

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court Of Common Pleas

The Honorable Paul M. Burch, Judicial Circuit Court Judge
Trial Court Case No.: 2015CP1600815

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SC Court of Appeals

Appellate Case No. 2018-001108

Allstate Fire and Casualty Insurance Company Respondent,

v.

Pamela Goodwin. Appellant.

RETURN TO APPELLANT'S RESPONSE TO RESPONDENT'S MOTION TO
CONSOLIDATE

Pursuant to South Carolina Appellate Court Rules 214 and 240, Respondent Allstate Fire and Casualty Insurance Company ("Allstate") submits this Return to Appellant's Response to Respondent's Motion to Consolidate.¹ Allstate objects to Appellant's request to consolidate Appellate Case Nos. 2018-001108 ("*Goodwin* matter") and 2018-001675 ("*Hamilton* matter").

Contrary to Appellant's contention that the common question in the *Goodwin* matter and the *Hamilton* matter involve "whether South Carolina continues to recognize the mirror-image rule," the complaints filed in the two lawsuits seek the following

¹ Because Appellant is seeking different relief than that set forth in Allstate's Motion to Consolidate, Allstate is treating Appellant's Response as a separate Motion to Consolidate pursuant to Rule 214, SCACR and therefore submits this Return.

declarations:

- a. The acceptance of the settlement demand, as demonstrated by Allstate's performance thereunder, on behalf of its insureds, is valid and enforceable;
- b. Allstate fulfilled its obligations under the policy when it settled [Goodwin's/Hamilton's] claim for the limits of the policy issued to the named insured(s); and
- c. Because the settlement agreement is valid and enforceable, Allstate and its insureds have no additional obligation to [Goodwin/Hamilton] with regard to the claim.

Specifically, in both the *Goodwin* matter and the *Hamilton* matter, Appellants contend that it rejected Allstate's acceptance of the settlement by its performance of the material terms because Allstate did not issue a certified or cashier's check. See Final Brief of Appellant Natoshia Hamilton; Final Brief of Appellant Pamela Goodwin. That is not the same issue in *Debra O'Connor, as Personal Representative of the Estate of Sandy Lynn Shook v. Aaron Collier*, Appellate Case No. 2019-000856 ("*O'Connor* matter").

The procedural posture of the *O'Connor* matter is different. In that case, Respondent Aaron Collier ("*Collier*") filed a Motion to Enforce Settlement arguing that the insurance carrier accepted Appellant's settlement offer in the amount of \$50,000, which represented the \$25,000 bodily injury limits and \$25,000 property damage limits of the policy.² In opposition to this motion, Appellant argued that her "offer, by its clear terms, required acceptance not later than October 12, 2018, required the payment of all applicable policy limits actually be received by Plaintiff's counsel, and that the check(s)

² Unlike the settlement demands sent to Allstate at issue in the *Goodwin* and *Hamilton* matters, the settlement demand at issue in the *O'Connor* matter specifically stated that "[a]ccordingly, Mr. Collier's exposure to punitive damages is very high. In light of these facts, our offer to Progressive requires payment from all applicable policies, **inclusive of both bodily injury and property damage.**" See Affidavit of Jeff Vicary, Exhibit D.

be delivered to 32 Ann Street, Charleston, SC 29403.” See Plaintiff’s Response in Opposition to Defendant’s Motion to Enforce Settlement, p. 5. This is a very different issue than the issue presented in the *Goodwin* and *Hamilton* matters where Allstate issued checks for the full amount of the settlement demand and Appellants Goodwin and Hamilton rejected the same because they requested Allstate issue the settlement funds in a form that it could not issue. Therefore, there is no common question and the *O’Connor* matter should not be consolidated.

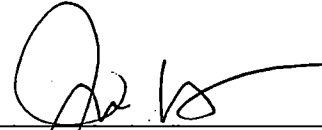
In addition, the notices of appeal were filed in the *Goodwin* matter and the *Hamilton* matter in June 2018 and October 2018, respectively, and the parties have completed the final briefing in both matters. It appears that the parties in the *O’Connor* matter have just completed initial briefing. To the extent that consolidating the *Goodwin* and *Hamilton* matters with the *O’Connor* matter would delay the Court’s consideration of the *Goodwin* and *Hamilton* matters, consolidation would be inappropriate. And, there is no indication that counsel has consulted with counsel for the Respondent in the *O’Connor* matter regarding consolidating these matters, and there has been no motion filed in that case to which counsel could respond or to provide notice of the request.

Therefore, for the reasons stated here Allstate respectfully requests that this Court deny Appellant’s request to consolidate the *Goodwin* and *Hamilton* matters with the *O’Connor* matter.

{Signature on next page}

November 15, 2019

By:



John T. Lay, Jr. (S.C. Bar No. 64526)
A. Johnston Cox (S.C. Bar No. 09081)
Janice Holmes (S.C. Bar No. 75038)
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, South Carolina 29202
Telephone: 803.779.1833
Facsimile: 803.779.1767
ATTORNEYS FOR RESPONDENT
ALLSTATE FIRE & CASUALTY INSURANCE
COMPANY

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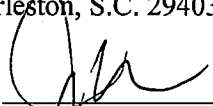
PROOF OF SERVICE

I certify that I served copies of the Return to Appellant's Response to Respondent's
Motion to Consolidate by United States mail, postage prepaid, addressed to:

Eric M. Poulin, Esq., Roy T. Willey, IV, Esq., and Lane D. Jefferies, Esq.
Anastopoulo Law Firm, LLC
32 Ann Street
Charleston, S.C. 29403

November 15, 2019

By:



John T. Lay, Jr. (S.C. Bar No.64526)
A. Johnston Cox (S.C. Bar No. 09081)
Janice Holmes (S.C. Bar No. 75038)
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
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VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Allstate Vehicle and Property Insurance Company v. Pamela Goodwin
Appellate Case No.: 2018-001108
GWB File No.: 8300-190

Dear Ms. Kitchings:

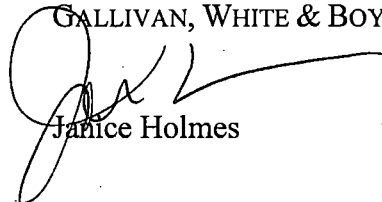
Enclosed for filing please find the original and eight (8) copies of Allstate Fire and Casualty Insurance Company's Return to Appellant's Response to Respondent's Motion to Consolidate and Proof of Service in the above-referenced matter.

We would appreciate you filing these documents with the Court of Appeals and returning the two (2) extra copies of the Return to Appellant's Response to Respondent's Motion to Consolidate and Proof of Service to me by the awaiting individual from my office. By copy of this letter, we are serving counsel of record with copies of these documents.

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.



Janice Holmes

JH:amo
Enclosures

Cc: Eric M. Poulin, Esquire
Roy T. Willey IV, Esquire
Lane D. Jefferies, Esquire