

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2015-CP-42-1578

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DEC 08 2017

SC Court of Appeals

Wadette Cothran and Chris Cothran,.....Respondents,

v.

State Farm Mutual Automobile Insurance Company
and Robert Tucker, of whom State Farm Mutual Automobile
Insurance Company is theAppellant.

RESPONDENTS' PETITION FOR REHEARING
AND MEMORANDUM IN SUPPORT

Pursuant to Rules 221 and 240, SCACR, respondents Wadette Cothran and Chris Cothran file this Petition for Rehearing with respect to this Court's decision in Wadette Cothran and Chris Cothran v. State Farm Mutual Automobile Insurance Company and Robert Tucker, 2016-000177 (S.Ct. App. filed Nov. 22, 2017).

Respondents respectfully resubmit all arguments from their briefs and, additionally, respectfully submit that the Court may have overlooked or misapprehended points in its decision:

First, State Farm Mut. Auto Ins. Co. v. Richardson, 313 S.C. 58, 437 S.E. 2d 43 (1993), upon which the Court relies in reaching its decision, does not address the application of the setoff provision under review in the case at bar but applies instead only to the stacking of multiple policies of personal injury protection ("PIP") coverage. The Richardson opinion makes it clear that the sole issue within the review of the court was the validity of PIP setoff, and therefore Richardson cannot be controlling authority with regard to the validity of a setoff provision. In its reliance on Rowzie v. Allstate Ins. Co., 556 F.3d 165, 166 (4th Cir. 2009), the Court overlooks that Rowzie's reasoning is of questionable validity because one case upon which it was based (State Farm Mut. Auto. Ins. Co. v. Calcutt, 530 S.E. 2d 896 (S.C. Ct. App. 2000)) was subsequently overturned by Sweetser v. S.C. Dept. of Ins. Reserve Fund, 703 SE.2d 509 (S.C. 2010).

Second, the Court does not define whether the policy provision within review is, by definition, a setoff and concomitantly, if the provision is a setoff, whether it thereby violates the plain meaning of the statutory setoff prohibition.

Third, by the Court's holding that Respondents' argument that allowing the "excess" provision to stand would lead to an absurd result are overstated, the Court fails to address the fact that State Farm could invoke the setoff provision to refuse payment in nearly any

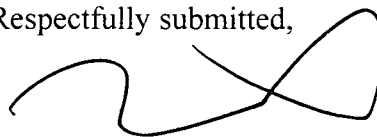
circumstance in which a claimant has received any money from any source, and the court thereby allows State Farm to take the position that literally any payment received by a claimant from any source falls within the exclusion of State Farm's policy, hence requiring any policyholder with a denied claim to litigate and meet the high burden of proving that the coverage she purchased was completely illusory.

Finally, the Court states that public policy does not warrant affirming the circuit court's ruling, but the Court does not address the fact that the public policy at issue is not the rights of the PIP carrier but the rights of the workers' compensation insurance carrier that is entitled to reimbursement for payments it has made if the Claimant has been made whole by payments from other sources.

CONCLUSION

Respondents' respect that the court has considered its arguments and denied them; Respondents nevertheless believe the Court should grant a rehearing and modify the opinion to reverse.

Respectfully submitted,



Logan Rollins
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Attorneys for Respondent

Dec. 5, 2017

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PROOF OF SERVICE

I do hereby certify, on this 5th day of December, 2017, that a copy of the foregoing Respondents' Petition for Rehearing and Memorandum in Support were served by depositing a copy of the same in the United States Mail, first-class, postage prepaid, addressed to: Charles R. Norris and Robert W. Whelen at Nelson Mullins Riley & Scarborough LLP, PO Box 1806, Charleston, SC 29402-1806.



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Attorneys for Respondent



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SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk of Court
Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Wadette Cothran and Chris Cothran v. State Farm Mutual Automobile Insurance
Company and Robert Tucker
Case No.: 2015-CP-42-1578

Dear Ms. Kitchings:

Enclosed for filing in the above referenced matter, please find the original and six (6) copies of Respondents' Petition for Rehearing and Memorandum in Support along with Proof of Service upon Charles R. Norris and Robert W. Whelen, attorneys for the Appellants.

Please file the original and return a file – stamped copy to me in the envelope provided. Please do not hesitate to contact me should you have any questions.

Sincerely,

Logan Rollins
Attorney for Respondents.

LR/hrs

Enclosures

cc: Charles R. Norris
Robert R. Whelen

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P.O. Box 11629
Columbia SC 29211-1629

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