

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY  
COURT OF COMMON PLEAS

George C. James, Jr., Circuit Court Judge

Case No. 2014-CP-45-00644

**RECEIVED**

APR 20 2017

SC Court of Appeals

Larry Brand .....Appellant,

v.

Allstate Insurance Company .....Respondent.

FINAL REPLY BRIEF OF APPELLANT

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## ARGUMENT

### I. ALLSTATE'S ARGUMENT CALLS IN TO QUESTION FACTS NOT IN DISPUTE AND WHOLLY SUPPORTED BY THE RECORD.

In their brief, Allstate states:

...Brand argues (**with no supporting documentation**) that Westfield received a setoff of \$354,750.75, which was the amount of worker's compensation benefits Brand received.

(Respondent's Brief, p.20, emphasis added)

Thus it would appear that Allstate is attempting to dispute either a) that the amount of worker's compensation benefits received by Brand was \$354,750.75; and/or b) that Westfield actually received such an offset. Disputing either would be incorrect.

#### A. The Trial Court specifically found that it was an undisputed fact that Brand's Employer's UIM carrier, Westfield, received a worker's compensation setoff of \$354,750.75.

As to whether or not Brand received \$354,750.75, the trial court's order resolves that question. In the opening section of the order, in a section titled "Undisputed Facts Related To The Underlying Tort Action," the trial court specifically found:

The worker's compensation claim has been resolved for a total payment of compensation and medical benefits of \$354,750.75.

(R. p. 2)

Brand would note that finding by the trial court **was** based on documentation. Specifically, via his *Plaintiff's Memorandum in Opposition to Defendant's Motion For Summary Judgment*, Brand provided both Allstate and the trial court with a Form 19. In providing the Form 19 as an exhibit, Brand's memorandum explained that:

Subsequent to the filing of this action, BRAND's worker's compensation claim, WCC File #1002789, was settled. A *Form 19* filed with the S.C. Worker's Compensation Commission in February of 2015 shows the following compensation having been paid:

-Number of weeks of T.T.: 15 5/7 from 1/28/2010 – 5/1/2010 =	\$8,291.80
201 5/7 from 3/23/2011 – 2/1/2015 =	\$106,436.56
-Agreement and Final Release:	\$156,848.66
-Total Compensation Paid:	\$271,577.02
-Total Medical Benefits Paid:	\$83,173.73

See *Exhibit B*.

The above shows that the true total benefits paid to BRAND through Worker's Compensation coverage was \$354,750.75 (\$271,577.02 in compensation and \$83,173.73 in medical benefits)  
(R. pp. 132, 145-146)

Therefore any allegation that Brand did not receive \$354,750.75 in workers' compensation benefits or that there was no documentation providing support for that amount of benefits received would be incorrect and directly contradicted by the record.

**B. The trial court specifically found that Brand's Employer's UIM, Westfield, was subject to a setoff.**

In like manner, any argument by Allstate that Westfield did not receive a setoff or that this was an unsupported allegation by Brand also fails based on the trial court's order. The trial court specifically found that:

**The Westfield UIM coverage purchased by Plaintiff's employer was also subject to a workers' compensation set-off pursuant to the terms of the Westfield policy.** See, *Williamson v. United States Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994). The workers' compensation carrier has paid benefits totaling \$354,750.75, thereby reducing by operation of law the amount of Westfield's UIM coverage payable to Plaintiff from \$1,000,000.00 to \$645,249.25, of which \$450,000.00 has been paid to Mr. Brand.  
(R. p.10, emphasis added).

Brand would note that this finding by the trial court was also supported by documentation provided through Brand's memorandum in opposition.

The UIM Endorsement of WESTFIELD's policy states:

C. Exclusions

This coverage does not apply to any of the following:

1. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.

*See Exhibit C, p.2*

That UIM Endorsement goes on to state:

D. Limit of Insurance

...

We will not pay for any element of "loss" if a person is entitled to receive payment from the same element of loss under any workers' compensation, disability benefits or similar law.

*See Exhibit C, p.2.*

(R. pp. 135, 149)

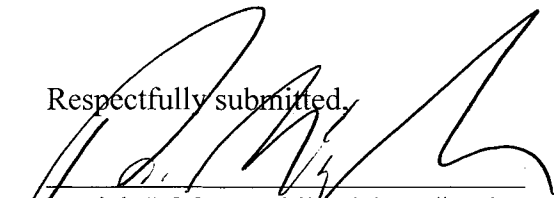
In short, Allstate's attempts to call in to question Brand's arguments based on disputing the amount of the workers' compensation setoff Westfield was entitled to or whether or not Westfield received such a setoff is directly contradicted by the record.

### CONCLUSION

Having addressed these two issues concerning the factual record raised by Allstate's Respondent's Brief, Brand rests his reply in reliance upon the legal arguments made in his previous brief.

April 19, 2017

Respectfully submitted,



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