IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM SUMTER COUNTY
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.

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. The Circuit Court properly exercised its discretion to exclude the proffered expert testimony of Ronald O'Neal Pitner, which failed to meet the Rule 702 "threshold" requirements for expert testimony.

II. The Circuit Court properly exercised its discretion in denying Appellant's request to include additional jury charges, and even if improperly denied, Appellant cannot show prejudice from these rulings.

III. The Circuit Court properly exercised its discretion in admitting Vincent Jackson's employment records, and even if not properly admitted, Appellant can show no prejudice due to the cumulative nature of this evidence.

IV. The Circuit Court properly exercised its discretion in denying Appellant's request to include the insurance contract in evidence.

STATEMENT OF THE CASE

This case involves a single issue – whether Vincent Jackson was a resident of his parents' house at the time of his death. Government Employees Insurance Company ("GEICO") issued an automobile policy to Barbara and Therel Jackson. On January 17, 2014, their adult son, Vincent Jackson, was involved in an auto accident and died as a result. Appellant contends that at the time of the accident Vincent Jackson was a resident of his parents' house at 9 Brown Street, Sumter, South Carolina. GEICO contends that Vincent Jackson was not a resident of his parents' house at the time of the accident but rather a resident of his own apartment. Prior to trial, the parties stipulated as to the effect the factfinder's residency determination would have on the insurance benefits.

After a trial involving multiple witnesses and pieces of documentary evidence, the jury entered a verdict finding that Vincent Jackson was not a resident of his parents' house at the time of his death. The Circuit Court denied Appellant's post-trial motions. In an attempt to obtain reversal of the jury's verdict and a new trial, Appellant now challenges four of the Circuit Court's evidentiary/jury charge rulings. Those rulings are: (1) exclusion of the testimony of Defendant's

proffered expert witness, Ronald Pitner; (2) denial of Defendant's requested additional jury charge instructions; (3) admission of Vincent Jackson's employment records; and (4) exclusion of the insurance contract.

STATEMENT OF FACTS

On January 17, 2014, Vincent Jackson was involved in an auto accident and died as a result. (Stipulation and Agreement, p. 1). Thereafter, on October 31, 2016, the parties entered into a Stipulation and Agreement. (Stipulation and Agreement). Under the terms of that agreement, GEICO agreed to pay the Jackson Estate an additional $400,000 if it was determined by final order that:

> [A]t the time of the Collision, Vincent Jackson resided in the household of his Parents, Therel A. Jackson and Barbaba Jackson, said household being located at 9 Brown Street, Sumter, South Carolina.

(Stipulation and Agreement, p. 2 ¶ 3). However, the parties also stipulated that GEICO would not pay the Jackson Estate any further sums if it was "ultimately determined that Vincent Jackson did not reside in the household of his Parents" at the time of the accident. (Stipulation and Agreement, pp. 2-3 ¶ 3). In her Answer, Defendant asserted that "the sole issue to be litigated" was whether or not Vincent Jackson was a resident of his parents' house at the time of his death. (Ans. p. 1, p. 8 ¶ 31). Defendant's Answer further asserted that this was a "question-of-fact" and any other claim or defense pursued would be in breach of the Stipulation and Agreement. (Ans. ¶¶ 31, 33).

For at least 18 months prior to the accident, Vincent Jackson had been renting an apartment located at 251 Rast Street, Sumter, South Carolina. (January 17, 2020 Order p. 2); (Apartment Lease). The rental application also listed his girlfriend and infant son as occupants. (Rental Application). At the time of his death, this apartment was the address listed on Vincent Jackson's driver's license, voter registration, his own insurance policy with Omni Indemnity Company, and

his tax returns. (January 17, 2020 Order p. 2); (Driver's License); (Voter Registration); (Insurance Application); (Tax Returns). It was also the address Vincent Jackson put on various documents he submitted to his employer within one week of his death. (Employment Records). In addition, a detention center record from the same month as Vincent Jackson's death showed that he was arrested at the apartment in the early morning hours. (Detention Center Record).

Prior to trial, GEICO took the deposition testimony of Defendant's proposed expert witness, Ronald Pitner. Based on his three-hour deposition testimony, GEICO filed a Motion in Limine and supporting Memorandum to exclude Pitner's qualification as an expert and his proposed testimony. (Pl.'s Mot. in Limine and Mem. in Supp.). On May 27, 2019, Defendant filed a Memorandum in Opposition. (Def.'s Mem. in Opp.). On May 28, 2019, the Circuit Court heard arguments from both parties on this issue. By Order dated May 28, 2019, the Circuit Court granted GEICO's Motion in Limine. (May 28, 2019 Order). The Circuit Court found that none of the three "threshold" requirements for expert testimony were met. (Tr. 320:6-12).

On May 28, 2019, the trial of this case began in the Sumter County Court of Common Pleas. On May 30, 2019, the jury returned a verdict unanimously finding that Vincent Jackson was not a resident of the home of his parents at the time of his death on January 17, 2014. (Verdict Form). By Order dated May 31, 2019, the Circuit Court entered judgment for GEICO based on the jury's verdict. (May 31, 2019 Order). On June 10, 2019, the Defendant filed a "Motion for Judgment Notwithstanding the Verdict or, in the Alternative, for New Trial." (Def.'s JNOV Mot.). On January 17, 2020, the Circuit Court entered an Order denying the Defendant's post-trial motions. (January 17, 2020 Order). On February 14, 2020, Defendant filed her Notice of Appeal in this Court. (Def.'s Notice of Appeal).

STANDARD OF REVIEW

A. Exclusion of Proffered Expert Testimony

"Qualification of an expert and the admission or exclusion of his testimony is a matter within the sound discretion of the trial court. Similarly, the admission or exclusion of evidence in general is within the sound discretion of the trial court. In both instances, the trial court's decision will not be disturbed on appeal absent an abuse of discretion." *Fields v. Regional Med. Ctr. Orangeburg*, 363 S.C. 19, 25, 609 S.E.2d 506, 509 (2005). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." *Id.* at 26, 609 S.E.2d at 509.

To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both: (1) the error of the ruling and (2) resulting prejudice. *Id.* As to the second requirement, "[t]he appellate court considers whether, viewing a case as a whole, the wrongly excluded evidence or testimony was so crucial and important in proving the aggrieved party's claim or defense that its exclusion constitutes prejudicial error, i.e., the aggrieved party demonstrates there is a reasonable probability the jury's verdict was influenced by the lack of the challenged evidence." *Id.* at 32–33, 609 S.E.2d at 513. "All expert testimony must satisfy the Rule 702 criteria, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration." *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009).

B. Jury Charge

"Generally, the trial judge is required to charge only the current and correct law of South Carolina." *State v. Adkins*, 353 S.C. 312, 317, 577 S.E.2d 460, 463 (Ct. App. 2003). In reviewing jury charges for error, the Court of Appeals considers "the court's jury charge as a whole in light

of the evidence and issues presented at trial." *Id.* at 318, 577 S.E.2d at 463 (citing *Burroughs & Chapin Co. v. South Carolina Dep't of Transp.*, 352 S.C. 535, 574 S.E.2d 751 (Ct. App. 2002)). "The substance of the law is what must be charged to the jury, not any particular verbiage. A jury charge which is substantially correct and covers the law does not require reversal." *Id.* at 319, 577 S.E.2d at 464 (Ct. App. 2003) (citations omitted); *State v. Logan*, 405 S.C. 83, 91, 747 S.E.2d 444, 448 (2013) (same).

As the South Carolina Supreme Court explained in *Stephens v. CSX Transp., Inc.*:

> When an appellate court reviews an alleged error in a jury charge, it "must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *Keaton ex rel. Foster v. Greenville Hosp. Sys.*, 334 S.C. 488, 497, 514 S.E.2d 570, 575 (1999) (citations omitted). "If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error." *Id.* "This holistic approach to jury instructions is linked to the principle of appellate procedure that '[a]n error not shown to be prejudicial does not constitute grounds for reversal.' " *Ardis v. Sessions*, 383 S.C. 528, 532, 682 S.E.2d 249, 250 (2009) (quoting *Brown v. Pearson*, 326 S.C. 409, 417, 483 S.E.2d 477, 481 (Ct.App.1997)).

415 S.C. 182, 197–98, 781 S.E.2d 534, 542 (2015). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). A trial judge's failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues. *State v. Brandt*, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011).

C. Admission or Exclusion of Evidence

"The admission or exclusion of evidence is within the circuit court's discretion, and the circuit court's ruling on the admissibility of evidence is not subject to reversal on appeal absent a showing of a clear abuse of that discretion." *Turner v. Medical Univ. of S.C.*, 430 S.C. 569, 589, 846 S.E.2d 1, 11 (Ct. App. 2020), *reh'g denied* (Aug. 13, 2020). "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the

resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof." *Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 408, 764 S.E.2d 249, 251 (Ct. App. 2014); *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 557, 658 S.E.2d 80, 86 (2008) ("[T]o warrant reversal based on the admission or exclusion of evidence, the appealing party must show both the error of the ruling and prejudice.). "The trial judge is given broad discretion in ruling on questions concerning the relevancy of evidence, and his decision will be reversed only if there is a clear abuse of discretion. Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." *State v. Alexander*, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991) (citations omitted).

ARGUMENT

I. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION TO EXCLUDE THE PROFFERED EXPERT TESTIMONY OF RONALD O'NEAL PITNER, WHICH FAILED TO MEET THE RULE 702 "THRESHOLD" REQUIREMENTS FOR EXPERT TESTIMONY.

Appellant contends she is entitled to a new trial because the Circuit Court refused to admit the testimony of her proffered expert, Ronald O'Neal Pitner. This action involves a single issue – whether Vincent Jackson was a resident of his parents' house at the time of his death. (Ans., p. 1 (stating that the "sole remaining issue in dispute" is "Vincent A. Jackson's residency at the time of his death.")); (Def.'s Mot. to Dismiss ¶ 17 ("...the sole remaining issue of Mr. Jackson's residency at the time of the Collision.")). Appellant proffered Pitner as an expert to offer opinion testimony on the issue of Vincent Jackson's residency at the time of his death. Prior to the trial court allowing a jury to consider expert testimony, the court must make three key preliminary findings which are fundamental to Rule 702, SCRE: (1) that the subject matter is beyond the ordinary knowledge of the jury; (2) that the proffered expert has acquired the requisite knowledge

and skill to qualify as an expert in the particular subject matter; and (3) that the substance of the testimony is reliable. Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter. The party offering the expert has the burden of making the requisite showing. With regard to Pitner and his testimony, none of these three prerequisite "threshold" requirements were met. Therefore, the Circuit Court properly exercised its discretion in excluding Pitner's testimony.

A. South Carolina Requirements for Expert Testimony

Pursuant to Rule 702, SCRE, "[i]f 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." Rule 702, SCRE. "Before a witness is qualified as an expert, the trial court must find (1) the expert's testimony will assist the trier of fact, (2) the expert possesses the requisite knowledge, skill, experience, training, or education, and (3) and the expert's testimony is reliable." *State v. Martin*, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011). As the South Carolina Supreme Court in *Watson v. Ford Motor Co.* explained:

> Specifically, in executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony. First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Next, while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable. Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability.

389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010) (citations omitted). These "threshold foundational requirements" apply with equal force to scientific and non-scientific evidence. *White*, 382 S.C. at

274, 676 S.E.2d at 689. "'The party offering the expert has the burden of showing his witness possesses the necessary learning, skill, or practical experience to enable the witness to give opinion testimony.'" *Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 411, 563 S.E.2d 109, 114 (Ct. App. 2002) (quoting *State v. Schumpert*, 312 S.C. 502, 505, 435 S.E.2d 859, 861 (1993)).

B. With regard to the first required finding, the subject matter at issue – residency – is not a matter beyond the ordinary knowledge of the jury.

In order for Pitner's testimony to be admitted, Appellant had to first establish that "the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012). The fact issue for consideration of the jury in this case was the residence of Vincent Jackson at the time of his death. Residency is not a subject beyond the ordinary knowledge of the jury such that they need expert testimony to assist them. *See State Farm Mut. Auto. Ins. Co. v. Cushing*, No. 614CV958ORL22DAB, 2015 WL 12835682, at *2 (M.D. Fla. Nov. 2, 2015) (stating that "determining a person's primary residence" is a "decision the average fact-finder is perfectly capable of making," finding that the proposed expert was "no more competent than a member of the general public to offer an opinion regarding the primary residence of these individuals," and excluding proffered opinions of proposed expert).

The fact that residency is not a subject beyond the ordinary knowledge of the jury is bolstered by the numerous South Carolina residency cases that have been determined without expert witnesses. *See, e.g., Auto-Owners Ins. Co. v. Horne*, 356 S.C. 52, 69, 586 S.E.2d 865, 874 (Ct. App. 2003); *Smith v. Auto-Owners Ins. Co.*, 377 S.C. 512, 514, 660 S.E.2d 271, 272 (Ct. App. 2008); *Auto Owners Ins. Co. v. Langford*, 330 S.C. 578, 500 S.E.2d 496 (Ct. App. 1998); *Richardson v. South Carolina Farm Bureau Mut. Ins. Co.*, 336 S.C. 233, 519 S.E.2d 120 (Ct. App. 1999); *Hunter v. Nationwide Mut. Ins. Co.*, 317 S.C. 402, 453 S.E.2d 900 (Ct. App. 1994); *State*

Auto Prop. & Cas. Ins. Co. v. Gibbs, 314 S.C. 345, 349, 444 S.E.2d 504, 506 (1994). Furthermore, the fact that residency is not a subject beyond the ordinary knowledge of the jury is bolstered by the lack of cases allowing the introduction of expert testimony on the issue of residency. Thus, Pitner's testimony does not meet the first *Watson* "threshold" requirement and was properly excluded by the Circuit Court.

C. With regard to the second required finding, Appellant failed to show that her proffered expert had acquired the requisite knowledge and skill to qualify as an expert in the matter of young adult residency.[1]

Although Appellant's proffered expert has a Ph.D. in social work and social psychology, he does not possess any specialized knowledge, skill, experience, education, or training with regard to the area of young adult residency. *See* (Dep. of Pitner 9:5-7); *Nelson v. Taylor*, 347 S.C. 210, 214, 553 S.E.2d 488, 490 (Ct. App. 2001) ("Qualification depends on the particular witness' reference to the subject.").[2] His dissertation was on whether stereotypes effect how Arab and Jewish children think about violence. (Dep. of Pitner 10:21-25); (Tr. 273:15-20). The focus of his post-graduate research has been youth violence and youth civic engagement. (Dep. of Pitner 11:12-12:7); (Tr. 267:19-24). He bases his opinion that the decedent was a resident of his parents' household on the concept of "emerging adulthood" but testified as follows:

Q. Have you done any research or writing on this idea of emerging adulthood?

A. Not on that in particular. Mine has just been more youth who happen to fall into that category.

Q. And in particular, it seems like your focal point has been youth and interactions with violence –

A. Yeah.

[1] *See* discussion *infra* note 2.

[2] Respondent cites to Pitner's deposition testimony because the Circuit Court granted Respondent's Motion in Limine based on Pitner's deposition testimony. (May 28, 2019 Order); (Pl.'s Mot. in Limine and Mem. in Supp.).

Q. Is that fair to say?

A. Violence. And then later with just civic – more civic engagement.

***

Q. But you personally have never done any research on the theory of emerging adulthood?

A. I have not done on emerging adulthood.

(Dep. of Pitner 25:19-26:3); (Tr. 314:13-15). The extent of his research for this case was to review information provided by Appellant's counsel and go on the "University of South Carolina's website, just to look at psych info." (Dep. of Pitner 26:13-27:7; 27:25-28:6); *see Watson*, 389 S.C. at 448, 699 S.E.2d at 176 (2010) (holding trial court erred in admitting proffered cruise control expert where he had experience with other auto components but "had no knowledge, skill, experience, training or education specifically related to cruise control systems" and "merely studied the Explorer's system just before trial"). Therefore, Appellant failed show that her proffered expert meets the second requirement for admission of his testimony, and the Circuit Court properly excluded his testimony.

D. With regard to the third required finding, Appellant failed show that her proffered expert's testimony is reliable.

"Nonscientific expert testimony must satisfy Rule 702, both in terms of expert qualifications and reliability of the subject matter." *White*, 382 S.C. at 273, 676 S.E.2d at 688. "There is no formulaic approach for determining the foundational requirements of qualifications and reliability in non-scientific evidence," but the proponent must present "some evidence demonstrating that the individual expert is able to draw reliable results" from the procedures he employs. *State v. Chavis*, 412 S.C. 101, 108, 771 S.E.2d 336, 339 (2015). In his deposition, Mr. Pitner stated that he would only be testifying to one opinion – that Jackson's residence at the time of his death was the Brown Street address because "his patterns of behavior seem classic to

emerging adulthood." (Dep. of Ronald Pitner 34:22-36:5).[3] Pitner's own deposition testimony demonstrates the unreliability of his opinion.

First, in his deposition, Mr. Pitner admitted that he has not done any research or writing on the idea of "emerging adulthood." (Dep. of Ronald Pitner 25:19-22). Moreover, he admitted in his deposition that he is not relying on any particular studies or papers to formulate any of his opinions in the case. (Dep. of Pitner 28:16-20). He also admitted that when it comes to the theory of "emerging adulthood" it is a generalized trend among a large swath of the population and not true with respect to all individuals. (Dep. of Pitner 36:6-15).

Second, Mr. Pitner admitted that there are not any recognized tests to apply to determine if someone fits into the mold of "emerging adulthood." (Dep. of Pitner 38:18-39:8; 40:19-25). He also admitted in his deposition that he did not apply any standard, field-recognized methodology to reach his opinion or any recognized standards or tests to reach his opinion. (Dep. of Pitner 48:13-25; 114:1-6). Furthermore, Pitner admitted that social work and psychology are scientific fields that apply the scientific method, but he "did not do a formal study." (Dep. of Pitner 49:1-14). Additionally, there is no evidence that his conclusions or impressions taken from his review of the documents provided by Appellant's counsel and his review of the "psych info" on the University of South Carolina's website are accurate. *See* (Dep. of Pitner 26:13-27:7; 27:25-28:6); *Chavis*, 412 S.C. at 108, 771 S.E.2d at 339 (holding circuit court abused its discretion by admitting opinion of

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[3] Even if Pitner qualifies as an expert on the theory of "emerging adulthood," which Respondent contends he does not, he does not qualify as an expert on young adult residency such that he could give an opinion on the "ultimate issue" of where Vincent Jackson resided at the time of his death. *See State v. Andrews*, 424 S.C. 304, 318, 818 S.E.2d 227, 235 (Ct. App. 2018), *reh'g denied* (Sept. 20, 2018) (holding trial court abused its discretion by allowing EMT paramedic who was qualified as an expert in the field of EMS to testify where victim was at time he was shot because the trial court, in effect, allowed the EMT to give an unqualified opinion on "the ultimate issue" of whether the shooter had been acting in self-defense when he shot and killed the victim).

proffered child abuse assessment expert because "there was simply no evidence that her conclusions or impressions taken from [victim] interviews were accurate" where there was no way to discern error rate and work was not peer reviewed); *Jamison v. Morris*, 385 S.C. 215, 228, 684 S.E.2d 168, 175 (2009) ("An expert cannot testify to an opinion predicated on an unreliable test.").

Third, as a starting point to his analysis, Pitner accepted as true testimony from Vincent Jackson's family members that he lived at his parents' home and then used the concept of "emerging adulthood" to explain all the inconsistencies that testimony has with the documents signed by Vincent Jackson before his death. (Dep. of Pitner 111:10-112:2; 45:3-6). Prior to giving his opinion in his deposition, Pitner did not review any depositions other than those of Vincent Jackson's mother, father, and his son's mother and grandmother, all of whom may have had a monetary stake in the outcome of this case. (Dep. of Pitner 51:8-12). This undermines the reliability of his proffered opinion. *See Graves*, 401 S.C. at 76, 735 S.E.2d at 657 ("'Simply put, an expert does not assist the trier of fact in determining whether a product failed if he starts his analysis based upon the assumption that the product failed (the very question that he was called upon to resolve), and thus, the court's refusal to accept and give credence to [the expert's] opinion was proper.'" (quoting *Clark v. Takata Corp.*, 192 F.3d 750, 757 (7th Cir.1999)); *see also id.* at 78, 735 S.E.2d at 657 ("Of great concern to us is that each [expert] began with the assumption that the monitor failed and then discounted evidence to the contrary based on the *ipse dixit* of the plaintiff who hired them, an analysis we find lacking in the indicia of reliability required for reasoning to the best inference."). The very language Pitner used at trial demonstrates that he was making bought-and-paid-for arguments rather than giving an expert opinion: "The behavior for Vincent not only tells me that he has this comfort with this home, but that comfort, ***I ultimately***

argue suggest that that was because that was what he considered to be his home." (Tr. 309:22-25 (emphasis added)).

Moreover, Pitner admitted that an emerging adult could live outside of his/her parents' home. (Dep. 55:21-25). Pitner admitted that the concept of emerging adulthood is not a tool designed to determine someone's residence. (Dep. of Pitner 80:6-11). As he explained:

> Q. So whether someone's an emerging adult doesn't actually help us answer the question of where somebody is spending their nights, does it?
>
> A. No. I means part of – I mean, I – when I talk of – when I think about where he was spending his time, I go by the evidence that I've seen.
>
> Q. Exactly. Which is the evidence, not the theory of emerging adulthood, correct?
>
> A. No, the theory of emerging adulthood explains why he's at home, the Brown Street location, and then why he would be putting his address as something else.
>
> Q. But it doesn't actually answer where he's staying correct?
>
> A. The theory itself doesn't.

(Dep. of Pitner 128:12-25). (Tr. 312:18 ("The theory doesn't explain residency.")). Pitner stated that even someone who fits into the category of "emerging adult" could have established a separate household outside of his parents' household. (Dep. of Pitner 134:8-14); (Tr. 312:18-24; 313:16-24).

Furthermore, Pitner failed to provide any objective criteria for why Jackson could not have been a resident of his own apartment. Rather, he "baldly marginalized" the documentary evidence in this case simply because the Jackson family said Vincent Jackson resided at his parents' house. *See* (Dep. of Pitner 29:3-16; 30:16-33:8; 72:19-23; 92:17-93:7; 97:17-99:6; 101:7-103:10; 115:25-116:3; 120:8-121:4; 123:11-124:24); (Tr. 311:6-20); *Graves*, 401 S.C. at 77, 735 S.E.2d at 657 (holding one proffered expert's testimony unreliable where he "failed to provide objective criteria" for rejecting an alternative possibility and holding other proffered expert's testimony unreliable

where he "baldly marginalized" contrary evidence in the case simply because the plaintiffs said something different to what that evidence revealed). Thus, Defendant cannot show that her proffered expert's testimony meets the third "reliability" requirement for admission, and the Circuit Court properly excluded his testimony.

Appellant/Defendant failed show that her proffered expert and his opinion testimony meet the requirements of Rule 702, SCRE and the South Carolina Supreme Court's "threshold" requirements for expert testimony – i.e. subject matter, expert qualifications, and reliability. Therefore, the Circuit Court properly exercised its discretion to exclude the proffered expert testimony of Ronald O'Neal Pitner.

II. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING APPELLANT'S REQUEST TO INCLUDE ADDITIONAL JURY CHARGES, AND EVEN IF IMPROPERLY DENIED, APPELLANT CANNOT SHOW PREJUDICE FROM THESE RULINGS.

Appellant contends she is entitled to a new trial because the Circuit Court refused to include two of her requested jury charges. "Generally, the trial judge is required to charge only the current and correct law of South Carolina." *Adkins*, 353 S.C. at 317, 577 S.E.2d at 463. "A jury charge which is substantially correct and covers the law does not require reversal." *Id.* at 319, 577 S.E.2d at 464; *Logan*, 405 S.C. at 91, 747 S.E.2d at 448 (same). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *Mattison*, 388 S.C. at 479, 697 S.E.2d at 583. A trial judge's failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues. *Brandt*, 393 S.C. at 550, 713 S.E.2d at 603. The Circuit Court properly charged the jury on South Carolina's current test for residency. The Circuit Court also properly exercised its discretion by refusing to include language from South Carolina's prior residency test and refusing to include a

"construe against the drafter" instruction. Moreover, Appellant can show no prejudice from these rulings. Therefore, Appellant is not entitled to a new trial on this basis.

A. The Circuit Court properly charged the jury with the South Carolina Supreme Court's current test for residency.

The Circuit Court charged the jury with the following instruction, which is the South Carolina Supreme Court's current test for residency as set forth in *State Farm Fire & Cas. Co. v. Breazell*, 324 S.C. 228, 231, 478 S.E.2d 831, 832 (1996):

> 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.

(Jury Instructions). Appellant requested an additional jury instruction based on a prior 1967 Supreme Court case – *Buddin v. Nationwide Mut. Ins. Co.*, 250 S.C. 332, 157 S.E.2d 633 (1967).

Several decades after the *Buddin* case, the South Carolina Supreme Court adopted the "*Waite* test," which is its current test for residency:

> To determine whether Thomas was a resident or member of the Breazell household, the trial court applied the test in *A.G. by Waite v. Travelers Ins. Co.*, 112 Wis.2d 18, 331 N.W.2d 643 (App.1983). The determination under the *Waite* test is dependent upon three factors: 1) living under the same roof; 2) in a close, intimate and informal relationship, and 3) where 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 that the parties would consider the relationship in contracting about such matters as insurance or in their conduct in reliance thereon. *Waite, supra*....
>
> We adopt the test as set forth in *Waite*....

Breazell, 324 S.C. at 231, 478 S.E.2d at 832; *Horne*, 356 S.C. at 60, 586 S.E.2d at 870 (recognizing that after *Buddin* the South Carolina Supreme Court in *Breazell* "adopted a three-factor test for

making this [residency] determination"). In *Smith v. Auto-Owners Ins. Co.*, this Court distinguished the former residency test under *Buddin* from the current residency test in *Breazell*:

> [T]he circuit court applied the *Buddin* standard of "one, other than a temporary or transient visitor, who lives together with others in the same house for a period of some duration, although he may not intend to remain there permanently." 250 S.C. at 339, 157 S.E.2d at 636. We note that ***in 1996, our supreme court adopted a similar but somewhat more stringent approach to determining residency.*** *State Farm Fire & Casualty Co. v. Breazell*, 324 S.C. 228, 478 S.E.2d 831 (1996).

377 S.C. at 517, 660 S.E.2d at 273 (emphasis added); *see also State Farm Fire & Cas. Ins. Co. v. Sproull*, 329 F. Supp. 3d 238, 244 (D.S.C. 2018) ("The relevant test for determining whether James was a resident of the LaDonna and Robert Campbell household under South Carolina law is set forth in *State Farm Fire & Casualty Company v. Breazell*, 324 S.C. 228, 478 S.E.2d 831 (1996)."). Therefore, the Circuit Court did not err by charging the jury with the South Carolina Supreme Court's current residency test and denying Appellant's request to include language from its former residency test.

However, even if the *Buddin* test was still applicable, Appellant's argument for why the *Buddin* language had to be included is without merit. Appellant argues that the *Buddin* language had to be included to instruct the jury "on the fact-based nature of the residency inquiry." (Appellant's Br., pp. 18-20). According to Appellant's argument, only the *Buddin* instruction would so inform the jury and without it the jury would think that residency "is a cut-and-dried inquiry instead of an intensely fact-based one." (Appellant's Br., pp. 19-20). However, the *Breazell* instruction given by the court puts the jury on notice that residency is a fact-based inquiry and instructs the jury on which facts to focus their inquiry. *See Varnadore v. Nationwide Mut. Ins. Co.*, 289 S.C. 155, 345 S.E.2d 711 (1986) (holding refusal of a request to charge is not error when the substance of the request is included in the general instructions). Consequently, Appellant's argument for the inclusion of additional language from *Buddin* is without merit, and the Circuit

Court did not err by refusing the same. *See Davis v. Tripp*, 338 S.C. 226, 237, 525 S.E.2d 528, 534 (Ct. App. 1999) (holding the trial court did not err in refusing to give the requested instruction and stating: "We have examined the court's charge to the jury and conclude that, when viewed in its entirety, it fairly and sufficiently sets forth the applicable law in this case."). The Appellant cannot show prejudice where the jury charge as a whole informed the jury of the fact-based nature of the inquiry. *See State v. Zeigler*, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005) ("A jury charge which is substantially correct and covers the law does not require reversal."); *Ardis*, 383 S.C. at 528, 682 S.E.2d at 251 (finding no prejudice "when the challenged jury charge is viewed in light of the evidence and issues presented at trial").

B. The Circuit Court properly refused to include Appellant's requested "construe against the drafter" jury instruction.

Appellant also alleges she is entitled to a new trial because the Circuit Court refused to include a "construe against the drafter" jury instruction. (Appellant's Br. p. 20). The Circuit Court properly refused to include such an instruction. There are several reasons Appellant's request for such an instruction was properly denied. First, inclusion of a "construe against the drafter" jury instruction would have been improper in this case because the jury was not interpreting any contract language. The sole question for the jury was whether Vincent Jackson was a resident of his parents' house at the time of his death. *See* (Appellant's Br. p. 18 ("[T]he only question is residency.")); (Ans., p. 1 (stating that the "sole remaining issue in dispute" is "Vincent A. Jackson's residency at the time of his death.")); (Def.'s Mot. to Dismiss ¶ 17 ("...the sole remaining issue of Mr. Jackson's residency at the time of the Collision.")). This question involves no contract interpretation.

Second, even if this case had involved contract interpretation (which it did not), contract interpretation would have been a matter for the court and not the jury. "[T]he interpretation of an

unambiguous contract is a question of law" for the court, not the jury. *Bennett & Bennett Const., Inc. v. Auto Owners Ins. Co.*, 405 S.C. 1, 4, 747 S.E.2d 426, 427 (2013). Only in the case of certain ambiguities would policy interpretation be a question for the jury. *See Beaufort Cty. Sch. Dist. v. United Nat. Ins. Co.*, 392 S.C. 506, 526, 709 S.E.2d 85, 95–96 (Ct. App. 2011) ("Interpretation of an unambiguous policy, or a policy with a patent ambiguity is for the court. Interpretation of a policy with a latent ambiguity is for the jury." (citations omitted)); *Auto Owners Ins. Co. v. Benjamin*, 415 S.C. 137, 144, 781 S.E.2d 137, 141 (Ct. App. 2015) (same). Appellant did not argue there was an ambiguity in the policy terms, and the Circuit Court did not determine that the policy language was ambiguous. "'It is a question of law for the court whether the language of a contract is ambiguous.'" *Canal Ins. Co. v. Nat'l House Movers, LLC*, 414 S.C. 255, 260, 777 S.E.2d 418, 421 (Ct. App. 2015) (quoting *South Carolina Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001)); *Preservation Capital Consultants, LLC v. First Am. Title Ins. Co.*, 406 S.C. 309, 316, 751 S.E.2d 256, 259 (2013) (same); *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 615, 732 S.E.2d 626, 628 (2012) (same). Consequently, as a matter of law, policy interpretation was not a question for the jury in this case.[4]

Moreover, policy terms are only construed against the drafter in the case of ambiguity, and the Circuit Court did not determine there was any ambiguity in the policy language. As this Court has repeatedly explained:

> Ambiguous terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer. *Diamond State Ins. Co. v. Homestead Indus., Inc.*, 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995). "However, in cases where there is no ambiguity, contracts of insurance, like other contracts, must be construed according to the terms which the parties have used, to be taken and understood in their plain, ordinary and popular sense." *Garrett v. Pilot Life Ins. Co.*, 241 S.C. 299, 304, 128 S.E.2d 171, 174 (1962).

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[4] At a March 30, 2017 hearing prior to the trial, Appellant argued that the issue of residency should be decided by a jury, and the Circuit Court agreed. (June 21, 2017 Order, p. 3)

Stringer v. State Farm Mut. Auto. Ins. Co., 386 S.C. 188, 192, 687 S.E.2d 58, 60 (Ct. App. 2009); *Precision Walls, Inc. v. Liberty Mut. Fire Ins. Co.*, 410 S.C. 175, 183, 763 S.E.2d 598, 602 (Ct. App. 2014) (same); *see also USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008) (same). Again, Appellant did not argue there was an ambiguity in the policy language, and the Circuit Court did not determine that the policy language was ambiguous. Therefore, Appellant's requested "construe against the drafter" jury instruction would have been improper for several reasons, and the Circuit Court properly refused to include such a jury instruction.

III. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING VINCENT JACKSON'S EMPLOYMENT RECORDS, AND EVEN IF NOT PROPERLY ADMITTED, APPELLANT CAN SHOW NO PREJUDICE DUE TO THE CUMULATIVE NATURE OF THIS EVIDENCE.

Appellant alleges she is entitled to a new trial because the Circuit Court admitted certain employment records Vincent Jackson completed only days prior to his death. (Appellant's Br. p. 21). Again, the sole question in this case was whether Vincent Jackson was a resident of his parents' house at the time of his death on January 17, 2014. With respect to this question, the employment records Vincent Jackson completed by hand three (3) days prior to his death, listing his address as the 251 Rast Street apartment, are highly probative. *See* Rule 402, SCRE; *Judy v. Judy*, 384 S.C. 634, 641, 682 S.E.2d 836, 839 (Ct. App. 2009) ("Evidence meets the test of relevance if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears."). Appellant objected to the admission of this evidence pursuant to Rule 403 of the South Carolina Rules of Evidence. However, Appellant failed to show that the statements in these records create "unfair prejudice," much less "unfair prejudice" that

substantially outweighs their probative value. Consequently, the Circuit Court properly admitted these employment records.

Appellant specifically challenges the admission of the following employment records: (1) Vincent Jackson's W-4 form; and (2) Vincent Jackson's federal I-9 employment eligibility verification form. (Appellant's Br. p. 21). Vincent Jackson completed and signed the W-4 form three (3) days before his death. (Jackson W-4 form (dated January 14, 2014)). On the form, he listed his Rast Street apartment as his "home address." (Jackson W-4 form). The W-4 form stated: "Under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge and belief, it is true, correct, and complete." (Jackson W-4 form). Therefore, this form is highly probative of the sole question at issue in this case – whether Vincent Jackson was a resident of his parents' house on the date of his death three days later. Several things make it probative: (1) the timing of the Vincent Jackson's execution of the form three days before his death; (2) that Vincent Jackson signed and completed it himself; and (3) that the language on the form incentivized the signer to provide truthful information.

Vincent Jackson also completed and signed the I-9 form three (3) days before his death. (Jackson I-9 form) (dated January 14, 2014)). He listed his Rast Street apartment as his address on this form. (Jackson I-9 form). The I-9 form contained the following statement: "I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form." (Jackson I-9 form). Likewise, this form is highly probative of the sole question at issue in this case – whether Vincent Jackson was a resident of his parents' house on the date of his death three days later – for the same reasons.

Under Rule 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice...." Rule 403, SCRE. "'A trial court has particularly

wide discretion in ruling on Rule 403 objections.'" *State v. Gray*, 408 S.C. 601, 608, 759 S.E.2d 160, 164 (Ct. App. 2014) (quoting *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012)). "'A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances.'" *Id.* (quoting *State v. Dial*, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App. 2013)); *see also State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003) ("We ... are obligated to give great deference to the trial court's judgment [regarding Rule 403]." (internal citation omitted)).

In exercising its discretion on a Rule 403 objection to the admissibility of the employment forms, the trial court must balance the alleged unfair prejudice of the employment forms against their probative value. *See Gray*, 408 S.C. at 608–09, 759 S.E.2d at 164. However, as this Court has explained, not all prejudice is "unfair prejudice":

> Prejudice that is "unfair" is distinguished from the legitimate impact all evidence has on the outcome of a case. "Unfair prejudice" does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis. All evidence is meant to be prejudicial; it is only unfair prejudice which must be scrutinized under Rule 403.

State v. Lee, 399 S.C. at 529, 732 S.E.2d at 229 (citations omitted); *see also State v. Stokes*, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009) ("Unfair prejudice means an undue tendency to suggest decision on an improper basis." (quoting *State v. Dickerson*, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000)).

Appellant alleges that these documents' probative value is "substantially outweighed by the danger of unfair prejudice" because of the penalty of perjury language contained in the documents. (Appellant's Br. p. 22 ("[T]hey 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.")). "Rule 403 only requires suppression of

evidence that results in unfair prejudice—prejudice that damages an opponent for reasons other than its probative value…" *Gray*, 408 S.C. at 616, 759 S.E.2d at 168 (citation omitted). While this perjury language may be prejudicial to Appellant's case, it creates no "unfair prejudice." The I-9 form itself states that federal law provides for imprisonment and/or fines for false statements in connection with completion of the form. (Jackson I-9 form). Nowhere does the form limit this language to any particular statement on the form. *See* (Jackson I-9 form). The W-4 form states that "under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge and belief, it is true, correct, and complete." (Jackson W-4 form). This form also does not limit this statement to any particular information provided on the form. *See* (Jackson W-4 form). Nowhere do the forms state that the federal government will only prosecute the signer for providing certain types of false information on these forms.

In addition to the other probative value of these documents (timing and completion by Jackson), these perjury statements add further probative value. They may have incentivized Vincent Jackson to provide truthful information about his address on these forms. Appellant argues that there is "unfair prejudice" from these statements on the forms because the government would not have prosecuted Jackson for providing a false address. (Appellant's Br. p. 22-24). Appellant's argument lacks a required logical step. Appellant has failed to show that Vincent Jackson knew the government would not prosecute him for providing a false address at the time he completed these forms. Without this step, Appellant's argument has no bearing on whether Vincent Jackson was incentivized to provide truthful information about his address on these forms – i.e. one of the legitimate probative forces of these documents.

In addition, Appellant has failed to show that this alleged "unfair prejudice" from these perjury statements substantially outweighs the probative value of these documents. These

documents were completed by Jackson three (3) days prior to his death. Due to his death, Vincent Jackson could not personally testify in this case. The written documents completed by Jackson prior to his death are his only testimony in this case about where he resided.[5] Consequently, Appellant failed to show that these documents' probative value was substantially outweighed by the unfair prejudice she alleged, and the Circuit Court properly admitted these documents.

Alternatively, even if improperly admitted, Appellant cannot show she was prejudiced by the admission of these employment records as Appellant admits that they were merely cumulative of other documents presented. *See* (Appellant's Br. p. 21); *State v. Williams,* 321 S.C. 455, 463, 469 S.E.2d 49, 54 (1996) (holding improperly admitted evidence that was cumulative to other, properly admitted evidence, was harmless); *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence."); *Campbell v. Jordan*, 382 S.C. 445, 453, 675 S.E.2d 801, 805 (Ct. App. 2009) (When improperly admitted evidence is merely cumulative, no prejudice exists, and therefore, the admission is not reversible error."). Like his insurance application, healthcare enrollment forms, and other employment records, Vincent Jackson signed these forms listing his address as the Rast Street apartment. Thus, the Circuit Court's admission of Vincent Jackson's employment records does not entitle Appellant to a new trial.

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[5] Appellant argues that the probative value of these documents is diminished by Vincent Jackson's other employment records also listing the Rast Street address. *See* (Appellant's Br. p. 24 ("[T]he address information was duplicative of other employment application documents, it therefore had no additional probative value….")). However, as Appellant's counsel pointed out at trial, unlike the I-9 form and W-4 form, "Vincent had nothing to do with the completion" of these other employment records. (Tr. 217:22-218:7). Consequently, these other records are not nearly as probative as the I-9 form and W-4 form Vincent Jackson completed and signed immediately prior to his death. Moreover, there is additional probative value from all of these documents consistently listing the Rast Street apartment as his address. This refutes Appellant's argument that Jackson considered himself to have two residences and demonstrates that Jackson consistently considered himself to be a resident of only the Rast Street apartment.

IV. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION IN EXCLUDING THE INSURANCE CONTRACT FROM EVIDENCE.

Appellant contends she is entitled to a new trial because the Circuit Court excluded the insurance contract from evidence. (Appellant's Br. p. 25-26). The Circuit Court properly excluded the insurance contract from evidence. As explained above, the jury was not interpreting any policy language. Moreover, prior to trial, the parties had already stipulated to the effect that the factfinder's factual determination would have on coverage. With respect to the sole question in this case – whether Vincent Jackson resided in his parents' house at the time of his death, the policy terms had no probative value. Therefore, the Circuit Court properly excluded the insurance contract.

Although insurance policy terms may be relevant in certain cases, this is not such a case. "Only evidence found to be relevant should be admitted." *State v. Lyles*, 379 S.C. 328, 337, 665 S.E.2d 201, 206 (Ct. App. 2008). "Under Rule 401, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy." *State v. Preslar*, 364 S.C. 466, 475, 613 S.E.2d 381, 386 (Ct. App. 2005). As Appellant previously admitted, the sole issue in this case was whether Vincent Jackson was a resident of his parents' house at the time of his death. (Appellant's Br., p. 18 ("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.")); *see also* (January 17, 2020 Order) (limiting case to this issue). In fact, in her prior Motion to Dismiss, Appellant stated that "matters of coverage have already been resolved by the Court's prior order, dated October 31, 2016 [approving the Stipulation and Agreement], leaving only the single issue of Vincent A. Jackson's residency at the time of death remaining to be determined." (Def.'s Mot. to Dismiss ¶ 22); (Ex. A to Def.'s Mot. to Dismiss (October 31, 2016 Order)). The terms of the insurance policy do not make it more or less probable that Vincent

Jackson was a resident of his parents' house at the time of his death. Consequently, in this case, the insurance contract has no probative value, and the Circuit Court properly excluded it.

Additionally, Appellant's arguments for why it was necessary for the jury to be presented with the insurance contract do not ring true. Appellant argues that it was necessary to present the jury with the insurance contract to provide "important context" and because "the terms of the policy [are] central to the issue of residency that they [the jury] were to decide." (Appellant's Br. pp. 25-26). As explained above, Appellant previously conceded prior to trial that there were no "remaining matters of coverage." (Def.'s Mot. to Dismiss ¶ 22). With respect to the sole remaining issue of Vincent Jackson's residency, the insurance policy terms are not probative, much less "central." Rather, the purpose of presenting the insurance contract to this jury would be to have the jury determine the residency issue on an improper basis – i.e. the desire to award the Estate insurance proceeds. *See* Rule 403, SCRE; *Lyles*, 379 S.C. at 338, 665 S.E.2d at 206 ("When evidence's prejudicial effect outweighs its probative value, it should be excluded, even if otherwise relevant." (citing Rule 403, SCRE)).[6] Appellant's counsel all but admitted this during his pre-trial arguments on this matter:

> Judge Cothran indicated that the decision determines whether or not there's $400,000 of under insured motorist coverage that is owed to the Jackson Estate. So

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[6] Appellant previously argued that this sole remaining residency issue could best be determined in the underlying tort actions against the at-fault driver's employer. (Def.'s Mot. to Dismiss ¶ 22). In such actions, the insurance contract could not have been introduced as evidence. *See Sarvis v. Register*, 288 S.C. 236, 238, 341 S.E.2d 791, 792 (1986) ("Generally, the existence of insurance should not be brought to the attention of the jury."); *Bartell v. Willis Constr. Co.*, 259 S.C. 20, 24, 190 S.E.2d 461, 463 (1972) ("It is well established that the fact that a defendant is protected by insurance or indemnity bond from liability in an action for damages shall not be known to the jury."); *Dunn v. Charleston Coca-Cola Bottling Co.*, 311 S.C. 43, 46, 426 S.E.2d 756, 758 (1993) (granting a new trial where counsel "erroneously injected into the trial of the case the insurance issue" which was "contrary to a legion of opinions issued by the Supreme Court of South Carolina"). Appellant now takes the inconsistent position that the jury in this case should have been provided a copy of the insurance policy.

> that is an important fact, one that should [be] disclosed to the jury. They need to understand what the import of their decision may be.

(Tr. 50:14-21). Consequently, this would be an additional proper basis for excluding the insurance contract from evidence.

CONCLUSION

For the reasons set-forth above, Appellant is not entitled to a new trial. The Circuit Court made proper rulings on all of the evidentiary and jury charge issues discussed above. Alternatively, even if any of the Circuit Court's rulings were in error, Appellant is not entitled to a new trial because she has not shown prejudice from such rulings. Thus, Respondent respectfully requests that this Court affirm the Circuit Court and deny Appellant's request to reverse the jury verdict entered in this case and remand the case for a new trial.

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Columbia, South Carolina
January 13, 2021

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SUMTER COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2020-000249

Government Employees Insurance Company,..Respondent,

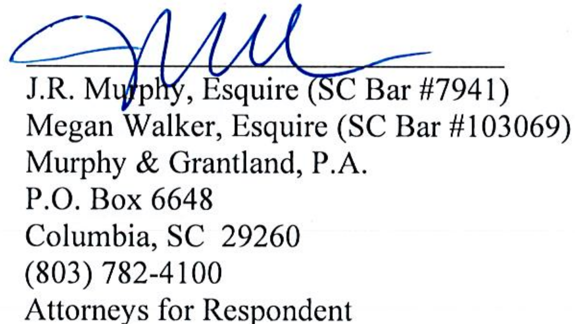
v.

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

CERTIFICATE OF COMPLIANCE

I, J.R. Murphy, attorney for Respondent, certify that the Initial Brief of Respondent and Designation of Matter comply with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

January 13, 2021



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PROOF OF SERVICE

I certify that I have served the Respondent's Initial Brief and Certificate of Compliance on Appellant by depositing copies of the same in the United States Mail, postage prepaid, on January 13, 2021, addressed to her attorneys of record, Calvin K. Hastie, Sr., 7 East Hampton Avenue, Sumter, SC 29150 and Mitchell Willoughby and Elizabeth Zeck, P.O. Box 8416, Columbia, SC 29202.

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