STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

Appeal from Florence County
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Case No. 2017-CP-21-341
Appeal No. 2018-001675

Allstate Property and Casualty Insurance Company..... Respondent,

v.

Natoshia Hamilton and Kenneth Collins Coogler, Defendants,
of Whom Natoshia Hamilton is the Appellant.....Appellant.

RECORD ON APPEAL

Eric M. Poulin
S.C. Bar No.: 100209
Roy T. Willey, IV
S.C. Bar No.: 101010
J. Camden Hodge
S.C. Bar No.: 100638
Anastopoulo Law Firm, LLC
32 Ann Street
Charleston, SC 29403
(843) 614-8888

Attorneys for Appellant

A. Johnston Cox
S.C. Bar No.: 09081
Janice Holmes
S.C. Bar No.: 75038
Gallivan, White & Boyd, P.A.
PO Box 7368
Columbia, SC 29202
(803) 779-1833

Attorneys for Respondent

ALLSTATE FIRE AND CASUALTY COMPANY V. NATOSHIA HAMILTON

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FILED

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE 2018 AUG -7 PM 12: 39 WELFTH JUDICIAL CIRCUIT

BORIS POULOS O'HARA
C.C.P. & G.S.
FLORENCE COUNTY, SC

Allstate Property and Casualty Insurance Company,

C/A#: 2017-CP-21-341

Plaintiff,

vs.

Natoshia Hamilton and Kenneth Collins Coogler,.

Defendants.

ORDER

This matter came before the Court on the parties' cross motions for summary judgment. A hearing was held before me on June 1, 2018, in the Florence County Court of Common Pleas. Appearing for Plaintiff was A. Johnston Cox of the law firm Gallivan, White & Boyd P.A. and Camden Hodge of the Anastopoulo Law Firm appeared on behalf of Natoshia Hamilton ("Hamilton"). Based upon the arguments of counsel, memoranda of law, exhibits, applicable law, and the record in this case, Plaintiff's Motion for Summary Judgment is granted and Hamilton's Motion is denied. Therefore, judgment should entered as a matter of law in favor of Plaintiff on its Complaint against Defendants.

FINDINGS OF FACT

Based on the competent evidence submitted in this case, the Court makes the following findings of fact:

Allstate Property and Casualty Insurance Company ("Allstate") received a letter dated February 5, 2015 from the Anastopoulo Law Firm, LLP ("Law Firm") stating that the Law Firm would be representing Hamilton "for the bodily injuries she suffered during a motor vehicle accident." On January 21, 2016, Allstate received a letter from the Law Firm regarding

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FLORENCE COUNTY, S.C.

radiology bills that were to be added to the bills included with the demand. However, because Allstate had not received the demand referenced in that letter, Allstate called the Law Firm and was told that the demand package had been sent. During the afternoon of January 21, 2016, Allstate received the time-sensitive demand that was dated January 15, 2016.

Per the terms of the demand, the bodily injury liability limits of the policy covering the vehicle Coogler was driving were to be delivered to the Anastopoulo firm by "5:00 pm EDT on January 26, 2016." Hamilton knew that Coogler's policy had $25,000.00 limits for bodily injury. The demand stated that "[s]ettlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company" and be made payable to Hamilton and the Law Firm.

In addition, the letter also demanded that Coogler "provide sworn and notarized statements that there is no other insurance coverage available to her [sic] that could pertain to this loss." Further, the demand requested that a proposed release be provided. The letter specifically directed that Allstate "[i]nstead of acting in bad faith and trying to trick us, please just send a reasonable Release that does not include indemnification or the release of property damage claims." In addition, the letter stated "[p]art of the performance required to accept this offer is for you to deliver a proposed Release with the settlement check" and "the proposed Release that is delivered with the settlement check must comply with the terms of this offer."

On January 26, 2016, the settlement check in the amount of $25,000.00, covenant not to execute, and affidavits of the named insured, Kathryn Broach, and her husband Kenneth Collins Coogler, were hand delivered to the Law Firm (and signed for by attorney Evan Williams) to satisfy the requirements of the time-sensitive demand.

Despite Allstate's acceptance of the time-sensitive demand by performance, Hamilton rejected Allstate's acceptance with no explanation. In her deposition, Hamilton explained that she rejected Allstate's acceptance of the demand because the check was not a certified check. She explained that the check "didn't meet our demand."[1] However, Hamilton conceded that the amount she demand was $25,000 and that a certified check in the amount of $25,000 and the check issued by Allstate in the amount of $25,000 were for the identical amount of money. Hamilton also admitted that she did not have any concerns that a check from Allstate would bounce. Hamilton also admitted that the check delivered by Allstate was negotiable.

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004) *and* Rule 56, SCRCP). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. *Rife*, 363 S.C. at 215, 609 S.E.2d at 568 (citing *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 443 (2003)). "Further, summary judgment depends upon the existence of plain, undisputed facts on which reasonable minds cannot differ." *Allen v. Long Mfg. NC, Inc.*, 332 S.C.

[1] Since sending the letter rejecting Allstate's acceptance of her demand, which provided no explanation regarding the rejection, per Hamilton's recently filed Motion for Summary Judgment and Memorandum of Law in Support ("Hamilton's Motion") and her deposition testimony, she has since clarified that she rejected Allstate's acceptance of her demand because Allstate allegedly "failed to comply with the clear, explicit requirements to tender a cashier's or certified check." Further, Hamilton testified that she had no issue with the proposed release that was submitted or the affidavits. No other reason for rejecting the settlement was given at the hearing, and the Court finds that this is the only issue of Allstate's acceptance of her demand about which Hamilton takes issue.

422, 426, 505 S.E.2d 354, 356 (Ct. App. 1998) (citing *Priest v. Brown*, 302 S.C. 405, 396 S.E.2d 638 (Ct. App. 1990)).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (2003). To defeat a properly supported motion for summary judgment, the party opposing the motion "must come forward with specific facts showing there is a genuine issue for trial." *Regions Bank*, 354 S.C. at 660, 528 S.E.2d at 438. *See, e.g., Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 216-217, 407 S.E.2d 637, 638 (1991) (determining grant of summary judgment was proper where "there was no evidence from which a jury could find in [the opposing party's] favor").

In viewing the record evidence in this case in the light most favorable to Hamilton, the Court finds that Hamilton has failed to show that genuine issues of material fact exist regarding whether Allstate complied with the material terms of the demand. Based on its review of the evidence in this case and in accordance with South Carolina law, the Court finds that Allstate complied with all material terms of the demand, and the Court further finds that Allstate's performance of the material terms of the demand constitute acceptance and the settlement was consummated under South Carolina law. Therefore, the Court enters judgment in favor of Allstate as a matter of law.

CONCLUSIONS OF LAW

The Court finds as a matter of law that Allstate's acceptance and performance of the material terms of the demand constitute a valid acceptance. The Court notes that Hamilton's only argument in support of her Motion seeking entry of summary judgment in her favor is that Allstate

allegedly "failed to comply with the clear, explicit requirements to tender a cashier's or certified check." Further, the Court notes that during her deposition, Hamilton testified her only issue with Allstate's acceptance of the demand was the form of the check. The Court also notes that Hamilton contends Allstate's acceptance of the demand "was not a mirror image or in compliance with the terms of [Hamilton]'s offer" and that "under the long-standing dictates of contract law" and that Allstate's acceptance "was nothing more than a counter proposal." The Court finds that South Carolina law does not support Hamilton's contention, and rather, the principles of South Carolina contract law mandate entry of summary judgment in favor of Allstate.

Under South Carolina law, "'[i]n construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007). Further, under South Carolina law, for there to be a valid contract, there must be an offer, an acceptance, and valuable consideration. *See Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct. App. 2011) (determining a valid contract existed because there was evidence of a meeting of the minds as to the terms and conditions of the agreement) (citing *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009) ("The necessary elements for a contract are an offer, acceptance, and valuable consideration.")). In addition, under South Carolina law, a valid and enforceable contract is created when there is "a meeting of the minds between the parties with regard to all ***essential*** and ***material*** terms of the agreement." *Nutt Corp.*, 396 S.C. at 328, 721 S.E.2d at 450 (citing *Player v. Chandler*, 299 S.C. 101, 106, 382 S.E.2d 891, 893 (1989)) (emphasis added). *See also Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014) (explaining that "[a] valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement.") (emphasis in original).

Here, the Court finds that there is no legitimate dispute that Hamilton's demand sought the full, $25,000 bodily injury limits to resolve Hamilton's claim for bodily injury as to Coogler. *See Ecclesiastes Prod. Ministries*, 374 S.C. at 498, 649 S.E.2d at 502 ("In ascertaining intent, the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered."). The Court further finds that there is no question that Allstate's acceptance of the settlement demand is valid and enforceable. Based on the record evidence, there was an offer from Hamilton that was accepted by Allstate, which provided valuable consideration to Hamilton. The Court further finds that there is no question that Allstate met the essential and material terms of Hamilton's demand – the payment of the entire $25,000 policy limits for Hamilton's alleged bodily injuries. Therefore, the Court finds that Allstate is entitled to entry of summary judgment in its favor.

The Court further notes that Hamilton's contention seems to suggest that because Allstate's acceptance of the settlement demand was not a "mirror image" in that the type of check issued was not a cashier's check or certified check, there was not an acceptance of Hamilton's demand. South Carolina law does not support Hamilton's contention. Rather, contrary to Hamilton's assertion, the Court finds that the type of check is not a material term of the settlement demand, and further, it was a term that was impossible for Allstate to meet.

The demand requires Allstate to issue a cashier's or certified check. Hamilton conceded that the type of check would not change the amount of money – the amount would still be $25,000. She further testified that they "had no problem with that [the check] would bounce or anything." It should go without saying that insurance companies such as Allstate do not issue cashier's checks or

certified checks. Allstate is not a bank.[2] Moreover, Hamilton has not demonstrated that issuing such checks in this manner is an accepted practice for insurance companies. Notwithstanding this fact, at least one South Carolina court has questioned the continued vitality of the so-called "mirror-image" rule and has noted that it is outdated in that it was "well suited to simple, one time transactions, in which the parties contract face to face" and that "it fails to accommodate the realities of much modern commercial practice." *Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus.*, 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991).

In addition, Hamilton has pointed to no South Carolina case stating that such a rule would apply to determine that Allstate's performance of the essential and material terms of the time-sensitive demand constitutes a counteroffer. Because there is no material difference between how the manual check issued by Allstate in this case and a certified or cashier's check issued by a bank would be treated under South Carolina law, the Court finds that Allstate's issuance of the manual check (the kind of check that it can actually issue), does not constitute a counteroffer.[3]

The South Carolina Supreme Court has already determined that payment in the form of a cashier's or certified check is not an essential or material term of a settlement agreement. South Carolina Rule of Professional Conduct 1.15 states as such. Specifically, the rule provides in pertinent part:

---

[2] In Hamilton's Motion, she cites to a decision by the Court of Appeals of South Carolina, *Fender & Latham, Inc. v. First Union National Bank*, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994), seemingly in support of her contention that Allstate's performance of the demand was not sufficient. The Court notes that in *Fender*, the bank's commitment letter to the borrower stated that to accept the offer the borrower needed to make an escrow deposit of $125,000, obtain "pole line rights," and accept the offer in writing. Fender did not comply with any of these clearly material terms by the date required in the offer. Therefore, the Court finds that *Fender* has no bearing on the case before the Court.

[3] Further, there is no evidence in the record before the court of an actual material difference between the check issued by Allstate a certified or cashier's check.

> (f)(1) A lawyer shall not disburse funds from an account containing the funds of more than one client or third person ("trust account") unless the funds to be disbursed have been deposited in the account and are collected funds.
>
> (2) Notwithstanding Subsection (f)(1) above, a lawyer may disburse funds from a trust account at the lawyer's risk in reliance on the following deposits when the deposit is made:
>
> ****
>
> (iv) by a certified check, cashier's check, or other check drawn by a depository institution or an insurance company, provided the insurance company check does not exceed $50,000.

Rules of Professional Conduct: Rule 1.15, RPC, Rule 407, SCACR. Therefore, per the mandate of the South Carolina Supreme Court, there is no material difference between a check issued by an insurance company, such as Allstate, and a certified check, cashier's check, or other check drawn by a depository institution.

Because Allstate complied with the terms of the demand, Hamilton was obligated to sign the Covenant Not to Execute and resolve her claims for bodily injury.

In addition, the Court finds that Allstate's acceptance of the settlement demand constitutes an accord and satisfaction. Under South Carolina law, "[t]he essential elements of an accord and satisfaction are an agreement to settle a dispute and consideration which supports the agreement." *Wilson v. Builders Transp., Inc.*, 330 S.C. 287, 297, 498 S.E.2d 674, 680 (Ct. App. 1998). The Court finds: 1) that there was an offer to settle Hamilton's claim, 2) Allstate accepted the demand, and 3) Allstate provided the demanded consideration to support the agreement to settle Hamilton's claim. The Court finds that this is a textbook example of an accord and satisfaction.

In this case, the Court finds that Allstate complied with the material terms of the demand. As stated above, the manual check issued by Allstate is treated the same as a certified check or a cashier's check under South Carolina law. Therefore, the Court finds that Allstate's manual check

was sufficient to meet the terms of the agreement and the payment thereof constitutes an accord and satisfaction.

Finally, the Court finds based on its review of the evidence in this case, that demanding a certified or cashier's check and rejecting the check issued by Allstate without attempting to negotiate it was done for the purpose of attempting to manufacture a *Tyger River* bad faith claim. When asked by the Court why such demand letters are sent and valid settlement checks rejected, counsel for Hamilton stated it was for the purpose of "getting our clients paid quicker." The Court rejects this explanation. Specifically, the Court finds that if the true reason for requesting payment of the policy proceeds in this manner was to get the client paid quicker, counsel would have deposited the check that was hand delivered by Allstate to Hamilton's counsel on January 26, 2016. Hamilton would have been paid within 2 weeks of the demand and over two years ago.[4]

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that Allstate's Motion for Summary Judgment is hereby GRANTED and Hamilton's Motion for Summary Judgment is hereby DENIED. Accordingly, the Court declares as follows:

a. Hamilton's demand that Allstate issue a certified or cashier's check in payment of the claim is not a material term of the settlement in light of Allstate's payment of the claim with a valid insurance check;

b. The acceptance of the settlement demand, as demonstrated by Allstate's performance thereunder, on behalf of its insureds, is valid and enforceable;

c. Allstate fulfilled its obligations under the policy when it settled Hamilton's claim for the bodily injury limits of the policy;

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[4] Furthermore, as discussed above, under Rule 1.15, the Law Firm can negotiate an insurance check just as quickly as a certified or cashier's check.

d. Because the settlement agreement is valid and enforceable, Allstate and any insured under the policy, including Kathryn Broach and Kenneth Collins Coogler, have no additional obligation to Hamilton with regard to the claim for bodily injury; and

e. Because the settlement agreement is valid and enforceable, Hamilton is directed to execute the Covenant Not to Execute provided by Allstate upon receipt of the $25,000.00 in resolution of her claims for bodily injury arising from the accident that occurred on January 31, 2015.[5]

AND IT IS SO ORDERED

The Honorable Judge Michael G. Nettles
Presiding Judge

Florence, South Carolina
~~June~~ August 6, 2018

FILED
2018 AUG -7 PM 12:39
PENNY POULOS O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

[5] Allstate shall issue a second check to Hamilton, as the original check most likely has expired due to the passage of time.

CERTIFIED: A TRUE COPY
Penny Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
12th JUDICIAL CIRCUIT

CASE NO: 2017-CP-21-0341

ALLSTATE PROPERTY AND CASULATY INSURANCE COMPANY,

Plaintiff,

v.

NATOSHIA HAMILTON and KENNETH COLLINS COOGLER,

Defendants

ORDER

FILED
2018 AUG 30 AM 11:44
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

This matter comes before the Court by way of Defendant's "Motion to Reconsider and/or Alter or Amend Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendant Hamilton's Motion for Summary Judgment."

This Court's Order Granting Summary Judgement and Denying Plaintiff's Motion for Summary Judgment was filed on August 7, 2018. Based upon careful reconsideration of all the evidence in this case, and upon full consideration of Defendant's motion and Memorandum of Law, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid the reconsideration of the original judgment. Therefore, this Court finds that the original Order Granting Summary Judgment shall stand as it was written.

AND IT IS SO ORDERED.

August 30, 2018
Florence, SC

Michael G. Nettles, Chief Administrative Judge
Twelfth Judicial Circuit

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-21-0341

Allstate Property and Casualty Insurance Company

PLAINTIFF(S)

Natoshia Hamilton, Kenneth Collins Coogler

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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.

FILED
2018 AUG 30 AM 11:43
CHRIS FOULOS O'HARA
CLERK OF COURT & CCOG
FLORENCE COUNTY, SC

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: See attached order

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2140 Judge Code	August 24, 2018 Date

For Clerk of Court Office Use Only

This judgment was entered on the 30 day of Aug., 2018 and a copy mailed first class or placed in the appropriate attorney's box on this 6 day of Sept, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

Janice Holmes / Alfred J. Cox
PO Box 7368
Columbia SC 29201
ATTORNEY(S) FOR THE PLAINTIFF(S)

Eric M. Poulin / Roy T. Willey IV, James C Hodge
32 Ann Street
Charleston SC 29403
ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara
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.

FILED
2018 AUG 30 AM 11:43
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Allstate Property and Casualty Insurance Company,

Plaintiff,

vs.

Natoshia Hamilton and Kenneth Collins Coogler,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A#: 2017-CP-21-341

CIVIL ACTION COVERSHEET

FILED
2017 FEB -6 PM 2:06
DORIS FOULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

Janice Holmes, Attorney
Gallivan, White & Boyd, P.A.
PO Box 7368
Columbia, SC 29202

SC Bar #: 75038
Telephone #: (803) 779-1833
Fax #: (803) 779-1767
E-mail: jholmes@gwblawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

***If Action is Judgment/Settlement do not complete*

☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☒ Other (199) Declaratory Judgment

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

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- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

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- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order
- ☐ Other (899) _____

Judgments/Settlements
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- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
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- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
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Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Submitting Party Signature: _____ **Date:** February 3, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Allstate Property and Casualty Insurance Company,

Plaintiff,

vs.

Natoshia Hamilton and Kenneth Collins Coogler,

Defendants.

IN THE COURT OF COMMON PLEAS

OF THE TWELFTH JUDICIAL CIRCUIT

C.A. No. 2017-CP-21- 341

SUMMONS

FILED
2017 FEB -6 PM 2:06
CHRIS PAULOS O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend within thirty (30) days from the date of service hereof and to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at their offices, 1201 Main Street, Suite 1200, Post Office Box 7368, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, upon you, exclusive of the day of such service; and if you fail to appear and defend and answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

SIGNATURE PAGE TO FOLLOW

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

GALLIVAN, WHITE & BOYD, P.A.

By: _____

John T. Lay, Jr., S.C. Bar No. 64526
A. Johnston Cox, S.C. Bar No. 09081
Janice Holmes, S.C. Bar 75038
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
Telephone: 803-779-1833
Facsimile: 803-779-1767
jlay@GWBlawfirm.com
jcox@GWBlawfirm.com
jholmes@GWBlawfirm.com

Attorneys for Allstate Property and Casualty Insurance Company

Columbia, South Carolina
February 3, 2017

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE Allstate Property and Casualty Insurance Company, Plaintiff, vs. Natoshia Hamilton and Kenneth Collins Coogler, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT Case No. 2016-CP-21-_____ **COMPLAINT FOR DECLARATORY JUDGMENT** **(Non-Jury)**

Plaintiff Allstate Property and Casualty Insurance Company ("Allstate"), by and through their undersigned counsel, complaining of the Defendants Natoshia Hamilton ("Hamilton") and Kenneth Collins Coogler, (collectively "Defendants"), respectfully alleges and states as follows:

BACKGROUND

1. Plaintiff Allstate is an insurance company organized and existing under the laws of the state of Illinois, with its principal place of business in the state of Illinois, and writes insurance policies in the state of South Carolina.

2. Defendant Coogler is an individual who is a citizen of the state of South Carolina and is a resident of Florence County, South Carolina.

3. Defendant Hamilton is an individual who is a citizen of the state of South Carolina and is a resident of Florence County, South Carolina.

4. Venue is appropriate in this Court because the loss and claims at issue in this case arise out of a motor vehicle accident that occurred in Florence County and involves the interpretation of a settlement agreement involving Allstate's insured, Coogler, in connection with that accident.

FACTUAL BACKGROUND

A. Motor Vehicle Accident

5. On January 31, 2015, Hamilton was operating her vehicle in Florence County, South Carolina.

6. Hamilton's vehicle was allegedly struck in the rear by the vehicle driven by Coogler. The vehicle Coogler was driving was owned by Kathryn Hope Price Broach ("Broach") and insured under a policy issued by Allstate.

7. As a result of the accident, Hamilton claimed that she suffered personal injuries and was transported to Carolina Hospital System, where she was treated for pain in her neck, back, arm, right side, and legs.

8. In addition, Hamilton received chiropractic treatment and physical therapy.

B. Settlement Demand and Acceptance

9. By letter dated February 5, 2015, Hamilton's counsel, Anastopoulo Law Firm, LLC ("Anastopoulo"), sent a letter of representation to Allstate stating that the firm was representing Hamilton in making a claim under the applicable policy and requested disclosure of the amount of the policy limits. A true and correct copy of the February 5, 2015 correspondence is attached as **Exhibit A**, and the contents of the letter are incorporated as if fully stated here.

10. On Friday, January 15, 2016, Anastopoulo, sent a lengthy letter to Allstate demanding that Allstate, on behalf of Coogler, pay the automobile liability policy limits to its client by "5:00 p.m. EDT on January 26, 2016." Hamilton's complete medical records and invoices were not included with the demand. A true and correct copy of the Friday, January 15, 2016 correspondence is attached as **Exhibit B**, and the contents of the letter are incorporated as if fully stated here.

11. The Friday, January 15, 2016 demand letter stated that "Kenneth Coogler [was required to] provide sworn and notarized statements that there is no other insurance coverage available to her [sic] that could pertain to this loss."

12. In addition, Allstate was required to ensure that the "policy limits" were "received" no later than 5:00 pm on Tuesday, January 26, 2016, and in a footnote stated that such "[s]ettlement funds must be paid by Cashier's Checks or Certified Bank Checks (not drafts) issued by your insurance company as follows: Natoshia Hamilton and the Anastopoulo Law Firm, LLC. The checks must be **RECEIVED** in my office no later than 5:00pm EDT on [prompt, deadline for check]."

13. Further, the demand stated:

> Please be aware that our demand for policy limits is not negotiable and that ALL conditions of this offer of compromise must be met by the specified time limit. ***If any condition is not met, or if any additional condition is imposed by Allstate Insurance Company, including but not limited to conditions of indemnification or the waiver of any rights or claims not specified herein, this offer of compromise will be withdrawn, and we will obtain an excess judgment against your insured and enforce it against assets.***
>
> This offer of compromise does not include the resolution of any property damage claims and does not request payment of any portion of your insured's property damage insurance limits. ***Accordingly, any request for a release of property damage claims and/or any request for indemnification will constitute a counteroffer and rejection of this offer of compromise.***

14. By letter dated Wednesday, January 20, 2016, Anastopoulo submitted additional medical invoices and requested they be included "in the demand package our office previously sent you." A true and correct copy of the Wednesday, January 20, 2016 correspondence is attached as **Exhibit C**, and the contents of the letter are incorporated as if fully stated here.

15. Following the weekend and holiday on Monday, January 18, 2016, Allstate received the Friday, January 15, 2016 letter on Thursday, January 21, 2016.

16. In order to meet the arbitrary deadline imposed by the demand, Allstate diligently began working to review the medical information and to retain counsel to prepare the requested covenant not to execute.

17. Allstate also obtained the requested affidavits from Coogler and Broach regarding the lack of additional insurance related to the claim.

18. Given the timing issues with regard to evaluating the claim and responding to the time-sensitive demand in such short order, Allstate issued a manual check in the amount of $25,000.00, which represented the available bodily injury limits under the policy.

19. In order to meet the arbitrary deadline imposed by the demand, on January 26, 2016, Allstate hand delivered the requested information, including the affidavits from Coogler and Broach, the $25,000.00 check, and "Agreement and Covenant not to Execute," which complied with the terms as set forth in the Friday, January 15, 2016 letter.

20. Evan Williams, Esq., an attorney with Anastopoulo, signed for and accepted the check and accompanying documents on Tuesday, January 26, 2016.

C. Filing of Lawsuit

21. Despite Allstate's acceptance of the demand and submission of the requested information, including the issuance of the check for the available policy limits, Anastopoulo subsequently replied by letter dated March 23, 2016 stating:

> Allstate failed to accept this offer of compromise. Therefore, as stated in the letter, we have been forced to return the check to you and file suit against Allstate's insured. Please do not try to trick us by sending us a check for this amount again. As our Offer of Compromise clearly states, now that you have rejected our client's offer, it is immediately and permanently withdrawn. If you send us a check for this amount [$25,000.00, the bodily injury limits of the policy,] in the future, we will consider it a partial payment toward whatever verdict we ultimately obtain. If no verdict is obtained, we will consider it a gift. However, it will not serve as a release in any way. We will deposit the check into our trust account, and disburse our

> client's portion without further communication and without having any Release or Covenant Not to Execute signed by our client.
>
> In any event, the offer is now withdrawn and suit will be filed. Please be advised that this is your one and only notification of the filing of the lawsuit and that we have no continuing duty to keep you informed or notify you when service has been perfected. Please also be advised that since you are now on notice, it is your duty to ensure that the lawsuit is timely answered, and you will not be able to avoid coverage by later claiming that your insured failed to forward you copies of the pleadings. The pleadings are available for you to view on the Clerk's website.

A true and correct copy of the March 23, 2016 correspondence is attached as **Exhibit D**, and the contents of the letter are incorporated as if fully stated here.

22. Hamilton's attorney failed to provide any specificity regarding how Allstate failed to accept the terms of the settlement offer.

23. By letters dated April 13, 2016, April 16, 2016, and May 11, 2016, Allstate reiterated its offer to settle the claim for the policy limits of $25,000.00. True and correct copies of these letters are attached as **Exhibits E, F,** and **G.**

24. On May 13, 2016, Allstate received notice that Coogler was served with the summons and complaint in the Underlying Lawsuit.

25. Plaintiff now seeks enforcement of the agreement to settle on the grounds that Allstate's and Coogler's performance constituted acceptance of Hamilton's demand to settle the claim.

FOR A FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT

26. The allegations contained in the paragraphs above, to the extent not inconsistent herewith, are incorporated as if fully stated herein.

27. This action is brought pursuant to the provisions of the South Carolina Code of Laws § § 15-53-10, *et seq.*

28. In accordance with South Carolina Code of Laws § 15-53-80, all of the parties are proper parties to this action because each has or claims an interest that would be affected by the requested declaration.

29. Plaintiff is entitled to a declaration that Allstate's and Coogler's acceptance of the settlement demand met the terms of the demand such that a valid and enforceable settlement agreement was formed upon its submission of the requested materials, including but not limited to, the tender of the settlement check for the amount of available policy limits.

30. Further, Plaintiff is entitled to a declaration that Allstate fulfilled its obligations under the policy when it settled Hamilton's claim for the limits of the policy issued to Coogler's wife, Broach, and that Broach and Coogler have no further liability to Hamilton.

31. A justiciable controversy exists between the parties in this action arising out of these claims. Therefore, Plaintiff asks this Court to construe and determine the rights of the parties and to declare that:

a. The acceptance of the settlement demand, as demonstrated by Allstate's performance thereunder, on behalf of its insureds, is valid and enforceable;

b. Allstate fulfilled its obligations under the policy when it settled Hamilton's claim for the limits of the policy issued to Broach; and

c. Because the settlement agreement is valid and enforceable, Allstate and its insureds have no additional obligation to Hamilton with regard to the claim.

WHEREFORE, having fully stated the above claims against Defendants, Plaintiff respectfully requests judgment as set forth above, as well as costs, attorneys' fees, and for any other relief for which the Court may deem just and proper.

{Signature on next page}

GALLIVAN, WHITE & BOYD, P.A.

By: _____

John T. Lay, Jr., S.C. Bar No. 64526
A. Johnston Cox, S.C. Bar No. 09081
Janice Holmes, S.C. Bar 75038
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
Telephone: 803-779-1833
Facsimile: 803-779-1767
jlay@GWBlawfirm.com
jcox@GWBlawfirm.com
jholmes@GWBlawfirm.com

Attorneys for Allstate Property and Casualty Insurance Company

Columbia, South Carolina
February 3, 2017

EXHIBIT tabbies A

FAX

Date:	02/05/2015
Pages including cover sheet:	3

To:	+18664672763
Phone	
Fax Number	+18664672763

From:	FAX Line 2
	NN
Phone	(843) 353-0505 * 102
Fax Number	(843) 353-1604

NOTE:

Re: Hamilton, Natoshia

Send and receive faxes with RingCentral. www.ringcentral.com

RingCentral

ANASTOPOULO LAW FIRM
Fax Cover Sheet

Anastopoulo Law Firm
2557 Ashley Phosphate Rd.
North Charleston, SC 29418
Toll Free: (800) 313-2546
Fax: (843) 853-2291

Send to: Allstate Insurance Company Attn: Jessica Webb	**From:** Adrienne Stuckey
Fax Number: (866) 467-2763	Date: Thursday, February 05, 2015
No. of Pages including cover: 2	Time:
Re: Claim #: 0356985366 Natoshia Hamilton	

HARD COPY TO FOLLOW: ☐ YES ☐ NO

- ☐ Urgent
- ☐ Reply ASAP
- ☐ Please comment
- ☐ Please review
- ☐ For your information

Comments:

ANASTOPOULO
LAW FIRM

Akim A. Anastopoulo (SC)
Renee M. Anderson (SC)
John I. Henderson (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)
Casey Van Valkenburgh (SC)(IL)
Philip Heath Ward (SC)
Roy T. Willey, IV (SC)
*Affiliate Counsel

Toll Free: 1 (800) 313-2546
Facsimile: (843) 853-2291

Reply to North Charleston Office
www.AkimLawFirm.com

Thursday, February 05, 2015

Sent via fax: (866) 467-2763
Allstate Insurance Company
PO Box 7068
Columbia, SC 29210

RE:	My Client(s):	Natoshia Hamilton
	DOL:	January 31, 2015
	Claim #:	0356985366

To Whom It May Concern:

Please be advised that I have been retained to represent the above for the bodily injuries she suffered during a motor vehicle accident on the above date due to the negligence of your insured. Also, please disclose in writing the policy limits for the above referenced claim. Please call our office if you have any questions or would like to discuss the claim.

Thank you for your cooperation.

Sincerely,

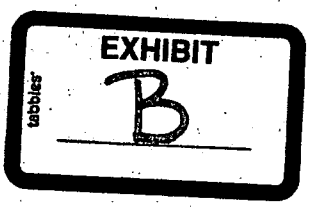
/s/ Akim A. Anastopoulo

Akim A. Anastopoulo

AAA/als

cc: Natoshia Hamilton

PAGE 3/3 * RCVD AT 2/5/2015 8:34:45 PM [Central Standard Time] * SVR:A0775-XFX0009-S/15 * DNIS:57626 * CSID:fax@akimlawfirm.com * DURATION (mm-ss):01-22



Akim A. Anastopoulo (SC)
Kate L. Bostrom (NC)
Samuel R. Flynn (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy T. Willey, IV (SC)
Evan P. Williams (SC)

ANASTOPOULO LAW FIRM

Toll Free: 1 (800) 313-2546
Facsimile: (843) 853-2291

Reply to North Charleston Office
www.AkimLawFirm.com

Friday, January 15, 2016

RMA

Date Due
By 5:00 PM
1/21/16

PRIVILEGED AND CONFIDENTIAL:
RELATING TO SETTLEMENT DISCUSSIONS

Sent via mail and fax to 866-467-2763
Marsa King
Allstate Insurance Company
PO Box 7068
Columbia, SC 29210

RE:	My Client(s):	Natoshia Hamilton — 02
	DOL:	January 31, 2015
	Claim #:	0356985366
	Pages:	10 Not Including Enclosures

Jnsd - Kathryn Breached

Dear Ms. King

INADMISSIBILITY OF OFFER OF COMPROMISE

Pursuant to South Carolina Rule of Evidence, Rule 408, statements made in compromise negotiations are not admissible at trial. This rule is identical to the Federal Rule and designed to encourage the settlement of controversies by permitting parties to discuss their cases candidly with the assurance that admissions and proposals for compromise made in the course of their good-faith settlement negotiations may not be used against them to later prove liability. Hunter v. Hyder, 236 S.C. 378, 114 S.E.2d 493 (1960). However, evidence of an offer to compromise may be admissible for some other purpose. Meehan v. Commercial Casualty Ins. Co., 166 S.C. 496, 165 S.E. 194 (1932). This entire letter and all of the exhibits attached are submitted with a view toward compromise of this claim. If you do not agree that everything that follows is inadmissible during the litigation of this matter, please stop reading and immediately destroy this letter and its attachments and immediately notify us of your refusal to review our attempt to compromise this claim.

OFFER OF COMPROMISE

This notice, demand, and offer of compromise is directed to you as the insurer of Kenneth Coogler. This letter is written to submit an offer of compromise regarding Natoshia Hamilton's claims against your insured(s) in the above-referenced matter. Additionally, this letter places you on notice, consistent with the dictates of Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933) of a time-limited demand for the payment of

policy limits of Kenneth Coogler's insurance coverage.

I. LIABILITY OF Kenneth Coogler

Our client, Natoshia Hamilton, was severely injured in an automobile collision due to the sole negligence of your insured. The incident occurred when your insured disregarded South Carolina Code § 56-5-1520 and failed to maintain a safe speed under the conditions. This failure caused your insured to violently smash into the rear end of the vehicle our client was in which was slowing for traffic on Pamplico Highway in Florence, South Carolina on January 31, 2015. The severity of the collision propelled our client forward and back within the vehicle, causing dramatic personal property damage and resulting in major injuries to her neck and back.

II. DAMAGES

Natoshia Hamilton's Injuries

Immediately following the collision, Florence County EMS arrived on scene and after noting our client's serious injuries, rushed our client to Carolinas Hospital System where she arrived on a backboard with a c-collar in place due to her neck and back injuries.

Her primary complaints at the time included neck pain and back pain. William Cauthen, MD diagnosed Ms. Hamilton with:

847.0	Neck sprain

The hospital staff conducted the following treatment:

81025	Urine Pregnancy test
81003	Urinalysis, auto w/o scope
72100	X-ray exam of lower spine
72072	X-ray exam of thoracic spine
72125	CT scan neck spine w/o dye
	Prescribed Flexeril 10mg
	Prescribed Cataflam 50mg
	Prescribed oxycodone 5mg

Dr. Cauthen treated our client for her injuries and released her with strict discharge instructions.

Our client was also forced to seek treatment with Lloyd Miller, MD at First Choice Healthcare. Upon initial consultation, our client was experiencing symptoms of neck pain, back pain, arm pain, pain to the right side, and pain in both legs. Dr. Miller diagnosed our client with:

723.1	Cervicalgia
724.2	Lumbago
719.45	Pain in joint, pelvis/thigh
729.5	Arm pain
780.96	Pain of right side of body

Dr. Miller conducted the following treatment:

72052	X-ray cervical spine
	Prescribed Duragesic-75 75mcg/hr
	Prescribed Hydrocodone-acetaminophen 2.5-325mg

Unfortunately, as the pain continued, our client required additional treatment among multiple visits with Tyrone Wallace, DC at Wallace Chiro of Lake City. Upon initial consultation, Ms. Hamilton was experiencing symptoms of remarkably severe constant aching neck pain on both sides, remarkably severe constant aching upper back pain, remarkably severe constant aching mid back pain, remarkably severe constant aching low back pain and remarkably severe constant aching pain in the right buttock. Dr. Wallace diagnosed Ms. Hamilton with:

307.81	Tension headache
719.46	Knee pain
723.1	Cervicalgia
723.2	Cervicocranial syndrome
723.3	Cervicobrachial syndrome
724.1	Pain in thoracic spine
724.2	Lumbalgia
728.85	Muscle spasm
729.1	Myositis
739.1	Cervical subluxation
739.2	Thoracic subluxation
739.3	Lumbar subluxation
739.4	S.I. subluxation
739.5	Pelvic subluxation
847.0	Cervical sprain/strain
847.1	Thoracic sprain/strain
847.2	Lumbar sprain/strain

Dr. Wallace treated our client for her injuries and conducted the following additional treatment:

99204	Comprehensive examination
72040	X-ray cervical 2-3 views
72100	X-ray lumbosacral 2-3 views
97140	Manual therapy (times conducted: 4)
98940	CMT 1-2 regions (times conducted: 9)
97032	Electrical muscle stimulation (times conducted: 19)
97010	Hot pack application (times conducted: 10)
99070	Orthopedic cervical support collar
98941	CMT 3-4 regions
99080	Narrative report

Due to the conditions caused by the collision, our client was required to seek multiple physical therapy visits with Anthony Alexander, MD at Pee Dee Orthopaedic Associates. The goals of these visits were to decrease pain, swelling, inflammation, and muscle spasms, and increase range of motion, function, strength, flexibility, and alignment. Upon initial consultation, our client was experiencing symptoms of right leg pain, back pain. Dr. Alexander diagnosed our client with:

722.10	Herniated disc
724.2	Back pain
724.4	Lumbar radiculopathy

723.1	Cervical pain
721.0	Cervical spondylosis w/o myelopathy

The additional treatment conducted by Dr. Alexander consisted of:

99214	Office visit
72110	X-ray lumbosacral spine (times conducted: 3)
72050	X-ray cervical spine
72148	MRI spinal canal and contents
72141	MRI spinal canal and contents
95911	NCS 9-10 studies
95860	Needle electromyography
63030	Laminotomy, 1 interspace, lumbar (times conducted: 2)
L0120	Cervical flexible, nonadjustable
	Prescribed Meloxicam 15mg
	Prescribed Norco 5-325mg
	Prescribed Celebrex 200mg
	Referral to Palmetto Physical Therapy and Wellness

Our client was referred for treatment with Mary Harpell, DC at Palmetto Physical Therapy and Wellness. Upon initial consultation, our client was experiencing symptoms of lower back pain, neck pain, right shoulder pain and right arm pain. Dr. Harpell diagnosed our client with:

724.3	Sciatica
724.2	Lumbago
728.87	Generalized weakness

Dr. Harpell conducted the following treatment:

	Cervical spine x-ray
	Lumbar spine x-ray
97110	Therapeutic exercises
97112	Neuromuscular re-education
97010	Heat/cryotherapy
97014	Electrical stimulation
97140	Manual therapy

Our client also sought treatment with Rakesh Chokshi, MD at McLeod Regional Medical Center. Dr. Chokshi diagnosed our client with:

722.10	Lumbar disc displacement

Dr. Chokshi conducted the following treatment:

36415	Venipuncture
80048	Basic metabolic panel
81003	Urinalysis w/o micro
85025	CBC w/ auto diff
85610	Prothrombin
85651	ESR sed rate
71010	Chest x-ray 1 view

86850	Antibody screen
86900	ABO group
86901	RH Type
63030	OR services
	Anesthesia
72148	MRI lumbar w/o contrast
J0330	Succinylcholine inj 200m
J0360	Hydralazine inj 20mg
J0690	Cefazolin 1gm (quantity: 2)
J1170	Hydromorphone inj 2mg
J2175	Meperedine inj 25mg/1mL
J2250	Midazolam 2mg/2mL
J2704	Propofol inj 200mg/20mL
J3010	Fentanyl inj 100mcg

The cumulative goal of the treatment has been to restore our client to her condition before the collision.

Summary of Damages

Due to the collision, Ms. Hamilton underwent a serious disruption in her life which prevents her from being able to participate in many things she enjoys. In addition to limitations placed on her enjoyment, Ms. Hamilton has been forced to endure limitations to her range of mobility. Ms. Hamilton will forever be limited in the activities in which she may participate because the nature of her injuries has rendered her at greater risk of future aggravation and trauma. These disruptions have caused considerable hardships and have significantly decreased our client's quality of life.

Punitive Damages

Please also be aware that striking a vehicle due to recklessness, distracted driving, and other willful and wanton behavior subjects Mr. Coogler to punitive damages, and that punitive damages may not be able to be discharged in bankruptcy under federal law or South Carolina law. Please be aware that, based on past precedent we expect this case to yield a verdict in excess of the policy limits. Accordingly, if you force this case to trial, the verdict is unlikely to be discharged in bankruptcy and we will follow Kenneth Coogler for the rest of life and take any property, and possessions may ever accumulate until the verdict is paid in full.

III. DEMAND PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933), and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).

Based on Kenneth Coogler's reckless driving and complete disregard for the safety of others on the road, the fact that he was likely distracted at the time he caused his vehicle to strike Ms. Hamilton, the fact that punitive damages will be imposed against Mr. Coogler, and due to the ongoing pain and mental anguish her family will experience for the rest of their lives, we

conservatively estimate the value of this case to be in excess of the policy limits. As there is a possibility that underinsured motorist coverage may be available to Natoshia Hamilton, we cannot offer a full and final release at this time. Instead, we require payment of the policy limits of all applicable policies, under which you insure Kenneth Coogler in a form that will not prejudice our client's right to seek recovery from any other insurance carriers. This offer of compromise requires that policy limits are **RECEIVED**[1] no later than 5:00 p.m. EDT onJanuary 26, 2016, and requires that Kenneth Coogler provide sworn and notarized statements that there is no other insurance coverage available to her that could pertain to this loss. **THIS OFFER OF COMPROMISE INCLUDES A TIME-LIMITED DEMAND FOR PAYMENT OF POLICY LIMITS, AND, AT 5:00 P.M. EDT ONJanuary 26, 2016, THIS OFFER WILL BE WITHDRAWN AND WE WILL OBTAIN AN EXCESS JUDGMENT AGAINST YOUR INSURED(S) WHICH WILL, IN TURN PROVIDE YOUR INSURED(S) WITH A CLAIM AGAINST Allstate Insurance Company PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933) and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).** Please be aware that our demand for policy limits is not negotiable and that ALL conditions of this offer of compromise must be met by the specified time limit. ***If any condition is not met, or if any additional condition is imposed byAllstate Insurance Company, including but not limited to conditions of indemnification or the waiver of any rights or claims not specified herein, this offer of compromise will be withdrawn, and we will obtain an excess judgment against your insured and enforce it against assets.*** This offer of compromise does not include the resolution of any property damage claims and does not request payment of any portion of your insured's property damage insurance limits. ***Accordingly, any request for a release of property damage claims and/or any request for indemnification will constitute a counteroffer and rejection of this offer of compromise.***[2] ***If you include indemnification or a release of property damage claims in the proposed Release you send to us, it will constitute a counteroffer and rejection of this offer of compromise even if you claim in a cover letter or other documents that you send to us that you have accepted our offer. Acceptance of this offer specifically requires you to prove a proposed Release that complied with this offer by the above deadline.***[3] Moreover, if there is any language in the

---

[1] Settlement funds must be paid by Cashier's Checks or Certified Bank Checks (not drafts) issued by your insurance company as follows: Natoshia Hamilton and the Anastopoulo Law Firm, LLC. The checks must be **RECEIVED** in my office no later than 5:00pm EDT on [prompt, deadline for check]. Anastopoulo Law Firm, LLC's Tax I.D. Number is 452775649. For your convenience, our firm's W-9 is also attached hereto (Exhibit A). The funds should be sent to 2557 Ashley Phosphate Road North Charleston, SC 29418.

[2] Please be aware that we have done everything reasonable to warn you that even a mere request for indemnification or a mere request for the waiver of any other rights or claims, including property damage claims, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

[3] Please do not attempt to send a proposed Release that includes indemnification or a release of property damage claims. The insurance company tactic of including indemnification or a release of property damage claims in the proposed Release will not work against this firm and its clients. Please be aware that you cannot get around this requirement by sending a cover letter with a non-compliant proposed Release that says your "proposed Release is not a counteroffer." *If you send a proposed Release that*

proposed Release or any other documents you send us that requires or even requests Natoshia Hamilton to make representations or warranties regarding the absence of medical liens or hospital liens or bankruptcy proceedings relating to Natoshia Hamilton, the requirement or request will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Allstate Insurance Company is perfectly capable of reviewing court records to verify this information, and attempting to shift the cost of verifying this information to our client(s) is not acceptable and will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.[4] Accordingly, please be aware that a requirement or even a request for a "Lien Affidavit" or similar document by any other name will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Additionally, please be aware that it will be deemed a counteroffer and rejection of this offer of compromise if Allstate Insurance Company requires or even requests the release of any individuals or entities other than Kenneth Coogler and Allstate Insurance Company.[5]

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includes indemnification or a release of property damage claims or that violates any other terms of this offer, it is a counteroffer regardless of whatever you put in your cover letter. Pursuant to this offer of compromise, your insurance company cannot provide a letter that says it accepts our offer and then try to trick us by providing a proposed Release that does not comply with our offer. Do not put indemnification or a release of property damage claims in the proposed Release you send to us in the hope that we will sign your proposed Release without reading it or in the hope that we will rely on a representation in your cover letter that you have accepted our offer of compromise when you have not provided a compliant release. If you do put indemnification or a release of property damage claims in the proposed Release, it is a counteroffer even if you try to say it is not, and, if you try this tactic, we will proceed to verdict and take your insured's assets until it is paid in full. Please also keep in mind that a proposed Release that includes the release of "any and all claims" would necessarily include property damage claims and is also a counteroffer and rejection. Instead of acting in bad faith and trying to trick us, please just send a reasonable proposed Release that does not include indemnification or the release of property damage claims. Acceptance of this offer of compromise requires you to make your acceptance through performance and not just mere words or promises. Part of the performance required to accept this offer is for you to deliver a proposed Release with the settlement check. Additionally, the proposed Release that is delivered with the settlement check must comply with the terms of this offer. ***Regardless of what you might say in your cover letter, if the proposed Release does not comply with this offer, it is a rejection and counteroffer.***

[4] Please be aware that we have done everything reasonable to warn you that even a mere request for warranties or representations regarding the absence of medical liens or hospital liens or bankruptcy proceedings will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise.

[5] Please be aware that we have done everything reasonable to warn you that even a mere request for the release of any individuals or entities other than Kenneth Coogler and Allstate Insurance Company will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. ***Moreover, please be aware that Allstate Insurance Company will only be released with respect to the bodily injury coverage of the subject policy and that Allstate Insurance Company will not be released with respect to any other policies or coverages not identified herein and that a request or requirement for a general release or a full and final release of Allstate Insurance Company will be a counteroffer and rejection of this offer of compromise.*** Please do not place any additional releases on the settlement check, in the proposed Release, or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware

Moreover, please be aware that Allstate Insurance Company will only be released with respect to the bodily injury coverage of the subject policy and that Allstate Insurance Company will not be released with respect to any other policies or coverages not identified herein. Payment must be made as described herein, and payment by any other method, including payment through the registry of any court or through the filing of an interpleader action, will not satisfy the terms of this offer of compromise and will result in the immediate and automatic withdrawal of this offer of compromise. Additionally, filing a declaratory judgment action will result in the immediate, automatic, and permanent withdrawal of this offer of compromise. Please be aware that, under South Carolina law, our offer of compromise must be accepted unequivocally and without variance of any sort and that a purported acceptance of this offer of compromises which imposes ***or even requests*** conditions beyond those contained in this offer will be construed as a counteroffer and rejection. Please also be aware, that under South Carolina law, we have no continuing duty to repeatedly remind you of the deadline or any conditions of our offer, herein. See Maxton v. Payes, 313 S.C. 109, 437 S.E.2d 66 (1993). Additionally, any attempted counteroffer by Allstate Insurance Company will be deemed a rejection of our offer of compromise and will result in the immediate and permanent withdrawal of our offer of compromise. Furthermore, please be aware that sworn and notarized statements that there is no other insurance coverage that could pertain to this loss must accompany your payment of policy limits. For your convenience, we have provided an affidavit that meets this condition. ***Please be aware that sending a proposed Release, settlement check, or any other documents that include any conditions or provisions that are not part of this offer will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.*** Additionally, even if you send a cover letter that claims to "unconditionally" or "unequivocally" accept our offer of compromise, but you also send a proposed Release, a settlement check, or any other documents that include any conditions or provisions that are not part of this offer, it will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Please do not attempt to trick us by saying in a letter that you accept our offer of compromise and then trying to sneak in additional terms that are not part of our offer. Our offer of compromise must be accepted by your insurance company's performance of the requirements of this letter and not by mere words that claims to accept the offer. Regardless of any statement that your insurance company has accepted or is accepting our offer of compromise, if your insurance company's actions and documents (i.e., your proposed Release, settlement check, etc.) do not comply with our offer of compromise, it will be a counteroffer and rejection of our offer. Acceptance of this offer of compromise requires performance and not just mere words or promises. Accordingly, in order to accept this offer of compromise, you must meet all of the terms and conditions of this offer of compromise, including, but not limited to, providing payment and a proposed Release that comply with the terms of this offer of compromise.

Please be aware that the only release we will accept is one that is limited in its scope to

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that many insurance companies use this tactic, but it will not work against this firm and its clients. Any request for the release of any individuals or entities other than Kenneth Coogler and Allstate Insurance Company as described herein, whether "accidental" or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise. Once again, if you send a proposed Release that purports to release any additional individuals or entities, it will be a counteroffer and rejection regardless of any claims of acceptance you make in a cover letter or any other documents you send to us. This offer of compromise requires you to deliver a proposed Release that complies with the terms of this offer of compromise. This offer of compromise requires you to make your acceptance through performance and not just mere words or promises.

protecting your insured from Natoshia Hamilton's rights to the personal assets of your insured. ***Additionally, this offer relates only to personal injury claims (and not any property damage claims); accordingly, a proposed Release or a statement on the settlement check or any other documents you send to us that purports to release or resolve "any and all claims" will be considered as a counteroffer and rejection of this offer, resulting in the immediate and permanent withdrawal of this offer.*** ***Natoshia Hamilton*** must not be prevented in any way from making a claim against her own insurance carriers. Despite the limited scope of our offer, our offer will protect the interests of your insured because it would only allow Natoshia Hamilton to seek the proceeds of their own coverage and other applicable insurance policies relating to personal injuries and it would prevent Natoshia Hamilton from seeking the assets of your insured as compensation for the personal injuries.[6] If you do not pay policy limits and meet the other requirements contained in this offer within the specified time limit, we will withdraw our offer of compromise and we will obtain an excess judgment against your insured and enforce it against her assets. In view of existing circumstances, we believe your insurance company should accord its insured the same faithful consideration it gives its own interests. If you do not pay policy limits in this case and meet the other requirements contained in this offer, pursuant to the terms of this offer of compromise, Kenneth Coogler may be able to sue your company for compensatory and punitive damages for bad-faith failure to properly adjust this claim. **Please explain to Kenneth Coogler that has the right to hire an attorney to represent against Allstate Insurance Company and that has the right to demand that you pay this demand in order to protect property and possessions.**

Please be aware that this letter constitutes Natoshia Hamilton's formal offer and that no oral representations made before or after this letter can alter the terms of this offer. If, for any reason, this firm agrees to change this offer in any way, such changes can and will be made only in a writing that is signed by a member of this firm. The purpose of this paragraph is to specifically prevent Allstate Insurance Company from claiming that this offer was modified in any way by an oral communication. ***Please be aware that, unless there has been a specific writing signed by a member of this firm that specifically changes this offer, the offer made by this letter has not been changed.*** Additionally, there are and will be no oral offers made to resolve this case. Accordingly, please do not attempt to claim that there has been an oral offer to resolve this case because there has not been and will not be such an offer. ***Any offer to resolve this case by Natoshia Hamilton must be made in writing and any acceptance of that offer must be made through performance of the provisions of this offer of compromise in order for this firm and Natoshia Hamilton to agree that a binding agreement has been formed. Specifically, this offer of compromise cannot be accepted by a mere statement of unconditional acceptance of this offer; instead, acceptance of this offer requires full performance of all terms and conditions of this offer. If any condition or requirement is not met by the specified deadline or if any additional condition or requirement is imposed upon Natoshia Hamilton, then there has been no acceptance and no agreement.***

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[6] Please be aware that it is our current belief that Natoshia Hamilton may have had underinsured motorist coverage with policy limits far below the full value of this case. However, she may also have no coverage at all. Accordingly, since there is only a small amount of underinsured motorist coverage compared to the actual value of this case, Allstate Insurance Company's acceptance of this offer provides the greatest possible amount of protection for its insured. Thus, if Allstate Insurance Company fails to accept this offer, it will be exposing its insured to substantial excess liability and acting in bad faith towards its insured.

We have supplied you with all information necessary to evaluate this offer of compromise[7]; however, should you have any questions regarding this offer of compromise, please do not hesitate to contact me at (843) 614-8888. Additionally, although any requirement or request for terms and conditions of settlement and compromise that are not approved herein will constitute a counteroffer and rejection of this offer of compromise, if you feel that any part of this letter needs clarification in order for you to comply with its terms, we will be happy to offer any clarification of terms so that you have a full and fair opportunity to comply with this offer. Of course, this letter relates to discussions involving settlement and compromise, and nothing contained herein shall be deemed admissible except to enforce a claim for bad-faith failure to properly adjust this claim.

I look forward to hearing from you.

Sincerely,

EW

Evan Williams

EW/df
Enclosures

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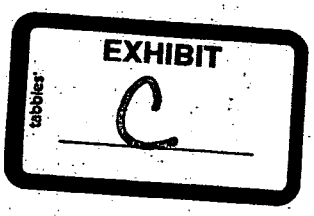
[7] Please be aware that we have provided you willful and sufficient information to evaluate this offer of compromise and to compel your insurance company to pay its policy limits as demanded. Nevertheless, we are aware that many insurance companies request unnecessary additional information within a few days of the deadline for payment as a tactic to delay the resolution of a case. We are aware that insurance companies make more money when settlements are delayed because the insurance company can continue to earn investment income from the settlement money for as long as the insurance company can maintain possession of the settlement funds. We are aware that many insurance companies use the tactic of requesting unnecessary additional information to delay payment, but it will not work against this firm and its clients. Additionally, in the unlikely event that there is a legitimate need for additional information, we will have to request that information from another party. Therefore, any request for additional information must be made as soon as possible and at least ten (10) days before the deadline so that we will have a reasonable opportunity to try and obtain the requested information. We have done everything reasonable to warn you that this offer of compromise includes a time-limited demand for the payment of policy limits. Please be aware that the deadline for payment and compliance with all other terms will not be extended based on a request for additional information because this offer of compromise already includes more than enough information to compel payment. Please do not place your insured's assets in jeopardy by incorrectly assuming that a request for additional information will extend the deadline of this offer of compromise. Failure to meet the deadline for any reason will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

ANASTOPOULO
LAW FIRM

Akim A. Anastopoulo (SC)
Kate L. Bostrom (NC)
Samuel R. Flynn (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy T. Willey, IV (SC)
Evan P. Williams (SC)

Toll Free: 1 (800) 313-2546
Facsimile: (843) 853-2291

Reply to North Charleston Office
www.AkimLawFirm.com



Wednesday, January 20, 2016

Sent via fax: (866) 467-2763
Marsa King
allstate Insurance Company
PO Box 7068
Columbia, SC 29210

RE:	My Client(s):	Natoshia Hamilton
	DOL:	January 31, 2015
	Claim #:	0356985366

To Whom It May Concern:

I am enclosing a copy of the above mentioned clients' Radiology Bill pertaining to this claim. Please include the enclosed items in the demand package our office previously sent you.

Thank you for your assistance.

Sincerely,

/s/ Evan Williams /s/

Evan Williams

EW/df

PAGE 1/2 * RCVD AT 1/20/2016 2:19:48 PM [Central Standard Time] * SVR:A0185-XFX0011-S/49 * DNIS:57626 * CSID:fax@akimlawfirm.com * DURATION (mm-ss):01-06

FLORENCE RADIOLOGICAL ASSOCIATES, PA
P O BOX 51330
MYRTLE BEACH SC 29579-0023
(800) 841-4236

Patient:
Acct #: 302431
HAMILTON,NATOSHIA
2196 BROAD DR
FLORENCE,SC 29505

Responsible party:
HAMILTON, NATOSHIA
2196 BROAD DR
FLORENCE, SC 29505

Srvc. Date	CPT	Proc. Description	Charge	Physician
08/11/2015	71010	RADEX CH 1 VIEW FRNT	$39.00	CLEVELAND, GREGOR G
08/26/2015	71010	RADEX CH 1 VIEW FRNT	$39.00	LEWIS, MARY BETH
08/26/2015	72148	MRI SPI CANAL&CNTS LMBR	$325.00	CHRISTIAN, STEPHEN

TOTAL BALANCE: $403.00
Print Date: 01/14/2016

This report has been Reproduced from the Original
Reproduced Thursday, January, 14, 2016 08:32:16 AM (THARDY)



ANASTOPOULO
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Akim A. Anastopoulo (SC)
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Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy T. Willey, IV (SC)
Evan P. Williams (SC)

Toll Free: 1 (800) 313-2546
Facsimile: (843) 494-5536

Reply to Columbus Street Office
eric@akimlawfirm.com

March 23, 2016

Richard Ozegovich
Allstate Insurance Company
PO Box 7068
Columbia, SC 29202

RE: *Natoshia Hamilton v. Kenneth Coogler*
Claim #: 0356985266

Dear Mr. Ozegovich:

I am in receipt of Allstate's check [#521274501] dated January 26, 2015 (which I assume was supposed to read 2016). As you know, by letter dated January 15, 2016, my client offered to settle her claims against your insured pursuant to an Offer of Compromise.

As stated in the Offer of Compromise, "Please be aware that our demand for policy limits is not negotiable and that ALL conditions of this offer of compromise must be met by the specified time limit. ***If any condition is not met, or if any additional condition is imposed by Allstate Insurance Company…this offer of compromise will be withdrawn.***"

Allstate failed to accept this offer of compromise. Therefore, as stated in the letter, we have been forced to return the check to you and file suit against Allstate's insured. Please do not try to trick us by sending us a check for this amount again. As our Offer of Compromise clearly states, now that you have rejected our client's offer, it is immediately and permanently withdrawn. If you send us a check for this amount in the future, we will consider it a partial payment toward whatever verdict we ultimately obtain. If no verdict is obtained, we will consider it a gift. However, it will not serve as a release in any way. We will deposit the check into our trust account, and disburse our client's portion without further communication and without having any Release or Covenant Not to Execute signed by our client.

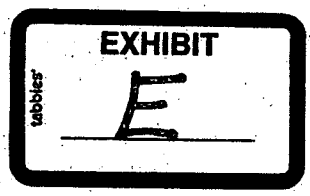
In any event, the offer is now withdrawn and suit will be filed. Please be advised that this is your one and only notification of the filing of the lawsuit and that we have no continuing duty to keep you informed or notify you when service has been perfected. Please also be advised that since you are now on notice, it is your duty to ensure that the lawsuit is timely answered, and you will not be able to avoid coverage by later claiming that your insured failed to forward you copies of the pleadings. The pleadings are available for you to view on the Clerk's website.

If you should have any questions, please do not hesitate to contact us.

Sincerely,

Eric M. Poulin

Cc: Natoshia A. Hamilton



Allstate. You're in good hands.
Palmetto
1400 BROWNING ROAD
COLUMBIA SC 29210

Anastopoulo Law Firm, LLC
2557 ASHLEY PHOSPHATE RD
NORTH CHARLESTON SC 294184431

April 13, 2016

INSURED: KATHRYN BROACH
DATE OF LOSS: January 31, 2015
CLAIM NUMBER: 0356985366 NMK

LOCATION OF LOSS: pamplico Hwy, Floernce
YOUR CLIENT: NATOSHIA HAMILTON
CASE NUMBER:

PHONE NUMBER: 8032133695
FAX NUMBER: 8664672763
OFFICE HOURS: Mon - Fri 8:00 am - 5:30 pm,
Sat 8:00 am - 4:00 pm

Re: Your Client's Claim Evaluation

Dear Anastopoulo Law Firm, LLC,

I am writing to confirm our offer of $25,000 to settle your client's Bodily Injury claim for the accident listed above. This offer is based on the written documentation we have received of your client's injury claim.

How to Accept the Offer
If you wish to accept the offer, please contact me at the number listed below and I will send a release and settlement check for this amount.

Thank you for your cooperation in this matter.

Sincerely,

MARSA KING

MARSA KING
803-213-3695
Allstate Property and Casualty Insurance Company

Copy : KATHRYN HOPE PRICE BROACH

EXHIBIT
tabbies
F

Allstate.
You're in good hands.

Palmetto
1400 BROWNING ROAD
COLUMBIA SC 29210

Anastopoulo Law Firm, LLC
2557 ASHLEY PHOSPHATE RD
NORTH CHARLESTON SC 294184431

April 19, 2016

INSURED: KATHRYN BROACH
DATE OF LOSS: January 31, 2015
CLAIM NUMBER: 0356985366 NMK

LOCATION OF LOSS: pamplico Hwy, Floernce
YOUR CLIENT: NATOSHIA HAMILTON
CASE NUMBER:

PHONE NUMBER: 8032133695
FAX NUMBER: 8664672763
OFFICE HOURS: Mon - Fri 8:00 am - 5:30 pm,
Sat 8:00 am - 4:00 pm

Re: Your Client's Claim Evaluation

Dear Anastopoulo Law Firm, LLC,

I am writing to confirm our offer of $25,000 to settle your client's Bodily Injury claim for the accident listed above. This offer is based on the written documentation we have received of your client's injury claim.

How to Accept the Offer
If you wish to accept the offer, please contact me at the number listed below and I will send a release and settlement check for this amount.

Thank you for your cooperation in this matter.

Sincerely,

MARSA KING

MARSA KING
803-213-3695
Allstate Property and Casualty Insurance Company

Copy : KATHRYN HOPE PRICE BROACH



Allstate. You're in good hands.
Palmetto
1400 BROWNING ROAD
COLUMBIA SC 29210

Anastopoulo Law Firm, LLC
2557 ASHLEY PHOSPHATE RD
NORTH CHARLESTON SC 294184431

May 11, 2016

INSURED: KATHRYN BROACH
DATE OF LOSS: January 31, 2015
CLAIM NUMBER: 0356985366 NMK

LOCATION OF LOSS: pamplico Hwy, Floernce
YOUR CLIENT: NATOSHIA HAMILTON
CASE NUMBER:

PHONE NUMBER: 8032133695
FAX NUMBER: 8664672763
OFFICE HOURS: Mon - Fri 8:00 am - 5:30 pm, Sat 8:00 am - 4:00 pm

Re: Your Client's Claim Evaluation

Dear Anastopoulo Law Firm, LLC,

I am writing to confirm our offer of $25,000 to settle your client's Bodily Injury claim for the accident listed above. This offer is based on the written documentation we have received of your client's injury claim.

How to Accept the Offer
If you wish to accept the offer, please contact me at the number listed below and I will send a release and settlement check for this amount.

Thank you for your cooperation in this matter.

Sincerely,

MARSA KING

MARSA KING
803-213-3695
Allstate Property and Casualty Insurance Company

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-21-341

ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Plaintiff(s),

v.

NATOSHIA HAMILTON and KENNETH COLLINS COOGLER,

Defendant(s).

ANSWER OF DEFENDANT HAMILTON (Jury Trial Requested)

FILED
2017 MAR -2 PM 2:22
FLORENCE COUNTY, SC

TO: THE HONORABLE COURT AND ATTORNEYS FOR PLAINTIFF:

COMES NOW Defendant Natoshia Hamilton, by and through undersigned counsel, who Answers Plaintiff's Complaint as follows:

1. Each end every allegation not hereinafter specifically admitted is strictly denied.
2. This Defendant admits Paragraph 1, upon information and belief.
3. This Defendant admits Paragraph 2, upon information and belief.
4. This Defendant admits Paragraph 3.
5. This Defendant admits venue is proper in Florence County, but denies the remaining allegations of Paragraph 4.
6. This Defendant admits Paragraph 5.
7. This Defendant admits Paragraph 6, upon information and belief.
8. This Defendant admits Paragraph 7, but would show that she suffered additional and severe injuries.
9. This Defendant admits Paragraph 8.
10. This Defendant admits Paragraph 9.

CERTIFIED: A TRUE COPY
Dora Paula O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

11. Answering Paragraph 10, this Defendant admits the authenticity of Exhibit B and that same was sent on January 15, 2016, but denies the remaining allegations, including the insinuation that Allstate did not have sufficient medical documentation to evaluate the offer of compromise.

12. This Defendant admits Paragraph 11.

13. This Defendant admits Paragraph 12.

14. This Defendant admits Paragraph 13.

15. This Defendant admits Paragraph 14.

16. This Defendant denies Paragraph 15. The January 15, 2016 letter was sent via facsimile in addition to being placed in the mail. Therefore, Allstate should have received it on January 15, 2016.

17. This Defendant denies Paragraph 16.

18. This Defendant is without sufficient information to respond to Paragraph 17, and therefore denies the same.

19. Answering Paragraph 19, this Defendant admits that Allstate issued a manual check, but denies the remaining allegations.

20. This Defendant denies Paragraph 19.

21. This Defendant denies Paragraph 20 in as much as it suggests the counter offer was accepted.

22. Answering Paragraph 21, this Defendant denies that Allstate accepted the demand but admits to the authenticity of Exhibit D.

23. This Defendant denies Paragraph 22.

24. This Defendant denies Paragraph 23.

25. This Defendant is without sufficient information to respond to Paragraph 24 and therefore denies the same.

26. This Defendant denies the relief sought in paragraph 25.

27. Paragraph 26 is a reincorporation of previous allegations, to which this Defendant restates her previous admissions and denials.

28. Paragraph 27 calls for a conclusion of law, to which no response is required.

29. Paragraph 28 calls for a conclusion of law, to which no response is required.

30. This Defendant denies Paragraph 29.

31. This Defendant denies Paragraph 30.

32. This Defendant denies Paragraph 31, including all sub-parts.

33. This Defendant denial Plaintiff's "Wherefore" clause, including Plaintiff's demand for relief, and would respectfully plead the following defenses:

FOR A FIRST DEFENSE
(Failure to State a Claim)

34. This Defendant incorporates by reference all of the foregoing paragraphs as if set forth fully herein.

35. Allstate's Complaint fails to state facts sufficient to support a claim upon which relief can be granted. As such, it should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

36. This defense is further supported by Defendant Hamilton's Motion to Dismiss which is being filed contemporaneously with this Answer.

FOR A SECOND DEFENSE
(Trial by Jury)

37. This Defendant incorporates by reference all of the foregoing paragraphs as if set forth fully herein.

38. This Defendant requests a trial by jury for all disputed issues of fact.

FOR A THIRD DEFENSE
(Failure to Satisfy Conditions Precedent)

39. This Defendant incorporates by reference all of the foregoing paragraphs as if set forth fully herein.

40. Expressly preserving and without waiving all defenses previously stated with respect to the Offer of Compromise alleged by Allstate to have been breached, Allstate failed to satisfy all conditions precedent to this Defendant's performance under the alleged agreement and therefore, this Defendant was relieved of any obligation to perform and was entitled to withhold performance because no such agreement occurred between the parties.

WHEREFORE, having fully answered the Complaint for Declaratory Judgment of Plaintiff Allstate, Defendant Hamilton prays that the Complaint be dismissed, with prejudice, and that any other relief requested by Plaintiff Allstate be denied, that Defendant Hamilton be awarded fees and costs and for such other and further relief as the Court may deem just and proper.

[Signature on Following Page]

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

Eric M. Poulin
S.C. Bar No.: 100209
Roy T. Willey, IV
S.C. Bar No.: 101010
J. Camden Hodge
S.C. Bar No.: 100638
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

ATTORNEYS FOR DEFENDANT HAMILTON

Dated at Charleston, SC
This 27th day of Feb, 2017.

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES THAT (S)HE SERVED A COPY OF THE PLEADING OR FOREGOING PAPERS ON ALL COUNSEL OF RECORD THIS 27th DAY OF February, 20 17

CERTIFIED: A TRUE COPY
Dan Paulin O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2017 MAR -2 PM 2:22
DAN PAULIN O'HARA
CLERK C.P. & G.S.
FLORENCE COUNTY, SC

IN THE STATE OF SOUTH CAROLINA) COUNTY OF FLORENCE)	IN THE COURT OF COMMON PLEAS FOR THE 12TH JUDICIAL CIRCUIT CASE NO: 2017-CP-21-341
ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, Plaintiff, v. NATOSHIA HAMILTON and KENNETH COLLINS COOGLER, Defendants.	**DEFENDANT NATOSHIA HAMILTON'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT**

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

DORIS POULOS O'HARA
COOP & GS
FLORENCE COUNTY, SC

2018 JAN 22 PM 2:07
FILED

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that Defendant Natoshia Hamilton (this "Defendant" or "Hamilton"), by and through her undersigned counsel, will move before the presiding judge within ten (10) days of the service of this Motion, or at such time as counsel may be heard, for an Order dismissing this case pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*.

As grounds for this Motion, this Defendant would show unto the Court as follows:

INTRODUCTION AND BACKGROUND

This is a declaratory judgment action seeking to enforce a settlement that was allegedly reached between Natoshia Hamilton and Allstate Property & Casualty Insurance Company ("Allstate").[1] This action arose out of a motor vehicle collision that occurred between Hamilton and Kenneth Coogler on January 31, 2015.[2] Defendant Hamilton sustained injuries, and thereafter retained the Anastapoulo Law Firm, LLC ("ALF") to represent her. On January 15,

[1] Plaintiff's Complaint attached as Exhibit 1.
[2] Police Report attached as Exhibit 2. Coogler is not the named insured on the policy; however, that fact is not germane to Defendant's Motion for Summary Judgment.

2016, Hamilton's counsel sent a time-limited Offer of Compromise (the "demand" or "Offer") to Allstate requesting payment of the applicable bodily injury policy limits.[3] Hamilton's Offer required payment via Cashier's Check or Certified Bank Check. Said Offer specifically states that payment by any other method constitutes a rejection and counteroffer.

In response to Hamilton's Offer, Allstate tendered the bodily injury limits via a hand written, non-certified, "manual" check.[4] Allstate does not allege that Hamilton agreed to modify the terms of her demand or otherwise accept a manual check in lieu of a Cashier's Check or Certified Bank Check. Because Allstate did not meet the terms of Defendant's Offer, the settlement documents and manual, non-certified check were returned to Allstate.[5] In the correspondence returning the check, Hamilton's counsel informed Allstate that it failed to accept Hamilton's Offer of Compromise and that suit was filed against Mr. Coogler. (Ex. 4). That lawsuit was filed in the Florence County Court of Common Pleas and assigned case number 2016-CP-21-835.

Allstate then filed the present Declaratory Judgment Action ("DJ") on February 3, 2017. In its DJ., Plaintiff seeks as declaration that it fulfilled its obligations under its policy and Hamilton's Offer because Hamilton "accepted" Allstate's offer. However, there is no genuine issue of material fact that, based on the explicit language of Defendant's Offer and the behavior of Allstate in response to the same, that Allstate did *not* accept Hamilton's offer. As set forth more fully below, under basic, long-standing common law contract principles, Plaintiff's alleged "acceptance" was merely a counteroffer/counter proposal. Accordingly, Summary Judgment in favor of Defendant Hamilton is appropriate.

---

[3] Hamilton's Offer of Compromise attached as Exhibit 3.
[4] Allstate does not dispute that the sent check was a Certified Bank Check or Cashier's Check. *See* Pl. Compl., ¶ 18.
[5] Exhibit 4. FIND

LEGAL STANDARD

Summary judgment is appropriate only if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56, SCRCP. In deciding whether a genuine issue of material fact exists, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in his favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The moving party has the burden of proving that summary judgment is appropriate. Once the moving party makes this showing, however, the opposing party may not rest upon mere allegations or denials, but rather must, by affidavits or other means permitted by the rule, set forth *specific facts* showing that there is a genuine issue for trial. *See* Rule 56, SCRCP; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

A party asserting that a fact is genuinely disputed must support the assertion by citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials. Rule 56, SCRCP. A litigant "cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another." *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985). Therefore, "[m]ere unsupported speculation . . . is not enough to defeat a summary judgment motion." *Ennis v. Nat'l Ass'n of Bus. & Educ. Radio, Inc.*, 53 F.3d 55, 62 (4th Cir. 1995).

"[W]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, disposition by summary judgment is appropriate." *Teamsters Joint Council No. 83 v. Centra, Inc.*, 947 F.2d 115, 119 (4th Cir. 1996). The court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so

one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52.

ARGUMENT

There is no dispute that Allstate did not meet or comply with Defendant's Offer of Judgment. Specifically, and as set forth more fully below, Allstate failed to comply with the clear, explicit requirements to tender a cashier's or certified check.

"A suit seeking a declaratory judgment is neither legal nor equitable; rather, it is determined by the nature of the underlying issue. . . The interpretation of a contract is an action at law." *Alexander's Land Co., L.L.C. v. M & M & K Corp.*, 390 S.C. 582, 591–92, 703 S.E.2d 207, 212 (2010). Under South Carolina Law, settlement agreements are viewed as contracts. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)(citing *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 177, 557 S.E.2d 708, 711 (Ct. App. 2001)). Thus, the general rules of contract construction apply to settlement agreements. *Mattox v. Cassady*, 289 S.C. 57, 61, 344 S.E.2d 620, 622 (Ct. App. 1986). To be effective, acceptance of an offer must conform to the terms of the offer. *Fender & Latham, Inc. v. First Union Nat. Bank of South Carolina*, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994). At common law, no contract is formed if the acceptance varies the terms of the offer. *Johnson Co., Inc. v. Peck Industries, Inc.*, 304 S.C. 101, 403 S.E.2d 146 (Ct. App. 1991)(citing *Sossamon v. Littlejohn*, 241 S.C. 478, 129 S.E.2d 124 (1963)). Instead, an acceptance which adds different or additional terms is treated as a counteroffer, which may be accepted or rejected by the other party. *Id.*; Restatement (Second) of Contracts § 59 (1979).

The purpose of Allstate's DJ is to determine whether or not Plaintiff complied with Defendant's Offer. Plaintiff seeks a judicial declaration that it met the terms of Defendant's

Offer. Accordingly, there are only two results that may arise from Plaintiff's DJ: (1) the Court finds that Plaintiff complied with Defendant's offer; or (2) the Court finds that Plaintiff did not comply with Defendant's offer.

Here, due to Defendant Hamilton's injuries, her counsel sent a time-limited offer of compromise to Plaintiff requesting payment of the applicable bodily injury limits. In this circumstance, the terms of Defendant's Offer explicitly required a payment via certified or cashier's check. In response, Allstate tendered a hand-written, non-certified "manual" check. Because Allstate did not meet the terms of Defendant's Offer, the settlement documents and the manual, non-certified check were returned to Allstate because its purported acceptance was not a mirror image or in compliance of the terms of Defendant's offer. Thus, under the long-standing dictates of contract law, as set forth herein, Allstate's tender in response to Defendant's offer was nothing more than a counter proposal, and Defendant is entitled to summary judgment on the DJ as a matter of law.

CONCLUSION

Therefore, based on the above, Defendant's Motion for Summary Judgment should be granted.

[Signature Block on Following Page]

ANASTOPOULO LAW FIRM, LLC

Eric M. Poulin
SC Bar Number: 100209
Roy T. Willey, IV
SC Bar Number: 101010
J. Camden Hodge
SC Bar Number: 100638
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888

ATTORNEYS FOR DEFENDANT HAMILTON

Dated at Charleston, SC
This 18th day of January, 2018.

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Plaintiff,

v.

NATOSHIA HAMILTON and KENNETH COLLINS COOGLER,

Defendants.

CASE NO.: 2017-CP-21-341

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: A. Johnston Cox Bar Number: Address: 1201 Main Street, Suite 1200 Columbia, SC 29201 Phone: (803) 724-1728 Email: jcox@gwblawfirm.com	Defendant Hamilton's Attorneys: J. Camden Hodge ; Roy T. Willey, IV; Eric M. Poulin Bar Number: 100638 ; 101010; 100209 Address: 32 Ann Street, Charleston, SC 29403 Phone: 843-614-8888 Fax: 843-853-2291 E-Mail: camden@akimlawfirm.com; Roy@akimlawfirm.com; Eric@akimlawfirm.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTINONS III and III)**
☐ **PROPOSED ORDER / CONSENT ORDER (complete SECTIONS II and III)**

FILED
2018 JAN 22 PM 2:07
KRIS POULOS O'HARA
COCP & GS
FLORENCE COUNTY, SC

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment
Estimated Time Needed: 15 Minutes Court Reporter Need: ☒ YES / ☐ NO

SECTION II: Motion / Order Type

☒ Written motion attached
☐ Form Motion / Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Camden Hodge
Signature of Attorney for ☐ Plaintiff / ☒ Defendants

January 18, 2018
Date Submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT:
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposal order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____ DATE: _____

CLERK'S SECTION

Date Filed:

Collected by: JTC

☐ MOTION FEE COLLECTED: 20

☐ CONTESTED – AMOUNT DUE: _____

Exhibit 1

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE Allstate Property and Casualty Insurance Company, Plaintiff, vs. Natoshia Hamilton and Kenneth Collins Coogler, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT Case No. 2016-CP-21-_____ **COMPLAINT FOR DECLARATORY JUDGMENT** **(Non-Jury)**

Plaintiff Allstate Property and Casualty Insurance Company ("Allstate"), by and through their undersigned counsel, complaining of the Defendants Natoshia Hamilton ("Hamilton") and Kenneth Collins Coogler, (collectively "Defendants"), respectfully alleges and states as follows:

BACKGROUND

1. Plaintiff Allstate is an insurance company organized and existing under the laws of the state of Illinois, with its principal place of business in the state of Illinois, and writes insurance policies in the state of South Carolina.

2. Defendant Coogler is an individual who is a citizen of the state of South Carolina and is a resident of Florence County, South Carolina.

3. Defendant Hamilton is an individual who is a citizen of the state of South Carolina and is a resident of Florence County, South Carolina.

4. Venue is appropriate in this Court because the loss and claims at issue in this case arise out of a motor vehicle accident that occurred in Florence County and involves the interpretation of a settlement agreement involving Allstate's insured, Coogler, in connection with that accident.

FACTUAL BACKGROUND

A. Motor Vehicle Accident

5. On January 31, 2015, Hamilton was operating her vehicle in Florence County, South Carolina.

6. Hamilton's vehicle was allegedly struck in the rear by the vehicle driven by Coogler. The vehicle Coogler was driving was owned by Kathryn Hope Price Broach ("Broach") and insured under a policy issued by Allstate.

7. As a result of the accident, Hamilton claimed that she suffered personal injuries and was transported to Carolina Hospital System, where she was treated for pain in her neck, back, arm, right side, and legs.

8. In addition, Hamilton received chiropractic treatment and physical therapy.

B. Settlement Demand and Acceptance

9. By letter dated February 5, 2015, Hamilton's counsel, Anastopoulo Law Firm, LLC ("Anastopoulo"), sent a letter of representation to Allstate stating that the firm was representing Hamilton in making a claim under the applicable policy and requested disclosure of the amount of the policy limits. A true and correct copy of the February 5, 2015 correspondence is attached as **Exhibit A**, and the contents of the letter are incorporated as if fully stated here.

10. On Friday, January 15, 2016, Anastopoulo, sent a lengthy letter to Allstate demanding that Allstate, on behalf of Coogler, pay the automobile liability policy limits to its client by "5:00 p.m. EDT on January 26, 2016." Hamilton's complete medical records and invoices were not included with the demand. A true and correct copy of the Friday, January 15, 2016 correspondence is attached as **Exhibit B**, and the contents of the letter are incorporated as if fully stated here.

11. The Friday, January 15, 2016 demand letter stated that "Kenneth Coogler [was required to] provide sworn and notarized statements that there is no other insurance coverage available to her [sic] that could pertain to this loss."

12. In addition, Allstate was required to ensure that the "policy limits" were "received" no later than 5:00 pm on Tuesday, January 26, 2016, and in a footnote stated that such "[s]ettlement funds must be paid by Cashier's Checks or Certified Bank Checks (not drafts) issued by your insurance company as follows: Natoshia Hamilton and the Anastopoulo Law Firm, LLC. The checks must be **RECEIVED** in my office no later than 5:00pm EDT on [prompt, deadline for check]."

13. Further, the demand stated:

> Please be aware that our demand for policy limits is not negotiable and that ALL conditions of this offer of compromise must be met by the specified time limit. ***If any condition is not met, or if any additional condition is imposed by Allstate Insurance Company, including but not limited to conditions of indemnification or the waiver of any rights or claims not specified herein, this offer of compromise will be withdrawn, and we will obtain an excess judgment against your insured and enforce it against assets.***
>
> This offer of compromise does not include the resolution of any property damage claims and does not request payment of any portion of your insured's property damage insurance limits. ***Accordingly, any request for a release of property damage claims and/or any request for indemnification will constitute a counteroffer and rejection of this offer of compromise.***

14. By letter dated Wednesday, January 20, 2016, Anastopoulo submitted additional medical invoices and requested they be included "in the demand package our office previously sent you." A true and correct copy of the Wednesday, January 20, 2016 correspondence is attached as **Exhibit C**, and the contents of the letter are incorporated as if fully stated here.

15. Following the weekend and holiday on Monday, January 18, 2016, Allstate received the Friday, January 15, 2016 letter on Thursday, January 21, 2016.

16. In order to meet the arbitrary deadline imposed by the demand, Allstate diligently began working to review the medical information and to retain counsel to prepare the requested covenant not to execute.

17. Allstate also obtained the requested affidavits from Coogler and Broach regarding the lack of additional insurance related to the claim.

18. Given the timing issues with regard to evaluating the claim and responding to the time-sensitive demand in such short order, Allstate issued a manual check in the amount of $25,000.00, which represented the available bodily injury limits under the policy.

19. In order to meet the arbitrary deadline imposed by the demand, on January 26, 2016, Allstate hand delivered the requested information, including the affidavits from Coogler and Broach, the $25,000.00 check, and "Agreement and Covenant not to Execute," which complied with the terms as set forth in the Friday, January 15, 2016 letter.

20. Evan Williams, Esq., an attorney with Anastopoulo, signed for and accepted the check and accompanying documents on Tuesday, January 26, 2016.

C. Filing of Lawsuit

21. Despite Allstate's acceptance of the demand and submission of the requested information, including the issuance of the check for the available policy limits, Anastopoulo subsequently replied by letter dated March 23, 2016 stating:

> Allstate failed to accept this offer of compromise. Therefore, as stated in the letter, we have been forced to return the check to you and file suit against Allstate's insured. Please do not try to trick us by sending us a check for this amount again. As our Offer of Compromise clearly states, now that you have rejected our client's offer, it is immediately and permanently withdrawn. If you send us a check for this amount [$25,000.00, the bodily injury limits of the policy,] in the future, we will consider it a partial payment toward whatever verdict we ultimately obtain. If no verdict is obtained, we will consider it a gift. However, it will not serve as a release in any way. We will deposit the check into our trust account, and disburse our

client's portion without further communication and without having any Release or Covenant Not to Execute signed by our client.

In any event, the offer is now withdrawn and suit will be filed. Please be advised that this is your one and only notification of the filing of the lawsuit and that we have no continuing duty to keep you informed or notify you when service has been perfected. Please also be advised that since you are now on notice, it is your duty to ensure that the lawsuit is timely answered, and you will not be able to avoid coverage by later claiming that your insured failed to forward you copies of the pleadings. The pleadings are available for you to view on the Clerk's website.

A true and correct copy of the March 23, 2016 correspondence is attached as **Exhibit D**, and the contents of the letter are incorporated as if fully stated here.

22. Hamilton's attorney failed to provide any specificity regarding how Allstate failed to accept the terms of the settlement offer.

23. By letters dated April 13, 2016, April 16, 2016, and May 11, 2016, Allstate reiterated its offer to settle the claim for the policy limits of $25,000.00. True and correct copies of these letters are attached as **Exhibits E, F,** and **G.**

24. On May 13, 2016, Allstate received notice that Coogler was served with the summons and complaint in the Underlying Lawsuit.

25. Plaintiff now seeks enforcement of the agreement to settle on the grounds that Allstate's and Coogler's performance constituted acceptance of Hamilton's demand to settle the claim.

FOR A FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT

26. The allegations contained in the paragraphs above, to the extent not inconsistent herewith, are incorporated as if fully stated herein.

27. This action is brought pursuant to the provisions of the South Carolina Code of Laws § § 15-53-10, *et seq.*

28. In accordance with South Carolina Code of Laws § 15-53-80, all of the parties are proper parties to this action because each has or claims an interest that would be affected by the requested declaration.

29. Plaintiff is entitled to a declaration that Allstate's and Coogler's acceptance of the settlement demand met the terms of the demand such that a valid and enforceable settlement agreement was formed upon its submission of the requested materials, including but not limited to, the tender of the settlement check for the amount of available policy limits.

30. Further, Plaintiff is entitled to a declaration that Allstate fulfilled its obligations under the policy when it settled Hamilton's claim for the limits of the policy issued to Coogler's wife, Broach, and that Broach and Coogler have no further liability to Hamilton.

31. A justiciable controversy exists between the parties in this action arising out of these claims. Therefore, Plaintiff asks this Court to construe and determine the rights of the parties and to declare that:

a. The acceptance of the settlement demand, as demonstrated by Allstate's performance thereunder, on behalf of its insureds, is valid and enforceable;

b. Allstate fulfilled its obligations under the policy when it settled Hamilton's claim for the limits of the policy issued to Broach; and

c. Because the settlement agreement is valid and enforceable, Allstate and its insureds have no additional obligation to Hamilton with regard to the claim.

WHEREFORE, having fully stated the above claims against Defendants, Plaintiff respectfully requests judgment as set forth above, as well as costs, attorneys' fees, and for any other relief for which the Court may deem just and proper.

{Signature on next page}

GALLIVAN, WHITE & BOYD, P.A.

By: _____

John T. Lay, Jr., S.C. Bar No. 64526
A. Johnston Cox, S.C. Bar No. 09081
Janice Holmes, S.C. Bar 75038
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
Telephone: 803-779-1833
Facsimile: 803-779-1767
jlay@GWBlawfirm.com
jcox@GWBlawfirm.com
jholmes@GWBlawfirm.com

Attorneys for Allstate Property and Casualty Insurance Company

Columbia, South Carolina
February 3, 2017

Exhibit 2

ORIGINAL

2015508594

SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM

TR-310 (Rev. 11/2011)

Page	# of Units	Notified	Arrived
1 of 1	02	1039	1056

Date	Time of Collision	County	Collision Location [Rt. # / Name]	Miles	Dir.	In (Near) City or Town of
01-31-2015	1029	21	51 / PAMPLICO HWY	2.40	N E S W	FLORENCE

Lane # / Dir: 1 | 2 | N E S W

Distance Offset: .01 (Miles / Feet)

Direction: N E S W

1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- Other

Base Intersection [Rt. # / Name]: From 726 / FLOWERS ROAD

1- Mainline 2- Alternate 3- Split 4- Connection 5- Business 6- Other

GPS COORDINATES (DEGREES MINUTES SECONDS): Latitude 34 06 27.17 / Longitude 79 42 18.04

RR Id.

Ramp Only: From N E S W; To N E S W; 1- Entrance 2- Exit

Second Intersection [Rt. # / Name]: Toward 1107 / CATO ROAD

Driver/Pedestrian 1

E-858057

COOGLER KENNETH COLLINS

Unit #	Sex	Race	Street
01	M	W	458 RIDGECREST CT

Occ	Birth Date	City, State, & Zip
1	05-04-1970	LATTA SC 295654125

State	Driver's License #	Class	Insurance Company
SC	8627105	D	ALLSTATE

Year	Body	Vehicle Make	VIN #
2004	SU	CHEV	1GNCS13X84K148775

State	Year	License Plate #	Owner's D.L. #
SC	2015	DCM985	UNKNOWN

Home Telephone:

Owner's Full Name: BROACH KATHRYN H

Bus. Telephone:

Street: 414 LONDONBERRY DR

Contributed To Collision: (Yes) No

City, State, & Zip: FflorENCE SC 295053823

Estimated Speed	Posted Limit	C.D.L. Req: Yes (No)	T/B S Req: Yes (No)	Acc/Drg Info (see back): Yes (No)				
55	55	Summons #	Code	Summons #	Code	Towed By: Yes (No)		

Driver/Pedestrian 2

E-858058

HAMILTON NATOSHIA A

Unit #	Sex	Race	Street
02	F	B	2196 BROAD DR

Occ	Birth Date	City, State, & Zip
1	07-17-1971	FLORENCE SC 29505

State	Driver's License #	Class	Insurance Company
SC	11276467	D	USAA

Year	Body	Vehicle Make	VIN #
2008	4S	MERZ	WDDGF56X18F106860

State	Year	License Plate #	Owner's D.L. #
SC	2016	HXX453	UNKNOWN

Home Telephone:

Owner's Full Name: HAMILTON CLARENCE EDWARD

Bus. Telephone:

Street: 1039 GREEN RD

Contributed To Collision: Yes (No)

City, State, & Zip: LAKE CITY SC 295605534

Estimated Speed	Posted Limit	C.D.L. Req: Yes (No)	T/B S Req: Yes (No)	Acc/Drg Info (see back): Yes (No)				
35	55	Summons #	Code	Summons #	Code	Towed By: (Yes) No		
						BENTONS BP		

Driver/Pedestrian 3

Driver/Pedestrian's Full Name:

Unit #	Sex	Race	Street

Occ	Birth Date	City, State, & Zip

State	Driver's License #	Class	Insurance Company

Year	Body	Vehicle Make	VIN #

State	Year	License Plate #	Owner's D.L. #

Home Telephone:

Owner's Full Name:

Bus. Telephone:

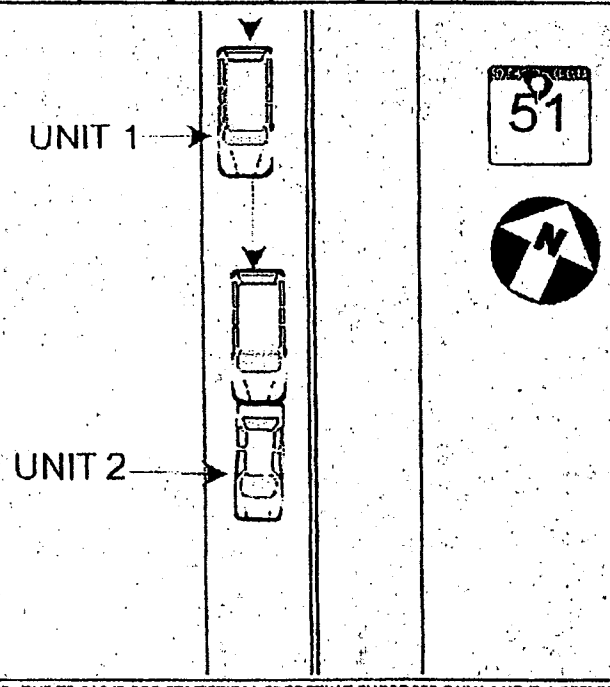
Street:

Contributed To Collision: Yes No

City, State, & Zip:

Estimated Speed	Posted Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Acc/Drg Info (see back): Yes No				
		Summons #	Code	Summons #	Code	Towed By: Yes No		

Dir. of Travel: Unit 1: N S E W | Unit 2: N S E W | Unit 3: N S E W



Unit 1 Dam.	Unit 2 Dam.	Unit 3 Dam.	Prop. Dam. 1	Prop. Dam. 2
$ 1000	$ 5000	$	$	$

Property Owner/Witness:

Address:

State: Zip: Phone:

Property Owner/Witness:

Address:

State: Zip: Phone:

Photo: Y (N) Describe/Warn (Reported) Refer to Witness/Narrative

UNIT 1 AND UNIT 2 WERE TRAVELING SOUTH ON SC 51. UNIT 2 HAD SLOWED FOR TRAFFIC. DRIVER OF UNIT 1 WAS DRIVING TOO FAST FOR CONDITIONS AND STRUCK UNIT 2 IN THE REAR.

NOTICE: THE TR 310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name	Rank	Badge #	Jurisdiction Code	Review Date	Reviewer's Name	Rank	Internal Agency Code
JONES - JASON	SGTPR	T557	HP05	02-02-2015	FT Cherry	Cpl	15FL011855

2015508594

Unit	Date of Birth	Sex	Race	INJ	Seat	RSC	A BD	Eject	LAI	Tran	Name	Street Address			Zip Code
01	05-04-1970	M	W	0	01	13	4	3	1	1	2	COOGLER KENNETH COLLI	458 RIDGECREST CT	LATTA	SC	295654125
02	07-17-1971	F	B	2	01	13	4	3	1	1	1	HAMILTON NATOSHIA A	2196 BROAD DR	FLORENCE	SC	29505

Race: A Asian/Pacific Islander; B African-American; I American Indian/Alaskan Native; W Caucasian; H Hispanic; O Other

a) Injury Status: 2 Admitted Hospital; 3 Fatality; 1 Possible Injury; 4 Fatal
b) 2 or 3 Wheel Motorized Vehicle
Head Injury: 1 Yes; 2 No
Location After Impact: 3 Fixed Object Struck; 1 Not Trapped; 4 Not Applicable; 2 Extricated, Vecturial Means; 9 Unknown

Seating Loc.: 01 02 03 / 04 05 06 / 07 08 09
20 Pedestrian; 30 Trailing Unit; 40 Bus/Van (24+ Occupant Capacity); 50 Other Enclosed Area (Describe); 51 Other Unenclosed Area (Describe); 60 Sleeper of Cab; 70 Riding on Unit Exterior; 80 Unk; 99 Unk/NA

a) Transported to Medical Facility: 1 Yes; 2 No; 3 Unknown
b) By: 1 EMS; 2 Public; 8 Other; 9 Unk

Restraint/Safety Device: 00 None Used; 01 Belt; 11 Shoulder Belt Only; 12 Lap Belt Only; 13 Shoulder & Lap Belt; 21 Child Safety Seat; 88 Other; 99 Unk
Pedestrian Visibility/Pedalcycle Only: 31 Helmet; 51 Reflective Clothing; 81 Reflective Paint; 61 Lighting

Air Bag Deployment / Switch: 1 Deployed Front; 4 Not Deployed; 2 Deployed Side; 7 Not Applicable; 3 Deployed Both; 9 Deployment Unk
a) 1 Switch in On Position; 3 No Switch
b) 2 Switch in Off Position; 9 Unknown

Ejection: 1 Not Ejected; 2 Part Ejected; 3 Totally Ejected; 7 Not Applicable; 9 Unk

Sequence of Events

1st	2nd	3rd	4th	Sequence	1st Harm
22				22	22
22				22	

Collision Not Fixed: 20 Animal (Not Deer); 21 Animal (Deer); 22 Work Zone Maint. Equip.; 23 Motor Vehicle in Transport; 24 Motor Vehicle (Other); 25 Motor Vehicle (Parked); 26 Pedalcycle; 27 Railway Vehicle; 28 Train; 29 Other Movable Object
Collision Fixed Object: 40 Bridge Overhead Structure; 41 Bridge Pier or Abutment; 42 Bridge Parapet End; 43 Bridge Rail; 44 Culvert; 45 Curb; 46 Ditch; 47 Embankment; 48 Guardrail Face; 49 Guardrail End; 50 Concrete Traffic Barrier; 51 Impact Attenuator/Crash Cushion; 52 Median Cable Barrier; 53 Median Concrete Barrier; 54 Median Other Barrier; 55 Traffic Sign Post; 56 Overhead Sign Support; 57 Light Support; 58 Utility Pole/Light Support; 59 Other Post, Pole or Support; 60 Other Fixed Object; 61 Tree; 62 Utility Pole; 63 Work Zone Maint. Equipment; 64 Work Zone Traffic Control; 65 Other Traffic Control; 66 Fire Hydrant; 67 Shrubbery; 68 Tunnel/Underpass; 69 Other Underground Structure; 70 Work Zone Structure Mounted; 71 Wall; 72 Building; 73 Other Fixed Object

Manner of Collision/Struck Veh: 1 Not Collision With Motor Veh; 10 Rear-End; 20 Head On; 30 Rear-to-Rear; 41 Angle; 42 Angle; 43 Angle; 50 Sideswipe Same Dir; 60 Sideswipe Opposite Dir; 70 Backed Into; 99 Unknown

1st / Most Deformed Area: 1st Deformed: 11 27; Most Deformed: 11 17
21-Pedestrian; 81-None; 92-Rollover; 93-Total; 98-Under Carriage; 99-Other; 99-Unk

Vehicle Type: 01 Automobile; 02 Police Truck; 03 Truck Tractor; 04 Other Trucks; 15 Full Size Van; 16 Mini Van; 17 Sport Utility; 25 Motorcycle; 26 Other Motorcycle; 27 Pedalcycle; 28 Animal Drawn Veh; 39 Animal (Rider); 41 Pedestrian; 51 Train; 61 School Bus; 62 Passenger Bus; 98 Other; 99 Unk; Hit/Run Only

Vehicle Use Code: 01 Personal; 02 Driver Training; 03 Construction/Maint; 04 Ambulance; 05 Military; 06 Transport Passengers; 07 Transport Property; 08 Taxi/Limo; 09 Wrecker/Tow; 10 Police; 11 Government; 12 Fire Fighting; 13 Logging; 18 Other; 41 Pedestrian

Vehicle Attachment: 1 None; 2 Mobile Home; 3 Semi-Trailer; 4 Full Trailer; 5 Pole Trailer; 6 Trailer w/ Boat; 7 Camper Trailer; 8 Towed Motor Vehicle; 9 Petroleum Tanker; A Livestock Trailer; B Auto Transporter Trailer; C Other Trailer; D Flat Bed; E Two Trailers; F Other

Alcohol / Drug Test Given: 1 Given / Known Results; 2 Given / Unavailable; 3 Given / Pending; 4 None; 5 Refused
Test Type: 1 Breath; 2 Blood; 3 Urine; 4 Serum; 8 Other
Drug Results: 1 Amphetamines; 2 Cocaine; 3 Marijuana; 4 Opiates; 5 PCP; 8 Other
Alc Test Results: A1- ; A2- ; A3-

Special Use Only
Underride/Override: 6
Extent of Deformity: 0 None/Minor; 1 Functional Damage; 2 Disabling Damage; 3 Severe/Total; 9 Unk
3
Trafficway: 1 Two-way Not Divided; 2 Two-way Divided, Unprotected Median; 3 Two-way Divided, Barrier; 4 One-Way; 8 Other
1
Number of Thru Lanes: 2
Event Date: 5 2

Action Prior to Impact: 01 Backing; 02 Changing Lanes; 03 Entering Traffic Lane; 04 Leaving Traffic Lane; 05 Making U-Turn; 06 Movements Essentially Straight Ahead; 07 Overtaking/Passing; 08 Parked; 09 Slowing or Stopped in Traffic; 10 Turning Left; 11 Turning Right; 88 Other; 99 Unk.
106 / 109

Vehicle: 27 Working
Non-Motorist: 21 Approaching/Leaving Vehicle; 22 Entering/Crossing Location; 23 Playing/Working on Vehicle; 24 Pushing Vehicle; 25 Standing; 26 Walking, Playing, Cycling

Road Character: 1 Straight - Level; 2 Straight - Grade; 3 Straight - Hillcrest; 4 Curve - Level; 5 Curve - Grade; 6 Curve - Hillcrest
1
Road Surface Condition: 1 Dry; 2 Wet; 3 Snow; 4 Slush; 5 Ice; 6 Contaminate; 7 Water (Standing/Moving); 8 Other; 9 Unk.
1
Traffic Control Type: 01 Stop and Go Light; 02 Flashing Traffic Signal; 11 RR (Crossbuck Signs & Gates); 12 RR (Crossbuck & Lights); 13 RR (Crossbuck Only); 21 Officer or Flagman; 22 Oncoming Emergency Vehicle; 31 Pavement Markings (only); 41 Stop Sign; 42 School Zone Sign; 43 Yield Sign; 45 Other Warning Signs; 46 Work Zone; 51 Flashing Beacon; 98 None; 99 Unk
98

Weather Condition: 1 Clear/No adverse conditions; 2 Rain; 3 Cloudy; 4 Sleet/Hail; 5 Snow; 6 Fog/Smog/Smoke; 7 Blowing Sand/Dirt/Snow; 8 Severe Crosswinds; 9 Unk
1

Light Condition: 1 Daylight; 2 Dawn; 3 Dusk; 4 Dark (Lighting Unspecified); 5 Dark (Street Lights On); 6 Dark (Street Lights Not On); 7 Dark (No Lights)
1

Junction Type: 01 Crossover; 02 Driveway; 03 Five/More Points; 04 Four-Way Intersection; 05 Railway Grade Crossing; 07 Shared Use Paths or Trail; 08 T-Intersection; 09 Traffic Circle; 12 Y-Intersection; 13 Non-Junction; 99 Unk
13

School Bus Involved: 1 Yes Directly; 2 Yes, Indirectly; 3 No; 9 Unk
3

Work Zone: 1 Yes 2 No
2
Work Zone Location: 1 Before 1st Sign; 2 Advanced Warning Area; 3 Transition Area; 4 Activity Area; 5 Termination Area
Work Zone Type: 1 Shoulder/Median Work; 2 Lane Shift/Crossover; 3 Intermittent/Moving Work; 4 Lane Closure; 8 Other; 9 Unk
Workers Present: 1 Yes 2 No

Primary Contributing Factors — Driver: 03
Others: 01 Disregarded Signs, Signals, Etc; 02 Disabled/Accident; 03 Driving Too Fast for Conditions; 04 Exceeded Authorized Speed Limit; 05 Failed to Yield Right-of-Way; 06 Ran Off Road; 07 Followed Too Closely; 09 Improper Turn; 10 Improper Start; 11 Improper Lane Change; 12 Improper Passing; 13 Improper Backing; 14 Improper Parking; 15 Wrong Side of Wrong Way; 16 Under the Influence; 17 Vision Obscured (Within Unit); 18 Inattentive (Use Cellular Phone, Etc.); 19 Cell Phone; 20 Texting; 28 Other Improper Action; 29 Unk

Roadway: 30 Debris; 31 Construction/Maint Work; 32 Obstruction in Roadway; 33 Road Surface Condition (Ice, Wet); 34 Rut, Holes, Bumps; 35 Shoulders (None, Low, Soft, High); 36 Traffic Control Device (Inop, Missing); 37 Work Zone (Control/Warning Device); 38 Worn, Travel-Polished Surface; 48 Other; 49 Unk
Non-Motorist: 50 Inattentive; 51 Lying and/or Illegally in Roadway; 52 Failure to Yield Right-of-Way; 53 Not Visible (Dark Clothing); 54 Disregard Signs, Signals, Etc; 55 Improper Crossing; 56 Darting; 57 Wrong Side of Road; 58 Other; 59 Unk; 61 Under the Influence; 67 Other Person under Influence
Environmental: 60 Construction; 63 Weather Cond; 64 Glare; 68 Other; 69 Unk
Vehicle Defect: 70 Brakes; 71 Steering; 72 Power Plant; 73 Tires/Wheels; 74 Lights; 75 Signals; 76 Windows/Shield; 77 Restraint System; 78 Trailer Coupling; 79 Cargo; 80 Fuel System; 88 Other; 89 Unk

000065

Exhibit 3

EXHIBIT tabbies B

Akim A. Anastopoulo (SC)
Kate L. Bostrom (NC)
Samuel R. Flynn (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy T. Willey, IV (SC)
Evan P. Williams (SC)

ANASTOPOULO LAW FIRM

Toll Free: 1 (800) 313-2546
Facsimile: (843) 853-2291

Reply to North Charleston Office
www.AkimLawFirm.com

Friday, January 15, 2016

RMA

Date Due
By 5:00 PM
1/26/16

PRIVILEGED AND CONFIDENTIAL:
RELATING TO SETTLEMENT DISCUSSIONS

Sent via mail and fax to 866-467-2763
Marsa King
Allstate Insurance Company
PO Box 7068
Columbia, SC 29210

RE:		
	My Client(s):	Natoshia Hamilton — 02
	DOL:	January 31, 2015
	Claim #:	0356985366
	Pages:	10 Not Including Enclosures

Jnsd - Kathryn Broached

Dear Ms. King

INADMISSIBILITY OF OFFER OF COMPROMISE

Pursuant to South Carolina Rule of Evidence, Rule 408, statements made in compromise negotiations are not admissible at trial. This rule is identical to the Federal Rule and designed to encourage the settlement of controversies by permitting parties to discuss their cases candidly with the assurance that admissions and proposals for compromise made in the course of their good-faith settlement negotiations may not be used against them to later prove liability. Hunter v. Hyder, 236 S.C. 378, 114 S.E.2d 493 (1960). However, evidence of an offer to compromise may be admissible for some other purpose. Meehan v. Commercial Casualty Ins. Co., 166 S.C. 496, 165 S.E. 194 (1932). This entire letter and all of the exhibits attached are submitted with a view toward compromise of this claim. If you do not agree that everything that follows is inadmissible during the litigation of this matter, please stop reading and immediately destroy this letter and its attachments and immediately notify us of your refusal to review our attempt to compromise this claim.

OFFER OF COMPROMISE

This notice, demand, and offer of compromise is directed to you as the insurer of Kenneth Coogler. This letter is written to submit an offer of compromise regarding Natoshia Hamilton's claims against your insured(s) in the above-referenced matter. Additionally, this letter places you on notice, consistent with the dictates of Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933) of a time-limited demand for the payment of

policy limits of Kenneth Coogler's insurance coverage.

I. LIABILITY OF Kenneth Coogler

Our client, Natoshia Hamilton, was severely injured in an automobile collision due to the sole negligence of your insured. The incident occurred when your insured disregarded South Carolina Code § 56-5-1520 and failed to maintain a safe speed under the conditions. This failure caused your insured to violently smash into the rear end of the vehicle our client was in which was slowing for traffic on Pamplico Highway in Florence, South Carolina on January 31, 2015. The severity of the collision propelled our client forward and back within the vehicle, causing dramatic personal property damage and resulting in major injuries to her neck and back.

II. DAMAGES

Natoshia Hamilton's Injuries

Immediately following the collision, Florence County EMS arrived on scene and after noting our client's serious injuries, rushed our client to Carolinas Hospital System where she arrived on a backboard with a c-collar in place due to her neck and back injuries.

Her primary complaints at the time included neck pain and back pain. William Cauthen, MD diagnosed Ms. Hamilton with:

847.0	Neck sprain

The hospital staff conducted the following treatment:

81025	Urine Pregnancy test
81003	Urinalysis, auto w/o scope
72100	X-ray exam of lower spine
72072	X-ray exam of thoracic spine
72125	CT scan neck spine w/o dye
	Prescribed Flexeril 10mg
	Prescribed Cataflam 50mg
	Prescribed oxycodone 5mg

Dr. Cauthen treated our client for her injuries and released her with strict discharge instructions.

Our client was also forced to seek treatment with Lloyd Miller, MD at First Choice Healthcare. Upon initial consultation, our client was experiencing symptoms of neck pain, back pain, arm pain, pain to the right side, and pain in both legs. Dr. Miller diagnosed our client with:

723.1	Cervicalgia
724.2	Lumbago
719.45	Pain in joint, pelvis/thigh
729.5	Arm pain
780.96	Pain of right side of body

Dr. Miller conducted the following treatment:

72052	X-ray cervical spine
	Prescribed Duragesic-75 75mcg/hr
	Prescribed Hydrocodone-acetaminophen 2.5-325mg

Unfortunately, as the pain continued, our client required additional treatment among multiple visits with Tyrone Wallace, DC at Wallace Chiro of Lake City. Upon initial consultation, Ms. Hamilton was experiencing symptoms of remarkably severe constant aching neck pain on both sides, remarkably severe constant aching upper back pain, remarkably severe constant aching mid back pain, remarkably severe constant aching low back pain and remarkably severe constant aching pain in the right buttock. Dr. Wallace diagnosed Ms. Hamilton with:

307.81	Tension headache
719.46	Knee pain
723.1	Cervicalgia
723.2	Cervicocranial syndrome
723.3	Cervicobrachial syndrome
724.1	Pain in thoracic spine
724.2	Lumbalgia
728.85	Muscle spasm
729.1	Myositis
739.1	Cervical subluxation
739.2	Thoracic subluxation
739.3	Lumbar subluxation
739.4	S.I. subluxation
739.5	Pelvic subluxation
847.0	Cervical sprain/strain
847.1	Thoracic sprain/strain
847.2	Lumbar sprain/strain

Dr. Wallace treated our client for her injuries and conducted the following additional treatment:

99204	Comprehensive examination
72040	X-ray cervical 2-3 views
72100	X-ray lumbosacral 2-3 views
97140	Manual therapy (times conducted: 4)
98940	CMT 1-2 regions (times conducted: 9)
97032	Electrical muscle stimulation (times conducted: 19)
97010	Hot pack application (times conducted: 10)
99070	Orthopedic cervical support collar
98941	CMT 3-4 regions
99080	Narrative report

Due to the conditions caused by the collision, our client was required to seek multiple physical therapy visits with Anthony Alexander, MD at Pee Dee Orthopaedic Associates. The goals of these visits were to decrease pain, swelling, inflammation, and muscle spasms, and increase range of motion, function, strength, flexibility, and alignment. Upon initial consultation, our client was experiencing symptoms of right leg pain, back pain. Dr. Alexander diagnosed our client with:

722.10	Herniated disc
724.2	Back pain
724.4	Lumbar radiculopathy

723.1	Cervical pain
721.0	Cervical spondylosis w/o myelopathy

The additional treatment conducted by Dr. Alexander consisted of:

99214	Office visit
72110	X-ray lumbosacral spine (times conducted: 3)
72050	X-ray cervical spine
72148	MRI spinal canal and contents
72141	MRI spinal canal and contents
95911	NCS 9-10 studies
95860	Needle electromyography
63030	Laminotomy, 1 interspace, lumbar (times conducted: 2)
L0120	Cervical flexible, nonadjustable
	Prescribed Meloxicam 15mg
	Prescribed Norco 5-325mg
	Prescribed Celebrex 200mg
	Referral to Palmetto Physical Therapy and Wellness

Our client was referred for treatment with Mary Harpell, DC at Palmetto Physical Therapy and Wellness. Upon initial consultation, our client was experiencing symptoms of lower back pain, neck pain, right shoulder pain and right arm pain. Dr. Harpell diagnosed our client with:

724.3	Sciatica
724.2	Lumbago
728.87	Generalized weakness

Dr. Harpell conducted the following treatment:

	Cervical spine x-ray
	Lumbar spine x-ray
97110	Therapeutic exercises
97112	Neuromuscular re-education
97010	Heat/cryotherapy
97014	Electrical stimulation
97140	Manual therapy

Our client also sought treatment with Rakesh Chokshi, MD at McLeod Regional Medical Center. Dr. Chokshi diagnosed our client with:

722.10	Lumbar disc displacement

Dr. Chokshi conducted the following treatment:

36415	Venipuncture
80048	Basic metabolic panel
81003	Urinalysis w/o micro
85025	CBC w/ auto diff
85610	Prothrombin
85651	ESR sed rate
71010	Chest x-ray 1 view

86850	Antibody screen
86900	ABO group
86901	RH Type
63030	OR services
	Anesthesia
72148	MRI lumbar w/o contrast
J0330	Succinylcholine inj 200m
J0360	Hydralazine inj 20mg
J0690	Cefazolin 1gm (quantity: 2)
J1170	Hydromorphone inj 2mg
J2175	Meperedine inj 25mg/1mL
J2250	Midazolam 2mg/2mL
J2704	Propofol inj 200mg/20mL
J3010	Fentanyl inj 100mcg

The cumulative goal of the treatment has been to restore our client to her condition before the collision.

Summary of Damages

Due to the collision, Ms. Hamilton underwent a serious disruption in her life which prevents her from being able to participate in many things she enjoys. In addition to limitations placed on her enjoyment, Ms. Hamilton has been forced to endure limitations to her range of mobility. Ms. Hamilton will forever be limited in the activities in which she may participate because the nature of her injuries has rendered her at greater risk of future aggravation and trauma. These disruptions have caused considerable hardships and have significantly decreased our client's quality of life.

Punitive Damages

Please also be aware that striking a vehicle due to recklessness, distracted driving, and other willful and wanton behavior subjects Mr. Coogler to punitive damages, and that punitive damages may not be able to be discharged in bankruptcy under federal law or South Carolina law. Please be aware that, based on past precedent we expect this case to yield a verdict in excess of the policy limits. Accordingly, if you force this case to trial, the verdict is unlikely to be discharged in bankruptcy and we will follow Kenneth Coogler for the rest of life and take any property, and possessions may ever accumulate until the verdict is paid in full.

III. **DEMAND PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933), and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).**

Based on Kenneth Coogler's reckless driving and complete disregard for the safety of others on the road, the fact that he was likely distracted at the time he caused his vehicle to strike Ms. Hamilton, the fact that punitive damages will be imposed against Mr. Coogler, and due to the ongoing pain and mental anguish her family will experience for the rest of their lives, we

conservatively estimate the value of this case to be in excess of the policy limits. As there is a possibility that underinsured motorist coverage may be available to Natoshia Hamilton, we cannot offer a full and final release at this time. Instead, we require payment of the policy limits of all applicable policies, under which you insure Kenneth Coogler in a form that will not prejudice our client's right to seek recovery from any other insurance carriers. This offer of compromise requires that policy limits are **RECEIVED**[1] no later than 5:00 p.m. EDT onJanuary 26, 2016, and requires that Kenneth Coogler provide sworn and notarized statements that there is no other insurance coverage available to her that could pertain to this loss. **THIS OFFER OF COMPROMISE INCLUDES A TIME-LIMITED DEMAND FOR PAYMENT OF POLICY LIMITS, AND, AT 5:00 P.M. EDT ONJanuary 26, 2016, THIS OFFER WILL BE WITHDRAWN AND WE WILL OBTAIN AN EXCESS JUDGMENT AGAINST YOUR INSURED(S) WHICH WILL, IN TURN PROVIDE YOUR INSURED(S) WITH A CLAIM AGAINST Allstate Insurance Company PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933) and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).** Please be aware that our demand for policy limits is not negotiable and that ALL conditions of this offer of compromise must be met by the specified time limit. ***If any condition is not met, or if any additional condition is imposed byAllstate Insurance Company, including but not limited to conditions of indemnification or the waiver of any rights or claims not specified herein, this offer of compromise will be withdrawn, and we will obtain an excess judgment against your insured and enforce it against assets.*** This offer of compromise does not include the resolution of any property damage claims and does not request payment of any portion of your insured's property damage insurance limits. ***Accordingly, any request for a release of property damage claims and/or any request for indemnification will constitute a counteroffer and rejection of this offer of compromise.***[2] ***If you include indemnification or a release of property damage claims in the proposed Release you send to us, it will constitute a counteroffer and rejection of this offer of compromise even if you claim in a cover letter or other documents that you send to us that you have accepted our offer. Acceptance of this offer specifically requires you to prove a proposed Release that complied with this offer by the above deadline.***[3] Moreover, if there is any language in the

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[1] Settlement funds must be paid by Cashier's Checks or Certified Bank Checks (not drafts) issued by your insurance company as follows: Natoshia Hamilton and the Anastopoulo Law Firm, LLC. The checks must be **RECEIVED** in my office no later than 5:00pm EDT on [prompt, deadline for check]. Anastopoulo Law Firm, LLC's Tax I.D. Number is 452775649. For your convenience, our firm's W-9 is also attached hereto (Exhibit A). The funds should be sent to 2557 Ashley Phosphate Road North Charleston, SC 29418.

[2] Please be aware that we have done everything reasonable to warn you that even a mere request for indemnification or a mere request for the waiver of any other rights or claims, including property damage claims, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

[3] Please do not attempt to send a proposed Release that includes indemnification or a release of property damage claims. The insurance company tactic of including indemnification or a release of property damage claims in the proposed Release will not work against this firm and its clients. Please be aware that you cannot get around this requirement by sending a cover letter with a non-compliant proposed Release that says your "proposed Release is not a counteroffer." ***If you send a proposed Release that***

proposed Release or any other documents you send us that requires or even requests Natoshia Hamilton to make representations or warranties regarding the absence of medical liens or hospital liens or bankruptcy proceedings relating to Natoshia Hamilton, the requirement or request will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Allstate Insurance Company is perfectly capable of reviewing court records to verify this information, and attempting to shift the cost of verifying this information to our client(s) is not acceptable and will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.[4] Accordingly, please be aware that a requirement or even a request for a "Lien Affidavit" or similar document by any other name will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Additionally, please be aware that it will be deemed a counteroffer and rejection of this offer of compromise if Allstate Insurance Company requires or even requests the release of any individuals or entities other than Kenneth Coogler and Allstate Insurance Company.[5]

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includes indemnification or a release of property damage claims or that violates any other terms of this offer, it is a counteroffer regardless of whatever you put in your cover letter. Pursuant to this offer of compromise, your insurance company cannot provide a letter that says it accepts our offer and then try to trick us by providing a proposed Release that does not comply with our offer. Do not put indemnification or a release of property damage claims in the proposed Release you send to us in the hope that we will sign your proposed Release without reading it or in the hope that we will rely on a representation in your cover letter that you have accepted our offer of compromise when you have not provided a compliant release. If you do put indemnification or a release of property damage claims in the proposed Release, it is a counteroffer even if you try to say it is not, and, if you try this tactic, we will proceed to verdict and take your insured's assets until it is paid in full. Please also keep in mind that a proposed Release that includes the release of "any and all claims" would necessarily include property damage claims and is also a counteroffer and rejection. Instead of acting in bad faith and trying to trick us, please just send a reasonable proposed Release that does not include indemnification or the release of property damage claims. Acceptance of this offer of compromise requires you to make your acceptance through performance and not just mere words or promises. Part of the performance required to accept this offer is for you to deliver a proposed Release with the settlement check. Additionally, the proposed Release that is delivered with the settlement check must comply with the terms of this offer. ***Regardless of what you might say in your cover letter, if the proposed Release does not comply with this offer, it is a rejection and counteroffer.***

[4] Please be aware that we have done everything reasonable to warn you that even a mere request for warranties or representations regarding the absence of medical liens or hospital liens or bankruptcy proceedings will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise.

[5] Please be aware that we have done everything reasonable to warn you that even a mere request for the release of any individuals or entities other than Kenneth Coogler and Allstate Insurance Company will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. ***Moreover, please be aware that Allstate Insurance Company will only be released with respect to the bodily injury coverage of the subject policy and that Allstate Insurance Company will not be released with respect to any other policies or coverages not identified herein and that a request or requirement for a general release or a full and final release of Allstate Insurance Company will be a counteroffer and rejection of this offer of compromise.*** Please do not place any additional releases on the settlement check, in the proposed Release, or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware

Moreover, please be aware that Allstate Insurance Company will only be released with respect to the bodily injury coverage of the subject policy and that Allstate Insurance Company will not be released with respect to any other policies or coverages not identified herein. Payment must be made as described herein, and payment by any other method, including payment through the registry of any court or through the filing of an interpleader action, will not satisfy the terms of this offer of compromise and will result in the immediate and automatic withdrawal of this offer of compromise. Additionally, filing a declaratory judgment action will result in the immediate, automatic, and permanent withdrawal of this offer of compromise. Please be aware that, under South Carolina law, our offer of compromise must be accepted unequivocally and without variance of any sort and that a purported acceptance of this offer of compromises which imposes *or even requests* conditions beyond those contained in this offer will be construed as a counteroffer and rejection. Please also be aware, that under South Carolina law, we have no continuing duty to repeatedly remind you of the deadline or any conditions of our offer, herein. See Maxton v. Payes, 313 S.C. 109, 437 S.E.2d 66 (1993). Additionally, any attempted counteroffer by Allstate Insurance Company will be deemed a rejection of our offer of compromise and will result in the immediate and permanent withdrawal of our offer of compromise. Furthermore, please be aware that sworn and notarized statements that there is no other insurance coverage that could pertain to this loss must accompany your payment of policy limits. For your convenience, we have provided an affidavit that meets this condition. ***Please be aware that sending a proposed Release, settlement check, or any other documents that include any conditions or provisions that are not part of this offer will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.*** Additionally, even if you send a cover letter that claims to "unconditionally" or "unequivocally" accept our offer of compromise, but you also send a proposed Release, a settlement check, or any other documents that include any conditions or provisions that are not part of this offer, it will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Please do not attempt to trick us by saying in a letter that you accept our offer of compromise and then trying to sneak in additional terms that are not part of our offer. Our offer of compromise must be accepted by your insurance company's performance of the requirements of this letter and not by mere words that claims to accept the offer. Regardless of any statement that your insurance company has accepted or is accepting our offer of compromise, if your insurance company's actions and documents (i.e., your proposed Release, settlement check, etc.) do not comply with our offer of compromise, it will be a counteroffer and rejection of our offer. Acceptance of this offer of compromise requires performance and not just mere words or promises. Accordingly, in order to accept this offer of compromise, you must meet all of the terms and conditions of this offer of compromise, including, but not limited to, providing payment and a proposed Release that comply with the terms of this offer of compromise.

Please be aware that the only release we will accept is one that is limited in its scope to

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that many insurance companies use this tactic, but it will not work against this firm and its clients. Any request for the release of any individuals or entities other than Kenneth Coogler and Allstate Insurance Company as described herein, whether "accidental" or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise. Once again, if you send a proposed Release that purports to release any additional individuals or entities, it will be a counteroffer and rejection regardless of any claims of acceptance you make in a cover letter or any other documents you send to us. This offer of compromise requires you to deliver a proposed Release that complies with the terms of this offer of compromise. This offer of compromise requires you to make your acceptance through performance and not just mere words or promises.

protecting your insured from Natoshia Hamilton's rights to the personal assets of your insured. ***Additionally, this offer relates only to personal injury claims (and not any property damage claims); accordingly, a proposed Release or a statement on the settlement check or any other documents you send to us that purports to release or resolve "any and all claims" will be considered as a counteroffer and rejection of this offer, resulting in the immediate and permanent withdrawal of this offer. Natoshia Hamilton*** must not be prevented in any way from making a claim against her own insurance carriers. Despite the limited scope of our offer, our offer will protect the interests of your insured because it would only allow Natoshia Hamilton to seek the proceeds of their own coverage and other applicable insurance policies relating to personal injuries and it would prevent Natoshia Hamilton from seeking the assets of your insured as compensation for the personal injuries.[6] If you do not pay policy limits and meet the other requirements contained in this offer within the specified time limit, we will withdraw our offer of compromise and we will obtain an excess judgment against your insured and enforce it against her assets. In view of existing circumstances, we believe your insurance company should accord its insured the same faithful consideration it gives its own interests. If you do not pay policy limits in this case and meet the other requirements contained in this offer, pursuant to the terms of this offer of compromise, Kenneth Coogler may be able to sue your company for compensatory and punitive damages for bad-faith failure to properly adjust this claim. **Please explain to Kenneth Coogler that has the right to hire an attorney to represent against Allstate Insurance Company and that has the right to demand that you pay this demand in order to protect property and possessions.**

Please be aware that this letter constitutes Natoshia Hamilton's formal offer and that no oral representations made before or after this letter can alter the terms of this offer. If, for any reason, this firm agrees to change this offer in any way, such changes can and will be made only in a writing that is signed by a member of this firm. The purpose of this paragraph is to specifically prevent Allstate Insurance Company from claiming that this offer was modified in any way by an oral communication. ***Please be aware that, unless there has been a specific writing signed by a member of this firm that specifically changes this offer, the offer made by this letter has not been changed.*** Additionally, there are and will be no oral offers made to resolve this case. Accordingly, please do not attempt to claim that there has been an oral offer to resolve this case because there has not been and will not be such an offer. ***Any offer to resolve this case by Natoshia Hamilton must be made in writing and any acceptance of that offer must be made through performance of the provisions of this offer of compromise in order for this firm and Natoshia Hamilton to agree that a binding agreement has been formed. Specifically, this offer of compromise cannot be accepted by a mere statement of unconditional acceptance of this offer; instead, acceptance of this offer requires full performance of all terms and conditions of this offer. If any condition or requirement is not met by the specified deadline or if any additional condition or requirement is imposed upon Natoshia Hamilton, then there has been no acceptance and no agreement.***

---

[6] Please be aware that it is our current belief that Natoshia Hamilton may have had underinsured motorist coverage with policy limits far below the full value of this case. However, she may also have no coverage at all. Accordingly, since there is only a small amount of underinsured motorist coverage compared to the actual value of this case, Allstate Insurance Company's acceptance of this offer provides the greatest possible amount of protection for its insured. Thus, if Allstate Insurance Company fails to accept this offer, it will be exposing its insured to substantial excess liability and acting in bad faith towards its insured.

We have supplied you with all information necessary to evaluate this offer of compromise[7]; however, should you have any questions regarding this offer of compromise, please do not hesitate to contact me at (843) 614-8888. Additionally, although any requirement or request for terms and conditions of settlement and compromise that are not approved herein will constitute a counteroffer and rejection of this offer of compromise, if you feel that any part of this letter needs clarification in order for you to comply with its terms, we will be happy to offer any clarification of terms so that you have a full and fair opportunity to comply with this offer. Of course, this letter relates to discussions involving settlement and compromise, and nothing contained herein shall be deemed admissible except to enforce a claim for bad-faith failure to properly adjust this claim.

I look forward to hearing from you.

Sincerely,

EW

Evan Williams

EW/df
Enclosures

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[7] Please be aware that we have provided you willful and sufficient information to evaluate this offer of compromise and to compel your insurance company to pay its policy limits as demanded. Nevertheless, we are aware that many insurance companies request unnecessary additional information within a few days of the deadline for payment as a tactic to delay the resolution of a case. We are aware that insurance companies make more money when settlements are delayed because the insurance company can continue to earn investment income from the settlement money for as long as the insurance company can maintain possession of the settlement funds. We are aware that many insurance companies use the tactic of requesting unnecessary additional information to delay payment, but it will not work against this firm and its clients. Additionally, in the unlikely event that there is a legitimate need for additional information, we will have to request that information from another party. Therefore, any request for additional information must be made as soon as possible and at least ten (10) days before the deadline so that we will have a reasonable opportunity to try and obtain the requested information. We have done everything reasonable to warn you that this offer of compromise includes a time-limited demand for the payment of policy limits. Please be aware that the deadline for payment and compliance with all other terms will not be extended based on a request for additional information because this offer of compromise already includes more than enough information to compel payment. Please do not place your insured's assets in jeopardy by incorrectly assuming that a request for additional information will extend the deadline of this offer of compromise. Failure to meet the deadline for any reason will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

Exhibit 4

EXHIBIT D

ANASTOPOULO LAW FIRM

Akim A. Anastopoulo (SC)
Kate L. Bostrom (NC)
Samuel R. Flynn (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy T. Willey, IV (SC)
Evan P. Williams (SC)

Toll Free: 1 (800) 313-2546
Facsimile: (843) 494-5536

Reply to Columbus Street Office
eric@akimlawfirm.com

March 23, 2016

Richard Ozegovich
Allstate Insurance Company
PO Box 7068
Columbia, SC 29202

RE: *Natoshia Hamilton v. Kenneth Coogler*
Claim #: 0356985366

Dear Mr. Ozegovich:

I am in receipt of Allstate's check [#521274501] dated January 26, 2015 (which I assume was supposed to read 2016). As you know, by letter dated January 15, 2016, my client offered to settle her claims against your insured pursuant to an Offer of Compromise.

As stated in the Offer of Compromise, "Please be aware that our demand for policy limits is not negotiable and that ALL conditions of this offer of compromise must be met by the specified time limit. ***If any condition is not met, or if any additional condition is imposed by Allstate Insurance Company...this offer of compromise will be withdrawn.***"

Allstate failed to accept this offer of compromise. Therefore, as stated in the letter, we have been forced to return the check to you and file suit against Allstate's insured. Please do not try to trick us by sending us a check for this amount again. As our Offer of Compromise clearly states, now that you have rejected our client's offer, it is immediately and permanently withdrawn. If you send us a check for this amount in the future, we will consider it a partial payment toward whatever verdict we ultimately obtain. If no verdict is obtained, we will consider it a gift. However, it will not serve as a release in any way. We will deposit the check into our trust account, and disburse our client's portion without further communication and without having any Release or Covenant Not to Execute signed by our client.

In any event, the offer is now withdrawn and suit will be filed. Please be advised that this is your one and only notification of the filing of the lawsuit and that we have no continuing duty to keep you informed or notify you when service has been perfected. Please also be advised that since you are now on notice, it is your duty to ensure that the lawsuit is timely answered, and you will not be able to avoid coverage by later claiming that your insured failed to forward you copies of the pleadings. The pleadings are available for you to view on the Clerk's website.

If you should have any questions, please do not hesitate to contact us

Sincerely:

Eric M. Poulin

Cc: Natoshia A. Hamilton

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE Allstate Property and Casualty Insurance Company, Plaintiff, vs. Natoshia Hamilton and Kenneth Collins Coogler, Defendants.	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT C/A#: 2017-CP-21-341 **ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT**

TO: ERIC M. POULIN, ROY T. WILLEY, IV and CAMDEN HODGE, ATTORNEYS FOR DEFENDANT NATOSHIA HAMILTON, AND DEFENDANT KENNETH COOGLER:

YOU WILL PLEASE TAKE NOTICE that Plaintiff Allstate Property and Casualty Insurance Company ("Allstate"), by and through its undersigned counsel, will move before the resident or presiding judge of the South Carolina Court of Common Pleas for Florence County on the tenth day after service hereof, or at such time and place as the court may determine, for an order granting summary judgment in its favor on its Complaint. This Motion is based on the grounds that there are no genuine issues of material fact relating to Allstate's claims against Defendants and Allstate is entitled to entry of summary judgment in its favor pursuant to South Carolina Rule of Civil Procedure 56. In support of this Motion, Allstate states as follows:

1. Through her counsel, the Anastopoulo Law Firm ("Law Firm"), by letter dated Friday, January 15, 2016, Defendant Natoshia Hamilton ("Hamilton") sent a time-sensitive demand to Allstate demanding payment of the policy's applicable limits of insurance for her bodily injuries arising out of an automobile accident that occurred on January 31, 2015 involving Allstate's

insured, Defendant Kenneth Collins Coogler ("Coogler"). A true and accurate copy of the letter is attached as Exhibit B.

2. The January 15, 2016 letter demanded payment of the bodily injury policy limits from Allstate's automobile policy, affidavits signed by the insureds stating that no other applicable liability coverage exists and a proposed covenant not to execute meeting the terms stated in the letter.

3. In addition, Allstate was required to ensure that the "policy limits" were "received" no later than 5:00 pm on Tuesday, January 26, 2016, and in a footnote stated that such "[s]ettlement funds must be paid by Cashier's Checks or Certified Bank Checks (not drafts) issued by your insurance company as follows: Natoshia Hamilton and the Anastopoulo Law Firm, LLC. The checks must be RECEIVED in my office no later than 5:00pm EDT on [prompt, deadline for check]."

4. Following the weekend and holiday on Monday, January 18, 2016, Allstate received the Friday, January 15, 2016 letter on Thursday, January 21, 2016.

5. In order to meet the arbitrary deadline imposed by the demand, Allstate diligently began working to review the medical information and to retain counsel to prepare the requested covenant not to execute.

6. Allstate also obtained the requested affidavits from Coogler and Broach regarding the lack of additional insurance related to the claim.

7. Given the timing issues with regard to evaluating the claim and responding to the time-sensitive demand in such short order, Allstate issued a manual check in the amount of $25,000.00, which represented the available bodily injury limits under the policy.

8. On January 26, 2016, Allstate hand delivered the requested information, including the affidavits from Coogler and Broach, the $25,000.00 check, and "Agreement and Covenant not to Execute," which complied with the terms as set forth in the Friday, January 15, 2016 letter. (Exhibit C.)

9. Evan Williams, an attorney with Anastopoulo, signed for and accepted the check and accompanying documents before 5:00 p.m. on Tuesday, January 26, 2016.

10. Allstate issued a manual check because it cannot issue a cashier's check of certified bank check because Allstate is not a bank or financial institution. (Ex. A., Affidavit of Wayne Gaymon, Ex. A)

11. Despite Allstate's acceptance of the demand and submission of the requested information, including the issuance of the check for the available policy limits, Anastopoulo subsequently replied by letter dated March 23, 2016 stating:

> Allstate failed to accept this offer of compromise. Therefore, as stated in the letter, we have been forced to return the check to you and file suit against Allstate's insured. Please do not try to trick us by sending us a check for this amount again. As our Offer of Compromise clearly states, now that you have rejected our client's offer, it is immediately and permanently withdrawn. If you send us a check for this amount [$25,000.00, the bodily injury limits of the policy,] in the future, we will consider it a partial payment toward whatever verdict we ultimately obtain. If no verdict is obtained, we will consider it a gift. However, it will not serve as a release in any way. We will deposit the check into our trust account, and disburse our client's portion without further communication and without having any Release or Covenant Not to Execute signed by our client.
>
> In any event, the offer is now withdrawn and suit will be filed. Please be advised that this is your one and only notification of the filing of the lawsuit and that we have no continuing duty to keep you informed or notify you when service has been perfected. Please also be advised that since you are now on notice, it is your duty to ensure that the lawsuit is timely answered, and you will not be able to avoid coverage by later claiming that your insured failed to forward you copies of the pleadings. The pleadings are available for you to view on the Clerk's website.

A true and correct copy of the March 23, 2016 correspondence is attached as Exhibit D, and the contents of the letter are incorporated as if fully stated here.

12. Hamilton's attorney failed to provide any specificity regarding how Allstate failed to accept the terms of the settlement offer.

13. Ultimately, Hamilton brought suit against Coogler despite the fact Allstate accepted Hamilton's demand.

There is no legitimate dispute and the competent evidence in this case clearly demonstrates Allstate's acceptance of the settlement demand on behalf of Coogler met the material terms of the demand as written and presented. Further, Allstate's acceptance and performance of the settlement demand constitute an accord and satisfaction. Therefore, Allstate's acceptance of the settlement demand presented in the January 15, 2016 letter is valid and enforceable under South Carolina law such that Allstate is entitled to entry of summary judgment in its favor as a matter of law.

This Motion is further supported by and based upon the pleadings filed in this case, discovery completed or to be competed, including discovery responses, depositions taken or to be taken, affidavits filed or to be filed, a memoranda of law that will be filed, and such other documents as may be appropriate.

WHEREFORE, Plaintiff Allstate Property and Casualty Insurance Company respectfully requests that this Court grant its motion and enter an Order granting summary judgment in its favor as a matter of law.

{Signature on next page}

GALLIVAN, WHITE & BOYD, P.A.

By: Johnston Cox (APA)

John T. Lay, Jr., S.C. Bar No. 64526
A. Johnston Cox, S.C. Bar No. 09081
Janice Holmes, S.C. Bar 75038
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
Telephone: 803-779-1833
Facsimile: 803-779-1767
jlay@GWBlawfirm.com
jcox@GWBlawfirm.com
jholmes@GWBlawfirm.com

Attorneys for Allstate Property and Casualty Insurance Company

Columbia, South Carolina
February 5, 2018

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

Allstate Property and Casualty Insurance Company,

Plaintiff,

vs.

Natoshia Hamilton and Kenneth Collins Coogler,

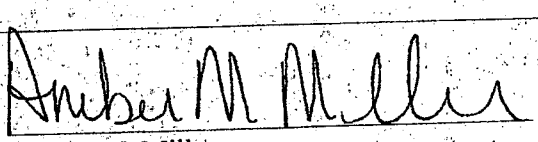
Defendants.

C/A#: 2017-CP-21-341

CERTIFICATE OF SERVICE

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U. S. Mail, postage prepaid, *or by other delivery as indicated,* to all parties of record at the address(es) shown below.

DOCUMENT:	**ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT**
COUNSEL SERVED:	Eric M. Poulin, Esquire Roy T. Willey IV, Esquire J. Camden Hodge, Esquire Anastopoulo Law Firm 32 Ann Street, Unit B Charleston, SC 29403



Amber M. Miller
Legal Assistant

Columbia, South Carolina
February 5, 2018

Case No. 2017-CP-21-341
Allstate's Memorandum of Law in Support of Motion for Summary Judgment

Exhibit A

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, Plaintiff, v. NATOSHIA HAMILTON and KENNETH COLLINS COOGLER, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT Case No. 2017-CP-21-341 **AFFIDAVIT OF WAYNE D. GAYMON**

Personally appeared before me, Wayne D. Gaymon, who, being duly sworn, deposes, and says that:

1. I am over the age of 21, am of sound mind, and I am personally familiar with the contents of this affidavit.

2. I am currently employed with Allstate Insurance Company ("Allstate"), where I have been employed for over 13 years. I am currently employed as the Casualty Claims Service Leader for the South Carolina MCO.

3. Allstate received a letter dated February 5, 2015 from the Anastopoulo Law Firm, LLP ("Law Firm") stating that the Law Firm would be representing Hamilton "for the bodily injuries she suffered during a motor vehicle accident." The relevant portions of the claims diary are attached as **Exhibit A** and the letter is attached as **Exhibit B**.

4. On January 21, 2016, Allstate received a letter from the Law Firm regarding radiology bills that were to be added to the bills included with the demand. Because Allstate had not received the demand, Allstate called the Law Firm and was told that the demand package had been sent. (ALLSTATE 0340)

5. During the afternoon of January 21, 2016, Allstate received the time-sensitive demand that was dated January 15, 2016. (ALLSTATE 0340)

6. Per the terms of the demand, the demanded limits of the policy were to be received by the Law Firm no later than "5:00 pm EDT on January 26, 2016." The demand also stated, in a footnote, that "[S]ettlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company" and be made payable to Hamilton and the Law Firm. **(Exhibit C)**

7. The demand also requested that Kenneth Collins Coogler ("Coogler") "provide sworn and notarized statements that there is no other insurance coverage available to her [sic] that could pertain to this loss."

8. In addition, the demand requested that a proposed release be provided. The letter specifically directed that Allstate "[i]nstead of acting in bad faith and trying to trick us, please just send a reasonable Release that does not include indemnification or the release of property damage claims." In addition, the letter stated "[p]art of the performance required to accept this offer is for you to deliver a proposed Release with the settlement check" and "the proposed Release that is delivered with the settlement check must comply with the terms of this offer."

9. On January 26, 2016, in order to meet the time limit in the demand, a handwritten check was requested to include with the response package accepting the time-sensitive demand. (ALLSTATE 0337)

10. Allstate does not and cannot issue certified bank check or cashier's checks. Allstate is not a bank. Given this fact, to my knowledge, Allstate has never issued a certified or cashier's check to settle a claim in South Carolina.

11. There is no material reason to request a certified bank check or cashier's check from Allstate. To my knowledge, no Allstate check has ever been returned for insufficient funds in South Carolina. In fact, the Anastopoulo law firm is the only law firm in South Carolina that has requested certified bank checks or cashier's checks from Allstate. Although the Anastopoulo firm does from time to time request such checks from Allstate, the firm routinely accepts both manual and printed checks from Allstate in settlement of claims.

12. As reflected in the claims diary, on January 26, 2016, the settlement check in the amount of $25,000.00, covenant not to execute, and affidavits of the named insured, Kathryn Broach, and her husband, Kenneth Collins Coogler, were hand delivered to the Law Firm (and signed for by attorney Evan Williams, who was with the Law Firm at the time) to satisfy the requirements of the time-sensitive demand. (ALLSTATE 0336-0337)

13. The $25,000 check was a valid and negotiable check. The affidavits and covenant not to execute complied with the terms of the demand letter.

14. Allstate did not receive any correspondence prior to Allstate's acceptance of the demand and performance by delivering the required check and documents to the Law Firm that the demand was rescinded.

Wayne D. Gaymon

Wayne D. Gaymon

Sworn to and subscribed before me this the
30th day of January 2018.

Notary Public My Commission Expires
My Commission Expires: August 6, 2019

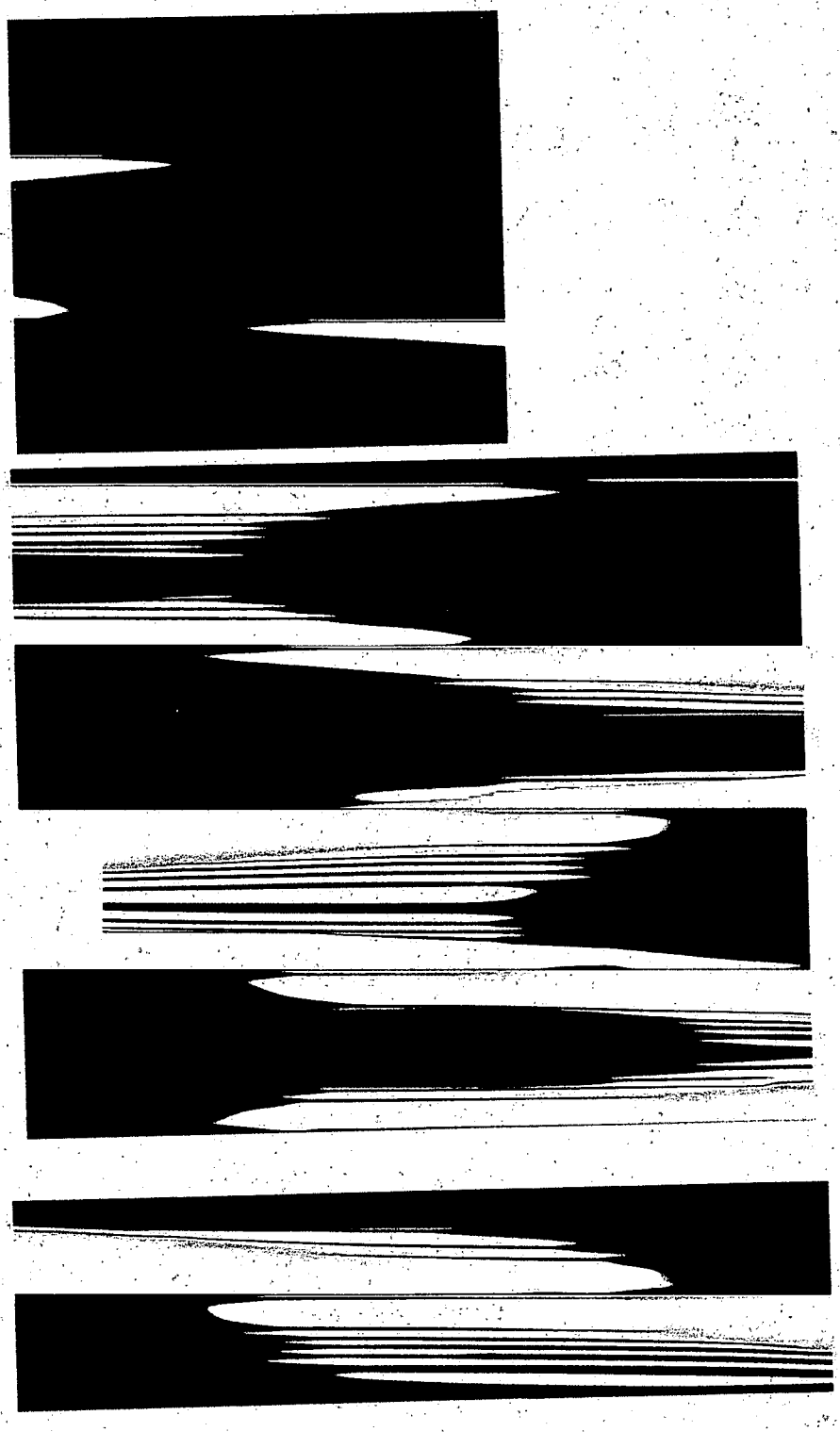
Case No. 2017-CP-21-341
Affidavit of Wayne D. Gaymon

Exhibit A

sssi	4/6/2016 1:59 PM Central	[redacted]	Litigation / Arbitr...	MARSA KING	KATHRYN H PRICE ...
		[redacted]			
sssi	4/2/2016 1:42 PM Central	ISO Result: Match	Investigation	ISO System Ge...	KATHRYN H PRICE ...
		ISO_CLAIMSEARCH			
sssi	3/31/2016 8:42 AM Central	CSL COMMENTS	Managers Com...	ADOLPHUS A. ...	NATOSHIA HAMILT...
		At this point we will await suit filing. Attorney has rejected settlement due to incorrect date on check. I have requested rep f/u with insd to discuss suit process.			
sssi	3/30/2016 10:18 AM Central	[redacted]	Litigation / Arbitr...	MARSA KING	NATOSHIA HAMILT...
		[redacted]			
sssi	3/30/2016 10:16 AM Central	[redacted]	Litigation / Arbitr...	MARSA KING	NATOSHIA HAMILT...
		[redacted]			
sssi	3/30/2016 10:13 AM Central	24481420-13-called tpc and left...	Contact	MARSA KING	USAA GENERAL IN...
		24481420-13-called tpc and left vm in ref to the claim.			
sssi	3/30/2016 10:10 AM Central	[redacted]	Contact	MARSA KING	KATHRYN H PRICE ...
		[redacted]			
	3/30/2016 10:09 AM Central	CP3_R_009 Letter sent	Correspondence Outbound Information Request	MARSA KING	KENNETH COOGLER
		CP3_R_009 letter sent			
	3/30/2016 10:08 AM Central	CP3_R_009 Letter sent	Correspondence Outbound Information Request	MARSA KING	KATHRYN H PRICE ...
		CP3_R_009 letter sent			
	3/30/2016 10:02 AM Central	GEN_I_001 is rejected - recreate	Correspondence	MARSA KING	Anastopoulo Law Fir...
		GEN_I_001 is rejected - recreate			
sssi	3/30/2016 9:51 AM Central	The atty's office sent back chec...	Litigation / Arbitr...	MARSA KING	NATOSHIA HAMILT...
		The atty's office sent back check due to the fact that the check was issued with the date 01/26/15 instead of 01/26/16. The attorney Evan Williams signed for check that was hand delivered 01/26/16.			

		discussed with Csl Burris and we will respond with letter indicating the check was signed for by atty in their office and check was still able to be cashed regardless of the date issued and demand did not indicate what date the check should have been issued.				
sssi	3/30/2016 9:33 AM Central	Pulled file from file room for NMK	Correspondence	MICHELLE TAY...	KATHRYN H PRICE ...	
		Pulled file from file room for NMK				
sssi	3/9/2016 9:49 AM Central	The tpc called and requested d...	Inquiry	MARSA KING	USAA GENERAL IN...	
		The tpc called and requested dec page and copy of covenant..they have uim claim and have nto been able to confirm withatty..confirmed we could send				
	3/8/2016 10:25 AM Central	Document Image Received	Damages - Auto	FileNotes Syste...	KATHRYN H PRICE ...	
			Physical File Documents			
sssi	2/24/2016 10:37 AM Central	TPC called to inquire about if lia ..	Inquiry	TIERA CHARLE...	USAA GENERAL IN...	
		TPC called to inquire about if liability has been accepted. Advised that liability has accepted.				
sssi	2/23/2016 7:34 AM Central	[redacted]	Payments	MARSA KING	TURNER PADGET G...	
		[redacted]				
sssi	2/16/2016 1:29 PM Central	CALLED CLMT TO INFORM H...	Injury	SARLICE T. HA...	NATOSHIA HAMILT...	
		CALLED CLMT TO INFORM HER THAT A CHECK WAS ISSUED TO HER IN ERROR. I INFORMED HER THE CHECK WAS CANCELLED AND ONCE SHE REC THE CHECK TO GET RID OF THE CHECK. SHE UNDERSTOOD. REISSUED CHECK TO CORRECT PARTY TURNER PADGET GRAHAM.				
sssi	1/27/2016 2:06 PM Central	File to file room	Correspondence	MICHELLE TAY...	KATHRYN H PRICE ...	
		File to file room				
	1/27/2016 11:45 AM Central	CP3_P_013 Letter sent	Correspondence	MARSA KING	KATHRYN H PRICE ...	
			Outbound Providing Information			
		CP3_P_013 letter sent				
	1/26/2016 12:43 PM Central	ok from csl ok handwritten chk ...	Correspondence	RICHARD P. O...	NATOSHIA HAMILT...	
		ok from csl ok handwritten chk atty demand asks for cashiers check or certified bank check				
sssi	1/25/2016 3:28 PM Central	spoke to atty will not concede to...	Contact	RICHARD P. O...	NATOSHIA HAMILT...	
		spoke to atty will not concede to normal draft needs written chk, will do so tomorrow then wil have to hand delivor chk to atty				
	1/25/2016 12:47 PM Central	cntx attached	Correspondence	RICHARD P. O...	KATHRYN H PRICE ...	
		cntx attached				
	1/25/2016 12:46 PM Central	insd aft attached	Correspondence	RICHARD P. O...	KATHRYN H PRICE ...	

		insd aft attached			
	1/25/2016 8:15 AM Central	Manual Evaluation	Evaluation	RICHARD P. O...	
		Manual Evaluation	Manual		
sssi	1/25/2016 8:09 AM Central	ISO Result: Match	Investigation	ISO System Ge...	NATOSHIA HAMILT...
		ISO_CLAIMSEARCH			
sssi	1/25/2016 7:52 AM Central	[redacted]	Evaluation	KIMBERLY A. B...	NATOSHIA HAMILT...
	1/25/2016 7:16 AM Central	aft from insd driver attached	Correspondence	RICHARD P. O...	KATHRYN H PRICE ...
		aft from insd driver attached			
ssss	1/25/2016 7:14 AM Central	[redacted]	Contact	RICHARD P. O...	KATHRYN H PRICE ...
	1/22/2016 10:25 AM Central	[redacted]	Compliance	MARSA KING	KATHRYN H PRICE ...
	1/22/2016 9:54 AM Central	CP3_P_020 Letter sent	Correspondence Outbound Providing Information	MARSA KING	KATHRYN H PRICE ...
		CP3_P_020 letter sent			
sssi	1/22/2016 9:52 AM Central	[redacted]	Contact	MARSA KING	KATHRYN H PRICE ...
sssi	1/22/2016 9:45 AM Central	med eval	Evaluation	MARSA KING	NATOSHIA HAMILT...





sssi	7:48 AM Central	ISO Result: Match	Investigation	ISO System Ge...	NATOSHIA HAMILT...
					Bodily Injury Liability(...
		ISO CLAIMSEARCH			
sssi	1/21/2016 3:37 PM Central	Time Demand recd 1/21 (late af...	Injury	ELIZABETH H ...	NATOSHIA HAMILT...
		Time Demand recd 1/21 (late afternoon mail), ltr states resp By 5:00 PM, 1//26, p/w to RMA. Thanks, Libby			
sssi	1/21/2016 9:51 AM Central	I spoke to Evan and he stated d...	Reserve	MARSA KING	NATOSHIA HAMILT...
		I spoke to Evan and he stated demand package was sent. I will set reminder task to f/u			
	1/21/2016 8:07 AM Central	I received letter from atty stating...	Reserve	MARSA KING	NATOSHIA HAMILT...
		I received letter from atty stating he was sending radiology bills. letter stated this was in addx to demand. We have not received a demand and ..I called to notify Evan of this and had to leave a message. I explained we have not received demand yet.			
sssi	12/7/2015 2:00 PM Central	I spoke to para-she stated they ...	Reserve	MARSA KING	NATOSHIA HAMILT...
		I spoke to para-she stated they are collecting the bills and records to get demand . client has finished trx			
sssi	10/8/2015 6:11 PM Central	ISO Result: Match	Investigation	ISO System Ge...	NATOSHIA HAMILT...
		ISO CLAIMSEARCH			

Case No. 2017-CP-21-341
Affidavit of Wayne D. Gaymon

Exhibit B

ANASTOPOULO LAW FIRM

Akim A. Anastopoulo (SC)
Rence M. Anderson (SC)
John I. Henderson (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)
Casey Van Valkenburgh (SC)(IL)
Philip Heath Ward (SC)
Roy T. Willey, IV (SC)
*Affiliate Counsel

Toll Free: 1 (800) 313-2546
Facsimile: (843) 853-2291
Reply to North Charleston Office
www.AkimLawFirm.com

Rec'd Dec Page
2/6/15

Thursday, February 05, 2015

RECEIVED
FEB 06 2015
ALH

Sent via fax: (866) 467-2763
Allstate Insurance Company
PO Box 7068
Columbia, SC 29210

RE: My Client(s): Natoshia Hamilton -02
DOL: January 31, 2015
Claim #: 0356985366

Ins'd - Kathryn Broach-01

To Whom It May Concern:

Please be advised that I have been retained to represent the above for the bodily injuries she suffered during a motor vehicle accident on the above date due to the negligence of your insured. Also, please disclose in writing the policy limits for the above referenced claim. Please call our office if you have any questions or would like to discuss the claim.

Thank you for your cooperation.

Sincerely,

/s/ Akim A. Anastopoulo

Akim A. Anastopoulo

AAA/als

cc: Natoshia Hamilton

Allstate_0076

Case No. 2017-CP-21-341
Allstate's Memorandum of Law in Support of Motion for Summary Judgment

Exhibit B

State of South Carolina

In Common Pleas Court

County of Florence

Allstate Property and Casualty Insurance Company,

Plaintiff,

V.

2017-CP-21-00341

Natoshia Hamilton and Kenneth Collins Coogler,

Defendants.

Deposition of: Natoshia Antoinette Hamilton

Location: 150 W. Evans Street
Florence, South Carolina

Date: Friday, January 12, 2018

Time: 12:58 p.m. - 2:03 p.m.

Court Reporter: Ashley Rogers

The deposition is taken pursuant to notice and/or agreement, in the above-entitled cause pending in the above-named court and pursuant to the South Carolina Rules of Civil Procedure.

Q & A Court Reporting Services
Post Office Box 4563 (29502)
273 West Evans St. (29501)
Florence, South Carolina
telephone: (843) 673-9845
e-mail: Info@qacourtreportingonline.com
visit: Www.qacourtreportingonline.com

Q Okay. Was she with you at the time of the accident?

A No. I was -- I was headed to a client to perform service. I was by myself. I was going to a client. She's 80-something years old and I was doing house calls as well.

Q Oh, okay. All right. And had your daughter been represented by Anastopoulo before?

A Yes, sir.

Q Okay. All right. Did -- have you -- did you ever talk to anyone at Allstate insurance company about your accident?

A No, sir.

Q You never made a telephone call to Allstate, never handled any part of that?

A No, sir.

Q Okay. Who owned the car involved in the accident?

A Me and my husband name was on it, Natoshia and Clarence.

Q Okay.

A Hamilton.

Q And who handled the property damage portion of that?

A Who --

Q Of the claim, yeah.

A Me and my husband.

Q Okay. All right. But did you ever talk to anybody at Allstate about the property damage or did you handle that through your own insurance company or do you recall?

A I think I handled it through my own insurance company 'cause I never been in a car accident before --

Q Okay.

A So I called my own insurance company and that kind of throwed a whole bunch of crazy stuff going on, so --

Q Okay --

A Yeah.

Q Okay. All right. Do -- do you -- do you have any -- and have you received money for your car?

A They paid my car off..

Q They did. They paid the car off.

A Yes, sir.

Q Okay.

A They didn't give me anything after it because wasn't nothing left over. So I had to put my own self back in a car.

Q Okay. All right. Do you have any -- any property damage claim that has not already been taken care of?

MR. HODGE: Object to the form of the question. You can answer it.

THE DEPONENT: Say that again.

By MR. COX:

Q Do you have any -- any outstanding property damages as a result of this automobile accident that have not been -- already been paid?

MR. HODGE: Same objection.

THE DEPONENT: Not to my knowledge.

By MR. COX:

Q Okay. That's what I was just wondering. All right. And just -- I mean, just to make sure, so you haven't incurred any type of -- just trying to think of anything, property damage, rental car bill, anything like that that has not already been reimbursed to you?

MR. HODGE: Object to the form of the question. You can answer.

THE DEPONENT: No, not to my knowledge. No.

By MR. COX:

Q Okay. All right. When -- when you --

A Yes, that's what I was told. Yes, sir.

Q Okay. All right. Have -- have you ever agreed to settle your claims against Mr. Coogler for 25,000 dollars?

MR. HODGE: Object to the form of the question.

THE DEPONENT: Say that again.

By MR. COX:

Q Yeah. Well, have -- have you ever agreed to -- to resolve your claims against Mr. Coogler for 25,000 dollars?

MR. HODGE: Same objection --

By MR. COX:

Q Your -- sorry, your bodily injury claim --

MR. HODGE: Same objection --

By MR. COX:

Q -- for 25,000 dollars?

A No, sir.

Q Okay. Have you ever been willing to resolve your bodily injury claims against Mr. Coogler and -- for 25,000 dollars?

MR. HODGE: Object to the form of the question.

THE DEPONENT: No, sir.

Q Okay. So this letter was sent with your knowledge?

A Yes, sir.

Q And with your consent?

A Yes, sir.

Q Okay. All right. And you were aware at the time that this letter was sent that the policy limits -- the bodily injury policy limits of Mr. Coogler from Allstate were 25,000 dollars?

A I -- yeah, I -- yes, sir.

Q Okay. All right. And in this letter, have -- have you read through this whole thing?

A I skimmed through it. I didn't actually sit down and went from cover to cover.

Q Okay. And is it your understanding that what you were asking for payment of in this case -- I'm sorry, in this letter was the bodily injury policy limits for -- that Mr. Coogler had with Allstate?

MR. HODGE: Object to the form of the question.

THE DEPONENT: Yes, sir.

By MR. COX:

Q Okay. And -- and that -- another way we ask it, you were not asking for payment of any

property damage coverage in this letter?

A No, sir.

Q Okay. Is that because you had already resolved that --

A Yes, sir.

Q -- part of it?

A Yes, sir.

Q Okay. All right. And -- and -- all right. So bodily injury limits of 25,000 dollars. Also requested in here was affidavits from -- or an affidavit from Mr. Coogler or the policyholder about, you know, not having anymore coverage available, right?

A Yes, sir.

Q Okay. And then a settlement document that complies with the requirements of the letter. Are those the three things that...

A Yes, sir.

Q You understand were being requested?

A Yes, sir.

MR. HODGE: Object to the form of the question.

By MR. COX:

Q Okay. Is there anything else that you know of that's being requested in this letter

other than payment of the bodily injury limits, the affidavits and a settlement document that complied with the requirements of the letter?

MR. HODGE: Object to the form of the question.

THE DEPONENT: They -- they didn't meet the requirement anyway, so...

By MR. COX:

Q All right. You've said that, but answer my question first. Are you aware of anything else that was being requested in this letter other than those things I just asked you?

A No, sir --

MR. HODGE: Object to the form of the question.

By MR. COX:

Q All right. And you understand that -- that -- you -- you mentioned that you -- this letter -- demand letter was sent with your knowledge and consent by your lawyers, right?

A Yes, sir.

Q Okay. And you understand that if Allstate met the requirements of the letter, that you would have resolved your bodily injury claims against Mr. Coogler for 25,000 dollars. Did you

understand --

A But they didn't meet it. Yes, I did, but they didn't meet it, so we're moving forward.

Q Okay. All right. You -- you -- you said a couple times that Allstate did not meet it. In what ways did Allstate not meet it?

A Well, they had things that they was supposed to do and they did not do 'em even down to the check that they did send out. They didn't send it out the way that the attorney had gave them instructions to do. They did things their way and it wasn't the way that -- what was in our demand.

Q Okay. Tell me -- tell me the difference between what was in the demand letter and the way that Allstate responded.

A I don't know. It was something to do with -- was it a -- you know, something about -- something the way that -- that they just handled everything. They just did it their own way instead of doing it the way that, I guess -- handling business the way someone asked them to.

Q But you don't know what it was?

A I don't know if it was a certified check or something that they was -- they sent and

it wasn't supposed to been a certified check. Just did things their own way. They didn't do it the way that -- what was in the demand from my attorney representing me.

Q Okay. All right. So one of things you're saying is you think that maybe there was a different type of check than what was requested.

A Right. And it -- yes.

Q Okay. What effect did that have on you?

MR. HODGE: Object to the form of the question.

By MR. COX:

Q That it was a different type of check, what effect did that have on you?

A Well -- the effect that it had on me.

Q Yes, ma'am.

A I guess it had a lot of effect on me, I guess, from moving forward with things that I could have done and -- and not been in the position that I'm in with bills. I don't know, but it -- it did -- it -- it didn't meet the demand, so -- it didn't meet the requirement, the demand on what we was asking for, so I don't...

Q All right. What I'm asking you is what

effect -- if it was a different type of check than what you asked for --

A Uh-huh.

Q -- what effect did that have? What was the difference?

MR. HODGE: Object to the form of the question.

THE DEPONENT: Didn't meet our demand.

By MR. COX:

Q No, I understand that. I understand that's what you're saying. All right, but what --

A It didn't meet our demand and that's all I would like to say.

Q All right. Well, sorry. I get to ask the questions and you get to answer them. Okay?

A Okay.

Q So what difference did it make? What effect did it have on you that it was --

A It didn't meet our --

Q -- a different type of check --

A -- demand.

MR. HODGE: Object to the form of the question.

By MR. COX:

Q Other than the fact that it was a

okay. Because what I'm asking you is a yes or no answer and then you --

A I say, yes, sir.

Q You did?

A I did.

Q Okay --

A I said, yes, sir, it didn't meet our demand. That what I say, yes, sir.

Q Okay. And the only difference, the only way it didn't meet your demand, the type of check, is that it just happened to be a different form of a check?

MR. HODGE: Object to the form of the question.

By MR. COX:

Q So you can answer yes or no --

A Yes, sir.

Q Okay. All right. But you can't tell me what other difference it made to you other than it just wasn't the type of check that was requested.

MR. HODGE: Object to the form of the question.

THE DEPONENT: I guess you're right, sir.

sent to resolve the claim?

MR. HODGE: Object to the form of the question.

THE DEPONENT: Yes, sir.

By MR. COX:

Q Okay. All right. From your earlier testimony, I think you said one of the reasons you did that is because the check that was sent to Allstate was not a certified check.

A And I also said --

Q Is that right?

A -- because of my pain and suffering too.

Q Okay. What about your pain and suffering?

A Say that again. What about 'em?

Q Yeah, what about your pain and suffering caused you to reject the -- the settlement that Allstate sent you?

A My limitation on my everyday life, what I can and cannot do.

Q Okay. And had you had a change of heart in between the time of the letter, the demand letter being sent out and Allstate's response about wanting to resolve your case for

By MR. COX:

Q Okay. All right. Tell me -- all right. So I want -- I want to kind of get back to this check issue. All right. So this check that -- that's attached here was in the amount of 25,000 dollars, correct?

A Yes, sir.

Q Okay. And the amount of money, the 25,000 dollars, you would agree that would have been the same amount of money whether it was a regular check or a certified check. Do you agree with that? The amount wouldn't change. It would still be 25,000 dollars.

A You're -- you're right. I'm -- yes, sir, you're right.

Q Okay. So it's the same amount of money.

A Yes, sir.

Q Okay. All right. And one of your -- one of our requests to admit to you was that, you know, when you received the check that it was negotiable. I mean, it could have been taken to the bank and put in the bank and negotiated and you agreed to that. And you still agree with that?

A No, sir.

Q You don't?

A Agree with -- agree with...

Q That you could have taken it to the bank and put it in the bank or your lawyer's did because it was made out to your lawyers.

A You talking about at that time?

Q Right. Yeah, so what I'm asking, did -- you don't have any reason to believe that it would bounce or wouldn't be a good check? Did anybody even try to put it in the bank? Do you know?

A I don't think we had no problem with that it would bounce or anything.

Q Right. Okay. All right. So if -- if this check is the same amount of money as a certified check and they were both -- a cer--- a certified check and this check would be -- both would be valid checks, right, and you could spend them or put them in the bank or whatever, is there any real difference between the two that you know of?

MR. HODGE: Object to the form of the question --

THE DEPONENT: It just didn't meet the

demand 'cause that wasn't what the demand was.

By MR. COX:

Q Okay. So the only difference that you know of is one is called a certified check and one is not called a certified check.

A Right. Yes, sir.

Q Okay. I want to talk with you about -- we had talked about claims that you had arising out of the accident. Let me ask, you -- apparently, you had some underinsured motorist coverage as well through your own insurance policy.

A Like what? What is -- I -- I...

Q Well, underinsured motorist coverage is -- it's something you buy from your own insurance company.

A Uh-huh.

Q And when you're in an accident like this where unfortunately the other person --

A I don't know if I had GAP at the time or not. That's what you're talking about?

Q Well, no, GAP is different. GAP is for your pro--- property damage.

A Right.

Q What this is is that unfortunately

this document, you're not being asked to waive or forego any -- really any potential insurance claim that you might have that's a result of your accident?

MR. HODGE: Object to the form of the question.

By MR. COX:

Q Other than, you know, protecting Mr. Coogler's personal assets for the bodily injury damages.

A Yes, sir.

Q Okay. All right. Are you aware sitting here as to how anything in this document did not comply with what was requested in your demand letter, the language in this document? If you don't know, that's fine, but I'm just asking if you do?

A Repeat it again.

Q Yeah. Do you -- do you know of any -- do -- do you know of any way in which the language contained in the agreement and covenant not to execute that we just went through did not comply with the -- with the language that was requested in your demand letter?

A No, not really I don't.

Q Okay. And did you -- and we haven't talked about the affidavits, but the affidavits you requested are there. And you don't have any problem with those as far as a reason to reject the settlement?

A Yes, you're right.

Q Okay. All right. And did you see the check and the covenant and the affidavits before this letter dated March 23rd, 2016 was sent out to Allstate?

A Did I see the check first?

Q Yes, did you see the check and the covenant and the affidavits before this letter dated March 23rd, 2016 was sent out?

A I want to say that -- yeah, it was -- yes, sir.

MR. COX: I think we're about done. I think those are all the questions I have, Camden.

MR. HODGE: Nothing from me.

(Deponent excused.)

(Whereupon, at 2:03 p.m., the taking of the foregoing deposition was concluded.)

Case No. 2017-CP-21-341
Allstate's Memorandum of Law in Support of Motion for Summary Judgment

Exhibit C

IN THE STATE OF SOUTH CAROLINA) COUNTY OF FLORENCE)	IN THE COURT OF COMMON PLEAS FOR THE 12TH JUDICIAL CIRCUIT CASE NO: 2017-CP-21-341
ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, Plaintiff, v. NATOSHIA HAMILTON and KENNETH COLLINS COOGLER, Defendants.	**Defendant Natoshia Hamilton's Supplemental Responses to Plaintiff's First Requests for Production**

TO: PLAINITFF AND ALL COUNSEL OF RECORD:

Defendant Natoshia Hamilton (hereinafter the "Defendant" or "Defendant Hamilton") hereby supplements her responses to Plaintiff's First Requests for Production as follows and pursuant to the *South Carolina Rules of Civil Procedure*. Defendant reserves the right to supplement and/or amend this response up until the date of trial.

1. Copies of all fee agreements with any attorney in connection with representation on your behalf related to the automobile accident on January 31, 2015.

RESPONSE:

Objection. Defendant objects as this request is not reasonably calculated to lead to the discovery of admissible evidence and seeks information protected by the attorney-client privilege, work product doctrine, and statutory and common law protections.

SUPPLEMENTAL RESPONSE:

Please find enclosed a copy of said fee agreement.

1. Defendant's calendars or any other information which indicates when you met with your attorneys regarding the settlement demand, Allstate's response, and your rejection of the settlement.

RESPONSE:

Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence and seeks information protected by the attorney-client privilege, work product

doctrine, and common law and statutory protections.

SUPPLEMENTAL RESPONSE:

Defendant is not in possession of any responsive material.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

Roy T. Willey, IV
S.C. Bar No.: 101010
Eric M. Poulin
S.C. Bar No.: 100209
J. Camden Hodge
S.C. Bar No.: 100638
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

ATTORNEYS FOR DEFENDANT HAMILTON

Dated at Charleston, SC
This 2nd day of May, 2017

Exhibit D

ELECTRONICALLY FILED - 2016 Sep 26 11:22 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400040

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	C/A No.: 2015-CP-14-040

Fred Floyd,

Plaintiff,

vs.

Palmer H. Tanner,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter came before the Court for a Motion hearing on September 7, 2016. Counsel in attendance for the parties were Katie M. Wilensky, Esq., on behalf of Plaintiff Fred Floyd, and Todd E. Rigler, Esq., on behalf of Defendant Palmer H. Tanner. This case arises out of a motor vehicle accident that occurred on September 3, 2013. The instant motion is Defendant's Motion for Summary Judgment on the affirmative defense of accord and satisfaction and/or Motion to Enforce Settlement.

The Court has considered all of the arguments of counsel raised at the motion hearing, the various memoranda of law filed by the parties, and any accompanying case law and other documents submitted to the Court.

STANDARD FOR SUMMARY JUDGMENT

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

> When a motion for summary judgment is made and supported by such facts as would be admissible in evidence at trial, the adverse party may not rest upon the

> mere allegations of his pleadings. Instead his response to the motion must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him.

Moody v. McLellan, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988) (*citing* Rule 56(e), SCRCP).

"In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party opposing summary judgment." *Bruce v. Durney*, 341 S.C. 563, 566, 534 S.E.2d 720, 722 (Ct. App. 2000) (*citing Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)). Summary judgment should be entered against a party "who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial." *Baughman v. AT&T Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991).

The purpose of summary judgment is to obviate delay where there is no material issue of fact involved. *Manly v. Manly*, 353 S.E.2d 312, 314 (Ct. App. 1987). Summary judgment is appropriate in those cases in which plain, palpable, and undisputed facts exist on which reasonable minds cannot differ. It is not sufficient for one to create an inference which is not reasonable or an issue of fact that is not genuine. *Priest v. Brown*, 396 S.E.2d 638 (S.C. Ct. App. 1990). Likewise, "[a] conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." *Shoop v. Settle*, 445 S.E.2d 651, 655 (Ct. App. 1994).

"The party opposing a properly supported motion for summary judgment ... may not rest on mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Thus, the existence of a mere scintilla of evidence in support of the non-moving party's position is not sufficient to overcome a motion for

ELECTRONICALLY FILED - 2016 Sep 26 11:22 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400040

summary judgment." *Bravis v. Dunbar*, 449 S.E.2d 495, 496 (S.C. Ct. App. 1994) (*citations omitted*).

ACCORD AND SATISFACTION / SETTLEMENT AGREEMENT

South Carolina recognizes the affirmative defense of Accord and Satisfaction. *Tremont Constr. Co. v. Dunlap*, 310 S.C. 180 (Ct. App. 1992). An "accord" is a meeting of the minds, agreement between parties to settle a dispute between them, and "satisfaction" is the payment of the consideration expressed in the accord. To prove this affirmative defense, a party must satisfy two elements:

(1) An agreement to accept in discharge of an obligation something different from that which the creditor is claiming or is entitled to receive; and

(2) Payment of the consideration expressed in the new agreement.

Wilson v. Builders Transport, Inc., 330 S.C. 287 (Ct. App. 1998).

"[A] settlement agreement is a contract." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009) (*certiorari denied*). "The necessary elements of a contract are an offer, acceptance, and valuable consideration." *Southern Glass & Plastics Co., Inc. v. Kemper*, 399 S.C. 483 (Ct. App. 2012) (*citing Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397 (2003). "A unilateral contract occurs when there is only one promisor and the other party accepts, not by mutual promise, but by actual performance." *Id.*

FINDINGS OF FACT

It is undisputed that on December 19, 2014, the Plaintiff sent a timed "Offer of Compromise" to the Defendant wherein he offered to settle his bodily injury claim against the Defendant in exchange for the following:

1. Receipt of the Defendant's $50,000.00 bodily injury liability limits by 5:00 p.m. on January 3, 2015, "via cashier's checks, certified bank checks, or valid

ELECTRONICALLY FILED - 2016 Sep 26 11:22 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400040

acceptance of the Offer of Compromise was a check issued by Allstate Insurance Company and therefore conforms to the acceptable forms of payment outlined in the Plaintiff's Offer of Compromise. Plaintiff's counsel indicated verbally at the hearing that they "may" have issues with the wording of the covenant not to execute, but could not identify any such issues with particularity or specificity despite being given the opportunity to identify the same.

The Court finds that the Plaintiff has failed to put forth any facts tending to indicate that Defendant's performance under the Offer of Compromise was non-compliant in any way. The Court further finds that the Defendant, by performing according to the various conditions expressed in the Plaintiff's Offer of Compromise, properly accepted said Offer of Compromise. The parties, therefore, reached an accord to settle this disputed claim and the accord was satisfied upon Defendant's performance.

THEREFORE, IT IS ORDERED that the Defendant's Motion for Summary Judgment is granted as to the bodily injury portion of the Plaintiff's claim. Plaintiff is directed to sign the Covenant Not to Execute.

AND IT IS SO ORDERED.

W. Jeffrey Young
At Large Circuit Court Judge

September ____, 2016
At Chambers, South Carolina

ELECTRONICALLY FILED - 2016 Sep 26 11:22 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400040

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Clarendon Common Pleas

Case Caption: Fred Floyd VS Palmer Tanner

Case Number: 2015CP1400040

Type: Acknowledgement of Filing of Removal

So Ordered

s/W. Jeffrey Young2156

Electronically signed on 2016-09-26 11:03:15 page 6 of 6

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT
Allstate Property and Casualty Insurance Company, Plaintiff, vs. Natoshia Hamilton and Kenneth Collins Coogler, Defendants.	C/A#: 2017-CP-21-341 **ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT**

TO: ERIC M. POULIN, ROY T. WILLEY, IV and CAMDEN HODGE, ATTORNEYS FOR DEFENDANT NATOSHIA HAMILTON, AND DEFENDANT KENNETH COOGLER:

YOU WILL PLEASE TAKE NOTICE that Plaintiff Allstate Property and Casualty Insurance Company ("Allstate"), by and through its undersigned counsel, will move before the resident or presiding judge of the South Carolina Court of Common Pleas for Florence County on the tenth day after service hereof, or at such time and place as the court may determine, for an order granting summary judgment in its favor on its Complaint. This Motion is based on the grounds that there are no genuine issues of material fact relating to Allstate's claims against Defendants and Allstate is entitled to entry of summary judgment in its favor pursuant to South Carolina Rule of Civil Procedure 56. In support of this Motion, Allstate states as follows:

1. Through her counsel, the Anastopoulo Law Firm ("Law Firm"), by letter dated Friday, January 15, 2016, Defendant Natoshia Hamilton ("Hamilton") sent a time-sensitive demand to Allstate demanding payment of the policy's applicable limits of insurance for her bodily injuries arising out of an automobile accident that occurred on January 31, 2015 involving Allstate's

insured, Defendant Kenneth Collins Coogler ("Coogler"). A true and accurate copy of the letter is attached as Exhibit B.

2. The January 15, 2016 letter demanded payment of the bodily injury policy limits from Allstate's automobile policy, affidavits signed by the insureds stating that no other applicable liability coverage exists and a proposed covenant not to execute meeting the terms stated in the letter.

3. In addition, Allstate was required to ensure that the "policy limits" were "received" no later than 5:00 pm on Tuesday, January 26, 2016, and in a footnote stated that such "[s]ettlement funds must be paid by Cashier's Checks or Certified Bank Checks (not drafts) issued by your insurance company as follows: Natoshia Hamilton and the Anastopoulo Law Firm, LLC. The checks must be RECEIVED in my office no later than 5:00pm EDT on [prompt, deadline for check]."

4. Following the weekend and holiday on Monday, January 18, 2016, Allstate received the Friday, January 15, 2016 letter on Thursday, January 21, 2016.

5. In order to meet the arbitrary deadline imposed by the demand, Allstate diligently began working to review the medical information and to retain counsel to prepare the requested covenant not to execute.

6. Allstate also obtained the requested affidavits from Coogler and Broach regarding the lack of additional insurance related to the claim.

7. Given the timing issues with regard to evaluating the claim and responding to the time-sensitive demand in such short order, Allstate issued a manual check in the amount of $25,000.00, which represented the available bodily injury limits under the policy.

8. On January 26, 2016, Allstate hand delivered the requested information, including the affidavits from Coogler and Broach, the $25,000.00 check, and "Agreement and Covenant not to Execute," which complied with the terms as set forth in the Friday, January 15, 2016 letter. (Exhibit C.)

9. Evan Williams, an attorney with Anastopoulo, signed for and accepted the check and accompanying documents before 5:00 p.m. on Tuesday, January 26, 2016.

10. Allstate issued a manual check because it cannot issue a cashier's check of certified bank check because Allstate is not a bank or financial institution. (Ex. A., Affidavit of Wayne Gaymon, Ex. A)

11. Despite Allstate's acceptance of the demand and submission of the requested information, including the issuance of the check for the available policy limits, Anastopoulo subsequently replied by letter dated March 23, 2016 stating:

> Allstate failed to accept this offer of compromise. Therefore, as stated in the letter, we have been forced to return the check to you and file suit against Allstate's insured. Please do not try to trick us by sending us a check for this amount again. As our Offer of Compromise clearly states, now that you have rejected our client's offer, it is immediately and permanently withdrawn. If you send us a check for this amount [$25,000.00, the bodily injury limits of the policy,] in the future, we will consider it a partial payment toward whatever verdict we ultimately obtain. If no verdict is obtained, we will consider it a gift. However, it will not serve as a release in any way. We will deposit the check into our trust account, and disburse our client's portion without further communication and without having any Release or Covenant Not to Execute signed by our client.
>
> In any event, the offer is now withdrawn and suit will be filed. Please be advised that this is your one and only notification of the filing of the lawsuit and that we have no continuing duty to keep you informed or notify you when service has been perfected. Please also be advised that since you are now on notice, it is your duty to ensure that the lawsuit is timely answered, and you will not be able to avoid coverage by later claiming that your insured failed to forward you copies of the pleadings. The pleadings are available for you to view on the Clerk's website.

A true and correct copy of the March 23, 2016 correspondence is attached as Exhibit D, and the contents of the letter are incorporated as if fully stated here.

12. Hamilton's attorney failed to provide any specificity regarding how Allstate failed to accept the terms of the settlement offer.

13. Ultimately, Hamilton brought suit against Coogler despite the fact Allstate accepted Hamilton's demand.

There is no legitimate dispute and the competent evidence in this case clearly demonstrates Allstate's acceptance of the settlement demand on behalf of Coogler met the material terms of the demand as written and presented. Further, Allstate's acceptance and performance of the settlement demand constitute an accord and satisfaction. Therefore, Allstate's acceptance of the settlement demand presented in the January 15, 2016 letter is valid and enforceable under South Carolina law such that Allstate is entitled to entry of summary judgment in its favor as a matter of law.

This Motion is further supported by and based upon the pleadings filed in this case, discovery completed or to be competed, including discovery responses, depositions taken or to be taken, affidavits filed or to be filed, a memoranda of law that will be filed, and such other documents as may be appropriate.

WHEREFORE, Plaintiff Allstate Property and Casualty Insurance Company respectfully requests that this Court grant its motion and enter an Order granting summary judgment in its favor as a matter of law.

{Signature on next page}

GALLIVAN, WHITE & BOYD, P.A.

By: Johnston Cox (APA)

John T. Lay, Jr., S.C. Bar No. 64526
A. Johnston Cox, S.C. Bar No. 09081
Janice Holmes, S.C. Bar 75038
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
Telephone: 803-779-1833
Facsimile: 803-779-1767
jlay@GWBlawfirm.com
jcox@GWBlawfirm.com
jholmes@GWBlawfirm.com

Attorneys for Allstate Property and Casualty Insurance Company

Columbia, South Carolina
February 5, 2018

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE Allstate Property and Casualty Insurance Company, Plaintiff, vs. Natoshia Hamilton and Kenneth Collins Coogler, Defendants.	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT C/A#: 2017-CP-21-341 **CERTIFICATE OF SERVICE**

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U. S. Mail, postage prepaid, *or by other delivery as indicated,* to all parties of record at the address(es) shown below.

DOCUMENT:	**ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT**
COUNSEL SERVED:	Eric M. Poulin, Esquire Roy T. Willey IV, Esquire J. Camden Hodge, Esquire Anastopoulo Law Firm 32 Ann Street, Unit B Charleston, SC 29403

Amber M. Miller
Legal Assistant

Columbia, South Carolina
February 5, 2018

Case No. 2017-CP-21-341
Allstate's Memorandum of Law in Support of Motion for Summary Judgment

Exhibit A

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, Plaintiff, v. NATOSHIA HAMILTON and KENNETH COLLINS COOGLER, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT Case No. 2017-CP-21-341 **AFFIDAVIT OF WAYNE D. GAYMON**

Personally appeared before me, Wayne D. Gaymon, who, being duly sworn, deposes, and says that:

1. I am over the age of 21, am of sound mind, and I am personally familiar with the contents of this affidavit.

2. I am currently employed with Allstate Insurance Company ("Allstate"), where I have been employed for over 13 years. I am currently employed as the Casualty Claims Service Leader for the South Carolina MCO.

3. Allstate received a letter dated February 5, 2015 from the Anastopoulo Law Firm, LLP ("Law Firm") stating that the Law Firm would be representing Hamilton "for the bodily injuries she suffered during a motor vehicle accident." The relevant portions of the claims diary are attached as **Exhibit A** and the letter is attached as **Exhibit B**.

4. On January 21, 2016, Allstate received a letter from the Law Firm regarding radiology bills that were to be added to the bills included with the demand. Because Allstate had not received the demand, Allstate called the Law Firm and was told that the demand package had been sent. (ALLSTATE 0340)

5. During the afternoon of January 21, 2016, Allstate received the time-sensitive demand that was dated January 15, 2016. (ALLSTATE 0340)

6. Per the terms of the demand, the demanded limits of the policy were to be received by the Law Firm no later than "5:00 pm EDT on January 26, 2016." The demand also stated, in a footnote, that "[S]ettlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company" and be made payable to Hamilton and the Law Firm. **(Exhibit C)**

7. The demand also requested that Kenneth Collins Coogler ("Coogler") "provide sworn and notarized statements that there is no other insurance coverage available to her [sic] that could pertain to this loss."

8. In addition, the demand requested that a proposed release be provided. The letter specifically directed that Allstate "[i]nstead of acting in bad faith and trying to trick us, please just send a reasonable Release that does not include indemnification or the release of property damage claims." In addition, the letter stated "[p]art of the performance required to accept this offer is for you to deliver a proposed Release with the settlement check" and "the proposed Release that is delivered with the settlement check must comply with the terms of this offer."

9. On January 26, 2016, in order to meet the time limit in the demand, a handwritten check was requested to include with the response package accepting the time-sensitive demand. (ALLSTATE 0337)

10. Allstate does not and cannot issue certified bank check or cashier's checks. Allstate is not a bank. Given this fact, to my knowledge, Allstate has never issued a certified or cashier's check to settle a claim in South Carolina.

11. There is no material reason to request a certified bank check or cashier's check from Allstate. To my knowledge, no Allstate check has ever been returned for insufficient funds in South Carolina. In fact, the Anastopoulo law firm is the only law firm in South Carolina that has requested certified bank checks or cashier's checks from Allstate. Although the Anastopoulo firm does from time to time request such checks from Allstate, the firm routinely accepts both manual and printed checks from Allstate in settlement of claims.

12. As reflected in the claims diary, on January 26, 2016, the settlement check in the amount of $25,000.00, covenant not to execute, and affidavits of the named insured, Kathryn Broach, and her husband, Kenneth Collins Coogler, were hand delivered to the Law Firm (and signed for by attorney Evan Williams, who was with the Law Firm at the time) to satisfy the requirements of the time-sensitive demand. (ALLSTATE 0336-0337)

13. The $25,000 check was a valid and negotiable check. The affidavits and covenant not to execute complied with the terms of the demand letter.

14. Allstate did not receive any correspondence prior to Allstate's acceptance of the demand and performance by delivering the required check and documents to the Law Firm that the demand was rescinded.

Wayne D. Gaymon

Wayne D. Gaymon

Sworn to and subscribed before me this the
30th day of January 2018.

Notary Public My Commission Expires
My Commission Expires: August 6, 2019

Case No. 2017-CP-21-341
Affidavit of Wayne D. Gaymon

Exhibit A

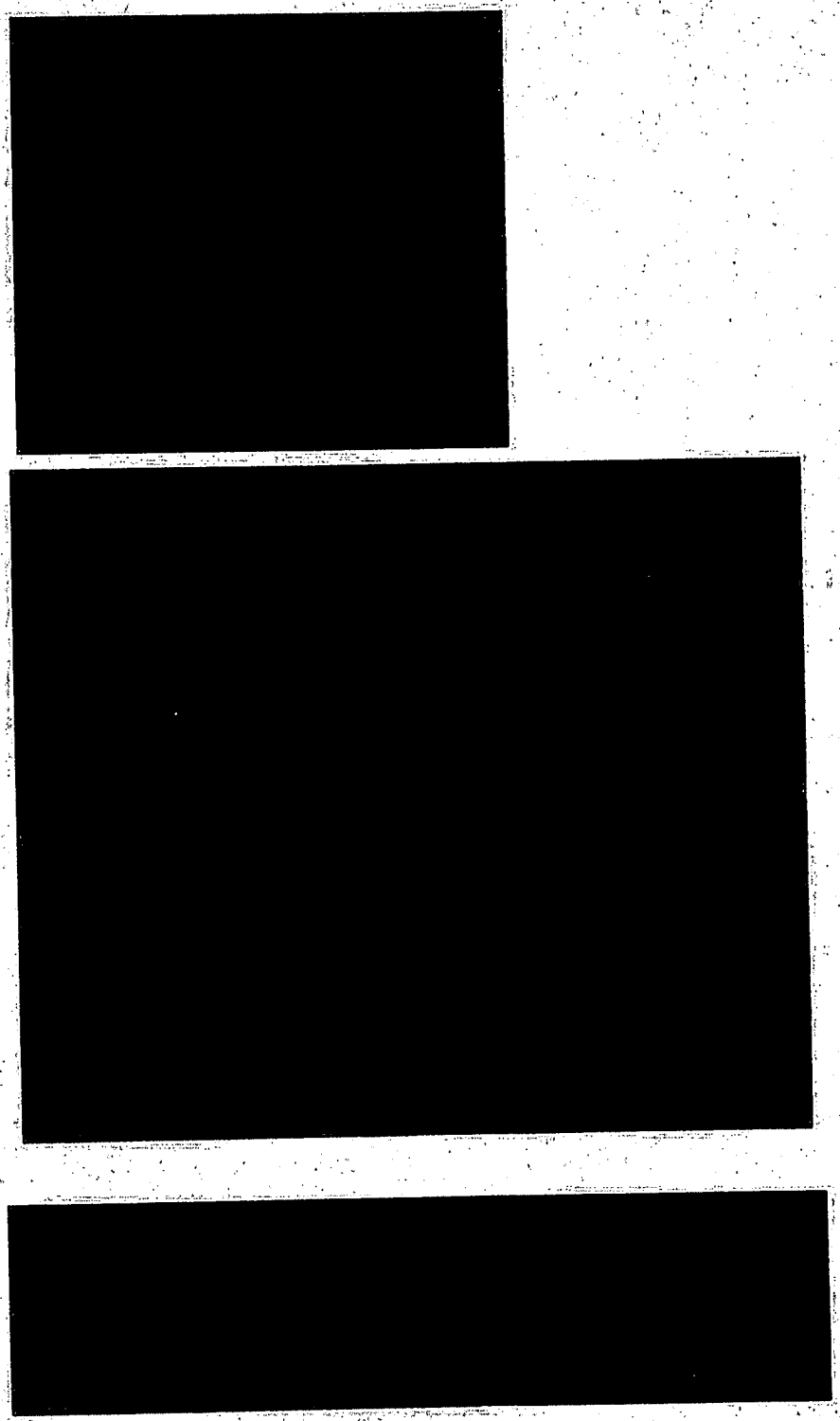
sssi	4/6/2016 1:59 PM Central	[redacted]	Litigation / Arbitr...	MARSA KING	KATHRYN H PRICE ...
		[redacted]			
sssi	4/2/2016 1:42 PM Central	ISO Result: Match	Investigation	ISO System Ge...	KATHRYN H PRICE ...
		ISO CLAIMSEARCH			
sssi	3/31/2016 8:42 AM Central	CSL COMMENTS	Managers Com...	ADOLPHUS A...	NATOSHIA HAMILT...
		At this point we will await suit filing. Attorney has rejected settlement due to incorrect date on check. I have requested rep f/u with insd to discuss suit process.			
sssi	3/30/2016 10:18 AM Central	[redacted]	Litigation / Arbitr...	MARSA KING	NATOSHIA HAMILT...
		[redacted]			
sssi	3/30/2016 10:16 AM Central	[redacted]	Litigation / Arbitr...	MARSA KING	NATOSHIA HAMILT...
		[redacted]			
sssi	3/30/2016 10:13 AM Central	24481420-13-called tpc and left...	Contact	MARSA KING	USAA GENERAL IN...
		24481420-13-called tpc and left vm in ref to the claim.			
sssi	3/30/2016 10:10 AM Central	[redacted]	Contact	MARSA KING	KATHRYN H PRICE ...
		[redacted]			
	3/30/2016 10:09 AM Central	CP3_R_009 Letter sent	Correspondence Outbound Information Request	MARSA KING	KENNETH COOGLER
		CP3_R_009 letter sent			
	3/30/2016 10:08 AM Central	CP3_R_009 Letter sent	Correspondence Outbound Information Request	MARSA KING	KATHRYN H PRICE ...
		CP3_R_009 letter sent			
	3/30/2016 10:02 AM Central	GEN_I_001 is rejected - recreate	Correspondence	MARSA KING	Anastopoulo Law Fir...
		GEN_I_001 is rejected - recreate			
sssi	3/30/2016 9:51 AM Central	The atty's office sent back chec...	Litigation / Arbitr...	MARSA KING	NATOSHIA HAMILT...
		The atty's office sent back check due to the fact that the check was issued with the date 01/26/15 instead of 01/26/16. The attorney Evan Williams signed for check that was hand delivered 01/26/16.			

discussed with Csl Burris and we will respond with letter indicating the check was signed for by atty in their office and check was still able to be cashed regardless of the date issued and demand did not indicate what date the check should have been issued.

sssi	3/30/2016 9:33 AM Central	Pulled file from file room for NMK	Correspondence	MICHELLE TAY...	KATHRYN H PRICE ...	
		Pulled file from file room for NMK				
sssi	3/9/2016 9:49 AM Central	The tpc called and requested d...	Inquiry	MARSA KING	USAA GENERAL IN...	
		The tpc called and requested dec page and copy of covenant..they have uim claim and have nto been able to confirm withatty..confirmed we could send				
	3/8/2016 10:25 AM Central	Document Image Received	Damages - Auto	FileNotes Syste...	KATHRYN H PRICE ...	
			Physical File Documents			
sssi	2/24/2016 10:37 AM Central	TPC called to inquire about if lia ...	Inquiry	TIERA CHARLE...	USAA GENERAL IN...	
		TPC called to inquire about if liability has been accepted. Advised that liability has accepted.				
sssi	2/23/2016 7:34 AM Central	[redacted]	Payments	MARSA KING	TURNER PADGET G...	
		[redacted]				
sssi	2/16/2016 1:29 PM Central	CALLED CLMT TO INFORM H...	Injury	SARLICE T. HA...	NATOSHIA HAMILT...	
		CALLED CLMT TO INFORM HER THAT A CHECK WAS ISSUED TO HER IN ERROR. I INFORMED HER THE CHECK WAS CANCELLED AND ONCE SHE REC THE CHECK TO GET RID OF THE CHECK. SHE UNDERSTOOD. REISSUED CHECK TO CORRECT PARTY TURNER PADGET GRAHAM.				
sssi	1/27/2016 2:06 PM Central	File to file room	Correspondence	MICHELLE TAY...	KATHRYN H PRICE ...	
		File to file room				
	1/27/2016 11:45 AM Central	CP3_P_013 Letter sent	Correspondence	MARSA KING	KATHRYN H PRICE ...	
			Outbound Providing Information			
		CP3_P_013 letter sent				
	1/26/2016 12:43 PM Central	ok from csl ok handwritten chk ...	Correspondence	RICHARD P. O...	NATOSHIA HAMILT...	
		ok from csl ok handwritten chk atty demand asks for cashiers check or certified bank check				
sssi	1/25/2016 3:28 PM Central	spoke to atty will not concede to...	Contact	RICHARD P. O...	NATOSHIA HAMILT...	
		spoke to atty will not concede to normal draft needs written chk, will do so tomorrow then wil have to hand delivor chk to atty				
	1/25/2016 12:47 PM Central	cntx attached	Correspondence	RICHARD P. O...	KATHRYN H PRICE ...	
		cntx attached				
	1/25/2016 12:46 PM Central	insd aft attached	Correspondence	RICHARD P. O...	KATHRYN H PRICE ...	

insd aft attached

1/25/2016 8:15 AM Central	Manual Evaluation	Evaluation	RICHARD P. O...		
		Manual			
	Manual Evaluation				
1/25/2016 8:09 AM Central	ISO Result: Match	Investigation	ISO System Ge...	NATOSHIA HAMILT...	
	ISO_CLAIMSEARCH				
1/25/2016 7:52 AM Central	[redacted]	Evaluation	KIMBERLY A. B...	NATOSHIA HAMILT...	
	[redacted]				
1/25/2016 7:16 AM Central	aft from insd driver attached	Correspondence	RICHARD P. O...	KATHRYN H PRICE ...	
	aft from insd driver attached				
1/25/2016 7:14 AM Central	[redacted]	Contact	RICHARD P. O...	KATHRYN H PRICE ...	
	[redacted]				
1/22/2016 10:25 AM Central	[redacted]	Compliance	MARSA KING	KATHRYN H PRICE ...	
	[redacted]				
1/22/2016 9:54 AM Central	CP3_P_020 Letter sent	Correspondence	MARSA KING	KATHRYN H PRICE ...	
		Outbound Providing Information			
	CP3_P_020 letter sent				
1/22/2016 9:52 AM Central	[redacted]	Contact	MARSA KING	KATHRYN H PRICE ...	
	[redacted]				
1/22/2016 9:45 AM Central	med eval	Evaluation	MARSA KING	NATOSHIA HAMILT...	



[redacted]

[redacted]

sssi	1/22/2016 7:48 AM Central	ISO Result: Match	Investigation	ISO System Ge...	NATOSHIA HAMILT...
					Bodily Injury Liability(...
		ISO CLAIMSEARCH			
sssi	1/21/2016 3:37 PM Central	Time Demand recd 1/21 (late af...	Injury	ELIZABETH H...	NATOSHIA HAMILT...
		Time Demand recd 1/21 (late afternoon mail), ltr states resp By 5:00 PM, 1//26, p/w to RMA. Thanks, Libby			
sssi	1/21/2016 9:51 AM Central	I spoke to Evan and he stated d...	Reserve	MARSA KING	NATOSHIA HAMILT...
		I spoke to Evan and he stated demand package was sent. I will set reminder task to f/u			
	1/21/2016 8:07 AM Central	I received letter from atty stating...	Reserve	MARSA KING	NATOSHIA HAMILT...
		I received letter from atty stating he was sending radiology bills. letter stated this was in addx to demand. We have not received a demand and ..I called to notify Evan of this and had to leave a mossage. I explained we have not received demand yet.			
sssi	12/7/2015 2:00 PM Central	I spoke to para-she stated they...	Reserve	MARSA KING	NATOSHIA HAMILT...
		I spoke to para-she stated they are collecting the bills and records to get demand , client has finished trx			
sssi	10/8/2015 6:11 PM Central	ISO Result: Match	Investigation	ISO System Ge...	NATOSHIA HAMILT...
		ISO CLAIMSEARCH			

Case No. 2017-CP-21-341
Affidavit of Wayne D. Gaymon

Exhibit B

ANASTOPOULO LAW FIRM

Akim A. Anastopoulo (SC)
Renee M. Anderson (SC)
John I. Henderson (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)
Casey Van Valkenburgh (SC)(IL)
Philip Heath Ward (SC)
Roy T. Willey, IV (SC)
*Affiliate Counsel

Toll Free: 1 (800) 313-2546
Facsimile: (843) 853-2291
Reply to North Charleston Office
www.AkimLawFirm.com

Kayla Lee Page
2/6/15

Thursday, February 05, 2015

RECEIVED
FEB 06 2015
ALH

Sent via fax: (866) 467-2763
Allstate Insurance Company
PO Box 7068
Columbia, SC 29210

RE: My Client(s): Natoshia Hamilton -02
DOL: January 31, 2015
Claim #: 0356985366

Ins'd - Kathryn Broach-01

To Whom It May Concern:

Please be advised that I have been retained to represent the above for the bodily injuries she suffered during a motor vehicle accident on the above date due to the negligence of your insured. Also, please disclose in writing the policy limits for the above referenced claim. Please call our office if you have any questions or would like to discuss the claim.

Thank you for your cooperation.

Sincerely,

/s/ Akim A. Anastopoulo

Akim A. Anastopoulo

AAA/als

cc: Natoshia Hamilton

Allstate_0076

Case No. 2017-CP-21-341
Allstate's Memorandum of Law in Support of Motion for Summary Judgment

Exhibit B

State of South Carolina

In Common Pleas Court

County of Florence

Allstate Property and Casualty Insurance Company,

Plaintiff,

V.

2017-CP-21-00341

Natoshia Hamilton and Kenneth Collins Coogler,

Defendants.

Deposition of: Natoshia Antoinette Hamilton

Location: 150 W. Evans Street
Florence, South Carolina

Date: Friday, January 12, 2018

Time: 12:58 p.m. - 2:03 p.m.

Court Reporter: Ashley Rogers

The deposition is taken pursuant to notice and/or agreement, in the above-entitled cause pending in the above-named court and pursuant to the South Carolina Rules of Civil Procedure.

Q & A Court Reporting Services
Post Office Box 4563 (29502)
273 West Evans St. (29501)
Florence, South Carolina
telephone: (843) 673-9845
e-mail: Info@qacourtreportingonline.com
visit: Www.qacourtreportingonline.com

Q Okay. Was she with you at the time of the accident?

A No. I was -- I was headed to a client to perform service. I was by myself. I was going to a client. She's 80-something years old and I was doing house calls as well.

Q Oh, okay. All right. And had your daughter been represented by Anastopoulo before?

A Yes, sir.

Q Okay. All right. Did -- have you -- did you ever talk to anyone at Allstate insurance company about your accident?

A No, sir.

Q You never made a telephone call to Allstate, never handled any part of that?

A No, sir.

Q Okay. Who owned the car involved in the accident?

A Me and my husband name was on it, Natoshia and Clarence.

Q Okay.

A Hamilton.

Q And who handled the property damage portion of that?

A Who --

Q Of the claim, yeah.

A Me and my husband.

Q Okay. All right. But did you ever talk to anybody at Allstate about the property damage or did you handle that through your own insurance company or do you recall?

A I think I handled it through my own insurance company 'cause I never been in a car accident before --

Q Okay.

A So I called my own insurance company and that kind of throwed a whole bunch of crazy stuff going on, so --

Q Okay --

A Yeah.

Q Okay. All right. Do -- do you -- do you have any -- and have you received money for your car?

A They paid my car off.

Q They did. They paid the car off.

A Yes, sir.

Q Okay.

A They didn't give me anything after it because wasn't nothing left over. So I had to put my own self back in a car.

Q Okay. All right. Do you have any -- any property damage claim that has not already been taken care of?

MR. HODGE: Object to the form of the question. You can answer it.

THE DEPONENT: Say that again.

By MR. COX:

Q Do you have any -- any outstanding property damages as a result of this automobile accident that have not been -- already been paid?

MR. HODGE: Same objection.

THE DEPONENT: Not to my knowledge.

By MR. COX:

Q Okay. That's what I was just wondering. All right. And just -- I mean, just to make sure, so you haven't incurred any type of -- just trying to think of anything, property damage, rental car bill, anything like that that has not already been reimbursed to you?

MR. HODGE: Object to the form of the question. You can answer.

THE DEPONENT: No, not to my knowledge. No.

By MR. COX:

Q Okay. All right. When -- when you --

Allstate?

A To Allstate?

Q Yes, ma'am.

A Not to my knowledge.

Q Okay. Did you know the person who you were involved -- the other person involved in the acc--- Mr. Coogler?

A Say that again.

Q Did you know Mr. Coogler?

A No, sir.

Q Okay. And did you at -- at some point find out how much insurance coverage Mr. Coogler had?

A Did I -- yes, sir.

Q When did you find that out?

A I want to say -- I want to say Katie, when the young lady -- when I met with the young lady, I think that's when I found out.

Q Okay. And that -- do you remember when it was that you actually met with Katie?

A I know -- I want to say in 2006. I mean '16 -- 2016.

Q Okay. All right. And you -- you were aware that Mr. Coogler's insurance policy limits for bodily injury are 25,000 dollars?

A. Yes, that's what I was told. Yes, sir.

Q. Okay. All right. Have -- have you ever agreed to settle your claims against Mr. Coogler for 25,000 dollars?

MR. HODGE: Object to the form of the question.

THE DEPONENT: Say that again.

By MR. COX:

Q. Yeah. Well, have -- have you ever agreed to -- to resolve your claims against Mr. Coogler for 25,000 dollars?

MR. HODGE: Same objection --

By MR. COX:

Q. Your -- sorry, your bodily injury claim --

MR. HODGE: Same objection --

By MR. COX:

Q. -- for 25,000 dollars?

A. No, sir.

Q. Okay. Have you ever been willing to resolve your bodily injury claims against Mr. Coogler and -- for 25,000 dollars?

MR. HODGE: Object to the form of the question.

THE DEPONENT: No, sir.

Q Okay. So this letter was sent with your knowledge?

A Yes, sir.

Q And with your consent?

A Yes, sir.

Q Okay. All right. And you were aware at the time that this letter was sent that the policy limits -- the bodily injury policy limits of Mr. Coogler from Allstate were 25,000 dollars?

A I -- yeah, I -- yes, sir.

Q Okay. All right. And in this letter, have -- have you read through this whole thing?

A I skimmed through it. I didn't actually sit down and went from cover to cover.

Q Okay. And is it your understanding that what you were asking for payment of in this case -- I'm sorry, in this letter was the bodily injury policy limits for -- that Mr. Coogler had with Allstate?

MR. HODGE: Object to the form of the question.

THE DEPONENT: Yes, sir.

By MR. COX:

Q Okay. And -- and that -- another way we ask it, you were not asking for payment of any

property damage coverage in this letter?

A No, sir.

Q Okay. Is that because you had already resolved that --

A Yes, sir.

Q -- part of it?

A Yes, sir.

Q Okay. All right. And -- and -- all right. So bodily injury limits of 25,000 dollars. Also requested in here was affidavits from -- or an affidavit from Mr. Coogler or the policyholder about, you know, not having anymore coverage available, right?

A Yes, sir.

Q Okay. And then a settlement document that complies with the requirements of the letter. Are those the three things that...

A Yes, sir.

Q You understand were being requested?

A Yes, sir.

MR. HODGE: Object to the form of the question.

By MR. COX:

Q Okay. Is there anything else that you know of that's being requested in this letter

other than payment of the bodily injury limits, the affidavits and a settlement document that complied with the requirements of the letter?

MR. HODGE: Object to the form of the question.

THE DEPONENT: They -- they didn't meet the requirement anyway, so...

By MR. COX:

Q All right. You've said that, but answer my question first. Are you aware of anything else that was being requested in this letter other than those things I just asked you?

A No, sir --

MR. HODGE: Object to the form of the question.

By MR. COX:

Q All right. And you understand that -- that -- you -- you mentioned that you -- this letter -- demand letter was sent with your knowledge and consent by your lawyers, right?

A Yes, sir.

Q Okay. And you understand that if Allstate met the requirements of the letter, that you would have resolved your bodily injury claims against Mr. Coogler for 25,000 dollars. Did you

understand --

A But they didn't meet it. Yes, I did, but they didn't meet it, so we're moving forward.

Q Okay. All right. You -- you -- you said a couple times that Allstate did not meet it. In what ways did Allstate not meet it?

A Well, they had things that they was supposed to do and they did not do 'em even down to the check that they did send out. They didn't send it out the way that the attorney had gave them instructions to do. They did things their way and it wasn't the way that -- what was in our demand.

Q Okay. Tell me -- tell me the difference between what was in the demand letter and the way that Allstate responded.

A I don't know. It was something to do with -- was it a -- you know, something about -- something the way that -- that they just handled everything. They just did it their own way instead of doing it the way that, I guess -- handling business the way someone asked them to.

Q But you don't know what it was?

A I don't know if it was a certified check or something that they was -- they sent and

it wasn't supposed to been a certified check. Just did things their own way. They didn't do it the way that -- what was in the demand from my attorney representing me.

Q Okay. All right. So one of things you're saying is you think that maybe there was a different type of check than what was requested.

A Right. And it -- yes.

Q Okay. What effect did that have on you?

MR. HODGE: Object to the form of the question.

By MR. COX:

Q That it was a different type of check, what effect did that have on you?

A Well -- the effect that it had on me.

Q Yes, ma'am.

A I guess it had a lot of effect on me, I guess, from moving forward with things that I could have done and -- and not been in the position that I'm in with bills. I don't know, but it -- it did -- it -- it didn't meet the demand, so -- it didn't meet the requirement, the demand on what we was asking for, so I don't...

Q All right. What I'm asking you is what

effect -- if it was a different type of check than what you asked for --

A Uh-huh.

Q -- what effect did that have? What was the difference?

MR. HODGE: Object to the form of the question.

THE DEPONENT: Didn't meet our demand.

By MR. COX:

Q No, I understand that. I understand that's what you're saying. All right, but what --

A It didn't meet our demand and that's all I would like to say.

Q All right. Well, sorry. I get to ask the questions and you get to answer them. Okay?

A Okay.

Q So what difference did it make? What effect did it have on you that it was --

A It didn't meet our --

Q -- a different type of check --

A -- demand.

MR. HODGE: Object to the form of the question.

By MR. COX:

Q Other than the fact that it was a

different form of a check, what difference did it make?

A It didn't meet our demand.

MR. HODGE: Same objection.

By MR. COX:

Q All right. So the only thing you can think of...

A It didn't meet our demand.

Q Is that a certain type of check was requested and the type of check that was sent just happened to be a different type of check?

A That it didn't meet our demand.

Q Okay. And that's the only difference?

A It didn't meet our demand.

Q And the way that it didn't meet your demand is that it was just a different form of a check. Is that right?

MR. HODGE: Object to the form of the question.

THE DEPONENT: It didn't meet our demand. I -- I -- yes, sir.

By MR. COX:

Q Okay. Well, what --

A Yes, sir.

Q What I'm going to ask you to do --

okay. Because what I'm asking you is a yes or no answer and then you --

A I say, yes, sir.

Q You did?

A I did.

Q Okay --

A I said, yes, sir, it didn't meet our demand. That what I say, yes, sir.

Q Okay. And the only difference, the only way it didn't meet your demand, the type of check, is that it just happened to be a different form of a check?

MR. HODGE: Object to the form of the question.

By MR. COX:

Q So you can answer yes or no --

A Yes, sir.

Q Okay. All right. But you can't tell me what other difference it made to you other than it just wasn't the type of check that was requested.

MR. HODGE: Object to the form of the question.

THE DEPONENT: I guess you're right, sir.

sent to resolve the claim?

MR. HODGE: Object to the form of the question.

THE DEPONENT: Yes, sir.

By MR. COX:

Q Okay. All right. From your earlier testimony, I think you said one of the reasons you did that is because the check that was sent to Allstate was not a certified check.

A And I also said --

Q Is that right?

A -- because of my pain and suffering too.

Q Okay. What about your pain and suffering?

A Say that again. What about 'em?

Q Yeah, what about your pain and suffering caused you to reject the -- the settlement that Allstate sent you?

A My limitation on my everyday life, what I can and cannot do.

Q Okay. And had you had a change of heart in between the time of the letter, the demand letter being sent out and Allstate's response about wanting to resolve your case for

By MR. COX:

Q Okay. All right. Tell me -- all right. So I want -- I want to kind of get back to this check issue. All right. So this check that -- that's attached here was in the amount of 25,000 dollars, correct?

A Yes, sir.

Q Okay. And the amount of money, the 25,000 dollars, you would agree that would have been the same amount of money whether it was a regular check or a certified check. Do you agree with that? The amount wouldn't change. It would still be 25,000 dollars.

A You're -- you're right. I'm -- yes, sir, you're right.

Q Okay. So it's the same amount of money.

A Yes, sir.

Q Okay. All right. And one of your -- one of our requests to admit to you was that, you know, when you received the check that it was negotiable. I mean, it could have been taken to the bank and put in the bank and negotiated and you agreed to that. And you still agree with that?

A No, sir.

Q You don't?

A Agree with -- agree with...

Q That you could have taken it to the bank and put it in the bank or your lawyer's did because it was made out to your lawyers.

A You talking about at that time?

Q Right. Yeah, so what I'm asking, did -- you don't have any reason to believe that it would bounce or wouldn't be a good check? Did anybody even try to put it in the bank? Do you know?

A I don't think we had no problem with that it would bounce or anything.

Q Right. Okay. All right. So if -- if this check is the same amount of money as a certified check and they were both -- a cer--- a certified check and this check would be -- both would be valid checks, right, and you could spend them or put them in the bank or whatever, is there any real difference between the two that you know of?

MR. HODGE: Object to the form of the question --

THE DEPONENT: It just didn't meet the

demand 'cause that wasn't what the demand was.

By MR. COX:

Q Okay. So the only difference that you know of is one is called a certified check and one is not called a certified check.

A Right. Yes, sir.

Q Okay. I want to talk with you about -- we had talked about claims that you had arising out of the accident. Let me ask, you -- apparently, you had some underinsured motorist coverage as well through your own insurance policy.

A Like what? What is -- I -- I...

Q Well, underinsured motorist coverage is -- it's something you buy from your own insurance company.

A Uh-huh.

Q And when you're in an accident like this where unfortunately the other person --

A I don't know if I had GAP at the time or not. That's what you're talking about?

Q Well, no, GAP is different. GAP is for your pro--- property damage.

A Right.

Q What this is is that unfortunately

this document, you're not being asked to waive or forego any -- really any potential insurance claim that you might have that's a result of your accident?

MR. HODGE: Object to the form of the question.

By MR. COX:

Q Other than, you know, protecting Mr. Coogler's personal assets for the bodily injury damages.

A Yes, sir.

Q Okay. All right. Are you aware sitting here as to how anything in this document did not comply with what was requested in your demand letter, the language in this document? If you don't know, that's fine, but I'm just asking if you do?

A Repeat it again.

Q Yeah. Do you -- do you know of any -- do -- do you know of any way in which the language contained in the agreement and covenant not to execute that we just went through did not comply with the -- with the language that was requested in your demand letter?

A No, not really I don't.

Q Okay. And did you -- and we haven't talked about the affidavits, but the affidavits you requested are there. And you don't have any problem with those as far as a reason to reject the settlement?

A Yes, you're right.

Q Okay. All right. And did you see the check and the covenant and the affidavits before this letter dated March 23rd, 2016 was sent out to Allstate?

A Did I see the check first?

Q Yes, did you see the check and the covenant and the affidavits before this letter dated March 23rd, 2016 was sent out?

A I want to say that -- yeah, it was -- yes, sir.

MR. COX: I think we're about done. I think those are all the questions I have, Camden.

MR. HODGE: Nothing from me.

(Deponent excused.)

(Whereupon, at 2:03 p.m., the taking of the foregoing deposition was concluded.)

Exhibit C

IN THE STATE OF SOUTH CAROLINA) COUNTY OF FLORENCE)	IN THE COURT OF COMMON PLEAS FOR THE 12TH JUDICIAL CIRCUIT CASE NO: 2017-CP-21-341
ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, Plaintiff, v. NATOSHIA HAMILTON and KENNETH COLLINS COOGLER, Defendants.	**Defendant Natoshia Hamilton's Supplemental Responses to Plaintiff's First Requests for Production**

TO: PLAINITFF AND ALL COUNSEL OF RECORD:

Defendant Natoshia Hamilton (hereinafter the "Defendant" or "Defendant Hamilton") hereby supplements her responses to Plaintiff's First Requests for Production as follows and pursuant to the *South Carolina Rules of Civil Procedure*. Defendant reserves the right to supplement and/or amend this response up until the date of trial.

1. Copies of all fee agreements with any attorney in connection with representation on your behalf related to the automobile accident on January 31, 2015.

RESPONSE:

Objection. Defendant objects as this request is not reasonably calculated to lead to the discovery of admissible evidence and seeks information protected by the attorney-client privilege, work product doctrine, and statutory and common law protections.

SUPPLEMENTAL RESPONSE:

Please find enclosed a copy of said fee agreement.

1. Defendant's calendars or any other information which indicates when you met with your attorneys regarding the settlement demand, Allstate's response, and your rejection of the settlement.

RESPONSE:

Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence and seeks information protected by the attorney-client privilege, work product

doctrine, and common law and statutory protections.

SUPPLEMENTAL RESPONSE:

Defendant is not in possession of any responsive material.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

Roy T. Willey, IV
S.C. Bar No.: 101010
Eric M. Poulin
S.C. Bar No.: 100209
J. Camden Hodge
S.C. Bar No.: 100638
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

ATTORNEYS FOR DEFENDANT HAMILTON

Dated at Charleston, SC
This 20th day of November, 2017.

ANY DISPUTE REGARDING THIS AGREEMENT OR ANY SERVICES RENDERED UNDER THIS AGREEMENT SHALL BE SUBJECT TO THE SOUTH CAROLINA ARBITRATION ACT, S.C. CODE AN. '15-48-10 *et seq.*, AS AMENDED, TO THE FULL EXTENT AS IS PERMISSIBLE UNDER THE ACT.

ATTORNEY RETAINER AND CONTINGENT FEE AGREEMENT

In consideration of legal services to be rendered by ANASTOPOULO LAW FIRM, LLC, Natasha Lenyk the undersigned, hereinafter referred to as the "Client", retains the ANASTOPOULO LAW FIRM, LLC herein after referred to as the "attorney", to represent him/her with respects to all claims against Kenneth Coogler and whomever (including corporations and governmental bodies) may be liable for all damages, (actual, consequential, special and/or punitive) and injuries suffered by the Client resulting from the incident which occurred on or about 1/31/15 hereinafter referred to as the "Claim". Furthermore, if wrongful death and/or survival claims are pursued, the Client authorizes the attorney to prosecute this case on behalf of all legal beneficiaries of the decedents.

Client employs and authorizes the above attorney, their agents and employees, to take all steps in this matter deemed by attorney to be necessary and appropriate to obtain a satisfactory result, including but not limited to, securing a complete investigation, instituting legal proceedings, entering into settlement negotiations, preparing for and/or proceeding to trial and/or discontinuing litigation. Attorney agrees not to settle or compromise the case without the Client's approval regarding the terms and form of the settlement. Client understands and consents that any of the attorneys from the ANASTOPOULO LAW FIRM, LLC or associate counsel is authorized to serve as the attorney on the claim or case. It is further understood and agreed that the attorney is not obligated or under employment to negotiate or settle property damage issues, or establish or maintain probate accounts or open probate estates.

Client agrees to pay the attorney a fee, contingent on what is recovered in this matter by way of settlement, judgment or otherwise, to be computed as follows:

(1) 33 1/3 % of the total amount recovered before suit is filed; or

(2) 40 % of the total amount recovered after suit is filed (whether tried or not);

In the event an appeal is taken, a separate agreement shall be entered into between the parties regarding additional services to be provided by attorney for the appeal and additional attorney fees and expenses related to the appeal only.

IN ADDITION TO AND AFTER DEDUCTION OF THE ABOVE ATTORNEY FEES, Client shall pay to attorney all case cost, expenses and any other monies advanced by attorney in connection with said matter at the time of the disposition of the case. Said expenses shall include, but not be limited to investigation, travel, lodging, physician and/or expert witness fees, consultant fees, settlement, mediation, and/or trial presentations and/or exhibits. In addition to the aforementioned expenses, an amount will be deducted from Client's recovery for repayment of administrative expenses incurred for copying cost, postage, long distance calls, delivery cost, mileage, etc. If said administrative cost exceeds seventy-five dollars ($75.00), the said expenses will be itemized on Client's Disbursement Sheet; otherwise, a flat charge of ($75.00) for administrative cost will be charged. Client understands that all expenses incurred for medical treatment are the exclusive responsibility of the Client and Client further extends permission to attorney to contact other individuals, corporations, healthcare providers and others concerning liens and authorizes attorney to deduct from Client's share and to directly pay any unpaid balances due to doctors, chiropractors, hospitals, healthcare providers, expert medical witnesses, or medical creditors in connection with the case. Client further authorizes attorney or an employee or agent of attorney to contact Medicare and Medicaid about any potential medical lien, and to negotiate and/or pay any outstanding lien to Medicare/Medicaid out of Client's share of the recovery. Client understands and agrees that attorneys fees are computed and paid before expenses are deducted or liens are paid. Attorney shall have a lien on said claim, suit or recovery for said fees and expenses.

I understand that ANASTOPOULO LAW FIRM, LLC will review my case prior to a lawsuit being filed and has the sole discretion on whether attorney will proceed with a lawsuit. It is also understood that the attorney retains the right, at any time, following the investigation, discovery or research, to release itself from this contract and withdraw from the representation of the Client, if it appears to the attorney that circumstances have developed which would hinder continued effective litigation of the case or that continued litigation would not be cost effective or result in a sustainable or collectible judgment.

If an offer of settlement is made, and attorney recommends to the Client that the offer be accepted, but Client refuses to accept the offer, attorney may withdraw from the representation of Client, so long as withdrawal can be accomplished without prejudicing the client. Neither inconvenience in locating a replacement counsel nor inability to retain substitute counsel is to constitute prejudice to the client. If attorney should withdraw following Client's refusal to accept a recommended offer of settlement, and one or more of the claims covered by this contract ultimately results in a recovery, attorney will be entitled to fair compensation for the work done by him and to reimbursement of expenses and advancements made by him before withdrawing. Fair compensation in such instance is defined as, the part of the contingent fee that best represents the contribution made and risk assumed by attorney relative to the total of all contributions and risks viewed retrospectively as of the resolution of the claims covered by this contract.

Client hereby appoints attorney as limited attorney-in-fact to receive and endorse any and all funds paid to client as a result of the claims rendered herein, solely for the purposes of depositing said funds in attorney's trust account pending clients' instruction as to disbursement as set forth herein. This appointment is provided as a convenience to the client and to expedite distribution of net proceeds to the client.

If the client discharges attorney, (a) attorney will be entitled to the reimbursement of all expenses, regardless of whether the claims covered by this contract produce any monetary recovery; and (b) attorney will be entitled to fair compensation for the work performed prior to discharge if there is an ultimate monetary recovery. In the event client discharges attorney, ANASTOPOULO LAW FIRM, LLC will acquire a lien on any outside recovery for an amount totaling the fee due under this contract based on ANASTOPOULO LAW FIRM, LLC's highest settlement offer prior to client's discharge of attorney.

Client authorizes attorney to destroy or dispose of client's file contents and all evidence gathered in connection therewith, and any of client's property in the attorney's possession relating to the case, six (6) years following the conclusion of the case or the conclusion of attorney's representation unless Client notifies attorney in writing that Client wants a copy of the file and pays all copying costs.

Client authorizes attorney and all agents and employees to give any medical providers, insurance adjuster, attorney information regarding the case.

Client does hereby authorize ANASTOPOULO LAW FIRM, LLC to engage the services of any attorney, whether or not such attorney is a member or employee of ANASTOPOULO LAW FIRM, LLC for and on behalf of the Client if it is deemed to be in the best interest of Client, so long as the fee charged to Client is not altered in any way.

Client: [signature]

Attorney: [signature]

Date: This 2nd day of Feb, 2015.

Exhibit D

ELECTRONICALLY FILED - 2016 Sep 26 11:22 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400040

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON)	C/A No.: 2015-CP-14-040
Fred Floyd,	
Plaintiff,	
vs.	**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
Palmer H. Tanner,	
Defendant.	

This matter came before the Court for a Motion hearing on September 7, 2016. Counsel in attendance for the parties were Katie M. Wilensky, Esq., on behalf of Plaintiff Fred Floyd, and Todd E. Rigler, Esq., on behalf of Defendant Palmer H. Tanner. This case arises out of a motor vehicle accident that occurred on September 3, 2013. The instant motion is Defendant's Motion for Summary Judgment on the affirmative defense of accord and satisfaction and/or Motion to Enforce Settlement.

The Court has considered all of the arguments of counsel raised at the motion hearing, the various memoranda of law filed by the parties, and any accompanying case law and other documents submitted to the Court.

STANDARD FOR SUMMARY JUDGMENT

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

> When a motion for summary judgment is made and supported by such facts as would be admissible in evidence at trial, the adverse party may not rest upon the

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> mere allegations of his pleadings. Instead his response to the motion must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him.

Moody v. McLellan, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988) (*citing* Rule 56(e), SCRCP).

"In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party opposing summary judgment." *Bruce v. Durney*, 341 S.C. 563, 566, 534 S.E.2d 720, 722 (Ct. App. 2000) (*citing Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)). Summary judgment should be entered against a party "who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial." *Baughman v. AT&T Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991).

The purpose of summary judgment is to obviate delay where there is no material issue of fact involved. *Manly v. Manly*, 353 S.E.2d 312, 314 (Ct. App. 1987). Summary judgment is appropriate in those cases in which plain, palpable, and undisputed facts exist on which reasonable minds cannot differ. It is not sufficient for one to create an inference which is not reasonable or an issue of fact that is not genuine. *Priest v. Brown*, 396 S.E.2d 638 (S.C. Ct. App. 1990). Likewise, "[a] conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." *Shoop v. Settle*, 445 S.E.2d 651, 655 (Ct. App. 1994).

"The party opposing a properly supported motion for summary judgment ... may not rest on mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Thus, the existence of a mere scintilla of evidence in support of the non-moving party's position is not sufficient to overcome a motion for

summary judgment." *Bravis v. Dunbar*, 449 S.E.2d 495, 496 (S.C. Ct. App. 1994) (*citations omitted*).

ACCORD AND SATISFACTION / SETTLEMENT AGREEMENT

South Carolina recognizes the affirmative defense of Accord and Satisfaction. *Tremont Constr. Co. v. Dunlap*, 310 S.C. 180 (Ct. App. 1992). An "accord" is a meeting of the minds agreement between parties to settle a dispute between them, and "satisfaction" is the payment of the consideration expressed in the accord. To prove this affirmative defense, a party must satisfy two elements:

(1) An agreement to accept in discharge of an obligation something different from that which the creditor is claiming or is entitled to receive; and

(2) Payment of the consideration expressed in the new agreement.

Wilson v. Builders Transport, Inc., 330 S.C. 287 (Ct. App. 1998).

"[A] settlement agreement is a contract." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009) (*certiorari denied*). "The necessary elements of a contract are an offer, acceptance, and valuable consideration." *Southern Glass & Plastics Co., Inc. v. Kemper*, 399 S.C. 483 (Ct. App. 2012) (*citing Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397 (2003). "A unilateral contract occurs when there is only one promisor and the other party accepts, not by mutual promise, but by actual performance." *Id.*

FINDINGS OF FACT

It is undisputed that on December 19, 2014, the Plaintiff sent a timed "Offer of Compromise" to the Defendant wherein he offered to settle his bodily injury claim against the Defendant in exchange for the following:

1. Receipt of the Defendant's $50,000.00 bodily injury liability limits by 5:00 p.m. on January 3, 2015, "via cashier's checks, certified bank checks, or valid

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acceptance of the Offer of Compromise was a check issued by Allstate Insurance Company and therefore conforms to the acceptable forms of payment outlined in the Plaintiff's Offer of Compromise. Plaintiff's counsel indicated verbally at the hearing that they "may" have issues with the wording of the covenant not to execute, but could not identify any such issues with particularity or specificity despite being given the opportunity to identify the same.

The Court finds that the Plaintiff has failed to put forth any facts tending to indicate that Defendant's performance under the Offer of Compromise was non-compliant in any way. The Court further finds that the Defendant, by performing according to the various conditions expressed in the Plaintiff's Offer of Compromise, properly accepted said Offer of Compromise. The parties, therefore, reached an accord to settle this disputed claim and the accord was satisfied upon Defendant's performance.

THEREFORE, IT IS ORDERED that the Defendant's Motion for Summary Judgment is granted as to the bodily injury portion of the Plaintiff's claim. Plaintiff is directed to sign the Covenant Not to Execute.

AND IT IS SO ORDERED.

W. Jeffrey Young
At Large Circuit Court Judge

September ____, 2016
At Chambers, South Carolina

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Clarendon Common Pleas

Case Caption: Fred Floyd VS Palmer Tanner

Case Number: 2015CP1400040

Type: Acknowledgement of Filing of Removal

So Ordered

s/W. Jeffrey Young2156

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT
Allstate Property and Casualty Insurance Company, Plaintiff, vs. Natoshia Hamilton and Kenneth Collins Coogler, Defendants.	C/A#: 2017-CP-21-341 **ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Plaintiff Allstate Property and Casualty Insurance Company ("Allstate") has moved pursuant to South Carolina Rule of Civil Procedure 56 for summary judgment. Allstate submits and files this Memorandum of Law in Support of its Motion for Summary Judgment.

INTRODUCTION

Defendant Natoshia Hamilton ("Hamilton") submitted a claim to Allstate related to injuries she sustained arising from an accident that occurred on January 31, 2015. By letter dated January 15, 2016, Hamilton made a time-sensitive demand for the bodily injury policy limits of the policy issued to Allstate's insured, Kathryn Broach ("Broach"), under which Defendant Kenneth Collins Coogler ("Coogler") was also an insured, for Hamilton's claimed injuries. The bodily injury limits of the policy are $25,000.00. Allstate timely delivered a check for the entire bodily injury limits of $25,000.00 along with the other documents demanded in the letter, thereby meeting the material terms of the offer and resolving the bodily injury claim on behalf of Coogler.

However, Hamilton rejected Allstate's acceptance of her demand with no explanation and filed suit against Coogler. Plaintiffs have filed this declaratory judgment action seeking a declaration that Allstate's performance under the demand is valid and enforceable and Allstate

fulfilled its obligations under the policy when the claim was settled. Further, Plaintiffs seek a declaration that they have no further obligation to Defendant Hamilton in connection with the bodily injury claim. None of the competent evidence in this case is in dispute and South Carolina law demonstrates that Allstate complied with the material terms of the demand. Therefore, Plaintiff is entitled to entry of summary judgment in its favor as a matter of law.

I. STATEMENT OF UNDISPUTED FACTS[1]

A. Claim Handling and Time-Sensitive Settlement Demand

Allstate received a letter dated February 5, 2015 from the Anastopoulo Law Firm, LLP ("Law Firm") stating that the Law Firm would be representing Hamilton "for the bodily injuries she suffered during a motor vehicle accident." (*See* Ex. A., Affidavit of Wayne D. Gaymon ("Gaymon Aff.", p. 1, Ex. B) Hamilton and her husband handled the property damage portion of her claim through her insurance company, and Hamilton testified that she does not know of any outstanding property damages as a result of this accident. (*See* Ex. B, Deposition of Natoshia Hamilton ("Hamilton Depo."), pp. 11-13, 28-29) Consistent therewith, per the Attorney Retainer and Contingent Fee Agreement between Hamilton and the Law Firm, the Law Firm did not have an obligation to negotiate or settle any property damage issues Hamilton may have had. (*See* Ex. C, Hamilton's Supplemental Responses to Plaintiff's First Requests for Production)

On January 21, 2016, Allstate received a letter from the Law Firm regarding radiology bills that were to be added to the bills included with the demand. However, because Allstate had not received the demand referenced in that letter, Allstate called the Law Firm and was told that the demand package had been sent. During the afternoon of January 21, 2016, Allstate received

[1] These facts are presented in the light most favorable to Defendant as required under Rule 56, SCRCP.

the time-sensitive demand that was dated January 15, 2016, which was the Friday before the holiday on January 18, 2016. (Gaymon Aff., pp. 1-2)

Per the terms of the demand, the demanded limits were to be received by "5:00 pm EDT on January 26, 2016." Hamilton was told and knew that Coogler's policy had $25,000.00 limits for bodily injury. (Hamilton Depo., pp. 19-20) The demand stated that "[s]ettlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company" and be made payable to Hamilton and the Law Firm. (Gaymon Aff., p. 2, Ex. C) However, Hamilton conceded the $25,000 would have been the same amount of money whether it was issued via a regular check or a certified check. (Hamilton Depo., p. 44) Hamilton also admitted that she did not have any concerns that a check from Allstate would bounce. (Hamilton Depo., pp. 45-46)

In addition, the letter also demanded that Coogler "provide sworn and notarized statements that there is no other insurance coverage available to her [sic] that could pertain to this loss." Further, the demand requested that a proposed release be provided. The letter specifically directed that Allstate "[i]nstead of acting in bad faith and trying to trick us, please just send a reasonable Release that does not include indemnification or the release of property damage claims." In addition, the letter stated "[p]art of the performance required to accept this offer is for you to deliver a proposed Release with the settlement check" and "the proposed Release that is delivered with the settlement check must comply with the terms of this offer." (Gaymon Aff., p. 2)

On January 26, 2016, the settlement check in the amount of $25,000.00, covenant not to execute, and affidavits of the named insured, Kathryn Broach, and her husband Kenneth Collins

Coogler, were hand delivered to the Law Firm (and signed for by attorney Evan Williams) to satisfy the requirements of the time-sensitive demand. (Gaymon Aff. p. 3)

B. Attempted Rejection of Allstate's Acceptance of Settlement

Despite Allstate's acceptance of the time-sensitive demand by performance, Hamilton rejected Allstate's acceptance. Hamilton explained that she rejected Allstate's acceptance of the demand because the check was not a certified check and "because of [her] pain and suffering." (Hamilton Depo., p. 41) She explained that the check "didn't meet our demand." (Hamilton Depo., pp. 30-35)[2]

II. SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004) *and* Rule 56, SCRCP). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. *Rife*, 363 S.C. at 215, 609 S.E.2d at 568 (citing *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 443 (2003)). "Further, summary judgment depends upon the existence of plain, undisputed facts on which reasonable minds cannot differ." *Allen v. Long Mfg. NC, Inc.*, 332 S.C.

[2] Since sending the letter rejecting Allstate's acceptance of her demand, which provided no explanation regarding the rejection, per Hamilton's recently filed Motion for Summary Judgment and Memorandum of Law in Support ("Hamilton's Motion") and her deposition testimony, she has since clarified that she rejected Allstate's acceptance of her demand because Allstate allegedly "failed to comply with the clear, explicit requirements to tender a cashier's or certified check." (*See* Hamilton's Motion, First Paragraph, "Argument" Section). Further, Hamilton testified that she had no issue with the proposed release that was submitted or the affidavits. (*See* Hamilton Depo., pp. 57-58) Therefore, Allstate assumes this is the only provision of Allstate's acceptance of her demand about which Hamilton takes issue.

422, 426, 505 S.E.2d 354, 356 (Ct. App. 1998) (citing *Priest v. Brown*, 302 S.C. 405, 396 S.E.2d 638 (Ct. App. 1990)).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (2003). To defeat a properly supported motion for summary judgment, the party opposing the motion "must come forward with specific facts showing there is a genuine issue for trial." *Regions Bank*, 354 S.C. at 660, 528 S.E.2d at 438. *See, e.g., Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 216-217, 407 S.E.2d 637, 638 (1991) (determining grant of summary judgment was proper where "there was no evidence from which a jury could find in [the opposing party's] favor").

Here, no genuine issue of material facts exists to defeat Allstate's motion for summary judgment. The competent evidence shows that Allstate complied with the material terms of the demand. Allstate's performance of the material terms of the demand constitute acceptance and the settlement was consummated under South Carolina law. Therefore, judgment should be entered in favor of Allstate as a matter of law.

III. ARGUMENT

A. Allstate's Acceptance and Performance of the Material Terms of the Settlement Demand Constitute a Valid Acceptance.

Hamilton's only argument in support of her Motion seeking entry of summary judgment in her favor is that Allstate allegedly "failed to comply with the clear, explicit requirements to tender a cashier's or certified check." (*See* Hamilton's Motion, First Paragraph, "Argument" Section) During her deposition, Hamilton testified her only issue with Allstate's acceptance of the demand was the form of the check. (*See* Hamilton's Depo. pp. 30-35) Further, Hamilton contends

Allstate's acceptance of the demand "was not a mirror image or in compliance with the terms of [Hamilton]'s offer" and that "under the long-standing dictates of contract law," Allstate's acceptance "was nothing more than a counter proposal." (*See* Hamilton's Motion, Fourth Paragraph, "Argument" Section) South Carolina law does not support Hamilton's contention. Rather, the principles of South Carolina contract law mandate entry of summary judgment in favor of Plaintiffs.

Under South Carolina law, "'[i]n construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007). Further, under South Carolina law, for there to be a valid contract, there must be an offer, an acceptance, and valuable consideration. *See Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct. App. 2011) (determining a valid contract existed because there was evidence of a meeting of the minds as to the terms and conditions of the agreement) (citing *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009) ("The necessary elements for a contract are an offer, acceptance, and valuable consideration.")). In addition, under South Carolina law, a valid and enforceable contract is created when there is "a meeting of the minds between the parties with regard to all ***essential*** and ***material*** terms of the agreement." *Nutt Corp.*, 396 S.C. at 328, 721 S.E.2d at 450 (citing *Player v. Chandler*, 299 S.C. 101, 106, 382 S.E.2d 891, 893 (1989)) (emphasis added). *See also Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014) (explaining that "[a] valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement.") (emphasis in original).

Allstate also filed another matter involving similar issues in *Allstate Fire & Casualty Insurance Company v. Pamela Goodwin*, C.A. No. 2015-CP-16-815, which was pending in the

Court of Common Pleas for Darlington County, South Carolina. The Court, on very similar arguments and facts, found, as a matter of law, that Allstate's acceptance and performance of the material terms of the demand constituted a valid acceptance in that case. A copy of this Order is attached as Exhibit E.

Remarkably, the facts at issue in *Goodwin* are very similar to facts at issue here. Counsel sent a time-limit demand to Allstate by letter dated December 12, 2014 requesting that the bodily injury liability limits be tendered by cashier's check or certified bank check – not drafts – by December 27, 2014. (*Goodwin* Order, p. 3) The other terms of the settlement demand were similar to those at issue here. The Court found as follows:

> In viewing the record evidence in this case in the light most favorable to Defendant, the Court finds that Defendant has failed to show that genuine issues of material fact exist regarding whether Allstate complied with the material terms of the demand. Based on its review of the evidence in this case and in accordance with South Carolina law, the Court finds that Allstate complied with the material terms of the demand, and the Court further finds that Allstate's performance of the material terms of the demand constitute acceptance and the settlement was consummated under South Carolina law. Therefore, the Court enters judgment in favor of Plaintiffs as a matter of law.

(*Goodwin* Order, p. 6)

Specifically, the Court found that there was an offer from the defendant to Allstate and that offer was accepted by Allstate and Allstate provided valuable consideration to the defendant. (*Goodwin* Order, p. 7) Further, the Court found that Allstate met the essential and material terms of the demand – the payment of the entire $50,000.00 policy limits for the defendant's bodily injuries. (*Id.*) The Court also rejected the defendant's argument regarding the acceptance being a mirror image and reasoned:

> The Court further notes that Defendant's contention seems to suggest that because Allstate's acceptance of the settlement demand was not a "mirror image" in that the type of check issued was not a cashier's check or certified check. South Carolina law does not support Defendant's contention. Rather, contrary to Defendant's

assertion, the type of check is not a material term of the settlement demand under South Carolina law, and further, this terms was impossible for Allstate to meet.

(*Goodwin* Order, p. 8)

There is no legitimate dispute that Hamilton's demand sought the full, $25,000 bodily injury limits to resolve Hamilton's claim for bodily injury as to Coogler. *See Ecclesiastes Prod. Ministries*, 374 S.C. at 498, 649 S.E.2d at 502 ("In ascertaining intent, the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered."); Gaymon Aff., Ex. C. There is no question that Allstate's acceptance of the settlement demand is valid and enforceable. There was an offer from Hamilton that was accepted by Allstate, which provided valuable consideration to Hamilton. Further, there is no question that Allstate met the essential and material terms of Hamilton's demand – the payment of the entire $25,000 policy limits for Hamilton's alleged bodily injuries. Therefore, Allstate is entitled to entry of summary judgment in its favor.

Hamilton's erroneously asserts that because Allstate's acceptance of the settlement demand was not a "mirror image" in that the type of check issued was not a cashier's check or certified check, there was not an acceptance of Hamilton's demand. Contrary to Hamilton's assertion, the type of check is not a material term of the settlement demand, and further, it was a term that was impossible for Allstate to meet.

The demand requires Allstate to issue a cashier's or certified check. Hamilton conceded that the type of check would not change the amount of money – the amount would still be $25,000. (*See* Hamilton Depo., pp. 44) She further testified that they "had no problem with that [the check] would bounce or anything." (*See* Hamilton Depo., p. 45) It should go without saying that insurance

companies such as Allstate do not issue cashier's checks or certified checks.[3] (*See* Gaymon Aff. pp. 2-3) Moreover, Hamilton has not demonstrated that issuing such checks in this manner is an accepted practice for insurance companies.

Notwithstanding this fact, at least one South Carolina court has questioned the continued vitality of the so-called "mirror-image" rule and has noted that it is outdated in that it was "well suited to simple, one time transactions, in which the parties contract face to face" and that "it fails to accommodate the realities of much modern commercial practice." *Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus.*, 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991). *See also* In addition, Hamilton has pointed to no South Carolina case stating that such a rule would apply to determine that Allstate's performance of the essential and material terms of the time-sensitive demand constitutes a counteroffer. Because there is no material difference between how the manual check issued by Allstate in this case and a certified or cashier's check issued by a bank would be treated in South Carolina, Allstate's issuance of the manual check (the kind of check that it can actually issue), does not constitute a counteroffer.

Our Supreme Court has already determined that payment in the form of a cashier's or certified check is not an essential or material term of a settlement agreement. South Carolina Rule of Professional Conduct 1.15 states as such. Specifically, the rule provides in pertinent part:

> (f)(1) A lawyer shall not disburse funds from an account containing the funds of more than one client or third person ("trust account") unless the funds to be disbursed have been deposited in the account and are collected funds.

[3] In Hamilton's Motion, she cites to a decision by the Court of Appeals of South Carolina, *Fender & Latham, Inc. v. First Union National Bank*, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994), seemingly in support of her contention that Allstate's performance of the demand was not sufficient. (*See* Hamilton's Motion, Second Paragraph, "Argument" Section) In *Fender*, the bank's commitment letter to the borrower stated that to accept the offer the borrower needed to make an escrow deposit of $125,000, obtain "pole line rights" and accept the offer in writing. Fender did not comply with any of these clearly material terms by the date required in the offer. *Fender* has no bearing on the case before this court.

(2) Notwithstanding Subsection (f)(1) above, a lawyer may disburse funds from a trust account at the lawyer's risk in reliance on the following deposits when the deposit is made:

****

(iv) by a certified check, cashier's check, or other check drawn by a depository institution or an insurance company, provided the insurance company check does not exceed $50,000.

Rules of Professional Conduct: Rule 1.15, RPC, Rule 407, SCACR. Therefore, per the mandate of the South Carolina Supreme Court, a check issued by an insurance company that does not exceed $50,000 is treated the same as a certified check, cashier's check, or other check drawn by a depository institution – i.e., the money would be immediately available. And, Hamilton had no concern that the check issued by Allstate would not be honored. (*See* Hamilton Depo., p. 45) Therefore, like in *Goodwin*, Allstate is entitled to entry of summary judgment in their favor as a matter of law.

B. Allstate's Performance of the Settlement Demand Constitutes an Accord and Satisfaction.

Under South Carolina law, "[t]he essential elements of an accord and satisfaction are an agreement to settle a dispute and consideration which supports the agreement." *Wilson v. Builders Transp., Inc.*, 330 S.C. 287, 297, 498 S.E.2d 674, 680 (Ct. App. 1998). Here, as previously stated, there was an offer to settle Hamilton's claim, Allstate accepted the demand, and provided the demanded consideration to support the agreement to settle Hamilton's claim. This is a textbook example of an accord and satisfaction.

The Court of Common Pleas for Clarendon County, South Carolina reached this same determination in a case involving very similar facts. In *Floyd v. Tanner*, C/A No. 2015-CP-14-040, the Court issued an Order dated September 26, 2016 in which the Court determined that an insured of Allstate Insurance Company was entitled to entry of summary judgment in his favor because

Allstate's acceptance of the settlement demand by issuing the requested policy limits constituted an accord and satisfaction.[4] A copy of this Order is attached as Exhibit D.

The facts in *Floyd v. Tanner* are strikingly similar to the facts at issue in this case. The plaintiff in that case was represented by the same counsel as Defendant. Counsel sent a time-limit demand to Allstate by letter dated December 19, 2014 requesting that the bodily injury liability limits be tendered by cashier's check, certified bank check, or valid check – not drafts – by January 3, 2015. (*Floyd* Order, pp. 3-4) The other terms of the settlement demand were similar to those at issue in this case as well. The Court found that Allstate Insurance Company sent a valid check for the policy limits and other requested documents, and that despite this fact, plaintiff's counsel "rejected the Defendant's tender indicating that 'Allstate failed to comply with the terms'" of the settlement offer. (*Floyd* Order, p. 4) The Court noted that while counsel did not indicate why the tender was being rejected at the time of rejection, counsel did explain in response to the motion for summary judgment that Allstate's "tender was rejected as non-compliant" because Allstate "'forwarded a draft' instead of a check." (*Floyd* Order, p. 4) (quoting Plaintiff's Memorandum in Opposition). The Court found that Allstate had complied with the terms of the settlement offer. (*Floyd* Order, pp. 4-5) The Court reasoned that "[t]he parties, therefore, reached an accord to settle this disputed claim and the accord was satisfied upon Defendant's performance." (*Floyd* Order, p. 5)

The same result should be reached here. Allstate omplied with the arbitrary deadline imposed by the January 15, 2016 letter, and based on prior experience with Hamilton's counsel, it

[4] In addition, Allstate filed another similar lawsuit styled *Allstate v. Hazel Stephens*, C.A. No. 2016-CP-17-187, which was pending in the Court of Common Pleas for Dillon County, South Carolina. The case involves a fact pattern very similar to that at issue here. The Law Firm sent a similar time-sensitive demand to Allstate. Ultimately, the parties were able to resolve that matter and the stipulation of dismissal was filed on April 26, 2017.

understood that it would not receive an extension of the deadline by which to tender the $25,000 policy limits. Given the time restraints, Allstate issued a manual check and had to hand deliver the check with the other requested items to counsel in order to comply with the deadline. And, as stated above, a check issued by an insurance company that does not exceed $50,000.00 is treated the same as a certified check or a cashier's check for purposes of disbursement of the funds to Hamilton. Therefore, as in *Floyd*, Allstate's manual check was sufficient to meet the terms of the agreement and the payment thereof constitutes an accord and satisfaction.

IV. CONCLUSION

As demonstrated above, Allstate is entitled to summary judgment entered in its favor and is entitled to a declaration that Allstate's acceptance of the time-sensitive demand was valid and enforceable such that Allstate has no further obligation regarding Hamilton's claim. Allstate accepted and performed the material, essential terms of the time-sensitive demand and such performance created a valid and enforceable agreement and an accord and satisfaction under South Carolina law. Therefore, Allstate respectfully requests that this Court grant its motion for summary judgment and deny Hamilton's Motion as a matter of law.

{Signature on next page}

GALLIVAN, WHITE & BOYD, P.A.

By:_____

A. Johnston Cox, S.C. Bar No. 09081
Janice Holmes, S.C. Bar 75038
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
Telephone: 803-779-1833
Facsimile: 803-779-1767
jlay@GWBlawfirm.com
jcox@GWBlawfirm.com
jholmes@GWBlawfirm.com

Attorneys for Plaintiff Allstate Property and Casualty Insurance Company

Columbia, South Carolina
May 31, 2018

Case No. 2017-CP-21-341
Allstate's Memorandum of Law in Support of Motion for Summary Judgment

Exhibit A

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, Plaintiff, v. NATOSHIA HAMILTON and KENNETH COLLINS COOGLER, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT Case No. 2017-CP-21-341 **AFFIDAVIT OF WAYNE D. GAYMON**

Personally appeared before me, Wayne D. Gaymon, who, being duly sworn, deposes, and says that:

1. I am over the age of 21, am of sound mind, and I am personally familiar with the contents of this affidavit.

2. I am currently employed with Allstate Insurance Company ("Allstate"), where I have been employed for over 13 years. I am currently employed as the Casualty Claims Service Leader for the South Carolina MCO.

3. Allstate received a letter dated February 5, 2015 from the Anastopoulo Law Firm, LLP ("Law Firm") stating that the Law Firm would be representing Hamilton "for the bodily injuries she suffered during a motor vehicle accident." The relevant portions of the claims diary are attached as **Exhibit A** and the letter is attached as **Exhibit B**.

4. On January 21, 2016, Allstate received a letter from the Law Firm regarding radiology bills that were to be added to the bills included with the demand. Because Allstate had not received the demand, Allstate called the Law Firm and was told that the demand package had been sent. (ALLSTATE 0340)

5. During the afternoon of January 21, 2016, Allstate received the time-sensitive demand that was dated January 15, 2016. (ALLSTATE 0340)

6. Per the terms of the demand, the demanded limits of the policy were to be received by the Law Firm no later than "5:00 pm EDT on January 26, 2016." The demand also stated, in a footnote, that "[S]ettlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company" and be made payable to Hamilton and the Law Firm. **(Exhibit C)**

7. The demand also requested that Kenneth Collins Coogler ("Coogler") "provide sworn and notarized statements that there is no other insurance coverage available to her [sic] that could pertain to this loss."

8. In addition, the demand requested that a proposed release be provided. The letter specifically directed that Allstate "[i]nstead of acting in bad faith and trying to trick us, please just send a reasonable Release that does not include indemnification or the release of property damage claims." In addition, the letter stated "[p]art of the performance required to accept this offer is for you to deliver a proposed Release with the settlement check" and "the proposed Release that is delivered with the settlement check must comply with the terms of this offer."

9. On January 26, 2016, in order to meet the time limit in the demand, a handwritten check was requested to include with the response package accepting the time-sensitive demand. (ALLSTATE 0337)

10. Allstate does not and cannot issue certified bank check or cashier's checks. Allstate is not a bank. Given this fact, to my knowledge, Allstate has never issued a certified or cashier's check to settle a claim in South Carolina.

11. There is no material reason to request a certified bank check or cashier's check from Allstate. To my knowledge, no Allstate check has ever been returned for insufficient funds in South Carolina. In fact, the Anastopoulo law firm is the only law firm in South Carolina that has requested certified bank checks or cashier's checks from Allstate. Although the Anastopoulo firm does from time to time request such checks from Allstate, the firm routinely accepts both manual and printed checks from Allstate in settlement of claims.

12. As reflected in the claims diary, on January 26, 2016, the settlement check in the amount of $25,000.00, covenant not to execute, and affidavits of the named insured, Kathryn Broach, and her husband, Kenneth Collins Coogler, were hand delivered to the Law Firm (and signed for by attorney Evan Williams, who was with the Law Firm at the time) to satisfy the requirements of the time-sensitive demand. (ALLSTATE 0336-0337)

13. The $25,000 check was a valid and negotiable check. The affidavits and covenant not to execute complied with the terms of the demand letter.

14. Allstate did not receive any correspondence prior to Allstate's acceptance of the demand and performance by delivering the required check and documents to the Law Firm that the demand was rescinded.

Wayne D. Gaymon

Wayne D. Gaymon

Sworn to and subscribed before me this the
20th day of January 2018.

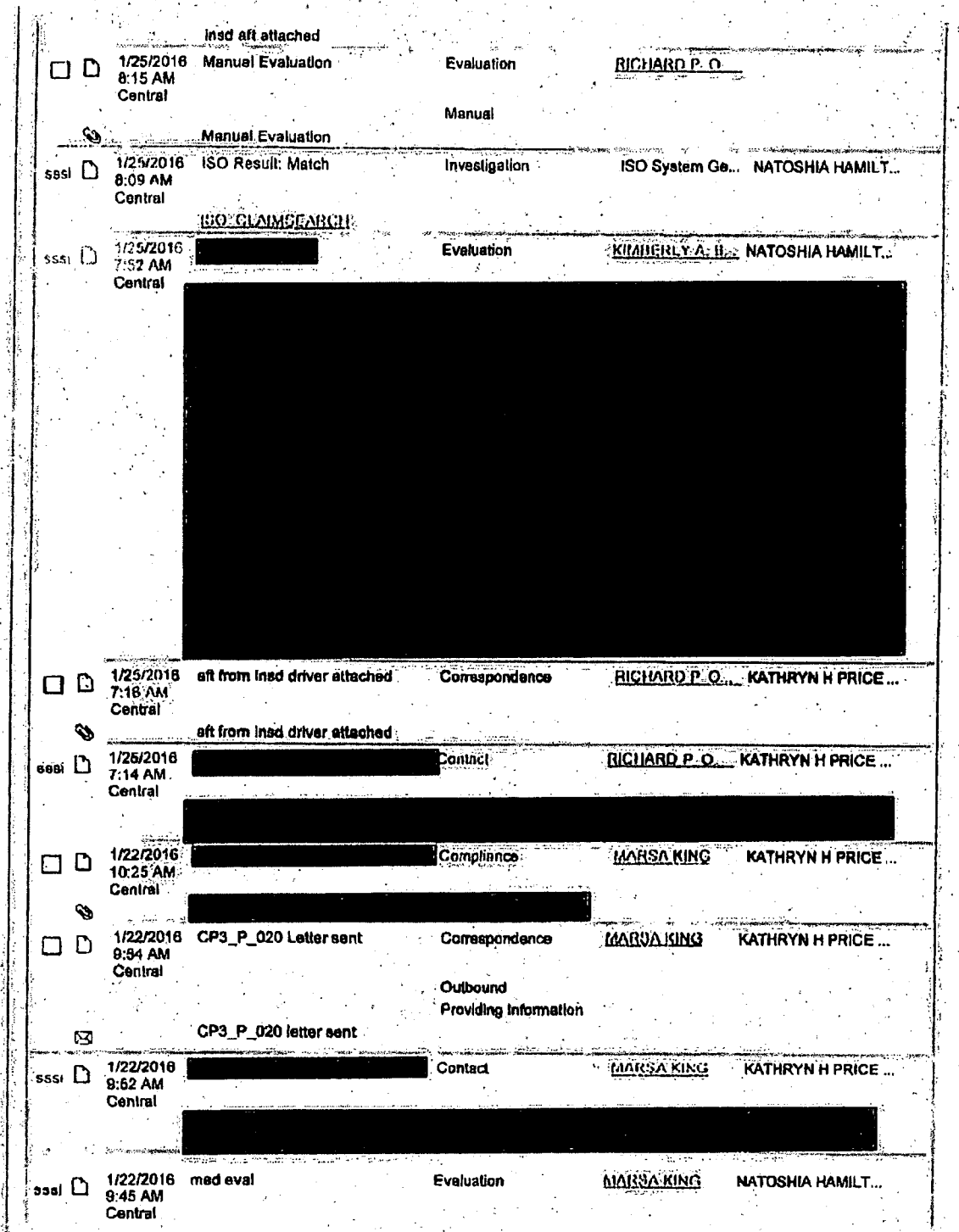
Notary Public My Commission Expires
My Commission Expires: August 6, 2019

Case No. 2017-CP-21-341
Affidavit of Wayne D. Gaymon

Exhibit A

sssi	4/6/2016 1:59 PM Central	[redacted]	Litigation / Arbitr...	MARSA KING	KATHRYN H PRICE ...
		[redacted]			
sssi	4/2/2016 1:42 PM Central	ISO Result: Match	Investigation	ISO System Ge...	KATHRYN H PRICE ...
		ISO_CLAIMSEARCH			
sssi	3/31/2016 8:42 AM Central	CSL COMMENTS	Managers Com...	ADOLPHUS A.....	NATOSHIA HAMILT...
		At this point we will await suit filing. Attorney has rejected settlement due to incorrect date on check. I have requested rep f/u with insd to discuss suit process.			
sssi	3/30/2016 10:16 AM Central	[redacted]	Litigation / Arbitr...	MARSA KING	NATOSHIA HAMILT...
		[redacted]			
sssi	3/30/2016 10:16 AM Central	[redacted]	Litigation / Arbitr...	MARSA KING	NATOSHIA HAMILT...
		[redacted]			
sssi	3/30/2016 10:13 AM Central	24481420-13-called tpc and left...	Contact	MARSA KING	USAA GENERAL IN...
		24481420-13-called tpc and left vm in ref to the claim.			
sssi	3/30/2016 10:10 AM Central	[redacted]	Contact	MARSA KING	KATHRYN H PRICE ...
		[redacted]			
	3/30/2016 10:09 AM Central	CP3_R_009 Letter sent	Correspondence	MARSA KING	KENNETH COOGLER
			Outbound Information Request		
		CP3_R_009 letter sent			
	3/30/2016 10:08 AM Central	CP3_R_009 Letter sent	Correspondence	MARSA KING	KATHRYN H PRICE ...
			Outbound Information Request		
		CP3_R_009 letter sent			
	3/30/2016 10:02 AM Central	GEN_I_001 is rejected - recreate	Correspondence	MARSA KING	Anastopoulo Law Fir...
		GEN_I_001 is rejected - recreate			
sssi	3/30/2016 8:51 AM Central	The atty's office sent back chec...	Litigation / Arbitr...	MARSA KING	NATOSHIA HAMILT...
		The atty's office sent back check due to the fact that the check was issued with the date 01/26/15 instead of 01/26/16. The attorney Evan Williams signed for check that was hand delivered 01/26/16.			

			discussed with Csl Burris and we will respond with letter indicating the check was signed for by atty in their office and check was still able to be cashed regardless of the date issued and demand did not indicate what date the check should have been issued.			
sssi		3/30/2016 9:33 AM Central	Pulled file from file room for NMK	Correspondence	MICHELLE TAY...	KATHRYN H PRICE ...
			Pulled file from file room for NMK			
sssi		3/9/2016 9:49 AM Central	The tpc called and requested d...	Inquiry	MARSA KING	USAA GENERAL IN...
			The tpc called and requested dec page and copy of covenant..they have uim claim and have nto been able to confirm withntty..confirmed we could send			
		3/8/2016 10:25 AM Central	Document Image Received	Damages - Auto	FileNotes Syste...	KATHRYN H PRICE ...
				Physical File Documents		
sssi		2/24/2016 10:37 AM Central	TPC called to inquire about if lia...	Inquiry	TIERA CHARLE...	USAA GENERAL IN...
			TPC called to inquire about if liability has been accepted. Advised that liability has accepted.			
sssi		2/23/2016 7:34 AM Central	[redacted]	Payments	MARSA KING	TURNER PADGET G...
			[redacted]			
sssi		2/16/2016 1:29 PM Central	CALLED CLMT TO INFORM H...	Injury	SARLICE T. HA...	NATOSHIA HAMILT...
			CALLED CLMT TO INFORM HER THAT A CHECK WAS ISSUED TO HER IN ERROR. I INFORMED HER THE CHECK WAS CANCELLED AND ONCE SHE REC THE CHECK TO GET RID OF THE CHECK. SHE UNDERSTOOD. REISSUED CHECK TO CORRECT PARTY TURNER PADGET GRAHAM.			
sssi		1/27/2016 2:08 PM Central	File to file room	Correspondence	MICHELLE TAY...	KATHRYN H PRICE ...
			File to file room			
		1/27/2016 11:45 AM Central	CP3_P_013 Letter sent	Correspondence	MARSA KING	KATHRYN H PRICE ...
				Outbound		
				Providing Information		
			CP3_P_013 letter sent			
		1/26/2016 12:43 PM Central	ok from csl ok handwritten chk ...	Correspondence	RICHARD P. O...	NATOSHIA HAMILT...
			ok from csl ok handwritten chk atty demand asks for cashiers check or certified bank check			
sssi		1/25/2016 3:28 PM Central	spoke to atty will not concede to...	Contact	RICHARD P. O...	NATOSHIA HAMILT...
			spoke to atty will not concede to normal draft needs written chk, will do so tomorrow then wil have to hand deliver chk to atty			
		1/25/2016 12:47 PM Central	cntx attached	Correspondence	RICHARD P. O...	KATHRYN H PRICE ...
			cntx attached			
		1/25/2016 12:46 PM Central	lnsd aft attached	Correspondence	RICHARD P. O...	KATHRYN H PRICE ...



		Insd aft attached			
	1/25/2016 8:15 AM Central	Manual Evaluation	Evaluation	RICHARD P. O	
		Manual Evaluation	Manual		
sssi	1/25/2016 8:09 AM Central	ISO Result: Match	Investigation	ISO System Ge...	NATOSHIA HAMILT...
		ISO CLAIMSEARCH			
sssi	1/25/2016 7:52 AM Central	[redacted]	Evaluation	KIMBERLY A. B...	NATOSHIA HAMILT...
		[redacted]			
	1/25/2016 7:18 AM Central	aft from insd driver attached	Correspondence	RICHARD P. O...	KATHRYN H PRICE ...
		aft from insd driver attached			
sssi	1/25/2016 7:14 AM Central	[redacted]	Contact	RICHARD P. O...	KATHRYN H PRICE ...
		[redacted]			
	1/22/2016 10:25 AM Central	[redacted]	Compliance	MARSA KING	KATHRYN H PRICE ...
		[redacted]			
	1/22/2016 9:54 AM Central	CP3_P_020 Letter sent	Correspondence	MARSA KING	KATHRYN H PRICE ...
		CP3_P_020 letter sent	Outbound Providing Information		
sssi	1/22/2016 9:52 AM Central	[redacted]	Contact	MARSA KING	KATHRYN H PRICE ...
		[redacted]			
sssi	1/22/2016 9:45 AM Central	med eval	Evaluation	MARSA KING	NATOSHIA HAMILT...

[redacted]

[redacted]

[redacted]

sssi	1/22/2016 7:48 AM Central	ISO Result: Match	Investigation	ISO System Ge...	NATOSHIA HAMILT...	Bodily Injury Liability(...
		ISO CLAIMSEARCH				
sssi	1/21/2016 3:37 PM Central	Time Demand recd 1/21 (late af...	Injury	ELIZABETH H...	NATOSHIA HAMILT...	
		Time Demand recd 1/21 (late afternoon mail), ltr states resp By 5:00 PM, 1/28, p/w to RMA. Thanks, Libby				
sssi	1/21/2016 9:51 AM Central	I spoke to Evan and he stated d...	Reserve	MARSA KING	NATOSHIA HAMILT...	
		I spoke to Evan and he stated demand package was sent. I will set reminder task to f/u				
	1/21/2016 8:07 AM Central	I received letter from atty stating...	Reserve	MARSA KING	NATOSHIA HAMILT...	
		I received letter from atty stating he was sending radiology bills. letter stated this was in addx to demand. We have not received a demand and ..I called to notify Evan of this and had to leave a message. I explained we have not received demand yet.				
sssi	12/7/2015 2:00 PM Central	I spoke to para-she stated they ...	Reserve	MARSA KING	NATOSHIA HAMILT...	
		I spoke to para-she stated they are collecting the bills and records to get demand . client has finished trx				
sssi	10/8/2015 6:11 PM Central	ISO Result: Match	Investigation	ISO System Ge...	NATOSHIA HAMILT...	
		ISO CLAIMSEARCH				

Case No. 2017-CP-21-341
Affidavit of Wayne D. Gaymon

Exhibit B

ANASTOPOULO
LAW FIRM

Akim A. Anastopoulo (SC)
Renee M. Anderson (SC)
John L. Henderson (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)
Casey Van Valkenburgh (SC)(IL)
Philip Heath Ward (SC)
Roy T. Willey, IV (SC)
*Affiliate Counsel

Toll Free: 1 (800) 313-2546
Facsimile: (843) 853-2291
Reply to North Charleston Office
www.AkimLawFirm.com

Hagy's Dec Page
2/6/15

Thursday, February 05, 2015

RECEIVED
FEB 06 2015
ALH

Sent via fax: (866) 467-2763
Allstate Insurance Company
PO Box 7068
Columbia, SC 29210

RE: My Client(s): Natoshia Hamilton -02
DOL: January 31, 2015
Claim #: 0356985366

Insd- Kathryn Breach-01

To Whom It May Concern:

Please be advised that I have been retained to represent the above for the bodily injuries she suffered during a motor vehicle accident on the above date due to the negligence of your insured. Also, please disclose in writing the policy limits for the above referenced claim. Please call our office if you have any questions or would like to discuss the claim.

Thank you for your cooperation.

Sincerely,

/s/ Akim A. Anastopoulo

Akim A. Anastopoulo

AAA/als

cc: Natoshia Hamilton

Allstate_0076

Case No. 2017-CP-21-341
Affidavit of Wayne D. Gaymon

Exhibit C

Akim A. Anastopoulo (SC)
Kate L. Bostrom (NC)
Samuel R. Flynn (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy T. Willey, IV (SC)
Evan P. Williams (SC)

ANASTOPOULO LAW FIRM

Toll Free: 1 (800) 313-2546
Facsimile: (843) 853-2291

Reply to North Charleston Office
www.AkimLawFirm.com

Friday, January 15, 2016

Demo Due By 5:00 PM 1/21/16

RMA

PRIVILEGED AND CONFIDENTIAL:
RELATING TO SETTLEMENT DISCUSSIONS

Sent via mail and fax to 866-467-2763
Marsa King
Allstate Insurance Company
PO Box 7068
Columbia, SC 29210

RE:	My Client(s):	Natoshia Hamilton — 02
	DOL:	January 31, 2015
	Claim #:	0356985366
	Pages:	10 Not Including Enclosures

Insd - Kathryn Broached

Dear Ms. King

INADMISSIBILITY OF OFFER OF COMPROMISE

Pursuant to South Carolina Rule of Evidence, Rule 408, statements made in compromise negotiations are not admissible at trial. This rule is identical to the Federal Rule and designed to encourage the settlement of controversies by permitting parties to discuss their cases candidly with the assurance that admissions and proposals for compromise made in the course of their good-faith settlement negotiations may not be used against them to later prove liability. Hunter v. Hyder, 236 S.C. 378, 114 S.E.2d 493 (1960). However, evidence of an offer to compromise may be admissible for some other purpose. Meehan v. Commercial Casualty Ins. Co., 166 S.C. 496, 165 S.E. 194 (1932). This entire letter and all of the exhibits attached are submitted with a view toward compromise of this claim. If you do not agree that everything that follows is inadmissible during the litigation of this matter, please stop reading and immediately destroy this letter and its attachments and immediately notify us of your refusal to review our attempt to compromise this claim.

OFFER OF COMPROMISE

This notice, demand, and offer of compromise is directed to you as the insurer of Kenneth Coogler. This letter is written to submit an offer of compromise regarding Natoshia Hamilton's claims against your insured(s) in the above-referenced matter. Additionally, this letter places you on notice, consistent with the dictates of Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933) of a time-limited demand for the payment of

policy limits of Kenneth Coogler's insurance coverage.

I. LIABILITY OF Kenneth Coogler

Our client, Natoshia Hamilton, was severely injured in an automobile collision due to the sole negligence of your insured. The incident occurred when your insured disregarded South Carolina Code § 56-5-1520 and failed to maintain a safe speed under the conditions. This failure caused your insured to violently smash into the rear end of the vehicle our client was in which was slowing for traffic on Pamplico Highway in Florence, South Carolina on January 31, 2015. The severity of the collision propelled our client forward and back within the vehicle, causing dramatic personal property damage and resulting in major injuries to her neck and back.

II. DAMAGES

Natoshia Hamilton's Injuries

Immediately following the collision, Florence County EMS arrived on scene and after noting our client's serious injuries, rushed our client to Carolinas Hospital System where she arrived on a backboard with a c-collar in place due to her neck and back injuries.

Her primary complaints at the time included neck pain and back pain. William Cauthen, MD diagnosed Ms. Hamilton with:

847.0	Neck sprain

The hospital staff conducted the following treatment:

81025	Urine Pregnancy test
81003	Urinalysis, auto w/o scope
72100	X-ray exam of lower spine
72072	X-ray exam of thoracic spine
72125	CT scan neck spine w/o dye
	Prescribed Flexeril 10mg
	Prescribed Cataflam 50mg
	Prescribed oxycodone 5mg

Dr. Cauthen treated our client for her injuries and released her with strict discharge instructions.

Our client was also forced to seek treatment with Lloyd Miller, MD at First Choice Healthcare. Upon initial consultation, our client was experiencing symptoms of neck pain, back pain, arm pain, pain to the right side, and pain in both legs. Dr. Miller diagnosed our client with:

723.1	Cervicalgia
724.2	Lumbago
719.45	Pain in joint, pelvis/thigh
729.5	Arm pain
780.96	Pain of right side of body

Dr. Miller conducted the following treatment:

72052	X-ray cervical spine
	Prescribed Duragesic-75 75mcg/hr
	Prescribed Hydrocodone-acetaminophen 2.5-325mg

Unfortunately, as the pain continued, our client required additional treatment among multiple visits with Tyrone Wallace, DC at Wallace Chiro of Lake City. Upon initial consultation, Ms. Hamilton was experiencing symptoms of remarkably severe constant aching neck pain on both sides, remarkably severe constant aching upper back pain, remarkably severe constant aching mid back pain, remarkably severe constant aching low back pain and remarkably severe constant aching pain in the right buttock. Dr. Wallace diagnosed Ms. Hamilton with:

307.81	Tension headache
719.46	Knee pain
723.1	Cervicalgia
723.2	Cervicocranial syndrome
723.3	Cervicobrachial syndrome
724.1	Pain in thoracic spine
724.2	Lumbalgia
728.85	Muscle spasm
729.1	Myositis
739.1	Cervical subluxation
739.2	Thoracic subluxation
739.3	Lumbar subluxation
739.4	S.I. subluxation
739.5	Pelvic subluxation
847.0	Cervical sprain/strain
847.1	Thoracic sprain/strain
847.2	Lumbar sprain/strain

Dr. Wallace treated our client for her injuries and conducted the following additional treatment:

99204	Comprehensive examination
72040	X-ray cervical 2-3 views
72100	X-ray lumbosacral 2-3 views
97140	Manual therapy (times conducted: 4)
98940	CMT 1-2 regions (times conducted: 9)
97032	Electrical muscle stimulation (times conducted: 19)
97010	Hot pack application (times conducted: 10)
99070	Orthopedic cervical support collar
98941	CMT 3-4 regions
99080	Narrative report

Due to the conditions caused by the collision, our client was required to seek multiple physical therapy visits with Anthony Alexander, MD at Pee Dee Orthopaedic Associates. The goals of these visits were to decrease pain, swelling, inflammation, and muscle spasms, and increase range of motion, function, strength, flexibility, and alignment. Upon initial consultation, our client was experiencing symptoms of right leg pain, back pain. Dr. Alexander diagnosed our client with:

722.10	Herniated disc
724.2	Back pain
724.4	Lumbar radiculopathy

723.1	Cervical pain
721.0	Cervical spondylosis w/o myelopathy

The additional treatment conducted by Dr. Alexander consisted of:

99214	Office visit
72110	X-ray lumbosacral spine (times conducted: 3)
72050	X-ray cervical spine
72148	MRI spinal canal and contents
72141	MRI spinal canal and contents
95911	NCS 9-10 studies
95860	Needle electromyography
63030	Laminotomy, 1 interspace, lumbar (times conducted: 2)
L0120	Cervical flexible, nonadjustable
	Prescribed Meloxicam 15mg
	Prescribed Norco 5-325mg
	Prescribed Celebrex 200mg
	Referral to Palmetto Physical Therapy and Wellness

Our client was referred for treatment with Mary Harpell, DC at Palmetto Physical Therapy and Wellness. Upon initial consultation, our client was experiencing symptoms of lower back pain, neck pain, right shoulder pain and right arm pain. Dr. Harpell diagnosed our client with:

724.3	Sciatica
724.2	Lumbago
728.87	Generalized weakness

Dr. Harpell conducted the following treatment:

	Cervical spine x-ray
	Lumbar spine x-ray
97110	Therapeutic exercises
97112	Neuromuscular re-education
97010	Heat/cryotherapy
97014	Electrical stimulation
97140	Manual therapy

Our client also sought treatment with Rakesh Chokshi, MD at McLeod Regional Medical Center. Dr. Chokshi diagnosed our client with:

722.10	Lumbar disc displacement

Dr. Chokshi conducted the following treatment:

36415	Venipuncture
80048	Basic metabolic panel
81003	Urinalysis w/o micro
85025	CBC w/ auto diff
85610	Prothrombin
85651	ESR sed rate
71010	Chest x-ray 1 view

86850	Antibody screen
86900	ABO group
86901	RH Type
63030	OR services
	Anesthesia
72148	MRI lumbar w/o contrast
J0330	Succinylcholine inj 200m
J0360	Hydralazine inj 20mg
J0690	Cefazolin 1gm (quantity: 2)
J1170	Hydromorphone inj 2mg
J2175	Meperedine inj 25mg/1mL
J2250	Midazolam 2mg/2mL
J2704	Propofol inj 200mg/20mL
J3010	Fentanyl inj 100mcg

The cumulative goal of the treatment has been to restore our client to her condition before the collision.

Summary of Damages

Due to the collision, Ms. Hamilton underwent a serious disruption in her life which prevents her from being able to participate in many things she enjoys. In addition to limitations placed on her enjoyment, Ms. Hamilton has been forced to endure limitations to her range of mobility. Ms. Hamilton will forever be limited in the activities in which she may participate because the nature of her injuries has rendered her at greater risk of future aggravation and trauma. These disruptions have caused considerable hardships and have significantly decreased our client's quality of life.

Punitive Damages

Please also be aware that striking a vehicle due to recklessness, distracted driving, and other willful and wanton behavior subjects Mr. Coogler to punitive damages, and that punitive damages may not be able to be discharged in bankruptcy under federal law or South Carolina law. Please be aware that, based on past precedent we expect this case to yield a verdict in excess of the policy limits. Accordingly, if you force this case to trial, the verdict is unlikely to be discharged in bankruptcy and we will follow Kenneth Coogler for the rest of life and take any property, and possessions may ever accumulate until the verdict is paid in full.

III. DEMAND PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933), and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).

Based on Kenneth Coogler's reckless driving and complete disregard for the safety of others on the road, the fact that he was likely distracted at the time he caused his vehicle to strike Ms. Hamilton, the fact that punitive damages will be imposed against Mr. Coogler, and due to the ongoing pain and mental anguish her family will experience for the rest of their lives, we

conservatively estimate the value of this case to be in excess of the policy limits. As there is a possibility that underinsured motorist coverage may be available to Natoshia Hamilton, we cannot offer a full and final release at this time. Instead, we require payment of the policy limits of all applicable policies, under which you insure Kenneth Coogler in a form that will not prejudice our client's right to seek recovery from any other insurance carriers. This offer of compromise requires that policy limits are RECEIVED[1] no later than 5:00 p.m. EDT onJanuary 26, 2016, and requires that Kenneth Coogler provide sworn and notarized statements that there is no other insurance coverage available to her that could pertain to this loss. **THIS OFFER OF COMPROMISE INCLUDES A TIME-LIMITED DEMAND FOR PAYMENT OF POLICY LIMITS, AND, AT 5:00 P.M. EDT ONJanuary 26, 2016, THIS OFFER WILL BE WITHDRAWN AND WE WILL OBTAIN AN EXCESS JUDGMENT AGAINST YOUR INSURED(S) WHICH WILL, IN TURN PROVIDE YOUR INSURED(S) WITH A CLAIM AGAINST Allstate Insurance Company PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933) and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).** Please be aware that our demand for policy limits is not negotiable and that ALL conditions of this offer of compromise must be met by the specified time limit. ***If any condition is not met, or if any additional condition is imposed byAllstate Insurance Company, including but not limited to conditions of indemnification or the waiver of any rights or claims not specified herein, this offer of compromise will be withdrawn, and we will obtain an excess judgment against your insured and enforce it against assets.*** This offer of compromise does not include the resolution of any property damage claims and does not request payment of any portion of your insured's property damage insurance limits. ***Accordingly, any request for a release of property damage claims and/or any request for indemnification will constitute a counteroffer and rejection of this offer of compromise.[2] If you include indemnification or a release of property damage claims in the proposed Release you send to us, it will constitute a counteroffer and rejection of this offer of compromise even if you claim in a cover letter or other documents that you send to us that you have accepted our offer. Acceptance of this offer specifically requires you to prove a proposed Release that complied with this offer by the above deadline.[3]*** Moreover, if there is any language in the

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[1] Settlement funds must be paid by Cashier's Checks or Certified Bank Checks (not drafts) issued by your insurance company as follows: Natoshia Hamilton and the Anastopoulo Law Firm, LLC. The checks must be RECEIVED in my office no later than 5:00pm EDT on [prompt deadline for check]. Anastopoulo Law Firm, LLC's Tax I.D. Number is 452775649. For your convenience, our firm's W-9 is also attached hereto (Exhibit A). The funds should be sent to 2557 Ashley Phosphate Road North Charleston, SC 29418.

[2] Please be aware that we have done everything reasonable to warn you that even a mere request for indemnification or a mere request for the waiver of any other rights or claims, including property damage claims, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

[3] Please do not attempt to send a proposed Release that includes indemnification or a release of property damage claims. The insurance company tactic of including indemnification or a release of property damage claims in the proposed Release will not work against this firm and its clients. Please be aware that you cannot get around this requirement by sending a cover letter with a non-compliant proposed Release that says your "proposed Release is not a counteroffer." *If you send a proposed Release that*

proposed Release or any other documents you send us that requires or even requests Natoshia Hamilton to make representations or warranties regarding the absence of medical liens or hospital liens or bankruptcy proceedings relating to Natoshia Hamilton, the requirement or request will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Allstate Insurance Company is perfectly capable of reviewing court records to verify this information, and attempting to shift the cost of verifying this information to our client(s) is not acceptable and will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.[4] Accordingly, please be aware that a requirement or even a request for a "Lien Affidavit" or similar document by any other name will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Additionally, please be aware that it will be deemed a counteroffer and rejection of this offer of compromise if Allstate Insurance Company requires or even requests the release of any individuals or entities other than Kenneth Coogler and Allstate Insurance Company.[5]

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includes indemnification or a release of property damage claims or that violates any other terms of this offer, it is a counteroffer regardless of whatever you put in your cover letter. Pursuant to this offer of compromise, your insurance company cannot provide a letter that says it accepts our offer and then try to trick us by providing a proposed Release that does not comply with our offer. Do not put indemnification or a release of property damage claims in the proposed Release you send to us in the hope that we will sign your proposed Release without reading it or in the hope that we will rely on a representation in your cover letter that you have accepted our offer of compromise when you have not provided a compliant release. If you do put indemnification or a release of property damage claims in the proposed Release, it is a counteroffer even if you try to say it is not, and, if you try this tactic, we will proceed to verdict and take your insured's assets until it is paid in full. Please also keep in mind that a proposed Release that includes the release of "any and all claims" would necessarily include property damage claims and is also a counteroffer and rejection. Instead of acting in bad faith and trying to trick us, please just send a reasonable proposed Release that does not include indemnification or the release of property damage claims. Acceptance of this offer of compromise requires you to make your acceptance through performance and not just mere words or promises. Part of the performance required to accept this offer is for you to deliver a proposed Release with the settlement check. Additionally, the proposed Release that is delivered with the settlement check must comply with the terms of this offer. ***Regardless of what you might say in your cover letter, if the proposed Release does not comply with this offer, it is a rejection and counteroffer.***

[4] Please be aware that we have done everything reasonable to warn you that even a mere request for warranties or representations regarding the absence of medical liens or hospital liens or bankruptcy proceedings will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise.

[5] Please be aware that we have done everything reasonable to warn you that even a mere request for the release of any individuals or entities other than Kenneth Coogler and Allstate Insurance Company will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. ***Moreover, please be aware that Allstate Insurance Company will only be released with respect to the bodily injury coverage of the subject policy and that Allstate Insurance Company will not be released with respect to any other policies or coverages not identified herein and that a request or requirement for a general release or a full and final release of Allstate Insurance Company will be a counteroffer and rejection of this offer of compromise.*** Please do not place any additional releases on the settlement check, in the proposed Release, or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware

Moreover, please be aware that Allstate Insurance Company will only be released with respect to the bodily injury coverage of the subject policy and that Allstate Insurance Company will not be released with respect to any other policies or coverages not identified herein. Payment must be made as described herein, and payment by any other method, including payment through the registry of any court or through the filing of an interpleader action, will not satisfy the terms of this offer of compromise and will result in the immediate and automatic withdrawal of this offer of compromise. Additionally, filing a declaratory judgment action will result in the immediate, automatic, and permanent withdrawal of this offer of compromise. Please be aware that, under South Carolina law, our offer of compromise must be accepted unequivocally and without variance of any sort and that a purported acceptance of this offer of compromises which imposes ***or even requests*** conditions beyond those contained in this offer will be construed as a counteroffer and rejection. Please also be aware, that under South Carolina law, we have no continuing duty to repeatedly remind you of the deadline or any conditions of our offer, herein. See Maxton v. Payes, 313 S.C. 109, 437 S.E.2d 66 (1993). Additionally, any attempted counteroffer by Allstate Insurance Company will be deemed a rejection of our offer of compromise and will result in the immediate and permanent withdrawal of our offer of compromise. Furthermore, please be aware that sworn and notarized statements that there is no other insurance coverage that could pertain to this loss must accompany your payment of policy limits. For your convenience, we have provided an affidavit that meets this condition. ***Please be aware that sending a proposed Release, settlement check, or any other documents that include any conditions or provisions that are not part of this offer will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.*** Additionally, even if you send a cover letter that claims to "unconditionally" or "unequivocally" accept our offer of compromise, but you also send a proposed Release, a settlement check, or any other documents that include any conditions or provisions that are not part of this offer, it will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Please do not attempt to trick us by saying in a letter that you accept our offer of compromise and then trying to sneak in additional terms that are not part of our offer. Our offer of compromise must be accepted by your insurance company's performance of the requirements of this letter and not by mere words that claims to accept the offer. Regardless of any statement that your insurance company has accepted or is accepting our offer of compromise, if your insurance company's actions and documents (i.e., your proposed Release, settlement check, etc.) do not comply with our offer of compromise, it will be a counteroffer and rejection of our offer. Acceptance of this offer of compromise requires performance and not just mere words or promises. Accordingly, in order to accept this offer of compromise, you must meet all of the terms and conditions of this offer of compromise, including, but not limited to, providing payment and a proposed Release that comply with the terms of this offer of compromise.

Please be aware that the only release we will accept is one that is limited in its scope to

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that many insurance companies use this tactic, but it will not work against this firm and its clients. Any request for the release of any individuals or entities other than Kenneth Coogler and Allstate Insurance Company as described herein, whether "accidental" or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise. Once again, if you send a proposed Release that purports to release any additional individuals or entities, it will be a counteroffer and rejection regardless of any claims of acceptance you make in a cover letter or any other documents you send to us. This offer of compromise requires you to deliver a proposed Release that complies with the terms of this offer of compromise. This offer of compromise requires you to make your acceptance through performance and not just mere words or promises.

protecting your insured from Natoshia Hamilton's rights to the personal assets of your insured. ***Additionally, this offer relates only to personal injury claims (and not any property damage claims); accordingly, a proposed Release or a statement on the settlement check or any other documents you send to us that purports to release or resolve "any and all claims" will be considered as a counteroffer and rejection of this offer, resulting in the immediate and permanent withdrawal of this offer. Natoshia Hamilton*** must not be prevented in any way from making a claim against her own insurance carriers. Despite the limited scope of our offer, our offer will protect the interests of your insured because it would only allow Natoshia Hamilton to seek the proceeds of their own coverage and other applicable insurance policies relating to personal injuries and it would prevent Natoshia Hamilton from seeking the assets of your insured as compensation for the personal injuries.[6] If you do not pay policy limits and meet the other requirements contained in this offer within the specified time limit, we will withdraw our offer of compromise and we will obtain an excess judgment against your insured and enforce it against her assets. In view of existing circumstances, we believe your insurance company should accord its insured the same faithful consideration it gives its own interests. If you do not pay policy limits in this case and meet the other requirements contained in this offer, pursuant to the terms of this offer of compromise, Kenneth Coogler may be able to sue your company for compensatory and punitive damages for bad-faith failure to properly adjust this claim. Please explain to Kenneth Coogler that has the right to hire an attorney to represent against Allstate Insurance Company and that has the right to demand that you pay this demand in order to protect property and possessions.

Please be aware that this letter constitutes Natoshia Hamilton's formal offer and that no oral representations made before or after this letter can alter the terms of this offer. If, for any reason, this firm agrees to change this offer in any way, such changes can and will be made only in a writing that is signed by a member of this firm. The purpose of this paragraph is to specifically prevent Allstate Insurance Company from claiming that this offer was modified in any way by an oral communication. ***Please be aware that, unless there has been a specific writing signed by a member of this firm that specifically changes this offer, the offer made by this letter has not been changed.*** Additionally, there are and will be no oral offers made to resolve this case. Accordingly, please do not attempt to claim that there has been an oral offer to resolve this case because there has not been and will not be such an offer. ***Any offer to resolve this case by Natoshia Hamilton must be made in writing and any acceptance of that offer must be made through performance of the provisions of this offer of compromise in order for this firm and Natoshia Hamilton to agree that a binding agreement has been formed. Specifically, this offer of compromise cannot be accepted by a mere statement of unconditional acceptance of this offer; instead, acceptance of this offer requires full performance of all terms and conditions of this offer. If any condition or requirement is not met by the specified deadline or if any additional condition or requirement is imposed upon Natoshia Hamilton, then there has been no acceptance and no agreement.***

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[6] Please be aware that it is our current belief that Natoshia Hamilton may have had underinsured motorist coverage with policy limits far below the full value of this case. However, she may also have no coverage at all. Accordingly, since there is only a small amount of underinsured motorist coverage compared to the actual value of this case, Allstate Insurance Company's acceptance of this offer provides the greatest possible amount of protection for its insured. Thus, if Allstate Insurance Company fails to accept this offer, it will be exposing its insured to substantial excess liability and acting in bad faith towards its insured.

We have supplied you with all information necessary to evaluate this offer of compromise[1]; however, should you have any questions regarding this offer of compromise, please do not hesitate to contact me at (843) 614-8888. Additionally, although any requirement or request for terms and conditions of settlement and compromise that are not approved herein will constitute a counteroffer and rejection of this offer of compromise, if you feel that any part of this letter needs clarification in order for you to comply with its terms, we will be happy to offer any clarification of terms so that you have a full and fair opportunity to comply with this offer. Of course, this letter relates to discussions involving settlement and compromise, and nothing contained herein shall be deemed admissible except to enforce a claim for bad-faith failure to properly adjust this claim.

I look forward to hearing from you.

Sincerely,

EW

Evan Williams

EW/df
Enclosures

[1] Please be aware that we have provided you willful and sufficient information to evaluate this offer of compromise and to compel your insurance company to pay its policy limits as demanded. Nevertheless, we are aware that many insurance companies request unnecessary additional information within a few days of the deadline for payment as a tactic to delay the resolution of a case. We are aware that insurance companies make more money when settlements are delayed because the insurance company can continue to earn investment income from the settlement money for as long as the insurance company can maintain possession of the settlement funds. We are aware that many insurance companies use the tactic of requesting unnecessary additional information to delay payment, but it will not work against this firm and its clients. Additionally, in the unlikely event that there is a legitimate need for additional information, we will have to request that information from another party. Therefore, any request for additional information must be made as soon as possible and at least ten (10) days before the deadline so that we will have a reasonable opportunity to try and obtain the requested information. We have done everything reasonable to warn you that this offer of compromise includes a time-limited demand for the payment of policy limits. Please be aware that the deadline for payment and compliance with all other terms will not be extended based on a request for additional information because this offer of compromise already includes more than enough information to compel payment. Please do not place your insured's assets in jeopardy by incorrectly assuming that a request for additional information will extend the deadline of this offer of compromise. Failure to meet the deadline for any reason will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

Mailing: 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418
Pee Dee: 150 W. Evans Street, Florence, South Carolina 29501
Columbia: 1201 Main Street, Suite 1901, Columbia, South Carolina 29201
Appointment Only: Myrtle Beach • Wilmington, North Carolina

Case No. 2017-CP-21-341
Allstate's Memorandum of Law in Support of Motion for Summary Judgment

Exhibit B

State of South Carolina

In Common Pleas Court

County of Florence

Allstate Property and Casualty Insurance Company,

Plaintiff,

V. 2017-CP-21-00341

Natoshia Hamilton and Kenneth Collins Coogler,

Defendants.

Deposition of: Natoshia Antoinette Hamilton

Location: 150 W. Evans Street
Florence, South Carolina

Date: Friday, January 12, 2018

Time: 12:58 p.m. - 2:03 p.m.

Court Reporter: Ashley Rogers

The deposition is taken pursuant to notice and/or agreement, in the above-entitled cause pending in the above-named court and pursuant to the South Carolina Rules of Civil Procedure.

Q & A Court Reporting Services
Post Office Box 4563 (29502)
273 West Evans St. (29501)
Florence, South Carolina
telephone: (843) 673-9845
e-mail: Info@qacourtreportingonline.com
visit: Www.qacourtreportingonline.com

Q Okay. Was she with you at the time of the accident?

A No. I was -- I was headed to a client to perform service. I was by myself. I was going to a client. She's 80-something years old and I was doing house calls as well.

Q Oh, okay. All right. And had your daughter been represented by Anastopoulo before?

A Yes, sir.

Q Okay. All right. Did -- have you -- did you ever talk to anyone at Allstate insurance company about your accident?

A No, sir.

Q You never made a telephone call to Allstate, never handled any part of that?

A No, sir.

Q Okay. Who owned the car involved in the accident?

A Me and my husband name was on it, Natoshia and Clarence.

Q Okay.

A Hamilton.

Q And who handled the property damage portion of that?

A Who --

Q Of the claim, yeah.

A Me and my husband.

Q Okay. All right. But did you ever talk to anybody at Allstate about the property damage or did you handle that through your own insurance company or do you recall?

A I think I handled it through my own insurance company 'cause I never been in a car accident before --

Q Okay.

A So I called my own insurance company and that kind of throwed a whole bunch of crazy stuff going on, so --

Q Okay --

A Yeah.

Q Okay. All right. Do -- do you -- do you have any -- and have you received money for your car?

A They paid my car off.

Q They did. They paid the car off.

A Yes, sir.

Q Okay.

A They didn't give me anything after it because wasn't nothing left over. So I had to put my own self back in a car.

Q Okay. All right. Do you have any -- any property damage claim that has not already been taken care of?

MR. HODGE: Object to the form of the question. You can answer it.

THE DEPONENT: Say that again.

By MR. COX:

Q Do you have any -- any outstanding property damages as a result of this automobile accident that have not been -- already been paid?

MR. HODGE: Same objection.

THE DEPONENT: Not to my knowledge.

By MR. COX:

Q Okay. That's what I was just wondering. All right. And just -- I mean, just to make sure, so you haven't incurred any type of -- just trying to think of anything, property damage, rental car bill, anything like that that has not already been reimbursed to you?

MR. HODGE: Object to the form of the question. You can answer.

THE DEPONENT: No, not to my knowledge. No.

By MR. COX:

Q Okay. All right. When -- when you --

Allstate?

A To Allstate?

Q Yes, ma'am.

A Not to my knowledge.

Q Okay. Did you know the person who you were involved -- the other person involved in the acc--- Mr. Coogler?

A Say that again.

Q Did you know Mr. Coogler?

A No, sir.

Q Okay. And did you at -- at some point find out how much insurance coverage Mr. Coogler had?

A Did I -- yes, sir.

Q When did you find that out?

A I want to say -- I want to say Katie, when the young lady -- when I met with the young lady, I think that's when I found out.

Q Okay. And that -- do you remember when it was that you actually met with Katie?

A I know -- I want to say in 2006. I mean '16 -- 2016.

Q Okay. All right. And you -- you were aware that Mr. Coogler's insurance policy limits for bodily injury are 25,000 dollars?

A Yes, that's what I was told. Yes, sir.
Q Okay. All right. Have -- have you ever agreed to settle your claims against Mr. Coogler for 25,000 dollars?
MR. HODGE: Object to the form of the question.
THE DEPONENT: Say that again.
By MR. COX:
Q Yeah. Well, have -- have you ever agreed to -- to resolve your claims against Mr. Coogler for 25,000 dollars?
MR. HODGE: Same objection --
By MR. COX:
Q Your -- sorry, your bodily injury claim --
MR. HODGE: Same objection --
By MR. COX:
Q -- for 25,000 dollars?
A No, sir.
Q Okay. Have you ever been willing to resolve your bodily injury claims against Mr. Coogler and -- for 25,000 dollars?
MR. HODGE: Object to the form of the question.
THE DEPONENT: No, sir.

Q Okay. So this letter was sent with your knowledge?

A Yes, sir.

Q And with your consent?

A Yes, sir.

Q Okay. All right. And you were aware at the time that this letter was sent that the policy limits -- the bodily injury policy limits of Mr. Coogler from Allstate were 25,000 dollars?

A I -- yeah, I -- yes, sir.

Q Okay. All right. And in this letter, have -- have you read through this whole thing?

A I skimmed through it. I didn't actually sit down and went from cover to cover.

Q Okay. And is it your understanding that what you were asking for payment of in this case -- I'm sorry, in this letter was the bodily injury policy limits for -- that Mr. Coogler had with Allstate?

MR. HODGE: Object to the form of the question.

THE DEPONENT: Yes, sir.

By MR. COX:

Q Okay. And -- and that -- another way we ask it, you were not asking for payment of any

property damage coverage in this letter?

A No, sir.

Q Okay. Is that because you had already resolved that --

A Yes, sir.

Q -- part of it?

A Yes, sir.

Q Okay. All right. And -- and -- all right. So bodily injury limits of 25,000 dollars. Also requested in here was affidavits from -- or an affidavit from Mr. Coogler or the policyholder about, you know, not having anymore coverage available, right?

A Yes, sir.

Q Okay. And then a settlement document that complies with the requirements of the letter. Are those the three things that...

A Yes, sir.

Q You understand were being requested?

A Yes, sir.

MR. HODGE: Object to the form of the question.

By MR. COX:

Q Okay. Is there anything else that you know of that's being requested in this letter

other than payment of the bodily injury limits, the affidavits and a settlement document that complied with the requirements of the letter?

MR. HODGE: Object to the form of the question.

THE DEPONENT: They -- they didn't meet the requirement anyway, so...

By MR. COX:

Q All right. You've said that, but answer my question first. Are you aware of anything else that was being requested in this letter other than those things I just asked you?

A No, sir --

MR. HODGE: Object to the form of the question.

By MR. COX:

Q All right. And you understand that -- that -- you -- you mentioned that you -- this letter -- demand letter was sent with your knowledge and consent by your lawyers, right?

A Yes, sir.

Q Okay. And you understand that if Allstate met the requirements of the letter, that you would have resolved your bodily injury claims against Mr. Coogler for 25,000 dollars. Did you

understand --

A But they didn't meet it. Yes, I did, but they didn't meet it, so we're moving forward.

Q Okay. All right. You -- you -- you said a couple times that Allstate did not meet it. In what ways did Allstate not meet it?

A Well, they had things that they was supposed to do and they did not do 'em even down to the check that they did send out. They didn't send it out the way that the attorney had gave them instructions to do. They did things their way and it wasn't the way that -- what was in our demand.

Q Okay. Tell me -- tell me the difference between what was in the demand letter and the way that Allstate responded.

A I don't know. It was something to do with -- was it a -- you know, something about -- something the way that -- that they just handled everything. They just did it their own way instead of doing it the way that, I guess -- handling business the way someone asked them to.

Q But you don't know what it was?

A I don't know if it was a certified check or something that they was -- they sent and

it wasn't supposed to been a certified check. Just did things their own way. They didn't do it the way that -- what was in the demand from my attorney representing me.

Q Okay. All right. So one of things you're saying is you think that maybe there was a different type of check than what was requested.

A Right. And it -- yes.

Q Okay. What effect did that have on you?

MR. HODGE: Object to the form of the question.

By MR. COX:

Q That it was a different type of check, what effect did that have on you?

A Well -- the effect that it had on me.

Q Yes, ma'am.

A I guess it had a lot of effect on me, I guess, from moving forward with things that I could have done and -- and not been in the position that I'm in with bills. I don't know, but it -- it did -- it -- it didn't meet the demand, so -- it didn't meet the requirement, the demand on what we was asking for, so I don't...

Q All right. What I'm asking you is what

effect -- if it was a different type of check than what you asked for --

A Uh-huh.

Q -- what effect did that have? What was the difference?

MR. HODGE: Object to the form of the question.

THE DEPONENT: Didn't meet our demand.

By MR. COX:

Q No, I understand that. I understand that's what you're saying. All right, but what --

A It didn't meet our demand and that's all I would like to say.

Q All right. Well, sorry. I get to ask the questions and you get to answer them. Okay?

A Okay.

Q So what difference did it make? What effect did it have on you that it was --

A It didn't meet our --

Q -- a different type of check --

A -- demand.

MR. HODGE: Object to the form of the question.

By MR. COX:

Q Other than the fact that it was a

different form of a check, what difference did it make?

A It didn't meet our demand.

MR. HODGE: Same objection.

By MR. COX:

Q All right. So the only thing you can think of...

A It didn't meet our demand.

Q Is that a certain type of check was requested and the type of check that was sent just happened to be a different type of check?

A That it didn't meet our demand.

Q Okay. And that's the only difference?

A It didn't meet our demand.

Q And the way that it didn't meet your demand is that it was just a different form of a check. Is that right?

MR. HODGE: Object to the form of the question.

THE DEPONENT: It didn't meet our demand. I -- I -- yes, sir.

By MR. COX:

Q Okay. Well, what --

A Yes, sir.

Q What I'm going to ask you to do --

okay. Because what I'm asking you is a yes or no answer and then you --

A I say, yes, sir.

Q You did?

A I did.

Q Okay --

A I said, yes, sir, it didn't meet our demand. That what I say, yes, sir.

Q Okay. And the only difference, the only way it didn't meet your demand, the type of check, is that it just happened to be a different form of a check?

MR. HODGE: Object to the form of the question.

By MR. COX:

Q So you can answer yes or no --

A Yes, sir.

Q Okay. All right. But you can't tell me what other difference it made to you other than it just wasn't the type of check that was requested.

MR. HODGE: Object to the form of the question.

THE DEPONENT: I guess you're right, sir.

sent to resolve the claim?

MR. HODGE: Object to the form of the question.

THE DEPONENT: Yes, sir.

By MR. COX:

Q Okay. All right. From your earlier testimony, I think you said one of the reasons you did that is because the check that was sent to Allstate was not a certified check.

A And I also said --

Q Is that right?

A -- because of my pain and suffering too.

Q Okay. What about your pain and suffering?

A Say that again. What about 'em?

Q Yeah, what about your pain and suffering caused you to reject the -- the settlement that Allstate sent you?

A My limitation on my everyday life, what I can and cannot do.

Q Okay. And had you had a change of heart in between the time of the letter, the demand letter being sent out and Allstate's response about wanting to resolve your case for

By MR. COX:

Q Okay. All right. Tell me -- all right. So I want -- I want to kind of get back to this check issue. All right. So this check that -- that's attached here was in the amount of 25,000 dollars, correct?

A Yes, sir.

Q Okay. And the amount of money, the 25,000 dollars, you would agree that would have been the same amount of money whether it was a regular check or a certified check. Do you agree with that? The amount wouldn't change. It would still be 25,000 dollars.

A You're -- you're right. I'm -- yes, sir, you're right.

Q Okay. So it's the same amount of money.

A Yes, sir.

Q Okay. All right. And one of your -- one of our requests to admit to you was that, you know, when you received the check that it was negotiable. I mean, it could have been taken to the bank and put in the bank and negotiated and you agreed to that. And you still agree with that?

A No, sir.

Q You don't?

A Agree with -- agree with...

Q That you could have taken it to the bank and put it in the bank or your lawyer's did because it was made out to your lawyers.

A You talking about at that time?

Q Right. Yeah, so what I'm asking, did -- you don't have any reason to believe that it would bounce or wouldn't be a good check? Did anybody even try to put it in the bank? Do you know?

A I don't think we had no problem with that it would bounce or anything.

Q Right. Okay. All right. So if -- if this check is the same amount of money as a certified check and they were both -- a cer--- a certified check and this check would be -- both would be valid checks, right, and you could spend them or put them in the bank or whatever, is there any real difference between the two that you know of?

MR. HODGE: Object to the form of the question --

THE DEPONENT: It just didn't meet the

demand 'cause that wasn't what the demand was.

By MR. COX:

Q Okay. So the only difference that you know of is one is called a certified check and one is not called a certified check.

A Right. Yes, sir.

Q Okay. I want to talk with you about -- we had talked about claims that you had arising out of the accident. Let me ask, you -- apparently, you had some underinsured motorist coverage as well through your own insurance policy.

A Like what? What is -- I -- I...

Q Well, underinsured motorist coverage is -- it's something you buy from your own insurance company.

A Uh-huh.

Q And when you're in an accident like this where unfortunately the other person --

A I don't know if I had GAP at the time or not. That's what you're talking about?

Q Well, no, GAP is different. GAP is for your pro--- property damage.

A Right.

Q What this is is that unfortunately

this document, you're not being asked to waive or forego any -- really any potential insurance claim that you might have that's a result of your accident?

MR. HODGE: Object to the form of the question.

By MR. COX:

Q Other than, you know, protecting Mr. Coogler's personal assets for the bodily injury damages.

A Yes, sir.

Q Okay. All right. Are you aware sitting here as to how anything in this document did not comply with what was requested in your demand letter, the language in this document? If you don't know, that's fine, but I'm just asking if you do?

A Repeat it again.

Q Yeah. Do you -- do you know of any -- do -- do you know of any way in which the language contained in the agreement and covenant not to execute that we just went through did not comply with the -- with the language that was requested in your demand letter?

A No, not really I don't.

Q Okay. And did you -- and we haven't talked about the affidavits, but the affidavits you requested are there. And you don't have any problem with those as far as a reason to reject the settlement?

A Yes, you're right.

Q Okay. All right. And did you see the check and the covenant and the affidavits before this letter dated March 23rd, 2016 was sent out to Allstate?

A Did I see the check first?

Q Yes, did you see the check and the covenant and the affidavits before this letter dated March 23rd, 2016 was sent out?

A I want to say that -- yeah, it was -- yes, sir.

MR. COX: I think we're about done. I think those are all the questions I have, Camden.

MR. HODGE: Nothing from me.

(Deponent excused.)

(Whereupon, at 2:03 p.m., the taking of the foregoing deposition was concluded.)

Case No. 2017-CP-21-341
Allstate's Memorandum of Law in Support of Motion for Summary Judgment

Exhibit C

IN THE STATE OF SOUTH CAROLINA) COUNTY OF FLORENCE)	IN THE COURT OF COMMON PLEAS FOR THE 12TH JUDICIAL CIRCUIT CASE NO: 2017-CP-21-341
ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, Plaintiff, v. NATOSHIA HAMILTON and KENNETH COLLINS COOGLER, Defendants.	**Defendant Natoshia Hamilton's Supplemental Responses to Plaintiff's First Requests for Production**

TO: PLAINITFF AND ALL COUNSEL OF RECORD:

Defendant Natoshia Hamilton (hereinafter the "Defendant" or "Defendant Hamilton") hereby supplements her responses to Plaintiff's First Requests for Production as follows and pursuant to the *South Carolina Rules of Civil Procedure*. Defendant reserves the right to supplement and/or amend this response up until the date of trial.

1. Copies of all fee agreements with any attorney in connection with representation on your behalf related to the automobile accident on January 31, 2015.

RESPONSE:

Objection. Defendant objects as this request is not reasonably calculated to lead to the discovery of admissible evidence and seeks information protected by the attorney-client privilege, work product doctrine, and statutory and common law protections.

SUPPLEMENTAL RESPONSE:

Please find enclosed a copy of said fee agreement.

1. Defendant's calendars or any other information which indicates when you met with your attorneys regarding the settlement demand, Allstate's response, and your rejection of the settlement.

RESPONSE:

Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence and seeks information protected by the attorney-client privilege, work product

doctrine, and common law and statutory protections.

SUPPLEMENTAL RESPONSE:

Defendant is not in possession of any responsive material.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

Roy T. Willey, IV
S.C. Bar No.: 101010
Eric M. Poulin
S.C. Bar No.: 100209
J. Camden Hodge
S.C. Bar No.: 100638
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

ATTORNEYS FOR DEFENDANT HAMILTON

Dated in Charleston, SC
this 8th day of May, 2017

ANY DISPUTE REGARDING THIS AGREEMENT OR ANY SERVICES RENDERED UNDER THIS AGREEMENT SHALL BE SUBJECT TO THE SOUTH CAROLINA ARBITRATION ACT, S.C. CODE ANN. § 15-48-10 *et seq.*, AS AMENDED, TO THE FULL EXTENT AS IS PERMISSIBLE UNDER THE ACT.

ATTORNEY RETAINER AND CONTINGENT FEE AGREEMENT

In consideration of legal services to be rendered by ANASTOPOULO LAW FIRM, LLC, Natosha Jones, the undersigned, hereinafter referred to as the "Client", retains the ANASTOPOULO LAW FIRM, LLC herein after referred to as the "attorney", to represent him/her with respects to all claims against Kenneth Cooper and whomever (including corporations and governmental bodies) may be liable for all damages, (actual, consequential, special and/or punitive) and injuries suffered by the Client resulting from the incident which occurred on or about 1/31/15, hereinafter referred to as the "Claim". Furthermore, if wrongful death and/or survival claims are pursued, the Client authorizes the attorney to prosecute this case on behalf of all legal beneficiaries of the decedents.

Client employs and authorizes the above attorney, their agents and employees, to take all steps in this matter deemed by attorney to be necessary and appropriate to obtain a satisfactory result, including but not limited to, securing a complete investigation, instituting legal proceedings, entering into settlement negotiations, preparing for and/or proceeding to trial and/or discontinuing litigation. Attorney agrees not to settle or compromise the case without the Client's approval regarding the terms and form of the settlement. Client understands and consents that any of the attorneys from the ANASTOPOULO LAW FIRM, LLC or associate counsel is authorized to serve as the attorney on the claim or case. It is further understood and agreed that the attorney is not obligated or under employment to negotiate or settle property damage issues, or establish or maintain probate accounts or open probate estates.

Client agrees to pay the attorney a fee, contingent on what is recovered in this matter by way of settlement, judgment or otherwise, to be computed as follows:

(1) 33 1/3 % of the total amount recovered before suit is filed; or

(2) 40 % of the total amount recovered after suit is filed (whether filed or not);

In the event an appeal is taken, a separate agreement shall be entered into between the parties regarding additional services to be provided by attorney for the appeal and additional attorney fees and expenses related to the appeal only.

IN ADDITION TO AND AFTER DEDUCTION OF THE ABOVE ATTORNEY FEES, Client shall pay to attorney all case costs, expenses and any other monies advanced by attorney in connection with said matter at the time of the disposition of the case. Said expenses shall include, but not be limited to investigation, travel, lodging, physician and/or expert witness fees, consultant fees, settlement, mediation, and/or trial presentations and/or exhibits. In addition to the aforementioned expenses, an amount will be deducted from Client's recovery for repayment of administrative expenses incurred for copying cost, postage, long distance calls, delivery cost, mileage, etc. If said administrative cost exceeds seventy-five dollars ($75.00), the said expenses will be itemized on Client's Disbursement Sheet; otherwise, a flat charge of ($75.00) for administrative cost will be charged. Client understands that all expenses incurred for medical treatment are the exclusive responsibility of the Client and Client further extends permission to attorney to contact other individuals, corporations, healthcare providers and others concerning liens and authorizes attorney to deduct from Client's share and to directly pay any unpaid balances due to doctors, chiropractors, hospitals, healthcare providers, expert medical witnesses, or medical creditors in connection with the case. Client further authorizes attorney or an employee or agent of attorney to contact Medicare and Medicaid about any potential medical lien, and to negotiate and/or pay any outstanding lien to Medicare/Medicaid out of Client's share of the recovery. Client understands and agrees that attorneys fees are computed and paid before expenses are deducted or liens are paid. Attorney shall have a lien on said claim, suit or recovery for said fees and expenses.

I understand that ANASTOPOULO LAW FIRM, LLC will review my case prior to a lawsuit being filed and has the sole discretion on whether attorney will proceed with a lawsuit. It is also understood that the attorney retains the right, at any time, following the investigation, discovery or research, to release itself from this contract and withdraw from the representation of the Client, if it appears to the attorney that circumstances have developed which would hinder continued effective litigation of the case or that continued litigation would not be cost effective or result in a sustainable or collectible judgment.

If an offer of settlement is made, and attorney recommends to the Client that the offer be accepted, but Client refuses to accept the offer, attorney may withdraw from the representation of Client, so long as withdrawal can be accomplished without prejudicing the client. Neither inconvenience in locating a replacement counsel nor inability to retain substitute counsel is to constitute prejudice to the client. If attorney should withdraw following Client's refusal to accept a recommended offer of settlement, and one or more of the claims covered by this contract ultimately results in a recovery, attorney will be entitled to fair compensation for the work done by him and to reimbursement of expenses and advancements made by him before withdrawing. Fair compensation in such instance is defined as, the part of the contingent fee that best represents the contribution made and risk assumed by attorney relative to the total of all contributions and risks viewed retrospectively as of the resolution of the claims covered by this contract.

Client hereby appoints attorney as limited attorney-in-fact to receive and endorse any and all funds paid to client as a result of the claims tendered herein, solely for the purposes of depositing said funds in attorney's trust account pending clients' instruction as to disbursement as set forth herein. This appointment is provided as a convenience to the client and to expedite distribution of net proceeds to the client.

If the client discharges attorney, (a) attorney will be entitled to the reimbursement of all expenses, regardless of whether the claims covered by this contract produce any monetary recovery; and (b) attorney will be entitled to fair compensation for the work performed prior to discharge if there is an ultimate monetary recovery. In the event client discharges attorney, ANASTOPOULO LAW FIRM, LLC will acquire a lien on any outside recovery for an amount totaling the fee due under this contract based on ANASTOPOULO LAW FIRM, LLC's highest settlement offer prior to client's discharge of attorney.

Client authorizes attorney to destroy or dispose of client's file contents and all evidence gathered in connection therewith, and any of client's property in the attorney's possession relating to the case, six (6) years following the conclusion of the case or the conclusion of attorney's representation unless Client notifies attorney in writing that Client wants a copy of the file and pays all copying costs.

Client authorizes attorney and all agents and employees to give any medical providers, insurance adjuster, attorney information regarding the case.

Client does hereby authorize ANASTOPOULO LAW FIRM, LLC to engage the services of any attorney, whether or not such attorney is a member or employee of ANASTOPOULO LAW FIRM, LLC for and on behalf of the Client if it is deemed to be in the best interest of Client, so long as the fee charged to Client is not altered in any way.

Client: _____

Attorney: _____

Date: This 2nd day of Feb, 2015

Exhibit D

ELECTRONICALLY FILED - 2016 Sep 26 11:22 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400040

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	C/A No.: 2015-CP-14-040

Fred Floyd,

Plaintiff,

vs.

Palmer H. Tanner,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter came before the Court for a Motion hearing on September 7, 2016. Counsel in attendance for the parties were Katie M. Wilensky, Esq., on behalf of Plaintiff Fred Floyd, and Todd E. Rigler, Esq., on behalf of Defendant Palmer H. Tanner. This case arises out of a motor vehicle accident that occurred on September 3, 2013. The instant motion is Defendant's Motion for Summary Judgment on the affirmative defense of accord and satisfaction and/or Motion to Enforce Settlement.

The Court has considered all of the arguments of counsel raised at the motion hearing, the various memoranda of law filed by the parties, and any accompanying case law and other documents submitted to the Court.

STANDARD FOR SUMMARY JUDGMENT

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

> When a motion for summary judgment is made and supported by such facts as would be admissible in evidence at trial, the adverse party may not rest upon the

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> mere allegations of his pleadings. Instead his response to the motion must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him.

Moody v. McLellan, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988) (*citing* Rule 56(e), SCRCP).

"In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party opposing summary judgment." *Bruce v. Durney*, 341 S.C. 563, 566, 534 S.E.2d 720, 722 (Ct. App. 2000) (*citing Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)). Summary judgment should be entered against a party "who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial." *Baughman v. AT&T Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991).

The purpose of summary judgment is to obviate delay where there is no material issue of fact involved. *Manly v. Manly*, 353 S.E.2d 312, 314 (Ct. App. 1987). Summary judgment is appropriate in those cases in which plain, palpable, and undisputed facts exist on which reasonable minds cannot differ. It is not sufficient for one to create an inference which is not reasonable or an issue of fact that is not genuine. *Priest v. Brown*, 396 S.E.2d 638 (S.C. Ct. App. 1990). Likewise, "[a] conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." *Shoop v. Settle*, 445 S.E.2d 651, 655 (Ct. App. 1994).

"The party opposing a properly supported motion for summary judgment ... may not rest on mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Thus, the existence of a mere scintilla of evidence in support of the non-moving party's position is not sufficient to overcome a motion for

summary judgment." *Bravis v. Dunbar*, 449 S.E.2d 495, 496 (S.C. Ct. App. 1994) (*citations omitted*).

ACCORD AND SATISFACTION / SETTLEMENT AGREEMENT

South Carolina recognizes the affirmative defense of Accord and Satisfaction. *Tremont Constr. Co. v. Dunlap*, 310 S.C. 180 (Ct. App. 1992). An "accord" is a meeting of the minds agreement between parties to settle a dispute between them, and "satisfaction" is the payment of the consideration expressed in the accord. To prove this affirmative defense, a party must satisfy two elements:

(1) An agreement to accept in discharge of an obligation something different from that which the creditor is claiming or is entitled to receive; and

(2) Payment of the consideration expressed in the new agreement.

Wilson v. Builders Transport, Inc., 330 S.C. 287 (Ct. App. 1998).

"[A] settlement agreement is a contract." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009) (*certiorari denied*). "The necessary elements of a contract are an offer, acceptance, and valuable consideration." *Southern Glass & Plastics Co., Inc. v. Kemper*, 399 S.C. 483 (Ct. App. 2012) (*citing Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397 (2003). "A unilateral contract occurs when there is only one promisor and the other party accepts, not by mutual promise, but by actual performance." *Id.*

FINDINGS OF FACT

It is undisputed that on December 19, 2014, the Plaintiff sent a timed "Offer of Compromise" to the Defendant wherein he offered to settle his bodily injury claim against the Defendant in exchange for the following:

1. Receipt of the Defendant's $50,000.00 bodily injury liability limits by 5:00 p.m. on January 3, 2015, "via cashier's checks, certified bank checks, or valid

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checks (not drafts);"

2. Receipt of signed affidavits from the Defendant and her husband affying that they had no additional bodily injury liability coverage at the time of the motor vehicle accident; and
3. Receipt of a release or covenant not to execute that satisfied numerous conditions outlined in the Offer of Compromise.

Plaintiff's Offer of Compromise specifically indicates that the offer should be accepted via performance of the above-enumerated demands. It is likewise undisputed that the Defendant caused the following to be delivered to the Plaintiff on or before December 31, 2014:

1. A valid check from Allstate Insurance Company in the amount of $50,000.00;
2. Signed affidavits from the Defendant and her husband affying that they had no additional bodily injury liability coverage at the time of the motor vehicle accident; and
3. A covenant not to execute that satisfied the numerous conditions outlined in the Offer of Compromise.

Despite receiving the requested bodily injury policy limits and accompanying documentation in accordance with the Plaintiff's Offer of Compromise, the Plaintiff rejected the Defendant's tender indicating that "Allstate failed to comply with the terms of [the Offer of Compromise] . . ." but otherwise failing to identify how the Defendant's tender was non-compliant. In the Plaintiff's Memorandum in Opposition to the instant motion, Plaintiff indicated that the reason the Defendant's tender was rejected as non-compliant was that the "Defendant's insurer forwarded a draft" instead of a check. Based on submissions by counsel at the hearing, the Court finds that the instrument sent to the Plaintiff during the Defendant's

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acceptance of the Offer of Compromise was a check issued by Allstate Insurance Company and therefore conforms to the acceptable forms of payment outlined in the Plaintiff's Offer of Compromise. Plaintiff's counsel indicated verbally at the hearing that they "may" have issues with the wording of the covenant not to execute, but could not identify any such issues with particularity or specificity despite being given the opportunity to identify the same.

The Court finds that the Plaintiff has failed to put forth any facts tending to indicate that Defendant's performance under the Offer of Compromise was non-compliant in any way. The Court further finds that the Defendant, by performing according to the various conditions expressed in the Plaintiff's Offer of Compromise, properly accepted said Offer of Compromise. The parties, therefore, reached an accord to settle this disputed claim and the accord was satisfied upon Defendant's performance.

THEREFORE, IT IS ORDERED that the Defendant's Motion for Summary Judgment is granted as to the bodily injury portion of the Plaintiff's claim. Plaintiff is directed to sign the Covenant Not to Execute.

AND IT IS SO ORDERED.

W. Jeffrey Young
At Large Circuit Court Judge

September ____, 2016
At Chambers, South Carolina

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Clarendon Common Pleas

Case Caption: Fred Floyd VS Palmer Tanner

Case Number: 2015CP1400040

Type: Acknowledgement of Filing of Removal

So Ordered

s/W. Jeffrey Young2156

Electronically signed on 2016-09-26 11:03:15 page 6 of 6

Case No. 2017-CP-21-341
Allstate's Memorandum of Law in Support of Motion for Summary Judgment

Exhibit E

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	FOURTH JUDICIAL CIRCUIT
Allstate Fire and Casualty Insurance Company, Plaintiff, vs. Pamela Goodwin, Defendant.	C/A#: 2015-CP-16-815 **PROPOSED ORDER**

This matter came before the Court on the parties' cross motions for summary judgment. A hearing was held before me on February 23, 2018, in the Darlington County Court of Common Pleas. Appearing for Plaintiff was A. Johnston Cox of the law firm Gallivan, White & Boyd P.A. and Benjamin Lee of the Anastopoulo Law Firm. Based upon the arguments of counsel, memoranda of law, exhibits, applicable law, and the record in this case, Plaintiffs' Motion is granted and Defendant's Motion is denied. Therefore, judgment should entered as a matter of law in favor of Plaintiffs on their Complaint against Defendant.

FILED
2018 MAR 22 AM 11:
CLERK OF COURT/ROD
DARLINGTON COUNTY, S.C.
SCOTT & SUGGS

FINDINGS OF FACT

Based on the competent evidence submitted in this case, the Court makes the following findings of fact:

Plaintiff Allstate Fire and Casualty Insurance Company ("Allstate") received a letter dated August 26, 2014 from the Anastopoulo Law Firm, LLP ("Law Firm") stating that the Law Firm would be representing Defendant Pamela Goodwin ("Goodwin") "for the injuries she suffered during a motor vehicle accident." Defendant explained that she hired the Law Firm to "look out for [her] and make sure [she] – that [she] was physically taken care of" because she did not have health insurance. Per the Attorney Retainer and Contingent Fee Agreement between

Defendant and the Law Firm, the Law Firm did not have an obligation to negotiate or settle any property damage issues Defendant may have had.

On August 27, 2014, Allstate called Defendant's attorney, the Law Firm, and spoke with the paralegal regarding the claim and Allstate was told that Defendant "suffered from a crushed right leg that required plates and screws" had a "broken right hand with bilateral black eyes" and would "be in a wheelchair for the next 6 months." On October 14, 2014, Allstate called Defendant's counsel's office to follow up on the claim and was told by the paralegal that Defendant "just recently came out of surgery" and updated Allstate regarding Defendant's claimed medicals. Allstate followed up with Defendant's counsel again on October 20, 2014 and November 18, 2014. On December 2, 2014, Allstate sent Defendant's counsel a letter asking for counsel's assistance with expediting the handling of his client's injury claim and stating that Allstate was prepared to tender the policy limits of $50,000 if Defendant's medical bills were provided.

Allstate received a copy of a letter dated December 12, 2014 from the Law Firm on December 17, 2017. Per the demand letter, the Law Firm described Defendant's damages and injuries as follows:

> **Pamela Goodwin's Injuries**
>
> Ms. Goodwin was a full-time bartender at Larry Moore's Bar & Grill. She had just become a grandmother at the time she was injured. She was on her way to work when Ms. Ham pulled out and knocked Ms. Goodwin off the motorcycle on August 20th, 2014.
>
> Unfortunately, and due to the driving of Ms. Ham, Ms. Goodwin sustained catastrophic bodily injuries due [to] the total body blunt force trauma from the vehicle driven by Ms. Ham inflicted upon her, and the subsequent impact with the ground and pavement (See Exhibit B, Medical Records). The impact resulted in Ms. Goodwin sustaining a crushed femur, broken in six places, and a broken foot. She no longer can work as a result of these injuries. Ms. Goodwin went through several operations. She almost lost both a leg and a foot. She will not be able to put weight

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> on her feet for six months. As a result, Ms. Went [sic] from making $250 per week from her side jobs, and $800 per week from her job at Larry Moore's Bar & Grill, to making absolutely nothing. Ms. Goodwin cannot play with her grandchild, she cannot walk, she cannot ride horses or motorcycles, she cannot live the life she was living before the incident, unfortunately, and due to Ms. Ham's driving Ms. Goodwin went from a life of independence to requiring in-home care.

Per the terms of the letter, the demanded limits of the policy were to be received by the Law Firm no later than "5:00 pm EDT on 12/27/2014." Defendant knew that Plaintiff Helen Elizabeth Metropol Ham's ("Ham") policy had $50,000.00 limits for bodily injury and she was told by her counsel that the $50,000.00 was "'all [Ham's] policy covers" and while there was a chance that the $50,000 was the only applicable policy that Ham had, Defendant was willing to accept that amount. Defendant acknowledged that she "was demanding the $50,000 and at a certain time limit." The letter stated that "settlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company" and be made payable to Defendant and the Law Firm. Defendant requested a certified bank check "because it just – that just helps it along a lot faster."

In addition, the letter also demanded Ham "provide sworn and notarized statements that there is no other insurance coverage available to her that could pertain to this loss." Also, the demand requested that a proposed release be provided. The letter specifically directed Allstate "[i]nstead of trying to act in bad faith and trying to trick us, please just send a reasonable Release that does not include indemnification or the release of property damage claims." Further, the letter stated "[p]art of the performance required to accept this offer is for you to deliver a proposed Release with the settlement check" and "the proposed Release that is delivered with the settlement check must comply with the terms of this offer."

Wayne D. Gaymon ("Gaymon"), the Casualty Claims Service Leader for the South Carolina MCO with Allstate, contacted John Wilkerson ("Wilkerson"), an attorney with

the Turner Padgett Law Firm, to review the affidavit provided with the demand and prepare the requested proposed Release. After Allstate's counsel, Wilkerson, reviewed the affidavit, Gaymon provided a copy of the affidavit to Ham to be executed and Ham executed and returned the affidavit.

On December 23, 2014, a cover letter, a manual settlement check in the amount of $50,000.00, the requested Release, and Ham's affidavit was sent by Fed Ex, priority overnight for morning delivery to the Law Firm to satisfy the requirements of the December 17, 2014 letter. As stated in the cover letter from Allstate, the Release was for bodily injury only (as required by the demand letter) and preserved Defendant's right to pursue a property damage claim should one be presented. The demand did not present a property damage claim.[1]

Despite Allstate's acceptance of the time-sensitive settlement demand by performance, Defendant rejected Allstate's acceptance. Defendant explained that they issued a demand and that if Allstate "met those demands and sent the check" then she "was going to settle with that." She explained they "had a problem with the check and not meeting demands." She further explained she "just knocked it off the table because [she] just said – you know, then [she] had all this going on

[1] The Court notes that while Defendant testified that her clothes were cut off following the accident, a claim for the alleged property damage was not included in the December 12, 2014 letter. The Court further notes that the December 14, 2014 letter specifically stated that the proposed release could not include a release of any claims for property damage and that Defendant conceded that if Allstate paid for a property damage claim she would expect to have to sign a release for that claim.

Further, the Court finds that Defendant did not make a claim for property damage because at the time of the accident, Goodwin was riding a motorcycle owned by an individual named Rickie Snipes ("Snipes"). A property damage claim was made regarding the damage to the motorcycle and Allstate and Snipes negotiated the amount of the settlement in connection the property damage claim on or about September 3, 2014. In fact, Defendant admitted she did not own the motorcycle she was operating at the time of the accident. She also admitted she did not have to pay the owner of the motorcycle any money for the damage to the motorcycle. Further, Defendant conceded that she never made a claim for property damage regarding the motorcycle.

and more surgeries and stuff" and "said no." Defendant testified that she objected to Allstate's acceptance of the demand by performance of its terms because "mainly, because it's a check – a cashier's check" and "[t]he check didn't meet the requirements."

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004) *and* Rule 56, SCRCP). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. *Rife*, 363 S.C. at 215, 609 S.E.2d at 568 (citing *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 443 (2003)). "Further, summary judgment depends upon the existence of plain, undisputed facts on which reasonable minds cannot differ." *Allen v. Long Mfg. NC, Inc.*, 332 S.C. 422, 426, 505 S.E.2d 354, 356 (Ct. App. 1998) (citing *Priest v. Brown*, 302 S.C. 405, 396 S.E.2d 638 (Ct. App. 1990)).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (2003). To defeat a properly supported motion for summary judgment, the party opposing the motion "must come forward with specific facts showing there is a genuine issue for trial." *Regions Bank*, 354 S.C. at 660, 528 S.E.2d at 438. *See, e.g., Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 216-217, 407 S.E.2d 637, 638 (1991) (determining grant of summary

judgment was proper where "there was no evidence from which a jury could find in [the opposing party's] favor").

In viewing the record evidence in this case in the light most favorable to Defendant, the Court finds that Defendant has failed to show that genuine issues of material fact exist regarding whether Allstate complied with the material terms of the demand. Based on its review of the evidence in this case and in accordance with South Carolina law, the Court finds that Allstate complied with all material terms of the demand, and the Court further finds that Allstate's performance of the material terms of the demand constitute acceptance and the settlement was consummated under South Carolina law. Therefore, the Court enters judgment in favor of Plaintiffs as a matter of law.

CONCLUSIONS OF LAW

The Court finds as a matter of law that Allstate's acceptance and performance of the material terms of the demand constitute a valid acceptance. The Court notes that Defendant's only argument in support of her Motion seeking entry of summary judgment in her favor is that Allstate "only tendered Ham's bodily injury limits and a hand-written, 'manual' check." Further, the Court notes that during her deposition, Defendant testified her only issue with Allstate's acceptance of the demand was the form of the check. Despite the fact Allstate sent a cover letter, the settlement check in the amount of $50,000.00, the requested Release (which did not include a release of Defendant's potential property damage claim) by the deadline of December 27, 2014, Defendant contends under "basic, long-standing common law contract principles, Plaintiff's 'acceptance' was effectively a counteroffer." The Court finds that Defendant's contention is not supported by South Carolina law, and rather, the principles of South Carolina contract law mandate entry of summary judgment in favor of Plaintiffs.

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Under South Carolina law, "'[i]n construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007). Further, under South Carolina law, for there to be a valid contract, there must be an offer, an acceptance, and valuable consideration. *See Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct. App. 2011) (determining a valid contract existed because there was evidence of a meeting of the minds as to the terms and conditions of the agreement) (citing *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009) ("The necessary elements for a contract are an offer, acceptance, and valuable consideration.")). In addition, under South Carolina law, a valid and enforceable contract is created when there is "a meeting of the minds between the parties with regard to all ***essential*** and ***material*** terms of the agreement." *Nutt Corp.*, 396 S.C. at 328, 721 S.E.2d at 450 (citing *Player v. Chandler*, 299 S.C. 101, 106, 382 S.E.2d 891, 893 (1989)) (emphasis added). *See also Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014) (explaining that "[a] valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement.") (emphasis in original).

Defendant testified that her intention in sending the December 12, 2014 letter to Allstate for the limits of the policy was to actually receive the full, $50,000.00 bodily injury limits to resolve her claim under the policy. *See Ecclesiastes Prod. Ministries*, 374 S.C. at 498, 649 S.E.2d at 502 ("In ascertaining intent, the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered."). The Court finds there is no question that Allstate's acceptance of the settlement demand is valid and enforceable. Based on the record evidence, there was an offer from Defendant that was accepted by Allstate, which provided valuable consideration to Defendant. The Court further finds that there is no question that Allstate met the essential and

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material terms of Defendant's demand – the payment of the entire $50,000.00 policy limits for Defendant's bodily injuries. Therefore, the Court finds that Plaintiffs are entitled to entry of summary judgment in their favor as a matter of law.

The Court further notes that Defendant's contention seems to suggest that because Allstate's acceptance of the settlement demand was not a "mirror image" in that the type of check issued was not a cashier's check or certified check. South Carolina law does not support Defendant's contention. Rather, contrary to Defendant's assertion, the type of check is not a material term of the settlement demand under South Carolina law, and further, this term was impossible for Allstate to meet.

The demand requires Allstate to issue a cashier's or certified check. Defendant testified that the reason she wanted a check in this form was because this type of check would help the settlement along faster – i.e., the funds would be immediately available to be disbursed from her attorneys. It should go without saying that insurance companies such as Allstate do not issue cashier's checks or certified checks. Moreover, Defendant has not demonstrated that issuing such checks in this manner is an accepted practice for insurance companies. Notwithstanding this fact, at least one South Carolina court has questioned the continued vitality of the so-called "mirror-image" rule and has noted that it is outdated in that it was "well suited to simple, one time transactions, in which the parties contract face to face" and that "it fails to accommodate the realities of much modern commercial practice." *Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus.*, 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991). In addition, Defendant has pointed to no South Carolina case stating that such a rule would apply to determine that Allstate's performance of the essential and material terms of the time-sensitive demand constitutes a counteroffer. Further, as has been demonstrated by Defendant's testimony, the reason for the inclusion of this specific term was to

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"help[] it along a lot faster." Because there is no material difference between how the manual check issued by Allstate in this case and a certified or cashier's check issued by a bank would be treated under South Carolina law, Allstate's issuance of the manual check (the kind of check that it can actually issue), does not constitute a counteroffer.

The South Carolina Supreme Court has already determined that payment in the form of a cashier's or certified check is not an essential or material term of a settlement agreement. South Carolina Rule of Professional Conduct 1.15 states as such. Specifically, the rule provides in pertinent part:

> (f)(1) A lawyer shall not disburse funds from an account containing the funds of more than one client or third person ("trust account") unless the funds to be disbursed have been deposited in the account and are collected funds.
>
> (2) Notwithstanding Subsection (f)(1) above, a lawyer may disburse funds from a trust account at the lawyer's risk in reliance on the following deposits when the deposit is made:
>
> ****
>
> (iv) by a certified check, cashier's check, or other check drawn by a depository institution or an insurance company, provided the insurance company check does not exceed $50,000.

Rules of Professional Conduct: Rule 1.15, RPC, Rule 407, SCACR. Therefore, per the mandate of the South Carolina Supreme Court, there is no material difference between a check issued by an insurance company, such as Allstate, and a certified check, cashier's check, or other check drawn by a depository institution.

Because Allstate complied with the material terms of the demand, Defendant was obligated to sign the Covenant Not to Execute (about which Defendant had no issue) and resolve her claims for bodily injury.

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THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for Summary Judgment is hereby GRANTED and Defendant's Motion for Summary Judgment is hereby DENIED. Accordingly, the Court declares as follows:

a. Goodwin's demand that Allstate issue a certified or cashier's check in payment of the claim is not a material term of the settlement in light of Allstate's payment of the claim with a valid insurance check;

b. The acceptance of the settlement demand, as demonstrated by Allstate's performance thereunder, on behalf of its insureds, is valid and enforceable;

c. Allstate fulfilled its obligations under the policy when it settled Defendant's claim for the bodily injury limits of the policy;

d. Because the settlement agreement is valid and enforceable, Plaintiffs and any other insured under this policy have no additional obligation to Defendant with regard to the claim for bodily injury; and

e. Because the settlement agreement is valid and enforcement, Defendant is directed to execute the Covenant Not to Execute provided by Allstate upon receipt of the $50,000.00 in resolution of her claims for bodily injury arising from the accident that occurred on August 20, 2014.[2]

AND IT IS SO ORDERED.

FILED
2018 MAR 22 AM 11:
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Pageland, South Carolina
March 7, 2018
16th

The Honorable Judge Paul M. Burch
Presiding Judge

[2] Allstate shall issue a second check to Goodwin, as the original check has expired due to the passage of time.

FILED
2018 AUG 20 PM 3:01

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

CASE NO: 2017-CP-21-341

ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

NATOSHIA HAMILTON and KENNETH COLLINS COOGLER,

Defendants.

DEFENDANT HAMILTON'S MOTION TO RECONSIDER AND/OR ALETER OR AMEND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT HAMILTON'S MOTION FOR SUMMARY JUDGMENT

TO: THE HONORABLE COURT AND ALL PARTIES OF RECORD:

The Defendant Natoshia Hamilton (this "Defendant" or "Defendant Hamilton"), by and through her undersigned counsel and pursuant to Rule 59, SCRCP, hereby submits this Motion to Reconsider and/or Alter or Amend this Court's August 7, 2018 Order Granting Plaintiff Allstate Property and Casualty Insurance Company's ("Allstate") Motion for Summary Judgment and denying Defendant's Motion for Summary Judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Allstate brought this declaratory judgment action seeking to enforce a settlement that was allegedly reached between Defendant Hamilton and Allstate, arising from a motor vehicle collision that occurred between Defendant Hamilton and Kenneth Coogler on January 31, 2015. Defendant Hamilton sustained injuries, and thereafter retained the Anastapoulo Law Firm, LLC ("ALF") to represent her. On January 15, 2016, Hamilton's counsel sent a time-limited Offer of Compromise (the "demand" or "Offer") to Allstate requesting payment of the applicable bodily injury policy limits. As detailed below, Defendant Hamilton's Offer was clear and unambiguous

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FLORENCE COUNTY, S.C.

in its terms. Specifically, it demanded that payment of the bodily injury limits be paid only via Cashier's Check or Certified Bank Check.[1]

In response to Hamilton's Offer, Allstate tendered the bodily injury limits via a hand written, non-certified, "manual" check. Because Allstate did not meet the clear, unambiguous terms of Defendant's Offer and, in doing so, made a proposed counteroffer, the settlement documents and manual, non-certified check were returned to Allstate. In the correspondence returning the check, Hamilton's counsel informed Allstate that it failed to accept Hamilton's Offer of Compromise and that suit was filed against Mr. Coogler. That lawsuit was filed in the Florence County Court of Common Pleas and assigned case number 2016-CP-21-835.

Allstate then filed the present Declaratory Judgment Action ("DJ") on February 3, 2017. In its DJ, Allstate sought a declaration that it fulfilled its obligations under its policy and Hamilton's Offer because Hamilton "accepted" Allstate's offer.

This matter came before the Court on the parties' cross motions for Summary Judgment. On August 7, 2018, the Court granted Allstate's Motion for Summary Judgment and denied

[1] *See* Offer, attached as Exhibit 1, at 6: "Settlement funds must be paid by Cashier's Checks or Certified Bank Checks (not drafts)..."(emphasis in original); Exhibit 1, at 8: "Payment must be made as described herein, and payment by any other method....will not satisfy the terms of this offer of compromise and will result in the immediate and automatic withdrawal of this offer of compromise...our offer of compromise must be accepted unequivocally and without variance of any sort and that a purported acceptance of this offer which imposes or even requests conditions beyond those contained in this offer will be construed as a counteroffer and rejection...Additionally, any attempted counteroffer by Allstate Insurance Company will be deemed a rejection of our offer of compromise and will result in the immediate and permanent withdrawal of our offer of compromise...Our offer of compromise must be accepted by your insurance company's performance of the requirement of this letter and not by mere words that claims to accept the offer...if your insurance company's actions and documents (i.e., your proposed release, settlement check, etc.) do not comply with our offer of compromise, it will be a counteroffer and rejection of our offer. Accordingly, in order to accept this offer of compromise, you must meet all of the terms and conditions of this offer of compromise, including, but not limited to , providing payment and a proposed Release that comply with the terms of this offer of compromise." (emphasis in original); Exhibit 1, at 9: "***If any condition or requirement is not met by the specified deadline or if any additional condition or requirement is imposed upon Natoshia Hamilton, then there has been no acceptance and no agreement.***"

Defendant Hamilton's Motion. Defendant Hamilton now respectfully requests that this Court reconsider and/or alter or amend said Order.

ARGUMENT AND CITATION TO AUTHORITY

I. DEFENDANT HAMILTON AND ALLSTATE DID NOT ENTER INTO A BINDING CONTRACT

"An unaccepted settlement offer—like any unaccepted contract offer—is a legal nullity, with no operative effect. As every first-year law student learns, the recipient's rejection of an offer leaves the matter as if no offer had ever been made."

Genesis Healthcare Corp. v. Symczyk, 569 U.S. 66, 81, 133 S. Ct. 1523, 1533, 185 L. Ed. 2d 636 (2013) (Justice Thomas).

The only issue before the Court is whether Allstate complied with Defendant Hamilton's Offer and thereby entered into a valid, binding settlement agreement with her. If no binding contract existed between the parties, then summary judgment must be granted in favor of Defendant Hamilton and denied as to Allstate.

As a preliminary matter, in South Carolina settlement agreements are viewed as contracts. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009). Therefore, general contract principles are applied in the construction of a settlement agreement. *Id.* When "an agreement is clear and capable of legal construction, the courts [sic] only function is to interpret its lawful meaning and the intent of the parties as found within the agreement." *Messer v. Messer*, 359 S.C. 614, 628, 598 S.E.2d 310, 317 (Ct.App.2004). When an agreement is plain and unambiguous, the court does ***not*** have the authority to modify its terms. *Patricia Grand Hotel, LLC v. MacGuire Enters.*, 372 S.C. 634, 640, 643 S.E.2d 692, 695 (Ct.App.2007). "The court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed." *Blakeley v. Rabon*, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976). It is only when

the language of a settlement agreement is susceptible to more than one interpretation that the court has the duty to ascertain the intention of the parties. *Mattox v. Cassady*, 289 S.C. 57, 60, 344 S.E.2d 620, 622 (Ct.App.1986).

A. THE COURT'S ORDER IGNORES THE PLAIN, CLEAR LANGUAGE OF THE OFFER

With respect, the Court's Order amounts to a re-writing of Defendant Hamilton's contractual offer to Allstate.

"Generally, parties are free to contract to anything as long as it is not illegal, unconscionable, or against the public interest." *Bicycle Transit Authority, Inc. v. Bell*, 333 S.E.2d 299, 305 (N.C.1985). Allstate does not argue that the contractual Offer presented to it was invalid on any of those grounds. Instead, knowing that Defendant Hamilton's Offer was wholly unambiguous and abundantly clear, Allstate essentially asked the Court to reform the contract to suit its own purposes and force Defendant Hamilton to accept a settlement offer she never made. It is outside of the province of the Court to do so. Indeed, "[i]t is fundamental that ***courts enforce contracts and do not rewrite them***." *Schmidt v. Magnetic Head Corp.*, 97 A.D.2d 151, 157, 468 N.Y.S.2d 649, 654 (1983) (internal citations omitted)(emphasis added). "The courts may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing." *Morlee Sales Corp. v. Manufacturers Trust Co.*, 9 N.Y.2d 16, 19, 210 N.Y.S.2d 516, 172 N.E.2d 280 (internal citations and quotations omitted). Where the intention of the parties is clearly and unambiguously set forth in the agreement itself, effect must be given to the intent as indicated by the language used without regard to extrinsic evidence - the subjective intent of the parties is irrelevant. *Mallad Construction Corp. v. County Fed. Sav. & Loan Assoc.*, 32 N.Y.2d 285, 344

N.Y.S.2d 925, 298 N.E.2d 96. There can be no doubt that "the best evidence of what the parties intended is what they say in their writing." *In re World Trade Ctr. Disaster Site Litig.*, 754 F.3d 114 (2d Cir. 2014).

Here, the language of the contract could not be clearer. As stated above, the Offer goes to great lengths and pains to inform Allstate that payment is to be made by Cashier's Check or Certified Check only, and that any modification to the terms set forth in the offer constitutes a counteroffer and complete rejection of the offer extended to Allstate. To be sure, Defendant Hamilton's Offer instructs that:

- "Settlement funds must be paid by Cashier's Checks or Certified Bank Checks (not drafts)..."(emphasis in original). –Exhibit 1, at 6.
- "Payment must be made as described herein, and payment by any other method....will not satisfy the terms of this offer of compromise and will result in the immediate and automatic withdrawal of this offer of compromise." Exhibit 1, at 8 (emphasis in original)
- "...[O]ur offer of compromise must be accepted unequivocally and without variance of any sort and that a purported acceptance of this offer which imposes or even requests conditions beyond those contained in this offer will be construed as a counteroffer and rejection..." *Id.*
- "Additionally, any attempted counteroffer by Allstate Insurance Company will be deemed a rejection of our offer of compromise and will result in the immediate and permanent withdrawal of our offer of compromise...Our offer of compromise must be accepted by your insurance company's performance of the requirement of this letter and

not by mere words that claims to accept the offer...if your insurance company's actions and documents (i.e., your proposed release, settlement check, etc.) do not comply with our offer of comprise, it will be a counteroffer and rejection of our offer. *Id.* (emphasis in original)

- Accordingly, in order to accept this offer of compromise, you must meet all of the terms and conditions of this offer of compromise, including, but not limited to, providing payment and a proposed Release that comply with the terms of this offer of compromise." *Id.*
- "***If any condition or requirement is not met by the specified deadline or if any additional condition or requirement is imposed upon Natoshia Hamilton, then there has been no acceptance and no agreement.***" Exhibit 1, at 9 (emphasis in original).

By accepting Allstate's argument, the Court's Order ignores the plain and unequivocal language of the Offer. It wholly ignores the intent of the Offeror. The Court's Order fundamentally re-writes Defendant Hamilton's Offer, completely excising the explicit language quoted above and in contravention of long-standing contract principles. Accordingly, Defendant Hamilton respectfully submits that the Court's Order committed reversible error.

B. THE FORM OF PAYMENT IS A MATERIAL TERM OF THE CONTRACT

In support of its finding that Allstate accepted Defendant Hamilton's Offer, the Court's Order cites to Rule 1.15 of the South Carolina Rules of Professional Conduct for the contention that the form of payment is not an essential or material term of a settlement agreement. As a threshold matter, the Court is not the arbiter of what is a material term of a settlement offer or

contract. Indeed, the offeror is the master of the offer; put differently, it is the offeror that decides and controls what terms are material. Further, and contrary to Allstate's argument and the Court's Order, Rule 1.15 does ***not*** state that there is "no material difference between a check issued by an insurance company, such as Allstate, and a certified check, cashier's check, or other check drawn by a depository institution."

Rule 1.15, also known as the safekeeping rule, allows a lawyer to disburse funds from its trust account to a client in limited circumstances as set forth in subsection (f)(2), such as when a check is certified, is a cashier's check or, in the case of a check issued by a depository institution or insurance company, the amount does not exceed $50,000. However, the Rule does ***not*** require a lawyer to negotiate nor disburse a check to a client in those limited circumstances. The language of Rule 1.15(f)(2) is permissive; it does not place any affirmative obligation on the attorney to disburse funds under such circumstances.

More importantly, Rule 1.15 explicitly states that by disbursing such a check, the lawyer does so at his own risk. "Notwithstanding Subsection (f)(1) above, a lawyer may disburse funds from a trust account ***at the lawyer's risk*** [in reliance to the circumstances set forth in (f)(2)(iv)..." Rule 1.15(f)(2) (emphasis added). The comments to Rule 1.15 take on a more explicit tone in issuing its warnings to lawyers seeking to disburse funds pursuant to subsection (f)(2). According to Rule 1.15, cmt. 7:

> Subsections (i) through (vi) of Rule 1.15(f)(2) represent categories of trust account deposits which carry a limited ***risk of failure*** so that disbursements may be made in reliance on such deposits without violating the fundamental rule of disbursing only on collected funds. ***In any of those circumstances, however, a lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds is at the risk of the lawyer making the disbursement. The lawyer's risk includes deposited instruments that are forged, stolen, or counterfeit. If any of the deposits fail for any reason, the lawyer, upon receipt of***

> ***notice or actual knowledge, must promptly act to protect the property of the lawyer's clients and third persons. If the lawyer accepting any such items personally pays the amount of any failed deposit within five (5) business days of receipt of notice that the deposit has failed, the lawyer will not be considered to have committed professional misconduct based upon the disbursement of uncollected funds.***

Further, Rule 1.15 cmt. 6 warns a lawyer that while "deposited funds of various types may be made 'available' for immediate withdrawal by the depository institution...lawyers should be aware that 'available funds' are not necessarily collected funds since the credit given for the available funds may be revoked if the deposited item does not clear."

If the members of the South Carolina bar were to follow the letter of this Court's Order and act as though there is no material difference between a certified check, cashier's check, and a check issued by an insurance company or other depository institution when deciding to disburse funds, then this state's attorneys would be opening themselves up to extensive risks. No attorney should be mandated to expose themselves to an ethical complaint or malpractice suit by ignoring the differences between these negotiable instruments.

In fact, if one reads the plain language of Rule 1.15 and its comments, the reader will see that there ***are*** material differences between certified checks, cashier's checks, and those issued by insurance companies or other depository institutions. While certified checks and cashier's checks can be relied on regardless of the amount pursuant to Rule 1.15, the same cannot be said for those issued by insurance companies or other institutions, which have a limit of $50,000. In setting forth this difference, Rule 1.15 is stating that there is in fact a material difference between these types of instruments. Accordingly, Summary Judgment should be granted as to Defendant Hamilton and denied as to Allstate.

CONCLUSION

For the reasons set forth above, Defendant Hamilton respectfully asks this Court to reconsider, alter, and/or amend its August 7, 2017 Order and GRANT Defendant Hamilton's Motion for Summary Judgment and DENY Allstate's Motion for Summary Judgment.

ANASTOPOULO LAW FIRM, LLC



Eric M. Poulin
SC Bar Number: 100209
Roy T. Willey, IV
SC Bar Number: 101010
J. Camden Hodge
SC Bar Number: 100638
Anastopoulo Law Firm, LLC
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

ATTORNEYS FOR DEFENDANT HAMILTON

Dated at Charleston, SC
This 16th day of August, 2018.

Akim A. Anastopoulo (SC)
Kate L. Bostrom (NC)
Samuel R. Flynn (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy E. Willey, IV (SC)
Evan P. Williams (SC)

ANASTOPOULO LAW FIRM

Toll Free: 1 (800) 313-2546
Facsimile: (843) 853-2291

Reply to North Charleston Office
www.AkimLawFirm.com

Friday, January 15, 2016

PRIVILEGED AND CONFIDENTIAL:
RELATING TO SETTLEMENT DISCUSSIONS

Sent via mail and fax to 866-467-2763
Marsa King
Allstate Insurance Company
PO Box 7068
Columbia, SC 29210

RE:	My Client(s):	Natoshia Hamilton
	DOL:	January 31, 2015
	Claim #:	0356985366
	Pages:	10 Not Including Enclosures

Dear Ms. King

INADMISSIBILITY OF OFFER OF COMPROMISE

Pursuant to South Carolina Rule of Evidence, Rule 408, statements made in compromise negotiations are not admissible at trial. This rule is identical to the Federal Rule and designed to encourage the settlement of controversies by permitting parties to discuss their cases candidly with the assurance that admissions and proposals for compromise made in the course of their good-faith settlement negotiations may not be used against them to later prove liability. Hunter v. Hyder, 236 S.C. 378, 114 S.E.2d 493 (1960). However, evidence of an offer to compromise may be admissible for some other purpose. Meehan v. Commercial Casualty Ins. Co., 166 S.C. 496, 165 S.E. 194 (1932). This entire letter and all of the exhibits attached are submitted with a view toward compromise of this claim. If you do not agree that everything that follows is inadmissible during the litigation of this matter, please stop reading and immediately destroy this letter and its attachments and immediately notify us of your refusal to review our attempt to compromise this claim.

OFFER OF COMPROMISE

This notice, demand, and offer of compromise is directed to you as the insurer of Kenneth Coogler. This letter is written to submit an offer of compromise regarding Natoshia Hamilton's claims against your insured(s) in the above-referenced matter. Additionally, this letter places you on notice, consistent with the dictates of Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933) of a time-limited demand for the payment of



policy limits of Kenneth Coogler's insurance coverage.

I. LIABILITY OF Kenneth Coogler

Our client, Natoshia Hamilton, was severely injured in an automobile collision due to the sole negligence of your insured. The incident occurred when your insured disregarded South Carolina Code § 56-5-1520 and failed to maintain a safe speed under the conditions. This failure caused your insured to violently smash into the rear end of the vehicle our client was in which was slowing for traffic on Pamplico Highway in Florence, South Carolina on January 31, 2015. The severity of the collision propelled our client forward and back within the vehicle, causing dramatic personal property damage and resulting in major injuries to her neck and back.

II. DAMAGES

Natoshia Hamilton's Injuries

Immediately following the collision, Florence County EMS arrived on scene and after noting our client's serious injuries, rushed our client to Carolinas Hospital System where she arrived on a backboard with a c-collar in place due to her neck and back injuries.

Her primary complaints at the time included neck pain and back pain. William Cauthen, MD diagnosed Ms. Hamilton with:

847.0	Neck sprain

The hospital staff conducted the following treatment:

81025	Urine Pregnancy test
81003	Urinalysis, auto w/o scope
72100	X-ray exam of lower spine
72072	X-ray exam of thoracic spine
72125	CT scan neck spine w/o dye
	Prescribed Flexeril 10mg
	Prescribed Cataflam 50mg
	Prescribed oxycodone 5mg

Dr. Cauthen treated our client for her injuries and released her with strict discharge instructions.

Our client was also forced to seek treatment with Lloyd Miller, MD at First Choice Healthcare. Upon initial consultation, our client was experiencing symptoms of neck pain, back pain, arm pain, pain to the right side, and pain in both legs. Dr. Miller diagnosed our client with:

723.1	Cervicalgia
724.2	Lumbago
719.45	Pain in joint, pelvis/thigh
729.5	Arm pain
780.96	Pain of right side of body

Dr. Miller conducted the following treatment:

72052	X-ray cervical spine
	Prescribed Duragesic-75 75mcg/hr
	Prescribed Hydrocodone-acetaminophen 2.5-325mg

Unfortunately, as the pain continued, our client required additional treatment among multiple visits with Tyrone Wallace, DC at Wallace Chiro of Lake City. Upon initial consultation, Ms. Hamilton was experiencing symptoms of remarkably severe constant aching neck pain on both sides, remarkably severe constant aching upper back pain, remarkably severe constant aching mid back pain, remarkably severe constant aching low back pain and remarkably severe constant aching pain in the right buttock. Dr. Wallace diagnosed Ms. Hamilton with:

307.81	Tension headache
719.46	Knee pain
723.1	Cervicalgia
723.2	Cervicocranial syndrome
723.3	Cervicobrachial syndrome
724.1	Pain in thoracic spine
724.2	Lumbalgia
728.85	Muscle spasm
729.1	Myositis
739.1	Cervical subluxation
739.2	Thoracic subluxation
739.3	Lumbar subluxation
739.4	S.I. subluxation
739.5	Pelvic subluxation
847.0	Cervical sprain/strain
847.1	Thoracic sprain/strain
847.2	Lumbar sprain/strain

Dr. Wallace treated our client for her injuries and conducted the following additional treatment:

99204	Comprehensive examination
72040	X-ray cervical 2-3 views
72100	X-ray lumbosacral 2-3 views
97140	Manual therapy (times conducted: 4)
98940	CMT 1-2 regions (times conducted: 9)
97032	Electrical muscle stimulation (times conducted: 19)
97010	Hot pack application (times conducted: 10)
99070	Orthopedic cervical support collar
98941	CMT 3-4 regions
99080	Narrative report

Due to the conditions caused by the collision, our client was required to seek multiple physical therapy visits with Anthony Alexander, MD at Pee Dee Orthopaedic Associates. The goals of these visits were to decrease pain, swelling, inflammation, and muscle spasms, and increase range of motion, function, strength, flexibility, and alignment. Upon initial consultation, our client was experiencing symptoms of right leg pain, back pain. Dr. Alexander diagnosed our client with:

722.10	Herniated disc
724.2	Back pain
724.4	Lumbar radiculopathy

723.1	Cervical pain
721.0	Cervical spondylosis w/o myelopathy

The additional treatment conducted by Dr. Alexander consisted of:

99214	Office visit
72110	X-ray lumbosacral spine (times conducted: 3)
72050	X-ray cervical spine
72148	MRI spinal canal and contents
72141	MRI spinal canal and contents
95911	NCS 9-10 studies
95860	Needle electromyography
63030	Laminotomy, 1 interspace, lumbar (times conducted: 2)
L0120	Cervical flexible, nonadjustable
	Prescribed Meloxicam 15mg
	Prescribed Norco 5-325mg
	Prescribed Celebrex 200mg
	Referral to Palmetto Physical Therapy and Wellness

Our client was referred for treatment with Mary Harpell, DC at Palmetto Physical Therapy and Wellness. Upon initial consultation, our client was experiencing symptoms of lower back pain, neck pain, right shoulder pain and right arm pain. Dr. Harpell diagnosed our client with:

724.3	Sciatica
724.2	Lumbago
728.87	Generalized weakness

Dr. Harpell conducted the following treatment:

	Cervical spine x-ray
	Lumbar spine x-ray
97110	Therapeutic exercises
97112	Neuromuscular re-education
97010	Heat/cryotherapy
97014	Electrical stimulation
97140	Manual therapy

Our client also sought treatment with Rakesh Chokshi, MD at McLeod Regional Medical Center. Dr. Chokshi diagnosed our client with:

722.10	Lumbar disc displacement

Dr. Chokshi conducted the following treatment:

36415	Venipuncture
80048	Basic metabolic panel
81003	Urinalysis w/o micro
85025	CBC w/ auto diff
85610	Prothrombin
85651	ESR sed rate
71010	Chest x-ray 1 view

86850	Antibody screen
86900	ABO group
86901	RH Type
63030	OR services
	Anesthesia
72148	MRI lumbar w/o contrast
J0330	Succinylcholine inj 200m
J0360	Hydralazine inj 20mg
J0690	Cefazolin 1gm (quantity: 2)
J1170	Hydromorphone inj 2mg
J2175	Meperedine inj 25mg/1mL
J2250	Midazolam 2mg/2mL
J2704	Propofol inj 200mg/20mL
J3010	Fentanyl inj 100mcg

The cumulative goal of the treatment has been to restore our client to her condition before the collision.

Summary of Damages

Due to the collision, Ms. Hamilton underwent a serious disruption in her life which prevents her from being able to participate in many things she enjoys. In addition to limitations placed on her enjoyment, Ms. Hamilton has been forced to endure limitations to her range of mobility. Ms. Hamilton will forever be limited in the activities in which she may participate because the nature of her injuries has rendered her at greater risk of future aggravation and trauma. These disruptions have caused considerable hardships and have significantly decreased our client's quality of life.

Punitive Damages

Please also be aware that striking a vehicle due to recklessness, distracted driving, and other willful and wanton behavior subjects Mr. Coogler to punitive damages, and that punitive damages may not be able to be discharged in bankruptcy under federal law or South Carolina law. Please be aware that, based on past precedent we expect this case to yield a verdict in excess of the policy limits. Accordingly, if you force this case to trial, the verdict is unlikely to be discharged in bankruptcy and we will follow Kenneth Coogler for the rest of life and take any property, and possessions may ever accumulate until the verdict is paid in full.

III. **DEMAND PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933), and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).**

Based on Kenneth Coogler's reckless driving and complete disregard for the safety of others on the road, the fact that he was likely distracted at the time he caused his vehicle to strike Ms. Hamilton, the fact that punitive damages will be imposed against Mr. Coogler, and due to the ongoing pain and mental anguish her family will experience for the rest of their lives, we

conservatively estimate the value of this case to be in excess of the policy limits. As there is a possibility that underinsured motorist coverage may be available to Natoshia Hamilton, we cannot offer a full and final release at this time. Instead, we require payment of the policy limits of all applicable policies, under which you insure Kenneth Coogler in a form that will not prejudice our client's right to seek recovery from any other insurance carriers. This offer of compromise requires that policy limits are **RECEIVED**[1] no later than 5:00 p.m. EDT on January 26, 2016, and requires that Kenneth Coogler provide sworn and notarized statements that there is no other insurance coverage available to her that could pertain to this loss. **THIS OFFER OF COMPROMISE INCLUDES A TIME-LIMITED DEMAND FOR PAYMENT OF POLICY LIMITS, AND, AT 5:00 P.M. EDT ONJanuary 26, 2016, THIS OFFER WILL BE WITHDRAWN AND WE WILL OBTAIN AN EXCESS JUDGMENT AGAINST YOUR INSURED(S) WHICH WILL, IN TURN PROVIDE YOUR INSURED(S) WITH A CLAIM AGAINST Allstate Insurance Company PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933) and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).** Please be aware that our demand for policy limits is not negotiable and that ALL conditions of this offer of compromise must be met by the specified time limit. ***If any condition is not met, or if any additional condition is imposed byAllstate Insurance Company, including but not limited to conditions of indemnification or the waiver of any rights or claims not specified herein, this offer of compromise will be withdrawn, and we will obtain an excess judgment against your insured and enforce it against assets.*** This offer of compromise does not include the resolution of any property damage claims and does not request payment of any portion of your insured's property damage insurance limits. ***Accordingly, any request for a release of property damage claims and/or any request for indemnification will constitute a counteroffer and rejection of this offer of compromise.***[2] ***If you include indemnification or a release of property damage claims in the proposed Release you send to us, it will constitute a counteroffer and rejection of this offer of compromise even if you claim in a cover letter or other documents that you send to us that you have accepted our offer. Acceptance of this offer specifically requires you to prove a proposed Release that complied with this offer by the above deadline.***[3] Moreover, if there is any language in the

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[1] Settlement funds must be paid by Cashier's Checks or Certified Bank Checks (not drafts) issued by your insurance company as follows: Natoshia Hamilton and the Anastopoulo Law Firm, LLC. The checks must be **RECEIVED** in my office no later than 5:00pm EDT on [prompt, deadline for check]. Anastopoulo Law Firm, LLC's Tax I.D. Number is 452775649. For your convenience, our firm's W-9 is also attached hereto (Exhibit A). The funds should be sent to 2557 Ashley Phosphate Road North Charleston, SC 29418.

[2] Please be aware that we have done everything reasonable to warn you that even a mere request for indemnification or a mere request for the waiver of any other rights or claims, including property damage claims, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

[3] Please do not attempt to send a proposed Release that includes indemnification or a release of property damage claims. The insurance company tactic of including indemnification or a release of property damage claims in the proposed Release will not work against this firm and its clients. Please be aware that you cannot get around this requirement by sending a cover letter with a non-compliant proposed Release that says your "proposed Release is not a counteroffer." ***If you send a proposed Release that***

proposed Release or any other documents you send us that requires or even requests Natoshia Hamilton to make representations or warranties regarding the absence of medical liens or hospital liens or bankruptcy proceedings relating to Natoshia Hamilton, the requirement or request will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Allstate Insurance Company is perfectly capable of reviewing court records to verify this information, and attempting to shift the cost of verifying this information to our client(s) is not acceptable and will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.[4] Accordingly, please be aware that a requirement or even a request for a "Lien Affidavit" or similar document by any other name will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Additionally, please be aware that it will be deemed a counteroffer and rejection of this offer of compromise if Allstate Insurance Company requires or even requests the release of any individuals or entities other than Kenneth Coogler and Allstate Insurance Company.[5]

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includes indemnification or a release of property damage claims or that violates any other terms of this offer, it is a counteroffer regardless of whatever you put in your cover letter. Pursuant to this offer of compromise, your insurance company cannot provide a letter that says it accepts our offer and then try to trick us by providing a proposed Release that does not comply with our offer. Do not put indemnification or a release of property damage claims in the proposed Release you send to us in the hope that we will sign your proposed Release without reading it or in the hope that we will rely on a representation in your cover letter that you have accepted our offer of compromise when you have not provided a compliant release. If you do put indemnification or a release of property damage claims in the proposed Release, it is a counteroffer even if you try to say it is not, and, if you try this tactic, we will proceed to verdict and take your insured's assets until it is paid in full. Please also keep in mind that a proposed Release that includes the release of "any and all claims" would necessarily include property damage claims and is also a counteroffer and rejection. Instead of acting in bad faith and trying to trick us, please just send a reasonable proposed Release that does not include indemnification or the release of property damage claims. Acceptance of this offer of compromise requires you to make your acceptance through performance and not just mere words or promises. Part of the performance required to accept this offer is for you to deliver a proposed Release with the settlement check. Additionally, the proposed Release that is delivered with the settlement check must comply with the terms of this offer. ***Regardless of what you might say in your cover letter, if the proposed Release does not comply with this offer, it is a rejection and counteroffer.***

[4] Please be aware that we have done everything reasonable to warn you that even a mere request for warranties or representations regarding the absence of medical liens or hospital liens or bankruptcy proceedings will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise.

[5] Please be aware that we have done everything reasonable to warn you that even a mere request for the release of any individuals or entities other than Kenneth Coogler and Allstate Insurance Company will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. ***Moreover, please be aware that Allstate Insurance Company will only be released with respect to the bodily injury coverage of the subject policy and that Allstate Insurance Company will not be released with respect to any other policies or coverages not identified herein and that a request or requirement for a general release or a full and final release of Allstate Insurance Company will be a counteroffer and rejection of this offer of compromise.*** Please do not place any additional releases on the settlement check, in the proposed Release, or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware

Moreover, please be aware that Allstate Insurance Company will only be released with respect to the bodily injury coverage of the subject policy and that Allstate Insurance Company will not be released with respect to any other policies or coverages not identified herein. Payment must be made as described herein, and payment by any other method, including payment through the registry of any court or through the filing of an interpleader action, will not satisfy the terms of this offer of compromise and will result in the immediate and automatic withdrawal of this offer of compromise. Additionally, filing a declaratory judgment action will result in the immediate, automatic, and permanent withdrawal of this offer of compromise. Please be aware that, under South Carolina law, our offer of compromise must be accepted unequivocally and without variance of any sort and that a purported acceptance of this offer of compromises which imposes ***or even requests*** conditions beyond those contained in this offer will be construed as a counteroffer and rejection. Please also be aware, that under South Carolina law, we have no continuing duty to repeatedly remind you of the deadline or any conditions of our offer, herein. See Maxton v. Payes, 313 S.C. 109, 437 S.E.2d 66 (1993). Additionally, any attempted counteroffer by Allstate Insurance Company will be deemed a rejection of our offer of compromise and will result in the immediate and permanent withdrawal of our offer of compromise. Furthermore, please be aware that sworn and notarized statements that there is no other insurance coverage that could pertain to this loss must accompany your payment of policy limits. For your convenience, we have provided an affidavit that meets this condition. ***Please be aware that sending a proposed Release, settlement check, or any other documents that include any conditions or provisions that are not part of this offer will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.*** Additionally, even if you send a cover letter that claims to "unconditionally" or "unequivocally" accept our offer of compromise, but you also send a proposed Release, a settlement check, or any other documents that include any conditions or provisions that are not part of this offer, it will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Please do not attempt to trick us by saying in a letter that you accept our offer of compromise and then trying to sneak in additional terms that are not part of our offer. Our offer of compromise must be accepted by your insurance company's performance of the requirements of this letter and not by mere words that claims to accept the offer. Regardless of any statement that your insurance company has accepted or is accepting our offer of compromise, if your insurance company's actions and documents (i.e., your proposed Release, settlement check, etc.) do not comply with our offer of compromise, it will be a counteroffer and rejection of our offer. Acceptance of this offer of compromise requires performance and not just mere words or promises. Accordingly, in order to accept this offer of compromise, you must meet all of the terms and conditions of this offer of compromise, including, but not limited to, providing payment and a proposed Release that comply with the terms of this offer of compromise.

Please be aware that the only release we will accept is one that is limited in its scope to

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that many insurance companies use this tactic, but it will not work against this firm and its clients. Any request for the release of any individuals or entities other than Kenneth Coogler and Allstate Insurance Company as described herein, whether "accidental" or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise. Once again, if you send a proposed Release that purports to release any additional individuals or entities, it will be a counteroffer and rejection regardless of any claims of acceptance you make in a cover letter or any other documents you send to us. This offer of compromise requires you to deliver a proposed Release that complies with the terms of this offer of compromise. This offer of compromise requires you to make your acceptance through performance and not just mere words or promises.

protecting your insured from Natoshia Hamilton's rights to the personal assets of your insured. ***Additionally, this offer relates only to personal injury claims (and not any property damage claims); accordingly, a proposed Release or a statement on the settlement check or any other documents you send to us that purports to release or resolve "any and all claims" will be considered as a counteroffer and rejection of this offer, resulting in the immediate and permanent withdrawal of this offer. Natoshia Hamilton*** must not be prevented in any way from making a claim against her own insurance carriers. Despite the limited scope of our offer, our offer will protect the interests of your insured because it would only allow Natoshia Hamilton to seek the proceeds of their own coverage and other applicable insurance policies relating to personal injuries and it would prevent Natoshia Hamilton from seeking the assets of your insured as compensation for the personal injuries.[6] If you do not pay policy limits and meet the other requirements contained in this offer within the specified time limit, we will withdraw our offer of compromise and we will obtain an excess judgment against your insured and enforce it against her assets. In view of existing circumstances, we believe your insurance company should accord its insured the same faithful consideration it gives its own interests. If you do not pay policy limits in this case and meet the other requirements contained in this offer, pursuant to the terms of this offer of compromise, Kenneth Coogler may be able to sue your company for compensatory and punitive damages for bad-faith failure to properly adjust this claim. **Please explain to Kenneth Coogler that has the right to hire an attorney to represent against Allstate Insurance Company and that has the right to demand that you pay this demand in order to protect property and possessions.**

Please be aware that this letter constitutes Natoshia Hamilton's formal offer and that no oral representations made before or after this letter can alter the terms of this offer. If, for any reason, this firm agrees to change this offer in any way, such changes can and will be made only in a writing that is signed by a member of this firm. The purpose of this paragraph is to specifically prevent Allstate Insurance Company from claiming that this offer was modified in any way by an oral communication. ***Please be aware that, unless there has been a specific writing signed by a member of this firm that specifically changes this offer, the offer made by this letter has not been changed.*** Additionally, there are and will be no oral offers made to resolve this case. Accordingly, please do not attempt to claim that there has been an oral offer to resolve this case because there has not been and will not be such an offer. ***Any offer to resolve this case by Natoshia Hamilton must be made in writing and any acceptance of that offer must be made through performance of the provisions of this offer of compromise in order for this firm and Natoshia Hamilton to agree that a binding agreement has been formed. Specifically, this offer of compromise cannot be accepted by a mere statement of unconditional acceptance of this offer; instead, acceptance of this offer requires full performance of all terms and conditions of this offer. If any condition or requirement is not met by the specified deadline or if any additional condition or requirement is imposed upon Natoshia Hamilton, then there has been no acceptance and no agreement.***

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[6] Please be aware that it is our current belief that Natoshia Hamilton may have had underinsured motorist coverage with policy limits far below the full value of this case. However, she may also have no coverage at all. Accordingly, since there is only a small amount of underinsured motorist coverage compared to the actual value of this case, Allstate Insurance Company's acceptance of this offer provides the greatest possible amount of protection for its insured. Thus, if Allstate Insurance Company fails to accept this offer, it will be exposing its insured to substantial excess liability and acting in bad faith towards its insured.

AFFIDAVIT OF Kenneth Coogler

Personally appeared before me who, being duly sworn, states as follows:

1. My name is Kenneth Coogler.
2. As of January 31, 2015, I was known as Kenneth Coogler.
3. I am over the age of 18, and as of January 31, 2015, resided in Dillon County, South Carolina.
4. On January 31, 2015, I was involved in a motor vehicle collision whereby the vehicle I was driving struck Natoshia Hamilton.
5. At that time, the vehicle I was driving had a policy of insurance issued by Allstate Insurance Company.
6. That as of January 31, 2015, there were no other policies of insurance that would apply to compensate Natoshia Hamilton for the losses incurred on that date.

FURTHER AFFIANT SAYETH NOT.

_____
Kenneth Coogler

Sworn to and Subscribed before me this

____ day of _____ 2015

Notary Public for _____

My Commission Expires _____

_____

We have supplied you with all information necessary to evaluate this offer of compromise[1]; however, should you have any questions regarding this offer of compromise, please do not hesitate to contact me at (843) 614-8888. Additionally, although any requirement or request for terms and conditions of settlement and compromise that are not approved herein will constitute a counteroffer and rejection of this offer of compromise, if you feel that any part of this letter needs clarification in order for you to comply with its terms, we will be happy to offer any clarification of terms so that you have a full and fair opportunity to comply with this offer. Of course, this letter relates to discussions involving settlement and compromise, and nothing contained herein shall be deemed admissible except to enforce a claim for bad-faith failure to properly adjust this claim.

I look forward to hearing from you.

Sincerely,

EW

Evan Williams

EW/df
Enclosures

[1] Please be aware that we have provided you willful and sufficient information to evaluate this offer of compromise and to compel your insurance company to pay its policy limits as demanded. Nevertheless, we are aware that many insurance companies request unnecessary additional information within a few days of the deadline for payment as a tactic to delay the resolution of a case. We are aware that insurance companies make more money when settlements are delayed because the insurance company can continue to earn investment income from the settlement money for as long as the insurance company can maintain possession of the settlement funds. We are aware that many insurance companies use the tactic of requesting unnecessary additional information to delay payment, but it will not work against this firm and its clients. Additionally, in the unlikely event that there is a legitimate need for additional information, we will have to request that information from another party. Therefore, any request for additional information must be made as soon as possible and at least ten (10) days before the deadline so that we will have a reasonable opportunity to try and obtain the requested information. We have done everything reasonable to warn you that this offer of compromise includes a time-limited demand for the payment of policy limits. Please be aware that the deadline for payment and compliance with all other terms will not be extended based on a request for additional information because this offer of compromise already includes more than enough information to compel payment. Please do not place your insured's assets in jeopardy by incorrectly assuming that a request for additional information will extend the deadline of this offer of compromise. Failure to meet the deadline for any reason will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

AFFIDAVIT OF Kathryn Broach

Personally appeared before me who, being duly sworn, states as follows:

1. My name is Kathryn Broach.
2. As of January 31, 2015, I was known as Kathryn Broach.
3. I am over the age of 18, and as of January 31, 2015, resided in Florence County, South Carolina.
4. On January 31, 2015, a vehicle I owned was involved in a motor vehicle collision whereby the vehicle struck Natoshia Hamilton.
5. At that time, a vehicle I owned had a policy of insurance issued by Allstate Insurance Company.
6. That as of January 31, 2015, there were no other policies of insurance that would apply to compensate Natoshia Hamilton for the losses incurred on that date.

FURTHER AFFIANT SAYETH NOT.

_____
Kathryn Broach

Sworn to and Subscribed before me this

____ day of _____ 2015

Notary Public for _____

My Commission Expires _____

_____

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

THE HONORABLE MICHAEL G. NETTLES
CIRCUIT COURT JUDGE

CIVIL ACTION NO.: 2017-CP-21-0341

Allstate Property and Casualty
Insurance Company,

Respondent,

v.

Natoshia Hamilton

Appellant.

RECEIVED
SEP 17 2018
SC Court of Appeals

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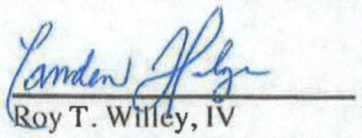
NOTICE OF APPEAL

The Appellant Natoshia Hamilton hereby appeals the Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendant's Motion for Summary Judgment entered by the Honorable Michael G. Nettles and filed August 7, 2018, as well as the Order Denying Defendant's Motion to Reconsider and/or Alter or Amend Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendant's Motion for Summary Judgment, entered by the Honorable Michael G. Nettles and filed August 30, 2018. Defendant received written notice of the entry of said Orders on August 14, 2018 and August 30, 2018 respectively.

[Signature Block on the Following Page]

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ANASTOPOULO LAW FIRM, LLC



Roy T. Willey, IV
S.C. Bar No.: 101010
Eric M. Poulin
S.C. Bar No.: 100209
J. Camden Hodge
S.C. Bar No.: 100638
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888
Fax: (843) 494-5536
camden@akimlawfirm.com
eric@akimlawfirm.com
roy@akimlawfirm.com

ATTORNEYS FOR
THE APPELLANT/DEFENDANT

Dated at Charleston, SC
September 12, 2018

Other Counsel of Record:
A. Johnston Cox
1201 Main Street
Suite 1200
Columbia, SC 29201
Phone: 803-779-1833
Fax: 803-779-1767
jcox@gwblawfirm.com

FORM 4

FILED

2018 AUG -7 PM 12:39

DORIS POULOS O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2100341

Allstate Property And Casualty Insurance Company		**Natoshia Hamilton**	**Kenneth Collins Coogler**

PLAINTIFF(S)

Submitted by: 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

RECEIVED
SEP 17 2018
SC Court of Appeals

☐ **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

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. 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)
Allstate Property And Casualty Insurance Company	Natoshia Hamilton and Kenneth Collins Coogler	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.

Michael Nettles — 240 — 8-7-18

Circuit Court Judge **Judge Code** **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

ELECTRONICALLY FILED - 2018 Oct 12 3:18 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2100341

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:

Janice Holmes 1201 Main Street, Suite 1200 PO Box 7368 (29202) Columbia, SC 29201
Alfred Johnston Cox PO Box 7368 1201 Main Street, Suite 1200 Columbia, SC 29201

Eric Marc Poulin 32 Ann Street Charleston, SC 29403
Roy T. Willey IV 32 Ann Street Charleston, SC 29403
James Camden Hodge 32 Ann Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Doris Poulos O'Hara - 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.

ELECTRONICALLY FILED - 2018 Oct 12 3:18 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2100341

FILED
2018 AUG -7 PM 12:39
DORIS POULOS O'HARA
C.C.P. & G.S.
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

WELFTH JUDICIAL CIRCUIT

Allstate Property and Casualty Insurance Company,

C/A#: 2017-CP-21-341

Plaintiff,

ORDER

vs.

Natoshia Hamilton and Kenneth Collins Coogler,

Defendants.

RECEIVED
SEP 17 2018
SC Court of Appeals

ELECTRONICALLY FILED - 2018 Oct 12 3:18 PM - FflorENCE - COMMON PLEAS - CASE#2017CP2100341

This matter came before the Court on the parties' cross motions for summary judgment. A hearing was held before me on June 1, 2018, in the Florence County Court of Common Pleas. Appearing for Plaintiff was A. Johnston Cox of the law firm Gallivan, White & Boyd P.A. and Camden Hodge of the Anastopoulo Law Firm appeared on behalf of Natoshia Hamilton ("Hamilton"). Based upon the arguments of counsel, memoranda of law, exhibits, applicable law, and the record in this case, Plaintiff's Motion for Summary Judgment is granted and Hamilton's Motion is denied. Therefore, judgment should entered as a matter of law in favor of Plaintiff on its Complaint against Defendants.

FINDINGS OF FACT

Based on the competent evidence submitted in this case, the Court makes the following findings of fact:

Allstate Property and Casualty Insurance Company ("Allstate") received a letter dated February 5, 2015 from the Anastopoulo Law Firm, LLP ("Law Firm") stating that the Law Firm would be representing Hamilton "for the bodily injuries she suffered during a motor vehicle accident." On January 21, 2016, Allstate received a letter from the Law Firm regarding

radiology bills that were to be added to the bills included with the demand. However, because Allstate had not received the demand referenced in that letter, Allstate called the Law Firm and was told that the demand package had been sent. During the afternoon of January 21, 2016, Allstate received the time-sensitive demand that was dated January 15, 2016.

Per the terms of the demand, the bodily injury liability limits of the policy covering the vehicle Coogler was driving were to be delivered to the Anastopoulo firm by "5:00 pm EDT on January 26, 2016." Hamilton knew that Coogler's policy had $25,000.00 limits for bodily injury. The demand stated that "[s]ettlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company" and be made payable to Hamilton and the Law Firm.

In addition, the letter also demanded that Coogler "provide sworn and notarized statements that there is no other insurance coverage available to her [sic] that could pertain to this loss." Further, the demand requested that a proposed release be provided. The letter specifically directed that Allstate "[i]nstead of acting in bad faith and trying to trick us, please just send a reasonable Release that does not include indemnification or the release of property damage claims." In addition, the letter stated "[p]art of the performance required to accept this offer is for you to deliver a proposed Release with the settlement check" and "the proposed Release that is delivered with the settlement check must comply with the terms of this offer."

On January 26, 2016, the settlement check in the amount of $25,000.00, covenant not to execute, and affidavits of the named insured, Kathryn Broach, and her husband Kenneth Collins Coogler, were hand delivered to the Law Firm (and signed for by attorney Evan Williams) to satisfy the requirements of the time-sensitive demand.

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Despite Allstate's acceptance of the time-sensitive demand by performance, Hamilton rejected Allstate's acceptance with no explanation. In her deposition, Hamilton explained that she rejected Allstate's acceptance of the demand because the check was not a certified check. She explained that the check "didn't meet our demand."[1] However, Hamilton conceded that the amount she demand was $25,000 and that a certified check in the amount of $25,000 and the check issued by Allstate in the amount of $25,000 were for the identical amount of money. Hamilton also admitted that she did not have any concerns that a check from Allstate would bounce. Hamilton also admitted that the check delivered by Allstate was negotiable.

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004) *and* Rule 56, SCRCP). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. *Rife*, 363 S.C. at 215, 609 S.E.2d at 568 (citing *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 443 (2003)). "Further, summary judgment depends upon the existence of plain, undisputed facts on which reasonable minds cannot differ." *Allen v. Long Mfg. NC, Inc.*, 332 S.C.

[1] Since sending the letter rejecting Allstate's acceptance of her demand, which provided no explanation regarding the rejection, per Hamilton's recently filed Motion for Summary Judgment and Memorandum of Law in Support ("Hamilton's Motion") and her deposition testimony, she has since clarified that she rejected Allstate's acceptance of her demand because Allstate allegedly "failed to comply with the clear, explicit requirements to tender a cashier's or certified check." Further, Hamilton testified that she had no issue with the proposed release that was submitted or the affidavits. No other reason for rejecting the settlement was given at the hearing, and the Court finds that this is the only issue of Allstate's acceptance of her demand about which Hamilton takes issue.

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422, 426, 505 S.E.2d 354, 356 (Ct. App. 1998) (citing *Priest v. Brown*, 302 S.C. 405, 396 S.E.2d 638 (Ct. App. 1990)).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (2003). To defeat a properly supported motion for summary judgment, the party opposing the motion "must come forward with specific facts showing there is a genuine issue for trial." *Regions Bank*, 354 S.C. at 660, 528 S.E.2d at 438. *See, e.g., Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 216-217, 407 S.E.2d 637, 638 (1991) (determining grant of summary judgment was proper where "there was no evidence from which a jury could find in [the opposing party's] favor").

In viewing the record evidence in this case in the light most favorable to Hamilton, the Court finds that Hamilton has failed to show that genuine issues of material fact exist regarding whether Allstate complied with the material terms of the demand. Based on its review of the evidence in this case and in accordance with South Carolina law, the Court finds that Allstate complied with all material terms of the demand, and the Court further finds that Allstate's performance of the material terms of the demand constitute acceptance and the settlement was consummated under South Carolina law. Therefore, the Court enters judgment in favor of Allstate as a matter of law.

CONCLUSIONS OF LAW

The Court finds as a matter of law that Allstate's acceptance and performance of the material terms of the demand constitute a valid acceptance. The Court notes that Hamilton's only argument in support of her Motion seeking entry of summary judgment in her favor is that Allstate

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allegedly "failed to comply with the clear, explicit requirements to tender a cashier's or certified check." Further, the Court notes that during her deposition, Hamilton testified her only issue with Allstate's acceptance of the demand was the form of the check. The Court also notes that Hamilton contends Allstate's acceptance of the demand "was not a mirror image or in compliance with the terms of [Hamilton]'s offer" and that "under the long-standing dictates of contract law" and that Allstate's acceptance "was nothing more than a counter proposal." The Court finds that South Carolina law does not support Hamilton's contention, and rather, the principles of South Carolina contract law mandate entry of summary judgment in favor of Allstate.

Under South Carolina law, "'[i]n construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007). Further, under South Carolina law, for there to be a valid contract, there must be an offer, an acceptance, and valuable consideration. *See Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct. App. 2011) (determining a valid contract existed because there was evidence of a meeting of the minds as to the terms and conditions of the agreement) (citing *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009) ("The necessary elements for a contract are an offer, acceptance, and valuable consideration.")). In addition, under South Carolina law, a valid and enforceable contract is created when there is "a meeting of the minds between the parties with regard to all ***essential*** and ***material*** terms of the agreement." *Nutt Corp.*, 396 S.C. at 328, 721 S.E.2d at 450 (citing *Player v. Chandler*, 299 S.C. 101, 106, 382 S.E.2d 891, 893 (1989)) (emphasis added). *See also Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014) (explaining that "[a] valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement.") (emphasis in original).

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Here, the Court finds that there is no legitimate dispute that Hamilton's demand sought the full, $25,000 bodily injury limits to resolve Hamilton's claim for bodily injury as to Coogler. *See Ecclesiastes Prod. Ministries*, 374 S.C. at 498, 649 S.E.2d at 502 ("In ascertaining intent, the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered."). The Court further finds that there is no question that Allstate's acceptance of the settlement demand is valid and enforceable. Based on the record evidence, there was an offer from Hamilton that was accepted by Allstate, which provided valuable consideration to Hamilton. The Court further finds that there is no question that Allstate met the essential and material terms of Hamilton's demand – the payment of the entire $25,000 policy limits for Hamilton's alleged bodily injuries. Therefore, the Court finds that Allstate is entitled to entry of summary judgment in its favor.

The Court further notes that Hamilton's contention seems to suggest that because Allstate's acceptance of the settlement demand was not a "mirror image" in that the type of check issued was not a cashier's check or certified check, there was not an acceptance of Hamilton's demand. South Carolina law does not support Hamilton's contention. Rather, contrary to Hamilton's assertion, the Court finds that the type of check is not a material term of the settlement demand, and further, it was a term that was impossible for Allstate to meet.

The demand requires Allstate to issue a cashier's or certified check. Hamilton conceded that the type of check would not change the amount of money – the amount would still be $25,000. She further testified that they "had no problem with that [the check] would bounce or anything." It should go without saying that insurance companies such as Allstate do not issue cashier's checks or

certified checks. Allstate is not a bank.[2] Moreover, Hamilton has not demonstrated that issuing such checks in this manner is an accepted practice for insurance companies. Notwithstanding this fact, at least one South Carolina court has questioned the continued vitality of the so-called "mirror-image" rule and has noted that it is outdated in that it was "well suited to simple, one time transactions, in which the parties contract face to face" and that "it fails to accommodate the realities of much modern commercial practice." *Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus.*, 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991).

In addition, Hamilton has pointed to no South Carolina case stating that such a rule would apply to determine that Allstate's performance of the essential and material terms of the time-sensitive demand constitutes a counteroffer. Because there is no material difference between how the manual check issued by Allstate in this case and a certified or cashier's check issued by a bank would be treated under South Carolina law, the Court finds that Allstate's issuance of the manual check (the kind of check that it can actually issue), does not constitute a counteroffer.[3]

The South Carolina Supreme Court has already determined that payment in the form of a cashier's or certified check is not an essential or material term of a settlement agreement. South Carolina Rule of Professional Conduct 1.15 states as such. Specifically, the rule provides in pertinent part:

---

[2] In Hamilton's Motion, she cites to a decision by the Court of Appeals of South Carolina, *Fender & Latham, Inc. v. First Union National Bank*, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994), seemingly in support of her contention that Allstate's performance of the demand was not sufficient. The Court notes that in *Fender*, the bank's commitment letter to the borrower stated that to accept the offer the borrower needed to make an escrow deposit of $125,000, obtain "pole line rights," and accept the offer in writing. Fender did not comply with any of these clearly material terms by the date required in the offer. Therefore, the Court finds that *Fender* has no bearing on the case before the Court.

[3] Further, there is no evidence in the record before the court of an actual material difference between the check issued by Allstate a certified or cashier's check.

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> (f)(1) A lawyer shall not disburse funds from an account containing the funds of more than one client or third person ("trust account") unless the funds to be disbursed have been deposited in the account and are collected funds.
>
> (2) Notwithstanding Subsection (f)(1) above, a lawyer may disburse funds from a trust account at the lawyer's risk in reliance on the following deposits when the deposit is made:
>
> ****
>
> (iv) by a certified check, cashier's check, or other check drawn by a depository institution or an insurance company, provided the insurance company check does not exceed $50,000.

Rules of Professional Conduct: Rule 1.15, RPC, Rule 407, SCACR. Therefore, per the mandate of the South Carolina Supreme Court, there is no material difference between a check issued by an insurance company, such as Allstate, and a certified check, cashier's check, or other check drawn by a depository institution.

Because Allstate complied with the terms of the demand, Hamilton was obligated to sign the Covenant Not to Execute and resolve her claims for bodily injury.

In addition, the Court finds that Allstate's acceptance of the settlement demand constitutes an accord and satisfaction. Under South Carolina law, "[t]he essential elements of an accord and satisfaction are an agreement to settle a dispute and consideration which supports the agreement." *Wilson v. Builders Transp., Inc.*, 330 S.C. 287, 297, 498 S.E.2d 674, 680 (Ct. App. 1998). The Court finds: 1) that there was an offer to settle Hamilton's claim, 2) Allstate accepted the demand, and 3) Allstate provided the demanded consideration to support the agreement to settle Hamilton's claim. The Court finds that this is a textbook example of an accord and satisfaction.

In this case, the Court finds that Allstate complied with the material terms of the demand. As stated above, the manual check issued by Allstate is treated the same as a certified check or a cashier's check under South Carolina law. Therefore, the Court finds that Allstate's manual check

was sufficient to meet the terms of the agreement and the payment thereof constitutes an accord and satisfaction.

Finally, the Court finds based on its review of the evidence in this case, that demanding a certified or cashier's check and rejecting the check issued by Allstate without attempting to negotiate it was done for the purpose of attempting to manufacture a *Tyger River* bad faith claim. When asked by the Court why such demand letters are sent and valid settlement checks rejected, counsel for Hamilton stated it was for the purpose of "getting our clients paid quicker." The Court rejects this explanation. Specifically, the Court finds that if the true reason for requesting payment of the policy proceeds in this manner was to get the client paid quicker, counsel would have deposited the check that was hand delivered by Allstate to Hamilton's counsel on January 26, 2016. Hamilton would have been paid within 2 weeks of the demand and over two years ago.[4]

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that Allstate's Motion for Summary Judgment is hereby GRANTED and Hamilton's Motion for Summary Judgment is hereby DENIED. Accordingly, the Court declares as follows:

a. Hamilton's demand that Allstate issue a certified or cashier's check in payment of the claim is not a material term of the settlement in light of Allstate's payment of the claim with a valid insurance check;

b. The acceptance of the settlement demand, as demonstrated by Allstate's performance thereunder, on behalf of its insureds, is valid and enforceable;

c. Allstate fulfilled its obligations under the policy when it settled Hamilton's claim for the bodily injury limits of the policy;

[4] Furthermore, as discussed above, under Rule 1.15, the Law Firm can negotiate an insurance check just as quickly as a certified or cashier's check.

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d. Because the settlement agreement is valid and enforceable, Allstate and any insured under the policy, including Kathryn Broach and Kenneth Collins Coogler, have no additional obligation to Hamilton with regard to the claim for bodily injury; and

e. Because the settlement agreement is valid and enforceable, Hamilton is directed to execute the Covenant Not to Execute provided by Allstate upon receipt of the $25,000.00 in resolution of her claims for bodily injury arising from the accident that occurred on January 31, 2015.[5]

AND IT IS SO ORDERED

The Honorable Judge Michael G. Nettles
Presiding Judge

Florence, South Carolina
June ___, 2018
August 6

FILED
2018 AUG -7 PM 12:39
DORIS PAULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

[5] Allstate shall issue a second check to Hamilton, as the original check most likely has expired due to the passage of time.

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
12th JUDICIAL CIRCUIT

CASE NO: 2017-CP-21-0341

ALLSTATE PROPERTY AND CASULATY INSURANCE COMPANY,

Plaintiff,

v.

NATOSHIA HAMILTON and KENNETH COLLINS COOGLER,

Defendants

ORDER

FILED
2018 AUG 30 AM 11:44
DORIS POULOS CHARA
CCCP & GS
FLORENCE COUNTY, SC

ELECTRONICALLY FILED - 2018 Oct 12 3:18 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2100341

This matter comes before the Court by way of Defendant's "Motion to Reconsider and/or Alter or Amend Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendant Hamilton's Motion for Summary Judgment."

This Court's Order Granting Summary Judgement and Denying Plaintiff's Motion for Summary Judgment was filed on August 7, 2018. Based upon careful reconsideration of all the evidence in this case, and upon full consideration of Defendant's motion and Memorandum of Law, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid the reconsideration of the original judgment. Therefore, this Court finds that the original Order Granting Summary Judgment shall stand as it was written.

AND IT IS SO ORDERED.

August 30, 2018
Florence, SC

Michael G. Nettles, Chief Administrative Judge
Twelfth Judicial Circuit

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018- CP-21-0341

Allstate Property and Casualty Insurance Company
PLAINTIFF(S)

Natoshia Hamilton, Kenneth Collins Coogler
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ 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.

2018 AUG 30 AM 11:42
JULIE FOULOS O'HARA
CLERK OF COURT, FLORENCE COUNTY, SC

FILED

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: See attached order

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

ELECTRONICALLY FILED - 2018 Oct 12 3:18 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2100341

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.

Michael Keller — 2140 — August 24, 2018

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on the 30 day of Aug., 2018 and a copy mailed first class or placed in the appropriate attorney's box on this 6 day of Sept., 2018 to attorneys of record or to parties (when appearing pro se) as follows:

Janice Holmes / Alfred J. Cox
PO Box 7368
Columbia SC 29201
ATTORNEY(S) FOR THE PLAINTIFF(S)

Eric M. Poulin / Roy T. Willey IV, James C. Hodge
32 Ann Street
Charleston SC 29403
ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Shaug
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.

FILED
2018 AUG 30 AM 11:43
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

ELECTRONICALLY FILED - 2018 Oct 12 3:18 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2100341

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document **Notice of Appeal** was duly served upon each party to this cause by depositing the same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, properly addressed as follows:

Attn: A. Johnston Cox, Esq.
Gallivan White Boyd
1201 Main Street
Suite 1200
Columbia, South Carolina 29201

ANASTOPOULO LAW FIRM, LLC

Yvette Wideman
Litigation Paralegal to J. Camden Hodge, Esq.

Dated: This 12th day of September, 2018

ELECTRONICALLY FILED - 2018 Oct 12 3:18 PM - FflorENCE - COMMON PLEAS - CASE#2017CP2100341

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2017-CP-21-00341
	)	
	)	
Allstate,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
Natoshia Hamilton and	)	
Kenneth Coogler,	)	
	)	
Defendants.	)	
	)	

June 1, 2018
Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Alfred Johnston Cox, Esquire
Attorney for the Plaintiff

James Camden Hodge, Esquire
Attorney for the Defendant, Natoshia Hamilton

Krystal J. Smith
Circuit Court Reporter

I N D E X

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NO.	DESCRIPTION	ID.	EV.
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Now, in January of 2016, the firm that I work for, on behalf of Ms. Hamilton, sent Allstate an offer of compromise and it was time-limited, and it had a number of provisions that were to be complied with, including that the full policy limits be paid by a certain time period and that also that the check sent is certified.

Now, of course, at its heart, a motion to enforce settlement is a motion that has to have at its -- as its essence a contract. There has to be a contract in place.

Now, in response to this offer of compromise, Allstate sent back the requested affidavits of no insurance and they also issued a manual check. It was not certified. It was not in accordance with the plain language brought for a compromise, which in multiple places states if any tenet or any part of this offer is not complied with, then the offer is withdrawn. That anything else that you submit is going to be deemed a counteroffer. That's the explicit language within the offer of compromise.

Now, despite that, Allstate did come and file this present action, and they submitted a brief to Your Honor that brings up a number of points that I believe overcomplicate the issue. I mean, again, simply, this is just a -- an issue of whether or not the plain language of the offer was met.

Here, it wasn't, and kind of by analogy, a good way to look at it is if I walked into a restaurant and I see a sign

on the door that says cash only, I go in there and I buy $150 worth of food, heat my fill, walk out, and try to pay with a credit card, they're going to say no, absolutely not. There's plain language. You said it's not -- you did not comply with that plain language.

Allstate is making the argument here that the method of payment is completely immaterial or is immaterial to the contract. Now, I can think of no better and more material part of an offer and an acceptance than the method of payment. For example, the restaurant analogy, or try showing up to the closing of a house that's a cash offer with a manual check. It just doesn't work.

So to argue that that is an immaterial part of an offer of compromise, that doesn't meet with our basic tenets of contract law. To have an -- to accept an offer, you have to accept the offer on those terms.

Now, Allstate does argue that they are not a bank. They can't issue -- they can't issue a certified check. They certainly have the ability to issue a certified check, but despite that, I don't want to even -- I don't want Allstate to lead the Court down that rabbit hole. That it doesn't matter the particulars of whether or not they can. We made an offer; they chose not to accept it. That's at its heart the only issue here.

They are going to bring up, as they did in their brief,

the fact that -- well, the Rules of Professional Conduct say that I, as the plaintiff's attorney, can deposit that $25,000 manual check that they issued. Very true.

That does not speak to the materiality of the method of payment, and the materiality -- in all honesty, it's not even relevant to today's dispute. It's just whether or not they complied with the plain language of the offer of compromise. The demand in that offer of compromise could not be more clear, and they did not comply with it just based on the four corners of it, based on the face of it.

And, Your Honor, I'd be more than happy to address any other kind of arguments that Allstate does make, either in brief or through argument of counsel.

THE COURT: Very good. Yes, sir?

MR. COX: Thank you, Your Honor. Johnston Cox here for Allstate.

Your Honor, we did file a brief. Well, actually, we didn't file it yet. We emailed it to your office. I don't know if you had a chance to look at it. But I do have another copy if you --

THE COURT: Good.

MR. COX: -- want to look at it.

THE COURT: I'll take a look at it while we talk about it.

MR. COX: Please don't be scared by how thick it is.

THE COURT: All right.

MR. COX: It's -- it's got a lot of attachments to it.

THE COURT: Okay.

MR. COX: And this, Your Honor, I want to apologize to. When we filed our motion, the exhibits kind of got mixed up. So this is a corrected version --

THE COURT: Okay.

MR. COX: -- of the motion that we filed.

THE COURT: Very good.

MR. COX: With -- with -- I'm not real sure. I am still learning this filing system.

Your Honor, you know, despite what counsel says, sometimes, unfortunately, the law can complicate things, you know, and the law is what the law is. So let me just kind of give you a little background.

We -- we do have competing motions for summary judgment. Our declaratory judgment action is asking the Court to declare as a matter of law that Allstate met the demand, the material aspects of the demand, and that the bodily injury claim that Ms. -- that Ms. Goodwin [sic] has submitted is settled. Basically, to enforce the settlement or accord and satisfaction, however you want to name it.

All right. So this is -- this is what the Anastopoulo firm does. Okay? When they have a case that they believe is, you know, in excess of the policy limits that are

available, they send these long, complicated demand letters.

This one -- they have different iterations of them. So you kind of have to be very specific in reading them and trying to figure out exactly what they are requiring. This one was nine pages long with seven footnotes that have all these different technical, you know, aspects.

And the only purpose of this letter is that they send it with a very short timeframe in the hopes that the insurance company either can't figure it out, makes some technical mistake, or they simply can't do the things that are being required in the short amount of time, which then allows them a pretextual, you know, reason to reject the payment and then they sue the insured, which they have in this case.

They rejected the settlement. They sue the insured and try to go get an excess verdict with, obviously, looking down the road, then trying to argue Tyger River and that sort of thing. It's a way just to get more money for their client.

But the thing is, Judge, if you make a demand, you've got to be willing to accept it when the money comes in, and that's what's -- that's not what's happening here.

So the timeline on this thing was we got this demand letter. It was dated January the 15th. Allstate got it on the 21st of January of 2016, and it said, you know, in this one that a check with a covenant meeting all these different requirements.

Instead of sending a covenant that they would accept, they say it has to have this, it has to have that, you can't put this in there, and you can't mention this, all these footnotes, and so you've got to figure that out. And then you have to get affidavits from the insureds that there's no other coverage. And it's got the check and all this stuff has to be in their office by 5 o'clock on January 26th.

In one of the footnotes, it says settlement funds must be made by certified checks or certified bank checks, not drafts -- I made sure what that means -- issued by your insurance company. Okay?

THE COURT: Which you maintain is impossible to do?

MR. COX: Correct. Yeah. The insurance company is not a bank. They can't issue certified or cashier's checks. That's one of my arguments.

Nevertheless, Allstate gets all this done in five days. They scramble. They drop everything they're doing, which is what they have to do every time they receive one of these letters. They get the affidavits signed from their insureds. They hire John Wilkerson from Charleston to try to decipher this letter and draft a covenant that meets their exacting requirements.

And, you know, they have no process to get a certified or a cashier's check. They have no time to order a -- you know, the typed-out check that comes from Texas or somewhere.

So they handwrite a check for $25,000, which is exactly what is demanded, the amount that is demanded in their letter, and they deliver it before 5 o'clock.

So all this happens and then, typically, what is the case? This is not the first rodeo -- my first rodeo with this, as you can imagine. They just send it all back with no explanation as to what the problem is. So that leaves us no choice but to try to figure out why, which is why we bring these lawsuits to try to figure out why and get the Court to declare that it is a good settlement.

So they have admitted -- and, of course, as I've said, they've sued the insured. So there's a court case going on right now. That we responded in time. That -- that Allstate check made out -- made the check out correctly the way they wanted it. That the check is in the amount that they requested, the $25,000, and that the check was negotiable when they received it.

Now, we've learned that this is apparently their only reason for rejecting it is that it's not a certified or cashier's check, and what we're asking the Court is to declare that there is no material difference in South Carolina as a matter of law between the type of check that you get.

First of all, you know, I'm sorry the law contemplates --

THE COURT: I think there probably is a material difference, but it probably -- the question is whether or not it's the tendering of the coverage. There is a difference between a draft and certified funds, but I think the issue is whether or not Allstate tendered the coverage and whether or not the draft satisfies that.

MR. COX: Correct. And we did. And my point is that the material terms is the amount of money.

THE COURT: Right.

MR. COX: It's paying the limits. And so that's what we did.

There are several reasons. The cases that they cite. They don't cite what cases say, which is these -- there has to be a difference of material terms, not just -- there is no real mirror-image rule, but I think this all comes from, say, Florida. Frankly, they have started getting these letters from down there. There is no mirror-image rule in South Carolina. It has to be a change of material terms, which there is not here. And if there is no difference in material terms, then it's a valid settlement.

The other thing is is, you know, we took Ms. Hamilton's deposition and she couldn't come up with a reason that there was a material difference. I mean there is no evidence in this case that there is a material difference between what we delivered and what they asked for. She just said it's not

what I asked for, but there was no -- she had no concern it might bounce, that it wasn't a good check, and she admitted that it was in the amount that was requested, which is the policy -- the policy limits.

They've admitted that the check was negotiable. They just never negotiated it.

THE COURT: Right.

MR. COX: And under our Rules of Professional Conduct, Rule 1.15, our Supreme Court has already determined that there really is no material difference between a check from an insurance company in an amount under $50,000 and a certified or cashier's check. That lawyers, under our Rules of Professional Responsibility, can handle those checks as if they're the exact same thing. So they can deposit it. They can -- they can, you know, move it just as quickly as they want to out of their account.

You know, as Judge Burch said a couple months ago when he was granting this same motion that I have before you, you know, he said, look, you can't -- you need to wait on every check. You know, you can't -- any check can be fake. He went on to tell us more about how he just had a case with a lawyer who got a certified check and it was a fraudulent check and he disbursed his money too soon before it cleared and then he was stuck.

So there is no real difference anymore these days

between the type of check you get. The only thing is, is it a good check, and our check was good. There's no evidence that any check from Allstate Insurance Company has ever bounced or has not been -- not been negotiable.

And the other thing, like you mentioned, Judge, is we are not -- the industry standard in South Carolina in settling cases is this is the way it's done. You get a check from an insurance company. It's a good check. You negotiate it, and the case is settled.

There's no way that we can comply with this. Issued by your insurance company. What's to say if we get somebody else to somehow issue a check that they say it's not from the insurance company as a -- as a pretextual reason to reject the settlement, then they've got a case that they -- that they would be able to seek in excess of the policy limits?

At the root of this, Judge, really, is a civility issue, and we need to restore civility to the settlement process. This -- like I said, this is not the first time we've had to bring a lawsuit. It is not -- you know, we've won the three other cases that we've already filed. This needs to stop. It's not a game. And if they are not going to accept the money when it comes in, then they just shouldn't demand it.

So we ask the Court to rule as a matter of law that this case is settled.

THE COURT: Do you want -- do you have anything further?

MR. HODGE: Please, Your Honor.

The first -- the first thing I must address is the last thing that Mr. Cox brought up as to civility. This is the first time he and I have worked together.

MR. COX: Oh, no.

MR. HODGE: I've sat in his shoes --

MR. COX: I've got no problem with you.

MR. HODGE: -- before, and I'll take that as just an aside and that you didn't mean anything by it.

But what I would think -- what I would bring up is what he said, the great point that during Ms. Hamilton's deposition, she says it's not what I asked for.

There's no evidence in this case that they ever issued a cashier's check or a certified check. They can laugh at the demand and the offer of compromise all they want. They can just throw it in the trash. That's fine. If they don't think they can comply with it, they don't have to, but they're here today to ask the Court to say that they did comply with it and they -- and ask the Court to enforce the settlement where there was no -- no acceptance. That's not the law in South Carolina.

And I appreciate why they are pushing us in that direction, you know, that I understand their position, but that doesn't make it correct. This is a simple issue. It's did they comply with the plain language of the offer of

compromise? There's nothing illegal in this contract.

They bring up these Rules of Professional Conduct, civility, why we are doing this in the first place is some kind of Tyger River bait. None of that has anything to do with the issue.

THE COURT: You know, is that true? Is that why you do it?

MR. HODGE: Absolutely not, Your Honor. We want to get our clients paid quicker. That's why these things are time-limited. That's why we send them to the insurer and ask them for things to pay that money as quickly as they possibly can.

THE COURT: Well, if you would have cashed the draft -- the check, it would have been a lot quicker than we are right now.

MR. HODGE: It could be, and this predates me, but I can tell you as an officer of the court that I'm not here trying to bait the Court or counsel into -- into anything of bad nature, any kind of bad faith, which hasn't been alleged by counsel in this present case --

THE COURT: There is --

MR. HODGE: -- or different litigation.

THE COURT: There is in the insurance industry bad faith, but this isn't it.

MR. HODGE: I would not disagree with Your Honor at this point --

THE COURT: Right.

MR. HODGE: -- but that would be a factual question for a jury down the road.

THE COURT: I don't -- I don't believe so. I think it's a question of law, and --

MR. HODGE: Which is not before the Court today in this suit.

THE COURT: Right. Well --

MR. HODGE: And I think that doesn't have any relevance as to whether or not they complied with the offer --

THE COURT: I'll tell you what --

MR. HODGE: -- for the limited purpose of why we're here.

THE COURT: I'll tell you what I'm going to do is I am going to make a ruling that they did, indeed, comply with the demand, and I don't think that under these circumstances the plaintiffs can demand the method of payment if they don't even -- if the payment is tendered and they don't even make an effort to collect it but just for any or no reason send it back.

I think it's clearly based on the -- on the facts of this case. It's an attempt to get bad faith refusal to pay and Tyger River in trying to get excess coverage. I think that's clearly what this is all about, and I think that they did comply with the demand letter in all material ways.

I'm going to ask that -- ask that counsel for Allstate, Mr. Johnston Cox, prepare the order to that effect.

MR. COX: Thank you, Your Honor.

THE COURT: Very good.

MR. HODGE: Thank you, Your Honor.

THE COURT: All right.

(WHEREUPON, the proceedings ended at 2:54 p.m.)

--- END REQUESTED TRANSCRIPT ---

State of South Carolina)
) Certificate
County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 18, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 1st day of June, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Krystal J. Smith

Court Reporter

Florence, South Carolina

November 9, 2018

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STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Florence County
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Case No. 2017-CP-21-341
Appeal No. 2018-001675

Allstate Property and Casualty Insurance Company..... Respondent,

v.

Natoshia Hamilton and Kenneth Collins Coogler, Defendants,
of Whom Natoshia Hamilton is the Appellant.....Appellant.

CERTIFICATE OF COUNSEL

Pursuant to Rule 209(c), SCACR, counsel for Appellant certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

[Signature Block on Following Page]

ANASTOPOULO LAW FIRM, LLC



J. Camden Hodge (SC #10638)
Eric M. Poulin (SC #100209)
Roy T. Willey, IV (SC #101010)
32 Ann Street
Charleston, South Carolina 29403
Phone (843) 614-8888
Facsimile (843) 494-5536

Attorneys for the Appellant Natoshia Hamilton