

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

O'neal Anderson as Personal Representative of  
the Estate of David Anderson,

vs.

Katie Simmons Odom,  
  
Defendant.

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT  
Case Number: 2019-CP-21-01783

ORDER  
**RECEIVED**

FEB 14 2020  
SC Court of Appeals

**INTRODUCTION**

This matter came before the Court on November 13, 2019, on Defendant's Motion to Test the Sufficiency of the Plaintiff's Responses to Defendant's Request to Admit pursuant to Rule 36(a), SCRCPP, or, in the alternative Motion for Sanctions against Plaintiff and/or counsel for Plaintiff. Those parties in attendance included Edward A. Love, Esquire, of King, Love, Hupfer & Nance, LLC, on behalf of the Defendant, and Lane Jefferies, Esquire, of the Anastopoulo Law Firm, LLC, on behalf of the Plaintiff.<sup>1</sup> Defendant and Plaintiff each provided memoranda and attachments to the Court in support of their respective arguments.

**STATEMENT OF FACTS**

The following is a timeline of facts pertinent to this matter:

<sup>1</sup> It is of importance to note that the attorney whose signature appeared on Plaintiff's initial Responses to Defendant's Request to Admit and Plaintiff's Supplemental Responses to Defendant's Request to Admit was Alexis McCumber, Esquire of the Anastopoulo Law Firm, LLC. The Court was advised that she was in a deposition in Richland County and that was the reason that she did not appear to argue against Defendant's Motion. During Defendant's Motion hearing, the Court did not specifically reference Rule 601(a), SCACR, relating to Conflicts in Hearing Dates, Order of Priority as Between Tribunals, the Court did point out to Plaintiff's counsel that a deposition did not take priority over a motion hearing and therefore Ms. McCumber should have been before the Court to argue against Defendant's Motion. This very situation occurred in a case handled by the Anastopoulo Law Firm, LLC wherein the attorney that was primarily handling a case did not attend opposing counsel's motion hearing but rather sent another attorney from their office to argue against Defense counsel's Motion to Set Aside Default. Shawna Adeeb, Individually and as Guardian ad Litem for L.S., a minor and S.S., a minor vs. Shawn Stanciliff, (C/A No. 2017-CP-33-00580).

1. May 28, 2019 – Counsel for Plaintiff sent an "Offer of Compromise" letter to GEICO Insurance Company by way of electronic mail, attached as Exhibit "A" to Defendant's Memorandum.<sup>2</sup>
2. June 10, 2019 – GEICO, through its attorney, Edward A. Love, Esquire, forwarded to Plaintiff's counsel an acceptance letter accepting the terms of Plaintiff's May 28, 2019, "Offer to Compromise" (i.e., demand) along with two settlement checks and documents, attached as Exhibit "B" to Defendant's Memorandum.
3. July 2, 2019 – Plaintiff filed suit in the Court of Common Pleas for Florence County against Katie Simmons Odom.
4. August 8, 2019 – Defendant timely filed an Answer to the Complaint alleging, among other things, that the case had been settled pre-suit.
5. September 4, 2019 – Defendant served its First Request to Admit on Plaintiff's counsel pursuant to Rule 36, SCRCP, attached as Exhibit "C" to Defendant's Memorandum.
6. September 23, 2019 – Plaintiff served its Responses to Defendant's Request to Admit, attached as Exhibit "D" to Defendant's Memorandum. In Plaintiff's response to each of Defendant's eight (8) Request to Admit, Plaintiff stated: **"Objection. Not reasonably calculated to lead to the discovery of admissible evidence. This is an automobile collision sounding in negligence. Subject to and without waiving the same and to the extent a response is required, denied."**

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<sup>2</sup> This "Offer of Compromise" letter was also referenced as a "Demand" in section III, page 7 of the same letter.

7. September 24, 2019 – Pursuant to Rule 11, SCRCF, Defense counsel wrote Plaintiff's counsel concerning perceived deficiencies in Plaintiff's Responses to Defendant's Request to Admit and requested that Plaintiff cure such deficiencies by September 27, 2019.<sup>3</sup>
8. October 1, 2019 – At 10:15 a.m., Defendant filed its Motion to Test the Sufficiency of Plaintiff's Responses to Defendant's First Request to Admit or, in the alternative or in addition thereto, for sanctions.
9. October 1, 2019 – Plaintiff's counsel sent to Defense counsel its Supplemental Responses to Defendant's Request for Admission, attached to Defendant's Memorandum as Exhibit "E."

### LAW

Rule 36 of the South Carolina Rules of Civil Procedure provides:

A party may serve upon any other party a written request for admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of the documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as stipulated in writing by the parties pursuant to Rules 29 and 6(b), the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering

<sup>3</sup> Defense counsel could have waited beyond thirty (30) days and simply moved to have each of its Request to Admit deemed admitted since Rule 36, SCRCF requires that Request to Admit be answered within thirty (30) days after service of the request. However, Defense counsel did not do so but rather requested Plaintiff's counsel cure what Defense counsel believed were deficient responses by Plaintiff's counsel.

party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

Rule 26(b)(1), SCRCP, General Provisions Governing Discovery, states as follows:

(b) Scope of Discovery.

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General.

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or the defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Rule 26(b)(1), SCRCP, provides, unless otherwise limited by order of the court, that

"[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action [whether it relates to the claim or **the defense of the party seeking discovery**] . . . It is not ground for objection that the information sought will

be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Hollman v. Woolfson, 384 S.C. 571, 577-78, 683 S.E.2d 495, 498 (2009).

Generally, the scope of discovery is within the trial court's discretion. However, the trial court must make an effort to impose reasonable discovery limits. The trial court abuses its discretion by ordering discovery that exceeds that permitted by the rules of procedure. Our procedural rules define the general scope of discovery as any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is "reasonably calculated to lead to the discovery of admissible evidence[;]" or in other words, "[a]lthough the scope of discovery is broad, requests must show a reasonable expectation of obtaining information that will aid in the dispute's resolution" and discovery must be "reasonably tailored" to include only relevant matters. Oncology and Hematology Assoc. of S.C., LLC v. SCDHEC, 387 S.C. 380, 388, 692 S.E.2d 920, 924-25 (2010).

### ANALYSIS

At the outset of the Motion hearing, Defense counsel argued to the Court its position as to the insufficiency of Plaintiff's Responses to its Request to Admit. After hearing from Defense Counsel, Plaintiff argued that Defendant's Requests to Admit were irrelevant to the negligence cause of action. The Court will address Defendant's arguments later in this Order, but will first address Plaintiff's assertion that Defendant's Requests to Admit were irrelevant to Plaintiff's negligence cause of action.

Pursuant to Rule 36, SCRCP, "[a] party may serve upon any other party a written request for admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the

application of law to fact, including the genuineness of any documents described in the request." Rule 26(b)(1), SCRPC, provides in part that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, **whether it relates to the claim or the defense of the party seeking discovery[.]**"

As previously noted in the factual history above, Plaintiff sent an "Offer of Compromise" letter to GEICO, dated May 28, 2019, which is also referenced to as a "Demand" in section III, page 7 of said letter. The purpose of the letter from Plaintiff's counsel was to set forth its position with regards to liability, the damages that it believed were appropriate (actual and punitive), and demand that certain conditions be met by the Defendant to consummate a settlement by 5:00 pm EDT on June 12, 2019. Of importance in this letter was that it included the following:

1. A time sensitive demand for payment of Defendant's policy limits by 5:00 p.m., on June 12, 2019, or such "offer" will be withdrawn;
2. A requirement that the insured "provide a sworn and notarized statement that there is no other insurance coverage available to Ms. Simmons or Ms. Odom that could pertain to this loss:"<sup>4</sup>
3. A requirement that a certified check or cashier's check made out to "'O'Neal Anderson, as PR for the Estate of David Anderson and the Anastopoulos Law Firm, LLC;"
4. Plaintiff counsel's agreement to execute a covenant "that will not prejudice our client's right to seek recovery from other carriers" and "limited in scope to protect your insured from our client's rights to your insured's personal assets."<sup>5</sup>

On June 10, 2019, Defense counsel forwarded a letter to Plaintiff's counsel which

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<sup>4</sup> Plaintiff's counsel provided the affidavits for Ms. Simmons and Ms. Odom to execute that met Plaintiff's conditions.

<sup>5</sup> This request by Plaintiff's counsel set forth four limitations on scope that the Covenant could not contain. Those limitations included: a) any language (or other documents) that requires or requests our client make representations or warranties regarding the absence of medical, hospital, or other bankruptcy liens/proceedings; b) a "Lien Affidavit"; c) the release of any individual or entities other than your insured and your insurance company; or, d) indemnification or release of any claims that could be brought by or on behalf of any person or entity other than our client.

included two cashier's checks (one for \$50,000.00 (Check # 6838101570) and one for \$25,000.000 (Check # 6838101571)), a Covenant Not to Execute, and affidavits from Maryann Odom and Katie Simmons Odom. The check for \$50,000 was appropriately made out while the check for \$25,000 misspelled "Anastopoulo." There does not appear to be any other correspondence between Plaintiff's counsel and Defense counsel until Plaintiff filed suit on July 2, 2019. Defense counsel timely answered Plaintiff's complaint on August 8, 2019 and alleged, among other things, that the matter had been settled.

Therefore, as it relates to Plaintiff's assertion that Defendant's Requests to Admit are not relevant to this case since it is a negligence cause of action, the Court disagrees. Plaintiff clearly made Defendant's Request to Admit relevant to the pending cause of action when: Plaintiff's counsel sent the "Offer to Compromise" to Defense counsel; Defense counsel made a good faith effort to comply with the terms of Plaintiff's offer; Plaintiff did not communicate with Defense counsel again until the filing of the Summons and Complaint; and Defense counsel timely answered the Summons and Complaint and raised as a defense in its Answer that the matter had been settled pre-suit. Rule 26(b)(1), SCRPC, in conjunction with Rule 36, SCRPC, authorizes discovery "**whether it relates to the claim or the defense of the party seeking discovery.**"

Having addressed Plaintiff's argument as to the relevancy of Defendant's Request to Admit, the Court now moves to address the sufficiency of Plaintiff's Supplemental Responses to Defendant's Request to Admit. In Plaintiff's initial responses to Defendant's Request to Admit, dated September 23, 2019, Plaintiff did object to each Request to Admit. Plaintiff's objection to each stated that the Requests were "[n]ot reasonably calculated to lead to the discovery of admissible evidence" and that "to the extent a response [was] required, denied." However, Plaintiff's denial of each Request to Admit failed to fairly meet the substance of the requested

admission as required pursuant to Rule 36, SCRPC. Defense counsel could have, upon receiving Plaintiff's initial responses, sought an Order from the Court deeming the Request to Admit, admitted. However, Defense Counsel requested that Plaintiff's counsel Supplement its initial response to Defendant's Request to Admit. Thus, Plaintiff's counsel did so on October 1, 2019. It is Plaintiff's Supplemental Responses to Defendant's Request to Admit that this Court shall now determine the sufficiency of.

Defendant's Request to Admit #1 asks Plaintiff to "[a]dmit that on May 28, 2019, you made a demand upon GEICO Insurance Company for the payment of policy limits for Claim #0433975440101012." Plaintiff's response was that "Plaintiff admits an offer of compromise containing certain conditions and material terms to consummate a settlement was sent to Geico. Geico refused to accept these terms and conditions."

Defense counsel asserts in its memo that the request is straight-forward and asks unequivocally whether a demand was made, including the date of the demand. Plaintiff, in its memo, asserts that the May 28, 2019 letter is an "offer", and proceeds to contrast the difference between an "offer" and a "demand."

Plaintiff's answer fails to admit or deny the specific request of Defense counsel. Plaintiff's response does not address the substance of the requested admission but rather disputes that they ever made a demand. In fact, Plaintiff's memo references in footnote number one that the letter of the May 28, 2019 used the word "demand" eight times while the word "offer" appears thirty-nine times. The number of times that either word appears in the May 28, 2019 letter is irrelevant. What is relevant is that Plaintiff, in three separate parts of the May 28, 2019 letter, used language indicating the letter was a demand. Specifically, the letter contained the following language: Section III of page 7 says the letter is a "**Demand** pursuant to Tyger River

Pine Co. v. Maryland Casualty Co., . . .; "time-limited **demand** for payment of policy limits" (page 1 & 9); "time-limited **demand** for payment" (page 7); and a statement telling GEICO to "explain to your insured that they have the right to hire an attorney to represent them against your company and that they have the right to demand that you pay this **demand** in order to protect their property and possessions" (page 8).

This Court therefore finds that Plaintiff's response to Request to Admit #1 does not comport with the requirements of Rule 36, SCRPC. It is clear that Plaintiff's May 28, 2019 letter did in fact **demand** the policy limits for Claim #0433975440101012. Furthermore, even if Plaintiff's response was proper, as Plaintiff's counsel incorrectly alleges, it still fails because it does not fairly meet the substance of the requested admission and Plaintiff failed to qualify or deny the remainder of Defendant's Request to Admit #1. Therefore, Defendant's Request to Admit #1 is, hereby, deemed ADMITTED.

Defendant's Request to Admit #2 asks Plaintiff to "[a]dmit that the policy limits applicable to claim #0433975440101012 are Seventy-five Thousand and 00/100 (\$75,000.00) Dollars (Fifty Thousand and 00/100 (\$50,000.00) Dollars for bodily injury and Twenty-five Thousand and 00/100 (\$25,000.00) Dollars for property damage)." Plaintiff denied Defendant's Request to Admit #2.

Defense counsel asserts in his memo that by denying Request to Admit #2, Plaintiff is admitting either that the policy limits in the admission are incorrect or Plaintiff is unaware of the policy limits (though lack of information or knowledge is not pled in the response). Defense counsel also attached a copy of the applicable declarations page from a certified copy of the policy of insurance covering the loss at issue as Exhibit "F" to its memo. Plaintiff's counsel, in his memo, asserts that his response is proper, stating that defense counsel is in a far better

position to know the applicable limits to this claim than Plaintiff. Plaintiff's counsel then references the Covenant Not to Execute, with paragraph 11 stating, in part, "that Covenantees have made no representations on the availability or applicability of any excess liability or underinsured motorist insurance coverage."

Plaintiff's denial fails to fairly meet the substance of the requested admission. Furthermore, good faith would require that Plaintiff qualify his answer based upon the information that Plaintiff did have. The following facts support this conclusion: Plaintiff demanded the "policy limits" in his May 28, 2019 letter; Defense counsel provided a copy of the declarations page reflecting those respective "policy limits;"<sup>6</sup> Plaintiff possessed the Covenant Not to Execute which referenced the liability limits; and Plaintiff's counsel prepared two affidavits, which were signed by Mary Ann Odom and Katie Simmons Odom, acknowledging that there were no other policies of insurance that would apply to compensate David Anderson. At a minimum, this was sufficient information that would require a good faith qualification of Plaintiff's response rather than an outright denial. Because Plaintiff's response failed to comport with Rule 36, SCRCP, as stated above, Defendant's Request to Admit #2 is, hereby, deemed ADMITTED.

Request to Admit #3 requests that Plaintiff "[a]dmit that you demanded payment be made no later than 5:00 p.m. on June 12, 2019." Plaintiff's response was that "[p]laintiff admits that payment was due on the above-referenced date and time, however, GEICO failed to accept other material terms and conditions, therefore payment was returned." Defendant argues in its memo that this request only required a one-word response and that any additional response is an effort by the Plaintiff to taint the entire response. Plaintiff, in its memo, asserts that its response is

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<sup>6</sup> The Court would refer to the Rules of Professional Conduct, Rule 3.4: Fairness to Opposing Party and Counsel.

proper, that its answer beyond a one word response does not taint the entire response, and that it is highly disingenuous of Defense counsel to assert this response was insufficient when Defense counsel's makes a routine practice of responding similarly, which Plaintiff's counsel supports by citing to specific instances of such.

Defendant's Request to Admit #3 was clear, specific, and unambiguous. Plaintiff's May 28, 2019 letter, Section III of page 7, unequivocally says that the "[p]olicy limits must be **RECEIVED** no later than 5:00 p.m. EDT on June 12, 2019[.]" Because Defendant's Request to Admit was clear, specific, and unambiguous, there was no good faith requirement that Plaintiff qualify his answer as required by Rule 36, SCRPC. In any event, Defendant's Request to Admit #3 was admitted by Plaintiff's counsel and it is, therefore, deemed ADMITTED.

Defendant's Request to Admit #4 requests that Plaintiff "[a]dmit that on June 11, 2019 at approximately 12:22 p.m. cashier's check #6838101570 in the amount of Fifty Thousand and 00/100 (\$50,000.00) Dollars and cashier's check #6838101571 in the amount of Twenty Five Thousand and 00/100 (\$25,000.00) Dollars was received by the Anastopoulo Law Firm." Plaintiff, in its response, "admits receipt of the above-referenced checks, however, GEICO failed to accept other material terms and conditions, therefore the payment was returned." Defense counsel's argument in its memo as to Request to Admit #4 is the same as its argument for Request to Admit #3. Likewise, Plaintiff's argument in its memo relating to Request to Admit #4 is the same as its argument as to its response to Request to Admit #3.

Defendant's Request to Admit #4, like Defendant's Request to Admit #3, was clear, specific, and unambiguous and only required a one word response. Because Defendant's Request to Admit was clear, specific, and unambiguous, there was no good faith requirement that

Plaintiff qualify his answer as required by Rule 36, SCRPC. In any event, Defendant's Request to Admit #4 was admitted by Plaintiff's counsel and it is, therefore, deemed ADMITTED.

Defendant's Request to Admit #5 asks Plaintiff to "[a]dmit that check #6838101570 and check #6838101571 were made payable to O'Neal Anderson as PR for the Estate of David Anderson and the Anastopoulos Law Firm, LLC." Plaintiff's response denied Defendant's Request to Admit #5 and Defendant accepts this response. Furthermore, the Court believes Plaintiff's response is appropriate to this respective Request to Admit pursuant to Rule 36, SCRPC.

Defendant's Request to Admit #6 asks Plaintiff to "[a]dmit that check #6838101570 and check #6838101571 were negotiable on June 11, 2019." Plaintiff denied this Request to Admit, asserting that there is no such payee as "ANASTAPOULO LAW FIRM, LLC", which was check #6838101571. Defendant asserts that because Plaintiff never attempted to negotiate the checks, a denial of this Request to Admit is improper.<sup>7</sup> Plaintiff argues in its memo that both checks were not negotiable as there is no such payee as the "Anastopoulos Law FirmLLC."

The Court agrees with the Defendant. Plaintiff only argued that one of the checks (#6838101571) was not negotiable. Plaintiff failed to address the negotiability of check #6838101570. Plaintiff should have attempted to negotiate both checks at issue before it could truthfully deny Request to Admit #6 in its entirety. Rule 36, SCRPC, requires that "[a] denial should fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer[,],...he shall specify so much of it as is true and qualify or deny the remainder." Plaintiff's denial does not meet the substance of the requested admission nor does it give a good faith qualification of his answer as to how much of the Request to Admit is true and

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<sup>7</sup> Plaintiff's counsel acknowledged at the Motion hearing that they did not attempt to negotiate the subject checks.

qualify or deny the remainder. Since Plaintiff failed to attempt to negotiate either check or further comply with the requirements of Rule 36, SCRCP, Defendant's Request to Admit #6 is, hereby, deemed ADMITTED.

Defendant's Request to Admit #7 asks Plaintiff to "[a]dmit that not one of the prohibitions listed on page 8 of your May 28, 2019 demand were contained in the Covenant Not to Execute also received by the Anastopoulo Law Firm on June 11, 2019." Plaintiff denied this Request to Admit. Defense counsel argues that the inclusion of any of Plaintiff's prohibitions would not materially alter the terms of the settlement and that none of the prohibitions were included in the proposed covenant. Plaintiff's counsel, in its memo, argues that the denial was proper referencing paragraphs 2 and 4 of the covenant which Plaintiff asserts contained language prohibited in clause "c" of its May 28, 2019 letter at page 8.

Upon review of the prohibitions listed on page 8 of Plaintiff's May 28, 2019 letter and the Covenant Not to Execute, Plaintiff failed to adequately respond as required under Rule 36, SCRCP. As with Plaintiff's responses to other Requests to Admit, Plaintiff's denial failed to meet the substance of the requested admission. Furthermore, Plaintiff failed in good faith to qualify his answer, failed to deny only a part of the matter of which an admission was requested, or specify so much of what was true and qualify or deny the remainder of the Request to Admit. Because of such, Defendant's Request to Admit #7 is, hereby, deemed ADMITTED.

Defendant's Request to Admit #8 requests Plaintiff "[a]dmit that the Affidavits prepared by the Anastopoulo Law Firm and enclosed with the May 28, 2019 demand were fully executed and signed by Mary Ann Odom and Katie Simmons Odom and returned to the Anastopoulo Law Firm on June 11, 2019 as required by your demand letter of May 28, 2019." Plaintiff denied this

Request to Admit and stated that "[o]ther documents served by GEICO contemporaneously with the aforementioned Affidavits had the force and effect of negating same."

Defendant asserts in its memo that the affidavits attached as Exhibit "B" to its memo are true and accurate copies of the affidavits prepared and required by Plaintiff's counsel. Defense counsel further argues that Plaintiff's denial is patently untruthful in that it denies the existence/execution of one document by referencing another document that is not relevant to the actual request. Plaintiff asserts in its memo and argument that there is a difference between signing and executing. Plaintiff admits that the Affidavits were signed but says that full execution requires more, citing Durham v. Blackard, 313 S.C. 432, 439, 438 S.E.2d 259, 263 (Cl. App. 1993), which stands for the proposition that a deed is not fully executed unless it is delivered. This argument is not beneficial to the Plaintiff because the Affidavits were delivered to the Plaintiff, thus meaning they were signed and executed if relying upon Durham for the proposition that the affidavits had to be delivered to be execute. Additionally, Black's Law Dictionary, 11<sup>th</sup> Edition (2019), defines **sign** as follows: "**1.** To identify (a record) by means of a signature, mark, or other symbol with the intent to authenticate it as an act or agreement of the person identifying it[;]" and it defines **execute** as follows: "**3.** To make (a legal document) valid by signing; to bring (a legal document) into its final, legally enforceable form." It is clear to the Court that the legal definitions of these two terms are clear, plain, and unambiguous, and that they are also clearly not consistent with Plaintiff's argument. Thus, Plaintiff had no basis to deny this Request to Admit under the grounds stated.

Plaintiff also asserts that the Covenant Not to Execute says the opposite of the Affidavits, i.e., that no representation about other coverage was made. While Plaintiff asserts this, the Court does not see that the Affidavits and the Covenant contradict each other. The Court reads the

Covenant as confirming that no additional coverage exists and the Affidavits simply confirm such. Assuming, for arguments sake, that the Covenant and the Affidavits contradict each other, Plaintiff's answer to this Request to Admit failed to comply with Rule 36, SCRPC, because Plaintiff's response did not fairly meet the substance of requested admission. Therefore, Defendant's Request to Admit #8 is, hereby, deemed ADMITTED.

Having addressed Defendant's Request to Admit and Plaintiff's responses, the Court now must determine whether costs are warranted.<sup>8</sup> Defendant asserts that Rule 37(a)(4), SCRPC, stands for the proposition that such costs are warranted. However, the Court believes that the appropriate rule pertaining to costs as it relates to Defendant's Request to Admit is Rule 37(c), SCRPC. This rule states:

If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court **shall** make the order unless it finds (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for failure to admit.

This matter is before the Court after Defense counsel gave the Plaintiff two opportunities to appropriately respond to its Request to Admit pursuant to Rule 36, SCRPC. Defense counsel was required to file a Motion which included attachments (a) through (g) for purposes of proving those matters in its Request to Admit pursuant to Rule 36, SCRPC. The Court finds that

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<sup>8</sup> Plaintiff argues in its memo that Defense counsel has unclean hands when it comes to responding to Request to Admit, citing and referencing other cases which Defense counsel has been involved. Regardless of whether Defense counsel may or may not have done the same as Plaintiff in other cases as it pertains to Request to Admit, those issues are not before this Court nor would it give Plaintiff permission to respond in like kind in a manner that this Court has determined is inconsistent with the requirements of Rule 36, SCRPC. Furthermore, if Plaintiff believed that Defense counsel failed to properly respond to its Request to Admit in this case or other cases, Plaintiff should have brought such matters before the Court to test the sufficiency of such responses like Defendant did in this case.

Defendant, through its Motion and attachments, did prove the truth of those matters for which it asked Plaintiff to admit.

Furthermore, the Court does not find Defendant's Requests to Admit were objectionable because Plaintiff brought these matters into issue when Plaintiff sent the May 28, 2019 letter to GEICO. Furthermore, it was clear these matters were relevant when Plaintiff's counsel admitted in court that the end game in sending such was to set up a bad faith claim. Defense counsel is also allowed to seek discovery pertaining to such issues after having raised in its Answer that the case had been settled pre-suit. This further leads the Court to conclude that the requested admissions were of substantial importance in this case as it went forward, or in any subsequent bad faith claim. The Court also concludes the Plaintiff did not have reasonable grounds to believe that it might prevail on the matter when Defendant's Request to Admit were clear, plain and unambiguous, nor was there good reason for Plaintiff to fail to admit to the requested admissions.

For the foregoing reasons, and in addition to the Courts ruling above as to the Request to Admit, the Court hereby awards attorney fees and costs to the Defendant in the amount of One thousand, seven hundred, twenty-three and 24/100 (\$1,723.24) Dollars. Plaintiff's Counsel is given ten (10) days from the date of this Order to pay the above fees and costs to the Defendant.

IT IS SO ORDERED.

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Honorable D. Craig Brown  
Presiding Judge

This \_\_\_ day of January, 2020



Florence Common Pleas

**Case Caption:** Oneal Anderson Personal Representative , plaintiff, et al VS Katie Simmons Odom  
**Case Number:** 2019CP2101783  
**Type:** Order/Other

IT IS SO ORDERED

s/D. Craig Brown (2160)

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