

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Anderson County
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2018-CP-04-02003
Appeal No.: 2019-000856

RECEIVED
DEC 20 2019
SC Court of Appeals

Debra O'Connor, as Personal
Representative of the Estate of Sandy Lynn
Shook.....Appellant

v.

Aaron
Collier.....Respondent.

RECORD ON APPEAL

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Roy T. Willey, IV
S.C. Bar No.: 101010
J. Camden Hodge
S.C. Bar No.: 100638
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Attorneys for Appellant

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Attorneys for Respondent

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STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2018-CP-04-02003

Debra O'Conner, as Personal)
Representative of the Estate of)
Sandy Lynn Shook,)
Plaintiff,)

**ORDER GRANTING DEFENDANT'S
MOTION TO ENFORCE SETTLEMENT**

vs.)
Aaron Collier,)
Defendant)

This matter came before the Court on motion of the defendant, being represented by Michael T. Coulter, requesting that the Court enforce a settlement between the plaintiff and the defendant. After considering the arguments by the plaintiff's attorney and Mr. Coulter, Affidavits, and the submitted memorandums, the Court grants the defendant's Motion to Enforce Settlement pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure, finding that the settlement was enforceable and was not a rejection and counteroffer of the arbitrary conditions placed in the plaintiff's "Offer to Compromise", and was instead an inadvertent mistake by an agent of the defendant's insurance carrier in regards to arbitrary deadlines set for by the plaintiff's attorney.

FINDING OF FACTS

1. On July 22, 2017, Sandy Lynn Shook and the defendant were involved in a single vehicle motorcycle accident in Greenville County.
2. Sandy Lynn Shook died from her injuries suffered in this single vehicle accident.
3. The defendant had been issued a motorcycle policy of insurance by Progressive Northern Insurance Company, ("Progressive"), (policy #: 28452697-0), that was in effect on July 22, 2017.

4. On July 28, 2017, the Anastopoulos Law Firm, LLC, ("Anastopoulos"), sent a letter of representation to Progressive stating that the firm was representing Ms. Shook's Estate.

5. On April 28, 2018, Progressive offered to settle with Ms. Shook's Estate via letter for its \$25,000.00 per person bodily injury limit and requested a response.

6. On May 25, 2018, via email, the Anastopoulos firm acknowledged receipt of the April 18, 2018 settlement letter and advised that the firm would be sending an "Offer of Compromise".

7. On September 27, 2018, the Anastopoulos firm faxed a lengthy letter to Progressive demanding that Progressive, on behalf of the defendant, pay "policy limits of all applicable policies" to its client by "5:00 p.m. EDT on October 12, 2018." The demand included the following nonexclusive list of conditions: "acceptance of this offer specifically requires you to prove [sic] a proposed Covenant that complied with this offer by the above deadline", a sworn notarized statement that there was no other insurance coverage available, that the settlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company as follows" Debra O'Conner [sic] as PR for the Estate of Sandy Shook and the Anastopoulos Law Firm, LLC, and the checks must be received in the Anastopoulos Law office not later than 5:00 pm EDT on October 12, 2018.

8. An Affidavit of no other coverage was obtained from the defendant.

9. On October 10, 2018, two checks each for \$25,000.00, for bodily injury liability limit and property damage liability limit, were issued.

10. In order to meet the arbitrary deadline imposed by the demand, on October 11, 2018, a Progressive claims representative hand delivered to the Anastopoulos Law Firm the requested

documents including an affidavit from the defendant, a Covenant Not to Execute, and one check for \$25,000.00.

11. The Progressive claims representative inadvertently left the second check for \$25,000.00 out of the packet of materials that were hand delivered to Anastopoulos Law Firm.

12. On October 16, 2018, Anastopoulos Law Firm sent a letter to Progressive that they were rejecting Progressive's acceptance of their offer because they only received one check. It was at this time that Progressive learned that, inadvertently, both checks had not been delivered.

13. On October 17, 2018, Progressive delivered the second check for \$25,000.00 to the Anastopoulos Law Firm. The second check was dated October 10, 2018, the same date as the first check. The Anastopoulos Law Firm then sent the checks for \$25,000.00 a piece back to Progressive.

14. This lawsuit was filed on October 17, 2018, at 3:29 pm.

STANDARD FOR REVIEW

In South Carolina the trial judge has, by reason of the common law, thirteenth-juror authority, to see that justice is done in every case. Rock Smith Chevrolet, Inc. v. Smith, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992). It has long been the policy of the Court to encourage settlement in lieu of litigation, and Courts have usually enforced settlement agreements. There can be no doubt but that the Trial Court retains inherent jurisdiction and power to enforce agreements entered into in settlement of litigation before that Court. (*Id.*)

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. The settlement agreement between the plaintiff and Progressive is enforceable as there was a meeting of the minds between both parties.

2. The failure to deliver to the second check to the Anastopoulo Law Firm by the arbitrary deadline set forth in the "Offer to Compromise" was an inadvertent mistake that was a product solely of human error and not a counter offer to the plaintiff's demand.

3. The failure to deliver the second check to the Anastopoulo Law Firm office location specified in the footnotes of the "Offer to Compromise" was an inadvertent mistake that was a product solely of human error and was not a counter offer to the plaintiff's demand.

4. The plaintiff endured no prejudice by Progressive's agent's inadvertent error.

5. Progressive, nor any of its agents, acted in bad faith in regards to the settlement of this case.

6. The plaintiff's attorneys filed this lawsuit solely as an attempt to hold Progressive in bad faith.

AND IT IS SO ORDERED.

By: _____
The Honorable R. Lawton McIntosh
P O Box 8002
Anderson, SC 29622.
Office: 864-260-4059
Fax: 864-224-6320

_____, South Carolina
_____, of April, 2019



Anderson Common Pleas

Case Caption: Debra O'Conner PRS , plaintiff, et al VS Aaron Collier

Case Number: 2018CP0402003

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2019-04-08 13:34:07 page 5 of 5

STATE OF SOUTH CAROLINA
 COUNTY OF ANDERSON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP-0402003

DEBRA O'CONNER PRS, ET AL
 PLAINTIFF(S)

AARON COLLIER
 DEFENDANT(S)

ELECTRONICALLY FILED - 2019 May 03 1:15 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

MOTION FOR RECONSIDERATION IS DENIED. NO FORMAL ORDER REQUESTED UNLESS REQUESTED BY COUNSEL.

This order ends does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
 E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2155	Date
	Judge Code	

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Anderson Common Pleas

Case Caption: Debra O'Conner PRS , plaintiff, et al VS Aaron Collier

Case Number: 2018CP0402003

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2019-05-03 12:25:31 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

Debra O'Conner, as Personal)
Representative of the Estate of)
Sandy Lynn Shook,)
Plaintiff,)

vs.)

Aaron Collier,)
Defendant.)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2018-CP-04-02003

**DEFENDANT'S MOTION TO ENFORCE
SETTLEMENT**

TO: ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE THAT ten days after service hereof, or at such time and place as the court may deem appropriate, the above-named Defendant will move before the court for an order enforcing the settlement reached by the parties in the above-referenced matter. The grounds for said motion are as follows:

1. On July 22, 2017, Sandy Lynn Shook and Defendant were single vehicle motorcycle accident in Greenville County.
2. Sandy Lynn Shook died from her injuries suffered in this single vehicle accident.
3. Defendant had been issued a motorcycle policy of insurance by Progressive Northern Insurance Company, ("Progressive"), (policy #: 28452697-0), that was in effect on July 22, 2017.
4. On July 28, 2017, Anastopoulo Law Firm, LLC, ("Anastopoulo"), sent a letter of representation to Progressive stating that the firm was representing Ms. Shook's Estate.
5. On April 28, 2018, Progressive offered to settle with Ms. Shook's Estate via letter for its \$25,000.00 per bodily injury limit and requested a response.

6. On May 25, 2018, via email, the Anastopoulos firm acknowledged receipt of this of the April 18, 2018 settlement letter and advised that the firm would be sending an "Offer of Compromise".

7. On September 27, 2018, the Anastopoulos firm faxed a lengthy letter to Progressive demanding that Progressive, on behalf of Defendant, pay "policy limits of all applicable policies" to its client by "5:00 p.m. EDT on October 12, 2018." The demand included the following nonexclusive list of conditions: "acceptance of this offer specifically requires you to prove [sic] a proposed Covenant that complied with this offer by the above deadline", a sworn notarized statement that there was no other insurance coverage available, that the settlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company as follows" Debra O'Conner [sic] as PR for the Estate of Sandy Shook and the Anastopoulos Law Firm, LLC, and the checks must be received in the Anastopoulos Law office not later than 5:00 pm EDT on October 12, 2018.

8. An Affidavit was obtained from Defendant.

9. On October 10, 2018, two checks each for \$25,000.00, for bodily injury liability limit and property damage liability limit, were issued.

10. In order to meet the arbitrary deadline imposed by the demand, on October 11, 2018, a Progressive claims representative hand delivered to the Anastopoulos Law Firm the requested documents including an affidavit from defendant, a covenant not to execute, and one check for \$25,000.00.

11. The Progressive claims representative inadvertently left the second check for \$25,000.00 out of the packet of materials that were hand delivered to Anastopoulos Law Firm.

12. On October 16, 2018, Anastopoulo Law Firm sent a letter to Progressive that they were rejecting Progressive's acceptance of their offer because they only received one check. It was that this time that Progressive learned that inadvertently both checks had not been delivered.

13. On October 17, 2018, Progressive delivered the second check for \$25,000.00. The second check was dated October 10, 2018, the same date as the first check. Anastopoulo Law Firm then sent the second check for \$25,000.00 back to Progressive.

14. Anastopoulo Law Firm did not return the first \$25,000.00 check back to Progressive.

15. This lawsuit was filed on October 17, 2018, at 3:29 pm.

LAW

It has long been the policy of the court to encourage settlement in lieu of litigation, and courts have usually enforced settlement agreements. There can be no doubt but that the trial court retains inherent jurisdiction and power to enforce agreements entered into in settlement of litigation before that court. Rock Smith Chevrolet, Inc. v. Smith, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992).

CONCLUSION

Accord and Satisfaction has been reached since Progressive tendered its available bodily injury and property damage liability coverage to Ms. Shook's Estate. This Motion will be supported by pleadings, all discovery undertaken thus far, briefs, affidavits, and memorandums which will later be submitted.

By: s/Michael T. Coulter
Michael T. Coulter (SC Bar# 15177)
Clarkson, Walsh, & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400
(864) 235-4399 (fax)
Attorneys for the Defendant

Greenville, South Carolina
February 1, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CIVIL ACTION NO: 2018-CP-04-02003

Debra O'Conner, as Personal Representative
of the Estate of Sandy Lynn Shook,

Plaintiff,

AFFIDAVIT OF JEFF VICARY

v.

Aaron Collier,

Defendant.

PERSONALLY APPEARED BEFORE ME, the undersigned, Jeff Vicary, who, after being duly sworn, deposes and says:

1. My name is Jeff Vicary. I am above 18 years of age. I make this affidavit based on my knowledge and observations. I am a Senior Claims Specialist with Progressive Insurance Company who was assigned to the claim of Plaintiff against Aaron Collier.

2. Progressive Northern Insurance Company ("Progressive") issued a motorcycle policy to Aaron Collier, Policy No. 28452697-0, which was in effect on July 22, 2017 (hereinafter the "Policy"). The Policy provides a bodily injury liability limit of \$25,000 per person and a property damage liability limit of \$25,000 per accident.

3. While operating his motorcycle on July 22, 2017 with Sandy Shook as a passenger, Aaron Collier was involved in a single-vehicle accident. As a result of this accident, Sandy Shook sustained fatal injuries.

4. By letter dated July 28, 2017, counsel for the Estate of Sandy Shook, Anastopoulo Law Firm, LLC ("Anastopoulo"), sent a letter of representation to Progressive stating that the firm was representing the Estate in making a claim under the Policy and requesting disclosure of the Policy

limits. The Anastopoulo firm also sent a subsequent letter of representation dated February 8, 2018. A true and correct copy of these correspondences are attached hereto as Exhibit A.

5. By letter dated April 18, 2018 sent to the Anastopoulo firm, Progressive, on behalf of Aaron Collier, offered to settle to with the Estate of Sandy Shook for its \$25,000 per person bodily injury limit and requested a response from the firm. When the Anastopoulo firm failed to respond, Progressive faxed this letter to the firm on May 24, 2018 and again requested a response. A true and correct copy of these correspondences are attached hereto as Exhibit B.

6. By email dated May 25, 2018, the Anastopoulo firm acknowledged receipt of the April 18, 2018 settlement letter and advised that the firm would be sending an "Offer of Compromise." A true and correct copy of this correspondence is attached hereto as Exhibit C.

7. On September 27, 2018, the Anastopoulo firm faxed a lengthy letter to Progressive demanding that Progressive, on behalf of Collier, pay "policy limits of all applicable policies" to its client by "5:00 p.m. EDT on October 12, 2018." The September 27, 2018 demand letter stated that "[a]cceptance of this offer specifically requires you to prove [sic] a proposed Covenant that complied with this offer by the above deadline." This demand included over a page of footnotes restricting the content of the proposed Covenant Not to Execute. The demand letter also required that "Mr. Collier provide a sworn and notarized statement that there is no other insurance coverage available to him that could pertain to this loss." A true and correct copy of this demand letter is attached hereto as Exhibit D.

8. In addition, the demand letter required Progressive to ensure that the "policy limits" were "received" no later than 5:00 p.m. on Friday, October 12, 2018 and an additional footnote stated that "[s]ettlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company as follows: Debra O'Conner [sic] as PR for the Estate

of Sandy Shook and the Anastopoulo Law Firm, LLC. The checks must be RECEIVED in my office not later than 5:00pm EDT on October 12, 2018.”

9. In order to meet the arbitrary deadline imposed by the demand, I diligently began working to obtain the requested affidavit from Collier and to retain counsel to prepare the requested covenant not to execute.

10. Prior to the deadline, I obtained the requested affidavit from Collier regarding the lack of additional insurance related to the claim. A true and correct copy of the affidavit is attached hereto as Exhibit E.

11. To respond to the demand, on October 10, 2018, I had two checks issued, Check Nos. 210477106 and 210477107, each in the amount of \$25,000, representing the Progressive Policy’s \$25,000 bodily injury liability limit and \$25,000 property damage liability limit. A true and correct copy of the claim payment details for each check are attached hereto as Exhibit F.

12. Prior to the deadline, Progressive also had counsel draft the requested covenant not to execute. This covenant not to execute referred to the payment of \$50,000 including “\$25,000.000 bodily injury liability coverage and \$25,000.00 property damage liability coverage.” A true and correct copy of this covenant not to execute is attached hereto as Exhibit G.

13. In order to meet the arbitrary deadline imposed by the demand, on October 10, 2018, I emailed the proposed covenant not to execute and a copy of Collier’s affidavit to Progressive’s North Charleston office. Both checks were also printed in the North Charleston office.

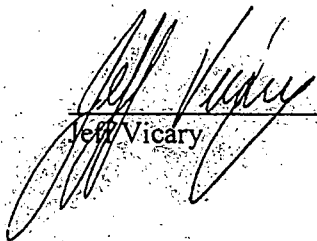
14. In order to meet the arbitrary deadline imposed by the demand, on October 11, 2018, I asked another Progressive claims representative, Richard Ozegovich, who works out of the North Charleston office, to hand deliver to the Anastopoulo firm the requested documents, including the covenant not to execute, affidavit from Collier, and the two checks.

15. The Anastopoulo firm replied to me by letter dated October 16, 2018, informing Progressive that it was rejecting Progressive's acceptance because it only received one \$25,000 check. I learned from Mr. Ozegovich that he inadvertently left the pre-printed, second \$25,000 check out of the packet of documents that he delivered to the Anastopoulo firm on October 11th. As soon as this was discovered, Mr. Ozegovich hand delivered the second \$25,000 check to the Anastopoulo firm October 17, 2018.

16. The Anastopoulo firm returned this second \$25,000 check to Progressive. A true and correct copy of the second \$25,000 check is attached hereto as Exhibit H. As the check shows, it was printed on October 10, 2018, several days before the Anastopoulo firm's arbitrary deadline.

17. At this time, the Anastopoulo firm has not returned the first \$25,000 check hand delivered to the firm on October 11, 2018.

FURTHER AFFIANT SAYETH NOT



Jeff Vicary

SWORN to and subscribed before me
This 29 day of NOVEMBER, 2018.

Paul Rosenbaum (L.S.)
Notary Public for Greenville, SC
My Commission Expires: 12/19/2027

ANASTOPOULOU LAW FIRM

Akim A. Anastopoulos (SC)
Kate L. Bostrom (NC)
Samuel R. Flynn (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy T. Willey, IV (SC)
Jonathan N. Alkis (SC)

Toll Free: 1 (800) 313-2546
Facsimile: (843) 853-2291

Reply to North Charleston Office
www.AkimLawFirm.com

ELECTRONICALLY FILED - 2019 Feb 18 3:22 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

July 28, 2017

Sent via fax: (877) 280-5587
Progressive Claims
128 Millport Circle, Suite 101
Greenville, SC 29607

RECEIVED
AUG 11 2017
Progressive Claims
Columbia SC

RE: My Client(s): Sandy Lynn Shook
DOL: June 22, 2017
Claim #: 174540335

To Whom It May Concern:

Please be advised that I have been retained to represent the above for the bodily injuries she suffered during a motor vehicle accident on the above date due to the negligence of your insured. Also, please disclose in writing the policy limits for the above referenced claim.

Please preserve and instruct your insured to preserve any evidence relating to this claim including the vehicle involved.

Please call our office if you have any questions or would like to discuss the claim.

Thank you for your cooperation.

Sincerely,

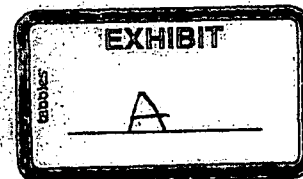
/s/ Camden Hodge /s/

Camden Hodge

CH/sks

cc: Sandy Lynn Shook

Mailing: 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418
Pee Dee: 150 W. Evans Street, Florence, South Carolina 29501
Columbia: 1201 Main Street, Suite 1901, Columbia, South Carolina 29201



TOEL FREE: 1 (800) 313-2546
FACSIMILE: (843) 494-5536

REPLY TO ANN STREET OFFICE
CAMDEN@AKTBLAWFIRM.COM

ANASTOPOULO LAW FIRM

AKIM A. ANASTOPOULO (SC)

JONATHAN N. ALKIS (SC)
CONSTANCE ANASTOPOULO (SC)*
GARRETT L. BROWN (SC)
STEFAN B. FEIDLER (SC)
HERU F. GLASS (SC)
J. CAMDEN HODGE (SC)
MARLEY N. GRIM (SC)
THOMAS D. KANDLER, II (NC)
BYRON V. LIDRY, II (SC)
BENJAMIN W. LEE (SC)
MATTHEW L. NALL (SC)
ERIC M. POUJIN (SC)(NC)(GA)(CA)
SAMANTHA SUTTON (SC)(NC)
SEAN M. TROPRA (SC)
CASEY VAN VALKENBURGH (SC)(IL)
P. HEATH WARD (SC)
DANNY LEE WILLARD, JR. (SC)
ROY T. WILLEY, IV (SC)
L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

February 08, 2018

Sent via fax: (864) 675-1388
James Moody
Progressive Insurance Company
128 Millport Circle Suite 101
Greenville, SC 29607

RE: My Client(s): Sandy Lynn Shook
DOL: June 22, 2017
Claim #: 174540335

To Whom It May Concern:

Please be advised that I have been retained to represent the above for the bodily injuries she suffered during a motor vehicle accident on the above date due to the negligence of your insured. Please disclose in writing the policy limits for the above referenced claim. Also, please let my office know if this policy has pip or medpay coverage. We are making a claim for all pip and medpay coverage therefore please document your files.

Please preserve and instruct your insured to preserve any evidence relating to this claim including the vehicle involved.

If you should have any questions, please do not hesitate to contact me.

Thank you for your cooperation.

Sincerely,

/s/ J. Camden Hodge /s/

J. Camden Hodge

JCH/cg

cc: Sandy Lynn Shook

MAILING: 32 Ann Street, Charleston, South Carolina 29403

North Charleston: 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418. * **Florence:** 150 W. Evans Street, Florence, South Carolina 29501
Columbia: 1201 Main Street, Suite 1100, Columbia, South Carolina 29201. * **Myrtle Beach:** 2411 N. Oak Street, Suite 305, Myrtle Beach, South Carolina 29577
Greenville: 418 River Street, Greenville, SC 29601. * **Wilmington, NC:** Appointment Only

ELECTRONICALLY FILED - 2019 Feb 18 3:22 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

000017

TOLL FREE: 1(800) 313-2546
FACSIMILE: (843) 494-5536

REPLY TO ANN STREET OFFICE
CAMDEN@ARIMLAWFIRM.COM

ANASTOPOULO LAW FIRM

JONATHAN N. ALKIS (SC)
CONSTANCE ANASTOPOULO (SC)*
GARRETT L. BROWN (SC)
STEFAN B. FEIDLER (SC)
HERB F. GLASS (SC)
J. CAMDEN HODGE (SC)
MARLEY N. GRIM (SC)
THOMAS D. KANDLER, II (NC)
BYRON V. LEARY, II (SC)
BENJAMIN W. LEE (SC)
MATTHEW L. NALL (SC)
ERIC M. POULIN (SC)(NC)(GA)(CA)
SAMANTHA SUTTON (SC)(NC)
SHAN M. TROPEA (SC)
CASEY VAN VALKENBURGH (SC)(IL)
P. HEATH WARD (SC)
DANNY LEE WILLARD, JR. (SC)
ROY T. WILLEY, IV (SC)
L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

ELECTRONICALLY FILED - 2019 Feb 18 3:22 PM - ANDERSON - COMMISSION PLEASANT CASE#2018CP0402003

February 08, 2018

James Moody
Progressive Insurance Company
128 Millport Circle Suite 101
Greenville, SC 29607

clm #17-4540335

Mr. Moody:

I submit under oath, that the Anastopoulos Law Firm, LLC, represents Sandy Lynn Shook in an action resulting from motor vehicle accident against Aaron Collier. That the incident occurred on or about June 22, 2017, and that, upon information and belief, Progressive Claims insured Aaron Collier on that date. Claim#174540335

Pursuant to S.C. Code Ann. § 38-77-250 this letter is a formal request for either:

- a. A statement, under oath, of a corporate officer or the insurer's claims manager stating with regard to **each known policy** of nonfleet private passenger insurance issued by it, the name of the insurer, the name of each insured, and the limits of coverage or;
- b. A copy of the declaration page of **each such policy** regarding the same.

The undersigned agrees to comply with all relevant provisions of the statute, and has so done, by having this request notarized, sent certified, and by including a copy of the incident report from which the claim is derived.

Thank you for your attention to this important matter.

Sincerely,



Cassandra Gordon
Litigation Paralegal
Enclosures: Incident Report

Sworn and subscribed before me
this 8 day of Feb, 2018.

Willy Court
Notary Public for South Carolina
My Commission Expires: 4/12/2024

MAILING: 32 Ann Street, Charleston, South Carolina 29403

North Charleston: 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418 * **Florence:** 150 W. Evans Street, Florence, South Carolina 29501
Columbia: 1201 Main Street, Suite 1100, Columbia, South Carolina 29201 * **Myrtle Beach:** 2411 N. Oak Street, Suite 305, Myrtle Beach, South Carolina 29577
Greenville: 418 River Street, Greenville, SC 29601 * **Wilmington, NC:** Appointment Only



Underwritten by Progressive Northern Insurance Company

Jeff Vicary
128 Millport Circle, Suite 101
Greenville, SC 29607
864-315-3658
Fax 864-675-1388
Jeff_J_Vicary@Progressive.com

April 18, 2018

Anastopoulo Law Firm
32 Ann Street
Charleston, SC 29403

Copy via fax: 843-494-5536

Our Insured: Aaron Collier
Claim Number: 17-1540723
Date of Loss: July 22, 2017
Your Client: Estate of Sandy Shook

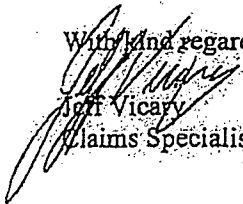
Dear Mr. Hodges,

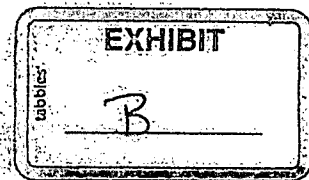
Please be advised that we would like to tender the \$25,000 per person bodily injury coverage to the Estate of Sandy Shook.

Please forward the death certificate and certificate of appointment so that we can determine who is the personal representative of the estate. Upon receipt of the death certificate and certificate of appointment and confirmation that the offer is accepted, we will forward all documentation to defense counsel to handle the wrongful death settlement.

If you should have any questions, feel free to contact me at 864-315-3658. Thank you for your cooperation and assistance in this matter.

With kind regards,


Jeff Vicary
Claims Specialist Senior



Fax Transmittal

Date: 5/24/18 Time: 09:10AM

To: <u>Camden Hodge</u>	Fax #: <u>843-494-5536</u>
Address/Box #: _____	Phone/Network #: _____
From: <u>Jeff Vicary</u>	Fax #: <u>864-675-1388</u>
Address/Box #: _____	Phone/Network #: <u>864-315-3658</u>

of Pages Transmitted: 2

<p>Message: <u>Mr. Hodge,</u> <u>Here is the letter that was sent to your office on April 18, 2018. Please advise if the offer is accepted and forward the death certificate and certificate of appointment so I can get the documents to defense counsel.</u> <u>Thank you.</u> <u>Jeff Vicary</u></p>
--

The Progressive Group of Insurance Companies



ELECTRONICALLY FILED - 2019 Feb 18 3:22 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

Transmission Log

Progressiveinsurance

Thursday, 2018-05-24 09:08

8642817412

Date	Time	Type	Job #	Length	Speed	Fax Name/Number	Pgs	Status
2018-05-24	09:07	SCAN	10936	0:37	14400	0	2	OK -- V.17 1R30

Fax Transmittal

Date: 5/24/18 Time: 09:10AM

To: <u>Camden Hodge</u>	Fax #: <u>843-494-5536</u>
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of Pages Transmitted: 2

Message:
Mr. Hodge,
Here is the letter that was sent to your office on April 18, 2018. Please advise if the offer is accepted and forward the death certificate and certificate of appointment so I can get the documents to defense counsel.
Thank you.
Jeff Vicary.

The Progressive Group of Insurance Companies

AUTO • MOTORCYCLE • WATERCRAFT • RV • COMMERCIAL AUTO

ELECTRONICALLY FILED - 2019 Feb 18 3:22 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

Jeff Vicary

From: Camden Hodge <camden@akimlawfirm.com>
Sent: Friday, May 25, 2018 9:27 AM
To: Jeff Vicary
Cc: Team Hodge
Subject: [EXTERNAL] Estate of Sandy Shook

Good morning Jeff,

Hope you're doing well. I am in receipt of your April 18, 2018 fax tendering the 25K BI in the above matter. Please be advised that we will send you an Offer of Compromise at the completion of our investigation. We will not be providing any other updates on this matter until that time. As always, I look forward to working with you, and please do not hesitate to contact me with any questions or concerns.

Thanks,

Camden

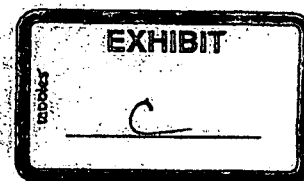
--

J. Camden Hodge, Esq.

PLEASE NOTE NEW MAILING ADDRESS

Anastopoulos Law Firm LLC
camden@akimlawfirm.com
mailing address: 32 Ann Street | Charleston, SC 29403
physical address: 418 River Street | Greenville, SC 29601
Tel: 843-614-8888 | Fax: 843-494-5536
www.akimlawfirm.com
Office Locations: Charleston | N. Charleston | Florence | Greenville | Columbia
By Appointment Only: Myrtle Beach | Wilmington, NC

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****IMPORTANT NOTICE****

****Please be advised that the following Offer of Compromise contains a time-limited demand and includes multiple digital attachments****

We are aware that most insurance companies process mail through a central processing division and that not all correspondence is received directly by the adjuster assigned to handle the claim. Often times, insurance companies take several days to process this mail, and adjusters often claim that they have not received our letters until weeks after they have been sent. We are also aware that adjusters who receive our letters often claim they have not received the corresponding attachments.

Therefore, this correspondence is being sent to your statutorily mandated personal email address on file with the South Carolina Department of Insurance and required by S.C. Code Ann. § 38-47-15. All attachments are provided through a secure ShareFile URL. Ensure your network and/or firewall settings allow access to the files as no hard copies or facsimiles will be provided or extension given due to technical limitations on your part.

This is a time-limited offer of compromise which will not be extended simply due to a delay in your ability to access the provided files, upload it to your case file, and/or forward it to the appropriate adjuster. Likewise, this deadline will not be extended simply because the attachments fail to make it to the appropriate adjuster along with the letter. We have sent this correspondence to the address that you are required to have on file with the South Carolina Department of Insurance. Thus, we expect that it will be handled appropriately.

If this letter is received by anyone other than the assigned adjuster, it is your duty to ensure that this letter is forwarded to the appropriate person immediately. Since your email is required by South Carolina Department of Insurance, this account is monitored. S.C. DOI Bulletin 2016-14.

For your convenience the claim number is:

17-1540723

****IMPORTANT NOTICE****



TOLL FREE: 1(800)313-2546
FACSIMILE: (843) 494-5536

REPLY TO ANN STREET OFFICE
CAMDEN@AKIMLAWFIRM.COM

ANASTOPOULO LAW FIRM

VIA EMAIL ONLY

September 26, 2018

Jeff Vicary
Progressive Insurance
128 Millport Circle, Suite 101
Greenville, SC 29607
Jvicary1@progressive.com

AKIM A. ANASTOPOULO (SC)
JONATHAN N. ALKIS (SC)
CONSTANCE ANASTOPOULO (SC)*
GARRETT L. BROWN (SC)
KENNETH T. DAVID (SC)
STEPAN B. FEIDLER (SC)(GA)
HERB F. GLASS (SC)
MARLEY N. GRIM (SC)
J. CAMDEN HODGE (SC)
LANE D. JEFFERIES (SC)
THOMAS D. KANDLER, II (NC)
BYRON V. LEARY, II (SC)
BENJAMIN W. LEE (SC)
MATTHEW L. NALL (SC)
ERIC M. POULIN (SC)(NC)(GA)(CA)
SAMANTHA SUTTON (SC)(NC)
CASEY VAN VALKENBURGH (SC)(IL)
P. HEATH WARD (SC)
DANNY LEE WILLARD, JR. (SC)
ROY T. WILLEY, IV (SC)
L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

PRIVILEGED AND CONFIDENTIAL:
RELATING TO SETTLEMENT DISCUSSIONS

RE: My Client: Debra O'Connor as PR for Estate of Sandy Shook
DOL: July 22, 2017
Claim #: 17-1540723
Pages: 12, Not Including Enclosures

Dear Jeff,

INADMISSIBILITY OF OFFER OF COMPROMISE

Pursuant to South Carolina Rule of Evidence, Rule 408, statements made in compromise negotiations are not admissible at trial. This rule is identical to the Federal Rule and designed to encourage the settlement of controversies by permitting parties to discuss their cases candidly with the assurance that admissions and proposals for compromise made in the course of their good-faith settlement negotiations may not be used against them to later prove liability. Hunter v. Hyder, 236 S.C. 378, 114 S.E.2d 493 (1960). However, evidence of an offer to compromise may be admissible for some other purpose. Meehan v. Commercial Casualty Ins. Co., 166 S.C. 496, 165 S.E. 194 (1932). This entire letter and all of the exhibits attached are submitted with a view toward compromise of this claim. If you do not agree that everything that follows is inadmissible during the litigation of this matter, please stop reading and immediately destroy this letter and its attachments and immediately notify us of your refusal to review our attempt to compromise this claim.

OFFER OF COMPROMISE

This notice, demand, and offer of compromise is directed to you as the insurer of Aaron Collier. This letter is written to submit an offer of compromise regarding The Estate of Sandy Lynn Shook's claims against your insured(s) in the above-referenced matter. Additionally, this letter places you on notice, consistent with the dictates of Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933) of a time-limited demand for the payment of policy limits of Aaron Collier's insurance coverage.

MAILING: 32 Ann Street, Charleston, South Carolina 29403

North Charleston: 2170 Ashley Phosphate Road, 3rd Floor, North Charleston, South Carolina 29406 * **Greenville:** 418 River Street, Greenville, SC 29601

Florence: 150 W. Evans Street, Florence, South Carolina 29501 * **Myrtle Beach:** 2411 N. Oak Street, Suite 407, Myrtle Beach, South Carolina 29577

Columbia: 1201 Main Street, Suite 1100, Columbia, South Carolina 29201 * **Raleigh, NC:** 8801 Fast Park Drive, Suite 301, Raleigh, NC 27617

Wilmington, NC: Appointment Only

ELECTRONICALLY FILED - 2019 Feb 18 3:22 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

Aaron was arrested at the hospital, charged with Felony DUI with death, and awaiting trial.

Defendants Name: Collier, Aaron W
Charges: Felony DUI w/ Death

There are many factors that Mr. Collier controlled that would have prevented the collision and the resulting death. First, Mr. Collier *should not* have been drinking and driving – as required by law. Second, Mr. Collier *should have* been travelling at a speed reasonable for the conditions. If Mr. Collier performed any of these simple actions, the collision would have never happened. Unfortunately, Sandy is dead because of Mr. Collier's negligence. Mr. Collier is demonstrably irresponsible and a clear danger as a driver. Therefore, liability in this case indisputable.



Passenger on Harley Davidson dies in wreck that sent driver to the hospital
Coroner says 40-year-old Sandy Lynn Shook of Pelzer was thrown from motorcycle
Updated: 1:08 AM EDT June 22, 2017

II. DAMAGES

Summary of Damages

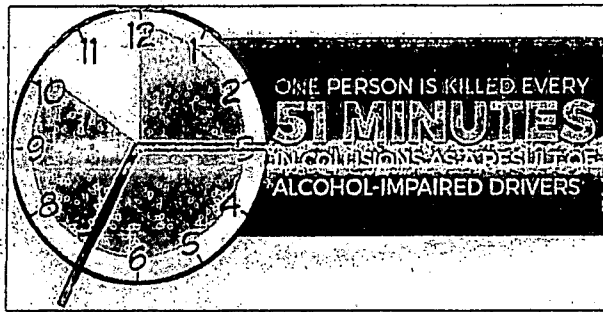
Under South Carolina law, Sandy's family is entitled to an award of damages against Mr. Collier for his negligence. Sandy's family lost a mother, sister, aunt and daughter on July 22, 2017. Not only does Sandy's family have to deal with the emotional pain of losing a loved one, but also the financial burdens that come along with it. For the reasons set forth more fully below, we also believe that Sandy's family will recover punitive damages at the trial of this action. Ultimately, we anticipate a jury to return a verdict in excess of Mr. Collier's policy limits.

ESTIMATED JURY VERDICT: \$5,000,000

Punitive Damages

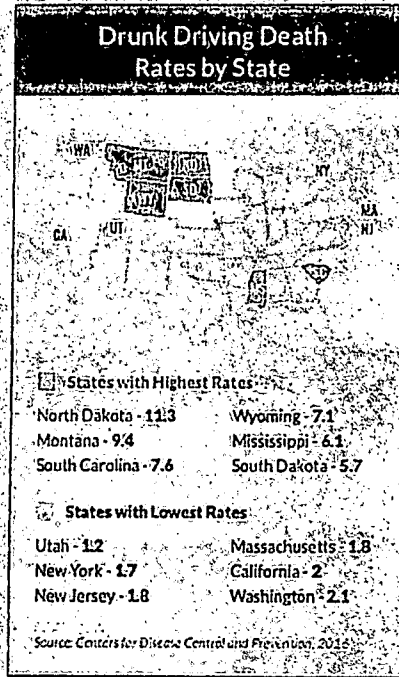
Please also be aware that causing an automobile collision due to recklessness, distracted driving, and other willful and wanton behavior subjects Mr. Collier to punitive damages, and that punitive damages may not be able to be discharged in bankruptcy under

federal law or South Carolina law. Based on past precedent we expect this case to yield a verdict in excess of the policy limits. If you force this case to trial, the verdict is unlikely to be discharged in bankruptcy and we will follow Mr. Collier to the maximum extent of the law.



This wreck happened because Mr. Collier chose to drive a vehicle while under the influence of alcohol. It is also likely that Mr. Collier was driving at an unreasonable speed and without "regard to the actual and potential hazards then existing." SC Code Ann. § 56-5-1520 (2012). ("General rules to maximum speed; lower speed may be required").

In South Carolina "punitive damages are sustainable if there is any evidence supporting a violation of a statute (evidence of a violation of an applicable statute is a proper basis for submitting punitive damages to the trial jury); Bethea v. Pedro Land, Inc., 290 S.C. 341, 350 S.E.2d 392 (Ct. App. 1986) (affirming finding of punitive damages in automobile accident where record contained evidence from which the jury could draw inferences of gross negligence). Because the evidence supports the trial judge's finding that Appellant's agent violated a statute, we find it was proper to award punitive damages to Respondents." Austin v. Specialty Transp. Servs. Inc., 358 S.C. 298, 315, 594 S.E.2d 867, 876 (Ct. App. 2004).



Since, the purpose of punitive damages is to punish a defendant for outrageous misconduct and to deter the defendant and others from similar misbehavior in the future. A quick review of Mr. Collier's driving and criminal history shows that he has a long history of disregarding traffic laws and endangering fellow Greenville County citizens:

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Collier, Aaron W	2056-VIOL BEGINNER PERMIT	2056-VIOL BEGINNER PERMIT	11/10/1992
Collier, Aaron Winford	0258-BREAKING INTO AUTO OR FUEL TANKS	0258-BREAKING INTO AUTO OR FUEL TANKS	04/20/1994
Collier, Aaron Winford	0174-DRIVING UNDER SUSPENSION, MULT CHGS IN	0174-DRIVING UNDER SUSPENSION, MULT CHGS IN	09/25/1994
Collier, Aaron Winford	0168-ESCAPE / AIDING ESCAPES FROM PRISON AND	0168-ESCAPE / AIDING ESCAPES FROM PRISON AND	04/20/1993
Collier, Aaron W	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	10/03/1995
Collier, Aaron W	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	12/29/1993
Collier, Aaron Winford	2511-PASSING UNLAWFULLY	2511-PASSING UNLAWFULLY	07/19/2000
Collier, Aaron Winford	2071-Domestic / Criminal Domestic Violence - 1st offense	2071-Domestic / Criminal Domestic Violence - 1st offense	11/04/2003
Collier, Aaron Demetrius	0396-Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	02/03/2005
Collier, Aaron Demetrius	0396-Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	02/14/2005
Collier, Aaron Winford	2571-Traffic / Failure to yield right-of-way on left turn	2571-Traffic / Failure to yield right-of-way on left turn	02/02/2006

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Collier, Aaron Winford	0107-Drugs / Distribute, sell, purchase, manuf. drug other than crack cocaine, or pwi	Drugs / Purchase of cont. sub. including crack cocaine within proximity of school	12/06/2006
Collier, Aaron Winford	0112-Drugs / Manufacture, distribution, etc., for, crack, crack cocaine - 1st offense	Drugs / Manufacture, distribution, etc., for, crack, crack cocaine - 1st offense	12/07/2006
Collier, Aaron W	3009-METHAMPHETAMINE- POSSESSION < 1G 1ST OFF.	3009-METHAMPHETAMINE- POSSESSION < 1G 1ST OFF.	12/07/2006
Collier, Aaron W	2101-Traffic / Speeding, more than 10 but less than 15 mph over the speed limit	2103-Traffic / Speeding, more than 25 mph over the speed limit	02/27/2007
Collier, Aaron W	0174-DUS / Driving under suspension, license not suspended for DUI - 2nd offense	0174-DUS / Driving under suspension, license not suspended for DUI - 2nd offense	02/27/2007
Collier, Aaron Demetrius	2886-Traffic / Seatbelt violation - Non-criminal	2886-Traffic / Seatbelt violation - Non-criminal	03/22/2011
Collier, Aaron Winford	0657-Traffic / Reckless Driving	0657-Traffic / Reckless Driving	11/09/2010
Collier, Aaron Winford	0173-DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	0173-DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	11/09/2010
Collier, Aaron Winford	3015-Drugs / Manufacture, distribution, etc. methamphetamine or cocaine base, 2nd offense	3039-Drugs / Manufacture, distribution, etc. of methamphetamine or cocaine base, 3rd	11/09/2010
Collier, Aaron Winford	0326-Resisting / Resisting Arrest, Oppose, resist, or assault law enforcement officer serving process	0326-Resisting / Resisting Arrest, Oppose, resist, or assault law enforcement officer serving process	11/10/2010
Collier, Aaron Demetrius	3183-Traffic / Child passenger restraint system Article violation	3183-Traffic / Child passenger restraint system Article violation	03/13/2013
Collier, Aaron Demetrius	2102-Traffic / Speeding, more than 15 but less than 25 mph over the speed limit	2102-Traffic / Speeding, more than 15 but less than 25 mph over the speed limit	04/09/2013
Collier, Aaron Demetrius	2886-Traffic / Seatbelt violation - Non-criminal	2886-Traffic / Seatbelt violation - Non-criminal	10/22/2014
Collier, Aaron Demetrius	2886-Traffic / Seatbelt violation - Non-criminal	2886-Traffic / Seatbelt violation - Non-criminal	07/16/2010
Collier, Aaron W	0395-DUI / Felony driving under the influence, death results	0395-DUI / Felony driving under the influence, death results	

Accordingly, Mr. Collier's exposure to punitive damages is very high. In light of these facts, our offer to Progressive requires payment from all applicable policies, **inclusive of both bodily injury and property damage**. As you know, the South Carolina Supreme Court held that punitive damages be cannot be apportioned pro-rata between those sustained for bodily injury and those sustained for property damage where the insurance policy is a split limits policy. GEICO v. Poole, Op. No. 27821 (July 5, 2018).

S.E.2d 531, 534 (2010) (emphasis added). Thus, while actual damages may be traceable directly to bodily injury and property damage, punitive damages are not so easily divisible. Reading the statutes to require allocation of punitive damages would result in adding language to the statutes, rather than merely interpreting them.

Undoubtedly, potential jurors may know, or know of, someone who was injured or killed as a result of a drunk driver. It is our belief these facts will drive the verdict in this case to be particularly harsh. We hope that this claim will stop Mr. Collier from ever driving while drunk and again.

III. DEMAND PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933), and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).

Based on Mr. Collier's reckless driving and complete disregard for the safety of others on the road, the fact that he was intoxicated at the time he caused his vehicle to slide off the road, the fact that punitive damages will be imposed against Mr. Collier, and due to the ongoing pain and mental anguish Sandy's family will experience for the rest of their lives, we conservatively estimate the value of this case to be in excess of the policy limits. As there is a possibility that underinsured motorist coverage may be available to Sandy's family we cannot offer a full and final release at this time. Instead, we require payment of the policy limits of all applicable policies¹, under which you insure Mr. Collier in a form that will not prejudice our client's right to seek recovery from any other insurance carriers. This offer of compromise requires that policy limits are **RECEIVED**² no later than 5:00 p.m. EDT on October 12, 2018, and requires that Mr. Collier provide a sworn and notarized statement that there is no other insurance coverage available to him that could pertain to this loss. **THIS OFFER OF COMPROMISE INCLUDES A TIME-LIMITED DEMAND FOR PAYMENT OF POLICY LIMITS, AND, AT 5:00 P.M. EDT ON OCTOBER 12, 2018, THIS OFFER WILL BE WITHDRAWN AND WE WILL OBTAIN AN EXCESS JUDGMENT AGAINST YOUR INSURED(S) WHICH WILL, IN TURN PROVIDE YOUR INSURED(S) WITH A CLAIM AGAINST PROGRESSIVE PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933) and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).** Please be aware that our demand for policy limits is not negotiable and that ALL conditions of this offer of compromise must be met by the specified time limit. *If any condition is not met, or if any additional condition is imposed by Progressive, including but not limited to conditions of indemnification or the waiver of any rights or claims not specified herein, this offer of compromise will be withdrawn, and we will obtain an excess judgment against your insured and enforce it against Mr. Collier's assets.* This offer of compromise does not include the resolution of any claims for any persons or entities other than those injury and property damage claims made by Sandy's family. *Accordingly, any request for a release of claims for other persons or entities and/or any request for indemnification will constitute a counteroffer and rejection of this offer of compromise.*³ *If you include indemnification or a release of claims that could be made by other persons or entities in the proposed Covenant you send to us, it will constitute a counteroffer and rejection of this offer of compromise even if you claim in a cover letter or other documents that you send to us*

¹ "Applicable Policies" would include, but not necessarily be limited to, bodily injury, property damage, PIP, MedPay, umbrella, or any other types of coverages or policies that would cover the losses herein described.

² Settlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company as follows: Debra O'Conner as PR for the Estate of Sandy Shook and the Anastopoulo Law Firm, LLC. The checks must be **RECEIVED** in my office no later than 5:00pm EDT on October 12, 2018. Anastopoulo Law Firm, LLC's Tax ID Number is 452775649. For your convenience, our firm's W-9 is also attached. These funds should be mailed to 32 Ann Street, Charleston, SC 29403. We agree to hold these funds in trust until the settlement is court approved, as required by statute.

³ Please be aware that we have done everything reasonable to warn you that even a mere request for indemnification or a mere request for the waiver of any other rights or claims, including claims for loss of consortium or claims that could be made by or on behalf of any other person or entity, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

*that you have accepted our offer. Acceptance of this offer specifically requires you to prove a proposed Covenant that complied with this offer by the above deadline.*⁴ Moreover, if there is any language in the proposed Covenant or any other documents you send us that requires or even requests the Estate of Sandy Shook to make representations or warranties regarding the absence of medical liens or hospital liens or bankruptcy proceedings relating to her, the requirement or request will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Progressive is perfectly capable of reviewing court records to verify this information, and attempting to shift the cost of verifying this information to our client(s) is not acceptable and will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.⁵ Accordingly, please be aware that a requirement or even a request for a "Lien Affidavit" or similar document by any other name will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Additionally, please be aware that it will be deemed a counteroffer and rejection of this offer of compromise if Progressive requires or even requests the release of any individuals or entities other than Mr. Collier and Progressive.⁶ Moreover, please be aware that Mr. Collier will only be released

⁴ Please do not attempt to send a proposed Covenant that includes indemnification or a release of any claims that could be brought by or on behalf of any person or entity other than our client, as we do not represent these persons or entities. The insurance company tactic of including indemnification or a release of unrelated parties in the proposed Covenant will not work against this firm and its clients. Please be aware that you cannot get around this requirement by sending a cover letter with a non-compliant proposed Covenant that says your "proposed Covenant is not a counteroffer." *If you send a proposed Covenant that includes indemnification or that violates any other terms of this offer, it is a counteroffer regardless of whatever you put in your cover letter.* Pursuant to this offer of compromise, your insurance company cannot provide a letter that says it accepts our offer and then try to trick us by providing a proposed Covenant that does not comply with our offer. Do not put indemnification language in the proposed Covenant you send to us in the hope that we will sign your proposed Covenant without reading it or in the hope that we will rely on a representation in your cover letter that you have accepted our offer of compromise when you have not provided a compliant release. If you do put indemnification language in the proposed Covenant, it is a counteroffer even if you try to say it is not, and, if you try this tactic, we will proceed to verdict and take your insured's assets until it is paid in full. Please also keep in mind that a proposed Covenant that includes the release of "any and all claims" would necessarily include claims not covered under this offer of compromise, such as loss of consortium, and is also a counteroffer and rejection. Instead of acting in bad faith and trying to trick us, please just send a reasonable proposed Covenant that does not include indemnification or the release of unrelated claims. Acceptance of this offer of compromise requires you to make your acceptance through performance and not just mere words or promises. Part of the performance required to accept this offer is for you to deliver a proposed Covenant with the settlement check. Additionally, the proposed Covenant that is delivered with the settlement check must comply with the terms of this offer. *Regardless of what you might say in your cover letter, if the proposed Covenant does not comply with this offer, it is a rejection and counteroffer.*

⁵ Please be aware that we have done everything reasonable to warn you that even a mere request for warranties or representations regarding the absence of medical liens or hospital liens or bankruptcy proceedings will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise.

⁶ Please be aware that we have done everything reasonable to warn you that even a mere request for the release of any individuals or entities other than Mr. Collier and Progressive will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. *Moreover, please be aware that Mr. Collier will only be released with respect to the bodily injury and property damage coverages of the subject policy and that he will not be released with respect to any other policies or coverages not identified herein and that a request or requirement for a general release or a full and final release of Mr. Collier will be a counteroffer and rejection of this offer of compromise.* Please do not place any additional releases on the settlement check, in the proposed Covenant, or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any request for the release of any individuals or entities other than Mr. Collier and

with respect to the bodily injury and property damage coverages of the subject policy and that he will not be released with respect to any other policies or coverages not identified herein. Payment must be made as described herein, and payment by any other method, including payment through the registry of any court or through the filing of an interpleader action, will not satisfy the terms of this offer of compromise and will result in the immediate and automatic withdrawal of this offer of compromise. Additionally, filing a declaratory judgment action will result in the immediate, automatic, and permanent withdrawal of this offer of compromise. Please be aware that, under South Carolina law, our offer of compromise must be accepted unequivocally and without variance of any sort and that a purported acceptance of this offer of compromise which imposes *or even requests* conditions beyond those contained in this offer will be construed as a counteroffer and rejection. Please also be aware, that under South Carolina law, we have no continuing duty to repeatedly remind you of the deadline or any conditions of our offer, herein. See Mayes v. Paxton, 313 S.C. 109, 437 S.E.2d 66 (1993). Additionally, any attempted counteroffer by Progressive will be deemed a rejection of our offer of compromise and will result in the immediate and permanent withdrawal of our offer of compromise. Furthermore, please be aware that sworn and notarized statements that there is no other insurance coverage that could pertain to this loss must accompany your payment of policy limits. For your convenience, we have provided an affidavit that meets this condition. *Please be aware that sending a proposed Covenant, settlement check, or any other documents that include any conditions or provisions that are not part of this offer will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.* Additionally, even if you send a cover letter that claims to "unconditionally" or "unequivocally" accept our offer of compromise, but you also send a proposed Covenant, a settlement check, or any other documents that include any conditions or provisions that are not part of this offer, it will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Please do not attempt to trick us by saying in a letter that you accept our offer of compromise and then trying to sneak in additional terms that are not part of our offer. Our offer of compromise must be accepted by your insurance company's performance of the requirements of this letter and not by mere words that claims to accept the offer. Regardless of any statement that your insurance company has accepted or is accepting our offer of compromise, if your insurance company's actions and documents (i.e., your proposed Covenant, settlement check, etc.) do not comply with our offer of compromise, it will be a counteroffer and rejection of our offer. Acceptance of this offer of compromise requires performance and not just mere words or promises. Accordingly, in order to accept this offer of compromise, you must meet all of the terms and conditions of this offer of compromise, including, but not limited to, providing payment and a proposed Covenant that comply with the terms of this offer of compromise.

Please be aware that the only covenant we will accept is one that is limited in its scope to protecting your insured from Sandy's Family's rights to the personal assets of your insured. *Additionally, this offer relates only to personal injury and property damage claims (and not claims that could be made on behalf of any other person or entity); accordingly, a proposed Covenant or a statement on the settlement check or any other documents you send to us that purports to release or resolve "any and all claims" will be considered as a counteroffer and rejection of this offer, resulting in the immediate and permanent withdrawal of this offer.* The

Progressive as described herein, whether "accidental" or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise. Once again, if you send a proposed Covenant that purports to release any additional individuals or entities, it will be a counteroffer and rejection regardless of any claims of acceptance you make in a cover letter or any other documents you send to us. This offer of compromise requires you to deliver a proposed Covenant that complies with the terms of this offer of compromise. This offer of compromise requires you to make your acceptance through performance and not just mere words or promises.

Estate of Sandy Shook must not be prevented in any way from making a claim against her own insurance carriers. Despite the limited scope of our offer, our offer will protect the interests of your insured because it would only allow Sandy's family to seek the proceeds of her own coverage and other applicable insurance policies relating to personal injuries and it would prevent Sandy's family from seeking the assets of your insured as compensation for the personal injuries and property damages described herein.⁷ If you do not pay policy limits and meet the other requirements contained in this offer within the specified time limit, we will withdraw our offer of compromise and we will obtain an excess judgment against your insured and enforce it against his assets. In view of existing circumstances, we believe your insurance company should accord its insured the same faithful consideration it gives its own interests. If you do not pay policy limits in this case and meet the other requirements contained in this offer, pursuant to the terms of this offer of compromise, Mr. Collier may be able to sue your company for compensatory and punitive damages for bad-faith failure to properly adjust this claim. **Please explain to Mr. Collier that he has the right to hire an attorney to represent him against Progressive and that he has the right to demand that Progressive pay this demand in order to protect his property and possessions.**

Please be aware that this letter constitutes the Estate's formal offer and that no oral representations made before or after this letter can alter the terms of this offer. If, for any reason, this firm agrees to change this offer in any way, such changes can and will be made only in a writing that is signed by a member of this firm. The purpose of this paragraph is to specifically prevent Progressive from claiming that this offer was modified in any way by an oral communication. *Please be aware that, unless there has been a specific writing signed by a member of this firm that specifically changes this offer, the offer made by this letter has not been changed.* Additionally, there are and will be no oral offers made to resolve this case. Accordingly, please do not attempt to claim that there has been an oral offer to resolve this case because there has not been and will not be such an offer. *Any offer to resolve this case by Sandy must be made in writing and any acceptance of that offer must be made through performance of the provisions of this offer of compromise in order for this firm and Sandy to agree that a binding agreement has been formed. Specifically, this offer of compromise cannot be accepted by a mere statement of unconditional acceptance of this offer; instead, acceptance of this offer requires full performance of all terms and conditions of this offer. If any condition or requirement is not met by the specified deadline or if any additional condition or requirement is imposed upon Sandy's family, then there has been no acceptance and no agreement.*

We have supplied Progressive with all information necessary to evaluate this offer of compromise⁸; however, should you have any questions regarding this offer of compromise, please

⁷ Please be aware that it is our current belief that the Estate may have had underinsured motorist coverage with policy limits far below the full value of this case. However, she may also have no coverage at all. Accordingly, since there is only a small amount of underinsured motorist coverage compared to the actual value of this case, Progressive's acceptance of this offer provides the greatest possible amount of protection for its insured. Thus, if Progressive fails to accept this offer, it will be exposing its insured to substantial excess liability and acting in bad faith towards its insured.

⁸ Please be aware that we have provided you willful and sufficient information to evaluate this offer of compromise and to compel your insurance company to pay its policy limits as demanded. Nevertheless, we are aware that many insurance companies request unnecessary additional information within a few days of the deadline for payment as a tactic to delay the resolution of a case. We are aware that insurance companies make more money when settlements are delayed because the insurance company can continue to earn investment income from the settlement money for as long as the insurance company can maintain possession of the settlement funds. We are aware that many insurance companies use the tactic of requesting unnecessary additional information to delay payment, but it will not work against this firm and its clients. Additionally, in the unlikely event that there is a legitimate need for additional

do not hesitate to contact me at (843) 614-8888. Additionally, although any requirement or request for terms and conditions of settlement and compromise that are not approved herein will constitute a counteroffer and rejection of this offer of compromise, if you feel that any part of this letter needs clarification in order for you to comply with its terms, we will be happy to offer any clarification of terms so that you have a full and fair opportunity to comply with this offer. Of course, this letter relates to discussions involving settlement and compromise, and nothing contained herein shall be deemed admissible except to enforce a claim for bad-faith failure to properly adjust this claim.

I look forward to hearing from you.

Sincerely,

s/J. Camden Hodge

J. Camden Hodge, Esq.

- Enclosures: Anastopoulo W-9
- Obituary
- Certificate of Appointment
- Death Certificate
- Police Report

Documents available at: <https://akmlawfirmroywilley.sharefile.com/d-s7e4544388514083b>

Cc: Debra O'Connor

information, we will have to request that information from another party. Therefore, any request for additional information must be made as soon as possible and at least five (5) days before the deadline so that we will have a reasonable opportunity to try and obtain the requested information. Likewise, if you are unable to access the supporting documentation as delivered, let us know immediately so that alternate arrangements can be made to allow you to view these files at any of our statewide offices. We have done everything reasonable to warn you that this offer of compromise includes a time-limited demand for the payment of policy limits. Please be aware that the deadline for payment and compliance with all other terms will not be extended based on a request for additional information because this offer of compromise already includes more than enough information to compel payment. Please do not place your insured's assets in jeopardy by incorrectly assuming that a request for additional information will extend the deadline of this offer of compromise. Failure to meet the deadline for any reason will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

AFFIDAVIT OF AARON COLLIER

Personally appeared before me who, being duly sworn, states as follows:

1. My name is Aaron Collier.
2. As of July 22, 2017, I was known as Aaron Collier.
3. I am over the age of 18, and as of July 22, 2017, I resided in Anderson County, South Carolina.
4. On July 22, 2017, I was involved in a motor vehicle collision whereby the vehicle I was driving struck Sandy Shook.
5. At that time, the vehicle I was driving had a policy of insurance issued by Progressive.
6. That as of July 22, 2017, there were no other policies of insurance that would apply to compensate Sandy Shook for the losses incurred on that date.

FURTHER AFFIANT SAYETH NOT.

Aaron Collier

Sworn to and Subscribed before me on

____ day of _____ 2018

Notary Public for _____

My Commission Expires _____

AFFIDAVIT OF NO OTHER INSURANCE

I, AARON COLLIER, hereby certify that on July 22, 2017, the only applicable insurance policy I had was with Progressive Northern Insurance Company under policy number 28452697.

I, AARON COLLIER, hereby declare that on July 22, 2017, I did not possess, nor was I insured under any other policies of insurance, either automobile or general, which would indemnify or compensate me in case of an automobile accident resulting in property damage, personal injury, or medical expense payments either to myself or another. I declare, under penalty of perjury, that the foregoing is true and accurate.

The undersigned being first duly sworn, hereby affirms that all statements made herein of his or her own knowledge are true and all statements made herein on information and belief are believed to be true.

Signed: Aaron Collier
Signature of individual completing affidavit

Witness Signature: Beate...

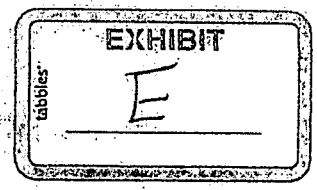
Witness Address: 900 Anderson St Plummet
SC 29673

Subscribed, and sworn to, before me, this 30th day of April, year 2018.
Aaron W Collier Personally Known

Licensed Notary - State of South Carolina Identification Produced: SC 12

Identification (seal): [Signature]

Form 2576 (11/14)



Sworn Statement of No Other Insurance

I, AARON COLLIER, certify that on July 22, 2017 the only applicable insurance policy I had was with Progressive Northern Insurance Company under policy number 28452697.

I, AARON COLLIER, also certify that on July 22, 2017, I did not possess, nor was I insured under any other policy of insurance, which would indemnify or compensate me in the event of an automobile accident that results in any property damage, personal injury, or medical expense payments either to myself or another.

I declare, under penalty of perjury, that all of my statements in this document are true and accurate.

The undersigned affirms that all statements made in this document are of his or her own knowledge and are true and accurate.

Signature: *Aaron Collier*
Signature of individual completing sworn statement

Printed name: Aaron Collier
Printed name of individual completing sworn statement

Date: 4/30/18

Form 2917 (07/17)

AFFIDAVIT OF Aaron Collier

Personally appeared before me who, being duly sworn, states as follows:

1. My name is Aaron Collier
2. As of 12/5/1973 I was known as Aaron Collier
3. I am over the age of 18, and as of 7/22/17 resided in Greenville county,
South Carolina.
4. On 7/22/17, I was involved in a motor vehicle collision whereby the vehicle I was driving struck Car.
5. At that time, the vehicle I was driving had a policy of insurance issued by Progressive Insurance Company.
6. That as of 7/22/17 there were no other policies of insurance that would apply to compensate _____ for the losses incurred on that date.

FURTHER AFFIANT SAYETH NOT.

Aaron Collier
Aaron Collier
 INSURED'S NAME

Sworn to and subscribed before me this

30th day of April, 2018

Notary Public for Anderson SC

My Commission Expires 7/23/25

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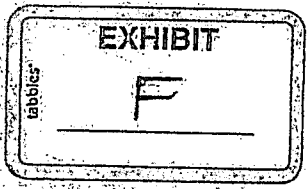
Claim Payment Detail (17-1540723)

Payment Information	
Disbursement Number:	390663816
Check Number:	210477107
Pay to the Order of:	DEBRA O'CONNOR AS PR FOR THE ESTATE OF SANDY SHOOK AND THE ANASTOPOULS
Mailing Address:	2170 ASHLEY PHOSPHATE RD FL 3 NORTH CHARLESTON, SC 29406-4190 USA
In Payment Of:	Progressive Invoice Number: 51592410

Reviewed Summary			
Issuing Rep:	JJV0004	Approved By:	
Issue Date:	10-10-18	Review Date:	
Last Updated Rep:	RLL0006	Reviewed By:	

Bank Information			
Type:	Less	Bank Code:	100
Stop Reason:		Cleared:	No
Stop Date:			

Exposure Detail: BI			
Party Name:	SHOOK, SANDY	Amount Paid:	\$25,000.00
Payment Type:	FINAL PAYMENT	Deductible Taken:	\$0.00



Claim Payment Detail (17-1540723)

Payment Information	
Disbursement Number:	390863815
Check Number:	210477106
Pay to the Order of:	DEBRA O'CONNOR AS PR FOR THE ESTATE OF SANDY SHOOK AND THE ANASTOPOULS
Mailing Address:	2170 ASHLEY PHOSPHATE RD FL 3 NORTH CHARLESTON, SC 29406-4190 USA
In Payment Of:	Progressive Invoice Number: 51592429

Reviewed Summary			
Issuing Rep:	RLL0008	Approved By:	
Issue Date:	10-10-18	Review Date:	
Last Updated Rep:	RLL0008	Reviewed By:	

Bank Information			
Type:	Loss	Bank Code:	1CC
Stop Reason:		Cleared:	No
Stop Date:			

Exposure Detail: PD			
Party Name:	SHOOK, SANDY	Amount Paid:	\$25,000.00
Payment Type:	FINAL PAYMENT	Deductible Taken:	\$0.00

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COVENANT NOT TO EXECUTE

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

This COVENANT NOT TO EXECUTE (hereinafter, "COVENANT") made this day of October, 2018, by and between Debra O'Connor as PR for the estate of Sandy Shook, hereinafter sometimes referred to as "Covenantor," and Aaron Collier hereinafter sometimes referred to as "Covanteee."

WHEREAS, on July 22, 2017, in Greenville County, South Carolina, Covenantor was injured in a vehicular collision or incident with Covanteee; and

WHEREAS, the automobile owned by Aaron Collier, and driven by Aaron Collier, at the time of the aforementioned automobile accident was insured by Progressive Northern Insurance Company, hereinafter sometimes referred to as "Insurer," under policy number 28452697-0, and had Fifty Thousand Dollars (\$50,000.00) in total available liability coverage under said policy which includes (\$25,000.00 bodily injury liability coverage and \$25,000.00 property damage liability coverage); and

WHEREAS, the damages sustained by Covenantor in the aforementioned automobile accident may exceed the liability limit of the said insurance policy, and the Covenantor is desirous of protecting his/her right to proceed to suit against Covanteee for purposes of collecting excess liability and/or underinsured motorist insurance benefits;

NOW, FOR AND IN CONSIDERATION OF the payment to Covenantor of the total sum of Fifty Thousand Five Hundred (\$50,000.00) by Insurer on behalf of Covanteee, the receipt and sufficiency of which is hereby acknowledged, Covenantor, Covanteee and Insurer agree as follows:

1. If and in the event Covenantor is unable to resolve by agreement and settlement of his/her claim with any excess liability or underinsured motorist insurer, Covenantor shall have the right to bring suit against Covanteee and/or any such excess liability and/or underinsured motorist insurer, in accordance with South Carolina law, and prosecute the same to final judgment.
2. Notwithstanding any judgment that may be rendered in any such lawsuit, it is the express intent of the parties that Covanteee, his/her/its/their agents, representatives, heirs and assigns, shall never at any time be liable to Covenantor, his/her subrogees, agents, representatives, heirs or assigns, beyond the consideration expressed herein and paid, by reason of any damages or injuries on which such judgment may be based except as herein stated. In consideration of the payment to Covenantor of the aforementioned sum, Covenantor, his/her subrogees, agents, representatives, heirs or assigns, shall not at any time, nor shall anyone for them or in their behalf, enforce against Covanteee, by execution or otherwise, any judgment that may be rendered in any such lawsuit except as herein stated. Further, immediately upon reduction to judgment of any such lawsuit, Covenantor, his/her subrogees, agents, representatives, heirs or



assigns, will provide Covenantec with an executed satisfaction of said judgment. Moreover, this COVENANT or a photocopy hereof shall be considered and serve as a satisfaction of any such judgment in any claim or lawsuit presented by Covenantor against Covenantee for the aforementioned vehicular collision or incident, and can be recorded as such should Covenantor, his/her subrogees, agents, representatives, heirs or assigns fail to execute a Satisfaction of Judgment.

3. Covenantor and Covenantee expressly reserve all rights of action, claims, demands or other legal remedies against all firms, persons or entities of any nature or kind, except as modified by the terms of this COVENANT. This COVENANT is not a release, nor shall it be construed as a release of any party, person, firm, or corporation.

4. Covenantor expressly represents that he/she has been fully advised of all facts of a potential lawsuit, and all claims arising out of or in relation thereto, and is aware and fully advised that the execution of this COVENANT will fully and forever prevent and bar the collection of any additional payments of any kind, nature or description against Covenantee, his/her/its/their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

5. In executing this COVENANT, Covenantor represents and warrants that he/she has relied on his/her investigation and has not relied on any statement, representation or commitment of any kind made by Covenantee, his/her/its/their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

6. All provisions and recitals in this COVENANT are intended to be and are covenants of the parties and are a material part of this agreement and binding on the parties hereto, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

7. The provisions and stipulations hereof shall inure to the benefit of, and shall be binding upon, the agents, representatives, heirs, executors, administrators, assigns and successors in interest of the parties hereto.

8. The execution of this COVENANT is acknowledged to have taken place in the State of South Carolina and the parties agree that it shall be construed and enforced pursuant to South Carolina law.

9. Covenantor acknowledges that he/she has been advised to seek the services of an attorney for advice and counsel on the consequences of executing this COVENANT.

IN WITNESS WHEREOF, the parties have executed this agreement on the day, month and year first above written.

AS TO COVENANTOR:

WITNESS SIGNATURE DATE

WITNESS SIGNATURE DATE

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TOLL FREE: 1 (800) 313-2546
FACSIMILE: (843) 494-5536

ANASTOPOULO LAW FIRM

REPLY TO ANN STREET OFFICE
CAMDEN@AKIMLAWFIRM.COM

JONATHAN N. ALKIS (SC)
CONSTANCE ANASTOPOULOU (SC)
GARRETT L. BROWN (SC)
KENNETH T. DAVID (SC)
STEFAN B. FEJDLER (SC)(GA)
HERB F. GLASS (SC)
MARLEY N. GRIM (SC)
J. CAMDEN HODGE (SC)
LANE D. JEFFERIES (SC)
THOMAS D. KANDLER, II (NC)
BYRON V. LEARY, II (SC)
BENJAMIN W. LEE (SC)
MATTHEW L. NALL (SC)
ERIC M. POULIN (SC)(NC)(GA)(CA)
SAMANTHA SUTTON (SC)(NC)
CASEY VAN VALKENBURGH (SC)(IL)
P. HEATH WARD (SC)
DANNY LEE WILLARD, JR. (SC)
ROY T. WILLEY, IV (SC)
L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

October 16, 2018

Jeff Vicary
Progressive Insurance Company
128 Millport Circle, Ste. 101
Greenville, SC 29607

RE: *Estate of Sandy Lynn Shook v. Aaron Collier*
Case No.: 2017-CP-23-_____

Dear Jeff:

We are in receipt of Progressive's draft in this matter [#210477107] in the amount of \$25,000 and accompanying Covenant Not to Execute. By copy of this letter, we are returning this draft. As you know, our Offer of Compromise requested payment of all available coverages (which necessarily would include bodily injury and property damage coverages) by October 12, 2018.

It is our understanding that the policy at issue carried limits of \$25,000 per person in bodily injury coverage together with \$25,000 in property damage coverage. Therefore, your draft for \$25,000 is clearly a rejection and counter offer. We are also troubled that your proposed CNTE purports to release my client's claims for both BI and PD, even though your office only tendered payment for one of the claims.

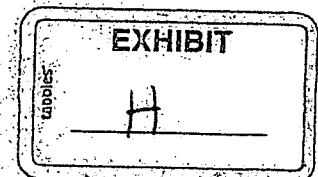
I am sure you can understand that my client is unable to release both the BI and PD claims without being fully compensated from both policies. It seems clear that Progressive recognizes its insured's exposure under both policies since Progressive requested a release as to both. However, it seems equally clear that Progressive failed to comply with our Offer of Compromise by failing to tender the applicable limits. As such, and as stated in our Offer of Compromise, our offer is now withdrawn and we will be forced to file suit against Mr. Collier.

If you should have any questions, please do not hesitate to contact us.

Sincerely,

J. Camden Hodge

Enclosure



MAILING: 32 Ann Street, Charleston, South Carolina 29403

North Charleston: 2170 Ashley Phosphate Road, 3rd Floor, North Charleston, South Carolina 29406 * Greenville: 418 River Street, Greenville, SC 29601

Florence: 150 W. Evans Street, Florence, South Carolina 29501 * Myrtle Beach: 2411 N. Oak Street, Suite 407, Myrtle Beach, South Carolina 29577

Columbia: 1201 Main Street, Suite 1100, Columbia, South Carolina 29201 * Raleigh, NC: 8801 East Park Drive, Suite 301, Raleigh, NC 27617

Wilmington, NC: Appointment Only

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PROGRESSIVE

PNC BANK, N.A. 070
ASHLAND, OH
1-877-448-9544
PAYABLE IF DESIRED AT FIRST
NATIONAL BANK OF ANCHORAGE

VOID IF NOT PRESENTED WITHIN 90 DAYS.

CLAIM NUMBER: 17-1540723
NAME: SHOOK, SANDY

CHECK NUMBER:
210477107

56-389
412

October 10, 2018

PAY EXACTLY: \$*****25,000.00

TWENTY-FIVE THOUSAND AND 00/100 *****

PAY TO THE ORDER OF: DEBRA O'CONNOR AS PR FOR THE ESTATE OF SANDY SHOOK AND THE ANASTOPOULO LAW FIRM LLC
2170 ASHLEY PHOSPHATE RD. FL 3
NORTH CHARLESTON, SC 29406-4190

Progressive Northern Insurance Company

BY: *[Signature]*
AUTHORIZED SIGNATURE

⑈ 210477107⑈ ⑆046203895⑆ 4239694532⑈

RECEIVED

GREENVILLE SC CLAIMS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2018-CP-04-02003

Debra O'Conner, as Personal Representative
of the Estate of Sandy Lynn Shook,

Plaintiff,

**AFFIDAVIT OF
RICHARD OZEGOVICH**

v.

Aaron Collier,

Defendant.

PERSONALLY APPEARED BEFORE ME, the undersigned, Richard Ozegovich, who, after being duly sworn, deposes and says:

1. My name is Richard Ozegovich. I am above 18 years of age. I make this affidavit based on my knowledge and observations. I am a Litigation Claims Representative with Progressive Insurance Company based in Progressive's North Charleston, South Carolina office.

2. To respond to a demand from the Anastopoulo law firm in this action, I was asked by Jeff Vicary to hand deliver certain settlement documents to the Anastopoulo law firm's North Charleston, South Carolina office.

3. On October 10, 2018, I was emailed certain documents to deliver to the Anastopoulo law firm, including a covenant not to execute and a copy of Aaron Collier's signed affidavit concerning lack of additional insurance coverage. The covenant not to execute and affidavit I received are attached hereto as Exhibits A and B, respectively.


4. To respond to the demand, two checks were printed in my office on October 10, 2018. Each check was in the amount of \$25,000. The claim payment details for each check are attached hereto as Exhibit C.

5. I put the covenant not to execute, Aaron Collier's affidavit, and one of the \$25,000 checks in an envelope to deliver to the Anastopoulo-law firm. I inadvertently left the other \$25,000 check on the printer and did not include it in the envelope.

6. On October 11, 2018, I delivered to the Anastopoulo law firm office in North Charleston, South Carolina the envelope containing the covenant not to execute, Aaron Collier's affidavit, and one of the \$25,000 checks. I was told that attorney Camden Hodge was not in at the time, so I left the envelope with attorney Casey Van Valkenburg, who filled out what was received and signed a receipt for the same. At no point during our interaction did attorney Casey Van Valkenburg inform me that the second check was missing.


7. After I realized that I had failed to include the second \$25,000 check in the packet, I hand delivered it to the Anastopoulo law firm on October 17, 2018. When I went to the Anastopoulo law firm, I was informed that neither attorney Camden Hodge nor attorney Casey Van Valkenburg were in the office. I asked for a lead attorney. Attorney Heath Ward came out. I explained the situation to attorney Ward. He said he could not sign for the check as it was not his group's file. I left the check with the receptionist to give to attorney Camden Hodge.

FURTHER AFFIANT SAYETH NOT


Richard Ozegovich

SWORN to and subscribed before me

This 28th day of November, 2018

 (L.S.)

Notary Public for SC

My Commission Expires: 9/20/2021

COVENANT NOT TO EXECUTE

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

This COVENANT NOT TO EXECUTE (hereinafter, "COVENANT") made this day of October, 2018, by and between Debra O'Connor as PR for the estate of Sandy Shook, hereinafter sometimes referred to as "Covenantor," and Aaron Collier hereinafter sometimes referred to as "Covenantee."

WHEREAS, on July 22, 2017, in Greenville County, South Carolina, Covenantor was injured in a vehicular collision or incident with Covenantee; and

WHEREAS, the automobile owned by Aaron Collier, and driven by Aaron Collier, at the time of the aforementioned automobile accident was insured by Progressive Northern Insurance Company, hereinafter sometimes referred to as "Insurer," under policy number 28452697-0, and had Fifty Thousand Dollars (\$50,000.00) in total available liability coverage under said policy which includes (\$25,000.00 bodily injury liability coverage and \$25,000.00 property damage liability coverage); and

WHEREAS, the damages sustained by Covenantor in the aforementioned automobile accident may exceed the liability limit of the said insurance policy; and the Covenantor is desirous of protecting his/her right to proceed to suit against Covenantee for purposes of collecting excess liability and/or underinsured motorist insurance benefits;

NOW, FOR AND IN CONSIDERATION OF the payment to Covenantor of the total sum of Fifty Thousand Five Hundred (\$50,000.00) by Insurer on behalf of Covenantee, the receipt and sufficiency of which is hereby acknowledged; Covenantor, Covenantee and Insurer agree as follows:

1. If and in the event Covenantor is unable to resolve by agreement and settlement of his/her claim with any excess liability or underinsured motorist insurer, Covenantor shall have the right to bring suit against Covenantee and/or any such excess liability and/or underinsured motorist insurer, in accordance with South Carolina law, and prosecute the same to final judgment.

2. Notwithstanding any judgment that may be rendered in any such lawsuit, it is the express intent of the parties that Covenantee, his/her/its/their agents, representatives, heirs and assigns, shall never at any time, be liable to Covenantor, his/her subrogees, agents, representatives, heirs or assigns, beyond the consideration expressed herein and paid, by reason of any damages or injuries on which such judgment may be based except as herein stated. In consideration of the payment to Covenantor of the aforementioned sum, Covenantor, his/her subrogees, agents, representatives, heirs or assigns, shall not at any time, nor shall anyone for them or in their behalf, enforce against Covenantee, by execution or otherwise, any judgment that may be rendered in any such lawsuit except as herein stated. Further, immediately upon reduction to judgment of any such lawsuit, Covenantor, his/her subrogees, agents, representatives, heirs or



assigns, will provide Covenantee with an executed satisfaction of said judgment. Moreover, this COVENANT or a photocopy hereof shall be considered and serve as a satisfaction of any such judgment in any claim or lawsuit presented by Covenantor against Covenantee for the aforementioned vehicular collision or incident, and can be recorded as such should Covenantor, his/her subrogees, agents, representatives, heirs or assigns fail to execute a Satisfaction of Judgment.

3. Covenantor and Covenantee expressly reserve all rights of action, claims, demands or other legal remedies against all firms, persons or entities of any nature or kind, except as modified by the terms of this COVENANT. This COVENANT is not a release, nor shall it be construed as a release of any party, person, firm or corporation.

4. Covenantor expressly represents that he/she has been fully advised of all facts of a potential lawsuit, and all claims arising out of or in relation thereto, and is aware and fully advised that the execution of this COVENANT will fully and forever prevent and bar the collection of any additional payments of any kind, nature or description against Covenantee, his/her/its/their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

5. In executing this COVENANT, Covenantor represents and warrants that he/she has relied on his/her investigation and has not relied on any statement, representation or commitment of any kind made by Covenantee, his/her/its/their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

6. All provisions and recitals in this COVENANT are intended to be and are covenants of the parties and are a material part of this agreement and binding on the parties hereto, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

7. The provisions and stipulations hereof shall inure to the benefit of, and shall be binding upon, the agents, representatives, heirs, executors, administrators, assigns and successors in interest of the parties hereto.

8. The execution of this COVENANT is acknowledged to have taken place in the State of South Carolina and the parties agree that it shall be construed and enforced pursuant to South Carolina law.

9. Covenantor acknowledges that he/she has been advised to seek the services of an attorney for advice and counsel on the consequences of executing this COVENANT.

IN WITNESS WHEREOF, the parties have executed this agreement on the day, month and year first above written.

AS TO COVENANTOR:

WITNESS SIGNATURE DATE

WITNESS SIGNATURE DATE

ELECTRONICALLY FILED - 2019 Feb 18 3:23 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

AFFIDAVIT OF NO OTHER INSURANCE

I, AARON COLLIER, hereby certify that on July 22, 2017 the only applicable insurance policy I had was with Progressive Northern Insurance Company under policy number 28452697.

I, AARON COLLIER, hereby declare that on July 22, 2017, I did not possess, nor was I insured under any other policies of insurance, either automobile or general, which would indemnify or compensate me in case of an automobile accident resulting in property damage, personal injury, or medical expense payments either to myself or another. I declare, under penalty of perjury, that the foregoing is true and accurate.

The undersigned being first duly sworn, hereby affirms that all statements made herein of his or her own knowledge are true and all statements made herein on information and belief are believed to be true.

Signed: *Aaron Collier*
Signature of individual completing affidavit

Witness Signature: *Debra [unclear]*

Witness Address: 900 Anderson St Permmt
SC 29073

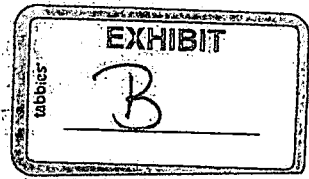
Subscribed, and sworn to, before me, this 30th day of April, year 2018.

Aaron W. Collier Personally Known

Licensed Notary - State of South Carolina Identification Produced C.P.L.

[Signature]
Identification (seal)

Form 2576 (1/1/14)



Sworn Statement of No Other Insurance

I, AARON COLLIER, certify that on July 22, 2017 the only applicable insurance policy I had was with Progressive Northern Insurance Company under policy number 28452697.

I, AARON COLLIER, also certify that on July 22, 2017, I did not possess, nor was I insured under any other policy of insurance, which would indemnify or compensate me in the event of an automobile accident that results in any property damage, personal injury, or medical expense payments either to myself or another.

I declare, under penalty of perjury, that all of my statements in this document are true and accurate.

The undersigned affirms that all statements made in this document are of his or her own knowledge and are true and accurate.

Signature: *Aaron Collier*
Signature of individual completing sworn statement

Printed name: Aaron Collier
Printed name of individual completing sworn statement

Date: 4/30/18
Form 2917 (07/17)

AFFIDAVIT OF Aaron Collier

Personally appeared before me who, being duly sworn, states as follows:

1. My name is Aaron Collier
2. As of 12/5/1973 I was known as Aaron Collier
3. I am over the age of 18, and as of 7/22/17 resided in Greenville County,
South Carolina.
4. On 7/22/17 I was involved in a motor vehicle collision whereby the vehicle I was driving struck Car.
5. At that time, the vehicle I was driving had a policy of insurance issued by Progressive Insurance Company.
6. That as of 7/22/17 there were no other policies of insurance that would apply to compensate _____ for the losses incurred on that date.

FURTHER AFFIANT SAYETH NOT.

Aaron Collier
Aaron Collier
 INSURED'S NAME

Sworn to and subscribed before me this

30th day of April, 2017

Notary Public for Anderson SC

My Commission Expires 7/23/25

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Claim Payment Detail (17-1540723)

Payment Information

Disbursement Number: 390663816
 Check Number: 210477107
 Pay to the Order of: DEBRA O'CONNOR AS PR FOR THE ESTATE OF SANDY SHOOK AND THE ANASTOPOUL
 Mailing Address: 2170 ASHLEY PHOSPHATE RD FL 3
 NORTH CHARLESTON SC 29406-4190 USA
 In Payment Of: Progressive Invoice Number: 51592410

Reviewed Summary

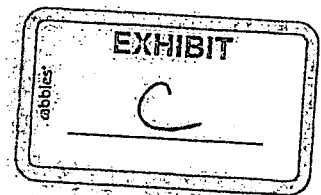
Issuing Rep: JJV0004 Approved By:
 Issue Date: 10-10-18 Review Date:
 Last Updated Rep: RLL0006 Reviewed By:

Bank Information

Type: Loss Bank Code: 100
 Stop Reason: Cleared: No
 Stop Date:

Exposure Detail: BI

Party Name: SHOOK, SANDY Amount Paid: \$25,000.00
 Payment Type: FINAL PAYMENT Deductible Taken: \$0.00



Claim Payment Detail (17-1540723)

Payment Information	
Disbursement Number:	390863815
Check Number:	210477106
Pay to the Order of:	DEBRA O'CONNOR AS PR FOR THE ESTATE OF SANDY SHOOK AND THE ANASTOPOUL
Mailing Address:	2170 ASHLEY PHOSPHATE RD FL 3 NORTH CHARLESTON, SC 29406-4190 USA
In Payment Of:	Progressive Invoice Number: 51592429

Reviewed Summary			
Issuing Rep:	RLL0006	Approved By:	
Issue Date:	10-10-18	Review Date:	
Last Updated Rep:	RLL0006	Reviewed By:	

Bank Information			
Type:	Loss	Bank Code:	100
Stop Reason:		Cleared:	No
Stop Date:			

Exposure Detail: PD			
Party Name:	SHOOK, SANDY	Amount Paid:	\$25,000.00
Payment Type:	FINAL PAYMENT	Deductible Taken:	\$0.00

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-04-02003

DEBRA O'CONNOR, as Personal
Representative of the ESTATE OF
SANDY LYNN SHOOK,

Plaintiff,

v.

AARON COLLIER,

Defendant.

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION TO ENFORCE
SETTLEMENT**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD:

COMES NOW the Plaintiff, DEBRA O'CONNOR, as Personal Representative of the ESTATE OF SANDY LYNN SHOOK, by and through undersigned counsel, and does submit this memorandum of law in opposition to Defendant AARON COLLIER and BRAZWELLS PREMIUM PUB's (herein "Defendant") Motion for Summary Judgment.

INTRODUCTION

This case is brought on behalf of the Estate of Sandy Lynn Shook, whose decedent was a single mother who raised three self-sufficient children. Unfortunately, on July 22, 2017, her life came to an end when a motorcycle driven by her friend Aaron Collier left the roadway outside of Greenville and crashed, killing Sandy.



At the time of the accident, Defendant was insured under a policy of insurance with Progressive Northern Insurance Company. On September 26, 2018, Plaintiff sent an offer of

compromise to Progressive via email, offering to settle her claims against Defendant, on a covenant not to execute, in exchange for payment of Progressive's applicable policy limits.

The offer of compromise, which is attached as Exhibit A, included a deadline for compliance of October 12, 2018 and stated:

release at this time. Instead, we require payment of the policy limits of all applicable policies¹, under which you insure Mr. Collier in a form that will not prejudice our client's right to seek recovery from any other insurance carriers. This offer of compromise requires that policy limits are **RECEIVED**² no later than 5:00 p.m. EDT on October 12, 2018, and requires that Mr. Collier provide a sworn and notarized statement that there is no other insurance coverage available to him that could pertain to this loss. **THIS OFFER OF COMPROMISE INCLUDES A TIME-LIMITED DEMAND FOR PAYMENT OF POLICY LIMITS, AND, AT 5:00 P.M. EDT ON OCTOBER 12, 2018, THIS OFFER WILL BE WITHDRAWN AND WE WILL OBTAIN AN EXCESS JUDGMENT AGAINST YOUR INSURED(S) WHICH WILL, IN TURN PROVIDE YOUR INSURED(S) WITH A CLAIM AGAINST PROGRESSIVE PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933) and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).** Please be aware that our demand for policy limits is not negotiable and that ALL conditions of this offer of compromise must be met by the specified time limit. *If any condition is not met, or if any additional condition is imposed by Progressive, including but not limited to conditions of indemnification or the waiver of any rights or claims not specified herein, this offer of compromise will be withdrawn, and we will obtain an excess judgment against your insured and enforce it against Mr. Collier's assets.* This offer of compromise does not include the resolution of any claims for any persons or entities other than those injury and property damage claims made by Sandy's family. *Accordingly, any request for a release of claims for other persons or entities and/or any request for indemnification will constitute a counteroffer and rejection of this offer of compromise. If you include indemnification or a release of claims that could be made by other persons or entities in the proposed Covenant you send to us, it will constitute a counteroffer and rejection of this offer of compromise even if you claim in a cover letter or other documents that you send to us*

¹ "Applicable Policies" would include, but not necessarily be limited to, bodily injury, property damage, PIP, MedPay, umbrella, or any other types of coverages or policies that would cover the losses herein described.

² Settlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company as follows: Debra O'Conner as PR for the Estate of Sandy Shook and the Anastopoulos Law Firm, LLC. The checks must be **RECEIVED** in my office no later than 5:00pm EDT on October 12, 2018. Anastopoulos Law Firm, LLC's Tax I.D. Number is 452775649. For your convenience, our firm's W-9 is also attached. These funds should be mailed to 32 Ann Street, Charleston, SC 29403. We agree to hold these funds in trust until the settlement is court approved, as required by statute.

The offer further stated that: "any attempted counteroffer by Progressive will be deemed a rejection of our offer of compromise and will result in the immediate and permanent withdrawal of our offer of compromise." (underline in original) and "[w]e have done everything reasonable to warn you that this offer of compromise includes a time-limited demand for the payment of

policy limits” as well as “[f]ailure to meet the deadline for any reason will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.”

The policy in question included \$25,000.00 in bodily injury coverage and \$25,000.00 in property damage coverage, both of which were owed and included in the Offer of Compromise, as admitted in Defendant’s Motion to Enforce Settlement.

As further admitted in its Motion to Enforce Settlement Progressive “on October 11, 2018, a Progressive claims representative hand-delivered to the Anastopoulos Law Firm, LLC the requested documents including an affidavit form defendant, a covenant not to execute, and one check for \$25,000.00” thereby not delivering the “payment of policy limits of all applicable policies” as required by Plaintiff’s Offer. Defendant Motion ¶ 10. According to Defendant, the Progressive claims representative “inadvertently left the second check for \$25,000.00 out of the packet of materials that were hand delivered to Anastopoulos Law Firm.” Id. at ¶ 11.

On October 16, 2018, a formal letter rejecting Progressive’s counteroffer of half of the applicable limits was sent by Plaintiff with the \$25,000.00 check enclosed (despite the assertion in Defendant’s Motion at ¶ 14) and on the very next day the lawsuit was filed. Exhibit B. Defendant answered the suit on November 7, 2018 and responded to Plaintiff’s Requests to Admit on December 17, 2019.

On October 17, 2018, Progressive delivered a second check for \$25,000.00 “to the Anastopoulos Law Firm.” Id. at ¶ 13. However, and despite the plain language of the offer of compromise, the second check was delivered to 2170 Ashley Phosphate Road, North Charleston, SC, 29406 – not to 32 Ann Street, Charleston, SC 29403 as required by the offer of compromise.

Defendant then filed this Motion, asking the Court to force Plaintiff to accept the second \$25,000 check and settle the case. Plaintiff contends that there was no settlement, and opposes Defendant's Motion.

LEGAL STANDARD

A motion to compel settlement adds to a pending action a collateral action for specific performance of an alleged settlement agreement. Under South Carolina law, settlement agreements are viewed as contracts. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)(Citing Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 177, 557 S.E.2d 708, 711 (Ct. App. 2001)). Thus, the general rules of contract construction apply to settlement agreements. Mattox v. Cassidy, 289 S.C. 57, 61, 344 S.E.2d 620, 622 (Ct. App. 1986).

Therefore, in ruling on this Motion, the court must essentially consider a collateral action sounding in contract. Because Defendant is the party alleging the existence of a contract, and requesting performance of the same, he has the burden of proof. Moreover, if there are any disputed questions of fact, those issues must be presented to a jury. See, e.g., Soil Remediation Co. v. Nu-Way Envtl., Inc., 325 S.C. 231, 234, 482 S.E.2d 554, 555 (1997)(holding the existence of mutual assent to a contract is a question of fact to be left to a jury when ambiguities exist). Thus, the Court can only grant Defendant's Motion if it finds, as a matter of law, that the evidence submitted gives rise to a valid and enforceable contract. Accordingly, the Court must view this, essentially, as a motion for summary judgment on Defendant's claims as to the existence of a settlement agreement and its breach.

ANALYSIS

“For a contract to arise there must be an agreement between two or more parties. There must be an offer, there must be an acceptance, and there must be a meeting of the minds of the parties involved.” Rushing v. McKinney, 370 S.C. 280, 633 S.E.2d 917 (Ct. App. 2006)(quoting Hughes v. Edwards, 265 S.C. 529, 536, 220 S.E.2d 231, 234 (1975)). To be effective, acceptance of an offer must conform to the terms of the offer. Fender & Latham, Inc. v. First Union Nat. Bank of South Carolina, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994). At common law, no contract is formed if the acceptance varies the terms of the offer. Johnson Co., Inc. v. Peck Industries, Inc., 304 S.C. 101, 403 S.E.2d 146 (Ct. App. 1991)(citing Sossamon v. Littlejohn, 241 S.C. 478, 129 S.E.2d 124 (1963)). Instead, an acceptance which adds different or additional terms is treated as a counteroffer, which may be accepted or rejected by the other party. Id.; Restatement (Second) of Contracts § 59 (1979). Moreover, the offeror is the master of her offer, and can withdraw it at any time before it is accepted.

Here, as a matter of law there can be no settlement agreement because there was no “mirror image” acceptance of Plaintiff’s offer. Plaintiff’s offer, by its clear terms, required acceptance not later than October 12, 2018, required the payment of all applicable policy limits actually be received by Plaintiff’s counsel, and that the check(s) be delivered to 32 Ann Street, Charleston, SC 29403. The written offer explicitly stated that it would be automatically withdrawn if not accepted by the stated deadline. There is no evidence that the offer was accepted by October 12, 2018. Instead, it is undisputed that, aside from acknowledging receipt of the offer, and delivering half of the applicable policy limits, Progressive did not accept the offer prior to the deadline and instead made a counteroffer. Why Progressive did so is not meaningful.

Here, the parties also lacked mutual assent. In order for a contract to be valid and enforceable, the parties must have a meeting of the minds as to *all* essential and material terms of the agreement. Mathis v. Brown & Brown of South Carolina, Inc., 389 S.C. 299, 698 S.E.2d 773 (2010)(emphasis added). Here, Plaintiff clearly intended that the offer be open for acceptance only for a limited time. After the deadline expired, and after Plaintiff filed the lawsuit, there is no indication that Plaintiff ever indicated any willingness to settle the claim on the terms Defendant now seeks to enforce.

Defendant is asking the Court to force upon Plaintiff a settlement to which she clearly never agreed. Thus, the Court cannot require it. Plaintiff therefore prays for an Order DENYING Defendant's Motion to Enforce Settlement.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

BY: s/ J. Camden Hodge

Roy T. Willey IV, Esquire

SC Bar Number: 101010

Roy T. Willey, IV, Esquire

SC Bar Number: 100638

Eric M. Poulin, Esquire

SC Bar Number: 100209

32 Ann Street

Charleston, South Carolina 29403

(843) 614-8888

Charleston, South Carolina
February 14, 2019

ATTORNEYS FOR THE PLAINTIFF

****IMPORTANT NOTICE****

****Please be advised that the following Offer of Compromise contains a time-limited demand and includes multiple digital attachments****

We are aware that most insurance companies process mail through a central processing division and that not all correspondence is received directly by the adjuster assigned to handle the claim. Often times, insurance companies take several days to process this mail, and adjusters often claim that they have not received our letters until weeks after they have been sent. We are also aware that adjusters who receive our letters often claim they have not received the corresponding attachments.

Therefore, this correspondence is being sent to your statutorily mandated personal email address on file with the South Carolina Department of Insurance and required by S.C. Code Ann. § 38-47-15. All attachments are provided through a secure ShareFile URL. Ensure your network and/or firewall settings allow access to the files as no hard copies or facsimiles will be provided or extension given due to technical limitations on your part.

This is a time-limited offer of compromise which will not be extended simply due to a delay in your ability to access the provided files, upload it to your case file, and/or forward it to the appropriate adjuster. Likewise, this deadline will not be extended simply because the attachments fail to make it to the appropriate adjuster along with the letter. We have sent this correspondence to the address that you are required to have on file with the South Carolina Department of Insurance. Thus, we expect that it will be handled appropriately.

If this letter is received by anyone other than the assigned adjuster, it is your duty to ensure that this letter is forwarded to the appropriate person immediately. Since your email is required by South Carolina Department of Insurance, this account is monitored. S.C. DOI Bulletin 2016-14.

For your convenience the claim number is:

17-1540723

****IMPORTANT NOTICE****

TOLL FREE: 1 (800) 313-2546
FACSIMILE: (843) 494-5536

REPLY TO ANN STREET OFFICE
CAMDEN@AKIMLAWFIRM.COM

ANASTOPOULO LAW FIRM

JONATHAN N. ALKIS (SC)
CONSTANCE ANASTOPOULO (SC)*
GARRETT L. BROWN (SC)
KENNETH T. DAVID (SC)
STEFAN B. FEIDLER (SC)(GA)
HERB F. GLASS (SC)
MARLEY N. GRIM (SC)
J. CAMDEN HODGE (SC)
LANE D. JEFFERIES (SC)
THOMAS D. KANDLER, II (NC)
BYRON V. LEARY, II (SC)
BENJAMIN W. LEE (SC)
MATTHEW L. NALL (SC)
ERIC M. POULIN (SC)(NC)(GA)(CA)
SAMANTHA SUTTON (SC)(NC)
CASEY VAN VALKENBURGH (SC)(IL)
P. HEATH WARD (SC)
DANNY LEE WILLARD, JR. (SC)
ROY T. WILLEY, IV (SC)
L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

VIA EMAIL ONLY

September 26, 2018

Jeff Vicary
Progressive Insurance
128 Millport Circle, Suite 101
Greenville, SC 29607
Jvicary1@progressive.com

PRIVILEGED AND CONFIDENTIAL:
RELATING TO SETTLEMENT DISCUSSIONS

RE: My Client: Debra O'Connor as PR for Estate of Sandy Shook
DOL: July 22, 2017
Claim #: 17-1540723
Pages: 12, Not Including Enclosures

Dear Jeff,

INADMISSIBILITY OF OFFER OF COMPROMISE

Pursuant to South Carolina Rule of Evidence, Rule 408, statements made in compromise negotiations are not admissible at trial. This rule is identical to the Federal Rule and designed to encourage the settlement of controversies by permitting parties to discuss their cases candidly with the assurance that admissions and proposals for compromise made in the course of their good-faith settlement negotiations may not be used against them to later prove liability. Hunter v. Hyder, 236 S.C. 378, 114 S.E.2d 493 (1960). However, evidence of an offer to compromise may be admissible for some other purpose. Meehan v. Commercial Casualty Ins. Co., 166 S.C. 496, 165 S.E. 194 (1932). This entire letter and all of the exhibits attached are submitted with a view toward compromise of this claim. If you do not agree that everything that follows is inadmissible during the litigation of this matter, please stop reading and immediately destroy this letter and its attachments and immediately notify us of your refusal to review our attempt to compromise this claim.

OFFER OF COMPROMISE

This notice, demand, and offer of compromise is directed to you as the insurer of Aaron Collier. This letter is written to submit an offer of compromise regarding The Estate of Sandy Lynn Shook's claims against your insured(s) in the above-referenced matter. Additionally, this letter places you on notice, consistent with the dictates of Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933) of a time-limited demand for the payment of policy limits of Aaron Collier's insurance coverage.

MAILING: 32 Ann Street, Charleston, South Carolina 29403

North Charleston: 2170 Ashley Phosphate Road, 3rd Floor, North Charleston, South Carolina 29406 * **Greenville:** 418 River Street, Greenville, SC 29601

Florence: 150 W. Evans Street, Florence, South Carolina 29501 * **Myrtle Beach:** 2411 N. Oak Street, Suite 407, Myrtle Beach, South Carolina 29577

Columbia: 1201 Main Street, Suite 1100, Columbia, South Carolina 29201 * **Raleigh, NC:** 8801 Fast Park Drive, Suite 301, Raleigh, NC 27617

Wilmington, NC: Appointment Only

ELECTRONICALLY FILED - 2019 Feb 14 4:14 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

I. LIABILITY OF AARON COLLIER

The daughter of a large and loving family, Sandy Lynn Shook ("Sandy") was born in New London, Ohio. Her family moved to the upstate of South Carolina when Sandy was a child, and she always considered herself a native South Carolinian. Sandy began to build her life in the small town of Pelzer, South Carolina, a close-knit community filled with Sandy's family as well as neighbors that became life-long friends. She raised three self-sufficient children – two grown boys and one daughter.



Sandy was a single mother and never shied away from hard work. She was the full-time manager of Tony's Pizza in Greenville, South Carolina, and it was a job she excelled at. Sandy was a natural leader, never met a stranger, and genuinely felt that working in the food and beverage service industry could make a positive impact on others and in her community. When she wasn't working, you could find Sandy hosting big gatherings on her Pelzer property, complete with lots of barbeque, live music, and good company. Sandy was also known around Greenville County as a pool shark, and while she enjoyed playing the game with her children, she liked nothing more than surprising an over-confident patron with her skills. Her talents didn't end on the pool table, as she could fix nearly anything with an engine, was an avid motorcyclist, and was a steward of the outdoors.

A. Before the Crash

Sandy was taken away from her family and community on the night of July 22, 2017. Saturday was her day off and Sandy decided to spend time the afternoon with her life-long friends Kim and Jerry Gault ("the Gaults"). The plan was to relax, enjoy the late afternoon, get some pizza at the local joint, and head to downtown Greenville for a birthday party at a local restaurant.

The Gaults were excited to see Sandy. The friends relaxed and enjoyed each other's company. Soon, they became hungry and decided to get some pizza downtown. The group arrived at the bar/restaurant around 8 PM and everyone was excited to see more friends and celebrate one of their birthdays. An acquaintance, Aaron Collier arrived at the restaurant, too.

B. The Crash, Investigation, and Aftermath.

10 PM came and everyone was ready to go home. Sandy spent her night socializing with friends and Aaron offered to give Sandy a ride home – unfortunately, she accepted. Once the pair left, Sandy realized Aaron was severely intoxicated. Aaron drove his motorcycle West on Chipwood Road toward Pelzer, traveling at excessive speeds, illegally passing cars over a double-yellow traffic line. According to witnesses, he then lost control of his motorcycle:

THEN WRITTEN STATEMENT. MR. [REDACTED] STATED THAT A WHITE AND BLACK MOTORCYCLE WAS DRIVING ERATICALLY BEHIND THEM. MR. [REDACTED] STATED THAT THE MOTORCYCLE WAS PASSING VEHICLES THAT WERE TRAVELING BEHIND HIM ON A DOUBLE YELLOW LINE. HE ALSO INFORMED ME THAT THE MOTORCYCLE GOT BEHIND HIM AND ATTEMPTED TO PASS THEM BY GOING INTO THE ONCOMING LANE. ONCE THEY CROSSED THE DOUBLE YELLOW LINE A CAR IN THE OPOSING LANE WAS COMING TOWARDS HIM. THE DRIVER OF THE MOTORCYCLE SWERVED BACK OVER INTO THE RIGHT LANE IN FRONT OF MR. [REDACTED] BEGAN TO WOBBLE, AND LOST CONTROL OF THE MOTORCYCLE. MR. [REDACTED] STATED THAT HE

The motorcycle careened off the road and went sideways on the shoulder of the road. The spin of the motorcycle slammed Sandy's head into a telephone pole and she was ejected from the bike, skidding across grass and back onto the asphalt.

THE PASSENGER OF THE MOTORCYCLE STRUCK HER HEAD ON A TELEPHONE POLE AND FELL OFF THE MOTORCYCLE. THE DRIVER OF THE MOTORCYCLE STAYED ON FOR A FEW MORE FEET BEFORE FALLING OFF HIMSELF. MR. [REDACTED] STATED THAT THEY PULLED OVER AND RUSHED OVER TO MR. COLLIER IN

Witnesses were immediately on the scene, two of whom were certified in CPR and First Aid. They checked Sandy's pulse and knew she was dead:

AS THEY WERE CHECKING ON MRS. SHOOK, TWO FEMALES IN ANOTHER VEHICLE PULLED OVER AND INFORMED THEM THAT THEY WERE CERTIFIED IN CPR AND FIRST AID AND ASKED IF THEY NEEDED ASSISTANCE. THE TWO FEMALES CHECKED THE FEMALE AND WERE UNABLE TO LOCATE A PULSE.

Law enforcement was quickly on the scene. Aaron was alive and coherent. Highway Patrol immediately determined Aaron was intoxicated through his slurred speech and changing narrative of the wreck. The reoccurring excuse that Aaron offered was that a friend crashed the motorcycle, then darted off into the woods. Another excuse was that another vehicle ran him off the road.



+ off road - Spoke w/ driver at hosp, search warrant, 2/17/03, Read impl. cons., placed under arrest, asked who pass was, said he wasn't driving m/c, friend was driving + he ran off - Then said a red or orange car ran him off road

Accordingly, law enforcement procured a search warrant and went to draw Aaron's blood. The results of the blood alcohol test of course showed that Aaron was intoxicated - nearly twice the legal limit.

Analyte	Result	Units	Threshold
Ethanol	0.148	%(g/dL)	0.010

The above range is calculated at 99.7% confidence.

Aaron was arrested at the hospital, charged with **Felony DUI with death**, and awaiting trial.

Defendants Name: Collier, Aaron W
Charges: Felony DUI w/ Death

There are many factors that Mr. Collier controlled that would have prevented the collision and the resulting death. First, Mr. Collier *should not* have been drinking and driving – as required by law. Second, Mr. Collier *should have* been travelling at a speed reasonable for the conditions. If Mr. Collier performed any of these simple actions, the collision would have never happened. Unfortunately, Sandy is dead because of Mr. Collier's negligence. Mr. Collier is demonstrably irresponsible and a clear danger as a driver. Therefore, liability in this case indisputable.



Passenger on Harley-Davidson dies in wreck that sent driver to the hospital
Coroner says 40-year-old Sandy Lynn Shook of Pelzer was thrown from motorcycle
Updated: 11:28 AM EST 10/22/17

II. DAMAGES

Summary of Damages

Under South Carolina law, Sandy's family is entitled to an award of damages against Mr. Collier for his negligence. Sandy's family lost a mother, sister, aunt and daughter on July 22, 2017. Not only does Sandy's family have to deal with the emotional pain of losing a loved one, but also the financial burdens that come along with it. For the reasons set forth more fully below, we also believe that Sandy's family will recover punitive damages at the trial of this action. Ultimately, we anticipate a jury to return a verdict in excess of Mr. Collier's policy limits.

ESTIMATED JURY VERDICT: \$5,000,000

Punitive Damages

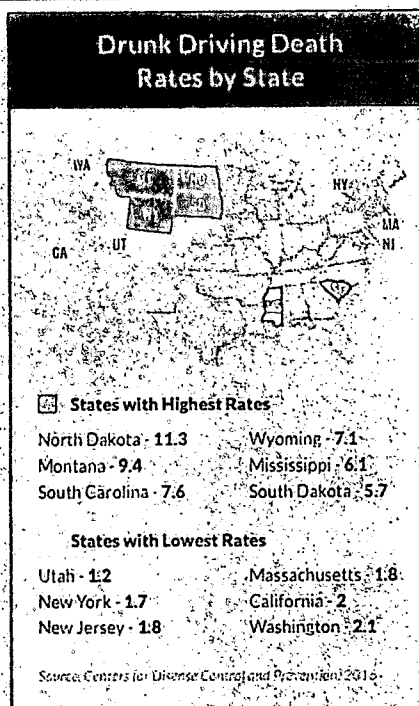
Please also be aware that causing an automobile collision due to recklessness, distracted driving, and other willful and wanton behavior subjects Mr. Collier to punitive damages, and that punitive damages may not be able to be discharged in bankruptcy under

federal law or South Carolina law. Based on past precedent we expect this case to yield a verdict in excess of the policy limits. If you force this case to trial, the verdict is unlikely to be discharged in bankruptcy and we will follow Mr. Collier to the maximum extent of the law.



This wreck happened because Mr. Collier chose to drive a vehicle while under the influence of alcohol. It is also likely that Mr. Collier was driving at an unreasonable speed and without "regard to the actual and potential hazards then existing." SC Code Ann. § 56-5-1520 (2012) ("General rules to maximum speed; lower speed may be required").

In South Carolina "punitive damages are sustainable if there is any evidence supporting a violation of a statute. (evidence of a violation of an applicable statute is a proper basis for submitting punitive damages to the trial jury); Betha v. Pedro Land, Inc., 290 S.C. 341, 350 S.E.2d 392 (Ct. App. 1986) (affirming finding of punitive damages in automobile accident where record contained evidence from which the jury could draw inferences of gross negligence). Because the evidence supports the trial judge's finding that Appellant's agent violated a statute, we find it was proper to award punitive damages to Respondents." Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 315, 594 S.E.2d 867, 876 (Ct. App. 2004).



Since, the purpose of punitive damages is to punish a defendant for outrageous misconduct and to deter the defendant and others from similar misbehavior in the future. A quick review of Mr. Collier's driving and criminal history shows that he has a long history of disregarding traffic laws and endangering fellow Greenville County citizens:

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Collier, Aaron W	2056-VIOL BEGINNER PERMIT	2056-VIOL BEGINNER PERMIT	11/10/1992
Collier, Aaron Winford	0258-BREAKING INTO AUTO OR FUEL TANKS	0258-BREAKING INTO AUTO OR FUEL TANKS	04/20/1994
Collier, Aaron Winford	0174-DRIVING UNDER SUSPENSION, MULT CHGS IN	0174-DRIVING UNDER SUSPENSION, MULT CHGS IN	09/26/1994
Collier, Aaron Winford	0168-ESCAPE / AIDING ESCAPES FROM PRISON AND	0168-ESCAPE / AIDING ESCAPES FROM PRISON AND	04/20/1995
Collier, Aaron W	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	10/03/1995
Collier, Aaron W	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	12/29/1995
Collier, Aaron Winford	2511-PASSING UNLAWFULLY	2511-PASSING UNLAWFULLY	07/19/2000
Collier, Aaron Winford	2671-Domestic / Criminal Domestic Violence - 1st offense	2671-Domestic / Criminal Domestic Violence - 1st offense	11/04/2003
Collier, Aaron Demetrius	0396-Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	02/03/2005
Collier, Aaron Demetrius	0396-Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	02/14/2005
Collier, Aaron Winford	2571-Traffic / Failure to yield right-of-way on left turn	2571-Traffic / Failure to yield right-of-way on left turn	02/02/2006

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Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Collier, Aaron Winford	0107-Drugs / Distribute, sell, purchase, manuf. drug other than crack cocaine, or pwi	-Drugs / Purchase of cont. sub. including crack cocaine within proximity of school	12/06/2006
Collier, Aaron Winford	0112-Drugs / Manufacture, distribution, etc., ice, crank, crack cocaine - 1st offense	-Drugs / Manufacture, distribution, etc., ice, crank, crack cocaine - 1st offense	12/07/2006
Collier, Aaron W	3009-METHAMPHETAMINE- POSSESSION < 1G-1ST OFF.	3009-METHAMPHETAMINE- POSSESSION < 1G-1ST OFF.	12/07/2006
Collier, Aaron W	2101-Traffic / Speeding, more than 10 but less than 15 mph over the speed limit	2103-Traffic / Speeding, more than 25 mph over the speed limit	02/27/2007
Collier, Aaron W	0174-DUI / Driving under suspension; license not suspended for DUI - 2nd offense	0174-DUI / Driving under suspension; license not suspended for DUI - 2nd offense	02/27/2007
Collier, Aaron Demetrius	2806-Traffic / Seatbelt violation - Non-criminal	2806-Traffic / Seatbelt violation - Non-criminal	03/22/2011
Collier, Aaron Winford	0657-Traffic / Reckless Driving	0657-Traffic / Reckless Driving	11/09/2010
Collier, Aaron Winford	0175-DUI / Driving under suspension; license not suspended for DUI - 3rd or sub. offense	0175-DUI / Driving under suspension; license not suspended for DUI - 3rd or sub. offense	11/09/2010
Collier, Aaron Winford	3015-Drugs / Manufacture, distribution, etc. methamphetamine or cocaine base, 2nd offense	3039-Drugs / Manufacture, distribution, etc. of methamphetamine or cocaine base, 3rd	11/09/2010
Collier, Aaron Winford	0326-Resisting / Resisting Arrest, Oppose, resist, or assault law enforcement officer serving process	0326-Resisting / Resisting Arrest, Oppose, resist, or assault law enforcement officer serving process	11/10/2010
Collier, Aaron Demetrius	3183-Traffic / Child passenger restraint system Article violation	3183-Traffic / Child passenger restraint system Article violation	03/13/2013
Collier, Aaron Demetrius	2102-Traffic / Speeding, more than 15 but less than 25 mph over the speed limit	2102-Traffic / Speeding, more than 15 but less than 25 mph over the speed limit	04/09/2013
Collier, Aaron Demetrius	2886-Traffic / Seatbelt violation - Non-criminal	2886-Traffic / Seatbelt violation - Non-criminal	10/22/2014
Collier, Aaron Demetrius	2886-Traffic / Seatbelt violation - Non-criminal	2886-Traffic / Seatbelt violation - Non-criminal	07/16/2018
Collier, Aaron W	0395-DUI / Felony driving under the influence, death results	0395-DUI / Felony driving under the influence, death results	

Accordingly, Mr. Collier's exposure to punitive damages is very high. In light of these facts, our offer to Progressive requires payment from all applicable policies, **inclusive of both bodily injury and property damage**. As you know, the South Carolina Supreme Court held that punitive damages be cannot be apportioned pro rata between those sustained for bodily injury and those sustained for property damage where the insurance policy is a split-limits policy. GEICO v. Poole, Op. No. 27821 (July 5, 2018).

S.E.2d 531, 534 (2010) (emphasis added). Thus, while actual damages may be traceable directly to bodily injury and property damage, punitive damages are not so easily divisible. Reading the statutes to require allocation of punitive damages would result in adding language to the statutes, rather than merely interpreting them.

Undoubtedly, potential jurors may know, or know of, someone who was injured or killed as a result of a drunk driver. It is our belief these facts will drive the verdict in this case to be particularly harsh. We hope that this claim will stop Mr. Collier from ever driving while drunk and again.

III. DEMAND PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933), and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).

Based on Mr. Collier's reckless driving and complete disregard for the safety of others on the road, the fact that he was intoxicated at the time he caused his vehicle to slide off the road, the fact that punitive damages will be imposed against Mr. Collier, and due to the ongoing pain and mental anguish Sandy's family will experience for the rest of their lives, we conservatively estimate the value of this case to be in excess of the policy limits. As there is a possibility that underinsured motorist coverage may be available to Sandy's family we cannot offer a full and final release at this time. Instead, we require payment of the policy limits of all applicable policies¹, under which you insure Mr. Collier in a form that will not prejudice our client's right to seek recovery from any other insurance carriers. This offer of compromise requires that policy limits are **RECEIVED**² no later than 5:00 p.m. EDT on October 12, 2018; and requires that Mr. Collier provide a sworn and notarized statement that there is no other insurance coverage available to him that could pertain to this loss. **THIS OFFER OF COMPROMISE INCLUDES A TIME-LIMITED DEMAND FOR PAYMENT OF POLICY LIMITS, AND, AT 5:00 P.M. EDT ON OCTOBER 12, 2018, THIS OFFER WILL BE WITHDRAWN AND WE WILL OBTAIN AN EXCESS JUDGMENT AGAINST YOUR INSURED(S) WHICH WILL, IN TURN PROVIDE YOUR INSURED(S) WITH A CLAIM AGAINST PROGRESSIVE PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933) and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).** Please be aware that our demand for policy limits is not negotiable and that **ALL** conditions of this offer of compromise must be met by the specified time limit. *If any condition is not met, or if any additional condition is imposed by Progressive, including but not limited to conditions of indemnification or the waiver of any rights or claims not specified herein, this offer of compromise will be withdrawn, and we will obtain an excess judgment against your insured and enforce it against Mr. Collier's assets.* This offer of compromise does not include the resolution of any claims for any persons or entities other than those injury and property damage claims made by Sandy's family. *Accordingly, any request for a release of claims for other persons or entities and/or any request for indemnification will constitute a counteroffer and rejection of this offer of compromise.*³ *If you include indemnification or a release of claims that could be made by other persons or entities in the proposed Covenant you send to us, it will constitute a counteroffer and rejection of this offer of compromise even if you claim in a cover letter or other documents that you send to us*

¹ "Applicable Policies" would include, but not necessarily be limited to, bodily injury, property damage, PIP, MedPay, umbrella, or any other types of coverages or policies that would cover the losses herein described.

² Settlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company as follows: Debra O'Conner as PR for the Estate of Sandy Shook and the Anastopoulos Law Firm, LLC. The checks must be **RECEIVED** in my office no later than 5:00pm EDT on October 12, 2018. Anastopoulos Law Firm, LLC's Tax I.D. Number is 452775649. For your convenience, our firm's W-9 is also attached. These funds should be mailed to 32 Ann Street, Charleston, SC 29403. We agree to hold these funds in trust until the settlement is court approved, as required by statute.

³ Please be aware that we have done everything reasonable to warn you that even a mere request for indemnification or a mere request for the waiver of any other rights or claims, including claims for loss of consortium or claims that could be made by or on behalf of any other person or entity, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

*that you have accepted our offer. Acceptance of this offer specifically requires you to prove a proposed Covenant that complied with this offer by the above deadline.*⁴ Moreover, if there is any language in the proposed Covenant or any other documents you send us that requires or even requests the Estate of Sandy Shook to make representations or warranties regarding the absence of medical liens or hospital liens or bankruptcy proceedings relating to her, the requirement or request will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Progressive is perfectly capable of reviewing court records to verify this information, and attempting to shift the cost of verifying this information to our client(s) is not acceptable and will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.⁵ Accordingly, please be aware that a requirement or even a request for a "Lien Affidavit" or similar document by any other name will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Additionally, please be aware that it will be deemed a counteroffer and rejection of this offer of compromise if Progressive requires or even requests the release of any individuals or entities other than Mr. Collier and Progressive.⁶ Moreover, please be aware that Mr. Collier will only be released

⁴ Please do not attempt to send a proposed Covenant that includes indemnification or a release of any claims that could be brought by or on behalf of any person or entity other than our client, as we do not represent these persons or entities. The insurance company tactic of including indemnification or a release of unrelated parties in the proposed Covenant will not work against this firm and its clients. Please be aware that you cannot get around this requirement by sending a cover letter with a non-compliant proposed Covenant that says your "proposed Covenant is not a counteroffer." *If you send a proposed Covenant that includes indemnification or that violates any other terms of this offer, it is a counteroffer regardless of whatever you put in your cover letter.* Pursuant to this offer of compromise, your insurance company cannot provide a letter that says it accepts our offer and then try to trick us by providing a proposed Covenant that does not comply with our offer. Do not put indemnification language in the proposed Covenant you send to us in the hope that we will sign your proposed Covenant without reading it or in the hope that we will rely on a representation in your cover letter that you have accepted our offer of compromise when you have not provided a compliant release. If you do put indemnification language in the proposed Covenant, it is a counteroffer even if you try to say it is not, and, if you try this tactic, we will proceed to verdict and take your insured's assets until it is paid in full. Please also keep in mind that a proposed Covenant that includes the release of "any and all claims" would necessarily include claims not covered under this offer of compromise, such as loss of consortium, and is also a counteroffer and rejection. Instead of acting in bad faith and trying to trick us, please just send a reasonable proposed Covenant that does not include indemnification or the release of unrelated claims. Acceptance of this offer of compromise requires you to make your acceptance through performance and not just mere words or promises. Part of the performance required to accept this offer is for you to deliver a proposed Covenant with the settlement check. Additionally, the proposed Covenant that is delivered with the settlement check must comply with the terms of this offer. *Regardless of what you might say in your cover letter, if the proposed Covenant does not comply with this offer, it is a rejection and counteroffer.*

⁵ Please be aware that we have done everything reasonable to warn you that even a mere request for warranties or representations regarding the absence of medical liens or hospital liens or bankruptcy proceedings will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise.

⁶ Please be aware that we have done everything reasonable to warn you that even a mere request for the release of any individuals or entities other than Mr. Collier and Progressive will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. *Moreover, please be aware that Mr. Collier will only be released with respect to the bodily injury and property damage coverages of the subject policy and that he will not be released with respect to any other policies or coverages not identified herein and that a request or requirement for a general release or a full and final release of Mr. Collier will be a counteroffer and rejection of this offer of compromise.* Please do not place any additional releases on the settlement check, in the proposed Covenant, or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any request for the release of any individuals or entities other than Mr. Collier and

with respect to the bodily injury and property damage coverages of the subject policy and that he will not be released with respect to any other policies or coverages not identified herein. Payment must be made as described herein, and payment by any other method, including payment through the registry of any court or through the filing of an interpleader action, will not satisfy the terms of this offer of compromise and will result in the immediate and automatic withdrawal of this offer of compromise. Additionally, filing a declaratory judgment action will result in the immediate, automatic, and permanent withdrawal of this offer of compromise. Please be aware that, under South Carolina law, our offer of compromise must be accepted unequivocally and without variance of any sort and that a purported acceptance of this offer of compromises which imposes *or even requests* conditions beyond those contained in this offer will be construed as a counteroffer and rejection. Please also be aware, that under South Carolina law, we have no continuing duty to repeatedly remind you of the deadline or any conditions of our offer, herein. See *Mayes v. Paxton*, 313 S.C. 109, 437 S.E.2d 66 (1993). Additionally, any attempted counteroffer by Progressive will be deemed a rejection of our offer of compromise and will result in the immediate and permanent withdrawal of our offer of compromise. Furthermore, please be aware that sworn and notarized statements that there is no other insurance coverage that could pertain to this loss must accompany your payment of policy limits. For your convenience, we have provided an affidavit that meets this condition. *Please be aware that sending a proposed Covenant, settlement check, or any other documents that include any conditions or provisions that are not part of this offer will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.* Additionally, even if you send a cover letter that claims to “unconditionally” or “unequivocally” accept our offer of compromise, but you also send a proposed Covenant, a settlement check, or any other documents that include any conditions or provisions that are not part of this offer, it will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Please do not attempt to trick us by saying in a letter that you accept our offer of compromise and then trying to sneak in additional terms that are not part of our offer. Our offer of compromise must be accepted by your insurance company’s performance of the requirements of this letter and not by mere words that claims to accept the offer. Regardless of any statement that your insurance company has accepted or is accepting our offer of compromise, if your insurance company’s actions and documents (i.e., your proposed Covenant, settlement check, etc.) do not comply with our offer of compromise, it will be a counteroffer and rejection of our offer. Acceptance of this offer of compromise requires performance and not just mere words or promises. Accordingly, in order to accept this offer of compromise, you must meet all of the terms and conditions of this offer of compromise, including, but not limited to, providing payment and a proposed Covenant that comply with the terms of this offer of compromise.

Please be aware that the only covenant we will accept is one that is limited in its scope to protecting your insured from Sandy’s Family’s rights to the personal assets of your insured. *Additionally, this offer relates only to personal injury and property damage claims (and not claims that could be made on behalf of any other person or entity); accordingly, a proposed Covenant or a statement on the settlement check or any other documents you send to us that purports to release or resolve “any and all claims” will be considered as a counteroffer and rejection of this offer, resulting in the immediate and permanent withdrawal of this offer.* The

Progressive as described herein, whether “accidental” or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise. Once again, if you send a proposed Covenant that purports to release any additional individuals or entities, it will be a counteroffer and rejection regardless of any claims of acceptance you make in a cover letter or any other documents you send to us. This offer of compromise requires you to deliver a proposed Covenant that complies with the terms of this offer of compromise. This offer of compromise requires you to make your acceptance through performance and not just mere words or promises.

Estate of Sandy Shook must not be prevented in any way from making a claim against her own insurance carriers. Despite the limited scope of our offer, our offer will protect the interests of your insured because it would only allow Sandy's family to seek the proceeds of her own coverage and other applicable insurance policies relating to personal injuries and it would prevent Sandy's family from seeking the assets of your insured as compensation for the personal injuries and property damages described herein.⁷ If you do not pay policy limits and meet the other requirements contained in this offer within the specified time limit, we will withdraw our offer of compromise and we will obtain an excess judgment against your insured and enforce it against his assets. In view of existing circumstances, we believe your insurance company should accord its insured the same faithful consideration it gives its own interests. If you do not pay policy limits in this case and meet the other requirements contained in this offer, pursuant to the terms of this offer of compromise, Mr. Collier may be able to sue your company for compensatory and punitive damages for bad-faith failure to properly adjust this claim. **Please explain to Mr. Collier that he has the right to hire an attorney to represent him against Progressive and that he has the right to demand that Progressive pay this demand in order to protect his property and possessions.**

Please be aware that this letter constitutes the Estate's formal offer and that no oral representations made before or after this letter can alter the terms of this offer. If, for any reason, this firm agrees to change this offer in any way, such changes can and will be made only in a writing that is signed by a member of this firm. The purpose of this paragraph is to specifically prevent Progressive from claiming that this offer was modified in any way by an oral communication. ***Please be aware that, unless there has been a specific writing signed by a member of this firm that specifically changes this offer, the offer made by this letter has not been changed.*** Additionally, there are and will be no oral offers made to resolve this case. Accordingly, please do not attempt to claim that there has been an oral offer to resolve this case because there has not been and will not be such an offer. ***Any offer to resolve this case by Sandy must be made in writing and any acceptance of that offer must be made through performance of the provisions of this offer of compromise in order for this firm and Sandy to agree that a binding agreement has been formed. Specifically, this offer of compromise cannot be accepted by a mere statement of unconditional acceptance of this offer; instead, acceptance of this offer requires full performance of all terms and conditions of this offer. If any condition or requirement is not met by the specified deadline or if any additional condition or requirement is imposed upon Sandy's family, then there has been no acceptance and no agreement.***

We have supplied Progressive with all information necessary to evaluate this offer of compromise⁸; however, should you have any questions regarding this offer of compromise, please

⁷ Please be aware that it is our current belief that the Estate may have had underinsured motorist coverage with policy limits far below the full value of this case. However, she may also have no coverage at all. Accordingly, since there is only a small amount of underinsured motorist coverage compared to the actual value of this case, Progressive's acceptance of this offer provides the greatest possible amount of protection for its insured. Thus, if Progressive fails to accept this offer, it will be exposing its insured to substantial excess liability and acting in bad faith towards its insured.

⁸ Please be aware that we have provided you willful and sufficient information to evaluate this offer of compromise and to compel your insurance company to pay its policy limits as demanded. Nevertheless, we are aware that many insurance companies request unnecessary additional information within a few days of the deadline for payment as a tactic to delay the resolution of a case. We are aware that insurance companies make more money when settlements are delayed because the insurance company can continue to earn investment income from the settlement money for as long as the insurance company can maintain possession of the settlement funds. We are aware that many insurance companies use the tactic of requesting unnecessary additional information to delay payment, but it will not work against this firm and its clients. Additionally, in the unlikely event that there is a legitimate need for additional

do not hesitate to contact me at (843) 614-8888. Additionally, although any requirement or request for terms and conditions of settlement and compromise that are not approved herein will constitute a counteroffer and rejection of this offer of compromise, if you feel that any part of this letter needs clarification in order for you to comply with its terms, we will be happy to offer any clarification of terms so that you have a full and fair opportunity to comply with this offer. Of course, this letter relates to discussions involving settlement and compromise, and nothing contained herein shall be deemed admissible except to enforce a claim for bad-faith failure to properly adjust this claim.

I look forward to hearing from you.

Sincerely,

s/ J. Camden Hodge

J. Camden Hodge, Esq.

Enclosures: Anastopoulo W-9
Obituary
Certificate of Appointment
Death Certificate
Police Report

Documents available at: <https://akimlawfirmroywilley.sharefile.com/d-s7e4544388514083b>

Cc: Debra O'Connor

information, we will have to request that information from another party. Therefore, any request for additional information must be made as soon as possible and at least five (5) days before the deadline so that we will have a reasonable opportunity to try and obtain the requested information. Likewise, if you are unable to access the supporting documentation as delivered, let us know immediately so that alternate arrangements can be made to allow you to view these files at any of our statewide offices. We have done everything reasonable to warn you that this offer of compromise includes a time-limited demand for the payment of policy limits. Please be aware that the deadline for payment and compliance with all other terms will not be extended based on a request for additional information because this offer of compromise already includes more than enough information to compel payment. Please do not place your insured's assets in jeopardy by incorrectly assuming that a request for additional information will extend the deadline of this offer of compromise. Failure to meet the deadline for any reason will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

AFFIDAVIT OF AARON COLLIER

ELECTRONICALLY FILED - 2019 Feb 14 4:14 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

Personally appeared before me who, being duly sworn, states as follows:

1. My name is Aaron Collier.
2. As of July 22, 2017, I was known as Aaron Collier.
3. I am over the age of 18, and as of July 22, 2017, I resided in Anderson County, South Carolina.
4. On July 22, 2017, I was involved in a motor vehicle collision whereby the vehicle I was driving struck Sandy Shook.
5. At that time, the vehicle I was driving had a policy of insurance issued by Progressive.
6. That as of July 22, 2017, there were no other policies of insurance that would apply to compensate Sandy Shook for the losses incurred on that date.

FURTHER AFFIANT SAYETH NOT.

Aaron Collier

Sworn to and Subscribed before me on

____ day of _____ 2018.

Notary Public for _____

My Commission Expires _____

TOLL FREE: 1 (800) 313-2546
FACSIMILE: (843) 494-5536

REPLY TO ANN STREET OFFICE
CAMDEN@AKIMLAWFIRM.COM

ANASTOPOULO

LAW FIRM

AKIMA A. ANASTOPOULO (SC)
JONATHAN N. ALKIS (SC)
CONSTANCE ANASTOPOULO (SC)*
GARRETT L. BROWN (SC)
KENNETH T. DAVID (SC)
STEFAN B. FEIDLER (SC)(GA)
HERB F. GLASS (SC)
MARLEY N. GRIM (SC)
J. CAMDEN HODGE (SC)
LANE D. JEFFERDES (SC)
THOMAS D. KASDLER, II (NC)
BYRON V. LEAVIS, II (SC)
BENJAMIN W. LEE (SC)
MATTHEW L. NALL (SC)
ERIC M. POELIN (SC)(NC)(GA)(CA)
SAMANTHA SUTTON (SC)(NC)
CASEY VAN VALKENBURGH (SC)(IL)
P. HEATH WARD (SC)
DANNY LEE WILLARD, JR. (SC)
ROY T. WILLEY, IV (SC)
L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

October 16, 2018

Jeff Vicary
Progressive Insurance Company
128 Millport Circle, Ste. 101
Greenville, SC 29607

RE: *Estate of Sandy Lynn Shook v. Aaron Collier*
Case No.: 2017-CP-23-_____

Dear Jeff:

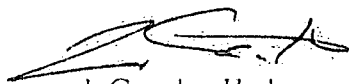
We are in receipt of Progressive's draft in this matter [#210477107] in the amount of \$25,000 and accompanying Covenant Not to Execute. By copy of this letter, we are returning this draft. As you know, our Offer of Compromise requested payment of all available coverages (which necessarily would include bodily injury and property damage coverages) by October 12, 2018.

It is our understanding that the policy at issue carried limits of \$25,000 per person in bodily injury coverage together with \$25,000 in property damage coverage. Therefore, your draft for \$25,000 is clearly a rejection and counter offer. We are also troubled that your proposed CNTE purports to release my client's claims for both BI and PD, even though your office only tendered payment for one of the claims.

I am sure you can understand that my client is unable to release both the BI and PD claims without being fully compensated from both policies. It seems clear that Progressive recognizes its insured's exposure under both policies since Progressive requested a release as to both. However, it seems equally clear that Progressive failed to comply with our Offer of Compromise by failing to tender the applicable limits. As such, and as stated in our Offer of Compromise, our offer is now withdrawn and we will be forced to file suit against Mr. Collier.

If you should have any questions, please do not hesitate to contact us.

Sincerely,



J. Camden Hodge

Enclosure

MAILING: 32 Ann Street, Charleston, South Carolina 29403

North Charleston: 2170 Ashley Phosphate Road, 3rd Floor, North Charleston, South Carolina 29406 * **Greenville:** 418 River Street, Greenville, SC 29601

Florence: 150 W. Evans Street, Florence, South Carolina 29501 * **Myrtle Beach:** 2411 N. Oak Street, Suite 407, Myrtle Beach, South Carolina 29577

Columbia: 1201 Main Street, Suite 1100, Columbia, South Carolina 29201 * **Raleigh, NC:** 8801 Past Park Drive, Suite 301, Raleigh, NC 27617

Wilmington, NC: Appointment Only

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000073

~~PROGRESSIVE~~

PNC BANK, N.A. 070
ASHLAND, OH
1-877-448-9544
PAYABLE IF DESIRED AT FIRST
NATIONAL BANK OF ANCHORAGE

VOID IF NOT PRESENTED WITHIN 90 DAYS

CLAIM NUMBER: 17-1540723
NAME: SHOOK, SANDY

CHECK NUMBER: 56-389
210477107 412

October 10, 2018

PAY EXACTLY \$*****25,000.00

TWENTY-FIVE THOUSAND AND 00/100 *****

PAY TO THE ORDER OF: DEBRA O'CONNOR AS PR FOR THE ESTATE OF SANDY SHOOK AND THE ANASTOPOULO LAW FIRM LLC
2170 ASHLEY PHOSPHATE RD FL 3
NORTH CHARLESTON, SC 29406-4190

Progressive Northern Insurance Company

BY: 
AUTHORIZED SIGNATURE

⑈ 210477107⑈ ⑆041203895⑆ 4239694532⑈

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-04-02003

DEBRA O'CONNOR, as Personal
Representative of the ESTATE OF
SANDY LYNN SHOOK,

Plaintiff,

v.

AARON COLLIER,

Defendant.

**PLAINTIFF'S MOTION TO
RECONSIDER and/or ALTER OR
AMEND ORDER GRANTING
DEFENDANT'S MOTION TO
ENFORCE SETTLEMENT**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD:

Plaintiff Debra O'Connor, as Personal Representative of the Estate of Sandy Lynn Shook ("Plaintiff"), by and through her undersigned counsel and pursuant to Rule 59, SCRPC hereby submits this Motion to Reconsider and/or Alter or Amend this Court's Order granting Defendant Aaron Collier's Motion to Enforce Settlement.

Defendant's Motion came before the Court on Wednesday, March 20, 2019 at the Anderson County Courthouse. Present for Defendant Aaron Collier ("Defendant") was Michael T. Coulter. Camden Hodge appeared on behalf of the Plaintiff. After hearing the arguments of counsel and reviewing their submissions, the Court entered a Form 4 Order on March 21, 2019 granting Defendant's Motion to Enforce Settlement (Exhibit A). The Form 4 Order directed defense counsel to prepare a proposed Order and submit it to the Court for review. To date, no proposed Order has been submitted.

Plaintiff now files this Motion to Reconsider to protect her rights and ensure it is timely made pursuant to the *South Carolina Rules of Civil Procedure*. Upon receipt of the executed formal Order granting Defendant's Motion to Enforce Settlement, Plaintiff will supplement this Motion to Reconsider with a Memorandum in Support. Plaintiff further relies on her previously

submitted filings, arguments of counsel, her forthcoming Memorandum in Support of the same, and any other submissions requested by the Court.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

BY: *s/ J. Camden Hodge*

Eric M. Poulin

SC Bar Number: 100209

Roy T. Willey, IV

SC Bar Number: 101010

J. Camden Hodge

SC Bar Number: 100638

Anastopoulos Law Firm, LLC

32 Ann Street

Charleston, South Carolina 29403

(843) 614-8888

ATTORNEYS FOR PLAINTIFF

Greenville, SC
March 22, 2019

STATE OF SOUTH CAROLINA
 COUNTY OF ANDERSON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP-0402003

DEBRA O'CONNOR PRS, ET AL
 PLAINTIFF(S)

AARON COLLIER
 DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

MOTION TO ENFORCE SETTLEMENT IS GRANTED. MR. COULTER TO PREPARE A FORMAL ORDER.

This order ends does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge _____ Judge Code 2155 Date _____

ELECTRONICALLY FILED - 2019 Mar 21 4:03 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003
 ELECTRONICALLY FILED - 2019 Mar 22 3:06 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2019 Mar 21 4:03 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003
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Anderson Common Pleas

Case Caption: Debra O'Conner PRS , plaintiff, et.al VS Aaron Collier

Case Number: 2018CP0402003

Type: Order/Form 4.

S/R. LAWTON McINTOSH

S/R. LAWTON McINTOSH

Electronically signed on: 2019-03-21 15:16:29 page 3 of 3

ELECTRONICALLY FILED - 2019 Mar 21 4:03 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003
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IN THE STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-04-02003

DEBRA O'CONNOR, as Personal
Representative of the ESTATE OF
SANDY LYNN SHOOK,

Plaintiff,

v.

AARON COLLIER,

Defendant.

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION TO
RECONSIDER and/or ALTER OR
AMEND ORDER GRANTING
DEFENDANT'S MOTION TO
ENFORCE SETTLEMENT**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD:

Plaintiff Debra O'Connor, as Personal Representative of the Estate of Sandy Lynn Shook ("Plaintiff"), by and through her undersigned counsel and pursuant to Rule 59, SCRPC, hereby submits this Memorandum in Support of her Motion to Reconsider and/or Alter or Amend this Court's April 8, 2019 Order granting Defendant Aaron Collier's ("Defendant") Motion to Enforce Settlement.

INTRODUCTION AND BACKGROUND

This case was brought on behalf of the Estate of Sandy Lynn Shook, whose decedent was a single mother who raised three self-sufficient children. Unfortunately, on July 22, 2017, her life came to an end when a motorcycle driven Aaron Collier left the roadway outside of Greenville and crashed, killing Sandy.

At the time of the accident, Defendant was insured under a policy of insurance with Progressive Northern Insurance Company. On September 26, 2018, Plaintiff sent an offer of compromise to Progressive via email, offering to settle her claims against Defendant, on a covenant not to execute, in exchange for payment of Progressive's applicable policy limits.

The offer of compromise, which is attached as Exhibit A, included a deadline for compliance of October 12, 2018 and stated:

release at this time. Instead, we require payment of the policy limits of all applicable policies¹, under which you insure Mr. Collier in a form that will not prejudice our client's right to seek recovery from any other insurance carriers. This offer of compromise requires that policy limits are **RECEIVED**² no later than 5:00 p.m. EDT on October 12, 2018, and requires that Mr. Collier provide a sworn and notarized statement that there is no other insurance coverage available to him that could pertain to this loss. **THIS OFFER OF COMPROMISE INCLUDES A TIME-LIMITED DEMAND FOR PAYMENT OF POLICY LIMITS, AND, AT 5:00 P.M. EDT ON OCTOBER 12, 2018, THIS OFFER WILL BE WITHDRAWN AND WE WILL OBTAIN AN EXCESS JUDGMENT AGAINST YOUR INSURED(S) WHICH WILL, IN TURN PROVIDE YOUR INSURED(S) WITH A CLAIM AGAINST PROGRESSIVE PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933) and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).** Please be aware that our demand for policy limits is not negotiable and that **ALL** conditions of this offer of compromise must be met by the specified time limit. *If any condition is not met, or if any additional condition is imposed by Progressive, including but not limited to conditions of indemnification or the waiver of any rights or claims not specified herein, this offer of compromise will be withdrawn, and we will obtain an excess judgment against your insured and enforce it against Mr. Collier's assets.* This offer of compromise does not include the resolution of any claims for any persons or entities other than those injury and property damage claims made by Sandy's family. *Accordingly, any request for a release of claims for other persons or entities and/or any request for indemnification will constitute a counteroffer and rejection of this offer of compromise.*³ *If you include indemnification or a release of claims that could be made by other persons or entities in the proposed Covenant you send to us, it will constitute a counteroffer and rejection of this offer of compromise even if you claim in a cover letter or other documents that you send to us*

¹ "Applicable Policies" would include, but not necessarily be limited to, bodily injury, property damage, PIP, MedPay, umbrella, or any other types of coverages or policies that would cover the losses herein described.

² Settlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company as follows: Debra O'Conner as PR for the Estate of Sandy Shook and the Anastopoulos Law Firm, LLC. The checks must be **RECEIVED** in my office no later than 5:00pm EDT on October 12, 2018. Anastopoulos Law Firm, LLC's Tax I.D. Number is 452775649. For your convenience, our firm's W-9 is also attached. These funds should be mailed to 32 Ann Street, Charleston, SC 29403. We agree to hold these funds in trust until the settlement is court approved, as required by statute.

The offer further stated that "any attempted counteroffer by Progressive will be deemed a rejection of our offer of compromise and will result in the immediate and permanent withdrawal of our offer of compromise." (underline in original) and "[w]e have done everything reasonable to warn you that this offer of compromise includes a time-limited demand for the payment of policy limits" as well as "[f]ailure to meet the deadline for any reason will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise."

The policy in question included \$25,000.00 in bodily injury coverage and \$25,000.00 in property damage coverage, both of which were owed and included in the Offer of Compromise, as admitted in Defendant's Motion to Enforce Settlement.

As admitted in Defendant's Motion to Enforce Settlement, "on October 11, 2018, a Progressive claims representative hand-delivered to the Anastopoulos Law Firm, LLC the requested documents including an affidavit form defendant, a covenant not to execute, and one check for \$25,000.00." Put simply, Progressive **did not** deliver the "payment of policy limits of all applicable policies" as required by Plaintiff's Offer. Defendant's Motion to Enforce, ¶ 10. According to Defendant, the Progressive claims representative "inadvertently left the second check for \$25,000.00 out of the packet of materials that were hand delivered to Anastopoulos Law Firm." Id. at ¶ 11.

On October 16, 2018, a formal letter rejecting Progressive's counteroffer of half of the applicable limits was sent by Plaintiff with the \$25,000.00 check enclosed (despite the assertion in Defendant's Motion at ¶ 14) and on the very next day the lawsuit was filed. Exhibit B. Defendant answered the suit on November 7, 2018 and responded to Plaintiff's Requests to Admit on December 17, 2019.

On October 17, 2018, Progressive delivered a second check for \$25,000.00 "to the Anastopoulos Law Firm." Id. at ¶ 13. However, and despite the plain language of the offer of compromise, the second check was delivered to 2170 Ashley Phosphate Road, North Charleston, SC, 29406 – not to 32 Ann Street, Charleston, SC 29403 as required by the offer of compromise. Defendant then filed the Motion to Enforce Settlement that is the subject of this action.

Defendant's Motion to Enforce Settlement was heard before the Honorable R. Lawton McIntosh on March 20, 2019. After considering the arguments of counsel and submitted memorandums and attachments, the Court granted Defendant's Motion to Enforce Settlement.

This Court's Order Granting Defendant's Motion to Enforce Settlement found that the settlement was enforceable and was not a rejection or counteroffer of the conditions placed in the plaintiff's Offer of Compromise, and was instead an "inadvertent mistake by an agent of the defendant's insurance carrier in regards to arbitrary deadlines set forth by the plaintiff's attorney." The Order further found that the Plaintiff "rejected Progressive's acceptance of their offer because they only received one check." Order, Finding of Facts, ¶ 11. More specifically, the Court made the factual finding that Plaintiff's Offer of Compromise required that the \$50,000 policy limits be delivered to the Anastopoulo Law Firm by 5:00 PM on October 12, 2018, and that the "arbitrary deadline" was not met. *Id.*, ¶ 7, 10 – 11.

LEGAL ARGUMENT

I. The Court Erred by Holding that an Enforceable Contract Existed Where There was No Meeting of the Minds Nor Mutual Assent

There can be no doubt that in South Carolina, settlement agreements are viewed as contracts. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)(Citing *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 177, 557 S.E.2d 708, 711 (Ct. App. 2001). Thus, the general rules of contract construction apply to settlement agreements. *Mattox v. Cassidy*, 289 S.C. 57, 61, 344 S.E.2d 620, 622 (Ct. App. 1986).

Therefore, in ruling upon Defendant's Motion to Enforce Settlement, the Court essentially was tasked with considering a collateral action sounding in contract. Because the Defendant was the party alleging the existence of an enforceable contract and requesting performance of the same,

he had the burden of proof. Moreover, when there are any disputed questions of fact, those issues must be presented to a jury. See, e.g., Soil Remediation Co. v. Nu-Way Env'tl., Inc., 325 S.C. 231, 234, 482 S.E.2d 554, 555 (1997)(holding the existence of mutual assent to a contract is a question of fact to be left to a jury when ambiguities exist). In sum, the Court could only grant Defendant's Motion if it found as a matter of law that the evidence submitted to it gives rise to a valid and enforceable contract.

In its Order, the Court indicated that its standard of review was governed by its power to enforce settlement agreements pursuant to its thirteenth-juror authority. Order, pg. 3. No mention was made of the standard of review for finding an enforceable contract. Id. Indeed, the Order contains no mention of any law holding that the essential terms of the contract were complied with by the Defendant save for that: (1) there was a "meeting of the minds"; (2) the failure to deliver the full settlement funds by the deadline set forth in the Offer of Compromise and to the correct location was an "inadvertent mistake that was a product of human error and not a counter offer to the plaintiff's demand. Order, ¶¶ 1 – 3.

Of course, for a contract to arise there must be an offer, an acceptance, and a meeting of the minds of the parties involved. Rushing v. McKinney, 370 S.C. 280, 633 S.E.2d 917 (Ct. App. 2006). To be effective, acceptance of an offer must conform to the terms of the offer. Fender & Latham, Inc. v. First Union Nat. Bank of South Carolina, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994). At common law, no contract is formed if the acceptance varies the terms of the offer. Johnson Co., Inc. v. Peck Industries, Inc., 304 S.C. 101, 403 S.E.2d 146 (Ct. App. 1991)(citing Sossamon v. Littlejohn, 241 S.C. 478, 129 S.E.2d 124 (1963)). Instead, an acceptance which adds different or additional terms is treated as a counteroffer, which may be accepted or rejected by the

other party. Id.; Restatement (Second) of Contracts § 59 (1979). Moreover, the offeror is the master of her offer, and can withdraw it at any time before it is accepted.

Our Fourth Circuit Court of Appeals has noted that a federal district court only “retains the power to enforce **complete** settlement agreements; it does not have the power to impose, in the role of a final arbiter, a settlement agreement where there was never a meeting of the parties’ minds. **Where there has been no meeting of the minds sufficient to form a complete settlement agreement, any partial performance of the settlement agreement must be rescinded and the case restored to the docket for trial.”** Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983)(emphasis added)(internal citation omitted). Put differently, “a valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement.” Patricia Grand Hotel, LLC v. MacGuire Enters., 372 S.C. 634, 638, 643 S.E.2d 692, 694 (Ct.App.2007)(emphasis in original).

There can be no dispute that the amount of payment and timing of payment are material terms to a contract. Here, and as admitted by the Defendant, the amount of payment demanded by the Plaintiff was not timely provided. This maxim can be illustrated by way of analogy. If a perspective buyer was attempting to purchase a home, and failed to provide the required amount of monies due at the time of closing as required by the seller, the seller would be well within his rights to reject the buyer’s offer. Indeed, no court under such factual circumstances would force the seller to accept the insufficient funds, untimely provided by the buyer, and enforce such a contract. The same reasoning must hold true here.

Here, as a matter of law there can be no settlement agreement because there was no “mirror image” acceptance of Plaintiff’s offer. Plaintiff’s offer, by its clear terms, required acceptance not later than October 12, 2018, required the payment of all applicable policy limits actually be

received by Plaintiff's counsel, and that the check(s) be delivered to 32 Ann Street, Charleston, SC 29403. The written offer explicitly stated that it would be automatically withdrawn if not accepted by the stated deadline. There is no evidence that the offer was accepted by October 12, 2018. Instead, it is undisputed that, aside from acknowledging receipt of the offer, and delivering half of the applicable policy limits, Progressive did not accept the offer prior to the deadline and instead made a counteroffer. Why Progressive did so is not meaningful.

Indeed, the court's Order cites no law indicating that the "inadvertent mistake" based upon "human error" allowed the court to find that an enforceable contract was entered into. Frankly, "inadvertent mistake" is not an excuse for failing to comply with the material terms of a contract. This is not a Motion to Set Aside Default where such a "good faith mistake" standard would apply. The sole question before the court is whether an enforceable contract was entered into between the parties. Clearly, and based upon the above, no enforceable contract was present. There is no dispute that the demanded funds were not timely delivered or delivered to the right location.

Further, the parties hereto also lacked mutual assent. To reiterate, in order for a contract to be valid and enforceable, the parties must have a meeting of the minds as to *all* essential and material terms of the agreement. Mathis v. Brown & Brown of South Carolina, Inc., 389 S.C. 299, 698 S.E.2d 773 (2010)(emphasis added). Here, Plaintiff clearly intended that the offer be open for acceptance only for a limited time. After the deadline expired, and after Plaintiff filed the lawsuit, there is no indication that Plaintiff ever indicated any willingness to settle the claim on the terms Defendant now seeks to enforce.

CONCLUSION

For the reasons set forth herein, Plaintiff respectfully asks that this Court Alter or Amend its Order Granting Defendant's Motion to Enforce Settlement by finding that no enforceable contract was entered into between the parties.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

BY: s/ J. Camden Hodge

Roy T. Willey IV, Esquire

SC Bar Number: 101010

Roy T. Willey, IV, Esquire

SC Bar Number: 100638

Eric M. Poulin, Esquire

SC Bar Number: 100209

32 Ann Street

Charleston, South Carolina 29403

(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

Greenville, South Carolina
April 23, 2019

****IMPORTANT NOTICE****

****Please be advised that the following Offer of Compromise contains a time-limited demand and includes multiple digital attachments****

We are aware that most insurance companies process mail through a central processing division and that not all correspondence is received directly by the adjuster assigned to handle the claim. Often times, insurance companies take several days to process this mail, and adjusters often claim that they have not received our letters until weeks after they have been sent. We are also aware that adjusters who receive our letters often claim they have not received the corresponding attachments.

Therefore, this correspondence is being sent to your statutorily mandated personal email address on file with the South Carolina Department of Insurance and required by S.C. Code Ann. § 38-47-15. All attachments are provided through a secure ShareFile URL. Ensure your network and/or firewall settings allow access to the files as no hard copies or facsimiles will be provided or extension given due to technical limitations on your part.

This is a time-limited offer of compromise which will not be extended simply due to a delay in your ability to access the provided files, upload it to your case file, and/or forward it to the appropriate adjuster. Likewise, this deadline will not be extended simply because the attachments fail to make it to the appropriate adjuster along with the letter. We have sent this correspondence to the address that you are required to have on file with the South Carolina Department of Insurance. Thus, we expect that it will be handled appropriately.

If this letter is received by anyone other than the assigned adjuster, it is your duty to ensure that this letter is forwarded to the appropriate person immediately. Since your email is required by South Carolina Department of Insurance, this account is monitored. S.C. DOI Bulletin 2016-14.

For your convenience the claim number is:

17-1540723

****IMPORTANT NOTICE****

TOLL FREE: 1 (800) 313-2546
FACSIMILE: (843) 494-5536

REPLY TO ANN STREET OFFICE
CAMDEN@AKIMLAWFIRM.COM

ANASTOPOULO

LAW FIRM

VIA EMAIL ONLY

September 26, 2018

Jeff Vicary
Progressive Insurance
128 Millport Circle, Suite 101
Greenville, SC 29607
jvicary1@progressive.com

JONATHAN N. ALKIS (SC)
CONSTANCE ANASTOPOULO (SC)*
GARRETT L. BROWN (SC)
KENNETH T. DAVID (SC)
STEFAN B. FEIDLER (SC)(GA)
HERB F. GLASS (SC)
MARLEY N. GRIM (SC)
J. CAMDEN HODGE (SC)
LANE D. JEFFERIES (SC)
THOMAS D. KANDLER, II (NC)
BYRON V. LEARY, II (SC)
BENJAMIN W. LEE (SC)
MATTHEW L. NALL (SC)
ERIC M. POULIN (SC)(NC)(GA)(CA)
SAMANTHA SUTTON (SC)(NC)
CASEY VAN VALKENBURGH (SC)(IL)
P. HEATH WARD (SC)
DANNY LEE WILLARD, JR. (SC)
ROY T. WILLEY, IV (SC)
L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

PRIVILEGED AND CONFIDENTIAL:
RELATING TO SETTLEMENT DISCUSSIONS

RE: My Client: Debra O'Connor as PR for Estate of Sandy Shook
DOL: July 22, 2017
Claim #: 17-1540723
Pages: 12, Not Including Enclosures

Dear Jeff,

INADMISSIBILITY OF OFFER OF COMPROMISE

Pursuant to South Carolina Rule of Evidence, Rule 408, statements made in compromise negotiations are not admissible at trial. This rule is identical to the Federal Rule and designed to encourage the settlement of controversies by permitting parties to discuss their cases candidly with the assurance that admissions and proposals for compromise made in the course of their good-faith settlement negotiations may not be used against them to later prove liability. Hunter v. Hyder, 236 S.C. 378, 114 S.E.2d 493 (1960). However, evidence of an offer to compromise may be admissible for some other purpose. Meehan v. Commercial Casualty Ins. Co., 166 S.C. 496, 165 S.E. 194 (1932). This entire letter and all of the exhibits attached are submitted with a view toward compromise of this claim. If you do not agree that everything that follows is inadmissible during the litigation of this matter, please stop reading and immediately destroy this letter and its attachments and immediately notify us of your refusal to review our attempt to compromise this claim.

OFFER OF COMPROMISE

This notice, demand, and offer of compromise is directed to you as the insurer of Aaron Collier. This letter is written to submit an offer of compromise regarding The Estate of Sandy Lynn Shook's claims against your insured(s) in the above-referenced matter. Additionally, this letter places you on notice, consistent with the dictates of Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933), of a time-limited demand for the payment of policy limits of Aaron Collier's insurance coverage.

MAILING: 32 Ann Street, Charleston, South Carolina 29403

North Charleston: 2170 Ashley Phosphate Road, 3rd Floor, North Charleston, South Carolina 29406 * **Greenville:** 418 River Street, Greenville, SC 29601

Florence: 150 W. Evans Street, Florence, South Carolina 29501 * **Myrtle Beach:** 2411 N. Oak Street, Suite 407, Myrtle Beach, South Carolina 29577

Columbia: 1201 Main Street, Suite 1100, Columbia, South Carolina 29201 * **Raleigh, NC:** 8801 East Park Drive, Suite 301, Raleigh, NC 27617

Wilmington, NC: Appointment Only.

ELECTRONICALLY FILED - 2019 Apr 23 1:49 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

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I. LIABILITY OF AARON COLLIER

The daughter of a large and loving family, Sandy Lynn Shook ("Sandy") was born in New London, Ohio. Her family moved to the upstate of South Carolina when Sandy was a child, and she always considered herself a native South Carolinian. Sandy began to build her life in the small town of Pelzer, South Carolina, a close-knit community filled with Sandy's family as well as neighbors that became life-long friends. She raised three self-sufficient children – two grown boys and one daughter.



Sandy was a single mother and never shied away from hard work. She was the full-time manager of Tony's Pizza in Greenville, South Carolina, and it was a job she excelled at. Sandy was a natural leader, never met a stranger, and genuinely felt that working in the food and beverage service industry could make a positive impact on others and in her community. When she wasn't working, you could find Sandy hosting big gatherings on her Pelzer property, complete with lots of barbeque, live music, and good company. Sandy was also known around Greenville County as a pool shark, and while she enjoyed playing the game with her children, she liked nothing more than surprising an over-confident patron with her skills. Her talents didn't end on the pool table, as she could fix nearly anything with an engine, was an avid motorcyclist, and was a steward of the outdoors.

A. Before the Crash

Sandy was taken away from her family and community on the night of July 22, 2017. Saturday was her day off and Sandy decided to spend time the afternoon with her life-long friends Kim and Jerry Gault ("the Gaults"). The plan was to relax, enjoy the late afternoon, get some pizza at the local joint, and head to downtown Greenville for a birthday party at a local restaurant.

The Gaults were excited to see Sandy. The friends relaxed and enjoyed each other's company. Soon, they became hungry and decided to get some pizza downtown. The group arrived at the bar/restaurant around 8 PM and everyone was excited to see more friends and celebrate one of their birthdays. An acquaintance, Aaron Collier arrived at the restaurant, too.

B. The Crash, Investigation, and Aftermath.

10 PM came and everyone was ready to go home. Sandy spent her night socializing with friends and Aaron offered to give Sandy a ride home – unfortunately, she accepted. Once the pair left, Sandy realized Aaron was severely intoxicated. Aaron drove his motorcycle West on Chipwood Road toward Pelzer, traveling at excessive speeds, illegally passing cars over a double-yellow traffic line. According to witnesses, he then lost control of his motorcycle.

THEN WRITTEN STATEMENT. MR. [REDACTED] STATED THAT A WHITE AND BLACK MOTORCYCLE WAS DRIVING ERATICALLY BEHIND THEM. MR. [REDACTED] STATED THAT THE MOTORCYCLE WAS PASSING VEHICLES THAT WERE TRAVELING BEHIND HIM ON A DOUBLE YELLOW LINE. HE ALSO INFORMED ME THAT THE MOTORCYCLE GOT BEHIND HIM AND ATTEMPTED TO PASS THEM BY GOING INTO THE ONCOMING LANE. ONCE THEY CROSSED THE DOUBLE YELLOW LINE A CAR IN THE OPPOSING LANE WAS COMING TOWARDS HIM. THE DRIVER OF THE MOTORCYCLE SWERVED BACK OVER INTO THE RIGHT LANE IN FRONT OF MR. [REDACTED] BEGAN TO WOBBLE, AND LOST CONTROL OF THE MOTORCYCLE. MR. [REDACTED] STATED THAT HE

The motorcycle careened off the road and went sideways on the shoulder of the road. The spin of the motorcycle slammed Sandy's head into a telephone pole and she was ejected from the bike, skidding across grass and back onto the asphalt.

THE PASSENGER OF THE MOTORCYCLE STRUCK HER HEAD ON A TELEPHONE POLE AND FELL OFF THE MOTORCYCLE. THE DRIVER OF THE MOTORCYCLE STAYED ON FOR A FEW MORE FEET BEFORE FALLING OFF HIMSELF. MR. [REDACTED] STATED THAT THEY PULLED OVER AND RUSHED OVER TO MR. COLLIER IN

Witnesses were immediately on the scene, two of whom were certified in CPR and First Aid. They checked Sandy's pulse and knew she was dead.

AS THEY WERE CHECKING ON MRS. SHOOK, TWO FEMALES IN ANOTHER VEHICLE PULLED OVER AND INFORMED THEM THAT THEY WERE CERTIFIED IN CPR AND FIRST AID AND ASKED IF THEY NEEDED ASSISTANCE. THE TWO FEMALES CHECKED THE FEMALE AND WERE UNABLE TO LOCATE A PULSE.

Law enforcement was quickly on the scene. Aaron was alive and coherent. Highway Patrol immediately determined Aaron was intoxicated through his slurred speech and changing narrative of the wreck. The reoccurring excuse that Aaron offered was that a friend crashed the motorcycle, then darted off into the woods. Another excuse was that another vehicle ran him off the road.



+ off road - Spoke w/ driver at hosp, search warrant, 4/17/03, Read impl. cons., placed under arrest, asked who pass was, said he wasn't driving mtc, friend was driving + he ran off - Then said a red or orange car ran him off road

Accordingly, law enforcement procured a search warrant and went to draw Aaron's blood. The results of the blood alcohol test of course showed that Aaron was intoxicated - nearly twice the legal limit.

Analyte	Result	Units	Threshold
Ethanol	0.148	%(g/dL)	0.010

The above range is calculated at 99.7% confidence.

Aaron was arrested at the hospital, charged with **Felony DUI with death**, and awaiting trial.

Defendants Name: Collier, Aaron W
Charges: Felony DUI w/Death

There are many factors that Mr. Collier controlled that would have prevented the collision and the resulting death. First, Mr. Collier *should not* have been drinking and driving – as required by law. Second, Mr. Collier *should have* been travelling at a speed reasonable for the conditions. If Mr. Collier performed any of these simple actions, the collision would have never happened. Unfortunately, Sandy is dead because of Mr. Collier's negligence. Mr. Collier is demonstrably irresponsible and a clear danger as a driver. Therefore, liability in this case indisputable.



Passenger on Harley Davidson dies in wreck that sent driver to the hospital
Coroner says 40-year-old Sandy Lynn Shook of Pelzer was thrown from motorcycle
Updated 11:28 AM EDT Jul 22, 2017

II. DAMAGES

Summary of Damages

Under South Carolina law, Sandy's family is entitled to an award of damages against Mr. Collier for his negligence. Sandy's family lost a mother, sister, aunt and daughter on July 22, 2017. Not only does Sandy's family have to deal with the emotional pain of losing a loved one, but also the financial burdens that come along with it. For the reasons set forth more fully below, we also believe that Sandy's family will recover punitive damages at the trial of this action. Ultimately, we anticipate a jury to return a verdict in excess of Mr. Collier's policy limits.

ESTIMATED JURY VERDICT: \$5,000,000

Punitive Damages

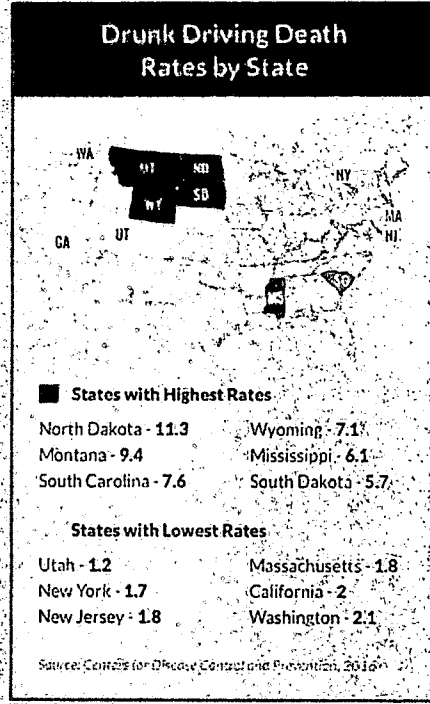
Please also be aware that causing an automobile collision due to recklessness, distracted driving, and other willful and wanton behavior subjects Mr. Collier to punitive damages, and that punitive damages may not be able to be discharged in bankruptcy under

federal law or South Carolina law. Based on past precedent we expect this case to yield a verdict in excess of the policy limits. If you force this case to trial, the verdict is unlikely to be discharged in bankruptcy and we will follow Mr. Collier to the maximum extent of the law.



This wreck happened because Mr. Collier chose to drive a vehicle while under the influence of alcohol. It is also likely that Mr. Collier was driving at an unreasonable speed and without "regard to the actual and potential hazards then existing." SC Code Ann. § 56-5-1520 (2012) ("General rules to maximum speed; lower speed may be required").

In South Carolina "punitive damages are sustainable if there is any evidence supporting a violation of a statute. (evidence of a violation of an applicable statute is a proper basis for submitting punitive damages to the trial jury); Bethea v. Pedro Land, Inc., 290 S.C. 341, 350 S.E.2d 392 (Ct. App. 1986) (affirming finding of punitive damages in automobile accident where record contained evidence from which the jury could draw inferences of gross negligence). Because the evidence supports the trial judge's finding that Appellant's agent violated a statute, we find it was proper to award punitive damages to Respondents." Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 315; 594 S.E.2d 867, 876 (Ct. App. 2004).



Since, the purpose of punitive damages is to punish a defendant for outrageous misconduct and to deter the defendant and others from similar misbehavior in the future. A quick review of Mr. Collier's driving and criminal history shows that he has a long history of disregarding traffic laws and endangering fellow Greenville County citizens:

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Collier, Aaron W	2056-VIOL-BEGINNER PERMIT	2056-VIOL-BEGINNER PERMIT	11/10/1992
Collier, Aaron Winford	0258-BREAKING INTO AUTO OR FUEL TANKS	0258-BREAKING INTO AUTO OR FUEL TANKS	04/20/1994
Collier, Aaron Winford	0174-DRIVING UNDER SUSPENSION; MULT CHGS IN	0174-DRIVING UNDER SUSPENSION; MULT CHGS IN	09/26/1994
Collier, Aaron Winford	0168-ESCAPE / AIDING ESCAPES FROM PRISON AND	0168-ESCAPE / AIDING ESCAPES FROM PRISON AND	04/20/1995
Collier, Aaron W	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	10/03/1995
Collier, Aaron W	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	12/29/1995
Collier, Aaron Winford	2511-PASSING UNLAWFULLY	2511-PASSING UNLAWFULLY	07/19/2000
Collier, Aaron Winford	2671-Domestic / Criminal Domestic Violence - 1st offense	2671-Domestic / Criminal Domestic Violence - 1st offense	11/04/2003
Collier, Aaron Demetrius	0396-Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	02/03/2005
Collier, Aaron Demetrius	0396-Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	02/14/2005
Collier, Aaron Winford	2571-Traffic / Failure to yield right-of-way on left turn	2571-Traffic / Failure to yield right-of-way on left turn	02/02/2006

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Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Collier, Aaron Winford	0107-Drugs / Distribute, sell, purchase, manuf. drug other than crack cocaine, or pwi	Drugs / Purchase of cont. sub. including crack cocaine within proximity of school	12/06/2006
Collier, Aaron Winford	0112-Drugs / Manufacture, distribution, etc., ice, crack, crack cocaine - 1st offense	Drugs / Manufacture, distribution, etc., ice, crack, crack cocaine - 1st offense	12/07/2006
Collier, Aaron W	3009-METHAMPHETAMINE- POSSESSION < 1G 1ST OFF	3009-METHAMPHETAMINE- POSSESSION < 1G 1ST OFF	12/07/2006
Collier, Aaron W	2101-Traffic / Speeding, more than 10 but less than 15 mph over the speed limit	2103-Traffic / Speeding, more than 25 mph over the speed limit	02/27/2007
Collier, Aaron W	0174-DUI / Driving under suspension, license not suspended for DUI - 2nd offense	0174-DUI / Driving under suspension, license not suspended for DUI - 2nd offense	02/27/2007
Collier, Aaron Demetrius	2886-Traffic / Seatbelt violation - Non-criminal	2886-Traffic / Seatbelt violation - Non-criminal	03/22/2011
Collier, Aaron Winford	0657-Traffic / Reckless Driving	0657-Traffic / Reckless Driving	11/09/2010
Collier, Aaron Winford	0175-DUI / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	0175-DUI / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	11/09/2010
Collier, Aaron Winford	3015-Drugs / Manufacture, distribution, etc. methamphetamine or cocaine base, 2nd offense	3039-Drugs / Manufacture, distribution, etc. of methamphetamine or cocaine base, 3rd	11/09/2010
Collier, Aaron Winford	0320-Resisting / Resisting Arrest, Oppose, resist, or assault law enforcement officer serving process	0320-Resisting / Resisting Arrest, Oppose, resist, or assault law enforcement officer serving process	11/10/2010
Collier, Aaron Demetrius	3183-Traffic / Child passenger restraint system Article violation	3183-Traffic / Child passenger restraint system Article violation	03/13/2013
Collier, Aaron Demetrius	2102-Traffic / Speeding, more than 15 but less than 25 mph over the speed limit	2102-Traffic / Speeding, more than 15 but less than 25 mph over the speed limit	04/09/2013
Collier, Aaron Demetrius	2886-Traffic / Seatbelt violation - Non-criminal	2886-Traffic / Seatbelt violation - Non-criminal	10/22/2014
Collier, Aaron Demetrius	2886-Traffic / Seatbelt violation - Non-criminal	2886-Traffic / Seatbelt violation - Non-criminal	07/16/2018
Collier, Aaron W	0395-DUI / Felony driving under the influence; death results	0395-DUI / Felony driving under the influence; death results	

Accordingly, Mr. Collier's exposure to punitive damages is very high. In light of these facts, our offer to Progressive requires payment from all applicable policies, **inclusive of both bodily injury and property damage**. As you know, the South Carolina Supreme Court held that punitive damages be cannot be apportioned pro rata between those sustained for bodily injury and those sustained for property damage where the insurance policy is a split limits policy. GEICO v. Poole, Op. No. 27821 (July 5, 2018).

S.E.2d 531, 534 (2010) (emphasis added). Thus, while actual damages may be traceable directly to bodily injury and property damage, punitive damages are not so easily divisible. Reading the statutes to require allocation of punitive damages would result in adding language to the statutes, rather than merely interpreting them.

Undoubtedly, potential jurors may know, or know of, someone who was injured or killed as a result of a drunk driver. It is our belief these facts will drive the verdict in this case to be particularly harsh. We hope that this claim will stop Mr. Collier from ever driving while drunk and again.

III. DEMAND PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933), and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).

Based on Mr. Collier's reckless driving and complete disregard for the safety of others on the road, the fact that he was intoxicated at the time he caused his vehicle to slide off the road, the fact that punitive damages will be imposed against Mr. Collier, and due to the ongoing pain and mental anguish Sandy's family will experience for the rest of their lives, we conservatively estimate the value of this case to be in excess of the policy limits. As there is a possibility that underinsured motorist coverage may be available to Sandy's family we cannot offer a full and final release at this time. Instead, we require payment of the policy limits of all applicable policies¹, under which you insure Mr. Collier in a form that will not prejudice our client's right to seek recovery from any other insurance carriers. This offer of compromise requires that policy limits are **RECEIVED**² no later than 5:00 p.m. EDT on October 12, 2018, and requires that Mr. Collier provide a sworn and notarized statement that there is no other insurance coverage available to him that could pertain to this loss. **THIS OFFER OF COMPROMISE INCLUDES A TIME-LIMITED DEMAND FOR PAYMENT OF POLICY LIMITS, AND, AT 5:00 P.M. EDT ON OCTOBER 12, 2018, THIS OFFER WILL BE WITHDRAWN AND WE WILL OBTAIN AN EXCESS JUDGMENT AGAINST YOUR INSURED(S) WHICH WILL, IN TURN PROVIDE YOUR INSURED(S) WITH A CLAIM AGAINST PROGRESSIVE PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933) and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).** Please be aware that our demand for policy limits is not negotiable and that **ALL** conditions of this offer of compromise must be met by the specified time limit. *If any condition is not met, or if any additional condition is imposed by Progressive, including but not limited to conditions of indemnification or the waiver of any rights or claims not specified herein, this offer of compromise will be withdrawn, and we will obtain an excess judgment against your insured and enforce it against Mr. Collier's assets.* This offer of compromise does not include the resolution of any claims for any persons or entities other than those injury and property damage claims made by Sandy's family. *Accordingly, any request for a release of claims for other persons or entities and/or any request for indemnification will constitute a counteroffer and rejection of this offer of compromise.³ If you include indemnification or a release of claims that could be made by other persons or entities in the proposed Covenant you send to us, it will constitute a counteroffer and rejection of this offer of compromise even if you claim in a cover letter or other documents that you send to us*

¹ "Applicable Policies" would include, but not necessarily be limited to, bodily injury, property damage, PIP, MedPay, umbrella, or any other types of coverages or policies that would cover the losses herein described.

² Settlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company as follows: Debra O'Conner as PR for the Estate of Sandy Shook and the Anastopoulos Law Firm, LLC. The checks must be **RECEIVED** in my office no later than 5:00pm EDT on October 12, 2018. Anastopoulos Law Firm, LLC's Tax I.D. Number is 452775649. For your convenience, our firm's W-9 is also attached. These funds should be mailed to 32 Ann Street, Charleston, SC 29403. We agree to hold these funds in trust until the settlement is court approved, as required by statute.

³ Please be aware that we have done everything reasonable to warn you that even a mere request for indemnification or a mere request for the waiver of any other rights or claims, including claims for loss of consortium or claims that could be made by or on behalf of any other person or entity, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

*that you have accepted our offer. Acceptance of this offer specifically requires you to prove a proposed Covenant that complied with this offer by the above deadline.*⁴ Moreover, if there is any language in the proposed Covenant or any other documents you send us that requires or even requests the Estate of Sandy Shook to make representations or warranties regarding the absence of medical liens or hospital liens or bankruptcy proceedings relating to her, the requirement or request will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Progressive is perfectly capable of reviewing court records to verify this information, and attempting to shift the cost of verifying this information to our client(s) is not acceptable and will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.⁵ Accordingly, please be aware that a requirement or even a request for a "Lien Affidavit" or similar document by any other name will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Additionally, please be aware that it will be deemed a counteroffer and rejection of this offer of compromise if Progressive requires or even requests the release of any individuals or entities other than Mr. Collier and Progressive.⁶ Moreover, please be aware that Mr. Collier will only be released

⁴ Please do not attempt to send a proposed Covenant that includes indemnification or a release of any claims that could be brought by or on behalf of any person or entity other than our client, as we do not represent these persons or entities. The insurance company tactic of including indemnification or a release of unrelated parties in the proposed Covenant will not work against this firm and its clients. Please be aware that you cannot get around this requirement by sending a cover letter with a non-compliant proposed Covenant that says your "proposed Covenant is not a counteroffer." ***If you send a proposed Covenant that includes indemnification or that violates any other terms of this offer, it is a counteroffer regardless of whatever you put in your cover letter.*** Pursuant to this offer of compromise, your insurance company cannot provide a letter that says it accepts our offer and then try to trick us by providing a proposed Covenant that does not comply with our offer. Do not put indemnification language in the proposed Covenant you send to us in the hope that we will sign your proposed Covenant without reading it or in the hope that we will rely on a representation in your cover letter that you have accepted our offer of compromise when you have not provided a compliant release. If you do put indemnification language in the proposed Covenant, it is a counteroffer even if you try to say it is not, and, if you try this tactic, we will proceed to verdict and take your insured's assets until it is paid in full. Please also keep in mind that a proposed Covenant that includes the release of "any and all claims" would necessarily include claims not covered under this offer of compromise, such as loss of consortium, and is also a counteroffer and rejection. Instead of acting in bad faith and trying to trick us, please just send a reasonable proposed Covenant that does not include indemnification or the release of unrelated claims. Acceptance of this offer of compromise requires you to make your acceptance through performance and not just mere words or promises. Part of the performance required to accept this offer is for you to deliver a proposed Covenant with the settlement check. Additionally, the proposed Covenant that is delivered with the settlement check must comply with the terms of this offer. ***Regardless of what you might say in your cover letter, if the proposed Covenant does not comply with this offer, it is a rejection and counteroffer.***

⁵ Please be aware that we have done everything reasonable to warn you that even a mere request for warranties or representations regarding the absence of medical liens or hospital liens or bankruptcy proceedings will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise.

⁶ Please be aware that we have done everything reasonable to warn you that even a mere request for the release of any individuals or entities other than Mr. Collier and Progressive will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. ***Moreover, please be aware that Mr. Collier will only be released with respect to the bodily injury and property damage coverages of the subject policy and that he will not be released with respect to any other policies or coverages not identified herein and that a request or requirement for a general release or a full and final release of Mr. Collier will be a counteroffer and rejection of this offer of compromise.*** Please do not place any additional releases on the settlement check, in the proposed Covenant, or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any request for the release of any individuals or entities other than Mr. Collier and

with respect to the bodily injury and property damage coverages of the subject policy and that he will not be released with respect to any other policies or coverages not identified herein. Payment must be made as described herein, and payment by any other method, including payment through the registry of any court or through the filing of an interpleader action, will not satisfy the terms of this offer of compromise and will result in the immediate and automatic withdrawal of this offer of compromise. Additionally, filing a declaratory judgment action will result in the immediate, automatic, and permanent withdrawal of this offer of compromise. Please be aware that, under South Carolina law, our offer of compromise must be accepted unequivocally and without variance of any sort and that a purported acceptance of this offer of compromises which imposes *or even requests* conditions beyond those contained in this offer will be construed as a counteroffer and rejection. Please also be aware, that under South Carolina law, we have no continuing duty to repeatedly remind you of the deadline or any conditions of our offer, herein. See *Mayes v. Paxton*, 313 S.C. 109, 437 S.E.2d 66 (1993). Additionally, any attempted counteroffer by Progressive will be deemed a rejection of our offer of compromise and will result in the immediate and permanent withdrawal of our offer of compromise. Furthermore, please be aware that sworn and notarized statements that there is no other insurance coverage that could pertain to this loss must accompany your payment of policy limits. For your convenience, we have provided an affidavit that meets this condition. ***Please be aware that sending a proposed Covenant, settlement check, or any other documents that include any conditions or provisions that are not part of this offer will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.*** Additionally, even if you send a cover letter that claims to “unconditionally” or “unequivocally” accept our offer of compromise, but you also send a proposed Covenant, a settlement check, or any other documents that include any conditions or provisions that are not part of this offer, it will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Please do not attempt to trick us by saying in a letter that you accept our offer of compromise and then trying to sneak in additional terms that are not part of our offer. Our offer of compromise must be accepted by your insurance company’s performance of the requirements of this letter and not by mere words that claims to accept the offer. Regardless of any statement that your insurance company has accepted or is accepting our offer of compromise, if your insurance company’s actions and documents (i.e., your proposed Covenant, settlement check, etc.) do not comply with our offer of compromise, it will be a counteroffer and rejection of our offer. Acceptance of this offer of compromise requires performance and not just mere words or promises. Accordingly, in order to accept this offer of compromise, you must meet all of the terms and conditions of this offer of compromise, including, but not limited to, providing payment and a proposed Covenant that comply with the terms of this offer of compromise.

Please be aware that the only covenant we will accept is one that is limited in its scope to protecting your insured from Sandy’s Family’s rights to the personal assets of your insured. ***Additionally, this offer relates only to personal injury and property damage claims (and not claims that could be made on behalf of any other person or entity); accordingly, a proposed Covenant or a statement on the settlement check or any other documents you send to us that purports to release or resolve “any and all claims” will be considered as a counteroffer and rejection of this offer, resulting in the immediate and permanent withdrawal of this offer.*** The

Progressive as described herein, whether “accidental” or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise. Once again, if you send a proposed Covenant that purports to release any additional individuals or entities, it will be a counteroffer and rejection regardless of any claims of acceptance you make in a cover letter or any other documents you send to us. This offer of compromise requires you to deliver a proposed Covenant that complies with the terms of this offer of compromise. This offer of compromise requires you to make your acceptance through performance and not just mere words or promises.

Estate of Sandy Shook must not be prevented in any way from making a claim against her own insurance carriers. Despite the limited scope of our offer, our offer will protect the interests of your insured because it would only allow Sandy's family to seek the proceeds of her own coverage and other applicable insurance policies relating to personal injuries and it would prevent Sandy's family from seeking the assets of your insured as compensation for the personal injuries and property damages described herein.⁷ If you do not pay policy limits and meet the other requirements contained in this offer within the specified time limit, we will withdraw our offer of compromise and we will obtain an excess judgment against your insured and enforce it against his assets. In view of existing circumstances, we believe your insurance company should accord its insured the same faithful consideration it gives its own interests. If you do not pay policy limits in this case and meet the other requirements contained in this offer, pursuant to the terms of this offer of compromise, Mr. Collier may be able to sue your company for compensatory and punitive damages for bad-faith failure to properly adjust this claim. **Please explain to Mr. Collier that he has the right to hire an attorney to represent him against Progressive and that he has the right to demand that Progressive pay this demand in order to protect his property and possessions.**

Please be aware that this letter constitutes the Estate's formal offer and that no oral representations made before or after this letter can alter the terms of this offer. If, for any reason, this firm agrees to change this offer in any way, such changes can and will be made only in a writing that is signed by a member of this firm. The purpose of this paragraph is to specifically prevent Progressive from claiming that this offer was modified in any way by an oral communication. *Please be aware that, unless there has been a specific writing signed by a member of this firm that specifically changes this offer, the offer made by this letter has not been changed.* Additionally, there are and will be no oral offers made to resolve this case. Accordingly, please do not attempt to claim that there has been an oral offer to resolve this case because there has not been and will not be such an offer. *Any offer to resolve this case by Sandy must be made in writing and any acceptance of that offer must be made through performance of the provisions of this offer of compromise in order for this firm and Sandy to agree that a binding agreement has been formed. Specifically, this offer of compromise cannot be accepted by a mere statement of unconditional acceptance of this offer; instead, acceptance of this offer requires full performance of all terms and conditions of this offer. If any condition or requirement is not met by the specified deadline or if any additional condition or requirement is imposed upon Sandy's family, then there has been no acceptance and no agreement.*

We have supplied Progressive with all information necessary to evaluate this offer of compromise⁸; however, should you have any questions regarding this offer of compromise, please

⁷ Please be aware that it is our current belief that the Estate may have had underinsured motorist coverage with policy limits far below the full value of this case. However, she may also have no coverage at all. Accordingly, since there is only a small amount of underinsured motorist coverage compared to the actual value of this case, Progressive's acceptance of this offer provides the greatest possible amount of protection for its insured. Thus, if Progressive fails to accept this offer, it will be exposing its insured to substantial excess liability and acting in bad faith towards its insured.

⁸ Please be aware that we have provided you willful and sufficient information to evaluate this offer of compromise and to compel your insurance company to pay its policy limits as demanded. Nevertheless, we are aware that many insurance companies request unnecessary additional information within a few days of the deadline for payment as a tactic to delay the resolution of a case. We are aware that insurance companies make more money when settlements are delayed because the insurance company can continue to earn investment income from the settlement money for as long as the insurance company can maintain possession of the settlement funds. We are aware that many insurance companies use the tactic of requesting unnecessary additional information to delay payment, but it will not work against this firm and its clients. Additionally, in the unlikely event that there is a legitimate need for additional

do not hesitate to contact me at (843) 614-8888. Additionally, although any requirement or request for terms and conditions of settlement and compromise that are not approved herein will constitute a counteroffer and rejection of this offer of compromise, if you feel that any part of this letter needs clarification in order for you to comply with its terms, we will be happy to offer any clarification of terms so that you have a full and fair opportunity to comply with this offer. Of course, this letter relates to discussions involving settlement and compromise, and nothing contained herein shall be deemed admissible except to enforce a claim for bad-faith failure to properly adjust this claim.

I look forward to hearing from you.

Sincerely,

s/ J. Camden Hodge

J. Camden Hodge, Esq.

Enclosures: Anastopoulo W-9
Obituary
Certificate of Appointment
Death Certificate
Police Report

Documents available at: <https://akimlawfirmroywilley.sharefile.com/d-s7e4544388514083b>

Cc: Debra O'Connor

information, we will have to request that information from another party. Therefore, any request for additional information must be made as soon as possible and at least five (5) days before the deadline so that we will have a reasonable opportunity to try and obtain the requested information. Likewise, if you are unable to access the supporting documentation as delivered, let us know immediately so that alternate arrangements can be made to allow you to view these files at any of our statewide offices. We have done everything reasonable to warn you that this offer of compromise includes a time-limited demand for the payment of policy limits. Please be aware that the deadline for payment and compliance with all other terms will not be extended based on a request for additional information because this offer of compromise already includes more than enough information to compel payment. Please do not place your insured's assets in jeopardy by incorrectly assuming that a request for additional information will extend the deadline of this offer of compromise. Failure to meet the deadline for any reason will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

AFFIDAVIT OF AARON COLLIER

Personally appeared before me who, being duly sworn, states as follows:

1. My name is Aaron Collier.
2. As of July 22, 2017, I was known as Aaron Collier.
3. I am over the age of 18, and as of July 22, 2017, I resided in Anderson County, South Carolina.
4. On July 22, 2017, I was involved in a motor vehicle collision whereby the vehicle I was driving struck Sandy Shook.
5. At that time, the vehicle I was driving had a policy of insurance issued by Progressive.
6. That as of July 22, 2017, there were no other policies of insurance that would apply to compensate Sandy Shook for the losses incurred on that date.

FURTHER AFFIANT SAYETH NOT.

Aaron Collier

Sworn to and Subscribed before me on

____ day of _____ 2018

Notary Public for _____

My Commission Expires _____

TOLL FREE: 1 (800) 313-2546
FACSIMILE: (843) 494-5536

REPLY TO ANN STREET OFFICE
CAMDEN@AKIMLAWFIRM.COM

ANASTOPOULO

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DANNY LEE WILFARD, JR. (SC)
ROY T. WILLEY, IV (SC)
L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

October 16, 2018

Jeff Vicary
Progressive Insurance Company
128 Millport Circle, Ste. 101
Greenville, SC 29607

RE: *Estate of Sandy Lynn Shook v. Aaron Collier*
Case No.: 2017-CP-23-_____

Dear Jeff:

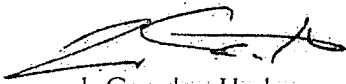
We are in receipt of Progressive's draft in this matter [#210477107] in the amount of \$25,000 and accompanying Covenant Not to Execute. By copy of this letter, we are returning this draft. As you know, our Offer of Compromise requested payment of all available coverages (which necessarily would include bodily injury and property damage coverages) by October 12, 2018.

It is our understanding that the policy at issue carried limits of \$25,000 per person in bodily injury coverage together with \$25,000 in property damage coverage. Therefore, your draft for \$25,000 is clearly a rejection and counter offer. We are also troubled that your proposed CNTE purports to release my client's claims for both BI and PD, even though your office only tendered payment for one of the claims.

I am sure you can understand that my client is unable to release both the BI and PD claims without being fully compensated from both policies. It seems clear that Progressive recognizes its insured's exposure under both policies, since Progressive requested a release as to both. However, it seems equally clear that Progressive failed to comply with our Offer of Compromise by failing to tender the applicable limits. As such, and as stated in our Offer of Compromise, our offer is now withdrawn and we will be forced to file suit against Mr. Collier.

If you should have any questions, please do not hesitate to contact us.

Sincerely,



J. Camden Hodge

Enclosure

MAILING: 32 Ann Street, Charleston, South Carolina 29403

North Charleston: 2170 Ashley Phosphate Road, 3rd Floor, North Charleston, South Carolina 29406 * **Greenville:** 418 River Street, Greenville, SC 29601

Florence: 150 W. Evans Street, Florence, South Carolina 29501 * **Myrtle Beach:** 2411 N. Oak Street, Suite 407, Myrtle Beach, South Carolina 29577

Columbia: 1201 Main Street, Suite 1100, Columbia, South Carolina 29201 * **Raleigh, NC:** 8801 East Park Drive, Suite 301, Raleigh, NC 27617

Wilmington, NC: Appointment Only

000101

ELECTRONICALLY FILED - 2019 Apr 23 1:49 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

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PROGRESSIVE

PNC BANK, N.A. 070
ASHLAND, OH
1-877-448-9544
PAYABLE IF DESIRED AT FIRST
NATIONAL BANK OF ANCHORAGE

VOID IF NOT PRESENTED WITHIN 90 DAYS

CLAIM NUMBER: 17-1540723
NAME: SHOOK, SANDY

CHECK NUMBER: 56-389
210477107
412
October 10, 2018

PAY EXACTLY \$*****25,000.00

TWENTY-FIVE THOUSAND AND 00/100 *****

PAY TO DEBRA O'CONNOR AS PR FOR THE ESTATE OF SANDY SHOOK AND THE
THE ORDER ANASTOPOULO LAW FIRM LLC
OF: 2170 ASHLEY PHOSPHATE RD FL 3
NORTH CHARLESTON, SC 29406-4190

Progressive Northern Insurance Company

BY: 
AUTHORIZED SIGNATURE

⑈ 210477107⑈ ⑆041203895⑆ 4239694532⑈

COPY
shardoon@sccourts.org

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF ANDERSON

4 Debra O'Conner, as Personal Representative
5 of the Estate of Sandy Lynn Shook,

6 Plaintiff,

7 vs. Transcript of Record
8 2018-CP-04-02003

9 Aaron Collier,
10 Defendant.

11 March 20, 2019
12 Anderson, South Carolina

13 B E F O R E:

14 The HONORABLE R. LAWTON MCINTOSH

15 A P P E A R A N C E S:

16 J. Camden Hodge, Representing the Plaintiff
17 Michael T. Coulter, Representing the Defendant
18

19
20
21
22 SHARON G. HARDOON, CSR
23 Official Circuit Court Reporter, II
24
25

1 THE COURT: This is a motion to enforce
2 settlement; is that correct?

3 MR. COULTER: It is, Judge.

4 THE COURT: And your motion?

5 MR. COULTER: It is, Judge.

6 THE COURT: Tell me about it. I have not
7 looked at anything in the file.

8 MR. COULTER: Okay. I will tell you,
9 it's a pretty unusual situation, Judge, in that
10 the material in the file is very -- it puts it out
11 pretty clear.

12 THE COURT: Okay.

13 MR. COULTER: I'll give you a quick
14 summary on it, Judge. This is the result of an
15 accident that occurred back in July of 2017, a
16 single vehicle motorcycle accident where the
17 passenger -- I think the passenger on the
18 motorcycle passed away as a result of the
19 collision.

20 There was discussions -- I'm here on
21 behalf of Progressive. There were some
22 discussions between Mr. Hodge and Progressive to
23 get the case resolved. And in September of 2018,
24 they had sent Progressive a -- basically a letter
25 that's included in it, and it's a pretty lengthy

1 letter, that talks about all the conditions that
2 they would require Progressive to file in order to
3 be able to resolve the case.

4 They wanted a proposed covenant. They
5 wanted an affidavit to show that there was no
6 other coverage, and they wanted the settlement
7 drafts of the applicable coverage, and they wanted
8 that by October 12th.

9 THE COURT: They wanted the settlement
10 draft?

11 MR. COULTER: Yes, and this is why I
12 think there was some confusion about it. It was a
13 minimum limit policy.

14 THE COURT: Okay.

15 MR. COULTER: But what Progressive
16 decided to do under the Geico case, Pool vs.
17 Geico, they also decided to go ahead and tender
18 the PD limits, okay? So it was going to be a
19 \$50,000 settlement.

20 THE COURT: Okay.

21 MR. COULTER: And those drafts for the
22 \$50,000 had to be written, and you're going to
23 find out in a minute why this is kind of unusual,
24 they both had to be, according this letter that
25 was sent, the time limit demand had to be present

1 by October 12th.

2 Well, my understanding is that all of the
3 negotiation -- I may be wrong about this.

4 Mr. Hodge was a part of it. But it was between
5 Progressive representative, Jeff Bickery, who was
6 here in the upstate, and Mr. Hodge, or somebody
7 from his office. But I think that the requirement
8 of the letter was that the checks and everything
9 had to be presented to the Charleston office.
10 Okay? So, Mr. Hodge is in the Charleston office.

11 So the Progressive had the drafts printed
12 out in Charleston. All the information that they
13 had requested was printed out in Charleston, and
14 one of the reps down there, who basically was
15 acting as courier, took over all the information
16 to Mr. Hodge's office in Charleston on the 12th.

17 The problem was that because it was a
18 minimum limits split policy, they couldn't just
19 print out a \$50,000 check. They had to print out
20 two different \$25,000 checks because one came from
21 PD, one came from BI.

22 What happened is, it's in the materials,
23 one of the checks ends in 106 and one of the
24 checks ends in 107.

25 THE COURT: You mean the check numbers?

1 MR. COULTER: Yes, the check numbers.

2 Yes, sir.

3 THE COURT: Okay.

4 MR. COULTER: So they printed out the
5 checks in Charleston. 106 came out upside down,
6 flat. 107 comes out upside down flat in the
7 printer, and the representative picked up the 107.
8 He had no involvement in the negotiation. Didn't
9 realize that there was another 106 check. Put it
10 in the demand, put it in the packet with all this
11 information, walked it over there, including a
12 covenant, which you will see in this packet of
13 information where there's a covenant in this
14 information that had a \$50,000 settlement, and
15 from that settlement \$25,000 comes from BI and
16 \$25,000 comes from PD.

17 Well, he forgot to put other check in
18 this packet. He brought it over and handed it
19 them. It was certainly the intention of
20 Progressive to give the \$50,000. The covenant
21 wouldn't have said 50 and broke it down that way
22 if that was not to be the case. Gave it to them.
23 They took that.

24 And then two days later, they send us a
25 letter saying, we reject your tender because you

1 only gave us \$25,000. So that's a mistake.

2 The next day, we go over with the other
3 \$25,000 check for the PD portion, and they said,
4 too late, no good. We reject it, and we're not
5 settling this case because you didn't give us the
6 \$50,000 even though, clearly, that was the
7 intention of the parties. And this courier, for
8 the most part, simply didn't realize that he only
9 took one check off the printer as opposed to two.

10 That's where we're at. They want to
11 reject it. They filed suit two days later. Now
12 they want to have a trial on this case.

13 THE COURT: Okay. Let me ask you this --

14 MR. COULTER: Sure.

15 THE COURT: -- in my mind, the intent,
16 under the settlement, was to comply with the
17 demand letter submitted by the plaintiffs in all
18 respects.

19 MR. COULTER: Absolutely.

20 THE COURT: So in order to comply with
21 it, don't you have a hundred percent compliance or
22 no compliance?

23 MR. COULTER: You know, Judge, if a
24 mistake of that nature means noncompliance --

25 THE COURT: Right.

1 MR. COULTER: -- then I guess so. I

2 mean, I'm not going to argue that.

3 THE COURT: Right.

4 MR. COULTER: Clearly, he intended to do
5 it. If the covenant had said 25, then I'd get it,
6 because there was a letter that said -- that came
7 from Mr. Hodge's office that said, we're concerned
8 because you've only put in a \$25,000 check and
9 you're asking us to waive everything regarding it.
10 Well, the covenant clearly says 50, and it says
11 there's 25 here for BI and 25 for PD.

12 THE COURT: Right.

13 MR. COULTER: So, I mean, if making a
14 mistake that small causes everything to be off the
15 books, well, I mean, I can't say -- I mean, that's
16 what happened.

17 THE COURT: All right. Mr. Hodge, let me
18 ask you this.

19 MR. HODGE: Yes, Your Honor.

20 THE COURT: Why are we here fighting over
21 a day? I mean, really? If it's good and it's an
22 honest mistake, which it appears to be, why are we
23 really here?

24 MR. HODGE: There's a couple of concerns
25 that could be a little bit more far reaching, and

1 Mr. Coulter did touch and this.

2 First, of course, a settlement agreement
3 is viewed as a contract in South Carolina. So, of
4 course, there has to be an offer and acceptance
5 and meeting of the minds, and all material terms
6 must be met.

7 Now, of course, the most material of
8 terms in accepting an offer is the amount of
9 payment. You know, for example, if I was trying
10 to buy a house from Mr. Coulter and he said the
11 offer is \$100,000, get it to me by tomorrow or
12 else I'm going to sell it to someone else, and I
13 send him \$50,000, he's well within his right to
14 say, hey, go pound sand.

15 THE COURT: I understand all that. I got
16 that down packed.

17 MR. HODGE: Yeah.

18 THE COURT: The question then is, if
19 there's two checks, one representing -- and I
20 don't really know all the can do, 50 to show up
21 for BI, 50 for PD, that's their failure, but if
22 there is, taken at face value, we made a mistake,
23 here's the check --

24 MR. HODGE: Yes, sir, Your Honor.

25 THE COURT: -- within 24, 48 hours

1 later --

2 MR. HODGE: And for two reasons. The
3 first --

4 THE COURT: Tell me the reason. I want
5 to hear all this other stuff.

6 MR. HODGE: Of course, Judge. The first
7 implication, did they comply with the contract?
8 And if there's an order that says that they can
9 comply with some terms of the contract but not the
10 material items of the contract, and he did. We
11 found some of those material likenesses.

12 THE COURT: What benefit -- what is the
13 benefit to your client receiving with suit? Are
14 they just trying to get more money out of the
15 liability coverage?

16 MR. HODGE: That's, of course, one. But
17 it's also not having an order that states that,
18 when we send an offer and the material terms
19 aren't complied with, that some new standard is
20 created. This isn't a motion to lift default
21 under sundown -- or, excuse me, neglect is the
22 standard.

23 THE COURT: I assume your firm has been
24 one hundred percent, in all occasions, have never
25 had a technical problem ever. Is that the

1 standard you want to set for these things, really?

2 MR. HODGE: Of course not, Your Honor.

3 THE COURT: Of course not.

4 MR. HODGE: I wouldn't make that
5 representation either.

6 THE COURT: I think it's a little -- I
7 hear -- what do you have to say in defense of what
8 he said? Anything more than it's not one hundred
9 percent, a good faith mistake doesn't count?

10 MR. HODGE: Which I think he wouldn't
11 agree with, or he would agree with.

12 THE COURT: Yeah.

13 MR. HODGE: Here we got the wrong amount
14 of money, delivered to the wrong address, to the
15 wrong address twice, to North Charleston, and
16 we've got an offer of compromise in this case that
17 says three different times the amount and where to
18 deliver it.

19 THE COURT: How long was it before they
20 rectified the -- let's say, the mistaken tender of
21 settlement?

22 MR. HODGE: Within one day of being
23 notified from us that the offer had been withdrawn
24 because it had not been complied with.

25 Because, of course, when you add terms,

1 which is, we accept \$25,000 instead of \$50,000,
2 that's a counter-offer. I've got every right in
3 the world to reject it.

4 THE COURT: Sure, I agree.

5 MR. HODGE: And what we're worried about
6 here is, if there's an order that comes down and
7 says you can kind of comply but not a hundred
8 percent, then that's going to have more far
9 reaching implications than just this case.

10 THE COURT: Well, even today, you would
11 be the reason that an order was issued in the
12 first place, wouldn't you, because you insisted
13 that this matter be determined by the Court in
14 stead of saying, okay, good faith mistake, we'll
15 go ahead and accept your tender. But the next
16 time, with any real serious deviations, we got a
17 problem with that.

18 MR. HODGE: And, Your Honor, I've also
19 got a client who agreed to the offer of
20 compromise, and I don't have the authority to --
21 if they do not allow me to, to reject their
22 wishes. That was the offer the plaintiff intended
23 me to make. We made it and it wasn't complied
24 with.

25 THE COURT: You know how often I hear

1 lawyers -- as a lawyer and as a judge, I hear them
2 say, well, my client made me do it. I'm giving
3 you a hard time. Quite frankly, I see this
4 two-fold. One is the method to try to attach
5 additional monies based on somebody's mistake. I
6 try to point out to you, and whoever else is out
7 there, the law is not a perfect machine, and
8 there's a lot of times little technical mistakes
9 are going to happen. You start banging people in
10 the head, but then expected to come back --

11 MR. HODGE: Of course.

12 THE COURT: Be careful what you ask for
13 because you might just get it on the reverse side
14 of things.

15 The other side of that is, it's a good
16 faith mistake. And I'm just not inclined to let
17 you or your client score additional monies -- and
18 did mostly plaintiff work -- based on a good faith
19 mistake.

20 MR. HODGE: I certainly understand. For
21 the record, I want to make sure that I'm
22 protected. You know, this is a situation where
23 the most material term of the offer, the amount of
24 money owed, was not met, and that's really --

25 THE COURT: Say that again. What's that

1 last line, please?

2 MR. HODGE: The most material term of the
3 offer, which was to pay \$50,000 by October the
4 12th, was not met.

5 THE COURT: Sure.

6 MR. HODGE: If this were a situation
7 where they simply delivered the check to the wrong
8 place or the wrong person, I'd say, Mr. Bickery at
9 Progressive, just send it to me and we'll be fine.
10 But this is after the deadline had passed and
11 we've only got \$25,000 instead of 50.

12 THE COURT: I got you. I understand. I
13 certainly heard nothing from you that indicated
14 that -- what you said, that they tried to pull a
15 fast one by saying, okay, we'll do 50, then try to
16 write you a check for 25, and then subsequently
17 issue a new check for an additional 25. It was
18 just somebody made a mistake in transmittal.

19 Under those facts and circumstances, I'll
20 enforce the settlement. I think that -- I said
21 what I said.

22 MR. HODGE: Understood. And that
23 settlement --

24 THE COURT: Draft me an order. I'm sorry?

25 MR. HODGE: And just so I'm clear, that

1 settlement would be for the full \$50,000.

2 THE COURT: Absolutely. Do you have your
3 check with you today?

4 MR. COULTER: No, I don't. Judge, I
5 don't. But I'll have it by whatever the date is.

6 THE COURT: When are you going to have
7 it?

8 MR. HODGE: Whenever the Court tells me
9 to have it.

10 THE COURT: It will be by Friday at five
11 o'clock. If it's not, you let me know, and I'll
12 vacate this order and let you go forward.

13 MR. COULTER: By Friday, at 5:00. And
14 where do you want it?

15 MR. HODGE: The same place that was
16 spelled in that demand three different times.

17 THE COURT: Be clear. Let's be clear.

18 MR. HODGE: Yes, sir. 32 Ann Street,
19 Charleston, South Carolina, 29403.

20 MR. COULTER: I'll look at the letter.

21 THE COURT: Mr. Hodge, I'm sorry to see
22 you under these circumstances, but I know a lot of
23 your family and I think a lot of them.

24 (The hearing was concluded.)

25

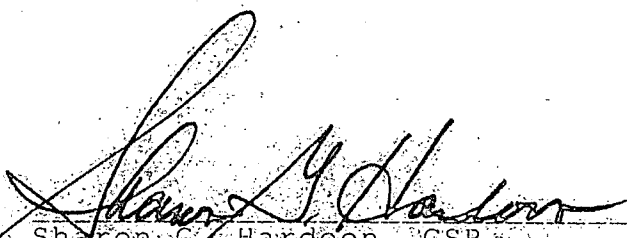
CERTIFICATE OF REPORTER

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I, SHARON G. HARDOON, Official Court Reporter for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas, Anderson County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

July 14, 2019.



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, II

State of South Carolina
County of Anderson

Court of Common Pleas

Debra O'Conner, as Personal Representative of the
Estate of Sandy Lynn Shook)

Plaintiff,)

v.)

Aaron Collier)

Defendant.)

) Transcript of Record
) 2018-CP-04-02003

April 25, 2019
Anderson, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge.

A P P E A R A N C E S:

Camden Hodge, Esquire
Attorney for the Plaintiff

Michael Coulter, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E X

WITNESS

PAGE

No Witnesses.

E X H I B I T S

NO.

DESCRIPTION

ID.

EVD.

No Exhibits.

P R O C E E D I N G S

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3 THE COURT: All right. This is a motion to
4 reconsider with Mr. Hodge and Mr. Coulter.

5 Mr. Hodge, you want to tell me?

6 MR. HODGE: Yes. Very briefly, Your Honor.
7 Camden Hodge for the plaintiff, the estate of Sandy
8 Shook. We're here to ask the Court respectfully to
9 reconsider its order granting defendant's motion to
10 enforce settlement that was entered on April 8th of
11 this year, and all the pertinent facts that are in
12 dispute are laid out in Your Honor's order.

13 THE COURT: Let -- let me -- I think I recall,
14 if I remember, that you had very specific
15 instructions as to the settlement and making
16 payments. If I recall, they deviated from that.

17 MR. HODGE: Yes, Your Honor.

18 THE COURT: I think that they were late by 30
19 minutes or a day. What was it?

20 MR. COULTER: It was a day.

21 THE COURT: A day?

22 MR. HODGE: They were to ---

23 MR. COULTER: Yeah, it was -- there were two
24 \$25,000 checks that were supposed to be delivered.
25 A covenant for \$50,000 separating those, meaning a

1 25 payment for BI; 25 PD.

2 The carrier forgot to bring one of those checks
3 and instead brought only one \$25,000 check. And --
4 and although the covenant was clear and it was
5 supposed to be 50 and supposed to be two \$25,000
6 checks, he just forgot it. And when he found out,
7 he brought it the next day.

8 THE COURT: Okay.

9 MR. HODGE: So those are the undisputed facts.
10 So the -- and those are important for a couple of
11 reasons. It's undisputed that the \$50,000, as
12 demanded, were not provided at either the time,
13 date, or location set forth in the plaintiff's offer
14 of compromise, and that's -- that's the pertinent
15 fact here.

16 So the question becomes whether or not there
17 was a meeting of minds to enter into an enforceable
18 contract because in South Carolina, settlement
19 agreements are viewed as contracts and regular
20 contract -- or contract and instruction principles
21 apply.

22 And, of course, if regular contract principles
23 apply, then there has to be not only a meeting of
24 minds between every material term, but that there
25 has to be that mutual assent. And in this case, of

1 course there could've been no mutual assent or
2 meeting of the minds.

3 THE COURT: Say that -- there's no meeting of
4 the minds?

5 MR. HODGE: Yes, Your Honor, because there can
6 be no more material terms than the amount of payment
7 and the timing of payment and the analogies would --
8 would run all day with it.

9 For example, if -- if Your Honor was selling me
10 a car to -- and you needed to give me \$5,000 by five
11 o'clock today to deliver to the Clerk of Court. And
12 instead, I take -- go down to the Clerk of Court and
13 give them \$250, even though I've got the rest in my
14 car and leave, or let's say I -- I take it family
15 court instead, you'd be well within your rights to
16 have come back a week later and say I've already
17 sold that car. It's gone. And the Court wouldn't
18 come and ask you -- or then grant me the opportunity
19 to actually force you to sell it to me.

20 And that's essentially what we have in this
21 case. The standard for enforcing a contract is not
22 inadvertent mistake and it's not human error, which
23 are the reasons that the defendant set forth in
24 their affidavits and the Court set forth in this
25 order.

1 If we take that to be the standard for
2 enforcing contracts, then we're completely leaving
3 out the meeting of the minds. And, of course, here
4 there can be no meeting of the minds as one of the
5 exhibits that we attached ---

6 THE COURT: What if there was a meeting of the
7 minds. It was just not -- it was improper
8 performance, was it not?

9 MR. HODGE: And they're asking for a specific
10 performance. And now meeting of minds requires that
11 a mirror image of the valid acceptance, it needs to
12 meet the terms of the offer. That didn't happen
13 here, and I think that that's -- that's really well
14 illustrated by the second exhibit to both the
15 original motion or memo in support of the
16 plaintiff's motion to -- in opposition to his motion
17 to enforce the settlement, which the letter that we
18 provided to Progressive on October the 16th, 2018.
19 That's when we received Progressive's draft for
20 \$25,000.

21 Of course, we did not know that there was some
22 kind of mistake or neglect on their part, so we sent
23 it to back to them. And they do send a covenant
24 that -- per Court's release itemized on both bodily
25 injury and property damage.

1 Now, they seem to take the position that that
2 should put us on notice that they're on some -- some
3 type of mistake. Obviously, we don't because we're
4 sending the check back to them.

5 So what we worry about here, Your Honor, is
6 that if the standard just becomes human error or
7 inadvertent mistake, that's fine if somebody is
8 trying to get out of default. That's not the
9 standard for enforcing contracts in South Carolina.
10 That meeting of the minds requires that that mirror
11 image be accepted. And here there can be no more
12 material terms than the amount of payment and time
13 of payment.

14 THE COURT: Well, you keep referring to a
15 meeting of the minds, and I don't think you're right
16 because you said 25, 25, pay me under a covenant and
17 we'll accept it. And they said, "We'll pay you 25,
18 25 under a covenant and we'll pay it." But then it
19 came down -- so there's the meeting of the minds.
20 Do you not agree?

21 MR. HODGE: Well, I would agree that they
22 said ---

23 THE COURT: But the performance was a mistake.

24 MR. HODGE: And then they're asking for a
25 specific performance here.

1 THE COURT: All right.

2 MR. HODGE: They're -- they're the ones that
3 are asking ---

4 THE COURT: Again, I hear you. You know, from
5 a hyper-technical standpoint you are right. I just
6 feel like under the facts of this case, they agree
7 to pay. They did. They were late by, you know, a
8 little bit. That's just a very hyper-technical
9 interpretation. And, technically, Mr. Hodge I think
10 you are right because they didn't perform within the
11 time frame. You said time is of the essence, so...

12 MR. HODGE: And I understand and that really
13 goes to the essence of the argument, that why -- why
14 they didn't comply with it is not meaningful. It's
15 the fact that they did not comply with it. They
16 should be dispositive in this case. Otherwise,
17 we're writing a new standard into contract
18 interpretation.

19 THE COURT: I think you're writing a new
20 standard for yourself because FYI, the next time you
21 mess up, they're going to -- they're going to hold
22 your feet to the fire.

23 MR. HODGE: I wouldn't blame them one bit.

24 THE COURT: Yes, Mr. Coulter.

25 MR. COULTER: Judge, you know, I -- I'm not

1 sure I can add any more than what I've already put
2 in.

3 THE COURT: I agree.

4 MR. COULTER: Okay.

5 THE COURT: I'm not going to change my mind.
6 I -- you know, you can call me a fool. I just think
7 this is not the way we want to practice law in South
8 Carolina.

9 So I'm going to -- with all due respect,
10 Mr. Hodge, I'm going to deny your motion.

11 (The proceedings concluded at 3:08 p.m.)

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****IMPORTANT NOTICE****

****Please be advised that the following Offer of Compromise contains a time-limited demand and includes multiple digital attachments****

We are aware that most insurance companies process mail through a central processing division and that not all correspondence is received directly by the adjuster assigned to handle the claim. Often times, insurance companies take several days to process this mail, and adjusters often claim that they have not received our letters until weeks after they have been sent. We are also aware that adjusters who receive our letters often claim they have not received the corresponding attachments.

Therefore, this correspondence is being sent to your statutorily mandated personal email address on file with the South Carolina Department of Insurance and required by S.C. Code Ann. § 38-47-15. All attachments are provided through a secure ShareFile URL. Ensure your network and/or firewall settings allow access to the files as no hard copies or facsimiles will be provided or extension given due to technical limitations on your part.

This is a time-limited offer of compromise which will not be extended simply due to a delay in your ability to access the provided files, upload it to your case file, and/or forward it to the appropriate adjuster. Likewise, this deadline will not be extended simply because the attachments fail to make it to the appropriate adjuster along with the letter. We have sent this correspondence to the address that you are required to have on file with the South Carolina Department of Insurance. Thus, we expect that it will be handled appropriately.

If this letter is received by anyone other than the assigned adjuster, it is your duty to ensure that this letter is forwarded to the appropriate person immediately. Since your email is required by South Carolina Department of Insurance, this account is monitored. S.C. DOI Bulletin 2016-14.

For your convenience the claim number is:

17-1540723

****IMPORTANT NOTICE****

TOLL FREE: 1 (800) 313-2546
FACSIMILE: (843) 494-5536

REPLY TO ANN STREET OFFICE
CAMDEN@AKIMLAWFIRM.COM

ANASTOPOULO LAW FIRM

JONATHAN N. ALKIS (SC)
CONSTANCE ANASTOPOULO (SC)*
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STEFAN B. FEIDLER (SC)(GA)
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J. CAMDEN HODGE (SC)
LANE D. JEFFERIES (SC)
THOMAS D. KANDLER, II (NC)
BYRON V. LEARY, II (SC)
BENJAMIN W. LEE (SC)
MATTHEW L. NALL (SC)
ERIC M. POULIN (SC)(NC)(GA)(CA)
SAMANTHA SUTTON (SC)(NC)
CASEY VAN VALKENBURGH (SC)(IL)
P. HEATH WARD (SC)
DANNY LEE WILLARD, JR. (SC)
ROY T. WILLEY, IV (SC)
L. CRAYTON WILLIAMS (SC)

*OF COUNSEL.

VIA EMAIL ONLY

September 26, 2018

Jeff Vicary
Progressive Insurance
128 Millport Circle, Suite 101
Greenville, SC 29607
Jvicary1@progressive.com

PRIVILEGED AND CONFIDENTIAL:
RELATING TO SETTLEMENT DISCUSSIONS

RE: My Client: Debra O'Connor as PR for Estate of Sandy Shook
DOL: July 22, 2017
Claim #: 17-1540723
Pages: 12, Not Including Enclosures

Dear Jeff,

INADMISSIBILITY OF OFFER OF COMPROMISE

Pursuant to South Carolina Rule of Evidence, Rule 408, statements made in compromise negotiations are not admissible at trial. This rule is identical to the Federal Rule and designed to encourage the settlement of controversies by permitting parties to discuss their cases candidly with the assurance that admissions and proposals for compromise made in the course of their good-faith settlement negotiations may not be used against them to later prove liability. Hunter v. Hyder, 236 S.C. 378, 114 S.E.2d 493 (1960). However, evidence of an offer to compromise may be admissible for some other purpose. Meehan v. Commercial Casualty Ins. Co., 166 S.C. 496, 165 S.E. 194 (1932). This entire letter and all of the exhibits attached are submitted with a view toward compromise of this claim. If you do not agree that everything that follows is inadmissible during the litigation of this matter, please stop reading and immediately destroy this letter and its attachments and immediately notify us of your refusal to review our attempt to compromise this claim.

OFFER OF COMPROMISE

This notice, demand, and offer of compromise is directed to you as the insurer of Aaron Collier. This letter is written to submit an offer of compromise regarding The Estate of Sandy Lynn Shook's claims against your insured(s) in the above-referenced matter. Additionally, this letter places you on notice, consistent with the dictates of Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933) of a time-limited demand for the payment of policy limits of Aaron Collier's insurance coverage.

MAILING: 32 Ann Street, Charleston, South Carolina 29403

North Charleston: 2170 Ashley Phosphate Road, 3rd Floor, North Charleston, South Carolina 29406 * **Greenville:** 418 River Street, Greenville, SC 29601

Florence: 150 W. Evans Street, Florence, South Carolina 29501 * **Myrtle Beach:** 2411 N. Oak Street, Suite 407, Myrtle Beach, South Carolina 29577

Columbia: 1201 Main Street, Suite 1100, Columbia, South Carolina 29201 * **Raleigh, NC:** 8801 East Park Drive, Suite 301, Raleigh, NC 27617

Wilmington, NC: Appointment Only

ELECTRONICALLY FILED - 2019 Apr 23 1:49 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

I. LIABILITY OF AARON COLLIER

The daughter of a large and loving family, Sandy Lynn Shook ("Sandy") was born in New London, Ohio. Her family moved to the upstate of South Carolina when Sandy was a child, and she always considered herself a native South Carolinian. Sandy began to build her life in the small town of Pelzer, South Carolina, a close-knit community filled with Sandy's family as well as neighbors that became life-long friends. She raised three self-sufficient children – two grown boys and one daughter.



Sandy was a single mother and never shied away from hard work. She was the full-time manager of Tony's Pizza in Greenville, South Carolina, and it was a job she excelled at. Sandy was a natural leader, never met a stranger, and genuinely felt that working in the food and beverage service industry could make a positive impact on others and in her community. When she wasn't working, you could find Sandy hosting big gatherings on her Pelzer property, complete with lots of barbeque, live music, and good company. Sandy was also known around Greenville County as a pool shark, and while she enjoyed playing the game with her children, she liked nothing more than surprising an over-confident patron with her skills. Her talents didn't end on the pool table, as she could fix nearly anything with an engine, was an avid motorcyclist, and was a steward of the outdoors.

A. Before the Crash

Sandy was taken away from her family and community on the night of July 22, 2017. Saturday was her day off and Sandy decided to spend time the afternoon with her life-long friends Kim and Jerry Gault ("the Gaults"). The plan was to relax, enjoy the late afternoon, get some pizza at the local joint, and head to downtown Greenville for a birthday party at a local restaurant.

The Gaults were excited to see Sandy. The friends relaxed and enjoyed each other's company. Soon, they became hungry and decided to get some pizza downtown. The group arrived at the bar/restaurant around 8 PM and everyone was excited to see more friends and celebrate one of their birthdays. An acquaintance, Aaron Collier arrived at the restaurant, too.

B. The Crash, Investigation, and Aftermath.

10 PM came and everyone was ready to go home. Sandy spent her night socializing with friends and Aaron offered to give Sandy a ride home – unfortunately, she accepted. Once the pair left, Sandy realized Aaron was severely intoxicated. Aaron drove his motorcycle West on Chipwood Road toward Pelzer, traveling at excessive speeds, illegally passing cars over a double-yellow traffic line. According to witnesses, he then lost control of his motorcycle:

THEN WRITTEN STATEMENT. MR. [REDACTED] STATED THAT A WHITE AND BLACK MOTORCYCLE WAS DRIVING ERATICALLY BEHIND THEM. MR. [REDACTED] STATED THAT THE MOTORCYCLE WAS PASSING VEHICLES THAT WERE TRAVELING BEHIND HIM ON A DOUBLE YELLOW LINE. HE ALSO INFORMED ME THAT THE MOTORCYCLE GOT BEHIND HIM AND ATTEMPTED TO PASS THEM BY GOING INTO THE ONCOMING LANE. ONCE THEY CROSSED THE DOUBLE YELLOW LINE A CAR IN THE OPPOSING LANE WAS COMING TOWARDS HIM. THE DRIVER OF THE MOTORCYCLE SWERVED BACK OVER INTO THE RIGHT LANE IN FRONT OF MR. [REDACTED] BEGAN TO WOBBLE, AND LOST CONTROL OF THE MOTORCYCLE. MR. [REDACTED] STATED THAT HE

The motorcycle careened off the road and went sideways on the shoulder of the road. The spin of the motorcycle slammed Sandy's head into a telephone pole and she was ejected from the bike, skidding across grass and back onto the asphalt.

THE PASSENGER OF THE MOTORCYCLE STRUCK HER HEAD ON A TELEPHONE POLE AND FELL OFF THE MOTORCYCLE. THE DRIVER OF THE MOTORCYCLE STAYED ON FOR A FEW MORE FEET BEFORE FALLING OFF HIMSELF. MR. [REDACTED] STATED THAT THEY PULLED OVER AND RUSHED OVER TO MR. COLLIER IN

Witnesses were immediately on the scene, two of whom were certified in CPR and First Aid. They checked Sandy's pulse and knew she was dead.

AS THEY WERE CHECKING ON MRS. SHOOK, TWO FEMALES IN ANOTHER VEHICLE PULLED OVER AND INFORMED THEM THAT THEY WERE CERTIFIED IN CPR AND FIRST AID AND ASKED IF THEY NEEDED ASSISTANCE. THE TWO FEMALES CHECKED THE FEMALE AND WERE UNABLE TO LOCATE A PULSE.

Law enforcement was quickly on the scene. Aaron was alive and coherent. Highway Patrol immediately determined Aaron was intoxicated through his slurred speech and changing narrative of the wreck. The reoccurring excuse that Aaron offered was that a friend crashed the motorcycle, then darted off into the woods. Another excuse was that another vehicle ran him off the road.



off road - Spoke w/ driver at hosp., search warrant, not rec, Read impl. cons., placed under arrest, asked who pass was, said he wasn't driving mtc, friend was driving + he ran off - Then said a red or orange car ran him off road.

Accordingly, law enforcement procured a search warrant and went to draw Aaron's blood. The results of the blood alcohol test of course showed that Aaron was intoxicated - nearly twice the legal limit.

Analyte	Result	Units	Threshold
Ethanol	0.148	% (g/dL)	0.010

The above range is calculated at 99.7% confidence.

Aaron was arrested at the hospital, charged with **Felony DUI with death**, and awaiting trial.

Defendants Name: Collier, Aaron W

Charges: Felony DUI w/ Death

There are many factors that Mr. Collier controlled that would have prevented the collision and the resulting death. First, Mr. Collier *should not* have been drinking and driving – as required by law. Second, Mr. Collier *should have* been travelling at a speed reasonable for the conditions. If Mr. Collier performed any of these simple actions, the collision would have never happened. Unfortunately, Sandy is dead because of Mr. Collier's negligence. Mr. Collier is demonstrably irresponsible and a clear danger as a driver. Therefore, liability in this case indisputable.



Passenger on Harley Davidson dies in wreck that sent driver to the hospital

Coroner says 49-year-old Sandy Lynn Shock of Palzer was thrown from motorcycle

WYZZ



Updated: 11:25 AM EDT Jul 25, 2017

II. DAMAGES

Summary of Damages

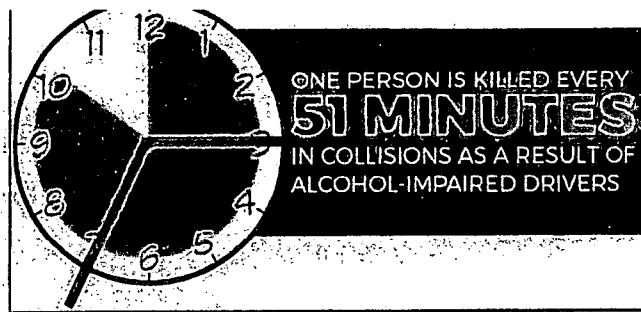
Under South Carolina law, Sandy's family is entitled to an award of damages against Mr. Collier for his negligence. Sandy's family lost a mother, sister, aunt and daughter on July 22, 2017. Not only does Sandy's family have to deal with the emotional pain of losing a loved one, but also the financial burdens that come along with it. For the reasons set forth more fully below, we also believe that Sandy's family will recover punitive damages at the trial of this action. Ultimately, we anticipate a jury to return a verdict in excess of Mr. Collier's policy limits.

ESTIMATED JURY VERDICT: \$5,000,000

Punitive Damages

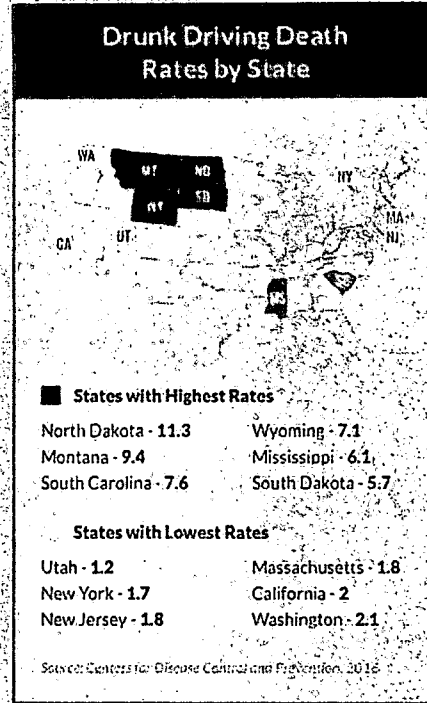
Please also be aware that causing an automobile collision due to recklessness, distracted driving, and other willful and wanton behavior subjects Mr. Collier to punitive damages, and that punitive damages may not be able to be discharged in bankruptcy under

federal law or South Carolina law. Based on past precedent we expect this case to yield a verdict in excess of the policy limits. If you force this case to trial, the verdict is unlikely to be discharged in bankruptcy and we will follow Mr. Collier to the maximum extent of the law.



This wreck happened because Mr. Collier chose to drive a vehicle while under the influence of alcohol. It is also likely that Mr. Collier was driving at an unreasonable speed and without "regard to the actual and potential hazards then existing." SC Code Ann. §56-5-1520 (2012) ("General rules to maximum speed; lower speed may be required").

In South Carolina "punitive damages are sustainable if there is any evidence supporting a violation of a statute. (evidence of a violation of an applicable statute is a proper basis for submitting punitive damages to the trial jury); Bethea v. Pedro Land, Inc., 290 S.C. 341, 350 S.E.2d 392 (Ct. App. 1986) (affirming finding of punitive damages in automobile accident where record contained evidence from which the jury could draw inferences of gross negligence). Because the evidence supports the trial judge's finding that Appellant's agent violated a statute, we find it was proper to award punitive damages to Respondents." Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 315, 594 S.E.2d 867, 876 (Ct. App. 2004).



Since, the purpose of punitive damages is to punish a defendant for outrageous misconduct and to deter the defendant and others from similar misbehavior in the future. A quick review of Mr. Collier's driving and criminal history shows that he has a long history of disregarding traffic laws and endangering fellow Greenville County citizens:

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Collier, Aaron W	2056-VIOL BEGINNER PERMIT	2056-VIOL BEGINNER PERMIT	11/10/1992
Collier, Aaron Winford	0258-BREAKING INTO AUTO OR FUEL TANKS	0258-BREAKING INTO AUTO OR FUEL TANKS	04/20/1994
Collier, Aaron Winford	0174-DRIVING UNDER SUSPENSION, MULT CHGS IN	0174-DRIVING UNDER SUSPENSION, MULT CHGS IN	09/26/1994
Collier, Aaron Winford	0160-ESCAPE / AIDING ESCAPES FROM PRISON AND	0160-ESCAPE / AIDING ESCAPES FROM PRISON AND	04/20/1995
Collier, Aaron W	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	10/03/1995
Collier, Aaron W	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	0671-CHECKS FRAUDULENT 1ST OFFENSE COURT C	12/29/1995
Collier, Aaron Winford	2511-PASSING UNLAWFULLY	2511-PASSING UNLAWFULLY	07/19/2000
Collier, Aaron Winford	2671-Domestic / Criminal Domestic Violence - 1st offense	2671-Domestic / Criminal Domestic Violence - 1st offense	11/04/2000
Collier, Aaron Demetrius	0396-Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	02/03/2005
Collier, Aaron Demetrius	0396-Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive	02/14/2005
Collier, Aaron Winford	2571-Traffic / Failure to yield right-of-way on left turn	2571-Traffic / Failure to yield right-of-way on left turn	02/02/2006

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Collier, Aaron Winford	0107-Drugs / Distribute, sell, purchase, manuf. drug other than crack cocaine, or pwt	Drugs / Purchase of cont. sub. including crack cocaine within proximity of school	12/06/2006
Collier, Aaron Winford	0112-Drugs / Manufacture, distribution, etc., ice, crack, crack cocaine - 1st offense	Drug / Manufacture, distribution, etc., ice, crack, crack cocaine - 1st offense	12/07/2006
Collier, Aaron W	3009-METHAMPHETAMINE- POSSESSION < 1G 1ST OFF.	3009-METHAMPHETAMINE- POSSESSION < 1G 1ST OFF.	12/07/2006
Collier, Aaron W	2101-Traffic / Speeding, more than 10 but less than 15 mph over the speed limit	2103-Traffic / Speeding, more than 25 mph over the speed limit	02/27/2007
Collier, Aaron W	0174-DUI / Driving under suspension, license not suspended for DUI - 2nd offense.	0174-DUI / Driving under suspension, license not suspended for DUI - 2nd offense.	02/27/2007
Collier, Aaron Demetrius	2000-Traffic / Seatbelt violation - Non-criminal	2000-Traffic / Seatbelt violation - Non-criminal.	03/22/2011
Collier, Aaron Winford	0657-Traffic / Reckless Driving	0657-Traffic / Reckless Driving	11/09/2010
Collier, Aaron Winford	0175-DUI / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	0175-DUI / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	11/09/2010
Collier, Aaron Winford	3015-Drugs / Manufacture, distribution, etc. methamphetamine or cocaine base, 2nd offense	3039-Drugs / Manufacture, distribution, etc. of methamphetamine or cocaine base, 3rd	11/09/2010
Collier, Aaron Winford	0326-Resisting / Resisting Arrest, Oppose, resist, or assault law enforcement officer serving process	0326-Resisting / Resisting Arrest, Oppose, resist, or assault law enforcement officer serving process	11/10/2010
Collier, Aaron Demetrius	3183-Traffic / Child passenger restraint system Article violation	3183-Traffic / Child passenger restraint system Article violation	03/13/2013
Collier, Aaron Demetrius	2102-Traffic / Speeding, more than 15 but less than 25 mph over the speed limit	2102-Traffic / Speeding, more than 15 but less than 25 mph over the speed limit	04/09/2013
Collier, Aaron Demetrius	2886-Traffic / Seatbelt violation - Non-criminal	2886-Traffic / Seatbelt violation - Non-criminal	10/22/2014
Collier, Aaron Demetrius	2886-Traffic / Seatbelt violation - Non-criminal	2886-Traffic / Seatbelt violation - Non-criminal	07/16/2018
Collier, Aaron W	0395-DUI / Felony driving under the influence, death results	0395-DUI / Felony driving under the influence, death results	

Accordingly, Mr. Collier's exposure to punitive damages is very high. In light of these facts, our offer to Progressive requires payment from all applicable policies, **inclusive of both bodily injury and property damage**. As you know, the South Carolina Supreme Court held that punitive damages be cannot be apportioned pro rata between those sustained for bodily injury and those sustained for property damage where the insurance policy is a split limits policy. *GEICO v. Poole*, Op. No. 27821 (July 5, 2018).

S.E.2d 531, 534 (2010) (emphasis added). Thus, while actual damages may be traceable directly to bodily injury and property damage, punitive damages are not so easily divisible. Reading the statutes to require allocation of punitive damages would result in adding language to the statutes, rather than merely interpreting them.

Undoubtedly, potential jurors may know, or know of, someone who was injured or killed as a result of a drunk driver. It is our belief these facts will drive the verdict in this case to be particularly harsh. We hope that this claim will stop Mr. Collier from ever driving while drunk and again.

III. DEMAND PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933), and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).

Based on Mr. Collier's reckless driving and complete disregard for the safety of others on the road, the fact that he was intoxicated at the time he caused his vehicle to slide off the road, the fact that punitive damages will be imposed against Mr. Collier, and due to the ongoing pain and mental anguish Sandy's family will experience for the rest of their lives, we conservatively estimate the value of this case to be in excess of the policy limits. As there is a possibility that underinsured motorist coverage may be available to Sandy's family we cannot offer a full and final release at this time. Instead, we require payment of the policy limits of all applicable policies¹, under which you insure Mr. Collier in a form that will not prejudice our client's right to seek recovery from any other insurance carriers. This offer of compromise requires that policy limits are **RECEIVED**² no later than 5:00 p.m. EDT on October 12, 2018, and requires that Mr. Collier provide a sworn and notarized statement that there is no other insurance coverage available to him that could pertain to this loss. **THIS OFFER OF COMPROMISE INCLUDES A TIME-LIMITED DEMAND FOR PAYMENT OF POLICY LIMITS, AND, AT 5:00 P.M. EDT ON OCTOBER 12, 2018, THIS OFFER WILL BE WITHDRAWN AND WE WILL OBTAIN AN EXCESS JUDGMENT AGAINST YOUR INSURED(S) WHICH WILL, IN TURN PROVIDE YOUR INSURED(S) WITH A CLAIM AGAINST PROGRESSIVE PURSUANT TO TYGER RIVER PINE CO. v. MARYLAND CASUALTY CO., 170 S.C. 286, 170 S.E. 346 (1933) and MAYES v. PAXTON, 313 S.C. 109, 437 S.E.2d 66 (1993).** Please be aware that our demand for policy limits is not negotiable and that ALL conditions of this offer of compromise must be met by the specified time limit. *If any condition is not met, or if any additional condition is imposed by Progressive, including but not limited to conditions of indemnification or the waiver of any rights or claims not specified herein, this offer of compromise will be withdrawn, and we will obtain an excess judgment against your insured and enforce it against Mr. Collier's assets.* This offer of compromise does not include the resolution of any claims for any persons or entities other than those injury and property damage claims made by Sandy's family. *Accordingly, any request for a release of claims for other persons or entities and/or any request for indemnification will constitute a counteroffer and rejection of this offer of compromise.*³ *If you include indemnification or a release of claims that could be made by other persons or entities in the proposed Covenant you send to us, it will constitute a counteroffer and rejection of this offer of compromise even if you claim in a cover letter or other documents that you send to us*

¹ "Applicable Policies" would include, but not necessarily be limited to, bodily injury, property damage, PIP, MedPay, umbrella, or any other types of coverages or policies that would cover the losses herein described.

² Settlement funds must be paid by Cashier's Checks, or Certified Bank Checks (not drafts) issued by your insurance company as follows: Debra O'Conner as PR for the Estate of Sandy Shook and the Anastopoulos Law Firm, LLC. The checks must be **RECEIVED** in my office no later than 5:00pm EDT on October 12, 2018. Anastopoulos Law Firm, LLC's Tax I.D. Number is 452775649. For your convenience, our firm's W-9 is also attached. These funds should be mailed to 32 Ann Street, Charleston, SC 29403. We agree to hold these funds in trust until the settlement is court approved, as required by statute.

³ Please be aware that we have done everything reasonable to warn you that even a mere request for indemnification or a mere request for the waiver of any other rights or claims, including claims for loss of consortium or claims that could be made by or on behalf of any other person or entity, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

*that you have accepted our offer. Acceptance of this offer specifically requires you to prove a proposed Covenant that complied with this offer by the above deadline.*⁴ Moreover, if there is any language in the proposed Covenant or any other documents you send us that requires or even requests the Estate of Sandy Shook to make representations or warranties regarding the absence of medical liens or hospital liens or bankruptcy proceedings relating to her, the requirement or request will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Progressive is perfectly capable of reviewing court records to verify this information, and attempting to shift the cost of verifying this information to our client(s) is not acceptable and will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.⁵ Accordingly, please be aware that a requirement or even a request for a "Lien Affidavit" or similar document by any other name will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Additionally, please be aware that it will be deemed a counteroffer and rejection of this offer of compromise if Progressive requires or even requests the release of any individuals or entities other than Mr. Collier and Progressive.⁶ Moreover, please be aware that Mr. Collier will only be released

⁴ Please do not attempt to send a proposed Covenant that includes indemnification or a release of any claims that could be brought by or on behalf of any person or entity other than our client, as we do not represent these persons or entities. The insurance company tactic of including indemnification or a release of unrelated parties in the proposed Covenant will not work against this firm and its clients. Please be aware that you cannot get around this requirement by sending a cover letter with a non-compliant proposed Covenant that says your "proposed Covenant is not a counteroffer." *If you send a proposed Covenant that includes indemnification or that violates any other terms of this offer, it is a counteroffer regardless of whatever you put in your cover letter.* Pursuant to this offer of compromise, your insurance company cannot provide a letter that says it accepts our offer and then try to trick us by providing a proposed Covenant that does not comply with our offer. Do not put indemnification language in the proposed Covenant you send to us in the hope that we will sign your proposed Covenant without reading it or in the hope that we will rely on a representation in your cover letter that you have accepted our offer of compromise when you have not provided a compliant release. If you do put indemnification language in the proposed Covenant, it is a counteroffer even if you try to say it is not, and, if you try this tactic, we will proceed to verdict and take your insured's assets until it is paid in full. Please also keep in mind that a proposed Covenant that includes the release of "any and all claims" would necessarily include claims not covered under this offer of compromise, such as loss of consortium, and is also a counteroffer and rejection. Instead of acting in bad faith and trying to trick us, please just send a reasonable proposed Covenant that does not include indemnification or the release of unrelated claims. Acceptance of this offer of compromise requires you to make your acceptance through performance and not just mere words or promises. Part of the performance required to accept this offer is for you to deliver a proposed Covenant with the settlement check. Additionally, the proposed Covenant that is delivered with the settlement check must comply with the terms of this offer. *Regardless of what you might say in your cover letter, if the proposed Covenant does not comply with this offer, it is a rejection and counteroffer.*

⁵ Please be aware that we have done everything reasonable to warn you that even a mere request for warranties or representations regarding the absence of medical liens or hospital liens or bankruptcy proceedings will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. Please do not place such conditions on the settlement check or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any placement of or request for restrictions not approved herein, whether "accidental" or not, will be a rejection of this demand and will result in the immediate and permanent withdrawal of this offer of compromise.

⁶ Please be aware that we have done everything reasonable to warn you that even a mere request for the release of any individuals or entities other than Mr. Collier and Progressive will result in the immediate and permanent withdrawal of this offer of compromise and will place your insured's assets in jeopardy. *Moreover, please be aware that Mr. Collier will only be released with respect to the bodily injury and property damage coverages of the subject policy and that he will not be released with respect to any other policies or coverages not identified herein and that a request or requirement for a general release or a full and final release of Mr. Collier will be a counteroffer and rejection of this offer of compromise.* Please do not place any additional releases on the settlement check, in the proposed Covenant, or in any other documents you send to us to see if we will not notice and then claim it was an "accident" when we do notice. We are aware that many insurance companies use this tactic, but it will not work against this firm and its clients. Any request for the release of any individuals or entities other than Mr. Collier and

with respect to the bodily injury and property damage coverages of the subject policy and that he will not be released with respect to any other policies or coverages not identified herein. Payment must be made as described herein, and payment by any other method, including payment through the registry of any court or through the filing of an interpleader action, will not satisfy the terms of this offer of compromise and will result in the immediate and automatic withdrawal of this offer of compromise. Additionally, filing a declaratory judgment action will result in the immediate, automatic, and permanent withdrawal of this offer of compromise. Please be aware that, under South Carolina law, our offer of compromise must be accepted unequivocally and without variance of any sort and that a purported acceptance of this offer of compromises which imposes *or even requests* conditions beyond those contained in this offer will be construed as a counteroffer and rejection. Please also be aware, that under South Carolina law, we have no continuing duty to repeatedly remind you of the deadline or any conditions of our offer, herein: See *Mayes v. Paxton*, 313 S.C. 109, 437 S.E.2d 66 (1993). Additionally, any attempted counteroffer by Progressive will be deemed a rejection of our offer of compromise and will result in the immediate and permanent withdrawal of our offer of compromise. Furthermore, please be aware that sworn and notarized statements that there is no other insurance coverage that could pertain to this loss must accompany your payment of policy limits. For your convenience, we have provided an affidavit that meets this condition. ***Please be aware that sending a proposed Covenant, settlement check, or any other documents that include any conditions or provisions that are not part of this offer will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer.*** Additionally, even if you send a cover letter that claims to “unconditionally” or “unequivocally” accept our offer of compromise, but you also send a proposed Covenant, a settlement check, or any other documents that include any conditions or provisions that are not part of this offer, it will be considered a counteroffer and rejection, resulting in the immediate and permanent withdrawal of this offer. Please do not attempt to trick us by saying in a letter that you accept our offer of compromise and then trying to sneak in additional terms that are not part of our offer. Our offer of compromise must be accepted by your insurance company’s performance of the requirements of this letter and not by mere words that claims to accept the offer. Regardless of any statement that your insurance company has accepted or is accepting our offer of compromise, if your insurance company’s actions and documents (i.e., your proposed Covenant, settlement check, etc.) do not comply with our offer of compromise, it will be a counteroffer and rejection of our offer. Acceptance of this offer of compromise requires performance and not just mere words or promises. Accordingly, in order to accept this offer of compromise, you must meet all of the terms and conditions of this offer of compromise, including, but not limited to, providing payment and a proposed Covenant that comply with the terms of this offer of compromise.

Please be aware that the only covenant we will accept is one that is limited in its scope to protecting your insured from Sandy’s Family’s rights to the personal assets of your insured. ***Additionally, this offer relates only to personal injury and property damage claims (and not claims that could be made on behalf of any other person or entity); accordingly, a proposed Covenant or a statement on the settlement check or any other documents you send to us that purports to release or resolve “any and all claims” will be considered as a counteroffer and rejection of this offer, resulting in the immediate and permanent withdrawal of this offer.*** The

Progressive as described herein, whether “accidental” or not, will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise. Once again, if you send a proposed Covenant that purports to release any additional individuals or entities, it will be a counteroffer and rejection regardless of any claims of acceptance you make in a cover letter or any other documents you send to us. This offer of compromise requires you to deliver a proposed Covenant that complies with the terms of this offer of compromise. This offer of compromise requires you to make your acceptance through performance and not just mere words or promises.

Estate of Sandy Shook must not be prevented in any way from making a claim against her own insurance carriers. Despite the limited scope of our offer, our offer will protect the interests of your insured because it would only allow Sandy's family to seek the proceeds of her own coverage and other applicable insurance policies relating to personal injuries and it would prevent Sandy's family from seeking the assets of your insured as compensation for the personal injuries and property damages described herein.⁷ If you do not pay policy limits and meet the other requirements contained in this offer within the specified time limit, we will withdraw our offer of compromise and we will obtain an excess judgment against your insured and enforce it against his assets. In view of existing circumstances, we believe your insurance company should accord its insured the same faithful consideration it gives its own interests. If you do not pay policy limits in this case and meet the other requirements contained in this offer, pursuant to the terms of this offer of compromise, Mr. Collier may be able to sue your company for compensatory and punitive damages for bad-faith failure to properly adjust this claim. **Please explain to Mr. Collier that he has the right to hire an attorney to represent him against Progressive and that he has the right to demand that Progressive pay this demand in order to protect his property and possessions.**

Please be aware that this letter constitutes the Estate's formal offer and that no oral representations made before or after this letter can alter the terms of this offer. If, for any reason, this firm agrees to change this offer in any way, such changes can and will be made only in a writing that is signed by a member of this firm. The purpose of this paragraph is to specifically prevent Progressive from claiming that this offer was modified in any way by an oral communication. ***Please be aware that, unless there has been a specific writing signed by a member of this firm that specifically changes this offer, the offer made by this letter has not been changed.*** Additionally, there are and will be no oral offers made to resolve this case. Accordingly, please do not attempt to claim that there has been an oral offer to resolve this case because there has not been and will not be such an offer. ***Any offer to resolve this case by Sandy must be made in writing and any acceptance of that offer must be made through performance of the provisions of this offer of compromise in order for this firm and Sandy to agree that a binding agreement has been formed. Specifically, this offer of compromise cannot be accepted by a mere statement of unconditional acceptance of this offer; instead, acceptance of this offer requires full performance of all terms and conditions of this offer. If any condition or requirement is not met by the specified deadline or if any additional condition or requirement is imposed upon Sandy's family, then there has been no acceptance and no agreement.***

We have supplied Progressive with all information necessary to evaluate this offer of compromise⁸; however, should you have any questions regarding this offer of compromise, please

⁷ Please be aware that it is our current belief that the Estate may have had underinsured motorist coverage with policy limits far below the full value of this case. However, she may also have no coverage at all. Accordingly, since there is only a small amount of underinsured motorist coverage compared to the actual value of this case, Progressive's acceptance of this offer provides the greatest possible amount of protection for its insured. Thus, if Progressive fails to accept this offer, it will be exposing its insured to substantial excess liability and acting in bad faith towards its insured.

⁸ Please be aware that we have provided you willful and sufficient information to evaluate this offer of compromise and to compel your insurance company to pay its policy limits as demanded. Nevertheless, we are aware that many insurance companies request unnecessary additional information within a few days of the deadline for payment as a tactic to delay the resolution of a case. We are aware that insurance companies make more money when settlements are delayed because the insurance company can continue to earn investment income from the settlement money for as long as the insurance company can maintain possession of the settlement funds. We are aware that many insurance companies use the tactic of requesting unnecessary additional information to delay payment, but it will not work against this firm and its clients. Additionally, in the unlikely event that there is a legitimate need for additional

do not hesitate to contact me at (843) 614-8888. Additionally, although any requirement or request for terms and conditions of settlement and compromise that are not approved herein will constitute a counteroffer and rejection of this offer of compromise, if you feel that any part of this letter needs clarification in order for you to comply with its terms, we will be happy to offer any clarification of terms so that you have a full and fair opportunity to comply with this offer. Of course, this letter relates to discussions involving settlement and compromise, and nothing contained herein shall be deemed admissible except to enforce a claim for bad-faith failure to properly adjust this claim.

I look forward to hearing from you.

Sincerely,

s/ J. Camden Hodge

J. Camden Hodge, Esq.

Enclosures: Anastopoulo W-9
Obituary
Certificate of Appointment
Death Certificate
Police Report

Documents available at: <https://akimlawfirmroywilley.sharefile.com/d-s7e4544388514083b>

Cc: Debra O'Connor

information, we will have to request that information from another party. Therefore, any request for additional information must be made as soon as possible and at least five (5) days before the deadline so that we will have a reasonable opportunity to try and obtain the requested information. Likewise, if you are unable to access the supporting documentation as delivered, let us know immediately so that alternate arrangements can be made to allow you to view these files at any of our statewide offices. We have done everything reasonable to warn you that this offer of compromise includes a time-limited demand for the payment of policy limits. Please be aware that the deadline for payment and compliance with all other terms will not be extended based on a request for additional information because this offer of compromise already includes more than enough information to compel payment. Please do not place your insured's assets in jeopardy by incorrectly assuming that a request for additional information will extend the deadline of this offer of compromise. Failure to meet the deadline for any reason will be a rejection of this offer of compromise and will result in the immediate and permanent withdrawal of this offer of compromise.

AFFIDAVIT OF AARON COLLIER

Personally appeared before me who, being duly sworn, states as follows:

1. My name is Aaron Collier.
2. As of July 22, 2017, I was known as Aaron Collier.
3. I am over the age of 18, and as of July 22, 2017, I resided in Anderson County, South Carolina.
4. On July 22, 2017, I was involved in a motor vehicle collision whereby the vehicle I was driving struck Sandy Shook.
5. At that time, the vehicle I was driving had a policy of insurance issued by Progressive.
6. That as of July 22, 2017, there were no other policies of insurance that would apply to compensate Sandy Shook for the losses incurred on that date.

FURTHER AFFIANT SAYETH NOT.

Aaron Collier

Sworn to and Subscribed before me on

____ day of _____ 2018

Notary Public for _____

My Commission Expires _____

ELECTRONICALLY FILED - 2019 Apr 23 1:49 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0402003

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2018-CP-04-02003
Appeal No.: 2019-000856

RECEIVED
DEC 20 2019
SC Court of Appeals

Debra O'Connor, as Personal
Representative of the Estate of Sandy Lynn
Shook.....Appellant

v.

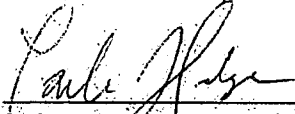
Aaron
Collier.....Respondent.

CERTIFICATE OF COUNSEL

Pursuant to Rule 209(c), SCACR, counsel for Appellant certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

[Signature Block on Following Page]

ANASTOPOULO LAW FIRM, LLC



J. Camden Hodge (SC #10638)

Eric M. Poulin (SC #100209)

Roy T. Willey, IV (SC #101010)

32 Ann Street

Charleston, South Carolina 29403

Phone (843) 614-8888

Facsimile (843) 494-5536

Attorneys for Appellant

Dated: _____

12/5/19