry and located at 1001 Pineland Drive, Columbia, South Carolina, including any and all claims arising from the investigation, adjustment and handling of the loss by Scottsdale Insurance Company, and any claim which was or could have been asserted against Scottsdale Insurance Company in the case of Porthemos Curry v Scottsdale et. al., C.A. No. 2014-CP-40-04661, Court of Common Pleas, Richland County, South Carolina . The consideration expressed herein constitutes full payment for all damages, losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from the loss aforesaid.

The undersigned expressly represent and warrants that he has consulted with his attorney and understands the effect of the things herein agreed to and that no statement or representations made by the persons released or by their agents, representatives and attorneys have influenced him or induced him to execute and deliver this Release.



I have read the foregoing Release and understand it to be a full, final and binding agreement.

IN WITNESS WHEREOF, U have hereunto set my hand and seal this 10 day of
December, 2015.

WITNESSES:

Rachel G. Peavy

Portemios Curry (SEAL)
Portemios Curry

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Porthemos Curry,)

Plaintiff(s),)

vs.)

Carolina Insurance Group of SC, Inc.)
and Maurice Derrick,)

Defendant(s).)

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-04661

**MEMORANDUM IN OPPOSITION TO
UNTIMELY HEARING OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, IN OPPOSITION TO
SUMMARY JUDGMENT**

TO: THE HONORABLE JOCELYN NEWMAN, AND WESLEY PEEL, ESQUIRE,
COUNSEL FOR DEFENDANTS:

The Plaintiff hereby submits this Memorandum in opposition to an untimely hearing being held on Defendants' Motion for Summary Judgment, filed April 15, 2016. In the event the Court rules that a hearing may go forward, Plaintiff submits that because the settlement agreement and release relied upon by Defendants solely concerns the release of claims between Plaintiff and Scottsdale Insurance Company, Defendants' Motion should be denied. In the alternative, Plaintiff would submit that the wording of the contract is susceptible to more than one construction and therefore summary judgment is not appropriate.

Preliminary Matter As to Whether Motion Should Be Heard

Plaintiff objects to a hearing being held on this late-filed summary judgment motion, without being given the requisite ten (10) days of notice under the Rule 56(c), SCRPC, which provides that "the motion **shall** be served at least 10 days before the time fixed for the hearing." See Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153,

156 (that granting summary judgment without the requisite 10 days notice violates the notice provision and noting that "the prejudice in doing so is obvious" where the non-moving party is unable to produce evidence in support of his claim.)

Accordingly, because the provisions of Rule 56 are mandatory – Plaintiff notes the use of the word "shall" – Plaintiff respectfully requests that a hearing on the Motion be denied as premature and outside the rules; that the Defendants' Motion for Summary Judgment be added to the motions roster by the Clerk of Court and set for hearing by the Chief Administrative Judge; and that a mistrial be declared in the instant trial and the case be re-set for a term of court after the summary judgment motion has been properly noticed and heard.

Plaintiff further objects to a hearing of this matter prior to the mandated ten (10) days notice, which Plaintiff submits conflicts with the decision of Judge Alison R. Lee, evidenced by the email attached hereto as **Exhibit K**, as it related to a hearing on this matter on the eve of trial.¹

Finally, the grounds for summary judgment as asserted by defense counsel in open court on April 18th were not the same grounds which were raised in the written motion for summary judgment filed 3 days prior; in fact, defense counsel asserted entirely new grounds for its summary judgment motion during the argument in support of whether a hearing should be held on whether the motion should be entertained to direct verdict.

Specifically, the written motion filed on April 15th alleges that the release as to Scottsdale actually releases these Defendants from all liability under a joint tortfeasor

¹ See, e.g., Cook v. Taylor, 272 S.C. 536, 252 S.E.2d 923 (1979); Sheppard v. Kimbrough, 282 S.C. 348, 318 S.E.2d 573 (Ct. App. 1984); State ex. rel. Medlock v. Love Shop Ltd., 286 S.C. 487, 334 S.E.2d 528 (Ct. App. 1985).

theory. However, at Monday's trial, defense counsel asserted that the release actually barred any recovery from these defendants because the release purported to release "Scottsdale Insurance Company and its agents . . ." and, since Plaintiff had alleged that these Defendants were agents of Scottsdale in his complaint, it was evidence that the Release actually released Carolina Insurance Group and Maurice Derrick. This position was outlined in Defendants' Motion to Amend the Complaint to add the affirmative defense of release.

These changing positions, along with an entirely new defense theory, further supports Plaintiff's contention that the Motion should not be heard without the requisite ten (10) days notice.

In the event the Court determines that the Defendants' Motion will be heard, Plaintiff respectfully submits that he should be entitled to a concurrent hearing on a motion for summary judgment as to the affirmative defense of release.

Undisputed Facts

This lawsuit arises out of the alleged negligent failure to procure insurance coverage for a vacant structure. Initially, Plaintiff brought claims against Scottsdale Insurance Company, the issuer of the policy, for breach of contract; statutory bad faith; and common law bad faith. The Plaintiff brought claims against Carolina Insurance Group and Maurice Derrick for negligence, later amending the pleading to add claims for gross negligence as against Carolina Insurance Group and Mr. Derrick.

The Second Amended Complaint, filed October 1, 2015, alleges that "Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale." Amend. Compl. at ¶34. See **Exhibit A**.

It is undisputed that the Defendants have consistently denied that they were agents of Scottsdale in both their Answer to the Second Amended Complaint, filed October 28, 2015, and in their Amended Answer filed April 18, 2016. See ¶14 of Answer and Amended Answer. Copies of the answers are attached as **Exhibit B**. Furthermore, the 30(b)(6) testimony of Carolina Insurance Group, attached hereto as **Exhibit C**, is that there is no agency relationship, or any relationship, between Scottsdale Insurance and Carolina Insurance Group, as excerpted below:

Q. Okay. What's the relationship between Carolina Insurance and Scottsdale?

A. We don't have a relationship --

Q. Okay.

A. With them.

...

Q. So, you have no relationship with Scottsdale, no authority to bind Scottsdale, and any conduct of you or the agents on your behalf is not the conduct of Scottsdale, is it?

A. Correct.

...

Q. You have not relationship with Scottsdale Insurance Company?

A. Correct.

Dep. Tr. of Carolina Insurance Group at pp. 26 -27, pp. 76-77.

In September 2015, the parties participated in a mediation conference with John Cuttino, Esq. serving as the mediator. At that time, Scottsdale Insurance was still a named defendant in the case.

As a result of the mediation and subsequent negotiations, Plaintiff reached a settlement agreement with Scottsdale Insurance Company in November 2015. On November 25, 2015, counsel for Scottsdale, J.R. Murphy, wrote a letter to Plaintiff's counsel whereby he wrote that he was enclosing a check in the amount of \$85,000, along with a Release and Stipulation of Dismissal for signature. Wesley Peel, Esq. was copied on the letter; however, a copy of the Release and Stipulation were not provided to Mr. Peel at that time.² A copy of Mr. Murphy's letter is attached as **Exhibit D**.

Plaintiff executed the Release, attached as **Exhibit E**. Counsel for Carolina Insurance Group and Maurice Derrick executed the Stipulation of Dismissal as to Defendant Scottsdale Insurance Company, a copy of which is attached as **Exhibit F**. The Stipulation specifically provided that ***"the Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal."***

Discovery continued in the case following Scottsdale's dismissal. With trial approaching, Defendants' counsel contacted Plaintiff's counsel on March 30, 2015 to explore a possible settlement of the matter. See E-Mail of Wesley Peel, attached as **Exhibit G**. In the e-mail, Mr. Peel notes that "given the settlement with Scottsdale and the upcoming expert depositions, I thought we should take another try at settlement."

The parties thereafter commenced settlement negotiations, with John Cuttino, Esq. again serving in a mediator role. On April 8th, Mr. Peel requested that Plaintiff's counsel provide him with a copy of the Release. At 11:38 a.m., Plaintiff's counsel forwarded a copy of the Release to Mr. Peel. See E-Mail attached as **Exhibit H**. At 4:04 p.m., Mr. Peel conveyed another offer of settlement – a best and final offer – in the amount

² It is undisputed that Mr. Peel did not receive a copy of the release until earlier this month, when he requested it from Plaintiff's counsel.

of \$30,000. See E-Mail, attached as **Exhibit I**. Plaintiff's counsel thereafter conveyed their final demand at 4:49 p.m., to which the mediator thereafter responded that the parties were at a stalemate as of 5:35 p.m. on April 8, 2016. See **Exhibit J**.

Legal Standard

"[B]ecause summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues." Lord v. D&J Enterprises, 407 S.C. 544, 757 S.E.2d 695 (2014). "Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. 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 in order to withstand a motion for summary judgment." Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009) (internal citations omitted).

I. The Terms of the Release are Unambiguous

At oral argument of the motions *in limine*, the Defendants argued that it was entitled to summary judgment on the grounds that the Release unambiguously provides for the release of Carolina Insurance Group and Mr. Derrick as "agents" of Scottsdale. Plaintiff responds to this oral argument as follows:

"In determining whether to grant summary judgment, pleadings and documents on file must be liberally construed in favor of [the] nonmoving party who must be given [the] benefit of all favorable inferences that might reasonably be drawn from [the] record."

McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488,493 (Ct. Ap. 1998) (internal citations omitted).

"It is a question of law for the court whether the language of a contract is ambiguous. In determining as a matter of law whether a contract is ambiguous, the court must consider the contract as a whole, rather than deciding whether phrases in isolation could be interpreted in various ways: [o]ne may not, by pointing out a single sentence or clause, create an ambiguity. Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract." Silver v. Abstract Pools, 376 S.C. 585, 658 S.E.2d 539 (Ct. App. 2008).

In Silver, the Court of Appeals considered whether a homeowner had breached a contract for construction where homeowner alleged that the payment terms were ambiguous. The Court disagreed, noting that a party "cannot create ambiguity when it does not exist within the four corners . . . words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed." Id. at 542 (citing McPherson v. J.E. Sirrine & Co., 206 S.C. 183, 33 S.E.2d 501 (1945)). Finding that the contract was "clear, explicit, unambiguous, and capable of only one reasonable interpretation", the court found that it was error for the master to have held that the payment terms were ambiguous."

Similarly, here the Release clearly and specifically releases only Scottsdale Insurance Company, its agents, servants, employees, successors and assigns and therefore summary judgment should be denied. There is no mention of Carolina Insurance Group or Maurice Derrick in the release. Furthermore, there is no evidence in the record that Carolina Insurance Group or Maurice Derrick are "agents, servants, or employees" of

Scottsdale. In fact, the testimony of Joel Sauls, the 30(b)(6) designee of Carolina Insurance Group and the president of Carolina Insurance Group, was that there was no agency relationship between Carolina Insurance and Scottsdale whatsoever. See Exhibit C. The only "evidence" that Defendants rely upon in making this argument are the pleadings in the case, previously attached as Exhibits A and B. Defendants' reliance upon the pleadings in the case is unpersuasive, as "allegations in a complaint denied in answer are evidence of nothing." Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301, 307 (Ct. App. 1999).³

As noted in Footnote 3, Plaintiff will stipulate to Defendants' position – as asserted in its pleadings and in its testimony in this case - that Carolina Insurance and Maurice Derrick are not agents of Scottsdale. With this stipulation, any other evidence in the case on whether Carolina Insurance or Maurice Derrick were agents of Scottsdale is irrelevant – the fact has been conclusively established in the case. See Crossmann Cmty. Of N.C. v. Harleysville Mut. Ins. Co., 411 S.C. 506, 769 S.E.2d 453 (Ct. App. 2015) (and cases cited therein) (noting that when there is an agreed stipulation of fact, the court will not go beyond such stipulation to determine the facts upon which the case is to be decided.)

Finally, counsel for Carolina Insurance Group and Mr. Derrick executed a legally binding Stipulation of Dismissal as to Scottsdale – filed with this Court on December 30, 2015 - which expressly stated that "the Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal." Viewed in the light most favorable to the Plaintiff, Plaintiff's motion should be denied and an order entered finding that the Release is capable

³ It is undisputed that Plaintiff alleged that the Defendants were agents of Scottsdale in his complaint; it is further undisputed that the Defendants denied they were agents of Scottsdale in their answer. Plaintiff stipulates that the Defendants are not agents of Scottsdale.

of only one reasonable interpretation – that it releases Scottsdale Insurance and only Scottsdale Insurance.

II. Defendants are not “Joint Tortfeasors” with Scottsdale.

Responding to the arguments raised in Defendants’ written motion for summary judgment dated April 15, 2016, Plaintiff would show that Scottsdale and the remaining Defendants are not joint tortfeasors under South Carolina law and that even if they were, the effect of the release with Scottsdae is not the dismissal of the remaining defendants. In addition, any set off must be from a settlement for the same cause of action against both the settled defendant and the remaining defendant.

Defendants rely upon Bartholomew v. McCartha, 255 S.C. 489, 492, 179 S.E.2d 912, 914 (1971) in support of their position that all other tortfeasors are released from liability when a party releases one joint tortfeasor and receives full compensation amounting to a satisfaction. Plaintiff would point out that Scottsdale cannot be a joint tortfeasor with Carolina Insurance Group and Maurice Derrick for multiple reasons. First, Scottsdale was never alleged to have committed a tort, and can therefore not be a tortfeasor, much less a joint tortfeasor. Plaintiff only alleged Breach of Contract, Statutory Bad Faith, and Common Law Bad Faith claims against Scottsdale. The only tort claims Plaintiff alleged were against Carolina Insurance Group and Mr. Derrick for negligent procurement of an insurance policy and gross negligence. See Plaintiff’s Amended Complaint filed October 1, 2015.

Second, in 1988, the Legislature codified the equitable principles of joint tortfeasor set-offs by passing the South Caorlina Contribution Among Tortfeasors Act (the “Act”), S.C. Code Ann. §15-38-10 -70.

Specifically, Section 15-38-50 provides: "When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or same wrongful death: (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant or in the amount of consideration paid for it, whichever is greater, and (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor." "Thus, the Act represents the Legislature's determination of the proper balance between preventing double-recovery and South Carolina's 'strong public policy favoring the settlement of disputes'." Riley v. Ford Motor Co., 414 S.C. 185, 195; 777 S.E. 2d 824, 830 (2015) (citing Chester v. S.C. Dep't of Pub. Safety, 338 S.C. 343, 698 S.E.2d 559 (2010)). Accordingly, even if Scottsdale was a joint tortfeasor with Carolina Insurance Group and Mr. Derrick, they would not be dismissed, but rather would only be entitled to request a set-off.

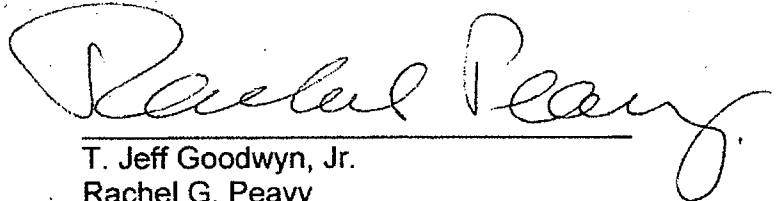
It is clear, however, that Scottsdale is not considered a joint tortfeasor and not entitled to a set off for the settlement of different causes of action. "Despite a defendant's entitlement to setoff, whether at common law or under §15-38-50, any reduction in the judgment must be from a settlement for the same cause of action." Riley v. Ford Motor Co., 414 S.C. 185, 195; 777 S.E. 2d 824, 830 (2015). This case did not involve any common causes of action between Scottsdale and Carolina Insurance Group and Mr. Derrick. See Plaintiff's Amended Complaint filed October 1, 2015. As a result, the entire settlement amount is not available for set off pursuant to the Supreme Court's decision in

Riley. However, as previously stated in Plaintiff's Motion in Limine, Plaintiff agrees that arguments as to set-off are properly considered by the Court at the post-verdict stage.

For all of the reasons stated above, Defendants' Motion for Summary Judgment based on the basis that the release of one party acts a release on the remaining defendants under a joint tortfeasor theory should be denied.

Conclusion

In the event the Court rules that a hearing on Defendants' Motion for Summary Judgment should be conducted, Plaintiff respectfully requests that the Court deny the motion, issue an order finding that the terms of the Release are unambiguous, and make such other and further findings as the Court deems just and proper.



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

April 19, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action No.: 14-CP-40-4661

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company,
Carolina Insurance Group of SC, Inc., and
Maurice Derrick,

Defendants.

AMENDED COMPLAINT
(Jury Trial Requested)

FILED
C.C.P. & C.V.
OCT - 1 AM 11:28

The Plaintiff, Porthemos Curry, complaining of the Defendants, would show as follows:

1. Plaintiff is a citizen and resident of Richland County who is the owner of a vacant structure located at 1001 Pineland Drive, Columbia, SC 29203 (hereafter "the Property").
2. Defendant Scottsdale Insurance Company ("Scottsdale") is a foreign corporation doing business in the State of South Carolina, including Richland County.
3. Defendant Carolina Insurance Group of South Carolina, Inc. is a corporation with an office located at Two Notch Road in Richland County, South Carolina.
4. Defendant Maurice Derrick is a citizen of the State of South Carolina who, upon information and belief, resides in Richland County.
5. On or about August 21, 2013, Defendants Carolina Insurance Group and Derrick sold Plaintiff a 3-month vacant structure policy with Scottsdale Insurance Company, Policy No. CPS1816463, with an expiration date of November 21, 2013. A copy of this Scottsdale policy is attached as **Exhibit A**.

6. Between the dates of November 22, 2013 and December 1, 2013, there was no insurance coverage on the Property.
7. On or about December 2, 2013, Defendant Derrick telephoned the Plaintiff to inquire as to whether he still needed vacant structure coverage for the Property, and Plaintiff told Derrick that he did.
8. On December 2, 2013, Defendant Derrick offered to place another vacant structure policy on the property, to which Plaintiff agreed.
9. As part of the underwriting process, Defendants Derrick and Carolina Insurance Group submitted an Application for a Vacant Structures Policy, a copy of which is attached hereto as **Exhibit B**. Upon approval, TAPCO prepared a Binder Summary Sheet which was forwarded to Defendants Derrick and Carolina Insurance Group and is attached hereto as **Exhibit C**. Defendant Scottsdale thereafter issued Policy No. CPS1884774 to the Plaintiff and a copy of the Policy is attached as **Exhibit D**.
10. On December 2, 2013, Plaintiff paid the premium amount of \$344.50 by utilizing his Bank of America account to transfer payment to TAPCO Underwriters, the underwriter for Defendant Scottsdale.

For a First Cause of Action
Breach of Contract

11. The Preceding allegations are incorporated herein as if repeated verbatim.
12. Defendant Scottsdale is an insurer offering, among other things, policies to cover vacant structures.
13. Plaintiff procured vacant structure insurance ("the Policy") from Defendant Scottsdale, which coverage included loss by vehicle or by fire.

14. While the Policy was in force, a white vehicle collided with the Property on February 21, 2014, prior to midnight, as evidenced by the affidavits attached hereto as **Exhibit E**.
15. The collision resulted in a fire being ignited at the Property, causing severe damage as a result.
16. Plaintiff provided to Defendant Scottsdale the information regarding the accident and the Policy.
17. This loss was covered by the Policy.
18. Plaintiff timely reported the loss to the Defendants.
19. Defendant Scottsdale has refused to pay the claim, and contends that the Policy expired at 12:01 a.m. on February 21, 2014, as evidenced by the letter attached hereto as **Exhibit F**. Defendant Scottsdale has further refused to pay the claim by asserting that the Policy was somehow "backdated" to November 21, 2013 and had therefore lapsed by the time the fire department responded to calls in the early morning of February 22, 2014, despite the fact that the agent did not even bind coverage on the Property until December 2013.
20. Defendant Scottsdale's failure to pay the claim and failure to cover the loss are breaches of the insurance contract entitling the Plaintiff to recover such amount as established at trial.

For a Second Cause of Action
Statutory Bad Faith

21. The preceding allegations are incorporated herein.
22. Defendant Scottsdale has failed to pay the sum due and owing within 90 days.
23. Defendant has failed to pay any amounts to Plaintiff due under the Policy.

24. Defendant Scottsdale has failed to discharge its statutory and contractual obligations in good faith and has acted without reasonable cause in failing to pay covered losses within 90 days.
25. Pursuant to S.C. Code Ann. 38-59-40, Plaintiff is entitled to an award of attorney's fees of one third of the judgment entered in this action.

For a Third Cause of Action
Common Law Bad Faith

26. The preceding allegations are incorporated herein as if repeated verbatim.
27. Defendant Scottsdale had a duty to act in good faith which required it to use due care not to deprive Plaintiff of his rights under the Policy.
28. Defendant Scottsdale's explanation of delay in processing Plaintiff's claim was based on a lack of knowledge of the Policy terms and conditions and is nonsensical.
29. Defendant Scottsdale has forced Plaintiff to pursue litigation in order to obtain payment for the loss covered by the Policy.
30. Defendant Scottsdale's failure to properly adjust Plaintiff's claim and failure to make payment as required by the terms of the Policy was the result of bad faith and the reckless and/or intentional disregard for Plaintiff's rights under the Policy.
31. Defendant Scottsdale's acts entitle Plaintiff to an award of punitive damages in an amount to be determined at trial.

For a Fourth Cause of Action
Negligence and Gross Negligence

32. To the extent not inconsistent, the preceding allegations are incorporated herein.
33. Defendant Maurice Derrick is an insurance broker employed by Defendant Carolina Insurance Group of SC, Inc.

34. Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale.
35. In addition to other activities, Defendants Derrick and Carolina Insurance submit applications for coverage with Scottsdale, receive premiums on behalf of Scottsdale, and deliver and present insurance contracts on behalf of Scottsdale.
36. Because Plaintiff had no special knowledge in the area of vacant coverage insurance, Plaintiff engaged Defendants Derrick and Carolina Insurance to procure vacant property coverage for the Property for the appropriate period of time while the Property was under renovation.
37. Plaintiff was assured by Defendants Derrick and Carolina Insurance that they offered coverage at competitive prices and that Defendants were well suited to work with a customer such as Plaintiff.
38. Defendants Derrick and Carolina Insurance undertook to procure insurance coverage for Plaintiff at two (2) different periods of time; first, in August 2013, when Plaintiff first began renovating the Property, and second, in December 2013, when Defendants inquired as to whether the Property was still under renovation and informed the Plaintiff that he needed a new policy, as the Lloyd's of London policy had expired.
39. In accepting the Scottsdale Policy procured by Defendants Derrick and Carolina Insurance in December 2013, Plaintiff, in reliance upon the knowledge, experience, and expertise of all of the Defendants, believed the Defendants would procure coverage sufficient to protect Plaintiff against the foreseeable insurance risk exposures faced by Plaintiff's Property for three (3) months.

40. According to positions taken by Defendant Scottsdale with respect to Plaintiff's loss that is the subject of this action, Plaintiff's loss is excluded from coverage under the terms of the Policy.
41. Prior to being informed of Scottsdale's position, Plaintiff had never been informed by any of the Defendants that the Policy was "backdated" and therefore the policy premium which was paid for in December 2013 actually was not a "three month policy" and did not cover the Property for 3 months.
42. As now relied upon by Defendant Scottsdale, the Policy is rendered materially deficient and insufficient to protect the Plaintiff.
43. Had the Defendants informed Plaintiff that the three month policy he was paying for provided less than 3 months of coverage, Plaintiff could have sought suitable insurance from another carrier or, in the alternative, sought to renew the Policy after the alleged expiration date of February 21st.
44. In permitting the Policy to be "shortened" in essence, without informing Plaintiff of this material limitation, Defendants failed to exercise the duty of ordinary care applicable to insurance carriers and professionals and such failure was, in fact, grossly negligent, reckless, and in contravention of the duties and standards imposed upon insurance professionals in similar situations.
45. As a result of the Defendants' failure to exercise ordinary care and failure to inform Plaintiff that the three month Policy was, in effect, 2 months plus 20 days, and willful or reckless failure to renew or seek to renew the Policy after the February loss, Plaintiff has been damaged in the amount of its losses to the Property, plus such other and further damages, including punitive damages, as may be proved at

trial, to include but not limited to, lost profits and income due to the destruction of the property; damage to credit rating; damage to reputation; and additional interest paid on credit cards due to failure to complete renovation and sale of the home.

WHEREFORE, Plaintiff prays for a trial by jury and judgment as follows:

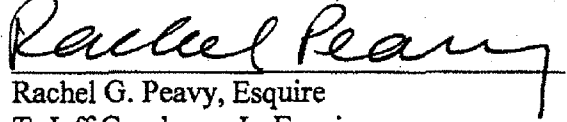
As against Defendant Scottsdale, an award of damages in the amount of his unpaid losses as established at trial; attorney's fees in an amount of one third of the judgment under his statutory bad faith claim; and an award of punitive damages in an amount to be determined by the jury;

As against all Defendants, judgment in the amount of Plaintiff's unpaid losses as established at trial, and all incidental, punitive, and consequential damages as may be shown at trial;

Prejudgment interest and costs against all Defendants; and

For such other and further relief as the Court deems just and proper.

GOODWYN LAW FIRM, LLC



Rachel G. Peavy, Esquire
T. Jeff Goodwyn, Jr. Esquire
2519 Devine Street

Suite A
Columbia, SC 29205
(803) 251-7517
(803) 251-7527 (f)
JGoodwyn@Goodwynlaw.com
Attorneys for Plaintiff

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action No.: 14-CP-40-4661

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company,
Carolina Insurance Group of SC, Inc., and
Maurice Derrick,

Defendants.

**CONSENT TO AMENDMENT
OF COMPLAINT**

FILED
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA
OCT - 1 AM 11:28
JANETTE M. MCGRIDE
C.C.P. & G.S.

COUNSEL HEREBY CONSENTS TO THE AMENDMENT OF THE COMPLAINT TO ASSERT
A CLAIM FOR GROSS NEGLIGENCE/PUNITIVE DAMAGES AS AGAINST DEFENDANTS
MAURICE DERRICK AND CAROLINA INSURANCE GROUP OF SC, INC.:

Wesley D. Peel by Rachel S. Peavy (w/permission)
9/28/15
Wesley D. Peel, Esquire

Counsel for Defendants Maurice Derrick and Carolina Insurance Group of SC, Inc.

J.R. Murphy by Rachel S. Peavy (w/permission)
9/28/15
J.R. Murphy, Esquire

Counsel for Defendant Scottsdale Insurance Company



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

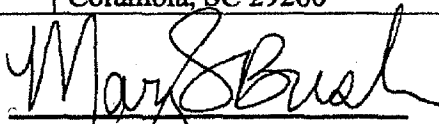
Civil Action No.: 2014-CP-40-04661

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **October 6, 2015**, copies of the foregoing **Amended Complaint** were served on the following party by placing a copy of the same Via U.S. Regular Mail, postage prepaid at the address shown below:

J.R. Murphy, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive
Columbia, South Carolina 29206

Wesley D. Peel, Esquire
Bruner Powerll Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260



Mary S. Bush
Paralegal to Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE: 803-252-7693

FAX: 803-254-5719

WWW.BRUNERPOWELL.COM

JAMES L. BRUNER, P.A.*
WARREN C. POWELL, JR., P.A.**
HENRY P. WALL
E. WADE MULLINS III, P.A.

BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE

* Of Counsel

**Also Admitted in District of Columbia

AUTHOR'S E-MAIL: WPEEL@BRUNERPOWELL.COM

October 28, 2015

VIA HAND DELIVERY

The Honorable Jeanette McBride
Richland County Clerk of Court
1701 Main Street
Columbia, SC 29202

Re: Porthemos Curry vs. Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice Derrick
Case No.: 2014-CP-40-4661
Our File No.: 3-264-189.1

Dear Ms. McBride:

Enclosed for filing with your office, please find the original and two (2) copies of the **ANSWER ON BEHALF OF DEFENDANTS CAROLINA INSURANCE GROUP OF SC, INC. AND MAURICE DERRICK TO SECOND AMENDED COMPLAINT**. Please have your office file the original and return the filed, stamped copies to me via my courier. I thank you for your attention to this matter. Should you have any questions, please do not hesitate to have your office contact me.

Please note that, as evidenced by my **Certificate of Service**, a copy of the enclosed is being served on all Counsel of Record.

With my kindest regards, I am

Sincerely,

Rita D. DeCarlis

Rita D. DeCarlis

/rdd

Enclosures

cc: Rachel G. Peavy, Esquire
J. R. Murphy, Esquire

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R.140

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Civil Action No. 2014-CP-40-04661

Porthemos Curry,)

Plaintiff,)

vs.)

Scottsdale Insurance Company, Carolina)
Insurance Group of SC, Inc. and Maurice)
Derrick,)

Defendants.)

ANSWER ON BEHALF OF
DEFENDANTS CAROLINA
INSURANCE GROUP OF SC,
INC. AND MAURICE
DERRICK TO SECOND
AMENDED COMPLAINT.

2015 OCT 23 PM 2:22

The Defendants, Carolina Insurance Group of SC, Inc ("Carolina") and Maurice Derrick ("Derrick"), referred to collectively as the Defendants, answer the allegations of the complaint as follows:

FOR A FIRST DEFENSE
(General Denial)

1. The Defendants deny each and every allegation of the complaint not otherwise admitted, qualified, or explained herein.
2. The Defendants admit the allegations of Paragraphs 1, 2, 3, 4, and 5.
3. The Defendants deny the allegations of Paragraphs 6.
4. The Defendants would show that, with respect to the allegations of Paragraph 7, that on December 2, 2014, the plaintiff contacted Derrick to renew the policy; the remaining allegations of Paragraph are denied and strict proof is demanded thereof.
5. The Defendants deny the allegations of Paragraph 8, as the Plaintiff requested to renew the existing coverage.
6. The Defendants admit the allegations of Paragraph 9.

7. As to the allegations of Paragraph 10, the Defendants admit that the Plaintiff paid the premium required for the policy.

8. The Defendants admit the allegations of Paragraph 12.

9. The Defendants admit the allegation of Paragraph 13 that the plaintiff procured vacant structure insurance from defendant Scottsdale Insurance Company ("Scottsdale"). The remaining allegations of Paragraph 13 are denied, and the Defendants crave reference to said policy (policy number CPS 18884774).

10. The Defendants deny the allegations of paragraphs 14 and 15.

11. The allegations of Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 are allegations against other defendants and do not make any allegations against the Defendants. However, to the extent any allegations in Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 may be construed as allegations against the Defendants, said allegations are denied and strict proof demanded thereof.

12. Paragraph 32 do not make any allegations against the Defendants and does not require a response from the Defendants. To the extent that Paragraph 32 may be construed to contain allegations against the Defendants, said allegations are denied and strict proof is demanded thereof.

13. Defendants admit the allegations of Paragraph 33.

14. Defendants deny the allegations of Paragraphs 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45 of the complaint.

FOR A SECOND DEFENSE
(Failure to State a Claim)

15. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

16. The complaint fails to state a claim on which relief can be granted and, accordingly, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Contributory Negligence)

17. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

18. The Defendants affirmatively allege that any injury sustained by the plaintiff, as alleged in his complaint, occurred as a direct result of plaintiff's negligent failure to exercise ordinary care, in that the plaintiff failed to read the policy of insurance. Therefore, plaintiff's alleged losses were caused in whole or in part, or were contributed to, by the plaintiff's own negligence, and not by any negligence of the Defendants.

FOR A FOURTH DEFENSE
(Lack of Proximate Cause)

19. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

20. The Defendants would show the Court that no act or omission of the Defendants, agents or servants, proximately caused any injuries to the plaintiff, which therefore bars any recovery from the Defendants.

21. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR A FIFTH DEFENSE
(Failure to Mitigate Damages)

22. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

23. The plaintiff failed to purchase insurance coverage for the alleged losses in the complaint and, therefore, has failed to mitigate his damages. The Defendants accordingly plead the failure to mitigate damages as an affirmative defense to the plaintiff's complaint.

FOR A SIXTH DEFENSE
(Set-Off)

24. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

25. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR AN SEVENTH DEFENSE
(Estoppel)

26. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

27. The plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

FOR AN EIGHTH DEFENSE
(Unclean Hands)

28. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

29. The plaintiff's claims are barred by virtue of the doctrine of unclean hands.

FOR A NINTH DEFENSE
(Failure of Proximate Cause)

30. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses

31. The plaintiff's claims against this defendant are barred in whole or in part by the fact that no action or inaction of the Defendants constituted the proximate cause of any injury or damage alleged by Plaintiff.

FOR A TENTH DEFENSE
(Reservation of Rights)

32. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

33. The Defendants reserve the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

FOR A ELEVENTH DEFENSE
(Illegality)

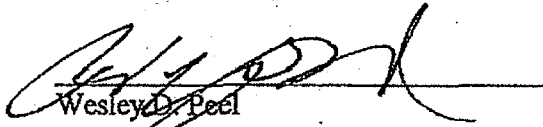
34. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

35. The plaintiff's claims are barred by virtue of the doctrine of illegality.

(SIGNATURE PAGE TO FOLLOW)

WHEREFORE, having fully answered, the Defendants pray for judgment in their favor,
for costs, and for such other and further relief as the Court finds just and fair.

Bruner, Powell, Wall & Mullins, LLC



Wesley D. Peel
P.O. Box 61110
Columbia, South Carolina 29260
(803) 252-7693
Fax (803) 254-5719
wpeel@brunerpowell.com

Columbia, South Carolina

October 28, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Porthemos Curry,)

Plaintiff,)

vs.)

Scottsdale Insurance Company, Carolina)
Insurance Group of SC, Inc. and Maurice)
Derrick,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-40-04661

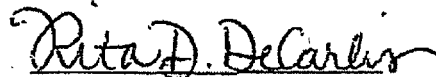
CERTIFICATE OF SERVICE

2015 OCT 28 PM 1:22

I, Rita D. DeCarlis, with the law firm of Bruner, Powell, Wall & Mullins, LLC, Attorneys for the Defendants, Carolina Insurance Group of SC, Inc. and Maurice Derrick, do hereby certify that on this 28th day of October 2015, I served the **ANSWER ON BEHALF OF DEFENDANTS CAROLINA INSURANCE GROUP OF SC, INC. AND MAURICE DERRICK TO SECOND AMENDED COMPLAINT** upon opposing counsel by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Rachel G. Peavy, Esquire
T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm
2519 Devine Street, Suite A
Columbia, South Carolina 29205
Attorneys for the Plaintiff, Porthemos Curry

J.R. Murphy, Esquire
Murphy & Grantland, PA
PO Box 6648
Columbia, South Carolina 29260
*Attorneys for the Defendant
Scottsdale Insurance Company*


Rita D. DeCarlis

Columbia, South Carolina
October 28, 2015

State of South Carolina	)	In The Court of Common Pleas
	)	Fifth Judicial Circuit
County of Richland	)	
	)	File No.: 2014-CP-40-04661
Porthemos Curry,	)	
	)	30(b)(6) Deposition
Plaintiff,	)	
	)	of
vs.	)	
	)	Carolina Insurance Group
Scottsdale Insurance	)	of SC, Inc.
Company, Carolina	)	
Insurance Group of SC,	)	by
Inc., and Maurice	)	
Derrick,	)	Joel Sauls
	)	
Defendants.	)	

Deposition of Joel Sauls, taken pursuant to the South Carolina Rules of Civil Procedure, commencing at the hour of 9:08 a.m., Thursday, June 4, 2015, at Bruner, Powell, Wall & Mullins, LLC, 1735 St. Julian Place, Suite 200, Columbia, South Carolina.

COPY

Reported by
Janni S. Gaskins

SCOTT REPORTING SERVICE
P.O. Box 290482, Columbia, SC 29229 ♦ (803) 736-2408
www.scottreporting.com ♦ bscott@scottreporting.com

C
R.148

1 Q Okay. Is that typical, that you would be copied on
2 that?
3 A Typical? I couldn't promise you it's typical.
4 Q Okay.
5 A Maurice is very thorough what he does.
6 Q Okay.
7 A So, he does -- he did notify me in this case.
8 Q Okay. And that reflects that he's -- Mr. Curry is
9 -- Mr. Derrick -- sorry -- is letting Tapco know
10 that there is a claim on the property for damage on
11 February 21, 2014; is that correct?
12 A Correct.
13 Q Okay. All right. What is the relationship between
14 Carolina Insurance Group and Tapco?
15 A Tapco is a surplus lines broker.
16 Q Okay. Explain that to me, what that means.
17 A They represent multiple insurance companies and we
18 place business with Tapco, and then they select the
19 insurance company to put the business with.
20 Q Okay. So, they're a middleman, essentially?
21 A Sure.
22 Q Okay. What's the relationship between Carolina
23 Insurance and Scottsdale?
24 A We don't have a relationship --
25 Q Okay.

- 1 A -- with them.
- 2 Q Who pays the commissions to Carolina Insurance when
3 a Scottsdale policy is issued?
- 4 A Tapco.
- 5 Q Okay. Does Scottsdale own Lloyds of London, to
6 your knowledge?
- 7 A I couldn't tell you.
- 8 Q Does Lloyds of London own Scottsdale? Do you know?
- 9 A I do not know.
- 10 Q Okay. All right. I'm going to show you what was
11 produced via subpoena sent to -- sent by Scottsdale
12 to Tapco. It bears Bates stamp number Tapco 56,
13 57, and 58.
- 14 Ms. Peavy: If you could, mark that as
15 Exhibit 3.
- 16 Marked as Plaintiff's Exhibit 3; Deposition of
17 Joel Sauls; copy of Tapco Underwriters, Inc.
18 Agency Agreement; three pages.
- 19 Q Can you take a look at that for me. Look through
20 it and identify it.
- 21 A It's an agency agreement with Tapco.
- 22 Q Okay. Is this your agent -- Is this Carolina
23 Insurance Group? I didn't see a signature page or
24 any -- It seemed sort of generic, so I was just
25 wondering. Do you recognize this as being



MURPHY & GRANTLAND, P.A.

J. R. Murphy
Direct dial 803-454-1231
jrmurphy@murphygrantland.com

November 25, 2015

Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205

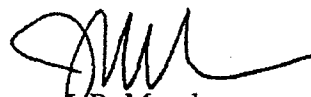
Re: Porthemos Curry vs. Scottsdale Ins. Co., Carolina Ins. Group of SC, Inc. and Maurice
Derrick
Civil Action No.: 2014-CP-40-04661
Claim No.: 1527747
Date of Loss: 2/21/14
Our File No.: 1500-0129

Dear Rachel:

Enclosed please find the settlement draft in the amount of \$85,000, Release and Stipulation of Dismissal in the above-referenced matter. I would appreciate your holding all settlement funds in trust until the Release and Stipulation of Dismissal have been properly executed and returned to me in the envelope provided.

With warm personal regards, I am

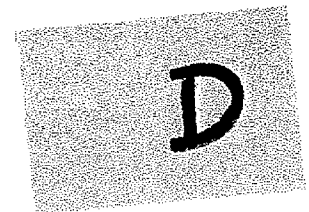
Sincerely yours,



J. R. Murphy

JRM/sb
Enclosures

cc: Wesley D. Peel, Esquire
Rob Fisher, Esquire (via email)



Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

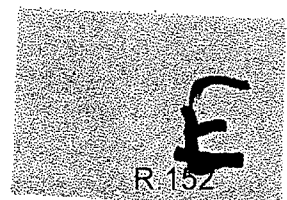
J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull Peter E. Farr
Alice P. Adams Tim J. Newton Chris A. Majure J. Ryan Oates Wesley B. Sawyer Jason P. Luther Elliott B. Daniels Hannah D. Stetson Rogers F. Harrell, III
*Member-American Board of Trial Advocates

R.151

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) **RELEASE**

KNOW ALL MEN BY THESE PRESENTS that the undersigned, Porthemos Curry , in consideration of the sum of Eighty Five and 00/100 (\$85,000.00) Dollars, the receipt of which from Scottsdale Insurance Company is hereby acknowledged, does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions, causes of action, demands and/or claims of whatsoever kind or nature prior to and including the date hereof growing out of any property coverage which may apply under policy number CPS1884774 issued by Scottsdale Insurance Company to Porthemos Curry, on account of or in any way growing out of a loss which occurred on or about February 21, 2014, when a vehicle ran into a vacant structure owned by Curry and located at 1001 Pineland Drive, Columbia, South Carolina, including any and all claims arising from the investigation, adjustment and handling of the loss by Scottsdale Insurance Company, and any claim which was or could have been asserted against Scottsdale Insurance Company in the case of Porthemos Curry v Scottsdale et. al., C.A. No. 2014-CP-40-04661, Court of Common Pleas, Richland County, South Carolina . The consideration expressed herein constitutes full payment for all damages, losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from the loss aforesaid.

The undersigned expressly represent and warrants that he has consulted with his attorney and understands the effect of the things herein agreed to and that no statement or representations made by the persons released or by their agents, representatives and attorneys have influenced him or induced him to execute and deliver this Release.



I have read the foregoing Release and understand it to be a full, final and binding agreement.

IN WITNESS WHEREOF, U have hereunto set my hand and seal this 10 day of

December, 2015.

WITNESSES:

Rachel J. Peavy

Porthmos Curry (SEAL)
Porthmos Curry

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No. 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendant.

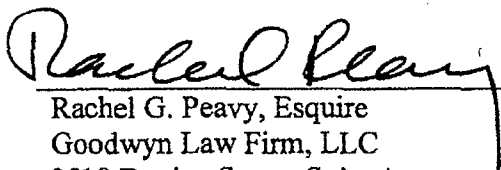
STIPULATION OF DISMISSAL
AS TO DEFENDANT SCOTTSDALE
INSURANCE COMPANY

2015 DEC 30 PM 2:07

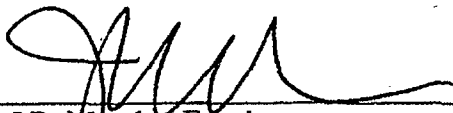
RICHLAND COUNTY

The Plaintiff, by and through its undersigned counsel, having settled this case with the Defendant Scottsdale Insurance Company, hereby dismisses, with prejudice, the Complaint, and all subsequent amendments thereto, as to the Defendant Scottsdale Insurance Company only.

The Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal.



Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517
Attorney for Porthemos Curry

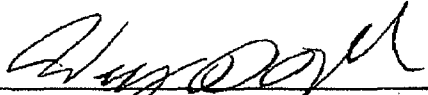


J.R. Murphy, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Scottsdale Ins. Co.

December 10, 2015

F

R 154



Wesley D. Peel, Esquire
Bruner, Powell, Robbins, Wall & Mullins
1735 St. Julian Place
P.O. Box 61110
Columbia, SC 29260-1110
803-252-7693
Attorney for Carolina Ins. Group of SC, Inc. and Maurice Derrick

From: Wesley Peel <WPeel@brunerpowell.com>

Date: March 30, 2016 at 3:33:01 PM EDT

To: "RPeavy@Goodwynlaw.com" <RPeavy@Goodwynlaw.com>

Cc: "JGoodwyn@Goodwynlaw.com" <JGoodwyn@Goodwynlaw.com>

Rachel:

I am sorry to hear that you are under the weather. I see that we are on the roster for April 18, still listed as a date certain. Terry has teaching obligations on Wednesday and Thursday that week, but would be available on Tuesday.

Given the settlement with Scottsdale and the upcoming expert depositions, I thought we should take another try at settlement. I recognize that you sent the last offer. If your or Jeff can give me a call at your convenience, I would like to run a few things by you and get your reactions and suggestions. Thanks.

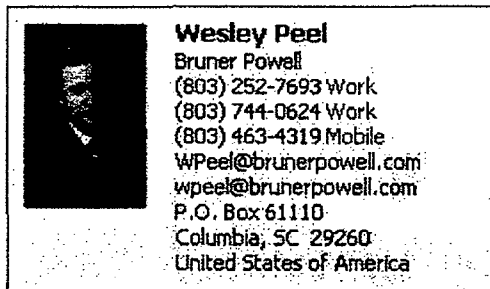
I hope you feel better soon.

Wesley

Mary Bush

From: Wesley Peel <WPeel@brunerpowell.com>
Sent: Friday, April 08, 2016 2:27 PM
To: 'Mary Bush'
Subject: RE: Porthemos Curry v. Scottsdale, et. al.
Attachments: Wesley Peel.vcf

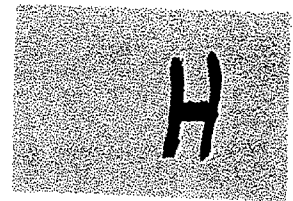
Thank you!



From: Mary Bush [mailto:MBush@Goodwynlaw.com]
Sent: Friday, April 08, 2016 11:38 AM
To: Wesley Peel
Subject: Porthemos Curry v. Scottsdale, et. al.

Ms. Peavy asked that I forward the attached signed Release in regard to the above matter.

Mary Bush, paralegal
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, S.C. 29205
Telephone: (803) 251-4517
Facsimile: (803) 251-4527
www.Goodwynlaw.com



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Rachel Peavy

From: John Cuttino <jcuttino@gwblawfirm.com>
Sent: Friday, April 8, 2016 4:04 PM
To: <RPeavy@Goodwynlaw.com>
Cc: Jeff Goodwyn
Subject: Re: Porthemos Curry
Attachments: image001.jpg

Just talked with Wesley. His instructions are a final best offer of \$30,000.

Gallivan, White & Boyd, P.A.
803-724-1714 (office)
803-414-2689 (cell)
Twitter: @SCLitigator

I

R.158

Rachel Peavy

From: John Cuttino <jcuttino@gwblawfirm.com>
Sent: Friday, April 8, 2016 5:35 PM
To: Jeff Goodwyn
Cc: <RPeavy@Goodwynlaw.com>
Subject: RE: Porthemos Curry

Importance: High

I just talked with him and conveyed the 90k demand. He says 30k is his best offer and he cannot do any more. So, it appears you are log jammed at 90k and 30k.

I am sorry I wasn't able to resolve this for you, but call me back if you think I can assist.

John

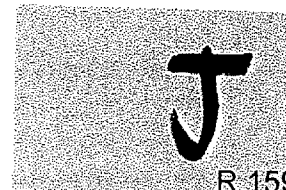


John E. Cuttino
Shareholder
jcuttino@gwblawfirm.com

Gallivan, White & Boyd P.A.
Office 1201 Main Street | Suite 1200 | Columbia SC 29201
803 724 1714 Direct | 803 779 1833 Main | 803 779 1767 Fax
Mailing Post Office Box 7368 | Columbia SC 29202

vCard | BioURL | Website

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Rachel Peavy

From: Lee, Alison Renee <ALeeJ@sccourts.org>
Sent: Friday, April 15, 2016 4:10 PM
To: RPeavy@Goodwynlaw.com; Lee, Alison Renee Law Clerk (Chadwick Devlin)
Cc: 'Wesley Peel'; 'Jeff Goodwyn'
Subject: RE: Curry vs. Carolina Insurance Group of SC, Inc. et al 2014-CP-40-04661

This case is on the trial roster set for a date certain and has been set for some time. The motion can be incorporated into the defense of this case and argued at directed verdict stage. You should be prepared for trial on Monday. Any additional issues you can take up with the trial judge. See you at roster meeting.

Alison Renee Lee
Circuit Court Judge At Large
1701 Main Street Suite 324
Columbia, SC 29201
(803) 576-1765
(803) 576-1768 fax

From: Rachel Peavy [mailto:RPeavy@Goodwynlaw.com]
Sent: Friday, April 15, 2016 4:06 PM
To: Lee, Alison Renee Law Clerk (Chadwick Devlin); Lee, Alison Renee
Cc: 'Wesley Peel'; 'Jeff Goodwyn'
Subject: Curry vs. Carolina Insurance Group of SC, Inc. et al 2014-CP-40-04661

Re: Curry v. Carolina Insurance Group – Date Certain April 18, 2016

Case No. 14-CP-40-4661

Dear Judge Lee:

I was served with the attached *Motion for Summary Judgment* by defense counsel a few moments ago.

The Motion asserts that the remaining defendants in the case, Carolina Insurance Group and its agent Maurice Derrick, are entitled to summary judgment on the negligence claims pending against them because Plaintiff previously entered into a settlement agreement with a former defendant, Scottsdale Insurance Company, in December 2015 as to his claims for breach of contract, statutory bad faith, and common law bad faith which were pending against Scottsdale. A stipulation of dismissal as to Scottsdale was filed that same month.

This case is set for a week-long trial beginning on Monday; as such, defense counsel has had notice of the dismissal of Scottsdale from this matter for almost four (4) months.

We write the Court seeking guidance as we believe that the Plaintiff cannot be reasonably expected to brief and respond to this motion by Monday, and we do not believe that the trial of this matter should be further delayed given the already considerable time and expense expended in preparing for trial.

Thank you in advance for your courtesy in this matter.

Rachel Peavy
Counsel for Plaintiff

Rachel G. Peavy
Special Counsel
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, S.C. 29205
Telephone: (803) 251-4517
Facsimile: (803) 251-4527
www.Goodwynlaw.com

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From: Rita Decarlis [<mailto:RDecarlis@brunerpowell.com>]
Sent: Friday, April 15, 2016 3:11 PM
To: 'RPeavy@Goodwynlaw.com' <RPeavy@Goodwynlaw.com>
Cc: 'Mary Bush' <MBush@Goodwynlaw.com>; Wesley Peel <WPeel@brunerpowell.com>; Robert Osborne <rosborne@brunerpowell.com>; Bryan Triplett <btriplett@brunerpowell.com>
Subject: Curry vs. Carolina Insurance Group of SC, Inc. et al 2014-CP-40-04661

Please find attached and hereby served upon you the **Motion and Order Information Form and Coversheet and Notice of Motion and Motion for Summary Judgment**. Please note a filed copy of the same will be hand-delivered to your office this afternoon.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff(s),

vs.

Carolina Insurance Group of SC, Inc.
and Maurice Derrick,

Defendant(s).

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-04661

**AMENDED MEMORANDUM IN
OPPOSITION TO
DEFENDANTS' MOTION
FOR
SUMMARY JUDGMENT
AND IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT
(REDACTED VERSION)**

TO: THE HONORABLE ROBERT E. HOOD, AND WESLEY PEEL, ESQUIRE,
COUNSEL FOR DEFENDANTS:

The Plaintiff hereby submits this Memorandum in opposition to Defendants' Motion for Summary Judgment, filed April 15, 2016, and in support of Plaintiff's responsive cross-motion for summary judgment as to the affirmative defenses of release and accord and satisfaction.¹

The *gravamen* of Defendants' Motion is that a November 2015 settlement agreement between Plaintiff and Scottsdale Insurance Company, a former defendant, somehow encompasses Plaintiff's separate claims against these Defendants. A copy of the Release is attached as **Exhibit A**.

Defendants take this position despite their attorney, Wesley Peel, having executed a Stipulation of Dismissal as to Scottsdale, which specifically provides that "Plaintiff's case

¹ Defendants moved to amend their answer to assert the affirmative defense of release on the first day of trial, April 18th, which the Court granted over Plaintiff's objection. Plaintiff reserves its objection to this late and prejudicial amendment. Defendants have argued the defense of accord and satisfaction as further grounds for their motion; however, the defense has not been asserted in any answer and Plaintiff objects to any late amendment.

against the remaining Defendants shall not be affected by this Dismissal." See Exhibit B. Defendants assert that they are parties to the Release despite having paid not a single dime towards settlement,² and despite having engaged in settlement negotiations up to the eve of trial, despite having participated in discovery, and despite having communicated extensively with the Court regarding the scheduling of the trial.

Defendants' Motion for Summary judgment should be denied – and Plaintiff's cross-motion should be granted – because, as a matter of law, the Release clearly and unambiguously does not encompass Plaintiff's claims against these Defendants, or reflect an intent by these parties to settle the Plaintiff's claims against them, as detailed below:

1. The Release clearly releases only Scottsdale Insurance Company and its agents and employees; there is no mention of Defendants Carolina Insurance Group and Maurice Derrick; nor did these Defendants contribute any money to the settlement, or participate in the drafting of the Release, which was handled by Attorney JR Murphy and Plaintiff's counsel. The Defendants have denied consistently throughout the course of this action that they were agents of Scottsdale, and have testified to same. See Dep. Tr. attached as Exhibit C, and answers to complaints. The Release further states that "the consideration expressed herein constitutes full payment for all damages . . . recoverable from Scottsdale Insurance Company" – there is no mention of damages recoverable from other parties.³

² There is no evidence in the record that Scottsdale Insurance Company intended to "foot the bill" for Carolina Insurance Group and Mr. Derrick when Scottsdale settled with Plaintiff, nor is there any evidence that the Defendants communicated with Scottsdale, or its attorney JR Murphy, regarding the terms and conditions of the Release. There is no evidence in the record that Defendants ever made a joint offer of settlement with Scottsdale and the parties always had their own attorneys.

³ As previously noted, the causes of action against Scottsdale and these Defendants did not, and do not, overlap. In the event Defendants' motion is denied, and Plaintiff's motion is granted, Plaintiff anticipates that Defendants could make a post-verdict motion for set-off; however, under the South Carolina Supreme Court's recent ruling in Riley v. Ford Motor Co., Plaintiff contends that such motion would be denied.

2. By letter dated November 25, 2015 and attached as **Exhibit D**, Defendants received notice of the Plaintiff's settlement with Scottsdale, and never asserted that they were parties to the Release at that time, or any time, up until April 15, 2016.

3. The Defendants' counsel, in executing the Stipulation of Dismissal dismissing Scottsdale, expressly agreed that "the Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal".

4. Following Scottsdale's dismissal, the Defendants continued to participate in discovery; engage in settlement negotiations;⁴ and communicate with the Court regarding the scheduling of this matter for a date certain trial. If Defendants had believed that they were released by virtue of Scottsdale having been released – a fact which they were on notice of since November 2015, they failed to ever raise this issue until the eve of trial.⁵

Undisputed Facts

This lawsuit arises out of the alleged negligent failure to procure insurance coverage for a vacant structure. Initially, Plaintiff brought claims against Scottsdale Insurance Company, the issuer of the policy, for breach of contract; statutory bad faith; and common law bad faith. The Plaintiff also brought claims against Carolina Insurance Group and Maurice Derrick for negligence, later amending the complaint to add claims for gross negligence as against Carolina Insurance Group and Mr. Derrick.

⁴ Plaintiff's counsel is aware of the confidentiality provisions contained in Rule 8 of the South Carolina ADR Rules; however, under Rule 8(b)(5), counsel believes that disclosure of such continuing settlement negotiations is required by law in order to show the intent of the parties, and is further required under the Rules of Professional Conduct, which require zealous advocacy. Plaintiff has requested that the Court issue a ruling, in response to the Defendants' motion for sanctions, that evidence of settlement negotiations – in this case, copies of e-mail correspondence – are relevant and properly for the Court to consider in its construction of the Release.

⁵ It is undisputed that while Defendants' counsel was aware of the release as of November 25th, he never requested a copy from the Plaintiff until April 8th. Furthermore, Defendants' counsel never served Plaintiff with a Rule 11 letter requesting that discovery responses be supplemented.

The second Amended Complaint, filed October 1, 2015, alleges that "Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale." Amend. Compl. at ¶34. The Defendants have consistently denied that they were agents of Scottsdale in both their Answer to the Second Amended Complaint, filed October 28, 2015, and in their Amended Answer filed April 18, 2016. See ¶14 of Answer and Amended Answer.

Furthermore, the deposition testimony of Carolina Insurance Group and Maurice Derrick, attached hereto as **Exhibit C**, is that there is no agency relationship, or any relationship, between Scottsdale Insurance and Carolina Insurance Group:

Q. Okay. What's the relationship between Carolina Insurance and Scottsdale?

A. We don't have a relationship –

Q. Okay.

A. With them.

...

Q. So, you have no relationship with Scottsdale, no authority to bind Scottsdale, and any conduct of you or the agents on your behalf is not the conduct of Scottsdale, is it?

A. Correct.

...

Q. You have no relationship with Scottsdale Insurance Company?

A. Correct.

Dep. Tr. of Carolina Insurance Group at pp. 26 -27, pp. 76-77.

Q. Okay. Mr. Derrick, you're not employed by Scottsdale Insurance Company or any of its affiliates, are you?

A. Correct.

Q. In fact, you have no direct relationship with Scottsdale Insurance Company as a producing agent in this case?

A. I do not.

Q. You have no authority to issue a policy on behalf of Scottsdale?

A. I do not.

Q. You have no authority to bind Scottsdale to a policy?

A. I do not.

Q. . . . [I]n this transaction . . . you represented the interest of Mr. Curry?

A. Correct.

Q. And in doing this, you dealt with Tapco, who in turn represented the interest of Scottsdale?

A. Correct.

Derrick Dep. Tr. at pp. 90-91

In September 2015, the parties participated in a mediation conference with John Cuttino, Esq. serving as the mediator. At that time, Scottsdale Insurance was still a party to the case.

As a result of the mediation conference and subsequent negotiations, Plaintiff reached a settlement agreement with Scottsdale Insurance Company in October 2015. On November 25, 2015, Scottsdale's attorney, J.R. Murphy, wrote a letter to Plaintiff's counsel, attached as **Exhibit D**, whereby he wrote that he was enclosing a check in the

amount of \$85,000, along with a Release and Stipulation of Dismissal for signature. Wesley Peel, Esq. was copied on the letter; however, a copy of the Release and Stipulation were not provided to Mr. Peel at that time. On December 14, Scottsdale's attorney wrote to Mr. Peel, enclosing a copy of the Stipulation of Dismissal as to Scottsdale only. See Exhibit E. Mr. Peel executed the Stipulation of Dismissal and it was filed with the Court. The Stipulation specifically provided that "***the Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal.***"

Until April 8th, at no time had Mr. Peel ever requested a copy of the Release. The Release makes no mention of Carolina Insurance Group or Maurice Derrick.

Discovery continued in the case following Scottsdale's dismissal. With trial approaching, Defendants' counsel contacted Plaintiff's counsel on March 30, 2015 to explore a possible settlement of the matter.

The parties thereafter commenced settlement negotiations; however, the parties were unable to settle the matter as of the end of business on April 8th. Accordingly, the parties proceeded with the previously scheduled expert depositions.

On April 15, 2015, Defendants filed the instant summary judgment motion, asserting it was entitled to judgment in its favor on the affirmative defense of release under a joint tortfeasor theory. The date certain trial commenced on April 18th and a jury was qualified and picked.

At the oral argument of pre-trial matters before The Honorable Jocelyn Newman, Defendants stated that they would also assert that they were entitled to summary

judgment because Plaintiff's amended complaint alleged that Defendants were "agents" of Scottsdale and therefore they were subject to the Release.⁶

Legal Standard

"Once a contract is before the court for interpretation, the paramount concern of the court is to give effect to the intention of the parties." *Middleborough Horizontal Property Regime v. Montedison S.p.A.*, 320 S.C. 470, 465 S.E.2d 765, 770 (Ct. App. 1995). "The purpose of all rules of contract construction is to ascertain the intention of the parties to the contract." *Parker v. Byrd*, 309 S.C. 189, 420 S.E.2d 850, 852 (1992); See also *Columbia East Associates vs. Bi-Lo, Inc.*, 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989) (noting "the main concern of the court is to give effect to the intention of the parties.")

A party "cannot create ambiguity when it does not exist within the four corners . . . words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed." *Silver v. Abstract Pools*, 376 S.C. 585, 658 S.E.2d 539, 542 (Ct. App. 2008) (citing *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 33 S.E.2d 501 (1945)).

"It is a question of law for the court whether the language of a contract is ambiguous. In determining as a matter of law whether a contract is ambiguous, the court must consider the contract as a whole, rather than deciding whether phrases in isolation could be interpreted in various ways: [o]ne may not, by pointing out a single sentence or

⁶ Upon hearing of this new theory, the Plaintiff filed a Stipulation with the Court attesting that Defendants, as stated in their answers and deposition testimony, were not agents. Defendants have also denied they are agents of Scottsdale in their responses to Requests to Admit.

clause, create an ambiguity. Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract." *Silver, supra*.

"Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. 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 in order to withstand a motion for summary judgment." *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009) (internal citations omitted). Finally, "[a]ll pleadings shall be so construed as to do substantial justice to all parties." Rule 8(f), SCRPC

I. The Terms of the Release, and the Intent of the Parties, are Unambiguous

Defendants argue that they are entitled to summary judgment on the grounds that the Release unambiguously provides for the release of Carolina Insurance Group and Mr. Derrick because "Scottsdale and its agents" are released. In support of this argument, Defendants point to the Plaintiff's complaints, which allege that the Defendants are agents of Scottsdale. It is undisputed that the Defendants denied this allegation.

Defendants' argument fails as a matter of law because "[a]llegations in a complaint denied in answer are evidence of nothing." *Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301, 307 (Ct. App. 1999).⁷ Only "facts which are

⁷ It is undisputed that the Defendants denied they were agents of Scottsdale in their answers and their deposition testimony; it is further undisputed that Scottsdale denied that Defendants were agents in its pleadings. Upon receiving notice on April 18th that defense counsel intended to advance this argument, Plaintiff filed a Stipulation that Defendants are not agents of Scottsdale. See *Crossmann Cmty. Of N.C. v. Harleysville Mut. Ins. Co.*, 411 S.C. 506,

admitted by the pleadings are taken as true against the pleader for the purpose of the action." *Elrod v. W.W. All*, 243 S.C. 425, 134 S.E.2d 410, 416 (1964) (emphasis added). Furthermore, "a party to an action is bound by the testimony of his own witnesses where he does not prove the facts to be otherwise than as such witnesses testified them to be." *Id.* (citing *Rakestraw v. Allstate Ins. Co.*, 238 S.C. 217, 119 S.E.2d 746 (1961)).

The Release clearly releases only Scottsdale Insurance Company, its agents, servants, employees, successors and assigns and therefore summary judgment should be denied. There is no mention of Carolina Insurance Group or Maurice Derrick in the release. Furthermore, there is no evidence in the record that Carolina Insurance Group or Maurice Derrick are "agents, servants, or employees" of Scottsdale. In fact, the testimony of both Defendants is that there was no agency relationship between Carolina Insurance and Scottsdale whatsoever.

Defendants' reliance upon the case of *Postal v. Mann*, 308 S.C. 385, 418 S.E.2d 322 (Ct. App. 1992) is unpersuasive, given that in that case, a party sought to offer testimony at trial that differed from his previous admission in his answer. There, the Court of Appeals held that the party was judicially bound by the admitted allegation.

Again, the only "evidence" that Defendants rely upon in making this argument is a denied allegation in the Plaintiff's pleadings. Defendants' reliance upon a theory of "judicial admission" espoused by the Federal courts of appeals in the Second, Fifth, Seventh, and Eighth circuits are unpersuasive and do not state the law of South Carolina.

⁷⁶⁹S.E.2d 453 (Ct. App. 2015) (noting that when there is an agreed stipulation of fact, the court will not go beyond such stipulation to determine the facts upon which the case is to be decided.)

The Court of Appeals in Vermeer succinctly and accurately stated the law; Defendants simply cannot avoid it by relying upon Federal law from other circuits. Plaintiff made a mere allegation in his complaint; the Defendants denied it. If the Defendants had admitted the allegation, that arguably could be deemed a "judicial admission"; however, the Defendants denied it repeatedly. As this Court is well aware, "[a]ll pleadings shall be so construed as to do substantial justice to all parties." Rule 8(f), SCRPC. Here, there is a mere allegation that was denied by the Defendants - accordingly, there is no "admission" under South Carolina law.

Finally, the attorney for Carolina Insurance Group and Mr. Derrick executed a legally binding Stipulation of Dismissal as to Scottsdale - filed with this Court on December 30, 2015 - which expressly stated that "the Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal."

Viewed in the light most favorable to the Plaintiff, Defendants' motion should be denied and an order entered finding that the Release is capable of only one reasonable interpretation - that the parties intended for the Release to release Scottsdale and only Scottsdale and that the Release does not encompass Plaintiff's separate claims against these Defendants.

In further support of this argument, Plaintiff relies upon his own affidavit, along with the affidavits of his attorneys Rachel G. Peavy and T. Jeff Goodwyn, Jr., to further show the intent of the parties. These affidavits have been served upon defense counsel; however, they have not been filed with the Court pending the Court's ruling on whether it will consider evidence of settlement negotiations - namely correspondence between the parties and with the mediator - in the weeks leading up to the date certain trial of this matter.

Noting that "the paramount concern of the court is to give effect to the intention of the parties", Plaintiff submits that the evidence taken together and viewed as a whole, shows that there is no genuine issue as to material fact and Plaintiff's cross-motion as to the affirmative defenses of release and accord and satisfaction should be granted and an order issued that the Release between Scottsdale and Plaintiff applies only to Scottsdale and the Plaintiff. See Middleborough Horizontal Property Regime v. Montedison S.p.A., 320 S.C. 470, 465 S.E.2d 765, 770 (Ct. App. 1995).

II. Defendants are not "Joint Tortfeasors" with Scottsdale.

There is no evidence in the record to support a finding that Scottsdale and the remaining Defendants are joint tortfeasors under South Carolina law. Even if they were, the effect of the release with Scottsdale is not the automatic dismissal of the remaining Defendants.

First, Scottsdale was never alleged to have committed a tort, and can therefore not be a "tortfeasor", much less a "joint tortfeasor." Plaintiff only alleged Breach of Contract, Statutory Bad Faith, and Common Law Bad Faith claims against Scottsdale. The only tort claims Plaintiff alleged were against Carolina Insurance Group and Mr. Derrick for negligent procurement of an insurance policy and gross negligence. See Plaintiff's second Amended Complaint filed October 1, 2015.

In 1988, the Legislature codified the equitable principles of joint tortfeasor set-offs by passing the South Carolina Contribution Among Tortfeasors Act (the "Act"), S.C. Code Ann. §15-38-10 -70.

Specifically, Section 15-38-50 provides: "When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in

tort for the same injury or same wrongful death: (1) **it does not discharge** any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant or in the amount of consideration paid for it, whichever is greater, and (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor."

Our Supreme Court recently held that "... the Act represents the Legislature's determination of the proper balance between preventing double-recovery and South Carolina's 'strong public policy favoring the settlement of disputes'." *Riley v. Ford Motor Co.*, 414 S.C. 185, 195; 777 S.E. 2d 824, 830 (2015) (citing *Chester v. S.C. Dep't of Pub. Safety*, 338 S.C. 343, 698 S.E.2d 559 (2010)).

Accordingly, even if Scottsdale was a joint tortfeasor with Carolina Insurance Group and Mr. Derrick, which is denied, or if the damages sought were the same (also denied), the Defendants would never be dismissed, but rather would only be entitled to request a set-off at the post-verdict stage.

However, given that the causes of action against Scottsdale did not overlap with the pending claims against these Defendants, Carolina Insurance Group and Mr. Derrick are not entitled to a set-off for the settlement of different causes of action under *Riley*. As the Supreme Court succinctly stated, "[d]espite a defendant's entitlement to setoff, **whether at common law or under §15-38-50, any reduction in the judgment must be from a settlement for the same cause of action.**" *Riley v. Ford Motor Co.*, 414 S.C. 185, 195; 777 S.E. 2d 824, 830 (2015) (emphasis added).

This case did not involve any common causes of action between Scottsdale and Carolina Insurance Group and Mr. Derrick. See Plaintiff's Amended Complaint filed October 1, 2015. As a result, the entire settlement amount is not available for set off pursuant to the Supreme Court's decision in Riley.

Defendants rely upon *Bartholomew v. McCartha*, 255 S.C. 489, 492, 179 S.E.2d 912, 914 (1971) in support of their position that all other tortfeasors are released from liability when a party releases one joint tortfeasor and receives full compensation amounting to a satisfaction. This opinion – 17 years prior to the passing of the South Carolina Contribution Among Tortfeasors Act – is unpersuasive as it does not state the current law, as codified, and expressly contradicts the Court's opinion in *Riley*.

For all of the reasons stated above, Defendants' Motion for Summary Judgment based on the basis that the release of one party acts as a release on the remaining defendants under a joint tortfeasor theory should be denied. Any arguments as to set-off are properly for the Court at the post-verdict stage.

III. Defendants Waived The Defense of Accord and Satisfaction

Defendants never asserted the affirmative defense of *accord and satisfaction* in their pleadings, and therefore the defense is waived under rule 8(c), SCRCP. See *SC Farm Bureau Mut. Ins. Co. v. Kelly*, 345 S.C. 232, 547 S.E.2d 871 (Ct. App. 2001) (and cases cited therein) (finding that where a party fails to plead accord and satisfaction as a defense in his answer, the defense is waived.)

In the event that the Court were to consider the Defendants' argument on this issue, and allow Defendants to amend their answer, Plaintiff submits that there is no evidence to support a finding of an *accord and satisfaction* between the parties.

"An accord and satisfaction occurs when there is: (1) an agreement to accept in discharge of an obligation something different from that which the creditor is claiming or entitled to receive; and (2) the payment of the consideration expressed in the new agreement. **Like any contract, an accord and satisfaction requires a meeting of the minds . . .** Without an agreement to discharge the obligation there can be no accord, and without an accord there can be no satisfaction." *Linda Mc Company, Inc. v. Shore*, 375 S.C. 432, 653 S.E.2d 279, 284 (Ct. App. 2007) (*affirmed as modified*) (emphasis added).

Here, there is simply no evidence in the record that the parties ever agreed to discharge the Defendants' obligation, nor is there any evidence that the Defendants paid the Plaintiff any money.

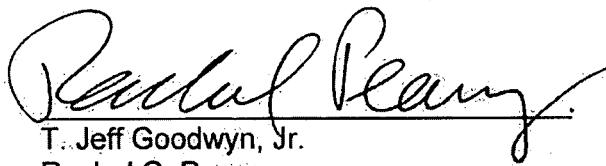
In fact, as argued extensively in the preceding paragraphs, the evidence is the opposite: the parties never entered into any agreement, the Plaintiff never thought he was settling with the Defendants, and the Defendants never paid a dime towards the satisfaction of the pending negligence claims. Accordingly, Defendants' summary judgment motion on this ground should be denied, and an order granting summary judgment to the Plaintiff as to the affirmative defense of *accord and satisfaction* should be entered.

Conclusion

Wherefore, Plaintiff respectfully requests that this Court:

1. Deny Defendants' Motion for Summary Judgment;
2. Enter an order finding the Release is unambiguous as a matter of law and applies only to Scottsdale and the Plaintiff;

3. Enter summary judgment in favor of the Plaintiff on the affirmative defenses of release and accord and satisfaction;
4. Issue an order that any arguments as to damages – specifically set-off – are properly for the trial judge at the post-verdict stage; and
5. Award any such further relief as the Court deems just and proper.



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

April 25, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) RELEASE

KNOW ALL MEN BY THESE PRESENTS that the undersigned, Porthemos Curry , in consideration of the sum of Eighty Five and 00/100 (\$85,000.00) Dollars, the receipt of which from Scottsdale Insurance Company is hereby acknowledged, does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions, causes of action, demands and/or claims of whatsoever kind or nature prior to and including the date hereof growing out of any property coverage which may apply under policy number CPS1884774 issued by Scottsdale Insurance Company to Porthemos Curry, on account of or in any way growing out of a loss which occurred on or about February 21, 2014, when a vehicle ran into a vacant structure owned by Curry and located at 1001 Pineland Drive, Columbia, South Carolina, including any and all claims arising from the investigation, adjustment and handling of the loss by Scottsdale Insurance Company, and any claim which was or could have been asserted against Scottsdale Insurance Company in the case of Porthemos Curry v Scottsdale et. al., C.A. No. 2014-CP-40-04661, Court of Common Pleas, Richland County, South Carolina . The consideration expressed herein constitutes full payment for all damages, losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from the loss aforesaid.

The undersigned expressly represent and warrants that he has consulted with his attorney and understands the effect of the things herein agreed to and that no statement or representations made by the persons released or by their agents, representatives and attorneys have influenced him or induced him to execute and deliver this Release.



I have read the foregoing Release and understand it to be a full, final and binding agreement.

IN WITNESS WHEREOF, U have hereunto set my hand and seal this 10 day of
December, 2015.

WITNESSES:

Laurel G. Peavy

Porthemos Curry (SEAL)
Porthemos Curry

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No. 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

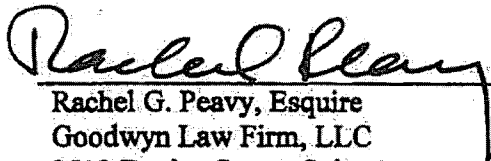
Defendant.

STIPULATION OF DISMISSAL
AS TO DEFENDANT SCOTSDALE
INSURANCE COMPANY

2015 DEC 30 PM 2:07

RICHLAND COUNTY

The Plaintiff, by and through its undersigned counsel, having settled this case with the Defendant Scottsdale Insurance Company, hereby dismisses, with prejudice, the Complaint, and all subsequent amendments thereto, as to the Defendant Scottsdale Insurance Company only. The Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal.



Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517
Attorney for Porthemos Curry

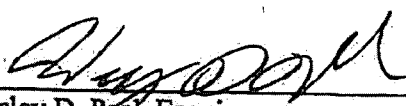


J.R. Murphy, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Scottsdale Ins. Co.

December 10, 2015



R.179



Wesley D. Pesi, Esquire
Bruner, Powell, Robbins, Wall & Mullins
1735 St. Julian Place

P.O. Box 61110

Columbia, SC 29260-1110

803-252-7693

Attorney for Carolina Ins. Group of SC, Inc. and Maurice Derrick

State of South Carolina	)	In The Court of Common Pleas
	)	Fifth Judicial Circuit
County of Richland	)	
Porthemos Curry,	)	File No.: 2014-CP-40-04661
	)	30(b)(6) Deposition
Plaintiff,	)	of
vs.	)	Carolina Insurance Group
	)	of SC, Inc.
Scottsdale Insurance	)	by
Company, Carolina	)	Joel Sauls
Insurance Group of SC,	)	
Inc., and Maurice	)	
Derrick,	)	
Defendants.	)	

Deposition of Joel Sauls, taken pursuant to the South Carolina Rules of Civil Procedure, commencing at the hour of 9:08 a.m., Thursday, June 4, 2015, at Bruner, Powell, Wall & Mullins, LLC, 1735 St. Julian Place, Suite 200, Columbia, South Carolina.

COPY

Reported by
Janni S. Gaskins



SCOTT REPORTING SERVICE
P.O. Box 290482, Columbia, SC 29229 ♦ (803) 1
www.scottreporting.com ♦ hscott@scottreporting.com

1 Q Okay. Is that typical, that you would be copied on
2 that?

3 A Typical? I couldn't promise you it's typical.

4 Q Okay.

5 A Maurice is very thorough what he does.

6 Q Okay.

7 A So, he does -- he did notify me in this case.

8 Q Okay. And that reflects that he's -- Mr. Curry is
9 -- Mr. Derrick -- sorry -- is letting Tapco know
10 that there is a claim on the property for damage on
11 February 21, 2014; is that correct?

12 A Correct.

13 Q Okay. All right. What is the relationship between
14 Carolina Insurance Group and Tapco?

15 A Tapco is a surplus lines broker.

16 Q Okay. Explain that to me, what that means.

17 A They represent multiple insurance companies and we
18 place business with Tapco, and then they select the
19 insurance company to put the business with.

20 Q Okay. So, they're a middleman, essentially?

21 A Sure.

22 Q Okay. What's the relationship between Carolina
23 Insurance and Scottsdale?

24 A We don't have a relationship --

25 Q Okay.

1 A -- with them.

2 Q Who pays the commissions to Carolina Insurance when
3 a Scottsdale policy is issued?

4 A Tapco.

5 Q Okay. Does Scottsdale own Lloyds of London, to
6 your knowledge?

7 A I couldn't tell you.

8 Q Does Lloyds of London own Scottsdale? Do you know?

9 A I do not know.

10 Q Okay. All right. I'm going to show you what was
11 produced via subpoena sent to -- sent by Scottsdale
12 to Tapco. It bears Bates stamp number Tapco 56,
13 57, and 58.

14 Ms. Peavy: If you could, mark that as
15 Exhibit 3.

16 Marked as Plaintiff's Exhibit 3; Deposition of
17 Joel Sauls; copy of Tapco Underwriters, Inc.
18 Agency Agreement; three pages.

19 Q Can you take a look at that for me. Look through
20 it and identify it.

21 A It's an agency agreement with Tapco.

22 Q Okay. Is this your agent -- Is this Carolina
23 Insurance Group? I didn't see a signature page or
24 any -- It seemed sort of generic, so I was just
25 wondering. Do you recognize this as being

STATE OF SOUTH CAROLINA	)	IN THE COURT
	)	OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Porthemos Curry,	)	Case: 2014-CP-40-04661
	)	
Plaintiff,	)	
	)	DEPOSITION
vs.	)	
	)	OF
Scottsdale Insurance Company,	)	
Carolina Insurance Group of	)	Maurice Derrick
SC, Inc., and Maurice Derrick,	)	
	)	
Defendants.	)	

Deposition of Maurice Derrick, taken pursuant to the South Carolina Rules of Civil Procedure, commencing at the hour of 9:05 a.m., Thursday, April 16, 2015, at Bruner, Powell, Wall & Mullins, 1735 St. Julian Place, Suite 200, Columbia, South Carolina.

COPY

Reported by
Janni S. Gaskins

SCOTT REPORTING SERVICE
P.O. Box 290482, Columbia, SC 29229 ♦ (803) 736-2408
www.scottreporting.com ♦ hscott@scottreporting.com

1 questions for you.

2 The Deponent: Okay.

3 Examination

4 By Ms. Stetson:

5 Q Mr. Derrick, my name is Hannah Stetson. We met
6 briefly before the deposition, and I represent
7 Scottsdale. I have just a few questions for you.
8 Do you need to take a break before we get started,
9 or I can get going?

10 A I'm okay.

11 Q Okay. Mr. Derrick, you're not employed by
12 Scottsdale Insurance Company or any of its
13 affiliates, are you?

14 A Correct.

15 Q In fact, you have no direct relationship with
16 Scottsdale Insurance Company as a producing agent
17 in this case?

18 A I do not.

19 Q You have no authority to issue a policy on behalf
20 of Scottsdale?

21 A I do not.

22 Q You have no authority to bind Scottsdale to a
23 policy?

24 A I do not.

25 Q So, essentially, you are acting as an independent

1 insurance agent here in Columbia, and in this
2 transaction involving the builders/risk policy
3 issued by Scottsdale, you represented the interest
4 of Mr. Curry, correct?

5 A Correct.

6 Q And in doing this, you dealt with Tapco, who in
7 turn represented the interest of Scottsdale,
8 correct?

9 A Correct.

10 Q Generally the way the excess and surplus lines
11 carriers operate, is it the same process for
12 various carriers? Are you aware of that?

13 Ms. Peavy: Object to the form.

14 A Repeat the question, please.

15 Q Generally the way the excess and surplus line
16 companies operate, is it generally the same
17 process, that they will operate through a general
18 agent and then the general agent will operate
19 through the independent sales agent?

20 A Correct.

21 Q And you don't have any authority to procure policy
22 directly from an excess and surplus lines insurance
23 carrier, do you?

24 A No, I do not.

25 Q So, in this case, you did not directly procure a

1 policy from Scottsdale, correct?

2 A Correct.

3 Q And you did not represent the interest of
4 Scottsdale in this case, correct?

5 A Correct.

6 Q The policy that's at issue here was issued in the
7 name of Porthemos Curry with effective dates from
8 November 21, 2013 to February 21, 2014; is that
9 correct?

10 A Repeat.

11 Q Yeah.

12 A Repeat that again.

13 Q The policy was issued in the name of Porthemos
14 Curry, and the effective dates were November 21,
15 2013 to February 21, 2014?

16 A Correct.

17 Mr. Peel: Object to the form.

18 Q Is that correct?

19 A Correct.

20 Q And this policy was a vacant/builders risk policy?

21 A Correct.

22 Q And you acted as an agent on behalf of Mr. Curry
23 and signed the application that was submitted for
24 the policy that would then be submitted to Tapco,
25 correct?



J. R. Murphy
Direct dial 803-454-1231
jrmurphy@murphygrantland.com

November 25, 2015

Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205

Re: Porthemos Curry vs. Scottsdale Ins. Co., Carolina Ins. Group of SC, Inc. and Maurice
Derrick
Civil Action No.: 2014-CP-40-04661
Claim No.: 1527747
Date of Loss: 2/21/14
Our File No.: 1500-0129

Dear Rachel:

Enclosed please find the settlement draft in the amount of \$85,000, Release and Stipulation of Dismissal in the above-referenced matter. I would appreciate your holding all settlement funds in trust until the Release and Stipulation of Dismissal have been properly executed and returned to me in the envelope provided.

With warm personal regards, I am

Sincerely yours,



J. R. Murphy

JRM/sb
Enclosures

cc: Wesley D. Peel, Esquire
Rob Fisher, Esquire (via email)



Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull Peter E. Farr
Alice P. Adams Tim J. Newton Chris A. Majure J. Ryan Oates Wesley B. Sawyer Jason P. Luther Elliott B. Daniels Hannah D. Stetson Rogers E. Harrell, III
*Member-American Board of Trial Advocates

R.188



MURPHY & GRANTLAND, P.A.

Hannah D. Stetson
Direct dial 803-454-1208
hstetson@murphygrantland.com

December 14, 2015

Wesley D. Peel, Esquire
Bruner, Powell, Robbins, Wall & Mullins
1735 St. Julian Place
P.O. Box 61110
Columbia, SC 29260-1110

Re: Porthemos Curry vs. Scottsdale Ins. Co., Carolina Ins. Group of SC, Inc. and Maurice Derrick

Civil Action No.: 2014-CP-40-04661
Claim No.: 1527747
Date of Loss: 2/21/14
Our File No.: 1500-0129

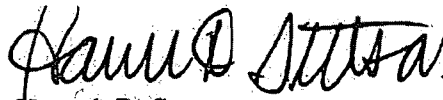
Dear Wesley:

Enclosed please find a Stipulation of Dismissal as to Defendant Scottsdale Insurance Company in the above-referenced matter. If the Stipulation meets with your approval, please sign where indicated and return the original to our office. We will send it to the Clerk for filing.

If you have any questions, please feel free to contact me.

With kind regards, I am

Sincerely,


Hannah D. Stetson

HDS/kbd

Enclosure

cc: Rachel G. Peavy, Esquire



Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull Peter E. Farr
Alice P. Adams Tim J. Newton Chris A. Majure Robert M. Peele, III Wesley B. Sawyer Jason P. Luther Elliott B. Daniels Hannah D. Stetson Rogers E. Harrell, III
*Member-American Board of Trial Advocates

R.189

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No. 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

vs.

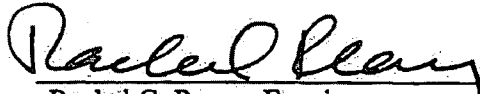
Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendant.

**STIPULATION OF DISMISSAL
AS TO DEFENDANT SCOTTSDALE
INSURANCE COMPANY**

The Plaintiff, by and through its undersigned counsel, having settled this case with the Defendant Scottsdale Insurance Company, hereby dismisses, with prejudice, the Complaint, and all subsequent amendments thereto, as to the Defendant Scottsdale Insurance Company only.

The Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal.


Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517
Attorney for Porthemos Curry

J.R. Murphy, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Scottsdale Ins. Co.

December 10, 2015

Wesley D. Peel, Esquire
Bruner, Powell, Robbins, Wall & Mullins
1735 St. Julian Place
P.O. Box 61110
Columbia, SC 29260-1110
803-252-7693
Attorney for Carolina Ins. Group of SC, Inc. and Maurice Derrick

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Civil Action No. 2014-CP-40-04661

Porthemos Curry,)

Plaintiff,)

v.)

**NOTICE OF MOTION AND
MOTION FOR SANCTIONS**
(ADR Rule 23 & 10)

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,)

Defendant.)

TO: Rachel G. Peavy, Esquire and T. Jeff Goodwyn, Jr., Esquire, Attorneys for the Plaintiff

YOU WILL PLEASE TAKE NOTICE that the Defendants Carolina Insurance Group of SC, Inc. and Maurice Derrick (collectively referred to herein as "the Defendants"), through their undersigned attorneys, will move before the Chief Administrative Judge pursuant to Rule 23, SCADR, at the Richland County Judicial Center, 1701 Main Street, Columbia South Carolina, 20201 as soon as the motion can be heard. This motion is made pursuant to Rules 8 and 10, SCADR, Rule 37(b), SCRCF, and the mediation agreement, for sanctions as deemed appropriate by the Court including disqualification of counsel, attorneys fees and costs associated with this motion, contempt of court, dismissal of this lawsuit with prejudice, any unpaid damages Plaintiff may prove at trial of this case, and any other sanctions the court deems just and proper. Additionally, Defendants ask that Judge Hood be recused from hearing the Motions for Summary Judgment on the docket for Tuesday, April 26, 2016 at 2:00pm if his honor has read any of the documents that form the basis of this motion.

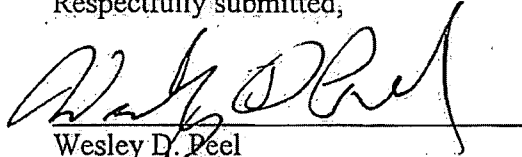
The grounds for this motion is Plaintiff's willful and wanton breach of mediation confidentiality through knowingly and wantonly filing confidential mediation settlement documents and correspondence with the Court, signed affidavits of Plaintiff's counsel and Plaintiff prepared with the intent to publish, and the Plaintiff's detailed recitation of negotiations

during the court ordered mediation of this case including: (1) views expressed or suggestions made by the parties with respect to a possible settlement of the dispute; (2) admissions made in the course of the mediation proceeding by another party or any other person present; (3) proposals made or views expressed by the mediator; (4) willingness to accept or reject proposals for settlement made by the mediator; and (5) records, reports or other documents created solely for use in the mediation.

The Plaintiff has engaged in a pattern of conduct designed to frustrate the purpose and intention of South Carolina's Alternative Dispute resolution rules through the wanton disregard of the court ordered mediation process. Sanctions are necessary to deter similar conduct by others in the future, restore respect for this Court's authority, repair the damage caused by Plaintiff to the integrity of the Court's ADR program, and minimize prejudice to the Defendants.

Therefore, Defendants ask the court for an order of sanctions as deemed appropriate pursuant. The undersigned certifies that he has, in good faith, conferred with opposing counsel in an attempt to resolve this matter without court action.

Respectfully submitted,



Wesley D. Peel

Bryan M. J. Triplett

**Bruner, Powell, Wall
& Mullins, LLC**

P.O. Box 61110

Columbia, South Carolina 29260-1110

(803)252-7693

*Attorney for the Defendants Carolina Insurance
Group of SC, Inc. and Maurice Derrick*

Columbia, South Carolina
April 25, 2016

AGREEMENT TO MEDIATE

*Porthemos Curry vs. Scottsdale Insurance Company,
Carolina Insurance Group of SC, Inc. and Maurice Derrick*

C/A: 2014-CP-40-04661

1. THIS AGREEMENT is entered into by John E. Cuttino, Esquire, of Gallivan, White, & Boyd, P.A., (hereinafter "Mediator"), and the undersigned parties, persons, and entities.
2. This agreement is being made by the Parties and their respective representatives to certain controversies entitled "*Porthemos Curry vs. Scottsdale Insurance Company, Carolina Insurance Group of SC, Inc. and Maurice Derrick*" (hereinafter called "the disputes"). The Mediator has heretofore been selected by the Parties to act as a neutral third party to facilitate settlement negotiations and attempt to resolve this dispute.
3. It is agreed and understood that the Mediator is not an advocate, representative, fiduciary or counsel for any Party, and that the Mediator has no authority to make any binding decisions or recommendations or to compel the making of any agreement or the granting of any concession.
4. It is agreed and understood that each Party will have in attendance at the mediation such person(s) (including insurance carrier representative(s), if applicable) with full authority to settle the dispute, or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and recommend a settlement to the appropriate decision-making body of the agency.

5. It is agreed and understood that the mediation is private and confidential. Persons other than the Parties and their representatives may attend only with the permission of all of the Parties and with the consent of the Mediator.

6. To facilitate a resolution, the Mediator and the Parties and their counsel will work to ensure that each Party appreciates the strengths and weaknesses of each side's factual and legal contentions. Both in the exchange of information and opinions, and in the evaluation of that information, each Party will have the opportunity and responsibility candidly to disclose to the Mediator the facts, theories and opinions on which it intends to rely with regard to the matters in dispute. In addition, the mediation process will focus on the interests and objectives of the Parties and possible solutions that the Parties believe would be fair, equitable and mutually beneficial. Accordingly, each Party will be asked to work with the Mediator in considering and evaluating solutions that would satisfy its own interests and those of the other Party.

7. It is agreed and understood that the Mediator may meet and/or consult privately with any Party or Parties or their counsel before, during and after the mediation. Confidential information disclosed to the Mediator by the Parties, their counsel, or by any witness in the course of mediation shall not be divulged by the Mediator without consent.

8. It is further agreed and understood that the entire mediation process is a compromise negotiation. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, are confidential. Such offers, promises, conduct and statements will not be disclosed to third Parties and are privileged and inadmissible for any purposes, including impeachment. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or not discoverable as a result of its use in the mediation.

9. It is further agreed and understood that the Mediator shall not be liable to any Party or person for any act or omission in connection with any mediation conducted under this Agreement and no Party or other signatory to this Agreement will call or subpoena the Mediator to produce any notes or documents related to the mediation or to testify regarding any notes or documents or the Mediator's thoughts or impressions, or any civil action, arbitration, or other legal administrative proceeding of any kind whatsoever. If so called or subpoenaed by anyone, the Mediator will refuse to testify and to produce such notes or documents. Should any Party or other signatory to this Agreement attempt to compel such testimony or production, such Party or signatory shall be liable for and shall indemnify the Mediator against any liabilities, costs or expenses, including reasonable attorneys' fees, which the Mediator may incur in resisting such compulsion.

10. It is agreed and understood that each Party may provide the Mediator, in advance of the mediation, with a statement setting forth its position with regard to the issues that need to be resolved, and the present status of settlement negotiations. Each Party may also attach such exhibits and/or other documentary information, as they deem appropriate. Any statements of position provided to the Mediator shall remain confidential unless all Parties consent to the mutual exchange of statements.

11. The Parties and their attorneys agree that they will be billed for the services of the Mediator at the rate of \$325 per hour plus any out-of-pocket expenses incurred by the Mediator. In addition, the parties agree that the attorney(s) representing each party will bear the responsibility and pay its respective share within thirty (30) days of receipt of the bill. Billing will be made by, and payment made to, Gallivan, White & Boyd, and P.A. Unless

otherwise agreed by the Parties and the Mediator, each Party will be responsible for an equal pro-rata share of the cost of the Mediator's fee.

12. The Parties and their representatives shall cooperate with the Mediator and shall participate in good faith in the entire mediation.

9/29/15
DATE

Rachael S. Peavy
Rachael G. Peavy, Attorney for Plaintiffs

9/29/15
DATE

Wesley D. Peel
Wesley D. Peel, Attorney for Defendant Carolina Ins.
Group of SC, Inc. and Maurice Derrick

Wesley D. Peel

9-29-15
DATE

J.R. Murphy
J.R. Murphy, Attorney for Defendant Scottsdale Ins. Co.
Dan Allen

SIGNATURE PAGE OF PARTIES PARTICIPATING IN THE CONFERENCE:

DATE:

SIGNATURE:

9/29/15

9/29/15

Robert J. Murray
James D. Doherty

Wesley Peel

From: Wesley Peel
Sent: Friday, April 22, 2016 2:36 PM
To: 'RPeavy@Goodwynlaw.com'; 'Jeff Goodwyn'
Cc: 'John Cuttino'
Subject: Memo in oppositon
Attachments: Wesley Peel.vcf

Dear Rachel and Jeff:

I have finally reviewed your memo in opposition to our Motion for Summary Judgment. You disclosed confidential settlement negotiations to the court without my consent, specifically emails from John Cuttino relaying settlement discussions and emails relating to my attempts in good faith to settle with you. Your actions violate Alternative Dispute Resolution Rule 8 - Confidentiality. In addition, I am certain that you have violated the Agreement to Mediate. I would suggest that you need to withdraw the memo and its exhibits immediately and take whatever other corrective action is necessary; otherwise, I will be forced to take the appropriate actions. Please let me know your intentions.

Wesley D. Peel



Wesley Peel

Bruner Powell
(803) 252-7693 Work
(803) 744-0624 Work
(803) 463-4319 Mobile
wPeel@brunerpowell.com
wpeel@brunerpowell.com
P.O. Box 61110
Columbia, SC 29260
United States of America

Wesley Peel

From: Jeff Goodwyn [JGoodwyn@Goodwynlaw.com]
Sent: Friday, April 22, 2016 4:09 PM
To: Wesley Peel; RPeavy@Goodwynlaw.com
Cc: 'John Cuttino'
Subject: RE: Memo in oppositon

Wesley –

I certainly agree that the rule and agreement require the parties to keep confidential what happened at the mediation from the jury and anyone outside of this case, but since the intent of the parties in settling at the mediation has been raised as an issue in your summary judgment motion, what went on at the mediation is particularly relevant for the court to consider and should be allowed under Rule 8(b)(5) of the Rules of ADR. “Once a contract is before the court for interpretation, the paramount concern of the court is to give effect to the intention of the parties.” Middleborough Horizontal Property Regime Council of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 477; 465 S.E.2d 765, 770 (1995) *citing* Parker v. Byrd, 309 S.C. 189, 420 S.E.2d 850 (1992), Columbia East Assoc. v. Bi-Lo, Inc. 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989).

Rule 8(b)(5) of the Rules of ADR provides an exception to the confidentiality rule if the information is required by law to be provided. Since you have raised intent in the settlement of Scottsdale in your motion for summary judgment, we have the legal and ethical obligation to respond to your arguments with the best evidence of intent available. The context in which the settlement was reached is essential in determining the intent of the parties, making the parties' positions and behavior at the mediation and afterwards of critical importance.

The purpose of the confidentiality provision is not to keep the court from obtaining key evidence on an issue of law that it has to decide as to the meaning of the terms of the release. There is no prejudice to you or anyone else if evidence of the intent of the parties is considered by the court for the purpose of ruling on your motion that raised this as an issue.

If you are concerned that parties not connected to this case would obtain this information by the filing of this information with the court, we are willing to consent to seal this portion of the record.

Please contact me if you wish to discuss this issue further -

T. Jeff Goodwyn, Jr.
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From: Wesley Peel [<mailto:WPeel@brunerpowell.com>]
Sent: Friday, April 22, 2016 2:36 PM
To: 'RPeavy@Goodwynlaw.com' <RPeavy@Goodwynlaw.com>; 'Jeff Goodwyn' <JGoodwyn@Goodwynlaw.com>
Cc: 'John Cuttino' <jcuttino@gwblawfirm.com>
Subject: Memo in opposition

Dear Rachel and Jeff:

I have finally reviewed your memo in opposition to our Motion for Summary Judgment. You disclosed confidential settlement negotiations to the court without my consent, specifically emails from John Cuttino relaying settlement discussions and emails relating to my attempts in good faith to settle with you. Your actions violate Alternative Dispute Resolution Rule 8 - Confidentiality. In addition, I am certain that you have violated the Agreement to Mediate. I would suggest that you need to withdraw the memo and its exhibits immediately and take whatever other corrective action is necessary; otherwise, I will be forced to take the appropriate actions. Please let me know your intentions.

Wesley D. Peel



Wesley Peel
Bruner Powell
(803) 252-7693 Work
(803) 744-0624 Work
(803) 463-4319 Mobile
WPeel@brunerpowell.com
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Columbia, SC 29260
United States of America

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff(s),

vs.

Carolina Insurance Group of SC, Inc.
and Maurice Derrick,

Defendant(s).

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-04661

**MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION
FOR
SANCTIONS**

TO: THE HONORABLE ROBERT E. HOOD AND WESLEY R. PEEL, ESQ.

The Plaintiff hereby files this Memorandum in Opposition to Defendants' Motion for Sanctions.

Plaintiff hereby submits that there has been no violation of the South Carolina ADR Rules as the disclosure of the ongoing settlement negotiations was required by law and the Code of Ethics under Rule 8(b)(5) of the ADR Rules, or, in the alternative, that any disclosure of any settlement offers or demands was made with good cause and in good faith given that Plaintiff was required, pursuant to the order of the Honorable Jocelyn Newman, to respond to, and prepare a brief in opposition to, Defendants' Motion for Summary in less than 24 hours.

Undisputed Factual Background

This action was commenced against these Defendants, an insurance agency and its agent, in 2014. Scottsdale Insurance Company was named as a defendant. Plaintiff alleged claims against these Defendants for negligence arising out of the failure to procure insurance on a vacant structure for a certain period of time. Plaintiff brought

claims against Scottsdale for breach of contract and statutory bad faith failure to pay under the Policy. Plaintiff alleged in his pleadings that Defendants were agents of Scottsdale; this was denied by the Defendants in their answers, as well as in their deposition testimony. Scottsdale also denied in its pleadings that the Defendants were its agent.

A mediation conference occurred in September 2015, with John Cuttino, Esq. serving as the mediator. No settlement was reached on the day of the conference; however, Plaintiff continued to negotiate with Scottsdale's attorney, JR Murphy, and Plaintiff subsequently reached an agreement to settle his claims against Scottsdale for \$85,000. By letter dated November 25, 2015, Attorney Murphy forwarded a copy of the release, a Scottsdale check in the amount of \$85,000, and a Stipulation of Dismissal to Plaintiff's counsel. Defendants' attorney, Wesley Peel, was copied on this letter. See **Exhibit A**. Plaintiff signed the Scottsdale Release, attached as **Exhibit B**. From the time he was notified of Plaintiff's settlement with Scottsdale last November until a few weeks ago, Mr. Peel never requested a copy of the Release from Plaintiff's counsel.

On December 14, 2015, Scottsdale's attorney forwarded Attorney Peel a Stipulation of Dismissal as to Scottsdale Insurance Company. A copy of the letter and Stipulation are attached as **Exhibit C**. Attorney Peel executed the Stipulation of Dismissal as to Scottsdale, which stated that the Plaintiff was dismissing the complaint against Scottsdale only and that "[t]he Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal." Defendants' attorney signed the Stipulation and it was filed with the Court on December 30, 2015.

Following the execution of the Stipulation of Dismissal as to Scottsdale, the Plaintiff and Defendants moved forward with the case, communicating with Judge Lee regarding the need for a date certain, conducting discovery, and scheduling the depositions of their respective expert witnesses in Charleston. A date certain was scheduled for April 18, 2016.

Prior to taking the depositions of the expert witnesses, which would involve significant time, travel, and expense for both parties, Mr. Peel initiated settlement discussions with the Plaintiff on March 30th. On April 8, 2016, Mr. Peel requested a copy of the Scottsdale Release. Plaintiff's counsel forwarded it to him that same morning; following receipt of the Release, additional settlement offers and demands were made. However, the parties were unable to reach an agreement and proceeded to trial.

On April 15th, Defendants filed a Motion for Summary Judgment, asserting that they were entitled to judgment in their favor on the affirmative defense of release and a joint tortfeasor theory, concurrently moving to amend their answer to assert this additional defense. Prior to April 15th, Defendants had never asserted that they considered them a party to the Scottsdale Release or that they were Scottsdale's agent; it is undisputed that they paid no money to Plaintiff.

Defendants assert that because the complaints allege that Defendants were agents of Scottsdale – which was denied by the Defendants in both their pleadings and their deposition testimony – that the Plaintiff is therefore bound by the denied allegation under a theory of “judicial admission”. Defendants’ argument is simply unsupported by South Carolina law; in the case of Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp.,

336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999), the Court of Appeals held that "allegations in a complaint denied in answer are evidence of nothing."

On April 18th, the matter was called for trial and a jury was qualified and selected by the parties. Thereafter, Judge Newman heard arguments on various pre-trial matters, and granted the Defendants' motion to amend their answer to assert the defense of release, over Plaintiff's objection.

Late in the afternoon on April 18th, Judge Newman ordered the parties to 1.) brief the issue of whether the Defendants' Motion for Summary Judgment should be heard without the required 10-day notice under Rule 56; and 2.) brief the merits of the Motion for Summary Judgment in the event she decided to hear the Motion. On April 18th, Defendants' counsel argued to the Court that Plaintiff intended to release Scottsdale because the Release stated that it released "Scottsdale, its agents and employees...."

On April 19th, Plaintiff's counsel filed a Memorandum in Opposition to Defendants' Motion for Summary Judgment, arguing that the Release only applied to Scottsdale and that it was never the intent of the Plaintiff, or these Defendants, or Scottsdale, to release the Defendants. In support of its argument, Plaintiff provided the Court with deposition excerpts, attached as **Exhibit D**. Plaintiff also referenced the ongoing settlement negotiations between Plaintiff's counsel and defense counsel, and the mediator John Cuttino, and attached e-mail correspondence related to same.

Because "once a contract is before the court for interpretation, the paramount concern of the court is to give effect to the intention of the parties," Plaintiff's counsel believes that evidence of the intent of the parties is, and was, critical to the disposition of the pending motions. See *Middleborough Horizontal Property Regime v. Montedison*

S.p.A, 320 S.C. 470, 465 S.E.2d 765, 770 (Ct. App. 1995); See also *Columbia East Associates vs. Bi-Lo, Inc.*, 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989) (noting "the main concern of the court is to give effect to the intention of the parties.") It is undisputed that defense counsel received a copy of the Memorandum in Opposition on April 19th and voiced no objection to the contents at that time.

On April 22nd, Plaintiff's counsel received an e-mail from Attorney Peel, attached as **Exhibit E**, stating that he had "finally reviewed your memo in opposition to our Motion for Summary Judgment" and requesting that they withdraw the memo and its exhibits immediately, as violative of the SC ADR rules.

Plaintiff's counsel respectfully disagreed, asserting under the cases cited herein, that the intent of the parties was properly for the Court to consider in deciding the meaning and effect of the Scottsdale Release. See Exhibit F. Plaintiff offered to consent to seal this portion of the record, which was declined.

Plaintiff's counsel, in preparation for today's hearing and mindful of the 2 day rule for affidavits under Rule 56, SCRPC, served Attorney Peel that same day with the affidavits of both Rachel Peavy and T. Jeff Goodwyn, Jr., along with Porthemos Curry, attesting to the intent of the parties to the Release and related matters. Plaintiff has not filed these with the Court pending the Court's decision on whether the affidavits, and supporting exhibits, should be considered; in addition, upon receipt of the Plaintiff's Motion for Emergency Sanctions, Plaintiff notified the Court that it was withdrawing the April 19th Memorandum it had filed (pursuant to Judge Newman's order from the bench on the afternoon of April 18th), and that Plaintiff's counsel would await the Court's decision regarding Mr. Peel's pending sanctions motion (and the issue of confidentiality).

Counsel submits that because Defendants have placed the intent of the parties directly at issue in this case – by virtue of filing a motion for summary judgment asking the Court to determine the meaning of the Release as a matter of law – evidence of the actions of the Defendants' counsel, following his being notified that Plaintiff had settled with Scottsdale, are directly at issue, relevant, and required under law to be considered by the Court.

Legal Standard

Rule 8 of the South Carolina Rules of ADR provides that generally "communications during a mediation settlement conference shall be confidential." However, Rule 8(b)(5) provides that "this rule does not prohibit any disclosures required by law or a professional code of ethics."

Under Rule 56(e), SCRCP, "when a motion for summary judgment is made . . . an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

Finally, Rule 407 of the South Carolina Rules of Professional Conduct require that "as advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."

Argument

1. The Court Must Determine the Intent of the Parties and Review Evidence Related to Same

The admission of evidence is within the trial judge's discretion. *Whaley v. CSX Transportation*, 362 S.C. 456, 609 S.E.2d 286 (2005). Furthermore, when such evidence is the disclosure of mediation details, the disclosure of same has been found to be proper under Rule 8(b)(5) of the ADR Rules. See *Brandt v. Brandt*, 2015-UP-558 (S.C. Ct. App. Dec. 16, 2015) (unpublished) (specifically finding that disclosure of confidential communications during a mediation settlement conference is not barred for purposes of upholding a settlement agreement). Because "the purpose of all rules of contract construction is to ascertain the intention of the parties to the contract", the Court should allow the Plaintiff to present evidence of same. *Parker v. Byrd*, 309 S.C. 189, 420 S.E.2d 850 (1992); See also *Middleborough Horizontal Property Regime*, supra; *Columbia East Associates*, supra.

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Relevant evidence is admissible but may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Rules 402 and 403, SCRE.

Here, the construction of the Release is before the Court. The Court cannot be misled by this evidence of settlement negotiations, nor is there danger of unfair prejudice,

given that the Defendants put the construction of the Release before the Court by virtue of their summary judgment motion.

It is worth noting that a finding by this Court that the Release only released Scottsdale Insurance Company – as asserted by the Plaintiff in his cross-motion for summary judgment – would not preclude the Defendants from making a motion for set-off at the post-verdict stage of the trial. While Plaintiff submits that Defendants are not entitled to a set-off of the Scottsdale settlement under our Supreme Court's recent ruling in *Riley v. Ford Motor Co.*, the issue of set-off is always for the trial judge.

2. Plaintiff's Counsel at All Times acted in Good Faith and In Accordance with the Rules

Defendants seek dismissal of this lawsuit with prejudice; sanctions; and attorneys' fees and costs in their Motion for Sanctions, along with other requests.

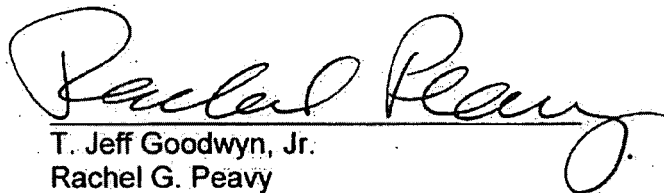
As outlined in detail above, Plaintiff's counsel believes that the law of South Carolina squarely places the issue of intent before the Court because the construction of a contract is a matter of law for the Court and the Court must act to determine the intent of the parties to such contract in making its decision. Plaintiff's counsel believes that any disclosure of settlement negotiations was made in compliance with Rule 8(b)(5) of the SC ADR Rules, along with the Rules of Civil Procedure and the Rules of Professional Conduct cited herein.

Accordingly, Plaintiff submits that the Motion for Sanctions be denied in whole, or in the alternative, that the Court find that any violation was for good cause, given that Plaintiff's counsel was required to respond to, and prepare a brief in opposition to, Defendants' motion for summary judgment in the space of less than 24 hours, as ordered

by Judge Newman. See *Rickerson v. Karl*, Op. 5310 (April 1, 2015) (S.C. Ct. App.) (reversing dismissal of action with prejudice under Rule 37 by the trial court where there was no evidence of bad faith, misconduct, willful disobedience, or a callous disregard for the rights of other litigants).

Conclusion

Wherefore, Plaintiff respectfully requests that this Court deny Defendants' motion for sanctions, that the Court issue an order finding that evidence of settlement negotiations are relevant and admissible for purposes of the Court's hearing on the parties' motions for summary judgment, and for such other and further relief as the Court deems just and proper.



T. Jeff Goodwyn, Jr.
Rachel G. Peavy
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2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517
Attorneys for Plaintiff

April 26, 2016

1 A. Yes.

2 Q. Okay. Also, if you need to take a break or
3 get up and walk around or anything, you're
4 uncomfortable at all, please just speak up and tell me
5 and we'll take a break.

6 A. Okay.

7 Q. Or if you say, "I need a drink of water," or
8 anything else, don't hesitate to let me know.

9 A. Okay.

10 Q. Now, I understand you're recovering from some
11 severe injuries; is that correct?

12 A. That's correct.

13 Q. Okay. And you were hit by a vehicle?

14 A. Trees.

15 Q. Trees?

16 A. Yes.

17 Q. Okay. And are you on medication today?

18 A. Yes.

19 Q. Okay. Is the type medication you're on going
20 to interfere with your ability to answer my questions
21 accurately and truthfully?

22 A. I don't believe that will affect, you know,
23 my answering questions.

24 Q. Okay. All right. Again, I understand if
25 you're -- don't feel up to speed, so any time you let

1 me know when we need to break. I don't anticipate
2 being very long, okay?

3 A. Okay.

4 Q. All right. And the first few questions I'm
5 going to ask you, this is a jury case and so they're
6 going to relate to, you know, information I need when
7 selecting a jury in Richland County. I don't mean to
8 get personal with you, but these are questions we have
9 to ask.

10 A. Okay.

11 Q. So first off, can you tell me where you
12 reside?

13 A. 6555 Frost Avenue.

14 Q. And what's that ZIP Code?

15 A. 29203.

16 Q. Okay. Other than the last name of Curry, do
17 you have any close relatives of Richland County, aunts,
18 uncles, cousins --

19 A. Yes.

20 Q. -- either by marriage?

21 Could you just give me the last names of
22 those people.

23 A. Floyd, Wentworth, Clark, McLemore.

24 Q. Okay. Are you married?

25 A. No.

1 sometimes for that; is that accurate?

2 A. That's accurate.

3 Q. What's the other address they use, do you
4 recall?

5 A. I don't recall.

6 Q. I think it's in there somewhere, but it's the
7 same thing, right? They reference that on the
8 documents that they sometimes use a different address?

9 A. Yes.

10 Q. Okay. Because I understand the house is
11 situated on a corner; is that correct?

12 A. That's correct.

13 Q. And so do you recall, would it be accurate
14 that you originally took out a builder's risk policy
15 for 1001 Pineland around October 15th, 2009?

16 A. I don't remember.

17 Q. Okay. Can you look at this application?
18 Does this application look like an application for
19 builder's risk for that particular piece of property?

20 A. Yes, it does.

21 Q. Okay. And was this going to be -- was this
22 new construction, or were you doing a remodel?

23 A. New construction.

24 Q. Okay. And so you began building that home
25 sometime toward the end of 2009, would that be

1 accurate?

2 A. It was -- it was a while back. I don't
3 remember exactly when it was, but it was a while back.

4 Q. Okay. And so it says on here, "Mortgagee or
5 loss payee are John and Amy Philbick of Portland,
6 Maine."

7 Do you recall who they were?

8 A. Portland, Maine. I don't remember them.

9 Q. Who were you building the home for?

10 A. I was building the home to sell.

11 Q. Okay. All right. Could you turn to the
12 page -- you see the numbers down at the bottom right
13 corner that says "Carolina Insurance Group" and it has
14 a number? Those are numbers I put on there or the
15 computer did.

16 A. Yes.

17 Q. Could you turn to the page that's 324,
18 please.

19 A. All right.

20 Q. Okay. Do you recall receiving your dec page
21 for your builder's risk policy for 1001 Pineland?

22 A. Could you repeat that question again? Do I
23 recall?

24 Q. Let me ask it a different way. Does this
25 appear to your dec page for the builder's risk policy

1 A. Yes, I was.

2 Q. Okay. What have been some of your damages,
3 some of the things that you -- have happened as a
4 result of this fire happening and the failure of the
5 insurance company to pay the claim and all the -- and
6 that the policy is for a different time period than you
7 expected? Can you testify as to some of the damages
8 you've sustained?

9 A. It has hurt my credit, my credit cards and --
10 tremendously. It affected my credit score. It has
11 affected my relationship. People that I had to go and,
12 you know, borrow money from. I've been locked up for
13 child support since then.

14 Q. Okay.

15 A. I been through a lot with that.

16 Q. So you were unable to sell the property as
17 you had expected in the time and manner you expected;
18 is that correct?

19 A. That's correct.

20 Q. Okay. And is it accurate that you had
21 partially financed the renovations of the home and some
22 of the construction costs on low interest credit cards
23 for definite periods of time in the anticipation that
24 you would sell the property and close before the
25 interest rates went back up again?

1 break or step outside and warm up, just let me
2 know. We'll stop. You need to get up and move
3 around, that's fine too.

4 A. All right.

5 Q. You have -- your attorneys have amended
6 your complaint to assert punitive damages against
7 Carolina Insurance Group and Maurice Derrick, and
8 so I wanted to start your deposition today by
9 asking you a few questions about those changes and
10 get you to, whatever knowledge you have about, give
11 it to me.

12 The first one, the allegation is that had
13 Carolina Insurance informed you that the
14 three-month policy you were paying for provided
15 less than three months coverage, plaintiff could
16 have sought suitable insurance from another carrier
17 or, an alternative, sought to renew the policy
18 after the alleged expiration date of February 21st.
19 Would that have been your intent, to renew the
20 policy?

21 A. I don't understand nothing that you just
22 said.

23 Q. Okay. Okay. That's fine. Let me ask you
24 this. I think you told me before that at the time
25 of the fire, the house was -- and this may not have

1 been you to say it, but mostly complete. People
2 have used the term about 90 percent. Would you
3 agree with that percentage?

4 A. Correct.

5 Q. Okay.

6 A. 95, yeah.

7 Q. You told me before what was left to be
8 done. I think you said the HVAC, some insulation
9 and there were a couple other items. Does that
10 sound right?

11 A. And just a deck, a round deck.

12 Q. A deck, that's right.

13 A. Yeah.

14 Q. That's what I couldn't remember.

15 And so I guess my question to you, if
16 you -- if you realized the policy had expired at
17 the time when the house was only 90 percent
18 complete, would you have renewed the policy?

19 A. At the time, yes, I would have.

20 Q. And you still had some days left of
21 work --

22 A. Yes.

23 Q. -- in the home?

24 You told me before, two or three weeks
25 left to finish?

1 remember, would you let your lawyers know who that
2 lawyer is?

3 A. Yes, I will.

4 Q. Okay. I'm going to follow up and ask them
5 and we can find out who that is, okay?

6 A. Okay.

7 Q. All right. I appreciate it. We won't
8 dwell on it today.

9 Do you remember why you needed to send
10 this letter in to Richland County?

11 A. I don't remember exactly why.

12 Q. I saw on the inspection report, the end of
13 2011, it looked like the house was ready for final
14 inspection. Do you recall that?

15 A. 2011. I don't recall.

16 Q. Okay. Did I ask you this? Were you
17 calling in for those inspection requests from the
18 County? Was that you?

19 A. I don't recall exactly.

20 Q. Okay. Would there have been -- did you
21 have anybody working for you that would have been
22 in charge of requesting property inspections?

23 A. Not that I recall.

24 Q. Okay. What -- I'll give this to you so
25 you can see. You don't have to take my word for

1 MS. STETSON: I didn't bring my complete
2 file, but I think it is around 1200.

3 MR. PEEL: That's about right.

4 BY MR. GOODWYN:

5 Q. Okay. Let's just assume that it is 1200
6 square feet unless we find something that says
7 otherwise, but 1200 times \$80 a square foot, that's
8 96,000. What would you offer to tear down and
9 rebuild the house for? Assuming seven to \$10,000
10 in demolition costs as you've testified to and a
11 \$96,000 base amount at \$80 a square foot to
12 rebuild, what would you be willing to tear down and
13 rebuild the house for?

14 A. About 120, 125, somewhere around there.

15 Q. Okay. All right. Well, I think that's
16 all I have, then.

17 MR. PEEL: It's about 1100.

18 MR. GOODWYN: 1100?

19 MR. PEEL: Yeah, 1099. That's at least
20 what the --

21 MR. GOODWYN: All right. Well, let's go
22 back then.

23 BY MR. GOODWYN:

24 Q. If it's 1100 square feet, let me just do
25 the math again, times \$80 a square foot, that's

1 \$88,000 base price as opposed to 96,000. What
2 would you be willing to tear down and rebuild the
3 house for assuming an 1100 square foot home?

4 A. About 110, 115.

5 Q. All right. I think that's all I have.

6 (The deposition concluded at 12:59 p.m.)

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1 questions for you.

2 The Deponent: Okay.

3 Examination

4 By Ms. Stetson:

5 Q Mr. Derrick, my name is Hannah Stetson. We met
6 briefly before the deposition, and I represent
7 Scottsdale. I have just a few questions for you.
8 Do you need to take a break before we get started,
9 or I can get going?

10 A I'm okay.

11 Q Okay. Mr. Derrick, you're not employed by
12 Scottsdale Insurance Company or any of its
13 affiliates, are you?

14 A Correct.

15 Q In fact, you have no direct relationship with
16 Scottsdale Insurance Company as a producing agent
17 in this case?

18 A I do not.

19 Q You have no authority to issue a policy on behalf
20 of Scottsdale?

21 A I do not.

22 Q You have no authority to bind Scottsdale to a
23 policy?

24 A I do not.

25 Q So, essentially, you are acting as an independent

1 insurance agent here in Columbia, and in this
2 transaction involving the builders/risk policy
3 issued by Scottsdale, you represented the interest
4 of Mr. Curry, correct?

5 A Correct.

6 Q And in doing this, you dealt with Tapco, who in
7 turn represented the interest of Scottsdale,
8 correct?

9 A Correct.

10 Q Generally the way the excess and surplus lines
11 carriers operate, is it the same process for
12 various carriers? Are you aware of that?

13 Ms. Peavy: Object to the form.

14 A Repeat the question, please.

15 Q Generally the way the excess and surplus line
16 companies operate, is it generally the same
17 process, that they will operate through a general
18 agent and then the general agent will operate
19 through the independent sales agent?

20 A Correct.

21 Q And you don't have any authority to procure policy
22 directly from an excess and surplus lines insurance
23 carrier, do you?

24 A No, I do not.

25 Q So, in this case, you did not directly procure a

1 Q Okay. Is that typical, that you would be copied on
2 that?

3 A Typical? I couldn't promise you it's typical.

4 Q Okay.

5 A Maurice is very thorough what he does.

6 Q Okay.

7 A So, he does -- he did notify me in this case.

8 Q Okay. And that reflects that he's -- Mr. Curry is
9 -- Mr. Derrick -- sorry -- is letting Tapco know
10 that there is a claim on the property for damage on
11 February 21, 2014; is that correct?

12 A Correct.

13 Q Okay. All right. What is the relationship between
14 Carolina Insurance Group and Tapco?

15 A Tapco is a surplus lines broker.

16 Q Okay. Explain that to me, what that means.

17 A They represent multiple insurance companies and we
18 place business with Tapco, and then they select the
19 insurance company to put the business with.

20 Q Okay. So, they're a middleman, essentially?

21 A Sure.

22 Q Okay. What's the relationship between Carolina
23 Insurance and Scottsdale?

24 A We don't have a relationship --

25 Q Okay.

1 A -- with them.

2 Q Who pays the commissions to Carolina Insurance when
3 a Scottsdale policy is issued?

4 A Tapco.

5 Q Okay. Does Scottsdale own Lloyds of London, to
6 your knowledge?

7 A I couldn't tell you.

8 Q Does Lloyds of London own Scottsdale? Do you know?

9 A I do not know.

10 Q Okay. All right. I'm going to show you what was
11 produced via subpoena sent to -- sent by Scottsdale
12 to Tapco. It bears Bates stamp number Tapco 56,
13 57, and 58.

14 Ms. Peavy: If you could, mark that as
15 Exhibit 3.

16 Marked as Plaintiff's Exhibit 3; Deposition of
17 Joel Sauls; copy of Tapco Underwriters, Inc.
18 Agency Agreement; three pages.

19 Q Can you take a look at that for me. Look through
20 it and identify it.

21 A It's an agency agreement with Tapco.

22 Q Okay. Is this your agent -- Is this Carolina
23 Insurance Group? I didn't see a signature page or
24 any -- It seemed sort of generic, so I was just
25 wondering. Do you recognize this as being

1 policy other than 12:01 a.m. on February 21st of
2 2014, was there?

3 Ms. Peavy: Object to the form.

4 A Correct.

5 Q It simply indicated that those endorsements were
6 being included or attached at the inception of the
7 policy?

8 A Correct.

9 Q But sometimes someone wants to add a rider or an
10 endorsement later, and the effective date of when
11 that is applicable may be a different date from the
12 inception of the policy as a whole?

13 A Correct.

14 Q But when the policy expires, all of those forms,
15 endorsements, riders, they all expire, correct?

16 A Correct.

17 Q An excess and surplus carrier does not write direct
18 through an agency like yours, does it?

19 A Correct.

20 Q So, you have no relationship with Scottsdale, no
21 authority to bind Scottsdale, and any conduct of
22 you or the agents on your behalf is not the conduct
23 of Scottsdale, is it?

24 A Correct.

25 Q You deal with Scottsdale's own agent, which, in

1 this case, was Tapco?

2 A Correct.

3 Q So, Tapco represents Scottsdale; your Carolina

4 Insurance Group represents Mr. Curry?

5 A Correct.

6 Q And the two agents or the agent and the surplus

7 lines broker meet in the middle to place the

8 business for their respective clients?

9 A Correct.

10 Q You have no relationship with Scottsdale Insurance

11 Company?

12 A Correct.

13 Q The policy that was issued that we looked at,

14 Exhibit 9, commencing 11/21/2013 and expiring 12:01

15 a.m. on February 21, 2014 was issued according and

16 precisely to the application submitted by Mr.

17 Derrick on behalf of Mr. Curry to Tapco; is that

18 correct?

19 A To the best of my knowledge.

20 Q Why don't we look at the application just to make

21 sure. That was Exhibit Number 7.

22 A Correct.

23 Q Okay. So, the dates of coverage issued in policies

24 referenced by Exhibit 9 is in -- is direct

25 conformity with the application submitted for that