

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case Number: 2012-CP-02-00392

Marsha Temples..... Appellant

v.

Neil O. Plush..... Respondent

BRIEF OF APPELLANT

JOHN W. CARRIGG, JR.
137 East Butler Street, Suite 6
Lexington, South Carolina 29072
Telephone: (803) 785-5511
Facsimile: (803) 785-5513

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE COURT ERR IN GRANTING RESPONDENT'S MOTION TO DISMISS?
 - A. APPELLANT WAS ENTITLED TO HAVE HER CASE RESTORED TO THE DOCKET.
 - B. THE STATUTE OF LIMITATIONS DEFENSE WAS NOT AVAILABLE TO RESPONDENT BECAUSE RESPONDENT DID NOT PLEAD STATUTE OF LIMITATIONS AS A DEFENSE IN THEIR ANSWER.
 - C. RESPONDENT WAS ESTOPPED FROM ASSERTING THE STATUTE OF LIMITATIONS AS A DEFENSE PURSUANT TO THE DOCTRINE OF PROMISSORY ESTOPPEL.

STATEMENT OF FACTS

This case is presented on appeal based upon procedural issues only. The relevant facts are that Appellant was involved in a motor vehicle collision in Aiken County on August 8, 2003 with Respondent and sustained personal injury. Thereafter an action was commenced by Appellant against Respondent by the filing of a summons and complaint on August 2, 2006. Respondent was served with the summons and complaint on August 31, 2006. Respondent filed his Answer on August 31, 2006. Appellant has Underinsured Motorist Coverage.

STATEMENT OF THE CASE

This case involves an action arising from an automobile collision that occurred in Aiken County on August 8, 2003. Appellant commenced an action against Respondent by the filing of a summons and complaint on August 2, 2006. Respondent was served with the summons and complaint on August 31, 2006. Respondent filed his Answer on August 31, 2006. Appellant settled the action with Respondent and his Liability Carrier. The case was dismissed pursuant to Rule 40(j) SCRPC by consent order entered on August 24, 2007. On September 12, 2007, Appellant executed a Covenant Not to Execute with Respondent in exchange for payment of the

limits of liability insurance coverage. Appellant's Underinsured Carrier was served Pursuant to S.C. Code Sections 38-5-70, 38-77-160, and 15-9-270 with the summons and complaint on July 28, 2008. Appellant's Counsel filed and served a Notice of Appearance on August 25, 2008. Respondent filed no additional or amended answer and thus adopted the answer originally filed by Respondent. On February 26, 2009 Respondent issued eleven (11) subpoenas for the production of documents to various medical providers who treated Appellant. On January 3, 2012 Appellant mailed a motion to restore the case to the docket to the Clerk of Court for Aiken County with a proposed order and appropriate filing fees for the motion. The filed motion was not returned to Appellant for service. Instead Appellant received a filed Order dated February 14, 2012, restoring the case to the docket, along with the filed motion to restore the case. Both documents were filed on February 14, 2012. The Clerk of Court served the Order on Appellant but through error served the Respondent's former attorney (Liability Insurance Carrier attorney). The Clerk did not serve the Order on Respondent's Underinsured Carrier attorney. Appellant served the filed motion to restore the case and the filed order restoring the case on Respondent's underinsured attorney on February 16, 2012. Respondent filed and served his Motion to Dismiss on March 13, 2012. The only ground for dismissal alleged in the motion was the statute of limitations. A hearing was held on April 9, 2012. The Court entered an Order granting Respondents Motion to Dismiss on June 19, 2012. Appellant served her motion for reconsideration on July 2, 2012. Appellant was notified via email on July 11, 2012 that Appellants motion for reconsideration was denied. Appellant served her Notice of Appeal on August 8, 2012. Subsequently Appellant received an order denying her motion for reconsideration entered July 16, 2012.

ARGUMENT

I. DID THE COURT ERR IN GRANTING RESPONDENT'S MOTION TO DISMISS?

A. APPELLANT WAS ENTITLED TO HAVE HER CASE RESTORED TO THE DOCKET.

In this case Respondent filed a motion to restore her case to the active docket pursuant to Rule 40(j) SCRCP. After the motion to restore was received by the Aiken County Clerk of Court along with a proposed order; instead of scheduling a Motion Hearing the Order restoring the case was executed by the Court and entered on February 14, 2012. No motion to reconsider pursuant to Rule 59(e) SCRCP was filed by the Respondent; instead their Motion to Dismiss was filed. The only ground alleged in Respondents motion to dismiss was the statute of limitations. The question before the lower Court was, "does the Appellant have a right to have the case restored to the docket if the case was previously dismissed pursuant to Rule 40(j) SCRCP?"

The Respondent asserts that since more than one year has elapsed since the case was dismissed the Appellant should not be allowed to restore the case to the docket based upon the defense of statute of limitations. The *only* ground for dismissal raised in Respondents Motion to Dismiss is that the statute of limitations had expired. (R. pp. 54-57). The defense of statute of limitations is an affirmative defense and must be pleaded in order to be asserted. *Dunbar v. Carlson*, 341 S.C. 261, 533 S.E.2d 913 (S.C.App. 2000), Rule 8, SCRCP. The Answer on file in this case does not plead the statute of limitations as a defense. (R. pp. 7-11). Since no motion pursuant to Rule 59(e) SCRCP was filed and the statute of limitations was not available to be asserted at that time the question becomes whether Rule 40(j) SCRCP provides for any procedure or objection to reinstatement that can be asserted by a party to the action. Appellant would show that it does not.

Rule 40(j), SCRCP states:

(j) Case Stricken From Docket by Agreement. A party may strike its complaint, counterclaim, cross-claim or third party claim from any docket one time as a matter of right, provided that all parties adverse to that claim, counterclaim, cross-claim or third party claim agree in writing that it may be stricken, and all further agree that if the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored. A party moving to restore a case stricken from the docket shall provide all parties notice of the motion to restore at least 10 days before it is heard. Upon being restored, the case shall be placed on the General Docket and proceed from that date as provided in this rule.

Rule 40(j) clearly does not provide for any objection by a party to the case being restored to the active docket. That does not prejudice the party from asserting defenses at a later time but the party seeking to restore the matter has the right to have the case restored. In *Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (S.C. 2003), The Supreme Court reversing the Court of Appeals stated as follows:

Rule 40(j) does not **require** that a party move to restore the case to the docket within one year after it was stricken. Instead, the unambiguous language provides that, **if** the claim is restored within one year after it is stricken, the statute of limitations is tolled for that period. This conclusion is supported by the Notes to Rule 40 ("Rule 40(j) now requires all adverse parties to consent to the dismissal in writing, but, the consent also operates to toll the statute of limitations for one year after the case is stricken from the docket as to each consenting party.") and language in *Graham v. Dorchester County School Dist.*, 339 S.C. 121, 125, 528 S.E.2d 80, 82 (Ct.App.2000) (Rule 40(j) requires motions to restore within one year of case being stricken "to take advantage of the tolling of the statute of limitations."). A party can move to restore a case to the docket more than one year after the claim was stricken without running afoul of Rule 40(j); the party simply cannot take advantage of the one year tolling period provided by the rule. Accordingly, the Court of Appeals erred by holding the Maxwell's were required to file their motion to restore within one year of April 13, 1999.

Maxwell v. Genez, 356 S.C. 617, 591 S.E.2d 26 (S.C. 2003) (emphasis in the original)

Here the lower court erred in dismissing Appellant's case. Appellant was entitled to have her case restored to the active docket and have an opportunity to address other issues of law in opposition to a motion to amend or motion for summary judgment.

B. THE STATUTE OF LIMITATIONS DEFENSE WAS NOT AVAILABLE TO RESPONDENT BECAUSE RESPONDENT DID NOT PLEAD STATUTE OF LIMITATIONS AS A DEFENSE IN THEIR ANSWER.

Respondent did not plead the statute of limitations as a defense in their answer. (R. pp. 7-

11). Instead they raised the defense for the first time by motion. (R. pp. 54-57). Rule 12(b)

SCRCP specifically states as follows:

(b) How Presented. *Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:* (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim. A motion making any of these defenses shall be made before pleading if a further pleading is permitted.

Rule 12 SCRCP. (Emphasis added)

Respondent did not plead the statute of limitations as a defense in his answer in this case and therefore they have not complied with Rule 12(b) SCRCP, and may not assert said defense by motion. Further, under Rule 8 SCRCP, respondent is required to plead the statute of limitations as a defense in order to assert it. Since Respondent had not pleaded the statute of limitations as a defense the lower court erred by allowing Respondent to raise that defense by motion in direct contradiction to Rule 12(b) SCRCP.

Rule 8(c) SCRCP sets forth a rule requiring that parties assert certain defenses in their responsive pleadings or the same are waived. Rule 8(c) states:

c) Affirmative Defenses; Reply. In pleading to a preceding pleading, a party *shall set forth affirmatively the defenses:* accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality, injury by fellow servant, laches, license, misrepresentation, mistake, payment, plene administravit or the administration of the estate is closed, recrimination, release, res judicata, statute of frauds, *statute of limitations*, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a

defense, the court shall treat the pleading as if there had been a proper designation. A party may file a reply to any of the foregoing affirmative defenses.

Rule 8 SCRPC. (Emphasis added).

This rule has been construed time and time again to require that a party plead the defense of statute of limitations or the defense is waived. In this case the Respondent did not plead the statute of limitations as a defense. Nor did Respondent move to amend his answer to assert the defense of statute of limitations. It is clear under South Carolina law that the statute of limitations must be pled for a party to avail themselves of the defense. Affirmative defenses set forth in Rule 8(c) SCRPC must be pleaded and may not be bootstrapped by defendants. Failure to properly plead insufficiency of service of process waives the defense of service of process and statute of limitations. *Unisun Insurance v. Hawkins*, 342 S.C. 537, 537 S.E.2d 559 (S.C. App. 2000). Statute of limitations defense is required to be pleaded to be asserted. *Dunbar v. Carlson*, 341 S.C. 261, 533 S.E.2d 913 (S.C. App. 2000). Failure to plead an affirmative defense set forth in Rule 8(c) SCRPC is considered a waiver of the defense. The defense of laches, much like statute of limitations, is an affirmative defense that must be pleaded. Rule 8(c), SCRPC. The failure to plead an affirmative defense is deemed a waiver of the right to assert it. *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (S.C. 2002).

As stated by the Court in *Davie v. Atkinson*, 281 S.C. 102, 313 S.E.2d 648 (S.C. App. 1984):

The appealed order is fatally erroneous because the reason for entry of judgment for respondents is based upon appellants' causes of action being barred by the statutes of limitation; this defense was not pleaded by respondents and therefore not available to them. A statute of limitation is an affirmative defense which must be raised by answer. Section 15-13-360, S.C. Code of Laws, 1976. Furthermore, a limitation statute is a statute of grace, permitting the avoidance and evasion of liability in applicable cases; and while given recognition when pleaded, it has never been favored by the courts. *Scovill v. Johnson*, 190 S.C. 457, 3 S.E.2d 543 (1939). *Davie v. Atkinson*, 281 S.C. 102, 313 S.E.2d 648 (S.C. App. 1984):

Clearly, the Respondent in this case never properly pleaded the statute of limitations as a defense in this matter and therefore the lower court erred by granting respondents motion based upon a defense that was not properly before the court. It is error for a lower court to decide a case based upon a ground that is not properly before it. *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 599 S.E.2d 462 (S.C.App. 2004), *Griffin v. Capital Cash*, 310 S.C. 288, 294, 423 S.E.2d 143, 147 (Ct.App.1992).

It is well settled in the law that a party may waive the statute of limitations defense by words or conduct. Waiver of [the statute of] limitations may be shown by words or conduct. Thus, waiver may result from express agreement, ... from failure to claim the defense, or by any action or inaction manifestly inconsistent with an intention to insist on the statute. *Mende v. Conway Hosp., Inc.*, 304 S.C. 313, 404 S.E.2d 33 (S.C. 1991). Here the underinsured carrier was served immediately before the tolling provision imposed by Rule 40(j) expired, and initiated discovery six months after they now claim the action was foreclosed by the statute of limitations. (R. pp. 20-49).

The defense of statute of limitations was not available to Respondent and the Court erred by applying the defense in this case.

C. RESPONDENT WAS ESTOPPED FROM ASSERTING THE STATUTE OF LIMITATIONS AS A DEFENSE PURSUANT TO THE DOCTRINE OF PROMISSORY ESTOPPEL.

To be entitled to collect underinsured motorist benefits a claimant is required to serve the pleading establishing liability on the underinsured carrier. S.C. Code Section 38-77-160, 38-5-70 and 15-9-270, our underinsured motorist statute is remedial in nature and enacted for the benefit of injured persons; It should be construed liberally to affect the purpose intended by the legislature. *Burgess v. Nationwide Mutual Insurance Co.*, 361 S.C. 196, 603 S.E.2d 861 (S.C.App. 2004); *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 626 S.E.2d 6 (S.C. 2005);

Franklin v. Devore, 327 S.C. 418, 489 S.E.2d 651 (S.C.App. 1997); *South Carolina Farm Bureau v. Koontz*, 314 S.C. 487, 431 S.E.2d 252 (S.C. 1993).

The underinsured motorist statute, S.C. Code Section 38-77-160 is a notice statute not a statute of limitations. *South Carolina Farm Bureau v. Koontz*, 314 S.C. 487, 431 S.E.2d 252 (S.C. 1993), *Franklin v. Devore*, 327 S.C. 418, 489 S.E.2d 651 (S.C. App. 1997).

Here, the Respondent entered into a contract with Appellant agreeing that Appellant could sue the Respondent in court to recover underinsured motorist coverage that Appellant had paid for. (R. pp. 14-16). In exchange for that agreement Appellant agreed to never pursue collection of any judgment rendered in the case against Respondent personally. Further, the underinsured carrier may not limit the manner in which Appellant settles with Respondent or the terms of the settlement. S.C. Code Section 38-77-160 states as follows:

... In the event the automobile insurance insurer for the putative at-fault insured chooses to settle in part the claims against its insured by payment of its applicable liability limits on behalf of its insured, the underinsured motorist insurer may assume control of the defense of action for its own benefit. **No underinsured motorist policy may contain a clause requiring the insurer's consent to settlement with the at-fault party.**

S. C. Code Section 38-77-160, (Emphasis added).

Clearly based upon the language of the statute the underinsured Carrier may assume control of the defense or “step into the shoes” of the defendant in the case; but the statute strictly prohibits the underinsured carrier from requiring their consent to settle a case, by natural extension the underinsured carrier would also be prohibited from controlling or dictating any terms of the settlement. Here the underinsured carrier is attempting to use the statute of limitations as a defense when Respondent should be estopped from asserting the same. Effectively to allow Respondent to assert the defense of statute of limitations would deprive the Appellant of the benefit of her bargain with Respondent when she entered into the Covenant Not

Appellant of the benefit of her bargain with Respondent when she entered into the Covenant Not to Execute and limited her ability to recover damages to her underinsured motorist benefits which she purchased and paid for.

Respondent entered into a Covenant Not to Execute specifically agreeing that he could be sued in court to allow Appellant to recover underinsured motorist benefits. Appellant would assert that the statute of limitations does not apply to an underinsured carrier and further that the underinsured carrier may not assert the statute of limitations when the respondent himself has specifically and without reservation agreed to allow himself to be sued in court so that Appellant may recover underinsured motorist benefits which she paid for. Here respondent specifically entered into a Covenant with Appellant and agreed as follows:

“1. In the event the [Appellant] is unable to resolve by agreement and settlement of her claim with the underinsured carrier, the [Appellant] *shall have the right to bring suit* against [Respondent] and prosecute the same to final judgment.” (R. p. 14); Emphasis added.

This provision is not merely a recital as stated in another provision of the same agreement:

“6. All provisions and recitals in this Covenant are intended to be and are covenants of the parties and are a material part of this agreement and binding on the parties hereto” (R. p. 15).

First it is important to note that this agreement was entered into after the case had been dismissed pursuant to Rule 40(j) SCRCPP; and after the statute of limitations had expired on any cause of action Appellant had against Respondent. Importantly the Covenant envisions the Appellant “bringing suit” against respondent in the future. The language of the Covenant does not in any way limit how or when the suit must be brought against Respondent. In fact the

may be brought. However, it is clear that Respondent gives Appellant the *right* to bring an action. This Covenant unlike many others that limit the Plaintiff to continuing a presently filed action or bringing an action within a certain period, places no limitation on Appellant. Appellant would assert that the doctrine of promissory estoppel would prevent Respondent and likewise the underinsured carrier from asserting the statute of limitations as a defense when the Respondent specifically entered into a contract with a specific provision giving the Appellant the right to bring suit against the respondent after the running of the statute of limitations. (i.e. the contract was entered into by Appellant and Respondent after the statute of limitations had expired). Appellant would contend that the underinsured carrier “steps into the shoes” of the defendant but clearly they must wear the shoes that they find themselves in.

The doctrine of promissory estoppel was first recognized by our Supreme Court in the case of *Higgins Constr. Co. v. S. Bell Tel. & Tel. Co.*, 276 S.C. 663, 281 S.E.2d 469 (1981). In *Higgins*, the court explained the doctrine of promissory estoppel, stating, “An estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice.” *Higgins, Supra.*

In *Barnes v. Johnson* (Op. No. 5079 S.C. Ct App 2013), the Court set forth the standard for promissory estoppel to apply. In that case the Court stated:

Under the *Higgins* case and its progeny, the party asserting promissory estoppel must demonstrate: (1) a promise with unambiguous terms; (2) reasonable reliance upon the unambiguous promise; (3) foreseeability of the promisee's reliance; and (4) injury sustained in relying on the promise because of the promisor's inconsistent disposition. *Id.*; *Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (2005). Notably, neither meeting of the minds nor consideration is a necessary element. *Satcher v. Satcher*, 351 S.C. 477, 484, 570 S.E.2d 535, 538 (Ct. App. 2002). Thus, in the interest of equity, the doctrine “looks at a promise,

its subsequent effect on the promisee, " and where appropriate "*bars the promisor* from making an inconsistent disposition of the property." *Id.* (emphasis added).

Although promissory estoppel is a flexible doctrine that aims to achieve equitable results, it, like all creatures of equity, has limitations. *See Craft v. S.C. Comm'n for Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009) (withholding the equitable remedy from an injury independent from the promisor's inconsistent disposition); *Rushing v. McKinney*, 370 S.C. 280, 295, 633 S.E.2d 917, 925 (Ct. App. 2006) (holding absence of clearly articulated terms between parties precludes recovery in promissory estoppel). Specifically, the doctrine's elements represent a balancing between affording a remedy where contract law cannot, and ensuring the doctrine's application is not, itself, an inequity against the party estopped. *See Satcher*, 351 S.C. at 484, 570 S.E.2d at 538-39 (reasoning even absent a meeting of the minds and exchanged consideration, sufficient proof for enforcement still exists if there is an unambiguous promise, reasonable reliance, foreseeability, and related injury); *see e.g., Craft*, 385 S.C. at 564-68, 685 S.E.2d at 627-29 (refusing to apply promissory estoppel to remedy an injury occurring after a blind vendor's reliance upon an unambiguous promise, because the complained of harm resulted independently from the promisor's inconsistent. *Barnes v. Johnson* (Op. No. 5079 S.C. Ct App 2013),

Here the procedural facts in question meet the standard set forth by our courts for the doctrine of promissory estoppel to apply. A promise was made in unambiguous terms. The Respondent agreed that Appellant could "bring suit" against Respondent if she was unable to settle or resolve her claim against the Underinsured carrier. There is no ambiguity whatsoever in the terms of the promise. Appellant reasonably relied upon Respondent's promise and clearly since the promise was made after the expiration of the statute of limitations it was clearly foreseeable that Appellant would "bring" an action against Respondent if she could not settle her claim with the underinsured carrier. Now the underinsured carrier seeks to assert the statute of limitations as a bar to allowing the Appellant to do the very thing Respondent promised to let her do. To allow the underinsured carrier to assert the statute of limitations under the facts of the present case would constitute an injustice to Appellant and accordingly the Court should reverse the holding of the lower court in this matter. *Craft v. South Carolina Com'n for Blind*, 385 S.C. 560, 685 S.E.2d 625 (S.C.App. 2009); *Rushing v. McKinney*, 370 S.C. 280, 633 S.E.2d 917

(S.C.App. 2006); *Satcher v. Satcher*, 351 S.C. 477, 570 S.E.2d 535 (S.C.App. 2002); *Powers Const. Co., Inc. v. Salem Carpets, Inc.*, 283 S.C. 302, 322 S.E.2d 30 (S.C.App. 1984).

Respondent may assert that the underinsured carrier is not bound by any agreement made by Respondent based upon the holding in *Broome v. Watts*, 319 S.C. 337, 461 S.E.2d 46 (S.C. 1995). However, that case is distinguishable. In *Broome* the plaintiff entered into a covenant with defendant that waived the right to a jury trial for defendant and waived home venue. There the court decided that the right to a jury trial was a substantial right, the waiver of venue is not addressed in the opinion. The defense of statute of limitations is not a “right” in the same manner that the right to a jury trial is. Jury trials are guaranteed by our State and Federal Constitutions. The statute of limitations is merely a time limit established by statute. Further, in *Broome* the underinsured carrier’s attorney filed an answer demanding a jury trial. Here the underinsured carrier did not file an answer or a motion to amend their answer and thus are bound by the pleading on file for the respondent.

Respondent and the underinsured carrier should not be allowed to avoid Respondent’s commitment any more than the underinsured carrier should be allowed to deny or avoid Respondent’s actions if they gave rise to punitive damages. *O’Neill v. Smith*, 695 S.E.2d 531 (S.C. 2010)(holding Underinsured carrier is liable for punitive damages even though terms of Covenant Not to Execute relieve at-fault defendant of any personal or contractual obligation for punitive damages).

Further, Respondent may assert that the underinsured carrier should be able to assert the statute of limitations based upon the holding in *Williams v. Selective Ins. Co. of Southeast*, 315 S.C. 532, 446 S.E.2d 402 (S.C. 1994), however that case again is clearly distinguishable, in that case the plaintiff did not file and serve a summons and complaint prior to the expiration of the

statute of limitations. Here Appellant filed and served a summons and complaint prior to the statute of limitations expiring and served the underinsured carrier in the manner provided by law as required by S.C. Code sections 38-77-160, 38-5-70 and 15-9-270. (Certificate of service pursuant to S.C. Code Sections 38-5-70 and 38-77-160 dated July 28, 2008).


In this case the Court erred in failing to consider and apply the doctrine of Promisory Estoppel. The Court further erred in dismissing Appellants case based upon the statute of limitations without considering or applying the doctrine of Promisory Estoppel.

CONCLUSION

Accordingly for the reasons stated above the ruling of the lower court should be reversed and this matter should be remanded to the lower court for trial to allow Appellant to pursue this matter to final judgment so that she may collect all sums due under her Underinsured coverage.

Respectfully submitted,

September 11, 2013



JOHN W. CARRIGG, JR.
137 E. Butler Street, Suite 6
Lexington, South Carolina 29072
Phone: (803) 785-5511
Facsimile: (803) 785-5513
Attorney for Appellant

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case Number: 2012-CP-02-00392

Marsha Temples..... Appellant

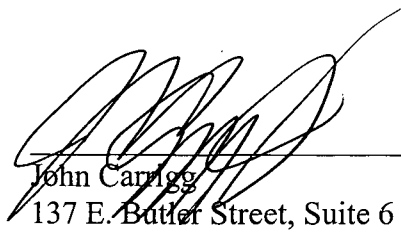
v.

Neil O. Plush..... Respondent

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211 (b), SCACR.

September 23, 2013



John Carrigg

137 E. Butler Street, Suite 6
Lexington, South Carolina 29072
(803) 785-5511
Attorney for Appellant

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SC Court of Appeals

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Doyet A. Early, III, Circuit Court Judge

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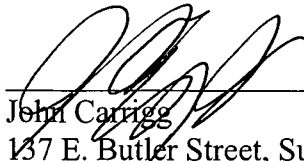
v.

Neil O. Plush..... Respondent

PROOF OF SERVICE

I certify that I have served the Brief of the Appellant and Record on Appeal on the above-listed Respondent by depositing a copy of it in the United States Mail, postage prepaid, on September 17, 2013, addressed to Respondent's attorney of record as detailed below.

September 17, 2013



John Carrigg
137 E. Butler Street, Suite 6
Lexington, South Carolina 29072
(803) 785-5511
Attorney for Appellant

Other Counsel of Record:

Sonya R. Tate, Esquire
Fulcher Hagler, LLP
Post Office Box 1477
Augusta, Georgia 30903-1477
Attorney for Respondent

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