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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 2016-CP-26-798

South Carolina Farm Bureau Mutual Insurance Company ..... Respondent

vs.

Michael David Harrelson, Devora Harrelson, Kevin Duke
and Government Employees Insurance Company ..... Defendants

OF WHOM:
Michael David Harrelson and Devora Harrelson are ..... Appellants
and
Government Employees Insurance Company is..... Respondent

FINAL REPLY BRIEF OF APPELLANTS
(As to Respondent Government Employees Insurance Company)

Gene M. Connell, Jr. (S.C. Bar No. 1358)
Kelaher, Connell & Connor, P.C.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellants

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Attorney for Appellants

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The Appellants offer the following Reply to the Initial Brief of Respondent Government Employees Insurance Company in regard to the captioned case.

ARGUMENT

I. RESPONDENT'S BRIEF INCORRECTLY CITES THE TESTIMONY OF MICHAEL HARRELSON.

Respondent Government Employees Insurance Company (GEICO) in its brief lumps the testimony of Devora Harrelson and Michael Harrelson into one section of its brief. (See GEICO Brief, pp. 2-4). For the purpose of brevity, Appellants would offer the testimony of Michael Harrelson as cited in Appellants' Initial Brief that Duke blew his horn and flashed his lights; that Duke got his car very close to Harrelson's car; that Duke used Harrelson's vehicle as a weapon by pinning him against the car; that Duke made sure to put him on the car; that Duke revved his engine in a threatening manner; that he was injured because Duke pinned him to the car; and that the car helped enable the injury. (See Appellants' Initial Brief, pp. 4-6).

II. THE EVIDENCE AND TESTIMONY SUPPORT APPELLANTS' POSITION.

The South Carolina Supreme Court has repeatedly held that there must be a causal connection between the vehicle and the injury. See *Home Ins. Co. v. Towe*, 314 S.C. 105, 107, 441 S.E.2d 825, 827 (1994). In *Towe*, the Supreme Court held that the use of the vehicle placed Alexander in a position to throw a bottle at the sign which caused the injury to another driver. (314 S.C. 107, 108). In this case, a confrontation by Duke over the driving of Harrelson and his failure to pull into the parking space resulted in his injuries. Just like in *Towe*, the use of the vehicle by Harrelson and Duke was key to the injury. One need only look at the evidence from Duke himself about him beeping his horn and flashing his headlights to realize that this was an argument about Harrelson's use of his car and in failing to move out of the way so that Duke could pass. As has

been stated previously, Harrelson's injuries were entirely from Harrelson and Duke's operation and use of their vehicles and thus coverage is mandated under South Carolina law.

III. BOTH HARRELSON AND DUKE WERE USING THEIR VEHICLE WHEN THE INJURY OCCURRED.

Respondent argues that Duke did not use his vehicle consistent with S.C. Code § 38-77-140. Our courts have held that the motor vehicle must be used for transportation at the time of the injury. See *Canal Ins. Co. v. Insurance Co. of America*, 315 S.C. 1, 431 S.E.2d 577 (1993). The *Canal* case adopted a test established in Minnesota from the case of *Continental Western Ins. Co. v. Klug*, 415 N.W. 2d 876 (1987). In that case, the Court found coverage and noted as follows:

(1) The car in question was being used for motoring purposes. In this case, both Harrelson and Duke's cars were being used for motoring purposes and that is what gave rise to the injury;

(2) In *Klug*, the defendant used his car to keep up with Klug on the highway for two miles. In this case, Duke blocked Harrelson in and used Harrelson's car to hold Harrelson against his car and severely beat him;

(3) Just like in *Klug*, Duke used his car to maneuver himself into a position to harm the plaintiff by pulling up behind him, blocking him in and then pinning Harrelson against Harrelson's own car;

Also, Duke prevented Harrelson from escaping when he pulled in behind him and then assaulted him. Further, our courts have held that an active accessory is less than proximate cause in the tort context and something more than being the mere situs of the injury. Here, Duke knew exactly what he was doing from his training as a retired police officer when he pulled his car behind Harrelson so he could not leave and then used Harrelson's car to hold him severely injuring him.

The evidence being that Duke's use of his car to block Harrelson's escape made it an active accessory to Harrelson's injury.

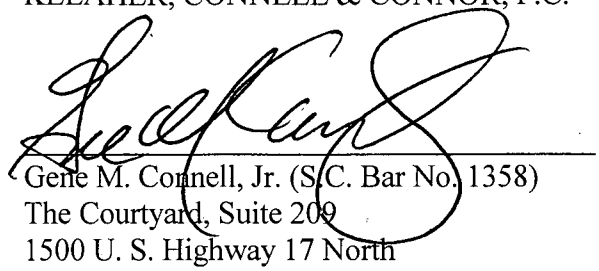
IV. DISPUTED FACTS CANNOT BE DECIDED ON SUMMARY JUDGMENT.

Respondent does not address Appellants' argument that this case could not be decided pursuant to SCRCP 56. Appellants had requested a jury trial and were entitled to such so that the finder of fact of fact could apply the law to the disputed facts. The trial judge erred in granting summary judgment since the finder of fact could clearly find after being charged with the applicable law that coverage was available. Appellants assert like any other case where a party has asked for a jury trial that the judge simply charge at the close of the evidence the three necessary elements and let the jury apply the facts to the law. Those elements for a claim arising out of the use of a motor vehicle are found *in Peagler v. USAA Ins. Co.*, 368 S.C. 153, 628 S.E.2d 475 (2006). Clearly based on the testimony presented by the Harrelsons there were disputed issues of material fact and the finder of fact in this case a jury would have to apply those facts to the law as provided by the court from the *Peagler* case. Accordingly, Appellants submit that it was error to grant summary judgment under those circumstances to GEICO and South Carolina Mutual Farm Bureau.

CONCLUSION

Accordingly, Appellants request that this Court reverse the ruling of the trial court.

KELAHER, CONNELL & CONNOR, P.C.



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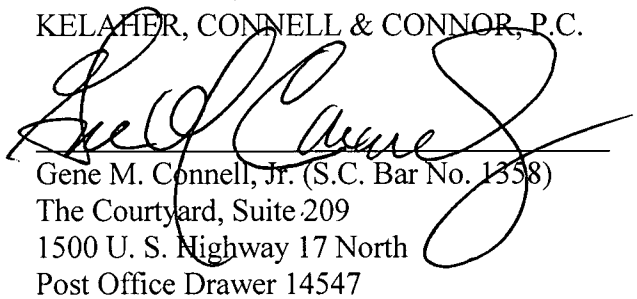
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b) SCACR.

KELAHER, CONNELL & CONNOR, P.C.



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Attorney for Appellants Michael David
Harrelson and Devora Harrelson

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