

92673

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 30 2020

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No.: 2019-001506
Trial Court Case No.: 2017CP2300311

Ex Parte: Trustgard Insurance Company, Appellant-Respondent,

In Re:

Terrence Graham, Plaintiff,

-v-

Full Logistics, Inc., Defendant,

Of whom, Terrence Graham, is Respondent-Appellant.

RESPONDENT-APPELLANT’S MOTION TO DISMISS
APPELLANT-RESPONDENT’S APPEAL AS UNAPPEALABLE

Respondent-Appellant Terrence Graham (“Graham”) moves this Court for an order dismissing the above-captioned appeal on two separate, independent grounds.

PROCEDURAL HISTORY¹

This case arises from the lower court granting Appellant-Respondent, Trustgard Insurance Company’s (“Trustgard”), motion to intervene but denying its motion to vacate the default judgment under Rule 60(b), SCRCF. Drico Fuller (“Fuller”), the owner of Trustgard’s insured-defendant, Full Logistics, Inc. (“Full Logistics”), testified under oath that he received service of

¹ For a full recitation of the facts, see Graham’s briefs on file with the Court.

the email stating where I sent everything to the insurance company. They dropped the ball. I gave them everything I had. When they served me, I sent it to them.” (Tr. p. 10). Counsel for Full Logistics did not object to Mr. Fuller testifying, ask to speak with him first, or request to ask questions while he was under oath. After Mr. Fuller’s testimony, Judge Miller continued the hearing. (Tr. p. 16).

On February 22, 2019, Trustgard filed a Motion to Intervene and Motion to Set Aside Default Judgment. (Mot. to Intervene). On April 15, 2019, Trustgard filed a memorandum in support of its motion to intervene and to set aside default judgment. Trustgard asked for intervention as of right and permissive intervention under Rules 24(a)-(b), SCRCF, arguing that, without intervention, “it will have *difficulty protecting its financial interest in this case.*” (Memo. pp. 9-14) (emphasis added). If it obtained intervention, Trustgard moved to set aside the default judgment under Rule 60(b), SCRCF, arguing improper service and surprise because Graham’s counsel did not notify Trustgard when he filed the lawsuit. (Memo. pp. 14-18).

On April 24, 2019, the Honorable Robin B. Stilwell held a hearing on Full Logistics’ motion to set aside default and Trustgard’s motion to intervene and to set aside default. (Tr. of Hearing). Full Logistics argued only that the evidence regarding service is conflicting but stated Mr. Fuller “wishes to stand on that testimony” from January 2019 that he received service. (Tr. pp. 27-28).

On August 9, 2019, Judge Stilwell filed an order granting Trustgard’s motion as to permissive intervention “for the sole purpose of posing its Motion to Set Aside Default Judgment.” (Order p. 5). Judge Stilwell then denied Trustgard and Full Logistics’ motions to set aside the default judgment. (Order pp. 5-9).

Four days after Judge Stilwell’s order and prior to filing its Notice of Appeal with this Court, Trustgard sought to protect its “financial interest in this case” by filing a declaratory judgment action in federal court against Graham, Johnnie Foster, and Full Logistics seeking to void

coverage under its Policy insuring Full Logistics. (Ex. 1 – DJ Complaint – *Trustgard Insurance Company v. Terence Graham, Johnnie William Foster, and Full Logistics, Inc.*, 6:19-cv-02269-TMC (ECF # 1 – Aug. 13, 2019). Trustgard alleges that it “has no duty to defend or indemnify Full Logistics . . . in the Underlying Lawsuit or to pay any judgment resulting from the Underlying Lawsuit.” *Id.* at p. 5, ¶ 28. On November 8, 2019, Full Logistics filed an Answer and Counterclaim. *Id.* (Ex. 2 – DJ Answer and Counterclaim). The Answer and Counterclaim allege that “Trustgard attempted to have its insured commit perjury and falsely state it was not served.” *Id.* at p. 6, ¶ 47. Full Logistics asserts counterclaims for insurance bad faith, negligence, and attorneys’ fees under S.C. Code Ann. § 38-59-10. *Id.*

On September 6, 2019, Trustgard filed a notice of appeal regarding the denial of its 60(b) motion. (Not.). On September 12, 2019, Graham filed a notice of cross-appeal related to the granting of Trustgard’s motion to intervene. (Not.). Full Logistics did **not** file a notice of appeal.

ARGUMENT

Trustgard’s appeal should be dismissed for two independent reasons. First, Trustgard is not an aggrieved party as required by Rule 201(b), SCACR. Even if Trustgard is an aggrieved party, Trustgard’s appeal should still be dismissed as moot because the Court cannot change the final judgment against Full Logistics that Full Logistics itself did not appeal.

I. TRUSTGARD IS NOT AN AGGRIEVED PARTY UNDER RULE 201(B), SCACR, BECAUSE THE ORDER DENYING THE MOTION TO SET ASIDE THE DEFAULT JUDGMENT DOES NOT OPERATE OR BEAR DIRECTLY ON ANY RIGHT OR INTEREST OF TRUSTGARD

Trustgard’s appeal must be dismissed as it is not an aggrieved party under the requirements of Rule 201(b), SCACR. Trustgard’s interest relates solely to insurance coverage³ which is the issue pending in the declaratory judgment action in federal court. Rule 201(b) requires that “[o]nly

³ Trustgard confirmed in its declaratory judgment complaint that its interest is related to insurance coverage. See Ex. 1, ¶ 31 (“Trustgard has a property interest in the \$1,000,000.00 limit of coverage afforded by the Policy.”).

a party aggrieved by an order, judgment, sentence or decision may appeal.” “A party is aggrieved by a judgment or decree when it *operates on* his or her rights of property *or bears directly on his or her interest.*” *Beaufort Realty Co., Inc. v. Beaufort Cnty.*, 346 S.C 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001). The lower court’s order denying Trustgard’s motion to set aside the default judgment against Full Logistics does not “operate[]” “or bear[] directly on” any right or interest of Trustgard. Potential insurance coverage is a matter between the insured and insurer and does not make Trustgard an aggrieved party. Trustgard’s interest in this action is not related to Full Logistics’ liability and Graham’s damages. Trustgard alleges an interest in coverage for the judgment over which Trustgard has sued its insured and Graham in federal court contending there is no coverage. This appeal does not relate to coverage. The federal court will determine to what extent, if any, Trustgard is liable for the judgment and whether it committed negligence and/or bad faith to its insured. “It, therefore, follows that it is our duty to reject an appeal that is prosecuted by a party who is not aggrieved in a legal sense by the judgment of the trial court.” *Cisson v. McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970).

The Supreme Court in *Ex parte Government Employees Ins. Co.*, 373 S.C. 132, 644 S.E.2d 699 (2007), held that an insurer with potential coverage does not have an interest in an underlying action. Without an interest in this action, Trustgard cannot be an aggrieved party. In *Ex Parte Gov’t Employee’s Ins. Co.*, GEICO wished to intervene in a family court action brought to obtain an order validating the common law marriage of Ronnie Cooper to a GEICO insured driver, Yolanda Goethe. *Id.* at 134, 644 S.E.2d at 700. Cooper was injured in an accident and sought to stack underinsured motorist coverage provided by Goethe’s GEICO policy on the grounds that he was a Class I insured as Goethe’s common law spouse. *Id.* After GEICO denied Cooper’s claim to stack coverage, Cooper filed the family court action seeking an order validating his common law marriage to Goethe. *Id.* The Supreme Court affirmed the denial of GEICO’s motion to intervene,

holding that GEICO “*has no real interest in whether Cooper and Goethe have a valid common law marriage.*” *Id.* at 138, 644 S.E.2d at 702 (emphasis added). Significantly, the Court went on to explain, “GEICO’s interest is in the *financial implications* of the family court’s decision, *which is peripheral to the subject matter before the court.*” *Id.* at 138-39, 644 S.E.2d at 702 (emphasis added).

If GEICO did not have an interest in whether there’s a valid common law action even though the amount of UIM coverage would be implicated, it follows that the judgment against Full Logistics does not “bear directly on [Trustgard’s alleged] interest.”⁴ As a result, Trustgard is not an aggrieved party entitled to appeal under Rule 201(b), SCACR.

Trustgard cannot credibly argue that it does have an interest in the judgment against Full Logistics to be an aggrieved party when it has taken the contrary position in the federal court action. In the declaratory judgment action filed in federal court, Trustgard alleges:

26. The Policy *does not provide liability coverage* to Full Logistics or Foster for the Underlying Lawsuit, or *the judgment resulting therefrom.*

27. Full Logistics and Foster breached the Policy’s Business Auto Conditions by failing to provide Trustgard with notice of the lawsuit, and therefore *the Policy does not afford coverage for Graham’s judgment against Full Logistics.*

28. Trustgard has *no duty to defend or indemnify Full Logistics* or Foster in the Underlying Lawsuit or *to pay any judgment* resulting from the Underlying Lawsuit.

⁴ This Court previously relied on *Ex Parte GEICO* in making the determination that a party was not “aggrieved” under Rule 201, SCACR and dismissing the appeal. *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 447, 665 S.E.2d 237, 243 (Ct. App. 2008) (“In light of *Ex Parte Government Employee’s Insurance Co.*, the Bank may not properly claim that the trial court’s apportionment of the escrowed funds affects its property rights or otherwise bears on its interest.”).

(Ex. 1 – DJ Complaint) (emphasis added).

In its briefing to the lower court and this Court, Trustgard has couched its efforts to intervene and set aside the judgment as “protect[ing] its insured.” However, Trustgard sued its insured in federal court contending it is not responsible for the judgment and there is no duty to defend or indemnify. Even if it is attempting to protect its insured, this Court clearly stated that one party cannot attempt to protect another party: “A party cannot appeal from a decision which does not affect his or her interest, *however erroneous and prejudicial it may be to some other person’s rights and interests.*” *Beaufort Realty Co.*, 346 S.C at 301, 551 S.E.2d at 589-90 (emphasis added). As Full Logistics did not appeal, Trustgard is not an aggrieved party that can appeal a judgment against Full Logistics on its behalf. The judgment is final against Full Logistics. Trustgard’s appeal should be dismissed on this ground alone.

II. TRUSTGARD’S APPEAL IS MOOT SINCE THE JUDGEMENT IS FINAL AGAINST FULL LOGISTICS AS IT DID NOT ALSO APPEAL

Even if the Court determines Trustgard is an aggrieved party, the appeal should still be dismissed as it is moot. There’s no relief available on the motion to set aside a default judgment because Full Logistics, the party against whom the lower court entered the judgment, did not file a notice of appeal and is not a party to this appeal. The default judgment is the final law of the case as to Full Logistics. *See Bone v. United States Food Serv.*, 399 S.C. 566, 576, 733 S.E.2d 200, 205 (2012) (“The law of the case doctrine applies where a party does not challenge an issue on appeal when there has been an opportunity to do so.”).

“A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.” *Seabrook v. Knox*, 369 S.C. 191, 197, 631 S.E.2d 907, 910 (2006). A judgment rendered by this Court will have no practical legal effect on the default judgment because it is still a final judgment as to Full Logistics. Its decision to not appeal renders

any grant of effectual relief impossible. As former Chief Judge Sanders stated in *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987), “Appellate courts recognize—or at least they should recognize—an overriding rule of civil procedure which says: *whatever doesn't make any difference, doesn't matter.*” Trustgard’s appeal does not make a difference as to the final judgment against Full Logistics and therefore “doesn’t matter.” *Id.* at 4, 362 S.E.2d at 28.

Full Logistics did not appeal the denial of its 60(b), SCRCP, motion and it is therefore the law of the case. No matter what happens in this appeal, the Court cannot relieve Full Logistics of the judgment against it and there is no judgment entered against Trustgard. “If there is no actual controversy, this Court will not decide moot or academic questions.” *Seabrook v. Knox*, 369 S.C. 191, 197, 631 S.E.2d 907, 910 (2006). Full Logistics has already waived any argument that it can be relieved from the judgment entered against it. Trustgard cannot assert Full Logistics’ rights on appeal. Trustgard’s appeal should be dismissed on this basis alone.

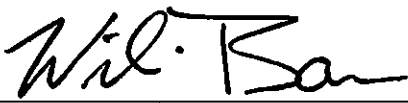
CONCLUSION

For either of the independent reasons set forth above Trustgard’s appeal should be dismissed.

Respectfully submitted,

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

April 27, 2020
Hampton, South Carolina

BY: 

William F. Barnes, III
101 Mulberry Street, East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Email: wbarnes@pmped.com

-And-

Brian T. Smith, Esquire
714 Pettigru Street
Greenville, SC 29601
Phone: (864) 239-2007
Email: bsmith@btsmithlaw.com
Attorneys for Respondent-Appellant

Other Counsel of Record:

Dorothy Holley Hogg, Esquire
Fulcher Hagler, LLP
Post Office Box 1477
Augusta, GA 30903-147
Attorney for Defendant, Full Logistics, Inc.

Michael R. Burchstead, Esquire
Collins & Lacy, PC
Post Office Box 12487
Columbia, SC 29211

Shelley S. Montague, Esquire
Janice Holmes, Esquire
Gallivan, White & Boyd, P.A.
1201 Main Street, Suite 1200
Columbia, SC 29201
Attorneys for Appellant-Respondent

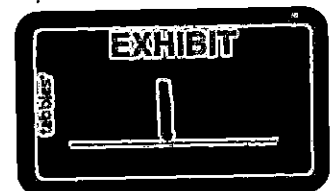
UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Trustgard Insurance Company,)	Civil Action No.:
)	
Plaintiff,)	
vs.)	COMPLAINT
)	(DECLARATORY JUDGMENT)
Terence Graham, Johnnie William Foster,)	
and Full Logistics, Inc.,)	
)	
Defendants.)	

Plaintiff Trustgard Insurance Company (“Trustgard”) alleges and would respectfully show the Court the following:

PARTIES AND JURISDICTION

1. Trustgard is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the State of Ohio.
2. Defendant Terence Graham (“Graham”) is a citizen and resident of Rockingham County, North Carolina.
3. Defendant Johnnie William Foster (“Foster”) is a citizen and resident of Rockingham County, North Carolina.
4. Defendant Full Logistics, Inc. (“Full Logistics”) is a corporation formed under the laws of the State of South Carolina and at all times pertinent hereto had its principle place of business in Greenville County, South Carolina.
5. There is complete diversity of citizenship between Plaintiff and Defendants.
6. This action seeks a declaration of the Court with respect to the obligation of



Trustgard to provide liability insurance coverage for a bodily injury lawsuit filed in the Greenville County, South Carolina, Court of Common Pleas.

7. The amount in controversy exceeds \$75,000.

8. This Court has jurisdiction of the parties and the subject matter herein set forth, and venue is proper in the County of Greenville, State of South Carolina.

FACTUAL ALLEGATIONS

9. On January 23, 2017, Graham filed a personal injury lawsuit against Foster and Full Logistics in the Greenville County, South Carolina, Court of Common Pleas, *Terence Graham vs. Johnnie William Foster and Full Logistics, Inc.*, civil action number 2017-CP-23-00311 (“Underlying Lawsuit”). A copy of the complaint in the Underlying Lawsuit is attached hereto as Exhibit A.

10. The Underlying Lawsuit alleges that on January 29, 2014, Graham was a “passenger” in a 2000 Volvo truck owned by Full Logistics and operated by Foster, an employee of Full Logistics, when the truck jackknifed, causing Graham bodily injury.

11. In January 2017 the Underlying Lawsuit was purportedly served on Full Logistics, and separately served on Foster.

12. Full Logistics did not respond to the complaint and an Order of Default was entered against it on May 18, 2018.

13. Foster, through counsel, filed an Answer in the Underlying Lawsuit. On October 12, 2018, Graham dismissed his claims against Foster without prejudice.

14. Graham obtained an Order of Damages by Way of Default against Full Logistics in

the Underlying Lawsuit in the amount of \$2,843,349.73 on July 24, 2018. A copy of that order is attached hereto as Exhibit B.

15. Trustgard was not provided with notice of the Underlying Lawsuit until October 16, 2018, and was not provided with an opportunity to defend Full Logistics, or Foster, in the Underlying Lawsuit, until after the judgment by default was entered.

16. The 2000 Volvo truck Foster was allegedly operating at the time of the January 29, 2014, accident was identified, subject to all terms, conditions, limitations, definitions and exclusions contained in the applicable Policy, all of which remain in full force and effect and none of which have been waived, as Unit 10 on Policy No: XA 2010782-01. Policy No: XA 2010782-01 was issued with an effective period of January 18, 2014 to January 18, 2015 ("Policy"). A certified copy of the Policy is attached hereto as Exhibit C.

17. The Policy contains the following pertinent exclusion:

4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

- a. An "employee" of the "insured" arising out of and in the course of:
 - (1) Employment by the "insured"; or
 - (2) Performing the duties related to the conduct of the "insured's" business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

18. The Policy contains the following pertinent exclusion:

5. Fellow Employee

"Bodily injury" to any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of "your" business.

19. The **Business Auto Conditions** in the policy include the following:

2. Duties In The Event Of Accident, Claim, Suit Or Loss

"We" have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

b. Additionally, "you" and any other involved "insured" must:

- (1) Assume no obligation, make no payment or incur no expense without "our" consent, except at the "insured's" own cost.
- (2) Immediately send "us" copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".
- (3) Cooperate with "us" in the investigation or settlement of the claim or defense against the "suit".

20. Graham, described in the Underlying Lawsuit as a "passenger" in the 2000 Volvo truck, was in fact an employee of Full Logistics and, like Foster, was in the course and scope of his employment with Full Logistics at the time of the accident.

21. Trustgard was not provided notice of the underlying lawsuit or the Judgment obtained by Graham against Full Logistics until October 16, 2018.

22. The first Notice of the underlying lawsuit and Judgment was provided to Trustgard by way of a letter mailed by Graham's attorney, dated October 11, 2018, demanding that Trustgard pay \$1,000,000, which Graham alleges are the applicable Policy limits, to Graham in satisfaction of the judgment Graham had already obtained against Full Logistics.

FOR A FIRST CAUSE OF ACTION

23. Trustgard restates and incorporates by reference the allegations contained in Paragraphs 1 through 22 as if fully sets forth herein verbatim.

24. This claim is made pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, in that there is a real and justiciable controversy between the parties as to whether the Policy Trustgard issued to Full Logistics provides liability coverage for the Underlying Lawsuit, and Trustgard asks this Court to inquire into and declare the rights and obligations of the parties hereto with respect to that issue.

25. Graham was an employee of Full Logistics, was engaged in that employment at the time of the underlying motor vehicle accident, and the policy excludes coverage, pursuant to Exclusions 4 and 5, set forth previously herein.

26. The Policy does not provide liability coverage to Full Logistics or Foster for the Underlying Lawsuit, or the judgment resulting therefrom.

27. Full Logistics and Foster breached the Policy's Business Auto Conditions by failing to provide Trustgard with notice of the lawsuit, and therefore the Policy does not afford coverage for Graham's judgment against Full Logistics.

28. Trustgard has no duty to defend or indemnify Full Logistics or Foster in the Underlying Lawsuit or to pay any judgment resulting from the Underlying Lawsuit.

FOR A SECOND CAUSE OF ACTION

29. Trustgard restates and incorporates by reference the allegations contained in Paragraphs 1-28 as if fully set forth here verbatim.

30. The Due Process Clause of the Fifth and Fourteenth Amendments states that neither the federal government nor any state shall deprive any person of life, liberty, or property without due process of law.”

31. Trustgard has a property interest in the \$1,000,000.00 limit of coverage afforded by the Policy.

32. To the extent that the laws of the State of South Carolina would require Trustgard to pay \$1,000,000.00 in liability coverage to Graham, without having had the opportunity to defend the Underlying Lawsuit against Graham, such requirement would be a violation of substantive and/or procedural due process rights afforded to Trustgard by the United States Constitution.

FOR A THIRD CAUSE OF ACTION

33. Trustgard restates and incorporates by reference the allegations contained in Paragraphs 1-31 as if fully set forth here verbatim.

34. If Trustgard is liable to Graham for the judgment in the Underlying Lawsuit, that liability is limited to \$25,000.00, the minimum liability limits required S.C. Code Section 38-77-140.

35. Alternatively, if Trustgard is liable to Graham for the judgment in the Underlying Lawsuit, that liability is limited to \$750,000.00 the required limit of liability in S.C. Regs. 38-414.

WHEREFORE, Trustgard asks the Court to inquire into this matter and declare that the Policy does not provide liability coverage for the motor vehicle accident at issue, that Trustgard has no duty to defend or indemnify Full Logistics or Foster with respect to any claims arising out of the accident, and that if Trustgard is liable for the judgment, which is denied, that said liability is limited to \$25,000.00, or, in the alternative, \$750,000.00, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

COLLINS & LACY, PC

By: s/ Peter H. Dworjanyn
Peter H. Dworjanyn, Esquire
Fed ID: 6289
pdworjanyn@collinsandlacy.com
1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
Columbia, SC 29211
803.256.2660 (voice)
803.771.4484 (fax)

ATTORNEYS FOR TRUSTGARD
INSURANCE COMPANY

Columbia, South Carolina
August 13, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Terence Graham,)
)
 Plaintiff,)
)
 vs.)
)
 Johnnie William Foster and Full Logistics)
 Inc.,)
)
 Defendants.)
)
 _____)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-23-_____

COMPLAINT
RECEIVED

(Jury Trial Demanded)
 APR 30 2020

SC Court of Appeals

The Plaintiff, complaining of the Defendants herein, would respectfully show unto this Honorable Court that:

PARTIES

1. Plaintiff, was, at all times pertinent to this action, a citizen and resident of Rockingham County, North Carolina.
2. That Defendant, Johnnie William Foster, [*hereinafter* "Defendant Foster"], was, at all times pertinent to his action, a citizen and resident of Rockingham County, North Carolina.
3. That Defendant, Full Logistics, Inc. [*hereinafter* "Defendant Full Logistics"], was, at all times pertinent hereto, a domestic corporation registered to do business in the state of South Carolina, with a principal place of business located in Greenville County, South Carolina.
4. That Defendant, Full Logistics, Inc., currently operates a business in Greenville County, South Carolina.
5. That, upon information and belief, Defendant Full Logistics is an active carrier operating under USDOT Number 2366421.
6. Plaintiff was a passenger in the 2000 Volvo Truck involved in the collision.

ELECTRONICALLY FILED - 2017 Jan 23 5:37 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2300311

7. Defendant Full Logistics owned the 2000 Volvo Truck involved in this collision.

8. That at all times pertinent to this action, upon information and belief, Defendant Foster was employed and acting in the scope of his employment with Defendant Full Logistics.

JURISDICTION

9. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

10. Defendant Full Logistics, upon information and belief, has its principal place of business in the County of Greenville, State of South Carolina.

11. The collision giving rise to this Complaint happened in Dorchester County, South Carolina.

12. This Court has jurisdiction of the parties and the subject matter herein set forth, and venue is proper in the County of Dorchester, State of South Carolina.

FACTUAL ALLEGATIONS

13. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

14. That on or about January 29, 2014, at approximately 5:40 p.m., Plaintiff was a passenger in Defendant Full Logistics' motor vehicle traveling north on Interstate 95.

15. That at the above time and place, Defendant Foster was driving the above vehicle owned by Defendant Full Logistic.

16. That, upon information and belief, Defendant Foster had Defendant Full Logistics' authorization and permission to drive the vehicle described above under an entrustment, or through the respective bailor/bailee, lessor/lessee, employee/employer, master/servant, and/or principal/agent relationship(s), including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, and/or relationships.

17. Defendant Foster was an employee of and worked for Defendant Full Logistic and regularly used Defendant Full Logistics' motor vehicle in furtherance of Defendant Full Logistics' business.

18. On the above date, the weather was wintry and stormy, upon information and belief, causing accumulation of wintry material on the highway.

19. Defendant Foster, driving too fast for conditions, lost control of Defendant Full Logistics' motor vehicle, causing it to jack knife in the roadway and collide with a guard rail.

20. At the above time and place, due to the collision described above, Plaintiff was thrown about Defendant Full Logistics' motor vehicle causing him great physical harm and injury.

21. That as a result of Defendant Foster's actions described above, Plaintiff has incurred medical expenses and will require continuous medical treatment, as his injuries are of a permanent nature.

22. Plaintiff, due to his injuries, has been and remains unable to work.

23. By reason of the Defendants' acts as set forth above, and the callous disregard shown for the rights and safety of the Plaintiff, Plaintiff is entitled to an award of actual, consequential, and punitive damages in an appropriate amount and for the costs of this action.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT FOSTER

(Negligence, Gross Negligence, Recklessness, Willfulness, and Wantonness)

24. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

25. That Defendant Foster owed Plaintiff a duty to operate Defendant Full Logistics' motor vehicle in a safe and reasonable manner.

26. Defendant Foster, individual, jointly, and in combination, at the time and place above-mentioned, breached his duty to the Plaintiff and was negligent, grossly negligent, wanton,

willful, careless, and showed callous disregard for the rights and safety of the Plaintiff in one or more of the following particulars:

- a. In failing to operate Defendant Full Logistics' motor vehicle safely;
- b. In failing to pay attention to traffic conditions, then and there prevailing;
- c. In failing to keep a proper lookout;
- d. In failing to pay attention and keep Defendant Full Logistics' motor vehicle under proper control;
- e. In failing to properly or timely apply his brakes;
- f. In driving Defendant Full Logistics' motor vehicle carelessly, heedlessly, and in willful and wanton disregard of the rights and safety of others;
- g. In failing to take reasonable steps to avoid colliding with the guard rail;
- h. In failing to operate Defendant Full Logistics' motor vehicle with due care or caution that a reasonably prudent person would have used in the same or similar circumstances;
- i. In failing to pay attention to his driving while operating Defendant Full Logistics' motor vehicle; and
- j. In all other ways being negligent.

27. That at the above time and place, Defendant Foster's negligence proximately caused the injuries to Plaintiff, in that without limitation:

- a. Defendant Foster failed to operate Defendant Full Logistics' motor vehicle safely;
- b. Defendant Foster failed to drive at an appropriate speed for traffic conditions then and there prevailing;
- c. Defendant Foster failed to pay attention to traffic conditions then and there prevailing;

- d. Defendant Foster failed to keep a proper lookout;
- e. Defendant Foster failed to pay attention and keep Defendant Full Logistics' motor vehicle under proper control;
- f. Defendant Foster failed to properly or timely apply his brakes;
- g. Defendant Foster drove Defendant Full Logistics' motor vehicle carelessly, heedlessly, and in willful and wanton disregard of the rights and safety of others;
- h. Defendant Foster failed to take reasonable steps to avoid colliding with the guard rail and injuring the Plaintiff;
- i. Defendant Foster failed to operate Defendant Full Logistics' motor vehicle with due care or caution that a reasonably prudent person would have used in same or similar circumstances;
- j. Defendant Foster failed to pay attention to his driving while operating Defendant Full Logistics' motor vehicle; and
- k. In all other ways being negligent.

28. Due to Defendant Foster's actions, as outlined above, Plaintiff is entitled to an award of actual, consequential, and punitive damages in an appropriate amount and for the costs of this action.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT FOSTER

(negligence *per se*)

29. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

30. S.C. Code § 56-5-1520(A) prohibits a driver from driving in a manner and speed greater than is reasonable and prudent under the conditions then and there prevailing.

31. The statute is a safety statute, designed for the protection of the community,

including the Plaintiff.

32. Defendant Foster violated the above statute in driving too quickly for conditions, as outlined above, and colliding with a guardrail.

33. Defendant Foster's acts caused the type of harm the above statute was intended to prevent.

34. Plaintiff was a member of the class of people the statute was designed to protect.

35. Defendant Foster's violation of the above statute resulted in the collision giving rise to this complaint and as such, Defendant Foster was per se negligent.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT FULL LOGISTICS

(negligent hiring, negligent supervision, negligent training)

36. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

37. That Defendant Full Logistics owned the vehicle driven by Defendant Foster on the date and time described above.

38. That Defendant Full Logistics expressly gave Defendant Foster authorization and permission to drive Defendant Full Logistics' motor vehicle.

39. That Defendant Full Logistics both apparently and/or impliedly gave Defendant Foster authorization and permission to drive Defendant Full Logistics' motor vehicle.

40. That Defendant Full Logistics employed Defendant Foster at all times pertinent to this action.

41. That, at the said time and place, upon information and belief, Defendant Foster was driving Defendant Full Logistics' motor vehicle in furtherance of Defendant Full Logistics' business.

42. That Defendant Full Logistics, under the doctrine of *respondeat superior*, was the direct and proximate cause of the collision between Defendant Full Logistics' motor vehicle and Plaintiff

in the following ways:

- a. In failing to properly train Defendant Foster in the use of Defendant Full Logistics' motor vehicle;
- b. In failing to properly supervise Defendant Foster in the use of Defendant Full Logistics' motor vehicle;
- c. In failing to properly conduct a background check on Defendant Foster;
- d. In failing to properly issue employee training manuals to Defendant Foster;
- e. In failing to initiate in-office training upon hiring Defendant Foster;
- f. In failing to check the driving abilities and skill of Defendant Foster upon hiring him other than checking if he had a proper driver's license; and
- g. In all other ways being negligent.

43. Defendant Full Logistics should be liable to the Plaintiff for the torts of negligent hiring, negligent training, negligent supervision, and negligent entrustment.

44. Defendant Full Logistics caused the collision in question by negligently, carelessly, recklessly, willfully, and wantonly granting Defendant Foster authorization and permission to drive Defendant Full Logistics' motor vehicle.

**FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT FULL LOGISTICS
(Negligent entrustment, vicarious liability, respondeat superior, bailor/bailee, lessor/lessee,
employer/employee, master/servant, principal/agent, including ostensible or apparent
agency, contractual relationships, corporate relationships, family and/or other
relationships)**

45. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

46. That Defendant Full Logistics owned, furnished and maintained the motor vehicle driven by Defendant Foster.

47. That at all times pertinent hereto, Defendant Foster was acting within the scope and course of his employment and was operating Defendant Full Logistics' vehicle in furtherance of Defendant Full Logistics' business.

48. That the negligence and recklessness of Defendant Foster is imputed to Defendant Full Logistics, and Defendant Full Logistics is vicariously liable for the negligent, reckless, willful, wanton, and heedless acts and omissions of Defendant Foster, as set forth above, committed in the course of and within the scope of their respective bailor/bailee, lessor/lessee, employer/employee, master/servant, and/or principal/agent relations(s), including any ostensible or apparent agency relationships, family relationships, contractual relationships, corporate relationships, and/or other relationships.

49. That the personal injuries suffered by the Plaintiff were due to, caused by, and the direct and proximate result of the negligence, carelessness, recklessness, willfulness, wantonness, and/or heedlessness of Defendant Full Logistics, jointly and severally and/or by virtue of their respective bailor/bailee, lessor/lessee, employee/employer, master/servant, and/or principal/agent relationship(s), including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, family, and/or other relationships, in one, more, or all of the following particulars, to wit:

- a. Said Defendant failed to exercise ordinary or even slight care in the maintenance and control of its vehicle;
- b. Said Defendant failed to properly maintain the brakes on its vehicle;
- c. Said Defendant negligently and recklessly entrusted its motor vehicle to the operation and control of an incompetent, inexperienced, and/or reckless driver,

namely, Defendant Foster, whom it knew or should have known to be an incompetent, inexperienced, and/or reckless driver;

- d. Said Defendant failed to properly supervise and control the use of its vehicle;
- e. Said Defendant negligently and recklessly failed to properly instruct and train Defendant Foster, a known inexperienced, incompetent, and/or reckless driver with whom it entrusted its vehicle, on proper driving techniques, as well as safety procedures, prior to allowing Defendant Foster to operate said vehicle;
- f. Said Defendant negligently and recklessly failed to properly supervise Defendant Foster, an inexperienced incompetent, and/or reckless driver, while Defendant Foster operated its vehicle;
- g. Said Defendant negligently and recklessly failed to exercise ordinary or even slight care in the supervision, entrustment, care, custody, and/or control of its vehicle;
- h. Said Defendant failed to use the degree of care and caution that a reasonably prudent person would have used under the circumstances then and there prevailing;
and
- i. In all other ways being negligent.

50. That, since Defendant Foster was operating the at-fault motor vehicle in the collision in question, upon information and belief, with Defendant Full Logistics' permission and within the course and scope of his employment with Defendant Full Logistics, Defendant Full Logistics should be liable through the family purpose doctrine, through an entrustment, or through the respective bailor/bailee, lessor/lessee, employee/employer, master/servant, and/or principal/agent relationship, including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, family and/or other relationships.

51. That as a proximate result of the negligent, careless, gross negligent, reckless, willful and wanton actions of Defendant Full Logistics, Plaintiff suffered personal injury, anxiety, pain and suffering, the expense of medical treatment, and other losses, for which the Plaintiff is informed and believes he is entitled to a judgment against the Defendants for a reasonable amount to include punitive damages.

52. That Defendant Full Logistics provided Defendant Foster with the authority to operate the motor vehicle, and pursuant to the above-referenced stated theories of liability, is jointly and severally liable.

53. At the above time and place, upon information and belief, Defendant Full Logistics was negligent, careless, grossly negligent, reckless, willful, wanton, and showed callous disregard for the rights and safety of the Plaintiff in granting authorization and permission to Defendant Foster to operate Defendant Full Logistics' motor vehicle and said negligence proximately caused injuries to Plaintiff in that, without limitation:

- a. Defendant Full Logistics failed to properly train Defendant Foster in the use of Defendant Full Logistics' motor vehicle;
- b. Defendant Full Logistics failed to properly supervise Defendant Foster's use of Defendant Full Logistics' motor vehicle;
- c. Defendant Full Logistics failed to properly conduct a background check on Defendant Foster;
- d. Defendant Full Logistics failed to properly issue employee training manuals to Defendant Foster;
- e. Defendant Full Logistics failed to initial in-office training upon hiring Defendant Foster;

- f. Defendant Full Logistics failed to evaluate and observe Defendant Foster's driving abilities and skill upon hiring other than checking if he had a proper driver's license; and
- g. In all other ways being negligent.

54. That as a result of the negligent, careless, gross negligent, reckless, willful, and wanton actions of Defendants, Plaintiff suffered personal injury, believed to be of a permanent nature, anxiety, pain and suffering, the expense of medical treatment, the expense of future medical treatment, lost wages, and lost earning capacity, for which the Plaintiff is informed and believes he is entitled to a judgment against Defendants, jointly and severally.

By reason of Defendants' acts as set forth above, and the callous disregard shown for the rights and safety of the Plaintiff, the Plaintiff is entitled to an award of actual, consequential, and punitive damages in an appropriate amount and for the costs of this action.

WHEREFORE, Plaintiff prays for a judgment against the Defendants as follows:

- (a) A monetary sum for actual and punitive damages and personal injuries incurred or to be incurred in an amount to be determined by a jury;
- (b) That the costs of this action be taxed against the Defendants;
- (c) That Plaintiff should be due any interest on any compensatory judgment from the date of the institution of this caption;
- (d) For such other, further, and different relief as the Court deems proper;

(e) That this matter should be tried by jury.

s/ Brian T. Smith

Brian T. Smith (S.C. Bar ID No. 070232)
714 Pettigru Street
Greenville, S.C. 29601
Dial: 864-239-2007
Fax: 864-239-2039
Attorney for the Plaintiff

s/ C. Dan Pruitt

C. Dan Pruitt (S.C. Bar ID No. 066497)
300 Pettigru Street
Greenville, S.C. 29601
Dial: 864-232-4673
Fax: 864-232-7781
Attorney for the Plaintiff

Dated: January 23, 2017
Greenville, South Carolina

ELECTRONICALLY FILED - 2017 Jan 23 5:37 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2300311

EXHIBIT B

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
))
Terence Graham,)
))
Plaintiff,)
))
vs.)
))
Johnnie William Foster and)
Full Logistics, Inc.,)
))
Defendants,)
_____)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2017-CP-23-00311

**ORDER OF DAMAGES
BY WAY OF DEFAULT**

This matter was before the Court on June 26, 2018 at 11:30 AM., for a hearing to determine damages in the above referenced case, as to the Defendant Full Logistics, Inc., who is in default. Defendant Full Logistics Inc. was served the Summons and Complaint by way of process server on April 28, 2017. The Defendant was served with notice of this hearing on June 21, 2018 by way of regular U.S. mail. Defendant Full Logistics, Inc. did not appear at the hearing.

FACTS

The Plaintiff presented the following facts. On January 29, 2014, Mr. Graham was a passenger in a 2000 Volvo truck, owned by the Defendant, Full Logistics, Inc. Both the driver and passenger were employees of Full Logistics at the time of the collision. The driver of truck, Johnnie William Foster, was traveling too fast for condition, lost control of the truck, struck a guardrail and jack-knifed. Mr. Graham was violently tossed around in the cab causing him serious injury. He sought medical treatment for injuries to his head, neck, chest, back, shoulder, hip, and knee. Mr. Graham was diagnosed with a traumatic brain injury. The Defendant's negligence was the cause of Mr. Grahams' injuries. Plaintiff's medical expenses total \$57,536.85.

ELECTRONICALLY FILED - 2018 Jul 24 11:02 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2300311

Dr. White has provided a cost projection for the future medical expenses of \$456,912.88. Plaintiff experienced physical pain and mental suffering.

FINDINGS OF FACT

After careful consideration and study of all the evidence, the following findings of fact are accordingly made:

1. Plaintiff experienced serious injury to his head, right arm, face, right elbow, right leg, and right ankle, as well as physical pain and mental suffering as a result of the motor vehicle collision of January 29, 2014.
2. Plaintiff's medical expenditures exceeded \$57,536.85 to date with a projection of future medicals in the amount of \$456,912,88.
3. Plaintiff provided credible testimony concerning his injuries during and after the accident of January 29, 2014.
4. Plaintiff has permanent injury and deficit and ongoing physical pain, mental suffering and loss of enjoyment of life.
5. Defendant, Full Logistics, Inc. is liable for the damages suffered by the Plaintiff as a result of the motor vehicle collision on January 29, 2014.
6. The greater weight of the evidence supports the Plaintiff's allegations regarding the Defendant's negligence.

LAW

An award of actual damages is appropriate when the Plaintiff suffers injuries that have been proximately caused by Defendant's negligence. *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000). I find that Plaintiff presented evidence that warrants recovery of both compensatory and punitive damages.

A. Actual Damages

The Plaintiff presented evidence establishing by the greater weight of evidence that his injuries were proximately caused by the Defendant's negligent acts. These damages include monetary injuries, pain and suffering, mental anguish, loss of enjoyment of life, and losses actually sustained. See *Bedenbaugh v. Southern Railroad Co.*, 69 S.C., 1, 6-7, 48 S.E. 53, 54 (1904). Defining the purpose of compensatory damages as returning the injured party to the place he or she occupied prior to the collision. The Plaintiff has presented evidence of his injuries, both physical and emotional, as well as medical bills, lost wages, prescription costs and mileage. In consideration of the testimony from the Plaintiff, and his medical bills as presented to this Court, I am awarding the Plaintiff with \$1,843,349.73 in compensatory damages.

B. Punitive Damages

Punitive damages are appropriate in this case as the Plaintiff has established by clear and convincing evidence that the Defendant engaged in reckless, wanton, willful, or malicious conduct. South Carolina law allows the awarding of punitive damages in order to punish the Defendant for reckless, wanton, willful or malicious conduct. *S.C. Farm Bureau Mut. Ins. Co. v Love Chevrolet, Inc.*, 295 S.C. 49, 51, 367 S.E.2d 57, 58. In evaluating the decision to award punitive damages, this Court looks at the Defendant's degree of culpability, the duration of the conduct, the Defendant's awareness or concealment, the existence of similar past conduct, the likelihood the award will deter the Defendant or others from like conduct, whether the award is reasonably related to harm likely to result from such conduct, the defendant's ability to pay, and other factors deemed appropriate. *Mitchell, Jr. v Fortis Ins. Co.*, 686 S.E.2d 176, 184-85 SC (2009) citing *Gamble v. Stevenson*, 306 S.C. 104, 111-12, 406 S.E.2d 350, 354 S.C. (1991).

The Plaintiff is awarded the sum of \$1,000,000.00 in punitive damages. This amount is not

excessive.

ORDER

Based on the presented evidence, I find judgment against Defendant Full Logistics, Inc in the amount of \$1,843,349.73 in actual damages and \$1,000,000.00 in punitive damages for a total award of Two Million Eight Hundred Forty-three Thousand Three Hundred Forty-Nine dollars and Seventy-three cents (\$2,843,349.73). This amount is fair and reasonable based on all of the evidence and award damages in this amount.

Defendant Full Logistics, Inc. did not appear prior to the conclusion of the hearing.

IT IS SO ORDERED.

The Honorable
Presiding Circuit Court Judge

Dated: _____
Greenville, South Carolina

ELECTRONICALLY FILED - 2018 JUL 24 11:02 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2300311

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-23-06122

Terence Graham

Full Logistics, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Brian T. Smith

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)
Terence Graham	Full Logistics, Inc.	\$2,843,349.73
		\$
		\$

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

[Empty rectangular box]

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 _____ Judge Code _____ Date 7/18/18

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ 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.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.
3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Greenville Common Pleas

Case Caption: Terence Graham vs. Johnnie William Foster , defendant, et al
Case Number: 2017CP2300311
Type: Order/Damages

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2018-07-23 15:41:44 page 10 of 10

EXHIBIT C

PARTLOW INSURANCE AGENCY INC
 2333 N FREDERICK PIKE
 PO BOX 2900
 WINCHESTER, VA 22604

Trustgard Insurance Company
 P.O. BOX 1218
 Columbus, Ohio 43216-1218

DBR

██████████-8387
 Agent No. ██████████09-12
 mpartlow@partlowinsurance.com
 www.partlowinsurance.com

To report a new claim, call
 1-800-445-3030 or your agent

Named Insured and Address

Policy Type: **Commercial AutoAccel**

Reason Issued: *Renewal*
 Policy Number: ██████████82-01
 Issue Date: 12/14/13

FULL LOGISTICS INC
 213 WESTFIELD ST
 GREENVILLE SC 29601

From: 01/18/14 To: 01/18/15 12:01 a.m. standard time at the address of the named insured as shown above. These declarations together with the application, common policy conditions, forms and endorsements, if any, complete the above numbered policy. In return for the payment of the premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in this policy.

Commercial Auto Coverage Part/Business Auto Coverage Form Declarations
 Named Insured's Legal Entity is: **CORPORATION**

Item 2 - Schedule of Coverages and Covered Autos

This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those "autos" shown as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the COVERED AUTOS Section of the Business Auto Coverage Form next to the name of the coverage.

Coverages	Covered Auto Symbols	Limit <i>The most we will pay for any one accident or loss.</i>	Premium
Liability Coverage Combined Single Limits	07	\$1,000,000 Per Accident	\$ 7,586.00
Medical Payments Uninsured Motorists Combined Single Limits	07	\$100,000 Per Accident	79.00
Underinsured Motorists Combined Single Limits	07	\$100,000 Per Accident	83.00
Physical Damage Insurance Comprehensive	07	Actual cash value or cost of repair, or the amount stated in the Declarations, whichever is less, minus deductible shown. See Item 3 for deductible for each covered auto. No deductible applies to loss caused by fire or lightning.	855.00
Collision Rental Reimbursement On-Hook Towing Acts of Terrorism Municipal Taxes Other State Specific Charge Fees Fees	07	See Item 3 for deductible for each covered auto. State/Federal Filing Financial Responsibility	1,320.00 9.00 0.00
Premium for Endorsements			

THIS IS NOT A BILL. Any outstanding balance due will be billed at a later date.

Your Estimated Total Policy Premium Is **\$ 9,932.00**
 Premium does not include service charges.

Item 3 - Schedule of Covered Autos You Own

Unit	State	Ter.	Zip Code	Year	Description	Vehicle Identification Number	Non-Truck Use	Class	Stated Amount	Change Date
010	SC	015	29601	00	VOLV TRACTOR	4V4ND4RJ3YN244080		400890	18500	01/18/14
011	SC	015	29601	03	TRLR REFRIGERATED	1UYV325303U129014		650980	18500	01/18/14

Item 3 - Schedule of Covered Autos You Own - Premiums

Unit	Liab.	PD Ded.	Med Pay	UM	UMP D	UIM	UIMPD	RENTAL
010	6057			79	Incl	83	Incl	
011	1529							

Item 3 - Schedule of Covered Autos You Own - Premiums

Unit	On-Hook Ded.	On-Hook Prem.	Comp Ded.	Comp Prem.	Coll. Ded.	Coll. Prem.	Spec Perils Ded.	Spec Perils Prem.	Other	Total Prem.
010			1000	681	2500	631				7531
011			1000	174	2500	689				2392

Item 7 - Driver Information

Driver	Name	Sex	Marital Status	Date of Birth	Status
01	WILLIAM ROGERS	Male	Married	██████/57	
02	HARRY MOBELY	Male	Married	██████/63	

*EXC=Excluded **FR=Financial Responsibility

Named Insured: *FULL LOGISTICS INC*
Policy No. ██████████782 *Commercial AutoAccel*

Policy Forms Inventory

Endorsement

CA 50	(05/07)	Asbestos, Silica, Mixed Dust Excl
CA 75	(03/12)	Policy Changes - Who Is An Insured
IL 00 21	(07/02)	Nuclear Energy Liability Exclusion
XA 01	(08/06)	Commercial Auto Coverage Form
XA 25	(05/07)	South Carolina Amendment of Policy Provisions
XA 26	(05/11)	Common Policy Conditions-South Carolina
CA 21 19	(03/06)	South Carolina Uninsured Motorists Coverage
CA 21 88	(03/06)	South Carolina Underinsured Motorists Coverage
FORM F	(06/71)	Uniform Motor Carrier BI and PD Liab. Ins. Endorsement
MCS 90	(03/96)	Motor Carrier Safety Act

* Indicates Added Form

Trustgard Insurance Company
P.O. BOX 1218
Columbus, Ohio 43216-1218

Dear Policyholder:

Thank you for choosing Grange Insurance Companies for your commercial insurance needs. We understand that you have many insurance options available and we value and appreciate your insurance decision. Studies have shown a relation between a consumer's driving record, loss history, and financial history and his/her future insurance loss potential. In the interest of providing our customers with quality insurance products at a fair and equitable price, we use a variety of consumer reports to assist in the development of the appropriate insurance premium for each risk we insure. These consumer reports include Motor Vehicle and Insurance Score Reports. Based on the information obtained from your consumer reports, your premium has increased or the rate assigned to your policy - while it is the best rate available to you - is not the lowest possible rate.

You have the right to dispute the accuracy or completeness of any information provided in the Motor Vehicle consumer report(s) we obtained. You have the right to obtain a free copy of the Motor Vehicle Consumer report(s) we used from Explore within sixty (60) days. Explore did not make any decision regarding your rates; therefore, they are unable to answer any questions regarding your insurance rate.

To receive a free copy of your consumer report(s), please contact Explore at the number, address, or email below:

Explore Consumer Service
P.O. Box 281300
Lakewood, CO 80228
1-888-888-0236
www.exploredata.com

Monday - Friday 8:00 a.m. - 7:00 p.m. Central Time

How can you get more information?

For 90 days after we send this notice, you may obtain in writing the specific information supporting our reasons for the action we have taken, if the information is not stated above or protected from disclosure by law. You may also:

- Learn about and access recorded information about you;
- Request correction of the information and reconsideration of any underwriting decision based on incorrect information;
- File a statement setting forth what you think is the correct information, and why you disagree with any refusal to correct the information;
- Learn the identity of others to whom we may have disclosed this information in the previous 2 years.

To do so, send a written request to:

Grange Insurance Companies
Attn: Commercial Lines Business Unit
P.O. Box 1218
Columbus, Ohio 43216-1218

Please describe the kind of information you want to review. Please include the following information in your request:

- Your full name
- Address
- Policy number (if applicable)
- Date of birth
- Social security number
- Driver's license number

ENDORSEMENT FOR
MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY
UNDER SECTIONS 29 AND 30 OF THE MOTOR CARRIER ACT OF 1980

Form Approved
OMB No. 2125-0074

Issued to FULL LOGISTICS INC
of 213 WESTFIELD ST GREENVILLE SC
Dated at 671 S. High St, Columbus, Oh 43206 this 14 day of DECEMBER, 20 13
Amending Policy Number 782 Effective date 01/18/2014
Name of Insurance Company Trustgard Insurance Company
Telephone Number 2900 COUNTERSIGNED BY Raymond R. Mazzotta
(Authorized Company Representative)

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "X", for the limits shown:

- The insurance is primary and the company shall not be liable for amounts in excess of \$ 1,000,000 for each accident.
- The insurance is excess and the company shall not be liable for amounts in excess of \$ _____ for each accident
in excess of the underlying limit of \$ _____ for each accident.

Whenever required by the Federal Highway Administration (FHWA) or the Interstate Commerce Commission (ICC), the company agrees to furnish the FHWA or the ICC a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FHWA or the ICC, to verify that the policy is in force as of a particular date.

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the ICC's jurisdiction, by providing (30) days notice to the ICC (said 30 days notice to commence from the date the notice is received by the ICC at its office in Washington, D.C.).

DEFINITIONS AS USED IN THIS ENDORSEMENT

ACCIDENT includes continuous or repeated exposure to conditions which result in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

MOTOR VEHICLE means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

BODILY INJURY means injury to the body, sickness, or disease to any person, including death resulting from any of these.

ENVIRONMENTAL RESTORATION means restitution for the loss,

damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

PROPERTY DAMAGE means damage to or loss of use of tangible property.

PUBLIC LIABILITY means liability for bodily injury, property damage, and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Highway Administration (FHWA) and the Interstate Commerce Commission (ICC).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation

thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amount prescribed in this endorsement apply separately, to each accident, and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

The Motor Carrier Act of 1980 requires limits of financial responsibility according to the type of carriage and commodity transported by the motor carrier. It is the MOTOR CARRIER'S obligation to obtain the required limits of financial responsibility. THE SCHEDULE OF LIMITS SHOWN ON THE REVERSE SIDE DOES NOT PROVIDE COVERAGE. The limits shown in the schedule are for information purposes only.

**SCHEDULE OF LIMITS
Public Liability**

Type of Carriage	Commodity Transported	Minimum Insurance
(1) For-hire (In interstate or foreign commerce).	Property (nonhazardous).	\$ 750,000
(2) For-hire and Private (In interstate, foreign, or intrastate commerce).	Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Divisions 1.1, 1.2 and 1.3 materials; any quantity of Division 2.3 Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	5,000,000
(3) For-hire and Private (In interstate or foreign commerce: in any quantity) or (In intrastate commerce: in bulk only).	Oil listed in 49 CFR 172.101; hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	1,000,000
(4) For-hire and Private (In interstate or foreign commerce).	Any quantity of Division 1.1, 1.2 or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	5,000,000

Note: The type of carriage listed under numbers (1), (2), and (3) applies to vehicles with a gross vehicle weight rating of 10,000 pounds or more. The type of carriage listed under number (4) applies to all vehicles with a gross vehicle weight rating of less than 10,000 pounds.

**SCHEDULE OF LIMITS
Public Liability**

For-hire motor carriers of passengers operating in interstate or foreign commerce

Vehicle Seating Capacity	Minimum Insurance
(1) Any vehicle with a seating capacity of 16 passengers or more.	\$ 5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less.	1,500,000

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Trustgard Insurance Company)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 6:19-cv-02269-TMC
)	(Jury Trial Demanded)
Terence Graham, Johnnie William Foster,)	
and Full Logistics, Inc.)	
)	
Defendants.)	

**DEFENDANT FULL LOGISTICS, INC.'S ANSWER AND
COUNTERCLAIM TO PLAINTIFF'S COMPLAINT**

Defendant, Full Logistics, Inc. ("Defendant"), by and through its undersigned attorneys, hereby answers the allegations of the Plaintiff's Complaint. This Defendant is further answering on behalf of Johnnie William Foster as the real party in interest, as follows:

FOR A FIRST DEFENSE

1. Upon information and belief, the allegations contained in paragraph 1 of Plaintiff's Complaint are admitted.
2. Defendant is without information and knowledge sufficient to form a belief as to the allegations contained in paragraph 2 of Plaintiff's Complaint and therefore denies the same.
3. The allegations contained in paragraph 3 of Plaintiff's Complaint are admitted.
4. The allegations contained in paragraph 4 of Plaintiff's Complaint are admitted.
5. The allegations contained in paragraph 5 of Plaintiff's Complaint are admitted.
6. The allegations contained in paragraph 6 of Plaintiff's Complaint are denied.
7. The allegations contained in paragraph 7 of Plaintiff's Complaint are admitted.



8. Responding to the allegations contained in paragraph 8 of Plaintiff's Complaint, Defendant admits that venue is proper in the Greenville Division. All other remaining allegations in paragraph 7 of Plaintiff's Complaint are denied.

9. The allegations contained in paragraph 9 of Plaintiff's Complaint are admitted.

10. The Defendant admits that the allegations of the Underlying Lawsuit pled alternative theories that Foster was an independent contractor; accordingly the allegations contained in paragraph 10 of Plaintiff's Complaint are denied.

11. The allegations contained in paragraph 11 of Plaintiff's Complaint are admitted as Drico Fuller testified he was served with the Underlying Lawsuit.

12. The allegations contained in paragraph 12 of Plaintiff's Complaint are admitted.

13. The allegations contained in paragraph 13 of Plaintiff's Complaint are admitted.

14. The allegations contained in paragraph 14 of Plaintiff's Complaint are admitted.

15. The allegations contained in paragraph 15 of Plaintiff's Complaint are denied.

16. The allegations contained in paragraph 16 of Plaintiff's Complaint are denied.

17. The allegations contained in paragraph 17 of Plaintiff's Complaint are denied.

18. The allegations contained in paragraph 18 of Plaintiff's Complaint are denied.

19. The allegations contained in paragraph 19 of Plaintiff's Complaint are denied.

20. The allegations contained in paragraph 20 of Plaintiff's Complaint are denied.

21. The allegations contained in paragraph 21 of Plaintiff's Complaint are denied.

22. The allegations contained in paragraph 22 that Graham demanded payment of the minimum policy limits in exchange for satisfaction of the judgment are admitted; the remaining allegations are denied.

23. The allegations contained in paragraph 23 of Plaintiff's Complaint do not require a response. To the extent a response is required, Defendant incorporates Paragraphs 1 – 22 above as if set forth fully herein and other allegations are denied.

24. The allegations contained in paragraph 24 of Plaintiff's Complaint are denied.

25. The allegations contained in paragraph 25 of Plaintiff's Complaint are denied.

26. The allegations contained in paragraph 26 of Plaintiff's Complaint are denied.

27. The allegations contained in paragraph 27 of Plaintiff's Complaint are denied.

28. The allegations contained in paragraph 28 of Plaintiff's Complaint are denied.

29. The allegations contained in paragraph 29 of Plaintiff's Complaint do not require a response. To the extent a response is required, Defendant incorporates Paragraphs 1 - 28 above as if set forth fully herein and other allegations are denied.

30. The allegations contained in paragraph 30 of Plaintiff's Complaint are admitted.

31. The allegations contained in paragraph 31 of Plaintiff's Complaint are denied.

32. The allegations contained in paragraph 32 of Plaintiff's Complaint are denied.

33. The allegations contained in paragraph 33 of Plaintiff's Complaint do not require a response. To the extent a response is required, Defendant incorporates Paragraphs 1 - 32 above as if set forth fully herein and other allegations are denied.

34. The allegations contained in paragraph 34 of Plaintiff's Complaint are denied.

35. The allegations contained in paragraph 35 of Plaintiff's Complaint are denied.

FOR A FIRST AFFIRMATIVE DEFENSE
(Laches)

36. Trustgard's claims are barred and coverage exists because of the doctrine of laches.

FOR A SECOND AFFIRMATIVE DEFENSE
(Waiver/Estoppel/Unclean Hands)

37. Trustgard's claims are barred and coverage exists because of the doctrines of waiver and/or estoppel and unclean hands.

FOR A THIRD AFFIRMATIVE DEFENSE
(Res Judicata/Collateral Estoppel)

38. Trustgard's claims are barred and coverage exists because of the doctrines of res judicata and/or collateral estoppel.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Judicial Estoppel)

39. Trustgard's claims are barred and coverage exists because of the doctrine of judicial estoppel and the fact that it has taken a position in another judicial proceeding contrary to the position it takes here.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Reservation of Rights)

40. Trustgard's claims are barred because it failed to issue a reservation of rights letter to its insured.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Insurance Bad Faith)

41. This action arises from Trustgard's insistence on placing its own interests above the interests of its insured, Full Logistics, Inc., in the defense of a lawsuit arising from *Terence Graham v. Johnnie Williams and Full Logistics, Inc.*, civil action number 2017-CP-23-00311 ("Underlying Lawsuit") that resulted in a judgment in the amount of \$2,843,349.73, which was \$1,843,349.73 in excess of the available liability coverage and the mandatory minimum limits required under the applicable law.

42. Under South Carolina law, liability insurance is required before one can operate a commercial motor vehicle and the coverage may not be defeated or voided after a loss by the insured's failure to forward the insurer the pleadings in an action brought against the insured by a third party. Because South Carolina is a mandatory insurance state, public policy prohibits an insurer from voiding or denying payment of mandatory minimum coverage regardless of prejudice from the insured's failure to give the insurer notice of the suit papers.

43. The mandatory minimum coverage applicable to the operation of Full Logistics, Inc.'s commercial motor vehicle was one million dollars. Accordingly, Trustgard could not void the coverage in this case nor could it deny Graham's demand to settle the judgment against its insured for the minimum applicable coverage.

44. Further, Trustgard issued with its policy of insurance an MCS-90 endorsement, which was in effect a suretyship by Trustgard requiring it to assume liability for the judgment up to \$1,000,000.00 irrespectively of the policy coverage.

45. At the time of the collision, which is the subject of the Underlying Lawsuit, Graham was asleep. Moreover, at the time of the collision, Graham was not an employee of Full Logistics, Inc. and was not in any way engaged in the course of any employment with Full Logistics, Inc.

46. On or about October 11, 2018, Graham's counsel demanded Trustgard pay the \$1,000,000.00 in coverage under its policy of insurance issued to Full Logistics, Inc., or under the MCS-90 endorsement, in exchange for a full satisfaction of the judgment. Such a settlement would have protected its insured. This offer was again made on February 4, 2019, and extended for a limited time. However, Trustgard rejected the offer both times, unreasonably putting its own financial interests ahead of its insured's interest when accepting the offer was the only reasonable thing to do. It was particularly unreasonable for Trustgard to reject these demands in light of the

fact that it knew it could not deny payment of the minimum statutory limits applicable to this motor carrier nor could it refuse to pay \$1,000,000.00 under its MCS-90 endorsement.

47. Instead, Trustgard attempted to have its insured commit perjury and falsely state it was not served. Thereafter, Trustgard accused Full Logistics, Inc. and its principal of collusion and insurance fraud.

48. Further, in its attempt to protect its financial interest, Trustgard moved to intervene in the Underlying Lawsuit, arguing that if “not allowed to intervene, it will have difficulty protecting its financial interest in this case.” In the hearing on the motion to intervene, Trustgard told the court that “the limits on the policy are one million dollars...And considering it’s a commercial policy, we don’t have \$25, \$50,000 limits.” Trustgard then went on to explain to the court:

We got a one million dollar insurance policy. A 2.8 million judgment based on a default hearing. **The insurance, unlike commercial general liability policy where failing to give the insurance company notice of the lawsuit may be a policy defense. There’s a problem in South Carolina in that regard in that insurance companies often have to pay default judgments because insurance policy is required by the legislature. So, it is not the same.**

That excepts this case from a lot of cases where an insurance company may not have a right to intervene. Because here, the insurance company may be bound by the judgment that - - of which it had no knowledge and which it couldn’t defend its insure[d] (sic).

* * *

So, if we’re not allowed to - - if this will substantially impair our ability to protect our interest because we’re - - if Full Logistics can’t defend its lawsuit, **they’re just going to sue Trustgard and say we want the one million dollars that you owe us. And then, they’re going to say we want the entire judgment because you didn’t pay us the one million dollars when we demanded it** after never telling you about this lawsuit. (emphasis added) From Transcript of Record before the Honorable Robin B. Stilwell, April 24, 2019.

Ultimately, at the hearing, Trustgard conceded that it was “the one that’s going to have to pay the judgment” if the default judgment was not set aside.

49. Based on Trustgard’s arguments, the court in the Underlying Lawsuit granted the motion to intervene, but ultimately denied the motion to set aside the default judgment.

50. Since that time, Trustgard has forsaken its insured and refused to pay its coverages or have the judgment satisfied causing irreparable harm to its insured.

51. For these reasons and those set forth in further detail below, Trustgard unreasonably failed to accept the offers to settle within its coverage limits, breached its duty to defend, was negligent in the handling of the claim against its insured, and willfully and recklessly disregarded its insured’s rights.

52. Trustgard is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the State of Ohio and writes insurance policies insuring motorists in the state of South Carolina. Further, Trustgard has subjected itself to the jurisdiction of this Court pursuant to S. C. Code Ann. § 36-2-803 because it committed tortious acts, in whole or in part, in this State and it insured a risk located in South Carolina.

53. Full Logistics, Inc. (“Full Logistics”) was at all times relevant hereto a South Carolina corporation, with its principal place of business in South Carolina and is the judgment debtor in the Underlying Lawsuit in the amount of \$2,843,349.73.

54. At all relevant times herein, Trustgard acted by and through its agents, servants, and/or employees who were acting within the scope and course of said agency, service, and/or employment thereby making Trustgard liable for the acts or omissions of its agents, servants, and employees under the theory of *respondeat superior*. Further, Trustgard adopted and ratified all acts or omissions of its agents, servants, and/or employees so as to be responsible for the same.

55. The vehicle owned by Full Logistics at the time of the wreck was insured by Trustgard under policy number XA 2010782-01 ("the Policy") that provides a combined single liability limit for the wreck of \$1,000,000, with an MCS-90 endorsement also of \$1,000,000.00. At all relevant times, this policy was in full force and effect.

56. Full Logistics is the named insured of the Policy and was the entity issued the MCS-90 endorsement, the terms of which are incorporated herein by reference.

57. The issuance of this insurance policy and the MCS-90 endorsement by Trustgard to Full Logistics created mutually binding contracts of insurance or surety and gave rise to a contractual relationship between them.

58. Full Logistics notified Trustgard of the wreck in accordance with the requirements of the insurance policy.

59. At no point in time did Trustgard communicate with anyone on behalf of Full Logistics regarding the offers to settle in the Underlying Lawsuit.

60. At no relevant time did Trustgard lack sufficient information to reasonably evaluate Graham's claims or to reach any reasonable conclusion other than that the claims warranted payment of the policy limits to protect its insureds. Further, there was no condition or restriction on Trustgard that prevented them from accepting or meeting the demand. Nonetheless, Trustgard refused to accept the demand. Moreover, Trustgard never informed its insureds of the time demand or its unilateral decision to reject the demand.

61. As a result of Trustgard's contracts with Full Logistics, Trustgard owed and still owes a duty of good faith and fair dealing and a duty to negotiate or compromise and settle the claims against its insureds "if that was [is] the reasonable thing to do" and not to place its financial interests ahead of those of its insured. Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C.

286, 170 S.E. 346 (1933). Trustgard owed its insured a duty to place the insured's interests ahead of its own and accept the offers to settle, especially in light of the fact that it had no defense to paying the one million dollar demand either under the policy or pursuant to the MCS-90 endorsement, and there was an unreasonable risk that the judgment would not be set aside based on the fact that the insured was actually served. Moreover, Trustgard owed its insured a duty to negotiate Graham's claims above its liability limits having mishandled the claims and unilaterally rejecting the offers to settle within the limits of coverage. Full Logistics reposed special trust and confidence in Trustgard and reasonably relied upon Trustgard to protect it from claims in excess of the applicable coverage limits, but Trustgard, nonetheless, put its financial interests ahead of those of its insured.

62. In so doing, Trustgard subjected its insured to an excess judgment well beyond the policy limits of its coverage. As a direct and proximate result of Trustgard's unreasonable conduct and bad faith, the insured has sustained substantial damages in an amount to be established at trial, including but not limited to, the excess verdict/judgment plus interest that continues to accrue, attorney's fees, increased liability insurance premiums, reputational harm, loss of current and future business, and such other damages as the Court may deem just and proper. Moreover, Full Logistics, Inc. is entitled to an award of punitive damages.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Negligence, Gross Negligence, Recklessness, Willful and Wanton Conduct)

63. Full Logistics, Inc. incorporates by reference, as if fully set forth here, the facts and allegations set forth in the preceding paragraphs.

64. Trustgard, through its mutually binding contract of insurance, owed Full Logistics, Inc. a duty of good faith and fair dealing, a duty to investigate, a duty to defend and a duty to settle the claims against it. Trustgard further owed a duty not to unreasonably place its

financial interest ahead of its insured's. Moreover, Trustgard undertook these duties by handling the claim against Full Logistics, Inc. in the Underlying Lawsuit.

65. Trustgard was negligent, grossly negligent, reckless, willful and wanton, and breached its duty of good faith and fair dealing in the following particulars:

- a) In breaching its duty of good faith and fair dealing;
- b) In failing to properly investigate and adjust the claims against its insured;
- c) In negligently investigating Graham's claims;
- d) In failing to follow industry standards or its policies and procedures regarding the investigation and handling of claims;
- e) In failing or refusing to communicate important information to its insured;
- f) In concluding that Graham was an employee of Full Logistics, Inc. when there were no documents verifying that, or in concluding that at the time of the collision, he was acting within the course and scope of any employment;
- g) In rejecting, failing and refusing to settle Graham's claim for the policy limits prior to the expiration of the time-sensitive demand when it was the reasonable thing to do given what Trustgard knew or should have known about the potential value of the claims;
- h) In failing to timely appear and defend Full Logistics in the Underlying Lawsuit and in causing Full Logistics to be exposed to judgment in excess of the policy limits;
- i) In failing and refusing to negotiate Graham's claim above its policy limits after it failed to settle within the coverage;
- j) In rejecting Graham's demands;
- k) In exercising its contractual right to defend in such a manner as to harm its insureds without regard to their welfare;
- l) In misrepresenting facts relating to the claims;
- m) In unreasonably putting Trustgard's financial interests ahead of the interests of its insureds;
- n) In wrongfully and intentionally harming its insured;

- o) In defaming its insured and its principal;
- p) In refusing to be responsible for paying any judgment that Graham obtains against Full Logistics;
- q) In such other and further particulars as the evidence at trial may show.

66. As a direct and proximate result of Trustgard's conduct, Full Logistics has suffered actual damages including but not limited to the excess verdict/judgment plus interest that continues to accrue, unnecessary litigation expenses, attorneys' fees, costs and other consequential damages as well as emotional distress, worry, anxiety, upset and loss of current and future business. Moreover, upon information and belief, Full Logistics is entitled to punitive damages.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM
(S. C. Code Ann. § 38-59-10 et seq.)

67. Full Logistics, Inc. incorporates by reference, as if fully set forth here, the facts and allegations set forth in the preceding paragraphs.

68. The actions of Trustgard referenced above amounted to a breach of S.C. Code Ann. § 38-59-10 et seq. which entitles Full Logistics, Inc. to recover costs and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Full Logistics prays that the Plaintiff's declaratory judgment action be dismissed with prejudice and the judgment against Trustgard for the excess judgment plus interest, other actual damages, for such punitive damages as a jury may reasonably award, for the costs of this action, and for such other and further relief as this Court may deem just and proper.

SIGNATURE BLOCK ON FOLLOWING PAGE

GOODING AND GOODING, P.A.

By: /s/ Mark B. Tinsley
Mark B. Tinsley, Esquire, Fed. Id #: 7160
P.O. Box 1000
Allendale, SC 29810
(803) 584-7676
mark@goodingandgooding.com

Attorneys for Full Logistics, Inc.

November 8, 2019

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

APR 30 2020

The Honorable Robin B. Stilwell, Circuit Court Judge

SC Court of Appeals

Appellate Case No.: 2019-001506
Trial Court Case No.: 2017CP2300311

Ex Parte: Trustgard Insurance Company, Appellant-Respondent,

In Re:

Terrence Graham, Plaintiff,

-v-

Full Logistics, Inc., Defendant,

Of whom, Terrence Graham, is Respondent-Appellant.

PROOF OF SERVICE

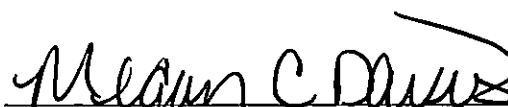
This is to certify that I, Megan C. Davis, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Respondent-Appellant, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within *Respondent-Appellant's Motion to Dismiss Appellant-Respondent's Appeal as Unappealable* to:

Michael R. Burchstead, Esquire
Collins & Lacy, PC
Post Office Box 12487
Columbia, SC 29211

Dorothy Holley Hogg, Esquire
Fulcher Hagler, LLP
Post Office Box 1477
Augusta, GA 30903-147

Shelley S. Montague, Esquire
Janice Holmes, Esquire
Gallivan, White & Boyd, P.A.
1201 Main Street, Suite 1200
Columbia, SC 29201

April 27, 2020
Hampton, South Carolina


Megan C. Davis

PMPED

PETERS | MURDAUGH | PARKER | ELTZROTH | DETRICK

RECEIVED

APR 30 2020

SC Court of Appeals

April 27, 2020

William F. Barnes, III
Direct Dial: (803) 914-6702
Email: wbarnes@pmped.com
Paralegal: mdavis@pmped.com

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629

*Re: Ex. Parte: Trustgard Insurance Company
Appellate Case No.: 2019-001506*

Dear Ms. Kitchings:

Please find enclosed a copy of Respondent-Appellant's Motion to Dismiss Appellant-Respondent's Appeal as Unappealable in the above-referenced case along with our check in the amount of \$50.00 for the filing fee. The motion is being uploaded for filing to prevent any delay during the COVID-19 pandemic.

If you have any questions, please let us know.

With kind regards, I am

Sincerely,


William F. Barnes, III

WFB/mcd
Enclosures as stated

cc: Michael Reid Burchstead, Esquire
Brian T. Smith, Esquire
Dorothy H. Hogg, Esquire
Shelley Montague, Esquire
Janice Holmes, Esquire



US POSTAGE
FIRST CLASS MAIL
ZNY 29924 \$ 003.00
02 49
000330774 APR 27 2020

First Class Mail

PMPED

PETERS | MURDAUGH | PARKER | ELTZROTH | DETRICK
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924

RECEIVED

APR 30 2020
SC Court of Appeals

TO:

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629