

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge
Robert E. Hood, Circuit Court Judge

RECEIVED

NOV 08 2017

SC Court of Appeals

Appellate Case No.: 2016-000986

Porthemos Curry.....Respondent/Appellant,

v.

Carolina Insurance Group of SC, Inc. and Maurice
Derrick,.....Appellants/Respondents.

APPENDIX TO THE RECORD ON APPEAL

T. Jeff Goodwyn, Jr.
Rachel G. Peavy
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, SC 29205
(803) 251-4517
Attorneys for Respondent/Appellant

Wesley D. Peel
Bryan M. J. Triplett
Bruner Powell Wall & Mullins, LLC
1735 St. Julian Place (29204)
P.O. Box 61110
Columbia, SC 29260-1110
(803) 252-7693
Attorneys for Appellants/Respondents

INDEX FOR APPENDIX TO THE RECORD ON APPEAL

I. ORDERS

Form 4 Order of the Honorable Jocelyn Newman, filed August 1, 2017.....458

II. PLEADINGS

Motion for Relief Pursuant to Rule 60(b), SCRCp, filed January 31, 2017.....459

Memorandum in Opposition to Curry's Motion for Relief, filed February 17, 2017.....488

Reply to Memorandum in Opposition, filed March 2, 2017.....717

III. CERTIFICATE OF COUNSEL.....744

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-40-04661

Porthemos Curry

Carolina Insurance Group of SC, Inc.

PLAINTIFF(S)

Maurice Derrick

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion for Relief Pursuant to Rule 60(b), SCRPC, is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

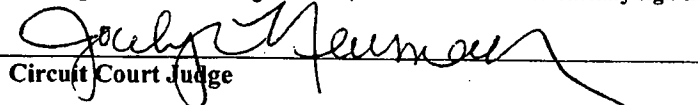
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2757
Judge Code

July 25, 2017
Date

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff(s),

vs.

Carolina Insurance Group of SC, Inc.
and Maurice Derrick,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-04661

**PLAINTIFF'S MOTION FOR RELIEF
PURSUANT TO
RULE 60(b), SCRPC**

2017 JAN 31 PM 4:52
JANETTE W. HODGINS
CLERK, P. & G.S.

RICHLAND COUNTY
FILED

Pursuant to the Order of the South Carolina Court of Appeals, attached as **Exhibit**

A, the Plaintiff hereby moves for relief from the Court's order granting Defendants Carolina Insurance Group of SC, Inc. and Maurice Derrick's (collectively "the Agency") Motion to Amend Answer to assert the affirmative defense of release. See Exhibit B.

Because this Court was never advised by Agency's counsel that he had actually received a copy of the unexecuted Scottsdale Release on November 30, 2015 - and the Court's reasoning was premised on the Agency's representation that it only first saw the Scottsdale Release on April 8, 2016 - the Plaintiff respectfully requests that the Court, in its sound discretion, grant this Motion for Relief; vacate its prior order; and enter a new order denying Agency's motion to amend its answer.¹

In the event this Motion is granted by the Court, the pending appeal arising from this defense, currently held *in abeyance*, would be necessarily dismissed as moot (as the

¹ The unexecuted Scottsdale Release, which Agency's counsel received from Attorney JR Murphy on November 30, 2015, and the executed Scottsdale Release he received from Plaintiff's counsel on April 8, 2016, are identical.

denial of a motion to amend is not immediately appealable) and the case remanded to the lower court for trial.

Procedural Background

On April 18, 2016, the first day of trial, the Court granted the Agency's motion to amend its answer to assert the affirmative defense of release. Agency's counsel alleged that the reason they moved to amend at trial was because they had only received a copy of the Scottsdale Release on April 8, 2016, and therefore had only just had a chance to review the terms and conditions therein. The trial was continued to allow the Court time to hear the Agency's motion for summary judgment as to the affirmative defense of release. The Court set the matter for a new date certain trial for the May 16, 2016 jury term.

The Honorable Robert E. Hood subsequently denied the Agency's motion for summary judgment, and granted the Plaintiff's cross-motion for summary judgment as to the new defense. The Agency appealed from Judge Hood's order granting summary judgment in favor of the Plaintiff as to the affirmative defense, thereby resulting in the cancellation of the second date certain trial set for May.²

Factual Background

This lawsuit arises out of the alleged failure to procure insurance coverage for a vacant house, under construction, which suffered massive damage as a result of a fire on February 21, 2014. Plaintiff filed a claim under his vacant structures policy, issued by Scottsdale Insurance Company. The claim was denied as falling outside of the coverage period.

² Plaintiff subsequently cross-appealed the Court's order allowing the amendment.

Plaintiff subsequently filed suit against Scottsdale Insurance Company, the issuer of the policy, for breach of contract; statutory bad faith; and common law bad faith. The Plaintiff brought claims against Carolina Insurance Group and Maurice Derrick for negligence, later amending the pleading to add claims for gross negligence as against Carolina Insurance Group and Mr. Derrick. The complaint, as amended, alleged that Carolina Insurance Group and Mr. Derrick were agents of Scottsdale. Carolina Insurance Group and Mr. Derrick denied such allegation in their answer, as amended, and in their deposition testimony.

Plaintiff reached a settlement agreement with Scottsdale Insurance Company in November 2015. On November 25, 2015, counsel for Scottsdale, J.R. Murphy, wrote a letter to Plaintiff's counsel whereby he wrote that he was enclosing a check, along with a Release (hereafter "the Release") and Stipulation of Dismissal for signature. Agency's counsel, Wesley Peel, Esq., was copied on the letter; however, JR Murphy's letter did not indicate that he was providing a copy of the Release to Mr. Peel at that time (i.e., the "cc" did not include language such as "w/encl." or "with enclosure"). A copy of the letter is attached as **Exhibit C**.

Plaintiff thereafter executed the Scottsdale Release and the parties proceeded to file a Stipulation of Dismissal as to Scottsdale Insurance Company. The Stipulation provided that *"the Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal."* The Stipulation of Dismissal – signed by Plaintiff's counsel, Agency's counsel, and Scottsdale's counsel, was filed on December 30, 2015. The remaining parties – the Agency and Mr. Curry - proceeded to prepare for trial, and the Honorable Allison R. Lee set the matter as a date certain trial for the April 18, 2016 jury term.

On April 8, 2016, Mr. Peel requested a copy of the settlement agreement between Mr. Curry and Scottsdale from Plaintiff's counsel. The executed Scottsdale Release, attached as **Exhibit D**, was forwarded to him that same day.

On April 18, 2016, a jury was selected and the parties proceeded to take up various pre-trial matters, including motions *in limine*, with the Court. On April 18, 2016, the Agency filed a motion to amend its answer to assert the affirmative defense of release, alleging that the Scottsdale Release served to release the Agency as well.

In support of his Motion to Amend, Mr. Peel represented to the Court that he had only saw the executed Scottsdale Release when he received it from Plaintiff's counsel on April 8th; that he did not have notice of the Release based upon JR Murphy's letter; there was no prejudice to Mr. Curry; and that Mr. Curry's counsel had failed to produce the Scottsdale Release until April 8th. See Exhibit E (J. Newman Hrg. Tr. at p. 56, l. 9-11; p. 37, l. 17 – p. 38, l. 2.).

Plaintiff's counsel, objecting to this late amendment at trial, represented to the Court, based upon her reading of JR Murphy's letter, that Agency's counsel was "on notice" of the Release by virtue of Mr. Murphy's letter advising of the settlement and enclosing the Release, Stipulation of Dismissal, and settlement check, having assumed that Attorney Murphy had not sent the enclosures to Mr. Peel.

Relevant portions of the hearing transcript, excerpted below, reflect the parties' representations to the Court:

Mr. Peel: I did not see the executed releases until April 8th. Ms. Peavy gave it to me as soon as I asked for it, the same day. However, it was apparently signed in December . . . When they served the release on me, not just the stipulation of dismissal, I had signed it, I did not get – I went back and checked – I did not get anything but the stipulation.

So I didn't see it. As I said, I just got this release, copy of the release April 8th from – I did move this morning.

...

Ms. Peavy: Your honor, we would oppose their motion to amend at this late date. And the reason for that is that they were on notice that we settled with Scottsdale in December . . . They are moving to amend the day of trial on an issue that they had notice of five months ago.

Mr. Peel: I did not have notice of it. You did not serve with me with a copy of the release and I distinctly requested copies of correspondence, e-mails, anything like that . . . and ya'll did not provide it to me.

...

Ms. Peavy: Your honor, my position is he was on actual notice that settlement agreement had been executed. If I failed to provide that to him in December, that is my error, but it is not that he didn't have notice that it existed. He knew Scottsdale had been released because he signed off on the stipulation of dismissal as to Scottsdale.

The Court: I know, *but it seems to me that you are seeking to benefit from your failure to provide him with a copy of the document . . . [Y]ou came into possession of it in December and did not provide a copy to him in December, January, February, or March, and he seeks to enforce it in April, I don't know that you should benefit from your delay.*

...

Mr. Peel: ... There is absolutely no prejudice because it is their document. They know what is in it.

The Court: *And he has just received a copy of it on April 8th.* I am inclined to – yes, I am going to grant the motion [to amend].

See, generally, Exhibit E (Hrg. Tr. at pp. 56, l. 4 – p. 60, l. 1., pp. 37-38) (emphasis added).

The Agency did not object to, or clarify, opposing counsel's remarks to the Court, or inform the Court that it had, in fact, received a copy of the Release from JR Murphy in

November. Accordingly, Plaintiff respectfully submits that it was the Court's understanding on April 18th that the Agency had never had the opportunity to review the terms and conditions of the Scottsdale Release until April 8, 2016.

The Court, having granted the motion to amend, continued the trial to May 16th in order to allow time for Judge Hood to hear the parties' respective motions for summary judgment as to the affirmative defense of release.

The Agency subsequently appealed Judge Hood's order granting summary judgment in favor of the Plaintiff as to the affirmative defense of release. On November 16, 2016, the consolidated Record on Appeal in this matter was filed with the Court of Appeals. On November 14, 2016, in reviewing the draft Record on Appeal prepared by Agency's counsel, Plaintiff's counsel discovered that Agency's counsel had included in the Record a copy of JR Murphy's November 25, 2015 letter, including enclosures, which reflected the receipt by Mr. Peel of the Scottsdale Release on November 30th (by way of his firm's "received" stamp). See Exhibit F.³

In short, Agency's counsel received the Scottsdale Release on November 30, 2015, but the Agency failed to move to amend its answer to assert the affirmative defense of release until the first day of trial on April 18, 2016. Upon information and belief, the Agency allowed the Court (and Plaintiff's counsel) to have the mistaken impression that it had not had the opportunity to review the terms and conditions of the Scottsdale Release – upon which the Agency based its late-filed motion to amend - until April 2016.⁴

³ Plaintiff's counsel thereafter filed a motion with the Court of Appeals for leave to make the instant motion, as required under Rule 60, SCRCP.

⁴ It is undisputed that Plaintiff's counsel, based upon her reading of JR Murphy's letter, always believed (and represented erroneously to the trial court) that JR Murphy had not sent the enclosures to Attorney Peel.

Legal Standard and Argument

A motion under Rule 60(b) is addressed to the sound discretion of the trial judge.

Coleman v. Dunlap, 303 S.C. 511, 402 S.E.2d 181 (Ct. App. 1990). Rule 60(b), SCRCP, provides, in part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

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

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

Because Agency's counsel represented to the trial court and to opposing counsel that he did not see the Scottsdale Release (and therefore never had a chance to review the terms and conditions therein) until he requested it from Mr. Curry's counsel on April 8, 2016, relief is proper under Rule 60(b), SCRCP. While the Agency may argue that it never received the executed release until April 8th and therefore its possession of the unexecuted (but identical) release in November 2015 was irrelevant, candor toward the tribunal would have presumably required Agency's counsel to disclose that JR Murphy had actually sent him a copy of the Release in November 2015.

In short, the Agency was not just "on notice" of the Release in November 2015; rather, it actually had the opportunity to review the Scottsdale Release because it was in possession of it at that time – but elected to delay filing its motion to amend based upon

the release until the first day of trial many months later. The Court, in its Order, held that the basis for the granting of Agency's motion, "was a document which, despite earlier written requests for the same, was provided to Defendants by Plaintiff only ten days before trial." However, the Court was never informed that Agency's counsel was in actual possession of the unexecuted (yet identical) Scottsdale Release as of November 30, 2015.

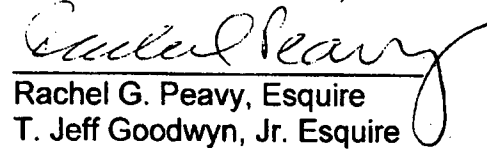
While the matter of allowing amendments is left to the sound discretion of the trial judge, this power should not be exercised indiscriminately or to surprise or prejudice an opposing party. See Hale v. Finn, 388 S.C. 79, 87-88, 694 S.E.2d 51, 56 (Ct. App. 2010); See also Holland v. Morbark, Inc., 407 S.C. 227, 754 S.E.2d 714 (Ct. App. 2014) (denying motion to amend on eve of trial as unfairly prejudicial and noting that party had been on notice of the "new" theory 5 months prior to moving to amend); See also Collins Entertainment v. White, 363 S.C. 546, 611 S.E.2d 262 (Ct. App. 2005) (finding denial of motion to amend proper because the prejudice that the civil procedure rules envision, as would warrant denial of a motion to amend the pleadings, is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it).

In considering relief under Rule 60(b), "the balance is drawn between finality of judgments, on the one hand, and preserving the court's fundamental purpose of providing a fair and just resolution of disputes, on the other." Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003). Because the timing of when Agency's counsel had an opportunity to review the language contained in the Scottsdale Release was a critical and determinative factor in the Court's granting of the Agency's motion to amend at trial, the Plaintiff respectfully requests that the Court grant this Motion for Relief pursuant to Rule

60(b), SCRCP, and enter an order denying the motion to amend, as fairness and justice so require; vacate the order granting the motion to amend; and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

GOODWYN LAW FIRM, LLC



Rachel G. Peavy, Esquire
T. Jeff Goodwyn, Jr. Esquire
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517
Attorneys for Plaintiff

Dated: Jan. 31, 2017

The South Carolina Court of Appeals

Porthemos Curry, Respondent/Appellant,

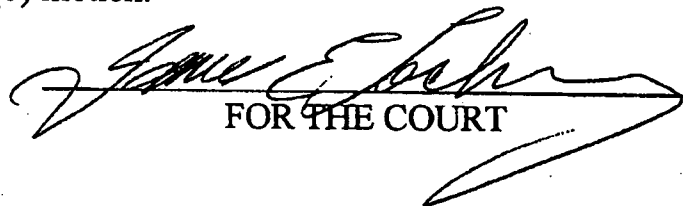
v.

Carolina Insurance Group of SC, Inc. and Maurice
Derrick, Appellants/Respondents.

Appellate Case No. 2016-000986

ORDER

Respondent/Appellant Porthemos Curry's motion for leave to file a motion with the circuit court for relief from judgment under Rule 60(b), SCRCP, is granted. Counsel for Respondent/Appellant is ordered to file the motion with the circuit court within twenty days of the date of this order and provide an update to the clerk of this court every thirty days thereafter. This appeal will be held in abeyance pending the circuit court's resolution of this matter. Because the motion for leave to file the Rule 60(b) motion has been granted and this appeal is being held in abeyance, this court declines to act on the motion to amend the initial briefs. Nothing prevents either party from moving to amend their briefs after the circuit court has ruled on the Rule 60(b) motion.


FOR THE COURT

Columbia, South Carolina

cc:

Wesley Dickinson Peel, Esquire
Bryan Michael James Triplett, Esquire
Thomas Jefferson Goodwyn, Jr., Esquire
Rachel Gottlieb Peavy, Esquire
The Honorable Jocelyn Newman

FILED

January 12, 2017



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff,

v.

Carolina Insurance Group of S.C., Inc.; and
Maurice Derrick,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-40-4661

ORDER GRANTING DEFENDANTS' MOTION TO
AMEND ANSWER

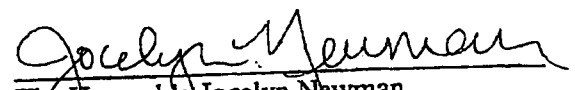
This matter came before the Court on Defendants' Motion to Amend their Answer, which was filed on April 18, 2016 pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure. A hearing was conducted on the same day, immediately prior to the anticipated commencement of the "date certain" jury trial in this case.

After hearing the arguments of all parties, the Court found that the basis of Defendants' proposed amendment was a document which, despite earlier written requests for the same, was provided to Defendants by Plaintiff only ten days before trial. Further the proposed defense was one that Plaintiff could have anticipated.

Rule 15(a) of the South Carolina Rules of Civil Procedure provides that "...leave [to amend pleadings] shall be freely given when justice so requires and does not prejudice any other party." While Plaintiff argued that the amendment would be prejudicial, the Court found that the timing of Defendants' motion was a direct result of Plaintiff's delay in providing necessary documents to Defendants.

IT IS THEREFORE ORDERED that Defendants' Motion to Amend is GRANTED.
AND IT IS SO ORDERED.

May 24, 2016
Columbia, South Carolina.


The Honorable Jocelyn Newman





J. R. Murphy
Direct dial 803-454-1231
jmurphy@murphygrantland.com

November 25, 2015

Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205

Re: Porthemos Curry vs. Scottsdale Ins. Co., Carolina Ins. Group of SC, Inc. and Maurice
Derrick
Civil Action No.: 2014-CP-40-04661
Claim No.: 1527747
Date of Loss: 2/21/14
Our File No.: 1500-0129

Dear Rachel:

Enclosed please find the settlement draft in the amount of \$85,000, Release and Stipulation of Dismissal in the above-referenced matter. I would appreciate your holding all settlement funds in trust until the Release and Stipulation of Dismissal have been properly executed and returned to me in the envelope provided.

With warm personal regards, I am

Sincerely yours,

J. R. Murphy

JRM/sb
Enclosures

cc: Wesley D. Peel, Esquire
Rob Fisher, Esquire (via email)



Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kuli Peter E. Parr
Alice P. Adams Tim J. Newton Chris A. Majure J. Ryan Oates Wesley B. Sawyer Jason P. Luther Elliott B. Dandels Hannah D. Stetson Rogers E. Harrell, III
*Member-American Board of Trial Advocates

R.188

R.470

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) RELEASE

KNOW ALL MEN BY THESE PRESENTS that the undersigned, Porthemos Curry , in consideration of the sum of Eighty Five and 00/100 (\$85,000.00) Dollars, the receipt of which from Scottsdale Insurance Company is hereby acknowledged, does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions, causes of action, demands and/or claims of whatsoever kind or nature prior to and including the date hereof growing out of any property coverage which may apply under policy number CPS1884774 issued by Scottsdale Insurance Company to Porthemos Curry, on account of or in any way growing out of a loss which occurred on or about February 21, 2014, when a vehicle ran into a vacant structure owned by Curry and located at 1001 Pineland Drive, Columbia, South Carolina, including any and all claims arising from the investigation, adjustment and handling of the loss by Scottsdale Insurance Company, and any claim which was or could have been asserted against Scottsdale Insurance Company in the case of Porthemos Curry v Scottsdale et. al., C.A. No. 2014-CP-40-04661, Court of Common Pleas, Richland County, South Carolina . The consideration expressed herein constitutes full payment for all damages, losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from the loss aforesaid.

The undersigned expressly represent and warrants that he has consulted with his attorney and understands the effect of the things herein agreed to and that no statement or representations made by the persons released or by their agents, representatives and attorneys have influenced him or induced him to execute and deliver this Release.



I have read the foregoing Release and understand it to be a full, final and binding agreement.

IN WITNESS WHEREOF, U have hereunto set my hand and seal this 10 day of

December, 2015.

WITNESSES:

Rachel G. Peavy

Porthemus Curry (SEAL)
Porthemus Curry

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
2014-CP-40-04661

Porthemos Curry,)

Plaintiff,)

vs.)

TRANSCRIPT OF RECORD

Scottsdale Insurance Group,)
Carolina Insurance Group of)
SC, Inc., and Maurice Derrick,)

Defendants.)

April 18-19, 2016
Columbia, South Carolina

B E F O R E:

THE HONORABLE JOCELYN NEWMAN, JUDGE.

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

RACHEL G. PEAVY, ESQ.
T. JEFF GOODWYN, JR., ESQ.
Attorneys for the Plaintiff

WESLEY D. PEEL, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter



1 day for that. I don't know how this trial is going
2 to progress, but -- and I don't know --

3 MR. PEEL: I will do whatever they need
4 time-wise.

5 MS. PEAVY: Let us -- if -- Your Honor, if we
6 can discuss it after this motion hearing is over
7 and make a decision.

8 THE COURT: Absolutely. Absolutely. Okay.
9 But I will, you know, I guess order that he make
10 himself available at a reasonable time, once they
11 figure out --

12 MR. PEEL: I don't think that is a problem,
13 Your Honor.

14 THE COURT: Okay. And we'll ensure that
15 deposition happens this week, if necessary.

16 Next motion.

17 MS. PEAVY: Your Honor, this is a motion in
18 limine to exclude evidence relating to previously
19 dismissed claims against and settlement with
20 Scottsdale Insurance Company.

21 The Plaintiff submits that the only evidence
22 properly for the jury to consider is that the
23 Plaintiffs filed a claim for insurance benefits
24 under a builders risk policy, vacant structure
25 policy that was sold to him by Carolina Insurance

1 Group and its agent, Maurice Derrick, and the
2 policy was issued by Scottsdale, and Scottsdale
3 denied the claim.

4 The only claim before this jury are claims for
5 negligence and gross negligence against the
6 Defendant.

7 And originally this lawsuit was filed naming
8 Scottsdale Insurance Company as an additional
9 Defendant. The claims against Scottsdale were
10 separated from the claims against Carolina
11 Insurance Group and Maurice Derrick.

12 The only claims that have ever been asserted
13 against Carolina Insurance Group and Mr. Derrick
14 are negligence claims. The claims against
15 Scottsdale were for breach of contract, statutory
16 bad faith, and common law bad faith, which is
17 incorporated into a contract action.

18 We settled -- the Plaintiff settled its claims
19 against Scottsdale in December of 2015, and a
20 stipulation of dismissal as to Scottsdale was
21 circulated among all counsel in this case and was
22 filed with the court on December 30th, 2015.

23 Defendant's counsel subsequently requested a
24 copy of the release from me earlier this month, and
25 I provided it to him.

1 I believe that the Defendant may seek to
2 introduce testimony related to Mr. Curry's claims
3 against Scottsdale or settlement with Scottsdale in
4 this lawsuit. And I would submit that that is
5 improper, and that evidence of Mr. Curry's previous
6 claims against Scottsdale, which are now dismissed,
7 which are settled, are irrelevant and would be
8 highly prejudicial to the Plaintiff's case, because
9 it would allow the jury to consider a setoff when
10 setoff is solely a matter at the post-verdict stage
11 for the Court to consider. And that is assuming
12 the Defendants make such a motion. And we would
13 obviously reserve the right to object to any setoff
14 of any verdict.

15 And I'm relying upon the case of Riley v. Ford
16 Motor Company and Scott v. Fruehauf Corp, which the
17 Scott case held that evidence of relief was
18 inadmissible.

19 Scottsdale is not a party to this lawsuit, and
20 any mention of Mr. Curry's prior claims against or
21 settlement with Scottsdale would make the jury
22 think that Mr. Curry was improperly seeking a
23 double recovery or had already gotten paid for his
24 damages in this case. There is no overlap between
25 the causes of action that are pending against these

1 Defendants and what was alleged against Scottsdale.

2 I would like to hand up to Your Honor the two
3 cases that I cited, as I believe they are
4 instructive in support of my motion.

5 THE COURT: All right.

6 MS. PEAVY: And if Your Honor will give me one
7 minute.

8 THE COURT: Sure. While you are looking for
9 that, let me hear from you Mr. Peel.

10 MR. PEEL: I was looking for a copy of the
11 release, and I've got such a stack of papers I
12 can't find it.

13 Your Honor, normally I would completely agree
14 with Ms. Peavy -- normally. We have had a little
15 bit of a different situation. We talked beforehand
16 a little bit about how to deal with this.

17 I did not see the executed releases until
18 April 8th. Ms. Peavy gave it to me as soon as I
19 asked for it, the same day. However, it was
20 apparently signed in December. I would say it
21 should have been introduced to me under our
22 discovery requests as communications between other
23 parties. When they served the release on me, not
24 just the stipulation of dismissal, I had signed it,
25 I did not get -- I went back and checked -- I did

1 not get anything but the stipulation. So I didn't
2 see it. So this relates to another motion that we
3 have in front of -- Judge Lee has dealt with some
4 of this also, so it is a little complicated.

5 Once I examined the release, I believe there
6 are arguments that that release operates to release
7 my clients completely. So, based upon that, we
8 filed a motion this morning to amend to add a
9 defense of release based upon the information we
10 got from April 8th. See, actually reading the
11 copy.

12 So, like I said, normally -- everything they
13 say generally is correct, especially if it is under
14 the contribution of the tortfeasors act, that would
15 normally exclude setoffs for the province of the
16 judge only for the trial. However, this
17 situation -- this goes to -- we told you earlier
18 about our motion for summary judgment -- and Judge
19 Lee had partially instructed some procedure --
20 moved for summary judgment on two grounds. We move
21 this morning, one, the release on its face as it is
22 a full satisfaction of everything due under the
23 policy for consequential damages, which would
24 operate as a matter of law to release these
25 parties. And it also states that it releases all

1 to their --

2 MS. PEAVY: Okay.

3 THE COURT: I will hear Ms. Peavy first.

4 MR. PEEL: Your Honor, I think we filed -- if
5 this is the proper time, we filed a motion to amend
6 this morning to assert the defense of release.

7 As Your Honor knows, a motion to amend should
8 be really granted, even can be granted during
9 trial. As I said, I just got this release, copy of
10 the release April 8th from -- I did move this
11 morning. It was too late Friday to get everything
12 done. Judge Lee may have already ruled on this.
13 It is hard to tell from the one line that she sent
14 us that it should be properly incorporated into the
15 trial -- and I don't have the quote from the e-mail
16 right now -- at directed verdict. But we just ask
17 to be allowed to amend to assert the defense of
18 release based solely on the release that we
19 received April 8th.

20 THE COURT: Yes, ma'am?

21 MS. PEAVY: Your Honor, we would oppose their
22 motion to amend at this late date. And the reason
23 for that is that they were on notice that we
24 settled with Scottsdale in December. And they
25 signed off on the stipulation of dismissal as to

1 Scottsdale. They never signed any release. They
2 were never dismissed on this case. We're here to
3 try the case. And now they are trying to say that,
4 oh, they were released from it at this late date
5 when they have known that Scottsdale has been out
6 presumably because we settled with Scottsdale since
7 December.

8 So now to move to amend on the day of trial to
9 assert this when they have known about it, it goes
10 to their summary judgment motion, Your Honor, but,
11 you know, I think it is -- I don't think it is
12 proper. I would ask that the Court deny the
13 motion. They are moving to amend the day of trial
14 on an issue that they had notice of five months
15 ago.

16 MR. PEEL: I did not have notice of it. You
17 did not serve me with a copy of the release and I
18 distinctly requested copies of any correspondence,
19 e-mails, anything like that, any documents between
20 the Plaintiff and any Co-Defendants, any Defendants
21 in the case, and y'all did not provide it to me.

22 MS. PEAVY: He had notice that the release
23 would have existed because he signed off on the
24 stipulation of dismissal as to Scottsdale in
25 December.

1 THE COURT: So because he didn't move to
2 enforce or file a motion to compel to enforce --

3 MS. PEAVY: He didn't ask me for it.

4 THE COURT: I haven't finished my question.

5 MS. PEAVY: I'm sorry.

6 THE COURT: -- to compel you to comply with
7 your continuing duty to disclose -- or provide
8 documents under the Rules of Evidence, then he
9 should be foreclosed from being able to do that
10 now? Is that your position?

11 MS. PEAVY: Your Honor, my position is he was
12 on actual notice that a settlement agreement had
13 been executed. If I failed to provide that to him
14 in December, that is my error, but it is not that
15 he didn't have notice that it existed. He knew
16 Scottsdale had been released because he signed off
17 on the stipulation of dismissal as to Scottsdale.

18 THE COURT: I know, but it seems to me that
19 you are seeking to benefit from your failure to
20 provide him with a copy of the document. You have
21 a continuing duty under the Rules of Civil
22 Procedure to --

23 MS. PEAVY: Uh-huh.

24 THE COURT: -- provide copies of documents.
25 If it was something that he previously requested,

1 you came into possession of it in December and did
2 not provide a copy to him in December, January,
3 February, or March, and he seeks to enforce it in
4 April, I don't know that you should benefit from
5 your delay.

6 MS. PEAVY: Thank you, Your Honor.

7 THE COURT: Or your failure to do that.

8 MR. PEEL: Your Honor, may I add one thing?

9 THE COURT: Sure.

10 MR. PEEL: I'm sorry. There is absolutely no
11 prejudice because it is their document. They know
12 what is in it.

13 THE COURT: And he has just received a copy of
14 it on April 8th. I am inclined to -- yes, I am
15 going to grant the motion. I know it ties into the
16 motion for summary judgment really.

17 MS. PEAVY: Okay.

18 THE COURT: But, yes, you know, Rule 15(a) --
19 is it? I don't know. Rule 15 allows amendment of
20 the pleadings. Amendments are freely given when
21 justice so requires and the opposing party is not
22 significantly prejudiced. I find that is the case
23 here, particularly in light of the fact that you
24 had a copy and you knew what it said. Yes. And
25 you were under a continued duty to disclose anyway.

1 So I will allow that amendment.

2 MR. PEEL: Thank you, Your Honor.

3 THE COURT: What is next? And before you even
4 get to the next motion, I see before me Defendant's
5 motion in limine to disqualify the Plaintiff's
6 expert witness and disregard purported expert's
7 affidavit.

8 Just reading the face of this motion, the
9 basis is that Mr. Hesse will testify about matters
10 within common knowledge of the jury and he is not
11 qualified to testify as an expert. Without having
12 heard his testimony, I mean --

13 MR. GOODWYN: And we would suggest we take
14 that up when we produce him.

15 THE COURT: Right. I can't rule on that now.
16 Certainly there will be an opportunity for you to
17 lay a foundation for him as an expert and the need
18 for his expert testimony. There will be an
19 opportunity for voir dire from the Plaintiff of his
20 qualifications. But I will not make a ruling on
21 that matter at this time.

22 MR. PEEL: Okay. Thank you very much. I'm
23 sorry, I misplaced my notes I made during lunch so
24 I could get through this quickly.

25 Next would be the Carolina Insurance Group's



MURPHY & GRANTLAND, P.A.

J. R. Murphy
Direct dial 803-454-1231
jrmurphy@murphygrantland.com

November 25, 2015

Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205

NOV 30 2015

Re: Porthemos Curry vs. Scottsdale Ins. Co., Carolina Ins. Group of SC, Inc. and Maurice Derrick
Civil Action No.: 2014-CP-40-04661
Claim No.: 1527747
Date of Loss: 2/21/14
Our File No.: 1500-0129

Dear Rachel:

Enclosed please find the settlement draft in the amount of \$85,000, Release and Stipulation of Dismissal in the above-referenced matter. I would appreciate your holding all settlement funds in trust until the Release and Stipulation of Dismissal have been properly executed and returned to me in the envelope provided.

With warm personal regards, I am

Sincerely yours,

J. R. Murphy

JRM/sb
Enclosures

cc: Wesley D. Peel, Esquire
Rob Fisher, Esquire (via email)



Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull Peter E. Farr
Alice R. Adams Tim J. Newton Chris A. Majure J. Ryan Gates Wesley B. Sawyer Jason P. Luther Elliott B. Daniels Hannah D. Steison Rogers E. Farrell, III
*Member-American Board of Trial Advocates

R.484

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

v.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

STIPULATION OF DISMISSAL

The Plaintiff, by and through its undersigned counsel, having settled this case with the Defendant Scottsdale Insurance Company, hereby dismisses, with prejudice, the Complaint, and all subsequent amendments thereto, as to the Defendant Scottsdale Insurance Company. The Plaintiff's case against the remaining Defendants, shall not be affected by this Dismissal.

Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
803-251-4517
Attorney for Porthemos Curry

J.R. Murphy, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
803-782-4100
Attorney for Scottsdale Ins. Co.

Wesley D. Peel, Esquire
Bruner, Powell, Robbins, Wall & Mullins
1735 St. Julian Place
P.O. Box 61110
Columbia, SC 29260-1110
803-252-7693
Attorney for Carolina Ins. Group of SC, Inc.
and Maurice Derrick

November 25, 2015

STATE OF SOUTH CAROLINA)
) R E L E A S E
COUNTY OF RICHLAND)

KNOW ALL MEN BY THESE PRESENTS that the undersigned, Porthemos Curry , in consideration of the sum of Eighty Five and 00/100 (\$85,000.00) Dollars, the receipt of which from Scottsdale Insurance Company is hereby acknowledged, does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions, causes of action, demands and/or claims of whatsoever kind or nature prior to and including the date hereof growing out of any property coverage which may apply under policy number CPS1884774 issued by Scottsdale Insurance Company to Porthemos Curry, on account of or in any way growing out of a loss which occurred on or about February 21, 2014, when a vehicle ran into a vacant structure owned by Curry and located at 1001 Pineland Drive, Columbia, South Carolina, including any and all claims arising from the investigation, adjustment and handling of the loss by Scottsdale Insurance Company, and any claim which was or could have been asserted against Scottsdale Insurance Company in the case of Porthemos Curry v Scottsdale et. al., C.A. No. 2014-CP-40-04661, Court of Common Pleas, Richland County, South Carolina . The consideration expressed herein constitutes full payment for all damages, losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from the loss aforesaid.

The undersigned expressly represent and warrants that he has consulted with his attorney and understands the effect of the things herein agreed to and that no statement or representations made by the persons released or by their agents, representatives and attorneys have influenced him or induced him to execute and deliver this Release.

I have read the foregoing Release and understand it to be a full, final and binding agreement.

IN WITNESS WHEREOF, U have hereunto set my hand and seal this ____ day of

_____, 2015.

WITNESSES:

_____(SEAL)
Porthemos Curry

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Porthemos Curry,)
)
Plaintiff,)
vs.)
Carolina Insurance Group of SC, Inc. and)
Maurice Derrick,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2014-CP-40-04661

**DEFENDANTS CAROLINA
INSURANCE GROUP OF SC, INC. AND
MAURICE DERRICK'S
MEMORANDUM IN OPPOSITION TO
CURRY'S MOTION FOR RELIEF**

Please take notice that the Defendants Carolina Insurance Group of SC, Inc. and Maurice Derrick (unless otherwise specified, referred to collectively as "Agency Defendants" or "Defendants") oppose Plaintiff's Motion to for Relief Pursuant to Rule 60(b), SCRC of January 31, 2017, and state the following:

INTRODUCTION

After filing the final briefs and record on appeal, the Court of Appeals granted Mr. Curry's (hereinafter "Curry") Motion to seek relief in this court pursuant to Rules 60(b)(2) and (3), SCRC. Curry seeks relief from this Court's Order Granting Defendants' Motion to Amend Answer (the "Order") of May 24, 2016 adding the defense of release. *See Exhibit A.* Curry's current Motion for Relief Pursuant to Rule 60(b), SCRC ("Curry's Motion") suggests that Rule 60(b) relief is warranted because (1) "Agency's counsel represented to the trial court and to opposing counsel that he did not see the Scottsdale Release (and therefore never had a chance to review the terms and conditions therein) until he requests it from Mr. Curry's counsel on April 8, 2016", and (2) "the timing of when Defendants' counsel had an opportunity to review the language contained in the Scottsdale Release was a critical and determinative factor" in the court's decision." (emphasis in original). The first is a misrepresentation to the court, the second is a fallacy made plausible

2017 FEB 17 PM 4:54
JENNIFER W. MCBRIDE
C.O.P. & G.S.
FILED
RICHLAND COUNTY

only by Plaintiff's use of the term "Scottsdale Release" rather than the document upon which the Defendants' Motion was based, the Defendants' argued, and the court ultimately relied; to wit: the final, executed release. Neither of Plaintiff's arguments are supported by law or fact.

Curry attempts to bootstrap himself into the argument because no substantive changes were made between the draft and the signed document. This does not change the fact that (1) the unexecuted document is not enforceable, (2) Curry had a duty to provide the Defendants with a copy of the executed document; (3) Curry's arguments of prejudice are a sham; and (4) no discovery is needed to deal with the release because the defense raises a question of law; and (5) only Curry could have anticipated the release defense because only he had a copy of the executed release.

Curry asserts as his basis for relief that counsel for the Defendants did not inform the court that counsel was copied on correspondence between Curry's counsel and Scottsdale Insurance Company's ("Scottsdale") counsel, which enclosed a draft, unexecuted copy of a proposed release. One of the issues which the court considered in granting Defendants' Motion to Amend Answer ("Defendants' Motion") and analyzing its timeline was that Curry's counsel did not provide a copy of the final and executed release until it was requested, just prior to trial.

Curry claims that because the defendants did not tell the court that they were copied on settlement negotiations between the Scottsdale and Curry, which contained a proposed release that somehow this is new evidence or fraud that requires the court to reverse its grant of Defendants Motion to Amend their Answer. Curry makes this argument despite being in possession of this letter from its transmittal and despite a proposed release having no force or effect at law and are based upon the misrepresentations of Curry's counsel. South Carolina law instructs that relief in such instances is unwarranted. *Paul Davis Sys. v. Deepwater of Hilton Head, LLC*, 362 S.C. 220,

607 S.E.2d 358 (Ct.App. 2004) (noting that reliance on both unexecuted and filed documents enclosed in a letter not addressed to the party was unreasonable, and relief is unwarranted under Rule 60(b)).

In Curry's Motion, Curry states that Defendants' counsel:

"represented to the trial court and to opposing counsel that he did not see the Scottsdale Release¹ (and therefore never had a chance to review the terms and conditions therein) until he requested it from Mr. Curry's counsel on April 8, 2016. . ."

At worst, this is a complete misstatement to the court. At best, it is a disingenuous attempt at summarizing Defendants' counsel's argument to the court, which wholly leaves out Defendants' counsel's direct statements to the court. As set forth in great detail below, Defense counsel made clear that Curry had not provided the executed release until April 8, 2016. Receiving a draft release to which they are not a party is not relevant and means nothing. The Plaintiff received the same letter (as it was addressed to Curry's counsel) and could have made this spurious argument earlier. Curry's arguments and allegations are not supported by law or fact and are false, misleading and unreasoned.

Curry's Motion is based upon his counsel's continued misunderstanding of the importance of supplying copies of executed and final documents to the parties in the case, his counsel's continuing duty to update and supplement discovery, and that the defense of release only arises when consideration for the release has been exchanged by the parties to that release. Due to Curry's counsel's misrepresentations and self-created issues in this Motion, it is unfortunately necessary to track Curry's counsel's misunderstanding and confusion throughout this case.

¹ It is important to note Plaintiff's inconsistent and confusing use of the terms "release", "unexecuted release", "Scottsdale Release" and "executed release" throughout the record.

BACKGROUND

This lawsuit arises from a fire that damaged a house that Mr. Curry was building. The house was insured under a 90-day builder's risk and general liability policy issued by Scottsdale Insurance Company ("Scottsdale")². Curry purchased the policy through the Agency Defendants. Curry submitted a claim to Scottsdale for his loss from the fire, but Scottsdale denied Curry's claim. In denying Curry's claim, Scottsdale alleged that the fire occurred the day after its policy expired. Since Scottsdale would not reimburse him for his alleged loss, Curry sued both Scottsdale and the Agency Defendants for negligence. Curry claimed that the policy should have covered his loss and that the Agency should have provided a different expiration date for the policy based upon his conversations with the agents.

The following is a timeline of the relative filings, discovery and other communications between the parties demonstrating that the Plaintiff failed to provide an executed copy of the release prior to April 8, 2016.

- **July 28, 2014** original Complaint filed (**Exhibit B**)
- **May 28, 2015** Complaint amended by consent (**Exhibit C**)
- **September 22, 2014** Defendants serve Discovery Requests for Production on Plaintiff – #6 requesting copies of "*all emails, correspondence, receipts, bills, invoices, statements, between you and your agents, or you and any other party, concerning this claim...*" "You" is defined therein as the Plaintiff and all other persons acting or purporting to act on behalf of Plaintiffs. (**Exhibit D**)
- **October 1, 2015** (second) Amended Complaint by consent 15 months after action was commenced (**Exhibit E**)
- **November 9, 2015** Mediation
- **November 25, 2015** letter from Scottsdale's lawyer addressed to Plaintiff's lawyer and carbon copied to the Agency Defendants' lawyer containing the proposed, unexecuted release and stipulation of dismissal (the "Letter") (**Exhibit F**).
- ✓ • **December 10, 2015** Curry executes the release – it is not sent to Defendants.
- **December 16, 2015** letter from Scottsdale's counsel to Defendants' counsel with

² Scottsdale was named as a Defendant and settled with Curry on December 10, 2015 through the executed release which is the subject of this motion.

- partially executed stipulation of dismissal, but no release. (**Exhibit G**)
- **December 17, 2015** correspondence from Curry's counsel to Defendants' counsel transmitting supplemental discovery responses. (**Exhibit H**). The executed release was not produced.
 - **December 30, 2015** Stipulation of Dismissal filed, but a filed copy document was not served on the Agency Defendants, nor was the transmittal to the court served on the Agency Defendants. The Agency Defendants had no notice of the final settlement and dismissal.
 - **March 14, 2016** Plaintiff sends Defendants supplemental discovery responses. The executed release was not produced.
 - **April 8, 2016** Defendants' counsel requests a copy of executed release and is provided the same day. (**Exhibit I**).
 - **April 11, 2016** Plaintiff takes Defendants' expert witness deposition. Defendants take Curry's expert witness deposition, who was just named by the Plaintiff on January 13, 2016.
 - **April 18, 2016** Defendants' Motion to Amend Answer to assert the release defense was filed and granted (**Exhibit J**).
 - **April 19, 2016:** This court continued trial until May 9, 2016 to allow parties sufficient time to prepare for hearings on cross-motions for summary judgment related to the release defense. The parties agreed to waive the notice requirements.
 - **April 26, 2016** Hearing on Cross-Motions for Summary Judgment before Judge Hood.
 - **May 9, 2016** Order denying Defendants' motion for summary judgment and granting Plaintiff's motion for summary judgment (**Exhibit K**)
 - **May 11, 2016** Defendants' file notice of appeal from May 9, 2016 Order.
 - **May 15, 2016** Plaintiff files Notice of Appeal of May 9, 2016 Order.
 - **May 18, 2016** Curry's counsel filed a Notice of Appeal from Judge Newman's order allowing the amendment of the Answer.
 - **May 19, 2016** Curry's counsel emails the court requesting written Order on Defendants' Motion to Amend. (**Exhibit L**)
 - **May 24, 2016** Order Granting Defendants' Motion to Amend Answer issued at request of Plaintiff's counsel (**Exhibit A**)

Curry's Motion alleges that the Agency Defendants' counsel failed to disclose being copied on a draft of the release between Plaintiff and Scottsdale on November 25, 2015. Plaintiff disregards the evidence and an omission of the fact that the release was not entered until December 10, 2015 and the Agency Defendants were never informed of it. While preparing for trial on April 8, 2016, Defendants' counsel realized the executed release was never sent, which was needed to show the amount of setoff that the Agency Defendants would be entitled to should a verdict be

issued in favor of the Plaintiff. A copy of the executed release was immediately requested from Plaintiff's counsel and was received the same day. *See Exhibit I*. Upon closer inspection of the executed release while preparing for trial the next week, it appeared that the executed release operated as a release of all parties as a matter of law. Accordingly, the Defendants moved to Amend their Answer to assert the release defense, which was filed on April 18, 2016.

Pre-Trial Hearing

In granting the Agency Defendants' Motion to Amend Answer, this court found that:

"[a]mendments are freely given when justice so requires and the opposing party is not significantly prejudiced. I find that is the case here, particularly in light of the fact that you [Curry] had a copy and you [Curry] knew what it said...and you were under a continuing duty to disclose anyway."

See Exhibit M at p.59:20-25.

In addition, Curry claims that Defendants' counsel made a misrepresentation to the court. Putting aside that a draft document is evidence of nothing, Mr. Peel consistently referred to the "executed" release, because it was the only document that mattered and Curry admittedly failed to provide. *See Exhibit M* at p.37:17; p.56:16-19. Curry's counsel admits that the Defendants did not received a copy of the executed release in December, 2015 when it was executed. "If I failed to provide that [executed release] to him in December, that is my error..." *Exhibit M* at p.58:13-14. The only basis to amend to assert the release defense was the executed release. A draft copy of the release still being negotiated would not support such a motion.

In addressing potential prejudice, the court agreed that there was no prejudice, noting "it seems to me that you are seeking to benefit from your failure to provide him with a copy of the document. You have a continuing duty under the Rules of Civil Procedure..." *Exhibit M* at p.58, lines 18-22, 24-25. It is undisputed that the Defendants never received the executed release until April 8, 2016, which, as the court pointed out, was due to Curry's failure to disclose the executed

release with the Defendants. “[Y]ou [the Plaintiff] came into possession of it [the executed release] in December and did not provide a copy to him in December, January, February, or March, and he seeks to enforce it in April, I don’t know that you should benefit from your delay.” **Exhibit M** at p.59, lines 1-5. Clearly, nothing could be “enforced” until the release was executed. The executed release never came into existence until December. Plaintiff’s entire motion requires the court to overturn its previous order based on a document that forms no basis of the court’s Order because it does not matter and it is based upon a letter in Curry’s possession for five months prior to the hearing.

The court continued the trial to May 9, 2016, so that any arguments regarding the executed release could be briefed and cross-summary judgment motions could be heard by Judge Hood on April 26, 2016. The parties agreed this would be enough time to prepare for the hearing on this matter, waiving the 10-day notice requirement.

STANDARD OF REVIEW

A circuit court considering a motion for relief under Rule 60(b) should consider four factors: "(1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other parties." *McClurg v. Deaton*, 380 S.C. 563, 573, 671 S.E.2d 87, 93 (Ct. App. 2008), *aff'd*, 395 S.C. 85, 716 S.E.2d 887 (2011). A party making a motion under Rule 60(b) has the burden of presenting material evidence proving the facts essential to entitle him to relief. *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991); 46 Am.Jur. (2d) Judgments § 780, at 940 (1969) ("The general rule is that no court has authority to open or vacate a judgment without some material evidence to support the claims on which the application for relief depends.")

Under Rule 60(b)(2), SCRCp, “a court may order relief from judgment based on newly

discovered evidence which by due diligence could not have been discovered in time to move for a new trial under S.C. R. Civ. P. 59(b). *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 14, 594 S.E.2d 478, 480 (2004) (no relief for after-discovered evidence, pursuant to Rule 60(b)(2), where the evidence presented in the motion could have been discovered during the litigation).

"In considering a Rule 60(b)(3) motion the threshold matter is whether the movant has demonstrated the existence of meritorious claim or defense." *Bowers v. Bowers*, 304 S.C. 65, 66, 403 S.E.2d 127, 129 (Ct.App. 1991). "A party may not prevail on a Rule 60(b)(3) motion on the basis of fraud where he or she has access to disputed information." *Ojeda-Toro v. Rivera-Mendez*, 853 F.2d 25, 29 (1st Cir.1988); *see also*, *Bowman v. Bowman*, 357 S.C. 146, 152, 591 S.E.2d 654, 657 (Ct.App.2004) (where a party could have discovered the "new" evidence prior to trial, the party is not entitled to relief under Rule 60(b)(2) or (3)).

The court at every stage of the proceeding must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties. Rule 61, SCRPC.

ARGUMENTS

- I. **Because the law and common sense dictate that it is unreasonable to rely on unexecuted documents as a basis for relief, Plaintiff's Motion should be denied in its entirety.**

Defendants' counsel admitted that they were aware that Scottsdale was dismissed because Defendants' counsel signed and returned the Stipulation of Dismissal, but did not know that final terms of the release between Scottsdale and Curry because the Defendants were not given the executed release. **Exhibit M** at pp.87:8-10, 14; 37:17-23; 38:7-10.

Curry's Motion is based on self-created issues and distorted facts from which he now seeks relief under Rule 60(b). Curry argues that he should be given relief from the Order because the Defendants should have filed their motion to amend based upon an unexecuted draft document.

Curry also maintains that he was unaware that the Defendants' were in possession of the unexecuted release, and it was the Defendants' duty to communicate receipt of the document to the Plaintiff and the court.

First, Plaintiff was in possession of the Scottsdale letter. "A party may not prevail on a Rule 60(b)(3) motion on the basis of fraud where he or she has access to disputed information." *Ojeda-Toro v. Rivera-Mendez*, 853 F.2d 25, 29 (1st Cir.1988); *see also*, *Bowman v. Bowman*, 357 S.C. 146, 152, 591 S.E.2d 654, 657 (Ct.App.2004) (where a party could have discovered the "new" evidence prior to trial, the party is not entitled to relief under Rule 60(b)(2) or (3)).

Second, the Defendants could not rely on an unexecuted document. *See Paul Davis Sys. v. Deepwater of Hilton Head, LLC*, 362 S.C. 220, 607 S.E.2d 358 (Ct.App. 2004) (noting that reliance on both unexecuted and filed³ documents enclosed in a letter not addressed to the party was unreasonable and relief is unwarranted under Rule 60(b)); *See also*, *Parsons Bros. Slate Co. v. Commonwealth*, 418 Pa. 389, 390, 211 A.2d 423, 423 (1965) (reasoning that in order to constitute a contract there must be an offer on one side and an unconditional acceptance on the other, and so long as any condition is not acceded to by both parties to the contract, the dealings are mere negotiations and may be terminated at any time by either party while they are pending). It stands to reason that a document designated as a draft does not place a party on notice of its final terms.

The *Paul Davis Sys.* case tells us that a party cannot rely on unexecuted documents. Suppose, as Plaintiff argues, that the Defendants were on notice of the settlement terms by the unexecuted release. The question becomes when is a party capable of recognizing the defense and

³ A mechanic's lien bond the court later struck because it failed to meet the statutory requirements for surety bonds under S.C. Code Ann., Section 29-5-110.

move to amend? If it is prior to execution, then the Plaintiff could respond by not signing that particular draft of the release. The Defendants obviously have no duty to point out the full effect of the draft release. Further, the Defendants' counsel would have a duty to not say anything about a draft release that is favorable to his client until it is executed and final. Quite simply, regardless of the language contained in the releases, the earliest time the Defendants could have reasonably relied on any release to form the basis of their motion to amend was upon receipt of the final, executed release on April 8, 2016. Therefore, the Plaintiff's Motion should be denied in its entirety.

A. There is no newly discovered evidence

Raby Constr., L.L.P. held that a party cannot receive relief under Rule 60(b) for after-discovered evidence where the evidence presented in the motion could have been discovered during the litigation. Here, the Plaintiff's motion is based on evidence that was in the Plaintiff's own hands since November, 2015—the letter from Scottsdale's lawyer addressed to Plaintiff's counsel and copied to Defendants' counsel. See **Exhibit G**. Confirmation of receipt by Defendants' counsel was easily available at the motion hearing or at any time prior to filing the notice of appeal. This court correctly found the Defendants' late filing of the Motion to Amend Answer was attributable to Curry's failure to provide the Defendants with a copy of the executed release until ten days before trial. Accordingly, there is no basis for relief under Rule 60(b)(2) because the Plaintiff was in possession of the evidence upon which this Motion is based.

Curry asserts that the Order is premised on the Defendants' representation that they only first saw the "Scottsdale Release"⁴ on April 8, 2016. This is not supported by the record and is a gross distortion of the facts. Defendants' counsel only referred to the executed release in his

⁴ This reference to the "Scottsdale Release" is apparently an effort to direct the court to adopt the view that an unexecuted document is the same as an executed document.

arguments. Defendants' counsel made it clear to the court that he was aware of the settlement, but was never served with a copy of the executed release. See **Exhibit M** at p.87:8-9 ("I know the case was settled. I was aware. They asked me to sign the stipulation and I sent it back"); see also, p. 37:17-18 ("I did not see the executed releases until April 8th"); p.58:5-11 (referencing the executed copy of the release); p.38:7-10 ("we filed a motion this morning to amend to add a defense of release based upon the information we got from April 8th").

Curry's counsel admitted it was her fault that the Defendants did not have a copy of the executed release, "If I failed to provide that [executed release] to him in December, that is my error." **Exhibit M** at p.58:11-14. Curry still argued that the Defendants should not be allowed to amend the answer because they were on actual notice of the settlement agreement. The court disagreed, concluding that Curry was under a duty to provide the Defendants with an executed copy of the release, but failed to do so:

it seems to me that you are seeking to benefit from your failure to provide him with a copy of the document...you came into possession of it in December and did not provide a copy to him in December, January, February, or March, and he seeks to enforce it in April, I don't know that you should benefit from your delay.

Exhibit M at pp.58:18-22; 59:1-5. (emphasis added). Obviously, "you" and "your" is referring to Plaintiff's counsel and "it" is referring to the executed release. Plaintiff's counsel was clearly aware of the transmittal of the draft release. If she believed it was important, she could have raised it then.

Neither the unexecuted release nor the letter from Scottsdale's counsel form sufficient grounds for Rule 60(b) relief because neither are newly discovered evidence. Both are Plaintiff's documents, or documents sent to the Plaintiff and in Plaintiff's possession. The only document that is relative to the Defendants' Motion, the Order, and the present Motion is the executed release, which was first seen by the defendants when Plaintiff produced it on April 8, 2016.

Though this fact is undisputed, Plaintiff's counsel would have the Court believe that its findings somehow did or should have relied the unexecuted release. Even if the unexecuted release and letter from Scottsdale's lawyer mattered here, the Plaintiff was in possession of both documents and, like the movant in *Raby Constr.*, could have discovered the basis of its Motion during the course of the litigation. *Id.*, 358 S.C. at 14, 594 S.E.2d at 480; *See also, Bowman*, 357 S.C. at 152, 591 S.E.2d at 657 (relief not available under Rule 60(b)(2) or (3) where a party could have discovered the "new" evidence prior to trial). Therefore, what Plaintiff describes as "newly discovered" evidence is insufficient to establish a basis for relief under 60(b)(2) and Plaintiff's Motion should be denied in its entirety.

B. There was no misrepresentation.

The supposed misrepresentations that are the subject of Plaintiff's Motion, are nonexistent, self-created issues, as no such representation was ever made by Defendants' counsel. Curry's counsel alleges that the Record on Appeal indicates that Mr. Peel received a letter from J.R. Murphy, Esquire on November 30, 2015, which included an unexecuted, draft copy of the Release. This is true. The letter was addressed to Plaintiff's counsel, and clearly indicated that Defendants' were copied on the letter and enclosures. However, Defendants' counsel has never represented in any argument, brief, or otherwise to anyone that he did not receive this particular letter or its attachments. The exact statement regarding the attachments to the November 25, 2016 letter not being received by the Defendants was never made by Mr. Peel, but were made by Plaintiff's counsel, presumably and hopefully due to a fundamental misunderstanding of the facts and issues before the court. Of course, Defendants counsel would not have mentioned it because it did not matter. The record should provide some clarity.

Defendants' counsel informed the court that Curry's counsel failed to serve Agency Defendants with a copy of the executed Release until he requested on April 8, 2016.

"I did not see the executed releases until April 8th. Ms. Peavy gave it to me as soon as I asked for it, the same day. However, it was apparently signed in December. I would say that it should have been introduced to me under our discovery requests as communications between other parties."

Exhibit M at p.37:17-23. Defendants' counsel made it clear to the court that he was only concerned about the executed release: "I just got this release, copy of release April 8th from – I did move this morning." **Exhibit M** at p.56:9-11. "But we just ask to be allowed to amend to assert the defense of release based solely on the release that we received April 8th." **Exhibit M** at p.56:16-19.

Even prior to the hearing, counsel for Curry was aware that Mr. Peel was asserting that he never received the executed release. In an email to the Chief Administrative Judge on April 15, 2016, Mr. Peel informed Judge Lee's clerk as follows: "Dear Mr. Devlin: Please let the judge know that I was supplied with an **executed** copy of the release on April 8, 2016 by email." (Emphasis added). Both Ms. Peavy and Mr. Goodwyn were copied on that email. Later, in correspondence to Judge Lee dated April 25, 2016, counsel for the agency informed Judge Lee: "The basis for the motion was that as a matter of law, the release operated as a release of all parties. I had never been served with the executed release o[r] the filed Stipulation of Dismissal until I requested it on April 8, 2016." **Exhibit N**.

The arguments in this Motion were already made before this court on April 18, 2016, but Plaintiff's counsel still argues that the Agency Defendants had been on notice of the settlement since December and that Agency Defendants signed the stipulation of dismissal, but not a release:

Your Honor, we would oppose their motion to amend at this late date. And the reason for that is that they were on notice that we settled with Scottsdale in December. And they signed off on the stipulation of dismissal as to Scottsdale. They never signed any release. They were never dismissed on this case. We're here to try the case....And now they are trying to say that, oh, they were released from it at

this late date when they have known that Scottsdale has been out presumably because we settled with Scottsdale since December.

Exhibit M at pp.56:2-57:15. (emphasis added). This court heard and considered Plaintiff's arguments.

Plaintiff's counsel admitted that failing to serve the executed and final release was a mistake. "If I failed to provide that to him in December, that is my error..." **Exhibit M** at p. 58:13-14. The court remarked that Plaintiff should have provided the Defendants with a copy of the executed release.

Plaintiff's counsel fails to recognize that knowledge of the existence of a proposed settlement and knowledge of its execution and final terms are two completely different things. The court ultimately granted Defendants' Motion to Amend Answer based solely on the executed release because (1) there was no prejudice to the Plaintiff; (2) the Plaintiff could have anticipated the defense; and (3) the executed release was not provided by Plaintiff's Counsel until April 8, 2016 and the Defendants should have moved earlier for a motion to amend. Plaintiff insists that the court should consider the unexecuted release or its terms as notice of the contents of a document that defendants did not see until April 8, 2016.

The court was aware that Plaintiff was arguing that the Defendants were aware of a settlement and took that into consideration: See **Exhibit M** at p. 58:19-20 ("I know, but it seems to me that you are seeking to benefit from your failure to provide him with a copy of the document."). The court made it very clear that it was only considering the executed release:

"If it was something that he previously requested, you came into possession of it in December and did not provide a copy to him in December, January, February, or March, and he seeks to enforce it in April, I don't know if you should benefit from your delay. . . . Or your failure to do that."

Exhibit M at pp. 58:24-59:5. Defendants counsel also made sure the court was aware that Defendants were aware of the settlement. "In addition to not receiving the release, I never even got the stipulation. Now, I know the case was settled. I was aware. They asked me to sign the stipulation and I sent it back." **Exhibit M** at p. 87:6-10. As Plaintiff's counsel admitted, it was the Plaintiff's error in providing a copy of the release, the court correctly ruled "[a]nd he has just received a copy of it on April 8th. I am inclined to - -yes, I am going to grant the motion." **Exhibit M** at p. 59:13-15. "It" being the executed release.

Unexecuted draft documents cannot support a release defense because draft documents are merely non-binding negotiations to which the parties have failed to demonstrate a meeting of the minds. *See e.g., Parsons Bros. Slate Co.*, 418 Pa. at 390, 211 A.2d at 423. Again, the Defendants could not have based a defense of release on a draft document. It is unreasonable for parties to rely on unexecuted, draft document, and parties do so at their own peril. *Paul Davis Sys.*, 362 S.C. 220, 607 S.E.2d 358. The supposed misrepresentation that is the basis of this Motion was never made by the Agency Defendants' counsel. Defendants' counsel was candid with the court at the hearing and informed the court that he was aware of the settlement, but not its final terms. Because Defendants' counsel made no misrepresentation or fraud upon the court, Plaintiff's Motion should be denied in its entirety.

C. There is still no prejudice to the Plaintiff.

Plaintiff cites cases in his Motion to support the proposition that the Plaintiff is prejudiced either by surprise, lack of notice of this "new" issue is to be tried, a lack of opportunity to refute it, and requests the court look to justice and fairness. Under Rule 15(a), SCRCP, a party may amend a pleading with leave of court, and such "leave shall be freely given when justice so requires and does not prejudice any other party." "The prejudice Rule 15 envisions is a lack of notice that

the new issue is going to be tried, and a lack of opportunity to refute it.” *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716 (Ct. App. 2005). Both were provided to Curry by this court.

- 1. There is no surprise because the timing of Defendants’ motion is due to Plaintiff’s failure to provide Defendants’ with a copy of the executed release for five months after it was executed.**

This court correctly pointed out that when Scottsdale and Curry finally completed their settlement, Curry had a continuing duty to disclose those communications. In granting Defendants Motion to Amend, this court found that

“Amendments are freely given when justice so requires and the opposing party is not significantly prejudiced. I find that is the case here, particularly in light of the fact that you had a copy and you knew what it said. Yes. And you were under a continued duty to disclose anyway. So I will allow the amendment.”

Exhibit M at pp. 59:18-60:1. The court’s Order reflects alternative grounds upon which Defendants’ Motion was granted, “[f]urther, the proposed defense was one that Plaintiff could have anticipated.” **Exhibit A**.

Curry’s counsel admitted that Curry had a duty to provide the Defendants with a copy of the executed release when it was executed, but failed to do so. *See Exhibit M* at p.58:13-14 (“If I failed to provide that to him in December, that is my error...”). The release was executed on December 10, 2015, and in Plaintiff’s exclusive possession at all times for five months prior to April 8, 2016, without reference or production to the Defendants. The earliest the Defendants had knowledge of the final terms and consideration of the executed release was on April 8, 2016. The court pointed out that the Plaintiff could have anticipated the defense. Yet, without any supporting citation to the record, the Plaintiff insists that he is somehow prejudiced. The record shows otherwise.

Plaintiff was given adequate time to prepare. At the pre-trial hearing on the release defense, Plaintiff's counsel stated that Plaintiff did not object to the trial being continued so that the parties could prepare summary judgment motions for argument. *See Exhibit M* at p.90:2-6. Plaintiff's counsel believed "the proper thing is to continue this trial so that these motions can be heard, and then any appeal from the granting or denial of such motions can work its way through the system." *Exhibit M* at p.90:14-18. This is precisely what has happened since. The Plaintiff even waived any notice requirement stating that "four or five days" was plenty of time for the Plaintiff to prepare. *Exhibit M* at p.96:5-8. The trial was continued.

The parties went on to draft their motions and memoranda related to their respective summary judgment motions, then fully argued the motions before the court on April 25, 2016. On appeal, one of which is Plaintiff's own cross-appeal, the parties have fully briefed the issues and final briefs have already been filed. To the extent the Plaintiff was ever surprised by or lacked notice of the Defendants' Motion, the court fully mitigated the same by continuing the trial and giving the parties enough time to prepare.

2. Because the executed release is the plaintiff's document and the Plaintiff was the only party in possession of the executed release for five months after it was executed, only the Plaintiff could have anticipated the defense of release.

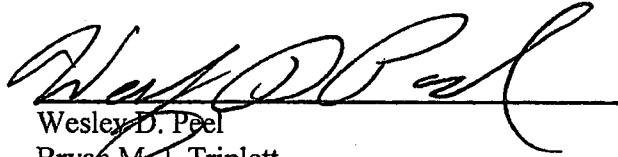
The release was executed on December 10, 2015. The only document in Defendants' possession until April 8, 2016 was a draft copy of an unexecuted release. Defendants' Motion was filed 10 days later, on the day of trial. The Plaintiff now argues prejudice based on the timing of Defendants' Motion. The court correctly found that the Plaintiff should have anticipated the defense. *See Exhibit A*. A draft copy of the release was at no point relevant to Defendants' amendment of its answer, so Defendants' counsel never addressed it.

Assuming that Defendants' counsel was mistaken at some point, and incorrectly claimed that he did not receive a copy of the draft settlement, it would not matter anyway. The Defendants' Motion to Amend and the court's ruling was based solely upon the date that the executed settlement was served upon the defendants, as any unsigned draft documents would not constitute notice of any defense. The release defense asserts that the Plaintiff released the Defendants through its executed release with Scottsdale. The Defendants could never be released by a draft, unsigned document.

Further, counsel cannot be charged with knowledge of the contents of the final Release until it was signed and served upon him. Even assuming that Curry's counsel is correct and the Defendants were on notice of a terms of a proposed, unexecuted release, and had read and considered the terms of that release, no defense could have been raised until the release was executed and consideration had been exchanged between Curry and Scottsdale. Counsel for the Agency Defendants are under an ethical duty to preserve and protect any potential defenses available to their client. Raising the issue regarding the release defense prior to the final settlement between Scottsdale and Curry would violate that ethical duty because the Release could have been undone or edited. Obviously the release defense did not arise until Scottsdale and Curry exchanged consideration -- the payment of \$85,000 to Curry and the execution of the release of Scottsdale and its agents by Curry. Neither could have happened until December 10, 2015. Because Plaintiff was the only party in possession of the executed release until April 8, 2016, the Plaintiff was the only party that could have anticipated the release defense before April 8, 2016. Therefore, the Plaintiff was in no way prejudiced by the timing of Defendants' Motion.

CONCLUSION

For these reasons set forth above, the Court should deny Plaintiff's Motion in its entirety.

A handwritten signature in black ink, appearing to read 'Wesley D. Peel', is written over a horizontal line.

Wesley D. Peel

Bryan M. J. Triplett

BRUNER POWELL WALL & MULLINS, LLC

1735 St. Julian Place, Ste. 200 (29206)

P.O. Box 61110

Columbia, SC 29260-1110

803-252-7693

*Attorneys for Defendants Carolina Insurance Group
of SC, Inc. and Maurice Derrick*

February 17, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Civil Action No. 2014-CP-40-04661

Porthemos Curry,)

Plaintiff,)

vs.)

Scottsdale Insurance Company, Carolina)
Insurance Group of SC, Inc. and Maurice)
Derrick,)

Defendants.)

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2017 FEB 17 PM 4:54
JEANNETTE M. MCBRIDE
Clerk, C.P. & G.S.

I, Katie Gjennestad, with the law firm of Bruner, Powell, Wall & Mullins, LLC Attorneys for the Defendants, Carolina Insurance Group of SC, Inc. and Maurice Derrick, do hereby certify that on this day of February 2017, I served the Defendants Carolina Insurance Group of SC, Inc. and Maurice Derrick's Memorandum in Opposition to Curry's Motion for Relief upon opposing counsel via email and by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

RPeavy@Goodwynlaw.com
JGoodwyn@Goodwynlaw.com
MBush@Goodwynlaw.com
Rachel G. Peavy, Esquire
T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm
2519 Devine Street, Suite A
Columbia, South Carolina 29205
Attorneys for the Plaintiff, Porthemos Curry

Katie Gjennestad
Katie Gjennestad

Columbia, South Carolina
February 17, 2017

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff,

v.

Carolina Insurance Group of S.C., Inc.; and
Maurice Derrick,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-40-4661

**ORDER GRANTING DEFENDANTS' MOTION TO
AMEND ANSWER**

This matter came before the Court on Defendants' Motion to Amend their Answer, which was filed on April 18, 2016 pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure. A hearing was conducted on the same day, immediately prior to the anticipated commencement of the "date certain" jury trial in this case.

After hearing the arguments of all parties, the Court found that the basis of Defendants' proposed amendment was a document which, despite earlier written requests for the same, was provided to Defendants by Plaintiff only ten days before trial. Further the proposed defense was one that Plaintiff could have anticipated.

Rule 15(a) of the South Carolina Rules of Civil Procedure provides that "...leave [to amend pleadings] shall be freely given when justice so requires and does not prejudice any other party." While Plaintiff argued that the amendment would be prejudicial, the Court found that the timing of Defendants' motion was a direct result of Plaintiff's delay in providing necessary documents to Defendants.

IT IS THEREFORE ORDERED that Defendants' Motion to Amend is GRANTED.

AND IT IS SO ORDERED.

May 24, 2016
Columbia, South Carolina.

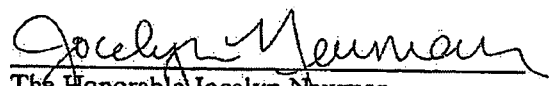

The Honorable Jocelyn Newman

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action No.: 14-CP-_____

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company,
Carolina Insurance Group of SC, Inc., and
Maurice Derrick,

Defendants.

COMPLAINT
(Jury Trial Requested)

RECEIVED
JUL 23 2014
CLERK OF COURT

The Plaintiff, Porthemos Curry, complaining of the Defendants, would show as follows:

Parties

1. Plaintiff is a citizen and resident of Richland County who is the owner of a vacant structure located at 1001 Pineland Drive, Columbia, SC 29203 (hereafter "the Property").
2. Defendant Scottsdale Insurance Company ("Scottsdale") is a foreign corporation doing business in the State of South Carolina, including Richland County.
3. Defendant Carolina Insurance Group of South Carolina, Inc. is a corporation with an office located at Two Notch Road in Richland County, South Carolina.
4. Defendant Maurice Derrick is a citizen of the State of South Carolina who, upon information and belief, resides in Richland County.
5. On or about August 21, 2013, Defendants Carolina Insurance Group and Derrick sold Plaintiff a 3-month vacant structure policy with Lloyd's of London, with an expiration date of November 21, 2013.

6. Between the dates of November 22, 2013 and December 1, 2013, there was no insurance coverage on the Property.
7. On or about December 2, 2013, Defendant Derrick telephoned the Plaintiff to inquire as to whether he still needed vacant structure coverage for the Property, and Plaintiff told Derrick that he did.
8. On December 2, 2013, Defendant Derrick offered to place another vacant structure policy on the property, to which Plaintiff agreed.
9. On December 2, 2013, Plaintiff paid the premium amount of \$344.50 by utilizing his Bank of America account to transfer payment to TAPCO Underwriters, the underwriter for Defendant Scottsdale.

For a First Cause of Action
Breach of Contract

10. The Preceding allegations are incorporated herein as if repeated verbatim.
11. Defendant Scottsdale is an insurer offering, among other things, policies to cover vacant structures.
12. Plaintiff procured vacant structure insurance ("the Policy") from Defendant Scottsdale, which coverage included loss by vehicle or by fire.
13. While the Policy was in force, a white vehicle collided with the Property on February 21, 2014, prior to midnight, as evidenced by the affidavits attached hereto as Exhibit A.
14. The collision resulted in a fire being ignited at the Property, causing severe damage as a result.
15. Plaintiff provided to Defendant Scottsdale the information regarding the accident and the Policy.

16. This loss was covered by the Policy.
17. Plaintiff timely reported the loss to the Defendants.
18. Defendant Scottsdale has refused to pay the claim, and refuses to acknowledge that the Policy was in effect on February 22, 2014.
19. Defendant Scottsdale has further refused to pay the claim by asserting that the Policy was somehow "backdated" to November 21, 2013 and had therefore lapsed by the time the fire department responded to calls in the early morning of February 22, 2014, despite the fact that the agent did not even bind coverage on the Property until December 2013.
20. Defendant Scottsdale's failure to pay the claim and failure to cover the loss are breaches of the insurance contract entitling the Plaintiff to recover such amount as established at trial.

For a Second Cause of Action
Statutory Bad Faith

21. The preceding allegations are incorporated herein.
22. Defendant Scottsdale has failed to pay the sum due and owing within 90 days.
23. Defendant has failed to pay any amounts to Plaintiff due under the Policy.
24. Defendant Scottsdale has failed to discharge its statutory and contractual obligations in good faith and has acted without reasonable cause in failing to pay covered losses within 90 days.
25. Pursuant to S.C. Code Ann. 38-59-40, Plaintiff is entitled to an award of attorney's fees of one third of the judgment entered into his action.

For a Third Cause of Action
Common Law Bad Faith

26. The preceding allegations are incorporated herein as if repeated verbatim.
27. Defendant Scottsdale had a duty to act in good faith which required it to use due care not to deprive Plaintiff of his rights under the Policy.
28. Defendant Scottsdale's explanation of delay in processing Plaintiff's claim was based on a lack of knowledge of the Policy terms and conditions and is nonsensical.
29. Defendant Scottsdale has forced Plaintiff to pursue litigation in order to obtain payment for the loss covered by the Policy.
30. Defendant Scottsdale's failure to properly adjust Plaintiff's claim and failure to make payment as required by the terms of the Policy was the result of bad faith and the reckless and/or intentional disregard for Plaintiff's rights under the Policy.
31. Defendant Scottsdale's acts entitle Plaintiff to an award of punitive damages in an amount to be determined at trial.

For a Fourth Cause of Action
Negligence

32. To the extent not inconsistent, the preceding allegations are incorporated herein.
33. Defendant Maurice Derrick is an insurance broker employed by Defendant Carolina Insurance Group of SC, Inc.
34. Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale.

35. In addition to other activities, Defendants Derrick and Carolina Insurance submit applications for coverage with Scottsdale, receive premiums on behalf of Scottsdale, and deliver and present insurance contracts on behalf of Scottsdale.
36. Because Plaintiff had no special knowledge in the area of vacant coverage insurance, Plaintiff engaged Defendants Derrick and Carolina Insurance to procure vacant property coverage for the Property for the appropriate period of time while the Property was under renovation.
37. Plaintiff was assured by Defendants Derrick and Carolina Insurance that they offered coverage at competitive prices and that Defendants were well suited to work with a customer such as Plaintiff.
38. Defendants Derrick and Carolina Insurance undertook to procure insurance coverage for Plaintiff at two (2) different periods of time; first, in August 2013, when Plaintiff first began renovating the Property, and second, in December 2013, when Defendants inquired as to whether the Property was still under renovation and informed the Plaintiff that he needed a new policy, as the Lloyd's of London policy had expired.
39. In accepting the Scottsdale Policy procured by Defendants Derrick and Carolina Insurance in December 2013, Plaintiff, in reliance upon the knowledge, experience, and expertise of all of the Defendants, believed the Defendants would procure coverage sufficient to protect Plaintiff against the foreseeable insurance risk exposures faced by Plaintiff's Property for three (3) months.

40. According to positions taken by Defendant Scottsdale with respect to Plaintiff's loss that is the subject of this action, Plaintiff's loss is excluded from coverage under the terms of the Policy.
41. Prior to being informed of Scottsdale's position, Plaintiff had never been informed by any of the Defendants that the Policy was "backdated" and therefore the policy premium which was paid for in December 2013 actually was not a "three month policy" and did not cover the Property for 3 months.
42. As now relied upon by Defendant Scottsdale, the Policy is rendered materially deficient and insufficient to protect the Plaintiff.
43. Had the Defendants informed Plaintiff that the three month policy he was paying for provided less than 3 months of coverage, Plaintiff could have sought suitable insurance from another carrier.
44. In permitting the Policy to be "shortened" in essence, without informing Plaintiff of this material limitation, Defendants failed to exercise the duty of ordinary care applicable to insurance carriers and professionals.
45. As a result of the Defendants' failure to exercise ordinary care and failure to inform Plaintiff that the three month Policy was, in effect, 2 months plus 20 days, Plaintiff has been damaged in the amount of its losses to the Property.

WHEREFORE, Plaintiff prays for a trial by jury and judgment as follows:

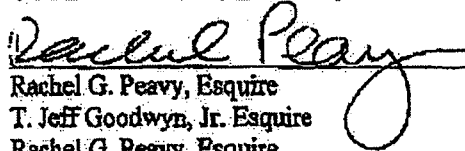
As against Defendant Scottsdale, an award of damages in the amount of his unpaid losses as established at trial; attorney's fees in an amount of one third of the judgment under his statutory bad faith claim; and an award of punitive damages in an amount to be determined by the jury;

As against all Defendants, judgment in the amount of Plaintiff's unpaid losses as established at trial, and all incidental and consequential damages;

Prejudgment interest and costs against all Defendants; and

For such other and further relief as the Court deems just and proper.

GOODWYN LAW FIRM, LLC



Rachel G. Peavy, Esquire

T. Jeff Goodwyn, Jr. Esquire

Rachel G. Peavy, Esquire

Suite A

Columbia, SC 29205

(803) 251-7517

(803) 251-7527 (f)

JGoodwyn@Goodwynlaw.com

Attorneys for Plaintiff

Columbia, South Carolina
July 24th, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

AFFIDAVIT

Personally appeared before the undersigned Notary Public, Tenellia Humphery, who, being duly sworn, does hereby testify as follows:

1. My name is Tenellia Humphery, I am over the age of eighteen (18), and a citizen and resident of South Carolina and make this Affidavit upon personal knowledge and belief.
2. On February 21, 2014, at approximately 11:35 p.m., I was driving to pick up a friend who lives near 1001 Pineland Drive.
3. I was conscious of the time because I was due to arrive at a certain pool hall prior to midnight.
4. At about the same date and time, I happened to drive by a home owned by Porthemos Curry at 1001 Pineland Drive which was on the way to the pool hall.
5. While I was driving, at or around 11:35 p.m., I observed a white vehicle pinned up against Mr. Curry's house, which appeared to be disabled.
6. At the same date and time, I observed two (2) men with the car that was pinned up against the house, and the men appeared to be trying to pull the car out.
7. Due to the darkness, I could not tell whether the car was smoking or a fire had started somewhere in the car.

THE AFFIANT FURTHER SAYETH NAUGHT.

Tenellia Humphery

SWORN TO BEFORE ME

This 11th day of June, 2014

Notary Public for South Carolina

My commission expires: 10-19-2019



STATE OF SOUTH CAROLINA

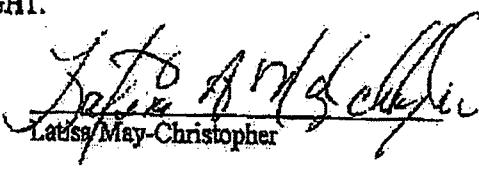
COUNTY OF RICHLAND

AFFIDAVIT

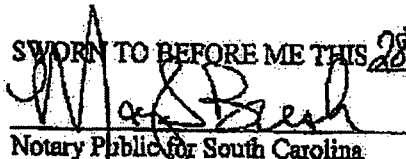
Personally appeared before the undersigned Notary Public, Latisa May-Christopher, who, being duly sworn, does hereby testify as follows:

1. My name is Latisa May-Christopher, I am over the age of eighteen (18), and a citizen and resident of Richland County, South Carolina and make this Affidavit upon personal knowledge and belief.
2. On February 21, 2014, at or about approximately 11:00 p.m., I was dropping a friend off in the neighborhood of 1001 Pineland Drive.
3. I was conscious of the time because I was trying to get to a bingo hall that closed at midnight and did not want to miss out.
4. At about the same date and time, I happened to drive by a home owned by Porthemos Curry at 1001 Pineland Drive.
5. While I was driving, at or about 11:00 p.m., I observed a vehicle pinned up against Mr. Curry's house, which appeared to be disabled. The car appeared to be a white sedan model.
6. At the same date and time, I observed one (1) man with the car that was pinned up against the house.
7. Due to the darkness, I could not tell whether the car was smoking or a fire had started somewhere in the car.

THE AFFIANT FURTHER SAYETH NAUGHT.


Latisa May-Christopher

SWORN TO BEFORE ME THIS 28th DAY OF MAY, 2014


Notary Public for South Carolina

My commission expires: 10-19-2019

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company,
Carolina Insurance Group of SC, Inc., and
Maurice Derrick,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 14-CP-40-4661

AMENDED COMPLAINT
(Jury Trial Requested)

2015 MAY 28 PM 9:50
JANETTE W. MCGRATH
CLERK & G.S.
RICHLAND COUNTY

The Plaintiff, Porthemos Curry, complaining of the Defendants, would show as follows:

1. Plaintiff is a citizen and resident of Richland County who is the owner of a vacant structure located at 1001 Pineland Drive, Columbia, SC 29203 (hereafter "the Property").
2. Defendant Scottsdale Insurance Company ("Scottsdale") is a foreign corporation doing business in the State of South Carolina, including Richland County.
3. Defendant Carolina Insurance Group of South Carolina, Inc. is a corporation with an office located at Two Notch Road in Richland County, South Carolina.
4. Defendant Maurice Derrick is a citizen of the State of South Carolina who, upon information and belief, resides in Richland County.
5. On or about August 21, 2013, Defendants Carolina Insurance Group and Derrick sold Plaintiff a 3-month vacant structure policy with Scottsdale Insurance Company, Policy No. CPS1816463, with an expiration date of November 21, 2013. A copy of this Scottsdale policy is attached as **Exhibit A**.

6. Between the dates of November 22, 2013 and December 1, 2013, there was no insurance coverage on the Property.
7. On or about December 2, 2013, Defendant Derrick telephoned the Plaintiff to inquire as to whether he still needed vacant structure coverage for the Property, and Plaintiff told Derrick that he did.
8. On December 2, 2013, Defendant Derrick offered to place another vacant structure policy on the property, to which Plaintiff agreed.
9. As part of the underwriting process, Defendants Derrick and Carolina Insurance Group submitted an Application for a Vacant Structures Policy, a copy of which is attached hereto as **Exhibit B**. Upon approval, TAPCO prepared a Binder Summary Sheet which was forwarded to Defendants Derrick and Carolina Insurance Group and is attached hereto as **Exhibit C**. Defendant Scottsdale thereafter issued Policy No. CPS1884774 to the Plaintiff and a copy of the Policy is attached as **Exhibit D**.
10. On December 2, 2013, Plaintiff paid the premium amount of \$344.50 by utilizing his Bank of America account to transfer payment to TAPCO Underwriters, the underwriter for Defendant Scottsdale.

For a First Cause of Action
Breach of Contract

11. The Preceding allegations are incorporated herein as if repeated verbatim.
12. Defendant Scottsdale is an insurer offering, among other things, policies to cover vacant structures.
13. Plaintiff procured vacant structure insurance ("the Policy") from Defendant Scottsdale, which coverage included loss by vehicle or by fire.

14. While the Policy was in force, a white vehicle collided with the Property on February 21, 2014, prior to midnight, as evidenced by the affidavits attached hereto as Exhibit E.
15. The collision resulted in a fire being ignited at the Property, causing severe damage as a result.
16. Plaintiff provided to Defendant Scottsdale the information regarding the accident and the Policy.
17. This loss was covered by the Policy.
18. Plaintiff timely reported the loss to the Defendants.
19. Defendant Scottsdale has refused to pay the claim, and contends that the Policy expired at 12:01 a.m. on February 21, 2014, as evidenced by the letter attached hereto as Exhibit F. Defendant Scottsdale has further refused to pay the claim by asserting that the Policy was somehow "backdated" to November 21, 2013 and had therefore lapsed by the time the fire department responded to calls in the early morning of February 22, 2014, despite the fact that the agent did not even bind coverage on the Property until December 2013.
20. Defendant Scottsdale's failure to pay the claim and failure to cover the loss are breaches of the insurance contract entitling the Plaintiff to recover such amount as established at trial.

For a Second Cause of Action
Statutory Bad Faith

21. The preceding allegations are incorporated herein.
22. Defendant Scottsdale has failed to pay the sum due and owing within 90 days.
23. Defendant has failed to pay any amounts to Plaintiff due under the Policy.

24. Defendant Scottsdale has failed to discharge its statutory and contractual obligations in good faith and has acted without reasonable cause in failing to pay covered losses within 90 days.
25. Pursuant to S.C. Code Ann. 38-59-40, Plaintiff is entitled to an award of attorney's fees of one third of the judgment entered in this action.

For a Third Cause of Action
Common Law Bad Faith

26. The preceding allegations are incorporated herein as if repeated verbatim.
27. Defendant Scottsdale had a duty to act in good faith which required it to use due care not to deprive Plaintiff of his rights under the Policy.
28. Defendant Scottsdale's explanation of delay in processing Plaintiff's claim was based on a lack of knowledge of the Policy terms and conditions and is nonsensical.
29. Defendant Scottsdale has forced Plaintiff to pursue litigation in order to obtain payment for the loss covered by the Policy.
30. Defendant Scottsdale's failure to properly adjust Plaintiff's claim and failure to make payment as required by the terms of the Policy was the result of bad faith and the reckless and/or intentional disregard for Plaintiff's rights under the Policy.
31. Defendant Scottsdale's acts entitle Plaintiff to an award of punitive damages in an amount to be determined at trial.

For a Fourth Cause of Action
Negligence

32. To the extent not inconsistent, the preceding allegations are incorporated herein.
33. Defendant Maurice Derrick is an insurance broker employed by Defendant Carolina Insurance Group of SC, Inc.

34. Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale.
35. In addition to other activities, Defendants Derrick and Carolina Insurance submit applications for coverage with Scottsdale, receive premiums on behalf of Scottsdale, and deliver and present insurance contracts on behalf of Scottsdale.
36. Because Plaintiff had no special knowledge in the area of vacant coverage insurance, Plaintiff engaged Defendants Derrick and Carolina Insurance to procure vacant property coverage for the Property for the appropriate period of time while the Property was under renovation.
37. Plaintiff was assured by Defendants Derrick and Carolina Insurance that they offered coverage at competitive prices and that Defendants were well suited to work with a customer such as Plaintiff.
38. Defendants Derrick and Carolina Insurance undertook to procure insurance coverage for Plaintiff at two (2) different periods of time; first, in August 2013, when Plaintiff first began renovating the Property, and second, in December 2013, when Defendants inquired as to whether the Property was still under renovation and informed the Plaintiff that he needed a new policy, as the Lloyd's of London policy had expired.
39. In accepting the Scottsdale Policy procured by Defendants Derrick and Carolina Insurance in December 2013, Plaintiff, in reliance upon the knowledge, experience, and expertise of all of the Defendants, believed the Defendants would procure coverage sufficient to protect Plaintiff against the foreseeable insurance risk exposures faced by Plaintiff's Property for three (3) months.

40. According to positions taken by Defendant Scottsdale with respect to Plaintiff's loss that is the subject of this action, Plaintiff's loss is excluded from coverage under the terms of the Policy.
41. Prior to being informed of Scottsdale's position, Plaintiff had never been informed by any of the Defendants that the Policy was "backdated" and therefore the policy premium which was paid for in December 2013 actually was not a "three month policy" and did not cover the Property for 3 months.
42. As now relied upon by Defendant Scottsdale, the Policy is rendered materially deficient and insufficient to protect the Plaintiff.
43. Had the Defendants informed Plaintiff that the three month policy he was paying for provided less than 3 months of coverage, Plaintiff could have sought suitable insurance from another carrier.
44. In permitting the Policy to be "shortened" in essence, without informing Plaintiff of this material limitation, Defendants failed to exercise the duty of ordinary care applicable to insurance carriers and professionals.
45. As a result of the Defendants' failure to exercise ordinary care and failure to inform Plaintiff that the three month Policy was, in effect, 2 months plus 20 days, Plaintiff has been damaged in the amount of its losses to the Property, plus such other and further damages as may be proved at trial, to include but not limited to, lost profits and income due to the destruction of the property; damage to credit rating; damage to reputation; and additional interest paid on credit cards due to failure to complete renovation and sale of the home.

WHEREFORE, Plaintiff prays for a trial by jury and judgment as follows:

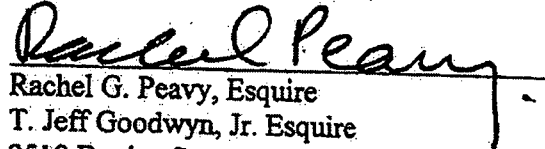
As against Defendant Scottsdale, an award of damages in the amount of his unpaid losses as established at trial; attorney's fees in an amount of one third of the judgment under his statutory bad faith claim; and an award of punitive damages in an amount to be determined by the jury;

As against all Defendants, judgment in the amount of Plaintiff's unpaid losses as established at trial, and all incidental and consequential damages as may be shown at trial;

Prejudgment interest and costs against all Defendants; and

For such other and further relief as the Court deems just and proper.

GOODWYN LAW FIRM, LLC



Rachel G. Peavy, Esquire

T. Jeff Goodwyn, Jr. Esquire

2519 Devine Street

Suite A

Columbia, SC 29205

(803) 251-7517

(803) 251-7527 (f)

JGoodwyn@Goodwynlaw.com

Attorneys for Plaintiff

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action No.: 14-CP-40-4661

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company,
Carolina Insurance Group of SC, Inc., and
Maurice Derrick,

Defendants.

**CONSENT TO AMENDMENT
OF COMPLAINT**

RICHLAND COUNTY
CLERK OF COURT
2015 MAY 28 AM 9:51
JEANETTE W. MCGRIDE
CLERK & S.

COUNSEL HEREBY CONSENTS TO THE AMENDMENT OF THE COMPLAINT:


Wesley D. Peel, Esquire

Counsel for Defendants Maurice Derrick and Carolina Insurance Group of SC, Inc.


J.R. Murphy, Esquire

Hannah Stetson, Esquire

Counsel for Defendant Scottsdale Insurance Company

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

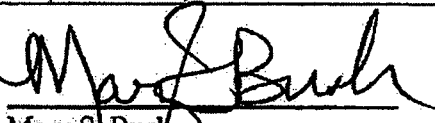
Civil Action No.: 2014-CP-40-04661

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 29, 2015, copies of the foregoing filed Amended Complaint were served on the following party by placing a copy of the same Via U.S. Regular Mail, postage prepaid at the address shown below:

J.R. Murphy, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive
Columbia, South Carolina 29206

Wesley D. Peel, Esquire
Bruner Powerll Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260



Mary S. Bush
Paralegal to T. Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517

EXHIBIT D

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-40-04661

DEFENDANTS CAROLINA
INSURANCE GROUP OF SC, INC. AND
MAURICE DERRICK'S FIRST SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION TO PLAINTIFF

TO: RACHEL G. PEAVY, ESQUIRE AND T. JEFF GOODWYN, JR., ESQUIRE,
ATTORNEYS FOR THE PLAINTIFF

The Defendants Carolina Insurance Group of SC, Inc. ("Carolina") and Maurice Derrick ("Derrick"), referred to collectively as the Defendants requests that the Plaintiff answer under oath in accordance with Rule 33 of the South Carolina Rules of Civil Procedure the Interrogatories propounded herein and to respond to the following Request for Production of Documents in accordance with Rule 34 of the South Carolina Rules of Civil Procedure.

INSTRUCTIONS

In answering each interrogatory and responding to each request for production:

1. Pursuant to Rule 33 SCRPC in answering the following interrogatories, you are to furnish all information available to you or subject to your reasonable inquiry including information in the possession of your agents, employees, attorneys, and other persons directly or indirectly employed by or connected with you and any one else otherwise subject to your controls and to serve your answers within thirty days from the date of service of the interrogatories if served alone, and forty-five days of the date of service of the interrogatories if served with the Complaint.

2. To the extent that you believe that any of the interrogatories calls for information contained in documents or communications subject to a claim of confidentiality, trade secret or privilege answer so much of the interrogatory or interrogatories, and each subpart thereof, as does not request, allegedly confidential, secret, or privileged information and identify each such document and communication and set forth the basis for your claim of confidentiality, secrecy or privilege with respect to the information which you refuse to furnish. With regards to each such document, state the date and nature of the document.

3. These interrogatories are deemed to be continuing; as such, you are required to file and serve supplemental answers and any additional information that you may subsequently acquire that would materially change the response to an interrogatory.

4. In responding to the request for production of documents, you are to respond within thirty days from the date of service of the request for production of documents if served alone, and forty-five days of the date of service, if served with the Complaint. Responses shall be in accordance with SCRCP 34 and served upon Bruner, Powell, Robbins, Wall & Mullins, LLC, P. O. Box 61110, 1735 St. Julian Place, Suite 200, Columbia, South Carolina 29260.

DEFINITIONS

1. As used herein, "you", "your", or "plaintiff" mean the plaintiff to whom these interrogatories and requests are addressed and include all other persons acting or purporting to act on behalf of the plaintiffs.

2. "Document" has the same meaning as in Rule 34(a) of the South Carolina Rules of Civil Procedure, and includes but is not limited to the original and all drafts of all written or graphic matter, however produced or reproduced, of any kind or description, and all copies thereof which are different from the original (whether different by interlineation, or otherwise). Included in such

definition are: books, records, reports, memoranda, or notes of conversations and meetings, notes, letters, telegrams, cables, telexes, diaries, calendars, schedules, graphs, charts, contracts, releases, studies, blueprints, cancelled checks, summaries, booklets, circulars, bulletins, instructions, minutes, bills, questionnaires, correspondence, financial statements, tapes, discs, tape recordings, microfilm, microfiche, videotapes, photographs, phonograph records, motion pictures, data cards, as well as any other written, recorded, transcribed, punched, taped, filmed or graphic matter on which information is recorded in writing or in sound or in any other manner, of which you have possession, custody or control.

3. "Files" means all methods of arranging or storing papers, records, documents or other compilations of data (whether contained in folders, cabinets or other containers; whether recorded on magnetic cards, tapes, or discs, or any other record or device) which are maintained by you, for your use, or on your behalf, for preservation or reference.

4. "Person" means any person and includes natural persons, corporations, partnerships, associations, joint ventures, firms and other business enterprises or legal entities, and includes both the singular and the plural.

5. "Policy" or "Renewal Policy" means the insurance policy (Policy No.: CPS1884774).

6. "Previous Policy" means the insurance policy (Policy No.: CPS1816463).

7. "Property" means that property located at 1001 Pineland Driver, Columbia, SC 29203.

8. As used herein, the conjunctions "and" and "or" shall be interpreted and construed "and/or", and shall not be interpreted to exclude any information otherwise within the scope of any request.

8. As used herein, the phrase "refer, regarding or relate", includes containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing or characterizing, either directly or indirectly, in whole or in part.

9. When asked to "identify" or "for the identity" of any natural person, set forth (i) the full name; (ii) present or last-known address; and (iii) his or her present telephone number.

10. When asked to "identify" or "for the identity" of any entity other than a natural person, set forth its (i) full name or title; (ii) present or last-known address; and (iii) its present telephone number.

11. As used herein, the phrase "refer, regarding or relate", includes containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing or characterizing, either directly or indirectly, in whole or in part.

12. In answering the Interrogatories herein if you are asked to "identify" or "for the identity" of a document, you are required to furnish a copy of each such document in lieu of identifying the same. When identifying a document set forth (i) its date and general type of category (e.g. letter, contract, memorandum, note); (ii) the identity of its author and each person who aided or assisted in its preparation; (iii) those who received the document; (iv) the last-known location or custodian; (v) its subject matter and substance; and (vi) if the document is no longer in your possession or control and the circumstances of its disposition are known, set forth the date and circumstances of the disposition thereof, as well as the identity of the person or entity to whom custody or possession was given.

RULE 33 INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of you or your counsel that relate to the claim or the defense in the case.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and identify the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. List the names and addresses of any and all expert witnesses whom the party proposes to use as a witness at the trial of this case.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statement taken from such witness.

6. Have you ever been a party to any lawsuit, civil or criminal, other than the present one and, if so, for each other lawsuit, state the name of the action, your status in the action, the kind of action involved, the court in which it was filed, the civil action number of the action, the date of filing, if there was a trial, and the ultimate disposition of the case.

7. Set forth with particularity the language in the Policy which indicates that there was no insurance coverage on the Property between November 22, 2013 and December 1, 2013, the steps you undertook to mitigate this risk, the dates on which such attempts were made, and the extent, if any, the attempts were successful.

8. Set forth with particularity the relationship between you and the driver of the vehicle alleged to have caused the loss claimed in the complaint, any interest in said vehicle, and the relationship between you and any witnesses.

9. Set forth with particularity who initiated the conversation that took place on December 2, 2013 between you and Derrick, along with the time such communications were made or attempted, and a summary of any and all conversations with Derrick.

12. Set forth with particularity the policy language on which you relied in alleging that the occurrence is covered under the terms and policy period of the Policy.

13. Set forth with particularity the date, time, and a summary thereof for each time Derrick allegedly contacted or attempted to contact you, and the facts and circumstances surrounding any alleged offer Derrick made with respect to placing another vacant structure policy on the property and the resulting agreement reached, if any.

14. Set forth with particularity the extent to which the plaintiff is currently or has ever been involved in the business of buying and selling real estate including but not limited the identity of the real estate, address, and any and all requests for quotes insurance policies covering any losses associated with any of these properties.

15. Set forth with particularity the day and time you first learned of the loss and the subsequent steps you took to mitigate the loss.

REQUESTS FOR PRODUCTION OF DOCUMENTS

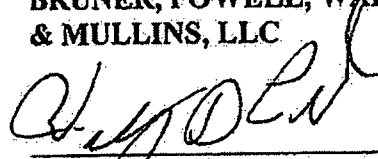
1. All documents in the care, custody, or control of the Plaintiff related to the events alleged in the Complaint.

2. All documents in the care, custody, or control of the Plaintiff related to any allegation or defense asserted in the Answer.

3. Any documents that you contend constitute the contract between the parties.
4. A certified copy of the policy or policies including, but not limited to, the face sheet, declaration sheet, and/or cover sheet for each insurance policy you own or have owned covering losses associated with damage to real property.
5. Copies of any and all reports created by any person, officer, entity, or agency of the state, county, city or municipality regarding to the claim.
6. All emails, correspondence, receipts, bills, invoices, statements, between you and your agents, or you and any other party, concerning this claim, including but not limited to: (a) Tapco Underwriters; (b) Scottsdale Insurance Company; (c) Carolina Insurance Group of SC, Inc; and (d) Maurice Derrick both prior and subsequent to the execution of the Policy.

These interrogatories shall be deemed continuing so as to require supplemental responses by your or your attorney to obtain further information between the time the answers are served and the time of trial.

BRUNER, POWELL, WALL
& MULLINS, LLC



Wesley D. Peel
wpeel@brunerpowell.com
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, S.C. 29260
(803) 252-7693
*Attorneys for the Defendants Carolina
Insurance Group of SC, Inc. and Maurice
Derrick*

Columbia, South Carolina
September 22, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Porthemos Curry,)

Plaintiff,)

vs.)

Scottsdale Insurance Company, Carolina)

Insurance Group of SC, Inc. and Maurice)

Derrick,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-40-04661

CERTIFICATE OF SERVICE

I, Rita D. DeCarlis, a legal assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, Attorneys for the Defendants, Carolina Insurance Group of SC, Inc. and Maurice Derrick, do hereby certify that on this 22nd day of September 2014, I served the **Defendants Carolina Insurance Group of SC, Inc. and Maurice Derrick's First Set of Interrogatories and Requests for Production to Plaintiff** upon opposing counsel by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Rachel G. Peavy, Esquire
T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm
2519 Devine Street, Suite A
Columbia, South Carolina 29205
Attorneys for the Plaintiff, Porthemos Curry

J.R. Murphy, Esquire
Murphy & Grantland, PA
PO Box 6648
Columbia, South Carolina 29260
*Attorneys for the Defendant
Scottsdale Insurance Company*


Rita D. DeCarlis

Columbia, South Carolina
September 22, 2014

EXHIBIT E

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action No.: 14-CP-40-4661

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company,
Carolina Insurance Group of SC, Inc., and
Maurice Derrick,

Defendants.

AMENDED COMPLAINT
(Jury Trial Requested)

2015 OCT -1 AM 11:28
JANETTE W. TORRIDE
C.C.P. & G.S.

The Plaintiff, Porthemos Curry, complaining of the Defendants, would show as follows:

1. Plaintiff is a citizen and resident of Richland County who is the owner of a vacant structure located at 1001 Pineland Drive, Columbia, SC 29203 (hereafter "the Property").
2. Defendant Scottsdale Insurance Company ("Scottsdale") is a foreign corporation doing business in the State of South Carolina, including Richland County.
3. Defendant Carolina Insurance Group of South Carolina, Inc. is a corporation with an office located at Two Notch Road in Richland County, South Carolina.
4. Defendant Maurice Derrick is a citizen of the State of South Carolina who, upon information and belief, resides in Richland County.
5. On or about August 21, 2013, Defendants Carolina Insurance Group and Derrick sold Plaintiff a 3-month vacant structure policy with Scottsdale Insurance Company, Policy No. CPS1816463, with an expiration date of November 21, 2013. A copy of this Scottsdale policy is attached as Exhibit A.

6. Between the dates of November 22, 2013 and December 1, 2013, there was no insurance coverage on the Property.
7. On or about December 2, 2013, Defendant Derrick telephoned the Plaintiff to inquire as to whether he still needed vacant structure coverage for the Property, and Plaintiff told Derrick that he did.
8. On December 2, 2013, Defendant Derrick offered to place another vacant structure policy on the property, to which Plaintiff agreed.
9. As part of the underwriting process, Defendants Derrick and Carolina Insurance Group submitted an Application for a Vacant Structures Policy, a copy of which is attached hereto as Exhibit B. Upon approval, TAPCO prepared a Binder Summary Sheet which was forwarded to Defendants Derrick and Carolina Insurance Group and is attached hereto as Exhibit C. Defendant Scottsdale thereafter issued Policy No. CPS1884774 to the Plaintiff and a copy of the Policy is attached as Exhibit D.
10. On December 2, 2013, Plaintiff paid the premium amount of \$344.50 by utilizing his Bank of America account to transfer payment to TAPCO Underwriters, the underwriter for Defendant Scottsdale.

For a First Cause of Action
Breach of Contract

11. The Preceding allegations are incorporated herein as if repeated verbatim.
12. Defendant Scottsdale is an insurer offering, among other things, policies to cover vacant structures.
13. Plaintiff procured vacant structure insurance ("the Policy") from Defendant Scottsdale, which coverage included loss by vehicle or by fire.

14. While the Policy was in force, a white vehicle collided with the Property on February 21, 2014, prior to midnight, as evidenced by the affidavits attached hereto as Exhibit E.
15. The collision resulted in a fire being ignited at the Property, causing severe damage as a result.
16. Plaintiff provided to Defendant Scottsdale the information regarding the accident and the Policy.
17. This loss was covered by the Policy.
18. Plaintiff timely reported the loss to the Defendants.
19. Defendant Scottsdale has refused to pay the claim, and contends that the Policy expired at 12:01 a.m. on February 21, 2014, as evidenced by the letter attached hereto as Exhibit F. Defendant Scottsdale has further refused to pay the claim by asserting that the Policy was somehow "backdated" to November 21, 2013 and had therefore lapsed by the time the fire department responded to calls in the early morning of February 22, 2014, despite the fact that the agent did not even bind coverage on the Property until December 2013.
20. Defendant Scottsdale's failure to pay the claim and failure to cover the loss are breaches of the insurance contract entitling the Plaintiff to recover such amount as established at trial.

For a Second Cause of Action
Statutory Bad Faith

21. The preceding allegations are incorporated herein.
22. Defendant Scottsdale has failed to pay the sum due and owing within 90 days.
23. Defendant has failed to pay any amounts to Plaintiff due under the Policy.

24. Defendant Scottsdale has failed to discharge its statutory and contractual obligations in good faith and has acted without reasonable cause in failing to pay covered losses within 90 days.
25. Pursuant to S.C. Code Ann. 38-59-40, Plaintiff is entitled to an award of attorney's fees of one third of the judgment entered in this action.

For a Third Cause of Action
Common Law Bad Faith

26. The preceding allegations are incorporated herein as if repeated verbatim.
27. Defendant Scottsdale had a duty to act in good faith which required it to use due care not to deprive Plaintiff of his rights under the Policy.
28. Defendant Scottsdale's explanation of delay in processing Plaintiff's claim was based on a lack of knowledge of the Policy terms and conditions and is nonsensical.
29. Defendant Scottsdale has forced Plaintiff to pursue litigation in order to obtain payment for the loss covered by the Policy.
30. Defendant Scottsdale's failure to properly adjust Plaintiff's claim and failure to make payment as required by the terms of the Policy was the result of bad faith and the reckless and/or intentional disregard for Plaintiff's rights under the Policy.
31. Defendant Scottsdale's acts entitle Plaintiff to an award of punitive damages in an amount to be determined at trial.

For a Fourth Cause of Action
Negligence and Gross Negligence

32. To the extent not inconsistent, the preceding allegations are incorporated herein.
33. Defendant Maurice Derrick is an insurance broker employed by Defendant Carolina Insurance Group of SC, Inc.

34. Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale.
35. In addition to other activities, Defendants Derrick and Carolina Insurance submit applications for coverage with Scottsdale, receive premiums on behalf of Scottsdale, and deliver and present insurance contracts on behalf of Scottsdale.
36. Because Plaintiff had no special knowledge in the area of vacant coverage insurance, Plaintiff engaged Defendants Derrick and Carolina Insurance to procure vacant property coverage for the Property for the appropriate period of time while the Property was under renovation.
37. Plaintiff was assured by Defendants Derrick and Carolina Insurance that they offered coverage at competitive prices and that Defendants were well suited to work with a customer such as Plaintiff.
38. Defendants Derrick and Carolina Insurance undertook to procure insurance coverage for Plaintiff at two (2) different periods of time; first, in August 2013, when Plaintiff first began renovating the Property, and second, in December 2013, when Defendants inquired as to whether the Property was still under renovation and informed the Plaintiff that he needed a new policy, as the Lloyd's of London policy had expired.
39. In accepting the Scottsdale Policy procured by Defendants Derrick and Carolina Insurance in December 2013, Plaintiff, in reliance upon the knowledge, experience, and expertise of all of the Defendants, believed the Defendants would procure coverage sufficient to protect Plaintiff against the foreseeable insurance risk exposures faced by Plaintiff's Property for three (3) months.

40. According to positions taken by Defendant Scottsdale with respect to Plaintiff's loss that is the subject of this action, Plaintiff's loss is excluded from coverage under the terms of the Policy.
41. Prior to being informed of Scottsdale's position, Plaintiff had never been informed by any of the Defendants that the Policy was "backdated" and therefore the policy premium which was paid for in December 2013 actually was not a "three month policy" and did not cover the Property for 3 months.
42. As now relied upon by Defendant Scottsdale, the Policy is rendered materially deficient and insufficient to protect the Plaintiff.
43. Had the Defendants informed Plaintiff that the three month policy he was paying for provided less than 3 months of coverage, Plaintiff could have sought suitable insurance from another carrier or, in the alternative, sought to renew the Policy after the alleged expiration date of February 21st.
44. In permitting the Policy to be "shortened" in essence, without informing Plaintiff of this material limitation, Defendants failed to exercise the duty of ordinary care applicable to insurance carriers and professionals and such failure was, in fact, grossly negligent, reckless, and in contravention of the duties and standards imposed upon insurance professionals in similar situations.
45. As a result of the Defendants' failure to exercise ordinary care and failure to inform Plaintiff that the three month Policy was, in effect, 2 months plus 20 days, and willful or reckless failure to renew or seek to renew the Policy after the February loss, Plaintiff has been damaged in the amount of its losses to the Property, plus such other and further damages, including punitive damages, as may be proved at

trial, to include but not limited to, lost profits and income due to the destruction of the property; damage to credit rating; damage to reputation; and additional interest paid on credit cards due to failure to complete renovation and sale of the home.

WHEREFORE, Plaintiff prays for a trial by jury and judgment as follows:

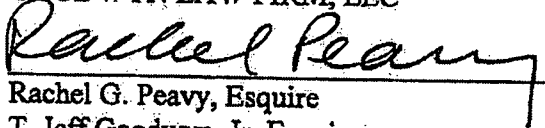
As against Defendant Scottsdale, an award of damages in the amount of his unpaid losses as established at trial; attorney's fees in an amount of one third of the judgment under his statutory bad faith claim; and an award of punitive damages in an amount to be determined by the jury;

As against all Defendants, judgment in the amount of Plaintiff's unpaid losses as established at trial, and all incidental, punitive, and consequential damages as may be shown at trial;

Prejudgment interest and costs against all Defendants; and

For such other and further relief as the Court deems just and proper.

GOODWYN LAW FIRM, LLC



Rachel G. Peavy, Esquire

T. Jeff Goodwyn, Jr. Esquire

2519 Devine Street

Suite A

Columbia, SC 29205

(803) 251-7517

(803) 251-7527 (f)

JGoodwyn@Goodwynlaw.com

Attorneys for Plaintiff

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company,
Carolina Insurance Group of SC, Inc., and
Maurice Derrick,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 14-CP-40-4661

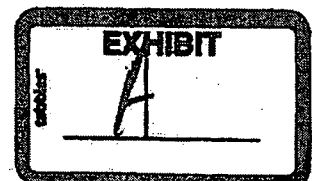
**CONSENT TO AMENDMENT
OF COMPLAINT**

RICHLAND COUNTY
CLERK
16 OCT - 1 AM 11:28
CANNETTE W. MCGRIDE
C.C.P. & G.S.

**COUNSEL HEREBY CONSENTS TO THE AMENDMENT OF THE COMPLAINT TO ASSERT
A CLAIM FOR GROSS NEGLIGENCE/PUNITIVE DAMAGES AS AGAINST DEFENDANTS
MAURICE DERRICK AND CAROLINA INSURANCE GROUP OF SC, INC.:**

Wesley D. Peel by Rachel G. Peavy (w/permission) 9/28/15
Wesley D. Peel, Esquire
Counsel for Defendants Maurice Derrick and Carolina Insurance Group of SC, Inc.

J.R. Murphy by Rachel G. Peavy (w/permission) 9/28/15
J.R. Murphy, Esquire
Counsel for Defendant Scottsdale Insurance Company



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

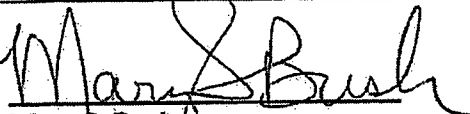
Civil Action No.: 2014-CP-40-04661

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **October 6, 2015**, copies of the foregoing **Amended Complaint** were served on the following party by placing a copy of the same Via U.S. Regular Mail, postage prepaid at the address shown below:

J.R. Murphy, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive
Columbia, South Carolina 29206

Wesley D. Peel, Esquire
Bruner Powerll Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260



Mary S. Bush
Paralegal to Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517

OCT 23 2015

EXHIBIT F



MURPHY & GRANTLAND, P.A.

J. R. Murphy
Direct dial 803-454-1231
jrmurphy@murphygrantland.com

November 25, 2015

Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205

NOV 30 2015

Re: Porthemos Curry vs. Scottsdale Ins. Co., Carolina Ins. Group of SC, Inc. and Maurice Derrick

Civil Action No.: 2014-CP-40-04661
Claim No.: 1527747
Date of Loss: 2/21/14
Our File No.: 1500-0129

Dear Rachel:

Enclosed please find the settlement draft in the amount of \$85,000, Release and Stipulation of Dismissal in the above-referenced matter. I would appreciate your holding all settlement funds in trust until the Release and Stipulation of Dismissal have been properly executed and returned to me in the envelope provided.

With warm personal regards, I am

Sincerely yours,

J. R. Murphy

JRM/sb
Enclosures

cc: Wesley D. Peel, Esquire
Rob Fisher, Esquire (via email)

Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull Peter E. Farr
Alice P. Adams Tim J. Newton Chris A. Majure J. Ryan Gates Wesley B. Sawyer Jason P. Luther Elliott B. Daniels Hannah D. Stetson Rogers E. Harrell, III
*Member-American Board of Trial Advocates

R.550

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

v.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

STIPULATION OF DISMISSAL

The Plaintiff, by and through its undersigned counsel, having settled this case with the Defendant Scottsdale Insurance Company, hereby dismisses, with prejudice, the Complaint, and all subsequent amendments thereto, as to the Defendant Scottsdale Insurance Company. The Plaintiff's case against the remaining Defendants, shall not be affected by this Dismissal.

Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
803-251-4517
Attorney for Porthemos Curry

J.R. Murphy, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
803-782-4100
Attorney for Scottsdale Ins. Co.

Wesley D. Peel, Esquire
Bruner, Powell, Robbins, Wall & Mullins
1735 St. Julian Place
P.O. Box 61110
Columbia, SC 29260-1110
803-252-7693
Attorney for Carolina Ins. Group of SC, Inc.
and Maurice Derrick

November 25, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) R E L E A S E

KNOW ALL MEN BY THESE PRESENTS that the undersigned, Porthemos Curry, in consideration of the sum of Eighty Five and 00/100 (\$85,000.00) Dollars, the receipt of which from Scottsdale Insurance Company is hereby acknowledged, does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions, causes of action, demands and/or claims of whatsoever kind or nature prior to and including the date hereof growing out of any property coverage which may apply under policy number CPS1884774 issued by Scottsdale Insurance Company to Porthemos Curry, on account of or in any way growing out of a loss which occurred on or about February 21, 2014, when a vehicle ran into a vacant structure owned by Curry and located at 1001 Pineland Drive, Columbia, South Carolina, including any and all claims arising from the investigation, adjustment and handling of the loss by Scottsdale Insurance Company, and any claim which was or could have been asserted against Scottsdale Insurance Company in the case of Porthemos Curry v Scottsdale et. al., C.A. No. 2014-CP-40-04661, Court of Common Pleas, Richland County, South Carolina. The consideration expressed herein constitutes full payment for all damages, losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from the loss aforesaid.

The undersigned expressly represent and warrants that he has consulted with his attorney and understands the effect of the things herein agreed to and that no statement or representations made by the persons released or by their agents, representatives and attorneys have influenced him or induced him to execute and deliver this Release.

I have read the foregoing Release and understand it to be a full, final and binding agreement.

IN WITNESS WHEREOF, U have hereunto set my hand and seal this ____ day of

_____, 2015.

WITNESSES:

_____(SEAL)
Porthemos Curry

EXHIBIT G



Hannah D. Stetson
Direct dial 803-454-1208
hstetson@murphygrantland.com

December 14, 2015

DEC 16 2015

Wesley D. Peel, Esquire
Bruner, Powell, Robbins, Wall & Mullins
1735 St. Julian Place
P.O. Box 61110
Columbia, SC 29260-1110

Re: Porthemos Curry vs. Scottsdale Ins. Co., Carolina Ins. Group of SC, Inc. and Maurice
Derrick
Civil Action No.: 2014-CP-40-04661
Claim No.: 1527747
Date of Loss: 2/21/14
Our File No.: 1500-0129

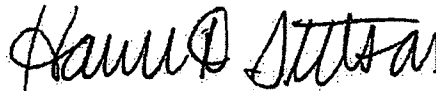
Dear Wesley:

Enclosed please find a Stipulation of Dismissal as to Defendant Scottsdale Insurance Company in the above-referenced matter. If the Stipulation meets with your approval, please sign where indicated and return the original to our office. We will send it to the Clerk for filing.

If you have any questions, please feel free to contact me.

With kind regards, I am

Sincerely,


Hannah D. Stetson

HDS/kbd

Enclosure

cc: Rachel G. Peavy, Esquire

Telephone: 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull Peter E. Farr
Alice P. Adams Tim J. Newton Chris A. Majure Robert M. Peeler, III Wesley B. Sawyer Jason P. Luther Elliott B. Daniels Hannah D. Stetson Rogers E. Hurrell, III
*Member-American Board of Trial Advocates

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No. 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

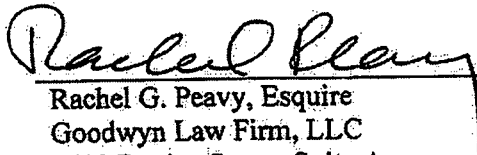
vs.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendant.

**STIPULATION OF DISMISSAL
AS TO DEFENDANT SCOTTSDALE
INSURANCE COMPANY**

The Plaintiff, by and through its undersigned counsel, having settled this case with the Defendant Scottsdale Insurance Company, hereby dismisses, with prejudice, the Complaint, and all subsequent amendments thereto, as to the Defendant Scottsdale Insurance Company only. The Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal.


Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517
Attorney for Porthemos Curry

J.R. Murphy, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Scottsdale Ins. Co.

December 10, 2015

Wesley D. Peel, Esquire
Bruner, Powell, Robbins, Wall & Mullins
1735 St. Julian Place
P.O. Box 61110
Columbia, SC 29260-1110
803-252-7693
Attorney for Carolina Ins. Group of SC, Inc. and Maurice Derrick

EXHIBIT H

GOODWYN LAW FIRM, LLC

T. Jeff Goodwyn, Jr.*
Christopher J. Archer

2519 Devine Street
Suite A
Columbia, South Carolina 29205

Tel. (803) 251-4517
Fax (803) 251-4527

Special Counsel:
Rachel G. Peavy

Email: JGoodwyn@GoodwynLaw.com
Web: www.GoodwynLaw.com

*Also Licensed in Georgia

December 17, 2015

VIA US MAIL

Wesley D. Peel, Esquire
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, South Carolina 29260

DEC 21 2015

**RE: Porthemos Curry vs. Scottsdale Ins. Co., Carolina Insurance
Group of SC, Inc. and Maurice Derrick
Civil Action No.: 2014-CP-40-04661
Our File No.: 3000-0170**

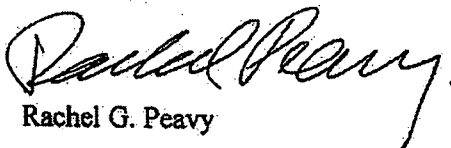
Dear Wesley:

Enclosed please find Plaintiff's Supplemental Answers to Defendant Carolina Insurance Group of SC, Inc. and Maurice Derrick's First Interrogatories to Plaintiff in regard to the above referenced matter.

Should you have any questions, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,


Rachel G. Peavy

RGP/msb
Enclosures

cc: Porthemos Curry

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

Civil Action No. 14-CP-40-04661

**PLAINTIFF'S SUPPLEMENTAL
ANSWER TO DEFENDANT
CAROLINA INSURANCE GROUP OF
SC, INC. AND MAURICE DERRICK'S
FIRST INTERROGATORIES**

TO: WESLEY D. PEEL, ESQUIRE, ATTORNEY FOR DEFENDANTS CAROLINA
INSURANCE GROUP OF SC, INC. AND MAURICE DERRICK:

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure,
Plaintiff, by and through its undersigned attorney, hereby submit their supplemental
responses to Defendant Carolina Insurance Group of SC, Inc. and Maurice Derrick's First
Interrogatories to Plaintiff as follows:

RESPONSES TO INTERROGATORIES

4. List the names and addresses of any and all expert witnesses whom the
party proposes to use as a witness at the trial of this case.

RESPONSE: John J. O'Brien JD CLU CPCU
4862 Marshwood Drive
Hollywood, South Carolina 29449

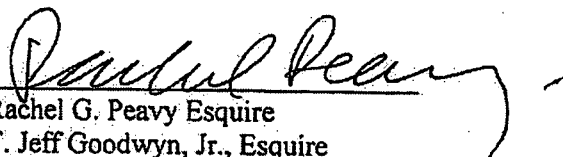
Mr. O'Brien is in the process of preparing a report and Plaintiff's counsel will
provide same to defense counsel upon receipt of same.

DEC 21 2015

**Frank Mitchell
Orion Construction
1428 Cherokee Street, Suite A
Columbia, SC 29201**

Mr. Mitchell is a licensed contractor who has previously been deposed in this case. No report has been prepared; however, Plaintiff intends to call Mr. Mitchell to testify as an expert as to the rebuilding cost at trial.

GOODWYN LAW FIRM, LLC


Rachel G. Peavy Esquire
T. Jeff Goodwyn, Jr., Esquire
2519 Devine Street
Suite A
Columbia, S.C. 29205
(803) 251-4517
(803) 251-4527 (f)
JGoodwyn@Goodwynlaw.com
Attorneys for Plaintiff

Columbia, South Carolina

December 17, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.)

Civil Action No.: 2014-CP-40-04661

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **December 17, 2015**, copies of the foregoing **Plaintiff's Supplemental Answer to Defendant Carolina Insurance Group of SC, Inc. and Maurice Derrick's First Interrogatories to Plaintiff** were served on the following party by placing a copy of the same Via U.S. Regular Mail, postage prepaid at the address shown below:

Wesley D. Peel, Esquire
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, South Carolina 29260



Mary S. Bush
Paralegal to Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517

EXHIBIT I

Wesley Peel

From: Wesley Peel
Sent: Friday, April 8, 2016 11:42 AM
To: 'RPeavy@Goodwynlaw.com'
Subject: RE: Motion Resolved - April 11th roster - Richland County Motions Roster
Attachments: Wesley Peel.vcf

Rachel:

Please provide me with a copy of the settlement agreement between Mr. Curry and Scottsdale. Thank you.

Wesley



Wesley Peel
Bruner Powell
(803) 252-7693 Work
(803) 744-0624 Work
(803) 463-4319 Mobile
WPeel@brunerpowell.com
wpeel@brunerpowell.com
P.O. Box 61110
Columbia, SC 29260
United States of America

From: Rachel Peavy [mailto:RPeavy@Goodwynlaw.com]
Sent: Thursday, April 07, 2016 12:15 PM
To: lverdinlc@sccourts.org
Cc: Wesley Peel; 'Mary Bush'
Subject: Motion Resolved - April 11th roster - Richland County Motions Roster

Re: Case No. 14-CP-40-4661
Porthemos Curry v. Scottsdale et al.

Dear Judge Verdin:

I am writing to let you know that Plaintiff's Motion to Compel (#17) has been resolved. Accordingly, we will not go forward with the hearing set for Monday at 2:00 p.m.

Thank you for your courtesy in this matter. By copy of this email, I am notifying defense counsel of same.

Rachel Peavy

Rachel G. Peavy
Special Counsel
Goodwyn Law Firm, LLC
2519 Devine Street

Suite A
Columbia, S.C. 29205
Telephone: (803) 251-4517
Facsimile: (803) 251-4527
www.Goodwynlaw.com

CONFIDENTIAL & PRIVILEGED

Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

Wesley Peel

From: Wesley Peel
Sent: Friday, April 8, 2016 3:27 PM
To: 'Mary Bush'
Subject: RE: Porthemos Curry v. Scottsdale, et. al.
Attachments: Wesley Peel.vcf

Thank you!



Wesley Peel
Bruner Powell
(803) 252-7693 Work
(803) 744-0624 Work
(803) 463-4319 Mobile
WPeel@brunerpowell.com
wpeel@brunerpowell.com
P.O. Box 61110
Columbia, SC 29260
United States of America

From: Mary Bush [mailto:MBush@Goodwynlaw.com]
Sent: Friday, April 08, 2016 11:38 AM
To: Wesley Peel
Subject: Porthemos Curry v. Scottsdale, et. al.

Ms. Peavy asked that I forward the attached signed Release in regard to the above matter.

Mary Bush, paralegal
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, S.C. 29205
Telephone: (803) 251-4517
Facsimile: (803) 251-4527
www.Goodwynlaw.com

CONFIDENTIAL & PRIVILEGED

Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

EXHIBIT J

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry

Plaintiff,

vs.

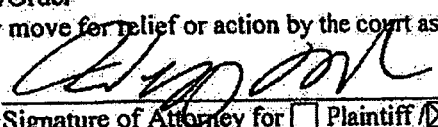
Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-4661

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: Wesley Peel, Bar No. 9283 Address: _____ 1735 St. Julian Place, Columbia, SC 29204 Phone: 803-252-7693 Fax 803-254-5719 E-mail: wpeell@brunerpowell.com Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information (hearing today) Nature of Motion: Motion to Amend Answer Estimated Time Needed: 15 Minutes Court Reporter Needed: ☒ YES ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff ☒ Defendant April 18, 2016 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: <u>Bm</u> Date Filed: <u>4-18-16</u> ☐ MOTION FEE COLLECTED: \$ _____			

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Porthemos Curry,)

Plaintiff,)

vs.)

Scottsdale Insurance Company, Carolina)
Insurance Group of SC, Inc. and Maurice)
Derrick,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-40-04661

NOTICE OF MOTION AND
MOTION TO AMEND ANSWER

2016 APR 18 PM 6:58
JEREMY L. PERRY, ESQ.
JERRY L. PERRY, ESQ.

TO: RACHEL G. PEAVY, ESQUIRE, ATTORNEY FOR PLAINTIFF PORTHEMOS CURRY

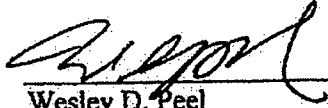
YOU WILL PLEASE TAKE NOTICE THAT the Defendants, Carolina Insurance Group of SC and Maurice Derrick (collectively referred to hereinafter as "Defendants"), through their undersigned attorneys, hereby move for an Order granting the Defendants leave to amend its/his Answer pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure.

Leave to amend a pleading "shall be freely given when justice so requires and [it] does not prejudice any other party." Rule 15(a), SCRCP. Rule 15(a) "strongly favors amendments and the court is encouraged to freely grant leave to amend." *Jarrel v. Seaboard Systems R.R., Inc.*, 294 S.C. 183, 363 S.E.2d 398, 399 (Ct. App. 1987). Defendants seek to amend its/his Answer to plead the affirmative defense of release. The Defendants proposed Amended Answer is attached hereto as Exhibit A.

The document which provides the basis for the defense of release was produced by the Plaintiff on April 8, 2016. This is not a situation where Defendants sat idly and failed to move for leave to amend until the eve of trial. Here, justice requires leave to amend and the Plaintiff will not be prejudiced by the amendment. Denial of this motion would prejudice the Defendants

by precluding them from pleading a defense they are entitled to under the law. For these reasons, Defendants respectfully request an Order of this Court granting leave to amend its/his Answer.

BRUNER, POWELL, WALL & MULLINS, LLC



Wesley D. Peel

1735 St. Julian Place, Suite 200

P.O. Box 61110

Columbia, SC 29260-1110

(803) 252-7693

Attorneys for Defendants

Carolina Insurance Group of SC, Inc.

and Maurice Derrick

Columbia, South Carolina

April 17, 2016

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Porthemos Curry,)
)
Plaintiff,)
)
vs.)
)
Scottsdale Insurance Company, Carolina)
Insurance Group of SC, Inc. and Maurice)
Derrick,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-40-04661

AMENDED ANSWER ON
BEHALF OF DEFENDANTS
CAROLINA INSURANCE
GROUP OF SC, INC. AND
MAURICE DERRICK

The Defendants, Carolina Insurance Group of SC, Inc ("Carolina") and Maurice Derrick ("Derrick"), referred to collectively as the Defendants, answer the allegations of the complaint as follows:

FOR A FIRST DEFENSE
(General Denial)

1. The Defendants deny each and every allegation of the complaint not otherwise admitted, qualified, or explained herein.
2. The Defendants admit the allegations of Paragraphs 1, 2, 3, 4, and 5.
3. The Defendants deny the allegations of Paragraphs 6.
4. The Defendants would show that, with respect to the allegations of Paragraph 7, that on December 2, 2014, the plaintiff contacted Derrick to renew the policy; the remaining allegations of Paragraph are denied and strict proof is demanded thereof.
5. The Defendants deny the allegations of Paragraph 8, as the Plaintiff requested to renew the existing coverage.
6. The Defendants admit the allegations of Paragraph 9.

7. As to the allegations of Paragraph 10, the Defendants admit that the Plaintiff paid the premium required for the policy.

8. The Defendants admit the allegations of Paragraph 12.

9. The Defendants admit the allegation of Paragraph 13 that the plaintiff procured vacant structure insurance from defendant Scottsdale Insurance Company ("Scottsdale"). The remaining allegations of Paragraph 13 are denied, and the Defendants crave reference to said policy (policy number CPS 18884774).

10. The Defendants deny the allegations of paragraphs 14 and 15.

11. The allegations of Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 are allegations against other defendants and do not make any allegations against the Defendants. However, to the extent any allegations in Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 may be construed as allegations against the Defendants, said allegations are denied and strict proof demanded thereof.

12. Paragraph 32 do not make any allegations against the Defendants and does not require a response from the Defendants. To the extent that Paragraph 32 may be construed to contain allegations against the Defendants, said allegations are denied and strict proof is demanded thereof.

13. Defendants admit the allegations of Paragraph 33.

14. Defendants deny the allegations of Paragraphs 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45 of the complaint.

FOR A SECOND DEFENSE
(Failure to State a Claim)

15. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

16. The complaint fails to state a claim on which relief can be granted and, accordingly, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Contributory Negligence)

17. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

18. The Defendants affirmatively allege that any injury sustained by the plaintiff, as alleged in his complaint, occurred as a direct result of plaintiff's negligent failure to exercise ordinary care, in that the plaintiff failed to read the policy of insurance. Therefore, plaintiff's alleged losses were caused in whole or in part, or were contributed to, by the plaintiff's own negligence, and not by any negligence of the Defendants.

FOR A FOURTH DEFENSE
(Lack of Proximate Cause)

19. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

20. The Defendants would show the Court that no act or omission of the Defendants, agents or servants, proximately caused any injuries to the plaintiff, which therefore bars any recovery from the Defendants.

21. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR A FIFTH DEFENSE
(Failure to Mitigate Damages)

22. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

23. The plaintiff failed to purchase insurance coverage for the alleged losses in the complaint and, therefore, has failed to mitigate his damages. The Defendants accordingly plead the failure to mitigate damages as an affirmative defense to the plaintiff's complaint.

FOR A SIXTH DEFENSE
(Set-Off)

24. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

25. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR AN SEVENTH DEFENSE
(Estoppel)

26. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

27. The plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

FOR AN EIGHTH DEFENSE
(Unclean Hands)

28. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

29. The plaintiff's claims are barred by virtue of the doctrine of unclean hands.

FOR A NINTH DEFENSE
(Failure of Proximate Cause)

30. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses

31. The plaintiff's claims against this defendant are barred in whole or in part by the fact that no action or inaction of the Defendants constituted the proximate cause of any injury or damage alleged by Plaintiff.

FOR A TENTH DEFENSE
(Reservation of Rights)

32. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

33. The Defendants reserve the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

FOR A ELEVENTH DEFENSE
(Illegality)

34. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

35. The plaintiff's claims are barred by virtue of the doctrine of illegality.

FOR A TWELTH DEFENSE
(Release)

36. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

37. The Defendants were expressly released from any alleged liability to the plaintiff. Defendants accordingly plead release as an affirmative defense to plaintiff's complaint.

(SIGNATURE PAGE TO FOLLOW)

WHEREFORE, having fully answered, the Defendants pray for judgment in their favor,
for costs, and for such other and further relief as the Court finds just and fair.

Bruner, Powell, Wall & Mullins, LLC

Wesley D. Peel
P.O. Box 61110
Columbia, South Carolina 29260
(803) 252-7693
Fax (803) 254-5719
wpeel@brunerpowell.com

Columbia, South Carolina

April _____, 2016

EXHIBIT K

FORM 4

JUDGMENT IN A CIVIL CASE

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

CASE NUMBER: 2014CP4004661

Porthemos Curry

Carolina Insurance Group of SC Inc

PLAINTIFF(S)

Maurice Derrick

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge _____

Judge Code 2164

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of May, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Rachel Gottlieb Peavy

John Robert Murphy

Wesley Dickinson Peel

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McVicker

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff(s),

vs.

Carolina Insurance Group of SC, Inc.
and Maurice Derrick,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-04661

ORDER

RICHLAND COUNTY
FILED
2016 MAY 29 AM 10:08
JENNIFER L. BROWN, CLERK

This matter came before the Court on Defendants' Motion for Summary Judgment, as amended, filed April 15, 2016, and the Plaintiff's cross-motion for summary judgment, as to the affirmative defense of release. A hearing was held on April 26, 2016, with Wesley R. Peel, Esq. appearing on behalf of the Defendants and Rachel G. Peavy, Esq. and T. Jeff Goodwyn, Jr., Esq. appearing on behalf of the Plaintiff.¹ Both parties waived 10 days' notice of hearing.

Oral argument was heard, and both parties submitted memorandum of law in support of their respective positions. Furthermore, the testimony of Plaintiff and Defendants was before the Court, along with affidavits of Plaintiff's counsel. The Court denied the Defendants' Motion from the bench, and took Plaintiff's cross-motion under advisement.

After careful review of the evidence and applicable law, the Court, as discussed in further detail below, hereby grants the Plaintiff's Cross-Motion for Summary Judgment as to the affirmative defense of release, finding that there was no genuine

¹ Defendants' counsel withdrew his Motion for Sanctions, filed April 25th, during the course of oral argument.

issue of material fact as to whether the Defendants were "released" from liability in this lawsuit by way of a settlement agreement entered into between Plaintiff and Scottsdale Insurance Company, a prior defendant in this same matter. The Court, having previously denied the Defendants' Motion from the bench, incorporates such denial into this Order, as outlined below.

Undisputed Facts

This lawsuit arises out of the alleged negligent failure to procure insurance coverage for a vacant structure. Initially, Plaintiff brought claims against Scottsdale Insurance Company, the issuer of the policy, for breach of contract; statutory bad faith; and common law bad faith. The Plaintiff brought claims against Carolina Insurance Group and Maurice Derrick for negligence, later amending the pleading to add claims for gross negligence as against Carolina Insurance Group and Mr. Derrick.

The Second Amended Complaint, filed October 1, 2015, alleges that "Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale." Amend. Compl. at 134.

It is undisputed that the Defendants have consistently denied that they were agents of Scottsdale in both their Answer to the Second Amended Complaint, filed October 28, 2015, and in their Amended Answer filed April 18, 2016. See 114 of Answer and Amended Answer. Furthermore, the 30(b)(6) testimony of Carolina Insurance Group and Maurice Derrick is that there is no agency relationship, or any relationship, between Scottsdale Insurance and Carolina Insurance Group, as excerpted below:

Q. Okay. What's the relationship between Carolina Insurance and Scottsdale?

A. We don't have a relationship --

Q. Okay.

A. With them.

...

Q. So, you have no relationship with Scottsdale, no authority to bind Scottsdale, and any conduct of you or the agents on your behalf is not the conduct of Scottsdale, is it?

A. Correct.

...

Q. You have not relationship with Scottsdale Insurance Company?

A. Correct.

Dep. Tr. of Carolina Insurance Group at pp. 26 -27, pp. 76-77.

Q. Okay. Mr. Derrick, you're not employed by Scottsdale Insurance Company or any of its affiliates, are you?

A. Correct.

Q. In fact, you have no direct relationship with Scottsdale Insurance Company as a producing agent in this case?

A. I do not.

Q. You have no authority to issue a policy on behalf of Scottsdale?

A. I do not.

Q. You have no authority to bind Scottsdale to a policy?

A. I do not.

Q. . . . [I]n this transaction . . . you represented the interest of Mr. Curry?

A. Correct.

Q. And in doing this, you dealt with Tapco, who in turn represented the interest of Scottsdale?

A. Correct.

Derrick Dep. Tr. at pp. 90-91.

In September 2015, the parties participated in a mediation conference. At that time, Scottsdale Insurance was still a defendant in the case. As a result of the mediation and subsequent negotiations, Plaintiff reached a settlement agreement with Scottsdale Insurance Company.

On November 25, 2015, counsel for Scottsdale, J.R. Murphy, wrote a letter to Plaintiff's counsel whereby he wrote that he was enclosing a check, along with a Release (hereafter "the Release") and Stipulation of Dismissal for signature. Wesley Peel, Esq. was copied on the letter; however, a copy of the Release and Stipulation were not provided to Mr. Peel at that time. Plaintiff did not receive a request for a copy of the Release from Mr. Peel until April 8, 2016. It is undisputed that the Defendants did not contribute any money to the Scottsdale settlement, and it is further undisputed that there is no mention of either Carolina Insurance Group of SC, Inc. or Maurice Derrick in the Release.

Plaintiff executed the Release. Counsel for Carolina Insurance Group and Maurice Derrick executed the Stipulation of Dismissal as to Defendant Scottsdale

Insurance Company. The Stipulation provided that *"the Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal."* The Stipulation was filed with the Court on December 30, 2015.

Discovery continued in the case following Scottsdale's dismissal. With a date certain trial set for April 18, 2016, Defendants' counsel contacted Plaintiff's counsel to explore a possible settlement of the matter.

The parties thereafter commenced settlement negotiations. On the morning of Friday, April 8th, Mr. Peel requested that Plaintiff's counsel provide him with a copy of the Release, which was promptly provided to him later that day. Thereafter, the parties continued their settlement negotiations; however, by the end of business Friday, they had apparently reached a stalemate. The parties proceeded to depose expert witnesses on April 11th and prepared for a date certain trial on April 18th. On April 15th, Defendants filed a motion for summary judgment, asserting the defense of release. On April 18th, Defendants moved to amend their answer to assert the affirmative defense of release; the motion to amend was granted by the Honorable Jocelyn Newman over Plaintiff's objection.

Legal Standard

"Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of

evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009) (internal citations omitted).

I. The Scottsdale Release Does Not Release These Defendants

Defendants argue that they are entitled to summary judgment on two (2) separate grounds: first, that they were released in the Scottsdale release by virtue of language releasing Scottsdale "and its agents"; and, second that they were released under a joint tortfeasor theory of liability. In denying Defendants' motions under Rule 56, SCRPC, the Court addresses each of these arguments in turn.

Defendants Are Not "Agents" of Scottsdale

The Release provides that "Porthemos Curry, in consideration of the sum of \$85,000, the receipt of which from Scottsdale Insurance Company is hereby acknowledged, does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions, causes of actions, demands and/or claims of whatsoever kind . . ."

Defendants argue that because Plaintiff's complaints alleged that the Defendants were "agents" of Scottsdale, the language of the Release was intended to release not just Scottsdale, but these Defendants as well. As previously noted, it is undisputed that the Defendants denied this allegation in both their answers and their deposition testimony.

Defendants' argument fails as a matter of law because "[a]llegations in a complaint denied in answer are evidence of nothing." *Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301, 307 (Ct. App. 1999). Only "facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the

action." *Elrod v. W.W. All*, 243 S.C. 425, 134 S.E.2d 410, 416 (1964). Furthermore, "a party to an action is bound by the testimony of his own witnesses where he does not prove the facts to be otherwise than as such witnesses testified them to be." *Id.* (citing *Rakestraw v. Allstate Ins. Co.*, 238 S.C. 217, 119 S.E.2d 746 (1961)).

"Once a contract is before the court for interpretation, the paramount concern of the court is to give effect to the intention of the parties." *Middleborough Horizontal Property Regime v. Montedison S.p.A.*, 320 S.C. 470, 465 S.E.2d 765, 770 (Ct. App. 1995). "The purpose of all rules of contract construction is to ascertain the intention of the parties to the contract." *Parker v. Byrd*, 309 S.C. 189, 420 S.E.2d 850, 852 (1992); See also *Columbia East Associates vs. Bi-Lo, Inc.*, 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989) (noting "the main concern of the court is to give effect to the intention of the parties.")

A party "cannot create ambiguity when it does not exist within the four corners....words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed." *Silver v. Abstract Pools*, 376 S.C. 585, 658 S.E.2d 539, 542 (Ct. App. 2008) (citing *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 33 S.E.2d 501 (1945)) (emphasis added).

"It is a question of law for the court whether the language of a contract is ambiguous. In determining as a matter of law whether a contract is ambiguous, the court must consider the contract as a whole, rather than deciding whether phrases in isolation could be interpreted in various ways: [o]ne may not, by pointing out a single sentence or clause, create an ambiguity. Whether a contract is ambiguous is to be

determined from the entire contract and not from isolated portions of the contract."

Silver, supra.

Looking at the Release as a whole, the Court finds that the plain language of the Release shows that it clearly and unambiguously releases only Scottsdale (and its agents and employees) and not these Defendants, and further finds that the intent of the parties was that it was to only encompass claims against Scottsdale. There is no mention of Carolina Insurance Group or Maurice Derrick in the Release.

Furthermore, there is no evidence in the record that Carolina Insurance Group or Maurice Derrick are "agents, servants, or employees" of Scottsdale. In fact, the testimony of both Defendants is that there was no agency relationship between Carolina Insurance and Scottsdale whatsoever. Finally, Defendants' counsel executed a Stipulation of Dismissal in December 2015, upon receiving notice that Plaintiff had settled with Scottsdale, which specifically stated that "the Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal." The Court finds that the intent of the parties to the Release, and the intent of the non-parties (here Carolina Insurance Group and Mr. Derrick), could not be more clear.

Defendants' reliance upon the case of *Postal v. Mann*, 308 S.C. 385, 418 S.E.2d 322 (Ct. App. 1992) is unpersuasive, given that in that case, a party sought to offer testimony at trial that differed from his previous admission in his answer. There, the Court of Appeals held that the party was judicially bound by the admitted allegation.

Again, the only "evidence" that Defendants rely upon in making this argument is a denied allegation in the Plaintiff's pleadings. Defendants' reliance upon a theory of

"judicial admission" espoused by the Federal courts of appeals in the Second, Fifth, Seventh, and Eighth circuits is unpersuasive.²

The Court of Appeals in *Vermeer* succinctly stated the law of South Carolina. Plaintiff made a mere allegation in his complaint; the Defendants denied it. If the Defendants had admitted the allegation, that arguably could be deemed a "judicial admission"; however, the Defendants denied it repeatedly. The Court is mindful that "[a]ll pleadings shall be so construed as to do substantial justice to all parties." Rule 8(f), SCRPC. Here, there is a mere allegation denied by the Defendants - accordingly, I find no "admission" under South Carolina law and hereby deny Defendants' Motion for Summary Judgment.

Defendants are Not Discharged Under a Joint Tortfeasor Theory

Defendants argue that they are entitled to summary judgment as "joint tortfeasors" of Scottsdale Insurance Company. In support of this position, they rely upon the language of the Release, wherein Plaintiff acknowledged that "the consideration expressed herein constitutes full payment for all damages, losses, or injuries . . . for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from the loss aforesaid." (emphasis added).

According to the position advanced by the Defendants, this language means that Mr. Curry received "full payment" for all damages recoverable in this lawsuit when he settled with only Scottsdale, and therefore cannot recover any additional damages - on his

² The Court has taken notice of the Federal opinions submitted by Defendants' counsel at the hearing, as well as those cited in Defendants' Amended Memorandum of Law.

separate negligence claims – against Carolina Insurance Group and/or Maurice Derrick.³ The Court finds this argument without merit. The Plaintiff's claims against Scottsdale were distinct from those pending against these Defendants, and could result in an award of different types of damages.⁴ Defendants' belief that the amount recovered by Plaintiff from Scottsdale represents the exact same damages Plaintiff seeks from them, and thereby entitles them to judgment in their favor, is not supported by the common law and fails as a matter of law under the *South Carolina Contribution Among Tortfeasors Act*, S.C. Code Ann. §15-38-10, et seq., which provides a mechanism for "set-off", not discharge.

In 1988, the Legislature codified the equitable principles of joint tortfeasor set-offs by passing the *South Carolina Contribution Among Tortfeasors Act* (the "Act"). S.C. Code Ann. §15-38-10 -70.

Specifically, Section 15-38-50 provides: "When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or same wrongful death: (1) **it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide**, but it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant or in the amount of consideration paid for it, whichever is greater, and (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor." (emphasis added)

The Supreme Court recently held that "... the Act represents the Legislature's determination of the proper balance between preventing double-recovery and South

³ The *gravamen* of Defendants' arguments appears to be that they are the fortunate, if unintended, beneficiary of Scottsdale's settlement agreement, in that they are entitled to reap the rewards of Scottsdale's settlement (i.e. a complete release) without having paid any monies towards such settlement.

⁴ For instance, a claim for statutory bad faith, under S.C. Code Ann. 38-59-40, provides for an award of attorney's fees in an amount not to exceed one-third the amount of any judgment.

Carolina's 'strong public policy favoring the settlement of disputes.'" *Riley v. Ford Motor Co.*, 414 S.C. 185, 195; 777 S.E. 2d 824, 830 (2015) (citing *Chester v. S.C. Dep't of Pub. Safety*, 338 S.C. 343, 698 S.E.2d 559 (2010)).

Defendants rely upon the case of *Bartholomew v. McCartha*, 255 S.C. 489, 179 S.E.2d 912 (1971) for the proposition that the release of one tortfeasor releases others who wrongfully contributed to the plaintiff's injuries where the release "reflects the intention of the parties or unless plaintiff has, in fact, received full compensation amounting to a satisfaction." *Id.* at 914.

Again, there is no evidence that the Plaintiff received "full compensation amounting to a satisfaction"; in fact, Plaintiff's own testimony is that "the amount I received from Scottsdale did not cover all of my damages in the case". See Affidavit of Porthemos Curry at 16.

Defendants argue that the Release constitutes a "full compensation amounting to a satisfaction" under *Ecclesiastes Prod. Ministries v. Outparcel Assoc. LLC*, 374 S.C. 483, 649 S.E.2d 494, 496 (2007). However, the Court in *Ecclesiastes* clearly stated that a "satisfaction is generally defined as the discharge of an obligation *by paying a party what is due to him*", and as noted by the Court, it is undisputed that the Defendants here have not paid any monies to the Plaintiff.

Accordingly, the Court finds that the Release, and the Uniform Contribution Among Tortfeasors Act, does not serve to discharge these Defendants, but merely provides for a means for the Defendants to assert a "set-off" argument at the post-

verdict stage of trial in the event they are successful in asserting that they are "joint tortfeasors" under the Act.⁵ For these reasons, the Defendants' Motion is denied.

There is No Genuine Issue of Material Fact as to the Defense of Release

After careful review, I hereby find as a matter of law that the Release is neither ambiguous nor capable of any construction other than the one apparent on its face – that it explicitly releases Scottsdale Insurance Company and solely Scottsdale Insurance Company, and that it is a contract clearly and solely between Porthemos Curry and Scottsdale Insurance Company. Accordingly, the Court finds that the Plaintiff is entitled to summary judgment as to the affirmative defense of release. See Middleborough Horiz. Prop. Regime, supra ("Once a contract is before the court for interpretation, the paramount concern of the court is to give effect to the intention of the parties.")

"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. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *McCune v. Myrtle Beach Indoor*, 364 S.C. 242, 612 S.E.2d 462, 464 (Ct. App. 2005) (internal citations omitted).

"Common sense and good faith are the leading touchstones of the construction of a contract and contracts are to be so construed as to avoid an absurd result. Where one construction would make a contract unusual or extraordinary and another, equally

⁵ The Court makes no ruling as to whether the Defendants are "joint tortfeasors" with Scottsdale; however, the Court specifically holds that, having ruled in favor of the Plaintiff on his cross-motion, these Defendants cannot rely upon the Release, at the post-verdict stage, in an attempt to argue that their liability was resolved under a joint tortfeasor theory of liability by way of language contained in the Release. The Court makes no finding as to whether Defendants are entitled to a "set-off" in light of the Supreme Court's ruling in *Riley v. Ford Motor Company*.

consistent, would make the contract reasonable, fair and just, the latter construction will prevail." *Id.* at 465. (citing *Georgetown Mfg. v. S.C. Dept. of Agric.*, 301 S.C. 514, 392 S.E.2d 801 (Ct. App. 1990) (citing *C.A.N. Enters., Inc. v. S.C. Health & Human Servs.*, 296 S.C. 373, 373 S.E.2d 584 (1988)). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 607 S.E.2d 362 (Ct. App. 2004).

The language of the Release clearly and unambiguously provide for a settlement agreement between Mr. Curry and Scottsdale Insurance Company. The evidence before the Court, outlined above, overwhelming indicates that both the Plaintiff and these Defendants did not intend for the Scottsdale Release to encompass the pending claims; the opposing party has presented no specific facts that show a genuine issue of fact for trial as to this affirmative defense. The Court finds that any ruling denying summary judgment as to this affirmative defense would produce "an absurd result" in contravention of longstanding South Carolina law.

ACCORDINGLY, the Court hereby DENIES the Defendants' Motion for Summary Judgment, as amended, and GRANTS the Plaintiff's cross-motion for summary judgment as to the affirmative defense of release.

AND IT IS SO ORDERED.

Robert E. Hood

The Honorable Robert E. Hood

Dated:

5/6/16

At:

Columbia

EXHIBIT L

Bryan Triplett

From: Wesley Peel
Sent: Wednesday, May 11, 2016 4:50 PM
To: Warren Powell
Cc: Bryan Triplett
Subject: FW: Curry v. Carolina Insurance Group
Attachments: Order Summary Judgment.pdf; Wesley Peel.vcf

Importance: High



Wesley Peel
Bruner Powell
(803) 252-7693 Work
(803) 744-0624 Work
(803) 463-4319 Mobile
WPeel@brunerpowell.com
wpeel@brunerpowell.com
P.O. Box 61110
Columbia, SC 29260
United States of America

From: Rachel Peavy [mailto:RPeavy@Goodwynlaw.com]
Sent: Wednesday, May 11, 2016 2:53 PM
To: 'Lee, Allison Renee Law Clerk (Chadwick Devlin)'
Cc: Wesley Peel; jgoodwyn@goodwynlaw.com
Subject: Curry v. Carolina Insurance Group
Importance: High

Re: Curry v. Carolina Insurance Group - Case No. 14-CP-40-4661

Judge Lee:

I represent the Plaintiff, Porthemos Curry, in this matter. I am writing to respectfully request that the trial of this case be held on May 16th, as scheduled and agreed upon by the parties.

As you are aware, this matter was originally set for a date certain trial on April 18th. Defendants filed a summary judgment motion on April 15th, asserting the defense of release, and moved to amend their answer to plead this new, affirmative defense.

A jury was picked on April 18th and Judge Newman heard numerous pre-trial motions from the parties. Judge Newman granted the Defendants' motion to amend, and subsequently continued the trial to the May 16th term of court to allow the motion for summary judgment to be heard. At that time, Plaintiff filed a cross-motion for summary judgment as to this new affirmative defense. Judge Newman ordered that both motions would be heard by Judge Hood on April 26th. The parties agreed to waive any 10-day notice requirements.

Judge Hood denied the Defendants' motion from the bench, and granted the Plaintiff's cross-motion as to the affirmative defense on April 28th, informing the parties of same. I attach a copy of Judge Hood's Order for your reference.

Counsel for the Defendants, Wesley Peel, filed a Notice of Appeal today as to Judge Hood's order granting Plaintiff's cross-motion. To the extent that Mr. Peel again seeks to delay the trial of this matter by filing this Notice of Appeal, we respectfully submit that this order granting summary judgment as to the affirmative defense of release does not prohibit the Court from proceeding with the trial of this matter on Monday. See, e.g., S.C. Code Ann. §14-3-330 and Thornton v. SCE&G, 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011); See also Rule 205, SCACR. In the alternative, I would request that the Court hear a motion by Plaintiff's counsel to lift any stay under Rule 241(d), SCACR.

Thank you in advance for your courtesy in this matter.

Rachel Peavy

Rachel G. Peavy
Special Counsel
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, S.C. 29205
Telephone: (803) 251-4517
Facsimile: (803) 251-4527
www.Goodwynlaw.com

CONFIDENTIAL & PRIVILEGED

Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

EXHIBIT M

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COURT OF COMMON PLEAS
2014-CP-40-04661

Porthemos Curry,

Plaintiff,

vs.

TRANSCRIPT OF RECORD

Scottsdale Insurance Group,
Carolina Insurance Group of
SC, Inc., and Maurice Derrick,

Defendants.

April 18-19, 2016
Columbia, South Carolina

B E F O R E:

THE HONORABLE JOCELYN NEWMAN, JUDGE.

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

RACHEL G. PEAVY, ESQ.
T. JEFF GOODWYN, JR., ESQ.
Attorneys for the Plaintiff

WESLEY D. PEEL, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 APRIL 18, 2016

2 (WHEREUPON, the following partial
3 transcript was heard at 2:30 p.m.)

4 *****

5 THE COURT: You may be seated. All right,
6 folks, have you been able to agree as to any of the
7 other motions in limine?

8 MR. GOODWYN: Maybe about the one we were just
9 talking about. It is kind of complicated. We are
10 close to getting -- close to figuring out what we
11 are going to do.

12 MS. PEAVY: The one issue is that the only
13 way --

14 THE COURT REPORTER: Are you speaking on the
15 record?

16 MS. PEAVY: No, I'm sorry, I'm not. Your
17 Honor, can I have a minute?

18 THE COURT: Yes.

19 (Pause.)

20 THE COURT: Do I need to decide for you?
21 Maybe I just need to hear your concerns.

22 MR. GOODWYN: I think we have this issue
23 worked out.

24 MS. PEAVY: Sorry, Your Honor.

25 MR. GOODWYN: There is another issue we are

1 trying to get worked out too.

2 THE COURT: Okay.

3 MS. PEAVY: Your Honor, at this point I would
4 like to just go through the motions that we haven't
5 been able to resolve. I'll be arguing some of
6 them, and my co-counsel will be stepping in as well
7 to argue some of them. And then we'll of course
8 respond to any of the motions in limine by the
9 Defense.

10 THE COURT: Yes, ma'am. Let me hear you.

11 MS. PEAVY: Okay. The first motion in limine
12 I'll address is the motion in limine to exclude
13 evidence or elicit testimony relating to alleged
14 violations of residential building regulations
15 and/or licensing requirements.

16 Your Honor, this motion is made because at the
17 deposition of both my client, Porthemos Curry, and
18 his mother, Ms. Jane Curry Ford, Defense counsel
19 raised issues in his questioning alleging that the
20 Plaintiff and/or his mother had somehow violated
21 certain residential building codes, LLR licensing
22 requirements concerning who can pull permits to
23 build houses in Richland County.

24 And there is no evidence in this case, Your
25 Honor, there is no witness, there is no records of

1 the county or LLR, anything like this, that Mr.
2 Curry or his mother were ever cited or investigated
3 for violation of any building code or licensing
4 requirement in Richland County by LLR, by the City
5 of Columbia, related to whether they were properly
6 licensed to build this home on the property.

7 And so any such questioning by Defense counsel
8 saying -- basically what Defense counsel would
9 attempt to do, I believe, Your Honor, is try to
10 enter into evidence by way of these questions the
11 idea that Mr. Curry or his mother had been in
12 violation of licensing requirements or county or
13 city code requirements relating to contractor's
14 licenses.

15 But the reality is, Your Honor, is that the
16 questioning would be hugely prejudicial and assumes
17 facts that are not in evidence.

18 So when he would ask my client at the
19 depositions, Well, isn't it true that you should
20 never have been building this house because you
21 weren't a licensed contractor, to say that type of
22 question in front of a jury is going to lead the
23 jury to believe that there was some sort of law or
24 regulation that Mr. Curry or his mother were in
25 violation of when they were building this house.

1 THE COURT: Let me interrupt you, Ms. Peavy.
2 My understanding of the issue in this case is the
3 issuance of this insurance policy and whether it
4 was a renewal of the old insurance policy or the
5 issuance of a new policy and any damages that flow
6 from that.

7 MS. PEAVY: That is correct.

8 THE COURT: Okay. So let me -- I'm going to
9 interrupt you and go over to the Defense and ask,
10 Do you intend to introduce any evidence about the
11 violation of the building code?

12 MR. PEEL: Most certainly, Your Honor.

13 THE COURT: And for what purpose?

14 MR. PEEL: We have pled illegality as a
15 defense. So -- it will take me a second to walk
16 through it.

17 Mr. Curry claims as damages -- well, let me
18 start over. Mr. Curry testified that he built this
19 house for resale on spec, a flip. And he claims a
20 number of consequential damages from the loss of
21 the house: Loss to his credit, running up credit
22 card bills, things like this, consequential
23 damages.

24 It is a fact that he was in violation of law.
25 The Residential Home Builders Code 40-59-30 says

1 you have to be licensed in order to build a home
2 unless you are doing it for yourself.

3 And on top of that -- that is under 260. The
4 exemption -- and it is a misdemeanor, punishable up
5 to a fine of like \$15,000 and no less than 30
6 days -- and/or no less than 30 days in jail. The
7 exemption says the only way that a non-licensed
8 builder, or one of the only ways a non-licensed
9 builder can build a home is if they are an owner of
10 the property that intends to live there for two
11 years. And if they move -- if they sell the house
12 any time within the two years of issuance of the
13 C.O., then they are deemed to have violated that
14 statute.

15 So, Your Honor, the law will not reward an
16 illegal act. Jackson v. Bi-Lo says all of these --
17 any type of money he receives from the sale of the
18 home, if he sells to flip it, is an illegal
19 transaction. He intended to put a house illegally
20 built into commerce.

21 And so on top of that, not only are all these
22 consequential damages excluded because he was
23 building this in violation of the law, it is worse
24 than that. The facts actually are Ms. Curry Ford
25 pulled a building permit for this house in 2007.

1 Mr. Curry did not own the house in 2007. He didn't
2 get the deed transferred to him for this property
3 until 2008. And he and his mother both admit that
4 they are not licensed contractors.

5 Mr. Curry -- there was some conflicting
6 testimony. Mr. Curry told me he built the house to
7 resell. And nobody has ever -- that is their
8 intention.

9 And so on top of the consequential damages,
10 Your Honor, as an illegal act, none of this -- they
11 can't collect on any of this that they are claiming
12 under this because the law doesn't allow --
13 everything done, all the building material, the
14 labor, everything put in this house was the fruit
15 of an illegal act. And it was done in a very
16 strange way. And I guess we'll hear the testimony
17 during the trial about why it was done that way.

18 But it is certainly relevant to our defense.
19 In fact, very important, because they aren't
20 entitled to any of that money.

21 THE COURT: Your contention is that it goes to
22 the damages, or whether the Plaintiff is allowed to
23 recover any of these damages?

24 MR. PEEL: That's correct.

25 THE COURT: You agree that there has been

1 no -- that there is no evidence of any citation of
2 violation, or there is no conviction of any
3 violation?

4 MR. PEEL: Oh, that's right. There has never
5 been anything written up. But it is without a
6 doubt they are in violation of the statute. I ask
7 the Court to take notice of that. There is no
8 question. They are not licensed builders, neither
9 one of them. And their intention is to resell this
10 home. And they were always building it for that,
11 is what Mr. Curry's original testimony was in the
12 first deposition.

13 THE COURT: Okay. Ms. Peavy?

14 MS. PEAVY: Your Honor, I mean, that is
15 Mr. Peel's opinion that Mr. Curry is in violation
16 of the licensing statute. That is his opinion that
17 the house is built illegally. That is all mere
18 speculation on the part of Mr. Peel.

19 There has been no evidence, no testimony in
20 the record whatsoever from the licensing
21 authorities, from LLR, from the county, from the
22 city, no one, that there has been violations of any
23 statute in this case.

24 And furthermore, Your Honor, if he contends
25 that Mr. Curry was violating some statute because

1 he was going to sell the house, well, the house has
2 never been sold, so he never actually sold the
3 house on the market that was allegedly built
4 illegally.

5 But, again, Your Honor, in this case there is
6 simply no evidence that anyone other than Mr. Peel
7 believed that Mr. Curry or his mother violated any
8 LLR statute or violated any county code. Nothing.
9 Mr. Peel is seeking to have evidence admitted to
10 the jury that hasn't been authenticated in any way.

11 And, Your Honor, I would further submit to you
12 that, as you so correctly noted, this is a case
13 that is about the negligent and arguably gross
14 negligent procurement of an insurance policy on a
15 home that it is undisputed was damaged in a fire
16 when a stolen vehicle ran into it.

17 So relevant evidence means evidence having any
18 tendency to make the existence of any fact that is
19 of consequence to the determination of the action
20 more probable or less probable than it would be
21 without the evidence.

22 And I don't think this evidence -- it is not
23 evidence, first of all, Your Honor. It is
24 questioning from Mr. Peel that attempts to plant in
25 the mind of the jury the idea that Mr. Curry or his

1 mother were somehow found to have violated code
2 sections, violated the law, punishable by
3 misdemeanors. He is wanting to testify to the jury
4 as to his opinion of the case through their
5 testimony. And that is totally improper, Your
6 Honor.

7 THE COURT: And, Mr. Peel, the fact of the
8 matter -- you know, without hearing how exactly it
9 is going to come up in context -- I mean, certainly
10 you can question the Plaintiff as to what his
11 intention was about pulling permits, things like
12 that, but I don't know that it is proper to put
13 before a jury that this -- I mean, even if you were
14 to question him, did he violate this statute, he
15 will likely say that he wouldn't.

16 MR. PEEL: All I have to ask him -- I'm
17 sorry -- all I have to ask him is was he a licensed
18 home builder.

19 THE COURT: Sure.

20 MR. PEEL: That's all I have to ask him. I
21 wouldn't say to the jury -- that is the Court's
22 province to say that he violated the law, not mine.

23 MS. PEAVY: Well, Your Honor, then it follows
24 that he's requesting a charge on the licensing
25 statute and that is not an issue that is before the

1 Court. It is not relevant to this case because
2 there is no evidence in this record that the county
3 or the city or LLR ever investigated this
4 construction site. Mr. Curry was the owner of it.
5 He and his mother went down to the building
6 department. They pulled a permit. And the
7 county -- since this house has been destroyed, and
8 is an eyesore in the neighborhood to this day, the
9 county has been involved with this because they
10 have written to Mr. Curry, What is going on with
11 the property? We have to cite you. You have got
12 to board it up. You have got to neaten it up.
13 Mr. Curry has responded.

14 But this property -- the county and -- it is
15 on their radar. And there has never been any
16 allegations, any evidence whatsoever other than
17 Mr. Peel's bold assertion that he -- that my
18 client's have violated a statute. That is just not
19 the evidence.

20 THE COURT: Let me ask you this. If there
21 were a car accident case and your client were suing
22 Mr. Peel's client and Mr. Peel asked them if they
23 were driving 100 miles per hour immediately prior
24 to the collision, do you think that would be
25 appropriate questioning?

1 MS. PEAVY: He can ask. Yes, in that context.

2 THE COURT: Right. And so what is the
3 difference here? Of course, that person may or may
4 not have been cited for speeding.

5 MS. PEAVY: Well, because Mr. Peel's
6 questioning --

7 THE COURT: Which is a violation of the law.

8 MS. PEAVY: What he is going to be doing is
9 referencing statutes and laws and implanting in the
10 mind of the jury that my client is a law breaker.
11 That is not --

12 MR. PEEL: That is not my intention, Your
13 Honor.

14 MS. PEAVY: Well, yes it is, because you are
15 going to try to get a jury charge on the licensing
16 statute.

17 MR. PEEL: Well, I am going to try to get a
18 jury charge, yes.

19 MS. PEAVY: And violation of the licensing
20 statute. So it directly relates to that.

21 He owns the property. He was building
22 something on it. Title was never transferred.

23 It is just not fair for Mr. Peel to inject
24 statutes and laws into the case that are not in
25 evidence.

1 If Mr. Peel felt so strongly about this issue,
2 then he could have had the county or someone come
3 and opine to, I guess, whether they believe that
4 LLR has been violated or that Mr. Curry was
5 unlicensed. That has never been the case.

6 THE COURT: And I'll deal with the issue of
7 jury charges at the appropriate time. But I do
8 think it is appropriate or permissible for him to
9 ask about his purpose in buying the home, as to
10 whether he is a licensed contractor. And that may
11 or may not be tied up with a bow at the end in the
12 jury charge, I don't know. But certainly you
13 shouldn't ask, Did you violate this statute, or, Do
14 you know that this statute says this, or anything
15 along those lines, but just the general questioning
16 about the facts and circumstances surrounding his
17 building of the home, whether he is a licensed
18 contractor, things like that. I don't know that --
19 I mean, I think those are appropriate questions.

20 MS. PEAVY: And what I'm seeking to do is
21 avoid questioning of Mr. Curry that would be
22 similar to what happened at the deposition where
23 Mr. Peel was alleging through his questioning that
24 Mr. Curry had violated building codes, building
25 statutes, LLR regulations, what have you.

1 I don't want Mr. Peel being allowed to
2 essentially testify to the jury as to the law and
3 what the violations of the law are.

4 MR. PEEL: Counsel can always object to my
5 question. But, Your Honor --

6 MS. PEAVY: It is highly prejudicial for them
7 to even hear that these statutes or regulations are
8 at issue here because the authority -- meaning the
9 county and city building departments and LLR --
10 have never cited Mr. Curry or his mother for any of
11 this.

12 THE COURT: I understand. That doesn't mean
13 it didn't happen. It doesn't mean there wasn't
14 illegal activity.

15 In my hypothetical situation, obviously
16 everybody agrees driving 100 miles per hour on any
17 highway in the United States is probably a
18 violation of the law. Lack of citation doesn't
19 mean that some breach of the law didn't occur.

20 MS. PEAVY: Uh-huh.

21 THE COURT: So I hear what you are saying, I
22 just don't know that I agree exactly.

23 MS. PEAVY: And, Your Honor, I think one of
24 the important distinctions, if I can just make one
25 point, is that in the hypothetical that you are

1 positing, the person who is driving 100 miles per
2 hour presumably crashed into someone else or caused
3 damages.

4 In this case, whether Mr. Curry was a licensed
5 builder or not is totally unrelated to the damages
6 that he suffered when his claim for insurance
7 benefits was denied because the policy did not
8 cover him for the term of coverage that he had
9 requested. That is the issue in the case.

10 Mr. Curry, whether he was a licensed builder
11 or not, the policy was issued, and we would submit
12 the term of coverage was incorrect, and as a result
13 of that he was damaged because the claim was
14 denied.

15 THE COURT: Okay. I understand your argument.

16 MS. PEAVY: Okay.

17 MR. PEEL: Your Honor, may I hand up just the
18 statutes that I cited for the Court? These are not
19 anything from LLR, this is from the General
20 Assembly. They are the law of the state. And
21 whether they got violated would certainly be up to
22 the Court.

23 And I'm not -- that line of questioning, I
24 think Your Honor understands, doesn't go to the
25 sale of the policy or whether you have coverage, it

1 ultimately goes to damages and the ability -- for
2 example, he could not reasonably expect to recover
3 his debt from building the home if he had to live
4 in it for two years after it was built.

5 MR. GOODWYN: That's not true. He paid rent
6 where he was living, and by living in the house
7 rent-free he --

8 MR. PEEL: All that relates to his testimony.
9 That relates to his testimony. I would agree, he
10 said he was going to do that. But that was not his
11 intention.

12 MR. GOODWYN: At the end of the day, they sold
13 an insurance policy to him, whether it was being
14 built legally or not. They didn't question whether
15 it was being built legally when they sold the
16 insurance policy. They shouldn't be able to get
17 out of having to pay for it.

18 THE COURT: And that was my next question.
19 And I don't have the answer in front of me. But
20 are you suggesting that he shouldn't be able to
21 recover -- that he breached the insurance policy,
22 or is it an invalid policy or --

23 MR. PEEL: No, Your Honor.

24 THE COURT: Just that he can't recover
25 damages?

1 MR. PEEL: He cannot -- well, it is two parts,
2 if I may split it up.

3 First, he has these allegations, consequential
4 damages. I'm not sure what, but I think they
5 relate to -- because he was never able to testify
6 to it -- the carrying charges on credit cards that
7 he used, instead of a mortgage, used to buy
8 material for the house. That might not be the
9 exact testimony because I never got a chance to
10 cross-examine him on it, but he said, I could
11 not -- because the insurance did not pay off, I
12 could not get all this money back.

13 Well, if he was a licensed builder, then, yes,
14 that would be right. If he was building a house to
15 flip it and sell it -- he may still have required
16 evidence to show that he had a sale coming -- but
17 because he is an unlicensed builder with his mother
18 pulling the building permit -- and his testimony in
19 his deposition -- I don't know what it will be on
20 the stand -- his testimony in his deposition was, I
21 always intended to resell it.

22 Well, the law does not allow him to profit
23 from an illegal act. So any money he got from
24 selling that house on a flip or in two years would
25 be against the law. The statute clearly says that.

1 THE COURT: Right. And I think that that is a
2 matter of law for us to parse out later. I don't
3 know that it is for this jury to decide whether --
4 because --

5 MR. GOODWYN: That money wouldn't go to them
6 anyway.

7 THE COURT: The jury is here to determine
8 whether there was a duty, a breach of that duty,
9 and whatever damages.

10 MR. PEEL: The damages.

11 THE COURT: Now, whether certain aspects of
12 those damages are recoverable I think is a matter
13 of law for the Court to decide at some later point.

14 MR. GOODWYN: Well, maybe we could resolve
15 this by having him proffer testimony before the
16 Court alone about the building issues outside the
17 presence of the jury, since that is not their
18 issue.

19 MR. PEEL: Another reason for asking about
20 that is habit, way of doing things, showing his
21 pattern and how he went about building the house,
22 renewing insurance, letting the insurance drop. It
23 is all important, but certainly relevant as to
24 damages. It may be a question of fact as to what
25 he was going to do with the house.

1 MR. GOODWYN: Which, again, is irrelevant,
2 what he was going to do with the house. This is
3 just a simple insurance claim. He can do whatever
4 -- he can change his mind at any time about what he
5 wants to do. That doesn't have any bearing on any
6 of the issues of the case.

7 THE COURT: As I said before, I will allow --
8 to the extent that you think it is necessary, I
9 will allow general questions about his purpose in
10 buying the home, his intention, et cetera, but I
11 would agree with the Plaintiff and not allow you to
12 argue to this jury that he is precluded from being
13 compensated for certain --

14 MR. PEEL: We will deal with that in the
15 trial, Your Honor. I agree.

16 THE COURT: Absolutely.

17 MR. PEEL: I agree.

18 THE COURT: Absolutely.

19 MS. PEAVY: Your Honor, can I just seek a
20 clarification on that. Are you saying that Mr. --
21 that the Defendant cannot argue through their
22 cross-examination of Mr. Curry that building codes
23 and LLR violations were present? Because there is
24 no evidence of any building code or LLR violations
25 whatsoever, so that questioning as it relates to

1 specifically citing statutes concerning licensing
2 of builders, LLR regulations, things like that,
3 that would be highly prejudicial because it gives
4 the jury the impression that, Oh, something has
5 gone on and he must have been ticketed by LLR, he
6 must have violated this, and all that.

7 I mean, it is fine. I have no quarrel with
8 your ruling, Your Honor, as it relates to, Were you
9 a licensed contractor? What were your intentions?
10 What were you doing with the property? Et cetera.
11 But injecting into it references to LLR statutes,
12 residential building statutes, things like that, I
13 think would be highly prejudicial.

14 THE COURT: I believe that is encompassed in
15 my ruling. I will not allow him to make that
16 argument, whether in opening statement, closing
17 argument, or by way of leading questions. I mean,
18 the argument is not appropriate no matter how you
19 slice it.

20 MR. GOODWYN: I think it is noteworthy that
21 the insurance carrier in this case never made any
22 suggestion or denied the claim because of
23 illegality. There was never any question the claim
24 was payable if the policy period covered that, Your
25 Honor.

1 MR. PEEL: That is their fault, not mine. I'm
2 entitled to defend and plead, and that is certainly
3 a legitimate defense. Jackson v. Bi-Lo is a case
4 right on point. The statute is clear. And so I'm
5 a little unclear right now as to what the ruling
6 is. I understand that I can -- you don't want
7 me -- of course, I'm not going to ask him because
8 the order -- Ms. Peavy is correct, there is no, as
9 far as I know, violations or other enforcement
10 actions against him. And, of course, there
11 wouldn't be because he is not a builder. That is
12 the only way there could be an enforcement action
13 against him other than a stop work order.

14 THE COURT: Right.

15 MR. PEEL: So my intention is just to ask him,
16 he and his mother, whether they were licensed
17 builders and what their intentions were with the
18 home. I can't think of anything else. And
19 everything else we could deal with on -- if it goes
20 to the jury -- on jury charges.

21 THE COURT: Exactly.

22 MR. PEEL: Okay. Then we're in agreement, I
23 think.

24 THE COURT: I believe so.

25 MR. GOODWYN: Just for clarity, is there

1 anything in the insurance policy itself that says
2 the defendant doesn't have to pay because of
3 illegality?

4 MR. PEEL: You have to read it. I don't --

5 MR. GOODWYN: Are you alleging -- this is your
6 affirmative defense. Are you alleging that there
7 is something in the policy that precludes -- that
8 prevents them from having to pay if he is not a
9 licensed builder?

10 MR. PEEL: I don't have to reveal that to you.

11 MR. GOODWYN: I think you do. An affirmative
12 defense. You have got to tell me the basis of your
13 affirmative defense.

14 MR. PEEL: No. I have repeated the basis for
15 my defense. I don't have anything else.

16 THE COURT: Well, and I don't have the answer
17 in front of me, but his defenses are as they are
18 stated in the answer.

19 I mean, y'all have mediated this case, y'all
20 have talked about this case, we have taken an extra
21 long lunch break to hash out some of these issues.
22 And so to the extent that you are unclear as to
23 what the pleadings say, I think we need to move on.

24 MR. PEEL: I was -- the policy does have
25 illegality sections in it. I don't know that they

1 apply to this, but the policy says that. It
2 says --

3 THE COURT: I'm sure y'all have copies of the
4 policy. And certainly with a 2014 case you should
5 have read the policy before now. Let's move on to
6 the next motion, please.

7 MS. PEAVY: Yes, Your Honor. This is a motion
8 in limine to exclude expert testimony of Bryant
9 McGowan.

10 THE COURT: Yes, ma'am.

11 MS. PEAVY: Mr. McGowan was an adjuster who
12 came by Scottsdale Insurance Company to prepare an
13 estimate in 2014 when the claim was filed.

14 On April 11th, 2016, one week ago, the
15 Defendants identified Mr. McGowan as an expert
16 witness to testify as to the damages, the cost --
17 the repair cost of the property.

18 And, as Your Honor is well aware, repair costs
19 must be offered by way of expert testimony under
20 Rule 702.

21 This late identification, one week prior to
22 trial, of an expert witness is highly prejudicial
23 to our case. I have not had a chance to depose
24 Mr. McGowan. And my own damages expert, Frank
25 Mitchell, who is a builder here in town, has not

1 had a chance to review the opinions offered by
2 Mr. McGowan, whatever those may be, or rebut them.
3 And the naming of an expert witness by the
4 Defendants at this late stage, I would submit, is
5 further violative of Rule 26(e).

6 Now, as Your Honor is well aware, the decision
7 of whether or not to allow a witness to testify who
8 was not previously listed rests within your sound
9 discretion. And that is the Arthur v. Sexton
10 Dental Clinic case. And I'd like to hand up the
11 Arthur v. Sexton Dental Clinic and the Jumper v.
12 Hawkins case, because I think they are
13 determinative of this issue, Your Honor. If I may
14 approach?

15 THE COURT: Yes, ma'am.

16 (Complies.)

17 THE COURT: Thank you.

18 MS. PEAVY: The Court of Appeals in Arthur v.
19 Sexton held that: The trial court properly
20 excluded the testimony of a late named expert
21 witness, a situation such as here.

22 The Court of Appeals noted that the trial
23 judge was required to consider and evaluate factors
24 that have been previously outlined in the case of
25 Jumper v. Hawkins. And that those five factors

1 are: The type of witness involved; the contents of
2 the evidence emanating from the proffered witness;
3 the nature of the failure or the lack or refusal to
4 furnish the witness's name; the degree of surprise
5 to the other party, including the prior knowledge
6 of the naming of the witness; and the prejudice to
7 the opposing party.

8 In this case, Your Honor, we have what I would
9 contend is a willful failure, almost two years
10 after this lawsuit was filed and after discovery
11 has been ongoing since November of 2014, to now
12 name an expert witness one week prior to trial to
13 testify as to damages. This witness has been known
14 to the parties in this case since discovery
15 commenced in the fall of 2014 as he was the
16 adjuster retained by Scottsdale to go out to the
17 property.

18 And I would submit, Your Honor, that the
19 surprise of this is considerable and that the
20 prejudice is also considerable.

21 In view of the factors illuminated in these
22 two opinions that I have handed up, I would
23 respectfully request that the Court exclude the
24 expert testimony.

25 THE COURT: Yes, ma'am.

1 MR. PEEL: Thank you, Your Honor. I will say
2 that is correct, that I did not list him until last
3 week. I'll say that the reason I didn't is because
4 I thought I had, because Scottsdale had named him
5 previously as an expert.

6 And as a matter of law, I think the Jumper
7 factors are not what you consider in this case. I
8 thought they were at first too. But there is
9 actually Jenkins v. Few. And I had to pull it up
10 on my computer. It is 705 S.E.2d 457. They say
11 you dispute -- the Court there says you review the
12 factors from Bensch -- B-E-N-S-H -- v. Davison,
13 which is 580 S.E.2d 128. The distinction being,
14 just like this case, they said, the Jenkins case
15 was a fact witness previously disclosed that was at
16 a later time or even at trial named as a witness.
17 So there are some different factors to consider.

18 And those factors are: The type of witness;
19 the content of the evidence; the explanation for
20 the failure to name the witness; the importance of
21 the witness's testimony; and the degree of surprise
22 to the other party.

23 And I will say, Mr. McGowan is only being
24 called to talk about the damage to the property he
25 inspected three days after the fire and the repair

1 estimates generated. And I would say there is no
2 surprise at all to the Plaintiff because in their
3 discovery responses to me dated November 25th,
4 2014, Ms. Peavy named Mr. McGowan, Vericclaim, and
5 says Mr. McGowan will testify to his investigation
6 of damage to the properties and any repair
7 estimates generated. Upon information and belief,
8 Mr. McGowan had prepared a report that is not their
9 possession. However, we know that they received
10 that because Scottsdale, on September 25th, 2015 --
11 well, actually before that -- Scottsdale's
12 responses from 2014, which they produced all the
13 Bates stamped documents, all those reports were
14 included in there. Scottsdale, in fact -- and that
15 was January 9th, 2015, when they produced all those
16 reports. Scottsdale designated him as a testifying
17 expert September 25th, 2015.

18 So, yes, I admit, I neglected to change him to
19 an expert, but I'm not offering him for anything
20 other than that the Plaintiff was aware of when
21 they first identified him before I did. And I
22 identified him shortly thereafter as a fact witness
23 also.

24 THE COURT: When did Scottsdale settle out of
25 this case?

1 MR. PEEL: December. I think December 10th.

2 MS. PEAVY: Yes, the stipulation with
3 Scottsdale was signed by all counsel on
4 December 30th.

5 MR. PEEL: That's right, December 30th.

6 MS. PEAVY: That was the stipulation of
7 dismissal.

8 MR. PEEL: But Mr. McGowan is not being asked
9 to testify to anything other than those exact
10 things that the Plaintiff listed him for that they
11 are aware that he had knowledge of.

12 THE COURT: Is there any additional report
13 generated by Mr. McGowan besides the report that
14 was produced in January?

15 MR. PEEL: No. Other than the reports that
16 Scottsdale provided to all of us, I'm not aware of
17 any.

18 THE COURT: Okay.

19 MS. PEAVY: Your Honor, the issue is not that
20 Mr. McGowan was previously identified as a fact
21 witness by the parties, the issue is that up until
22 Monday I was never aware and never notified that
23 they were going to be naming him as an expert
24 witness. And obviously that is a big difference,
25 because that means that I'm in a position where I

1 haven't had a chance to depose Mr. McGowan. I
2 haven't had a chance to review -- he prepared
3 multiple repair estimates. There are a lot of
4 different figures in his repair estimate.

5 THE COURT: And you have had those repair
6 estimates in your possession for a considerable
7 amount of time; correct?

8 MS. PEAVY: I have, Your Honor, but while he
9 was identified as an expert witness by Scottsdale,
10 Scottsdale then settled out of the case, and he was
11 never named an expert witness by these Defendants
12 until last week. So at that point all I was going
13 on was the fact that their expert witness, who they
14 had identified previously, was their expert witness
15 who was going to opine as to the standard of care
16 related to insurance agents. And that was
17 Mr. Terry Tadlock. And I deposed Mr. Tadlock prior
18 to trial because he was their expert witness. I'm
19 now in a position where they are identifying
20 another expert witness. I haven't had a chance to
21 depose him. My expert builder hasn't had a chance
22 to look at his reports, his testimony, rebut that
23 in any way.

24 So they are basically saying that they should
25 just be allowed to identify an expert witness one

1 week prior to trial.

2 And I submit to you, Your Honor, that both
3 Sexton Dental and Jumper v. Hawkins are directly on
4 point with the situation here and that the expert
5 witness should be excluded.

6 MR. PEEL: Your Honor, I don't know if this
7 helps or not -- not to delay the trial -- he is
8 really not -- we can depose him anytime. I know he
9 is in town. If it bothers them that much. But the
10 fact is, these reports and all this information in
11 there, they are the ones who told me originally
12 what he would testify to. I'm not offering
13 anything other than what the Plaintiff identified
14 him for.

15 THE COURT: Yes, ma'am.

16 MS. PEAVY: Your Honor, I identified him as a
17 witness because Scottsdale told me that their
18 adjuster, Bryant McGowan, had gone out to the
19 scene. I didn't have the reports at that time. I
20 never heard from Mr. McGowan as to what went into
21 his analysis in forming these reports, what the
22 bases of the reports were. I have no idea what
23 they mean. All I know is they were reports
24 prepared for the claims department at Scottsdale.
25 Scottsdale subsequently denied the claim. Told

1 Mr. McGowan, Hold off on doing my more work. And
2 that was all there was to it, Your Honor.

3 He's never been deposed in this case and he
4 was never named as an expert witness by these
5 Defendants until last Monday.

6 THE COURT: Considering the circumstances, the
7 Plaintiff has known of the existence of Bryant
8 McGowan since at least 2014. His name, the
9 location that he worked, and the extent of his
10 involvement in this case.

11 Now, based on the Defense's representation
12 that they don't intend to offer him as a witness to
13 testify to anything other than what the Plaintiff
14 was already aware of, I find that while there may
15 be some modicum of surprise in designating him as
16 an expert versus a fact witness, if the scope of
17 his testimony is more or less the same, I mean,
18 obviously experts can offer opinion testimony and
19 other things, some specialized knowledge, but if
20 the scope of his involvement has been known by all
21 of the parties, I'm going to allow him to testify,
22 particularly in light of the fact that he's not an
23 unknown factor. I understand your argument that he
24 was not designated as an expert by this party,
25 these parties, until a week ago, he was named as a

1 witness initially by the Plaintiff and then listed
2 as an expert by Scottsdale, who I understand he is
3 now settled out of this case, but at least as of
4 September 25th, 2015, you were -- the Plaintiffs
5 were aware -- the Plaintiff was aware that Mr.
6 McGowan may have some specialized knowledge, at
7 least in the mind of Scottsdale. I just don't see
8 some huge degree of prejudice. I think that he is
9 an important witness, from what I can tell. If
10 there is some need to depose him, that can be done
11 this week.

12 MS. PEAVY: Yes.

13 THE COURT: You know, if Mr. McGowan -- I
14 don't know his schedule, but --

15 MR. PEEL: I think he is in the office this
16 week. I talked to him Friday. His office is on
17 Forest Drive, so he is pretty close. But he is in
18 town. I will say again, he will not testify as to
19 anything but what is in his reports. I don't think
20 he has any other knowledge about this case.

21 THE COURT: So -- but, I mean, it is up to the
22 Plaintiff whether they -- the Plaintiff's counsel
23 whether they intend to -- whether they would like
24 to depose him, feel a deposition is necessary.

25 I guess I should designate maybe a time and a

1 day for that. I don't know how this trial is going
2 to progress, but -- and I don't know --

3 MR. PEEL: I will do whatever they need
4 time-wise.

5 MS. PEAVY: Let us -- if -- Your Honor, if we
6 can discuss it after this motion hearing is over
7 and make a decision.

8 THE COURT: Absolutely. Absolutely. Okay.
9 But I will, you know, I guess order that he make
10 himself available at a reasonable time, once they
11 figure out --

12 MR. PEEL: I don't think that is a problem,
13 Your Honor.

14 THE COURT: Okay. And we'll ensure that
15 deposition happens this week, if necessary.

16 Next motion.

17 MS. PEAVY: Your Honor, this is a motion in
18 limine to exclude evidence relating to previously
19 dismissed claims against and settlement with
20 Scottsdale Insurance Company.

21 The Plaintiff submits that the only evidence
22 properly for the jury to consider is that the
23 Plaintiffs filed a claim for insurance benefits
24 under a builders risk policy, vacant structure
25 policy that was sold to him by Carolina Insurance

1 Group and its agent, Maurice Derrick, and the
2 policy was issued by Scottsdale, and Scottsdale
3 denied the claim.

4 The only claim before this jury are claims for
5 negligence and gross negligence against the
6 Defendant.

7 And originally this lawsuit was filed naming
8 Scottsdale Insurance Company as an additional
9 Defendant. The claims against Scottsdale were
10 separated from the claims against Carolina
11 Insurance Group and Maurice Derrick.

12 The only claims that have ever been asserted
13 against Carolina Insurance Group and Mr. Derrick
14 are negligence claims. The claims against
15 Scottsdale were for breach of contract, statutory
16 bad faith, and common law bad faith, which is
17 incorporated into a contract action.

18 We settled -- the Plaintiff settled its claims
19 against Scottsdale in December of 2015, and a
20 stipulation of dismissal as to Scottsdale was
21 circulated among all counsel in this case and was
22 filed with the court on December 30th, 2015.

23 Defendant's counsel subsequently requested a
24 copy of the release from me earlier this month, and
25 I provided it to him.

1 I believe that the Defendant may seek to
2 introduce testimony related to Mr. Curry's claims
3 against Scottsdale or settlement with Scottsdale in
4 this lawsuit. And I would submit that that is
5 improper, and that evidence of Mr. Curry's previous
6 claims against Scottsdale, which are now dismissed,
7 which are settled, are irrelevant and would be
8 highly prejudicial to the Plaintiff's case, because
9 it would allow the jury to consider a setoff when
10 setoff is solely a matter at the post-verdict stage
11 for the Court to consider. And that is assuming
12 the Defendants make such a motion. And we would
13 obviously reserve the right to object to any setoff
14 of any verdict.

15 And I'm relying upon the case of Riley v. Ford
16 Motor Company and Scott v. Fruehauf Corp, which the
17 Scott case held that evidence of relief was
18 inadmissible.

19 Scottsdale is not a party to this lawsuit, and
20 any mention of Mr. Curry's prior claims against or
21 settlement with Scottsdale would make the jury
22 think that Mr. Curry was improperly seeking a
23 double recovery or had already gotten paid for his
24 damages in this case. There is no overlap between
25 the causes of action that are pending against these

1 Defendants and what was alleged against Scottsdale.

2 I would like to hand up to Your Honor the two
3 cases that I cited, as I believe they are
4 instructive in support of my motion.

5 THE COURT: All right.

6 MS. PEAVY: And if Your Honor will give me one
7 minute.

8 THE COURT: Sure. While you are looking for
9 that, let me hear from you Mr. Peel.

10 MR. PEEL: I was looking for a copy of the
11 release, and I've got such a stack of papers I
12 can't find it.

13 Your Honor, normally I would completely agree
14 with Ms. Peavy -- normally. We have had a little
15 bit of a different situation. We talked beforehand
16 a little bit about how to deal with this.

17 I did not see the executed releases until
18 April 8th. Ms. Peavy gave it to me as soon as I
19 asked for it, the same day. However, it was
20 apparently signed in December. I would say it
21 should have been introduced to me under our
22 discovery requests as communications between other
23 parties. When they served the release on me, not
24 just the stipulation of dismissal, I had signed it,
25 I did not get -- I went back and checked -- I did

1 not get anything but the stipulation. So I didn't
2 see it. So this relates to another motion that we
3 have in front of -- Judge Lee has dealt with some
4 of this also, so it is a little complicated.

5 Once I examined the release, I believe there
6 are arguments that that release operates to release
7 my clients completely. So, based upon that, we
8 filed a motion this morning to amend to add a
9 defense of release based upon the information we
10 got from April 8th. See, actually reading the
11 copy.

12 So, like I said, normally -- everything they
13 say generally is correct, especially if it is under
14 the contribution of the tortfeasors act, that would
15 normally exclude setoffs for the province of the
16 judge only for the trial. However, this
17 situation -- this goes to -- we told you earlier
18 about our motion for summary judgment -- and Judge
19 Lee had partially instructed some procedure --
20 moved for summary judgment on two grounds. We move
21 this morning, one, the release on its face as it is
22 a full satisfaction of everything due under the
23 policy for consequential damages, which would
24 operate as a matter of law to release these
25 parties. And it also states that it releases all

1 agents of Scottsdale Insurance.

2 Well, the complaint, the amended complaint,
3 second amended complaint, filed in October of 2015
4 alleges that Carolina Insurance and Maurice Derrick
5 are agents of Scottsdale.

6 On the face of the pleading under Rule 11,
7 that is taken as fact and you can't state something
8 that you know to be false. The fact is that they
9 aren't, in reality. But that doesn't matter. What
10 matters is the intention of the parties on that
11 release.

12 So you've got two points where we say that
13 release -- and I think it is a matter of law for
14 the Court to decide, because I think you can take
15 the four corners and present extrinsic evidence.

16 So the issue I have -- and that is not
17 something I normally would want for any reason to
18 put in front of the jury, but extrinsic evidence is
19 needed to decide the intention of the parties, and
20 release is an affirmative defense that we're
21 entitled to plead, is to how to deal with that
22 issue of the release. And I think it ends up being
23 a weighing analysis under the rules of evidence
24 whether or not it is prejudicial. There may be --
25 I have been thinking on it. There may be other

1 ways. Judge Lee has instructed us to take it up at
2 the directed verdict stage as far as those
3 arguments.

4 One way to handle it would be to determine at
5 directed verdict if Your Honor determines that they
6 are matters outside the four corners of the
7 pleadings that require findings of fact. I could
8 recall Mr. Curry in the second half of the case to
9 introduce it and discuss it in my case. But it is
10 problematic, to say the least. And that would be
11 my suggestion, is I think I'm entitled -- normally
12 I wouldn't want to do it, but I think because of my
13 defense, and if there is an issue of fact related
14 to it, I'm entitled to present it. And that
15 overcomes the reasons for not disclosing. Because
16 there is no other way to get to it.

17 THE COURT: I think as to the motion in
18 limine -- I understand what you are saying,
19 Mr. Peel, but I want to say that I think that is
20 sort of a separate matter. And I understand how it
21 ties into your motion for summary judgment and all
22 of that, but without ruling on the motion for
23 summary judgment exactly at this point, I would
24 grant the motion in limine, because I just don't
25 think that settlement with another party is proper

1 for this jury to determine.

2 Now, as to whether that release, that
3 settlement should resolve this entire case, the
4 separate matter -- I think that is a matter of law
5 for the Court, but without ruling on the motion for
6 summary judgment, should we get to presenting
7 testimony before this jury, that testimony should
8 not include anything about this release.

9 MR. PEEL: Could I ask the Court to do this?
10 I think that is completely fair and is a matter of
11 strategy generally. We just don't know what they
12 are going to do with something like that.

13 THE COURT: Sure.

14 MR. PEEL: I would like -- once the motion for
15 summary judgment is fully argued, my concern is the
16 Court will determine there is an issue of fact that
17 needs to be determined. I'd like to reserve rights
18 to revisit the idea again during the Defense's case
19 regarding the admission of the settlement agreement
20 then. It would depend on your ruling at summary
21 judgment.

22 THE COURT: Right. And I would withhold
23 any -- I mean, I can't predict the future.

24 MR. PEEL: Right.

25 THE COURT: Yes, I think that would --

1 MR. PEEL: So I would just like to revisit it
2 maybe at the beginning of our case after that, and
3 Your Honor could tell me no again at that part of
4 the case. There may be a reason at that point in
5 time we need to address it if it has not been
6 developed. But I don't want to introduce it in
7 their case.

8 THE COURT: Okay. That is clear.

9 MS. PEAVY: Your Honor, would you like to see
10 these cases, or should I hold off until the
11 directed verdict stage?

12 THE COURT: I actually would like to see those
13 cases. What I would also like to see is -- and
14 maybe it is not exactly the right time, but I would
15 like to see the release -- the settlement documents
16 that you are referring to.

17 Actually, I think, for scheduling purposes,
18 the best thing to do actually may be to go ahead
19 and bring the jury back in and release them for the
20 day, because I actually am interested in the
21 arguments on this motion for summary judgment. It
22 may have some teeth to it. I'm not entirely sure.
23 But I would like everyone to have a full and fair
24 opportunity to argue that and for me to consider
25 that.

1 I'm sorry, has Judge Lee already ruled on
2 that, or was that a suggestion?

3 MS. PEAVY: She did rule that the matter
4 should be incorporated into their defense of the
5 case at the directed verdict stage. Because when I
6 received their motion for summary judgment on
7 Friday, I obviously couldn't prepare a response to
8 that, and so I reached out to Judge Lee, as she was
9 the one who set the date certain for this trial and
10 had been administering various scheduling issues,
11 et cetera, and she ruled at that time that the
12 matter -- the arguments contained in the summary
13 judgment motion were best incorporated into the
14 directed verdict stage of the case.

15 MR. PEEL: And all that is correct. That is
16 exactly what the e-mail said. My understanding was
17 that Ms. Peavy was not going to argue that today,
18 not be prepared to argue it. I don't know that
19 going through the trial -- since we are not putting
20 the settlement agreement into evidence, I don't
21 think going through the trial is going to benefit
22 the Court in any way in making a decision, but it
23 would at least give Ms. Peavy additional time to
24 argue her motion. But that is what Judge Lee told
25 us.

1 MS. PEAVY: Well, Your Honor, Judge Lee told
2 us that the trial would go forward this week and
3 that these arguments that he was making in the
4 summary judgment motion that was filed on Friday
5 could be incorporated into the directed verdict
6 stage.

7 MR. PEEL: And I just point out to the Court,
8 I got the release April 8th, so I filed the motion
9 at the end of the week right after I got it, so I
10 apologize for it being last minute.

11 MS. PEAVY: Well, Your Honor, the point is
12 Mr. Peel signed off on the stipulation of dismissal
13 as to Scottsdale in December.

14 THE COURT: I understand. I understand. I
15 heard you.

16 MS. PEAVY: He never signed the release.

17 THE COURT: I understand.

18 MS. PEAVY: Okay.

19 THE COURT: And if that was your understanding
20 from Judge Lee, then we are not going to argue that
21 motion for summary judgment now.

22 MR. PEEL: That is exactly right.

23 MS. PEAVY: Would you like me to hand up these
24 cases and a copy of the release, Your Honor?

25 THE COURT: I would, actually, yes.

1 MS. PEAVY: May I approach?

2 MR. PEEL: And I agree, Your Honor, with the
3 number of motions, to release --

4 THE COURT: Right. I was going to say, I am
5 still going to bring the jury in, release them for
6 the day, and we'll just start with -- we are going
7 to finish the motions this afternoon, but we will
8 start with opening -- and start the trial tomorrow
9 morning.

10 MS. PEAVY: Thank you, Your Honor.

11 THE COURT: Because it is already almost 3:30.
12 So if you will hand those up.

13 MS. PEAVY: Okay. Can I actually -- these are
14 for you, Your Honor. Can I ask to get a copy of
15 this release? This is my file copy.

16 THE CLERK: Just one?

17 MS. PEAVY: Yes. Oh, he's got copies. I'm
18 sorry.

19 MR. PEEL: That was one of the issues on our
20 directed verdict. This is not in evidence.

21 THE COURT: Right.

22 MR. PEEL: So if I am going to argue a motion
23 on this, I need some type of stipulation as to this
24 is an accurate copy.

25 MS. PEAVY: We don't deny this is the release.

1 THE COURT: I'm just curious to see it. I
2 don't intend to make any ruling on anything.

3 MR. PEEL: And I wasn't trying to hold it from
4 her.

5 (Hands to Court.)

6 MS. PEAVY: And, Your Honor, we will also need
7 to be able to -- this morning Mr. Peel filed a
8 motion to amend his answer to assert the defense of
9 release. So we will need to be able to argue that
10 issue at the time perhaps when you are considering
11 the greater motion as a whole, if that is in Your
12 Honor's --

13 THE COURT: I understand. At this point let's
14 bring this jury in so that I can let them go for
15 the day.

16 MS. PEAVY: Okay.

17 THE BAILIFF: Now, Your Honor?

18 THE COURT: Yes, please.

19 THE BAILIFF: Yes, Your Honor.

20 (WHEREUPON, the jury came into open
21 court at 3:28 p.m.)

22 THE BAILIFF: Your Honor, the jury is present
23 and seated.

24 THE COURT: Thank you.

25 Ladies and gentlemen, I told you we were going

1 to start the trial of this case this afternoon, but
2 that is not going to happen. As I told you, I had
3 some matters of law to discuss with the attorneys,
4 and those are taking much longer than I
5 anticipated. I know that you have already been
6 back there for about half an hour, and I hate to
7 keep you sitting and waiting, and certainly
8 wouldn't want to leave you sitting for another hour
9 and then get started at 4:30, or something like
10 that.

11 So, that said, I'm going to spend the rest of
12 the afternoon with the lawyers dealing with those
13 matters of law, and I am going to dismiss you for
14 the day so that I don't waste your afternoon.

15 I'm going to ask you to be back in your jury
16 room tomorrow morning at 9:30. And I will tell
17 you, as I told you before, do not discuss the case.
18 Don't go home and try to do any research about the
19 case, about any of the attorneys, the parties, the
20 limited facts that you know about the case, or any
21 of the issues involved in the case. You shouldn't
22 be on Facebook or Twitter or just Googling the
23 issues in this case or the attorneys and the
24 parties to the case, or even the court personnel.
25 You are to get all of your information about this

1 case within this courtroom while court is in
2 session and from no other source.

3 You also shouldn't be on social media telling
4 people that you are on jury duty, only because it
5 is not a secret that you are on jury duty, but once
6 you post your Facebook status as jury duty, people
7 are going to ask questions about what is going on.
8 And you are not permitted to answer those
9 questions.

10 So you will be able to talk about all of it
11 when it is all over, but you shouldn't do that
12 during the week.

13 So, with that said, I'm going to dismiss you
14 for the afternoon. Be back in your jury room at
15 9:30 tomorrow morning, and we will begin then.

16 Have a good night.

17 THE JURY: You too.

18 (WHEREUPON, the jury was released for
19 the day at 3:30 p.m.)

20 THE COURT: All right, counsel. Move on with
21 the next motion in limine.

22 MS. PEAVY: Yes, Your Honor. This is the
23 motion in limine that has been partially resolved
24 by the attorneys. It is the motion in limine to
25 exclude evidence relating to Ulysses Simpkins.

1 THE COURT: Yes, ma'am.

2 MS. PEAVY: And the attorneys have agreed that
3 we will not be -- that there will be no
4 solicitation of evidence relating to Mr. Simpkins
5 as it relates to the fact that Mr. Simpkins is
6 currently incarcerated, that Mr. Simpkins operated
7 a company that sold the vacant land to Mr. Curry
8 back in 2007/2008.

9 And the only issue left for the Court to
10 determine is whether Mr. -- is whether the
11 Defendant can elicit testimony relating to the
12 chain of title on this property, meaning going
13 through the Richland County property records to
14 show that Mr. Curry purchased it from AAO
15 Investments in 2008, I think it was. And that the
16 deed was recorded. The purchase price was around
17 \$2,500. All that.

18 And, Your Honor, we would just submit that
19 that puts into the jury's mind the idea that there
20 was something weird or unsavory about the property
21 transaction. There has been no dispute whatsoever
22 that Mr. Curry, at the time that this loss
23 occurred, was the record owner of the property and
24 continues to be so to this day.

25 So eliciting testimony about who he bought the

1 property from seems to try to plant in the mind of
2 the jurors that there is something relevant about
3 who the seller of the property was, the way the
4 transaction went down, all of that. So we would
5 ask Your Honor to exclude evidence related to that.

6 THE COURT: All right. Mr. Peel?

7 MR. PEEL: Your Honor, if I may? Everything I
8 agreed to is correct. There is no need to mention
9 anybody about the incoming deed. The only deed I
10 intend to introduce related to that property is the
11 incoming deed to Mr. Curry where he got the
12 property for \$5 from this AAO Investment and the
13 mortgage on the property, which is the subject of
14 another motion. I think we can handle it all in
15 one. It is really the same argument, I think.

16 THE COURT: I think probably they are too, but
17 tell me about both of those. What is the relevance
18 of the mortgage and the identity of the previous
19 owner?

20 MR. PEEL: Well, I do have several reasons.

21 THE COURT: Sure.

22 MR. PEEL: First I will point the Court to
23 kind of the history of this. And the history of
24 Mr. Curry and my client is going to be important
25 and how they conducted themselves. And that is

1 just really helping me more than you so I'll
2 remember it.

3 This property was -- the building permit was
4 pulled in 2007. This deed that we're talking about
5 is dated 12/3/2008. Mr. Curry had come to us to
6 purchase builders risk in 2009, October of 2009.
7 He bought a year-long builder risk policy, which
8 expired, and he let it go for some time uninsured.
9 And then we get into kind of the two policies that
10 this case was about. In October, where there is
11 another time where he lets it expire and comes back
12 and gets coverage.

13 So first, Your Honor, the reason that it is
14 relevant, the policy itself says that -- and I
15 still get it on my computer -- under the loss
16 payment section that they will pay -- one of the
17 limitations is they will pay no more than the
18 insured's financial interest in the property.

19 So to the extent that he paid \$5 for this lot,
20 the valuation of the house, the total financial
21 interest may in the end be important depending on
22 his testimony and testimony about what is in the
23 house. But that is a policy provision that limits
24 payment on the house. And that is what this case
25 is about is what would have been paid on that

1 policy.

2 THE COURT: Okay.

3 MR. PEEL: The second is the custom and habit
4 of how he dealt with his business, how these
5 non-conventional things kept happening in the
6 course of the builder policy. And, in fact, Your
7 Honor, I think it is probably important, the
8 mortgage, the mortgagee is a named insured on that
9 first insurance policy. From 2009/2010 he didn't
10 carry insurance, which I will get into to show that
11 that was his general habit, to let the insurance
12 expire. So how he got the property, what he paid
13 for it is relevant under the terms of the policy
14 and establishing the way Mr. Curry conducted
15 business.

16 THE COURT: Well, what is the problem with him
17 asking, When did you get the property? How much
18 did you pay for it? And things like that.

19 MS. PEAVY: Well, first of all, Your Honor, he
20 is saying that Mr. Curry -- I guess his line of
21 reasoning is Mr. Curry is only entitled to \$5 if
22 that is what his document shows under the policy.
23 Is that your argument?

24 And the Richland County Assessor's Office I
25 have shows Mr. Curry purchasing the property for

1 \$2,700, according to the Richland County records.

2 But, regardless, Your Honor, Mr. Peel has
3 already consented to the motion in limine as it
4 relates to the mortgage on the property.

5 I don't have a problem with him, you know,
6 saying, When did you buy the property, and all
7 that, but it seems to me going through these
8 documents has nothing to do with whether insurance
9 was placed on the property at the time the loss
10 occurred.

11 If they want to get up in front of the jury
12 and argue that all Mr. Curry is entitled to is
13 either \$5 or \$2,700 because that is what he paid
14 for the raw land in 2008, you know, I don't --

15 THE COURT: And he may intend to do that, I
16 don't know, but I don't see any problem with him
17 asking when he got the property, who he bought it
18 from, and how much it cost, and any questions about
19 when it was insured and was it insured, and things
20 like that.

21 THE COURT: Okay, Your Honor.

22 MR. PEEL: She's correct.

23 MS. PEAVY: That's fine. That's fine, Your
24 Honor.

25 MR. PEEL: But the deed -- I just want to

1 introduce the deed for what is on the face, the
2 date, time.

3 MS. PEAUVY: Can I see the date that you are
4 referring to? Because it conflicts with the
5 assessor's record.

6 (Pause.)

7 THE COURT: All right. I am not going to rule
8 on the admissibility of that deed at this point. I
9 mean, I don't know what context it would come in
10 under, what foundation would be laid, if any,
11 unless he contested it was a true and accurate
12 copy, there is some issue of authenticity. I mean,
13 even that could be addressed at a later date. I
14 don't know if they have some witness to
15 authenticate it.

16 MR. PEEL: We can get a stamped copy from
17 right downstairs.

18 MR. GOODWYN: Just for clarity. Their
19 position in the case is that this is relevant
20 towards the proper damages argument that they are
21 going to argue that he is only entitled to \$5 under
22 this policy.

23 MR. PEEL: That's --

24 MR. GOODWYN: Correct. They sold him a
25 policy, they backdated it, and they say he wants to

1 get \$5.

2 THE COURT: I don't know what his argument is,
3 and I am not going to ask him at this point.

4 MR. GOODWYN: I want him to open on that. I
5 mean, that is a great argument for us.

6 THE COURT: I can't try your case for you. If
7 he ultimately argues that, fine, y'all will deal
8 with it however you deal with it.

9 MR. GOODWYN: Okay.

10 MR. PEEL: To be clear, that is not what I
11 said.

12 MR. GOODWYN: That is what you said. You
13 said --

14 THE COURT: Whether he did or didn't isn't for
15 me to determine right now. Let's move on to the
16 next motion, please.

17 MS. PEAVY: Thank you, Your Honor. I believe
18 that you have heard all you will hear from me, Your
19 Honor.

20 THE COURT: All right. Then let's go on.

21 MS. PEAVY: I believe my co-counsel has --

22 THE COURT: Another?

23 MS. PEAVY: -- one more.

24 MR. GOODWYN: Well, there is one more. This
25 is their motion, actually. I was going to respond

1 to their --

2 MS. PEAVY: Okay.

3 THE COURT: I will hear Ms. Peavy first.

4 MR. PEEL: Your Honor, I think we filed -- if
5 this is the proper time, we filed a motion to amend
6 this morning to assert the defense of release.

7 As Your Honor knows, a motion to amend should
8 be really granted, even can be granted during
9 trial. As I said, I just got this release, copy of
10 the release April 8th from -- I did move this
11 morning. It was too late Friday to get everything
12 done. Judge Lee may have already ruled on this.
13 It is hard to tell from the one line that she sent
14 us that it should be properly incorporated into the
15 trial -- and I don't have the quote from the e-mail
16 right now -- at directed verdict. But we just ask
17 to be allowed to amend to assert the defense of
18 release based solely on the release that we
19 received April 8th.

20 THE COURT: Yes, ma'am?

21 MS. PEAVY: Your Honor, we would oppose their
22 motion to amend at this late date. And the reason
23 for that is that they were on notice that we
24 settled with Scottsdale in December. And they
25 signed off on the stipulation of dismissal as to

1 Scottsdale. They never signed any release. They
2 were never dismissed on this case. We're here to
3 try the case. And now they are trying to say that,
4 oh, they were released from it at this late date
5 when they have known that Scottsdale has been out
6 presumably because we settled with Scottsdale since
7 December.

8 So now to move to amend on the day of trial to
9 assert this when they have known about it, it goes
10 to their summary judgment motion, Your Honor, but,
11 you know, I think it is -- I don't think it is
12 proper. I would ask that the Court deny the
13 motion. They are moving to amend the day of trial
14 on an issue that they had notice of five months
15 ago.

16 MR. PEEL: I did not have notice of it. You
17 did not serve me with a copy of the release and I
18 distinctly requested copies of any correspondence,
19 e-mails, anything like that, any documents between
20 the Plaintiff and any Co-Defendants, any Defendants
21 in the case, and y'all did not provide it to me.

22 MS. PEAVY: He had notice that the release
23 would have existed because he signed off on the
24 stipulation of dismissal as to Scottsdale in
25 December.

1 THE COURT: So because he didn't move to
2 enforce or file a motion to compel to enforce --

3 MS. PEAVY: He didn't ask me for it.

4 THE COURT: I haven't finished my question.

5 MS. PEAVY: I'm sorry.

6 THE COURT: -- to compel you to comply with
7 your continuing duty to disclose -- or provide
8 documents under the Rules of Evidence, then he
9 should be foreclosed from being able to do that
10 now? Is that your position?

11 MS. PEAVY: Your Honor, my position is he was
12 on actual notice that a settlement agreement had
13 been executed. If I failed to provide that to him
14 in December, that is my error, but it is not that
15 he didn't have notice that it existed. He knew
16 Scottsdale had been released because he signed off
17 on the stipulation of dismissal as to Scottsdale.

18 THE COURT: I know, but it seems to me that
19 you are seeking to benefit from your failure to
20 provide him with a copy of the document. You have
21 a continuing duty under the Rules of Civil
22 Procedure to --

23 MS. PEAVY: Uh-huh.

24 THE COURT: -- provide copies of documents.
25 If it was something that he previously requested,

1 you came into possession of it in December and did
2 not provide a copy to him in December, January,
3 February, or March, and he seeks to enforce it in
4 April, I don't know that you should benefit from
5 your delay.

6 MS. PEAVY: Thank you, Your Honor.

7 THE COURT: Or your failure to do that.

8 MR. PEEL: Your Honor, may I add one thing?

9 THE COURT: Sure.

10 MR. PEEL: I'm sorry. There is absolutely no
11 prejudice because it is their document. They know
12 what is in it.

13 THE COURT: And he has just received a copy of
14 it on April 8th. I am inclined to -- yes, I am
15 going to grant the motion. I know it ties into the
16 motion for summary judgment really.

17 MS. PEAVY: Okay.

18 THE COURT: But, yes, you know, Rule 15(a) --
19 is it? I don't know. Rule 15 allows amendment of
20 the pleadings. Amendments are freely given when
21 justice so requires and the opposing party is not
22 significantly prejudiced. I find that is the case
23 here, particularly in light of the fact that you
24 had a copy and you knew what it said. Yes. And
25 you were under a continued duty to disclose anyway.

1 So I will allow that amendment.

2 MR. PEEL: Thank you, Your Honor.

3 THE COURT: What is next? And before you even
4 get to the next motion, I see before me Defendant's
5 motion in limine to disqualify the Plaintiff's
6 expert witness and disregard purported expert's
7 affidavit.

8 Just reading the face of this motion, the
9 basis is that Mr. Hesse will testify about matters
10 within common knowledge of the jury and he is not
11 qualified to testify as an expert. Without having
12 heard his testimony, I mean --

13 MR. GOODWYN: And we would suggest we take
14 that up when we produce him.

15 THE COURT: Right. I can't rule on that now.
16 Certainly there will be an opportunity for you to
17 lay a foundation for him as an expert and the need
18 for his expert testimony. There will be an
19 opportunity for voir dire from the Plaintiff of his
20 qualifications. But I will not make a ruling on
21 that matter at this time.

22 MR. PEEL: Okay. Thank you very much. I'm
23 sorry, I misplaced my notes I made during lunch so
24 I could get through this quickly.

25 Next would be the Carolina Insurance Group's

1 motion, Mr. Derrick's motion to limit the testimony
2 of evidence and damages. And I think this is what
3 we were discussing earlier, and I think we were
4 kind of almost there, and may need just a little
5 guidance from the Court.

6 My motion was based on the fact that the
7 damages under the terms -- the damages in this
8 case, at least the base damages in this case, are
9 what would have been paid under the terms of the
10 policy.

11 And this is a builders risk policy that has a
12 valuation of actual cash value for whatever the
13 builder has put in place at the time of the loss,
14 labor and materials. And this was a vacant
15 structure policy, so anything he starts with is
16 covered and anything he added prior to the fire
17 would be covered.

18 And so what we discussed -- there was some
19 expert witness testimony that came up with a pretty
20 big number because it included a complete cleanout,
21 teardown, and rebuild, soup to nuts. And so I
22 think we have gone around with it basically. And I
23 think --

24 MR. GOODWYN: Our expert basically said to
25 repair it would be \$150,000, but to tear down and

1 rebuild would be much cheaper, maybe like 95 or 98.
2 Obviously I think we have to go with the lower
3 number because who would pick the higher number?
4 And that is about the value of the house at the
5 time of the loss anyway. He doesn't want us to put
6 up the \$150,000 number, which we are fine with,
7 because that is not --

8 MR. PEEL: And that is one thing that we're
9 kind of in agreement with on this case. All the
10 evidence of anybody I think will testify the home
11 was about between 90 and 95 percent complete at the
12 time of the fire. So almost all of the numbers,
13 regardless of where they are, revolve around
14 that -- in fact, very close to that valuation. So
15 I think we agreed to that.

16 MR. GOODWYN: Right. As long as we don't try
17 to go \$150,000.

18 THE COURT: If you have agreed, then there is
19 nothing for me to rule on.

20 MR. PEEL: What needs -- and we can argue this
21 later or object at the time. I'm not worried about
22 it. He's entitled to whatever money -- there are
23 different ways to come up with damages on
24 percentage of completion. I think we agree to
25 that.

1 THE COURT: Okay.

2 MR. PEEL: Your Honor, we have also a motion
3 in limine to exclude the testimony of Mr. Curry's
4 credit reports. These credit reports were provided
5 to me after Mr. Curry's second deposition, I think
6 in November 2015. I don't recall the exact date.
7 So I didn't depose about it, but I think from --
8 counsel has provided me with a nice summary sheet,
9 and I think what they are going to do is try to use
10 them to introduce -- showing that he is carrying
11 charges, made minimum payments for 24 months or so,
12 because -- he couldn't pay them off because he
13 couldn't sell the house.

14 Under any case law that I have been able to
15 find across the country, including the Fifth
16 Circuit, credit reports themselves are hearsay.
17 People that compile them, put them together, they
18 can testify as to what they mean, what they show,
19 what they include. They have to be here to testify
20 to that. Mr. Curry cannot introduce his own credit
21 reports into evidence because that is hearsay. And
22 I can cite a string of cases. And the only time
23 they have ever let credit reports in is when
24 somebody from the credit company comes in to
25 testify to them, because he is putting them in for

1 the truth of the matter asserted that this is the
2 amount of money I had to pay. So we would ask that
3 those be excluded.

4 THE COURT: How are they not hearsay, sir?

5 MR. GOODWYN: I mean, I see what he is saying
6 there. And like he said, I came up with a summary.
7 And the credit reports are probably too confusing
8 for the jury anyway, it is a lot of detailed
9 information, but I think he should certainly be
10 able to testify if we give him something to refresh
11 his recollection, Yes, these are my credit card
12 balances as of March 2014 and these were my minimum
13 payments as of that time. And then they total "x"
14 amount and I had to pay those for 25 months now
15 because the insurance policy didn't payoff.

16 His business model was to take his cash, use
17 it to pay contractors, and put -- use credit
18 cards -- he had to use credit cards to finance the
19 house, and then once the house was built, to sell
20 it and payoff the credit cards. He hasn't been
21 able to do that because of the Defendant's
22 negligence, so he has had these carrying costs. He
23 still has those credit card balances. And I think
24 even without the credit reports he can just testify
25 as to what his balances were as of the date of the

1 fire, the month of the fire, and what his carrying
2 costs have cost him since then until now.

3 THE COURT: Yes, sir.

4 MR. PEEL: I think he is agreeing as to the
5 credit reports. That leads to another issue, of
6 course, is his ability to testify as to what his
7 credit card balances were. I was not provided --
8 although I have been asking for it for months and
9 months and months -- credit card statements until
10 last week on this, and I was told that they were
11 not going to be introduced in trial. I think the
12 reason is because they show Bojangles and Taco Bell
13 and gas stations and they don't relate at all to
14 construction costs on the home, and so then we --

15 MR. GOODWYN: Your Honor, that --

16 MR. PEEL: I'm sorry. And then we open up a
17 whole problem. Whether or not that is the case.
18 Then there is a whole problem of foreseeability.
19 And then my ability to cross-examine him on those
20 credit card statements I have been asking for for
21 months and months, and deposed him twice, after his
22 complaint was amended. So those are all things
23 that are very speculative and really unforeseeable
24 and anyway it is consequential damages to the
25 failure to get an insurance policy. But I haven't

1 really heard how that is going to happen, but those
2 are the issues that I have even after we don't get
3 the credit reports.

4 MR. GOODWYN: There is case law on this type
5 of situation about consequential damages being
6 allowed in situations like this. Republic Textile
7 v. Aetna Insurance Company. That is 293 S.C. 381.

8 MR. PEEL: I agree with that. That wasn't
9 what I was talking about.

10 MR. GOODWYN: You know, if he had financed the
11 house in a more traditional fashion, just with a
12 mortgage broker and had mortgage payments over two
13 years, that would be a lot easier to say, Yes,
14 clearly you had these expenses, had to pay all this
15 interest, whether you were ordered to or not to do
16 that. Just because it is a little more complicated
17 and financed through a number of credit cards
18 doesn't change the essence of what he is asking
19 for. He has had carrying costs for two years
20 because the house was sitting there unrepaired,
21 unlivable, can't rent it, can't live in it, can't
22 do anything with it. It is just a burned out house
23 right now. And that is their fault, is what I'm
24 saying. Expenses with having to carry costs on
25 house, other than just getting money to rebuild it.

1 THE COURT: He is not going to attempt to
2 quantify that and say that, "X" dollars in interest
3 is because they didn't pay me, or something like
4 that, is he?

5 MR. GOODWYN: It is just going to be the
6 carrying -- what we are going to argue is look
7 at -- for the credit cards that he took out in late
8 2012, early 2013, to help finance the final push to
9 get the house complete, it is those balances, what
10 the balance was as of March of 2014 right after the
11 fire, and so just a minimum payments on those
12 cards, what he has had to pay just to carry them.
13 The balance hasn't gone down, the same balances, he
14 was just having to pay to carry the debt for this
15 time.

16 MR. PEEL: Your Honor, if we have to deal with
17 time, I guess we can do that. But, again, these
18 are not anything I was able to cross-examine him on
19 because I did not have --

20 MR. GOODWYN: He has had the credit reports
21 for months. And he knew we were making a claim for
22 those carrying costs.

23 THE COURT: Let's not interrupt each other.

24 MR. GOODWYN: I'm sorry. He --

25 THE COURT: If Mr. Peel could finish his

1 statement then I might understand what he is trying
2 to say.

3 MR. PEEL: I did not get the credit reports
4 until after his second deposition, okay? Although
5 I had asked for damages from Day One and got the
6 damages from Day One, I didn't get the credit card
7 statements on the disk until last week when I wrote
8 and asked for them again, if they were going to be
9 introduced, because I saw now we are going to
10 introduce credit reports, because I didn't know
11 what they were going to do with those credit
12 reports. I had no idea until they came up with a
13 summary sheet.

14 MR. GOODWYN: Maybe he can depose him at the
15 same time we are deposing your expert.

16 MR. PEEL: But, anyway, in the end, depose or
17 not, or notice, the foreseeability issue as to this
18 type of claims are going to be an issue. And I
19 really wasn't prepared to argue that today because
20 my motion really related to the credit reports. It
21 is something I can probably give you a more cogent
22 argument on if I had couple of minutes.

23 THE COURT: Foreseeability, including those
24 costs as damages?

25 MR. PEEL: Cost of damage right at the time we

1 sold the policy we are supposed to foresee that he
2 is going to -- if he doesn't get it paid off after
3 the fire that he is going to be living on credit
4 cards in order to finance this house, and we really
5 don't have any decent receipts as to what he was
6 doing in the house, because they did provide me
7 some receipts at the same time several months ago,
8 I can't read half of them, half of them aren't made
9 out to him. So it is a whole big issue. But I
10 don't need a ruling right now. I think we can take
11 it up at the time.

12 MR. GOODWYN: This is good point here. This
13 is the Republic case I cited.

14 The Republic case was cited as a tort cause of
15 action. It held that trial judge properly
16 instructed the jury to consider all pecuniary
17 losses that are a natural result of the Defendant's
18 misconduct, regardless of whether those losses
19 could have been anticipated.

20 So foreseeability, from their point of view,
21 when they sold the policy could they foresee, that
22 is not an issue. Is it, was it a natural
23 consequence of what happened? That is the
24 question.

25 THE COURT: Well, I think the question is, Is

1 it a natural consequence? Right. Which --

2 MR. GOODWYN: If they don't pay the policy for
3 two years, yes, it is going to cost you money to
4 have to carry this. You have a burned out house
5 you can't rent, you can't live in, it is going to
6 cost you money to live somewhere else just to pay
7 the debt on the house. That is a natural
8 consequence.

9 MR. PEEL: You're right, couldn't rent it.

10 THE COURT: All right, I'm going to reserve my
11 ruling on that at this time. You all agreed about
12 the credit report. I'm not so concerned about the
13 credit card bills. I understand that you got them
14 sort of late in the game, two weeks ago, ten days
15 ago, whatever it was. You know, if you feel some
16 need to be able to depose him on that issue, I
17 don't know that you would, but you certainly have
18 copies of the statements now and could
19 cross-examine him about any testimony.

20 MR. PEEL: I don't think that is such a big
21 issue. I think it is more of a legal argument. I
22 can of course go through it. It is a giant
23 notebook of them like that. But we could -- I
24 think counsel can address any issues. I have an
25 understanding of what was produced as they did

1 provide me a summary. I'm not real clear on that.
2 We can get together and straighten it out.
3 Anything else that has a legal argument I can bring
4 up at the time they try to introduce it will be
5 fine.

6 THE COURT: Okay. The only thing that is
7 left, then, is this motion for summary judgment.
8 And I understand that nobody was prepared to argue
9 that today.

10 My reading of Judge Lee's message is that, You
11 should be prepared for trial today and you can take
12 up any additional issues with the trial judge.
13 That would be me. The motions can be incorporated
14 into the defense of the case and argued at the
15 directed verdict stage.

16 I'm sort of struggling with that because that
17 is -- if that is what y'all were prepared to do,
18 that is what we'll do, but --

19 MR. PEEL: Can I state my concern on the
20 record?

21 THE COURT: Please.

22 MR. PEEL: Procedurally how this might be a
23 problem?

24 THE COURT: Please.

25 MR. PEEL: I filed the motion late, but I

1 think -- right at the eve of trial, and I don't
2 blame Ms. Peavy at all for not wanting to have to
3 deal with it right away because she is trying to
4 get ready for trial, just like me, working all
5 weekend. However, it is a legal issue and I just
6 became aware of it. If it is not ruled upon prior
7 to trial starting, then I don't have any idea of
8 what evidence that I need to put in, or at least
9 proffer and have turned down to preserve reversible
10 error. So I didn't think of that until we were
11 sitting here a minute ago. So it is a real issue.
12 And I think that that is what Judge Lee said, that
13 needs to be reconsidered, because my concern is
14 that I get to directed verdict and I have waived my
15 client's right to present that defense without
16 preserving error on the record regarding the
17 admission or not of the release for consideration
18 by the trier of fact.

19 THE COURT: And, obviously, counsel, that is
20 sort of my concern too, and that is why I said I
21 was sort of troubled by Judge Lee's decision.

22 MR. GOODWYN: I mean, I don't have any problem
23 with you seeing the release and ruling on the
24 release, and all of that. It is just we don't want
25 to go before the jury. Why can't we just kind of

1 stipulate that it is the release and it is in
2 evidence but not for the jury to see but for the
3 Court to see to rule on this summary judgment and
4 the release issue?

5 MR. PEEL: I think that is a perfectly
6 reasonable position. However, in reading the case
7 law on this, which we have not argued today, the
8 issue may become, if Your Honor says, I do not see
9 in the four corners of this document that it is a
10 release, we would have to offer extrinsic evidence
11 to demonstrate its intent. Or if you found that
12 there was a reason for extrinsic evidence and then
13 it would have to be introduced, I would have to
14 cross-examine Mr. Curry on it, and I just -- I
15 don't want to -- I don't want to waive my client's
16 rights.

17 MR. GOODWYN: My problem with that, though, is
18 extrinsic evidence, I wouldn't want to call
19 Scottsdale to come and say, Did you think you were
20 settling out with the other Defendant, and they
21 would say presumably no. But now we are here at
22 trial, they are in Arizona, I can't depose and get
23 them here. I have no way to show that. Not to
24 this jury. Maybe if we reserve that for, you know,
25 another trial, or something like that. But, I

1 mean, that is a problem with filing it the day of
2 the trial is that we can't get the witnesses we
3 need here to defend that argument.

4 (Pause.)

5 MR. PEEL: Your Honor, we have just discussed
6 it. I'm wondering if perhaps you will give us this
7 evening to more clearly present to the Court what
8 we believe the law to be is on this subject and aid
9 Your Honor in rendering a decision first thing in
10 the morning?

11 THE COURT: Actually, that is what I would
12 suggest actually. And, of course, prepare to begin
13 trial as though I denied your motion for summary
14 judgment. But, yes, overnight if you could pull
15 together your arguments, any law that you think
16 applies, and we'll start at 9:00 o'clock in the
17 morning.

18 MR. PEEL: Okay.

19 THE COURT: So that I can hear arguments.

20 MR. GOODWYN: We are going to argue the
21 summary judgment tomorrow?

22 MR. PEEL: She said be prepared to.

23 THE COURT: Yes.

24 MR. PEEL: Perhaps.

25 THE COURT: Yes. And I don't know what my

1 decision -- of course I don't know what my decision
2 will be at that point, and I know that that gives
3 you a really short turnaround, but --

4 MR. GOODWYN: I can't even get -- I have got
5 to provide an affidavit in response two days before
6 the motion. And I'd like to get one from
7 Scottsdale, get their take on what the intent was
8 and I can't do that.

9 MR. PEEL: At this point, I'm not asking -- I
10 think that would be the ruling is that as a matter
11 of law you can't consider anything outside of the
12 four corners of that document. If you can't decide
13 it based upon the four corners of that document,
14 that is the only time we need to get into that,
15 even worry about getting it to the jury.

16 MR. GOODWYN: Well, maybe we can just -- if
17 you rule that I can decide within the four corners,
18 that is one thing, then we don't have to worry
19 about what all this other extrinsic evidence is.

20 MR. PEEL: That's what I'm saying.

21 MR. GOODWYN: If we don't, yes. If you say, I
22 need extrinsic evidence, then we can cross that
23 bridge when we get there.

24 THE COURT: Right. I would agree with that.

25 MS. PEAVY: Thank you, Your Honor.

1 THE COURT: I know that is an odd sort of
2 situation.

3 MS. PEAVY: Uh-huh.

4 THE COURT: And it may or may not get us any
5 farther down the road in this case, but I think I
6 need to hear some preliminary arguments on it.
7 Something.

8 MR. GOODWYN: Right.

9 THE COURT: In the morning. That gives you
10 overnight to prepare as much as you can.

11 Yes, ma'am?

12 MS. PEAVY: I mean, there is many, many legal
13 issues contained in their motion for summary
14 judgment, Your Honor, that need to be fully
15 briefed. They are contending that, you know --
16 their whole thing goes to -- they say that it is a
17 question of law, but then they are talking about
18 the fact that we have identified them alternatively
19 as being agents of Scottsdale, but then the
20 testimony in the case is undisputed that both
21 Scottsdale and Carolina Insurance Group and
22 Mr. Derrick deny unequivocally that they are in any
23 kind of agency relationship. So, you know, already
24 there we're at questions of fact that are right
25 there.

1 MR. GOODWYN: And we're going to have to --

2 MS. PEAVY: They are saying the language of
3 the release releases Scottsdale's agents and they
4 have been identified as agents of Scottsdale even
5 though they themselves and Scottsdale have both
6 denied that they are agents, in an agency
7 relationship. So right there you are at a question
8 of fact, Your Honor.

9 MR. PEEL: Your Honor, I wasn't prepared to
10 argue it. If she wants to argue it, I'll do so.

11 MS. PEAVY: Just --

12 THE COURT: And, of course, right, like I
13 said, we are going to argue this in the morning. I
14 assume that their response to that would be that
15 the party's intent control -- of course, they were
16 not parties to this release -- and if it was your
17 intent -- if you believe that they are agents and
18 it was your intent to release agents of Scottsdale,
19 then --

20 MR. GOODWYN: We didn't know what they were.
21 You know, we just -- you pick out agents, you
22 don't --

23 THE COURT: I don't know. I am telling you
24 that may or may not be their response. I'm not
25 sure.

1 MR. GOODWYN: But, anyway, just because we
2 allege something doesn't make it so. If they are
3 not agents, in fact, if we thought they might have
4 been at some point, we were wrong. You don't know
5 when you file a complaint what the relationship is,
6 you just make allegations. They denied it. Okay.
7 It is not even a factor in the case anymore.

8 MR. PEEL: Except if you amend after you have
9 taken all the depositions.

10 MR. GOODWYN: I don't think so.

11 THE COURT: Well, I think it is akin to me
12 thinking that your name is Bob, and I say, Bob, go
13 over there, I intend to tell you to go out that
14 door, whatever it is, even though I may be wrong
15 about your name. I mean, my intent was to get you
16 to do a thing even though I'm wrong about the
17 identity. I don't know that is the argument.

18 MR. GOODWYN: Just for the record, I do want
19 to object to hearing the summary judgment motion
20 tomorrow just because this was filed last Friday,
21 we haven't had ten days' notice to prepare, we
22 cannot get any affidavits, and it is very short
23 notice for a complicated legal argument.

24 MR. PEEL: We don't intend to argue anything
25 outside the motion. And then, you know -- my

1 understanding is we may or may not argue. You want
2 us to be prepared to argue.

3 THE COURT: I want you to be prepared to
4 argue.

5 MR. PEEL: And then you want us to present
6 reasons why it may be prejudicial or not to deal
7 with it on the front end.

8 THE COURT: Absolutely.

9 MS. PEAVY: So the first issue is whether it
10 should even be heard, and then you'll decide
11 whether you will hear it based on those arguments,
12 Your Honor, if I'm understanding?

13 THE COURT: All right. Because there is a
14 real possibility that as a matter of law this case
15 should be over. I don't know. I don't know. And
16 that is their argument.

17 MS. PEAVY: Uh-huh.

18 THE COURT: So I'd like to hear arguments on
19 that issue in the morning.

20 MS. PEAVY: Thank you, Your Honor.

21 THE COURT: But also presume that I will deny
22 the motion and be prepared to try the case.

23 MR. PEEL: We are ready today, Judge.

24 THE COURT: Plus, I think the rules say that
25 outstanding motions are to be heard before

1 commencement of the trial of the case. I can't
2 find the rule right off, but --

3 MR. GOODWYN: It says we get ten days to
4 prepare a response for summary judgment.

5 THE COURT: I understand. I understand. All
6 right. So we will back at 9:00 o'clock tomorrow
7 morning.

8 MS. PEAVY: Thank you.

9 THE COURT: Thank you.

10 MR. PEEL: Your Honor, can we leave some of
11 our boxes?

12 THE COURT: Absolutely. The courtroom will be
13 locked.

14 (WHEREUPON, the requested proceedings
15 were concluded for the day at 4:10 p.m.)

16 APRIL 19, 2016

17 (WHEREUPON, the requested proceedings
18 resumed at 9:27 a.m.)

19 THE COURT: Good morning.

20 MS. PEAVY: Good morning, Your Honor.

21 MR. PEEL: Good morning, Your Honor.

22 THE COURT: Now, I know when we broke
23 yesterday I told you to prepare to argue the
24 summary judgment motion. And that is something I
25 was wrestling with both before starting yesterday,

1 throughout yesterday, last night, this morning,
2 because my concern is that there may or may not be,
3 I don't know, but there may be a valid defense to
4 this case.

5 However, because of the late nature of the
6 filing of the motion, or the amended motion at
7 least, for summary judgment just having been filed
8 yesterday, I tend to agree with the Plaintiff and
9 with Judge Lee, and I come back to it not being a
10 timely motion for summary judgment. And as Judge
11 Lee suggested, perhaps that defense needs to be
12 raised, argued, whatever, at the directed verdict
13 stage.

14 In order for that to happen -- I know we went
15 through several motions in limine yesterday, and I
16 think that specifically the one as to -- mention of
17 the settlement with Scottsdale or the mention of
18 Scottsdale Insurance Company, I forget exactly what
19 it was titled, since we have such a large file
20 here -- I maintain that it is not appropriate for
21 the jury to determine any setoff or reduction, or
22 anything like that, but I do think on a very, very
23 limited extent, if Mr. Peel feels it is necessary,
24 that you should be able to question the Plaintiff
25 about whether he signed this release, or something

1 of that nature, to -- I don't want to say --

2 MR. GOODWYN: I may have a way around all of
3 that.

4 THE COURT: Okay.

5 MR. GOODWYN: I think the question is -- their
6 argument, from what I understand, is that the
7 release to Scottsdale and its agents and because --
8 and then the question is, Are their clients agents?
9 That is the ultimate question. If they are not
10 agents, the release doesn't apply to them. If they
11 are agents, then the release applies to them. That
12 is my analysis of it.

13 And so the jury doesn't -- the jury doesn't
14 need to see the release. The only question -- fact
15 question -- that may be out there is, Are they
16 agents or not? And, again, we filed a stipulation
17 this morning that they are not. They have
18 alleged -- they denied the allegation that we made
19 in our complaint, and we filed a stipulation this
20 morning saying that they are not agents. We
21 stipulated to that fact now in this case. That is
22 a fact in the case. Anyway. If you want to send
23 it to the jury, that's fine, but they don't need to
24 see the release.

25 THE COURT: And I wasn't suggesting that the

1 jury would see the release or that it be admitted
2 into evidence, but to the extent that -- and I
3 don't know what the argument is going to be --

4 MR. GOODWYN: And we can stipulate to what we
5 need to to allow the judge to review the release.

6 MS. PEAVY: But, Judge, they are still asking
7 for the judge -- it incorporates the issue of the
8 judge construing what the release means.

9 THE COURT: Absolutely.

10 MS. PEAVY: What the release says. But that
11 is the summary judgment motion. And that is what
12 I'm saying, Your Honor. I think that what we need
13 to do here -- and I laid this out in my memorandum
14 this morning under the section entitled
15 "preliminary matters" as to whether the motion
16 should be heard.

17 Your Honor has correctly noted the ten day
18 requirement has not been met here. And we would
19 request that there be no hearing on the motion for
20 summary judgment, which necessarily incorporates
21 the judge hearing motions as to what the release
22 means as a matter of law and making a finding as a
23 matter of law. And that directly impacts our
24 ability to present our case, because if they are
25 allowed to get testimony as to, Well, you ended up

1 releasing Scottsdale from any claims in this
2 matter, then that means that there has been a
3 determination that they believe -- that there has
4 been a determination that the release is ambiguous
5 and therefore is a question for the jury, or there
6 has been a determination by the Court as a matter
7 of law that the release is not ambiguous and it
8 does apply to their client.

9 So, Your Honor, I think that that situation in
10 this case is for the motion for summary judgment
11 that was filed -- obviously we can't have a timely
12 hearing of it now -- that it be added to the
13 motions roster, Your Honor, and that the trial of
14 this matter not go forward, because it all circles
15 back to the process of what the release means. And
16 they can't argue that properly within this case.
17 They need to be able to argue it in a separate
18 summary judgment motion.

19 THE COURT: And I don't want to play a
20 semantics game, but really sort of envisioning what
21 Judge Lee meant and what I think would be
22 appropriate -- I understand it is styled as a
23 summary judgment motion -- is not appropriate at
24 this time, because you have not had ten days'
25 notice. However, at the directed verdict stage,

1 after the Plaintiff has presented their case, or
2 may be at some point after the Defendant has
3 rested, I don't know which would be appropriate or
4 whether it would be an appropriate argument at
5 either time, but in any trial at the directed
6 verdict stage the contention of the party making
7 the motion is that there is either a lack of
8 evidence as to some element or just as a matter of
9 law just in general the case should not be
10 submitted to the jury. There is nothing for the
11 jury to determine, no issues of fact for the jury
12 to consider, because as a matter of law the case
13 cannot go forward. That is essentially what the
14 summary judgment motion is, that as a matter of law
15 this case cannot go forward. And maybe it can't
16 come up at summary judgment, but certainly at a
17 trial the judge can determine as a matter of law
18 whether the case goes forward.

19 MS. PEAVY: Your Honor, certainly that is the
20 standard for directed verdict, but in order for
21 them to make a motion for directed verdict based on
22 the grounds they listed in their summary judgment
23 motion, the release has to be part of the record.
24 And it has to be evidence in the case. And it is
25 not evidence in the case.

1 THE COURT: Let me hear from you, Mr. Peel.

2 MR. PEEL: Thank you. And, Your Honor, and
3 I'd like permission to put something on the record.
4 I hear you have ruled about hearing it, but I think
5 just to preserve errors I have got to do this, if
6 it is okay with you, just briefly.

7 THE COURT: Absolutely.

8 MR. PEEL: As to the timeliness of the filing,
9 because I think we all spent a lot of time last
10 night getting ready for this today, but Your Honor
11 was correct yesterday, Rule 16, as a matter of fact
12 I believe it lets the trial judge take care of all
13 outstanding motions prior to trial. And, in fact,
14 Summer Place v. Knight, 379 S.E.2d 724 -- I hand
15 the Court a copy, if that is okay -- the Court of
16 Appeals -- this is one of Judge Peeples' cases
17 where he ruled in chambers on summary judgment with
18 no notice -- the Court said they have a summary
19 judgment pending and they weren't aware it had been
20 decided at pretrial conference with no court
21 reporter present without violating the civil
22 procedure rules. And Court Administration can
23 provide all motions pending at the time of pretrial
24 hearing which was not presented for disposition so
25 it wouldn't violate Rule 56.

1 As to timeliness, I feel like I've got to
2 address that, because I reviewed all the
3 correspondence in the file last night. I was never
4 served, ever, under Rule 5 with a file copy or even
5 a transmitted copy to the court of the stipulation
6 of dismissal. I never received that. In addition
7 to not receiving the release, I never even got the
8 stipulation. Now, I know the case was settled. I
9 was aware. They asked me to sign the stipulation
10 and I sent it back.

11 THE COURT: Go ahead.

12 MR. PEEL: But I was never served with it. So
13 until I realized I didn't have any of this,
14 April 8th is the first day I got it, so April 8th
15 it is impossible for me to comply with Rule 56(c)
16 and file a motion for summary judgment, because
17 that puts -- I think ten days is still like
18 tomorrow or the next day, before I could file it.
19 So it clearly was included in my request for
20 production that all e-mail correspondence, notice
21 statements between the parties, and it was not
22 supplemented.

23 So a party should not be able to profit from
24 their own wrongdoing by putting me in this
25 position, but I do agree with Ms. Peavy, because I

1 think we do have an evidentiary issue, that the
2 problem exists upon our review of the case law last
3 night. It is no problem at all if Your Honor
4 reviews the settlement release and says it is
5 unambiguous and rules for either one of us. That
6 does not create a problem. What creates the
7 problem, Ms. Peavy is right, is that if there is a
8 ruling of ambiguity --

9 THE COURT: Sure.

10 MR. PEEL: -- then there is a question of fact
11 to be reviewed by the jury. And if it is not dealt
12 with pursuant to Rule 16 -- I say that is the
13 reason for that rule -- then there is a real issue
14 when we get to the directed verdict stage. And
15 Ms. Peavy is right. I think we have to deal with
16 it or we have to continue the trial. Otherwise, my
17 client will be prejudiced on that defense, because
18 I agree we don't -- we can't -- I mean, I think
19 there is a prejudicial effect to the jury if it
20 came in. It would outweigh those risks. But if we
21 have an issue and we have determined -- if we
22 determined that it is ambiguous, as the Court may
23 well find, then we have got to get a determination
24 of fact.

25 The stipulations now as to what was said in

1 the complaint -- I feel like I need to address
2 that -- don't matter. All that matters is what was
3 going on at the time the release was entered.

4 THE COURT: Right.

5 MR. PEEL: But, Your Honor, I think it is the
6 exact reason of Rule 16 is to prevent situations
7 like that. And, like I said, it is not fair to
8 prejudice my client because we didn't get this
9 until the week before trial.

10 MR. GOODWYN: And, again, we're fine --

11 THE COURT: Mr. Peel, the motion for summary
12 judgment filed on yesterday morning was an amended
13 motion. When was the original motion filed?

14 MR. PEEL: Friday.

15 THE COURT: Do you have a copy of that that I
16 can look at? We're having trouble locating it.

17 MR. GOODWYN: I think we do.

18 THE COURT: And it may not have made it to the
19 court's file because it was not on the shelf in
20 preparing for this trial. I don't know.

21 MR. PEEL: Your Honor, that is the danger of
22 keeping everything electronically.

23 MR. GOODWYN: This is my copy here.

24 (Hands to Court.)

25 THE COURT: Thank you, sir.

1 MS. PEAVY: Your Honor --

2 MR. GOODWYN: Now that he has kind of said
3 what he said, I mean, we don't have objection to
4 the trial being continued so all this issue about
5 the release and whether the Defense -- the release
6 is valid can be determined.

7 MS. PEAVY: The reality, Your Honor, is that
8 if either side gets an adverse -- and we believe
9 they are moving obviously for a motion for summary
10 judgment as to their affirmative defense of
11 release. And so there will be rulings issued on
12 the motions for summary judgment. The parties will
13 presumably want to submit affidavit testimony or
14 further testimony in response. And so we believe
15 the proper thing is to continue this trial so that
16 these motions can be heard, and then any appeal
17 from the granting or denial of such motions can
18 work its way through the system. Because, really,
19 this issue is now becoming the crux of the case.

20 THE COURT: Well, I tell you, I considered --
21 and that is where I was yesterday afternoon --
22 continuing the trial. My concern is that this was
23 set for a day certain.

24 MR. GOODWYN: Only because of the expert's
25 schedule.

1 THE COURT: And --

2 MR. GOODWYN: We didn't know about all these
3 problems.

4 THE COURT: Let me just note, though, it was
5 scheduled for a day certain to accommodate your
6 expert, who is then not available on Wednesday or
7 Thursday of this week.

8 MR. PEEL: It was supposed to be a two to
9 three day trial when that was agreed to in the
10 status conference with Judge Lee. I apologize for
11 that. I thought he could be here. But we could --
12 generally, unless he's being a sponsor like he was
13 this day, then he would be able to get somebody to
14 sub for the course.

15 THE COURT: So he doesn't need -- I mean, you
16 don't need a day certain?

17 MR. GOODWYN: Not generally.

18 MR. PEEL: Well, what I could do is the next
19 couple of terms I can go check right away and see
20 about his schedule and we can work around it.
21 Generally two days is unusual unless he has to
22 teach in Boston sometimes. Usually it is one day.
23 So usually it is fairly easy to work around.

24 MR. GOODWYN: Are you available next month if
25 it is continued to try the case?

1 MS. PEAVY: May or June?

2 MR. GOODWYN: We're available. Because of the
3 prejudice to the jury and this whole release issue
4 and the timing, it just makes a lot of sense to get
5 this issue resolved first so we don't prejudice the
6 jury by any exposure to the release.

7 MR. PEEL: Judge, I want to say something to
8 make something clear. Not getting the release, I
9 believe that is completely inadvertent. I don't
10 want anyone to think I am saying that they held
11 back the release.

12 MR. GOODWYN: The day he asked, we gave it to
13 him. I never sent a Rule 11 letter saying, Hey, I
14 know there is a release out there, please provide
15 it. As soon as he asked for it, we gave it to him.

16 THE COURT: I understand. And, frankly -- I
17 know this is maybe asking a bit much, I know how
18 the practice of law goes -- but I think had you
19 received the release on April 8th, reviewed it that
20 day, and filed a motion for summary judgment that
21 day, we would not be here, because even excluding
22 that day, today would be the tenth day.

23 MR. PEEL: Well, even so, it doesn't apply.
24 Technically, as the practice of law goes, I did get
25 it that day, but getting ready for this trial --

1 THE COURT: I understand. I understand.

2 MR. PEEL: -- I'm not sure --

3 THE COURT: I understand.

4 MR. GOODWYN: The next nonjury calendar is ten
5 days from Friday. And that should give us plenty
6 of time for the judge to rule and let the judge
7 know we're on the trial calendar for the next term.

8 MS. PEAVY: I mean, that would be up to the
9 Clerk's Office, what motions roster it would be
10 placed on, Your Honor, but we are going -- we are
11 filing -- have filed a motion for summary judgment
12 today, almost like a cross motion on the
13 affirmative defense of release, and so then they
14 will need ten days to respond to that as well,
15 so --

16 MR. GOODWYN: Ten days from today.

17 THE COURT: So what I'm going to do, I am
18 going to continue the case. It will be continued
19 until May 9th. Because you need ten days' notice
20 on these motions, it cannot be scheduled next week.
21 And then the week of May 2nd there is no court. So
22 the next available appropriate term of court will
23 be May 9th. I do not intend to ask the Clerk's
24 Office to put it on any special motions roster or
25 schedule it as they would motions. You will come

1 in that morning prepared to argue the motions. And
2 depending on the outcome of those motions, you will
3 begin the trial that morning.

4 MR. PEEL: Your Honor, and we can deal with my
5 expert. If it looks like he is out of town, we can
6 go ahead and get his video deposition done, so that
7 way --

8 MR. GOODWYN: I don't have a calendar of court
9 terms. Is there another term of court close to
10 that? We have got a huge federal court case with a
11 class action with six motions that day, or that
12 week.

13 MS. PEAVY: Well, Your Honor, the other issue
14 I anticipate with that is almost the same issue
15 that has impacted this trial this week, is that if
16 we receive -- if a motions hearing is held, but at
17 the same time we are preparing for the trial of the
18 case, then all the witnesses have been corralled.
19 But if an adverse ruling is entered for either
20 party, then it would be an appealable issue, Your
21 Honor, and then the jury would have been convened
22 and the witnesses would have been assembled here,
23 and then it would all be -- the court's resources
24 would have been --

25 MR. GOODWYN: It will be more judicially

1 efficient, I think is what she is saying, to have
2 the motions hearing held a few days before so we
3 know the result before we actually go in the
4 courtroom and have everybody ready.

5 MS. PEAVY: And qualify a jury and strike a
6 jury, and everything else, Your Honor.

7 THE COURT: I understand. The problem is,
8 Judge Lee said this case will not be continued, it
9 has been continued a number of times. So I am sort
10 of stepping out on a limb in continuing it at all.
11 I will be happy to have a motions hearing before
12 the 9th, except that I am not available. You know,
13 I --

14 MR. GOODWYN: Is there a nonjury calendar,
15 motions calendar between now and then that
16 anybody -- I mean, that should be put on that
17 calendar.

18 MS. PEAVY: And, Your Honor, we can certainly
19 write Judge Lee and her law clerk to request it be
20 added to a different motions roster and explain the
21 situation.

22 THE COURT: I mean, allowing ten days' notice
23 from -- no, there isn't. There isn't another term
24 of court, because ten days' notice, if you filed a
25 motion this morning, exclusive of today, would put

1 us into --

2 MS. PEAVY: I'm talking about a motions
3 nonjury term.

4 MR. GOODWYN: When is the next motions
5 calendar? Because he said he would waive ten days'
6 notice if -- I mean, as long as we have four or
7 five days, I think that would be plenty, or
8 something within ten days.

9 THE COURT: I don't really know how to read
10 the calendar. Is there a motions term next week,
11 or do you know?

12 THE CLERK: I'm not sure.

13 THE COURT: There may or may not be a day that
14 we can stick it on next week. Again, I'm not
15 available next week. And then there is --

16 MR. GOODWYN: Maybe we can ask Judge Lee for a
17 special set date for us next week.

18 THE COURT: Right. Except that I don't know
19 Judge Lee's schedule, and I am not going to just
20 leave it out there. I want it scheduled before we
21 leave here today.

22 MR. GOODWYN: Can we maybe consult with Judge
23 Lee before we leave?

24 THE COURT: She's in court. And I hear what
25 you are saying about the 9th. And I don't know

1 that that is -- having the witnesses come and
2 having to be prepared for trial is so much judicial
3 efficiently so much as convenience for your
4 witnesses or not, I don't know. But if there is no
5 motions term next week, then it will have to be the
6 9th. And then you'll be prepared to go forward at
7 that time with whoever the judge is.

8 MS. PEAVY: Okay.

9 MR. GOODWYN: I don't know my rules of
10 conflict with federal court. Do federal motions
11 take precedence over a jury trial?

12 (Pause.)

13 THE COURT: Mr. Truitt is on the way.

14 (Pause.)

15 THE COURT: As to the 9th, you say you have
16 motions in federal court?

17 MS. PEAVY: We have a pending class action in
18 federal court.

19 THE COURT: What is scheduled for the 9th?

20 MS. PEAVY: Scheduled for the 9th is
21 approximately 10 to 12 motions that have been
22 pending in the case for approximately six months.
23 And Judge Childs' office elected to schedule them
24 on May 10th.

25 (Mr. Truitt enters courtroom.)

1 MR. TRUITT: Hello, Your Honor.

2 THE COURT: Hello. These folks were set to
3 begin trial this week. They have some motions that
4 need to be heard in advance of trial. I don't want
5 to continue the case for too, too long, and so I'm
6 trying to figure out what is going on next week.
7 Does somebody have a motions term throughout the
8 week where I can tag them on one day? Or I don't
9 really know how to read the calendar where it says
10 nonjury, what that really means.

11 MS. PEAVY: It is showing Judge Hood is here.
12 We were wondering if he could possibly fit.

13 MR. TRUITT: Judge Hood is doing motions.

14 THE COURT: Motions, motions, motions?

15 MR. TRUITT: Yes.

16 THE COURT: Okay. That's what I needed to
17 know. Thank you.

18 So what we are going to do is add on --

19 MR. GOODWYN: The 25th, it says.

20 THE COURT: Says what?

21 MR. GOODWYN: Judge Hood's motions calender.

22 THE COURT: So I am just going to squeeze two
23 motions in in this case. So I'll try to pick a
24 time where there are lots of motions to compel or
25 something.

1 (Colloquy held off record.)

2 THE COURT: What day?

3 MR. GOODWYN: The 25th?

4 MR. PEEL: Judge, the only day I can't is
5 Thursday. I have got my schedule out.

6 THE COURT: It says: Appearance shall have
7 such priority as is appropriate. But because it
8 has been scheduled a while, I am going to continue
9 the trial until I guess the week of May 16th. And
10 if it can't happen, I mean, you know, if it is
11 stayed pending some appeal, that -- but, if not, if
12 there is no reason not to go to trial, if no appeal
13 is filed after these motions are decided,
14 dada-dada-da, we should be prepared to try the case
15 on May 16th.

16 MR. GOODWYN: Oh, absolutely.

17 MS. PEAVY: Okay. And, obviously, Your Honor,
18 that would also depend on Judge Hood issuing an
19 order prior to the May 16th term. Okay.

20 MR. GOODWYN: We will let him know that we
21 were in here and that we really need to try the
22 case by the 16th.

23 THE COURT: Absolutely. Absolutely.

24 MR. PEEL: And I will take care of my expert.

25 If we need to, I'm sure we will work out a date, we

1 will do a video deposition.

2 MR. GOODWYN: Yes.

3 MR. PEEL: That way it is not an issue.

4 THE COURT: Right. So, just to be clear, in
5 addition, I forget which expert hasn't been
6 deposed --

7 MR. GOODWYN: Well, now the expert is
8 finally -- well, I guess we have time to depose
9 their expert if we want to between now and trial.

10 THE COURT: Absolutely. So any depositions,
11 any additional discovery --

12 MR. GOODWYN: And they can depose our guy.

13 THE COURT: Exactly. And for whatever reason,
14 if the Defendant needs to depose the Plaintiff to
15 talk about those credit card statements, that all
16 needs to be done before May 16th.

17 MR. GOODWYN: Okay.

18 MS. PEAVY: Thank you so much.

19 MR. GOODWYN: All right. Thank you. Tell the
20 jury we apologize for all the confusion.

21 THE COURT: Absolutely.

22 MR. GOODWYN: They will probably be really
23 happy. They can actually say they have served now,
24 they have been sworn?

25 THE COURT: They have not been sworn.

1 MR. GOODWYN: Oh.

2 MR. PEEL: Judge, thank you. Sorry for the
3 confusion.

4 THE COURT: Thanks, Jim.

5 MR. TRUITT: You're welcome.

6 THE COURT: We are going to bring the jury
7 back in, so y'all just sit tight and have a seat
8 while I dismiss the jury.

9 (WHEREUPON, the jury was dismissed.)

10 (WHEREUPON, at 10:05 a.m., the requested
11 proceedings were concluded.)

12 *****

13

14

15

16

17

18

19

20

21

22

23 (END OF REQUESTED TRANSCRIPT)

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the FIFTH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and partial Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 18th and 19th days of April, 2016.

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

June 23, 2016

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

\$15,000 [1] 7/5 \$150,000 [3] 61/25 62/6 62/17 \$2,500 [1] 49/17 \$2,700 [2] 53/1 53/13 \$5 [6] 50/12 51/19 52/21 53/13 54/21 55/1 0 04661 [1] 1/2 1 10 [1] 97/21 100 [2] 12/23 16/1 100 miles [1] 15/16 10:05 [1] 101/10 10th [2] 29/1 97/24 11 [2] 39/6 92/13 11th [1] 24/14 12 [1] 97/21 12/3/2008 [1] 51/5 128 [1] 27/13 15 [2] 59/18 59/19 16 [3] 86/11 88/12 89/6 16th [5] 99/9 99/15 99/19 99/22 100/16 18 [1] 3/1 18-19 [1] 1/10 18th [1] 102/15 19 [2] 1/10 80/16 19th [1] 102/15 2 2007 [3] 7/25 8/1 51/4 2007/2008 [1] 49/8 2008 [5] 8/3 49/8 49/15 51/5 53/14 2009 [2] 51/6 51/6 2009/2010 [1] 52/9 2010 [1] 52/9 2012 [1] 67/8 2013 [1] 67/8 2014 [9] 24/4 24/13 26/11 26/15 28/4 28/12 32/8 64/12 67/10 2014-CP-40-04661 [1] 1/2 2015 [8] 28/10 28/15 28/17 33/4 35/19 35/22 39/3 63/6 2016 [6] 1/10 3/1 24/14 80/16 102/15 102/19 23 [1] 102/19 24 [1] 63/11 25 [1] 64/14 25th [6] 28/3 28/10 28/17 33/4 98/19 99/3 26 [1] 25/5 260 [1] 7/3 293 [1] 66/7 2:30 [1] 3/3 2nd [1] 93/21 3 30 [3] 6/25 7/5 7/6 30th [3] 29/4 29/5 35/22 379 [1] 86/14 381 [1] 66/7 3:28 p.m [1] 46/21 3:30 [2] 45/11 48/19 4 40-59-30 [1] 6/25 457 [1] 27/10 4:10 [1] 80/15 4:30 [1] 47/9 5 56 [2] 86/25 87/15 580 [1] 27/13	702 [1] 24/20 705 [1] 27/10 724 [1] 86/14 8 8th [9] 37/18 38/10 44/8 56/10 56/19 59/14 87/14 87/14 92/19 9 90 [1] 62/11 95 [1] 62/1 95 percent [1] 62/11 98 [1] 62/1 9:00 [2] 74/16 80/6 9:27 [1] 80/18 9:30 [2] 47/16 48/15 9th [9] 28/15 93/19 93/23 95/12 96/25 97/6 97/15 97/19 97/20 A a.m [2] 80/18 101/10 AAO [2] 49/14 50/12 ability [4] 17/1 65/6 65/19 83/24 able [18] 3/6 4/5 17/16 17/20 18/5 46/7 46/9 48/10 58/9 63/14 64/10 64/21 67/18 70/16 81/24 84/17 87/23 91/13 about [61] 3/8 3/9 6/10 8/17 10/13 11/11 14/1 14/9 14/16 19/16 19/19 19/21 20/4 20/9 23/20 27/24 33/20 37/16 38/18 41/8 47/6 47/18 47/19 47/20 47/25 48/7 48/10 49/20 49/25 50/2 50/9 50/17 51/4 51/10 51/22 51/25 53/18 57/9 60/9 62/4 62/11 62/21 63/7 66/5 66/9 70/11 70/12 70/19 75/15 75/19 76/17 78/15 78/16 81/25 86/4 90/4 91/2 91/20 96/2 96/25 100/15 absolutely [14] 20/16 20/18 34/8 34/8 59/10 79/8 80/12 83/9 86/7 99/16 99/23 99/23 100/10 100/21 accident [1] 12/21 accommodate [1] 91/5 according [1] 53/1 accurate [3] 45/24 54/11 102/11 across [1] 63/15 act [5] 7/16 8/10 8/15 18/23 38/14 action [7] 10/19 22/12 35/17 36/25 69/15 94/11 97/17 actions [1] 22/10 activity [1] 15/14 actual [2] 58/12 61/12 actually [16] 7/24 10/2 27/9 28/11 38/10 42/12 42/17 42/18 42/20 44/25 45/13 55/25 74/11 74/12 95/3 100/23 add [3] 38/8 59/8 98/18 added [3] 61/16 84/12 95/20 addition [2] 87/6 100/5 additional [5] 29/12 35/8 43/23 71/12 100/11 address [5] 4/12 42/5 70/24 87/2 89/1 addressed [1] 54/13 adjuster [3] 24/11 26/16 31/18 administering [1] 43/10 Administration [1] 86/22 admissibility [1] 54/8 admission [2] 41/19 72/17 admit [2] 8/3 28/18 admitted [2] 10/9 83/1 advance [1] 98/4 adverse [2] 90/8 94/19 Aetna [1] 66/7 affidavit [3] 60/7 75/5 90/13 affidavits [1] 78/22	93/13 after [17] 17/4 26/10 26/10 27/25 34/6 42/2 44/9 63/5 65/21 66/2 67/10 68/4 69/2 78/8 85/1 85/2 99/13 afternoon [6] 45/7 47/1 47/12 47/14 48/14 90/21 again [10] 10/5 20/1 33/18 41/18 42/3 67/17 68/8 82/16 89/10 96/14 against [15] 18/25 22/10 22/13 34/19 35/5 35/9 35/10 35/13 35/14 35/19 36/3 36/6 36/20 36/25 37/1 agency [2] 76/23 77/6 agent [1] 35/1 agents [17] 30/16 39/1 39/5 76/19 77/3 77/4 77/6 77/17 77/18 77/21 78/3 82/7 82/8 82/10 82/11 82/16 82/20 ago [7] 24/14 32/25 57/15 69/7 70/14 70/15 72/11 agree [15] 3/6 8/25 15/22 17/9 20/11 20/15 20/17 37/13 45/2 62/24 66/8 75/24 81/8 87/25 88/18 agreed [6] 49/2 50/8 62/15 62/18 70/11 91/9 agreeing [1] 65/4 agreement [5] 22/22 41/19 43/20 58/12 62/9 agrees [1] 15/16 ahead [3] 42/18 87/11 94/6 aid [1] 74/8 akin [1] 78/11 all [75] 3/5 7/16 7/21 8/13 9/17 10/23 11/16 11/17 11/20 17/8 18/12 19/23 21/6 28/2 28/12 28/13 28/15 29/3 29/16 30/12 31/10 31/23 32/2 32/20 35/21 37/5 38/25 40/21 43/15 47/25 48/10 48/11 48/20 49/17 50/4 50/6 50/14 52/19 53/6 53/12 54/7 55/18 55/20 62/9 62/12 65/13 65/22 66/14 69/16 70/10 70/11 72/2 72/4 72/24 75/19 78/9 79/13 80/5 82/2 84/14 86/9 86/12 86/23 87/2 87/20 88/3 89/2 90/4 91/2 94/18 94/23 95/10 100/15 100/19 100/20 allegation [1] 82/18 allegations [3] 12/16 18/3 78/6 allege [1] 78/2 alleged [3] 4/13 37/1 82/18 allegedly [1] 10/3 alleges [1] 39/4 alleging [4] 4/19 14/23 23/5 23/6 allow [11] 8/12 18/22 20/7 20/9 20/11 21/15 25/7 32/21 36/9 60/1 83/5 allowed [6] 8/22 15/1 30/25 56/17 66/6 83/25 allowing [1] 95/22 allows [1] 59/19 almost [6] 26/9 45/11 61/4 62/12 93/12 94/14 alone [1] 19/16 along [1] 14/15 already [8] 32/14 36/23 43/1 45/11 47/5 53/3 56/12 76/23 also [10] 26/20 28/23 38/4 38/25 42/13 46/6 48/3 63/2 79/21 99/18 alternatively [1] 76/18 although [2] 65/8 68/4 always [3] 9/10 15/4 18/21 am [18] 13/17 42/20 45/4 45/22 47/13 54/7 55/3 59/14 59/14 77/23 92/10 93/17 95/9 95/12 96/19 98/22 99/8 102/16 ambiguity [1] 88/8 ambiguous [3] 84/4 84/7 88/22 amend [9] 38/8 46/8 56/5 56/7 56/17 56/22 57/8 57/13 78/8 amended [5] 39/2 39/3 65/22 81/6 89/12 amendment [2] 59/19 60/1 Amendments [1] 59/20
--	--	--

among [1] 35/21 amount [3] 30/7 64/2 64/14 analysis [3] 31/21 39/23 82/12 and/or [3] 4/15 4/20 7/6 another [13] 3/25 19/19 30/20 38/2 40/25 47/8 50/14 51/11 55/22 65/5 73/25 94/9 95/23 answer [5] 17/19 23/16 23/18 46/8 48/8 anticipate [1] 94/14 anticipated [2] 47/5 69/19 any [74] 3/6 4/8 5/3 5/7 6/5 6/10 7/12 7/17 8/11 8/20 8/23 9/1 9/2 9/22 10/7 10/8 10/10 10/17 10/18 12/15 12/16 15/10 15/16 18/23 20/4 20/5 20/5 20/24 21/21 21/23 28/6 29/12 29/17 30/23 33/20 36/13 36/14 36/20 39/17 41/23 43/22 46/2 47/18 47/19 47/20 53/16 53/18 54/10 57/1 57/18 57/19 57/20 57/20 63/14 69/5 70/19 70/24 71/12 72/7 72/22 74/15 76/4 76/22 78/22 81/21 84/1 85/5 87/13 90/16 92/6 93/24 100/10 100/11 102/17 anybody [3] 50/9 62/10 95/16 anymore [1] 78/7 anyone [2] 10/6 92/10 anything [24] 5/1 9/5 14/14 16/19 22/18 23/1 23/15 28/19 29/9 31/13 32/13 33/19 38/1 41/8 46/2 57/19 61/15 61/16 66/22 67/18 71/3 75/11 78/24 81/22 anytime [1] 31/8 anyway [8] 19/6 59/25 62/5 64/8 65/24 68/16 78/1 82/22 apologize [3] 44/10 91/10 100/20 apparently [1] 37/20 appeal [4] 90/16 99/11 99/12 102/13 appealable [1] 94/20 Appeals [3] 25/18 25/22 86/16 Appearance [1] 99/6 applies [2] 74/16 82/11 apply [4] 24/1 82/10 84/8 92/23 approach [2] 25/14 45/1 appropriate [12] 12/25 14/7 14/8 14/19 21/18 81/20 84/22 84/23 85/3 85/4 93/22 99/7 approximately [2] 97/21 97/22 April [15] 1/10 3/1 24/14 37/18 38/10 44/8 56/10 56/19 59/4 59/14 80/16 87/14 87/14 92/19 102/15 April 11th [1] 24/14 April 8th [9] 37/18 38/10 44/8 56/10 56/19 59/14 87/14 87/14 92/19 are [126] aren't [3] 8/19 39/9 69/8 arguably [1] 10/13 argue [28] 4/7 20/12 20/21 42/24 43/17 43/18 43/24 44/20 45/22 46/9 53/12 54/21 62/20 67/6 68/19 71/8 74/20 77/10 77/10 77/13 78/24 79/1 79/2 79/4 80/23 84/16 84/17 94/1 argued [4] 41/15 71/14 73/7 81/12 argues [1] 55/7 arguing [1] 4/5 argument [20] 16/15 21/16 21/17 21/18 32/23 50/15 52/23 54/20 55/2 55/5 68/22 70/21 71/3 74/3 78/17 78/23 79/16 82/6 83/3 85/4 arguments [10] 38/6 40/3 42/21 43/12 44/3 74/15 74/19 76/6 79/11 79/18 Arizona [1] 73/22 around [6] 49/16 61/22 62/13 82/2 91/20 91/23	as [128] ask [24] 5/18 6/9 9/6 11/16 11/17 11/20 12/20 13/1 14/9 14/13 22/7 22/15 41/9 45/14 47/15 48/7 50/5 55/3 56/16 57/12 58/3 64/2 93/23 96/16 asked [8] 12/22 29/8 37/19 68/5 68/8 87/9 92/12 92/15 asking [9] 19/19 52/17 53/17 65/8 65/20 66/18 75/9 83/6 92/17 aspects [1] 19/11 assembled [1] 94/22 Assembly [1] 16/20 assert [4] 46/8 56/6 56/17 57/9 asserted [2] 35/12 64/1 assertion [1] 12/17 assessor's [2] 52/24 54/5 assume [1] 77/14 assumes [1] 5/16 assuming [1] 36/11 attempt [2] 5/9 67/1 attempts [1] 10/24 Attorney [1] 1/21 attorneys [6] 1/20 47/3 47/19 47/23 48/24 49/2 authenticate [1] 54/15 authenticated [1] 10/10 authenticity [1] 54/12 authorities [1] 9/21 authority [1] 15/8 available [7] 34/10 91/6 91/24 92/2 93/22 95/12 96/15 avoid [1] 14/21 aware [12] 24/18 25/6 28/20 29/11 29/16 29/22 32/14 33/5 33/5 72/6 86/19 87/9 away [2] 72/3 91/19	9/22 10/2 10/10 12/7 12/9 12/15 13/4 14/4 14/5 21/5 25/24 26/11 26/13 32/3 32/20 35/12 37/21 39/25 42/5 43/10 47/5 48/23 49/21 51/25 57/5 58/13 58/16 61/9 63/14 64/20 65/8 65/20 69/19 77/4 78/4 81/7 83/18 84/2 84/4 84/6 86/19 94/18 94/21 94/22 94/24 95/9 97/21 99/8 100/5 100/24 100/25 before [24] 11/13 11/25 19/15 20/7 24/5 28/11 28/21 35/4 41/7 47/17 60/3 60/4 72/25 75/5 79/25 80/25 87/18 89/9 95/2 95/3 95/11 96/20 96/23 100/16 beforehand [1] 37/15 begin [4] 48/15 74/12 94/3 98/3 beginning [1] 42/2 being [15] 15/1 17/13 17/15 20/12 27/13 27/23 29/8 39/22 44/10 58/9 66/5 76/19 81/9 90/4 91/12 belief [1] 28/7 believe [17] 5/9 5/23 14/3 21/14 22/24 36/1 37/3 38/5 55/17 55/21 74/8 77/17 84/3 86/12 90/8 90/14 92/9 believed [1] 10/7 Bell [1] 65/12 benefit [3] 43/21 58/19 59/4 benefits [2] 16/7 34/23 Bensh [1] 27/12 besides [1] 29/13 best [2] 42/18 43/13 between [7] 36/24 37/22 57/19 62/11 87/21 95/15 100/9 Bi [2] 7/16 22/3 Bi-Lo [2] 7/16 22/3 big [4] 29/24 61/20 69/9 70/20 bills [2] 6/22 70/13 bit [3] 37/15 37/16 92/17 blame [1] 72/2 board [1] 12/12 Bob [2] 78/12 78/12 Bojangles [1] 65/12 bold [1] 12/17 Boston [1] 91/22 both [7] 4/17 8/3 31/2 50/17 76/20 77/5 80/25 bothers [1] 31/9 bought [3] 49/25 51/7 53/17 bow [1] 14/11 boxes [1] 80/11 breach [3] 15/19 19/8 35/15 breached [1] 17/21 break [1] 23/21 breaker [1] 13/10 bridge [1] 75/23 briefed [1] 76/15 briefly [1] 86/6 bring [5] 42/19 45/5 46/14 71/3 101/6 broke [1] 80/22 broker [1] 66/12 Bryant [3] 24/8 31/18 32/7 build [4] 4/23 5/6 7/1 7/9 builder [14] 7/8 7/9 11/18 16/5 16/10 18/13 18/17 22/11 23/9 24/25 30/21 51/7 52/6 61/13 builders [7] 6/25 9/8 21/2 22/17 34/24 51/6 61/11 building [25] 4/14 4/21 5/3 5/20 5/25 6/11 7/23 7/25 8/13 9/10 12/5 13/21 14/17 14/24 14/24 15/9 17/3 18/14 18/18 19/16 19/21 20/22 20/24 21/12 51/3 built [9] 6/18 7/20 8/6 9/17 10/3 17/4 17/14 17/15 64/19 burned [2] 66/22 70/4
--	--	--

business [3] 52/4 52/15 64/16	cite [2] 12/11 63/22	confusion [2] 100/20 101/3
buy [2] 18/7 53/6	cited [7] 5/2 13/4 15/10 16/18 37/3 69/13	consented [1] 53/3
buying [2] 14/9 20/10	69/14	consequence [4] 10/19 69/23 70/1 70/8
C	clinging [1] 21/1	consequential [8] 6/20 6/22 7/22 8/9 18/3
C.O. [1] 7/13	city [5] 5/4 5/13 9/22 12/3 15/9	38/23 65/24 66/5
calendar [9] 93/4 93/7 94/8 95/14 95/15	civil [2] 58/21 86/21	consider [10] 25/23 27/7 27/17 34/22 36/9
95/17 96/5 96/10 98/9	claim [11] 16/6 16/13 20/3 21/22 21/23 24/13	36/11 42/24 69/16 75/11 85/12
calender [1] 98/21	31/25 34/23 35/3 35/4 67/21	considerable [3] 26/19 26/20 30/6
call [1] 73/18	claiming [1] 8/11	consideration [1] 72/17
called [2] 2/4 27/24	claims [16] 6/17 6/19 31/24 34/19 35/4 35/9	considered [1] 90/20
came [7] 24/12 46/20 59/1 61/19 64/6 68/12	35/10 35/12 35/14 35/14 35/18 36/2 36/6	considering [2] 32/6 46/10
88/20	36/20 68/18 84/1	construction [2] 12/4 65/14
can [64] 3/17 4/22 7/9 11/10 13/1 15/4 15/24	clarification [1] 20/20	construing [1] 83/8
20/3 20/4 20/19 22/6 31/8 32/18 33/9 33/10	clarity [2] 22/25 54/18	consult [1] 96/22
34/6 39/14 45/13 45/14 46/14 49/11 50/14	class [2] 94/11 97/17	contained [2] 43/12 76/13
54/3 54/16 56/8 62/20 63/18 63/22 64/24	cleanout [1] 61/20	contend [1] 26/9
67/17 68/14 68/21 69/10 70/22 70/24 71/2	clear [6] 22/4 42/8 55/10 71/1 92/8 100/4	contending [1] 76/15
71/3 71/11 71/13 71/19 74/19 75/16 75/17	clearly [4] 18/25 66/14 74/7 87/19	contents [1] 9/24
75/22 76/10 80/10 83/4 85/17 86/22 89/16	clerk [1] 95/19	content [1] 27/19
90/6 90/16 90/17 91/19 91/20 94/4 94/5	Clerk's [2] 93/9 93/23	contention [2] 8/21 85/6
95/18 96/14 96/16 96/22 98/8 100/12 100/23	client [9] 4/17 5/18 12/21 12/22 13/10 50/24	contents [1] 26/1
can't [28] 8/11 17/24 22/18 37/12 39/7 41/23	84/8 88/17 89/8	contested [1] 54/11
55/6 60/15 66/21 66/21 66/21 69/8 70/5 70/5	client's [3] 12/18 72/15 73/15	context [3] 11/9 13/1 54/9
72/25 73/22 74/2 75/4 75/8 75/11 75/12 80/1	clients [2] 38/7 82/8	continue [5] 88/16 90/15 93/18 98/5 99/8
84/11 84/16 85/15 88/18 99/4 99/10	Clinic [2] 25/10 25/11	continued [6] 59/25 90/4 91/25 93/18 95/8
cannot [7] 18/1 20/21 63/20 78/22 85/13	close [5] 3/10 3/10 33/17 62/14 94/9	95/9
85/15 93/20	closing [1] 21/16	continues [1] 49/24
captioned [1] 102/13	co [3] 4/6 55/21 57/20	continuing [4] 58/7 58/21 90/22 95/10
car [1] 12/21	co-counsel [2] 4/6 55/21	contract [2] 35/15 35/17
card [9] 6/22 64/11 64/23 65/7 65/9 65/20	Co-Defendants [1] 57/20	contractor [4] 5/21 14/10 14/18 21/9
68/6 70/13 100/15	code [7] 5/3 5/13 6/11 6/25 10/8 11/1 20/24	contractor's [1] 5/13
cards [8] 18/6 64/18 64/18 64/20 66/17 67/7	codes [3] 4/21 14/24 20/22	contractors [2] 8/4 64/17
67/12 69/4	cogent [1] 68/21	contribution [1] 38/14
care [3] 30/15 86/12 99/24	collect [1] 8/11	control [1] 77/15
CAROLINA [12] 1/1 1/7 1/10 34/25 35/10	collision [1] 12/24	convened [1] 94/21
35/13 39/4 60/25 76/21 102/4 102/10 102/14	Colloquy [1] 99/1	convenience [1] 97/3
carrier [1] 21/21	Columbia [2] 1/10 5/5	conventional [1] 52/5
carry [5] 52/10 66/24 67/12 67/14 70/4	come [10] 11/9 14/2 51/5 54/9 62/23 73/19	conviction [1] 9/2
carrying [7] 18/6 63/10 64/22 65/1 66/19	81/9 85/16 93/25 97/1	copies [5] 24/3 45/17 57/18 58/24 70/18
67/6 67/22	comes [2] 51/11 63/24	copy [20] 35/24 37/10 38/11 44/24 45/14
case [106]	coming [1] 18/16	45/15 45/24 54/12 54/16 56/9 57/17 58/20
cases [6] 37/3 42/10 42/13 44/24 63/22 86/16	commenced [1] 26/15	59/2 59/13 59/24 86/15 87/4 87/5 89/15
cash [2] 61/12 64/16	commencement [1] 80/1	89/23
cause [1] 69/14	commerce [1] 7/20	corners [6] 39/15 40/6 73/9 75/12 75/13
caused [1] 16/2	common [4] 1/1 35/16 60/10 102/14	75/17
causes [1] 36/25	communications [1] 37/22	Corp [1] 36/16
certain [7] 4/21 19/11 20/13 43/9 90/23 91/5	company [8] 24/12 34/20 35/8 36/16 49/7	corrallled [1] 94/18
91/16	63/24 66/7 81/18	correct [11] 6/7 8/24 22/8 27/2 30/7 38/13
certainly [15] 6/12 8/18 11/9 14/12 16/21	compel [3] 58/2 58/6 98/24	43/15 50/8 53/22 54/24 86/11
19/23 22/2 24/4 47/7 60/16 64/9 70/17 85/16	compensated [1] 20/13	correctly [2] 10/12 83/17
85/19 95/18	compile [1] 63/17	correspondence [3] 57/18 87/3 87/20
CERTIFICATE [1] 102/1	complaint [7] 39/2 39/2 39/3 65/22 78/5	cost [7] 24/16 24/17 53/18 65/2 68/25 70/3
certify [2] 102/10 102/16	82/19 89/1	70/6
cetera [3] 20/10 21/10 43/11	complete [3] 61/20 62/11 67/9	costs [8] 24/18 64/22 65/2 65/14 66/19 66/24
chain [1] 49/12	completely [4] 37/13 38/7 41/10 92/9	67/22 68/24
chambers [1] 86/17	completion [1] 62/24	could [24] 14/2 17/2 18/10 18/12 19/14 22/12
chance [7] 18/9 24/23 25/1 30/1 30/2 30/20	complicated [4] 3/9 38/4 66/16 78/23	22/19 40/7 41/9 42/3 44/5 54/13 60/24 67/25
30/21	Complies [1] 25/16	69/19 69/21 70/18 70/23 74/14 87/18 91/11
change [3] 20/4 28/18 66/18	comply [2] 58/6 87/15	91/11 91/18 98/12
charge [4] 11/24 13/15 13/18 14/12	computer [2] 27/10 51/15	couldn't [4] 43/7 63/12 63/13 70/9
charges [4] 14/7 18/6 22/20 63/11	concern [6] 41/15 71/19 72/13 72/20 81/2	counsel [15] 4/6 4/18 5/7 5/8 15/4 29/3 33/22
cheaper [1] 62/1	90/22	35/21 35/23 48/20 55/21 63/8 70/24 72/19
check [1] 91/19	concerned [1] 70/12	102/17
checked [1] 37/25	concerning [2] 4/22 21/1	country [1] 63/15
Childs' [1] 97/23	concerns [1] 3/21	county [18] 1/2 4/23 5/1 5/4 5/12 9/21 10/8
circles [1] 84/14	concluded [2] 80/15 101/11	12/2 12/7 12/9 12/14 14/2 15/9 49/13 52/24
Circuit [3] 63/16 102/9 102/23	conducted [2] 50/25 52/14	53/1 102/5 102/14
circulated [1] 35/21	conference [2] 86/20 91/10	couple [2] 68/22 91/19
circumstances [2] 14/16 32/6	conflict [1] 97/10	course [12] 4/7 13/3 22/7 22/10 52/6 65/6
	conflicting [1] 8/5	70/22 74/12 75/1 77/12 77/15 91/14
	conflicts [1] 54/4	court [54] 1/1 1/25 3/14 9/7 12/1 16/18 16/22

court... [47] 19/13 19/16 25/18 25/19 25/22 26/23 27/11 35/22 36/11 39/14 41/5 41/9 41/16 43/22 44/7 46/5 46/21 47/24 48/1 49/9 50/22 57/12 61/5 73/3 74/7 84/6 86/15 86/15 86/18 86/20 86/22 87/5 88/22 89/24 93/21 93/22 94/8 94/9 94/10 95/24 96/24 97/10 97/16 97/18 102/8 102/13 102/23 court's [3] 11/21 89/19 94/23 courtroom [4] 48/1 80/12 95/4 97/25 cover [1] 16/8 coverage [4] 16/8 16/12 16/25 51/12 covered [3] 21/24 61/16 61/17 CP [1] 1/2 crashed [1] 16/2 create [1] 88/6 creates [1] 88/6 credit [33] 6/21 6/21 18/6 63/4 63/4 63/16 63/20 63/23 63/24 64/7 64/11 64/17 64/18 64/20 64/23 64/24 65/5 65/7 65/9 65/20 66/3 66/17 67/7 67/20 68/3 68/6 68/10 68/11 68/20 69/3 70/12 70/13 100/15 cross [8] 18/10 20/22 65/19 67/18 70/19 73/14 75/22 93/12 cross-examination [1] 20/22 cross-examine [5] 18/10 65/19 67/18 70/19 73/14 crux [1] 90/19 curious [1] 46/1 currently [1] 49/6 Curry [41] 1/4 4/17 4/18 5/2 5/11 5/24 6/17 6/18 7/24 8/1 8/5 8/6 9/15 9/25 10/7 10/25 12/4 12/10 12/13 14/4 14/21 14/24 15/10 16/4 16/10 20/22 36/22 40/8 49/7 49/14 49/22 50/11 50/24 51/5 52/14 52/20 52/21 52/25 53/12 63/20 73/14 Curry's [6] 9/11 36/2 36/5 36/20 63/3 63/5 custom [1] 52/3	35/22 37/20 44/13 56/24 57/7 57/25 58/14 59/1 59/2 December 30th [3] 29/4 29/5 35/22 decent [1] 69/5 decide [8] 3/20 19/3 19/13 39/14 39/19 75/12 75/17 79/10 decided [2] 86/20 99/13 decision [7] 25/6 34/7 43/22 72/21 74/9 75/1 75/1 deed [9] 8/2 49/16 50/9 50/9 50/11 51/4 53/25 54/1 54/8 deemed [1] 7/13 defend [2] 22/2 74/3 defendant [10] 1/21 20/21 23/2 35/6 35/9 36/1 49/11 73/20 85/2 100/14 Defendant's [4] 35/23 60/4 64/21 69/17 Defendants [9] 1/9 24/15 25/4 30/11 32/5 36/12 37/1 57/20 57/20 defense [27] 4/9 4/18 5/7 5/8 6/9 6/15 8/18 22/3 23/6 23/12 23/13 23/15 38/9 39/20 40/13 43/4 46/8 56/6 56/17 71/14 72/15 81/3 81/11 88/17 90/5 90/10 93/13 Defense's [2] 32/11 41/18 defenses [1] 23/17 degree [3] 26/4 27/21 33/8 delay [2] 31/7 59/5 demonstrate [1] 73/11 denial [1] 90/17 denied [9] 16/7 16/14 21/22 31/25 35/3 74/13 77/6 78/6 82/18 Dental [3] 25/10 25/11 31/3 deny [4] 45/25 57/12 76/22 79/21 department [2] 12/6 31/24 departments [1] 15/9 depend [2] 41/20 99/18 depending [2] 51/21 94/2 depose [14] 24/23 30/1 30/21 31/8 33/10 33/24 63/7 68/14 68/16 70/16 73/22 100/8 100/12 100/14 deposed [4] 30/17 32/3 65/21 100/6 deposing [1] 68/15 deposition [11] 4/17 9/12 14/22 18/19 18/20 33/24 34/15 63/5 68/4 94/6 100/1 depositions [3] 5/19 78/9 100/10 Derrick [6] 1/8 35/1 35/11 35/13 39/4 76/22 Derrick's [1] 61/1 designate [1] 33/25 designated [2] 28/16 32/24 designating [1] 32/15 destroyed [1] 12/7 detailed [1] 64/8 determination [5] 10/19 84/3 84/4 84/6 88/23 determinative [1] 25/13 determine [9] 19/7 40/4 41/1 41/16 49/10 55/15 81/21 85/11 85/17 determined [4] 41/17 88/21 88/22 90/6 determines [1] 40/5 developed [1] 42/6 did [27] 8/1 11/14 14/13 16/7 18/11 27/2 28/21 28/24 37/17 37/25 37/25 43/3 52/17 52/18 53/6 55/14 56/10 57/16 57/17 57/21 59/1 67/19 68/3 69/6 70/25 73/19 92/24 didn't [22] 8/1 15/13 15/19 17/14 27/3 31/19 38/1 52/9 55/14 58/1 58/3 58/15 63/7 64/15 67/3 68/6 68/10 72/10 77/20 87/13 89/8 91/2 difference [2] 13/3 29/24 different [5] 27/17 30/4 37/15 62/23 95/20 dire [1] 60/19 directed [16] 40/2 40/5 42/11 43/5 43/14 44/5 45/20 56/16 71/15 72/14 81/12 84/25	directly [3] 13/20 31/3 83/23 disclose [2] 58/7 59/25 disclosed [1] 27/15 disclosing [1] 40/15 discovery [5] 26/10 26/14 28/3 37/22 100/11 discretion [1] 25/9 discuss [4] 34/6 40/9 47/3 47/17 discussed [2] 61/18 74/5 discussing [1] 61/3 disk [1] 68/7 dismiss [3] 47/13 48/13 101/8 dismissal [8] 29/7 35/20 37/24 44/12 56/25 57/24 58/17 87/6 dismissed [4] 34/19 36/6 57/2 101/9 disposition [1] 86/24 dispute [2] 27/11 49/21 disqualify [1] 60/5 disregard [1] 60/6 distinction [1] 27/13 distinctions [1] 15/24 distinctly [1] 57/18 do [56] 3/11 3/20 5/9 6/10 12/24 14/7 14/13 14/20 17/10 19/25 20/2 20/3 20/5 23/11 34/3 40/12 41/9 41/12 42/18 47/17 47/18 48/11 50/20 53/8 53/15 58/9 59/7 63/9 64/21 66/15 66/22 67/17 68/11 71/17 71/18 73/8 75/8 77/10 78/16 78/18 81/22 83/13 86/5 87/25 88/1 89/15 89/17 91/18 93/17 93/23 96/11 97/10 98/18 100/1 102/10 102/16 document [6] 52/22 58/20 59/11 73/9 75/12 75/13 documents [6] 28/13 42/15 53/8 57/19 58/8 58/24 does [5] 18/22 23/24 84/8 88/6 98/7 doesn't [17] 8/12 15/12 15/13 15/18 16/24 20/5 23/2 39/9 62/5 66/18 69/2 78/2 82/10 82/13 82/13 91/15 92/23 doing [7] 7/2 13/8 19/20 21/10 32/1 69/6 98/13 dollars [1] 67/2 don't [91] 10/22 11/12 14/12 14/18 15/1 15/22 17/19 18/19 19/2 22/6 23/4 23/10 23/15 23/16 23/25 31/6 32/12 33/7 33/14 33/19 34/1 34/2 34/12 40/24 41/11 42/6 43/18 43/20 45/25 46/2 47/14 47/18 53/5 53/14 53/16 53/16 54/9 54/14 55/2 56/15 57/11 59/4 59/19 62/16 63/6 65/13 66/2 69/5 69/10 70/2 70/17 70/20 72/1 72/7 72/22 72/24 73/15 73/15 74/25 75/1 75/18 75/21 77/22 77/23 78/4 78/10 78/17 78/24 79/15 79/15 81/3 82/1 82/23 83/3 84/19 85/3 88/18 89/2 89/20 90/3 91/16 92/5 92/9 94/8 96/9 96/18 96/25 97/4 97/9 98/4 98/8 done [7] 8/13 8/15 8/17 33/10 56/12 94/6 100/16 door [1] 78/14 double [1] 36/23 doubt [1] 9/6 down [6] 12/5 50/4 61/25 67/13 72/9 76/5 downstairs [1] 54/17 Drive [1] 33/17 driving [3] 12/23 15/16 16/1 drop [1] 19/22 due [1] 38/22 during [7] 2/5 2/14 8/17 41/18 48/12 56/8 60/23 duty [8] 19/8 19/8 48/4 48/5 48/6 58/7 58/21 59/25
D da [1] 99/14 dada [2] 99/14 99/14 dada-dada-da [1] 99/14 damage [3] 27/24 28/6 68/25 damaged [2] 10/15 16/13 damages [33] 6/5 6/17 6/20 6/23 7/22 8/9 8/22 8/23 16/3 16/5 17/1 17/25 18/4 19/9 19/10 19/12 19/24 24/16 24/24 26/13 36/24 38/23 54/20 61/2 61/7 61/7 61/8 62/23 65/24 66/5 68/5 68/6 68/24 danger [1] 89/21 date [10] 43/9 54/2 54/3 54/13 56/22 57/4 63/6 64/25 96/17 99/25 dated [2] 28/3 51/5 Davison [1] 27/12 day [36] 12/8 17/12 34/1 37/19 42/20 45/6 46/15 47/14 48/19 49/24 57/8 57/13 68/5 68/6 74/1 80/15 83/17 87/14 87/18 90/23 91/5 91/9 91/13 91/16 91/22 92/12 92/20 92/21 92/22 92/22 92/25 94/11 96/13 98/8 99/2 99/4 days [15] 7/6 7/6 27/25 70/14 75/5 80/3 87/17 91/21 93/5 93/14 93/16 95/2 96/7 96/8 102/15 days' [6] 78/21 84/24 93/19 95/22 95/24 96/5 deal [12] 14/6 20/14 22/19 37/16 39/21 55/7 55/8 67/16 72/3 79/6 88/15 94/4 dealing [1] 47/12 dealt [3] 38/3 52/4 88/11 DEBORAH [4] 1/24 102/8 102/21 102/23 debt [3] 17/3 67/14 70/7	E e-mail [3] 43/16 56/15 87/20	

e-mails [1] 57/19 each [1] 67/23 earlier [3] 35/24 38/17 61/3 early [1] 67/8 easier [1] 66/13 easy [1] 91/23 effect [1] 88/19 efficient [1] 95/1 efficiently [1] 97/3 either [6] 53/13 85/5 85/7 88/5 90/8 94/19 elected [1] 97/23 electronically [1] 89/22 element [1] 85/8 elicit [2] 4/13 49/11 eliciting [1] 49/25 else [7] 16/2 22/18 22/19 23/15 70/6 71/3 95/6 emanating [1] 26/2 encompassed [1] 21/14 end [7] 14/11 17/12 44/9 51/21 68/16 79/7 101/23 ended [1] 83/25 ends [1] 39/22 enforce [3] 58/2 58/2 59/3 enforcement [2] 22/9 22/12 ensure [1] 34/14 enter [1] 5/10 entered [2] 89/3 94/19 enters [1] 97/25 entire [1] 41/3 entirely [1] 42/22 entitled [10] 8/20 22/2 39/21 40/11 40/14 52/21 53/12 54/21 62/22 83/14 envisioning [1] 84/20 error [3] 58/14 72/10 72/16 errors [1] 86/5 especially [1] 38/13 ESQ [3] 1/19 1/19 1/21 essence [1] 66/18 essentially [2] 15/2 85/13 establishing [1] 52/14 estimate [2] 24/13 30/4 estimates [4] 28/1 28/7 30/3 30/6 et [3] 20/10 21/10 43/11 evaluate [1] 25/23 eve [1] 72/1 even [20] 11/13 15/7 27/16 47/24 54/13 56/8 60/3 64/24 66/2 75/4 75/15 77/4 78/7 78/14 78/16 79/10 87/4 87/7 92/21 92/23 evening [1] 74/7 ever [6] 5/2 8/7 12/3 35/12 63/23 87/4 everybody [2] 15/16 95/4 everyone [1] 42/23 everything [9] 8/13 8/14 22/19 38/12 38/22 50/7 56/11 89/22 95/6 evidence [50] 4/13 4/24 5/10 5/17 6/10 9/1 9/19 10/6 10/9 10/17 10/17 10/21 10/22 10/23 12/2 12/16 12/19 13/25 18/16 20/24 26/2 27/19 34/18 34/21 36/5 36/17 39/15 39/18 39/23 43/20 45/20 48/25 49/4 50/5 58/8 61/2 62/10 63/21 72/8 73/2 73/10 73/12 73/18 75/19 75/22 83/2 85/8 85/24 85/25 102/12 evidentiary [1] 88/1 exact [4] 18/9 29/9 63/6 89/6 exactly [9] 11/8 15/22 22/21 40/23 42/14 43/16 44/22 81/18 100/13 examination [1] 20/22 examine [5] 18/10 65/19 67/18 70/19 73/14 examined [1] 38/5	except [3] 78/8 95/12 96/18 exclude [8] 4/12 24/8 26/23 34/18 38/15 48/25 50/5 63/3 excluded [4] 7/22 25/20 31/5 64/3 excluding [1] 92/21 exclusive [1] 95/25 executed [2] 37/17 58/13 exemption [2] 7/4 7/7 exhibits [1] 2/13 existed [2] 57/23 58/15 existence [2] 10/18 32/7 exists [1] 88/2 expect [1] 17/2 expenses [2] 66/14 66/24 expert [39] 24/8 24/15 24/19 24/22 24/24 25/3 25/20 26/12 26/24 27/5 28/17 28/19 29/23 30/9 30/11 30/13 30/14 30/18 30/20 30/21 30/25 31/4 32/4 32/16 32/24 33/2 60/6 60/11 60/17 60/18 61/19 61/24 68/15 91/6 94/5 99/24 100/5 100/7 100/9 expert's [2] 60/6 90/24 experts [1] 32/18 expire [2] 51/11 52/12 expired [1] 51/8 explain [1] 95/20 explanation [1] 27/19 exposure [1] 92/6 extent [6] 20/8 23/22 32/9 51/19 81/23 83/2 extra [1] 23/20 extrinsic [7] 39/15 39/18 73/10 73/12 73/18 75/19 75/22 evesore [1] 12/8 F face [4] 38/21 39/6 54/1 60/8 Facebook [2] 47/22 48/6 fact [36] 6/24 8/19 10/18 11/7 19/24 27/15 28/14 28/22 29/20 30/13 31/10 32/16 32/22 39/7 39/8 40/7 40/13 41/16 49/5 52/6 59/23 61/6 62/14 72/18 76/18 76/24 77/8 78/3 82/14 82/21 82/22 85/11 86/11 86/13 88/10 88/24 factor [2] 32/23 78/7 factors [7] 25/23 25/25 26/21 27/7 27/12 27/17 27/18 facts [4] 5/17 7/24 14/16 47/20 failed [1] 58/13 failure [6] 26/3 26/9 27/20 58/19 59/7 65/25 fair [4] 13/23 41/10 42/23 89/7 fairly [1] 91/23 faith [2] 35/16 35/16 fall [1] 26/15 false [1] 39/8 far [2] 22/9 40/2 farther [1] 76/5 fashion [1] 66/11 fault [2] 22/1 66/23 February [1] 59/3 federal [5] 94/10 97/10 97/10 97/16 97/18 feel [4] 33/24 70/15 87/1 89/1 feels [1] 81/23 felt [1] 14/1 few [2] 27/9 95/2 Fifth [3] 63/15 102/9 102/23 figure [2] 34/11 98/6 figures [1] 30/4 figuring [1] 3/10 file [9] 45/15 58/2 78/5 81/19 87/3 87/4 87/16 87/18 89/19 filed [24] 24/13 26/10 34/23 35/7 35/22 38/8 39/3 44/4 44/8 46/7 56/4 56/5 71/25 78/20	93/11 95/24 99/13 filing [4] 74/1 81/6 86/8 93/11 final [1] 67/8 finally [1] 100/8 finance [3] 64/18 67/8 69/4 financed [2] 66/10 66/17 financial [2] 51/18 51/20 find [6] 32/14 37/12 59/22 63/15 80/2 88/23 finding [1] 83/22 findings [1] 40/7 fine [9] 7/5 21/7 53/23 53/23 55/7 62/6 71/5 82/23 89/10 finish [2] 45/7 67/25 finished [1] 58/4 fire [8] 10/15 27/25 61/16 62/12 65/1 65/1 67/11 69/3 first [15] 4/11 9/12 10/23 18/3 27/8 28/21 50/22 51/13 52/9 52/19 56/3 74/9 79/9 87/14 92/5 fit [1] 98/12 five [3] 25/25 57/14 96/7 flip [4] 6/19 7/18 18/15 18/24 flow [1] 6/5 folks [2] 3/6 98/2 following [1] 3/2 follows [1] 11/23 Ford [3] 4/18 7/24 36/15 foreclosed [1] 58/9 foregoing [1] 102/10 foresee [2] 69/1 69/21 foreseeability [4] 65/18 68/17 68/23 69/20 Forest [1] 33/17 forget [2] 81/18 100/5 forming [1] 31/21 forward [6] 44/2 84/14 85/13 85/15 85/18 97/6 found [2] 11/1 73/11 foundation [2] 54/10 60/17 four [7] 39/15 40/6 73/9 75/12 75/13 75/17 96/6 Frank [1] 24/24 frankly [1] 92/16 free [1] 17/7 freely [1] 59/20 Friday [7] 33/16 43/7 44/4 56/11 78/20 89/14 93/5 front [7] 5/22 17/19 23/17 38/3 39/18 53/11 79/7 Fruehauf [1] 36/16 fruit [1] 8/14 full [2] 38/22 42/23 fully [2] 41/15 76/14 furnish [1] 26/4 further [4] 10/11 25/5 90/14 102/16 furthermore [1] 9/24 future [1] 41/23 G game [2] 70/14 84/20 gas [1] 65/13 gave [3] 37/18 92/12 92/15 general [5] 14/15 16/19 20/9 52/11 85/9 generally [5] 38/13 41/11 91/12 91/17 91/21 generated [3] 28/1 28/7 29/13 gentlemen [1] 46/25 get [51] 4/1 8/2 13/15 13/17 17/16 18/12 37/25 38/1 40/16 41/6 45/14 47/9 47/25 51/9 51/15 52/10 52/17 53/11 54/16 55/1 56/11 60/4 60/24 65/25 66/2 67/9 68/3 68/6 69/2 71/2 72/4 72/14 73/22 74/2 75/4 75/6 75/7 75/14 75/23 76/4 78/15 78/22 80/3 83/25
---	---	---

get... [7] 88/14 88/23 89/8 91/13 92/4 92/24 94/6	12/9 12/13 12/15 14/4 14/5 18/3 21/4 24/25 26/11 26/13 32/7 32/20 33/20 38/3 40/1 42/5 43/1 48/23 49/21 53/2 53/8 55/21 57/5 59/13 61/11 61/13 63/8 64/22 64/23 66/19 67/12 67/20 71/3 83/17 83/18 84/2 84/3 84/6 85/1 85/2 85/23 85/24 90/2 91/21 94/15 95/9 99/8	Hood's [1] 98/21
gets [2] 51/12 90/8	hash [1] 23/21	hour [5] 12/23 15/16 16/2 47/6 47/8
getting [6] 3/10 66/25 75/15 86/10 92/8 92/25	hasn't [5] 10/10 30/21 64/20 67/13 100/5	house [38] 5/20 5/25 6/19 6/21 7/11 7/19 7/25 8/1 8/6 8/14 9/17 10/1 10/1 10/3 12/7 17/6 18/8 18/14 18/24 19/21 19/25 20/2 51/20 51/23 51/24 62/4 63/13 64/19 64/19 66/11 66/20 66/22 66/25 67/9 69/4 69/6 70/4 70/7
giant [1] 70/22	hate [1] 47/6	houses [1] 4/23
give [6] 37/6 43/23 64/10 68/21 74/6 93/5	have [156]	how [19] 11/8 19/21 21/18 34/1 37/16 39/21 40/20 50/25 52/4 52/4 52/12 52/17 53/18 64/4 66/1 71/22 92/17 96/9 98/9
given [1] 59/20	haven't [7] 4/4 30/1 30/2 30/20 58/4 65/25 78/21	however [8] 28/9 37/19 38/16 55/8 72/5 73/6 81/5 84/25
gives [3] 21/3 75/2 76/9	having [11] 10/17 17/17 19/15 23/8 60/11 66/24 67/14 81/7 89/16 97/1 97/2	huge [2] 33/8 94/10
go [26] 4/4 6/9 16/24 19/5 26/16 42/18 44/2 46/14 47/18 51/8 55/20 62/2 62/17 70/22 72/25 78/12 78/13 84/14 85/13 85/15 87/11 91/19 94/6 95/3 97/6 99/12	Hawkins [3] 25/12 25/25 31/3	hugely [1] 5/16
goes [9] 8/21 17/1 22/19 38/17 57/9 76/16 85/18 92/18 92/24	he [171]	huh [4] 15/20 58/23 76/3 79/17
going [73] 3/11 5/22 6/8 10/1 11/9 12/10 13/8 13/15 13/17 17/10 19/25 20/2 22/7 29/23 30/12 30/15 32/21 34/1 41/12 43/17 43/19 43/21 43/21 44/20 45/4 45/5 45/6 45/22 46/25 47/2 47/11 47/13 47/15 48/7 48/7 48/13 49/12 50/24 53/7 54/7 54/21 55/3 55/25 59/15 63/9 65/11 66/1 67/1 67/5 67/6 68/8 68/9 68/11 68/18 69/2 69/3 70/3 70/5 70/10 74/20 77/1 77/13 83/3 89/3 93/10 93/17 93/18 96/19 98/6 98/18 98/22 99/8 101/6	he's [6] 11/24 32/3 32/22 45/17 62/22 91/12	hypothetical [2] 15/15 15/25
gone [4] 21/5 31/18 61/22 67/13	hear [15] 3/21 4/10 8/16 15/7 15/21 37/9 55/18 56/3 74/19 76/6 79/11 79/18 86/1 86/4 96/24	I
good [5] 48/16 69/12 80/19 80/20 80/21	heard [11] 3/3 31/20 44/15 55/18 60/12 66/1 79/10 79/25 83/16 90/16 98/4	I'd [5] 25/10 41/17 75/6 79/18 86/3
GOODWYN [1] 1/19	hearing [11] 11/8 34/6 78/19 83/19 83/21 84/12 86/4 86/24 94/16 95/2 95/11	I'll [7] 4/5 4/12 14/6 27/3 51/1 77/10 98/23
Googling [1] 47/22	hearsay [3] 63/16 63/21 64/4	I'm [52] 3/16 3/16 6/8 11/16 14/20 16/23 18/4 22/1 22/4 22/7 24/3 28/19 29/16 29/25 30/18 31/12 32/21 36/15 40/11 40/14 42/22 43/1 45/17 46/1 47/11 47/15 48/13 58/5 59/10 60/22 62/21 65/16 66/23 67/24 70/10 70/12 71/1 71/16 74/6 75/9 75/20 77/24 78/16 79/12 83/12 93/2 93/17 96/2 96/12 96/14 98/5 99/25
got [26] 12/11 12/12 16/21 18/9 18/23 23/12 37/11 38/10 39/12 44/8 44/9 45/17 50/11 52/12 53/17 56/9 68/5 70/13 75/4 86/5 87/1 87/7 87/14 88/23 94/10 99/5	held [7] 25/19 36/17 69/15 92/10 94/16 95/2 99/1	I've [2] 37/11 87/1
gotten [1] 36/23	Hello [2] 98/1 98/2	idea [7] 5/11 10/25 31/22 41/18 49/19 68/12 72/7
grant [2] 40/24 59/15	help [1] 67/8	identification [1] 24/21
granted [2] 56/8 56/8	helping [1] 51/1	identified [10] 24/15 28/21 28/22 29/20 30/9 30/14 31/13 31/16 76/18 77/4
granting [1] 90/17	helps [1] 31/7	identify [1] 30/25
great [1] 55/5	her [3] 43/24 46/4 95/19	identifying [1] 30/19
greater [1] 46/11	here [24] 13/3 15/8 19/7 24/25 25/21 31/4 57/2 59/23 63/19 69/12 72/11 73/21 73/23 74/3 81/20 83/13 83/18 89/23 91/11 92/21 94/22 96/21 98/11 99/21	identity [2] 50/18 78/17
gross [2] 10/13 35/5	hereby [1] 102/10	illegal [6] 7/16 7/18 8/10 8/15 15/14 18/23
grounds [2] 38/20 85/22	hereto [1] 102/17	illegality [4] 6/14 21/23 23/3 23/25
Group [6] 1/7 1/7 35/1 35/11 35/13 76/21	Hesse [1] 60/9	illegally [3] 7/19 9/17 10/4
Group's [1] 60/25	Hey [1] 92/13	illuminated [1] 26/21
guess [8] 8/16 14/3 33/25 34/9 52/20 67/17 99/9 100/8	higher [1] 62/3	immediately [1] 12/23
guidance [1] 61/5	highly [5] 15/6 21/3 21/13 24/22 36/8	impacted [1] 94/15
guy [1] 100/12	highway [1] 15/17	impacts [1] 83/23
H	him [60] 8/2 11/14 11/16 11/17 11/20 14/8 16/8 17/13 18/10 18/22 19/15 21/15 22/7 22/10 22/13 22/15 27/2 27/4 28/16 28/18 28/19 28/21 28/22 29/10 29/23 30/21 31/8 31/14 31/16 32/12 32/15 32/21 33/10 33/16 33/24 34/25 35/25 52/16 53/5 53/16 54/24 55/3 55/4 58/13 58/20 59/2 60/14 60/17 64/10 65/2 65/19 65/21 67/18 68/14 69/9 70/16 70/19 92/13 92/15 99/20	importance [1] 27/20
habit [3] 19/20 52/3 52/11	himself [1] 34/10	important [7] 8/19 15/24 19/23 33/9 50/24 51/21 52/7
had [52] 4/20 5/11 14/2 14/24 16/8 17/3 18/16 24/23 25/1 27/4 27/4 27/9 28/8 29/11 30/1 30/2 30/5 30/14 30/20 30/21 31/18 36/23 37/14 37/24 38/19 43/10 47/2 51/5 57/14 57/22 58/12 58/16 59/24 64/2 64/14 64/18 64/22 66/10 66/12 66/14 66/14 66/19 67/12 67/20 68/5 68/12 68/22 78/21 84/24 86/19 92/18 102/12	his [70] 4/18 4/19 4/20 5/2 5/11 5/24 6/21 8/3 9/16 10/7 10/25 11/4 11/10 12/5 14/9 14/16 14/23 15/10 16/6 17/3 17/8 17/9 17/10 18/17 18/18 18/19 18/20 18/20 19/20 20/4 20/9 20/10 22/16 23/17 28/5 30/4 30/22 30/22 31/21 32/8 32/9 32/17 32/20 33/14 33/16 33/19 36/23 46/8 51/22 52/4 52/11 52/20 52/22 55/2 60/12 60/18 60/19 63/20 64/11 64/16 64/16 64/25 65/1 65/6 65/6 65/21 67/25 68/4 91/20 94/6	impossible [1] 87/15
half [4] 40/8 47/6 69/8 69/8	history [2] 50/23 50/23	impression [1] 21/4
hand [6] 16/17 25/10 37/2 44/23 45/12 86/14	hold [3] 32/1 42/10 46/3	improper [2] 11/5 36/5
handed [1] 26/22	home [16] 5/6 6/25 7/1 7/9 7/18 9/10 10/15 11/18 14/9 14/17 17/3 20/10 22/18 47/18 62/10 65/14	improperly [1] 36/22
handle [2] 40/4 50/14	Honor [114]	inadmissible [1] 36/18
Hands [2] 46/5 89/24	Honor's [1] 46/12	inadvertent [1] 92/9
happen [5] 15/13 47/2 66/1 81/14 99/10	HONORABLE [1] 1/15	Inc [1] 1/8
happened [2] 14/22 69/23		incarcerated [1] 49/6
happening [1] 52/5		inclined [1] 59/14
happens [1] 34/15		include [2] 41/8 63/19
happy [2] 95/11 100/23		included [3] 28/14 61/20 87/19
hard [1] 56/13		including [3] 26/5 63/15 68/23
		incoming [2] 50/9 50/11
		incorporated [6] 35/17 43/4 43/13 44/5 56/14 71/13
		incorporates [2] 83/7 83/20
		incorrect [1] 16/12
		information [5] 28/7 31/10 38/9 47/25 64/9
		initially [1] 33/1
		inject [1] 13/23
		injecting [1] 21/11

I inspected [1] 27/25 instead [1] 18/7 instructed [3] 38/19 40/1 69/16 instructive [1] 37/4 insurance [35] 1/7 1/7 6/3 6/4 10/14 16/6 17/13 17/16 17/21 18/11 19/22 19/22 20/3 21/21 23/1 24/12 30/16 34/20 34/23 34/25 35/8 35/11 35/13 39/1 39/4 52/9 52/10 52/11 53/8 60/25 64/15 65/25 66/7 76/21 81/18 insured [3] 52/8 53/19 53/19 insured's [1] 51/18 intend [9] 6/10 32/12 33/23 46/2 50/10 53/15 78/13 78/24 93/23 intended [2] 7/19 18/21 intends [1] 7/10 intent [6] 73/11 75/7 77/15 77/17 77/18 78/15 intention [9] 8/8 9/9 11/11 13/12 17/11 20/10 22/15 39/10 39/19 intentions [2] 21/9 22/17 interest [5] 51/18 51/21 66/15 67/2 102/17 interested [1] 42/20 interrupt [3] 6/1 6/9 67/23 introduce [10] 6/10 36/2 40/9 42/6 50/10 54/1 63/10 63/20 68/10 71/4 introduced [6] 2/13 37/21 65/11 68/9 73/13 102/12 invalid [1] 17/22 investigated [2] 5/2 12/3 investigation [1] 28/5 Investment [1] 50/12 Investments [1] 49/15 involved [3] 12/9 26/1 47/21 involvement [2] 32/10 32/20 irrelevant [2] 20/1 36/7 is [467] isn't [4] 5/19 55/14 95/23 95/23 issuance [3] 6/3 6/5 7/12 issue [46] 3/12 3/22 3/25 6/2 11/25 14/1 14/6 15/8 16/9 19/18 25/13 29/19 29/21 39/16 39/22 40/13 41/16 46/10 49/9 54/12 57/14 65/5 68/17 68/18 69/9 69/22 70/16 70/21 72/5 72/11 73/4 73/8 79/9 79/19 83/7 88/1 88/13 88/21 90/4 90/19 92/3 92/5 94/13 94/14 94/20 100/3 issued [3] 16/11 35/2 90/11 issues [13] 4/19 19/16 20/6 23/21 43/10 45/19 47/21 47/23 66/2 70/24 71/12 76/13 85/11 issuing [1] 99/18 it [318] its [6] 35/1 35/18 38/21 73/11 82/7 90/18 itself [2] 23/1 51/14	99/4 99/18 101/2 judgment [40] 38/18 38/20 40/21 40/23 41/6 41/15 41/21 42/21 43/6 43/13 44/4 44/21 57/10 59/16 71/7 73/3 74/14 74/21 76/14 78/19 80/4 80/24 81/7 81/10 83/11 83/20 84/10 84/18 84/23 85/14 85/16 85/22 86/17 86/19 87/16 89/12 90/10 90/12 92/20 93/11 judicial [2] 97/2 102/9 judicially [1] 94/25 Jumper [4] 25/11 25/25 27/6 31/3 June [2] 92/1 102/19 jurors [1] 50/2 jury [67] 5/22 5/23 10/10 10/25 11/3 11/13 11/21 13/10 13/15 13/18 14/7 14/12 15/2 19/3 19/7 19/17 20/12 21/4 22/20 22/20 34/22 35/4 36/9 36/21 39/18 41/1 41/7 42/19 45/5 46/14 46/20 46/22 47/15 48/4 48/5 48/6 48/14 48/18 53/11 60/10 64/8 69/16 72/25 73/2 73/24 75/15 81/21 82/13 82/13 82/23 83/1 84/5 85/10 85/11 85/11 88/11 88/19 92/3 92/6 94/21 95/5 95/6 97/11 100/20 101/6 101/8 101/9 jury's [1] 49/19 just [69] 3/8 3/21 4/4 12/18 13/23 14/15 15/22 15/24 16/17 17/24 20/3 20/19 22/15 22/25 27/14 30/25 33/7 37/24 40/24 41/11 42/1 44/7 45/6 45/16 46/1 47/22 49/18 51/1 53/25 54/18 56/9 56/16 59/13 60/8 61/4 64/24 66/11 66/16 66/22 66/25 67/5 67/11 67/12 67/14 70/6 72/4 72/5 72/24 72/25 73/14 74/5 75/16 77/11 77/21 78/1 78/6 78/18 78/20 81/7 85/8 85/9 86/5 86/6 91/4 92/4 96/19 98/22 100/4 101/7 justice [1] 59/21	67/7 70/14 71/25 81/5 later [5] 19/2 19/13 27/16 54/13 62/21 law [44] 5/23 6/24 7/15 7/23 8/12 11/2 11/22 13/7 13/10 15/2 15/3 15/18 15/19 16/20 18/22 18/25 19/2 19/13 27/6 35/16 38/24 39/13 41/4 47/3 47/13 63/14 66/4 73/7 74/8 74/15 75/11 76/17 79/14 83/22 83/23 84/7 85/9 85/12 85/14 85/17 88/2 92/18 92/24 95/19 laws [2] 13/9 13/24 lawsuit [4] 26/10 35/7 36/4 36/19 lawyers [1] 47/12 lay [1] 60/17 lead [1] 5/22 leading [1] 21/17 leads [1] 65/5 least [8] 32/8 33/3 33/7 40/10 43/23 61/8 72/8 81/7 leave [5] 47/8 80/10 96/20 96/21 96/23 Lee [18] 38/3 38/19 40/1 43/1 43/8 43/24 44/1 44/20 56/12 72/12 81/9 81/11 84/21 91/10 95/8 95/19 96/16 96/23 Lee's [3] 71/10 72/21 96/19 left [2] 49/9 71/7 legal [5] 70/21 71/3 72/5 76/12 78/23 legally [2] 17/14 17/15 legitimate [1] 22/3 less [4] 7/5 7/6 10/20 32/17 let [15] 4/10 6/1 6/8 6/17 12/20 34/5 37/9 46/14 51/8 52/11 63/23 86/1 91/4 93/6 99/20 let's [5] 24/5 46/13 55/15 55/20 67/23 lets [2] 51/11 86/12 letter [1] 92/13 letting [1] 19/22 licensed [16] 5/6 5/21 7/1 7/7 7/8 8/4 9/8 11/17 14/10 14/17 16/4 16/10 18/13 21/9 22/16 23/9 licenses [1] 5/14 licensing [10] 4/15 4/21 5/3 5/12 9/16 9/20 11/24 13/15 13/19 21/1 light [2] 32/22 59/23 like [47] 4/4 5/1 6/22 7/5 11/11 14/18 21/2 21/12 25/10 27/14 33/23 37/2 38/12 41/12 41/14 41/17 42/1 42/9 42/12 42/13 42/15 42/23 44/23 47/9 52/18 53/20 57/19 62/1 64/6 66/6 67/3 70/23 72/4 73/25 75/6 77/12 79/18 81/22 86/3 87/1 87/17 89/1 89/7 89/7 91/12 93/12 94/5 likely [1] 11/15 limb [1] 95/10 limine [15] 3/7 4/8 4/11 4/12 24/8 34/18 40/18 40/24 48/21 48/23 48/24 53/3 60/5 63/3 81/15 limit [1] 61/1 limitations [1] 51/17 limited [2] 47/20 81/23 limits [1] 51/23 line [3] 16/23 52/20 56/13 lines [1] 14/15 list [1] 27/2 listed [4] 25/8 29/10 33/1 85/22 little [6] 22/5 37/14 37/16 38/4 61/4 66/16 live [5] 7/10 17/3 66/21 70/5 70/6 living [3] 17/6 17/6 69/3 LLR [15] 4/21 5/1 5/4 9/21 10/8 12/3 14/4 14/25 15/9 16/19 20/23 20/24 21/2 21/5 21/11 Lo [2] 7/16 22/3 locating [1] 89/16 location [1] 32/9 locked [1] 80/13
J Jackson [2] 7/16 22/3 jail [1] 7/6 Jane [1] 4/18 January [3] 28/15 29/14 59/2 January 9th [1] 28/15 JEFF [1] 1/19 Jenkins [2] 27/9 27/14 Jim [1] 101/4 JOCELYN [1] 1/15 JR [1] 1/19 judge [46] 1/15 25/23 38/3 38/16 38/18 40/1 43/1 43/8 43/24 44/1 44/20 56/12 69/15 71/10 71/12 72/12 72/21 79/23 81/9 81/10 83/5 83/6 83/7 83/8 83/21 84/21 85/17 86/12 86/16 91/10 92/7 93/6 93/6 95/8 95/19 96/16	K keep [1] 47/7 keeping [1] 89/22 kept [1] 52/5 kin [1] 102/16 kind [8] 3/9 50/23 51/9 61/4 62/9 72/25 76/23 90/2 knew [3] 58/15 59/24 67/21 Knight [1] 86/14 know [80] 11/8 11/12 14/12 14/14 14/18 15/22 18/19 19/3 22/9 23/25 28/9 31/6 31/8 31/23 33/13 33/14 34/1 34/2 34/9 39/8 41/11 43/18 47/5 47/20 53/5 53/14 53/16 54/9 54/14 55/2 57/11 58/18 59/4 59/11 59/15 59/18 59/19 66/10 68/10 70/15 70/17 73/24 74/25 75/1 75/2 76/1 76/15 76/23 77/20 77/21 77/23 78/4 78/17 78/25 79/15 79/15 80/22 81/3 81/14 83/3 85/3 87/8 89/20 91/2 92/14 92/17 92/17 93/7 95/3 95/12 96/9 96/11 96/18 96/25 97/4 97/9 98/9 98/17 99/10 99/20 knowledge [6] 26/5 29/11 32/19 33/6 33/20 60/10 known [5] 26/13 32/7 32/20 57/5 57/9 knows [1] 56/7 L labor [2] 8/14 61/14 lack [3] 15/18 26/3 85/7 Ladies [1] 46/25 laid [2] 54/10 83/13 land [2] 49/7 53/14 language [1] 77/2 large [1] 81/19 last [11] 27/2 30/12 32/5 44/10 65/10 68/7 78/20 81/1 86/9 87/3 88/2	L 67/7 70/14 71/25 81/5 later [5] 19/2 19/13 27/16 54/13 62/21 law [44] 5/23 6/24 7/15 7/23 8/12 11/2 11/22 13/7 13/10 15/2 15/3 15/18 15/19 16/20 18/22 18/25 19/2 19/13 27/6 35/16 38/24 39/13 41/4 47/3 47/13 63/14 66/4 73/7 74/8 74/15 75/11 76/17 79/14 83/22 83/23 84/7 85/9 85/12 85/14 85/17 88/2 92/18 92/24 95/19 laws [2] 13/9 13/24 lawsuit [4] 26/10 35/7 36/4 36/19 lawyers [1] 47/12 lay [1] 60/17 lead [1] 5/22 leading [1] 21/17 leads [1] 65/5 least [8] 32/8 33/3 33/7 40/10 43/23 61/8 72/8 81/7 leave [5] 47/8 80/10 96/20 96/21 96/23 Lee [18] 38/3 38/19 40/1 43/1 43/8 43/24 44/1 44/20 56/12 72/12 81/9 81/11 84/21 91/10 95/8 95/19 96/16 96/23 Lee's [3] 71/10 72/21 96/19 left [2] 49/9 71/7 legal [5] 70/21 71/3 72/5 76/12 78/23 legally [2] 17/14 17/15 legitimate [1] 22/3 less [4] 7/5 7/6 10/20 32/17 let [15] 4/10 6/1 6/8 6/17 12/20 34/5 37/9 46/14 51/8 52/11 63/23 86/1 91/4 93/6 99/20 let's [5] 24/5 46/13 55/15 55/20 67/23 lets [2] 51/11 86/12 letter [1] 92/13 letting [1] 19/22 licensed [16] 5/6 5/21 7/1 7/7 7/8 8/4 9/8 11/17 14/10 14/17 16/4 16/10 18/13 21/9 22/16 23/9 licenses [1] 5/14 licensing [10] 4/15 4/21 5/3 5/12 9/16 9/20 11/24 13/15 13/19 21/1 light [2] 32/22 59/23 like [47] 4/4 5/1 6/22 7/5 11/11 14/18 21/2 21/12 25/10 27/14 33/23 37/2 38/12 41/12 41/14 41/17 42/1 42/9 42/12 42/13 42/15 42/23 44/23 47/9 52/18 53/20 57/19 62/1 64/6 66/6 67/3 70/23 72/4 73/25 75/6 77/12 79/18 81/22 86/3 87/1 87/17 89/1 89/7 89/7 91/12 93/12 94/5 likely [1] 11/15 limb [1] 95/10 limine [15] 3/7 4/8 4/11 4/12 24/8 34/18 40/18 40/24 48/21 48/23 48/24 53/3 60/5 63/3 81/15 limit [1] 61/1 limitations [1] 51/17 limited [2] 47/20 81/23 limits [1] 51/23 line [3] 16/23 52/20 56/13 lines [1] 14/15 list [1] 27/2 listed [4] 25/8 29/10 33/1 85/22 little [6] 22/5 37/14 37/16 38/4 61/4 66/16 live [5] 7/10 17/3 66/21 70/5 70/6 living [3] 17/6 17/6 69/3 LLR [15] 4/21 5/1 5/4 9/21 10/8 12/3 14/4 14/25 15/9 16/19 20/23 20/24 21/2 21/5 21/11 Lo [2] 7/16 22/3 locating [1] 89/16 location [1] 32/9 locked [1] 80/13

long [5] 23/21 51/7 62/16 96/6 98/5 longer [1] 47/4 look [3] 30/22 67/6 89/16 looking [2] 37/8 37/10 looks [1] 94/5 loss [7] 6/20 6/21 49/22 51/15 53/9 61/13 62/5 losses [2] 69/17 69/18 lot [6] 30/3 51/19 64/8 66/13 86/9 92/4 lots [1] 98/24 lower [1] 62/2 lunch [2] 23/21 60/23	means [7] 10/17 29/25 83/8 83/22 84/2 84/15 98/10 meant [1] 84/21 media [1] 48/3 mediated [1] 23/19 memorandum [1] 83/13 mention [4] 36/20 50/8 81/16 81/17 mere [1] 9/17 message [1] 71/10 met [1] 83/18 might [4] 18/8 68/1 71/22 78/3 miles [3] 12/23 15/16 16/1 mind [6] 10/25 13/10 20/4 33/7 49/19 50/1 mine [2] 11/22 22/1 minimum [3] 63/11 64/12 67/11 minute [4] 3/17 37/7 44/10 72/11 minutes [1] 68/22 misconduct [1] 69/18 misdemeanor [1] 7/4 misdemeanors [1] 11/3 misplaced [1] 60/23 Mitchell [1] 24/25 model [1] 64/16 modicum [1] 32/15 Monday [2] 29/22 32/5 money [10] 7/17 8/20 18/12 18/23 19/5 62/22 64/2 66/25 70/3 70/6 month [3] 35/24 65/1 91/24 months [11] 57/14 63/11 64/14 65/8 65/9 65/9 65/21 65/21 67/21 69/7 97/22 more [13] 10/20 32/1 32/17 51/1 51/17 55/23 55/24 66/11 66/16 68/21 70/21 74/7 94/25 morning [25] 38/8 38/21 45/9 46/7 47/16 48/15 56/6 56/11 74/10 74/17 76/9 77/13 79/19 80/7 80/19 80/20 80/21 81/1 82/17 82/20 83/14 89/12 94/1 94/3 95/25 mortgage [7] 18/7 50/13 50/18 52/8 53/4 66/12 66/12 mortgagee [1] 52/8 Most [1] 6/12 mother [12] 4/18 4/20 5/2 5/11 5/24 8/3 10/7 11/1 12/5 15/10 18/17 22/16 motion [83] 4/11 4/12 4/16 24/6 24/7 34/6 34/16 34/17 36/12 37/4 38/2 38/8 38/18 40/17 40/21 40/22 40/24 41/5 41/14 42/21 43/6 43/13 43/24 44/4 44/8 44/21 45/22 46/8 46/11 48/21 48/23 48/24 50/14 53/3 55/16 55/25 56/5 56/7 56/22 57/10 57/13 58/2 59/15 59/16 60/4 60/5 60/8 61/1 61/1 61/6 63/2 68/20 71/7 71/25 74/13 75/6 76/13 78/19 78/25 79/22 80/24 81/6 81/6 81/10 83/11 83/15 83/19 84/10 84/18 84/23 85/7 85/14 85/21 85/23 87/16 89/11 89/13 89/13 90/9 92/20 93/11 93/12 95/25 motions [44] 3/7 4/4 4/8 45/3 45/7 71/13 79/25 81/15 83/21 84/13 86/13 86/23 90/12 90/16 90/17 93/9 93/20 93/24 93/25 94/1 94/2 94/11 94/16 95/2 95/11 95/15 95/20 96/2 96/4 96/10 97/5 97/10 97/16 97/21 98/3 98/7 98/13 98/14 98/14 98/14 98/21 98/23 98/24 99/13 Motor [1] 36/16 move [9] 7/11 23/23 24/5 38/20 48/20 55/15 56/10 57/8 58/1 moved [1] 38/20 moving [2] 57/13 90/9 Mr [34] 5/1 5/24 8/1 9/15 9/25 10/7 10/25 12/10 13/5 14/4 14/24 20/20 28/5 29/20 33/5 36/2 36/22 37/9 49/4 49/5 49/6 49/7 49/10 49/14 50/11 52/20 53/12 63/3 86/1 97/13 97/25 98/1 98/13 101/5	9/18 10/6 10/9 10/24 11/7 12/4 12/13 12/17 12/22 12/22 13/23 14/1 14/21 14/23 15/1 15/10 16/4 16/10 20/22 24/11 24/15 24/24 25/2 27/23 28/4 28/8 29/8 29/13 30/1 30/17 30/17 31/20 32/1 33/13 35/13 36/5 36/20 40/8 40/19 44/12 46/7 49/22 50/6 50/24 51/5 52/14 52/21 52/25 53/2 60/9 61/1 63/5 63/20 67/25 73/14 76/22 81/23 89/11 Mr. Curry [21] 5/11 6/17 6/18 8/5 8/6 12/4 12/13 14/21 15/10 16/4 16/10 20/22 40/8 49/22 50/24 51/5 52/14 52/21 52/25 63/20 73/14 Mr. Curry's [4] 9/11 36/5 36/20 63/5 Mr. Derrick [2] 35/13 76/22 Mr. Derrick's [1] 61/1 Mr. Hesse [1] 60/9 Mr. McGowan [13] 24/11 24/15 24/24 25/2 27/23 28/4 28/8 29/8 29/13 30/1 31/20 32/1 33/13 Mr. Peel [18] 9/18 10/6 10/9 10/24 11/7 12/22 13/23 14/1 14/23 15/1 40/19 44/12 46/7 50/6 53/2 67/25 81/23 89/11 Mr. Peel's [3] 9/15 12/17 12/22 Mr. Tadlock [1] 30/17 Mr. Terry [1] 30/17 Ms [3] 37/18 56/3 72/2 Ms. [12] 4/18 6/1 7/24 9/13 22/8 28/4 37/14 43/17 43/23 87/25 88/7 88/15 Ms. Curry [1] 7/24 Ms. Jane [1] 4/18 Ms. Peavy [10] 6/1 9/13 22/8 28/4 37/14 43/17 43/23 87/25 88/7 88/15 much [11] 31/9 47/4 52/17 53/18 60/22 62/1 76/10 92/17 97/2 97/3 100/18 multiple [1] 30/3 must [3] 21/5 21/6 24/19 my [61] 4/6 4/17 5/18 6/2 12/17 13/10 13/12 15/4 15/15 17/18 21/15 22/15 23/15 24/24 27/10 30/21 32/1 37/4 38/7 40/9 40/11 40/12 41/15 43/16 45/15 50/24 51/15 55/21 58/4 58/11 58/14 60/23 61/6 64/11 64/12 65/19 68/20 70/10 71/10 71/19 72/13 72/14 72/20 73/15 73/17 74/25 75/1 78/15 78/25 81/2 82/12 83/13 87/19 88/16 89/8 89/23 90/22 94/4 97/9 99/5 99/24
ma'am [8] 4/10 24/10 25/15 26/25 31/15 49/1 56/20 76/11 made [7] 4/16 21/21 60/23 63/11 69/8 82/18 89/18 mail [3] 43/16 56/15 87/20 mails [1] 57/19 maintain [1] 81/20 make [13] 10/18 15/24 21/15 34/7 34/9 36/12 36/21 46/2 60/20 78/2 78/6 85/21 92/8 makes [1] 92/4 making [5] 43/22 44/3 67/21 83/22 85/6 many [2] 76/12 76/12 March [3] 59/3 64/12 67/10 March 2014 [1] 64/12 market [1] 10/3 material [2] 8/13 18/8 materials [1] 61/14 matter [30] 11/8 19/2 19/12 21/18 27/6 36/10 38/24 39/9 39/13 40/20 41/4 41/4 41/10 43/3 43/12 60/21 64/1 75/10 79/14 83/22 83/23 84/2 84/6 84/14 85/8 85/12 85/14 85/17 86/11 89/2 matters [7] 39/10 40/6 47/3 47/13 60/9 83/15 89/2 Maurice [4] 1/8 35/1 35/11 39/4 may [54] 3/5 13/3 13/3 14/10 14/11 16/17 18/2 18/15 19/24 25/2 25/13 32/14 33/6 36/1 39/24 39/25 42/4 42/18 42/22 45/1 50/7 51/21 53/15 56/12 59/8 61/4 73/8 76/4 76/4 77/24 77/24 78/14 79/1 79/1 79/6 81/2 81/2 81/3 82/2 82/15 85/2 88/22 89/18 92/1 93/19 93/21 93/23 96/13 96/13 97/24 99/9 99/15 99/19 100/16 May 10th [1] 97/24 May 16th [3] 99/9 99/19 100/16 May 2nd [1] 93/21 May 9th [2] 93/19 93/23 maybe [14] 3/8 3/21 19/14 33/25 42/2 42/14 62/1 68/14 73/24 75/16 85/15 92/17 96/16 96/22 McCURDY [4] 1/24 102/8 102/21 102/23 McGowan [19] 24/9 24/11 24/15 24/24 25/2 27/23 28/4 28/5 28/8 29/8 29/13 29/20 30/1 31/18 31/20 32/1 32/8 33/6 33/13 me [47] 4/10 6/1 6/8 6/15 6/17 8/6 12/20 17/19 22/7 23/12 23/17 28/3 31/11 31/17 35/24 37/6 37/9 37/18 37/21 37/23 42/3 42/24 44/23 50/17 51/1 53/7 55/15 55/18 57/17 57/21 58/3 58/18 60/4 62/19 63/5 63/8 67/3 69/6 71/1 71/13 72/4 78/11 86/1 87/9 87/15 87/24 91/4 mean [32] 9/14 11/9 11/13 14/19 15/12 15/13 15/19 21/7 21/17 23/19 31/23 32/17 33/21 41/23 54/9 54/12 55/5 60/12 63/18 64/5 72/22 74/1 76/12 78/15 88/18 90/3 91/15 93/8 95/16 95/22 96/6 99/10	name [6] 26/4 26/12 27/20 32/8 78/12 78/15 named [8] 25/20 27/4 27/16 28/4 30/11 32/4 32/25 52/8 naming [4] 25/3 26/6 29/23 35/7 natural [4] 69/17 69/22 70/1 70/7 nature [3] 26/3 81/5 82/1 neaten [1] 12/12 necessarily [1] 83/20 necessary [4] 20/8 33/24 34/15 81/23 need [33] 3/20 3/21 23/23 33/10 34/3 42/5 45/23 46/6 46/9 50/8 60/17 61/4 69/10 70/16 72/8 74/3 75/14 75/22 76/6 76/14 82/14 82/23 83/5 83/12 84/17 89/1 91/15 91/16 93/14 93/19 98/4 99/21 99/25 needed [2] 39/19 98/16 needs [6] 41/17 62/20 72/13 81/11 100/14 100/16 neglected [1] 28/18 negligence [4] 35/5 35/5 35/14 64/22 negligent [2] 10/13 10/14 neighborhood [1] 12/8 neither [2] 9/8 102/16 never [26] 5/20 9/4 10/2 10/2 12/15 13/22 14/5 15/10 18/5 18/9 21/21 21/23 29/22	

never... [13] 29/22 30/11 31/20 32/3 32/4 44/16 57/1 57/2 87/3 87/6 87/7 87/12 92/13 new [1] 6/5 NEWMAN [1] 1/15 next [22] 17/18 24/6 34/16 48/21 55/16 60/3 60/4 60/25 87/18 91/18 91/24 93/4 93/7 93/20 93/22 96/4 96/10 96/14 96/15 96/17 97/5 98/6 nice [1] 63/8 night [5] 48/16 81/1 86/10 87/3 88/3 no [48] 2/4 2/13 3/16 4/24 4/25 4/25 7/5 7/6 9/1 9/1 9/2 9/7 9/19 9/19 9/22 10/6 12/2 17/23 20/24 21/7 21/18 22/8 23/14 28/1 29/15 31/22 36/24 40/16 42/3 48/2 49/3 49/21 50/8 51/17 59/10 68/12 73/21 73/23 83/19 85/11 86/18 86/20 88/3 93/21 95/23 97/4 99/12 99/12 nobody [2] 8/7 71/8 non [3] 7/7 7/8 52/5 non-conventional [1] 52/5 non-licensed [2] 7/7 7/8 none [1] 8/10 nonjury [4] 93/4 95/14 96/3 98/10 normally [6] 37/13 37/14 38/12 38/15 39/17 40/11 not [164] note [1] 91/4 notebook [1] 70/23 noted [3] 10/12 25/22 83/17 notes [1] 60/23 noteworthy [1] 21/20 nothing [4] 10/8 53/8 62/19 85/10 notice [17] 9/7 56/23 57/14 57/16 57/22 58/12 58/15 68/17 78/21 78/23 84/25 86/18 87/20 93/19 95/22 95/24 96/6 notified [1] 29/22 November [3] 26/11 28/3 63/6 November 2015 [1] 63/6 November 25th [1] 28/3 now [36] 19/11 22/5 24/5 25/6 26/11 30/19 32/11 33/3 36/6 41/2 44/21 46/17 55/15 56/16 57/3 57/8 58/10 60/15 64/14 65/2 66/23 68/9 69/10 70/18 73/21 80/22 82/21 84/12 87/8 88/25 90/2 90/19 95/15 100/7 100/9 100/23 number [8] 6/20 45/3 61/20 62/3 62/3 62/6 66/17 95/9 numbers [1] 62/12 nuts [1] 61/21	68/4 71/6 74/18 78/6 82/4 86/6 86/15 97/8 98/16 99/17 99/19 100/17 old [1] 6/4 once [5] 34/10 38/5 41/14 48/5 64/19 one [33] 3/8 3/12 7/8 9/9 9/22 15/23 15/24 24/14 24/21 26/12 30/25 37/6 38/21 40/4 43/9 45/16 45/19 50/15 51/16 55/23 55/24 56/13 59/8 62/8 68/5 68/6 75/6 75/18 81/16 86/16 88/5 91/22 98/8 ones [1] 31/11 ongoing [1] 26/11 only [21] 3/12 7/7 7/8 7/21 22/12 27/23 34/21 35/4 35/12 38/16 48/4 49/9 50/9 52/21 54/21 63/22 71/6 75/14 82/14 90/24 99/4 open [3] 46/20 55/4 65/16 opening [2] 21/16 45/8 operate [1] 38/24 operated [1] 49/6 operates [1] 38/6 opine [2] 14/3 30/15 opinion [4] 9/15 9/16 11/4 32/18 opinions [2] 25/1 26/22 opportunity [3] 42/24 60/16 60/19 oppose [1] 56/21 opposing [2] 26/7 59/21 order [8] 7/1 22/8 22/13 34/9 69/4 81/14 85/20 99/19 ordered [1] 66/15 original [2] 9/11 89/13 originally [2] 31/11 35/7 other [23] 3/7 10/6 12/16 22/9 22/13 26/5 27/22 28/20 29/9 29/15 31/13 32/13 32/19 33/20 37/22 39/25 40/16 48/2 66/25 67/23 73/20 75/19 94/13 Otherwise [1] 88/16 our [13] 8/18 24/23 37/21 38/18 42/2 45/19 61/24 80/11 82/19 83/23 83/24 88/2 100/12 out [32] 3/10 3/23 4/1 17/17 19/2 23/21 26/16 28/24 30/10 31/18 33/3 34/11 43/8 44/7 57/5 66/22 67/7 69/9 70/4 71/2 73/20 77/21 78/13 82/15 83/13 92/14 94/5 95/10 96/20 98/6 99/5 99/25 outcome [1] 94/2 outlined [1] 25/24 outside [4] 19/16 40/6 75/11 78/25 outstanding [2] 79/25 86/13 outweigh [1] 88/20 over [8] 6/9 6/18 34/6 48/11 66/12 78/13 79/15 97/11 overcomes [1] 40/15 overlap [1] 36/24 overnight [2] 74/14 76/10 own [4] 8/1 24/24 63/20 87/24 owner [4] 7/9 12/4 49/23 50/19 owns [1] 13/21	party's [1] 77/15 pattern [1] 19/21 Pause [5] 3/19 54/6 74/4 97/12 97/14 pay [17] 17/17 18/11 23/2 23/8 51/16 51/17 52/18 63/12 64/2 64/14 64/17 66/14 67/3 67/12 67/14 70/2 70/6 payable [1] 21/24 payment [2] 51/16 51/24 payments [4] 63/11 64/13 66/12 67/11 payoff [2] 64/15 64/20 PEAVY [14] 1/19 6/1 9/13 22/8 28/4 37/14 37/18 43/17 43/23 56/3 72/2 87/25 88/7 88/15 pecuniary [1] 69/16 PEEL [21] 1/21 9/18 10/6 10/9 10/24 11/7 12/22 13/23 14/1 14/23 15/1 37/9 40/19 44/12 46/7 50/6 53/2 67/25 81/23 86/1 89/11 Peel's [4] 9/15 12/17 12/22 13/5 Peeples' [1] 86/16 pending [6] 36/25 86/19 86/23 97/17 97/22 99/11 people [3] 48/4 48/6 63/17 per [3] 12/23 15/16 16/1 percent [1] 62/11 percentage [1] 62/24 perfectly [1] 73/5 perhaps [4] 46/10 74/6 74/24 81/11 period [1] 21/24 permissible [1] 14/8 permission [1] 86/3 permit [4] 7/25 12/6 18/18 51/3 permits [2] 4/22 11/11 permitted [1] 48/8 person [2] 13/3 16/1 personnel [1] 47/24 pick [3] 62/3 77/21 98/23 place [2] 61/13 86/14 placed [2] 53/9 93/10 Plaintiff [23] 1/5 1/20 4/20 8/22 11/10 20/11 28/2 28/20 29/10 31/13 32/7 32/13 33/1 33/5 33/22 34/21 35/18 57/20 60/19 81/8 81/24 85/1 100/14 Plaintiff's [3] 33/22 36/8 60/5 Plaintiffs [2] 33/4 34/23 plant [2] 10/24 50/1 play [1] 84/19 plead [2] 22/2 39/21 pleading [1] 39/6 pleadings [3] 23/23 40/7 59/20 PLEAS [2] 1/1 102/14 please [6] 24/6 46/18 55/16 71/21 71/24 92/14 pled [1] 6/14 plenty [2] 93/5 96/7 Plus [1] 79/24 point [20] 4/3 15/25 19/13 22/4 30/12 31/4 40/23 42/4 44/7 44/11 46/13 50/22 54/8 55/3 69/12 69/20 75/2 75/9 78/4 85/2 points [1] 39/12 policies [1] 51/9 policy [40] 6/3 6/4 6/5 10/14 16/7 16/11 16/25 17/13 17/16 17/21 17/22 21/24 23/1 23/7 23/24 24/1 24/4 24/5 34/24 34/25 35/2 38/23 51/7 51/14 51/23 52/1 52/6 52/9 52/13 52/22 54/22 54/25 61/10 61/11 61/15 64/15 65/25 69/1 69/21 70/2 Porthemos [2] 1/4 4/17 positing [1] 16/1 position [7] 29/25 30/19 54/19 58/10 58/11 73/6 87/25 possession [3] 28/9 30/6 59/1
O o'clock [2] 74/16 80/6 object [4] 15/4 36/13 62/21 78/19 objection [1] 90/3 obviously [10] 15/15 29/24 32/18 36/13 43/7 62/2 72/19 84/11 90/9 99/17 occur [1] 15/19 occurred [2] 49/23 53/10 October [3] 39/3 51/6 51/10 odd [1] 76/1 off [11] 18/11 32/1 42/10 44/12 56/25 57/23 58/16 63/12 69/2 80/2 99/1 offer [3] 32/12 32/18 73/10 offered [2] 24/19 25/1 offering [2] 28/19 31/12 office [6] 33/15 33/16 52/24 93/9 93/24 97/23 Official [2] 1/25 102/8 oh [6] 9/4 21/4 45/17 57/4 99/16 101/1 okay [33] 4/2 4/11 6/8 9/13 16/15 16/16 22/22 29/18 34/8 34/14 42/8 44/18 45/13	P p.m [4] 3/3 46/21 48/19 80/15 paid [8] 17/5 36/23 51/19 51/25 52/12 53/13 61/9 69/2 papers [1] 37/11 parse [1] 19/2 part [3] 9/18 42/3 85/23 partial [2] 3/2 102/11 partially [2] 38/19 48/23 particularly [2] 32/22 59/23 parties [13] 26/14 29/21 32/21 32/25 37/23 38/25 39/10 39/19 47/19 47/24 77/16 87/21 90/12 parts [1] 18/1 party [11] 26/5 26/7 27/22 32/24 36/19 40/25	

possibility [1] 79/14 possibly [1] 98/12 post [2] 36/10 48/6 post-verdict [1] 36/10 practice [2] 92/18 92/24 precedence [1] 97/11 precluded [1] 20/12 precludes [1] 23/7 predict [1] 41/23 prejudice [7] 26/6 26/20 33/8 59/11 89/8 92/3 92/5 prejudiced [2] 59/22 88/17 prejudicial [9] 5/16 15/6 21/3 21/13 24/22 36/8 39/24 79/6 88/19 preliminary [2] 76/6 83/15 prepare [7] 24/12 43/7 74/12 76/10 78/21 80/4 80/23 prepared [17] 28/8 30/2 31/24 43/18 68/19 71/8 71/11 71/17 74/22 77/9 79/2 79/3 79/22 94/1 97/2 97/6 99/14 preparing [2] 89/20 94/17 presence [1] 19/17 present [9] 20/23 39/15 40/14 46/22 72/15 74/7 79/5 83/24 86/21 presented [2] 85/1 86/24 presenting [1] 41/6 preserve [2] 72/9 86/5 preserving [1] 72/16 presumably [4] 16/2 57/6 73/21 90/13 presume [1] 79/21 pretrial [2] 86/20 86/23 pretty [2] 33/17 61/19 prevent [1] 89/6 prevents [1] 23/8 previous [2] 36/5 50/18 previously [8] 25/8 25/24 27/5 27/15 29/20 30/14 34/18 58/25 price [1] 49/16 prior [11] 12/23 24/21 26/5 26/12 30/17 31/1 36/20 61/16 72/6 86/13 99/19 priority [1] 99/7 probable [2] 10/20 10/20 probably [6] 15/17 50/16 52/7 64/7 68/21 100/22 problem [15] 34/12 52/16 53/5 53/16 65/17 65/18 71/23 72/22 73/17 74/1 88/2 88/3 88/6 88/7 95/7 problematic [1] 40/10 problems [1] 91/3 Procedurally [1] 71/22 procedure [3] 38/19 58/22 86/22 proceedings [6] 2/5 2/14 80/14 80/17 101/11 102/12 process [1] 84/15 procurement [1] 10/14 produce [1] 60/14 produced [4] 28/12 28/15 29/14 70/25 production [1] 87/20 proffer [2] 19/15 72/9 proffered [1] 26/2 profit [2] 18/22 87/23 progress [1] 34/2 proper [6] 11/12 40/25 54/20 56/5 57/12 90/15 properly [6] 5/5 25/19 34/22 56/14 69/15 84/16 properties [1] 28/6 property [28] 5/6 7/10 8/2 12/11 12/14 13/21 21/10 24/17 26/17 27/24 49/12 49/13 49/20 49/23 50/1 50/3 50/10 50/12 50/13 51/3	53/17 provide [11] 57/21 58/7 58/13 58/20 58/24 59/2 69/6 71/1 75/5 86/23 92/14 provided [5] 29/16 35/25 63/4 63/8 65/7 province [2] 11/22 38/15 provision [1] 51/23 pull [3] 4/22 27/9 74/14 pulled [3] 7/25 12/6 51/4 pulling [2] 11/11 18/18 punishable [2] 7/4 11/2 purchase [2] 49/16 51/6 purchased [1] 49/14 purchasing [1] 52/25 purported [1] 60/6 purpose [3] 6/13 14/9 20/9 purposes [1] 42/17 pursuant [1] 88/12 push [1] 67/8 put [13] 7/19 8/14 11/12 39/18 61/13 62/5 63/17 64/17 72/8 86/3 93/24 95/16 95/25 puts [2] 49/19 87/17 putting [3] 43/19 63/25 87/24 Q qualifications [1] 60/20 qualified [1] 60/11 qualify [1] 95/5 quantify [1] 67/2 quarrel [1] 21/7 question [22] 5/22 9/8 11/10 11/14 15/5 17/14 17/18 19/24 21/23 58/4 69/24 69/25 76/17 77/7 81/24 82/5 82/8 82/9 82/14 82/15 84/5 88/10 questioning [11] 4/19 5/7 5/16 10/24 12/25 13/6 14/15 14/21 14/23 16/23 20/25 questions [8] 5/10 14/19 20/9 21/17 48/7 48/9 53/18 76/24 quickly [1] 60/24 quote [1] 56/15 R RACHEL [1] 1/19 radar [1] 12/15 raised [2] 4/19 81/12 ran [1] 10/16 raw [1] 53/14 reached [1] 43/8 read [5] 23/4 24/5 69/8 96/9 98/9 reading [4] 38/10 60/8 71/10 73/6 ready [5] 72/4 79/23 86/10 92/25 95/4 real [4] 71/1 72/11 79/14 88/13 reality [3] 5/15 39/9 90/7 realized [1] 87/13 really [18] 31/8 50/15 51/1 56/8 59/16 65/23 66/1 68/19 68/20 69/4 75/3 84/20 90/18 96/9 98/9 98/10 99/21 100/22 reason [12] 19/19 27/3 39/17 42/4 51/13 56/22 65/12 73/12 88/13 89/6 99/12 100/13 reasonable [2] 34/10 73/6 reasonably [1] 17/2 reasoning [1] 52/21 reasons [3] 40/15 50/20 79/6 rebuild [3] 61/21 62/1 66/25 rebut [2] 25/2 30/22 recall [2] 40/8 63/6 receipts [2] 69/5 69/7 receive [1] 94/16 received [6] 28/9 43/6 56/19 59/13 87/6 92/19 receives [1] 7/17 receiving [1] 87/7	reconsidered [1] 72/13 record [13] 1/6 3/15 9/20 12/2 49/23 54/5 71/20 72/16 78/18 85/23 86/3 99/1 102/11 recorded [1] 49/16 records [3] 4/25 49/13 53/1 recover [4] 8/23 17/2 17/21 17/24 recoverable [1] 19/12 recovery [1] 36/23 reduction [1] 81/21 references [1] 21/11 referencing [1] 13/9 referring [2] 42/16 54/4 refresh [1] 64/10 refusal [1] 26/3 regarding [2] 41/19 72/16 regardless [3] 53/2 62/13 69/18 regulation [1] 5/24 regulations [4] 4/14 14/25 15/7 21/2 relate [2] 18/5 65/13 related [7] 5/5 30/16 36/2 40/13 50/5 50/10 68/20 relates [8] 13/20 17/8 17/9 20/25 21/8 38/2 49/5 53/4 relating [6] 4/13 5/13 34/18 48/25 49/4 49/11 relationship [3] 76/23 77/7 78/5 relative [1] 102/13 release [70] 35/24 37/11 37/23 38/5 38/6 38/6 38/9 38/21 38/24 39/11 39/13 39/20 39/22 41/2 41/8 42/15 42/19 44/8 44/16 44/24 45/3 45/5 45/15 45/25 46/9 56/6 56/9 56/10 56/18 56/18 57/1 57/17 57/22 72/17 72/23 72/24 73/1 73/4 73/10 77/3 77/16 77/18 81/25 82/7 82/10 82/11 82/14 82/24 83/1 83/5 83/8 83/10 83/21 84/4 84/7 84/15 85/23 87/7 88/4 89/3 90/5 90/5 90/11 92/3 92/6 92/8 92/11 92/14 92/19 93/13 released [3] 48/18 57/4 58/16 releases [3] 37/17 38/25 77/3 releasing [1] 84/1 relevance [1] 50/17 relevant [8] 8/18 10/17 12/1 19/23 50/2 51/14 52/13 54/19 relief [1] 36/17 relying [1] 36/15 remember [1] 51/2 rendering [1] 74/9 renewal [1] 6/4 renewing [1] 19/22 rent [5] 17/5 17/7 66/21 70/5 70/9 rent-free [1] 17/7 repair [8] 24/17 24/18 27/25 28/6 30/3 30/4 30/5 61/25 repeated [1] 23/14 report [4] 28/8 29/12 29/13 70/12 reporter [6] 1/25 3/14 86/21 102/1 102/8 102/23 reports [24] 28/13 28/16 29/15 30/22 31/10 31/19 31/21 31/22 31/23 33/19 63/4 63/4 63/16 63/21 63/23 64/7 64/24 65/5 66/3 67/20 68/3 68/10 68/12 68/20 representation [1] 32/11 Republic [3] 66/6 69/13 69/14 request [4] 26/23 83/19 87/19 95/19 requested [8] 16/9 35/23 57/18 58/25 80/14 80/17 101/10 101/23 requesting [1] 11/24 requests [1] 37/22 require [1] 40/7 required [2] 18/15 25/23 requirement [2] 5/4 83/18 requirements [4] 4/15 4/22 5/12 5/13
--	---	---

requires [1] 59/21	41/19 42/15 43/20 58/12 81/17 88/4
resale [1] 6/19	settling [1] 73/20
research [1] 47/18	several [3] 50/20 69/7 81/15
resell [3] 8/7 9/9 18/21	Sexton [4] 25/9 25/11 25/19 31/3
reserve [4] 36/13 41/17 70/10 73/24	shall [1] 99/6
residential [4] 4/14 4/21 6/25 21/12	she [8] 43/3 43/8 43/11 56/13 72/3 74/22
resolve [3] 4/5 19/14 41/3	77/10 95/1
resolved [2] 48/23 92/5	She's [2] 53/22 96/24
resources [1] 94/23	sheet [2] 63/8 68/13
respectfully [1] 26/23	shelf [1] 89/19
respond [3] 4/8 55/25 93/14	short [2] 75/3 78/22
responded [1] 12/13	shortly [1] 28/22
response [6] 43/7 75/5 77/14 77/24 80/4	should [26] 5/19 24/4 30/24 31/5 33/25 37/21
90/14	41/3 41/6 41/7 42/10 43/4 56/7 56/14 58/9
responses [2] 28/3 28/12	59/4 64/9 71/11 79/10 79/15 81/24 83/16
rest [1] 47/11	85/9 87/23 93/5 95/16 99/14
rested [1] 85/3	shouldn't [6] 14/13 17/16 17/20 47/21 48/3
rests [1] 25/8	48/11
result [3] 16/12 69/17 95/3	show [6] 18/16 49/14 52/10 63/18 65/12
resumed [1] 80/18	73/23
retained [1] 26/16	showing [3] 19/20 63/10 98/11
reveal [1] 23/10	shows [2] 52/22 52/25
reversible [1] 72/9	side [1] 90/8
review [5] 25/1 27/11 30/2 83/5 88/2	sign [1] 87/9
reviewed [3] 87/2 88/11 92/19	signed [10] 29/3 37/20 37/24 44/12 44/16
reviews [1] 88/4	56/25 57/1 57/23 58/16 81/25
revisit [2] 41/18 42/1	significantly [1] 59/22
revolve [1] 62/13	similar [1] 14/22
reward [1] 7/15	Simpkins [4] 48/25 49/4 49/5 49/6
RICHLAND [8] 1/2 4/23 5/4 49/13 52/24	simple [1] 20/3
53/1 102/5 102/14	simply [1] 10/6
right [52] 3/5 9/4 13/2 18/14 19/1 22/4 22/5	since [9] 12/7 19/17 26/11 26/14 32/8 43/19
22/14 29/5 36/13 37/5 41/22 41/24 42/14	57/6 65/2 81/19
44/9 44/22 45/4 45/21 48/20 50/6 54/7 54/17	sir [3] 64/4 65/3 89/25
55/15 55/20 56/16 60/15 62/16 66/23 67/10	sit [1] 101/7
68/25 69/10 70/1 70/9 70/10 72/1 72/3 72/15	site [1] 12/4
75/24 76/8 76/24 77/7 77/12 79/13 80/2 80/6	sitting [4] 47/7 47/8 66/20 72/11
88/7 88/15 89/4 91/19 96/18 100/4 100/19	situation [9] 15/15 25/21 31/4 37/15 38/17
rights [2] 41/17 73/16	66/5 76/2 84/9 95/21
Riley [1] 36/15	situations [2] 66/6 89/6
risk [4] 34/24 51/6 51/7 61/11	six [2] 94/11 97/22
risks [1] 88/20	slice [1] 21/19
road [1] 76/5	so [115]
room [2] 47/16 48/14	social [1] 48/3
roster [4] 84/13 93/9 93/24 95/20	sold [9] 10/2 10/2 17/12 17/15 34/25 49/7
RPR [3] 1/24 102/21 102/23	54/24 69/1 69/21
rule [21] 24/20 25/5 39/6 43/3 54/7 59/18	solely [2] 36/10 56/18
59/19 60/15 62/19 73/3 75/17 80/2 86/11	solicitation [1] 49/4
86/25 87/4 87/15 88/12 88/13 89/6 92/13	some [32] 4/5 4/7 5/23 8/5 9/25 15/19 19/13
93/6	23/21 27/17 32/15 32/19 33/6 33/8 33/10
Rule 11 [2] 39/6 92/13	38/3 38/19 42/22 45/23 47/3 51/8 54/12
Rule 15 [2] 59/18 59/19	54/14 61/18 69/7 70/15 76/6 78/4 80/10 85/2
Rule 16 [3] 86/11 88/12 89/6	85/8 98/3 99/11
Rule 26 [1] 25/5	somebody [3] 63/24 91/13 98/7
Rule 56 [1] 86/25	somehow [2] 4/20 11/1
Rule 702 [1] 24/20	someone [2] 14/2 16/2
ruled [6] 43/1 43/11 56/12 72/6 86/4 86/17	something [23] 13/22 21/4 23/7 39/7 39/17
rules [7] 39/23 58/8 58/21 79/24 86/22 88/5	41/12 47/9 49/20 50/2 58/25 64/10 67/3
97/9	68/21 73/25 76/7 78/2 80/24 81/25 86/3 92/7
ruling [14] 21/8 21/15 22/5 40/22 41/5 41/20	92/8 96/8 98/25
46/2 60/20 69/10 70/11 72/23 75/10 88/8	sometimes [1] 91/22
94/19	somewhere [1] 70/6
rulings [1] 90/11	soon [2] 37/18 92/15
running [1] 6/21	sorry [11] 3/16 3/24 11/17 43/1 45/18 58/5
S	59/10 60/23 65/16 67/24 101/2
S.C. [1] 66/7	sort [9] 5/23 40/20 70/14 71/16 72/20 72/21
S.E.2d [3] 27/10 27/13 86/14	76/1 84/20 95/9
s/Deborah [1] 102/21	sound [1] 25/8
said [26] 17/10 18/10 20/7 27/14 38/12 43/16	soup [1] 61/21
	source [1] 48/2
	SOUTH [5] 1/1 1/10 102/4 102/9 102/14
41/24 64/6 72/12 72/20 74/22 77/13 86/18	
88/25 89/7 90/2 90/3 95/8 96/5	
sale [3] 7/17 16/25 18/16	
same [8] 32/17 37/19 50/15 67/13 68/15 69/7	
94/14 94/17	
satisfaction [1] 38/22	
saw [1] 68/9	
say [33] 5/21 11/15 11/21 11/22 23/23 27/1	
27/3 27/10 27/23 28/1 33/18 37/20 38/13	
39/12 40/10 40/19 45/4 54/25 57/3 66/13	
67/2 68/2 73/19 73/21 75/21 76/16 78/12	
79/24 82/1 88/12 92/7 97/15 100/23	
saying [17] 5/8 15/21 20/20 30/24 40/18	
52/20 53/6 64/5 66/24 75/20 77/2 82/20	
83/12 92/10 92/13 95/1 96/25	
says [19] 6/25 7/7 7/16 14/14 18/25 23/1 24/1	
24/2 27/11 28/5 51/14 73/8 80/3 83/10 88/4	
98/9 98/19 98/20 99/6	
SC [1] 1/8	
scene [1] 31/19	
schedule [7] 33/14 90/25 91/20 93/25 96/19	
97/23 99/5	
scheduled [6] 91/5 93/20 96/20 97/19 97/20	
99/8	
scheduling [2] 42/17 43/10	
scope [2] 32/16 32/20	
Scott [2] 36/16 36/17	
Scottsdale [52] 1/7 24/12 26/16 27/4 28/10	
28/14 28/16 28/24 29/3 29/16 30/9 30/10	
31/17 31/24 31/25 33/2 33/7 34/20 35/2 35/2	
35/8 35/9 35/15 35/19 35/20 36/3 36/3 36/6	
36/19 36/21 37/1 39/1 39/5 44/13 56/24 57/1	
57/5 57/6 57/24 58/16 58/17 73/19 75/7	
76/19 76/21 77/4 77/5 77/18 81/17 81/18	
82/7 84/1	
Scottsdale's [2] 28/11 77/3	
seat [1] 101/7	
seated [2] 3/5 46/23	
second [6] 6/15 39/3 40/8 52/3 63/5 68/4	
secret [1] 48/5	
section [2] 51/16 83/14	
sections [2] 11/2 23/25	
see [20] 33/7 37/17 38/2 38/10 42/9 42/12	
42/13 42/15 46/1 53/16 54/3 60/4 64/5 73/2	
73/3 73/8 82/14 82/24 83/1 91/19	
seeing [1] 72/23	
seek [2] 20/19 36/1	
seeking [4] 10/9 14/20 36/22 58/19	
seeks [1] 59/3	
seems [3] 50/1 53/7 58/18	
sell [5] 7/11 10/1 18/15 63/13 64/19	
seller [1] 50/3	
selling [1] 18/24	
sells [1] 7/18	
semantics [1] 84/20	
send [1] 82/22	
sense [1] 92/4	
sent [3] 56/13 87/10 92/13	
separate [3] 40/20 41/4 84/17	
separated [1] 35/10	
September [3] 28/10 28/17 33/4	
September 25th [3] 28/10 28/17 33/4	
serve [1] 57/17	
served [4] 37/23 87/4 87/12 100/23	
session [1] 48/2	
set [4] 43/9 90/23 96/17 98/2	
setoff [4] 36/9 36/10 36/13 81/21	
setoffs [1] 38/15	
settle [1] 28/24	
settled [8] 30/10 33/3 35/18 35/18 36/7 56/24	
57/6 87/8	

speaking [1] 3/14 spec [1] 6/19 special [2] 93/24 96/17 specialized [2] 32/19 33/6 specifically [2] 21/1 81/16 speculation [1] 9/18 speculative [1] 65/23 speeding [1] 13/4 spend [1] 47/11 spent [1] 86/9 split [1] 18/2 sponsor [1] 91/12 squeeze [1] 98/22 stack [1] 37/11 stage [12] 25/4 36/10 40/2 42/11 43/5 43/14 44/6 71/15 81/13 84/25 85/6 88/14 stamped [2] 28/13 54/16 stand [1] 18/20 standard [2] 30/15 85/20 start [6] 6/18 45/6 45/8 45/17 47/1 74/16 started [1] 47/9 starting [2] 72/7 80/25 starts [1] 61/15 state [6] 1/1 16/20 39/7 71/19 102/4 102/9 stated [1] 23/18 statement [2] 21/16 68/1 statements [6] 65/9 65/20 68/7 70/18 87/21 100/15 states [2] 15/17 38/25 stations [1] 65/13 status [2] 48/6 91/10 statute [15] 7/14 9/6 9/16 9/23 9/25 10/8 11/14 11/25 12/18 13/16 13/20 14/13 14/14 18/25 22/4 statutes [8] 13/9 13/24 14/25 15/7 16/18 21/1 21/11 21/12 statutory [1] 35/15 stayed [1] 99/11 stepping [2] 4/6 95/10 stick [1] 96/14 still [6] 18/15 45/5 51/15 64/23 83/6 87/17 stipulate [2] 73/1 83/4 stipulated [1] 82/21 stipulation [15] 29/2 29/6 35/20 37/24 38/1 44/12 45/23 56/25 57/24 58/17 82/16 82/19 87/5 87/8 87/9 stipulations [1] 88/25 stolen [1] 10/16 stop [1] 22/13 straighten [1] 71/2 strange [1] 8/16 strategy [1] 41/11 strike [1] 95/5 string [1] 63/22 strongly [1] 14/1 structure [2] 34/24 61/15 struggling [1] 71/16 styled [1] 84/22 sub [1] 91/14 subject [2] 50/13 74/8 submit [8] 10/11 16/11 25/4 26/18 31/2 36/4 49/18 90/13 submits [1] 34/21 submitted [1] 85/10 subsequently [2] 31/25 35/23 such [8] 5/7 25/21 36/12 37/11 70/20 81/19 90/17 99/7 suffered [1] 16/6 suggest [2] 60/13 74/12 suggested [1] 81/11	suggestion [3] 21/22 40/11 43/2 suing [1] 12/21 summary [44] 38/18 38/20 40/21 40/23 41/6 41/15 41/20 42/21 43/6 43/12 44/4 44/21 57/10 59/16 63/8 64/6 68/13 71/1 71/7 73/3 74/13 74/21 76/13 78/19 80/4 80/24 81/7 81/10 83/11 83/20 84/10 84/18 84/23 85/14 85/16 85/22 86/17 86/18 87/16 89/11 90/9 90/12 92/20 93/11 Summer [1] 86/14 supplemented [1] 87/22 support [1] 37/4 supposed [2] 69/1 91/8 sure [13] 11/19 18/4 24/3 37/8 41/13 42/22 50/21 59/9 77/25 88/9 93/2 96/12 99/25 surprise [5] 26/4 26/19 27/21 28/2 32/15 surrounding [1] 14/16 sworn [2] 100/24 100/25 system [1] 90/18 T Taco [1] 65/12 Tadlock [2] 30/17 30/17 tag [1] 98/8 take [12] 6/15 9/7 39/14 40/1 60/13 64/16 69/10 71/11 75/7 86/12 97/11 99/24 taken [3] 23/20 39/7 78/9 taking [1] 47/4 talk [3] 27/24 48/10 100/15 talked [3] 23/20 33/16 37/15 talking [5] 3/9 51/4 66/9 76/17 96/2 teach [1] 91/22 tear [1] 61/25 teardown [1] 61/21 Technically [1] 92/24 teeth [1] 42/22 tell [9] 23/12 33/9 42/3 47/16 50/17 56/13 78/13 90/20 100/19 telling [2] 48/3 77/23 ten [14] 70/14 78/21 80/3 83/17 84/24 87/17 93/4 93/14 93/16 93/19 95/22 95/24 96/5 96/8 tend [1] 81/8 tendency [1] 10/18 tenth [1] 92/22 term [11] 16/8 16/12 93/7 93/22 94/9 95/23 96/3 96/10 97/5 98/7 99/19 terms [5] 52/13 61/7 61/9 91/19 94/9 Terry [1] 30/17 testified [1] 6/18 testify [21] 11/3 15/2 18/5 24/16 25/7 26/13 28/5 29/9 31/12 32/13 32/21 33/18 60/9 60/11 62/10 63/18 63/19 63/25 64/10 64/24 65/6 testifying [1] 28/16 testimony [37] 4/13 8/6 8/16 9/11 9/19 11/5 17/8 17/9 18/9 18/18 18/20 19/15 24/8 24/19 25/20 26/24 27/21 30/22 32/17 32/18 36/2 41/7 41/7 49/11 49/25 51/22 51/22 60/12 60/18 61/1 61/19 63/3 70/19 76/20 83/25 90/13 90/14 Textile [1] 66/6 than [16] 7/5 7/6 7/24 10/6 10/20 12/16 22/13 28/20 29/9 29/15 31/13 32/13 47/4 51/1 51/17 66/25 thank [18] 25/17 27/1 45/10 46/24 55/17 59/6 60/2 60/22 75/25 79/20 80/8 80/9 86/2 89/25 98/17 100/18 100/19 101/2 Thanks [1] 101/4 that [598] that's [11] 8/24 9/4 11/20 17/5 29/5 53/23	their [39] 8/7 9/9 11/4 12/15 19/17 20/21 22/1 22/17 28/2 28/8 30/13 30/14 30/18 31/17 42/7 43/4 43/6 54/18 55/25 56/1 56/21 57/10 59/11 66/23 69/20 75/7 76/13 76/16 77/14 77/24 79/16 82/5 82/8 84/8 85/1 85/22 87/24 90/10 100/9 them [31] 4/6 4/7 9/9 12/22 15/6 19/5 23/8 25/2 31/9 42/19 45/5 46/14 63/10 63/12 63/17 63/17 63/25 63/25 67/12 68/8 69/8 69/8 70/13 70/23 73/23 76/18 82/10 82/11 85/21 97/23 98/8 themselves [3] 50/25 63/16 77/5 then [54] 4/7 7/13 11/23 14/2 18/13 22/22 30/10 33/1 41/20 44/20 47/9 48/15 51/9 55/20 58/8 62/18 64/13 64/19 65/2 65/14 65/16 65/18 65/19 68/1 71/7 72/7 73/12 75/18 75/22 76/17 76/19 77/19 78/25 79/5 79/10 82/8 82/11 84/2 88/10 88/13 88/23 90/16 91/6 91/13 93/13 93/21 94/18 94/20 94/21 94/23 95/15 96/15 97/5 97/6 there [102] 3/25 4/24 4/25 4/25 5/23 7/10 8/5 8/25 9/1 9/2 9/4 9/7 9/19 9/22 10/5 12/2 12/15 12/20 15/13 19/8 20/23 21/23 22/8 22/10 22/12 22/25 23/6 27/8 27/11 27/17 28/1 28/14 29/12 30/3 31/11 32/2 32/14 33/10 36/24 38/5 39/24 39/25 40/13 40/16 41/16 42/4 47/6 49/3 49/19 49/21 50/2 50/8 51/10 54/12 55/24 59/10 60/16 60/18 61/4 61/18 62/18 62/22 64/6 65/18 66/4 66/20 73/12 75/23 76/12 76/24 76/25 77/7 78/13 79/13 81/2 81/3 82/15 83/19 84/2 84/3 84/5 85/7 85/10 88/7 88/10 88/13 88/19 90/11 92/14 92/14 93/21 94/9 95/14 95/23 95/23 96/10 96/13 96/15 96/20 97/4 98/24 99/12 thereafter [1] 28/22 therefore [1] 84/5 these [35] 2/5 2/14 5/10 7/16 7/21 8/23 15/7 16/18 18/3 23/21 26/21 30/11 31/10 31/21 32/4 32/25 36/25 38/24 42/10 44/3 44/23 45/13 52/4 53/7 63/4 64/11 64/12 64/22 66/14 67/17 90/16 91/2 93/20 98/2 99/13 they [144] thing [9] 42/18 59/8 62/8 71/6 74/9 75/18 76/16 78/16 90/15 things [12] 6/22 11/11 14/18 19/20 21/2 21/12 29/10 32/19 52/5 52/18 53/19 65/22 think [95] 3/22 10/22 12/24 14/8 14/19 15/23 16/24 18/4 19/1 19/12 20/8 21/13 21/20 22/18 22/23 23/11 23/23 25/12 27/6 29/1 33/8 33/15 33/19 34/12 36/22 39/13 39/14 39/22 40/11 40/12 40/17 40/19 40/25 41/4 41/10 41/25 42/17 43/21 49/15 50/14 50/15 50/16 52/7 56/4 57/11 57/11 61/2 61/3 61/22 61/23 62/2 62/10 62/15 62/24 63/5 63/7 63/9 64/9 64/23 65/4 65/11 69/10 69/25 70/20 70/21 70/24 72/1 72/10 72/12 73/5 73/19 74/15 75/10 76/5 78/10 78/11 79/24 81/16 81/22 82/5 83/12 84/9 84/21 86/4 86/9 87/17 88/1 88/15 88/18 89/5 89/17 92/10 92/18 95/1 96/7 thinking [2] 39/25 78/12 this [215] those [33] 14/15 14/19 19/12 25/2 25/25 27/18 28/13 28/15 29/9 30/5 40/2 42/12 45/12 47/4 47/12 48/8 50/17 64/3 64/14 64/23 65/19 65/22 66/1 67/9 67/11 67/22 68/11 68/23 69/18 79/11 88/20 94/2 100/15 though [6] 73/17 74/13 77/5 78/14 78/16 91/4 thought [4] 27/4 27/8 78/3 91/11 three [2] 27/25 91/9
---	--	--

through [14] 4/4 6/16 11/4 14/23 20/21 43/19 43/21 49/13 53/7 60/24 66/17 70/22 81/15 90/18 throughout [2] 81/1 98/7 Thursday [2] 91/7 99/5 ticketed [1] 21/5 tied [1] 14/11 ties [2] 40/21 59/15 tight [1] 101/7 time [46] 7/12 14/7 20/4 27/16 30/7 31/19 33/25 34/4 34/10 42/5 42/14 43/11 43/23 46/10 49/22 51/8 51/11 53/9 54/2 56/5 60/21 61/13 62/5 62/12 62/21 63/22 64/13 67/15 67/17 68/15 68/25 69/7 69/11 70/11 71/4 75/14 84/24 85/5 86/9 86/23 89/3 93/6 94/17 97/7 98/24 100/8 time-wise [1] 34/4 timeliness [2] 86/8 87/1 timely [2] 81/10 84/11 times [1] 95/9 timing [1] 92/4 title [2] 13/22 49/12 titled [1] 81/19 today [12] 43/17 68/19 71/9 71/11 73/7 79/23 86/10 92/22 93/12 93/16 95/25 96/21 together [3] 63/17 71/2 74/15 told [12] 8/6 31/11 31/17 31/25 38/17 43/24 44/1 46/25 47/2 47/17 65/10 80/23 tomorrow [7] 45/8 47/16 48/15 74/21 78/20 80/6 87/18 too [9] 4/1 27/8 48/17 50/16 56/11 64/7 72/20 98/5 98/5 took [1] 67/7 top [3] 7/3 7/21 8/9 tort [1] 69/14 tortfeasors [1] 38/14 total [2] 51/20 64/13 totally [2] 11/5 16/5 towards [1] 54/20 town [4] 24/25 31/9 33/18 94/5 traditional [1] 66/11 transaction [3] 7/19 49/21 50/4 transcript [4] 1/6 3/3 101/23 102/11 transferred [2] 8/2 13/22 transmitted [1] 87/5 trial [59] 8/17 20/15 24/22 25/19 25/22 26/12 27/16 30/18 31/1 31/7 34/1 38/16 43/9 43/19 43/21 44/2 45/8 47/1 56/9 56/15 57/8 57/13 65/11 69/15 71/11 71/12 72/1 72/4 72/7 73/22 73/25 74/2 74/13 80/1 84/13 85/5 85/17 86/12 86/13 88/16 89/9 89/20 90/4 90/15 90/22 91/9 92/25 93/7 94/3 94/15 94/17 97/2 97/11 98/3 98/4 99/9 99/12 100/9 102/12 trier [1] 72/18 trouble [1] 89/16 troubled [1] 72/21 true [4] 5/19 17/5 54/11 102/11 Truitt [5] 97/13 97/25 98/1 98/13 101/5 truth [1] 64/1 try [15] 5/9 13/15 13/17 47/18 50/1 55/6 57/3 62/16 63/9 71/4 79/22 91/25 98/23 99/14 99/21 trying [6] 4/1 46/3 57/3 68/1 72/3 98/6 turnaround [1] 75/3 turned [1] 72/9 twice [1] 65/21 Twitter [1] 47/22 two [19] 7/10 7/12 17/4 18/1 18/24 26/9 26/22 37/2 38/20 39/12 51/9 66/12 66/19	type [7] 5/21 7/17 26/1 27/18 45/23 66/4 68/18 U Uh [4] 15/20 58/23 76/3 79/17 Uh-huh [4] 15/20 58/23 76/3 79/17 ultimate [1] 82/9 ultimately [2] 17/1 55/7 Ulysses [1] 48/25 unambiguous [1] 88/5 unclear [2] 22/5 23/22 under [22] 7/3 8/12 24/19 34/24 37/21 38/13 38/22 39/6 39/23 51/15 52/13 52/22 54/10 54/21 58/8 58/21 59/25 61/7 61/9 63/14 83/14 87/4 understand [23] 15/12 16/15 22/6 32/23 33/2 40/18 40/20 44/14 44/14 44/17 46/13 68/1 70/13 71/8 80/5 80/5 82/6 84/22 92/16 93/1 93/1 93/3 95/7 understanding [6] 6/2 43/16 44/19 70/25 79/1 79/12 understands [1] 16/24 undisputed [2] 10/15 76/20 unequivocally [1] 76/22 unforeseeable [1] 65/23 uninsured [1] 51/8 United [1] 15/17 unknown [1] 32/23 unless [4] 7/2 54/11 91/12 91/21 unlicensed [2] 14/5 18/17 unlivable [1] 66/21 unrelated [1] 16/5 unrepaired [1] 66/20 unsavory [1] 49/20 until [18] 8/3 27/2 29/21 30/12 32/5 32/25 37/17 42/10 65/2 65/9 68/4 68/7 68/12 72/10 87/13 89/9 93/19 99/9 unusual [1] 91/21 up [34] 6/21 7/4 9/5 11/9 12/12 12/12 14/11 16/17 16/21 18/2 25/10 26/22 27/9 29/21 33/21 37/2 39/22 40/1 44/23 45/12 53/11 60/14 61/19 62/6 62/23 64/6 65/16 68/12 69/11 71/4 71/12 83/25 85/16 93/8 upon [7] 28/7 36/15 38/7 38/9 72/6 75/13 88/2 us [18] 19/2 29/16 34/5 40/1 43/25 44/2 51/5 55/5 56/14 62/5 74/6 76/4 79/2 79/5 88/5 93/5 96/1 96/17 use [4] 63/9 64/16 64/17 64/18 used [2] 18/7 18/7 usually [2] 91/22 91/23 V vacant [3] 34/24 49/7 61/14 valid [2] 81/3 90/6 valuation [3] 51/20 61/12 62/14 value [2] 61/12 62/4 various [1] 43/10 vehicle [1] 10/16 verdict [18] 36/10 36/14 40/2 40/5 42/11 43/5 43/14 44/5 45/20 56/16 71/15 72/14 81/12 84/25 85/6 85/20 85/21 88/14 Vericlimb [1] 28/4 versus [1] 32/16 very [8] 8/15 8/19 60/22 62/14 65/23 78/22 81/22 81/22 video [2] 94/6 100/1 view [2] 26/21 69/20 violate [3] 11/14 14/13 86/25 violated [12] 4/20 7/13 10/7 10/8 11/1 11/2 11/22 12/18 14/4 14/24 16/21 21/6	violation [13] 5/3 5/12 5/25 6/11 6/24 7/23 9/2 9/3 9/6 9/15 13/7 13/19 15/18 violations [6] 4/14 9/22 15/3 20/23 20/24 22/9 violative [1] 25/5 voir [1] 60/19 W waiting [1] 47/7 waive [2] 73/15 96/5 waived [1] 72/14 walk [1] 6/15 want [28] 15/1 22/6 39/17 40/12 40/19 42/6 47/8 53/11 53/25 55/4 62/5 72/24 73/15 73/15 73/18 78/18 79/1 79/3 79/5 82/1 82/22 84/19 90/13 92/7 92/10 96/20 98/4 100/9 wanting [2] 11/3 72/2 wants [3] 20/5 54/25 77/10 was [164] wasn't [6] 15/13 46/3 66/8 68/19 77/9 82/25 waste [1] 47/14 way [22] 3/13 5/10 7/7 8/16 8/17 10/10 19/20 21/17 22/12 24/19 30/23 40/4 40/16 43/22 50/3 52/14 73/23 82/2 90/18 94/7 97/13 100/3 ways [3] 7/8 40/1 62/23 we [182] we'll [6] 4/7 8/16 34/14 45/6 71/18 74/16 we're [11] 22/22 39/20 51/4 57/2 62/8 76/24 77/1 89/10 89/16 92/2 93/7 Wednesday [1] 91/6 week [30] 24/14 24/21 26/12 27/3 30/12 31/1 32/25 33/11 33/16 34/15 44/2 44/9 48/12 65/10 68/7 89/9 91/7 93/20 93/21 94/12 94/15 96/10 96/14 96/15 96/17 97/5 98/3 98/6 98/8 99/9 weekend [1] 72/5 weeks [1] 70/14 weighing [1] 39/23 weird [1] 49/20 welcome [1] 101/5 well [35] 4/6 5/19 6/17 10/1 11/23 13/5 13/14 13/17 18/1 18/13 18/22 19/14 23/16 24/18 25/6 28/11 39/2 44/1 44/11 50/20 52/16 52/19 55/24 69/25 75/16 78/11 83/25 88/23 90/20 91/18 92/23 93/14 94/13 100/7 100/8 went [6] 12/5 19/21 31/20 37/25 50/4 81/14 were [56] 2/4 2/13 3/8 5/2 5/5 5/24 5/25 9/10 11/1 11/13 12/21 12/21 12/23 20/23 21/8 21/9 21/10 22/16 22/17 27/8 28/13 29/23 31/22 31/23 33/4 33/5 35/9 35/15 43/13 46/25 56/23 57/2 57/4 59/25 61/3 61/3 63/4 64/12 64/25 65/7 65/10 66/15 67/21 68/8 68/11 71/17 72/10 73/19 77/15 77/20 78/4 80/15 98/2 98/12 99/21 101/11 weren't [2] 5/21 86/19 WESLEY [1] 1/21 what [123] whatever [10] 19/9 20/3 25/2 34/3 61/12 62/22 70/15 78/14 81/12 100/13 whatsoever [4] 9/20 12/16 20/25 49/21 when [32] 5/18 5/25 10/16 16/6 17/15 24/13 28/15 28/20 28/24 36/9 37/23 43/5 46/10 48/11 52/17 53/6 53/17 53/19 57/5 57/9 59/20 60/14 63/23 68/7 69/21 75/23 78/5 80/22 88/14 89/13 91/9 96/4 where [14] 14/22 17/6 29/25 30/19 39/12 50/11 51/10 51/11 62/13 86/17 90/21 98/8 98/9 98/24 WHEREUPON [9] 2/4 2/13 3/2 46/20 48/18 80/14 80/17 101/9 101/10
---	--	--

yy	x
whether [37] 5/5 6/3 8/22 14/3 14/10 14/17 16/4 16/10 16/21 16/25 17/13 17/14 19/3 19/8 19/11 21/16 22/16 25/7 33/22 33/23 33/23 39/24 41/2 49/10 49/10 53/8 55/14 65/17 66/15 69/18 79/9 79/11 81/25 83/15 85/4 85/18 90/5	y'all [7] 23/19 23/19 24/3 55/7 57/21 71/17 101/7
which [19] 13/7 20/1 27/13 28/12 35/16 36/6 36/7 36/16 38/23 50/13 51/7 52/10 62/6 70/1 73/7 83/20 85/3 86/24 100/5	year [1] 51/7
while [6] 30/8 32/14 37/8 48/1 99/8 101/8	year-long [1] 51/7
who [15] 4/22 16/1 24/11 24/25 25/7 30/13 30/15 31/11 33/2 43/9 49/25 50/3 53/17 62/3 91/6	years [8] 7/11 7/12 17/4 18/24 26/9 66/13 66/19 70/3
whoever [1] 97/7	yes [36] 3/18 4/10 13/1 13/14 13/18 18/13 24/7 24/10 25/15 26/25 28/18 29/2 31/15 33/12 41/25 44/25 45/17 46/18 46/19 48/22 49/1 56/20 59/14 59/18 59/24 64/11 65/3 66/13 70/3 74/14 74/23 74/25 75/21 76/11 98/15 100/2
whole [6] 46/11 65/17 65/18 69/9 76/16 92/3	yesterday [8] 80/23 80/25 81/1 81/8 81/15 86/11 89/12 90/21
why [4] 8/17 72/20 72/25 79/6	you [210]
will [64] 4/6 6/15 7/15 11/15 18/19 20/7 20/9 20/14 21/15 27/1 27/23 28/5 33/18 33/18 34/3 34/9 37/6 41/16 45/7 45/12 46/6 46/9 47/16 48/10 48/15 49/3 49/3 50/22 51/16 51/17 52/10 55/7 55/18 56/3 60/1 60/9 60/16 60/18 60/20 62/10 71/4 74/6 75/2 79/11 79/21 80/6 80/12 88/17 90/11 90/12 93/14 93/18 93/22 93/25 94/2 94/25 95/8 95/11 97/5 99/20 99/24 99/25 100/1 100/22	you'll [2] 79/10 97/6
willful [1] 26/9	You're [2] 70/9 101/5
wise [1] 34/4	you've [1] 39/12
withhold [1] 41/22	your [150]
within [7] 7/12 25/8 48/1 60/10 75/17 84/16 96/8	yourself [1] 7/2
without [9] 9/5 10/21 11/8 40/22 41/5 60/11 64/24 72/15 86/21	
witness [35] 4/25 24/16 24/22 25/3 25/7 25/21 26/1 26/2 26/6 26/12 26/13 27/15 27/16 27/18 27/20 28/22 29/21 29/24 30/9 30/11 30/13 30/14 30/18 30/20 30/25 31/5 31/17 32/4 32/12 32/16 33/1 33/9 54/14 60/6 61/19	
witness's [2] 26/4 27/21	
witnesses [6] 2/4 74/2 94/18 94/22 97/1 97/4	
wondering [2] 74/6 98/12	
work [6] 22/13 32/1 90/18 91/20 91/23 99/25	
worked [3] 3/23 4/1 32/9	
working [1] 72/4	
worried [1] 62/21	
worry [2] 75/15 75/18	
worse [1] 7/23	
would [99] 4/3 5/8 5/16 5/18 10/11 10/20 12/24 14/21 16/11 16/21 17/9 18/14 18/24 20/11 21/3 21/13 25/4 26/8 26/18 26/22 28/1 31/12 33/23 36/4 36/7 36/9 36/12 36/21 37/2 37/13 37/20 38/14 38/23 39/17 40/4 40/10 40/23 41/14 41/20 41/22 41/25 42/1 42/9 42/12 42/13 42/14 42/23 43/23 44/2 44/23 44/25 49/18 50/4 51/25 54/9 54/10 56/21 57/12 57/23 60/13 60/25 61/9 61/17 61/25 62/1 62/3 64/2 66/13 70/17 71/13 73/10 73/13 73/13 73/21 74/11 75/10 75/24 77/14 83/1 83/18 84/21 85/3 85/4 88/20 91/13 92/21 92/22 93/8 93/9 93/25 94/20 94/21 94/22 94/23 94/24 95/25 96/5 96/7 99/18	
wouldn't [8] 11/15 11/21 19/5 22/11 40/12 47/8 73/18 86/25	
wrestling [1] 80/25	
write [1] 95/19	
written [2] 9/5 12/10	
wrong [3] 78/4 78/14 78/16	
wrongdoing [1] 87/24	
wrote [1] 68/7	

EXHIBIT N

BRUNER, POWELL, WALL & MULLINS, LLC

JAMES L. BRUNER, P.A.*
WARREN C. POWELL, JR., P.A.**
HENRY P. WALL
E. WADE MULLINS III, P.A.

ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110
TELEPHONE: 803-252-7693
FAX: 803-254-5719
WWW.BRUNERPOWELL.COM

BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

* Of Counsel

** Also Admitted in District of Columbia

ANN ALLISON LEE
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III
BRYAN M.J. TRIPLETT

AUTHOR'S E-MAIL: WPEEL@BRUNERPOWELL.COM

April 25, 2016

VIA EMAIL AND HAND-DELIVERY

aleej@sccourts.org

aleelc@sccourts.org

The Honorable Alison Renee Lee
Chief Judge for Administrative Purposes
Richland County Judicial Center
1701 Main Street, Room 324
Columbia, South Carolina 29202

Re: Porthemos Curry vs. Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice Derrick
Case No.: 2014-CP-40-4661
Our File No.: 3-264-189.1

Dear Judge Lee:

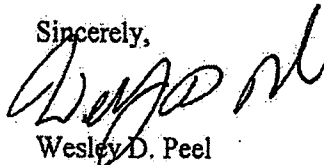
I sincerely apologize for troubling you once again with this matter. However, due to the incomprehensible actions of the Plaintiff's counsel, I am forced this morning to file an emergency motion before you pursuant to the South Carolina Alternative Resolution Rule 23. As your honor knows, this matter was scheduled for trial last week before Judge Newman. The Friday before trial, I filed a Motion for Summary Judgment based upon the Release entered between the Plaintiff and the former Co-Defendant Scottsdale Insurance. The basis for the motion was that as a matter of law, the release operated as a release of all parties. I had never been served with the executed release of the filed Stipulation of Dismissal until I requested it on April 8, 2016. Judge Newman continued the case and set the summary judgment motion for hearing this Tuesday, mostly based upon the evidentiary issues that having the motion unresolved would create and the fairness related to hearing the motion without ten days notice. Therefore, she set the motion to be heard before Judge Hood this week, which has now been scheduled for tomorrow at 2PM. Prior to Judge Newman continuing the case, Plaintiff's counsel handed up a memo of law with exhibits. At the time, Plaintiff's counsel did not have a complete copy with exhibits for the Defense. In any event, the motion was continued.

Unfortunately, on Friday April 22, 2016, I finally had an opportunity to review the memorandum and exhibits. In the memorandum and exhibits, Plaintiff's counsel has set forth and attached as exhibits, communication between the mediator and Plaintiff's counsel conveying offers and positions on settlement. Plaintiff's counsel has also included emails from me to them discussing settlement, all in violation of ADR Rule 10. I emailed Plaintiff's counsel Friday afternoon and requested that they withdraw these disclosures in the email attached. MR. Goodwyn replied by email and continued his nonsensical position that I was attempting to argue about the outcome of mediation. This is completely fabricated. The Defendants' motion is based upon the language of the Release between Plaintiff and Scottsdale and nothing more. My belief of my client's belief has nothing to do with my motion and any extrinsic evidence is improper regardless.

Continuing their complete disregarding and contempt for the ADR Rules and our mediation agreement, the Plaintiff then served me with affidavits completed by Mr. Goodwyn, Ms. Peavy, and their client Mr. Curry. These affidavits set forth in detail everything that occurred at the mediation between the parties. I am sorry that we once again have to involve your honor in a dispute in this case, but I cannot take likely counsel's cavalier disregard of the rules and our agreement.

In conclusion, our motion requests sanctions and to the extent that Judge Hood has read any of the privileged submissions, we would request assignment of the motion to another judge. I will make myself available for a hearing at the court's command.

Sincerely,



Wesley D. Peel

cc: T. Jeff Goodwyn, Jr Esq.
Rachel Peavy, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff(s),

vs.

Carolina Insurance Group of SC, Inc. and
Maurice Derrick,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-04661

PLAINTIFF'S REPLY TO
MEMORANDUM IN OPPOSITION
TO MOTION FOR RELIEF

2017 MAR -2 AM 11:58

LETTE W. MCNEIL
C.P. & C.S.

RICHLAND COUNTY
FILED

Pursuant to Rule 60(b), SCRP, Plaintiff Porthemos Curry (hereafter "Mr. Curry") hereby
briefly replies to the *Memorandum in Opposition*, filed February 17, 2017.

**I. The Court of Appeals Believes Defense Counsel's Receipt of the Unexecuted
Release on November 30, 2015 was Significant Enough to Warrant Review.**

First, the Court of Appeals considered Defendants' possession of the unexecuted Scottsdale Release to be significant enough to warrant the granting of Curry's request for leave to file this Motion for Relief. The Court of Appeals considered Mr. Curry's arguments as to this issue in its consideration of Curry's *Request for Leave to File a Rule 60 Motion*, attached as Exhibit A. While Defendants continue to argue that "*receiving a draft release to which they are not a party is not relevant and means nothing*", the Court of Appeals obviously disagreed.¹ Accordingly, Defendants' argument that "*[o]f course, Defendants counsel would not have mentioned it*

¹ Defendants made the same argument to the Court of Appeals in their *Return to Respondent/Appellant's Request for Leave*, filed with the Court of Appeals on November 23, 2016.

because it did not matter” is unpersuasive.² For the reasons previously outlined in Plaintiff’s Motion, the time when Defendants’ counsel had the opportunity to review the terms and conditions contained in the Scottsdale Release was a critical and determinative factor in the Court’s consideration of the motion to amend, and would also have been critical in allowing Plaintiff to fully and fairly present his arguments in opposition to the motion.

II. The Failure to Disclose The Receipt of the Unexecuted Release is Significant

JR Murphy’s letter clearly states that he was sending the Release to Plaintiff’s counsel and no one else. It does not reflect that he was also sending the release to Attorney Peel by way of an enclosure. When, in the course of preparing the *Record on Appeal*, Defendants produced the documents reflecting the receipt by Attorney Peel on November 30, 2015 of the unexecuted Release from JR Murphy, it was the first time that Plaintiff became aware that Mr. Peel had received - and presumably reviewed - the Release many months prior to trial. If, as Defendants assert, the receipt of an unexecuted release “means nothing” and is “not relevant”, then it is puzzling as to why counsel failed to disclose to the Court his receipt of the release on November 30, 2015. The only conclusion is that the reason for this failure to disclose was because counsel understood that his receipt of the unexecuted release over 4 months prior would be relevant to the Court’s determination of whether to grant the motion to amend at trial, as it would place the Defendants on notice of the possible affirmative defense in November 2015 – not April 2015.

Upon receipt of the unexecuted release on November 30th, Defendants became aware at that point that the release included standard corporate release language releasing not just Scottsdale Insurance Company, but its employees, assigns, agents, etc. A mere 16 days later, on December

² As previously noted, should this Court grant the requested relief, the pending appeals arising from the affirmative defense of release will be moot, the appeal dismissed, and the matter returned to the lower court for trial.

16, 2015, Attorney Peel received a *Stipulation of Dismissal* as to Scottsdale Insurance, reflecting Plaintiff's dismissal of Scottsdale from the lawsuit, which he signed and returned to counsel. At that point, defense counsel knew for certain that a settlement agreement had been consummated by way of a release; otherwise, neither Scottsdale nor Plaintiff would have agreed to Scottsdale's dismissal from the lawsuit. To argue otherwise is nonsensical. However, Defendants' counsel never requested a copy of the executed Release until April 8, 2016, and then waited another 11 days to file the motion to amend. In short, defense counsel was "on notice" of the terms of the release in November 2015 but failed to advise the Court (and Plaintiff's counsel) of same at the hearing.

It was for the Court to consider all relevant facts and circumstances in considering the Defendants' motion to amend; part of the Court's analysis was when counsel had a chance to see the Release and the Court (and Plaintiff's counsel) were never informed by Attorney Peel that the unexecuted Release – which was identical to the executed Release – had been in the possession of Defendants' counsel for over 4 months prior to filing the motion to amend on the first day of trial.

III. The Case Law Cited by Defendants Does Not Change the Undisputed Facts

Defendants rely upon the case of *Paul Davis Systems v. Deepwater of Hilton Head* in support of their contention that Defendants "could not rely on an unexecuted document" to support a motion to amend to assert the affirmative defense of release. However, Defendants misstate the Plaintiff's argument; Defendants were on notice of the terms of the Release in November 2015 and knew that it had been consummated at the latest by December 16, 2016, when it received the Stipulation of Dismissal for signature. Defendants therefore had a duty of candor to the tribunal, when arguing the Motion to Amend, to inform the Court that it had actually received the

unexecuted Release on November 30th. It would have then been for the Court to decide whether the Defendants had, in fact, timely moved to amend their answer when considering the Motion.

In *Paul Davis Systems*, a party believed that it had been discharged from a mechanic's lien because it had received a copy of a letter to another party enclosing unexecuted and unsigned documents to that effect. The party sought relief from judgment on the ground that it "reasonably believed it had been discharged from the lien." The Court of Appeals disagreed, finding the belief "unreasonable." The situation here is not one of a defaulting party relying on an unexecuted document to request relief; rather, it is an issue of disclosure (or non-disclosure) of all material, relevant facts to the Court.

Furthermore, the case of *Bowman v. Bowman* is likewise unpersuasive, given that in that divorce case, the husband was fully aware of the existence of the wife's defined benefit plan at the time of trial; however, following judgment, the husband alleged he became aware of certain intricacies regarding how the plan was funded and requested relief under Rule 60 because of his alleged unawareness of the funding source. Because the husband was aware *prior to trial* of the asset at issue, the Court of Appeals affirmed the trial court's denial of the motion for relief. Here, there is no evidence in the record that Plaintiff's counsel was ever aware that JR Murphy sent Attorney Peel the Scottsdale Release in November 2015; rather, the evidence is that Plaintiff's counsel only discovered that Mr. Murphy sent the Release to Mr. Peel when the Record on Appeal was being prepared, and immediately filed a *Request for Leave to File a Rule 60 Motion* and a *Motion to Amend Initial Briefs* with the Court of Appeals. Plaintiff's counsel relied upon a plain reading of Mr. Murphy's letter, along with the fact that defense counsel never informed the Court or counsel otherwise.

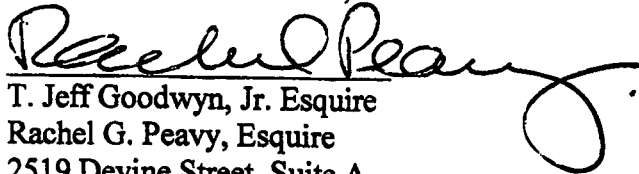
IV. The Prejudice Arising from this Amendment is Real and Severe

This case has been pending for over three (3) years. The prejudice which Plaintiff suffered as a result of this amendment is significant; a fire destroyed his property in early 2014 and, due to the alleged negligence of these Defendants in procuring the insurance policy on the house, the property remains in disrepair. A date certain trial was set for April 18, 2016 - with witnesses subpoenaed, experts deposed and scheduled, and Plaintiff present and a jury seated - and continued due to this affirmative defense. Another date certain trial, set for May 16, 2016, was cancelled after Defendants filed a Notice of Appeal as to Judge Hood's Order granting Plaintiff's cross-motion for summary judgment as to the affirmative defense of release. See Exhibit B (Order of J. Hood). In short, Plaintiff has been severely prejudiced as a result of this late-added affirmative defense, as more fully outlined in the Motion for Relief. *See, e.g., Holland v. Morbark*, 407 S.C. 227, 754 S.E.2d 714 (Ct. App. 2014) (affirming denial of motion to amend on eve of trial as unfairly prejudicial, noting that the party had been on notice of the theory 5 months prior to moving to amend.)

CONCLUSION

In the interest of fairness and justice, and with a view towards a judicial system that requires candor towards the tribunal, the Plaintiff respectfully requests that the Court grant the Motion for Relief pursuant to Rule 60(b), SCRPC and enter an order denying the motion to amend.

GOODWYN LAW FIRM, LLC



T. Jeff Goodwyn, Jr. Esquire
Rachel G. Peavy, Esquire
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517

Rpeavy@Goodwynlaw.com
Attorneys for Porthemos Curry

Dated: March 2, 2017

81648

RECEIVED

NOV 18 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge
Jocelyn Newman, Circuit Court Judge

Appellate Case No.: 2016-000986

Porthemos Curry.....Respondent/Appellant,

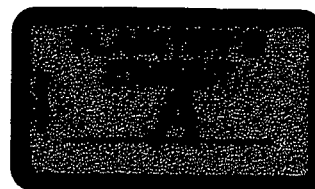
v.

Carolina Insurance Group of SC, Inc. and Maurice
Derrick,.....Appellants/Respondents.

**RESPONDENT/APPELLANT'S REQUEST FOR LEAVE TO MAKE A MOTION
FOR RELIEF PURSUANT TO RULE 60(b), SCRCP**

Respondent/Appellant Porthemos Curry (hereafter "Mr. Curry") hereby requests leave to make a motion for relief from the order of the Honorable Jocelyn Newman, pursuant to Rule 60(b)(2) and Rule 60(b)(3), SCRCP.

On November 16, 2016, the consolidated Record on Appeal in this matter was filed with the Court. In reviewing the draft Record on November 14, 2016, counsel discovered that Appellants/Respondents' counsel, Wesley R. Peel, Esq., had included in the Record a copy of correspondence, including enclosures, he received from Attorney JR Murphy on November 30, 2015, which reflected the receipt by Attorney Peel on November 30, 2015



of the Release between Scottsdale Insurance Company and Porthemos Curry. See Exhibit A. (See also R. at pp. 446-449)¹

Prior to November 14, 2016, Agency's counsel Wesley Peel, Esq. had represented to the trial court – specifically, the Honorable Jocelyn Newman - and to opposing counsel that he had never had a chance to review the Scottsdale Release until he requested it from Mr. Curry's counsel on April 8, 2016.² As detailed below, the timing of when Attorney Peel had an opportunity to review the Scottsdale Release was a critical and determinative factor in the trial court's ruling on the Agency's motion to amend its answer, to assert the affirmative defense of release, at trial. Copies of the relevant transcript of hearing and Judge Newman's order are attached as Exhibit B. (See also R. at p. 14; R. p. 250, l. 4 – p. 254, l. 2; R. p. 231, l. 17 – p. 232, l. 2).

On April 18, 2016, this case was set for a date certain trial before the Honorable Jocelyn Newman. On April 18, 2016, the Agency filed a motion to amend its answer to assert the affirmative defense of release, alleging that the Scottsdale Release served to release the Agency as well. Over the objection of Mr. Curry's counsel, the Motion to Amend was granted. In support of his Motion to Amend, Mr. Peel represented to the Court that he had only received the Scottsdale Release on April 8th; that there was no prejudice to Mr. Curry; and that Mr. Curry's counsel had failed to produce the Scottsdale Release in 2015 when Mr. Curry settled his claim with Scottsdale.

¹ Scottsdale Insurance Company was originally a defendant in the underlying lawsuit.

² The Scottsdale Release which Mr. Peel received from Attorney JR Murphy on November 30, 2015, and the executed Scottsdale Release that Mr. Curry's counsel forwarded to Mr. Peel on April 8, 2016, are identical.

The transcript from Judge Newman's hearing on the motion to amend, along with her formal order which followed, reflects that the trial court specifically relied upon the fact that Attorney Peel alleged he never had an opportunity to review the Scottsdale Release until April 8, 2016, and therefore the late amendment at trial was properly allowed. Given that the documents produced by counsel in the Record on Appeal reflect that the basis for the late motion to amend to assert the affirmative defense of release – to wit, that he hadn't been able to review the Scottsdale Release until Mr. Curry's counsel produced it to him on April 8th – was misleading, Mr. Curry should be able to move for relief from Judge Newman's order and Judge Newman should be allowed to consider this newly disclosed evidence. This issue is of critical important to both the parties and this Court, for if the motion to amend had never been granted in the first place, this appeal and cross- appeal would not be pending, as the denial of a motion to amend is not immediately appealable.

Mr. Curry respectfully requests that he be granted leave to file a motion for relief under Rule 60(b), SCRPC, for all the reasons stated above, and respectfully requests that the deadlines in the instant appeal be extended accordingly.

GOODWYN LAW FIRM, LLC


T. Jeff Goodwyn, Jr. Esquire [#13289]
Rachel G. Peavy, Esquire [#69397]
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517
jgoodwyn@Goodwynlaw.com
Attorneys for the Respondent/Appellant

Dated: 11/18/16

Other Counsel of Record:

Wesley R. Peel, Esq.

Bryan M.J. Triplett

PO Box 61110

Columbia, SC 29260-1110

Attorneys for Appellants/Respondents

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge
Jocelyn Newman, Circuit Court Judge

Appellate Case No.: 2016-000986

RECEIVED

NOV 29 2016

SC Court of Appeals

Porthemos Curry.....Respondent/Appellant,

v.

Carolina Insurance Group of SC, Inc. and Maurice
Derrick.....Appellants/Respondents.

**RESPONDENT/APPELLANT'S REPLY TO APPELLANTS/RESPONDENTS'
RETURN**

Pursuant to Rule 240(f), SCACR, Respondent/Appellant Porthemos Curry (hereafter "Mr. Curry") hereby briefly replies to the *Return of Appellants/Respondents*, filed on November 23, 2016.

It is undisputed that the letter from J.R. Murphy dated November 25, 2015 did not indicate that the enclosures being sent to Attorney Peavy (i.e. the Scottsdale Release and the Stipulation of Dismissal) were also being sent to Attorney Peel, as the "cc:" portion of the letter did not indicate such an enclosure. Accordingly, counsel was mistaken when she represented to the trial court that Attorney Peel, as counsel for Appellants/Respondents, did not receive the Scottsdale Release in November 2015. This representation was

obviously incorrect; however, Attorney Peel did not attempt to correct this error with the trial court.

The *gravamen* of Mr. Curry's position, as articulated more fully in the underlying motions, is that such a fact would have been material to the trial court's analysis of whether to grant the Agency's motion to amend its answer, on the first day of trial, to assert the affirmative defense of release. By failing to correct the trial court's impression and/or belief of when Agency's counsel had a chance to review the terms and conditions of the Scottsdale Release, whether executed or not, the trial court was not possessed of all relevant facts.

Furthermore, Counsel is mindful of the Rules of Professional Conduct and has made no allegation of "fraud" on the part of opposing counsel, who is a learned and respected member of the Bar. However, the date when Attorney Peel was able to review the terms and conditions of the Scottsdale Release was material to the trial court's determination and should have been fully disclosed at the hearing, by way of opposing counsel acknowledging to the trial court his receipt of the unsigned Scottsdale Release on November 30, 2015. The trial court could then have determined whether the receipt of the unsigned Release on November 30, 2015 was material, and therefore relevant, to its analysis of the pending motion to amend.

For all the reasons contained in the underlying motions, Respondent/Appellant respectfully requests that his motions be granted, the appeal stayed, and the matter returned to the trial court for further determination.

-signature page to follow-

GOODWYN LAW FIRM, LLC



T. Jeff Goodwyn, Jr. Esquire [#73788]

Rachel G. Peavy, Esquire [#69397]

2519 Devine Street, Suite A

Columbia, SC 29205

(803) 251-4517

jgoodwyn@goodwynlaw.com

Attorneys for the Respondent/Appellant

Dated: November 29, 2016

Other Counsel of Record:

Wesley R. Peel, Esq.

Bryan M.J. Triplett

PO Box 61110

Columbia, SC 29260-1110

Attorneys for Appellants/Respondents

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff(s),

vs.

Carolina Insurance Group of SC, Inc.
and Maurice Derrick,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-04661

ORDER

RICHLAND COUNTY
FILED
2016 MAY 29 AM 10:00
JEANETTE W. MCGRATH
C.C.P. & G.S.

This matter came before the Court on Defendants' Motion for Summary Judgment, as amended, filed April 15, 2016, and the Plaintiff's cross-motion for summary judgment, as to the affirmative defense of release. A hearing was held on April 26, 2016, with Wesley R. Peel, Esq. appearing on behalf of the Defendants and Rachel G. Peavy, Esq. and T. Jeff Goodwyn, Jr., Esq. appearing on behalf of the Plaintiff.¹ Both parties waived 10 days' notice of hearing.

Oral argument was heard, and both parties submitted memorandum of law in support of their respective positions. Furthermore, the testimony of Plaintiff and Defendants was before the Court, along with affidavits of Plaintiff's counsel. The Court denied the Defendants' Motion from the bench, and took Plaintiff's cross-motion under advisement.

After careful review of the evidence and applicable law, the Court, as discussed in further detail below, hereby grants the Plaintiff's Cross-Motion for Summary Judgment as to the affirmative defense of release, finding that there was no genuine

¹ Defendants' counsel withdrew his Motion for Sanctions, filed April 25th, during the course of oral argument.

SCANNED

issue of material fact as to whether the Defendants were "released" from liability in this lawsuit by way of a settlement agreement entered into between Plaintiff and Scottsdale Insurance Company, a prior defendant in this same matter. The Court, having previously denied the Defendants' Motion from the bench, incorporates such denial into this Order, as outlined below.

Undisputed Facts

This lawsuit arises out of the alleged negligent failure to procure insurance coverage for a vacant structure. Initially, Plaintiff brought claims against Scottsdale Insurance Company, the issuer of the policy, for breach of contract; statutory bad faith; and common law bad faith. The Plaintiff brought claims against Carolina Insurance Group and Maurice Derrick for negligence, later amending the pleading to add claims for gross negligence as against Carolina Insurance Group and Mr. Derrick.

The Second Amended Complaint, filed October 1, 2015, alleges that "Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale." Amend. Compl. at 134.

It is undisputed that the Defendants have consistently denied that they were agents of Scottsdale in both their Answer to the Second Amended Complaint, filed October 28, 2015, and in their Amended Answer filed April 18, 2016. See 114 of Answer and Amended Answer. Furthermore, the 30(b)(6) testimony of Carolina Insurance Group and Maurice Derrick is that there is no agency relationship, or any relationship, between Scottsdale Insurance and Carolina Insurance Group, as excerpted below:

SCANNED 2

Q. Okay. What's the relationship between Carolina Insurance and Scottsdale?

A. We don't have a relationship --

Q. Okay.

A. With them.

...

Q. So, you have no relationship with Scottsdale, no authority to bind Scottsdale, and any conduct of you or the agents on your behalf is not the conduct of Scottsdale, is it?

A. Correct.

...

Q. You have not relationship with Scottsdale Insurance Company?

A. Correct.

Dep. Tr. of Carolina Insurance Group at pp. 26 -27, pp. 76-77.

Q. Okay. Mr. Derrick, you're not employed by Scottsdale Insurance Company or any of its affiliates, are you?

A. Correct.

Q. In fact, you have no direct relationship with Scottsdale Insurance Company as a producing agent in this case?

A. I do not.

Q. You have no authority to issue a policy on behalf of Scottsdale?

A. I do not.

SCANNED

Q. You have no authority to bind Scottsdale to a policy?

A. I do not.

Q. . . . [I]n this transaction . . . you represented the interest of Mr. Curry?

A. Correct.

Q. And in doing this, you dealt with Tapco, who in turn represented the interest of Scottsdale?

A. Correct.

Derrick Dep. Tr. at pp. 90-91

In September 2015, the parties participated in a mediation conference. At that time, Scottsdale Insurance was still a defendant in the case. As a result of the mediation and subsequent negotiations, Plaintiff reached a settlement agreement with Scottsdale Insurance Company.

On November 25, 2015, counsel for Scottsdale, J.R. Murphy, wrote a letter to Plaintiff's counsel whereby he wrote that he was enclosing a check, along with a Release (hereafter "the Release") and Stipulation of Dismissal for signature. Wesley Peel, Esq. was copied on the letter; however, a copy of the Release and Stipulation were not provided to Mr. Peel at that time. Plaintiff did not receive a request for a copy of the Release from Mr. Peel until April 8, 2016. It is undisputed that the Defendants did not contribute any money to the Scottsdale settlement, and it is further undisputed that there is no mention of either Carolina Insurance Group of SC, Inc. or Maurice Derrick in the Release.

Plaintiff executed the Release. Counsel for Carolina Insurance Group and Maurice Derrick executed the Stipulation of Dismissal as to Defendant Scottsdale.

Insurance Company. The Stipulation provided that *"the Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal."* The Stipulation was filed with the Court on December 30, 2015.

Discovery continued in the case following Scottsdale's dismissal. With a date certain trial set for April 18, 2016, Defendants' counsel contacted Plaintiff's counsel to explore a possible settlement of the matter.

The parties thereafter commenced settlement negotiations. On the morning of Friday, April 8th, Mr. Peel requested that Plaintiff's counsel provide him with a copy of the Release, which was promptly provided to him later that day. Thereafter, the parties continued their settlement negotiations; however, by the end of business Friday, they had apparently reached a stalemate. The parties proceeded to depose expert witnesses on April 11th and prepared for a date certain trial on April 18th. On April 15th, Defendants filed a motion for summary judgment, asserting the defense of release. On April 18th, Defendants moved to amend their answer to assert the affirmative defense of release; the motion to amend was granted by the Honorable Jocelyn Newman over Plaintiff's objection.

Legal Standard

"Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of

evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009) (internal citations omitted).

I. The Scottsdale Release Does Not Release These Defendants

Defendants argue that they are entitled to summary judgment on two (2) separate grounds: first, that they were released in the Scottsdale release by virtue of language releasing Scottsdale "and its agents"; and, second that they were released under a joint tortfeasor theory of liability. In denying Defendants' motions under Rule 56, SCRCP, the Court addresses each of these arguments in turn.

Defendants Are Not "Agents" of Scottsdale

The Release provides that "Porthemos Curry, in consideration of the sum of \$85,000, the receipt of which from Scottsdale Insurance Company is hereby acknowledged, does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions, causes of actions, demands and/or claims of whatsoever kind . . ."

Defendants argue that because Plaintiff's complaints alleged that the Defendants were "agents" of Scottsdale, the language of the Release was intended to release not just Scottsdale, but these Defendants as well. As previously noted, it is undisputed that the Defendants denied this allegation in both their answers and their deposition testimony.

Defendants' argument fails as a matter of law because "[a]llegations in a complaint denied in answer are evidence of nothing." *Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301, 307 (Ct. App. 1999). Only "facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the

SCANNED

action." *Elrod v. W.W. All*, 243 S.C. 425, 134 S.E.2d 410, 416 (1964). Furthermore, "a party to an action is bound by the testimony of his own witnesses where he does not prove the facts to be otherwise than as such witnesses testified them to be." *Id.* (citing *Rakestraw v. Allstate Ins. Co.*, 238 S.C. 217, 119 S.E.2d 746 (1961)).

"Once a contract is before the court for interpretation, the paramount concern of the court is to give effect to the intention of the parties." *Middleborough Horizontal Property Regime v. Montedison S.p.A.*, 320 S.C. 470, 465 S.E.2d 765, 770 (Ct. App. 1995). "The purpose of all rules of contract construction is to ascertain the intention of the parties to the contract." *Parker v. Byrd*, 309 S.C. 189, 420 S.E.2d 850, 852 (1992); See also *Columbia East Associates vs. Bi-Lo, Inc.*, 299 S.C. 515, 366 S.E.2d 259 (Ct. App. 1989) (noting "the main concern of the court is to give effect to the intention of the parties.")

A party "cannot create ambiguity when it does not exist within the four corners....words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed." *Silver v. Abstract Pools*, 376 S.C. 585, 658 S.E.2d 539, 542 (Ct. App. 2008) (citing *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 33 S.E.2d 501 (1945)) (emphasis added).

"It is a question of law for the court whether the language of a contract is ambiguous. In determining as a matter of law whether a contract is ambiguous, the court must consider the contract as a whole, rather than deciding whether phrases in isolation could be interpreted in various ways: [o]ne may not, by pointing out a single sentence or clause, create an ambiguity. Whether a contract is ambiguous is to be

SCANNED

determined from the entire contract and not from isolated portions of the contract.”
Silver, supra.

Looking at the Release as a whole, the Court finds that the plain language of the Release shows that it clearly and unambiguously releases only Scottsdale (and its agents and employees) and not these Defendants, and further finds that the intent of the parties was that it was to only encompass claims against Scottsdale. There is no mention of Carolina Insurance Group or Maurice Derrick in the Release.

Furthermore, there is no evidence in the record that Carolina Insurance Group or Maurice Derrick are “agents, servants, or employees” of Scottsdale. In fact, the testimony of both Defendants is that there was no agency relationship between Carolina Insurance and Scottsdale whatsoever. Finally, Defendants’ counsel executed a Stipulation of Dismissal in December 2015, upon receiving notice that Plaintiff had settled with Scottsdale, which specifically stated that “the Plaintiff’s case against the remaining Defendants shall not be affected by this Dismissal.” The Court finds that the intent of the parties to the Release, and the intent of the non-parties (here Carolina Insurance Group and Mr. Derrick), could not be more clear.

Defendants’ reliance upon the case of *Postal v. Mann*, 308 S.C. 385, 418 S.E.2d 322 (Ct. App. 1992) is unpersuasive, given that in that case, a party sought to offer testimony at trial that differed from his previous admission in his answer. There, the Court of Appeals held that the party was judicially bound by the admitted allegation.

Again, the only “evidence” that Defendants rely upon in making this argument is a denied allegation in the Plaintiff’s pleadings. Defendants’ reliance upon a theory of

SCANNED

"judicial admission" espoused by the Federal courts of appeals in the Second, Fifth, Seventh, and Eighth circuits is unpersuasive.²

The Court of Appeals in *Vermeer* succinctly stated the law of South Carolina. Plaintiff made a mere allegation in his complaint; the Defendants denied it. If the Defendants had admitted the allegation, that arguably could be deemed a "judicial admission"; however, the Defendants denied it repeatedly. The Court is mindful that "[a]ll pleadings shall be so construed as to do substantial justice to all parties." Rule 8(f), SCRCP. Here, there is a mere allegation denied by the Defendants - accordingly, I find no "admission" under South Carolina law and hereby deny Defendants' Motion for Summary Judgment.

Defendants are Not Discharged Under a Joint Tortfeasor Theory

Defendants argue that they are entitled to summary judgment as "joint tortfeasors" of Scottsdale Insurance Company. In support of this position, they rely upon the language of the Release, wherein Plaintiff acknowledged that "the consideration expressed herein constitutes full payment for all damages, losses, or injuries . . . for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from the loss aforesaid." (emphasis added).

According to the position advanced by the Defendants, this language means that Mr. Curry received "full payment" for all damages recoverable in this lawsuit when he settled with only Scottsdale, and therefore cannot recover any additional damages - on his

² The Court has taken notice of the Federal opinions submitted by Defendants' counsel at the hearing, as well as those cited in Defendants' Amended Memorandum of Law.

separate negligence claims – against Carolina Insurance Group and/or Maurice Derrick.³ The Court finds this argument without merit. The Plaintiff's claims against Scottsdale were distinct from those pending against these Defendants, and could result in an award of different types of damages.⁴ Defendants' belief that the amount recovered by Plaintiff from Scottsdale represents the exact same damages Plaintiff seeks from them, and thereby entitles them to judgment in their favor, is not supported by the common law and fails as a matter of law under the *South Carolina Contribution Among Tortfeasors Act*, S.C. Code Ann. §15-38-10, et seq., which provides a mechanism for "set-off", not discharge.

In 1988, the Legislature codified the equitable principles of joint tortfeasor set-offs by passing the South Carolina Contribution Among Tortfeasors Act (the "Act"), S.C. Code Ann. §15-38-10 -70.

Specifically, Section 15-38-50 provides: "When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or same wrongful death: (1) **It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide**, but it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant or in the amount of consideration paid for it, whichever is greater, and (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor." (emphasis added)

The Supreme Court recently held that "... the Act represents the Legislature's determination of the proper balance between preventing double-recovery and South

³ The gravamen of Defendants' arguments appears to be that they are the fortunate, if unintended, beneficiary of Scottsdale's settlement agreement, in that they are entitled to reap the rewards of Scottsdale's settlement (i.e. a complete release) without having paid any monies towards such settlement.

⁴ For instance, a claim for statutory bad faith, under S.C. Code Ann. 38-59-40, provides for an award of attorney's fees in an amount not to exceed one-third the amount of any judgment.

Carolina's 'strong public policy favoring the settlement of disputes.' *Riley v. Ford Motor Co.*, 414 S.C. 185, 195; 777 S.E. 2d 824, 830 (2015) (citing *Chester v. S.C. Dep't of Pub. Safety*, 338 S.C. 343, 698 S.E.2d 559 (2010)).

Defendants rely upon the case of *Bartholomew v. McCartha*, 255 S.C. 489, 179 S.E.2d 912 (1971) for the proposition that the release of one tortfeasor releases others who wrongfully contributed to the plaintiff's injuries where the release "reflects the intention of the parties or unless plaintiff has, in fact, received full compensation amounting to a satisfaction." *Id.* at 914.

Again, there is no evidence that the Plaintiff received "full compensation amounting to a satisfaction"; in fact, Plaintiff's own testimony is that "the amount I received from Scottsdale did not cover all of my damages in the case". See Affidavit of Porthemos Curry at 16.

Defendants argue that the Release constitutes a "full compensation amounting to a satisfaction" under *Ecclesiastes Prod. Ministries v. Outparcel Assoc. LLC*, 374 S.C. 483, 649 S.E.2d 494, 496 (2007). However, the Court in *Ecclesiastes* clearly stated that a "satisfaction is generally defined as the discharge of an obligation by paying a party what is due to him", and as noted by the Court, it is undisputed that the Defendants here have not paid any monies to the Plaintiff.

Accordingly, the Court finds that the Release, and the Uniform Contribution Among Tortfeasors Act, does not serve to discharge these Defendants, but merely provides for a means for the Defendants to assert a "set-off" argument at the post-

SCANNED

verdict stage of trial in the event they are successful in asserting that they are "joint tortfeasors" under the Act.⁵ For these reasons, the Defendants' Motion is denied.

There is No Genuine Issue of Material Fact as to the Defense of Release

After careful review, I hereby find as a matter of law that the Release is neither ambiguous nor capable of any construction other than the one apparent on its face – that it explicitly releases Scottsdale Insurance Company and solely Scottsdale Insurance Company, and that it is a contract clearly and solely between Porthemos Curry and Scottsdale Insurance Company. Accordingly, the Court finds that the Plaintiff is entitled to summary judgment as to the affirmative defense of release. See Middleborough Horiz. Prop. Regime, supra ("Once a contract is before the court for interpretation, the paramount concern of the court is to give effect to the intention of the parties.")

"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. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *McCune v. Myrtle Beach Indoor*, 364 S.C. 242, 612 S.E.2d 462, 464 (Ct. App. 2005) (internal citations omitted).

"Common sense and good faith are the leading touchstones of the construction of a contract and contracts are to be so construed as to avoid an absurd result. Where one construction would make a contract unusual or extraordinary and another, equally

⁵ The Court makes no ruling as to whether the Defendants are "joint tortfeasors" with Scottsdale; however, the Court specifically holds that, having ruled in favor of the Plaintiff on his cross-motion, these Defendants cannot rely upon the Release, at the post-verdict stage, in an attempt to argue that their liability was resolved under a joint tortfeasor theory of liability by way of language contained in the Release. The Court makes no finding as to whether Defendants are entitled to a "set-off" in light of the Supreme Court's ruling in *Riley v. Ford Motor Company*.

consistent, would make the contract reasonable, fair and just, the latter construction will prevail." *Id.* at 465. (citing *Georgetown Mfg. v. S.C. Dept. of Agric.*, 301 S.C. 514, 392 S.E.2d 801 (Ct. App. 1990) (citing *C.A.N. Enters., Inc. v. S.C. Health & Human Servs.*, 296 S.C. 373, 373 S.E.2d 584 (1988)). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 607 S.E.2d 362 (Ct. App. 2004).

The language of the Release clearly and unambiguously provide for a settlement agreement between Mr. Curry and Scottsdale Insurance Company. The evidence before the Court, outlined above, overwhelming indicates that both the Plaintiff and these Defendants did not intend for the Scottsdale Release to encompass the pending claims; the opposing party has presented no specific facts that show a genuine issue of fact for trial as to this affirmative defense. The Court finds that any ruling denying summary judgment as to this affirmative defense would produce "an absurd result" in contravention of longstanding South Carolina law.

ACCORDINGLY, the Court hereby DENIES the Defendants' Motion for Summary Judgment, as amended, and GRANTS the Plaintiff's cross-motion for summary judgment as to the affirmative defense of release.

AND IT IS SO ORDERED.

Robert E. Hood

The Honorable Robert E. Hood

Dated:

5/6/16

At:

Columbia

SCANNED 13

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)

Porthemos Curry,

Plaintiff,

vs.

Carolina Insurance Group of SC, Inc. and
Maurice Derrick,

Defendants.

Civil Action No.: 2014-CP-40-04661

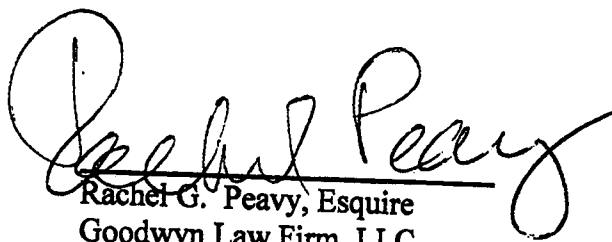
CERTIFICATE OF SERVICE

FILED
RICHLAND
MAR -2 AM 11:58
JANETTE W. MORRIS
C.C.P. & G.S.

The undersigned hereby certifies that on March 2, 2017, copies of the foregoing filed Plaintiff's Reply were served on the following party, Via Hand Delivery, at the address shown below:

VIA HAND DELIVERY

Wesley D. Peel, Esquire
Bruner Powell Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
Columbia, SC 29204



Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517

GOODWYN LAW FIRM, LLC

T. Jeff Goodwyn, Jr.*
Christopher J. Archer

Special Counsel:
Rachel G. Peavy

Of Counsel:
E. Crosby Lewis

*Also Licensed in Georgia

Reply to:
2519 Devine Street
Suite A
Columbia, South Carolina 29205

111-B Congress Street
Winnsboro, South Carolina 29180

Tel. (803) 251-4517 (Columbia)
Fax (803) 251-4527

Tel. (803) 635-1920 (Winnsboro)
Fax (803) 635-2100

Email: Rpeavy@Goodwynlaw.com
Web: www.GoodwynLaw.com

March 2, 2017

BY HAND

The Honorable Jeanette McBride
Richland County Clerk of Court
PO Box 2766
Columbia, SC 29202-2766

Re: *Porthemos Curry v. Carolina Insurance Group of SC, Inc., et al.*
Civil Action No.: 14-CP-40-04661
Our File No.: 3000-0170

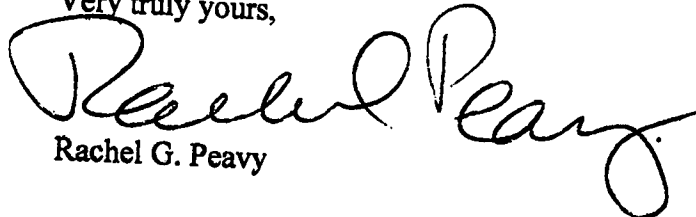
Dear Ms. McBride:

Enclosed for filing please find the original and three (3) copies of Plaintiff's *Reply*, in regards to the above-referenced matter. Please file the original and return the copies to me. I am also delivering a filed copy of same to the Honorable Jocelyn Newman for her review.

By copy of this letter to Wesley D. Peel, Esquire, attorney for the Defendants, I am serving him with a copy of same.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Rachel G. Peavy

RGP/
Enclosures

cc: The Honorable Jocelyn Newman. (w/Encl.) (By Hand)
Wesley D. Peel, Esquire (w/Encl.) (By Hand)
Porthemos Curry (w/Encl.) (Via US Mail)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge
Robert E. Hood, Circuit Court Judge

Appellate Case No.: 2016-000986

RECEIVED

NOV 08 2017

SC Court of Appeals

Porthemos Curry.....Respondent/Appellant,

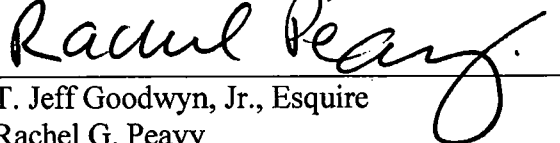
v.

Carolina Insurance Group of SC, Inc. and Maurice
Derrick,.....Appellants/Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Appendix to the Record on Appeal, submitted with the consent of all attorneys of record pursuant to Rule 212(b), SCACR, contains all materials proposed to be included by any of the parties and not any other material.

GOODWYN LAW FIRM, LLC



T. Jeff Goodwyn, Jr., Esquire

Rachel G. Peavy

2519 Devine Street

Suite A

Columbia, SC 29205

(803) 251-4517

JGoodwyn@Goodwynlaw.com

Attorneys for the Respondent/Appellant

Columbia, South Carolina
November 8, 2017