

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY SC Court of Appeals
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2016-000987

Randall Dixon, Appellant,

v.

Nationwide Property & Casualty
Insurance Company, Respondent.

FINAL REPLY BRIEF OF APPELLANT

Joshua C. B. Allen
SC Bar No. 80398
Donald Leverette Allen
SC Bar No. 10421
The Allen & Allen Law Firm
Post Office Box 2861
Anderson, South Carolina
29622
864-226-6184
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
----------------------------	----

ARGUMENT.....	1
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1. The Respondent fails to address the inconsistencies in McDonald v. South Carolina Farm Bureau Ins. Co., 336 S.C. 120 (1999), 518 S.E.2d 624 and other cited cases in its brief. McDonald requires a rejection form from all named insureds.

CONCLUSION.....	2
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TABLES OF AUTHORITIES

CASES

<u>McDonald v. South Carolina Farm Bureau Ins. Co.,</u> 336 S.C. 120 (1999), 518 S.E.2d 624	1, 2
--	------

STATUTES

S.C. Code Ann. §38-77-350 (A)	1, 2
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ARGUMENT

The Respondent fails to address the inconsistencies in McDonald v. South Carolina Farm Bureau Ins. Co., 336 S.C. 120 (1999), 518 S.E.2d 624 and other cited cases in its brief. McDonald requires a rejection form from all named insureds.

The Respondent has maintained throughout that Jessica Dixon was not a named insured on the subject policy. The Appellant's argument in its initial brief was not inconsistent, rather, the Appellant was addressing two different scenarios because the Respondent made an argument at trial that Jessica Dixon was not a named insured, while the actions by Respondent showed she was clearly considered a named insured by the insurer. Therefore, the Appellant addressed both arguments since the actions of the Respondent and argument at trial were factually inconsistent.

If the Court adopts the position of the Respondent, then there exists no named insured that has signed a rejection form. The McDonald case addresses the legislature's intent regarding the requirement of South Carolina Code Ann. §38-77-350(A) in requiring

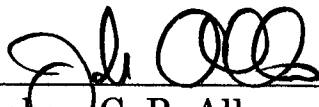
that all “new applicants” be offered UIM coverage. In McDonald, the Court addressed this issue directly, stating: “Clearly, the legislature intended for insurers to afford all named insured the opportunity to accept or reject UIM coverage.”

CONCLUSION

The Respondent has argued Jessica Dixon was not a named insured. Therefore, the requirements of §38-77-350(A) are not met. To allow Respondent to subsequently argue that Jessica Dixon was a named insured in order to claim the existence of a agency relationship violates public policy. Therefore, the subject policy should be reformed in favor of Appellant.

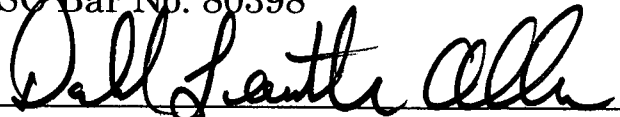
Respectfully submitted,

THE ALLEN & ALLEN LAW FIRM



Joshua C. B. Allen

SC Bar No. 80398



Donald Leverette Allen

SC Bar No. 10421

PO BOX 2861

Anderson, South Carolina 29622

864-226-6184

February 27, 2017

Anderson, South Carolina Attorneys for Appellant

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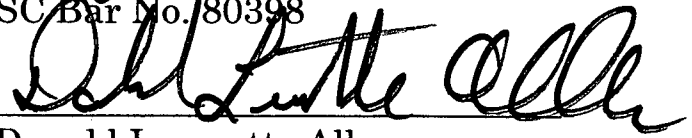
SC Court of Appeals

CERTIFICATE OF COUNSEL

I hereby certify that the Final Brief of Appellant and the Final Reply
of Appellant complies with Rule 211(b), SCACR.



Joshua C. B. Allen
SC Bar No. 80398



Donald Leverette Allen
SC Bar No. 10421
The Allen & Allen Law Firm
Post Office Box 2861
Anderson, South Carolina 29622
864-226-6184
Attorneys for Appellant

February 28, 2017
Anderson, South Carolina