IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Case No. 2014-CP-26-2463

Donna Jensen, ... Appellant,

v.

Matthew B. Wiseman and Peoples Underwriters, Inc., ... Respondents.

FINAL BRIEF OF APPELLANT

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2. **DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT TO THE RESPONDENTS WHERE MORE THAN A SCINTILLA OF EVIDENCE EXISTED THAT RESPONDENT, MATTHEW WISEMAN, WAS NEGLIGENT IN FAILING TO ASCERTAIN THAT AT LEAST ONE OF THE VEHICLES IN QUESTION WAS TITLED IN APPELLANT'S NAME, THEREBY BREACHING HIS DUTY TO ADEQUATELY ADVISE HER AND TO PLACE THE COMMERCIAL AUTOMOBILE POLICY IN HER NAME AS WELL AS IN THE DAYCARE?**

STATEMENT OF THE CASE

Appellant, Donna Jensen, filed this action asserting Respondents, Matthew B. Wiseman and Peoples Underwriters, Inc., were negligent in placing the commercial liability policy on her daycare because the policy did not cover injuries Jensen received in an accident on May 11, 2011, which occurred when Jensen was sitting at her desk in the daycare and was injured when a student's mother drove her vehicle into the building. Respondents timely answered.

By motion dated February 12, 2015, Respondents sought summary judgment,[1] stating that: "The grounds for this Motion are that Plaintiff cannot satisfy the elements of a negligence claim, including duty, breach of duty, or proximate case to alleged damages, and thus, the claim fails as a matter of law." (R. p. 372). The case was called for trial on June 22, 2015, before The Honorable Diane S. Goodstein, at which time a jury was drawn and the parties agreed to hear the outstanding motion for summary judgment the following morning prior to trial.

The next morning following a chambers conference, the trial court heard arguments on the motion for summary judgment. The trial court granted summary judgment in favor of Respondents from the bench, and this oral order was followed by a written order dated August 14, 2015. Appellant made a Rule 59(e) motion to alter or amend, which was denied by the trial court. Appellant thereafter made a motion for a new hearing based upon after-discovered evidence, which was also denied by the trial court. This appeal followed.

[1] Appellant Jensen also moved for summary judgment but the only issues involved in this appeal concern the grant of summary judgment in favor of Respondents.

STATEMENT OF FACTS

Appellant, Donna Jensen, operated a daycare for many years in Horry County, South Carolina, known as the Learning Station, CDC, LLC f/k/a Four J's & A D, LLC, d/b/a The Learning Station. The Learning Station had approximately 175 students and employed 32 teachers (R. p. 211). Jensen procured commercial insurance for the Learning Station through various insurance agencies. In the Spring of 2010, Jensen was contacted by Respondent, Matthew B. Wiseman, an independent agent with Respondent, Peoples Underwriters, Inc., about purchasing commercial liability coverage for the daycare. In April of 2010, Jensen met with Wiseman to discuss her needs for commercial property coverage, commercial comprehensive liability coverage, and commercial automobile coverage on two vans as a part of an overall insurance policy for her daycare business (R. p. 389). During this meeting, Wiseman suggested that Jensen increase the amount of underinsurance (UIM) coverage on the two vans associated with her business from $750, 000 to $1,000,000 (R. p. 389). That policy went into effect on April 17, 2010 (R. p. 558).

On May 11, 2011, while sitting at her desk at work, a vehicle driven by the parent of one of the students at the Learning Station crashed into the building of the daycare, injuring Jensen severely. According to Jensen, when she contacted Wiseman following the incident, he assured her she would be covered (R. pp. 354-355).

Jensen pursued a claim against the at-fault driver and recovered liability limits of $25,000 in exchange for a covenant not to execute.[2] She also filed a claim with Allstate, her personal

[2] Pursuant to a consent order executed between Appellant's counsel and counsel for Allstate, a hearing for damages was held before the Honorable Daniel Hewitt Hall in Conway, South Carolina. By Order dated March 18, 2015, Judge Hall found that Jensen was entitled to an award of $850,000 against the at-fault driver.

automobile insurance carrier, and will recover $25,000 in UIM limits, pending the outcome of this matter. Thereafter, Jensen filed a claim under the UIM provision of the Learning Station's commercial automobile insurance policy with Selective Insurance Company. Selective denied the claim, and Jensen thereafter filed a declaratory judgment action which was removed to federal court. By order dated June 19, 2013, the federal court held there was no coverage for the accident under the commercial automobile policy, stating that "the way the policy had been written indeed excluded Plaintiff from coverage." (R. p. 401).

Jensen thereafter filed this action claiming Respondents were negligent in placing the commercial automobile policy in the name of the daycare only and not in her individual name because the policy did not cover Jensen for the accident in question. Respondents moved for summary judgment, and following the drawing of a jury for trial, the Honorable Diane S. Goodstein heard arguments on the motion. Immediately prior to the hearing, Judge Goodstein raised the issue of whether Jensen had an insurable interest in the daycare vans to counsel in chambers (R. p. 176). Accordingly, during arguments on the record, Respondents' counsel for the first time argued that Jensen had no insurable interest in the vehicles in question. (R. pp. 153-154). Counsel for Jensen stated that issue had never been raised by Respondents but his client informed him she believed the vans were titled in her name (R. pp. 150-151). Counsel then indicated he would be able to introduce proof of his client's insurable interest in the vans at trial (R. p. 163). The trial court refused to allow him to supplement the record with proof of ownership, ruling from the bench that Respondents were entitled to summary judgment because Jensen had not satisfied the elements of her negligence claim and had not submitted proof of title to the vans in question and therefore had no insurable interest in them (R. pp. 168-177). The oral ruling was followed by a written order dated August 14, 2015 (R. pp. 5-17).

Jensen then filed a Rule 59(e) motion to alter or amend the judgment. Styled as a "motion to reconsider order for summary judgment," the motion stated that Jensen's counsel had received from his client copies of the titles for the two vans covered under the commercial automobile policy for the daycare center, and that one of the two vans was titled in the name of Donna M. Jensen or Four J's & A D (R. pp. 413-416). By Order dated September 1, 2015, the trial court denied the motion to reconsider, stating *inter alia*, that a party cannot use a Rule 59(e) motion to present new evidence to the court (R. p. 18). Thereafter, Jensen filed a motion for a new hearing based on newly discovered evidence (R. p. 420-422). By Order dated October 1, 2015, the trial court denied the motion on the ground that the evidence in question "could have been presented to the Court at the time of the motion for summary judgment and cannot be considered newly discovered evidence as contemplated by Rule 60(b)." (R. p. 19). This appeal followed.

ARGUMENTS

I. The trial court erred in granting summary judgment to Respondents on the day of trial on the ground that Appellant had no insurable interest in the vans because Respondents never raised that issue in their motion for summary judgment and the trial court refused to permit Appellant's counsel to supplement the record with proof of his client's insurable interest.

It is well settled that summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *R.J. Hendricks, II v. Clemson Univ.*, 353 S.C. 449, 455, 578 S.E.2d 711, 714 (2003). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in the light most favorable to the non-moving party below. *USAA Prop & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 796 (2008). In cases where the burden of proof is by the preponderance of the evidence, the non-moving party is required to submit merely a scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Furthermore, since it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Only when plain, palpable and indisputable facts exist on which reasonable minds cannot differ, should summary judgment be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct.App. 2004). Viewing the trial court's order through this lens, it is clear that the grant of summary judgment must be reversed.

Respondents' motion for summary judgment was very general, seeking judgment as a matter of law on the grounds that Appellant "cannot satisfy the elements of a negligence claim, including duty, breach of duty, or proximate cause to alleged damages." (R. pp. 372-373). The

motion was filed in February of 2015 and argued in front of the Honorable Larry Hyman, although he never ruled. On June 22, 2015, a jury was drawn by the Honorable Diane S. Goodstein in Conway, South Carolina. The following day, after conferring with Judge Hyman, and prior to bringing the jury into the courtroom, the trial court heard Respondents' motion for summary judgment. In a chambers conference, the trial court asked the attorneys to address the issue of whether Appellant Jensen had an insurable interest in the vans (R. p. 176).

Counsel for Respondents proceeded to argue that her clients owed no duty to Appellant to advise her concerning her personal insurance, relying primarily on *Trotter v. State Farm Mut. Auto.* Co., 297 S.C. 465, 377 S.E.2d 343 (1988). Additionally, pursuant to the trial court's request, Respondents' counsel for the first time brought up the issue that Jensen had no insurable interest in the daycare vehicles (R. pp. 153-154). That issue had been not raised in Respondents' motion for summary judgment and had never been recognized by counsel as an issue in the case until that morning. Appellant's counsel acknowledged to the trial court in his argument that he hadn't submitted anything on insurable interest because until then, he had never heard those words mentioned in this case (R. p. 150). He then stated that his client had handed him a note stating she believed that the vans were titled in her and her husband's name (R. p. 151).

Before Respondents' counsel could respond, the trial court stated: "The fact that these vehicles are not titled in the LLC is a bit of a bombshell. How about helping me there." (R. p. 153). Counsel for Respondents answered by reviewing the burden of proof, arguing that Appellant--*the non-moving party*--had "the burden to prove that they are not how they're titled, and there is nothing in this record that they were titled in their personal names." (R. pp. 153-154). The trial court continued to confuse the burden of proof by asking Respondents' counsel: "Have you ever had any information up until this moment, I should say five minutes ago that in fact these-

-at the time of the accident, that the vehicles, the insured vehicles that were insured under this commercial automobile policy, were owned by anyone other than the LLC?" (R. p. 157). Respondents' counsel answered in the negative. *Id.*

Counsel for Appellant candidly admitted he had never put forth the titles to the daycare vehicles because he had never before seen this as an issue in the case. (R. p. 150). However, he stated he would put it into evidence at the trial. Respondents' counsel persisted in turning the burden of proof on its head by arguing to the trial court: "[H]e can't introduce it into evidence because...he has the burden of proof in this case. He would have the duty to prove that all of a sudden there's this insurable interest." (R. p. 163).

Appellant's counsel reiterated that the issue of insurable interest was not raised in Respondents' motion for summary judgment and was only raised for the first time that morning (R. p. 164). Acknowledging that "it's disconcerting a little bit the comment about who owns these buses," (R. p. 167) the trial court, nevertheless, ruled from the bench that Respondents had no duty to advise under *Trotter* and there was nothing in the record to establish that Appellant had an insurable interest in daycare vehicles (R. pp. 176-177). During the oral ruling, the trial court acknowledged it was the court which had initially raised the issue of whether Appellant had an insurable interest in the vehicles (R. p. 176). The trial court stated:

> [L]ast evening as I was going through the information before me, I could find no information that led me to believe that this Plaintiff had an insurable interest. That was the question that I asked counsel in chambers this morning, can you point me to a part of this record where this Plaintiff has an insurable interest. Because taking the evidence in the light most favorable to the Plaintiff, the non-moving party, *that would in my mind have allowed the Plaintiff to survive summary judgment.*
>
> (R. pp. 176-177)

Appellant fully acknowledges that under our jurisprudence, argument of counsel is not evidence and that the oral ruling of a trial judge from the bench is superseded by the written order. *E.g., McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933)(appellate courts have repeatedly held that statements of fact appearing only in arguments of counsel will not be considered as evidence); *S.C. Dept. of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) (stating that arguments made by counsel are not evidence); *First Union Nat'l Bank v. Hitman, Inc.*, 306 S.C. 327, 329, 411 S.E.2d 681, 682 (Ct.App. 1991)(stating that no order is final until it is written); *Ford v. State Ethics Comm'n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001)(stating that the written order constitutes the final judgment). However, highlighting the arguments on the motion for summary judgment and the trial court's oral ruling in this case is essential in order to focus this Court's attention on the series of errors inherent in the trial court's grant of summary judgment.

First, the trial court went beyond the general motion for summary judgment filed by Respondents in *sua sponte* bringing up the issue of Appellant's insurable interest in the vehicles. It is crystal clear from the summary judgment motion that the issue was raised *for the first time* that morning. What is also apparent from the record is that Appellant's counsel was advised by his client that she believed the vehicles were in her and her husband's names. However, with this revelation, the trial court erroneously accepted the argument made by Respondents' counsel that Appellant had the burden of proof, and because this information as to title was not in the record, summary judgment should be granted.

The trial court had an opportunity to rectify its ruling on the motion to reconsider, but instead of doing so, it compounded its error by referring to the evidence as to title as "new pieces of evidence regarding the plaintiff's possible insurable interest in the company vehicles" and

holding that a party cannot use a Rule 59(e) motion to present new evidence to the court (R. p. 18). This ruling completely ignored the manner in which this issue of insurable interest was injected into the case. To add insult to injury, the trial court also stated in a footnote in its order that "There is no evidence that these documents were turned over during discovery." *Id.* This ignores the fact that the issue of insurable interest had never before been raised so there had been no request for production of the title during discovery.

In the area of error preservation it has been said that the courts of this state should not be party to a "gotcha" game to showcase alleged mistakes by attorneys at the expense of their clients. *See Atlantic Coast Builders v. Lewis*, 398 S.C. 323, 330, 730 S.E.2d 282, 285, (2012). This is so because of the "life-blood litigant" who will suffer. *Id.* That principle is even more compelling here, where, on the eve of trial, the trial court itself raised a ground to support summary judgment not mentioned in the motion and then at the hearing on the motion, proceeded to place on the non-moving party the burden of proof on the issue. Moreover, the trial court denied--three times--Appellant's counsel's request to introduce evidence which, according to the trial court, would have allowed his client to survive summary judgment. This Court should not countenance such an erroneous procedure and concomitant ruling which resulted in Appellant losing her day in court. It is clear from the transcript of the hearing that the issue of Appellant's insurable interest in the daycare vehicles--an issue which the trial court deemed so pivotal that it not only raised it itself but stated on the record that Appellant's survival of summary judgment hinged on it--was clearly disputed and that summary judgment was therefore improper.

Because the trial court characterized the evidence on title of the vans as new evidence, Appellant thereafter filed a motion for a new hearing based on after-discovered evidence (R. pp. 417-419). However, the trial court ruled that the evidence as to title could not constitute after-

discovered evidence because it had been in Appellant's possession at the time of the summary judgement motion but not presented to the court (R. p. 19). Appellant was thus placed in the impossible position of not being permitted to supplement the evidence at the summary judgment motion because it was "too late", not being able to raise the issue in her motion to reconsider because new matter cannot be brought up at the Rule 59(e) stage, and not being entitled to a new hearing based on after-discovered evidence because the evidence was in her possession but not introduced at the hearing. Faced with this circular, erroneous reasoning, Appellant had no choice but to appeal the grant of summary judgment to this Court.

The importance of this information regarding the title to the vehicles can scarcely be debated. As noted in the lengthy block quote above, the trial court acknowledged in the oral ruling that *Appellant would have survived summary judgment* if she had been able to establish an insurable interest in the vans (R. p. 177). Nevertheless, the trial court refused to allow Appellant's counsel to hold the record open so as to allow him to introduce this evidence, and she also denied his two post-trial motions to do so. This was patently unfair to Appellant and requires reversal.

II. The trial court erred in granting summary judgment to the Respondents because more than a scintilla of evidence existed that Respondent Matthew Wiseman was negligent in failing to ascertain that at least one of the vehicles in question was titled in the name of Appellant, thereby breaching his duty to adequately advise her and to place the commercial automobile policy in her name as well as in the name of the daycare.

South Carolina jurisprudence is clear that in order to survive summary judgment in a civil case where the burden of proof is by the preponderance of the evidence, the non-moving party has only to submit a scintilla of evidence. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Here, considerably more than a mere scintilla of evidence exists that Respondent Matthew Wiseman was negligent in failing to ascertain that at least one of the vehicles in question was actually titled in the name of Appellant Jensen and that he therefore breached his duty to adequately advise her and to properly write the commercial automobile policy.

It is undisputed that Wiseman, an independent insurance agent, in an effort to garner Appellant's commercial liability insurance business, reached out to Appellant, advising her that he was aware of some excellent coverage that she might want to consider for her daycare business (R. p. 302-303). Ultimately, the two met to discuss transferring her commercial liability insurance business to him. At that meeting, according to Appellant, she told Wiseman she wanted coverage for every single person that went in and out of her daycare business every day, including herself (R. p. 334). He suggested she increase the underinsured coverage on the two daycare vans to $1,000,000 (R. p. 196). Significantly, the space on the policy he wrote for her regarding title to the two vehicles was left blank. When the accident in question happened, Wiseman repeatedly told Appellant not to worry, that she was covered (R. pp. 354-355). Nevertheless, the federal court concluded that the policy was not written in such a way as to allow Appellant to recover under this underinsured coverage (R. p. 27). As a result, Appellant brought this suit against Wiseman and

Peoples Underwriters for Wiseman's negligence in procuring this policy of insurance.

In her first argument, Appellant Jensen established that the trial court erred in several particulars in granting summary judgment to Respondents, including in overlooking the principle that a litigant is normally limited to the grounds stated in his motion for relief; in confusing the burden of proof in a motion for summary judgment; and, in denying Appellant the right to introduce evidence to counter a new issue injected into the case by the court. In her second argument, Appellant contends the trial court also erred in ignoring the standard of proof necessary to survive a motion for summary judgment--a mere scintilla--and in applying the law regarding the duty of an independent insurance agent to advise a client.

At the hearing for summary judgment, the parties disagreed as to the applicable law. Respondents' position was that this case was governed by the case of *Trotter v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 465, 377 S.E.2d 343 (Ct. App. 1988), while Appellant argued this case was more akin to the situation presented in *Riddle-Duckworth, Inc. v. Sullivan*, 253 S.C. 411, 171 S.E.2d 486 (1969). The trial court accepted Respondents' argument and held that *Trotter* controlled. Accordingly, the trial court held that Respondents owed no duty to Appellant and that in addition, Appellant's lack of an expert witness required that summary judgment be granted to Respondents. This was error.

In *Trotter,* Mr. Trotter was the sole proprietor of an upholstery business and met with his State Farm agent about insuring his vehicles, including the pickup truck he used to collect and deliver his customers' furniture. Trotter told his agent he wanted "full protection" on the truck, explaining how the truck would be used in his business. The agent wrote a commercial policy on the truck and a personal policy on his other vehicles. The commercial policy included a standard exclusion for any injury to an employee of the insured arising out of his or her employment. This

exclusion was not pointed out to Trotter nor did the agent ask him if he needed to purchase workers' compensation insurance. Years later, Trotter and an employee were traveling in the truck when they were involved in an accident. When coverage was denied by State Farm based on the exclusion, Trotter brought suit. Following a jury verdict in favor of Trotter, the Court of Appeals reversed, finding that Trotter presented no evidence to show that either State Farm or the agent expressly undertook to advise him on his insurance needs, stating that: "A request for 'full coverage,' 'the best policy,' or similar expressions does not place an insurance agent under a duty to determine the insured's full insurance needs, to advise the insured about coverage, or to use his discretion and expertise to determine what coverage the insured should purchase." 297 S.C. at 472, 377 S.E.2d at 347. In so holding, the Court of Appeals emphasized that Trotter conceded that he did not ask the agent's advice about workers' compensation coverage. *Id.*

Riddle-Duckworth, the case relied on by Appellant, was an action against insurance agents for damage resulting from alleged negligence in the procurement of liability insurance coverage for a business. The business sought out complete liability coverage for a business, including coverage on an elevator which was used to transport goods and people from one floor of the business to another. When the business moved to new premises, the elevator was also moved, and when the agent was informed of this fact, he assured the plaintiff the business was fully covered and that there was nothing to worry about. When the elevator ultimately malfunctioned and someone suffered injuries and recovered against the business, the business brought suit against its insurance agent. Following a verdict in favor of the business, the agents appealed and the Supreme Court affirmed, noting this general rule: "If the agent or broker fails, because of his fault or neglect, to procure the insurance, or does not follow instructions, or if the policy is void or materially deficient, or does not provide the coverage he undertook to supply, he is liable to his

principal for the loss sustained thereby." 253 S.C. at 420, 171 S.E.2d at 490. Appellant contends the situation presented here is analogous to *Riddle-Duckworth* because Wiseman negligently failed to ascertain title to the vans and, therefore, drafted a policy which was materially deficient.

However, regardless of whether this Court finds *Trotter* or *Riddle-Duckworth* more applicable to the case at hand, the trial court erred in granting summary judgment to Respondents. Our jurisprudence is clear that an agent owes a duty to a client to procure the insurance requested and not to write a policy which is materially deficient. Here, the evidence showed that Wiseman failed to inquire of Appellant concerning the state of title to the vehicles; in fact, that section was left blank in the policy. There is certainly more than a scintilla of evidence, emanating from the deposition of Appellant, that she requested that every employee of the daycare, including herself, be covered for any eventuality that occurred at the business. Appellant's testimony alone created an issue of fact for the jury.

Nor was the trial court correct in holding that Appellant could not survive summary judgment because she failed to present an affidavit from an expert witness. South Carolina law is clear that expert testimony is not required where the jury can utilize its own knowledge and common sense in determining whether negligence occurred. *Green v. Lilliewood*, 272 S.C. 186, 192, 249 S.E.2d 910, 913 (1978) (stating that while the general rule is that expert testimony is required in a malpractice case to show that the defendant failed to conform to the required standard, there is an exception to the rule in situations where the common knowledge or experience of laymen is extensive enough to recognize or infer negligence from the facts.) *King v. Williams*, 276 S.C. 478, 483, 279 S.E.2d 618, 620 (1981)("The law is well-established that expert testimony is not required where the common knowledge or experience of laymen is capable of inferring lack of proper care and also the required causal link"); *Pederson v. Gould*, 288 S.C. 141, 142, 341

S.E.2d 633, 634 (1986)(stating that expert testimony is not required where the common knowledge or experience of laymen is extensive enough for them to be able to recognize or infer negligence). Here, surely expert testimony was not required to establish that when an insurance agent undertakes to insure a vehicle, he should inquire as to who owns the vehicle in question. The expert testimony of Edwin Stuart Powell, Jr., offered by Respondents, is focused primarily on whether Respondents had a duty to discuss workers' compensation coverage with Appellant and does not address the duty of an agent who writes a policy on a vehicle to ascertain ownership of that vehicle. Appellant submits that the testimony of Jensen, when taken together with the inference that Wiseman was negligent in not inquiring about the title to the vans, is sufficient to withstand summary judgment and under settled principles, this Court should reverse.

CONCLUSION

The trial court committed several errors in granting summary judgment to Respondents. First, the court went outside the bounds of the motion in raising a ground for summary judgment itself. Second, the court misapprehended its scope of review and placed the burden on Appellant to come forward with evidence to refute this new ground for summary judgment. The trial court also erred in refusing to allow Appellant the opportunity to introduce evidence on whether or not Appellant had an insurable interest in the vans, evidence which, by the court's own admission, would have allowed Appellant to survive summary judgment. Finally, the trial court erred in granting summary judgment because there was more than a scintilla of evidence adduced to create a classic jury issue regarding the negligence of Respondents in procuring insurance for Appellant and no expert witness is required in such a situation. For the foregoing reasons, Appellant requests this Court to reverse the grant of summary judgment and remand for a trial on the merits.

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Dated: November 10, 2016

CERTIFICATE OF COUNSEL

We hereby certify that Appellant's Final Brief complies with Rule 211(b), SCACR.

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