

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court Of Common Pleas

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Case No: 2016-000867

Darhyl Taylor, as the Personal Representative of the Estate of Ruth T. Simpson, Respondent,

v.

Johnson & Johnson Preferred Financing, ProCentury Insurance Company, FINCO
Premium Finance Co., Inc. and Carolina Independent Automobile Dealers Association,
Dealers Risk and Insurance Services, Independent Dealers Insurance Management,
Defendants,

Of whom ProCentury Insurance Company is the Appellant.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

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COMMON PLEAS AND

Daryhl Taylor, as the Personal Representative
of the Estate of Ruth T. Simpson,

Plaintiff,

vs.

Johnson & Johnson Preferred Financing,
ProCentury Insurance Company, FINCO
Premium Finance Co., Inc., and Carolina
Independent Automobile Dealers Association,
Dealers Risk and Insurance Services,
Independent Dealers Insurance Management,

Defendants.

Civil Action No.: 2014-CP-04-0398

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING DEFENDANT
PROCENTURY'S AND DEFENDANT
FINCO'S MOTIONS FOR SUMMARY
JUDGMENT**

A TRUE COPY

MAR 30 2016

Richard M. Kelly
ANDERSON CLERK OF COURT

THIS Matter is before the Court on similar motions for summary judgment filed by Defendant ProCentury Insurance Company's and Defendant FINCO Premium Finance Co., Inc.'s. Plaintiff Darhyl Taylor, as personal representative of the estate of Ruth T. Simpson, filed a counter-motion for summary judgment. The issue before the Court is whether an insurance policy financed by a premium finance company was properly cancelled. Defendants seek a declaration that the automobile liability policy was cancelled before the date of the accident which killed Ruth T. Simpson. The Plaintiff seeks a declaration that the policy was in full force and effect at the time of the accident.

I heard the motions in open court at which time all parties in this matter appeared through their attorneys. I have reviewed the file, all submissions, the applicable law, and have considered the arguments of counsel. All submissions to the court are incorporated into the record. Based upon the record and applicable law, I hereby grant Plaintiff Darhyl Taylor's motion and deny Defendant ProCentury's and Defendant FINCO's motions for the reasons explained below.

I. STANDARD OF REVIEW

Under Rule 56(c), SCRCP: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003); *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711 (2003). If triable issues exist, those issues must go to the jury. *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct.App.2002).

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (2003); Rule 56(c), SCRCP. When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Hedgepath*, 348 S.C. at 355, 559 S.E.2d at 336; *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App.1997). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001).

PROCEDURAL HISTORY AND UNDISPUTED FACTS

On June 17, 2011, Ruth T. Simpson was killed in an accident in Anderson County, South Carolina involving a vehicle owned by Autos Nex Store, LLC and driven by Mazen A. Zein.

Plaintiff submitted a claim for payment under Autos Nex's liability policy with Defendant ProCentury (the "Policy"). On October 19, 2011, Defendant ProCentury denied the claim asserting that the Policy had been canceled on May 31, 2011 for non-payment of premium.

Plaintiff filed a civil action against Autos Nex and Mazen Zein in the Anderson Court of Common Pleas. Following a trial, an order and judgment was entered on September 17, 2013 in *Darhyl Taylor, as Personal Representative for the Estate of Ruth T. Simpson, v. Mazen A. Zein and Autos Nex Store, LLC* (C/A No. 2011-CP-04-02407) against Autos Nex Store, LLC in the amount of \$500,000 and in favor of Plaintiff Taylor for his wrongful death and survival action claims arising from the Accident. Plaintiff thereafter filed a declaratory judgment action in the above captioned case seeking a declaration that Autos Nex's Policy with Defendant ProCentury was in force on the date of the accident. Defendant ProCentury filed a counterclaim requesting that the court declare that the Policy was cancelled prior to the date of the Accident.

Autos Nex obtained the Policy, with an effective date of August 10, 2010, through a premium finance security agreement with Defendant FINCO, a premium service company. (Plaintiff's Ex. 1). That agreement contains a power of attorney permitting Defendant FINCO to cancel the insurance contract.

The parties submitted into the record letters entitled "Notice of Intent to Cancel" and "Cancellation Notice" that the Defendants claim are the cancellation notices sent to Autos Nex to cancel the Policy. Defendant FINCO prepared the notices and included a line of text that denotes the purported date of mailing. The notice of intent to cancel contains a mailing date of May 16, 2011. (Plaintiff's Ex. 3). The cancellation notice contains a mailing date of May 26, 2011, and purports to state that the effective date of cancellation is May 31, 2011. (Plaintiff's Ex. D). The cancellation notice lists the insured, the policy agent Defendant Dealer's Risk and Insurance

Service, but not the insurance company Defendant Procentury. Additional cancellation correspondence was also submitted into evidence, this time addressed to the managing agent for Defendant Procentury and dated for July 28, 2011. (Plaintiff's Ex. 5).

Between May 26, 2011 and June 17, 2011, the date of the accident, the Defendants took no further action to effectuate the cancellation. Specifically, it was not until July 29, 2011, almost a month after the accident, that ProCentury created the cancellation endorsement reflecting a cancellation date of May 31, 2011 and calculating a return premium of \$381.00. (Plaintiff's Ex. 7). Defendant Procentury thereafter returned the premium refund to Defendant FINCO by August 17, 2011. (Plaintiff's Ex. 2). On that same date, Defendant FINCO issued a check refunding the premium, minus agency fees, to Autos Nex for \$166.89. (Plaintiff's Ex. 8). All told, sixty-one days lapsed between the date of the accident and return of the premium to Autos Nex.

DISCUSSION

S.C. Code § 38-39-90 is the exclusive means for cancellation of an insurance contract by a premium service company. *Bowman v. State Roofing Co.*, 365 S.C. 112, 121 (2005). An insurance contract "may not be canceled by the premium service company unless the cancellation is effectuated in accordance with this section." § 38-90-90(a). Any violation of this section therefore invalidates cancellation. *Id.* citing *South Carolina Ins. Co. v. Brown*, 280 S.C. 574, 313 S.E.2d 348 (Ct. App. 1984).

Failure to return unearned premium prior to the date of the accident

Plaintiff moved for summary judgment arguing that the policy remained in force until the Defendants returned the unearned premium on August 17, 2011. Defendants maintain that the timing of return of the unearned premium is a mere ministerial act that does not affect cancellation. Section 38-39-90 requires the following when a policy is cancelled:

(e) If an insurance contract is canceled, the insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium service company which financed the premium for the account of the insured. The gross unearned premiums due on personal lines insurance contracts financed by premium service companies must be computed on a pro rata basis.

(f) If the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium service company promptly shall refund the excess to the insured or the agent of record. A refund is not required if it amounts to less than five dollars.

(Emphasis added.)

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *Joint Legislative Comm. v. Huff*, 320 S.C. 241, 464 S.E.2d 324 (1995). If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning. *City of Columbia v. ACLU of S.C., Inc.*, 323 S.C. 384, 475 S.E.2d 747 (1996).

Our Court of Appeals addressed the importance of the return of the refund of a premium when cancelling a policy of insurance obtained through a premium service company in *Bowman v. State Roofing Co.* 365 S.C. 112, 616 S.E.2d 699 (2005). In *Bowman*, the trial court found that the cancellation of an insurance policy was invalid because the insurer failed to return the unearned premium as required under S.C. Code § 38-39-90(e). The insurer argued on appeal that the failure to return the premium was an accounting matter that did not invalidate cancellation. In affirming the decision of the trial court, the court held that "a return of unearned premiums as required under § 38-39-90(e) is in effect part of Carrier's obligation under its policy and is therefore a condition precedent to an effective cancellation." (Emphasis added). Further, the

court held that the return of the premium subsection (f) requires the premium service company to credit any return of unearned premiums to the account of the insured and "promptly refund" any surplus over five dollars. "This provision works to the benefit of the insured and is an added protection ensuring notice to the insured." *Id* at 122, 704 (2005). Therefore, cancellation is not effective unless and until the premium is refunded.

Here, it is undisputed that premium was not refunded until August 17, 2013. (Plaintiff's Ex. 8). This Court finds as a matter of law that the policy was not cancelled until the premium was refunded on that date. Therefore, the Policy is in effect on June 17, 2013, the date of the accident.

Defendants ProCentury and FINCO argue that this case is distinguishable from *Bowman* because they returned the premium whereas the insurer in *Bowman* never returned the premium. Defendants' argument fails to recognize that the return of the premium is a condition precedent to cancellation. Additionally, they ignore the promptness requirement for the return of the premium in subsection (f) of the statute that provides the insured additional notice of cancellation. As a practical matter, accepting the Defendants' argument would allow an insurer and premium service company to wrongfully withhold the return of an unearned premium and avoid paying under a policy. An insurer and premium service company could simply refund the premium after a claim is received and backdate the cancellation to the date of the cancellation notice, even after significant delay. Such a reading is contrary to the clear and unambiguous language of the statute and the holding in *Bowman*. See *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 62, 504 S.E.2d 117, 121 (1998) (the cardinal rule of statutory construction is for a court to ascertain the intent of the legislature and to give it effect); *Rosenbaum v. S-M-S*

32, 311 S.C. 140, 143, 427 S.E.2d 897, 898 (1993) (a court should give a statute a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of lawmakers.)

Mailing of Notices

Plaintiff moved for summary judgment arguing that the cancellation of the Policy is invalid under S.C Code 38-39-90 because the cancellation notice was delivered to the insured less than fifteen days after the mailing of the notice of the intent to cancel. Additionally, Plaintiff argues that there is no proof of mailing as required under the statute. Because this court finds the first issue dispositive of Plaintiff's motion, the court need not address the latter issue and makes no determinations as to whether the Defendants provided sufficient proof of mailing.

S.C Code 38-39-90 mandates the following timeline for the mailing of notices:

(b) The premium service company shall deliver to the insured *at least ten days' written notice of its intent to cancel the insurance contract* if there is a default. This notice must be mailed or delivered not more than ten days before the due date.

(c) *Not less than five days after the expiration of the notice required pursuant to the provisions of subsection (b), the premium service company may after that time request in the name of the insured cancellation of the insurance contract by delivering to the insurer a notice of cancellation.* The insurance contract must be canceled as if the notice of cancellation had been submitted by the insured himself, but without requiring the return of the insurance contract. The premium service company also *shall deliver a notice of cancellation to the insured at his last address as provided for in its records by the date the notice of cancellation is delivered to the insurer.* It is sufficient to give notice either by delivering it to the person or by depositing it in the United States mail, postage prepaid, addressed to the last address of the person. Notice delivered in accordance with the provisions of this section is sufficient proof of delivery. If a notice of cancellation effected in accordance with this chapter is issued, a nonrefundable cancellation charge is permitted. The amount of the cancellation charge must be filed with and promulgated by the department.

(Emphasis added). The statute requires a "five day waiting period" after the expiration of the notice of intent to cancel before the premium service company may deliver to the insurance company and the insured the notice of cancellation. *S. Carolina Ins. Co. v. Brown*, 280 S.C. 574, 575-76, 313 S.E.2d 348, 348-49 (Ct. App. 1984)

Assuming that Defendant FINCO mailed the notices on stated dates of mailing, Defendant FINCO failed to comply with five day waiting period. The notice of intent contains a mailing date of May 16, 2011, and would have expired on May 26, 2011. (Plaintiff's Ex. 3). The cancellation notice is dated for March 26, 2011. (Plaintiff's Ex. 4). In *S. Carolina Ins. Co. v. Brown*, our Court of Appeals held a cancellation invalid because the cancellation notice was mailed the day after the expiration of the notice of intent to cancel. *Id.* Consequently, Defendant FINCO failed to comply with the waiting period required by the statute, and therefore the Policy was not canceled.

Additionally, the record shows that the initial cancellation notice was not addressed to the insurance company. Due to the failure of one or more of the other named Defendants, the cancellation notice was not delivered to Defendant ProCentury until July 28, 2011, some 41 days after the accident. Therefore cancellation notice was not delivered soon enough to cancel the policy before the accident. *See Brown*, 280 S.C. at 576, 313 S.E.2d at 349.

ORDER

Viewing the evidence as contained in the record and all inferences which can be reasonably drawn from the evidence in the light most favorable to the non-moving parties, this Court finds as follows:

1. Plaintiff's motion for summary judgment is granted and therefore the Policy with Defendant ProCentury was in force at the time of the accident on June 17, 2011.
2. Defendant ProCentury's motion for summary judgment and Defendant FINCO's motion for summary judgment are denied.

Accordingly, and based upon the foregoing, it is therefore

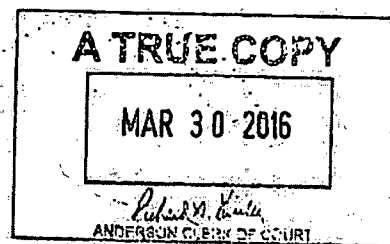
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ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Summary Judgment be, and is hereby granted, and Defendants' Motions for Summary Judgment be, and are hereby denied.

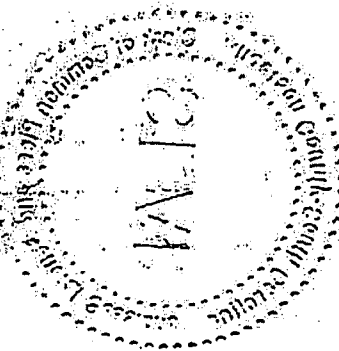
IT IS SO ORDERED.


J. Cordell Maddox, Jr., Judge
Tenth Judicial Circuit

3/24, 2016
Anderson, South Carolina



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COMMON PLEAS AND
GENERAL SESSIONS



STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Daryhl Taylor, as the Personal Representative
of the Estate of Ruth T. Simpson,

Plaintiff,

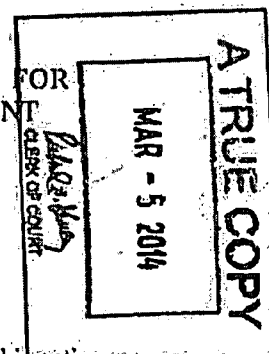
vs.

Johnson & Johnson Preferred Financing, and
ProCentury Insurance Company,

Defendants.

Civil Action No.: 2014-CP-04-0398

**SUMMONS TO COMPLAINT FOR
DECLARATORY JUDGMENT**



TO THE DEFENDANT(S) 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 the said Complaint on the subscriber at his office at 207 East Calhoun Street, Anderson, South Carolina 29621, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the said relief demanded in the Complaint.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent you in this action within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE) AND TO, (GENERAL OR TESTAMENTARY GUARDIAN) (COMMITTEE) WITH WHOM (S) HE/(THEY) RESIDE(S):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent said infant(s) under 14 years of age (said incompetent or insane person) within 30 days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

KRAUSE, MOORHEAD AND DRAISEN, PA

March 5, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Daryhl Taylor, as the Personal Representative
of the Estate of Ruth T. Simpson,

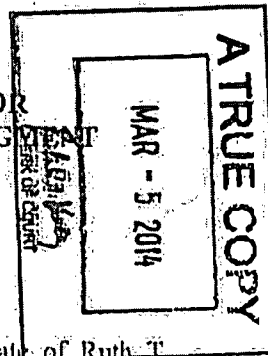
Plaintiff,

vs.

Johnson & Johnson Preferred Financing, and
ProCentury Insurance Company,

Defendants.

Civil Action No.: 2014-CP-04



COMPLAINT FOR
DECLARATORY JUDGMENT

The Plaintiff, Daryhl Taylor, as the Personal Representative of the Estate of Ruth T. Simpson, seeking a Declaratory Judgment pursuant to S.C. Code § 15-53-10, et seq., respectfully states as follows:

1. The Plaintiff, Daryhl Taylor, is a citizen and resident of the County of Anderson, State of South Carolina, and is the duly appointed personal representative of the Estate of Ruth T. Simpson by Order of the Anderson County Probate Court dated June 22, 2011.

2. The Defendant, Johnson and Johnson Preferred Financing, Inc. ("Johnson"), is a South Carolina corporation with its principal place of business in the County of Charleston. Defendant Johnson entered into a contractual agreement to provide premium financing for Autos Nex Store in the County of Anderson, South Carolina.

3. The Defendant, ProCentury Insurance Company ("ProCentury"), is a foreign insurance company that is licensed to write policies of insurance in South Carolina and contracted to insure persons, property, or risks located within the County of Anderson, South Carolina at the time of contracting. In particular, Defendant ProCentury wrote the policy of insurance that is at issue in this case.

4. All parties, matters, and things herein are within the jurisdiction of this Court.

5. This action is brought pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and in accordance with the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et seq., seeking a declaration of the rights and/or other legal relations and remedies surrounding the questions of an actual controversy presently existing between Plaintiff and the Defendants.

6. On June 17, 2011, Ruth T. Simpson was killed in an accident in Anderson County, South Carolina involving a vehicle owned by Autos Nex Store, LLC and driven by Mazen A. Zein.

7. Plaintiff submitted a claim for payment under Autos Nex's liability policy with Defendant ProCentury (the "Policy").

8. On October 19, 2011, Defendant ProCentury denied the claim asserting that that the Policy had been canceled on May 31, 2011, prior to the accrual of the Plaintiff's claims, for non-payment of premium.

9. Following a trial, an order and judgment was entered on September 17, 2013 in *Darhyl Taylor, as Personal Representative for the Estate of Ruth T. Simpson, v. Mazen A. Zein and Autos Nex Store, LLC* (C/A No. 2011-CP-04-02407) against Autos Nex Store, LLC in the amount of \$500,000 and in favor of Plaintiff Taylor for his wrongful death and survival action claims arising on June 17, 2011. A copy of the Order and Judgment is attached hereto as Exhibit 1 and incorporated by reference.

10. Thereafter, Plaintiff resubmitted a claim for payment of the judgment under Autos Nex's liability policy with Defendant ProCentury (the "Policy").

11. Defendant ProCentury again denied the claim asserting that the Policy had been canceled on May 31, 2011, prior to the accrual of the Plaintiff's claims in the underlying action, for non-payment of premium.

12. Upon information and belief, Autos Nex entered into a premium service agreement with Defendant Johnson, a premium service company, to obtain the Policy.

13. The cancellation of an insurance policy by a premium service company is governed by S.C. Code § 38-39-90.

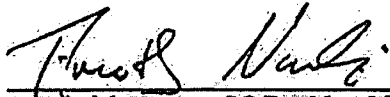
14. Pursuant to S.C. Code § 38-39-90, if a premium service agreement contains a power of attorney enabling the company to cancel an insurance contract listed in the agreement, the insurance contract may not be canceled by the premium service company unless the cancellation is effectuated in accordance the requirements contained therein.

15. The Defendants have failed to show that the Policy was cancelled in accordance with S.C. Code § 38-39-90.

16. Plaintiff seeks a Declaratory Judgment that the cancellation of the Policy was not accomplished in accordance with the required procedures in S.C. Code § 38-39-90, the cancellation is invalid, the Policy was effective on June 17, 2011, and therefore Plaintiff is entitled to payment from the Policy for the Judgment and interest accruing on the unpaid limit of liability from September 17, 2013 until payment is received.

WHEREFORE, the Plaintiff prays for declaration that the cancellation of the Policy was not accomplished in accordance with the required procedures in S.C. Code § 38-39-90, the cancellation is invalid, the Policy was in effect at the time the Plaintiff's causes of action accrued in the underlying action, the Plaintiff is entitled to payment under the Policy, interest, and any other relief that the Court deems just and proper.

Respectfully submitted,



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March 5, 2014

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Daryhl Taylor, as the Personal Representative
of the Estate of Ruth T. Simpson,

Plaintiff,

vs.

Johnson & Johnson Preferred Financing, and
ProCentury Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS

ANSWER AND COUNTERCLAIM

C.A. No.: 2014-CP-04-398

(Jury Trial Demanded)

The defendant, ProCentury Insurance Company, answering the complaint and counterclaiming against the plaintiff, would respectfully allege and show unto the court as follows:

FOR A FIRST DEFENSE

1. The defendant, ProCentury Insurance Company (hereinafter referred to as "ProCentury"), admits, upon information and belief, the truth of the allegations of paragraph 1 of the complaint.
2. It lacks sufficient information to form a belief as to the truth of the allegations of paragraph 2 of the complaint and, therefore, denies same and demands strict proof thereof.
3. It admits the allegations of paragraph 3 of the complaint.
4. It admits the allegations of paragraph 4 of the complaint.
5. It alleges that the allegations of paragraph 5 of the complaint state legal conclusions to which no response is necessary from it. To the extent that a response is deemed necessary, and to the extent the allegations of paragraph 5 somehow allege that it has some liability to the plaintiff and is entitled to a declaration to that effect, they are denied and strict proof is demanded thereof.

6. ProCentury admits, upon information and belief, the truth of the allegations of paragraph 6 of the complaint.

7. It admits the allegations of paragraph 7 of the complaint.

8. It admits so much of the allegations of paragraph 8 of the complaint as allege that it sent a denial letter to the plaintiff dated October 19, 2011. However, it alleges that the terms of that letter speak for themselves and to the extent the allegations of paragraph 8 are to the contrary, they are denied and strict proof is demanded thereof.

9. It admits so much of the allegations of paragraph 9 of the complaint as allege that an order was entered on September 17, 2013, against Autos Nex Store. It further alleges that the terms of that order speak for itself. To the extent the allegations of paragraph 9 of the complaint are contrary thereto, they are denied and strict proof is demanded thereof. Additionally, ProCentury lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 9 of the complaint and, therefore, denies same and demands strict proof thereof.

10. It lacks sufficient information to form a belief as to the truth of the allegations of paragraph 10 of the complaint as written and, therefore, denies same and demands strict proof thereof.

11. It admits so much of the allegations of paragraph 11 of the complaint as allege that it has consistently denied the plaintiff's claim on the basis that the policy had been cancelled by FINCO Premium Finance Company (hereinafter referred to as "FINCO") for non-payment of premium.

12. It admits so much of the allegations of paragraph 12 of the complaint as allege that Autos Nex entered into a Premium Finance Agreement with FINCO on August 10, 2010.

However, it denies the remaining allegations of paragraph 12 of the complaint and demands strict proof thereof.

13. It alleges that the allegations of paragraph 13 of the complaint state legal conclusions to which no response is necessary from it. To the extent a response is deemed necessary and to the extent those allegations somehow allege that the cancellation at issue was somehow improper or wrongful, they are denied and strict proof is demanded thereof.

14. It alleges that the allegations of paragraph 14 of the complaint state legal conclusions to which no response is necessary from it. To the extent a response is deemed necessary and to the extent those allegations somehow allege that the cancellation at issue was somehow improper or wrongful, they are denied and strict proof is demanded thereof.

15. It denies the allegations of paragraph 15 of the complaint and demands strict proof thereof.

16. It denies so much of the allegations of paragraph 16 of the complaint as allege that the plaintiff is entitled to declaratory relief as set forth therein and demands strict proof thereof. It denies the remaining allegations of paragraph 16 of the complaint and demands strict proof thereof.

17. ProCentury denies each and every allegation of the complaint not hereinabove specifically admitted, explained or modified.

FOR A SECOND DEFENSE

18. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

19. It alleges that the plaintiff's complaint fails to state facts sufficient to constitute a cause of action upon which relief can be granted as against it and is, accordingly, barred as to it.

FOR A THIRD DEFENSE

20. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

21. It alleges that the policy at issue was properly cancelled in accord with the applicable statutory provisions of South Carolina Code § 38-39-90. Such cancellation is thus pled as a complete defense and bar to the plaintiff's claims.

FOR A FOURTH DEFENSE

22. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

23. It alleges that the policy at issue, having been properly cancelled, provides no coverage for any of the claims being made by the plaintiff. As such, the plaintiff's complaint should be dismissed as against it.

FOR A FIFTH DEFENSE

24. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

25. It alleges that insofar as the plaintiff's complaint seeks pre-judgment interest, such pre-judgment interest is not allowable in actions such as this one. As such, the plaintiff's claims for pre-judgment interest are barred and should be stricken from the complaint.

FOR A SIXTH DEFENSE

26. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

27. It alleges that the plaintiff has failed to comply with all conditions precedent to the making of this claim. As such, his claim should be dismissed.

FOR A SEVENTH DEFENSE

28. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

29. It alleges that even if the policy was in effect at the time of the accident, which is expressly denied and admitted solely for the purpose of this defense and no other, coverage is or may be excluded under the terms of the policy at issue. Such exclusions are thus pled as complete defenses and bars to the plaintiff's claims.

FOR AN EIGHTH DEFENSE

30. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

31. It alleges that even if the policy was in effect at the time of the accident, which is expressly denied and admitted solely for the purpose of this defense and no other, all of the plaintiff's claims against Autos Nex Stores have been resolved, released and ordered dismissed and an accord and satisfaction has been reached. Such resolution, release, accord and satisfaction, order and dismissal are thus pled as complete defenses and bars to the plaintiff's claims.

FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM

32. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

33. It alleges that it issued a policy of insurance to Autos Nex Store bearing policy number PIC 112590 with initial effective dates of coverage from August 10, 2010 through August 10, 2011. The premium for the policy was \$2,185.00.

34. ProCentury is informed and believes that in order to make the necessary premium payments, Autos Nex entered into a premium finance security agreement with FINCO. That

agreement was entered into on August 10, 2010. Under the terms of that agreement, Autos Nex irrevocably appointed FINCO or its successors or assigns as its attorney in fact with full authority to cancel the insurance policy or any renewal thereof. Under the terms of the agreement, FINCO had the right to cancel the policy if Autos Nex Store did not pay any installment according to the terms of the agreement. A copy of this premium finance security agreement is attached hereto as Exhibit 1 to this answer and counterclaim and its terms and conditions are incorporated herein by reference.

35. Following the issuance of the policy, Autos Nex failed to make certain of the necessary payments called for under the terms of the premium finance security agreement. When that occurred, FINCO, or its successor, properly provided the necessary notices to representatives of Autos Nex.

36. Included in the notice provided was an intent to cancel which was forwarded to Autos Nex by regular mail on May 16, 2011.

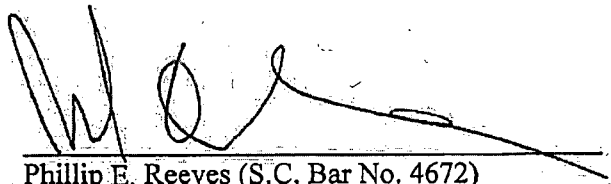
37. Having received no response or payments, FINCO or its successor issued a cancellation notice which it sent by regular mail to Autos Nex on May 26, 2011. Copies of that cancellation notice were also sent to both Dealer's Risk and Insurance Services, Autos Nex's agent, and Independent Dealer's Insurance Management, the involved broker. Upon forwarding that notice, FINCO cancelled the policy in accord with the terms of the Premium Finance Security Agreement. The cancellation was effective as of May 31, 2011.

38. Following its cancellation of the policy, FINCO notified ProCentury that the policy had been cancelled effective May 31, 2011. Immediately upon receipt of this notification, ProCentury endorsed the policy showing that it had been cancelled effective May 31, 2011. In connection with doing so, it issued a check for the unearned premium in the amount of \$382.00 which it is informed and believes was returned to and accepted by Autos Nex.

39. ProCentury is informed and believes that all of the appropriate notices were provided to Autos Nex Store in accord with South Carolina Code § 38-39-90. Under the terms of that section, assuming the requirements contained therein are met, and ProCentury is informed and believes this to be the case, upon receipt of a directive to cancel the policy, the insurance contract must be cancelled effective as of the date of cancellation on the notice of cancellation issued by the premium service company. In connection with the cancellation of the policy, ProCentury fully complied with this statute.

40. As such, it is informed and believes that it is entitled to a declaration of this court that (1) the cancellation of the policy was proper and mandated by South Carolina Code § 38-39-90, (2) that the cancellation was effective as of May 31, 2011, and (3) that the policy was cancelled as of that date. It is also informed and believes that it is thus entitled to declarations that (4) the plaintiff has no right to recover any benefits under the terms of the policy at issue and (5) the plaintiff's claims against it should be dismissed.

WHEREFORE, having fully answered the complaint, ProCentury prays that it be dismissed as against it, that it be afforded the declaratory relief sought in its counterclaim as set forth hereinabove, for the costs of this action and for any such other and further relief as this court shall deem just and proper.

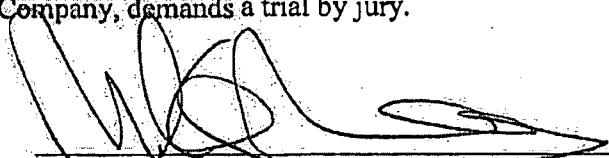


Phillip E. Reeves (S.C. Bar No. 4672)
Gallivan, White & Boyd, P.A.
Post Office Box 10589, F.S.
Greenville, South Carolina 29603
(864) 271-9580

Attorneys for Defendant, ProCentury Insurance
Company

Greenville, South Carolina
May 8, 2014

The defendant, ProCentury Insurance Company, demands a trial by jury.

A handwritten signature in black ink, appearing to read 'P. E. Reeves', written over a horizontal line.

Phillip E. Reeves (S.C. Bar No. 4672)

EXHIBIT 1



FINCO PREMIUM FINANCE CO., INC.
PREMIUM FINANCE SECURITY AGREEMENT
 610 West Friendly Avenue Post Office Box 26009 Greensboro, NC 27420-0000
 800-673-4828 800-983-8780

Type of Loan	
☐	PERSONAL
☒	COMMERCIAL
☐	ADDITIONAL PREMIUM

AGENCY/BROKER Dealer's Risk and Ins Services PO Box 1088 Harrisburg, NC 28078 800-422-4232 x1100		BORROWER Audra Max Stone 6612 Highway 187 Anderson, SC 29625 854-401-0722																																											
Producer Code: 1168A		649197																																											
TOTAL PREMIUM \$2,185.00		PAYMENT SCHEDULE (G. No. Refundable Set Up Fee \$20.00)																																											
DOWN PAYMENT \$437.00		WHEN PAYMENTS ARE DUE FIRST INSTALLMENT DUE: 9/10/2010 INSTALLMENT DUE DATES: 10th																																											
AMOUNT FINANCED \$1,748.00		SCHEDULE OF POLICIES																																											
FINANCE CHARGE The dollar amount plus set up fee for credit \$95.83		<table border="1"> <thead> <tr> <th>POLICY NUMBER</th> <th>POLICY EFFECTIVE DATE</th> <th>INSURANCE COMPANY AND MANAGING GENERAL AGENT</th> <th>TYPE OF COVERAGE</th> <th>POLICY TERM (months)</th> <th>GROSS PREMIUM</th> </tr> </thead> <tbody> <tr> <td>TBD PIC112640</td> <td>8/10/2010</td> <td>Independent Dealers Insurance Management PO Box 1088 Harrisburg, NC 28078</td> <td>GARAGE</td> <td>12</td> <td>\$2,185.00</td> </tr> <tr> <td colspan="5">FIN TXS/FEES</td> <td>\$3.00</td> </tr> <tr> <td colspan="5">ERN TXS/FEES</td> <td>\$0.00</td> </tr> <tr> <td colspan="5">FIN TXS/FEES</td> <td></td> </tr> <tr> <td colspan="5">ERN TXS/FEES</td> <td></td> </tr> <tr> <td colspan="5">TOTAL PREMIUMS MUST AGREE WITH BOX "A" ABOVE >>>></td> <td>\$2,185.00</td> </tr> </tbody> </table>		POLICY NUMBER	POLICY EFFECTIVE DATE	INSURANCE COMPANY AND MANAGING GENERAL AGENT	TYPE OF COVERAGE	POLICY TERM (months)	GROSS PREMIUM	TBD PIC112640	8/10/2010	Independent Dealers Insurance Management PO Box 1088 Harrisburg, NC 28078	GARAGE	12	\$2,185.00	FIN TXS/FEES					\$3.00	ERN TXS/FEES					\$0.00	FIN TXS/FEES						ERN TXS/FEES						TOTAL PREMIUMS MUST AGREE WITH BOX "A" ABOVE >>>>					\$2,185.00
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TOTAL PREMIUMS MUST AGREE WITH BOX "A" ABOVE >>>>					\$2,185.00																																								
TOTAL OF PAYMENTS The amount you will have paid after you make all payments as scheduled. (C + D) \$1,843.83		APR The cost of this loan is a yearly rate of 10.3%																																											
Quote Number: 87111.1		FINCO License #: B-224, 91830102, PF-152, 08151, 81532																																											

TO THE BORROWER:
 If you sign below, you acknowledge receipt of a copy of this Agreement and you agree to the provisions, BOTH ON THE FIRST AND THE SECOND PAGE OF THIS AGREEMENT. You further agree that you are appointing LENDER your ATTORNEY-IN-FACT to cancel the policies outlined in the Agreement. You further agree that electronic or digital transmissions of this document are acceptable and not limited to facsimile transmissions shall be legally binding.
 IF FOR ANY REASON YOU DO NOT RECEIVE YOUR PAYMENT COUPONS OR INVOICES FOR INSTALLMENTS DUE, YOU MUST STILL MAKE YOUR PAYMENTS ON THE ABOVE DUE DATE TO THE ABOVE ADDRESS. UNDERSTAND THAT BY SIGNING THIS AGREEMENT I SHALL BE BOUND FINANCIALLY TO THE TERM AND CONDITIONS OF THE CONTRACT.

* x
 SIGNATURE OF BORROWER(S) OR FULLY AUTHORIZED BORROWER(S)
 DATE: 8/10/10
 364802635
 SSN or FEIN
 PRINTED NAME: [Signature]
 PRINTED NAME: [Signature]

PRODUCERS WARRANTIES AND REPRESENTATIONS:
THE UNDERSIGNED WARRANTS AND GUARANTEES:

(1) The Borrower has received a copy of this Agreement and the Required Federal Truth-in-Lending disclosures for Personal Line Insurance, if applicable, (2) The policies herein are in full force and effect and the information in the schedule of policies and the premiums are correct, (3) The Borrower has authorized this transaction and recognizes the security interest assigned herein, (4) The Down Payment shown above has been paid by or on behalf of the Borrower, and the Total Premium shown above has been or will be used to purchase insurance policies shown in the Schedule of Policies, (5) There are no exceptions to the policies other than those indicated and the policies comply with LENDER's eligibility requirements, (6) NO AUDIT OR REPORTING FORM POLICIES, POLICIES SUBJECT TO RETROSPECTIVE RATING OR TO MINIMUM EARNED PREMIUMS ARE INCLUDED EXCEPT AS INDICATED AND THAT THE DEPOSIT OR PROVISIONAL PREMIUMS ARE NOT LESS THAN THE ANTICIPATED PREMIUMS TO BE EARNED FOR THE FULL TERM OF THE POLICIES, IF POLICY IS SUBJECT TO A MINIMUM EARNED PREMIUM IT IS (7) The policies can be cancelled by the Borrower of this company on 10 days notice and the unearned premiums will be computed on the standard short rate or pro rata table except as indicated. Upon cancellation of any of the Scheduled Policies, Producer shall remit to LENDER the full amount of the unearned premium, including unearned commission as well as any other payments or credits received by Producer, up to the unpaid balance due under this Agreement, within 15 days of receipt. (8) The undersigned represents that a proceeding in bankruptcy, receivership or insolvency has not been instituted by or against the named Borrower or if the named Borrower is the subject of such a proceeding, it is noted on this Agreement in the space in which the Borrower's name and address is placed.

* x
 SIGNATURE OF AGENT OR BROKER
 DATE: 8-12-10
 PRINTED NAME: Leslie E. Walshe
 PRINTED NAME: [Signature]

RECEIVED AUG 13 2010

ASSIGNED FOR VALUE
 TO BRANCH BANKING
 AND TRUST COMPANY

PROVISIONS OF YOUR SECURITY AGREEMENT

1. **PROMISE OF REPAYMENT:** The borrower requests LENDER to pay the premiums on the policies shown on the reverse. The Borrower promises to pay to LENDER at its office the amount stated in Block E above, according to the Payment Schedule shown on the reverse, subject to the terms of the Security Agreement.
2. **SECURITY INTEREST:** The Borrower assigns to LENDER as security for the total amount payable in this Agreement any and all unearned premiums and dividends which may become payable under the insurance policies and loss payments which reduce the unearned premiums, subject to any mortgage or loss payee interests. The Borrower gives to LENDER a security interest in all items mentioned in this paragraph.
3. **DEFAULT CHARGES:** Borrower agrees that if any installment is more than 5 days past due, or minimum number of days permitted by state law, it will pay to LENDER a delinquency charge in an amount up to the maximum permitted by applicable state law. Borrower agrees if default results in cancellation to pay the maximum allowable cancellation charge allowed by applicable state law.
4. **FINANCE CHARGES:** The finance charge, shown in Box "D" on the front side of this Agreement, begins to accrue on the earliest possible date allowed by applicable state law and continues until all funds are paid in full.
5. **WARRANTY OF ACCURACY:** The borrower warrants to LENDER that the insurance policies listed in the above schedule have been issued to the borrower and are in full force and effect and that the borrower has not assigned any interest in the policies except for the interest of mortgagees and loss payees.
6. **REPRESENTATION OF SOLVENCY:** The Borrower represents that it is not insolvent or presently the subject of any insolvency proceeding.
7. **CANCELLATION:** LENDER may cancel the insurance policies and the unpaid balances due to LENDER shall be immediately payable by the Borrower if any of the following occur: (a) The Borrower does not pay any installment according to the terms of this Agreement; (b) The borrower does not comply with any of the terms of this Agreement; (c) The Borrower or the insurer voluntarily or involuntarily becomes the subject of a bankruptcy, receivership or any other kind of insolvency proceeding; (d) If the Borrower is a business and stops doing business or ceases to be qualified to do business. LENDER at its option may enforce payment of this debt without recourse to the security given to LENDER.
8. **POWER OF ATTORNEY - LIMIT OF LIABILITY:** The Borrower irrevocably appoints LENDER, or its successors or assigns, its Attorney-in-Fact with full authority to cancel the insurance policies, or any renewal thereof, to receive all sums assigned to LENDER or in which it has granted LENDER a security interest and LENDER may execute and deliver on the Borrower's behalf all documents, instruments of payment, forms and notices of any kind relating to the insurance policies in furtherance of this Agreement. LENDER's liability to any person or corporation on the exercise of its authority to cancel the insurance policies is limited to the amount of the principal balance, except if LENDER willfully fails to deliver the notices required by law. When LENDER effects cancellation in accordance with state law, the Borrower will be responsible for attorney's fees and other cost in any unsuccessful action filed as a result thereof to the extent permitted by applicable state law.
9. **MONEY RECEIVED AFTER NOTICE OF CANCELLATION:** Any payment made to LENDER after LENDER's Notice of Cancellation of the insurance policies has been delivered may be credited to the Borrower's account without affecting the acceleration of this Agreement and without any liability or obligation on the LENDER's part to request reinstatement of the canceled policies. Any money LENDER receives from an insurance company shall be credited to the amount due LENDER with any surplus being paid to whomsoever is entitled to the money. No refund of less than \$1.00 shall be made, if there is a balance due after LENDER receives the unearned premiums, dividends or loss payments from the insurance company then the Borrower will pay the balance to LENDER with interest at the rate shown on the agreement.
10. **PREPAYMENT:** Borrower has the right to prepay the entire outstanding balance in full at any time before the due date of the final installment. Upon prepayment in full, or upon cancellation and full payment to LENDER, Borrower will be entitled to receive a refund of the Finance Charge to be computed by the Rule of 78's ("Sum of the Years Digits") method, or as required or permitted by the applicable law, after deducting any fully earned charge permitted by law. If cancellation occurs, the Borrower agrees to pay a Finance Charge on the balance due at the rate on the reverse side of this Agreement until it is paid in full, or until such other date as is required by applicable state law. Borrower agrees to pay LENDER reasonable attorney's fees and collection cost under the terms and condition hereof and to the extent and amount permitted by applicable state law.
11. **INSURANCE AGENT OR BROKER:** The insurance agent or broker named on this Agreement is the Borrower's agent, not LENDER's and LENDER is not legally bound by anything the agent or broker represents to the Borrower, orally or in writing.
12. **SPECIAL INSURANCE POLICIES:** If the insurance policy issued to the borrower is auditable or is a reporting form policy or subject to retrospective rating, then the Borrower promises to pay the insurance company the earned premium computed in accordance with the policy provisions which is in excess of the amount of the premium advanced by LENDER which the insurance company retains.
13. **SUCCESSORS AND ASSIGN:** All legal rights given to LENDER shall benefit LENDER's assign. The Borrower will not assign the policies without LENDER's written consent except for the interest of mortgagees and loss payees.
14. **MISSING AND INCORRECT INFORMATION:** If the policy has not been issued at the time of signing this Agreement, then the Borrower agrees the name of the insurance company, and the policy number of the insurance policies may be left blank and may be subsequently inserted in this Agreement. In addition, Borrower authorized LENDER or the agent or broker to correct on this Agreement at any time, if incorrect, the name of the insurance companies, the policy numbers and the installment due dates. LENDER will notify the Borrower of the corrected and/or inserted information.
15. **ADDITIONAL PREMIUMS:** The money paid by LENDER is only for the premium as determined at the time the insurance policy is issued. LENDER's payment shall not be applied by the insurance company to pay for any additional premiums owed by the insured as a result of any type of misclassification of this risk. The Borrower agrees to pay the company any additional premiums which become due for any reason. LENDER may assign to the company any rights it has against the Borrower for premiums due the company in excess of the premium returned to LENDER.
16. **AGENT'S WARRANTIES:** To convince LENDER to enter this Agreement and accept the security underlying this Agreement, the person executing this Agreement, if not the Borrower, warrants severally and as the duly authorized agent of the Borrower that he is the duly authorized agent of the Borrower appointed specifically to enter into this transaction on the Borrower's behalf; that he can perform any act the Borrower could or should perform with respect to this transaction; that he will hold in trust for LENDER any payments made or credit to the Borrower through the undersigned or to the undersigned, directly, indirectly, actually or constructively by any of the insurance companies and that he will pay the monies to LENDER upon demand to satisfy the then outstanding indebtedness of the Borrower.
17. **ASSIGNMENT:** All of LENDER's rights under this Agreement shall inure to its successors and assign. This Agreement may not be assigned by the borrower except as provided for in this Agreement.
18. **DOCUMENT AND GOVERNING LAW:** This document is the entire Agreement between LENDER and the Borrower and can only be changed in writing and signed by both parties. The laws of the state of Borrower's residence as set forth above will govern this Agreement. If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be impaired.
19. **SERVICE CHARGE:** The maximum service fee allowable by state regulations will be charged on all returned checks. This same fee will also be assessed if the insured authorizes a payment from a deposit account through an electronic funds transfer or some method other than a paper check signed by the insured, and the insured's bank or financial institution where the deposit account is maintained refuses to honor such withdrawal or payment request because there are insufficient funds in the account.

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Darhyl Taylor, as Personal Representative
of the Estate of Ruth T. Simpson,

Plaintiff,

vs.

Johnson & Johnson Preferred Financing,
and ProCentury Insurance Company,

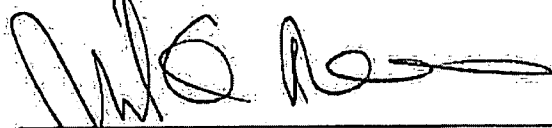
Defendants.)

CERTIFICATE OF SERVICE

C.A. No. 2014-CP-04-398

The undersigned, Phillip E. Reeves, of the firm Gallivan, White & Boyd, P.A., attorneys for the defendant, ProCentury Insurance Company, certifies that on the 8th day of May, 2014, he served its answer and counterclaim by depositing in the U. S. Mail, with due and proper postage affixed thereto, copies of the same addressed to:

Mr. Timothy A. Nowacki
Krause, Moorhead & Drasien, P.A.
207 E. Calhoun Street
Anderson, South Carolina 29621



Phillip E. Reeves (S.C. Bar No. 4672)
Gallivan, White & Boyd, P.A.
Post Office Box 10589
Greenville, South Carolina 29603
(864) 271-9580

Attorneys for Defendant, ProCentury Insurance
Company

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Daryhl Taylor, as the Personal Representative
of the Estate of Ruth T. Simpson,

Plaintiff,

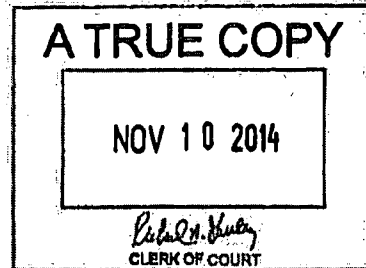
vs.

Johnson & Johnson Preferred Financing,
ProCentury Insurance Company, FINCO
Premium Finance Co., Inc., and Carolina
Independent Automobile Dealers Association,
Dealers Risk and Insurance Services,
Independent Dealers Insurance Management,

Defendants.

Civil Action No.: 2014-CP-04-0398

**FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT**



Plaintiff Daryhl Taylor, as the Personal Representative of the Estate of Ruth T. Simpson, seeking a Declaratory Judgment pursuant to S.C. Code § 15-53-10, et seq., respectfully states as follows:

1. This action is brought pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and in accordance with the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et seq., seeking a declaration of the rights and/or other legal relations and remedies surrounding the questions of an actual controversy presently existing between Plaintiff and the Defendants.

2. Plaintiff Daryhl Taylor is a citizen and resident of the County of Anderson, State of South Carolina, and is the duly appointed personal representative of the Estate of Ruth T. Simpson by Order of the Anderson County Probate Court dated June 22, 2011.

3. The Defendant Johnson and Johnson Preferred Financing, Inc. ("JJPF"), individually and as successor to Defendant FINCO Premium Finance Company ("FINCO"), is a South Carolina

corporation with its principal place of business in the County of Charleston and transacted business in Anderson County, South Carolina. Upon information and belief, JJPF purchased FINCO assets, including the premium finance security agreement (hereinafter "Security Agreement") at issue in this case. FINCO was a corporation organized pursuant to the laws of that State of North Carolina and transacted business in the Anderson County, South Carolina.

4. The Defendant ProCentury Insurance Company ("ProCentury") is a foreign insurance company that is licensed to write policies of insurance in South Carolina and contracted to insure persons, property, or risks located within the County of Anderson, South Carolina.

5. The Defendant Carolina Independent Auto Dealers Association ("CIADA") is a North Carolina organization and, upon information and belief, is the parent company of both Defendant Dealer's Risk and Insurance Services and Defendant Independent Dealer's Insurance Management (collectively the "CIADA Subsidiaries"). Defendant Independent Dealer's Risk and Insurance Services is a North Carolina organization and is the agent and broker for the Security Agreement. Defendant Independent Dealers Insurance Management is a North Carolina organization and the managing general agent for Security Agreement.

6. All parties, matters, and things herein are within the jurisdiction of this Court.

BACKGROUND AND FACTS

7. Underlying this action, Ruth T. Simpson was killed on June 17, 2011 in an accident in Anderson County, South Carolina involving a vehicle owned by Autos Nex Store, LLC and insured by Defendant ProCentury.

8. Plaintiff submitted a claim for payment under Autos Nex's liability policy with Defendant ProCentury (the "Policy").

9. On October 19, 2011, Defendant ProCentury denied the claim asserting that that the Policy had been canceled on May 31, 2011, prior to the June 17, 2011 occurrence, for non-payment of premium.

10. Following a trial, an order and judgment was entered on September 17, 2013 in *Darhyl Taylor, as Personal Representative for the Estate of Ruth T. Simpson, v. Mazen A. Zein and Autos Nex Store, LLC* (C/A No. 2011-CP-04-02407) against Autos Nex Store, LLC in the amount of \$500,000 and in favor of Plaintiff Taylor for the wrongful death and survival action claims arising on June 17, 2011 (the "Judgment"). A copy of the Order and Judgment is attached hereto as Exhibit 1 and incorporated by reference.

11. Thereafter, Plaintiff resubmitted a claim for payment under Autos Nex's liability policy with Defendant ProCentury (the "Policy"), this time based upon the Judgment.

12. Defendant ProCentury again denied the claim asserting that the Policy had been canceled on May 31, 2011, prior to the accrual of the Plaintiff's claims in the underlying action, for non-payment of premium.

13. In order to obtain the Policy, Autos Nex Store LLC entered into a premium finance security agreement (the "Security Agreement") on August 10, 2010, with Defendant FINCO, a premium service company, as the lender.

14. The Security Agreement contained a power of attorney stating in pertinent part:

TO THE BORROWER:

If you sign below, you acknowledge receipt of a copy of this Agreement and you agree to the provisions, BOTH ON THE FIRST AND THE SECOND PAGE OF THIS AGREEMENT. You further agree that you are appointing LENDER your ATTORNEY-IN-FACT to cancel the policies outlined in the Agreement.

15. The second page of the Security Agreement provides in pertinent part:

8. POWER OF ATTORNEY – LIMIT OF LIABILITY: The Borrower irrevocably appoints LENDER, or its successors or assigns, its Attorney-in-Fact with full authority to cancel the insurance policies ...

13. SUCCESSORS and ASSIGN: All legal rights given to LENDER shall benefit LENDER's assign.

17. ASSIGNMENT: All of the LENDER's rights under this Agreement shall inure to its successors and assigns.

16. Upon information and belief, JJPF, a premium service company, completed an asset purchase of FINCO sometime after the execution of the Security Agreement.

17. Upon information and belief, either FINCO or JJPF assigned the Security Agreement, along with all rights contained therein, for value to Branch Banking and Trust prior to May 31, 2011.

18. As a result, both FINCO and JJPF lacked the authority to act as Auto Nex's power of attorney and cancel the Policy.

19. Despite the foregoing, Defendant JJPF issued a cancellation notice effective May 31, 2011, to Autos Nex Store LLC claiming that it cancelled the Policy for non-payment of premium pursuant to the authority given to it by the power of attorney in the Security Agreement.

20. Upon information and belief, Defendant JJPF directed that Defendant CIADA, through either one of its CIADA Subsidiaries, contact Defendant ProCentury and cancel the policy for non-payment of premium. Independent Dealers Insurance Management is listed as the managing agent on the Security Agreement.

21. On July 29, 2011, Defendant CIADA requested that Defendant ProCentury cancel the Policy effective May 31, 2011 for non-payment of premium.

22. As a result, Defendant ProCentury claims that the Policy is cancelled and has denied Plaintiff's claims for payment.

FOR A FIRST CAUSE OF ACTION
Cancellation of Insurance Contracts by Premium Service Company

23. The cancellation of an insurance policy by a premium service company is governed by S.C. Code § 38-39-90.

24. Pursuant to S.C. Code § 38-39-90, if a premium service agreement contains a power of attorney enabling the premium service company to cancel an insurance contract listed in the agreement for nonpayment of premium, the insurance contract may not be canceled by the premium service company unless the cancellation is effectuated in accordance with the requirements contained therein.

25. The Defendants failed to cancel the Policy in accordance with S.C. Code § 38-39-90 based upon one or more of the following grounds:

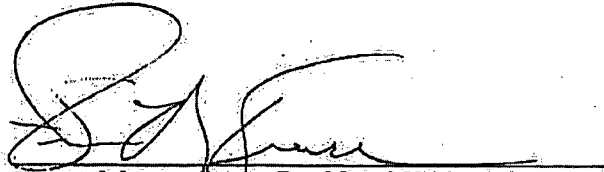
- a. Defendants failed to follow the procedures as required in S.C. Code § 38-39-90;
- b. Defendants were not the attorney-in-fact for Autos Nex Store LLC.

26. Plaintiff seeks a Declaratory Judgment that the cancellation of the Policy was not accomplished in accordance with the required procedures in S.C. Code § 38-39-90, Defendants were not the attorney-in-fact for Autos Nex Store LLC, Defendants lacked the legal authority to cancel the Policy, the cancellation is invalid, the Policy was effective on June 17, 2011, and therefore Plaintiff is entitled to payment from the Policy for the Judgment and interest accruing on the unpaid limit of liability from June 17, 2011 until payment is received.

WHEREFORE, the Plaintiff prays for declaration that the cancellation of the Policy was not accomplished in accordance with the required procedures in S.C. Code § 38-39-90, Defendants lacked the legal authority to cancel the Policy, the cancellation is invalid, the Policy was in effect at

the time the Plaintiff's causes of action accrued in the underlying action, the Plaintiff is entitled to payment under the Policy, interest, and any other relief that the Court deems just and proper.

Respectfully submitted,



Steven M. Krause, SC Bar No. 3571
Timothy A. Nowacki, SC Bar No. 100967
KRAUSE MOORHEAD & DRAISEN, P.A.
207 East Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
Attorneys for the Plaintiff

November 6, 2014

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

Daryhl Taylor, as the Personal Representative
of the Estate of Ruth T. Simpson,

Plaintiff,

vs.

Johnson & Johnson Preferred Financing,
ProCentury Insurance Company, FINCO
Premium Finance Co., Inc., and Carolina
Independent Automobile Dealers Association,
Dealers Risk and Insurance Services,
Independent Dealers Insurance Management,

Defendants.

**PROCENTURY INSURANCE
COMPANY'S ANSWER AND
COUNTERCLAIM TO FIRST
AMENDED COMPLAINT**

C.A. No.: 2014-CP-04-398

(Jury Trial Demanded)

The defendant, ProCentury Insurance Company, answering the first amended complaint, would respectfully allege and show unto the court as follows:

FOR A FIRST DEFENSE

1. The defendant, ProCentury Insurance Company (hereinafter referred to as "ProCentury"), alleges that the allegations of paragraph 1 of the first amended complaint state legal conclusions to which no response is necessary from it. To the extent a response is deemed necessary, ProCentury admits that the plaintiff's claim is a declaratory judgment action. However, it denies that the plaintiff is entitled to the relief sought therein.

2. ProCentury admits, upon information and belief, the truth of the allegations of paragraph 2 of the first amended complaint.

3. ProCentury admits so much of the allegations of paragraph 3 of the first amended complaint as allege that Johnson & Johnson Preferred Financing, Inc. is a South Carolina corporation with its principal place of business in Charleston County. However, it lacks

sufficient information to form a belief as to the truth of the remaining allegations of paragraph 3 of the first amended complaint and, therefore, denies same and demands strict proof thereof.

4. ProCentury admits the allegations of paragraph 4 of the first amended complaint.

5. It lacks sufficient information to form a belief as to the truth of the allegations of paragraph 5 of the first amended complaint and, therefore, denies same and demands strict proof thereof.

6. It lacks sufficient information to form a belief as to the truth of the allegations of paragraph 6 of the first amended complaint and, therefore, denies same and demands strict proof thereof.

7. It admits, upon information and belief, the truth of so much of the allegations of paragraph 7 of the first amended complaint as allege that Ms. Simpson was killed on June 17, 2011 in an automobile accident involving a vehicle owned by Autos Nex. However, it denies the remaining allegations of paragraph 7 of the plaintiff's first amended complaint and demands strict proof thereof.

8. It admits so much of the allegations of paragraph 8 of the first amended complaint as allege that the plaintiff made a demand for payment following this accident. However, it denies the remaining allegations of paragraph 9 of the first amended complaint and demands strict proof thereof.

9. It admits so much of the allegations of paragraph 9 of the first amended complaint as allege that it sent a denial letter to the plaintiff dated October 19, 2011. However, it alleges that the terms of that letter speak for themselves and to the extent the allegations of paragraph 9 are contrary thereto, they are denied and strict proof is demanded thereof.

10. It admits so much of the allegations of paragraph 10 of the first amended complaint as allege that an order was entered on September 17, 2013 against Autos Nex Store. It further alleges that the terms of that order speak for themselves. To the extent that the allegations of paragraph 10 of the first amended complaint are contrary thereto, they are denied and strict proof is demanded thereof. Additionally, ProCentury lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 10 of the first amended complaint and, therefore, denies same and demands strict proof thereof.

11. It lacks sufficient information to form a belief as to the truth of the allegations of paragraph 11 of the first amended complaint as written and, therefore, denies same and demands strict proof thereof.

12. It admits so much of the allegations of paragraph 12 of the first amended complaint as allege that it has consistently denied the plaintiff's claim on the basis that the policy had been appropriately and properly cancelled for non-payment of premium.

13. ProCentury admits so much of the allegations of paragraph 13 of the first amended complaint as allege that Autos Nex entered into a premium finance security agreement with FINCO on August 10, 2010. However, it lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 13 of the first amended complaint and, therefore, denies same and demands strict proof thereof.

14. Insofar as the allegations of paragraph 14 of the first amended complaint state terms contained in the premium finance security agreement, ProCentury alleges that the terms and conditions of that agreement speak for themselves. Insofar as the allegations of paragraph 14 of the first amended complaint are contrary thereto, they are denied and strict proof is demanded thereof.

15. Insofar as the allegations of paragraph 15 of the first amended complaint state terms contained in the premium finance security agreement, ProCentury alleges that the terms and conditions of that agreement speak for themselves. Insofar as the allegations of paragraph 15 of the first amended complaint are contrary thereto, they are denied and strict proof is demanded thereof.

16. ProCentury lacks sufficient information to form a belief as to the truth of the allegations of paragraph 16 of the first amended complaint and, therefore, denies same and demands strict proof thereof.

17. ProCentury lacks sufficient information to form a belief as to the truth of the allegations of paragraph 17 of the first amended complaint and, therefore, denies same and demands strict proof thereof.

18. ProCentury denies the allegations of paragraph 18 of the first amended complaint and demands strict proof thereof.

19. It admits so much of the allegations of paragraph 19 of the first amended complaint as allege that it received a cancellation notice effective May 31, 2011 noting that the policy had been cancelled for non-payment of premium. It also admits that it timely and properly cancelled the policy in accord with the directions provided to it. It lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 19 of the first amended complaint and demands strict proof thereof.

20. It admits so much of the allegations of paragraph 20 of the first amended complaint as allege that it was directed to cancel the policy for non-payment of premium. However, it lacks sufficient information to form a belief as to the truth of the remaining

allegations of paragraph 20 of the first amended complaint and, therefore, denies same and demands strict proof thereof.

21. It admits so much of the allegations of paragraph 21 of the first amended complaint as allege that on or about July 29, 2011, it received a directive that the policy be cancelled effective May 31, 2011 for non-payment of premium. It lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 21 of the first amended complaint and, therefore, denies same and demands strict proof thereof.

22. It admits so much of the allegations of paragraph 22 of the first amended complaint as allege that the policy was properly cancelled and that its denial of the plaintiff's claim was appropriate. It denies the remaining allegations of paragraph 22 of the first amended complaint and demands strict proof thereof.

23. It alleges that the allegations of paragraph 23 of the first amended complaint state legal conclusions to which no response is necessary from it. To the extent a response is deemed necessary and to the extent those allegations somehow allege that the cancellation at issue was somehow improper or wrongful, they are denied and strict proof is demanded thereof.

24. It alleges that the allegations of paragraph 24 of the first amended complaint state legal conclusions to which no response is necessary from it. To the extent a response is deemed necessary and to the extent those allegations somehow allege that the cancellation at issue was somehow improper or wrongful, they are denied and strict proof is demanded thereof.

25. It denies the allegations of paragraph 25 of the first amended complaint and demands strict proof thereof.

26. It denies so much of the allegations of paragraph 26 of the first amended complaint as allege that the plaintiff is entitled to the declaratory relief set forth therein and

demands strict proof thereof. It denies the remaining allegations of paragraph 26 of the first amended complaint and demands strict proof thereof.

27. ProCentury denies each and every allegation of the first amended complaint not hereinabove specifically admitted, explained or modified.

FOR A SECOND DEFENSE

28. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

29. It alleges that the plaintiff's first amended complaint fails to state facts sufficient to constitute a cause of action upon which relief can be granted as against it and is, accordingly, barred as to it.

FOR A THIRD DEFENSE

30. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

31. It alleges that the policy at issue was properly cancelled in accord with the applicable statutory provisions of South Carolina Code § 38-39-90. Such cancellation is thus pled as a complete defense and bar to the plaintiff's claims.

FOR A FOURTH DEFENSE

32. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

33. It alleges that the policy at issue, having been properly cancelled, provides no coverage for any of the claims being made by the plaintiff. As such, the plaintiff's first amended complaint should be dismissed as against it.

FOR A FIFTH DEFENSE

34. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

35. It alleges that insofar as the plaintiff's first amended complaint seeks pre-judgment interest, such pre-judgment interest is not allowable in actions such as this one. As such, the plaintiff's claims for pre-judgment interest are barred and should be stricken from the first amended complaint.

FOR A SIXTH DEFENSE

36. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

37. It alleges that the plaintiff has failed to comply with all conditions precedent to the making of this claim. As such, his claim should be dismissed.

FOR A SEVENTH DEFENSE

38. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

39. It alleges that even if the policy was in effect at the time of the accident, which is expressly denied and admitted solely for the purpose of this defense and no other, coverage is or may be excluded under the terms of the policy at issue. Such exclusions are thus pled as complete defenses and bars to the plaintiff's claims.

FOR AN EIGHTH DEFENSE

40. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

41. It alleges that even if the policy was in effect at the time of the accident, which is expressly denied and admitted solely for the purpose of this defense and no other, all of the plaintiff's claims against Autos Nex Stores have been resolved, released and ordered dismissed and an accord and satisfaction has been reached. Such resolution, release, accord and satisfaction, order and dismissal are thus pled as complete defenses and bars to the plaintiff's claims.

FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM

42. ProCentury incorporates herein the allegations of its first defense not inconsistent herewith.

43. It alleges that it issued a policy of insurance to Autos Nex Store bearing policy number PIC 112590 with initial effective dates of coverage from August 10, 2010 through August 10, 2011. The premium for the policy was \$2,185.00.

44. ProCentury is informed and believes that in order to make the necessary premium payments, Autos Nex entered into a premium finance security agreement with FINCO. That agreement was entered into on August 10, 2010. Under the terms of that agreement, Autos Nex irrevocably appointed FINCO or its successors or assigns as its attorney in fact with full authority to cancel the insurance policy or any renewal thereof. Under the terms of the agreement, FINCO had the right to cancel the policy if Autos Nex Store did not pay any installment according to the terms of the agreement. A copy of this premium finance security agreement is attached hereto as Exhibit 1 to this answer and counterclaim and its terms and conditions are incorporated herein by reference.

45. Following the issuance of the policy, Autos Nex failed to make certain of the necessary payments called for under the terms of the premium finance security agreement.

When that occurred, FINCO, or its successor, properly provided the necessary notices to representatives of Autos Nex.

46. Included in the notice provided was an intent to cancel which was forwarded to Autos Nex by regular mail on May 16, 2011.

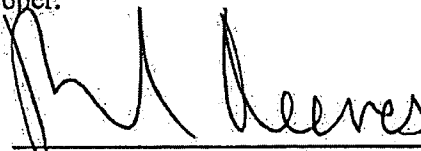
47. Having received no response or payments, FINCO or its successor issued a cancellation notice which it sent by regular mail to Autos Nex on May 26, 2011. Copies of that cancellation notice were also sent to both Dealer's Risk and Insurance Services, Autos Nex's agent, and Independent Dealer's Insurance Management, the involved broker. Upon forwarding that notice, FINCO cancelled the policy in accord with the terms of the Premium Finance Security Agreement. The cancellation was effective as of May 31, 2011.

48. Following its cancellation of the policy, FINCO notified ProCentury that the policy had been cancelled effective May 31, 2011. Immediately upon receipt of this notification, ProCentury endorsed the policy showing that it had been cancelled effective May 31, 2011. In connection with doing so, it issued a check for the unearned premium in the amount of \$382.00 which it is informed and believes was returned to and accepted by Autos Nex.

49. ProCentury is informed and believes that all of the appropriate notices were provided to Autos Nex Store in accord with South Carolina Code § 38-39-90. Under the terms of that section, assuming the requirements contained therein are met, and ProCentury is informed and believes this to be the case, upon receipt of a directive to cancel the policy, the insurance contract must be cancelled effective as of the date of cancellation on the notice of cancellation issued by the premium service company. In connection with the cancellation of the policy, ProCentury fully complied with this statute.

50. As such, it is informed and believes that it is entitled to a declaration of this court that (1) the cancellation of the policy was proper and mandated by South Carolina Code § 38-39-90, (2) that the cancellation was effective as of May 31, 2011, and (3) that the policy was cancelled as of that date. It is also informed and believes that it is thus entitled to declarations that (4) the plaintiff has no right to recover any benefits under the terms of the policy at issue and (5) the plaintiff's claims against it should be dismissed.

WHEREFORE, having fully answered the first amended complaint, ProCentury prays that it be dismissed as against it, that it be afforded the declaratory relief sought in its counterclaim as set forth hereinabove, for the costs of this action and for any such other and further relief as this court shall deem just and proper.

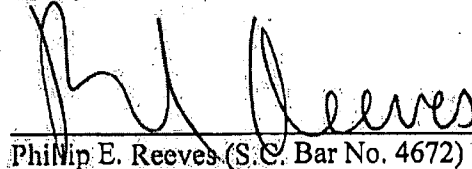


Phillip E. Reeves (S.C. Bar No. 4672)
Gallivan, White & Boyd, P.A.
Post Office Box 10589, F.S.
Greenville, South Carolina 29603
(864) 271-9580

Attorneys for Defendant, ProCentury Insurance
Company

Greenville, South Carolina
January 14, 2015

The defendant, ProCentury Insurance Company, demands a trial by jury.



Phillip E. Reeves (S.C. Bar No. 4672)

Exhibit 1



FINCO PREMIUM FINANCE CO., INC.
PREMIUM FINANCE SECURITY AGREEMENT
 610 West Friendly Avenue Post Office Box 26000 Greensboro, NC 27420-0000
 800-873-4829 800-903-8780

TYPE OF LOAN	
☐	PERSONAL
☒	COMMERCIAL
☐	ADDITIONAL PREMIUM

AGENCY/BROKER
 Dealer's Risk and Ins Services
 PO Box 1088
 Hartsburg, NC 28078
 800-432-4232 x100

BORROWER
 Anna Nex Store
 8812 Highway 187
 Anderson, SC 29625
 854-401-0722

649197

Product Code: 1188A

TOTAL PREMIUM		G. Non Refundable Set Up Fee \$20.00		PAYMENT SCHEDULE	
A.	\$2,185.00	NUMBER OF INSTALLMENTS	AMOUNT OF EACH INSTALLMENT	WHEN PAYMENTS ARE DUE	
B.	\$437.00	9	\$204.87	FIRST INSTALLMENT DUE	INSTALLMENT DUE DATE
C.	\$1,748.00			01/02/2010	10th

SCHEDULE OF POLICIES						
	POLICY NUMBER	POLICY EFFECTIVE DATE	INSURANCE COMPANY AND MANAGING GENERAL AGENT	TYPE OF COVERAGE	POLICY TERM (months)	GROSS PREMIUM
D.	780	8/10/2010	Independent Dealers Insurance Management PO Box 1088 Hartsburg, NC 28078	GARAGE	12	\$2,185.00
E.	780	8/10/2010		FIN TXS/FEE		\$2.00
				ERN TXS/FEE		\$0.00
				FIN TXS/FEE		
				ERN TXS/FEE		
F.	TOTAL PREMIUMS MUST AGREE WITH BOX "A" ABOVE >>>>					\$2,185.00

Quote Number: 87111.1
 FINCO License #: B-224, 91830102, PF-152, 08181, 81632

TO THE BORROWER:
 If you sign below, you acknowledge receipt of a copy of this Agreement and you agree to the provisions, BOTH ON THE FIRST AND THE SECOND PAGE OF THIS AGREEMENT. You further agree that you are appointing LENDER your ATTORNEY-IN-FACT to cancel the policies outlined in the Agreement. You further agree that electronic or digital transmissions of this document including but not limited to facsimile transmissions shall be legally binding.
 IF FOR ANY REASON YOU DO NOT RECEIVE YOUR PAYMENT COUPONS OR INVOICE FOR INSTALLMENTS DUE, YOU MUST STILL MAKE YOUR PAYMENTS ON THE ABOVE DUE DATE TO THE ABOVE ADDRESS. UNDERSTAND THAT BY SIGNING THIS AGREEMENT I SHALL BE BOUND FINANCIALLY TO THE TERM AND CONDITIONS OF THE CONTRACT.

SIGNATURE OF BORROWER(S) OR POLY AUTHORIZED BORROWER(S) _____ DATE 8/10/10
 364802635
 SSN or FEIN

PRODUCERS WARRANTIES AND REPRESENTATIONS:
 THE UNDERSIGNED WARRANTIES AND GUARANTEES:
 (1) The Borrower has received a copy of this Agreement, and the Required Federal Truth-in-Lending disclosures for Personal Line Insurance, if applicable.
 (2) The policies herein are in full force and effect and the information in the schedule of policies and the premiums are correct. (3) The Borrower has authorized this transaction and recognizes the security interest assigned herein. (4) The Down Payment shown above has been paid by or on behalf of the Borrower, and the Total Premium shown above has been or will be used to purchase insurance policies shown in the Schedule of Policies. (5) There are no exceptions to the policies other than those indicated and the policies comply with LENDER's eligibility requirements. (6) NO AUDIT OR REPORTING FORM POLICIES, POLICIES SUBJECT TO RETROSPECTIVE RATING OR TO MINIMUM EARNED PREMIUMS ARE INCLUDED EXCEPT AS INDICATED AND THAT THE DEPOSIT OR PROVISIONAL PREMIUMS ARE NOT LESS THAN THE ANTICIPATED PREMIUMS TO BE EARNED FOR THE FULL TERM OF THE POLICIES. IF POLICY IS SUBJECT TO A MINIMUM EARNED PREMIUM IT IS (7) The policies can be cancelled by the Borrower of the company on 10 days notice and the unearned premium will be computed on the standard short rate or pro rata table except as indicated. Upon cancellation of any of the Scheduled Policies, Producer shall remit to LENDER the full amount of the unearned premium, including unearned commission as well as any other payments or credits received by Producer, up to the unpaid balance due under this Agreement, within 15 days of receipt. (8) The undersigned represents that a proceeding in bankruptcy, receivership or insolvency has not been instituted by or against the named Borrower or if the named Borrower is the subject of such a proceeding, it is noted on this Agreement in the space in which the Borrower's name and address is placed.

SIGNATURE OF AGENT OR BROKER _____ DATE 8-12-10
 Leslie E. Walsby
 PRINTED NAME

RECEIVED AUG 13 2010

ASSIGNED FOR VALUE
 TO BRANCH BANKING
 AND TRUST COMPANY

PROVISIONS OF YOUR SECURITY AGREEMENT

1. **PROMISE OF REPAYMENT:** The borrower requests LENDER to pay the premiums on the policies shown on the reverse. The Borrower promises to pay to LENDER at its office the amount stated in Block E above, according to the Payment Schedule shown on the reverse, subject to the rest of the terms of this Security Agreement.
2. **SECURITY INTEREST:** The Borrower assigns to LENDER as security for the total amount payable in this Agreement any and all unearned premiums and dividends which may become payable under the insurance policies and loss payments which reduce the unearned premiums, subject to any mortgage or loss payee interests. The Borrower gives to LENDER a security interest in all items mentioned in this paragraph.
3. **DEFAULT CHARGES:** Borrower agrees that if any installment is more than 5 days past due, or minimum number of days permitted by state law, it will pay to LENDER a delinquency charge in an amount up to the maximum permitted by applicable state law. Borrower agrees if default results in cancellation to pay the maximum allowable cancellation charge allowed by applicable state law.
4. **FINANCE CHARGES:** The finance charge, shown in Box "D" on the front side of this Agreement, begins to accrue on the earliest possible date allowed by applicable state law and continues until all funds are paid in full.
5. **WARRANTY OF ACCURACY:** The borrower warrants to LENDER that the insurance policies listed in the above schedule have been issued to the borrower and are in full force and effect and that the borrower has not assigned any interest in the policies except for the interest of mortgagee and loss payees.
6. **REPRESENTATION OF SOLVENCY:** The Borrower represents that it is not insolvent or presently the subject of any insolvency proceeding.
7. **CANCELLATION:** LENDER may cancel the insurance policies and the unpaid balances due to LENDER shall be immediately payable by the Borrower if any of the following occur: (a) The Borrower does not pay any installment according to the terms of this Agreement; (b) The Borrower does not comply with any of the terms of this Agreement; (c) The Borrower or the insurer voluntarily or involuntarily becomes the subject of a bankruptcy, receivership or any other kind of insolvency proceeding; (d) If the Borrower is a business and stops doing business or ceases to be qualified to do business. LENDER at its option may enforce payment of this debt without recourse to the security given to LENDER.
8. **POWER OF ATTORNEY - LIMIT OF LIABILITY:** The Borrower irrevocably appoints LENDER, or its successors or assigns, its Attorney-in-Fact with full authority to cancel the insurance policies, or any renewal thereof, to receive all sums assigned to LENDER or in which it has granted LENDER a security interest and LENDER may execute and deliver on the Borrower's behalf all documents, instruments of payment, forms and notices of any kind relating to the insurance policies in furtherance of this Agreement. LENDER's liability to any person or corporation on the exercise of its authority to cancel the insurance policies is limited to the amount of the principal balance, except if LENDER willfully fails to deliver the notices required by law. When LENDER effects cancellation in accordance with state law, the Borrower will be responsible for attorney's fees and other cost in any unsuccessful action filed as a result thereof to the extent permitted by applicable state law.
9. **MONEY RECEIVED AFTER NOTICE OF CANCELLATION:** Any payment made to LENDER after LENDER's Notice of Cancellation of the insurance policies has been delivered may be credited to the Borrower's account without affecting the acceleration of this Agreement and without any liability or obligation on the LENDER's part to request reinstatement of the canceled policies. Any money LENDER receives from an insurance company shall be credited to the amount due LENDER with any surplus being paid to whomsoever is entitled to the money. No refund of less than \$1.00 shall be made. If there is a balance due after LENDER receives the unearned premiums, dividends or loss payments from the insurance company then the Borrower will pay the balance to LENDER with interest at the rate shown on the agreement.
10. **PREPAYMENT:** Borrower has the right to prepay the entire outstanding balance in full at any time before the due date of the final installment. Upon prepayment in full, or upon cancellation and full payment to LENDER, Borrower will be entitled to receive a refund of the Finance Charge to be computed by the Rule of 78's ("Sum of the Years Digits") method, or as required or permitted by the applicable law, after deducting any fully earned charge permitted by law. If cancellation occurs, the Borrower agrees to pay a Finance Charge on the balance due at the rate on the reverse side of this Agreement until it is paid in full, or until such other date as is required by applicable state law. Borrower agrees to pay LENDER reasonable attorney's fees and collection cost under the terms and condition hereof and to the extent and amount permitted by applicable state law.
11. **INSURANCE AGENT OR BROKER:** The insurance agent or broker named on this Agreement is the Borrower's agent, not LENDER's and LENDER is not legally bound by anything the agent or broker represents to the Borrower, orally or in writing.
12. **SPECIAL INSURANCE POLICIES:** If the insurance policy issued to the borrower is auditable or is a reporting form policy or subject to retrospective rating, then the Borrower promises to pay the insurance company the earned premium computed in accordance with the policy provisions which is in excess of the amount of the premium advanced by LENDER which the insurance company retains.
13. **SUCCESSORS AND ASSIGN:** All legal rights given to LENDER shall benefit LENDER's assign. The Borrower will not assign the policies without LENDER's written consent except for the interest of mortgagees and loss payees.
14. **MISSING AND INCORRECT INFORMATION:** If the policy has not been issued at the time of signing this Agreement, then the Borrower agrees the name of the insurance company, and the policy numbers of the insurance policies may be left blank and may be subsequently inserted in this Agreement. In addition, Borrower authorized LENDER or the agent or broker to contact on this Agreement at any time, if incorrect, the name of the insurance companies, the policy numbers and the installment due dates. LENDER will notify the Borrower of the corrected and/or inserted information.
15. **ADDITIONAL PREMIUMS:** The money paid by LENDER is only for the premium as determined at the time the insurance policy is issued. LENDER's payment shall not be applied by the insurance company to pay for any additional premiums owed by the insured as a result of any type of misclassification of this risk. The Borrower agrees to pay the company any additional premiums which become due for any reason. LENDER may assign to the company any rights it has against the Borrower for premiums due the company in excess of the premium returned to LENDER.
16. **AGENT'S WARRANTIES:** To convince LENDER to enter this Agreement and accept the security underlying this Agreement, the person executing this Agreement, if not the Borrower, warrants severally and as the duly authorized agent of the Borrower: that he is the duly authorized agent of the Borrower appointed specifically to enter into this transaction on the Borrower's behalf; that he can perform any act the Borrower could or should perform with respect to this transaction; that he will hold in trust for LENDER any payments made or credit to the Borrower through the undersigned or to the undersigned, directly, indirectly, actually or constructively by any of the insurance companies and that he will pay the monies to LENDER upon demand to satisfy the then outstanding indebtedness of the Borrower.
17. **ASSIGNMENT:** All of LENDER's rights under this Agreement shall inure to its successors and assigns. This Agreement may not be assigned by the borrower except as provided for in this Agreement.
18. **DOCUMENT AND GOVERNING LAW:** This document is the entire Agreement between LENDER and the Borrower and can only be changed in writing and signed by both parties. The laws of the state of Borrower's residence as set forth above will govern this Agreement. If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be impaired.
19. **SERVICE CHARGE:** The maximum service fee allowable by state regulations will be charged on all returned checks. This same fee will also be assessed if the insured authorizes a payment from a deposit account through an electronic funds transfer or some method other than a paper check signed by the insured, and the insured's bank or financial institution where the deposit account is maintained refuses to honor such withdrawal or payment request because there are insufficient funds in the account.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

Daryhl Taylor, as the Personal Representative
of the Estate of Ruth T. Simpson,

Plaintiff,

vs.

Johnson & Johnson Preferred Financing,
ProCentury Insurance Company, FINCO
Premium Finance Co., Inc., and Carolina
Independent Automobile Dealers Association,
Dealers Risk and Insurance Services,
Independent Dealers Insurance Management,

Defendants.

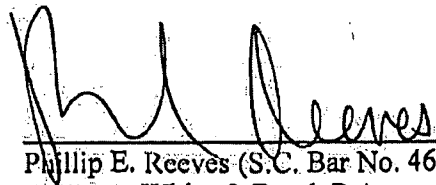
CERTIFICATE OF SERVICE

C.A. No.: 2014-CP-04-398

The undersigned, Phillip E. Reeves, of the firm Gallivan, White & Boyd, P.A., attorneys for the defendant, ProCentury Insurance Company, certifies that on the 14th day of January, 2015, he served its answer and counterclaim to plaintiff's first amended complaint, interrogatories to plaintiff and requests for production to plaintiff by depositing in the U. S. Mail, with due and proper postage affixed thereto, copies of the same addressed to:

Mr. Steven M. Krause
Mr. Timothy A. Nowacki
Krause, Moorhead & Drasien, P.A.
207 E. Calhoun Street
Anderson, SC 29621

Mr. Stephen L. Brown
Ms. Catherine H. Chase
Young Clement Rivers, LLP
Post Office Box 993
Charleston, SC 29402-9993



Phillip E. Reeves (S.C. Bar No. 4672)
Gallivan, White & Boyd, P.A.
Post Office Box 10589
Greenville, South Carolina 29603
(864) 271-9580

Attorneys for Defendant, ProCentury Insurance
Company

MOTION FEE PAID

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Daryhl Taylor, as the Personal Representative
of the Estate of Ruth T. Simpson,)

Plaintiff,)

vs.)

Johnson & Johnson Preferred Financing,
ProCentury Insurance Company, FINCO
Premium Finance Co., Inc., and Carolina
Independent Automobile Dealers Association,
Dealers Risk and Insurance Services,
Independent Dealers Insurance Management,)

Defendants.)

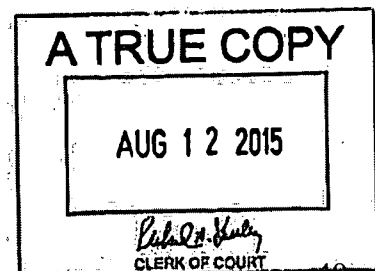
IN THE COURT OF COMMON PLEAS

PROCENTURY INSURANCE COMPANY'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

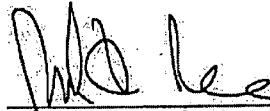
C.A. No.: 2014-CP-04-398

YOU WILL PLEASE TAKE NOTICE that the defendant, ProCentury Insurance Company, by and through its undersigned attorneys, will move before the resident or presiding judge on the 10th day after service hereof, or as soon thereafter as counsel may be heard, at such time and place as the court may determine for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting it summary judgment as to the issue of whether the insurance policy at issue in this action was properly cancelled. This motion is based upon the following grounds:

1. There is no genuine issue as to any material fact in this case; and
2. The only conclusion which can be drawn is that each of the statutory provisions of Section 38-39-90 of the South Carolina Code were complied with in cancelling the insurance policy at issue. As such, the policy was properly cancelled and ProCentury is entitled to summary judgment in its favor as a matter of law.



This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and is based upon the pleadings filed in this case, discovery completed in this case, deposition transcripts, affidavits filed or to be filed, the terms and conditions of the policy of insurance at issue, a Memorandum in Support of Summary Judgment to be filed, and the common and statutory law of the State of South Carolina.



Phillip E. Reeves (SC Bar No. 4672)
Nicholas A. Farr (S.C. Bar No. 78769)
Gallivan, White & Boyd, P.A.
Post Office Box 10589
Greenville, South Carolina 29603
(864) 271-9580

Greenville, South Carolina

August 10, 2015

Attorneys for Defendant,
ProCentury Insurance Company

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Daryhl Taylor, as the Personal Representative
of the Estate of Ruth T. Simpson,

Civil Action No.: 2014-CP-04-0398

Plaintiff,

vs.

**PLAINTIFF'S COUNTER-MOTION FOR
SUMMARY JUDGMENT**

Johnson & Johnson Preferred Financing,
ProCentury Insurance Company, FINCO
Premium Finance Co., Inc., and Carolina
Independent Automobile Dealers Association,
Dealers Risk and Insurance Services,
Independent Dealers Insurance Management,

Defendants.

A TRUE COPY

SEP 23 2015

K. D. V. Allen
CLERK OF COURT

TO: DEFENDANT PROCENTURY INSURANCE CO. AND ITS ATTORNEY PHILLIP E. REEVES, ESQ.; DEFENDANT JOHNSON AND JOHNSON PREFERRED FINANCING AND ITS ATTORNEYS, STEPHEN L. BROWN, ESQ AND CATHERINE H. CHASE, ESQ.; DEFENDANT FINCO PREMIUM FINANCE CO. AND ITS ATTORNEY THOMAS L. STEPHENSON, ESQ.; DEFENDANTS CAROLINA INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION, DEALERS RISK AND INSURANCE SERVICES, AND INDEPENDENT DEALERS INSURANCE MANAGEMENT AND THEIR ATTORNEY, WILLIAM E. BOOTH III, ESQ.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service hereof, or as soon, thereafter as counsel may be heard, the Plaintiff, Daryhl Taylor, as the Personal Representative of the Estate of Ruth T. Simpson, will move before this Honorable Court for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting him summary judgment as to the issue of whether the insurance policy at issue in this action was properly cancelled. This motion is based upon the following grounds:

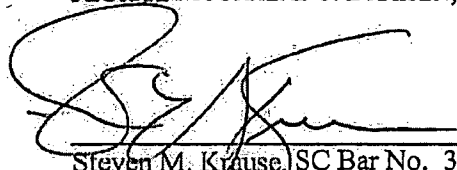
1. There is no genuine issue as to any material fact in this case; and
2. The only conclusion which can be drawn is that the Defendants failed to satisfy each of the statutory requirements of Section 38-39-90 of the South Carolina Code governing

the cancellation of insurance policies financed by premium service companies. As a result, the policy was improperly cancelled and Plaintiff is entitled to summary judgment in its favor as a matter of law.

This motion is further based on the Rules of Civil Procedure, the pleadings, the laws of the State of South Carolina, a memorandum law to be submitted, exhibits, and upon such other and further grounds as may be properly presented to the court.

Respectfully submitted,

KRAUSE MOORHEAD & DRAISEN, P.A.



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September 22, 2015

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
Darhyl Taylor, as PR of the Estate	)	
Of Ruth T. Simpson,	)	
	)	
v.	)	Case No. 14-CP-04-0398
	)	
Johnson & Johnson Preferred Finan-	)	
cing, <i>et. al.</i> ,	)	
	)	
Defendants.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on February 18th, 2016, before The Honorable J. Cordell Maddox in the Court of Common Pleas for the Tenth Judicial Circuit; attended by counsel as follows:

APPEARANCES:

Timothy A. Nowacki, Esq.
Steven M. Krause, Esq.
207 East Calhoun Street
Anderson, South Carolina 29621
Appearing for Plaintiff

Phillip E. Reeves, Esq.
Appearing for ProCentury Insurance

Stephen L. Brown, Esq.
Appearing for Johnson & Johnson

Thomas L. Stephenson, Esq.
Appearing for FINCO

William E. Booth, III, Esq.
Independent Automobile Dealers Association

TRANSCRIBED FOR VIVIAN CROSS, COURT REPORTER

Deborah A. Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

1 THE COURT: This is Darhyl Taylor
2 as Personal Representative of the Estate of
3 Ruth Simpson?

4 MR. REEVES: Yes, sir.

5 THE COURT: Versus Johnson &
6 Johnson Preferred Financing, *et. al.*?

7 MR. REEVES: Good morning. Your
8 Honor, I am Phil Reeves. I'm here for
9 ProCentury Insurance Company.

10 There are a series of Motions before
11 you. I think that one of those has been
12 resolved by Mr. Brown's Motion to amend. I
13 think that's off, it's been resolved.

14 MR. BROWN: That's correct, Your
15 Honor. It was a Motion to withdraw and amend
16 certain answers and requests to admit.
17 Counsel and I have consulted and he is in
18 agreement with it.

19 THE COURT: Thank you.

20 MR. REEVES: So what you are left
21 with are three Motions for summary judgment.
22 Mine was first filed, so I get the honor of
23 speaking first.

24 This is a premium services financing
25 case. I'm assuming that you've run into some

1 of those before.

2 THE COURT: I have.

3 MR. REEVES: Let me give you a
4 little bit of factual overview. The insured
5 in the case is a company called AutoNext
6 (phonetic). AutoNext was a small repair
7 shop/dealership here in Anderson. It needed
8 some insurance -- it is now out of business,
9 by the way.

10 It needed some insurance, so it went
11 through the Independent Automobile Dealers
12 Association, which is one of the defendants.
13 That's one of the companies that Mr. Booth
14 represents. Apparently they offered
15 insurance to these folks as an association
16 under the terms of some creative financing
17 arrangements.

18 So what happened was that they went
19 to a company called FINCO, represented by Mr.
20 Stephenson, and they signed a premium
21 servicing finance agreement, a standard
22 agreement whereupon FINCO loaned them the
23 money to buy the policy; and the policy was
24 purchased from ProCentury, which is who I
25 represent.

1 Under the terms of the agreement,
2 they were to pay the money back. For a
3 period of time, they did. But there came a
4 time when they quit paying the money back for
5 their premium.

6 As the Court knows, premium service
7 companies are fairly heavily regulated by
8 statute. The statute is South Carolina Code
9 Section 38-39-9, and its got some pretty
10 specific requirements about what you can put
11 in a premium service agreement and what you
12 have to do when they quit making the
13 payments.

14 The premium servicing agreement is
15 before you, it's in the record. It basically
16 has language that says that the borrower,
17 AutoNext gives irrevocable power of attorney
18 to the lender, which was FINCO at that point,
19 to cancel the policy if the payments were not
20 made by giving them the requisite notices
21 under the statute.

22 That's what happened here. All of
23 this occurred in April and May of 2011.
24 There were two notices that were sent, as the
25 statute required. The first notice was sent

1 in April of 2011 saying, 'You're not making
2 your payments, you've got to make regular
3 payments. It's due. If you don't do it,
4 we're sending you notice of our intent to
5 cancel the policy.' That notice had to be
6 sent within -- they had to be given ten days
7 notice. That happened. The payment wasn't
8 made.

9 So the second notice was sent, a
10 notice of cancellation that says "...your
11 policy is canceled effective May 31st, 2011."

12 No response from AutoNext to either
13 of those notices. They didn't make any
14 payments, they didn't make any calls, there
15 was nothing in the record to indicate that
16 they took any action once they got these
17 notices.

18 So the notices -- the last notice
19 was the notice of cancellation. Under the
20 statute the lender has the right to cancel
21 the policy just as the insured would have the
22 right to cancel the policy. It did that, it
23 did that effective May the 31st, 2011.

24 Spring forward a little bit.
25 Basically as an administrative act a couple of

1 months later, they sent -- the dealers
2 actually sent a notice to ProCentury saying
3 "This policy was canceled under the terms of
4 the premium finance servicing agreement
5 effective May 31st, 2011. Mark your records
6 accordingly." ProCentury did that.

7 ProCentury filed an endorsement to
8 the policy saying 'this policy was canceled
9 effective May 31st, 2011.' It also in that
10 endorsement said that there would be a return
11 of premium of \$382 -- I think was the amount
12 of the unearned premium that was returned.

13 That all happened in July and August
14 of 2011.

15 Here's the catch. Earlier in July
16 of 2011, there was an automobile accident.
17 The automobile accident involved a car owned
18 by AutoNext and being operated by one of its
19 employees, a lady name Ruth Simpson.

20 Ms. Simpson, who Mr. Nowacki
21 represents, was killed in the accident.

22 After she was killed, she made some
23 claims against several folks. She made some
24 claims against, I think Progressive, who
25 insured the driver of the vehicle. That was

1 paid. I think that she a hundred thousand
2 dollars (\$100,000) payment on that. They can
3 confirm that, I'm not real sure about that.

4 She made a claim against ProCentury,
5 or her estate did. We told them that there
6 was no coverage under the policy, that the
7 policy had been canceled May 31st, 2011. She
8 filed suit. They had a bench trial. Judge
9 McIntosh, I believe, was the bench trial
10 judge and he awarded her estate five hundred
11 thousand dollars (\$500,000), split four
12 hundred for the wrongful death and a hundred
13 for the survival. I think that's correct.

14 So they then filed this suit
15 initially against ProCentury and then later
16 on they added Independent Dealers and Johnson
17 & Johnson. Johnson & Johnson is here because
18 at some point in this transaction Johnson &
19 Johnson bought FINCO. Okay? So I will let
20 Mr. Brown tell you how that happened, but
21 that's why Johnson & Johnson is here.

22 So they allege in their Complaint
23 that the statute was not properly complied
24 with and that the policy should continue to
25 be in effect. Everybody answered, said 'we

1 disagree, we think everything was done
2 correctly.' The policy was canceled, it was
3 not in effect. We counterclaimed for a
4 declaration that the policy was properly
5 canceled.

6 So those are the issues before you.

7 As I understand it, the plaintiffs
8 make a couple of arguments. I am not sure
9 about the first one, they may have abandoned
10 it. I am not sure.

11 But one of the arguments that they
12 made is that FINCO did some financing with
13 BB&T, assigned some of its accounts to BB&T
14 in connection with that; that this was one of
15 the accounts that was assigned and that
16 therefore FINCO didn't have the right to
17 cancel the policy. Well, the premium
18 financing servicing agreement says the lender
19 or its assignees can cancel the policy, so we
20 really don't think much of that argument.

21 The second argument that they make
22 has to do with the return of the premium. I
23 think that is where you will hear most of the
24 talk today.

25 Again, here's what happened. The

1 policy was canceled. It was canceled as May
2 31st by the lender, which the lender has the
3 right to do.

4 The statute clearly provides and
5 anticipates that after the policy is canceled
6 -- and it actually says "after the policy is
7 canceled" in the statute, then the premium
8 has to be returned. Well, ProCentury of
9 course knew nothing about the cancelation
10 until they given this notice in July by the
11 Dealers. Immediately, the day that they got
12 the notice the policy had been canceled, they
13 filed an endorsement saying that this policy
14 was canceled; in fact, on May 31st, 2011, and
15 the return of the premium will be due, three
16 hundred eighty-two buck (\$382) within ---

17 THE COURT: This happened between
18 May 31st and the return of the premium?

19 MR. REEVES: Yes. Between -- about
20 three weeks later, in mid-August of 2011, the
21 premium was returned.

22 So the issue simply put is, is the
23 cancelation effective as of May 31st or is
24 there coverage for this accident that
25 occurred in July when the premium was

1 returned later?

2 There is a case that you will hear
3 about, that both sides will hand up, called
4 the *Bowman* case. The *Bowman* case deals with
5 a workers compensation policy. In that case
6 -- in that policy the Court says clearly that
7 the return of the premium is a condition
8 precedent to being able to cancel the policy
9 because the statute says that you've got to
10 return the premium. We don't disagree with
11 that. What happened in that case is that the
12 premium was never returned. Because it was
13 never returned the Court said that the policy
14 can't have been considered canceled, because
15 part of it was that you had to return the
16 premium. We agree with that. The
17 distinguishing factor here is that the
18 premium was returned. As soon as ProCentury
19 got notice, it made arrangements to have the
20 premium returned.

21 Here's the issue, as I see it. The
22 issue as I see it is, does *Bowman* somehow
23 change the date of the effective date of the
24 cancelation? We don't think it does. We
25 think that *Bowman* stands for the proposition

1 that you've got to do all three steps:
2 you've got to file the notice of intent,
3 you've got to file the notice of cancelation,
4 and you've got to return the premium. You do
5 those in order.

6 The statute specifically says, if
7 you ready the section talking about returned
8 premium, it says "if the insurance is
9 canceled then the premium shall be returned."
10 So that, by definition, means that you can't
11 return the premium before the policy is
12 canceled. Okay? In fact, it wouldn't make
13 sense to be able to return the premium before
14 the policy is canceled.

15 So we believe that we did everything
16 right: the notice was sent, we don't think
17 that there is any factual dispute about that;
18 the policy was canceled, we don't think that
19 there was any factual dispute about that; the
20 premium was returned, we don't think that
21 there was any factual dispute about that.

22 The legal issue, to the extent that
23 there is a legal issue is, does the fact that
24 it was returned after this accident somehow
25 operate to change the date of the

1 cancelation? We don't think it does. We
2 don't think the statute calls for that. We
3 don't think *Bowman* says that. In fact we
4 think *Bowman* is distinguishable because the
5 premium was never returned. We agree that
6 if we had not returned the premium, we
7 wouldn't be here, but we did as soon as we
8 got notice that we needed to do it.

9 So our position, fairly simply, is
10 that everything was done correctly in
11 accordance with the statute, that the policy
12 was canceled by the insured, which is what
13 the power of attorney said, effective May
14 31st, 2011. The insured never complained,
15 never made any argument, never contested it,
16 never made a payment, never said anything at
17 all. They were just gone. Therefore, this
18 policy was canceled effective May 31st.

19 THE COURT: So basically the issue
20 is when the policy was canceled?

21 MR. REEVES: Yes.

22 THE COURT: At the time of the
23 letter or upon the return of the premium?

24 MR. REEVES: Yes, sir.

25 MR. STEPHENSON: Your Honor, I

1 represent FINCO, I've got almost nothing to
2 add to that except to point out that I know
3 this Court is equitable, fair, ---

4 THE COURT: It depends on which
5 side you're on, ---

6 MR. STEPHENSON: That doesn't
7 matter because I've not been getting paid so
8 far, but that doesn't matter except FINCO is
9 out of business, doesn't exist anymore.
10 Maybe that doesn't matter either but what
11 matters is that if you read the Complaint
12 there is nothing that is sought against this
13 defunct company, who is not paying their
14 lawyer. It asks for a declaratory judgment
15 that there is insurance. So either there is
16 insurance or there is not and it doesn't
17 matter about FINCO, who is now out of
18 business.

19 Now, just so that you understand
20 what happened, after all that -- okay? After
21 all that -- in November, after all this was
22 over, FINCO sold out to -- what is the name
23 of your client?

24 MR. BROWN: Johnson & Johnson.

25 MR. STEPHENSON: Johnson & Johnson.

1 And they did not sell this asset. They sold
2 some assets. When discovery took place some
3 of the documents had Johnson & Johnson
4 written on it. Clearly Johnson & Johnson,
5 and I say that on behalf that we sold to
6 them, uh, produced some documents, spit out
7 of the computer, that said Johnson & Johnson.
8 But Johnson & Johnson got into this game way
9 after the fact that they, they shouldn't be
10 in it. That's all that I've got to say.

11 THE COURT: Okay. Well, let me
12 ask you this. Let me deal with that
13 equitable issue. Is there some reason you
14 all want them to stay in, is there some
15 equitable reason why you need them to keep
16 coming up here?

17 MR. REEVES: No, I thoroughly enjoy
18 Mr. Stephenson and would not voluntarily
19 release him from that because that would mean
20 that I would not have the opportunity of
21 commiserating with him as we do now.

22 THE COURT: But is there a real
23 legal reason to keep him in if the asset was
24 sold and they are defunct?

25 MR. REEVES: If that is correct,

1 however the documents that we have presently
2 don't say that. We don't have any reason to
3 doubt what counsel is representing. We heard
4 that fairly recently, so in all probability
5 Mr. Stephenson will be staying in Greenville,
6 to my dismay.

7 THE COURT: Go ahead.

8 MR. BOOTH: Your Honor, I am
9 William Booth, a lawyer from Lexington
10 County. My client is a defendant in this
11 case in association with the Independent Car
12 Dealers Association that had to do with
13 selling insurance, in this case, to an
14 automobile dealer.

15 I can stand my defense very simply,
16 don't kill the messenger. My client is
17 nothing but a messenger between the company
18 that had the financial -- FINCO at that time
19 -- and ProCentury, which had the right to --
20 had the insurance that was supposedly
21 canceled. My client was simply a messenger.

22 The only thing that has come up,
23 Judge, that they have kind of argued is that
24 we delayed in getting the message to
25 ProCentury. In other words, my client got

1 the message that "this policy is canceled" --
2 "is canceled." That message, for whatever
3 reason, and we don't dispute it, didn't get
4 transmitted to ProCentury until later and
5 that's why the payment of the unearned
6 premium got paid later.

7 But as a messenger, we had nothing
8 that we could have done differently. We did
9 everything that we were supposed to. We
10 just delayed in sending the message that the
11 premium finance company said this policy is
12 canceled. The date of cancelation sticks no
13 matter when the message gets sent over, so
14 that's all our involvement is. Of course, we
15 would like for plaintiff to weigh in on this.

16 THE COURT: Well, now, let me ask
17 you this. There hasn't been any cross-claim
18 from your people for delay; right?

19 MR. REEVES: The counterclaim that
20 I suspect for a declaration that 'we did
21 everything right.' But those claims are
22 percolating. One of the reasons that
23 everybody is here is because depending on
24 what you do those claims could come.

25 THE COURT: So -- I mean, if I let

1 them out in this case, you're going to cross-
2 claim against them?

3 MR. REEVES: Yeah.

4 THE COURT: Yeah.

5 MR. REEVES: If you let them out on
6 the basis that we got notice late and that it
7 therefore somehow extends the cancelation
8 date, I have no choice.

9 MR. BOOTH: Our duties were
10 administerial acts.

11 THE COURT: I am just looking down
12 the road, as a practical matter whether you
13 might have to come back in. Yes, sir?

14 MR. BROWN: Your Honor, I spoke
15 with plaintiff's counsel and the issue before
16 the court today is whether there was a policy
17 in effect or not. I've produced every -- I
18 didn't file it with the court because I
19 didn't think that the clerk would appreciate
20 me sending this in, but this is the asset
21 purchase agreement. It lists each specific
22 policy by number that my client purchased
23 under the asset purchase agreement. The
24 policy at-issue is not in here. It was dated
25 and executed November 30th, 2011, which is

1 after -- I think everyone will agree -- this
2 whole thing was, start to finish, -- we came
3 in after that, so I'd respectfully ask that
4 they'd consider letting me go. I was
5 brought in because this document had my name
6 on it. Someone called our office asking for
7 a purchase agreement, requested a copy of the
8 documents -- to populate documents with
9 certain names, certain provisions and the
10 computer spit this out. I'd just throw that
11 out there. I think everyone could truthfully
12 agree that I am not involved, not a problem
13 for them.

14 THE COURT: So your company bought
15 a bunch of assets from Mr. Stephenson's at
16 that time but it didn't buy this asset?

17 MR. BROWN: Yes. That's correct.

18 THE COURT: All right. So that
19 policy stayed with Mr. Stephenson's client,
20 who is now defunct.

21 MR. BROWN: And I don't see how
22 Mr. Reeves client can get to me on a cross-
23 claim because I just wasn't in the picture.

24 THE COURT: I wouldn't sell Mr.
25 Reeves short, he'll figure something out.

1 MR. NOWACKI: And, Your Honor, if I
2 may go through a bit of this as to the reason
3 why we brought all the parties in.

4 THE COURT: And I'm not trying to
5 shorten you. I'm just trying to figure out,
6 seriously, where we are.

7 MR. NOWACKI: Yes, Your Honor. I
8 created a color timeline to help you
9 visualize this because it helped me. I'd
10 like to hand this up to you as well as some
11 case law, as well as some statutes that I
12 believe you already have a copy of.

13 I am going to make three points ---

14 THE COURT: Well, let me ask you
15 something.

16 MR. NOWACKI: Yes, sir?

17 THE COURT: This timeline doesn't
18 do anything different than to say that there
19 was an alleged date of cancelation, which
20 would have been the letter; then there was
21 the wreck; then there was the return of the
22 premium. Right?

23 MR. NOWACKI: Correct.

24 THE COURT: All right.

25 MR. NOWACKI: And I am going to go

1 through those as to the dates and why I think
2 that they are important. I'm going to make
3 three points. This is statutory. As Mr.
4 Reeves said, it is strict compliance. The
5 courts have been clear on this and there is
6 case law that I will address on each point,
7 but I have three specific points -- and I'll
8 go through it with the timeline -- as to why
9 we believe that this policy was not properly
10 canceled in accordance with the premium
11 service financing statute.

12 THE COURT: Okay.

13 MR. NOWACKI: The first of which --
14 and I will refer you to document two in the
15 exhibits that I've provided. That would be
16 that there is no proof of mailing. The
17 statute requires that there be proof of
18 mailing of the cancellation.

19 Document two, there was a request
20 from one of Mr. Reeves' associates, through
21 Johnson & Johnson premium finance company,
22 that if they had any proof that there were
23 any notices. The very first entry on 10-4-13
24 says that attorney asked if they would sign
25 an affidavit saying that there was no proof

1 of mailing. Also then on "6-12-13, Nick
2 Farr, Attorney, called to see if we had proof
3 of mailing and told him no." So today we've
4 seen no proof that the notices were actually
5 sent. The statute requires that there be
6 some proof of mailing.

7 Two, and this has to do with timing.
8 As we looked into this more -- and the dates
9 are important. The company, we believe, in
10 looking at this failed to comply with the
11 timing requirements of sending the notices.
12 This is under 30-39-98. As Mr. Reeves
13 explained, they have ten days notice from the
14 date of the intent of cancellation -- they've
15 got to give ten days notice.

16 And as you see -- if you look at the
17 timeline, on 5-16, the Intent to Cancel.
18 That has the date of there of the intent to
19 cancel.

20 On 5-26, the cancelation date was
21 sent with an effective date of 5-31. Under
22 the statute, it says that they've got to
23 provide ten days written notice, that's under
24 subsection (b). But if you look at
25 subsection (c) it says, "but not less than

1 five days after the expiration of notice
2 required can they send a notice of
3 cancelation." So if they mailed it on 5-16,
4 ten days would be 5-26. The court -- the
5 Court of Appeals -- I'm sorry.

6 Yes, the Court of Appeals in the
7 case of *South Carolina Insurance Company v*
8 *Brown* said that that five days is a five-day
9 waiting period. The courts specifically said
10 that when -- that they have to waive that
11 five days after the ten days, so it has to be
12 fifteen days, essentially, before they send
13 that notice of cancelation.

14 The *South Carolina Insurance Co v.*
15 *Brown* is on point. The insurance company
16 filed a DJ action basically to declare that
17 they wanted to say everything was timely sent
18 and the Court said -- and here the initial
19 notice of intent to cancel was sent on
20 November 16th, notice of cancelation was sent
21 November 27th and the Court said that was one
22 day after the ten days, that they didn't wait
23 the five days, so it wasn't in accordance
24 with the statute and they said that the
25 policy was still in force. That is the

1 second point. Again, that is strict
2 compliance and there is case law on that.

3 The third point and this is the one
4 that I want to address specifically -- and I
5 know that Mr. Reeves has addressed it -- is
6 failure to timely return the premium. They
7 are alleging that it was canceled on 5/31,
8 which we believe is incorrect.

9 The return of the premium is not
10 simply an administerial act. There are
11 actually two obligations under the statute to
12 provide a return of -- to return a premium.
13 It is not just the insurance company. The
14 first is that the insurance company has to
15 return it and refund it, but the premium
16 finance company also has a duty to promptly
17 refund the excess to the insured.

18 If you look at the timeline, 5-16 is
19 when they sent the initial intent to cancel.
20 They are alleging a 5-31 cancelation date.
21 The wreck happened 6-17, so June 17th, just a
22 couple of weeks afterwards. In one of the
23 exhibits that I provided on the account
24 notes, you'll see that on 7-28 they see a
25 cancellation request and there is this flurry

1 of activity that starts after the claim
2 accrues at the end of July. Then on 7-29,
3 this cancelation request comes in.

4 Then another couple of weeks go by
5 before there is the actual cancelation which
6 they claim was effective 5-31.

7 Then the return premium check was
8 issued on 8-17, which we've provided a copy
9 of in the exhibits.

10 The case on point in this is *Bowman*
11 *v State Roofing Company*, which Mr. Reeves has
12 referred to and they said that this was an
13 administerial act. The Court has been
14 specific on this. That was argued that it
15 was simply an accounting matter, which to me
16 is akin to an administerial act. And the
17 Court says, "We have held that where an
18 insurance premium provides for a return of
19 unearned premium upon cancelation, the tender
20 of refund is a condition precedent to an
21 effective cancelation."

22 "Precedent" has to mean something.
23 If they are going to have to return that
24 premium to cancel a policy, the Court has
25 already said that they have to do it.

1 beforehand.

2 Here -- while they did return the
3 premium in the case -- in the *Bowman* case, it
4 makes little difference I think because of
5 the delay that happened here. Uh, -- in fact
6 the Court went on to say "once a client has
7 notice of request of cancelation they have
8 the right to demand return of the unearned
9 premium." Further, subsection "f" requires
10 the premium service company credit any return
11 of unearned premiums to the account of the
12 insured and promptly refund -- the court
13 emphasized that -- any surplus over three
14 dollars. This "works to the benefit of the
15 insured and is an added protection of
16 insuring notice to the insured."

17 So the Court has said that it is not
18 simply an administerial act.

19 And I want to add something -- there
20 was a correspondence which supposedly went
21 from Exhibit 6, which I have attached, -- and
22 this is from FINCO to Independent Insurance
23 Management. I thought that this was
24 interesting in terms of timing. In the
25 middle of the page it says, "Not to Insurer:

1 Please be advised that the gross cancelation
2 return must be returned within sixty (60)
3 days of cancelation date."

4 Now, that is something that the
5 agent here is advising the insurance company
6 that they need to return a premium. That has
7 nothing to do with our client. We think the
8 controlling part of the statute is the prompt
9 return of premium to the insured.

10 Again, we're looking at -- based on
11 the timeline -- a total of seventy-eight (78)
12 days between the alleged date of cancelation
13 to the return of the premium and another --
14 then sixty-one (61) days from the date of the
15 wreck, which is when the claim accrues to the
16 date of the return of the premium.

17 So it is our position that again
18 this is a strict compliance statute. The
19 Courts have been very clear in Court of
20 Appeals Decisions and Supreme Court
21 Decisions, a couple of pages saying, 'You
22 didn't do it, too bad. The insurance is in
23 place.'

24 THE COURT: So basically you're
25 saying that it wasn't canceled until the

1 money was returned?

2 MR. NOWACKI: That's correct, Your
3 Honor. In addition, we're arguing that as
4 far as the notices that they didn't comply
5 with the notice requirement, and that is
6 *South Carolina Insurance Company v Brown*.

7 THE COURT: Okay.

8 MR. NOWACKI: Not just the timeframe
9 but the proof of mailing.

10 THE COURT: Okay. Does the
11 statute require proof of mailing.

12 MR. NOWACKI: It is in the middle of
13 "c", I believe, Your Honor. Yes, subsection
14 "c", (reading): "It is sufficient to give
15 notice either by delivering to the person or
16 depositing it in the United States Mail,
17 postage prepaid to the last known address."

18 COURT REPORTER: I'm sorry?

19 THE COURT: I got it. He said,
20 "It is sufficient to give notice either by
21 delivering to the person or depositing it in
22 the United States Mail, postage prepaid."

23 MR. REEVES: Your Honor, if I may,
24 what we have -- and I can hand it up. I
25 think it is in these exhibits but if not, I

1 can hand it up, is the notice history for
2 this account. If the court looks at that
3 history it has got Intent to Notice sent by
4 regular mail and e-mail, and it's got the
5 cancelation notice sent by regular mail and
6 e-mail. E-mail to the agent, regular mail to
7 the insured.

8 THE COURT: My biggest problem is
9 that return -- I mean, these are issues. I
10 understand your argument that in the Brown
11 case that it was ---

12 MR. REEVES: Bowman.

13 THE COURT: --- Bowman. That in
14 the *Bowman* case that it was never returned
15 and therefore that's factually different.
16 But just because they didn't ever return it,
17 it says that it is not complete until you
18 return it.

19 MR. REEVES: They said that it --
20 they used the language "condition precedent."

21 THE COURT: Yeah.

22 MR. REEVES: But if you think that
23 through to its logical conclusion, that means
24 that you are wiping out the rest of the
25 statute, because the statute says that the

1 lender has the right to basically step in and
2 say that this policy is effectively canceled
3 effective this date. To read the way that
4 they would like it read is no help, you don't
5 have that right because it is never going to
6 happen until the premium is returned and
7 you'd have a different date, which is based
8 on whatever the vagaries are of how the
9 premium is returned. That is not what the
10 statute is intended to do. It is intended to
11 make sure that the notice is given, for the
12 date that it is given, and that the premium
13 is then returned. It was. I don't think
14 that the legislature intended to make that
15 final date dependent on the premium being
16 returned -- if it had, it would have said
17 that if a contract is canceled that the
18 insurer shall return the premium. That, by
19 definition, means that the policy has been
20 canceled. That is the only thing that makes
21 sense. You can't return something that is
22 still being used to pay premiums for a
23 policy.

24 THE COURT: Only this group of six
25 lawyers can literally make me wonder what the

1 word "cancel" means. Seriously, everybody
2 else -- yes, sir?

3 MR. NOWACKI: And, Your Honor, the
4 *South Carolina Insurance Company v Brown*
5 case, and this is why I want to point out
6 that I think that there is a difference
7 between the insurance company returning a
8 premium as well as a difference with the
9 premium finance company. The South Carolina
10 Insurance Company in this case -- and this is
11 the *Brown* case -- said, (reading): "The
12 notice to effect cancelation was mailed one
13 day after the expiration of the first notice
14 and therefore is not in compliance with the
15 statute, which requires a five-day waiting
16 period."

17 THE COURT: Right.

18 MR. NOWACKI: And I know that
19 Phil's client has a concern but the case went
20 on to say that, "Additionally the record
21 shows that the notice to effect cancelation
22 was not addressed to the insurance company.
23 The insurance company offered no evidence
24 that the notice of intent was mailed to the
25 insurance company." And the insurance

1 company went to try to cancel the insurance
2 policy itself because it was concerned about
3 the lack of compliance with the statute.

4 So, again it -- the fact that it
5 hadn't been returned, the fact that we think
6 that they haven't complied with the timing
7 requirements and the statutes -- there is
8 more than one player here which has to comply
9 with the statute; they didn't do it, and the
10 insurance policy is in place.

11 THE COURT: Okay, I get it. Let
12 me read it -- I'm not going to make y'all sit
13 here but you'll know something before I leave
14 for Richland Monday. I am not going to just
15 let it sit.

16 But, for instance, let's say that I
17 agree -- just as a practical matter, let's
18 say that I agree with return of the policy
19 (sic) is a condition precedent and that it
20 didn't expire; therefore, somebody may be on
21 the hook. Who can I let out so that they
22 don't have to come back? Assuming that's the
23 way I rule?

24 (Laughter).

25 I know we're talking form over

1 substance. If I rule that way, am I
2 correct in saying that you would amend
3 and cross-claim against everybody here?

4 MR. REEVES: With the possible
5 exception of ---

6 THE COURT: Because they
7 didn't buy anything. So why can't I let
8 him out.

9 MR. REEVES: So that the Court
10 is aware, there are document -- and I
11 think Steve agrees with this, he alluded
12 to it, there were documents that didn't
13 confirm that representation. That's why
14 they are sitting here.

15 THE COURT: Computer
16 generated.

17 MR. REEVES: Since that time,
18 other documents have come in. It may be
19 that even by the time that the court
20 makes that ruling that it alluded to, he
21 may not be here. Now, in the same
22 breath, we wouldn't do anything -- I
23 wouldn't feel comfortable, Your Honor, if
24 that were my call, to prejudice anything
25 that any of the defendants would have

1 between each other.

2 THE COURT: No, I don't want
3 to do that. I mean, I can kind of see
4 where this is headed. I am just trying
5 to ---

6 MR. REEVES: And it may be that
7 Johnson & Johnson is out but we haven't
8 really concentrated on that outside of
9 the documents that he has given ---

10 THE COURT: All right. Let me
11 ask you this, what does he have to give
12 you to show to your satisfaction that
13 this asset -- I mean, I know that he has
14 something that has Johnson & Johnson
15 printed on it, but what is it that he has
16 to give you -- you just tell me. You've
17 said that the reason you've sued him is
18 because that was on there and you were
19 not sure that it was included.

20 MR. REEVES: Well, the reason
21 we sued him is because the documents came
22 in that said that it was included.

23 Now, to back this up a little
24 bit, we have mediation and it was at that
25 mediation -- which was three weeks ago --

1 that surfaced ---

2 THE COURT: I gotcha.

3 MR. REEVES: Since then all of
4 the focus has been on this hearing.

5 THE COURT: Okay. Let me do
6 this. I will take it under advisement.
7 With all these insurance things, its so
8 many years ago that all these statutes
9 were written and it is just stunning the
10 stuff that they put in without thinking
11 it through. All these people who talk
12 about there being too many lawyers in the
13 Legislature have never looked at how many
14 lawyers really are in the Legislature.
15 It ain't a bunch.

16 I am not saying that lawyers
17 would stop this kind of thing because the
18 truth of the matter is that they're
19 written by staff somewhere, but -- but it
20 seems to me, just a first blush, that the
21 way that you first read this the statute
22 creates requirements down the chain to
23 cancel a policy, starting with 'it is
24 canceled', 'here is your notice' and then
25 it moves down the chain left or right and

1 then the last person to get it is this
2 lady who is dead. The point that she is
3 hooked in on that is when the policy
4 premium was returned and was notified
5 'you ain't got any insurance.' Or her --
6 I guess actually it wouldn't matter to
7 her.

8 You'd almost have to have this
9 literal fact -- date/fact -- situation
10 for this to occur. It doesn't occur
11 unless the wreck occurs between the
12 notice of cancelation and the return of
13 premium; which is a sad thing. Something
14 that they ought to think about when they
15 write these procedures. There ought to
16 be a catch-all provision. All you have
17 to do is put an "f" in here that says
18 that it is not binding upon the insured
19 until notice is received.

20 MR. REEVES: Sure.

21 THE COURT: I am not going to
22 be too critical because I was just down
23 there playing golf, not worrying about
24 it.

25 I'll take it under advisement.

1 Mr. Stephenson, as much as I
2 want to let you out, I don't know how to
3 do it.

4 MR. STEPENSON: I am not too
5 worried about it, I'm local counsel.

6 THE COURT: As far as the
7 Association goes, I think you're, quite
8 frankly, still in for a while. But I am
9 not sure, quite frankly, that you get out
10 no matter what because they are going to
11 cross claim against you.

12 Have y'all made any headway in
13 mediation?

14 MR. KRAUSE: No. Some.

15 THE COURT: You need me to
16 rule for you to make some more headway?
17 Well, off the record.

18 (OFF RECORD DISCUSSION)

19 THE COURT: I will let you
20 know.

21 (HEARING CONCLUDED)

22

23

24

25

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on February 18th, 2016, before The Honorable Cordell Maddox as prepared from the audio recordings of Vivian C. Cross, assigned Court Reporter;

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


Deborah Garrison

Charleston, South Carolina
August 7, 2016

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
Darhyl Taylor, as PR of the Estate	)	
Of Ruth T. Simpson,	)	
	)	
v.	)	Case No. 14-CP-04-0398
	)	
Johnson & Johnson Preferred Finan-	)	
cing, <i>et. al.</i> ,	)	
	)	
Defendants.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on February 18th, 2016, before The Honorable J. Cordell Maddox in the Court of Common Pleas for the Tenth Judicial Circuit; attended by counsel as follows:

APPEARANCES:

Timothy A. Nowacki, Esq.
Steven M. Krause, Esq.
207 East Calhoun Street
Anderson, South Carolina 29621
Appearing for Plaintiff

Phillip E. Reeves, Esq.
Appearing for ProCentury Insurance

Stephen L. Brown, Esq.
Appearing for Johnson & Johnson

Thomas L. Stephenson, Esq.
Appearing for FINCO

William E. Booth, III, Esq.
Independent Automobile Dealers Association

TRANSCRIBED FOR VIVIAN CROSS, COURT REPORTER

Deborah A. Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

1 THE COURT: This is Darhyl Taylor
2 as Personal Representative of the Estate of
3 Ruth Simpson?

4 MR. REEVES: Yes, sir.

5 THE COURT: Versus Johnson &
6 Johnson Preferred Financing, *et al.*?

7 MR. REEVES: Good morning. Your
8 Honor, I am Phil Reeves. I'm here for
9 ProCentury Insurance Company.

10 There are a series of Motions before
11 you. I think that one of those has been
12 resolved by Mr. Brown's Motion to amend. I
13 think that's off, it's been resolved.

14 MR. BROWN: That's correct, Your
15 Honor. It was a Motion to withdraw and amend
16 certain answers and requests to admit.
17 Counsel and I have consulted and he is in
18 agreement with it.

19 THE COURT: Thank you.

20 MR. REEVES: So what you are left
21 with are three Motions for summary judgment.
22 Mine was first filed, so I get the honor of
23 speaking first.

24 This is a premium services financing
25 case. I'm assuming that you've run into some

1 of those before.

2 THE COURT: I have.

3 MR. REEVES: Let me give you a
4 little bit of factual overview. The insured
5 in the case is a company called AutoNext
6 (phonetic). AutoNext was a small repair
7 shop/dealership here in Anderson. It needed
8 some insurance -- it is now out of business,
9 by the way.

10 It needed some insurance, so it went
11 through the Independent Automobile Dealers
12 Association, which is one of the defendants.
13 That's one of the companies that Mr. Booth
14 represents. Apparently they offered
15 insurance to these folks as an association
16 under the terms of some creative financing
17 arrangements.

18 So what happened was that they went
19 to a company called FINCO, represented by Mr.
20 Stephenson, and they signed a premium
21 servicing finance agreement, a standard
22 agreement whereupon FINCO loaned them the
23 money to buy the policy; and the policy was
24 purchased from ProCentury, which is who I
25 represent.

1 Under the terms of the agreement,
2 they were to pay the money back. For a
3 period of time, they did. But there came a
4 time when they quit paying the money back for
5 their premium.

6 As the Court knows, premium service
7 companies are fairly heavily regulated by
8 statute. The statute is South Carolina Code
9 Section 38-39-9, and its got some pretty
10 specific requirements about what you can put
11 in a premium service agreement and what you
12 have to do when they quit making the
13 payments.

14 The premium servicing agreement is
15 before you, it's in the record. It basically
16 has language that says that the borrower,
17 AutoNext gives irrevocable power of attorney
18 to the lender, which was FINCO at that point,
19 to cancel the policy if the payments were not
20 made by giving them the requisite notices
21 under the statute.

22 That's what happened here. All of
23 this occurred in April and May of 2011.
24 There were two notices that were sent, as the
25 statute required. The first notice was sent

1 in April of 2011 saying, 'You're not making
2 your payments, you've got to make regular
3 payments. It's due. If you don't do it,
4 we're sending you notice of our intent to
5 cancel the policy.' That notice had to be
6 sent within -- they had to be given ten days
7 notice. That happened. The payment wasn't
8 made.

9 So the second notice was sent, a
10 notice of cancellation that says "...your
11 policy is canceled effective May 31st, 2011."

12 No response from AutoNext to either
13 of those notices. They didn't make any
14 payments, they didn't make any calls, there
15 was nothing in the record to indicate that
16 they took any action once they got these
17 notices.

18 So the notices -- the last notice
19 was the notice of cancellation. Under the
20 statute the lender has the right to cancel
21 the policy just as the insured would have the
22 right to cancel the policy. It did that, it
23 did that effective May the 31st, 2011.

24 Spring forward a little bit.

25 Basically as an administrative act a couple of

1 months later, they sent -- the dealers
2 actually sent a notice to ProCentury saying
3 "This policy was canceled under the terms of
4 the premium finance servicing agreement
5 effective May 31st, 2011. Mark your records
6 accordingly." ProCentury did that.

7 ProCentury filed an endorsement to
8 the policy saying 'this policy was canceled
9 effective May 31st, 2011.' It also in that
10 endorsement said that there would be a return
11 of premium of \$382 -- I think was the amount
12 of the unearned premium that was returned.

13 That all happened in July and August
14 of 2011.

15 Here's the catch. Earlier in July
16 of 2011, there was an automobile accident.
17 The automobile accident involved a car owned
18 by AutoNext and being operated by one of its
19 employees, a lady name Ruth Simpson.

20 Ms. Simpson, who Mr. Nowacki
21 represents, was killed in the accident.

22 After she was killed, she made some
23 claims against several folks. She made some
24 claims against, I think Progressive, who
25 insured the driver of the vehicle. That was

1 paid. I think that she a hundred thousand
2 dollars (\$100,000) payment on that. They can
3 confirm that, I'm not real sure about that.

4 She made a claim against ProCentury,
5 or her estate did. We told them that there
6 was no coverage under the policy, that the
7 policy had been canceled May 31st, 2011. She
8 filed suit. They had a bench trial. Judge
9 McIntosh, I believe, was the bench trial
10 judge and he awarded her estate five hundred
11 thousand dollars (\$500,000), split four
12 hundred for the wrongful death and a hundred
13 for the survival. I think that's correct.

14 So they then filed this suit
15 initially against ProCentury and then later
16 on they added Independent Dealers and Johnson
17 & Johnson. Johnson & Johnson is here because
18 at some point in this transaction Johnson &
19 Johnson bought FINCO. Okay? So I will let
20 Mr. Brown tell you how that happened, but
21 that's why Johnson & Johnson is here.

22 So they allege in their Complaint
23 that the statute was not properly complied
24 with and that the policy should continue to
25 be in effect. Everybody answered, said 'we

1 disagree, we think everything was done
2 correctly.' The policy was canceled, it was
3 not in effect. We counterclaimed for a
4 declaration that the policy was properly
5 canceled.

6 So those are the issues before you.

7 As I understand it, the plaintiffs
8 make a couple of arguments. I am not sure
9 about the first one, they may have abandoned
10 it. I am not sure.

11 But one of the arguments that they
12 made is that FINCO did some financing with
13 BB&T, assigned some of its accounts to BB&T
14 in connection with that; that this was one of
15 the accounts that was assigned and that
16 therefore FINCO didn't have the right to
17 cancel the policy. Well, the premium
18 financing servicing agreement says the lender
19 or its assignees can cancel the policy, so we
20 really don't think much of that argument.

21 The second argument that they make
22 has to do with the return of the premium. I
23 think that is where you will hear most of the
24 talk today.

25 Again, here's what happened. The

1 policy was canceled. It was canceled as May
2 31st by the lender, which the lender has the
3 right to do.

4 The statute clearly provides and
5 anticipates that after the policy is canceled
6 -- and it actually says "after the policy is
7 canceled" in the statute, then the premium
8 has to be returned. Well, ProCentury of
9 course knew nothing about the cancelation
10 until they given this notice in July by the
11 Dealers. Immediately, the day that they got
12 the notice the policy had been canceled, they
13 filed an endorsement saying that this policy
14 was canceled; in fact, on May 31st, 2011, and
15 the return of the premium will be due, three
16 hundred eighty-two buck (\$382) within ---

17 THE COURT: This happened between
18 May 31st and the return of the premium?

19 MR. REEVES: Yes. Between -- about
20 three weeks later, in mid-August of 2011, the
21 premium was returned.

22 So the issue simply put is, is the
23 cancelation effective as of May 31st or is
24 there coverage for this accident that
25 occurred in July when the premium was

1 returned later?

2 There is a case that you will hear
3 about, that both sides will hand up, called
4 the *Bowman* case. The *Bowman* case deals with
5 a workers compensation policy. In that case
6 -- in that policy the Court says clearly that
7 the return of the premium is a condition
8 precedent to being able to cancel the policy
9 because the statute says that you've got to
10 return the premium. We don't disagree with
11 that. What happened in that case is that the
12 premium was never returned. Because it was
13 never returned the Court said that the policy
14 can't have been considered canceled, because
15 part of it was that you had to return the
16 premium. We agree with that. The
17 distinguishing factor here is that the
18 premium was returned. As soon as ProCentury
19 got notice, it made arrangements to have the
20 premium returned.

21 Here's the issue, as I see it. The
22 issue as I see it is, does *Bowman* somehow
23 change the date of the effective date of the
24 cancelation? We don't think it does. We
25 think that *Bowman* stands for the proposition

1 that you've got to do all three steps:
2 you've got to file the notice of intent,
3 you've got to file the notice of cancelation,
4 and you've got to return the premium. You do
5 those in order.

6 The statute specifically says, if
7 you ready the section talking about returned
8 premium, it says "if the insurance is
9 canceled then the premium shall be returned."
10 So that, by definition, means that you can't
11 return the premium before the policy is
12 canceled. Okay? In fact, it wouldn't make
13 sense to be able to return the premium before
14 the policy is canceled.

15 So we believe that we did everything
16 right: the notice was sent, we don't think
17 that there is any factual dispute about that;
18 the policy was canceled, we don't think that
19 there was any factual dispute about that; the
20 premium was returned, we don't think that
21 there was any factual dispute about that.

22 The legal issue, to the extent that
23 there is a legal issue is, does the fact that
24 it was returned after this accident somehow
25 operate to change the date of the

1 cancellation? We don't think it does. We
2 don't think the statute calls for that. We
3 don't think *Bowman* says that. In fact we
4 think *Bowman* is distinguishable because the
5 premium was never returned. We agree that
6 if we had not returned the premium, we
7 wouldn't be here, but we did as soon as we
8 got notice that we needed to do it.

9 So our position, fairly simply, is
10 that everything was done correctly in
11 accordance with the statute, that the policy
12 was canceled by the insured, which is what
13 the power of attorney said, effective May
14 31st, 2011. The insured never complained,
15 never made any argument, never contested it,
16 never made a payment, never said anything at
17 all. They were just gone. Therefore, this
18 policy was canceled effective May 31st.

19 THE COURT: So basically the issue
20 is when the policy was canceled?

21 MR. REEVES: Yes.

22 THE COURT: At the time of the
23 letter or upon the return of the premium?

24 MR. REEVES: Yes, sir.

25 MR. STEPHENSON: Your Honor, I

1 represent FINCO, I've got almost nothing to
2 add to that except to point out that I know
3 this Court is equitable, fair, ---

4 THE COURT: It depends on which
5 side you're on, ---

6 MR. STEPHENSON: That doesn't
7 matter because I've not been getting paid so
8 far, but that doesn't matter except FINCO is
9 out of business, doesn't exist anymore.
10 Maybe that doesn't matter either but what
11 matters is that if you read the Complaint
12 there is nothing that is sought against this
13 defunct company, who is not paying their
14 lawyer. It asks for a declaratory judgment
15 that there is insurance. So either there is
16 insurance or there is not and it doesn't
17 matter about FINCO, who is now out of
18 business.

19 Now, just so that you understand
20 what happened, after all that -- okay? After
21 all that -- in November, after all this was
22 over, FINCO sold out to -- what is the name
23 of your client?

24 MR. BROWN: Johnson & Johnson.

25 MR. STEPHENSON: Johnson & Johnson.

1 And they did not sell this asset. They sold
2 some assets. When discovery took place some
3 of the documents had Johnson & Johnson
4 written on it. Clearly Johnson & Johnson,
5 and I say that on behalf that we sold to
6 them, uh, produced some documents, spit out
7 of the computer, that said Johnson & Johnson.
8 But Johnson & Johnson got into this game way
9 after the fact that they, they shouldn't be
10 in it. That's all that I've got to say.

11 THE COURT: Okay. Well, let me
12 ask you this. Let me deal with that
13 equitable issue. Is there some reason you
14 all want them to stay in, is there some
15 equitable reason why you need them to keep
16 coming up here?

17 MR. REEVES: No, I thoroughly enjoy
18 Mr. Stephenson and would not voluntarily
19 release him from that because that would mean
20 that I would not have the opportunity of
21 commiserating with him as we do now.

22 THE COURT: But is there a real
23 legal reason to keep him in if the asset was
24 sold and they are defunct?

25 MR. REEVES: If that is correct,

1 however the documents that we have presently
2 don't say that. We don't have any reason to
3 doubt what counsel is representing. We heard
4 that fairly recently, so in all probability
5 Mr. Stephenson will be staying in Greenville,
6 to my dismay.

7 THE COURT: Go ahead.

8 MR. BOOTH: Your Honor, I am
9 William Booth, a lawyer from Lexington
10 County. My client is a defendant in this
11 case in association with the Independent Car
12 Dealers Association that had to do with
13 selling insurance, in this case, to an
14 automobile dealer.

15 I can stand my defense very simply,
16 don't kill the messenger. My client is
17 nothing but a messenger between the company
18 that had the financial -- FINCO at that time
19 -- and ProCentury, which had the right to --
20 had the insurance that was supposedly
21 canceled. My client was simply a messenger.

22 The only thing that has come up,
23 Judge, that they have kind of argued is that
24 we delayed in getting the message to
25 ProCentury. In other words, my client got

1 the message that "this policy is canceled" --
2 "is canceled." That message, for whatever
3 reason, and we don't dispute it, didn't get
4 transmitted to ProCentury until later and
5 that's why the payment of the unearned
6 premium got paid later.

7 But as a messenger, we had nothing
8 that we could have done differently. We did
9 everything that we were supposed to. We
10 just delayed in sending the message that the
11 premium finance company said this policy is
12 canceled. The date of cancelation sticks no
13 matter when the message gets sent over, so
14 that's all our involvement is. Of course, we
15 would like for plaintiff to weigh in on this.

16 THE COURT: Well, now, let me ask
17 you this. There hasn't been any cross-claim
18 from your people for delay; right?

19 MR. REEVES: The counterclaim that
20 I suspect for a declaration that 'we did
21 everything right.' But those claims are
22 percolating. One of the reasons that
23 everybody is here is because depending on
24 what you do those claims could come.

25 THE COURT: So -- I mean, if I let

1 them out in this case, you're going to cross-
2 claim against them?

3 MR. REEVES: Yeah.

4 THE COURT: Yeah.

5 MR. REEVES: If you let them out on
6 the basis that we got notice late and that it
7 therefore somehow extends the cancelation
8 date, I have no choice.

9 MR. BOOTH: Our duties were
10 administerial acts.

11 THE COURT: I am just looking down
12 the road, as a practical matter whether you
13 might have to come back in. Yes, sir?

14 MR. BROWN: Your Honor, I spoke
15 with plaintiff's counsel and the issue before
16 the court today is whether there was a policy
17 in effect or not. I've produced every -- I
18 didn't file it with the court because I
19 didn't think that the clerk would appreciate
20 me sending this in, but this is the asset
21 purchase agreement. It lists each specific
22 policy by number that my client purchased
23 under the asset purchase agreement. The
24 policy at-issue is not in here. It was dated
25 and executed November 30th, 2011, which is

1 after -- I think everyone will agree -- this
2 whole thing was, start to finish, -- we came
3 in after that, so I'd respectfully ask that
4 they'd consider letting me go. I was
5 brought in because this document had my name
6 on it. Someone called our office asking for
7 a purchase agreement, requested a copy of the
8 documents -- to populate documents with
9 certain names, certain provisions and the
10 computer spit this out. I'd just throw that
11 out there. I think everyone could truthfully
12 agree that I am not involved, not a problem
13 for them.

14 THE COURT: / So your company bought
15 a bunch of assets from Mr. Stephenson's at
16 that time but it didn't buy this asset?

17 MR. BROWN: Yes. That's correct.

18 THE COURT: All right. So that
19 policy stayed with Mr. Stephenson's client,
20 who is now defunct.

21 MR. BROWN: And I don't see how
22 Mr. Reeves client can get to me on a cross-
23 claim because I just wasn't in the picture.

24 THE COURT: I wouldn't sell Mr.
25 Reeves short, he'll figure something out.

1 MR. NOWACKI: And, Your Honor, if I
2 may go through a bit of this as to the reason
3 why we brought all the parties in.

4 THE COURT: And I'm not trying to
5 shorten you. I'm just trying to figure out,
6 seriously, where we are.

7 MR. NOWACKI: Yes, Your Honor. I
8 created a color timeline to help you
9 visualize this because it helped me. I'd
10 like to hand this up to you as well as some
11 case law, as well as some statutes that I
12 believe you already have a copy of.

13 I am going to make three points ---

14 THE COURT: Well, let me ask you
15 something.

16 MR. NOWACKI: Yes, sir?

17 THE COURT: This timeline doesn't
18 do anything different than to say that there
19 was an alleged date of cancelation, which
20 would have been the letter; then there was
21 the wreck; then there was the return of the
22 premium. Right?

23 MR. NOWACKI: Correct.

24 THE COURT: All right.

25 MR. NOWACKI: And I am going to go

1 through those as to the dates and why I think
2 that they are important. I'm going to make
3 three points. This is statutory. As Mr.
4 Reeves said, it is strict compliance. The
5 courts have been clear on this and there is
6 case law that I will address on each point,
7 but I have three specific points -- and I'll
8 go through it with the timeline -- as to why
9 we believe that this policy was not properly
10 canceled in accordance with the premium
11 service financing statute.

12 THE COURT: Okay.

13 MR. NOWACKI: The first of which --
14 and I will refer you to document two in the
15 exhibits that I've provided. That would be
16 that there is no proof of mailing. The
17 statute requires that there be proof of
18 mailing of the cancellation.

19 Document two, there was a request
20 from one of Mr. Reeves' associates, through
21 Johnson & Johnson premium finance company,
22 that if they had any proof that there were
23 any notices. The very first entry on 10-4-13
24 says that attorney asked if they would sign
25 an affidavit saying that there was no proof

1 of mailing. Also then on "6-12-13, Nick
2 Farr, Attorney, called to see if we had proof
3 of mailing and told him no." So today we've
4 seen no proof that the notices were actually
5 sent. The statute requires that there be
6 some proof of mailing.

7 Two, and this has to do with timing.
8 As we looked into this more -- and the dates
9 are important. The company, we believe, in
10 looking at this failed to comply with the
11 timing requirements of sending the notices.
12 This is under 30-39-98. As Mr. Reeves
13 explained, they have ten days notice from the
14 date of the intent of cancellation -- they've
15 got to give ten days notice.

16 And as you see -- if you look at the
17 timeline, on 5-16, the Intent to Cancel.
18 That has the date of there of the intent to
19 cancel.

20 On 5-26, the cancelation date was
21 sent with an effective date of 5-31. Under
22 the statute, it says that they've got to
23 provide ten days written notice, that's under
24 subsection (b). But if you look at
25 subsection (c) it says, "but not less than

1 five days after the expiration of notice
2 required can they send a notice of
3 cancelation." So if they mailed it on 5-16,
4 ten days would be 5-26. The court -- the
5 Court of Appeals -- I'm sorry.

6 Yes, the Court of Appeals in the
7 case of *South Carolina Insurance Company v*
8 *Brown* said that that five days is a five-day
9 waiting period. The courts specifically said
10 that when -- that they have to waive that
11 five days after the ten days, so it has to be
12 fifteen days, essentially, before they send
13 that notice of cancelation.

14 The *South Carolina Insurance Co v.*
15 *Brown* is on point. The insurance company
16 filed a DJ action basically to declare that
17 they wanted to say everything was timely sent
18 and the Court said -- and here the initial
19 notice of intent to cancel was sent on
20 November 16th, notice of cancelation was sent
21 November 27th and the Court said that was one
22 day after the ten days, that they didn't wait
23 the five days, so it wasn't in accordance
24 with the statute and they said that the
25 policy was still in force. That is the

1 second point. Again, that is strict
2 compliance and there is case law on that.

3 The third point and this is the one
4 that I want to address specifically -- and I
5 know that Mr. Reeves has addressed it -- is
6 failure to timely return the premium. They
7 are alleging that it was canceled on 5/31,
8 which we believe is incorrect.

9 The return of the premium is not
10 simply an administerial act. There are
11 actually two obligations under the statute to
12 provide a return of -- to return a premium.
13 It is not just the insurance company. The
14 first is that the insurance company has to
15 return it and refund it, but the premium
16 finance company also has a duty to promptly
17 refund the excess to the insured.

18 If you look at the timeline, 5-16 is
19 when they sent the initial intent to cancel.
20 They are alleging a 5-31 cancelation date.
21 The wreck happened 6-17, so June 17th, just a
22 couple of weeks afterwards. In one of the
23 exhibits that I provided on the account
24 notes, you'll see that on 7-28 they see a
25 cancellation request and there is this flurry

1 of activity that starts after the claim
2 accrues at the end of July. Then on 7-29,
3 this cancelation request comes in.

4 Then another couple of weeks go by
5 before there is the actual cancelation which
6 they claim was effective 5-31.

7 Then the return premium check was
8 issued on 8-17, which we've provided a copy
9 of in the exhibits.

10 The case on point in this is *Bowman*
11 *v State Roofing Company*, which Mr. Reeves has
12 referred to and they said that this was an
13 administerial act. The Court has been
14 specific on this. That was argued that it
15 was simply an accounting matter, which to me
16 is akin to an administerial act. And the
17 Court says, "We have held that where an
18 insurance premium provides for a return of
19 unearned premium upon cancelation, the tender
20 of refund is a condition precedent to an
21 effective cancelation."

22 "Precedent" has to mean something.
23 If they are going to have to return that
24 premium to cancel a policy, the Court has
25 already said that they have to do it

1 beforehand.

2 Here -- while they did return the
3 premium in the case -- in the *Bowman* case, it
4 makes little difference I think because of
5 the delay that happened here. Uh, -- in fact
6 the Court went on to say "once a client has
7 notice of request of cancelation they have
8 the right to demand return of the unearned
9 premium." Further, subsection "f" requires
10 the premium service company credit any return
11 of unearned premiums to the account of the
12 insured and promptly refund -- the court
13 emphasized that -- any surplus over three
14 dollars. This "works to the benefit of the
15 insured and is an added protection of
16 insuring notice to the insured."

17 So the Court has said that it is not
18 simply an administerial act.

19 And I want to add something -- there
20 was a correspondence which supposedly went
21 from Exhibit 6, which I have attached, -- and
22 this is from FINCO to Independent Insurance
23 Management. I thought that this was
24 interesting in terms of timing. In the
25 middle of the page it says, "Not to Insurer:

1 Please be advised that the gross cancelation
2 return must be returned within sixty (60)
3 days of cancelation date."

4 Now, that is something that the
5 agent here is advising the insurance company
6 that they need to return a premium. That has
7 nothing to do with our client. We think the
8 controlling part of the statute is the prompt
9 return of premium to the insured.

10 Again, we're looking at -- based on
11 the timeline -- a total of seventy-eight (78)
12 days between the alleged date of cancelation
13 to the return of the premium and another --
14 then sixty-one (61) days from the date of the
15 wreck, which is when the claim accrues to the
16 date of the return of the premium.

17 So it is our position that again
18 this is a strict compliance statute. The
19 Courts have been very clear in Court of
20 Appeals Decisions and Supreme Court
21 Decisions, a couple of pages saying, 'You
22 didn't do it, too bad. The insurance is in
23 place.'

24 THE COURT: So basically you're
25 saying that it wasn't canceled until the

1 money was returned?

2 MR. NOWACKI: That's correct, Your
3 Honor. In addition, we're arguing that as
4 far as the notices that they didn't comply
5 with the notice requirement, and that is
6 *South Carolina Insurance Company v Brown.*

7 THE COURT: Okay.

8 MR. NOWACKI: Not just the timeframe
9 but the proof of mailing.

10 THE COURT: Okay. Does the
11 statute require proof of mailing.

12 MR. NOWACKI: It is in the middle of
13 "c", I believe, Your Honor. Yes, subsection
14 "c", (reading): "It is sufficient to give
15 notice either by delivering to the person or
16 depositing it in the United States Mail,
17 postage prepaid to the last known address."

18 COURT REPORTER: I'm sorry?

19 THE COURT: I got it. He said,
20 "It is sufficient to give notice either by
21 delivering to the person or depositing it in
22 the United States Mail, postage prepaid."

23 MR. REEVES: Your Honor, if I may,
24 what we have -- and I can hand it up. I
25 think it is in these exhibits but if not, I

1 can hand it up, is the notice history for
2 this account. If the court looks at that
3 history it has got Intent to Notice sent by
4 regular mail and e-mail, and it's got the
5 cancelation notice sent by regular mail and
6 e-mail. E-mail to the agent, regular mail to
7 the insured.

8 THE COURT: My biggest problem is
9 that return -- I mean, these are issues. I
10 understand your argument that in the Brown
11 case that it was ---

12 MR. REEVES: Bowman.

13 THE COURT: --- Bowman. That in
14 the *Bowman* case that it was never returned
15 and therefore that's factually different.
16 But just because they didn't ever return it,
17 it says that it is not complete until you
18 return it.

19 MR. REEVES: They said that it --
20 they used the language "condition precedent."

21 THE COURT: Yeah.

22 MR. REEVES: But if you think that
23 through to its logical conclusion, that means
24 that you are wiping out the rest of the
25 statute, because the statute says that the

1 lender has the right to basically step in and
2 say that this policy is effectively canceled
3 effective this date. To read the way that
4 they would like it read is no help, you don't
5 have that right because it is never going to
6 happen until the premium is returned and
7 you'd have a different date, which is based
8 on whatever the vagaries are of how the
9 premium is returned. That is not what the
10 statute is intended to do. It is intended to
11 make sure that the notice is given, for the
12 date that it is given, and that the premium
13 is then returned. It was. I don't think
14 that the legislature intended to make that
15 final date dependent on the premium being
16 returned -- if it had, it would have said
17 that if a contract is canceled that the
18 insurer shall return the premium. That, by
19 definition, means that the policy has been
20 canceled. That is the only thing that makes
21 sense. You can't return something that is
22 still being used to pay premiums for a
23 policy.

24 THE COURT: Only this group of six
25 lawyers can literally make me wonder what the

1 word "cancel" means. Seriously, everybody
2 else -- yes, sir?

3 MR. NOWACKI: And, Your Honor, the
4 *South Carolina Insurance Company v Brown*
5 case, and this is why I want to point out
6 that I think that there is a difference
7 between the insurance company returning a
8 premium as well as a difference with the
9 premium finance company. The South Carolina
10 Insurance Company in this case -- and this is
11 the *Brown* case -- said, (reading): "The
12 notice to effect cancelation was mailed one
13 day after the expiration of the first notice
14 and therefore is not in compliance with the
15 statute, which requires a five-day waiting
16 period."

17 THE COURT: Right.

18 MR. NOWACKI: And I know that
19 Phil's client has a concern but the case went
20 on to say that, "Additionally the record
21 shows that the notice to effect cancelation
22 was not addressed to the insurance company.
23 The insurance company offered no evidence
24 that the notice of intent was mailed to the
25 insurance company." And the insurance

1 company went to try to cancel the insurance
2 policy itself because it was concerned about
3 the lack of compliance with the statute.

4 So, again it -- the fact that it
5 hadn't been returned, the fact that we think
6 that they haven't complied with the timing
7 requirements and the statutes -- there is
8 more than one player here which has to comply
9 with the statute; they didn't do it, and the
10 insurance policy is in place.

11 THE COURT: Okay, I get it. Let
12 me read it -- I'm not going to make y'all sit
13 here but you'll know something before I leave
14 for Richland Monday. I am not going to just
15 let it sit.

16 But, for instance, let's say that I
17 agree -- just as a practical matter, let's
18 say that I agree with return of the policy
19 (sic) is a condition precedent and that it
20 didn't expire; therefore, somebody may be on
21 the hook. Who can I let out so that they
22 don't have to come back? Assuming that's the
23 way I rule?

24 (Laughter).

25 I know we're talking form over

1 substance. If I rule that way, am I
2 correct in saying that you would amend
3 and cross-claim against everybody here?

4 MR. REEVES: With the possible
5 exception of ---

6 THE COURT: Because they
7 didn't buy anything. So why can't I let
8 him out.

9 MR. REEVES: So that the Court
10 is aware, there are document -- and I
11 think Steve agrees with this, he alluded
12 to it, there were documents that didn't
13 confirm that representation. That's why
14 they are sitting here.

15 THE COURT: Computer
16 generated.

17 MR. REEVES: Since that time,
18 other documents have come in. It may be
19 that even by the time that the court
20 makes that ruling that it alluded to, he
21 may not be here. Now, in the same
22 breath, we wouldn't do anything -- I
23 wouldn't feel comfortable, Your Honor, if
24 that were my call, to prejudice anything
25 that any of the defendants would have

1 between each other.

2 THE COURT: No, I don't want
3 to do that. I mean, I can kind of see
4 where this is headed. I am just trying
5 to ---

6 MR. REEVES: And it may be that
7 Johnson & Johnson is out but we haven't
8 really concentrated on that outside of
9 the documents that he has given ---

10 THE COURT: All right. Let me
11 ask you this, what does he have to give
12 you to show to your satisfaction that
13 this asset -- I mean, I know that he has
14 something that has Johnson & Johnson
15 printed on it, but what is it that he has
16 to give you -- you just tell me. You've
17 said that the reason you've sued him is
18 because that was on there and you were
19 not sure that it was included.

20 MR. REEVES: Well, the reason
21 we sued him is because the documents came
22 in that said that it was included.

23 Now, to back this up a little
24 bit, we have mediation and it was at that
25 mediation -- which was three weeks ago --

1 that surfaced ---

2 THE COURT: I gotcha.

3 MR. REEVES: Since then all of
4 the focus has been on this hearing.

5 THE COURT: Okay. Let me do
6 this. I will take it under advisement.
7 With all these insurance things, its so
8 many years ago that all these statutes
9 were written and it is just stunning the
10 stuff that they put in without thinking
11 it through. All these people who talk
12 about there being too many lawyers in the
13 Legislature have never looked at how many
14 lawyers really are in the Legislature.
15 It ain't a bunch.

16 I am not saying that lawyers
17 would stop this kind of thing because the
18 truth of the matter is that they're
19 written by staff somewhere, but -- but it
20 seems to me, just a first blush, that the
21 way that you first read this the statute
22 creates requirements down the chain to
23 cancel a policy, starting with 'it is
24 canceled', 'here is your notice' and then
25 it moves down the chain left or right and

1 then the last person to get it is this
2 lady who is dead. The point that she is
3 hooked in on that is when the policy
4 premium was returned and was notified
5 'you ain't got any insurance.' Or her --
6 I guess actually it wouldn't matter to
7 her.

8 You'd almost have to have this
9 literal fact -- date/fact -- situation
10 for this to occur. It doesn't occur
11 unless the wreck occurs between the
12 notice of cancelation and the return of
13 premium; which is a sad thing. Something
14 that they ought to think about when they
15 write these procedures. There ought to
16 be a catch-all provision. All you have
17 to do is put an "f" in here that says
18 that it is not binding upon the insured
19 until notice is received.

20 MR. REEVES: Sure.

21 THE COURT: I am not going to
22 be too critical because I was just down
23 there playing golf, not worrying about
24 it.

25 I'll take it under advisement.

1 Mr. Stephenson, as much as I
2 want to let you out, I don't know how to
3 do it.

4 MR. STEPENSON: I am not too
5 worried about it, I'm local counsel.

6 THE COURT: As far as the
7 Association goes, I think you're, quite
8 frankly, still in for a while. But I am
9 not sure, quite frankly, that you get out
10 no matter what because they are going to
11 cross claim against you.

12 Have y'all made any headway in
13 mediation?

14 MR. KRAUSE: No. Some.

15 THE COURT: You need me to
16 rule for you to make some more headway?
17 Well, off the record.

18 (OFF RECORD DISCUSSION)

19 THE COURT: I will let you
20 know.

21 (HEARING CONCLUDED)

22

23

24

25

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) CERTIFICATE

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on February 18th, 2016, before The Honorable Cordell Maddox as prepared from the audio recordings of Vivian C. Cross, assigned Court Reporter;

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


Deborah Garrison

Charleston, South Carolina
August 7, 2016



FINCO PREMIUM FINANCE CO., INC.
PREMIUM FINANCE SECURITY AGREEMENT
 618 West Friendly Avenue Post Office Bx 26009 Greensboro, NC 27420-8009
 800-873-4629 800-583-8750

TYPE OF LOAN	
☐ PERSONAL	☒ COMMERCIAL
☐ ADDTN'L PREMIUM	

AGENT/BROKER Dealer's Risk and Ins Services PO Box 1088 Harrisburg, NC 28075 800-432-4232 x1109	BORROWER Autos Next Store 6612 Highway 187 Anderson, SC 29625 854-401-0722
Producer Code: 1188A	

649197

A. TOTAL PREMIUM \$2,185.00	G. Non Refundable Set Up Fee \$20.00	PAYMENT SCHEDULE	
B. DOWN PAYMENT \$437.00	NUMBER OF INSTALLMENTS 9	AMOUNT OF EACH INSTALLMENT \$204.87	WHEN PAYMENTS ARE DUE FIRST INSTALLMENT DUE 8/10/2010 INSTALLMENT DUE DATES 10th

C. AMOUNT FINANCED \$1,748.00	SCHEDULE OF POLICIES					
D. FINANCE CHARGE The dollar amount plus set up fee for credit \$95.83	POLICY NUMBER IB5 PIC112640	POLICY EFFECTIVE DATE 8/10/2010	INSURANCE COMPANY AND MANAGING GENERAL AGENT Independent Dealers Insurance Management PO Box 1088 Harrisburg, NC 28075	TYPE OF COVERAGE GARAGE	POLICY TERM (months) 12	GROSS PREMIUM \$2,185.00
E. TOTAL OF PAYMENTS The amount you will have paid after you make all payments as scheduled, (C + D) \$1,843.83				FIN TXS/FEES \$0.00	ERN TXS/FEES \$0.00	
F. A.P.R. The cost of this interest is a yearly rate 10.3%	TOTAL PREMIUMS MUST AGREE WITH BOX "A" ABOVE >>>>					\$2,185.00

Quote Number: 87111.1 FINCO License #: B-224, 91830102, PF-152, 08151, 81532

TO THE BORROWER:
 If you sign below, you acknowledge receipt of a copy of this Agreement and you agree to the provisions, BOTH ON THE FIRST AND THE SECOND PAGE OF THIS AGREEMENT. You further agree that you are appointing LENDER your ATTORNEY-IN-FACT to cancel the policies outlined in the Agreement. You further agree that electronic or digital transmissions of this document including but not limited to facsimile transmissions shall be legally binding.
 IF FOR ANY REASON YOU DO NOT RECEIVE YOUR PAYMENT COUPONS OR INVOICE FOR INSTALLMENTS DUE, YOU MUST STILL MAKE YOUR PAYMENTS ON THE ABOVE DUE DATE TO THE ABOVE ADDRESS. UNDERSTAND THAT BY SIGNING THIS AGREEMENT I SHALL BE BOUND FINANCIALLY TO THE TERM AND CONDITIONS OF THE CONTRACT.

SIGNATURE OF BORROWER(S) OR FULLY AUTHORIZED BORROWER(S) _____ DATE 8/10/10
 PRINTED NAME _____ SSN or FEIN 364802635

PRODUCERS WARRANTIES AND REPRESENTATIONS:
 THE UNDERSIGNED WARRANTIES AND GUARANTEES:
 (1) The Borrower has received a copy of this Agreement, and the Required Federal Truth-in-Lending disclosures for Personal Line Insurance, if applicable.
 (2) The policies herein are in full force and effect and the information in the schedule of policies and the premiums are correct.
 (3) The Borrower has authorized this transaction and recognizes the security interest assigned herein.
 (4) The Down Payment shown above has been paid by or on behalf of the Borrower, and the Total Premium shown above has been or will be used to purchase insurance policies shown in the Schedule of Policies.
 (5) There are no exceptions to the policies other than those indicated and the policies comply with LENDER's eligibility requirements.
 (6) NO AUDIT OR REPORTING FORM POLICIES, POLICIES SUBJECT TO RETROSPECTIVE RATING OR TO MINIMUM EARNED PREMIUMS ARE INCLUDED EXCEPT AS INDICATED AND THAT THE DEPOSIT OR PROVISIONAL PREMIUMS ARE NOT LESS THAN THE ANTICIPATED PREMIUMS TO BE EARNED FOR THE FULL TERM OF THE POLICIES. IF POLICY IS SUBJECT TO A MINIMUM EARNED PREMIUM IT IS _____
 (7) The policies can be cancelled by the Borrower of the company on 10 days notice and the unearned premium will be computed on the standard short rate or pro rata table except as indicated. Upon cancellation of any of the Scheduled Policies, Producer shall remit to LENDER the full amount of the unearned premium, including unearned commission as well as any other payments or credits received by Producer, up to the unpaid balance due under this Agreement, within 15 days of receipt.
 (8) The undersigned represents that a proceeding in bankruptcy, receivership or insolvency has not been instituted by or against the named Borrower or if the named Borrower is the subject of such a proceeding, it is noted on this Agreement in the space in which the Borrower's name and address is placed.

SIGNATURE OF AGENT OR BROKER _____ DATE 8-12-10
 PRINTED NAME Leslie E. Walshe

RECEIVED AUG 13 2010

ASSIGNED FOR VALUE
 TO BRANCH BANKING
 AND TRUST COMPANY

PROVISIONS OF YOUR SECURITY AGREEMENT

1. **PROMISE OF REPAYMENT:** The borrower requests LENDER to pay the premiums on the policies shown on the reverse. The Borrower promises to pay to LENDER at its office the amount stated in Block E above, according to the Payment Schedule shown on the reverse, subject to the rest of the terms of this Security Agreement.
2. **SECURITY INTEREST:** The Borrower assigns to LENDER as security for the total amount payable in this Agreement any and all unearned premiums and dividends which may become payable under the insurance policies and loss payments which reduce the unearned premiums, subject to any mortgages or loss payee interests. The Borrower gives to LENDER a security interest in all items mentioned in this paragraph.
3. **DEFAULT CHARGES:** Borrower agrees that if any installment is more than 5 days past due, or minimum number of days permitted by state law, it will pay to LENDER a delinquency charge in an amount up to the maximum permitted by applicable state law. Borrower agrees if default results in cancellation to pay the maximum allowable cancellation charge allowed by applicable state law.
4. **FINANCE CHARGES:** The finance charge, shown in Box "D" on the front side of this Agreement, begins to accrue on the earliest possible date allowed by applicable state law and continues until all funds are paid in full.
5. **WARRANTY OF ACCURACY:** The borrower warrants to LENDER that the insurance policies listed in the above schedule have been issued to the borrower and are in full force and effect and that the borrower has not assigned any interest in the policies except for the interest of mortgages and loss payees.
6. **REPRESENTATION OF SOLVENCY:** The Borrower represents that it is not insolvent or presently the subject of any insolvency proceeding.
7. **CANCELLATION:** LENDER may cancel the insurance policies and the unpaid balances due to LENDER shall be immediately payable by the Borrower if any of the following occur: (a) The Borrower does not pay any installment according to the terms of this Agreement; (b) The Borrower does not comply with any of the terms of this Agreement; (c) The Borrower or the insurer voluntarily or involuntarily becomes the subject of a bankruptcy, receivership or any other kind of insolvency proceeding; (d) If the Borrower is a business and stops doing business or ceases to be qualified to do business. LENDER at its option may enforce payment of this debt without recourse to the security given to LENDER.
8. **POWER OF ATTORNEY - LIMIT OF LIABILITY:** The Borrower irrevocably appoints LENDER, or its successors or assigns, its Attorney-in-Fact with full authority to cancel the insurance policies, or any renewal thereof, to receive all sums assigned to LENDER or in which it has granted LENDER a security interest and LENDER may execute and deliver on the Borrower's behalf all documents, instruments of payment, forms and notices of any kind relating to the insurance policies in furtherance of this Agreement. LENDER's liability to any person or corporation on the exercise of its authority to cancel the insurance policies is limited to the amount of the principal balance, except if LENDER willfully fails to deliver the notices required by law. When LENDER effects cancellation in accordance with state law, the Borrower will be responsible for attorney's fees and other cost in any unsuccessful action filed as a result thereof to the extent permitted by applicable state law.
9. **MONEY RECEIVED AFTER NOTICE OF CANCELLATION:** Any payment made to LENDER after LENDER's Notice of Cancellation of the insurance policies has been delivered may be credited to the Borrower's account without affecting the acceleration of this Agreement and without any liability or obligation on the LENDER's part to request reinstatement of the canceled policies. Any money LENDER receives from an insurance company shall be credited to the amount due LENDER with any surplus being paid to whomsoever is entitled to the money. No refund of less than \$1.00 shall be made, if there is a balance due after LENDER receives the unearned premiums, dividends or loss payments from the insurance company then the Borrower will pay the balance to LENDER with interest at the rate shown on the agreement.
10. **PREPAYMENT:** Borrower has the right to prepay the entire outstanding balance in full at any time before the due date of the final installment. Upon prepayment in full, or upon cancellation and full payment to LENDER, Borrower will be entitled to receive a refund of the Finance Charge to be computed by the Rule of 78's ("Sum of the Years Digits") method, or as required or permitted by the applicable law, after deducting any fully earned charge permitted by law. If cancellation occurs, the Borrower agrees to pay a Finance Charge on the balance due at the rate on the reverse side of this Agreement until it is paid in full, or until such other date as is required by applicable state law. Borrower agrees to pay LENDER reasonable attorney's fees and collection cost under the terms and condition hereof and to the extent and amount permitted by applicable state law.
11. **INSURANCE AGENT OR BROKER:** The insurance agent or broker named on this Agreement is the Borrower's agent, not LENDER's and LENDER is not legally bound by anything the agent or broker represents to the Borrower, orally or in writing.
12. **SPECIAL INSURANCE POLICIES:** If the insurance policy issued to the borrower is auditable or is a reporting form policy or subject to retrospective rating, then the Borrower promises to pay the insurance company the earned premium computed in accordance with the policy provisions which is in excess of the amount of the premium advanced by LENDER which the insurance company retains.
13. **SUCCESSORS AND ASSIGN:** All legal rights given to LENDER shall benefit LENDER's assign. The Borrower will not assign the policies without LENDER's written consent except for the interest of mortgages and loss payees.
14. **MISSING AND INCORRECT INFORMATION:** If the policy has not been issued at the time of signing this Agreement, then the Borrower agrees the name of the insurance company, and the policy numbers of the insurance policies may be left blank and may be subsequently inserted in this Agreement. In addition, Borrower authorized LENDER or the agent or broker to correct on this Agreement at any time, if incorrect, the name of the insurance companies, the policy numbers and the installment due dates. LENDER will notify the Borrower of the corrected and/or inserted information.
15. **ADDITIONAL PREMIUMS:** The money paid by LENDER is only for the premium as determined at the time the insurance policy is issued. LENDER's payment shall not be applied by the insurance company to pay for any additional premiums owed by the insured as a result of any type of misclassification of this risk. The Borrower agrees to pay the company any additional premiums which become due for any reason. LENDER may assign to the company any rights it has against the Borrower for premiums due the company in excess of the premium returned to LENDER.
16. **AGENT'S WARRANTIES:** To convince LENDER to enter this Agreement and accept the security underlying this Agreement, the person executing this Agreement, if not the Borrower, warrants severally and as the duly authorized agent of the Borrower: that he is the duly authorized agent of the Borrower appointed specifically to enter into this transaction on the Borrower's behalf; that he can perform any act the Borrower could or should perform with respect to this transaction; that he will hold in trust for LENDER any payments made or credit to the Borrower through the undersigned or to the undersigned, directly, indirectly, actually or constructively by any of the insurance companies and that he will pay the monies to LENDER upon demand to satisfy the then outstanding indebtedness of the Borrower.
17. **ASSIGNMENT:** All of LENDER's rights under this Agreement shall inure to its successors and assign. This Agreement may not be assigned by the borrower except as provided for in this Agreement.
18. **DOCUMENT AND GOVERNING LAW:** This document is the entire Agreement between LENDER and the Borrower and can only be changed in writing and signed by both parties. The laws of the state of Borrower's residence as set forth above will govern this Agreement. If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be impaired.
19. **SERVICE CHARGE:** The maximum service fee allowable by state regulations will be charged on all returned checks. This same fee will also be assessed if the insured authorizes a payment from a deposit account through an electronic funds transfer or some method other than a paper check signed by the insured, and the insured's bank or financial institution where the deposit account is maintained refuses to honor such withdrawal or payment request because there are insufficient funds in the account.

Johnson & Johnson Preferred Financing, Inc.

Physical: 200 Wingo Way, Ste 200, Mt. Pleasant SC
Mailing: PO Box 26009
Greensboro, NC 27420
800-868-5573

TO: Autos Nex Store
5512 Highway 187
Anderson, SC 29625

INTENT TO CANCEL

Mailing Date: 5/16/2011
Account Number: 649197
Policy Number(s): PIC112590
Due Date of Past Due Payment: 5/10/2011
Amount Due for This Payment: \$215.11
Current Balance: \$215.11

Our records indicate that this account is now past due. If we do not receive payment within 10 days of the date this notice is mailed, we will request cancellation of this policy(s) to be effective on 5/26/2011 at 12:01 AM EST. If there are any questions, please call Johnson & Johnson Preferred Financing, Inc. at 800-868-5573.

To make your payment online, go to <http://www.jjpf.com> and select "Insureds Login Here."

If payment does not reach our office before 12:01 AM EST 5/15/2011, please include a late fee of \$10.24 with your payment.

PLEASE BE ADVISED that if payment does not reach our office **BEFORE THE CANCELLATION DATE**, reinstatement requests will not be sent without payment in full of the past due balance in **CERTIFIED FUNDS**. Available certified funds options are: Money Orders, Official Bank Checks, Cash Payments to your Agent, Verified Cash Direct Deposit into one of our Bank Accounts at BB&T, Bank of America, or Wells Fargo. Reinstatement requests will not be sent on payments drawn on a personal/business checking account, received on or after the cancellation date until proof of guaranteed funds is provided by the account holder.

Insured: Autos Nex Store
5512 Highway 187
Anderson SC 29625
Agent: Dealer's Risk and Ins Services
PO Box 1088
Harrisburg NC 28075

----- PLEASE RETURN THE COUPON BELOW WITH YOUR PAYMENT -----

Account Number:	649197	Date Payment Due:	5/10/2011
Scheduled Payment:	\$0.00	Total Amount Due:	\$215.11
Late Fees:	\$10.24		
Additional Payment:	_____	Amount Enclosed:	_____

Autos Nex Store
5512 Highway 187
Anderson SC 29625

Johnson & Johnson Preferred Financing, Inc.
PO Box 162667
Atlanta, GA 30321-2667

0006491972 0000215112 051020116

Johnson & Johnson Preferred Financing, Inc.
Physical: 200 Wingo Way, Ste 200, Mt. Pleasant SC Mailing: PO Box 26009
Greensboro, NC 27420
800-868-5573

CANCELLATION NOTICE EFFECTIVE 5/31/2011 12:01 A.M. Standard Time

TO: Autos Nex Store
5512 Highway 187
Anderson, SC 29625

Account Number: 649197
Effective Date: 8/10/2010
Policy Number(s): PIC112590
Mailing Date: 5/26/2011

The insurance policy(ies) listed above is hereby cancelled by the lender for reason: Non-Payment of Premium, pursuant to the authority given us by the power of attorney in your "Premium Finance Agreement". For further information contact your Agent at: 800-432-4232 xt 109

Acceptance of payment after the cancellation date does not guarantee reinstatement. **YOU WILL CONTINUE TO RECEIVE MONTHLY BILLS AS LONG AS THERE IS A BALANCE ON YOUR ACCOUNT.** Johnson & Johnson Preferred Financing, Inc. can only request reinstatement from the insurance company.

Date of Payment in Default:	5/10/2011
Past Due Installment Amount:	\$204.87
Late Charge:	\$10.24
Minimum Amount Required to Request Reinstatement:	\$215.11
Account Balance:	\$215.11

Insured:	Autos Nex Store 5512 Highway 187 Anderson SC 29625
Agent:	Dealer's Risk and Ins Services PO Box 1088 Harrisburg, NC 28075 800-432-4232 xt 109

Company:

To: <images@centurysurety.com>
From: Leslie Waslo <LWaslo@theoiada.com>
Date: Fri, 29 Jul 2011 08:45:45 -0400
Subject: Autos Nex Store PIC112590

Please cancel the above policy for non-payment of premium per the attached request.

Thank you,
Leslie

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

POLICY NUMBER PIC112590	ENDT. # 2	CHANGES EFFECTIVE 05/31/2011	COMPANY ProCentury Insurance Company
NAMED INSURED AUTOS NEX STORE			AUTHORIZED REPRESENTATIVE IDIM 6060 A
COVERAGE PARTS AFFECTED GARAGE COVERAGE FORM			
<u>CHANGES</u> In consideration of \$382 return premium, the policy is canceled effective 05/31/2011. This policy is cancelled on a short-rate basis with a factor of .175. 07/29/2011 NR			

AUTHORIZED REPRESENTATIVE

IL 12 01 11 85

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Copyright, ISO Commercial Risk Services, Inc., 1983

Page 1 of 1

Account Transaction History #649197 (Autos Nex Store)

Click on a payment description for printable receipt

☐ Show Account Notes ☒ Show Account Status ☐ Show Balance After Each Transaction (including fees)

Date	Activity	Transaction Code	Amount	Description/Note	User
8/13/2010 12:01:12 PM	Activation			Account Activated	peppen
8/13/2010 12:01:12 PM	Status			Current	peppen
9/7/2010 9:25:34 AM	Convenience Fee	OF1050883	\$7.79		vickle
9/7/2010 9:25:34 AM	Installment	RCPT338185	\$212.66	Insured: Credit Card	vickle
10/14/2010 10:08:28 AM	Convenience Fee	OF1088733	\$7.79		vickle
10/14/2010 10:08:28 AM	Installment	RCPT343917	\$212.66	Insured: Credit Card	vickle
11/12/2010 1:43:35 PM	Convenience Fee	OF1083397	\$7.79		vickle
11/12/2010 1:43:35 PM	Installment	RCPT348594	\$212.66	Insured: Credit Card	vickle
12/15/2010 11:24:21 AM	Late Fee	LF1097915	\$10.24		mary
12/15/2010 11:24:25 AM	Status			Intent To Cancel	System
12/27/2010 12:00:24 PM	Status			Cancelled	System
12/27/2010 12:00:28 PM	Status			Cancelled. (Level 0)	mary
1/4/2011 8:08:43 AM	Convenience Fee	OF1105187	\$8.17		vickle
1/4/2011 8:08:43 AM	Installment	RCPT356221	\$223.28	Insured: Credit Card	vickle
1/4/2011 8:08:44 AM	Status			Current	vickle
1/12/2011 9:11:35 AM	Convenience Fee	OF1108860	\$5.00		barbara
1/12/2011 9:11:35 AM	Installment	RCPT357710	\$209.87	Insured: eCheck	barbara
2/10/2011 2:38:32 PM	Convenience Fee	OF1122931	\$5.00		ljalmea
2/10/2011 2:38:32 PM	Installment	RCPT382323	\$209.87	Insured: eCheck	ljalmea
3/11/2011 8:21:27 AM	Convenience Fee	OF1138085	\$5.00		ljalmea
3/11/2011 8:21:27 AM	Installment	RCPT367065	\$209.87	Insured: eCheck	ljalmea
4/15/2011 11:58:58 AM	Late Fee	LF1155853	\$10.24		sonya
4/15/2011 11:58:58 AM	Status			Intent To Cancel	System
4/19/2011 11:24:42 AM	Convenience Fee	OF1157330	\$5.00		barbara
4/19/2011 11:24:42 AM	Installment	RCPT373138	\$220.11	Insured: eCheck	barbara
4/19/2011 11:24:42 AM	Status			Current	System
5/18/2011 12:53:40 PM	Late Fee	LF1170877	\$10.24		mary
5/18/2011 12:53:45 PM	Status			Intent To Cancel	System
5/28/2011 11:25:02 AM	Status			Cancelled	System
5/28/2011 11:25:05 AM	Status			Cancelled. (Level 0)	mary
8/17/2011 2:13:08 PM	Cancel Return Premium Incl Agent Commission for # PIC112590	RCPT392512	\$382.00	Agent: Check 13288	debbie
8/17/2011 2:13:40 PM	Refund	RCPT392513	(\$166.89)	Insured: Check 122907 refund for closed account	debbie
8/17/2011 2:13:40 PM	Status			Closed	debbie

FINCO Premium Finance Company
618 West Friendly Avenue
Post Office Box 26009
Greensboro, NC 27420-6009
800-873-4626

TO: Independent Dealers Insurance Management
PO Box 1088
Harrisburg, NC 28075

CANCELLATION NOTICE EFFECTIVE 5/31/2011 12:01 A.M. Standard Time

Account Number: 649197
Effective Date: 8/10/2010
Policy Number(s): PIC112590
Mailing Date: 5/26/2011

The insurance policy(ies) listed above is hereby cancelled by the lender for reason: Non-Payment of Premium, pursuant to the authority given us by the power of attorney in your "Premium Finance Agreement". For further information contact your Agent at: 800-432-4232 x1109

Acceptance of payment after the cancellation date does not guarantee reinstatement. **YOU WILL CONTINUE TO RECEIVE MONTHLY BILLS AS LONG AS THERE IS A BALANCE ON YOUR ACCOUNT.** FINCO Premium Finance Company can only request reinstatement from the insurance company.

Note to Insurer: Please be advised that the gross cancellation return must be returned within 60 days of cancellation date.

Due Date: 5/10/2011
Installment Amount: \$204.87
Late Charge: \$10.34
Past Due: \$215.11

Insured: Autos Next Store
5512 Highway 187
Anderson SC 29625

Agent: Dealer's Risk and Ins Services
PO Box 1088
Harrisburg, NC 28075
800-432-4232 x1109

Company: Independent Dealers Insurance Management
PO Box 1088
Harrisburg NC 28075

<https://secure.financepro.net/financepro/notices/ViewNotice.aspx?NoticeID...> 7/28/2011
PDF created with pdfFactory Pro trial version www.pdffactory.com

20140413 009

Notice History for Account #649197 (Autos Nex Store)

Cancelled notices are shown in red.
Notices that have been suspended are shown in gray.

View Notice	Resend?	Date Sent/Printed	Date Generated	Notice	Sent To	How To Send/How Sent	Language	Sent As
View Notice	☐ 1028082	8/13/2010 4:19:24 PM	8/13/2010 12:01:13 PM	Notice of Financed Premium	Ins Co: Independent Dealers Insurance Management	Email	English	Original
View Notice	☐ 1028081	8/13/2010 4:19:25 PM	8/13/2010 12:01:13 PM	Statement Billing Cover Letter	Agent: Dealer's Risk and Ins Services	Email	English	Original
View Notice	☐ 1033307	8/26/2010 11:38:28 AM	8/26/2010 10:54:20 AM	Billing Statement	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	☐ 1048851	9/27/2010 12:54:35 PM	9/27/2010 12:03:07 PM	Billing Statement	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	☐ 1047009	9/27/2010 4:05:21 PM	9/27/2010 12:03:17 PM	Notice of Financed Premium	Ins Co: Independent Dealers Insurance Management	Email	English	Original
View Notice	☐ 1052600	10/11/2010 4:07:33 PM	10/11/2010 10:56:48 AM	Past Due Warning	Insured: Autos Nex Store	Email	English	Original
View Notice	☐ 1060058	10/26/2010 11:49:17 AM	10/26/2010 10:46:24 AM	Billing Statement	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	☐ 1067096	11/11/2010 3:43:13 PM	11/11/2010 10:45:56 AM	Notice of Financed Premium	Ins Co: Independent Dealers Insurance Management	Email	English	Original
View Notice	☐ 1068876	11/11/2010 3:43:15 PM	11/11/2010 10:45:34 AM	Past Due Warning	Insured: Autos Nex Store	Email	English	Original
View Notice	☐ 1073978	11/29/2010 12:47:04 PM	11/29/2010 11:40:50 AM	Billing Statement	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	☐ 1080244	12/13/2010 3:58:24 PM	12/13/2010 12:12:52 PM	Past Due Warning	Insured: Autos Nex Store	Email	English	Original
View Notice	☐ 1081400	12/15/2010 11:34:13 AM	12/15/2010 11:24:25 AM	Intent to Cancel	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	☐ 1081401	12/15/2010 4:00:57 PM	12/15/2010 11:24:25 AM	Intent to Cancel	Agent: Dealer's Risk and Ins Services	Email	English	Original
View Notice	☐ 1085740	12/27/2010 12:33:03 PM	12/27/2010 12:00:24 PM	Cancellation Notice	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	☐ 1086092	12/27/2010 1:06:25 PM	12/27/2010 12:00:48 PM	Billing Statement	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	☐ 1085741	12/27/2010 4:03:54 PM	12/27/2010 12:00:24 PM	Cancellation Notice	Agent: Dealer's Risk and Ins Services	Email	English	Original
View Notice	☐ 1085739	12/27/2010 4:03:54 PM	12/27/2010 12:00:24 PM	Cancellation Notice	Ins Co: Independent Dealers Insurance Management	Email	English	Original
View Notice	☐ 1088488	12/27/2010 4:03:57 PM	12/27/2010 12:01:12 PM	Notice of Financed Premium	Ins Co: Independent Dealers Insurance Management	Email	English	Original
View Notice	☐ 1089498	1/4/2011 11:51:11 AM	1/4/2011 8:06:44 AM	Reinstatement Request	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	☐ 1089865	1/4/2011 12:37:35 PM	1/4/2011 12:37:35 PM	Payment Coupons	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	☐ 1089495	1/4/2011 4:02:36 PM	1/4/2011 8:06:44 AM	Reinstatement Request	Ins Co: Independent Dealers Insurance Management	Email	English	Original
View Notice	☐ 1089497	1/4/2011 4:02:36 PM	1/4/2011 8:06:44 AM	Reinstatement Request	Agent: Dealer's Risk and Ins Services	Email	English	Original

20140413 003

View Notice	1092830	1/11/2011 3:57:39 PM	1/11/2011 1:50:01 PM	Past Due Warning	Insured: Autos Nex Store	Email	English	Original
View Notice	1099353	1/28/2011 11:23:38 AM	1/28/2011 11:01:28 AM	Billing Statement	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	1108083	2/10/2011 4:04:33 PM	2/10/2011 11:45:18 AM	Notice of Financed Premium	Ins Co: Independent Dealers Insurance Management	Email	English	Original
View Notice	1111778	2/23/2011 12:23:03 PM	2/23/2011 11:53:40 AM	Billing Statement	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	1126117	3/28/2011 12:30:07 PM	3/28/2011 11:48:59 AM	Billing Statement	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	1126534	3/28/2011 4:04:48 PM	3/28/2011 11:49:29 AM	Notice of Financed Premium	Ins Co: Independent Dealers Insurance Management	Email	English	Original
View Notice	1131879	4/11/2011 4:08:55 PM	4/11/2011 12:52:20 PM	Past Due Warning	Insured: Autos Nex Store	Email	English	Original
View Notice	1133999	4/15/2011 12:09:10 PM	4/15/2011 11:58:58 AM	Intent to Cancel	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	1134000	4/15/2011 4:09:45 PM	4/15/2011 11:58:58 AM	Intent to Cancel	Agent: Dealer's Risk and Ins Services	Email	English	Original
View Notice	1137840	4/25/2011 1:38:12 PM	4/25/2011 12:37:06 PM	Billing Statement	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	1145755	5/11/2011 4:06:13 PM	5/11/2011 11:05:21 AM	Past Due Warning	Insured: Autos Nex Store	Email	English	Original
View Notice	1146465	5/12/2011 4:32:06 PM	5/12/2011 12:08:53 PM	Notice of Financed Premium	Ins Co: Independent Dealers Insurance Management	Email	English	Original
View Notice	1147312	5/16/2011 1:09:18 PM	5/16/2011 12:53:45 PM	Intent to Cancel	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	1147313	5/16/2011 4:27:18 PM	5/16/2011 12:53:45 PM	Intent to Cancel	Agent: Dealer's Risk and Ins Services	Email	English	Original
View Notice	1152084	5/25/2011 11:31:35 AM	5/25/2011 11:10:48 AM	Billing Statement	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	1152461	5/26/2011 11:39:37 AM	5/26/2011 11:25:02 AM	Cancellation Notice	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	1152462	5/26/2011 4:06:53 PM	5/26/2011 11:25:02 AM	Cancellation Notice	Agent: Dealer's Risk and Ins Services	Email	English	Original
View Notice	1152460	5/26/2011 4:08:54 PM	5/26/2011 11:25:02 AM	Cancellation Notice	Ins Co: Independent Dealers Insurance Management	Email	English	Original
View Notice	1166685	6/27/2011 1:30:38 PM	6/27/2011 12:43:48 PM	Billing Statement	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	1167165	6/27/2011 4:15:28 PM	6/27/2011 12:44:18 PM	Notice of Financed Premium	Ins Co: Independent Dealers Insurance Management	Email	English	Original
View Notice	1179274	7/25/2011 1:41:30 PM	7/25/2011 12:48:14 PM	Billing Statement	Insured: Autos Nex Store	Regular Mail	English	Original
View Notice	1187713	8/11/2011 4:08:39 PM	8/11/2011 11:25:28 AM	Notice of Financed Premium	Ins Co: Independent Dealers Insurance Management	Email	English	Original
View Notice	1190838	8/17/2011 3:20:09 PM	8/17/2011 2:13:40 PM	Refund for overpaid account	Insured: Autos Nex Store	Check	English	Original

Amount	166.89
SerialNum	122907
PostDate	11/14/2011
ItemSeqNum	29219629
TrRoutNum	53101121
TransCode	0

Amount	166.89
SerialNum	122907
PostDate	11/14/2011
ItemSeqNum	29219629
TrRoutNum	53101121
TransCode	0

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court Of Common Pleas

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Case No: 2016-000867

RECEIVED

FEB 13 2017

SC Court of Appeals

Darhyl Taylor, as the Personal Representative of the Estate of Ruth T. Simpson, Respondent,

v.

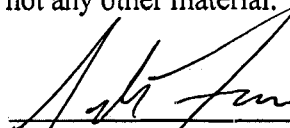
Johnson & Johnson Preferred Financing, ProCentury Insurance Company, FINCO
Premium Finance Co., Inc. and Carolina Independent Automobile Dealers Association,
Dealers Risk and Insurance Services, Independent Dealers Insurance Management,
Defendants,

Of whom ProCentury Insurance Company is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties except for certain materials ordered to be filed
under seal which is being filed separately and not any other material.

February 9, 2017


Phillip E. Reeves (S.C. Bar No. 4672)
Nicholas A. Farr (S.C. Bar No. 78769)
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Attorney for Appellant