

to

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

22407

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

RECEIVED

JAN 28 2016

SC Court of Appeals

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2015-001452

Levern McCray,.....Appellant,

v.

Jose W. Valle,.....Respondent,

Of Whom Allstate Insurance Company and Liberty Mutual Fire Insurance Company are
Respondents.

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Levern McCray,

Plaintiff,

v.

Jose W. Valle,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.:2010-CP-08-1801

ORDER

2015 JUN 10 PM 3:22
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

Presiding Judge:
Date of Hearing:
Plaintiff's Attorney:
Defendant Liberty Mutual Fire
Ins. Co. Attorney:
Defendant Allstate Insurance:
Court Reporter:

Deadra L. Jefferson
May 12, 2015
Pamela Mullis, Esq.

Morgan Templeton, Esq.
Johnston Cox, Esq.
Denise Lauder

This matter came before the Court on May 12, 2015, on Allstate Insurance Company's ("Allstate") Motion to Quash Plaintiff's Execution Against Property filed February 12, 2015. Plaintiff filed the Writ, entitled "Execution Against Property" on January 27, 2015 seeking to have the Sheriff execute against the property owned by Allstate arising out of a judgment entered against Jose W. Valle ("Valle"), the Defendant in the above-captioned action. The judgment was entered against Valle on August 16, 2012, which was followed by an order for costs entered on January 27, 2013 and an order for costs from the South Carolina Court of Appeals dated December 22, 2014. The matter was fully briefed by the parties in advance of the hearing. After careful consideration of the materials before the Court and the arguments of counsel, the Court grants Allstate's Motion and makes the following findings of fact and conclusions of law.

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FINDINGS OF FACT AND PROCEDURAL HISTORY

On December 20, 2008, Plaintiff was involved in an automobile accident with Valle. Plaintiff's vehicle was struck when Valle's vehicle crossed the center line. As a result of the accident, Plaintiff sustained injuries, including injury to his ankle and pain in his knee and hip. Plaintiff filed a summons and complaint against Valle on May 21, 2010 and sought to serve him by publication on August 10, 2010, which service was done on September 2, 6, and 16, 2010.

Allstate issued an automobile insurance policy number 0 90 746371 12/06 ("the policy") to Named Insured, Ollie E. Walton-McCray. Plaintiff was a listed driver on the policy. The policy included uninsured motorist coverage. Plaintiff was also insured under a policy of insurance issued by Liberty Mutual Fire Insurance Company ("Liberty Mutual"), which also included uninsured motorist coverage. Because Valle did not make an appearance in the lawsuit, Allstate and Liberty Mutual filed answers on behalf of Valle and participated in the defense of the instant action. Allstate was not identified as a party to the lawsuit.

Plaintiff filed an Offer of Judgment in his lawsuit against Valle, the Defendant, on February 15, 2011. Specifically, in his Offer of Judgment, Plaintiff stated:

... Plaintiff ... offers the total sum of Three Hundred Thousand (\$300,000) Dollars as full compromise and settlement of his claim against the **Defendant** for personal injury... **Defendant** has twenty (20) days from the date indicated below to accept this offer and, if notice of acceptance is not given by the **Defendant**, in writing, the offer is withdrawn and cannot be given in evidence.

(emphasis added) (See Offer of Judgment, attached as Exhibit A).

Following a four-day jury trial in this case, a jury returned a verdict in favor of Plaintiff in the amount of \$500,000 in actual damages and \$147,000 in punitive damages. Accordingly, judgment was entered against Valle in the amount of \$647,000, and the judgment against Valle was filed on August 16, 2012. The Judgment in a Civil Case states that the Order ends the case

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and includes information for the judgment index to enroll the judgment. (See Judgment, attached as Exhibit B).

Following a hearing "in regard to the setting of the proper amount of costs and interest ... in regard to Plaintiff's Offer of Judgment ...," the Court issued an Order for Costs and Interest Pursuant to Offer of Judgment ("Order for Costs") dated January 14, 2013 and filed on January 17, 2013. (See Order for Costs, attached as Exhibit C). The Order for Costs provided that Plaintiff was entitled to \$3,247.01 in costs and \$77,569.10 in interest. Plaintiff did not file an Offer of Judgment as to Allstate or Liberty Mutual, and neither Allstate nor Liberty Mutual was identified in the Order for Costs.¹

On September 18, 2014, Plaintiff filed a Motion to Enforce Order of Judgment and Rule to Show Cause. Plaintiff requested that the court "enforce the Order of Judgment and issue a Rule to Show Cause directly against the insurers ordering payment of the Judgment pursuant to the statute." The Rule was denied by Order of the Court on December 1, 2014.

On January 27, 2015, Plaintiff filed the writ seeking to execute against Allstate and Liberty Mutual. Allstate filed its motion to quash on February 12, 2015.

CONCLUSIONS OF LAW AND ANALYSIS

"A judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money." *Home Port Rentals, Inc. v. Moore*, 359 S.C. 230, 234, 597 S.E.2d 810, 812 (Ct. App. 2004). Plaintiff's Offer of Judgment was specifically made as to Valle, not Allstate or Liberty Mutual. The Order of Judgment was issued with regard to the Offer of Judgment. Because Plaintiff did not file an order of judgment

¹ On May 19, 2014, Plaintiff filed a separate lawsuit against Allstate in the Court of Common Pleas for Richland County, South Carolina, and this matter was removed to the United States District Court for the District of South Carolina. Plaintiff alleges that he is entitled to recover damages from Allstate under the Order of Costs.

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specifically stating that the order was filed as to Allstate, he cannot now seek to enforce the Order of Judgment against Allstate. Therefore, Plaintiff must execute his judgment against Valle, not Allstate.

Plaintiff's effort to enforce his judgment against Allstate through the Writ is improper.

South Carolina Rule of Civil Procedure 69 provides:

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be as provided by law. In the aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for obtaining discovery.

Rule 69, SCRCF. Plaintiff has improperly filed the Writ to enforce the judgment against a non-judgment creditor. Pursuant to Rule 69, SCRCF, Plaintiff is required to seek a writ of execution issued by the sheriff as to Valle to attempt to collect on the judgment. Plaintiff cannot bypass the proper procedure as mandated by South Carolina law.

Finally, to the extent Plaintiff seeks to change the scope of the judgments previously entered in this case, South Carolina law does not permit such an alteration. South Carolina Rule of Civil Procedure 60(b), the procedure by which a judgment may be altered, provides:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;

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[Signature]

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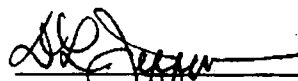
(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken....

"While a court may correct mistakes or clerical errors by its own process to make it conform to the record, it cannot change the scope of the judgment." *Dion v. Ruvenel, Eiserhardt Assocs.*, 316 S.C. 226, 230, 449 S.E.2d 251, 253-254 (Ct. App. 1994). "In addition, Rule 60 specifically provides for a party's relief *from* a judgment, not the enforcement of that judgment against non-parties." *See also Ex parte South Carolina Dep't of Revenue*, 350 S.C. at 408, 566 S.E.2d at 198, n. 1 (italics in original). "Attempting to bind a non-party to a judgment extinguishing its lien changes the scope of the original judgment and extends beyond the relief contemplated by Rule 60, SCRCP." *Id.* Finally, any motion to seek relief from a judgment or order "shall be made within a reasonable time, and for reasons (1), (2), and (3), not more than one year after the judgment." Rule 60(b), SCRCP. "The one year limit for motions pursuant to Rule 60(b)(1)-(3) is an *absolute time limit*." *Coleman v. Dunlap*, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992) (emphasis added).

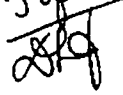
IT IS THEREFORE ORDERED, that Allstate Insurance Company's Motion to Quash Plaintiff's Execution Against Property is GRANTED.

AND IT IS SO ORDERED.



Judge Debra Jefferson
Presiding Judge
Ninth Judicial Circuit

June 4, 2015
Charleston, South Carolina
At Chambers

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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C.A. NO.: 2012-CP-08-1801

LAVERN McCRAY,)
Plaintiff,)
-versus-)
JOSE W. VALLE,)
Defendant.)

ORDER

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2015 JUN 10 PM 3:22

[Handwritten signature]

Presiding Judge:
Date of Hearing:
Plaintiff's Attorney:
Defendant's Attorney:
Defendant Allstate Insurance:
Court Reporter:

Deadra L. Jefferson
May 12, 2015
Pamela Mullis, Esq.
Morgan Templeton
Johnston Cox
Denise Lauder

This matter came before the Court on May 12, 2015, on Liberty Mutual Fire Insurance Company's ("LMFIC"), Motion to Quash the Plaintiff's "Execution Against Property" ("writ") filed February 9, 2015. The Plaintiff's writ seeks to have the Sheriff execute against property owned by LMFIC arising out of a judgment entered against the Defendant on August 16, 2012, and a subsequent costs order entered on January 27, 2013, as well as an order of costs from the Court of Appeals dated December 22, 2014. The matter was fully briefed by the parties in advance of the hearing. After careful consideration of the materials before the Court and the arguments of counsel, the court grants LMFIC's motion and makes the following findings of fact and conclusions of law.

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I. FINDINGS OF FACT & PROCEDURAL HISTORY

On May 21, 2010, the Plaintiff Levern McCray ("Plaintiff") filed a Summons and Complaint in the South Carolina Court of Common Pleas for the Ninth Judicial Circuit, Berkeley County, identified as Civil Action Number 2010-CP-08-1801, and captioned as *Levern McCray vs. Jose W. Valle* (hereinafter the "Liability Lawsuit"). The Liability Lawsuit alleged that Jose W. Valle ("Valle") was responsible for causing an automobile collision between Plaintiff and Valle wherein Plaintiff suffered various alleged injuries. LMFIC was not a party Defendant in the Liability Lawsuit. Rather, LMFIC was Plaintiff's uninsured motorist coverage ("UM") carrier and participated in the defense of the Liability Lawsuit.

On August 16, 2012, following a four-day trial, a Berkeley County jury rendered a verdict in favor of the Plaintiff in the amount of \$500,000.00 in actual damages and \$147,000.00 in punitive damages. See Judgement. The undersigned served as trial judge and entered judgment against Valle in the amount of \$647,000.00, and was filed on August 16, 2012. Id. LMFIC was not identified as a party to the judgment in the Liability Lawsuit. Id. The Form 4 Order indicates that "this order ends . . . the case". Id.

On January 14, 2013, the undersigned issued an Order for Costs and Interests Pursuant to Plaintiff's Offer of Judgment in the Liability Lawsuit. The Order was filed on January 17, 2013. See Order. The Order for Costs and Interests provided that the Plaintiff was entitled to \$3,247.01 in costs and \$77,569.10 in interest. Id. LMFIC was not identified as a party to the Order for Costs and Interests in the Liability Lawsuit. Id.

On May 19, 2014, the Plaintiff filed a civil action against LMFIC in the Circuit Court of Richland County, South Carolina, as Case No. 2014-CP-40-3227 (hereinafter "Bad Faith Lawsuit"). LMFIC was thereafter served on May 28, 2014. On June 27, 2014, the case was

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removed to the United States District Court where it remains pending. In relevant part, as part of the Bad Faith Lawsuit, the Plaintiff specifically alleges that she is entitled to recover damages from LMFIC as a direct result of the State court's Order for Costs and Interest. Complaint at ¶ 15. LMFIC denies any liability for those costs beyond the limits of its insurance coverage and seeks declaratory relief on that issue.

On September 18, 2014, the Plaintiff filed a Motion to Enforce Order of Judgment and Rule to Show Cause in the Liability Lawsuit (hereinafter "the Rule"). The Rule was filed against LMFIC and Allstate Insurance Company ("Allstate"). See Motion. The Rule was denied by Order of Judge Kristi Harrington on December 1, 2014. See, Order. On January 27, 2015, the Plaintiff filed the writ seeking to execute against LMFIC and Allstate. LMFIC filed a motion to quash on February 9, 2015.

II. LAW & ANALYSIS

"A judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money." Home Port Rentals, Inc. v. Moore, 359 S.C. 230, 234, 597 S.E.2d 810, 812 (Ct. App. 2004)(emphasis added). In the case at bar, the Plaintiff's judgment is against Valle, not LMFIC. To the extent the Plaintiff seeks to execute on the judgment, he must execute against Valle, not LMFIC. Further, it is noted that SC Code § 15-35-400 does not extend a judgment entered against a Defendant to a UM carrier that participates in the defense of that tort action pursuant to SC Code Ann. § 38-77-150. Plaintiff cites no South Carolina authority standing for such a proposition and the undersigned finds no such authority.

The Plaintiff's effort to enforce his judgment against LMFIC through a writ of execution is improper. Rule 69 of the South Carolina Rules of Civil Procedure provides that:

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Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be as provided by law. In the aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for obtaining discovery. S.C.R.C.P. 69 (emphasis added).

The Plaintiff has filed a writ of execution to enforce the State Court's judgment against a non judgment creditor. Home Port Rentals, Inc. v. Moore, 359 S.C. 230, 597 S.E.2d 810 (Ct. App. 2004). Plaintiff should proceed with Supplemental Proceedings against Valle to the extent he wants, but not against entities to which he possesses no judgment. See Ex parte Wilson, 367 S.C. 7, 14, 625 S.E.2d 205, 209 (2005).

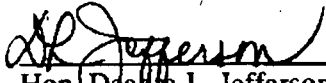
Finally, to the extent the Plaintiff's argument seeks to change the scope of the judgments previously entered in this case, this argument is without procedural support. "[W]hile a court may correct mistakes or clerical errors by its own process to make it conform to the record, it cannot change the scope of the judgment." Ex parte South Carolina Dept. of Revenue, 566 S.E.2d 196, 198 n.1 (S.C. Ct. App. 2002)(quoting Dion v. Ravenel, Eiserhardt Assocs., 316 S.C. 226, 230, 449 S.E.2d 251, 253 (Ct. App. 1994); see also Ex parte Strom, 343 S.C. 257, 264, 539 S.E.2d 699, 702 (2000)("indicating a Rule 60 cannot be used to expand the scope of a judgment)). Rule 60 of the South Carolina Rules of Civil Procedure specifically provides for a party's relief from a judgment, not the enforcement of that judgment against non-parties. Id. Attempting to bind a non-party to a judgment extends beyond the relief contemplated by Rule 60. Id. Even if the relief sought were proper, which it is not, any motion to seek relief from a judgment or order "shall be made within a reasonable time, and for reasons (1), (2), and (3), not more than one year after the judgment." See Brinkley v. Gregory K. Martin, ASL, Inc., 2006

WL 7287050 (Ct. App. 2006); S.C.R.C.P. 60(b). "The one year limit for motions pursuant to Rule 60(b)(1)-(3) is an absolute time limit." Coleman v. Dunlap, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992)(emphasis added).

Conclusion

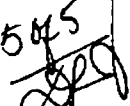
Based on the Court's thorough review of the record before it, the arguments of counsel, and applicable law, LMFC's motion to quash must be Granted.

AND IT IS SO ORDERED!



Hon. Debra L. Jefferson
Circuit Court Judge
Ninth Judicial Circuit

June 4, 2015
Charleston, South Carolina
At Chambers

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STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

**ORDER
FOR COSTS AND INTEREST
PURSUANT TO
OFFER OF JUDGMENT**

2013 JAN 17 PM 1:10
CLERK OF COURT
BERKELEY COUNTY, SC

Date of Hearing: September 11, 2012
Presiding Judge: Honorable Deadra L. Jefferson
Plaintiff's Attorney: Pamela R. Mullis, Esquire
Defendant's Attorney: Julian K. Allen, Esquire, on behalf of Allstate

This matter came before the Court by hearing on September 11, 2012. The parties were before the Court in regard to the setting of the proper amount of costs and interest, pursuant S.C. Code Ann. § 15-35-400 in regard to Plaintiff's Offer of Judgment filed on February 15, 2011, in the amount of \$300,000.00, and Defendant's Offer of Judgment filed on January 19, 2011, in the amount of \$135,000.00. The jury awarded the Plaintiff a total of \$500,000.00 Dollars in actual damages and \$147,000.00 Dollars in punitive damages, totaling \$647,000.00 Dollars, on August 16, 2012.

COSTS PURSUANT TO OFFER OF JUDGMENT

Pursuant to § 15-35-400 of the S. C. Code of Laws for 1976, as amended; the Plaintiff is entitled to recover court costs where the Offer of Judgment filed was exceeded by the jury verdict. The jury awarded the Plaintiff for a total of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012.

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Pursuant to § 15-35-400(B), South Carolina Code of Laws 1976, as amended, "If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment."¹

In this case, Plaintiff obtained a verdict in excess of the offer of judgment. Trial costs including court filing fees, deposition witness attendance fees, including mileage and service of necessary subpoenas, and trial witness fees, including mileage and service of necessary subpoenas are all recoverable costs pursuant to S.C Code § 15-35-400(B). Black v. Roche Biomedical Labs., a Div. of Hoffman-LaRoche, Inc., 315 S.C. 223, 229, 433 S.E.2d 21, 25 (Ct. App. 1993); Belton v. State, 330 S.C. 422, 499 S.E.2d 225 (Ct. App. 1998). The South Carolina Supreme Court has decided "[c]osts and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute." Oliver v. S.C. Dep't of Highways and Public Transp., 309 S.C. 313, 422 S.E.2d 128, 131 (1992). While a "prevailing party *shall* ordinarily be entitled to recover certain costs and disbursements[,] [s]uch costs and disbursements do not, however, include attorney fees²." Black, 315 S.C. at 224, 433 S.E.3d at 227. Further, Rule 54, SCRCP and Rule 68, SCRCP do not create a right to recover attorney's fees without authorization of statute. S.C. Code Ann. § 15-35-400(B) does not create a right to recover attorney's fees if an offeror obtains a favorable judgment.

Pursuant Rule 45(b)(1), SCRCP, the recoverable costs for a subpoenaed witness includes a \$25.00 attendance fee per day and mileage. Because the Plaintiff was not subpoenaed to appear at his deposition, his attendance fee and mileage are not recoverable. Regarding transcript costs, case law establishes "the cost of a transcript or copy of the evidence, or of a part thereof,

¹ S.C. CODE ANN. § 15-35-400(B) (1976).

² As attorney's fees are not recoverable costs, Ms. Mullis' mileage to and from depositions is not recoverable.

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obtained for the convenience of the parties or their counsel, cannot be taxed as part of the costs."

South Carolina Pub. Serv. Auth. v. Spearwant Liquidating Co., 201 S.C. 207, 207, 22 S.E.2d 252, 254 (1942) (quoting 20 C.J.S. *Costs* § 249). As the Plaintiff has identified no statute or rule of court that provides for the award of transcript costs, such costs are not recoverable. Likewise, the Plaintiff has not identified a rule of court or statute providing for witness attendance fees in excess of that provided for in Rule 45(b)(1), SCRPC. "Fees for expert witnesses, beyond the ordinary fees authorized for witnesses generally, are not taxable as costs unless there is a statute specifically allowing such an expense." Oliver, 309 S.C. at 319, 422 S.E.2d at 132. As no statute provides otherwise, Rule 45(g), SCRPC "places a fixed dollar amount on witness fees in the amount of \$25.00 per day plus mileage." Id (quoting 20 C.J.S. *Costs* § 116 (1990)).

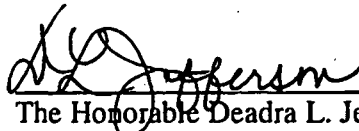
The Plaintiff is entitled to the following costs: Court filing fees of \$50.00; Deposition costs, for witness attendance fees and mileage, totaling \$65.50: Trooper Reginald Thomas - \$35.00, and Heather Dailey - \$30.50; Expenses of witnesses at trial: Dr. Green B. Neal - \$142.66, Dr. Oliver G. Wood - \$210.60, Trooper Reginald Thomas - \$64.96, Timothy Craven - \$52.75, Process Service for Timothy Craven - \$165.00, George Williams - \$50.53, Clyde Cochran - \$67.18, Process Service for George Williams/Clyde Cochran - \$124.88, Nathan Washington - \$104.92, Harry White - \$107.14, Leon Goodman - \$110.47, Michael Lewis - \$92.71, Marvin Mosely - \$353.56, Jennifer Stayton, RN - \$35.00; SLED witnesses: Doris Yarbrough, Pat Crooks, Kimberly Meres - \$1,449.15. The total for expenses of witnesses at trial is \$3,131.51. Therefore, Plaintiff is entitled to costs from the date of the Offer of Judgment in the amount of Three Thousand Two Hundred Forty Seven Dollars and One Cent (\$3,247.01)

INTEREST PURSUANT TO OFFER OF JUDGMENT

With respect to interest, S. C. Code § 15-35-400(B)(2) provides for "... eight percent interest computed on the amount of the verdict or award from the date of the offer."³ The jury awarded the Plaintiff a verdict of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012, for which he is entitled to Eight percent (8%) interest from the date of the offer until the date of the verdict. As 547 days have elapsed between the date of the offer of judgment, February 15, 2011, and the date of the verdict, August 16, 2012, the total amount of interest owed equals Seventy Seven Thousand Five Hundred Sixty Nine Dollars and Ten Cents (\$77,569.10).

AND IT IS SO ORDERED.

January 14, 2013
Charleston, South Carolina,


The Honorable Deadra L. Jefferson
Chief Administrative Judge

³ S.C. CODE ANN. § 15-35-400(B)(2) (1976).

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STATE OF SOUTH CAROLINA
COUNTY OF Berkeley
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-08-1801

Levern McCray

Jose W. Valle

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This case came before the Court on Plaintiff's Motion to Enforce Order of Judgment and Rule to Show Cause on October 22, 2014. Under SCRPC 69, the Court hereby finds that a writ of execution, together with supplementary proceedings, is the proper procedure to enforce the underlying judgment. Plaintiff's instant motion is hereby DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge
SCRPC Form 4C (03/2013)

2151
Judge Code

12/1/14
Date
Page 1

LED 710
15

For Clerk of Court Office Use Only

This judgment was entered on the 1 day of Dec, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 1 day of Dec, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Mary P. Brown/BW
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
Plaintiff,)
)
vs.)
)
Jose W. Valle,)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

20 10 -CP-08-1801

SUMMONS
(Personal Injury)
(JURY TRIAL REQUEST)

FILED
2010 MAY 21 PM 3:53
CLERK OF COURT
BERKELEY COUNTY, S.C.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribed, Mullis Law Firm, 1229 Elmwood Avenue, Post Office Box 7757, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



J. Marvin Mullis, Jr.
Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

Columbia, South Carolina
May 12, 2010

JURY TRIAL REQUESTED

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
Plaintiff,)
)
vs.)
)
Jose W. Valle,)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2010-08-1801

COMPLAINT
(Personal Injury)
(JURY TRIAL REQUESTED)

FILED
2010 MAY 21 PM 3:53
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

The Plaintiff above named, complaining of the Defendant herein, would respectfully show unto the Court:

1. The Plaintiff, Levern McCray, is a citizen and resident of the Kershaw County, State of South Carolina.

2. The Defendant, Jose W. Valle, is upon information and belief, a citizen and resident of the Berkeley County, State of South Carolina.

3. On or about December 20, 2008, the Plaintiff was traveling east on 5-8-748 in or about Moncks Corner, South Carolina. The Defendant, who was driving under the influence, was traveling west on 5-8-748 and crossed the center line into the eastbound lane and struck Plaintiff's vehicle causing a collision between the two vehicles and the damages of the Plaintiff.

4. The aforementioned collision was a direct and proximate result of the negligence and the recklessness of the Defendant as follows:

- a. In driving under the influence;
- b. in pulling into the Plaintiff's lane of travel;



- c. in speeding;
- d. in failing to maintain a proper lookout;
- e. in operating his vehicle in an unsafe manner;
- f. in failing to use the degree of care and caution a reasonable and prudent person would have used under the same or similar circumstances;
- g. and in such other particulars as the evidence at trial may show.

5. As a direct and proximate result of the negligence and recklessness of the Defendant, the Plaintiff was injured as follows:

- a. suffered traumatic and permanent injury to his left ankle at the fibular and tibia, right thumb, left shoulder, left knee, left foot, left leg and left hip;
- b. incurred substantial medical expenses and will continue to incur such expenses in the future;
- c. suffered severe pain and mental anguish and will continue to so suffer in the future;
- d. suffered an impairment in his ability to enjoy life; and
- e. suffered a loss of wages and an impairment in her ability to earn wages in the future.

6. As a result of the negligence and recklessness of the Defendant which injured the Plaintiff, he is informed and believes he is entitled to recover actual and punitive damages against the Defendant.

WHEREFORE, the Plaintiff prays for judgment against the Defendant in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars, actual and punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

Columbia, South Carolina
May 12, 2010

JURY TRIAL REQUESTED.



J. Marvin Mullis, Jr.
Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
LEVERN MCCRAY,	)	Civil Action No. 10-CP-08-1801
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER
	)	(Jury Trial Requested)
JOSE W. VALLE,	)	
	)	
Defendant.	)	
	)	

The undersigned, as Attorneys for Liberty Mutual Fire Insurance Company, hereby notifies and advises this Court, the Plaintiff above-named, and his attorney, that they are appearing on behalf of Liberty Mutual Fire Insurance Company, an insurance carrier which is alleged to provide underinsured motorist coverage to the Plaintiff. Liberty Mutual Fire Insurance Company specifically reserves and does not waive any rights pursuant to its policy of insurance, including the applicability of underinsured motorist coverage to this action and/or whether or not underinsured motorist coverage is included as part of this policy.

In the event Defendant's liability insurance carrier has not answered and/or appeared on behalf of Defendant, Liberty Mutual Fire Insurance Company, an alleged UIM Carrier, appearing on behalf of Defendant Felix Albert Turner, and answering Plaintiff's Complaint herein pursuant to S.C. Code § 38-77-160, would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Defendant lacks sufficient knowledge and information upon which to form

a belief as to the allegations contained in Paragraph 1 of the Complaint, and therefore, denies same and demands strict proof thereof.

2. Defendant lacks sufficient knowledge and information upon which to form a belief as to the allegations contained in Paragraph 2 of the Complaint, and therefore, denies same and demands strict proof thereof.

3. Defendant lacks sufficient knowledge and information upon which to form a belief as to the allegations contained in Paragraph 3 of the Complaint, and therefore, denies same and demands strict proof thereof.

4. Defendant denies the allegations contained in Paragraph 4 of the Complaint, including all subparagraphs, and demands strict proof thereof.

5. Defendant denies the allegations contained in Paragraph 5 of the Complaint, including all subparagraphs, and demands strict proof thereof.

6. Defendant denies the allegations contained in Paragraph 6 of the Complaint, and strict proof thereof is demanded

7. Defendant denies the allegations contained in the "Wherefore" Paragraph of the Complaint, which is the remainder of the Complaint, and demands strict proof thereof.

8. Defendant denies each and every allegation of the Complaint not otherwise admitted, modified, or explained.

FOR A SECOND DEFENSE
(Comparative Negligence Barring Recovery)

9. Defendant pleads the doctrine of comparative negligence and alleges that the negligence and/or recklessness of the Plaintiff was greater than any negligence which may be established against the Defendant, and therefore, Plaintiff is barred from

recovery.

FOR A THIRD DEFENSE
(Comparative Negligence Percentage of Negligence)

10. Defendant pleads the doctrine of comparative negligence and alleges that the negligence and/or recklessness of the Plaintiff was greater than any negligence, if any, which may be established against the Defendant, and therefore, the Plaintiff is barred from recovery. Defendant further alleges that any injury and damage sustained by the Plaintiff was due to and caused by the negligence and/or willfulness of the Plaintiff, combining, concurring and contributing with the negligence and/or willfulness, if any, on the part of the Defendant, and that any amount of recovery awarded to the Plaintiff for the alleged injuries and damage shall be reduced by the Court based on the percentage of negligence and/or willfulness attributed to the Plaintiff.

FOR A FOURTH DEFENSE
(Failure to State a Claim)

11. Defendant would respectfully show that each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted. Plaintiff's Complaint should therefore be dismissed pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

FOR A FIFTH DEFENSE
(Punitive Damages)

12. Defendant would show the claims of the Plaintiff for punitive damages against the Defendant cannot be sustained, because any award of punitive damages under South Carolina law by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of the punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by the

applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the resident, wealth, and corporate status of Defendant, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards, would violate Defendant's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the South Carolina constitutional provisions providing for due process and equal protection, and would be improper under the common law and public policies of the State of South Carolina.

FOR A SIXTH DEFENSE
(Intervening and Superseding Negligence)

13. Defendant would allege and show that any injuries and damages sustained by the Plaintiff as alleged in the Complaint, which are denied, were due to and were caused and occasioned by the intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness of some other party or parties over whom the Defendant had no supervision or control, and the Defendant does plead such intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness as the direct and proximate cause of the injuries and damages sustained by the Plaintiff as alleged in the Complaint.

FOR A SEVENTH DEFENSE
(Improper Claim for Punitive Damages)

14. Punitive damages are inappropriate in this case since the Defendant did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

FOR AN EIGHTH DEFENSE
(Sole Negligence)

15. Defendant would allege and show that any injuries and damages sustained by the Plaintiff as alleged in the Complaint, which are denied, were due to and were caused and occasioned by the sole negligence, carelessness, recklessness, heedlessness, willfulness and wantonness of some other party or parties over whom the Defendant had no supervision or control, and the Defendant does plead such sole negligence, carelessness, recklessness, heedlessness, willfulness and wantonness as the direct and proximate cause of the injuries and damages sustained by the Plaintiff as alleged in the Complaint.

FOR A NINTH DEFENSE
(Sudden Emergency/Unavoidable Accident)

16. Defendant would allege and show, on information and belief, that the accident in question was the result of a sudden emergency and/or unavoidable accident which was not brought about by his negligence or want of care.

FOR A TENTH DEFENSE
(Set Off)

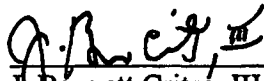
17. Defendant would respectfully show that he is entitled to a set off or credit for any settlement proceeds received by the Plaintiffs.

FOR AN ELEVENTH DEFENSE
(Reliance on Additional Defenses)

18. Defendant hereby gives notice that he intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend his Answer to assert any such defenses.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.



J. Bennett Crites, III
Post Office Box 877
78 Wentworth Street, Suite 200 (29401)
Charleston, South Carolina 29402
(843) 576-2900

ATTORNEYS FOR LIBERTY MUTUAL FIRE
INSURANCE COMPANY
ON BEHALF OF DEFENDANT
PURSUANT TO S.C. CODE § 38-77-160

September 23, 2010

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

LEVERN MCCRAY,
Plaintiff,

Civil Action No. 2010-CP-08-1801

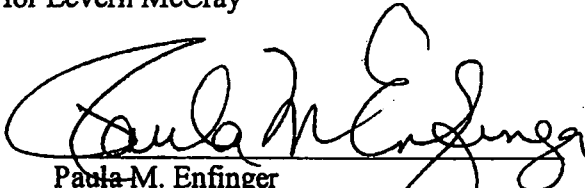
vs.

JOSE W. VALLE,
Defendant.

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of September, 2010 served a copy of the foregoing Answer (Jury Trial Requested) by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Pamela R. Mullis, Esquire
Mullis Law Firm
Post Office Box 7757
Columbia, SC 29202
Attorney for Levern McCray


Paula M. Enfinger
Legal Assistant to J. Bennett Crites, III

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
Plaintiff,)
)
v.)
)
Jose W. Valle,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Docket No.: 2010-CP-08-1801

ANSWER
(Jury Trial Demanded)

Allstate Insurance Company appears in this action pursuant to S.C. Code Ann. § 38-77-150 and respectfully shows unto the Court:

FOR A FIRST DEFENSE

1 Except as specifically admitted, qualified, or explained, Defendant denies the allegations and demands strict proof of each allegation.

2. Upon information and belief, Defendant admits the allegations of Paragraphs 1-2.

3. Defendant admits only so much of the allegations of Paragraphs 3-6 as alleged an automobile accident occurred on December 20, 2008 between vehicles driven by Plaintiff and Defendant near Moncks Corner, South Carolina. Defendant admits simple negligence for the accident, but lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations at this time; therefore, the Defendant denies the allegations and demands strict proof of each allegation.

FOR A SECOND DEFENSE
(Punitive Damages)

4. FURTHER ANSWERING, this party alleges that any award of punitive damages would violate the constitutional safeguards provided this party by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded.

FOR A THIRD DEFENSE
(Reservation of Rights)

5. FURTHER ANSWERING, this party has not had an opportunity to conduct a sufficient investigation or engage in adequate discovery touching on the circumstances of these allegations. This party intends to act as best it can to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage and gives notice of its intent to assert any further affirmative defenses that its information-gathering process may indicate is supported by fact and law, including but not limited to, defense that the action is barred in whole or in part by any applicable statute, contract, release, covenant, or the doctrine of laches. Thus, this party reserves its right to amend this pleading to assert any such defenses.

WHEREFORE, having answered, Defendant asks this Court to dismiss the Amended Complaint and grant them such relief as the Court deems just and proper.

TURNER PADGET

 for DSC

David S. Cobb

Post Office Box 22129

Charleston, South Carolina 29413-2129

Direct: (843) 576-2803

Fax: (843) 577-1629

DCobb@TurnerPadget.com

Charleston, South Carolina

October 19, 2010

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
LEVERN McCRAY,)
)
Plaintiff,)
)
)
v.)
)
JOSE W. VALLE,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Docket No.: 2010-CP-08-1801

DEFENDANT'S OFFER OF JUDGMENT

TO: J. MARVIN MULLIS, JR., ATTORNEY FOR PLAINTIFF:

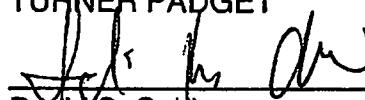
Pursuant to S.C. Code Ann. § 15-35-400, Defendant, makes, through her undersigned attorney, an Offer of Judgment to Plaintiff in this action in the amount of One Hundred Thirty-Five Thousand Dollars and No/100 (\$135,000.00), inclusive of any and all claims brought by Plaintiff. Defendant makes this Offer of Judgment for the purposes specified in Rule 68, SCRCP, and this Offer of Judgment is not to be construed as either an admission that Defendant is liable in this action or that Plaintiff has suffered any damage.

This Offer of Judgment shall be deemed withdrawn if Plaintiff does not file and serve written notice of acceptance within twenty (20) days after the service of this Offer. If deemed withdrawn, this Offer shall not be admissible as evidence at trial except in a proceeding to determine costs.

If Defendant ultimately obtains a verdict or determination at least as favorable as the rejected offer, Defendant shall move the Court to award any recoverable administrative, filing, and other Court costs incurred from the date of the offer, plus a

reduction from any judgment or award obtained by Plaintiff of 8% interest computed on the amount of the verdict or award from the date of the offer, plus such other and further relief as the Court deems just and appropriate.

TURNER PADGET



David S. Cobb

Post Office Box 22129

Charleston, South Carolina 29413-2129

Telephone: (843) 576-2803

Fax: (843) 577-1629

dcobb@turnerpadget.com

Charleston, South Carolina

January 18, 2011

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

Docket No.: 2010-CP-08-1801

Levern McCray,

Plaintiff,

v.

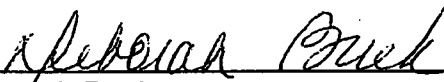
Jose W. Valle,

Defendant.

CERTIFICATE OF SERVICE

I, Deborah Buck, an employee of Turner Padgett, hereby certify that I have on January 12, 2011, served a copy of the **Defendant's Offer of Judgment**, by placing same in the United States Mail, postage prepaid, to:

J. Marvin Mullis, Jr.
Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202


Deborah Buck

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Levern McCray,)
Plaintiff,)
vs.)
Jose W. Valle,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

PLAINTIFF'S OFFER OF JUDGMENT

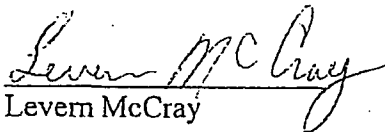
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FILED
CLERK OF COURT
BERKELEY COUNTY, SC

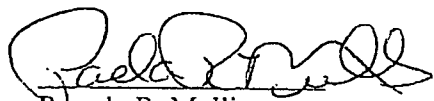
TO: DAVID S. COBB, ESQUIRE, ATTORNEY FOR DEFENDANT:

PLEASE TAKE NOTICE the Plaintiff, by and through his undersigned attorneys, pursuant to S.C. Code Ann. Section 15-35-400, hereby offers the total sum of Three Hundred Thousand (\$300,000.00) Dollars as full compromise and settlement of his claim against the Defendant for personal injury.

In addition, pursuant to Section 15-35-400 if this offer of judgment is not accepted and Plaintiff obtains a verdict or determination at least as favorable as the rejected offer, the offeror will pursue statutory costs and eight (8) percent interest computed on the amount of the verdict or award from the date of the offer. Defendant has twenty (20) days from the date

indicated below to accept this offer and, if notice of acceptance is not given by the Defendant, in writing, the offer is withdrawn and cannot be given in evidence.


Levern McCray


Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

January 31, 2011

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

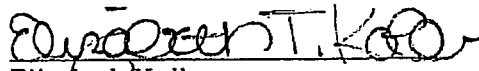
CERTIFICATE OF SERVICE

2011 FEB 15 PM 3:43
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY

The undersigned hereby certifies that she is a paralegal with the Mullis Law Firm; that a copy of Plaintiff's Offer of Judgment was served in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon, on February 14, 2011, to the following:

David S. Cobb, Esquire
TURNER PADGET
Post Office Box 22129
Charleston, South Carolina 29413

J. Bennett Crites, III, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 877
Charleston, SC 29402


Elizabeth Kolb

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF COMMON PLEAS
2010-CP-08-01801

LEVERN MCCRAY,

Plaintiff,

v.

JOSE W. VALLE,

Defendant.

TRANSCRIPT OF RECORD

September 11, 2012
Moncks Corner, South Carolina

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

A P P E A R A N C E S:

**MS. PAMELA MULLIS, ESQUIRE
REPRESENTING THE PLAINTIFF**

**MR. CHARLES ALLEN, ESQUIRE
REPRESENTING THE PLAINTIFF**

Anne Bouley Meyer, RPR
Circuit Court Reporter

1 THE COURT: This is Levern McCray versus Jose W.
2 valle, 2010-CP-08-1801. Now, the purpose of this
3 hearing, it is my understanding, that y'all could not
4 come to an agreement regarding any, I guess, costs to be
5 assessed pursuant to the statute since there were offers
6 of judgment that both sides presented prior to trial.

7 And I'm trying to remember -- the plaintiff's
8 offer of judgment was filed on February 15, 2011, and
9 that was pursuant to 15-35-400. And that offer of
10 judgment was for a total sum of \$300,000.

11 It is my recollection that the defense also filed
12 an offer of judgment; is that correct?

13 MS. MULLIS: They did, Your Honor. It was filed
14 on January 10th, 2011.

15 THE COURT: Okay. So that was before yours.

16 MS. MULLIS: It was, Your Honor.

17 THE COURT: Here it is. The defendant's offer of
18 judgment was filed January 19th, 2011, in the amount of
19 \$135,000. It is my understanding that y'all cannot come
20 to an agreement as to the import of that offer of
21 judgment such that you are able to enter a consent
22 order; is that correct?

23 MS. MULLIS: That is correct, Your Honor. And
24 part of that is the plaintiff's fault. Honestly, we
25 were just receiving our final costs yesterday afternoon

1 from some of our depositions that were taken late, and
2 some of our experts.

3 THE COURT: Okay. So y'all don't disagree then
4 as to what -- I'm a little confused?

5 MR. ALLEN: Yeah, I understand your confusion. I
6 received a phone call from Hope the week of our trial
7 asking that we submit a consent order with the
8 applicable costs and interest. I said we'll try to do
9 that. And, I guess, I followed up with Hope, and then
10 Chanda called me and said can we set a hearing on this?

11 And I thought it might be somewhat premature in
12 that I hadn't seen what costs were being sought to be
13 recovered. So I received it today, about four minutes
14 ago, and I think we are having a disagreement.

15 THE COURT: Well, what was communicated to my
16 office was not that it hadn't been received, but that
17 y'all just couldn't agree. So I apologize. I'll take
18 responsibility for any miscommunication of that.
19 Because what was reported to me was that y'all just
20 simply couldn't agree. And so I told Chanda to set a
21 hearing.

22 MR. ALLEN: Well, based on the conversations I
23 had with Ms. Mullis, I had an indication we were not
24 going to be able to agree. Now after having received
25 the package, I can agree that we will not agree.

1 THE COURT: I would imagine y'all would be able
2 to agree to the interest part of it, because that's
3 fairly cut and dry. The statute says 8 percent from the
4 date of the offer of judgment.

5 MR. ALLEN: I think we -- it depends on how Your
6 Honor is inclined to rule. I believe Ms. Mullis is
7 going to want 8 percent per annum. I think the statute
8 doesn't say per annum. And the only reason I bring it
9 to the Court's attention is that since it was a year and
10 a half, it would really be tentatively 12 percent.
11 Because it would be 8 percent on the first year, and
12 then another 6 months. So half of --

13 THE COURT: Usually what lawyers do is they break
14 down the 8 percent on a per diem basis and they just add
15 it up. That's the way I have seen it done.

16 In other words, you would break down what that 8
17 percent is per day, and then you calculate it per day up
18 to the date that the judgment was entered. I'm not good
19 at math, so I'm probably the wrong person to ask this
20 question. But I'm only going on the way I have seen it
21 done before.

22 MR. ALLEN: The way I think that the rule
23 contemplates is you take whatever the verdict is and
24 just multiply it by 8 percent and add it on to the
25 award.

1 THE COURT: I have never seen it done that way.

2 MS. MULLIS: If that were the case, Your Honor,
3 then we would get a total of 8 percent even if the
4 judgment were 6 months.

5 THE COURT: I think they calculate post-judgment
6 interest -- or pre-judgment interest.

7 MR. ALLEN: I guess if it's done on a per annual
8 basis it would be 8 percent per year. So if you have
9 \$100,000 offer of judgment, for example, say, and it was
10 filed 2 years before the case was tried, you get \$8,000
11 year one, and then another \$8,000 in year two, for a
12 total of \$16,000 in interest. I don't think --

13 THE COURT: I have never seen it done that way.
14 what I have seen is that you break down -- the same way
15 you do pre- and post-judgment interest. You calculate
16 this the same way. The same way the bank does it.

17 You figure out what it is per day on a per dim
18 basis, and then you apply that per day up through the
19 day of the judgment. And then it may vary. I don't
20 know what the exact amount would be.

21 MR. ALLEN: And I think we might be getting a
22 little ahead of ourselves, because I don't know what
23 interest, what amount is being sought. So we may able
24 to agree.

25 THE COURT: The rules say 8 percent. So I don't

1 -- you lost me.

2 MR. ALLEN: I agree that she is entitled to 8
3 percent.

4 THE COURT: Okay.

5 MR. ALLEN: What I'm not so sure about is how we
6 agree as to how we calculate that 8 percent, I guess, is
7 what I'm trying to say. And I haven't seen what
8 interest is being sought, and how that calculation is
9 done.

10 MS. MULLIS: That amount would be \$141.81 per day
11 for a total of 547 days totaling \$77,569.42.

12 THE COURT: How did you calculate that?

13 MS. MULLIS: That is 8 percent interest divided
14 by -- on the verdict of \$647,000, and 547 days. Because
15 February 15th, 2012 [sic], to August 16th, 2012, is 365
16 days, plus another 182 days from -- I'm sorry -- from
17 the February 15 to -- of 2011, to February 15th to 2012,
18 is 365 days. And then February 15th, 2012 to August
19 16th, 2012 is another 182 days.

20 So the first year is \$51,760. And then February
21 15, 2012 to August 16th, 2012 is another 182 days. So
22 we came up with another 25,809.42, for a total of
23 \$77,569.42.

24 And I would just like to point out that based on
25 opposing counsel's theory that it would be per year,

1 that if in fact an offer of judgment were filed in
2 January and a trial came up in 6 months, then the offer
3 of judgment would be a total year of 8 percent of a
4 total year, that you would have to necessarily break it
5 down or an offer of judgment would be worth 8 percent
6 and they wouldn't get the benefit of a 6-month offer of
7 judgment and would owe 8 percent on a full year. They
8 don't get it both ways.

9 So they either owe a full year and a partial
10 year, or the other way -- they either owe a year and a
11 half. Do you understand what I'm saying?

12 MR. ALLEN: Yeah. I guess it's to her advantage
13 that the offer of judgment was filed over a year,
14 because if it had been only 6 months, it would have been
15 tentatively 4 percent, not 8 percent.

16 MS. MULLIS: Right.

17 MR. ALLEN: And I think that the rule says that
18 it should just be 8 percent flat.

19 THE COURT: That's not how -- I have never seen
20 it done that way. I have always seen it calculated the
21 same way you calculate pre- and post-judgment interest,
22 which you do a per dim rate, the same way the bank would
23 do it.

24 Otherwise, it defeats the purpose of the rule.
25 The purpose of the rule is punitive. Basically it is to

1 penalize a person who did not make an accurate
2 assessment of their position, and to reward the person
3 for the loss of money and the loss of the use of their
4 money during the time that the case was pending.

5 So I have never seen it calculated the way you
6 are suggesting. Every order that I have ever received
7 doing it, the lawyers have always agreed that it's
8 almost kind of like on a per dim basis, and they
9 designate what that daily rate is, and then they
10 calculate that.

11 Basically they break it down per year, because
12 that's the way you calculate the additional days. But I
13 have always seen it done the same way you do pre- and
14 post-judgment interest.

15 So I really don't -- but again, I'm not good at
16 math, so I really don't know exactly how much -- days
17 like this, I had a great math whiz of a clerk one time.
18 Some days I feel like calling her up. She was a math
19 whiz. She could do it off the top of her head.

20 MR. ALLEN: Plaintiff's lawyers always have
21 calculators.

22 MS. MULLIS: Yes, we do.

23 THE COURT: I don't think you can do it the way
24 you are suggesting. But I have always seen it done
25 where it's broken down and then applied. The same way

1 the statute works where the Supreme Court sets the
2 judgment rate every year, that it's calculated that very
3 same way.

4 what else is the rub other than the amount of the
5 interest?

6 MR. ALLEN: Do you have a copy of the package?

7 THE COURT: I do.

8 MR. ALLEN: I don't know if you want to go by it
9 line by line. The only thing I would say is that Rule
10 68(B) says that the offerer shall be able to recover any
11 administrative, filing or other courts costs. And I
12 agree that she's entitled to the filing fees, and would
13 be entitled to subpoena fees and mileage for witnesses,
14 but --

15 THE COURT: And service fees.

16 MR. ALLEN: Yeah. But clearly some of this other
17 stuff I don't think is --

18 THE COURT: What other stuff are you referring
19 to?

20 MR. ALLEN: Deposition costs.

21 THE COURT: I don't think the rules -- or the
22 case law contemplates that. It specifically says that
23 it's court costs. That would be filing fees, service of
24 process fees, motion fees, administrative-type costs,
25 but not attorney's fees or -- it's no different than any

1 other case where you are awarded costs.

2 There's a Supreme Court case that interprets the
3 definition of costs.

4 MS. MULLIS: And I will refer the Court to the
5 Black case where the court contemplates deposition
6 costs.

7 THE COURT: What's the citation for that?

8 MS. MULLIS: It is 315 S.C. 223.

9 MR. ALLEN: I have an extra copy.

10 THE COURT: I don't kill trees. I'm trying to
11 reduce my carbon footprint.

12 MS. MULLIS: It's my understanding from the case
13 law that as long as we can find some basis, statutory
14 basis, that we can claim the costs. So we broke it down
15 with an affidavit supporting the costs stating that --
16 and that affidavit is the first document, and it's a
17 three-page document signed by myself, and attaching all
18 of the costs laid out and all of the bills for all of
19 the costs.

20 So the deposition costs are under number 2,
21 laying them out. The deposition costs are referred to
22 in the Black case on page -- under subsection -- I guess
23 page 25, where they refer back to them. But Rule
24 30(A)(2) provides a per diem of \$25 per day and mileage
25 for witnesses attending depositions.

1 So we are permitted to assess or collect costs
2 under judgment under Rule 54 for costs or witness fees
3 or depositions, and costs of witnesses and mileage
4 actually traveled. And fees in service of process.

5 And pursuant to Belton versus State, 330 S.C.
6 422, we are permit to collect all taxable costs that
7 shall include all sanctions, including reasonable
8 attorney's fees if ordered -- which I don't think apply
9 here --

10 THE COURT: Don't apply to this case.

11 MS. MULLIS: -- if ordered among a party, and
12 prevailing party under any statute of or rule of civil
13 procedure are taxable costs that we are permitted to
14 collect pursuant to the rule.

15 So then we refer to any rule that allows us to
16 collect any costs under any statute or any costs.

17 THE COURT: You are saying these depositions,
18 that you would be -- under your theory, you would be
19 entitled to get reimbursement for the witness fee and
20 the mileage and that's it?

21 MS. MULLIS: The witness fee, the mileage, and
22 the costs of the actual deposition, or any deposition
23 taken after the offer of judgment.

24 THE COURT: I'd have to see some real black
25 letter precedent telling me that. I have never had it

1 interpreted that way, and I have never awarded it. And
2 I've never had a plaintiff's lawyer ask for it.

3 MS. MULLIS: There isn't any in South Carolina.

4 THE COURT: You know, I have had a lot of offers
5 of judgment, it's done routinely. But I have never had
6 a lawyer ask for that. I've only had them ask for --
7 because there is a case on point that says all you're
8 entitled to is your service of process, it's to be
9 strictly construed that it's not a substitute for you to
10 collect costs that are normally incurred in litigation,
11 or attorney's fees.

12 MS. MULLIS: Yes.

13 THE COURT: Then we still strictly stand by our
14 precedent which is, you know, you only get certain
15 things under certain circumstances; that being if it's
16 legislated, or if it is -- or if you fully agree to it
17 in a contract in an arms-length transaction.

18 But I'd have to see some black letter precedent
19 that says you are entitled to the cost of depositions.
20 I think that under a liberal construction of the rule,
21 you are entitled to any witness fees you've paid, any
22 mileage you've paid to those witnesses, but I don't
23 think you're entitled to a deposition transcript.
24 That's the ordinary cost of litigation.

25 But I'm going to research it and see what we come

1 up with.

2 Did you have any case law?

3 MR. ALLEN: Just that the Black case that she
4 referenced. In that case the trial judge actually
5 denied the recovery of those deposition fees and costs,
6 and the Court of Appeals affirmed. So I find it odd
7 that we are relying on a case that said those costs were
8 not recoverable.

9 THE COURT: It's a PCR; isn't it?

10 MR. ALLEN: I think it was a medmal case out of
11 Jasper.

12 THE COURT: Black versus State?

13 MS. MULLIS: Black was a medmal case.

14 THE COURT: Can you give me the citation on that
15 one again? Because I just looked at it a while ago.

16 MS. MULLIS: 315 S.C. 223, it's a 1993 case.

17 THE COURT: I have got that one. Why are y'all
18 calling it Black? It's Roche -- oh, I'm not looking at
19 the full caption. That might help.

20 MS. MULLIS: It's a mess. Black versus -- and
21 then they reversed it --

22 THE COURT: It's like 20 different names.

23 MS. MULLIS: Yes, ma'am.

24 THE COURT: I only looked at the second half of
25 the caption. I apologize.

1 MS. MULLIS: And then the only other one that
2 talks about costs is Belton versus State, which is
3 330 S.C. 422.

4 THE COURT: That's a PCR though; isn't it?

5 MS. MULLIS: Yes, ma'am. And that's the one that
6 talks about the taxable costs have to either be related
7 to a statute or a rule of civil procedure that are
8 taxable.

9 THE COURT: But that wouldn't be applicable in
10 this case because PCR's are regulated by statute, and
11 this says specifically what you can recover and what's
12 compensable and what isn't, what you can be reimbursed.

13 And that's even changed now because the statutory
14 framework on that has changed, and all of that authority
15 has been delegated to indigent defense.

16 MS. MULLIS: And they're both referring back to
17 Rule 54 on the judgment costs.

18 Black is helpful because it lays out -- and
19 that's, again, what we did is we laid out the entire
20 affidavit under the same deposition, copy costs,
21 expenses of witnesses that was used in the Black
22 decision just for simplicity's sack.

23 THE COURT: Mr. Allan, you concede that she would
24 be entitled to the filing fees, the cost of process, any
25 motion fees, costs for any witnesses and their mileage,

1 correct?

2 MR. ALLEN: If you are defining the costs of any
3 witnesses the \$25 witness fee, yes.

4 THE COURT: I'm talking about the witness fee and
5 the mileage that's required by the rule. Aren't you
6 required to pay the mileage as well?

7 MR. ALLEN: Yes. I agree mileage, \$25 witness
8 fee, filing fees, motion fees, service of process.

9 THE COURT: Why would you be entitled to the
10 costs of expert? Are these the same thing, mileage fees
11 and witness fees for the expert witnesses?

12 MS. MULLIS: They're expert fees.

13 THE COURT: Like, what do you mean?

14 MS. MULLIS: We listed every cost we could come
15 up with.

16 THE COURT: You are going to have to be more
17 specific than that. When you list \$2,111, what does
18 that constitute? I have no way of knowing what that is.

19 MS. MULLIS: There is an itemized bill attached
20 from the doctor.

21 THE COURT: What, is that his hourly fee he
22 charged for the deposition?

23 MS. MULLIS: It is. And we're entitled --

24 THE COURT: I don't think that's a cost.

25 MS. MULLIS: -- pursuant to Rule 26(B)(4)(c), we

1 are entitled to reasonable fees for time and expenses
2 and travel and the opinion of an expert pursuant to the
3 South Carolina Rules of Civil Procedure.

4 THE COURT: Where does it say that in the rule?
5 What is the exact language of the rule?

6 MS. MULLIS: 26(B)(4)(c). In deposing, the party
7 seeking discovery shall pay the expert a reasonable fee
8 for time and expenses spent in travel and responding to
9 discovery. Upon motion, the Court may require the party
10 seeking discovery to pay the other party a fair portion
11 of the fees and expenses reasonably incurred by the
12 latter party in obtaining facts and opinions from the
13 expert.

14 MR. ALLEN: I think that rule is designed for if
15 I want to depose her expert, I have got to pay him for
16 his time

17 THE COURT: Yeah, I think that's a stretch. That
18 rule stands for the proposition that the expert is to be
19 paid, not that you are to be paid. And the Black case
20 is very clear that you have to point to a statute or
21 rule that supports you being reimbursed or you being
22 paid.

23 And that rule does not stand for that
24 proposition. That rule simply says that if you are
25 going to take the time of an expert, you've got to pay

1 him, which inures to their benefit, not yours. It goes
2 both ways.

3 And it says actually that if the Court deems it
4 appropriate, it can split those costs if that's -- it
5 gives you a lot of discretion, but I don't think it
6 stands for the proposition that you get reimbursed and
7 that's an offer of judgment.

8 MS. MULLIS: And obviously we don't pay the
9 experts, these are fees being collected on behalf of my
10 client. We are asking that opposing counsel, as part of
11 this offer of judgment, pay the plaintiffs for the time
12 that the expert had to come into court and prove the
13 case because the defendant didn't pay.

14 THE COURT: There is no rule that provides for
15 that. The discovery rules is the rule of discovery.
16 The fact that you have to pay an expert, that's a matter
17 of contract between you and the expert. Because all he
18 is entitled to under the rules is his witness fee and
19 his mileage.

20 I don't think there is any rule that says you
21 have to pay him his hourly rate at trial, is there?

22 MS. MULLIS: I think that that's what that rule
23 says. If he wants an opinion from an expert, that's
24 what he has to get.

25 THE COURT: That rule applies to discovery, it

1 does not apply to trial. I'm not aware of any rules in
2 the rules of civil procedure that talk about you paying
3 an expert at trial. There is a rule that deals with
4 mileage, there is a rule that deals with appearance fees
5 and it limits it.

6 But I'm not aware of anything in the rules -- and
7 again, my memory is not infallible, but I'm not aware of
8 anything in the rules that say you are required by rule
9 or statute to pay an expert \$400 an hour to come to
10 court.

11 That's a matter of contract between you and the
12 expert. That's a bargain that you make with him to
13 procure his testimony. But I don't think that that's
14 something that any of us can make you pay him, except if
15 he sues you pursuant to your contract. And that's a
16 whole separate cause of action.

17 Because then he'll say, I contracted with them to
18 do certain things, and they breached by not paying me.
19 That doesn't have anything to do with the rules. I'm
20 not aware of any statute or rule that requires, pursuant
21 to a trial subpoena, for you to pay an expert 4-, 5-,
22 you know, I have heard of experts being \$1,000 an hour.

23 But I'm not aware of anything that says that I
24 would be able to enforce that absent him suing you. And
25 experts have sued lawyers.

1 MS. MULLIS: Yes, ma'am.

2 THE COURT: I don't know if it's a good course of
3 action, but they do. I have seen a few of them where
4 they have gotten -- more so in construction cases than
5 anything else, where somebody gets mad at somebody and
6 they don't pay the mold expert, you know.

7 Normally they don't sue each other, they just
8 say, I will never work for you again and I will just,
9 you know, take that hit. And then they spread it among
10 their colleagues, and then the person can't ever get an
11 expert again. Depending, of course, on everybody's
12 loyalties to one another, that being the expert's as
13 well as that profession.

14 I think clearly you are entitled to the expert
15 fee, meaning the witness fee; you are entitled to be
16 reimbursed for the mileage; you're entitled to all your
17 clerk of court filing fees; any costs of service
18 expenses. But I don't think you get the cost of a
19 transcript, and I don't think you get the cost of paying
20 for an expert to come to court and testify.

21 And the case is very clear. You have to point to
22 a deposition -- I mean, a statute or a rule that
23 specifically entitles you to reimbursement. It's no
24 different than the same logic in the contract where -- I
25 mean, same logic with attorney's fees. Absent a statute

1 or contract or provision, you are not entitled to
2 recover.

3 And so, you know, the precedent basically
4 recognizes that unless people contract with one another
5 to be reimbursed for something as a result of certain
6 actions, or based on a statute that the law confers a
7 right, we don't just get to independently create it.

8 And the rules that you've cited deal with the
9 discovery, they don't deal with -- they don't deal with
10 the cost of litigation. It basically says, if you are
11 going to use somebody's expert's time, you have to pay
12 them for it. But at trial, they're only entitled to
13 recover that witness fee, which is poultry, and their
14 mileage, which, you know, depending on the distance can
15 amount to a good deal of money.

16 MS. MULLIS: So the experts can get a \$25
17 appearance fee and the mileage?

18 THE COURT: Pretty much. I think that's what the
19 case law supports. I haven't seen anything other than
20 that to give me any other impression. And I need to
21 research some more.

22 Because there is a case on point out of the
23 Supreme Court that says -- and I don't remember it off
24 the top of my head, I will have to look for it -- that
25 says -- that defines what costs are. And it

1 specifically says, it is not attorney's fees, it is not
2 all these other things. That the rules contemplate that
3 it is, you know, your service fees, your cost of process
4 fees.

5 This is not a substitute almost for the Court to
6 impose a contractual provision for the defense counsel
7 to absorb all the costs of your litigation, because
8 that's not what the rule says. And if I were to
9 interpret it the way that you have argued it or posited
10 it to the Court, basically if you ever made an offer of
11 judgment and you lost, then basically the opposing side
12 would have to absorb all of your litigation costs.

13 And that's not -- and I'm certain your position
14 would be different if Mr. Allen had prevailed. You'd
15 be, oh, no, that is not what the rule says. We pay
16 service of process fees, and we pay filing, you know,
17 filing fees, and we will pay some witness fees and some
18 mileage, but that's all the rule requires.

19 And I can't fault you for trying to collect as
20 much as you can. It's a novel argument, but I don't
21 think it's supported.

22 Yes, sir.

23 MR. ALLEN: The only thing that -- again, I
24 received this package about 10 minutes ago. The thing
25 that's a little concerning to me and I don't really

1 understand is the SLED figure for witness fee and
2 mileage is like \$1,500.

3 THE COURT: Where is that at?

4 MR. ALLEN: It's at the top of page 3 of 3.

5 THE COURT: Okay. I have I have 3 of 3, I have
6 FOIA, SLED.

7 MS. MULLIS: It is under subsection 4.

8 MR. ALLEN: See, it says SLED for \$1,449?

9 THE COURT: Wait, I have SLED, FOIA, 424.20.

10 MS. MULLIS: Right above that.

11 THE COURT: Oh, \$1,449.15. What is that for?

12 MR. ALLEN: That's what I don't know.

13 THE COURT: You don't know?

14 MS. MULLIS: We do not.

15 THE COURT: Was that for copy costs from SLED?

16 MS. MULLIS: It was not. It was the appearance
17 fee for the three witnesses produced by SLED.

18 THE COURT: Yeah, because you have to take them
19 out of their office.

20 MS. MULLIS: I did.

21 THE COURT: Yeah. I didn't realize they charge
22 -- I wonder if they charge in criminal court for that
23 when they have to come all around the world to testify?

24 MS. MULLIS: I would be interested in seeing
25 that.

1 THE COURT: But, you know, by statute they might
2 be required to come on criminal cases. I don't know, I
3 have never really researched it. I don't know what the
4 -- since by statute they're required to do certain
5 things. I'm wondering if they are required to appear
6 under those circumstances, I'm not sure. I've never
7 really asked. I just always thought they showed up.

8 So they just sent you a bill for \$1,449.15?

9 MS. MULLIS: With little explanation of it that
10 we have been unable to get good clarification on.

11 MR. ALLEN: And by little, she means none.

12 THE COURT: That's interesting. I don't know
13 that -- more and more, of course, they're the only
14 certified lab in the state to do certain testing. You
15 have more and more local labs that are able to do their
16 own testing on certain kinds of drugs like Ecstasy and
17 marijuana, things like that, so that they don't have to
18 send all that stuff to SLED.

19 But there are certain things they have to do like
20 DNA and all of that other stuff. But I wonder if they
21 charge -- I have no clue. That's an interesting
22 question.

23 MS. MULLIS: They're not experts. They weren't
24 qualified as experts.

25 THE COURT: Oh, they sent just for your chain

1 witnesses, not for your expert that came to testify?

2 MS. MULLIS: That's correct. The expert was paid
3 separately.

4 THE COURT: The SLED expert?

5 MS. MULLIS: Yes, Your Honor.

6 THE COURT: They charged for her too?

7 MS. MULLIS: She was paid separately. She was no
8 longer an employee of SLED.

9 THE COURT: Oh, okay. Well, wasn't one of these
10 people you talked to her supervisor?

11 MS. MULLIS: But she wasn't a witness.

12 THE COURT: I guess that's why they have that
13 provision in the statute where if you have that detailed
14 listing from their computer system you can agree to
15 exclude having to call them to testify. That's in
16 criminal cases. I don't know that that applies to civil
17 cases.

18 That's an interesting question. You didn't call
19 the director and ask him what it was for?

20 MS. MULLIS: We haven't gotten back to them.

21 THE COURT: How long were they here?

22 MS. MULLIS: Nine-and-a-half minutes. They came
23 in at 9:30, we put them up first.

24 THE COURT: I'd have to look back at my notes to
25 see exactly -- Ms. Yarborough was here on 8/14 from

1 10:12 to 10:27. Ms. Crooks was here from 10:27 to
2 10:30. Ms. Daily was by deposition. There were three
3 of them, weren't there? And Ms. Meer's was here from
4 10:31 to 10:35.

5 So basically they were here from 10:12 to 10:35.
6 Then they had to drive. I guess you paid for their
7 travel time. I didn't know they charged. It certainly
8 wasn't for mileage.

9 MS. MULLIS: It takes me two hours.

10 THE COURT: From here to Columbia? What about
11 Charleston? This is closer.

12 MS. MULLIS: It's not. Because once I get off
13 the interstate, there is a bunch of construction.

14 THE COURT: So you're saying timewise, not
15 mileage.

16 MS. MULLIS: Timewise it takes me longer to get
17 here than it does to Charleston.

18 THE COURT: That's interesting. That's a lot of
19 money with no explanation. They're a state agency.
20 They work for the public, just like I do. I would
21 imagine the head of SLED -- I would think the head of
22 SLED would be really amenable to answering that
23 question. I mean, they want to get paid. I'm sure they
24 will tell you what it's for.

25 I guess they're charging -- they must have been

1 charged or paid they're yearly salaries, though. So I
2 guess, how would you break it down? Last time I broke
3 down a circuit judge's hourly it's like \$25. That hurt
4 my feelings. And some days about \$13.

5 But I guess when you make a yearly salary, how do
6 you break down hourly? Because they are there from 8:30
7 to 5:00, or 9:00 to 5:00. I don't know how you would
8 really -- unless you divided it by 52 weeks. That
9 doesn't make sense to me.

10 I guess I'm speculating. I have no idea what
11 that would be for. And I would imagine that you would
12 need to get some clarity from them as to what it was
13 because that's the only way you can make any sort of
14 assessment as to what that cost would constitute.

15 I have just never known them to charge. I guess
16 maybe their position is different in civil case than a
17 criminal case. But it begs the question, because now
18 I'm curious, and I'm going to find out from the
19 solicitor's office whether they pay for them when they
20 come to testify. Now I'm just curious.

21 MS. MULLIS: I don't think a state agency can
22 charge a state agency for an appearance.

23 THE COURT: That's an interesting question. I
24 don't know. I'm going to find out though because like I
25 said, now I'm curious. I'm going to ask somebody in the

1 solicitor's office today, because I'm curious. But
2 again, they may not charge in a criminal case because
3 their duties are mandated by statute.

4 I don't think -- and I think certain things they
5 are mandated to do, and I'm not certain they can charge
6 for that, but it's interesting.

7 You know, I do think they charge for FOIA
8 requests and all that kind of stuff. I think they
9 charge -- the only thing I think they don't charge for
10 are background checks, and that's because the
11 solicitor's office is considered an arm of law
12 enforcement. And I think they have access to databases
13 through their systems in their office where they don't
14 get charged.

15 But I know they charge the public defender's
16 office to run a background check, that's why usually the
17 solicitor's office is kind and shares their information
18 with the public defender's office because they know that
19 it costs -- and it gets passed on to indigent defense,
20 which is already an overburdened system, so they try to
21 share that information.

22 Let me ask you this question, Mr. Allen. With
23 the Court's sort of -- because I'm going to research it,
24 and I'm going to see if I can find something on point --
25 but with that, looking at it from that perspective, do

1 you think y'all can you agree on that and come up with a
2 proposed order for me?

3 MR. ALLEN: I think so. If I understand the
4 way --

5 THE COURT: Then y'all can break down those
6 figures, and then I can compare it to what I -- once I
7 do my research and sort of cross-reference what y'all
8 do.

9 Mr. ALLEN: And I think if I understand which way
10 you are inclined to rule, the plaintiff is clearly
11 entitled to motion fees, filing fees, service of
12 process, witness mileage and the witness fees.

13 THE COURT: And, like, if you have publication
14 fees, stuff like that, because that's required. That's
15 a service of process fee if you can't find a person and
16 you have to publish. Witness fees.

17 In my estimation, a publication fee is the same
18 as if you paid a processor server to go serve somebody
19 personally. It amounts to the same thing. It's
20 accomplishing the same thing. Service is required by
21 rule and by statute.

22 MR. ALLEN: The only thing I bring to the Court's
23 attention is that the rule says any administrative
24 filing or other court costs from the date of the offer,
25 that service of process by publication I believe was

1 pre-offer.

2 THE COURT: Yeah. And I would -- of course, my
3 observations are premised on the actual language of the
4 rule. which would be whatever those demarcation lines
5 are in the rule, you need to adhere to those. But I
6 think the interest question is -- and y'all may want to
7 talk to some of your colleagues and see how they have --
8 again, I'm limited in math. I'm not going to sit here
9 and pretend to you all that I'm some math whiz because
10 I'm not.

11 But the way I have seen it done in the past is
12 the parties deal with it just like pre- and
13 post-judgment interest, and they break it down on a per
14 dim rate.

15 Mr. Dorset, have you ever done that? I hate to
16 put you on the spot. Is that how y'all -- have you done
17 it in the past?

18 MR. DORSEL: That's how I've done it.

19 THE COURT: Eight percent a year?

20 MR. DORSEL: Yeah, and break it down per day.

21 THE COURT: Per day, and then that way you can
22 apply it per day. Because then when you go past a year
23 then you can -- because that's how the bank does it.

24 MS. MULLIS: So less than a year is less than 8
25 percent?

1 THE COURT: No, it goes per day rate per day.

2 MR. DORSEL: It's sill 8 percent, but it's on a
3 per day basis.

4 MS. MULLIS: Okay. Right.

5 THE COURT: So then you do the judgment times 8
6 percent, then you break it down 365 and then you do it
7 daily.

8 But that's how I have seen it done. So I think
9 that y'all -- that should be just the math, a function
10 of math for y'all to be able to break that down. And
11 then go through -- and then see if you can find out from
12 SLED exactly what this \$1,400 is for.

13 MS. MULLIS: I will.

14 MR. ALLEN: And then do you want us to email it
15 to your law clerk?

16 THE COURT: Yeah, y'all can do that. And then
17 I'll have this package.

18 Do you want this filed, Ms. Mullis, with the
19 file?

20 MS. MULLIS: Please.

21 THE COURT: Then we will do that. This is your
22 original, isn't it?

23 MS. MULLIS: It is.

24 THE COURT: Okay. Mr. Allen, did you have any
25 response you need us to file with the file?

1 MR. ALLEN: I do not. Oh, the only thing I would
2 like to state for the record is that we had post-trial
3 motions, and the plaintiff's waived their post-trial
4 motions.

5 THE COURT: Well, this isn't really a post-trial
6 motion. I said, for the record, that y'all needed to --
7 that there was an offer of judgment and you were going
8 to need to deal with that. So I don't perceive that
9 they waived any entitlement to their costs pursuant to
10 the offer of judgment.

11 And you asked a question of my staff, I don't
12 know if you asked Chanda or Hope, I can't remember, but
13 I did a supplemental order on the punitives, and I ruled
14 on the post-trial motions on the record. So you would
15 need to get that transcript for those specific rulings
16 on that.

17 Because I don't do -- once I do it on the record
18 like that, I don't do an order. Sometimes, in some rare
19 circumstances I do, but rarely do I do that. And then I
20 will just do a Form 4 that says, post-trial motions were
21 heard and denied. But the record stands for itself
22 because, you know, I made contemporaneous rulings based
23 on whatever your grounds were.

24 MR. ALLEN: That's fine. I just needed
25 clarification, I think your supplemental order did it.

1 THE COURT: Okay.

2 MS. MULLIS: Thank you.

3 THE COURT: I'll do a little research in the
4 meantime, and we'll see what's -- but if y'all go ahead
5 and submit -- Ms. Mullis, why don't you go ahead and
6 draft something and send it on to Mr. Allen. And then
7 once y'all come to some consensus, send it on to me.

8 MS. MULLIS: Thank you.

9 THE COURT: Have a good day.

10 (Whereupon, the proceedings in this matter before
11 the Court were adjourned.)

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
PARTIAL transcript of record, and of all the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in the Circuit
Court for South Carolina, on the indicated date.

I do further certify that I am neither
of kin, counsel, nor interest to any party hereto.

-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

1

2 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
3 COUNTY OF BERKELEY) CASE NO. 2012-CP-08-1801
4 LEVERN MCCRAY,)
5 Plaintiff,) Transcript of Record
6 vs.)
7 JOSE W. VALLE,) Date: May 12, 2015
8 Defendant.) Time: 2:10, p.m.

9 * * * * *

10

11 B E F O R E:

12 The Honorable DEADRA JEFFERSON

13

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15 * * * * *

16

17 Denise J. Lauder, RPR

18 Ninth Judicial Circuit

19 Circuit Court

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A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

PAMELA R. MULLIS, ATTORNEY AT LAW
Mullis Law Firm
1229 Elmwood Avenue
Columbia, SC 29202

REPRESENTING LIBERTY MUTUAL FIRE INSURANCE COMPANY:

MORGAN TEMPLETON, ESQUIRE
Wall Templeton
145 King Street
Charleston, SC 29401

REPRESENTING ALLSTATE INSURANCE COMPANY

JOHNSTON COX, ESQUIRE
Gallivan White & Boyd, PA
55 Beattie Place
Suite 120
Greenville, SC 29601

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INDEX OF EXHIBITS

(No exhibits were offered or
marked for identification.)

1 The following proceedings were had May
2 12, 2015, Berkeley County Common Pleas, Berkeley
3 County, South Carolina.

4 THE COURT: Liberty Mutual Fire
5 Insurance Company's motion to quash, dated 2/9/15.
6 Who is representing Allstate.

7 MR. COX: Johnston Cox, Your Honor.

8 THE COURT: I'm sorry, say your name
9 again.

10 MR. COX: Johnston Cox.

11 THE COURT: And who is representing
12 Liberty?

13 MR. TEMPLETON: Morgan Templeton,
14 Judge.

15 THE COURT: And, Ms. Mullis, you're
16 representing the Plaintiff?

17 MS. MULLIS: Yes, ma'am.

18 THE COURT: I'll hear them in the order
19 they were filed starting with Mr. Templeton and
20 then Mr. Cox. You may proceed.

21 And I tried this case and I've read the
22 file; I don't need a whole lot of background. I
23 need you to cut to the chase.

24 MR. TEMPLETON: Yes, Your Honor.
25 Morgan Templeton on behalf of Liberty Mutual Fire

1 Insurance Company. We filed a motion to quash writ
2 of execution.

3 As the Court is aware, you tried this
4 case to verdict. Back in August of 2012, you
5 entered a Form 4 Order finding a judgment against
6 Jose Valle. There was a subsequent order in
7 January of 2013 awarding costs and fees pursuant to
8 an offer of judgment that was made during the
9 pendency of the lawsuit.

10 An appeal was lodged by Allstate
11 Insurance Company to the Court of Appeals resulting
12 in affirmation. While that case was on appeal, the
13 Plaintiff filed a bad faith lawsuit in Berkeley
14 County in May of 2014. That case was removed to
15 federal court where it sits today. Included in
16 that lawsuit is a counter claim by Liberty Mutual
17 Fire Insurance Company for declaratory relief
18 arguing what amount of money is owed beyond the
19 policy limits. The policy limits of both Liberty
20 Mutual and Allstate have been paid and received by
21 Ms. Mullis.

22 What is before -- following --
23 following the removal of that case to federal
24 court, Ms. Mullis filed a rule to show cause in
25 this court arguing that Liberty Mutual and/or

1 Allstate should have paid the amount due under Your
2 Honor's order related to the offer of judgment.
3 Judge Harrington denied that motion in October of
4 2014.

5 Following that, Ms. Mullis filed a writ
6 of execution here with Berkeley County court.
7 Critically, the writ of execution is filed against
8 Liberty Mutual and Allstate.

9 Cutting to the chase, Ms. Mullis does
10 not have a judgment either flowing from the tort
11 action or from the offer of judgment order against
12 either Liberty Mutual or Allstate. To the extent
13 she is entitled to recover beyond the contractual
14 limits of the policy --

15 THE COURT: How much were the policy
16 limits?

17 MR. TEMPLETON: Liberty Mutual policy
18 limits were \$50,000 of UM insurance and then an
19 additional 10,000 in MedPay, Allstate had 300,000
20 and then there's some additional MedPay beyond
21 that, but I do not know the exact amount.

22 THE COURT: And they've paid those
23 limits?

24 MR. TEMPLETON: They've paid that, yes,
25 ma'am.

1 THE COURT: So \$360,000?

2 MR. TEMPLETON: Approximately, that is
3 correct. I think it's a little bit more than that.
4 I think it's 362 or 364, something like that. To
5 the extent she is entitled to recover more than
6 that, that is the exact issue that's being
7 litigated in federal court in front of Judge
8 Wooten.

9 What she did in January, however, was
10 submit a writ of execution against Liberty Mutual
11 and Allstate which asked the Sheriff to go levy
12 property that's situated in Berkeley County. Our
13 position is that is procedurally flawed because she
14 does not have a judgment against either of those
15 two companies. To the extent she's entitled to
16 recover money beyond that which she had already
17 received, she has her day in court -- in federal
18 court with Judge Wooten.

19 And it's not as if either of those
20 insurance companies are running from the issue. We
21 have raised the very issue that she has raised in
22 the pleadings that are pending in that court, which
23 brings us to today which argues the two positions
24 that we've put in the motion. Number one, she
25 doesn't have a judgment against a judgement debtor

1 defined as Liberty Mutual or Allstate; and number
2 two, to the extent she is trying to modify, or
3 alter, or amend pursuant to Rule 60 either of the
4 two earlier orders, well more than a year has
5 passed and that can't occur.

6 If she wants to go and execute against
7 Mr. Valle, she is more than welcome to do that; we
8 don't have a dog in that fight, but to the extent
9 that she wants to levy against Liberty Mutual,
10 that's improper procedurally.

11 I have a copy of the operative
12 pleadings from Liberty Mutual in federal court, as
13 well as the Complaint that had been filed and was
14 moved to federal court, and a hard copy of the
15 motion that is before Your Honor. If you would
16 like me to hand those --

17 THE COURT: I already have a copy of
18 the motion. I don't know that I need those other
19 pleadings, as I would assume they represent what
20 you just said.

21 MR. TEMPLETON: Okay. Yes, ma'am.
22 I'll answer any questions the Court may have.

23 THE COURT: I don't have any.

24 Ms. Mullis.

25 MS. MULLIS: May it please the Court.

1 THE COURT: Yes, ma'am.

2 MS. MULLIS: This is round four of a
3 legal farce based on a legal fiction. There was an
4 offer of judgment filed. Insurance companies only
5 like loser-pays statutes when they're not the
6 loser. The fact of the matter is, Allstate
7 Insurance Company filed against the Plaintiff an
8 offer of judgment on this case. It was signed by
9 Allstate Insurance Company. They're the only
10 people that had the authority to offer the policy
11 limits in this case, because Jose Valle did not
12 have any authority to offer any money in this case.

13 Both of those -- these insurance
14 companies, Allstate and Liberty Mutual, asserted
15 the opportunity under the uninsured motorists
16 carrier statute to defend this action in the name
17 of Jose Valle. They had the opportunity to do so
18 pursuant to 38-77-150. They are the insurer -- as
19 the insurer pursuant to that statute because --

20 THE COURT: How does that make them a
21 party?

22 MS. MULLIS: They are served pursuant
23 to the Department of Insurance and they have --
24 they appear and defend in the name of the uninsured
25 motorist. There is a case called Crawford, cited

1 at 356 South Carolina 389, where we have just had
2 this conversation, and the court of appeals had
3 this conversation when we were looking at whether
4 or not we can assert attorney/client privilege.

5 THE COURT: But that's not talking
6 about execution of a judgment. That's not saying
7 that makes them a party for purposes of execution,
8 does it?

9 MS. MULLIS: It's talking about whether
10 or not we have attorney/client privilege in UIM --

11 THE COURT: Yeah, but that's a whole
12 different issue.

13 MS. MULLIS: -- situations. The issue
14 is whether or not we have a legal fiction here.
15 And there are two issues --

16 THE COURT: Legal fiction doesn't make
17 them a party. You can only execute judgments
18 against parties. That's black letter precedent.
19 Insurance companies exercise that fiction all the
20 time. If I go out here and I run the light and I
21 hit somebody, my insurance company really is
22 representing their interest because they don't want
23 to pay the policy limits on my policy.

24 So to say they're representing me is
25 really a fiction. They're representing their own

1 interest because they really don't care about me.
2 They just want to pay out as little as possible.

3 MS. MULLIS: That's correct.

4 THE COURT: So that doesn't -- however,
5 if there's a judgment, it doesn't make them a
6 party. If you get a judgment against me, if they
7 don't pay it, you still can execute and levy
8 against my property, and then I have to sue them
9 for acting in bad faith, but that doesn't make them
10 a party that you can execute against.

11 I'm trying to figure out what legal
12 theory, what case law you have to support that that
13 would support that a nonparty can have a judgment
14 executed against them. Just because they stepped
15 in to defend --

16 MS. MULLIS: Because in South Carolina,
17 we operate in the uninsured context in a legal
18 fiction unlike most states in this country. We are
19 not permitted to sue as a plaintiff the actual
20 insurance company. We sue the motorist and they --

21 THE COURT: As you should because
22 they're the party that committed the tort, not the
23 insurance company.

24 MS. MULLIS: That's correct. But we
25 sue the motorist and the insurance company elects

1 to either -- elects to defend the case in the name
2 of the motorist pursuant to the statute, but that
3 isn't the case everywhere else in the country --

4 THE COURT: Everywhere else is a
5 no-fault state. So if you hit somebody, your
6 insurance company is going to pay anyway. And I
7 like the way South Carolina operates because it
8 bothers me a little bit if somebody hits me, my
9 insurance company is going to pay out and my
10 premium is going to go up and, in all likelihood,
11 they're going to cancel my policy; that's three
12 quarters of the country. South Carolina is very
13 different. I don't think that you can argue that
14 we're similar by analogy.

15 MS. MULLIS: And I understand that,
16 Your Honor; however, they still owe the offer of
17 judgment because they filed the offer of judgment
18 against us. That's the purpose of the loser-pays
19 statute. That is the purpose of 15-35-400. They
20 filed the offer of judgment against the Plaintiff
21 and they owe the offer of judgment.

22 The offer of judgment statute would be
23 useless if they didn't owe it when they filed it
24 against the Plaintiff.

25 THE COURT: Why isn't this staid while

1 it's in federal court, while the federal court
2 decides who owes who what?

3 MS. MULLIS: Because they filed an
4 injunction against me and Judge Wooten issued an
5 order, and I'll read directly from his order.
6 After careful consideration of the factors set
7 forth above and of the procedural postures of this
8 case and the underlying lawsuit, the Court finds
9 that at this stage of the proceedings, there is no
10 basis for this Court to enjoin the Plaintiff from
11 seeking relief related to the state court's order
12 through proceedings in state court.

13 Judge Wooten specifically by entry
14 number 33 --

15 THE COURT: Yeah, but that contemplates
16 the listed party, not the insurance company I'm
17 certain. If I'd written it, that's what I would
18 have contemplated.

19 MS. MULLIS: Judge Wooten specifically,
20 when requested by the Defendants to enjoin me from
21 enforcing my offer of judgment here, permitted me
22 to continue to pursue the action --

23 THE COURT: Yeah, there would be
24 nothing to preclude it, because why would he
25 preclude you from executing judgment against the

1 other person's property? Judgments aren't staid
2 during the pendency -- money judgments are not
3 staid.

4 MS. MULLIS: I'll provide you with a
5 copy of --

6 THE COURT: I have no reason to doubt
7 what you said. I would have written it the exact
8 same way, but I would have known what I was
9 contemplating when I would have said it. If I had
10 meant something else, I would have said it far more
11 particularly than that.

12 MS. MULLIS: I can provide with you an
13 entire copy of the order. This was specifically
14 over us pursuing the offer of judgment in state
15 court, because opposing counsel had asked the Court
16 to enjoin me from pursuing the offer of judgment in
17 particular in state court, and the only issue was
18 the offer of judgment.

19 THE COURT: But my question still
20 becomes, how are you prejudiced by waiting to see
21 what happens in federal court?

22 MS. MULLIS: Because we don't have any
23 intention of pursuing the offer of judgment in
24 federal court.

25 THE COURT: That's not my question.

1 MS. MULLIS: This is pursuant to the
2 statute. We intend to pursue the offer of
3 judgment, the \$80,000 that was awarded by this
4 Court on --

5 THE COURT: The offer of judgment
6 statute still refers to a party. The insurance
7 company does not become a party by virtue of
8 defending an action.

9 MS. MULLIS: The offer of judgment
10 wasn't filed against Jose Valle --

11 THE COURT: That's the only way it
12 could have been filed; he's the only party.

13 MS. MULLIS: -- no authority to offer
14 the insurance policy --

15 THE COURT: I need some case law that
16 tells me that an insurance company becomes a party
17 just because they file an offer of judgment.

18 MS. MULLIS: We provided the Court with
19 a memorandum and multiple authorities --

20 THE COURT: From other states.

21 MS. MULLIS: -- from as many states as
22 we can find --

23 THE COURT: Yeah, who are not like
24 South Carolina. I read your memo already.

25 MS. MULLIS: Because there is no

1 authority --

2 THE COURT: I cannot -- I cannot apply
3 other states' law when their insurance scheme is so
4 different from ours.

5 MS. MULLIS: There is no state law in
6 the State of South Carolina interpreting our offer
7 --

8 THE COURT: Because I think black
9 letter precedent says what a party is. I don't
10 think there's any mystery to that. I don't think
11 an insurance company becomes a party just because
12 they defend somebody. That doesn't make sense to
13 me. That's sort of an illogical result.

14 If I were to apply this to every case,
15 that would mean then that in every case where an
16 offer of judgment is filed, then you could then sue
17 the insurance company to execute your judgment.
18 That just doesn't make sense to me. It's not
19 logical. And I don't mean to seem indelicate, but
20 it just isn't. It's sort of like such a far leap
21 to me.

22 That would mean then that every time an
23 insurance company defends somebody they become a
24 party to the litigation. And while we do have a
25 fiction when it comes to uninsured and underinsured

1 carriers, and certainly they're entitled to defend,
2 that doesn't make them a party to the litigation.
3 It just means they step in the shoes of the person
4 who has contracted with them to defend them. And
5 certainly the Defendant would never have filed an
6 offer of judgment. He's not a lawyer; he doesn't
7 have enough knowledge to do that. That doesn't --
8 it doesn't make a whole lot of sense to me.

9 I think if I were to allow this, then
10 -- that's such a slippery slope. Why would you
11 ever execute against the main party in the case?
12 The insurance company is always going to have more
13 assets.

14 Anything further for the record?

15 MS. MULLIS: No, Your Honor.

16 THE COURT: Anything further from the
17 defense? I assume, Mr. Cox, you're going to tell
18 me the same thing Mr. Templeton did, or is there
19 something different you would like to tell the
20 Court?

21 MR. COX: No, Your Honor, I was going
22 to say the same thing. I would just mention, the
23 Complaint in the -- the Plaintiff's Complaint in
24 federal court specifically says that she contends
25 that they are now -- that the Defendants are liable

1 to the Plaintiff for the total amount of the
2 awarded offer of judgment. So she is pursuing that
3 in federal court, but other than that, no.

4 THE COURT: And is there any other
5 coverage out there to satisfy this judgment?

6 MS. MULLIS: There is not.

7 MR. COX: No, ma'am, not that we know
8 of.

9 MR. TEMPLETON: None that I'm aware of,
10 Judge.

11 THE COURT: The motions are granted,
12 the writ to execute is quashed on both; and Mr. Cox
13 and Mr. Templeton, if you could provide the Court
14 with proposed orders within ten days making any
15 findings of fact, conclusions of law that are
16 consistent with the record to
17 djeffersonsc@sccourts.org and copy Ms. Mullis on
18 those -- those orders.

19 While I think it is certainly a novel
20 argument, I can find no case support for it, nor
21 any statutory support to allow an individual to
22 execute judgment against the nonparty. If I were
23 to follow this logic to what can only be
24 characterized as this illogical extreme, every time
25 an insurance company met its limit of coverage and

1 a party was judgment proof, then a party could sue
2 the insurance company for the deficit in coverage.
3 And I cannot find any support for that. And I've
4 looked and I've not found any cases on point to
5 support that position.

6 15-35-400, in its plain and ordinary
7 language, refers to a party. The only person that
8 can be a party is someone listed in a pleadings
9 that's been sued. The insurance company is not a
10 party to this action. Thank you-all very much.

11 I'm sorry I skipped over you. We had
12 some notes in our margin that indicated that the
13 motion had been resolved when, in fact, it had not,
14 and it was referring to the trial and not the
15 motions. So I apologize for skipping over you all.

16 MR. COX: Your Honor, one question for
17 clarity?

18 THE COURT: Sure.

19 MR. COX: WordPerfect, pdf, or Word?

20 THE COURT: WordPerfect. No, Word, I'm
21 sorry. Don't ask me those technical questions.
22 Just not pdf; I need something I can work on and
23 change.

24 MR. COX: And then the follow-up
25 question, do you want a consolidated order or do

1 you want --

2 THE COURT: I need separate orders
3 because they're separate motions. And I need you
4 to make sure that you copy Ms. Mullis on them.

5 MR. COX: Yes, ma'am.

6 THE COURT: Thank you.

7 (These proceedings were concluded at
8 2:38, p.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 17th day of August, 2015 at
13 Charleston, Charleston County, South Carolina.

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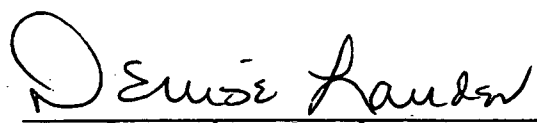
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25


Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
)
Plaintiff,)
)
vs.)
)
Jose W. Valle,)
)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2010-CP-08-1801

**MOTION TO ENFORCE
ORDER OF JUDGMENT AND
RULE TO SHOW CAUSE**

FILED
2014 SEP 22 PM 3:19
CLERK OF COURT
BERKELEY COUNTY NC

Plaintiff filed an Offer of Judgment on or about February 15, 2011, in response to an Offer of Judgment filed upon the Plaintiff by his own insurance company in an uninsured claim *attached hereto and incorporated herein by reference*. The Plaintiff's Offer of Judgment was served on both UM carriers, Allstate and Liberty Mutual. Plaintiff obtained a verdict in excess of his offer of judgment in the underlying jury trial on August 16, 2012, for which the Plaintiff's insurers owe.

Accordingly, on September 11, 2012, Counsel for Plaintiff and Counsel for Allstate on behalf of the Defendant, appeared before this Court for the purpose of setting the proper amount of costs and interest, pursuant to S.C. Code Ann. § 15-35-400 in regard to Plaintiff's Offer of Judgment. On January 14, 2013, this Court issued its **Order** ruling the Plaintiff is entitled to costs from the date of the Offer of Judgment in the amount of \$3,247.01 and that the amount of interest owed to Plaintiff is \$77,569.10. The Order awarding Plaintiff \$80,816.11 in costs and interest for the offer of judgment was never challenged or appealed. The underlying jury verdict was appealed.

On August 6, 2014, the South Carolina Court of Appeals affirmed the verdict and issued the remittitur from Defendant's appeal, *attached hereto*. Nevertheless, both insurers have failed to make any payment according to the January 14, 2013, Order of this Court, awarding the Plaintiff costs and interest pursuant to the above statute.

Therefore, the Plaintiff respectfully moves for this Court to enforce the Order of Judgment and issue a Rule to Show Cause directly against the insurers Ordering payment of the Judgment pursuant to the statute; as the Plaintiff's Insurers are duly licensed in the state of South Carolina and owe this valid Order for costs and pre-judgment interest – as penalties pursuant to the above statute and Order. The Plaintiff requests this Court issue an Order and a Rule to show cause, why the insurer Allstate and Liberty Mutual should not be required to comply with the terms and conditions of the Order of the Court filed on January 14, 2013, and why it should not be held in contempt; and why it should not be required to pay the attorney's fees and costs of Plaintiff for the institution and prosecution of this proceeding.

Finally, Plaintiff requests the Court along with the award of attorney fees and costs for this motion, add the additional interest on the Offer of Judgment the Plaintiff is entitled to pursuant to statute, from the date of the verdict until the awarded judgment is actually paid by the insurers; who defended the underlying case, were served with the Offer of Judgment, were Ordered to pay the judgment by the trial court, and failed to appeal or challenge the judgment.

Respectfully submitted,

Columbia, South Carolina
September 18, 2014


Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
Plaintiff,)
)
vs.)
)
Jose W. Valle,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

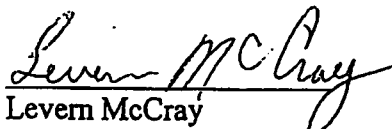
PLAINTIFF'S OFFER OF JUDGMENT

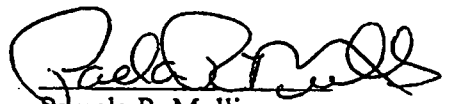
FILED
2011 FEB 15 PM 3:43
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO: DAVID S. COBB, ESQUIRE, ATTORNEY FOR DEFENDANT:

PLEASE TAKE NOTICE the Plaintiff, by and through his undersigned attorneys, pursuant to S.C. Code Ann. Section 15-35-400, hereby offers the total sum of Three Hundred Thousand (\$300,000.00) Dollars as full compromise and settlement of his claim against the Defendant for personal injury.

In addition, pursuant to Section 15-35-400 if this offer of judgment is not accepted and Plaintiff obtains a verdict or determination at least as favorable as the rejected offer, the offeror will pursue statutory costs and eight (8) percent interest computed on the amount of the verdict or award from the date of the offer. Defendant has twenty (20) days from the date indicated below to accept this offer and, if notice of acceptance is not given by the Defendant, in writing, the offer is withdrawn and cannot be given in evidence.


Levern McCray


Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

January 30, 2011

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
Plaintiff,)
)
vs.)
)
Jose W. Valle,)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

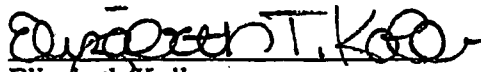
CERTIFICATE OF SERVICE

FILED
2011 FEB 15 PM 3:43
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The undersigned hereby certifies that she is a paralegal with the Mullis Law Firm; that a copy of Plaintiff's Offer of Judgment was served in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon, on February 14, 2011, to the following:

David S. Cobb, Esquire
TURNER PADGET
Post Office Box 22129
Charleston, South Carolina 29413

J. Bennett Crites, III, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 877
Charleston, SC 29402


Elizabeth Kolb

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

ORDER
FOR COSTS AND INTEREST
PURSUANT TO
OFFER OF JUDGMENT

FILED
2013 JAN 17 PM 1:10
CLERK OF COURT
BERKELEY COUNTY, SC

Date of Hearing: September 11, 2012
Presiding Judge: Honorable Deadra L. Jefferson
Plaintiff's Attorney: Pamela R. Mullis, Esquire
Defendant's Attorney: Julian K. Allen, Esquire, on behalf of Allstate

This matter came before the Court by hearing on September 11, 2012. The parties were before the Court in regard to the setting of the proper amount of costs and interest, pursuant S.C. Code Ann. § 15-35-400 in regard to Plaintiff's Offer of Judgment filed on February 15, 2011, in the amount of \$300,000.00, and Defendant's Offer of Judgment filed on January 19, 2011, in the amount of \$135,000.00. The jury awarded the Plaintiff a total of \$500,000.00 Dollars in actual damages and \$147,000.00 Dollars in punitive damages, totaling \$647,000.00 Dollars, on August 16, 2012.

COSTS PURSUANT TO OFFER OF JUDGMENT

Pursuant to § 15-35-400 of the S. C. Code of Laws for 1976, as amended; the Plaintiff is entitled to recover court costs where the Offer of Judgment filed was exceeded by the jury verdict. The jury awarded the Plaintiff for a total of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012.

[Handwritten signature]

Pursuant to § 15-35-400(B), South Carolina Code of Laws 1976, as amended, "If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment."¹

In this case, Plaintiff obtained a verdict in excess of the offer of judgment. Trial costs including court filing fees, deposition witness attendance fees, including mileage and service of necessary subpoenas, and trial witness fees, including mileage and service of necessary subpoenas are all recoverable costs pursuant to S.C. Code § 15-35-400(B). Black v. Roche Biomedical Labs., a Div. of Hoffman-LaRoche, Inc., 315 S.C. 223, 229, 433 S.E.2d 21, 25 (Ct. App. 1993); Belton v. State, 330 S.C. 422, 499 S.E.2d 225 (Ct. App. 1998). The South Carolina Supreme Court has decided "[c]osts and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute." Oliver v. S.C. Dep't of Highways and Public Transp., 309 S.C. 313, 422 S.E.2d 128, 131 (1992). While a "prevailing party *shall* ordinarily be entitled to recover certain costs and disbursements[,] [s]uch costs and disbursements do not, however, include attorney fees²." Black, 315 S.C. at 224, 433 S.E.3d at 227. Further, Rule 54, SCRPC and Rule 68, SCRPC do not create a right to recover attorney's fees without authorization of statute. S.C. Code Ann. § 15-35-400(B) does not create a right to recover attorney's fees if an offeror obtains a favorable judgment.

Pursuant Rule 45(b)(1), SCRPC, the recoverable costs for a subpoenaed witness includes a \$25.00 attendance fee per day and mileage. Because the Plaintiff was not subpoenaed to appear at his deposition, his attendance fee and mileage are not recoverable. Regarding transcript costs, case law establishes "the cost of a transcript or copy of the evidence, or of a part thereof,

¹ S.C. CODE ANN. § 15-35-400(B) (1976).

² As attorney's fees are not recoverable costs, Ms. Mullis' mileage to and from depositions is not recoverable.

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obtained for the convenience of the parties or their counsel, cannot be taxed as part of the costs." South Carolina Pub. Serv. Auth. v. Spearwant Liquidating Co., 201 S.C. 207, 207, 22 S.E.2d 252, 254 (1942) (quoting 20 C.J.S. *Costs* § 249). As the Plaintiff has identified no statute or rule of court that provides for the award of transcript costs, such costs are not recoverable. Likewise, the Plaintiff has not identified a rule of court or statute providing for witness attendance fees in excess of that provided for in Rule 45(b)(1), SCRPC. "Fees for expert witnesses, beyond the ordinary fees authorized for witnesses generally, are not taxable as costs unless there is a statute specifically allowing such an expense." Oliver, 309 S.C. at 319, 422 S.E.2d at 132. As no statute provides otherwise, Rule 45(g), SCRPC "places a fixed dollar amount on witness fees in the amount of \$25.00 per day plus mileage." Id (quoting 20 C.J.S. *Costs* § 116 (1990)).

The Plaintiff is entitled to the following costs: Court filing fees of \$50.00; Deposition costs, for witness attendance fees and mileage, totaling \$65.50: Trooper Reginald Thomas - \$35.00, and Heather Dailey - \$30.50; Expenses of witnesses at trial: Dr. Green B. Neal - \$142.66, Dr. Oliver G. Wood - \$210.60, Trooper Reginald Thomas - \$64.96, Timothy Craven - \$52.75, Process Service for Timothy Craven - \$165.00, George Williams - \$50.53, Clyde Cochran - \$67.18, Process Service for George Williams/Clyde Cochran - \$124.88, Nathan Washington - \$104.92, Harry White - \$107.14, Leon Goodman - \$110.47, Michael Lewis - \$92.71, Marvin Mosely - \$353.56, Jennifer Stayton, RN - \$35.00; SLED witnesses: Doris Yarbrough, Pat Crooks, Kimberly Meres - \$1,449.15. The total for expenses of witnesses at trial is \$3,131.51. Therefore, Plaintiff is entitled to costs from the date of the Offer of Judgment in the amount of Three Thousand Two Hundred Forty Seven Dollars and One Cent (\$3,247.01)

INTEREST PURSUANT TO OFFER OF JUDGMENT

With respect to interest, S. C. Code § 15-35-400(B)(2) provides for “ . . . eight percent interest computed on the amount of the verdict or award from the date of the offer.”³ The jury awarded the Plaintiff a verdict of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012, for which he is entitled to Eight percent (8%) interest from the date of the offer until the date of the verdict. As 547 days have elapsed between the date of the offer of judgment, February 15, 2011, and the date of the verdict, August 16, 2012, the total amount of interest owed equals Seventy Seven Thousand Five Hundred Sixty Nine Dollars and Ten Cents (\$77,569.10).

AND IT IS SO ORDERED.

January 14, 2013
Charleston, South Carolina,


The Honorable Deadra L. Jefferson
Chief Administrative Judge

³ S.C. CODE ANN. § 15-35-400(B)(2) (1976).

4 10 of 4
2010

96



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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September 02, 2014

The Honorable Mary P. Brown
PO Box 219
Moncks Corner SC 29461-0219

REMITTITUR

Re: Levern McCray v. Jose Valle
Lower Court Case No. 2010CP0801801
Appellate Case No. 2012-213050

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Julian Kane Allen, Esquire
R. Hawthorne Barrett, Esquire
Pamela R. Mullis, Esquire

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

CERTIFICATE OF SERVICE

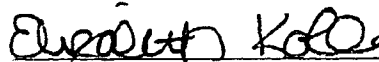
The undersigned hereby certifies that she is a paralegal with the Mullis Law Firm; that a copy of Plaintiff's Motion to Enforce Order of Judgment and Rule to Show Cause was served in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon, on September 18, 2014, to the following:

Amanda Blundy, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 650007
Mt. Pleasant, SC 29465

Julian K. Allen, Esquire
TURNER PADGET
Post Office Box 22129
Charleston, South Carolina 29413

John T. Lay, Esquire
Gallivan, White & Boyd
1201 Main Street, Suite 1200
Columbia, SC 29201

Morgan S. Templeton, Esquire
Wall Templeton, Esquire
145 King St., Ste. 300
Charleston, SC 29401


Elizabeth Kolb

Columbia, South Carolina

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2014 SEP 22 PM 3:19

FILED

Elizabeth Kolb

From: Elizabeth Kolb
Sent: Tuesday, May 12, 2015 9:26 AM
To: 'DJeffersonLC@sccourts.org'; 'djeffersonj@sccourts.org'; Pamela Mullis
Cc: 'JAllen@TurnerPadget.com'; 'morgan.templeton@walltempleton.com'; 'jlay@GWBlawfirm.com'; 'kimberly.tralies@mgclaw.com'
Subject: McCray v. Valle; 2010-CP-08-1801
Attachments: Memo of Law in Support of Motion to Enforce OOJ and Rule to Show Cause with exhibits.pdf

Dear Judge Jefferson and Counsel:

Pam Mullis has asked me to send you her Memo in Support of Motion to Enforce the Order of Judgment and Rule to Show with Exhibits in this matter. She believes that these documents were previously submitted by email to counsel and Judge Harrington back in October of 2014, and a hard copy may not be available at the Court. She asked me to email them again instead of providing everyone a hard copy in an effort to cut down paper waste. I will send the Out of State Authorities in a separate email just following this one. She will see everyone at 1:00 p.m.

Thank you,

Elizabeth T. Kolb, *Paralegal*
MULLIS LAW FIRM
1229 Elmwood Avenue
P.O. Box 7757
Columbia, SC 29202-7757
803-799-9577
Fax: 803-254-8956

MULLIS LAW FIRM

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Office (803) 799-9577 • Fax (803) 254-8956

PAMELA R. MULLIS
ATTORNEY AT LAW

J. MARVIN MULLIS, JR.
1940 - 2012

May 13, 2015

The Honorable Mary P. Brown
Berkeley County Clerk of Court
P.O. Box 219
Moncks Corner, SC 29461

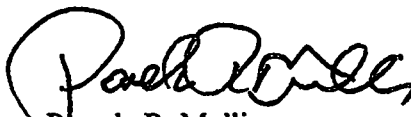
RE: Levern McCray v. Jose W. Valle
Case No.: 2010-CP-08-1801

Dear Ms. Brown:

Please find enclosed the original and one copy of Plaintiff's Memo in Support of previously filed Motion to Enforce Order of Judgment and Rule to Show Cause in regard to the above-referenced matter. Also enclosed is a cover sheet. Please file the original memo and return the file-stamped copy to me in envelope enclosed herein.

With best regards, I am

Sincerely yours,



Pamela R. Mullis

PRM/etk
Enclosures

cc: John T. Lay, Esquire
Morgan S. Templeton, Esquire

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
)
Plaintiff,)
)
vs.)
)
Jose W. Valle,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-08-1801

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO ENFORCE
ORDER OF JUDGMENT AND
RULE TO SHOW CAUSE**

15 MAY 18 PM 3:09
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

MATERIAL FACTS & PROCEDURAL HISTORY

On January 18, 2011, the Defendant served an Offer of Judgment on the Plaintiff for \$135,000.00; signed and served by Counsel for Uninsured Motorist carrier, Allstate Insurance Company. The Plaintiff filed a counter Offer of Judgment on February 15, 2011, which was served on both UM carriers, Allstate and Liberty Mutual. *[see Exh. A- OOJ]* Plaintiff obtained a verdict in excess of his offer of judgment in the underlying jury trial on August 16, 2012, for which the Plaintiff's insurers owe. *[Exh. B- Verdict]*

On September 11, 2012, Counsel for Plaintiff and Counsel for Allstate on behalf of the Defendant, appeared before this Court for the purpose of setting the proper amount of costs and interest, pursuant to S.C. Code Ann. § 15-35-400 in regard to Plaintiff's rejected Offer of Judgment. *[Exh. C-SC Code]* On January 14, 2013, this Court issued its Order ruling the Plaintiff is entitled to costs from the date of the Offer of Judgment in the amount of \$3,247.01 and that the amount of interest owed to Plaintiff is \$77,569.10. *[Exh.D- Order on OOJ]* The Order awarding Plaintiff \$80,816.11 in costs and interest for the Offer of Judgment was never

challenged or appealed. However, Defendants did appeal the underlying jury verdict. On August 6, 2014, the South Carolina Court of Appeals affirmed the verdict and issued the remittitur from Defendant's appeal. *[Exh. E- Remittitur]* Nevertheless, neither insurer has made any payment to Plaintiff pursuant to the January 14, 2013, Order of this Court, awarding the Plaintiff costs and interest pursuant to the statute.

Therefore, on September 14, 2014, Plaintiff moved to enforce its Order of Judgment and issue a Rule to Show Cause directly against the insurers, ordering payment of the Judgment pursuant to the statute. Plaintiff's insurers are duly licensed in the state of South Carolina providing Uninsured Coverage pursuant to state law and owe this valid Order for costs and pre-judgment interest as the result of the rejection of the offer of judgment pursuant to § 15-35-400 and the Order of this Court. Plaintiff requested this Court issue an Order and a Rule to show cause, why insurer Allstate and insurer Liberty Mutual should not be required to comply with the terms and conditions of the Order of the Court filed on January 14, 2013, and why the insurers should not be held in contempt; and not be required to pay the attorney's fees and costs of Plaintiff for the institution and prosecution of this proceeding.

Plaintiff requested the Court, along with the award of attorney fees and costs for this motion, to add the additional interest on the Offer of Judgment the Plaintiff is entitled to pursuant to statute, from the date of the verdict until the awarded judgment is actually paid by the insurers who defended the underlying case, were served with the Offer of Judgment, unsuccessfully appeared to defend against the offer of judgment, were Ordered to pay the judgment by the trial court, and failed to appeal or challenge the judgment. Under these circumstances, the Court should issue the requested Rule to Show Cause.

ARGUMENT

A. Plaintiff is entitled to costs and interest for the rejected Offer of Judgment, pursuant to statute, as a matter of law.

The plain language of South Carolina's Offer of Judgment statute, §15-35-400, establishes Plaintiff's entitlement to the costs and interest as set out by the January 14, 2013, Order of this Court. The statute provides that a Plaintiff is entitled to recover court costs where a rejected Offer of Judgment was exceeded by the jury verdict. Section 15-35-400(B), provides the Consequences of Non-acceptance:

"If an offer of judgment is not accepted and the offerer obtains a verdict or determination at least as favorable as the rejected offer, the offerer shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment."

The payment of prejudgment interest is also a "consequence" of a party's refusing to accept an offer of judgment. *S. C. Code § 15-35-400(B)(2)* provides " If the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer."

The established purpose of the offer of judgment statute and rule is to encourage settlement and avoid protracted litigation. *Black v. Roche Biomedical Laboratories, a Div. of Hoffman-LaRoche, Inc.*, 315 S.C. 223, 433 S.E.2d 21 (Ct. App. 1993). Thus, the legislature has provided a statutory procedure whereby an insurer settling a claim on an offer of judgment and thereby avoiding protracted litigation is rewarded by not having to pay costs and interest. However, where the insurer rejects an offer of judgment, gambling on a defense verdict, if the

insurer's gamble does not pay off and the verdict exceeds the offer of judgment, the insurer shall be required to pay to the Plaintiff prejudgment interest.

In this case. Plaintiff obtained a verdict in excess of the offer of judgment and he is, therefore, entitled to costs and interest. S.C Code § 15-35-400(B). The Court's prior Order properly found that, as the jury awarded the Plaintiff a verdict of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012, he is entitled to Eight percent (8%) interest from the date of the offer until the date of the verdict. By her Order, the trial judge found, "As 547 days have elapsed between the date of the offer of judgment, February 15, 2011, and the date of the verdict, August 16, 2012, the total amount of interest owed equals Seventy Seven Thousand Five Hundred Sixty Nine Dollars and Ten Cents (\$77,569.10)." This result is wholly consistent with the plain and mandatory language of the statute and with the purpose and intent of the legislature.

"The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." *State v. Scott*, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)). Here, the statute providing for offers of judgment was codified for the purpose of encouraging settlement. The legislature's intent and purpose would be nullified by any ruling that prejudgment interest is limited to the insurer's policy limits. Under such a decision, if the insurance company's exposure were limited to the policy limits, the insurance company would have no reason to settle a meritorious claim. Instead, the insurance company would have every reason to reject an offer of judgment and to proceed to trial, hoping for a favorable verdict as it profits from the money retained, secure in the knowledge that it would not be required to expend

its resources beyond the policy limits, regardless of the outcome. Such an interpretation of the offer of judgment statute would be inconsistent with the purpose and intent of the statute.

South Carolina Courts have discussed the policy considerations presented by the question of prejudgment interest. Citing *Jacobs v. American Mutual Fire Insurance Co. of Charleston*, 340 S.E.2d 142 (1986), the South Carolina Court of Appeals indicated in *Edens v. S. Carolina Farm Bureau Mut. Ins. Co.*, 288 S.C. 435, 437-38, 343 S.E.2d 49, 50-51 (Ct. App. 1986), with reference to a question of prejudgment interest in a case of property damage, "While *Jacobs* indicates that the allowance of prejudgment interest is a matter of discretion, we hold that it was an error of law to limit prejudgment interest to January 25, 1980. The fire occurred October 4, 1974. Farm Bureau denied coverage on the basis of cancellation; the Supreme Court rejected this. The *Jacobs* decision approvingly quoted *Myrtle Beach A.F.B. Fed. Credit Union v. Cumis Ins. Society, Inc.*, 507 F.Supp. 794 (D.S.C.1981); "in pertinent part, we quote:

Only by allowing interest in a case involving loss of, or damage to, property, unless such allowance is expressly excluded, can the damaged party be restored to the position which it would have occupied if the party in default had fulfilled its duty in the premises. A party who fails to perform a duty in these circumstances is justly bound to make good all damages that accrue naturally from a breach, and a party who has had the use of money owed to another may justly be required to pay interest from the time the payment should have originally been made."

Edens v. S. Carolina Farm Bureau Mut. Ins. Co., 288 S.C. 435, 437-38, 343 S.E.2d 49, 50-51 (Ct. App. 1986). Thus, in South Carolina, the offer of judgment statute serves the dual purpose of avoiding protracted litigation, thereby conserving judicial resources and of restoring the injured party to the financial status justice requires.

1. Other Jurisdictions Have awarded Costs and Prejudgment Interest on similar Offer of Judgment Statutes.

Although South Carolina's appellate courts have yet to review an award of prejudgment interest in excess of policy limits, numerous jurisdictions have decided that prejudgment interest on a rejected offer of judgment may properly exceed policy limits. The courts in Wisconsin have reached alternate results, depending on which party refused to settle the case. In *Knoche v. Wisconsin Mut. Ins. Co.*, 151 Wis.2d 754, 760, 445 N.W.2d 740, 743 (Ct.App.1989), the Wisconsin Court of Appeals held that: The purpose of sec. 807.01, to encourage settlement of cases prior to trial, would be subverted if the liability insurer could, by contract, free itself from the application of secs. 807.01(3) and 807.01(4). The Court found, "It is plain that Wisconsin Mutual was not disposed to settle Knoche's claim....It did not file an acceptance of the offer with the clerk of court as provided by sec. 807.01(3). It chose to litigate vigorously its insured's negligence. It lost. It would be contrary to the purpose of sec. 807.01 to allow it to escape the consequences of its choice." In contrast, in *Oliver v. Heritage Mut. Ins. Co.*, 179 Wis. 2d 1, 19-21, 505 N.W.2d 452, 460 (Ct. App. 1993), the Wisconsin Court of Appeals indicated that the decision in *Knoche*, approving an award of prejudgment interest was a general rule, the purpose of which was to promote settlements. The *Oliver* Court held that, where the insurer, upon proper investigation, filed its own offer to settle the case which was then rejected by Oliver, it was Oliver and not the insurer who was taking the chance of trial. Ruling that prejudgment interest to Oliver was limited, the Court held that where it was the insured that rejected settlement and took the chance of trial, the contract language in the insurance policy limiting prejudgment interest should control over the prejudgment interest statute. The Court explained that the statute's purpose to encourage settlement would not be fostered by reaching the same result that this court

did in *Knoche* for the reason that it was Oliver, in the final analysis, who refused to settle with Heritage—not the other way around. Therefore the Court ruled that the insurer would only be held responsible for interest computed from the date of judgment.

In an unpublished opinion, *State Farm Mut. Auto. Ins. Co. v. Enrique*, 16 A.3d 938 (Del. 2011), the Delaware Supreme Court held that prejudgment interest only becomes an obligation of a litigating party—there the uninsured motorist carrier—when that party rejects a demand before trial for an amount less than what the jury awards as damages. The Court explained, “Just as State Farm must pay ordinary court costs and fees which are beyond the limits of liability, it also must pay prejudgment interest costs. The contracted policy limit forms the basis for the prejudgment interest award but does not set the cap for recovery on litigation costs and fees, which may include expert witness fees, witness fees, and court reporter fees. Indeed, we agree with the rationale of the trial judge that prejudgment interest is an expense associated with the defense costs and strategy in the case. As a litigation cost, prejudgment interest does not constitute an element of damages controlled by the uninsured motorist policy’s coverage limits. The Court noted that the Delaware legislature had enacted the offer of judgment statute to “promote earlier settlement of claims by encouraging parties to make fair offers sooner, with the effect of reducing court congestion.” Therefore, the Court held that a holding capping State Farm’s liability on prejudgment interest to the policy limit would strip the statute of its purpose—encouraging settlement—when the insurer is faced with a demand below or at what ultimately may be determined to be at or in excess of the policy limit. Therefore, the Delaware Supreme Court held “Contractual terms in an uninsured motorist policy must be interpreted consistently with statutory public policy.”

Similarly, in Connecticut, where a party rejects an offer of judgment, the consequences for rejection include the payment of prejudgment interest. *Accettullo v. Worcester Ins. Co.*, 256 Conn. 667, 672-73, 775 A.2d 943, 946-47 (2001). The Court in *Accettullo* recognized a “public policy that implicitly recognizes that certain strategies and consequences are involved in either the acceptance or rejection of a settlement offer.” In *Accettullo*, the defendant insurer had claimed that it was not obligated to pay offer of judgment interest pursuant to § 52-192a(b), because the insurance policy between the insurer and the insured did not expressly provide for it. The Court held, “This statutory provision clearly reflects the consequences at play when a party rejects a valid offer of judgment, proceeds to trial, consumes precious judicial resources, and ultimately is subject to a verdict that exceeds that offer. In this regard, the contractual policy limitations have no effect on the punitive nature of the statute or the clear legislative intent of § 52-192a to promote settlements and preserve judicial resources. Simply put, the parties cannot avoid the mandatory statutory provision.”

The Connecticut Court explained in *Paine Webber Jackson & Curtis, Inc. v. Winters*, 22 Conn. App. 640 (1990), where the insurance policy was silent as to prejudgment interest, that the costs and interest applied under the offer of judgment statute “is solely related to a defendant’s rejection of an advantageous offer to settle before trial and his subsequent waste of judicial resources. A defendant who rejected an offer of judgment that is less than the plaintiff’s ultimate recovery is subject to additional interest as a penalty for failing to terminate litigation.” The Court held in *Cox v. Peerless Ins. Co.*, 774 F. Supp. 83, 86 (D. Conn. 1991), that prejudgment interest is a statutory right, primed by a plaintiff’s filing of an Offer of Judgment with the court, and activated after the plaintiff receives a verdict, and a judgment award of an amount equal to or greater than his original settlement offer. Conn.Gen.Stat. § 52-192a. The purpose of this statute is to encourage settlement. In addition to the costs associated with conducting a trial, the statute’s prejudgment interest award “provides an

additional incentive to settle a lawsuit and avoid a trial in certain cases by imposing an increased penalty upon a nonsettling litigant."

The *Cox* Court observed, "An award of prejudgment interest arises from a defense attorney's strategic decision to reject an offer of settlement, and proceed to trial. Therefore, an award of prejudgment interest does not arise out of the action's underlying controversy, and is not taxed to the defendant's policy's \$50,000 limit of liability as "damages", but rather is an expense associated with the "defense costs" and strategy of the case. In the instant action, the defense of the case was controlled and directed by the defendant, as was the decision to reject the plaintiff's offer of judgment. The 1984 policy, under which defendant Savo's was insured, states: "We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur." The Court concluded, "To allow the insurer total control over all pre-trial settlement negotiations, and ultimately tax the insured for the insurer's decision not to settle within the insured's liability limit would discourage settlement, and would be in opposition to the statutory goal of prejudgment interest awards."

In *Denham v. Bedford*, 407 Mich. 517, 532, 287 N.W.2d 168, 173 (1980), the Michigan Supreme Court held, "Interest and court costs are added to a judgment to recompense the prevailing party for the delay in payment of the money damages determined and to put back in his pocket some of the expense he incurs in instituting and prosecuting an action." The Court rejected the defendant insurance company's argument that an award of prejudgment interest was impermissible as exceeding its policy limits. The Michigan Supreme Court indicated, "Defendant Transamerica's concern seems to boil down to the following: An insurer limits its risks when it sets a certain policy limit. Any chargeable interest which causes the insurer to pay a

sum in excess of this limitation is an intrusion upon the insurer's right and ability to contract. However, this notion runs contrary to the very concept and purpose of charging interest. Interest has been defined as follows: Interest and court costs are added to a judgment to recompense the prevailing party for the delay in payment of the money damages determined and to put back in his pocket some of the expense he incurs in instituting and prosecuting an action. Furthermore, the notion clearly runs contrary to the Legislature's intent in enacting the Prejudgment Interest Statute and is without foundation at common law."

Discussing its offer of judgment statute, the Ohio Court of Appeals has observed, "The primary, if not the sole, purpose of that statute is to encourage the settlement of lawsuits. We therefore find it repugnant to the purpose of the statute that an insurance company should be permitted to delay settlement efforts, or fail to make any settlement efforts at all, and limit its liability to the maximum stated in its policy. Accordingly, an insurance company can be held liable for prejudgment interest pursuant to R.C. 1343.03 in excess of any stated limits in its policy. *Phoenix Phase I Associates v. Ginsberg, Guren & Merrill*, 23 Ohio App. 3d 1, 5, 490 N.E.2d 634, 638 (1985).

In *Vasquez v. LeMars Mut. Ins. Co.*, 477 N.W.2d 404, 405 (Iowa 1991), an insured sued his insurer under two underinsured motorist policies. Following a jury determination in favor of the insured, the trial court entered judgment for prejudgment interest in excess of the combined limits of the policies. The insurer argued that prejudgment interest is an element of damages covered by the policies and so is subject to the limits of liability stated in the policies. Affirming the award of prejudgment interest in excess of the policy limits, the Iowa Supreme Court rejected the insurer's argument that interest was subject to the policy limits of liability. The Court quoted a commentator, "Once it is established that a claimant is entitled to compensation provided by an

uninsured motorist insurance coverage, there is little, if any, justification for the insurer to derive economic benefits from having forced the insured to seek an adjudication of the claim. To allow insurers the benefit of the time value of the funds due the insured from the time of the accident to the date of payment following adjudication is to encourage insurers to delay payments. Once it is determined that payments were due the insured on the basis of injuries caused by an uninsured tortfeasor, the benefits of having delayed payment should not be retained by the insurer. Thus, a persuasive argument can be made that a claimant should be entitled to interest on a compensation payment when it has been necessary for the claimant to seek an adjudication by an arbitration or a court that the insurer is obligated to pay the insured. Furthermore, it also follows that the insurer should be liable for such interest even when the award or judgment itself is equal to the company's maximum coverage limits," citing Widiss, *Uninsured and Underinsured Motorist Insurance*, § 20.6, at 131 (2d ed. 1990). *LeMars Mut. Ins. Co.*, 477 N.W.2d 404, 411 (Iowa 1991).

In *Wilson v. Farm Bureau Mut. Ins. Co.*, 770 N.W.2d 324 (Iowa 2009), the Iowa Supreme Court found that an insurer owed the excess of an underlying aggregated tort judgment along with interest on that judgment until a judgment was entered in UIM contract case. The Court found, "As an underinsured motorist carrier, Farm Bureau "bound itself under its insurance policy to pay its insured what the insured would have recovered against a third party if that party had been adequately insured." The purpose of allowing interest on the aggregated tort judgment is "to encourage prompt payment and to compensate the plaintiff for another's use of his or her money." Iowa Code section 535.3. like any other post judgment interest statute, is "designed to eliminate the financial incentive or disincentive to appeal and to ensure that a judgment creditor whose satisfaction is delayed because of an unsuccessful appeal receives the

time value of the money judgment.” *Id.* at 64. This rationale for section 535.3 and our holding in *Opperman* combine to support a conclusion that Farm Bureau owed the excess of the aggregated tort judgment along with interest on that judgment until a judgment was entered in this contract case. The Court noted that a contrary holding would amount to a windfall to Farm Bureau, would deprive the estate of the time value of the tort judgment, and would provide an incentive for underinsured motorist insurance carriers to delay payment of money owed by engaging in protracted litigation.

In Rhode Island, statutes that award prejudgment interest generally serve the dual purposes of encouraging the early settlement of claims, *Pray v. Narragansett Improvement Co.*, 434 A.2d 923, 930 (R.I.1981), and compensating plaintiffs for waiting for recompense to which they were legally entitled, *Dennis v. Rhode Island Hosp. Trust Nat’l Bank*, 744 F.2d 893, 901 (1st Cir.1984). However, where the insurer made a bona fide offer to settle the claim by offering the uninsured policy limits, but the offer was rejected, the Court found that the award of interest in this case would promote neither of the purposes of § 9-21-10. The Court found that, although the estate has been delayed in the receipt of the insurance proceeds, the delay was caused entirely by the litigation commenced by the insured. In a situation such as this the awarding of prejudgment interest would be inappropriate. *Martin v. Lumbermen’s Mut. Cas. Co.*, 559 A.2d 1028, 1031 (R.I. 1989).

In *Metro. Prop. & Cas. Ins. Co. v. Barry*, 892 A.2d 915, 925 (R.I. 2006), quoting *Skaling v. Aetna Insurance Co.*, 799 A.2d 997 (R.I.2002), the Rhode Island Supreme Court held that insurers “doing business in Rhode Island have an implied obligation to promptly and fully respond to their insured” and this responsibility also includes a duty “to investigate a claim and to subject that claim to appropriate review.” *Id.* at 1010. This assessment must occur *before* the

carrier refuses to pay a claim. *Id.* Insurers must deal with their insureds in good faith and by fair dealing and must have a lawful basis to deny the claim or be subject to tort liability for bad faith. *See id.* at 1011. Further, the insurer is "obliged to engage in settlement discussions in an effort to relieve the insured from the burden and expense of litigation." *Id.* In light of these well-established principles, we have no hesitation declaring that prejudgment interest in the UM context begins to accrue on the date of the injury.

In South Carolina, given the plain language of the offer of judgment statute and in light of the policy considerations applied in insurance matters, insurers who reject a bona fide offer of judgment are subjected to the payment of costs and prejudgment interest, regardless of the policy limits. Any other application of § 15-35-400 would strip the statute of its purpose; would encourage insurers to reject bona fide offers and choose to proceed to trial, thereby needlessly consuming judicial resources and depriving the party offering judgment of the time value of the funds to which he was entitled, while the insurer would reap a windfall.

B. Plaintiff's entitlement to costs and interest for the rejected offer of judgment is not limited by any provision in the uninsured insurance contracts:

The insurance contract purchased by Plaintiff from neither insurance company included a specific provision limiting the UM carrier's obligation to pay prejudgment interest. The Allstate policy for **uninsured** coverage contains no provision limiting Allstate's obligation to pay prejudgment interest. The policy provides in relation to **liability** insurance that it will pay "interest accruing on a judgment entered against you, but only on that part of a judgment entered against you which do not exceed our limits of liability, until such time as we have paid, formally offered, or conditionally or unconditionally deposited in court, the amount for which we are

liable under this policy. This means that under no circumstances will we pay interest on that part of a judgment entered against you which exceeds our stated limits of liability.” [See *Exh. F-Allstate Policy* at p. 5]. However, in regard to the applicable policy for uninsured coverage, the policy provides, “the policy makes no mention of prejudgment interest. [*Id* - See *Allstate Policy* at p. 11]. The Liberty Mutual policy for the applicable uninsured coverage contains no provision limiting Liberty Mutual’s obligation to pay prejudgment interest. The Liberty Mutual policy indicates in regard to liability insurance, “We will pay damages which an insured is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle....” [*Exh. G – Liberty Policy*] In South Carolina, “damages” are defined pursuant to statute, § 38-77-30(4) providing that “Damages” include both actual and punitive damages.

Thus, where the insurance contract for uninsured coverage contains no provision limiting prejudgment interest, the insurer should not be heard to argue that the Order setting the costs and interest was improper as exceeding the policy limits included in the contract. However, even had the insurance contracts included provisions attempting to limit the insurer’s obligation to pay prejudgment interest despite the mandatory provisions of § 15-35-400, any such language would be ineffective as contradicting South Carolina law. Where an insurance policy is inconsistent with South Carolina law, the law prevails and the contract must conform to the law. “The central purpose of the UIM statute is to provide coverage when the injured party’s damages exceed the liability limits of the at-fault motorist,” and therefore, “[t]he UIM and UM statutes are remedial in nature and enacted for the benefit of injured persons” and “should be construed liberally to effect the purpose intended by the Legislature.” *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005). In the context of interpreting an insurance contract, “[s]tatutory provisions relating to an insurance contract are part of the contract as a matter of law.” *State*

Farm Mut. Auto. Ins. Co. v. Calcutt, 340 S.C. 231, 234, 530 S.E.2d 896, 897 (Ct.App.2000).

These insurance carriers can not limit the coverage paid to their insured for 'damages' pursuant to SC law by claiming that the costs and pre-judgment interest awarded by the Court as punitive 'sanctions' can be subtracted from those policy limits.

CONCLUSION

For all the foregoing reasons, the Rule to Show Cause, as requested, should be issued. The duly licensed Insurance companies providing coverage pursuant to this action under state law should be ordered to pay the Judgment – Order For Costs and Interest Pursuant To Offer of Judgment; the Plaintiff should be awarded additional interest from the date of the Offer of Judgment pursuant to the statute and the Plaintiff should be awarded costs and attorney fees for the filing of this motion.

Respectfully submitted,



Pamela R. Mullis

MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577
COUNSEL FOR PLAINTIFF

Columbia, South Carolina
October 20, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2010-CP-08-1801

CERTIFICATE OF SERVICE

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

15 MAY 18 PM 3:09

FILED

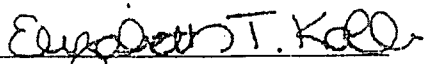
The undersigned hereby certifies that she is a paralegal with the Mullis Law Firm; that a copy of Plaintiff's Memorandum of Law in Support of Motion to Enforce Order of Judgment and Rule to Show Cause was served in the foregoing action by email, on May 12 2015, to the following:

Ms. Kimberly Tralies
McAngus, Goudelock & Courie, LLC
P.O. Box 650007
Mt. Pleasant, SC 29465

Julian K. Allen, Esquire
TURNER PADGET
Post Office Box 22129
Charleston, South Carolina 29413

John T. Lay, Esquire
Gallivan, White & Boyd
1201 Main Street, Suite 1200
Columbia, SC 29201

Morgan S. Templeton, Esquire
Wall Templeton, Esquire
145 King St., Ste. 300
Charleston, SC 29401


Elizabeth T. Kolb

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

CERTIFICATE OF SERVICE

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

15 MAY 18 PM 3:09

FILED

The undersigned hereby certifies that she is a paralegal with the Mullis Law Firm; that a copy of Plaintiff's Memorandum of Law in Support of Motion to Enforce Order of Judgment and Rule to Show Cause was served in the foregoing action by email, on May 12, 2015, to the following:

Ms. Kimberly Tralies
McAngus, Goudelock & Courie, LLC
P.O. Box 650007
Mt. Pleasant, SC 29465

Julian K. Allen, Esquire
TURNER PADGET
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Charleston, South Carolina 29413

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Columbia, SC 29201

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Wall Templeton, Esquire
145 King St., Ste. 300
Charleston, SC 29401

Elizabeth T. Kolb
Elizabeth T. Kolb

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Levern McCray,)
Plaintiff,)
vs.)
Jose W. Valle,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

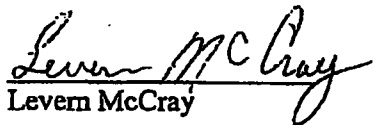
PLAINTIFF'S OFFER OF JUDGMENT

FILED
2011 FEB 15 PM 3:43
CLERK OF COURT
BERKELEY COUNTY, SC

TO: DAVID S. COBB, ESQUIRE, ATTORNEY FOR DEFENDANT:

PLEASE TAKE NOTICE the Plaintiff, by and through his undersigned attorneys, pursuant to S.C. Code Ann. Section 15-35-400, hereby offers the total sum of Three Hundred Thousand (\$300,000.00) Dollars as full compromise and settlement of his claim against the Defendant for personal injury.

In addition, pursuant to Section 15-35-400 if this offer of judgment is not accepted and Plaintiff obtains a verdict or determination at least as favorable as the rejected offer, the offeror will pursue statutory costs and eight (8) percent interest computed on the amount of the verdict or award from the date of the offer. Defendant has twenty (20) days from the date indicated below to accept this offer and, if notice of acceptance is not given by the Defendant, in writing, the offer is withdrawn and cannot be given in evidence.


Levern McCray


Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

January 30, 2011

ATTORNEYS FOR PLAINTIFF

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Levern McCray,

Plaintiff,

vs.

Jose W. Valle,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

CERTIFICATE OF SERVICE

FILED
2011 FEB 15 PM 3:43
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The undersigned hereby certifies that she is a paralegal with the Mullis Law Firm; that a copy of Plaintiff's Offer of Judgment was served in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon, on February 14, 2011, to the following:

David S. Cobb, Esquire
TURNER PADGET
Post Office Box 22129
Charleston, South Carolina 29413

J. Bennett Crites, III, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 877
Charleston, SC 29402


Elizabeth Kolb

Columbia, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-08-1801

Levern McCray
PLAINTIFF(S)

Jose W. Valle
DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant
	or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(b), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This Negligence cause of action came before the Court for a trial by jury on August 13-16, 2012. All issues have been tried and a verdict rendered in favor of the Plaintiff in the amount of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars actual damages and One Hundred Forty-Seven Thousand and 0/100 (\$147,000.00) Dollars punitive damages. The Court required post-trial motions. Post-trial motions were heard and respectfully denied. The Court conducted a B.M.W. of North America, Inc. v. Gore, 517 U.S. 559, 116 S. Ct. 1589 (1996) analysis and will be submitting a supplemental order conducting a post-trial review of the jury's punitive damages award.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Levern McCray	Jose W. Valle	\$ 647,000.00
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

Exhibit B

B 120

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Dr. J. J. J. J.
Circuit Court Judge

2128
Judge Code

8/16/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 16th day of August, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 16 day of Aug, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Pamela Mullis, Esq.
Joseph Epting, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

Julian Allen, Esq.
Emily Sheets, Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

Court Reporter: Melissa Singletary

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

LEVERN MCCRAY,)

Plaintiff,)

vs.)

JOSE W. VALLE,)

Defendant.)

IN THE COURT OF COMMON PLEAS
OF THE NINTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-08-1801

VERDICT FORM

FILED
2012 AUG 16 PM 3:22
CLERK OF COURT
PERKINS COUNTY SC

AS TO THE NEGLIGENCE CAUSE OF ACTION:

___ We, the jury, unanimously find for the Plaintiff in the amount of

\$ _____ (dollars) actual damages.

or

☒ We, the jury, unanimously find for the Plaintiff in the amount of

\$ 500,000.00 (dollars) actual damages

and

\$ 147,000.00 (dollars) punitive damages.

Please sign and date.

[Signature]
Foreperson

August 16, 2012

Please notify Bailiff(s) when you have completed your deliberations.

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 35. Judgments and Decrees Generally
Article 3. Judgment by Default or Confession

Code 1976 § 15-35-400

§ 15-35-400. Offer of judgment; acceptance; consequences of nonacceptance; attorney's fees.

Currentness

(A) Offer of Judgment. Except in domestic relations actions, after commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, any party may, at any time more than twenty days before the actual trial date, file with the clerk of the court a written offer of judgment signed by the offeror or his attorney, directed to the opposing party, offering to take judgment in the offeror's favor, or as the case may be, to allow judgment to be taken against the offeror, for a sum stated therein, for property, or to the effect specified in the offer. The offeror shall give notice of the offer of judgment to the offeree's attorney, or if the offeree is not represented by an attorney, to the offeree himself, in accordance with the service rules for motions and other pleadings set forth in the South Carolina Rules of Civil Procedure. Within twenty days after notification, or at least ten days prior to the trial date, whichever date is earlier, the offeree or his attorney may file with the clerk of the court a written acceptance of the offer of judgment. Upon the filing, the clerk shall enter immediately judgment of the stipulation. If the offer of judgment is not accepted within twenty days after notification or prior to or on the tenth day before the actual trial date, whichever date occurs first, the offer shall be considered rejected and evidence thereof is not to be admissible except in a proceeding after the trial to fix costs, interests, attorney's fees, and other recoverable monies. Any offeror may withdraw an offer of judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to the offeree or his attorney in accordance with the service rules for motions and other pleadings outlined in the South Carolina Rules of Civil Procedure. Any offeror may file a subsequent offer of judgment in any amount provided that the subsequent offer supersedes any earlier offer that was rejected by the offeree or withdrawn by the offeror, and, on filing, terminates any rights of interest or costs that may have been applicable to the superseded offer. Notwithstanding this provision, an offer is not considered rejected upon the making of a counteroffer by the offeree, but shall remain effective until accepted, rejected, or withdrawn as provided in this subsection. Any and all offers of judgment and any acceptance of offers of judgment must be included by the clerk in the record of the case.

(B) Consequences of NonAcceptance. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer; or (3) if the offeror is a defendant, a reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer.

(C) This section shall not be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees or other monies in accordance with the provisions of any written contract between the parties to the action.

Credits

HISTORY: 2005 Act No. 32, § 3, eff July 1, 2005, for causes of action arising after that date.

Exhibit C

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
Plaintiff,)
)
vs.)
)
Jose W. Valle,)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

ORDER
FOR COSTS AND INTEREST
PURSUANT TO
OFFER OF JUDGMENT

FILED
2013 JAN 17 PM 1:10
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Date of Hearing: September 11, 2012
Presiding Judge: Honorable Deadra L. Jefferson
Plaintiff's Attorney: Pamela R. Mullis, Esquire
Defendant's Attorney: Julian K. Allen, Esquire, on behalf of Allstate

This matter came before the Court by hearing on September 11, 2012. The parties were before the Court in regard to the setting of the proper amount of costs and interest, pursuant S.C. Code Ann. § 15-35-400 in regard to Plaintiff's Offer of Judgment filed on February 15, 2011, in the amount of \$300,000.00, and Defendant's Offer of Judgment filed on January 19, 2011, in the amount of \$135,000.00. The jury awarded the Plaintiff a total of \$500,000.00 Dollars in actual damages and \$147,000.00 Dollars in punitive damages, totaling \$647,000.00 Dollars, on August 16, 2012.

COSTS PURSUANT TO OFFER OF JUDGMENT

Pursuant to § 15-35-400 of the S. C. Code of Laws for 1976, as amended; the Plaintiff is entitled to recover court costs where the Offer of Judgment filed was exceeded by the jury verdict. The jury awarded the Plaintiff for a total of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012.

1/12/13
[Signature]

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Exhibit D

Pursuant to § 15-35-400(B), South Carolina Code of Laws 1976, as amended, "If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment."¹

In this case, Plaintiff obtained a verdict in excess of the offer of judgment. Trial costs including court filing fees, deposition witness attendance fees, including mileage and service of necessary subpoenas, and trial witness fees, including mileage and service of necessary subpoenas are all recoverable costs pursuant to S.C Code § 15-35-400(B). Black v. Roche Biomedical Labs., a Div. of Hoffman-LaRoche, Inc., 315 S.C. 223, 229, 433 S.E.2d 21, 25 (Ct. App. 1993); Belton v. State, 330 S.C. 422, 499 S.E.2d 225 (Ct. App. 1998). The South Carolina Supreme Court has decided "[c]osts and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute." Oliver v. S.C. Dep't of Highways and Public Transp., 309 S.C. 313, 422 S.E.2d 128, 131 (1992). While a "prevailing party *shall* ordinarily be entitled to recover certain costs and disbursements[,] [s]uch costs and disbursements do not, however, include attorney fees²." Black, 315 S.C. at 224, 433 S.E.3d at 227. Further, Rule 54, SCRPC and Rule 68, SCRPC do not create a right to recover attorney's fees without authorization of statute. S.C. Code Ann. § 15-35-400(B) does not create a right to recover attorney's fees if an offeror obtains a favorable judgment.

Pursuant Rule 45(b)(1), SCRPC, the recoverable costs for a subpoenaed witness includes a \$25.00 attendance fee per day and mileage. Because the Plaintiff was not subpoenaed to appear at his deposition, his attendance fee and mileage are not recoverable. Regarding transcript costs, case law establishes "the cost of a transcript or copy of the evidence, or of a part thereof,

¹ S.C. CODE ANN. § 15-35-400(B) (1976).

² As attorney's fees are not recoverable costs, Ms. Mullis' mileage to and from depositions is not recoverable.

2
2/14
JTG

obtained for the convenience of the parties or their counsel, cannot be taxed as part of the costs." South Carolina Pub. Serv. Auth. v. Spearwant Liquidating Co., 201 S.C. 207, 207, 22 S.E.2d 252, 254 (1942) (quoting 20 C.J.S. *Costs* § 249). As the Plaintiff has identified no statute or rule of court that provides for the award of transcript costs, such costs are not recoverable. Likewise, the Plaintiff has not identified a rule of court or statute providing for witness attendance fees in excess of that provided for in Rule 45(b)(1), SCRPC. "Fees for expert witnesses, beyond the ordinary fees authorized for witnesses generally, are not taxable as costs unless there is a statute specifically allowing such an expense." Oliver, 309 S.C. at 319, 422 S.E.2d at 132. As no statute provides otherwise, Rule 45(g), SCRPC "places a fixed dollar amount on witness fees in the amount of \$25.00 per day plus mileage." Id (quoting 20 C.J.S. *Costs* § 116 (1990)).

The Plaintiff is entitled to the following costs: Court filing fees of \$50.00; Deposition costs, for witness attendance fees and mileage, totaling \$65.50: Trooper Reginald Thomas - \$35.00, and Heather Dailey - \$30.50; Expenses of witnesses at trial: Dr. Green B. Neal - \$142.66, Dr. Oliver G. Wood - \$210.60, Trooper Reginald Thomas - \$64.96, Timothy Craven - \$52.75, Process Service for Timothy Craven - \$165.00, George Williams - \$50.53, Clyde Cochran - \$67.18, Process Service for George Williams/Clyde Cochran - \$124.88, Nathan Washington - \$104.92, Harry White - \$107.14, Leon Goodman - \$110.47, Michael Lewis - \$92.71, Marvin Mosely - \$353.56, Jennifer Stayton, RN - \$35.00; SLED witnesses: Doris Yarbrough, Pat Crooks, Kimberly Meres - \$1,449.15. The total for expenses of witnesses at trial is \$3,131.51. Therefore, Plaintiff is entitled to costs from the date of the Offer of Judgment in the amount of Three Thousand Two Hundred Forty Seven Dollars and One Cent (\$3,247.01)

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INTEREST PURSUANT TO OFFER OF JUDGMENT

With respect to interest, S. C. Code § 15-35-400(B)(2) provides for " . . . eight percent interest computed on the amount of the verdict or award from the date of the offer."³ The jury awarded the Plaintiff a verdict of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012, for which he is entitled to Eight percent (8%) interest from the date of the offer until the date of the verdict. As 547 days have elapsed between the date of the offer of judgment, February 15, 2011, and the date of the verdict, August 16, 2012, the total amount of interest owed equals Seventy Seven Thousand Five Hundred Sixty Nine Dollars and Ten Cents (\$77,569.10).

AND IT IS SO ORDERED.

January 14, 2013
Charleston, South Carolina,


The Honorable Deadra L. Jefferson
Chief Administrative Judge

³ S.C. CODE ANN. § 15-35-400(B)(2) (1976).

4 1084
2010



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1016 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1880
FAX: (803) 734-1839
www.sccourts.org

September 02, 2014

The Honorable Mary P. Brown
PO Box 219
Moncks Corner SC 29461-0219

REMITTITUR

Re: Levern McCray v. Jose Valle
Lower Court Case No. 2010CP0801801
Appellate Case No. 2012-213050

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Julian Kane Allen, Esquire
R. Hawthorne Barrett, Esquire
Pamela R. Mullis, Esquire

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Exhibit E

Allstate Insurance Company

RENEWAL Auto Policy Declarations

The company issuing the policy is:

Allstate Insurance Company
2775 Sanders Road
Northbrook, IL 60062-6127
1-800-ALLSTATE® (1-800-255-7828)

Summary

NAMED INSURED(S)
Otilie E Walton-McCray
2407 Anderson Court
Elgin SC 29045-9003

YOUR ALLSTATE AGENT IS
Hanna Agency
(843) 662-7438

2143 A Hoffmayer Rd
Florence SC 29501

YOUR BILL
lists your payment options.

POLICY NUMBER
0 90 746371 12/08

POLICY PERIOD
Dec. 6, 2008 to June 6, 2009 at 12:01 a.m. standard time

DRIVER(S) LISTED*
Otilie Lavern

DRIVER(S) EXCLUDED
None

VEHICLES COVERED

1. 03 BMW 745i

VEHICLE ID NUMBER
WBAGN63493DS43852

LIENHOLDER
None

2. 91 Subaru Legacy

4S3BC6321M1612532

None

3. 97 Honda Accord

1HGCD5538VA149380

None

Total Premium

Premium for 03 BMW 745i \$438.86

Premium for 91 Subaru Legacy \$188.03

Premium for 97 Honda Accord \$278.11

TOTAL \$905.00

✓ Your total premium reflects a combined discount of \$328.87
Your Policy Effective Date is Dec. 6, 2008

AUTO *810003305100001000800000*



Information as of
October 20, 2008

Page 3
00012790

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Exhibit F

If a covered loss to the auto, a covered auto accident, or any other occurrence for which coverage applies under this policy happens outside South Carolina, lawsuits regarding that covered loss to the auto, covered auto accident, or other covered occurrence may also be brought in the judicial district where that covered loss to the auto, covered auto accident, or other covered occurrence happened.

Nothing in this provision, Where Lawsuits May Be Brought, shall impair any party's right to remove a state court lawsuit to a federal court.

Action Against Us

No one may bring an action against us unless there is full compliance with all policy terms; and the action is commenced within one year of the date the cause of action accrues. However, if an action is in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a particular coverage that is shown on the Policy Declarations, such action must be commenced within the time period specified in the Action Against Us provision of that particular coverage. If an action is brought asserting claims relating to the existence or amount of coverage, or the amount of loss for which coverage is sought, under different coverages of this policy, the claims relating to each coverage shall be treated as if they were separate actions for the purpose of the time limit to commence action.

Arbitration

Any claim or dispute in any way related to this policy, by an insured person under this policy against us or us against an insured person under this policy, may be resolved by arbitration only upon mutual consent of the parties. Arbitration pursuant to this provision shall be subject to the following:

1. no arbitrator shall have the authority to award punitive damages or attorney's fees;
2. neither of the parties shall be entitled to arbitrate any claims or disputes in a representative capacity or as a member of a class; and
3. no arbitrator shall have the authority, without the mutual consent of the parties, to consolidate claims or disputes in arbitration.

Part 1

Automobile Liability Insurance

Bodily Injury — Coverage AA

Property Damage — Coverage BB

Insuring Agreements

We will pay for damages an insured person is legally obligated to pay because of bodily injury or property damage meaning:

1. bodily injury to any person; and
2. damage to or destruction of property, including loss of use.

Under these coverages, your policy protects an insured person from claims for accidents arising out of the ownership, maintenance or use, loading or unloading of an insured auto. Damages include prejudgment interest awarded against an insured person.

We will defend an insured person sued as the result of an auto accident, even if the suit is groundless or false. We will choose the counsel. We may settle any claim or suit if we believe it is proper.

Additional Payments We Will Make

When we defend an insured person under this Part I, we will pay:

1. up to \$50 a day for the loss of wages or salary if we ask that person to attend hearings or trials to defend against a bodily injury suit. We will not pay for loss of other income. We will pay other reasonable expenses incurred at our request.
2. court costs for defense.
3. interest accruing on a judgment entered against you, but only on that part of a judgment entered against you which do not exceed our limits of liability, until such time as we have paid, formally offered, or conditionally or unconditionally deposited in court, the amount for which we are liable under this policy. This means that under no circumstances will we pay interest on that part of a judgment entered against you which exceeds our stated limits of liability.

choose, when and as often as we may reasonably require.

Non-Duplication Of Benefits; Priority Of Payments; Other Insurance

No injured person will recover duplicate benefits for the same loss under this and any similar insurance, including self-insurance. If the injured person is entitled to recover benefits under more than one policy, the maximum recovery under all policies will not exceed the amount payable under the provisions of the policy providing the highest dollar limit. We will not be liable for more than the proportion of any loss to which this coverage applies than our limit of liability bears to the sum of our limit of liability and that of any other applicable insurance.

Subrogation

Subject to the provisions of South Carolina law, no benefit payable under this coverage will be subject to subrogation or assignment.

Reimbursement And Trust Agreement

When we pay any person under this coverage:

1. We are entitled to repayment of amounts paid by us out of the proceeds of any settlement that person recovers from any legally responsible party or insurer.
2. All rights of recovery against any legally responsible party or insurer must be preserved for our benefit.

Our rights under this provision are subject to any applicable limitations provided under the laws of South Carolina.

Constitutionality Clause

The premium for and the coverages of the policy have been established in accordance with the laws of South Carolina. If a court of competent jurisdiction declares, or enters a judgment the effect of which is to render the provisions of those applicable laws invalid or unenforceable, in whole or in part, we will have the right to recompute the premium payable for this policy. These provisions will be voidable or

subject to amendment at our option in accordance with such declaration or judgment.

Part 3

Uninsured Motorists Insurance – Coverage SS

Underinsured Motorists Insurance – Coverage SU

Section I

Uninsured Motorists Insurance – Coverage SS

Insuring Agreements

If a premium is shown on the Policy Declarations for Uninsured Motorists Insurance, we will pay those damages that an insured person is legally entitled to recover from the owner or operator of an uninsured auto because of:

1. bodily injury sustained by an insured person; and
2. property damage.

The bodily injury or property damage must be caused by accident and arise out of the ownership, maintenance or use of an uninsured auto. This coverage does not apply to the first \$200 of the total amount of all property damage as the result of any one accident.

Insured Persons

1. you and any resident relative.
2. any other person while in, on, or getting into or out of an insured auto with your permission.
3. any other person who is legally entitled to recover because of bodily injury to you, a resident relative or an occupant of your insured auto with your permission.

An Insured Auto Is A Motor Vehicle:

1. described on the Policy Declarations. This includes the motor vehicle you replace it with.

NO LONG
DESIGNING
DRUGS Etc
include present
injuries -

Violation
OS
Statute



LibertyGuard Auto Policy Declarations
Liberty Mutual Fire Insurance Company
Boston, Massachusetts

OUR POLICY NUMBER: A02-258-329871-70 8 1
NAMED INSURED AND MAILING ADDRESS:
JEVERN MCCRAY
OLIE MCCRAY
2407 ANDERSON CT
ELGIN SC 29045-9003

THESE DECLARATIONS EFFECTIVE: 11/17/08
FOR SERVICE PLEASE CONTACT:

2501 WILMINGTON ROAD
NEW CASTLE PA 16105

SERVICE: 800-225-7014
CLAIMS: 800-2CLAIMS (800-225-2467)

Members® Auto and Homeowners Insurance Program

Policy Period: 11/17/08 to 11/17/09 12:01AM Standard Time at the Address of the
Named Insured as Stated in the Policy.

Reason For This Notice: Your Renewal Policy Declarations

PERSONAL AUTOMOBILE COVERAGE, LIMITS, AND PREMIUM

Coverages And Limits Under Your Auto Policy:

Coverage Is Provided Where A
Premium Is Shown For The Coverage

Part

Veh 1

A. Liability

\$ 227

Bodily Injury

\$ 50,000 Each Person
\$ 100,000 Each Accident

Property Damage

\$ 50,000 Each Accident

B. Medical Payments

\$ 10,000 Each Person \$ 32

C. Uninsured Motorists

\$ 27

Bodily Injury

\$ 50,000 Each Person
\$ 100,000 Each Accident

Property Damage

\$ 50,000 Each Accident

Underinsured Motorists

\$ 41

Bodily Injury

\$ 50,000 Each Person
\$ 100,000 Each Accident

Property Damage

\$ 50,000 Each Accident

D. Coverage For Damage To Your Auto

Collision

\$ 331

Actual Cash Value Less Deductible Shown:

Veh 1 \$ 250

Other Than Collision

\$ 205

Actual Cash Value Less Deductible Shown:

Veh 1 \$ 250

Optional Coverage

Towing And Labor Cost - \$50 Each Disablement

\$ 6

Transportation Expenses

\$ 33

\$30 Per Day \$900 Per Accident

Annual Premium Per Vehicle:

\$ 902

Total Annual Policy Premium

\$ 902.00

AUTO 1079 (PA 4-07)

This policy, including all endorsements attached is countersigned by:

Dexter R. Lay
SECRETARY

Edmund F. Kelly
PRESIDENT

Steph J. Fitch

AUTHORIZED REPRESENTATIVE

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Exhibit G



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNINSURED MOTORISTS COVERAGE - SOUTH CAROLINA

AS 2098 06 99
(PP 04 65 06 94)

I. PART C - UNINSURED MOTORISTS COVERAGE

Part C is replaced by the following:

INSURING AGREEMENT

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of:

1. "Bodily injury" sustained by an "insured" and caused by an accident; and
2. "Property damage" caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle".

"Insured" as used in this endorsement means:

1. You or any "family member".
2. Any other person "occupying" "your covered auto".
3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

"Property damage" as used in this endorsement means injury to or destruction of the property of an "insured".

"Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which neither:
 - a. A liability bond or policy; nor
 - b. Cash or securities deposited with the State Treasurer;applies at the time of the accident.
2. To which a liability bond or policy applies at the time of the accident. In this case its limit for liability must be less than the minimum limits specified by the South Carolina Financial Responsibility Act.
3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in "bodily injury" or "property damage" without hitting:
 - a. You or any "family member";

- b. A vehicle which you or any "family member" are "occupying";
- c. "Your covered auto"; or
- d. Any of your property.

If there is no physical contact with the hit-and-run vehicle the facts of the accident must be corroborated by an affidavit attesting to the truth of the facts of the accident signed by any eyewitness other than the owner or operator of the vehicle which you or any "family member" were "occupying" at the time of the accident.

4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. Successfully denies coverage;
 - b. Is or becomes insolvent;
 - c. Is in delinquency proceedings, suspension or receivership; or
 - d. Is proven unable to respond to a judgment.
5. For which the owner has not qualified as a self-insurer in accordance with the applicable provisions of the South Carolina Insurance Laws.

However, "uninsured motor vehicle" does not include any vehicle or equipment:

1. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
2. Owned by any governmental unit or agency unless a cause of action against that governmental unit or agency is barred by the Tort Claims Act, South Carolina Laws 1986, Ratification No. 514, Subsection 15-78-60, or by other applicable statute.
3. Operated on rails or crawler treads.
4. Designed mainly for use off public roads while not on public roads.

EXCLUSIONS

- A. We do not provide Uninsured Motorists Coverage for "property damage" or "bodily injury" sustained by any "insured":
1. If that "insured" or the legal representative settles the "bodily injury" or "property damage" claim without our consent.

Code of Laws of South Carolina 1976 Annotated
Title 38. Insurance
Chapter 77. Automobile Insurance
Article 1. Purposes and Definitions

Code 1976 § 38-77-30

§ 38-77-30. Definitions.

Currentness

As used in this chapter, unless the context requires otherwise:

(1) "Automobile insurance" means automobile bodily injury and property damage liability insurance, including medical payments and uninsured motorist coverage, and automobile physical damage insurance such as automobile comprehensive physical damage, collision, fire, theft, combined additional coverage, and similar automobile physical damage insurance and economic loss benefits as provided by this chapter written or offered by automobile insurers. An automobile insurance policy includes a motor vehicle liability policy as defined in item (7) of Section 56-9-20 and any nonowner automobile insurance policy which covers an individual private passenger automobile not owned by the insured, a family member of the insured, or a resident of the same household as the insured.

(2) "Automobile insurer" means an insurer licensed to do business in South Carolina and authorized to issue automobile insurance policies.

(3) "Bodily injury" includes death resulting therefrom.

(3.5) "Cancellation" or "to cancel" means a termination of a policy during the policy period.

(4) "Damages" includes both actual and punitive damages.

(4.5) "Facility physical damage rate" means the final rate or premium charge for physical damage coverage which must be established by adding the physical damage loss component developed under Section 38-77-596 to the expense component developed under Section 38-77-596.

(5.2) "Facility physical damage rate" means the final rate or premium charge for physical damage coverage which must be established by adding the physical damage loss component developed under Section 38-73-780 to the expense component developed under Section 38-73-1420.

(5.5)(a) "Individual private passenger automobile" means the following types of motor vehicles owned by or leased under a long-term contract by an individual or individuals:

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Exhibit H

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.:2010-CP-08-1801

Levern McCray,

Plaintiff,

v.

Jose W. Valle,

Defendant.

**RESPONSE TO PLAINTIFF'S MOTION
TO ENFORCE ORDER OF JUDGMENT
AND RULE TO SHOW CAUSE**

Non-party Allstate Insurance Company ("Allstate"), submits the following in response to Plaintiff's Motion to Enforce Order of Judgment and Rule to Show Cause.

FACTUAL BACKGROUND¹

A. Lawsuit Against Jose W. Valle

On December 20, 2008, Plaintiff was involved in an automobile accident with defendant, Jose W. Valle ("Valle"). Plaintiff's vehicle was struck when Valle's vehicle crossed the center line. As a result of the accident, Plaintiff sustained injuries, including injury to his ankle and pain in his knee and hip. Plaintiff filed suit against Valle on May 21, 2010 and sought to serve him by publication on August 10, 2010. Plaintiff attempted to serve him on September 2, 6, and 16, 2010.

Allstate issued an automobile insurance policy number 0 90 746371 12/06 ("the policy") to Named Insured, Ollie E. Walton-McCray. Plaintiff was a listed driver on the policy. The policy

¹ We apologize to the Court for the abbreviated nature of the factual overview and argument. As stated in Allstate's Motion to Continue Hearing on Plaintiff's Motion to Enforce Order of Judgment and Rule to Show Cause, Allstate did not receive notice regarding the hearing until it received a filing by Plaintiff in connection with Plaintiff's lawsuit against Allstate based on these same issues, which is currently pending in federal district court.

included uninsured motorist coverage. Because Valle did not make an appearance in the lawsuit, Allstate had an answer filed.

Currently pending before this Court is Plaintiff's Motion to Enforce Order of Judgment and Rule to Show Cause. Plaintiff filed an Offer of Judgment in his lawsuit against Valle, the defendant, on February 15, 2011. Specifically, in his Offer of Judgment, Plaintiff stated:

...Plaintiff...offers the total sum of Three Hundred Thousand (\$300,000) Dollars as full compromise and settlement of his claim against the *Defendant* for personal injury....*Defendant* has twenty (20) days from the date indicated below to accept this offer and, if notice of acceptance is not given by the *Defendant*, in writing, the offer is withdrawn and cannot be given in evidence.

(Plaintiff's Offer of Judgment). Following a hearing "in regard to the setting of the proper amount of costs and interest...in regard to Plaintiff's Offer of Judgment..." the Court issued an Order dated January 14, 2013. (Order for Costs And Interest Pursuant to Offer of Judgment, p. 1). Plaintiff did not file an Offer of Judgment as to Allstate.

B. Lawsuit Against Allstate

On March 19, 2014, Plaintiff filed suit against Allstate and Liberty Mutual Fire Insurance Company ("Liberty Mutual") for "bad faith breach of contract."² The claims against both Allstate and Liberty Mutual arise out of the December 20, 2008 accident with Valle. In his Complaint, Plaintiff specifically alleges:

Plaintiff now contends that the Defendants are now liable to the Plaintiff for the total verdict including post judgment interest, the total amount of the awarded Offer of Judgment, as well as, costs, actual and punitive damages separate and apart from the underlying damages for this bad faith breach of contract.

(Federal Court Complaint ¶ 16)

² Plaintiff initially filed the lawsuit in the Court of Common Pleas for Richland County, South Carolina. Liberty Mutual filed a Notice of and Petition for Removal on June 27, 2014. The lawsuit is currently pending in the United States District Court for the District of South Carolina styled, *Levern McCray v. Allstate Insurance Company and Liberty Mutual Fire Insurance Company*, C/A No. 3:14-cv-02623-TLW.

ARGUMENT

A. The Court Does Not Have Jurisdiction Over Allstate Because It Is Not a Party to This Suit.

“A court may not act against a party without personal jurisdiction.” *Green Tree Servicing, LLC v. Adams*, 375 S.C. 583, 586, 654 S.E.2d 100, 102 (Ct. App. 2007) (citing *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006)). Further, “a court should not render a judgment affecting the rights of a party without proper notice.” *Green Tree Servicing*, 375 S.C. at 586, 654 S.E.2d at 102 (citing *Ex Parte South Carolina Dep’t of Revenue*, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct. App. 2002)). Here, because Allstate was not a party to the lawsuit, the Court does not have jurisdiction to issue a rule to show cause or enter an order against Allstate directing it to pay the judgment.

The South Carolina Court of Appeals addressed a similar issue in *Ex Parte South Carolina Department of Revenue*. In that case, the mortgagee brought suit against the mortgagor to foreclose on the mortgage. After the mortgagor failed to answer the complaint, a default judgment was entered, and the master ordered a public sale of the property. Following the sale, the mortgagee found out that the South Carolina Department of Revenue (“SCDOR”) held a lien against the property, which had not been named as a party in the initial lawsuit. The mortgagee filed a motion for rule to show cause and the master issued the rule to show cause. The “rule instructed SCDOR to appear on April 25, 2001, and show cause why it should not be required to protect its lien by paying [the mortgagee] the amount due or have its lien extinguished pursuant to the master’s initial Judgment of Foreclosure and Sale.” *Ex Parte South Carolina Dep’t of Revenue*, 350 S.C. at 407, 566 S.E.2d at 198. The SCDOR argued that the rule to show cause was improper, and the appellate court agreed. The court explained that “[a] judgment is void...if a court acts without [personal] jurisdiction” and that the “master lacked personal jurisdiction over SCDOR, and the order binding

it to the master's initial Judgment of Foreclosure and Sale is void and must be vacated." *Id.* at 408, 566 S.E.2d at 198.

The same result should be reached here. Allstate is not a party to this lawsuit. The only parties to this lawsuit are Plaintiff and Valle. Therefore, the Court does not have jurisdiction to issue a rule to show cause as to Allstate.

B. Plaintiff's Motion Is Procedurally Defective.

While the Court does not have personal jurisdiction to hear any attempt by Plaintiff to enforce the judgment against Allstate, even if the Court did have jurisdiction, Plaintiff's instant motion is improper. Plaintiff has a judgment that he seeks to execute upon. South Carolina Rule of Civil Procedure 69 provides two methods whereby a plaintiff may execute on a judgment: writ of execution and supplementary proceedings. *See Ex parte Wilson*, 367 S.C. 7, 14, 625 S.E.2d 205, 209 (2005) (explaining that in addition to execution on a judgment by "writs of execution issued to the sheriff," "[s]upplementary proceedings also 'furnish a means of reaching, in aid of the judgment, property beyond the reach of an ordinary execution, such as choses in action.'") (quoting *Lynn v. Int'l Bhd. of Firemen & Oilers*, 228 S.C. 357, 362, 90 S.E.2d 204, 206 (1995)) and *Johnson v. Service Management, Incorporated*, 319 S.C. 165, 167, 459 S.E.2d 900, 902 (Ct. App. 1995), *aff'd*, 324 S.C. 198, 478 S.E.2d 63 (1996) ("[j]udgments are enforced by way of writs of execution issued to the sheriff" and "[i]f a judgment is unsatisfied, the judgment creditor may institute supplementary proceedings to discover assets" and that "[i]n addition to their discovery functions, supplementary proceedings 'furnish a means of reaching, in aid of the judgment, property beyond the reach of an ordinary execution, such as choses in action.'").

Plaintiff has chosen neither of these appropriate methods and this failure to follow the proper procedure in an attempt to execute on his judgment is fatal. *See McManus v. Bank of*

Greenwood, 171 S.C. 84, 171 S.E. 473, 474 (1933) (determining the plaintiff failed to properly levy on the bank account to satisfy judgment where the attempt to execute “was not brought in accordance with the statute regulating supplementary proceedings.”).

Here, Plaintiff has failed to follow the well-established procedure in South Carolina to execute on the judgment.³ The process is clear. “Judgments requiring the payment of money or the delivery of real or personal property are generally enforced by way of writs of execution issued to the sheriff.” *Trial Handbook for South Carolina Lawyers* § 40:1 (citing Rule 69, SCRCP, S.C. Code Ann. § 15-35-180, and *Johnson*, 319 S.C. 165, 459 S.E.2d 900). At that point, “[i]f a judgment is unsatisfied, the judgment creditor may institute supplementary proceedings to discover assets.” *Id.* (citing S.C. Code Ann. § 15-39-310 and *Johnson*, 319 S.C. 165, 459 S.E.2d 900). “The procedure set forth by the Legislature requires the issuance of execution against the property of the judgment debtor.” *Id.* (citing *John Deere Co. v. Cone*, 239 S.C. 597, 124 S.E.2d 50 (1962)). Plaintiff has improperly attempted to bypass the mandated procedure in violation of South Carolina law. Therefore, Plaintiff’s motion should be denied.

C. Plaintiff Has Sought Payment Under the Order of Judgment with regard to Allstate in the Federal Lawsuit and Cannot be Sought Here.

As explained above, Plaintiff has filed a lawsuit against Allstate for “bad faith breach of contract” in which he seeks payment of the policy limits as well as satisfaction of the order of judgment. See Federal Court Complaint ¶ 16 (“Plaintiff now contends that the Defendants are now liable to the Plaintiff for...the total amount of the awarded Offer of Judgment...”) That Plaintiff is now also seeking to recover the *same* costs in this litigation through a request to show

³ In fact, Plaintiff fails to address Valle’s presence in the lawsuit and does not address whether he has instituted any proceedings to execute against him.

cause is baffling to say the least. Plaintiff's attempt to litigate this issue in multiple forums is improper.

Because Allstate is not a party to this lawsuit and because another lawsuit is pending between Plaintiff and Allstate regarding this very issue, this is not the proper forum to resolve this issue. Therefore, Allstate requests that Plaintiff's motion be denied.

D. Pursuant to Rule 60, SCRCP, Plaintiff Cannot Alter or Amend His Offer of Judgment to Include Allstate.

Plaintiff's Offer of Judgment was specifically made as to Valle, not Allstate. The Order of Judgment was issued with regard to the Offer of Judgment. If Plaintiff is now contending, as he appears to be, that the Offer of Judgment and subsequent Order of Judgment should have been made as to Allstate and not Valle, the defendant and driver who injured him, it too late to make such a contention. South Carolina Rule of Civil Procedure 60(b), the procedure by which a judgment may be altered, provides:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken....

Plaintiff cannot deny that he currently does not have a judgment against Allstate. He acknowledges as much in filing the lawsuit against Allstate, which is currently pending in federal district court. It appears the only basis upon which Plaintiff could be intending to move would be under Rule 60(b)(1) in that the Offer of Judgment should have been filed and offered as to Allstate as well. However, more than a year has passed since the Order of Judgment was entered. Therefore, Plaintiff is precluded from amending the order, and his motion should be denied.

E. Even if Plaintiff Is Entitled to Recover Costs and Interest, the Interest Should Be Measured Based on the Uninsured Policy Limits, not the Total Amount of the Judgment.

Plaintiff's argument that he is entitled to recover interest on the total amount of the judgment because "if the insurance company's exposure were limited to the policy limits, the insurance company would have no reason to settle a meritorious claim" is without merit. (Plaintiff's Memorandum of Law in Support of Motion to Enforce Order of Judgment and Rule to Show Cause, p. 4) While the issue regarding whether an insurer is obligated to pay beyond policy limits for such costs and interest is a novel issue in South Carolina, the law governing policy interpretation and application is certainly not novel.⁴

Under South Carolina law, insurance policies are subject to the general rules of contract construction. See *Nationwide Mut. Ins. Co. v. Commercial Bank*, 325 S.C. 357, 479 S.E.2d 524 (1996). The insurer's duties under a policy of insurance are set forth by the terms of the policy and cannot be enlarged by judicial construction. See *South Carolina Ins. Co. v. White*, 301 S.C. 133, 390 S.E.2d 471 (Ct. App. 1990). The policy issued to Ollie E. Walton-McCray has stated limits of

⁴ Plaintiff's citation to and reliance upon the cases in his Memorandum of Law is likewise misplaced. Plaintiff fails to consider that the plain language of policy limits the coverage afforded under the policy to the policy limits, and South Carolina courts will enforce the express terms of the contract between the parties.

uninsured motorist coverage and Allstate is only obligated to pay the policy limits and is release from any further liability in excess of those limits.

In spite of Plaintiff's assertion that an insurer's ability to deny a meritorious claim is unfettered, South Carolina law states otherwise. Under South Carolina law, there is an implied covenant of good faith and fair dealing that neither party will do anything to impair the other party's rights to receive benefits under the contract. See *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 339, 306 S.E.2d 616, 618 (1983) ("The *Gruenberg* decision is premised on an implied covenant of good faith and fair dealing that neither party will do anything to impair the other's rights to receive benefits under the contract.") (citing *Gruenberg v. Aetna Insurance Co.*, 9 Cal.3d 566, 108 Cal.Rptr. 480, 510 P.2d 1032 (1973)). Plaintiff has not made any showing that Allstate has acted in bad faith in this lawsuit. Therefore, Plaintiff cannot recover more than the limits of the policy. See *Nichols*, 279 S.C. at 339, 306 S.E.2d 618-619 (explaining that "unreasonable refusal on the insurer's part to accept an offer compromise settlement will render it liable in tort to the insured for the amount of the judgment against the insured in excess of policy limits.") (citing *Miles v. State Farm Mut. Ins. Co.*, 238 S.C. 374, 120 S.E.2d 217 (1961)).

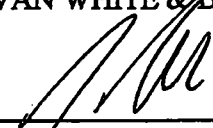
Even if Plaintiff were entitled to recover interest in excess of the policy limits, any measure of the interest would be with regard to the policy limits. Plaintiff's contention that the Order of Judgment was calculated based on the verdict returned does not lend support to his argument that *Allstate* must pay this amount. Rather, Plaintiff brought suit against Valle. That Valle failed to answer the Complaint or otherwise appear to defend his rights in this litigation does not affect the limits of the policy issued by Allstate. Therefore, if Allstate owes any amounts, which it contends it does not under the Order of Judgment on the Offer of Judgment entered as to Valle, the amounts should be calculated with regard to the policy limits. See, e.g., *Taddei v. State Farm Indemnity Co.*,

951 A.2d 1041, 1049 ("We reject plaintiff's argue that the trial court lacked authority to mold the verdict to enter judgment in plaintiff's favor in the amount of the policy limits....").

CONCLUSION

As demonstrated above, Plaintiff is not entitled to the requested relief against Allstate. Allstate was not a party to this lawsuit and Plaintiff's Offer of Judgment was directed only to Valle, the named defendant. The Order of Judgment was entered as to Valle, not Allstate. In light of the foregoing issues, Allstate respectfully requests that the Court deny Plaintiff's motion.

GALLIVAN WHITE & BOYD, P.A.

BY: 

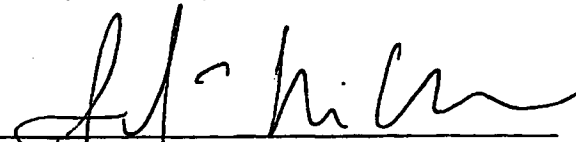
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jlay@GWBlawfirm.com
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Telephone: (803) 779-1833
Facsimile: (803) 779-1767

Attorneys for Defendant Allstate Insurance Company

Columbia, South Carolina
October 22, 2014

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

BY:



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CHAMBERSON

~~Columbia~~, South Carolina

October 22, 2014

22

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Lavern McCray,

Plaintiff,

vs.

Allstate Insurance Company, et al.,

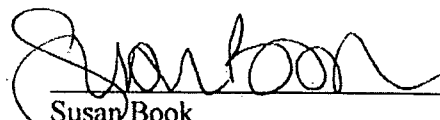
Defendant.

CIVIL ACTION NO. 3:14-2623

CERTIFICATE OF SERVICE

The undersigned employee of Gallivan, White & Boyd, P.A., does hereby certify that I have served all counsel in this action with a copy of the document listed below by placing a copy in the United States Mail, with due and proper postage affixed thereto and addressed as follows:

<u>DOCUMENT:</u>	ALLSTATE INSURANCE COMPANY'S SUPPLEMENTAL RESPONSES TO REQUEST TO ADMIT, SUPPLEMENTAL ANSWERS TO INTERROGATORIES; SECOND SUPPLEMENTAL ANSWERS TO INTERROGATORIES pursuant to Court's Order (ECF 75)
<u>COUNSEL SERVED:</u>	Pamela R. Mullis, Esquire Mullis Law Firm P.O. Box 7757 Columbia, SC 29202 PRMullis@mullislawfirm.com Morgan S. Templeton, Esquire (via E-mail Only) Wall Templeton P.O. Box 1200 Charleston, SC 29402 Morgan.Templeton@WallTempleton.com



Susan Book
Paralegal

Columbia, South Carolina
November 5, 2015

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

LAVERN McCRAY,

Plaintiff,

-versus-

JOSE W. VALLE,

Defendant.

IN THE COURT OF COMMON PLE
NINTH JUDICIAL CIRCUIT
C.A. NO.: 2010-CP-08-1801

LIBERTY MUTUAL FIRE
INSURANCE COMPANY
MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION TO
ENFORCE ORDER AND
RULE TO SHOW CAUSE¹

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2010 OCT 22 AM 9:03

FILED

Liberty Mutual Fire Insurance Company ("LMFIC"), submits this memorandum in opposition to Lavern McCray's Motion to Enforce Order of Judgment and Rule to Show Cause. To the extent the motion seeks relief from LMFIC, the motion should be denied because: (1) there is no judgment against LMFIC and Plaintiff is attempting to change the scope of the State Court's order in violation of Rule 60 of the South Carolina Rules of Civil Procedure; (2) Plaintiff is seeking identical relief in South Carolina Federal Court; (3) LMFIC is not a party in this lawsuit and the Court lacks personal jurisdiction over LMFIC; and (4) Plaintiff is unable to initiate claims against LMFIC with the Rule to Show Cause.

I. MATERIAL FACTS AND PROCEDURAL HISTORY

On May 21, 2010, the Plaintiff Lavern McCray ("Plaintiff") filed a summons and complaint in the above-captioned matter (hereinafter the "Lawsuit"). See Exhibit "A". The Lawsuit alleged that Jose W. Valle ("Valle") was responsible for causing an automobile collision between Plaintiff

¹ LMFIC is not waiving personal jurisdiction since no summons has been served on LMFIC and no direct claims have been asserted against it. Instead, LMFIC is filing this memorandum out of an abundance of caution as Plaintiff is apparently seeking relief against LMFIC, despite LMFIC not being a party to this lawsuit.

and Valle wherein Plaintiff suffered various alleged injuries. LMFIC is not a party in the Lawsuit. Rather, LMFIC was Plaintiff's uninsured motorist coverage ("UM") carrier and participated in the defense of the Lawsuit.

On August 16, 2012, following a four-day trial, a Berkeley County jury rendered a verdict in favor of the Plaintiff in the amount of \$500,000.00 in actual damages and \$147,000.00 in punitive damages. See Exhibit "B". A judgment was entered against Valle in the amount of \$647,000.00, which was filed on August 16, 2012. Id. LMFIC was not identified as a party to the judgment in the Lawsuit. Id. The Form 4 Order indicates that "this order ends . . . the case". Id.

On January 14, 2013, Judge Deadra L. Jefferson issued an Order for Costs and Interests Pursuant to Plaintiff's Offer of Judgment in the Liability Lawsuit; the Order was subsequently filed on January 17, 2013. See Exhibit "C". The Order for Costs and Interests provided that the Plaintiff was entitled to \$3,247.01 in costs and \$77,569.10 in interest. Id. LMFIC was not identified as a party to the Order for Costs and Interests in the Liability Lawsuit. Id.

On May 19, 2014, the Plaintiff filed a civil action against LMFIC in the Circuit Court of Richland County, South Carolina, as Case No. 2014-CP-40-3227 (hereinafter "Bad Faith Lawsuit"). LMFIC was thereafter served on May 28, 2014. See Exhibit "D". On or around June 27, 2014, the case was removed to this Court pursuant to 28 U.S.C. § 1332.

In the Bad Faith Lawsuit, the Plaintiff alleged two causes of action, to wit: (1) breach of implied covenant of good faith/fair dealing; and (2) breach of contract. Id. As part of the Bad Faith Lawsuit, the Plaintiff specifically alleges that she is entitled to recover damages from LMFIC as a direct result of the State court's Order for Costs and Interest. Id. at ¶ 15. This is the identical relief, among other things, sought in this State Court matter. The Plaintiff's pleadings in the lawsuits

specifically allege as follows:

In the Bad Faith Lawsuit, the Plaintiff's Complaint seeks damages related to:

An Order for Costs and Interest Pursuant to Plaintiff's Offer of Judgment [which] was entered on January 17, 2013, awarding Plaintiff costs in the amount of \$3,427.01 and \$77,569.10 in interest; this Offer of Judgment is still outstanding. Id.

In the Lawsuit, the Plaintiff's Motion to Enforce Order of Judgment and Rule to Show Cause seeks damages related to:

On January 14, 2013, this Court issued its Order ruling the Plaintiff is entitled to costs from the date of the Offer of Judgment in the amount of \$3,247.01 and that the amount of interest owed to Plaintiff is \$77,569.10. . . . Therefore, the Plaintiff respectfully moves for this Court to enforce the Order of Judgment and issue a Rule to Show Cause directly against the insurers Ordering payment of the Judgment pursuant to the statute.
See Pl. Mot, pp 1-2.

On June 30, 2014, LMFIC filed a motion to dismiss the Bad Faith Lawsuit. In short, LMFIC contends that Plaintiff's claims should be dismissed because: (1) South Carolina law has not expressly authorized a bad faith lawsuit against an Underinsured Motorist Insurer ("UM") by its insured; (2) the Plaintiff's claims, and thus the relief that appears to be sought, is not supported by (a) the *facts* alleged or (b) existing South Carolina law; and (3) since it is unknown whether any monies are due under the insurance contract, consequently there has been no "refusal to pay benefits due under the contract" that would support a claim of bad faith or breach of contract claim. On July 15, 2014, the Plaintiff filed a response to LMFIC's motion to dismiss.

On September 18, 2014, the Plaintiff filed a Motion to Enforce Order of Judgment and Rule to Show Cause in the Lawsuit. While Valle remains the only defendant in the Lawsuit, the Plaintiff's motion seeks relief and, thus, damages from LMFIC for precisely the same damages she

is seeking in the Bad Faith Lawsuit; *i.e.*, recovery of damages set forth in the Order for Costs and Interest Pursuant to Plaintiff's Offer of Judgment.

On October 3, 2014, LMFIC filed a Motion for Preliminary Injunction in order to prevent the Plaintiff from seeking the identical relief in separate forums. On October 20, 2014, the Plaintiff filed a Response to LMFIC's Motion for Preliminary Injunction. See Exhibit "E". In its response, the Plaintiff attached the Motions Roster for Berkeley County 9th Judicial Circuit for the week of October 20, 2014, which indicated the Plaintiff's Motion to Enforce Order of Judgment and Rule to Show Cause was scheduled to be heard on Wednesday, October 22, 2014. Since LMFIC is not a party in the Lawsuit, this was LMFIC's first "notice" of the hearing.

II. LAW & ANALYSIS

- 1. THERE IS NO JUDGMENT AGAINST LMFIC AND PLAINTIFF IS ATTEMPTING TO CHANGE THE SCOPE OF THE STATE COURT'S ORDER IN VIOLATION OF RULE 60 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.**

"A judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money." Home Port Rentals, Inc. v. Moore, 359 S.C. 230, 234, 597 S.E.2d 810, 812 (Ct. App. 2004)(emphasis added). In the case at bar, the Plaintiff's judgment is against Valle, not LMFIC. See Exhibit "B". Thus, Plaintiff must execute its judgment against Valle, not LMFIC.

Furthermore, Plaintiff has elected the improper proceeding to in which to collect a judgment. Rule 69 of the South Carolina Rules of Civil Procedure provides that:

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be as provided by law. In the aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record,

may examine any person, including the judgment debtor, in the manner provided in these rules for obtaining discovery. S.C.R.C.P. 69 (emphasis added).

Upon information, the Plaintiff has not filed a writ of execution to enforce the State Court's judgment. Instead, Plaintiff should proceed with a supplemental proceeding. See Ex parte Wilson, 367 S.C. 7, 14, 625 S.E.2d 205, 209 (2005). Regardless, Plaintiff has elected an improper venue in which to enforce a judgment on any party, let alone LMFIC (a non-party).

Finally, "while a court may correct mistakes or clerical errors by its own process to make it conform to the record, it cannot change the scope of the judgment." Elliot, 350 S.C. at 408 (citing Dion v. Ravenel, Eiserhardt Assocs., 316 S.C. 226, 230, 449 S.E.2d 251, 253 (Ct. App. 1994); see also Ex parte Strom, 343 S.C. 257, 264, 539 S.E.2d 699, 702 (2000))("indicating a Rule 60 cannot be used to expand the scope of a judgment)). In addition, Rule 60 of the South Carolina Rules of Civil Procedure specifically provides for a party's relief from a judgment, not the enforcement of that judgment against non-parties. Id. Attempting to bind a non-party to a judgment extends beyond the relief contemplated by Rule 60. Id. Finally, any motion to seek relief from a judgment or order "shall be made within a reasonable time, and for reasons (1), (2), and (3), not more than one year after the judgment."² S.C.R.C.P. 60(b). "The one year limit for motions pursuant to Rule 60(b)(1)-(3) is an absolute time limit." Coleman v. Dunlap, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992)(emphasis added).

In the case at bar, a Berkeley County jury rendered a verdict in favor of the Plaintiff in the amount of \$500,000.00 in actual damages and \$147,000.00 in punitive damages. See Exhibit "B". A judgment was entered against Valle in the amount of \$647,000.00, which was filed on August 16,

² SCRC P 60(b)(4)-(5) are not applicable; thus, the one year limitations applies. See Brinkley v. Gregory K. Martin, ASL, Inc., 2006 WQL 7287050 (Ct. App. 2006).

2012. Id. LMFIC was not identified as a party to the judgment in the Lawsuit. Id. The Plaintiff is seeking to enforce the judgment against LMFIC, a non-party, which is prohibited by South Carolina law. Any such relief would expand the scope of the judgment and go beyond the relief contemplated by Rule 60 of the South Carolina Rules of Civil Procedure.

Finally, the judgment that was entered against Valle in the Lawsuit was filed on August 16, 2012. See Exhibit "B". Plaintiff filed its Motion to Enforce Order of Judgment and Rule to Show Cause in the Lawsuit on September 18, 2014, which is well beyond the one-year limitation set forth in S.C.R.C.P. 60(b). As a result, the Plaintiff is clearly beyond the time period to seek relief from, or amend, the State Court judgment or order.

2. PLAINTIFF IS SEEKING IDENTICAL RELIEF IN SOUTH CAROLINA FEDERAL COURT.

In the case at bar, the Plaintiff filed the Bad Faith Lawsuit on May 19, 2014, against LMFIC in the Circuit Court of Richland County, South Carolina. The Bad Faith Lawsuit alleges two causes of action, to wit: (1) breach of implied covenant of good faith/fair dealing; and (2) breach of contract. See Exhibit "D". Among other things, the Plaintiff specifically alleges that she is entitled to recover damages from LMFIC for the amount set forth in the "Order for Costs and Interest Pursuant to Plaintiff's Offer of Judgment [which] was entered on January 17, 2013, awarding Plaintiff costs in the amount of \$3,427.01 and \$77,569.10 in interest" Id. at ¶15. On or around June 27, 2014, the Bad Faith Lawsuit was removed to Federal Court, pursuant to 28 U.S.C. § 1332, and jurisdiction was vested in South Carolina District Court.³

In an apparent attempt to circumvent the Federal Court's jurisdiction, the Plaintiff then filed

³ On October 14, 2014, the Federal Court issued an Order Deferring its Ruling pending final resolution of the underlying state court action, this Lawsuit.

a Motion to Enforce Order of Judgment and Rule to Show Cause in the Liability Lawsuit on September 18, 2014, requesting that this Court: (1) enforce the Order of Judgment and issue a Rule to Show Cause directly against LMFIC ordering payment of the Judgment . . . and for costs and pre-judgment interest; and (2) issue an Order and Rule to Show Cause as to (a) why LMFIC should not be required to comply with the terms and conditions of the Order of the Court; (b) why LMFIC should not be held in contempt; and (c) why LMFIC should not be required to pay attorneys' fees and costs. See Pl. Mot. to Enforce. Thus, the Plaintiff is seeking essentially identical relief in both the Bad Faith Lawsuit and the Lawsuit: damages and/or sanctions arising out of a dispute related to the State court Judgment to which LMFIC is not a party. The Bad Faith Lawsuit clearly demonstrates the Plaintiff is pursuing claims against LMFIC in Federal Court for the very claims she is now attempting to pursue in this Motion to Enforce Order of Judgment and Rule to Show Cause.

Plaintiff should be prevented from seeking double recovery because the United States Supreme Court has rejected such tactics. See Matthews v. Rodgers, 284 U.S. 521, 529-30 (1932) ("In general, the jurisdiction of equity to avoid multiplicity of suits at law is restricted to cases where there would otherwise be some necessity for the maintenance of numerous suits between the same parties, involving the same issues of law or fact.") (emphasis added). Logically Plaintiff cannot recover a judgment from LMFIC in the State court matter *because* Plaintiff has no judgment against LMFIC – hence the reason for the Bad Faith Lawsuit.

3. LMFIC IS NOT A PARTY IN THE LAWSUIT AND THE STATE COURT LACKS PERSONAL JURISDICTION OVER LMFIC.

"A judgment is void if a court acts without personal jurisdiction." Ex parte S.C. Dept. of Rev. v. Elliot, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (S.C. Ct. App. 2002) (quotations omitted)

(citing Thomas & Howard Co. v. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995); see also Coogler v. Cal. Ins. of San Francisco, Cal., 192 S.C. 54, 58-59, 5 S.E.2d 459, 461 (1939)(“No order or judgment affecting the rights of a party . . . should be made or rendered without [proper] notice to the party whose rights are to be thus affected”). A court ordinarily obtains personal jurisdiction by the service of a summons. Id. (citing State v. Sanders, 118 S.C. 498, 502, 110 S.E. 808, 810 (1920)(“The purpose of the summons is to acquire jurisdiction of the person of the defendant”); cf S.C.R.C.P. 3(a)(“A civil action is commenced by filing and service of a summons and complaint.”)). “A summons is not a mere notice, but a means for giving jurisdiction to the court, and unless it is waived, the court cannot otherwise obtain personal jurisdiction.” Brown v. Evatt, 322 S.C. 189, 194, 470 S.E.2d 848, 860 (1996). “One of the most important elements of a Summons is the time it allots for the defendant to appear.” Elliot, 350 S.C. at 408.

In the case at bar, the Plaintiff has not yet instituted any actions against LMFIC in State court.⁴ First, LMFIC is not identified as a party in the Summons or Complaint in the Lawsuit. See Exhibit “A”. Second, LMFIC is not a party to the judgment. See Exhibit “B”. As set forth above, “a judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money.” Moore, 359 S.C. at 234. Third, LMFIC is not a party to the Order for Costs and Interest Pursuant to Plaintiff’s Offer of Judgment in the Lawsuit. See Exhibit “C”. The Plaintiff’s Lawsuit and, thus, judgment are against Valle, not LMFIC.

Since LMFIC is not a party to the Lawsuit, and LMFIC was not subject to the State Court’s Order for Costs, this Court does not have personal jurisdiction to: (1) compel LMFIC to comply with the Order for Costs; (2) hold LMFIC in contempt for failing to comply with the Order of Costs

⁴ Except for the Bad Faith Lawsuit which was removed to South Carolina Federal Court.

against Valle; and/or (3) issue a Rule to Show Cause directly against the insurers Ordering payment of the Judgment - as the Plaintiff requests in its Motion to Enforce Order of Judgment and Rule to Show Cause. In so far as the Plaintiff is seeking relief, it can only be directed at the sole party Defendant who is personally indebted to Plaintiff. See Evatt, 322 S.C. at 194.

4. PLAINTIFF IS UNABLE TO INITIATE CLAIMS AGAINST LMFIC WITH THE RULE TO SHOW CAUSE.

While the South Carolina Supreme Court has "previously excused the use of the Rule to Show Cause [in place of a summons] to obtain jurisdiction when it contained the essential elements of a valid Summons," it has held that a court does not acquire jurisdiction if the "Rule to Show Cause [does] not contain the substantial requisites of a Summons." Citizens & S. Nat'l Bank of S.C. v. First Palmetto State Bank & Trust Co., 279 S.C. 252, 254, 305 S.E.2d 80, 80-81 (1983).

Instead, the Plaintiff is apparently seeking to create an action against LMFIC through the Plaintiff's Rule to Show Cause. The Rule, however, "does not contain the essential elements of a summons" as no time is set forth for any party or non-party to respond and, thus, the State court "does not have personal jurisdiction" over LMFIC. See Ex Parte S.C. Dept. of Rev., 566 S.E.2d 196, 198, 350 S.C. 404 (2002).

III. CONCLUSION

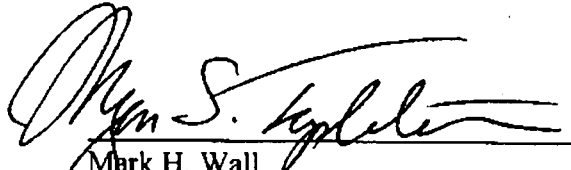
For all of the aforementioned reasons, Liberty Mutual Fire Insurance Company prays this Honorable Court deny Plaintiff's Motion to Enforce Order of Judgment and Rule to Show Cause in

so far as it seeks relief and/or damages from Liberty Mutual Fire Insurance Company.

This 20th day of October, 2014.

Respectfully submitted,

WALL, TEMPLETON & HALDRUP, P.A.

A handwritten signature in dark ink, appearing to read "Morgan S. Templeton", is written over a horizontal line.

Mark H. Wall

Morgan S. Templeton

145 King Street, Suite 300

Post Office Box 1200

Charleston, South Carolina 29402

(843) 329-9500

Attorneys for Liberty Mutual Fire Insurance
Company

EXHIBIT “A”

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Levern McCray

Plaintiff(s)

vs.

Jose W. Valle,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP-

2010-CP-08-1501

(Please Print)

Submitted By: Pamela R. Mullis

Address: Mullis Law Firm
P.O. Box 7757

Columbia, SC 29202-7757

SC Bar #: 13503

Telephone #: 803-799-9577

Fax #: 803-254-8956

Other:

E-mail: prmmullis@mullislawfirm.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

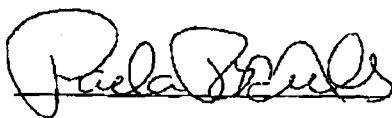
*If Action Is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

☐ Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	☐ Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Previous Notice of Intent Case # 20-CP- ☐ Notifier File Med Mal (230) ☐ Other (299)	☐ Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☒ Personal Injury (350) ☐ Other (399)	☐ Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Other (399)
☐ Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	☐ Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	☐ Administrative Law/Relief ☐ Reinstatement Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	☐ Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
☐ Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of-State Depositions (650) ☐ Sexual Predator (510)		

Submitting Party Signature:



Date: 5/12/10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

20 10 -CP-08-1801

SUMMONS
(Personal Injury)
(JURY TRIAL REQUEST)

FILED
2010 MAY 21 PM 3:53
MARVIN P. BROWN
CLERK OF COURT

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribed, Mullis Law Firm, 1229 Elmwood Avenue, Post Office Box 7757, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



J. Marvin Mullis, Jr.

Pamela R. Mullis

MULLIS LAW FIRM

Post Office Box 7757

Columbia, South Carolina 29202

(803) 799-9577

Columbia, South Carolina
May 12, 2010

JURY TRIAL REQUESTED

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Levern McCray,)
Plaintiff,)
vs.)
Jose W. Valle,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2010-08-1801

COMPLAINT
(Personal Injury)
(JURY TRIAL REQUESTED)

FILED
2010 MAY 21 PM 3:53
MARY P. BROWN
CLERK OF COURT
JUDICIAL CIRCUIT 9

The Plaintiff above named, complaining of the Defendant herein, would respectfully show unto the Court:

1. The Plaintiff, Levern McCray, is a citizen and resident of the Kershaw County, State of South Carolina.
2. The Defendant, Jose W. Valle, is upon information and belief, a citizen and resident of the Berkeley County, State of South Carolina.
3. On or about December 20, 2008, the Plaintiff was traveling east on 5-8-748 in or about Moncks Corner, South Carolina. The Defendant, who was driving under the influence, was traveling west on 5-8-748 and crossed the center line into the eastbound lane and struck Plaintiff's vehicle causing a collision between the two vehicles and the damages of the Plaintiff.
4. The aforementioned collision was a direct and proximate result of the negligence and the recklessness of the Defendant as follows:
 - a. In driving under the influence;
 - b. in pulling into the Plaintiff's lane of travel;

1
am

- c. in speeding;
- d. in failing to maintain a proper lookout;
- e. in operating his vehicle in an unsafe manner;
- f. in failing to use the degree of care and caution a reasonable and prudent person would have used under the same or similar circumstances;
- g. and in such other particulars as the evidence at trial may show.

5. As a direct and proximate result of the negligence and recklessness of the Defendant, the Plaintiff was injured as follows:

- a. suffered traumatic and permanent injury to his left ankle at the fibular and tibia, right thumb, left shoulder, left knee, left foot, left leg and left hip;
- b. incurred substantial medical expenses and will continue to incur such expenses in the future;
- c. suffered severe pain and mental anguish and will continue to so suffer in the future;
- d. suffered an impairment in his ability to enjoy life; and
- e. suffered a loss of wages and an impairment in her ability to earn wages in the future.

6. As a result of the negligence and recklessness of the Defendant which injured the Plaintiff, he is informed and believes he is entitled to recover actual and punitive damages against the Defendant.

WHEREFORE, the Plaintiff prays for judgment against the Defendant in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars, actual and punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

Columbia, South Carolina
May 12, 2010

JURY TRIAL REQUESTED.



J. Marvin Mullis, Jr.

Pamela R. Mullis

MULLIS LAW FIRM

Post Office Box 7757

Columbia, South Carolina 29202

(803) 799-9577

EXHIBIT “B”

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-08-1803

Levern McCray
PLAINTIFF(S)

Jose W. Valle
DEFENDANT(S)

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This Negligence cause of action came before the Court for a trial by jury on August 13-16, 2012. All issues have been tried and a verdict rendered in favor of the Plaintiff in the amount of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars actual damages and One Hundred Forty-Seven Thousand and 0/100 (\$147,000.00) Dollars punitive damages. The Court required post-trial motions. Post-trial motions were heard and respectfully denied. The Court conducted a B.M.W. of North America, Inc. v. Gore, 517 U.S. 559, 116 S. Ct. 1589 (1996) analysis and will be submitting a supplemental order conducting a post-trial review of the jury's punitive damages award.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Levern McCray	Jose W. Valle	\$ 647,000.00
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

email: PRM, JRE KKA,
mjm, ECS

164

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

dk Jesser
Circuit Court Judge

2128
Judge Code

8/16/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 16th day of Aug, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 16 day of Aug, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Pamela Mullis, Esq.

Joseph Epting, Esq.

Julian Allen, Esq.

Emily Sheets, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

Court Reporter: Melissa Singletary

EXHIBIT "C"

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Levern McCray,

Plaintiff,

vs.

Jose W. Valle,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

ORDER
FOR COSTS AND INTEREST
PURSUANT TO
OFFER OF JUDGMENT

2013 JAN 17 PM 1:10
FILED
CLERK OF COURT
NINTH JUDICIAL CIRCUIT
SOUTH CAROLINA

Date of Hearing: September 11, 2012
Presiding Judge: Honorable Dendré L. Jefferson
Plaintiff's Attorney: Pamela R. Mullis, Esquire
Defendant's Attorney: Julian K. Allen, Esquire, on behalf of Allstate

This matter came before the Court by hearing on September 11, 2012. The parties were before the Court in regard to the setting of the proper amount of costs and interest, pursuant S.C. Code Ann. § 15-35-400 in regard to Plaintiff's Offer of Judgment filed on February 15, 2011, in the amount of \$300,000.00, and Defendant's Offer of Judgment filed on January 19, 2011, in the amount of \$135,000.00. The jury awarded the Plaintiff a total of \$500,000.00 Dollars in actual damages and \$147,000.00 Dollars in punitive damages, totaling \$647,000.00 Dollars, on August 16, 2012.

COSTS PURSUANT TO OFFER OF JUDGMENT

Pursuant to § 15-35-400 of the S. C. Code of Laws for 1976, as amended; the Plaintiff is entitled to recover court costs where the Offer of Judgment filed was exceeded by the jury verdict. The jury awarded the Plaintiff for a total of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012.

1 HLA
AKA

Pursuant to § 15-35-400(B), South Carolina Code of Laws 1976, as amended, "If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment."¹

In this case, Plaintiff obtained a verdict in excess of the offer of judgment. Trial costs including court filing fees, deposition witness attendance fees, including mileage and service of necessary subpoenas, and trial witness fees, including mileage and service of necessary subpoenas are all recoverable costs pursuant to S.C. Code § 15-35-400(B). Black v. Roche Biomedical Labs., a Div. of Hoffman-LaRoche, Inc., 315 S.C. 223, 229, 433 S.E.2d 21, 25 (Cl. App. 1993); Belton v. State, 330 S.C. 422, 499 S.E.2d 225 (Cl. App. 1998). The South Carolina Supreme Court has decided "[c]osts and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute." Oliver v. S.C. Dep't of Highways and Public Transp., 309 S.C. 313, 422 S.E.2d 128, 131 (1992). While a "prevailing party *shall* ordinarily be entitled to recover certain costs and disbursements[,] [s]uch costs and disbursements do not, however, include attorney fees²." Black, 315 S.C. at 224, 433 S.E.3d at 227. Further, Rule 54, SCRCF and Rule 68, SCRCF do not create a right to recover attorney's fees without authorization of statute. S.C. Code Ann. § 15-35-400(B) does not create a right to recover attorney's fees if an offeror obtains a favorable judgment.

Pursuant Rule 45(b)(1), SCRCF, the recoverable costs for a subpoenaed witness includes a \$25.00 attendance fee per day and mileage. Because the Plaintiff was not subpoenaed to appear at his deposition, his attendance fee and mileage are not recoverable. Regarding transcript costs, case law establishes "the cost of a transcript or copy of the evidence, or of a part thereof,

¹ S.C. CODE ANN. § 15-35-400(B) (1976).

² As attorney's fees are not recoverable costs, Ms. Mullis' mileage to and from depositions is not recoverable.

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2/24/94
[Signature]

obtained for the convenience of the parties or their counsel, cannot be taxed as part of the costs." South Carolina Pub. Serv. Auth. v. Spearwaint Liquidating Co., 201 S.C. 207, 207, 22 S.E.2d 252, 254 (1942) (quoting 20 C.J.S. *Costs* § 249). As the Plaintiff has identified no statute or rule of court that provides for the award of transcript costs, such costs are not recoverable. Likewise, the Plaintiff has not identified a rule of court or statute providing for witness attendance fees in excess of that provided for in Rule 45(b)(1), SCRCF. "Fees for expert witnesses, beyond the ordinary fees authorized for witnesses generally, are not taxable as costs unless there is a statute specifically allowing such an expense." Oliver, 309 S.C. at 319, 422 S.E.2d at 132. As no statute provides otherwise, Rule 45(g), SCRCF "places a fixed dollar amount on witness fees in the amount of \$25.00 per day plus mileage." Id (quoting 20 C.J.S. *Costs* § 116 (1990)).

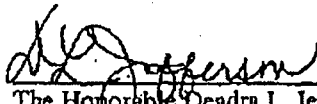
The Plaintiff is entitled to the following costs: Court filing fees of \$50.00; Deposition costs, for witness attendance fees and mileage, totaling \$65.50: Trooper Reginald Thomas - \$35.00, and Heather Dailey - \$30.50; Expenses of witnesses at trial: Dr. Green B. Neal - \$142.66, Dr. Oliver G. Wood - \$210.60, Trooper Reginald Thomas - \$64.96, Timothy Craven - \$52.75, Process Service for Timothy Craven - \$165.00, George Williams - \$50.53, Clyde Cochran - \$67.18, Process Service for George Williams/Clyde Cochran - \$124.88, Nathan Washington - \$104.92, Harry White - \$107.14, Leon Goodman - \$110.47, Michael Lewis - \$92.71, Marvin Mosely - \$353.56, Jennifer Stayton, RN - \$35.00; SLED witnesses: Doris Yarbrough, Pat Crooks, Kimberly Meres - \$1,449.15. The total for expenses of witnesses at trial is \$3,131.51. Therefore, Plaintiff is entitled to costs from the date of the Offer of Judgment in the amount of Three Thousand Two Hundred Forty Seven Dollars and One Cent (\$3,247.01)

INTEREST PURSUANT TO OFFER OF JUDGMENT

With respect to interest, S. C. Code § 15-35-400(B)(2) provides for "... eight percent interest computed on the amount of the verdict or award from the date of the offer."³ The jury awarded the Plaintiff a verdict of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012, for which he is entitled to Eight percent (8%) interest from the date of the offer until the date of the verdict. As 547 days have elapsed between the date of the offer of judgment, February 15, 2011, and the date of the verdict, August 16, 2012, the total amount of interest owed equals Seventy Seven Thousand Five Hundred Sixty Nine Dollars and Ten Cents (\$77,569.10).

AND IT IS SO ORDERED.

January 14, 2013
Charleston, South Carolina,


The Honorable Deadra L. Jefferson
Chief Administrative Judge

³ S.C. CODE ANN. § 15-35-400(B)(2) (1976).

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2013

EXHIBIT "D"

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Levern McCray

Plaintiff(s)

vs.

Allstate Insurance Company and
Liberty Mutual Fire Insurance
Company,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 40-

3227

(Please Print)

Submitted By: Pamela R. Mullis

Address: Mullis Law Firm

P.O. Box 7757

Columbia, SC 29202-7757

SC Bar #: 13503

Telephone #: 803-799-9577

Fax #: 803-254-8956

Other:

E-mail: prnullis@mullislawfirm.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action Is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
- ☐ Constructions (140)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☒ Other (199)

- Torts - Professional Malpractice**
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case #
20 -CP-
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

- Torts - Personal Injury**
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Other (399)

- Real Property**
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Other (399)

- Inmate Petitions**
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

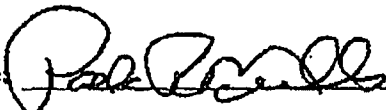
- Judgments/Settlements**
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

- Administrative Law/Relief**
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

- Appraisals**
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

- Special/Complex /Other**
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of-State Depositions (650)
- ☐ Sexual Predator (610)

Submitting Party Signature:



Date:

5/19/2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Levern McCray,)
Plaintiff,)
vs.)
Allstate Insurance Company and)
Liberty Mutual Fire Insurance)
Company,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-40-

SUMMONS
(Bad Faith)
(JURY TRIAL REQUESTED)

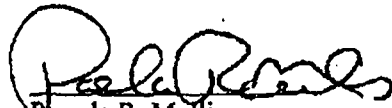
RICHLAND COUNTY
FILED
2014 MAY 19 PM 2:10
JEANETTE W. MCBRIDE
C.C.P. & G.S.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribed, Mullis Law Firm, 1229 Elmwood Avenue, Post Office Box 7757, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Columbia, South Carolina
May 19, 2014

JURY TRIAL REQUESTED


Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Levern McCray,)

Plaintiff,)

vs.)

Allstate Insurance Company and)

Liberty Mutual Fire Insurance)

Company,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-40-

COMPLAINT
(Bad Faith)
(JURY TRIAL REQUESTED)

RICHLAND COUNTY
FILED
2014 MAY 19 PM 2:10
JEANNE E. W. MCBRIDE
C.D.P. & G.S.

The Plaintiff above named; complaining of the Defendants herein; would respectfully show unto the Court:

1. The Plaintiff, Levern McCray, is a citizen and resident of Kershaw County, State of South Carolina.

2. The Defendant, Allstate Insurance Company, is an insurance company licensed and authorized to do business in South Carolina and does conduct business in and maintain agents, servants and employees in the County of Richland, State of South Carolina.

3. The Defendant, Liberty Mutual Fire Insurance Company, is an insurance company licensed and authorized to do business in South Carolina and does conduct business in and maintain agents, servants and employees in the County of Richland, State of South Carolina

4. At all times herein mentioned and in regard to all matters herein mentioned the both Defendants acted by and through their respective agents, servants, and employees,

pm

who were at all times acting within the course and scope of their agency and employment, and for whose acts and omissions these Defendants are liable.

5. On or about December 20, 2008, the Plaintiff was traveling east on 5-8-748 in or near Moncks Corner, South Carolina when he was violently struck by Jose Valle, who was driving under the influence, was traveling west on 5-8-748 and crossed the center line into the eastbound lane, coming around a curve and hit the Plaintiff's vehicle head on causing a collision between the two vehicles and the damages of the Plaintiff.

6. The Plaintiff had to be cut from his vehicle using the jaws of life by emergency personnel, and suffered the following injuries: a fractured left leg and ankle requiring surgical implantation of hardware into his leg; injuries to his head including loss of consciousness - - a concussion/ traumatic brain injury, neck, lower back, left knee, chest, laceration to his right thumb, injuries to both his left and right shoulders. All the above injuries resulted in permanent impairment to the Plaintiff. He also suffered a loss of wages and a loss of future ability to earn wages in the future.

7. Defendant Allstate Insurance Company insured Plaintiff at the time of the subject accident pursuant to a valid auto insurance policy with \$100,000.00 in uninsured bodily injury coverage on the vehicle in the accident and \$100,000.00 on two additional vehicles at his residence for a total of \$300,000.00 in available coverage for damages both actual and punitive, including an additional owed \$6,000.00 in personal injury protection, \$2,000.00 per vehicle that Allstate owes and never tendered to the Plaintiff.

8. Defendant Liberty Mutual insured Plaintiff at the time of the subject accident pursuant to an uninsured insurance policy with \$50,000.00 in bodily injury coverage and \$10,000.00 in personal injury protection (PIP), for a total of \$60,000.00 in

available coverage for damages both actual and punitive; Liberty tendered the PIP just before trial and eventually tendered their UM policy after forcing Plaintiff to obtain a verdict for over \$597,000.00, above their available coverage. Liberty Claims their exposure is 1/5 of the coverage over the available coverage on the vehicle the Plaintiff was operating on the day of the incident, which would represent, \$109,400.00 plus post judgment interest on August 16, 2012; Liberty has not offered this amount as of the date of filing, and has adamantly denied any responsibility for the Offer Of Judgment despite the fact they were served with the OOJ and would, per their own admission owe 1/5 above the first \$100,000.00 in coverage.

9. The Plaintiff suffered substantial losses as a result of the incident above, as detailed above, including but not limited to substantial permanent impairment, loss of enjoyment of life, pain and suffering, mental impairment among other damages and demanded the tender of the entire available coverage from both Defendants Allstate Insurance Company and Liberty Mutual for actual and punitive damages pursuant to their contracts of insurance up until August 13, 2012.

10. Said demand was reasonable and a duty properly owed by both Defendants pursuant to their contract with Plaintiff, and said contract includes not only the express duties that the Defendants treat the Plaintiff fairly, reasonably, and in good faith, evaluate the Plaintiff's claim pursuant to the contract of insurance but also include the implied covenant of good faith and fair dealing which was breached by the Defendants in failing to tender the demanded policy limits to the Plaintiff within a reasonable time and without requiring the Plaintiff to either take the case through trial OR continue to delay the payment of the owed amount by appealing a valid verdict.

3


11. Both Defendants refused to tender the available coverage to Plaintiff, upon demand, in intentional breach of their insurance contracts with the Plaintiff, and are strictly liable for refusing to tender their policy limits.

12. Furthermore, Both Defendants in connection with the aforesaid loss required lawsuits, and said Defendants have acted without just cause, unreasonably and in bad faith, have failed to fully investigate, evaluate and determine the loss in accordance with the policies of insurance referred to, have failed to make a timely proper offer to Plaintiff, knowing that by so doing they would subject Plaintiff to further damage, and Defendants have otherwise acted improperly, all in a negligent, unreasonably, willful and reckless disregard of Plaintiff's rights under the terms of the aforesaid contracts of insurance and the Defendants' obligations of good faith and fair dealing thereunder, forcing an unnecessary, costly and mentally stressful trial of this case and by continuing the bad faith by appealing the valid verdict and refusing to pay the claim.

13. Plaintiff filed an Offer of Judgment on February 15, 2011, in the amount of \$300,000.00 and it was properly served upon defense counsel for both Defendant Allstate Insurance Company and Defendant Liberty Mutual, neither Defendant tendered their policy limits within the time limit of the offer; Liberty Mutual did not offer the amount they claimed they owed which would have been 1/5 of \$200,000. or \$40,000.

14. Plaintiff received a verdict against Defendant Jose Valle on August 16, 2012, in the amount of \$500,000.00 actual damages and \$147,000.00 punitive damages.

15. An Order for Costs and Interest Pursuant to Plaintiff's Offer of Judgment was entered on January 17, 2013, awarding Plaintiff costs in the amount of \$3,427.01 and \$77,569.10 in interest; this Offer of Judgment is still outstanding.

16. Plaintiff now contends that the Defendants are now liable to the Plaintiff for the total verdict including post judgment interest, the total amount of the awarded Offer of Judgment; as well as, costs, actual and punitive damages separate and apart from the underlying damages for their bad faith breach of contract and such other relief as the court may deem just and proper.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in an amount in excess of Three Hundred Thousand (\$300,000.00) Dollars, actual and punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

Columbia, South Carolina
May 19, 2014

JURY TRIAL REQUESTED.



Pamela R. Mullis

MULLIS LAW FIRM

Post Office Box 7757

Columbia, South Carolina 29202

(803) 799-9577

in preparation for submission
is hereby submitted to the court
for the purpose of the court's
review of the proposed
amendment to the petition
for summary judgment.

Respectfully,
Pamela R. Mullis
Attorney for Plaintiff

EXHIBIT "E"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Levern McCray,	)	CIVIL ACTION NO.: 3:14-2623-TLW
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S RESPONSE TO DEFENDANT
	)	LIBERTY'S MOTION FOR
Allstate Insurance Company and	)	PRELIMINARY INJUNCTION
Liberty Mutual Fire Insurance	)	
Company,	)	
	)	
Defendants.	)	

Plaintiff by and through his Counsel, files the following Limited Response, and defers a Memorandum with further argument until the Court lifts the Stay or directs otherwise.

SUMMARY OF ARGUMENT

Plaintiff's Counsel is under the impression, this matter was stayed pursuant to the Court's Order dated October 2, 2014; and subsequent Court Order deferring the ruling on the pending motions until January 2015, filed October 14, 2014. However, with Defendant Liberty's filing a Motion For Preliminary Injunction - and the Defendant's Joint Reply to Court Order - Plaintiff files this very brief Limited Response out of an abundance of caution and merely to make clear the Plaintiff's position without further detailed argument in the matter or possible annoyance to the Court.

First, Plaintiff Objects to the Defendant's request for an injunction, and requests the Court deny the same. Clearly, Plaintiff's Counsel substantively disagrees with Defense Counsel's position that the lower court action is "final," as evidenced by Plaintiff's two (2) current motions in the state court regarding costs. In the event the Court is inclined to lift the

stay and address this motion, Plaintiff would respectfully request the opportunity to fully brief and file a Memorandum Opposing Defendant Liberty's Motion For Preliminary Injunction.

Second, in Defendant's Joint Reply to the Court, the Defendants stated the state court action was "final." As stated above, Plaintiff continues to seek relief in the state court case related to appellate costs and attorney's fees, as well as, awarded cost and prejudgment interest pursuant to the South Carolina Offer of Judgment statute. The state court motion is set for a hearing on Wednesday, October 22, 2014 - (see attached notice). If Defense Counsel "upon information and belief" considers the matter final - then frankly they would not be filing a Motion for Injunction to prevent the state court hearing or ruling on a Motion for costs. Plaintiff is clearly entitled, now that the case has been Remitted from the South Carolina Court of Appeals; to seek costs pursuant to state statutes and this bad faith action does not interfere with those proceedings or vice-versa.

Alternatively, pursuant to both state and federal rules of civil procedure, the Plaintiff filed this bad faith action, while the appeal in the state court was pending to protect Plaintiff's rights in both matters. While the state court case was pending Plaintiff did not seek to enforce the Order on the Offer of Judgment in the state court (see attached). However now that the Court of Appeals has issued a Remitter; the Plaintiff is entitled to, and is therefore moving forward with that motion, as well as a motion for appellate costs.

The Offer of Judgment was outstanding at the time this bad faith action was filed and the Plaintiff properly raised that Order for Costs and Interest, and the subsequent delay in failure to pay that Order, as a possible issue regarding damages in this bad faith action. In the event Plaintiff proves his bad faith claim the Offer of Judgment and award, maybe relevant to this case. However, at this early stage no discovery has been done on that issue. The Defendants refused

to pay the demand in the Offer of Judgment for years and the actual Order awarding the costs and prejudgment interest was not appealed. Plaintiff is entitled to pursue an Order awarding him costs and prejudgment interest in the state court case now that the case has been remitted. Plaintiff is clearly entitled to raise the issue and pursue the possible bad faith actions of the Defendants related to the Offer of Judgment response, delay in payment of the Offer of Judgment, the use of the Offer of Judgment in the claims process, and any other related matters thereto in this Court against both these Defendants directly. In the event there is a claim of prior payment, created by a subsequent award in the state court action related to the Offer of Judgment; Plaintiff's counsel has the utmost confidence in Defense Counsel's ability to file a Motion; and raise any issue of possible overpayment or set-off with the Court. At which time the Court can consider that issue and certainly perform the simple mathematical equation that would also be relevant to any other payments provided by both Defendants in this case.

CONCLUSION

Plaintiff respectfully considers this case stayed pursuant to the Court's prior rulings. Plaintiff considers the state court matter pending until all motions have been properly addressed by the state court. In the event the matter is not stayed as to the injunction, Plaintiff respectfully requests this Court deny Defendant's Motion or correct the Plaintiff as to the proper status of the case and permit a detailed memorandum if required.

Respectfully submitted,

s/Pamela R. Mullis

Pamela R. Mullis, Fed. I.D. # 7254

MULLIS LAW FIRM

Post Office Box 7757

Columbia, South Carolina 29202

(803) 799-9577

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina
October 20, 2014

Berkeley County 9th Judicial Circuit - Roster Details
Motion Docket Week of Oct 20, 2014 Courtroom E

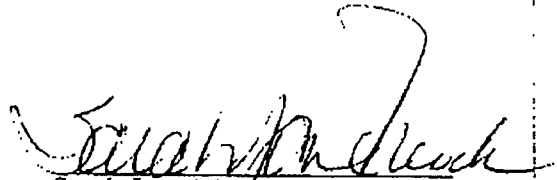
Common Pleas				Harrington				119			
Motion Hearing				10/20/2014				10/24/2014			
Number of motions = 184											
#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
17	10/20/2014	10:00 AM	0:12	Motion to Establish Monthly Rents or to Vacate Single Family	Allen R. White-PLT	08/29/2014	2014CP0801956 Allen R. White VS Timothy L. White	Partition 440	Wheeler M. Tolman (843) 569-0212		
19	10/20/2014	10:00 AM	0:12	Motion/Default Judgment Including Request for Attorneys Fees	Scott Hebebrand-PLT	05/22/2014	2014CP0800117 Scott Hebebrand VS Sheetrock And Stucco Services, Lc	Construdions 100	Patrick J. McDonald (843) 388-0313		
2	10/22/2014	9:30 AM	0:12	Motion/Order of Reference	Wells Fargo Bank, N.A-PLT	09/19/2014	2013CP0801514 Wells Fargo Bank, N.A VS Brandi Davis , defendant, et al	Foreclosure 420	Andrew William Montgomery (803) 744-5331 J. Pamela Price (803) 771-1790 x1293	Betty Brown Richard Brown	
4	10/22/2014	9:30 AM	0:12	Motion/Compel Answers to Interrogatories and Responses to	Inxs, Vii, Llc-PLT	09/19/2014	2014CP0800273 Inxs, Vii, Llc VS Jeffrey A Slah	Breach of Cont 140	Irish Ryan Neville (843) 727-1144	David B. Marvel (843) 722-7250	

CERTIFICATE OF SERVICE

The undersigned employee of WALL TEMPLETON & HALDRUP, P.A. hereby certifies that on this 21st day of October, 2014 she served a copy of **LIBERTY MUTUAL FIRE INSURANCE COMPANY'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO ENFORCE ORDER AND RULE TO SHOW CAUSE** *via hand delivery* **ONLY** to the persons hereinafter named, at the places and addresses stated below, which are the last known address, in Charleston, South Carolina:

ADDRESSEE(S)

Pamela R. Mullis
Mullis Law Firm
Post Office Box 7757
Columbia, South Carolina 29202
ATTORNEY FOR PLAINTIFF


Sarah Jane Mosk

2014 OCT 22 AM 9:03
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO.: 2010-CP-08-1801
	)	
Levern McCray,	)	
	)	
Plaintiff,	)	ORDER ENFORCING COSTS AND
	)	INTEREST AGAINST CARRIERS
vs.	)	ALLSTATE AND LIBERTY MUTUAL
	)	
Jose W. Valle	)	
	)	
Defendant.	)	
	)	

Date of Hearing:	October 22, 2014
Presiding Judge:	Honorable Kristi L. Harrington
Plaintiff's Attorney:	Pamela R. Mullis, Esquire
Defendants' Attorney:	Julian K. Allen, Esquire

PROCEDURAL HISTORY

The Parties were before the Court on Plaintiff's Motion to Enforce Order of Judgment and for Rule to Show Cause in the above referenced matter against the insurers Allstate Insurance Company (Allstate) and Liberty Mutual Insurance Company (Liberty). Appearing were Pamela R. Mullis, Esquire and Joseph M. Epting, Jr., Esquire on behalf of the Plaintiff, Levern McCray, and Julian K. Allen, Esquire on behalf of Defendants. Making special appearances in the matter but not arguing before the Court were: John Holden and Janice Holmes on behalf of Allstate and Mark Wall on behalf of Liberty.

This case was tried and a final verdict awarded to the Plaintiff on August 16, 2012, with Julian K. Allen, Esquire appearing at trial for Allstate and Emily Sheets, Esquire appearing for Liberty. Prior to trial, Offers of Judgment were exchanged between the parties. Plaintiff seeks to enforce the Court's Order of January 14, 2013, awarding costs and prejudgment interest related to his unaccepted Offer of Judgment.

LAW/ ANALYSIS

The uninsured motorist provision, S.C. Code Ann. § 38-77-150 (2002), requires that automobile insurance policies in South Carolina contain a provision “undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of the uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140.” The referenced section, S.C. Code Ann. § 38-77-140, provides “An automobile insurance policy may not be issued or delivered in this State...unless it contains a provision insuring the persons defined as insured against loss...imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles...subject to limits **exclusive of interest and costs** with respect to each motor vehicle....” (emphasis added). The statute goes on to spell out the minimum limits required for automobile insurance in the state of South Carolina. The uninsured motorist statute further provides,

“No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear.”

Thus, the statute required Plaintiff to serve copies of his pleadings on his uninsured motorist carriers and allowed, but did not require, the uninsured motorist carriers to appear and defend the claim “in the name of the uninsured motorist,” Jose Valle. The file establishes that Plaintiff’s Summons and Complaint was brought in the name of the uninsured motorist, Jose Valle, with copies of the pleadings served upon insurers, Allstate and Liberty in the manner provided by law, i.e., through the Department of Insurance, on August 27, 2010. Allstate answered on October 19, 2010; Liberty answered on September 23, 2010. Thus the carriers each elected to defend the

action pursuant to the above statute and subject themselves to the jurisdiction of the court. Neither insurer challenged the jurisdiction of the court at any time throughout the case.

A. PERSONAL JURISDICTION

Allstate Insurance Company and Liberty Mutual Insurance Company came within the jurisdiction of the Court upon being properly served with the Summons and Complaint in 2010-CP-08-1801. Thereafter, the defending carriers participated in discovery; extended an Offer of Judgment to Plaintiff; rejected Plaintiff's Offer of Judgment; pursued the case through trial to verdict; unsuccessfully appealed the jury verdict; and appeared before this Court in a hearing for the purpose of arguing against Plaintiff's Motion for offer of judgment costs and interest.

The defending carriers availed themselves of the jurisdiction of the Court as permitted by the uninsured motorist statute in their unsuccessful effort to avoid a jury verdict for Plaintiff at trial. Having lost the trial; having lost the appeal; and having failed in their arguments against the award of Offer of Judgment costs and interest as set out in the unappealed January 14, 2013, Order of this Court, the carriers will not be heard to claim that the Court lacks personal jurisdiction to award offer of judgment costs and interest against them pursuant to the statute.

B. OFFERS OF JUDGMENT

Having elected to appear and defend the case in the name of the uninsured motorist, the defending carriers participated in discovery and conducted depositions. On January 18, 2011, the defending carriers served an Offer of Judgment on the Plaintiff for \$135,000.00.¹ Plaintiff filed a counter Offer of Judgment for \$300,000.00 on February 15, 2011. Plaintiff's Offer of

¹ The defending carriers' Offer of Judgment was signed and served by counsel for uninsured carrier, Allstate representing, at the time, both carriers as he had the primary defense of the action as the uninsured carrier for the vehicle involved in the collision.

Judgment was served on both uninsured carriers, Allstate and Liberty Mutual. The carriers chose not to accept Plaintiff's Offer of Judgment. The uninsured motorist, Jose Valle was not served with the Offer of Judgment; Valle had no actual authority to tender the defending carriers' policy limits.

Upon rejection of Plaintiff's Offer of Judgment, this civil action proceeded to a four-day jury trial, with the carriers appearing and defending in the name of Jose Valle. The jury awarded the Plaintiff a total of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in damages.² The carriers took appeal from the jury verdict in the name of Jose Valle. Upon the appellate court's affirming the jury verdict on September 2, 2014, the Plaintiff moved for an order of costs and interest based on the Order issued by the trial Judge on January 14, 2013, from the unaccepted Offer of Judgment pursuant to S.C. Code Ann. § 15-35-400.

The carriers participated in the hearing on Plaintiff's motion for offer of judgment costs and interest on September 11, 2012, represented by primary counsel for Allstate and attended by counsel for Liberty Mutual. Upon unsuccessfully arguing against the imposition of costs and interest from the unaccepted Offer of Judgment, the carriers made no request for reconsideration and took no appeal from the January 14, 2013, Order awarding to Plaintiff costs and interest from the unaccepted offer of judgment in this civil case.

C. SECTION 15-35-400 - COSTS AND INTEREST

An award of costs and interest pursuant to the Offer of Judgment Statute is not limited to the insurance company's policy limits as these costs and interest are not 'damages' awarded to

² Thus, Plaintiff obtained a verdict in excess of his Offer of judgment in the underlying jury trial, entitling him to an award of costs and interest pursuant to the Offer of Judgment statute, S.C. Code Ann. § 15-35-400.

the Plaintiff which would be included in those policy limits and they are expressly excluded by the South Carolina code in our minimum limits as required by law.

In South Carolina, “damages” are defined by statute, Section 38-77-30(4), to include *actual and punitive damages*; costs and interest are not included as “damages.” In addition, the statute setting the minimum limits of coverage for bodily injury and property damage which must be offered by an insurer, § 38-77-140, indicates that coverage is “subject to limits exclusive of costs and interest.” The uninsured motorist provision, § 38-77-150, references the coverage limits established by § 38-77-140 which are explicitly “exclusive of costs and interest.” Therefore, any claims that costs and interest are subject to the policy limits of coverage for bodily injury and property damage is inconsistent with the plain meaning of South Carolina statutory language.

The established purpose of the offer of judgment statute is to encourage settlement and avoid protracted litigation. *Black v. Roche Biomedical Laboratories, a Div. of Hoffman-LaRoche, Inc.*, 315 S.C. 223, 433 S.E.2d 21 (Ct. App. 1993). The award of prejudgment interest against a party as a consequence for that party’s rejecting an offer to settle, as required by § 15-35-400, furthers the legislature’s purpose to encourage settlement and avoid protracted litigation. Limiting the full measure of costs and interest mandated by the plain language of § 15-35-400, in order to avoid exceeding the policy limits for bodily injury and property damage coverage in this case would be inconsistent with the plain language and established purpose of the statute.

The award of Costs and Prejudgment Interest as specifically provided in the offer of judgment statute and as detailed in the unappealed January 14, 2013, Order is proper without reference to the policy limits for bodily injury and property damage.

IT IS THEREFORE ORDERED the defending carriers, Allstate Insurance Company and Liberty Mutual Insurance Company shall pay to Plaintiff their proportionate share of the award of costs and interest as set out in the January 14, 2013, Order and will further pay to Plaintiff costs and attorney fees for having to pursue this second motion as to the same Offer of Judgment in the amount of \$144.00 in costs and \$2,450.00 in attorney fees, within 10 days of the date of this Order.

AND IT IS SO ORDERED.

November ____, 2014
Moncks Corner, South Carolina

Kristi L. Harrington
Presiding Judge, Ninth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
)
Plaintiff,)
)
vs.)
)
Jose W. Valle,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-08-1801

**EXECUTION AGAINST
PROPERTY**

To the Sheriff of Berkley County:

Whereas, judgments in the underlying case were rendered in the above-entitled action on the 16th day of August, 2010 in favor of the Plaintiff and against Defendant Jose W. Valle for the sum of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars filed under the above referenced case number in the Office of the Clerk of Court and thereafter on the 17th day of January, 2013 and as a result of the aforementioned verdict an Order for Costs and Interest in the amount of Eighty Thousand Eight hundred sixteen and eleven cents (\$80,816.11) Dollars in costs and interest Pursuant to an Offer of Judgment was also awarded pursuant to S.C Code Ann § 15-35-400 and awarded against the Uninsured Motorist Carriers: Allstate Insurance Company and Liberty Mutual Fire Insurance Company, who have coverage pursuant to S.C. Code Ann. § 38-77-150 (2002).

And whereas, there is now actually due on the said judgments thus docketed in your County the principal sums aforesaid, with interest thereon from the date of the said judgments.

Now therefore, we recommend that you satisfy the said judgments, including principal, interest, costs and your fees out of the personal property of the said judgments debtor in your

P120

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County and if sufficient personal property cannot be found, then out of the real property in your County belonging to the said judgment debtors on the day when the said judgments were docketed in your County, or at any time thereafter, in whosoever hands the same may be, and that you duly return this execution according to law to this Clerk of the said Court.

Witness the Honorable Clerk of Court at Berkley County, this 23rd day of February, 2015.

Mary P. Brawnton
CLERK OF COURT

Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

COUNSEL FOR PLAINTIFF

January 27, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
Plaintiff,)
)
vs.)
)
Jose W. Valle,)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

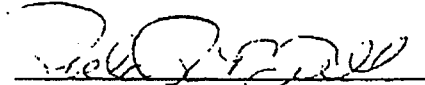
PETITION FOR ORDER OF PUBLICATION

FILED
2010 AUG 10 AM 9:15
CLERK OF COURT, SC
BERKELEY COUNTY, SC

Pamela R. Mullis, attorney for the Plaintiff herein, would respectfully show unto the Court:

1. This is an action for recovery of damages suffered as a result of the negligence of the Defendant Jose W. Valle, whose last known address was 73 Oak Grove Road, Goose Creek, SC 29445.
2. Upon information and belief, the Defendant has not moved out of the State of South Carolina and is not in the military.
3. Although the Plaintiff has made a diligent attempt to locate and serve the Defendant, the Plaintiff has been unable to locate the Defendant in South Carolina, as shown from the attached Affidavit of Non-Service of Michael Brooks and Affidavit of Pamela R. Mullis.
4. The Plaintiff is informed and believes it is necessary that the Defendant be served by publication in The Post and Courier newspaper and requests that this Court issue its Order allowing such service.

WHEREFORE, Plaintiff prays that this Court issue its Order authorizing service of the Summons and notice of the Complaint by publication in The Post and Courier newspaper.



J. Marvin Mullis, Jr.
Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
July 22, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

AFFIDAVIT OF PAMELA R. MULLIS

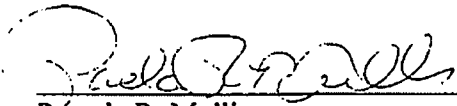
FILED
2010 AUG 10 AM 9:15
PAMELA R. MULLIS
CLERK OF COURT
BERKELEY COUNTY, SC

PERSONALLY APPEARED before me Pamela R. Mullis, who, after being duly sworn,
deposes and states:

1. That I am a practicing attorney with the Mullis Law Firm, of Columbia, South Carolina.
2. That I am one of the attorneys for Levern McCray and on his behalf the Mullis Law Firm brought an action against the above captioned Defendant. Plaintiff's Summons and Complaint was filed on May 21, 2010.
3. That service of the Summons and Complaint was attempted on Defendant Jose W. Valle by certified mail, return receipt requested, restricted on May 28, 2010, at his last known address obtained from the accident report in the subject case. However, the envelope containing the Summons and Complaint addressed to Defendant was returned to Mullis Law Firm, stating unclaimed, on or about June 15, 2010.

4. That I contacted a process server, Michael Brooks, and had him attempt to locate and serve Defendant. Mr. Brooks was not able to locate and/or serve Defendant with the Summons and Complaint. (See Affidavit of Non-Service on Michael Brooks)

5. That my final attempt to serve Defendant is to file a Petition for Order of Publication and proposed Order of Publication and serve the Defendant by publication in The Post and Courier newspaper.


Pamela R. Mullis

MULLIS LAW FIRM

Post Office Box 7757

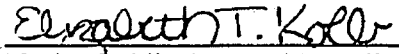
Columbia, South Carolina 29202

(803) 799-9577

Columbia, South Carolina

July 22, 2010

SWORN TO BEFORE ME
this 22 day of July, 2010


Notary Public for South Carolina

My Commission Expires: January 10, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A No.: 2010-CP-08-1801

AFFIDAVIT OF NON-SERVICE

FILED
2010 AUG 10 AM 9:15
HARRY P. BROOKS
CLERK OF COURT
BERKELEY COUNTY, SC

PERSONALLY APPEARED BEFORE ME, the undersigned deponent, who being duly sworn says he attempted to locate Jose W. Valle by going to the address listed on the accident report, 73 Oak Grove Dr. in Goose Creek, S.C. 29445 and the addresses listed on incident reports from Hanahan, S.C. Police Department and North Charleston Police Department. The address from the Hanahan Police, 573 Meeting St. in Charleston, S.C. was determined to be a crisis ministry who advised that they have not seen Mr. Valle in over a year. The address from the North Charleston Police, 5918 Sellers Rd. Lot 54, was visited and the occupants did not know Mr. Valle and advised that he did not reside there. The residents of 73 Oak Grove Dr. in Goose Creek advised that they know Mr. Valle but could not or would not provide any information with respect to his current address or place of employment. This residence was visited on at least four occasions. I also attempted to locate Mr. Valle by use of a pay website and was unsuccessful in locating him.

Michael E. Brooks

Michael E. Brooks
Brooks Insurance Services, Inc.
Post Office Box 343
Gilbert, S.C. 29054

Sworn to and subscribed before me this

21 day of July, 2010.

Shawn Brooks
Notary Public for South Carolina

My Commission Expires: 12/31/13

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Levern McCray,)
Plaintiff,)
vs.)
Jose W. Valle.)
Defendant.)

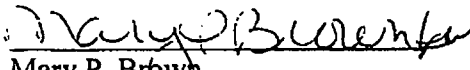
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

ORDER OF PUBLICATION

FILED
2010 AUG 10 AM 9:15
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY

Having read the Petition for Publication attached hereto and it appearing that this is an action for negligent infliction of personal injury and the Defendant Jose W. Valle's last known address was in Berkeley County, South Carolina; and it further appearing the Plaintiff cannot, after due diligence, locate the Defendant in said County or in the State of South Carolina, and that there is no indication that said Defendant has moved out of the state or is in the military, is it is hereby ordered that the service in this matter be made upon the Defendant by publishing copies of the Summons, and Notice of the Complaint, in The Post and Courier newspaper, a paper of general circulation in Berkeley County, South Carolina, once weekly for three consecutive weeks and by forwarding a copy of this Order with the pleadings to the Defendant by mail, at his last known address.

Moncks Corner, South Carolina
8/10, 2010


Mary P. Brown
Berkeley County Clerk of Court

Elizabeth Kolb Mullis Law Firm
Po Box 7757
Columbia SC 292027757

2010 SEP 23 AM 11:15
FILED
MARY P. BROOKS
CLERK OF COURT
BERKELEY COUNTY, SC

AFFIDAVIT OF PUBLICATION

The Post and Courier

State of South Carolina

County of Charleston

Personally appeared before me the undersigned advertising clerk of the above indicated newspaper published in the city of Charleston, county and state aforesaid, who, being duly sworn, says that the advertisement of

(copy attached)

appeared in the issues of said newspaper on the following day(s):

09/02/10 Thu PC 09/16/10 Thu CNW
09/09/10 Thu PC
09/16/10 Thu PC
09/02/10 Thu CNW
09/09/10 Thu CNW

at a cost of \$329.70
Account# 255962
Order# 377797
P.O. Number:

Subscribed and sworn to before

me this 20th day September
of 2010
A.D. 2010
Kaisha Edging
advertising clerk

Shelly Duberry
NOTARY PUBLIC, SC
My commission expires

SUMMONS
STATE OF
SOUTH CAROLINA
COUNTY OF
BERKELEY
IN THE COURT OF
COMMON PLEAS
FOR THE NINTH
JUDICIAL CIRCUIT
(Personal Injury)
(JURY TRIAL
REQUESTED)
2010-CP-08-1801
Levern McCray, Plaintiff
vs.
Jose W. Valle, Defendant.
YOU ARE HEREBY
SUMMONED and required
to answer the Complaint in
this action, of which a copy
is herewith served upon
you, and to serve a copy of
your Answer to said Com-
plaint on the subscriber,
Mullis Law Firm, 1229
Elmwood Avenue, Post
Office Box 7757, Columbia,
South Carolina, 29202,
within thirty (30) days after
the service hereof, exclu-
sive of the date of such
service; and if you fail to
answer the Complaint
within the time aforesaid,
judgment by default will be
rendered against you for
the relief demanded in the
Complaint.
May 21, 2010.
NOTICE
PLEASE TAKE NOTICE
that the Complaint in the
above entitled matter was
filed in the Office of the
Clerk of Court for Berkeley
County on May 21, 2010,
under Civil Action Number
2010-CP-08-1801.
J. Marvin Mullis, Jr.
Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, SC 29202
(803) 799-9577 AD# 377797

200

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	:	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	C.A. NO.: 2012-CP-08-1801
LAVERN McCRAY,	)	
	)	
Plaintiff,	)	
	)	MOTION TO QUASH
-versus-	)	WRIT OF EXECUTION
	)	
JOSE W. VALLE,	)	
	)	
Defendant.	)	
	)	

Liberty Mutual Fire Insurance Company ("LMFIC"), submits this motion to quash the Plaintiff's "Execution Against Property" ("writ") filed on January 27, 2015, in this matter. The writ seeks to have the sheriff execute against property owned by LMFIC arising out of a judgment entered against the Defendant on August 16, 2010, and a subsequent costs order entered on January 27, 2013, as well as an order of costs from the Court of Appeals dated December 22, 2014. As will be set forth, Defendant possesses no judgment whatsoever against LMFIC and seeking to recover a judgment against an entity to whom no judgment has been lodged is patently improper.

I. MATERIAL FACTS AND PROCEDURAL HISTORY

On May 21, 2010, the Plaintiff Lavern McCray ("Plaintiff") filed a summons and complaint in the South Carolina Court of Common Pleas for the Ninth Judicial Circuit, Berkeley County, identified as Civil Action number 2010-CP-08-1801, and captioned as *Lavern McCray vs. Jose W. Valle* (hereinafter the "Liability Lawsuit"). The Liability Lawsuit alleged that Jose W. Valle ("Valle") was responsible for causing an automobile collision between Plaintiff and Valle wherein Plaintiff suffered various alleged injuries. LMFIC was not a party Defendant in the Liability

Lawsuit. Rather, LMFIC was Plaintiff's uninsured motorist coverage ("UM") carrier and participated in the defense of the Liability Lawsuit.

On August 16, 2012, following a four-day trial, a Berkeley County jury rendered a verdict in favor of the Plaintiff in the amount of \$500,000.00 in actual damages and \$147,000.00 in punitive damages. See Exhibit "A". A judgment was entered against Valle in the amount of \$647,000.00, which was filed on August 16, 2012. Id. LMFIC was not identified as a party to the judgment in the Liability Lawsuit. Id. The Form 4 Order indicates that "this order ends . . . the case". Id.

On January 14, 2013, Judge Deadra L. Jefferson issued an Order for Costs and Interests Pursuant to Plaintiff's Offer of Judgment in the Liability Lawsuit; the Order was subsequently filed on January 17, 2013. See Exhibit "B". The Order for Costs and Interests provided that the Plaintiff was entitled to \$3,247.01 in costs and \$77,569.10 in interest. Id. LMFIC was not identified as a party to the Order for Costs and Interests in the Liability Lawsuit. Id.

On September 18, 2014, the Plaintiff filed a Motion to Enforce Order of Judgment and Rule to Show Cause in the Liability Lawsuit (hereinafter "the Rule"). The Rule was filed against LMFIC and Allstate Insurance Company ("Allstate"). See Exhibit "C". The Rule was denied by Order of Judge Harrington on December 1, 2014. See, Exhibit "D".

On January 27, 2015, the Plaintiff filed the writ seeking to execute against LMFIC and Allstate. This motion to quash follows.

II. LAW & ANALYSIS

THERE IS NO JUDGMENT AGAINST LMFIC AND PLAINTIFF IS ATTEMPTING TO CHANGE THE SCOPE OF THE STATE COURT'S ORDER IN VIOLATION OF RULE 60 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

"A judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money." Home Port Rentals, Inc. v. Moore, 359 S.C. 230, 234, 597 S.E.2d 810, 812 (Ct. App. 2004)(emphasis added). In the case at bar, the Plaintiff's judgment is against Valle, not LMFIC. See Exhibit "A". Thus, Plaintiff must execute its judgment against Valle, not LMFIC.

Furthermore, Plaintiff has elected the improper proceeding to in which to collect a judgment. Rule 69 of the South Carolina Rules of Civil Procedure provides that:

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be as provided by law. In the aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for obtaining discovery. S.C.R.C.P. 69 (emphasis added).

Upon information, the Plaintiff has filed a writ of execution to enforce the State Court's judgment against a non judgment creditor. Moore, 597 S.E.2d 810. Plaintiff should proceed with a supplemental proceeding against Valle, not entities to which Plaintiff possesses no judgment. See Ex parte Wilson, 367 S.C. 7, 14, 625 S.E.2d 205, 209 (2005).

Finally, "while a court may correct mistakes or clerical errors by its own process to make it conform to the record, it cannot change the scope of the judgment." Elliot, 350. S.C. at 408 (citing Dion v. Ravenel, Eiserhardt Assocs., 316 S.C. 226, 230, 449 S.E.2d 251, 253 (Ct. App. 1994); see

also Ex parte Strom, 343 S.C. 257, 264, 539 S.E.2d 699, 702 (2000)(“indicating a Rule 60 cannot be used to expand the scope of a judgment)). In addition, Rule 60 of the South Carolina Rules of Civil Procedure specifically provides for a party’s relief from a judgment, not the enforcement of that judgment against non-parties. Id. Attempting to bind a non-party to a judgment extends beyond the relief contemplated by Rule 60. Id. Finally, any motion to seek relief from a judgment or order “shall be made within a reasonable time, and for reasons (1), (2), and (3), not more than one year after the judgment.”¹ S.C.R.C.P. 60(b). “The one year limit for motions pursuant to Rule 60(b)(1)-(3) is an absolute time limit.” Coleman v. Dunlap, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992)(emphasis added).

In the case at bar, a Berkeley County jury rendered a verdict in favor of the Plaintiff in the amount of \$500,000.00 in actual damages and \$147,000.00 in punitive damages. See Exhibit “B”. A judgment was entered against Valle in the amount of \$647,000.00, which was filed on August 16, 2012. Id. LMFIC was not identified as a party to the judgment in the Lawsuit. Id. The Plaintiff is seeking to enforce the judgment against LMFIC, a non-party, which is prohibited by South Carolina law. Any such relief would expand the scope of the judgment and go beyond the relief contemplated by Rule 60 of the South Carolina Rules of Civil Procedure.

Finally, the judgment that was entered against Valle in the Lawsuit was filed on August 16, 2012. See Exhibit “B”. Plaintiff filed its Motion to Enforce Order of Judgment and Rule to Show Cause in the Lawsuit on September 18, 2014, which is well beyond the one-year limitation set forth in S.C.R.C.P 60(b). As a result, the Plaintiff is clearly beyond the time period to seek relief from,

¹ SCRCP 60(b)(4)-(5) are not applicable; thus, the one year limitations applies. See Brinkley v. Gregory K. Martin, ASL, Inc., 2006 WL 7287050 (Ct. App. 2006).

or amend, the State Court judgment or order.

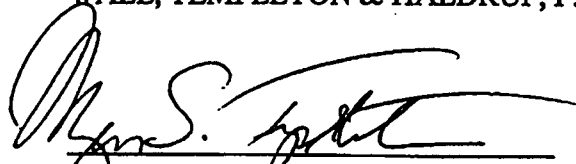
Conclusion

Liberty Mutual hereby asks that the Court deny the Plaintiff's request for a writ of execution, as well as for an award of attorneys fees pursuant to Rule 11 of the South Carolina Rules of Civil Procedure for seeking to execute against an entity for which the Plaintiff has no judgment.

This 5th day of February, 2015.

Respectfully submitted,

WALL, TEMPLETON & HALDRUP, P.A.



Morgan S. Templeton
145 King Street, Suite 300
Post Office Box 1200
Charleston, South Carolina 29402
(843) 329-9500
Attorneys for Liberty Mutual Fire Insurance
Company

EXHIBIT “A”

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-08-1801

Lavern McCray
PLAINTIFF(S)

Jose W. Valle
DEFENDANT(S)

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(c), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This Negligence cause of action came before the Court for a trial by jury on August 13-16, 2012. All issues have been tried and a verdict rendered in favor of the Plaintiff in the amount of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars actual damages and One Hundred Forty-Seven Thousand and 0/100 (\$147,000.00) Dollars punitive damages. The Court required post-trial motions. Post-trial motions were heard and respectfully denied. The Court conducted a B.M.W. of North America, Inc. v. Gore, 517 U.S. 559, 116 S. Ct. 1589 (1996) analysis and will be submitting a supplemental order conducting a post-trial review of the jury's punitive damages award.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Lavern McCray	Jose W. Valle	\$ 647,000.00
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Dr. J. J. J. J.
Circuit Court Judge

2128
Judge Code

8/16/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 16th day of August, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 16 day of Aug, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Pamela Mullis, Esq.
Joseph Epling, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

Julian Allen, Esq.
Emily Sheets, Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)
Donna P. Brown
CLERK OF COURT

Court Reporter: Melissa Singletary

EXHIBIT “B”

STATE OF SOUTH CAROLINA

COUNTY OF BERKLEY

Levin McCray,

Plaintiff,

vs.

John W. Valle,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

ORDER
FOR COSTS AND INTEREST
PURSUANT TO
OFFER OF JUDGMENT

FILED
2012 SEP 17 PM 1:10

Date of Hearing:
Presiding Judge:
Plaintiff's Attorney:
Defendant's Attorney:

September 11, 2012
Honorable Dendria L. Jefferson
Pamela R. Mullis, Esquire
Julian K. Allen, Esquire, on behalf of Allstate

This matter came before the Court by hearing on September 11, 2012. The parties were before the Court in regard to the setting of the proper amount of costs and interest, pursuant S.C. Code Ann. § 15-35-400 in regard to Plaintiff's Offer of Judgment filed on February 15, 2011, in the amount of \$300,000.00, and Defendant's Offer of Judgment filed on January 19, 2011, in the amount of \$135,000.00. The jury awarded the Plaintiff a total of \$500,000.00 Dollars in actual damages and \$147,000.00 Dollars in punitive damages, totaling \$647,000.00 Dollars, on August 16, 2012.

COSTS PURSUANT TO OFFER OF JUDGMENT

Pursuant to § 15-35-400 of the S. C. Code of Laws for 1976, as amended, the Plaintiff is entitled to recover court costs where the Offer of Judgment filed was exceeded by the jury verdict. The jury awarded the Plaintiff for a total of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012.

1
H. A.
[Signature]

Pursuant to § 15-35-400(B), South Carolina Code of Laws 1976, as amended, "If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment."¹

In this case, Plaintiff obtained a verdict in excess of the offer of judgment. Trial costs including court filing fees, deposition witness attendance fees, including mileage and service of necessary subpoenas, and trial witness fees, including mileage and service of necessary subpoenas are all recoverable costs pursuant to S.C. Code § 15-35-400(B). Black v. Roche Biomedical Labs., a Div. of Hoffman-LaRoche, Inc., 315 S.C. 223, 229, 433 S.E.2d 21, 25 (Ct. App. 1993); Belton v. State, 330 S.C. 422, 499 S.E.2d 225 (Ct. App. 1998). The South Carolina Supreme Court has decided "[c]osts and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute." Oliver v. S.C. Dep't of Highways and Public Transp., 309 S.C. 313, 422 S.E.2d 128, 131 (1992). While a "prevailing party *shall* ordinarily be entitled to recover certain costs and disbursements[,] [s]uch costs and disbursements do not, however, include attorney fees."² Black, 315 S.C. at 224, 433 S.E.2d at 227. Further, Rule 54, SCRCF and Rule 68, SCRCF do not create a right to recover attorney's fees without authorization of statute. S.C. Code Ann. § 15-35-400(B) does not create a right to recover attorney's fees if an offeror obtains a favorable judgment.

Pursuant Rule 45(b)(1), SCRCF, the recoverable costs for a subpoenaed witness includes a \$25.00 attendance fee per day and mileage. Because the Plaintiff was not subpoenaed to appear at his deposition, his attendance fee and mileage are not recoverable. Regarding transcript costs, case law establishes "the cost of a transcript or copy of the evidence, or of a part thereof,

¹ S.C. CODE ANN. § 15-35-400(B) (1976).

² As attorney's fees are not recoverable costs, Ms. Mullis' mileage to and from depositions is not recoverable.

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JRC

obtained for the convenience of the parties or their counsel, cannot be taxed as part of the costs." South Carolina Pub. Serv. Auth. v. Spearwain Liquidating Co., 201 S.C. 207, 207, 22 S.E.2d 252, 254 (1942) (quoting 20 C.J.S. Costs § 249). As the Plaintiff has identified no statute or rule of court that provides for the award of transcript costs, such costs are not recoverable. Likewise, the Plaintiff has not identified a rule of court or statute providing for witness attendance fees in excess of that provided for in Rule 45(b)(1), SCRPC. "Fees for expert witnesses, beyond the ordinary fees authorized for witnesses generally, are not taxable as costs unless there is a statute specifically allowing such an expense." Oliver, 309 S.C. at 319, 422 S.E.2d at 132. As no statute provides otherwise, Rule 45(g), SCRPC "places a fixed dollar amount on witness fees in the amount of \$25.00 per day plus mileage." Id (quoting 20 C.J.S. Costs § 116 (1990)).

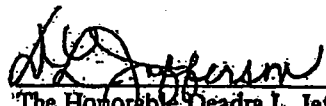
The Plaintiff is entitled to the following costs: Court filing fees of \$50.00; Deposition costs, for witness attendance fees and mileage, totaling \$65.50; Trooper Reginald Thomas - \$35.00, and Heather Dalley - \$30.50; Expenses of witnesses at trial: Dr. Green B. Neal - \$142.66, Dr. Oliver G. Wood - \$210.60, Trooper Reginald Thomas - \$64.96, Timothy Craven - \$52.75, Process Service for Timothy Craven - \$165.00, George Williams - \$50.53, Clyde Cochran - \$67.18, Process Service for George Williams/Clyde Cochran - \$124.88, Nathan Washington - \$104.92, Harry White - \$107.14, Leon Goodman - \$110.47, Michael Lewis - \$92.71, Marvin Mosely - \$353.56, Jennifer Stayton, RN - \$35.00; SLED witnesses: Doris Yarbrough, Pat Crooks, Kimberly Meres - \$1,449.15. The total for expenses of witnesses at trial is \$3,131.51. Therefore, Plaintiff is entitled to costs from the date of the Offer of Judgment in the amount of Three Thousand Two Hundred Forty Seven Dollars and One Cent (\$3,247.01)

INTEREST PURSUANT TO OFFER OF JUDGMENT

With respect to interest, S. C. Code § 15-35-400(B)(2) provides for "... eight percent interest computed on the amount of the verdict or award from the date of the offer."³ The jury awarded the Plaintiff a verdict of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012, for which he is entitled to Eight percent (8%) interest from the date of the offer until the date of the verdict. As 547 days have elapsed between the date of the offer of judgment, February 15, 2011, and the date of the verdict, August 16, 2012, the total amount of interest owed equals Seventy Seven Thousand Five Hundred Sixty Nine Dollars and Ten Cents (\$77,569.10).

AND IT IS SO ORDERED.

January 14, 2013
Charleston, South Carolina,


The Honorable Deadra L. Jefferson
Chief Administrative Judge

³ S.C. CODE ANN. § 15-35-400(B)(2) (1976).

4084
SFD

EXHIBIT “C”

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
Plaintiff,)
)
vs.)
)
Jose W. Valle,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2010-CP-08-1801

**MOTION TO ENFORCE
ORDER OF JUDGMENT AND
RULE TO SHOW CAUSE**

Plaintiff filed an Offer of Judgment on or about February 15, 2011, in response to an Offer of Judgment filed upon the Plaintiff by his own insurance company in an uninsured claim *attached hereto and incorporated herein by reference*. The Plaintiff's Offer of Judgment was served on both UM carriers, Allstate and Liberty Mutual. Plaintiff obtained a verdict in excess of his offer of judgment in the underlying jury trial on August 16, 2012, for which the Plaintiff's insurers owe.

Accordingly, on September 11, 2012, Counsel for Plaintiff and Counsel for Allstate on behalf of the Defendant, appeared before this Court for the purpose of setting the proper amount of costs and interest, pursuant to S.C. Code Ann. § 15-35-400 in regard to Plaintiff's Offer of Judgment. On January 14, 2013, this Court issued its Order ruling the Plaintiff is entitled to costs from the date of the Offer of Judgment in the amount of \$3,247.01 and that the amount of interest owed to Plaintiff is \$77,569.10. The Order awarding Plaintiff \$80,816.11 in costs and interest for the offer of judgment was never challenged or appealed. The underlying jury verdict was appealed.

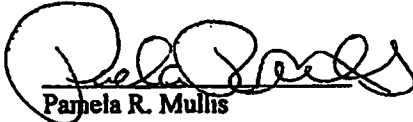
On August 6, 2014, the South Carolina Court of Appeals affirmed the verdict and issued the remittitur from Defendant's appeal, *attached hereto*. Nevertheless, both insurers have failed to make any payment according to the January 14, 2013, Order of this Court, awarding the Plaintiff costs and interest pursuant to the above statute.

Therefore, the Plaintiff respectfully moves for this Court to enforce the Order of Judgment and issue a Rule to Show Cause directly against the insurers Ordering payment of the Judgment pursuant to the statute; as the Plaintiff's Insurers are duly licensed in the state of South Carolina and owe this valid Order for costs and pre-judgment interest -- as penalties pursuant to the above statute and Order. The Plaintiff requests this Court issue an Order and a Rule to show cause, why the insurer Allstate and Liberty Mutual should not be required to comply with the terms and conditions of the Order of the Court filed on January 14, 2013, and why it should not be held in contempt; and why it should not be required to pay the attorney's fees and costs of Plaintiff for the institution and prosecution of this proceeding.

Finally, Plaintiff requests the Court along with the award of attorney fees and costs for this motion, add the additional interest on the Offer of Judgment the Plaintiff is entitled to pursuant to statute, from the date of the verdict until the awarded judgment is actually paid by the insurers; who defended the underlying case, were served with the Offer of Judgment, were Ordered to pay the judgment by the trial court, and failed to appeal or challenge the judgment.

Respectfully submitted,

Columbia, South Carolina
September 18, 2014


Parhela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

PLAINTIFF'S OFFER OF JUDGMENT

2011 FEB 15 PM 3:43
FILED
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO: DAVID S. COBB, ESQUIRE, ATTORNEY FOR DEFENDANT:

PLEASE TAKE NOTICE the Plaintiff, by and through his undersigned attorneys, pursuant to S.C. Code Ann. Section 15-35-400, hereby offers the total sum of Three Hundred Thousand (\$300,000.00) Dollars as full compromise and settlement of his claim against the Defendant for personal injury.

In addition, pursuant to Section 15-35-400 if this offer of judgment is not accepted and Plaintiff obtains a verdict or determination at least as favorable as the rejected offer, the offeror will pursue statutory costs and eight (8) percent interest computed on the amount of the verdict or award from the date of the offer. Defendant has twenty (20) days from the date indicated below to accept this offer and, if notice of acceptance is not given by the Defendant, in writing, the offer is withdrawn and cannot be given in evidence.


Levern McCray


Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

January 30, 2011

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

Levern McCray,

Plaintiff,

vs.

Jose W. Valle,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

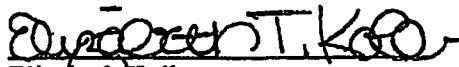
CERTIFICATE OF SERVICE

FILED
2011 FEB 15 PM 3:43
HARRY P. BRUNN
CLERK OF COURT
BERKELEY COUNTY, SC

The undersigned hereby certifies that she is a paralegal with the Mullis Law Firm; that a copy of Plaintiff's Offer of Judgment was served in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon, on February 14, 2011, to the following:

David S. Cobb, Esquire
TURNER PADGET
Post Office Box 22129
Charleston, South Carolina 29413

J. Bennett Crites, III, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 877
Charleston, SC 29402


Elizabeth Kolb

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Levern McCray,

Plaintiff,

vs.

Jose W. Valle,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

ORDER
FOR COSTS AND INTEREST
PURSUANT TO
OFFER OF JUDGMENT

FILED
2013 JAN 17 PM 1:10
CLERK OF COURT
NINTH JUDICIAL CIRCUIT
SOUTH CAROLINA

Date of Hearing:	September 11, 2012
Presiding Judge:	Honorable Deadra L. Jefferson
Plaintiff's Attorney:	Pamela R. Mullis, Esquire
Defendant's Attorney:	Julian K. Allen, Esquire, on behalf of Allstate

This matter came before the Court by hearing on September 11, 2012. The parties were before the Court in regard to the setting of the proper amount of costs and interest, pursuant S.C. Code Ann. § 15-35-400 in regard to Plaintiff's Offer of Judgment filed on February 15, 2011, in the amount of \$300,000.00, and Defendant's Offer of Judgment filed on January 19, 2011, in the amount of \$135,000.00. The jury awarded the Plaintiff a total of \$500,000.00 Dollars in actual damages and \$147,000.00 Dollars in punitive damages, totaling \$647,000.00 Dollars, on August 16, 2012.

COSTS PURSUANT TO OFFER OF JUDGMENT

Pursuant to § 15-35-400 of the S. C. Code of Laws for 1976, as amended; the Plaintiff is entitled to recover court costs where the Offer of Judgment filed was exceeded by the jury verdict. The jury awarded the Plaintiff for a total of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012.

1/10/13
JKA

Pursuant to § 15-35-400(B), South Carolina Code of Laws 1976, as amended, "If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment."¹

In this case, Plaintiff obtained a verdict in excess of the offer of judgment. Trial costs including court filing fees, deposition witness attendance fees, including mileage and service of necessary subpoenas, and trial witness fees, including mileage and service of necessary subpoenas are all recoverable costs pursuant to S.C Code § 15-35-400(B). Black v. Roche Biomedical Labs., a Div. of Hoffman-LaRoche, Inc., 315 S.C. 223, 229, 433 S.E.2d 21, 25 (Ct. App. 1993); Belton v. State, 330 S.C. 422, 499 S.E.2d 225 (Ct. App. 1998). The South Carolina Supreme Court has decided "[c]osts and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute." Oliver v. S.C. Dep't of Highways and Public Transp., 309 S.C. 313, 422 S.E.2d 128, 131 (1992). While a "prevailing party *shall* ordinarily be entitled to recover certain costs and disbursements[,] [s]uch costs and disbursements do not, however, include attorney fees²." Black, 315 S.C. at 224, 433 S.E.3d at 227. Further, Rule 54, SCRPC and Rule 68, SCRPC do not create a right to recover attorney's fees without authorization of statute. S.C. Code Ann. § 15-35-400(B) does not create a right to recover attorney's fees if an offeror obtains a favorable judgment.

Pursuant Rule 45(b)(1), SCRPC, the recoverable costs for a subpoenaed witness includes a \$25.00 attendance fee per day and mileage. Because the Plaintiff was not subpoenaed to appear at his deposition, his attendance fee and mileage are not recoverable. Regarding transcript costs, case law establishes "the cost of a transcript or copy of the evidence, or of a part thereof,

¹ S.C. CODE ANN. § 15-35-400(B) (1976).

² As attorney's fees are not recoverable costs, Ms. Mullis' mileage to and from depositions is not recoverable.

2
2/14
[Signature]

obtained for the convenience of the parties or their counsel, cannot be taxed as part of the costs." South Carolina Pub. Serv. Auth. v. Spearwaint Liquidating Co., 201 S.C. 207, 207, 22 S.E.2d 252, 254 (1942) (quoting 20 C.J.S. *Costs* § 249). As the Plaintiff has identified no statute or rule of court that provides for the award of transcript costs, such costs are not recoverable. Likewise, the Plaintiff has not identified a rule of court or statute providing for witness attendance fees in excess of that provided for in Rule 45(b)(1), SCRCPP. "Fees for expert witnesses, beyond the ordinary fees authorized for witnesses generally, are not taxable as costs unless there is a statute specifically allowing such an expense." Oliver, 309 S.C. at 319, 422 S.E.2d at 132. As no statute provides otherwise, Rule 45(g), SCRCPP "places a fixed dollar amount on witness fees in the amount of \$25.00 per day plus mileage." Id (quoting 20 C.J.S. *Costs* § 116 (1990)).

The Plaintiff is entitled to the following costs: Court filing fees of \$50.00; Deposition costs, for witness attendance fees and mileage, totaling \$65.50: Trooper Reginald Thomas - \$35.00, and Heather Dailey - \$30.50; Expenses of witnesses at trial: Dr. Green B. Neal - \$142.66, Dr. Oliver G. Wood - \$210.60, Trooper Reginald Thomas - \$64.96, Timothy Craven - \$52.75, Process Service for Timothy Craven - \$165.00, George Williams - \$50.53, Clyde Cochran - \$67.18, Process Service for George Williams/Clyde Cochran - \$124.88, Nathan Washington - \$104.92, Harry White - \$107.14, Leon Goodman - \$110.47, Michael Lewis - \$92.71, Marvin Mosely - \$353.56, Jennifer Stayton, RN - \$35.00; SLED witnesses: Doris Yarbrough, Pat Crooks, Kimberly Meres - \$1,449.15. The total for expenses of witnesses at trial is \$3,131.51. Therefore, Plaintiff is entitled to costs from the date of the Offer of Judgment in the amount of Three Thousand Two Hundred Forty Seven Dollars and One Cent (\$3,247.01)

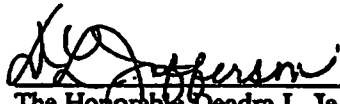
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INTEREST PURSUANT TO OFFER OF JUDGMENT

With respect to interest, S. C. Code § 15-35-400(B)(2) provides for " . . . eight percent interest computed on the amount of the verdict or award from the date of the offer."³ The jury awarded the Plaintiff a verdict of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012, for which he is entitled to Eight percent (8%) interest from the date of the offer until the date of the verdict. As 547 days have elapsed between the date of the offer of judgment, February 15, 2011, and the date of the verdict, August 16, 2012, the total amount of interest owed equals Seventy Seven Thousand Five Hundred Sixty Nine Dollars and Ten Cents (\$77,569.10).

AND IT IS SO ORDERED.

January 14, 2013
Charleston, South Carolina,


The Honorable Deadra L. Jefferson
Chief Administrative Judge

³ S.C. CODE ANN. § 15-35-400(B)(2) (1976).

4 10/4
2012



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 02, 2014

The Honorable Mary P. Brown
PO Box 219
Moncks Corner SC 29461-0219

REMITTITUR

Re: Levern McCray v. Jose Valle
Lower Court Case No. 2010CP0801801
Appellate Case No. 2012-213050

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Julian Kane Allen, Esquire
R. Hawthorne Barrett, Esquire
Pamela R. Mullis, Esquire

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2010-CP-08-1801

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a paralegal with the Mullis Law Firm; that a copy of Plaintiff's Motion to Enforce Order of Judgment and Rule to Show Cause was served in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon, on September 18, 2014, to the following:

Amanda Blundy, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 650007
Mt. Pleasant, SC 29465

Julian K. Allen, Esquire
TURNER PADGET
Post Office Box 22129
Charleston, South Carolina 29413

John T. Lay, Esquire
Gallivan, White & Boyd
1201 Main Street, Suite 1200
Columbia, SC 29201

Morgan S. Templeton, Esquire
Wall Templeton, Esquire
145 King St., Ste. 300
Charleston, SC 29401


Elizabeth Kolb

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Levern McCray

☒ Plaintiff

v.

Jose W. Valle,

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-08-1801

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

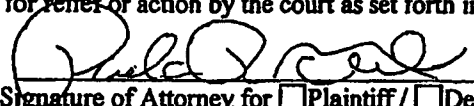
Plaintiff's Attorney: Pamela R. Mullis, Bar No. 13503 Address: P.O. Box 7757, Columbia, SC 29202 phone: 803-799-9577 fax: 803-254-8956 e-mail: prnullis@nullislawfirm.com other:	Defendant's Attorney: Julian K. Allen, Bar No. Address: P.O. Box 22129, Charleston, SC 29413 phone: fax: e-mail: other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Enforce Order of Judgment and Rule to Show Cause Estimated Time Needed: 20 Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☐ Defendant 9/18/14 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

EXHIBIT “D”

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Berkeley
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-08-1801

Lavern McCray

Jose W. Valle

PLAINTIFF(S)

DEPENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This case came before the Court on Plaintiff's Motion to Enforce Order of Judgment and Rule to Show Cause on October 22, 2014. Under SCRPC 69, the Court hereby finds that a writ of execution, together with supplementary proceedings, is the proper procedure to enforce the underlying judgment. Plaintiff's instant motion is hereby DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

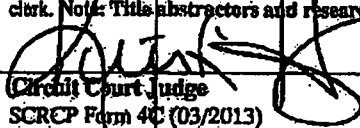
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

SCRPC Form 4C (03/2013)

2151

Judge Code

Date

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the 1 day of Dec, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 1 day of Dec, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Mary P. Brown
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CERTIFICATE OF SERVICE

The undersigned employee of WALL TEMPLETON & HALDRUP, P.A. hereby certifies that on this 5th day of February 2015 she served a copy of **MOTION TO QUASH WRIT OF EXECUTION** by placing a copy in a postpaid envelope for collection and processing for mailing, following this business's ordinary practice, with which she is readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited with the United States Postal Service in the ordinary course of business and addressed to the persons hereinafter named, at the places and addresses stated below, which are the last known address, in Charleston, South Carolina:

ADDRESSEE(S)

Pamela R. Mullis
Mullis Law Firm
Post Office Box 7757
Columbia, South Carolina 29202
ATTORNEY FOR PLAINTIFF

John T. Lay, Jr.
A. Johnston Cox
Gallivan, White & Boyd, PA
1201 Main Street, Ste. 1200
Columbia, South Carolina 29201
email: jlay@gwblawfirm.com
jcox@gwblawfirm.com
**ATTORNEY FOR ALLSTATE
INSURANCE COMPANY**


Sarah Jane Schrodetzki

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.:2010-CP-08-1801

Levern McCray,

Plaintiff,

v.

Jose W. Valle,

Defendant.

**ALLSTATE INSURANCE COMPANY'S
MOTION TO QUASH PLAINTIFF'S
EXECUTION AGAINST PROPERTY**

Allstate Insurance Company ("Allstate") submits this motion to quash the Plaintiff's "Execution Against "Property" ("writ") filed on January 27, 2015, in this matter. The writ seeks to have the sheriff execute against property owned by Allstate arising out of a judgment entered against the Defendant Jose W. Valle on August 16, 2010, and a subsequent costs order entered on January 27, 2013, as well as an order of costs from the Court of Appeals dated December 22, 2014. As set forth below, Plaintiff possesses no judgment whatsoever against Allstate and seeking to recover a judgment against a non-party entity against whom no judgment has been entered is improper. Thus, Plaintiff's writ should be denied.¹

I. BACKGROUND INFORMATION AND PROCEDURAL HISTORY

Allstate provides this brief overview of the facts that are germane to the consideration of Plaintiff's writ.

On December 20, 2008, Plaintiff was involved in an automobile accident with Defendant, Jose W. Valle ("Valle"). Plaintiff's vehicle was struck when Valle's vehicle crossed the center line. As a result of the accident, Plaintiff sustained injuries, including injury to his ankle and

¹ Pursuant to Rule 10(c) of the South Carolina Rules of Civil Procedure, Allstate adopts and incorporates by referenced as if fully stated herein, any and all grounds for denial asserted at any time by Liberty Mutual in this case.

pain in his knee and hip. Plaintiff filed a summons and complaint against Valle on May 21, 2010 and sought to serve him by publication on August 10, 2010, which service was done on September 2, 6, and 16, 2010.

Allstate issued an automobile insurance policy number 0 90 746371 12/06 ("the policy") to Named Insured, Ollie E. Walton-McCray. Plaintiff was a listed driver on the policy. The policy included uninsured motorist coverage. Plaintiff was also insured under a policy of insurance issued by Liberty Mutual, which also included uninsured motorist coverage. Because Valle did not make an appearance in the lawsuit, Allstate and Liberty Mutual filed answers on behalf of Valle and participated in the defense of the instant action.

Plaintiff filed an Offer of Judgment in his lawsuit against Valle, the defendant, on February 15, 2011. Specifically, in his Offer of Judgment, Plaintiff stated:

... Plaintiff ...offers the total sum of Three Hundred Thousand (\$300,000) Dollars as full compromise and settlement of his claim against the *Defendant* for personal injury....*Defendant* has twenty (20) days from the date indicated below to accept this offer and, if notice of acceptance is not given by the *Defendant*, in writing, the offer is withdrawn and cannot be given in evidence.

(emphasis added) (See Offer of Judgment, attached as Exhibit A).

Following a four-day jury trial in this case, a jury returned a verdict in favor of Plaintiff in the amount of \$500,000 in actual damages and \$147,000 in punitive damages. Accordingly, judgment was entered against Valle in the amount of \$647,000, and the judgment against Valle was filed on August 16, 2012. The Judgment in a Civil Case states that the order ends the case and includes information for the judgment index to enroll the judgment. (See Judgment, attached as Exhibit B).

Following a hearing "in regard to the setting of the proper amount of costs and interest ... in regard to Plaintiff's Offer of Judgment ...," the Court issued an Order for Costs and Interest

Pursuant to Offer of Judgment ("Order for Costs") dated January 14, 2013 and filed on January 17, 2013. (See Order for Costs, attached as Exhibit C). The Order for Costs provided that Plaintiff was entitled to \$3,247.01 in costs and \$77,569.10 in interest. Plaintiff did not file an Offer of Judgment as to Allstate or Liberty Mutual, and neither Allstate nor Liberty Mutual was identified in the Order for Costs.

On September 18, 2014, Plaintiff filed a Motion to Enforce Order of Judgment and Rule to Show Cause. Plaintiff requested that the court "enforce the Order of Judgment and issue a Rule to Show Cause directly against the insurers ordering payment of the Judgment pursuant to the statute." (See Rule to Show Cause, attached as Exhibit D). The Rule was denied by Order of the Court on December 1, 2014. (See Denial Order, attached as Exhibit E).

On January 27, 2015, Plaintiff filed the writ seeking to execute against Allstate and Liberty Mutual. This motion to quash follows.

II. LAW AND ANALYSIS

There is no judgment that exists against Allstate and Plaintiff's attempt to manipulate the scope of the Court's order is improper pursuant to Rule 60 of the South Carolina Rules of Civil Procedure. Therefore, the writ should be quashed.

"A judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money." *Home Port Rentals, Inc. v. Moore*, 359 S.C. 230, 234, 597 S.E.2d 810, 812 (Ct. App. 2004). Plaintiff's Offer of Judgment was specifically made as to Valle, not Allstate or Liberty Mutual. The Order of Judgment was issued with regard to the Offer of Judgment. Because Plaintiff did not file an order of judgment specifically stating that the order was filed as to Allstate, he cannot now seek to enforce the

Order of Judgment against either Allstate. Therefore, Plaintiff must execute his judgment against Valle, not Allstate.²

South Carolina Rule of Civil Procedure 60(b), the procedure by which a judgment may be altered, provides:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken....

“While a court may correct mistakes or clerical errors by its own process to make it conform to the record, it cannot change the scope of the judgment.” *Dion v. Ravenel, Eiserhardt Assocs.*, 316 S.C. 226, 230, 449 S.E.2d 251, 253-254 (Ct. App. 1994). “In addition, Rule 60 specifically provides for a party’s relief *from* a judgment, not the enforcement of that judgment

² Rule 69 of the South Carolina Rules of Civil Procedure provide:

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be as provided by law. In the aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for obtaining discovery.

Rule 69, SCRPC. Pursuant to Rule 69, SCRPC, Plaintiff is required to seek a writ of execution issued by the sheriff as to Valle to attempt to collect on the judgment. Plaintiff cannot bypass the proper procedure as mandated by South Carolina law.

against non-parties.” *See also Ex parte South Carolina Dep’t of Revenue*, 350 S.C. at 408, 566 S.E.2d at 198, n. 1 (italics in original). “Attempting to bind a non-party to a judgment extinguishing its lien changes the scope of the original judgment and extends beyond the relief contemplated by Rule 60, SCRCP.” *Id.* Finally, any motion to seek relief from a judgment or order “shall be made within a reasonable time, and for reasons (1), (2), and (3), not more than one year after the judgment.” Rule 60(b), SCRCP. “The one year limit for motions pursuant to Rule 60(b)(1)-(3) is an *absolute time limit*.” *Coleman v. Dunlap*, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992) (emphasis added).

Here, the verdict was rendered in favor of Plaintiff in the amount of \$500,000 in actual damages and \$147,000 in punitive damages. The judgment, filed on August 16, 2012, was entered against Valle in the amount of \$647,000. Likewise, the earlier Offer of Judgment was issued as to the Defendant, Valle, and the Order of Judgment was entered based on the Offer of Judgment. Plaintiff’s attempt to enforce the judgment against Allstate is in contravention of established South Carolina state law because the requested relief would expand the scope of the judgment and expand the Order of Judgment beyond its terms.

Furthermore, the terms of the Order of Judgment cannot be altered or amended so that Plaintiff may seek to enforce it against non-parties, specifically Allstate. Plaintiff’s attempt to utilize the writ to enforce a judgment against a non-party extends beyond the relief contemplated by the Rules of Civil Procedure.

Finally, Plaintiff’s motion was filed well beyond the one-year limitation set forth in S.C.R.C.P. 60(b), which prevents Plaintiff from seeking relief from, or amending, this Court’s Order. Plaintiff filed his motion on September 18, 2014, which is well beyond the one-year

statute of limitations. As a result, Plaintiff is beyond the time period from which he could even attempt to seek relief from or amend the judgment or order.

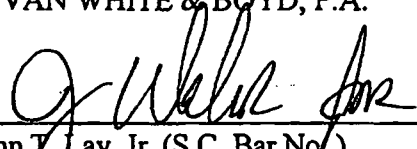
Therefore, the Court should quash Plaintiff's writ.

III. CONCLUSION

For the foregoing reasons, Allstate requests that this Court quash and/or deny Plaintiff's request for a writ of execution, as well as for an award of attorney's fees pursuant to South Carolina Rule of Civil Procedure 11 seeking to execute against an entity for which Plaintiff has no judgment.

Respectfully Submitted,

GALLIVAN WHITE & BOYD, P.A.

BY: 

John T. Lay, Jr. (S.C. Bar No.)
Janice Holmes (S.C. Bar No. 75038)
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
jlay@GWBlawfirm.com
jholmes@GWBlawfirm.com
Telephone: (803) 779-1833
Facsimile: (803) 779-1767

Attorneys for Defendant Allstate Insurance Company

Columbia, South Carolina
February 10, 2015

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Lavern McCray,

Plaintiff,

vs.

Jose W. Valle,

Defendant.

IN THE COURT OF COMMON PLEAS

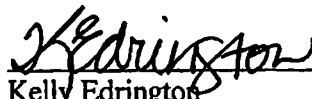
FOR THE NINTH JUDICIAL CIRCUIT

C.A. No. 2010-CP-08-1801

CERTIFICATE OF SERVICE

The undersigned employee of Gallivan, White & Boyd, P.A., does hereby certify that I have served all counsel in this action with a copy of the document listed below by placing a copy in the United States Mail, with due and proper postage affixed thereto and addressed as follows:

<u>DOCUMENT:</u>	ALLSTATE INSURANCE COMPANY'S MOTION TO QUASH PLAINTIFF'S EXECUTION AGAINST PROPERTY
<u>COUNSEL SERVED:</u>	Pamela R. Mullis, Esquire Mullis Law Firm P.O. Box 7757 Columbia, SC 29202 Morgan S. Templeton, Esquire Wall Templeton P.O. Box 1200 Charleston, SC 29402


Kelly Edrington
Legal Assistant

Columbia, South Carolina
February 10, 2015

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
Plaintiff,)
)
vs.)
)
Jose W. Valle,)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

PLAINTIFF'S OFFER OF JUDGMENT

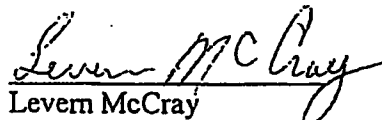
FILED
2011 FEB 15 PM 3:43
HALL P. DUNN
CLERK OF COURT
BERKELEY COUNTY, SC

TO: DAVID S. COBB, ESQUIRE, ATTORNEY FOR DEFENDANT:

PLEASE TAKE NOTICE the Plaintiff, by and through his undersigned attorneys, pursuant to S.C. Code Ann. Section 15-35-400, hereby offers the total sum of Three Hundred Thousand (\$300,000.00) Dollars as full compromise and settlement of his claim against the Defendant for personal injury.

In addition, pursuant to Section 15-35-400 if this offer of judgment is not accepted and Plaintiff obtains a verdict or determination at least as favorable as the rejected offer, the offeror will pursue statutory costs and eight (8) percent interest computed on the amount of the verdict or award from the date of the offer. Defendant has twenty (20) days from the date

indicated below to accept this offer and, if notice of acceptance is not given by the Defendant, in writing, the offer is withdrawn and cannot be given in evidence.


Levern McCray


Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

January 31, 2011

ATTORNEYS FOR PLAINTIFF

Exhibit A

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

CERTIFICATE OF SERVICE

FILED
2011 FEB 15 PM 3:43
HON. J. P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The undersigned hereby certifies that she is a paralegal with the Mullis Law Firm; that a copy of Plaintiff's Offer of Judgment was served in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon, on February 14, 2011, to the following:

David S. Cobb, Esquire
TURNER PADGET
Post Office Box 22129
Charleston, South Carolina 29413

J. Bennett Crites, III, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 877
Charleston, SC 29402


Elizabeth Kolb

Columbia, South Carolina

EXHIBIT B

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-08-1801

Levern McCray
PLAINTIFF(S)

Jose W. Valle
DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant
	or
	☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 40(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This Negligence cause of action came before the Court for a trial by jury on August 13-16, 2012. All issues have been tried and a verdict rendered in favor of the Plaintiff in the amount of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars actual damages and One Hundred Forty-Seven Thousand and 0/100 (\$147,000.00) Dollars punitive damages. The Court required post-trial motions. Post-trial motions were heard and respectfully denied. The Court conducted a B.M.W. of North America, Inc. v. Gore, 517 U.S. 559, 116 S. Ct. 1589 (1996) analysis and will be submitting a supplemental order conducting a post-trial review of the jury's punitive damages award.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Levern McCray	Jose W. Valle	\$ 647,000.00
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

Exhibit B

241

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Dr. J. J. J. J.
Circuit Court Judge

2128
Judge Code

8/16/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 16th day of Aug, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 16 day of Aug, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Pamela Mullis, Esq.

Joseph Epling, Esq.

Julian Allen, Esq.

Emily Sheets, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

Court Reporter: Melissa Singletary

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
LEVERN MCCRAY,)
Plaintiff,)
vs.)
JOSE W. VALLE,)
Defendant.)

IN THE COURT OF COMMON PLEAS
OF THE NINTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-08-1801

VERDICT FORM

FILED
2012 AUG 16 PM 3:22
CLERK OF COURT
BERKELEY COUNTY SC

AS TO THE NEGLIGENCE CAUSE OF ACTION:

____ We, the jury, unanimously find for the Plaintiff in the amount of

\$ _____ (dollars) actual damages.

or

☒ We, the jury, unanimously find for the Plaintiff in the amount of

\$ 500,000.00 (dollars) actual damages

and

\$ 147,000.00 (dollars) punitive damages.

Please sign and date.

[Signature]
Foreperson

August 16, 2012

Please notify Bailiff(s) when you have completed your deliberations.

EXHIBIT C

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

ORDER
FOR COSTS AND INTEREST
PURSUANT TO
OFFER OF JUDGMENT

FILED
2013 JAN 17 PM 1:30
CLERK OF COURT
BERKELEY COUNTY, SC

Date of Hearing: September 11, 2012
Presiding Judge: Honorable Deadra L. Jefferson
Plaintiff's Attorney: Pamela R. Mullis, Esquire
Defendant's Attorney: Julian K. Allen, Esquire, on behalf of Allstate

This matter came before the Court by hearing on September 11, 2012. The parties were before the Court in regard to the setting of the proper amount of costs and interest, pursuant S.C. Code Ann. § 15-35-400 in regard to Plaintiff's Offer of Judgment filed on February 15, 2011, in the amount of \$300,000.00, and Defendant's Offer of Judgment filed on January 19, 2011, in the amount of \$135,000.00. The jury awarded the Plaintiff a total of \$500,000.00 Dollars in actual damages and \$147,000.00 Dollars in punitive damages, totaling \$647,000.00 Dollars, on August 16, 2012.

COSTS PURSUANT TO OFFER OF JUDGMENT

Pursuant to § 15-35-400 of the S. C. Code of Laws for 1976, as amended; the Plaintiff is entitled to recover court costs where the Offer of Judgment filed was exceeded by the jury verdict. The jury awarded the Plaintiff for a total of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012.

1/16/13
[Signature]

245

Pursuant to § 15-35-400(B), South Carolina Code of Laws 1976, as amended, "If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment."¹

In this case, Plaintiff obtained a verdict in excess of the offer of judgment. Trial costs including court filing fees, deposition witness attendance fees, including mileage and service of necessary subpoenas, and trial witness fees, including mileage and service of necessary subpoenas are all recoverable costs pursuant to S.C Code § 15-35-400(B). Black v. Roche Biomedical Labs., a Div. of Hoffman-LaRoche, Inc., 315 S.C. 223, 229, 433 S.E.2d 21, 25 (Ct. App. 1993); Belton v. State, 330 S.C. 422, 499 S.E.2d 225 (Ct. App. 1998). The South Carolina Supreme Court has decided "[c]osts and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute." Oliver v. S.C. Dep't of Highways and Public Transp., 309 S.C. 313, 422 S.E.2d 128, 131 (1992). While a "prevailing party *shall* ordinarily be entitled to recover certain costs and disbursements[,] [s]uch costs and disbursements do not, however, include attorney fees²." Black, 315 S.C. at 224, 433 S.E.3d at 227. Further, Rule 54, SCRPC and Rule 68, SCRPC do not create a right to recover attorney's fees without authorization of statute. S.C. Code Ann. § 15-35-400(B) does not create a right to recover attorney's fees if an offeror obtains a favorable judgment.

Pursuant Rule 45(b)(1), SCRPC, the recoverable costs for a subpoenaed witness includes a \$25.00 attendance fee per day and mileage. Because the Plaintiff was not subpoenaed to appear at his deposition, his attendance fee and mileage are not recoverable. Regarding transcript costs, case law establishes "the cost of a transcript or copy of the evidence, or of a part thereof,

¹ S.C. CODE ANN. § 15-35-400(B) (1976).

² As attorney's fees are not recoverable costs, Ms. Mullis' mileage to and from depositions is not recoverable.

2
2/14
[Signature]

246

obtained for the convenience of the parties or their counsel, cannot be taxed as part of the costs." South Carolina Pub. Serv. Auth. v. Spearwant Liquidating Co., 201 S.C. 207, 207, 22 S.E.2d 252, 254 (1942) (quoting 20 C.J.S. *Costs* § 249). As the Plaintiff has identified no statute or rule of court that provides for the award of transcript costs, such costs are not recoverable. Likewise, the Plaintiff has not identified a rule of court or statute providing for witness attendance fees in excess of that provided for in Rule 45(b)(1), SCRPC. "Fees for expert witnesses, beyond the ordinary fees authorized for witnesses generally, are not taxable as costs unless there is a statute specifically allowing such an expense." Oliver, 309 S.C. at 319, 422 S.E.2d at 132. As no statute provides otherwise, Rule 45(g), SCRPC "places a fixed dollar amount on witness fees in the amount of \$25.00 per day plus mileage." Id (quoting 20 C.J.S. *Costs* § 116 (1990)).

The Plaintiff is entitled to the following costs: Court filing fees of \$50.00; Deposition costs, for witness attendance fees and mileage, totaling \$65.50: Trooper Reginald Thomas - \$35.00, and Heather Dailey - \$30.50; Expenses of witnesses at trial: Dr. Green B. Neal - \$142.66, Dr. Oliver G. Wood - \$210.60, Trooper Reginald Thomas - \$64.96, Timothy Craven - \$52.75, Process Service for Timothy Craven - \$165.00, George Williams - \$50.53, Clyde Cochran - \$67.18, Process Service for George Williams/Clyde Cochran - \$124.88, Nathan Washington - \$104.92, Harry White - \$107.14, Leon Goodman - \$110.47, Michael Lewis - \$92.71, Marvin Mosely - \$353.56, Jennifer Stayton, RN - \$35.00; SLED witnesses: Doris Yarbrough, Pat Crooks, Kimberly Meres - \$1,449.15. The total for expenses of witnesses at trial is \$3,131.51. Therefore, Plaintiff is entitled to costs from the date of the Offer of Judgment in the amount of Three Thousand Two Hundred Forty Seven Dollars and One Cent (\$3,247.01)

3 

247

INTEREST PURSUANT TO OFFER OF JUDGMENT

With respect to interest, S. C. Code § 15-35-400(B)(2) provides for " . . . eight percent interest computed on the amount of the verdict or award from the date of the offer."³ The jury awarded the Plaintiff a verdict of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012, for which he is entitled to Eight percent (8%) interest from the date of the offer until the date of the verdict. As 547 days have elapsed between the date of the offer of judgment, February 15, 2011, and the date of the verdict, August 16, 2012, the total amount of interest owed equals Seventy Seven Thousand Five Hundred Sixty Nine Dollars and Ten Cents (\$77,569.10).

AND IT IS SO ORDERED.

January 14, 2013
Charleston, South Carolina,


The Honorable Deadra L. Jefferson
Chief Administrative Judge

³ S.C. CODE ANN. § 15-35-400(B)(2) (1976).

4 40 of 4
200

EXHIBIT D

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Levern McCray

☒ Plaintiff

v.

Jose W. Valle,

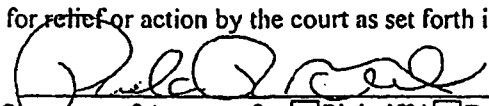
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-08-1801

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Pamela R. Mullis, Bar No. 13503 Address: P.O. Box 7757, Columbia, SC 29202 phone: 803-799-9577 fax: 803-254-8956 e-mail: prnullis@mullislawfirm.com other:		Defendant's Attorney: Julian K. Allen, Bar No. Address: P.O. Box 22129, Charleston, SC 29413 phone: fax: e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Enforce Order of Judgment and Rule to Show Cause Estimated Time Needed: 20 Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☐ Defendant 9/18/14 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCR) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____ Date Filed: _____			

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
Plaintiff,)
)
vs.)
)
Jose W. Valle,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2010-CP-08-1801

**MOTION TO ENFORCE
ORDER OF JUDGMENT AND
RULE TO SHOW CAUSE**

FILED
2014 SEP 22 PM 3:19
CLERK OF COURT
BERKELEY COUNTY SC

Plaintiff filed an Offer of Judgment on or about February 15, 2011, in response to an Offer of Judgment filed upon the Plaintiff by his own insurance company in an uninsured claim *attached hereto and incorporated herein by reference*. The Plaintiff's Offer of Judgment was served on both UM carriers, Allstate and Liberty Mutual. Plaintiff obtained a verdict in excess of his offer of judgment in the underlying jury trial on August 16, 2012, for which the Plaintiff's insurers owe.

Accordingly, on September 11, 2012, Counsel for Plaintiff and Counsel for Allstate on behalf of the Defendant, appeared before this Court for the purpose of setting the proper amount of costs and interest, pursuant to S.C. Code Ann. § 15-35-400 in regard to Plaintiff's Offer of Judgment. On January 14, 2013, this Court issued its Order ruling the Plaintiff is entitled to costs from the date of the Offer of Judgment in the amount of \$3,247.01 and that the amount of interest owed to Plaintiff is \$77,569.10. The Order awarding Plaintiff \$80,816.11 in costs and interest for the offer of judgment was never challenged or appealed. The underlying jury verdict was appealed.

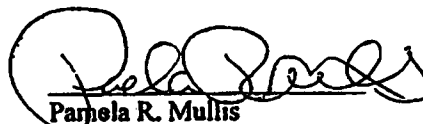
On August 6, 2014, the South Carolina Court of Appeals affirmed the verdict and issued the remittitur from Defendant's appeal, *attached hereto*. Nevertheless, both insurers have failed to make any payment according to the January 14, 2013, Order of this Court, awarding the Plaintiff costs and interest pursuant to the above statute.

Therefore, the Plaintiff respectfully moves for this Court to enforce the Order of Judgment and issue a Rule to Show Cause directly against the insurers Ordering payment of the Judgment pursuant to the statute; as the Plaintiff's Insurers are duly licensed in the state of South Carolina and owe this valid Order for costs and pre-judgment interest – as penalties pursuant to the above statute and Order. The Plaintiff requests this Court issue an Order and a Rule to show cause, why the insurer Allstate and Liberty Mutual should not be required to comply with the terms and conditions of the Order of the Court filed on January 14, 2013, and why it should not be held in contempt; and why it should not be required to pay the attorney's fees and costs of Plaintiff for the institution and prosecution of this proceeding.

Finally, Plaintiff requests the Court along with the award of attorney fees and costs for this motion, add the additional interest on the Offer of Judgment the Plaintiff is entitled to pursuant to statute, from the date of the verdict until the awarded judgment is actually paid by the insurers; who defended the underlying case, were served with the Offer of Judgment, were Ordered to pay the judgment by the trial court, and failed to appeal or challenge the judgment.

Respectfully submitted,

Columbia, South Carolina
September 18, 2014


Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Levern McCray,)
)
Plaintiff,)
)
vs.)
)
Jose W. Valle,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

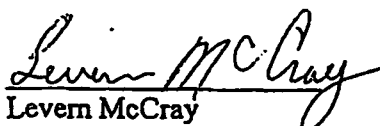
PLAINTIFF'S OFFER OF JUDGMENT

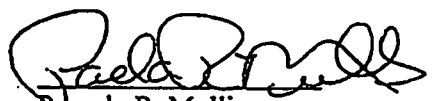
2011 FEB 15 PM 3:43
FILED
MARY R. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO: DAVID S. COBB, ESQUIRE, ATTORNEY FOR DEFENDANT:

PLEASE TAKE NOTICE the Plaintiff, by and through his undersigned attorneys, pursuant to S.C. Code Ann. Section 15-35-400, hereby offers the total sum of Three Hundred Thousand (\$300,000.00) Dollars as full compromise and settlement of his claim against the Defendant for personal injury.

In addition, pursuant to Section 15-35-400 if this offer of judgment is not accepted and Plaintiff obtains a verdict or determination at least as favorable as the rejected offer, the offeror will pursue statutory costs and eight (8) percent interest computed on the amount of the verdict or award from the date of the offer. Defendant has twenty (20) days from the date indicated below to accept this offer and, if notice of acceptance is not given by the Defendant, in writing, the offer is withdrawn and cannot be given in evidence.


Levern McCray


Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

January 30, 2011

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

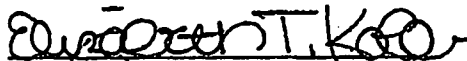
CERTIFICATE OF SERVICE

FILED
2011 FEB 15 PM 3:43
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The undersigned hereby certifies that she is a paralegal with the Mullis Law Firm; that a copy of Plaintiff's Offer of Judgment was served in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon, on February 14, 2011, to the following:

David S. Cobb, Esquire
TURNER PADGET
Post Office Box 22129
Charleston, South Carolina 29413

J. Bennett Crites, III, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 877
Charleston, SC 29402


Elizabeth Kolb

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Levern McCray,)

Plaintiff,)

vs.)

Jose W. Valle,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-08-1801

ORDER
FOR COSTS AND INTEREST
PURSUANT TO
OFFER OF JUDGMENT

FILED
2013 JAN 17 PM 1:10
CLERK OF COURT
BERKELEY COUNTY, SC

Date of Hearing: September 11, 2012
Presiding Judge: Honorable Deadra L. Jefferson
Plaintiff's Attorney: Pamela R. Mullis, Esquire
Defendant's Attorney: Julian K. Allen, Esquire, on behalf of Allstate

This matter came before the Court by hearing on September 11, 2012. The parties were before the Court in regard to the setting of the proper amount of costs and interest, pursuant S.C. Code Ann. § 15-35-400 in regard to Plaintiff's Offer of Judgment filed on February 15, 2011, in the amount of \$300,000.00, and Defendant's Offer of Judgment filed on January 19, 2011, in the amount of \$135,000.00. The jury awarded the Plaintiff a total of \$500,000.00 Dollars in actual damages and \$147,000.00 Dollars in punitive damages, totaling \$647,000.00 Dollars, on August 16, 2012.

COSTS PURSUANT TO OFFER OF JUDGMENT

Pursuant to § 15-35-400 of the S. C. Code of Laws for 1976, as amended; the Plaintiff is entitled to recover court costs where the Offer of Judgment filed was exceeded by the jury verdict. The jury awarded the Plaintiff for a total of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012.

1/18/13
[Signature]

255

Pursuant to § 15-35-400(B), South Carolina Code of Laws 1976, as amended, "If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment."¹

In this case, Plaintiff obtained a verdict in excess of the offer of judgment. Trial costs including court filing fees, deposition witness attendance fees, including mileage and service of necessary subpoenas, and trial witness fees, including mileage and service of necessary subpoenas are all recoverable costs pursuant to S.C. Code § 15-35-400(B). Black v. Roche Biomedical Labs., a Div. of Hoffman-LaRoche, Inc., 315 S.C. 223, 229, 433 S.E.2d 21, 25 (Ct. App. 1993); Belton v. State, 330 S.C. 422, 499 S.E.2d 225 (Ct. App. 1998). The South Carolina Supreme Court has decided "[c]osts and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute." Oliver v. S.C. Dep't of Highways and Public Transp., 309 S.C. 313, 422 S.E.2d 128, 131 (1992). While a "prevailing party *shall* ordinarily be entitled to recover certain costs and disbursements[,] [s]uch costs and disbursements do not, however, include attorney fees²." Black, 315 S.C. at 224, 433 S.E.3d at 227. Further, Rule 54, SCRPC and Rule 68, SCRPC do not create a right to recover attorney's fees without authorization of statute. S.C. Code Ann. § 15-35-400(B) does not create a right to recover attorney's fees if an offeror obtains a favorable judgment.

Pursuant Rule 45(b)(1), SCRPC, the recoverable costs for a subpoenaed witness includes a \$25.00 attendance fee per day and mileage. Because the Plaintiff was not subpoenaed to appear at his deposition, his attendance fee and mileage are not recoverable. Regarding transcript costs, case law establishes "the cost of a transcript or copy of the evidence, or of a part thereof,

¹ S.C. CODE ANN. § 15-35-400(B) (1976).

² As attorney's fees are not recoverable costs, Ms. Mullis' mileage to and from depositions is not recoverable.

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2/14
AKG

obtained for the convenience of the parties or their counsel, cannot be taxed as part of the costs." South Carolina Pub. Serv. Auth. v. Spearwant Liquidating Co., 201 S.C. 207, 207, 22 S.E.2d 252, 254 (1942) (quoting 20 C.J.S. *Costs* § 249). As the Plaintiff has identified no statute or rule of court that provides for the award of transcript costs, such costs are not recoverable. Likewise, the Plaintiff has not identified a rule of court or statute providing for witness attendance fees in excess of that provided for in Rule 45(b)(1), SCRPC. "Fees for expert witnesses, beyond the ordinary fees authorized for witnesses generally, are not taxable as costs unless there is a statute specifically allowing such an expense." Oliver, 309 S.C. at 319, 422 S.E.2d at 132. As no statute provides otherwise, Rule 45(g), SCRPC "places a fixed dollar amount on witness fees in the amount of \$25.00 per day plus mileage." Id (quoting 20 C.J.S. *Costs* § 116 (1990)).

The Plaintiff is entitled to the following costs: Court filing fees of \$50.00; Deposition costs, for witness attendance fees and mileage, totaling \$65.50: Trooper Reginald Thomas - \$35.00, and Heather Dailey - \$30.50; Expenses of witnesses at trial: Dr. Green B. Neal - \$142.66, Dr. Oliver G. Wood - \$210.60, Trooper Reginald Thomas - \$64.96, Timothy Craven - \$52.75, Process Service for Timothy Craven - \$165.00, George Williams - \$50.53, Clyde Cochran - \$67.18, Process Service for George Williams/Clyde Cochran - \$124.88, Nathan Washington - \$104.92, Harry White - \$107.14, Leon Goodman - \$110.47, Michael Lewis - \$92.71, Marvin Mosely - \$353.56, Jennifer Stayton, RN - \$35.00; SLED witnesses: Doris Yarbrough, Pat Crooks, Kimberly Meres - \$1,449.15. The total for expenses of witnesses at trial is \$3,131.51. Therefore, Plaintiff is entitled to costs from the date of the Offer of Judgment in the amount of Three Thousand Two Hundred Forty Seven Dollars and One Cent (\$3,247.01)

INTEREST PURSUANT TO OFFER OF JUDGMENT

With respect to interest, S. C. Code § 15-35-400(B)(2) provides for "... eight percent interest computed on the amount of the verdict or award from the date of the offer."³ The jury awarded the Plaintiff a verdict of Six Hundred Forty Seven Thousand (\$647,000.00) Dollars in total damages on August 16, 2012, for which he is entitled to Eight percent (8%) interest from the date of the offer until the date of the verdict. As 547 days have elapsed between the date of the offer of judgment, February 15, 2011, and the date of the verdict, August 16, 2012, the total amount of interest owed equals Seventy Seven Thousand Five Hundred Sixty Nine Dollars and Ten Cents (\$77,569.10).

AND IT IS SO ORDERED.

January 14, 2013
Charleston, South Carolina,


The Honorable Deadra L. Jefferson
Chief Administrative Judge

³ S.C. CODE ANN. § 15-35-400(B)(2) (1976).

4 4024
SD



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 02, 2014

The Honorable Mary P. Brown
PO Box 219
Moncks Corner SC 29461-0219

REMITTITUR

Re: Levern McCray v. Jose Valle
Lower Court Case No. 2010CP0801801
Appellate Case No. 2012-213050

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Julian Kane Allen, Esquire
R. Hawthorne Barrett, Esquire
Pamela R. Mullis, Esquire

Defendant.

CERTIFICATE OF SERVICE

260

EXHIBIT E

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Berkeley
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-08-1801

Levern McCray

Jose W. Valle

PLAINTIFF(S)

DEPENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This case came before the Court on Plaintiff's Motion to Enforce Order of Judgment and Rule to Show Cause on October 22, 2014. Under SCRPC 69, the Court hereby finds that a writ of execution, together with supplementary proceedings, is the proper procedure to enforce the underlying judgment. Plaintiff's instant motion is hereby DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge
SCRPC Form 4C (03/2013)

2151

Judge Code

Date

Page 1

262

For Clerk of Court Office Use Only

This judgment was entered on the 1 day of Dec, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this day of Dec, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-08-1801

Levern McCray
PLAINTIFF(S)

Jose W. Valle
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(b), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This Negligence cause of action came before the Court for a trial by jury on August 13-16, 2012. All issues have been tried and a verdict rendered in favor of the Plaintiff in the amount of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars actual damages and One Hundred Forty-Seven Thousand and 0/100 (\$147,000.00) Dollars punitive damages. The Court required post-trial motions. Post-trial motions were heard and respectfully denied. The Court conducted a B.M.W. of North America, Inc. v. Gore, 517 U.S. 559, 116 S. Ct. 1589 (1996) analysis and will be submitting a supplemental order conducting a post-trial review of the jury's punitive damages award.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Levern McCray	Jose W. Valle	\$ 647,000.00
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

2012 AUG 16 PM 3:22

FILED

email: PRM, JRE KKA, mjm, ECS

264

B

10 PM

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

DR Jepsen
Circuit Court Judge

2128
Judge Code

8/16/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 16th day of Aug, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 16 day of Aug, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Pamela Mullis, Esq.
Joseph Epting, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

Julian Allen, Esq.
Emily Sheets, Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

Court Reporter: Melissa Singletary

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT.

CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM.

VIS * 004229
LAKE NORMAN, NC
PO BOX 1709
HUNTERSVILLE, NC 28078



62-207311
CITIBANK NA, ONE PENNS WAY
NEW CASTLE, DE 19720

PAY 10000.00

PAY TEN THOUSAND DOLLARS AND NO CENTS

OFFICE NO.	B. CODE	PAYMENT IDENTIFICATION	CHECK NUMBER	CHECK DATE
0591	251	CLAIM 016097741-0003	29992406	08/10/12

PAY **\$10000.00

VOID IF NOT PRESENTED WITHIN
6 MONTHS OF DATE OF CHECK

PAY TO THE
ORDER OF

MULLIS LAW FIRM
& LEVERN MCCRAY
C/OMCANGUS GOUDELOCK AND COURIE
PO BOX 30307
CHARLESTON SC 28230

Randy Fargnoli

TWO SIGNATURES REQUIRED IF OVER \$500,000

⑈ 29992406 ⑆ 031100209: 38707351 ⑈

THE ORIGINAL DOCUMENT HAS A REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENT.

266

BE SURE TYPEWRITER HAS A WELL INKED RIBBON. DO NOT ERASE OR STRIKE OVER IN THE AMOUNT, DATE, OR PAYEE NAME AND ADDRESS BLOCK. TYPE A "T" IMMEDIATELY AFTER THE TRIANGLE WITH THE AMOUNT AND TWO ASTERISKS FOLLOWING. EXAMPLE: ▶ \$10,000**

V31709751

OFFICE NO.
0591

BANK NO.
428

DATE OF CHECK	CLAIM NUMBER
09-17-2012	LA591-016097741-02

*VOID IF NOT PRESENTED WITHIN 6 MONTHS FROM ISSUE DATE



PAY ▶	\$50,000.00

CITIBANK
NEW CASTLE, DE

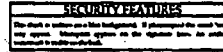
TO THE ORDER OF

LeVern McCray and
The Mullis Law Firm
1229 Elmwood Avenue
Columbia, SC 29201

Kyla Brown

Barbara Leighton

TWO SIGNATURES REQUIRED IF AMOUNT EXCEEDS \$10,000



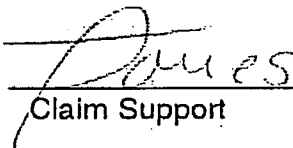
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CLAIM# 0126218767

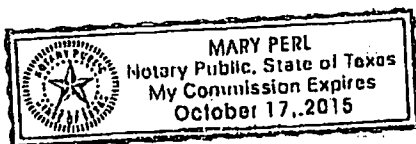
To Whom It May Concern:

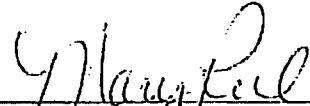
I, Patricia Torres, employee of Allstate Insurance Company Irving, Texas,
do certify that the enclosed is a copy of policy and or declaration page for the above
claim number, showing the coverages that were on the policy at the time of loss
of 12/20/2008. The enclosed copy of policy and or declaration
page was printed and mailed through Allstate's Output Processing Center.


Claim Support

State of Texas, County of Dallas

On this 12th day of September 2014, before me personally
appeared Patricia Torres to me known to be the person who executed the
foregoing instrument and acknowledged that he/she executed the same as a free act
and deed.




Notary Public

Allstate Insurance Company

RENEWAL Auto Policy Declarations

The company issuing the policy is:

Allstate Insurance Company
2775 Sanders Road
Northbrook, IL 60062-6127
1-800-ALLSTATE® (1-800-255-7828)

Summary

NAMED INSURED(S)
Ollie E Walton-McCray
2407 Anderson Court
Elgin SC 29045-9003

YOUR ALLSTATE AGENT IS
Hanna Agency
(843) 662-7438

2143 A Hoffmeyer Rd
Florence SC 29501

YOUR BILL
lists your payment options.

POLICY NUMBER
0 90 746371 12/06

POLICY PERIOD
Dec. 6, 2008 to June 6, 2009 at 12:01 a.m. standard time

DRIVER(S) LISTED*
Ollie Levern

DRIVER(S) EXCLUDED
None

VEHICLES COVERED
1. 03 BMW 745li

VEHICLE ID NUMBER
WBAGN63493DS43852

LIENHOLDER
None

2. 91 Subaru Legacy

4S3BC6321M1612532

None

3. 97 Honda Accord

1HGCD5538VA149390

None

Total Premium

Premium for 03 BMW 745li \$438.86

Premium for 91 Subaru Legacy \$198.03

Premium for 97 Honda Accord \$279.11

TOTAL \$916.00

✓ Your total premium reflects a combined discount of \$328.87
Your Policy Effective Date is Dec. 6, 2008

AUTO *510003908103003008960803*



Information as of
October 30, 2008

Page 3
SC010P9D

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Allstate Insurance Company

Policy Number : 0 90 746371 12/06
Policy Effective Date: Dec. 6, 2008

Your Agent: Hanna Agency (843) 662-7438

COVERAGE FOR VEHICLE # 2

1991 Subaru Legacy

COVERAGE	LIMITS		DEDUCTIBLE	PREMIUM
Automobile Liability Insurance				\$61.96
• Bodily Injury	\$100,000	each person	Not Applicable	
	\$300,000	each accident		
• Property Damage	\$100,000	each accident	Not Applicable	\$36.44
Uninsured Motorists Insurance				\$18.80
• Bodily Injury	\$100,000	each person	Not Applicable	
	\$300,000	each accident		
• Property Damage	\$25,000	each accident	\$200	
Underinsured Motorists Insurance			Not Applicable	\$38.70
• Bodily Injury	\$50,000	each person		
	\$100,000	each accident		
• Property Damage	\$25,000	each accident		
Automobile Medical Payments	\$2,000	each person	Not Applicable	\$9.42
Auto Comprehensive Insurance	Actual Cash Value		\$250	\$32.71
Total Premium for 91 Subaru Legacy				\$198.03

DISCOUNTS

Your premium for this vehicle reflects the following discounts:

Multiple Policy	\$12.22	Premier Plus	\$39.24
Antilock Brakes	\$10.93	Automatic Seat Belts	\$1.04

RATING INFORMATION

This vehicle is driven over 7,500 miles per year, 0-3 miles to work/school, adult age 55, with no unmarried driver under 25, good driver rate

AUTO *510003908103003008980804*



Information as of
October 30, 2008

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6C010R80

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Allstate Insurance Company

Policy Number : 0 90 746371 12/06
Policy Effective Date: Dec. 8, 2008

Your Agent: Hanna Agency (843) 662-7438

COVERAGE FOR VEHICLE # 3

1997 Honda Accord

COVERAGE	LIMITS		DEDUCTIBLE	PREMIUM
Automobile Liability Insurance				\$65.38
• Bodily Injury	\$100,000 \$300,000	each person each accident	Not Applicable	
• Property Damage	\$100,000	each accident	Not Applicable	\$38.45
Uninsured Motorists Insurance				\$18.80
• Bodily Injury	\$100,000 \$300,000	each person each accident	Not Applicable	
• Property Damage	\$25,000	each accident	\$200	
Underinsured Motorists Insurance				\$38.70
• Bodily Injury	\$50,000 \$100,000	each person each accident	Not Applicable	
• Property Damage	\$25,000	each accident		
Automobile Medical Payments	\$2,000	each person	Not Applicable	\$7.69
Auto Collision Insurance	Actual Cash Value		\$500	\$65.42
Auto Comprehensive Insurance	Actual Cash Value		\$250	\$44.67
Total Premium for 97 Honda Accord				\$279.11

DISCOUNTS

Your premium for this vehicle reflects the following discounts:

Multiple Policy	\$19.26	Antilock Brakes	\$18.80
Premier Plus	\$62.99	Passive Restraint	\$3.30

RATING INFORMATION

This vehicle is driven over 7,500 miles per year, 0-3 miles to work/school, adult age 44, with no unmarried driver under 25, good driver rate

Allstate Insurance Company

Policy Number: 0 90 746371 12/06
Policy Effective Date: Dec. 6, 2008

Your Agent: Hanna Agency (843) 662-7438

Your Policy Documents

Your auto policy consists of this Policy Declarations and the documents listed below. Please keep these together.

- Renewal Offer Guarantee form AU12952
- South Carolina Auto Policy form PDU46-1
- South Carolina Dividend Provision form PDU79

Important Payment and Coverage Information

Your rate is lower because you are insuring multiple cars.

IN WITNESS WHEREOF, Allstate has caused this policy to be signed by its Secretary and its President at Northbrook, Illinois, and if required by state law, this policy shall not be binding unless countersigned on the Policy Declarations by an authorized agent of Allstate.



Thomas J. Wilson
President



Mary J. McGinn
Secretary

AUTO *510063908103003008980805*



Information as of
October 30, 2008

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SC010R60

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Hanna Agency
2143 A Hoffmeyer Rd
Florence SC 29501

Your Quick Insurance Check

- ✓ Verify the vehicles and drivers listed on the Policy Declarations and ID cards.
- ✓ Check the vehicle identification number (VIN) listed on these documents; its accuracy could affect your premium.
- ✓ Now you can pay your premium even before your bill is issued - visit allstate.com or call 1-800-Allstate®.



Ollie E Walton-McCray
2407 Anderson Court
Elgin SC 29045-9003

Thank you for being a loyal Allstate customer — we're delighted to have you with us!

Here's Your Allstate Auto Insurance Renewal Offer

I'm pleased to offer to continue your Allstate Insurance Company auto policy for another six months, so you can continue getting:

- Quality coverage at competitive prices
- Access to our knowledgeable, helpful agent network
- The peace of mind of knowing your insurance provider is one of the most experienced in the industry

What's In This Package?

This mailing package contains your insurance documents, including your Renewal Policy Declarations—which lists your coverages, coverage limits, premiums and any discounts you're receiving. You'll want to review the Policy Declarations to make sure you're comfortable with the coverage choices you've made. Please store all of these documents with your other important papers.

Your Insurance Identification Cards, Billing And Renewing

Be sure to replace the Insurance Identification cards you currently have with the enclosed cards no later than your policy's effective date. Your bill will be sent separately. But note that if you're enrolled in the Allstate Easy Pay Plan, you won't receive a bill. Instead, we'll send you a statement detailing your payment withdrawal schedule.

Renewing your coverage is simple—just make sure we receive the required premium payment when it's due.

(over)

AUTO *516103908103903008880801* Information as of October 30, 2008 0000900090746271 D10 010 SC



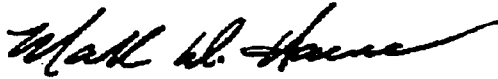
RA719

Have Questions? Please Contact Us

Give me a call at (843) 662-7438 if you have any questions or if you see something that needs updating—coverages, limits, deductibles, drivers, vehicles. For online services, such as making a payment or viewing policy information, you can register at the Customer Care Center on *allstate.com*. And for 24-hour-a-day, 7-day-a-week service and information, just call 1-800-ALLSTATE® (1-800-255-7828).

We Appreciate Your Business

Thanks again for choosing Allstate — where you get more than great coverage and service. You get Allstate's 75 years of business experience behind you, plus the freedom to manage your policy your way.



Hanna Agency
Your Allstate Agent

Allstate Insurance Company

Your Savings and Opportunities

Your discount savings for this policy period is: \$328.87 (For an itemized list of your discounts, refer to your Policy Declarations)	Your premium for this policy period is: \$916.00 This amount reflects the discount savings shown on left.

Allstate Offers You Innovative Choices

We'd like to introduce you to Allstate® Your Choice Auto Insurance, a different kind of car insurance that can reward you like never before. Now, with a Gold or Platinum Protection package you can get a range of innovative features, including:

- An immediate \$100 off your collision coverage deductible.
- A safe driving bonus of up to 5% which can be applied toward your next renewal premium.
- Enhanced accident forgiveness — your rates won't go up just because of an accident.
- If your new car gets totaled, Allstate can help replace it with a brand new car.

Your Choice Auto bundles together the kind of features you want most in car insurance. You simply choose the package that you like best. And you get these great features on top of what you already get from Allstate, such as quality coverage and 24/7 claim service. Consider whether one of the following optional Your Choice Auto packages is right for you:

Platinum Protection package

- Safe Driving Deductible Reward
- A Safe Driving Bonus
- Enhanced Accident Forgiveness for Multiple Accidents

Gold Protection package

- Safe Driving Deductible Reward
- Enhanced Accident Forgiveness (covers one accident every three years)

If you're looking to lower your premium, consider the Allstate Value Plan, our save money now plan. This option requires you to use the Allstate Easy Pay Plan, a convenient and time-saving service for automatically deducting your insurance payments from your checking or savings account. Also, any accidents occurring while the Allstate Value Plan is part of your policy will *not* be eligible for any accident waiver program, nor will any time spent in the Allstate Value Plan apply towards qualification for such a program.

New Car Expanded Protection coverage is available for an additional premium to customers who have added either our Gold Protection package or the Platinum Protection package to their policy. With this coverage, if your

AUTO *510003908103003008880802*



Information as of
October 30, 2008

Page 1
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Allstate Insurance Company

insured new car is totaled, Allstate can help replace it with a brand new car. It's a good value if you want extra protection for your new car.

You can add a Your Choice Auto package to your policy right away. You don't need to wait for your current insurance to expire. Call your Allstate representative for a quote today!

Discounts and Other Savings Opportunities

There are a variety of ways to save money on your Allstate auto insurance. Below are just a few of the discounts and savings options that may be available in your area. Please contact your Allstate representative for more information about these and other savings opportunities.

Good Student Discount

Did you know that if the young driver on your policy is an unmarried student under the age of 25 and meets certain academic criteria, you could be eligible to receive our Good Student Discount?

Multiple Policy Discount

Customers who currently insure their home, condo, mobile home or apartment through Allstate may be eligible for our Multiple Policy Discount.

New Car Discount

You may be able to add to the thrill of purchasing a brand new car by finding out if it qualifies for our New Car Discount.

Accident Waiver Program

For eligible long-term customers, there's an Accident Waiver Program that can help prevent the application of an accident surcharge due to an accident, and, in certain cases, enable you to keep your discounts too.

Allstate Easy Pay Plan Discount

You may also qualify for a premium discount by having your insurance payments automatically deducted from your bank account through the Allstate Easy Pay Plan. And you'll be able to select a convenient day of the month for your premium withdrawal — either a monthly installment payment or a single Pay in Full option. And you'll avoid the hassle of writing checks and worrying about payments getting lost in the mail. Just contact your Allstate representative, or go to the Customer Care Center at allstate.com to apply. If you're already enrolled in the Allstate Easy Pay Plan, the discount has been applied to your policy.

X71551

Allstate Insurance Company

Policy Number : 0 90 746371 12/06
Policy Effective Date: Dec. 8, 2008

Your Agent: Hanna Agency (843) 662-7438

COVERAGE FOR VEHICLE # 1

2003 BMW 745li

COVERAGE	LIMITS		DEDUCTIBLE	PREMIUM
Automobile Liability Insurance				\$49.46
• Bodily Injury	\$100,000	each person	Not Applicable	
	\$300,000	each accident		
• Property Damage	\$100,000	each accident	Not Applicable	\$29.09
Uninsured Motorists Insurance				\$18.80
• Bodily Injury	\$100,000	each person	Not Applicable	
	\$300,000	each accident		
• Property Damage	\$25,000	each accident	\$200	
Underinsured Motorists Insurance			Not Applicable	\$38.70
• Bodily Injury	\$50,000	each person		
	\$100,000	each accident		
• Property Damage	\$25,000	each accident		
Automobile Medical Payments	\$2,000	each person	Not Applicable	\$4.62
Auto Collision Insurance	Actual Cash Value		\$500	\$149.65
Auto Comprehensive Insurance	Actual Cash Value		\$250	\$148.54
Total Premium for 03 BMW 745li				\$438.86

DISCOUNTS

Your premium for this vehicle reflects the following discounts:

Passive Restraint	\$1.98	Multiple Policy	\$33.17
Antilock Brakes	\$25.35	Premier Plus	\$100.59

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Allstate Insurance Company

Policy Number : 0 90 746371 12/06
Policy Effective Date: Dec. 5, 2008

Your Agent: Hanna Agency (843) 652-7438

Important Notice

Allstate's Privacy Policy

At Allstate, we value you as a customer and share your concerns about privacy. To help you understand how we treat the nonpublic personal information ("customer information") that we obtain from you or other sources in the course of providing you with products and services, this notice describes our use and protection of that information.

Whether you're doing business with us through your local agent or broker, our Customer Information Center, or allstate.com, we want you to know that Allstate respects your privacy and protects your information.

- We do not sell customer information.
- We do not share your customer information with persons, companies, or organizations outside of Allstate that would use that information to contact you about their own products and services.
- We expect persons or organizations that provide services on our behalf to keep customer information confidential and to use it only to provide the services we've asked them to perform.
- Within Allstate, we communicate to our employees regarding the need to protect customer information, and we've established physical, electronic, and procedural safeguards to protect customer information.

Below we've provided answers to questions that might be on your mind regarding privacy. You may be wondering...

What do we do with your customer information?

Allstate does not sell your customer information, or medical information, to anyone. Nor do we share it with companies or organizations outside of Allstate that would use that information to contact you about their own products and services. If that practice were ever to change, we would, of course, offer you the ability to opt out of this type of information sharing, and we would offer you the opt-out with time for you to respond before the change in our practice took place.

Your agent or broker may use customer information to help you with your overall insurance program. We may also communicate with you about products, features, and options you have expressed an interest in or that we believe may be of interest to you. We may, without authorization but only as permitted or required by law, provide customer information to persons or organizations both inside and outside of Allstate to fulfill a transaction you have requested, service your policy, market our products to you, investigate or handle claims, detect or prevent fraud, participate in insurance support organizations, or comply with lawful requests from regulatory and law enforcement authorities. These persons or organizations may include: our affiliated companies, companies that perform marketing services on our behalf, other financial institutions with which we have a joint marketing agreement for the sale of our own products, and your agent or broker.

What kind of customer information do we have, and where did we get it?

Much of the customer information that we have about you comes directly from you. When submitting your application or request for insurance or other products and services we offer, or requesting an insurance quote, you may give us information such as your name, address, and Social Security number. We keep information about your transactions with our affiliates, others or us—for example, the types of products and services you purchase from us, premiums, account balances, and payment history.

We also may collect information from outside sources, including consumer reporting agencies and health care providers. This information may include loss information reports, motor vehicle reports, credit reports, and medical information.

Page 1

AUTO *510003908103003008980806*



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Allstate Insurance Company

Policy Number : 0 90 746371 12/06
Policy Effective Date: Dec. 6, 2008

Your Agent: Hanna Agency (843) 662-7438

How do we protect your customer information?

When we share customer information with companies working on Allstate's behalf, we expect those companies to use that information only to provide the service we have asked them to perform. Within Allstate, customer information is available to those individuals who may need to use it to fulfill and service the needs of Allstate customers. We communicate the need to protect customer information to all employees and agents, especially those individuals who have access to it. Plus, we've established physical, electronic, and procedural safeguards to protect customer information.

Finally, should your relationship with Allstate end, your customer information will remain protected in accordance with our privacy practices as outlined in this Important Notice.

How can you find out what information we have about you?

You may request to either see, or obtain from us by mail, the customer information about you in our records. If you believe that information is incomplete or inaccurate, you may request that we make any necessary corrections, additions or deletions to the disputed customer information. To fulfill your request, we may make arrangements with an insurance support organization or a consumer reporting agency to copy and disclose customer information to you on our behalf. You may also request a more complete description of the entities to which we disclose customer information, or the circumstances that might warrant such disclosures. Please send any of the requests listed above in writing to: Allstate Insurance Company, Customer Privacy Inquiries, P.O. Box 11904, Roanoke, VA 24022.

If you are an Internet user...

Our website, allstate.com, provides information about Allstate, our products, and the agencies and brokers that represent us. You may also perform certain transactions on the website. When accessing allstate.com, please be sure to read the Privacy Statement that appears there.

To learn more, the allstate.com Privacy Statement provides important information relating to your use of the website, including, for example, information regarding: 1) our use of online collecting devices known as "cookies"; 2) our collection of information such as IP address (the number assigned to your computer when you use the Internet), browser and platform types, domain names, access times, referral data, and your activity while using our site; 3) who should use our web site; 4) the security of information over the Internet and 5) links and co-branded sites.

We hope you have found this Important Notice helpful. If you have any questions or would like more information, please don't hesitate to contact your Allstate agent or call the Allstate Customer Information Center at 1-800-Allstate.

X66702-1v3

This notice is being provided on behalf of the following companies:

Allstate County Mutual Insurance Company
Allstate Indemnity Company
Allstate Investment Management Company
Allstate New Jersey Insurance Company
Allstate Texas Lloyd's
Forestview Mortgage Insurance Company
Allstate New Jersey Property and Casualty Insurance Company

Allstate Fire and Casualty Insurance Company
Allstate Insurance Company
Allstate Motor Club, Inc.
Allstate Property and Casualty Insurance Company
Allstate Texas Lloyd's, Inc.
General Underwriters Agency, Inc.
Roadway Protection Auto Club, Inc.

(ed. 09/2006)

Allstate Insurance Company

Policy Number: 0 90 746371 12/05
Policy Effective Date: Dec. 6, 2008

Your Agent: Hanna Agency (843) 662-7438

Important Notice

Important Information About Your Auto Policy

The enclosed Policy Declarations lists important information about your policy, such as your address, the vehicles you've insured, the vehicle identification numbers (VIN) assigned to your insured vehicles, the drivers insured, and the coverages and coverage limits you've chosen. Your Policy Declarations also lists any discounts and surcharges applied to your policy.

Because much of the information found on your Policy Declarations is used to help us determine your premium, please be sure to review your Policy Declarations carefully each time you receive one. You may want to add coverage, delete coverage or change your coverage limits—or you may want to change the information concerning the vehicles or drivers your policy insures.

Another thing to keep in mind is that you may now qualify for discounts that you previously were not eligible to receive. For instance, in many states, Allstate offers discounts for:

- drivers who are age 55 and older who are no longer working;
- young drivers, including students under the age of 25;
- drivers who have completed approved driver training courses; and
- drivers who also insure their homes with Allstate.

Please contact your Allstate representative for additional information about discount qualifications, as well as other discounts that may be available.

Making changes to your policy

If you need to make a change to any of the information listed on your Policy Declarations, please notify your Allstate representative of the change as soon as possible. With a few exceptions, **any changes will be effective as of the date you notify us.**

If you have any questions about this notice, or if you need to update any of the information listed on the enclosed Policy Declarations, please contact your Allstate agent or our Customer Information Center at 1-800-ALLSTATE (1-800-255-7828).

X67094

AUTO *510003990103003003990807*



GUNTHER END PAGE

FOR FINISHING EQUIPMENT JOB

SCFOAO

AUTO DEC SET MAILING PACKAGE

SOUTH CAROLINA

FOLD

STD RUN

September 11, 2014

New Biz Pages

Renewal Pages

8

Endorsement Pages

Total Fold Pages

8

Reprint TimeStamp 2014-09-11-00.13.27.27

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Allstate Insurance Company

Policy Number: 0 90 746371 12/06
Policy Effective Date: Dec. 6, 2008

Your Agent: Hanna Agency (843) 662-7438

Important Notice

Coverage is available with an affiliate of Allstate Insurance Company

Allstate Insurance Company provides your current policy. Auto insurance is also available from an affiliate of Allstate Insurance Company, Allstate Fire and Casualty Insurance Company. This affiliate offers auto insurance policies with different qualification criteria, rating factors, prices and policy features. For more information about Allstate Fire and Casualty Insurance Company, or to obtain a quote, please contact an Allstate representative.

Issues to Consider before Switching Companies

When considering which company best meets your needs, it's important to carefully consider your circumstances, options and any potential effects on your premium. It's a good idea to review copies of both policies before making a decision. (Your Allstate representative can provide you with copies of each policy.)

Impact on Your Premium

It's possible that Allstate Fire and Casualty Insurance Company will provide you coverage at a lower premium today. However, the rates of Allstate Insurance Company and its affiliates, including Allstate Fire and Casualty Insurance Company, as well as the information used to determine your premium, are subject to change at each policy period.

Therefore, it's possible that while one company's rates are lower than the other's today, they may, in some cases, be higher than the other company's in the future. Similarly, policy features that are available today in one company may not be available in future policy periods, and features not available today may become available.

Impact on Benefits and Renewal Offers

Switching to Allstate Fire and Casualty Insurance Company would also mean the loss of certain benefits that you now qualify for, or that you might qualify for at a later time. In addition, the tenure you've earned with Allstate Insurance Company will not carry over to the new company. For example, both Allstate Insurance Company and Allstate Fire and Casualty Insurance Company waive the premium surcharge that would normally apply to a customer's first chargeable accident if that customer has maintained his or her policy for five consecutive years without any other chargeable accidents. But if you switch companies, you would qualify for the accident surcharge waiver only after five consecutive years with Allstate Fire and Casualty Insurance Company without any other chargeable accidents. The time you have spent as an Allstate Insurance Company customer would not count towards earning the accident surcharge waiver. In some cases, this inability to carry over your tenure to the new company could limit future renewal offers from Allstate Fire and Casualty Insurance Company.

Also, if you terminate your policy with Allstate Insurance Company, you cannot go back to that company since it is not currently accepting new customers.

If you'd like to know more about the information in this notice or about our other insurance products, contact your local Allstate representative.

X72319

Allstate Insurance Company

Policy Number: 0 90 746371 12/06
Policy Effective Date: Dec. 6, 2008

Your Agent: Hanna Agency (843) 662-7438

Important Notice

The company listed below uses local agencies to assist customers with their insurance decision-making process by providing customers with information and high quality service. These agencies provide numerous services to customers on the company's behalf. Agencies are paid a commission by the company for selling and servicing the company's insurance policies and may be eligible to receive additional compensation and rewards based on performance.

Allstate Insurance Company

X72006

AUTO *510003908103003608980808*





GUNTHER START PAGE

FOR FINISHING EQUIPMENT JOB

SCFOAO

AUTO DEC SET MAILING PACKAGE

SOUTH CAROLINA

FOLD

STD RUN

September 11, 2014

Insert Station 1: None
Insert Station 2: None
Mailing Envelope: G3662
Operator Message: None

Reprint TimeStamp 2014-09-11-00.13.27.27

If you have an accident or loss:

- Get medical attention if needed.
- Notify the police immediately.
- Obtain names, addresses, phone numbers (work & home) and license plate numbers of all persons involved including passengers and witnesses.
- Call 1-800-ALLSTATE[®] (1-800-255-7828), logon to allstate.com or contact your agent or producer as soon as possible.

Hanna Agency
(843) 662-7438
2143 A Hoffmeyer Rd
Florence SC 29501

- The coverage provided by your policy meets South Carolina's minimum financial responsibility requirements.

If you have an accident or loss:

- Get medical attention if needed.
- Notify the police immediately.
- Obtain names, addresses, phone numbers (work & home) and license plate numbers of all persons involved including passengers and witnesses.
- Call 1-800-ALLSTATE[®] (1-800-255-7828), logon to allstate.com or contact your agent or producer as soon as possible.

Hanna Agency
(843) 662-7438
2143 A Hoffmeyer Rd
Florence SC 29501

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Hanna Agency
(843) 662-7438
2143 A Hoffmeyer Rd
Florence SC 29501

- The coverage provided by your policy meets South Carolina's minimum financial responsibility requirements.



GUNTHER END PAGE

FOR FINISHING EQUIPMENT JOB

SCFOAO

AUTO DEC SET MAILING PACKAGE

SOUTH CAROLINA

FOLD

STD RUN

September 11, 2014

New Biz Pages

Renewal Pages

1

Endorsement Pages

Total Fold Pages

1

Reprint TimeStamp 2014-09-11-00.13.27.27

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

South Carolina

Renewal Offer Guarantee Endorsement — AU12952

When the Policy Declarations indicates that the **Renewal Offer Guarantee Endorsement** applies, your policy is amended as follows:

A. In the General section of your policy, the following provision is added:

Renewal

Prior to the expiration of each policy period during which the Policy Declarations indicates that the **Renewal Offer Guarantee Endorsement** applies, we will offer to you the opportunity to renew this policy. We will offer to renew this policy with such coverages, policy terms, conditions, limits of liability, deductibles and premiums as we, in our discretion, elect to include in the offer of renewal to you on the date that the renewal offer is processed by us. You may elect to accept our renewal offer by complying with the terms and conditions of the offer and all applicable policy terms and conditions, including those relating to premium payment.

As a condition of our offer to renew this policy, we may, at our discretion and as permitted by law, require that any operator added to your policy after the **Renewal Offer Guarantee Endorsement** was first made a part of your policy be excluded from coverage under the policy.

If, at the time we offer you the opportunity to renew this policy, we have ceased to offer a **Renewal Offer Guarantee Endorsement** in South Carolina, we will notify you that the renewal policy we are offering will not include a **Renewal Offer Guarantee Endorsement**.

We are not required to offer to you the opportunity to renew this policy if this policy is cancelled pursuant to the Cancellation provision of this policy or if:

1. we intend to discontinue writing private passenger automobile insurance in South Carolina;
2. you no longer reside in South Carolina or the vehicles you insure under this policy are no longer principally garaged in South Carolina;
3. renewal of this policy would violate any law or regulation;
4. you obtained this policy through an independent agent or agency, and the relationship between us and that independent agent or agency is discontinued; or
5. you or any member of your household who operates an auto:
 - a. has had his or her drivers license suspended or revoked or otherwise fails to maintain a valid drivers license; or

- b. is convicted of driving while under the influence of alcohol or drugs, leaving the scene of an accident or any other violation considered to be a major violation as described in our rules that are in effect and on file (if required) for our use in South Carolina.

If any of the items numbered 1 through 5 above apply, or if the Policy Declarations does not indicate that the Renewal Offer Guarantee Endorsement applies, we may nonrenew this policy. If we intend to nonrenew this policy, we will mail notice to you at least 34 days before the end of the policy period. Our mailing of notice of nonrenewal to you at your last mailing address known to us shall be deemed proof of notice.

B. In the General section of your policy, the provision titled Non-Renewal is deleted.

All other policy terms and conditions apply.

SOUTH CAROLINA

Effective: //////////////



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The Company Named in the Policy Declarations
A Stock Company
Home Office: Northbrook, Illinois 60062

General

Agreements We Make With You

This policy is a legal contract between you and us. A coverage applies only when a premium for it is shown on the Policy Declarations. If more than one auto is insured, premiums will be shown for each auto. If you pay the premiums when due and comply with the policy terms, we, relying on the information you have given us, makes the following agreements with you.

When And Where The Policy Applies

Your policy applies only during the policy period. During this time, it applies to covered losses to the auto, accidents, and occurrences within the United States Of America, its territories or possessions or Canada, or between their ports. The policy period is shown on the Policy Declarations.

Insurance Coverage in Mexico

Prior to entering and driving in Mexico, you must check with the appropriate Mexican authorities regarding automobile insurance requirements.

Automobile accidents in Mexico are subject to the laws of Mexico, NOT the United States. In Mexico, an automobile accident can be considered a CRIMINAL OFFENSE as well as a civil matter.

In some cases, part or all of this policy may NOT be recognized by Mexican authorities and we may not be allowed to provide any insurance coverage at all in Mexico. For your protection, you should consider purchasing automobile insurance coverage from a licensed Mexican insurance company before driving into Mexico.

However, when permitted, protection will be afforded under those coverages for which a premium is shown on the Policy Declarations for an insured auto while that insured auto is within 75 miles of the United States border and only for a period not to exceed ten days after each separate entry into Mexico.

If loss or damage occurs which may require repair of the insured auto or replacement of any part (s) while the insured auto is in Mexico, the basis for adjustment of the claim will be as follows: Any amount payable resulting from any covered loss or damage occurring in Mexico shall be payable in the United States. We will not be liable for more than the cost of having the repairs made or parts replaced at the nearest point in the United States where repairs or replacements can be performed. The costs for towing, transportation, and salvage operations of the insured auto while within Mexico are not covered under this policy.

Definitions Used In This Section

1. **We, Us or Our** means the company shown on the Policy Declarations.
2. **Auto** means a land motor vehicle with at least four wheels designed for use on public roads.
3. **Resident** means a person who physically resides in your household with the intention of continuing residence there.
4. **You or Your** means the policyholder named on the Policy Declarations and that policyholder's resident spouse.

Changes

When we broaden coverage during the policy period without charge, you have the new features if you have the coverage. Otherwise, the policy can be changed only by endorsement.

The premium for each auto is based on information in our possession. Any change in this information will allow us to make an adjustment of the policy premium.

Any calculation of your premium or changes in your coverage will be made using the rules, rates, and forms on file, if required, for our use in your state.

Duty To Report Policy Changes

You must tell us within 30 days when you acquire an additional or replacement auto. If you do not, certain coverages of this policy may not apply.

Combining Limits Of Two Or More Autos Prohibited

If you have two or more autos insured in your name and one of these autos is involved in an accident, only the coverage limits shown on the Policy Declarations for that auto will apply. When you have two or more autos insured in your name and none of them is involved in the accident, you may choose any single auto shown on the Policy Declarations and the coverage limits applicable to that auto will apply. The limits available for any other auto covered by the policy will not be added to the coverage for the involved or chosen auto.

Transfer

This policy cannot be transferred to anyone without our written consent. However, if you die, coverage will be provided until the end of the policy period for:

1. your legal representative while acting as such; and
2. persons covered on the date of your death.

Payment

If your initial premium payment for your first policy period is by check, draft, or any remittance other than cash, such payment is conditional upon the check, draft, or remittance being honored upon presentation. If such check, draft, or remittance is not honored upon presentation, this shall be deemed void from its inception. This means that we will not be liable under this policy for any claims or damages which would otherwise be covered had the check, draft, or remittance been honored upon presentation.

Conditional Reinstatement

If we mail a cancellation notice because you didn't pay the required premium when due and you then tender payment by check, draft, or other remittance which is not honored upon presentation, your policy will terminate on the date and time shown on the cancellation notice and any notice we issue which waives the cancellation to reinstate coverage is void. This means that we will not be liable under this policy for claims or damages after the date and time indicated on the cancellation notice.

Misrepresentation, Fraud or Concealment

We may void this policy if it was obtained by misrepresentation, fraud or concealment of material facts. If we determine that this policy is void, all premiums paid will be returned to you since there has been no coverage under this policy.

Cancellation

You may cancel this policy by writing us the future date you wish to stop coverage.

We may cancel part or all of this policy by mailing notice to you at your last known address. Our notice will include the specific reason(s) for cancellation. The date of cancellation will be at least 15 days after the date of mailing.

Proof of mailing the notice will be proof of notice. A refund, if due, will be in proportion to the time your policy has been in effect. Cancellation will be effective even if the refund is not made immediately.

We may cancel this policy for any reason during the first 90 days of the original policy period. After your original policy has been in effect 90 days, we will not cancel your policy during the policy period unless:

1. you do not pay the premium when it is due; or
2. you or any other operator who either resides in the same household or customarily operates a motor vehicle insured by the policy has had a driver's license suspended or revoked. This must have occurred during the policy period or, if this is a renewal, during its policy period or the 90 days immediately preceding the last anniversary of the effective date.

Any unearned premium amounts under \$2.00 will be refunded only upon your request.

We will not be liable for any claims or damages which would otherwise be covered, had there not been material misrepresentation, fraud, or concealment of material fact.

We do not cover any loss or occurrence in which any insured person has concealed or misrepresented any material fact or circumstance.

Non-Renewal

We will renew your policy, unless South Carolina law permits non-renewal and we decide not to renew. If we decide not to renew your policy, we will mail notice to you at your last known address. Our notice will include the specific reason(s) for nonrenewal. Notice will be mailed at least 15 days before the end of the policy period. Proof of mailing the notice will be proof of notice.

Charge For Insufficient Funds Or Closed Account

If at any time, your payment of any premium amount due is made by check, electronic transaction, or other remittance which is not honored because of insufficient funds or a closed account, you will be charged a fee.

What Law Will Apply

This policy is issued in accordance with the laws of South Carolina and covers property or risks principally located in South Carolina. Subject to the following paragraph, any and all claims or disputes in any way related to this policy shall be governed by the laws of South Carolina.

If a covered loss to the auto, a covered auto accident, or any other occurrence for which coverage applies under this policy happens outside South Carolina, claims or disputes regarding that covered loss to the auto, covered auto accident, or other covered occurrence may be governed by the laws of the jurisdiction in which that covered loss to the auto, covered auto accident, or other covered occurrence happened.

Where Lawsuits May Be Brought

Subject to the following two paragraphs, any and all lawsuits in any way related to this policy, shall be brought, heard, and decided only in a state or federal court located in South Carolina. Any and all lawsuits against persons not parties to this policy but involved in the sale, administration, performance, or alleged breach of this policy, or involved in any other way with this policy, shall be brought, heard, and decided only in a state or federal court located in South Carolina, provided that such persons are subject to or consent to suit in the courts specified in this paragraph.

If a covered loss to the auto, a covered auto accident, or any other occurrence for which coverage applies under this policy happens outside South Carolina, lawsuits regarding that covered loss to the auto, covered auto accident, or other covered occurrence may also be brought in the judicial district where that covered loss to the auto, covered auto accident, or other covered occurrence happened.

Nothing in this provision, **Where Lawsuits May Be Brought**, shall impair any party's right to remove a state court lawsuit to a federal court.

Action Against Us

No one may bring an action against us unless there is full compliance with all policy terms; and the action is commenced within one year of the date the cause of action accrues. However, if an action is in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a particular coverage that is shown on the Policy Declarations, such action must be commenced within the time period specified in the **Action Against Us** provision of that particular coverage. If an action is brought asserting claims relating to the existence or amount of coverage, or the amount of loss for which coverage is sought, under different coverages of this policy, the claims relating to each coverage shall be treated as if they were separate actions for the purpose of the time limit to commence action.

Arbitration

Any claim or dispute in any way related to this policy, by an insured person under this policy against us or us against an insured person under this policy, may be resolved by arbitration only upon mutual consent of the parties. Arbitration pursuant to this provision shall be subject to the following:

1. no arbitrator shall have the authority to award punitive damages or attorney's fees;
2. neither of the parties shall be entitled to arbitrate any claims or disputes in a representative capacity or as a member of a class; and
3. no arbitrator shall have the authority, without the mutual consent of the parties, to consolidate claims or disputes in arbitration.

Part 1

Automobile Liability Insurance

Bodily Injury—Coverage AA

Property Damage—Coverage BB

Insuring Agreements

We will pay for damages an Insured person is legally obligated to pay because of **bodily injury** or **property damage** meaning:

1. **bodily injury** to any person; and
2. damage to or destruction of property, including loss of use.

Under these coverages, your policy protects an insured person from claims for accidents arising out of the ownership, maintenance or use, loading or unloading of an insured auto. Damages include prejudgment interest awarded against an insured person.

We will defend an insured person sued as the result of an auto accident, even if the suit is groundless or false. We will choose the counsel. We may settle any claim or suit if we believe it is proper.

Additional Payments We Will Make

When we defend an insured person under this Part I, we will pay:

1. up to \$50 a day for the loss of wages or salary if we ask that person to attend hearings or trials to defend against a **bodily injury** suit. We will not pay for loss of other income. We will pay other reasonable expenses incurred at our request.
2. court costs for defense.
3. interest accruing on a judgment entered against you, but only on that part of a judgment entered against you which do not exceed our limits of liability, until such time as we have paid, formally offered, or conditionally or unconditionally deposited in court, the amount for which we are liable under this policy. This means that under no circumstances will we pay interest on that part of a judgment entered against you which exceeds our stated limits of liability.

4. premiums on appeal bonds and on bonds to release attachments, but not in excess of our limit of liability. We have no obligation, however, to apply for or furnish these bonds.

We will repay an Insured person for:

1. the cost of any bail bonds required because of an accident or traffic law violation involving the use of the Insured auto. Payment will not exceed \$300 per bond. We have no obligation to apply for or furnish a bond.
2. reasonable expenses incurred by an Insured person for first aid to other persons at the time of an auto accident involving the insured auto.

Insured Persons

1. While using your insured auto:
 - a. you,
 - b. any resident, and
 - c. any other person using it with your permission.
2. While using a non-owned auto:
 - a. you,
 - b. any resident relative using a four wheel private passenger auto or utility auto.

The following are not insured persons:

1. The United States of America or any of its agencies.
2. Any person with respect to bodily injury or property damage resulting from the operation of an auto by that person as an employee of the United States Government. This applies only if the provisions of Section 2679 of Title 28, United States Code as amended, require the Attorney General of the United States to defend that person in any civil action which may be brought for the bodily injury or property damage.

Insured Autos

1. Any auto described on the Policy Declarations. This includes the four wheel private passenger auto or utility auto you replace it with.

2. An additional private passenger auto or utility auto you become the owner of during the policy period provided we insure all other private passenger autos or utility autos you own. You must tell us within 30 days of acquiring the auto and you must pay any additional premium. We must agree to insure the auto. Coverage will not continue after 30 days if we are not notified of the additional auto.
3. A substitute four wheel private passenger auto or utility auto, not owned by you or a resident, being temporarily used while your insured auto is being serviced or repaired, or if your insured auto is stolen or destroyed.
4. A non-owned auto used by you or a resident relative with the owner's permission. This auto must not be available or furnished for the regular use of an insured person.
5. A trailer while attached to an insured auto. The trailer must be designed for use with a private passenger auto or utility auto. This trailer cannot be used for business purposes with other than a private passenger auto or utility auto.

Definitions Used In Part 1

1. We, Us, or Our means the company shown on the Policy Declarations.
2. Auto means a land motor vehicle with at least four wheels designed for use on public roads.
3. Bodily injury means bodily injury, sickness, disease or death.
4. Resident means the physical presence in your household with the intention to continue living there. Your unmarried dependent children while temporarily away from home will be considered residents, if they intend to continue to live in your household.
5. Utility auto means an auto of the pick-up body, sedan delivery or panel truck type. This auto must have a gross vehicle weight of

10,000 pounds or less, according to manufacturer's specifications.

6. **You or Your** means the policyholder named on the Policy Declarations and that policyholder's resident spouse.

Exclusions—What Is Not Covered

This coverage does not apply to liability for:

1. your insured auto while used to carry persons or property for a charge, or any auto you are driving while available for hire by the public. This exclusion does not apply to shared-expense car pools.
2. auto business operations such as repairing, servicing, testing, washing, parking, storing or selling of autos or motor vehicles. This exclusion does not apply to the use of your insured auto by:
 - a. you, resident relatives, partners or employees of the partnership of you or a resident relative; or
 - b. any other insured person for damages up to the minimum limits required by the financial responsibility law of South Carolina.
3. a non-owned auto while being used in any business or occupation of an insured person. However, coverage does apply while you, your chauffeur, or domestic servant are using a private passenger auto or trailer.
4. bodily injury to an employee of any insured person arising in the course of employment. Coverage does apply to a domestic employee who is not required to be covered by workers' compensation law or similar law.
5. bodily injury or property damage arising out of the ownership, maintenance, or use of a motor vehicle with less than four wheels.
6. anyone other than you, for claims made by a co-worker injured in the course of employment.
7. damage to or destruction of property an insured person owns, is in charge of, or rents. However, a private residence or a garage rented by that person is covered.
8. bodily injury or property damage caused intentionally by or at the direction of an insured person. This exclusion applies only to damages in excess of the minimum limit required by the financial responsibility law of South Carolina.
9. bodily injury or property damage which would also be covered under nuclear energy liability insurance. This applies even if the limits of that insurance are exhausted.
10. bodily injury or property damage arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of an auto at a track or course designed or used for racing or high performance driving,or in practice or preparation for any contest or use of this type.

This exclusion does not apply up to the minimum limits required by the financial responsibility law of South Carolina.

Financial Responsibility

When this policy is certified as proof under any motor vehicle financial responsibility law, the insurance under this part of the policy will comply with the provisions of that law.

Limits Of Liability

The limits shown on the Policy Declarations are the maximum we will pay for any single accident involving an insured auto. The limit stated for each person for bodily injury is our total limit of liability for all damages because of bodily injury sustained by one person in any single accident involving an insured auto including all damages sustained by anyone else as a result of that bodily injury. Subject to the limit for each person, the limit stated for each

accident is our total limit of liability for all damages for **bodily injury** sustained by two or more persons in any single accident involving an insured **auto**. For property damage, the limit stated for each accident is our total limit of liability for property damage sustained in any single accident involving an insured **auto**.

The liability limits apply to each insured **auto** as shown on the Policy Declarations. The insuring of more than one person or **auto** under this policy will not increase our liability limits beyond the amount shown for any one **auto**, even though a separate premium is charged for each **auto**. The limits also will not be increased if you have other **auto** insurance policies that apply.

There will be no duplication of payments made under the Bodily Injury Liability and Uninsured Motorists Insurance or Underinsured Motorists Insurance of this policy.

An **auto** and attached trailer are considered one **auto**. Also, an **auto** and a mounted camper unit, topper, cap or canopy are considered one **auto**.

If There Is Other Insurance

If an insured person is using a substitute private passenger **auto** or non-owned **auto**, our liability insurance will be excess over other collectible insurance. If more than one policy applies to an accident involving your insured **auto**, we will bear our proportionate share with other collectible liability insurance.

Assistance And Cooperation

When we ask, an insured person must cooperate with us in the investigation, settlement and defense of any claim or lawsuit. If we ask, that person must also help us obtain payment from anyone who may be jointly responsible.

We can't be obligated if an insured person voluntarily takes any action or makes any payments other than for covered expenses for bail bonds or first aid to others.

Action Against Us

No insured person may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part I—Automobile Liability Insurance, unless there is full compliance with all policy terms and such action is commenced no later than the last of the following to occur:

1. two years after the date of the accident; or
2. one year after entry of final judgment or other court order terminating a lawsuit against the insured to determine the insured's liability or the amount of the insured's liability arising out of the accident; or
3. one year after we agree to a settlement; or
4. if we have denied coverage and the insured person has thereafter settled with the claimant without any lawsuit being filed to determine the insured's liability or the amount of the insured's liability arising out of the accident, within one year after the denial of coverage.

If the insured person is subjected to claims arising out of the same accident by more than one person claiming **bodily injury** or property damage, the time for the insured person to bring an action against us shall be determined separately as to the coverage sought or provided with respect to the claims of each of those claiming against the insured person.

If liability has been determined by judgment after trial, or by written agreement among the insured, the other person, and us, then whoever obtains this judgment or agreement against an insured person may sue us up to the limits of this policy. However, no one has the right to join us in a suit to determine legal responsibility of an insured person.

Bankruptcy Or Insolvency

The bankruptcy or insolvency of an insured person will not relieve us of any obligation.

What To Do In Case Of An Auto Accident Or Claim

If an insured person has an **auto** accident, we must be informed promptly of all details. If an insured

person is sued as the result of an auto accident, we must be informed immediately.

Additional Interested Parties

If one or more additional interested parties are listed on the Policy Declarations, the Automobile Liability Insurance coverages of this policy will apply to those parties as insureds.

We will mail or deliver at least 15 days notice to an additional interested party if we cancel or make any changes to this policy which adversely affect that party's interest. Our notice will be considered properly given if mailed to the last known address of the additional interested party.

The naming of an additional interested party does not increase that party's right to recovery under this policy, nor does it impose an obligation for the payment of premiums under this policy.

Part 2

Medical Expense Benefits Coverage CC

Insuring Agreements

We will pay an injured person medical expense benefits. Payments will be made only when bodily injury, sickness, disease or death is caused by an accident arising from the use of a motor vehicle as a motor vehicle.

Medical Expense

All reasonable and necessary treatment expenses incurred within three years from the date of accident. This covers medical, surgical, x-ray, optical, dental, chiropractic and rehabilitative services, prosthetic devices, prescription drugs, ambulance, hospital, extended care and nursing services, and funeral services. Also covered are treatment and services rendered in accordance with a recognized religious or licensed method of healing.

Definitions Used In Part 2

1. **We, Us, or Our** means the company indicated on the Policy Declarations.
2. **Injured Person** means:

- a. **You or a resident relative** who sustains bodily injury, sickness, disease or death:
 - i. while in, on, getting into or out of a motor vehicle
 - ii. when struck as a pedestrian by a motor vehicle.
- b. any other person who sustains bodily injury, sickness, disease or death:
 - i. while in, on, getting into or out of the insured auto.
 - ii. while in, on, getting into or out of a motor vehicle operated by you or a resident relative.

3. **Insured auto** means a motor vehicle to which the insurance under this coverage applies, and for which a specific premium is charged.

4. **Motor vehicle** means a vehicle which is required to be registered under the South Carolina Motor Vehicle Registration and Licensing Act.

5. **Resident relative** means
- a. any person related to you and residing in your household, and
 - b. any minor residing in your household who is:
 - i. in your custody; or
 - ii. in the custody of any relative who resides in your household.

These persons will be considered resident relatives, even if temporarily living elsewhere.

6. **You or Your** means the policyholder named on the Policy Declarations.

Exclusions—What Is Not Covered

This coverage does not apply to bodily injury, sickness, disease or death:

1. to you or a resident relative while maintaining or using any motor vehicle you own which is not an insured auto.
2. to any resident relative while maintaining or using any motor vehicle owned by that relative.
3. to any person who intentionally causes the accident resulting in such injury.

4. to any person
 - a. while operating or voluntarily riding in a vehicle known by him to be stolen; or
 - b. while in the commission of a felony or while in violation of Section 56-5-750 of the South Carolina 1976 Code.
5. to any person while in, on, getting into or out of a motor vehicle, or while a pedestrian, as a result of an accident involving any motor vehicle (other than an insured auto) for which security is available under South Carolina law.
6. to any pedestrian, other than you or a resident relative, if the accident occurs outside the State of South Carolina.
7. to any person while maintaining or using a motor vehicle while located for use as a residence or premises.
8. to any person, arising out of the operation, maintenance, or use of a motorcycle by such person.
9. any person arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of an auto at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.

Limits Of Liability

The limit of our liability for Medical Expense Benefits, as stated on the Policy Declarations, is the maximum We will pay per any one injured person for any motor vehicle accident. This is the maximum we will pay regardless of the number of:

1. claims made;
2. vehicles shown on the Policy Declarations; or
3. vehicles involved in the accident.

Benefits will be reduced by any amounts paid or payable under any workers' compensation law.

Determination Of Reasonable And Necessary Medical Expenses

If the injured person incurs medical expenses which we deem not to be reasonable or necessary, we have no obligation to pay and may refuse to pay for those medical expenses.

If the injured person is sued by a health care provider because we refuse to pay medical expenses which we deem to be unreasonable or unnecessary, we will pay resulting defense costs, and pay any resulting judgment against the injured person, up to the Automobile Medical Expense Benefits policy limit. We will choose the counsel. The injured person must cooperate with us in the defense of any claim or lawsuit. If we ask the injured person to attend hearings or trials, we will pay up to \$50 per day for loss of wages or salary. We will also pay other reasonable expenses incurred at our request. If the injured person is threatened with or made the subject of collection activity by the medical care provider, we will defend the injured person as to such activity.

Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part II—Auto Medical Payments, Coverage CC, unless there is full compliance with all policy terms and such action is commenced within one year after the date the expenses for which coverage is sought were actually incurred by an insured person.

Notice To Us

As soon as possible, the injured person or someone on that person's behalf must give us written notice of the accident. This notice must include the time, place and circumstances of the accident and the identity of the injured person.

Proof Of Claim; Medical Reports

As soon as practicable, the injured person or someone on that person's behalf must give us written proof of claim. It must include all details reasonably required by us to determine the amounts payable. The injured person may be asked to take physical examinations by physicians we

choose, when and as often as we may reasonably require.

Non-Duplication Of Benefits; Priority Of Payments; Other Insurance

No injured person will recover duplicate benefits for the same loss under this and any similar insurance, including self-insurance. If the injured person is entitled to recover benefits under more than one policy, the maximum recovery under all policies will not exceed the amount payable under the provisions of the policy providing the highest dollar limit. We will not be liable for more than the proportion of any loss to which this coverage applies than our limit of liability bears to the sum of our limit of liability and that of any other applicable insurance.

Subrogation

Subject to the provisions of South Carolina law, no benefit payable under this coverage will be subject to subrogation or assignment.

Reimbursement And Trust Agreement

When we pay any person under this coverage:

1. We are entitled to repayment of amounts paid by us out of the proceeds of any settlement that person recovers from any legally responsible party or insurer.
2. All rights of recovery against any legally responsible party or insurer must be preserved for our benefit.

Our rights under this provision are subject to any applicable limitations provided under the laws of South Carolina.

Constitutionality Clause

The premium for and the coverages of the policy have been established in accordance with the laws of South Carolina. If a court of competent jurisdiction declares, or enters a judgment the effect of which is to render the provisions of those applicable laws invalid or unenforceable, in whole or in part, we will have the right to recompute the premium payable for this policy. These provisions will be voidable or

subject to amendment at our option in accordance with such declaration or judgment.

Part 3

Uninsured Motorists Insurance —

Coverage SS

Underinsured Motorists Insurance —

Coverage SU

Section I

Uninsured Motorists Insurance —

Coverage SS

Insuring Agreements

If a premium is shown on the Policy Declarations for Uninsured Motorists Insurance, we will pay those damages that an insured person is legally entitled to recover from the owner or operator of an uninsured auto because of:

1. bodily injury sustained by an insured person; and
2. property damage.

The bodily injury or property damage must be caused by accident and arise out of the ownership, maintenance or use of an uninsured auto. This coverage does not apply to the first \$200 of the total amount of all property damage as the result of any one accident.

Insured Persons

1. you and any resident relative.
2. any other person while in, on, or getting into or out of an insured auto with your permission.
3. any other person who is legally entitled to recover because of bodily injury to you, a resident relative or an occupant of your insured auto with your permission.

An Insured Auto Is A Motor Vehicle:

1. described on the Policy Declarations. This includes the motor vehicle you replace it with.

2. you become the owner of during the policy period. This additional motor vehicle will be covered if we insure all other private passenger motor vehicles you own. You must, however, tell us within 30 days after you acquire the motor vehicle. You must pay any additional premium. We must agree to insure the motor vehicle. Coverage will not continue after 30 days if we are not notified of the additional motor vehicle.

3. not owned by you or a resident relative, if being temporarily used while your insured auto is being serviced or repaired, or if your insured auto is stolen or destroyed. The motor vehicle must be used with the owner's permission. It cannot be furnished for the regular use of you or any resident relative.

4. not owned by you or a resident relative if being operated by you or a resident relative with the owner's permission. The motor vehicle cannot be furnished for the regular use of you or any resident relative.

An insured auto is not a motor vehicle made available for public hire by an insured person.

An Uninsured Auto Is:

1. a motor vehicle which has
 - a. no bodily injury liability bond or insurance in effect; and
 - b. no cash or securities deposited with the State Treasurer;

at the time of the accident.

2. a motor vehicle covered by insurance which doesn't provide at least the minimum limits specified by the South Carolina Financial Responsibility Act and for which there is no cash deposit or bond in lieu of such minimum insurance limits.

3. a motor vehicle for which the bonding or insuring company:

- a. successfully denies coverage;
- b. is or becomes insolvent;

- c. is in delinquency proceedings, suspension or receivership; or
- d. is proven unable to respond to a judgment.

4. a hit-and-run motor vehicle which causes bodily injury to an insured person by physical contact with the insured person or with a vehicle occupied by that person or which causes property damage arising out of the physical contact with the damaged property. The identity of the operator or the owner of the vehicle must be unknown and the insured must not have been negligent in failing to determine the identification of the other vehicle and driver of the other vehicle at the time of the accident. The accident must be reported within 24 hours to some appropriate police authority. We must be notified within 30 days or as soon thereafter as practicable. If the insured person was occupying a vehicle at the time of the accident, we have a right to inspect it.

5. a phantom motor vehicle which causes:
- a. bodily injury to an insured person without physical contact with the insured person or with a motor vehicle occupied by that person.
 - b. property damage to the insured auto without physical contact between the vehicles.

The facts of the accident must have been witnessed by someone other than the owner or operator of the insured vehicle, provided, however, the witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit.

An Uninsured Auto Is Not:

1. a motor vehicle owned by any state or local government or agency, unless operated by a person without proper authorization.
2. a motor vehicle owned by any federal government or agency.
3. a motor vehicle that is lawfully self-insured.

4. a motor vehicle which is insured for Automobile Liability Insurance under Part 1 of this policy.

Definitions Used In Part 3—Section I

1. **We, Us, or Our** means the company shown on the Policy Declarations.
 2. **Bodily injury** means bodily injury, sickness, disease or death.
 3. **Motor vehicle** means a land motor vehicle or trailer other than:
 - a. a vehicle or other equipment designed for use off public roads, while not on public roads;
 - b. a vehicle operated on rails or crawler-treads; or
 - c. a vehicle while used as a residence or premises.
 4. **Property damage** means damage to or destruction of the property of an insured person.
 5. **Resident** means a person who physically resides in your household with the intention of continuing residence there. Your unmarried dependent children while temporarily away from home will be considered residents if they intend to resume residing in your household.
 6. **You or Your** means the policyholder named on the Policy Declarations and that policyholder's resident spouse.
3. **bodily injury or property damage**, to the extent that benefits are paid, payable or required to be provided under any workers' compensation or disability benefits law.
 4. **property damage** if the payment would directly or indirectly benefit any insurer of property.
 5. **property damage** to the extent that an insured person has been compensated by other property or physical damage insurance.
 6. **bodily injury or property damage** arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of a motor vehicle at a track or course designed or used for racing or high performance driving,or in practice or preparation for any contest or use of this type.

Exclusions—What Is Not Covered

We will not pay any damages an insured person is legally entitled to recover because of:

1. **bodily injury or property damage** to any person who makes a settlement with the owner or operator of the uninsured auto without our written consent.
2. **bodily injury or property damage** to any person while in, on, getting into, or out of an insured auto while available for hire to the public. This exclusion does not apply to shared expense car pools.

Limits Of Liability

The limits shown on the Policy Declarations are the maximum we will pay for any single accident involving an insured auto. The limit stated for each person for **bodily injury** is our total limit of liability for all damages because of **bodily injury** sustained by one person in any single accident involving an insured auto including all damages sustained by anyone else as a result of that **bodily injury**. Subject to the limit for each person, the limit stated for each accident is our total limit of liability for all damages for **bodily injury** sustained by two or more persons in any single accident involving an insured auto. For **property damage**, the limit stated for each accident is our total limit of liability for **property damage** sustained in any single accident involving an insured auto.

These limits are the maximum we will pay for any one motor vehicle accident regardless of the number of:

1. insured persons;
2. claims made;
3. vehicles or premiums shown on the Policy Declarations; or

4. vehicles involved in the accident.

The liability limits apply to each insured motor vehicle as shown on the Policy Declarations. The insuring of more than one person or auto under this policy will not increase our liability limits beyond the amount shown for any one auto, even though a separate premium is charged for each auto. The limits also will not be increased if you have other auto insurance policies that apply.

In addition to this limit, we will make an additional amount available to you or any resident relative if such person sustains bodily injury or property damage in an accident involving your insured auto. The additional amount is equal to the sum of that part of the limit on each additional insured auto shown on the Policy Declarations that does not exceed the limit provided for the insured auto involved in the accident. This additional amount is the most we will pay over the stated limit of liability regardless of the number of:

1. Insured persons;
2. claims made; or
3. vehicles involved in the accident.

However, no one will be entitled to receive duplicate benefits for the same elements of loss.

Subject to the above limits of liability, damages payable will be reduced by:

1. all amounts paid or payable by or on behalf of the owner or operator of the uninsured auto, or anyone else responsible. This includes all sums paid under the bodily injury liability coverage or property damage liability coverage of this or any other auto policy.
2. all amounts paid or payable under any Uninsured Motorists Coverage applicable to the vehicle involved in the accident; and
3. all amounts paid because of the property damage under Part 4 of the policy or any similar coverage under any other policy.
4. all amounts payable under any workers' compensation law, disability benefits law, or similar law, Medical Expense Benefits Coverage under this policy or any similar automobile medical payments coverage.

Non-Duplication Of Benefits

No injured person will recover duplicate benefits for the same elements of loss under this or any other uninsured motorists insurance, including approved plans of self-insurance.

Proof Of Claim; Medical Reports

Any person making claim for bodily injury must give us written proof of claim as soon as practicable. Any person making claim for property damage must submit written proof of claim within 60 days, unless we extend this time in writing. All proof of claims must include all details we need to determine the amounts payable.

The insured person may be required to take physical examinations by physicians we choose, as often as we may reasonably require. The insured person or that person's representative must authorize us to obtain medical reports or copies of records. We may also require any person making claim to submit to questioning under oath and sign the transcript.

Any person making claim for property damage must allow us to inspect the damaged property.

Assistance And Cooperation

With respect to the minimum limits required by law, we may require the insured person to take proper action to preserve all rights to recover damages from anyone responsible for the bodily injury or property damage to the extent of our payment.

If There Is Other Insurance

If the insured person was in, on, getting into or out of a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the insured person is legally entitled to recover damages in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability of this policy.

If more than one policy applies to the accident on a primary basis, the total benefits payable will not exceed the amount the insured person is legally entitled to recover. We will bear our proportionate share with other uninsured motorists benefits.

With respect to property damage, this coverage will apply only after the limit of any other collectible insurance applicable to the damaged property has been exhausted.

Our Rights Of Recovery

1. If an insured person has prosecuted to judgment any suit against any person responsible, we will be entitled to an assignment of the judgment to the extent of payment under this insurance.
2. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery to the extent of payment under this insurance, including reasonable attorneys' fees. However, we reserve the right to retain an attorney of our choice to pursue a claim to the extent that claim is not in excess of the minimum limits required by law.
3. If an insured person making a claim for property damage under this insurance is also entitled to other insurance or other compensation for the property damage, we will not be obligated to pay a claim until the insured person has assigned us the rights to the compensation, to the extent of payment under this insurance.
4. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:
 - a. hold in trust for us the proceeds of the recovery; and
 - b. reimburse us to the extent of our payment.

Payment Of Loss By Us

Any amount due is payable to the insured person, to the parent or guardian of an injured minor, or to the spouse of any insured person who dies. However, we may pay any person lawfully entitled to recover damages.

Legal Actions

No one may sue us under this coverage unless there is full compliance with all the policy terms. No action attempting to establish the liability of the uninsured motorist may be brought under this coverage unless

we are served with copies of the pleadings in the manner prescribed by law. We have the right to appear and defend in the name of the uninsured motorist in any suit which may affect our liability.

Conformity With State Statute

These coverages are intended to be in full conformity with the South Carolina Uninsured Motorists Law. If any provision of this coverage is in conflict with such law, the provision is amended or eliminated to conform with such law.

Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part 3—Uninsured Motorists Insurance, Coverage SS, unless there is full compliance with all policy terms and, except as provided below, such action is commenced within two years after the date of the accident.

If an insured person commences a timely action against the owner or operator of an uninsured auto to recover damages for loss arising out of the accident and gives us written notice of such action within 30 days after such action is commenced, an action against us related to the existence or amount of coverage, or the amount of loss for which coverage is sought, may be brought more than two years after the date of the accident, but in no event later than the earliest of the following to occur:

1. one year after entry of a final judgment or other court order terminating such lawsuit against the owner or operator of an uninsured auto; or
2. one year after we deny coverage.

If any insured person sues a person believed responsible for the accident without our written consent, we are not bound by any resulting judgment.



Section II

Underinsured Motorists Insurance

Coverage SU

Insuring Agreements

We will pay those damages that an insured person is legally entitled to recover from the owner or operator of an underinsured auto because of:

1. **bodily injury** sustained by an insured person; and
2. **property damage.**

The **bodily injury** or **property damage** must be caused by accident and arise out of the ownership, maintenance or use of an underinsured auto.

We will pay under this coverage only after the limits of liability under any applicable liability bonds or policies, or any applicable uninsured motorists coverage have been exhausted by payment of judgments or settlements.

Insured Persons

1. **you** and any **resident relative.**
2. any other person while in, on, getting into or out of an insured auto with your permission.
3. any other person who is legally entitled to recover because of **bodily injury** to you, a **resident relative** or an occupant of your insured auto with your permission.

An insured auto is a motor vehicle:

1. described on the Policy Declarations. This includes the **motor vehicle** you replace it with.
2. **you** become the owner of during the policy period. This additional **motor vehicle** will be covered if we insure all other private passenger **motor vehicles** you own. You must, however, tell us within 30 days after you acquire the **motor vehicle.** You must pay any additional premium. We must agree to insure the additional **motor vehicle.** Coverage will not

continue after 30 days if we are not notified of the additional **motor vehicle.**

3. not owned by **you** or a **resident relative** if being temporarily used while your insured auto is being serviced or repaired, or if your insured auto is stolen or destroyed. The **motor vehicle** must be used with the owner's permission. It cannot be furnished or available for the regular use of **you** or any **resident relative.**
4. not owned by **you** or a **resident relative,** if being operated by **you** or a **resident relative** with the owner's permission. The **motor vehicle** cannot be furnished for the regular use of **you** or any **resident relative.**

An insured auto is not a **motor vehicle** made available for public hire by an insured person.

An **underinsured auto** is a **motor vehicle** which has liability insurance or a bond in effect at the time of the accident in an amount at least equal to the minimum limits required by the financial responsibility law of South Carolina, but its limit of liability is not enough to pay the full amount the insured is legally entitled to recover as damages.

An **underinsured auto** is not a **motor vehicle** which is owned by any state or local government or agency.

Definitions Used In Part 3—Section II

1. **We, Us or Our** means the company shown on the Policy Declarations.
2. **Bodily Injury** means **bodily injury,** sickness, disease or death.
3. **Motor vehicle** means a land motor vehicle or trailer other than:
 - a. a vehicle or other equipment designed for use off public roads, while not on public roads;
 - b. a vehicle operated on rails or crawler treads; or
 - c. a vehicle while used as a residence or premises.

4. **Property damage** means damage to or destruction of property of an insured person.
5. **Resident** means a person who physically resides in your household with the intention of continuing residence there. Your unmarried dependent children while temporarily away from home will be considered residents if they intend to resume residing in your household.
6. **You or Your** means the policyholder named on the Policy Declarations and that policyholder's resident spouse.

Exclusions—What Is Not Covered

We will not pay any damages an insured person is legally entitled to recover because of:

1. **bodily injury or property damage** to any person who makes a settlement with the owner or operator of the underinsured auto without our written consent.
2. **bodily injury or property damage** to any person while in, on, getting into, or out of an insured auto while available for hire to the public. This exclusion does not apply to shared expense car pools.
3. **bodily injury or property damage** to the extent that benefits are paid, payable or required to be provided under any workers' compensation or disability benefits law.
4. **property damage** if the payment would directly or indirectly benefit any insurer of property.
5. **property damage** to the extent that an insured person has been compensated by other property or physical damage insurance.
6. **bodily injury or property damage** arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of a motor vehicle at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.

Limits Of Liability

The limits shown on the Policy Declarations are the maximum we will pay for any single accident involving an insured auto. The limit stated for each person for **bodily injury** is our total limit of liability for all damages because of **bodily injury** sustained by one person in any single accident involving an insured auto including all damages sustained by anyone else as a result of that **bodily injury**. Subject to the limit for each person, the limit stated for each accident is our total limit of liability for all damages for **bodily injury** sustained by two or more persons in any single accident involving an insured auto. For **property damage**, the limit stated for each accident is our total limit of liability for **property damage** sustained in any single accident involving an insured auto. This is the most we will pay regardless of the number of:

1. insured persons;
2. claims made;
3. vehicles or premiums shown on the Policy Declarations; or
4. vehicles involved in the accident.

The Underinsured Motorists Insurance limits apply to each insured motor vehicle as shown on the Policy Declarations. The insuring of more than one person or auto under this policy will not increase our liability limits beyond the amount shown for any one auto, even though a separate premium is charged for each auto. The limits also will not be increased if you have other auto insurance policies that apply.

In addition to this limit, we will make an additional amount available to you or any resident relative if such person sustains **bodily injury or property damage** in an accident involving your insured auto. The additional amount is equal to the sum of that part of the limit on each additional insured auto shown on the Policy Declarations that does not exceed the limit provided for the insured auto involved in the accident. This additional amount is the most we will

pay over the stated limit of liability regardless of the number of:

1. insured persons;
2. claims made; or
3. vehicles involved in the accident.

However, no one will be entitled to receive duplicate benefits for the same elements of loss.

Subject to the above limits of liability, damages payable will be reduced by:

1. all amounts paid or payable by or on behalf of the owner or operator of the underinsured auto or anyone else responsible. This includes all sums paid or payable under the bodily injury liability coverage or property damage liability coverage of this or any other auto policy.
2. all amounts paid or payable under any applicable uninsured motorists coverage. This includes all amounts paid under the Uninsured Motorists Insurance of this policy.
3. all amounts payable under any workers' compensation law, disability benefits law, or similar law, Medical Expense Benefits Coverage of this policy, or any similar automobile medical payments coverage.
4. all amounts paid or payable under any Underinsured Motorists Coverage applicable to a vehicle, other than your insured auto, which the insured person was in, on, getting into, or out of at the time of the accident.
5. all amounts paid under Part 4, Protection Against Loss To The Auto, of this policy or any similar coverage under any other policy.

Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under Part I of this policy.

Non-Duplication Of Benefits

No injured person will recover duplicate benefits for the same elements of loss under this or any other underinsured motorists insurance, including approved plans of self-insurance.

Proof Of Claim; Medical Reports

As soon as possible, any person making claim must give us written proof of claim. It must include all details we may need to determine the amounts payable.

The insured person may be required to take physical examinations by physicians we choose, as often as we may reasonably require. The insured person or that person's representative must authorize us to obtain medical reports or copies of records. We may also require any person making claim to submit to questioning under oath and sign the transcript.

Any person making claim for **property damage** must allow us to inspect the damaged property.

Our Rights Of Recovery

1. If an insured person has prosecuted to judgment any suit against any person responsible, we will be entitled to an assignment of the judgment to the extent of payment under this insurance. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery to the extent of payment under this insurance, including reasonable attorneys' fees.
2. If an insured person making a claim for **property damage** under this insurance is also entitled to other insurance or other compensation for the **property damage**, we will not be obligated to pay a claim until the insured person has assigned us the rights to the compensation, to the extent of payment under this insurance.
3. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:
 - a. hold in trust for us the proceeds of the recovery; and
 - b. reimburse us to the extent of our payment.

If There Other Insurance

If the insured person was in, on, getting into or out of a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the insured

person is legally entitled to recover damages in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability of this policy.

If more than one policy applies to the accident on a primary basis, the total benefits payable will not exceed the amount the insured person is legally entitled to recover. We will bear our proportionate share with other underinsured motorists benefits.

With respect to property damage, this coverage will apply only after the limit of any other collectible insurance applicable to the damaged property has been exhausted.

Payment of Loss by Us

Any amount due is payable to the insured person, to the parent or guardian of an injured minor, or to the spouse of any insured person who dies. However, we may pay any person lawfully entitled to recover damages.

Legal Actions

No one may sue us under this coverage unless there is full compliance with all the policy terms.

If, at any time before we pay for the loss, an insured person institutes a suit against anyone believed responsible for the accident, we must be given a copy of the summons and complaint or other process. If a suit is brought without our written consent, we are not bound by any resulting judgment.

Conformity To Statute

This coverage is intended to be in full compliance with the South Carolina Uninsured Motorists Law. If any provision of this endorsement conflicts with that law, it is amended or eliminated to comply with the law.

Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part 3—Underinsured Motorists Insurance, Coverage SU, unless there is full compliance with all

policy terms and, except as provided below, such action is commenced within two years after the date of the accident.

If an insured person commences a timely action against the owner or operator of an uninsured auto to recover damages for loss arising out of the accident and gives us written notice of such action within 30 days after such action is commenced, an action against us related to the existence or amount of coverage, or the amount of loss for which coverage is sought, may be brought more than two years after the date of the accident, but in no event later than the earliest of the following to occur:

1. one year after entry of a final judgment or other court order terminating such lawsuit against the owner or operator of an uninsured auto; or
2. one year after we deny coverage.

If any insured person sues a person believed responsible for the accident without our written consent, we are not bound by any resulting judgment.

Part 4

Protection Against Loss To The Auto

Insuring Agreements

The following coverages apply when indicated and a premium for them is shown on the Policy Declarations. Other information applicable to all these coverages appears after all the coverage descriptions.

Auto Collision Insurance

Coverage DD

We will pay for loss to your insured auto or a non-owned auto from a collision with another object or by upset of that auto or trailer. No deductible will apply to loss to automobile safety glass.

Auto Comprehensive Insurance

Coverage HH

We will pay for loss to an insured auto not caused by collision. Loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, and riot or civil commotion is covered.

Glass breakage, whether or not caused by collision, and collision with a bird or animal is covered. Plastic or other materials used by the manufacturer as substitutes for glass will also be considered glass.

If by agreement between you and us, the glass is repaired rather than replaced, the deductible amount will not be subtracted from a glass breakage loss. No deductible will apply to loss to automobile safety glass.

Towing And Labor Costs Coverage JJ

We will pay costs for labor performed at the initial place of disablement and for towing made necessary by the disablement of your insured auto or a non-owned auto. The total limit of our liability for towing and labor caused by a single loss is stated on the Policy Declarations.

Lease Or Loan Gap Coverage Coverage LG

If a premium is shown on the Policy Declarations for Lease Or Loan Gap Coverage, and if the amount you owe under the terms of the auto lease or loan agreement on your auto exceeds the actual cash value of the auto, then we will pay the difference between these amounts in the event of a total loss due to physical damage or theft of that auto. We may pay you and the lessor or lienholder named on the Policy Declarations.

Lease Or Loan Gap Coverage applies only if you have both Auto Collision Insurance and Auto Comprehensive Insurance in effect under this policy and the loss is covered under either coverage. This coverage applies only to the original lease or loan written on your auto and applies only if your auto was not previously titled. If, according to the information you have given us, the lease or loan ends during the policy period, we will stop this coverage at the end of that policy period. However, you must tell us if you want this coverage to end at an earlier date.

Repair Or Replacement Cost Coverage Coverage RC

If a premium is shown on the Policy Declarations for Repair Or Replacement Cost Coverage (Coverage RC),

it will be our option to pay to repair or replace the auto to which Repair Or Replacement Cost Coverage applies as shown on the Policy Declarations for a covered loss if you have purchased both Auto Collision Insurance and Auto Comprehensive Insurance and either coverage is applicable to the loss. This coverage does not apply to loss caused by fire, theft, larceny or flood.

This coverage will continue until the first policy renewal after the coverage has been in effect for three years. Repair Or Replacement Cost Coverage does not automatically transfer to any replacement auto or additional auto acquired during the policy period. This coverage does not apply to any other vehicle, including, but not limited to, additional autos, replacement autos, or substitute autos.

Rental Reimbursement Coverage Coverage UU

If a premium is shown on the Policy Declarations for Rental Reimbursement Coverage, and if you have an auto accident, or the entire insured auto is stolen, we will reimburse you for your cost of renting an auto from a rental agency or garage. We will not pay more than the dollar amount per day shown on the Policy Declarations. We will not pay mileage charges or any collision damage waiver.

If an insured auto is disabled by a collision or comprehensive loss, coverage starts the day of the loss. If the entire insured auto is stolen, coverage begins the day you report the theft to us. If an insured auto is driveable, coverage starts the day the auto is taken to a garage for repairs. Coverage ends when whichever of the following occurs first:

1. if an insured auto is disabled by a collision or comprehensive loss, completion of the repairs or replacement of the auto;
2. if an insured auto is stolen, when we offer settlement or your auto is returned to use; or
3. thirty full days of coverage.

Sound System Coverage Coverage ZA

If a premium is shown on the Policy Declarations for Sound System Coverage, we will pay for loss to a sound system.

Sound System Coverage applies only if Auto Comprehensive Insurance is in effect under this policy. This coverage makes sound systems, and antennas or other apparatus used specifically with them, insured property under the terms of both Auto Collision Insurance and Auto Comprehensive Insurance. The limit of our liability for each loss is shown on the Policy Declarations.

Tape Coverage Coverage ZZ

If a premium is shown on the Policy Declarations for Tape Coverage, we will pay for loss to any tapes, compact discs or similar items used with auto sound systems. Coverage applies to property owned by you or a resident relative that is in or on your insured auto at the time of loss. The total limit of our liability for each loss is shown on the Policy Declarations.

This coverage applies only if you have Auto Comprehensive Insurance under this policy. Tape Coverage makes tapes, compact discs, or similar items insured property under your Auto Comprehensive Insurance.

Additional Payments We Will Make Under Part 4

1. We will pay up to \$200 for loss of clothing and personal luggage, including its contents, belonging to you or a resident relative while it is in or upon your insured auto. This provision does not apply if the insured auto is a travel-trailer.

This coverage applies only when:

- a. the loss is caused by collision and you have purchased Auto Collision Insurance.
- b. the entire auto is stolen, and you have purchased Auto Comprehensive Insurance.

- c. physical damage is done to the auto and to the clothing and luggage caused by earthquake, explosion, falling objects, fire, lightning or flood and you have purchased Auto Comprehensive Insurance.

The amount stated under paragraph 1. Above is the maximum we will pay, regardless of the number of vehicles insured.

2. If you have purchased Auto Collision Insurance or Auto Comprehensive Insurance under this policy, we will pay general average and salvage charges imposed when your insured auto is being transported.

Insured Autos

1. Any auto described on the Policy Declarations. This includes the four wheel private passenger auto or utility auto you replace it with if you notify us within 30 days of the replacement and pay the additional premium.
2. An additional four wheel private passenger auto or utility auto you become the owner of during the policy period. This auto will be covered if we insure all other private passenger autos or utility autos you own. You must, however, tell us within 30 days of acquiring the auto. You must pay any additional premium. We must agree to insure the auto. Coverage will not continue after 30 days if we are not notified of the additional auto.
3. A substitute four wheel private passenger auto or utility auto, not owned by you or a resident, temporarily used with the permission of the owner while your insured auto is being serviced or repaired, or if your insured auto is stolen or destroyed.
4. A non-owned four wheel private passenger auto used by you or a resident relative with the owner's permission. This auto must not be available or furnished for the regular use of you or any resident.

5. A trailer while attached to an insured **auto**. This trailer must be designed for use with a private passenger **auto**. This trailer cannot be used for business purposes with other than a private passenger **auto** or utility **auto**. Home, office, store, display, or passenger trailers, travel-trailers or camper units are not covered unless described on the Policy Declarations.

Definitions Used In Part 4

1. **We, Us, or Our** the company as shown on the Policy Declarations.
 2. **Auto** means a land motor vehicle with at least four wheels designed for use on public roads.
 3. **Camper unit** means a demountable unit designed to be used as temporary living quarters, including all accessories built into and forming a permanent part of the unit. A camper unit includes caps, toppers, canopies and all equipment and accessories built into and forming a permanent part of the structure. However, a camper unit will not include radio or television antennas, awnings, cabanas, or equipment designed to create additional living facilities while off a highway.
 4. **Motor home** means a self-propelled vehicle equipped, designed or used as a living quarters.
 5. **Resident** means the physical presence in your household with the intention to continue living there. Unmarried dependent children temporarily away from home will be considered residents if they intend to continue to live in your household.
 6. **Sound system** means any device permanently installed inside your insured **auto** by bolts, brackets, or other similar means designed for:
 - a. voice or video transmission, or for voice or video reception; or
 - b. recording or playing back recorded material; or
 - c. supplying power to cellular or similar telephone equipment,and which is permanently installed in a location other than the one designed by the **auto's** manufacturer for that device.
- A sound system also includes antennas or other apparatus in or on your insured **auto** used specifically with that system, if permanently installed. Apparatus does not include sound reproducing media such as compact discs or cassette tapes. A sound system does not include any equipment that is externally exposed except for antennas.
7. **Travel-trailer** means a trailer of the house, cabin or camping type equipped or used as a living quarters.
 8. **Utility auto** means an **auto** of the pick-up body, sedan delivery or panel truck type. This **auto** must have a gross vehicle weight of 10,000 pounds or less, according to manufacturer's specifications.
 9. **You or Your** means the policyholder named on the Policy Declarations and that policyholder's resident spouse.
 10. **Custom parts or equipment** means equipment, devices, accessories, enhancements, and changes, other than those offered by the manufacturer of the **auto** specifically for that model, or installed by the **auto** dealership when new as part of the original sale, which alter the appearance or performance of an **auto**. This does not include items designed for assisting disabled persons or items covered under **Sound System Coverage**.

Exclusions—What Is Not Covered

These coverages do not apply to:

1. loss caused intentionally by or at the direction of an insured person.
2. any **auto** used for the transportation of people or property for a fee. This exclusion does not apply to shared-expense car pools.
3. any damage or loss resulting from any act of war, insurrection, rebellion or revolution.

4. loss to any non-owned auto used in auto business operations such as repairing, servicing, testing, washing, parking, storing or selling of autos.
5. loss due to radioactive contamination.
6. damage resulting from wear and tear, freezing, mechanical or electrical breakdown unless the damage is the burning of wiring used to connect electrical components, or the result of other loss covered by this policy.
7. tires unless stolen or damaged by fire, malicious mischief or vandalism. Coverage is provided if the damage to tires occurs at the same time and from the same cause as other loss covered by this policy.
8. loss to any sound system within your auto. Coverages under this Part also will not apply to any apparatus in or on the auto designed for use with that system.

This exclusion will not apply if you have purchased Sound System Coverage.
9. damage or loss to any tapes, compact discs or similar items. This exclusion will not apply if you purchased Tape Coverage under this policy.
10. damage or loss to a camper unit whether or not mounted. This exclusion will not apply if the camper unit is described on the Policy Declarations.
11. damage or loss to appliances, furniture, equipment and accessories that are not built into or forming a permanent part of a motor home or a travel-trailer.
12. damage or loss to your motor home or your travel-trailer while rented to anyone else unless a specific premium is shown on the Policy Declarations for the rented vehicle.
13. loss or damage arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or

- c. use of a motor vehicle at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.

14. damage or loss to home, office, store, display, or passenger trailers, or travel-trailers. This exclusion will not apply if the item is described on the Policy Declarations.
15. damage or loss to any device that is designed for the detection of radar or laser.
16. damage or loss to any custom furnishings or equipment in or upon any auto or utility auto. Custom furnishings include, but are not limited to:
 - a. Special carpeting and insulation, furniture, bars or television receivers;
 - b. Facilities for cooking and sleeping;
 - c. Height extending roofs; or custom murals, paintings, or other decals or graphics.
17. loss to any custom parts or equipment designed for racing which is installed in or upon your insured auto. This includes, but is not limited to, nitrous oxide systems, roll cages, and air intake modifications.

Right To Appraisal

Both you and us have a right to demand an appraisal of the loss. Each will appoint and pay a qualified appraiser. Other appraisal expenses will be shared equally. The two appraisers, or a judge of a court of record, will choose an umpire. Each appraiser will state the actual cash value and the amount of loss. If they disagree, they will submit their differences to the umpire. A written decision by any two of these three persons will determine the amount of the loss.

Payment Of Loss By Us

We may pay for the loss in money, or may repair or replace the damaged or stolen property. We may, at any time before the loss is paid or the property is replaced, return at our own expense any stolen property, either to you or at our option to the address

shown on the Policy Declarations, with payment for any resulting damage. We may take all or part of the property at the agreed or appraised value. We may settle any claim or loss either with you or the owner of the property.

Limits Of Liability

Our limit of liability is the least of:

1. the actual cash value of the property or damaged part of the property at the time of the loss, which may include a deduction for depreciation; or
2. the cost to repair or replace the property or part to its physical condition at the time of loss using parts produced by or for the vehicle's manufacturer, or parts from other sources, including, but not limited to, non-original equipment manufacturers, subject to applicable state laws and regulations; or
3. \$500, if the loss is to a covered trailer not described on the Policy Declarations.

Any applicable deductible amount is then subtracted.

If we, at its option, elects to pay for the cost to repair or replace the property or part, our liability does not include any decrease in the property's value, however measured, resulting out of the loss and/or repair or replacement. If repair or replacement results in the betterment of the part, you may be responsible, subject to applicable state laws and regulations, for the amount of the betterment.

The maximum we will pay for a covered loss to any custom parts or equipment is \$1000.

An auto and attached trailer are considered separate autos, and you must pay the deductible, if any, on each. Only one deductible will apply to an auto with a mounted camper unit. If unmounted, a separate deductible will apply to the auto and camper unit.

When more than one coverage is applicable to the loss, you may recover under the broadest coverage but not both. However, any Sound System Coverage deductible will always apply.

Limits Of Liability Under Lease Or Loan Gap Coverage

If the Policy Declarations indicates a premium charge for Lease Or Loan Gap Coverage (Coverage LG), our limit of liability with respect to that coverage is the amount you owe under the terms of the auto lease or loan agreement to which the auto described on the Policy Declarations is subject. The amount payable will be reduced by:

1. overdue payments and the financial penalties associated with those payments;
2. the transfer or rollover of a previous outstanding lease or loan balance from another vehicle to the original lease or loan for the auto described on the Policy Declarations;
3. the dollar amount of unrepaired damage which occurred prior to the total loss of your auto, and
4. all refunds paid or payable to you as a result of the early termination of the lease or loan agreement or, to the extent financed, as a result of the early termination of any warranty or extended service agreement on your auto.

Limits Of Liability Under Repair Or Replacement Cost Coverage

If the Policy Declarations indicates a premium charge for Repair Or Replacement Cost Coverage (Coverage RC), it will be our option to pay to repair or replace the auto to which Repair Or Replacement Cost Coverage applies as shown on the Policy Declarations for a covered loss, subject to the applicable Auto Collision Insurance or Auto Comprehensive Insurance deductible, but without a deductible for depreciation. This coverage does not apply to loss caused by fire, theft, larceny or flood.

However, the most we will pay for the loss will be the lesser of the:

1. Cost of repair or replacement of the property or part using parts manufactured by or for the vehicle's manufacturer or parts from other sources, including, but not limited to, non-original equipment manufacturers as permitted by state laws and regulations.
2. Cost of a new auto of the same make and model with the same equipment. If an auto of the same make and model with the same

equipment is not available, the new auto must be of similar size, class, body type and equipment. A new auto is an auto that has not been previously titled and is of the latest model year available at the time of the loss.

We reserve the right to repair, or to replace the damaged property, or to pay for the loss in money. If we, at its option elects to pay for the cost to repair or replace property or parts, Allstate's liability does not include any decrease in the property's value, however measured, resulting from the loss and/or repair or replacement.

In no event, shall an insured person be entitled to recover for the same element of loss under both Repair Or Replacement Cost Coverage and Auto Collision Insurance or Repair Or Replacement Cost Coverage and Auto Comprehensive Insurance.

If There Is Other Insurance

If there is other insurance covering the loss at the time of the accident, we will pay only our share of any damages. Our share is determined by adding the limits of this insurance to the limits of all other insurance that applies on the same basis and finding the percentage of the total that our limits represent.

When this insurance covers a substitute auto or non-owned auto, we will pay only after all other collectible insurance has been exhausted.

When this insurance covers a replacement auto or additional auto, this policy will not apply if you have other collectible insurance.

Lease Or Loan Gap Coverage is excess over any other collectible insurance.

Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part 4—Protection Against Loss to The Auto, unless there is full compliance with all policy terms and such action is commenced within one year after the date of loss.

Subrogation Rights

When we pay, your rights of recovery from anyone else become ours up to the amount we have paid. You must protect these rights and help us enforce them.

What You Must Do If There Is A Loss

1. As soon as possible any person making claim must give us written proof of loss. It must include all details reasonably required by us. We have the right to inspect the damaged property. We may require any person making claim to file with us a sworn proof of loss. We may also require that person to submit to examinations under oath.
2. Protect the auto from further loss. We will pay reasonable expenses to guard against further loss. If you do not protect the auto, further loss is not covered.
3. Report all theft losses promptly to the police.

Loss Payable Clause

If a Lienholder and/or Lessor are shown on the Policy Declarations, we may pay loss or damage under this policy to you and the Lienholder and/or Lessor as its interest may appear, except:

1. Where fraud, misrepresentation, material omission, or intentional damage has been committed by or at the direction of you.
2. When the vehicle(s) is intentionally damaged, destroyed or concealed by or at the direction of you or any owner.
3. When you or any owner makes fraudulent statement(s) or engages in fraudulent conduct in connection with any accident or loss for which coverage is sought.

The Lienholder and/or Lessor must notify us of any change in ownership or hazard that is known.

If you or any owner fails to render proof of loss within the time granted in the policy, the Lienholder and/or Lessor must do so within sixty days in the form and manner described in the policy. The Lienholder and/or Lessor are subject to the provisions of the

policy relating to appraisal, time of payment and bringing suit.

We may cancel this policy according to its terms. We will notify the Lienholder and/or Lessor at least ten days prior to the date of cancellation that the cancellation is effective as to the interest of the Lienholder and/or Lessor. Whenever we pay the Lienholder and/or Lessor any sum for loss or damage

under this policy, we will be subrogated to the extent of payment to the rights of the party to whom payment was made. However, these subrogation provisions must in no way impair the rights of the Lienholder and/or Lessor to recover the full amount of its claim from the insured.

The Lienholder and/or Lessor have no greater rights under the provisions of the policy than the Insured.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Dividend Provision— PDU79

You shall be entitled to participate in a distribution of any surplus of Allstate to the extent and upon the conditions fixed and determined from time to time by its Board of Directors in accordance with the provisions of any applicable laws and regulations.

GUNTHER START PAGE

FOR FINISHING EQUIPMENT JOB

SCFOA0

AUTO DEC SET MAILING PACKAGE

SOUTH CAROLINA

FOLD

STD RUN

September 11, 2014

Insert Station 1: None
Insert Station 2: None
Mailing Envelope: G3662
Operator Message: None

Reprint TimeStamp 2014-09-11-00.13.27.27

S039FOA000140911001





Allstate Automobile Insurance

A Quick Guide to This Package

• PROOF OF INSURANCE CARD

Attached at the right is one Proof of Insurance Card for each vehicle with liability coverage. Please keep this card with you at all times as evidence of insurance.

• POLICY DECLARATIONS

The Policy Declarations section contains detailed information about your policy such as drivers, vehicles, coverages, limits, and premiums. Please take a moment to check this information.

• IMPORTANT NOTICE

The Important Notice section provides you with explanations about insurance issues or any other policy information that we think may be helpful to you.

• QUESTIONS

Do you have any questions about this package? Just call your Allstate agent - or call the Allstate Customer Information Center at 1-800-ALLSTATE (1-800-255-7828).

Please use the printed Insurance Card(s) below.

South Carolina Automobile Insurance Identification Card

Allstate Insurance Company

Ollie E Walton-McCray
2407 Anderson Court
Elgin SC 29045-9003

POLICY NUMBER
0 90 746371 12/06
EFFECTIVE DATE
12/06/08
EXPIRATION DATE
06/06/09

YEAR / MAKE / MODEL
03 BMW 745i
VEHICLE ID NUMBER
WBAGN63493DS43852

Keep this card with you at all times as evidence of insurance.

South Carolina Automobile Insurance Identification Card

Allstate Insurance Company

Ollie E Walton-McCray
2407 Anderson Court
Elgin SC 29045-9003

POLICY NUMBER
0 90 746371 12/06
EFFECTIVE DATE
12/06/08
EXPIRATION DATE
06/06/09

YEAR / MAKE / MODEL
91 Subaru Legacy
VEHICLE ID NUMBER
4S3BC6321M1612532

Keep this card with you at all times as evidence of insurance.

South Carolina Automobile Insurance Identification Card

Allstate Insurance Company

Ollie E Walton-McCray
2407 Anderson Court
Elgin SC 29045-9003

POLICY NUMBER
0 90 746371 12/06
EFFECTIVE DATE
12/06/08
EXPIRATION DATE
06/06/09

YEAR / MAKE / MODEL
97 Honda Accord
VEHICLE ID NUMBER
1HGCD5538VA149390

Keep this card with you at all times as evidence of insurance.

This is not a bill.

IDSC

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Levern McCray,)
)
Plaintiff,)
)
vs.)
)
Allstate Insurance Company and)
Liberty Mutual Fire Insurance)
Company,)
)
Defendants.)

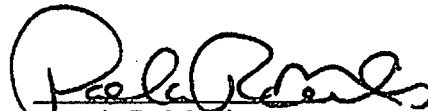
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-40-

SUMMONS
(Bad Faith)
(JURY TRIAL REQUESTED)

RICHLAND COUNTY
FILED
2014 MAY 19 PM 2:11
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribed, Mullis Law Firm, 1229 Elmwood Avenue, Post Office Box 7757, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



Pamela R. Mullis

MULLIS LAW FIRM

Post Office Box 7757

Columbia, South Carolina 29202

(803) 799-9577

Columbia, South Carolina

May 19, 2014

JURY TRIAL REQUESTED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Levern McCray,)
)
Plaintiff,)
)
vs.)
)
Allstate Insurance Company and)
)
Liberty Mutual Fire Insurance)
)
Company,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-40-

COMPLAINT
(Bad Faith)
(JURY TRIAL REQUESTED)

RICHLAND COUNTY
FILED
2014 MAY 19 PM 2:11
JEANETTE W. MCBRIDE
Clerk, S.C. & G.S.

The Plaintiff above named, complaining of the Defendants herein, would respectfully show unto the Court:

1. The Plaintiff, Levern McCray, is a citizen and resident of Kershaw County, State of South Carolina.
2. The Defendant, Allstate Insurance Company, is an insurance company licensed and authorized to do business in South Carolina and does conduct business in and maintain agents, servants and employees in the County of Richland, State of South Carolina.
3. The Defendant, Liberty Mutual Fire Insurance Company, is an insurance company licensed and authorized to do business in South Carolina and does conduct business in and maintain agents, servants and employees in the County of Richland, State of South Carolina
4. At all times herein mentioned and in regard to all matters herein mentioned the both Defendants acted by and through their respective agents, servants, and employees,

1
Pm

who were at all times acting within the course and scope of their agency and employment, and for whose acts and omissions these Defendants are liable.

5. On or about December 20, 2008, the Plaintiff was traveling east on 5-8-748 in or near Moncks Corner, South Carolina when he was violently struck by Jose Valle, who was driving under the influence, was traveling west on 5-8-748 and crossed the center line into the eastbound lane, coming around a curve and hit the Plaintiff's vehicle head on causing a collision between the two vehicles and the damages of the Plaintiff.

6. The Plaintiff had to be cut from his vehicle using the jaws of life by emergency personnel, and suffered the following injuries: a fractured left leg and ankle requiring surgical implantation of hardware into his leg; injuries to his head including loss of consciousness - - a concussion/ traumatic brain injury, neck, lower back, left knee, chest, laceration to his right thumb, injuries to both his left and right shoulders. All the above injuries resulted in permanent impairment to the Plaintiff. He also suffered a loss of wages and a loss of future ability to earn wages in the future.

7. Defendant Allstate Insurance Company insured Plaintiff at the time of the subject accident pursuant to a valid auto insurance policy with \$100,000.00 in uninsured bodily injury coverage on the vehicle in the accident and \$100,000.00 on two additional vehicles at his residence for a total of \$300,000.00 in available coverage for damages both actual and punitive, including an additional owed \$6,000.00 in personal injury protection, \$2,000.00 per vehicle that Allstate owes and never tendered to the Plaintiff.

8. Defendant Liberty Mutual insured Plaintiff at the time of the subject accident pursuant to an uninsured insurance policy with \$50,000.00 in bodily injury coverage and \$10,000.00 in personal injury protection (PIP), for a total of \$60,000.00 in

available coverage for damages both actual and punitive; Liberty tendered the PIP just before trial and eventually tendered their UM policy after forcing Plaintiff to obtain a verdict for over \$597,000.00, above their available coverage. Liberty Claims their exposure is 1/5 of the coverage over the available coverage on the vehicle the Plaintiff was operating on the day of the incident, which would represent, \$109,400.00 plus post judgment interest on August 16, 2012; Liberty has not offered this amount as of the date of filing, and has adamantly denied any responsibility for the Offer Of Judgment despite the fact they were served with the OOJ and would, per their own admission owe 1/5 above the first \$100,000.00 in coverage.

9. The Plaintiff suffered substantial losses as a result of the incident above, as detailed above, including but not limited to substantial permanent impairment, loss of enjoyment of life, pain and suffering, mental impairment among other damages and demanded the tender of the entire available coverage from both Defendants Allstate Insurance Company and Liberty Mutual for actual and punitive damages pursuant to their contracts of insurance up until August 13, 2012.

10. Said demand was reasonable and a duty properly owed by both Defendants pursuant to their contract with Plaintiff, and said contract includes not only the express duties that the Defendants treat the Plaintiff fairly, reasonably, and in good faith, evaluate the Plaintiff's claim pursuant to the contract of insurance but also include the implied covenant of good faith and fair dealing which was breached by the Defendants in failing to tender the demanded policy limits to the Plaintiff within a reasonable time and without requiring the Plaintiff to either take the case through trial OR continue to delay the payment of the owed amount by appealing a valid verdict.

11. Both Defendants refused to tender the available coverage to Plaintiff, upon demand, in intentional breach of their insurance contracts with the Plaintiff, and are strictly liable for refusing to tender their policy limits.

12. Furthermore, Both Defendants in connection with the aforesaid loss required lawsuits, and said Defendants have acted without just cause, unreasonably and in bad faith, have failed to fully investigate, evaluate and determine the loss in accordance with the policies of insurance referred to, have failed to make a timely proper offer to Plaintiff, knowing that by so doing they would subject Plaintiff to further damage, and Defendants have otherwise acted improperly, all in a negligent, unreasonably, willful and reckless disregard of Plaintiff's rights under the terms of the aforesaid contracts of insurance and the Defendants' obligations of good faith and fair dealing thereunder, forcing an unnecessary, costly and mentally stressful trial of this case and by continuing the bad faith by appealing the valid verdict and refusing to pay the claim.

13. Plaintiff filed an Offer of Judgment on February 15, 2011, in the amount of \$300,000.00 and it was properly served upon defense counsel for both Defendant Allstate Insurance Company and Defendant Liberty Mutual, neither Defendant tendered their policy limits within the time limit of the offer; Liberty Mutual did not offer the amount they claimed they owed which would have been 1/5 of \$200,000. or \$40,000.

14. Plaintiff received a verdict against Defendant Jose Valle on August 16, 2012, in the amount of \$500,000.00 actual damages and \$147,000.00 punitive damages.

15. An Order for Costs and Interest Pursuant to Plaintiff's Offer of Judgment was entered on January 17, 2013, awarding Plaintiff costs in the amount of \$3,427.01 and \$77,569.10 in interest; this Offer of Judgment is still outstanding.

16. Plaintiff now contends that the Defendants are now liable to the Plaintiff for the total verdict including post judgment interest, the total amount of the awarded Offer of Judgment; as well as, costs, actual and punitive damages separate and apart from the underlying damages for their bad faith breach of contract and such other relief as the court may deem just and proper.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in an amount in excess of Three Hundred Thousand (\$300,000.00) Dollars, actual and punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

Columbia, South Carolina
May 19, 2014

JURY TRIAL REQUESTED.



Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Levern McCray,

Plaintiff,

v.

Allstate Insurance Company, et al.,

Defendant.

CIVIL ACTION NO. 3:14-2623-TLW

**DEFENDANT ALLSTATE INSURANCE
COMPANY'S SUPPLEMENTAL
RESPONSES TO PLAINTIFF'S
REQUESTS TO ADMIT**

TO: PAMELA R. MULLIS, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

Pursuant to Federal Rule of Civil Procedure 36, Allstate Insurance Company ("Allstate"), hereby responds to Plaintiff's First Requests to Admit as follows:

6. Admit Allstate served the Plaintiff with an Offer of Judgment for \$135,000.00 signed on January 18, 2011.

RESPONSE:

Denied as stated. Allstate states that the Offer of Judgment speaks for itself and that Allstate submitted the Offer of Judgment by and through the Defendant in the Underlying Lawsuit as required pursuant to the uninsured motorist code.

SUPPLEMENTAL REPONSE:

Admitted

7. Admit Jose W. Valle had no authority to make any offers of judgment on behalf of Allstate.

RESPONSE:

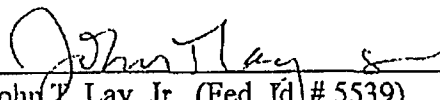
Denied as stated. While Jose W. Valle had no authority to make any offers of judgment on behalf of Allstate, he did have the authority to make offers of judgment on his own behalf.

SUPPLEMENTAL RESPONSE:

Admitted.

GALLIVAN, WHITE & BOYD, P.A.

By:



John T. Lay, Jr. (Fed. Id. # 5539)

A. Johnston Cox (Fed. Id. #6534)

Janice Holmes (Fed. Id. #11366)

1201 Main Street, Suite 1200

Post Office Box 7368

Columbia, South Carolina 29202

Telephone: 803-779-1833

Facsimile: 803-779-1767

jlay@GWBlawfirm.com

jcox@GWBlawfirm.com

jholmes@GWBlawfirm.com

Attorneys for Allstate Insurance Company

Columbia, South Carolina
November 4, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2012-CP-08-1801

RECEIVED
JUL 06 2015
SC Court of Appeals

Levern McCray,

Appellant,

v.

Jose Valle,

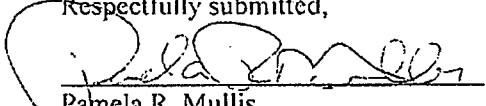
Respondent,

NOTICE OF APPEAL

Levern McCray appeals the Order filed on June 10, 2015, by Judge Deadra L. Jefferson granting Defendant's Motion to Quash Plaintiff's Execution Against Property filed on February 9, 2015. Counsel for Appellant received a written copy of the Order on June 15, 2015.

July 1, 2015

Respectfully submitted,


Pamela R. Mullis
MULLIS LAW FIRM
P.O. Box 7757
Columbia, SC 29202
(803) 799-9577

Attorney for Appellant

Other Counsel of Record:

Morgan S. Templeton, Esquire
Wall Templeton, Esquire
145 King St., Ste. 300
Charleston, SC 29401

A. Johnston Cox, Esquire
Gallivan, White & Boyd
1201 Main Street, Suite 1200
Columbia, SC 29201

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2012-CP-08-1801

RECEIVED
JUL 06 2015
SC Court of Appeals

Levern McCray,

Appellant,

v.

Jose Valle,

Respondent,

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on counsel for Liberty Mutual and Allstate Insurance by depositing a copy of it in the United States Mail, postage prepaid, on July 1, 2015, addressed to their attorneys of record:

Morgan S. Templeton, Esquire
Wall Templeton, Esquire
145 King St., Ste. 300
Charleston, SC 29401

A. Johnston Cox, Esquire
Gallivan, White & Boyd
1201 Main Street, Suite 1200
Columbia, SC 29201

Attorney for Liberty Mutual Ins.

Attorney for Allstate Ins.

July 1, 2015

Elizabeth T. Kolb
Elizabeth T. Kolb, Paralegal to
Pamela R. Mullis
MULLIS LAW FIRM
Post Office Box 7757
Columbia, South Carolina 29202
(803) 799-9577

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2015-001452

Levern McCray,

Appellant,

v.

Jose W. Valle,

Respondent,

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 8, 2016



Pamela R. Mullis
Mullis Law Firm
Post Office Box 7757
Columbia, S.C. 29202
(803) 799-9577

COUNSEL FOR APPELLANT

RECEIVED
JAN 28 2016
SC Court of Appeals