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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

22407

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,

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

APPENDIX

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STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
 ) NINTH JUDICIAL CIRCUIT  
COUNTY OF BERKELEY ) CASE NO.: 2010-CP-08-01801

LEVERN MCCRAY, )  
 )  
 PLAINTIFF, )  
 )  
VS. )  
 )  
JOSE W. VALLE, )  
 )  
 DEFENDANT. )  
 )

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**MOTIONS HEARING**

held before the Honorable Kristi L. Harrington  
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit  
in the Berkeley County Courthouse  
Moncks Corner, South Carolina /  
on Wednesday, October 22, 2014, Commencing at 9:29 a.m.

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**Circuit Court Reporter - 9th Judicial Circuit**  
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EXHIBITS

[None]

Levern McCray v. Jose Valle  
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PROCEEDINGS

1  
2 THE CLERK OF COURT: Motion to enforce order for  
3 judgment and rule to show cause. Levern McCray versus  
4 Jose Valle.

5 MS. MULLIS: I'm Pamela Mullis. I'm here  
6 representing the plaintiff.

7 THE COURT: All right.

8 MR. WALL: I'm Mark Wall representing the  
9 interest of Liberty Mutual, who is not a party.

10 MR. HUDSON: Your Honor, John Hudson  
11 representing the interest of Allstate Insurance  
12 Company, who is also not a party.

13 THE COURT: All right.

14 MR. ALLEN: Julian Allen, Turner Padgett. I was  
15 trial counsel for Allstate's U.M. coverage on the  
16 underlying action, McCray versus --

17 MS. HOLMES: Janice Holmes. I'm also here  
18 representing the interest of Allstate Insurance  
19 Company.

20 THE COURT: Last name again?

21 MS. HOLMES: Holmes.

22 THE COURT: Thank you.

23 [Off the record momentarily]

24 THE COURT: What are we doing here today?

25 MS. MULLIS: Your Honor, we filed a motion to

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1 enforce the underlying order of the Court on our offer  
2 of judgment that was filed in January of 2013 with the  
3 Court. The trial was heard in August of 2012.

4 THE COURT: And so what do you want me to do  
5 today?

6 MS. MULLIS: We want you to enforce our offer of  
7 judgment.

8 We filed an offer of judgment. There's a  
9 memorandum that's been e-mailed to you. If you would  
10 like a hard copy, I can provide you with one.

11 THE COURT: I've got it.

12 MS. MULLIS: What we have -- and just briefly,  
13 the facts of the underlying case were that my client  
14 was involved in an automobile accident on December  
15 20th of 2008. He was hit by a drunk driver. He  
16 suffered medicals, lost wages, and future lost wages,  
17 and had significant permanent impairment ratings. The  
18 jury awarded \$500,000 in actual damages and \$145,000  
19 in punitive damages.

20 The coverage on the vehicles included Allstate  
21 coverage on the car, in the accident, of 100,000;  
22 200,000 on two other vehicles in the accident; and  
23 50,000 provided by Liberty Mutual. Both Allstate and  
24 Liberty Mutual defended the claim in the trial court,  
25 as this is an uninsured claim.

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1 Allstate filed an offer of judgment against the  
2 plaintiff, which you have attached as Exhibit -- no  
3 you don't. But Allstate's offer of judgment was filed  
4 against the plaintiff on January 18th of 2011 and the  
5 plaintiff -- that was signed by counsel for the  
6 uninsured motorist carrier Allstate Insurance Company.

7 The plaintiff filed a counteroffer of judgment  
8 on February 15th of 2011. It was served on both U.M.  
9 carriers, Allstate and Liberty Mutual.

10 At the conclusion of the trial, Judge Jefferson  
11 heard the offer of judgment hearings and granted an  
12 offer of judgment to the plaintiff, an award of costs  
13 and prejudgment interest of \$80,816.11. Since that  
14 time, the case was appealed for two years and has been  
15 remitted back into this court, and we did not attempt  
16 to enforce the offer of judgment.

17 Once the case was remitted back, the defendants  
18 -- well, Liberty Mutual had already done it because  
19 they did it right after trial. They tendered their  
20 policy limits. Allstate tendered their policy limits  
21 and we requested that they pay the offer of judgment,  
22 the 80,000-dollar offer of judgment, and they're  
23 taking the position that they don't owe that offer of  
24 judgment because it will be included within their  
25 policy limits as damages and subtracted from the

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1 plaintiff's damages that he's collected in this case.

2 It's our position that the offer of judgment  
3 statute is a punitive statute. It is essentially a  
4 sanction for failure to reasonably settle a case or  
5 for expending judicial resources in a trial where  
6 reasonable demand was made.

7 We've provided you -- there is no South Carolina  
8 law on point on this. I have cases from -- and we've  
9 provided them -- seven states that all have similar  
10 statutes.

11 If I can approach?

12 THE COURT: If you will just give it to the  
13 deputy. Thank you.

14 [Whereupon, Ms. Mullis proffers documents to the  
15 Court]

16 MS. MULLIS: -- whereby an insurance company  
17 cannot subtract an award up under a statute, or a  
18 similar offer of judgment statute, from their policy  
19 limits because damages are within the policy limits  
20 and we define damages, under South Carolina law, as  
21 actual and punitive damages. And that's what their  
22 position is is they're trying to subtract the 80,000-  
23 dollar judgment off the policy limits that were  
24 awarded to the plaintiff, and we don't think they're  
25 entitled to do that.

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1           That's the essence of what we're looking for  
2           from the Court as a directive for these two insurance  
3           companies, that that statute is a punitive statute and  
4           not damages pursuant to their policy.

5           THE COURT: Tell me, who are the interested  
6           parties that I need to hear from today? They just  
7           told me that they're not parties. So if you're not a  
8           party --

9           MS. MULLIS: Then I don't think you have the  
10          right to stand up in court and make an argument. If  
11          they would like to file a notice of appearance in the  
12          case, that suits me fine.

13          There is a federal bad-faith case that has been  
14          stayed pending these decisions in lower court.

15          MR. WALL: That's not my understanding, Your  
16          Honor, that --

17          THE COURT: I'm sorry?

18          MR. WALL: Mark Wall, representing the interest  
19          of Liberty Mutual.

20          I'm a defendant in that federal court case.  
21          We've been moved to federal court. I'm not exactly  
22          sure it's stayed, and I'm not sure it's stayed pending  
23          any outcome of these cases. It's stayed so the Court  
24          can consider --

25          THE COURT: All right. But clearly you've

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1 indicated here today you're not a party to this --

2 MR. WALL: Correct, Your Honor.

3 THE COURT: All right. I don't need to be  
4 interrupted. I'm trying --

5 MR. WALL: I'm -- I -- I have a notice of  
6 special appearance, if the Court wants it.

7 THE COURT: If you would allow me to maintain  
8 the record and please do not speak over me.

9 Are you a party in this case?

10 MR. WALL: No, Your Honor, I am not a party in  
11 this pending case in this court.

12 THE COURT: So you would agree that I do not  
13 need to hear from your argument here at this time?

14 MR. WALL: I would say that the Court has  
15 discretion as to whether or not it wants to hear,  
16 because we were given notice of this hearing.

17 THE COURT: Mr. Allen, you represented the  
18 defendant? There's -- procedurally, I'm just trying  
19 to make sure. So you were at the trial?

20 MR. ALLEN: I was.

21 THE COURT: So tell me, is there -- do I need to  
22 hear from you?

23 MR. ALLEN: So I was Allstate's lawyer for the  
24 U.M. coverage that was being tried in the underlying  
25 action.

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1           There has since been a federal court case, that  
2           the plaintiffs have filed for that, a breach of  
3           contract against Allstate and Liberty Mutual, who were  
4           the two carriers that she pointed out provided U.M.  
5           coverage for the case.

6           Mark Wall's firm has appeared for Liberty  
7           Mutual, Galvin White & Boyd, who has -- John T. Lay I  
8           believe said he e-mailed late last night to your  
9           chambers, represents Allstate.

10           So after the appeal was done and the Court of  
11           Appeals affirmed the verdict, Allstate has kind of  
12           deferred to John T. Lay, from Galvin White & Boyd, in  
13           handling furtherance of the matter. They are not  
14           filing notice of appearance today, I don't think. But  
15           our interests are aligned, and as attorney for  
16           Allstate in the federal court action, I don't see why  
17           they would be precluded from the hearing today. But  
18           if Your Honor is inclined to not have them make an  
19           argument, I will go forward.

20           THE COURT: I'm sorry?

21           MR. ALLEN: I will go forward. I will go  
22           forward in defending the motion if the Court is not  
23           inclined to let Allstate's lawyer in the federal  
24           action argue it.

25           THE COURT: Well, I don't -- tell me why -- I

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1 just don't want to re-litigate. To me, the motion is  
2 very simple on its face. We have a judgment. It  
3 needs to be enforced. I don't -- and, you know, I  
4 think an e-mail came in at 10:00 p.m. last evening.

5 I don't know why -- perhaps I'm missing the  
6 larger issue if there's a federal case. It seems  
7 pretty simple to me, Mr. Allen, so --

8 MR. ALLEN: I'll be happy to address it, if you  
9 would like.

10 THE COURT: Happy to address?

11 MR. ALLEN: Why it's not so simple.

12 THE COURT: All right. Give it to me in a  
13 nutshell, Mr. Allen.

14 MR. HUDSON: Your Honor, may I interject?

15 Whenever the Court would like to hear from me,  
16 I'm John Hudson on behalf of Allstate. If you would  
17 like to finish hearing Mr. Allen out, I'll certainly  
18 wait my turn and try to shed whatever light I can on  
19 the situation.

20 THE COURT: And tell me your involvement. And I  
21 don't mean to -- I'm just -- I'm failing to see why we  
22 now have all these interested parties that were not at  
23 the trial and now you get to come in and really direct  
24 and change the outcome of a trial at the late date.

25 And so you weren't here. You were not

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1 participating. I wouldn't have allowed you to  
2 participate in the trial had you been here. And  
3 you've indicated, from the moment I addressed you,  
4 that you're not a party but yet you want to interject  
5 here to influence the outcome.

6 MR. HUDSON: Your Honor, I'm with you. It is  
7 less than clear, so I will do my best.

8 It's taken me awhile to get to the point where I  
9 am now, so if I may?

10 THE COURT: All right. Well, let me -- again,  
11 so are you and Mr. Allen representing Allstate?

12 MR. HUDSON: In separate capacities. He  
13 defended the defendant in the tort suit. Okay?

14 THE COURT: Right.

15 MR. HUDSON: And he was hired by Allstate to  
16 provide that defense.

17 My firm is now representing Allstate with  
18 respect to the bad-faith action --

19 THE COURT: In federal court.

20 MR. HUDSON: -- that is currently pending in  
21 federal court, which seeks damages identical to those  
22 the plaintiff is now asking this Court to levy upon.

23 So we've got these parallel actions going --

24 THE COURT: But if we enforce -- if I enforce  
25 the judgment here, would that not preclude the federal

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1 litigation and that would end that, or not?

2 MS. MULLIS: No, ma'am.

3 Opposing counsel -- this is an outstanding trial  
4 motion based on our remittitur. I think it's simple.  
5 The federal action is a bad-faith action, breach of  
6 contract, in federal court that is stayed pending this  
7 motion as well as a motion for costs based on the  
8 appeal.

9 So in the event that -- just like they tendered  
10 their policy limits that may be subtracted from the  
11 federal court case and the bad faith case in a setoff,  
12 if part of this offer of judgment is awarded that  
13 would apply in the bad-faith case, a federal judge can  
14 clearly do a setoff.

15 THE COURT: All right. Today I am only going  
16 to hear from Mr. Allen, because he was the only one  
17 to appear in court. So if y'all want to take just  
18 a moment to coordinate, I will allow y'all to huddle  
19 up and talk, but I'm only going to hear from Mr.  
20 Allen.

21 [Whereupon, counsel confer]

22 MR. HUDSON: Your Honor, I understand the  
23 Court's position. Just for purposes of preserving the  
24 record, I would ask the Court to let Allstate, through  
25 me, make a special appearance for purposes of this

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1 hearing only, to address the matters that are  
2 relevant. And that's primarily going to be a  
3 jurisdictional argument: that the Court does not have  
4 jurisdiction over Allstate Insurance Company because  
5 it is not a party to the pending action.

6 MR. WALL: Liberty Mutual takes the exact same  
7 position, Your Honor.

8 THE COURT: But it doesn't -- I mean, I don't  
9 mean -- again, maybe this just seems so simple.

10 It's of no moment at this point where the money  
11 comes from; right?

12 MR. WALL: The money is all paid, Your Honor.

13 THE COURT: Right?

14 MR. WALL: There is no money. The policy limits  
15 have been paid by both carriers.

16 THE COURT: Then there may be other money out  
17 there. So if I don't --

18 MR. WALL: Yes, Your Honor. I --

19 THE COURT: All right.

20 MR. WALL: I --

21 THE COURT: It's noted.

22 I will hear from Mr. Allen. Y'all can file  
23 whatever you need to after this hearing, but I'm  
24 only going to hear from Mr. Allen. Thank you very  
25 much.

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1 MR. WALL: Yes, Your Honor.

2 MR. ALLEN: Good morning, Judge.

3 I have handed up a memorandum in opposition to  
4 the plaintiff's motion to enforce the order of  
5 judgment and rule to show cause. I would ask that it  
6 be incorporated by reference.

7 THE COURT: All right. Thank you.

8 MR. ALLEN: I have alluded to it a second ago  
9 why this was so simple, and I'm going to try to be as  
10 brief and precise as I can.

11 There are five arguments why the plaintiff's  
12 motion should be denied. The first one is,  
13 ostensibly, the plaintiff is asking the Court to issue  
14 an order saying insurance company A and insurance  
15 company B, that being Allstate Insurance Company and  
16 Liberty Mutual, paid this money. The problem is on  
17 its face the Court doesn't have jurisdiction to do  
18 that because as the case is captioned, it is Levern  
19 McCray versus Jose Valle. I did not say anything  
20 about Allstate Insurance Company or Liberty Mutual  
21 Insurance Company because they are not parties. The  
22 Court cannot and does not have jurisdiction to order a  
23 nonparty to pay something.

24 There's a case called South Carolina Department  
25 of Revenue -- I only have one copy. I apologize.

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1 THE COURT: If you'll just give me the citation,  
2 we'll pull it up.

3 MR. ALLEN: Sure.

4 It is 350 S.C. 404. It's a Court of Appeals  
5 opinion. In that case the mortgagee filed a lawsuit  
6 against the mortgagor. And they were trying to  
7 foreclose on a piece of property. And the mortgagor  
8 went into default, so the Master ordered the sale of  
9 property. The property was then sold.

10 Subsequently, the mortgagee found out, oh, well,  
11 the Department of Revenue had a tax lien on this  
12 property, we need to do something about that, and they  
13 filed a motion for rule to show cause why the D.O.R.  
14 shouldn't extinguish its tax lien and the Master  
15 granted it.

16 That went to the Court of Appeals and kind of --  
17 or pretty analogous to what we have here. The Court  
18 of Appeals said you can't make a nonparty pay  
19 something or do something when they weren't a party to  
20 the underlying action. That's exactly the problem  
21 that we have in this case. Allstate Insurance Company  
22 was not a listed party either as a plaintiff or a  
23 defendant in the underlying trial, so the Court is  
24 without jurisdiction to order that a nonparty do  
25 something.

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1           The second reason why the plaintiff's motion  
2           should be denied is that the plaintiff's motion is  
3           procedurally defective. There are ways to make people  
4           pay things, and this is not the way. Rule 59 of the  
5           South Carolina Rules of Civil Procedure offers two  
6           methods to make someone pay a judgment, that being a  
7           writ of execution and supplemental proceedings where a  
8           plaintiff has a judgment, there it is, it's filed with  
9           the courthouse, now go collect it. This isn't the  
10          manner in which it's done.

11          And there's a number of cases cited in the  
12          memorandum. Johnson vs. Service Management  
13          Incorporated, which is 319 S.C. 165, McManus vs. Bank  
14          of Greenwood, 171 S.C. 84, where the Court has said  
15          the plaintiff -- it's a fatal mistake for them to try  
16          this manner, this means, of trying to collect a  
17          judgment. There are statutes that provide means of  
18          collecting a judgment, and this is not the way to do  
19          it.

20          Which brings me to the third argument, which is  
21          the federal court case which we've alluded to. The  
22          plaintiff has filed a lawsuit against Allstate  
23          Insurance Company and Liberty Mutual for breach of  
24          contract, bad faith. I.e, she wants -- plaintiff  
25          wants the judgment, and some amount of money above

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1 that, to be paid by the insurance companies. So we  
2 have a lawsuit already right now in district court on  
3 this exact same issue. As a matter of fact, the  
4 damages that plaintiff is seeking in this case, that  
5 being the roughly \$80,000 and change, for interests  
6 and costs associated with the offer of judgment, is an  
7 element of damages that is being claimed in the  
8 federal court case right now. So we have two  
9 different lawsuits seeking the same element of damage,  
10 and the plaintiff can't do that.

11 This issue will be resolved in the federal court  
12 case. The plaintiff's attorney cites a bunch of out-  
13 of-state authorities for how much is an insurance  
14 company on the hook for, for lack of a better term,  
15 when there's an offer of judgment. Does it exceed the  
16 policy limits? This issue will all be fleshed out  
17 where the parties can properly brief it and argue it  
18 and where the parties in interest, that being Allstate  
19 and Liberty Mutual, can speak their peace. And that  
20 issue will be decided there.

21 THE COURT: Tell me, Mr. Allen: the federal  
22 court case is stayed pending this outcome?

23 MR. ALLEN: One moment, Your Honor.

24 THE COURT: All right. Because there seems to  
25 be disagreement.

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1 [Off the record momentarily]

2 MS. MULLIS: I brought a copy of the court order  
3 with me and handed it to Mr. Wall, but I don't have  
4 multiple copies for everybody in the room. It's a  
5 copy of the order.

6 Your Honor, as an officer of the Court, the  
7 federal court Judge Wooten, stayed this case -- the  
8 federal bad-faith action on October 2nd. And when the  
9 attorneys on the other side filed another motion, he  
10 reiterated that the federal court was stayed on  
11 October 14th. Mr. Allen has a copy of the order. If  
12 he'll pass it up to the Court, I'll --

13 MR. ALLEN: Yeah.

14 [Whereupon, the Court reviews documents]

15 THE COURT: You may continue.

16 MR. ALLEN: The way I read that order is it  
17 is staying the federal court action until this  
18 underlying action has been resolved. Allstate's  
19 position is this case has been resolved when the Court  
20 of Appeals confirmed the verdict. This motion, as  
21 I've tried to --

22 THE COURT: When was the verdict --

23 MR. ALLEN: -- is not really --

24 THE COURT: When was the verdict affirmed?

25 Prior to October 14th or after October 14th?

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1 MR. ALLEN: September 2nd, 2014.

2 THE COURT: And Judge Wooten was aware of that  
3 when the order was --

4 I mean, it seems to me that if that was  
5 knowledge that -- I mean, the order seems pretty  
6 specific.

7 MR. ALLEN: This is one of those problems that  
8 we have two different lawyers representing Allstate in  
9 two different matters.

10 I wasn't there for Judge Houck's ruling, but I  
11 don't think he was aware that the verdict had been  
12 affirmed as of September 2nd, 2014.

13 MS. MULLIS: May I? Again, I apologize.

14 THE COURT: All right. Again, counsel, I --

15 MS. MULLIS: -- I just don't want --

16 THE COURT: I'm just trying to resolve my  
17 motion. And I understand that there's other motions.  
18 To me, the order is pretty clear as to what was  
19 intended, the previously-ordered stay. And so pretty  
20 much it's clear to me.

21 And I'm sure, with as much interjection and  
22 preparation as the attorneys have shown me here today,  
23 that everyone was aware of everything that  
24 procedurally happened when that order was written.

25 So I will -- we will just go forward, Mr. Allen.

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1 Thank you.

2 MR. ALLEN: One of the things that Your Honor  
3 just brought up, that I failed to mention at the  
4 beginning, was the idea that I talked about earlier  
5 with Rule 69 allowing two methods to collect on a  
6 judgment, neither of which was before you today, that  
7 being a writ of execution and supplemental  
8 proceedings. Those methods would be applicable and  
9 appropriate if they were levied upon the actual  
10 defendant, Jose Valle. That's who -- that is the  
11 person the Court has jurisdiction over. That is the  
12 person that was served the underlying lawsuit. That  
13 is the person against whom the judgment was rendered.  
14 And if the plaintiff wants to explore those options  
15 against Jose Valle to try to collect on the judgment,  
16 that is really what would be appropriate. But this is  
17 not the means to do that over a nonparty.

18 Argument number four is that Rule 60, which  
19 talks about altering or amending judgments or orders:  
20 the plaintiff's attorney has artfully tried to make  
21 the offer of judgment, that was rendered in this case  
22 by Judge Jefferson, apply to Liberty Mutual and  
23 Allstate.

24 As Your Honor will see in the exhibit in  
25 plaintiff's memorandum, the offer of judgment was to

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1 the defendant, again, Jose Valle. The offer of  
2 judgment was not to Liberty Mutual. It was not to  
3 Allstate.

4 So, again, we're trying to get -- this is,  
5 again, the problem about having a party and trying to  
6 execute a judgment on that party. When you file an  
7 offer of judgment against the defendant, you can't ask  
8 the insurance company, who was not the recipient of  
9 the offer of judgment as addressed on the offer, to  
10 pay that offer of judgment or the costs and fees  
11 associated with it.

12 The last argument is somewhat to the merits of  
13 what Ms. Mullis had talked about, and in the stack of  
14 authority she gave you from outside the State of South  
15 Carolina, and that is the issue of what amount of  
16 money, if any, can be collected from Allstate and/or  
17 Liberty Mutual above its policy limits.

18 She is correct there is no South Carolina law on  
19 point. But there are numerous authorities which are  
20 cited in our response to her memorandum in response to  
21 her motion that would stand for the proposition that  
22 she's incorrect policy limits -- on policy limits and  
23 there's no recovery in excess of those limits in South  
24 Carolina.

25 There is a presumption that insurance company

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1 was acting in good faith and fair dealing. And the  
2 plaintiff's attorney had tried to argue something  
3 else, and to collect some amount of money above those  
4 policy limits would be disingenuous. And, frankly,  
5 again, a matter to be decided by the federal court  
6 action.

7 I was just reminded of something else.

8 And, again, the purpose of the supplemental  
9 proceedings would be to find out and discover whether  
10 the defendant, Jose Valle, had any assets upon which  
11 this judgment could be levied and executed. Which,  
12 again, not the motions before you today.

13 Also, these issues that we're talking about,  
14 that being what is collectable above and beyond policy  
15 limits, would and could be better argued in that forum  
16 under that procedure rather than this one.

17 THE COURT: All right.

18 MR. ALLEN: Thank you.

19 THE COURT: Anything else?

20 [Whereupon, counsel confer]

21 MR. ALLEN: I was reminded of something else,  
22 Your Honor.

23 My first argument, which is the most important  
24 one, I think, is the jurisdictional question: does  
25 the Court have the power to do what the plaintiff is

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1 asking it to do. When the remittitur was sent down in  
2 early September of 2014, the Court, for the most part,  
3 lost jurisdiction over the case. And the verdict and  
4 judgment is final. The offer of judgment and the  
5 order awarding those costs and fees associated with it  
6 were part of the judgment. So the Court, with that  
7 annoying action, lost jurisdiction and the case was  
8 over.

9 And, again, alluding to the supplemental  
10 proceedings, that is exactly what that procedure is  
11 designed to do, is for another Court in another forum  
12 to decide how is that judgment, that verdict, that  
13 award, going to be paid.

14 Thank you.

15 THE COURT: Thank you, Mr. Allen.

16 Ms. Mullis, anything else briefly? I think I  
17 have --

18 MS. MULLIS: Briefly.

19 THE COURT: -- I think I have it.

20 MS. MULLIS: Briefly.

21 We filed the remittitur with the federal court  
22 as soon as we got it. Judge Wooten was aware of it  
23 when he stayed the case.

24 In South Carolina, unlike other states, we are  
25 required to file the lawsuit against the driver of

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1 the car. In other states, they put -- they file U.M.  
2 cases in the name of the insurance carrier. This is  
3 essentially a legal fiction created by our courts so  
4 that we can pursue an uninsured driver. And we think  
5 that Allstate and Liberty Mutual, who both defended  
6 the action in court and then the appeal, are certainly  
7 on the hook, as duly-licensed carriers in the state of  
8 South Carolina for a judgment at the end, and costs  
9 and interest that are awarded by the Court, and  
10 sanctions for failure to participate in negotiations  
11 and wasting judicial resources, frankly, in a four-day  
12 trial in this case.

13 This is a court order. We don't have to collect  
14 it as a judgment. We have the parties. They filed  
15 notices. In fact, the offer of judgment that we  
16 responded to was signed by the attorney for Allstate  
17 Insurance Company, not by the defendant. It was never  
18 served on the defendant, and it was served on Allstate  
19 and Liberty Mutual.

20 Bad faith: the federal court, in bad faith,  
21 requires us to show the actions of these two insurance  
22 companies in a breach of contract claim and we were  
23 entitled in that case during the pending appeal to  
24 also include the offer of judgment and their failure  
25 to pay that offer of judgment in a timely manner.

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1 Those are other damages in that case.

2 The two-year delay in failing to pay the offer  
3 of judgment: once we have proven they've committed  
4 bad faith, we think we'll be able to collect the  
5 interest on that.

6 But in this court case, this is merely a trial  
7 court order related to the trial and it stops at the  
8 time of the judgment. So we can't collect post-  
9 judgment interest. That's the bad-faith case. We  
10 can collect prejudgment interest. And that's why the  
11 offer of judgment is brought up or addressed in the  
12 bad-faith case.

13 Under Rule 8, which is parallel wording to our  
14 state court Rule 8, we're allowed to file alternative  
15 or conflicting causes of action or alleged conflicting  
16 causes of action. A federal court judge, in the event  
17 that we are awarded this offer of judgment here, can  
18 frankly take that into account. And we are sure that  
19 opposing counsel can certainly file a motion in that  
20 to address that setoff at that time.

21 I think that if you'll look at the cases that we  
22 cited, that the statutes in those seven jurisdictions  
23 that we found, those seven states have the most  
24 similar offer of judgment analogous to the state -- to  
25 South Carolina State offer of judgment. And we think

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1 that insurance policies are interpreted in favor of  
2 the insured.

3 So the plaintiff shouldn't be taxed for the  
4 offer of judgment that was awarded on top of the  
5 judgment. The purpose of this statute is to encourage  
6 settlements, and the statute would be useless if it  
7 didn't enforce that as a matter of law.

8 That's all we have.

9 THE COURT: Counsel --

10 MR. WALL: Your Honor, again, I hate to keep  
11 interrupting --

12 THE COURT: I thought I had made my position  
13 very clear. If you interrupt me one more time, I'm  
14 going to hold you in contempt. Do you understand?

15 MR. WALL: Yes, Your Honor.

16 THE COURT: I will accept proposed orders. Due  
17 to the nature of this case, I'm going to give you ten  
18 days to submit orders. You do not have to submit  
19 proposed orders, but I'm giving you that opportunity.  
20 I will give you until November 4th at 5:00 p.m.  
21 Please make sure that you copy all parties in this  
22 case before you submit proposed orders.

23 And let me make what my preference is on  
24 proposed orders. I understand that y'all do not agree  
25 with each other, so I do not need back-and-forth Mr.

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1 Allen's proposed order is incorrect because. I am  
2 able to read the file and I understand. Your proposed  
3 order is what you want me to -- how you want me to  
4 rule. I do not need back-and-forth about -- and I  
5 will not accept that. All right? Any questions about  
6 that? Ms. Mullis?

7 MS. MULLIS: Would you like that in electronic  
8 form?

9 THE COURT: Please.

10 MS. MULLIS: Thank you.

11 MR. ALLEN: E-mail it to your law clerk?

12 THE COURT: Yes, please.

13 MR. ALLEN: Great.

14 THE COURT: All right. Thank you. Y'all have a  
15 wonderful day.

16 Ms. Mullis, I made a copy for Mr. Allen of the  
17 order, so please make sure --

18 I made you a copy, so please give her back her  
19 original.

20 Thank you.

21 [MOTIONS HEARING CONCLUDES]  
22  
23  
24  
25

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Motions Hearing

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the motions hearing held before the Honorable Kristi L. Harrington, on Wednesday, October 22, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 12th day of November, 2015.



Mia Perron, CVR-CM-M  
Circuit Court Reporter  
9th Judicial Circuit

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

**RECEIVED**  
JAN 28 2016  
SC Court of Appeals

Levern McCray,

Appellant,

v.

Jose W. Valle,

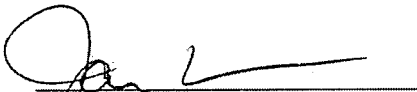
Respondent,

Of Whom Allstate Insurance Company is Respondent.

**SUPPLEMENT TO THE RECORD ON APPEAL**

Pursuant to Rule 212(b), SCACR and with the written consent of opposing counsel, counsel for Appellant supplements the Record on Appeal with the attached Appendix containing the transcript of the hearing held on October 22, 2014.

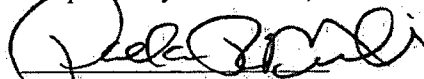
I CONSENT



John T. Lay, Jr.  
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Counsel for Respondent Allstate Insurance Company

January 27, 2016

Respectfully submitted,



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**COUNSEL 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

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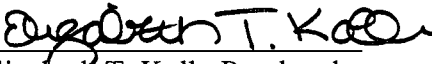
**PROOF OF SERVICE**

I certify that I have served the Appendix on counsel for Allstate Insurance by depositing a copy of it in the United States Mail, postage prepaid, on January 28, 2016, addressed to their attorneys of record:

John T. Lay, Esquire  
Gallivan, White & Boyd  
1201 Main Street, Suite 1200  
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*Attorney for Allstate Ins.*

January 28, 2016

  
Elizabeth T. Kolb, Paralegal to  
Pamela R. Mullis  
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FEB 01 2016

SC Court of Appeals