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SEP 28 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIFIED QUESTIONS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

J. Michelle Childs, United States District Judge

Appellate Case No. 2016-001351

Sentry Select Insurance Company,

Plaintiff,

v.

Maybank Law Firm, LLC and
Roy P. Maybank,

Defendants.

RESPONSE TO SENTRY'S SUPPLEMENTAL BRIEF

DAVID W. OVERSTREET
MICHAEL B. McCALL
STEVEN R. KROPSKI
Earhart Overstreet LLC
P.O. Box 22528
Charleston, SC 29413
(843) 972-9404

Attorneys for Defendants

Maybank Defendants respectfully submit this response to Sentry's supplemental brief. This marks the twelfth brief submitted by the parties since the original motion to dismiss was filed in federal court almost three years ago. The questions before the Court have been briefed extensively, but the central issue remains unchanged: whether this Court should place the economic interests of an insurer ahead of the sanctity of the attorney-client relationship under the guise of solving an accountability problem that does not exist. Never before has this Court expanded a professional's liability to a third party because of a perceived lack of incentive to pursue the claim by the original claimholder.

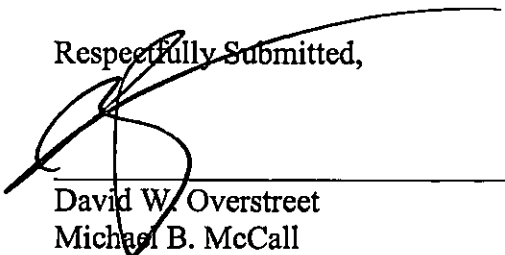
Sentry's reference to an insurer's lien on the proceeds of a malpractice claim only reinforces that an insurer's economic interests are protected under existing law in a manner that does not impair the already delicate relationship between insurer, insured and defense counsel. The existence of an insurer's lien no more discourages a client from suing defense counsel than it does a patient from suing a doctor for medical malpractice. Just as a health insurer is not permitted to pursue a patient's medical malpractice claim against its insured's physician, a liability insurer should not be permitted to sue its insured's lawyer for malpractice.

Recognizing an insurer's claim against defense counsel – whether directly as a third-party beneficiary or indirectly as an assignee or subrogee – would unquestionably dilute the cornerstones of the attorney-client relationship between insurance defense attorneys and their clients by dividing loyalty, creating and exacerbating conflicts, and forcing a unilateral waiver of privilege and confidentiality. Answering both certified questions in the negative, together with an affirmation of the insurer's contractual or equitable lien on the proceeds of a malpractice action, would leave the delicate relationship intact and protect the insurer's financial stake in the outcome of the malpractice claim.

CONCLUSION

For the reasons set forth herein and in Defendants' prior submissions, the Court should issue an amended opinion answering both certified questions in the negative.

Respectfully Submitted,



David W. Overstreet
Michael B. McCall
Steven R. Kropki
EARHART OVERSTREET LLC
P.O. Box 22528
Charleston, SC 29413
(843) 972-9404

Attorneys for Defendants

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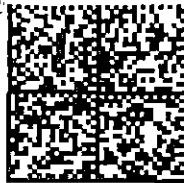
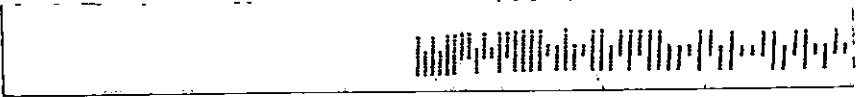
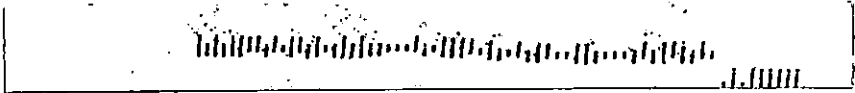
The undersigned hereby certifies that a copy of the enclosed *Response to Plaintiff's Supplemental Brief* was served upon Plaintiff this day by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

Daryl Hawkins, Esquire
The Law Offices of Daryl Hawkins
1331 Elmwood Avenue, Suite 305
Columbia, South Carolina 29201-2150

September 24, 2018



Michael B. McCall



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Earhart Overstreet

ATTORNEYS AT LAW

PO Box 22528

Charleston, SC 29413

Daniel E. Shearouse, Clerk of Court
Supreme Court of South Carolina
Supreme Court Building
P.O. Box 11330
Columbia, SC 29211