

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No.: 2016-CP-10-00363

RECEIVED
AUG 20 2018
SC Court of Appeals

LEVI THOMAS BROWNAppellant

v.

STATE FARM FIRE AND CASUALTY INSURANCE COMPANY Respondent

RESPONDENT'S RETURN TO MOTION FOR REHEARING

The Appellant's position in its rehearing is that issue one regarding the scope of State Farm Fire & Cas. Co. v. Aytes, 332 S.C. 221, 503 S.E.2d 744 (1998), State Farm Mut. Auto. Ins. v. Bookert, 337 S.C. 291, 523 S.E.2d 181 (1999), Wausau Underwriters Ins. Co. v. Howser, 309 S.C. 269, 422 S.E.2d 106 (1991) and Wausau Underwriters Ins. Co. v. Howser, 309 S.C. 269, 422 S.E.2d 106 (1991) will determine issue number two (the firearm exclusion) because "It is axiomatic that a policy exclusion cannot exclude coverage contrary to the common law." That is an incorrect statement. An exclusion cannot violate public policy or a statutory requirement, but it is incorrect to say that a policy exclusion cannot be contrary to common law.

Second, Appellant's argument in its brief didn't take the position that issue two would be determined by a ruling on issue one. Normally, issues must be raised by the parties in their briefs in order to be heard on rehearing. The purpose of the petition for rehearing is to address matters overlooked or misapprehended by the Court. The Court has not

overlooked any issue properly raised. If issue one is decided in State Farm's favor without this argument that issue one impacts issue two, then it does render the rest of the case moot and serves as a separate and independent basis for the decision of the lower court to stand.

Of course, State Farm remains of the view that issue one regarding the scope of Aytes, Bookert and Howser should be resolved in favor of State Farm consistent with the decision of the lower court. It appears Appellant's petition for rehearing is an effort to get to the court to hear that issue and not a request that the Court actually rule in its favor on issue one. However, State Farm would incorporate its brief by reference its position that the common law most definitely not support the view that car to car shootings are covered under the most recent prevailing precedents or the facts of this case.

CLAWSON and STAUBES, LLC



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Charleston, South Carolina

August 16, 2018

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PROOF OF SERVICE

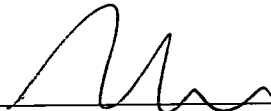
I certify that I have served the **RESPONDENT'S RETURN TO MOTION FOR REHEARING** on Levi Thomas Brown by depositing a copy of it in the United States mail, postage prepaid, on August 16, 2018 addressed to his attorneys of record as follows:

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Dated: August 16, 2018

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August 16, 2018

File No.: 20160581.000

VIA US MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

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SC Court of Appeals

Re: Levi Thomas Brown vs. State Farm Fire and Casualty Insurance Company
Case No.: 2016-CP-10-00363
Claim No.: 402T80066

Dear Ms. Kitchings:

Enclosed please find the original and a copy of Respondent's Return to Motion for Rehearing and Certificate of Service regarding the above-referenced case. After filing, please return the copies to me in the enclosed self-addressed stamped envelope.

Very truly yours,

CLAWSON and STAUBES, LLC



Timothy A. Domin

TAD/alb

Enclosures

cc: **VIA US MAIL & W/ ENCLOSURES**
Patrick T. Napolski, Esq.
Robert E. Treacy, Jr., Esq.

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08/16/2018

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AND
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