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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

Appeal from Richland County
Court of Common Pleas
The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Circuit Court Case No. 2014-CP-40-0313

Opinion No. 5562 (S.C. Ct. App. Filed May 23, 2018)
Court of Appeals Case No. 2016-000192

Supreme Court Case No. 2018-002047

Raymond G. Farmer, as Director of the South Carolina
Department of Insurance, Petitioner,

v.

CAGC Insurance Company, in Liquidation, Respondent.

South Carolina Property and Casualty Insurance
Guaranty Association, Appellant,

v.

CAGC Insurance Company, in Liquidation; Raymond G. Farmer,
in his capacity as Ancillary Receiver of CAGC Insurance
Company, in Liquidation; and CompTrustAGC of South Carolina
a/k/a CompTrustAGC of South Carolina, Inc., Respondents.

Of whom CompTrustAGC of South Carolina a/k/a
CompTrustAGC of South Carolina, Inc. is Petitioner,

And CAGC Insurance Company, in Liquidation; Raymond G.
Farmer, in his capacity as Ancillary Receiver of CAGC Insurance
Company, in Liquidation; and South Carolina Property and
Casualty Insurance Guaranty Association are Respondents.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

**OF RESPONDENT RAYMOND G. FARMER, IN HIS CAPACITY AS
ANCILLARY RECEIVER OF CAGC INSURANCE COMPANY, IN
LIQUIDATION**

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QUESTIONS PRESENTED AND RESPONSES

1. Did the Court of Appeals err in reversing the circuit court on the basis of its finding that the circuit court did not have the “discretion to answer [a] question of first impression with no factual record while ruling upon a Rule 21 [, SCRC] motion”?
 - (a) Is this an improper basis for reversal of the circuit court where it does not correspond to any issue/argument that was properly before the Court of Appeals for decision on appeal?
 - (b) Is this finding by the Court of Appeals correct?
2. Did the Court of Appeals err in reversing the circuit court on the basis of its finding that the Association’s addition of CompTrust as a party to its complaint for declaratory relief “meets the ‘right to relief’ necessary for proper joinder under Rule 20, SCRC . . . [and that] [d]ismissing CompTrust at this early stage of the lawsuit jeopardizes the judicial economy Rule 21 and the Declaratory Judgment Act strive to foster”?
 - (a) Is this an improper basis for reversal of the circuit court where it does not correspond to any Issue/argument that was properly before the Court of Appeals for decision on appeal?
 - (b) Is this finding by the Court of Appeals correct?
3. Is the Court of Appeals' statute of limitations analysis incorrect?
 - (a) Did the circuit court, as the Court of Appeals found, “mischaracterize the Association’s declaratory judgment claim”?
 - (b) Even if it were true that the relief sought in the Association’s complaint calls for investigation into the LPT Agreement, which it does not, did the Court of Appeals properly account for the “exclusive jurisdiction” of the WCC and the fact that the WCC approved the LPT Agreement?
4. Did the Court of Appeals err in relying on the Association’s statutory authority under S.C. Code Ann. § 38-31-60(d) and (l) to reverse the circuit court?
 - (a) Is this an improper basis for reversal of the circuit court where it does not correspond to any issue/argument that was properly before the Court of Appeals for decision on appeal?
 - (b) Even though, generally speaking, the Association is directed and authorized as stated in the referenced statutory provisions, are these provisions nonetheless irrelevant here, where the case actually pleaded by the Association simply does not implicate them?

5. Is it error for the Court of Appeals to reverse the circuit court by viewing the Association's complaint more broadly than even the Association itself asked the circuit court to view it?
6. Is it enough to reverse the circuit court that “the Association has alleged a real and substantial controversy concerning whether the Guaranty Act obligates it to pay the “Transferred Claims”?”
7. Did the Association present any proper argument to the Court of Appeals “concerning an employer’s residual liability under [S.C. Code Ann.] § 42-1-150.”?
8. Did the Court of Appeals overlook or misapprehend the effect of the law of the case doctrine on the circuit court’s unappealed ruling regarding denial of the Association's motion for reconsideration?
9. Did the Court of Appeals’ citation to *Jones v. State*, 382 S.C. 589, 677 S.E.2d 20 (2009), *abrogated on other grounds by Smalls v. State*, Op. No. 27764 (S.C. filed Feb. 7, 2018) (Shearouse Adv. Sh. No. 6 at 43), actually dispose of CompTrust's two-issue-rule argument?
10. Did the Court of Appeals err in finding that the Association could not have appealed the circuit court's ruling that the Transferred Claims were “covered claims” the Association was responsible for paying?

The Respondent Raymond G. Farmer is the Director of the South Carolina Department of Insurance in his capacity as the Ancillary Receiver of CAGC, an insurer in liquidation proceedings in North Carolina. S.C. Code Ann. § 38-27-940 (2015) provides that if a domiciliary liquidator has been appointed for an insurer not domiciled in this State, the Director of the South Carolina Department of insurance or his designee may file a petition with the Court of Common Pleas (in Richland County) requesting appointment as ancillary receiver in this State, provided he finds that there are sufficient assets of the insurer located in this State to justify the appointment of an ancillary receiver or if the protection of creditors or policyholders in this State so requires.

The Ancillary Receiver did not present arguments in the proceedings in the Court of Appeals and takes no position regarding the decision of the Court of Appeals filed on

May 23, 2018. Accordingly, this Respondent takes no position as to the arguments presented in the Petition for a Writ of Certiorari.

CONCLUSION

Respondent takes no position as to the questions presented.



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Columbia, South Carolina
January 9, 2019

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Casualty Insurance Guaranty Association are Respondents.

PROOF OF SERVICE

I, the undersigned Administrative Assistant for the South Carolina Department of Insurance, on behalf of counsel to the Director in his capacity as Ancillary Receiver, do hereby certify that I have served all counsel in this matter with a copy of the Return to Petition for a Writ of Certiorari of Respondent Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation by mailing a copy of same by United States Mail, postage prepaid, to the following address(es):

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January 9, 2019