

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2011-CP-06-111

Empire Fire and Marine Insurance Company,

Appellant,

v.

RB Recovery and Retail, LLC, also known as
RB Recovery & Bail Bond Agency, LLC,
George R. Peterson and Suzanne B. Peterson

Respondents.

PETITION FOR REHEARING

Clarke W. McCants, III, Esquire
Nance, McCants & Massey
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SC Court of Appeals

ARGUMENT

In its decision for this matter the Court of Appeals concluded that the Parties entered into a stipulation before the Circuit Court which has the effect of summarily resolving the issue presented here. The Court also determined that Judge Early relied upon that stipulation in reaching his decision.

The Appellant respectfully contends that the Court of Appeals misapprehended the insurance policy involved in this case and the Circuit Court's decision. First, the policy in questions makes a clear distinction between "named insureds" and "insureds" for purposes of underinsured motorist coverage. While the Parties may have stipulated that Mr. Peterson is a "named insured" under the main part of the policy, there is no stipulation that he is an "insured" for purposes of the UIM endorsement to the policy. As argued before the Court the Appellant contends that Mr. Peterson is not an "insured" under the UIM Endorsement because he was not operating a "covered vehicle" at the time of the accident in November 2008.

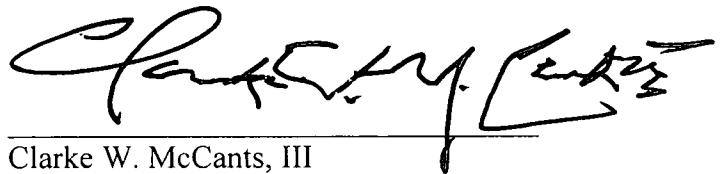
Further, had Judge Early relied solely on the Parties' stipulation in resolving the issue in this case it would have been unnecessary for him to set forth in his Order an extensive analysis of the policy provisions involved here. Indeed, in no part of his Order does Judge Early conclude that any stipulations of the Parties have the effect of summarily ending the questions presented.

At the oral argument for this matter both Counsel affirmed to this Court that it was never their intent to end an inquiry into the issues presented here based solely upon whether Mr. Peterson should be considered a "named insured" under the main policy. As

stated the primary issue presented in this case is whether Mr. Peterson was operating a “covered vehicle” at the time of the accident involved here.

The Appellant respectfully submits that fairness and justice requires a full review of all issues presented in this case. The Appellant continues to assert that the Court of Appeals should reverse the Order of the Circuit Court. In the alternative the Appellant respectfully submits, at a minimum, this matter should be remanded to the Circuit Court for the purpose of conducting a hearing to clarify any stipulations made in this matter, and whether any such stipulations are dispositive of the issues presented herein.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Clarke W. McCants, III". The signature is written in a cursive style with a large, sweeping flourish at the end.

Clarke W. McCants, III
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December 13, 2012.

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PROOF OF SERVICE

I certify that I have served a copy of the Appellant's Petition for Rehearing on opposing counsel by depositing a copy of it in the United States Mail, postage prepaid, on December 13, 2012 addressed to J. Martin Harvey, Jr., Esquire, Harvey & Kulmala, P.O. Box 705, Barnwell, SC 29812.

NANCE, MCCANTS & MASSEY

By: 

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Dated: December 13, 2012.

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