

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2017-002234
Case No. 2016-CP-40-5885

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NOV 15 2017

SC Court of Appeals

Stephany A. Connelly and James M. Connelly, Plaintiffs,

v.

The Main Street America Group, Old Dominion Insurance Company,
Allstate Fire and Casualty Insurance Company, Debbie Cohn,
and Freya Trezona, Defendants

Of whom Allstate Fire and Casualty Insurance Company,
The Main Street America Group and Old Dominion Insurance
Company,.....Appellants,

And

Stephany A. Connelly and James M. Connelly,Respondents.

RESPONDENTS' RULE 204(b) MOTION

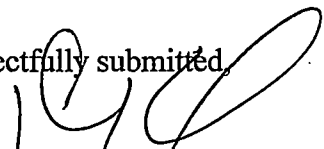
John D. Kassel, Esquire
Theile B. McVey, Esquire
Kassel McVey, Attorneys at Law
P.O. Box 1476
Columbia, South Carolina 29202
803-256-4242
803-256-1952 (Facsimile)

This matter comes before the Court upon motion of Respondents, Stephany A. Connelly and James M. Connelly, pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, seeking an Order certifying the case for review by the Supreme Court before the matter has been determined by the Court of Appeals. Certification is appropriate since this case involves a novel legal principle of major importance. Respondents respectfully request that jurisdiction of this matter be transferred to the Supreme Court for all purposes. Appellants filed their notices of appeal on October 23, 2017 and October 25, 2017.

This case involves interpretation of South Carolina Code §38-77-150(A)(2014), the automobile uninsured motorist provision. This case raises the novel question in South Carolina whether an injured employee-automobile passenger may recover uninsured motorist benefits where her co-employee driver, immune from liability under the South Carolina Workers' Compensation Act, negligently caused a motor vehicle wreck. In other words, can an injured employee maintain an action against the uninsured motorist carrier providing coverage on the vehicle in which the employee was occupying and/or her own personal uninsured policy when liability coverage for the at fault driver is unavailable because of the immunity? In large part, this question requires interpretation of the statutory language of §38-77-150(A) mandating that insurance policies sold in this state pay an insured all sums he is *legally entitled to recover* as damages from the owner or operator of an uninsured motor vehicle. (Emphasis added). This language may preclude coverage if interpreted to mean an insured must secure a judgment against the driver as a

precondition to uninsured coverage. *Peterson v. State Frm Bureau Ins. Co.*, 927 P.2d 192 (Utah Ct. App. 1996). This language may allow coverage if interpreted to mean an insured must simply demonstrate fault on the part of the immune driver. *Barfield v. Barfield*, 742 P.2d 1107 (Oklahoma Sup. Ct. 1987); *Torres v. Kansas City Fire and Marine*, 849 P.2d 407 (Oklahoma Sup Ct. 1993). Central to this controversy is whether the South Carolina Legislature intended to provide uninsured motorist protection to individuals where automobile liability coverage is not available due to legal immunity as well as financial irresponsibility. There are no South Carolina reported decisions directly on point. Given the mandatory nature of uninsured motorist coverage, this case likely will have a significant impact on insurers and insureds alike.

Respectfully submitted,



John D. Kassel, Esquire
jkassel@kassellaw.com
Theile B. McVey, Esquire
tmcvey@kassellaw.com
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Of whom Allstate Fire and Casualty Insurance Company,
The Main Street America Group and Old Dominion Insurance
Company,.....Appellants,

And

Stephany A. Connelly and James M. Connelly,Respondents.

CERTIFICATE OF SERVICE

I, Amanda L. Kaminer, administrative legal assistant, an employee of Kassel
McVey Attorneys at Law, counsel for Plaintiffs in the above-entitled matter, do hereby
certify that on the 14th day of **NOVEMBER 2017**, I caused the attached **RESPONDENT'S**
RULE 204(B) MOTION to be served upon counsel for Defendants by depositing a true and

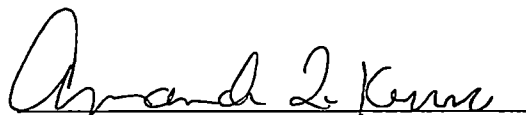
correct copy in the United States Mail, First Class, with postage pre-paid, return address clearly printed on the envelope, and addressed as follows:

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1015 Sumter Street
P O Box 11629
Columbia, SC 29211-1629

Thomas F. Dougall, Esquire
Law Office of Thomas Dougall
1700 Woodcreek Farms Road, Suite 100
Elgin, South Carolina 29045

The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street, Room 205
Post Office Box 2766
Columbia, South Carolina 29202-2766

A. Johnston Cox, Esquire
Gallivan White & Boyd
1201 Main Street Suite 1200
Columbia, South Carolina 29201


Amanda L. Kaminer

November 14, 2017

Columbia, South Carolina.

KASSEL McVEY

JOHN D. KASSEL
ATTORNEY AT LAW
JKASSEL@KASSELLAW.COM

THEILE B. McVEY
ATTORNEY AT LAW
TMCVEY@KASSELLAW.COM

November 14, 2017

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SC Court of Appeals

The Honorable Daniel Shearouse
Supreme Court of South Carolina
1231 Gervais Street
Columbia, South Carolina 29201

Re: Stephany Connelly and James M. Connelly v. The Main Street America Group, et al.
C/A No.:2016-CP-40-5885

Stephany A. Connelly vs. the Main Street America Group
Appellate Case No. 2017-002234

Dear Mr. Shearouse:

Enclosed please find an original and six copies of the Respondent's Rule 204(b) Motion seeking an Order certifying the case for review by the Supreme Court. Please file the original and return a clocked copy to me via return addressed envelope enclosed. I have also included my firm's check in the amount of \$25 to cover the filing fee. By copy of this letter, I have served all counsel of record, the Clerk of the Supreme Court, and the Richland County Clerk of Court.

Thank you for your kind consideration and assistance. If you have any questions or concerns, please do not hesitate to call.

Sincerely,



Amanda L. Kaminer

ALK:ecm

cc: Alfred Johnston Cox, Esquire
Janice Holmes, Esquire
Thomas F. Dougall, Esquire
Michal Kalwajtys, Esquire

KASSEL McVEY

JOHN D. KASSEL
ATTORNEY AT LAW
JKASSEL@KASELLAW.COM

THEILE B. McVEY
ATTORNEY AT LAW
TMCVEY@KASELLAW.COM

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The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street, Room 205
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Columbia, South Carolina 29202-2766

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C/A No.:2016-CP-40-5885

Stephany A. Connelly vs. the Main Street America Group
Appellate Case No. 2017-002234

Dear Ms. McBride:

Enclosed herewith and served upon your please find a copy of the Respondent's Rule 204(b) Motion seeking an Order certifying the case for review by the Supreme Court.

Thank you for your kind consideration and attention. If you have any questions or concerns, please do not hesitate to call..

Sincerely,


Amanda L. Kaminer

ALK:ecm

cc: Alfred Johnston Cox, Esquire
Janice Holmes, Esquire
Thomas F. Dougall, Esquire
Michal Kalwajtys, Esquire

KASSEL McVEY

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South Carolina Court of Appeals
1015 Sumter Street
P O Box 11629
Columbia, SC 29211-1629

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Re: Stephany A. Connelly vs. the Main Street America Group
Appellate Case No. 2017-002234

Dear Ms. Kitchings:

Enclosed herewith and served upon your please find a copy of the Respondent's Rule 204(b) Motion seeking an Order certifying the case for review by the Supreme Court.

Thank you for your kind consideration and attention. If you have any questions or concerns, please do not hesitate to call.

Sincerely,


Amanda L. Kaminer

JK/ak

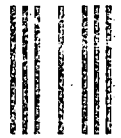
cc: The Honorable David Shearouse (w/enclosures)
The Honorable Jeanette McBride (w/enclosures)
Alfred Johnston Cox, Esquire (w/enclosures)
Janice Holmes, Esquire (w/enclosures)
Thomas F. Dougall, Esquire (w/enclosures)
Michal Kalwajtys, Esquire (w/enclosures)

KASSEL  McVEY

JOHN D. KASSEL, ATTORNEY AT LAW, LLC

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