

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

Latarsha Docena-Guerrero,)
)
Plaintiff,)
)
vs.)
)
Rafael Docena-Guerrero,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2018-CP-08-01079

RECEIVED
JUN 29 2020
SC Court of Appeals

**ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION.**

This matter came before the Court upon the motion of the Plaintiff's Motion for Reconsideration of the denial of her Motion to Quash the Notice of Appearance by GEICO Insurance Company as the underinsured motorist carrier in this matter.

After reviewing the briefs from counsel, the Court still finds that good cause exists to set aside any default (though none has been entered by the Court) or late appearance by the UIM carrier pursuant to SCRCP Rule 55(c) and that the UIM carrier has the right to appear and defend this claim pursuant to S.C. Code of Laws §38-77-160 and the South Carolina Rules of Civil Procedure.

The Court disagrees with the position of Plaintiff's counsel that the UIM carrier has a thirty (30) day of Statute of Limitations to answer any lawsuit served upon it. The issue of whether or not the UIM carrier has the right to appear and defend this matter under the circumstances is to be handled under the South Carolina Rules of Civil Procedure to determine the just determination of the action. The South Carolina Rules of Civil Procedure apply to every action in the South Carolina Court of Common Pleas.

The very first rule of the South Carolina Rules of Civil Procedure state that the laws of South Carolina are to be construed to secure the **JUST** determination of every action. SCRCP Rule 1. The United States Constitution and the South Carolina Constitution prohibit takings without Due Process of Law. S.C. Code of Laws §38-77-160 was enacted for the very purpose of ensuring that the UIM carrier have the right to contest its liability for underinsured motorist's benefits. *Williams vs. Selective Insurance Company*, 315 S.C. 532, 446 S.E. 2d 402 (1994). The statute specifically states that the UIM carrier has the right to appear and defend the claim against it.

The Court recognizes that the obligation of good faith in a first party setting is a two-way street. The court in the seminal case of *Nichols vs. State Farm Mutual Insurance Company*, 279 S.C. 336, 306 S.E. 2d 616 (1983) set forth this principle when it stated that the obligation of good faith is an obligation that **NEITHER PARTY** will do anything to impair the other's rights to received benefits under the contract. The court would caution the parties against attempting a collusive arrangement that would deprive and party or entity involved in the action from a fair trial.

Courts should strive so as to promote the ends of justice and dispose of cases on their merits. *In re Estate of Weeks*, 329 S.C. 251, 495 S.E. 2d 454 (S.C. App. 1997). In order to fulfill this purpose to promote the ends of justice and have cases decided on the merits, the Plaintiff's Motion for Reconsideration must be properly denied. It is therefore

ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion for Reconsideration is denied.

_____, 2020
Moncks Corner, SC

Honorable Roger C. Young
Presiding Judge
Ninth Judicial Circuit



Berkeley Common Pleas

Case Caption: Latarsha Docena-Guerrero VS Rafael Docena-Guerrero
Case Number: 2018CP0801079
Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134