

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case No. 2016-CP-26-06091

RECEIVED

AUG 20 2018

SC Court of Appeals

ACCC Insurance Company, ...

Respondent,

vs.

Patricia Williams, Ronald Williams, Patrick Benjamin Myers, Brittany Stanley
a/k/a Brittany Standley, and State Farm Mutual Automobile Insurance
Company,

Defendants,

Of Whom

Patricia Williams and Ronald Williams are

Appellants,

And

State Farm Mutual Automobile Insurance Company is

Respondent:

RECORD ON APPEAL

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Attorneys for Respondent
State Farm Mutual Automobile Insurance
Company

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ACCC INSURANCE COMPANY,

Plaintiff,

v.

Patricia Williams, Ronald Williams, Patrick
Benjamin Myers, Brittany Stanley a.k.a. Brittany
Standley, and State Farm Mutual Automobile
Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. NO. 2016-CP-26-06091

ORDER OF DEFAULT

FILED
HOLLYWOOD COUNTY
16 DEC 16 AM 11:02
CLERK OF COURT

This case came before the Court on Plaintiff Petition for Declaratory Judgment and other relief, pursuant to South Carolina Rule of Civil Procedure 57 and S.C. Code Ann. §§ 15-53-10 *et seq.* After review of the Motion and supporting Affidavit and exhibits, it appears to the Court that:

Defendants Patrick Benjamin Myers, Brittany Stanley a.k.a. Brittany Standley were personally served the Summons and Petition for Declaratory Judgment and other relief of October 3, 2016.

It also appearing to the Court that the time for defendants Patrick Benjamin Myers, Brittany Stanley a.k.a. Brittany Standley to respond to Plaintiff's Petition for Declaratory Judgment and other relief has lapsed and defendants Patrick Benjamin Myers, Brittany Stanley a.k.a. Brittany Standley have not answered, made an appearance, or otherwise pled in response to the Petition;

It also appearing to the Court that no Motion to Open Default has been made; and

It further appearing to the Court that Plaintiff's Petition for Declaratory Judgment and other relief does not seek money damages and Plaintiff does not seek recovery of its attorney's fees or costs in this matter.

Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Petition for Declaratory Judgment and other relief against defendants Patrick Benjamin Myers, Brittany Stanley a.k.a. Brittany Standley is **GRANTED**. Default Judgment is entered in favor of Plaintiff and against defendants Patrick Benjamin Myers, Brittany Stanley a.k.a. Brittany Standley.

SO ORDERED this 13 day of Dec, 2016.

A handwritten signature in black ink, appearing to be 'J. R. N.', written over a horizontal line.

Judge, Court of Common Pleas
Horry County

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2606091

ACCC Insurance Company

Patricia Williams
Patrick Benjamin Myers
Brittany StandleyRonald Williams
Brittany Stanley
State Farm Mutual
Automobile Insurance
Company

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ 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: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

ORDER INFORMATION

Defendants Motion to Compel and Motion to Alter and Amend is now Moot.
Plaintiff's Motion to Dismiss is Granted.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)
N/A	N/A	N/A

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

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

John Timothy Wooten 4200 Northside Parkway NW Building
12 Atlanta, GA 30327
Douglas Edward Leadbitter PO Box 945 Blythewood, SC
29016

Stacy L. Stanley 3303 Highway 9 East Little River, SC
29566-7825
Linda Weeks Gangi Thompson & Henry, P.A. PO Box 1740
Conway, SC 29528

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Sallie Beth Todd

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Horry Common Pleas

Case Caption: ACCC Insurance Company VS Patricia Williams, defendant, et al.

Case Number: 2016CP2606091

Type: Order/Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2017-11-01 14:48:50 page 3 of 3

ELECTRONICALLY FILED - 2017 Nov 01 4:18 PM - HORRY - COMMON PLEAS - CASE#2016CP2606091

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-26-6091

ACCC Insurance Company,

Plaintiff,

vs.

ORDER

Patricia Williams, Ronald Williams,
Patrick Benjamin Myers, Brittany
Stanley a/k/a Brittany Standley, and
State Farm Mutual Automobile
Insurance Company,

Defendants.

PROCEDURAL HISTORY

This is a declaratory judgment action. This matter is before the Court on a joint motion to dismiss filed by Plaintiff ACCC Insurance Company ("ACCC") and State Farm Mutual Automobile Insurance Company ("State Farm") on August 4, 2017. Defendants, Patricia Williams and Ronald Williams (hereinafter collectively referred to as "the Williams"), have also filed a Motion to Compel an ADR on August 4, 2017 and a Motion to Amend the Answer on September 6, 2017 to assert alleged counterclaims.

Douglas E. Leadbitter appeared before me on November 1, 2017 at the Horry County Courthouse on behalf of Plaintiff ACCC. Linda Weeks Gangi appeared on behalf of Defendant State Farm. Stacy Stanley appeared on behalf of Defendants, the Williams. The remaining Defendants are in default.

ARGUMENT PRESENTED

Plaintiff ACCC, the liability carrier for Patrick Benjamin Myers and Brittany Stanley a/k/a Brittany Standley, asserts after a careful review of the facts and law of South Carolina, there is

liability coverage under its policy for the subject automobile accident. ACCC thus moved to dismiss the declaratory judgment action and has tendered the liability policy limits to the Williams because there was no longer a justiciable controversy in this declaratory judgment action. Defendant State Farm joined the motion. State Farm asserts there is no justiciable controversy because S.C. Code Ann. § 56-9-20(5)(b) is dispositive of the issues presented and mandates liability coverage under the ACCC policy. State Farm tendered all of the underinsured (UIM) limits to the Williams even before the Williams retained counsel Stacy Stanley and before this suit was filed.

The Williams made arguments in support of the request to compel mediation and made arguments contending that there is a justiciable controversy concerning the validity of the ACCC liability coverage.

CONCLUSION OF LAW

After considering the Memorandum of Law submitted by Plaintiff ACCC and the arguments of counsel presented at the November 1, 2017 hearing, the Court finds there is no justiciable issue. S.C. Code Ann. § 56-9-20(5)(b) dictates that there is liability coverage under the ACCC policy and ACCC is willing to pay its liability limits to the Williams. The Court finds that there is liability coverage under the ACCC policy. The Court further finds that all arguments presented by the Williams, asserting that a justiciable controversy exists in support of the Williams' challenge to the enforceability and validity of the ACCC liability policy, are without merit.

The Court finds that ACCC's policy provides liability coverage. Accordingly, the Court finds there is no justiciable controversy under the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq.*

The Court therefore grants the joint motion of ACCC and State Farm to dismiss this declaratory judgment action. The remaining motions filed by the Williams are now moot based on the Court's ruling.

IT IS THEREFORE ORDERED,

This case is dismissed with prejudice.


The Honorable Larry B. Hyman, Jr.
Presiding Judge

Conway, South Carolina

November 15, 2017

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2606091

ACCC Insurance Company

Patricia Williams
Patrick Benjamin Myers
Brittany Standley

Ronald Williams
Brittany Stanley
State Farm Mutual
Automobile Insurance
Company

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ 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: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

ORDER INFORMATION

Plaintiff's Motions to Reconsider are DENIED. A formal Order to follow by Attorney Gangi.

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)
N/A	N/A	N/A

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

2152

Judge Code

1/8/2018

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

John Timothy Wooten 4200 Northside Parkway NW Building
12 Atlanta, GA 30327
Douglas Edward Leadbitter PO Box 945 Blythewood, SC
29016

Stacy L. Stanley 3303 Highway 9 East Little River, SC
29566-7825

Linda Weeks Gangi-Thompson & Henry, P.A. PO Box 1740
Conway, SC 29528

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Kay Richardson

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d); SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Horry Common Pleas

Case Caption: ACCC Insurance Company VS Patricia Williams , defendant, et al

Case Number: 2016CP2606091

Type: Order/Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2018-01-11 09:22:12 page 3 of 3

ELECTRONICALLY FILED - 2018 Jan 11 10:24 AM - HORRY - COMMON PLEAS - CASE#2016CP2606091

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-26-6091

ACCC Insurance Company,

Plaintiff,

vs.

Patricia Williams, Ronald Williams,
Patrick Benjamin Myers, Brittany
Stanley a/k/a Brittany Standley, and
State Farm Mutual Automobile
Insurance Company,

Defendants.

**ORDER DENYING MOTIONS FOR
RECONSIDERATION**

Defendants Patricia Williams and Ronald Williams represented by Stacy Stanley, the Plaintiff represented by Douglas E. Leadbitter and the Defendant State Farm Mutual Automobile Insurance Company represented by Linda Weeks Gangi came before this Court on the Defendants', Patricia Williams' and Ronald Williams', Motions for Reconsideration. The remaining Defendants are in default. The Court heard such arguments of counsel as was appropriate.

On November 1, 2017 the attorneys for these parties appeared before this Court on a Motion to Dismiss jointly filed by ACCC Insurance Company and State Farm Mutual Automobile Insurance Company. Patricia Williams and Ronald Williams objected to the dismissal. The parties were also before the Court on motions filed by Patricia Williams and Ronald Williams seeking to compel mediation and seeking to amend their answer to file a counterclaim. The Court heard the arguments of counsel. The Court indicated at the time of the hearing that the motion to dismiss was granted and the motions filed by the Williams were rendered moot by that decision. The Court directed that counsel for ACCC Insurance Company and State Farm Mutual Automobile Insurance

Company prepare an Order consistent with its ruling. The Court executed a Form 4. Thereafter the Court entered a formal Order on November 15, 2017 finding that the Motion to Dismiss should be granted and the above-captioned action should be dismissed with prejudice. The Court in its Order also found that based on its ruling the motions filed by the Williams were rendered moot. Thereafter, the Williams filed multiple Motions for Reconsideration. This Court having heard the arguments of counsel, reviewed the Memorandums in Support and in Opposition, and reviewed its Order of November 15, 2017 finds that the Motions to Reconsider are hereby denied. The Order of this Court dated and filed on November 15, 2017 shall be law of the case.

The Honorable Larry B. Hyman, Jr.
Presiding Judge

Conway, South Carolina

January ____, 2018



Horry Common Pleas

Case Caption: ACCC Insurance Company VS Patricia Williams , defendant, et al
Case Number: 2016CP2606091
Type: Order/Confirm

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2018-02-01 11:00:10 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ACCC INSURANCE COMPANY,

Plaintiff,

v.

Patricia Williams, Ronald Williams, Patrick
Benjamin Myers, Brittany Stanley a.k.a.
Brittany Standley, and State Farm Mutual
Automobile Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. NO. 2016-CP-26-_____

PETITION FOR
DECLARATORY JUDGMENT
AND OTHER RELIEF

2016 SEP 14 AM 10:05
CLERK OF COURT

COMES NOW Plaintiff ACCC Insurance Company (hereinafter referred to as "ACCC") and files this Complaint for Declaratory Judgment against defendants Patricia Williams, Ronald Williams, Patrick Benjamin Myers, Brittany Stanley a.k.a. Brittany Standley, and State Farm Mutual Automobile Insurance Company and respectfully shows unto the Court as follows:

JURISDICTION AND PARTIES

1. Defendant Patricia Williams is a citizen and resident of the County of Horry, South Carolina, and is subject to the personal jurisdiction of this Court by virtue of her residence in the State of South Carolina. Defendant Patricia Williams may be served through her attorney Stacy Stanley, 3303 Highway 9 East, Little River, South Carolina 29566.

2. Defendant Ronald Williams is a citizen and resident of the County of Horry, South Carolina, and is subject to the personal jurisdiction of this Court by virtue of her residence in the State of South Carolina. Defendant Ronald Williams may be served through his attorney Stacy Stanley, 3303 Highway 9 East, Little River, South Carolina 29566.

3. Defendant Patrick Benjamin Myers is a citizen and resident of the County of Horry, South Carolina, and is subject to the personal jurisdiction of this Court by virtue of his

residence in the State of South Carolina. Defendant Patrick Benjamin Myers may be served at his residence at 5283 Highway 66, Loris, South Carolina 29569.

4. Defendant Brittany Stanley a.k.a. Brittany Standley is a citizen and resident of the County of Horry, South Carolina, and is subject to the personal jurisdiction of this Court by virtue of her residence in the State of South Carolina. Defendant Brittany Stanley a.k.a. Brittany Standley may be served at her residence at 5283 Highway 66, Loris, South Carolina 29569.

5. State Farm Mutual Insurance Company is a foreign insurance company and may be served through the South Carolina Department of Insurance.

6. This Court has subject matter jurisdiction over this declaratory judgment action pursuant to South Carolina Code Ann. §§ 15-53-10 *et seq.* and South Carolina Rule of Civil Procedure 57.

7. Venue is proper in this Court because all parties either reside or conduct business in Horry County, South Carolina.

8. On March 18, 2016, defendant Benjamin Patrick Myers was operating a 2004 Chevrolet Monte Carlo, which was involved in an automobile accident in Horry County, South Carolina with defendant Patricia Williams, who was operating a 2005 Buick automobile. (hereinafter referred to as the "Accident").

9. The South Carolina Department of Motor Vehicles Traffic Collision Report lists Patrick Benjamin Myers's date of birth as June 28, 1987, lists Patrick Benjamin Myers as the owner of 2004 Chevrolet Monte Carlo involved in the Accident, lists Patrick Benjamin Myers's South Carolina driver's license number as 100375877, and states that the 2004 Chevrolet Monte Carlo was uninsured at the time of the accident. (A true and correct copy of the South Carolina Department of Motor Vehicles Traffic Collision Report for the Accident is attached hereto as Exhibit 1).

10. ACCC issued a policy of automobile liability insurance to "Patrick Myers" and "Brittany Standley," policy number SCE0052102-1 (hereinafter referred to as the "Policy"), which purported to provide coverage for a 2004 Chevrolet Monte Carlo SS, VIN 2G1W12K949368935. (A true and correct copy of the Policy Declarations Page in effect at the time of the Accident is attached hereto as Exhibit 2).

11. The Policy Declarations Page lists "Patrick Myers" as a Policy Holder, and lists his date of birth as May 12, 1961 and his South Carolina driver's license number as 100375876 (Ex.2).

12. The Policy Declarations Page lists "Brittany Standley" as a Policy Holder, and lists her date of birth as November 26, 1990 and her South Carolina driver's license number as 101245463. (Ex. 2).

13. The Policy contained the following language:

AGREEMENT

This Personal Auto Policy is a binding contract between **you** and **us**. The contract includes the application, the Declarations Page, the Personal Auto Policy, endorsements, and all attachments. If **your** premium payment is paid, **we** will insure you subject to the terms, exclusions, conditions, and limitations of this policy. The Declarations Page shows a premium for each type of coverage purchased. **You** must pay the premium for the coverage to apply to a loss. The selected coverages in this policy apply only to occurrences while the policy is in force.

The statements that **you** made while **you** were applying for coverage are **representations**. To determine **your** premium and eligibility for coverage under this policy, **we** rely on the **representations** that **you** made when **you** applied for coverage. If **you** or any applicant made any false, fraudulent, or misleading **representations** in your application for insurance, this policy will not provide coverage. Examples of such false, fraudulent, or misleading representations include, but are not limited to, **your** failure to disclose: all persons residing in **your** home; all **family members** age 14 and over, whether or not residing in the household; traffic violations, accidents, or driver's license suspensions and revocations; commercial use of **your auto**; or **your** correct address(es).

DEFINITIONS

A. Throughout this policy, "**you**" and "**your**" refer to:

1. The "**named insured**" shown on the Declarations Page. And,
2. **Your** spouse, if a resident of the same household, unless said spouse is a named excluded driver.

PART F – GENERAL PROVISIONS

FRAUD & MISREPRESENTATION

This policy includes the Declarations Page and the amendments. This policy also includes the application and the endorsements. The statements that **you** made while **you** were applying for coverage are **representations**. To determine **your** premium and eligibility for coverage under this policy, **we** relied on the representations that **you** made when **you** applied for coverage. If **you** or any applicant made any false, fraudulent, or misleading representations in **your** application for insurance, this policy will not provide coverage. In such a case, **we** will not be liable for any claims that would otherwise be covered in the absence of the fraud or misrepresentation. **Your** failure to completely and accurately inform us of persons residing in your home may constitute fraud or misrepresentation. All **family members** age 14 and over **MUST** be included on the application. No coverage will be afforded to any **family member** or **resident** in **your** household unless named in the application for coverage and/or listed on the Declarations Page or added by endorsement.

If **we** are required by law to pay any claim despite this provision, then **we** reserve the right to recover from **you** any payments made as a result of **your** misrepresentation or fraud.

Any statements **you** made or will make in a notification of change to **your** policy are also considered **representations** and are subject to the provisions set out above.

(A true and correct copy of the Policy is attached hereto as Exhibit 3).

14. Defendants Patricia Williams and Ronald Williams allege personal injuries and tort damages as a result of the Accident.

COUNT I – DECLARATORY RELIEF

15. ACCC re-alleges and incorporates by reference paragraphs 1 through 14 of the Complaint as if they have been fully and completely set forth herein.

16. Neither of the policyholders listed on the Policy Declarations Page have an ownership interest in the 2004 Chevrolet Monte Carlo involved in the Accident.

17. Patrick Myers and Britany Stanley aka Brittany Standley made material misrepresentations while applying for insurance with ACCC for the Policy.

18. ACCC maintains that Patrick Benjamin Meyers and Britany Stanley a.k.a Britany Standley are not entitled to coverage or a defense under the Policy for any claims or damages arising from the Accident.

19. ACCC has not acted to deny coverage to Patrick Benjamin Myers or Britany Stanley a.k.a Britany Standley for any claims arising out of the Accident.

20. ACCC is in a position of great uncertainty as to the applicability of Policy number SCE0052102-1.

21. ACCC is entitled to a declaratory judgment declaring that it owes no coverage to or duty to defend and/or indemnify any of the Defendants for any claims, damages, injuries, or actions arising out of the above-referenced collision.

22. An actual and justiciable controversy exists regarding the rights and obligations based upon the contractual duties, coverages, and liability in the Policy.

23. As ACCC and Defendants' future course of action may be directly governed by the status of coverage afforded or denied pursuant to the facts referred to above, the parties face uncertainty as to their rights and legal obligations. ACCC has no adequate remedy at law or otherwise except by this Petition for Declaratory Judgment. ACCC is presently uncertain of its rights, obligations, and duties in regard to the extent of possible coverage.

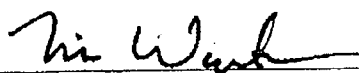
24. ACCC requests that this Court inquire into the rights and liability of the parties hereto with respect to ACCC's Policy number SCE0052102-1 and that this Court declare that ACCC has no obligation to provide coverage or a defense regarding the Policy or the Accident.

25. This is a declaratory judgment action pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and S.C. Code Ann. §§ 15-53-10 *et seq.* in which ACCC seeks a declaration from this Court that Policy number SCE0052102-1 does not provide insurance coverage for the Accident at issue.

WHEREFORE, Plaintiff ACCC Insurance Company respectfully prays:

- a) That process issue and Defendants be served as provided by law;
- b) That this Court inquire into the rights, obligations, duties, and liabilities of the parties hereto with respect to the Policy of insurance number SCE0052102-1 issued by ACCC and that this Court declare that ACCC has no liability to provide coverage, indemnity, or a defense as a result of the March 18, 2016 Accident; and
- c) That ACCC Insurance Company have such other and further relief as this Court deems just and proper under the circumstances.

This the 9th day of September, 2016.


J. Timothy Wooten (SC Bar no. 71717)
Jamie Ackermann SC Bar no. 72427)
GOWER, WOOTEN & DARNEILLE, LLC
900 Circle 75 Parkway, Suite 1150
Atlanta, Georgia 30339
(404) 662-2333
Fax: (404) 662-2444
tim@gwdlawfirm.com
Attorney for Plaintiff ACCC Insurance Company

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 16-CP-26-6091

ACCC INSURANCE COMPANY,)

Plaintiff,)

vs.)

PATRICIA WILLIAMS, RONALD)
WILLIAMS, PATRICK BENJAMIN)
MYERS, BRITTANY STANLEY a.k.a.)
BRITTANY STANDLEY, and STATE)
FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)

Defendants.)

**ANSWER OF
PATRICIA WILLIAMS AND
RONALD WILLIAMS**

2016 SEP 19 PM 4:11
CLERK OF COURT

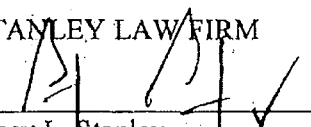
The Defendants, Patricia Williams and Ronald Williams, (hereinafter "Williams"), answering the Complaint of the Plaintiff, would respectfully show unto this Court as follows:

1. Each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted, or explained is denied and strict proof demanded thereof.
2. Defendants Williams admits the allegations of Paragraph 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 20, 21, 22, 23, 24 and 25 of Plaintiff's Complaint.
3. Upon information and belief, Defendants Williams admits the allegations of Paragraph 13 of Plaintiff's Complaint.
4. Paragraph 15 of Plaintiff's Complaint does not require an answer.
5. Defendants Williams are without sufficient information to form a belief as to the truth or falsity of Paragraph 19 of Plaintiff's Complaint.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendants Williams pray as follows:

- (a) That the Court protect the interest of Patricia Williams and Ronald Williams
in this matter;
- (b) For its attorney's fees and costs of this action;
- (c) For such other and further relief as the Court deems just and proper.

STANLEY LAW FIRM



Stacy L. Stanley
3303 East Highway 9
Little River S.C. 29566
Attorney for Defendants
Patricia Williams and Ronald Williams

9-15, 2016
Little River, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
IN THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-26-6091

ACCC Insurance Company,)
Plaintiff,)

vs.)

Patricia Williams, Ronald Williams,)
Patrick Benjamin Myers, Brittany)
Stanley a/k/a Brittany Standley, and)
State Farm Mutual Automobile)
Insurance Company,)
Defendants.)

ANSWER ON BEHALF OF THE
DEFENDANT STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY
(Jury Trial Requested)

RECEIVED-5 PM 3:09

The Defendant, State Farm Mutual Automobile Insurance Company, answering the Plaintiff's Complaint would respectfully show unto this Court:

1. Each and every allegation of the Plaintiff's Complaint which is not hereinafter specifically admitted, modified or explained is denied and strict proof demanded thereof.
2. This answering Defendant does not have sufficient information to form a belief as to the allegations contained in paragraphs 1, 2, 3 and 4 and therefore denies same and demands strict proof thereof.
3. This answering Defendant admits the allegations contained in paragraphs 5, 6, 7 and 8.
4. This answering Defendant admits that the South Carolina Department of Motor Vehicles Traffic Collision report provides the information stated in paragraph 9, but, this answering Defendant does not have sufficient information to admit or deny the accuracy of the information contained therein and therefore denies the allegations contained in paragraph 9 and demands strict proof thereof.

5. This answering Defendant does not have sufficient information to form a belief as to the allegations contained in paragraphs 10, 11, 12, 13 and 14 and therefore denies same and demands strict proof thereof.

6. This answering Defendant does not have sufficient information to form a belief as to the allegations contained in paragraphs 16, 17, 18, 19 and 20 and therefore denies same and demands strict proof thereof.

7. This answering Defendant denies the allegations contained in paragraph 21 and demands strict proof thereof.

8. This answering Defendant does not have sufficient information to form a belief as to the allegations contained in paragraphs 22 and 23 and therefore denies same and demands strict proof thereof.

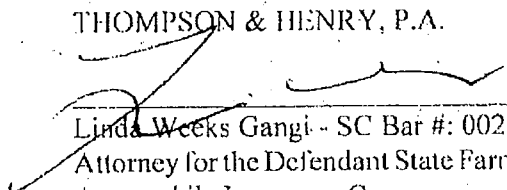
9. This answering Defendant denies the allegations contained in paragraphs 24 and 25 and demands strict proof thereof.

WHEREFORE, having fully set forth its Answer, the Defendant, State Farm Mutual Automobile Insurance Company, prays that same be dismissed and for the cost of this action.

Conway, South Carolina

December 6, 2016.

THOMPSON & HENRY, P.A.


Linda Weeks Gangi - SC Bar #: 002365
Attorney for the Defendant State Farm Mutual
Automobile Insurance Company
Post Office Box 1740
Conway, SC 29528-1740
(843) 248-5741 (p)
(843) 248-5112 (f)
lgangi@thompsonlaw.com

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ACCC INSURANCE COMPANY,

Plaintiff,

v.

Patricia Williams, Ronald Williams, Patrick
Benjamin Myers, Brittany Stanley a.k.a. Brittany
Standley, and State Farm Mutual Automobile
Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. NO. 2016-CP-26-06091

**MOTION FOR
DEFAULT JUDGMENT**

2016 NOV 28 PM 2:49

COMES NOW Plaintiff ACCC Insurance Company (hereinafter referred to as "ACCC") and pursuant to South Carolina Rule of Civil Procedure 55, respectfully moves this Court for Default Judgment against defendants Patrick Benjamin Myers, Brittany Stanley a.k.a. Brittany Standley for failing to file an Answer or otherwise plead or appear within the time required by law.

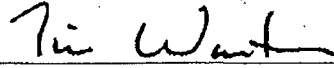
This Motion is based on the Petition for Declaratory Judgement and all other relief filed September 14, 2016 and personally served on defendants Patrick Benjamin Myers, Brittany Stanley a.k.a. Brittany Standley on October 4, 2016 (Exhibits 2 and 3).

The Petition for Declaratory Judgement seeks a ruling from the Court that ACCC Insurance Company does not have automobile liability insurance coverage for a March 18, 2016 date of accident in Horry County involving defendants Benjamin Patrick Myers and Patricia Williams.

This Motion is also based upon the attached Affidavit of J. Timothy Wooten (Exhibit 1). Plaintiff's Complaint for Declaratory Judgment does not seek money damages and ACCC does not seek recovery of its attorney's fees or costs in this matter.

WHEREFORE, plaintiff ACCC Insurance Company respectfully requests that default judgment be entered against defendants Patrick Benjamin Myers, Brittany Stanley a.k.a. Brittany Standley.

This the 21st day of November, 2016.



J. Timothy Wooten (SC Bar no. 71717)

Jamie Ackermann SC Bar no. 72427)

GOWER, WOOTEN & DARNEILLE, LLC

900 Circle 75 Parkway, Suite 1150

Atlanta, Georgia 30339

(404) 662-2333

Fax: (404) 662-2444

Tim@gwdlawfirm.com

Attorneys for Plaintiff ACCC Insurance Company

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ACCC INSURANCE COMPANY,

Plaintiff,

v.

Patricia Williams, Ronald Williams, Patrick
Benjamin Myers, Brittany Stanley a.k.a. Brittany
Standley, and State Farm Mutual Automobile
Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. NO. 2016-CP-26-06091

**AFFIDAVIT IN SUPPORT
OF DEFAULT JUDGMENT**

2016 NOV 28 PM 2:49
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

I, J. Timothy Wooten, personally appeared before the undersigned officer duly authorized to administer oaths in the State of Georgia, and, after first being duly sworn, depose and say the following:

1.

I am over the age of eighteen (18) years and am not laboring under any disabilities.

2.

I have personal knowledge of the facts set forth in this affidavit.

3.

I am an attorney licensed to practice law in the State of South Carolina and represent Plaintiff ACCC Insurance Company ("ACCC") in the above-referenced matter.

4.

ACCC filed this action for Petition for Declaratory Judgment and other relief with this Court on September 14, 2016 a judgment declaring that it owes no coverage to or duty to defend and/or indemnify any of the Defendants.

5.

Defendants Patrick Benjamin Myers and Brittany Stanley aka Standley were served personally with the Summons and Petition for Declaratory Judgment and other relief and accompanying civil action



coversheet on October 3, 2016. (True and correct copies of the Affidavits of Personal Service on Patrick Benjamin Myers and Brittany Stanley aka Standley are attached hereto as Exhibits 2 and 3).

6.

As of the date of this Affidavit, neither defendants Patrick Benjamin Myers and Brittany Stanley aka Standley have filed an Answer nor otherwise pled or appeared within the time required by law.

7.

ACCC's Petition for Declaratory Judgment and other relief does not seek money damages and ACCC does not seek recovery of its attorney's fees or costs in this matter.

8.

Upon information and belief, defendants Patrick Benjamin Myers and Brittany Stanley aka Standley are not members of the military service.

FURTHER AFFIANT SAYETH NOT.

This the 21st day of November, 2016.

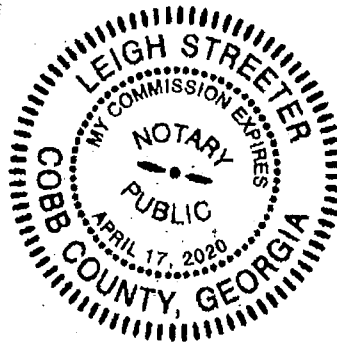
J. Timothy Wooten

J. Timothy Wooten
SC State Bar No. 71717
Attorney for Plaintiff

Sworn to and subscribed before me
this 21st day of November, 2016.

Reid Stitt

Notary Public
My commission expires:



AFFIDAVIT OF PERSONAL SERVICE
STATE OF SOUTH CAROLINA,
COUNTY OF HORRY

Case No: 2016-CP-26-06091

ACCC Insurance Company,
Plaintiff,

Vs.

Patricia Williams, Ronald Williams,
Patrick Benjamin Myers, Brittany Stanley,
Aka Brittany Standley and State Farm Mutual,
Automobile Insurance Company,
Defendant,

HORRY COUNTY
2016 OCT 14 PM 1:24
MELANIE HUGHES-WARD
CLERK OF COURT

Eugene Graham being duly sworn says that he served Summons
Petition for Declaratory Judgment and other relief and accompanying civil action
coversheet on Patricia Myers by delivering to her personally and
leaving him copies of the same at 5283 Hwy 66, Loris, SC 29569 on the
3rd day of October 2016; and that he knows the person he so served to be the
Defendant's maternal mother and which whom he resides with for Patrick Benjamin
Myers.

Sworn to before me this 4th day of October 2016

Donald M. Humphrey
Notary Public for S.C.

Eugene Graham
Process Server

My commission expires on 2-6-2024

COPY

AFFIDAVIT OF PERSONAL SERVICE
STATE OF SOUTH CAROLINA,
COUNTY OF HORRY

Case No: 2016-CP-26-06091

ACCC Insurance Company,
Plaintiff,

Vs.

Patricia Williams, Ronald Williams,
Patrick Benjamin Myers, Brittany Stanley,
Aka Brittany Standley and State Farm Mutual,
Automobile Insurance Company,
Defendant,

HORRY COUNTY
2016 OCT 14 PM 1:04
MELANIE B. WARD
CLERK OF COURT

Eugene Graham being duly sworn says that he served Summons
Petition for Declaratory Judgment and other relief and accompanying civil action
coversheet, on Patricia Myers by delivering to her personally and
leaving him copies of the same at 5283 Hwy 66, Loris, SC 29569 on the
3rd day of October 2016; and that he knows the person he so served to be the
Defendant's maternal mother and which whom he resides with for Brittany Stanley aka
Brittany Standley.

Sworn to before me this 4th day of October 2016

Cristal M. Himphep
Notary Public for S.C.

Eugene Graham
Process Server

My commission expires on 2-16-2024

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-26-6091

ACCC INSURANCE COMPANY,)
)
Plaintiff,)

vs.)

PATRICIA WILLIAMS, RONALD)
WILLIAMS, PATRICK BENJAMIN)
MYERS, BRITTANY STANLEY a.k.a.)
BRITTANY STANDLEY, and STATE)
FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)
)
Defendants.)

**NOTICE OF MOTION AND MOTION FOR
STATUS CONFERENCE AND
SCHEDULING ORDER**

**TO: TIM WOOTEN, ESQUIRE AND CHAD POTEAT, ESQUIRE, ATTORNEYS FOR
PLAINTIFF ACCC INSURANCE COMPANY AND LINDA GANGI, ESQUIRE,
ATTORNEY FOR CO-DEFENDANT STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY:**

YOU WILL PLEASE TAKE NOTICE, that the Defendants Patricia Williams and Ronald Williams, by and through the undersigned attorney, will move before the Presiding Judge for the Fifteenth Judicial Circuit, ten days from the date of this motion or as soon thereafter as counsel may be heard, for an Order pursuant to Rules 26 and 40 of the South Carolina Rules of Civil Procedure, setting a status conference and issuing a Scheduling Order in the above-captioned matter.

The basis for this motion is that there are witnesses that have been recently added and/or will probably be added in the near future and additional depositions will need to be taken. Moreover, upon information and belief, the Plaintiff's allegations in this case may have recently changed and additional discovery will be needed by the Defendants Patricia Williams and Ronald Williams.

In accordance with Rule 11 of the South Carolina Rules of Civil Procedure, the undersigned hereby affirms that any consultation with opposing counsel would serve no useful purpose or could not be timely held.

STANLEY LAW FIRM

s/ Stacy L. Stanley

Stacy L. Stanley

SC Bar No.: 13410

3303 East Highway 9

Little River, SC 29566

Phone: (843) 390-9111

Fax: (843) 390-9187

Email: sstanley@stanleylawfirm.com

Attorney for the Defendants Patricia Williams and
Ronald Williams

July 27, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-26-6091

ACCC Insurance Company,)
Plaintiff,)

vs.)

Patricia Williams, Ronald Williams,)
Patrick Benjamin Myers, Brittany)
Stanley a/k/a Brittany Standley, and)
State Farm Mutual Automobile)
Insurance Company,)

Defendants.)

**DEFENDANTS PATRICIA WILLIAMS
AND RONALD WILLIAMS'
NOTICE OF MOTION AND MOTION
TO COMPEL ADR**

TO: **TIM WOOTEN, ESQUIRE AND CHAD POTEAT, ESQUIRE,
ATTORNEYS FOR PLAINTIFF ACCC INSURANCE COMPANY AND
LINDA GANGI, ESQUIRE, ATTORNEY FOR CO-DEFENDANT STATE
FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**

YOU WILL PLEASE TAKE NOTICE, that the Defendants, by and through the undersigned attorney, will move before the Presiding Judge for the Fifteenth Judicial Circuit, ten (10) days from the date of this motion or as soon thereafter as counsel may be heard, for an Order compelling Plaintiff ACCC Insurance Company and Co-Defendant State Farm Mutual Automobile Insurance Company to enter into Alternative Dispute Resolution (ADR) pursuant to Rule 3 of the *South Carolina Rules of Alternative Dispute Resolution*.

The basis for this motion is that ADR is mandatory for civil actions filed in the circuit court, the trial of this matter is imminent, and opposing counsel have failed to cooperate in scheduling a mediation (see Exhibit A).

The undersigned hereby affirms, pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, that prior to filing this motion, he communicated with opposing counsel and attempted in good faith to resolve the matters contained herein, to no avail.

STANLEY LAW FIRM

s/Stacy L. Stanley

Stacy L. Stanley

SC Bar No.: 13410

3303 East Highway 9

Little River, SC 29566

Phone: (843) 390-9111

Fax: (843) 390-9187

Email: ssstanley@stanleylawfirm.com

Attorney for the Defendants Patricia and
Ronald Williams

August 4, 2017

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ACCC Insurance Company,

Plaintiff,

v.

Patricia Williams, Ronald Williams, Patrick Benjamin Myers, Brittany Stanley a.k.a. Brittany Standley, and State Farm Mutual Automobile Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. NO. : 2016-CP-26-06091

**ACCC INSURANCE COMPANY
AND STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY'S
JOINT CONSENT MOTION TO DISMISS**

TO: Defendants Patricia Williams and Ronald Williams and their attorney Stacy L. Stanley

Plaintiff ACCC Insurance Company ("ACCC") and defendant State Farm Mutual Automobile Insurance Company ("State Farm"), pursuant to South Carolina Rule of Civil Procedure 41 respectfully request that this matter be dismissed and show unto the Court as follows:

1. ACCC filed this declaratory judgment action on September 14, 2016 seeking a determination from the Court whether there was coverage under a policy of automobile liability insurance issued by ACCC to defendants Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley for a motor vehicle accident on March 18, 2016 in which defendant Patricia Williams alleges she sustained injuries while driving an automobile insured by State Farm.

2. ACCC has determined there is automobile liability coverage for defendants Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley in the amount of \$25,000 per person, \$50,000 per accident, and \$25,000 property damage coverage per accident for the March 18, 2016 motor vehicle accident in which defendant Patricia Williams alleges she sustained injuries.

3. ACCC has tendered to attorney Stacy Stanley, who represents defendants Patricia Williams, the liability insurance coverage limits under its policy of insurance issued to Patrick Benjamin

Myers and Brittany Stanley a.k.a. Brittany Standley

4. ACCG and State Farm consent to the dismissal of this case.
4. Attorney Stacy Stanley has advised he does not consent to the dismissal of this case.

WHEREFORE, plaintiff ACCG Insurance Company and defendant State Farm Mutual Automobile Insurance Company jointly respectfully request that the Court dismiss this case with prejudice.

Respectfully submitted this the 4th day of August, 2017.

/s/ J. Timothy Wooten

J. Timothy Wooten (S.C. Bar No. 71717)
Douglas E. Leadbitter
4200 Northside Parkway NW, Building 12
Atlanta, Georgia 30327
(404) 662-2333
(864) 991-3197
Fax: (404) 662-2444
Tim@GWDlawfirm.com
Doug@GWDlawfirm.com
Attorneys for Plaintiff

/s/ Linda L. Gangi

Linda Weeks Gangi (S.C. Bar No. 2365)
P.O. Box 1740
Conway, SC 29528-1740
(843) 248-5741
lgangi@thompsonlaw.com
Attorney for State Farm Mutual Automobile Insurance Company

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 16-CP-26-6091

ACCC INSURANCE COMPANY

Plaintiff,

vs.

PATRICIA WILLIAMS, RONALD
WILLIAMS, PATRICK BENJAMIN
MYERS, BRITTANY STANLEY, a.k.a.
BRITTANY STANDLEY, and STATE
FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendants.

MEMORANDUM IN OPPOSITION TO ACCC INSURANCE COMPANY
AND STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY'S JOINT MOTION TO DISMISS

I. INTRODUCTION

On March 18, 2016, Patrick Benjamin Myers ("Myers") was driving a car that crossed the center line and collided head on with a car being driven by Patricia Williams ("Williams"). On the Traffic Collision Report Form ("Collision Report"), Highway Patrol Officer Eden determined that Myers contributed to the collision and was uninsured at the time of the accident and that Williams did not contribute to the collision. Upon information and belief, there is no dispute that Myers was liable for the collision.

On April 14, 2016, approximately twenty-seven days after the collision, Plaintiff ACCC Insurance Company ("ACCC") through its attorney Tim Wooten of Gower Wooten & Darneille,

LLC contradicted the Collision Report and notified Williams that Myers was insured and, therefore, "tendered" the disputed liability coverage.

However, almost six months after the subject collision on September 14, 2016, ACCC changed its position and rescinded its offer of the liability coverage and instead filed this declaratory judgment action seeking a declaration that Defendants Patrick Benjamin Myers and Brittany Stanley aka Brittany Standley ("Stanley") are not entitled to coverage or a defense under an automobile liability policy issued by ACCC to Myers and Stanley ("the Policy"). (See Petition for Declaratory Judgment and Other Relief [hereinafter "Petition"], ¶¶ 10, 18.)

In its Petition, ACCC alleged that the Policy contained a provision stating that, if the insureds made any false, fraudulent, or misleading representations in their application for insurance, the Policy "will not" provide coverage. (*Id.*, ¶ 12.) As an example of such false, fraudulent, or misleading representations, ACCC gave a failure of an applicant to provide his or her correct address. (*Id.*) ACCC further stated in the Policy that, if an insured made a false, fraudulent, or misleading representation in the application for insurance, "we will not be liable for any claims. . . ." (*Id.*, ¶ 13.)

ACCC further stated that Defendants Myers and Stanley made several false, fraudulent, or misleading representations negating coverage under the Policy. ACCC alleged that Defendants Myers and Stanley falsely claimed an ownership interest in the vehicle being operated by Myers at the time of his collision with Defendant Patricia Williams. (*Id.*, ¶¶ 10, 16.) In addition, ACCC stated that Defendants Myers and Stanley provided a false driver's license number and date of birth for Patrick Myers. (*Id.*, ¶ 11.)

In this case, the Williams' expert witness, Gerald M. Finkel, Esquire, will opine that false representations as to the age of an insured and his driver's license number are material

misrepresentations upon which ACCC relied in issuing the policy at the specified premium, and that the policy was void ab initio as a result of such misrepresentations.

ACCC concluded in its Petition that Myers and Stanley are not entitled to coverage under the Policy because of the false, fraudulent, and misleading statements they made in their application and that ACCC is entitled to a declaratory judgment that it owes no coverage to these Defendants arising out of the collision at issue. (Petition, ¶¶ 18, 21.) Upon information and belief, the Williams' insurance expert Mr. Finkel will agree with ACCC and state that a liability policy would not have been sold to Myers if he had stated the true facts in the policy application or if the agent had submitted such true facts to ACCC.

After approximately one year of steadfastly holding to the position that Defendants Myers and Stanley were uninsured under the ACCC liability Policy, ACCC has now filed a motion to dismiss, joined by Defendant State Farm Mutual Automobile Insurance Company ("State Farm"), in which ACCC has completely reversed its course and adopts the position that the ACCC Policy provides coverage to Myers and Stanley. However, nothing has changed in this period which supports ACCC's change in position. On the other hand, the facts are exactly the same as they were during the prolonged period in which ACCC stated that the Policy did not provide coverage to Myers and Stanley.

Here, Defendants Patricia Williams and Ronald Williams will be harmed by ACCC's change in position as to coverage under the Policy, in that, if there is no coverage for Myers and Stanley under the Policy, Patricia Williams and Ronald Williams are entitled to uninsured motorist ("UM") coverage under their automobile policy with State Farm, which has higher coverage limits than the ACCC liability policy. Defendant Patricia Williams sustained severe personal injuries and over one million dollars in medical bills as a result of the collision with

Patrick Myers, and the limits of the ACCC Policy (and even the State Farm UM policy) are seriously inadequate to compensate Patricia Williams for the harm she suffered from this collision.

II. ARGUMENT

A. Standards for Motion to Dismiss under S.C.R. Civ. P. 41

ACCC and State Farm have filed their motion to dismiss under S.C.R. Civ. P. 41. Rule 41 provides, in relevant part:

RULE 41. DISMISSAL OF ACTIONS; NON-SUIT

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; By Stipulation. Subject to the provisions of Rule 23(c), of Rule 66(a), and of any statute, an action may be dismissed by the plaintiff without order of court (A) by filing and serving a notice of dismissal at any time before service by the adverse party of an answer or motion for summary judgment, whichever first occurs, or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

S.C.R. Civ. P. 41.

Generally, a plaintiff is entitled as a matter of right to a voluntary nonsuit without prejudice under Rule 41, unless the defendant shows legal prejudice or important issues of public policy are present. *E.g., Nelson v. QHG of South Carolina, Inc.*, 354 S.C. 290, 580 S.E.2d 171

(Ct. App. 2003), *aff'd in part, rev'd in part on other grounds*, 361 S.C. 421, 608 S.E.2d 855 (2005); *see also Prime Medical Corp. v. First Medical Corp.*, 291 S.C. 296, 353 S.E.2d 294 (Ct. App. 1987) (a plaintiff is entitled to a voluntary nonsuit without prejudice as a matter of right, unless there is a showing of legal prejudice to the defendant); *Ralston Purina Co. v. O'Dell*, 248 S.C. 37, 148 S.E.2d 736 (1966) (same). The question of a nonsuit is one largely within the discretion of the court, but, when a nonsuit would work injury upon the defendant, it is an abuse of discretion to grant it. *See Barr v. Witsell*, 173 S.C. 199, 175 S.E. 436 (1934).

The existence of a counterclaim affects the plaintiff's right to voluntary dismissal. The court in *Parnell v. Powell*, 191 S.C. 159, 3 S.E.2d 801 (1939), stated that a plaintiff does not have an unquestionable right at all times and under all circumstances to terminate his action voluntarily without prejudice, but that the plaintiff's right to do so depends on the effect that it will have on the defendant's right, especially when the defendant has set up a counterclaim or pleaded other affirmative relief. *See also Romanus v. Biggs*, 217 S.C. 77, 59 S.E.2d 645 (1950), (trial court abused its discretion in allowing plaintiff to dismiss suit voluntarily, when defendants had filed a counterclaim and plaintiff gave no reason why the suit should be discontinued over the objection of the defendants). Moreover, the general rule that material or legal prejudice to the defendant, which will preclude allowance of a voluntary nonsuit for the plaintiff, may not be deduced from the mere fact that granting of the motion will impose on the defendant the necessity of defending another suit is not applicable when defendant is clearly entitled to judgment on the merits. *Foster v. United Insurance Co. of America*, 250 S.C. 423, 158 S.E.2d 201 (1967).

In the case at bar, Defendants Patricia Williams and Ronald Williams have submitted a proposed Amended Answer and Counter-Claim to Plaintiff ACCC and Defendant State Farm in

accordance with S.C.R. Civ. P. 11. (Exhibit A.) In this counterclaim, the Williams have stated a cognizable counterclaim for voiding the Policy, such that ACCC is not permitted to provide coverage under it to the detriment of the Williams' ability to recover higher benefits under their UM policy with State Farm. As discussed, under South Carolina law and the terms of the Policy itself, the Policy is void due to the fraudulent, false, or misleading representations by Myers and Stanley.

Upon information and belief, the Williams' expert witness will testify that providing liability coverage under the policy is in direct contravention of the applicable policy language and South Carolina law. Moreover, Mr. Finkel will opine that ACCC's liability policy contains mandatory language that it will not provide coverage if the applicant made any material misrepresentations.

If this Court were to grant ACCC and State Farm's joint motion to dismiss, then this ruling would cause legal prejudice to Patricia and Ronald Williams in that it would result in the waste of a year in recovering benefits for the Williams' injuries in light of ACCC's false representation during that period that there was no coverage under the Policy. Patricia and Ronald Williams would be back to the same position they occupied at the commencement of ACCC's present lawsuit, with the prospect of further substantial delays before they see any insurance benefits. Because of such legal prejudice, the Court should deny ACCC and State Farm's motion to dismiss. Moreover, as discussed above, a voluntary nonsuit should not be granted to a plaintiff when the defendant is clearly entitled to judgment on the merits. As discussed below, Patricia and Ronald Williams are clearly entitled to judgment on the merits of their counterclaim. For this reason as well, it is not appropriate to grant the motion to dismiss in this case.

B. Patricia Williams and Ronald Williams Have Stated a Counterclaim that There Is No Coverage under the Policy Due to the False, Fraudulent, or Misleading Representations by Myers and Stanley

Myers and Stanley falsely stated the residential address of Stanley, the driver's license number of Myers, and Myers' date of birth in their application for liability insurance with ACCC. Although there is no South Carolina authority on the point, courts considering the question have held that an insured's false statement in an insurance application regarding the residence of the driver constituted a representation that would render the policy voidable if it was fraudulently made and material to the risk. *See James v. Safeco Insurance Co. of Illinois*, 2011-Ohio-4241, 959 N.E.2d 599. This principle comports with ACCC's statement in the Policy that failure to provide a correct address is an example of fraud which voids the Policy. (*See* Petition, ¶12.)

During the course of this litigation, ACCC admitted not only that Brittany Stanley provided a false address in the insurance application, but that Myers' driver's license number and date of birth were false in the application. As discussed above, the Policy expressly provided that the Policy "will not" provide coverage if the applicants made false, fraudulent, or misleading representations in their application for insurance. The evidence is clear that the applicants did so here. Therefore, by both the terms of the Policy and South Carolina law, the Policy is void and cannot provide coverage for Myers and Stanley. *See United Insurance Co. of America v. Stanley*, 277 S.C. 463, 289 S.E.2d 407 (1982) (in order to void insurance policy for fraudulent procurement, insurer must show not only that statements complained of were untrue, but also that falsity was known to applicant, material to the risk, relied on by insurer, and made with intent to deceive and defraud the company).

C. ACCC Has Waived Its Right to Provide Coverage

"Waiver" is a voluntary and intentional abandonment or relinquishment of a known right. *E.g., Eason v. Eason*, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009); *SPUR at Williams Brice Owners Association, Inc. v. Lalla*, 415 S.C. 72, 91, 781 S.E.2d 115, 125 (Ct. App. 2015). Waiver may be implied, as well as express, and implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable. *SPUR at Williams Brice Owners Association, Inc.*, 415 S.C. at 91, 781 S.E.2d at 125. Waiver requires a party to have known of a right and known that he was abandoning that right. *Eason*, 384 S.C. at 480, 682 S.E.2d at 807. Unlike equitable estoppel, waiver does not require the party asserting the doctrine to have relied on the other party's representations. *See Strickland v. Strickland*, 375 S.C. 76, 650 S.E.2d 465 (2007). It has been held that an insurer waived its right under a clause of a policy, when the insurer's agent knew of the insured's violation of the clause, and did not seek repayment until months later. *See South Carolina Farm Bureau Mutual Insurance Co. v. Mayer*, 314 S.C. 102, 441 S.E.2d 824 (1994).

In the present case, ACCC has waived its right to claim that the Policy provides liability coverage to Myers and Stanley. For approximately one year, ACCC vehemently denied that Myers and Stanley are entitled to coverage under the policy, both on the basis of Policy documents and because of the false, fraudulent, or misleading statements by these persons. It was not necessary that ACCC expressly state that it was waiving its right to provide coverage. As discussed above, ACCC's acts in declaring that the Policy does not provide coverage are sufficient to constitute a waiver. Moreover, as discussed above, it is not necessary that Patricia Williams and Ronald Williams relied on ACCC's conduct in denying coverage in order for a waiver to exist.

D. ACCC Is Judicially Estopped From Asserting that the Policy Provides Coverage

Judicial estoppel is an equitable estoppel which prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or a related proceeding. *Patterson v. Witter*, 418 S.C. 66, 791 S.E.2d 294 (Ct. App. 2016). The purpose of judicial estoppel is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary. *Id.* at 77, 791 S.E.2d at 300. The object of judicial estoppel is to preserve the integrity of judicial proceedings, and the doctrine, therefore, does not require a finding of prejudice to the party invoking the doctrine. *In re Point Wylie Co.*, 78 B.R. 453 (D.S.C. 1987). To prevail on a judicial estoppel claim, a party must prove the following: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court, and (5) the two positions must be totally inconsistent. *Patterson*, 418 S.C. at 76, 791 S.E.2d at 300.

In the case at bar, it is proper to apply the doctrine of judicial estoppel against ACCC. As discussed herein, during the course of this litigation ACCC has adopted totally inconsistent positions as to the issue of whether Myers and Stanley are entitled to coverage under the ACCC liability Policy. First, although the Collision Report stated that Myers was uninsured, ACCC stated to the Williams that there was liability coverage. (Exhibits B and C.) Second, ACCC filed this declaratory judgment action and adamantly held to the position that the Policy did not provide coverage for reasons of fraudulent representations by Myers and Stanley in their insurance application and the provisions of the Policy itself. And now in ACCC's current

motion to dismiss, in which for some reason it and State Farm (the Williams' UM insurer) inexplicably join hands, ACCC completely reverses its position and declares that there is coverage under the Policy.

As discussed above, the application of judicial estoppel does not require proof of any prejudice to Patricia Williams or Ronald Williams, although the actions of ACCC are clearly prejudicial to the Williams. Here, ACCC successfully maintained, for approximately one year, its position that there was no coverage under the Policy, benefitted from that position by delaying the payment of any benefits to Patricia and Ronald Williams under the Policy, and avoided any independent action by Patricia and Ronald Williams for a declaration regarding coverage under the Policy. In short, ACCC's recent reversal of position on the issue of coverage intentionally misled the Court as to the very reason for this lawsuit which the Court is overseeing.

For these reasons, all the elements supporting judicial estoppel are present, and Defendants Patricia Williams and Ronald Williams have stated a valid counterclaim.

E. ACCC Is Equitably Estopped From Asserting that the Policy Provides Coverage

Equitable estoppel occurs when a party is denied the right to plead or to prove an otherwise important fact because of something which he has done or failed to do. *Eason*, 384 S.C. at 480, 682 S.E. 2d at 807. Equitable estoppel applies if a person, by his actions, conduct, words, or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury. *State v. Hinojos*, 393 S.C. 517, 713 S.E.2d 351 (Ct. App. 2011). The elements of equitable estoppel, as related to the party being estopped, are: (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by

the other party, and (3) actual or constructive knowledge of the real facts. *Rodarte v. University of South Carolina*, 419 S.C. 592, 799 S.E.2d 912 (2017). The party asserting equitable estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) a prejudicial change of position in reliance on the conduct of the party being estopped. *Id.* at 601, 799 S.E.2d at 917. Unlike with waiver, the estopped party need not intend to relinquish or change any existing right for estoppel to arise. *Provident Life & Accident Insurance Co. v. Driver*, 317 S.C. 471, 451 S.E.2d 924 (Ct. App. 1994).

In order to establish that an insurer is equitably estopped, the insured must show lack of knowledge and means of knowledge as to the state of the facts, and a change in position resulting in prejudice because of such reliance. *Carolina Amusement Co. v. Connecticut National Life Insurance Co.*, 313 S.C. 215, 437 S.E.2d 122 (Ct. App. 1993); *see also Stringer v. State Farm Mutual Automobile Insurance Co.*, 386 S.C. 188, 687 S.E.2d 58 (Ct. App. 2009) (in order to prevail on a claim of estoppel, the insured must demonstrate: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reasonable reliance on the other party's conduct, and (3) a prejudicial change in position).

In the present case, ACCC made a number of representations which it is now equitably estopped to deny. First, ACCC stated in its Petition that the Policy "will not" provide coverage if the applicants (Myers and Stanley) made false, fraudulent, or misleading representations in their application for insurance.

Second, ACCC stated on the Declarations Page of the Policy that coverage was provided only where a premium and limit of coverage were shown for the coverage. (See Exhibit D.) The Declarations Page for the Policy did not show a premium for any liability coverage. Although

there is no South Carolina authority on the point, numerous courts considering the issue have held that automobile liability coverage does not exist unless a premium charge for such coverage is shown on the declarations page of the policy. *See Auto Owners Insurance Co. v. Estate of Johnson*, 459 N.W.2d 7 (Mich. App. 1990); *see also Farmers Home Mutual Insurance Co. v. Lill*, 332 N.W.2d 635 (Minn. 1983) (declarations page unambiguously showed that no premium charge was made for farm employee coverage; therefore, liability policy was inapplicable); *Miljack Associates v. United States Fidelity & Guaranty Co.*, 120 So. 2d 163 (Miss. 1960) (when declarations page did not show charge for coverage, no insurance was provided); *Edens v. The Netherlands Insurance Co.*, 834 F.3d 1116 (10th Cir. 2016) (motorcyclist was not an insured under his company's insurance, when motorcycle was not an automobile listed in declarations for which coverage premium was shown). The court in *Blalock v. Southern Insurance Co.*, 349 S.E.2d 32, 33-34 (Ga. App. 1986), observed:

The application for insurance here clearly shows a written rejection of uninsured motorist coverage which complies with the statutory requirement. "Uninsured motorists" is listed under the section at the top of the marked "optional coverages," and the second, "reject" box next to it had been checked rather than the first, "accept" box. In the middle of the page, where coverages, limits of liability, and premiums are listed, the premium box for "Uninsured Motorists" is blank and no selection among three liability amounts is designated. Plaintiffs do not deny that Mr. Blalock checked or authorized checking the rejection box or that he signed the form at the bottom. At the bottom of the application immediately above appellant's signature, is a statement in capital letters that "the undersigned, by his/her signature, hereon, certifies that the coverages listed in the 'optional coverages' section of this application have been explained and offered to him/her, and that this application accurately reflects his/her wishes in that regard." What is more, the policy's declaration sheet shows that no premium was charged for uninsured motorist coverage and the "limits of liability" is blank. The sheet states: "The insurance afforded is only with respect to such of the following coverages ... as are indicated by specific premium charge or charges." Thus, summary judgment was proper.

(Emphasis added; citations omitted.)

However, ACCC now attempts to negate these affirmative representations by providing coverage even though it admits that Myers and Stanley made false, fraudulent, or misleading representations in their application for insurance and even though the Declarations Page of the Policy expressly stated that coverage was not provided because there was no premium shown for any coverage. These were false representations by ACCC upon which it intended Patricia and Ronald Williams to rely by not suing ACCC for a declaration regarding coverage under the Policy and by allowing ACCC to delay substantially the payment of any benefits to Patricia and Ronald Williams. As anticipated by ACCC, Patricia and Ronald Williams relied on ACCC's misrepresentations. However, Patricia and Ronald Williams had no knowledge or means of knowing that ACCC would somehow find coverage under the Policy contrary to ACCC's long-standing representations. Therefore, all the elements of equitable estoppel exist in the present case.

III. CONCLUSION

Based on the above, the Williams intend to file an Amended Answer and Counterclaim that states a valid cause of action under South Carolina law and have submitted this proposed Amended Answer and Counterclaim to opposing counsel for their consent. This counterclaim raises substantial issues as to the Williams' rights to insurance benefits, rights which will be severely compromised if ACCC and State Farm's motion to dismiss is granted. Such rights should not be permitted to be whisked away by ACCC and State Farm's mere statement that they wish to dismiss the case with prejudice. As discussed herein, dismissal would result in legal prejudice to Patricia and Ronald Williams. Hence, dismissal is improper under Rule 41, and the Court should deny ACCC and State Farm's Joint Motion to Dismiss.

Accordingly, Defendants Patricia Williams and Ronald Williams respectfully request that this Honorable Court deny ACCC Insurance Company and State Farm Mutual Automobile Insurance Company's Joint Motion to Dismiss.

STANLEY LAW FIRM

s/ Stacy L. Stanley

Stacy L. Stanley

SC Bar No.: 13410

3303 East Highway 9

Little River, SC 29566

Phone: (843) 390-9111

Fax: (843) 390-9187

Email: ssstanley@stanleylawfirm.com

Attorney for the Defendants Patricia and
Ronald Williams

August 31, 2017

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 16-CP-26-6091

ACCC INSURANCE COMPANY

Plaintiff,

vs.

PATRICIA WILLIAMS, RONALD
WILLIAMS, PATRICK BENJAMIN
MYERS, BRITTANY STANLEY, a.k.a.
BRITTANY STANDLEY, and STATE
FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendants.

AMENDED ANSWER AND COUNTERCLAIM

The Defendants, Patricia Williams and Ronald Williams (hereinafter "the Williams"), answering the Complaint of the Plaintiff, would respectfully show unto this Court as follows:

1. Each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted or explained is denied and strict proof demanded thereof.
2. Defendants Williams admit the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 20, 21, 22, 23, 24, and 25 of Plaintiff's Complaint.
3. Upon information and belief, Defendants Williams admit the allegations of Paragraph 13 of Plaintiff's Complaint.
4. Paragraph 15 of Plaintiff's Complaint does not require an answer.
5. Defendants Williams are without sufficient information to form a belief as to the truth or falsity of Paragraph 19 of Plaintiff's Complaint.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendants Williams pray as follows:

- (a) That the Court protect the interest of Patricia Williams and Ronald Williams in this matter;
- (b) For their attorney's fees and costs of this action;
- (c) for such other and further relief as the Court deems just and proper.

COUNTERCLAIM FOR DECLARATORY JUDGMENT

COME NOW Defendants Patricia Williams and Ronald Williams (hereinafter "Counterclaim Plaintiffs"), and, for their Counterclaim against the Plaintiff, (hereinafter "Counterclaim Defendant") allege as follows:

Parties and Jurisdiction

1. Counterclaim Plaintiff Patricia Williams is a citizen and resident of the County of Horry, South Carolina.
2. Counterclaim Plaintiff Ronald Williams is a citizen and resident of the County of Horry, South Carolina.
3. Counterclaim Defendant ACCC Insurance Company ("ACCC") is a corporation organized and existing under the laws of the State of Texas, and has its principal place of business in Houston, Texas. ACCC is licensed to do business in the State of South Carolina.
4. The Court has subject matter jurisdiction over this declaratory judgment action pursuant to S.C. Code Ann. § 35-53-10 et seq. and S.C.R. Civ.P. 57.
5. Venue is proper in this Court because all parties either reside or conduct business in Horry County, South Carolina.

Facts

6. ACCC has admitted that its purported insureds, Patrick Benjamin Myers and Brittany Stanley, made material misrepresentations in their application for liability insurance with ACCC as to the residential address of Stanley, and Myers' driver's license number and date of birth.

7. ACCC liability policy number SCE0052102-1 issued to Myers and Stanley ("the Policy", attached as Exhibit A) expressly provided that the policy "will not provide coverage" if the applicants made false, fraudulent, or misleading representations in their application for insurance.

8. Pursuant to South Carolina law, an insurance policy is void if it contains false and misleading statements.

9. Providing liability coverage under the ACCC Policy with Myers and Stanley is in direct contravention of the applicable policy language and South Carolina law.

10. In its Petition for Declaratory Judgment, ACCC States that Myers and Stanley are not entitled to coverage under the Policy based on the material misrepresentations they made when applying for insurance with ACCC. (See Petition for Declaratory Judgment, ¶¶ 17, 18.)

11. The Williams will be directly harmed by ACCC's change in position as to coverage under the Policy, in that, if there is no coverage for Myers and Stanley under the Policy, Patricia Williams and Ronald Williams are entitled to uninsured motorist ("UM") coverage under their automobile policy with State Farm, which has higher coverage limits than the ACCC liability policy. Patricia Williams sustained severe personal injuries in the collision with Patrick Myers, and the limits of the ACCC Policy (and even the State Farm UM policy) are seriously inadequate to compensate Patricia Williams for the harm she suffered.

**FIRST CAUSE OF ACTION
(Declaratory Relief)**

12. The allegations contained in paragraphs 1 through 11 are repeated and realleged as if fully set forth herein.

13. Due to the material false, fraudulent, or misleading representations made by Myers and Stanley in their insurance application submitted to ACCC, they are not entitled to coverage under the automobile liability Policy issued to them by ACCC.

14. Due to the material false, fraudulent, or misleading representations made by Myers and Stanley in their insurance application submitted to ACCC, the ACCC automobile liability Policy issued to Myers and Stanley is void.

15. ACCC is precluded from providing coverage to Myers and Stanley under the ACCC Policy issued to them.

16. The Williams are entitled to a declaratory judgment declaring that ACCC is precluded from providing coverage to Myers and Stanley under the ACCC Policy issued to them.

17. An actual and justiciable controversy exists regarding the rights and obligations under the ACCC Policy issued to Myers and Stanley.

18. The Williams have no adequate remedy at law or otherwise except by this action for a declaratory judgment.

19. The Williams request that this Court inquire into the rights and liabilities of the parties with respect to the ACCC Policy, and that the Court declare that ACCC is precluded from providing coverage to Myers and Stanley under the Policy.

20. This is a declaratory judgment action pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 15-53-10 et seq., in which the Williams seek a

declaration from this Court that ACCC is barred from providing coverage to Myers and Stanley under the Policy for the accident at issue.

WHEREFORE, the Counterclaim Plaintiffs respectfully pray:

- a. That the Court inquire into the rights, obligations, duties, and liabilities of the parties with respect to the Policy, and that the Court declare that ACCC is precluded from providing coverage to Myers and Stanley under the Policy with respect to the accident at issue; and
- b. That the Counterclaim Plaintiffs have such other and further relief as the Court deems just and proper under the circumstances.

s/ Stacy L. Stanley
Stacy L. Stanley
SC Bar No.: 13410
STANLEY LAW FIRM
3303 Highway 9 East
Little River, South Carolina 29566
(843) 390-9111
sstanley@stanleylawfirm.com

Attorney for Defendants/Counterclaim
Plaintiffs Patricia Williams and Ronald
Williams

_____, 2017

Exhibit B

EXHIBIT



County Jail

1-800-235-2355
1-800-235-2355
1-800-235-2355
1-800-235-2355
1-800-235-2355

County Jail

1-800-235-2355
1-800-235-2355
1-800-235-2355
1-800-235-2355
1-800-235-2355

Exhibit C

GOWER WOOTEN & DARNEILLE, LLC
ATTORNEYS AT LAW

ANNE GOWER
J. TIMOTHY WOOTEN
JASON D. DARNEILLE
JAMIE ACKERMANN
SEAN J. GILL
ROBERT W. JOHNSON, JR.

J. TIMOTHY WOOTEN
TIM@GWDLAWFIRM.COM

* ADMITTED IN SOUTH CAROLINA
* ADMITTED IN ALABAMA
* ADMITTED IN NORTH CAROLINA

April 14, 2016

VIA CERTIFIED MAIL & REGULAR U.S. MAIL

Mrs. Patricia Williams
c/o Mr. Ronald Williams
3430 Sumpter Road
Loris, South Carolina 29569

Re: Claimant: Patricia Graham Williams
ACCC Insd: Patrick Benjamin Myers
Claim No.: S 14213
Date of Loss: March 18, 2016

Dear Mr. Williams:

Thank you for taking the time today to speak with me about your wife's claim. As you know, I am an attorney hired by ACCC Insurance Company ("ACCC") regarding the above-referenced claim brought by your wife, Patricia Williams. You advised that currently do not have a lawyer for this claim, but you may hire a lawyer shortly. If you do hire an attorney to help you with this claim, please have him or her contact me immediately. It is my understanding that you demanded from ACCC bodily injury liability policy limits of \$25,000, as well as the property damage coverage available for punitive damages under Mr. Myers's automobile liability policy number SCE0052102-1.

Please allow this letter to confirm our telephone conversation today during which I advised that ACCC is tendering to your wife its full \$25,000.00 bodily injury policy limits available under automobile policy number SCE0052102-1 issued Patrick Benjamin Myers in settlement of this claim. This also will confirm that ACCC is offering the balance of the \$25,000.00 property damage coverage available to Mr. Myers in settlement of your wife's punitive damages claim against Mr. Myers. As we discussed, if your insurer State Farm Insurance Company is paying you or your wife for the loss of your 2005 Buick Lacrosse, then ACCC must first reimburse State Farm from Mr. Myers's property damage coverage. After ACCC reimburses State Farm, ACCC will then pay to your wife the remaining property damage coverage in settlement of the punitive damages claim. However, at this time State Farm has not yet provided ACCC with the amount it is paying you for property damage to your 2005 Buick Lacrosse, so I cannot tell you the exact amount your wife will receive from the property damage coverage for the punitive damages. Once I know this amount I will forward that information to you.

I will prepare the settlement documents for you to review. Please contact my office if you or Mrs. Williams have any questions whatsoever. It is very important that you and Mrs. Williams understand the settlement documents that I will send you.

GREENVILLE, SC OFFICE:
223 WEST STONE AVE.
GREENVILLE, SOUTH CAROLINA 29609
(864) 991-3197
FAX: (404) 662-2444

ATLANTA, GA OFFICE:
800 CIRCLE 75 PARKWAY
SUITE 1150
ATLANTA, GEORGIA 30339
(404) 662-2333
FAX: (404) 662-2444

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Ms. Patricia Williams c/o Mr. Ronald Williams
April 19, 2016
Page 2 of 2

I look forward to working with you and resolving this matter.

With kind regards,



J. Timothy Wooten

JTW/kc

cc: Mr. Luis Sepulveda
Ms. Deborah Williams
Ms. Adrienne Boney

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Exhibit D

RENE HARLESS INSURANCE AGENCY, LLC
4019 MEETING ST
LORIS SC 29580-2461



ACCC Insurance Company
South Carolina
P.O. Box 2081, Alpharetta, GA 30023-2081
(404) 929-0369 Toll Free (800) 651-1658

REINSTATEMENT

Attached to and forming a part of Policy Number: SCE0052102-1
This reinstatement is effective 2/24/2016 at: 12:01 AM
and amends policy as indicated herein.

Policyholder Name and Address:

PATRICK MYERS AND BRITANY STANDLEY
5283 HIGHWAY 66
LORIS SC 29569-5962

Producer Number: 7151
Producer Name and Address:

RENE HARLESS INSURANCE AGENCY, LLC
4019 MEETING ST
LORIS, SC 29568-2461

Discounts:	Car.1	Car.2	
Multi-car Renewal	10% 15%	10% 15%	
<u>Surcharges:</u>			
Miss./Inc. VIF		50%	

ENDORSEMENTS and/or EXCLUSIONS:
SC LPE

Excluded Drivers:

Coverage is provided only where a premium and limit of coverage are shown for the coverage.				Territory: 630		Car 1	Car 2	
				F.R. Filing: N				
				Rate Class & Points:		W9 - 2	M22 - 0	-
				Symbol & Age:		11 - 12	15 - 13	-
COVERAGES				LIMITS OF LIABILITY		PREMIUMS		
A Bodily Injury Liability				\$ 25,000 each person				
Property Damage Liability				\$ 50,000 each accident				
				\$ 25,000 each accident				
B Medical Payments		\$	DED	\$ each person				
C1 Uninsured Bodily Injury				\$ 25,000 each person				
Motorist Liability				\$ 50,000 each accident				
Coverage Property Damage				\$ 25,000 each accident				
C2 Underinsured Bodily Injury				\$ 25,000 each person				
Motorist Liability				\$ 50,000 each accident				
Coverage Property Damage				\$ each accident				
D Coverage for Damage to Your Auto:				Car 1	Car 2			
Other Than Collision:		Actual Cash Value		\$				
		Less Deductible		\$				
Collision:		Actual Cash Value		\$				
		Less Deductible		\$				
Towing and Labor:		(each disablement)		\$				
Rental Reimbursement		\$	per day	\$				
				Premium By Auto				
				Expense Constant				
				Total Premium				

DRIVERS	All Drivers in the Household	Date of Birth	Sex	M/S	CLS	PTS	License No.	State	Occupation	1 Way
										Miles
	PATRICK MYERS	5/12/1981	M	M	M22	0	100375876	SC	SKILLED	8
	BRITANY STANDLEY	11/26/1990	F	M	W9	2	101245463	SC	SALES	8

The Named Insured warrants there are no other drivers in the household other than those listed in the Application or Endorsement.

The Named Insured warrants there are no other drivers in the household.						
AUTO OWNED	CAR	YEAR	MAKE	MODEL	BODY TYPE	VEHICLE IDENTIFICATION #
	1	2005	FORD	TAURUS SE	SEDAN 4 DR.	1FAFP53U05A155592
	2	2004	CHEVROLET	MONTE CARLO SS	COUPE	2G1WX12K949388935
LOSS PAYEE	CAR	Any loss under Coverage for Damage to your auto is payable as interest may appear to named insured and (name and full address):				

The insurance afforded is only with respect to the coverage or groups of coverages as are indicated herein by a specific premium charge or charges. The limit of the Company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy, having reference thereto and shall not be increased regardless of the number of premiums charged or the number of automobiles or trailers to which this policy applies.

Jack Shroyer
COUNTERSIGNED

2/11/2016
DATE

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COUNTY OF HORRY

FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 16-CP-26-6091

ACCC INSURANCE COMPANY

Plaintiff,

vs.

PATRICIA WILLIAMS, RONALD
WILLIAMS, PATRICK BENJAMIN
MYERS, BRITTANY STANLEY, a.k.a.
BRITTANY STANDLEY, and STATE
FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendants.

**MOTION TO AMEND ANSWER
TO ASSERT A COUNTERCLAIM**

Defendants Patricia Williams and Ronald Williams, by and through their undersigned attorney, and, pursuant to Rule 15, SCRCP, move to amend their Answer to assert a counterclaim. As the basis for this motion, the Defendants would show unto the Court the following:

Facts

1. On March 18, 2016, Patrick Benjamin Myers ("Myers") was driving a car that crossed the center line and collided head on with a car being driven by Patricia Williams ("Williams"). On the Traffic Collision Report Form ("Collision Report"), Highway Patrol Officer Eden determined that Myers contributed to the collision and was uninsured at the time of the accident and that Williams did not contribute to the collision. (See Exhibit A.) Upon information and belief, there is no dispute that Myers was liable for the collision.

2. On April 14, 2016, approximately twenty-seven days after the collision, Plaintiff ACCC Insurance Company ("ACCC") through its attorney Tim Wooten of Gower Wooten & Darneille, LLC contradicted the Collision Report and notified Williams that Myers was insured and, therefore, "tendered" the disputed liability limits. (See Exhibit B.)

3. However, ACCC changed its position on September 14, 2016, almost six months after the subject collision and approximately five months after its coverage letter to the Williams, when it rescinded its offer of the liability limits and filed this declaratory judgment action seeking a declaration that Defendants Patrick Benjamin Myers and Brittany Stanley aka Brittany Standley ("Stanley") are not entitled to coverage or a defense under an automobile liability policy issued by ACCC to Myers and Stanley ("the Policy"). (See Petition for Declaratory Judgment and Other Relief [hereinafter "Petition"], ¶¶ 10, 18.)

4. In the Petition, ACCC alleged that the Policy contained a provision stating that, if the insureds made any false, fraudulent, or misleading representations in their application for insurance, the Policy "will not" provide coverage. (*Id.*, ¶ 12.) As an example of such false, fraudulent, or misleading representations, ACCC gave a failure of an applicant to provide his or her correct address. (*Id.*) ACCC further stated in the Policy that, if an insured made a false, fraudulent, or misleading representation in the application for insurance, "we will not be liable for any claims . . ." (*Id.*, ¶ 13.)

5. ACCC further stated that Defendants Myers and Stanley made several false, fraudulent, or misleading representations negating coverage under the Policy. ACCC alleged that Defendants Myers and Stanley falsely claimed an ownership interest in the vehicle being operated by Myers at the time of his collision with Defendant Patricia Williams. (*Id.*, ¶¶ 10, 16.)

In addition, ACCC stated that Defendants Myers and Stanley provided a false driver's license number and date of birth for Patrick Myers. (*Id.*, ¶ 11.)

6. Furthermore, ACCC stated that the Collision Report listed the vehicle being driven by Myers at the time of the accident as uninsured. (*Id.*, ¶ 9.)

7. Although not alleged in the Petition, ACCC's Policy Declarations Page ("Declarations Page") stated that coverage was provided only where a premium and limit of coverage were shown for the coverage. The Declarations Page for the Policy did not show a premium for any liability coverage. (*See Exhibit C.*)

8. ACCC concluded in its Petition that Myers and Stanley are not entitled to coverage under the Policy because of the false, fraudulent, and misleading statements they made in their application and that ACCC is entitled to a declaratory judgment that it owes no coverage to these Defendants arising out of the collision at issue. (*Id.*, ¶¶ 18, 21.)

9. Upon information and belief, the Williams' expert witness, Gerald M. Finkel, Esquire, will agree with ACCC's Petition and testify that Myers' vehicle was uninsured at the time of the accident due to the material misrepresentations Myers made in his application submitted for coverage with ACCC.

10. On or about March 4, 2017, almost six months after filing this declaratory judgment action, ACCC asked opposing counsel to consent to an Amended Petition that would add a party and additional allegations to this action. (*See Exhibit D.*) The additional party was a brother of Myers, James Myers, III, who was involved in a separate auto collision on April 24, 2016.

11. By requesting to amend its declaratory judgment action, ACCC was attempting to add to its already existing allegations, but, most importantly, ACCC did not see any reason to dismiss this action.

12. On July 5, 2017, almost ten months after ACCC filed this action, Williams asked the parties to participate in mandatory alternative dispute resolution ("ADR") because the case could possibly come up for trial within a little over two months and there had not been any change in ACCC or State Farm Automobile Insurance Company's ("State Farm") legal position. Although ADR is mandated by the Court, both ACCC and State Farm refused to respond to this correspondence from Williams and, as a result, Williams filed a motion to compel ADR. (See Exhibits E and F.)

13. After approximately eleven months of steadfastly holding to the position that Defendants Myers and Stanley were uninsured under the ACCC liability Policy, ACCC filed a motion to dismiss on August 4, 2017, joined by Defendant State Farm, in which ACCC has completely reversed its course and adopts the position that the ACCC Policy provides coverage to Myers and Stanley. However, nothing has changed in this period which supports ACCC's change in position. Instead, the facts now are exactly the same as they were during the prolonged period in which ACCC stated that the Policy did not provide coverage to Myers and Stanley.

14. Although the facts in ACCC's Petition and in its Declaration Page have not changed during this prolonged litigation, ACCC audaciously threatened Williams via letter dated September 6, 2017 that if Williams does not withdraw its proposed Amended Answer and Counterclaim, then ACCC intends to "seek recourse under the South Carolina Frivolous Proceedings Act, S.C. Code Ann. Section 56-9-20(5)(b)(1-3)." (See Exhibit G.) By threatening Williams with a frivolous action, ACCC, maybe unknowingly, is actually stating that its own initial Petition was frivolous. Instead of an alleged frivolous action, Williams is only requesting that the allegations in ACCC's Petition (the exact allegations that started the now so-called "frivolous" proceeding) be heard by this Court.

15. In this case, Defendants Patricia Williams and Ronald Williams will be harmed by ACCC's change in position as to coverage under the Policy, in that, if there is no coverage for Myers and Stanley under the Policy, Patricia Williams and Ronald Williams are entitled to uninsured motorist ("UM") coverage under their automobile policy with State Farm, which has higher coverage limits than the ACCC liability policy. Defendant Patricia Williams sustained severe personal injuries and over one million dollars in medical bills as a result of the collision with Patrick Myers and the limits of the ACCC Policy (and even the State Farm UM policy) are seriously inadequate to compensate Patricia Williams for the harm she suffered from this collision.

Argument

A. Standards for Amendment

16. Rule 15 of the South Carolina Rules of Civil Procedure provides, in relevant part:

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. *Otherwise a party may amend his pleading only 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.* A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders.

Rule 15, SCRPC (Emphasis added).

17. A motion to amend the pleadings is addressed to the discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice. *Collins Entm't, Inc. v. White*, 363 S.C. 546, 611 S.E.2d 262 (Ct. App. 2005); *Foggie v. CSX Transp., Inc.*, 313 S.C. 431,

431 S.E.2d 587 (1993) (burden is on party-opposing motion to amend to establish that he will be prejudiced by amendment). The prejudice that will warrant denial of a motion to amend the pleadings is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it. *Collins Entm't, Inc.*, 363 S.C., at 562, 611 S.E.2d at 270.

18. In the case at bar, the amended Answer proposed by Defendants Patricia Williams and Ronald Williams gives ACCC and State Farm notice that previously asserted issues by ACCC are to be tried and there is sufficient opportunity to refute them. (See Exhibit H.) Therefore, there is no basis for denying the Motion to Amend.

B. Patricia Williams and Ronald Williams Should be Allowed to Amend Their Answer to State a Counterclaim that There Is No Coverage under the Policy Due to the False, Fraudulent, or Misleading Representations by Myers and Stanley

19. Myers and Stanley falsely stated the residential address of Stanley, the driver's license number of Myers, and Myers' date of birth in their application for liability insurance with ACCC. Although there is no South Carolina authority on point, courts considering the question have held that an insured's false statement in an insurance application regarding the residence of the driver constituted a representation that would render the policy voidable if it was fraudulently made and material to the risk. *See James v. Safeco Ins. Co. of Illinois*, 959 N.E.2d 599 (Ohio Ct. App. 2011). This principle comports with ACCC's statement in the Policy that failure to provide a correct address is an example of fraud which voids the Policy. (See Petition, ¶ 12.)

20. The Williams' insurance expert will opine that misrepresentations as to the age of an insured and his driver's license number are material misrepresentations upon which ACCC relied in issuing the policy at the specified premium, and which render the policy void ab initio. Mr. Finkel will further state that ACCC would not have sold a liability policy to Myers if he had

stated the true facts in the policy application or if the agent had submitted such true facts to ACCC.

21. During the course of this litigation, ACCC has admitted not only that Brittany Stanley provided a false address in the insurance application, but that Myers' driver's license number and date of birth were false in the application. As discussed above, the Policy expressly provided that the Policy "will not" provide coverage if the applicants made false, fraudulent, or misleading representations in their application for insurance. Here, the evidence is clear that the applicants made false, fraudulent, or misleading representations. Therefore, by both the terms of the Policy and South Carolina law, the Policy is void and cannot provide coverage for Myers and Stanley. *See United Ins. Co. of America v. Stanley*, 277 S.C. 463, 289 S.E.2d 407 (1982) (in order to void insurance policy for fraudulent procurement, insurer must show not only that statements complained of were untrue, but also that falsity was known to applicant, material to the risk, relied on by insurer, and made with intent to deceive and defraud the company). Mr. Finkel will also state that ACCC's liability policy contains mandatory language that it will not provide coverage if the applicant made any material misrepresentations.

22. In accordance with Rule 11 of the South Carolina Rules of Civil Procedure, counsel affirms that he has communicated with opposing counsel and attempted in good faith to resolve the matters contained herein, to no avail.

23. For these reasons, Patricia Williams and Ronald Williams are entitled to make a counterclaim that ACCC is not entitled to provide coverage under the Policy and to amend their Answer to set forth a counterclaim in this regard.

Conclusion

24. Based on the above, Defendants Patricia Williams and Ronald Williams respectfully request that this Honorable Court grant their Motion to Amend Their Answer to Assert a Counterclaim.

STANLEY LAW FIRM

s/Stacy L. Stanley
Stacy L. Stanley
SC Bar No.: 13410
3303 East Highway 9
Little River, SC 29566
Phone: (843) 390-9111
Fax: (843) 390-9187
Email: ssstanley@stanleylawfirm.com

Attorney for the Defendants Patricia Williams and
Ronald Williams

September 6, 2017

Exhibit A

ORIGINAL

SOUTH CAROLINA										TRAFFIC COLLISION REPORT FORM		10-11-1971		1972		1973	
Date: 02-10-1972										Time: 1:40		Location: Highway 17		County: York		City: York	
Driver 1: [Name], [Address], [City], [State], [Zip]										Driver 2: [Name], [Address], [City], [State], [Zip]		Driver 3: [Name], [Address], [City], [State], [Zip]		Driver 4: [Name], [Address], [City], [State], [Zip]		Driver 5: [Name], [Address], [City], [State], [Zip]	
Vehicle 1: [Make], [Model], [Year], [Color], [Type], [License], [Registration], [Insurance], [Driver's License]										Vehicle 2: [Make], [Model], [Year], [Color], [Type], [License], [Registration], [Insurance], [Driver's License]		Vehicle 3: [Make], [Model], [Year], [Color], [Type], [License], [Registration], [Insurance], [Driver's License]		Vehicle 4: [Make], [Model], [Year], [Color], [Type], [License], [Registration], [Insurance], [Driver's License]		Vehicle 5: [Make], [Model], [Year], [Color], [Type], [License], [Registration], [Insurance], [Driver's License]	
Witnesses: [Name], [Address], [City], [State], [Zip]										Witnesses: [Name], [Address], [City], [State], [Zip]		Witnesses: [Name], [Address], [City], [State], [Zip]		Witnesses: [Name], [Address], [City], [State], [Zip]		Witnesses: [Name], [Address], [City], [State], [Zip]	
Description of Collision: [Detailed Description]										Description of Collision: [Detailed Description]		Description of Collision: [Detailed Description]		Description of Collision: [Detailed Description]		Description of Collision: [Detailed Description]	
Remarks: [Remarks]										Remarks: [Remarks]		Remarks: [Remarks]		Remarks: [Remarks]		Remarks: [Remarks]	

UNIT 11 WAS ON SECONDARY 45 IN LANE 11 HEADING NORTH. UNIT 22 WAS ON SECONDARY 45 IN LANE 21 HEADING SOUTH. DRIVER OF UNIT 11 ROLL BACK AT THE WHEEL. DRIVER OF UNIT 21 WAS DRIVING TOO FAST FOR CONDITIONS. UNIT 21 WENT LEFT OF CENTER AND STRUCK UNIT 22 HEAD ON.

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A SUBSTITUTE FOR THE OFFICIAL RECORD. IT DOES NOT REPLACE THE OFFICIAL RECORD. IT IS THE RESPONSIBILITY OF THE USER TO OBTAIN THE OFFICIAL RECORD.

EXHIBIT

General Information										Personal Information										Medical History										Dental History										Other Information									
Name		Date of Birth		Sex		Race		Religion		Marital Status		Occupation		Education		Address		Phone		Social Security		Blood Type		Allergies		Current Medication		Past Medical History		Past Dental History		Other Notes																	
J. Edgar Hoover		01-01-1901		M		W		Catholic		Married		FBI Director		Harvard		1400 ...		...		...		...		...		...		...		...		...																	
...		...		...		...		...		...		...		...		...		...		...		...		...		...		...		...		...																	

Exhibit B

GOWER WOOTEN & DARNEILLE, LLC
ATTORNEYS AT LAW

ANNE GOWER
J. TIMOTHY WOOTEN
JASON D. DARNEILLE
JAMIE ACKERMAN
SEAN J. GILL
ROBERT W. JOHNSON, JR.

J. TIMOTHY WOOTEN
TIM@GOWDLAWFIRM.COM

* ADMITTED IN SOUTH CAROLINA
* ADMITTED IN ALABAMA
* ADMITTED IN NORTH CAROLINA

April 14, 2016

VIA CERTIFIED MAIL & REGULAR U.S. MAIL

Mrs. Patricia Williams
c/o Mr. Ronald Williams
3430 Sumpter Road
Loris, South Carolina 29569

Re: Claimant: Patricia Graham Williams
ACCC Insd: Patrick Benjamin Myers
Claim No.: S 14219
Date of Loss: March 18, 2016

Dear Mr. Williams:

Thank you for taking the time today to speak with me about your wife's claim. As you know, I am an attorney hired by ACCC Insurance Company ("ACCC") regarding the above-referenced claim brought by your wife, Patricia Williams. You advised that currently do not have a lawyer for this claim, but you may hire a lawyer shortly. If you do hire an attorney to help you with this claim, please have him or her contact me immediately. It is my understanding that you demanded from ACCC bodily injury liability policy limits of \$25,000, as well as the property damage coverage available for punitive damages under Mr. Myers's automobile liability policy number SCB0052102-1.

Please allow this letter to confirm our telephone conversation today during which I advised that ACCC is tendering to your wife its full \$25,000.00 bodily injury policy limits available under automobile policy number SCB0052102-1 issued Patrick Benjamin Myers in settlement of this claim. This also will confirm that ACCC is offering the balance of the \$25,000.00 property damage coverage available to Mr. Myers in settlement of your wife's punitive damages claim against Mr. Myers. As we discussed, if your insurer State Farm Insurance Company is paying you or your wife for the loss of your 2008 Buick Lacrosse, then ACCC must first reimburse State Farm from Mr. Myers's property damage coverage. After ACCC reimburses State Farm, ACCC will then pay to your wife the remaining property damage coverage in settlement of the punitive damages claim. However, at this time State Farm has not yet provided ACCC with the amount it is paying you for property damage to your 2008 Buick Lacrosse, so I cannot tell you the exact amount your wife will receive from the property damage coverage for the punitive damages. Once I know this amount I will forward that information to you.

I will prepare the settlement documents for you to review. Please contact my office if you or Mrs. Williams have any questions whatsoever. It is very important that you and Mrs. Williams understand the settlement documents that I will send you.

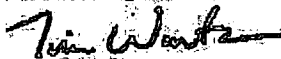
GREENVILLE, SC OFFICE
228 WEST STONE AVENUE
GREENVILLE, SOUTH CAROLINA 29609
(864) 661-3197
FAX (404) 662-2444

ATLANTA, GA OFFICE
200 CIRCLE 75 PARKWAY
SUITE 1150
ATLANTA, GEORGIA 30336
(404) 662-2883
FAX (404) 662-2444

Ms. Patricia Williams c/o Mr. Ronald Williams
April 19, 2016
Page 2 of 2

I look forward to working with you and resolving this matter.

With kind regards,



J. Timothy Wooten

JTW/lc

cc: Mr. Luis Sepulveda
Ms. Deborah Williams
Ms. Adrienne Boney

Exhibit C

Insured Company

RENE MARLESS INSURANCE AGENCY, LLC
4018 MEETING ST
LORIS SC 29569-2461



ACCC Insurance Company
South Carolina
P.O. Box 2081, Alpharetta, GA 30023-2081
(404) 922-0369 Toll Free (800) 651-1650

REINSTATEMENT

Attached to and forming a part of Policy Number: SCE0052102-1
This reinstatement is effective 2/24/2016 at 12:01 AM
and amends policy as indicated herein.

Policyholder Name and Address:

PATRICK MYERS AND BRITANY STANDLEY.
5283 HIGHWAY 88
LORIS SC 29589-5902

Producer Number: 7151

Producer Name and Address:

RENE HARLESS INSURANCE AGENCY, LLC
4019 MEETING ST
LORIS, SC 29555-2481

Discounts	Car. 1	Car. 2
Multi-car Renewal	10% 15%	10% 15%
~~Surcharge~~ Mbs./Inc. VIF		50%

ENDORSEMENTS and/or EXCLUSIONS:
SC LPE

Excluded Drivers:

Coverage is provided only where a premium and limit of coverage are shown for the coverage.				Territory: 630		Car 1	Car 2	
				F.R. Filing:	N			
				Rate Class & Points:		W9 - 2	M22 - 0	-
				Symbol & Age:		11 - 12	16 - 19	-
COVERAGES				LIMITS OF LIABILITY		PREMIUMS		
A	Bodily Injury Liability:			\$	25,000 each person			
	Property Damage Liability			\$	50,000 each accident			
				\$	25,000 each accident			
B	Medical Payments	\$	DED	\$	each person			
C1	Uninsured Motorist Coverage	Bodily Injury Liability		\$	25,000 each person			
				\$	50,000 each accident			
		Property Damage Liability \$ 200	DED	\$	25,000 each accident			
C2	Uninsured Motorist Coverage	Bodily Injury Liability		\$	25,000 each person			
				\$	50,000 each accident			
		Property Damage Liability \$	DED	\$	each accident			
D	Coverage for Damage to Your Auto					Car 1	Car 2	
	Other Than Collision:	Actual Cash Value		\$				
		Less Deductible		\$				
	Collision:	Actual Cash Value		\$				
		Less Deductible		\$				
	Towing and Labor:	(each disbursement)		\$				
	Rental Reimbursement	\$ per day		\$				
				Premium By Auto				
				Expense Constant				
				Total Premium:				

DRIVERS	All Drivers in the Household		Date of Birth	Sex	M/S	CLS	PTS	License No.	State	Occupation	1 Way Miles
	PATRICK MYERS		8/12/1931	M	M	M22	0	100376078	SC	SKILLED	8
	BRITANY STANDLEY		11/28/1890	F	M	W9	2	101248409	SC	BALES	0
The Named Insured warrants there are no other drivers in the household other than those listed in the Application or Endorsement.											
AUTO OWNED	CAR	YEAR	MAKE	MODEL	BODY TYPE	VEHICLE IDENTIFICATION #					
	1	2003	FORD	TAURUS SE	SEDAN 4 DR.	1FAPP63L06A155582					
	2	2004	CHEVROLET	MONTE CARLO SS	COUPE	2G1WX12K849S0C8885					
LOSS PAYEE	CAR Any loss under Coverage for Damage to your auto is payable as interest may appear to named insured and (name and full address):										

The Insurance afforded is only with respect to the coverage or groups of coverages as are indicated herein by a specific premium charge or charges. The limit of the Company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy, including reference thereto and shall not be increased regardless of the number of premiums charged or the number of automobiles or trailers to which it applies.

Generated 2/11/2016 6:45 PM EDT

Jack [Signature]
COUNTERSIGNED

2/11/2016
DATE

EC REI 2013 02 29



Exhibit D



Amended Petition for DJ - ACCC v Williams et al

Tim Wooten <tim@gwdlawfirm.com>

Sat, Mar 4, 2017 at 1:00 PM

To: Stacy Stanley <sstanley@stanleylawfirm.com>, "lgangi@thompsonlaw.com" <lgangi@thompsonlaw.com>

Linda and Stacy,

Attached is the draft Amended Petition for Declaratory Judgment adding James Myers, III as a defendant for his April 24, 2016 UM claim. Linda, please let me know if you will consent to plaintiff filing the Amended Petition.

Thanks,

Tim Wooten

J. Timothy Wooten

Gower, Wooten & Darneille, LLC

4200 Northside Parkway NW

Building 12

Atlanta, Georgia 30327

(404) 662-2333

Fax: (404) 662-2444

tim@wootenfirm.com

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ACCC INSURANCE COMPANY,

Plaintiff,

v.

Patricia Williams, Ronald Williams, Patrick
Benjamin Myers, Brittany Stanley a.k.a.
Brittany Standley, James Myers, III, and State
Farm Mutual Automobile Insurance
Company,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. NO. 2016-CP-26-06091

**AMENDED PETITION FOR
DECLARATORY JUDGMENT
AND OTHER RELIEF**

COMES NOW Plaintiff ACCC Insurance Company (hereinafter referred to as "ACCC") and files this Complaint for Declaratory Judgment against defendants Patricia Williams, Ronald Williams, Patrick Benjamin Myers, Brittany Stanley a.k.a. Brittany Standley James Myers, III, and State Farm Mutual Automobile Insurance Company and respectfully shows unto the Court as follows:

JURISDICTION AND PARTIES

1. Defendant Patricia Williams is a citizen and resident of the County of Horry, South Carolina, and is subject to the personal jurisdiction of this Court by virtue of her residence in the State of South Carolina. Defendant Patricia Williams may be served through her attorney Stacy Stanley, 3303 Highway 9 East, Little River, South Carolina 29566.

2. Defendant Ronald Williams is a citizen and resident of the County of Horry, South Carolina, and is subject to the personal jurisdiction of this Court by virtue of her residence in the State of South Carolina. Defendant Ronald Williams may be served through his attorney Stacy Stanley, 3303 Highway 9 East, Little River, South Carolina 29566.

3. Defendant Patrick Benjamin Myers is a citizen and resident of the County of Horry, South Carolina, and is subject to the personal jurisdiction of this Court by virtue of his residence in the State of South Carolina. Defendant Patrick Benjamin Myers may be served at his residence at 5283 Highway 66, Loris, South Carolina 29569.

4. Defendant Brittany Stanley a.k.a. Brittany Standley is a citizen and resident of the County of Horry, South Carolina, and is subject to the personal jurisdiction of this Court by virtue of her residence in the State of South Carolina. Defendant Brittany Stanley a.k.a. Brittany Standley may be served at her residence at 5283 Highway 66, Loris, South Carolina 29569.

5. State Farm Mutual Insurance Company is a foreign insurance company and may be served through the South Carolina Department of Insurance.

6. Defendant James Myers, III is a citizen and resident of the County of Horry, South Carolina, and is subject to the personal jurisdiction of the Court by virtue of his residence in the State of South Carolina. Defendant James Myers III may be served at his residence at 5283 Highway 66, Loris, South Carolina 29569.

7. James Myers, III alleges he is a resident relative of Patrick Benjamin Myers, Brittany Stanley a.k.a. Brittany Standley.

8. This Court has subject matter jurisdiction over this declaratory judgment action pursuant to South Carolina Code Ann. §§ 15-53-10 *et seq.* and South Carolina Rule of Civil Procedure 57.

9. Venue is proper in this Court because all parties either reside or conduct business in Horry County, South Carolina.

10. On March 18, 2016, defendant Benjamin Patrick Myers was operating a 2004 Chevrolet Monte Carlo, which was involved in an automobile accident in Horry County, South

Carolina with defendant Patricia Williams, who was operating a 2005 Buick automobile; (hereinafter referred to as the "Accident").

11. The South Carolina Department of Motor Vehicles Traffic Collision Report lists Patrick Benjamin Myers's date of birth as June 28, 1987, lists Patrick Benjamin Myers as the owner of 2004 Chevrolet Monte Carlo involved in the Accident, lists Patrick Benjamin Myers's South Carolina driver's license number as 100375877, and states that the 2004 Chevrolet Monte Carlo was uninsured at the time of the accident. (A true and correct copy of the South Carolina Department of Motor Vehicles Traffic Collision Report for the Accident is attached hereto as Exhibit 1).

12. James Myers, III contends that he suffered personal injuries in a separate accident on or about April 24, 2016 while he was operating a motorcycle on Water Tower Road in North Myrtle Beach, South Carolina when he was struck by an unknown vehicle and unknown driver.

13. ACCC issued a policy of automobile liability insurance to "Patrick Myers" and "Brittany Standley," policy number SCE0052102-1 (hereinafter referred to as the "Policy"), which purported to provide coverage for a 2004 Chevrolet Monte Carlo SS, VIN 2G1W12K949368935. (A true and correct copy of the Policy Declarations Page in effect at the time of the Accident is attached hereto as Exhibit 2).

14. The Policy Declarations Page lists "Patrick Myers" as a Policy Holder, and lists his date of birth as May 12, 1961 and his South Carolina driver's license number as 100375876 (Ex. 2).

15. The Policy Declarations Page lists "Brittany Standley" as a Policy Holder, and lists her date of birth as November 26, 1990 and her South Carolina driver's license number as 101245463. (Ex. 2).

16. The Policy contained the following language:

AGREEMENT

This Personal Auto Policy is a binding contract between you and us. The contract includes the application, the Declarations Page, the Personal Auto Policy, endorsements, and all attachments. If your premium payment is paid, we will insure you subject to the terms, exclusions, conditions, and limitations of this policy. The Declarations Page shows a premium for each type of coverage purchased. You must pay the premium for the coverage to apply to a loss. The selected coverages in this policy apply only to occurrences while the policy is in force.

The statements that you made while you were applying for coverage are representations. To determine your premium and eligibility for coverage under this policy, we rely on the representations that you made when you applied for coverage. If you or any applicant made any false, fraudulent, or misleading representations in your application for insurance, this policy will not provide coverage. Examples of such false, fraudulent, or misleading representations include, but are not limited to, your failure to disclose: all persons residing in your home; all family members age 14 and over, whether or not residing in the household; traffic violations, accidents, or driver's license suspensions and revocations; commercial use of your auto; or your correct address(es).

DEFINITIONS

A. Throughout this policy, "you" and "your" refer to:

1. The "named insured" shown on the Declarations Page. And,
2. Your spouse, if a resident of the same household, unless said spouse is a named excluded driver.

PART F - GENERAL PROVISIONS

FRAUD & MISREPRESENTATION

This policy includes the Declarations Page and the amendments. This policy also includes the application and the endorsements. The

statements that you made while you were applying for coverage are representations. To determine your premium and eligibility for coverage under this policy, we relied on the representations that you made when you applied for coverage. If you or any applicant made any false, fraudulent, or misleading representations in your application for insurance, this policy will not provide coverage. In such a case, we will not be liable for any claims that would otherwise be covered in the absence of the fraud or misrepresentation. Your failure to completely and accurately inform us of persons residing in your home may constitute fraud or misrepresentation. All family members age 14 and over MUST be included on the application. No coverage will be afforded to any family member or resident in your household unless named in the application for coverage and/or listed on the Declarations Page, or added by endorsement.

If we are required by law to pay any claim despite this provision, then we reserve the right to recover from you any payments made as a result of your misrepresentation or fraud.

Any statements you made or will make in a notification of change to your policy are also considered representations and are subject to the provisions set out above.

(A true and correct copy of the Policy is attached hereto as Exhibit 3).

17. Defendants Patricia Williams and Ronald Williams allege personal injuries and tort damages as a result of the Accident.

COUNT I – DECLARATORY RELIEF

18. ACCC re-alleges and incorporates by reference paragraphs 1 through 17 of the Complaint as if they have been fully and completely set forth herein.

19. Neither of the policyholders listed on the Policy Declarations Page have an ownership interest in the 2004 Chevrolet Monte Carlo involved in the Accident.

20. Patrick Myers and Britany Stanley aka Brittany Standley made material misrepresentations while applying for insurance with ACCC for the Policy.

21. ACCC maintains that Patrick Benjamin Meyers and Britany Stanley a.k.a Brittany Standley are not entitled to coverage or a defense under the Policy for any claims or damages arising from the Accident.

22. ACCC has not acted to deny coverage to Patrick Benjamin Myers or Britany Stanley a.k.a Britany Standley for any claims arising out of the Accident.

23. ACCC is in a position of great uncertainty as to the applicability of Policy number SCE0052102-1.

24. ACCC is entitled to a declaratory judgment declaring that it owes no coverage to or duty to defend and/or indemnify any of the Defendants for any claims, damages, injuries, or actions arising out of the above-referenced Accident.

25. ACCC maintains that James Myers, III is not entitled to coverage or a defense under the uninsured motorist provisions of the Policy as set forth in Exhibit 3 for any claims or damages arising from his alleged April 24, 2016 motorcycle accident.

26. Neither James Myers, III nor anyone on his behalf reported the April 24, 2016 accident to the appropriate authority within a reasonable amount of time under all circumstances after the occurrence as required by South Carolina Code § 38-77-170, and no one on defendant James Myers III's behalf has submitted an affidavit meeting the requirements of S.C. Code Ann. § 38-77-170.

27. James Myers, III has not complied with the requirements of S.C. Code Ann § 38-77-170 for coverage under the ACCC Policy for his alleged accident on April 24, 2016.

28. ACCC maintains that James Myers, III is not entitled to coverage under the Policy for claims and damages arising from the April 24, 2016 accident.

29. ACCC has not acted to deny coverage to James Myers, III for any claims arising from the April 24, 2016 accident.

30. ACCC is in a position of great uncertainty as to the applicability of Policy number SCE0052102-1.

31. ACCC is entitled to a declaratory judgment declaration that it owes no coverage to or duty to defend and/or indemnify James Myers, III for any claims, damages, injuries, or actions arising out of the April 24, 2016 accident.

32. An actual and justiciable controversy exists regarding the rights and obligations based upon the contractual duties, coverages, and liability in the Policy.

33. As ACCC and Defendants' future course of action may be directly governed by the status of coverage afforded or denied pursuant to the facts referred to above, the parties face uncertainty as to their rights and legal obligations. ACCC has no adequate remedy at law or otherwise except by this Petition for Declaratory Judgment. ACCC is presently uncertain of its rights, obligations, and duties in regard to the extent of possible coverage.

34. ACCC requests that this Court inquire into the rights and liability of the parties hereto with respect to ACCC's Policy number SCE0052102-1 and that this Court declare that ACCC has no obligation to provide coverage or a defense regarding the Policy or the Accident, or to James Myers, III for the alleged April 24, 2016 motorcycle accident.

35. This is a declaratory judgment action pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and S.C. Code Ann. §§ 15-53-10 *et seq.* in which ACCC seeks a declaration from this Court that Policy number SCE0052102-1 does not provide insurance coverage for the Accident at issue, or for James Myers, III's alleged April 24, 2016 motorcycle accident.

WHEREFORE, Plaintiff ACCC Insurance Company respectfully prays:

- a) That process issue and Defendants be served as provided by law;
- b) That this Court inquire into the rights, obligations, duties, and liabilities of the parties hereto with respect to the Policy of insurance number SCE0052102-1 issued by ACCC and that this Court declare that

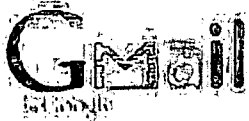
ACCC has no liability or obligation to provide coverage, indemnity, or a defense as a result of the March 18, 2016 Accident;

- c) That this Court inquire into the rights, obligations, duties, and liabilities of the parties hereto with respect to the Policy of Insurance number SCE0052102-1 issued by ACCC and that this Court declare that ACCC has no liability or obligation to provide coverage, indemnify or a defense as a result of James Myers, III's alleged April 24, 2016 accident; and
- d) That ACCC Insurance Company have such other and further relief as this Court deems just and proper under the circumstances.

This the ____ day of March, 2017.

J. Timothy Wooten (SC Bar no. 71717)
Chad E. Poteat (S.C. Bar No.: 66199)
4200 Northside Parkway NW, Building 12
Atlanta, Georgia 30327
(404) 662-2333
(864) 991-3197
Fax: (404) 662-2444
Tim@GWDlawfirm.com
Chad@GWDlawfirm.com
Attorney for Plaintiff ACCC Insurance Company

Exhibit E



RE: ACCC v. Williams, et al.

Stacy Stanley <sstanley@stanleylawfirm.com>

Tue, Aug 1, 2017 at 5:03 PM

To: Stacy Stanley <sstanley@stanleylawfirm.com>, Linda Gangi <LGangi@thompsonlaw.com>, tim@gwdlawfirm.com, Poteat Law Firm <cep@poteatlawfirm.com>
Cc: Lexy McNutt <lmcnutt@stanleylawfirm.com>, Neicey Smith <neicey@thompsonlaw.com>, vporter@gwdlawfirm.com

Counsel,

I am following up on this email dated July 5, 2017. As of today, I have not received a response from counsel. If I do not receive a response by this Thursday, then I will be forced to file a motion to compel ADR.

Thank you.

Stacy

From: Stacy Stanley [mailto:sstanley@stanleylawfirm.com]
Sent: Wednesday, July 05, 2017 11:19 AM
To: 'Linda Gangi'; 'tim@wootenfirm.com'; 'Poteat Law Firm'
Cc: 'Lexy McNutt'; 'Neicey Smith'
Subject: ACCC v. Williams, et al.



Counsel,

Good morning. This case was filed in September 2016 and I suspect that we will be coming up for a jury trial in September/October of this year.

As we have mandatory ADR, I would suggest that we agree on a mediator and schedule a mediation in August which should give us some time before trial. I would suggest Karl Folkens or Frank Elmore as mediators for a case with this much complexity. Please give me your thoughts.

Stacy

Stacy Stanley
Attorney at law

3303 East Highway 9, Little River, SC 29566-7825
P: 843.390.9111 • F: 843.390.9187
sstanley@stanleylawfirm.com

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Stacy Stanley <sstanley@stanleylawfirm.com>

Tue, Aug 1, 2017 at 5:03 PM

To: Stacy Stanley <sstanley@stanleylawfirm.com>, Linda Gangi <LGangi@thompsonlaw.com>, tim@gwdlawfirm.com,

Poteat Law Firm <cep@poteatlawfirm.com>

Cc: Lexy McNutt <lmcnutt@stanleylawfirm.com>, Neicey Smith <neicey@thompsonlaw.com>, vporter@gwdlawfirm.com

Counsel,

I am following up on this email dated July 5, 2017. As of today, I have not received a response from counsel. If I do not receive a response by this Thursday, then I will be forced to file a motion to compel ADR.

Exhibit F

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-26-6091

ACCC Insurance Company,)
Plaintiff,)

vs.)

Patricia Williams, Ronald Williams,)
Patrick Benjamin Myers, Brittany)
Stanley a/k/a Brittany Standley, and)
State Farm Mutual Automobile)
Insurance Company,)

Defendants.)

**DEFENDANTS PATRICIA WILLIAMS
AND RONALD WILLIAMS'
NOTICE OF MOTION AND MOTION
TO COMPEL ADR**

**TO: TIM WOOTEN, ESQUIRE AND CHAD POTEAT, ESQUIRE,
ATTORNEYS FOR PLAINTIFF ACCC INSURANCE COMPANY AND
LINDA GANGI, ESQUIRE, ATTORNEY FOR CO-DEFENDANT STATE
FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**

YOU WILL PLEASE TAKE NOTICE, that the Defendants, by and through the undersigned attorney, will move before the Presiding Judge for the Fifteenth Judicial Circuit, ten (10) days from the date of this motion or as soon thereafter as counsel may be heard, for an Order compelling Plaintiff ACCC Insurance Company and Co-Defendant State Farm Mutual Automobile Insurance Company to enter into Alternative Dispute Resolution (ADR) pursuant to Rule 3 of the *South Carolina Rules of Alternative Dispute Resolution*.

The basis for this motion is that ADR is mandatory for civil actions filed in the circuit court, the trial of this matter is imminent, and opposing counsel have failed to cooperate in scheduling a mediation (see Exhibit A).

The undersigned hereby affirms, pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, that prior to filing this motion, he communicated with opposing counsel and attempted in good faith to resolve the matters contained herein, to no avail.

STANLEY LAW FIRM

s/Stacy L. Stanley
Stacy L. Stanley
SC Bar No.: 13410
3303 East Highway 9
Little River, SC 29566
Phone: (843) 390-9111
Fax: (843) 390-9187
Email: sstanley@stanleylawfirm.com
Attorney for the Defendants Patricia and
Ronald Williams

August 4, 2017

Exhibit G

GOWER WOOTEN & DARNEILLE, LLC
ATTORNEYS AT LAW

ANNE GOWER
J. TIMOTHY WOOTEN+
JASON D. DARNEILLE*
JAMIE ACKERMANN +Φ
SEAN J. GILL
N. MATTHEW MONROE
AMY DOWIS
ROBERT W. JOHNSON, JR.
KATIE R. IRACI

+ ADMITTED IN SOUTH CAROLINA
* ADMITTED IN ALABAMA
Φ ADMITTED IN NORTH CAROLINA

J. TIMOTHY WOOTEN
TIM@GWDLAWFIRM.COM

4200 NORTHSIDE PARKWAY, NW
BUILDING 12
ATLANTA, GEORGIA 30327
(404) 662-2333
FAX (404) 662-2444

September 6, 2017

VIA EMAIL ONLY

Mr. Stacy Stanley
Stanley Law Firm
3303 Highway 9 East
Little River, South Carolina 29566

Re: **ACCC Insurance Company v. Patricia Myers et al.**
In the Horry County Court of Common Pleas
C.A. No. 2016-CP-26-06091
Claim No.: S 15083-9

Dear Stacy:

I am writing in response to your email requesting consent to amend your Answer dated August 31, 2017. We carefully considered your request and we do not consent to your proposed Amended Answer. If you file a motion to amend the Answer we will oppose.

First, you are asserting that the policy is void. In our opinion, your client has no standing to argue that there is no coverage under the liability policy after we determined that there is coverage. In our view, you are attempting to "switch sides" and make an insurance carrier's argument of misrepresentation on the part of our client to try to "create" an uninsured situation. You have no standing to do so. Your client is not a party to the insurance contract.

Next, even if you had standing, it is our opinion that ACCC cannot simply deny coverage under a liability policy where an insured makes a material misrepresentation in the application.

S.C. Code Ann. Section 56-9-20 (as amended) states in pertinent part:

(5) "Motor vehicle liability policy": An owner's or an operator's policy of liability insurance that fulfills all the requirements of Sections 38-77-140 through 38-77-230, certified as provided in Section 56-9-550 or 56-9-560 as proof of financial responsibility and issued, except as otherwise provided in Section 56-9-560, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person or persons named therein as insured, and any other person, as insured, using the vehicle described therein with the express or implied permission of the named insured, and subject to the following special conditions:

(b) Provisions deemed incorporated in such policy. Every motor vehicle liability policy is subject to the following provisions, which need not be contained therein:

(1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by the motor vehicle liability policy occurs;

(2) The policy may not be canceled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage;

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(3) No Statement made by the Insured or on his behalf and no violation of the policy shall defeat or void the policy;

See also, S.C. Code Ann. Section 38-77-142 (as amended); *Williams v. GEICO*, 409 S.C. 586, 762 S.E.2d 705 (2014).

Actually, if there is a misrepresentation in the application, ACCC could use that to deny coverage beyond the statutorily mandated minimum limits and would do so if needed. However, the statutorily mandated minimum limits simply cannot be denied on this basis. Again, that is an argument that ACCC has standing to make, if an argument were being made for an amount in excess of the statutory minimum limits. Since we only have minimum limits applicable here, the misrepresentation in the application argument is moot.

Thus, we have carefully considered the law on this issue and have determined that there is coverage in this case up to the statutory minimum limit. Accordingly, we have tendered the minimum limits to you.

In conclusion, it is our opinion you cannot "create" an uninsured case by asserting that the ACCC liability policy is void for our insured's misrepresentation in the application. The South Carolina Financial Responsibility Act clearly provides coverage under the ACCC policy in this case and that coverage has been tendered to you. Continuing this coverage litigation over the applicable ACCC liability policy is not necessary and will serve no legitimate purpose.

We believe the law is so clear on this point that your assertions and efforts to circumvent the applicable law to create an uninsured vehicle is wholly frivolous. Please understand that if this moot litigation is prolonged with further pointless proceedings, we are providing notice to you of our intent seek recourse under the South Carolina Frivolous Proceedings Act, S.C. Code Ann. Section 56-9-20(5)(b) (1-3).

With kind regards,
s/Douglas E. Leadbitter
Douglas E. Leadbitter

DEL
cc: Linda Weeks Gangl (via email)

Exhibit H

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 16-CP-26-6091

ACCC INSURANCE COMPANY

Plaintiff,

vs.

PATRICIA WILLIAMS, RONALD
WILLIAMS, PATRICK BENJAMIN
MYERS, BRITTANY STANLEY, a.k.a.
BRITTANY STANDLEY, and STATE
FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendants.

AMENDED ANSWER AND COUNTERCLAIM

The Defendants, Patricia Williams and Ronald Williams (hereinafter "the Williams"), answering the Complaint of the Plaintiff, would respectfully show unto this Court as follows:

1. Each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted or explained is denied and strict proof demanded thereof.
2. Defendants Williams admit the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 20, 21, 22, 23, 24, and 25 of Plaintiff's Complaint.
3. Upon information and belief, Defendants Williams admit the allegations of Paragraph 13 of Plaintiff's Complaint.
4. Paragraph 15 of Plaintiff's Complaint does not require an answer.
5. Defendants Williams are without sufficient information to form a belief as to the truth or falsity of Paragraph 19 of Plaintiff's Complaint.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendants Williams pray as follows:

- (a) That the Court protect the interest of Patricia Williams and Ronald Williams in this matter;
- (b) For their attorney's fees and costs of this action;
- (c) for such other and further relief as the Court deems just and proper.

COUNTERCLAIM FOR DECLARATORY JUDGMENT

COME NOW Defendants Patricia Williams and Ronald Williams (hereinafter "Counterclaim Plaintiffs"), and, for their Counterclaim against the Plaintiff, (hereinafter "Counterclaim Defendant") allege as follows:

Parties and Jurisdiction

1. Counterclaim Plaintiff Patricia Williams is a citizen and resident of the County of Horry, South Carolina.
2. Counterclaim Plaintiff Ronald Williams is a citizen and resident of the County of Horry, South Carolina.
3. Counterclaim Defendant ACCC Insurance Company ("ACCC") is a corporation organized and existing under the laws of the State of Texas, and has its principal place of business in Houston, Texas. ACCC is licensed to do business in the State of South Carolina.
4. The Court has subject matter jurisdiction over this declaratory judgment action pursuant to S.C. Code Ann. § 35-53-10 et seq. and S.C.R. Civ. P. 57.
5. Venue is proper in this Court because all parties either reside or conduct business in Horry County, South Carolina.

Facts

6. ACCC has admitted that its purported insureds, Patrick Benjamin Myers and Brittany Stanley, made material misrepresentations in their application for liability insurance with ACCC as to the residential address of Stanley, and Myers' driver's license number and date of birth.

7. ACCC liability policy number SCE0052102-1 issued to Myers and Stanley ("the Policy", attached as Exhibit A) expressly provided that the policy "will not provide coverage" if the applicants made false, fraudulent, or misleading representations in their application for insurance.

8. Pursuant to South Carolina law, an insurance policy is void if it contains false and misleading statements.

9. Providing liability coverage under the ACCC Policy with Myers and Stanley is in direct contravention of the applicable policy language and South Carolina law.

10. In its Petition for Declaratory Judgment, ACCC States that Myers and Stanley are not entitled to coverage under the Policy based on the material misrepresentations they made when applying for insurance with ACCC. (See Petition for Declaratory Judgment, ¶¶ 17, 18.)

11. The Williams will be directly harmed by ACCC's change in position as to coverage under the Policy, in that, if there is no coverage for Myers and Stanley under the Policy, Patricia Williams and Ronald Williams are entitled to uninsured motorist ("UM") coverage under their automobile policy with State Farm, which has higher coverage limits than the ACCC liability policy. Patricia Williams sustained severe personal injuries in the collision with Patrick Myers, and the limits of the ACCC Policy (and even the State Farm UM policy) are seriously inadequate to compensate Patricia Williams for the harm she suffered.

**FIRST CAUSE OF ACTION
(Declaratory Relief)**

12. The allegations contained in paragraphs 1 through 11 are repeated and realleged as if fully set forth herein.

13. Due to the material false, fraudulent, or misleading representations made by Myers and Stanley in their insurance application submitted to ACCC, they are not entitled to coverage under the automobile liability Policy issued to them by ACCC.

14. Due to the material false, fraudulent, or misleading representations made by Myers and Stanley in their insurance application submitted to ACCC, the ACCC automobile liability Policy issued to Myers and Stanley is void.

15. ACCC is precluded from providing coverage to Myers and Stanley under the ACCC Policy issued to them.

16. The Williams are entitled to a declaratory judgment declaring that ACCC is precluded from providing coverage to Myers and Stanley under the ACCC Policy issued to them.

17. An actual and justiciable controversy exists regarding the rights and obligations under the ACCC Policy issued to Myers and Stanley.

18. The Williams have no adequate remedy at law or otherwise except by this action for a declaratory judgment.

19. The Williams request that this Court inquire into the rights and liabilities of the parties with respect to the ACCC Policy, and that the Court declare that ACCC is precluded from providing coverage to Myers and Stanley under the Policy.

20. This is a declaratory judgment action pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 15-53-10 et seq., in which the Williams seek a

declaration from this Court that ACCC is barred from providing coverage to Myers and Stanley under the Policy for the accident at issue.

WHEREFORE, the Counterclaim Plaintiffs respectfully pray:

- a. That the Court inquire into the rights, obligations, duties, and liabilities of the parties with respect to the Policy, and that the Court declare that ACCC is precluded from providing coverage to Myers and Stanley under the Policy with respect to the accident at issue; and
- b. That the Counterclaim Plaintiffs have such other and further relief as the Court deems just and proper under the circumstances.

STANLEY LAW FIRM

s/ Stacy L. Stanley

Stacy L. Stanley

SC Bar No.: 13410

3303 Highway 9 East

Little River, South Carolina 29566

(843) 390-9111

sstanley@stanleylawfirm.com

Attorney for Defendants/Counterclaim
Plaintiffs Patricia Williams and Ronald
Williams

September 6, 2017

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ACCC Insurance Company,

Plaintiff,

v.

Patricia Williams, Ronald Williams, Patrick
Benjamin Myers, Brittany Stanley a.k.a.
Brittany Standley, and State Farm Mutual
Automobile Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-26-06091

**DEFENDANTS PATRICIA WILLIAMS
AND RONALD WILLIAMS'
NOTICE OF MOTION
AND MOTION TO COMPEL
DEPOSITION OF THE 30(B)(6)
DESIGNEE OF ACCC INSURANCE
COMPANY**

TO: TIMOTHY WOOTEN AND DOUG LEADBITTER, ATTORNEYS FOR ACCC
INSURANCE COMPANY

YOU WILL PLEASE TAKE NOTICE, that the Defendants Patricia Williams and Ronald Williams, by and through the undersigned attorney, will move before the Presiding Judge for the Fifteen Judicial Circuit, ten (10) days from the date of this motion or as soon thereafter as counsel may be heard, for an Order compelling the 30(b)(6) representative of ACCC Insurance Company ("ACCC") to appear for the taking of deposition in the above-captioned matter and would show in support thereof:

1. Defense counsel representing State Farm Mutual Insurance Company, Patricia Williams, and Ronald Williams have been requesting the deposition for ACCC's 30(b)(6) representative for several months dating back to April 4, 2017. (See Exhibit A.)
2. Within the last several months, Defense counsel for Patricia and Ronald Williams has tried to schedule this deposition, but Plaintiff's counsel have delayed this deposition and only recently made their representative available, but the

deposition date is after pending motions are to be heard by this Court. (See Exhibit B.)

3. The deposition of the 30(b)(6) witness is essential to the case and additional discovery, depositions, and motions may hinge on this deposition.
4. Unless Defense counsel is allowed to take these depositions, the Defendants Patricia Williams and Ronald Williams will be prejudiced especially considering the fact that ACCC brought this action in the first place.

Based on the above, Defendants hereby respectfully request an Order of this Court requiring the 30(b)(6) representative of ACCC Insurance Company to appear for the taking of this deposition immediately and prior to any motion hearings that may be impacted by this deposition, the immediate coordination of the scheduling of these depositions by all counsel of record, and attorney's fees and costs for the preparation and attendance for this motion.

In accordance with the requirements of Rule 11 of the South Carolina Rules of Civil Procedure, I hereby affirm that prior to the filing of this Motion that I attempted in good faith to resolve the matter contained herein, to no avail.

STANLEY LAW FIRM

s/Stacy L. Stanley
Stacy L. Stanley
SC Bar No.: 13410
3303 East Highway 9
Little River, SC 29566
Phone: (843) 390-9111
Fax: (843) 390-9187
Email: sstanley@stanleylawfirm.com

Attorney for the Defendants Patricia Williams and
Ronald Williams

October 26, 2017

Exhibit A

THOMPSON & HENRY, P.A.
ATTORNEYS AT LAW
1300 SECOND AVENUE, THIRD FLOOR (29526)
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528

LINDA WEEKS GANGI
lgangi@thompsonlaw.com

TELEPHONE
(843) 248-5741
FAX
(843) 248-5112

April 13, 2017

ssstanley@stanleylawfirm.com
Stacy L. Stanley, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825

Re: *ACCC Insurance Company vs. Patricia Williams, Ronald Williams, Patrick Benjamin Myers, Brittany Stanley a/k/a Brittany Standley, and State Farm Mutual Automobile Insurance Company*
Civil Action No.: 2016-CP-26-6091
Claim No.: 40-8G40-517
Date of Loss: March 18, 2016
SF Ins: Patricia & Ronald Williams

Dear Stacy:

I am in receipt of your letter of April 3, 2017. You sent a previous demand dated January 31, 2017. I spoke with you about that demand and you agreed to hold it in abeyance until we could complete discovery. I scheduled the depositions of Patrick Benjamin Myers, Brittany Stanley, Renee Harless, and James Myers. I subpoenaed all four of them for their depositions. Ms. Stanley failed to appear. Both of Mr. Myers appeared but much later than scheduled. You and Chad Poteat had to leave and we could not complete James Myers deposition. You have sent an additional time demand dated April 3, 2017. This letter is in response to that time demand. I enclose herewith a copy of the Auto Renewal for Ronald and Patricia Williams that you forwarded to me. You will note that that document renews State Farm's policy on the 2005 Buick LaCrosse. That document does list as one of the household's vehicles a 2005 Mercedes C240. State Farm does not insure that vehicle. If you have any documentation to the contrary, please provide same for my review.

As part of your time demand you forwarded to me documents that you and I received from ACCC Insurance Company. I have reviewed those documents as well as the additional documents sent to us by ACCC Insurance. As you are aware, we are still missing documents from ACCC's underwriting file. I requested those at the time of the depositions and I requested those again from Chad Poteat in writing on April 4, 2017 and still have not received those documents.

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Stacy L. Stanley, Esquire
April 13, 2017
Page 2

We have received from ACCC Insurance the Renewal Premium Notice for the period January 17, 2016 to July 16, 2016 which includes coverage on both vehicles. It includes all the information concerning what the premium is for each type of coverage for six months on the two vehicles. ACCC then issued South Carolina Liability Insurance Identification Cards for both of the vehicles. The first payment was made under the payment plan on January 15, 2016. A Renewal Certificate was provided to Patrick Myers and Britany Standley which sets forth once again each of the premiums and the totals. ACCC Insurance also issued an Installment Payment Schedule showing the remaining five payments was sent with an installment notice dated January 21, 2016. That payment was due on February 5, 2016. If you look carefully in the middle portion of the installment notice, you will see that it specifically states that if payment is not made by February 5, 2016, the notice of cancellation for nonpayment of premium will be mailed to you on February 6, 2016. There was a Notice of Cancellation or Termination dated February 8, 2016 that was sent to Myers and Standley indicating that the policy would be terminated or cancelled on February 24, 2016 for nonpayment of premium. Payment was made on February 11, 2016. The policy was never terminated because payment was received on February 11, 2016 prior to the cancellation which was to occur on February 24, 2016. Next, an Installment Notice was sent out which was dated February 19, 2016. That installment was due on March 5, 2016. That installment notice specifically provides that if the premium due is not paid in full the policy will be cancelled by a 15 day notice of cancellation for nonpayment of premium which would be mailed on March 7, 2016. A Notice of Cancellation dated March 7, 2016 was sent to Myers and Standley indicating that the policy would be cancelled or terminated on March 23, 2016. The automobile accident happened on March 18, 2016. Payment was made on that installment on March 19, 2016. The ACCC Insurance policy was in full force and effect throughout that entire time period. Code Ann. §38-77-120 requires the 15 day notice before a policy can be cancelled or terminated. In reviewing these documents after the depositions, it became clear to me why ACCC Insurance Company has never taken the position that the policy was terminated. The premiums were always paid before the policy was cancelled.

I have been able to locate the owner of the Rene Harless Insurance Agency assistant. I am in the process of scheduling her deposition and rescheduling Ms. Stanley's deposition, as well as scheduling the 30(b)(6) witness for ACCC Insurance. I sent Chad Poteat a letter on April 4, 2017 and copied you on that letter. In that letter I requested not only a complete copy of ACCC's underwriting file, including the driver's licenses of Myers and Stanley, I also asked that he provide me with dates for the 30(b)(6) witness of ACCC Insurance and told him what I expected that person to testify with regard to. To date, I have heard nothing from him. I will follow up with him.

THOMPSON & HENRY, P.A.

ELECTRONICALLY FILED - 2017 Oct 26 5:05 PM - HARRY - COMMON PLEAS - CASE#2016CP2606091

Stacy L. Stanley, Esquire
April 13, 2017
Page 3

State Farm is doing everything possible to determine whether or not there is coverage under the ACCC Insurance policy for injuries and damages sustained by your clients. As you are aware, State Farm paid your client before your involvement the underinsured motorist coverage available under the three policies it issued to the Williams.

I sent you interrogatories and request to produce on November 28, 2016. To date, you have never answered my discovery. I wrote to you on April 4, 2017 and gave you an additional 10 days. I will move forward with filing a motion to compel.

If you have any questions with regard to this or would like to discuss this matter further, please do not hesitate to contact me.

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P.A.



Linda Weeks Gangi

LWG/ns
Enclosures

cc: Pam Basile
SF 5612.24

THOMPSON & HENRY, P.A.

Exhibit B

Stacy Stanley

From: Stacy Stanley [sstanley@stanleylawfirm.com]
Sent: Wednesday, September 13, 2017 1:40 PM
To: 'Stacy Stanley'; 'Tim Wooten'
Cc: 'Doug Leadbitter'; lgangi@thompsonlaw.com; 'Lexy McNutt'; 'Nelcey Smith'
Subject: RE: ACCC v. Williams, et al.
Attachments: NOD for ACCC 30(b)(6).docx

Tim and Doug,

Please see the revised *draft* Notice of Deposition for ACCC's 30(b)(6) representative.

Again, please provide the designated person and available deposition dates. Please be advised that if I do not receive this information within 7 days from the date of this email, then I will file a motion to compel.

Thank you.

Stacy

From: Stacy Stanley [mailto:sstanley@stanleylawfirm.com]
Sent: Tuesday, September 12, 2017 3:54 PM
To: 'Tim Wooten'
Cc: 'Doug Leadbitter'; lgangi@thompsonlaw.com; 'Lexy McNutt'; 'Nelcey Smith'
Subject: ACCC v. Williams, et al.



AUTO ACCIDENTS • COLLECTION • CONSTRUCTION LAW
• CORPORATIONS LLC • CRIMINAL LAW • PROBATE LAW • REAL ESTATE
TRAFFIC CASES • WILLS AND ESTATES • WORKERS' COMPENSATION

Tim,

Per your request, please see the attached *draft* Notice of Deposition for ACCC's 30(b)(6) representative that provides the issues to be discussed during this deposition.

Based on this, I would ask that you provide me the witness for ACCC that will address these issues and available deposition dates for this witness. Thank you.

Stacy

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STACY STANLEY
ATTORNEY AT LAW

3303 East Highway 9, Little River, SC 29566-7825

P: 843.390.9111 • F: 843.390.9187

ssstanley@stanleylawfirm.com

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 16-CP-26-6091

ACCC INSURANCE COMPANY,)
)
Plaintiff,)

vs.)

PATRICIA WILLIAMS, RONALD)
WILLIAMS, PATRICK)
BENJAMIN MYERS, BRITTANY)
STANLEY a/k/a BRITTANY)
STANDLEY, and STATE FARM)
MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)

Defendant.)
_____)

**NOTICE OF TAKING DEPOSITION
OF ACCC INSURANCE
COMPANY PURSUANT TO RULE 30(b)(6)**

**TO: TIM WOOTEN, ESQUIRE AND DOUGLAS LEADBITTER, ESQUIRE,
ATTORNEYS FOR ACCC INSURANCE COMPANY**

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants Patricia and Ronald Williams will take the deposition of a representative of Plaintiff ACCC Insurance Company ("ACCC"), pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure on oral examination, before a Notary Public or before some other officer authorized by law to take depositions.

The person designated shall testify as to matters known or reasonably available to ACCC and shall be the person most knowledgeable concerning issues in this case including, but not limited to, the following:

1. Discovery or discoverable matters in this litigation among the parties that includes, but is not limited to, ACCC's responses to Defendants' interrogatories and requests to produce.
2. ACCC's Petition filed September 14, 2016;
3. Documents provided by ACCC including, but not limited to; the documents in the underwriting file of ACCC.
4. ACCC's Motion to Dismiss filed August 4, 2017;
5. Payments by Defendant Patrick Benjamin Myers to ACCC regarding the subject policy including, but not limited to:
 - a. Date of payments; and
 - b. Type of payments (cash, credit card, money order, etc.);
6. Explanation of ACCC procedures regarding withdrawing or sweeping funds from an insurance agent's bank account;
7. Dates and the specific amounts that ACCC withdrew or swept funds from any bank account of Rene Harless Insurance Agency, LLC;
8. Dates and the specific amounts that ACCC withdrew or swept funds from any bank account regarding Defendant Patrick Benjamin Myers;
9. Dates and specific amounts that ACCC withdrew or swept funds from any bank account regarding policy SCE0052102-1;
10. Dates and specific amounts that ACCC withdrew or swept funds from any bank account regarding VIN number 2G1WX12K949368935;
11. Communications, whether oral or written, with Defendant State Farm Mutual Automobile Insurance Company;

12. ACCC's process regarding the Automobile Liability Insurance Reporting ("ALIR") system to the South Carolina Department of Motor Vehicles;
13. ACCC's weekly VIN filing on the ALIR regarding VIN number 2G1WX12K949368935;
14. Dates that Carol Rene Harless wrote or produced insurance for ACCC;
15. Payments from ACCC to Carol Rene Harless including, but not limited to:
 - a. Date of payments;
 - b. Amount of payments;
 - c. Policies paid by ACCC;
16. Payments from ACCC to Carol Rene Harless for policy SCE0052102-1 including, but not limited to:
 - a. Date of payments;
 - b. Amount of payments; and
 - c. ACCC check numbers;
17. Date that ACCC knew that Carol Rene Harless could no longer produce or write insurance in South Carolina;
18. Date that ACCC discontinued doing business with Carol Rene Harless;
19. Date that ACCC discontinued doing business with the Rene Harless Insurance Agency, LLC;
20. Lawsuits, complaints, violations, problems, claims, or other types of issues that ACCC is aware of related to Carol Rene Harless;
21. Basis for ACCC's attempt to add James Myers to the Petition;

22. Any information or documents related to the fact that ACCC registered with the South Carolina Secretary of State or other governmental agency to do business in South Carolina.

WITNESS:

30(b)(6) witness for
ACCC Insurance Company

DATE:

TIME:

LOCATION:

TBD
Little River, SC

DOCUMENTS TO BE PROVIDED:

Any and all documents that relate to this litigation, the above described issues, and that were provided through discovery.

The oral examination will continue from day to day until completed. This deposition is being taken for the purpose of discovery, for use at trial and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws. You are invited to attend and take such part as is fit and proper.

STANLEY LAW FIRM

Stacy L. Stanley
3303 East Highway 9
Little River, SC 29566
(843) 390-9111
Attorney for the Defendants Patricia and Ronald
Williams

_____, 2017.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ACCC Insurance Company,

Plaintiff,

vs.

Patricia Williams, Ronald Williams, Patrick
Benjamin Myers, Brittany Stanley a.k.a Brittany
Standley, and State Farm Mutual Automobile
Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2016-CP-26-6091

**PLAINTIFF'S
MEMORANDUM OF LAW**

PROCEDURAL HISTORY

This is a declaratory judgment action. This matter is before the Court on a joint motion to dismiss pursuant to Rule 41(a), SCRPC as a voluntary dismissal of the declaratory judgment action filed by ACCC Insurance Company ("ACCC") and State Farm Mutual Automobile Insurance Company (State Farm) on August 4, 2017. Defendants Patricia Williams and Ronald Williams (hereinafter collectively referred to as "The Williams") have also filed a Motion to Compel ADR on August 4, 2017; and also a Motion to Amend the Answer on September 6, 2017 to assert counterclaims.

STATEMENT OF THE CASE

ACCC, the liability carrier, originally filed this declaratory judgment action because there was a question of whether there was an insurable interest in the vehicle involved in the accident for the ACCC liability policy that provided coverage for Myers Brittany Stanley a.k.a Brittany Standley. The Williams have UIM and UM coverage on their vehicle through State Farm.

The issue of the insurable interest of the liability policy has now been resolved in favor of coverage for the ACCC insured and ACCC has sought to tender policy limits to the Williams and

dismiss this case. State Farm has also tendered the UIM policy limits to the Williams because it has been determined that there is a valid liability policy providing coverage. The Williams have previously accepted the State Farm UIM coverage policy limit.

STATEMENT OF PERTINENT FACTS

ACCC filed this declaratory judgment action on September 14, 2016 seeking a determination from the Court whether there was insurance coverage under a policy of automobile liability insurance issued by ACCC to Defendants Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley for a motor vehicle accident which occurred on March 18, 2016. Defendant Patricia Williams alleged she sustained injuries in the March 18, 2016 automobile accident and she was insured by State Farm.

When filing the declaratory judgment action, ACCC asserted upon information and belief that Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley lacked an insurable interest in the vehicle, which would permit ACCC to deny coverage. ACCC has since determined there is an insurable interest and therefore automobile liability coverage for Defendants Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley in the amount of \$25,000 per person, \$50,000 per accident, and \$25,000 property damage coverage per accident for the March 18, 2016 motor vehicle accident in which Defendant Patricia Williams alleges she sustained injuries.

ARGUMENT

I. PLAINTIFF ACCC IS ENTITLED TO PAY POLICY LIMITS AND DISMISS THIS ACTION PURSUANT TO RULE 41(A)(2), SCRPC.

Plaintiff ACCC has determined there is coverage and has tendered the liability policy limits. ACCC asserts that there is no longer a justiciable controversy under the Uniform Declaratory Judgment Act, S.C. Code Ann. §§15-53-10 *et seq.*. Since ACCC has determined

there is coverage for Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley Myers and because the Williams already accepted the tender of the UIM policy limits from State Farm, the Court should grant the motion to dismiss. Rule 41(A)(2), SCRCP.

II. THE WILLIAMS MOTION TO ALTER OR AMEND THE ANSWER IS WITHOUT MERIT

The Williams motion to alter or amend the Answer should be denied. The Williams lack standing to attack the grant of insurance coverage by ACCC to Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley Myers with ACCC. An insurance policy is a contract between the insured and the insurance company, and the policy's terms are to be construed according to the law of contracts. Williams v. GEICO, 409 S.C. 586, 762 S.E.2d 705 (2014). Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008).

The Williams, as third parties, are not parties to this insurance contract and have no standing whatsoever to assert rights of coverage under the insurance contract as a third party. Id. The Williams are actually trying to “switch sides” and make arguments against coverage that are normally made by insurance carriers where coverage is in question.

In this case, the main thrust of the Williams amended Answer is that there was misrepresentation by Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley Myers and possibly some improper conduct by Carol Rene Harless that vitiates the insurance coverage of the liability policy *ab initio*. Again, as a party to the insurance contract, an insurance carrier has standing to make such an argument, but the Williams, as third parties, lack the standing to make the misrepresentation arguments. The Williams cannot create standing by forcibly inserting themselves into the place of ACCC. To be sure, the Williams are trying to have their cake and eat it too because they are trying to place themselves in place of an insurance

carrier to argue against coverage in order to simply gain the benefit of a higher coverage amount of their UM policy, as opposed to the lesser coverage amount of their UIM policy.¹

Counsel for Williams has also recently filed a new Motion to Compel a Rule 30(b)(6) deposition of an ACCC witness, complaining that there is information that will support his Amended Answer in an attempt to sidestep ACCC's motion to dismiss. ACCC asserts that further discovery in this case will serve no purpose on the threshold issue of standing. No testimony offered by any witness is going to establish that the Williams have standing to argue against the coverage of the liability policy.

Moreover, in the proposed Amended Answer, the Williams are attempting to raise numerous issues regarding parties that are not included in this declaratory judgment. They are attempting to bootstrap claims and numerous extraneous and irrelevant issues about the actions of Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley Myers, and Carol Rene Harless in an attempt manufacture questions of coverage in this declaratory judgment action. Again, if there was a legitimate dispute as to coverage, that dispute would be between the insured (Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley) and ACCC.

Nevertheless, even assuming arguendo that there was misrepresentation by Myers or Standley or Standley, or some improper action taken by Carol Rene Harless on her own or on their behalf, the South Carolina Financial Responsibility Act (SCFRA) does not allow for misrepresentation by an insured or their representatives to void coverage.

S.C. Code Ann. Section 56-9-20 (as amended) states in pertinent part (emphasis added):

(5) "Motor vehicle liability policy": An owner's or an operator's policy of liability insurance that fulfills all the requirements of Sections 38-77-140 through 38-77-230, certified as provided

¹ The Williams could have purchased more coverage under their UIM policy but chose not to. They made their choice on the amount of coverage and must accept the consequences of their choice of coverage rather than using the Courts to manipulate their coverages through allegations they are not entitled or empowered to make under the law.

in Section 56-9-550 or 56-9-560 as proof of financial responsibility and issued, except as otherwise provided in Section 56-9-560, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person or persons named therein as insured, and any other person, as insured, using the vehicle described therein with the express or implied permission of the named insured, and subject to the following special conditions:

(b) Provisions deemed incorporated in such policy. Every motor vehicle liability policy is subject to the following provisions, which need not be contained therein:

(1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by the motor vehicle liability policy occurs;

(2) The policy may not be canceled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage;

(3) No Statement made by the insured or on his behalf and no violation of the policy shall defeat or void the policy;

See also, S.C. Code Ann. Section 38-77-142 (as amended); Williams v. GEICO, 409 S.C. 586, 762 S.E.2d 705 (2014).

The Williams are parties that the SCFRA seeks to protect and provide coverage for, yet they are asking the Court to ignore standing and to ignore the plain and ordinary language of the SCFRA, in order to gain a pecuniary benefit. To be sure, if the only coverage available was the ACCC liability policy, the Williams would be kicking and screaming if ACCC sought to void the liability policy by asserting misrepresentation.

Since the Williams have no standing to argue against the insurance policy contract and because the asserted claims of misrepresentation do not void coverages under the South Carolina Financial Responsibility Act, the Motion to Amend the Answer should be denied and this case should be dismissed.

III. THE WILLIAMS MOTION TO COMPEL ADR IS MOOT.

There is nothing to mediate. The Williams have no rights to assert under the ACCC policy for lack of standing. ACCC has already tendered the policy limits of the liability policy. The Williams have already taken the position that there was a liability policy in

place when they accepted the UIM limits from State Farm. There are no disputes to mediate in this case. The Court should dismiss the motion to compel mediation and should dismiss this action.

CONCLUSION

ACCC should be allowed to tender policy limits and dismiss this case.

Respectfully submitted,

s/Douglas E. Leadbitter

Douglas E. Leadbitter (SC Bar # 68430)
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Attorney for ACCC Insurance Company

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-26-6091

ACCC Insurance Company,)
Plaintiff,)

vs.)

**DEFENDANTS PATRICIA WILLIAMS
AND RONALD WILLIAMS'
MOTION FOR RECONSIDERATION**

Patricia Williams, Ronald Williams,)
Patrick Benjamin Myers, Brittany)
Stanley a/k/a Brittany Standley, and)
State Farm Mutual Automobile)
Insurance Company,)
Defendants.)

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, that the Defendants Patricia Williams and Ronald Williams ("Williams") hereby submit this motion for reconsideration of the Court's Form 4 Order dated November 1, 2017 specifically related to the Williams' Motion to Compel ADR.

Although Williams' counsel was unaware that the Court requested a proposed Order at the hearing, Williams' counsel was advised on or about November 9, 2017 that this Court requested a proposed Order from opposing counsel. This proposed Order was submitted to the Court on or about November 10, 2017. Because of the time constraints related to a Motion for Reconsideration, Williams' counsel had no alternative, but to submit this Motion for Reconsideration. Otherwise, Williams' appellate rights may have been waived.

The basis for this motion is that alternative dispute resolution (ADR) is mandatory for civil actions filed in the circuit court. Earlier this year, the trial of this matter was imminent, but counsel for ACCC Insurance Company ("ACCC") and State Farm Mutual Automobile Insurance Company ("State Farm") failed to cooperate in scheduling the

mediation. In fact, ACCC and State Farm's counsel did not respond in any way to the Williams' request for ADR that was done in accordance with Rule 11, SCRCP. The subject correspondence will be provided at the motion for reconsideration hearing.

Additionally, at the hearing of this matter, Williams referred to Plaintiff's Civil Action Coversheet that did not provide that this case was exempt from ADR (*See* Civil Action Coversheet, p.1). In this case, ACCC and State Farm's counsel did not have any response to this argument.

Moreover, at the hearing, the Williams argued that the Plaintiff's Civil Action Coversheet clearly stated that the South Carolina Supreme Court "requires submission of all civil cases to an alternative dispute resolution process unless otherwise exempt." Here, this case was not exempt pursuant to ADR rules and opposing counsel did not argue that it was exempt.

The Williams also argued at the hearing that the Plaintiff's Civil Action Coversheet stated that "[y]ou must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions." (*See* Civil Action Coversheet, p.3). Once again, ACCC and State Farm's counsel made no opposing argument to the Williams' position.

Finally, the Williams' motion to compel ADR supersedes other motions that were before this Court on November 1, 2017 because ADR was required prior to this motion being dismissed and this motion to compel ADR was filed approximately forty minutes prior to ACCC's and State Farm's motion to dismiss. Therefore, this motion to compel ADR must be addressed by the Court prior to the other motions on November 1, 2017 and cannot be moot.

For the reasons stated above, this Court should compel ACCC and State Farm to participate in ADR. This required ADR should take place prior to any rulings by this Court on other motions that were held on November 1, 2017.

STANLEY LAW FIRM

s/Stacy L. Stanley

Stacy L. Stanley

SC Bar No.: 13410

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Attorney for the Defendants Patricia and
Ronald Williams

November 10, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF Horry)

ACCC Insurance Company,)

Plaintiff,)

vs.)

Patricia Williams, Ronald Williams,)

Patrick Benjamin Myers, Brittany)

Stanley a/k/a Brittany Standley, and)

State Farm Mutual Automobile)

Insurance Company,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2016-CP-26-6091

**DEFENDANTS PATRICIA WILLIAMS
AND RONALD WILLIAMS'
MOTION FOR RECONSIDERATION**

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, that the Defendants Patricia Williams and Ronald Williams ("Williams") hereby submit this motion for reconsideration of the Court's Form 4 Order dated November 1, 2017 specifically related to Williams' Motion to Amend Their Answer.

Although Williams' counsel was unaware that the Court requested a proposed Order at the hearing, Williams' counsel was advised on or about November 9, 2017 that this Court requested a proposed Order from opposing counsel. This proposed Order was submitted to the Court on or about November 10, 2017 and apparently combines all of the motions that were before this Court on November 1, 2017. Because of the time constraints related to a Motion for Reconsideration, Williams' counsel had no alternative, but to submit this Motion for Reconsideration. Otherwise, the Williams' appellate rights may have been waived.

The basis for this motion for reconsideration is stated in the Williams' Motion to Amend that is incorporated as part of this motion for reconsideration.

For the reasons stated above, this Court should grant the Williams' Motion to Amend Their Answer.

STANLEY LAW FIRM

s/Stacy L. Stanley

Stacy L. Stanley

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Attorney for the Defendants Patricia and
Ronald Williams

November 10, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-26-6091

ACCC Insurance Company,)
Plaintiff,)

vs.)

**DEFENDANTS PATRICIA WILLIAMS
AND RONALD WILLIAMS'
MOTION FOR RECONSIDERATION**

Patricia Williams, Ronald Williams,)
Patrick Benjamin Myers, Brittany)
Stanley a/k/a Brittany Standley, and)
State Farm Mutual Automobile)
Insurance Company,)
Defendants.)

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRPC, that the Defendants Patricia Williams and Ronald Williams ("Williams") hereby submit this motion for reconsideration of the Court's Form 4 Order dated November 1, 2017 specifically related to ACCC Insurance Company ("ACCC") and State Farm Mutual Insurance Company's ("State Farm") Joint Motion to Dismiss.

Although Williams' counsel was unaware that the Court requested a proposed Order at the hearing, Williams' counsel was advised on or about November 9, 2017 that this Court requested a proposed Order from opposing counsel. This proposed Order was submitted to the Court on or about November 10, 2017 and apparently combines all of the motions that were before this Court on November 1, 2017. Because of the time constraints related to a Motion for Reconsideration, Williams' counsel had no alternative, but to submit this Motion for Reconsideration. Otherwise, the Williams' appellate rights may have been waived.

The basis for this motion for reconsideration related to ACCC and State Farm's Motion to Dismiss was very briefly argued at the hearing on November 1, 2017.

Moreover, Williams filed a Memorandum in Opposition to ACCC and State Farm's Joint Motion to Dismiss on August 31, 2017 that is incorporated as part of this motion for reconsideration. Furthermore, because Williams' Motion to Amend Their Answer is intimately linked to ACCC and State Farm's Motion to Dismiss, Williams' Motion to Amend is also incorporated as part of this motion for reconsideration.

On the other hand, ACCC and State Farm did not submit a memorandum in support of their motion to dismiss at the time that their motion was filed. As required by the South Carolina Supreme Court in its Order for Civil Motions Pilot Program, ACCC and State Farm were required to file a memorandum at the time of filing. While a memorandum was not filed at the time that the motion to dismiss was filed, ACCC emailed Plaintiff's Memorandum to this Court *one day* prior to the hearing on November 1, 2017. This was in obvious violation of the Supreme Court's Order, and, as such, Williams' counsel did not have time to adequately respond to this belated memorandum.

Finally, ACCC and State Farm's Motion to Dismiss did not state a basis for the motion. Instead, the motion to dismiss only stated that ACCC had arbitrarily determined that there was liability coverage. After ACCC filed this action, the Williams advanced thousands of dollars in the defense and prosecution of this case, and ACCC somehow chose to dismiss this action eleven months after the filing of this litigation, the lack of a basis for the motion to dismiss is inexcusable and a misrepresentation to this Court.

For the reasons stated above, this Court should deny ACCC and State Farm's Motion to Dismiss.

STANLEY LAW FIRM

s/Stacy L. Stanley

Stacy L. Stanley

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Attorney for the Defendants Patricia and
Ronald Williams

November 10, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-26-6091

ACCC Insurance Company,)
Plaintiff,)

vs.)

Patricia Williams, Ronald Williams,)
Patrick Benjamin Myers, Brittany)
Stanley a/k/a Brittany Standley, and)
State Farm Mutual Automobile)
Insurance Company,)

Defendants.)

**DEFENDANTS PATRICIA WILLIAMS
AND RONALD WILLIAMS'
MOTION FOR RECONSIDERATION**

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, that the Defendants Patricia Williams and Ronald Williams ("Williams") hereby move for this Court to reconsider its Order dated November 15, 2017 on the following grounds and any other grounds that may be voiced at the hearing:

1. The Court's written Order is a nullity under Leviner v. Sonoco Products Co., 339 S.C. 492, 530 S.E.2d 137 (2000) as there was no reservation of jurisdiction in the Form 4 and more than 10 days lapsed since its issuance.
2. The Court dismissed this case on the basis of a voluntary non-suit under Rule 41(a)(2), SCRCP, but the Court's written order purports to make findings of fact and conclusions of law as to insurance coverage that precludes the Williams from pursuing subsequent litigation for the purposes of determining whether the at-fault driver Patrick Benjamin Myers meets the legal definition of an uninsured driver.

3. The case was dismissed as a voluntary non-suit under 41(a)(2) without prejudice, but the Court's written order states that the case is dismissed with prejudice.
4. ACCC Insurance Company ("ACCC") and State Farm's Mutual Insurance Company's ("State Farm") Joint Motion to Dismiss did not state the grounds of their motion with particularity.
5. ACCC and State Farm's Joint Motion to Dismiss did not set forth that the case should be dismissed with prejudice, but instead only stated that the case should be dismissed by the Court in accordance with Rule 41, SCRCp.
6. Alternative dispute resolution (ADR) is mandatory for civil actions filed in the circuit court, but ACCC and State Farm failed to participate in ADR.
7. ACCC's Civil Action Coversheet failed to state that the case was exempt from ADR.
8. ACCC's Civil Action Coversheet requires ADR unless otherwise exempt.
9. ACCC's Civil Action Coversheet requires that all parties comply with the South Carolina Supreme Court Rules regarding ADR and that failure to do so may affect the case or result in sanctions.
10. The Williams' Motion to Compel ADR was filed prior to any other motions that were heard on November 1, 2017 (approximately forty minutes prior to ACCC and State Farm's Joint Motion to Dismiss) and, therefore, the Court must rule on the Williams' Motion to Compel ADR prior to ruling on the other motions that were heard on November 1, 2017.
11. As outlined in the Williams' Memorandum in Opposition to ACCC and State Farm's Joint Motion to Dismiss and the Affidavit of Gerald M.

Finkel, Esq., there are numerous grounds for the Court to not dismiss the case, or in the alternative, to not dismiss this case with prejudice.

12. As outlined in the Williams' Motion to Alter or Amend and Affidavit of Gerald M. Finkel, Esq., there are numerous grounds for this Court to allow the Williams to amend or alter their answer to assert a counterclaim.

STANLEY LAW FIRM

s/Stacy L. Stanley

Stacy L. Stanley

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Attorney for the Defendants Patricia and
Ronald Williams

November 21, 2017

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ACCC Insurance Company,

Plaintiff,

vs.

Patricia Williams, Ronald Williams, Patrick
Benjamin Myers, Brittany Stanley a.k.a Brittany
Standley, and State Farm Mutual Automobile
Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2016-CP-26-6091

**PLAINTIFF'S
MEMORANDUM IN OPPOSITION TO
WILLIAMS' RULE 59 MOTION**

PROCEDURAL HISTORY

This is a declaratory judgment action. This matter came before the Court on a joint motion to dismiss pursuant to Rule 41(a), SCRCP as a voluntary dismissal with prejudice of the declaratory judgment action filed by ACCC Insurance Company ("ACCC") and State Farm Mutual Automobile Insurance Company (State Farm) on August 4, 2017. A Hearing was convened on the motion to dismiss as well as a motion to compel mediation and a motion to the Court granted the motion to dismiss rendering the Motion to Compel ADR and the Motion To Amend the Answer moot.

Defendants Patricia Williams and Ronald Williams (hereinafter collectively referred to as "The Williams") then filed a Rule 59(e) re-arguing the same issues that had previously been brought before the Court and asserting that the Court erred in dismissing the case with prejudice. ACCC and State Farm responded that the dismissal with prejudice is proper and within the discretion of the Court pursuant to Rule 41, SCRCP.

STATEMENT OF THE CASE

ACCC, the liability carrier, originally filed this declaratory judgment action because there was a question of whether there was an insurable interest in the vehicle involved in the accident for the ACCC liability policy that provided coverage for Myers Brittany Stanley a.k.a Brittany Standley. The Williams have UIM and UM coverage on their vehicle through State Farm.

The issue of the insurable interest of the liability policy has now been resolved in favor of coverage for the ACCC insured and ACCC has sought to tender policy limits to the Williams and dismiss this case. State Farm has also tendered the UIM policy limits to the Williams because it has been determined that there is a valid liability policy providing coverage. The Williams previously accepted the State Farm UIM coverage policy limit.

STATEMENT OF PERTINENT FACTS

ACCC filed this declaratory judgment action on September 14, 2016 seeking a determination from the Court whether there was insurance coverage under a policy of automobile liability insurance issued by ACCC to Defendants Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley for a motor vehicle accident which occurred on March 18, 2016. Defendant Patricia Williams alleged she sustained injuries in the March 18, 2016 automobile accident and she was insured by State Farm.

When filing the declaratory judgment action, ACCC asserted upon information and belief that Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley lacked an insurable interest in the vehicle, which would permit ACCC to deny coverage. ACCC has since determined there is an insurable interest and therefore automobile liability coverage for Defendants Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley in the amount of \$25,000 per person, \$50,000 per accident, and \$25,000 property damage coverage per

accident for the March 18, 2016 motor vehicle accident in which Defendant Patricia Williams alleges she sustained injuries.

ARGUMENT

I. THE WILLIAMS MOTION TO ALTER OR AMEND THE ANSWER IS WITHOUT MERIT AND THE RULE 59 (e) MOTION SHOULD BE DENIED.

The Williams motion to alter or amend the Answer was properly denied and the subsequent Rule 59 (e), SCRCP motion should also be denied. It is still the position of ACCC that the Williams lack standing to argue that the liability coverage was void *ab initio*.

Nevertheless, even assuming arguendo that there was misrepresentation by Myers or Standley or Standley, or some improper action taken by Carol Rene Harless on her own or on their behalf, the South Carolina Financial Responsibility Act (SCFRA) does not allow for misrepresentation by an insured or their representatives to void coverage.

S.C. Code Ann. Section 56-9-20 (as amended) states in pertinent part (emphasis added):

(5) "Motor vehicle liability policy": An owner's or an operator's policy of liability insurance that fulfills all the requirements of Sections 38-77-140 through 38-77-230, certified as provided in Section 56-9-550 or 56-9-560 as proof of financial responsibility and issued, except as otherwise provided in Section 56-9-560, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person or persons named therein as insured, and any other person, as insured, using the vehicle described therein with the express or implied permission of the named insured, and subject to the following special conditions:

(b) Provisions deemed incorporated in such policy. Every motor vehicle liability policy is subject to the following provisions, which need not be contained therein:

(1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by the motor vehicle liability policy occurs;

(2) The policy may not be canceled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage;

(3) No Statement made by the insured or on his behalf and no violation of the policy shall defeat or void the policy;

See also, S.C. Code Ann. Section 38-77-142 (as amended); Williams v. GEICO, 409 S.C. 586, 762 S.E.2d 705 (2014).

The Williams are parties that the SCFRA seeks to protect and provide coverage for, yet they are asking the Court to ignore their lack of standing and to ignore the plain and ordinary language of the SCFRA, in order to gain a pecuniary benefit.

Since the asserted claims of misrepresentation do not void coverages under the South Carolina Financial Responsibility Act, the Motion to Amend the Answer was properly denied, and the case properly dismissed with prejudice. The Williams have offered no applicable law or evidence to attack the applicability of the S.C. Code Ann. Section 56-9-20 in this case. Section 56-9-20 is controlling in this case. The case was properly dismissed with prejudice and the Court should deny the Williams Rule 59(e), SCRCP Motion.

II. THE COURT PROPERLY DISMISSED THIS CASE WITH PREJUDICE AND THE RULE 59(e) MOTION SHOULD BE DENIED

This case was properly dismissed with prejudice and the Court should deny the Williams Rule 59(e), SCRCP motion. At the November 1, 2017 hearing convened before this Court, the Parties Counsel presented his oral argument in support of the previously submitted motions, legal memoranda, and even the Williams affidavit. The Court has the discretion to dismiss a case pursuant to Rule 41, SCRCP with prejudice.

Rule 41, SCRCP – Dismissal of Actions; Non-Suit

(a) Voluntary Dismissal: Effect Thereof

(1) By Plaintiff; By Stipulation. Subject to the provisions of Rule 23(c), of Rule 66(a), and of any statute, an action may be dismissed by the plaintiff without order of court (A) by filing and serving a notice of dismissal at any time before service by the adverse party of an answer or motion for summary judgment, whichever first occurs, or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

In this case no counterclaim had been allowed prior to the dismissal with prejudice. The Court heard the Williams arguments that they should be allowed to alter or amend the Answer with counterclaims before the case was dismissed. All issues were presented to the Court in the several motions, the supporting memoranda, the affidavit, arguments made at the November 1, 2017 hearing, and re-argued in the Rule 59(e) motion. The case was properly dismissed with prejudice under Rule 41, SCRCP pursuant to the discretion given to the Court in Rule 41. Therefore, the Williams Rule 59(e), SCRCP motion should also be denied.

III. OTHER CLAIMS MADE BY THE WILLIAMS IN THE RULE 59(e), SCRCP MOTION

The Williams raise several other assertions in the Rule 59 (e) SCRCP motion to attack the original Order entered by the Court. All assertions made by the Williams lack merit.

The Williams claim that the Order is a nullity because the failed Court failed to reserve jurisdiction in the Form 4. The Court specifically orally instructed that a formal written Order was to be drafted by the winning joint movants (ACCC and State Farm) at the November 1, 2017 hearing. Moreover, since the Williams filed a Rule 59(e), SCRCP motion the Form 4 Order did not "mature" into a final order. Leviner v. Sonoco Products Co., 339 SC 492, 530 S.E.2d 127 (2000). The assertion that the original full written Order entered by the Court in this case is a nullity, is wholly without merit and is frivolous.

Next, the Williams argue that the Court was unable to make relevant findings of fact as to the issues presented in the motions. This assertion is nonsense and is contrary to the standard practice and procedure utilized by the Court of the State of South Carolina. The Williams presented no basis for this ludicrous assertion. This claim is wholly without merit and also frivolous.

Next, the Williams argue that ACCC and State Farm's joint motion to dismiss lacked particularity. The motion to dismiss was clearly set forth in accordance with the South Carolina Rules of Civil Procedure. The motion specifically requested that the case be dismissed with prejudice. ACCC presented clear arguments in the Motion to Dismiss, supporting memoranda and in oral argument to the Court at November 1, 2017 hearing. The Court made findings and facts consistent with the evidence presented in writing and at oral argument. The Williams claim that the grounds for the motion were not clear, lacks merit.

Next, the Williams claim that ACCC and State Farm failed to participate in mediation. ACCC admitted at the hearing that it never took the position that mediation was inapplicable and also stated it did not oppose a mediation if there was something to mediate after the motion to dismiss hearing. The fact that the motion to compel mediation was filed shortly before the motion to dismiss is irrelevant and has no merit. The timing of the filing motion to compel arbitration versus the motion to dismiss is irrelevant. The Court properly ordered that the motion to compel mediation was rendered moot by the dismissal.

Next, the Williams are simply re-asserting the same arguments made at the November 1, 2017 hearing concerning the purported counterclaims and the request to alter or amend the Answer to raise counterclaims. Counsel for Williams filed the affidavit of Gerald M. Finkel and argued at length at the November 1, 2017 hearing in support of the

Williams motion to Alter or Amend the Williams Answer. The Court allowed Counsel for the Williams to present all arguments in support of the assertion that the Williams were entitled to file purported counterclaims. The Court made findings of fact and conclusions of law in the Order based on all of those arguments. Now in the Rule 59 (e), SCRPC motion, the Williams are simply referencing prior arguments, while rearguing and reiterating that the case should not be dismissed. The Williams have offered nothing further to explain why they think the Court misconstrued the facts and the law concerning the purported counterclaims and the request to alter or amend the Answer to raise counterclaims. Since the Williams Rule 59 (e), SCRPC motion is nothing more than a re-assertion of the arguments already made, and all of those argument lack merit, the Rule 59(e), SCRPC should be denied.

CONCLUSION

For all of the reasons argued above, the Williams Rule 59(e), SCRPC Motion lacks merit and should be denied.

Respectfully submitted,

s/Douglas E. Leadbitter

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Attorney for ACCC Insurance Company

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ACCC INSURANCE COMPANY

Plaintiff,

v.

PATRICIA WILLIAMS, RONALD
WILLIAMS, PATRICK BENJAMIN
MYERS, BRITTANY STANLEY a.k.a
BRITTANY STANDLEY, and STATE
FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No. 2016-CP-26-06091

AFFIDAVIT OF
GERALD M. FINKEL, ESQUIRE,
EXPERT WITNESS

PERSONAL BACKGROUND AND QUALIFICATIONS

1. I am over the age of eighteen (18) years, am suffering from no mental disability, and am legally competent to make this Affidavit. After being duly sworn, I depose and state the following:

2. I am a member of the South Carolina and District of Columbia Bars, and am admitted to practice in the United States District Court for the District of South Carolina, the United States Circuit Court of Appeals for the Fourth Circuit, the United States Supreme Court, and the United States Court of Federal Claims. I am, and have been continuously since my admission, in good standing with all Bars and Courts to which I have been admitted.

3. Following my graduation from the University of South Carolina School of Law in 1970, I formed Finkel Law Firm, LLC (then known as Kohn & Finkel), where I have been

continually employed for the past 47 years, serving as a managing member of the Firm. On January 1, 2007, I became "Of Counsel" to the Firm, and have continually served on the Management Committee of the firm to the present.

4. In 1972, I was hired by the University of South Carolina School of Law as an adjunct professor to teach Trial Advocacy each semester. In 1986, I began teaching Insurance Law each semester and continued to do so until 2007. In 2006, I was named as a Distinguished Visiting Professor at the Charleston School of Law ("CSOL") to teach Insurance Law and Torts. From 2007 to 2016, I served as a Professor of Law at CSOL, teaching Insurance Law, Torts, Evidence, Criminal Procedure and Trial Advocacy; in 2016 I was named Professor *Emeritus* at CSOL. I also taught Insurance Law for the South Carolina Bar Review from 1987 through 2011. I have taught various Insurance Law subjects at numerous CLE programs and JCLE programs. Additionally, I have written and lectured extensively on the topic of Insurance Law as reflected on my Curriculum Vitae, a copy of which is attached hereto as **Exhibit B** and incorporated herein.

5. I have testified as an expert a number of times on the issues of insurance coverage and bad faith insurance practices in both trial and deposition testimony. I am also familiar with insurance proceedings from a practitioner's standpoint, having litigated coverage, bad faith, and regulatory compliance issues. I have served as the Chairman of the Insurance, Negligence and Worker's Compensation section of the South Carolina Bar (1979-1980) and am currently serving on the Consultative Committee for the American Law Institute's Restatement of Liability Insurance.

6. I reserve the right to alter or amend the opinions herein, based upon review of additional materials that may be provided by counsel or continuing discovery.

7. I have been retained by Stacy L. Stanley, Esquire, at my normal hourly rate of \$500.00 per hour for research and analysis, preparation and testimony.

NATURE OF OPINION EXPRESSED

8. I have been asked to express opinions as to whether Defendant State Farm Mutual Automobile Insurance Company ("State Farm") is liable for uninsured motorist coverage ("UM") or underinsured motorist coverage ("UIM") to Patricia Williams ("Mrs. Williams") under the subject Policy; whether Plaintiff's ACCC Insurance Company ("ACCC") liability Policy numbered SCE0052102-1 as to the insured, Defendant Patrick Benjamin Myers ("Mr. Myers"), is void, based on (A) agent Carol Renee Harless ("Harless") not having been an appointed, authorized agent for ACCC at the time of the issuance of the liability policy, which fact was known to ACCC, (B) Mr. Myers' misrepresentations during the application process, and (C) that the Declarations Page for the Policy did not show a premium for any liability coverage – and consequently whether ACCC's and State Farm's position on UM coverage, which if accepted would result in substantial monetary benefit to State Farm and acute prejudice and damage to Mrs. Williams, is incorrect and contrary to both applicable law and the unambiguous language of the policy.

MATERIALS REVIEWED

9. In preparing this Affidavit and the opinions stated herein I have reviewed the materials attached hereto as **Exhibit A**.

FACTS RELIED UPON IN FORMING OPINION

10. Upon information and belief it is undisputed that South Carolina law governs all issues as between parties to this action.

11. On February 11, 2016, ACCC issued a policy of automobile liability insurance to Mr. Myers and Ms. Stanley, policy number SCE0052102-1 ("liability policy"), which purported to provide coverage for a 2004 Chevrolet Monte Carlo SS, VIN 2G1W12K949368935. (Compl. ¶ 10; Answer of Patricia Williams and Ronald Williams ¶ 2).

12. The liability policy provided coverage limits of \$25,000 per person and \$50,000 per accident. (Compl. Exhibit 2).

13. The liability policy lists Mr. Myers and Ms. Stanley as the policy holders. (Compl. ¶¶ 11-12; Answer of Patricia Williams and Ronald Williams ¶ 2).

14. Upon information and belief, the insurance agent who sold the automobile liability insurance policy numbered SCE0052102-1 to Mr. Myers and Ms. Stanley, which purported to provide coverage for the 2004 Chevrolet Monte Carlo SS, VIN 2G1W12K949368935, was Harless.

15. At the time of the issuance of the policy, Harless was not an appointed, authorized agent and was not lawfully able to sell insurance policies on behalf of ACCC. Her status is shown as "Inactive" beginning November 27, 2014. This fact was known to ACCC. (Screenshot of SCDOI Individual License Detail 467321).

16. The declaration page of the liability policy states Mr. Myers' date of birth as May 12, 1961, and his South Carolina driver's license number as 100375876. (Compl. ¶ 11; Answer of Patricia Williams and Ronald Williams ¶ 2).

17. At the time of the subject accident, Mrs. and Mr. Williams were insured under Defendant State Farm's UM/UIM policy. (Def's State Farm Responses to Defendants Patricia Williams and Ronald Williams Request for Production).

18. State Farm's policy provided \$250,000 limit per person and \$500,000 per accident on the UM policy and \$100,000 limit per person and \$300,000 per accident on the UIM policy. (Defendant State Farm's Responses to Defendants Patricia Williams and Ronald Williams' Request for Production).

19. On March 18, 2016, Mr. Myers, while operating the 2004 Chevrolet Monte Carlo, was involved in an automobile accident with Mrs. Williams, who was operating a 2005 Buick automobile. Mrs. Williams sustained personal injuries and tort damages as a result of the accident. (Compl. ¶¶ 8, 14; Answer of Patricia and Ronald Williams ¶ 2).

20. The South Carolina Department of Motor Vehicles Traffic Collision Report ("DMV report") stated that Mr. Myers' date of birth is June 28, 1987, and that his South Carolina driver's license is 100375877—indisputably different facts than were apparently provided to ACCC on Mr. Myers' application for liability insurance. (Compl. ¶¶ 9, 11; Answer of Patricia and Ronald Williams ¶ 2).

21. ACCC's Policy Declarations Page ("Declarations Page") states that coverage was provided only where a premium and limit of coverage were shown for the coverage. The Declarations Page for the Policy did not show a premium for any liability coverage.

22. On September 19, 2016, ACCC caused to be filed a Petition for Declaratory Judgment and other Relief against Patricia Williams, Ronald Williams, Mr. Myers, Ms. Stanley,

and State Farm, on the grounds of fraud and misrepresentation by Mr. Myers. (Compl. ¶¶ 15-22).

23. Specifically, ACCC claimed that Mr. Myers and Ms. Stanley made material misrepresentations while applying for the liability policy.¹ (Compl. ¶ 17).

24. The relief sought by ACCC in its declaratory judgment action is for the court to declare that ACCC owes no coverage or duty to defend and/or indemnify Mr. Myers for any claims, damages, injuries, or actions arising out the accident. (Compl. ¶ 21, 25).

25. On September 15, 2016, Defendants Mrs. and Mr. Williams filed an answer to ACCC's declaratory judgment and requested that the court protect their interest in the matter. (Answer of Patricia Williams and Ronald Williams).

26. On December 6, 2016, Defendant State Farm filed an answer to ACCC's declaratory judgment in which it requested a jury trial and sought to dismiss the declaratory judgment action. (Answer of State Farm Mutual Automobile Insurance Company).

27. On August 4, 2017, ACCC and State Farm caused to be filed a "Joint Consent Motion To Dismiss" the declaratory judgment action which had been filed by ACCC on

¹ ACCC's liability policy states:

To determine your premium and eligibility for coverage under this policy, we relied on the representation that you made when you applied for coverage. If you or any applicant made any false, fraudulent, or misleading representations in your application for insurance, this policy will not provide coverage. In such case, we will not be liable for any claims that would otherwise be covered in the absence of the fraud or misrepresentation.

(Compl. ¶ 13) (Emphasis in original.)

September 14, 2016. The motion states in relevant part, "ACCC has determined there is automobile liability coverage for defendants Patrick Benjamin Myers and Brittany Stanley a.k.a. Brittany Standley in the amount of \$25,000 per person, \$50,000 per accident, and \$25,000 property damage coverage per accident for the March 18, 2016 motor vehicle accident in which defendant Patricia Williams alleges she sustained injuries."

28. The Joint Consent Motion To Dismiss directly contradicts the position asserted by ACCC in its declaratory judgment complaint. ACCC and State Farm's Joint Consent Motion to Dismiss does not specify what, if any, different facts have come to light which led ACCC to reverse the position it asserted in its declaratory judgment complaint.

29. On September 6, 2017, Defendants Mr. and Mrs. Williams caused to be filed a Motion to Amend Answer to Assert a Counterclaim. It states, in relevant part, "Patricia Williams and Ronald Williams are entitled to make a counterclaim that ACCC is not entitled to provide coverage under the Policy and to amend their Answer to set forth a counterclaim in this regard."

30. The Motion to Amend Answer to Assert a Counterclaim further states, "Defendants Patricia Williams and Ronald Williams will be harmed by ACCC's change in position as to coverage under the Policy, in that, if there is no coverage for Myers and Stanley under the Policy, Patricia Williams and Ronald Williams are entitled to uninsured motorist ("UM") coverage under their automobile policy with State Farm, which has higher coverage limits than the ACCC liability policy."

OPINIONS

31. All of my opinions are to a reasonable degree of professional certainty.

32. Upon information and belief, the fact that Harless was not an appointed, authorized agent for ACCC at the time of the issuance of the liability policy, due to her being "Inactive" per the SCDOI beginning November 27, 2014, and that this fact was necessarily known to ACCC, is not materially disputed. Accordingly I am of the opinion that as a result the liability policy is void *ab initio*.

33. Upon information and belief, the facts regarding the false representations made regarding Mr. Myers' age and driver's license number during the application for automobile liability insurance with ACCC are not materially disputed; and assuming such facts are proven, I am of the opinion that the representations about Mr. Myers' age and driver's license number are affirmative warranties that are incorporated clearly by reference in ACCC's policy, that said false representations constitute a breach of an affirmative warranty, and that as a result the liability policy is void *ab initio*.

34. I am of the opinion that the insurance contract between Plaintiff ACCC and Mr. Myers clearly shows that the parties intended that the rights of the insured would depend on the truth of the warranty by stating: "If you or any applicant made false, fraudulent, or misleading representation in your application for insurance, this policy will not provide coverage," (emphasis original) and because of this mandatory language Mr. Myers' representations constitute as affirmative warranties.

35. Assuming the facts regarding Mr. Myers' affirmative warranties are proven, I am of the opinion that ACCC's liability policy is void *ab initio*, that Mr. Myers' vehicle was uninsured at the time of the accident, and that Mrs. Williams is entitled to UM coverage from State Farm rather than UIM coverage.

36. I am of the opinion that even if Defendant's Myers' false representations are viewed as or deemed to be misrepresentations rather than affirmative warranties, the age of an insured and his driver's license number are material misrepresentations, that ACCC relied on the misrepresentations in issuing the policy at the specified premium, that such material misrepresentations results in a policy that is void *ab initio*, and that State Farm in required to provide UM coverage, not UIM coverage, to Mrs. Williams.

37. Assuming the facts regarding Mr. Myers' misrepresentations are proven, my understanding of industry underwriting standards and the underwriting policies and procedures of an auto liability insurance provider in these circumstances lead me to the opinion that a liability policy would not have been sold to Mr. Myers if he had stated true facts in the policy application or if the agent had submitted those true facts to the carrier, or at the very least would not have been sold at the same premium cost and with the same coverages and declarations as the policy sold to Mr. Myers; and therefore for ACCC and State Farm to now seek to confirm liability coverage given their knowledge of the apparently indisputable material misrepresentations is in direct contravention of the applicable policy language and South Carolina law, resulting in substantial monetary benefit to State Farm and acute prejudice and damage to Mrs. Williams.

38. Should ACCC choose to pay or tender all or any part of its stated policy limit based on this claim for damages arising from bodily injuries suffered by Mrs. Williams, ACCC would be electing to do so entirely as a volunteer payor, not as an insurer paying a covered claim to an insured, as there is no liability coverage under the ACCC policy for this claim for the

reasons stated above, which consequently triggers UM coverage, not UIM coverage, under Mrs. Williams' State Farm policy.

39. Because ACCC's Policy Declarations Page ("Declarations Page") states that coverage was provided only where a premium and limit of coverage were shown for the coverage, and the Declarations Page for the Policy did not show a premium for any liability coverage, I am of the opinion that the policy is not and cannot be valid.

BASIS OF OPINION(S)

40. State Farm's UM/UIM policy provides as follows:

Uninsured Motor Vehicle means a *motor vehicle*:

1. the ownership, maintenance, and use of which is:

a. not insured or bonded for bodily injury and property damage liability at the time of the accident

41. ACCC's liability policy provides as follows:

The statements that you made while you were applying for coverage are representations. To determine your premium and eligibility for coverage under this policy, we rely on the representations that you made when you applied for coverage. If you or any applicant made any false, fraudulent, or misleading representations in your application for insurance, this policy will not provide coverage.

42. South Carolina Code Annotated Section § 38-77-30(14) provides as follows:

"Uninsured motor vehicle" means a motor vehicle as to which:

(a) There is not bodily liability insurance and property damage liability insurance both at least in the amounts specified in Section 38-77-140; or

43. The purpose of the uninsured motorist law is to provide for benefits and protection against a peril of injury or death by an uninsured motorist to an insured motorist.²

44. S.C. Code Ann. § 38-43-240, "Other offenses by producers," states in relevant part: "(A) It is unlawful for a producer, collector, or other person to: (1) undertake or pretend to represent an insurer licensed to do business in this State, or to collect or do business for the insurer without the authority of the insurer;"

45. S.C. Code of Regulations § 69-23, states in relevant part: "Section IV. Appointments. After becoming licensed, producers must be appointed by an insurer licensed in the State for the kinds of insurance for which the applicant is licensed and seeks to transact business."

46. Under insurance law, a warranty is a statement, description, or undertaking by the insured, incorporated in the policy, relating contractually to the risk insured against. Warranties are either affirmative or promissory. An affirmative warranty is one that asserts the existence of a fact at the time the policy is entered into, and appears on the face of said policy, or is attached thereto and made a part thereof.³ Breach of an affirmative warranty by insured voids the policy.

47. Void *ab initio* means null from the beginning, from the first moment when a contract is entered into.⁴

² *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973).

³ *Reid v. Hardware Mut. Ins. Co.*, 252 S.C. 339, 346, 166 S.E.2d 317, 321 (1969).

⁴ "A contract is void *ab initio* if it seriously offends law or public policy, in contrast to a contract that is merely voidable at the election of one party to the contract." VOID, Black's Law Dictionary (10th Ed. 2014).

48. Any fraud or misrepresentations that are material under an insurance policy voids the entire policy. To prove material misrepresentation and vitiate an insurance policy, it is necessary to show (1) falsity of the statement challenged; (2) that the falsity was known to the applicant; (3) the falsity was material to the risk; (4) made with the intent to defraud the insurer; and (5) relied upon the insurer in issuing the policy.⁵

49. A representation is considered material if it is such as to induce the reasonable insurer to enter into a contract of insurance that it would otherwise have refused, or to accept a lower premium than it would have otherwise required. Under South Carolina Law, a representation is material to the risk when the insured knows or has reason to know that it will likely affect the decision of the insurer as to whether to insure the applicant or as to the terms of the contract.⁶

50. A contract between two persons, for the benefit of a third, even though such third party be not named therein, can be enforced by such third party.⁷

51. "Good faith", means honesty in fact and the observance of reasonable commercial standards of fair dealing."⁸

52. "There is an implied covenant of good faith and fair dealing in every insurance contract that neither party will do anything to impair the other's rights to receive benefits under the contract."⁹

⁵ *Strickland v. Prudential Ins. Co. of America*, 278 S.C. 82, 86, 292 S.E.2d 301, 304 (1982).

⁶ *State Farm Bureau Cas. Ins. Co. v. Ausborn*, 249 S.C. 627, 648, 155 S.E.2d 902, 913 (1967).

⁷ *Pharr v. Canal Ins. Co.*, 233 S.C. 266, 104 S.E.2d 394 (1958); *Wise v. Picow*, 232 S.C. 237, 101 S.E.2d 651 (1958); *Kingman v. Nationwide Mut. Ins. Co.*, 243 S.C. 405, 134 S.E.2d 217 (1964).

⁸ S.C. Code Ann. § 36-1-201(20); *Specialty Flooring Co., Inc. v. Palmetto Federal Sav. Bank of South Carolina*, 302 S.C. 107, 111, 394 S.E.2d 13, 16 (1990).

CONCLUSION

53. For the reasons explained herein above, I am of the opinion that Mrs. Williams is entitled to receive UM coverage from Defendant State Farm.

54. I am of the opinion that Mr. Myers' vehicle was uninsured at the time of the accident because Harless was not an appointed, authorized agent for ACCC at the time of the issuance of the liability policy, and that this fact was necessarily known to ACCC, and thus the liability policy is void *ab initio*.

55. I am of the opinion that Mr. Myers' vehicle was uninsured at the time of the accident because Defendant's Myers' false representations about his age and driver's license number constitute a breach of an affirmative warranty, or in the alternative, material misrepresentations, which makes ACCC's liability policy void *ab initio* on the basis that the policy provides mandatory language that it will not provide coverage if the applicant provided any material misrepresentations.

56. I am of the opinion that a liability policy would not have been sold to Mr. Myers if he had stated true facts in the policy application or if the agent had submitted those true facts to the carrier, or at the very least not at the same premium cost and with the same coverages and declarations as the policy sold to Mr. Myers, and therefore for ACCC and State Farm to now seek to confirm liability coverage given its knowledge of the apparently indisputable material misrepresentations is in direct contravention of the applicable policy language and South

⁹ *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 339, 306 S.E.2d 616, 618 (1983) (citing *Gruenberg v. Aetna Ins. Co.*, 108 Cal. Rptr. 480, 510 P.2d 1032 (1973)).

Carolina law, resulting in substantial monetary benefit to State Farm and acute prejudice and damage to Mrs. Williams.

57. I am of the opinion that ACCC has acted in in direct contravention of the applicable policy language and South Carolina law, resulting in substantial monetary benefit to State Farm and acute prejudice and damage to Mrs. Williams.

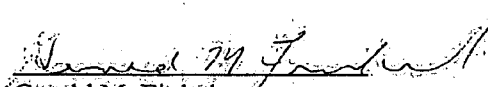
58. I am of the opinion that because ACCC's Policy Declarations Page ("Declarations Page") states that coverage was provided only where a premium and limit of coverage were shown for the coverage, and the Declarations Page for the Policy did not show a premium for any liability coverage, the policy is not and cannot be valid.

59. These and all of the foregoing constitute my opinion(s) to a reasonable degree of professional certainty.

(SIGNATURE PAGE FOLLOWS)

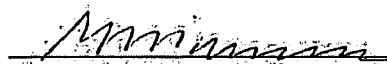
ACCC Insurance Company
v. Patricia Williams
Civil Action No. 16-CP-26-6091
AFFIDAVIT OF GERALD M. FINKEL, ESQUIRE,
EXPERT WITNESS

FURTHER DEPONENT SAYETH NOT.


Gerald M. Finkel

ACKNOWLEDGED, SWORN TO AND SUBSCRIBED before me

this 30th day of October, 2017.


Notary Public for the State of South Carolina
My Commission Expires: 2/28/23

Malena A. Dinwoodie
Notary Public: State of South Carolina
My Commission Expires Feb. 28, 2023

EXHIBIT A

DOCUMENTS/MATERIALS CONSIDERED IN REACHING OPINION

The following documents were reviewed and considered in reaching the opinion:

A. Pleadings:

1. Civil Action Coversheet, Summons, and Petition for Declaratory Judgment and Other Relief, including Exhibits 1 – 2, filed September 14, 2016;
2. Answer of Patricia Williams and Ronald Williams, filed September 19, 2016;
3. Affidavit of Personal Service on Defendant Myers, filed October 14, 2016;
4. Acceptance of Service Letter from South Carolina Department of Insurance, filed October 19, 2016;
5. Motion for Default Judgment, filed November 28, 2016;
6. Answer on Behalf of State Farm Mutual Automobile Insurance Company, filed December 6, 2016;
7. Order of Default, filed December 16, 2016;
8. Affidavit of Service of Subpoena on Renee Harless, filed January 20, 2017;
9. Proof of Service of Subpoena on Carol Renee Harless, filed March 3, 2017;
10. Affidavit of Service of Subpoena and Notice of Taking Deposition on Brittany Stanley a/k/a Brittany Standley, filed March 3, 2017;
11. Affidavit of Service of Subpoena and Notice of Taking Deposition on Patrick Myers, filed March 3, 2017;
12. Affidavit of Service of Subpoena and Notice of Taking Deposition on James Myers III, filed March 23, 2017;
13. Defendants Patricia Williams and Ronald Williams' Notice of Motion and Motion to Compel Discovery, including attached Interrogatories to Defendant State Farm Mutual Automobile Insurance Company, filed May 9, 2017; and
14. Form 4 – Defendants Motion to Compel Resolved, filed June 21, 2017.

B. Correspondence:

1. Letter from Arch Insurance Company to Showcase Cars Inc. dated October 16, 2013;
2. Letter from J. Timothy Wooten to Patricia Williams c/o Ronald Williams dated April 14, 2016;
3. Letter from J. Timothy Wooten to Stacy Stanley dated September 1, 2016; and
4. Letter from Linda Gangi to Stacy Stanley dated July 11, 2017.

C. Discovery Documents:

1. ACCC Insurance Company's Response to Defendant State Farm Mutual Automobile Insurance Company's Interrogatories, served February 7, 2017;

2. ACCC Insurance Company's Response to Defendant State Farm Mutual Automobile Insurance Company's Request for Production of Documents, served February 7, 2017;
3. ACCC Insurance Company's Supplemental Responses to Defendant State Farm Mutual Automobile Insurance Company's Request for Production of Documents, including produced documents Bates numbered ACCC0001-0179, served February 17, 2017;
4. Defendant State Farm Mutual Automobile Insurance Company's Answers to Defendants Patricia Williams and Ronald Williams' Interrogatories, served June 19, 2017;
5. Defendant State Farm Mutual Automobile Insurance Company's Responses to Defendants Patricia Williams and Ronald Williams' Request for Production of Documents, served June 19, 2017; and
6. Defendant State Farm Mutual Automobile Insurance Company's Responses to Defendants Patricia Williams and Ronald Williams' Second Request for Production of Documents, served June 19, 2017, including documents produced, 203 pages, not Bates numbered.

D. Other Documents:

1. ACCC Insurance Reinstatement for Myers and Standley, effective February 24, 2016;
2. ACCC Insurance Appraisal Contact Letter to Patricia Williams, processed March 30, 2016;
3. ACCC Insurance Request for Information and Assistance in Investigation to Patricia Williams, processed March 31, 2016;
4. South Carolina Traffic Collision Report Form TR-310, 16FL030455, dated March 18, 2016;
5. South Carolina Department of Motor Vehicles Report on Insurance Information for VIN 2G1WX12K949368935, dated August 3, 2016;
6. South Carolina Department of Motor Vehicles Report on Vehicles by Customer for Patrick Benjamin Myers, dated August 3, 2016;
7. South Carolina Department of Motor Vehicles Report on Current Plate for VIN 2G1WX12K949368935, dated August 3, 2016;
8. South Carolina Department of Motor Vehicles Report on Plate History for VIN 2G1WX12K949368935, dated August 3, 2016;
9. South Carolina Department of Motor Vehicles Report on Current Title for VIN 2G1WX12K949368935, dated August 3, 2016;
10. South Carolina Department of Motor Vehicles Report on Title History for VIN 2G1WX12K949368935, dated August 3, 2016;
11. South Carolina Department of Motor Vehicles Form 400, signed by Patrick Myers, dated April 24, 2014;
12. Georgia Certificate of Title for vehicle with VIN 2G1WX12K949368935, issued November 2, 2007;
13. Assignment and Warranty of Title By Owner for vehicle with VIN 2G1WX12K949368935, with date of sale/transfer of December 6, 2011;

14. Branch Banking and Trust Co. Assignment of Rights, Title and Interest in regard to vehicle with VIN 2G1WX12K949368935 to Arch Insurance Group, contract date of October 2, 2007;
15. South Carolina Department of Motor Vehicles Affidavit for Repossessed Motor Vehicle for vehicle with VIN 2G1WX12K949368935 with date of repossession as August 16, 2010;
16. North Carolina Division of Motor Vehicles Dealer's Reassignment of Title to a Motor Vehicle for vehicle with VIN 2G1WX12K949368935, dated January 4, 2012;
17. North Carolina Division of Motor Vehicles Dealer's Reassignment of Title to a Motor Vehicle for vehicle with VIN 2G1WX12K949368935, dated October 9, 2013;
18. North Carolina Division of Motor Vehicles Dealer's Reassignment of Title to a Motor Vehicle for vehicle with VIN 2G1WX12K949368935, dated March 10, 2014;
19. Damage Disclosure Statement for vehicle with VIN 2G1WX12K9493689, WO# 1224214;
20. Tackett Auto Sales Purchase Order and Bill of Sale for vehicle with VIN 2G1WX12K9493689;
21. Affidavit and Notification of Sale of Motor Vehicle for vehicle with VIN 2G1WX12K9493689 sold April 4, 2014, stamped 5223014;
22. Affidavit and Notification of Sale of Motor Vehicle for vehicle with VIN 2G1WX12K9493689 sold April 24, 2014, stamped 5223010;
23. State Farm Mutual Automobile Insurance Company Auto Renewal for Policy Number 039 1903-E21-40B, policy period November 21, 2015 – May 21, 2016; and
24. South Carolina Official 10 Year Driver Record fro Patrick Benjamin Myers, dated September 1, 2016.

CURRICULUM VITAE

GERALD M. FINKEL

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Summerville, South Carolina 29483
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Office Address:

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Post Office Box 41489
North Charleston, South Carolina 29423
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EDUCATION

New York University College of Arts and Science, New York, New York, **Bachelor of Arts**, 1962.
University of South Carolina School of Law, Columbia, South Carolina, **Juris Doctor**, 1970.

ACADEMIC HONORS

Editorial Board, *South Carolina Law Review* (Business Manager, 1968-1969); Chairman, Scholarship Committee, Student Bar Association; Vice-Justice, Pinckney Chapter, Phi-Alfa Delta Law Fraternity International, Awarded Outstanding Senior Service Certificate (1970); American Jurisprudence Awards in Regulated Industries and Evidence; Honorable Mention, *Criminal Law Bulletin Essay Competition* (1968).

PROFESSIONAL EMPLOYMENT

Professor Emeritus, Charleston School of Law, 2016-Present; **Professor of Law**, Charleston School of Law, 2007-May 2015; **Of Counsel**, Finkel Law Firm, L.L.C. 2007-present; **Founder and Managing Member**, Finkel Law Firm LLC, 1970-2006. Firm is engaged in a general practice with primary emphasis in the areas of business law, commercial litigation, unfair trade practices, general litigation in State and Federal Courts, corporate matters, bankruptcy and insolvency proceedings, business planning, insurance law, finance, real estate and development, and estate planning.

BAR ASSOCIATIONS AND PROFESSIONAL ORGANIZATIONS

South Carolina Bar, United States District Court for the District of South Carolina, Fourth Circuit Court of Appeals, United States Supreme Court, D.C. Court of Appeals, United States Court of Federal Claims, Richland County Bar Association, Charleston County Bar Association, Trial Lawyers' Association of America, South Carolina Trial Lawyers Association, D.C. Bar Association, American Judicature Society.

OFFICES AND DISTINCTIONS

Sustaining Life Member, **American Law Institute**, 1982-present; Member, Consultative Group, Restatement of the Law of Unfair Competition; Member, Consultative Group, Restatement of Torts 3rd; Member, Consultative Group, Principles of the Law of Liability Insurance; Consultative Committee for Restatement of Liability Insurance; Consultative Committee for the Principles of Law, Police Investigations. **ALI-ABA**, 1980-1985; Lecturer in Federal Practice and Procedure, **South Carolina Bar**; Member, Fee Disputes Panel for Ninth Judicial Circuit, 2009 to present; Board of Governors, 1985-88; Professional Responsibility Committee and Ethics Advisory Committee, 1995 - 1999; Chairman, Lawyer Referral Board, 1989-1994; Chairman Finance Committee, C.L.E. Division 1984-85; House of Delegates, 1980-84; Chairman, Insurance Negligence and Workers Compensation Section 1979-80; Lecturer for Continuing Legal Education Programs, 1973-present; Chairman, Medical-Legal Committee, 1975-76; **South Carolina Trial Lawyers Association**: President, 1982-83; President-Elect, 1981-82; Vice-President, 1980-81; Treasurer, 1978-80; Convention Chairman, 1978; Member Executive Board, 1978-84; Lecturer for Continuing Legal Education Programs; **South Carolina State Constable's Association**: President, 1990-1996; Legal Affairs Officer 1996 - 2004; **Dorchester County Sheriff's**

Gerald M. Finkel
Page Two

Office: Legal Advisor, 2000 to 2009; **Charleston County Sheriff's Office:**, Legal Advisor to Criminal Investigation Division, 2009 to present.

OFFICES AND DISTINCTIONS (Continued)

Recognized for more than 30 years in all Edition of S. Naifeh and G.S. Smith *The Best Lawyers in America*, in the areas of Bankruptcy and Credit-Debtor Rights Law, Commercial Litigation and Insurance Law. Listed in *South Carolina Super Lawyers*, 2008 to present. Biography in *Marquis Who's Who in American Law*; *Who's Who in America*; *Who's Who in the South and South Southwest*.

Phi Alpha Delta Law Fraternity, International; **Justice**, Palmetto Alumni Chapter, 1972-1976; **Justice**, District XIX, 1976-1978; Awarded Outstanding Alumni Service Certificate, 1972.

PUBLIC SERVICE AND BOARDS OF DIRECTORS

Hearing Officer, South Carolina Department of Health and Environmental Control, 1978-1983; **Commissioner** for Governor's Sentencing Guidelines Commission, 1982-1983; **Commissioner** for the South Carolina Appellate Defense Commission, 1982-1983; **Special Judge**, Richland County Family Court, 1974-1978; **Special Judge**, Court of General Sessions for the Fifth Judicial Circuit, 1976; **Board of Directors**, Community National Bancorporation, 1989-1992; **Board of Directors and General Counsel**, Kores Nordic (USA) Corp, 1985-1993. **Certified Circuit Court Arbitrator**, 1996 - Present. **Legal Affairs Officer**, S.C. State Constables Association, 1994-Present; **Police Legal Advisor**, Dorchester County Sheriff's Office, 2001 - Present; **Lecturer** on Corporate and Business Law, South Carolina Bar Bridge the Gap Program; **Member**, South Carolina Legislature's Real Property Rights Task Force Drafting Committee, 2002, **Member**, South Carolina Bar Resolution of Fees Disputes Board, 2008 - present; **Special Referee**, South Carolina Department of Insurance, 2010 to present.

ACADEMIC INTERESTS

Professor Emeritus, Charleston School of Law, 2016-Present; **Professor of Law**, Charleston School of Law, 2007-2015. **Distinguished Visiting Professor of Law**, Charleston School of Law for 2005-2006. **Adjunct Professor** in Trial Advocacy and Insurance Law for the University of South Carolina of Law, 1981-2006; **Board of Visitors**, Charleston Southern University, 2001 to present; **Lecturer** on Medical-Legal Problems and Medical Malpractice for Richland Memorial Hospital Continuing Medical Education Program, 1976-1977; **Capstone Lecturer on Law and Medicine**, U.S.C. School of Medicine, 1997 - present; **Lecturer in Law and Management**, Columbia Junior College of Business, 1970-1982; **Board of Advisors** and General Counsel to Columbia Junior College of Business, 1973-1982; **Lecturer** on Medical-Legal Problems for Department of Surgery, University of South Carolina School of Medicine, 1981-2000; **Board of Advisors** to Professional Center for Paralegal Studies, 1989-1998; **Board of Trustees**, South College, 1998-2000. **Lecturer** on Insurance Law, South Carolina Bar Review, 1990-Present. **Lecturer** on Crime to Court Series, S.C. State Constables Association, Inc., 1994-2000; **Instructor**, S.C. Department of Public Safety (Criminal Justice Academy); **Instructor** South Carolina Police Corps, The Citadel 2001-2005.

MILITARY SERVICE

June 1962 - March 1967 -- Captain, United States Army.

PUBLICATIONS

Co-Author, *Catacombs of Insurance Policy English - Your Work Exclusion & Insuring Damage Under a CGL Policy*

Co-Author, *CGL Coverage and the Myth of L-J v. Bituminous Fire & Marine Ins. Company*, South Carolina Trial Lawyer Bulletin, Fall 2004.

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Co-Author, *South Carolina Legal and Business Forms*, Vols. 1 and 3 (Lawyers Co-op 1998).

Co-Author, *A Guide to South Carolina Torts*, Palmetto Law Publishers (1st ed. 1981).

PUBLICATIONS (Continued)

Co-Author, *A Guide to South Carolina Torts II*, S.C.T.L.A. (2nd ed. 1986).

Co-Author, *A Guide to South Carolina Torts III*, S.C.T.L.A. (3rd ed. 1990).

Co-Author, *A Guide to South Carolina Torts IV*, S.C.T.L.A. (4th ed. 1995).

Co-Author, ch. 29 *Medical Depositions and Court Appearances, Claimant's Counsel Perspective Painful Cervical Trauma* (Williams & Wilkins 1990).

Survey of Damages, 21 S.C.L. Rev. 552 (1968).

Effective Deposition Techniques, ALI-ABA Study Materials *Federal Discovery Practice* No. 3537, May 24, 1980, at page 223.

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Educating Laymen on Legal Fictions, Intangibles, and Other Ethereal Concepts, 28 S.C.T.L.A. Convention Program 350 (1985).

Co-Author, *Cases and Materials on South Carolina Insurance Law* (Revised Annually)

Author, *Insurance Law*, BARBRI (Revised Annually).

Co-Author, *Property Insurance Issues in the Aftermath of Hurricane Hugo*, South Carolina Lawyer (S.C. Bar Sept/Oct 1990).

Co-Author, *The Coast is Clear; Lucas Court Sheds Light on Regulatory Takings*, 2 S.C. Env. L. J. 28, U.S.C. Press (1992).

Author, *Stacking of Liability Coverage: Unstacked*, South Carolina Lawyer (S.C. Bar May/June 1998).

SEMINARS

Advanced Uninsured/Underinsured Motorist Law; Stacking Insurance Coverage and Uninsured Motorist Setoffs; Special Issues That Can Make or Break Your Case, NBI Seminar, Columbia, South Carolina October 23, 2015.

Torts and Negligence Seminar/Ensuing Damages Under CGL Policies, South Carolina Association for Justice 2012 Annual Convention, Hilton Head, South Carolina, August 6, 2012.

Advanced Uninsured/Underinsured Motorist Law, National Business Institute, Columbia, South Carolina, October 13, 2010.

Advanced Uninsured/Underinsured Motorist Law, National Business Institute, Columbia, South Carolina, October 7, 2009.

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Courtroom Testimony for Law Enforcement Officers, Sponsored by Charleston County Sheriff's Office and Charleston School of Law, Charleston, South Carolina, November 19, 2009.

SEMINARS (Continued)

Advanced Uninsured/Underinsured Motorist Law, National Business Institute, Columbia, South Carolina, October 7, 2009.

Litigating Bad Faith Insurance Claims, National Business Institute, Charleston, South Carolina, June 20, 2008.

"Just The Facts" - The Defense Investigation, 2nd Annual Indigent Defense Best Practices Seminar sponsored by the South Carolina Commission On Indigent Defense and the Charleston School of Law, Charleston School of Law, February 22, 2008.

Personal Reflections on the Lucas Case, Balancing Private and Public Rights in the Coastal Zone in the Era of Climate Change: the Fifteenth Anniversary of *Lucas v. South Carolina Coastal Council*; University of South Carolina School of Law and Georgetown University Law Center, Columbia, South Carolina, September 20, 2007.

Critical Issues in Professional Responsibility and Ethics in the Construction Industry, 2007 North Carolina/South Carolina Construction Law Sections Biennial Meeting Seminar, Isle of Palms, South Carolina, September 15, 2007.

Patronage Dismissals and Qualified Immunity, South Carolina Association of Countywide Elected Executives, 2007 Fall Academy, Charleston, South Carolina, September 12, 2007.

Recent Developments Under 42 U.S.C. § 1983, South Carolina Sheriff's Association Conference, Myrtle Beach, South Carolina, July 30, 2007.

Settling Uninsured and Underinsured Motorist's Claims, National Business Institute, Charleston, South Carolina, December 13, 2006.

Insuring Catastrophic Losses, Disaster Response CLE, Charleston School of Law, October 6, 2006

Keep Off My Property! Federal and State Legislatures' Attempt to Behead the Kelo Hydra, Eminent Domain Seminar CLE International, September 18-19, 2006.

Regulatory Takings Development Since Lucas, Eminent Domain Seminar CLE International, February 28 - March 1, 2005.

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Trial Strategy-The Beginning Of The End, "Bad Faith Litigation in South Carolina", National Business Institute, Columbia, South Carolina, December 16, 2004.

"I Did It - Pay Me Anyway!" - Special Problems in Automobile Insurance, S.C. Bar Convention, January 24, 2004.

Regulatory Takings Since Lucas, Takings Conference, Albany Law School, April 4 and 5, 2003.

What Is An Occurrence?, Charleston County Bar Association, October 18, 2001.

How to Successfully Make and Manage Objections at Trial in South Carolina, National Business Institute, March 23, 2001.

Second Annual Governor's Summit on Growth, Property Rights Speech, March 12, 2001.

Insuring Mother Nature, Disaster Relief: Advising Victims after the Dust Settles, S.C. Bar C.L.E., September 4, 1998.

SEMINARS (Continued)

Earthquake Insurance: Disaster Legal Assistance, ABA/FEMA, December 13-14, 1991.

The Law of Seat Belt Defense, S.C.T.L.A. Criminal Law and Automobile Torts Seminar, October 14, 1977.

The Damages Settlement Package, S.C. Bar Damages Seminar, March 25, 1977.

Federal Discovery Techniques, S.C.T.L.A. Convention Program, August, 1978.

Federal Civil Procedure, S.C. Bar, Basic Skills Course, November 2, 1979.

Juvenile Defense, S.C. Bar Judicial C.L.E. Seminar, November 16, 1979.

Federal Discovery, ALI-ABA Seminar, May 23, 1980.

Sources and Preparation of Expert Witnesses, S.C. Bar Trial Advocacy Series, August 29, 1980.

Exceptions to the Hearsay Rule, S.C. Bar Judicial C.L.E. Seminar, August 8, 1980.

Trustee Litigation: Jurisdiction, Removal Venue and Jury Trials in Bankruptcy Proceedings, U.S.C. Law School and Seminar Series-Bankruptcy Clinic, Fall, 1981.

Mechanics Liens under the Bankruptcy Code, S.C. Bar C.L.E. Program, "Construction Law/Mechanics Lien Seminar," June 18, 1982.

Preference Litigation, Richland County Bar, January 5, 1983.

Negotiation and Counseling Skills for Lawyers, Professional Institute's Second Annual Law and Psychology Seminar, Montego Bay, Jamaica, January 26-30, 1983.

Attorneys' Fees as Damages, S.C. Bar C.L.E. Program "Damages and Remedies", February 7, 1986.

Attorneys' Fees, University of South Carolina School of Law, C.L.E., November 1, 1986.

Advocacy in Civil and Criminal Trials, Speaker, Young Lawyers Program, S.C. Bar Midyear Convention, December 1986.

Banking Law Seminar, Southern National Bank (June 18, 1987).

Lender Liability Seminar, The Bank Administration Institute - S.C. Chapter (November 12, 1987).

From the Medical Record to the Deposition, Richland Memorial Hospital Surgical Grand Rounds, March 5, 1988.

Depositions in Civil Litigation, William S. Hall, Psychiatric Institute, South Carolina Department of Mental Health, May 28, 1988.

Utilization of Computers by the Trial Lawyer, The John Belton O'Neill Inns of Court Program, October 20, 1988.

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Charts, Drawings and Blackboards, Practical Evidence for Trial Attorneys, S.C. Bar, June 9, 1989.

The Lawyers Perspective: Insurance Law; Agent Responsibility; Flood, Wind, Rain and Hail, Hugo Related Hurricane issues, S.C. Bar, December 8, 1989; Charleston County Bar, October 27, 1989; South Carolina Legal Services Association, December 4, 11, 12, 1989.

SEMINARS (Continued)

The Physician as a Witness, Richland Memorial Hospital Department of Surgery, September, 1990.

Lender Liability Commercial Law Seminar, First Union National Bank of South Carolina, September 11, 1990 Columbia, South Carolina; September 25, 1990, Greenville, South Carolina.

Lucas v. South Carolina Coastal Council, ABA National Appellate Advocacy Competition Banquet, Columbia, South Carolina, March 21, 1993.

Lucas v. South Carolina Coastal Council, 3rd Annual Maine Conservation Rights Congress, Bangor, Maine, April 24, 1993.

Property Rights and the Courts, Clemson University's College of Forest & Recreation Resources Teleconference, Sponsored by: Forest Farmers Association, South Carolina Farm Bureau Federation, South Carolina Forestry Association in Cooperation with Society of American Foresters, S.C. Department of Agriculture, S.C. Forestry Commission, S.C. Sportsmen's Coalition, September 21, 1993.

Contradictory Relationships Between Government Laws and Property Rights, "A Day of Environmental Education" Natural Resources Foundation of Texas, Fort Worth, Texas, January 14, 1994.

Lucas v. South Carolina Coastal Council, Texas and Southwestern Cattle Raisers Association's 117th Annual Convention, Fort Worth, Texas, March 29, 1994.

Risk Management for Lawyers, South Carolina Bar Lowcountry Solo/Small Firm Section, Mt. Pleasant, South Carolina, July 26, 2013.

REPORTED CASES

Original Blue Ribbon Taxi Corp. v. S.C. Department of Motor Vehicles, 670 S.E.2d 674.

Sinkler v. County of Charleston, 690 S.E.2d 777.

Bank of New York v. Sumter County, 691 S.E.2d 473.

Lucas v. The South Carolina Coastal Council, 112 S.Ct. 2886, 120 L.E. 2d 798.

City of Folly Beach v. Atlantic House Properties, 458 S.E.2d 426.

Kores Nordic (USA) Corp. v. Sinkler, Gibbs & Simons, 327 S.E.2d 365.

Interstate Securities Corp. v. Costantino, 72 B.R. 189.

Chester County Hospital & Nursing Center v. Martin, 314 S.E.2d 308.

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In re: Allen University, 497 F.2d 346.

Mims v. Kemp, 516 F.2d 21.

Mims v. Yarborough, 343 F.Supp. 1146, 461 F.2d 1266, cert. den. 409 U.S. 1041, 17 ALR Fed. 549.

Walpole v. Great Am. Ins. Cos., 914 F.Supp 1283.

REPORTED CASES (Continued)

FOP v. S.C. Dep't of Revenue, 574 S.E.2d 717.

McClanahan v. Richland County Council, 567 S.E.2d 240.

FOP v. South Carolina Dep't of Revenue, 506 S.E.2d 495.

Lawson v. Rogers, 435 S.E.2d 853.

In re Galloway, 300 S.E.2d 479.

Roof v. Swanson, 543 S.E.2d 278.

Town of Sullivan's Island v. Felger, 457 S.E.2d 626.

Minter v. GOCT, Inc., 473 S.E.2d 67.

Red Cardinal Fifteen, Inc. v. Chang, 954 F.Supp. 1111.

Sonoco Products Co. v. Intoplast corp., 867 F.Supp. 352.

Myrtle Beach Pipeline Corp. v. Emerson Elec. Co., 843 F.Supp. 1027.

In re Seabrook Island Ocean Club, Inc., 118 B.R. 410.

Drury Development v. Foundation Ins., 668 S.E.2d 798 (2008).

TRANSACTIONS

Debtor's Counsel *In Re: Sam Solomon Co.*

Creditor's Committee Counsel *In Re: Macalloy Corporation.*

Attorney for Marathon Oil Company *In Re: Hilton Head Company, Inc.*

Creditor's Committee Counsel *In Re: Braswell Shipyards.*

Creditor's Committee Counsel *In Re: Phoenix Medical Technology, Inc.*

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	2016-CP-26-6091
ACCC Insurance Company,)	
Plaintiff,)	Transcript of Record
vs.)	
Patricia Williams, et. al)	November 1, 2017
Defendant.)	

B E F O R E:

Honorable Larry Hyman
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Douglas Leadbitter, Esquire
Attorney for Plaintiff

Stacy Stanley, Esquire
Attorney for Defendant Williams

Linda Gangi, Esquire
Attorney for State Farm Insurance Company

Sallie Beth Todd
Court Reporter

I N D E X

(There were no witnesses called during the hearing.)

Certificate of Court Reporter 19

E X H I B I T S

(There were no exhibits marked during the hearing.)

1 **THE COURT:** ACCC Insurance Company vs. Williams. Mr.
2 Leadbitter, Mr. Wooten, Ms. Gangi, Mr. Stanley. All right.
3 Whose motion is it?

4 **MR. STANLEY:** Your Honor, may it please the Court? Stacy
5 Stanley for the Defendant, Patricia Williams. The first
6 motion.

7 **THE COURT:** Whoa. Whoa. Whoa. Whoa. Are you lost or is
8 Ms. Gangi lost?

9 **MS. GANGI:** I filed along with Plaintiff's Counsel, a
10 Motion to Dismiss because Mr. ---

11 **THE COURT:** I see both of you listed as Defendants
12 attorneys is -- that's what confused me.

13 **MR. STANLEY:** Yes, sir.

14 **MS. GANGI:** We are, but this is a funky case.

15 **THE COURT:** Well this will be interesting. Go ahead, Mr.
16 Stanley.

17 **MR. STANLEY:** It's very interesting, Your Honor. Again,
18 Stacy Stanley from the Stanley Law Firm. I'm representing
19 Patricia Williams and Ronald Williams, who are two of the
20 Defendants in this case. Your Honor, this case, just very
21 briefly, if I could just give you a little about the case.

22 **THE COURT:** Okay.

23 **MR. STANLEY:** My client, Patricia Williams, was driving
24 on a road, a secondary road in Horry County on March 18th,
25 2016 and one of the other Defendants in this case, Patrick

1 Benjamin Myers crossed the center line, hit her head on. She
2 had some -- it was a life or death situation for her. She
3 survived. She has about a million dollars in medical bills,
4 significant permanent impairment.

5 The issue, Your Honor, in this case is whether there is
6 insurance or not on the at fault vehicle, which is driven by
7 Mr. Patrick Benjamin Myers and that's what we're dealing with
8 in this case, Your Honor. That's why it's so strange and
9 unusual.

10 Your Honor, we've been in this case, this case was filed
11 by ACCC Insurance Company and it was to determine Declaratory
12 ---

13 THE COURT: A DJ Action?

14 MR. STANLEY: Yes, sir -- to determine whether there was
15 insurance or not on the vehicle driven by Mr. Patrick Benjamin
16 Myers. We went for about ten months or so in this case. ACCC
17 Insurance Company was asking the Court to decide on these
18 issues of insurance or not and they were asking the Court to
19 determine that there was no insurance on the vehicle. We got
20 to about ten months into this case and that is the position
21 that we want for Patricia Williams and I'll tell you why this
22 makes this even more unusual.

23 The fact is, Ms. Williams has a policy with State Farm,
24 that's why Ms. Gangi is here. It is a UMUIM ---

25 THE COURT: Uninsured, yeah.

1 **MR. STANLEY:** Yes, sir. For the UIM is a 100/300 and for
2 the UM it is 250/500. So, we take the position that there is
3 no insurance on the vehicle and therefore the UM will apply,
4 which will be significantly more for Ms. Williams.

5 **THE COURT:** Isn't it rather odd that they have different
6 coverage limits for UM and UA?

7 **MS. GANGI:** No, Your Honor. On your selection/rejection
8 component that you sign with each policy, you get to choose.

9 **THE COURT:** I just never ran into anybody that didn't do
10 it the same way.

11 **MS. GANGI:** They do it.

12 **MR. STANLEY:** It's very unusual, very odd. So, the
13 officer at the scene, Your Honor, determined that there was no
14 insurance on the at fault vehicle.

15 **THE COURT:** Now how did he know that; they don't even
16 usually know what caused the accident, much less who had
17 insurance?

18 **MR. STANLEY:** Your Honor, he's a very valuable witness
19 and an expert in these type of situations and ---

20 **THE COURT:** I bet he told you that.

21 **MR. STANLEY:** He did. And during my conversation with
22 him, I've taken his deposition; he did look into the insurance
23 situation. He called the Department of Insurance -- the
24 Department of Motor Vehicles and it was determined there was
25 no insurance. About 30 days after that, Mr. Tim Wooten from

1 ACCC Insurance Company, he's not here today I don't think, but
2 Mr. Wooten wrote my clients a letter and said, we don't really
3 care what the officer says, there is insurance on this
4 vehicle. I got involved maybe two to three months after that.
5 I then contacted Mr. Wooten and I said, Mr. Wooten, I'm
6 helping my clients out with a medical claim with Blue
7 Cross/Blue Shield that is very significant, but I'm looking at
8 the accident and the Accident Report and it shows that there
9 was no insurance. I don't see where the officer has changed
10 that, it's on his final report and then I see your letter
11 saying there is insurance. I don't think there's any
12 insurance based on some of the other information that I have.
13 Mr. Wooten said okay, let me think about it. He then filed a
14 Declaratory Judgment action saying that there was no insurance
15 on the vehicle.

16 We go, fast forward ten months or so into the case. I
17 send a letter to opposing counsel or to Ms. Gangi, I guess, my
18 co-counsel in that case and to opposing counsel, Mr. Wooten.

19 THE COURT: Who has your UIM and UM?

20 MR. STANLEY: Sir?

21 THE COURT: Who has your UIM and UM insurance?

22 MR. STANLEY: Yes, sir.

23 THE COURT: Ms. Gangi?

24 MR. STANLEY: Yes, sir. And I sent a letter to counsel
25 and I say, you know, by the rules, we have to mediate this

1 case. Really no response from counsel. I wrote them -- I
2 waited several weeks and I wrote them another email and said,
3 we got to mediate this case; no response. So, then I filed a
4 Motion for ADR, which is why I'm here today. I've practiced
5 for about twenty years now, Your Honor, this is the first time
6 I've had to file a Motion for ADR, but the ---

7 THE COURT: I didn't know there was such thing.

8 MR. STANLEY: To compel mediation.

9 THE COURT: Well maybe that's what it means. I, you
10 know, I'm gone just give you a star for today. You actually
11 aggressively tried to comply?

12 MR. STANLEY: Yes, sir.

13 THE COURT: Good gracious, Mr. Stanley. Judgment for Mr.
14 Stanley.

15 MR. STANLEY: Thank you, Your Honor. We can go home now?

16 THE COURT: No. No, just joshing you.

17 MR. STANLEY: Your Honor, I think our, I know you are. I
18 think our Supreme Court requires us to mediate this case.

19 THE COURT: I remember something about that. There was a
20 rule or something like that.

21 MR. STANLEY: And Mr. Wooten's Declaratory Judgment
22 action, Your Honor, he did not check that the case was exempt
23 from ADR and of course on page 3 of the cover page that he
24 sent to the Court, it states that the Supreme Court requires
25 mediation of all Civil Cases to Alternative Dispute

1 Resolution.

2 THE COURT: Well what were you trying to mediate; were
3 you trying to mediate the initial case, the accident case or
4 were you trying to mediate the DJ?

5 MR. STANLEY: The DJ.

6 THE COURT: Well isn't that exempt like condemnations and
7 some other things of that nature?

8 MR. STANLEY: I do not see it on this list, Your Honor,
9 and it has not been brought by opposing counsel to me that
10 it's exempt.

11 THE COURT: Okay. Well maybe it's not.

12 MR. STANLEY: And it's not on the cover sheet. Of
13 course, the third page says ---

14 THE COURT: Okay. You want to have mediation?

15 MR. STANLEY: Yes, sir.

16 THE COURT: When we gone have it?

17 MR. LEADBITTER: Your Honor, I'm Doug Leadbitter, I'm
18 here for ACCC. Your Honor, we have ---

19 THE COURT: Mr. Leadbitter, have we met?

20 MR. LEADBITTER: I think I have had the privilege to have
21 met you.

22 THE COURT: Well, I just don't recall. And you're with
23 who?

24 MR. LEADBITTER: I'm with Coward and Darnell.

25 THE COURT: Okay. And you practice out of?

1 MR. LEADBITTER: Columbia.

2 THE COURT: Columbia, okay.

3 MR. LEADBITTER: Yes, sir.

4 THE COURT: It's good to meet you. All right. Now tell
5 me, when we gone mediate?

6 MR. STANLEY: Your Honor, mediating this case isn't
7 really a big deal. We can mediate this case, that's not
8 really the issue. He filed a Motion to Compel the Mediation,
9 but we've got a Motion to Dismiss.

10 THE COURT: Well let me ask you this. What's the big
11 deal, I mean, you just -- somebody -- does somebody have a
12 policy; does somebody have a check?

13 MR. LEADBITTER: Your Honor, this is my memorandum. I
14 emailed it to y'all last night, but ---

15 THE COURT: Okay. This shouldn't be hard.

16 MR. LEADBITTER: He's kind of jumped -- jumped around a
17 little bit, but see we can now get back on the rails here.

18 THE COURT: It sounds like Mr. Stanley is all for you
19 getting out.

20 MR. LEADBITTER: Exactly. And if, Your Honor, ACCC
21 originally filed this DEC action challenging coverage because
22 they were concerned about an issue with the -- whether or not
23 the Defendants have an insurable interest in the case. Okay.
24 After the -- the DEC action was filed, there were some
25 discovery and some further investigation to it, they decided

1 that there actually was coverage, that there is a valid
2 liability policy despite the fact that the cop said that he
3 thought that there wasn't and went to the Department of Motor
4 Vehicles. There were some issues about the identity of the
5 driver. There were some -- wrong driver's license number and
6 they tracked all that down and we got it all figured out. So,
7 we decided, we determined there was coverage and we tried to
8 tender the policy limits to -- to the Plaintiffs here, the
9 Williams'. So ACCC took the position there was a policy,
10 therefore, you know, we tendered the limits and that should be
11 the end of the case. That's why we filed a motion under Rule
12 41 to actually dismiss this case. There is nothing to mediate
13 because we believe that there is an insurance policy.

14 And after that motion was filed, after the August 4th,
15 2016, after that motion was filed, this issue about the
16 compelling the arbitration -- mediation and this other issue
17 that he tried to then amend his answer to raise all these
18 other subsequent issues because he wanted to start bringing in
19 to challenge the validity of the liability policy by asserting
20 other defenses to the policy by claiming.

21 THE COURT: Mr. Stanley, if they say we covered it, I
22 mean -- where you gonna go with that; I know it's a novel
23 issue, but when they say, yeah, we covered it.

24 MS. GANGI: Your Honor, it's not a novel issue ---

25 THE COURT: Kinda like farmers, you know, there it is, we

1 covered it.

2 MS. GANGI: The whole case is covered by one portion of
3 one statute. Under 56-9-20 which I will pass up to Your
4 Honor, subsection (b)(1) and (3) state that when a policy is
5 issued, a liability insurance policy is issued and there is an
6 accident, that the insurance company cannot contest the fact
7 that there is a policy and it is valid on the basis of any
8 type of misrepresentation. So, in this case, there is no
9 doubt that ---

10 THE COURT: I mean they miss the boat if they don't do it
11 before that, right?

12 MS. GANGI: Correct. They miss the boat and it says it
13 shall; it doesn't give any latitude to anybody. That policy
14 is in effect, they have tendered not only the bodily injury,
15 but all the property damage. State Farm paid way before
16 Stanley -- Stacy got involved in it, all of their underinsured
17 motorist coverage to his clients. So, all of the coverage
18 under all of the policies because State Farm had three
19 policies.

20 THE COURT: Have been paid or tendered.

21 MS. GANGI: Has been paid.

22 THE COURT: Or tendered.

23 MS. GANGI: Or tendered. So, there's nothing -- there is
24 no issue to mediate; there is no issue for Your Honor to
25 decide the case. It just needs to be dismissed.

1 THE COURT: Mr. Stanley, tell me now, tell me?

2 MR. STANLEY: Yes, sir.

3 THE COURT: How -- how can you challenge the policy from
4 way out here in third party land when the carrier has come in
5 and said we have coverage; here's our limits. I mean how are
6 you now going to -- what issue is there? They made a Motion
7 to Dismiss, but they're about to make a Motion for Summary
8 Judgment if I don't grant it. I mean, how can -- how can you
9 attack the policy now, where can we go with that?

10 MR. STANLEY: On numerous -- on numerous levels, Your
11 Honor. First of all, I just refer the Court to the affidavit
12 of Gerald -- Gerald Finkel, who has been in the insurance
13 industry for about forty-some years.

14 THE COURT: I'll hear him. I'll hear him, Mr.
15 Leadbitter. Okay. Go ahead.

16 MR. STANLEY: He was a professor for some time at USC and
17 Charleston School of Law. First of all, he says that a
18 contract between two persons for the benefit of a third, which
19 would be my client, even though such third party may not be
20 named therein, can be enforced by such third party. So, Ms.
21 Williams has a right to contest whether there was insurance or
22 not in this case.

23 THE COURT: I didn't say she couldn't come from third
24 party land out here. I want -- I want to know how you gonna
25 challenge it, on what grounds? Whether she can is not the

1 issue. The issue is how?

2 MR. STANLEY: Well first of all, Your Honor ---

3 THE COURT: When both parties to the contract say, yeah,
4 that's our contract.

5 MR. STANLEY: --- you're talking about both parties,
6 you're talking about Patrick Benjamin Myers?

7 THE COURT: And the carrier.

8 MR. STANLEY: I don't think Patrick Benjamin Myers knows
9 what he has. So, I don't know that he's agreed to anything in
10 this case. But as far as the carrier, the carrier doesn't
11 know what they have. Your Honor, you kinda have to go back to
12 the time frame the accident was on March 18th, 2016. They
13 sent a letter saying we got coverage. I come and say well,
14 there's a question of this -- this accident report says no
15 insurance. They considered it, Your Honor, on their own
16 volition, they file a DJ action that says we want the Court to
17 declare that there's no insurance for the at fault driver.
18 That was their position.

19 They go eleven months throughout this case and then right
20 before this may be coming to trial, they make this Motion to
21 Dismiss. That -- that's the first thing in our -- in our
22 expert's affidavit will say that all those things that they
23 asserted in their DJ action; number 1, they asserted that
24 there was a different address from Brittany Stanley, who was a
25 person on the policy. Our expert says that is correct, that's

1 a reason to void the policy.

2 Secondly, there are -- there are differences of the date
3 of birth between Patrick Benjamin Myers, who was that at fault
4 driver and also differences in his driver's license number
5 from the policy to what was on the police report.

6 **THE COURT:** Why would you think ACCC would come in and
7 throw in their -- how much throwing in -- how much you
8 throwing, 25,000, I got a feeling that was probably ---

9 **MR. LEADBITTER:** It's 50 for the bodily injury and the
10 property damage policy, Your Honor.

11 **THE COURT:** Why would they come in and pitch in \$50,000
12 just for fun, if they didn't think they had a -- I mean, what
13 reason if they did not have a policy, why would they just
14 tender their limits.

15 **MR. STANLEY:** Because there are numerous other issues
16 involved in this case, Your Honor. First of all, they have a
17 rogue agent who is Carolyn A. Harless.

18 **MR. LEADBITTER:** Your Honor, that person is not involved
19 in this lawsuit. This is a broker that had some issues that
20 has nothing to do with this case; he's not a party. He --
21 this is a fishing expedition that he's trying to go on with
22 this Amended Answer Motion that he's also ---

23 **THE COURT:** Even so, Mr. Myers has the benefit of the
24 policy. If the agent did something squirrely with the
25 company, Mr. Myers can still enforce that -- that policy

1 because that agent apparent authority to issue the policy,
2 right?

3 **MR. STANLEY:** As our expert stated, these violations in
4 the policy, the fact that there was fraud, misrepresentation
5 and material misrepresentation in the -- in the policy itself,
6 which is what ACCC, Your Honor, alleged in its DJ action. So,
7 they agreed with our position up until just a couple of months
8 ago when I filed this motion to dismiss and our expert says
9 that those things, fraud, misrepresentation and material
10 misrepresentations, void the policy, Ab initio, right from the
11 beginning. That's one of the arguments, Your Honor. Why
12 shouldn't you just let them pay this? The second is, Your
13 Honor, Ms. Carolyn A. Harliss, both this policy, even though
14 ACCC does not want to in any way acknowledge her, she has been
15 unlicensed since 2015. And her appointment was revoked by
16 ACCC Insurance Company in 2014, which therefore, Your Honor,
17 she's been -- she is unlawfully writing these policies, which
18 would therefore void the policy.

19 **THE COURT:** Okay.

20 **MR. STANLEY:** And finally, Your Honor, and again our
21 expert addresses all of this in his affidavit. The last thing
22 is on their Declarations Page, their own Declarations Page,
23 that they sent to my client when they initial letter, it
24 states that there are no policy premiums on that Dec page,
25 that the policy is void. On the Declarations Page that they

1 sent to us saying this is what provides coverage, there is
2 nothing that's been paid on it and therefore, as our expert
3 stated in his -- his affidavit, that policy is void.

4 And finally, Your Honor, on that particular Declarations
5 Page, it has something I've never seen before, it has
6 something at the very top that says reinstatement by Black's
7 Law Dictionary, it means that something had been discontinued
8 and had to be reinstated, which we believe was the coverage.
9 Why would you put reinstatement if that were not a fact?

10 THE COURT: Okay. So, let me ask you, what have I got
11 here. I've got a Motion to Compel. That's your Motion; what
12 do you want?

13 MR. STANLEY: I want to go to arbitration, Your Honor.

14 THE COURT: Okay.

15 MR. STANLEY: And if they say ---

16 MR. LEADBITTER: Mediation I think is what I think he
17 meant to say.

18 THE COURT: Mediation, okay.

19 MR. STANLEY: Mediation -- I've got arbitration on my
20 mind.

21 THE COURT: Now ACCC has made a Motion, I would imagine
22 that's a Rule 12 Motion to Dismiss it's own action?

23 MR. LEADBITTER: It's Rule 41 ---

24 THE COURT: Rule 41.

25 MR. LEADBITTER: --- there's no judicial -- we decided

1 there is coverage; therefore, we want to tender limits and
2 dismiss the case because we're the Plaintiffs.

3 THE COURT: And do you have counterclaims in it or cross
4 complaints.

5 MR. STANLEY: Your Honor, again, we're going along. They're
6 arguing exactly what I think is the case. They changed it and
7 surprisingly filed the Motion to Dismiss and thereafter I
8 filed my Motion to Amend the Answer to assert a counterclaim
9 and all in my counterclaim I'm doing is I'm saying these
10 allegations that ACCC Insurance Company alleged in their
11 original DJ action, I just want this heard by the Court.

12 THE COURT: What relief are you seeking on a
13 counterclaim?

14 MR. STANLEY: I'm seeking the fact that there's no
15 insurance on the -- on the at fault vehicle.

16 THE COURT: Do you need to amend to do that when that's
17 the issue in the primary action?

18 MR. STANLEY: Well he's trying to dismiss the primary
19 action.

20 THE COURT: Well?

21 MR. STANLEY: So, the primary action that he alleged that
22 there was no insurance, he's had a change of heart eleven
23 months in the lawsuit and said, oh, by the way, we have found
24 -- we found some coverage and ---

25 THE COURT: Let me -- let me just shorten this.

1 MR. STANLEY: Yes, sir.

2 THE COURT: Mr. Stanley, I appreciate your predicament
3 and I understand where you're going, but there's no judicial
4 controversy now. They've admitted that they have coverage.
5 That's what it was brought for. I'm going to dismiss the
6 case. Thank you.

7 MR. GANGI: Thank you, Your Honor.

8 MR. STANLEY: Your Honor, just for clarification, you're
9 dismissing it based on Rule 41?

10 THE COURT: Yes. And you can prepare me an Order, okay?

11 MR. LEADBITTER: Thank you, Your Honor.

12 MR. STANLEY: Thank you, Your Honor.

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(ADJOURNED)

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C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of ACCC Insurance Company versus Patricia Williams, et al, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on November 1, 2017.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Sallie Beth Todd

Official Court Reporter

March 6, 2017.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2016-CP-26-06091
ACC INSURANCE COMPANY,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	(Motion for Reconsideration)
vs.	)	
	)	January 8, 2018
PATRICIA WILLIAMS,	)	
RONALD WILLIAMS, PATRICK	)	
BENJAMIN MYERS, BRITTANY	)	
STANLEY, A/K/A BRITTANY	)	
STANDLEY, AND STATE FARM	)	
MUTUAL AUTOMOBILE	)	
INSURANCE COMPANY,	)	
	)	
Defendants.	)	

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Douglas E. Leadbitter, Esquire
Attorney for Plaintiff

Stacy L. Stanley, Esquire
Attorney for Defendants Williams

Linda W. Gangi, Esquire
Attorney for Defendant State Farm

Kay H. Richardson
Circuit Court Reporter

I N D E X

JANUARY 8, 2018

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E X H I B I T S

No.

ID

EV

(No exhibits were marked or admitted.)

1 (JANUARY 8, 2018 - 9:45 A.M.)

2 THE COURT: Ms. Gangi or Mr. Stanley, somebody tell me
3 what this is about. I just simply don't recall.

4 MR. STANLEY: Yes, sir.

5 THE COURT: I remember we continued it but I just don't
6 recall what it -- exactly what.

7 MR. STANLEY: Yes, sir, Your Honor. This is a -- there
8 are several motions for reconsideration in this case. They
9 were scheduled for last Wednesday, because of the weather we
10 continued it until today. It involves a declaratory judgment
11 action that was filed by ACCC Insurance Company and it
12 involves a situation where my clients were driving the vehicle
13 ---

14 THE COURT: I remember now. And tell me if I'm wrong.
15 This is the case where there was a declaratory judgment action
16 brought to determine whether there was primary coverage in an
17 automobile accident. During the course of that, the company
18 conceded that there was coverage. It affects your case
19 because you have excess uninsured coverage that will kick in
20 and, if there was no coverage or if there was coverage, you
21 have -- excuse me -- if there was no coverage, you have under
22 -- uninsured which is at a higher coverage than if there is
23 coverage and you fall back on your underinsured coverage?
24 That's right?

25 MR. STANLEY: Yes, sir.

1 THE COURT: And it came before me you had intervened in
2 the declaratory judgment action or had been made a party; is
3 that correct?

4 MR. STANLEY: Well, Your Honor, it's very unusual. A-
5 triple-C, I'm just gonna say triple C instead of ACCC every
6 time. A-triple-C filed a DJ action against my client Patricia
7 Williams and her husband Ronald Williams and also State Farm,
8 which is why Linda Gangi is involved.

9 THE COURT: And State Farm is your insurer?

10 MR. STANLEY: Yes, sir, and the at-fault driver and
11 another insured that was on the policy. So, that's why we're
12 involved in this case.

13 THE COURT: Okay. But the bottom line is this, the issue
14 in that case is whether or not there was liability coverage on
15 that at-fault vehicle, period. That's the issue.

16 MR. STANLEY: Yes, sir

17 THE COURT: And that involved a contract matter issue
18 between ACCC or A-triple-C or whatever, I'm sorry, between
19 them and the insured. And during the course of that
20 litigation, the insurer says, we've investigated; yes, we do
21 have coverage. Right? Okay. And I, on a motion for summary
22 judgment -- was it a motion for summary judgment?

23 MS. GANGI: It was a motion to dismiss that was a joint
24 motion.

25 THE COURT: Okay. And I found that there was no matter

1 to be litigated once the company declared that yes, we do have
2 coverage. Okay? Isn't that kind of where we are? And you've
3 filed now a motion to reconsider.

4 MR. STANLEY: Well, just a couple of things to fill in,
5 Your Honor. A-triple-C when they filed a motion for DJ, they
6 said that there was no coverage. And they went 11 months and
7 then decided they wanted to dismiss the action. And what
8 we're asking is that -- there were two orders that were issued
9 in that case. The first order was issued on November the 1st
10 and you dismissed the case. You said the other motions that
11 were pending were moot, which was a motion to compel
12 arbitration and also a motion to ---

13 THE COURT: Right; uh-huh, (affirmative response).

14 MR. STANLEY: Then subsequent to that, we filed a motion
15 for reconsideration and then another order was signed by Your
16 Honor on November 15th. And that was an order that was
17 drafted by opposing counsel. So, the argument before Your
18 Honor is that second order is a nullity because the -- there
19 was more than 10 days that had gone past the initial order and
20 ---

21 THE COURT: What did the second order address?

22 MS. GANGI: Your Honor, the first order is just a Form
23 IV.

24 THE COURT: Right.

25 MS. GANGI: And the second order was the order that you

1 wanted drafted in response to the motion hearing. So, the
2 first order is just a Form IV and your law clerk directed that
3 we ---

4 THE COURT: And I mean, it's clear that the written order
5 takes precedent over the Form IV.

6 MS. GANGI: Correct.

7 THE COURT: Regardless of when it may be signed.

8 MR. STANLEY: Well, I just think the case law states that
9 after 10 days the Court no longer has jurisdiction for any
10 post-trial motions or orders.

11 THE COURT: Okay.

12 MR. STANLEY: And so, therefore, that November 15th is a
13 nullity, so we would revert back to ---

14 THE COURT: Well, what difference does it make if the
15 Form IV dismissed the order, I mean, dismissed the case? It
16 did the same thing.

17 MR. STANLEY: Well, here is -- this is the issue, Your
18 Honor, you're exactly right. So, it dismissed the case.
19 What's the difference? Well, the Form IV dismissed the case,
20 we believe, without prejudice, which would allow the Williams'
21 to bring another lawsuit. The November 15th order dismissed
22 the case with prejudice.

23 THE COURT: Okay.

24 MR. LEADBITTER: Your Honor, I'm with ACCC, I'm Doug
25 Leadbitter. You know, first of all, in the -- at the hearing

1 that we had before, you instructed us to draft an order. You
2 found for us to draft ---

3 THE COURT: And I always give 15 days, two weeks,
4 whatever the attorneys need.

5 MR. LEADBITTER: Exactly, and we clarified that with your
6 law clerk in an email exchange, I did, to make sure that that
7 was what we were supposed to do because that's what I
8 remembered hearing Your Honor order. Linda remembered the
9 same thing in court. We did that, we submitted it. And then
10 all of a sudden there's this question about, well, the Form IV
11 didn't reserve jurisdiction. Your Honor, I -- in court, you
12 instructed us to ---

13 THE COURT: Well, maybe I'm wrong, but I -- I think that
14 the order is good. It is the final signed order. And I
15 believe that it is my order, and whatever it says is how the
16 case will be resolved.

17 MR. STANLEY: And it's the November 15th order, Your
18 Honor?

19 THE COURT: Right, uh-huh, (affirmative response).

20 MR. STANLEY: And that says without prejudice. Now, we
21 did receive an email ---

22 THE COURT: I thought it says with prejudice ---

23 MR. STANLEY: I'm sorry.

24 MS. GANGI: With prejudice.

25 MR. STANLEY: I'm sorry, with prejudice.

1 MS. GANGI: Your Honor, I think the point that's not been
2 made ---

3 MR. STANLEY: Can I just finish, Your Honor?

4 THE COURT: Wait a minute. Okay.

5 MS. GANGI: I'm sorry.

6 MR. STANLEY: It stated that it was with prejudice.

7 Subsequent to that, we sent email to Your Honor, your --
8 somebody from your office, I don't remember if it was your law
9 clerk or who came back and said, okay, draft it to be without
10 prejudice. And so, then my comment was that's fine, that's
11 what we wanted was without prejudice. However, there were
12 also findings of fact and conclusions of law with that order.
13 And I said, we just can't have that in this case. So, at that
14 point, it just kind of stopped.

15 THE COURT: Well, the order that I signed is the order
16 that I intended. I remember the case quite well because it is
17 so unusual. Let me just ask you something, Mr. Stanley.

18 MR. STANLEY: Yes, sir.

19 THE COURT: Even if it were without prejudice and even if
20 you brought an action, a DJ directly against State Farm, how
21 in the world do you think that there's any possibility that
22 you could prevail when A-triple-C stands up and said we have
23 coverage and we have tendered our limits. How in the world
24 can you overcome that?

25 MR. STANLEY: Well, Your Honor, there are numerous

1 reasons and those are outlined in the memos that we presented
2 to the Court.

3 THE COURT: Okay. All right.

4 MR. STANLEY: Let me just say, Your Honor, that first of
5 all they can voluntarily pay anything they want to, I mean, at
6 any time. But, when it affects a third party like the
7 Williams', it becomes -- it becomes, you know, essential that
8 that is to determine that issue of insurance or no insurance.

9 THE COURT: How do you get by the standing issue to
10 challenge the position that A-triple-C takes relevant to its
11 insured?

12 MR. STANLEY: Well, Your Honor, it -- that's a great
13 question. That's because even though there is a contractual
14 relationship between A-triple-C and the at-fault driver, it
15 effects a third party. That insurance ---

16 THE COURT: But you're certainly not even by any stretch
17 a third-party beneficiary under the A-triple-C policy, are
18 you?

19 MR. STANLEY: Well, this is outlined in our expert's
20 affidavit, Mr. Finkel, which has again been filed with the
21 Court. It says a contract between two persons for the benefit
22 of a third, even though such third party may not be named
23 therein can be enforced by a third party. And the case that
24 is referenced is *Pharr v. Canal* and *Wise v. Picow*. You know,
25 our expert -- and they have not -- they have not produced an

1 expert in this case, but our expert Gerald Finkel, who has
2 been this for over 40 years, determined that we could -- we do
3 have an interest in this lawsuit. We do have an interest in
4 whether it's insurance or no insurance because it impacts --
5 obviously the coverage is very unusual but it impacts the
6 coverage for our client.

7 THE COURT: Uh-huh, (affirmative response).

8 MR. STANLEY: Your Honor, if I could -- it sounds like
9 you've made a decision on this, but we do have a ---

10 THE COURT: There's just judiciable issue here. I mean,
11 ---

12 MR. STANLEY: Well, there is ---

13 THE COURT: I mean, they have folded their tent and said
14 we have coverage.

15 MR. STANLEY: Yes, but again, it might not be the right
16 decision, the fact of whether they have -- there are numerous
17 reasons where there is -- we would contend that there is no
18 insurance. And again, we have an expert that's been doing
19 this for 40 years that would state because their agent was not
20 appointed by them at the time that this happened, their agent
21 was not licensed. There are numerous other reasons that we've
22 outlined in the affidavit, in our memorandums, where there is
23 no insurance. Even their own agent, who was deposed, Ms.
24 Renee Harliss (spelled phonetically), she stated that there
25 was no coverage during that time period when our client was

1 involved in the accident. That's their own agent said that,
2 looking at the documents.

3 THE COURT: Okay.

4 MR. STANLEY: So, Your Honor, if I could just ---

5 THE COURT: Yeah.

6 MR. STANLEY: I would submit a brief; it's already been
7 filed.

8 THE COURT: Well, I have Mr. Finkel's affidavit right
9 here. I've seen it. Uh-huh, (affirmative response).

10 MR. STANLEY: Mr. Finkel's affidavit. Also, for the
11 Court, we'd like to hand up to the Court the deposition of Ms.
12 Carol Renee Harliss.

13 RULING OF THE COURT:

14 THE COURT: I understand that -- I've already seen that
15 and that as something we addressed to begin with, but again, I
16 think that my ruling was appropriate and I would deny the
17 motion for reconsideration. Okay?

18 MS. GANGI: Thank you, Your Honor.

19 MR. LEADBITTER: Thank you.

20 THE COURT: Thank you.

21 MR. STANLEY: Your Honor, there were -- if you're denying
22 the first motion for reconsideration, which was for the
23 November 15th order, there are also three other ones that were
24 filed as a result of the November 1st order.

25 THE COURT: Three motions for reconsideration?

1 MR. STANLEY: Yes, sir.

2 THE COURT: On one order by the same party?

3 MR. STANLEY: Well, there were three motions. There was
4 a motion to dismiss.

5 THE COURT: Okay.

6 MR. STANLEY: And so we made a motion for reconsideration
7 for the motion to dismiss that you granted. We also made a
8 motion for reconsideration for the motion to compel
9 arbitration, and also the motion to amend. And, you know,
10 those are before Your Honor, also.

11 THE COURT: All right. Well, I, again for the same
12 reasons, believe that I have made the right call in this. I
13 think it's clear that it should be dismissed. There's just
14 nothing to be litigated here as, from my perspective. And I
15 would again deny those motions. Okay?

16 MR. STANLEY: Okay.

17 MS. GANGI: Thank you, Your Honor.

18 MR. LEADBITTER: Thank you, Your Honor.

19 THE COURT: Ms. Gangi, an order, proposed order?

20 MS. GANGI: I'll prepare it.

21 THE COURT: Thank you.

22 MS. GANGI: Thank you, Your Honor.

23 (ADJOURNED - 10:00 A.M.)

24

25

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of ACCC Insurance Company v. Patricia Williams, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on January 8, 2018.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Kay H. Richardson
Official Court Reporter

May 9, 2018.

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(1948-2016)
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(INACTIVE)
RANDOLPH MURDAUGH, III
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March 1, 2018

The Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: ACCC Insurance Company vs. Patricia Williams, et al
C/A No.: 2016-CP-26-06091
New Appeal from Horry County

Dear Ms. Kitchings:

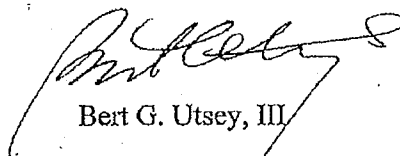
Enclosed please find original and a copy of the Notice of Appeal on behalf of Patricia Williams and Ronald Williams, together with a Certificate of Service by Mail, in the above-referenced matter. Please file the originals, date stamp the copies and return same to me in the provided self-addressed stamped envelope for my file.

I am also enclosing a copy of Judge Hyman's order and my firm's check in payment of the applicable \$100.00 filing fee.

By copy of this transmittal to counsel of record, I am serving same upon the Respondents herein.

With kind regards, I am

Sincerely,



Bert G. Utsey, III

BGU/hd
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March 1, 2018

Page Two

cc: J. Timothy Wooten, Esquire
Jamie Ackerman, Esquire
Linda Weeks Gangi, Esquire
Stacy L. Stanley, Esquire

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J. ROBERT PETERS, JR.
(1927-2008)
J. PAUL DETRICK
(1948-2016)
CLYDE A. ELTZROTH, JR.
(INACTIVE)
RANDOLPH MURDAUGH, III
(OF COUNSEL)

March 2, 2018

The Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: ACCC Insurance Company vs. Patricia Williams, et al
C/A No.: 2016-CP-26-06091, Appeal from Horry County

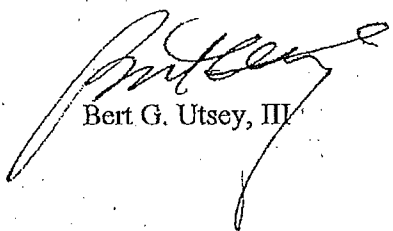
Dear Ms. Kitchings:

Enclosed please find original and a copy of an Amended Notice of Appeal and Certificate of Service reflecting the proper mailing addresses of other counsel therein. Please file the originals, date stamp the copies and return same to me in the provided self-addressed stamped envelope for my file.

By copy of this transmittal, I am serving same upon counsel of record.

With kind regards, I am

Sincerely,


Bert G. Utsey, III

BGU/hd
Enclosures

cc: J. Timothy Wooten, Esquire
Douglas E. Leadbitter, Esquire
Linda Weeks Gangi, Esquire
Stacy L. Stanley, Esquire

OTHER OFFICES: 101 MULBERRY STREET EAST, P.O. Box 457, HAMPTON, SOUTH CAROLINA 29924
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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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March 08, 2018

Mr. Stacy L. Stanley, Esquire
3303 Highway 9 East
Little River SC 29566-7825

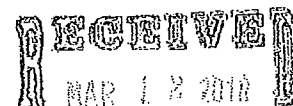
Re: ACCC Insurance Company v. Patricia Williams
Appellate Case No. 2018-000381

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.



BY: 00205

This is to advise that the title in the above matter has been changed to read as follows:

ACCC Insurance Company, Respondent,

v.

Patricia Williams, Ronald Williams, Patrick Benjamin Myers, Brittany Stanley a/k/a Brittany Standley, and State Farm Mutual Automobile Insurance Company, Defendants,

Of whom Patricia Williams and Ronald Williams are the Appellants.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Clara Allen, Deputy

CLERK

cc: Bert Glenn Utsey, III, Esquire
John Timothy Wooten, Esquire
Linda Weeks Gangi, Esquire

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March 20, 2018

The Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

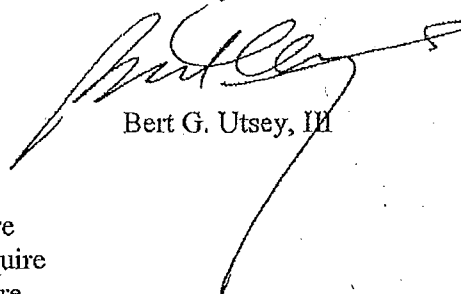
RE: ACCC Insurance Company vs. Patricia Williams
Appellate Case No. 2018-000381

Dear Ms. Kitchings:

This is to acknowledge receipt of the Transcript of Record for the November 1, 2017 hearing before the Honorable Larry Hyman from Sallie Beth Todd, Court Reporter, on March 12, 2018.

With kind regards, I am

Sincerely,



Bert G. Utsey, III

BGU/hd

cc: J. Timothy Wooten, Esquire
Douglas B. Leadbitter, Esquire
Linda Weeks Gangi, Esquire
Stacy L. Stanley, Esquire

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March 20, 2018

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

RE: *ACCC Insurance Company vs. Patricia Williams, Ronald Williams, Patrick Benjamin Myers, Brittany Stanley a/k/a Brittany Standley, and State Farm Mutual Automobile Insurance Company*
Civil Action No.: 2016-CP-26-06091
Date of Loss: March 18, 2016
Claim No.: 40-8G40-517
SF Insured: Patricia & Ronald Williams

Dear Ms. Kitchings:

I represent State Farm Mutual Automobile Insurance Company. I filed a joint Motion to Dismiss with ACCC's attorney, Tim Wooten. The Order that is being appealed is from the granting of that motion. Thus, I believe that the appropriate caption should reflect that State Farm is also a Respondent in the appeal.

If you have any questions with regard to this, please do not hesitate to contact me.

With kindest personal regards, I remain

Yours very truly;

THOMPSON & HENRY, P.A.

s/ Linda Gangi
Linda Weeks Gangi

LWG/ns

cc: J. Timothy Wooten, Esquire
Stacy L. Stanley, Esquire
Bert G. Utsey, III, Esquire
SF 5612.24



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BY:

The South Carolina Court of Appeals

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April 03, 2018

Mr. Bert Glenn Utsey, III, Esquire
PO Box 30968
Charleston SC 29417

Re: ACCC Insurance Company v. Patricia Williams
Appellate Case No. 2018-000381

Dear Counsel:

The Court received correspondence from Ms. Linda Gangi on March 26, 2018, regarding State Farm Mutual Automobile Insurance Company's position in this appeal. The Court requests that you respond to this correspondence as to whether State Farm should be named a respondent in this appeal, within ten (10) days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Stacy L. Stanley, Esquire
John Timothy Wooten, Esquire
Linda Weeks Gangi, Esquire

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(OF COUNSEL)

April 9, 2018

VIA FACSMILE AND U.S. MAIL

V. Claire Allen, Esquire
Deputy Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: ACCC Insurance Company vs. Patricia Williams, *et al.*
Appellate Case No. 2018-000381

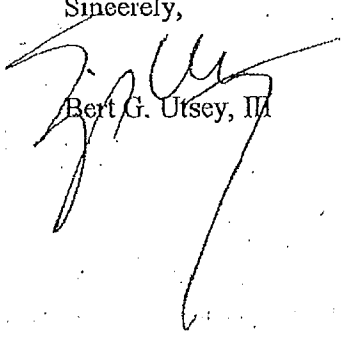
Dear Claire:

I am in receipt of Linda Gangi's letter to the Court of March 20, 2018 and your letter to me of April 3, 2018 regarding the above appeal. Mrs. Gangi is correct that State Farm should also be listed as a Respondent. I apologize for my previous omission.

We are preparing to file the Appellants' Initial Brief this week. I plan to revise the caption as per the attached page; however, if you would prefer for it to be different, please let me know.

Thank you for your kind attention to this matter.

Sincerely,


Bert G. Utsey, III

BGU/hd
Enclosure

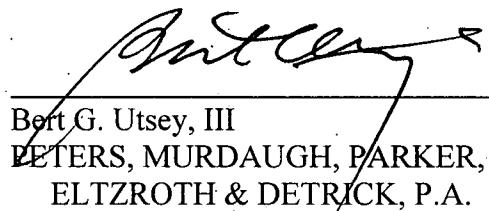
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Certificate of Counsel

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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Attorney for Appellant

July 31, 2018

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SC Court of Appeals