

ORIGINAL

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
J.C. Nicholson, Jr., Circuit Court Judge

---

Appellate Case No. 2013-0013816577

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RECEIVED  
OCT 10 2013  
SC Court of Appeals

Centennial Casualty Co., Inc. .... Respondent

• v.

Western Surety Co., d/b/a CNA Surety ..... Appellant

Western Surety Co., d/b/a CNA Surety ..... Defendant/Third-Party Plaintiff

v.

Charleston Auto Auction, A3 Auto Center, LLC, and  
Wylie Mickle, ..... Third-Party Defendants

---

**RECORD ON APPEAL**

---

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-10-6577

Centennial Casualty  
PLAINTIFF(S)

Western Surety  
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.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other \_\_\_\_\_
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other \_\_\_\_\_
- ☐ 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: Motion for Reconsideration is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

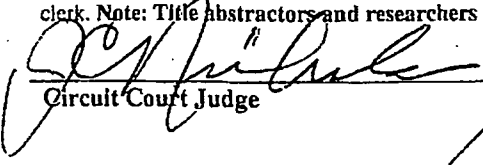
INFORMATION FOR THE JUDGMENT INDEX

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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| 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.

  
Circuit Court Judge

2117  
Judge Code

5/7/13  
Date

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CENTENNIAL CASUALTY CO., INC., )

CASE NO.: 2009-CP-10-6577

Plaintiffs, )

vs. )

WESTERN SURETY COMPANY, d/b/a )  
CNA SURETY, )

Defendant. )

WESTERN SURETY COMPANY, )  
d/b/a CNA SURETY, )

Defendant/Third-Party Plaintiff, )

vs. )

CHARLESTON AUTO AUCTION, A3 )  
AUTO CENTER, LLC and WYLIE )  
MICKLE, )

Third-Party Defendants. )

FILED  
2013 MAR -4 AM 9:41  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

**ORDER**

The parties have submitted a stipulation of facts, legal memoranda, and exhibits in this action, and agree that the case is ripe for a decision. The Court has reviewed the briefs, exhibits, and relevant law, and rules as follows.

**FINDINGS OF FACT**

**1. The Dealer Bond Statute**

South Carolina's licensing statute for motor vehicle dealers requires a surety bond under S.C. Code § 56-15-320(B) (the "Dealer Bond Statute"). The Dealer Bond Statute

requires motor vehicle wholesalers or dealers to obtain a bond in order to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

*Id.* (emphasis added). The statute allows that "An [automobile] owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter." *Id.*

## 2. Charleston Auto Auction and A3 Auto Center



The undisputed evidence shows that Charleston Auto Auction is a wholesale auctioneer that facilitates the sale and purchase of automobiles among dealers. Centennial and Charleston Auto Auction have submitted an affidavit and accompanying documents indicating that Charleston Auto Auction acts as the agent and legal representative for the dealerships in the transactions; collects and conveys the funds for the automobiles; and conveys (but does not assume) the title to the automobiles between the parties. *See* Pl. Mot. at Ex. 2 ¶ 3 (Affidavit of Laura Taylor).

That evidence shows that, before Charleston Auto Auction will facilitate the sale of an automobile to or from a dealer, dealers on both sides of the transaction must enter into a purchase and sale agreement with Charleston Auto Auction, which makes Charleston Auto Auction their legal representative in the transactions. *Id.* ¶ 4.

The undisputed evidence also shows that A3 Auto Center is an automobile dealer in South Carolina. In March 2008, A3 Auto Center purchased three automobiles using Charleston Auto Auction: a 2006 Dodge Magnum; a 2001 Oldsmobile Aurora; and a 2006 Ford F250 (collectively the "Vehicles"). A Plus Auto Sales, Priceless Automotive, and Automotive Rentals, Inc./ARI Fleet Ltd (collectively the "Selling Dealerships") each sold one of the Vehicles. *Id.* ¶ 5. Both the Selling Dealerships and A3 Auto Center made Charleston Auto Auction the "middle-man" auctioneer. *Id.* ¶ 6. Pursuant to the Dealer Bond Statute, A3 Auto Center obtained a Bond from CNA Surety under the Dealer Bond Statute. *See* Pl. Mot at Ex. 7.

A3 Auto Center paid for the Vehicles with worthless checks, causing at least \$35,305.00 in damage to the Selling Dealerships. Pl. Mot. at Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).

### 3. Charleston Auto Auction and Centennial's Dealer Bond claim

Charleston Auto Auction, as the Selling Dealerships' legal representative, seeks reimbursement under the Bond for A3 Auto Center's worthless checks. The undisputed evidence shows that Plaintiff Centennial insured Charleston Auto Auction against such losses, and has repaid Charleston Auto Auction on those claims. As the legal subrogee of Charleston Auto Auction, Centennial has the right to proceed in the place of Charleston Auto Auction in this matter. Centennial has made demands on Defendant for payment under the Bond, which CNA Surety has rejected. *See* Pl. Mot. at Ex. 8 (denial letter). CNA Surety's primary argument is that neither Centennial nor Charleston Auto Auction is the "owner" or "legal representative" as required by the Dealer Bond Statute. *See id.*

This is a legal issue of statutory interpretation, and is ripe for the Court to rule on as a matter of law.

### CONCLUSIONS OF LAW

#### 1. "Legal Representative" under the Dealer Bond Statute

The primary issue is whether Charleston Auto Auction (or Centennial as its subrogee) is a "legal representative" under the Dealer Bond Statute. The South Carolina Supreme Court has stated:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, **or the owner's legal representative**, with a cause of action against the surety on a bond issued pursuant to that statute.

*Mid-State Auto Auction v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (emphasis added).



Each vehicle's Bill of Sale made Charleston Auto Auction the seller and buyer's "legal representative" by stating: "Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company. . . ." Pl. Mot. at Ex. 3 (terms of Purchase Agreement and Bill of Sale (p. 4, para. 2); emphasis added); Pl. Mot. at Ex. 4 (title clerk authorizations); cf. *McNeill v. Electric Storage Battery Co.*, 96 S.E. 134, 135 (S.C. 1918) (agency relationship may be created by contract); *Love v. Gamble*, 316 S.C. 203, 213, 448 S.E.2d 876, 881 (S.C. App. 1994) (citing *McNeill* for the legal rule that "If provisions of contract make it one of agency, it is immaterial by what names the parties call themselves in the contract"); *State ex rel. McLeod v. C & L Corp., Inc.*, 280 S.C. 519, 313 S.E.2d 334 (Ct. App. 1984) (an independent contractor can also be an agent; the two are not mutually exclusive.) The term "legal representative" is commonly understood to mean "one who

stands in place of, and represents the interests of, another. . . ." *Black's Law Dictionary* 896 (6th ed. 1990).

927  
In this matter, the Court finds that Charleston Auto Auction (and Centennial as its subrogee<sup>1</sup>) was the legal representative under the Dealer Bond Statute for the purposes of the transactions. In addition to its explicit designation as "legal representative" in the relevant contract (see Pl. Mot. at Exs. 3-4), Charleston Auto Auction acts as the dealerships' representative and agent in the transactions it facilitates by (among other things) collecting and conveying the funds for the automobiles, and by conveying (but not assuming) the title for the automobiles between the parties. Pl. Mot. at Ex. 2 ¶¶ 3-4, 6 (Affidavit of Laura Taylor). These facts qualify Charleston Auto Auction and its subrogee as a "legal representative" for purposes of the Dealer Bond Statute.

CNA Surety's primary argument is that the Dealer Bond Statute provision does not apply when fraud is committed in the purchase of a motor vehicle. See Def. Mot. at pp. 2-3. This argument is based on a sentence in *Connecticut Indemnity Co. v. Burdette Chrysler Dodge Corp.*, 317 S.C. 406, 453 S.E.2d 902 (Ct. App. 1994), overruled, *Mid-State Auto*, 476 S.C. 406, 453 S.E.2d 902. As an initial matter, *Burdette* has been overruled by the South Carolina Supreme Court. See *id.* Moreover, the sentence referred to by CNA Surety appears in the context of a discussion of the definition of "fraud"; in that discussion in *Burdette*, the Court of Appeals indicated there was no fraud because there was a pre-existing debt. See *id.* at 409, 453 S.E.2d at 904. In contrast, here there is no dispute that there is no pre-existing debt. See Pl. Mot. at Ex. 2 ¶ 7. Additionally, the

<sup>1</sup> See, e.g., Am. Jur. *Subrog.* § 61 ("Subrogation contemplates full substitution and places the party subrogated in the shoes of the creditor. Generally speaking, the party subrogated acquires all the rights, securities, and remedies the creditor has against the debtor who is primarily liable.") (internal citations omitted).

Dealer Bond Statute's language is broad and includes fraud "in connection with the sale or transfer" of a motor vehicle, as well as "loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter." S.C. Code § 56-15-320. This language is expansive and covers situation such as this one, where a motor vehicle is being sold or transferred. There is no indication in the Dealer Bond Statute that the South Carolina Legislature intended to only cover fraud by the seller—but meant to exclude fraud by the purchaser—when it enacted the language in the Dealer Bond Statute.



CNA Surety also argues that "legal representative" under the Dealer Bond Statute does not include Charleston Auto Auction. The Dealer Bond Statute does not define the term "legal representative," and outside legal research shows that the definition of "legal representative" can vary depending on the context. As discussed above, the undisputed evidence here shows that both the selling and purchasing dealers made Charleston Auto Auction their "agent and legal representative." See Pl. Mot. at Ex. 3. In opposition, CNA Surety points to the use of "legal representatives" in other contexts, such as probate and bankruptcy. See Def. Mot. at pp. 5-6 (citing probate code § 62-3-703 and federal bankruptcy law). However, those examples are specific to specialized areas of law, and in those contexts the "legal representative" generally is created by a statutory definition for purposes of the specific probate or bankruptcy proceedings. There is no indication that the South Carolina Legislature intended to incorporate other statutes' specific definitions (such as probate or bankruptcy) into the Dealer Bond Statute. The undisputed evidence here shows that a purpose of the auction company is to transact business for the buying and selling dealers. See Pl. Mot. at Ex. 2 ¶¶ 3-6 (describing function of auction

company in these transactions).

Finally, CNA Surety points to a definition of "wholesaler motor vehicle auction" and statutory provisions stating that the auction is not the owner of a vehicle simply because it transfers the title. *See* Def. Mot. at p. 5. Those definitions and provisions do not prohibit an auction company from being the "legal representative" of a vehicle's owner, which is the crux of the argument here. Moreover, a primary purpose of those cited provisions is to prevent an auction company from being the owner of a motor vehicle for purposes of property taxation. There is no indication that those provisions affect whether an auction company is a "legal representative" under § 56-15-320.

**2. The remaining elements of the Dealer Bond Statute are satisfied.**

The remaining elements of the Statute also are satisfied. Section 56-15-320(B) requires:

- *"Loss or damage suffered"*: The evidence establishes that the worthless checks caused loss or damage. *See* Pl. Mot. at Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).
- *"by reason of fraud practiced or fraudulent representation made"*: The passing of worthless checks, which is undisputed here, constitutes fraud as a matter of law. *Cf.* S.C. Code § 34-11-60 (the giving of a check where the maker lacks sufficient funds to pay the check is *prima facie* evidence of fraud, except when, *inter alia*, the check is given in full or partial payment of a preexisting debt); *see also* Pl. Mot. at Ex. 5 (returned checks). There was no preexisting debt in this case. Pl. Mot. at Ex. 2 ¶ 7 (Affidavit of Laura Taylor).

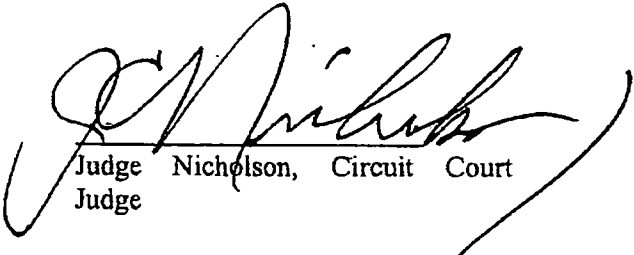
- *"made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent . . . ."*

These transactions were made in connection with the sale or transfer of the Vehicles. See Pl. Mot. at Ex. 2 ¶ 9 (Affidavit of Laura Taylor).

### CONCLUSION

For these reasons, the Court finds in favor of Plaintiff Centennial Casualty Company and Charleston Auto Auction. Judgment is granted in favor of Plaintiff on the full amount of the bond at issue.

So ordered this 25 day of Feb. 2013.

  
Judge Nicholson, Circuit Court  
Judge

Charleston, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-10-6577

Centennial Casualty  
PLAINTIFF(S)

Western Surety Company  
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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other \_\_\_\_\_
- ☐ **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. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| 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.

Circuit Court Judge

2117  
Judge Code

Date

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO.: 2009-CP-10-0577

CENTENNIAL CASUALTY CO., )  
INC., )

Plaintiff, )

vs. )

WESTERN SURETY COMPANY, )  
d/b/a CNA SURETY, )

Defendant. )

**COMPLAINT**

FILED  
2009 OCT 19 PM 12:18  
JULIE J. ARMSTRONG  
CLERK OF COURT

Plaintiff Centennial Casualty Co., Inc. ("Centennial" or "Plaintiff"), brings this claim against defendant Western Surety Company d/b/a CNA Surety ("WSC" or "Defendant") based on the allegations set forth below.

**PARTIES**

1. Plaintiff Centennial is an Alabama corporation with its principal place of business in Birmingham, Alabama. Centennial is the subrogee of Charleston Auto Auction, Inc. ("Charleston Auto Auction").
2. Defendant Western Surety Company is a South Dakota corporation with its principal place of business in Sioux Falls, South Dakota.

**JURISDICTION**

3. This Court has subject matter jurisdiction over the claims in this lawsuit under, *inter alia*, Article V, § 11 of the South Carolina Constitution and South Carolina Code § 14-5-350 *et seq.*

4. This Court has personal jurisdiction over the Defendant under, *inter alia*, South Carolina Code § 36-2-803, because Defendant transacts business in the State of South Carolina.
5. Venue is proper in this circuit under, *inter alia*, South Carolina Code § 15-7-30 because, upon information and belief, Defendant does business in Charleston, South Carolina and does not reside in South Carolina.

### FACTS

6. A3 Auto Center is a licensed dealer or wholesaler of automobiles in South Carolina.
7. In March 2008, A3 Auto Center purchased three automobiles: a 2006 Dodge Magnum; a 2001 Oldsmobile Aurora; and a 2006 Ford F250 (collectively the "Vehicles").
8. The selling dealerships were A Plus Auto Sales (for the 2001 Oldsmobile Aurora); Priceless Automotive (for the 2006 Ford F250); and Automotive Rentals, Inc. / ARI Fleet Ltd. (for the 2006 Dodge Magnum) (collectively the "Selling Dealerships").
9. At all relevant times, Charleston Auto Auction was acting as the legal representative of the Selling Dealerships for the sale of the Vehicles.
10. Pursuant to South Carolina Code § 56-15-10 *et seq.*, A3 Auto Center had obtained a surety Bond to indemnify any owner of a motor vehicle, or his legal representative, who may be aggrieved by any fraud, fraudulent representation, or other violations of § 56-15-10 *et seq.*, which is incorporated herein by reference.

11. A true and correct copy of the Bond is attached hereto as Exhibit A, and is incorporated herein by reference (the "Bond").
12. The Selling Dealerships made Charleston Auto Auction their legal representative for purposes of the sale of the Vehicles and the Bond. True and correct copies of certain documents evidencing this are attached hereto as Exhibit B and are incorporated herein by reference.
13. Defendant is the surety under the Bond.
14. The checks used by A3 Auto Center to purchase the Vehicles were returned as having insufficient funds.
15. Charleston Auto Auction was damaged in the amount of at least \$35,305 through the fraudulent writing of insufficient checks for the Vehicles.
16. Plaintiff insured Charleston Auto Auction against the loss, and has paid on the claim.
17. Plaintiff is the legal subrogee of Charleston Auto Auction, and has been assigned Charleston Auto Auction's rights in this matter.
18. The Bond gives Charleston Auto Auction, as the legal representative of the owner, the right to be indemnified and seek reimbursement under the Bond.
19. As the legal subrogee of Charleston Auto Auction, Plaintiff has the right to proceed in the place of Charleston Auto Auction in this matter.
20. Plaintiff has made demands on Defendant for payment under the Bond.
21. Defendant has refused to pay Plaintiff under the Bond.

**FIRST CAUSE OF ACTION**  
**(Claim for payment on Bond pursuant to § 56-15-320 *et seq.*)**

22. Plaintiff incorporates all allegations of the paragraphs above into this cause of action.
23. A purpose of the Bond is indemnification for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler.
24. An owner or his legal representative who suffered a loss or damage has a right of action against, *inter alia*, the dealer or wholesaler's surety upon the Bond and may recover damages as provided by the relevant statutory chapter.
25. Plaintiff has suffered actual loss or damage by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of motor vehicles.
26. This loss or damage falls under the Bond required by South Carolina Code § 56-15-320 *et seq.*
27. As the surety on the Bond, Defendant is obligated to pay Plaintiff for the loss for the vehicles under the Bond.

WHEREFORE, Plaintiff requests that a judgment be entered against Defendant on all causes of action and that Plaintiff be awarded actual damages under the Bond; consequential damages as permitted by law; any special damages permitted by law; any punitive damages permitted by law; pre- and post-judgment interest; attorneys' fees and costs; and such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

GREEN & FORD LLC



---

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602 Rutledge Ave.

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(843) 266-2628; (843) 266-2627 (facsimile)

Web: [www.greenandford.com](http://www.greenandford.com)

*Attorneys for Plaintiff*

Dated: October 19, 2009



# South Carolina Department of Motor Vehicles

## MOTOR VEHICLE DEALER AND WHOLESALE SURETY BOND

DLA-1B  
(Rev. 2/04)

Dealer Number

Please read instructions on reverse side before executing bond.

COPY

BOND NUMBER 22887755 EFFECTIVE DATE JULY 21, 22006 TIME A.M.  
P.M.KNOW ALL MEN BY THESE PRESENTS: that we A 3 Auto Center LLC  
(Firm Name as Licensed)Doing business at  
2301 Main Street, Columbia, SC 29201as Principal and WESTERN SURETY COMPANY as Surety

are duly authorized to do business within the State of South Carolina, as Surety, are held and firmly bound unto the people of the State of South Carolina to indemnify any owner of a motor vehicle, or his legal representative, who may be aggrieved by any fraud, fraudulent representation or violation by said Principal, salesman, or representatives acting for such Principal within the scope of employment of such salesman or representatives, of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, in the amount of Fifteen Thousand Dollars (\$15,000), lawful money of the United States of America, for which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, administrators, successors, and assigns, firmly by these presents; provided that the aggregate liability of the surety under this bond for any and all claims is limited to Fifteen Thousand Dollars (\$15,000) or to the amount of the actual loss incurred, whichever is less.

WHEREAS, the above bounden Principal desires that a motor vehicle dealer's or wholesaler's license be issued and thereafter renewed from time to time by South Carolina Department of Motor Vehicles;

WHEREAS, this bond executed by the said Principal and Surety is filed with the South Carolina Department of Motor Vehicles in compliance with S.C. Code Ann., 56-15-320, to enable said Principal to obtain a license from the Department under the provisions of that law.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall well and truly observe and strictly and faithfully comply with the aforesaid requirements of law and shall save and keep harmless any owner of a motor vehicle or his legal representative made to him by such Principal, such Principal's salesman or representatives acting for the Principal or within the scope of the employment of such salesman or representatives, or from any loss or damage suffered by reason of the violation such Principal or any such salesman or representatives of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, then this obligation shall be null and void; otherwise it shall remain in full force and effect. It is understood that the injured party need not obtain a judgment against the Principal before making claim against the Surety on this bond.

This bond shall not automatically expire with the license for which it is initially issued, but shall continue indefinitely, from license year to license year, upon timely payment of the premium thereon. Before this bond may be cancelled, a thirty (30) day written notice must be given to the Department of Motor Vehicles. Such cancellation does not affect any liability incurred or accrued prior to cancellation.

A 3 Auto Center LLC

(Principal)

(Surety)

WESTERN SURETY COMPANY

By: \_\_\_\_\_  
(Title)By: Johanna Mc Masters  
Johanna Mc Masters (Title) Attorney-In-Fact



COPY

# Western Surety Company

## POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 22887755

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint Dale E. Clark, Brian A. Clark, Robert A. Jacobson, Diane Gibson, Wendy M. Lande, Heidi S. Sklandziel, Johanna McMaisters and Maria E. Zeccearo-Duyk its true and lawful attorneys-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, any surety or fidelity in an unlimited amount, and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorneys-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect:

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

The penal amount of the bond herein described may be increased if there is attached to this Power, written authority so authorizing in the form of an endorsement, letter or telegram signed by the Senior Underwriting Officer, Underwriting Officer, President, Vice President, Assistant Vice President, Treasurer, Secretary, or Assistant Secretary of Western Surety Company specifically authorizing said increase.

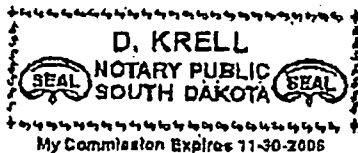
In Witness Whereof, Western Surety Company has caused these presents to be signed by its Senior Vice President, Paul T. Bruflat, and its corporate seal to be affixed this 21 day of JULY, 2006



WESTERN SURETY COMPANY

Paul T. Bruflat  
Paul T. Bruflat, Senior Vice President

On this 21 day of JULY, in the year 2006, before me, a notary public, personally appeared Paul T. Bruflat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.



D. Krell  
Notary Public - South Dakota

I, the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 21 day of JULY, 2006

WESTERN SURETY COMPANY

Paul T. Bruflat  
Paul T. Bruflat, Senior Vice President

Form F3525

AGENT COPY

STATE OF S. C.

CAA DEALER # \_\_\_\_\_

COUNTY OF HorryTITLE CLERK AUTHORIZATIONI, Gregory J. Norris  
(Consignor)

do hereby duly authorize Charleston Auto Auction and/or its employees to act as our Agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicles owned by consignor and consigned to Charleston Auto Auction for sale, including without limitation, any title, title transfer document, reassignment or odometer disclosure statements as required by federal or state law.

In consideration of Charleston Auto Auction's agreement to execute such documents on Consignor's behalf from time to time, Consignor shall indemnify, defend and hold harmless Charleston Auto Auction, its affiliates, subsidiaries, officers, directors, employees, successors and assigns from and against any and all loss, damages, liability, claims, causes of action, and expenses of whatever kind and nature, arising from the execution transfer of ownership of any consigned vehicle or from the execution by Charleston Auto Auction or its employees or agents of any certificate of title, odometer statement, bill of sale or other document necessary to transfer ownership of a consigned vehicle. Notwithstanding the foregoing, nothing contained herein shall be construed to require Consignor to indemnify Charleston Auto Auction from any loss resulting from any gross negligence or willful misconduct of Charleston Auto Auction or its employees or agents.

Consignor further agrees to guarantee and save the authorities of any state requested to process such transfer of title from all responsibility with respect to this Title Clerk Authorization.

A Plus Auto Sales - GREGORY J. Norris  
(PRINT COMPANY/CONSIGNOR NAME)

[Signature]  
(SIGNATURE OF CONSIGNOR)

Gregory Norris, Pres.  
(PRINT NAME & TITLE OF PERSON SIGNING)

WITNESS MY HAND AND SEAL

affixed this 12 day of Oct, 2008

[Signature]  
(NOTARY PUBLIC)

My Commission Expires: Sept 25, 2010

STATE OF \_\_\_\_\_

CAA DEALER CODE: P00140

COUNTY OF \_\_\_\_\_

**TITLE CLERK AUTHORIZATION**

I, R. DAVE MURER SR  
(Consignor - owner)

do hereby duly authorize Charleston Auto Auction and/or its employees to act as our Agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicles owned by consignors and consigned to Charleston Auto Auction for sale, including without limitation, any title, title transfer document, reassignment or odometer disclosure statements as required by federal or state law.

In consideration of Charleston Auto Auction's agreement to execute such documents on Consignor's behalf from time to time, Consignor shall indemnify, defend and hold harmless Charleston Auto Auction, its affiliates, subsidiaries, officers, directors, employees, successors and assigns from and against any and all loss, damages, liability, claims, causes of action, and expenses of whatever kind and nature, arising from the execution transfer of ownership of any consigned vehicle or from the execution by Charleston Auto Auction or its employees or agents of any certificate of title, odometer statement, bill of sale or other document necessary to transfer ownership of a consigned vehicle. Notwithstanding the foregoing, nothing contained herein shall be construed to require Consignor to indemnify Charleston Auto Auction from any loss resulting from any gross negligence or willful misconduct of Charleston Auto Auction or its employees or agents.

Consignor further agrees to guarantee and have the authorities of any state requested to process such transfer of title from all responsibility with respect to this Title Clerk Authorization.

R. DAVE MURER SR  
(PRINT COMPANY/CONSIGNOR NAME)

Priceless Automotive

[Signature]  
(SIGNATURE OF CONSIGNOR)

R. DAVE MURER SR  
(PRINT NAME & TITLE OF PERSON SIGNING)

WITNESS MY HAND AND SEAL

Affixed this 13 day of 10, 2006

Laura Jaxon  
(NOTARY PUBLIC)

My Commission Expires: Sept 25, 2010



Automotive Resources International

**POWER-OF-ATTORNEY  
(AGENCY)  
INDEMNITY AND HOLD HARMLESS AGREEMENT**

AUTOMOTIVE RENTALS INC. &/OR ARI FLEET LT, (HEREINAFTER CALLED CUSTOMER), WHOSE PRINCIPAL PLACE OF BUSINESS IS AT 9000 MIDLANTIC DRIVE, MT. LAUREL, NJ 08054, APPOINTS CHARLESTON AUTO AUCTION, 651 PRECAST LANE, MONCK'S CORNER, SOUTH CHARLESTON, SOUTH CAROLINA, 29461 AND ALL OF ITS SUBSIDIARY AUCTIONS (HEREINAFTER CALLED AUCTION) AS CUSTOMER'S AGENT WITH FULL AND COMPLETE AUTHORITY TO SIGN ODOMETER DISCLOSURE STATEMENT, TITLE DOCUMENTS AND AUCTION INVOICES, OR OTHER DOCUMENTS AS REQUIRED ON CUSTOMER'S BEHALF WITH REGARD TO ANY AND ALL MOTOR VEHICLES OWNED BY CUSTOMER WHICH ARE SOLD THROUGH THE AUCTION.

CUSTOMER WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS AUCTION FROM ALL LOSSES OR EXPENSE INCURRED BY AUCTION AS A RESULT OF AUCTION ACTING AS CUSTOMER'S AGENT PURSUANT TO THIS AGREEMENT, INCLUDING ALL EXPENSES AND ATTORNEY'S FEES INCURRED BY AUCTION, UNLESS CAUSED BY AUCTION'S OWN NEGLIGENCE.

AGREED TO AND ACCEPTED BY: AUTOMOTIVE RENTALS, INC. &/OR  
ARI FLEET LT

SIGNATURE: Howard Graus

PRINT NAME: HOWARD GRAUS

TITLE: ASST MGR.

DATE: 3/20/03

THE ABOVE IS SWORN AND SUBSCRIBED TO ME  
THIS 20<sup>TH</sup> DAY OF MARCH, 2003.

Karen B. Heller

NOTARY PUBLIC  
KAREN B. HELLER  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires December 23, 2005

MY COMMISSION EXPIRES

Notary Public, State of New Jersey, Commission Expires December 23, 2005

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Centennial Casualty Co., Inc. )

Plaintiff, )

v. )

Western Surety Company,  
d/b/a CNA Surety, )

Defendant. )

Western Surety Company,  
d/b/a CNA Surety, )

Defendant/Third-Party  
Plaintiff, )

v. )

Charleston Auto Auction, A3  
Auto Center, LLC. and Wylie  
Mickle, )

Third-Party Defendants.

THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-10-6577

ANSWER AND THIRD-PARTY  
COMPLAINT

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2009 NOV 16 PM 4:19

FILED

TO: IAN S. FORD, ESQUIRE AND DWAYNE M. GREEN, ESQUIRE,  
ATTORNEYS FOR PLAINTIFF AND TO PLAINTIFF ABOVE-NAMED:

The Defendant, Western Surety Company, d/b/a CNA Surety, answers the  
complaint as follows:

1. Each and every allegation of the Complaint hereinafter not specifically  
admitted is denied and strict proof is demanded thereof.
2. Defendant Western Surety admits so much of the allegations of Paragraph  
1 as alleges that Centennial Casualty Co., Inc. is a Alabama corporation with its principal  
place of business in Birmingham, Alabama. Defendant Western Surety lacks sufficient

information to form a belief as to the remaining allegations of Paragraph 1 and therefore denies the same.

3. Defendant Western Surety admits the allegations of Paragraph 2.

4. Defendant craves reference to the laws of South Carolina with respect to the allegations of Paragraph 3.

5. Defendant craves reference to the laws of South Carolina with respect to the allegations of Paragraph 4.

6. Defendant admits the allegations of Paragraph 5.

7. Defendant admits so much of the allegations of Paragraph 6 as alleges that A3 Auto Center is or was a licensed dealer upon information and belief.

8. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 7 and demands strict proof thereof.

9. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 8 and demands strict proof thereof.

10. Defendant would deny the allegations of Paragraph 9 and demands strict proof thereof.

11. Defendant craves reference to South Carolina Code 56-15-10 *et seq.* for their terms and conditions.

12. Defendant admits so much of the allegations of Paragraph 11 as alleges that Exhibit A is a copy of the Bond.

13. Defendant denies the allegations of Paragraph 12.

14. Defendant admits that it is the surety under the bond in response to Paragraph 13.

15. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 14 and demands strict proof thereof.

16. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 15 and demands strict proof thereof.

17. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 16 and demands strict proof thereof.

18. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 17 and demands strict proof thereof.

19. Defendant denies the allegations of Paragraph 18.

20. Defendant denies the allegations of Paragraph 19.

21. Defendant admits the allegations of Paragraph 20.

22. Defendant admits the allegations of Paragraph 21.

23. Defendant reincorporates its responses as set forth herein above in response to the allegations of Paragraph 22.

24. Defendant craves reference to the statute for its terms and conditions which control the bond in response to the allegations of Paragraph 23.

25. Defendant craves reference to the statute for its terms and conditions in response to the allegations of Paragraph 24.

26. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 25 and therefore denies the same and demands strict proof thereof.

27. Defendant denies the allegations of Paragraph 26.

28. Defendant denies the allegations of Paragraph 27.

**BY AND FOR A SECOND DEFENSE**

29. The bond is limited to the penal sum of the bond and only for the actual damage suffered as set forth by the statute.

**BY AND FOR A THIRD DEFENSE**

30. The Plaintiff is not a proper party either individually or asserting by way of subrogation. The Plaintiff is not the owner or the owner's legal representative at the time of the loss in question.

**BY AND FOR A FOURTH DEFENSE AND BY WAY OF A  
THIRD-PARTY COMPLAINT**

31. In this action, Plaintiff has asserted that it is acting as subrogees Charleston Auto Auction, Inc.

32. That Charleston Auto Auction, Inc. is the real party in interest in this litigation and has the rights, if any, of the Plaintiff were contingent upon the rights if any of Charleston Auto Auction, Inc.

33. That the bond is a statutory bond controlled by statute and a controversy exists as to whether or not Charleston Auto Auction, Inc. is or ever was the appropriate person to make a claim against the bond, which is the subject matter of this litigation.

34. Defendant prays the Court inquiries into the bond and inquire into ownership of the vehicle, title of the vehicle, and any and determine if Charleston Auto Auction, Inc. qualifies under the facts of this case to seek a claim under the bond.

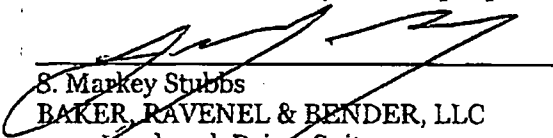
**BY AND FOR A FIFTH DEFENSE AND BY WAY OF A  
THIRD-PARTY COMPLAINT AS AGAINST  
A3 AUTO CENTER, LLC. AND WYLIE MICKLE**

35. That in applying for this bond, A3 Auto Center, LLC and Wylie Mickle individually did agree to indemnify and hold Defendant harmless of and from any and all claims arising out of the bond including attorneys fees and costs incurred in defending such claims.

36. This Defendant has now been sued as a result of the claim asserted to be as against the bond.

37. Defendant is entitled to judgment against A3 Auto Center, LLC and Wylie Mickle pursuant to contractual indemnity for all costs and fees associated with defense of this action including attorneys fees and further entitled to an award against Wylie Mickle and A3 Auto Center, LLC for any and all damages, if any, the court deems appropriate to be paid under the bond.

WHEREFORE, having answered and brought a Third-Party Complaint, Defendant prays for dismissal of the Complaint, a declaration that Charleston Auto Auction, Inc. is not an appropriate party to maintain a claim under the bond and to award judgment as against Wylie Mickle and A3 Auto Center, LLC as set forth herein above and for such other and further relief as this court deems just and proper.

  
S. Markey Stubbs  
BAKER, RAVENEL & BENDER, LLC  
3710 Landmark Drive, Suite 400  
Post Office Box 8057  
Columbia, South Carolina 29202  
Telephone: (803) 799-9091  
Facsimile: (803) 779-3423  
Attorneys for Defendant Western Surety Company,  
d/b/a CNA Surety  
Our File No. 7753.67

November 13, 2009.

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CENTENNIAL CASUALTY CO., INC., )

CASE NO.: 2009-CP-10-6577

Plaintiffs, )

vs. )

WESTERN SURETY COMPANY, d/b/a )  
CNA SURETY, )

Defendant. )

WESTERN SURETY COMPANY, )  
d/b/a CNA SURETY, )

Defendant/Third-Party Plaintiff, )

vs. )

CHARLESTON AUTO AUCTION, A3 )  
AUTO CENTER, LLC and WYLIE )  
MICKLE, )

Third-Party Defendants. )

**ANSWER OF THIRD-PARTY  
DEFENDANT, CHARLESTON AUTO  
AUCTION, INC.**

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2009 DEC 11 AM 11:32

FILED

Third-Party Defendant Charleston Auto Auction, Inc. ("CAA" or "Defendant") answers the Third-Party Complaint of Western Surety Company d/b/a CNA Surety below. CAA denies each allegation that is not specifically admitted below.

1. In response to the allegations in Paragraph 31 of the Third-Party Complaint, CAA refers to and incorporates the allegations in the Complaint filed by Centennial Casualty Co., Inc. in this matter. To the extent a further response is required, CAA admits the allegations in Paragraph 31 to the extent that they are consistent

with the allegations in Centennial's Complaint. Any further characterizations or allegations in Paragraph 31 are denied, and strict proof is demanded.

2. In response to Paragraph 32 of the Third-Party Complaint, CAA states that the allegations in Paragraph 32 are legal conclusions to which no response is required. To the extent a response is required, CAA refers to the allegations in Centennial's Complaint in this action, and admits the allegations in Paragraph 32 to the extent they are consistent with the allegations in Centennial's Complaint. Any other allegations or characterizations are denied, and strict proof is demanded.
3. In response to Paragraph 33 of the Third-Party Complaint, the allegations in Paragraph 33 are legal conclusions and arguments to which no response is required. To the extent a response is required, CAA admits the allegations to the extent they are consistent with the allegations in Centennial's Complaint. To the extent there are any additional allegations or characterizations in Paragraph 33, Centennial denies those allegations and demands strict proof.
4. In response to Paragraph 34 of the Third-Party Complaint, the allegations in Paragraph 34 are legal conclusions and arguments to which no response is required. To the extent a response is required, CAA admits the allegations to the extent they are consistent with the allegations in Centennial's Complaint. To the extent there are any additional allegations or characterizations in Paragraph 34, Centennial denies those allegations and demands strict proof thereof.

5. In response to Paragraphs 35, 36, 37 and the paragraph beginning "WHEREFORE" of the Third-Party Complaint, CAA states that those allegations are against another party, not CAA, and no response is required from CAA. To the extent a response is required from CAA, CAA denies the allegations in those paragraphs and demands strict proof.

**First Affirmative Defense**  
**(Failure to State a Claim)**

Third-Party Plaintiff's Complaint fails to state a claim against CAA.

**Second Affirmative Defense(s)**  
**(Statute of Limitations; Laches; Waiver)**

Third-Party Plaintiff's claims are barred by the doctrines of laches and waiver, and are barred by the applicable statutes of limitations.

**Third Affirmative Defense**  
**(Failure to Establish Conditions Precedent)**

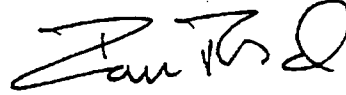
Third-Party Plaintiff has failed to establish conditions precedent as required by applicable law.

CAA denies all allegations not specifically admitted, and demands strict proof thereof. CAA reserves the right to supplement or amend this Answer as information becomes available.

CAA accordingly requests that the Third-Party Plaintiff's Complaint be dismissed, and that CAA be awarded attorneys' fees and costs and such other further relief as the Court may deem appropriate.

Respectfully submitted,

GREEN & FORD LLC



Ian S. Ford

[Ian.Ford@greenandford.com](mailto:Ian.Ford@greenandford.com)

Dwayne M. Green

[Dwayne.Green@greenandford.com](mailto:Dwayne.Green@greenandford.com)

602 Rutledge Avenue

Charleston, SC 29403

(P.O. Box 20009, Charleston, SC 29413)

Tele.: (843) 266-2626

Fax: (843) 266-2627

Web: [www.greenandford.com](http://www.greenandford.com)

*Attorneys for Third-Party Defendant Charleston  
Auto Auction, Inc.*

December 10, 2009  
Charleston, South Carolina

09-CP-10, 6577

CERTIFICATE OF SERVICE

I, Susan Creel, Legal Assistant at Green & Ford LLC, hereby certify that I have this 10<sup>th</sup> day of December, 2009, served a copy of the foregoing Answer of Third-Party Defendant, Charleston Auto Auction, Inc. on counsel of record by depositing same in the U.S. Mail, via first class mail with sufficient postage prepaid, at the addressed as follows:

S. Markey Stubbs, Esquire  
Baker, Ravenel & Bender, LLP  
P.O. Box 8057  
Columbia, SC 29202.

  
\_\_\_\_\_  
Susan Creel

FILED

2009 DEC 11 AM 11:32

JULIE J. ARMSTRONG  
CLERK OF COURT

BY \_\_\_\_\_

|                               |   |                                   |
|-------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA       | ) | THE COURT OF COMMON PLEAS         |
| COUNTY OF CHARLESTON          | ) | FOR THE NINTH JUDICIAL CIRCUIT    |
| Centennial Casualty Co., Inc. | ) | Civil Action No.: 2009-CP-10-6577 |
| Plaintiff,                    | ) |                                   |
| v.                            | ) | STIPULATION OF FACTS              |
| Western Surety Company,       | ) |                                   |
| d/b/a CNA Surety,             | ) |                                   |
| Defendant.                    | ) |                                   |
| Western Surety Company,       | ) |                                   |
| d/b/a CNA Surety,             | ) |                                   |
| Defendant/Third-Party         | ) |                                   |
| Plaintiff,                    | ) |                                   |
| v.                            | ) |                                   |
| Charleston Auto Auction,      | ) |                                   |
| A3 Auto Center, LLC. and      | ) |                                   |
| Wylie Mickle,                 | ) |                                   |
| Third-Party Defendants.       | ) |                                   |

The parties to the above-referenced litigation stipulate as to the following:

1. The Plaintiff Centennial is an insurance company that insurers certain transactions that are passed through Charleston Auto Auction, Inc. and maintains this suit as subrogee.
2. Defendant Western Surety is a corporation which issued a bond to A3 Auto Center. This is a thirty thousand and 00/100 (\$30,000.00) Dollar bond controlled by Statute 56-15-320.
3. That A3 Auto Center bought three vehicles through Charleston Auto Auction, Inc. from different dealers as set forth in the Complaint. Two of the checks had

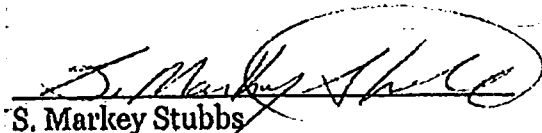
insufficient funds (NSF) and A3 Auto Center stopped payment on the third check. The amount lost due to insufficient funds exceeds the thirty thousand and 00/100 (\$30,000.00) cap on the bond and it is agreed that if the bond of A3 Auction Center is applicable, the maximum recovery is thirty thousand and 00/100 (\$30,000.00).

4. Certain documents outlining the transactions are as attached to the Plaintiff's complaint and contains documents entitled "Title Authorization" executed by both buyer and seller.

In addition to the pleadings, the cross motions previously filed by the parties, attached as Exhibits (a) Centennial Motion filed 7/12/10 (w/exhibits) and (b) Western Surety amended Motion filed 9/27/10, set forth the positions and each party has five (5) days to provide any correction or addition to the cases cited therein.



Ian S. Ford, Esquire  
Green, Ford and Wallace  
602 Rutledge Avenue  
Charleston, South Carolina 29403  
Attorneys for Plaintiff Centennial Casualty  
Company, Inc.



S. Markey Stubbs  
BAKER, RAVENEL & BENDER, LLC  
3710 Landmark Drive, Suite 400  
Post Office Box 8057  
Columbia, South Carolina 29202  
Telephone: (803) 799-9091  
Facsimile: (803) 779-3423  
Attorneys for Defendant Western Surety  
Company, d/b/a CNA Surety  
Our File No. 7753.67

May 22, 2012

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON ) IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CENTENNIAL CASUALTY CO., INC., ) CASE NO.: 2009-CP-10-6577

Plaintiffs,

vs.

WESTERN SURETY COMPANY, d/b/a  
CNA SURETY,

Defendant.

WESTERN SURETY COMPANY,  
d/b/a CNA SURETY,

Defendant/Third-Party Plaintiff,

vs.

CHARLESTON AUTO AUCTION, A3  
AUTO CENTER, LLC and WYLIE  
MICKLE,

Third-Party Defendants.

FILED  
2010 JUL 12 PM 4:17  
JULIE J. ARMSTRONG  
CLERK OF COURT

**MOTION FOR SUMMARY JUDGMENT OF  
CENTENNIAL CASUALTY CO., INC. AND CHARLESTON AUTO AUCTION**

Plaintiff Centennial Casualty Co., Inc. ("Centennial") and Third-Party Defendant Charleston Auto Auction, by counsel and pursuant to South Carolina Rule of Civil Procedure 56, bring this Motion for Summary Judgment against Defendant and Third-Party Plaintiff Western Surety Company d/b/a CNA Surety ("CNA Surety"). As set forth below, no genuine issue of material fact exists as to the central issue in this action: that Centennial and/or Charleston Auto Auction are the "legal representative" of the relevant motor vehicle owner, and therefore are the beneficiary of the motor vehicle dealer bond

discussed in South Carolina Code § 56-15-320 *et seq.* The parties agree that the interpretation of "legal representative" is a matter of law. See Ex. 1 (CNA Surety's response to Interrogatory 15: "The Defendant's defense against the Plaintiff is based upon the statutory bond which is interpreted as a matter of law.")

## STATEMENT OF MATERIAL FACTS

### 1. The Dealer Bond Statute

South Carolina's licensing statute for motor vehicle dealers requires a surety bond under S.C. Code § 56-15-320(B) (2009) (the "Dealer Bond Statute"). The Dealer Bond Statute requires motor vehicle wholesalers or dealers to obtain a bond in order to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

*Id.* (emphasis added). "An [automobile] owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter." *Id.*

### 2. Charleston Auto Auction and A3 Auto Center

Charleston Auto Auction is a wholesale auctioneer that facilitates the sale and purchase of automobiles among dealers. Charleston Auto Auction acts as the agent and legal representative for the dealerships in the transactions; collects and conveys the funds

for the automobiles; and conveys (but does not assume) the title to the automobiles between the parties. Ex. 2 ¶ 3(Affidavit of Laura Taylor).

Before Charleston Auto Auction will facilitate the sale of an automobile to or from a dealer, dealers on both sides of the transaction must enter into a purchase and sale agreement with Charleston Auto Auction, which makes Charleston Auto Auction their legal representative in the transactions. *Id.* ¶ 4.

A3 Auto Center is an automobile dealer in South Carolina. In March 2008, A3 Auto Center purchased three automobiles using Charleston Auto Auction: a 2006 Dodge Magnum; a 2001 Oldsmobile Aurora; and a 2006 Ford F250 (collectively the "Vehicles"). A Plus Auto Sales, Priceless Automotive, and Automotive Rentals, Inc. / ARI Fleet Ltd (collectively the "Selling Dealerships") each sold one of the Vehicles. *Id.* ¶ 5. Both the Selling Dealerships and A3 Auto Center made Charleston Auto Auction the "middle-man" auctioneer, their agent and legal representative pursuant to the Dealer Bond Statute. *Id.* ¶ 6. Pursuant to the Dealer Bond Statute, A3 Auto Center obtained a Bond from CNA Surety under the Dealer Bond Statute. Ex. 7.

A3 Auto Center paid for the Vehicles with worthless checks, causing at least \$35,305.00 in damage to the Selling Dealerships. Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).

### **3. Charleston Auto Auction and Centennial's Dealer Bond claim**

Charleston Auto Auction, as the Selling Dealerships' legal representative, seeks reimbursement under the Bond for A3 Auto Center's worthless checks. Plaintiff Centennial insured Charleston Auto Auction against such losses, and has repaid Charleston Auto Auction on those claims. As the legal subrogee of Charleston Auto

Auction, Centennial has the right to proceed in the place of Charleston Auto Auction in this matter. Centennial has made demands on Defendant for payment under the Bond, which CNA Surety has rejected. See Ex. 8 (denial letter). CNA Surety's sole contention is that neither Centennial nor Charleston Auto Auction is the "owner" or "legal representative" as required by the Dealer Bond Statute. See *id.* This is a pure legal issue of statutory interpretation, and is ripe for the Court to rule on as a matter of law.

### LEGAL STANDARD

A motion for summary judgment shall be granted "if the pleading, 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." *Standard Fire Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 421, 392 S.E.2d 460, 462 (1990) (quoting SCRCP 56(c)). "Summary judgment can be granted when plain, palpable and indisputable facts exist on which reasonable minds cannot differ." *Byerly v. Conner*, 307 S.C. 441, 445, 415 S.E.2d 796, 799 (1992).

In rendering its decision, the Court will consider only material facts that support or disprove each claim, and must draw all inferences in favor of the non-moving party. However, "the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994). Furthermore,

the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, 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. American Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545 (1991) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1990)).

## ARGUMENT

### 1. "Legal Representative" under the Dealer Bond Statute

The only issue is whether Charleston Auto Auction (or Centennial as its subrogee) is a "legal representative" under the Dealer Bond Statute. The South Carolina Supreme Court has stated:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, or the owner's legal representative, with a cause of action against the surety on a bond issued pursuant to that statute.

*Mid-State Auto Auction v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (emphasis added).

Each vehicle's Bill of Sale explicitly made Charleston Auto Auction the seller and buyer's "legal representative" by stating: "Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company . . . ." Ex. 3 (terms of Purchase Agreement and Bill of Sale (p. 4, para. 2); emphasis added); Ex. 4 (title clerk authorizations); cf. *McNeill v. Electric Storage Battery Co.*, 96 S.E. 134, 135 (S.C. 1918) (agency relationship may be created by contract); *Love v. Gamble*, 316 S.C. 203, 213, 448 S.E.2d 876, 881 (S.C. App. 1994) (citing *McNeill* for the legal rule that "If provisions of contract make it one of agency, it is immaterial by what names the parties call themselves in the contract"); *State ex rel. McLeod v. C & L Corp., Inc.*, 280 S.C. 519, 313 S.E.2d 334 (Ct. App. 1984) (an independent contractor can also be an agent; the two are not mutually exclusive.) The term "legal representative" is commonly understood to mean "one who stands in place of,

and represents the interests of, another. . . .” *Black’s Law Dictionary* 896 (6th ed. 1990).

In this matter, there can be no genuine issue of material fact that Charleston Auto Auction (and Centennial as its subrogee<sup>1</sup>) was the legal representative under the Dealer Bond Statute for the purposes of the transactions. In addition to its explicit designation as “legal representative” in the relevant contract (Exs. 3-4), Charleston Auto Auction acts as the dealerships’ agent in the transactions it facilitates by (among other things) collecting and conveying the funds for the automobiles, and by conveying (but not assuming) the title for the automobiles between the parties. Ex. 2 ¶¶ 3-4, 6 (Affidavit of Laura Taylor). These undisputed facts qualify Charleston Auto Auction and its subrogee as a “legal representative” for purposes of the Dealer Bond Statute.

**2. The remaining elements of the Dealer Bond Statute are satisfied.**

Once the Court makes a legal ruling on whether Charleston Auto Auction (or Centennial) is a “legal representative” under the Dealer Bond Statute, the remaining elements of the Statute are easily satisfied. Section 56-15-320(B) requires:

- “*Loss or damage suffered*”: There is no genuine dispute of material fact that the worthless checks caused loss or damage. Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).
- “*by reason of fraud practiced or fraudulent representation made*”: The passing of worthless checks, which is undisputed here, constitutes fraud as a matter of law. *Cf.* S.C. Code § 34-11-60 (the giving of a check where the maker lacks sufficient funds to pay the check is *prima facie* evidence of

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<sup>1</sup> See, e.g., Am. Jur. *Subrog.* § 61 (“Subrogation contemplates full substitution and places the party subrogated in the shoes of the creditor. Generally speaking, the party subrogated acquires all the rights, securities, and remedies the creditor has against the debtor who is primarily liable.”) (internal citations omitted).

fraud, except when, *inter alia*, the check is given in full or partial payment of a preexisting debt); Ex. 5 (returned checks). There was no preexisting debt in this case. Ex. 2 ¶ 7 (Affidavit of Laura Taylor).

- “made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer’s or wholesaler’s agent . . . .”

These transactions were made in connection with the sale or transfer of the Vehicles. Ex. 2 ¶ 9 (Affidavit of Laura Taylor).

### CONCLUSION

For these reasons, no genuine issue of material fact exists and the Court should enter a summary judgment in favor of Centennial Casualty Co., Inc. as subrogee, and Charleston Auto Auction.

Respectfully submitted,

GREEN FORD & WALLACE LLC



Ian S. Ford

ian.ford@greenfordwallace.com

Dwayne M. Green

dwayne.green@greenfordwallace.com

602 Rutledge Ave.

Charleston, SC 29403

(843) 266-2628; (843) 266-2627 (facsimile)

www.greenfordwallace.com

*Attorneys for Centennial Casualty Co., Inc. and  
Charleston Auto Auction*

July 8, 2010  
Charleston, South Carolina

## INDEX TO EXHIBITS

### Motion for Summary Judgment of Centennial Casualty Co., Inc. and Charleston Auto Auction

*Centennial Casualty Co., Inc. v. Western Surety Co. d/b/a CAN Surety et al.*  
2009-CP-10-6577

- Exhibit 1: Defendant/Third Party Plaintiff Western Surety Company d/b/a CAN Responses to the Interrogatories of Centennial Casualty Co., Inc.
- Exhibit 2: Affidavit of Laura Taylor
- Exhibit 3: Purchase Agreement and Bill of Sale, with terms
- Exhibit 4: Title clerk authorizations
- Exhibit 5: Bounced checks
- Exhibit 6: Subrogation receipt
- Exhibit 7: Bond
- Exhibit 8: Denial letter by CNA Surety

STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) FOR THE NINTH JUDICIAL CIRCUIT

Centennial Casualty Co., Inc. ) Civil Action No.: 2009-CP-10-6577

Plaintiff,

v.

DEFENDANT/THIRD-PARTY  
PLAINTIFF WESTERN SURETY  
COMPANY, D/B/A CNA RESPONSES  
TO THE INTERROGATORIES OF  
CENTENNIAL CASUALTY CO., INC.

Western Surety Company,  
d/b/a CNA Surety,

Defendant.

Western Surety Company,  
d/b/a CNA Surety,

Defendant/Third-Party  
Plaintiff,

v.

Charleston Auto Auction, A3  
Auto Center, LLC. and Wylie  
Mickle,

Third-Party Defendants.

TO: IAN S. FORD, ESQUIRE AND DWAYNE M. GREEN, ESQUIRE,  
ATTORNEYS FOR PLAINTIFF CENTENNIAL CASUALTY CO., INC.  
AND TO PLAINTIFF CENTENNIAL CASUALTY CO., INC., ABOVE-  
NAMED:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure,  
Defendant/Third-Party Plaintiff Western Surety Company d/b/a CNA Surety hereby  
responds to the Interrogatories of Plaintiff in accordance with the rules as follows:

**INTERROGATORIES**

1. Identify all persons who may be witnesses concerning the facts of this  
case, indicate whether or not written or recorded statements have been taken from the

witnesses, and indicate who has possession of such statements.

**ANSWER:**

**a) Agents and employees of Charleston Auto Auction**

Agents and employees of Charleston Auto Auction are expected to testify as to the transaction of the business as an auto auction; that they do not take title to the vehicles, that they do not pay taxes on the vehicles, and they do not become the owner of the vehicles that are the subject matter of this litigation. They are further expected to testify as to their relationship with both the buyer and the seller and acting not as legal representative but as an auction house. They are further expected to testify as to their relationship with Centennial Casualty Co., Inc., which upon information and belief insures them for losses the auction house may suffer by guaranteeing payments in order to induce persons or entities to use the auction house. They are further expected to testify as to the procedures, if any, regarding deeds, titling, and handling of the sale of the vehicles.

**b) Agents and employees of Plaintiff, Centennial Casualty Co., Inc.**

Agents and employees of Centennial Casualty Co., Inc. are expected to testify that they are insurers of Charleston Auto Auction.

**c) Wylie Mickle**

**A3 Auto Center**

**312 Longpoint Drive, Suite 100**

**Columbia, South Carolina 29229**

Upon information and belief, the Plaintiff has alleged that they were involved in transactions which Plaintiff maintains has caused a loss.

**d) Actual owners of the vehicles which Plaintiff claims has resulted in a loss.**

2. For each person known to Defendant or its counsel to be a witness concerning the facts of this case, set forth either a summary sufficient to inform Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

**ANSWER:**

**No written or recorded statements.**

3. Identify all photographs, plats, sketches, or other prepared documents in Defendant's or its attorneys' possession, custody, or control that relate to any claim or defense in this action.

**ANSWER:**

**Defendant will rely upon all documents exchanged by and between the parties in discovery including any and all documents relating to the transfer of the vehicles which are the subject matter of this litigation.**

**Defendant has only been provided what has been produced by the Plaintiffs as of this date. Defendant is in possession of the bond which is likewise in the possession of the Plaintiff.**

4. Identify all insurance companies which may have insurance coverage related to any claim in this action and set forth the number or numbers of policies involved and the amount or amounts of coverage provided in each policy.

**ANSWER:**

**This is a bond claim. There is no insurance coverage related to the**

bond claim.

5. Identify all persons who have investigated the events underlying the claims in this action and describe their investigation(s).

**ANSWER:**

Upon information and belief, Jonathan Bowman on behalf of the Plaintiff performed the investigation in this matter, submitted documents to Western Surety Company which has denied the claim, first through Judith Randall and subsequently through its undersigned counsel.

6. Identify all persons whom Defendant will call as an expert witness at trial, and for each such person:

- (a) State the subject matter on which the expert is expected to testify;
- (b) State the substance of the facts and opinions to which the expert is expected to testify;
- (c) Provide a summary of the grounds for each such opinion; and
- (d) Identify all facts and evidence relied upon by each expert in making such opinion.

**ANSWER:**

Defendant has not determined a testifying expert as of this date.

7. — If Defendant alleges that it has suffered any damages from the events underlying this action, identify and list (a) all such damages, and (b) how Defendant believes those injuries or damages arose, and (c) who Defendant believes is responsible for each of those injuries or damages.

**ANSWER:**

Defendant has brought a third-party complaint seeking recovery if the bond is found to allow recovery, if the claim is granted as against the person or entities who allegedly caused the loss.

8. Identify any payments made under the Bond at issue in this action (attached to the Complaint).

**ANSWER:**

**Defendant will check, but at this time does not believe any payment has been made under this bond.**

9. Identify and set forth in detail all reasons and evidence, including all legal support, for Defendant's claim that Plaintiff is not a "legal representative" under the South Carolina Code § 56-15-10 *et seq.*, including § 56-15-320.

**ANSWER:**

**Defendant craves reference to the statute and the bond. Plaintiff has failed to established that it is a "legal representative." Defendant would object to the remainder of Interrogatory No. 9 on the grounds it seeks to invade the attorney work product privilege.**

10. Identify and set forth in detail all reasons and evidence, including all legal support, for Defendant's denial of Paragraph 9 of the Complaint, that "At all relevant times, Charleston Auto Auction was acting as the legal representative of the Selling Dealerships for the sale of the Vehicles."

**ANSWER:**

**Defendant craves reference to the bond and the common law of South Carolina in response to Interrogatory No. 10 and objects to further responding to the same on the grounds it seeks to invade the attorney work product privilege. The Plaintiff as of this date yet to provide any documentation that it is either an owner or legal representative as required in the bond.**

11. Identify and set forth in detail all reasons and evidence, including all legal support, for Defendant's denial of Paragraph 12 of the Complaint, that "The Selling Dealerships made Charleston Auto Auction their legal representative for purposes of the sale of the Vehicles and the Bond."

**ANSWER:**

**See response to Interrogatories 9 and 10.**

12. Identify and set forth in detail all reasons and evidence, including all legal support, for Defendant's claim that Plaintiff is not the legal subrogee of Charleston Auto Auction.

**ANSWER:**

**See response to Interrogatories 9, 10, and 11.**

13. Set forth in detail all reasons and evidence, including all legal support, for Defendant's denial of Paragraph 19 of the Complaint, that "As the legal subrogee of Charleston Auto Auction, Plaintiff has the right to proceed in the place of Charleston Auto Auction in this matter."

**ANSWER:**

**See response to Interrogatories Nos. 9, 10, 11, and 12. Defendant has demanded proof of said allegations.**

14. Set forth in detail all reasons and evidence, including all legal support, for Defendant's denial of Paragraph 26 of the Complaint, that "This loss or damage falls under the Bond required by South Carolina Code § 56-15-320 *et seq.*"

**ANSWER:**

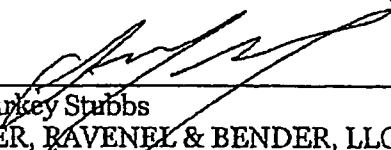
**Defendant craves reference to the statute for its terms and conditions and reasserts its responses as set forth herein in response to the**

**Interrogatories Nos. 9, 10, and 11.**

15. To the extent not already identified, identify all documents that support or otherwise relate to Defendant's claims against Plaintiff, or to any of the third-party claims in this action.

**ANSWER:**

**Defendant's claim as it would relate to third-party claimants would have to rely upon documents produced by the Plaintiff. The Defendant's defense against the Plaintiff is based upon the statutory bond which is interpreted as a matter of law.**



S. Markey Stubbs  
BAKER, RAVENEL & BENDER, LLC  
3710 Landmark Drive, Suite 400  
Post Office Box 8057  
Columbia, South Carolina 29202  
Telephone: (803) 799-9091  
Facsimile: (803) 779-3423  
Attorneys for Defendant Western Surety Company,  
d/b/a CNA Surety  
Our File No. 7753.67

December 22, 2009

THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUITT

**Civil Action No.: 2009-CP-10-6577**

# CERTIFICATE OF SERVICE

**V.**

**Defendant.**

**Defendant/Third-Party  
Plaintiff,**

**v.**

### **Third-Party Defendants.**

**Plaintiff's Counsel:**

Catherine M. Gwyn

ROA 49

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

CENTENNIAL CASUALTY CO., INC., ) CASE NO.: 2009-CP-10-6577

Plaintiffs,

vs.

WESTERN SURETY COMPANY, d/b/a  
CNA SURETY,

Defendant.

WESTERN SURETY COMPANY,  
d/b/a CNA SURETY,

Defendant/Third-Party Plaintiff,

vs.

CHARLESTON AUTO AUCTION, A3  
AUTO CENTER, LLC and WYLIE  
MICKLE,

Third-Party Defendants.

### AFFIDAVIT OF LAURA TAYLOR

Laura Taylor, having been duly sworn, deposes and states as follows:

1. I am the general manager of Charleston Auto Auction. I am over the age of twenty-one, am competent to give the testimony herein, and make the statements in this Affidavit from my personal knowledge and in my capacity as general manager of Charleston Auto Auction.

2. I make the statements in this Affidavit in support of the Motion for Summary Judgment of Centennial Casualty Co., Inc. and Charleston Auto Auction.

3. Charleston Auto Auction is an auctioneer that facilitates the sale and purchase of automobiles among dealers. Charleston Auto Auction acts as the agent and legal representative for the dealerships in the transactions it facilitates; collects and conveys the funds for the automobiles; and conveys (but does not assume) the title for the automobiles between the parties.

4. Before Charleston Auto Auction will facilitate the sale of an automobile to or from a motor vehicle dealer, dealers on both sides of the transaction must enter into a purchase and sale agreement with Charleston Auto Auction, which makes Charleston Auto Auction the dealers' legal representative.

5. In March 2008, A3 Auto Center purchased three automobiles: a 2006 Dodge Magnum; a 2001 Oldsmobile Aurora; and a 2006 Ford F250 (collectively the "Vehicles"). Charleston Auto Auction facilitated the sale of those automobiles to A3 Auto Center. A Plus Auto Sales, Priceless Automotive, and Automotive Rentals, Inc. / ARI Fleet Ltd (collectively the "Selling Dealerships") sold the vehicles. True and correct copies of certain business record documents evidencing those transactions are attached as Exhibits 3-5.

6. As is customary in the motor vehicle auction business, the Selling Dealerships made Charleston Auto Auction their agent and legal representative. True and correct copies of certain business record documents evidencing this designation are attached as Exhibits 3-4.

7. The checks used by A3 Auto Center to purchase the Vehicles were returned as having insufficient funds. True and correct copies of those returned checks are attached as Exhibit 5. Those checks were not given in full or partial payment of a preexisting debt.

8. Charleston Auto Auction was damaged in the amount of at least \$35,305 through the fraudulent writing of insufficient checks for the Vehicles.

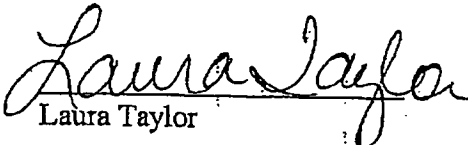
9. Charleston Auto Auction incurred damages and losses in connection with the sale or transfer of motor vehicles by a licensed dealer or wholesaler or the dealer's or wholesaler's agent, as required by South Carolina's Dealer Bond Statute.

10. Centennial Casualty Co., Inc. insured Charleston Auto Auction against the loss, and has paid on the claim. Centennial is the legal subrogee of Charleston Auto Auction, and Charleston Auto Auction assigned its rights in this matter to Centennial. Centennial may stand in Charleston Auto Auction's place in pursuit of payment under the Bond at issue. True and correct copies of certain business record documents showing that status are attached as Exhibit 6.

11. Charleston Auto Auction, through Centennial, has made demands on Western Surety Company for payment under the Bond, which Western Surety Company has refused to pay.

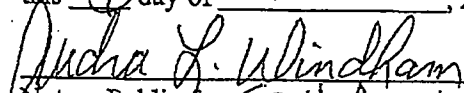
[SIGNATURE APPEARS ON NEXT PAGE]

So sworn under penalty of perjury.

  
Laura Taylor

SWORN to and subscribed before me

this 6 day of 7, 2010

 (L.S.)

Notary Public for South Carolina

My Commission Expires: March 6<sup>th</sup> 2018

Aug-05-08 12:03pm From-

T-337 P 001/001 F-363

1st Check SALE

ON LINE

4/4/07



"Count On Us"

651 Precast Lane  
Moncks Corner S.C. 29461

Ph: 843-719-1900 • Fax: 843-719-1909

www.charlestonautoauction.net

**ODOMETER MILEAGE STATEMENT:**

ederal law and State law requires that you state the mileage in connection with the  
transfer of ownership. Failure to complete or providing a false statement may result in  
is and/or imprisonment...

SELLER A00101  
A PLUS AUTO SALES  
1507. HIGHWAY 9. EAST  
LONGS, SC 29568

843-399-2121  
License: 08285

SPECIAL ADDRESS

TE THAT THE ODOMETER OF THE VEHICLE  
SCRIBED TO THE RIGHT NOW READS → 92110

TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE  
RIBED TO THE RIGHT AND ABOVE UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED.

- ☐ (1) I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING  
REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.
- ☐ (2) I HEREBY CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE.

WARNING: ODOMETER DISCREPANCY

I signature below acknowledges sales agreement with such terms of sale and receipt of a copy of the above  
and disclosure statement.

SERIALIZED SIGNATURE PRINTED NAME OF SELLER  
A PLUS AUTO SALES

IE (TRANSFEREE) BYR# A00193 Bid# 2872  
A3 AUTO CENTER  
2301 MAIN ST  
COLUMBIA, SC 29201

803-779-2030  
License: 33544

I signature below acknowledges purchase agreement with such terms of sale  
receipt of a copy of the above odometer disclosure statement.

TRANSFEREE'S AUTHORIZED SIGNATURE PRINTED NAME OF TRANSFEREE  
WILL STEWART

OFFICE COPY

INVR# 082266

SIK# 180523

|                       |             |               |                     |            |
|-----------------------|-------------|---------------|---------------------|------------|
| DATE 8/14/2008        | TIME 11:14  | AUCTIONEER TG | BLOCK CLK CHARLOTTE | CAR A 0047 |
| VIN 1G3GR62H414103216 |             | UNIT #        |                     | STOCK #    |
| YEAR 2001             | MAKE OLDSMO | MODEL AURORA  | BODY 4 DR           | COLOR WHT  |
|                       |             |               | CYL 06              |            |

**OPTIONS**

SUN ROOF  
AUTOMATIC  
AIR CONDITIONER  
POWER STEERING  
POWER BRAKES  
ELECTRIC WINDOWS  
ELECTRIC SEATS  
CRUISE CONTROL  
TILT WHEEL  
COMPACT

**HOW SOLD**

|                      |      |               |         |       |
|----------------------|------|---------------|---------|-------|
| Green                | Blue | Yellow        | Red     | White |
| Ride & Drive         | *TA* | Time Affected | Caution | As Is |
| XX Auction Guarantee |      |               |         |       |

**ANNOUNCED CONDITIONS**

10,100.00  
81,400.00

|          |          |        |         |
|----------|----------|--------|---------|
| No. Sets | No. Bids | Return | Overbid |
|          |          |        |         |

TIME 17:02:00 13224563 SC

AUCTION OK

BIDDER 8129

RECEIVED DATE

RELEASE DATE

MAIL DATE

**INSPECTION**

This inspection will be done for a FEE and will align with all auction lighting systems and  
arbitration rules. This FEE will be added to the purchase price or in the event of a No-  
Sale, will be added to the customer's account. Charleston Auto Auction makes no  
expressed warranties and assumes no liability regarding this inspection. Any vehicle that  
does not pass inspection will automatically be entered into arbitration.

Dealer Signature

**WARRANTY**

This warranty will be done for a FEE and covers drive train only (engine, transmission,  
differential, four-wheel drive, and clutch, if manual). It is valid for a period of 7 days (sale  
day to sale day) or 500 miles (whichever occurs first) and is non-transferable. Vehicle must  
be 5 years old or newer with less than 100,000 miles. Charleston Auto Auction reserves  
the right to repair the vehicle or purchase the vehicle, Transportation not included.

Dealer Signature

PLAINTIFF'S  
EXHIBIT

3

MSS

ROA 54

Aug-05-08 12:03pm From-

T-337 P 001/001 F-362

1st Unit

RE-SALE



"Count On Us"

651 Precast Lane  
Moncks Corner S.C. 29461

Ph: 843-719-1900 • Fax: 843-719-1909

www.charlestonautoauction.net

**ODOMETER MILEAGE STATEMENT**  
Federal law and State law requires that you state the mileage in connection with the title of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

SELLER: H00193  
A3 AUTO CENTER  
2301 MAIN ST  
COLUMBIA, SC 29201

803-779-2030  
License: 33544

will 7/4/4  
12.29

STATE THAT THE ODOMETER OF THE VEHICLE  
REGISTERED TO THE RIGHT NOW READS →

92648

TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE  
REGISTERED TO THE RIGHT AND ABOVE UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED.

- ☐ (1) I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING  
REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.
- ☐ (2) I HEREBY CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE.

**WARNING: ODOMETER DISCREPANCY**

Signatures below acknowledge sales agreement with such terms of sale and receipt of a copy of the above  
disclosure statement.

SELLER'S AUTHORIZED SIGNATURE

PRINTED NAME OF SELLER

A3 AUTO CENTER

(TRANSFEREE) BYRN T00129 Bid# 2520  
TLC AUTO EXCHANGE LLC  
1318 WILSON RD  
NEWBERRY, SC 29108

803-276-1940  
License: 33773

Signatures below acknowledge purchase agreement with such terms of sale  
and receipt of a copy of the above odometer disclosure statement.

TRANSFEREE'S AUTHORIZED SIGNATURE

PRINTED NAME OF TRANSFEREE

TIM COOK

OFFICE COPY.

INVT 0000074

DIRW

101170

|                          |                |                  |                        |                |
|--------------------------|----------------|------------------|------------------------|----------------|
| 08/28<br>2008            | TIME<br>12:17  | AUCTIONEER<br>RL | BLOCK CLK<br>CHARLOTTE | CAR #<br>A 006 |
| VIN<br>163GR62H414103216 |                | UNIT #           |                        |                |
| YEAR<br>2001             | MAKE<br>OLDSMO | MODEL<br>AURORA  | BODY<br>4 DR           | COLOR<br>WHT   |
|                          |                |                  |                        | STOCK #<br>06  |

**OPTIONS**

SUN ROOF  
AUTOMATIC  
AIR CONDITIONER  
POWER STEERING  
POWER BRAKES  
ELECTRIC WINDOWS  
ELECTRIC SEATS  
CRUISE CONTROL  
TILT WHEEL  
COMPACT

**HOW SOLD**

|              |       |                |      |                         |
|--------------|-------|----------------|------|-------------------------|
| Green        | Blue  | Yellow         | Red  | White                   |
| Ride & Drive | *TRA* | Trade Attached | Cash | As Is                   |
|              |       |                |      | XX<br>Auction Guarantee |

**ANNOUNCED CONDITIONS**

\*IF IF IF IF IF IF

Sold

|                         |
|-------------------------|
| Sale Price<br>4,000.00  |
| Buyer's Fee<br>125.00   |
| Buyer's Draft Fee<br>10 |
| Other<br>4135           |
| TOTAL<br>4,125.00       |

|                   |                |              |         |
|-------------------|----------------|--------------|---------|
| No. Bids          | No. Seller     | Rebid        | Overbid |
| 11                | 10260133274563 |              |         |
| AUCTION CK #      |                |              |         |
| BUYER'S SIGNATURE |                | CLERK'S NAME |         |
| RECEIVE DATE      |                | RELEASE DATE |         |
| HOLD DATE         |                | DEPOSIT DATE |         |

**INSPECTION**

This inspection will be done for a FEE and will align with all auction lighting systems and arbitration rules. This FEE will be added to the purchase price or in the event of a No-Sale, will be added to the customer's account. Charleston Auto Auction makes no expressed warranties and assumes no liability regarding this inspection. Any vehicle that does not pass inspection will automatically be entered into arbitration.

Dealer Signature \_\_\_\_\_

**WARRANTY**

This warranty will be done for a FEE and covers drive train only (engine, transmission, differential, four-wheel drive, and clutch, if manual). It is valid for a period of 7 days (sale day to sale day) or 500 miles (whichever occurs first) and is non-transferable. Vehicle must be 5 years old or newer with less than 100,000 miles. Charleston Auto Auction reserves the right to repair the vehicle or purchase the vehicle. Transportation not included.

Dealer Signature \_\_\_\_\_

## 2ND UNIT

UN-Land

**"Count On Us"**



651 Precast Lane  
Moncks Corner S.C. 29451

[www.charlestonaviation.net](http://www.charlestonaviation.net)

### ODOMETER MILEAGE STATEMENT

ul law and State law requires that you state the mileage in connection with the  
or of ownership. Failure to complete or providing a false statement may result in  
and/or imprisonment.

903-739-2770-n...

License: 221.16

2 THAT THE ODOMETER OF THE VEHICLE  
RIBED TO THE RIGHT NOW READS —————→

THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE  
 RECORDED TO THE RIGHT AND ABOVE UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED.

- (1) I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL UNITS.
- (2) I HEREBY CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE.
- WARNING: ODOMETER DISCREPANCY

Signature below acknowledges sales agreement with such terms of sale and receipt of a copy of the above describing statement.

5 AUTHORIZED SIGNATURE

PRINTED NAME OF SELLER

# PRICELESS AUTOMOTIVE

TRANSFERRED  
AS-ADULT CENTER  
2301 MAIN ST  
COLUMBIA, SC 29201

803-779-2030  
License #: 33544

Signature below constitutes purchase agreement with such terms of sale  
as set out in a copy of the above odorless disclosure statement.

FREE'S AUTHORIZED SIGNATURE

W.I. STEWART

OFFICE COPY

|                          |               |                 |                     |                 |
|--------------------------|---------------|-----------------|---------------------|-----------------|
| DATE<br>2008             | TIME<br>13:51 | ACTIONEER<br>BS | BLOCK CLK<br>TERESA | CAR #<br>LB0063 |
| VIN<br>1FTSW21P76EB49998 |               | UNIT #<br>—     |                     | STOCK #         |
| ENGINE<br>E006           | MAKE<br>FORD  | MODEL<br>F250   | SL. & DR.<br>COLOR  | EX. #           |

### OPTIONS

HARD TOP  
AUTOMATIC  
AIR CONDITIONER  
POWER STEERING  
POWER BRAKES  
ELECTRIC WINDOW  
ELECTRIC SEATS  
CRUISE CONTROL  
TILT WHEEL  
COMPACT

### HOW SOLD

|                |               |         |       |                      |
|----------------|---------------|---------|-------|----------------------|
| Green<br>XX    | Pink<br>*TA*  | Yellow  | Red   | White                |
| Figs &<br>Onys | Ten<br>Anchod | Caution | As Is | Auction<br>Guarantee |

\* IF ANNOUNCED CONDITIONS IF \*

•AUCTION POLICY. ALL  
DIESELS AS IS PER  
SELLER GRN LGHT••

| No. Balls | No. Balls | Revol. | Outlets |
|-----------|-----------|--------|---------|
|           |           |        |         |

|       |                |       |    |
|-------|----------------|-------|----|
| TITLE | 77032010097337 | STATE | IL |
|-------|----------------|-------|----|

AUCTION CK #

|                    |        |              |
|--------------------|--------|--------------|
| BUYER              | DATE   | CLERK'S NAME |
| <i>[Signature]</i> | 6/1/29 |              |

|              |              |
|--------------|--------------|
| RECEIVE DATE | RELEASE DATE |
| USE DATE     | REPORT DATE  |

|      |          |
|------|----------|
| DATE | 10/10/10 |
| TIME | 10:10    |

## INSPECTION

This inspection will be done for a FEE and will align with all auction lighting systems and arbitration rules. This FEE will be added to the purchase price or in the event of a No-Sale, will be added to the customer's account. Charleston Auto Auction makes no expressed warranties and assumes no liability regarding this inspection. Any vehicle that does not pass inspection will automatically be entered into arbitration.

**Dozier Signature**

## WARRANTY

This warranty will be done for a FEE and covers drive train only (engine, transmission, differential, four-wheel drive, and clutch, if manual). It is valid for a period of 7 days (sale day to sale day) or 500 miles (whichever occurs first) and is non-transferable. Vehicle must be 5 years old or newer with less than 100,000 miles. Charleston Auto Auction reserves the right to require the vehicle or purchase the vehicle. Transportation not included.

**Dealer Signature**

Jun-05-08 10:55am From-



"Count On Us"

651 Precast Lane  
Moncks Corner S.C. 29461

Ph: 843-719-1900 • Fax: 843-719-1909

www.charlestonautoauction.net

#### ODOMETER MILEAGE STATEMENT

Federal law and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

SELLER

A00057

AUTOMOTIVE RENTALS INC  
9000 MIDLANTIC DR  
MT. LAUREL, NJ 08054

856-778-1500

License: LEASE

STATE THAT THE ODOMETER OF THE VEHICLE  
DESCRIBED TO THE RIGHT NOW READS →

88062

TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE  
DESCRIBED TO THE RIGHT AND ABOVE UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED

- ☐ (1) I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING  
REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.
- ☐ (2) I HEREBY CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE.

WARNING: ODOMETER DISCREPANCY

Buyer's signature below acknowledges sales agreement with each item of sale and receipt of a copy of the above  
seller's disclosure statement

SELLER'S AUTHORIZED SIGNATURE

PRINTED NAME OF SELLER

AUTOMOTIVE RENTALS

NAME (TRANSFEREE) BYR# A00193 Bid# 1959

A3 AUTO CENTER  
2301 MAIN ST  
COLUMBIA, SC 29201

803-779-2030

License: 33544

Buyer's signature below acknowledges purchase agreement with each item of sale  
to receipt of a copy of the above seller's disclosure statement

TRANSFEREE'S AUTHORIZED SIGNATURE

PRINTED NAME OF TRANSFEREE

WILLIAM STEWART

OFFICE COPY

T-754 P 003/011 F-623

|                   |                  |                  |                      |                |
|-------------------|------------------|------------------|----------------------|----------------|
| DATE<br>3/07      | TIME<br>12:00 PM | AUCTIONEER<br>AU | BLOCK CLK<br>VANESSA | CAR #<br>L0015 |
| 2006              | 2006             | UNIT #           | STOCK #              |                |
| 204FV47V16H162327 |                  | 0K74/05027/6H162 |                      |                |
| YEAR<br>2006      | MAKE<br>DODGE    | MODEL<br>MAGNUM  | BODY<br>4 DR         | CYL.<br>06     |

#### OPTIONS

#### HOW SOLD

HARD TOP  
AUTOMATIC  
AIR CONDITIONER  
POWER STEERING  
POWER BRAKES  
ELECTRIC WINDOWS  
ELECTRIC SEATS  
CRUISE CONTROL  
TILT WHEEL  
COMPACT

|              |                |        |       |                        |
|--------------|----------------|--------|-------|------------------------|
| Group        | Days           | Yellow | Red   | White                  |
| Ride & Drive | Yield Assigned | Coupon | As Is | XXV Auction Conditions |

#### ANNOUNCED CONDITIONS

|                            |           |              |             |
|----------------------------|-----------|--------------|-------------|
| No Bid                     | No Bidder | Run          | Outbid      |
| TITLE #<br>770570157582430 |           |              | STATE<br>SC |
| AUCTION CK #               |           |              |             |
| BUYER CK #                 |           | CLERK'S NAME |             |
| RECEIVE DATE               |           | RELEASE DATE |             |
| MIL DATE                   |           | DEPOSIT DATE |             |

#### Sale Price

9,800.00

Buyer's Fee

195.00

Buyer's Dist Fee

1000 Lake Fee

Other

\$10,095

2,995.00

#### INSPECTION

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Dealer Signature

#### WARRANTY

This warranty will be done for a FEE and covers drive train only (engine, transmission, differential, four-wheel drive, and clutch, if manual). It is valid for a period of 7 days (sole day to sale day) or 500 miles (whichever occurs first) and is non-transferable. Vehicle must be 5 years old or newer with less than 100,000 miles. Charleston Auto Auction reserves the right to repair the vehicle or purchase the vehicle. Transportation not included.

Dealer Signature

## PURCHASE AGREEMENT AND BILL OF SALE

Seller and buyer agree to abide by all Auction Company policies, which are incorporated herein, and all decisions of management.

Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company, including transfer of title, however, they agree Auction is merely performing an auction service and Auction Company disclaims all express and implied warranties, including merchantability and fitness, except for the warranty of title described below.

Seller and buyer indemnify and hold Auction Company harmless from any liability, loss, costs, damage or expense, including attorney's fees which arise directly or indirectly from this transaction, including, but not limited to, all matters relating to odometer mileage, odometer mileage disclosure and vehicle history even if Seller and Buyer are not at fault.

Buyer agrees that he has examined the vehicle described on reverse side and accepts it in its present condition; he also agrees that the title and ownership of said vehicle, with all of its equipment, shall remain in Seller, or Auction Company if it has paid Seller, until any check or draft given for the Sale Price of said vehicle or any part of the same, has been honored and paid in full. However, on delivery of this vehicle to Buyer, he shall assume all liability of damage or destruction of the same. Buyer further agrees to honor payment of any check or draft immediately when presented to his bank for payment. And under no circumstances will stop payment for any reason whatsoever unless approved by authorized representative of Auction Company. Then if approved, Buyer is to return vehicle at his expense to place of purchase. Buyer agrees to hold Auction Company harmless for and to indemnify it against any loss, including attorney's fees, as a result of a Buyer's check or draft being dishonored by the bank upon which it is drawn for any reason whatsoever. Should Buyer's check or draft be dishonored, in addition to the above, Buyer shall pay Auction Company interest at a rate of 1.5% per month on any amount outstanding.

Auction Company, in accordance with the below terms and conditions, guarantees to Buyer that the vehicle described is not stolen or mortgaged at the time of this sale.

1. This warranty of title does not cover mere technical defects which can be removed by execution and delivery to buyer or prior owners, or legally required papers without the necessity of any monetary payment.
2. Auction company's liability under its warranty of title of the vehicle, the subject of this transaction, shall never exceed the sale price of said vehicle in this transaction, and the maximum amount of Auction Company's liability under its said warranty shall be reduced by deducting from said sale price 2% thereof on the first of each month following the date of this transaction, and all liability of Auction Company will expire and terminate on the first day of the forty-eighth month after the date of this transaction.

## PURCHASE AGREEMENT AND BILL OF SALE

Seller and buyer agree to abide by all Auction Company policies, which are incorporated herein, and all decisions of management.

Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company, including transfer of title, however, they agree Auction is merely performing an auction service and Auction Company disclaims all express and implied warranties, including merchantability and fitness, except for the warranty of title described below.

Seller and buyer indemnify and hold Auction Company harmless from any liability, loss, costs, damage or expense, including attorney's fees which arise directly or indirectly from this transaction, including, but not limited to, all matters relating to odometer mileage, odometer mileage disclosure and vehicle history even if Seller and Buyer are not at fault.

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3. Auction Company's warranty of title is expressly limited to Buyer and said warranty is not negotiable or transferable.

4. Auction Company's warranty of title is void ab initio if the purchase price for the vehicle is not paid by Buyer.

5. This warranty of title does not protect against defects in the title known to Buyer whether listed as exceptions to the title on this instrument or not.

6. Whenever any claim is made by any person against the title of said vehicle, whether by suit or otherwise, Buyer shall within five days after becoming aware of said claim notify Auction Company, giving full particulars of the claim, and shall cooperate fully in defending any legal action and in taking any other steps to minimize possible loss.

7. On payment of any claim under this warranty of title, Buyer will execute all necessary papers subrogating his right to recover against Seller, or others, to Auction Company.

8. Buyer shall not surrender possession of the vehicle, except as required by legal process, to any such claimant, nor shall it voluntarily pay or acknowledge the validity of any such claim, without the prior approval of Auction company.

9. Time is of the essence of this agreement and any failure on the part of Buyer to notify Auction Company of such claim shall vitiate Auction Company's liability under this warranty of title. Likewise, failure of Buyer to cooperate in defending any such claim shall relieve Auction Company of liability under this warranty of title.

If Auction Company makes a claim as a result of this transaction against Seller, Buyer or their agents or employees, Auction Company shall recover reasonable attorney's fees in an amount not less than 25% of the amount of the claim, regardless of whether suit is filed, including appellate fees and costs.

### INSPECTION

This inspection will be done for a FEE and will align with all auction lighting systems and arbitration rules. This FEE will be added to the purchase price or in the event of a No Sale, will be added to the customer's account. Auction company makes no expressed warranties and assumes no liability regarding this inspection. Any vehicle that does not pass inspection will automatically be entered into probation.

Dealer Signature \_\_\_\_\_

### WARRANTY

This warranty will be done for a FEE and covers drive train only (engine, transmission, differential, four-wheel drive, and clutch, if manual). It is valid for a period of 7 days (sale day to sale day) or 600 miles (whichever occurs first) and is non-transferable. Vehicle must be 6 years old or newer with less than 100,000 miles. Auction company reserves the right to repair the vehicle or purchase the vehicle. Transportation not included.

Dealer Signature \_\_\_\_\_

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Dealer Signature \_\_\_\_\_

### WARRANTY

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Dealer Signature \_\_\_\_\_

STATE OF SC

CAA DEALER CODE: \_\_\_\_\_

COUNTY OF RICHLANDTITLE CLERK AUTHORIZATIONI, WILLIAM A STEWART  
(Consignor - owner)

do hereby duly authorize Charleston Auto Auction and/or its employees to act as our Agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicles owned by consignor and consigned to Charleston Auto Auction for sale, including without limitation, any title, title transfer document, reassignment or odometer disclosure statements as required by federal or state law.

In consideration of Charleston Auto Auction's agreement to execute such documents on Consignor's behalf from time to time, Consignor shall indemnify, defend and hold harmless Charleston Auto Auction, its affiliates, subsidiaries, officers, directors, employees, successors and assigns from and against any and all loss, damages, liability, claims, causes of action, and expenses of whatever kind and nature, arising from the execution transfer of ownership of any consigned vehicle or from the execution by Charleston Auto Auction or its employees or agents of any certificate of title, odometer statement, bill of sale or other document necessary to transfer ownership of a consigned vehicle. Notwithstanding the foregoing, nothing contained herein shall be construed to require Consignor to indemnify Charleston Auto Auction from any loss resulting from any gross negligence or willful misconduct of Charleston Auto Auction or its employees or agents.

Consignor further agrees to guarantee and save the authorities of any state requested to process such transfer of title from all responsibility with respect to this Title Clerk Authorization.

A3 AUTO CENTER  
(PRINT COMPANY/CONSIGNOR NAME)William A Stewart  
(SIGNATURE OF CONSIGNOR)WILLIAM A STEWART  
(PRINT NAME & TITLE OF PERSON SIGNING)

WITNESS MY HAND AND SEAL

Affixed this 13 day of  
10, 2006Laura Taylor  
(NOTARY PUBLIC)My Commission Expires: Sept 25, 2010PLAINTIFF'S  
EXHIBIT4

STATE OF S. C.  
 COUNTY OF Horry

CAA DEALER # \_\_\_\_\_

TITLE CLERK AUTHORIZATION

I, Gregory J. Norris  
 (Consignor)

do hereby duly authorize Charleston Auto Auction and/or its employees to act as our Agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicles owned by consignor and consigned to Charleston Auto Auction for sale, including without limitation, any title, title transfer document, reassignment or odometer disclosure statements as required by federal or state law.

In consideration of Charleston Auto Auction's agreement to execute such documents on Consignor's behalf from time to time, Consignor shall indemnify, defend and hold harmless Charleston Auto Auction, its affiliates, subsidiaries, officers, directors, employees, successors and assigns from and against any and all loss, damages, liability, claims, causes of action, and expenses of whatever kind and nature, arising from the execution transfer of ownership of any consigned vehicle or from the execution by Charleston Auto Auction or its employees or agents of any certificate of title, odometer statement, bill of sale or other document necessary to transfer ownership of a consigned vehicle. Notwithstanding the foregoing, nothing contained herein shall be construed to require Consignor to indemnify Charleston Auto Auction from any loss resulting from any gross negligence or willful misconduct of Charleston Auto Auction or its employees or agents.

Consignor further agrees to guarantee and save the authorities of any state requested to process such transfer of title from all responsibility with respect to this Title Clerk Authorization.

A Plus Auto Sales - GREGORY J. Norris  
 (PRINT COMPANY/CONSIGNOR NAME)

Gregory J. Norris  
 (SIGNATURE OF CONSIGNOR)

Gregory J. Norris, Pres.  
 (PRINT NAME & TITLE OF PERSON SIGNING)

WITNESS MY HAND AND SEAL

affixed this 12 day of 05

Laura Taylor  
 (NOTARY PUBLIC)

My Commission Expires: Sept 25, 2010

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

CAA DEALER CODE: P00140**TITLE CLERK AUTHORIZATION**I, R. DAVE MURER SR  
(Consignor - owner)

do hereby duly authorize Charleston Auto Auction and/or its employees to act as our Agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicles owned by consignor and consigned to Charleston Auto Auction for sale, including without limitation, any title, title transfer document, reassignment or odometer disclosure statements as required by federal or state law.

In consideration of Charleston Auto Auction's agreement to execute such documents on Consignor's behalf from time to time, Consignor shall indemnify, defend and hold harmless Charleston Auto Auction, its affiliates, subsidiaries, officers, directors, employees, successors and assigns from and against any and all loss, damages, liability, claims, causes of action, and expenses of whatever kind and nature, arising from the execution transfer of ownership of any consigned vehicle or from the execution by Charleston Auto Auction or its employees or agents of any certificate of title, odometer statement, bill of sale or other document necessary to transfer ownership of a consigned vehicle. Notwithstanding the foregoing, nothing contained herein shall be construed to require Consignor to indemnify Charleston Auto Auction from any loss resulting from any gross negligence or willful misconduct of Charleston Auto Auction or its employees or agents.

Consignor further agrees to guarantee and have the authorities of any state requested to process such transfer of title from all responsibility with respect to this Title Clerk Authorization.

R. DAVE MURER SR  
(PRINT COMPANY/CONSIGNOR NAME)President AutomobileR. DAVE MURER SR  
(SIGNATURE OF CONSIGNOR)R. DAVE MURER SR President  
(PRINT NAME & TITLE OF PERSON SIGNING)

WITNESS MY HAND AND SEAL

Affixed this 13 day of 10, 2006Laura J. Jara  
(NOTARY PUBLIC)My Commission Expires: Sept 25, 2010



Automotive Rentals International

**POWER-OF-ATTORNEY  
(AGENCY) --  
INDEMNITY AND HOLD HARMLESS AGREEMENT**

AUTOMOTIVE RENTALS INC. &/OR ARI FLEET LT, (HEREINAFTER CALLED CUSTOMER), WHOSE PRINCIPAL PLACE OF BUSINESS IS AT 9000 MIDLANTIC DRIVE, MT. LAUREL, NJ 08054, APPOINTS CHARLESTON AUTO AUCTION, 651 PRECAST LANE, MONCK'S CORNER, SOUTH CHARLESTON, SOUTH CAROLINA, 29461 AND ALL OF ITS SUBSIDIARY AUCTIONS (HEREINAFTER CALLED AUCTION) AS CUSTOMER'S AGENT WITH FULL AND COMPLETE AUTHORITY TO SIGN ODOMETER DISCLOSURE STATEMENT, TITLE DOCUMENTS AND AUCTION INVOICES, OR OTHER DOCUMENTS AS REQUIRED ON CUSTOMER'S BEHALF WITH REGARD TO ANY AND ALL MOTOR VEHICLES OWNED BY CUSTOMER WHICH ARE SOLD THROUGH THE AUCTION.

CUSTOMER WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS AUCTION FROM ALL LOSSES OR EXPENSE INCURRED BY AUCTION AS A RESULT OF AUCTION ACTING AS CUSTOMER'S AGENT PURSUANT TO THIS AGREEMENT, INCLUDING ALL EXPENSES AND ATTORNEY'S FEES INCURRED BY AUCTION, UNLESS CAUSED BY AUCTION'S OWN NEGLIGENCE.

AGREED TO AND ACCEPTED BY: AUTOMOTIVE RENTALS, INC. &/OR  
ARI FLEET LT

SIGNATURE:

Howard Graus

PRINT NAME:

HOWARD GRAUS

TITLE:

ASST MGR.

DATE:

3/20/03

THE ABOVE IS SWORN AND SUBSCRIBED TO ME  
THIS 20<sup>TH</sup> DAY OF MARCH, 2003.

Karen B. Heller

NOTARY PUBLIC

KAREN B. HELLER  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires December 23, 2005

MY COMMISSION EXPIRES

DOMESTIC UNIT, 10001, P.O. BOX 700, MT. LAUREL, NJ 08054 TELEPHONE (609) 278-1200 FAX (609) 278-0305





*Attention  
Jonathan*

A3 AUTO CENTER, LLO  
PH. 803-779-2030  
2301 MAIN ST  
COLUMBIA, SC 29201

1129  
67-7891/2530

4/11/08 Date

Pay to the order of *AAA* \$29,345.00

PAID TO CITIZENS BANK

AD/AMERICAN FORD

1544 EAST 11th STREET NEWELL, SC 29576



1-800-WACHOVIA (922-4684)  
Date: Apr 10, 2008 Advice D-486090

Acct: 004/2003204864597

**WACHOVIA**  
All fees associated with this service will be reflected in your current account analysis statement. The listed items are enclosed. You may obtain payment from the maker.

| SEQ#  | ITEM | AMOUNT    |
|-------|------|-----------|
| 42500 |      | 29,345.00 |

NORTH CHARLESTON AUTO AUCTION  
ATTN: JANICE CAMPBELL  
651 PRECAST LANE  
MONCK'S CORNER, SC 29461

1 item charged totaling \$29,345.00

Advice Total \$29,345.00

⑆02333198⑆ 002003204864597⑆ ⑆0000486090⑆

Jonathan

## SUBROGATION RECEIPT

RECEIVED OF Centennial Casualty Company (hereinafter referred to as "Company") the sum of Eight Thousand Nine Hundred Ninety-five and 50/100 DOLLARS, (\$8,995.50) being in full settlement, discharge and release of all claims and demands under the Automobile Auction Dealers Check and Title Policy issued to the undersigned by said "Company", for the check loss sustained by the undersigned arising out of the transaction where

2006 Dodge Magnum VIN 162327

was sold through the auction facilities of the undersigned on 3/7/2008 to A3 Auto Center, Purchaser.

In consideration of such payment, and in conformity with the provisions of said policy, the undersigned hereby assigns and transfers to the said "Company" any and all claims and demands against any person or persons, partnership, association, corporation or estate, arising from or connected with such loss and damage, and hereby subrogates said "Company" in place of the undersigned in respect of any such claims and demands.

The undersigned covenants that no settlement has been made by the undersigned with any such party against whom such claim may lie, and no release has been given to any such party, and that no such settlement will be made, nor release given without the written consent of the said "Company"; and the undersigned covenants and agrees to cooperate fully with the said "Company" to promptly present claim, and, if necessary, to commence, enter into and prosecute suit against any such party through whose legal fault the aforesaid loss was caused, or who may otherwise be responsible therefore, with all due diligence, in the name of the undersigned, or in the name of said "Company", at the election of the "Company". In connection with any such claim or suit, the undersigned does promise and agree to furnish to said "Company" all papers and information in possession of the undersigned, bearing upon or related to such loss, and will further provide any assistance by way of testimony of its personnel or any other aid or cooperation the "Company" may reasonably require in the prosecution of such claim or suit.

In further consideration of said payment and of these premises, the undersigned hereby appoints the managers, agents or attorneys of said "Company" and their successors, severally, the agents and attorneys-in-fact of the undersigned, with irrevocable power, to collect any such claim or claims, and to begin, prosecute, compromise or withdraw in the name of the undersigned, or of the "Company", any and all legal proceedings that the said "Company" may deem necessary to enforce such claim or claims, and to execute in the name of the undersigned, any documents that may be necessary to carry the same into effect for the purposes of this agreement. Any such legal proceedings are to be under the exclusive direction and control of said "Company" and at the expense of said "Company".

Dated at Charleston Auto Auction, this the  
11 Day of Apr, 2008

Charleston Auto Auction

BY:

Laura Taylor

TITLE:

Office Manager

WITNESS:

[Signature]

J Brown  
8/4/08

## SUBROGATION RECEIPT

RECEIVED OF Centennial Casualty Company (hereinafter referred to as "Company") the sum of Twenty-two Thousand Six Hundred Ninety-eight and 00/100 DOLLARS, (\$22,698.00) being in full settlement, discharge and release of all claims and demands under the Automobile Auction Dealers Check and Title Policy issued to the undersigned by said "Company", for the check loss sustained by the undersigned arising out of the transaction where

2001 Oldsmobile Aurora VIN# 103216

2006 Ford F250 VIN# B49998

were sold through the auction facilities of the undersigned on 3/14 & 3/28/2008 to A3 Auto Center, Purchaser.

In consideration of such payment, and in conformity with the provisions of said policy, the undersigned hereby assigns and transfers to the said "Company" any and all claims and demands against any person or persons, partnership, association, corporation or estate, arising from or connected with such loss and damage, and hereby subrogates said "Company" in place of the undersigned in respect of any such claims and demands.

The undersigned covenants that no settlement has been made by the undersigned with any such party against whom such claim may lie, and no release has been given to any such party, and that no such settlement will be made, nor release given without the written consent of the said "Company"; and the undersigned covenants and agrees to cooperate fully with the said "Company" to promptly present claim, and, if necessary, to commence, enter into and prosecute suit against any such party through whose legal fault the aforesaid loss was caused, or who may otherwise be responsible therefore, with all due diligence, in the name of the undersigned, or in the name of said "Company", at the election of the "Company". In connection with any such claim or suit, the undersigned does promise and agree to furnish to said "Company" all papers and information in possession of the undersigned, bearing upon or related to such loss, and will further provide any assistance by way of testimony of its personnel or any other aid or cooperation the "Company" may reasonably require in the prosecution of such claim or suit.

In further consideration of said payment and of these premises, the undersigned hereby appoints the managers, agents or attorneys of said "Company" and their successors, severally, the agents and attorneys-in-fact of the undersigned, with irrevocable power, to collect any such claim or claims, and to begin, prosecute, compromise or withdraw in the name of the undersigned, or of the "Company", any and all legal proceedings that the said "Company" may deem necessary to enforce such claim or claims, and to execute in the name of the undersigned, any documents that may be necessary to carry the same into effect for the purposes of this agreement. Any such legal proceedings are to be under the exclusive direction and control of said "Company" and at the expense of said "Company".

Dated at 22, this the

Day of August, 2008

Charleston Auto Auction

BY:

Karina Taylor

TITLE:

Office Manager

WITNESS:

Pam Hunt



# South Carolina Department of Motor Vehicles

## MOTOR VEHICLE DEALER AND WHOLESALE SURETY BOND

DLA-1B  
(Rev. 2/04)

Dealer Number

Please read instructions on reverse side before executing bond.

COPY

BOND NUMBER 22887755 EFFECTIVE DATE July 21, 2006 TIME

A.M.  
P.M.

KNOW ALL MEN BY THESE PRESENTS: that we A 3 Auto Center LLC

(Firm Name as Licensed)

Doing business at

2301 Main Street, Columbia, SC 29201

as Principal and WESTERN SURETY COMPANY

as Surety

are duly authorized to do business within the State of South Carolina, as Surety, are held and firmly bound unto the people of the State of South Carolina to indemnify any owner of a motor vehicle, or his legal representative, who may be aggrieved by any fraud, fraudulent representation or violation by said Principal, salesman, or representative acting for such Principal within the scope of employment of such salesman or representative, of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, in the amount of Fifteen Thousand Dollars (\$15,000), lawful money of the United States of America, for which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, administrators, successors, and assigns, firmly by these presents, provided that the aggregate liability of the surety under this bond for any and all claims is limited to Fifteen Thousand Dollars (\$15,000) or to the amount of the actual loss incurred, whichever is less.

WHEREAS, the above bounden Principal desires that a motor vehicle dealer's or wholesaler's license be issued and thereafter renewed from time to time by South Carolina Department of Motor Vehicles;

WHEREAS, this bond executed by the said Principal and Surety is filed with the South Carolina Department of Motor Vehicles in compliance with S.C. Code Ann., 56-15-320, to enable said Principal to obtain a license from the Department under the provisions of that law.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall well and truly observe and strictly and faithfully comply with the aforesaid requirements of law and shall save and keep harmless any owner of a motor vehicle or his legal representative made to him by such Principal, such Principal's salesman or representative acting for the Principal or within the scope of the employment of such salesman or representative, or from any loss or damage suffered by reason of the violation such Principal or any such salesman or representative of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, then this obligation shall be null and void; otherwise it shall remain in full force and effect. It is understood that the injured party need not obtain a judgment against the Principal before making claim against the Surety on this bond.

This bond shall not automatically expire with the license for which it is initially issued, but shall continue indefinitely, from license year to license year, upon timely payment of the premium thereon. Before this bond may be cancelled, a thirty (30) day written notice must be given to the Department of Motor Vehicles. Such cancellation does not affect any liability incurred or reported prior to cancellation.

A 3 Auto Center LLC

(Principal)

(Surety)

WESTERN SURETY COMPANY

By:

(Title)

By:

Johanna Mc Masters

(Title)

Attorney-in-Fact

PLAINTIFF'S  
EXHIBIT

7

MST

# CNA SURETY

101 S. Phillips Avenue, Sioux Falls, SD 57104-6703  
P.O. Box 5077, Sioux Falls, SD 57117-5077

Kenneth Randall  
Claims Analyst  
Telephone 605-330-2605  
Facsimile 605-977-7724  
Email: kenneth.randall@cna surety.com

March 19, 2009

Auction Insurance Agency  
ATTN: Jonathan Bowman  
2200 Woodcrest Place  
Birmingham, AL 35253

RE: Principal: A3 Auto Center  
Obligee: South Carolina Department of Motor Vehicles  
Surety: Western Surety Company  
Bond No.: 22887755  
Claim No. 9A-319023 CI

Dear Mr. Bowman:

Western Surety Company issued a statutory motor vehicle dealer bond for A3 Auto Center pursuant to SC ST §56-15-320. The bond provides indemnity to an owner and/or an owner's legal representative for fraud, fraudulent misrepresentation and damages relating to violations of the statute.

Auction Insurance Agency seeks to recover outstanding debt under the statutory motor vehicle bond. Based on the facts presented with your claims, ADESA Auto Auction and Charleston Auto Auction were not the actual "owners" of the vehicles in question. An owner of a vehicle generally means the party who is the record title owner.

The bond is not there to provide protection to an Auction. The risk of non-payment is part of the business risk associated with the extension of credit. Western Surety Company hereby declines payment based on the attached case law that determines only "an owner or an owner's legal representative" could recover under the bond. *Mid-State Auto Auction v. Altman*, 476 S.E. 2d. 690 (1996). *ITIE CLERK*

For these reasons, unfortunately Auction Insurance Agency is not a covered party under the bond. Western Surety Company respectfully declines any further consideration of your claim. This will be our final correspondence regarding this claim.

Western Surety Company reserves all rights and defenses.

Sincerely,



Kenneth Randall  
Authorized Representative  
Western Surety Company

Enclosure

ROA 69



STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Centennial Casualty Co., Inc. )

Plaintiff, )

v. )

Western Surety Company,  
d/b/a CNA Surety, )

Defendant. )

Western Surety Company,  
d/b/a CNA Surety, )

Defendant/Third-Party  
Plaintiff, )

v. )

Charleston Auto Auction,  
A3 Auto Center, LLC. and  
Wylie Mickle, )

Third-Party Defendants.

THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-10-6577

NOTICE OF MOTION AND MOTION  
FOR SUMMARY JUDGMENT IN  
ACCORDANCE WITH RULE 56

**FILED**

SEP 22 2010

JULIE J. STRONG  
CLERK, C.P. & G.S.

TO: IAN S. FORD, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO  
THE PLAINTIFF, ABOVE-NAMED:

The Defendant, Western Surety Company, brings this Motion for Summary Judgment and in opposition to Plaintiff's Motion for Summary Judgment on the grounds that there is no material fact that the Plaintiff is not allowed to make recovery under the bond. This action involves a motor vehicle bond issued pursuant to 56-15-320. Pursuant to the provisions of the statute, the bond is made available for "loss or damage suffered by an owner of a motor vehicle or his legal representative, by reason of fraud practice or fraudulent representation made in connection with the sale or transfer of the motor vehicle by a licensed dealer or wholesaler." The Plaintiff must fail for

numerous reasons as outlined herein below, there is no material fact the Plaintiff is not allowed to recover. In this action, the Plaintiff maintains that they are insurer of an auto auction and by this action by way of subrogation to the auto auction rights. They have alleged that A-3 Auto Center is an automobile dealer in South Carolina. They allege that A-3 Auto Center purchased three automobiles from others using the auto auction service. They allege A-3 Auto Center paid for the vehicles with worthless checks causing damage to the auto auction. It is undisputed that the seller "owner" of the vehicle was paid. Apparently, in the furtherance of the auto auction business, the auto auction guarantees funds to all sellers and Centennial Casualty Insurance Company insures any loss of funds from bad checks on the policy issued to the auto auction.

The statute 56-15-320 provided a penal sum of \$15,000 prior to May 31, 2006 and \$30,000 thereafter:

"... as indemnification for loss and damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representations made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesalers or the dealers or wholesalers' agents acting for the dealer or wholesaler or within the scope of the employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler of its agent of this chapter. The owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealers' or wholesalers' surety on the bond and may recover damages that are provided in this chapter. However, regardless of the number of years a bond remains in effect, the aggregate liability of a surety for claims is limited to \$30,000 on each bond and to the amount of the actual loss incurred...."

- A. **The facts alleged by the Plaintiff do not reflect that the alleged fraudulent acts were made in connection with the statutorily required "the sale or transfer of motor vehicle by a licensed dealer or wholesaler ..."**

In this action, it is alleged that A-3 Auto Center was the **purchaser** and provided bad checks in the purchasing of the vehicles. In Connecticut Indemnity v. Burdette Chrysler Dodge Corp., 453 S.E. 2d 92 (1994) at 904, the Court in a claim where a dealer Burdette sold vehicles to a dealer purchaser Eagle Auto and received insufficient funds checks held:

Burdette suffered no loss or damage by reason of a 'fraud practiced...In connection with the sale or transfer of a motor vehicle by a licensed dealer' Here, as we have indicated, Burdette, not Eagle Auto sold or transferred the motor vehicles for which the worthless checks were given Eagle Auto only purchased or received the transfer of these motor vehicles.

The court in Burdette remanded for a determination if recovery could be made by "any person" for a violation of the act. This contention has been rejected by our court in Mid-State Auto Auction of Lexington v. Altman, 476 S.E.2d 690 (1996). The allegations complained of are that the fraud was in the purchase not the sale and our courts do not recognize that as recoverable under the act. The plaintiff has put forward no other violation of the title to establish their claim.

**B. Centennial Casualty Company, Inc. is not the owner or legal representatives so as to be entitled to recover under the bond.**

Even if plaintiff alleges a different violation of the Chapter they are not an "owner or legal representative". In Mid-State Auto Auction of Lexington v. Altman, 476 S.E.2d 690 (1996), the Supreme Court of South Carolina held that the clear legislative intent behind section 56-15-320(b), was to provide "only the owner of a motor vehicle, or the owner's legal representative, with a cause of action against the surety. This was highlighting the fact that the statute in South Carolina distinguishes when they recover under the bond from other statutes that allow any person to recover under bonds. It

should be noted that these are limited bonds and the penal sums and regardless of the number of claims the aggregate amount is limited to the penal sum. It is therefore the Court's logic just as courts in numerous other jurisdictions have held the financiers and others involved in sophisticated deals with each other not sap the funds made available to the ordinary consumer, the owner of the vehicle. See, Price v. Piotrowski, 632 So 2d 1 (La.Ct. App. 1994), Casualty Company v. Acker, 541 NW2d 517 (Iowa 1995), Lawyer Surety Corp. v. Flowers, 66 SW3d 669 (Ark Ct. App. 2002), Southwestern Capital Investment, Inc. v. Pioneer G.E. Ins. Co., 24 P2d 1205 (Colo. Ct. App. 1996). Due to the limited nature of the bond and the wording of the statute, it is clear it was not intended to protect the insurance company of an auto auction.

The auto auction attempts to claim and create paper work to make it the "legal representative" of the owner however the statute is much stronger than some self created agency relationship. The cardinal rule of statutory interpretation is to determine the intent of the legislature. Bass v. Isochem, 365 S.C.454, 459, 617 S.E.2d 369, 377 (Ct. App. 2005). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Miller v. Aiken, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005). The words of a statute must be given their plain and ordinary meaning without resorting to forced construction. Durham v. United CLS. Fin. Corp., 331 S.C. 600, 604, 503 S.E.2d 465, 468 (1998).

The Auto Auction alleges the purchase agreement and bill of sale documents between the auto auction and the sellers and buyers made to facilitate the sale attached the Plaintiff's motion for Summary Judgment create the legal representative status. They allege the buyer and seller each appoint Auto Auction as their agent and legal

representative "for the purpose of processing this transaction through the auction company." The insurance carrier of the auto auction in hopes of attempting to scoop the limited funds made available to owners of motor vehicle attempted to frame language to recover under the bond. The document "bill of sale" using the "legal representative" language, presented was not signed, but even if signed would not be binding. The document that was signed, the authorizations on both the buyer and seller authorized the Auto Auction only "as our agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicle owned by the consigner and consigned to Charleston Auto Auction for sale..." The paperwork makes clear that the auto auction is not the owner or legal representative but an agent merely for execution of paperwork pertaining to the sale. See exhibits 3 and 4 of Plaintiff's exhibits attached to Plaintiff's Motion for Summary Judgment. In addition, statutory law provides under 56-15-510 :

"As used in this article:

- 1) "wholesaler motor vehicle auction" is an entity in the business of providing auction services and wholesale transactions at its established place of business, and which does not buy, sell, or own the motor vehicles it auctions in the ordinary course of its business...."

Further, under statute 56-15-520 the statute provides

"when a transfer of title is made as a result of a transaction at a wholesale motor vehicle auction, the reassignment of title or bill of sale must note the name and address of the wholesale motor vehicle auction. However, the wholesale motor vehicle auction is not deemed to be the owner, seller, transferer or assigner of title of the motor vehicle by reason of its name appearing on the reassignment of title or bill of sale or by reason of its payment or a guarantee of payment to the seller, receipt of payment from the purchaser, or the reservation of a lien or security interest for the purpose of securing payment from a purchaser.

The legal representative of the owner would be the personal representative or conservator a person who stand in the shoes of the Owner. Blacks law dictionary does not define the term "legal representative " but refers the reader to the term "lawful representative" and "personal representative.". Blacks Law Dictionary (8<sup>th</sup> Edition 2004). A personal representative is the equivalent of an executor or administrator. Plaintiff failed to complete the Black's earlier definition that defines the legal representative with the example "executer."

In this action, the most the Plaintiff can claim to be is the insurance company of an auction house who became the agent merely for furthering the business of the auction house of both the buyer and the seller. The terms "owner or owner's legal representative" must be strictly construed. It is clear from the paperwork and statute the auto auction does not and can not stand in the shoes of the Owner. At best the Auto Auction my claim they were "agents" with respect to processing the sale between two other entities to their auto auction. The terms "agent" and "legal representative" are not synonymous. For example, American Jurisprudence states that the term "legal representative" when used in an insurance policy generally means executor or administrator, but "may have other or secondary meanings – which include anyone who succeeds to the rights of another, such as an heir, next of kin, assignee, trustee, or receiver". 44 A Am.Jur. 2d Insurance Section 1696: See also, 4 Couch on Ins., Section 59:22 (unless circumstances indicate otherwise, the term "legal representative" must be given its primary legal meaning of executor or administrator. 4 Couch on Ins., Section 59:24.

Another example of a legal representative is bankruptcy trustee. The 4<sup>th</sup> Circuit Court of Appeals held that a bankruptcy trustee is a bankruptcy estate's "legal

representative” for the purpose of a Rule 60(b) Motion and Fair Rules of Civil Procedure.” Conversely, an attorney does not have standing to move under rule 60(b) as a legal representative as they are merely an agent. See W. Steele Erection Company v. U.S., 424 F2d 737, 739 (10<sup>th</sup> Circuit 1970) (citing Mobay Chem. Co. v. Hudson Foam Plastics Corp., 227 F2d 413, 416 (S.D.N.Y. 1967)). The term legal representative is a term of art that indicates more than simply an agency relationship. By law a legal representative has “... the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to his death.” S.C. Code Am. Section 62-3-703(c) recently amended by 2010 Laws Acts 244(H.B. No. 3803). All legal representatives in South Carolina have much authority than the mere limit authority claimed by Auto Auction to have authorization to act as agent to facilitate the sale between the buyer and seller through the auto auction. The terms legal “owner or owner’s legal representative” must be strictly construed. The Auction house attempted assertion of the unsigned document using the term “legal representative”, in the bill of sale, but a resuscitation without the authority is not binding. See Beasley v. Kerr-McGee Chem. Corp., 273 S.C. 523, 526, 257 S.E.2d 726, 727, (1979), citing Hubbard v. Row, 192 S.C.12, 5 S.E.2d 187 (1939). The statute is to protect the Owner or those in the shoes of the Owner this is a hurdle the Auction House can not surpass by documents or statute.

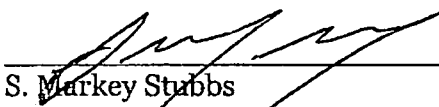
**C. To the extent the Auction House is the legal representative of the buyer they are also the legal representative of the seller**

The auto auction claim it is legal representative of buyer and seller to the extent they allege that they stand in the shoes of the purchaser, they have alleged the purchaser is the wrongdoer and therefore they stand in the shoes of A-3 Auto Center, they cannot

seek recovery for the acts of their own alleged principle. As stated in the Connecticut Indemnity Co., v. Burdette Chrysler Dodge Corp., 453 S.E2d 9:

"Burdette may not take advantage of its own conduct by taking assignments from innocent purchasers and recovering against Eagle Auto on its bond in action .... It is a well-founded policy of law that no person may be permitted to acquire right of action from their own unlawful act and when it participates in an unlawful act, cannot recover damages from the consequences of that act ..."

In this action, the facts as alleged by the complainant set forth clearly that the Plaintiff is not making a claim against A-3 Auto Center, LLC as a dealer who has practiced fraud in the sale or transfer of motor vehicle but in fact has alleged that they see A-3 Auto Center LLC was a purchaser and therefore they may not maintain the suit. Even assuming such a suit can be maintained, they are neither the owner or the owner's legal representative so as to maintain this suit. The claims must be dismissed as a matter of law.



S. Markey Stubbs  
BAKER, RAVENEL & BENDER, LLC  
3710 Landmark Drive, Suite 400  
Post Office Box 8057  
Columbia, South Carolina 29202  
Telephone: (803) 799-9091  
Facsimile: (803) 779-3423  
Attorneys for Defendant Western Surety  
Company, d/b/a CNA Surety  
Our File No. 7753.72

September 17, 2010

|                                  |   |                              |
|----------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA          | ) | IN THE COURT OF COMMON PLEAS |
|                                  | ) | NINTH JUDICIAL CIRCUIT       |
| COUNTY OF CHARLESTON             | ) |                              |
|                                  |   |                              |
| CENTENNIAL CASUALTY CO., INC.,   | ) | CASE NO.: 2009-CP-10-6577    |
|                                  | ) |                              |
| Plaintiffs,                      | ) |                              |
|                                  | ) |                              |
| vs.                              | ) |                              |
|                                  | ) |                              |
| WESTERN SURETY COMPANY, d/b/a    | ) |                              |
| CNA SURETY,                      | ) |                              |
|                                  | ) |                              |
| Defendant.                       | ) |                              |
| <hr/>                            |   |                              |
| WESTERN SURETY COMPANY,          | ) |                              |
| d/b/a CNA SURETY,                | ) |                              |
|                                  | ) |                              |
| Defendant/Third-Party Plaintiff, | ) |                              |
|                                  | ) |                              |
| vs.                              | ) |                              |
|                                  | ) |                              |
| CHARLESTON AUTO AUCTION, A3      | ) |                              |
| AUTO CENTER, LLC and WYLIE       | ) |                              |
| MICKLE,                          | ) |                              |
|                                  | ) |                              |
| Third-Party Defendants.          | ) |                              |
| <hr/>                            |   |                              |

**SUPPLEMENTAL MEMORANDUM OF AUTHORITIES OF  
CENTENNIAL CASUALTY CO., INC. AND CHARLESTON AUTO AUCTION**

Pursuant to the parties' Stipulation of Facts dated May 22, 2012, Plaintiff Centennial Casualty Co., Inc. ("Centennial") and Third-Party Defendant Charleston Auto Auction, by counsel, submit the following additional citations. This Supplemental Memorandum is provided in support of the previous briefing, including Centennial's Motion for Summary Judgment docketed July 12, 2010 ("Centennial's Motion").

1. **Western Surety's primary case has been overruled.**

Western Surety's brief twice quotes, and relies in large part on, the case *Connecticut Indemnity v. Burdette Chrysler Dodge Corp.*, 317 S.C. 406, 453 S.E.2d 902 (1994). That case has been overruled by *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996), which held that:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, **or the owner's legal representative**, with a cause of action against the surety on a bond issued pursuant to that statute.

(emphasis added). Moreover, the *Burdette's* ruling was based on the understanding that the purchaser had not established "fraud" under the statute. In this action, there is no serious dispute that "fraud" was committed by (1) the two NSF checks (which were not for preexisting debts), and (2) the stop-payment placed on the third check.

2. **Western Surety's arguments contradict the clear language of the statute.**

Western Surety's brief argues that sophisticated dealers are not entitled to make claims under the bond. There is no evidence or South Carolina law to support this argument. Instead, the clear language of the statute is that the bond is to compensate for:

[L]oss or damage suffered by an owner of a motor vehicle, **or his legal representative**, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler . . . .

S.C. Code § 56-15-320(B) (emphasis added). The statute's clear language makes no mention of limiting the bond only to certain types of owners or certain types of legal representatives.

Similarly, Western Surety's brief argues that the statute limits "legal representative[s]" to executors or administrators, or perhaps to bankruptcy trustees. There is no such indication in the statute's clear language, and no law has been cited

providing such an interpretation of this statute. Instead, South Carolina law is clear that “When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” *Anderson v. South Carolina Election Commission*, \_\_\_ S.C. \_\_\_, 2012 WL 1530655, at \*2 (S.C. Sup. Ct., May 1, 2012).

Moreover, Western Surety’s argument makes no sense under the statute. A cardinal rule of statutory construction is that a statute must receive a practical and fair interpretation, which harmonizes its subject matter. *See Jones v. State Farm Mut. Auto Ins. Co.*, 364 S.C. 222, 232, 612 S.E.2d 719, 724 (Ct. App. 2005). For example, the statute requires Charleston Auto Auction to obtain a bond. *See* S.C. Code § 56-15-320; Ex. A. Charleston Auto Auction only does business with sophisticated dealers. Individual consumers cannot purchase automobiles through a dealer auto auction. *See* Centennial Motion at Ex. 2 (Aff. of Laura Taylor). If Western Surety’s argument were correct, the bonds that Charleston Auto Auction and similar auctions must purchase under the statute would be worthless, because nobody could legally make a claim on those bonds. The only reasonable conclusion is that dealers and auction companies are permitted to make claims on the bond.

**3. Western Surety’s arguments contradict the collateral source rule.**

Western Surety’s brief argues that persons who are insured should not be able to make claims under the bond because they “sap the funds made available to the ordinary consumer.” As discussed above, this argument makes no sense when one understands that the statute requires entities such as auto auctions (who do no business with ordinary consumers) to buy these bonds. Additionally, there is no language in the statute that

limits claims to "ordinary consumers." Finally, there is no language in the statute that punishes entities that also choose to purchase insurance for such losses. - The principle of the collateral source rule should be applied here: a wrongdoer should not be relieved of responsibility simply because the injured party received compensation from another source. *Cf. Covington v. George*, 359 S.C. 100, 103, 597 S.E.2d 142, 144 (2004) (summarizing collateral source rule). Here, Western Surety should not be relieved of its obligation under the bond simply because a "legal representative" under the statute also chose to purchase insurance.

**4. Western's Surety's citation of § 56-15-520 is misplaced.**

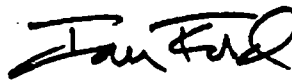
Western Surety's brief cites S.C. Code § 56-15-520 for the proposition that the statute does not make a motor vehicle auction the owner of a vehicle. That section's primary purpose is to prevent, among other things, motor vehicle auctions from being assessed property tax for owning the automobiles it auctions. It has no bearing on the interpretation of whether the auction is able to make a claim under the bond.

**CONCLUSION**

For these reasons, judgment should be granted in favor of Centennial Casualty Company and Charleston Auto Auction.

Respectfully submitted,

GREEN FORD & WALLACE LLC



Ian S. Ford

ian.ford@greenfordwallace.com

602 Rutledge Ave.

Charleston, SC 29403

(843) 266-2628; (843) 266-2627 (facsimile)

www.greenfordwallace.com

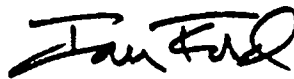
*Attorneys for Centennial Casualty Co., Inc. and  
Charleston Auto Auction*

May 29, 2012  
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that on May 29, 2012, this document was served by  
electronic mail and first class mail on all attorneys of record.

GREEN FORD & WALLACE LLC





# Western Surety Company

## CONTINUATION CERTIFICATE

Western Surety Company hereby continues in force Bond No. 69217391 briefly described as MOTOR VEHICLE DEALER  
CHARLESTON AUTO AUCTION, INC., as Principal,  
in the sum of \$ FIFTEEN THOUSAND AND NO/100 Dollars, for the term beginning August 31, 2007, and ending August 31, 2010, subject to all the covenants and conditions of the original bond referred to above.

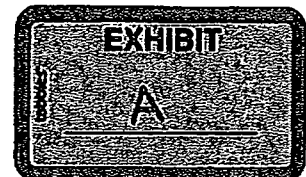
This continuation is issued upon the express condition that the liability of Western Surety Company under said Bond and this and all continuations thereof shall not be cumulative and shall in no event exceed the total sum above written.

Dated this 27 day of August, 2007.



WESTERN SURETY COMPANY

By Paul T. Brufat  
Paul T. Brufat, Senior Vice President



THIS "Continuation Certificate" MUST BE FILED WITH THE ABOVE BOND.

Form 80-A-4-2002

# Western Surety Company

## POWER OF ATTORNEY

### KNOW ALL MEN BY THESE PRESENTS:

That WESTERN SURETY COMPANY, a corporation organized and existing under the laws of the State of South Dakota, and authorized and licensed to do business in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the United States of America, does hereby make, constitute and appoint

Paul T. Brufat of Sioux Falls  
State of South Dakota, its regularly elected Senior Vice President,  
as Attorney-in-Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, the following bond:

One MOTOR VEHICLE DEALER

bond with bond number 69217391

for CHARLESTON AUTO AUCTION, INC.

as Principal in the penalty amount not to exceed: \$15,000.00

Western Surety Company further certifies that the following is a true and exact copy of Section 7 of the by-laws of Western Surety Company duly adopted and now in force, to-wit:

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys-in-Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

In Witness Whereof, the said WESTERN SURETY COMPANY has caused these presents to be executed by its  
Senior Vice President with the corporate seal affixed this 27 day of August, 2007

ATTEST

L. Nelson  
L. Nelson, Assistant Secretary

WESTERN SURETY COMPANY  
By Paul T. Brufat  
Paul T. Brufat, Senior Vice President

STATE OF SOUTH DAKOTA }  
COUNTY OF MINNEHAHA } ss

On this 27 day of August, 2007, before me, a Notary Public, personally appeared  
Paul T. Brufat and L. Nelson

who, being by me duly sworn, acknowledged that they signed the above Power of Attorney as Senior Vice President  
and Assistant Secretary, respectively, of the said WESTERN SURETY COMPANY, and acknowledged said instrument to  
be the voluntary act and deed of said Corporation.

D. KRELL  
NOTARY PUBLIC  
SOUTH DAKOTA

My Commission Expires November 30, 2012

D. Krell

Notary Public

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CENTENNIAL CASUALTY CO., INC., )

CASE NO.: 2009-CP-10-6577

Plaintiffs, )

vs. )

WESTERN SURETY COMPANY, d/b/a )  
CNA SURETY, )

Defendant. )

WESTERN SURETY COMPANY, )  
d/b/a CNA SURETY, )

Defendant/Third-Party Plaintiff, )

vs. )

CHARLESTON AUTO AUCTION, A3 )  
AUTO CENTER, LLC and WYLIE )  
MICKLE, )

Third-Party Defendants. )

### ORDER

The parties have submitted a stipulation of facts, legal memoranda, and exhibits in this action, and agree that the case is ripe for a decision. The Court has reviewed the briefs, exhibits, and relevant law, and rules as follows.

### FINDINGS OF FACT

#### 1. The Dealer Bond Statute

South Carolina's licensing statute for motor vehicle dealers requires a surety bond under S.C. Code § 56-15-320(B) (the "Dealer Bond Statute"). The Dealer Bond Statute

requires motor vehicle wholesalers or dealers to obtain a bond in order to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

*Id.* (emphasis added). The statute allows that "An [automobile] owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter." *Id.*

## 2. Charleston Auto Auction and A3 Auto Center

The undisputed evidence shows that Charleston Auto Auction is a wholesale auctioneer that facilitates the sale and purchase of automobiles among dealers. Centennial and Charleston Auto Auction have submitted an affidavit and accompanying documents indicating that Charleston Auto Auction acts as the agent and legal representative for the dealerships in the transactions; collects and conveys the funds for the automobiles; and conveys (but does not assume) the title to the automobiles between the parties. See Pl. Mot. at Ex. 2 ¶ 3 (Affidavit of Laura Taylor).

That evidence shows that, before Charleston Auto Auction will facilitate the sale of an automobile to or from a dealer, dealers on both sides of the transaction must enter into a purchase and sale agreement with Charleston Auto Auction, which makes Charleston Auto Auction their legal representative in the transactions. *Id.* ¶ 4.

The undisputed evidence also shows that A3 Auto Center is an automobile dealer in South Carolina. In March 2008, A3 Auto Center purchased three automobiles using Charleston Auto Auction: a 2006 Dodge Magnum; a 2001 Oldsmobile Aurora; and a 2006 Ford F250 (collectively the “Vehicles”). A Plus Auto Sales, Priceless Automotive, and Automotive Rentals, Inc./ARI Fleet Ltd (collectively the “Selling Dealerships”) each sold one of the Vehicles. *Id.* ¶ 5. Both the Selling Dealerships and A3 Auto Center made Charleston Auto Auction the “middle-man” auctioneer. *Id.* ¶ 6. Pursuant to the Dealer Bond Statute, A3 Auto Center obtained a Bond from CNA Surety under the Dealer Bond Statute. *See* Pl. Mot at Ex. 7.

A3 Auto Center paid for the Vehicles with worthless checks, causing at least \$35,305.00 in damage to the Selling Dealerships. Pl. Mot. at Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).

### **3. Charleston Auto Auction and Centennial’s Dealer Bond claim**

Charleston Auto Auction, as the Selling Dealerships’ legal representative, seeks reimbursement under the Bond for A3 Auto Center’s worthless checks. The undisputed evidence shows that Plaintiff Centennial insured Charleston Auto Auction against such losses, and has repaid Charleston Auto Auction on those claims. As the legal subrogee of Charleston Auto Auction, Centennial has the right to proceed in the place of Charleston Auto Auction in this matter. Centennial has made demands on Defendant for payment under the Bond, which CNA Surety has rejected. *See* Pl. Mot. at Ex. 8 (denial letter). CNA Surety’s primary argument is that neither Centennial nor Charleston Auto Auction is the “owner” or “legal representative” as required by the Dealer Bond Statute. *See id.*

This is a legal issue of statutory interpretation, and is ripe for the Court to rule on as a matter of law.

## CONCLUSIONS OF LAW

### 1. "Legal Representative" under the Dealer Bond Statute

The primary issue is whether Charleston Auto Auction (or Centennial as its subrogee) is a "legal representative" under the Dealer Bond Statute. The South Carolina Supreme Court has stated:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, **or the owner's legal representative**, with a cause of action against the surety on a bond issued pursuant to that statute.

*Mid-State Auto Auction v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (emphasis added).

Each vehicle's Bill of Sale made Charleston Auto Auction the seller and buyer's "legal representative" by stating: "Seller and Buyer each appoint Auction Company as their **agent and legal representative** for the purpose of processing this transaction through Auction Company . . . ." Pl. Mot. at Ex. 3 (terms of Purchase Agreement and Bill of Sale (p. 4, para. 2); emphasis added); Pl. Mot. at Ex. 4 (title clerk authorizations); *cf. McNeill v. Electric Storage Battery Co.*, 96 S.E. 134, 135 (S.C. 1918) (agency relationship may be created by contract); *Love v. Gamble*, 316 S.C. 203, 213, 448 S.E.2d 876, 881 (S.C. App. 1994) (citing *McNeill* for the legal rule that "If provisions of contract make it one of agency, it is immaterial by what names the parties call themselves in the contract"); *State ex rel. McLeod v. C & L Corp., Inc.*, 280 S.C. 519, 313 S.E.2d 334 (Ct. App. 1984) (an independent contractor can also be an agent; the two are not mutually exclusive.) The term "legal representative" is commonly understood to mean "one who

stands in place of, and represents the interests of, another. . . .” *Black’s Law Dictionary* 896 (6th ed. 1990).

In this matter, the Court finds that Charleston Auto Auction (and Centennial as its subrogee<sup>1</sup>) was the legal representative under the Dealer Bond Statute for the purposes of the transactions. In addition to its explicit designation as “legal representative” in the relevant contract (see Pl. Mot. at Exs. 3-4), Charleston Auto Auction acts as the dealerships’ representative and agent in the transactions it facilitates by (among other things) collecting and conveying the funds for the automobiles, and by conveying (but not assuming) the title for the automobiles between the parties. Pl. Mot. at Ex. 2 ¶¶ 3-4, 6 (Affidavit of Laura Taylor). These facts qualify Charleston Auto Auction and its subrogee as a “legal representative” for purposes of the Dealer Bond Statute.

CNA Surety’s primary argument is that the Dealer Bond Statute provision does not apply when fraud is committed in the purchase of a motor vehicle. See Def. Mot. at pp. 2-3. This argument is based on a sentence in *Connecticut Indemnity Co. v. Burdette Chrysler Dodge Corp.*, 317 S.C. 406, 453 S.E.2d 902 (Ct. App. 1994), overruled, *Mid-State Auto*, 476 S.C. 406, 453 S.E.2d 902. As an initial matter, *Burdette* has been overruled by the South Carolina Supreme Court. See *id.* Moreover, the sentence referred to by CNA Surety appears in the context of a discussion of the definition of “fraud”; in that discussion in *Burdette*, the Court of Appeals indicated there was no fraud because there was a pre-existing debt. See *id.* at 409, 453 S.E.2d at 904. In contrast, here there is no dispute that there is no pre-existing debt. See Pl. Mot. at Ex. 2 ¶ 7. Additionally, the

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<sup>1</sup> See, e.g., Am. Jur. *Subrog.* § 61 (“Subrogation contemplates full substitution and places the party subrogated in the shoes of the creditor. Generally speaking, the party subrogated acquires all the rights, securities, and remedies the creditor has against the debtor who is primarily liable.”) (internal citations omitted).

Dealer Bond Statute's language is broad and includes fraud "in connection with the sale or transfer" of a motor vehicle, as well as "loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter." S.C. Code § 56-15-320. This language is expansive and covers situation such as this one, where a motor vehicle is being sold or transferred. There is no indication in the Dealer Bond Statute that the South Carolina Legislature intended to only cover fraud by the seller—but meant to exclude fraud by the purchaser—when it enacted the language in the Dealer Bond Statute.

CNA Surety also argues that "legal representative" under the Dealer Bond Statute does not include Charleston Auto Auction. The Dealer Bond Statute does not define the term "legal representative," and outside legal research shows that the definition of "legal representative" can vary depending on the context. As discussed above, the undisputed evidence here shows that both the selling and purchasing dealers made Charleston Auto Auction their "agent and legal representative." *See* Pl. Mot. at Ex. 3. In opposition, CNA Surety points to the use of "legal representatives" in other contexts, such as probate and bankruptcy. *See* Def. Mot. at pp. 5-6 (citing probate code § 62-3-703 and federal bankruptcy law). However, those examples are specific to specialized areas of law, and in those contexts the "legal representative" generally is created by a statutory definition for purposes of the specific probate or bankruptcy proceedings. There is no indication that the South Carolina Legislature intended to incorporate other statutes' specific definitions (such as probate or bankruptcy) into the Dealer Bond Statute. The undisputed evidence here shows that a purpose of the auction company is to transact business for the buying and selling dealers. *See* Pl. Mot. at Ex. 2 ¶¶ 3-6 (describing function of auction

company in these transactions).

Finally, CNA Surety points to a definition of “wholesaler motor vehicle auction” and statutory provisions stating that the auction is not the owner of a vehicle simply because it transfers the title. *See* Def. Mot. at p. 5. Those definitions and provisions do not prohibit an auction company from being the “legal representative” of a vehicle’s owner, which is the crux of the argument here. Moreover, a primary purpose of those cited provisions is to prevent an auction company from being the owner of a motor vehicle for purposes of property taxation. There is no indication that those provisions affect whether an auction company is a “legal representative” under § 56-15-320.

**2. The remaining elements of the Dealer Bond Statute are satisfied.**

The remaining elements of the Statute also are satisfied. Section 56-15-320(B) requires:

- “*Loss or damage suffered*”: The evidence establishes that the worthless checks caused loss or damage. *See* Pl. Mot. at Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).
- “*by reason of fraud practiced or fraudulent representation made*”: The passing of worthless checks, which is undisputed here, constitutes fraud as a matter of law. *Cf.* S.C. Code § 34-11-60 (the giving of a check where the maker lacks sufficient funds to pay the check is *prima facie* evidence of fraud, except when, *inter alia*, the check is given in full or partial payment of a preexisting debt); *see also* Pl. Mot. at Ex. 5 (returned checks). There was no preexisting debt in this case. Pl. Mot. at Ex. 2 ¶ 7 (Affidavit of Laura Taylor).

- *“made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer’s or wholesaler’s agent . . . .”*

These transactions were made in connection with the sale or transfer of the Vehicles. *See* Pl. Mot. at Ex. 2 ¶ 9 (Affidavit of Laura Taylor).

### CONCLUSION

For these reasons, the Court finds in favor of Plaintiff Centennial Casualty Company and Charleston Auto Auction. Judgment is granted in favor of Plaintiff on the full amount of the bond at issue.

So ordered this \_\_\_\_ day of June, 2012.

\_\_\_\_\_  
Judge Nicholson, Circuit Court  
Judge

Charleston, South Carolina

STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) FOR THE NINTH JUDICIAL CIRCUIT

Centennial Casualty Co., Inc. ) Civil Action No.: 2009-CP-10-6577

Plaintiff, )

v. )

DEFENDANT/THIRD-PARTY  
—PLAINTIFF WESTERN SURETY  
COMPANY, D/B/A CNA  
MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S SECOND BRIEF

Western Surety Company,  
d/b/a CNA Surety, )

Defendant. )

Western Surety Company,  
d/b/a CNA Surety, )

Defendant/Third-Party  
Plaintiff, )

v. )

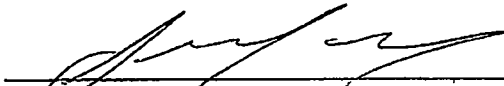
Charleston Auto Auction, A3  
Auto Center, LLC. and Wylie  
Mickle, )

Third-Party Defendants. )

The Plaintiff asserts that Connecticut Indemnity v. Burdett Chrysler Dodge Corp., 453 S.E.2d 902 (1994) has been overruled. It notes that it was overruled by the Mid-State Auto Auction of Lexington, Inc. v. Altman, 476 S.E.2d 690 (1996). Plaintiff fails to note that it was overruled only to the extent that it mandated that any person could recover under the bond. The remainder of the case was not overruled. I was the attorney for prevailing party in Mid-State Auto Auction of Lexington, Inc. v. Altman,

The language of the statutes are clear. And the statutes clearly set forth that only an owner may recover under the bond and that a Auto Auction by statute cannot be an owner. The fact that they attach contractual obligations within the transfer of vehicles through the Auto Auction does not make them an owner of the vehicle or the legal representative such as a conservator or other person who is actually standing in the shoes of the owner.

Plaintiff for the first time argues the collateral source rule, which has no application to this case. The Defendant is not arguing that the Plaintiff does not have a claim against whoever allegedly gave them a bad check. Defendant is alleging that the Auction is not the appropriate person to claim under the bond. The claimant in this case is an insurance carrier who will provides a policy to protect business operations of an Auto Auction which is not the owner, nor can it be the owner or the owner's legal representative standing in the shoes of the owner by statute. By statute the Auto Auction is prohibited from being an owner. The Plaintiff likewise fails to acknowledge that that the fact that it is not liable for taxes or any other indicia of ownership is why it is not the owner for the purposes of the bond. For the reasons as set forth in the original brief, Defendant Western Surety prays for judgment in its favor and has attached a proposed Order.



S. Markey Stubbs  
BAKER, RAVENEL & BENDER, LLC  
3710 Landmark Drive, Suite 400  
Post Office Box 8057  
Columbia, South Carolina 29202  
Telephone: (803) 799-9091  
Facsimile: (803) 779-3423  
Attorneys for Defendant Western Surety Company,  
d/b/a CNA Surety  
Our File No. 7753.67

May 29, 2012

STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) FOR THE NINTH JUDICIAL CIRCUIT  
Centennial Casualty Co., Inc. ) Civil Action No.: 2009-CP-10-6577

Plaintiff,

v.

CERTIFICATE OF SERVICE

Western Surety Company,  
d/b/a CNA Surety,

Defendant.

Western Surety Company,  
d/b/a CNA Surety,

Defendant/Third-Party  
Plaintiff,

v.

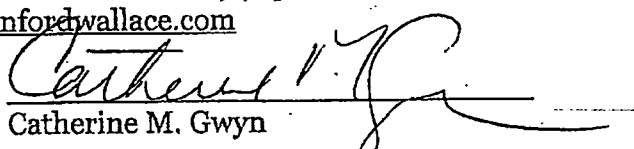
Charleston Auto Auction, A3  
Auto Center, LLC. and Wylie  
Mickle,

Third-Party Defendants.

I, Catherine M. Gwyn, secretary to S. Markey Stubbs, of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on this 29<sup>th</sup> day of May, 2012, served counsel below with **DEFENDANT WESTERN SURETY COMPANY'S MEMORANDUM IN OPPOSITION TO Plaintiff's SECOND BRIEF, AND AN PROPOSED ORDER** to the following via electronic transmission:

**Plaintiff's Counsel:**

Ian S. Ford, Esquire  
Green Ford and Wallace  
602 Rutledge Avenue  
Charleston, South Carolina 29403  
[www.greenfordwallace.com](http://www.greenfordwallace.com)

  
Catherine M. Gwyn

Columbia, South Carolina  
May 29, 2012

|                               |   |                                   |
|-------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA       | ) | THE COURT OF COMMON PLEAS         |
| COUNTY OF CHARLESTON          | ) | FOR THE NINTH JUDICIAL CIRCUIT    |
| Centennial Casualty Co., Inc. | ) | Civil Action No.: 2009-CP-10-6577 |
| Plaintiff,                    | ) |                                   |
| v.                            | ) | ORDER IN FAVOR OF WESTERN         |
|                               | ) | SURETY                            |
| Western Surety Company,       | ) |                                   |
| d/b/a CNA Surety,             | ) |                                   |
| Defendant.                    | ) |                                   |
| Western Surety Company,       | ) |                                   |
| d/b/a CNA Surety,             | ) |                                   |
| Defendant/Third-Party         | ) |                                   |
| Plaintiff,                    | ) |                                   |
| v.                            | ) |                                   |
| Charleston Auto Auction, A3   | ) |                                   |
| Auto Center, LLC. and Wylie   | ) |                                   |
| Mickle,                       | ) |                                   |
| Third-Party Defendants.       | ) |                                   |

This matter comes before the court upon Briefs and Stipulation of Facts. This action involves a motor vehicle bond issued pursuant to 56-15-320. Pursuant to the provisions of the bond it is made available for "loss or damage suffered by an owner of a motor vehicle or his legal representative, by reason of fraud, practice, or fraudulent representations made in connection with the sale or transfer of the motor vehicle by a licensed dealer or wholesaler." In this action, the Plaintiff does not maintain that they are the owner of the motor vehicle, and in fact Statute 56-15-510 provides that a wholesale motor vehicle auction, be definition does not buy, sell, or own the motor

vehicles it auctions. The statute further provides pursuant to 56-15-520 that when a transfer of title is made, the transfer of title must note the name of the wholesaler auction, however, the wholesale motor vehicle auction is not deemed to be the owner, seller, transferor or signer of title of the motor vehicle. Clearly the statute provides that the Auto Auction is not the owner of the motor vehicle. The bond does provide remedy for the owners of the motor vehicle or their legal representatives. Their legal representatives would be guardians, conservators, and in some cases holders of a power of attorney. The power of attorney, however, would have to make the person stand fully in the shoes of the owner such as a durable power of attorney or a power of attorney issued providing a person with any and all rights and liabilities of the owner in handling the transaction. The Auto Auction in this action relies upon a power of attorney which is given to both the buyer and sellers at the auction authorizing the Auction to be the "legal representative" of both parties for a limited purpose, that purpose is identified "for the purpose of processing the transaction through the auction company." This limited purpose is insufficient to make an auction house the legal representative of the owner. In addition, under the plaintiff's provision, they would be legal representative of both the owner and the seller and therefore have caused the very fraud, i.e. bad check, which they are complaining of. In this action, the bond was not intended to protect auto auctions in the furtherance of their business.

The Court further notes that under Connecticut Indemnity v. Burdette Chrysler Dodge Corp., 453 S.E.2d 902 (1994) which was repealed to the extent the case could be interpreted as allowing any person to recover under the bond is still a valid law. Having reached determination that the auto auction is not the "owner" or legal representative" pursuant to the statute, the court does not reach the remaining arguments of Western

Surety as to the power of attorney issued to the alleged defrauding agency, any issue as to whether or not there was actual fraud in the transaction, and whether the transaction itself assuming the Auto Auction/Centennial Casualty Company, Inc. were the owner would give rise to a claim under the bond.

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Judge J. C. Nicholson, Jr.

May 29, 2012

7753.72

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Centennial Casualty Co., Inc. )

Plaintiff, )

v. )

Western Surety Company,  
d/b/a CNA Surety, )

Defendant. )

Western Surety Company,  
d/b/a CNA Surety, )

Defendant/Third-Party  
Plaintiff, )

v. )

Charleston Auto Auction,  
A3 Auto Center, LLC. and  
Wylie Mickle, )

Third-Party Defendants. )

THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-10-6577

NOTICE OF MOTION AND MOTION  
FOR SUMMARY JUDGMENT  
RULE 56 (SCRCP)  
AMENDED

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2010 SEP 27 PM 2:27

FILED

TO: IAN S. FORD, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO  
THE PLAINTIFF, ABOVE-NAMED:

The Defendant, Western Surety Company, brings this Motion for Summary Judgment and in opposition to Plaintiff's Motion for Summary Judgment on the grounds that there is no material fact that the Plaintiff is not allowed to make recovery under the bond. This action involves a motor vehicle bond issued pursuant to 56-15-320. Pursuant to the provisions of the statute, the bond is made available for "loss or damage suffered by an owner of a motor vehicle or his legal representative, by reason of fraud practice or fraudulent representation made in connection with the sale or transfer

of the motor vehicle by a licensed dealer or wholesaler." The Plaintiff must fail for numerous reasons as outlined herein below, there is no material fact the Plaintiff is not allowed to recover. In this action, the Plaintiff maintains that they are insurer of an auto auction and by this action by way of subrogation to the auto auction rights. They have alleged that A-3 Auto Center is an automobile dealer in South Carolina. They allege that A-3 Auto Center purchased three automobiles from others using the auto auction service. The allege A-3 Auto Center paid for the vehicles with worthless checks causing damage to the auto auction. It is undisputed that the seller "owner" of the vehicle was paid. Apparently, in the furtherance of the auto auction business, the auto auction guarantees funds to all sellers and Centennial Casualty Insurance Company insures any loss of funds from bad checks on the policy issued to the auto auction.

The statute 56-15-320 provided a penal sum of \$15,000 prior to May 31, 2006 and \$30,000 thereafter:

"... as indemnification for loss and damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representations made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesalers or the dealers or wholesalers' agents acting for the dealer or wholesaler or within the scope of the employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler of its agent of this chapter. The owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealers' or wholesalers' surety on the bond and may recover damages that are provided in this chapter. However, regardless of the number of years a bond remains in effect, the aggregate liability of a surety for claims is limited to \$30,000 on each bond and to the amount of the actual loss incurred...."

A. The facts alleged by the Plaintiff do not reflect that the alleged fraudulent acts were made in connection with the statutorily required "the sale or transfer of motor vehicle by a licensed dealer or wholesaler ..."

In this action, it is alleged that A-3 Auto Center was the purchaser and provided bad checks in the purchasing of the vehicles. In Connecticut Indemnity v. Burdette Chrysler Dodge Corp., 453 S.E. 2d 902 (1994) at 904, overruled s to who could maintain a claim by Mid-State Auto Auction of Lexington v. Altman, 476 S.E.2d 690 (1996) the Court in a claim were a dealer Burdette sold vehicles to a dealer- purchaser Eagle Auto and received insufficient funds checks held:

Burdette suffered no loss or damage by reason of a 'fraud practiced...In connection with the sale or transfer of a motor vehicle by a licensed dealer' Here, as we have indicated, Burdette, not Eagle Auto sold or transferred the motor vehicles for which the worthless checks were given Eagle Auto only purchased or received the transfer of these motor vehicles.

The court in Burdette remanded for a determination if recovery could be made by "any person" for a violation of the act. The contention that anyone may bring a claim has been rejected by our court in Mid-State Auto Auction of Lexington v. Altman, 476 S.E.2d 690 (1996). The allegations complained of are that the fraud was in the purchase not the sale and our courts do not recognize that as recoverable under the act. The plaintiff has put forward no other violation of the title to establish their claim.

**B. Centennial Casualty Company, Inc. is not the owner or legal representatives so as to be entitled to recover under the bond.**

Even if plaintiff alleges a different violation of the Chapter they are not an "owner or legal representative". In Mid-State Auto Auction of Lexington v. Altman, 476 S.E.2d 690 (1996), the Supreme Court of South Carolina held that the clear legislative intent behind section 56-15-320(b), was to provide "only the owner of a motor vehicle, or the owner's legal representative, with a cause of action against the surety. This was highlighting the fact that the statute in South Carolina distinguishes when they recover

under the bond from other statutes that allow any person to recover under bonds. It should be noted that these are limited bonds and the penal sums and regardless of the number of claims the aggregate amount is limited to the penal sum. It is therefore the Court's logic just as courts in numerous other jurisdictions have held the financiers and others involved in sophisticated deals with each other not sap the funds made available to the ordinary consumer, the owner of the vehicle. See, Price v. Piotrowski, 632 So 2d 1 (La.Ct. App. 1994), Casualty Company v. Acker, 541 NW2d 517 (Iowa 1995), Lawyer Surety Corp. v. Flowers, 66 SW3d 669 (Ark Ct. App. 2002), Southwestern Capital Investment, Inc. v. Pioneer G.E. Ins. Co., 24 P2d 1205 (Colo. Ct. App. 1996). Due to the limited nature of the bond and the wording of the statute, it is clear it was not intended to protect the insurance company of an auto auction.

The auto auction attempts to claim and create paper work to make it the "legal representative" of the owner however the statute is much stronger than some self created agency relationship. The cardinal rule of statutory interpretation is to determine the intent of the legislature. Bass v. Isochem, 365 S.C.454, 459, 617 S.E.2d 369, 377 (Ct. App. 2005). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Miller v. Aiken, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005). The words of a statute must be given their plain and ordinary meaning without resorting to forced construction. Durham v. United CLS. Fin. Corp., 331 S.C. 600, 604, 503 S.E.2d 465, 468 (1998).

The Auto Auction alleges the purchase agreement and bill of sale documents between the auto auction and the sellers and buyers made to facilitate the sale attached the Plaintiff's motion for Summary Judgment create the legal representative status.

They allege the buyer and seller each appoint Auto Auction as their agent and legal representative "for the purpose of processing this transaction through the auction company." The insurance carrier of the auto auction in hopes of attempting to scoop the limited funds made available to owners of motor vehicle attempted to frame language to recover under the bond. The document "bill of sale" using the "legal representative" language, presented was not signed, but even if signed would not be binding. The document that was signed, the authorizations on both the buyer and seller authorized the Auto Auction only "as our agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicle owned by the consigner and consigned to Charleston Auto Auction for sale..." The paperwork makes clear that the auto auction is not the owner or legal representative but an agent merely for execution of paperwork pertaining to the sale. See exhibits 3 and 4 of Plaintiff's exhibits attached to Plaintiff's Motion for Summary Judgment. In addition, statutory law provides under 56-15-510 :

"As used in this article:

- 1) "wholesaler motor vehicle auction" is an entity in the business of providing auction services and wholesale transactions at its established place of business, and which does not buy, sell, or own the motor vehicles it auctions in the ordinary course of its business...."

Further, under statute 56-15-520 the statute provides

"when a transfer of title is made as a result of a transaction at a wholesale motor vehicle auction, the reassignment of title or bill of sale must note the name and address of the wholesale motor vehicle auction. However, the wholesale motor vehicle auction is not deemed to be the owner, seller, transferer or assigner of title of the motor vehicle by reason of its name appearing on the reassignment of title or bill of sale or by reason of its payment or a guarantee of payment to the seller, receipt of payment from the purchaser, or the reservation of a lien or security interest for the purpose of securing payment from a purchaser.

The legal representative of the owner would be the personal representative or conservator a person who stand in the shoes of the Owner. Blacks law dictionary does not define the term "legal representative " but refers the reader to the term "lawful representative" and "personal representative.". Blacks Law Dictionary (8<sup>th</sup> Edition 2004). A personal representative is the equivalent of an executor or administrator. Plaintiff failed to complete the Black's earlier definition that defines the legal representative with the example "executer."

In this action, the most the Plaintiff can claim to be is the insurance company of an auction house who became the agent merely for furthering the business of the auction house of both the buyer and the seller. The terms "owner or owner's legal representative" must be strictly construed. It is clear from the paperwork and statute the auto auction does not and can not stand in the shoes of the Owner. At best the Auto Auction my claim they were "agents" with respect to processing the sale between two other entities to their auto auction. The terms "agent" and "legal representative" are not synonymous. For example, American Jurisprudence states that the term "legal representative" when used in an insurance policy generally means executor or administrator, but "may have other or secondary meanings – which include anyone who succeeds to the rights of another, such as an heir, next of kin, assignee, trustee, or receiver". 44 A Am.Jur. 2d Insurance Section 1696: See also, 4 Couch on Ins., Section 59:22 (unless circumstances indicate otherwise, the term "legal representative" must be given its primary legal meaning of executor or administrator. 4 Couch on Ins., Section 59:24.

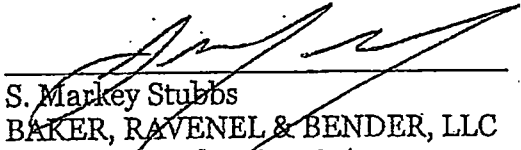
Another example of a legal representative is bankruptcy trustee. The 4<sup>th</sup> Circuit Court of Appeals held that a bankruptcy trustee is a bankruptcy estate's "legal representative" for the purpose of a Rule 60(b) Motion and Fair Rules of Civil Procedure." Conversely, an attorney does not have standing to move under rule 60(b) as a legal representative as they are merely an agent. See W. Steele Erection Company v. U.S., 424 F2d 737, 739 (10<sup>th</sup> Circuit 1970) (citing Mobay Chem. Co. v. Hudson Foam Plastics Corp., 227 F2d 413, 416 (S.D.N.Y. 1967)). The term legal representative is a term of art that indicates more than simply an agency relationship. By law a legal representative has "... the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to his death." S.C. Code Am. Section 62-3-703(c) recently amended by 2010 Laws Acts 244(H.B. No. 3803). All legal representatives in South Carolina have much authority than the mere limit authority claimed by Auto Auction to have authorization to act as agent to facilitate the sale between the buyer and seller through the auto auction. The terms legal "owner or owner's legal representative" must be strictly construed. The Auction house attempted assertion of the unsigned document using the term "legal representative", in the bill of sale, but a resuscitation without the authority is not binding. See Beasley v. Kerr-McGee Chem. Corp., 273 S.C. 523, 526, 257 S.E.2d 726, 727, (1979), citing Hubbard v. Row, 192 S.C.12, 5 S.E.2d 187 (1939). The statute is to protect the Owner or those in the shoes of the Owner this is a hurdle the Auction House can not surpass by documents or statute.

**C. To the extent the Auction House is the legal representative of the buyer they are also the legal representative of the seller.**

The auto auction claim it is legal representative of buyer and seller to the extent they allege that they stand in the shoes of the purchaser, they have alleged the purchaser is the wrongdoer and therefore they stand in the shoes of A-3 Auto Center, they cannot seek recovery for the acts of their own alleged principle. As stated in the Connecticut Indemnity Co., v. Burdette Chrysler Dodge Corp., 453 S.E2d 90<sup>2</sup>!

"Burdette may not take advantage of its own conduct by taking assignments from innocent purchasers and recovering against Eagle Auto on its bond in action .... It is a well-founded policy of law that no person may be permitted to acquire right of action from their own unlawful act and when it participates in an unlawful act, cannot recover damages from the consequences of that act ..."

In this action, the facts as alleged by the complainant set forth clearly that the Plaintiff is not making a claim against A-3 Auto Center, LLC as a dealer who has practiced fraud in the sale or transfer of motor vehicle but in fact has alleged that they see A-3 Auto Center LLC was a purchaser and therefore they may not maintain the suit. Even assuming such a suit can be maintained, they are neither the owner nor the owner's legal representative so as to maintain this suit. The claims must be dismissed as a matter of law.

  
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Attorneys for Defendant Western Surety  
Company, d/b/a CNA Surety  
Our File No. 7753.72

September 17, 2010

|                               |   |                                   |
|-------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA       | ) | THE COURT OF COMMON PLEAS         |
|                               | ) |                                   |
| COUNTY OF CHARLESTON          | ) | FOR THE NINTH JUDICIAL CIRCUIT    |
|                               | ) |                                   |
| Centennial Casualty Co., Inc. | ) | Civil Action No.: 2009-CP-10-6577 |
|                               | ) |                                   |
| Plaintiff,                    | ) |                                   |
|                               | ) |                                   |
| v.                            | ) | ORDER IN FAVOR OF WESTERN         |
|                               | ) | SURETY                            |
|                               | ) |                                   |
|                               | ) |                                   |
| Western Surety Company,       | ) |                                   |
| d/b/a CNA Surety,             | ) |                                   |
|                               | ) |                                   |
| Defendant.                    | ) |                                   |
| Western Surety Company,       | ) |                                   |
| d/b/a CNA Surety,             | ) |                                   |
|                               | ) |                                   |
| Defendant/Third-Party         | ) |                                   |
| Plaintiff,                    | ) |                                   |
|                               | ) |                                   |
| v.                            | ) |                                   |
|                               | ) |                                   |
| Charleston Auto Auction, A3   | ) |                                   |
| Auto Center, LLC. and Wylie   | ) |                                   |
| Mickle,                       | ) |                                   |
|                               | ) |                                   |
| Third-Party Defendants.       | ) |                                   |

This matter comes before the court upon Briefs and Stipulation of Facts. This action involves a motor vehicle bond issued pursuant to 56-15-320. Pursuant to the provisions of the bond it is made available for "loss or damage suffered by an owner of a motor vehicle or his legal representative, by reason of fraud, practice, or fraudulent representations made in connection with the sale or transfer of the motor vehicle by a licensed dealer or wholesaler." In this action, the Plaintiff does not maintain that they are the owner of the motor vehicle, and in fact Statute 56-15-510 provides that a wholesale motor vehicle auction, be definition does not buy, sell, or own the motor

vehicles it auctions. The statute further provides pursuant to 56-15-520 that when a transfer of title is made, the transfer of title must note the name of the wholesaler auction, however, the wholesale motor vehicle auction is not deemed to be the owner, seller, transferor or signer of title of the motor vehicle. Clearly the statute provides that the Auto Auction is not the owner of the motor vehicle. The bond does provide remedy for the owners of the motor vehicle or their legal representatives. Their legal representatives would be guardians, conservators, and in some cases holders of a power of attorney. The power of attorney, however, would have to make the person stand fully in the shoes of the owner such as a durable power of attorney or a power of attorney issued providing a person with any and all rights and liabilities of the owner in handling the transaction. The Auto Auction in this action relies upon a power of attorney which is given to both the buyer and sellers at the auction authorizing the Auction to be the "legal representative" of both parties for a limited purpose, that purpose is identified "for the purpose of processing the transaction through the auction company." This limited purpose is insufficient to make an auction house the legal representative of the owner. In addition, under the plaintiff's provision, they would be legal representative of both the owner and the seller and therefore have caused the very fraud, i.e. bad check, which they are complaining of. In this action, the bond was not intended to protect auto auctions in the furtherance of their business.

The Court further notes that under Connecticut Indemnity v. Burdette Chrysler Dodge Corp., 453 S.E.2d 902 (1994) which was repealed to the extent the case could be interpreted as allowing any person to recover under the bond is still a valid law. Having reached determination that the auto auction is not the "owner" or legal representative" pursuant to the statute, the court does not reach the remaining arguments of Western

Judge J. C. Nicholson, Jr.

ROA 109

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Centennial Casualty Co., Inc. )  
Plaintiff, )

THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
Civil Action No.: 2009-CP-10-6577

v.

NOTICE OF MOTION AND MOTION  
FOR RECONSIDERATION  
59(e) SCRCP

Western Surety Company,  
d/b/a CNA Surety,  
Defendant.

Western Surety Company,  
d/b/a CNA Surety,

Defendant/Third-Party  
Plaintiff,

v.

Charleston Auto Auction,  
A3 Auto Center, LLC. and  
Wylie Mickle,

Third-Party Defendants.

*[Signature]*

JULIE J. ARMSTRONG  
CLERK OF COURT

2013 MAR 25 PM 2:43

FILED

The Defendant, Western Surety Company d/b/a CNA Surety hereby moves the Court to reconsider its order by the Honorable judge Nicholson, filed March 4, 2013 notice of which was received by the Defendant March 11<sup>th</sup>, 2013.

The South Carolina licensing statute for motor vehicle dealers requires a surety bond under S.C. Code Section 56-15-320(b). The statute requires a motor vehicle wholesaler dealer to obtain a bond:

"For loss or damage suffered by an owner of a motor vehicle, or his legal representative ...

The Court erred in finding that the Auction Company is entitled to recovery under the bond. The purchasers in this action undisputedly received their vehicles. The

sellers undisputedly received their cars. The Court failed to address the fact that the only injury was to the insurance company of an auction company. The Auction Company made a business decision to guarantee funds and obtained insurance for that guarantee. The Auction Company did not stand in the shoes of the buyer or seller but as the court found, they merely "facilitates sales" it is not a party to the sale not as a purchaser, seller, owner.

The court omitted from the quoted affidavit on page one of the order Laura Taylor item #3 the word agent or legal representative to "facilitate" sales. The Auction Company does not assert nor does their agreement provide it is the legal representative or agent to enter into sales, make sales or make purchases. The affidavit was not a stipulated fact. The agreements were stipulated the affidavit is only an opinion. The court failed to look at the language of the agreement and the totality of stipulated facts to reach its conclusion. The unsigned Purchase Agreement and Bill of Sale provides in boiler plate in part :

"Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through the Auction Company, including processing of title, however, they agree Auction is merely performing a service and Auction Company disclaims all express and implied warranties..."

The agreement goes on to require Seller and Buyer to indemnify the Auction Company. The court is in error in finding that this agency meets the statutorily required "owner or his legal representative" who has suffered a loss. The document was stipulated and is attached the affidavit is just a persons opinion of the language of the document.

The statutes are not intended to protect auto auctions from failing to require cashier's checks or otherwise securing funds when they make transfers of the vehicles.

As noted by the Court, The Auto Auction claims to be the agent for both the buyer and the seller for the purpose, "of processing this transaction through Auction Company." The Auction Company does not stand in the shoes as the owner or claim to have the rights of the owner of a motor vehicle, nor as noted above has the owner suffered any loss or damage. The owner has received his vehicle. The prior owner has received his funds. The Auto Auction is standing solely in the shoes of The Auto Auction. The result of the court's interpretation would deplete the limited fund provided to protect the buying public, whether they are buying themselves or buying through a legal representative such as a conservator.

The Court was in error at page 3 of the Order when it found that the bad checks caused \$35,305.00 in loss to the seller Dealership. The undisputed facts are the loss was to the Auction Company not the dealership. The Auction house made a business decision to guarantee checks and not require certified or secure funds. This decision was for the Auction Company not as anyone's agent but a business enhancer for the Auction Company.

The Court erred in finding that Connecticut Indemnity Co. v. Burdette Chrysler Dodge Corp., 317 S.C. 406, 453 S.E.2d 902 (Ct. App. 1994), was entirely overruled by Mid-State Auto-Auction v. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996) in that it was only overruled to the extent it held that "any person" could recover under the bond as set forth in footnote 4. The case was specifically overruled only to the extent that it mandated that any person could recover under the bond. The remainder of the case was not overruled. The Court, therefore, erred in disregarding Connecticut Indemnity Co. v. Chrysler Dodge Corp. . In Burdette court noted

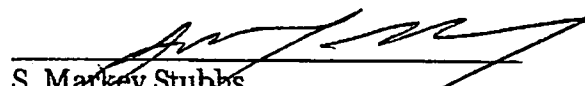
"Burdette suffered no loss or damage by reason of a "fraud practice" ...in connection with the sale and transfer of a motor vehicle by a licensed dealer." Here as we have indicated, Burdette not Eagle Auto sold or transferred the motor vehicles for which the worthless checks were given to Eagle Auto only purchased or received the transfer of these motor vehicles.

This portion of the case has not been overruled. In this case, it is clear that neither the purchaser nor the seller suffered a loss, only the auction house's insurer's company, suffered a loss.

The Court erred in finding that Statute 56-15-510 fails to support the Bonding Company's position. The statute specifically holds that the wholesale motor vehicle auction is not the owner, seller, transferor or assignor of the title of the motor vehicle by reason of its name appearing in the paperwork. To be an owner, an auction would actually have to buy vehicles, not merely have vehicles transferred through its organization. The Court erred in disregarding the statute and in finding the statute did not prohibit the auto auction from being an owner.

The Court erred in not addressing the fact that the Auction Company maintains it is the agent and legal representative for both the buyer and the seller. In doing so, they are claiming that they stand in the shoes of both parties. As noted in Connecticut Indemnity Co. v. Burdette, they cannot recover since they stand in the shoes of the party that gave the bad checks. If they are, in fact, the agent for both such that they could be an owner, they cannot recover for their own wrongful conduct. Defendant therefore requests the Court reconsider its findings and find that in the facts of this case, that the bond is not applicable to this action as there has not been a loss or damage suffered by an owner of a motor vehicle or his legal representative as intended by the statute.

The defendant therefore requests the court to reverse its findings and execute the proposed order of the Defendant.



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Attorneys for Defendant Western Surety  
Company, d/b/a CNA Surety  
Our File No. 7753.67

March 21, 2013

## PURCHASE AGREEMENT AND BILL OF SALE

Seller and buyer agree to abide by all Auction Company policies, which are incorporated herein, and all decisions of management.

Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company, including transfer of title, however, they agree Auction is merely performing an auction service and Auction Company disclaims all express and implied warranties, including merchantability and fitness, except for the warranty of title described below.

Seller and buyer indemnify and hold Auction Company harmless from any liability, loss, costs, damage or expense, including attorney's fees which arise directly or indirectly from this transaction, including, but not limited to, all matters relating to odometer mileage, odometer mileage disclosure and vehicle history even if Seller and Buyer are not at fault.

Buyer agrees that he has examined the vehicle described on reverse side and accepts it in its present condition; he also agrees that the title and ownership of said vehicle, with all of its equipment, shall remain in Seller, or Auction Company if it has paid Seller, until any check or draft given for the Sale Price of said vehicle or any part of the same, has been honored and paid in full. However, on delivery of the vehicle to Buyer, he shall assume all liability of damage or destruction of the same. Buyer further agrees to honor payment of any check or draft immediately when presented to his bank for payment. And under no circumstances will stop payment for any reason whatsoever unless approved by authorized representative of Auction Company. Then if approved, Buyer is to return vehicle at his expense to place of purchase. Buyer agrees to hold Auction Company harmless for and to indemnify it against any loss, including attorney's fees, as a result of a Buyer's check or draft being dishonored by the bank upon which it is drawn for any reason whatsoever. Should Buyer's check or draft be dishonored, in addition to the above, Buyer shall pay Auction Company interest at a rate of 1.5% per month on any amount outstanding.

Auction Company, in accordance with the below terms and conditions, guarantees to Buyer that the vehicle described is not stolen or mortgaged at the time of this sale.

1. This warranty of title does not cover mere technical defects which can be removed by execution and delivery to buyer or prior owners, or legally required papers without the necessity of any monetary payment.
2. Auction company's liability under its warranty of title of the vehicle, the subject of this transaction, shall never exceed the sale price of said vehicle in this transaction, and the maximum amount of Auction Company's liability under its said warranty shall be reduced by deducting from said sale price 2% thereof on the first of each month following the date of this transaction, and all liability of Auction Company will expire and terminate on the first day of the forty-eighth month after the date of this transaction.

## PURCHASE AGREEMENT AND BILL OF SALE

Seller and buyer agree to abide by all Auction Company policies, which are incorporated herein, and all decisions of management.

Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company, including transfer of title, however, they agree Auction is merely performing an auction service and Auction Company disclaims all express and implied warranties, including merchantability and fitness, except for the warranty of title described below.

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3. Auction Company's warranty of title is expressly limited to Buyer and said warranty is not negotiable or transferable.

4. Auction Company's warranty of title is void ab initio if the purchase price for the vehicle is not paid by Buyer.

5. This warranty of title does not protect against defects in the title known to Buyer whether listed as exceptions to the title on this instrument or not.

6. Whenever any claim is made by any person against the title of said vehicle, whether by suit or otherwise, Buyer shall within five days after becoming aware of said claim notify Auction Company, giving full particulars of the claim, and shall cooperate fully in defending any legal action and in taking any other steps to minimize possible loss.

7. On payment of any claim under this warranty of title, Buyer will execute all necessary papers authorizing his right to recover against Seller, or others, to Auction Company.

8. Buyer shall not surrender possession of the vehicle, except as required by legal process, to any such claimant, nor shall he voluntarily pay or acknowledge the validity of any such claim, without the prior approval of Auction Company.

9. Time is of the essence of this agreement and any failure on the part of Buyer to notify Auction Company of such claim shall vitiate Auction Company's liability under this warranty of title. Likewise, failure of Buyer to cooperate in defending any such claim shall relieve Auction Company of liability under this warranty of title.

If Auction Company makes a claim as a result of this transaction against Seller, Buyer or their agents or employees, Auction Company shall recover reasonable attorney's fees in an amount not less than 25% of the amount of the claim, regardless of whether suit is filed, including appellate fees and costs.

### INSPECTION

This inspection will be done for a FEE and will align with all auction lighting systems and arbitration rules. This FEE will be added to the purchase price or in the event of a No Sale, will be added to the customer's account. Auction company makes no expressed warranties and assumes no liability regarding this inspection. Any vehicle that does not pass inspection will automatically be entered into arbitration.

Dealer Signature \_\_\_\_\_

### WARRANTY

This warranty will be done for a FEE and covers drive train only (engine, transmission, differential, four-wheel drive, and clutch, 3 manual). It is valid for a period of 7 days (sale day to sale day) or 500 miles (whichever occurs first) and is non-transferable. Vehicle must be 5 years old or newer with less than 100,000 miles. Auction company reserves the right to repair the vehicle or purchase the vehicle. Transportation not included.

Dealer Signature \_\_\_\_\_

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4. Auction Company's warranty of title is void ab initio if the purchase price for the vehicle is not paid by Buyer.

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Dealer Signature \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Centennial Casualty Co., Inc.,

Plaintiff,

vs.

Western Surety Co., d/b/a CNA  
Surety,

Defendant.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Civil Action No. 2009-CP-10-6577

Plaintiff's Opposition to Defendant's  
Motion for Reconsideration

*[Handwritten signature]*

2013 APR -5 PM 1:13  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

Plaintiff Centennial Casualty Co., Inc. respectfully opposes defendant Western Surety Co.'s Motion for Reconsideration (the "Motion"), which seeks to have the Court reverse its Order filed March 4, 2013 (the "Order"). As discussed below, the Motion raises no new issues and cites no new law. It is a repetition of the arguments made earlier in this lawsuit, which have been considered and rejected by the Court based on solid facts and legal precedent.

1. The Motion's arguments contradict the clear language of the statute and the South Carolina Supreme Court.

The Motion argues that the Court committed error because some of the parties had insurance (page 2), because the auction company is not an owner (page 3), and because an auction house at times serves multiple parties in certain automobile transactions (page 4). The Motion cites no applicable law in support of these arguments, which contradict the clear language of the Dealer Bond

Statute:

[L]oss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler . . . .

S.C. Code § 56-15-320(B) (emphasis added). The statute's language makes no mention of limiting the bond only to certain types of owners or certain types of legal representatives. The statute does not exclude parties who have insurance, or parties that in certain instances may serve multiple parties. Instead, the statute allows owners or their legal representatives to make claims under the bond. The South Carolina Supreme Court has reinforced this conclusion in *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996), which held that:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, or the owner's legal representative, with a cause of action against the surety on a bond issued pursuant to that statute.

(emphasis added). Here, there is no serious dispute that the Purchase Agreement and Bill of Sale appointed the auction company as the "agent and legal representative," therefore falling squarely under the statute. The Motion's arguments, if accepted, would require this Court ignore the language of the statute and to contradict the clear instruction of both the South Carolina Legislature and the South Carolina Supreme Court.

2. **The Motion's only supporting case has been overruled.**

The Motion cites only one case in support of its arguments, *Connecticut Indemnity v. Burdette Chrysler Dodge Corp.*, 317 S.C. 406, 453 S.E.2d 902 (1994),

which the Motion argues is good law. There is no serious dispute that *Burdette*, as it applies to this lawsuit, has been overruled by *Mid-State Auto Auction*, 324 S.C. at 69, 476 S.E.2d at 692. *Mid-State Auto Auction* reinforces the holding applicable here:

Further, when referring to loss or damage suffered as the result of fraud or a violation of Chapter 15 on the part of a motor vehicle dealer, the statute specifically states that "[a]n owner or his legal representative who suffers the loss or damage has a right of action against the ... dealer's ... surety upon the bond." (emphasis added). We therefore reverse the grant of summary judgment and remand this case for further proceedings not inconsistent with this opinion.

*Id.* (italics in original; bolding added).

Moreover, *Burdette* is distinguishable because its ruling was based on the understanding that the purchaser had not established "fraud" under the statute.

In this action, there is no serious dispute that "fraud" was committed by (1) the two NSF checks (which were not for preexisting debts), and (2) the stop-payment placed on the third check.

**3. The Motion's citation of § 56-15-520 is misplaced.**

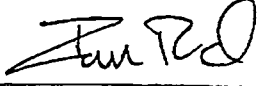
The Motion (at page 4) cites S.C. Code § 56-15-520 for the proposition that the statute does not make a motor vehicle auction the owner of a vehicle. That section's primary purpose is to prevent, among other things, motor vehicle auctions from being assessed property tax for owning the automobiles it auctions. It has no bearing on the interpretation of whether the auction is able to make a claim under the relevant statute or the bond.

## CONCLUSION

For these reasons, the Motion for Reconsideration should be denied.

Respectfully submitted,

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*Attorneys for Centennial Casualty Co., Inc. and  
Charleston Auto Auction*

April 3, 2013  
Charleston, South Carolina

## CERTIFICATE OF SERVICE

The undersigned certifies that on April 3, 2013, this document was served  
by electronic mail and first class mail on all attorneys of record.

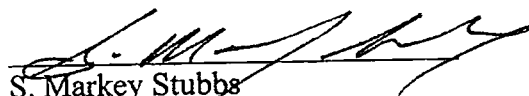
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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October 2, 2013

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-0013816577

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SC COURT OF APPEALS

Centennial Casualty Co., Inc. .... Respondent

v.

Western Surety Co., d/b/a CNA Surety ..... Appellant

Western Surety Co., d/b/a CNA Surety ..... Defendant/Third-Party Plaintiff

v.

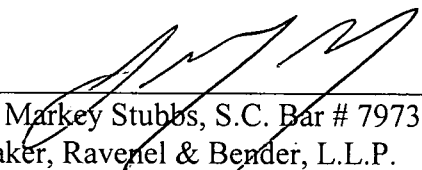
Charleston Auto Auction, A3 Auto Center, LLC, and Wylie Mickle, Third-Party Defendants

**PROOF OF SERVICE**

I, S. Markey Stubbs, attorney for Appellant Western Surety Co., d/b/a CNA Surety, do hereby certify that I have this 10th day of October, 2013 served counsel of record with the Record On Appeal by mailing said copies by United States Mail, first class postage pre-paid, to said counsel at the following addresses:

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