
In The Supreme Court of South Carolina

United Auto Insurance Company,

Respondent, **RECEIVED**

vs.

FEB 26 2018

Willie Freeman, Michael Craft,
Kimberly Sanford and Antonio Craft,

S.C. SUPREME COURT

Petitioners.

*On Petition for Writ of Certiorari to the
Supreme Court of South Carolina*

**APPENDIX FOR
PETITION FOR WRIT OF CERTIORARI**

January 11, 2018



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APPENDIX "A"

The South Carolina Court of Appeals

United Auto Insurance Company, Respondent,

v.

Willie Freeman, Michael Craft, Kimberly L. Sanford, and
Antonio Craft, Appellants.

Appellate Case No. 2015-000811

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr.

J.

CAKE

J.

John

J.

Columbia, South Carolina

FILED

cc:

Donald Loren Smith, Esquire
George Verner Hanna, IV, Esquire
Trevor Penrose Eddy, Esquire
The Honorable R. Scott Sprouse

December 14, 2017

APPENDIX "B"

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2017-UP-412

RECEIVED
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SC Court of Appeals

William Freeman, Michael Craft,
Kimberly Sanford & Antonio Craft,

Appellants,

v.

United Auto Insurance Company,

Respondent.

PETITION FOR REHEARING

Pursuant to the provision of Rule 221 (a), Appellants (hereinafter Petitioners), with the exception of Kimberly Stanford and Antonio Craft, who, since they have not been represented or participated in litigation in this case and, therefore, the appeal as to them is dismissed.

Petitioners through their undersigned counsel, respectfully petition this Court for a rehearing based on facts, points, and arguments overlooked or misapprehended as set forth herein.

One of the self-declared purposes of Title 38, Chapter 77 (Automobile Insurance) of the South Carolina Code is to provide "that every automobile insurance risk which is insurable . . . is entitled to automobile insurance." S.C. Code Ann. § 38-77-10(1). The chapter is to be liberally construed in order to achieve that purpose. S.C. Code Ann. § 38-77-20. The South Carolina legislature undoubtedly intended for the public to be free from the dangers of uninsured motorists. Therefore, based on the plain language of the relevant statutes, the legislature's intent,

and public policy considerations, this Court should hold that Respondent could not have issued a cancellation notice until Kimberly Sanford's payment became delinquent, and thus provided insurance coverage on her vehicle on February 13, 2013.

The Court's decision relies on the plain language of the statutes, but fails to use the plain meaning of the policy for which they are applying the statutes. Furthermore, the Court interpreting the policy fails to read from the left to the right. As a result, the holding contradicts the very language that is relied upon in the affirmation of the lower court.

I. **WHETHER RESPONDENT PROPERLY CANCELLED THE POLICY ON FEBRUARY 3, 2013 UNDER § 56-10-280.**

Section 56-10-280 refers specifically to the cancellation of a new insurance policy within sixty days of issuance. In pertinent part, the section provides:

(A) [A] contract of policy may be canceled within the first sixty days only under one or more of the following circumstances:

...

(4) the insured fails to pay **when due** the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of issuance must remain in effect for at least thirty days.

S.C. Code Ann. § 56-10-280 (emphasis added).

Utilizing the left to right manner in which the English language is read, the policy may be canceled within the first sixty days only if under the following conditions:

- a. The insured **fails to pay when due**. That phrase cannot be more clear. Black's Law Dictionary describes delinquent as "simply due and unpaid at the time fixed by contract.
- b. An installment contract is an agreement that provides for the periodic payment of an equal fraction of the whole, on a regular basis. The installment period in this case was once a month for a period of six months. In this installment contract, the first date of payment, or installment was paid on January 3, 2013 and, therefore, each installment would be paid on the 3rd of each month.

- c. Upon failure to pay the installment payment of a premium service contract, "The contract or policy of issuance must remain in effect for at least thirty days."

The Court relied on the notion that "the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation". *Catawba Indian Tribe of S.*, 372 S.C. at 525, 642 S.E.2d at 754. That may be the holding in the case cited. However, the finding in this matter is representative of the Court forcing construction of the verbiage used by the drafters of the statute, in defiance of the mandate to allow the legislative intent to pervade the insurance legislation.

According to Robert Gibbs, the spokesman for Respondents, said the *critical* factor was that she did not pay for the entire policy. "She was paying month to month." The plain meaning of this statement was that the Respondents expected her payment to be made on a monthly basis. Thus, the due day date would be the 3rd of the month throughout the duration of the contract. Therefore, pursuant to the plain and ordinary meaning of failing to pay when due, the next installment payment would have been due on February 3rd when the first installment payment was exhausted. Failure to pay the installment on the 3rd of February would have *required* the policy to remain in effect for at least thirty days. There is absolutely no qualification to the way in which statute was drafted. Not seeing the statute in this vein forces a result expanding the statute's operation.

II. WHETHER S.C. CODE § 38-77-120 PERMITS AN INSURANCE COMPANY TO ISSUE A NOTICE OF CANCELLATION FOR NONPAYMENT OF PREMIUM BEFORE A PAYMENT BECOMES DELINQUENT.

South Carolina has yet to address whether anticipatory breach is an acceptable move by a carrier. However, since ordinary and plain meaning are the driving force behind statutory interpretation of insurance, it is necessary to look at the language. According to § 56-10-280, an

insurer can only cancel a new policy within sixty days if the insured fails to pay, **when due**, the premium for the policy. It is undisputed that the coverage that Kimberly Sanford received, for which she had paid the initial installment, took her through February 3rd. That would have been the due date of the next installment. **From that date**, the fifteen days to cancellation would begin. Thus, February 18, 2013, would have been the last day of coverage.

Victoria Automobile Insurance Company attempted to incorporate the anticipatory breach by likewise issuing a cancellation letter in anticipation of the insured's failure to emargued that the Cancellation Notice had complied with § 3937.32(E) because the cancellation date identified in the Notice was at least ten days subsequent to the date of the Notice. In rejecting the argument, the court held that the statute was ambiguous, and looked at other statutes to determine the legislative intent. Vietzen, 9 N.E.3d at 504. The court considered Ohio Rev. Code Ann. § 3937.31, which sets forth the reasons for which an insurance policy may be canceled by the insurer, including the nonpayment of premium. Id. at 505. The Ohio statute defines nonpayment of premium as “[the] **failure of the named insured to discharge when due** any of the named insured's obligations in connection with the payment of premiums on a policy.” Ohio Rev. Code Ann. § 3937.31(A)(3). The court reasoned that because anticipatory breach is not a reason for cancellation enumerated in the statute, the insurance company could not cancel the policy based on its belief that Ms. Henry would not pay her premium when it was due. See Vietzen, 9 N.E.3d at 505.

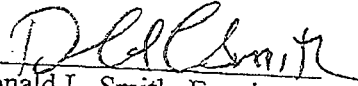
The key to the coverage in Ohio and in South Carolina is seemingly the fact that the carrier cannot begin the cancellation countdown until such time as the insured has failed to make a timely payment. Ohio's reasoning was that an anticipatory breach was not addressed by statute and, therefore, resulted inherent ambiguity. Ambiguity should be addressed in favor of the

carriers. Ohio found on the side of finding coverage. South Carolina should follow suit, especially given the significant damages assessed to Plaintiffs' case. Insurance coverage is ultimately favored when the issue of coverage is weighed.

Conclusion

The Court in this case has withdrawn from the plain meaning approach to legislative intent. The vagueness in this statute is overwhelming. There are two different explanations of how it can be interpreted that coverage was in effect through February 18, 2013. That is a direct result of the Respondents being able to introduce imprecision into insurance forum. This case of first impression needs to be addressed at this point to prevent further cases wherein people in this state due fall under the gambit of being insure. \

November 14, 2017


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APPENDIX "C"

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

United Auto Insurance Company, Respondent,

v.

Willie Freeman, Michael Craft, Kimberly L. Sanford, and
Antonio Craft, Appellants.

Appellate Case No. 2015-000811

Appeal From Anderson County
R. Scott Sprouse, Circuit Court Judge

Unpublished Opinion No. 2017-UP-412
Submitted September 1, 2017 – Filed November 1, 2017

AFFIRMED

Donald Loren Smith, of Attorney Office of Donald
Smith, of Anderson, for Appellants.

George Verner Hanna, IV and Trevor Penrose Eddy, both
of Howser Newman & Besley, LLC, of Columbia, for
Respondent.

PER CURIAM: Willie Freeman, Michael Craft, Kimberly L. Sanford, and Antonio Craft (collectively Appellants)¹ appeal the circuit court's order finding the conduct of United Auto Insurance Company (Respondent) did not violate applicable statutory requirements related to the cancellation of automobile insurance policies. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. With regard to whether subsection 38-77-120(a)(2) of the South Carolina Code (2015) permitted Respondent to issue a notice of cancellation for nonpayment of insurance premium before the payment became delinquent: *Wade v. Berkeley Cty.*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) ("The first question of statutory interpretation is whether the statute's meaning is clear on its face."); *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 525-26, 642 S.E.2d 751, 754 (2007) ("The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation."); *id.* at 525, 642 S.E.2d at 754 ("If a statute's language is plain, unambiguous, and conveys a clear meaning, then 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000))); S.C. Code Ann. § 38-77-120(a)(2) (stating a cancellation of insurance is effective provided the insured is mailed a notice of cancellation and the notice states the date on which cancellation becomes effective, which cannot be less than fifteen days from the time of mailing).

2. With regard to whether Respondent's cancellation of the insurance policy was proper pursuant to subsection 56-10-280(A)(4) of the South Carolina Code (Supp. 2016): *Wade*, 348 S.C. at 229, 559 S.E.2d at 588 ("The first question of statutory interpretation is whether the statute's meaning is clear on its face."); *Catawba Indian Tribe of S.C.*, 372 S.C. at 525-26, 642 S.E.2d at 754 ("The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation."); *id.* at 525, 642

¹ Although Sanford and Antonio Craft are designated as Appellants in the Notice of Appeal, the record reveals these parties have not been represented or participated in the litigation in this case and are currently in default. Therefore, the appeal as to them is dismissed. See *Winesett v. Winesett*, 287 S.C. 332, 333-34, 338 S.E.2d 340, 341 (1985) (dismissing appeal and noting "[t]he proper procedure for challenging a default judgment is to move the trial court to set aside the judgment pursuant to Rule 60(b), SCRCP. An appeal may then be taken from the denial of this motion.").

S.E.2d at 754 ("If a statute's language is plain, unambiguous, and conveys a clear meaning, then 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" (quoting *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581)); S.C. Code Ann. § 56-10-280(A)(4) (stating an insurance policy may be canceled within the first sixty days if the insured fails to pay when due the premium for the policy).

AFFIRMED.²

SHORT, KONDUROS, and GEATHERS, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

APPENDIX " D "

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No.: 2015-900811

United Auto Insurance Company,

Respondent,

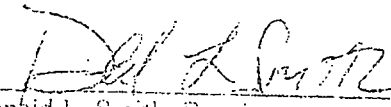
v.

Willie Freeman, Michael Craft,
Kimberly Sanford and Antonio Craft,

Appellants,

RECORD ON APPEAL

January 22, 2016


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Order Granting Plaintiff's Motion for Summary Judgment, March 6, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) MAR 6 2015 IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
C/A NUMBER: 14-CP-04-850

United Auto Insurance Company, *Elizabeth K. Kelly*
CLERK OF COURT

Plaintiff,

vs.

Willie Freeman, Michael Craft, Kimberly
L. Sanford and Antonio Craft,

Defendants.

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

COMMON PLEAS AND
GENERAL SESSIONS
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ANDERSON SC

I. INTRODUCTION

This matter came before the Court on Plaintiff's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure during the February 2, 2015 Anderson County Non-Jury term of Court. Attorney George V. Hanna, IV appeared on behalf of United Auto Insurance Company ("UAIC"). Attorney Donald L. Smith appeared on behalf of Defendants Willie Freeman and Michael Craft. Defendants Kimberly Sanford and Antonio Craft are in default and did not make an appearance. After carefully considering the arguments of counsel for UAIC, the arguments of counsel for Willie Freeman and Michael Craft, the affidavit of Robert Gibbs, the exhibits presented at trial, the various pleadings filed in the case, the submissions of both parties and the relevant case law, I hereby GRANT Plaintiff's Motion for Summary Judgment.

II. STATEMENT OF FACTS

At oral argument the parties stipulated to the following pertinent facts:

1. UAIC issued policy # SCU 000693514 ("the Policy") to Defendant Kimberly L. Sanford as named insured a policy of automobile liability insurance with effective dates of January

R/S

3, 2013 to July 3, 2013, which provided bodily injury liability coverage for one (1) vehicle, a 1997 Ford Crown Victoria, in the amount of \$25,000/\$50,000.

2. That Defendant Kimberly L. Sanford paid her first month's premium on January 3, 2013 at the time the Policy was issued.

3. UAIC sent a bill to Defendant Kimberly L. Sanford for the second month's premium on January 9, 2013.

4. UAIC then sent a cancellation notice to Defendant Kimberly L. Sanford on January 22, 2013, stating that the policy would be cancelled if the premium was not received on or before February 3, 2013.

5. That Defendant Kimberly L. Sanford failed to pay the premium for the second month before the due date of February 3, 2013.

6. That on February 13, 2013 Antonio Craft was operating the aforementioned 1997 Ford Crown Victoria on Tribble Street in the Anderson, South Carolina when his vehicle allegedly struck Defendants William F. Freeman and Michael Craft, who were pedestrians.

7. That Defendant Kimberly L. Sanford made an additional payment on February 14, 2013 at 11:21 AM.

III. CONCLUSIONS OF LAW

Plaintiff presented evidence at the motion hearing that the notice of cancellation mailed on January 22, 2013 met all the requirements of South Carolina Code § 38-77-120 and Defendants Willie Freeman and Michael Craft did not challenge this evidence. Therefore, as a threshold matter, I find as a matter of law that Plaintiff's notice of cancellation dated January 22, 2013 met all the requirements of South Carolina Code § 38-77-120.

In addition, Plaintiff contends that it was permissible to cancel the policy within the first 60 days because this cancellation met the requirements of South Carolina Code § 56-10-

280(A)(4). Specifically, the policy had remained in effect for at least 30 days and was being cancelled for nonpayment of premium. Defendants Willie Freeman and Michael Craft challenged this contention at the hearing, arguing that South Carolina Code § 56-10-280(A)(4) prohibits an insurance carrier from cancelling an insurance policy within the first 60 days for nonpayment of premiums for at least 30 days after the premium is due. Under the Plaintiff's interpretation of the statute the policy was cancelled for nonpayment on February 3, 2013 at 12:01 AM. Under Defendants Willie Freeman and Michael Craft's interpretation of the statute the policy could not be cancelled until March 5, 2013 at 12:01 AM. Therefore, the issue presented to the court is to interpret the meaning of South Carolina Code § 56-10-280(A)(4) and then apply that meaning to the undisputed facts of the case. The specific statutory language at issue is as follows:

(A) Contracts or policies of insurance issued to meet the financial responsibility requirements prescribed in this chapter must be issued for not less than six months. A contract or policy of insurance remains in effect at least sixty days notwithstanding a power of attorney which may purport to give the attorney-in-fact the right to effect cancellation on behalf of the insured. However, a contract or policy may be canceled within the first sixty days only under one or more of the following circumstances: (4) the insured fails to pay when due the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of insurance must remain in effect for at least thirty days.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election*

Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992).

The court finds that the language of South Carolina Code § 56-10-280(A)(4) is plain and unambiguous. This section clearly evidences the legislature's intent that a policy of automobile insurance issued in compliance with the Financial Responsibility Act can only be cancelled during the first 60 days for four enumerated reasons, including the nonpayment of premiums when due. A policy that is cancelled for nonpayment of premiums must remain in effect for at least 30 days. The Court finds that the plain and unambiguous meaning of this provision is that a policy of automobile insurance can be cancelled for nonpayment of premium on the 31st day. This is exactly what happened in this case.

The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd. *Ray Bell Constr. Co. v. School Dist. of Greenville Co.*, 331 S.C. 19, 501 S.E.2d 725 (1998).

However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention. If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.

Id. (citing *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364 (1994)). The interpretation urged by Defendants Willie Freeman and Michael Craft leads to a result that is plainly absurd. Based on the undisputed facts, the policy was issued on January 3, 2013. The premium for the second months had to be received on or before February 3, 2013. Therefore, according to Defendants Willie Freeman and Michael Craft's interpretation of the

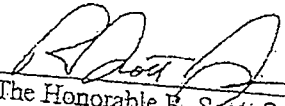
statute, the policy could not be cancelled until March 5, 2013 at 12:01 AM. In other words, they are urging this court to hold that the statute prohibits an insurer from cancelling a policy for nonpayment of premiums for a period of 60 days. This result is plainly absurd in that it requires the court ignore the fact that a cancellation for nonpayment of premiums is one of the four enumerated reasons listed in the statute wherein it is permissible for an insurer to cancel a policy within the first 60 days. If the legislature had intended the result urged by Defendants Willie Freeman and Michael Craft, it would have listed only the first three reasons and not ever mentioned nonpayment of premiums as an exception.

CONCLUSION

The court finds that the Plaintiff properly cancelled the Policy on February 3, 2013 at 12:01 AM and that the Policy was not reinstated until February 14, 2013 at 11:21 AM. Therefore, there is no coverage available for the accident of February 13, 2013. For the foregoing reasons, the Plaintiff's Motion for Summary Judgment is hereby GRANTED.
AND IT IS SO ORDERED.

Walthella, SC

3-6, 2015


The Honorable R. Scott Sprouse
Presiding Judge

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COMMON PLEAS AND
GENERAL SESSIONS

Order Denying Motion for Reconsideration, April 6, 2015

App. 20

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

CLERK'S OFFICE OF THE COURT OF COMMON PLEAS
ANDERSON SC

2015 APR -7 A 11:06

United Auto Insurance Company,
Plaintiffs,

v.

Willie Freeman, Michael Craft,
Kimberly L. Sanford, and Antonio Craft,
Defendants.

COMMON PLEAS AND
GENERAL SESSIONS

CASE NO.: 2014-CP-04-0850

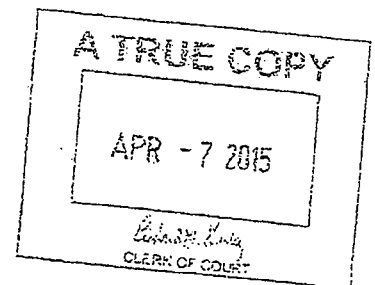
ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION

After careful consideration of the record and the able argument and filings of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Plaintiff's Motion, pursuant to Rule 59, SCRCP,¹ is DENIED.

AND, IT IS SO ORDERED.


R. SCOTT SPROUSE
Judge, Tenth Judicial Circuit

Anderson, South Carolina
April 6, 2015



¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

App. 21

Complaint, April 24, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
C/A NUMBER: 14-CP-04- 0850

United Auto Insurance Company,

Plaintiff,

vs.

Willie Freeman, Michael Craft, Kimberly
L. Sanford and Antonio Craft,

Defendants.

COMPLAINT

A TRUE COPY

APR 29 2014

[Signature]
CLERK OF COURT

The Plaintiff United Auto Insurance Company ("UAIC"), complaining of the Defendants herein, alleges:

1. That the Plaintiff, UAIC, is an insurance company organized and existing under the laws of one of the United States, and is authorized, and does conduct, business in Anderson County, South Carolina.
2. That the Defendant, Willie Freeman, is a resident of Anderson County, South Carolina.
3. That the Defendant, Michael Craft, is a resident of Anderson County, South Carolina.
4. That the Defendant, Kimberly Sanford, is a resident of Anderson County, South Carolina.
5. That the Defendant Antoine Craft, is a resident of Anderson County, South Carolina.
6. This action is one for declaratory judgment pursuant to Section 15-53-10 et seq. of the 1976 South Carolina Code as amended for the purpose of determining a question in controversy

between the parties as more fully appears herein.

5. The Plaintiff UAIC issued to Defendant Kimberly L. Sanford as named insured a policy of automobile liability insurance bearing policy number SCU 000693514 ("the Policy") with effective dates of January 3, 2013 to July 3, 2013 which provides bodily injury liability coverage for one (1) vehicle, including a 1997 Ford Crown Victoria, in the amount of \$25,000/\$50,000, and that reference to this policy is craved for its exact terms, provisions, insuring agreements, limitations and exclusions.

6. That Defendant Kimberly L. Sanford paid her first month's premium on January 3, 2013 at the time the Policy was issued.

7. That Defendant Kimberly L. Sanford failed to pay the premium for the second month before the due date of February 3, 2013, resulting in cancellation of the Policy as of February 3, 2013 at 12:01 AM.

8. That Policy was reinstated on February 14, 2013 at 11:21 AM after Defendant Kimberly L. Sanford made an additional payment.

9. That on or about February 13, 2013 Antonio Craft was operating the aforementioned 1997 Ford Crown Victoria on Tribble Street in the Anderson, South Carolina when his vehicle allegedly struck Defendants William F. Freeman and Michael Craft, who were pedestrians.

10. That at the time of the accident the Policy had been cancelled due to nonpayment of the premium.

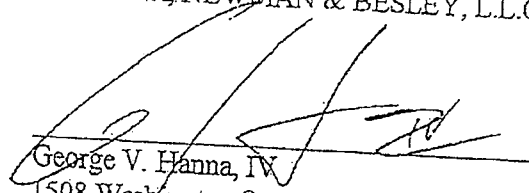
11. That heretofore William F. Freeman and Michael Craft instituted an action in the Court of Common Pleas for Anderson County against Kimberly Sanford and Antonio Craft for

injuries and damages allegedly received in the accident of February 13, 2013.

12. That a justiciable controversy exists as to whether the Plaintiff UAIC owes either a defense or indemnity under the liability provisions of the policy issued by the Plaintiff to Defendant Kimberly L. Sanford, this court should inquire into this matter, which is a proper subject for declaratory judgment under Section 15-53-10 *et seq.* of the 1976 South Carolina Code as amended, and issue its order declaring that the policy of UAIC does not provide liability insurance coverage for the accident referred to in this Complaint and the underlying Complaint which Antonio Craft had with William F. Freeman and Michael Craft on February 13, 2013, since the policy had been cancelled for nonpayment of premiums.

Wherefore, Plaintiff demands that the court inquire into this matter and issue its order and judgment declaring that the automobile liability insurance policy issued by Plaintiff UAIC does not provide liability insurance coverage to any person with a claim or potential claim arising out of the accident on February 13, 2013, and that Plaintiff UAIC owes no duty of defense and/or indemnity to the Defendants Kimberly L. Sanford and Antonio Craft as a result of any claim or action arising out of this accident, and that the court grant such other and further relief as may be just and proper.

HOWSER, NEWMAN & BESLEY, L.L.C.



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Attorneys for Plaintiff United Auto Insurance Company

April 23, 2014

App. 25

Answer, May 20, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	
United Auto Insurance Company,	)	
Plaintiff,	)	ANSWER
	)	
v.	)	
	)	
Willie Freeman, Michael Craft, Kimberly	)	
L. Sanford and Antonio Craft.	)	C.A. NO.: 2014-CP-04-0850
Defendants.	)	
	)	

Defendants Willie Freeman and Michael Craft, answering the Complaint of the Plaintiff herein, would show unto this Honorable Court that:

1. Defendants admit Paragraph 1.
2. Defendants admit Paragraphs 2 and 3.
3. Defendants admit Paragraphs 4, 5 and 6.
5. Defendants admit Paragraph 5 on Page 2 of the Complaint.
6. Defendants deny they have knowledge or information sufficient to form a belief

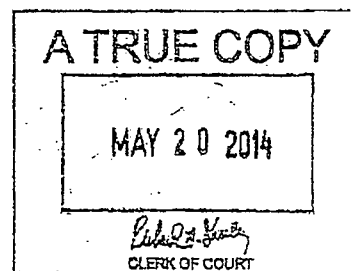
as to the allegations of Paragraphs 6, 7 and 8 on Page 2 of the Complaint, and therefore deny the same.

7. Defendants admit Paragraph 9.

8. Defendants deny they have knowledge or information sufficient to form a belief as to the allegations of Paragraph 10, and therefore deny the same.

9. Defendants admit Paragraph 11.

10. Defendants deny that the "justiciable controversy" alluded to in Paragraph 12 exists, and believe that Plaintiff owes Defendants indemnity under the liability provisions of the subject policy.



WHEREFORE, the Defendants Willie Freeman and Michael Craft pray for an
Order of this Honorable Court:

1. Dismissing the Plaintiff's Complaint;
2. Ordering Plaintiff to provide them indemnity; and
3. Granting them such other relief as is just and proper.



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Attorney for Plaintiff
attorneydonaldsmith@gmail.com

Anderson, South Carolina
Dated: May 10, 2014

Plaintiff's Motion for Summary Judgment, December 4, 2014

MOTION FEE PAID

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
C/A NUMBER: 14-CP-04-850



United Auto Insurance Company,

Plaintiff,

vs.

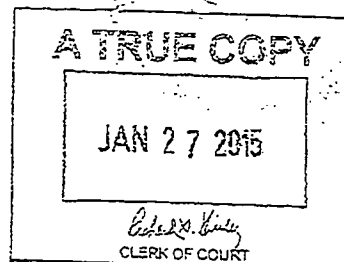
Willie Freeman, Michael Craft, Kimberly
L. Sanford and Antonio Craft,

Defendants.

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that the Plaintiff, by and through its undersigned attorneys, will move before the Presiding Judge of the Court of Common Pleas, Tenth Judicial Circuit, on the tenth (10th) day after service hereof or at such time and place as is convenient to the Court and counsel for an Order granting the Plaintiff's Motion for Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as to the within action because there are no genuine issues of material facts and because this Defendant is entitled to judgment as a matter of law.

This motion is based upon the grounds that Plaintiff fully complied with the requirements of S.C. Code Ann. § 38-77-120 in cancelling Defendant Kimberly L. Sanford's policy of insurance and that the policy was not in effect on February 13, 2013. This motion is further based upon the pleadings, the discovery responses of the parties, the depositions taken in this case, the affidavit of Robert Gibbs and the memorandum of law to be filed by the Plaintiff.



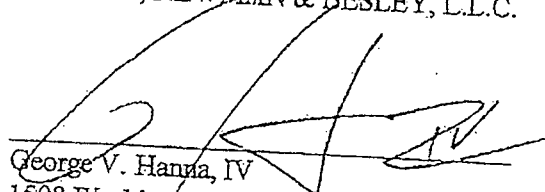
COMMON PLEAS AND
GENERAL SESSIONS

JAN DEC - 9 AM 10: 50

FILED-CLERK'S OFFICE
ANDERSON SC

Respectfully submitted,

HOWSER, NEWMAN & BESLEY, L.L.C.



George V. Hanna, IV

1508 Washington Street

P.O. Box 12009

Columbia, South Carolina 29211

(803) 758-6000

Attorneys for Plaintiff United Auto Insurance Company

December 4, 2014

Defendant's Return to Plaintiff's Motion for Declaratory Judgment, February 12, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	
United Auto Insurance Company,	)	
	)	DEFENDANT'S RETURN TO
Plaintiff,	)	PLAINTIFF'S MOTION
	)	FOR DECLARATORY JUDGMENT
v.	)	
	)	
Willie Freeman, Michael Craft, Kimberly	)	C.A. NO.: 2014-CP-04-0850
L. Sanford and Antonio Craft,	)	
	)	
<u>Defendants.</u>	)	

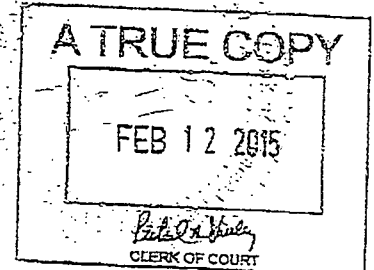
RETURN TO PLAINTIFF'S MOTION FOR DECLARATORY JUDGMENT

COMES NOW Defendants, Michael Craft and William Freeman, by and through undersigned counsel, and respectfully submits this memorandum in opposition to United Auto Insurance Company's ("Plaintiff" or "UAIC") Motion for Summary Judgment.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The threshold issue before this court is whether UAIC was statutorily required to provide insurance coverage to Kimberly Sanford and Antonio Craft at the time of their car accident. In support of its motion for summary judgment, Plaintiff UAIC relies solely upon S.C. Code Ann. § 38-77-120, which requires a 15-day notice for cancellation. However, the 15-day notice, and subsequent policy cancellation, was invalid because UAIC should *not* have issued a cancellation notice until after the insured failed to pay the premium. Here the legislative intent and public policy interests are clear—protect the public from the burden of compensating for injuries sustained as a result of uninsured drivers. Therefore, Plaintiff is not entitled to summary judgment as a matter of law.

II. FACTUAL HISTORY



On or about February 13, 2013, at approximately 11:00 a.m., Michael Craft and Willie Freeman having a conversation on the sidewalk in front of 1506 Tribble St., in Anderson, SC. Drew Order ¶ 2, September 9, 2014 (2013-CP-04-00771). Antonio Craft was driving Kimberly Sanford's automobile, 1997 Ford Crown Victoria. *Id.* at ¶ 4. Antonio Craft struck Michael Craft and Willie Freeman. *Id.* at ¶¶ 5-7. Antonio Craft fled the scene of the accident on foot after striking Michael Craft and Willie Freeman. *Id.* at ¶ 9. As a result of the accident, Michael Craft suffered blunt force trauma to the head, which necessitated the removal of part of his skull. *Id.* at ¶¶ 10-12. Michael Craft's medical bills totaled \$49,128.52 as a result of being struck by the vehicle. *Id.* at ¶ 15. In addition to Michael Craft's injuries, Antonio Freeman suffered a torn medial meniscus in his left knee and a tear in his left shoulder. *Id.* at ¶¶ 16-17. Antonio Freeman's medical bills relating to injuries sustained in the accident totaled \$12,295.50. Michael Craft and Antonio Freeman were awarded \$64,128.52 and \$24,295.50, respectively. *Id.* at ¶¶ 1-2.

On January 3, 2013, Kimberly Sanford paid her first month's premium on a new automobile insurance policy with UAIC. Gibbs Aff. at ¶ 2. This policy covered Ms. Sanford's 1997 Ford Crown Victoria and had bodily injury coverage of \$25,000/\$50,000. Gibbs Aff. at ¶ 1. Less than a week after Kimberly Sanford paid her first month's premium, UAIC sent her a bill for the second month's premium on January 9, 2013. Gibbs Aff. at ¶ 3. On January 22, 2013, while in the first month of Ms. Sanford's new policy, UAIC sent Ms. Sanford a cancellation notice of her policy. Gibbs Aff. at ¶ 4. Ms. Sanford's premium for the second month of the policy was not due until February 3, 2013. Gibbs Aff. at ¶ 5. The same day Ms. Sanford's second policy premium was due; UAIC cancelled the policy effective at February 3, 2013 at 12:01 AM. Gibbs Aff. at ¶ 5.

III. PROCEDURAL HISTORY

On April 4, 2013, Michael Craft and William Freeman timely filed a Summons and Complaint (2013-CP-04-0071). Antonio Craft and Kimberly Sanford were properly served with the pleadings on September 21, 2013 and April 29, 2013, respectively. Drew Order, September 9, 2014 (2013-CP-04-00771). Neither defendant filed responsive pleadings. Id. On January 21, 2014, Plaintiff moved for an Order of Default and Order for Hearing to Ascertain Damages. Id. The hearing was set for April 28, 2014. Id. On April 24, 2014, UAIC filed a declaratory judgment action to discern responsibility for providing coverage. (14-CP-04-850). UAIC requested a continuance for the damages hearing based on its Declaratory Judgment action. Drew Order, September 9, 2014 (2013-CP-04-00771). On July 15, 2014, UAIC again requested a continuance in hopes that the declaratory judgment action could be addressed prior to the hearing on Damages. Id. On July 11, 2014, an Order Denying the Motion for Stay or for Continuance was issued. Id. The total award of damages ordered for Michael Craft and William Freeman were \$64,128.52 and \$24,295.50, respectively. Id.

The only issue now before the court is Defendant's Motion for Summary Judgment in its Declaratory Judgment action (14-CP-04-850).

IV. STANDARD OF REVIEW

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. Rule 56(c), SCRCP. 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. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Here, the evidence shows that Defendant is not entitled to summary judgment. Accordingly, its motion for summary judgment should be denied.

V. LEGAL ARGUMENT

A. UAIC failed to properly comply with S.C. Code Ann. § 38-77-120 and S.C. Code Ann. § 56-10-280

In Plaintiff's Motion for Summary Judgment, Plaintiff asserts because it allegedly complied with S.C. Code Ann. § 38-77-120 ("§ 38-77-120") its motion should be granted. Plaintiff is wrong. Plaintiff neglects to acknowledge the plain meaning of § 38-77-120 and S.C. Code Ann. § 56-10-280 ("§ 56-10-280").¹ When read together these two statutes unequivocally require that an insured has 15-days *after* the payment due date to bring her balance current, which is exactly what occurred in this matter. Plaintiff ignored the legislative intent and plain meanings of these statutes.

Specifically, § 38-77-120 concerns the requirements for notice as it relates to renewal of a policy. It states:

SECTION 38-77-120. Requirements for notice of cancellation of or refusal to *renew* policy.

(a) No cancellation or refusal to renew by an insurer of a policy of automobile insurance is effective unless the insurer delivers or mails to the named insured at the address shown in the policy a written notice of the cancellation or refusal to renew. This notice:

(1) must be approved as to form by the director or his designee before use;

(2) *must state the date not less than fifteen days after the date of the mailing or delivering on which the cancellation or refusal to renew becomes effective;*

(3) must state the specific reason of the insurer for cancellation or refusal to renew and provide for the notification required by subsection (B) of Section 38-77-390. However, those notification requirements must not apply when the policy is being canceled or not renewed for the reason set forth in Section 38-77-123(B),

(4) must inform the insured of his right to request in writing within fifteen days of the receipt of notice that the director review the action of the insurer. The notice of

¹ Defendant also contends that §38-77-120 is inapplicable in this matter because it concerns a renewal policy, not a new policy.

cancellation or refusal to renew must contain the following statement to inform the insured of such right:

"IMPORTANT NOTICE

Within fifteen days of receiving this notice, you or your attorney may request in writing that the director review this action to determine whether the insurer has complied with South Carolina laws in canceling or nonrenewing your policy. If this insurer has failed to comply with the cancellation or nonrenewal laws, the director may require that your policy be reinstated. However, the director is prohibited from making underwriting judgments. If this insurer has complied with the cancellation or nonrenewal laws, the director does not have the authority to overturn this action.";

(5) must inform the insured of the possible availability of other insurance which may be obtained through his agent, through another insurer, or through the Associated Auto Insurers Plan. It must also state that the Department of Insurance has available an automobile insurance buyer's guide regarding automobile insurance shopping and availability, and provide applicable mailing addresses and telephone numbers, including a toll-free number, if available, for contacting the Department of Insurance.

Nothing in this subsection prohibits any insurer or agent from including in the notice of cancellation or refusal to renew, any additional disclosure statements required by state or federal laws, or any additional information relating to the availability of other insurance. The insurer must disclose in writing whether the insured is ceded to the facility.

(b) Subsection (a) does not apply if the:

(1) insurer has manifested to the insured its willingness to renew by actually issuing or offering to the insured to issue a renewal policy, certificate, or other evidence of renewal, or has manifested such intention to the insured by any other means;

(2) named insured has demonstrated by some overt action to the insurer or its agent that he expressly intends that the policy be canceled or that it not be renewed.

S.C. Code Ann. § 38-77-120 (emphasis added).

In contrast to § 38-77-120, § 56-10-280 concerns cancellation of automobile insurance policies within the first 60 days of coverage. § 56-10-280 states:

SECTION 56-10-280. Insurance not to be issued for period less than six months; contract or policy valid for at least sixty days; cancellation within sixty days.

(A) Contracts or policies of insurance issued to meet the financial responsibility requirements prescribed in this chapter must be issued for not less than six months. A contract or policy of insurance remains in effect at least sixty days notwithstanding a power of attorney which may purport to give the attorney-in-fact the right to effect cancellation on behalf of the insured. However, a contract or policy may be canceled within the first sixty days only under one or more of the following circumstances:

- (1) a check or bank draft tendered by the insured for payment to an agent, an insurance company, or a premium finance company is returned unpaid for insufficient funds or other reason by the insured's financial institution. If the check or draft is an initial payment made by an applicant for insurance or a payment made by an insured to renew a policy, the cancellation is effective as of the policy inception or renewal date;
- (2) the insured produces satisfactory proof from the Department of Motor Vehicles that he has sold or otherwise disposed of the insured vehicle or surrendered its tags and registration;
- (3) the insured has secured another policy that meets the financial responsibility requirements prescribed in this chapter;
- (4) the insured fails to pay *when due* the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of insurance must remain in effect for at least thirty days.

(B) This section does not prohibit refunds to the insured for cancellations after sixty days resulting from causes other than nonpayment of premium. Where an insurance company or premium finance company cancels a contract or policy pursuant to this section for nonpayment of premium under the circumstances in subsection (A) which occurs within the first sixty days, the insurance company, premium finance company, or agent may charge and collect a fifteen-dollar penalty in addition to that otherwise provided by law, and the penalty charge is not a premium charge.

S.C. Code Ann. § 56-10-280 (emphasis added).

Again, Defendant maintains that § 38-77-120 is inapplicable because it concerns a renewal policy when the evidence clearly shows that Ms. Sanford was not a renewing customer, but a new

customer. Pl's MSJ Ex. 1, "Receipt of Payment—New Business." The issue of whether an insurer properly complied with the requirements of § 38-77-120 and § 56-10-280 as it relates to new policy cancellation has not been ruled upon by the South Carolina Supreme Court. However, the Ohio Supreme court in *Vietzen v. Victoria Auto. Ins. Co.* has ruled on this issue with similar facts as the present case. (2014-Ohio-749.)²

In *Vietzen v. Victoria Auto. Ins. Co.*, the insurer (Victoria Auto) sent the insured (Vietzen) a billing statement, which also included a cancellation notice. *Id.* at ¶ 9. Payment on the billing statement was due by September 5, 2009, and the cancellation of coverage, if unpaid, was scheduled for September 6, 2009 at 12:01 AM. *Id.* Vietzen had an accident on September 6, 2009 and had failed to pay her insurance premium by the due date (September 5, 2009). *Id.* at ¶ 10. In *Vietzen*, the insurer relied on an Ohio Statute, R. C. 3937.32, in its defense of cancelling Vietzen's policy. Similar to S.C. Code Ann. § 38-77-120, R.C. 3937.32 required a cancellation notice of 10-days, instead of 15-days. *Id.* at ¶ 12. Like here, the insured in *Vietzen* argued that it had met all requirements under the state statute. *Id.* at ¶ 13. The Ohio Supreme Court, however, disagreed with the insured. *Id.* at ¶ 15.

The Ohio Supreme Court reasoned that the insurers "nonpayment of premium" did not constitute grounds for cancellation when the time for payment had not yet passed. *Id.* at ¶ 17. According to the Ohio Supreme Court, if the statute permitted this then insurance companies could cancel an insured's policy on the grounds of anticipatory breach. *Id.* The court further reasoned that the state statute grants no authority to the insurer to cancel a policy on the belief that the insured will not pay her premium when due. *Id.* at 17.

² For the court's convenience, this case is attached.

Just as in Vietzen, the insurer here wants this court to read in § 38-77-120 an anticipatory breach clause, but there is none. On January 9, 2013, less than a week after Ms. Sanford paid her first month's premium, UAIC sent her a bill for her second month's premium, which required payment by January 18, 2013. Gibbs Aff. at ¶ 3. On or about January 22, 2013, UAIC sends Ms. Sanford a cancellation notice effective February 3, 2013 at 12:01AM if payment has not been received. Gibbs Aff. at ¶ 4. Ms. Sanford only had her new policy with UAIC for less than three weeks before UAIC sent her the premature cancellation notice, before her second payment was due (February 3, 2013).

UAIC believes that § 38-77-120 affords insurers an anticipatory breach clause. It does not. According to the § 38-77-120 there must first be a breach, and then a 15-day cancellation of notice, which means that Ms. Sanford would have been covered until February 18, 2013 at 12:01 AM. UAIC erroneously relies upon § 38-77-120 to shield it from liability. For this reason alone, UAIC's motion should be denied.

Furthermore, the statutory construction of § 56-10-280 lends added support to Defendants' legal argument. According to this statute, which is specifically for new coverage, the plain language of the statute specifically requires that from the time the payment is missed ("when due") may action be taken. Accordingly, § 38-77-120's cancellation notification requirements could not be taken until after Ms. Sanford's due date of February 3, 2013.

B. Plaintiff's Motion for Summary Judgment should be denied because Defendant maintained an active insurance policy based on the legislative intent of both § 38-77-120 and § 56-10-280.

The plain meaning of § 38-77-120 and § 56-10-280 espouses a public policy doctrine that demonstrates a clear legislative intent to avoid having uninsured motorists on South Carolina roads. See, e.g., *Bankers Trust of South Carolina v. Bruce*, 275 S.C. 35, 267 S.E. (2d) 424 (1980)

(the cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent wherever possible). According to S.C. Ann. § 38-77-10, one of the stated purposes of the Automobile Insurance statutes is that every automobile insurance risks that is insurable under the statute be insured and that evasion of coverage be penalized. Furthermore, S.C. Ann. § 38-77-20 specifically states under [Statutory] Construction that Chapter 77 as it relates to automobile insurance coverage be *liberally construed* to achieve its purposes.

Accordingly, the public policy purposes for a state's automobile insurance policies are clear—to protect the public from the burden of compensating for injuries sustained as a result of uninsured drivers. *Vietzen v. Victoria Auto. Ins. Co.*, 2014-Ohio-749, ¶ 19. Based on this public policy assumption, it is reasonable to read into the statute that an insurance company must wait until the insured has actually failed to pay her premium when due before mailing notice of cancellation of the policy which will take effect no fewer than fifteen days after the date of the mailing of the notice. For the foregoing reasons, Plaintiff's Motion for Summary Judgment should be denied.

VI. CONCLUSION

To grant summary judgment, Plaintiff must prove that there is no genuine issue of material fact. With all inferences drawn against the moving party (Plaintiff) and in favor of the non-moving party (Defendant), Plaintiff has not met its burden of proof.

Plaintiff inexplicably attempts to justify the cancellation of Ms. Sanford's insurance policy by utilizing an irrelevant statute—§ 38-77-120. § 38-77-120 is specifically for renewal of motor vehicle policies, not new policy coverage. Simply put, Plaintiff is attempting to shield itself from liability by arguing that Ms. Sanford anticipatorily breached her contract, without providing Ms. Sanford the statutorily required 15-days to cure any breach after missing her payment deadline. If

Plaintiff had provided Ms. Sanford with the proper notice, Ms. Sanford would have been covered up and through the date of the accident until February 18, 2013.

WHEREFORE, the undersigned counsel respectfully requests that the plaintiff's motion be denied and that sanctions be issued for the bad faith denial of coverage in contravention of the law, as well its own underwriter's manual.

Date: 2/12/15



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App. 42

ATTACHMENT

[Cite as *Vietzen v. Victoria Auto. Ins. Co.*, 2014-Ohio-749.]

STATE OF OHIO) IN THE COURT OF APPEALS
)ss: NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN)

ROBERT VIETZEN

Appellant

v.

VICTORIA AUTOMOBILE INSURANCE
COMPANY

Appellee

Dated: March 3, 2014

C.A. No. 13CA010390

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 12CV176322
DECISION AND JOURNAL ENTRY

CARR, Judge.

{¶1} Appellant Robert Vietzen appeals the judgment of the Lorain County Court of Common Pleas which granted summary judgment in favor of appellee Victoria Automobile Insurance Company. This Court reverses and remands.

I.

{¶2} On September 6, 2009, Mr. Vietzen was injured in an automobile accident when a car driven by Dean Mandell and owned by Paulette Henry collided with his vehicle. Victoria Automobile Insurance Company ("Victoria Insurance") had issued an insurance policy for Ms. Henry's vehicle. The parties agree that Mr. Vietzen obtained a judgment against Ms. Henry in the amount of \$97,000.00 in case number 10CV166122. Victoria Insurance refused to satisfy the judgment based on its claims that it had cancelled Ms. Henry's policy at 12:01 a.m. on September 6, 2009, for nonpayment of the premium. Mr. Vietzen thereafter filed a supplemental complaint against Victoria Insurance. The clerk's office assigned a new case number to the

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supplemental complaint, specifically 12CV176322, even though the supplemental complaint bore the prior case number. Victoria Insurance filed an answer, admitting that Mr. Vietzen had obtained a judgment against Ms. Henry and that the insurance company had not satisfied the judgment. It denied the remaining allegations in the complaint and raised two affirmative defenses: (1) that the trial court previously determined in case number 10CV166122 that Ms. Henry's Victoria Insurance policy had been cancelled and was no longer in effect, and (2) that due to Ms. Henry's filing for bankruptcy, the proceedings in case number 10CV166122, which encompassed the supplemental complaint, had been stayed.

{¶3} Victoria Insurance and Mr. Vietzen filed competing motions for summary judgment. Victoria Insurance filed a brief in opposition to Mr. Vietzen's motion for summary judgment. The trial court denied Mr. Vietzen's motion for summary judgment and granted the insurance company's motion for summary judgment. Mr. Vietzen filed a timely appeal in which he raises one assignment of error for review. No party moved to supplement the record on

appeal with the record in case number 10CV166122. Accordingly, our review is constrained to the record in case number 12CV176322.

II.

ASSIGNMENT OF ERROR

WHETHER AN AUTOMOBILE INSURANCE COMPANY CAN LEGALLY COMBINE THE NOTICE OF CANCELLATION OF A POLICY WITH THE NOTICE OF NON-PAYMENT OF PREMIUM AND MEET THE REQUIR[E]MENTS OF [R.C. CHAPTER] 3937.

{¶4} Mr. Vietzen argues that the trial court erred by granting summary judgment in favor of Victoria Insurance and by denying his motion for summary judgment. This Court agrees.

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{¶5} This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). This Court applies the same standard as the trial court, viewing the facts in the case in the light most favorable to the non-moving party and resolving any doubt in favor of the non-moving party. *Viock v. Stowe-Woodward Co.*, 13 Ohio App.3d 7, 12 (6th Dist.1983).

{¶6} Pursuant to Civ.R. 56(C), summary judgment is proper if:

(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977).

{¶7} To prevail on a motion for summary judgment, the party moving for summary judgment must be able to point to evidentiary materials that show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

Dresher v. Burt, 75 Ohio St.3d 280, 293 (1996). Once a moving party satisfies its burden of

supporting its motion for summary judgment with sufficient and acceptable evidence pursuant to Civ.R. 56(C), Civ.R. 56(E) provides that the non-moving party may not rest upon the mere allegations or denials of the moving party's pleadings. Rather, the non-moving party has a reciprocal burden of responding by setting forth specific facts, demonstrating that a "genuine triable issue" exists to be litigated for trial. *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449 (1996).

{¶8} No party objected to the trial court's consideration of any evidence appended to the competing motions for summary judgment. Despite the fact that the majority of the evidence appended to the motions did not comport with Civ.R. 56, the parties agreed that the evidence was

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proper because it had been obtained during discovery in case number 10CV166122 and, in some cases, considered in conjunction with motions for summary judgment in that case. This Court has recognized that the trial court may, in its discretion, consider improper Civ.R. 56 evidence if no party has objected to the evidence. *Wallner v. Thorne*, 189 Ohio App.3d 161, 2010-Ohio-2146, ¶ 18 (9th Dist.). As neither party objected to any evidence attached to the other's motion for summary judgment, and the trial court considered the evidence attached, this Court will also consider all evidence submitted for purposes of our review.

{¶9} The parties do not dispute that Victoria Insurance mailed a billing statement to Ms. Henry on August 24, 2009. The billing statement included an "Installment Payment Notice," indicating that a minimum payment of \$198.39 was due on September 5, 2009. The statement further included a "Cancellation Notice" which stated: "If the Minimum Due is not received by or on the Payment Due date, your policy cancels on the date and time shown above for nonpayment of premium." The "Cancellation Effective" date on the statement was September 6, 2009, at 12:01 a.m. The "Cancellation Notice" further expressly provided: "THIS SECTION DOES NOT APPLY TO YOU IF YOU PAY THIS BILL BY THE DUE DATE."

{¶10} The accident at issue occurred on September 6, 2009. The parties do not dispute that Ms. Henry had not paid the minimum due on her insurance policy as of the September 5, 2009 due date. Victoria Insurance attached a document to its motion for summary judgment which it asserted was Ms. Henry's answer to Mr. Vietzen's personal injury complaint in case

number 10CV166122. In her answer, Ms. Henry wrote that she had insurance at the time of the accident and that, although that insurance “ended” at 12:01 a.m. on September 6, 2009, she “was in [her] grace period” at that time.

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{¶11} The issue before the trial court was whether the cancellation notice sent to Ms. Henry by Victoria Insurance complied with the requirements of R.C. 3937.32. In other words, the trial court had to determine whether a notice of cancellation sent in advance of the premium due date, and therefore in advance of any failure to timely pay the premium, was effective to cancel the policy on the cancellation date identified in the billing statement. The issue implicates the meaning of the statute and, therefore, constitutes an issue of law. *Wetterman v. B.C.*, 9th Dist. Medina No. 12CA0021-M, 2013-Ohio-57, ¶ 8. In construing the statute, this Court’s primary goal is “to ascertain and give effect to the legislature’s intent in enacting the statute.” *Id.*, quoting *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, ¶ 9.

{¶12} The version of R.C. 3937.32 in effect at the relevant time read, in part:
No cancellation of an automobile policy is effective, unless it is pursuant to written notice to the insured of cancellation. Such notice shall contain:

- (A) The policy number;
- (B) The date of the notice;
- (C) The effective date of cancellation of the policy, which shall not be earlier than thirty days following the date of the notice;
- (D) An explanation of the reason for cancellation and the information upon which it is based, or a statement that such explanation will be furnished to the insured in writing within five days after receipt of his written request therefor to the insurer;
- (E) Where cancellation is for nonpayment of premium at least ten days notice from the date of mailing of cancellation accompanied by the reason therefor[] shall be given[.]

{¶13} Victoria Insurance argued in its motion for summary judgment, and the trial court apparently agreed, that its notice of cancellation to Ms. Henry complied with the requirements of R.C. 3937.32 and was, therefore, effective to cancel her policy at 12:01 a.m. on September 6,

2009. In support, the insurance company asserted that the cancellation notice contained the policy number, date of the notice, and the effective date of cancellation, as well as an explanation

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that the policy would be cancelled on that date if the premium payment was not received by the due date. In addition, the insurance company argued that the cancellation date identified was at least ten days subsequent to the date of mailing of the cancellation notice. Victoria Insurance argued that the notice of cancellation did not provide for a grace period in which Ms. Henry could maintain coverage despite a failure to pay the minimum due on time. In addition, the insurance company emphasized that its notice of cancellation would not apply if Ms. Henry paid the bill by its due date. It offered no legal support for the proposition that an insurance company may issue an effective notice of cancellation in advance of the insured's failure to timely pay the premium and in anticipation of the insured's failure to pay by a later due date.

{¶14} Mr. Vietzen argued in his motion for summary judgment that the insurance company must wait until the insured has failed to pay the premium when due before mailing the notice of cancellation. He premised his argument on legislative intent and public policy reasoning.

{¶15} This case presents an issue of first impression for this Court. Moreover, our research reveals that no other Ohio appellate court has had the opportunity to address the efficacy of a notice of cancellation based on nonpayment of the premium where the insured's payment is not yet delinquent. Upon due consideration, this Court is persuaded by Mr. Vietzen's arguments and concludes that Victoria Insurance's notice of cancellation was not effective to cancel Ms. Henry's insurance policy prior to the accident on September 6, 2009.

{¶16} Victoria Insurance and Mr. Vietzen present varying interpretations of the notice requirements in R.C. 3937.32. Accordingly, it is fair to say that the statute is ambiguous and must, therefore, be "construed to give effect to the legislative intent." *Wolfe v. Wolfe*, 88 Ohio St.3d 246, 248 (2000). In determining legislative intent, this Court must look at the language of

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the statute, the objective of the statute, and the consequences of various constructions of the statute. *Id.* at 248-249; *see also* R.C. 1.49.

{¶17} In this case, the statute requires that any notice of cancellation for nonpayment of premiums must include the reason for the cancellation. Reasonably, "nonpayment of premium" cannot constitute grounds for cancellation where the time for payment has not passed.

Construing the statute as Victoria Insurance suggests would allow an insurance company to cancel an insured's policy on the grounds of anticipatory breach. R.C. 3937.31(A) sets forth the reasons for which an insurer may cancel an automobile insurance policy, including fraud, concealment, or misrepresentation by the insured; loss of driving privileges of a covered driver; change of residence by the insured to a state where the insurer is not authorized to write automobile coverage; and nonpayment of premium, "which means failure of the named insured to discharge when due any of the named insured's obligations in connection with the payment of premiums on a policy * * *." R.C. 3937.31(A)(1)-(4). Anticipatory breach is not listed as a valid reason for an insurer to cancel a policy. In other words, the statute grants no authority to the insurer to cancel a policy on the belief that the insured will not pay her premium when due.

{¶18} In addition, the Ohio Supreme Court recognized the public policy interests that the legislature intended to protect in enacting the statutory scheme regarding an insurer's cancellation of automobile insurance. In *Wolfe, supra*, at 249-250, the high court wrote that "the statute is intended to protect insureds from unilaterally being left without the protections that automobile insurance coverage affords by requiring that insurers provide an adequate method of notification when canceling insurance policies. *See* R.C. 3937.31(A) (grounds for cancellation limited), 3937.31(B)(4) (cancellation permitted at end of any mandatory period), 3937.32 (notice of cancellation required), and 3937.33 (procedures for cancellation)." The *Wolfe* court

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concluded that "[i]t is clear that the public policy of this state, as gleaned through the Acts of the General Assembly, is to ensure that all motorists maintain some form of liability coverage on motor vehicles operated within Ohio. * * * It is beyond reasonable dispute that R.C. 3937.30 et seq. are primarily designed to protect the public from the dangers which uninsured motorists pose." *Wolfe*, 88 Ohio St.3d at 250.

{¶19} Given the legislature's clear intent to protect the public from the burden of compensating for injuries sustained as a result of uninsured drivers, the reasonable interpretation of the notice requirements in R.C. 3937.32 is that the legislature intended to include a grace period of ten days in which an insured may pay a past-due premium before the insurance company may cancel the policy. This interpretation is bolstered by the common sense understanding that grounds must exist to support cancellation and the statutory scheme does not include anticipatory breach as grounds for cancellation. Accordingly, this Court holds that R.C. 3937.32(E) includes a grace period of ten days during which an insured may cure her failure to pay her premium by its due date before the insurance company may cancel her automobile insurance policy.

Therefore, an insurance company must wait until the insured has actually failed to pay her premium when due before mailing notice of cancellation of the policy which will take effect no fewer than ten days after the date of mailing of the notice.

{¶20} In this case, Victoria Insurance included a notice of cancellation of the policy in its billing statement to Ms. Henry. The insurance company notified Ms. Henry in advance of the premium due date that her policy would be cancelled one minute after midnight on the day after her premium was due if she failed to make a timely payment. As Ms. Henry could only have failed to timely pay her premium as of September 6, 2009, Victoria Insurance could only assert

As the issue is not before us, this Court does not render any conclusions regarding any lapse in coverage under the policy due to Ms. Henry's failure to timely pay her premium.

nonpayment grounds at that time. The insurance company's notice of cancellation mailed on August 24, 2009, was ineffective to give Ms. Henry the requisite notice of cancellation pursuant to R.C. 3937.32. Accordingly, the trial court erred by granting summary judgment in favor of Victoria Insurance and by denying Mr. Vietzen's motion for summary judgment. Mr. Vietzen's assignment of error is sustained.

III.

{¶21} Mr. Vietzen's sole assignment of error is sustained. The judgment of the Lorain County Court of Common Pleas is reversed and the cause remanded for further proceedings consistent with this opinion.

There were reasonable grounds for this appeal.

Judgment reversed,
and cause remanded.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

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DONNA J. CARR
FOR THE COURT

WHITMORE, J.
CONCURS.

BELFANCE, P. J.
CONCURRING IN JUDGMENT ONLY.

{¶22} I concur in the majority's judgment. The version of R.C. 3937.31 in effect in 2009 provided that:

No insurer may cancel any such policy except pursuant to the terms of the policy, and in accordance with sections 3937.30 to 3937.39 of the Revised Code, and for one or more of the following reasons:

- (1) Misrepresentation by the insured to the insurer of any material fact in the procurement or renewal of the insurance or in the submission of claims thereunder;
- (2) Loss of driving privileges through suspension or expiration of the driver's or commercial driver's license of the named insured or any member of the named insured's family covered as a driver; provided that the insurer shall continue the policy in effect but exclude by endorsement all coverage as to the person whose driver's license has been suspended or has expired, if the person is other than the named insured or the principal operator;
- (3) *Nonpayment of premium, which means failure of the named insured to discharge when due any of the named insured's obligations in connection with the payment of premiums on a policy, or any installment of such premiums, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;*
- (4) The place of residence of the insured or the state of registration or license of the insured automobile is changed to a state or country in which the insurer is not authorized to write automobile coverage.

(Emphasis added.)

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{¶23} Thus, in order to cancel a policy, the insurer must comply with the provisions of the policy, R.C. 3937.30 to 3937.39, and have a reason to cancel the policy as enumerated in R.C. 3937.31. *See* former R.C. 3937.31. Victoria Insurance asserts that Ms. Henry's payment

was due September 5, 2009, and that her policy was cancelled September 6, 2009, after she failed to make the required payment. Victoria Insurance relies upon former R.C. 3937.31 in isolation. However, former R.C. 3937.32 must also be taken into account given that it governs when cancellation of an automobile policy is effective. See former R.C. 3937.31. It provided that

No cancellation of an automobile insurance policy is effective, unless it is pursuant to written notice to the insured of cancellation. Such notice shall contain:

(A) The policy number;

(B) The date of the notice;

(C) The effective date of cancellation of the policy, which shall not be earlier than thirty days following the date of the notice;

(D) An explanation of the reason for cancellation and the information upon which it is based, or a statement that such explanation will be furnished to the insured in writing within five days after receipt of his written request therefor to the insurer;

(E) *Where cancellation is for nonpayment of premium at least ten days notice from the date of mailing of cancellation accompanied by the reason therefore shall be given;*

(F) A statement that if there is cause to believe such cancellation is based on erroneous information, or is contrary to law or the terms of the policy, the insured is entitled to have the matter reviewed by the superintendent of insurance, upon written application to the superintendent made not later than the effective date of cancellation of the policy, and that if a hearing is held by the superintendent of insurance, a deposit of five dollars shall be made, and that such deposit shall be returned to the insured if the finding is in his favor.

(Emphasis added.) Former R.C. 3937.32.

{¶24} Thus, in attempting to cancel Ms. Henry's insurance for nonpayment, Victoria Insurance had to provide notice of the cancellation ten days before the cancellation could be

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deemed effective. See former R.C. 3937.32(E). It asserts that it did so because it notified Ms.

Henry in late August that her policy would be cancelled if she failed to make her payment on or before September 5, 2009. However, only cancellation of the policy *when due* is permissible. Thus, cancellation is permissible for nonpayment of the policy only when there is nonpayment of the premium on September 5th. Cancellation is not permissible prior to that. Moreover, cancellation is not effective for 10 days from the date of notice of the cancellation. Victoria Insurance's argument that it could provide for preemptive notification of cancellation for nonpayment before cancellation is actually permissible under the statutes does not comport with the language of former R.C. 3937.31 and 3937.32, nor a common sense reading of the statutes in *pari materia*.

{¶25} Under Victoria Insurance's view, it could provide notice of cancellation months before the bill was due and still satisfy the statutes. Considering the two provisions together, the event of nonpayment of the premium when due must occur first, followed by providing a notice to the insured of the cancellation of the policy for nonpayment. In other words, it is apparent that the legislature intended that the insured have ten days *after* the insured failed to make payments when due before the policy would be cancelled.

2

Accordingly, the only reasonable interpretation of those two provisions is that "effective notice of cancellation for nonpayment of premiums cannot be given until the time for making payment of the premium has expired." 2 Plitt, Maldonado, Rogers, and Plitt, *Couch on Ins.*, Section 31:6 (3d Ed.2013). To interpret the provisions otherwise would essentially eviscerate the legislature's creation of a notice

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As noted by a California appellate court, "[r]eceipt of a notice of cancellation of automobile insurance should be an unanticipated event; something that spurs the insured into action to protect against the potentially catastrophic consequences associated with being an uninsured motorist-not something that is received routinely with each month's bill." *Mackey v. Bristol West Ins. Servs. Of Cal., Inc.*, 105 Cal.App.4th 1247, 1262 (2003).

requirement, thus thwarting the ultimate policy behind the provision, namely to ensure that Ohio motorists have insurance so as to avoid shifting the substantial burden that is created when motorists who are at fault are uninsured. *See Wolfe v. Wolfe*, 88 Ohio St.3d 246, 249-250 (2000), *superseded by statute on other grounds* (noting that the statutory provisions are “primarily designed to protect the public from the dangers which uninsured motorists pose[]” and also are “intended to protect insureds from unilaterally being left without the protections that automobile insurance coverage affords by requiring that insurers provide an adequate method of notification when canceling insurance policies[]”). Therefore, I concur in the majority’s judgment.

APPEARANCES:

JONATHAN E. ROSENBAUM, Attorney at Law, for Appellant.

RONALD V. RAWLIN and STEPHANIE L. SIMON, Attorneys at Law, for Appellee.

Defendants' Motion to Reconsider, March 30, 2015

MOTION FEE PAID

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

United Auto Insurance Company,)

Plaintiff,)

v.)

Willie Freeman, Michael Craft, Kimberly)

L. Sanford and Antonio Craft,)

Defendants.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUITDEFENDANTS' MOTION TO
RECONSIDER THE GRANTING OF
PLAINTIFF'S MOTION FOR JUDGMENT

C.A. NO.: 2014-CP-04-0850

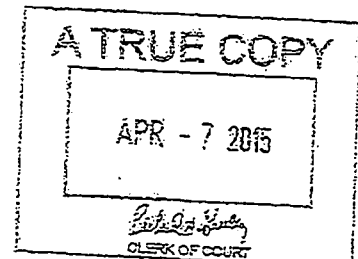
YOU WILL PLEASE TAKE NOTICE, that the defendants, by and through their undersigned attorney will move on the ____ day of _____, 2015, at ____:____ M.; or as soon thereafter as counsel may be heard, before the Honorable R. Scott Sprouse, for the purpose of moving for reconsideration of the Order issued March 16th that was issued in the above-referenced matter. This motion is based on the Court's granting of the plaintiff's Motion for Summary Judgment. The defendants contend that the plain language of the statute which relates to this matter finds coverage as a matter of law, and public policy.

SUMMARY OF ARGUMENT

§ 56-10-280 concerns cancellation of automobile insurance policies within the first 60 days of coverage. §56-10-280 states:

SECTION 56-10-280. Insurance not to be issued for period less than six months; contract or policy valid for at least sixty days; cancellation within sixty days.

The relevant paragraph in this section states the following:



(4) the insured fails to pay when due the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of insurance must remain in effect for at least thirty days.

Since public policy demands that drivers be insured, there are specific requirements for a carrier to take advantage of the ability to cancel a policy within the initial sixty (60) days. Paragraph (4) relates specifically to the facts in this case. Paragraph (4) forms the basis of the defendants' argument that the insured was covered at the time of the accident.

It is undisputed that Kimberly L. Sanford's policy with UAIC was new business pursuant to the materials submitted into evidence by the plaintiff. Additionally, she paid \$79.00 in cash for her first installment of a six month policy which cost \$369.00. Argument by counsel for the plaintiff was that the next installment would be required on February 3, 2013. Pursuant to paragraph (4), February 3, 2013 was date for which the next installment of the premium was due. Therefore, based on the fact that Ms. Sanford failed to pay the next installment on February 3, 2013, the policy would remain in effect for at least thirty (30) days. Since the accident occurred on February 13, 2013, Kimberly L. Sanford had coverage through UAIC.

STANDARD OF REVIEW

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. Rule 56(c), SCRCP. 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. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Here, the evidence shows that Defendant is not entitled to summary judgment. Accordingly, its motion for summary judgment should be denied.

PUBLIC POLICY CONSIDERATION

§ 56-10-280 espouses a public policy doctrine that demonstrates a clear legislative intent to avoid having uninsured motorists on South Carolina roads. See, e.g., *Bankers Trust of South Carolina v. Bruce*, 275 S.C. 35, 267 S.E. (2d) 424 (1980) (the cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent wherever possible). According to S.C. Ann. § 38-77-10, one of the stated purposes of the Automobile Insurance statutes is that every automobile insurance risks that is insurable under the statute be insured and that evasion of coverage be penalized. Furthermore, S.C. Ann. § 38-77-20 specifically states under [Statutory] Construction that Chapter 77 as it relates to automobile insurance coverage be *liberally construed* to achieve its purposes. United Automobile Insurance Company has intentionally violated this statute in contradiction of the public policy requiring coverage.

CONCLUSION

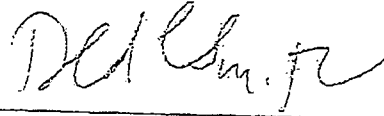
To grant summary judgment, Plaintiff must prove that there is no genuine issue of material fact. With all inferences drawn against the moving party (Plaintiff) and in favor of the non-moving party (Defendant), Plaintiff has not met its burden of proof.

Plaintiff inexplicably attempts to justify the cancellation of Ms. Sanford's insurance policy by utilizing an irrelevant statute—§ 38-77-120. § 38-77-120 is specifically for renewal of motor vehicle policies, not new policy coverage. Simply put, Plaintiff is attempting to shield itself from liability by arguing that Ms. Sanford anticipatorily breached her contract, without providing Ms. Sanford the statutorily required 15-days to cure any breach after missing her payment deadline. If Plaintiff had provided Ms. Sanford with the proper notice, Ms. Sanford would have been covered up and through the date of the accident until February 18, 2013.

WHEREFORE, the undersigned counsel respectfully requests that this Honorable Court reconsider the Order previously issued in this matter, and render a decision denying the plaintiff's

quest for Summary Judgment; and, that sanctions be issued for the bad faith denial of coverage in contravention of the law, as well its own underwriter's manual.

Date: 3/30/15



Donald L. Smith
Attorney for Defendants
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Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Transcript Damages Hearing , July 15, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS

MICHAEL CRAFT AND WILLIAM FREEMAN,)
PLAINTIFFS,)
VS) 2013-CP-04-0771
ANTONIO CRAFT AND KIMBERLY SANFORD,)
DEFENDANTS.) ANDERSON, SC
JULY 15, 2014

TRANSCRIPT OF TESTIMONY

BEFORE THE HONORABLE ELLIS B. DREW, JR.
MASTER IN EQUITY FOR THE TENTH JUDICIAL CIRCUIT

APPEARANCES

FOR PLAINTIFFS: DONALD L. SMITH, ESQ.
122 N MAIN ST.
ANDERSON, SC 29621
864.642.9284

FOR DEFENDANTS: NO ONE

FOR UNITED AUTO
INSURANCE COMPANY: GEORGE V. HANNA, IV, ESQ.
PO BOX 12009
COLUMBIA, SC 29211
803.758.6000

COURT REPORTER: KAREN T. SENN
CIRCUIT COURT REPORTER
406 DOVE TREE LANE
ANDERSON, SC 29621
864.226.8170

I N D E XWITNESSES: DIRECT CROSS REDIRECT RECROSS

WILLIAM FREDERICK FREEMAN

MR. SMITH

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16

MR. HANNA

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MICHAEL JEROME CRAFT

MR. SMITH

17

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MR. HANNA

23

EXHIBITSFOR PLAINTIFF FREEMAN:IDIN EVID

1. MEDSHORE INVOICE
2. ANMED INVOICE
3. ANMED INVOICE
4. ANMED INVOICE
5. CAROLINA HEALTH INVOICE

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FOR PLAINTIFF CRAFT:

1. MEDSHORE INVOICE
2. ANMED INVOICE
3. ANMED INVOICE
4. ANMED INVOICE
5. ANMED INVOICE

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FOR DEFENDANTS:

NONE

1 THE COURT: THIS IS CASE 2013-CP-04-771
2 ENTITLED WILLIAM FREEMAN AND MICHAEL CRAFT, PLAINTIFFS,
3 VERSUS ANTONIO CRAFT AND KIMBERLY SANFORD, DEFENDANTS.

4 THIS MATTER WAS REFERRED TO ME BY AN ORDER OF
5 THE PRESIDING JUDGE OF THE COURT OF COMMON PLEAS ON APRIL
6 8, 2014. ACCORDING TO THE ORDER OF REFERENCE THIS IS A
7 HEARING TO ASCERTAIN DAMAGES AND THE DEFENDANTS ANTONIO
8 CRAFT AND KIMBERLY SANFORD ARE IN DEFAULT.

9 APPEARING AT THE HEARING IN THIS MATTER IS
10 ATTORNEY DONALD L. SMITH ON BEHALF OF THE PLAINTIFFS.
11 AND YOU ARE MR. GEORGE HANNA?

12 MR. HANNA: YES, SIR, GEORGE HANNA.

13 THE COURT: ALL RIGHT.

14 MR. HANNA: I'M HERE ON BEHALF OF UNITED
15 AUTO INSURANCE COMPANY.

16 THE COURT: BUT YOU DO NOT REPRESENT THESE
17 DEFENDANTS?

18 MR. HANNA: NO, I'M HERE FOR THE INSURANCE
19 COMPANY.

20 THE COURT: ALL RIGHT. FOR THE RECORD, I'LL
21 NOTE THAT MR. HANNA HAS FILED SEVERAL MOTIONS FOR A
22 CONTINUANCE OF THIS MATTER, WAITING FOR THE OUTCOME, --
23 APPARENTLY TO DETERMINE THE TERMINATION OF SOME COVERAGE
24 IN THE MATTER AND I'VE GRANTED SEVERAL STAYS. HOWEVER,
25 FOR THE LAST MOTION FILED BY MR. HANNA I DENIED THE

- THE COURT -

4

1 MOTION FOR CONTINUANCE.

2 ALL RIGHT, ARE YOU READY TO PROCEED NOW, MR.
3 SMITH?

4 MR. SMITH: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MR. SMITH: THE PLAINTIFF CALLS WILLIAM
7 FREEMAN.

8 WILLIAM FREDERICK FREEMAN, PLAINTIFFS' WITNESS,
9 SWORN:

10 THE COURT: SPEAK UP NOW, MR. FREEMAN, SO WE
11 CAN HEAR YOU.

12 THE WITNESS: YES, SIR.

13 THE COURT: THANK YOU. YOU MAY PROCEED.

14 DIRECT EXAMINATION

15 BY MR. SMITH:

16 Q. MR. FREEMAN, WOULD YOU STATE YOUR FULL NAME, PLEASE?

17 A. WILLIAM FREDERICK FREEMAN.

18 Q. WHAT COUNTY DID THIS ACCIDENT OCCUR IN?

19 A. ANDERSON COUNTY.

20 Q. ALL RIGHT. CAN YOU TELL US WHAT YOU WERE DOING ON
21 THE MORNING OF FEBRUARY 13, 2013?

22 A. YEAH, I WAS WALKING TO THE STORE AND THEN I RAN INTO
23 MICHAEL CRAFT AND WE WAS JUST STANDING ON THE SIDEWALK
24 TALKING.

25 Q. WHAT HAPPENED THEN?

FREEMAN - DIRECT

5

1 A. WELL, HIS BROTHER CAME AND JUMPED UP ON THE SIDEWALK
2 AND RUN US DOWN.

3 Q. WHEN YOU SAY RUN YOU DOWN, ---

4 A. HE RAN US OVER IN THE CAR.

5 Q. ALL RIGHT. SO THAT'S A LITERAL STATEMENT, RIGHT?

6 A. UH-HUH (AFFIRMATIVE).

7 Q. YES OR NO.

8 A. YES, SIR.

9 Q. WHAT DID YOU FEEL DIRECTLY AFTER OR IMMEDIATELY
10 AFTER THE ACCIDENT?

11 A. WELL, IT KNOCKED ME OUT AND WHEN I CAME TO HE WAS
12 STANDING OVER ME.

13 Q. DID HE SAY ANYTHING?

14 A. YEAH, HE WAS TELLING ME TO GET UP OFF THE GROUND. I
15 CAN'T GET UP BECAUSE MY LEG, MY SHOULDER -- I MEAN I'M
16 HURTING. THEN HE WENT BACK TO TRY TO GET IN THE CAR TO
17 MOVE THE CAR BUT HE COULDN'T. THE CAR WAS STUCK. HE
18 COULDN'T MOVE THE CAR SO HE JUST TOOK OFF RUNNING UP THE
19 ROAD.

20 Q. WHAT DID YOU FEEL LIKE THE NEXT DAY?

21 A. MY KNEE, MY SHOULDER AND MY NECK WAS HURTING.

22 Q. ALL RIGHT. AND DID YOU GET SOME TREATMENT AFTER
23 GOING TO THE ER?

24 A. YES, SIR. I WENT TO THE ER AND I HAD STARTED GOING
25 TO A DOCTOR UP IN GREENVILLE BUT I COULDN'T AFFORD TO PAY

FREEMAN - DIRECT

6

1 THE BILL.

2 Q. DO YOU HAVE DIFFICULTIES TODAY?

3 A. YES, SIR, MY KNEE AND SHOULDER STILL GIVE ME

4 PROBLEMS.

5 Q. DID YOU GET MRI'S ON BOTH OF THOSE INJURIES?

6 A. YES, SIR.

7 Q. DID YOU HAVE THE OPPORTUNITY TO REVIEW THE MRI'S

8 WITH YOUR DOCTOR?

9 A. YES, SIR.

10 Q. AND YOUR SHOULDER, DID YOU SEE THE TEAR IN THE

11 TENDON?

12 A. YES, SIR, I SEEN IT.

13 Q. DID YOU SEE THE DISLOCATION OF YOUR BICEPS?

14 A. YES, SIR.

15 Q. DID YOU SEE THE TEAR IN THE MEDIAL MENISCUS OF YOUR

16 LEFT KNEE?

17 A. YES, SIR.

18 Q. HAVE YOU HAD REPAIRS DONE ON THESE INJURIES?

19 A. NO, SIR. I CAN'T AFFORD IT.

20 Q. HOW OLD ARE YOU?

21 A. 49.

22 Q. SO YOU HAVE A LIFE EXPECTANCY OF ROUGHLY 28 YEARS?

23 A. YES, SIR.

24 Q. DO YOU HAVE OUTSTANDING BILLS WITH THE PROVIDERS

25 FROM THIS ACCIDENT?

FREEMAN - DIRECT

7

1 A. YES, SIR.

2 Q. DO YOU HAVE A BILL WITH MEDSHORE?

3 A. YES, SIR.

4 Q. DO YOU RECALL WHAT THAT WAS FOR?

5 A. NO, IT MUST BE FOR THE RIDE IN THE AMBULANCE, I
6 GUESS.

7 MR. SMITH: MAY I APPROACH THE WITNESS, YOUR
8 HONOR?

9 THE COURT: YES, SIR.

10 Q. DOES THAT REFRESH YOUR MEMORY?

11 A. YES, SIR.

12 Q. HOW MUCH IS THAT?

13 A. \$352.50.

14 MR. SMITH: I'D LIKE TO HAVE THIS MARKED AS
15 A PLAINTIFFS' EXHIBIT.

16 (PLAINTIFF FREEMAN'S EXHIBIT 1 FOR
17 IDENTIFICATION)

18 Q. HOW MANY TIMES DID YOU GO TO ANMED?

19 A. WELL, I WENT TWICE. I MEAN, I WENT TWICE. LIKE THE
20 SECOND TIME WHEN I WENT UP THERE MY KNEE HAD GAVE OUT ON
21 ME AND I WENT BACK UP THERE AND I SEEN THE DOCTOR, I
22 MEAN, THE NURSE, BUT THEY DIDN'T DO TOO MUCH FOR ME
23 BECAUSE, LIKE I SAY, I CAN'T AFFORD TO PAY THE BILL.

24 Q. DO YOU HAVE OUTSTANDING BALANCES THEN FOR THOSE TWO
25 VISITS?

FREEMAN - DIRECT

8

1 A. YES, SIR.

2 Q. AND DO YOU REMEMBER WHAT THEY ARE?

3 A. NO, SIR.

4 MR. SMITH: MAY I APPROACH THE WITNESS, YOUR
5 HONOR?

6 THE COURT: YES, SIR.

7 Q. HOW MUCH IS THAT BILL?

8 A. \$6,753.00.

9 Q. AND THE FOLLOWING DAY'S VISIT?

10 A. \$1,718.00.

11 Q. WERE YOU FORCED TO GO BACK AGAIN?

12 A. YES, SIR.

13 Q. 10 DAYS LATER?

14 A. UH-HUH (AFFIRMATIVE).

15 Q. AND WHAT WAS THE BILL THERE?

16 A. \$1,137.00.

17 Q. THE MRI'S THAT YOU GOT, YOU GOT THOSE AT ANMED, IS
18 THAT CORRECT?

19 A. UH-HUH (AFFIRMATIVE).

20 Q. WOULD THAT BE IT?

21 A. YES, SIR, THIS IS IT.

22 MR. HANNA: THE COURT REPORTER IS MARKING
23 THE THREE EXHIBITS FROM ANMED AS PLAINTIFFS' 2, 3 AND 4
24 AND PLAINTIFFS' 5 WILL BE THE TWO MRI'S FROM ANMED IN
25 DUNCAN.

FREEMAN - DIRECT

9

1 (PLAINTIFF FREEMAN'S 2, 3, 4 & 5 FOR
2 IDENTIFICATION)

3 MR. HANNA: FOR THE RECORD, ARE YOU PUTTING
4 IN BILLS OR THE RECORDS THEMSELVES?

5 MR. SMITH: BILLS.

6 MR. HANNA: OKAY.

7 THE COURT: ALL RIGHT. DO YOU HAVE ANY
8 OTHER EXHIBITS?

9 MR. SMITH: NO MORE EXHIBITS.

10 THE COURT: WHEN THE COURT REPORTER FINISHES
11 MARKING THOSE LET ME LOOK AT THEM AND I'LL LET MR. HANNA
12 LOOK AT THEM. ALL RIGHT, PROCEED WITH YOUR QUESTIONS.

13 MR. SMITH: YES, SIR.

14 Q. WHAT ARE YOU SEEKING TODAY?

15 A. I NEED HELP PAYING THESE BILLS AND FOR FUTURE --

16 Q. SO YOU'RE ASKING TO HAVE THE BILLS PAID?

17 A. UH-HUH (AFFIRMATIVE).

18 Q. WITH REGARDS TO YOUR INJURIES DO YOU WISH TO HAVE
19 MONIES SO YOU CAN GET THEM REPAIRED?

20 A. YEAH, YEAH.

21 Q. DO YOU WISH TO BE COMPENSATED FOR THE PERMANENCY OF
22 YOUR INJURIES?

23 A. YES, SIR.

24 Q. DO YOU HAVE ANY SCARS?

25 MR. HANNA: YOUR HONOR, I WOULD OBJECT AS TO

FREEMAN - DIRECT

10

1 THIS. THERE IS NO FOUNDATION THAT'S BEEN LAID FOR ANY
2 SORT OF FUTURE INJURIES. THERE IS NO EVIDENCE AT ALL
3 THAT THERE IS EVEN SOMETHING ABOUT FUTURE INJURIES. HE
4 IS LEADING THE WITNESS. WITHOUT EVIDENCE TO SUPPORT SUCH
5 A CLAIM, I WOULD OBJECT TO ANY QUESTIONS ALONG THOSE
6 LINES WITHOUT A DOCTOR COMING IN HERE AND SAYING WHAT IT
7 IS THAT THIS GUY NEEDS, WHAT SPECIFIC SURGERY REQUIRES
8 EXACTLY -- ALL THAT STUFF. THIS IS MASSIVE RANK
9 SPECULATION COMING FROM THEM BASED UPON THE RECORD BEFORE
10 THE COURT THAT THE FOUNDATION HAS BEEN LAID TODAY.

11 MR. SMITH: MR. FREEMAN TESTIFIED TO SEEING
12 THE TEARS IN HIS SHOULDER AND HIS KNEE.

13 MR. HANNA: AGAIN, I'LL CROSS HIM ON THAT
14 BUT HE IS NOT A DOCTOR AND IS NOT CAPABLE, I BELIEVE, OF
15 READING AN MRI OR ---

16 THE COURT: ALL RIGHT. I'M GOING TO LET HIM
17 ANSWER BRIEFLY BUT IT'S UP TO THE COURT TO WEIGH HIS
18 TESTIMONY UNDER THESE CIRCUMSTANCES. GO AHEAD.

19 MR. SMITH: YES, SIR.

20 THE COURT: HERE ARE THESE EXHIBITS, MR.
21 HANNA ---

22 MR. HANNA: THANK YOU, SIR.

23 THE COURT: --- IF YOU'D LIKE TO REVIEW
24 THOSE. ALL RIGHT, SIR. EXCUSE ME, GO AHEAD.

25 Q. WAS THERE EVER ANY JUSTIFICATION FOR THIS ACT?

FREEMAN - DIRECT

11

1 THE COURT: EVER ANY WHAT?

2 MR. SMITH: JUSTIFICATION.

3 Q. DID HE DO THIS ON PURPOSE?

4 A. YES, SIR.

5 THE COURT: WHO DID IT? I HAVEN'T HEARD OR
6 HE MAY HAVE SAID AND I MISSED IT.

7 MR. SMITH: ANTONIO CRAFT.

8 THE COURT: OKAY. WHAT'S KIMBERLY SANFORD'S
9 INVOLVEMENT?

10 MR. SMITH: THE GIRLFRIEND OF ANTONIO CRAFT.

11 THE COURT: SHE WAS RIDING WITH ANTONIO?

12 MR. HANNA: SHE OWNED THE VEHICLE. SHE WAS
13 NOT INVOLVED IN THE ACCIDENT.

14 THE COURT: SHE WAS AN OCCUPANT?

15 MR. HANNA: I DON'T BELIEVE SHE WAS EVEN IN
16 THE CAR, TO MY KNOWLEDGE.

17 MR. SMITH: SHE PROVIDED THE CAR TO MR.
18 CRAFT.

19 THE COURT: OKAY. ALL RIGHT, GO AHEAD.

20 Q. AND SO ARE YOU SEEKING PUNITIVE DAMAGES AS A RESULT
21 OF THAT?

22 A. YES, SIR.

23 MR. SMITH: I HAVE NOTHING ELSE AT THIS
24 TIME, YOUR HONOR.

25 THE COURT: NOW, THEY ARE IN DEFAULT AND I

FREEMAN - DIRECT

12

1 KNOW YOU DON'T REPRESENT THE DEFENDANTS BUT YOU DO
2 REPRESENT SOME POSSIBLE OTHER COMPANY. WOULD YOU LIKE TO
3 QUESTION THIS WITNESS ON HIS CLAIMS?

4 MR. HANNA: YES, SIR, YOUR HONOR. JUST SO
5 THE RECORD IS CLEAR, I REPRESENT UNITED AUTO INSURANCE
6 COMPANY WHO, IF THERE IS COVERAGE THAT'S APPLICABLE TO
7 THIS LOSS, THEY WOULD HOLD THAT POLICY. THEY, OF COURSE,
8 DENY THAT THAT IS TRUE. THEY BELIEVE THE POLICY LAPSED
9 PRIOR TO THE ACCIDENT AND THERE WAS NO COVERAGE IN FORCE
10 BUT THAT'S THE BASIS UPON WHICH I'M HERE. I WANT THE
11 RECORD CLEAR THAT I'M NOT APPEARING ON BEHALF OF EITHER
12 OF THOSE INDIVIDUALS.

13 THE COURT: YES, I UNDERSTAND.

14 MR. SMITH: YOUR HONOR, WITH THAT IN MIND,
15 WE WOULD OBJECT TO HIS PARTICIPATION. HE SAYS HE'S NOT
16 PART OF THIS CASE, YET HE WANTS TO COME IN AND HAVE A
17 BEARING ON THE CASE.

18 THE COURT: WELL, HE JUST MIGHT WANT TO ASK
19 THE WITNESS SOME QUESTIONS ABOUT -- HE OBJECTED TO ANY
20 TESTIMONY ABOUT FUTURE CLAIMS OR WHATEVER.

21 MR. HANNA: UNDERSTOOD. AGAIN, I BELIEVE
22 THE RELEVANCE IS THAT OUR POLICY POTENTIALLY DOES HAVE AN
23 INTEREST IN THIS MATTER. WE DON'T BELIEVE WE DO BUT THAT
24 DOESN'T -- YOU KNOW, SINCE WE'RE PUTTING THE CART BEFORE
25 THE HORSE HERE, WE THINK THAT WE DO HAVE THE RIGHT, FOR

FREEMAN - DIRECT

13

1 WHAT THE RECORD IS WORTH.

2 CROSS EXAMINATION

3 BY MR. HANNA:

4 Q. MR. FREEMAN, ON THE DATE OF THIS ACCIDENT YOU WERE
5 TAKEN BY AMBULANCE TO THE EMERGENCY ROOM, IS THAT
6 CORRECT?

7 A. YES, SIR.

8 Q. AND YOU HAD A FULL BATTERY OF X-RAYS AND VARIOUS
9 TESTS DONE WHEN YOU WERE AT THE HOSPITAL, ISN'T THAT
10 CORRECT?

11 A. YES, SIR.

12 Q. AND WOULD YOU AGREE WITH ME THAT NONE OF THE X-RAYS
13 OR ANY OF THE DIAGNOSTIC TESTS PERFORMED ON THE DATE OF
14 THE ACCIDENT SHOWED THAT YOU HAD ANY BROKEN BONES OR ANY
15 INJURIES OF THAT NATURE ON THE DATE OF THE ACCIDENT,
16 CORRECT?

17 A. I DIDN'T HAVE NO BROKEN BONES BUT I HAD TEARS AND A
18 DISLOCATION ON MY ARM.

19 Q. WOULD YOU AGREE WITH ME THAT THE ONLY EVIDENCE OF
20 THIS ALLEGED TEAR IS FROM THE MRI, CORRECT?

21 A. YES, SIR.

22 Q. OKAY. THAT WAS NOT TAKEN FOR LIKE THREE OR FOUR
23 WEEKS AFTER THE ACCIDENT, ISN'T THAT RIGHT?

24 A. NO, SIR. I DON'T THINK.

25 Q. I THINK EARLIER ON DIRECT YOU TESTIFIED THAT IT WAS

FREEMAN - CROSS

14

1 THIS PLACE CALLED -- WHERE YOU HAD THE MRI'S DONE ---

2 MR. HANNA: MAY I APPROACH THE WITNESS,
3 PLEASE?

4 THE COURT: ALL RIGHT.

5 MR. HANNA: THANK YOU.

6 Q. I'M JUST GOING TO HAND YOU BACK THE BILL TO REFRESH
7 YOUR MEMORY. WHAT DATE DOES IT SAY THAT YOU HAD THOSE
8 DONE?

9 A. FEBRUARY 26.

10 Q. AND THE DATE OF THE ACCIDENT WAS THE 13TH, CORRECT?

11 A. UH-HUH (AFFIRMATIVE). YES, SIR.

12 Q. GETTING BACK TO MY QUESTION, THE EVIDENCE OF THE
13 ALLEGED TEAR CAME WHEN YOU HAD THAT MRI, CORRECT?

14 A. I MEAN, YEAH, BECAUSE WHEN I WENT TO THIS PLACE THEY
15 RAN TESTS ON ME THAT THEY DIDN'T DO AT THE HOSPITAL.

16 Q. UNDERSTOOD. ALL I'M TRYING TO ESTABLISH IS THAT
17 WHATEVER TESTS WERE DONE AT THE HOSPITAL, THEY COULDN'T
18 FIND ANY INJURIES, ANY TEARS OR ANY BROKEN BONES OR
19 NOTHING, CORRECT, THAT WERE DONE AT THE HOSPITAL?

20 A. YEAH, THEY WAS DONE AT THE HOSPITAL BUT I TOLD THEM
21 I WAS STILL HURTING.

22 Q. UNDERSTOOD. OKAY, ALL RIGHT. NOW IT LOOKS LIKE YOU
23 RETURNED TO THE ER A COUPLE OF DAYS LATER, CORRECT?

24 ACTUALLY, LET ME GO BACK. YOU WERE RELEASED THE SAME DAY
25 OF THE ACCIDENT, WERE YOU NOT?

FREEMAN - CROSS

15

1 A. YES, SIR.

2 Q. AND YOU LEFT -- THE RECORD REFLECTS YOU LEFT
3 AMBULATING WHICH, BASED ON MY UNDERSTANDING, THAT MEANS
4 YOU WALKED OUT OF THE EMERGENCY ROOM, ISN'T THAT CORRECT?

5 A. YES, SIR.

6 Q. OKAY. THEN YOU CAME BACK TO THE EMERGENCY ROOM A
7 COUPLE OF DAYS LATER ON THE 18TH AND WERE SEEN BY THE
8 PEOPLE AT THE FRONT DESK AND THEN YOU ACTUALLY LEFT
9 WITHOUT EVEN BEING SEEN BY THE DOCTOR, ISN'T THAT RIGHT?

10 A. NO, SIR.

11 Q. YOU DENY THAT YOU ARE WILLIAM FREDERICK FREEMAN?

12 A. YEAH, I'M WILLIAM FREDERICK FREEMAN.

13 Q. YES, SIR.

14 A. BUT EVERYTIME I WENT WITH DEALING WITH THIS ACCIDENT
15 I AIN'T NEVER WALKED OUT OF NO HOSPITAL BECAUSE I WAS IN
16 PAIN.

17 Q. THIS RECORD THAT YOUR LAWYER PROVIDED TO ME THAT
18 SAYS THAT -- "DISPOSITION, LEFT WITHOUT BEING SEEN". IS
19 THAT NOT ACCURATE?

20 A. NO, THAT AIN'T ACCURATE.

21 THE COURT: ALL RIGHT. I THINK THAT'S
22 SUFFICIENT. NOW I'VE GOT FOUR EXHIBITS, WAS THERE A
23 FIFTH?

24 MR. HANNA: HE IS HOLDING ONE. I HAD TAKEN
25 ONE. I APOLOGIZE.

FREEMAN - CROSS

16

1 THE COURT: ALL RIGHT. ANY FURTHER
2 QUESTIONS OF THIS WITNESS, MR. SMITH?

3 MR. SMITH: YES, SIR, IN RESPONSE.

4 REDIRECT EXAMINATION

5 BY MR. SMITH:

6 Q. YOU WENT TO ANMED BECAUSE -- DO YOU HAVE A FAMILY
7 DOCTOR?

8 A. NO, SIR.

9 Q. DID YOU HAVE INSURANCE?

10 A. NO, SIR.

11 Q. OPPOSING COUNSEL SAYS THAT THERE WAS A GAP BETWEEN
12 THE ACCIDENT AND YOUR VISIT TO THE EMERGENCY ROOM AND
13 YOUR MRI'S. IS THERE ANY INTERVENING CAUSE OR ANY OTHER
14 ACCIDENT THAT YOU HAD BETWEEN THAT TIME?

15 A. NO, SIR.

16 Q. WERE THE INJURIES THAT YOU SUSTAINED RELATED TO THE
17 ACCIDENT?

18 A. YES, SIR.

19 Q. AND THERE'S NO DOUBT THAT YOU SAW THE TEARS ON THE
20 MRI?

21 A. YES, SIR.

22 Q. I HAVE NOTHING FURTHER.

23 THE COURT: WHAT TIME OF DAY OR NIGHT DID
24 THIS ACCIDENT HAPPEN, MR. FREEMAN?

25 THE WITNESS: IT WAS THAT MORNING.

FREEMAN - REDIRECT

17

1 THE COURT: WHAT TIME?

2 THE WITNESS: I WANT TO SAY AROUND 10.
3 BETWEEN 10 AND 11.

4 THE COURT: 10 OR 11:00 O'CLOCK IN THE
5 MORNING?

6 THE WITNESS: YES, SIR.

7 THE COURT: IT WAS DAYLIGHT.

8 THE WITNESS: YES, SIR.

9 THE COURT: THANK YOU. YOU MAY STEP DOWN,
10 MR. FREEMAN.

11 THE WITNESS: THANK YOU.

12 THE COURT: NOW DOES MR. CRAFT NEED TO
13 TESTIFY?

14 MR. SMITH: YES, SIR.

15 THE COURT: ALL RIGHT. I CAN HEAR HIM
16 THERE. DO YOU SEE THAT BLACK MICROPHONE? PULL IT OVER
17 TO THE WITNESS. RAISE YOUR RIGHT HAND AND BE SWORN,
18 PLEASE.

19 MICHAEL JEROME CRAFT, PLAINTIFFS' WITNESS,
20 SWORN:

21 DIRECT EXAMINATION

22 BY MR. SMITH:

23 Q. MR. CRAFT, WOULD YOU STATE YOUR NAME FOR THE RECORD,
24 PLEASE?

25 A. MICHAEL JEROME CRAFT.

CRAFT - DIRECT

18

- 1 Q. WHERE DID THIS ACCIDENT OCCUR?
- 2 A. ON THE NORTH SIDE OF ANDERSON COUNTY.
- 3 Q. WHAT WERE YOU DOING ON THE MORNING OF FEBRUARY 13TH,
- 4 2013?
- 5 A. ME AND MR. WILLIAM WAS WALKING TO THE STORE AND WE
- 6 STOPPED TO CHAT FOR A MINUTE AND THAT'S WHEN THE CAR CAME
- 7 AROUND THE CURVE AND HIT BOTH OF US.
- 8 Q. WHAT DO YOU RECALL IMMEDIATELY FOLLOWING THE
- 9 ACCIDENT?
- 10 A. WELL, I WAS OUT. I GOT UP AND I SPIT BLOOD AND I
- 11 FELL BACK DOWN ON THE GROUND AND WHEN I CAME TO I WAS AT
- 12 THE HOSPITAL.
- 13 Q. DID YOU NOTICE ANY INJURIES?
- 14 A. ALL I KNOW IS MY HEAD WAS BLEEDING.
- 15 Q. DID YOU HAVE ANY PAIN IMMEDIATELY FOLLOWING THE
- 16 ACCIDENT?
- 17 A. MY HEAD WAS HURTING, LEGS, BACK.
- 18 Q. WERE YOU BLEEDING AT ALL?
- 19 A. YES, SIR, ON MY HEAD.
- 20 Q. WHAT DID YOU FEEL LIKE THE NEXT DAY?
- 21 A. LIKE I HAD BEEN HIT BY A CAR.
- 22 Q. HOW LONG WERE YOU IN THE HOSPITAL?
- 23 A. I THINK ABOUT SEVEN OR EIGHT DAYS.
- 24 Q. DO YOU HAVE ANY AFTEREFFECTS FROM THE ACCIDENT?
- 25 A. YES, SIR. SOMETIMES MY MEMORY COMES AND GOES. I

CRAFT - DIRECT

19

- 1 CAN REMEMBER SOME THINGS AND SOME THINGS I CAN'T BUT I'M
2 CONSTANTLY IN PAIN ALL THE TIME.
- 3 Q. WHERE IS THAT PAIN AT?
- 4 A. IN MY HEAD.
- 5 Q. IS IT SPECIFICALLY IN A SPOT?
- 6 A. WELL, WHEN THEY HAD TO SEW ME UP THAT'S MOSTLY WHERE
7 IT IS, IN THE FOREHEAD AREA.
- 8 Q. SO THIS SCARRING THAT GOES FROM THE MIDDLE OF YOUR
9 FOREHEAD TO THE SIDE, LEFT SIDE OF YOUR HEAD, IS THAT
10 WHERE IT IS?
- 11 A. YES, SIR.
- 12 Q. DO YOU HAVE ANY METAL IN YOUR HEAD?
- 13 A. I HAVE A PLATE IN MY HEAD.
- 14 Q. DID YOU GET ANY CARE OR ANY FOLLOW-UP TREATMENT?
- 15 A. WELL, I WANT BACK TO THE HOSPITAL A COUPLE OF TIMES
16 BECAUSE I WAS IN PAIN. LIKE I SAY, I DON'T HAVE ANY
17 INSURANCE OR NOTHING LIKE THAT.
- 18 Q. WHAT INJURIES -- BESIDES YOUR HEAD, DID YOU HAVE ANY
19 OTHER INJURIES?
- 20 A. JUST MY BACK AND NECK. MY BACK HASN'T BEEN RIGHT
21 SINCE.
- 22 Q. DO YOU HAVE ANY SCARRING BESIDES THE SCAR ON YOUR
23 FOREHEAD?
- 24 A. NO, SIR, THAT'S THE ONLY ONE.
- 25 Q. DO YOU HAVE ANY DIFFICULTIES -- YOU SAY YOU HAVE

CRAFT - DIRECT

20

1 DIFFICULTIES REMEMBERING?

2 A. YES, SIR.

3 Q. HOW OLD ARE YOU?

4 A. 47.

5 Q. HAS THE SCARRING GONE AWAY SINCE THE ACCIDENT?

6 A. I DON'T THINK IT'S GOING TO EVER GO AWAY.

7 Q. WITH REGARD TO WHAT YOU SEEK FROM THE JUDGE TODAY --
8 NO, HOLD ON A SECOND. DO YOU HAVE BILLS AS A RESULT OF
9 THE ACCIDENT?

10 A. YES, SIR.

11 Q. DID YOU GO TO THE HOSPITAL BY MEDSHORE?

12 A. YES, SIR.

13 Q. IS THIS THE BILL THAT YOU RECEIVED?

14 A. YES, SIR.

15 Q. HOW MUCH WAS THAT FOR?

16 A. \$445.00.

17 Q. AND YOU USED ANMED FOR TREATMENT?

18 A. YES, SIR.

19 Q. YOU WENT ON SEVERAL OCCASIONS?

20 A. YES, SIR.

21 MR. SMITH: WE'LL MARK MEDSHORE'S BILL AS
22 PLAINTIFFS' EXHIBIT 1.

23 (PLAINTIFF CRAFT'S EXHIBIT 1 FOR
24 IDENTIFICATION)

25 MR. SMITH: WE'RE GOING TO LABEL THE FIRST

CRAFT - DIRECT

21

- 1 VISIT TO ANMED THE DAY OF THE ACCIDENT AS PLAINTIFFS'
2 EXHIBIT 2.
3 (PLAINTIFF CRAFT'S EXHIBIT 2 FOR
4 IDENTIFICATION)
5 Q. AND HOW MUCH IS THAT BILL FOR?
6 A. WHAT'S THAT? FOUR THOUSAND?
7 Q. 43.
8 A. \$43,117.00, IT LOOKS LIKE.
9 Q. \$43,117.00?
10 A. YES, SIR.
11 Q. THE SECOND ADMISSION WAS THE 22ND OF FEBRUARY?
12 A. YES, SIR.
13 Q. AND THIS BILL CAME FROM THAT VISIT?
14 A. YES, SIR.
15 Q. AND HOW MUCH WAS THAT BILL?
16 A. 13 THOUSAND ---
17 Q. \$1,389.52?
18 A. YES, SIR.
19 Q. DID YOU GO ON THE 25TH AS WELL?
20 A. YES, SIR.
21 Q. AND WHAT IS THE BILL FOR THAT?
22 A. \$3,586.00.
23 Q. \$3,586.00?
24 A. YES, SIR.
25 Q. AND ONE LAST TIME ON THE 27TH?

CRAFT - DIRECT

22

- 1 A. YES, SIR.
- 2 Q. AND THAT IS THE BILL FROM THAT DATE?
- 3 A. YES, SIR.
- 4 Q. HOW MUCH IS THAT?
- 5 A. \$566.00.
- 6 Q. \$566.00?
- 7 A. YES, SIR.
- 8 Q. THANK YOU, SIR. WOULD THAT BE THE EXTENT OF YOUR
- 9 BILLS?
- 10 A. YES, SIR.
- 11 MR. SMITH: WE'VE MARKED THE THREE BILLS AS
- 12 PLAINTIFF 3, 4 AND 5.
- 13 (PLAINTIFF CRAFT'S EXHIBITS 3,4 & 5 FOR
- 14 IDENTIFICATION)
- 15 Q. THOSE BILLS TOTAL \$49,000.00?
- 16 A. YES, SIR.
- 17 Q. WITH REGARD TO WHAT YOU SEEK TODAY, DO YOU SEEK THE
- 18 MONEY TO PAY THOSE BILLS?
- 19 A. YES, SIR, AND I'D LIKE TO HAVE SOME FOR PAIN AND
- 20 SUFFERING.
- 21 Q. AND I BELIEVE THE SCARRING IS PERMANENT?
- 22 A. YES, IT WON'T NEVER GO AWAY.
- 23 Q. IS THERE ANY PLAN TO TAKE THE PLATE OUT OF YOUR
- 24 HEAD?
- 25 A. NO, SIR.

CRAFT - DIRECT

23

1 Q. DID MR. CRAFT DO THIS ON PURPOSE, TO YOUR KNOWLEDGE?

2 A. I THINK HE DID.

3 Q. WERE YOU OFF THE ROAD WHEN YOU WERE STRUCK?

4 A. I WAS ON THE SIDEWALK.

5 Q. AND WAS IT RAINING OR DARK OR ANYTHING?

6 A. IT WAS LIGHT.

7 Q. SO YOU SEEK PUNITIVE DAMAGES FROM HIM?

8 A. YES, SIR.

9 MR. SMITH: I HAVE NOTHING FURTHER, YOUR
10 HONOR.

11 THE COURT: WOULD YOU LIKE TO LOOK AT THESE
12 MEDICAL BILLS?

13 MR. HANNA: THEY MATCH WHAT WAS PREVIOUSLY
14 PRODUCED. I WAS FOLLOWING HIM BECAUSE I HAVE HAD THESE
15 SO I DON'T NEED TO SEE THOSE.

16 THE COURT: ALL RIGHT.

17 MR. HANNA: MAY I QUESTION THE WITNESS, YOUR
18 HONOR?

19 THE COURT: ALL RIGHT.

20 CROSS EXAMINATION

21 BY MR. HANNA:

22 Q. MR. CRAFT, IS THAT CORRECT?

23 A. YES, SIR.

24 Q. HAVE YOU BEEN TO THE DOCTOR RELATED TO THIS SINCE
25 FEBRUARY 27, 2013?

CRAFT - CROSS

24

1 A. I'VE BEEN INCARCERATED SINCE THEN.

2 Q. OKAY. AND WHAT ARE YOU INCARCERATED FOR?

3 A. SIR?

4 Q. WHAT ARE YOU INCARCERATED FOR?

5 A. SECOND DEGREE BURGLARY.

6 Q. OKAY. AND WHAT WAS THE OFFENSE DATE?

7 A. I CAN'T RECALL.

8 Q. IS IT SOMETHING THAT YOU DID AFTER THIS ACCIDENT?

9 A. YES.

10 Q. OKAY. SO SUBSEQUENT TO THE ACCIDENT ON FEBRUARY
11 13TH -- YOU GOT OUT OF THE HOSPITAL ON FEBRUARY 27TH AND
12 SHORTLY THEREAFTER YOU COMMITTED A BURGLARY AND HAVE BEEN
13 INCARCERATED EVER SINCE, IS THAT WHAT YOU'RE TELLING US?

14 A. YES, IT WASN'T SHORTLY AFTER THAT. IT WAS A WHILE.
15 THE ACCIDENT HAPPENED IN FEBRUARY, 2013.

16 MR. HANNA: YOUR HONOR, I HAVE COPIES OF MR.
17 CRAFT'S CRIMINAL RECORD WHICH I'D LIKE TO HAND UP.

18 MR. SMITH: I WOULD OBJECT.

19 MR. HANNA: I THINK IT'S RELEVANT TO HIS
20 DAMAGES AND HOW BAD HE WAS HURT AND WHAT HE WAS UP TO
21 SHORTLY AFTER THE ACCIDENT.

22 MR. SMITH: THEN IF THAT'S THE CASE HE
23 SHOULD HAVE HAD A WITNESS HERE.

24 THE COURT: WELL, I BELIEVE HE ADMITTED THAT
25 THE ---

CRAFT - CROSS

25

1 MR. HANNA: HE JUST ADMITTED IT.

2 THE COURT: --- BURGLARY OCCURRED --

3 MR. HANNA: ALL WE'RE DOING NOW IS JUST
4 TRYING TO FIGURE OUT WHEN IT HAPPENED.

5 THE COURT: YES, I THINK THAT'S WHAT HE
6 SAID.

7 MR. HANNA: IT'S NOT FOR THE PURPOSES OF
8 ANYTHING OTHER THAN TO THE EXTENT OF HIS DAMAGES.

9 MR. SMITH: HE CAN CROSS HIM ON THAT.

10 MR. HANNA: I AM TRYING TO CROSS.

11 MR. SMITH: HE'S ADMITTED ---

12 Q. WOULD YOU AGREE THAT YOU WERE ARRESTED FOR BURGLARY
13 ON THE OFFENSE DATE OF MARCH THE 28TH OF 2013, LESS THAN
14 A MONTH AFTER YOU WERE RELEASED FROM THE HOSPITAL?

15 A. I DON'T RECALL THE DATE.

16 THE COURT: ALL RIGHT. IF THAT'S WHAT THE
17 RECORD SHOWS, THAT'S WHAT THE RECORD SHOWS.

18 MR. HANNA: OKAY, UNDERSTOOD, YOUR HONOR.
19 THANK YOU.

20 Q. AND IS IT MY UNDERSTANDING THAT THE PERSON THAT HIT
21 YOU IS YOUR BROTHER?

22 A. SIR?

23 Q. IS YOUR BROTHER THE ONE THAT HIT YOU?

24 A. YES.

25 Q. OKAY. AND WHY DO YOU THINK HE HIT YOU?

CRAFT - CROSS

26

1 MR. SMITH: OBJECTION. THAT CALLS FOR
2 SPECULATION.

3 A. YOU'LL HAVE TO ASK HIM THAT, SIR.

4 Q. YOU'RE THE ONE WHO TESTIFIED ON DIRECT THAT YOU
5 THOUGHT IT WAS PURPOSEFUL AND I WANT TO KNOW WHY YOU
6 BELIEVE THAT?

7 A. IF ANYBODY IS WALKING ON THE SIDEWALK AND THEY RUN
8 UP THE SIDEWALK AND HIT YOU, THAT'S PURPOSEFUL IN MY
9 OPINION.

10 Q. THAT'S WHAT I'M ASKING YOU. IN OTHER WORDS, TELL ME
11 WHAT HAPPENED. HOW DO YOU KNOW THAT HE RAN UP ON THE
12 SIDEWALK AND HIT YOU?

13 A. HOW ---

14 Q. HOW DO YOU KNOW HE DIDN'T LOSE CONTROL? HOW DO YOU
15 KNOW A CAT DIDN'T RUN IN FRONT OF HIM ON THE ROAD?

16 THE COURT: ALL RIGHT. THAT'S NOT PROPER.

17 MR. HANNA: OKAY, SIR.

18 THE COURT: WHAT ELSE?

19 MR. HANNA: I HAVE NO FURTHER QUESTIONS,
20 YOUR HONOR.

21 THE COURT: ALL RIGHT. I'M STILL LOOKING
22 FOR EXHIBIT 5 FOR MR. FREEMAN.

23 MR. HANNA: I THINK IT'S STILL SITTING UP
24 THERE.

25 THE COURT: ALL RIGHT. LET ME HAVE THAT AND

CRAFT - CROSS

27

1 THEN THOSE OTHERS, KAREN. THANK YOU. ALL RIGHT, MR.
2 SMITH, WHAT ELSE?

3 MR. SMITH: IN RESPONSE TO MR. HANNA.

4 REDIRECT EXAMINATION

5 BY MR. SMITH:

6 Q. THE MARCH 28TH ALLEGATION THAT WAS MADE, IN FACT WE
7 WENT TO TRIAL WITH THAT AND YOU WERE FOUND NOT GUILTY OF
8 THAT, RIGHT?

9 A. YES, SIR.

10 Q. THANK YOU, SIR.

11 THE COURT: WELL, IF HE WAS FOUND NOT GUILTY
12 ON THAT WHY THE RECORD.

13 MR. HANNA: I MUST HAVE THE WRONG OFFENSE.
14 SOMETHING ELSE HAPPENED.

15 THE COURT: OKAY.

16 THE WITNESS: I WAS FOUND NOT GUILTY OF THE
17 OFFENSE WHICH YOU JUST SPOKE OF.

18 THE COURT: ALL RIGHT.

19 MR. HANNA: THE ONE YOU DIDN'T KNOW ABOUT?

20 THE COURT: MR. SMITH, HAVE YOU TOTALED
21 THESE BILLS ON BEHALF OF EACH OF YOUR CLIENTS?

22 MR. SMITH: YES, I HAVE. THE BILLS FOR MR.
23 FREEMAN ARE \$12,295.50.

24 THE COURT: ALL RIGHT, LET ME SEE THAT.
25 WELL, GO AHEAD AND PUT IT IN THE RECORD.

1 MR. SMITH: \$12,295.50. MR. CRAFT'S BILLS
2 TOTAL \$49,128.52.

3 THE COURT: ALL RIGHT, WOULD YOU SUBMIT A
4 COPY OF THAT TO THE COURT? MR. HANNA, HAVE YOU SEEN THIS
5 COMPILATION ALSO?

6 MR. HANNA: I DON'T KNOW IF I HAVE SEEN THAT
7 ONE BUT I HAVE IN FACT SEEN -- AS FAR AS THE -- I HAVE
8 NO OBJECTION TO THE COMPILATION ITSELF. I DO HAVE AN
9 OBJECTION TO THE LETTER WHICH IT IS ATTACHED TO.

10 THE COURT: TO THE LETTER? I HAVEN'T SEEN A
11 LETTER.

12 MR. HANNA: IN OTHER WORDS, WHAT HE IS GOING
13 TO HAND TO YOU IS A LETTER THAT HE WROTE TO THE INSURANCE
14 COMPANY DEMANDING TO SETTLE THE CASE.

15 THE COURT: I THOUGHT HE HAD A COMPILATION
16 OF EACH OF HIS CLIENTS' INJURIES.

17 MR. HANNA: I HAVE NO PROBLEM WITH THE
18 COMPILATION.

19 THE COURT: ALL RIGHT. HAVE YOU GOT A
20 COMPILATION JUST FOR THE INJURIES?

21 MR. SMITH: ALL I HAVE IS WHAT I COMPILED
22 FOR PURPOSES OF SETTLEMENT.

23 THE COURT: WELL, LET ME SEE WHAT YOU HAVE.
24 I'M NOT GOING TO ADMIT THE LETTER BUT I WILL ADMIT THE
25 BILLS YOU MARKED FOR EACH OF YOUR CLIENTS. I BELIEVE

- THE COURT -

29

1 THERE ARE FIVE EXHIBITS FOR EACH ONE.

2 (PLAINTIFF FREEMAN'S EXHIBITS 1-5 IN EVIDENCE)

3 (PLAINTIFF CRAFT'S EXHIBITS 1-5 IN EVIDENCE)

4 MR. SMITH: UNDERSTOOD. THANK YOU.

5 THE COURT: ALL RIGHT. ACCORDING TO THIS
6 MR. FREEMAN HAS \$12,295.50. MR. CRAFT HAS \$49,128.52.

7 ALL RIGHT. I'LL GIVE YOU THIS BACK.

8 MR. SMITH: YES, SIR.

9 THE COURT: MR. HANNA, THIS IS YOUR PAPER.

10 MR. HANNA: YES, SIR, THANK YOU.

11 THE COURT: WELL, IT'S NOT FOR ME TO WONDER
12 WHY OR HOW IT HAPPENED. I BELIEVE THEY SAID THIS ANTONIO
13 CRAFT WAS THE BROTHER OF MICHAEL CRAFT. BUT ANYWAY,
14 ACCORDING TO THE PLAINTIFFS, THEY GOT HIT AND THEY WERE
15 INJURED. MR. CRAFT HAD ACTUAL DAMAGES OR HOSPITAL
16 DAMAGES OF \$49,285.52. WAS THAT WHAT IT WAS? NO, IT'S
17 \$49,128.52. MR. FREEMAN HAD \$12,295.50.

18 ALL RIGHT, IN THE CASE OF MICHAEL CRAFT,
19 APPARENTLY HE WAS THE MORE SERIOUSLY INJURED OF THE TWO,
20 ACCORDING TO THE HOSPITAL RECORDS. ONE OF THE BILLS WAS
21 VERY, VERY HIGH. I'M GOING TO ALLOW THE ACTUAL HOSPITAL
22 BILL OF THAT AMOUNT AND I'M GOING TO ALLOW THE SUM OF
23 \$15,000.00 ACTUAL DAMAGES.

24 IN THE MATTER OF MR. FREEMAN, \$12,295.50, I'LL
25 ALLOW \$12,000.00 IN THAT CASE.

1 NOW I DON'T HAVE A FOUNDATION, MR. SMITH, FOR
2 ANY PUNITIVE DAMAGES. AS I UNDERSTAND IT, YOU'VE GOT TO
3 LAY SOME FOUNDATION, THAT THE DEFENDANTS CAN RESPOND AND
4 ALL SUCH AS THAT.

5 NOW THIS JUDGMENT WILL BE AGAINST ANTONIO
6 CRAFT. KIMBERLY SANFORD, I BELIEVE MR. SMITH SAID THAT
7 SHE JUST LOANED HIM HER CAR BUT I'M NOT GOING TO IMPUTE
8 ANY DAMAGES FOR HER. I DON'T THINK THERE ARE ANY
9 ALLEGATIONS OF NEGLIGENT ENTRUSTMENT OR SUCH AS THAT.

10 NOW I THINK THAT'S PRETTY REASONABLE DAMAGES
11 UNDER THE CIRCUMSTANCES. CERTAINLY, MR. CRAFT, AS I
12 SAID, IS PROBABLY THE MORE SERIOUSLY INJURED.

13 ALL RIGHT, MR. SMITH, IF YOU WILL PREPARE A
14 PROPOSED ORDER AND ALLOWING THE DAMAGES AS I'VE SAID,
15 \$12,000.00 FOR PAIN AND SUFFERING OR ACTUAL DAMAGES AND
16 \$15,000.00 FOR MR. CRAFT, PLUS THE HOSPITAL BILLS.

17 MR. SMITH: THANK YOU, YOUR HONOR.

18 THE COURT: THANK YOU, GENTLEMEN.

19 END OF HEARING.
20
21
22
23
24
25

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF ANDERSON)

3
4 C E R T I F I C A T I O N
5

6 I, KAREN T. SENN, CERTIFIED COURT REPORTER FOR
7 THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
8 FOREGOING PAGES CONSTITUTE A TRUE, ACCURATE AND COMPLETE
9 TRANSCRIPT OF THE HEARING HELD ON JULY 15, 2014, BEFORE
10 THE HONORABLE ELLIS B. DREW, JR., MASTER IN EQUITY FOR
11 THE TENTH JUDICIAL CIRCUIT, IN THE CASE OF MICHAEL CRAFT
12 AND WILLIAM FREEMAN VERSUS ANTONIO CRAFT AND KIMBERLY
13 SANFORD, CIVIL ACTION 2013-CP-04-00771.
14

15
16 

17 ANDERSON, SOUTH CAROLINA

18 SEPTEMBER 29, 2014
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Transcript Summary Judgment Hearing, February 2, 2015

State of South Carolina

County of Anderson

In the Court of Common Pleas

United Automobile Insurance)
Company,)

Plaintiff,)

v.)

Willie Freeman, Michael Craft,)
Kimberly L. Sanford, and Antonio)
Craft,)

Defendants.)

2014-CP-04-850

February 2, 2015

Transcript of Record

BEFORE:

The Honorable Scott Sprouse, Judge

APPEARANCES:

George V. Hanna IV, Esquire
Attorneys for the Plaintiff

Donald L. Smith, Esquire
Attorney for Defendants

Renee Tollison
Circuit Court Reporter

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EXHIBITS

No	DESCRIPTION	ID	EV
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1 (WHEREUPON, court convened and the following
2 proceedings were had commencing at approximately
3 2:31 p.m.)

4 THE COURT: All right. This is the matter of
5 United Automobile Insurance Company versus Willie
6 Freeman, Michael Craft, Kimberly L. Sanford and Antonio
7 Craft. And Mr. Hannah is here on behalf of the
8 Plaintiff, and ...

9 Mr. Smith?

10 MR. SMITH: Yes, sir.

11 THE COURT: ... is here on behalf of ...

12 Mr. Smith, you represent two of the defendants; is
13 that correct?

14 MR. SMITH: Just two at this point. And if I
15 may, Your Honor?

16 THE COURT: Yes, sir.

17 MR. SMITH: I don't normally look like this. I
18 thought next week was the hearing because we have a
19 summary judgment for this case. And I'm prepared. It's
20 just I didn't -- my appearance is just not -- it's
21 clownish.

22 THE COURT: Thank you, Mr. Smith. Thank you.

23 MR. SMITH: Yes, sir.

24 THE COURT: Now, Mr. Hannah, you have filed for
25 summary judgement.

1 First of all, Mr. Smith, which two defendants do you
2 represent?

3 MR. SMITH: At present I represent William
4 Freeman and Michael Craft.

5 THE COURT: Okay. And Kimberly L. Sanford is
6 unrepresented; is that correct?

7 MR. HANNAH: Both Kimberly and Antonio --
8 Kimberly Sanford and Antonio Craft are in default, and I
9 filed affidavits of default there.

10 THE COURT: All right. And I believe you
11 served Antonio Craft by publication; is that correct?

12 MR. HANNAH: Yes.

13 THE COURT: Okay.

14 MR. HANNAH: I could not get him -- I could not
15 get him served.

16 THE COURT: Okay.

17 MR. HANNAH: The Sanford was served personally.

18 THE COURT: Okay. I saw that in the file, and
19 you did an affidavit of default. And you are not seeking
20 -- this is a declaratory judgment; you're not seeking
21 damages from this?

22 MR. HANNAH: No, Your Honor. This is not a --
23 no.

24 THE COURT: Okay. All right. Now, you have
25 filed for summary judgment in this matter?

1 MR. HANNAH: Yes, I have. And -- yes.

2 THE COURT: Looks like -- I'm looking at the
3 motion. Looks like you filed on December the 9th seeking
4 summary judgment.

5 And Mr. Smith, I'm assuming that you oppose that
6 motion?

7 MR. SMITH: Absolutely, sir.

8 THE COURT: Okay. Let's just do this. Let's
9 proceed. This motion has been filed since December the
10 9th. And it looks like that is noted on our docket. So
11 Mr. Hannah, why don't we proceed and we'll hear the
12 motion ---

13 MR. HANNAH: Okay.

14 THE COURT: --- first. And then ---

15 MR. HANNAH: To the extent -- the issue in the
16 motion and the trial are virtually identical. And so I
17 have the -- anyway, what this is is an action, a
18 declaratory judgment action, filed on behalf of United
19 Auto Insurance Company related to whether or not a policy
20 of insurance was in force at the time of an accident.
21 Okay? And the question is whether or not the policy had
22 lapsed for nonpayment of premiums.

23 Do you have in your file the affidavit of Robert
24 Gibbs attached -- it should be attached to the summary
25 judgment motion. About the third page.

1 THE COURT: Yes, sir. That's part of the
2 court's file. Let me stop you.

3 Mr. Smith, do you have copies of the motion?

4 MR. SMITH: Yes, sir.

5 THE COURT: Okay. Thank you.

6 Go ahead, Mr. Hannah.

7 MR. HANNAH: Okay. Like I said, if we need to,
8 Mr. Gibbs is here to testify if necessary. But anyway,
9 United Auto issued to Defendant Kimberly Sanford, the
10 named insured, a policy of automobile insurance. And
11 that effective date is January 3, 2013, to July 3, 2013.
12 It provided liability coverage for one vehicle which is a
13 '97 Crown Vic., and minimum limits of twenty-five fifty.
14 Okay? At the time she took the application out -- I
15 would direct your attention to the affidavit of Mr. Gibbs
16 -- she paid her first month's premium, which the receipt
17 for that is attached as exhibit 1 to Mr. Gibbs' -- the
18 critical factor is that she did not pay for the entire
19 policy. She was paying month-to-month.

20 United then sent a bill to Ms. Sanford on or about
21 January 9, 2013, you know, telling her that, you know,
22 you need to make the second month's payment. That letter
23 is attached as exhibit 2 to the affidavit. Okay?

24 The payment was not received. Thereafter, UAIC sent
25 Ms. Sanford a notice of cancellation dated January 22nd,

1 2013. That cancellation notice as well as the
2 certificate of mailing is attached as exhibit number 3 to
3 the affidavit. As of the due date, payment was not
4 received. Therefore, the policy was cancelled.

5 The accident -- which this is not in dispute --
6 occurred on February the 13th of 2013. And then the very
7 next day, Ms. Sanford went to her agent and reinstated
8 the policy back on February 14th, 2013, by making her
9 next payment. Okay? That is attached therein as exhibit
10 4 to the affidavit.

11 Under South Carolina law, notices and requirements
12 for the cancellation of a policy is governed by S.C. Code
13 § 38-77-120. I have got a copy of that to hand to you if
14 you would like.

15 THE COURT: Yes, I would appreciate that.

16 (WHEREUPON, document was handed up to the Court.)

17 THE COURT: Thank you.

18 MR. HANNAH: And I would direct your attention
19 back to the notice of cancellation which is exhibit, I
20 believe, number 3. Okay? And what § 38-77-120 requires
21 is that, "No cancellation or refusal to renew by the
22 insured of a policy of automobile insurance is effective
23 unless the insurance delivers or mails to the named
24 insured at the address shown in the policy written notice
25 of the cancellation or refusal to renew notice. This

1 notice, colon ..." And then it has several requirements
2 that must be -- you know, that the notice itself on the
3 face must meet. Okay? The address that it was mailed
4 to, you will note, is the same as the address on the --
5 under exhibit number 1 when she took out the policy in
6 the application in the initial mailing. And that may not
7 -- actually, I may need to hand that up too. I have --
8 give me a second. Two seconds. I think I went ahead and
9 included the -- I only have one copy of this, but I would
10 hand this up as exhibit -- I'm not sure what this -- this
11 is the actual application. I apologize.

12 THE COURT: Okay.

13 Did you get a copy of this, Mr. Smith?

14 MR. SMITH: I certainly did, sir.

15 MR. HANNAH: I produced it previously. And if
16 I need to have that -- I did not have that verified. Mr.
17 Gibbs is present if we need to verify that that is a true
18 and accurate copy of the -- of that document. The point
19 being the only reason that's even relevant is to show
20 that the address that the notice of mailing is the same
21 as was on the application, okay, which was the last known
22 address.

23 The form, number one, must be approved as the form.
24 This is the form that the director approves. Number two,
25 it must state that not less than fifteen days after the

1 date of mailing or delivering on which the cancellation
2 or refusal becomes effective. The exhibit does that.
3 Number three, must state the specific reason for the
4 cancellation. It does that. Nonpayment. Number four,
5 it must inform the insured of their right to request in
6 writing certain things. That is also straight-up on the
7 form. And in fact, it has a part that's kind of a boiler
8 plate that's required. If you look on the statute, it
9 has in bold, "Important Notice." And there's a paragraph
10 under there. If you'll note on the cancellation notice,
11 that's verbatim printed. And then number five, it must
12 make them aware of this thing called the buyer's guide
13 which is also at the bottom of the notice.

14 So the bottom line is that it's the position of
15 United Auto that based on the documents before the Court
16 that the notice of cancellation is proper, that it was
17 all sent out, you know, that the dates meet. And during
18 the time that this accident occurred, the policy had
19 lapsed. And it was not reinstated until after the
20 accident had occurred. And therefore, we would ask the
21 Court to declare that there is no coverage for this loss.

22 Thank you.

23 THE COURT: Okay.

24 Mr. Smith?

25 MR. SMITH: May it please the Court.

Robert Gibbs - Direct Examination by Mr. Smith

10

1 THE COURT: Yes, sir.

2 MR. SMITH: The Defense would call Mr. Gibbs.

3 ROBERT GIBBS,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. SMITH:

7 Q. Mr. Gibbs, do you remember giving your deposition?

8 A. Yes.

9 Q. And the deposition you gave, that was honest,
10 truthful and forthright?

11 A. Yes.

12 Q. Is there coverage in this particular case?

13 A. I do not believe so.

14 Q. You're not sure though?

15 A. I do not believe there is coverage in this case.

16 Q. Okay. And how long have you known about the rules
17 with regard to South Carolina insurance?

18 A. Since I became a licensed adjuster five or six years
19 ago.

20 Q. And when you testified in your deposition, do you
21 remember what you told me about an SR22 insurance?

22 A. I wouldn't be able to quote that verbatim back to
23 you.

24 Q. What is SR22?

25 A. That's escaping me right now.

Robert Gibbs - Direct Examination by Mr. Smith

11

1 Q. The argument that Counsel made on your behalf is
2 misguided, isn't it? When was this policy purchased?

3 A. I don't have the documents in front of me.

4 Q. Would January 3rd sound about right?

5 A. If that's the policy exception, that would be
6 correct.

7 Q. And she paid the first month; isn't that right?

8 A. She paid the first installment; that's correct.

9 Q. Seventy-nine dollars?

10 A. I believe that's the correct amount, yes.

11 Q. And so the next payment would be due February 3rd;
12 right?

13 A. I would need the documents in front of me to be able
14 to accurately tell you that.

15 MR. HANNAH: I hand up his affidavit.

16 THE COURT: Let's do this. Mr. Smith, do you
17 stipulate the payments that Mr. Hannah has put in as an
18 exhibit to his motion?

19 MR. SMITH: Yes, sir.

20 THE COURT: Okay. That will save us some time
21 on that.

22 Q. It was purchased on January 3rd which was forty-one
23 days prior to the accident. Does that sound about right?

24 A. That sounds about right, yes.

25 Q. Do you know of § 56-10-280?

Robert Gibbs - Direct Examination by Mr. Smith

12.

1 A. I don't have these things.

2 Q. Do you know of the rules and regulations with regard
3 to a policy within the first sixty days?

4 A. If you don't pay your premium, there's no coverage.

5 Q. Even if it's in the first sixty days?

6 A. (No verbal response)

7 MR. SMITH: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes, sir.

10 Q. Tell me what this document is.

11 A. These would be general underwriting guidelines for
12 United Automobile Insurance Company.

13 MR. SMITH: Could I have this marked?

14 (WHEREUPON, Defendant's Exhibit Number 1 was marked
15 for identification only.)

16 Q. So Defendant's Exhibit 1 is an underwriting policy
17 that your company put out?

18 A. It's not a policy. It's guidelines.

19 Q. What does that mean, guidelines?

20 A. It is something for the underwriters to refer to as
21 a general idea, but the policy is what the contract is
22 between United Auto and the insured.

23 Q. Well, your policies fall within the state statutes;
24 correct?

25 A. The state statutes. That's correct, yes.

Robert Gibbs - Direct Examination by Mr. Smith

13

1 Q. I'm going to ask you to review cancellation policy
2 in 4(B). If you can read that for me, please.

3 A. "Service bulletin 2006-04, the insured fails to pay
4 the premium for the policy, installment on the premium or
5 an installment payment under a premium service contract,
6 the contract or policy must remain in effect for at least
7 thirty days. This would need to be cancelled on the
8 thirty-first day after the installment payment is due to
9 be paid."

10 Q. So can you tell me again when the payment -- next
11 payment was due from Ms. Sanford?

12 A. Again, I would need that in front of me.

13 Q. It's understood that she made a seventy-nine-dollar
14 payment on January 3rd; right?

15 A. To the best of my recollection, that's correct. But
16 without the actual documents in front of me, these are
17 not things that I would have memorized.

18 Q. What is this right here?

19 A. That is the first generated bill after the first
20 installment payment was paid, which would have been the
21 policy in sections. So this was the bill afterwards.

22 Q. What does that mean, afterwards? After what?

23 A. After the first installment payment.

24 Q. How much did the six-month policy cost?

25 A. That is not on here.

Robert Gibbs - Direct Examination by Mr. Smith

14

1 Q. It doesn't say three hundred and thirteen dollars?

2 A. That would be the payoff, but that doesn't include
3 the first installment.

4 Q. All right. So if we add the seventy-nine dollars to
5 that, that would be three ninety-two for six months?

6 A. Yes.

7 Q. All right. And the first payment was seventy-nine
8 dollars. So that would be one sixth of three eighty-
9 nine? Or two ninety-two? Excuse me.

10 A. The seventy-nine dollars was for the first
11 installment.

12 Q. And what time period did that installment cover?

13 A. That would -- up until 2/3.

14 Q. So the next payment was due on 2/3?

15 A. The next payment would be due on the 18th and would
16 be cancelled on the 3rd, which would be fifteen days
17 after the due date.

18 Q. Well, if she paid seventy-nine dollars in the first
19 installment January 3rd, are you telling me that she was
20 required to pay another seventy-one dollars on the 18th?

21 A. On the 18th was the due date. And if she did not
22 pay that by the 3rd of that February, then it would be
23 cancelled on that date because the statute says that you
24 have to notify them within fifteen days of the
25 cancellation.

Robert Gibbs - Direct Examination by Mr. Smith

1 Q. So the next payment was due ---

2 A. It was due on January 18th.

3 Q. And so the provision that we just read in the
4 underwriting piece that I gave you, wouldn't that mean
5 that it would be in effect for the next thirty days?

6 A. No, it does not. If you read the document as a
7 whole, that's not what it says. And also, that is not --
8 the policy is what governs, not the underwriting guide.

9 Q. Okay. What about the statutes?

10 A. The statute was followed.

11 Q. Doesn't the statute state that within the first
12 sixty days, if there is nonpayment, there has to be a
13 thirty-day window before you can cancel it?

14 A. I have not seen that statute.

15 MR. SMITH: I beg your indulgence, Your Honor.

16 THE COURT: If you have a copy of that, let Mr.
17 Hannah ---

18 MR. HANNAH: The underwriting guidelines?

19 THE COURT: He's quoting section § 56-10-280.

20 I think the pertinent subsection is subsection A(4) that
21 Mr. Smith is questioning this client on -- or your client
22 on.

23 MR. HANNAH: I've got it. Which subsection?

24 THE COURT: Mr. Smith, if I'm misquoting you --
25 but I believe you're questioning his client on subsection

1 A(4) under that statute.

2 MR. SMITH: I am. That's ---

3 THE COURT: The thirty-day provision.

4 MR. HANNAH: Okay. Yes, I see it. Could we
5 simply suggest that it was in effect for thirty days?

6 THE COURT: Okay. I'm going to let you ---

7 MR. HANNAH: I understand.

8 THE COURT: --- question him about that in just
9 a minute. I just wanted to make sure we understand.

10 MR. HANNAH: Yeah, we're all on the same -- I
11 am aware of that. I just haven't pulled it out.

12 MR. SMITH: Your Honor, if I could have two
13 minutes, please.

14 THE COURT: We'll be in recess for a minute to
15 give Mr. Smith time to ...

16 And Mr. Hannah, your client said that he had not
17 seen that statute before? If you want to let him read
18 that statute ---

19 MR. HANNAH: Yes, I'll be happy to ---

20 THE COURT: --- while we're in recess.

21 MR. HANNAH: Could I hand him a copy of his
22 affidavit? That way he's got the other ---

23 THE COURT: Any objection to that, Mr. Smith?

24 MR. HANNAH: That way when you're asking did he
25 pay so much on such and such a date ---

Robert Gibbs - Direct Examination by Mr. Smith

17

1 THE COURT: I'm going to allow it because you
2 put his affidavit in and he's questioning him.

3 MR. HANNAH: That would be ---

4 THE COURT: I'm allowing him to question the
5 witness. Ordinarily we do this by affidavit, but ...

6 MR. HANNAH: Understood. That's why I was
7 telling you earlier that whether we just do it as a
8 motion or do the trial right now, either way I'm good.

9 (WHEREUPON, court stood at ease.)

10 MR. SMITH: I'm ready, Your Honor. I'm truly
11 sorry. I had the file broke down this weekend working on
12 three for next week.

13 Q. The -- do you recall ...

14 MR. SMITH: May I approach the witness, Your
15 Honor?

16 THE COURT: Yes, sir.

17 Q. We had a response to your previous declaratory
18 judgment action; right? I mean, we responded to that?

19 A. I believe so.

20 Q. Are you aware that when we sought the insurance
21 coverage that the agent said that there was coverage?

22 A. I cannot -- I was not there. I never heard her say
23 that.

24 Q. Are you aware that when talking to the carrier, the
25 carrier said there was coverage?

Robert Gibbs - Direct Examination by Mr. Smith

18

1 A. Who stated that there was coverage?

2 Q. Someone at UAIC.

3 A. You'd have to tell me who that was. This states
4 that there was ---

5 MR. SMITH: Could I have this marked as
6 Defendant's 2, please? And it is an affidavit.

7 (WHEREUPON, Defendant's Exhibit Number 2 was marked
8 for identification only.)

9 Q. Ms. Sanford failed to pay an installment; right?

10 A. She failed to pay her second installment. That's
11 correct.

12 Q. And according to you, that was January 18th it was
13 due? It was due January 18th?

14 A. It was due on January 18th. That's correct.

15 Q. Could you do me a favor and interpret § 56-10-280

16 A(4), please?

17 MR. HANNAH: Your Honor, I'm going to object to
18 him asking the witness for a legal conclusion as to what
19 the statute means.

20 THE COURT: I sustain that objection.

21 Q. What is bad faith to you?

22 A. Excuse me?

23 Q. Bad faith. What is it to you?

24 MR. HANNAH: I'm going to object to this on the
25 grounds of relevance.

Robert Gibbs - Direct Examination by Mr. Smith

19

1 THE COURT: What's the relevance of this, Mr.
2 Smith?

3 MR. SMITH: It deals with the -- their
4 position.

5 THE COURT: Okay. Well, this isn't a bad faith
6 ---

7 MR. SMITH: I understand that, sir.

8 THE COURT: --- action. All right. I will let
9 you ask him as pertaining to his belief whether there was
10 coverage. That's the issue before the Court today. This
11 is not a bad faith litigation.

12 MR. SMITH: Yes, sir. I was using that for
13 impeachment purposes.

14 Q. The installment was due January 18th. And from that
15 point when it was due and she failed to pay, according to
16 this statute, she had -- there was thirty more days of
17 coverage; isn't that right?

18 A. I do not believe so.

19 Q. Isn't ---

20 THE COURT: That's the ultimate issue in the
21 case.

22 MR. HANNAH: Exactly. That's the same exact
23 ---

24 Q. Defendant's Exhibit 1 which you saw earlier had the
25 same statement, didn't it? Your own underwriting

Robert Gibbs - Direct Examination by Mr. Smith

20

- 1 policies; is that right?
- 2 A. Those are underwriting guidelines; they are not part
3 of policy.
- 4 Q. So you don't adhere to § 56-10-280?
- 5 A. We have adhered to § 56-10-280.
- 6 Q. How?
- 7 A. By sending the proper cancellation notice.
- 8 Q. That's not § 56-10-280, is it? Isn't that § 38-77-
9 something or other?
- 10 A. Well, it states here, "However, a contract or policy
11 may be cancelled in the first sixty days only under one
12 or more of the following circumstances." And I believe
13 that's what we followed.
- 14 Q. What's your reasoning you're utilizing?
- 15 A. If the insured fails to pay, number four.
- 16 Q. Could you read the last sentence in number four,
17 please?
- 18 A. "The contract or policy of insurance must remain in
19 effect for at least thirty days." Which it did here. It
20 remained in effect for exactly thirty days due to the
21 first installment being paid.
- 22 Q. Insured fails to pay when installment is due, when
23 that occurs, there's thirty more days of coverage. In
24 fact, your underwriting thing says on the thirty-first
25 day, you can cut them off, isn't that right?

Robert Gibbs - Direct Examination by Mr. Smith

21

- 1 A. And that's what we did.
- 2 Q. How many days was the policy in effect?
- 3 A. I believe it was in effect for thirty days.
- 4 Q. From when to when?
- 5 A. It would have been from January 3rd, which was
- 6 inception, to February 3rd. The first thirty days,
- 7 that's what they paid for.
- 8 Q. And February 3rd would have been the next
- 9 installment; right?
- 10 A. The next -- no. The next installment was due on the
- 11 18th.
- 12 Q. Okay.
- 13 A. And if they didn't pay within those fifteen days,
- 14 the thirty days they actually paid for, then it would be
- 15 cancelled on the 3rd.
- 16 Q. All right. According to -- taking your statement as
- 17 the truth -- all right? -- thirty days from January 18th
- 18 is February 18th. When was the accident? February 13th?
- 19 A. February 12, 13, somewhere in there.
- 20 Q. So clearly there was coverage; right?
- 21 A. I disagree.
- 22 MR. HANNAH: Objection.
- 23 THE COURT: Again, it calls for a legal
- 24 conclusion. I sustain the objection.
- 25 Q. Upon reading this section, please tell me why you

Robert Gibbs - Direct Examination by Mr. Smith

22

1 believe that there was no coverage.

2 MR. HANNAH: Asked and answered. Objection.

3 THE COURT: I sustain the objection. I think
4 he stated his position.

5 Mr. Smith, I don't want to cut you short, but I -- I
6 think we've narrowed down what the issue is in the case.
7 And if you have other matters you want to get into with
8 him, but this is -- as I understand it, the policy was
9 issued on January 3rd. She had a payment due on January
10 18th. Missed that payment. They sent her a cancellation
11 notice, the fifteen-day notice, after that payment was
12 missed telling her that it possibly was going to be
13 cancelled February 3rd. Now, do you agree with those
14 facts?

15 MR. SMITH: I agree that's what they did.

16 THE COURT: Okay. And then the legal issue is
17 whether under the statute the policy has to remain in
18 effect an additional thirty days from the date of the
19 default in that first sixty-day period. Is that your
20 argument?

21 MR. SMITH: Yes, sir.

22 THE COURT: All right. I understand your
23 argument there.

24 Mr. Hannah, your argument is since the policy was in
25 effect from January 3rd to February 3rd that that

1 satisfies the statute. Is that correct?

2 MR. HANNAH: Yes. My position is that he's
3 misinterpreting that subsection.

4 THE COURT: And this boils down to -- and I
5 understand you're interpreting the statute to say that
6 it's thirty days from the date of the default. So you
7 believe the policy should have been in effect until
8 February the 18th. Is that correct?

9 MR. SMITH: At least, yes, sir.

10 THE COURT: Okay. I understand your position,
11 Mr. Smith. And I think I understand the representative
12 and Mr. Hannah's position. All right. This is what I'm
13 going to do because I think the facts here are not in
14 dispute as to what happened. And you've got people who
15 may have a claim on liability insurance that we need to
16 know if there's coverage.

17 Now, based on that -- let me back up. Are there any
18 other legal issues other than the length of coverage? Is
19 that -- do you have any other arguments, Mr. Smith, as to
20 why there should be coverage on this policy? Or is that
21 ---

22 MR. SMITH: That's my ...

23 THE COURT: Okay. I understand. All right.
24 This is what I'm going to do. I'm going to take this
25 under advisement, and I'm going to give each party ten

1 days in order to submit a brief to me with some
2 authority. And again, I want you to ...

3 Mr. Smith, I want you to hone in on that statute.
4 And if you can get me some authority showing me your
5 position.

6 Mr. Hannah, you do the same.

7 Or I'm going to go with this is under the rule --
8 and this is what I'm struggling with, gentlemen. They
9 repeat this in case law over and over that the cardinal
10 rule is to ascertain and effectuate the intent of the
11 Legislature. If the language of the statute is plain and
12 unambiguous, then it doesn't have any room for
13 interpretation. So that's kind of what I want y'all to
14 focus on in your brief.

15 Give me some authority as to, Mr. Smith, A, why this
16 statute, in your opinion, is ambiguous and how it should
17 be interpreted.

18 And Mr. Hannah the opposite. You know, your
19 position.

20 So y'all submit that. I'll take it under advisement
21 and do that within ten days and we'll -- that will give
22 y'all an opportunity to formulate your arguments. But I
23 think -- let me back up. Does either attorney have any
24 other facts that you would like to put into the record?

25 MR. HANNAH: None from me, Your Honor.

1 THE COURT: Anything else, Mr. Smith?

2 MR. SMITH: May it please the Court. There was
3 a damages hearing already. And I'm sure that's
4 irrelevant based on the fact that we're just trying to
5 determine whether they have to pay or not.

6 THE COURT: Yes, sir. The focus of this is
7 going to be Mr. Hannah's motion for summary judgment.
8 And his motion for summary judgment is based on his
9 argument that there is no coverage. And I understand
10 you're opposed to that, and that's why I want to give
11 both of you plenty of time to formulate your argument and
12 get me some authority.

13 MR. HANNAH: Just for clarification, Your
14 Honor, to avoid -- even though technically there wasn't a
15 cross motion for summary judgment, since we're here for
16 the non-jury trial, can we agree that you're going to
17 rule definitively one way or the other? In other words,
18 you're not going to rule there was a question of fact
19 we've got to come back and have another trial. Will you
20 rule definitively one way or the other?

21 THE COURT: Well, if I deny your motion for
22 summary judgment, that's in effect going to be a ruling
23 that there is coverage.

24 MR. HANNAH: Exactly. That's all I want.

25 THE COURT: Do you understand that, Mr. Smith?

1 And that doesn't affect the issues of damages or how --
2 we're just going to decide the issue of whether there's
3 coverage.

4 MR. SMITH: Yes, sir.

5 MR. HANNAH: Right. I just want to make sure
6 procedurally -- because of how we did it, it was a little
7 -- I agree to allow this to count as his cross motion.

8 THE COURT: And I'm trying to frame this
9 because, Mr. Smith, I understand you were prepared that
10 there was another hearing set on this, and you sort of
11 got thrown into this at the last minute. So I let you
12 call a witness rather than an affidavit. But I'm trying
13 to give you time to get your authority together.

14 MR. SMITH: And I truly appreciate that, sir.

15 THE COURT: Okay. All right. Anything further
16 from either side?

17 MR. HANNAH: No, sir, Your Honor. Thank you
18 very much.

19 MR. SMITH: Thank you.

20 THE COURT: Thank you.

21 MR. SMITH: Thank you.

22 (WHEREUPON, the hearing ended at approximately 3:12
23 p.m.)

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

Appellants' Notice of Appeal, April 17, 2015

FORM 1
NOTICE OF APPEAL FROM A JUDGMENT RENDERED BY
THE COURT OF COMMON PLEAS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2014-CP-04-0850

Willie Freeman, Michael Craft,
Kimberly Sanford & Antonio Craft,

Appellants,

v.

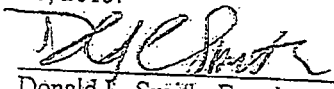
United Auto Insurance Company,

Respondent.

NOTICE OF APPEAL

Willie Freeman, Michael Craft, Kimberly Sanford and Antonio Craft appeal the
Summary Judgment of the Honorable R. Scott Sprouse dated March 6, 2015.

April 17, 2015


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Appellants' Notice of Appeal, April 17, 2015

FORM 1
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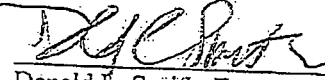
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Initial Brief of Appellants, July 6, 2015

FORM 13
BRIEF OF APPELLANTS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2014-CP-04-0850

Willie Freeman, Michael Craft,
Kimberly Sanford & Antonio Craft,

Appellants,

v.

United Auto Insurance Company,

Respondent.

BRIEF OF APPELLANTS

July 6, 2015

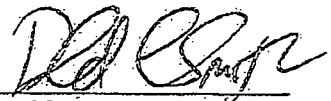

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER S.C. CODE § 38-77-120 PERMITS AN INSURANCE COMPANY TO ISSUE A NOTICE OF CANCELLATION FOR NONPAYMENT OF PREMIUM BEFORE A PAYMENT BECOMES DELINQUENT.
- II. WHETHER RESPONDENT PROPERLY CANCELLED THE POLICY ON FEBRUARY 3, 2013 UNDER § 56-10-280.

STATEMENT OF THE CASE

The action that led to this appeal, civil action number 2013-CP-04-00771, was filed on April 4, 2013. Appellants brought suit against Antonio Craft and Kimberly Sanford for injuries suffered in an automobile accident that occurred on February 13, 2013. Neither defendant filed responsive pleadings. An Order of Default was entered, and Michael Craft and William Freeman were awarded \$64,128.52 and \$24,295.50 in damages, respectively. Respondent, the alleged insurer of the subject automobile, owned by Sanford, filed a Summons and Complaint on April 29, 2014, in which it sought a declaratory judgment that Sanford's automobile was not insured on the date of the accident.

On January 3, 2013, Sanford paid her first month's premium on a new automobile insurance policy with UAIC. The policy covered the automobile that was involved in the accident, a 1997 Ford Crown Victoria, with bodily injury coverage of \$25,000/\$50,000. On January 9, 2013, less than a week after Sanford paid her first month's premium, Respondent sent her a bill for the second month's premium. On January 22, 2013, still in the first month of coverage, Respondent sent Sanford a cancellation notice. Respondent canceled the policy on February 3, 2013, the same day that the second month's premium was due.

Respondent filed a Motion for Summary Judgment on December 4, 2014, based on its purported compliance with S.C. Code Ann § 38-77-120. The Honorable R. Scott Sprouse heard

the Motion on February 9, 2015. Judge Sprouse executed an Order Granting Motion for Summary Judgment on March 6, 2015. Specifically, Judge Sprouse found that Respondent properly cancelled the subject insurance policy on February 3, 2013, and thus did not cover the subject automobile on the date of the accident. After receiving the Order, Appellants timely served their Notice of Appeal on April 17, 2015.

ARGUMENT

I. WHETHER S.C. CODE ANN. § 38-77-120 PERMITS AN INSURANCE COMPANY TO ISSUE A NOTICE OF CANCELLATION FOR NONPAYMENT OF PREMIUM BEFORE A PAYMENT BECOMES DELINQUENT.

South Carolina courts have not yet ruled on the issue of whether a cancellation notice for nonpayment may be properly sent to an insured prior to a missed payment. S.C. Code Ann. § 38-77-120 concerns the requirements for notice of cancellation. The section provides:

- (a) No cancellation or refusal to renew by an insurer of a policy of automobile insurance is effective unless the insurer delivers or mails to the named insured at the address shown in the policy a written notice of the cancellation or refusal to renew. This notice:
 - (1) must be approved as to form by the director or his designee before use;
 - (2) must state the date not less than fifteen days after the date of the mailing or delivering on which the cancellation or refusal to renew becomes effective;

S.C. Code Ann. § 38-77-120(a)(1)-(2).

Respondent essentially argued, and the trial court apparently agreed, that § 38-77-120 affords insurers an anticipatory breach clause. While South Carolina courts have not ruled on this issue, other jurisdictions have. In Vietzen v. Victoria Auto. Ins. Co., the Court of Appeals of Ohio reversed the judgment of the trial court granting summary judgment in favor of the insurance company. Vietzen v. Victoria Auto Ins. Co., 9 N.E.3d 500, 506. In that case, Vietzen was injured in an automobile accident, involving a vehicle owned by Panlette Henry and allegedly insured by Victoria Automobile Insurance Company (the insurance company), on

September 6, 2009. *Id.* at 501. The insurance company had mailed Ms. Henry a billing statement on August 24, 2009 indicating a payment due on September 5, 2009, and attached to it a "Cancellation Notice" that said "If the Minimum Due is not received by or on the Payment Due date, your policy cancels on the date and time shown above for nonpayment of premium." *Id.* at 503. Ms. Henry failed to make the payment by September 5. *Id.* The issue to be decided by the Ohio courts was "whether the cancellation notice sent to Ms. Henry by [the insurance company] complied with the requirements of R.C. 3937.32." In pertinent part, the statute provides:

No cancellation of an automobile insurance policy is effective, unless it is pursuant to written notice to the insured of cancellation. Such notice shall contain:

...
(E) Where cancellation is for nonpayment of premium at least ten days notice from the date of mailing of cancellation accompanied by the reason therefor shall be given;

Ohio Rev. Code Ann. § 3937.32(E).

The insurance company argued that the Cancellation Notice had complied with § 3937.32(E) because the cancellation date identified in the Notice was at least ten days subsequent to the date of the Notice. In rejecting the argument, the court held that the statute was ambiguous, and looked at other statutes to determine the legislative intent. *Vietzen*, 9 N.E.3d at 504. The court considered Ohio Rev. Code Ann. § 3937.31, which sets forth the reasons for which an insurance policy may be canceled by the insurer, including the nonpayment of premium. *Id.* at 505. The Ohio statute defines nonpayment of premium as "[the] failure of the named insured to discharge when due any of the named insured's obligations in connection with the payment of premiums on a policy." Ohio Rev. Code Ann. § 3937.31(A)(3). The court reasoned that because anticipatory breach is not a reason for cancellation enumerated in the

statute, the insurance company could not cancel the policy based on its belief that Ms. Henry would not pay her premium when it was due. See Vietzen, 9 N.E.3d at 505.

In addition, the court pointed to public policy interests as evidence that an insurance company must wait until payment is delinquent to issue a cancellation notice. See id. The court referenced a case¹ in which the Ohio Supreme Court noted that public policy of Ohio is to ensure that motorists maintain coverage, and held that requiring notification of cancellation and other requirements within the statutory scheme is intended to protect insureds from lapses in coverage, and the public from uninsured motorists. See id.

The Court of Appeals of Ohio reasoned that Ohio Rev. Code Ann. § 3937.32(E) was intended to “include a grace period of ten days during which an insured may cure her failure to pay her premium by its due date before the insurance company may cancel her automobile insurance policy.” See id. The court further reasoned that “an insurance company must wait until the insured has actually failed to pay her premium when due before mailing notice of cancellation of the policy which will take effect no fewer than ten days after the date of mailing of the notice.” Id. Therefore, because the Ohio legislature intended a ten day grace period, and public policy was to ensure that motorists maintain coverage, the court held that the notice of cancellation mailed August 24, 2009 was “ineffective to give Ms. Henry the requisite notice of cancellation pursuant to R.C. 3937.32.” See id. at 506.

S.C. Code Ann. § 38-77-120(a)(2) is nearly identical to Ohio Rev. Code Ann. § 3937.32(E). Both require that notice be given in advance of the cancellation of an insurance policy. In addition, the South Carolina legislature seems to have considered many of the public policy reasons that were considered by the Ohio legislature. One of the self-declared purposes of

¹ See Wolfe v. Wolfe, 725 N.E.2d 261 (Ohio 2000).

Title 38, Chapter 77 (Automobile Insurance) of the South Carolina Code is to provide “that every automobile insurance risk which is insurable . . . is entitled to automobile insurance.” S.C. Code Ann. § 38-77-10(1). The chapter is to be liberally construed in order to achieve that purpose. S.C. Code Ann. § 38-77-20. The South Carolina legislature undoubtedly intended for the public to be free from the dangers of uninsured motorists. Therefore, based on the plain language of the relevant statutes, the legislature’s intent, and public policy considerations, this Court should hold that Respondent could not have issued a cancellation notice until Kimberly Sanford’s payment became delinquent, and thus provided insurance coverage on her vehicle on February 13, 2013.

II. WHETHER RESPONDENT PROPERLY CANCELLED THE POLICY ON FEBRUARY 3, 2013 UNDER § 56-10-280.

Section 56-10-280 refers specifically to the cancellation of a new insurance policy within sixty days of issuance. In pertinent part, the section provides:

(A) [A] contract of policy may be canceled within the first sixty days only under one or more of the following circumstances:

(4) the insured fails to pay when due the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of insurance must remain in effect for at least thirty days.

S.C. Code Ann. § 56-10-280 (emphasis added).

Appellants contend that this section is ambiguous. Appellants interpret the section as requiring that an insurance policy remain effective for at least thirty days *after* a missed payment; the trial court found that the section merely prohibits the cancellation of a new insurance policy until the thirty-first day.

Assuming, *arguendo*, the Court holds that § 56-10-280 is unambiguous and merely prohibits the cancellation of a new policy until the thirty-first day, the language of the statute still supports coverage of Kimberly Sanford’s automobile at least until

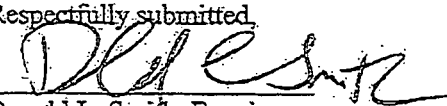
February 18, 2013. According to § 56-10-280, an insurer can only cancel a new policy within sixty days if the insured fails to pay, when due, the premium for the policy. After a missed payment, the notification requirements of § 38-77-120 would become operative. Respondent has stated, and the trial court found, that the second installment was due February 3, 2013. Because of the required fifteen-day notice period, the policy could not have been canceled until February 18, 2013. Therefore, this Court should hold Respondent improperly canceled Kimberly Sanford's insurance policy on February 3, 2013, and that the coverage was effective until February 18, 2013.

CONCLUSION

For the reasons stated above, Appellants pray this Court reverse the trial court's judgment granting Respondent summary judgment. Specifically, Appellants pray the Court hold that Respondent could not have mailed Kimberly Sanford a notice of cancellation until her payment became delinquent, cancellation of the policy on February 3, 2013 was improper, and that Kimberly Sanford's insurance policy was effective on February 13, 2013.

July 13, 2015

Respectfully submitted,



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Initial Brief of Respondent, November 23, 2015

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2014-CP-04-850

Willie Freeman, Michael Craft, Kimberly L. Sanford and
Antonio Craft,

Appellants,

vs.

United Auto Insurance Company,

Respondent,

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. The Circuit Court Was Correct In Granting Respondent's Motion for Summary Judgment
 - A. The Circuit Court's Decision Regarding Respondent's Compliance with §38-77-120 Was Not Controlled By An Error Of Law And Is Supported By The Facts
 - B. The Circuit Court's Decision Regarding Respondent's Compliance with §56-10-280 Was Not Controlled By An Error Of Law And Is Supported By The Facts

STATEMENT OF THE CASE

The Respondent, United Auto Insurance Company, (hereinafter "United"), commenced this action against Appellants, Willie Freeman and Michael Craft, (hereinafter "Appellants") and Defendants, Kimberly L. Sanford¹ and Antonio Craft², in the Anderson County Circuit Court on April 29, 2014. *Complaint (April 29, 2014)*. The Complaint sought declaratory judgment that an automobile policy issued by United did not provide liability insurance coverage to any person with a claim or potential claim arising out of a February 13, 2013 accident; and that, United owed no duty of defense and/or indemnity to Antonio Craft and Sanford. Appellants filed an Answer on May 20, 2014. *Answer on Behalf of Defendant (May 20, 2014)*. United filed a motion for summary judgment on December 4, 2014, alleging that United had complied with the applicable statutory law in cancelling the automobile insurance policy on February 3, 2013 and therefore that the policy was not in effect on February 13, 2013. *United's Motion for Summary Judgment (December 4, 2014)*.

¹ Please note that Kimberly L. Sanford never appeared in the underlying litigation or United's declaratory judgment action, and, upon information and belief, is not a party to this appeal.

² Please note that Antonio Craft never appeared in the underlying litigation or United's declaratory judgment action, and, upon information and belief, is not a party to this appeal.

A hearing on United's motion was held before the Honorable R. Scott Sprouse, Circuit Court Judge, on February 9, 2015, in Anderson. After taking the matter under advisement, Judge Sprouse issued an Order finding for United that the automobile insurance policy was properly cancelled on February 3, 2013 and therefore not in force on February 13, 2013. *Judgment and Final Order (March 6, 2015)*. Thereafter, Appellants filed a Notice of Appeal to the Circuit Court. *Notice of Civil Appeal (April 17, 2015)*. This appeal followed.

STATEMENT OF FACTS

UAIC issued policy # SCU 000693514 ("the Policy") to Kimberly L. Sanford as named insured a policy of automobile liability insurance with effective dates of January 3, 2013 to July 3, 2013, which provided bodily injury liability coverage for one (1) vehicle, a 1997 Ford Crown Victoria, in the amount of \$25,000/\$50,000. Kimberly L. Sanford paid her first month's premium on January 3, 2013 at the time the Policy was issued. UAIC sent a bill to Defendant Kimberly L. Sanford for the second month's premium on January 9, 2013. UAIC then sent a cancellation notice to Kimberly L. Sanford on January 22, 2013, stating that the policy would be cancelled if the premium was not received on or before February 3, 2013. Kimberly L. Sanford failed to pay the premium for the second month before the due date of February 3, 2013.

On February 13, 2013 Antonio Craft was operating the aforementioned 1997 Ford Crown Victoria on Tribble Street in the Anderson, South Carolina when his vehicle allegedly struck Appellants William F. Freeman and Michael Craft, who were pedestrians.

Kimberly L. Sanford made an additional payment to United on February 14, 2013 at 11:21 AM.

ARGUMENT

The determination of coverage under an insurance policy is an action at law. Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct.App.2004). On appeal, The Court is limited to determining whether the trial court based its ruling on an error of law or on a factual conclusion without evidentiary support. S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E Underwriters Risk Retention Group, 347 S.C. 333, 338, 554 S.E.2d 870, 873 (Ct.App.2001).

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996); Shealy v. Doe, 370 S.C. 194, 199, 634 S.E.2d 45, 48 (Ct. App. 2006). The first question of statutory interpretation is whether the statute's meaning is clear on its face. Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002); Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 622, 622 S.E.2d 733, 738 (Ct. App. 2005) (cert. granted January 31, 2007).

When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and this Court has no right to impose another meaning. Catawba Indian Tribe of South Carolina v. State, 372 S.C. 519 642 S.E.2d 751 (2007); see Vaughn v. Bernhardt, 345 S.C. 196, 198, 547 S.E.2d 869, 870 (2001). "[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Mun. Ass'n of S.C. v. AT & T Communications of S. States, Inc.

361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004); *see also Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994) ("In determining the meaning of a statute, the terms used therein must be taken in their ordinary and popular meaning, nothing to the contrary appearing.").

The legislature's intent should be ascertained primarily from the plain language of the statute. *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230, 612 S.E.2d 719, 723 (Ct. App. 2005) (citing *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 506 (Ct. App. 2004); *Stephen v. Avins Const. Co.*, 324 S.C. 334, 339, 478 S.E.2d 74, 77 (Ct. App. 1996)). What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. *Jones*, 364 S.C. at 230, 612 S.E.2d at 723 (citing *Bayle v. South Carolina Dept. of Transp.*, 344 S.C. 115, 122, 542 S.E.2d 736, 740 (Ct. App. 2001)). The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Jones*, 364 S.C. at 230, 612 S.E.2d at 723 (citing *Hitachi Data Sys. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)). The court's primary function in interpreting a statute is to ascertain the intent of the General Assembly. *Smith v. South Carolina Ins. Co.*, 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 2002). "Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." *South Carolina Farm Bureau Mut. Ins. Co. v. Mamford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989).

If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. *State v. Morgan*, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct. App. 2002). "Statutes, as a

whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers." Collins Music Co., Inc. v. IGT, 365 S.C. 544, 550, 619 S.E.2d 1, 3 (Ct. App. 2005) (quoting TNS Mills, Inc. v. South Carolina Dept of Revenue, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998)). Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. Jones, 364 S.C. at 230, 612 S.E.2d at 723 (citing Unison Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000); Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)). A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law. See Hinton v. South Carolina Dept. of Prob., Parole and Pardon Servs., 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004); Doe v. Roe, 353 S.C. 576, 580, 578 S.E.2d 733, 735-36 (Ct. App. 2003).

1. **The Circuit Court Was Correct In Finding That United Complied with §38-77-120.**

In §38-77-120, the legislature set out the five requirements by which an insurer for automobile policies may issue a notice of cancellation. The Circuit Court Judge found that United's Notice of Cancellation, dated January 22, 2013, complied with these five requirements. On appeal, Appellants challenge only the timeliness requirement of §38-77-120(a)(2). This requirement states that a notice of cancellation must be mailed no less than 15 days in advance of the date of cancellation. Appellants torture the plain language of §38-77-120 to give meaning to the statute not intended by the legislature.

Appellants aim to show that §38-77-120 was intended to require that insurers can't issue a notice of cancellation for 15 days *after* a premium is due, in effect requiring that all automobile insurers in the state provide 15 days of free coverage to every insured who fails to pay premiums. Appellants stretch for this interpretation with the citation to a single Ohio case based on Ohio law and Ohio statutes. The Ohio Court of Appeals began their analysis of this particular case with the finding that the notice requirement in the corresponding Ohio statute was ambiguous. Vietzen v. Victoria Auto. Ins. Co., 2014-Ohio-749, ¶ 16, 9 N.E.3d 500, 504.

No South Carolina court has ever found §38-77-120 to be ambiguous. In fact, there are dozens of South Carolina Court of Appeals and Supreme Court cases in which §38-77-120 was referenced, interpreted and cited without any indication of ambiguity.³ It would be folly to, after years of successful jurisprudence, to declare that which has been the clear and unambiguous terms of the statute to have suddenly become murky and ambiguous.

Moreover, the Court of Appeals has addressed this very issue in the matter of Stringer v. State Farm Mut. Auto. Ins. Co., 386 S.C. 188, 192, 687 S.E.2d 58, 60 (Ct. App. 2009). In Stringer, the insured had purchased an automobile policy from an insurer. The insurer sent a notice of cancellation to the insured indicating that a premium payment was due 15 days from the date of the notice and that if the insured did not pay his premium by that date, the insurance policy would be cancelled on said date. The insured

³ See for example Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 229 612 S.E.2d 719, 726 (Ct.App.2005); Hiett v. Guaranty Nat'l Ins. Co., 329 S.C. 522, 531, 496 S.E.2d 417, 426 (Ct.App.1997); South Carolina Farm Bureau Mut. Ins. Co. v. Courtney, 342 S.C. 271, 536 S.E.2d 689 (Ct.App.2000); Shealy v. Doe, 370 S.C. 194, 199, 634 S.E.2d 45, 48 (Ct. App. 2006); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct.App.1999); Auto Now Acceptance Corp. v. Catawba Ins. Co., 351 S.C. 377, 570 S.E.2d 163 (2002)

failed to pay his premium, his policy was cancelled and he was involved in an automobile accident shortly thereafter. While the Court focused its analysis on the issue of contract interpretation, it did not balk at the concept that an insurance policy for automobile coverage could be cancelled with a notice issued before the due date / cancellation date of the premium and the cancellation was upheld.

The facts of Stringer closely mirror those of the instant case. Both insured's were provided notice of cancellation for failure to pay premiums 15 day in advance of the ultimate due date / cancellation date. Both insureds failed to pay premiums by that date and were both in accidents shortly thereafter. As in Stringer, this Court should find that failure to pay premiums under notice of cancellation, in compliance with the 15 day notice requirement of §38-77-120, is an effective cancellation of the subject insurance policy.

2. The Circuit Court Was Correct In Finding That United Complied with §56-10-280.

Appellants once more attempt to torture the plain meaning of a statute in their argument that §56-10-280 requires an insurer not cancel a policy for at least thirty days after a missed payment if within the first sixty days of the policy. §56-10-280(A)(4) provides that a policy of insurance may be canceled within the first sixty days when the insured fails to pay the premium when due and that the policy must remain in effect for at least thirty days. Appellants contend that the last term is ambiguous and should be interpreted to require that the policy stay in force for another 30 days.

The plain language of the statute allows that during the first 60 days of a new insurance policy, an insurer may cancel a policy for the failure of an insured to pay

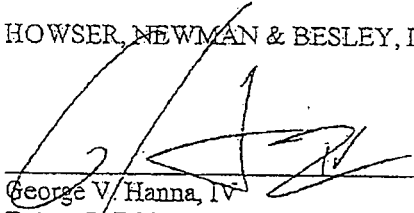
premiums. The statute limits this right to cancel for failure to pay premiums by requiring that the policy stay in force for at least 30 days. The Legislature could have added the term "an additional" 30 days if that was their intent. That the Legislature simply stated, "the contract or policy of insurance must remain in effect for at least thirty days" indicates that the policy need only be in force *in total* 30 days. The term "at least" indicates that the intent of the Legislature was to ensure that every policy would have to be in force for the first 30 days despite issues with payments of premiums. This goal serves the public policy, which Appellants reference, in favor of insurance coverage for automobile insurance risks. There is no need to torture the language of the statute to effectuate an additional 30 days of coverage after an insured has failed to make a premium payment.

CONCLUSION

The Circuit Court properly found that United had complied with all applicable statutes in the cancellation of the relevant insurance policy. The Circuit Court, therefore, properly found that there was no policy which could provide coverage to Appellants. Appellants have been unable to show that §38-77-120 or §56-10-280 provided an additional 15 days or 30 days, respectively, of free coverage to insureds that failed to pay their premiums when due. Instead, §38-77-120 simply requires that an insurer issue a notice of cancellation 15 days *in advance* of the date of cancellation. Additionally, §56-10-280 simply requires that during the first 60 days of a policy, an insurer may cancel the policy for nonpayment of premiums after the first 30 days. United has clearly complied with the plain terms of these unambiguous statutes.

Therefore, for the foregoing reasons Respondent respectfully requests that the Court uphold the Circuit Court's grant of Summary Judgment in favor of United and dismiss this Appeal. In addition, the Respondent would ask the Court to affirm for any other reason appearing in the record as provided by Rule 220(c).

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November 21, 2015

Certification

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2015-000811

Willie Freeman, Michael Craft,
Kimberly Sanford, and Antonio Craft,

Appellants,

v.

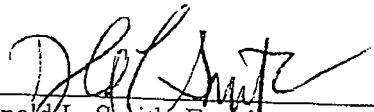
United Auto Insurance Company,

Respondent.

CERTIFICATION

I HEREBY CERTIFY that the Record on Appeal in the above-captioned matter contains
all materials proposed to be included by the parties, and not any other material.

January 22, 2016


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APPENDIX "E"

FORM 13
FINAL BRIEF OF APPELLANTS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2015-000811

United Auto Insurance Company,

Respondent.

v.

Willie Freeman, Michael Craft,
Kimberly Sanford and Antonio Craft,

Appellants.

FINAL BRIEF OF APPELLANTS

January 22, 2016


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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER S.C. CODE § 38-77-120 PERMITS AN INSURANCE COMPANY TO ISSUE A NOTICE OF CANCELLATION FOR NONPAYMENT OF PREMIUM BEFORE A PAYMENT BECOMES DELINQUENT.
- II. WHETHER RESPONDENT PROPERLY CANCELLED THE POLICY ON FEBRUARY 3, 2013 UNDER § 56-10-280.

STATEMENT OF THE CASE

The action that led to this appeal, civil action number 2013-CP-04-00771, was filed on April 4, 2013. Appellants brought suit against Antonio Craft and Kimberly Sanford for injuries suffered in an automobile accident that occurred on February 13, 2013. Neither defendant filed responsive pleadings. An Order of Default was entered, and Michael Craft and William Freeman were awarded \$64,128.52 and \$24,295.50 in damages, respectively. (R. pp. 41-42). Respondent, the alleged insurer of the subject automobile, owned by Sanford, filed a Summons and Complaint on April 29, 2014, in which it sought a declaratory judgment that Sanford's automobile was not insured on the date of the accident. (R. pp. 8-10).

On January 3, 2013, Sanford paid her first month's premium on a new automobile insurance policy with UAIC. (R. p. 54, lines 1-8). The policy covered the automobile that was involved in the accident, a 1997 Ford Crown Victoria, with bodily injury coverage of \$25,000/\$50,000. (R. p. 49, lines 10-13). On January 9, 2013, less than a week after Sanford paid her first month's premium, Respondent sent her a bill for the second month's premium. (R. p. 49, lines 20-22). On January 22, 2013, still in the first month of coverage, Respondent sent Sanford a cancellation notice. (R. p. 49, lines 24-25). Respondent canceled the policy on February 3, 2013, the same day that the second month's premium was due. (R. p. 57, lines 12-13).

Respondent filed a Motion for Summary Judgment on December 4, 2014, based on its purported compliance with S.C. Code Ann. § 38-77-120. (R. p. 72). The Honorable R. Scott Sprouse heard the Motion on February 2, 2015. (R. pp. 44-71). Judge Sprouse executed an Order Granting Motion for Summary Judgment on March 6, 2015. (R. p. 2). Specifically, Judge Sprouse found that Respondent properly cancelled the subject insurance policy on February 3, 2013, and thus did not cover the subject automobile on the date of the accident. (R. pp. 3-6). After receiving the Order, Appellants timely served their Notice of Appeal on April 17, 2015. (R. p. 101).

ARGUMENT

I. WHETHER S.C. CODE ANN. § 38-77-120 PERMITS AN INSURANCE COMPANY TO ISSUE A NOTICE OF CANCELLATION FOR NONPAYMENT OF PREMIUM BEFORE A PAYMENT BECOMES DELINQUENT.

South Carolina courts have not yet ruled on the issue of whether a cancellation notice for nonpayment may be properly sent to an insured prior to a missed payment. S.C. Code Ann. § 38-77-120 concerns the requirements for notice of cancellation. The section provides:

- (a) No cancellation or refusal to renew by an insurer of a policy of automobile insurance is effective unless the insurer delivers or mails to the named insured at the address shown in the policy a written notice of the cancellation or refusal to renew. This notice:
 - (1) must be approved as to form by the director or his designee before use;
 - (2) must state the date not less than fifteen days after the date of the mailing or delivering on which the cancellation or refusal to renew becomes effective;

...
S.C. Code Ann. § 38-77-120(a)(1)-(2).

Respondent essentially argued, and the trial court apparently agreed, that § 38-77-120 affords insurers an anticipatory breach clause. While South Carolina courts have not ruled on this issue, other jurisdictions have. In Vietzen v. Victoria Auto. Ins. Co., the Court of Appeals of Ohio reversed the judgment of the trial court granting summary judgment in favor of the

insurance company. Vietzen v. Victoria Auto Ins. Co., 9 N.E.3d 500, 506. In that case, Vietzen was injured in an automobile accident, involving a vehicle owned by Paulette Henry and allegedly insured by Victoria Automobile Insurance Company (the insurance company), on September 6, 2009. Id. at 501. The insurance company had mailed Ms. Henry a billing statement on August 24, 2009 indicating a payment due on September 5, 2009, and attached to it a "Cancellation Notice" that said "If the Minimum Due is not received by or on the Payment Due date, your policy cancels on the date and time shown above for nonpayment of premium." Id. at 503. Ms. Henry failed to make the payment by September 5. Id. The issue to be decided by the Ohio courts was "whether the cancellation notice sent to Ms. Henry by [the insurance company] complied with the requirements of R.C. 3937.32." In pertinent part, the statute provides:

No cancellation of an automobile insurance policy is effective, unless it is pursuant to written notice to the insured of cancellation. Such notice shall contain:

...

(E) Where cancellation is for nonpayment of premium at least ten days notice from the date of mailing of cancellation accompanied by the reason therefor shall be given;

...

Ohio Rev. Code Ann. § 3937.32(E).

The insurance company argued that the Cancellation Notice had complied with § 3937.32(E) because the cancellation date identified in the Notice was at least ten days subsequent to the date of the Notice. In rejecting the argument, the court held that the statute was ambiguous, and looked at other statutes to determine the legislative intent. Vietzen, 9 N.E.3d at 504. The court considered Ohio Rev. Code Ann. § 3937.31, which sets forth the reasons for which an insurance policy may be canceled by the insurer, including the nonpayment of premium. Id. at 505. The Ohio statute defines nonpayment of premium as "[the] failure of the named insured to discharge when due any of the named insured's obligations in connection

with the payment of premiums on a policy.” Ohio Rev. Code Ann. § 3937.31(A)(3). The court reasoned that because anticipatory breach is not a reason for cancellation enumerated in the statute, the insurance company could not cancel the policy based on its belief that Ms. Henry would not pay her premium which it was due. See Vietzen, 9 N.E.3d at 505.

In addition, the court pointed to public policy interests as evidence that an insurance company must wait until payment is delinquent to issue a cancellation notice. See id. The court referenced a case¹ in which the Ohio Supreme Court noted that public policy of Ohio is to ensure that motorists maintain coverage, and held that requiring notification of cancellation and other requirements within the statutory scheme are intended to protect insureds from lapses in coverage, and the public from uninsured motorists. See id.

The Court of Appeals of Ohio reasoned that Ohio Rev. Code Ann. § 3937.32(E) was intended to “include a grace period of ten days during which an insured may cure her failure to pay her premium by its due date before the insurance company may cancel her automobile insurance policy.” See id. The court further reasoned that “an insurance company must wait until the insured has actually failed to pay her premium when due before mailing notice of cancellation of the policy which will take effect no fewer than ten days after the date of mailing of the notice.” Id. Therefore, because the Ohio legislature intended a ten day grace period, and public policy was to ensure that motorists maintain coverage, the court held that the notice of cancellation mailed August 24, 2009 was “ineffective to give Ms. Henry the requisite notice of cancellation pursuant to R.C. 3937.32.” See id. at 506.

S.C. Code Ann. § 38-77-120(a)(2) is nearly identical to Ohio Rev. Code Ann. § 3937.32(E). Both require that notice be given in advance of the cancellation of an insurance

¹ See Wolfe v. Wolfe, 725 N.E.2d 261 (Ohio 2000).

policy. In addition, the South Carolina legislature seems to have considered many of the public policy reasons that were considered by the Ohio legislature. One of the self-declared purposes of Title 38, Chapter 77 (Automobile Insurance) of the South Carolina Code is to provide “that every automobile insurance risk which is insurable . . . is entitled to automobile insurance.” S.C. Code Ann. § 38-77-10(1). The chapter is to be liberally construed in order to achieve that purpose. S.C. Code Ann. § 38-77-20. The South Carolina legislature undoubtedly intended for the public to be free from the dangers of uninsured motorists. Therefore, based on the plain language of the relevant statutes, the legislature’s intent, and public policy considerations, this Court should hold that Respondent could not have issued a cancellation notice until Kimberly Sanford’s payment became delinquent, and thus provided insurance coverage on her vehicle on February 13, 2013.

II. WHETHER RESPONDENT PROPERLY CANCELLED THE POLICY ON FEBRUARY 3, 2013 UNDER § 56-10-280.

Section 56-10-280 refers specifically to the cancellation of a new insurance policy within sixty days of issuance. In pertinent part, the section provides:

(A) [A] contract of policy may be canceled within the first sixty days only under one or more of the following circumstances:

...

(4) the insured fails to pay **when due** the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of issuance must remain in effect for at least thirty days.

S.C. Code Ann. § 56-10-280 (emphasis added).

Appellants contend that this section is ambiguous. Appellants interpret the section as requiring that an insurance policy remain effective for at least thirty days *after* a missed payment; the trial court found that the section merely prohibits the cancellation of a new insurance policy until the thirty-first day.

Assuming, *arguendo*, the Court holds that § 56-10-280 is unambiguous and merely prohibits the cancellation of a new policy until the thirty-first day, the language of the statute still supports coverage of Kimberly Sanford's automobile at least until February 18, 2013.

According to § 56-10-280, an insurer can only cancel a new policy within sixty days if the insured fails to pay, **when due**, the premium for the policy. After a missed payment, the notification requirements of § 38-77-120 would become operative. Respondent has stated, and the trial court found, that the second installment was due February 3, 2013. Because of the required fifteen-day notice period, the policy could not have been canceled until February 18, 2013. Therefore, this Court should hold Respondent improperly canceled Kimberly Sanford's insurance policy on February 3, 2013; and that the coverage was effective until February 18, 2013.

CONCLUSION

For the reasons stated above, Appellants pray this Court reverse the trial court's judgment granting Respondent summary judgment. Specifically, Appellants pray the Court hold that Respondent could not have mailed Kimberly Sanford a notice of cancellation until her payment became delinquent, cancellation of the policy on February 3, 2013 was improper, and that Kimberly Sanford's insurance policy was effective on February 13, 2013.

~~February~~ 22, 2015

Respectfully submitted,



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Case No. 19-CP-ET-S-1

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FINAL BRIEF OF TESTOXYLANT

FBI MEMPHIS
FBI MOBILE ALA
BIRMINGHAM
HOUSTON TEXAS
MEMPHIS TENN
NEW ORLEANS LA
SAN ANTONIO TEX
ST LOUIS MO
TULSA OKLAHOMA
WICHITA KAN
YOUNG HAVEN ALA

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STATEMENT OF ISSUES ON APPEAL

1. The Circuit Court Was Correct In Granting Respondent's Motion for Summary Judgment.
 - A. The Circuit Court's Decision Regarding Respondent's Compliance with §38-77-120 Was Not Controlled By An Error Of Law And Is Supported By The Facts
 - B. The Circuit Court's Decision Regarding Respondent's Compliance with §56-10-280 Was Not Controlled By An Error Of Law And Is Supported By The Facts

STATEMENT OF THE CASE

The Respondent, United Auto Insurance Company, (hereinafter "United"), commenced this action against Appellants, Willie Freeman and Michael Craft, (hereinafter "Appellants") and Defendants, Kimberly L. Sanford¹ and Antonio Craft², in the Anderson County Circuit Court on April 29, 2014. R. pp. 9-12. The Complaint sought declaratory judgment that an automobile policy issued by United did not provide liability insurance coverage to any person with a claim or potential claim arising out of a February 13, 2013 accident; and that, United owed no duty of defense and/or indemnity to Antonio Craft and Sanford. Appellants filed an Answer on May 20, 2014. R. pp. 13-15. United filed a motion for summary judgment on December 4, 2014, alleging that United had complied with the applicable statutory law in cancelling the automobile insurance policy on February 3, 2013 and therefore that the policy was not in effect on February 13, 2013. R. pp. 16-18.

¹ Please note that Kimberly L. Sanford never appeared in the underlying litigation or United's declaratory judgment action, and, upon information and belief, is not a party to this appeal.

² Please note that Antonio Craft never appeared in the underlying litigation or United's declaratory judgment action, and, upon information and belief, is not a party to this appeal.

A hearing on United's motion was held before the Honorable R. Scott Sprouse, Circuit Court Judge, on February 9, 2015, in Anderson. After taking the matter under advisement, Judge Sprouse issued an Order finding for United that the automobile insurance policy was properly cancelled on February 3, 2013 and therefore not in force on February 13, 2013. R. pp. 1-6. Thereafter, Appellants filed a Notice of Appeal to the Circuit Court. R. pp. 109-110. This appeal followed.

STATEMENT OF FACTS

UAIC issued policy # SCU 000693514 ("the Policy") to Kimberly L. Sanford as named insured a policy of automobile liability insurance with effective dates of January 3, 2013 to July 3, 2013, which provided bodily injury liability coverage for one (1) vehicle, a 1997 Ford Crown Victoria, in the amount of \$25,000/\$50,000. Kimberly L. Sanford paid her first month's premium on January 3, 2013 at the time the Policy was issued. UAIC sent a bill to Defendant Kimberly L. Sanford for the second month's premium on January 9, 2013. UAIC then sent a cancellation notice to Kimberly L. Sanford on January 22, 2013, stating that the policy would be cancelled if the premium was not received on or before February 3, 2013. Kimberly L. Sanford failed to pay the premium for the second month before the due date of February 3, 2013.

On February 13, 2013 Antonio Craft was operating the aforementioned 1997 Ford Crown Victoria on Tribble Street in the Anderson, South Carolina when his vehicle allegedly struck Appellants William F. Freeman and Michael Craft, who were pedestrians.

Kimberly L. Sanford made an additional payment to United on February 14, 2013 at 11:21 AM.

ARGUMENT

The determination of coverage under an insurance policy is an action at law. Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct.App.2004). On appeal, The Court is limited to determining whether the trial court based its ruling on an error of law or on a factual conclusion without evidentiary support. S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E Underwriters Risk Retention Group, 347 S.C. 333, 338, 554 S.E.2d 870, 873 (Ct.App.2001).

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996); Shealy v. Doe, 370 S.C. 194, 199, 634 S.E.2d 45, 48 (Ct. App. 2006). The first question of statutory interpretation is whether the statute's meaning is clear on its face. Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002); Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 622, 622 S.E.2d 733, 738 (Ct. App. 2005) (cert. granted January 31, 2007).

When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and this Court has no right to impose another meaning. Catawba Indian Tribe of South Carolina v. State, 372 S.C. 519 642 S.E.2d 751 (2007); see Vaughn v. Bernhardt, 345 S.C. 196, 198, 547 S.E.2d 869, 870 (2001). "[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Mun. Ass'n of S.C. v. AT & T Communications of S. States, Inc.,

361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004); *see also* Miller v. Doe, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994) ("In determining the meaning of a statute, the terms used therein must be taken in their ordinary and popular meaning, nothing to the contrary appearing.").

The legislature's intent should be ascertained primarily from the plain language of the statute. Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 230, 612 S.E.2d 719, 723 (Ct. App. 2005) (citing State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 506 (Ct. App. 2004); Stephen v. Avins Const. Co., 324 S.C. 334, 339, 478 S.E.2d 74, 77 (Ct. App. 1996)). What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Jones, 364 S.C. at 230, 612 S.E.2d at 723 (citing Bayle v. South Carolina Dept. of Transp., 344 S.C. 115, 122, 542 S.E.2d 736, 740 (Ct. App. 2001)). The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Jones, 364 S.C. at 230, 612 S.E.2d at 723 (citing Hitachi Data Sys. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)). The court's primary function in interpreting a statute is to ascertain the intent of the General Assembly. Smith v. South Carolina Ins. Co., 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 2002). "Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." South Carolina Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989).

If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. State v. Morgan, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct. App. 2002). "Statutes, as a

whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers." Collins Music Co., Inc. v. IGT, 365 S.C. 544, 550, 619 S.E.2d 1, 3 (Ct. App. 2005) (quoting TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998)). Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. Jones, 364 S.C. at 230, 612 S.E.2d at 723 (citing Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000); Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)). A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law. See Hinton v. South Carolina Dept. of Prob., Parole and Pardon Servs., 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004); Doe v. Roe, 353 S.C. 576, 580, 578 S.E.2d 733, 735-36 (Ct. App. 2003).

1. The Circuit Court Was Correct In Finding That United Complied with §38-77-120.

In §38-77-120, the legislature set out the five requirements by which an insurer for automobile policies may issue a notice of cancellation. The Circuit Court Judge found that United's Notice of Cancellation, dated January 22, 2013, complied with these five requirements. On appeal, Appellants challenge only the timeliness requirement of §38-77-120(a)(2). This requirement states that a notice of cancellation must be mailed no less than 15 days in advance of the date of cancellation. Appellants torture the plain language of §38-77-120 to give meaning to the statute not intended by the legislature.

Appellants aim to show that §38-77-120 was intended to require that insurers can't issue a notice of cancellation for 15 days *after* a premium is due, in effect requiring that all automobile insurers in the state provide 15 days of free coverage to every insured who fails to pay premiums. Appellants stretch for this interpretation with the citation to a single Ohio case based on Ohio law and Ohio statutes. The Ohio Court of Appeals began their analysis of this particular case with the finding that the notice requirement in the corresponding Ohio statute was ambiguous. Vietzen v. Victoria Auto. Ins. Co., 2014-Ohio-749, ¶ 16, 9 N.E.3d 500, 504.

No South Carolina court has ever found §38-77-120 to be ambiguous. In fact, there are dozens of South Carolina Court of Appeals and Supreme Court cases in which §38-77-120 was referenced, interpreted and cited without any indication of ambiguity.³ It would be folly to, after years of successful jurisprudence, to declare that which has been the clear and unambiguous terms of the statute to have suddenly become murky and ambiguous.

Moreover, the Court of Appeals has addressed this very issue in the matter of Stringer v. State Farm Mut. Auto. Ins. Co., 386 S.C. 188, 192, 687 S.E.2d 58, 60 (Ct. App. 2009). In Stringer, the insured had purchased an automobile policy from an insurer. The insurer sent a notice of cancellation to the insured indicating that a premium payment was due 15 days from the date of the notice and that if the insured did not pay his premium by that date, the insurance policy would be cancelled on said date. The insured

³ See for example Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 229 612 S.E.2d 719, 726 (Ct.App.2005); Hiett v. Guaranty Nat'l Ins. Co., 329 S.C. 522, 531, 496 S.E.2d 417, 426 (Ct.App.1997); South Carolina Farm Bureau Mut. Ins. Co. v. Courtney, 342 S.C. 271, 536 S.E.2d 689 (Ct.App.2000); Shealy v. Doe, 370 S.C. 194, 199, 634 S.E.2d 45, 48 (Ct. App. 2006); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct.App.1999); Auto Now Acceptance Corp. v. Catawba Ins. Co., 351 S.C. 377, 570 S.E.2d 168 (2002)

failed to pay his premium, his policy was cancelled and he was involved in an automobile accident shortly thereafter. While the Court focused its analysis on the issue of contract interpretation, it did not balk at the concept that an insurance policy for automobile coverage could be cancelled with a notice issued before the due date / cancellation date of the premium and the cancellation was upheld.

The facts of Stringer closely mirror those of the instant case. Both insured's were provided notice of cancellation for failure to pay premiums 15 day in advance of the ultimate due date / cancellation date. Both insureds failed to pay premiums by that date and were both in accidents shortly thereafter. As in Stringer, this Court should find that failure to pay premiums under notice of cancellation, in compliance with the 15 day notice requirement of §38-77-120, is an effective cancellation of the subject insurance policy.

2. The Circuit Court Was Correct In Finding That United Complied with §56-10-280.

Appellants once more attempt to torture the plain meaning of a statute in their argument that §56-10-280 requires an insurer not cancel a policy for at least thirty days after a missed payment if within the first sixty days of the policy. §56-10-280(A)(4) provides that a policy of insurance may be canceled within the first sixty days when the insured fails to pay the premium when due and that the policy must remain in effect for at least thirty days. Appellants contend that the last term is ambiguous and should be interpreted to require that the policy stay in force for another 30 days.

The plain language of the statute allows that during the first 60 days of a new insurance policy, an insurer may cancel a policy for the failure of an insured to pay

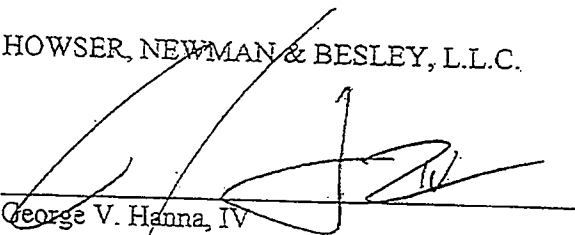
premiums. The statute limits this right to cancel for failure to pay premiums by requiring that the policy stay in force for at least 30 days. The Legislature could have added the term "an additional" 30 days if that was their intent. That the Legislature simply stated, "the contract or policy of insurance must remain in effect for at least thirty days" indicates that the policy need only be in force *in total* 30 days. The term "at least" indicates that the intent of the Legislature was to ensure that every policy would have to be in force for the first 30 days despite issues with payments of premiums. This goal serves the public policy, which Appellants reference, in favor of insurance coverage for automobile insurance risks. There is no need to torture the language of the statute to effectuate an additional 30 days of coverage after an insured has failed to make a premium payment.

CONCLUSION

The Circuit Court properly found that United had complied with all applicable statutes in the cancellation of the relevant insurance policy. The Circuit Court, therefore, properly found that there was no policy which could provide coverage to Appellants. Appellants have been unable to show that §38-77-120 or §56-10-280 provided an additional 15 days or 30 days, respectively, of free coverage to insureds that failed to pay their premiums when due. Instead, §38-77-120 simply requires that an insurer issue a notice of cancellation 15 days *in advance* of the date of cancellation. Additionally, §56-10-280 simply requires that during the first 60 days of a policy, an insurer may cancel the policy for nonpayment of premiums after the first 30 days. United has clearly complied with the plain terms of these unambiguous statutes.

Therefore, for the foregoing reasons Respondent respectfully requests that the Court uphold the Circuit Court's grant of Summary Judgment in favor of United and dismiss this Appeal. In addition, the Respondent would ask the Court to affirm for any other reason appearing in the record as provided by Rule 220(c).

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February 9, 2016

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2014-CP-04-850

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SC Court of Appeals

Willie Freeman, Michael Craft, Kimberly L. Sanford and
Antonio Craft,

Appellants,

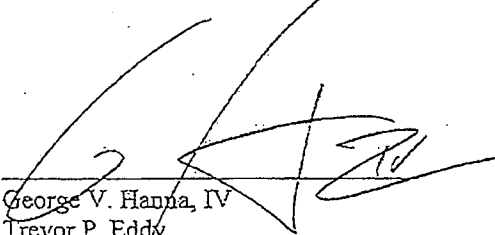
vs.

United Auto Insurance Company,

Respondent,

CERTIFICATE OF COMPLIANCE WITH RULE 211(b)

*I hereby certify that this Final Brief complies with Rule 211(b) in that it contains only
corrections to obvious typographical errors.*


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