RECEIVED

JUN 08 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2012-CP-01-00306
Supreme Court Case No. 2016-001512

Richard Wilson, Michael J. Antoniak, Jr., Marsha L. Antoniak, Anita L. Belton, Prescott Darren Bosler, Johnny Calhoun, Sallie Calhoun, Cynthia Gary, Robert Wayne Gary, Eugene P. Lawton, Jr., Jeanette Norman, James Robert Shirley, Robert W. Spires, Crystal Spires Wiley, Lewis S. Williams, Janie Wiltshire, Benjamin Franklin Wofford, Jr., and Rebecca Hammond Wofford,.....*Petitioners,*

v.

Laura B. Willis and Jesse A. Dantice, individually, and as agents and/or brokers for Southern Risk Insurance Services LLC, Travelers Casualty Insurance Company of America, Allied Property and Casualty Insurance Co., Peerless Insurance Co., Montgomery Mutual Insurance Co., Safeco Insurance Co. of America, and Foremost Insurance Co.; Southern Risk Insurance Services, LLC; Travelers Casualty Insurance Co. of America, Allied Property and Casualty Insurance Co., Peerless Insurance Co., Montgomery Mutual Insurance Co., Safeco Insurance Co. of America, and Foremost Insurance Co; and Laurie Williams,.....*Defendants,*

Of whom Peerless Insurance Co., Montgomery Mutual Insurance Co., and Safeco Insurance Co. of America are.....*Respondents,*

Of whom Laurie Williams is.....*Petitioner.*

REPLY BRIEF OF PETITIONERS

[Submitting Counsel's Information on Next Page]

Thomas E. Hite, Jr. (SC Bar No.:2531)
Anne Marie Hempy (SC Bar No.:74871)
HITE AND STONE, ATTORNEYS AT LAW
P.O. Box 805
100 East Pickens
Abbeville, SC 29620
(864) 366-5400

Leslie A. Bailey (admitted *pro hac vice*)
PUBLIC JUSTICE
475 14th St., Suite 610
Oakland, CA 94612
(510) 622-8150
lbailey@publicjustice.net

Attorneys for Petitioners Richard Wilson et al.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases

Federal Cases

Other State Cases

Other Authorities

INTRODUCTION

Each Plaintiff in this case has a story. Some Plaintiff customers placed their trust in the Respondent Insurers and forked over their hard-earned money to insure their families' homes and cars against life's contingencies only to discover, to their alarm—and sometimes after an accident or storm—that the policies they'd paid for had never been issued. Others obtained a policy but later learned—contrary to assurances from Respondents and their agents—that coverage had lapsed without their knowledge, putting them at risk and costing them money. Still others were unaware they'd been deceived until the Department of Motor Vehicles revoked their drivers licenses and registration. Meanwhile, law-abiding insurance agents in Abbeville County started to wonder why their business dried up when they found themselves unable to compete with fraudulently low premiums offered by Respondents and their agents.

While their individual stories differ, the Plaintiffs all have two things in common. First, all were victims of allegedly unlawful tactics by Respondents and their agents—including agent Laura Willis, who, Plaintiffs allege, harmed them while acting within the scope of her authority, on Respondents' behalf, with Respondents' permission, and for the benefit of Respondents' business. And second, none of them agreed to arbitrate disputes with Respondents.

It makes perfect sense that the Liberty Mutual insurance companies, including Safeco, Peerless, and Montgomery, would have a business practice of requiring the agencies that sell their policies to agree that they'll resolve certain disputes arising in the course of their insurer-agency relationship in binding arbitration. And it stands to reason that, when Southern Risk agreed to represent Respondents in Abbeville County, the companies would execute Respondents' standard Agency Agreement, including its arbitration clause.

But there is no basis for compelling Plaintiffs to arbitrate their claims. The Agency Agreement and its arbitration clause have nothing to do with Plaintiffs. As explained in

Petitioners' opening brief, the Court of Appeals' decision that arbitration should nonetheless be required here was based on a misinterpretation of the applicable law and a misunderstanding of the relevant facts.

Respondents offer no legitimate defense of the decision below. Instead, they have doubled down on their argument that Plaintiffs' allegations "rest[] on rights or duties imposed *solely* by the Agency Agreement." Brief of Respondent ("RB") 14 (emphasis added).[1] This notion—which undergirds both Respondents' equitable estoppel theory and their scope theory—is based on four premises: two factual, two legal, and all absolutely wrong.

First, as a factual matter, Respondents claim that Plaintiffs allege *only* that Respondents failed to adequately train and supervise Southern Risk agent Laura Willis—and that Plaintiffs *don't* allege that the Insurers are vicariously liable for the unlawful acts Willis committed on their behalf *or* that Respondents committed any unlawful "acts of their own." RB 13. But in reality, the complaints contain extensive allegations both that Respondents' own conduct violated South Carolina law, and that Respondents are liable for the acts of Willis and other agents. Thus, the allegations in the complaint provide no factual basis for ruling that Plaintiffs' claims must arise from the Agency Agreement.

Respondents' second factual premise is that Plaintiffs, in their claims against Respondents, are actually seeking to enforce the terms in the Agency Agreement—that is, the contractual obligations between Respondents and the other party to that contract, the Southern Risk Agency. But even the specific Agency Agreement terms cited by Respondents as evidence

---

[1] Respondents repeat this contention *sixteen times* in their brief. "Proof by repeated assertion" is a logical fallacy in which a proposition is restated repeatedly and the repetition is offered as proof of the truth of the assertion, regardless of evidence to the contrary. Austin J. Freeley, David L. Steinberg, ARGUMENTATION AND DEBATE; CRITICAL THINKING FOR REASONED DECISION MAKING (Wadsworth Cengage Learning, Boston, 2009), p. 196.

for this theory do not create any relevant duties on Respondents' part to Plaintiffs. After all, as detailed in Petitioners' opening brief, the Agency Agreement expressly governs only the contractual relationship between Respondents and Southern Risk—and disclaims any duties to anyone else. Thus, notwithstanding Respondents' efforts to match up similar-sounding phrases, the Agency Agreement's terms do not support a conclusion that Plaintiffs' claims arise from the Agency Agreement.

Third, Respondents argue that insurance companies cannot, under South Carolina law, be vicariously liable for their *agents*' actions under *respondeat superior*. RB 3. But this is blatantly false. In reality, South Carolina provides the exact opposite. Indeed, this Court has been holding principals—including insurance companies—liable for the conduct of agents for over 130 years.

Fourth, Respondents claim that, as a matter of law, insurance companies owe no extra-contractual legal duties to their customers or the public. If Respondents are to be believed, insurers can't be held liable for violating any laws—only whatever contractual duties they voluntarily take on. Again, Respondents are badly mistaken. Insurance companies are not above the law. Like any other type of business, they owe a duty of care to those whom their actions may harm. And those legal duties supplement, rather than supplant, any contractual obligations the business might voluntarily decide to take on.

Respondents' strategy in this case has been to try to eliminate all other potential sources of their legal duties to Plaintiffs in order to argue, apparently by process of elimination, that the only possible basis for holding them liable is for breach of the terms of the Agency Agreement. The problem with this approach, is that Respondents' theories only work if one distorts the relevant facts and law beyond recognition. With the fallacy of their four premises exposed, Respondents' carefully-constructed objective—the theory that Plaintiffs' claims arise solely from

the Agency Agreement—comes tumbling down. That Respondents would go to such lengths in their effort to preserve the Court of Appeals' decision only confirms that it was wrong.

Besides being legally and factually erroneous, the decision below is bad policy. If it becomes the law of this State, there will be nothing to stop a corporation sued for any violation of law from invoking an arbitration clause in an unrelated contract against individuals who are not parties to—indeed, are total strangers to—that contract. Thus, under the reasoning advanced by Respondents and accepted by the Court of Appeals, a daycare center sued by the parents of a child who was abused by a caregiver working at the center could force the parents' claims into arbitration, so long as the employment contract governing the relationship between the center and its employees had an arbitration clause. Likewise, if a hospital patient harmed by a doctor sued the hospital, the hospital could compel the patient to arbitrate his claims based on an arbitration clause in the contract between the hospital and the doctor. Nothing in South Carolina law or the facts of this case warrants such a result. The decision below should be reversed.

I. Equitable Estoppel Does Not Apply Here.

Equitable estoppel is "a shield to prevent injustice rather than a sword to compel arbitration" and "should be used sparingly." *Hirsch v. Amper Fin. Servs., LLC*, 71 A.3d 849, 852 (N.J. 2013). Here, no injustice will result from permitting Plaintiffs to continue pursuing their clams in court. And none of Respondents' arguments justifies applying estoppel to force those claims into arbitration.

A. Respondents' Attempt to Equate Plaintiffs' Claims to the Breach-of-Contract Claims in *International Paper* and *Pearson* Fails.

As detailed in Petitioners' opening brief, because the non-party Plaintiffs are seeking to vindicate rights that are legally independent of the contract at issue and have never sought any benefits under the Agency Agreement, estoppel does not apply. *See Malloy v. Thompson*, 409

S.C. 557, 562, 762 S.E.2d 690, 692-93 (2014); *see generally* Brief of Petitioner ("PB") 17, 19-26. The mere fact that Plaintiffs' claims against Respondents may not have arisen "but for" Respondents' relationship with the Southern Risk Agency and agent Laura Willis does not make those claims equivalent to contract claims. *See R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n, Inc.*, 384 F.3d 157, 162 (4th Cir. 2004).

Unable to meaningfully distinguish *Malloy* or *R.J. Griffin*, Respondents now advance a novel theory based on the cases cited by the Court of Appeals in its erroneous estoppel decision. The court below relied exclusively on two cases: *International Paper Co. v. Schawbedissen Maschinen & Anlagen GMBH*, 206 F.3d 411 (4th Cir. 2000), and *Pearson v. Hilton Head Hospital*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012). As Plaintiffs previously explained, both decisions turned on the "critical fact" that the plaintiffs alleged breach of—and thereby sought to directly benefit from the enforcement of—the contracts containing the arbitration clause. In contrast, because Plaintiffs do not allege breach of the Agency Agreement, the reasoning of those cases does not apply here. PB 20. Respondents now dismiss the importance of the breach-of-contract allegations, suggesting that what really matters is that the claims in those cases "were inextricably intertwined with the contract." RB 18.

This argument fails. The "intertwined claims" theory of estoppel Respondents cite "applies only to prevent a *signatory* from avoiding arbitration with a *nonsignatory* when the issues the *nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed.*" *Bridas S.A.P.I.C. v. Gov't of Turkmenistan*, 345 F.3d 347, 360-61 (5th Cir. 2003). Put another way, the non-parties in that line of cases sought to *enforce*—not avoid—arbitration clauses. In contrast, "[b]ecause arbitration is guided by contract principles, the reverse is not also true." *Id.* at 361. "The distinction [between parties and non-

parties] is *not* one without a difference." *Id.* Where, as here, a party to an arbitration clause seeks to enforce an arbitration clause against a non-party, the "interrelatedness of the claims" to the underlying contract is an "insufficient justification" for compelling arbitration. *E.I. Dupont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Interms.*, 269 F.3d 187, 202 (3d Cir. 2001); *see also Pearson*, 400 S.C. at 293, 733 S.E.2d at 603.

Furthermore, the courts in *Pearson* and *International Paper* made clear that the breach-of-contract claims were indeed dispositive. *See Int'l Paper*, 206 F.3d at 418 (explaining that the "contract provide[d] part of the factual foundation for every claim" and that the plaintiff not only "allege[d] that [the defendant] failed to honor the warranties in the" contract but also sought damages and other remedies "in accordance with" the contract, and thus the "entire case hinge[d] on [the non-party's] asserted rights under the . . . contract"); *Pearson*, 400 S.C. at 297, 733 S.E.2d at 605 (explaining that because "Dr. Pearson has to rely on [one of the two contracts] to have a breach of contract action against the Hospital," and "[b]ecause both of [those] contracts have arbitration clauses, he should not be allowed ... to allege a breach but not be subject to the arbitration provisions").

Perhaps realizing that their characterization of *International Paper* and *Pearson* lacks merit, Respondents admit that their position really is that there's *no legal difference* between a non-party who alleges breach of—and seeks to obtain damages by enforcing—the contract containing an arbitration clause, on one hand, and a non-party who was unaware of the contract and has never sought to enforce it, on the other. *See* RB at 16 (arguing that "at bottom, [Plaintiffs] *effectively* alleged breach of the [Agency Agreement]"). But the case law does not bear out Respondents' theory. In fact, they do not cite a single South Carolina case (in state or

federal court) in which equitable estoppel was applied to *non-parties* who did not allege breach of contract.[2]

B. Respondents' Liability for Their Agents' Actions Arises from South Carolina Law.

Respondents' argument that Plaintiffs' claims are "premised on . . . the Agency Agreement" is based, in part, on their assertion that they cannot be held vicariously liable for their agents' wrongdoing. RB 13. According to Respondents, (1) South Carolina law "bar[s]" respondeat superior liability claims against insurance companies, and (2) "[n]one of the Complaints assert [sic] any claim . . . based on vicarious liability or respondeat superior." *Id.* Respondents are wrong on both counts.

1. Under South Carolina Law, Insurers are vicariously liable for the acts of their agents.

Respondents argue that, as a matter of law, "[a]n insurer cannot be vicariously liable for an agent's . . . misrepresentation, fraud, unfair and deceptive acts, [or] conversion" because claims against insurance companies under the doctrine of respondeat superior are "barred by South Carolina law." RB 3 n.3, 13; *see also* RB 28 at n. 19. According to Respondents, "South Carolina's courts have held an insurer is *not* vicariously liable" for harm caused by their agents. RB 13-14. Therefore, the argument goes, any liability Respondents may have for their agents' acts must by process of elimination arise solely from the Agency Agreement and not state law.

---

[2] While Plaintiffs position is that neither federal nor state equitable estoppel applies here, it is worth noting that this Court and others have applied state law to the question of whether a non-party is bound by an arbitration clause. *See, e.g.*, *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001); *Evans v. North Pole Assisted Living*, No. 8:17-cv-951, 2017 WL 8780878, at *7 (D.S.C. Dec. 8, 2017) ("Post-*Arthur Andersen* it is incontrovertible that state law governs the equitable estoppel determinations" and applying South Carolina state law.). Respondents do not even attempt to show that South Carolina's equitable estoppel doctrine requires arbitration. *See* RB 18 n. 15.

Respondents' theory is patently false. Under black-letter South Carolina law, an insurance company is liable for the acts of its agent when that agent acted within the scope of his employment or authority. *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 296-99, 468 S.E.2d 292, 295-98 (1996); *E.A. Prince & Son, Inc., v. Selective Ins. Co. of Southeast*, 818 F. Supp. 910, 914 (D.S.C. 1993). In *Rickborn*, this Court unanimously held that Liberty Life Insurance was liable for its agent's negligence and false misrepresentations, as well as its own negligent supervision of the agent. *Id.* at 300-03, 468 S.E.2d at 298-99. Like Willis, the agent in *Rickborn* allegedly submitted incomplete insurance applications, mishandled premium payments, and falsely assured an applicant that he was insured when really no valid policy had been issued. *Id.* at 294-95; 468 S.E.2d at 295. In determining that Liberty owed a legal duty to its customers for the acts of its agents, the Court did not look to any contract between the insurer and the agent. Instead, the Court applied the elements of common-law negligence, negligent misrepresentation, and negligent supervision. *Id.* at 300-01, 468 S.E.2d at 298-99. An insurance company is "liable to third persons in civil suits" under the doctrine of *respondeat superior*, the Court explained, for "the frauds, deceits, concealments, misrepresentations, negligence[] . . . and omissions of duty of his agent." *Id.* at 300; 468 S.E.2d at 298. So long as the agent acted "in the course of his employment," the principal is liable even if it did not expressly authorize the misconduct—indeed, "even if [it] forbade the acts or disapproved of them." *Id.* at 300; 468 S.E.2d at 298. The *Rickborn* Court further held that, because the insurer had had notice of its agent's negligence and was thus "alerted to the fact that [the agent's] carelessness could cause harm," the company "breached a duty of care owed to [the plaintiff] by failing to properly supervise him." *Id.* at 303, 468 S.E.2d at 299. *Rickborn* is the nail in the coffin of Respondents' estoppel theory. It disproves Respondents' argument that they cannot possibly be liable for their agent's conduct under South

Carolina law (and that thus any legal duties they owed Plaintiffs must arise solely from the Agency Agreement).[3] And the *respondeat superior* rule articulated by this Court in *Rickborn* goes back well over a century. *See Reynolds v. Witte*, 13 S.C. 5, 18 (1880); *West v. Serv. Life & Health Ins. Co.*, 220 S.C. 198, 202, 66 S.E.2d 816, 817 (1951). Remarkably, Respondents do not even mention the *Rickborn* line of cases.

An agent acts within the scope of her authority or employment when she acts in furtherance of the principal's business. *Hamilton v. Miller*, 301 S.C. 45, 48, 389 S.E.2d 652, 653-54 (1990) (sufficient evidence to find insurance company liable under *respondeat superior* for injuries arising out of a car accident caused by an agency employee who drove to pick up a co-worker's son, thus enabling the agency's owner to remain at the office). Any doubts as to whether an agent was acting within the scope of his authority should be resolved against the principal. *Adams v. South Carolina Power Co.*, 200 S.C. 438, 21 S.E.2d 17 (1942). And, under South Carolina law, a corporation may be held vicariously liable not only for the negligent acts of its agents but their intentional torts. *Young v. F.D.I.C.*, 103 F.3d 1180, 1190 (4th Cir. 1997).

The sole case cited by Respondents, *Vereen v. Liberty Life Insurance Co.*, 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991), did not—as Respondents claim—hold that South Carolina bars respondeat superior liability for conduct such as Willis' here. *See* RB 13-14. The *Vereen* court recognized that insurers can be liable for the acts of their agents, but held that on the unique facts of that case the jury had properly found that the agent had acted outside the scope of his authority and that no innocent third party had reasonably relied on his apparent authority. 306 S.C. at 427-28, 412 S.E.2d at 425-26. In *Vereen*, an insurance agent conspired with an acquaintance to apply

[3] Respondents claim that the Agency Agreement defines *Willis'* authority to act on their behalf, RB 15-16, but Willis is not a party to that contract nor is she named in it.

for a life insurance policy for a man without the man's knowledge—and against the express instructions of his supervisor. The acquaintance then killed the man in order to collect the insurance proceeds and rewarded the agent with a cut. *Id.* at 426; 412 S.E.2d at 428. After the victim's body was found, both the insurance agent and the murderer pled guilty to felonies. *Id.* at 426-27; 412 S.E.2d at 428. Because the agent had not acted in furtherance of the insurer's business, and because no one had reasonably relied on the agent's conduct, the court held that the insurance company was not vicariously liable for the death. *Id.* at 428-28; 412 S.E.2d at 428; *see also E.A. Prince & Son*, 818 F. Supp. at 913 n.3 (rejecting insurer's argument that, under *Vereen*, "as a matter of law, it cannot be liable").

While Respondents are free to argue on the merits that they should not be held liable for Willis' conduct in this case—for example, because she was acting outside the scope of her authority—nothing in South Carolina's *respondeat superior* liability law requires arbitration of Plaintiffs' claims.[4]

2. Plaintiffs have always alleged that Respondents are vicariously liable for their agents' actions.

Respondents' claim that "[n]one of the Complaints assert any claim, theory, or cause of action based on vicarious liability or *respondeat superior*" and that Plaintiffs nowhere "allege the Insurers are responsible for Willis' wrongful acts" is easily disproven. RB 13. Among other things, Plaintiffs allege that:

- Willis was acting as Respondents' "authorized and acting agent" and with Respondents' "express or implied permission" when she forged insurance documents, falsified applications, used cash transactions, issued bogus policies, fraudulently adjusted claims, lied to customers, and committed other unlawful

[4] Because South Carolina law clearly permits insurance companies to be held liable for the actions of their agents under common-law agency principles, Plaintiffs' previous citation to an outdated version of a state statute, *see* RB 11-2 n. 8, is irrelevant to the question before the Court.

acts. App. 101-02 (Spires); 140 (Bosler); 153-54 (Garys); 162-63 (Wiley); 328 (Antoniak).

- Willis was "acting within the scope of her employment, and acting as [an] agent[] and/or servant[]" of Respondents when she committed fraud and made misrepresentations, and Plaintiffs thus "had the right to rely on" her misrepresentations. App. 121 (Wofford); 144 (Bosler); 166 (Wiley); 176 (Williams).

- Respondents "by and through their acting agent and/or servant Laura Willis have made numerous misrepresentations to Plaintiffs and the general public." App. 103 (Spires); 118 (Wofford); 164 (Wiley).

- Respondents "by and through their acting agent and/or servant have made numerous misrepresentations to the general public and have gained an unfair and illegal business advantage in doing so." App. 120 (Wofford); 131-32 (Wilson); 142 (Bosler); 165 (Wiley).

By alleging that Respondents' agents, including Willis, were acting on Respondents' behalf, with Respondents' permission, and within the scope of their authority when they committed the wrongful acts alleged in the complaints, and that those actions benefitted Respondents' business, Plaintiffs have alleged that Respondents are vicariously liable for their agents' actions.

Respondents have previously recognized this fact. In their answers to the complaints, Respondents argued that "any actions taken by any alleged agents of the Defendants which caused any injury to Plaintiff . . . were taken while said alleged agent or agents were acting outside the scope of any alleged agency relationship[.]" App. 209; 221-22; 353. The only possible reason for Respondents to argue that their agents were acting outside the scope of their authority is to rebut a claim that they are liable under respondeat superior for their agents' actions. Respondents also addressed Plaintiffs' vicarious liability claims directly in their answers, arguing that "an award of punitive damages based solely on vicarious liability or the doctrine of respondeat superior" would violate due process. App. 210; 223. The question of whether Respondents are *actually* liable for their agents' acts is, of course, a question for the

merits. But Respondents' argument that Plaintiffs' only allegation is that Respondents breached some agreement to Southern Risk to supervise agents is meritless.

C. Respondents' Liability for Their Own Actions Arises from South Carolina Law and the Contracts Between Respondents and Plaintiffs.

Respondents next argue that insurance companies can only be held liable for violating the terms of contracts they make with their agents, and that they can't be liable for violating state law or their contracts with policyholders. *See* RB 11-12, 14, 20. These arguments, like Respondents' respondeat superior arguments, are meritless.

1. Under South Carolina law, Insurers are liable for their own violations of law regardless of any contractual duties they choose to take on.

Respondents suggest that their only potential liability to Plaintiffs arises from the Agency Agreement. But by this reasoning, an insurance company would have *no legal duties* to the public, its insureds, or other businesses—and no responsibility for complying with state law—only contractual duties to which they agree in any contracts *with insurance agencies*. But Respondent's wishful thinking aside, in reality, insurance companies in South Carolina, as in other states, are subject to a host of legal duties over and above whatever contractual obligations they may have taken on. Thus, in *Rickborn*, this Court made clear that an insurance company can be held liable for its failure to supervise an agent when the company was on notice that the agent was acting improperly—and that liability arises not from some contractual duty to the agent, but from the insurer's common-law duties to its customers under state law. *Rickborn*, 321 S.C. at 300-03, 468 S.E.2d at 298-89. Likewise, this Court has held that "an insurance company has a duty to use reasonable care not to issue a policy of life insurance in favor of a beneficiary who has obtained such policy without the knowledge or consent of the insured." *Ramey v. Carolina Life Ins., Co.,* 244 S.C. 16, 24, 135 S.E.2d 362, 366 (1964). Likewise, insurers have a duty, under tort law, to "exercise reasonable care in giving information" to an insured when the companies

have "a pecuniary interest in the transaction." *Winburn v. Ins. Co. of N. Am.*, 287 S.C. 435, 442, 339 S.E.2d 142, 147 (Ct. App. 1985); *see also Hosp. Care Corp. v. Commercial Cas. Ins. Co.*, 194 S.C. 370, 9 S.E.2d 796 (1940) (insurer can be liable to competitor for libel).

This makes sense. Contractual duties don't supplant existing legal duties—they supplement them. All companies doing business in South Carolina are bound by state laws, regardless of whether the company may have also voluntarily taken on contractual responsibilities to another company. An insurance company that enters into a contract with an insurance agency is, for example, still bound by zoning regulations, criminal laws, tax laws, and consumer protection laws. And a claim against the company for violation of one of these laws does not become a breach-of-contract claim simply because the company has a contractual relationship with another company.

None of the cases Respondents cite are to the contrary. *See* RB at 20 n. 16. *Bluehaven Funding, LLC v. First Am. Title Ins. Co.*, 594 F.3d 1055 (8th Cir. 2010), for example, reaffirmed that "[a] principal is responsible for its agents' acts and agreements that are within the agent's authority," but held that the agent in question was not authorized to take the alleged actions. *Id.* at 1058. Here, in contrast, no one is claiming that Willis and Southern Risk lacked authority to sell insurance policies on Respondents' behalf.[5] Other cases cited by Respondents explicitly recognized, consistently with South Carolina law, that insurers *do* owe noncontractual duties to customers or members of the public.[6] Still others are even further afield.[7] And Respondents'

[5] Notably, although the agency agreement in *Bluehaven* had an arbitration clause, no one suggested that the non-party plaintiff could be bound by it. *See Bluehaven Funding, LLC v. First Am. Title Ins. Co.*, No. 4:06-cv1425 (E.D. Mo.), ECF doc. 18-5 at 189.

[6] *See, e.g.*, *Pan-Am. Life Ins. Co. v. Roethke*, 30 S.W.3d 128, 133 (Ky. 2000) (insurer can be held vicariously liable for agent's misrepresentations);

other cases involve duties *not* to customers or competing agents such as Plaintiffs, but between insurance companies and their *agents*.[8] While perhaps such cases would be relevant in a case brought by Southern Risk against Respondents (or vice-versa), they are irrelevant to this appeal. And they certainly provide no basis for requiring Plaintiffs to arbitrate.

2. Plaintiffs make numerous allegations that Respondents are liable for their own actions.

Respondents claim that, other than seeking to enforce a duty to supervise Willis, "[t]he Complaints make *no* . . . factual allegations regarding the Insurers' conduct nor do they allege the Insurers themselves had *any contact* or involvement with the Petitioners." RB 12 (emphasis added). Respondents could not be more wrong about this. As the record in this case plainly shows, the complaints contain extensive allegations that Respondents are liable for their own conduct. The complaints also contain numerous allegations regarding contact the Insurers had with Plaintiffs. For example:

- Respondents accepted premiums for Plaintiff's insurance policy on four vehicles but then allowed the policy to lapse without notifying him, causing the

---

[7] *See, e.g., Vigilante v. Phoenix Mut. Life Ins. Co.*, 755 F. Supp. 25, 28 (D. Mass. 1991) (unfair practices statute does not impose duty on insurer's part to disclose agent's background); *In re Evans*, 464 B.R. 272, 288 (Bankr. S.D. Miss. 2011) (title insurer did not owe a duty to insured banks to audit, monitor, or supervise the insurer's "approved attorneys"); *Vincent v. Safeco Ins. Co. of Am.*, 29 P.3d 943, 946 (Idaho 2001) (insurer did not assume duty to train and supervise its insurance agents by selling materials for continuing education requirements); *Dusina v. Bowers*, No. 13311, 1992 WL 246033, at *4 (Ohio Ct. App. Oct. 2, 1992) (insurer had no duty to train independent agent who did not represent insurer); *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 331-32, 574 S.E.2d 502, 508-09 (Ct. App. 2002) (insurer did not owe fiduciary duty to applicant for insurance before entering into policy relationship).

[8] *See Consol. Insured Benefits, Inc. v. Conseco Med. Ins. Co.*, No. 6:03-cv-03211, 2006 WL 3423891, at *13-15 (D.S.C. Nov. 27, 2006) (insurer and independent insurance agent were not in a "marketing partnership," and thus insurer did not owe fiduciary duty to agent); *Lumbermens Mut. Cas. Ins. Co. v. First Ins. Servs., Inc.*, 417 F. App'x 247, 251 (4th Cir. 2011) (insurance agent owed no fiduciary duty to insurer); *Joyce v. Benefits Mktg. Grp., Inc.*, 32 F.3d 562 (4th Cir. 1994) (insurance company owed no non-contractual duty to agent with respect to lost commissions).

Department of Motor Vehicles to cancel his license and registration, forcing him to pay substantial additional fees, and damaging his standing in the insurance industry for the purpose of receiving future policies. App. 139-40; 143 (Bosler).

- Respondents Montgomery and Safeco notified Plaintiffs by letter that their automobiles, which were insured by Peerless, "would continue to be covered under the Liberty Mutual Group" and that no action on their part was required, but Respondent Safeco, despite receiving payment for premiums, failed to provide liability insurance, putting Plaintiffs at risk of being personally responsible for a potential judgment arising out of a personal injury claim against them. App. 150-51 (Garys).

- Respondent Safeco breached its contract of insurance with Plaintiffs. App. 151 (Garys).

- Respondents Montgomery and Safeco assured Plaintiffs in writing that their policy would be replaced before it expired, but then after Plaintiffs paid the premiums, Respondents denied their liability coverage and accused them of fraud. App. 152 (Garys).[9]

- Respondents "received the Plaintiffs' insurance premiums and converted the same to their own use and benefit without providing the Plaintiffs the insurance they believed they were purchasing." App. 155-56 (Garys); App. 332-33 (Antoniak);

- Respondent Montgomery accepted premium payments from Plaintiff for a homeowner's policy, but then allowed her insurance coverage to lapse "for an extended period of time" without notice, leaving the "equity in her home at risk." App. 161-62 (Wiley);

- Respondents "individually and/or through their authorized and acting agent . . . received the Plaintiffs' insurance premiums and converted the same to their own use and benefit." App. 103-04 (Spires); App. 165 (Wiley);

- Respondent Safeco accepted premiums from Plaintiff for a Landlord Protection Policy, but when the home's roof was damaged by a hailstorm, denied the valid claim and never paid it in breach of the policy, in bad faith, and in violation of South Carolina law. App. 116-17 (Wofford);

- Respondent Peerless accepted premiums from Plaintiff for auto and homeowners insurance policies via monthly bank draft, but never actually issued policies,

[9] Respondents' factual claim that that Garys met with Willis "after the accident . . . to obtain new car insurance" is inaccurate. *See* RB 6. The Garys had been paying for insurance all along, but after they learned (post-accident) that Respondents had failed to issue the policy they had paid for, Willis told them not to worry. They later learned that Willis had back-dated their application. *See* App. 150-51; 721; 723.

resulting in Plaintiff unknowingly "driving an uninsured motor vehicle for several months in direct violation of South Carolina law," subjecting Plaintiff to the risk of having his driver's license and registration suspended, and necessitating him paying a substantial reinstatement fee. App. 171-72 (Williams);

- Respondent Safeco misled Plaintiff into believing she had a valid policy when in fact there was no policy in force, by accepting money in payment for the nonexistent policy, and even by paying for repairs to Plaintiff's vehicle after a loss claim when no policy existed. App. 192-93 (Wiltshire);

- Respondent Safeco repeatedly failed to contact Plaintiff to discuss her claim for hail damage or to discuss why her homeowners' policy was "unilaterally reinstated by [Respondents] but with a beginning date subsequent to her loss claim." App. 194 (Wiltshire);

- Respondents issued insurance policies for the wrong vehicles, resulting in no proof of insurance. App. 375 (Norman);

- Respondents Peerless and Safeco accepted premiums for a homeowner's policy which were paid by Plaintiff via bank draft, but either never issued a policy or allowed it to lapse, forcing Plaintiffs' mortgage lender to obtain insurance to protect the lien, which led to increased premiums for Plaintiffs. App. 330 (Antoniak);

- Respondent Peerless accepted payment for premiums for homeowners and auto insurance policies via automatic bank draft, but then allowed policies to lapse, resulting in the DMV cancelling Plaintiffs' license and registration and forcing him to pay substantial reinstatement fees. App. 339-40 (Lawton);

- "[A]gents and servants of Defendant Safeco" who were "acting within the scope of their employment" "made numerous false representations to the Plaintiff." App. 200 (Wiltshire);

- Respondents used "illegal and improper tactics . . . to corner the retail insurance market . . . and destroy all competition." App. 128 (Wilson);

- Respondents "individually and/or through their authorized and acting agent and/or servant, separate and apart from the improper and illegal activities alleged above, conspired together and worked together and coordinated their efforts with a common design and plan to restrain trade by putting [Plaintiff] and other licensed insurance agents . . . out of business and in the process make huge sums of money for the Defendants." App. 132 (Wilson); App. 393 (Shirley);

- Respondents, "individually and/or through their authorized acting agent and/or servant, separate [and] apart from the improper and illegal activities alleged above, mutually agreed to ignore and/or disregard the improper and illegal

activities of Defendant [Willis]. . . This . . . conspiracy allowed the activities of Defendant Laura Willis to continue unabated . . . ." App. 132-33 (Wilson);

- Respondents "repeatedly and intentionally procured the breach and/or termination of [Plaintiff's existing insurance] contracts by using false statements and illegal and improper acts with no legal justification . . . ." App. 133 (Wilson);

- Respondents intentionally caused the breach or termination of competing agents' contracts in order to destroy their business (App. 393-94).

- Respondents breached their "duty of care to Plaintiffs" by "disseminating false information, authoring fraudulent and false insurance documents, accepting and converting cash payments instead of paying premiums, [and] issuing bogus policies." App. 334 (Antoniak); App. 367 (Belton);

These allegations are impossible to reconcile with Respondents' repeated claim that the complaints "limit their allegations against the Insurers to their supposed failure to investigate, train, supervise, detect, and stop Willis." RB 14.

3. Respondents have conceded that their legal duties to Plaintiffs arise not from the Agency Agreement, but from statutes, case law, and insurance policies.

When they answered the Plaintiff Customers' complaints, Respondents didn't cite the Agency Agreement. Rather, they argued that any "duties owed by them to an insured are set forth in certain statutes, in case law, and in the contract of insurance between them and their insured." App. 351, 401. Respondents even requested that the South Carolina state court "issue a declaration as to the rights and obligations of the parties" with respect to any "contracts of insurance or coverage," and argued that they were "entitled to" multiple "declaration[s] by the Court" as to the legal effect of various policies as well as letters they sent to Plaintiffs. App. 230-34. Only much later did Respondents arrive at the notion of invoking their contract with Southern Risk. Their current argument—that "all of the allegations . . . against the Insurers arise from rights, duties, and obligations imposed solely by the Agency Agreement"—can't be reconciled with their original position. *See* RB 8.

If Respondents actually believed that their legal relationship with their customers and policyholders was governed by the Agency Agreement and its arbitration clause, why would they have filed claims against Plaintiffs in court—not once, but twice? When they sued their customers, why didn't they sue them for violations of the Agency Agreement? And why did they wait a whole year into this litigation to suddenly raise the arbitration clause? The answer is that the Agency Agreement and its arbitration clause never applied to these Plaintiffs, and Respondents knew it. Respondents got it right the first time.

D. Enforcing the Agency Agreement's Terms Would Do Nothing to Benefit Plaintiffs or Resolve Their Claims Against Respondents.

Plaintiffs, who filed these lawsuits without even knowing the Agency Agreement existed, have nothing to gain by seeking to enforce its terms. By its own language, the contract governs only the relationship between each Insurer and Southern Risk, establishes no duties to customers or the public on the Insurers' part, and expressly disclaims all obligations on the part of the Insurers to "anyone else." App. 466. But even if one accepted Respondents' mantra that the "only" allegations against them are that they failed to train and supervise Willis (which, as explained in part I.C.2 above, is patently false), Respondents fail to demonstrate how even that limited claim arises from the Agency Agreement.

For example, Respondents claim that any "duty" they have to supervise Willis stems "***solely***" from the contract. RB 14-15. But the only contract term they cite—¶ I.B—addresses not the Insurers' duties to anyone, but rather the "Authority of [the] Agency." App. 459. And the Agency Agreement makes no mention of Willis. *See* App. 459-67.

Likewise, Respondents claim that their "ability to perform . . . a background check on Willis" is derived from ¶ 2.F. RB 15. But that provision says only that the "Agency will comply with *any* [Insurer] requests for assistance in completing background checks or investigations of

Agency personnel . . . if requested by [Insurer]." App. 460 (emphasis added). This term imposes no duties on Respondents whatsoever.

Respondents also assert that their legal "duty to train and supervise" Willis is "grounded" in ¶ I.C of the Agreement. RB 15. But that paragraph says nothing about Willis, training, supervision, or any duties on the Insurers' part. Instead, it states that the Agency "is authorized to act as an agent for Company and bind Company pursuant to written authority and guidelines furnished to Agency by Company." App. 459. Safeco's version, likewise, provides that the agency is "only authorized to act as an agent for Safeco . . . in such classes of risks and under such limits as Safeco may from time to time establish in product underwriting and binding authority guides published on www.safeconow.com." App. 470. Neither the "written authority and guidelines" nor the "product underwriting and binding authority guides" are in the record. And Respondents nowhere explain how a term *limiting* the authority of Southern Risk creates a contractual duty on the Insurers' part to train or supervise Southern Risk's agents—let alone a duty to the non-party Plaintiffs.

Likewise, Respondents assert that any duty on their part to detect and stop Willis' unlawful conduct is rooted in ¶¶ 6.C-D and 8 of the agreement. RB 16. But on inspection, those provisions address "Agency-Billed Business" provisions requiring the *agency* to comply with various "accounting procedures" and collect premiums, and permit (but do not require) the Insurers to suspend the agency's business if the agency violates the Agency Agreement. App. 462-63. Again, these terms create no duty on Respondents' part at all—even to Southern Risk, let alone to Plaintiffs. And they confirm beyond any doubt that—as the trial court found—the Agency Agreement "control[s] only the business relationship between the agency and the insurance company, not the relationship between the insurers and [their] insureds." App. 20.

The Fourth Circuit's decision in *R.J. Griffin*, is particularly on point here. *R.J. Griffin* involved negligence claims by a homeowners association against a contractor for damage caused by a leak. 384 F.3d at 162-64. The construction contract between the contractor and developer had an arbitration clause; the plaintiff association was not a party to it. *Id.* at159. The defendant contractor sought arbitration. Like Respondents here, the contractor compared an allegation in the complaint that the contractor "failed to follow the plans and specifications," to language in the contract setting out "plans and specifications," and argued that this similarity demonstrated that the homeowners were seeking to recover damages from the builder's "alleged failure to follow the plans and specifications in [the general] contract." *Id.* at 163. But the Fourth Circuit rejected that argument and held that because the association was not seeking a "direct benefit" from the contract, estoppel did not apply. *Id.* The court reasoned that, while the builder may have owed contractual duties, it also could be held liable under state law—and that it was *those* legal duties on which the plaintiffs' claims were based. *Id.*; *see also Ellen v. A.C. Schultes of Maryland, Inc.*, 615 S.E.2d 729, 730, 733 (N.C. App. 2005) (estoppel did not apply to non-party plaintiff even though contract "provide[d] part of the factual foundation" for plaintiffs' complaint and required arbitration of all claims "arising out of or related to" the contract, where defendants' liability would be "determined by its duties under . . . statutory and common law, not by its duties under the contract[]").

In sum, Respondents' efforts to shoehorn allegations about their legal duties to Plaintiffs into contract language governing Southern Risk's contractual duties to them fail.

* * *

Plaintiffs' complaints clearly and exhaustively allege that Respondents are liable under South Carolina law for both the actions of their agents and their own conduct. And South

Carolina law is clear that insurance companies can be held liable both for their own actions and—under *respondeat superior*—for the actions of their agents. Accordingly, Respondents' contention that their Agency Agreement with Southern Risk provides the "sole" source of their legal duties to Plaintiffs cannot stand. There is simply no basis, in fact or in law, for holding that Plaintiffs' claims arise from the Agency Agreement—and thus no basis for applying equitable estoppel to enforce the agreement's arbitration clause against them.

II. Plaintiffs' Claims are Outside the Scope of the Agency Agreement's Arbitration Clause.

There is no valid factual or legal basis for holding that Plaintiffs' claims are within the scope of the Agency Agreement's arbitration clause. Respondents' core arguments—that Plaintiffs' only allegations against them are that they failed to supervise Willis, and that those allegations "concern the 'performance or non-performance'" of the Agency Agreement and thus arise solely from the Agency Agreement's provisions—have been shown to be false. *See* RB 24. Respondents offer a handful of other half-hearted arguments, but, as set out below, none of them has merit.

A. *Aiken* Resolves the Scope Issue Here.

First, Respondents cannot meaningfully distinguish this case from *Aiken v. World Finance Corp. of South Carolina*, 373 S.C. 144, 644 S.E.2d 705 (2007), where this Court held that a borrower's claims for negligence, negligent supervision, and unfair trade practices against a lender for its failure to prevent its agents' theft of the borrower's personal identity could *not* be forced into arbitration based on a clause in the loan agreement—even though the borrower (unlike Plaintiffs here) *was a party to that agreement*. *See* RB 26-27. Respondents respond that *Aiken* is "not analogous," because that the loan agreement in that case "did not impose on World Finance the right or obligation to hire, train, or supervise the employees" who accessed the

plaintiff's accounts and stole his identity. RB at 26. But even assuming that's true (the loan agreement is not quoted in its entirety in the *Aiken* decision), it doesn't matter, because the arbitration clause in the loan agreement was so broad that it extended not just to "all disputes or controversies of any kind and nature arising out of or in connection with the loan agreement," but also all disputes of any kind "arising out of any . . . relationship between lender and borrower or . . . any prior or future dealings between lender and borrower[.]" *Aiken*, 373 S.C. at 147, 644 S.E.2d at 707. Under Respondents' logic, a borrower who *did* agree to arbitrate "all disputes of any kind arising out of" the relationship between lender and borrower is not required to arbitrate a dispute with the lender about the lenders' employees' conduct towards the borrower; but a borrower who did not agree to arbitrate *any* disputes *is* required to arbitrate claims against the lender, if the lender had a separate contract with its employees that had an arbitration clause. The irrationality of this argument speaks for itself.

B. Respondents' "Arising Out Of" Argument Fails.

Second, Respondents continue to insist that, because the Agency Agreement's arbitration clause contains the magic words "arising out of," the court below was right to rule that it's broad enough to encompass unrelated claims by non-parties. According to Respondents, the decision below "relied on and comports with" decisions of this Court holding that "'[t]he phrase "arising out of" should be broadly construed in a *clause of inclusion*.'" RB 25 (quoting *Town of Duncan v. State Budget & Control Bd.*, 326 S.C. 6, 13, 482 S.E. 768, 772 (1997) (emphasis added), and *Howard v. State Farm Mut. Aut. Ins. Co.*, 316 S.C. 445, 450, 450 S.E.2d 582, 585 (1994)). Setting aside the fact that the decision below did not actually cite either case, Respondents conflate clauses of inclusion with arbitration clauses. These are different kinds of contract terms that are subject to completely different legal rules of interpretation.

A "clause of inclusion" is a term in an insurance policy that extends coverage to the included items of parties: for example, "any relative resident of the same household." *Buddin v. Nationwide Mut. Ins. Co.*, 250 S.C. 332, 338, 157 S.E.2d 633, 635 (1967). As the Court has explained, "[t]he courts have uniformly held that where the clause is one of inclusion, it should be broadly construed for the benefit of the insured"—meaning that the policy should be interpreted "in favor of coverage." *Id.* In contrast, this Court has held that in a policy's clause of *exclusion*, the phrase "'arising out of' should be *narrowly* construed." *McPherson By & Through McPherson v. Michigan Mut. Ins. Co.*, 310 S.C. 316, 319-20, 426 S.E.2d 770, 771 (1993) (emphasis added). *See also Allstate Ins. Co. v. Thatcher*, 283 S.C. 585, 587, 325 S.E.2d 59, 60 (1985) ("inclusion clauses in insurance policies should be given broad and liberal construction while exclusion clauses should be interpreted in a more restrictive fashion. . . . [T]he policy must be interpreted in the manner most favorable to the insured."). Whether Respondents failed to see the difference between inclusion (and exclusion) clauses in insurance policies and arbitration clauses or were knowingly mischaracterizing the case law, the argument fails.

C. Because the Arbitration Clause Is Limited to Disputes Between Insurer and Agency, Claims by Non-Parties are Outside Its Scope.

As explained in Petitioners' opening brief, the Agency Agreement's clause is inapplicable on its face to the non-party Plaintiffs' claims. *See* PB 8-10. By its own terms, the Agency Agreement is between each Respondent and Southern Risk. App. 459 ("The undersigned Agency and . . . 'Company'[] agree as follows:"); App. 466 ("This Agreement and any addenda hereto constitute the entire agreement between Company and Agency"). It expressly states that it does not apply to "anyone else." App. 466. The arbitration clause, likewise, clearly indicates that it applies to disputes between the two contract parties. *See* App. 464; PB 9. It even specifies that the arbitrator must apply "insurance law" and that "arbitrators will have particular knowledge

and experience"—*not* with common-law negligence and fraud claims brought by customers, but "with *independent insurance agency/company issues*." App. 464 (emphasis added).

Under these circumstances, courts have held that claims by non-parties are simply outside the scope of the arbitration clause. For example, the Alabama Supreme Court recently held that a non-party's claims were outside the scope of an arbitration clause in a car dealership's sales contract. *Daphne Auto., LLC v. E. Shore Neurology Clinic, Inc.*, No. 1151296, 2017 WL 3446127, at *4 (Ala. Aug. 11, 2017). In *Daphne*, the plaintiff company arranged to buy a car for its employee. The company paid for the car and was listed as the lienholder on the title, but the employee signed the sales contract and the car was put in his name. 2017 WL 3446127 at *1. The sales contract required arbitration of "all claims, demands, disputes or controversies of every kind or nature between them . . . ." *Id.* When the company sued, the dealership moved to compel arbitration, arguing that the clause should be enforced under equitable estoppel. *Id.* at *3.

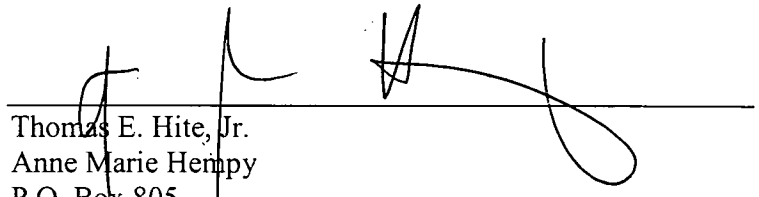
The Alabama Supreme Court declined to reach the estoppel argument and simply held that the non-party company's claims were "beyond the scope" of the arbitration clause. *Id.* It based its ruling on the language of the arbitration clause, explaining that, while the clause applied to a broad *range* of disputes, it was limited to disputes arising between the two *parties*. *Id.* at *4. The court explained that "the language employed in the arbitration agreements is not broad enough to encompass the plaintiffs, who are nonsignatories to those agreements." *Id.* The reasoning of the *Daphne* decision provides an equally valid basis for ruling that the non-party Plaintiffs' claims are outside the scope of the Agency Agreement's clause.

CONCLUSION

The decision of the Court of Appeals below should be reversed and the case should be remanded to the trial court for resolution on the merits.

Respectfully submitted,

HITE AND STONE, ATTORNEYS AT LAW



Thomas E. Hite, Jr.
Anne Marie Hempy
P.O. Box 805
100 East Pickens
Abbeville, SC 29620
(864) 366-5400

Leslie A. Bailey (admitted *pro hac vice*)
PUBLIC JUSTICE
475 14th St., Suite 610
Oakland, CA 94612
(510) 622-8150
lbailey@publicjustice.net

June 8, 2018

THE STATE OF SOUTH CAROLINA
In the Supreme Court

No. 2016-001512

APPEAL FROM ABBEVILLE COUNTY
Court of Common Please
Eugene G. Griffith, Jr., Circuit Court Judge

RECEIVED
JUN 08 2018
S.C. SUPREME COURT

Opinion No. 5387 (S.C. Ct. App. Filed March 2, 2016)
Appellate Case No. 2014-00946

Richard Wilson, Michael J. Antoniak, Jr., Marsha L. Antoniak, Anita L. Belton, Prescott Darren Bosler, Johnny Calhoun, Sallie Calhoun, Cynthia Gary, Robert Wayne Gary, Eugene P. Lawton, Jr., Jeanette Norman, James Robert Shirley, Robert W. Spires, Crystal Spires Wiley, Lewis S. Williams, Janie Wiltshire, Benjamin Franklin Wofford, Jr., and Rebecca Hammond Wofford, ... *Plaintiffs/Petitioners,*

v.

Laura B. Willis and Jesse A. Dantice, individually and as agents and/or brokers for Southern Risk Insurance Services LLC, Travelers Casualty Insurance Company of America, Allied Property and Casualty Insurance Co., Peerless Insurance Co., Montgomery Mutual Insurance Co., Safeco Insurance Co. of America, and Foremost Insurance Co.; Southern Risk Insurance Services, LLC, Travelers Casualty Insurance Co. of America, Allied Property and Casualty Insurance Co., Peerless Insurance Co., Montgomery Mutual Insurance Co., Safeco Insurance Co. of America, and Foremost Insurance Co.; and Laurie Williams, ... *Defendants,*

Of whom Peerless Insurance Co., Montgomery Mutual Insurance Co., and Safeco Insurance Co. of America are ..... *Respondents.*

PROOF OF SERVICE

I, the undersigned legal assistant with the law offices of Hite and Stone, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Reply Brief of Petitioners

Counsel Served:

Jane H. Merrill, Esquire
Hawthorne Merrill Law, LLC
410 Main Street
Greenwood, SC 29646

C. Mitchell Brown, Esquire
William C. Wood, Jr., Esquire
A. Mattison Bogan, Esquire
Nelson Mullins Riley & Scarborough LLP
Post Office Box 11070
Columbia, SC 29201

Robert C. Calamari, Esquire
Nelson Mullins Riley & Scarborough LLP
Post Office Box 3939
Myrtle Beach, SC 29577

April Powell

June 8, 2018