

THE STATE OF SOUTH CAROLINA

ORIGINAL

In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Appellant Case No: 2012-212896

RECEIVED

JUL 24 2014

SC Court of Appeals

Charles Taylor,

Appellant,

v.

Thomas Davis and
State Farm Mutual Automobile Insurance Company, Respondent,

FINAL BRIEF OF APPELLANT

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SCRCP (58-B),4,5,6,7&8
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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

THAT ONCE A NOTICE OF APPEAL WAS FILED 6/8/11, DID THE LOWER COURT

HAVE JURISDICTION-AUTHORITY (SCACR 205) &/or ERRED;

As detailed specifically in (B-1 thru b-6) on p.5 herein?

STATEMENT OF THE CASE

(In Brief); That on 12/14/07, Charles Taylor-Appellant, brought a \$10ML action, (later amended up to \$40ML), for gross negligence against Thomas Davis--Respondent, for damages he cause in a truck accident on 9/7/07. Taylor suffered severe personal injuries (R.p.6 L.8-9 & R.p.12 L.6-7) including lifetime disabling re-injured spinal cord surgery with more needed; samples, (R.p.82-83), among others, with medical bills from \$50,000.00 to \$60,000.00 & up to \$125,000.00, and past \$135,000.00 & continues & property damages of \$110,000.00 due to load of business materials just picked up in brand new automobile--all destroyed in the accident-(admitted)-(R.p.4 para 2) & all resulting from being rear ended / sandwiched-into another car-the Brown family---by a rental truck driven by underinsured at fault driver-Davis (R.p.4 para 2) which Truck Co. paid their limits \$25T to Taylor; who then turn to his under insurer-State Farm (R.p.68 3rd para) who paid Taylor \$25T of \$200T contract coverage & later renege on other \$175T; forcing further litigation and a potential ultimate judgment for up to the \$40ML against Davis with no indemnification, per State Farm, that he would have to pay himself beyond Appellant's remaining \$175T coverage w/ SF (Total);

¹ Note Respondent State Farm drumbeat complaint throughout its brief about not wanting to be held liable for final \$1,735,000 judgment they caused (R.p.74-75); & yet they never mention the untold offers to settle well within their—Appellant's policy limit and they refused each & every time to date (R.p.74-75). The problem is that they wanted their cake & eat it too. Appellant believes they can't have it both ways; but Respondent State Farm disagrees! They believe that they can!

That on 5/17/11, the Taylor v. Davis case was tried with; Taylor's own contract-non-party under insurer-state farm attorney defending Davis (R.p.11 top & bot. rt.) who could not attend. A jury found for Taylor, awarding him \$615.00 in total damages (R.p.21) wherein there were no attempt to refute-dispute Taylor losses, as such was so obvious, thoroughly & without question documented. On 6-8-11 Taylor filed an appeal (R.p.65) on among other appealable grounds, a juror acquaintance w/the defense wasn't reveal (R.p.70) until later after trial per the \$615 for all damages p.3 above.

RELEVANT FACTS

With appeal pending, the parties reached & filed a settlement agreement for \$1,735,000.00 of the \$40,000,000.00 that was being sought; in exchange to dismiss the appeal & no further litigation against (Davis). That pursuant to the agreement-(R.p.3-4) the appeals court dismissed the appeal by its order of 6/27/11 and **thus closed the case-**(R.p.2); remitting same to the Clerk of Court for Richland County (R.p.2). That Taylor later on 8/18/11 filed a motion (R.p.28) to the lower Court asking administratively per, (SCRCP 58b, the Appeals Court Order, & the agreement), to enter the final \$1,735,000.00 judgment-(R.p.4 #4d). The Lower Court entered final judgment pursuant to the agreement which, among other things, vacated, (R.p.4 L.4-d), the initial erroneous \$615.00 damages award, replacing it retroactively with final \$1,735,000.00 judgment (R.p.10 L.4-5) total damages to appellant in its 7/17/12 order-(R.p.10 L.4-5); & the lower Court then went beyond-to
rule as follows on p.5 B-1 thru B-6 on the next page—the reasons for this appeal.

² Note Importantly That: If Appellant could just sum it up---essentially---Respondent State Farm don't want to acknowledge---for obvious reasons---that the Final \$1,735,000.00 Judgment entered 7/17/13 (R.p.10 L.4-5) vacated & replaced (R.p.4 L.4d) the erroneous \$615.00 one (R.p.21).

ARGUMENT

(Discussion and Citation of Authority)

APPELLANT ARGUES: THAT ONCE NOTICE OF APPEAL WAS FILED 6/8/11,
(R.p.65) THE LOWER COURT HAD NO JURISDICTION-AUTHORITY (SCACR 205)

&/or erred; (as detailed per B-1 thru B-6 below):

(A-1). [Except of course so as to enter the Court Final \$1,735,000.00 Judgment--(R.p.2-5)
per Appeals Court Agreement Order of 6/27/11 (R.p.2-5); & per appellant motion
request 8/18/11 (R.p.28) to enter same per SCRCP 58-b (R.p.36 L.6-7)] otherwise erred;

(B-1). To rule, without motion (SCRCP 7-b) & (R.p.41-42 & R.p.6. L.1-5 & R.p.43-64) for non-party

State Farm (R.p.69) in the closed Appeals Court Case (R.p.2-5);

- b-2. That state farm had no other financial duty to appellant in the matter; (R. p. 9 L. 20);
(see R.p.2-5 & R.p.10 L.4-5 & R.p.87 top right L.5 thru item #1 therein the *contract*);
- b-3. That state farm obligations in the matter were exhausted w/initial \$615; (R.p.9 L.17);
(see R.p.70 & R.p.4 (4)d & R.p.2-5 & para. below bottom this page & R.p.10 L.4 thru p.11);
- b-4. That state farm not required to participate in the \$1,735,000.00 judgment; (R. p. 10);
(see R.p.4 (4)d & R.p.2-5 & para. bot. this pg & (R.p.68 3rd para. & R.p.87 right L.5- #1);
- b-5. That state farm attorney did not represent defendant Davis (R.p.9 L.13-14 & L.21-22);
(see R.p.11 Top & Bot Right & R.p.21 bottom right & R.p.43 under appearances & R.p.44 L.4&20)
- b-6. That appellant also alleges the lower court, even if it had authority to rule; erred to
rule as per above without even seeing--let alone reviewing, the subject under insured
contract provisions to see what they provided for between parties (R.p.87 right L.5 thru #1);

Further

& Another Main Point: Note with great emphasis that the initial \$615 award was vacated &
replace w/the \$1,735,000 (R.p.4 L.4d & R.p.10 L.4 thru R.p.11) & the b-3 ruling above should especially,
specifically & accordingly be [reversed] as prima facie contradictory err; [in that] the initial

award for all purposes was legally \$1,735,000.00--not the \$615--thus State Farm obligations per b-3 above, exhausts accordingly--(EMPHASIS!!)--to this most salient err by the Lower Court; even if it had Jurisdiction--Authority, to rule in the case and on the subject matter; & further reason to reverse (B-1 thru b-6 p.5 above) is because: The Lower Court rulings on these was done without motion (R.p.6 1st para. & R.p.41-42) of any party (SCRCP 7-b) & in a closed Appeals Court Case that had ended (R.p.2-5). Appellant's simple motion above A-1 p.5; required only simple entry per, SCRCP 58b (R.p.36 L.6-7); Because beyond that, Respondent State Farm-themselves had earlier caused the subject \$1,735,000.00 final judgment in several instances & in each & every instance could've avoided such if they wanted to beforehand; (R.p.74-75 & R.p.70).

³ Note w/great emphasis: (R.p.13 last para.) especially in that light & (R.p.76 Atty. Tyler's letter); and square these with Respondent State Farm's assertions in its brief; (p.1 2nd para. L.5 "After defense counsel withdrew from the case and while there was no counsel for Davis, Appellant then sought and was awarded an uncontested judgment against Davis for \$1,500,000.00 on June 19, 2009 based upon a Rule 68 SCRCP Offer of Judgment which had been accepted by Davis"); Again, see the just above referenced in the (R.p.76 & 13 bottom) for the truth of that matter & the deliberate falsehoods by Respondent State Farm so that they can prevail at whatever cost.

⁴ Also note w/same emphasis & light: Ref. the (R.p.71-73) Appellant's True Certified Correct Copies and (R.p.67) Respondent State Farm's altered copy and view same in light of their brief p.1 @ bottom & their brief p.4 2nd para. & @ bottom that page, as to the subject covenant and in light of the undisputed damages (R.p.76 & R.p.13 last para. & R.p.4--#2) suffered therein & p.3 above.

CONCLUSION

Accordingly-Appellant Seeks the Following Relief:

Declare the Lower Court Rulings;

(B-1 thru b-6)

p.5 above was done without

Jurisdiction-Authority &/or Erred

Pursuant to SCACR 205, SCRCP 58b, 7b,

& Any/All other Applicable Authorities

& accordingly should be

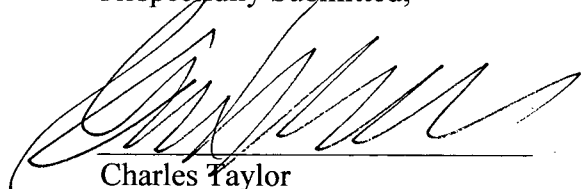
REVERSED &

That the Final Judgment \$1,735,000.00 (R.p.10 L.4-5) be properly included & recorded per form 4 (R.p.11); to include correctly named: State Farm Mutual Automobile Insurance Company; (which it managed to evade before per (R.p.69); (until their *inclusion* in this Court's 2/15/13 order--1st time as a proper defendant-respondent).

s Finally: Note that Respondent State Farm's whole argument essentially is that; Appellant asked the lower court via motion (R.p.41 & R.p.42 & R.p.6 1st para.) & that door then gave the lower court the necessary jurisdiction-authority to rule B-1 thru B-6 p.5 herein above to State Farm and Appellant says---even with an appellant's motion (R.p.41-42)---can anyone who may want, for whatever reason--as State Farm in the instant case wanting--a different Appeals Court Ending than in the instant case, (R. p. 2 thru 5), can they say; well--we'll just go back to the lower court & ask for a different ruling B-1 thru B-6 p.5 herein above, & because it's asked via whatever appellant's motion (R.p.41-42), then that confers jurisdiction-authority, otherwise not there, to the lower court to rule to Respondent State Farm, in the instant case, B-1 thru B-6 p.5 herein above; **Appellant Disagrees with Respondent State Farm's argument; because if such rulings, B-1 thru B-6 p.5 herein above are affirmed, then the above—back to the lower court from the Appeals Court, as State Farm here-----will thereafter be the end result by this precedent.**

Also Appellant believes that such requests by State Farm for the B-1 thru B-6 p.5 rulings herein, should not have been back to lower court as in the instant case (SCACR 221&242) but that such requests by Respondent State Farm should have been instead in the Appeal's Court Proceedings at the first appeal (R.p.65 & 2-5) within the allotted time for filing such by respondent state farm or thereafter be barred (R.p.2-5 & scacr L.2 above) from asking for such rulings as B-1 thru B-6 p.5 herein almost a year later from 6/27/11 case close at Appeals Court (R.p.2-5) to 5-7-12 (R.p.6 top) in a lower court hearing (R.p.41-42) to enter the 6/21/11 final judgment that the lower court clerk office was ask to & should have entered promptly pursuant to SCRCRCP 58-b (R.p.36 L.6-7) in the first instance; and then the B-1 thru B-6 rulings per p.5 herein above would--could never have occurred and thus such rulings B-1 thru B-6 p.5 herein should be reversed per conclusion on top of p.7 herein.

Respectfully Submitted,



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July 23, 2014

6 VERY IMPORTANT LAST NOTE: That Appellant gave up his right to further appeal in exchange for the 6/27/11 Appeals Court Agreement Order (R.p.2-5); note that Respondent State Farm never mentioned that they would have been liable for any final judgment up to the \$40,000,000.00 (R.p.84) amount then being sought against Respondent Davis if when the 1st appeal was reversed (R.p.70) absent the subject agreement (R.p.4 & 2-5). Simply put, Respondent State Farm could--should have settle within Appellant policy limits (R.p.74-75) & (R.p.68 3rd para.) if in fact they wish not to be subject to the \$1,735,000.00 final judgment (R.p.76 & R.p.13 last para. & R.p.4 L.4d et al; & R.p.10 L.4-5) that they caused by their refusal to settle (R.p.74-75) & otherwise (R.p.70); which all led to everything else.

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the; **Final Brief of Appellant;** complies with rule 211(b).

July 23, 2014

BY: 

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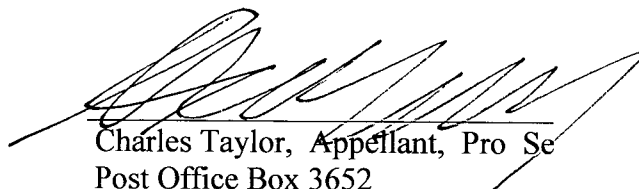
v.

Thomas Davis and
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PROOF OF *SERVING & FILING* of FINAL BRIEF OF APPELLANT

Appellant hereby certifies that copies of his; **Final Brief of Appellant**; following this Court's 6/9/14 Order; was served as addressed below upon Respondent Thomas Davis & Respondent State Farm Mutual Automobile Insurance Company to its counsel below, on the date shown below; with 1 original + 14 copies **FILED** to this Court by depositing same in the U.S. Mail, from Sumter, SC. on the same date below, w/1st class duly affixed postage & a return address clearly indicated thereon.

Date: July 23, 2014


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