THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

Case No. 2019-000009

Tyrin S. Young, Sr., Individually,
as PR of the Estates of Tyrin Young, Jr.
and Micah A. Young and as Legal
Guardian of J.Y. minor under the age of 14. .....Appellant,

v.

USAA General Indemnity Company .....Respondents.

FINAL BRIEF OF RESPONDENT

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I. **The Circuit Court properly granted summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.**

STATEMENT OF THE CASE

Appellant initiated this declaratory judgment action as a result of a coverage dispute with his automobile insurer, USAA, after a motor vehicle accident ("the accident") on or about August 30, 2015, which occurred in Greenville, South Carolina. On that date, Kamika Young was operating a Ford Expedition ("Ford"), which was insured under a USAA South Carolina Policy. The Parties to this litigation stipulated to the facts of that accident, which consist of Mrs. Young failing to yield to oncoming traffic as she attempted to make a left turn from a private parking lot. It is undisputed that Mrs. Young was at fault for causing this accident. The initial collision between the vehicles caused Mrs. Young's vehicle to proceed across the northbound lane, to strike a building and to catch fire. Tragically, two of Appellant's children, Tyrin S. Young, Jr. and Micah A. Young, did not survive the accident. A third child, minor J.Y. suffered personal injuries, but he survived the accident. ROA 214, ll. 14-23.

Thereafter, Appellant made claims against his personal policy with USAA on behalf of the minor child, J.Y., and the estates of the deceased children related to his wife's negligence. The policy covering the Ford was issued in South Carolina, with the policy number 022260801G71050 ("the SC Policy"). ROA 83. USAA tendered the liability limits of $50,000 per accident and the underinsured motorist ("UIM") limits of $50,000 per accident under the SC Policy that insured Appellant's Ford. See ROA 331, ll. 2 – 332, ll. 2. The Circuit Court approved the settlements on behalf of Appellant individually, as Guardian of J.Y. and as the Personal Representative of the estates of the two deceased minors. The covenant not to execute signed in exchange for that initial settlement included a provision that would allow Appellant to pursue other excess liability and/or UIM coverage. See ROA 2.

Subsequently, Appellant initiated this declaratory judgment action in the lower court in an attempt to collect uninsured motorist coverage from a separate USAA automobile policy which

covered his 2006 KIA Spectra ("the KIA"). ROA 14-18. The policy, USAA policy number 022260801G71030, ("the California Policy") was issued in California and written pursuant to California law, as Appellant and his family were living on a Naval base in California at the time as part of his military service. ROA 110. In mid-2014, while Appellant's wife and children returned to South Carolina, Appellant and the KIA remained in California until he was deployed to Guam in late summer or early fall of 2014. At some point prior to this accident, the KIA was transported to Guam for Appellant's use during his deployment. ROA 335, ll. 15-17. Appellant was deployed in Guam when this accident occurred. ROA 335, ll. 15-17. The KIA never returned to the Continental United States after this accident as it was sold to avoid shipping costs. ROA 335, ll. 18 – 336, ll. 5.

In addition to the facts discussed above, the parties stipulated to the following facts:

- At all times relevant hereto, Appellant considered himself to be a citizen and permanent resident of the State of South Carolina even though he was stationed in other states while in the Navy;
- Appellant and his wife paid South Carolina income taxes every year since getting married in 2008;
- The Ford and KIA were registered in the State of South Carolina;
- Appellant and his wife paid property taxes on the Ford and KIA in the State of South Carolina;
- Appellant's wife and children were physically residing in the State of South Carolina at the time of this accident;
- The KIA had not been located within the State of South Carolina since at least 2009;
- The KIA was insured under a California Policy at the time of the accident;
- The KIA was located in Guam at the time of the accident; and
- Neither Appellant nor his wife ever requested that the KIA be insured under a South Carolina policy after it left the State in 2008.

ROA 3.

Appellant's declaratory judgment action, filed on July 26, 2017, sought to reform the California policy covering the KIA to conform to South Carolina statutory and common law, which allows insureds to stack UIM coverage from multiple policies. ROA 14-18. Respondent USAA timely answered the Complaint, asserting defenses based on California law against stacking underinsured motorist coverage, and raised additional counterclaims against Appellant. ROA 19-55. Appellant timely filed its Reply to Answer and Counterclaim of USAA General Company. ROA 56-62.

USAA took the depositions of Appellant and his wife Kamika Young on June 19, 2018. ROA 241-353; 354-403. Appellant served its Notice of Rule 30(b)(6) Deposition of Defendant USAA General Indemnity Company on July 6, 2018. ROA 188. On July 25, 2018, USAA filed a Motion for Summary Judgment and a Motion for a Protective Order seeking to prevent Plaintiff from deposing a USAA representative regarding immaterial and irrelevant internal procedures which are not germane to the issues at hand, as our courts have never ruled that failure to abide by internal procedures could be grounds for reforming a policy under S.C. Code Ann. §38-61-10. ROA 63-65; 180-187. Appellant filed a Motion to Compel Attendance at Rule 30(b)(6) Deposition on September 5, 2018. ROA 191-192. On September 24, 2018, a hearing on all motions was held before the Honorable Perry H. Gravely. ROA 210-240.

Judge Gravely granted Respondent's Motion for Summary Judgment and dismissed all cross motions relating to discovery as moot in an Order issued on October 8, 2018. ROA 1-10. Appellant filed a Motion to Reconsider on October 17, 2018. ROA 202-209. The trial court denied the motion to reconsider in an Order issued on December 6, 2018. ROA 11-13.

Appellant filed a timely Notice of Appeal on December 31, 2018. The Initial Brief of Appellant and Designation of Matter to be Included on Appeal were filed on April 26, 2019. This Initial Brief of Respondent follows.

STANDARD OF REVIEW

"When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c),: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Henderson v. Allied Signal, Inc., 373 S.C. 179, 183, 644 S.E.2d 724, 726 (2007) (citing Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001)). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Id. (citing Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997)). "Summary judgment is not 'a disfavored procedural shortcut,' but an important mechanism for weeding out 'claims and defenses [that] have no factual bases.'" Okatie Hotel Grp., LLC v. Amerisure Ins. Co., No. : 2:04-2212-23, 2006 U.S. Dist. LEXIS 2980, at 7 (D.S.C. Jan. 13, 2006) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548 (1986)).

ARGUMENT

I. The Circuit Court correctly granted summary judgment when the Plaintiff failed to prove sufficient grounds for reforming the California Policy to conform to South Carolina law.

Appellant asserts the lower court erred in failing to reform the California Policy to conform to South Carolina law to allow stacking of underinsured motorist coverage. However, the Circuit Court's grant of summary judgment was correct under the facts and circumstances of this case because the undisputed facts are clear that the KIA, which was not the vehicle involved in the accident in question, did not have sufficient ties to South Carolina which would justify a reformation of the policy, which is a drastic remedy saved for certain limited circumstances where the subject of the policy is located in this State.

Insurance policies are subject to the general rules of contract construction. Nationwide Mut. Ins. Co. v. Commercial Bank, 479 S.E.2nd 524 (S.C. 1996). Under general contract law, South Carolina generally follows the legal theory that the controlling law is *lex loci contractus*, or the location in which the contract was entered. See, e.g. Bowman v. The Cont'l Ins. Co., 2000 U.S. App. LEXIS 20957, No. 99-2540, at 3 (4th Cir. June 7, 2000) (holding that, under the traditional *lex loci contractus* rule in the absence of § 38-61-10, the contract was governed by the law of the place where it was formed, despite the insured's move into South Carolina where the action was brought). To the extent that the Court were to apply this general concept, it is clear that California law would apply and Appellant would not be entitled to stack any additional coverage onto the $100,000 he has already received.

However, the South Carolina legislature has enacted Section 38-61-10 of the South Carolina Code to specifically address insurance policies that insure property or lives located in the State of South Carolina. Section 38-61-10 provides:

> All contracts of insurance on property, lives, or interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State.

S.C. Code Ann. § 38-61-10. "Where this statute applies, it governs as South Carolina's rule of conflicts." Sangamo Weston, Inc., v. Nat'l Surety Corp., 307 S.C. 143, 147, 414 S.E.2d 127, 130 (S.C. 1992).

Importantly, the party moving to reform the policy has the burden to establish that Section 38-61-10 applies. Pursuant to Sangamo, the Court must conduct a two-fold analysis to determine what law applies in this case. Hartsock v. Am. Auto. Ins. Co., 788 F. Supp. 2d 447, 451 (D.S.C. 2011). First, the Court must consider the applicability of § 38-61-10. Id. Secondly, the Court must address whether South Carolina has sufficient contacts creating a state interest in this dispute so that applying South Carolina's substantive law is consistent with the Full Faith and Credit Clause and the Due Process Clause of the United States Constitution. Id. Where both prongs of the test are met, South Carolina law controls. In this case, however, neither prong of the Sangamo test is met, and California law must control.

A. The first prong of the Sangamo test is not met under these circumstances because the insured vehicle in question, which was not the vehicle involved in the accident, was not located in South Carolina.

To determine whether § 38-61-10 applies, South Carolina courts must first analyze the expansive first prong of the Sangamo test. "Pursuant to Sangamo, this Court's inquiry does not look to where the contract was formed, but instead focuses on whether the subject of the insurance contract is located in South Carolina." Hartsock, 788 F.Supp. 447, 451 (2011 DSC). "[A]s noted in Sangamo, under this statute it is immaterial where the contract was entered into. Further there is no requirement that the policyholders or insurers be citizens of South Carolina. What is solely relevant is where the property, lives, or interests insured are located [at the time of the loss]." Id.

In Appellant's argument, he mistakenly insists that this concept should be applied in an overly broad manner, asserting that the word "or" in the statute should essentially be interpreted to mean "and." ("All contracts of insurance on property, lives, **or** interests in this State are considered to be made in the State...and are subject to the laws of this State." S.C. Code Ann. § 38-61-10 (emphasis added).) Appellant argues that the statute requires the Court to consider *all* property, interests, persons *and* risks connected to South Carolina beyond the KIA itself. However, the case law to which Appellant cites does not support this assertion.

Courts interpreting this statute have explicitly stated that "[t]he court is bound by the plain meaning of the statute's language." Heslin-Kim v. CIGNA Grp. Ins., 377 F. Supp. 2d 527, 531 (D.S.C. 2005) (citing Hillman v. I.R.S., 263 F.3d 338, 342 (4th Cir. 2001) ("unless there is some ambiguity in the language of the statute, a court's analysis must end with the statute's plain language...").

In the context of the statute at hand, the word "or" clearly, in its plain meaning, acts to separate the alternatives of *property*, *lives*, or *interests*. For example, in applying the statute to a policy which insures a piece of property, the court should consider whether the property is located in South Carolina. In applying the statute to a life insurance policy, the court should consider whether the life—the person it insures—is located in South Carolina. Or, the final catch-all, in applying the statute to a policy which insures any other type of insurable interest—be it a business interest, an event, or anything else which would cause the policyholder to suffer a loss in the event of some sort of loss or damage—the court should consider whether that insurable interest is located in South Carolina.

While the statute should be considered broadly in terms of determining location, there is simply no way to read the meaning of the word "or" as one which would have the opposite effect on its provision. By using the word "or," the legislature must have been separating these three

distinct types of insurable interests. If the legislature had intended to include all three considerations together in the analysis of this statute, they would have used the word "and." To assume the word "or" actually means "and" as Appellant argues is to warp and alter the purpose of the statute. For example, if courts adopted Appellant's interpretation of the statute, a plaintiff could be allowed to reform a Florida liability policy which insures a piece of property in Florida under Florida law simply because the plaintiff was a South Carolina resident. To stretch the meaning of this statute in such a manner would open the floodgates for a deluge of litigation over countless insurance policies insuring interests which are only minimally, if at all, connected to our state.

The plain reading of the statute is clear that all contracts of insurance on property in this State are considered to be made in this State and are subject to the laws of this State. Here, however, it is undisputed that the property insured by the USAA policy—the KIA—has not been in South Carolina since at least 2009, *six years* before the accident. The KIA was located in California at the time the California Policy was issued under California law.[1] The KIA was shipped from California to Guam and was located in Guam at the time of the accident. Notably, the KIA was not the vehicle involved in the South Carolina collision, and the California Policy was not the policy insuring the vehicle involved in the collision. Accordingly, the KIA cannot be considered to be located in South Carolina.

[1] Respondent concedes, however, that this point is only one factor to be considered in the question of location of the KIA. See Heslin-Kim, 377 F. Supp. 2d at 531-32 ("[P]erhaps most importantly, neither the South Carolina Supreme Court in Sangamo nor the statute emphasize location of property or lives upon inception of the insurance contract. Rather, both emphasize only the general location of property, lives and interests within the state and that 'it is immaterial where the contract was entered into.'" (quoting Sangamo, 414 S.E.2d at 130.) "Pursuant to Sangamo and the statute's plain language, South Carolina's broad jurisdiction over an insurance contract is triggered by the location of the property, lives, and interests within the state, not by the entrance into an insurance contract.")

Although South Carolina courts have held that § 38-61-10 contemplates a broad application of South Carolina law to insurance contracts with a significant connection to South Carolina, see Heslin-Kim, 377 F. Supp. 2d at 531, there is no such *significant* connection in this case. The only factor tying the KIA to the state is the fact that it was registered in South Carolina throughout Appellant's military service. This factor alone is not a significant enough connection to deem the KIA as being "located" in South Carolina when it was clearly being garaged, driven, used, and maintained in California and, subsequently, Guam.

Furthermore, the cases which Appellant cites in support of its position find the insurance policies should be reformed only where the vehicle insured under the policy was involved in the accident. See e.g., Leggett v. Smith, 386 S.C. 63, 686 S.E.2d 699 (Ct. App. 2009) (holding a New York policy should be reformed to conform to South Carolina law where the vehicle it insured was involved in a collision in South Carolina, where the driver lived as a college student.); Russell v. McGrath, 135 F. Supp. 3d 427 (D.S.C. 2015) (ultimately denying reformation based on insufficient contacts to South Carolina, but analyzing a policy insuring a vehicle which was involved in the collision at question in South Carolina.). Here, in contrast, the KIA in question was not involved in the accident and was not located in South Carolina at the time of the accident. It was completely unrelated to the accident in question, and its only tie to the facts of this loss is the fact that it was owned by the same owner of the vehicle in the accident.

Sangamo itself allowed reformation of an out-of-state policy because the damage arose out of action which occurred within South Carolina. The court explained, "In this action Sangamo seeks coverage solely for the liability it incurred due to its operations within the State of South Carolina. Therefore, as these policies relate to this action, they insure property and interest in this state." The KIA in question in the current case was not being operated in South Carolina, and the collision which caused the damages in this case did not involve and was completely unrelated to

the KIA. Appellant has already recovered the limits of all applicable policies from the vehicle involved in the accident, and it is now seeking to use South Carolina law to stack additional coverage from an unrelated California vehicle with a non-South Carolina policy that had not been located in the state of South Carolina since 2009. To allow Appellant to do so would not be satisfying the purpose of § 38-61-10.

Accordingly, because the KIA, the insured property, was not located in South Carolina at any time within at least six years of the accident, the first prong of the Sangamo test is not satisfied, and § 38-61-10 does not apply. Therefore, South Carolina law does not apply to this dispute, and California law, which does not allow for the stacking on the uninsured motorist coverage in question, controls.

B. The second prong of the Sangamo test is not satisfied under these circumstances because the vehicle does not have sufficient contacts to South Carolina to create a state interest.

Even if, *arguendo*, the analysis of the first prong of the Sangamo test did show that section 38-61-10 applied, the second prong of the test still would not be satisfied, and South Carolina law would not apply to this dispute. Under the second prong of the Sangamo test, the Court must address whether South Carolina has sufficient contacts creating a state interest in this dispute so that applying South Carolina's substantive law is consistent with the Full Faith and Credit Clause and the Due Process Clause of the United States Constitution. Sangamo, 307 S.C. at 149.

The Full Faith and Credit Clause provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." USCS Const. Art. IV, § 1. This Article implies that public acts of every state shall be given same effect by courts of another state that they have by law and usage at home. Chicago & A. Railroad v Wiggins Ferry Co., 119 US 615 (1887). The Full Faith and Credit Clause is an inexorable command, and "its

applicability does not turn on a balance of convenience as between litigants." Morris v. Jones, 329 US 545 (1947) (superseded by statute on other grounds).

In the case at hand, the California Insurance Policy covering the KIA was issued as a mutual agreement between both Appellant and USAA under California law, which does not allow the stacking of UIM coverages. Both parties stipulate that neither Appellant nor his wife ever requested that the KIA be insured under a South Carolina policy after it left South Carolina in 2008. USAA insured the vehicle under a clear California insurance policy, and Appellant paid premiums to continue the California insurance policy. California insurance law provides:

> Regardless of the number of vehicles involved whether insured or not, persons covered, claims made, premiums paid or the number of premiums shown on the policy, in no event shall the limit of liability for two or more motor vehicles or two or more policies be added together, combined, or stacked to determine the limit of insurance coverage available to injured persons.

Cal. Civ. Code § 11580.2(q). California case law echoes this statute, and their courts repeatedly preclude stacking of UM and UIM benefits. See generally Wagner v. State Farm Mut. Auto. Ins. Co., 40 Cal. 3d 460, 466, 220 Cal. Rptr. 659, 662 (1985) (holding that the insured was not entitled to stack two UM policies by the same carrier pursuant to California Insurance Code §115580.2); Calfarm Ins. Co. v. Wolf, 86 Cal. App. 4th 811, 821, 103 Cal. Rptr. 2d 584, 591 (2001) (noting that California law precludes the stacking of UM benefits and instead limits the injured party's recovery to the high limit of applicable UM coverage).

To reform a California insurance policy, which was written to conform to California law as clearly agreed upon by both parties, would not only strip California of its control over its own inhabitants but would also ignore the intentions of Appellant and USAA at the time they entered into the agreement. Unless this Court can find that the KIA had sufficient contacts to South Carolina to justify a state interest in this dispute which would nullify California law, it must apply the law intended at the creation of the California Policy. Looking to the facts and circumstances

of this case, the KIA's contacts to South Carolina were not sufficient to create a state interest in this dispute.

In its Order granting summary judgment, the lower court held:

> In viewing the facts of this case in the light most favorable to the Plaintiff, it is clear that the 2006 KIA has financial ties to the State of South Carolina. However, it is also clear that not only was the KIA not involved in the accident that is the subject of this suit, the vehicle was not in the State of South Carolina within at least 6 years of the accident.

ROA 4. The lower court acknowledged the financial ties between the KIA and the State of South Carolina, which Appellant raises in its brief, but the court also noted that the KIA was not related in any way to the accident in question in this action. The lower court went on to rule that, because the first prong of the Sangamo test was not satisfied, there was no need to address the second prong. The court explained, "Having determined that S.C. Code § 38-61-10 cannot be invoked based upon the location of the insured property, the Court need not address the 'connections' that the Plaintiff, his family, and the car had to the State of South Carolina." ROA 7. The lower court was correct in this ruling, as the second prong of the test need not be analyzed if section 38-61-10 does not apply.

Regardless, the clear and undisputed facts of the case show insufficient contacts between the KIA, which is the subject of the insurance policy in question, and the State of South Carolina. Although Appellant and his wife originally purchased the KIA in South Carolina and continually kept the vehicle registered in South Carolina, the vehicle had been permanently moved outside of South Carolina for at least six years prior to the accident, with no plans to return the vehicle to South Carolina. Although Appellant, who owned the vehicle, had a South Carolina driver's license, he kept and used the vehicle at his home base in California and, when he was deployed to Guam, he took the car with him to Guam. The vehicle was never returned to South Carolina.

Appellant asserts that Mrs. Young and the children, who were involved in the accident, had permanent connections to South Carolina. However, an analysis of their connections to the State is unnecessary and irrelevant to the question at hand, as the KIA was not the vehicle being driven by Mrs. Young during the accident. The dispute in question in this particular case revolves around the property insured by the California Policy—the KIA—and not the vehicle involved in the accident nor the lives of the family members involved in the accident. The KIA, which was located in California/Guam, insured under a California policy, and not related in any way to the accident in question, is the only interest which should be analyzed for sufficient contacts to South Carolina. The simple fact that the KIA was registered in South Carolina does not create a state interest in the vehicle's regulation.

Accordingly, the undisputed facts show insufficient contacts between the KIA and the State of South Carolina to create a state interest in a dispute over an automobile accident which did not even involve the KIA. Therefore, the second prong of the Sangamo test is not satisfied and California law must apply to the policy at issue.

II. The Circuit Court properly granted summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Appellant argues the Circuit Court erred by granting summary judgment prematurely because there were genuine issues of material fact in dispute. However, the issues Appellant claims are in dispute are not *material facts* relevant to or necessary to determine the sole issue before the Court. The record before this Court clearly shows that all facts necessary to determine whether South Carolina law or California law should apply to this insurance dispute have been agreed upon and stipulated to by the parties. Accordingly, because there is no genuine issue of material fact, this case was ripe for summary judgment, and because the undisputed material facts showed Respondent was entitled to judgment as a matter of law, the lower court's grant of Respondent's summary judgment motion was proper and should be affirmed.

First, to any extent that Appellant is attempting to raise any substantive issue unrelated to whether South Carolina or California law applies to this dispute,[2] this Court should find that issue unpreserved for appellate review, as the sole issue before the lower court was whether the California Policy should be reformed to allow South Carolina law to control this action given the undisputed facts and stipulations before the court. Turning to the issue at hand, upon a review of the record, the summary judgment standard is clearly met in this case.

"When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c): summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Henderson v. Allied Signal, Inc., 373 S.C. 179, 183, 644 S.E.2d 724, 726 (2007) (citing Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001)). "In determining whether any triable

[2] The Initial Brief of Appellant appears to present an argument that USAA accepted premiums from Appellant even after the KIA was shipped from California to Guam and therefore USAA waived policy provisions regarding residency and garaging the vehicle. IBOA 21-22.

issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Id. (citing Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997)).

Rule 56(b), S.C.R.C.P. provides, "A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, **at any time**, move with or without supporting affidavits for a summary judgment in his favor **as to all or any part thereof.**" (emphasis added). Under the rule, Respondent's motion was properly made at any time during the pendency of this action. Rule 56(c), S.C.R.C.P. further explains that "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Here, the parties to this action agreed upon and stipulated to all necessary facts in this dispute, including Appellant's citizenship and permanent residency in South Carolina, Appellant's income taxes being paid in South Carolina, both vehicles in question being registered and taxed in South Carolina, the KIA's location outside of South Carolina since 2008, and the KIA being insured under a California policy. See ROA 3. Regardless of any alleged "ambiguity" in the California insurance policy in question, these stipulated facts do not change, and they are the only facts material to the ruling in this case.

Appellant argues there is still a dispute over the meaning of the term "garaged" in the California Policy, but this issue is not material to the issue at hand. In its order denying Appellant's Motion to Reconsider, the Circuit Court correctly addressed this issue, ruling:

> The policy in question indicates that the vehicle in question is "principally garaged" in "Santee CA". Merriam-Webster Dictionary defines garage as "to keep or put in a garage." The location of the garage, according to the policy, is California, but there is evidence that the location of the vehicle was moved to Guam, which according to Defendant, creates an ambiguity as to where the vehicle is "principally

> garaged". This may be an issue of whether there would be coverage under this policy for the KIA, but this is not relevant to whether South Carolina law would apply since the vehicle was not moved to South Carolina.

ROA 12. Even if Appellant had the opportunity to depose the USAA representatives as it requested and got an answer to the question on "garaging," there is no way the answer would affect the ruling of this case, as the KIA could not possibly have been garaged in South Carolina. Whether the KIA was garaged in California or in Guam at the time of the accident would not have an effect that would make South Carolina law apply to this dispute. Because of this, the issue is not a material fact in the action. Furthermore, there can be no prejudice from Appellant's lack of opportunity to depose the USAA representative, as that deposition would not have affected the materials facts in question in this action.

Similarly, there is no prejudice from the lower court's denial of Appellant's motion to compel the USAA deposition because Appellant was not entitled to conduct this deposition. Appellant attempted to invoke S.C.R.C.P. 30(b)(6) to depose a representative of USAA on issues that are confidential, privileged, or irrelevant to the sole issue at hand. The deposition would have been overly burdensome in that it would require Respondent to identify designees on subjects that are not in dispute in the lawsuit, involved privileges and confidential communications as to USAA's conversations with its attorneys and issues that are otherwise irrelevant to the claims asserted in Appellant's Complaint. Even if the denial of Appellant's motion were an error, it would be a harmless error. Appellant is not entitled to conduct this deposition based on these grounds, so this assertion has no effect on any factual disputes in the action, material or immaterial.

In sum, the issues which Appellant asserts are still in dispute, such as the definition of the term "garaged" and whether USAA accepted premiums knowing that the KIA had been moved to Guam, are not material to the issue at hand because they do not relate to the KIA's presence in South Carolina or determine whether South Carolina law should apply to this action. Accordingly,

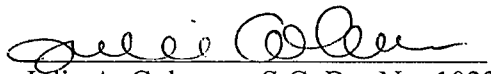
all material facts relevant to this action have been agreed upon or stipulated to by both parties, and there is no genuine issue of material fact in this case. The action was ripe for summary judgment and supported by undisputed materials facts.

Finally, because the undisputed material facts in this action supported Respondent's assertion that it was entitled to judgment as a matter of law as discussed in Issue I, the Circuit Court's Order granting summary judgment was proper. Accordingly, this Court should affirm the lower court's grant of summary judgment.

CONCLUSION

In conclusion, Respondent respectfully asks this Court to affirm the Trial Court's Order granting Summary Judgment.

Respectfully submitted,



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August 16, 2019

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
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PERRY H. GRAVELY, CIRCUIT COURT JUDGE

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Tyrin S. Young, Sr., Individually,
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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Final Brief of Respondent USAA General Indemnity Company complies with Rule 211(b) of the *South Carolina Rules of Appellate Procedure.*

Respectfully submitted,

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