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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 18 2019

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

IN CASE NO. 15-CP-10-6684, THE HONORABLE KRISTI LEA HARRINGTON

Case No. 2018-000692

Zurich American Insurance Company of Illinois,Respondent,

v.

Palmetto Contract Services, Inc.,Appellant.

**APPELLANT’S MOTION TO EXCLUDE
CERTAIN DOCUMENTS IN
RESPONDENT’S DESIGNATION OF MATTERS**

Appellant, Palmetto Contract Services, Inc. (hereinafter “Palmetto”), hereby moves to exclude certain documents designated to be included in the Record on Appeal by the Respondent, Zurich American Insurance Company of Illinois (hereinafter “Zurich”).

Rule 210, Record on Appeal, states that “The Record shall not, however, include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR, 210(c). Respondent designated the following documents to be included in the Record on Appeal; however, none of the documents were presented to the lower court, or were a part of the file with the clerk of court:

Transcript of Hearing on Defendant Palmetto’s Motion to Amend Answer and Assert a Counterclaim, dated January 5, 2017, before the Honorable W. Jeffrey Young. (Respondent’s Designation No. 12).

Letter dated August 24, 2017 from William A. Scott, Attorney for Defendant Palmetto to the Honorable W. Jeffrey Young and Defendant Palmetto's proposed Order to Amend Answer and Assert Counterclaim. (Respondent's Designation No. 14).

Transcript of Hearing on Defendant Palmetto's Motion to Amend Answer and Assert a Counterclaim, dated September 19, 2017, before the Honorable J. C. Nicholson, Jr. (Respondent's Designation No. 17).

See Exhibit A, Respondent's Designation of Matters to be Included in the Record of Appeal. None of the above documents were provided to the lower court, and were not available to the lower court for review as part of the file maintained by the clerk of court. Under these circumstances, the documents should be excluded from the Record on Appeal.

Respectfully submitted,

PEDERSEN & SCOTT, P.C.



William A. Scott (SC Bar #15148)
775 St. Andrews Blvd.
Charleston, SC 29407
Tel: (843) 556-5656
Fax: (843) 556-5635
E-Mail: bscott@pslawpc.com

Attorney for Appellant

Dated this 15th day of March, 2019

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

COPY

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2018- 000692
Circuit Court Case No. 2015-CP-10-06684

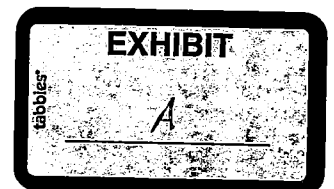
Zurich American Insurance Company of Illinois Respondent,

v.

Palmetto Contract Services, Inc. Appellant.

RESPONDENT'S DESIGNATION OF MATTERS
TO BE INCLUDED IN THE RECORD ON APPEAL

1. Order granting Plaintiff's Motion to Strike Defendant's Jury Trial Demand dated March 13, 2018.
2. Complaint dated December 11, 2015.
3. Defendant's Answer to Plaintiff's Complaint dated February 16, 2016.
4. Notice of Motion and Motion to Amend Answer and Assert a Counterclaim Against Plaintiff dated July 12, 2016.
5. Plaintiff's Response in Opposition to Defendant's Motion to Amend Complaint and File Counterclaim dated November 7, 2016.
6. Order granting Defendant's Motion to Amend dated September 22, 2017.



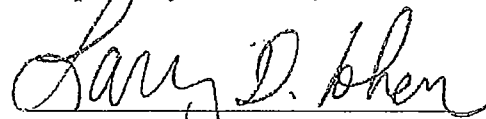
7. Defendant's Amended Answer and Counterclaim dated September 29, 2017.
8. Plaintiff Zurich American Insurance Company's Reply to Defendant's Amended Answer and Counterclaim dated October 26, 2017.
9. Plaintiff Zurich's Objection to Transfer to Jury Trial Roster and Motion to Strike Demand for Jury Trial dated October 26, 2017.
10. Plaintiff Zurich's Memo in Support of Its Objection to Transfer to Jury Trial Roster and Motion to Strike Defendant Palmetto Contract Services Inc.'s Demand for Jury Trial dated March 5, 2018.
11. Transcript of Record of Hearing on Plaintiff Zurich's Objection to Transfer to Jury Trial Roster and Motion to Strike Jury Trial Demand dated March 6, 2018.
12. Transcript of Hearing on Defendant Palmetto's Motion to Amend Answer and Assert a Counterclaim, dated January 5, 2017, before The Honorable W. Jeffrey Young.
13. Form 4 Order entered on January 6, 2017 on Defendant Palmetto's Motion to Amend and Assert a Counterclaim taken under advisement by Court and parties ordered to submit proposed Orders.
14. Letter dated August 24, 2017 from William A. Scott, attorney for Defendant Palmetto to The Honorable Roger M. Young, Sr. [sic] and Defendant Palmetto's proposed Order to Amend Answer and Assert Counterclaim [Plaintiff Zurich's proposed Order is omitted].
15. Charleston County Clerk of Court's Notice to Parties, dated March 8, 2017, that the case is on the trial court's backup non-jury trial roster for week of March 20, 2017 to March 24, 2017.
16. Transcript of Hearing on Defendant Palmetto's Motion to Amend Answer and Assert

- a Counterclaim, dated September 19, 2017, before the Honorable J. C. Nicholson, Jr.
17. Charleston County Clerk of Court's Notice to Parties, dated October 5, 2017 that case is on the Jury Trial Roster for period from October 9, 2017 to October 13, 2017.

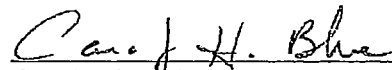
I certify that Respondent's Designation of Matters contains no matter which is irrelevant to this appeal.

Charleston, South Carolina
February 15, 2019

Respectfully submitted,



Larry D. Cohen
S.C. Bar No. 6254
Larry D. Cohen, LLC
Attorneys at Law
P.O. Box 30547
Charleston, SC 29417
Tel. (843) 225-4445
Fax (843) 225-2008
ldcohen@ldcohenlaw.com



Carolyn H. Blue
S.C. Bar No. 68506
Attorney at Law
P.O. Box 30845
Charleston, S.C. 29417
Tel. (843) 860-8076
carolyn.blue@ymail.com

Attorneys for Respondent
Zurich American Insurance Company of Illinois

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IN CASE NO. 15-CP-10-6684, THE HONORABLE KRISTI LEA HARRINGTON

Case No. 2018-000692

Zurich American Insurance Company of Illinois,Respondent,

v.

Palmetto Contract Services, Inc.,Appellant.

PROOF OF SERVICE

I certify that I have served the **Appellant's Motion to Exclude Certain Documents in Respondent's Designation of Matters**, by depositing a copy of it in the United States Mail, postage prepaid, on March 15, 2019, addressed to Larry D. Cohen, Esq., Larry D. Cohen, LLC, P.O. Box 30547, Charleston, SC 29417 and Carolyn H. Blue, Esq., P.O. Box 30845, Charleston, SC 29417.

PEDERSEN & SCOTT, P.C.



William A. Scott (SC Bar #15148)
775 St. Andrews Blvd.
Charleston, SC 29407
Tel: (843) 556-5656
Fax: (843) 556-5635
E-Mail: bscott@pslawpc.com

Attorney for Appellant

Dated this 15th day of March, 2019

PEDERSEN & SCOTT, P.C.
ATTORNEYS AT LAW

P 843-556-5656
F 843-556-5635
bscott@pslawpc.com

March 15, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
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Re: **Zurich American Insurance Company of Illinois, Respondent**
v. Palmetto Contract Services, Inc., Appellant
Appellate Case No.: 2018-000692/Case No. 15-CP-10-6684

Dear Ms. Kitchings:

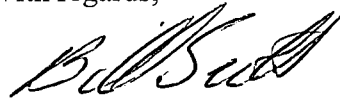
Please find enclosed for filing:

1. Original and one (1) copy of the Appellant's Reply Brief, Certificate of Counsel, and Proof of Service;
2. Original and six (6) copies of the Appellant's Motion to Exclude Certain Documents in Respondent's Designation of Matters and Proof of Service; and
3. Check in the amount of \$50.00 in payment of the motion fee.

Kindly file the documents and return stamped copies in the return addressed stamped envelope.

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

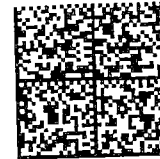
With regards,



William A. Scott

Enclosures
Counsel of Record (w/encs.)
Larry Cohen, Esq.
Carolyn H. Blue, Esq.

PRIORITY MAIL



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William A. Scott, Esq.
Pedersen & Scott, P.C.
775 St. Andrews Boulevard
Charleston, SC 29407

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