THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court Of Common Pleas

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

Appellate Case No. 2018-001108

Allstate Fire and Casualty Insurance Company..... Respondent,

v.

Pamela Goodwin. .....Appellant.

FINAL BRIEF OF RESPONDENT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY

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ATTORNEYS FOR RESPONDENT
ALLSTATE FIRE & CASUALTY
INSURANCE COMPANY

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INTRODUCTION

The circuit court's grant of summary judgment in favor of Respondent Allstate Fire and Casualty Insurance Company ("Allstate") should be affirmed because Appellant Pamela Goodwin ("Goodwin") has failed to demonstrate any basis upon which the circuit court's determination should be reversed.

This case arises from a claim that was submitted to Allstate related to bodily injuries Goodwin sustained arising from an accident that occurred on August 20, 2014. By letter dated December 12, 2014, and received by Allstate on December 17, 2014, Goodwin made a time-sensitive demand for payment of Allstate's policy limits to resolve her bodily injury claim. The applicable limits of the policy issued to Allstate's insured, Helen Elizabeth Metropol Ham ("Ham"), were $50,000.00 for Goodwin's bodily injuries. Despite having only 4 business days to ascertain what Goodwin was seeking in the lengthy, nine-page letter, compile the necessary information that was not included with the letter, evaluate the claim, and respond before the Christmas holidays, Allstate was able to respond before the arbitrary deadline of Saturday, December 27, 2014. On December 23, 2014, Allstate sent to Goodwin's counsel, via overnight mail, a check for the applicable $50,000.00 bodily injury policy limits along with the other documentation demanded in the letter, thereby resolving the bodily injury claim on behalf of Ham.[1]

Despite the fact Allstate performed the material terms outlined in the December 12, 2014 letter and timely tendered the applicable limits of the policy,

[1] Allstate's insured, Ham, was added as a Plaintiff per the circuit court's order on Allstate's prior Motion for Leave to Amend Complaint and to Join Additional Parties. However, it does not appear that she is currently named as a Respondent in the appeal currently before this Court.

Goodwin rejected Allstate's acceptance of her demand with no explanation and filed suit against Ham. Allstate filed, and later added Ham as a party to, a declaratory judgment action seeking a declaration that Allstate's performance under the demand is valid and enforceable and Allstate fulfilled its obligations under the policy when the claim was settled. Further, Allstate and Ham sought a declaration that they have no further obligation to Goodwin in connection with her claim. The parties filed cross-motions for summary judgment, and the trial court granted Allstate and Ham's motion and denied Goodwin's motion.

The trial court correctly determined that Allstate accepted the material terms of the time-sensitive demand such that Allstate's payment of the $50,000.00 bodily injury limits constituted a valid and enforceable settlement. Because Goodwin failed to demonstrate the existence of a genuine issue of material fact, the circuit court properly granted Allstate and Ham's motion and denied Goodwin's motion. The circuit court's decision should be affirmed.

STATEMENT OF THE CASE

On October 28, 2015, Allstate filed a Summons and Complaint against Goodwin seeking a declaration from the court that Allstate's acceptance of Goodwin's time-sensitive demand resulted in a valid and enforceable settlement agreement. Allstate filed an Amended Complaint on November 19, 2015. Counsel for Goodwin accepted service on behalf of Goodwin, and thereafter, Goodwin filed an Answer to Allstate's Complaint on February 11, 2016. In her Answer, Goodwin contended that Ham was a necessary party to the lawsuit. On July 21, 2016, Allstate filed a Motion for Leave to Amend Complaint and to Join Additional Parties. In the Motion, among other things, Allstate sought to join Ham as a plaintiff. On August 23, 2016, the court heard argument on the Motion and the court granted that portion of the Motion requesting that Ham be joined as a party.

On December 7, 2017, Goodwin filed a Motion for Summary Judgment ("Goodwin's Motion") contending that the time-sensitive settlement demand requested payment of both the bodily injury and property damage limits of the policy by way of a certified or cashier's check and that because Allstate did not comply with these terms, she was entitled to entry of summary judgment and an order declaring that there was no settlement agreement. On December 18, 2017, Allstate and Ham filed their Motion for Summary Judgment ("Allstate's Motion") contending that Allstate complied with the material terms of the time-sensitive settlement demand such that Allstate and Ham were entitled to entry of summary judgment in their favor and entitled to an order declaring that the settlement agreement was valid and enforceable. On December 27, 2017, Goodwin filed a Memorandum of Law in Opposition to Allstate's Motion ("Goodwin's

Opposition").[2]

On February 23, 2018, the circuit court heard oral argument of the parties. After hearing oral argument and considering the written argument and evidence, the circuit court granted Allstate's Motion and denied Goodwin's Motion by Order dated March 16, 2018. In granting Allstate's Motion, the court determined that Allstate met the essential and material terms of the demand – the payment of the entire $50,000.00 policy limits for Goodwin's bodily injuries. (R., pp. 7-8) The court also rejected Goodwin's contention that Allstate's payment of the policy limits by way of regular check as opposed to a cashier's or certified check constituted a material term of the agreement to settle, finding that the amount of $50,000 was the material term. Further, the court determined that it was a term that was impossible for Allstate to meet because, as an insurance company, Allstate does not issue cashier's or certified checks. (R., pp. 8-9) In reaching such a determination regarding the materiality of the type of check, the court noted that the South Carolina Supreme Court has ordered that there is no material difference between an insurance check and a certified or cashier's check per South Carolina Rule of Professional Conduct 1.15, thus, the type of check was not an essential or material term of a settlement agreement. (R., p. 9)

On April 16, 2018, Goodwin filed a Motion to Reconsider. Allstate filed a Memorandum of Law in Opposition to Goodwin's Motion to Reconsider on May 3, 2018. The circuit court denied Goodwin's Motion to Reconsider and entered an

[2] As previously stated in Allstate and Ham's Memorandum of Law in Opposition to Goodwin's Motion to Reconsider, counsel did not receive a service copy of Goodwin's Opposition.

order denying the motion on May 4, 2018. Goodwin filed a Notice of Appeal on June 11, 2018.

STATEMENT OF FACTS

A. Claim Handling and Time-Sensitive Settlement Demand

Allstate received a letter dated August 26, 2014 from the Anastopoulo Law Firm, LLP ("the Law Firm") stating that the Law Firm would be representing Goodwin "for the injuries she suffered during a motor vehicle accident." (R., p. 89.) Goodwin explained that she hired the Law Firm to "look out for [her] and make sure [she] – that [she] was physically taken care of" because she did not have health insurance. (R., pp. 137, 138-141) Per the Attorney Retainer and Contingent Fee Agreement between Goodwin and the Law Firm, the Law Firm did not have an obligation to negotiate or settle any property damage issues Goodwin may have had. (R., pp. 170-173).

On August 27, 2014, Allstate called Goodwin's attorney, the Law Firm, and spoke with the paralegal regarding the claim and Allstate was told that Goodwin "suffered from a crushed right leg that required plates and screws" had a "broken right hand with bilateral black eyes" and would "be in a wheelchair for the next 6 months." On October 14, 2014, Allstate called Goodwin's counsel's office to follow up on the claim and was told by the paralegal that Goodwin "just recently came out of surgery" and updated Allstate regarding Goodwin's claimed medicals. Allstate followed up with Goodwin's counsel again on October 20, 2014 and November 18, 2014. On December 2, 2014, Allstate sent Goodwin's counsel a letter asking for counsel's assistance with expediting the handling of his client's injury claim and stating that Allstate was prepared to tender the policy limits of $50,000 if Goodwin's medical bills were provided. (R., p. 131)

Allstate received a copy of the Friday, December 12, 2014 letter from the Law Firm on Wednesday, December 17, 2014. Per the letter, the Law Firm described Goodwin's damages and injuries as follows:

> **Pamela Goodwin's Injuries**
>
> Ms. Goodwin was a full-time bartender at Larry Moore's Bar & Grill. She had just become a grandmother at the time she was injured. She was on her way to work when Ms. Ham pulled out and knocked Ms. Goodwin off the motorcycle on August 20th, 2014.
>
> Unfortunately, and due to the driving of Ms. Ham, Ms. Goodwin sustained catastrophic bodily injuries due [to] the total body blunt force trauma from the vehicle driven by Ms. Ham inflicted upon her, and the subsequent impact with the ground and pavement (See Exhibit B, Medical Records). The impact resulted in Ms. Goodwin sustaining a crushed femur, broken in six places, and a broken foot. She no longer can work as a result of these injuries. Ms. Goodwin went through several operations. She almost lost both a leg and a foot. She will not be able to put weight on her feet for six months. As a result, Ms. Went [sic] from making $250 per week from her side jobs, and $800 per week from her job at Larry Moore's Bar & Grill, to making absolutely nothing. Ms. Goodwin cannot play with her grandchild, she cannot walk, she cannot ride horses or motorcycles, she cannot live the life she was living before the incident, unfortunately, and due to Ms. Ham's driving Ms. Goodwin went from a life of independence to requiring in-home care.

(R., p. 177)

Per the terms of the demand, the demanded limits of the policy were to be received by the Law Firm no later than "5:00 pm EDT on 12/27/2014." Goodwin knew that Ham's policy had $50,000.00 limits for bodily injury and she was told by her counsel that the $50,000.00 was "'all [Ham's] policy covers" and while there was a chance that the $50,000 was the only applicable policy that Ham had, Goodwin was willing to accept that amount. (R., p. 142, 158-159) And, when she was specifically asked what she was

requesting in the demand, Goodwin stated: "I was demanding the $50,000 and at a certain time limit." (R., p. 144); *see also* R., p. 145 ("Q: So you demanded $50,000? A: Yeah.")

The letter also stated that "settlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) **issued** by your insurance company" and be made payable to Goodwin and the Law Firm. (R., p. 178, footnote 1) (emphasis added) Goodwin requested a certified bank check "because it just – that just helps it along a lot faster." (R., p. 144)

In addition, the letter also demanded Ham "provide sworn and notarized statements that there is no other insurance coverage available to her that could pertain to this loss." Also, the demand requested that a proposed release be provided. The letter specifically directed Allstate: **"[i]nstead of acting in bad faith and trying to trick us, please just send a reasonable Release that does not include indemnification or the release of property damage claims."** (R., p. 179, footnote 3) (emphasis added) Further, the letter stated "[p]art of the performance required to accept this offer is for you to deliver a proposed Release with the settlement check" and "the proposed Release that is delivered with the settlement check must comply with the terms of this offer." (*See* R., pp. 120-121) Allstate had four business days to accomplish everything set forth in the December 12, 2014 demand letter.

Wayne D. Gaymon, the Casualty Claims Service Leader for the South Carolina MCO with Allstate, contacted John Wilkerson ("Wilkerson"), an attorney with the Turner Padgett Law Firm, to review the affidavit provided with the demand and prepare the requested proposed Release. After Allstate's counsel, Wilkerson, reviewed the affidavit,

Gaymon provided a copy of the affidavit to Ham to be executed, and Ham executed and returned the affidavit. (*See* R., p. 121)

Given the upcoming Christmas holidays, on Thursday, December 18, 2014, Sonya Wise ("Wise"), the Allstate adjuster tasked with reviewing the information submitted with the demand, contacted the hospital to phone verify the charges for Goodwin's surgery because the demand did not include medical bills. After phone verifying the charges, Wise completed her evaluation of the bodily injury claim. On Monday, December 22, 2014, Wise's evaluation was reviewed, and Gaymon granted authority to issue a manual check in the amount of $50,000.00 due to the time requirements of the demand and special wording required by the letter. Allstate does not have the ability to issue certified or cashier's checks, as Allstate is not a bank. (*See* R. p. 121)

On Tuesday, December 23, 2014, the day before Christmas Eve, a cover letter, the settlement check in the amount of $50,000.00, the requested Release, and Ham's affidavit was sent by Fed Ex, priority overnight for morning delivery to the Law Firm to satisfy the requirements of December 12, 2014 letter. As stated in the cover letter from Allstate, the Release was for bodily injury only (as required by the demand letter) and preserved Goodwin's right to pursue a property damage claim should one be presented. (*See* R, p. 122) It is undisputed that the check arrived at the Law Firm's office before the arbitrary December 27, 2014 deadline, which fell on the Saturday following Christmas. Further, it is undisputed that the Release sent with the check complied with the terms of the demand letter.

With regard to any claims for property damage, Goodwin testified:

Q: ...And, so, here, you agree that the letter is saying that, "Don't try to get any type of release for property damage," correct?

A: The letter says it doesn't include it.

Q: Yeah. "Don't send us a proposed release that includes the release of any property-damage claims"

A: Yeah.

(R., p. 155) Goodwin testified that the December 12, 2014 letter specifically stated that the proposed release could not include a release of any claims for property damage. (R., pp. 155-157) Goodwin also testified that if Allstate paid for a property damage claim she would expect to have to sign a release for that claim. (R., pp. 155-156)[3]

B. Attempted Rejection of Allstate's Acceptance of Settlement

Despite Allstate's acceptance of the time-sensitive settlement demand by performance, Goodwin rejected Allstate's acceptance. Goodwin explained that they issued a demand and that if Allstate "met those demands and sent the check" then she "was going to settle with that." (R., p. 142) She explained they "had a problem with the check and not meeting demands." (R., p. 142) Goodwin testified that she objected to Allstate's acceptance of the demand by performance of its terms because "mainly, because it's a check – a cashier's check" and "[t]he check didn't meet the requirements." (R., pp. 146-147, 160-168)

[3] Also, Goodwin admits that she did not make a property damage claim for the motorcycle. (R., p. 136) At the time of the accident, Goodwin was riding a motorcycle owned by an individual named Rickie Snipes ("Snipes"). A property damage claim was made regarding the damage to the motorcycle and Allstate and Snipes negotiated the amount of the settlement in connection the property damage claim on or about September 3, 2014. (R., p. 122) In fact, Goodwin admits she did not own the motorcycle she was operating at the time of the accident. (R., p. 134) She also admits she did not have to pay the owner of the motorcycle any money for the damage to the motorcycle. (R., pp. 135-136)

ARGUMENT

I. Standard of Review

"Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004) *and* Rule 56, SCRCP). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. *Rife*, 363 S.C. at 215, 609 S.E.2d at 568 (citing *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 443 (2003)). "Further, summary judgment depends upon the existence of plain, undisputed facts on which reasonable minds cannot differ." *Allen v. Long Mfg. NC, Inc.*, 332 S.C. 422, 426, 505 S.E.2d 354, 356 (Ct. App. 1998) (citing *Priest v. Brown*, 302 S.C. 405, 396 S.E.2d 638 (Ct. App. 1990)). "When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Fleming v. Rose*, 350 S.C. 488, 493-494, 567 S.E.2d 857, 860 (2002) (citing *Peterson v. West Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1990)).

Here, Allstate demonstrated that it was entitled to entry of judgment in its favor as a matter of law with regard to the validity and enforcement of the settlement agreement that was formed upon its acceptance of Goodwin's time-sensitive demand. Goodwin has failed to present any basis upon which the circuit court's grant of summary judgment in Allstate and Ham's favor should be reversed. Allstate interpreted the demand to require payment of the $50,000 bodily injury limits be paid by a certain time. Allstate's

interpretation of the requirements of the demand was correct as evidenced by Goodwin's testimony where she acknowledges that she was seeking payment of the $50,000 bodily injury policy limits. The evidence clearly shows that Allstate complied with the terms of the demand. Allstate issued a check for the $50,000.00 bodily injury limits of the policy in a form that was immediately available to her before the arbitrary deadline included in the demand. The circuit court properly granted Allstate's Motion on these undisputed facts and the grant of summary judgment should be affirmed.

II. The Circuit Court Properly Granted Allstate's Motion for Summary Judgment.

The circuit court's determination that the settlement agreement was viable and enforceable was correct under the terms of the demand and South Carolina law and should be affirmed.

A. Goodwin Cannot Rely Upon Arguments That Were Never Presented To, Nor Considered By, the Circuit Court.

Before delving into the merits of the circuit court's decision, it is important to define the contours of Goodwin's arguments in opposition to Allstate's Motion and in support of her own Motion because Goodwin appears to be trying to raise new arguments on appeal that are not properly before this Court.

In her Opening Brief, Goodwin includes an argument regarding South Carolina contract interpretation and the application of unambiguous policy language. Notably, this discussion is missing from Goodwin's moving papers that were submitted to the circuit court. Goodwin appears to be contending that the circuit court improperly modified the

terms of the settlement demand.[4] These specific arguments were not presented to the circuit court on either Goodwin's Motion, Goodwin's Opposition, or on Goodwin's Motion to Reconsider. Therefore, these issues should not be considered on appeal.

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, 565, 633 S.E.2d 505, 510 (2006). For this Court to have "a platform for meaningful appellate review," *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011), the circuit court must have had the opportunity *for each theory advanced by Appellant* "to rule properly after it has considered all relevant facts, law, and arguments," *I'On, LLC v. Town of Mt. Pleasant,* 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). Goodwin cannot keep "ace card[s] up [her] sleeve - intentionally or by chance - in the hope that an appellate court will accept th[ose] ace card[s] and, via a reversal, give [her] another opportunity to prove [her] case." *I'On,* 338 S.C. at 422, 526 S.E.2d at 724. However, that is exactly what Goodwin attempts to do in this appeal. Because these new arguments are outside the scope of arguments presented to and considered by the circuit court, they are not on appeal.

Notwithstanding the fact these arguments are not properly before this Court, even if the Court were to consider these arguments, they fail. Goodwin's reliance on the

[4] Goodwin also appears to be arguing for the first time that the circuit court did not properly interpret the language of the settlement demand. In support of this argument, Goodwin cites to several out-of-jurisdiction decisions seemingly in an attempt to establish certain precedent regarding interpretation of contracts. This argument is not properly before this Court. Further, as illustrated by Goodwin's testimony in this case, there is no dispute regarding the terms of the settlement agreement and the purpose of this argument is unclear.

Fourth Circuit Court of Appeals' decision in *Ozyagcilar v. Davis*, 701 F.2d 306 (4th Cir. 1983) is misplaced. The *Ozyagcilar* court explained in that decision that because there was an actual misunderstanding regarding the terms of the settlement, the district court was required to have conducted a plenary hearing and make findings regarding whether there was a meeting of the minds. This case is readily distinguishable.

There is no question that there was a meeting of the minds in this case. Goodwin, by her own testimony, explained that she expected to receive the $50,000 bodily injury limits in issuing the demand to Allstate. She could not articulate any material difference between a certified, cashiers or insurance company check. While Allstate could not "issue" a cashier's or certified check, the check Allstate could issue was sent and operated such that the funds were available in the same way the funds would be for a cashier's or certified check. Also, Goodwin testified that she did not expect to receive policy limits, or any amount, for property damage without providing a release for the claim and acknowledged that the demand stated a property damage release would not be given. In fact, Goodwin specifically stated she "was demanding the $50,000 and at a certain time limit." (*See* R., p. 144) There is no question that the circuit court properly considered the evidence in this case and determined that the evidence – including Goodwin's testimony – demonstrated that there was a meeting of the minds and that Allstate's performance of the material, essential terms of the settlement demand operated such that the claim was settled.[5]

[5] Likewise, the Fourth Circuit's decision in *Wood v. Virginia Hauling Co.*, 528 F.2d 423 (4th Cir. 1975) is also distinguishable. Again, that case involved a factual dispute about the terms included in the agreement such that the district court was required to have an evidentiary hearing. There is no such factual dispute at issue here because Allstate and Goodwin actually agree about the terms of the settlement demand.

B. Allstate's Acceptance and Performance of the Material Terms of the Settlement Demand Constitute a Valid Acceptance.

In her Motion, Goodwin's only argument was that Allstate "only tendered Ham's bodily injury limits and a hand-written, 'manual' check." (R., p. 54) During her deposition, Goodwin testified her only issue with Allstate's acceptance of the demand was the form of the check. (*See* R., pp. 142, 146-147, 160-168) Further, Goodwin contends "under basic, long-standing common law contract principles, Allstate's 'acceptance' was effectively a counteroffer." (*See* R., p. 2) Goodwin's contention is not supported by South Carolina law. Rather, the principles of South Carolina contract law mandate affirming the trial court's entry of summary judgment in favor of Allstate and Ham.

Under South Carolina law, "'[i]n construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007). Further, under South Carolina law, for there to be a valid contract, there must be an offer, an acceptance, and valuable consideration. *See Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct. App. 2011) (determining a valid contract existed because there was evidence of a meeting of the minds as to the terms and conditions of the agreement) (citing *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009) ("The necessary elements for a contract are an offer, acceptance, and valuable consideration.")). In addition, under South Carolina law, a valid and enforceable contract is created when there is "a meeting of the minds between the parties with regard to all ***essential*** and ***material*** terms of the agreement." *Nutt Corp.*, 396 S.C. at 328, 721 S.E.2d

at 450 (citing *Player v. Chandler*, 299 S.C. 101, 106, 382 S.E.2d 891, 893 (1989)) (emphasis added). *See also Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014) (explaining that "[a] valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement.") (emphasis in original).

Goodwin testified that her intention in sending the December 12, 2014 letter to Allstate for the limits of the policy was to actually receive the full, $50,000 bodily injury limits to resolve her claim under the policy. *See Ecclesiastes Prod. Ministries*, 374 S.C. at 498, 649 S.E.2d at 502 ("In ascertaining intent, the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered."); Goodwin Depo., pp. 50, 108-109. There is no question that Allstate's acceptance of the settlement demand is valid and enforceable. There was an offer from Goodwin that was accepted by Allstate, which provided valuable consideration to Goodwin. Further, there is no question that Allstate met the essential and material terms of Goodwin's demand – the payment of the entire $50,000 policy limits for Goodwin's alleged bodily injuries. Therefore, the trial court properly determined that Allstate and Ham were entitled to entry of summary judgment in their favor.

Goodwin's contention seems to suggest that because Allstate's acceptance of the settlement demand was not a so-called "mirror image" in that the type of check issued was not a cashier's check or certified check there was no valid settlement. Contrary to Goodwin's assertion, the type of check is not a material term of the settlement demand, and further, it was a term that was impossible for Allstate to meet.

Goodwin testified that the reason she wanted a certified or cashier's check in this

form was because this type of check would help the settlement along faster. (*See* R., p. 144) It should go without saying that insurance companies such as Allstate do not issue cashier's checks or certified checks. (*See* R., p. 121) Moreover, Goodwin has not demonstrated that issuing such checks in this manner is an accepted practice for insurance companies.

Notwithstanding this fact, at least one South Carolina court has questioned the continued vitality of the so-called "mirror-image" rule and has noted that it is outdated in that it was "well suited to simple, one time transactions, in which the parties contract face to face" and that "it fails to accommodate the realities of much modern commercial practice." *Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus.*, 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991).

In addition, Goodwin has pointed to no South Carolina case stating that such a rule would apply to determine that Allstate's performance of the actual essential and material terms of the time-sensitive demand constitutes a counteroffer. Further, as has been demonstrated by Goodwin's testimony, the reason for the inclusion of this specific term was to "help[] it along a lot faster." (*See* R., p. 144) Because there is no material difference between how the manual check issued by Allstate in this case and a certified or cashier's check issued by a bank would be treated in South Carolina, Allstate's issuance of the manual check (the kind of check that it can actually issue), does not constitute a counteroffer.

Our Supreme Court has already determined that payment in the form of a cashier's or certified check is not an essential or material term of a settlement agreement. South Carolina Rule of Professional Conduct 1.15 states as such. Specifically, the rule

provides in pertinent part:

> (f)(1) A lawyer shall not disburse funds from an account containing the funds of more than one client or third person ("trust account") unless the funds to be disbursed have been deposited in the account and are collected funds.
>
> (2) Notwithstanding Subsection (f)(1) above, a lawyer may disburse funds from a trust account at the lawyer's risk in reliance on the following deposits when the deposit is made:
>
> ****
>
> (iv) by a certified check, cashier's check, or other check drawn by a depository institution or an insurance company, provided the insurance company check does not exceed $50,000.

Rules of Professional Conduct: Rule 1.15, RPC, Rule 407, SCACR. Therefore, per the mandate of the South Carolina Supreme Court, a check issued by an insurance company that does not exceed $50,000 is treated the same as a certified check, cashier's check, or other check drawn by a depository institution – i.e., the money would be immediately available, which addresses Goodwin's concern. (*See* R., p. 144)

Further, there is no valid reason for demanding a cashier's or certified check from an insurance company to resolve an insurance claim. The only reason to send a nine-page demand letter with multiple footnotes, containing multiple requirements that the insurance company must meet, including payment by way of a certified or cashier's check "issued" by the insurance company, all within a short period of time, is to attempt to manufacture a future so-called *Tyger River* claim. The form of the payment is not a material term of the agreement – the amount is the material term. It would be no different than if Goodwin had demanded payment of the $50,000 in pennies rather than a certified check. Settlement of claims should not be reduced to a game of cat and mouse. While Allstate is entitled to prevail on this issue as a matter of law, Allstate is also

entitled to prevail on this issue as a matter of civility and common sense, both of which are important components to the process of settling insurance claims.

Therefore, the circuit court correctly granted Allstate's Motion as a matter of law and the grant should be affirmed.

C. Allstate's Performance of the Settlement Demand Constitutes an Accord and Satisfaction.

Under South Carolina law, "[t]he essential elements of an accord and satisfaction are an agreement to settle a dispute and consideration which supports the agreement." *Wilson v. Builders Transp., Inc.*, 330 S.C. 287, 297, 498 S.E.2d 674, 680 (Ct. App. 1998). Here, as previously stated, there was an offer to settle Goodwin's claim, Allstate accepted the offer, and provided the demanded consideration to support the agreement to settle Goodwin's claim. This is a textbook example of an accord and satisfaction.

The circuit court correctly determined that an accord and satisfaction was present in this case. Allstate sought to comply with the arbitrary deadline imposed by the December 12, 2014 letter, and based on prior experience with Goodwin's counsel, it understood that it would not receive an extension of the deadline by which to tender the $50,000 policy limits. Given the time restraints, Allstate issued a manual check and had to overnight the check with the other requested items to counsel in order to comply with the deadline. And, as stated above, a check issued by an insurance company that does not exceed $50,000.00 is treated the same as a certified check or a cashier's check for purposes of disbursement of the funds to Goodwin. Therefore, Allstate's manual check was sufficient to meet the terms of the agreement and the payment thereof constitutes an accord and satisfaction.

CONCLUSION

The circuit court properly granted Allstate's Motion and properly declared that Allstate's acceptance of the time-sensitive demand was valid and enforceable such that Allstate and Ham have no further obligation regarding Goodwin's claim. Allstate accepted and performed the material, essential terms of the time-sensitive demand and such performance created a valid and enforceable agreement and an accord and satisfaction under South Carolina law. Therefore, Allstate respectfully requests this Court affirm the circuit court's grant of its Motion for Summary Judgment.

December 19, 2018 By: _____

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court Of Common Pleas

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

Appellate Case No. 2018-001108

Allstate Fire and Casualty Insurance Company ..... Respondent,

v.

Pamela Goodwin. .....Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that Respondent Allstate Fire and Casualty Insurance Company's Final Brief complies with South Carolina Appellate Court Rule 211(b).

December 19, 2018

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