THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court Of Common Pleas

The Honorable Robin B. Stilwell, Judicial Circuit Court Judge
Trial Court Case No.: 2017-CP-23-00311

Appellate Case No. 2019-001506

Ex Parte: Trustgard Insurance Company .....Appellant-Respondent,

In Re:

Terence Graham,..... Plaintiff,

v.

Full Logistics, Inc., ...Defendant,

Of Whom Terence Graham is the .....Respondent-Appellant.

FINAL RESPONSE BRIEF OF APPELLANT-RESPONDENT TRUSTGARD INSURANCE COMPANY

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INTRODUCTION

The Circuit Court's grant of Trustgard Insurance Company's ("Trustgard") motion to intervene should be affirmed because Respondent-Appellant Terrence Graham ("Graham") has failed to demonstrate that the Circuit Court abused its discretion in granting the motion and has failed to establish any basis upon which the Circuit Court's determination should be reversed.

This case arises from a lawsuit that was filed in the Court of Common Pleas for Greenville, South Carolina captioned, *Terence Graham v. Johnnie William Foster, Full Logistics, Inc.*, Case No. 2017-CP-23-00311 ("Graham Lawsuit"). Trustgard filed a Motion to Intervene in the Graham Lawsuit for the purpose of moving to set aside a default judgment that had been entered against Defendant Full Logistics, Inc. ("Full Logistics"), Trustgard's insured.

The Graham Lawsuit involves claims by Graham against Defendants Johnnie William Foster ("Foster") and Full Logistics arising out of a trucking accident that occurred on January 29, 2014. At the time of the accident, Foster and Graham were traveling north on Interstate 95 in Dorchester County, South Carolina. The Complaint, which was filed on January 23, 2017, includes causes of action for 1) Negligence, 2) Gross Negligence, Recklessness, Willfulness, and Wantonness and 3) Negligence *per se* against Foster and causes of action for 1) Negligent Hiring, Negligent Supervision, Negligent Training and Negligent Entrustment and 2) 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 against Full Logistics.

Trustgard issued a commercial automobile policy number XA 2010782-01 ("the Policy") to Full Logistics for the January 18, 2014 to January 18, 2015 policy period. The Policy insures Full Logistics for certain risks under the Policy's Liability Coverage and excludes certain risks through exclusions to the Policy. In addition, the Policy includes certain duties that Full Logistics was required to fulfill in the event of an accident, claim, suit, or loss, including a duty to immediately send to Trustgard copies of any summons or legal papers it received concerning a claim or suit, among other things. Full Logistics did not provide Trustgard with the Summons and Complaint filed in the Graham Lawsuit as required under the Policy.

Because Full Logistics did not comply with the Policy conditions, Trustgard was not afforded the opportunity to retain counsel on Full Logistics' behalf to defend against the claims in the Graham Lawsuit. Therefore, a default and default judgement was entered against Full Logistics. Thereafter, the Circuit Court held a damages hearing and entered judgment in favor of Graham in the amount of $2,843,349.73. Trustgard finally received notice of the Graham Lawsuit and the damages awarded to Graham after Graham submitted a demand to Trustgard for payment of the judgment under the Policy. Ultimately, Trustgard filed a Motion to Intervene and to Set Aside the Default Judgment, which the Circuit Court granted in part and allowed it to intervene (R., p. 108, "Motion to Intervene") in the Graham Lawsuit for the purpose of seeking to set aside the default judgment.

The Circuit Court properly granted Trustgard's Motion to Intervene determining that Trustgard met the requirements for permissive intervention. Further, Trustgard demonstrated that it was also entitled to intervene in the Graham Lawsuit as a matter of

right. Accordingly, the decision to allow intervention should be affirmed.

STATEMENT OF THE CASE

On January 23, 2017, Graham filed a Summons and Complaint against Foster and Full Logistics seeking damages arising out of a trucking accident that occurred on January 29, 2014 while Graham and Foster were traveling north on Interstate 95 in Dorchester County, South Carolina. Foster filed an Answer to the Complaint on March 15, 2017. On April 27, 2017, Graham filed an Affidavit Seeking Order to Allow Service by Publication requesting that the Court issue an order authorizing service of the Summons and Complaint by publication because Full Logistics' agent and owner, Drico Fuller ("Fuller") would not provide an address for service. Per the Affidavit, contact was made with Fuller but he "indicated that he had moved and would not disclose his address," and the Affidavit also included an Affidavit of Non-Service from Karen C. Garrett ("Garrett"). On May 1, 2017, the Circuit Court issued an Order for Service by Publication stating that "service of the Summons and Complaint in this action upon Defendant Full Logistics, Inc. be made by publication thereof for three consecutive weeks in the Greenville News" and by forwarding a copy of the pleadings to Full Logistics' last known address.

On April 30, 2018, Graham filed another Affidavit of Service showing that Fuller was served via his estranged wife, Bridget Lovone Hunter-Fuller on April 28, 2017 at 8:57 PM and stating that the service was by leaving "a mail package on the front porch in the recipient name of Drico Fuller." Also, on April 30, 2018, Graham filed an Affidavit of Service showing that Foster was personally served with the Summons and Complaint in Reidsville, North Carolina. In addition, on April 30, 2018, over a year after Foster Answered the Complaint, Graham filed an Affidavit of Default stating that Foster was

served on January 30, 3017 and Full Logistics was served on April 28, 2017 and stated that "said Defendant is now in default" and included the Affidavit of Service on Foster and Full Logistics as exhibits to the Affidavit of Default. On May 10, 2018, the Circuit Court denied the request to enter default against Foster and Full Logistics because Foster filed an Answer to the Complaint on March 15, 2017. By Order dated May 15, 2018, the Circuit Court granted the request for entry of default as to Full Logistics and stated that because Graham was seeking unliquidated damages, a hearing would be set to determine the amount of the judgment against Full Logistics.

On June 26, 2018, Graham filed a Certificate of Service showing that counsel provided notice of the Damages Hearing set for June 26, 2018 to Fuller on June 21, 2018. The Damages Hearing was held on June 26, 2018, and the Court awarded the requested damages to include $1,843,349.00 in actual damages and $1,000,000 in punitive damages. On July 24, 2018, the Circuit Court entered an Order of Damages By Way of Default and also noted that Full Logistics did not appear prior to the conclusion of the hearing. On August 21, 2018, the Circuit Court denied Graham's petition to the Court for a re-hearing to allow additional time for the Defendants to respond. On October 16, 2018, Graham filed a Stipulation of Dismissal as to Foster stating that Foster was being voluntarily dismissed without prejudice pursuant to a Tolling Agreement.

On November 29, 2018, after Trustgard finally received notice of the Graham Lawsuit and the damages award via a settlement demand from Graham, Full Logistics, through counsel retained by Trustgard, filed a Motion to Vacate and/or Set Aside Judgment for Default Damages. On December 27, 2018, Graham's counsel filed a letter regarding its attempts to execute against Full Logistics' property and begin supplemental

proceedings to satisfy the judgment. On January 4, 2019, Full Logistics filed its Memorandum of Law in Support of Motion to Vacate and/or Set Aside Judgment for Default Damages. On January 7, 2019, Graham filed a Motion to Strike seeking to strike the affidavits filed in support of Full Logistics' motion. A hearing was held on Full Logistics' motion on January 8, 2019, and thereafter on January 30, 2019, Graham's counsel filed a Consent Motion to be Relieved as Counsel and Full Logistics' counsel filed a Motion to be Relieved as Counsel. The Circuit Court granted Graham's counsel's motion by Order dated January 31, 2019. After Graham's counsel noted their consent to Full Logistics' counsel's motion, the Circuit Court granted that motion by Order dated March 5, 2019.

On February 22, 2019, Trustgard filed its Motion to Intervene and filed its Memorandum in Support of Motion to Intervene on April 15, 2019 (R., p. 116, "Supporting Memo"). Graham filed his Memorandum in Opposition to Full Logistics, Inc.'s Motion to Vacate and/or Set Aside Judgment for Default Damages as well as its Memorandum in Opposition to Trustgard's Motion to Intervene (R., p. 175, "Opposition Memo") on April 23, 2019. On June 28, 2019, Trustgard filed its Supplemental Memorandum in Support of Motion to Intervene and to Set Aside the Default Judgment (R., p. 298, "Supplemental Memo").

A hearing was held on Trustgard's Motion to Intervene on April 24, 2019. Before the Circuit Court issued a ruling on the Motion to Intervene, Trustgard filed a Motion to Stay a Formal Ruling Pending Discovery.[1] After considering the parties' arguments and

[1] In this motion, Trustgard pointed out the inconsistencies in Fuller's testimony when compared with the affidavits of service that had been filed by Graham and the fact

evidence presented during the hearing and in briefing, the Circuit Court granted Trustgard's Motion to Intervene[2] allowing it to intervene for the sole purpose of posing Trustgard's Motion to Set Aside Default Judgment. On September 10, 2019, Graham filed a Notice of Cross-Appeal.

Fuller never provided any evidence supporting the circumstances regarding the alleged service of process.

[2] The Circuit Court ultimately denied Trustgard's Motion to Set Aside Default Judgment. The Circuit Court's denial of that portion of Trustgard's Motion is also currently on appeal.

STATEMENT OF FACTS

A. Accident and Service of Process

On January 29, 2014, Graham and Foster were involved in an accident while Foster was driving a truck owned by Full Logics and while Graham was a passenger. (R., p. 008, Order of Damages By Way of Default ("Default Order"), p. 1) Both Graham and Foster were employees of Full Logistics. (R., p. 008, Default Order, p. 1) Foster was allegedly traveling too fast for conditions, lost control of the truck, struck a guardrail, and jack-knifed. (R., p. 008, Default Order, p. 1) Graham sustained injuries and sought medical treatment for injuries to his head, neck, chest, back, shoulder, hip, and knee. (R., p. 008, Default Order, p. 1) Graham was allegedly diagnosed with a traumatic brain injury and incurred medical expenses in the amount of $57,536.85. (R., p. 008, Default Order, p. 1)

Shortly after the accident, Graham retained attorneys Brian T. Smith, Esq. ("Smith") and C. Dan Pruitt, Esq. ("Pruitt") to represent him in connection with the injuries he allegedly sustained as a result of the accident. (R., p. 332, Transcript of Hearing of January 8, 2019 ("January Transcript"), p. 2) Smith sent a letter of representation to Grange. (R., p. 332, January Transcript, p. 2) In addition, counsel also sent a spoliation letter to Grange requesting that the tractor be made available for inspection, and the inspection occurred in March 2014. (R., p. 332, January Transcript, p. 2) Grange continued to communicate about the case for the next few years and continuously requested updates regarding the status of Graham's injuries and the status of the claim. (R., p. 332, January Transcript, pp. 2-4) By letter dated, June 15, 2016, Grange sent a letter to Smith stating:

> Our investigation concluded that there is no liability coverage under the Trustgard Insurance Company policy for this claim. Our investigation revealed that Terence Graham was an employee of Full Logistics Inc at the time of the loss. As an employee he would not be covered for his claims under Section II – Liability Coverage because of Exclusions #4. Employee Indemnification And Employer's Liability and 5#. Fellow Employee. Workman's compensation would be his only recourse for recovery due his injury during the course and scope of his employment with Full Logistics Inc.
>
> If you have evidence to the contrary, please forward it immediately to our attention for review.

(R., p. 175, Opposition Memo, Ex. 3) Graham's counsel did not respond to this letter providing any contrary evidence or any other response. (R., p. 332, January Transcript, pp. 3-4) In January 2017, Graham filed the Summons and Complaint in the Graham Lawsuit and did not provide any notice of the filing to Grange. (R., p. 332, January Transcript, p. 3)

Graham attempted to serve Full Logistics with the Summons and Complaint. Garrett completed an Affidavit of Non-Service (R., p. 053, "Garrett Affidavit") and stated that she attempted to leave copies of the Summons, Complaint, Plaintiff's First Interrogatories to Defendant, and First Set of Requests for Production of Documents to Defendant with Fuller as follows:

- January 28, 2017 at 213 Westfield Street in Greenville, South Carolina;
- March 23, 2017 at 31 Badger Street in Greenville, South Carolina; and
- March 24, 2017 at 11 Cog Hill Drive in Simpsonville, South Carolina.

In addition, the Affidavit also included a supplemental affidavit from Garrett in which she stated, among other things:

> I noticed that there was a mobile phone number listed (864) 243-7929. I called it and Mr. Fuller answered the phone. I asked him if he still lived at 11 Cog Hill Dr. he said that he did not. He told me that he had moved to

> North Carolina. I asked him where [in] NC but he refused to give me an answer. I explained that I was a process server and that I had some legal documents to be served on him as registered agent for Full Logistics, Inc. He told me that he no longer had this company because he wasn't making any money with it. I explained to Mr. Fuller that it didn't matter he still needed to be served this document, because the documents were in reference to when he did own Full [L]ogistics, Inc. He told me that he was told he didn't have to worry about this because the company had been dissolved. I assured him that he did need to be served. He then hung up on me.

(R., p. 053, Garrett Affidavit, p. 1)

On April 30, 2018, Graham filed an Affidavit of Service showing that Paul Silvaggio ("Silvaggio") served Fuller via his estranged wife, Bridget Lovone Hunter-Fuller ("Hunter-Fuller") on April 28, 2017 at 8:57 PM and stating that the service was by leaving "a mail package on the front porch in the recipient name of Drico Fuller." Twenty-two months after completing the alleged service on Hunter-fuller, Silvaggio stated in a supplemental affidavit that on April 27, 2017 he served Hunter-Fuller with a copy of the Summons and Complaint and asked whether she was married to Fuller, to which she responded in the affirmative. (R., p. 057, Affidavit of Paul Silvaggio "Silvaggio Affidavit," p. 2) Silvaggio also asked whether Fuller lived at the residence, and Hunter-Fuller stated that he did but was not at home at the time the Summons and Complaint was served. (R., p. 057, Silvaggio Affidavit, p. 2) He also asked Hunter-Fuller whether she was an authorized agent of Full Logistics and was told that she was when the company was operating, but it was now dissolved and no longer in business. (R., p. 057, Silvaggio Affidavit, p. 2) Per Full Logistics' Articles of Incorporation dated January 7, 2013, Fuller was appointment the registered agent of Full Logistics and Full Logistics' initial registered office was located at 213 Westfield Street in Greenville,

South Carolina. (R., p. 116, Supporting Memo, Ex. A) Full Logistics was dissolved on June 22, 2015. (R., p. 116, Supporting Memo., Ex. A) Silvaggio allegedly verified that the mail package was left on the home's front porch. (R., p. 057, Silvaggio Affidavit, p. 2)

B. Attempts to Obtain Cooperation from Fuller and Set Aside Default Judgment.

After Trustgard received its first notice of the Graham Lawsuit through a demand letter from Graham, Trustgard retained the law firm of Collins & Lacey, P.C. ("Collins & Lacey") to assist with assessing the claim. (R., p. 332, January Transcript, p. 6; R., p. 113, Affidavit of Michael R. Burchstead "Burchstead Affidavit," p. 1) Collins & Lacey, through its attorney, Michael R. Burchstead ("Burchstead"), made numerous attempts to contact Fuller to discuss his knowledge of the Graham Lawsuit and the service of process, which included calling various telephone numbers and sending an email that stated as follows:

> I am an attorney in Columbia, SC and my firm has been retained by Grange Insurance in connection with an accident that took place in January 2014 involving one of your trucks and a lawsuit arising out of that accident. I have been trying to reach you to discuss certain matters regarding this accident and lawsuit, but I am unsure if my contact information is correct. Can you please give me a call at (803) 807-7891 as soon as you are able?

(R., p. 113, Burchstead Affidavit, p. 2) After not receiving any response from Fuller, Collins & Lacey, through its investigator, M. Larry Nelson ("Nelson"), continued to work to contact Fuller, and on October 30, 2018, Nelson had two conversations with Fuller. (R., p. 113, Burchstead Affidavit, p. 2; R., p. 110, Affidavit of M. Larry Nelson ("Nelson Affidavit"), pp. 1-2) During the initial conversation between Nelson and Fuller, Fuller

said that Fuller's estranged wife, Bridget, was not served and that the suit papers were left on the porch. (R., p. 110, Nelson Affidavit, p. 2) In addition, Fuller stated that Bridget was not an officer, shareholder, and had nothing to do with Full Logistics and that he did not give her authorization to accept the Summons and Complaint. (R., p. 110, Nelson Affidavit, p. 2) Further, Fuller stated that he was represented by an attorney named "Michael Johnson" in North Carolina; however, Burchstead was unable to confirm whether such an attorney existed. (R., p. 113, Burchstead Affidavit, p. 2; R., p. 110, Nelson Affidavit, p. 2)

During the second conversation, Nelson attempted to have Fuller speak with Burchstead, and Fuller hung up the phone mid-conversation. (R., p. 113, Burchstead Affidavit, p. 2) Before he hung up, Fuller stated that he spoke with his attorney and was advised that the case from 4 years ago was over and that Fuller had nothing to do with the Graham Lawsuit. (R., p. 110, Nelson Affidavit, p. 2)

Burchstead received a telephone call from Fuller on November 28, 2018, and Fuller stated that he was receiving letters regarding the Graham Lawsuit and stated that he was personally served process, not his estranged wife. (R., p. 113, Burchstead Affidavit, p. 3) Fuller further stated that he was served on or in his truck but refused to provide any further detail regarding the alleged service, including the timing or circumstances of the alleged service of process. (R., p. 113, Burchstead Affidavit, p. 3) Fuller ultimately hung up the telephone rather than provide additional information. (R., p. 113, Burchstead Affidavit, p. 3)

The Circuit Court scheduled a hearing on Full Logistics' Motion to Vacate And/Or Set Aside Judgment for January 8, 2019. Counsel for Graham and Full Logistics

discussed the potential for discontinuing the hearing on the Motion. Counsel William Barnes stated:

> …Much of the surprise argument set forth in the memo relates to Grange, not Full Logistics or Mr. Fuller. Since you have not spoken with Mr. Fuller he may not be surprised.
>
> One component of continuing the hearing tomorrow, in addition to me fully reviewing everything, is to find out whether Mr. Fuller turned the summons and complaint over to Grange. Obviously, there are potential issues above the state and federally mandated minimum coverages if the summons and complaint were not turned over. I would like to either depose or get an affidavit from Mr. and Mrs. Fuller about whether the summons and complaint were turned over. If they were turned over Mr. Graham may be aggregable taking an assignment of a bad faith action against Grange to satisfy the judgment. If they were not turned over, Mr. Graham may be agreeable taking a satisfaction of judgment in exchange for the covenant – I DO NOT have authority for either position so this not a formal offer. It is clear from the memorandum and private investigator affidavit that Mr. Fuller is scared of the judgment and this would allow Mr. Fuller's fears to be eased. In our conversation you dismissed as not being possible although I think it would be beneficial for Mr. Fuller to explore or at least consider these options.

(R., p. 175, Opposition Memo., Ex. 11) Full Logistics' counsel disputed the accuracy of the summary of the conversation. (R., p. 175, Opposition Memo. Ex. 11)

The hearing on the motion went forward on January 8, 2019. Fuller appeared at the hearing, and despite the information contained in the affidavits of service filed with the Circuit Court in this case, Fuller testified as follows regarding service of the Summons and Complaint:

> I got served. I got 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. We kept communication going. Then they show up with a private investigator following my wife, trying to get to sign an affidavit stating that she got served. I got served, not my wife. He left the affidavit paper on the front porch.

(R., p. 332, January Transcript, p. 10) Fuller further testified that he was served at his place of business by a woman. (R., p. 332, January Transcript, p. 10) He also testified that while he did not recall when he was served with a "white packet" he recalled receiving the "white packet" before "a package" was left the package on the front porch. (R., p. 332, January Transcript, p. 12) He further recalled being served with the "white packet" about a year before the "package" was left on the front porch. (R., p. 332, January Transcript, pp. 12-13) Fuller provided copies of the documents that were included in the "white packet" for review at the hearing, and a copy of the Summons and Complaint was not included. (R., p. 332, January Transcript, p. 13) Fuller stated that the "package" that was left on the front porch was an affidavit stating that Hunter-Fuller was served with the Summons and Complaint.[3] (R., p. 332, January Transcript, p. 14)

Fuller also testified that he took a "package" into his house and "didn't even go through it" because it was his "understanding [his] insurance company handling everything." (R., p. 332, January Transcript, p. 15) He testified that he sent "everything" to Trustgard the first time he received the "white packet" a year before the Graham Lawsuit was even filed. (R., p. 332, January Transcript, pp. 14-15)

Following the hearing on January 8, 2019, Graham's counsel sent Full Logistics' counsel correspondence dated February 4, 2019 stating, among other things:

> It appears that Grange/Trustgard has three options to weigh. First, Grange/Trustgard may have to pay the full judgment amount plus interest at a later date as a result of a negligence/bad faith action which will no doubt be brought directly by Mr. Fuller or by Mr. Graham through an assignment from Mr. Fuller. Second, Grange/Trustgard can pay the

[3] The proposed affidavit of Hunter-Fuller was left by Keith Johnson of K Johnson Consulting, LLC. (R., p. 175, Opposition Memo., Exs. 8, 9)

> policy's coverage of $1,000,000.00 now based on the offer set forth below to protect Mr. Fuller from excess exposure. Lastly, Grange/Trustgard may possibly have to pay nothing at a later date. ***Regardless of who takes over representing Mr. Fuller and Full Logistics, they will have to state his position testified to on January 8, 2019 that he was served and turned everything over to his insurance company***….

(R., p. 175, Opposition Memo., Ex. 13) (emphasis added) By letter dated February 15, 2019, Trustgard's counsel responded to the settlement demand and made an offer to resolve the case. (R., p. 175, Opposition Memo., Ex. 14) In response, Graham's counsel sent a letter dated February 22, 2019, wherein counsel stated that the pending "Rule 60(b) motion must be withdrawn" and that any counsel who represents Full Logistics "***will still have to take Mr. Fuller's position that he was personally served and turned the lawsuit over to Trustgard***." (R., p. 175, Opposition Memo., Ex. 16) Trustgard's counsel responded by letter dated March 19, 2019 and stated that the threat to sue Trustgard for bad faith was further proof of Trustgard's substantial interest in working to set aside the default judgment. (R., p. 175, Opposition Memo., Ex. 17) Graham's counsel also wrote to Full Logistics' new counsel and requested the Rule 60(b) motion to be withdrawn because Fuller provided "sworn testimony that he was served and turned everything over to Trustgard." (R., p. 175, Opposition Memo., Ex. 18)

Trustgard has no record of receiving any information from any person or entity, including Fuller, showing that Trustgard was provided with notice of the Graham Lawsuit until Graham sent the letter dated October 11, 2018, which included a settlement demand. (R., p. 298, Supplemental Memo., Ex. A)

C. Hearing on Motion to Intervene

After it became clear that Fuller would continue to assert that he had been served with the Summons and Complaint as Full Logistics' registered agent, despite his confusion regarding when he received certain documents, Trustgard filed its Motion to Intervene for the sole purpose of seeking to set aside the default judgment. During the hearing on April 24, 2019, Trustgard presented evidence for the Circuit Court's review. The evidence included an article that was published in the Greenville New about Fuller's barbershop, The Distinguished Gentlemen – II. (R., p. 350, Transcript of April 24, 2019 Hearing ("April Transcript"), p. 15) In addition Trustgard presented evidence that included an investigator's report and photographs taken in February 2016 showing that a Cadillac Escalade owned by Graham was repeatedly at Fuller's business, The Distinguished Gentlemen – II. (R., p. 350, April Transcript, p. 15)

In addressing Fuller's testimony regarding the alleged service, the Circuit Court noted that it "[l]ooked like there was some equivocation." (R., p. 350, April Transcript, p. 11) The Circuit Court further noted that Fuller did "equivocate pretty significantly…saying [he] got something but [he] d[id]n't know what it was and [he] turned it over or [he] turned it over a year later." (R., p. 350, April Transcript, p. 28) The Circuit Court determined that there "were a lot of issues associated with what [Fuller] had to say. And it was difficult to ascertain exactly what his assertions were." (R., p. 350, April Transcript, p. 28)

ARGUMENT

I. Standard of Review

The South Carolina Rules of Civil Procedure allow for permissive intervention, and Rule 24(b) states:

> **(b) Permissive Intervention.** Upon timely application ***anyone may be permitted to intervene in an action***: (1) when a statute confers a conditional right to intervene; or (2) ***when an applicant's claim or defense and the main action have a question of law or fact in common***. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute of executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Rule 24(b), SCRCP (emphasis added). "Most cases call for a liberal construction of Rule 24." *TPI Corp. v. Merchandise Mart of S.C., Inc.*, 61 F.R.D. 684, 690 (D.S.C. 1974). *See also Stoney v. Stoney*, 425 S.C. 47, 64, 819 S.E.2d 201, 210 (Ct. App. 2018) (explaining that "'[g]enerally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties.'") (quoting *Ex parte Gov't Emp.'s Ins. Co.*, 373 S.C 132, 138, 644 S.E.2d 699, 702 (2007)).

The South Carolina Supreme Court has explained that "[t]he granting of intervention is wholly discretionary with the trial court and will be reversed only for abuse of discretion." *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 411, 581 S.E.2d 161, 168-169 (2003) (citing *S.C. Tax Comm. v. Union City Treasurer*, 295 S.C. 257, 368 S.E.2d 72 (Ct. App. 1988)). "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006) (citing *Tri-County Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990)). "Mere allegations of error are not sufficient to demonstrate an abuse of discretion." *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444

S.E.2d 513, 514 (1994). And, "[o]n appeal, the burden of showing abuse of discretion is on the party challenging the trial court's ruling." *First. Sav. Bank*, 314 S.C. at 363, 444 S.E.2d at 514 (citing *State ex rel. McLeod v. Wilson*, 279 S.C. 562, 310 S.E.2d 818 (Ct. App. 1983)).

Graham has failed to meet his burden. Trustgard demonstrated that it was entitled to intervene in the Graham Lawsuit for the purpose of seeking to set aside the default judgment. Because of Fuller's clear confusion regarding whether he was actually served with the Summons and Complaint, he has made it impossible for counsel for Full Logistics to seek to set aside the default judgment that was entered against Full Logistics. In an effort to protect its insured from the excess judgment that was wrongfully entered, Trustgard sought to intervene to set the judgment aside. And, while Graham now argues that Trustgard's arguments are identical to the arguments put forth by Full Logistics, Graham previously argued that counsel for Full Logistics was prohibited from raising the necessary arguments to have the default judgment set aside. The record contains ample evidence supporting the Circuit Court's decision and Graham has failed to point to any error of law by the Circuit Court. Therefore, Graham has failed to demonstrate that the Circuit Court abused its discretion in granting Trustgard's Motion to Intervene, and the Circuit Court's grant of the Motion to Intervene should be affirmed.

II. Trustgard Was Entitled to Intervene in the Graham Lawsuit.

The Circuit Court's determination that Trustgard's interest in setting aside the default judgment met the commonality requirement for permissive intervention and determining that the intervention did not unduly prejudice the interests of Graham and Full Logistics is proper under South Carolina law and should be affirmed. In addition,

the facts of this case and South Carolina law demonstrate that Trustgard was also entitled to intervene in the Graham Lawsuit as of right.

A. The Circuit Court correctly determined that Trustgard was entitled to permissive intervention.

1. The Circuit Court properly determined that Trustgard met the commonality requirement in Rule 24(b).

Graham argues that Trustgard does not have a cause of action or defense that it could assert in the Graham Lawsuit and that its arguments are "identical to those of Full Logistics." However, Graham's arguments ignore the facts giving rise to the necessity of Trustgard filing the Motion to Intervene. The record clearly demonstrates that Trustgard and Full Logistics are not aligned regarding whether the default judgment should be set aside, and the Circuit Court recognized that fact in determining that Trustgard was entitled to permissive intervention. Graham has failed to demonstrate that the Circuit Court abused its discretion in allowing Trustgard to intervene.

Graham's reliance on *South Carolina Tax Commission v. Union County Treasurer*, 368 S.E.2d 72, 75, 295 S.C. 257, 263 (Ct. App. 1988) is misplaced, and it is clear that he misapprehends the Court's analysis. In *South Carolina Tax*, the Court explained that "[l]ike permissive joinder, Rule 24(b) intervention is premised upon the theory that when claims or defenses have a question of law or fact common to each other, sound administrative procedures encourage the disposition of all of the claims or defenses in one action rather than a multiplicity of actions." Further, the Court explained that "[t]he typical situation for which the Rule was designed is one where the prospective intervenor might institute or be called upon to defend a separate proceeding that would substantially duplicate the one in question." *S.C. Tax Comm'n*, 295 S.C. at 263, 368

S.E.2d at 75-76. And, the Court reasoned "it seems clear the better rule is that permissive intervention should be allowed only where the prospective intervenor has a cause of action or defense it could bring or assert." *Id.* at 76, 295 S.C. at 263.

The Court did not say that the fact an intervenor's claims are "identical" to those of a current party bars the ability of the intervenor to intervene, rather the fact the attempted intervenor in *South Carolina Tax* "could not become a party to suit where its claim or defense would be identical" to the defendants barred its ability to intervene. *Id.*, 295 S.C. at 263-264. Stated a different way – if it had an identical claim or defense, it would have been allowed to intervene. *See TPI Corp.*, 61 F.R.D. at 691 (determining permissive intervention was proper where denial of intervention would result in prejudice to the rights at issue and would cause undue delay in resolving the issues); *Greenville County Dep't of Soc. Servs. v. Bowes*, 313 S.C. 188, 192, 437 S.E.2d 107, 109, (1993), *superseded by statute as stated in Hooper v. Rockwell,* 334 S.C. 281, 296, 513 S.E.2d, 358, 366 (1999) *on other grounds* (determining the court did not abuse its discretion in allowing permissive intervention because the foster parents had standing to seek termination and the statutory scheme allows removal and termination to be considered together).

Here, it is clear that Trustgard has claims and defenses it could bring or assert to protect its insured. Trustgard's claims and defenses arise out of the January 29, 2014 accident, specifically the damages that were awarded. The defense that Trustgard could assert in the Graham Lawsuit is that it did not receive notice of the Summons and Complaint that was allegedly served on Full Logistics' registered agent, Fuller or that the service that the affidavits of service attest to was not proper such that the default

judgment should be set aside. And, Trustgard could assert in the Graham Lawsuit that Fuller's testimony clearly demonstrates that he was confused about whether he was actually served with the Summons and Complaint, particularly in light of the fact Graham's process servers never attested that the Summons and Complaint were served on Graham and were certainly not served in the manner that Fuller recalls. Despite this apparent confusion, inexplicably, Fuller refuses to recognize and argue that Full Logistics was not properly served, and also inexplicably he has accepted the consequences of the excess default judgment being entered against Full Logistics and, potentially, himself, individually.

In an effort to protect its insured, Full Logistics, Trustgard moved to intervene to assert those defenses that Full Logistics should be asserting on its own behalf and for some unknown reason its agent is not. The Circuit Court properly determined that the commonality requirement under Rule 24(b) was met and correctly allowed Trustgard to intervene. *See TPI Corp.*, 61 F.R.D. at 689 (determining the first condition for permissive intervention under Rule 24(b)(2) was satisfied because "the petitioner-intervenors' claims and the main action arose out of the same transaction.").

2. The Circuit Court properly determined that Trustgard's intervention did not constitute undue prejudice or delay for the parties.

Further, based on the evidence presented in the briefing and at the hearing, the Circuit Court properly determined that Graham, Foster, and Full Logistics did not suffer any undue prejudice in allowing Trustgard to intervene for the sole purpose of moving to set aside the default judgment. The facts demonstrate that Fuller and Full Logistics are seemingly unconcerned about the issuance of the default judgment against Full Logistics

and seem content to rely on Fuller's confusion regarding the service of the Summons and Complaint. Allowing Trustgard the opportunity to protect its insured in seeking to set aside the default judgment certainly would not work prejudice as to Full Logistics. And, Foster, who filed an Answer denying the allegations of Graham's Complaint, has made no argument that he would be prejudiced by allowing Trustgard to intervene.

As to Graham, he merely argues that the Circuit Court's grant of Trustgard's Motion to Intervene "prejudices [him] by forcing the briefing and potential argument of an appeal rather than simply addressing the declaratory judgment action in federal court related to coverage." (R., p. 175, Graham's Brief, p. 13) The declaratory judgment action was filed on August 13, 2019, after the hearing on April 24, 2019 and after the Circuit Court issued its Order. There is no question that this argument was not presented to the Circuit Court.

The law is clear that only issues "fairly and properly raised to the lower court and passed upon by that court" can be appealed. *State v. Oxner*, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (internal quotations omitted). *See also Pye v. Estate of Fox*, 369 S.C. 555, 564-565, 633 S.E.2d 505, 510 (2006) (explaining that "[i]t is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.") (citing *Holy Loch Distribs., Inc. v. Hitchcock*, 340 S.C. 20, 531 S.E.2d 282 (2000); *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000)). Therefore, because Graham's argument was not presented and was not considered by the Circuit Court this new argument is not properly preserved for appellate review. And, Graham contains no argument regarding the Circuit Court's finding that Graham was not prejudiced based on the arguments Graham raised in its opposition to

Trustgard's Motion to Intervene, which means those arguments are not at issue on appeal. *Cf. Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006) (determining the failure to address an issue in the brief precluded the Court from considering the issue on appeal because "'[a]n issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.'") (quoting *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106, 439 S.E.2d 238, 284 (Ct. App. 1993); *Bell v. Bennett*, 307 S.C. 286, 294, 414 S.E.2d 786, 791 (Ct. App. 1992)).

Graham has failed to meet his burden to demonstrate that the Circuit Court abused its discretion in determining this requirement under Rule 24(b) did not bar Trustgard's request for intervention. Accordingly, the Circuit Court decision that Trustgard was entitled to permissive intervention should be affirmed.

B. As an alternative sustaining ground, Trustgard was also entitled to intervene in the Graham Lawsuit as of right.

Under Rule 220(c), SCACR, "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." In its Motion to Intervene, Trustgard also sought to intervene as of right, and the Circuit Court determined that Trustgard did not meet the requirements of Rule 24(a). However, the evidence in the record clearly demonstrates that the Circuit Court's decision was controlled by an error of law regarding whether insurers have a right to intervene in the underlying lawsuit to assert the defenses at issue. *See BB&T*, 369 S.C. at 551, 633 S.E.2d at 503 (citing *Tri-County Ice*, 303 S.C. at 241, 399 S.E.2d at 782). Therefore, this Court has an alternative basis upon which to affirm Trustgard's ability to intervene in the Graham Lawsuit.

Rule 24(a) provides, in part:

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: … (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 24, SCRCP. Under South Carolina law, a party seeking intervention must (1) establish timely application; (2) assert an interest relating to the property or transaction; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. *Berkeley Elec. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). The evidence in the record clearly supports a determination that Trustgard was also entitled to intervene in the Graham Lawsuit as of right.

1. Trustgard's Motion to Intervene was filed timely.

The evidence in the record shows that Trustgard's Motion to Intervene was timely filed. In considering issues regarding timeliness, South Carolina courts will consider (1) the time that elapsed since the applicant knew or should have known of its interest in the action; (2) the reason for the delay; (3) the state to which the action has progressed; and (4) the prejudice the original parties to the action would suffer from granting intervention and the applicant would suffer from denying intervention. *Ex parte Reichlyn*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993). *Scardelletti v. Debarr*, 265 F.3d 195, 203(4th Cir. 2001), *rev'd on other grounds by Devlin v. Scardelletti*, 536 U.S. 1 (2002) (explaining that the Fourth Circuit has established the following factors to consider when determining

whether a motion to intervene is timely: "how far the suit has progressed, the prejudice that delay might cause other parties, and the reason for the tardiness in moving to intervene."); *Atkins v. State Bd. of Educ. of N.C.*, 418 F.2d 874 (4th Cir. 1969) (reasoning that "timeliness is not absolute [and i]t should be evaluated in light of all the circumstances."); *Nautilus Ins. Co. v. Strongwell Corp.*, No. 1:12CV00038, 2014 WL 2645503, *3 (W.D.Va. June 13, 2014) (determining that the insurer's motion to intervene was timely even though it was not made until over a year after the original complaint was filed because the case was not one "in which the movant has been 'sitting on [its] rights in ignorance or apathy.'") (quoting *Maxum Indem. Co. Sec. Ins. Co. v. Eclipse Mfg. Co.*, No. 06-cv-4946, 2008 WL 4831734 (N.D. Ill. Nov. 5, 2008)). Here, Trustgard has met this requirement.

Trustgard received its first notice of the Graham Lawsuit on October 15, 2018, and thereafter, Trustgard retained defense counsel for Full Logistics. Defense counsel promptly moved to set aside the default. Throughout this period, Trustgard's counsel attempted to contact Fuller to discuss the lawsuit and specifically whether Full Logistics was properly served. Rather than engage in these discussions with counsel, Fuller refused to discuss the issue, and then, despite his insistence that he wanted nothing to do with defending the Graham Lawsuit, he appeared at the hearing on Full Logistics' Motion on January 8, 2019 and testified that he had been "served." Once it became clear that Fuller would continue to claim that he had been served with the Summons and Complaint, it then became clear that Trustgard would have to seek to intervene in the Graham Lawsuit to raise defenses that Full Logistics refused to raise. Fuller's actions demonstrate that he has failed to cooperate in Full Logistics' defense and is working

against Trustgard in its efforts to protect its insured, Full Logistics. Trustgard moved quickly to seek intervention once it became apparent that it was necessary for it do to so. Trustgard did not sit on its rights, and requiring Graham to prosecute his case when service was not proper under South Carolina law does not prejudice any of the parties.

2. Trustgard has an interest relating to the property or transaction at issue in the Graham Lawsuit.

a. The *McClurg Deaton* and *Narruhn v. Alea London Limited* decisions support Trustgard's ability to intervene.

The evidence in the record also demonstrates that Trustgard has an interest in the property or transaction at issue in the Graham Lawsuit. South Carolina courts have recognized that an interested third-party may intervene after the entry of a default judgment. For example, in *McClurg v. Deaton*, 380 S.C. 563, 671 S.E.2d 87 (Ct. App. 2008), *aff'd* 395 S.C. 85, 716 S.E.2d 887 (2011), the plaintiff obtained a default judgment against the employee. The employee moved to set aside the default judgment, and the employer also sought to intervene to also move to set aside the default judgment. In addressing the employer's argument that "the trial court erred in failing to recognize its status as a party to the action after the court granted its motion to intervene," the Court agreed with the employer. *McClurg*, 380 S.C. at 570, 671 S.E.2d at 91. The Court noted that the trial court granted the employer's motion to intervene after it recognized the employer's "large financial interest in the action and possible responsibility for paying the judgment." *Id.* at 570, 671 S.E.2d at 91. The Court specifically found that "the trial court erred in holding [the employer] was not a party to the action…." *Id.*, 671 S.E.2d at 91.

The ability of Trustgard to intervene is also buttressed by the South Carolina Supreme Court's decision in *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 745 S.E.2d 90 (2013). In *Narruhn*, the court determined that the insurer was unable to directly challenge the default judgment because it was not a party to the lawsuit and cited *McClurg* with approval in that the employer sought to intervene. Notably, the Court did not determine that the insurer would be barred from intervening in the action if it had sought to do so. *See Edwards v. Ferguson*, 254 S.C. 278, 175 S.E.2d 224 (1970) (determining the insurer stood in the shoes of the insured and could move to set aside the judgment); *see also Morton Regent Enters., Inc. v. Leadtec Cal., Inc.*, 74 Cal.App.3d 842, 846 (Cal. App. 1977) (reasoning that "[a]n aggrieved person may intervene after judgment for the purpose of vacating a default judgment which is void.").

Graham has demanded that Trustgard pay the judgment to settle Graham's claim and has threatened Trustgard with a bad faith lawsuit if Trustgard does not pay the judgment. It is clear that Trustgard has a "direct, substantial, legally protectable interest in the proceedings." *Ex parte Reichlyn*, 310 S.C. 495, 499-500, 427 S.E.2d 661, 664; *see also W. Heritage Ins. Co. v. Superior Court*, 199 Cal.App.4th 1196, 1205, 132 Cal.Rptr.3d 209, 216 (2011) (explaining that "[t]his exposure to such direct liability has been repeatedly held sufficient to create a basis for insurer intervention in a third-party action against the insured.").

b. The *Ex parte Government Employees Insurance Co.* decision is distinguishable.

The South Carolina Supreme Court's decision in *Ex Parte Government Employee's Insurance Co.*, 373 S.C. 132, 644 S.E.2d 699 (2007) is distinguishable and

does not demonstrate that Trustgard does not have an interest relating to the property or transaction at issue in the Graham Lawsuit. The *GEICO* Court determined that the family court properly denied the insurer's motion to intervene in the proceeding involving the validity of the claimant's common law marriage with the insured. In making this determination, the Court stated:

> We find that GIECO [sic] does not have "an interest relating to the property or transaction which is the subject of the action "as required by Rule 24(a)(2), SCRCP. Additionally, we hold that the family court correctly found GEICO lacked standing because GEICO does not have an interest in the subject matter of the family court action. Stated differently, GEICO has no real interest in whether Cooper and Goethe have a valid common law marriage. GEICO's interest is in the financial implications of the family court's decision, which is peripheral to the subject matter before the court. This interest is insufficient to warrant GEICO's intervention in Cooper's family court action under Rule 24(a)(2), SCRCP.

Ex parte Gov't Empls. Ins. Co., 373 S.C. at 138, 644 S.E.2d at 702.

Here, there is no question that Trustgard has an interest in setting aside the default judgment against its insured to give its insured an opportunity to defend against the allegations contained in Graham's Complaint, as well as to have an opportunity to have a fair opportunity to consider Graham's alleged damages. This interest is not peripheral to the subject matter in the Graham Lawsuit; rather, it ***is*** the issue in the Graham Lawsuit. As the South Carolina Supreme Court and Court of Appeals recognized in *McClurg* and *Narruhn*, Trustgard's interest is sufficient, and it is entitled to intervention as of right.

3. If Trustgard is not allowed to intervene, the disposition of the Graham Lawsuit will impair and impede Trustgard's ability to protect that interest.

Trustgard is in a position that without intervention, disposition of the action may impair or impede its ability to protect that interest. "To meet [this] requirement, a party

need not prove that it would be bound in a res judicata sense by the judgment, only that it would have difficulty adequately protecting its interests if not allowed to intervene." *Berkeley Elec. Coop., Inc.*, 302 S.C. at 190, 394 S.E.2d at 715 (citing *Spring Constr. Co., Inc. v. Harris*, 614 F.2d 374 (4th Cir. 1980)). Fuller, on behalf of Full Logistics, has patently shown that he is not interested in cooperating to work towards having the default judgment set aside. And, given Graham's proposal to settle this matter by obtaining an assignment from Full Logistics to pursue a bad faith lawsuit, Trustgard would have great difficulty in protecting its interests to protect its insured if not allowed to intervene to seek to set aside the default judgment.

And, if Trustgard is not allowed to intervene in the Graham Lawsuit to challenge the default judgment, it will be robbed of the ability to challenge the judgment in any other forum. While Trustgard has filed a declaratory judgment action in federal court to address issues regarding whether the policy affords coverage for the claimed damages or if it does, the scope of such coverage, under the current state of South Carolina law, it will likely not be allowed to pursue the issues regarding the validity of Graham's claims and damages. Therefore, if Trustgard is not allowed to intervene in the Graham Lawsuit it will have no ability to protect its interests on behalf of its insured.

4. Trustgard's interest is not adequately represented by other parties.

Trustgard also meets the final requirement. South Carolina courts have adopted a test for determining whether the existing representation in a case is adequate and will consider:

> (1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and

> willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent.

Berkeley Elec. Coop., Inc., 302 S.C. at 191, 394 S.E.2d at 715. While the burden is on Trustgard to demonstrate inadequacy of representation, "[t]his burden is minimal and [it] need only show that the representation of [its] interest 'may be' inadequate." *Id.* at 191, 394 S.E.2d at 715. Trustgard is clearly able to meet its burden.

While South Carolina courts have not yet had the opportunity to address this issue, courts in other jurisdictions have determined that in similar circumstances insurers have successfully demonstrated that their interests will not be adequately represented. For example, in *Bond v. Giebel*, 101 A.D.3d 1340, 1342 (N.Y. 2012), which involved an assignment agreement between the plaintiff and the defendant whereby the defendant would share in the proceeds of any judgment, the court explained:

> [The insurer] is the only person or entity with an interest in vacating the default judgment, as the [insureds] have the potential to benefit financially by allowing that judgment to remain in effect. Without the judgment, neither plaintiff nor the [insureds] would stand to reap any significant benefit from action…Thus, the particular terms of the assignment agreement place the [insureds] in the unusual position of opposing [the insured]'s motion to vacate the substantial judgment entered against them. While the collusive nature of the assignment agreement may not have led to the default judgment, the financial benefit that the [insureds] stand to gain as a result of that agreement clearly provides them with an incentive to act in unison with plaintiff going forward. At the very least, to allow such a result offends our sense of justice and propriety and cannot be condoned.

See also Edwards, 254 S.C. 278, 175 S.E.2d 224 (considering the possibility of collusion between the plaintiff and the defendant as a factor in allowing the insurer to intervene); *Royal Indem. Co. v. United Enters., Inc.*, 162 Cal.App.4th 194, 206 (2008) (explaining that "[i]ntervention may … be allowed in the insurance context, where third party

claimants are involved, when the insurer is allowed to take over in litigation if its insured is not defending an action, to avoid harm to the insurer.").

Fuller's conduct, which necessitated Trustgard filing the Motion to Intervene, clearly demonstrates that there is no other party to the Graham Lawsuit that will adequately represent Trustgard's interests. And, certainly, Graham does not. Further, Foster did not provide notice of the Graham Lawsuit to Trustgard and is not involved in seeking to set aside the default judgment, which demonstrates that he, also, does not adequately represent Trustgard's interests. Therefore, Trustgard has met this requirement and should be allowed to intervene as of right.

CONCLUSION

The Circuit Court properly granted Trustgard's Motion to Intervene based on permissive intervention. Graham has failed to present any cogent argument that the Circuit Court abused its discretion in determining that Trustgard met the requirements for permissive intervention. Trustgard has a claim or defense in common with the main action, and the intervention did not unduly delay or prejudice the adjudication of the rights of the original parties. And, further, the evidence in the record supports this Court affirming Trustgard's right to intervene because Trustgard also had a right to intervene as of right. Therefore, Trustgard respectfully requests that this Court affirm the Circuit Court's determination that Trustgard was entitled to intervene in the Graham Lawsuit.

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