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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2018- 000692
Circuit Court Case No. 2015-CP-10-06684

RECEIVED
JUL 31 2018
SC Court of Appeals

Zurich American Insurance Company of Illinois Respondent,

v.

Palmetto Contract Services, Inc. Appellant.

RESPONDENT'S MOTION TO DISMISS APPEAL

Appellant Palmetto Contract Services, Inc. (Palmetto) has appealed an interlocutory order denying it a jury trial. Respondent Zurich American Insurance Company of Illinois (Zurich), now moves to dismiss the appeal on the grounds the order is not immediately appealable. Zurich requests that the Court of Appeals dismiss Palmetto's interlocutory appeal based upon Palmetto's waiver of its right to a jury trial.

BACKGROUND

1. Zurich filed its Summons and Verified Complaint alleging breach of contract against Palmetto on December 12, 2015, based upon Palmetto's failure to pay its workers compensation insurance premiums as agreed.

2. Zurich served Palmetto with Zurich's Summons and Verified Complaint on January 14, 2016.

3. Palmetto served its initial Answer to Zurich's Summons and Verified Complaint on February 12, 2016, denying all of the allegations in Zurich's Verified Complaint and alleging certain affirmative defenses, including fraud and misrepresentation. [Judge Nicholson's Order, P.1, Para. 1.] A true and correct copy of Judge Nicholson's Order Granting Defendant's Motion to Amend is attached as Exhibit "A." Attached as Exhibit "B" is a true and correct copy of Palmetto's initial Answer to Zurich's Summons and Verified Complaint.

4. Palmetto failed to demand a jury trial in its initial Answer to Zurich's Summons and Verified Complaint or within 10 days of serving it. Rule 38 (b), SCRCF.

5. Five months later, on July 12, 2016, Palmetto moved and served its motion to amend its initial Answer and assert counterclaims against Zurich for misrepresentation, fraud and breach of contract. Along with its Motion to Amend, Palmetto filed its proposed Amended Answer and Counterclaim. Attached as Exhibit "C" are true and correct copies of Palmetto's Motion to Amend with its proposed Amended Answer and Counterclaim. Again Palmetto failed to demand a jury trial at the time it served its Motion to Amend and proposed Amended Answer and Counterclaim.

6. The Honorable J. C. Nicholson Jr., granted Palmetto's Motion to Amend based upon several factors. One of the reasons for the Court granting Defendant Palmetto's Motion to Amend is that Palmetto's initial Answer to Zurich's Verified Complaint already alleged the affirmative defenses of fraud and misrepresentation. [Exhibit "A," Judge Nicholson's Order, P. 3, Para. 2].

7. More than 18 months after the deadline for Palmetto to demand a jury trial under Rule 38 (b), SCRCF, Palmetto served its Amended Answer and Counterclaim and for the first time, on

September 27, 2017, included the words, “(Jury Trial)” on its amended pleading. Attached as Exhibit “D,” is a true and correct copy of Palmetto’s Amended Answer and Counterclaim. Palmetto never actually “demanded” a jury trial as required by 38 (b), SCRPC. Instead, Palmetto wrote only wrote the words, “Jury Trial,” in parenthesis at the top of its amended pleading. No motion was ever filed by Palmetto to transfer this action from the Trial Court’s Non-jury Trial Roster to the Trial Court’s Jury Trial Roster. Instead, without prior notice to Zurich, the Charleston County Clerk of Court transferred the action to the Jury Trial Roster. Prior to the transfer to the Jury Trial Roster, the action was on the Trial Court’s Non-jury Trial Roster. By August 2, 2017, the action had reached the Trial Court’s backup Non-jury Trial Roster for the week of September 5, 2017. A true and correct copy of the Charleston County Clerk of Court’s notice (Notice) that the action was added to the Non-jury Roster is attached as Exhibit “E.”

8. The allegations in Palmetto’s Amended Answer and Counterclaim are based upon the same facts issues raised in Zurich’s Verified Complaint and Palmetto’s initial Answer. [Exhibit “A,” Judge Nicholson’s Order, P. 3, Para. 2]

9. On October 26, 2017, Zurich served its “Objection to the Transfer to Jury Trial Roster and Motion to Strike Jury Trial Demand (Motion to Strike). Attached as Exhibit “F” is a true and correct copy of the Zurich’s Motion to Strike and its Memo in Support of its Motion to Strike.

10. Appellant Palmetto failed to file any written response to Zurich’s Motion to Strike.

11. Instead, at the Trial Court’s Hearing on the Respondent’s Motion to Strike, Appellant Palmetto argued that, “[a] party is entitled to a jury trial as a matter of right. And [the trial court’s] decision here is really discretionary. Your Honor what’s interesting is, if - - its your discretion.”

Attached as Exhibit “G” is a true and correct copy the Transcript of the Hearing for the Motion to

Strike held on March 3, 2018.

12. On March 13, 2018, the Charleston County Clerk of Court entered the Trial Court's order granting, Zurich's Motion to Strike. The Trial Court based its decision on Rule 38 (d), SCRPC, the South Carolina Court of Appeals' ruling in *King v. Shorter*, 291 S.C. 501, 354 S.E. 2nd 402 (Ct. App. 1987), in which this Court states that, "... the new claims failed to create new issues of fact" and the Trial Court's finding that, "[t]he counterclaims raised in [Palmetto's] Amended Pleadings do not create new issues of fact." Attached as Exhibit "H" is a true and correct copy of the Trial Court's Order entered on March 13, 2018.

ARGUMENT

13. Through the amendment of its Answer, Palmetto has improperly attempted to revive its entitlement to a jury trial, after failing to request it in its initial pleading. Rule 38, SCRPC reads in part:

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, except where an opposing party is in default under Rule 55(a).

Rule 39, SCRPC reads in part:

(b) By the Court. Issues of law and issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court or may be referred to a master as provided in Rule 53; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues.

14. Based on Rule 38 (b), SCRCF, Palmetto's deadline for demanding a jury trial was on or before March 23, 2016, 10 days after Palmetto served its initial Answer to Zurich's Summons and Verified Complaint. Palmetto's failure to serve a demand as required by Rule 38 (b), SCRCF, constitutes a waiver.¹

15. Once Palmetto waived its right to a jury trial by failing to make a timely demand, Palmetto's request for a trial becomes subject to the discretion of the trial court. Rule 39 (b), SCRCF.

16. In *Satcher v. Satcher*, 351 S.C. 477, 490, 570 S.E.2d 535, 542 (Ct. App. 2002), this Court held that an argument as to whether under Rule 39 (b), SCRCF, the trial court had erred in failing to grant a jury trial is a matter of discretion. "A decision denying a jury trial based on Rule 39 (b) is discretionary and not immediately appealable." *Id* at 490, 542, citing, *Rowe Furniture Corp. v. Carolina Wholesale Furniture Co.*, 292 S.C. 575, 576, 357 S.E.2d 725, 725 (Ct. App. 1987).

17. Here, Appellant Palmetto is not entitled to a jury trial as a matter of right based on the filing of its Amended Answer and Counterclaim on essentially the same fact issues as in its initial Answer. Palmetto failed to timely demand a jury trial and the amended answer and counterclaim did not resurrect this right after the waiver.

18. An order denying a party a jury trial is not immediately appealable unless it deprives the party of a mode of trial to which it is entitled as a matter of right. *See Williford v. Downs*, 265 S.C. 319, 218 S.E. 2d 242 (1975); *Alston v. Limehouse*, 61 S.C. 1, 39 S.E. 192 (1901). Palmetto, by

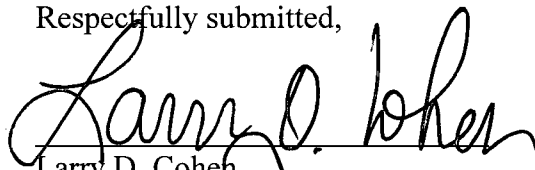
¹Respondent Zurich contends that Appellant Palmetto also failed to comply with Rule 38 (b), SCRCF, in that Palmetto never actually made a "demand" for a jury trial. Rather, Palmetto ambiguously inserted the words "Jury Trial," instead of the words, "Jury Trial Demanded" on its Amended Answer and Counterclaim served on September 27, 2017. [Exhibit "D"]

its failure to timely file a demand for a jury trial, made the issue one in the discretion of the trial court. "[N]otwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues. A decision denying a jury trial based on Rule 39 (b), SCRPC is discretionary and not immediately appealable. *Rowe Furniture Corp.*, 292 S.C. at 576, 357 S.E.2d at 725. Because the decision on Palmetto's request for a jury trial was discretionary with the Trial Court, it is not immediately appealable.

CONCLUSION

Appellant Palmetto Contract Services, Inc. waived its right to demand a jury trial by its failure to comply with Rule 38 (b), SCRPC. At the time Palmetto inserted the words "Jury Trial," on its amended pleading, the Trial Court had discretion whether to grant a jury trial. Notwithstanding the untimeliness, Zurich contends that Palmetto never actually "demanded" a jury trial as required by Rule 38 (b), SCRPC. Because the decision whether to grant a jury trial was within the discretion of the trial court, it is not immediately appealable. Zurich requests that this Court dismiss, Palmetto's interlocutory appeal as premature.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT

EXHIBIT “A”

**Judge Nicholson’s Order
Granting Leave to Amend
Answer**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CASE NO.: 2015-CP-10-6684

ZURICH AMERICAN INSURANCE
COMPANY OF ILLINOIS,

Plaintiff,

v.


PALMETTO CONTRACT SERVICES,
INC.,

Defendant.

ORDER
GRANTING DEFENDANT'S
MOTION TO AMEND

2017 SEP 22 PM 12:46

FILED

 This matter came before the court on September 19, 2017, on the motion of the Defendant, Palmetto Contract Services, Inc. (hereinafter "Palmetto"), to amend its answer to add a counterclaim for breach of contract and for fraud and negligent misrepresentation. The Plaintiff, Zurich American Insurance Company of Illinois (hereinafter "Zurich"), filed a complaint for breach of contract relating to the payment of premiums for workers' compensation insurance. Palmetto filed an answer denying all of the allegations in the complaint and alleged defenses, including Plaintiff's fraud and misrepresentation. (Answer, Par. 9). For the reasons set forth below, Palmetto's motion to amend is granted.

According to the complaint, this matter involves insurance premiums allegedly due for the time period of February 20, 2012, through February 20, 2013. Zurich made a demand for payment in the amount of \$158,744.00 on June 18, 2013. (Complaint, Par. 8). By letter dated June 17, 2013, Palmetto sent a letter to Zurich contesting the audit and requested that the audit be amended. (See, Exhibit 2 to Plaintiff's Response in Opposition to Defendant's Motion to Amend). Zurich filed the complaint on December 11, 2015. Palmetto filed an answer on February 12, 2016.

Palmetto contends that it is entitled to amend its answer to add a counterclaim pursuant to Rule 15 of the South Carolina Rules of Civil Procedure. Zurich contends that the motion should be denied for two reasons: (1) that it would be prejudiced because it does not now have an opportunity to demand a jury trial, and (2) because the amendment is untimely. Zurich contends that the statute of limitations has run because Palmetto knew or should have known about its counterclaim as of June 17, 2013, but did not file the motion to amend until July 12, 2016, more than three years after the June 17, 2013, letter.

Rule 15(a) provides that “a party may amend his pleading ... by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.” Rule 15(a), SCRPC. “The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. [citations omitted]” City of N. Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232–33, 599 S.E.2d 462, 465–66 (Ct. App. 2004). The party opposing the motion has the burden of establishing prejudice. Id. During the hearing, Palmetto consented to a jury trial, therefore there can be no prejudice.

Rule 15(c) provides that any amendment under this rule “relates back to the original pleadings.” Rule 15(c), SCRPC. If there is a question relating to the statute of limitations, “the issue then becomes whether the amended claim was time-barred at the time the action was commenced.” Arant v. Kressler, 327 S.C. 225, 228, 489 S.E.2d 206, 208 (1997). The statute of limitations runs “from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996).” McAlhany v. Carter, 415 S.C. 54, 63, 781 S.E.2d 105, 110 (Ct. App. 2015), reh'g denied (Jan. 28, 2016). However, “[w]hen there is

conflicting testimony regarding the time of discovery, it becomes an issue for the jury to decide.”

Arant, 327 S.C. at 229, 489 S.E.2d at 208.

In Collins v. Sigmon, 299 S.C. 464, 385 S.E.2d 835 (1989), the S.C. Supreme Court provided helpful guidance regarding motions to amend.

A motion to amend an Answer should be contested primarily by procedural arguments, not arguments concerning the substance and merits of the counterclaims and/or defenses proposed. For example, one might argue that it is too late in the case to allow an amendment, and that prejudice would result from such an amendment. Arguments going to the legal merits of a proposed defense or counterclaim are better taken up in the context of a Rule 12(b) motion to dismiss or a Rule 56 motion for summary judgment. It follows that the trial judge should generally not consider these substantive arguments at the mere amendment stage.

Id. at 466, 385 S.E.2d at 836. See also, City of N. Myrtle Beach, 360 S.C. at 232–33, 599 S.E.2d at 465–66.

Palmetto is entitled to amend the complaint to add a counterclaim. First, Rule 15(a) provides that a motion to amend shall be freely given. Second, there is no prejudice to Zurich. Palmetto put Zurich on notice of allegations of fraud in the original answer, and Palmetto consented to a jury trial. Further, there is no evidence that Zurich does not have adequate time to prepare and defend against the counterclaim. Therefore, both requirements of 15(a) are met.

I also find that Zurich’s statute of limitations argument fails based on the plain language of Rule 15(c). Zurich bases its statute of limitations argument on the assertion that Palmetto knew or should have known about the causes of action against Zurich as of the June 17, 2013 letter. However, Rule 15(c) provides that an amendment relates back to the time the original filing, in this case, December 11, 2015. Therefore, for the purposes of this motion, the fact that Palmetto filed the motion to amend more than three (3) years after the letter dated June 17, 2013, is irrelevant. Pursuant to the language in Rule 15(c), the counterclaim would have been appropriate, and could have been asserted at the time the answer was filed.

Further, the question of whether the statute of limitations had run is best left to a motion for summary judgment when all of the facts can be sorted out. At this juncture, the court is not in a position to determine as a matter of law that the statute had run. Since the statute of limitations is a question of fact, that issue is not before the court, and should not be considered in this motion to amend.

Under the circumstances here, there is no basis for denying the motion. Zurich has failed to show how it might be prejudiced by the amendment. Zurich has been on notice since the Defendant filed the original answer that there were issues of fraud and misrepresentation. Further, even if the statute of limitations is a defense available to Zurich, it is free to assert that defense in the answer to the counterclaim and in any subsequent motions for summary judgment. As discussed above, if there is a dispute as to when the statute of limitations began, it is an issue for a later motion.

For all the foregoing reasons, Palmetto's motion to amend the answer to add counterclaims is granted. The amended answer and counterclaims shall be filed within ten (10) days of receipt of this court's order. Plaintiff shall have thirty (30) days to answer upon receipt of the amended answer and counterclaims.

AND IT IS SO ORDERED.

Dated: 9/20, 2017

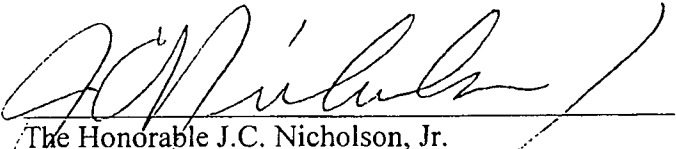

The Honorable J.C. Nicholson, Jr.

EXHIBIT “B”

**Defendant’s (Appellant’s) Initial
Answer to Plaintiff’s Summons
and Verified Complaint**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CASE NO.: 2015-CP-10-6684

ZURICH AMERICAN INSURANCE
COMPANY OF ILLINOIS,

Plaintiff,

v.

PALMETTO CONTRACT SERVICES,
INC.,

Defendant.

**DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT**

FILED
2016 FEB 16 PM 4:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY *JP*

The Defendant, Palmetto Contract Services, Inc. (hereinafter "Palmetto"), answering the Complaint would show as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Any allegations contained in the Plaintiff's Complaint not specifically admitted, denied or otherwise modified are expressly denied and strict proof demanded thereof. To the extent any allegation or part thereof may not be expressly referred to and specifically answered, it is hereby denied and legal proof thereof is requested.

FOR A SECOND DEFENSE
(Specific Responses)

2. Upon information and belief, Palmetto admits Paragraph 1 of the Complaint
 3. Palmetto admits the allegations contained in Paragraphs 2 through 5 of the Complaint.
 4. Palmetto denies the allegations contained in Paragraph 6 of the Complaint.
 5. Palmetto denies the allegations contained in Paragraph 7 of the Complaint as written.
- Palmetto is not required to pay amounts not due under the terms of the policy.

6. Palmetto denies the allegations contained in Paragraphs 8 through 12 of the Complaint.

FOR A THIRD DEFENSE
(Failure to Mitigate Damages)

7. The Plaintiff has failed to mitigate damages as required by law.

FOR A FOURTH DEFENSE
(Waiver, Estoppel, Laches)

8. The Plaintiff's claims are barred by the doctrine of waiver, estoppel and/or laches.

FOR A FIFTH DEFENSE
(Fraud and Fraud in the Inducement)

9. The Plaintiff's claims are barred as a result of the Plaintiff's fraud and misrepresentations concerning the policy and audit.

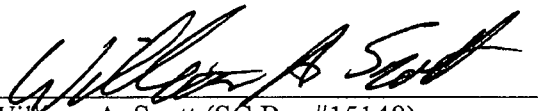
RESERVATION AND NON-WAIVER

Palmetto reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, the Defendant, Palmetto Contract Services, Inc., prays that the Complaint be dismissed with prejudice, attorney's fees as may be allowed at law, the cost of defending this action, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

PEDERSEN & SCOTT, P.C.



William A. Scott (SC Bar #15148)

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Email: bscott@pslawpc.com

Attorney for Defendant,

Palmetto Contract Services, Inc.

February 12, 2016

EXHIBIT “C”

**Appellant’s Motion to Amend
Answer and Assert Counterclaim**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CASE NO.: 2015-CP-10-6684

ZURICH AMERICAN INSURANCE
COMPANY OF ILLINOIS,

Plaintiff,

v.

PALMETTO CONTRACT SERVICES,
INC.,

Defendant.

**NOTICE OF MOTION AND
MOTION TO AMEND ANSWER AND
ASSERT A COUNTERCLAIM AGAINST
PLAINTIFF**

FILED
JUL 18 2 39 PM
CLERK OF COURT

TO: LARRY D. COHEN, ESQ. and CAROLYN H. BLUE, ESQ.

YOU PLEASE TAKE NOTICE that the Defendant, Palmetto Contract Services, Inc., by and through its undersigned counsel, pursuant to Rules 13 and 15 of the South Carolina Rules of Civil Procedure, hereby requests that the Court allow the Defendant to amend its Answer and assert a counterclaim against Plaintiff, Zurich American Insurance Company of Illinois ("Zurich"), to conform to the evidence.

Respectfully submitted,

PEDERSEN & SCOTT, P.C.



William A. Scott (SC Bar #15148)

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Fax. (843) 556-5635

Email: bscott@pslawpc.com

Attorney for Defendant,

Palmetto Contract Services, Inc.

July 12, 2016

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO.: 2015-CP-10-6684

ZURICH AMERICAN INSURANCE
COMPANY OF ILLINOIS,

Plaintiff,

v.

PALMETTO CONTRACT SERVICES,
INC.,

Defendant.

**DEFENDANT'S AMENDED ANSWER
AND COUNTERCLAIM**

The Defendant, Palmetto Contract Services, Inc. (hereinafter "Palmetto"), answering the Complaint of Plaintiff, Zurich American Insurance Company of Illinois (hereinafter "Zurich" or "Plaintiff"), would show as follows:

FOR A FIRST DEFENSE

(General Denial)

1. Any allegations contained in the Plaintiff's Complaint not specifically admitted, denied or otherwise modified are expressly denied and strict proof demanded thereof. To the extent any allegation or part thereof may not be expressly referred to and specifically answered, it is hereby denied and legal proof thereof is requested.

FOR A SECOND DEFENSE

(Specific Responses)

2. Upon information and belief, Palmetto admits Paragraph 1 of the Complaint
3. Palmetto admits the allegations contained in Paragraphs 2 through 5 of the Complaint.
4. Palmetto denies the allegations contained in Paragraph 6 of the Complaint.

5. Palmetto denies the allegations contained in Paragraph 7 of the Complaint as written. Palmetto is not required to pay amounts not due under the terms of the policy.

6. Palmetto denies the allegations contained in Paragraphs 8 through 12 of the Complaint.

FOR A THIRD DEFENSE
(Failure to Mitigate Damages)

7. The Plaintiff has failed to mitigate damages as required by law.

FOR A FOURTH DEFENSE
(Waiver, Estoppel, Laches)

8. The Plaintiff's claims are barred by the doctrine of waiver, estoppel and/or laches.

FOR A FIFTH DEFENSE
(Fraud and Fraud in the Inducement)

9. The Plaintiff's claims are barred as a result of the Plaintiff's fraud and misrepresentations concerning the policy and audit.

FOR A SIXTH DEFENSE
(Full Accord and Satisfaction)

10. The Plaintiff's claims are barred due to full accord and satisfaction by the Defendant.

FOR A SEVENTH DEFENSE
(Setoff)

11. The Plaintiff's claims must be reduced by the amount paid for the value of the work performed.

FOR A EIGHTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Negligent Representation and Fraud)

12. On or about January 12, 2012, Zurich and Palmetto entered into a contract whereby Plaintiff agreed to provide certain workers' compensation and employer's liability insurance coverage to Palmetto for which the Palmetto agreed to pay the premiums.

13. The agreement entered into between Zurich and Palmetto was similar to agreements entered into between Assurance Company of America, a subsidiary of the Plaintiff, and/or Zurich, for the years 2009 through 2010, 2010 through 2011, and 2011 through 2012.
14. For each of the aforesaid policy periods, Zurich and/or Assurance agreed to provide coverage under NCCI Class Codes 3040, 3040U, 6824F, 6834, 7842, and 8810.
15. During each of the aforesaid policy periods, Zurich and/or Assurance had charged Palmetto premiums and assigned employees to the different class codes, specifically including 3046.
16. In connection with the policy period for 2012 through 2013, Zurich represented that it would provide insurance and invoice Palmetto based on the class codes set forth in the agreement, as it had done during the previous three policy periods.
17. On or around April 4, 2013, after the policy period, Zurich performed an audit of Palmetto's books.
18. The audit was performed by Evelyn Wyatt on behalf of Zurich.
19. The audit summary separated the work performed by Palmetto into different work categories corresponding to the different class codes, including workers under class codes 3040, 6824F, 8742, and 8810, as it had done during previous policy periods.
20. The audit summary was provided to Palmetto on or around April 4, 2013.
21. On or around April 6, 2013, Zurich revised the audit summary and took all of the labor originally classified under 3040 and added it under code 6824F and made a minor change to the work under class code 8810.
22. The summary of audit review from Zurich review states that, "Class code 3040 does not apply to [Palmetto's] operations."

23. During the policy periods of 2009 through 2010, 2010 through 2011, 2011 through 2012, Zurich and/or its subsidiaries took the position that class code 3040 did apply to Palmetto's operations.
24. In 2012, Assurance Company of America, a subsidiary of Zurich (hereinafter "Assurance"), filed a complaint, case no. 2012-CP-10-284, in which it took the position that a portion of Palmetto's operations were covered under class code 3040.
25. On or around June 18, 2013, Zurich invoiced Palmetto \$158,744.00, as a result of the revised audit and the change from listing work under 6824F as opposed to 3040.
26. The representation that Zurich would properly classify people under 3040 and bill Palmetto accordingly was false.
27. The representations in the agreement including that Zurich would classify work under 3040 and invoice Palmetto accordingly were material.
28. Zurich knew the representations in the agreement were false.
29. Zurich intended that the representations be acted upon.
30. Palmetto did not know that the representations were false, and relied on the representations as set forth in the agreement.
31. Zurich had a pecuniary interest in making the false representations as set forth herein.
32. Zurich had a duty of due care to provide truthful information to Palmetto, and breached its duty by failing to properly communicate information regarding class codes to Palmetto, and changing the audit in direct violation of the contract requirements and prior dealings with the parties.
33. Palmetto had a right to rely on the representations in the agreement and on the prior dealings with Zurich and its subsidiaries regarding the classification of employees.

34. As a direct and proximate result of the aforesaid negligent misrepresentations and fraud, which were intentional, willful, reckless, and grossly negligent, Palmetto has been overbilled, and has incurred actual, incidental, and unspecified damages all in the amount to be determined by the trier of fact.

FOR A NINTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Breach of Contract)

35. Zurich breached the contract by failing to classify operations properly and improperly billing Palmetto.
36. As a direct and proximate result of the breach of contract, Zurich overbilled Palmetto, and Palmetto is entitled to a refund for actual damages in an amount to be determined by the trier of fact.

RESERVATION AND NON-WAIVER

Palmetto reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, the Defendant, Palmetto Contract Services, Inc., requests that the Court issue an Order dismissing the Plaintiff's Complaint with prejudice, and for judgment against the Plaintiff in excess of \$100,000.00, for actual, incidental, and consequential damages, for punitive damages in an amount to be determined by the trier of fact, for the cost of this action and for such and further relief as this Court deems just and proper.

[SIGNATURE ON NEXT PAGE]

Respectfully submitted,

PEDERSEN & SCOTT, P.C.

William A. Scott (SC Bar #15148)

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Attorney for Defendant,

Palmetto Contract Services, Inc.

July 12, 2016

EXHIBIT “D”

**Defendant’s (Appellant’s)
Amended Answer and
Counterclaim**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

6084
CASE NO.: 2015-CP-10-6684

ZURICH AMERICAN INSURANCE
COMPANY OF ILLINOIS,

Plaintiff,

v.

PALMETTO CONTRACT SERVICES,
INC.,

Defendant.

2017 SEP 29 AM 10:50
CLERK OF COURT
DEFENDANT'S AMENDED ANSWER
AND COUNTERCLAIM
(Jury Trial)

The Defendant, Palmetto Contract Services, Inc. (hereinafter "Palmetto"), answering the Complaint of Plaintiff, Zurich American Insurance Company of Illinois (hereinafter "Zurich" or "Plaintiff"), would show as follows:

FOR A FIRST DEFENSE

(General Denial)

1. Any allegations contained in the Plaintiff's Complaint not specifically admitted, denied or otherwise modified are expressly denied and strict proof demanded thereof. To the extent any allegation or part thereof may not be expressly referred to and specifically answered, it is hereby denied and legal proof thereof is requested.

FOR A SECOND DEFENSE

(Specific Responses)

2. Upon information and belief, Palmetto admits Paragraph 1 of the Complaint
3. Palmetto admits the allegations contained in Paragraphs 2 through 5 of the Complaint.
4. Palmetto denies the allegations contained in Paragraph 6 of the Complaint.

5. Palmetto denies the allegations contained in Paragraph 7 of the Complaint as written. Palmetto is not required to pay amounts not due under the terms of the policy.

6. Palmetto denies the allegations contained in Paragraphs 8 through 12 of the Complaint.

FOR A THIRD DEFENSE

(Failure to Mitigate Damages)

7. The Plaintiff has failed to mitigate damages as required by law.

FOR A FOURTH DEFENSE

(Waiver, Estoppel, Laches)

8. The Plaintiff's claims are barred by the doctrine of waiver, estoppel and/or laches.

FOR A FIFTH DEFENSE

(Fraud and Fraud in the Inducement)

9. The Plaintiff's claims are barred as a result of the Plaintiff's fraud and misrepresentations concerning the policy and audit.

FOR A SIXTH DEFENSE

(Full Accord and Satisfaction)

10. The Plaintiff's claims are barred due to full accord and satisfaction by the Defendant.

FOR A SEVENTH DEFENSE

(Setoff)

11. The Plaintiff's claims must be reduced by the amount paid for the value of the work performed.

FOR A EIGHTH DEFENSE AND BY WAY OF A COUNTERCLAIM

(Negligent Representation and Fraud)

12. On or about January 12, 2012, Zurich and Palmetto entered into a contract whereby Plaintiff agreed to provide certain workers' compensation and employer's liability insurance coverage to Palmetto for which the Palmetto agreed to pay the premiums.

13. The agreement entered into between Zurich and Palmetto was similar to agreements entered into between Assurance Company of America, a subsidiary of the Plaintiff, and/or Zurich, for the years 2009 through 2010, 2010 through 2011, and 2011 through 2012.
14. For each of the aforesaid policy periods, Zurich and/or Assurance agreed to provide coverage under NCCI Class Codes 3040, 3040U, 6824F, 6834, 7842, and 8810.
15. During each of the aforesaid policy periods, Zurich and/or Assurance had charged Palmetto premiums and assigned employees to the different class codes, specifically including 3046.
16. In connection with the policy period for 2012 through 2013, Zurich represented that it would provide insurance and invoice Palmetto based on the class codes set forth in the agreement, as it had done during the previous three policy periods.
17. On or around April 4, 2013, after the policy period, Zurich performed an audit of Palmetto's books.
18. The audit was performed by Evelyn Wyatt on behalf of Zurich.
19. The audit summary separated the work performed by Palmetto into different work categories corresponding to the different class codes, including workers under class codes 3040, 6824F, 8742, and 8810, as it had done during previous policy periods.
20. The audit summary was provided to Palmetto on or around April 4, 2013.
21. On or around April 6, 2013, Zurich revised the audit summary and took all of the labor originally classified under 3040 and added it under code 6824F and made a minor change to the work under class code 8810.
22. The summary of audit review from Zurich review states that, "Class code 3040 does not apply to [Palmetto's] operations."

23. During the policy periods of 2009 through 2010, 2010 through 2011, 2011 through 2012, Zurich and/or its subsidiaries took the position that class code 3040 did apply to Palmetto's operations.
24. In 2012, Assurance Company of America, a subsidiary of Zurich (hereinafter "Assurance"), filed a complaint, case no. 2012-CP-10-284, in which it took the position that a portion of Palmetto's operations were covered under class code 3040.
25. On or around June 18, 2013, Zurich invoiced Palmetto \$158,744.00, as a result of the revised audit and the change from listing work under 6824F as opposed to 3040.
26. The representation that Zurich would properly classify people under 3040 and bill Palmetto accordingly was false.
27. The representations in the agreement including that Zurich would classify work under 3040 and invoice Palmetto accordingly were material.
28. Zurich knew the representations in the agreement were false.
29. Zurich intended that the representations be acted upon.
30. Palmetto did not know that the representations were false, and relied on the representations as set forth in the agreement.
31. Zurich had a pecuniary interest in making the false representations as set forth herein.
32. Zurich had a duty of due care to provide truthful information to Palmetto, and breached its duty by failing to properly communicate information regarding class codes to Palmetto, and changing the audit in direct violation of the contract requirements and prior dealings with the parties.
33. Palmetto had a right to rely on the representations in the agreement and on the prior dealings with Zurich and its subsidiaries regarding the classification of employees.

34. As a direct and proximate result of the aforesaid negligent misrepresentations and fraud, which were intentional, willful, reckless, and grossly negligent, Palmetto has been overbilled, and has incurred actual, incidental, and unspecified damages all in the amount to be determined by the trier of fact.

FOR A NINTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Breach of Contract)

35. Zurich breached the contract by failing to classify operations properly and improperly billing Palmetto.
36. As a direct and proximate result of the breach of contract, Zurich overbilled Palmetto, and Palmetto is entitled to a refund for actual damages in an amount to be determined by the trier of fact.

RESERVATION AND NON-WAIVER

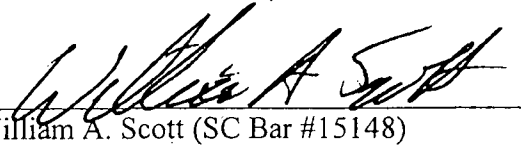
Palmetto reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, the Defendant, Palmetto Contract Services, Inc., requests that the Court issue an Order dismissing the Plaintiff's Complaint with prejudice, and for judgment against the Plaintiff in excess of \$100,000.00, for actual, incidental, and consequential damages, for punitive damages in an amount to be determined by the trier of fact, for the cost of this action and for such and further relief as this Court deems just and proper.

[SIGNATURE ON NEXT PAGE]

Respectfully submitted,

PEDERSEN & SCOTT, P.C.

A handwritten signature in black ink, appearing to read "William A. Scott", is written over a horizontal line.

William A. Scott (SC Bar #15148)

775 St. Andrews Blvd.

Charleston, SC 29407

Tel. (843) 556-5656

Fax. (843) 556-5635

Email: bscott@pslawpc.com

Attorney for Defendant,

Palmetto Contract Services, Inc.

September 27, 2017

EXHIBIT "E"

**Charleston County Clerk of
Court's Notice Case Added to
Non-Jury Trial Roster**

Case 2015CP1006684- Zurich American Insurance Company Of Illinois VS Palmetto Contract Services Inc
added to Court Roster for period 2017-09-05 through 2017-09-08.

X DELETE ← REPLY ⇐ REPLY ALL → FORWARD ...



cpas@charlestoncounty.org

Wed 8/2/2017 2:11 PM

Mark as unread

To: Larry D. Cohen;

You forwarded this message on 8/2/2017 3:16 PM.

THIS CASE IS ON THE BACK UP NON JURY TRIAL ROSTER FOR THE WEEK OF SEPTEMBER 5th. CASES WILL BE CALLED FROM THIS ROSTER AFTER THE JURY ROSTER IS COMPLETED FOR THE WEEK. MANDATORY ATTENDANCE IS REQUIRED AT THE ROSTER MEETING ON FRIDAY, SEPTEMBER 1st AT 9:30 AM. THE NON JURY ROSTER WILL BE CALLED AFTER THE JURY ROSTER.

If you have questions, please contact Caroline Leonard at ccleonard@charlestoncounty.org

EXHIBIT “F”

**Objection to Transfer to Jury
Trial Roster and Motion to
Strike Demand for Jury Trial**

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 ZURICH AMERICAN INSURANCE)
 COMPANY OF ILLINOIS,)
)
 Plaintiff,)
)
)
 PALMETTO CONTRACT SERVICES,)
 INC.,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER 2015-CP-10-6684

PLAINTIFF ZURICH'S OBJECTION
 TO TRANSFER TO JURY TRIAL
 ROSTER AND MOTION TO STRIKE
 DEMAND FOR JURY TRIAL

2015 DEC 26 PM 4:37
 JUDGE CHRISTOPHER STRONG
 CLERK OF COURT
 FILED
 LP

To: William A. Scott, Esquire, 775 St. Andrews Blvd, Charleston, South Carolina 29407, Attorney for Defendant Palmetto Contract Services, Inc.

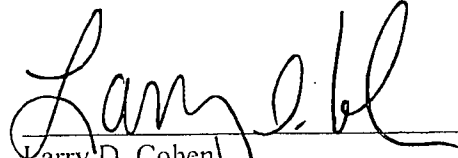
PLEASE TAKE NOTICE, that Plaintiff Zurich American Insurance Company of Illinois, pursuant to Rules 38 and 40, South Carolina Rules of Civil Procedure, files this its objection to the transfer of this action to the Jury Trial Roster and will move at a time and place to be arranged by the Court and counsel involved, for an Order Striking Defendant Palmetto Contract Services, Inc.'s jury trial demand and for the transfer of this action to the Court's Non-jury Roster.

Wherefore Premises Considered, Plaintiff prays that this Court strike Defendant's demand for jury trial and transfer this action to the Court's non-jury roster and for any other relief that Plaintiff may show itself entitled.

[signature on following page]

Charleston, South Carolina
October 26, 2017

Respectfully submitted,



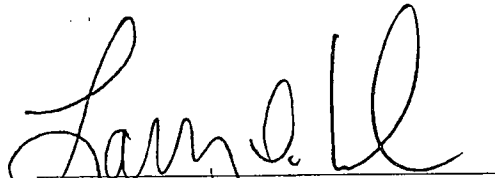
Larry D. Cohen
Larry D. Cohen, LLC
Attorneys at Law
P.O. Box 30547
Charleston, SC 29417
Tel. (843) 225-4445
Fax (843) 225-2008
ldcohen@ldcohenlaw.com

Carolyn H. Blue
Attorney at Law
P.O. Box 30845
Charleston, S.C. 29417
Tel. (843) 860-8076
carolyn.blue@ymail.com

ATTORNEYS FOR MOVANT

CERTIFICATE OF CONFERENCE

Pursuant to the requirements of Rule 11 SCRPC, the undersigned affirms that he communicated with opposing counsel via email in a good faith attempt to resolve the subject of this Motion, but was unable to do so.


Larry D. Cohen
Attorney for Plaintiff

Charleston, South Carolina
October 26, 2017

EXHIBIT “G”

**Transcript of Hearing on
Motion to Strike Jury Demand
Before Judge Harrington on
March 3, 2018**

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STATE OF SOUTH CAROLINA)	
)	Court of Common Pleas
COUNTY OF CHARLESTON)	Case No. 2015-CP-10-06684
_____)	
ZURICH AMERICAN INSURANCE)	
COMPANY OF ILLINOIS,)	
)	
Plaintiff,)	
)	
vs.)	Transcript of Record
)	
PALMETTO CONTRACT SERVICES, INC.))	
)	
Defendant.)	DATE: March 3, 2018
_____)	

B E F O R E:

THE HONORABLE KRISTI LEA HARRINGTON

A P P E A R A N C E:

LARRY COHEN and CAROLYN BLUE
Attorney for the Plaintiff

WILLIAM A. SCOTT
Attorney for the Defendant

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

1 THE COURT: Good afternoon. How are you?

2 MR. SCOTT: Pretty well.

3 THE COURT: Good. What are we doing here today?

4 MR. SCOTT: Your Honor, we are here, I think, on
5 three motions. This is Zurich case against Palmetto
6 Contracting. I represent Palmetto. I had filed a motion to
7 withdraw. I was able to work things out with my client this
8 morning, and that was withdrawn.

9 THE COURT: You are withdrawing your motion to
10 withdraw?

11 MR. SCOTT: Yes, Your Honor. There was also a
12 motion to quash a notice of a 30(b)(6) deposition. That is
13 also withdrawn. I filed that because it was filed while --
14 when I did not think I would be continuing to represent
15 Palmetto. So my two motions are withdrawn.

16 THE COURT: All right.

17 MR. SCOTT: And the motion -- I received a notice
18 of that 30(b)(6) deposition to take place in April. I think
19 the only other motion is a motion by Zurich to strike a
20 demand for a jury trial in my amended answer and
21 counterclaim.

22 THE COURT: All right. Thank you.

23 MR. COHEN: Hi, Your Honor. I'm Larry Cohen. I
24 represent plaintiff Zurich Insurance Company, along with my
25 co-counsel, Carolyn Blue. Can we proceed with our motion?

1 THE COURT: Sure.

2 MR. COHEN: My client filed this motion because the
3 time for the defendant to demand a jury trial passed in
4 February 2016, 10 days after it filed its initial answer.
5 After filing its initial answer, approximately five months
6 later, the defendant filed a motion to amend its complaint
7 and attached a copy of the proposed -- I'm sorry, amended
8 answer, and asserted a counterclaim along with its answer.

9 In September, I think it was September 2017, the
10 answer to amend or the motion to amend the answer and assert
11 a counterclaim was granted. At that time, the first time,
12 defendant put a notation on its amended answer and
13 counterclaim, the words "jury trial", no actual demand for a
14 jury trial as required by Rule 38.

15 And the other problem with the defendant's request
16 for a jury trial is that it's based on the same issues that
17 were raised previously in its initial answer to the
18 plaintiff's complaint. In fact, if you look at Judge
19 Nichols's (sic) order granting the motion to amend, he
20 references one of the reasons he's granting the defendant's
21 motion to amend is that there's no surprise because it's
22 based on the same facts as in the original answer, which
23 were affirmative defenses for misrepresentation and fraud.

24 So we don't believe that the defendant is entitled
25 to a jury trial because it's waived. It's waived its right

1 to a jury trial by failing to file the request timely. And
2 just because they filed amended answers and counterclaims,
3 it doesn't resuscitate their right to request a jury trial.

4 THE COURT: All right. Mr. Scott.

5 MR. SCOTT: Your Honor, I sort of find this whole
6 motion strikingly odd, because when we argued, or Ms. Blue
7 argued against the motion to amend in front of Judge
8 Nicholson, she actually argued that it would be prejudicial
9 to grant that motion to amend because they couldn't ask for
10 a jury trial. And in the order, I consented and said, we
11 will consent to a jury trial.

12 THE COURT: I thought that's what it says on page 3
13 of the order, that jury trial was consented to.

14 MR. COHEN: Yes, Your Honor. Part of our argument
15 was that it would be prejudicial to our client to not be
16 able to even consider being able to request a jury trial,
17 but we never actually requested or demanded a jury trial in
18 writing or verbally.

19 THE COURT: If we were here -- you were here in
20 front of Judge Nicholson and, evidently, somebody stated
21 that there was a consent to a jury trial or wouldn't have
22 been an order --

23 MR. COHEN: Well, what happened was, we argued that
24 the motion to amend was prejudicial to our case. And one of
25 the reasons was because our time had passed of requesting a

1 jury trial. But we made clear that we were not requesting a
2 jury trial.

3 Well, at that hearing, Mr. Scott stood up and said,
4 well, we will consent to the jury trial. But we never
5 actually requested a jury trial. So when you read that, you
6 have to read it in the light that we didn't request it, but
7 that Mr. Scott consented to something that we never
8 requested. It was just an issue raised to show possible
9 prejudice to our client.

10 MR. SCOTT: Your Honor, while I find that odd, I
11 don't think that's the determinative issue in this case.

12 THE COURT: All right.

13 MR. SCOTT: A party is entitled to a jury trial as
14 a matter of right. And your decision here is really
15 discretionary. We agree that the case in here that rules is
16 *King v. Shorter*. If I may, it's cited in their memorandum.
17 And it's what I have, would rely on also.

18 Your Honor, what's interesting is, if -- it's your
19 discretion. If you grant this motion, this matter is
20 immediately appealable. If you deny their motion, it's not
21 appealable. And that's only significant to trying to get
22 this thing resolved. I would have to appeal it just because
23 of the issues. However, if you look at Rule 38(b) in *King*
24 *v. Shorter*, the operative language that *King* states is, does
25 the amended counterclaim create new issues of fact? And

1 that's really what the case is all about.

2 The original complaint or answer did not assert a
3 counterclaim. It asserted an offense of fraud and
4 misrepresentation. The amended complaint asserts a
5 complaint for breach of contract and affirmative claim for
6 fraud and negligent misrepresentation. And there are
7 damages, including actual and consequential damages and
8 punitive damages, all of which are issues of fact or new
9 issues of fact that were not in the original pleading.

10 And, therefore, I believe the rule is, we can ask
11 for that when we amend the complaint. That is what the *King*
12 *v. Shorter* case says. And that's what we are relying on.

13 THE COURT: So wasn't that what you argued in front
14 of Judge Nicholson and, in essence, it was the consent?

15 MR. SCOTT: I consented and said, yes, they want a
16 jury trial, we will have a jury trial.

17 MR. COHEN: Judge, he didn't argue -- he didn't
18 even request a jury trial until he filed his formal amended
19 answer and counterclaim. There was no issue about him
20 requesting or his client requesting a jury trial in any of
21 his motions prior to the time period until after Judge
22 Nichols (sic) granted that. So that wasn't even an issue.

23 In fact, we weren't even given the opportunity by
24 the defendant to review the proposed order submitted to the
25 judge before it was submitted. It was submitted at 6:45 in

1 the morning by e-mail to the court. So we didn't even --

2 THE COURT: But you did have an opportunity to file
3 a motion to reconsider a final order, right?

4 MR. COHEN: We could have, yes, but we didn't.
5 Well, at that time, there was no issue about a jury demand.
6 So that wasn't an issue. And the fact that the defendant is
7 now seeking a -- instead of having affirmative defenses of
8 negligence -- I'm sorry, negligent misrepresentation,
9 misrepresentation, fraud, versus having a counterclaim on
10 the same issues, it's still the same facts. The facts
11 haven't changed. There are no new facts in this case. And
12 new facts are the basis for Mr. Scott's client being able to
13 assert a demand for a jury trial.

14 MR. SCOTT: Your Honor, just briefly, the new facts
15 include breach of contract claim that was not asserted in
16 the original answer, the damages. Even if you assume for
17 the purpose of this argument that the facts are the same for
18 the negligence and fraud in the defense, versus affirmative
19 claims, the damages are clearly different and are issues for
20 a jury. And the issue of whether punitive damages are
21 appropriate, those are clearly issues for the jury.

22 MR. COHEN: But the damages are still based on
23 facts arising from alleged misrepresentation and fraud.

24 THE COURT: Who do you want to decide your issues?

25 MR. COHEN: We want the Court to.

1 THE COURT: Ms. Blue, anything you wish tell you
2 the Court?

3 MS. BLUE: Your Honor, I think that there's been
4 some misunderstanding. I argued before Judge Nicholson the
5 fact that we wanted to be able to look at the option of a
6 jury trial. And I didn't want our client to be prejudiced.
7 I did not request a jury trial. And Judge Nicholson
8 understood that. I have not been able to get a transcript;
9 otherwise, we would have submitted that.

10 But what happened was, opposing counsel submitted
11 the order to the court without our being able to see it in
12 advance. And it was submitted at 6:42 a.m. on October the
13 5th. As soon as I saw it at 9:33 that morning, I e-mailed
14 opposing counsel to say that was not the language that had
15 been agreed to in the courtroom and what Judge Nicholson
16 said.

17 I copied -- because I was so concerned about it --

18 THE COURT: It was filed in September, not October.
19 I'm sorry.

20 MS. BLUE: Right. But October the 5th is when
21 opposing counsel submitted the order. I'm sorry. He
22 submitted the order without giving it to us to review what
23 it meant. And I immediately e-mailed him and copied Carolyn
24 Leonard, as well as Judge Nicholson, to make sure --
25 normally, I would not copy the court. But I was so

1 concerned that the order -- we had not seen it in advance,
2 and it said consented to a jury trial. And that was not
3 what was agreed to.

4 And my co-counsel here attempted to call Judge
5 Nicholson's law clerk. And Judge Nicholson's law clerk said
6 Judge Nicholson already signed the order. And we were just
7 like, oh, my gracious, because we had not seen an advanced
8 copy or had not been given it until it was submitted at 6:45
9 in the morning.

10 And so that's where I think there has been some
11 confusion. But I argued that we wanted to have the option.
12 We didn't want to be prejudiced, but I did not make a
13 written demand for a jury trial.

14 THE COURT: Anything else, Mr. Scott?

15 MR. SCOTT: Your Honor, I just will say that Judge
16 Nicholson asked that we submit an order, proposed order. I
17 did. At the same time I submitted to him, I submitted it to
18 opposing counsel. They didn't like it. They told the judge
19 that. The judge opted, for whatever reason, to sign the
20 order I presented. And that's where we are, Your Honor.

21 THE COURT: All right. I will take the matter
22 under advisement. Good luck to you both. Thank you.

23 MR. SCOTT: Your Honor, I will be out of the
24 country for the next -- pretty much until the end of this
25 month. So I'm just -- if there's something that comes up,

1 you won't be able to get in touch with me.

2 THE COURT: All right. Thank you.

3 MR. SCOTT: Thank you very much.

4 (Whereupon, proceedings are adjourned.)

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CERTIFICATE OF REPORTER

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I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

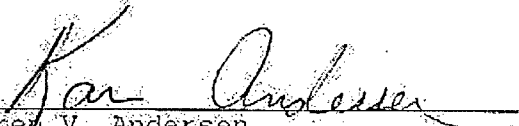

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

EXHIBIT “H”

**Order Granting Motion
to Strike Jury Demand**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-6684

ZURICH AMERICAN INSURANCE COMPANY
OF ILLINOIS,
PLAINTIFF(S)

PALMETTO CONTRACT SERVICES, INC.
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendant's Motion for Withdrawal of Appearance, filed 1/12/18, is granted. Defendant shall have 30 days from the date of this Order to obtain new counsel. Plaintiff's Motion to Strike Defendant's Jury Trial Demand is granted pursuant to SCRPC 38(d) and *King v. Shorter*, 291 S.C. 501. The counterclaims raised in Defendant's Amended Pleading do not create new issues of fact.

ORDER INFORMATION

This order ends does not end the case.

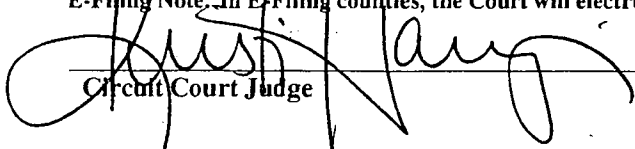
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2151
Judge Code

3/8/18
Date

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2018-000692
Circuit Court Case No. 2015-CP-10-06684

RECEIVED
JUL 31 2018
SC Court of Appeals

Zurich American Insurance Company of Illinois Respondent,

v.

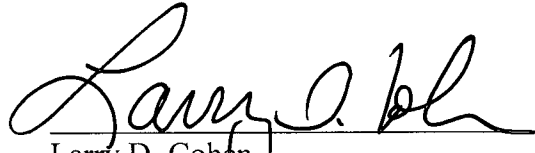
Palmetto Contract Services, Inc. Appellant.

CERTIFICATE OF SERVICE

I certify that on July 30, 2018, I served Appellant, Palmetto Contract Services, Inc. with Respondent Zurich American Insurance Company of Illinois's Motion to Dismiss with Exhibits "A" through "H," attached, and this Certificate of Service, by placing copies of the documents into a sealed wrapper and depositing the sealed wrapper into the United States Mail, with first class postage attached, addressed to the attorney of record for Appellant, William A. Scott, 775 St. Andrews Blvd., Charleston, SC 29407.

[signature on following page]

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry D. Cohen". The signature is written in a cursive style with a horizontal line underneath it.

Larry D. Cohen
S.C. Bar No. 6264
Larry D. Cohen, LLC
Attorneys at Law
P.O. Box 30547
Charleston, SC 29417
Tel. (843) 225-4445
Fax (843) 225-2008
ldcohen@ldcohenlaw.com

Charleston, South Carolina
July 30, 2018

LARRY D. COHEN, LLC

Attorneys at Law
Post Office Box 30547
Charleston, S.C. 29417

Telephone: (843) 225-4445
Facsimile: (843) 225-2009

Larry D. Cohen *▼
Debra L. Redman ♦▼
Carolyn H. Blue (Of Counsel) +

* Member SC, FL, GA & TX
▼ ♦ Member SC & TX Bars
+ Member SC & Florida Bars

▼ TX- inactive

July 30, 2018

Via USPS Express Mail # EI 691528326
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
JUL 31 2018
SC Court of Appeals

Re: *Zurich American Insurance Company of Illinois v. Palmetto Contract Services, Inc.*
Appellate Case No. 2018-000692

Dear Ms. Kitchings:

Enclosed, please find the following:

1. An original and seven copies of Respondent Zurich American Insurance Company of Illinois's Motion to Dismiss Appeal with Exhibits A through H and Certificate of Service; and
2. Our Check No. 6854 in the amount \$25.00 for the filing fee.

Please return a file-stamped copy of the enclosed documents to us in the enclosed self-addressed stamped envelope.

Under cover of this letter, I am serving appellant's attorney of record, William A. Scott, with copies of the enclosed documents.

Letter to The Hon. Jenny Abbott Kitchings
July 30, 2018
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Sincerely,


Larry D. Cohen

LDC/rb
enclosures

cc: William A. Scott, Esquire
Pedersen & Scott, P.C.
775 St. Andrews Boulevard
Charleston, S.C. 29407
w/enclosures