

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
In the Court of Common Pleas

Paul M. Burch, Circuit Court Judge
William O. Spencer, Special Referee

RECEIVED
MAR 28 2019
SC Court of Appeals

Case No. 2017-CP-13-804

First Citizens Bank & Trust Company and Sadie M. Murvin, ... Respondents,

v.

Miranda Libby Murvin, a/k/a Miranda Libby Murvin Zimmerman
and Great American Life Insurance Company, ... Defendants.

Of whom Great American Life Insurance Company is Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD) CASE NO. 17-CP-13-804

First-Citizens Bank & Trust)
Company and Sadie M. Murvin)

Plaintiffs,)

v.)

Miranda Libby Murvin, a/k/a)
Miranda Libby Murvin)
Zimmerman and Great American)
Life Insurance Company,)

Defendants.)

2018 MAR -5 PM 2:00
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

ENTRY OF DEFAULT

Upon consideration of Plaintiffs' Application for Entry of Default, along with the supporting Affidavit, both being in compliance with Rule 55, South Carolina Rules of Civil Procedure, it is hereby determined that a copy of the Amended Summons, together with a copy of the Complaint, was served upon the Defendant, Murvin, on January 24, 2018 and on the Defendant, Great American, on January 25, 2018 Pursuant to Rule 55, South Carolina Rules of Civil Procedure, service of process was deemed complete on Defendant on January 30, 2018. The Defendants have failed to plead, defend or otherwise respond to this action.

THEREFORE, default is hereby entered against Miranda Libby Murvin, a/k/a Miranda Libby Murvin Zimmerman and Great American Life Insurance Company this 5th day of March, 2018.

Wanda C. Miles

Ashley N. Johnson, Deputy Clerk

The Honorable Wanda C. Miles
Clerk of Court, Chesterfield County

Chesterfield, South Carolina

March 5th, 2018

2018 MAR -5 PM 2:00

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 17-CP-13-804

First Citizens Bank & Trust Company

Miranda Libby Murvin, d/b/a Miranda Libby

And Sadie M. Murvin

Murvin Zimmerman and Great American Life
Insurance Company

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Kevin M. Barth

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), 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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE):** ☐ 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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
First Citizens Bank & Trust Company	Great American Life Ins. Co.	\$136,000.00
		\$
		\$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

SCRPC Form 4C (02/2017)

Judge Code

Date

Page 1 of 4

R - 004

For Clerk of Court Office Use Only

This judgment was entered on the 22 day of Mar., 20 18 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of Mar., 20 18 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Wanda C. Miles AT
CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

2018 MAR 22 AM 11:17
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NO. 17-CP-13-804

First-Citizens Bank & Trust)
Company and Sadie M. Murvin)
)
Plaintiffs,)

v.)

Miranda Libby Murvin, a/k/a)
Miranda Libby Murvin)
Zimmerman and Great American)
Life Insurance Company,)
)
Defendants.)

**JUDGMENT FOR PLAINTIFFS
AND ORDER FOR DEFAULT AND
FOR HEARING ON DAMAGES**

2018 MAR 22 AM 11:47
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

IT APPEARING from the Affidavit of Kevin M. Barth, Esquire, attorney for the Plaintiffs, and a Motion for Entry of Default, that the Defendants, Miranda Libby Murvin and Great American Life Insurance Company, in this matter have been duly served with an Amended Summons and Complaint by hand delivery and delivery through the South Carolina Department of Insurance, and that more than thirty-five (35) days have elapsed during which time no responsive pleadings have been filed by the Defendants, nor anyone on their behalf, nor has anyone appeared on behalf of the Defendants in response to the Summons and Complaint.

IT FURTHER APPEARING that the Plaintiffs' First Cause of Action against the Defendant, Great American Life Insurance Company, is for breach of contract. This Defendant issued an annuity that was to pay the sum of \$136,000.00 to the Estate of

Lonnie Murvin per the terms of a single premium deferred annuity. Mr. Murvin passed away. The annuity, however, was wrongfully paid to the Defendant, Miranda Libby Murvin who converted the entire amount to herself personally. I find that this cause of action is for a sum certain in the amount of \$136,000.00 and that Plaintiffs are entitled to a judgment in that amount against the Defendant, Great American Life Insurance Company, and that Plaintiffs are entitled to pre-judgment interest at the statutory rate.

IT FURTHER APPEARING that the Plaintiffs are desirous of withdrawing their request for a jury trial as to the remaining causes of action against both Defendants reserving the right to reinstate that request should the hearing not be held or should some other circumstances make it desirous to request a jury trial.

IF FURTHER APPEARING that a hearing to ascertain damages pursuant to Rule 55, SCRPC, should be held on the remaining causes of action to determine the amount owed to the Plaintiffs by each of the Defendants.

IF FURTHER APPEARING that it is necessary to take some testimony and that it would be more efficient for this Court and in the interest of justice that this matter be referred. For those reasons pursuant to Sections 14-11-60 and 15-31-150, South Carolina Code of Laws (1976) and pursuant to Rules 53 and

55(b)(2) of the South Carolina Rules of Civil Procedure, a Special Referee should be appointed in this matter, with the power to take testimony, make conclusions of law and findings of fact, and issue a final order in this matter. Counsel for the Plaintiff advises this Court that William O. Spencer, Jr., Esquire, has consented to serve as Special Referee and the Court finds that he is an appropriate and suitable person to serve as such referee. Now on the motion of the Plaintiff the court directs that William O. Spencer, Jr., Esquire shall be appointed as Special Referee in this action.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Plaintiffs are entitled to a judgment against the Defendant, Great American Life Insurance Company, in the sum of \$136,000.00, plus pre-judgment interest on their cause of action for Breach of Contract and same is awarded to them.

2. That the above matter be and is hereby referred to William O. Spencer, Jr., Esquire, as Special Referee, to take testimony, decide any motions or other matters that might arise after the date of this Order, make conclusions of law and findings of fact, and issue a final Order in this matter. The Plaintiffs are allowed to withdraw their request for a jury trial as to the remaining causes of action against both Defendants reserving unto self, however, the right to reinstate that request should a hearing not be held or some other

circumstances make it necessary to reinstate the request for a jury trial.

3. That the fees of the Special Referee shall be paid by the Plaintiffs with the provision that if an appearance is made by someone on behalf of either of the Defendants, then that party or the Defendants as the case might be, shall pay half of the expenses for the hearing.

4. That the Special Referee shall set a date for the hearing and have the Plaintiffs' attorney notify the Defendants, of the same by regular United States Mail.

5. That a final Order be filed as soon as practicable after the date of the hearing.

6. That jurisdiction of this entire matter shall be vested in the Special Referee as of the date of this Order to determine any and all matters that might arise concerning this case thereafter. This shall include not only the hearing itself but any motions concerning the case made prior to or subsequent to the hearing including, but not limited to, motion to set aside the default and any other motions that might be filed in this matter. Any appeal from the motions and from the final Order or Orders of the Special Referee, if applicable, shall be directed to the South Carolina Supreme Court.

7. The Defendants are hereby adjudged to be in default on the Plaintiffs' Second through Fourth Causes of action and a

judgment in such fashion and form as determined by the hearing shall be filed in favor of the Plaintiffs if it is so determined by the Special Referee that the Plaintiffs are entitled to a finding in their favor.


HONORABLE PAUL M. BURCH
JUDGE OF THE CIRCUIT COURT FOR THE
FOURTH JUDICIAL CIRCUIT

, South Carolina
, 2018

2018 MAR 22 AM 11:17
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017- CP-13-804

First Citizens Bank & Trust Company and Sadie M. Murvin

Miranda Libby Murvin, a/k/a Miranda Libby Murvin
Zimmerman and Great American Life Insurance
Company

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Kevin Barth 205 N. Irby, P.O. Box 107, St. Florence, SC
29501

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), 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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

A True Copy Attest

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Wanda C. Miles
~~Circuit Court Judge~~
Special Referee

2098
Judge Code

9-13-2018
Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

2018 SEP 13 PM 1:13
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy Attest
Wanda C. Miles
CLERK OF COURT C.R. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NO. 17-CP-13-804

First-Citizens Bank & Trust)
Company and Sadie M. Murvin)

Plaintiffs,)

v.)

ORDER DENYING DEFENDANT'S
MOTION TO VACATE DEFAULT
JUDGMENT

Miranda Libby Murvin, a/k/a)
Miranda Libby Murvin)
Zimmerman and Great American)
Life Insurance Company,)

Defendants.)

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, SC

2018 SEP 13 PM 1:16

This matter is before the undersigned pursuant to the Judgment for Plaintiffs and Order for Default and for Hearing on Damages, signed by Honorable Paul M. Burch and filed on March 22, 2018. This Order referred the matter to the undersigned, and granted Plaintiff, First-Citizens Bank & Trust Company, a judgment against the Defendants in the sum of \$136,000.00 on the breach of contract cause of action. It also found the Defendants in default on the remaining causes of action and ordered the undersigned to set a hearing on damages.

Pursuant to the above referenced Order, the undersigned scheduled a hearing on July 12, 2018 on the Defendant, Great American's, Motion to Vacate the Default Judgment. Both attorneys appeared at the hearing and presented oral arguments.

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A True Copy Attest
Wanda C. Miles
CLERK OF COURT C.P. & C.S.
CHESTERFIELD COUNTY, SC

and Memoranda to the undersigned for consideration. The Defendant, Murvin, has not appeared in this matter and did not appear at this hearing.

This action was filed by the Plaintiffs on December 18, 2017 against the above-referenced Defendants. The Complaint alleges causes of action against the Defendant, Great American, for breach of contract, insurance bad faith, breach of covenant of good faith and fair dealing and conversion. It also alleges a cause of action against the Defendant, Murvin, for conversion. Clerical errors were corrected with the filing of an Amended Complaint on January 17, 2018. The Defendant, Murvin, was personally served with the Amended Complaint on January 24, 2018 and has not filed any responsive pleadings nor made an appearance. Defendant, Murvin is thus in default.

The Defendant, Great American, was properly served with the Summons and Amended Complaint through the South Carolina Department of Insurance on January 25, 2018. On that same date, the South Carolina Department of Insurance mailed a certified letter to Great American notifying them that service had been accepted on their behalf. A copy of that letter was filed with the Clerk of Court for Chesterfield County on February 9, 2018.

WOSL
#2 On March 5, 2018, Plaintiff filed a Motion for Entry of Default by Clerk, which requested that judgment be entered for the liquidated amount, \$136,000.00, outlined in the breach of

contract action only. In addition, Plaintiffs requested that an Order of Default be entered on the remaining unliquidated damage causes of action and that a hearing be set before a duly appointed Special Referee. An Entry of Default was entered by the Clerk and filed on March 5, 2018.

A Judgment for Plaintiffs and Order for Default and for Hearing on Damages was filed by Honorable Paul M. Burch on March 22, 2018. The Judgment on the liquidated amount was against both Defendants in the sum of \$136,000.00, jointly and severally. A default judgment was also entered on the unliquidated amount, which Order also ordered that a hearing be held to determine same.

This Judgment/Order was mailed to Thomas Higgins, Senior Counsel for the Defendant, Great American. A Motion to Vacate Default Judgment under S.C.R.C.P. Rule 60 was served upon Plaintiffs' counsel on April 13, 2018. The basis for this Motion, as stated in the Motion, is that the judgment should be set aside upon the grounds that the default judgment was the result of mistake, inadvertence or excusable neglect and that Plaintiff would not be prejudiced by vacating the default judgment. S.C.R.C.P., Rule 60.

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The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. *Harbor Island Owners' Ass'n v. Preferred Island*

Props., Inc., 369 S.C. 540, 544, 633 S.E.2d 497 (2006). The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct.App.1988). An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997).

Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRPC. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c). *Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct.App.1987). Rule 60(b) requires a more particularized showing of "mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party." Rule 60(b), SCRPC. The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality. The Defendant's Motion in this case, as it relates to the judgments that have been entered against them for

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\$136,000.00 on the liquidated claim and for unspecified damages on the unliquidated claim, is pursuant to Rule 60(b).

The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief. See 49 C.J.S. Judgments § 297, at 545 (1947) ("The party who seeks to have a judgment opened or set aside must assume the burden of proving the facts essential to entitle him to the relief asked."); 46 Am.Jur.2d Judgments § 780, at 940 (1969) ("The general rule is that no court has authority to open or vacate a judgment without some material evidence to support the claims on which the application for relief depends."); cf. 7 J. Moore & J. Lucas, Moore's Federal Practice p 60.24, at 60-217 (1990). 403 S.E.2d 127. *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127 (1991).

The Defendant, Great American, alleges that it should be allowed out of default based upon mistake, inadvertence or excusable neglect. The Defendant contends that they looked at the Amended Complaint and determined that the referenced annuity was not issued by them, and that they were named as a party Defendant by mistake or confusion on the part of the Plaintiff because that has happened to this Defendant in the past. Great American is an insurance company and should have been diligent enough to recognize that the insured referenced in the Amended

was
#5

Complaint was their insured and that Great American was a proper party to this lawsuit.

Even if this Defendant had been named by mistake, the insurance company and its attorneys should know that the proper method for addressing the matter would be to file an Answer and/or a Motion to Dismiss, not to simply ignore it. Simply checking Great American's computer system and determining that the annuity number was not one of their system's number, without even bothering to check the name of the insured is careless and is not an excuse sufficient to set aside a default judgment. Ignoring the matter altogether is even more careless. I find that Great American certainly should not be rewarded for such careless behavior. See *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995) ("Losing a summons and complaint within the corporation is not a ground to set aside a default judgment"); *Ricks v. Weinrauch*, 293 S.C. 372, 360 S.E.2d 535 (Ct. App. 1987) (leaving the suit papers in the trunk of defendant's car would not, alone meet the requisite showing for good cause).

"[A] party has a duty to monitor the progress of his case." *Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct.App.1988). "It is always a matter of regret that a party should not have his day in court. However, ... [where] the appellant was duly served with the summons and complaint, [i]t

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was his duty to answer the complaint. ... [Therefore,] [h]e must suffer the consequence of his failure to answer." *Williams v. Ray*, 232 S.C. 373, 383-84, 102 S.E.2d 368, 373 (1958); see also *Bissonette v. Joseph*, 170 S.C. 407, 170 S.E. 467 (1933) (refusing to vacate a default judgment on the ground of excusable neglect where the defendant in an automobile collision case forwarded the summons to his insurance carrier which then failed to serve notice of appearance until after the plaintiff had obtained judgment).

The undersigned finds that the case at bar is very similar to the facts in *Ledford v. Pennsylvania Insurance Company*, 267 S.C. 671, 230 S.E.2d 900 (1976). In *Ledford*, the Defendant was properly served with the Summons and Complaint. The insurance company admittedly saw the Summons and Complaint but took no action and failed to answer and was subsequently held in default. The Defendant's explanation for "excusable negligence or mistake" is that the Defendant's in-house counsel assumed the matter had been referred to local counsel and that an Answer had been filed. The attorney had reviewed the file and made a mistaken assumption. The Court reversed the granting of the Defendant's Motion to Vacate Default and noted "even a cursory examination of these papers would readily have disclosed the fallacy of the assumption which he made. We are of the opinion that (this conduct) under these circumstances was unreasonable,

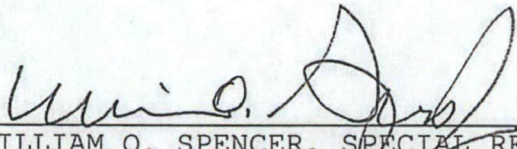
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there being a total absence of any justification for the conclusion he reached". In other words, the court clearly found that the Defendant's mistaken assumption was not a sufficient excuse to allow the court to set aside a default judgment. The same is true in this case. The Defendant, Great American, mistakenly assumed that they had been named as a party Defendant by mistake. Instead of hiring local counsel to deal with it, they instead ignored it. I do not believe this conduct is a sufficient basis upon which to vacate the default judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant's Motion to Vacate Default Judgment is hereby denied.

IT IS FUTHER ORDERED ADJUDGED AND DECREED that a damages hearing will be set on the Plaintiffs' unliquidated claims.

AND IT IS SO ORDERED!


WILLIAM O. SPENCER, SPECIAL REFEREE
FOR THE FOURTH JUDICIAL CIRCUIT

Chesterfield, South Carolina

September 13, 2018

2018 SEP 13 PM 1:13
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy Attest
Wanda C. Miles
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

#8

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

First-Citizens Bank & Trust Company, et al.

Plaintiff(s)

vs.

Miranda Libby Murvin, et al.

Defendant(s)

Submitted By: Kevin M. Barth

Address: P.O. Box 107

Florence, SC 29503

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - 13 - 804

2017 DEC 18 AM 9:53
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY

SC Bar #: 559

Telephone #: 843-662-6304

Fax #: 843-664-8384

Other:

E-mail: kbarth@bbllawsc.com

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

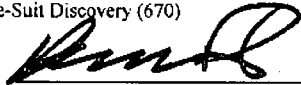
DOCKETING INFORMATION (Check all that apply)

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

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☒ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____ -NI- ____ -
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: 

Date: December 13, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10-e024.

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NO. 17-CP-13-804

First-Citizens Bank & Trust)
Company, and Sadie M. Murvin,)
Plaintiffs,)

vs.)

Miranda Libby Murvin aka)
Miranda Libby Murvin Zimmerman)
And Great American Life)
Insurance Company,)
Defendants.)

SUMMONS

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2017 DEC 18 AM 9:53

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at 205 N. Irby Street, Florence, South Carolina, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgement by default will be rendered against you for the relief demanded in the Complaint.

BARTH, BALLENGER & LEWIS, LLP

By: 

KEVIN M. BARTH
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301
kbarth@bblawsc.com

Attorney for Plaintiffs

Florence, South Carolina
December 12, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NO. 17-CP- 13-804

First-Citizens Bank & Trust)
Company, and Sadie M. Murvin)
Plaintiffs,)

vs.)

Miranda Libby Murvin aka)
Miranda Libby Murvin Zimmerman)
And Great American Life)
Insurance Company,)
Defendants.)

COMPLAINT

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2017 DEC 18 AM 9:53

*1
HOB
The Plaintiffs, complaining of the Defendants herein, would respectfully allege and show unto this Honorable Court as follows:

1. That the Plaintiff, Sadie M. Murvin (hereinafter "Murvin") is a citizen and resident of the County of Chesterfield, State of South Carolina and is a beneficiary of the Estate of Lonnie B. Murvin, Deceased. As such, Plaintiff, Murvin, has a stake in the outcome of this litigation as an heir and beneficiary of said Estate and is a proper party to this litigation.

2. That the Plaintiff, First-Citizens Bank & Trust Company (hereinafter First-Citizens) is a North Carolina banking corporation organized and existing under the laws of the State of North Carolina authorized to conduct business in the State of South Carolina. At all times relevant hereto First-Citizens is the duly appointed Personal Representative of the Estate of Lonnie B. Murvin, Deceased, and as such, has the statutory obligation to accumulate all of the assets of said Estate and to

distribute them to the Estate's lawful heirs and/or beneficiaries.

#2
MB

3. That, upon information and belief, the Defendant, Great American Life Insurance Company (hereinafter "Great American"), is a corporation organized and existing under the laws of one of the states of the United States other than the State of South Carolina, but who maintains agents, employees, and/or servants in the State of South Carolina and who derives substantial financial benefits there from. The Plaintiff is informed and believes that the Defendant is subject to the jurisdiction of this Court.

4. That upon information and belief, the Defendant, Miranda Libby Murvin aka Miranda Libby Murvin Zimmerman (hereinafter "Defendant Murvin") is a citizen and resident of the County of Chesterfield, State of South Carolina.

5. That the Defendant, Great American, sold to the deceased, Lonnie B. Murvin, a single premium deferred annuity, contract number 8500457055. A copy of the annuity contract is attached hereto as Exhibit A and incorporated herein by reference as fully as if set forth herein verbatim. The aforementioned annuity would provide to Lonnie Murvin the sum of \$169,710.00. The annuity was still in full force and effect upon the death of Lonnie Murvin. As a result, the remaining annuity funds would be an asset of the Estate of Lonnie Murvin.

6. That Lonnie Murvin paid all of the required premiums to maintain this annuity policy in full force and effect, and in all manners has complied with the conditions of said annuity policy.

7. That on April 14, 2015, while the annuity was in full force and effect, Lonnie B. Murvin passed away and the annuity then became due and payable to the Estate of Lonnie B. Murvin.

#3
VB

8. That upon information and belief, the Defendant Murvin filed an Application for Informal Appointment in the Probate Court asking that she be appointed to serve as Personal Representative of the Estate of Lonnie Murvin. By Certificate of Appointment dated September 15, 2015, Defendant Murvin was appointed to serve. Subsequent to that date, on September 30, 2015, Plaintiff, First Citizens, filed its Application for Restraint and for Performance, indicating that it had been designated under the Last Will and Testament of Lonnie Murvin to serve as Personal Representative of his Estate. The Probate Court for Chesterfield County issued an Order of Restraint/Performance on September 30, 2015. This Order prevented the Defendant Murvin from undertaking any actions on behalf of the Estate of Lonnie Murvin. A copy of this Order is attached hereto as Exhibit B and incorporated herein by reference. Defendant Murvin attended the aforementioned hearing and was served with a copy of this Order on October 4, 2015.

9. The Plaintiff, First Citizens, was later appointed to serve as Personal Representative of the Estate. Again, Defendant Murvin attended this hearing and was served with a copy of the Order and Certificate of Appointment. A copy of this Certificate of Appointment is attached hereto as Exhibit C.

10. Even though the Defendant Murvin was restrained and enjoined from undertaking any actions on behalf of the Estate, she communicated with the Defendant, Great American, regarding the annuity in question. As a result of those communications, Great American issued a check in the sum of \$136,000.00, payable to the Estate of Lonnie B. Murvin and delivered the check to the Defendant Murvin. Upon information and belief, the Defendant

Murvin deposited the check into an account in the name of the Estate of Lonnie B. Murvin opened by Defendant Murvin. Defendant Murvin opened this account on July 26, 2017 at PNC Bank for the sole purpose of depositing this check and giving herself access to these funds. Once opening the account and gaining access to the funds, she spent the entire amount.

#4
MB

11. Prior to the issuance of the annuity check to Defendant Murvin, on February 15, 2017, counsel for Plaintiff, First Citizens, notified Great American in writing that First Citizens was named as Personal Representative of the Estate of Lonnie B. Murvin under the terms of his Last Will and Testament and that First Citizens would be making a claim to the annuity proceeds. Counsel additionally notified Great American that the annuity proceeds should be held until such time as First Citizens could be appointed to serve as PR and could formally make a claim to same. On March 28, 2017, the Defendant, Great American, wrote First Citizen's attorney and notified him that for the annuity proceeds to be paid he should provide them with a Certified Death Certificate and a Claimant Statement & Election Request Form. In response to that letter, First Citizens' attorney wrote the Defendant, Great American and indicated that he would notify them once the PR was appointed, and further that "the annuity is, of course, an asset of the Estate of Lonnie Murvin, and as such we have an interest in your maintaining its integrity and safety".

12. Despite having such knowledge, Defendant, Great American, wrongfully issued a check to Defendant, Murvin. As a result, the funds have been completely depleted and the Estate of Lonnie B. Murvin has received none of the funds due to it.

AS A FIRST CAUSE OF ACTION
(Breach of Contract against Great American)

13. That each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

14. That Lonnie B. Murvin purchased the aforementioned annuity and fully and completely paid the premiums associated with that annuity. The Plaintiff has satisfied all conditions precedent to the full funding of the annuity. The annuity was in full force and effect at the time of the death of Lonnie B. Murvin and had a value of approximately \$136,000.00 that was to be payable to the Estate of Lonnie B. Murvin.

15. That the Defendant, Great American, wrongfully distributed the proceeds of the annuity to the improper party, thus depriving the Estate of the benefit of the annuity Lonnie B. Murvin had purchased and for which it was to be paid. Despite being requested, the Defendant, Great American, fails and refuses to issue the proceeds check to First Citizens as Personal Representative of the Estate of Lonnie B. Murvin.

16. That as a direct and proximate result of the breach of contract by the Defendant, Great American, the Plaintiffs have suffered actual damages and demand a judgement against the Defendant in an amount sufficient to compensate them for those damages.

AS A SECOND CAUSE OF ACTION
(Insurance Bad Faith against Great American)

17. That each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

18. That the Plaintiffs are informed and believe that there existed a mutually binding contract for the Defendant, Great American, to provide annuity proceeds to the Estate of Lonnie B. Murvin and its heirs upon demand for payment.

19. That the Plaintiffs complied with all requirements and conditions precedent of the annuity, and have demanded payment to the Estate.

20. By virtue of an insurance annuity contract, a special relationship exists between the insurer and insured which imposes a duty on the parties to deal with each other fairly, honestly, in good faith and to not take any action that will injure the right of the other to receive the benefits of the agreement.

21. That the Defendant, Great American, has refused to provide the benefits due under the contract and has acted in bad faith in the handling of this matter.

22. That the Plaintiffs are informed and believe that the Defendant, Great American's, actions as stated above violate the provisions of S.C. Code § 38-59-20 and S.C. Code § 38-57-10, as the Defendant has failed to act in good faith in their handling and processing of the Plaintiffs' claim for payment.

23. That as a direct and proximate result of the Defendant, Great American's wrongful conduct, the Plaintiffs have suffered damage, financial hardship and other damages to be shown at trial. That the Plaintiffs are informed and believe that they are entitled to an award of actual damages in an amount sufficient to compensate them for those damages, as well as an award of attorney's fees and costs.

24. That the Plaintiffs are informed and believe the Defendant, Great American's bad faith conduct was willful,

intentional, with malice toward the Plaintiffs and with a reckless disregard for the rights of the Plaintiffs; concomitantly, the Plaintiffs seek an award of punitive damages in an amount to be determined by the jury.

FOR A THIRD CAUSE OF ACTION
(Breach of Covenant of Good Faith
and Fair Dealing against Great American)

25. That each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

26. That the Defendant, Great American, entered into a binding insurance annuity contract with Lonnie B. Murvin to provide annuity proceeds to him and his Estate.

27. That pursuant to this contract, there was an implied covenant of good faith and fair dealing which imposed a duty upon the Defendant, Great American, to act in good faith with the Plaintiffs.

28. That the Plaintiffs are informed and believes that the Defendant, Great American, breached the covenant of good faith and fair dealing by virtue of the conduct specified above. More specifically, Plaintiffs are informed and believe that by issuing a check to Defendant Murvin after being placed on notice of a dispute regarding the issuance of these funds, was in bad faith.

29. That as a result of the Defendant, Great American's, breach of the covenant of good faith and fair dealing, the Plaintiffs have been actually damaged.

30. That the Plaintiffs are informed and believes that they are entitled to an award of actual damages sufficient to compensate them for those damages, as well as an award of attorney's fees and costs.

31. That the Plaintiffs are informed and believes that the Defendant, Great American's, bad faith conduct was willful, intentional, with malice toward the Plaintiffs and with a reckless disregard for the rights of the Plaintiffs; concomitantly, the Plaintiffs seek an award of punitive damages in an amount to be determined by the jury.

FOR A FOURTH CAUSE OF ACTION
(Conversion against both Defendants)

#8
MB
32. That each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

33. That the Plaintiffs herein are entitled to the use, ownership and possession of the annuity proceeds in the approximate sum of \$136,000.00.

34. That despite such entitlement, the Defendants, jointly and severally, have converted those sums to their own use, thus depriving the Plaintiffs of same.

35. This deprivation occurred after both Defendants were placed clearly on notice that the funds belonged to the Estate of Lonnie B. Murvin and should be held for safekeeping until such time as a proper and appropriate claim for payment could be made.

36. Plaintiffs are informed and believe that they are entitled to a judgment against the Defendants, both jointly and severally, in an amount of actual damages sufficient to compensate them for their damages, and for punitive damages in an appropriate sum.

WHEREFORE, the Plaintiffs having set forth their Complaint against the Defendants herein, would respectfully pray for an Order as follows:

1. Granting the Plaintiffs an award of actual damages against the Defendant, General American, in an appropriate sum on their First Cause of Action.

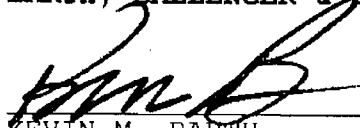
2. Granting the Plaintiffs an award of actual damages against the Defendant, General American, including an award of attorney's fees and costs, and punitive damages in an appropriate sum on their Second Cause of Action.

3. Granting the Plaintiffs an award of actual damages against the Defendant, General American, including an award of attorney's fees and costs, and punitive damages in an appropriate sum on their Third Cause of Action.

4. Granting the Plaintiffs an award of actual damages against both Defendants, both jointly and severally, and punitive damages in an appropriate sum on their Fourth Cause of Action.

5. Granting such other and further relief as this Court may deem just and proper.

BARTH, BALLENGER & LEWIS, LLP

By: 

KEVIN M. BARTH
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301
kbarth@bbllawsc.com

Attorney for Plaintiffs

Florence, South Carolina

December 12, 2017

2017 DEC 18 AM 9:53
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NO. 17-CP-13-804

First-Citizens Bank & Trust
Company, and Sadie M. Murvin,
Plaintiffs,

vs.

SUMMONS

Miranda Libby Murvin aka
Miranda Libby Murvin Zimmerman)
And Great American Life
Insurance Company,
Defendants.

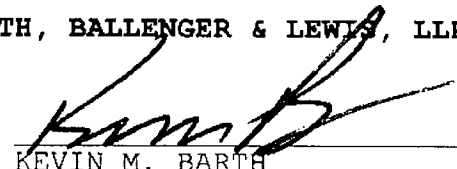
Wanda C. Rhee
Clerk of Court
Chesterfield County, SC

2018 JUN 17 AM 10:43

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Amended Complaint on the subscriber at 205 N. Irby Street, Florence, South Carolina, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Amended Complaint within the time aforesaid, judgement by default will be rendered against you for the relief demanded in the Amended Complaint.

BARTH, BALLENGER & LEWIS, LLP

By: 

KEVIN M. BARTH
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301
kbarth@bbllawsc.com

Attorney for Plaintiffs

Florence, South Carolina
January 11, 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD) FOURTH JUDICIAL CIRCUIT
CASE NO. 17-CP-13-804

First-Citizens Bank & Trust)
Company, and Sadie M. Murvin)
Plaintiffs,)

vs.)

Miranda Libby Murvin aka)
Miranda Libby Murvin Zimmerman)
And Great American Life)
Insurance Company,)
Defendants.)

AMENDED COMPLAINT

2018 JUN 17 AM 10:43
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

#1
HB
The Plaintiffs, complaining of the Defendants herein, would respectfully allege and show unto this Honorable Court as follows:

1. That the Plaintiff, Sadie M. Murvin (hereinafter "Murvin") is a citizen and resident of the County of Chesterfield, State of South Carolina and is a beneficiary of the Estate of Lonnie B. Murvin, Deceased. As such, Plaintiff, Murvin, has a stake in the outcome of this litigation as an heir and beneficiary of said Estate and is a proper party to this litigation.

2. That the Plaintiff, First-Citizens Bank & Trust Company (hereinafter First-Citizens) is a North Carolina banking corporation organized and existing under the laws of the State of North Carolina authorized to conduct business in the State of South Carolina. At all times relevant hereto First-Citizens is the duly appointed Personal Representative of the Estate of Lonnie B. Murvin, Deceased, and as such, has the statutory obligation to accumulate all of the assets of said Estate and to

distribute them to the Estate's lawful heirs and/or beneficiaries.

3. That, upon information and belief, the Defendant, Great American Life Insurance Company (hereinafter "Great American"), is a corporation organized and existing under the laws of one of the states of the United States other than the State of South Carolina, but who maintains agents, employees, and/or servants in the State of South Carolina and who derives substantial financial benefits there from. The Plaintiff is informed and believes that the Defendant is subject to the jurisdiction of this Court.

#2
HMB
4. That upon information and belief, the Defendant, Miranda Libby Murvin aka Miranda Libby Murvin Zimmerman (hereinafter "Defendant Murvin") is a citizen and resident of the County of Chesterfield, State of South Carolina.

5. That the Defendant, Great American, sold to the deceased, Lonnie B. Murvin, a single premium deferred annuity, contract number 8500457055. A copy of the annuity contract is attached hereto as Exhibit A and incorporated herein by reference as fully as if set forth herein verbatim. The aforementioned annuity would provide to Lonnie Murvin the sum of \$169,710.00. The annuity was still in full force and effect upon the death of Lonnie Murvin. As a result, the remaining annuity funds would be an asset of the Estate of Lonnie Murvin.

6. That Lonnie Murvin paid all of the required premiums to maintain this annuity policy in full force and effect, and in all manners has complied with the conditions of said annuity policy.

7. That on April 14, 2015, while the annuity was in full force and effect, Lonnie B. Murvin passed away and the annuity then became due and payable to the Estate of Lonnie B. Murvin.

#3
HMB

8. That upon information and belief, the Defendant Murvin filed an Application for Informal Appointment in the Probate Court asking that she be appointed to serve as Personal Representative of the Estate of Lonnie Murvin. By Certificate of Appointment dated September 15, 2015, Defendant Murvin was appointed to serve. Subsequent to that date, on September 30, 2015, Plaintiff, First Citizens, filed its Application for Restraint and for Performance, indicating that it had been designated under the Last Will and Testament of Lonnie Murvin to serve as Personal Representative of his Estate. The Probate Court for Chesterfield County issued an Order of Restraint/Performance on September 30, 2015. This Order prevented the Defendant Murvin from undertaking any actions on behalf of the Estate of Lonnie Murvin. A copy of this Order is attached hereto as Exhibit B and incorporated herein by reference. Defendant Murvin attended the aforementioned hearing and was served with a copy of this Order on October 4, 2015.

9. The Plaintiff, First Citizens, was later appointed to serve as Personal Representative of the Estate. Again, Defendant Murvin attended this hearing and was served with a copy of the Order and Certificate of Appointment. A copy of this Certificate of Appointment is attached hereto as Exhibit C.

10. Even though the Defendant Murvin was restrained and enjoined from undertaking any actions on behalf of the Estate, she communicated with the Defendant, Great American, regarding the annuity in question. As a result of those communications, Great American issued a check in the sum of \$136,000.00, payable to the Estate of Lonnie B. Murvin and delivered the check to the Defendant Murvin. Upon information and belief, the Defendant

Murvin deposited the check into an account in the name of the Estate of Lonnie B. Murvin opened by Defendant Murvin. Defendant Murvin opened this account on July 26, 2017 at PNC Bank for the sole purpose of depositing this check and giving herself access to these funds. Once opening the account and gaining access to the funds, she spent the entire amount.

#4
HOB

11. Prior to the issuance of the annuity check to Defendant Murvin, on February 15, 2017, counsel for Plaintiff, First Citizens, notified Great American in writing that First Citizens was named as Personal Representative of the Estate of Lonnie B. Murvin under the terms of his Last Will and Testament and that First Citizens would be making a claim to the annuity proceeds. Counsel additionally notified Great American that the annuity proceeds should be held until such time as First Citizens could be appointed to serve as PR and could formally make a claim to same. On March 28, 2017, the Defendant, Great American, wrote First Citizen's attorney and notified him that for the annuity proceeds to be paid he should provide them with a Certified Death Certificate and a Claimant Statement & Election Request Form. In response to that letter, First Citizens' attorney wrote the Defendant, Great American and indicated that he would notify them once the PR was appointed, and further that "the annuity is, of course, an asset of the Estate of Lonnie Murvin, and as such we have an interest in your maintaining its integrity and safety".

12. Despite having such knowledge, Defendant, Great American, wrongfully issued a check to Defendant, Murvin. As a result, the funds have been completely depleted and the Estate of Lonnie B. Murvin has received none of the funds due to it.

AS A FIRST CAUSE OF ACTION
(Breach of Contract against Great American)

13. That each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

14. That Lonnie B. Murvin purchased the aforementioned annuity and fully and completely paid the premiums associated with that annuity. The Plaintiff has satisfied all conditions precedent to the full funding of the annuity. The annuity was in full force and effect at the time of the death of Lonnie B. Murvin and had a value of approximately \$136,000.00 that was to be payable to the Estate of Lonnie B. Murvin.

15. That the Defendant, Great American, wrongfully distributed the proceeds of the annuity to the improper party, thus depriving the Estate of the benefit of the annuity Lonnie B. Murvin had purchased and for which it was to be paid. Despite being requested, the Defendant, Great American, fails and refuses to issue the proceeds check to First Citizens as Personal Representative of the Estate of Lonnie B. Murvin.

16. That as a direct and proximate result of the breach of contract by the Defendant, Great American, the Plaintiffs have suffered actual damages and demand a judgement against the Defendant in an amount sufficient to compensate them for those damages.

AS A SECOND CAUSE OF ACTION
(Insurance Bad Faith against Great American)

17. That each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

18. That the Plaintiffs are informed and believe that there existed a mutually binding contract for the Defendant, Great American, to provide annuity proceeds to the Estate of Lonnie B. Murvin and its heirs upon demand for payment.

19. That the Plaintiffs complied with all requirements and conditions precedent of the annuity, and have demanded payment to the Estate.

#6
HAB
20. By virtue of an insurance annuity contract, a special relationship exists between the insurer and insured which imposes a duty on the parties to deal with each other fairly, honestly, in good faith and to not take any action that will injure the right of the other to receive the benefits of the agreement.

21. That the Defendant, Great American, has refused to provide the benefits due under the contract and has acted in bad faith in the handling of this matter.

22. That the Plaintiffs are informed and believe that the Defendant, Great American's, actions as stated above violate the provisions of S.C. Code § 38-59-20 and S.C. Code § 38-57-10, as the Defendant has failed to act in good faith in their handling and processing of the Plaintiffs' claim for payment.

23. That as a direct and proximate result of the Defendant, Great American's wrongful conduct, the Plaintiffs have suffered damage, financial hardship and other damages to be shown at trial. That the Plaintiffs are informed and believe that they are entitled to an award of actual damages in an amount sufficient to compensate them for those damages, as well as an award of attorney's fees and costs.

24. That the Plaintiffs are informed and believe the Defendant, Great American's bad faith conduct was willful,

intentional, with malice toward the Plaintiffs and with a reckless disregard for the rights of the Plaintiffs; concomitantly, the Plaintiffs seek an award of punitive damages in an amount to be determined by the jury.

FOR A THIRD CAUSE OF ACTION
(Breach of Covenant of Good Faith
and Fair Dealing against Great American)

25. That each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

#7
KB
26. That the Defendant, Great American, entered into a binding insurance annuity contract with Lonnie B. Murvin to provide annuity proceeds to him and his Estate.

27. That pursuant to this contract, there was an implied covenant of good faith and fair dealing which imposed a duty upon the Defendant, Great American, to act in good faith with the Plaintiffs.

28. That the Plaintiffs are informed and believes that the Defendant, Great American, breached the covenant of good faith and fair dealing by virtue of the conduct specified above. More specifically, Plaintiffs are informed and believe that by issuing a check to Defendant Murvin after being placed on notice of a dispute regarding the issuance of these funds, was in bad faith.

29. That as a result of the Defendant, Great American's, breach of the covenant of good faith and fair dealing, the Plaintiffs have been actually damaged.

30. That the Plaintiffs are informed and believes that they are entitled to an award of actual damages sufficient to compensate them for those damages, as well as an award of attorney's fees and costs.

31. That the Plaintiffs are informed and believes that the Defendant, Great American's, bad faith conduct was willful, intentional, with malice toward the Plaintiffs and with a reckless disregard for the rights of the Plaintiffs; concomitantly, the Plaintiffs seek an award of punitive damages in an amount to be determined by the jury.

FOR A FOURTH CAUSE OF ACTION
(Conversion against both Defendants)

32. That each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

33. That the Plaintiffs herein are entitled to the use, ownership and possession of the annuity proceeds in the approximate sum of \$136,000.00.

34. That despite such entitlement, the Defendants, jointly and severally, have converted those sums to their own use, thus depriving the Plaintiffs of same.

35. This deprivation occurred after both Defendants were placed clearly on notice that the funds belonged to the Estate of Lonnie B. Murvin and should be held for safekeeping until such time as a proper and appropriate claim for payment could be made.

36. Plaintiffs are informed and believe that they are entitled to a judgment against the Defendants, both jointly and severally, in an amount of actual damages sufficient to compensate them for their damages, and for punitive damages in an appropriate sum.

WHEREFORE, the Plaintiffs having set forth their Complaint against the Defendants herein, would respectfully pray for an Order as follows:

1. Granting the Plaintiffs an award of actual damages against the Defendant, General American, in an appropriate sum on their First Cause of Action.

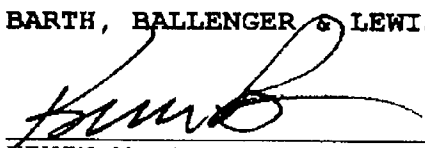
2. Granting the Plaintiffs an award of actual damages against the Defendant, General American, including an award of attorney's fees and costs, and punitive damages in an appropriate sum on their Second Cause of Action.

3. Granting the Plaintiffs an award of actual damages against the Defendant, General American, including an award of attorney's fees and costs, and punitive damages in an appropriate sum on their Third Cause of Action.

4. Granting the Plaintiffs an award of actual damages against both Defendants, both jointly and severally, and punitive damages in an appropriate sum on their Fourth Cause of Action.

5. Granting such other and further relief as this Court may deem just and proper.

BARTH, BALLENGER & LEWIS, LLP

By: 

KEVIN M. BARTH
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301
kbarth@bbllawsc.com

Attorney for Plaintiffs

Florence, South Carolina

January 11, 2018

2018 JAN 17 AM 10:43
Wanda C. Miles
CLERK OF COURT
DISTRICT COURT, S.C.



(Home) <https://www.midlandnational.com/home> Agent Home <https://www.midlandnational.com/group/mnportal/an-agent-homepage>
 My Business <https://www.midlandnational.com/group/mnportal/an-app-pending-business>
 Inforce Contract Information <https://www.midlandnational.com/group/mnportal/an-app-policy-access> Inforce Contract Access

Contract Summary

Contract Number	• 889447886	Issue Date	• 8/18/2012
Product	• Single Premium Deferred Annuity - Dynamic Choice	Issue Age	• 68
Contract Status	• Active (Inforce)	Annuitant(s)	• LORNE MUEYER
Accumulation Value	• \$186,718.80	Owner(s)	• LORNE MUEYER
Tax Qualification Code	• Non-Qualified	Agent(s)	• TROY J. YOUNG PRAT CITICORP INVESTOR SERVICES INC

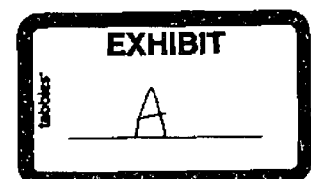
Contract Values (As of 10/14/2018)

Contract Values	Withdrawal Details		
Current Accumulation Value	• \$186,718.80	12/31 Value	• \$187,343.26
Surrender Charge	• \$8,383.84 <i>Surrender Charge Schedule</i>	Cost Basis	• \$184,600.00
Surrender Value	• \$181,189.64	Total Premium	• \$154,600.00
		Total Interest & Index Credits	• \$18,119.80
		Current Interest Rate	• 1.0%

Note

- Values in parentheses indicate a negative value.
- During the surrender charge period, the surrender value may reflect a market value adjustment. In all contract years, the surrender value may also reflect additional guarantees provided by your contract.
- Interest rates displayed in the base interest rate for the Contract.

2018 JAN 17 AM 10:43
 Maria C. Miles
 CLERK OF COURT
 CHRISTIAN COUNTY, S.C.



2015 OCT 16 PM 6:30

STATE OF SOUTH CAROLINA,
CHESTERFIELD COUNTY
COUNTY OF CHESTERFIELD

First-Citizens Bank & Trust Company)
Petitioner,)

vs.)

Sadie M. Murvin, Ronald Emmanuel)
Murvin, Jonathan F. Murvin, Lonnie)
Lee Murvin, Jr. and Miranda Libby)
Murvin a/k/a Miranda Libby Murvin)
Zimmerman)

Respondent(s).)

IN THE PROBATE COURT
ORDER FOR RESTRAINT OR PERFORMANCE
OF PERSONAL REPRESENTATIVE

CASE NO. 2015-ES-00338

TRUE COPY

Chesterfield County
Probate Court

Paul B. Ingram
Probate Judge

This matter was before me on Thursday, October 15, 2015 for a hearing scheduled at 9:00 a.m. at the office of Chesterfield County Probate Court, 2nd Floor, Chesterfield County Courthouse, Chesterfield, South Carolina. Present at the hearing were C. Anthony Harris, Jr., attorney for First-Citizens Bank & Trust Company, and Miranda Libby Murvin, the current Personal Representative of the Estate of Lonnie B. Murvin, deceased.

Miranda Libby Murvin previously filed an Application for Informal Appointment, and she was appointed Personal Representative by this court on September 15, 2015. Subsequently, First-Citizens Bank & Trust Company filed its Application for Restraint or Performance on September 30, 2015, setting forth that Lonnie B. Murvin executed a Will and Trust dated February 21, 1997, in which First-Citizens Bank & Trust Company was named as Personal Representative and Trustee. This court issued its temporary Order of Restraint/Performance dated September 30, 2015, and this Order also scheduled the hearing for October 15, 2015. Miranda Libby Murvin was served with the Application for Restraint or Performance of Personal Representative and temporary Order on October 4, 2015. Subsequently, First-Citizens Bank & Trust Company filed a Summons and Petition for Formal Testacy and Appointment dated October 9, 2015.

The court concludes that it would be in the best interest of the estate for the temporary Order of Restraint/Performance to be continued and to remain in effect pending further order of this court. It is anticipated that a hearing on the Petition for Formal Testacy and Appointment filed by First-Citizens Bank and Trust Company could be scheduled in the relatively near future, and in the

meantime there is no prejudice to the estate that no Personal Representative have authority to act, given what everyone believes to be the nature of the assets of the estate.

Conclusions of Law

I find and conclude that this court has jurisdiction of the subject matter and the parties, and that the relief sought by First-Citizens Bank & Trust Company is appropriate and should be granted.

WHEREFORE, IT IS ORDERED That Miranda Libby Murvin is hereby enjoined and prohibited from collecting, transferring, disbursing or otherwise managing any assets of any kind in the decedent's estate, and she is hereby enjoined and prohibited from performing any and all duties in the management of the estate of the decedent, pending further order from this court.

AND IT IS SO ORDERED.



HONORABLE GAIL B. INGRAM

CHESTERFIELD COUNTY PROBATE COURT

October 16, 2015

Chesterfield, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF: CHESTERFIELD

IN THE MATTER OF:
LONNIE B. MURVIN
(Decedent)

IN THE PROBATE COURT

CERTIFICATE OF APPOINTMENT

CASE NUMBER: 2015-ES-13- 00338

This is to certify that

FIRST- CITIZENS BANK & TRUST COMPANY

is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE
☐ GUARDIAN
☐ CONSERVATOR
☐ TRUSTEE

2018 JAN 17 AM 10:10
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

in the above matter and that this appointment, having been executed on the 8th day of August, 2017, is in full force and effect, including authorization to receive monies, income, principal, interest, & dividends of and belonging to said estate.

RESTRICTIONS:

None.

Executed this 8th day of August 2017.

Gail B. Ingram

Honorable Gail B. Ingram, Probate Court Judge

Do not accept a copy of this certificate without
the raised seal of the Probate Court.

EXHIBIT

C

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

FIRST-CITIZENS BANK & TRUST COMPANY
AND SADIE M. MURVIN,
PLAINTIFF

V.

MIRANDA LIBBY MURVIN, aka MIRANDA
LIBBY MURVIN ZIMMERMAN AND GREAT
AMERICAN LIFE INSURANCE COMPANY
DEFENDANT

) IN THE COURT OF COMMON PLEAS
) FOURTH JUDICIAL COURT

) CASE # 2017-C0-13-804

2018 FEB -9 AM 10:42
Wanda C. Hiles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

) AFFIDAVIT OF SERVICE

SERVED:

- 1- SUMMONS
- 2- AMENDED COMPLAINT
- 3- ORDER FOR RESTRAINT OR PERFORMANCE OF PERSONAL REPRESENTATIVE
- 4- CERTIFICATE OF APPOINTMENT

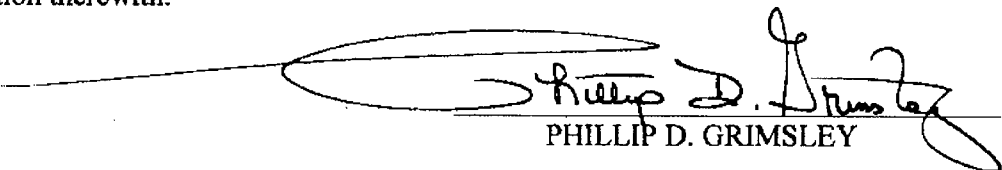
PERSONALLY APPEARED BEFORE ME, PHILLIP D. GRIMSLEY, who being duly sworn, swears that he served the above mentioned paper(s) to MIRANDA LIBBY MURVIN, aka MIRANDA LIBBY MURVIN ZIMMERMAN, AT 121 BUIE STREET, CHESTERFIELD, S.C., on WEDNESDAY JANUARY 24, 2018, at 11:55 (AM) o'clock.

() By personal delivery to the named party

(X) By delivery to ALAYSIA STRONG, 20 YEAR OLD DAUGHTER OF MIRANDA LIBBY MURVIN / ZIMMERMAN, A person of age and discretion at the residence / business of the party (CIRCLE ONE).

Place of service: 121 BUIE STREET, CHESTERFIELD, SOUTH CAROLINA

The deponent further swears that he is not a party to this action and has no interest therein or connection therewith.


PHILLIP D. GRIMSLEY

SWORN TO BEFORE ME THIS,
24TH DAY OF JANUARY 2018


NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 10/21/2024

South Carolina
Department of Insurance

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

HENRY McMASTER
Governor

RAYMOND G. FARMER
Director

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

January 25, 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
GREAT AMERICAN LIFE INS CO
301 E. 4TH STREET
CINCINNATI, OH 45202-4201

2018 FEB -9 AM 10:42
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

Dear Sir:

On January 25, 2018, I accepted service of the attached Summons and Amended Complaint on your behalf. I am, hereby, forwarding that accepted process on to you pursuant to the provisions of S.C. Code Ann. § 38-5-70. By forwarding accepted process on to you, I am meeting a ministerial duty imposed upon me by S.C. Code Ann. § 15-9-270. I am not a party to this case. The State of South Carolina Department of Insurance is not a party to this case. It is important for you to realize that service was effected upon your insurer on my date of acceptance for service.

You must promptly acknowledge in writing your receipt of this accepted process to sdubois@doi.sc.gov. When replying, please refer to File Number 169026, First-Citizens Bank & Trust Company, et al. v. GREAT AMERICAN LIFE INS CO, et al., 2017-CP-13-804.

By:

Sincerely Yours,



David E. Belton
Senior Associate General Counsel
(803)737-6132

Raymond G. Farmer
Director
State of South Carolina
Department of Insurance

Attachment

CC: Kevin M. Barth
Post Office Box 107
Florence, SC 29503

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NO. 17-CP-13-804

First-Citizens Bank & Trust)
Company and Sadie M. Murvin,)

Plaintiffs,)

v.)

Miranda Libby Murvin, a/k/a)
Miranda Libby Murvin)
Zimmerman and Great American)
Life Insurance Company)

Defendants.)

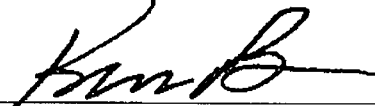
MOTION FOR ENTRY
OF DEFAULT BY CLERK

2018 MAR -5 PM 1:45
Hande C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

TO: HONORABLE SHARON W. STAGGERS, CLERK OF COURT, CHESTERFIELD
COUNTY

NOW COMES the undersigned attorney for the Plaintiffs and
pursuant to the attached Affidavit, move the Clerk of this Court
for an entry of default pursuant to Rule 55(a), SCRCP and
request that the Clerk shall enter the default against both
Defendants in this matter upon the calendar/file book.

BARTH, BALLENGER & LEWIS, LLP

By: 

KEVIN M. BARTH
ATTORNEY FOR PLAINTIFFS
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301

Florence, South Carolina

Mar 12, 2018

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-13-804

First Citizens Bank & Trust Company, et al
Plaintiff,
vs.
Miranda Libby Murvin, et a.
Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Kevin M. Barth, Bar No. 559
Address:
P.O. Box 107
Florence, SC 29503
Phone: 843-662-6301 Fax 843-664-8384
E-mail: kbarth@bblawsc.com Other:

Defendant's Attorney:
_____, Bar No. ____
Address:

Phone: _____ Fax _____
E-mail: _____ Other: _____

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

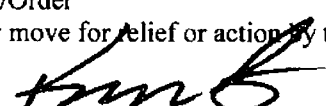
SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

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


Signature of Attorney for ☒ Plaintiff / ☐ Defendant

3-2-18
Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

- Collected by:  Date Filed: _____
☒ MOTION FEE COLLECTED: \$ 25.00
☐ CONTESTED - AMOUNT DUE: \$ _____

2018 MAR -5 PM 1:45
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

) IN THE COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT
) CASE NO. 17-CP-13-804

First-Citizens Bank & Trust
Company and Sadie M. Murvin,

Plaintiffs,

v.

Miranda Libby Murvin, a/k/a
Miranda Libby Murvin
Zimmerman and Great American
Life Insurance Company,

Defendants.

**MOTION FOR
ORDER OF DEFAULT**

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2018 MAR -5 PM 1:38

TO: THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the undersigned, Attorney for the Plaintiff, will move before this Honorable Court at such time as might be set by the Clerk of Court for an entry of an Order of Default and for an Order setting a hearing on damages before a duly appointed a Special Referee.

PLEASE TAKE FURTHER NOTICE that this motion is made pursuant to Affidavit of counsel heretofore filed and pursuant to the provisions of Rule 53, SCRCP and the provisions of Rule 55, SCRCP and other such rules that might be applicable.

BARTH, BALLENGER & LEWIS, LLP

By: 

Kevin M. Barth
Attorney for Plaintiffs
Post Office Box 107
Florence, South Carolina 29503
(843) 662-6301

Florence, South Carolina
March 2, 2018

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-13-804

First Citizens Bank & Trust Company, et al
Plaintiff,
vs.
Miranda Libby Murvin, et a.
Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Kevin M. Barth, Bar No. 559 Address: P.O. Box 107 Florence, SC 29503 Phone: 843-662-6301 Fax 843-664-8384 E-mail: kbarth@bblawsc.com Other:		Defendant's Attorney: _____, Bar No. ____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant 3-2-18 Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)			
JUDGE'S SECTION		CLERK'S VERIFICATION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE _____ Date: _____	
Collected by: <u>AG</u> Date Filed: _____ ☒ MOTION FEE COLLECTED: \$ 25.00 ☐ CONTESTED - AMOUNT DUE: \$ _____			

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.
2018 MAR -5 PM 1:38

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NO. 17-CP-13-804

First-Citizens Bank & Trust)
Company and Sadie M. Murvin)

Plaintiffs,)

v.)

Miranda Libby Murvin, a/k/a)
Miranda Libby Murvin Z)
immerman and Great American)
Life Insurance Company)

Defendants.)

AFFIDAVIT OF DEFAULT

2018 MAR -5 PM 1:45
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

#1
HB
PERSONALLY APPEARED before me, Kevin M. Barth, who being
duly sworn, deposes and says:

1. That I am a practicing attorney with the law firm of
Barth, Ballenger & Lewis, LLP, of Florence, South Carolina.

2. That I am the attorney of record for the Plaintiffs,
whom I represent, and on whose behalf I brought an action
against the above-captioned Defendants. That the Amended
Summons and Complaint filed on January 17, 2018, was served on
the Defendant, Miranda Libby Murvin on January 24, 2018, via
personal service as is reflected by the Affidavit of Service
previously filed in this matter.

3. That more than thirty-five (35) days have elapsed
since service of the said Amended Summons and Complaint and
there has been no appearance by anyone on behalf of this
Defendant. That in addition, the Defendant, Murvin, has failed
to file an Answer, Notice of Appearance, Motion or other
pleadings in this matter and is now, and has been, in default.

4. That I am the attorney of record for the Plaintiffs,
whom I represent, and on whose behalf I brought an action

against the Defendant Great American Life Insurance Company. That the Amended Summons and Complaint filed on January 17, 2018, was served on the Defendant, Great American Life Insurance Company on January 25, 2018, via service through the South Carolina Department of Insurance as is reflected by the Affidavit of Service previously filed in this matter.

#3
HAB
5. That more than thirty-five (35) days have elapsed since service of the said Amended Summons and Complaint and there has been no appearance by anyone on behalf of this Defendant. That in addition, the Defendant, Great American Life Insurance Company, has failed to file an Answer, Notice of Appearance, Motion or other pleadings in this matter and is now, and has been, in default.

6. That as to the cause of action in the Amended Complaint for **breach of contract only**, your Affiant is informed and believes that the amount requested is a sum certain in money and that the Plaintiffs are entitled to judgment against each of the Defendants, jointly and severally, in the amount requested in the Amended Summons and Complaint.

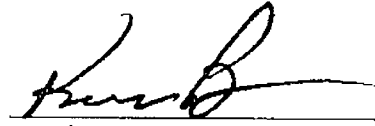
7. That as to the remaining causes of action in the Amended Summons and Complaint, your affiant is informed and believes that it will be necessary for the taking of testimony, including lay witnesses, liability witnesses, expert witnesses, and damage witnesses. That your affiant is informed and believes that it would be more efficient for this Court and the interests of justice would be better served to have the matter referred to a Special Referee pursuant to Section 14-11-60 and Section 15-31-150 of the South Carolina Code of Laws of 1976, as amended, and pursuant to Rule 53 of the South Carolina Rules of Civil Procedure.

8. That your affiant is informed and believes that the Court should appoint a suitable person to serve as Special Referee.

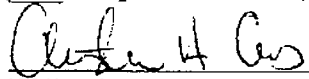
#3
9. That your affiant would ask the Court to enter an Order of Default as to the remaining causes of action and to issue an Order for a hearing on damages before a duly appointed Special Referee. That your affiant would further ask that the Court appoint a Special Referee to hear this matter and any matters hereafter relating to this matter and file a final Order appealable only to the Supreme Court.

10. That your affiant intends and will give full notice as required by the rules of this Court concerning any hearings to be held pursuant to this affidavit and petition for order of default and for a hearing on damages.

11. That your affiant said nothing further.


Kevin M. Barth

Sworn to before me this
22 day of March, 2018


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3/10/2019

2018 MAR -5 PM 1:45
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

FIRST-CITIZENS BANK & TRUST COMPANY
AND SADIE M. MURVIN,
PLAINTIFF

V.

MIRANDA LIBBY MURVIN, aka MIRANDA
LIBBY MURVIN ZIMMERMAN AND GREAT
AMERICAN LIFE INSURANCE COMPANY
DEFENDANT

) IN THE COURT OF COMMON PLEAS
) FOURTH JUDICIAL COURT

) CASE # 2017-C0-13-804

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2018 FEB -9 AM 10:42

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

A True Copy Attest
Wanda C. Miles

) AFFIDAVIT OF SERVICE

SERVED:

- 1- SUMMONS
- 2- AMENDED COMPLAINT
- 3- ORDER FOR RESTRAINT OR PERFORMANCE OF PERSONAL REPRESENTATIVE
- 4- CERTIFICATE OF APPOINTMENT

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2018 MAR -5 PM 1:45

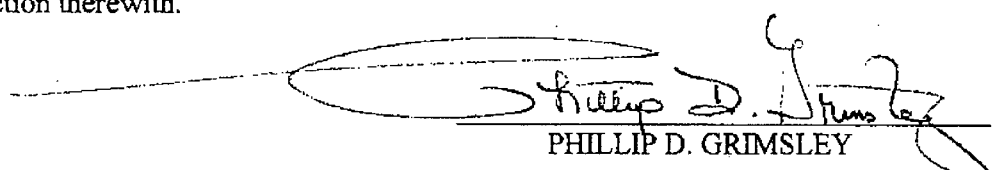
PERSONALLY APPEARED BEFORE ME, PHILLIP D. GRIMSLEY, who being duly sworn, swears that he served the above above mentioned paper(s) to MIRANDA LIBBY MURVIN, aka MIRANDA LIBBY MURVIN ZIMMERMAN, AT 121 BUIE STREET, CHESTERFIELD, S.C., on WEDNESDAY JANUARY 24, 2018, at 11:55 (AM) o'clock.

() By personal delivery to the named party

(X) By delivery to ALAYSIA STRONG, 20 YEAR OLD DAUGHTER OF MIRANDA LIBBY MURVIN / ZIMMERMAN, A person of age and discretion at the residence / business of the party (CIRCLE ONE).

Place of service: 121 BUIE STREET, CHESTERFIELD, SOUTH CAROLINA

The deponent further swears that he is not a party to this action and has no interest therein or connection therewith.


PHILLIP D. GRIMSLEY

SWORN TO BEFORE ME THIS,
24TH DAY OF JANUARY 2018


NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 10/21/2024

South Carolina Department of Insurance

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

January 25, 2018

HENRY McMASTER
Governor

RAYMOND G. FARMER
Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
GREAT AMERICAN LIFE INS CO
301 E. 4TH STREET
CINCINNATI, OH 45202-4201

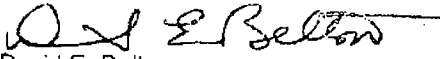
Dear Sir:

On January 25, 2018, I accepted service of the attached Summons and Amended Complaint on your behalf. I am, hereby, forwarding that accepted process on to you pursuant to the provisions of S.C. Code Ann. § 38-5-70. By forwarding accepted process on to you, I am meeting a ministerial duty imposed upon me by S.C. Code Ann. § 15-9-270. I am not a party to this case. The State of South Carolina Department of Insurance is not a party to this case. It is important for you to realize that service was effected upon your insurer on my date of acceptance for service.

You must promptly acknowledge in writing your receipt of this accepted process to sdubois@doi.sc.gov. When replying, please refer to File Number 169026, First-Citizens Bank & Trust Company, et al. v. GREAT AMERICAN LIFE INS CO, et al., 2017-CP-13-804.

By:

Sincerely Yours,


David E. Belton
Senior Associate General Counsel
(803)737-6132

Raymond G. Farmer
Director
State of South Carolina
Department of Insurance

Attachment

CC: Kevin M. Barth
Post Office Box 107
Florence, SC 29503

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2018 FEB -9 AM 10:42

Wanda C. Miles
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

A True Copy Attest

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2018 MAR -5 PM 1:45

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NO. 17-CP-13-804

First-Citizens Bank & Trust)
Company and Sadie M. Murvin)

Plaintiffs,)

v.)

Miranda Libby Murvin, a/k/a)
Miranda Libby Murvin)
Zimmerman and Great American)
Life Insurance Company)

Defendants.)

AFFIDAVIT

Wanda C. Hiles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2018 MAR 22 AM 11:17

PERSONALLY APPEARED before me, Suzanne B. King, who being duly sworn, deposes and says:

1. That I am employed with First-Citizens Bank & Trust Company ("First Citizens") on a full-time basis as the Manager, Trust Legal & Compliance. I am very familiar with the issues involved in this litigation.

2. That First Citizens is the duly appointed Personal Representative of the Estate of Lonnie Murvin ("Estate") and as such has the statutory duty to gather all of the Estate's assets.

3. That one of the Estate's assets is the proceeds of a single premium deferred annuity payable to the Estate of Lonnie Murvin and that a copy of the annuity terms was attached to the Amended Summons and Complaint filed in this action.

4. That the annuity proceeds check was made payable to the Estate of Lonnie Murvin in the sum of \$136,000.00 and was sent to the Defendant, Miranda Libby Murvin, who was not a duly appointed Personal Representative of the Estate of Lonnie Murvin.

5. That Ms. Murvin opened an account in the name of the Estate of Lonnie Murvin with the annuity proceeds and spent the money on herself as opposed to the Estate.

5. That the annuity proceeds should have been paid to First Citizens in its capacity as Personal Representative of the Estate and that as a result of the wrongfully issued check, First Citizens as the duly appointed Personal Representative for the Estate of Lonnie Murvin is entitled to judgment against Great American Life Insurance Company in the sum of \$136,000.00, plus pre-judgment interest from the date of Mr. Murvin's death.

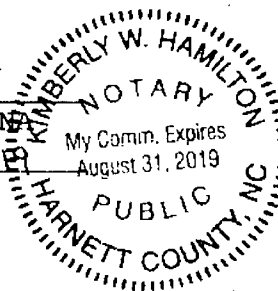
6. That I am authorized to sign this Affidavit on behalf of First-Citizens Bank & Trust Company and that I affirm that the sum of \$136,000.00 is due and owing to First Citizens in its capacity as the Personal Representative of the Estate of Lonnie Murvin and that the annuity proceeds will be deposited into an account for the benefit of the Estate of Lonnie Murvin.

7. That your affiant said nothing further.

Suzanne B. King
AFFIANT

Sworn to before me this
7th day of March, 2018

Kimberly W. Hamilton
NOTARY PUBLIC FOR NORTH CAROLINA
My Commission Expires: 8/31/2019



Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2018 MAR 22 AM 11:18

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD
FIRST-CITIZENS BANK & TRUST
COMPANY AND SADIE M. MURVIN,

PLAINTIFFS,

vs.

MIRANDA LIBBY MURVIN, A/K/A
MIRANDA LIBBY MURVIN
ZIMMERMAN AND GREAT
AMERICAN LIFE INSURANCE
COMPANY,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

FOURTH JUDICIAL CIRCUIT

CASE NO. 2017-CP-13-0804

NOTICE OF APPEARANCE

2018 APR 12 AM 11:06
Miranda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

PLEASE TAKE NOTICE that I, Wilbur E. Johnson, Esquire of Young Clement Rivers, LLP, hereby give Notice of Appearance as counsel of record in the above-captioned action on behalf of Defendant Great American Life Insurance Company.

YOUNG CLEMENT RIVERS, LLP

By: Wilbur E. Johnson

Wilbur E. Johnson, Esquire, SC Bar No. 3062
P.O. Box 993, Charleston, SC 29402-0993
25 Calhoun Street, Suite 400, Charleston, SC 29401
Telephone: (843) 724-6659
Fax: (843) 579-1331
E-mail: wjohnson@ycrlaw.com
Attorneys for the Defendant Great American Life
Insurance Company

Charleston, South Carolina

Dated: April 5, 2018

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 5th day of April, 2018.

Laura L. Russell

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD
FIRST-CITIZENS BANK & TRUST
COMPANY AND SADIE M. MURVIN,

PLAINTIFFS,

vs.

MIRANDA LIBBY MURVIN, A/K/A
MIRANDA LIBBY MURVIN
ZIMMERMAN AND GREAT
AMERICAN LIFE INSURANCE
COMPANY,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

CASE NO. 2017-CP-13-0804

**DEFENDANT GREAT AMERICAN LIFE
INSURANCE COMPANY'S
MOTION TO
VACATE DEFAULT JUDGMENT**

2018 APR 16 AM 11:39
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

TO: KEVIN M. BARTH, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that Defendant, Great American Life Insurance Company, through its undersigned counsel, hereby moves, pursuant to the provisions of Rule 60(b), *South Carolina Rules of Civil Procedure*, for the issuance of an Order relieving Defendant from judgment by default. Said motion is based upon the grounds that the default judgment was the result of mistake, inadvertence or excusable neglect.

The motion shall be supported by such statutory law, common law and rules of court as may be applicable.

South Carolina Rules of Civil Procedure, Rule 11(a) Affirmation

The undersigned counsel hereby affirms, that, prior to filing this motion, he communicated with opposing counsel in a good faith attempt to resolve the matter contained in the motion.

YOUNG CLEMENT RIVERS, LLP

By: Wilbur E. Johnson
Wilbur E. Johnson, Esquire, SC Bar No. 3062
P.O. Box 993, Charleston, SC 29402-0993
25 Calhoun Street, Suite 400, Charleston, SC 29401
Telephone: (843) 724-6659
Fax: (843) 579-1331
E-mail: wjohnson@ycrlaw.com
Attorneys for the Defendant Great American Life
Insurance Company

Charleston, South Carolina

Dated: April 13, 2018

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to
all counsel of record in this proceeding this 13th day of

April, 2018.
Lane E. Russell

2018 APR 16 AM 11:39
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTERFIELD

CASE NO.: 2017-CP-13-0804

First-Citizens Bank & Trust Company and Sadie
M. Murvin



Plaintiff(s)

vs.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Miranda Libby Murvin, a/k/a Miranda Libby
Murvin Zimmerman and Great American Life
Insurance Company



Defendant(s)

Check box above indicating submitting party

Name, SC Bar No. and Address of Plaintiff's Attorney Kevin M. Barth, Esquire Address: Barth, Ballenger & Lewis, LLP P. O. Box 107 Florence, SC 29503 Telephone: (843) 662-9301 fax: (843) 664-8384 e-mail: kbarth@bblawsc.com		Name, SC Bar No. and Address of Defendant's Attorney Wilbur E. Johnson SC Bar #:3062 Address: Young Clement Rivers, LLP Post Office Box 993 Charleston, SC 29402-0993 Telephone: (843) 724-6659 fax: (843) 579-1332 e-mail: wjohnson@ycrlaw.com	
☒ MOTION HEARING REQUESTED (attach <i>written</i> motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (COMPLETE SECTIONS II and III)			
SECTION I: HEARING INFORMATION			
Nature of Motion: Motion to Vacate Default Judgment Estimated Time Needed: 15 mins. Court Reporter Needed?: ☒ YES ☐ NO			
SECTION II: MOTION TYPE			
☒ Written Motion Attached ☐ Form Motion - I hereby move for relief or action by the Court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff (s) ☒ Defendant(s)		Dated: <u>April 13, 2018</u>	
SECTION III: MOTION FEE			
☒ PAID - AMOUNT \$ <u>25.00</u> ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency w. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the Court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION		JUDGE: _____	
☐ Motion Fee to be paid upon filing of the attached order ☐ Other: _____		CODE: _____ DATE: _____	
CLERK'S VERIFICATION			
Collected by: <u>A. Johnson</u> Date Filed: _____ (print name)			
☒ MOTION FEE COLLECTED: <u>25.00</u>			
☐ CONTESTED - AMOUNT DUE: _____			

2018 APR 16 AM 11:39
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

FIRST-CITIZENS BANK & TRUST
COMPANY AND SADIE M. MURVIN,

PLAINTIFFS,

vs.

MIRANDA LIBBY MURVIN, A/K/A
MIRANDA LIBBY MURVIN
ZIMMERMAN AND GREAT
AMERICAN LIFE INSURANCE
COMPANY,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

FOURTH JUDICIAL CIRCUIT

CASE NO. 2017-CP-13-0804

**MEMORANDUM IN SUPPORT OF
DEFENDANT GREAT AMERICAN LIFE
INSURANCE COMPANY'S MOTION TO
VACATE DEFAULT JUDGMENT**

INTRODUCTION

Great American Life Insurance Company's ("Great American") motion to vacate default judgment should be granted because: 1) the decision is within the sound discretion of the court; 2) Great American has met all of the factors courts must consider when ruling on SCRCP 60(b)(1) motions to grant relief from judgment by default; and, 3) because vacating the default judgment would effectuate well-established state public policy favoring the resolution of disputes on the merits.

PROCEDURAL AND FACTUAL HISTORY

On December 18, 2017, Plaintiffs filed this action against Great American and Miranda Libby Murvin aka Miranda Libby Murvin Zimmerman ("Miranda"). Plaintiffs alleged that Great American wrongfully distributed the proceeds of decedent Lonnie B. Murvin's deferred annuity to Miranda in violation of state law. Plaintiffs amended their Summons and Complaint on

2018 JUL 12 PM 5:08
Wanda C. Hille
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

January 17, 2018, and Great American received it from the South Carolina Department of Insurance on January 30, 2018.

The next day, January 31, 2018, Great American thoroughly reviewed the Complaint and noticed several inconsistencies. First, Lonnie B. Murvin's alleged contract number mentioned in ¶5 of the Complaint is not a Great American contract number, nor is the number's numeric sequence one used by Great American. Second, Exhibit A of the Complaint, referred to in ¶5 as a copy of the contract, is in fact a statement from Midland National Life Insurance Company which goes by the acronym "MNL". Similarly, Great American has a subsidiary company named Manhattan National Life which also goes by the acronym "MNL". In the past, Great American and Manhattan National Life have been mistakenly named as defendants in lieu of Midland National Life Insurance Company due to confusion over the acronym "MNL". Accordingly, Great American concluded that it had been mistakenly served and therefore did not need to timely answer the Complaint. Great American based this conclusion on the fact that neither the contract number nor its sequence was used by Great American; Exhibit A of the Complaint was a statement from an unrelated insurance company, Midland National Life; and Great American's past experiences regarding confusion over the acronym "MNL."

On March 5, 2018, Plaintiffs filed a motion for entry of Default. Judgment for Plaintiffs and Order for Default was granted by the court on March 22, 2018. On April 3, 2018, Great American, in fulfillment of its Rule 11, SCRCP obligation to consult, notified Plaintiffs' counsel of its intention to request the setting aside of the default judgment. Great American subsequently filed its motion to vacate on April 13, 2018.

ARGUMENT

I. GREAT AMERICAN HAS MET THE RULE 60(b)(1) FACTORS FOR VACATING A DEFAULT JUDGMENT.

Under SCRCP 60(b)(1), a court may grant a party relief from a default judgment because of “mistake, inadvertence, surprise, or excusable neglect” As a part of the Rule 60(b)(1) analysis, the court must consider the following factors: “(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party.” *Micronics, Inc. v. S.C. Dep’t of Revenue*, 345 S.C. 506, 510–11 (Ct. App. 2001). Moreover, “this rule is an appropriate remedy for good faith mistakes of fact if all other applicable factors are met.” *Hillman v. Pinion*, 347 S.C. 253, 256, (Ct. App. 2001). The movant in Rule 60(b) motions has the burden of presenting evidence proving the facts essential to entitle her to relief, *Rouvet v. Rouvet*, 388 S.C. 301, 309 (Ct. App. 2010), and a consideration of each of the 60(b)(1) factors demonstrates that Great American has met its burden. Therefore, Great American’s motion to vacate the default judgment should be granted.

A. Promptness with which relief was sought.

The standard by which a party’s promptness for requesting relief is measured is one year. *See id.* (finding that a Rule 60(b) motion for relief from a family judgment was timely because it was filed within one year). Here, Great American was prompt in requesting relief. The default judgment was entered on March 22, 2018, and Great American notified counsel for Plaintiffs of its intention to request setting aside the default judgment less than two (2) weeks later, on April 3, 2018. Thereafter, Great American filed its motion to vacate the default judgment on April 13, 2018. Accordingly, the first 60(b)(1) factor is met since Great American acted promptly in requesting relief.

B. Reasons for the failure to act promptly.

As to the second factor, Great American has a good faith reason for failing to act promptly. In *Columbia Pools, Inc. v. Galvin*, the court of appeals held that “where there is a good faith mistake of fact, and, no attempt to thwart the judicial system, there is basis for relief.” 288 S.C. 59, 61 (Ct. App. 1986). Here, Great American’s reasons for not responding to the Complaint indicate that there was, indeed, a good faith mistake of fact. Great American based its decision on the incorrect contract number and number sequence, the attachment of a statement from an unrelated corporation, and Great American’s own past experience regarding previous litigants’ confusion regarding the acronym “MNL.”

Furthermore, Great American has not sought to thwart the judicial system. When the default judgment was entered, Great American, promptly sought relief from the default judgment in order to remedy its mistake and immediately reached out to Plaintiffs’ counsel seeking to vacate the default judgment by joint consent less than two weeks after the judgment was entered. Therefore, the second 60(b)(1) factor is met.

C. The existence of a meritorious defense.

The third factor under the Rule 60(b)(1) analysis is for a party to establish a meritorious defense. Notably, in order “[t]o establish a meritorious defense, the party does not have to show he would prevail on the merits.” *Williams v. Watkins*, 384 S.C. 319, 326 (Ct. App. 2009) (citing *McClurg v. Deaton*, 380 S.C. 563, 575 (Ct. App. 2008)). A meritorious defense only needs to be “one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence.” *McClurg*, 320 S.C. at 575 (quotations and citations omitted).

Attached as Exhibit A is an affidavit describing relevant facts underlying Great American's defense to the allegations set forth in Plaintiffs' Amended Complaint. Also attached, as Exhibit B, is Great American's draft Answer to the Amended Complaint. Accordingly, and inasmuch as Great American is able to set forth a defense raising issues worthy of judicial inquiry, the third factor is met.

D. Prejudice to another party.

The fourth and final factor of the Rule 60(b)(1) analysis is a balancing scale between the need to vacate the judgment and the degree of prejudice suffered by the party in whose favor the judgment was rendered. Even if the three prior Rule 60(b)(1) factors are in favor of vacating the judgment, it will not be vacated if the prejudice suffered by the prevailing party is "so high as to outweigh the other factors" *Williams*, 384 S.C. at 327.

Here, the potential prejudice suffered by Plaintiffs is not so great as to outweigh the other three factors in favor of vacating the default judgment. Plaintiffs have been on notice regarding Great American's desire to vacate the judgment since April 3, 2018, which has given them time to gather, preserve, and maintain evidence that they would use in a contested trial. Additionally, the default judgment was uncontested for less than two weeks meaning that Plaintiffs are not prejudiced by the resumption of the case on the merits. *See Mictronic*, 345 S.C. at 511 (finding no prejudice when "the resolution of the case has not been substantially delayed by the parties' actions"). Accordingly, because the Plaintiffs' potential prejudice does not outweigh the other three factors in favor of vacating the default judgment, the fourth factor is met.

II. SOUTH CAROLINA PUBLIC POLICY FAVORS RESOLUTION OF ISSUES ON THE MERITS INSTEAD OF PROCEDURAL TECHNICALITIES

The default judgment should be set aside not only because Great American has met all of the Rule 60(b)(1) factors but also because it would effectuate South Carolina public policy. The

courts of this state prefer “trial of the issues on merit over securing judgment by slight technicalities.” *Columbia Pools*, 288 S.C. at 61. Therefore, it is important for courts, when making a determination of whether or not to vacate a default judgment, to “note ‘the law favors the resolution of disputes based upon all parties having their day in court.’” *Williams*, 384 S.C. at 327 (quoting *McClurg*, 380 S.C. at 580 (Hearn, C.J., dissenting)). Here, the court should grant Great American’s motion to vacate the default judgment because it would effectuate state public policy and allow the court to adjudicate the issues between the parties on the merits rather than by procedural technicalities.

III. THE COURT HAS DISCRETION TO SET ASIDE THE DEFAULT JUDGMENT

The decision of whether to set aside a default judgment lies solely within the discretion of the trial judge. *Harbor Island Owner’s Ass’n v. Preferred Island Props., Inc.*, 369 S.C. 540, 544 (2006). Moreover, the trial court’s decision will not be disturbed on appeal absent a clear showing of abuse of discretion. *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 162–63 (Ct. App. 1988). Finally, “[a]n abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. *Sundown Operating Co., v. Intedje Industries, Inc.*, 383 S.C. 601, 607 (2009); *see also Grant v. Goodwin*, No. 2012-UP-402, 2012 WL 10860678, at *1 (S.C. Ct. App. July 11, 2012) (finding that the court abused its discretion in declining to set aside a default judgment when the moving party had provided sufficient evidence.)

CONCLUSION

Since Great American has met the 60(b)(1) factors by promptly filing its motion to vacate the default judgment, providing a valid excuse for failing to act promptly, and describing a meritorious defense via affidavit, the court should grant its motion to vacate the default judgment

and conclude that Plaintiffs would not be unfairly prejudiced. *See Grant*, 2012 WL 10860678, at *1 (holding that the court abused its discretion by declining to set aside a default judgment when a party promptly filed their motion, presented a valid excuse for failing to act promptly, and submitted an affidavit describing a meritorious defense). Moreover, this result would promote the aims of state public policy by allowing the case to be resolved on its merits rather than by procedural technicalities.

YOUNG CLEMENT RIVERS, LLP

By: Wilbur E. Johnson
Wilbur E. Johnson, Esquire, SC Bar No. 3062
P.O. Box 993, Charleston, SC 29402-0993
25 Calhoun Street, Suite 400, Charleston, SC 29401
Telephone: (843) 724-6659
Fax: (843) 579-1331
E-mail: wjohnson@ycrlaw.com
Attorneys for the Defendant Great American Life
Insurance Company

Charleston, South Carolina

Dated: July 10, 2018

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was e-mailed
and mailed to all counsel of record in this proceeding this 10th
day of July, 2018
Loren L. Russell

EXHIBIT A

Affidavit of Keith A. Lindsay

2018 JUL 12 PM 12:08
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

FIRST-CITIZENS BANK & TRUST
COMPANY AND SADIE M. MURVIN,

PLAINTIFFS,

vs.

MIRANDA LIBBY MURVIN, A/K/A
MIRANDA LIBBY MURVIN
ZIMMERMAN AND GREAT
AMERICAN LIFE INSURANCE
COMPANY,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

FOURTH JUDICIAL CIRCUIT

CASE NO. 2017-CP-13-0804

AFFIDAVIT OF
KEITH A. LINDSAY

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2018 JUL 12 PM 12:08

PERSONALLY APPEARING BEFORE ME, Keith A. Lindsay, who being duly sworn,
deposes and states as follows:

1. I am currently employed as Supervisor, Claims with Great American Life Insurance
Company ("GALIC").

2. I have been employed with GALIC since August 5, 1997.

3. In my capacity as Supervisor, Claims, I am familiar with the documents contained in the
Lonnie Murvin Annuity Contract file ("the file") maintained by GALIC.

4. The file contains a copy of a letter, dated April 21, 2016, sent by GALIC to First Citizens
Securities. A copy of that letter is attached hereto as Exhibit A.

5. The letter, among other things, informs First Citizens that GALIC has been made aware
of the passing of Lonnie Murvin. The letter requests that First Citizens provide certain, specified

information, including the identification of the executor of Lonnie Murvin's estate, in order to facilitate a claim and distribution of proceeds. First Citizens did not respond to this letter.

6. GALIC sent follow-up letters to First Citizens, requesting the same information, on May 23, 2016, June 23, 2016, July 25, 2016 and August 30, 2016. First Citizens did not respond to these follow-up letters.

7. On September 30, 2016, October 31, 2016, November 30, 2016, January 4, 2017 and February 7, 2017, GALIC sent letters requesting the same information to the "Murvin Family" and to Miranda Murvin.

8. A letter, dated February 15, 2017, written by C. Anthony Harris, Jr., Esq. was received by GALIC. Mr. Harris indicated that he represented First Citizens Bank. Among other things, the letter stated that no person or entity had been appointed to act on behalf of the Lonnie Murvin estate. The letter also stated that the Murvin estate would like to claim the Lonnie Murvin annuity as an asset, once a "PR" is appointed.

9. On March 28, 2017, GALIC sent a "follow-up request" letter to Mr. Harris containing the same requests for information as has been made in the letters previously sent to First Citizens, the Murvin Family and Miranda Murvin.

10. Mr. Harris sent a letter, dated April 17, 2017 to GALIC. The letter, among other things, repeated the fact that no PR had been appointed for the Lonnie Murvin estate.

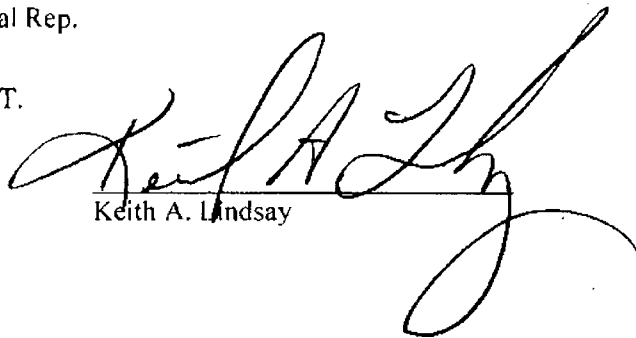
11. On June 19, 2017, Miranda Murvin submitted to GALIC the documents, including a Certificate of Appointment, dated September 15, 2015, issued by the Probate Court for Chesterfield County, necessary to facilitate a claim and distribution regarding the Lonnie Murvin Annuity Contract.

12. On July 13, 2017, GALIC processed payment and issued the proceeds of the annuity contract to The Estate of Lonnie Murvin c/o Miranda Murvin, Personal Rep. At no time prior to the processing of payment, and issuance of the proceeds, was GALIC given notice of, provided with, or otherwise made aware of, any Order of Restraint/Performance issued by the Probate Court for Chesterfield County preventing Miranda Murvin from undertaking any action related to the estate of Lonnie Murvin.

13. Subsequently, GALIC received a letter, dated August 17, 2017, from Mr. Harris, stating that First Citizens had been appointed as Personal Representative for the Lonnie Murvin estate. The letter also stated that a representative of First Citizens would be contacting GALIC regarding the completion of a claim form and other necessary papers.

14. On August 25, 2017, GALIC provided a letter to First Citizens indicating that a claim had been processed and that on July 13, 2017, a check had been issued made payable to The Estate of Lonnie Murvin c/o Miranda Murvin, Personal Rep.

FURTHER, DEPONENT SAYETH NOT.


Keith A. Landsay

SWORN to before me this 10th
day of July, 2018.

 (SEAL)
Notary Public for State of Ohio
My Commission Expires: Does not expire - attorney

THOMAS P. HIGGINS, Attorney at Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration
date, Section 147.03 O.R.C.

EXHIBIT A

2018 JUL 12 PM 12:08

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.



April 21, 2016

FIRST CITIZENS SECURITIES
ATTN: TROY YOUNG
PO BOX 581
LANCASTER, SC 29721

Great American Life Insurance Company
Policy Number: 07453578
Deceased: Lonnie Murvin

Dear FIRST CITIZENS SECURITIES:

Our office has recently been informed of the passing of Lonnie Murvin. Please accept our condolences.

The beneficiary of record is **Estate Of Lonnie Murvin**.

In order to make a claim and distribution election, an **Original Certified Death Certificate** (that reflects cause and manner of death) will be required along with a **Claimant Statement & Election Request Form** from the estate. The executor should select **ONE** of the options below:

- **Election A – Lump Sum:** To receive a check issued to the Estate;
- **Election B – Annuitization:** To receive a periodic stream of payments of the death benefit proceeds. Please note that payments must start prior to 12/31 of the year following death.

Since the estate is the beneficiary on the above policy, please provide the following:

- a certified copy of the court-issued Letters of Testamentary that identify the executor(s)
- completed Form W-9 (enclosed) that contains the Estate's tax identification number

If you have any questions regarding this claim, you may reach us at (800) 854-3649.

Sincerely,

Sarah Cummins
Life & Annuity Claims Department

cc: file

Encl: K2655311NW

Member Companies:
Annuity Investors Life Insurance Company®
Continental General Insurance Company®
Great American Life Insurance Company®
Manhattan National Life Insurance Company
United Teacher Associates Insurance Company

Administration for Life Insurance and Annuities:
American Retirement Life Insurance Company
Central Reserve Life Insurance Company
Loyal American Life Insurance Company®
Provident American Life & Health Insurance Company

P.O. Box 5420 • Cincinnati, OH 45201-5420

R - 075

2018 JUN 12 PM 12:09
Wanda C. Hill
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

EXHIBIT B

Proposed Answer of Defendant Great American Life Insurance Company

2018 JUL 12 PM 12:09
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD
FIRST-CITIZENS BANK & TRUST
COMPANY AND SADIE M. MURVIN,
PLAINTIFFS,

vs.

MIRANDA LIBBY MURVIN, A/K/A
MIRANDA LIBBY MURVIN
ZIMMERMAN AND GREAT
AMERICAN LIFE INSURANCE
COMPANY,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

CASE NO. 2017-CP-13-0804

DEFENDANT GREAT AMERICAN
LIFE INSURANCE COMPANY'S
ANSWER TO AMENDED COMPLAINT

2018
MAY 1
PM 12:09
Miles
COUNTY, S.C.

Defendant, Great American Life Insurance Company (hereafter "GALIC"), answers the Amended Complaint herein by alleging and stating as follows:

1. Defendant admits, on information and belief, so much of the allegations contained in Paragraph One of the Amended Complaint as allege that Plaintiff Sadie M. Murvin is a citizen and resident of the County of Chesterfield, State of South Carolina. The remaining allegations contained in Paragraph One constitute conclusions of law, requiring no answer.

2. Defendant admits, on information and belief, so much of the allegations contained in Paragraph Two of the Amended Complaint as allege that Plaintiff, First-Citizens Bank & Trust Company is a North Carolina banking corporation organized and existing under the laws of the State of North Carolina and authorized to conduct business in the State of South Carolina. Defendant does not have sufficient information upon which to admit or deny the remaining allegations contained in Paragraph Two.

3. Defendant admits so much of the allegations contained in Paragraph Three of the Amended Complaint as allege that Defendant is a corporation organized and existing under the laws of one of the states of the United States other than the State of South Carolina. The remaining allegations contained in Paragraph Three constitute conclusions of law, requiring no answer.

4. Defendant does not have sufficient information upon which to admit or deny the allegations contained in Paragraph Four of the Amended Complaint.

5. Defendant admits, on information and belief, so much of the allegations contained in Paragraph Five of the Amended Complaint as allege that Defendant sold to Lonnie B. Murvin a single premium deferred annuity contract. However, Defendant denies that the annuity contract sold to Lonnie B. Murvin is number 8500457055. Defendant further alleges and states that the terms of the annuity contract speak for themselves. Defendant further alleges and states that so much of the allegations contained in Paragraph Five as refer to the Estate of Lonnie Murvin constitute conclusions of law, requiring no answer.

6. The allegations contained in Paragraph Six of the Amended Complaint are admitted, upon information and belief.

7. Defendant admits, upon information and belief, so much of the allegations contained in Paragraph Seven of the Amended Complaint as allege that Lonnie B. Murvin passed away while the annuity was in full force and effect. The remaining allegations contained in Paragraph Seven of the Amended Complaint constitute conclusions of law, requiring no answer.

8. Defendant admits, upon information and belief, so much of the allegations contained in Paragraph Eight of the Amended Complaint as allege that Defendant Murvin was appointed as Personal Representative of the Estate of Lonnie Murvin. Defendant does not have

sufficient information upon which to admit or deny the remaining allegations contained in Paragraph Eight of the Amended Complaint.

9. Defendant does not have sufficient information upon which to admit or deny the allegations contained in Paragraph Nine of the Amended Complaint.

10. Defendant admits, upon information and belief, only so much of the allegations contained in Paragraph Ten of the Amended Complaint as allege that Defendant issued a check in the sum of \$136,000.00 payable to the Estate of Lonnie Murvin and delivered the check to the Defendant Murvin. Defendant does not have sufficient information upon which to admit or deny the remaining allegations contained in Paragraph Ten of the Amended Complaint.

11. Defendant responds to the allegations contained in Paragraph Eleven of the Amended Complaint by stating that such letters, notices and other correspondence as are referenced in Paragraph Eleven speak for themselves.

12. Defendant denies so much of the allegations contained in Paragraph Twelve of the Amended Complaint as allege that Defendant engaged in any wrongful conduct. Defendant does not have sufficient information upon which to admit or deny the remaining allegations contained in Paragraph Twelve of the Amended Complaint.

As to the First Cause of Action - Breach of Contract

13. Defendant responds to the allegations contained in Paragraph Thirteen of the Amended Complaint by reaffirming and realleging the foregoing paragraphs of its Answer as if fully repeated herein verbatim.

14. Defendant admits, upon information and belief, the allegations contained in Paragraph Fourteen of the Amended Complaint.

15. The allegations contained in Paragraph Fifteen of the Amended Complaint are denied.

16. The allegations contained in Paragraph Sixteen of the Amended Complaint are denied.

As to the Second Cause of Action – Insurance Bad Faith

17. Defendant responds to the allegations contained in Paragraph Seventeen of the Amended Complaint by reaffirming and realleging the foregoing paragraphs of its Answer as if fully repeated herein verbatim.

18. The allegations contained in Paragraph Eighteen of the Amended Complaint constitute conclusions of law, requiring no answer.

19. The allegations contained in Paragraph Nineteen of the Amended Complaint constitute conclusions of law, requiring no answer.

20. The allegations contained in Paragraph Twenty of the Amended Complaint constitute conclusions of law, requiring no answer.

21. The allegations contained in Paragraph Twenty-One of the Amended Complaint are denied.

22. The allegations contained in Paragraph Twenty-Two of the Amended Complaint constitute conclusions of law, requiring no answer.

23. The allegations contained in Paragraph Twenty-Three of the Amended Complaint are denied.

24. The allegations contained in Paragraph Twenty-Four of the Amended Complaint are denied.

As to the Third Cause of Action – Breach of Covenant of Good Faith and Fair Dealing

25. Defendant responds to the allegations contained in Paragraph Twenty-Five of the Amended Complaint by reaffirming and realleging the foregoing paragraphs of its Answer as if fully repeated herein verbatim.

26. Defendant admits, upon information and belief, the allegations contained in Paragraph Twenty-Six of the Amended Complaint.

27. The allegations contained in Paragraph Twenty-Seven of the Amended Complaint constitute conclusions of law, requiring no answer.

28. The allegations contained in Paragraph Twenty-Eight of the Amended Complaint constitute conclusions of law, requiring no answer.

29. The allegations contained in Paragraph Twenty-Nine of the Amended Complaint are denied.

30. The allegations contained in Paragraph Thirty of the Amended Complaint are denied.

31. The allegations contained in Paragraph Thirty-One of the Amended Complaint are denied.

As to the Fourth Cause of Action - Conversion

32. Defendant responds to the allegations contained in Paragraph Thirty-Two of the Amended Complaint by reaffirming and realleging the foregoing paragraphs of its Answer as if fully repeated herein verbatim.

33. The allegations contained in Paragraph Thirty-Three of the Amended Complaint constitute conclusions of law, requiring no answer.

34. The allegations contained in Paragraph Thirty-Four of the Amended Complaint insofar as they reference Defendant, are denied.

35. So much of the allegations contained in Paragraph Thirty-Five of the Amended Complaint as may allege that Defendant converted property are denied.

36. The allegations contained in Paragraph Thirty-Six of the Amended Complaint are denied.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FURTHER DEFENSE THERETO:**

37. The Amended Complaint fails to state facts sufficient to constitute a cause of action against Defendant GALIC.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FURTHER DEFENSE THERETO:**

38. Plaintiffs' claim pursuant to the provisions of 1976 S.C. Code Ann. § 38-59-20 against Defendant is barred because the statute is inapplicable to the annuity policy referenced in the Amended Complaint.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FURTHER DEFENSE THERETO:**

39. Plaintiffs' claim pursuant to the provisions of 1976 S.C. Code Ann. § 38-57-10 against Defendant is barred because the statute does not set forth a private right of action.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FURTHER DEFENSE THERETO:**

40. Plaintiffs' claim for breach of covenant of good faith and fair dealing against Defendant is barred because Plaintiffs cannot demonstrate the existence of any unreasonable conduct on the part of Defendant.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FURTHER DEFENSE THERETO:**

41. Plaintiffs' claim for conversion against Defendant is barred because Plaintiffs cannot establish any wrongful detention of property belonging to Plaintiffs by Defendant.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FURTHER DEFENSE THERETO:**

42. Defendant acted at all times in good faith and with reasonable judgment under the circumstances.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FURTHER DEFENSE THERETO:**

43. To the extent that any liability may be attached to Defendant, such liability is superseded or relieved by the intentional conduct of Miranda Murvin.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FURTHER DEFENSE THERETO:**

44. Plaintiffs' claims are subject to, and barred by, all applicable statutes of limitations.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FURTHER DEFENSE THERETO:**

45. Defendant gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of this litigation and, therefore, reserves its right to amend its Answer to assert such defenses.

WHEREFORE, having fully answered the Amended Complaint, Defendant, GALIC, prays for an Order of this Court:

1. Dismissing the Amended Complaint, with prejudice;
2. Granting judgment to Defendant;
3. Granting appropriate attorney's fees and costs to Defendant; and,

4. Granting such other and further relief as the Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

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Attorneys for the Defendant Great American Life
Insurance Company

Charleston, South Carolina

Dated: July 11, 2018

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to
all counsel of record in this proceeding this ____ day of
____, 20__

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
In the Court of Common Pleas

Paul M. Burch, Circuit Court Judge
William O. Spencer, Special Referee

Case No. 2017-CP-13-804

RECEIVED
OCT 09 2018
SC Court of Appeals

First Citizens Bank & Trust Company and Sadie M. Murvin, ... Respondents,

v.

Miranda Libby Murvin, a/k/a Miranda Libby Murvin Zimmerman
and Great American Life Insurance Company, ... Defendants.

Of whom Great American Life Insurance Company is Appellant.

NOTICE OF APPEAL

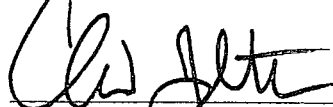
Pursuant to Rule 203 of the South Carolina Appellate Court Rules, Appellant Great American Life Insurance Company appeals from the following orders in the above-referenced case:

1. March 5, 2018 Entry of Default (Attached as Exhibit A)
2. March 22, 2018 Form-4 Entry of Judgment (Attached as Exhibit B)
3. March 22, 2018 Order Entering Default for Plaintiffs (Attached as Exhibit C)
4. September 13, 2018 Form-4 Order Denying Motion to Vacate (Attached as Exhibit D)

5. September 13, 2018 Order Denying Motion to Vacate (Attached as Exhibit E)

Appellant received notice of the September 13, 2018 Order Denying its Motion to Vacate
Default Judgment on September 18, 2018.

Respectfully submitted,



Chad N. Johnston

R. Walker Humphrey, II

WILLOUGHBY & HOEFER, P.A.

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Attorneys for Appellant

Great American Life Insurance Company

October 9, 2018
Columbia, South Carolina

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Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
In the Court of Common Pleas

Paul M. Burch, Circuit Court Judge
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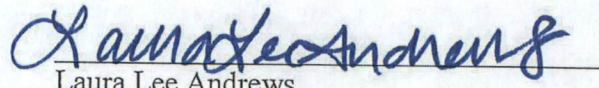
Of whom Great American Life Insurance Company is Appellant.

PROOF OF SERVICE

This is to certify that I, a paralegal with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of the **Notice of Appeal** by depositing the same in the U.S. Mail to the following:

The Honorable Wanda C. Miles
Chesterfield County Clerk of Court
PO Box 529
Chesterfield, South Carolina 29709-0529

Kevin M. Barth
Barth, Ballenger & Lewis, LLP
PO Box 107
Florence, South Carolina 29503


Laura Lee Andrews

Columbia, South Carolina
This 9th day of October 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
In the Court of Common Pleas

Paul M. Burch, Circuit Court Judge
William O. Spencer, Special Referee

Case No. 2017-CP-13-804

RECEIVED
MAR 28 2019
SC Court of Appeals

First Citizens Bank & Trust Company and Sadie M. Murvin, ... Respondents,

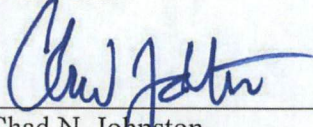
v.

Miranda Libby Murvin, a/k/a Miranda Libby Murvin Zimmerman
and Great American Life Insurance Company, ... Defendants.

Of whom Great American Life Insurance Company is Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties, material required by Rule 210(c), SCACR, and not any other material.


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Columbia, South Carolina
April 1, 2019