THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
In the Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2020-000249

Government Employees Insurance Company,.....Respondent,

v.

Barbara P. Jackson, as Personal Representative
for the Estate of Vincent A. Jackson,.....Appellant.

INITIAL BRIEF OF APPELLANT BARBARA P. JACKSON, AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF VINCENT A. JACKSON

Calvin K. Hastie, Sr.
HASTIE LAW FIRM
7 East Hampton Avenue
Sumter, SC 29150
(803) 774-7776

Mitchell Willoughby
Elizabeth Zeck
WILLOUGHBY & HOEFER, P.A.
930 Richland Street
Post Office Box 8416
Columbia, SC 29202-8416
(803) 252-3300

Attorneys for Appellant Barbara P. Jackson,
as Personal Representative for the Estate of Vincent A. Jackson

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in refusing to allow expert testimony from Dr. Ronald Pitner, Associate Dean of the School of Social Work at the University of South Carolina, with regard to developmental stages that would have assisted the jury in understanding the behavior of the decedent, Vincent Jackson, on the central question in this case: whether Vincent Jackson was a resident of his parents' home and thereby entitled to "stack" underinsured motorist coverage from his parents' policies?

2. Did the trial court err in refusing to give instructions that correctly state the law by emphasizing the fact-based nature of the residency inquiry and that any doubts should be resolved in favor of insurance coverage?

3. Did the trial court err by improperly admitting into evidence federal employment records that were cumulative on the question of residency and unduly prejudicial because they incorrectly suggest that any statement as to Vincent Jackson's address were made under oath?

4. Did the trial court err by improperly excluding from evidence the insurance policy which was central to this dispute?

STATEMENT OF THE CASE

Respondent Government Employees Insurance Company ("GEICO") initiated this declaratory judgment action on August 12, 2016, by filing a Complaint against Respondent Barbara P. Jackson, as Personal Representative for the Estate of Vincent A. Jackson ("Jackson Estate"). **(R. pp.)** (Compl.). GEICO sought a declaration that Vincent Jackson, who tragically died in a car wreck while driving a vehicle insured by GEICO, did not reside with his parents, the named insureds, at the time of his death, and thus the Jackson Estate could not stack underinsured motorist coverage his parents purchased for other vehicles through GEICO. **(R. pp.)** (Compl.). The Jackson Estate timely responded, filing an answer and a motion to dismiss, seeking to have the question of residency decided in previously-filed tort actions against the City of Bishopville and the Bishopville Police Department (Civil Action Nos. 2014-CP-43-02399 and 2014-CP-43-02400 ("Tort Actions")), of which GEICO had assumed the defense following the Jackson Estate's

settlement with the original tortfeasors. **(R. pp.)** (Answer; Mot. Dismiss).[1] This motion was denied by Order dated June 21, 2017. **(R. pp.)** (Order Den. Mot. Dismiss).

Prior to trial, GEICO filed a motion *in limine* seeking to preclude expert testimony from the Jackson Estate's expert, Professor Ronald Pitner ("Dr. Pitner") **(R. pp.)** (GEICO's Mot. Lim.), to which the Jackson Estate filed an Opposition **(R. pp.)** (Memo in Opp'n). The Jackson Estate also filed a motion *in limine* seeking to exclude certain federal employment records. **(R. pp.)** (Jackson Estate's Mot. Lim.). These motions were heard on May 28, 2019, prior to the beginning of trial. **(R. pp.)** (Tr. 3-57). The parties also offered arguments about the admissibility of the insurance contract from which this dispute arose. (**R. pp.**) (Tr. 50-52, 63; Court Ex. 1; Jackson Estate's Pretrial Br.). By written order, the trial court denied each of the Jackson Estate's motions and granted GEICO's motion, stating that he did not see that Dr. Pitner's testimony "is needed by the jury." **(R. pp.)** (Order). On May 29, 2019, the Jackson Estate made a proffer of Dr. Pitner's testimony. **(R. pp.)** (Tr. 261-317). The trial judge renewed his order excluding Dr. Pitner's testimony. **(R. p.)** (Tr. 317).

The jury returned a verdict finding that the decedent Vincent A. Jackson was not a resident of the home of his parents, GEICO's insureds. **(R. pp.)** (Tr. 474, Form 4 Order).

The Jackson Estate timely moved for JNOV or, in the alternative, for a new trial. **(R. pp.)**. A hearing on the post-trial motions was held on December 9, 2019, and the trial court denied the Jackson Estate's motions from the bench. **(R. pp.)** (Tr. From 12/9/19 hrg.). Thereafter, GEICO submitted a proposed order, **(R. pp.)** (GEICO's Prop. Order), and on January 17, 2020, the trial

[1] Although GEICO filed this action and was therefore technically styled as "plaintiff," under South Carolina insurance law, the Jackson Estate, although nominally the "defendant," bore the burden of proof as the insured party seeking to establish coverage. **(R. p.)** (Tr. 70). Therefore, to minimize confusion, this brief will refer to the parties by name rather than as plaintiff and defendant.

court entered its written order, **(R. p.)** (Order). The Jackson Estate then timely filed this appeal. **(R. pp.)** (Notice of Appeal).

STATEMENT OF FACTS

This case arises out of a January 17, 2014 fatal automobile wreck in Sumter County. Officer Roniea Conyers was the on-call investigator for the Bishopville Police Department. **(R. pp.)** (Answer pp. 6-7). Due to her failure to actually monitor her calls, she was responding nearly an hour late to a routine, non-emergency call for service. **(R. p.)** (Answer p. 7). Because she was running late, Officer Conyers' patrol vehicle was traveling at 80 miles per hour when she rounded a sharp blind curve and struck the automobile driven by Vincent Jackson, who was attempting to execute a left-hand turn onto the roadway. **(R. p.)** (*Id.*). Tragically, as a result of the force of the impact, Vincent Jackson received traumatic and fatal injuries and died as a result of the impact. **(R. p.)** (*Id.*).

At the time of the collision, Vincent was operating a 2002 Suzuki automobile insured by GEICO under Policy No. 4007-84-2307 ("the Policy"). **(R. p.)** (*Id.*). The named insureds on the Policy were Vincent's parents, Therel Jackson and Barbara Jackson. **(R. p.)** (*Id.*). The Policy covered the 2002 Suzuki that Vincent was driving with underinsured motorist ("UIM") coverage in the amount of $100,000.00 per person. **(R. p.)** (Answer p. 18). Four other vehicles were listed under the Policy each with an additional $100,000.00 per person in "stacked" UIM coverage for a total of $500,000.00 in potential UIM coverage. **(R. p.)** (*Id.*).

On November 7, 2014, wrongful death and survival actions were filed against the City of Bishopville and the Bishopville Police Department ("Bishopville Defendants") for the benefit of Vincent Jackson's young child, sole heir, and sole beneficiary, Jayden A. Jackson, who was born with various birth defects and disabilities, requiring multiple corrective medical procedures and continuing treatment. **(R. p.)** (Answer p. 7). GEICO was served with process and became a party

to the Tort Actions by entering its Notice of Appearance. The Bishopville Defendants agreed to pay the Jackson Estate the $300,000.00 statutory limit under the South Carolina Tort Claims Act limit for the wrongful death action and $50,000 for the survival action. This settlement, which included a covenant not to execute, was approved by the court in the Tort Actions on March 31, 2016, pursuant to S.C. Code Ann. § 15-51-41, expressly reserving the Jackson Estate's right to pursue UIM coverage from GEICO. Following the settlement with the tortfeasor, GEICO, as the UIM carrier, stepped into the shoes of Bishopville and assumed the defense in the Related Actions. **(R. pp.)** (Order Den. Mot. Dismiss pp. 2-3).

On August 12, 2016, while the UIM benefits for the wrongful death and survival actions were still being actively litigated with GEICO, the insurer filed this separate declaratory judgment action, seeking a determination that it was not obligated to pay "stacked" UIM coverage benefits on the other insured vehicles not involved in the collision. **(R. p.)** (Compl.). GEICO and the Jackson Estate entered into a stipulation by which GEICO agreed to pay within forty-five (45) days UIM coverage of the $100,000 policy limit on the 2002 Suzuki while reserving the right to litigate the issue of Mr. Jackson's residency at the time of his death. **(R. pp.)** (Answer pp. 24-28). The parties agreed that if Mr. Jackson was a resident relative of the named insureds, his parents, Therel Jackson and Barbara Jackson, at 9 Brown Street in Sumter, South Carolina at the time of the collision, then GEICO would be obligated to pay an additional $400,000, representing the aggregate "stacked" policy limits of UIM coverage under the Jacksons' policy with GEICO. **(R. pp.)** (Answer pp. 26-27). This stipulation was approved by the court in the Tort Actions on October 31, 2016, pursuant to S.C. Code Ann. § 15-51-41. **(R. pp.)** (Answer pp. 17-22).

Vincent Jackson was the son of GEICO's named insureds, Barbara and Therel Jackson. **(R. p.)** (Tr. 102). The family has lived at 9 Brown Street in Sumter, South Carolina since 2001, when

Vincent was 11 years old. Vincent spent his teenage years growing up and residing at that address. **(R. pp.)** (Tr. 103, 162-63). He graduated from Sumter High School in 2008 and following the advice of his father, attended the Sumter County Career Center, where he obtained a welding certificate. Upon his graduation from this program, his father assisted him in obtaining work as a construction welder. Due to the intermittent nature of this work, he worked for several different employers and was assigned to various construction sites. **(R. pp.)** (Tr. 103, 164). This work frequently took Vincent out of town for weeks at a time during which time he traveled with his father. But Vincent always returned to his family home on Brown Street, where he kept his clothes and work tools. **(R. pp.)** (Tr. 104-05, 165, 167-68).

Vincent began a relationship with Jessica Wilson, whom he had originally met in high school. **(R. pp.)** (Tr. 105, 223-24). Jessica resided at home with her mom and sisters, and Vincent continued to reside at home with his parents and younger brother. Both families were deeply religious and active in the Black Baptist Church and thus did not allow the young couple to spend overnights at their respective homes. **(R. pp.)** (Tr. 105, 123, 227, 333, 339). In late 2011, Vincent was offered the opportunity to use the unoccupied home of a paternal aunt in exchange for looking after the property. That property was located on Center Street in Sumter. Vincent and Jessica spent occasional time together at the Center Street property but continued to live and reside with their respective parents. **(R. pp.)** (Tr. 105-06, 108, 167, 226).

During this time period, Vincent had discussed with his father, Therel Jackson, the benefit of Vincent establishing a credit history in his own name. They believed that this process would be aided if Vincent established an address separate from the family home on Brown Street. **(R. pp.)** (Tr. 110, 166, 176). A separate address would also qualify Vincent for per diem compensation on some construction jobs. **(R. pp.)** (Tr. 171, 201-02). On January 30, 2012, although he continued

to live at home with his parents, Vincent changed his address with the South Carolina Department of Motor Vehicles to the Center Street property owned by his aunt.

Jessica became pregnant. **(R. pp.)** (Tr. 107). She was placed on bedrest during her pregnancy and spent that time at her family home, which was located on Dollard Street in Sumter. **(R. pp.)** (Tr. 227-30, 331). Vincent continued to live at Brown Street with his parents. **(R. p.)** (Tr. 177). On June 11, 2012 their son Jayden A. Jackson was born at 33 weeks' gestation. **(R. p.)** (Tr. 230). He spent about a month in the hospital's neonatal care unit after his birth. **(R. pp.)** (Tr. 110, 232).

While Jessica was pregnant, the Center Street property was burglarized. **(R. p.)** (Tr. 110). Consequently, she did not feel safe meeting there anymore, particularly after their son was born prematurely with severe disabilities. **(R. p.)** (Tr. 230). Therefore, while baby Jayden was still hospitalized, Jessica and Vincent looked into finding a safer meeting place. On June 21, 2012, they applied to rent an apartment located on Rast Street. **(R. p.)** (Tr. 135). The vehicle listed on the Rast Street rental application was a Ford Explorer owned by his parents and insured by GEICO. **(R. pp.)** (Tr. 181; GEICO Ex. 15). Nor did the Rast Street application form list Center Street as Vincent's address, even though that address was on his driver's license; instead, it listed the Brown Street address he shared with his parents. **(R. pp.)** (Tr. 256-57; GEICO Ex. 15). Although the lease was effective in July 2012, Vincent did not change his address with the SC DMV until December 2012. **(R. p.)** (Tr. 254).

Jayden's disabilities, which required more care than Jessica and Vincent could provide on their own, prevented the Rast Street apartment from being a family setting. **(R. pp.)** (Tr. 232-33, 236, 244, 257, 332, 343). The Rast Street apartment was sparsely furnished with used items from both families. **(R. pp.)** (Tr. 111, 188). Jessica and Vincent kept only a few items of clothing there

and essentially no cooking equipment, as they usually brought food from their respective family homes or take-out from restaurants. **(R. p.)** (Tr. 254). When Vincent and Jessica met at Rast Street to spend time together and with Jayden, they brought groceries just for that time. **(R. pp.)** (Tr. 129, 239). Neither would stay at Rast Street alone. **(R. pp.)** (Tr. 114, 235). For example, in 2013, within a month of his death, Vincent spent Christmas Eve at the family home on Brown Street and Jessica brought Jayden there to open presents. **(R. pp.)** (Tr. 116, 184-85, 236, 336).

While Vincent understood he could claim head of household status for himself and Jayden if he referenced the Rast Street address, **(R. pp.)** (Tr. 172-73), Brown Street continued to be Vincent's residence. When Vincent returned to Sumter from out-of-town jobs, Vincent returned not to the Rast Street apartment but to his family home at Brown Street, where he would shower and have his mother wash his laundry. **(R. p.)** (Tr. 179). Similarly, unless they arranged to meet Vincent at the apartment, Jessica and Jayden would stay at her mother's home on Dollard Drive. **(R. p.)** (Tr. 113). When he was not away from Sumter working, he spent most of his time at the family home on Brown Street, spending only 2-3 nights per week at Rast Street. **(R. pp.)** (Tr. 129, 179-80, 333). Due to the sporadic nature of Vincent's work, he did not always have enough money to pay the rent. When he was between jobs, his mother would cover the Rast Street rent payments. **(R. pp.)** (Tr. 133, 146). He discussed his need for financial help with his parents and selected a family car to drive usually based upon the one with the most gas in the tank.[2] Vincent continued to receive mail at Brown Street. **(R. pp.)** (Tr. 188; Jackson Estate's Ex. 5). His phone was on his family's cell plan, and his parents required that he pay the Brown Street water bill, and for internet

[2] Although he purchased and insured his own vehicle in 2013, a 2001 Oldsmobile Aurora, that car was rarely operational despite substantial repairs paid for by Vincent's father. **(R. p.)** (Tr. 183). Vincent stored the inoperable vehicle at the family home on Brown Street and drove one of his family's other cars with his parents' permission. **(R. pp.)** (Tr. 114-15, 165-66, 177-78, 181-82).

service at that location. **(R. pp.)** (Tr. 112, 168-69). Vincent did not maintain internet service at Rast Street. **(R. pp.)** (Tr. 113, Tr. 255).

On January 4, 2014, shortly before his death, Jessica and Vincent had a vocal disagreement. A neighbor called the police to the Rast Street apartment, complaining about the noise. After they arrived, Vincent, who was angry, was placed under arrest, and charged with disorderly conduct. **(R. p.)** (Tr. 237). He was briefly detained in the Sumter-Lee Detention Center before being bonded out by Jessica. **(R. p.)** (Tr. 238). The following week, on January 8, 2014, Vincent applied for another job with Roper Personnel Services. He completed numerous forms using the address listed on his driver's license. **(R. pp.)** (Tr. 139-41; GEICO Ex. 2).

Vincent spent Friday, January 17, 2014, at his family home on Brown Street. He ate a dinner prepared by his mother and, as normal and with his parents' standing permission, selected one of the family's vehicles to meet up with some friends. **(R. pp.)** (Tr. 117, 185). Later, his younger brother, Tyrell, needed a larger vehicle; so, Vincent met him and traded cars, leaving Vincent with the smaller Suzuki. Later that night, Vincent left his friend's home, offering a lift to another friend. After he dropped off that friend, at about 10:30 pm, Vincent's car was struck by a City of Bishopville police cruiser traveling at a high rate of speed on the way to a non-emergency call without sirens or flashing lights. Due to the violence of that collision, Vincent sustained traumatic injuries and died at the scene. **(R. p.)** (Answer p. 17).

Vincent's mother, Barbara, brought the Tort Actions on behalf of Vincent's estate, the sole beneficiary of which is Vincent's disabled son Jayden. **(R. pp.)** (Order Den. Mot. to Dismiss). While the Tort Actions were pending, GEICO brought this declaratory judgment action to limit the Jackson Estate's recovery arguing that he was not a resident of his parents' home and therefore not entitled to stack UIM coverage from their other vehicles. **(R. pp.)** (Compl.). Ultimately, this

matter proceeded to a jury trial on the sole question of residency. As explained in detail below, the trial court excluded expert testimony offered by the Jackson Estate that would have assisted the jury in understanding developmental stages and the psychology of Vincent's renting the Rast Street property while remaining dependent on his parents for support. *See infra* pp. 12-13. The court also refused to instruct the jury on the complete law regarding residency and construction of insurance agreements. *See infra* pp. 18-19. Finally, the court allowed GEICO to introduce and use merely cumulative federal employment documents listing Rast Street as Vincent's address, but incorrectly suggested that this statement was made under penalty of perjury (*see infra* p. 21), while excluding from evidence any reference to the insurance policy which was central to this dispute, including the very policy language that the jury was asked to consider. *See infra* p. 25. The jury thereafter found Vincent was not a resident of his parents' home. **(R. p.) (**Form 4 Order).

STANDARD OF REVIEW

The trial court's decisions regarding the admission of expert testimony, the admission or exclusion of evidence over a "more prejudicial than probative" objection based on Rule 403, SCRE, and jury instructions are each reviewed for an abuse of discretion. *Lee v. Bunch,* 373 S.C. 654, 658, 647 S.E.2d 197, 199 (2007) (Rule 403); *Clark v. Cantrell,* 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (jury instructions); *Ray v. City of Rock Hill*, 428 S.C. 358, 369, 834 S.E.2d 464, 470 (Ct. App. 2019) (expert testimony). An abuse of discretion occurs when the ruling is based on an error of law or the trial court's factual conclusions lack factual support. *Clark*, 339 S.C. at 389, 529 S.E.2d at 539; *Ray*, 428 S.C. at 369, 834 S.E.2d at 470. With respect to the exclusion of expert testimony, reversal on appeal is warranted if the jury was not presented with any other testimony equivalent to that of the wrongly excluded expert. *Means v. Gates*, 348 S.C. 161, 171, 588 S.E.2d 921, 926 (Ct. App. 2001).

The denial of a motion for a new trial is within the trial judge's discretion and will not be reversed on appeal absent an abuse of discretion. *Haselden v. Davis*, 341 S.C. 486, 495, 534 S.E.2d 295, 300 (Ct. App. 2000), *aff'd,* 353 S.C. 481, 579 S.E.2d 293 (2003).

ARGUMENT

I. The trial court erred in refusing to allow Dr. Pitner's expert testimony that would have assisted the jury in understanding the psychology underlying Vincent Jackson's behavior and whether he was a resident of his parents' home.

The Jackson Estate proffered a highly qualified expert, Dr. Ronald Pitner, to testify concerning aspects of human development that would have assisted the jury in understanding alleged inconsistencies in Vincent's behavior and determining his true intent as to residency. The trial court refused to allow this expert to testify because it held that his testimony would not assist the jury and that the issue of residency was solely within the knowledge and experience of the jury. **(R. p.)** (Tr. 319). This was error as South Carolina courts have allowed human behavior experts to explain aspects of witness' actions that seem contrary to ordinary experience. The error was prejudicial because there was no other expert testimony on this point.

A. Standard for admissibility of expert testimony.

Rule 702, SCRE, states, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." In determining whether to admit expert testimony, the trial court must make three inquiries: (1) whether the evidence will assist the trier of fact; (2) whether the expert has acquired the requisite knowledge and skill to qualify as an expert in that particular subject matter, and (3) whether the substance of the testimony is reliable. *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). "Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in

which the subject matter falls outside the realm of ordinary lay knowledge." *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010).

The use of expert testimony is always appropriate when "the [proffered] witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's . . . common knowledge." *State v. Henry*, 329 S.C. 266, 273, 495 S.E.2d 463, 466 (1997). Challenges to this prong of expert qualifications are essentially challenges to the relevancy of the evidence. Pursuant to Rule 401, SCRE, "[r]elevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." In *State v. Schmidt*, 288 S.C. 301, 342 S.E.2d 401 (1986), the court held that "[e]vidence which assists a jury at arriving at the truth of an issue is relevant and admissible." *Id.* at 303, 342 S.E.2d at 403 (citing *Toole v. Salter*, 249 S.C. 354, 154 S.E.2d 434 (1967)).

B. Dr. Pitner would have testified about human development and the understanding of Vincent's behavior in maintaining the Rast Street property along the developmental continuum.

Dr. Pitner has a bachelor's degree in psychology from Lee University, a master's degree in experimental psychology from the University of Tennessee-Knoxville, and a masters in social work as well as doctorates in both social work and psychology from the University of Michigan, which is known internationally as offering one of the best social work programs in the world. **(R. pp.)** (Tr. 264-66).

Dr. Pitner was a professor at the School of Social Work at Washington University in St. Louis where, among other things, he taught a foundational course in human behavior, which focused on development stages and the effect of the social environment. **(R. pp.)** (Tr. 266-67). He also worked in the private sector researching consumer decision-making on behalf of *inter alia*

major pharmaceutical companies, before coming to the University of South Carolina in 2009, where he is now a tenured professor, holding an endowed chair, while also serving as Associate Dean for Curriculum for the School of Social Work and the director of the I. DeQuincy Newman Institute for Peace and Social Justice. **(R. pp.)** (Tr. 269-72). Dr. Pitner is also a certified social worker. **(R. p.)** (Tr. 271). Dr. Pitner's research has focused on young people and their decision-making. **(R. pp.)** (Tr. 273-75). He has 46 publications, 34 of which have been peer reviewed, and has also written book chapters including in textbooks on human behavior. **(R. pp.)** (Tr. 277, 282).

Here, it cannot be denied that Dr. Pitner, a graduate of a highly rated program in social work and psychology and a tenured professor at our State's flagship university is highly knowledgeable about the stages and patterns of human behavior and their interaction with the social environment, which is a technical area requiring advanced study. In addition to knowledge gained on this subject from his extensive education, he has taught classes covering that subject and reviewed relevant literature prior to forming his opinion. Indeed, the trial court's ruling on admissibility did not question that expertise or the substance of Dr. Pitner's opinion. Rather, the trial court rejected Dr. Pitner's analysis because of its belief that it would not aid the jury in determining the question of residency. This was contrary to South Carolina law and an abuse of discretion.

In the proffer of his testimony, Dr. Pitner explained that human developmental stages are a part of the required curriculum for all social work students in the United States and also for psychology students. **(R. pp.)** (Tr. 280-81). An understanding of this subject is necessary to assess clients' life circumstances. **(R. p.)** (Tr. 283).

The developmental stage relevant to understanding the behavior of the decedent, Vincent Jackson, is emerging adulthood. This is a transitional phase between adolescence and true

adulthood, appearing between the ages 18-29, which has been recognized since the mid-1990s. Its hallmarks are identity exploration and developing independence. The emerging adult has a desire for independence but his reality is one of continuing dependence on his parents and family. This stage exhibits much inconsistent behavior. **(R. pp.)** (Tr. 296-99).

Dr. Pitner reviewed all deposition testimony and documents offered into evidence, as well as the trial testimony of the Jacksons and Jessica Wilson. **(R. p.)** (Tr. 299). He also conducted an extensive literature review and relied on his own expertise and experience with the deductive process and in working with youth. **(R. pp.)** (Tr. 300-02). In Pitner's opinion, Vincent was in the developmental phase of emerging adulthood and his behavior demonstrated the inconsistencies typical of this stage. He expressed his desire for independence by obligating himself to pay rent for the Rast Street apartment, but still needed parental help to made rent payments. The limited amount of furniture at Rast Street came from the families. Vincent also continued to participate as a resident of his childhood home on Brown Street by paying the water bills and internet. In contrast, there was no internet connectivity at Rast Street. Vincent kept most of his clothes at Brown Street and ate most meals there, which also showed a continuing level of dependency. He only stayed at Rast Street a few times a week but never when he was alone. **(R. pp.)** (Tr. 306-08).

Vincent's car use was another example of his inconsistent behavior. Although he purchased and insured a car listing the Rast Street address, which were actions asserting his independence, the car did not work, despite substantial monetary contributions by his father (again indicative of dependence). Instead, he used the family's cars and gas. **(R. p.)** (Tr. 309). All of these facts taken together made up an almost textbook case of an emerging adult, whose comfort zone and residential intent was still in his childhood home with his parents. **(R. pp.)** (Tr. 308-09).

C. Dr. Pitner's Testimony would have aided the jury in determining whether Vincent was a resident of his parents' home.

In this case, where Vincent, being deceased, could not speak for himself, the Jackson Estate was offering Dr. Pitner's specialized knowledge and expertise in human development to aid the jury in understanding the alleged contradictions in Vincent's behavior, as well as his use of an apartment while still continuing to live and maintain his personal effects and work tools and clothes at his childhood home. This testimony would have assisted the jury in determining his state of mind and intent regarding his actual residence—the sole question presented to the jury for resolution.

South Carolina courts have long found that expertise in human behavior is helpful to juries and thus admissible. For example, in *State v. Jones*, 423 S.C. 631, 817 S.E.2d 268 (2018), our Supreme Court upheld the trial court's decision to admit expert testimony regarding human behavior, there, child sex abuse dynamics, such as delayed disclosure by sexual abuse victims and the behavior of nonoffending caregivers. *Id.* at 640, 817 S.E.2d at 272; *see also State v. Anderson*, 413 S.C. 212, 218, 776 S.E.2d 76, 79 (2015) ("Certainly we recognize that there is such an expertise: this is the type of expert who can, for example, testify to the behavioral characteristics . . . ."). Indeed, South Carolina courts have long recognized that expert psychological testimony is relevant to explain otherwise contradictory actions. *See, e.g., State v. Hill*, 287 S.C. 398, 399-400, 339 S.E.2d 121, 122 (1986) (expert testimony on battered spouse syndrome is admissible in homicide cases); *State v. Grubbs*, 353 S.C. 374, 380-81, 577 S.E.2d. 493, 496-97 (Ct. App. 2003) (same). The expert testimony in *Grubbs* was specifically offered to explain why the defendant gave conflicting statements with respect to her actions. Although the trial court refused to allow the testimony, this was reversible error:

> Precisely because [the defendant's] trial testimony conflicted with her own defense, and the proffered expert testimony was relevant to explain this conflict, the jury

> was entitled to consider the testimony. The jury needed the expert's testimony to assist it in evaluating [the defendant's] state of mind. . . . The expert offered testimony that [the defendant's] conflicting statements resulted from the syndrome. Without the expert's testimony, the jury had no way of putting the differing versions of [the defendant's] statements into context. We find [the expert's] testimony was necessary to assist the jury in understanding the issues involved in the case, and the trial court erred in excluding the evidence.

Id. at 381, 577 S.E.2d at 496-97 (citation omitted). Similarly, in *State v. Weaverling*, 337 S.C. 460, 523 S.E.2d 787 (Ct. App.1999), a case involving a social worker offering expert testimony about rape trauma and victim behavior, the Court observed:

> Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible. Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the abused child's often strange demeanor.

Id. at 466, 699 S.E.2d at 175.

Here, the relevant topic is developmental stages and the interaction of those stages with the social environment, and particularly the inconsistent and contradictory behavior of individuals in the emerging adulthood phase. That topic, like the child sexual abuse dynamics involved in *Jones*, is outside the ordinary realm of lay knowledge. This is clearly demonstrated by the very fact that human developmental stages are taught as part of a required course to students who aspire to become professionals in the fields of social work, education, and psychology. If aspiring professionals in these fields cannot rely on their "common knowledge" in assessing clients' life circumstances, but must instead be formally taught about these developmental issues and their interaction with the social environment, it is an abuse of discretion to find that such information would not be helpful to a lay jury in making a similar assessment. Therefore, Dr. Pitner's proposed testimony met Rule 702's requirements because it would have supplied specialized knowledge that would have assisted the jury in understanding the inconsistent and contradictory nature of

Vincent's actions and thus aided them in determining the fact in issue in this case: where Vincent resided on the date of his death. *See* Rule 702, SCRE.

Courts have often allowed expert testimony in cases that, on first blush, appear to be within the realm of common knowledge held by jurors. *See, e.g.*, *State v. Frazier*, 357 S.C. 161, 166-67, 592 S.E.2d 621, 624 (2004) (reliability of eyewitness testimony); *State v. Whaley*, 305 S.C. 138, 143, 406 S.E.2d 369, 372 (1991) (same); *Orangeburg Sausage Co. v. Cincinnati Ins. Co.*, 316 S.C. 331, 346, 450 S.E.2d. 66, 75 (Ct. App. 1994) (expert allowed to testify regarding propensity of insureds to fail to read policy in suit to recover under casualty and loss insurance policy); *United States v. Byrnes*, 644 F.2d 107 (2d Cir. 1981) (allowing bird expert to give testimony in perjury case); *Katkish v. District of Columbia*, 763 A.2d 703 (D.C. 2000) (allowing expert testimony on application of hair relaxer). Indeed, in *State v. Jones*, *supra*, the Supreme Court affirmed the admission of a different type of human behavior analysis to educate jurors on why an involved individual might act contrary to what a reasonable person might expect. Therefore, the touchstone of the admissibility analysis is whether the expert testimony will prove helpful to the jury, not whether it has ever been offered before in any other case or whether lay people like members of the jury might have some experience with the subject matter. Here, the testimony proffered by Dr. Pitner about behavior of individuals in the developmental stage of emerging adulthood and their attempts to establish identities separate and independent from their parents and childhood homes was similar to other opinions on human behavior accepted by South Carolina courts as helpful to South Carolina juries and as such it was an abuse of discretion to exclude it.

It is irrelevant that there are no reported South Carolina cases[3] approving the use of expert testimony on human behavior in residency cases. As South Carolina courts have previously recognized, "the problem of deciding whether a person is a member of a particular household is dependent upon the factual circumstances involved and . . . the factual circumstances are *so varied that the decisions are of little precedential value*." *Auto-Owners Ins. Co. v. Horne*, 356 S.C. 52, 61, 586 S.E.2d 865, 870 (Ct. App. 2003) (emphasis added) (citing *Griffith v. Sec. Ins. Co. of Hartford*, 167 Conn. 450, 458, 356 A.2d 94, 97 (Conn. 1975)). The fact that earlier cases were decided without the benefit of expert testimony in the stages and patterns of human behavior from a properly qualified expert in the field says nothing whatsoever about whether such expert testimony would have been beneficial to the jury in this case.

The Jackson Estate is entitled to a new trial because trial court's decision to exclude Dr. Pitner's proposed testimony was not harmless error. When there is no equivalent testimony presented on the topic covered by the excluded expert, the error is prejudicial and reversible and requires a new trial. *Means*, 348 S.C. at 171 558 S.E.2d at 926 (trial court's erroneous decision to

[3] In its motion *in limine* **(R. pp.)** (GEICO's Mot. in Lim.) against Dr. Pitner's testimony, GEICO cited a federal district court from Florida which rejected proffered testimony from an attorney on the question of residency. *State Farm Mut. Auto. Ins. Co. v. Cushing*, No. 614CV9580RL22DAB, 2015 WL 12835682 (M.D. Fla. Nov. 2, 2015). The purported expert was a lawyer with no training or expertise whatsoever in human behavior. The *Cushing* case does not support an outright prohibition on ***all*** experts in cases involving residency; it merely held that the testimony of a *lawyer* would not be helpful in a "*relatively simple*" case which did not implicate any area outside the realm of an average fact-finder. *Id.* at *2 (emphasis added). Moreover, since the lawyer-expert's area of expertise was his specialization in insurance claims, his opinion on the residency issue was essentially a legal one. In South Carolina, of course, expert testimony on issues of law is generally inadmissible. *See, e.g., Dawkins v. Fields*, 354 S.C. 58, 65-66, 580 S.E.2d 433, 437 (2003) (lawyer-expert not allowed to opine about whether closed corporation met duties to shareholders); *Green v. State*, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002) (in post-conviction review, criminal defense expert not allowed to opine on alleged deficiency of trial counsel conduct). *Cushing* says nothing about the usefulness of an actual human behavior expert to explain a decedent's complex conduct in connection with a residency inquiry.

exclude testimony of neuropsychologist was not harmless); *see also Whaley*, 305 S.C. at 143, 406 S.E.2d at 372 (abuse of discretion to exclude expert testimony going to central issue). Obviously, no other witness testified as to the human development issues that Dr. Pitner would have explained to the jury, so his exclusion was prejudicial error, requiring reversal.

II. The trial court erred in refusing to correctly instruct the jury on the fact-based nature of the residency inquiry and that any doubts should be resolved in favor of coverage.

"A trial court must charge the current and correct law." *In re Estate of Pallister,* 363 S.C. 437, 451, 611 S.E.2d 250, 258 (2005). "[A] trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence." *Ross v. Paddy,* 340 S.C. 428, 437, 532 S.E.2d 612, 617 (Ct. App. 2000). "Moreover, when general instructions to the jury are insufficient to enable the jury to understand fully the law of the case and issues involved, a refusal to give a requested charge is reversible error." *Id.*

The parties agreed that the sole question for the jury was whether Vincent was a "resident relative" of the named insureds, Barbara and Therel Jackson. **(R. pp.)** (Order Den. Mot. to Dismiss pp. 2-3). Since Vincent was the Jackson's son, he unquestionably qualified as a relative. Therefore, the only question is residency. Consequently, the instruction on this issue was crucial. At GEICO's request, the trial court gave the following instruction:

> A person resides in the household with the named insured if he 1) lives under the same roof; 2) in a close, intimate, and informal relationship; and 3) the intended duration of the relationship is likely to be substantial where it is consistent with the informality of the relationship, and from which it is reasonable to conclude the parties would consider the relationship in contracting about such matters as insurance or their conduct in reliance thereon.

(R. pp.) (Jury Charges). This instruction was taken from *State Farm Fire and Casualty Co. v. Breazell*, 324 S.C. 228, 478 S.E.2d 831 (1996), which also considered the question of residency in connection with a UM/UIM policy of insurance. The Jackson Estate requested that the following additional instructions be given:

> "Reside in the household" has no absolute or precise meaning and whether a person is a resident depends heavily on the facts of each situation. If doubt exists, the term "resident' must be understood in its broadest and most inclusive sense for the benefit of the insureds.
>
> You must consider the person's actual residence and not his mere legal residence.

(R. pp.) (Tr. 424-26; Pl.'s Req. Charge, No. 7). The first requested instruction is based upon *Buddin v. Nationwide Mutual Insurance Co.* 250 S.C. 332, 338, 157 S.E.2d 633, 635 (1967), and the second upon *Breazell*, 324 S.C. at 232, 448 S.E.2d at 833. The Jackson Estate also unsuccessfully requested that a standard "construe against the drafter" instruction be given. **(R. pp.)** (Tr. 424-26; Pl.'s Req. Charge, No. 7). The trial court denied the Jackson Estate's requests. **(R. p.)** (Tr. 426).

Here, the Jackson Estate timely requested instructions on current and correct law. GEICO argued that the emphasis on the fact-based nature of the residency inquiry imposed by *Buddin*, a 1967 case, was somehow supplanted by *Breazell*, a 1996 case, which did not mention this aspect of the residency inquiry. **(R. p.)** (Tr.423-24). Although the trial court apparently accepted this argument, it is wrong. In 2003, some seven years after *Breazell*, this Court reiterated that "the problem of deciding whether a person is a member of a particular household is dependent upon the factual circumstances involved" and further noted that "the factual circumstances are *so varied that the decisions are of little precedential value*." *Horne*, 356 S.C. at 61, 586 S.E.2d at 870 (emphasis added). Indeed, South Carolina courts have distinguished "residences from domiciles, noting that, 'residence' is a more elastic and flexible term than domicile or citizenship. A person may have only one domicile, but may have several residences." *Cook v. Federal Ins. Co.*, 263 S.C. 575, 582, 211 S.E.2d 881, 884 (1975). The incomplete instruction, which omitted the emphasis on the fact-based nature of the inquiry, gave the jury the incorrect impression that residency is a cut-

and-dried inquiry instead of an intensely fact-based one, which is dependent upon the unique facts and circumstances of each case.

More important, nothing in *Breazell* negates *Buddin*'s statement of the important and continuing principle of South Carolina law that insurance policies are to be construed in favor of coverage. This principle has been reaffirmed many times by South Carolina courts since 1996. *See, e.g., American Credit of Sumter, Inc. v. Nationwide Mut. Ins. Co.*, 378 S.C. 623, 628-29, 663 S.E.2d 492, 495 (2008); *M & M Corp. of S.C. v. Auto-Owners Ins. Co*., 390 S.C. 255, 259, 701 S.E.2d 33, 35 (2010); *Walde v. Ass'n Ins. Co.*, 401 S.C. 431, 439, 737 S.E.2d 631, 635 (Ct. App. 2012). These cases also hold that insurance policies are subject to the general rules of contract construction. *American Credit*, 378 S.C. at 628, 663 S.E.2d at 495; *M & M Corp.*, 390 S.C. at 259, 737 S.E.2d at 635; *Walde*, 401 S.C. at 439, 737 S.E.2d at 635. As such, the "construe against the drafter" instruction requested by the Jackson Estate was also proper and should have been given in addition to the *Buddin* formulation that construction should favor coverage.

Taken together, the refusal to charge the jury to emphasize the fact-based nature of the residency question and the obligation to construe any doubt in favor of coverage essentially imposed a higher standard of proof upon the Jackson Estate as to residency, which was the only issue submitted to the jury. An erroneous instruction that goes to the heart of the case is prejudicial and requires reversal. *Sulton v. HealthSouth Corp.*, 400 S.C. 412, 416-17, 734 S.E.2d 641, 643-44 (2012) (instruction that used the wrong standard of care was prejudicial error in medical malpractice case); *Campbell v. Robinson*, 398 S.C.12, 24-25, 726 S.E.2d 221, 288 (Ct. App. 2012) (reversal required based on erroneous instruction giving incorrect standard to determine ownership of engagement ring based on the party "at fault" in the breakup). Here, the Jackson Estate was

prejudiced by the failure to give these correct and current instructions, and is therefore entitled to a new trial for this reason.

III. The trial court erred when it admitted the cumulative and prejudicial federal employment records into evidence.

The trial court erred in admitting into evidence over the objection of the Jackson Estate, certain federal employment forms, namely the Internal Revenue Service Form W-4, Employee's Withholding Allowance Certificate **(R. pp.)** (GEICO's Ex. 8) and Department of Homeland Security Form I-9, Employment Eligibility Verification **(R. pp.)** (GEICO's Ex. 13). The Jackson Estate had argued that these forms, both of which were signed "under penalty of perjury," were substantially more prejudicial than probative, because they were subject to misuse. Tellingly, GEICO chose not to offer as exhibits other employment related forms listing the Rast Street address which contained no "penalty of perjury" admonition. Referencing these two federal forms, GEICO expressly argued to the jury during closing argument that the Rast Street address on these forms was included "under penalty of perjury" and thus should be given additional weight and gravity. **(R. p.)** (Tr. 454). This is precisely the misuse that the Jackson Estate had warned against, because it is based on a patent misunderstanding of perjury law, which law was made known to GEICO and the Court in the Jackson Estate's motion *in limine*. **(R. p.)** (Jackson Estate's Mot. in Lim.). Moreover, the address information contained on these forms was merely duplicative of similar information on other employment records such that the Court abused its discretion in allowing the admission of these documents which allowed GEICO to make the improper "penalty of perjury" argument to the jury.

"Evidence is relevant and admissible if it tends to establish or make more or less probable some matter in issue." *Hoeffner v. The Citadel,* 311 S.C. 361, 365, 429 S.E.2d 190, 192 (1993); Rule 401, SCRE; Rule 402, SCRE. However, otherwise relevant evidence may be excluded where

its probative value is "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Rule 403, SCRE. "Unfair prejudice means an undue tendency to suggest a decision on an improper basis." *State v. Owens,* 346 S.C. 637, 666, 552 S.E.2d 745, 760 (2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). For example, in *Kennedy v. Griffin*, 358 S.C. 122, 128-129, 595 S.E.2d 248, 251 (Ct. App. 2004), this Court reversed a jury verdict where the trial court had erred in admitting evidence relating to a toxicology test showing the presence of marijuana in the plaintiff driver's system but not indicating that he was impaired by the presence of that substance. Since there was no correlation between the drug and the accident, the potential for misuse was too great and a new trial was required.

The Jackson Estate was unfairly prejudiced by the introduction of these two merely duplicative exhibits, because they created an undue tendency to suggest a decision on an improper basis, namely that residency should be determined by the documents Vincent had signed under penalty of perjury listing the Rast Street address. Under federal criminal law, the "penalty of perjury" may be imposed only if the declarant "willfully and contrary to such oath state[d] or subscribe[d] to any material matter which he does not believe to be true." 18 U.S.C. § 1621(1) (emphasis added); *see also United States v. Sarihifard*, 155 F.3d 301, 306 (4th Cir. 1998) ("[a]n essential element in…the crime of [perjury] is materiality"). The test for determining materiality required for a charge of perjury is whether the alleged untrue statement "has a natural tendency to influence, or is capable of influencing, the decision-making body to which it was addressed." *See, e.g., id.,* 155 F.3d at 306 (quoting *United States v. Littlejohn*, 76 F.3d 614, 618 (4th Cir. 1996)). Here, the declarant's address is not "material matter" to the purpose of either form, such that the penalty of perjury could not attach as a matter of federal law, making improper any argument based on "under penalty of perjury."

A. Vincent's address was not material to the I-9 Employment Eligibility Verification Form (GEICO Ex. 8)

The stated purpose of the I-9 form is "to document verification of the identity and employment authorization of each new employee…to work in the United States." Form I-9 instructions (July 2017). The employee accomplishes this goal by providing a passport or a combination of a number of other documents, such as a driver's license and social security card. 8 C.F.R. § 274a.2(b)(v)(A) (2017). The employee's address is irrelevant to establish citizenship or other employment eligibility. Indeed, the employee may list a foreign address outside of the United States, and the updated I-9 form allows employees to list a P.O. Box number than rather a physical address. These instructions demonstrate the irrelevancy of the employee's listed address in determining the citizenship status of an employee.

The layout of Form I-9 itself demonstrates that the only material representation relates to citizenship or other evidence of work eligibility. The "attest under penalty of perjury" warning appears below the boxes for identifying information, including the address box, and grammatically refers only to citizenship or other immigration status. Moreover, the sponsoring witness, Ms. Ernestine Baxter, the former head of the human relations department of the employer for whom these forms were completed, expressly testified that the purpose of the I-9 form is to "ensure that the person is eligible to work in the United States" and that the attestation merely relates to the signer's citizenship. **(R. pp.)** (Tr. 209, 215).

Moreover, the second page of the Form I-9 demonstrated that Mr. Jackson presented as his identification document his South Carolina driver's license, which was already in evidence bearing the Rast Street address. Since the I-9 Form was simply another document which incorporated the drivers' license information and was merely duplicative of other employment application documents listing the Rast Street address, it therefore had no additional probative value to counter

the substantial prejudice that flowed from the improper misuse of "under penalty of perjury" oath, such that its admission into evidence was an abuse of discretion.

B. Vincent's address was not a "material matter" to the IRS Form W-4 Employee's Withholding Allowance Certificate (GEICO Ex. 13).

With respect to the IRS Form W-4, federal tax law expressly limits the "penalty of perjury" to "material matters." 26 U.S.C. § 7206(1) (penalizing a person who "willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under penalties of perjury, and which he does not believe to be true and correct as to every material matter"). As is specified on Form W-4 itself, its sole purpose is to permit the employer to properly calculate and deduct federal income tax withholding. Form W-4 provides the employer with information about "the marital status, the number of withholding allowances, and any additional amount to use when deducting federal income tax from the employee's pay." Topic No. 753-Form W-4 (Mar. 2019). Again, the sponsoring witness testified that the purpose of this IRS form is to list the number of allowances the applicant wants to take for tax purposes. **(R. pp.)** (Tr. 210-11).

The IRS instructs employers to "inform employees of the importance of submitting an accurate Form W-4. An employee may be subjected to a…penalty if he or she submits…a Form W-4 that results in less tax being withheld than is required." IRS Topic No. 753-Form W-4 (Mar. 2019). This penalty is codified at 26 U.S.C. § 7205(a), which criminalizes only "false or fraudulent information…which would require an increase in tax to be withheld." Since the employee's address in no way factors into the determination of tax withholding, there can be no "penalty of perjury" associated with the inclusion of an address. Since "penalty of perjury" did not attach to the employee's address, which was irrelevant to the calculation of federal taxes and the address information was duplicative of other employment application documents, it therefore had no

additional probative value to counter the prejudice that could flow from the "under penalty of perjury" admonition, such that its admission was prejudicial error.

Under these circumstances, evidence of the "under penalty of perjury" forms was more prejudicial than probative because it could mislead the jury. Indeed, GEICO itself admitted during closing arguments that the multiple addresses given in the employment records were "duplicative." **(R. p.)** (Tr. 455). Yet it nonetheless expressly and improperly invited the jury to place undue weight on the federal employment forms because of their "under penalty of perjury" admonition. This invitation is both wrong as a matter of federal law, as Vincent's address was not material to either form, and unsupported by the evidence, as GEICO's own supporting witnesses admitted that the address had nothing to do with the forms' purposes. Therefore, the admission of these forms, together with the improper argument based upon them, was error, such that a new trial should have been granted.

IV. The trial court erred when it refused to admit the insurance contract into evidence.

The trial court erred in refusing to admit the operative insurance contract into evidence. The Jackson Estate tendered the "Declarations Page," and the Protection Against Underinsured Motorist Coverage Amendment South Carolina which together defined the scope of the disputed UIM coverage in this case. **(R. pp.)** (Tr. 50-52, 63; Court Exs. 1 & 2; Pretrial Br.). These documents were attached to GEICO's Complaint and referenced in the parties' pleadings. **(R. pp.)** (Compl.; Court Exs. 1 & 2). These contract provisions would give important context for the jury's finding on the issue of residency. Nonetheless, the trial court ruled that "there would be no mention of money or limits or the use of insurance policies at trial or as charges." **(R. p.)** (Ruling on Mots. Lim.).

As set forth in GEICO's own Complaint, the issue in this action for declaratory relief is whether at the time of the January 17, 2014 wreck, Vincent Jackson was a Class I or Class II

insured and thus whether he was entitled to "stack" UIM benefits associated with the other insured vehicles under the terms of the GEICO Policy. **(R. pp.)** (Compl.). The ultimate factual question was whether he made his residence in the household of the insureds, his parents, Barbara and Therel Jackson. Insurance policies or other documentation which establish the parties' rights and obligations under the policy are typically admitted in cases involving insurance coverage. For example, in *Gasque v. Voyager Life Ins. Co. of South Carolina*, 288 S.C. 629, 344 S.E.2d. 182 (Ct. App. 1986), the court properly admitted the application and sales contract for a credit accident and health policy to prove the terms of the policy. These documents were admissible to prove the terms of the contract under which the insured sought to recover. *Id.* at 631, 344 S.E.2d at 183. The policy language was properly admissible even though the primary issue was whether the insured had materially misrepresented her health on the application and not whether she came within the terms of the policy. *Id.* at 634, 344 S.E.2d at 185.

Here, the information contained on the Declarations Page and UIM Coverage portions of the GEICO policy were central to the dispute in this declaratory judgment case: whether GEICO was liable for only the $100,000 limit on the vehicle involved in the accident or also for stacked coverage of $400,000 on the other four insured vehicles**.** This information was kept from the jury leaving them to make their decision in a vacuum and without the opportunity to even review the terms of the policy central to the issue of residency that they were to decide**.** This was error, such that a new trial should have been granted**.**

CONCLUSION

As a result of the trial court's errors of law and abuse of discretion, the Jackson Estate is entitled to a new trial. The trial court erred in excluding the testimony of Dr. Pitner, who would have testified about human behavioral phases to aid the jury in understanding the inconsistencies and contradictions of Vincent's behavior. The trial court further erred in refusing to give

instructions emphasizing the factual nature of the residency question and the need to resolve questions in favor of coverage. Finally, the trial court erred in admitting federal employment forms signed under penalty of perjury and allowing GEICO to suggest the improper use thereof to the prejudice of the Jackson Estate, while refusing to admit insurance policy documents. The Jackson Estate therefore respectfully requests that this Court reverse and remand this case for a new trial.

Respectfully submitted,

Calvin K. Hastie, Sr., S.C. Bar No. 12045
HASTIE LAW FIRM
7 East Hampton Avenue
Sumter, South Carolina 29150
(803) 774-7776

s/Elizabeth Zeck
Mitchell Willoughby, S.C. Bar No. 6161
Elizabeth Zeck, S.C. Bar No. 9006
WILLOUGHBY & HOEFER, P.A.
930 Richland Street
Post Office Box 8416
Columbia, SC 29202-8416
(803) 252-3300

Attorneys for Appellant Barbara P. Jackson, as Personal Representative for the Estate of Vincent A. Jackson

October 14, 2020
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
In the Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2020-000249

Government Employees Insurance Company,.....Respondent,

v.

Barbara P. Jackson, as Personal Representative
for the Estate of Vincent A. Jackson,.....Appellant.

PROOF OF SERVICE

This is to certify that the undersigned counsel, an attorney with the law firm of Willoughby & Hoefer, P.A., has caused to be served this day one (1) copy of Appellant Barbara P. Jackson, as Personal Representative for the Estate of Vincent A. Jackson's Initial Brief and Designation of Matter pursuant to section (g)(3) of the South Carolina Supreme Court's Amended Order dated May 29, 2020 via electronic mail at the email address as stated in the Attorney Information System and as set forth below to the following:

John Robert Murphy, Esquire
MURPHY & GRANTLAND, P.A.
P.O. Box 6648
Columbia, SC 29260
jrmurphy@murphygrantland.com

G. Murrell Smith, Jr., Esquire
SMITH ROBINSON HOLLER DUBOSE MORGAN, LLC
P.O. Box 580
Sumter, SC 29151
murrell@smithrobinsonlaw.com

s/ Elizabeth Zeck
Elizabeth Zeck, S.C. Bar No. 9006

This 14th day of October, 2020
Columbia, South Carolina

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
CHAD N. JOHNSTON
JOHN W. ROBERTS
ELIZABETH ZECK*
ELIZABETHANN L. CARROLL
ANDREW J. D'ANTONI
R. WALKER HUMPHREY, II***
ANDREW R. HAND****
J. JOSEPH OWENS

ELIZABETH S. MABRY
J. PATRICK HUDSON
OF COUNSEL

JOSEPH H. FARRELL, III
SPECIAL COUNSEL

*ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN WASHINGTON, D.C.
***ALSO ADMITTED IN CALIFORNIA
****ALSO ADMITTED IN NORTH CAROLINA

October 14, 2020

VIA ELECTRONIC FILING

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201
ctappfilings@sccourts.org

RE: *Government Employees Insurance Company. Respondent, v. Barbara P. Jackson, as Personal Representative for the Estate of Vincent A. Jackson, Appellant.* Appellate Case No. 2020-00249

Dear Ms. Kitchings:

Attached for electronic filing in accordance with Supreme Court Order 2020-05-29-02, part (c)(6), and pursuant to Rule 208, SCACR, are Appellant Barbara P. Jackson, as Personal Representative for the Estate of Vincent A. Jackson's Initial Brief and Designation of Matter to be Included in the Record on Appeal. As permitted by Order 2020-05-29-02, part (c)(6), the attached electronic filing is being made via email, and as permitted by the Court, no other copies, whether paper or electronic, are being provided.

By copy of this letter, we are serving Respondent via email as permitted by Order 2020-05-29-02 part (g)(3) and enclose a proof of service to that effect.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.

Elizabeth Zeck

EZ/lla
Attachments

cc: John Robert Murphy, Esquire
G. Murrell Smith, Jr., Esquire