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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Appellate Case Number 2020-001141

South Carolina Farm Bureau Mutual Insurance Company, ...Respondent,
v.

Richard K. Longphre and Travis E. Simpson, Defendants,
Of Whom Richard K. Longphre is Appellant.....Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
RICHARD LONGPHRE,	)	C.A. Number: 2018-CP-32-03314
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED
	)	PROPOSED ORDER
TRAVIS SIMPSON,	)	
	)	
Defendant.	)	
_____	)	

This matter comes before the Court, pursuant to SCRCP 15(a), for an Order allowing Plaintiff Longphre to amend the Complaint herein (originally filed on October 8, 2019 and duly served on Defendant Simpson on October 16, 2018).

IT APPEARS, this motion was made on the following grounds, *to wit*:

1. Through further investigation, Plaintiff is informed and believes that certain causes of action in the initial Complaint were improperly pled.
2. Further, since the filing of this lawsuit, a former party to the action has died, and there is no reason for the caption to continue to reflect his or his estate's involvement.
3. Permitting Plaintiff to amend the Complaint will reduce the number of causes of action to be heard by the Court, as well as prevent issues with the deceased party's estate, and will greatly streamline the issues in the case.
4. Further, permitting Plaintiff to amend the Complaint will neither divest this Court of jurisdiction, nor be to the prejudice of any party.
5. SCRCP 15(a) states that leave to amend a Complaint "shall be freely given when justice so requires and does not prejudice any other party."

IT FURTHER APPEARS that good and sufficient cause has been shown for Plaintiff's motion to amend the Complaint and the motion is made without opposition from Defendant's counsel.

AND IT IS SO ORDERED.

Chief Administrative Judge
11th Judicial Circuit



Lexington Common Pleas

Case Caption: Richard Longphre VS Travis Simpson , defendant, et al

Case Number: 2018CP3203314

Type: Order/Amend

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge

Electronically signed on 2019-06-14 11:43:37 page 3 of 3

ROA0003

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

RICHARD LONGPHRE,)
) Case No: 2018-CP-32-03314
Plaintiff,)

vs.)

CONSENT ORDER

TRAVIS SIMPSON,)
) Defendant.)
_____)

A status conference was held in this case on September 27, 2019, and it was agreed upon by both parties that the case would be stayed pending the resolution of the Declaratory Judgment, *South Carolina Farm Bureau Mutual Insurance Company v. Richard K. Longphre and Travis E. Simpson, 2019-CP-32-01671*.

Discovery will continue notwithstanding the staying of the case.

_____, 2019

Alison Renee Lee
Chief Administrative Judge
Eleventh Judicial Circuit

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ATTORNEYS FOR PLAINTIFF



Lexington Common Pleas

Case Caption: Richard Longphre VS Travis Simpson , defendant, et al

Case Number: 2018CP3203314

Type: Order/Consent Order

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge

Electronically signed on 2019-10-01 17:12:00 page 3 of 3

ROA0006

+STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	
South Carolina Farm Bureau Mutual Insurance Company,	)	C/A No. 2019-CP-32-01671
	)	
<i>Plaintiff,</i>	)	ORDER GRANTING SUMMARY
	)	JUDGMENT FOR THE PLAINTIFF
Versus	)	
	)	
Richard K. Longphre and Travis E. Simpson,	)	
	)	
<i>Defendant.</i>	)	

This matter is before the Court on South Carolina Farm Bureau Mutual Insurance Company's (hereinafter "the Plaintiff") Motion for Summary Judgment. This declaratory judgment arises out of a physical altercation between the Defendants resulting in injury. The parties agreed to have this matter decided upon written submissions to the court, and waived a formal hearing on the matter. The Court received substantive legal memoranda and exhibits from each party. Ross Plyler, Esquire appeared for the Plaintiff, while Neal Truslow, Esquire appeared for Defendant Richard K. Longphre (hereinafter "Longphre").

FACTUAL AND PROCEDURAL BACKGROUND

On December 28, 2017, at approximately 6:30 p.m., Walter Santos ("Santos") and Defendant Simpson were hitting golf balls on Defendant Longphre's property in a grassy area between Longphre's house and Santos' house. Apparently, there was a history of tension between Longphre and Santos regarding use of the surrounding property. Longphre, aggravated by this activity, shined his flashlight on the men and went outside to confront them about hitting golf balls on his property. Simpson admitted to drinking "two – one to two, three" beers on the night of the incident. They were hitting "glow balls" which are golf balls that blink for ten minutes after they are struck. While each person's account of the events does not match perfectly, it is nonetheless

evident that a verbal confrontation devolved into a physical engagement, and Longphre suffered physical injuries as a result.¹

Plaintiff filed this declaratory action on April 30, 2019, seeking the Court to declare that the claims asserted against Defendant Simpson by Defendant Longphre are excluded under the applicable policy terms and conditions, and further, that there is no duty to defend Simpson under the policy. Plaintiff filed its Motion for Summary Judgment on March 2, 2020, and its Memorandum in Support of Motion for Summary Judgment on April 23, 2020. Defendant Lamphre filed his Memorandum in Opposition on April 29, 2020. Plaintiff filed its Reply on May 4, 2020. This matter is ripe for a decision, and this Court finds as follows.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. S.C.R.C.P. 56. In determining whether any true triable issues of fact exist, the Court should view the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493 (2002). Naturally, a court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth the facts that remain undisputed. *David v. McLeod Regional Medical Center*, 367 S.C. 242, 250 (2006).

The plain language of S.C.R.C.P. 56 mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case. *Baughman v. At&T*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-546 (1991). In such a situation, there can be no genuine

¹ This underlying action involving the Defendants is *Richard Longphre v. Travis Simpson*, Case No. 2018-CP-32-03314.

issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *Id.* The moving party is entitled to a judgment as a matter of law because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. *Id.*

ANALYSIS

The primary issue before this court is whether the evidence, both documentary and through sworn testimony, creates an issue of material fact as to the question of coverage and exclusions thereof. On one hand, Plaintiff asserts that Lamphre's injuries were the result of intentional conduct and therefore excluded from coverage. On the other, Lamphre asserts that the deposition testimony provides an issue of fact as to whether the injuries were accidental and subject to coverage.² Since "accident" is not specifically defined in the policies, the term should be defined according to the usual understanding of the term's significance to the ordinary person. *Manufacturers and Merchants Mut. Ins. Co. v. Harvey*, 498 S.E.2d 222, 225, 330 S.C. 152, 158–59 (S.C.App.,1998); *USAA Property and Casualty Ins. Co. v. Rowland*, 312 S.C. 536, 435 S.E.2d 879 (Ct.App.1993). The South Carolina Supreme Court has interpreted the term "accident" to mean "an effect which the actor did not intend to produce and cannot be charged with the design of producing." *Goethe v. New York Life Ins. Co.*, 183 S.C. 199, 190 S.E. 451 (1937). More plainly stated, an intended injury cannot be accidental. *Id.*

² The applicable policy language provides:

SECTION II – EXCLUSIONS, paragraph 1a:

1. Coverage E – Personal Liability and Coverage F – Medical Payments to Others do not apply to bodily injury or property damage:

a. resulting from intentional acts or directions of you or any insured. The expected or unexpected results or these acts or directions are not covered.

Although South Carolina allows alternative pleading, a party may not invoke coverage by couching intentional acts in negligence terms. *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 11, 530 S.E.2d 132, 137 (Ct. App. 2000). In South Carolina, the general rule, for an act to be excluded by the intentional act exclusion of a policy, requires: 1) that the act which produced the loss must be intentional; and 2) that the results of the act must be intended. *See Miller v. Fidelity-Phoenix Ins. Co.*, 268 S.C. 72, 231 S.E.2d 701 (1977). However, “[a]n insurance policy can be written to exclude the application of Miller.” *Auto-Owners Ins. Co. v. Taylor*, 2018 WL 4078579 at *5, C/A 1:17-cv-02632-JMC (D.S.C. August 24, 2018). Plaintiff Farm Bureau’s intentional act exclusion is written specifically to exclude both intended and unintended results of intentional acts, and the Court has applied and upheld this exact exclusion.³ *See S.C. Farm Bureau Mut. Ins. Co. v. Dawsey*, 371 S.C. 353, 357, 638 S.E.2d 103, 105 (Ct. App. 2006) (holding that the policy language excludes unexpected results of intentional acts in addition to expected results).

Having reviewed the relevant deposition testimony, it is abundantly clear that the confrontation was the result of intentional acts. While Simpson may not have intended serious injury and Longphre may not have expected to be seriously injured, Simpson’s acts appear to be precisely the type of acts contemplated by his insurance policy. The confrontation between the Defendants was not by accident. Simpson may ultimately be found legally liable in the underlying case for Longphre’s injuries, however his conduct in bringing about the injuries was intentional,

³ Insurance policies are subject to the general rules of contract construction. *South Carolina Farm Bureau Mut. Ins. Co. v. Dawsey*, 638 S.E.2d 103, 104–05, 371 S.C. 353, 356 (S.C.App.,2006); *Century Indem. Co. v. Golden Hills Builders, Inc.*, 348 S.C. 559, 565, 561 S.E.2d 355, 358 (2002). The court must give policy language its plain, ordinary, and popular meaning. *Id.* Although exclusions in a policy are construed against the insurer, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or a statutory prohibition. *B.L.G. Enters. v. First Fin. Ins. Co.*, 334 S.C. 529, 535–36, 514 S.E.2d 327, 330 (1999). The court cannot torture the meaning of policy language to extend coverage not intended by the parties. *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 8, 530 S.E.2d 132, 135 (Ct.App.2000).

and the harmful results arising from that intentional conduct (“expected or unexpected”) are not covered under Plaintiff’s policy with Simpson.

The Plaintiff’s Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: South Carolina Farm Bureau Ins Co VS Richard K Longphre ,
defendant, et al
Case Number: 2019CP3201671
Type: Order/Summary Judgment

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2020-07-17 14:58:04 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	
South Carolina Farm Bureau Mutual Insurance Company,	)	C/A No. 2019-CP-32-01671
	)	
<i>Plaintiff,</i>	)	ORDER
	)	
Versus	)	
	)	
Richard K. Longphre and Travis E. Simpson,	)	
	)	
<i>Defendant.</i>	)	

This matter came before this Court on Defendant Richard K. Longphre's Motion to Reconsider or Vacate the Order Granting Summary Judgment for the Plaintiff pursuant to Rule 59(e), SCRCF. Specifically, Defendant seeks this Court to alter or amend its judgment entered on July 17, 2020. Defendant's motion was timely filed and provided to this Court on July 24, 2020. Plaintiff, S.C. Farm Bureau Mutual Insurance Company, filed a response in opposition to Defendant's motion on July 28, 2020.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby DENIES Defendant's Motion to Reconsider pursuant to Rule 59(e) SCRCF to Alter or Amend Judgment of this Court's Order entered on or about July 17, 2020. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: South Carolina Farm Bureau Ins Co VS Richard K Longphre ,
defendant, et al
Case Number: 2019CP3201671
Type: Order/Amend

It Is So Ordered

s/ Walton J. McLeod

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTHTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
South Carolina Farm Bureau Mutual	)	Civil Action No.: 2019-CP-32-_____
Insurance Company,	)	
	)	
Plaintiff,	)	SUMMONS
	)	
vs.	)	
	)	
Richard K. Longphre and Travis E.	)	
Simpson,	)	
	)	
Defendants.	)	
_____	)	

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribers at Post Office Box 10529, Greenville, South Carolina 29603, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, appear, or defend within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

[SIGNATURE BLOCK ON NEXT PAGE]

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COUNSEL FOR PLAINTIFF
SOUTH CAROLINA FARM BUREAU MUTUAL
INSURANCE COMPANY

Greenville, South Carolina
April 30, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTHTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
South Carolina Farm Bureau Mutual Insurance Company,	)	Civil Action No.: 2019-CP-32-_____
	)	
Plaintiff,	)	PLAINTIFF'S DECLARATORY
	)	JUDGMENT COMPLAINT
vs.	)	
	)	(Non-Jury)
Richard K. Longphre and Travis E. Simpson,	)	
	)	
Defendants.	)	
_____	)	

COMES NOW Plaintiff, South Carolina Farm Bureau Mutual Insurance Company ("Farm Bureau"), by and through its undersigned counsel, while reserving all rights under any current or subsequently filed motions herein, and respectfully brings this action for declaratory judgment pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, as follows:

PARTIES

1. Plaintiff Farm Bureau is a corporation organized and existing in South Carolina.
2. Upon information and belief, Defendant Richard Longphre ("Longphre") is a citizen and resident of Lexington County, South Carolina.
3. Upon information and belief, Defendant Travis E. Simpson ("Simpson") is a citizen and resident of Lexington County, South Carolina.
4. This is a declaratory judgment action brought pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*
5. The court has jurisdiction over the matters, allegations, and parties.

FACTS

6. Farm Bureau issued a homeowner's policy, Policy Number HO 0411374, to Travis E. Simpson and Kristin W. Simpson. The effective dates of the Policy were August 11, 2017 to August 11, 2018.

7. On October 8, 2018, Richard K. Longphre filed a complaint in the South Carolina Court of Common Pleas for Lexington County, captioned as follows: *Richard Longphre v. Travis Simpson and Walter Santos*, Case No. 2018-CP-32-03313, (hereinafter referred to as the "Underlying Action"). A copy of this complaint is attached as **Exhibit A**.

8. The Underlying Action alleges that on December 28, 2017, Longphre observed Simpson and Walter W. Santos ("Santos") hitting golf balls into Longphre's yard and toward his house despite his requests both previously and that evening that they cease this activity. (Compl. 6-7, 9-10.)

9. Longphre alleges that Santos and Simpson ignored his requests and continued hitting golf balls on his property. (Compl. 10.)

10. Longphre alleges that as he picked up a golf ball, Santos "violently and unexpectedly shoved" him. (Compl. 11.)

11. Longphre alleges that Simpson "more violently and unexpectedly tackled or 'speared' Plaintiff, brutally throwing him to the ground." (Compl. 12.)

12. Longphre alleged that Simpson expressed intent to kill Longphre. (Compl. 12-13.)

13. Longphre alleges that Simpson threw him to the ground and "began to strangle" him. (Compl. at 13).

14. Longphre alleges that Simpson "brutally hit [Longphre] in the side of the left leg" as he was trying to get up (Compl. 16.)

15. Alleging that Simpson “acted and intended to wrongfully touch and assault Plaintiff and to do him harm,” Longphre asserted causes of action in civil conspiracy, intentional infliction of emotional distress, and negligence/gross negligence. (Compl. 23.)

16. Upon being served with the Underlying Action, Simpson tendered the claim to Farm Bureau for defense and indemnification. Farm Bureau is currently defending Simpson under a reservation of rights.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

17. The allegations contained in paragraphs 1 through 16 are realleged and incorporated herein by reference, as if completely set forth herein.

18. Farm Bureau seeks a determination from this Court that it has no defense or indemnification obligation to Simpson under the Policy in connection with the claims alleged against him in the Underlying Action.

19. The Simpson Policy No. HO 0411374 (Homeowners Policy Form 9, Special Plus Form Policy Provisions) is a homeowner’s insurance policy with a personal liability protection policy limits of \$300,000.00 which Farm Bureau issued for the policy period effective August 11, 2017 to August 11, 2018 (the “Simpson Policy”).

20. The Simpson Policy provides the following:

SECTION- II LIABILITY COVERAGES
COVERAGE E – PERSONAL LIABILITY:

If a claim is made or a suit is brought against an insured for damages because of bodily injury or property damage caused by an occurrence to which this coverage applies, we will:

1. *pay up to our limit of liability for the damages for which the insured is legally liable; and*

2. *have the right and duty to provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate, settle, deny, or defend any claim or suit that we decide is appropriate. However, we will have no duty to defend any suit seeking damages for bodily injury or property damage to which this insurance does not apply. Our duty to settle or defend ends when the amount we pay for damages resulting from the occurrence equals our limit of liability.*

Damages because of bodily injury include damages claimed by any person or organization for care, loss of services or death resulting at any time from the bodily injury.

Property damage that is loss of use of tangible property that is not physically injured will be deemed to occur at the time of the occurrence that caused it. For the purposes of this Section, electronic data is not tangible property. We will not cover any loss, loss of use, deletion, corruption, or degradation of performance of any other electronic data equipment or material caused by your ownership, use, or operation of any electronic data equipment, material, or instructions, whether the damage or consequences was intentional or not.

This insurance applies to bodily injury and property damage only if:

- a. *the bodily injury or property damage is caused by an occurrence which takes place in the coverage territory; and*
- b. *the bodily injury or property damage occurs during the policy period of this policy.*

The amount we will pay for damages is limited as described in SECTION II – LIMITS OF LIABILITY.

21. The Simpson Policy provides the following definition:

DEFINITIONS

Certain words and phrases in this policy have specific meanings.

11. **"Occurrence"** *means an accident, but does not include exposure to conditions, which results during the policy period in:*
 - a. *bodily injury; or*
 - b. *property damage.*

22. The Simpson Policy provides the following exclusion:

SECTION II – EXCLUSIONS

1. *Coverage E – Personal Liability and Coverage F – Medical Payments to Others do not apply to bodily injury or property damage:*
- a. resulting from intentional acts or directions of you or any insured. The expected or unexpected results or these acts or directions are not covered.*

23. Under the terms and conditions of the Simpson Policy, the allegations and claims made in the Underlying Action are excluded because they do not fall within the coverage of the Simpson Policy. Specifically, the facts as alleged in the Underlying Action are not an “occurrence” as defined by the Simpson Policy.

24. Under the exclusion of the Simpson Policy, liability coverage does not apply to bodily injury arising out of the conduct alleged in the Underlying Action, because the alleged bodily injury was an expected or unexpected result of intentional acts which is excluded by the Simpson Policy.

25. Farm Bureau is entitled to a judicial determination that it owes no duty of defense or indemnification to Defendant Simpson with regard to claims made in or arising out of the Underlying Action.

WHEREFORE, South Carolina Farm Bureau Mutual Insurance Company prays the Court grant the following relief:

1. That the Court declare the rights and obligations of Farm Bureau under the Simpson Policy issued to Simpson and determine that the claims asserted against Simpson in the Underlying Action are excluded by the Simpson Policy’s terms and conditions;
2. That the Court declare that Farm Bureau has no obligation to defend Simpson for any claims made against him in the Underlying Action;

3. That the Court declare that Farm Bureau has no obligation to indemnify Simpson for any judgment that may be filed against him arising out of the Underlying Action;
4. That the costs of this action be taxed against Simpson; and
5. For such other relief as the Court may deem just and proper.

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INSURANCE COMPANY

Greenville, South Carolina
April 30, 2019

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
RICHARD LONGPHRE,	)	C.A. Number: 2018-CP-32-03314
	)	
Plaintiff,	)	
	)	
v.	)	SUMMONS
	)	(Jury Trial Demanded)
TRAVIS SIMPSON	)	
	)	
Defendants.	)	
_____	)	

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber, at his office at his mailing address: Post Office Box 1465, Columbia, SC 29202 (Physical address is 914 Richland Street, Suite B-102, Columbia, South Carolina, 29201) within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Truslow & Truslow Law Firm

s/Neal D. Truslow
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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
RICHARD LONGPHRE,	)	C.A. Number: 2018-CP-32-03314
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED COMPLAINT
	)	(Jury Trial Demanded)
TRAVIS SIMPSON	)	
	)	
	)	
Defendants.	)	
_____	)	

Plaintiff alleges:

1. Plaintiff is a citizen and resident of Lexington County, South Carolina.
2. On information and belief, Defendant Simpson ("Simpson") is a citizen and resident of Lexington County, South Carolina.
3. This Court has jurisdiction over the parties hereto and subject matter herein, and venue is proper in Lexington County, South Carolina.

CAUSE OF ACTION
(Negligence)

4. Each and every allegation herein is repeated as if verbatim.
5. On December 28, 2017, Plaintiff and his wife observed Simpson and a neighbor, Walter Santos ("Santos") hitting golf balls both into their yard and towards their home from the direction of Santos' residence (not on Santos' property).
6. Plaintiff had requested Santos not to do so on a number of previous occasions.
7. Santos ignored Plaintiff's requests and directives even after "No Trespassing" signs were erected (the signs were torn down).
8. Plaintiff previously found golf balls hit by Santos in his yard on numerous occasions and near a new sun porch – on the evening in question, he requested that Santos and Simpson cease hitting golf balls onto his property.

9. Simpson and Santos were acting together and ignored Plaintiff's requests and kept hitting golf balls on Plaintiff's property (and not on Santos' property).
10. As Plaintiff bent over to pick one of the golf balls, Santos and Plaintiff came into contact with one another and mistakenly perceiving that Santos was shoved, Simpson tackled Plaintiff to the ground. A scuffle ensued but, at that point, Plaintiff was unharmed and/or was uninjured.
11. Thereafter, as Plaintiff was attempting to stand up, Simpson negligently made contact with Plaintiff, injuring him.
12. On information and belief, Simpson's accidental contact with Plaintiff was negligent, and presumably Simpson did not attempt or intend to harm Plaintiff.
13. Nonetheless, Defendant Simpson's negligent conduct was the proximate cause of Plaintiff's damages.
14. The result of Simpson's accidental contact with Plaintiff's leg severely damaged Plaintiff's left knee and leg. Plaintiff suffered much pain and was immobilized – causing him permanent injury to incur extensive medical bills.
15. At the time, Plaintiff was seventy-two (72) years of age.
16. Plaintiff has suffered permanent pain and suffering as a result of Simpson's negligence.
 - a. He had to be transported by ambulance to a hospital and had to have extensive knee surgery.
 - b. As a result of the injury and the surgery that it necessitated, Plaintiff developed life threatening medical conditions. Plaintiff is told these include blood clots; two pulmonary embolisms in his left lung; and a deep vein thrombosis in his left leg resulting in permanent damage to the veins of his left leg and life-long edema in his left leg.
 - c. Plaintiff has incurred extensive medical expenses as a proximate result of the injury and will require future medical treatment and expenses.
 - d. Finally, Plaintiff has been left with a permanent and severe injury to his leg.
17. Defendant Simpson's negligent actions have caused Plaintiff to lose income, incur expenses, pain and suffering, and permanent injury as a direct and proximate result

of Defendant Simpson's negligent action for which Plaintiff seeks actual damages in an amount that a jury may find proper.

Wherefore, having set forth his Amended Complaint herein, Plaintiff prays for the following relief, *to wit*: For actual damages against Simpson, for the costs of this action, and for such other and further relief as the Court may find proper.

Truslow & Truslow Law Firm

s/Neal D. Truslow
NEAL D. TRUSLOW
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June 11, 2019

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
RICHARD LONGPHRE,	)	C.A. Number: 2018-CP-32-03314
	)	
Plaintiff,	)	
	)	
v.	)	CONSENT MOTION TO
	)	AMEND PLAINTIFF'S
TRAVIS SIMPSON	)	COMPLAINT
	)	
Defendant.	)	
_____	)	

To: TRAVIS SIMPSON, Defendant, and CAREY AYER, Esquire, counsel of record for Defendant Simpson

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before the Court at such time as is proper, pursuant to SCRCP 15(a), for an Order allowing Plaintiff Longphre to amend the Complaint herein (originally filed on October 8, 2019 and duly served on Defendant Simpson on October 16, 2018).

Defendant Simpson accordingly answered on December 13, 2018.

It should be noted that Walter Santos was originally a party to this matter, however he is deceased and has been dismissed from suit via a Stipulation of Dismissal with Prejudice filed on April 25, 2019.

This motion is made with the consent of Defendant's attorney on the following grounds, *to wit*:

1. Through further investigation, Plaintiff is informed and believes that certain causes of action in the initial Complaint were improperly pled.
2. Further, since the filing of this lawsuit, a former party to the action has died, and there is no reason for the caption to continue to reflect his or his estate's involvement.

3. Permitting Plaintiff to amend the Complaint will reduce the number of causes of action to be heard by the Court, as well as prevent issues with the deceased party's estate, and will greatly streamline the issues in the case.
4. Further, permitting Plaintiff to amend the Complaint will neither divest this Court of jurisdiction, nor be to the prejudice of any party.
5. SCRCP 15(a) states that leave to amend a Complaint "shall be freely given when justice so requires and does not prejudice any other party."
6. Counsel for Defendant Simpson has consented to Plaintiff's Motion herein to amend his Complaint.
7. Plaintiff's proposed Amended Complaint is attached hereto.

Respectfully Submitted,

Truslow & Truslow Law Firm

/s/Neal D. Truslow
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_____, 2019

I So Consent:

DAVIS FRAWLEY, LLC

s/Carey M. Ayer
Carey M. Ayer, Esquire
ATTORNEY FOR
DEFENDANT TRAVIS SIMPSON
S.C. Bar No. 448
140 East Main Street
Lexington, South Carolina 29072
Phone No.: (803) 359-2512
carey@oldcourthouse.com

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
SOUTH CAROLINA FARM BUREAU	)	C.A. Number: 2019-CP-32-01671
MUTUAL INSURANCE COMPANY,	)	
Plaintiff,	)	
	)	
v.	)	AMENDED
	)	ACCEPTANCE OF SERVICE
RICHARD K. LONGPHRE AND	)	
TRAVIS SIMPSON,	)	
	)	
Defendants.	)	
_____	)	

I, the undersigned counsel for Defendant, RICHARD LONGPHRE, hereby accept service of the filed Summons and Complaint in the above-referenced action and hereby waive all objections and defenses concerning insufficiency of process and insufficiency of service of process in this matter.

This 15th day of May, 2019.

TRUSLOW AND TRUSLOW

s/Neal D. Truslow
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Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
SOUTH CAROLINA FARM BUREAU	)	C.A. Number: 2019-CP-32-01671
MUTUAL INSURANCE COMPANY,	)	
Plaintiff,	)	
	)	
v.	)	ANSWER
	)	Jury Trial Demanded
RICHARD K. LONGPHRE AND	)	
TRAVIS SIMPSON,	)	
	)	
Defendants.	)	
	)	

Defendant Richard K. Longphre in response to Plaintiff's Declaratory Judgment Complaint would Answer as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of Plaintiff's Complaint not specifically admitted is denied and strict proof thereof is required.
2. Paragraphs one (1) through three (3) are admitted.
3. Paragraph four (4) does not require a response.
4. Paragraph five (5) is admitted insofar as the Court would have jurisdiction; however, it is otherwise denied because, pursuant to S.C. Code § 15-53-70, the Court should refuse to act. There is currently pending an action by Longphre against Simpson, which Plaintiff in this matter is defending under a reservation of rights. (See Longphre v. Simpson and Santos, 2018-CP-32-03314). Based on the facts, circumstances and pleadings in that case, a declaratory judgment would not end the controversy should the Court declare that Simpson had no insurance coverage. In that regard, Longphre would show, on information and belief that Simpson never intended to commit an act not covered by his insurance,
5. Defendant Longphre can neither confirm nor deny paragraph six (6), so it should be considered denied as alleged.
6. Paragraph seven (7) is admitted with exception to the case docket number referenced appears to have been a scrivener's error.

7. Paragraphs eight (8) through fifteen (15) are denied as alleged in that, after the filing of the original Complaint; Longphre has moved to amend his Complaint and has filed an amended Complaint based on further investigation into the matter.
8. Defendant Longphre can neither confirm nor deny paragraph sixteen (16), so it should be considered denied.
9. Paragraph seventeen (17) does not require a response.
10. Paragraphs eighteen (18) through twenty-five (25) are denied as alleged.

AS TO THE PRAYER FOR RELIEF

11. Responding to the statements following the “Wherefore” clause (paragraphs one (1) through five (5)), Defendant denies same as alleged.

WHEREFORE having set forth his Answer herein, Defendant Longphre prays that the Court inquire into this matter and issue an appropriate Order dismissing Plaintiff’s claims and that they be granted the relief sought in the Answer herein, as well as any further and other relief as the Court may find just and proper.

RESPECTFULLY SUBMITTED,

Truslow & Truslow Law Firm

s/Neal D. Truslow
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 DOUGLAS N. TRUSLOW
 SC Bar # 5642
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Columbia, South Carolina
 June 13, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
SOUTH CAROLINA FARM BUREAU	)	C.A. Number: 2019-CP-32-01671
MUTUAL INSURANCE COMPANY,	)	
Plaintiff,	)	ANSWER
vs.	)	(Jury Trial Requested)
	)	
RICHARD LONGPHRE and	)	
TRAVIS SIMPSON,	)	
Defendants.	)	

The Defendant, Travis Simpson, in response to Plaintiff's Declaratory Judgement Complaint would Answer as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of Plaintiff's Complaint not specifically admitted is denied and strict proof is thereof required.
2. Paragraphs one (1) through three (3) are admitted.
3. Paragraph four (4) does not require a response.
4. Paragraphs five (5) and six (6) are admitted.
5. Defendant Travis Simpson admits that a Complaint was filed on the date identified in Paragraph seven (7); however, the correct case number is 2018-CP-32-03314, and the Complaint was subsequently amended.
6. Defendant Travis Simpson admits that Defendant Richard Longphre made the allegations set out in Paragraph eight (8) in his Complaint in case number 2018-CP-32-03314. Defendant Travis Simpson denies that the allegations in Paragraph eight (8) are true. Further, Defendant Travis Simpson asserts that the Complaint in 2018-CP-32-03314 was amended and the citations do not accurately reflect the allegations of the Amended Complaint.
7. Defendant Travis Simpson admits that Defendant Richard Longphre made the

allegations in Paragraph nine (9) in his Complaint in case 2018-CP-32-003314. Further, Defendant Travis Simpson asserts that the Complaint in 2018-CP-32-03314 was amended and the citations do not accurately reflect the allegations of the Amended Complaint.

8. Defendant Travis Simpson denies Paragraphs ten (10) through fifteen (15). The Amended Complaint in 2018-CP-32-03314 does not make such allegations.

9. Paragraph sixteen (16) is admitted.

10. Defendant Travis Simpson would direct Plaintiff to his responses to Paragraphs one (1) through sixteen (16) and believes this allegation requires no further response.

11. Paragraph eighteen (18) does not require a response.

12. Paragraph nineteen (19) is admitted.

13. At this time, Defendant Travis Simpson can neither admit nor deny if Paragraphs twenty (20) through twenty-two (22) accurately reflect the wording of the policy in place at the time of the underlying incident.

14. Paragraphs twenty-three (23) through twenty-five (25) are denied.

WHEREFORE having fully answered the Complaint of the Plaintiff, Defendant Travis Simpson prays that the same be dismissed and that costs and other such relief as the court deems appropriate be awarded to this Defendant.

KOON COOK AND WALTERS, LLC

By: s/ Jamie L. Walters
Jamie L. Walters (SC Bar # 76956)
2016 Gadsden Street
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f (803) 254-0658
Attorney for Defendant Simpson

Columbia, South Carolina
August 12, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTHTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
South Carolina Farm Bureau Mutual	)	Civil Action No.: 2019-CP-32-01671
Insurance Company,	)	
	)	
Plaintiff,	)	PLAINTIFF'S MOTION TO AMEND
	)	DECLARATORY JUDGMENT
vs.	)	COMPLAINT
	)	
Richard K. Longphre and Travis E.	)	(Non-Jury)
Simpson,	)	
	)	
Defendants.	)	
	)	

COMES NOW Plaintiff South Carolina Farm Bureau Mutual Insurance Company ("Farm Bureau"), by and through its undersigned counsel, and moves before this Honorable Court, within ten (10) days after service hereof, at such time and place as the Court may determine, for an order pursuant to Rule 15 of the *South Carolina Rules of Civil Procedure* permitting Farm Bureau to amend its Complaint. Farm Bureau asserts that Defendants will sustain no prejudice from the amendment at this stage. In accordance with the provisions of Rule 15, leave to amend "shall be freely given when justice so requires," and the amended pleading should be permitted. Attached hereto as **Exhibit A** and incorporated herein by reference is the proposed Amended Complaint.

This motion will be based upon the pleadings on file, Rule 15 of the *South Carolina Rules of Civil Procedure* and upon applicable common and statutory law. Counsel for Defendants were consulted, but have not yet consented to the amended complaint.

ROE CASSIDY COATES & PRICE PA

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COUNSEL FOR PLAINTIFF
SOUTH CAROLINA FARM BUREAU MUTUAL
INSURANCE COMPANY

Greenville, South Carolina
September 19, 2019

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
South Carolina Farm Bureau Mutual	)	Civil Action No.: 2019-CP-32-01671
Insurance Company,	)	
	)	
Plaintiff,	)	PLAINTIFF'S AMENDED
	)	DECLARATORY JUDGMENT
vs.	)	COMPLAINT
	)	
Richard K. Longphre and Travis E.	)	(Non-Jury)
Simpson,	)	
	)	
Defendants.	)	
	)	

COMES NOW Plaintiff, South Carolina Farm Bureau Mutual Insurance Company (“Farm Bureau”), by and through its undersigned counsel, while reserving all rights under any current or subsequently filed motions herein, and respectfully files this amended declaratory judgment complaint pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, as follows:

PARTIES

1. Plaintiff Farm Bureau is a corporation organized and existing in South Carolina.
2. Upon information and belief, Defendant Richard Longphre (“Longphre”) is a citizen and resident of Lexington County, South Carolina.
3. Upon information and belief, Defendant Travis E. Simpson (“Simpson”) is a citizen and resident of Lexington County, South Carolina.
4. This is a declaratory judgment action brought pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*
5. The court has jurisdiction over the matters, allegations, and parties.

FACTS

6. Farm Bureau issued a homeowner's policy, Policy Number HO 0411374, to Travis E. Simpson and Kristin W. Simpson. The effective dates of the Policy were August 11, 2017 to August 11, 2018.

7. On October 8, 2018, Richard K. Longphre filed a complaint in the South Carolina Court of Common Pleas for Lexington County, captioned as follows: *Richard Longphre v. Travis Simpson and Walter Santos*, Case No. 2018-CP-32-03314. A copy of this complaint is attached as **Exhibit A**.

8. On June 11, 2019, Longphre filed an amended complaint, captioned as follows: *Richard Longphre v. Travis Simpson*, Case No. 2018-CP-32-03314, (hereinafter referred to as the "Underlying Action"). A copy of this amended complaint is attached as **Exhibit B**.

9. The Underlying Action alleges that on December 28, 2017, Longphre observed Simpson and Walter W. Santos ("Santos") hitting golf balls into Longphre's yard and toward his house despite his requests both previously and that evening that they cease this activity. (Compl. 6-7, 9-10; Am. Compl. 5-6, 8-9)

10. Longphre alleges that Santos and Simpson ignored his requests and continued hitting golf balls on his property. (Compl. 10; Am. Compl. 9.)

11. Longphre alleges that as he picked up a golf ball, Santos "came into contact" with him. (Am. Compl. 10.)

12. Longphre alleges that Simpson "tackled [Longphre] to the ground" and a "scuffle ensued." (Am. Compl. 10.)

13. Longphre alleges that as he was trying to get up from the ground, "Simpson negligently made contact with [Longphre], injuring him." (Am. Compl. 11.)

14. Longphre alleges that Simpson's acts caused injuries and damages including permanent and severe injury, pain and suffering, medical expenses, future medical expenses, and lost income. (Am. Compl. 13-14, 16-17.)

15. Upon being served with the original complaint, Simpson tendered the claim to Farm Bureau for defense and indemnification. Farm Bureau is currently defending Simpson under a reservation of rights.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

16. The allegations contained in paragraphs 1 through 15 are realleged and incorporated herein by reference, as if completely set forth herein.

17. Farm Bureau seeks a determination from this Court that it has no defense or indemnification obligation to Simpson under the Policy in connection with the claims alleged against him in the Underlying Action.

18. The Simpson Policy No. HO 0411374 (Homeowners Policy Form 9, Special Plus Form Policy Provisions) is a homeowner's insurance policy with a personal liability protection policy limits of \$300,000.00 which Farm Bureau issued for the policy period effective August 11, 2017 to August 11, 2018 (the "Simpson Policy").

19. The Simpson Policy provides the following:

SECTION- II LIABILITY COVERAGES
COVERAGE E – PERSONAL LIABILITY:

*If a claim is made or a suit is brought against an **insured** for damages because of **bodily injury** or **property damage** caused by an **occurrence** to which this coverage applies, we will:*

1. *pay up to **our** limit of liability for the damages for which the **insured** is legally liable; and*

2. have the right and duty to provide a defense at **our** expense by counsel of **our** choice, even if the suit is groundless, false or fraudulent. **We** may investigate, settle, deny, or defend any claim or suit that **we** decide is appropriate. However, **we** will have no duty to defend any suit seeking damages for **bodily injury** or **property damage** to which this insurance does not apply. **Our** duty to settle or defend ends when the amount we pay for damages resulting from the **occurrence** equals **our** limit of liability.

Damages because of **bodily injury** include damages claimed by any person or organization for care, loss of services or death resulting at any time from the **bodily injury**.

Property damage that is loss of use of tangible property that is not physically injured will be deemed to occur at the time of the **occurrence** that caused it. For the purposes of this Section, **electronic data** is not tangible property. **We** will not cover any loss, loss of use, deletion, corruption, or degradation of performance of any other **electronic data** equipment or material caused by **your** ownership, use, or operation of any **electronic data** equipment, material, or instructions, whether the damage or consequences was intentional or not.

This insurance applies to **bodily injury** and **property damage** only if:

- a. the **bodily injury** or **property damage** is caused by an **occurrence** which takes place in the **coverage territory**; and
- b. the **bodily injury** or **property damage** occurs during the policy period of this policy.

The amount **we** will pay for damages is limited as described in SECTION II – LIMITS OF LIABILITY.

20. The Simpson Policy provides the following definition:

DEFINITIONS

Certain words and phrases in this policy have specific meanings.

11. "**Occurrence**" means an accident, but does not include exposure to conditions, which results during the policy period in:
 - a. **bodily injury**; or
 - b. **property damage**.
21. The Simpson Policy provides the following exclusion:

SECTION II – EXCLUSIONS

1. ***Coverage E – Personal Liability and Coverage F – Medical Payments to Others do not apply to **bodily injury** or **property damage**:***

- a. *resulting from intentional acts or directions of you or any insured. The expected or unexpected results or these acts or directions are not covered.*

22. Under the terms and conditions of the Simpson Policy, the allegations and claims made in the Underlying Action are excluded because they do not fall within the coverage of the Simpson Policy. Specifically, the facts as alleged in the Underlying Action are not an “occurrence” as defined by the Simpson Policy.

23. Under the exclusion of the Simpson Policy, liability coverage does not apply to bodily injury arising out of the conduct alleged in the Underlying Action, because the alleged bodily injury (despite being couched in terms of negligence) was an expected or unexpected result of intentional acts which is excluded by the Simpson Policy.

24. Farm Bureau is entitled to a judicial determination that it owes no duty of defense or indemnification to Defendant Simpson with regard to claims made in or arising out of the Underlying Action.

WHEREFORE, South Carolina Farm Bureau Mutual Insurance Company prays the Court grant the following relief:

1. That the Court declare the rights and obligations of Farm Bureau under the Simpson Policy issued to Simpson and determine that the claims asserted against Simpson in the Underlying Action are excluded by the Simpson Policy’s terms and conditions;
2. That the Court declare that Farm Bureau has no obligation to defend Simpson for any claims made against him in the Underlying Action;

3. That the Court declare that Farm Bureau has no obligation to indemnify Simpson for any judgment that may be filed against him arising out of the Underlying Action;
4. That the costs of this action be taxed against Simpson; and
5. For such other relief as the Court may deem just and proper.

ROE CASSIDY COATES & PRICE PA

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COUNSEL FOR PLAINTIFF
SOUTH CAROLINA FARM BUREAU MUTUAL
INSURANCE COMPANY

Greenville, South Carolina
September _____, 2019

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

RICHARD LONGPHRE,

Plaintiff,

v.

TRAVIS SIMPSON and WALTER
SANTOS,

Defendants.

COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C.A. Number:

SUMMONS
(Jury Trial Demanded)

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber, at his office at his mailing address: Post Office Box 1465, Columbia, SC 29202 (Physical address is 914 Richland Street, Suite B-102, Columbia, South Carolina, 29201) within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

[SIGNATURE ON FOLLOWING PAGE.]

Truslow & Truslow Law Firm

s/Neal D. Truslow

NEAL D. TRUSLOW

(SC Bar # 77806)

DOUGLAS N. TRUSLOW

(SC Bar #5642)

Attorneys for Plaintiff

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_____, 2018

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
RICHARD LONGPHRE,	)	C.A. Number:
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	(Jury Trial Demanded)
TRAVIS SIMPSON and WALTER	)	
SANTOS,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff alleges:

1. Plaintiff is a citizen and resident of Lexington County, South Carolina.
2. On information and belief, Defendants Santos (“Santos”) and Simpson (“Simpson”) are both citizens and residents of Lexington County, South Carolina.
3. Simpson was at all pertinent times was employed by Farm Bureau and Santos was a client of Simpson.
4. This Court has jurisdiction over the parties hereto and subject matter herein, and venue is proper in Lexington County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Assault and Battery as to Santos and Simpson)

5. Each and every allegation herein is repeated as if verbatim.
6. On the evening of December 28, 2017, Plaintiff and his wife observed Defendants hitting golf balls both into their yard and towards their home from the direction of Santos’ residence (not on Santos’ property).
7. Plaintiff had requested Santos not to do so on a number of previous occasions.
8. Defendant Santos ignored Plaintiff’s requests and directives even after “No Trespassing” signs were erected (the signs were torn down, presumably by Defendant(s) and/or others).

19. Defendant Simpson reportedly refused to cooperate with law enforcement in the investigation of this attack.
20. The attack by Defendants Santos and Simpson was unprovoked, unjustifiable, and extreme.
21. At the time, Plaintiff was seventy-two (72) years of age, while Defendants Santos and Simpson appeared to be in their late thirties or early forties.
22. Further, the attack on Plaintiff was offensive, particularly outrageous, and harmful. This brutal attack was without consent and resulted in permanent damages to Plaintiff, including medical expenses, and permanent disabling injuries.
23. Defendants Santos and Simpson acted and intended to wrongfully touch and assault Plaintiff and to do him harm.
24. As a result of Defendants Santos' and Simpson's assault and battery on Plaintiff, he was put in fear of imminent bodily harm and was, in fact, severely injured.
25. Plaintiff has suffered permanent pain and suffering as a result of Defendants Santos' and Simpson's acts.
 - a. He had to be transported by ambulance to a hospital and had to have extensive knee surgery.
 - b. As a result of the Defendants' attack and the surgery that it necessitated, Plaintiff developed life threatening medical conditions. Plaintiff is told these include blood clots; two pulmonary embolisms in his left lung; and a deep vein thrombosis in his left leg resulting in permanent damage to the veins of his left leg and life-long edema in his left leg.
 - c. Plaintiff has incurred extensive medical expenses as a proximate result of the attack and will require future medical treatment and expenses.
 - d. Finally, Plaintiff has been left with a permanent and severe injury to his leg.
26. Defendants Santos' and Simpson's actions have caused Plaintiff to lose income, incur expenses, pain and suffering, and permanent injury as a direct and proximate result of Defendants Santos' and Simpson's individual and joint bad

actions for which Plaintiff seeks actual and punitive damages in excess of \$100,000.00 as a jury may find proper.

FOR A SECOND CAUSE OF ACTION
(Civil Conspiracy as to Santos and Simpson)

27. Each and every allegation herein is repeated as if verbatim.
28. Defendants Santos and Simpson combined and conspired with one another for the purpose and/or object of harming and damaging Plaintiff.
29. Defendants Santos and Simpson did in fact cause physical and financial harm to Plaintiff and Defendants engaged in overt acts to do so.
30. Defendants Santos' and Simpson's actions have caused Plaintiff to lose income, incur expenses, pain and suffering, and permanent injury as a direct and proximate result of Defendants Santos' and Simpson's individual and joint bad actions for which Plaintiff seeks actual and punitive damages in excess of \$100,000.00 as a jury may find proper.

FOR A THIRD CAUSE OF ACTION
(Outrage and Intentional Infliction of Emotional Distress as to Santos and Simpson)

31. Each and every allegation herein is repeated as if verbatim.
32. Defendants Santos' and Simpson's actions jointly and severely were outrageous and extreme.
33. Defendants Santos' and Simpson's actions exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.
34. Defendants Santos' and Simpson's acts were intentional and/or reckless so as to cause severe emotional and physical harm to Plaintiff.
35. The actions of Defendants Santos and Simpson caused Plaintiff emotional and physical distress and harm, and the emotional distress suffered by Plaintiff is/was so severe that no reasonable person could be expected to endure it.
36. Defendants Santos' and Simpson's actions have caused Plaintiff to lose income, incur expenses, pain and suffering, and permanent injury as a direct and

proximate result of Defendants Santos' and Simpson's individual and joint bad actions for which Plaintiff seeks actual and punitive damages in excess of \$100,000.00 as a jury may find proper.

FOR A FOURTH CAUSE OF ACTION
(Negligence and Gross Negligence as to Santos and Simpson)

37. Each and every allegation herein is repeated as if verbatim.
38. As an additional and alternative cause of action, Defendants Santos and Simpson were negligent, careless and/or reckless, willful or wanton and/or grossly negligent in attacking and harming Plaintiff, and presumably Defendants Santos and Simpson did not attempt or intend to harm Plaintiff to the severe degree they did.
39. Nonetheless, Defendants Santos' and Simpson's conduct, whether negligent or grossly negligent, was the proximate cause of Plaintiff's damages.
40. Because of, resulting therefrom, and as a proximate and/or direct result of Defendants Santos' and Simpson's actions as outlined above, Plaintiff has and will suffer pecuniary loss (past and future) for which Plaintiff seeks actual and punitive damages.

Wherefore, having set forth his complaint herein, Plaintiff prays for the following relief, *to wit*: For actual and punitive damages against Defendants jointly and severally as may be found to be appropriate, for the costs of this action and for such other and further relief as the Court may find proper.

[SIGNATURE ON FOLLOWING PAGE]

Truslow & Truslow Law Firm

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_____, 2018

Exhibit B

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
RICHARD LONGPHRE,	)	C.A. Number: 2018-CP-32-03314
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED COMPLAINT
	)	(Jury Trial Demanded)
TRAVIS SIMPSON	)	
	)	
	)	
Defendants.	)	
_____	)	

Plaintiff alleges:

1. Plaintiff is a citizen and resident of Lexington County, South Carolina.
2. On information and belief, Defendant Simpson (“Simpson”) is a citizen and resident of Lexington County, South Carolina.
3. This Court has jurisdiction over the parties hereto and subject matter herein, and venue is proper in Lexington County, South Carolina.

CAUSE OF ACTION
(Negligence)

4. Each and every allegation herein is repeated as if verbatim.
5. On December 28, 2017, Plaintiff and his wife observed Simpson and a neighbor, Walter Santos (“Santos”) hitting golf balls both into their yard and towards their home from the direction of Santos’ residence (not on Santos’ property).
6. Plaintiff had requested Santos not to do so on a number of previous occasions.
7. Santos ignored Plaintiff’s requests and directives even after “No Trespassing” signs were erected (the signs were torn down).
8. Plaintiff previously found golf balls hit by Santos in his yard on numerous occasions and near a new sun porch – on the evening in question, he requested that Santos and Simpson cease hitting golf balls onto his property.

9. Simpson and Santos were acting together and ignored Plaintiff's requests and kept hitting golf balls on Plaintiff's property (and not on Santos' property).
10. As Plaintiff bent over to pick one of the golf balls, Santos and Plaintiff came into contact with one another and mistakenly perceiving that Santos was shoved, Simpson tackled Plaintiff to the ground. A scuffle ensued but, at that point, Plaintiff was unharmed and/or was uninjured.
11. Thereafter, as Plaintiff was attempting to stand up, Simpson negligently made contact with Plaintiff, injuring him.
12. On information and belief, Simpson's accidental contact with Plaintiff was negligent, and presumably Simpson did not attempt or intend to harm Plaintiff.
13. Nonetheless, Defendant Simpson's negligent conduct was the proximate cause of Plaintiff's damages.
14. The result of Simpson's accidental contact with Plaintiff's leg severely damaged Plaintiff's left knee and leg. Plaintiff suffered much pain and was immobilized – causing him permanent injury to incur extensive medical bills.
15. At the time, Plaintiff was seventy-two (72) years of age.
16. Plaintiff has suffered permanent pain and suffering as a result of Simpson's negligence.
 - a. He had to be transported by ambulance to a hospital and had to have extensive knee surgery.
 - b. As a result of the injury and the surgery that it necessitated, Plaintiff developed life threatening medical conditions. Plaintiff is told these include blood clots; two pulmonary embolisms in his left lung; and a deep vein thrombosis in his left leg resulting in permanent damage to the veins of his left leg and life-long edema in his left leg.
 - c. Plaintiff has incurred extensive medical expenses as a proximate result of the injury and will require future medical treatment and expenses.
 - d. Finally, Plaintiff has been left with a permanent and severe injury to his leg.
17. Defendant Simpson's negligent actions have caused Plaintiff to lose income, incur expenses, pain and suffering, and permanent injury as a direct and proximate result

of Defendant Simpson's negligent action for which Plaintiff seeks actual damages in an amount that a jury may find proper.

Wherefore, having set forth his Amended Complaint herein, Plaintiff prays for the following relief, *to wit*: For actual damages against Simpson, for the costs of this action, and for such other and further relief as the Court may find proper.

Truslow & Truslow Law Firm

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June 11, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
South Carolina Farm Bureau Mutual Insurance Company,	)	Civil Action No.: 2019-CP-32-01671
	)	
Plaintiff,	)	PLAINTIFF'S MOTION FOR
	)	SUMMARY JUDGMENT
vs.	)	
	)	
Richard K. Longphre and Travis E. Simpson,	)	
	)	
Defendants.	)	
	)	

COMES NOW Plaintiff South Carolina Farm Bureau Mutual Insurance Company ("Farm Bureau"), through its undersigned counsel, and moves before the Court for an Order granting Summary Judgment pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*, on the grounds that there is no genuine issue of material fact and that Farm Bureau is entitled to judgment as a matter of law.

This motion will be based upon the pleadings, depositions, affidavits, applicable law, and such other documents as may be submitted subsequently prior to the hearing on the motion.

Specifically, Farm Bureau is entitled to summary judgment on the following issues:

a. There is no genuine issue of material fact that the allegations and claims made in the Underlying Action¹ by Richard K. Longphre against Travis E. Simpson do not meet the definition of an "occurrence" and therefore are not covered by Travis E. Simpson's homeowner's insurance policy

¹ The Underlying Action is *Richard Longphre v. Travis Simpson and Walter Santos*, Case No. 2018-CP-32-03314, currently under a stay pending resolution of the present declaratory judgment action.

(HO 0411374) (the "Policy").

b. There is no genuine issue of material fact that the Policy's "intentional act" exclusion applies to exclude liability coverage for the bodily injury arising out of the conduct alleged in the Underlying Action because the alleged bodily injury (despite being couched in negligence terms) was an expected or unexpected result of intentional acts by Travis E. Simpson.

Respectfully submitted,
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COUNSEL FOR PLAINTIFF
SOUTH CAROLINA FARM BUREAU MUTUAL
INSURANCE COMPANY

Greenville, South Carolina
March 2, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
South Carolina Farm Bureau Mutual	)	Civil Action No.: 2019-CP-32-01671
Insurance Company,	)	
	)	
Plaintiff,	)	PLAINTIFF'S MEMORANDUM IN
	)	SUPPORT OF MOTION FOR
vs.	)	SUMMARY JUDGMENT
	)	
Richard K. Longphre and Travis E.	)	
Simpson,	)	
	)	
Defendants.	)	
	)	

COMES NOW Plaintiff South Carolina Farm Bureau Mutual Insurance Company ("Farm Bureau"), through its undersigned counsel, in support of its motion for Summary Judgment pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*, on the grounds that there is no genuine issue of material fact and that Farm Bureau is entitled to judgment as a matter of law. Specifically, there is no genuine issue of material fact that the allegations and claims made in the Underlying Action¹ by Richard K. Longphre ("Longphre") against Travis E. Simpson ("Simpson") are not covered under Simpson's homeowner's insurance policy (HO 0411374) (the "Policy") as they do not meet the definition of an "occurrence" and that the Policy's intentional act exclusion bars coverage.

Factual and Procedural History

On December 28, 2017, at approximately 6:30 p.m., Walter Santos ("Santos") and Simpson had been hitting golf balls on Longphre's property in a grassy area between Longphre's house and

¹ The Underlying Action, *Richard Longphre v. Travis Simpson*, Case No. 2018-CP-32-03314, is currently under a stay pending resolution of the present declaratory judgment action.

Santos' house.² (Ex. A, Longphre Dep. at 61-62, 65.) Longphre, aggravated by this activity, shined his flashlight on the men and went outside to confront them about hitting golf balls on his property.³ (Ex. A, Longphre Dep. at 62.) Simpson admitted to drinking “two – one to two, three” beers on the night of the incident. (Ex. B, Simpson Dep. at 23.) They were hitting “glow balls” which are golf balls that blink for ten minutes after they are struck. (Id.)

Longphre went to pick up one of the golf balls and throw it back on the Santos property when Santos pushed him, and Simpson then “attacked [Longphre] as [his] back was turned, knocked [him] to the ground, jumped on top of [him] and got [him] in a choke hold.” (Exhibit C, Richard K. Longphre Voluntary Statement to Police.) Further, Simpson broke Longphre's glasses and yelled “I'm going to kill you you f—king a—hole.” (Id.) After Santos told Simpson to get off Longphre, Simpson complied. (Id.) Longphre “thinking the confrontation was over,” turned around but was hit again “this time in [his] left knee knocking [him] back to the ground and damaging [his] knee so badly [he] could not get up off ground.” (Id.) Santos ran back to his house and Simpson “jumped into his truck ... and sped off.” (Id.)

This declaratory judgment action arises from the Underlying Action where Longphre is seeking damages for injuries he received in this physical attack. On October 8, 2018, Richard K.

² According to Longphre, this area is an old farm pond and currently a drainage easement, and he and a neighbor take turns mowing the grass there. (Ex. A, Longphre Dep. at 21, 39.) Immediate neighbors use the area to let dogs and children play. (Id. at 42-43.)

³ Longphre and Santos had a long history of disputes regarding the use of this grassy area. At one point, Santos' children had placed rocks or logs into the area and this aggravated Longphre, who did not like debris in the field that he mowed. After multiple offenses, Longphre told the Santos children they could not use the field because they were “old enough to know better.” (Ex. A, Longphre Dep. at 51-54.) Santos and his wife confronted Longphre about it, but Longphre told them “sorry...they've had three chances and they dropped the ball.” (Id. at 54.) Since that incident, Longphre testified he had to “warn [Santos] about [hitting golf balls] at least a half a dozen times over the years.” (Id. 54-55.)

Longphre filed a complaint in the South Carolina Court of Common Pleas for Lexington County, captioned as follows: *Richard Longphre v. Travis Simpson and Walter Santos*, Case No. 2018-CP-32-03314. A copy of this complaint is attached as **Exhibit D**. On June 11, 2019, Longphre filed an amended complaint, captioned as follows: *Richard Longphre v. Travis Simpson*, Case No. 2018-CP-32-03314, (hereinafter referred to as the “Underlying Action”). A copy of this amended complaint is attached as **Exhibit E**.⁴

Longphre’s account of the attack changes from his initial written statement to police (Ex. C) through his complaint (Ex. D) and finally to his amended complaint (Ex. E). However, the Underlying Action consistently alleges that on December 28, 2017, Longphre observed Simpson and Santos hitting golf balls into Longphre’s yard and toward his house despite his requests both previously and that evening that they cease this activity. (Compl. 6-7, 9-10; Am. Compl. 5-6, 8-9.) Longphre alleges that Santos and Simpson ignored his requests and continued hitting golf balls on his property. (Compl. 10; Am. Compl. 9.)

In the initial complaint, Longphre alleges that as he picked up a golf ball, Simpson??? “violently and unexpectedly tackled or ‘speared’ him, brutally throwing him to the ground,” “began to strangle” Longphre, and also expressed intent to kill Longphre. (Compl. 12-13.) In the Amended Complaint, Longphre alleges that as he picked up a golf ball, Santos “came into contact” with him. (Am. Compl. 10.)

Further, in the initial complaint, Longphre alleges that as he was trying to get up, Simpson “brutally hit Plaintiff in the side of the left leg.” (Compl. 16.) In the amended complaint, Longphre

⁴ Santos is not a party in the amended complaint. It is possible he was dismissed because he died on December 30, 2018.

alleges that Simpson “tackled [Longphre] to the ground” and a “scuffle ensued.” (Am. Compl. 10.) Longphre alleges that as he was trying to get up from the ground, “Simpson negligently made contact with [Longphre], injuring him.” (Am. Compl. 11.)

Farm Bureau filed a declaratory judgment action on April 30, 2019, stating the claims made in the Underlying Action by Longphre against Simpson are not covered under Simpson’s homeowner’s insurance policy (HO 0411374) (the “Policy”) as they do not meet the definition of an “occurrence” and that the Policy’s intentional act exclusion bars coverage. In response to Longphre’s amended complaint in the underlying action, Farm Bureau filed a motion to amend the declaratory judgment complaint on September 19, 2019. That motion remains outstanding.

Relevant Policy Provisions

Farm Bureau issued Policy HO 411374 to Travis E. Simpson and Kristin W. Simpson for the policy period effective August 11, 2017 to August 11, 2018 (the “Policy”).

The HO 9 policy states the following in **SECTION- II LIABILITY COVERAGES, COVERAGE E – PERSONAL LIABILITY:**

*If a claim is made or a suit is brought against an **insured** for damages because of **bodily injury** or **property damage** caused by an **occurrence** to which this coverage applies, **we** will:*

1. *pay up to **our** limit of liability for the damages for which the **insured** is legally liable; and*
2. *have the right and duty to provide a defense at **our** expense by counsel of **our** choice, even if the suit is groundless, false or fraudulent. **We** may investigate, settle, deny, or defend any claim or suit that **we** decide is appropriate. However, **we** will have no duty to defend any suit seeking damages for **bodily injury** or **property damage** to which this insurance does not apply. **Our** duty to settle or defend ends when the amount **we** pay for damages resulting from the **occurrence** equals **our** limit of liability.*

*Damages because of **bodily injury** include damages claimed by any person or organization for care, loss of services or death resulting at any time from the **bodily***

injury.

Property damage that is loss of use of tangible property that is not physically injured will be deemed to occur at the time of the **occurrence** that caused it. For the purposes of this Section, **electronic data** is not tangible property. **We** will not cover any loss, loss of use, deletion, corruption, or degradation of performance of any other **electronic data** equipment or material caused by **your** ownership, use, or operation of any **electronic data** equipment, material, or instructions, whether the damage or consequences was intentional or not.

This insurance applies to **bodily injury** and **property damage** only if:

- a. the **bodily injury** or **property damage** is caused by an **occurrence** which takes place in the **coverage territory**; and
- b. the **bodily injury** or **property damage** occurs during the policy period of this policy.

The amount **we** will pay for damages is limited as described in SECTION II – LIMITS OF LIABILITY.

The HO 9 policy states the following in the section entitled “Definitions”, paragraph 11:

DEFINITIONS

Certain words and phrases in this policy have specific meanings.

11. **"Occurrence"** means an accident, but does not include exposure to conditions, which results during the policy period in:
 - a. **bodily injury**; or
 - b. **property damage**.

The HO 9 policy states the following in SECTION II – EXCLUSIONS, paragraph 1a:

1. **Coverage E – Personal Liability and Coverage F – Medical Payments to Others** do not apply to **bodily injury** or **property damage**:
 - a. resulting from intentional acts or directions of **you** or any **insured**. The expected or unexpected results or these acts or directions are not covered.

This Physical Attack is not an “Occurrence” or Accident

There is no genuine issue of material fact that the attack alleged by Longphre is not an “occurrence” and therefore there is no coverage under Simpson’s homeowner’s insurance policy. An “occurrence” is defined by the Policy as an “accident” and the evidence is uncontradicted that Simpson’s attack on Longphre is not accidental. Plainly stated, “an intended injury cannot be accidental.” Manufacturers & Merchants Mut. Ins. Co. v. Harvey, 330 S.C. 152, 159, 498 S.E.2d 222, 225 (Ct. App. 1998) (emphasis in original).

An insured’s act is not an accidental contributing cause of injury when the insured actually intended to cause the injury that results. ‘An accident is never present when a deliberate act is performed unless some additional unexpected, independent and unforeseen [circumstance exists or] happening occurs which produces or brings about the result of injury or death.’ *Nor can an insured’s intentional act be an accidental cause of injury when it is so inherently injurious that it cannot be performed without causing the resulting injury.* Id., 330 S.C. at 161, 498 S.E.2d at 226 (emphasis in original). Simpson’s conduct in tackling, choking, and striking Longphre’s leg was intentional and inherently injurious. It was not accidental.

Longphre’s Labels of ‘Negligence’ Cannot Evoke Coverage

Longphre’s improper attempt to characterize this attack in terms of negligence cannot change the fact that he is actually alleging intentional acts. The gravamen of Longphre’s complaint in the Underlying Action is an intentional act, and the complaint truly cannot be read any other way. “Although South Carolina allows alternative pleading, a party may not invoke coverage by couching intentional acts in negligence terms.” State Farm Fire & Cas. Co. v. Barrett, 340 S.C. 1,

11, 530 S.E.2d 132, 137 (Ct. App. 2000). Despite the labels of negligence and the attempt in an amended pleading to re-fashion the allegations to speak in terms of negligence, the Court should look beyond these labels and find no coverage, no duty to defend, and no duty to indemnify. See Manufacturers & Merchants Mut. Ins. Co. v. Harvey, 330 S.C. 152, 163, 498 S.E.2d 222, 228 (Ct. App. 1998) (holding that characterizing intentional conduct as negligence is not a basis for coverage).

Intentional Act Exclusion Bars Coverage

Next, there is no genuine issue of material fact that Simpson's acts were intentional and the "intentional act exclusion" of the Policy acts to bar coverage for Longphre's claims. In South Carolina, the general rule is for an act to be excluded by the intentional act exclusion of a policy, 1) the act which produces the loss must be intentional, and 2) the results of the act must be intended. See Miller v. Fidelity-Phoenix Ins. Co., 268 S.C. 72, 231 S.E.2d 701 (1977). However, "an insurance policy can be written to exclude the application of Miller." Auto-Owners Ins. Co. v. Taylor, 2018 WL 4078579 at *5, C/A 1:17-cv-02632-JMC (D.S.C. August 24, 2018)⁵. Farm Bureau's intentional act exclusion is written specifically to exclude both intended and unintended results of intentional acts, and the Court has applied and upheld this exact exclusion.⁶ See S.C. Farm Bureau Mut. Ins. Co. v. Dawsey, 371 S.C. 353, 357, 638 S.E.2d 103, 105 (Ct. App. 2006) (holding that the policy language excludes unexpected results of intentional acts in addition to expected results).

⁵ This unpublished case is attached hereto as Exhibit F.

⁶ The Policy in Dawsey is identical to the one in this case and excludes coverage for injury "resulting from intentional acts or directions of you or any insured. The expected or unexpected results or (sic) these acts or directions are not covered." S.C. Farm Bureau Mut. Ins. Co. v. Dawsey, 371 S.C. 353, 355, 638 S.E.2d 103, 104 (Ct. App. 2006).

Accounts of this altercation differ slightly, but no matter the version, the acts causing the injury were not accidental and were intentional. These acts were so inherently injurious that they cannot be performed without causing injury. Longphre's account to the police shows that Simpson attacked him as his back was turned, knocked him to the ground, jumped on top of him and put him in a choke hold. (See Exhibit C, Richard K. Longphre Voluntary Statement to Police.) After Longphre thought this confrontation was over, he turned around but was hit again in his left knee knocking him back to the ground and damaging his knee so badly he could not get up off the ground. (See *id.*)

Simpson's account varies slightly, but he admits that after the initial confrontation between Santos and Longphre, he "reacted" and "ended up putting [Longphre] ...in a headlock." (Ex. B, Simpson Dep. at 26.) During this "headlock," Simpson admits he took Longphre to the ground. (*Id.* at 42.) Simpson goes on to say that as they were getting up, "I used him to help myself get up, and I pushed him back. And he fell back to the ground." (*Id.* at 26, 44-45.)

Longphre confirms in his deposition when he testified as follows:

When I bent down to pick up the golf ball, [Santos] pushed me away. When he pushed me away, this guy beside me, off to the side that I didn't see - I had my back half turned to him, he tackled me to the ground and got me in a choke hold, okay?

(Ex. A, Longphre Dep. at 62-63.) Longphre testified clearly that he got tackled from behind by Simpson, which took him to the ground. (*Id.* at 68, 72.) Longphre goes on to say that when he was in the process of getting up, "we got entangled somehow...our bodies came in contact with each other and I went back down on the ground like a ton of bricks and I couldn't get up." (*Id.* at 63.) Longphre said his quad tendon had been "severed." (*Id.* at 69.)

Longphre went further to testify as to the brutality of the attack, and explained how his glasses broke in the melee:

Well, when somebody tackles you from behind and grabs you, you know, and smashes your head into the ground, your face into the ground and you're wearing glasses, they tend to break.

(Ex. A, Longphre Dep. at 75.) There is no genuine issue of material fact that what both Simpson and Longphre described is an intentional act by Simpson, and is therefore excluded from coverage.

Defendants may attempt to defeat summary judgment by arguing that even while physical contact was intended, Simpson never intended to injure Longphre. This would only create a fact issue if the Miller test was the rule. In fact, Simpson testifies to this in his deposition in the following exchange:

Q. Okay. Now, when you put Mr. Longphre in the headlock, did you have any intention of hurting him at that point?

A. No.

(Ex. E, Simpson Dep. at 31.)

Q. And when you pushed [Longphre], did he fall back to the ground a second time?

A. Yes.

Q. Okay. Did you intend to hurt Mr. Longphre when you pushed him to get yourself up?

A. No.

(Id. at 32.)

In an attempt to secure the coverage of Simpson's insurance policy, Longphre even now attempts to characterize his injury as a "freak accident". (Ex. A, Longphre Dep. at 73-74.)

Because of the language of the exclusion, it does not matter that Simpson may not have intended the injurious result. See S.C. Farm Bureau Mut. Ins. Co. v. Dawsey, 371 S.C. 353, 357, 638 S.E.2d 103, 105 (Ct. App. 2006) (holding that the policy language excludes unexpected results of intentional acts in addition to expected results). The intentional act exclusion applies. Moreover, Simpson's conduct is so outrageous and inherently injurious that even if the Miller test was operative, the Court should hold that Simpson intended both the act and some injurious result.

There is no genuine issue of material fact that Simpson's actions were not an accident, not an occurrence under the policy, and therefore not covered. Even if the Court finds this incident was an occurrence and should be covered, there is no genuine issue of material fact that the intentional act exclusion applies to defeat that coverage. The Court should grant summary judgment to Farm Bureau and hold there is no duty to defend or indemnify Simpson in the Underlying Action.

Respectfully submitted,
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SOUTH CAROLINA FARM BUREAU MUTUAL
INSURANCE COMPANY

Greenville, South Carolina
April 23, 2020

Exhibit A

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF LEXINGTON) CASE NO.: 2018-CP-32-03314

3

4 Richard Longphre,)

5)

6 Plaintiff,) DEPOSITION OF

7) RICHARD LONGPHRE

8 vs.) SEPTEMBER 9, 2019

9 Travis Simpson,)

10)

11 Defendants.)

12 _____)

13 Deposition on oral examination of RICHARD LONGPHRE,
14 reported by Barbara S. Ham, Court Reporter and Notary
15 Public in and for the State of South Carolina; pursuant to
16 Rule 30 of the South Carolina Rules of Civil Procedure;
17 said Deposition was taken at the law office of Davis
18 Frawley, LLC, 140 East Main Street, Lexington, South
19 Carolina, on Monday, the 9th day of September, 2019,
20 commencing at the hour of 1:09 p.m.

21

22

23

24

25

1 them -- below Barbara next door, we've got Don
2 Morton and his wife Elizabeth and I think he does
3 the media stuff for Lexington Hospital. And then
4 down below them is -- I call him Gunnie. Fred
5 Long and his wife works at the library and Fred
6 works for his wife's -- his wife's brother, who
7 has some kind of a technology company and they
8 install software and stuff for dentist offices
9 and he travels all the time. But he -- he and I
10 are the two main people that -- when I was
11 injured and couldn't mow the field out behind the
12 house -- we live on a -- on a drainage easement
13 that used to be an old farm pond; okay?

14 Q. Old farm pond?

15 A. Old farm pond.

16 Q. Okay.

17 A. That's correct; okay? And we take turns mowing
18 the field with our riding lawn mowers.

19 Q. Who takes turn riding the -- mowing the field?

20 A. Fred Long and I do.

21 Q. Okay.

22 A. When I was injured and couldn't do that for, you
23 know, a year, he'd cut it himself all the time;
24 okay? And now I'm back to where I'm able to do
25 that, so now I'm cutting some of the times and

- 1 Q. All right. Let's -- you doing okay? Do you need
2 to take a break or anything?
- 3 A. I'm fine.
- 4 Q. Okay. Let's talk -- you mentioned earlier the --
5 correct me if I say the term wrong -- the farm
6 pond. Did you refer to the area behind your
7 house as the farm pond?
- 8 A. It use to be an old farm pond. It's a drainage
9 easement now.
- 10 Q. Okay. And what -- what is your understanding of
11 what a drainage easement is?
- 12 A. That you can't build anything out there.
- 13 Q. Okay. And you mentioned that you and your
14 neighbor cut the grass out there. What do you
15 use to cut grass out there?
- 16 A. A riding lawn mower.
- 17 Q. Okay. So, you don't use a tractor? You use a
18 riding lawn mower?
- 19 A. It's a riding tractor. Yeah. Forty-eight inch
20 cut.
- 21 Q. Okay.
- 22 A. Troy-Bilt tractor.
- 23 Q. But now when I -- when I'm talking about tractor,
24 I'm talking about like a farm tractor with
25 something -- you're pulling something behind it.

1 pond now, it's a drain because it's dry. So,
2 it's the pond implies it's got water and it
3 doesn't have water in it.

4 Q. Right. Right.

5 A. It's got grass now and Gunnie and I, when I first
6 moved in -- in there, Gunnie, Fred Long, the guy
7 down below and I, we rebuilt an old tractor that
8 they had and got the tractor running so we could
9 cut the -- cut the field out the back and get it
10 in shape. Get it cleared out and right now what
11 goes on back there is Gunnie has three dogs. He
12 runs his dogs out there and they chase balls. He
13 brought his grandson over the other day to ride
14 his tractor and drive his tractor and help him
15 cut the field, part of the field, because I cut
16 the other part of the field while he was doing
17 that with his grandson. And then my neighbor,
18 Barbara, has a white labradoodle dog that she
19 runs out there in the field. She and her sister
20 take turns taking the dog out to the field and
21 they do that in the field, and then we have the
22 kids go out there -- our neighbors, have a little
23 girl, and they'll go out there and play with the
24 little girl out in the field. The neighbor
25 across the street comes over into the field and

1 they play in the field. You know, so the
2 neighbors use it.

3 Q. Okay. Do the neighbors in your neighborhood,
4 Murraywood, use it, and the neighbors in Mr.
5 Santos' neighborhood use it?

6 A. No. It's normally -- it's, you know, by
7 invitation, you know, we'll say that's okay if
8 you go out there and use the field. Because we
9 don't want everybody over there using the field.

10 Q. And everybody over there would be who?

11 A. Well, that we -- people we don't know.

12 Q. Okay.

13 A. Yeah.

14 Q. Okay.

15 A. That we as a community don't know, our little
16 group, the people that live there on the
17 easement.

18 Q. But if you know the people, did I just hear you
19 say you might invite somebody to come out there?

20 A. Yeah.

21 Q. Okay. And so, just for the record know exactly
22 what it is when we're talking about when we refer
23 to the field. Let me show you this diagram that
24 Mr. Truslow provided to me. Can you see that
25 okay? Take your time too if you need to -- and

1 touched on it. I was trying to get straight in
2 my head how you came to know Mr. Santos and
3 correct me if I'm wrong, but I think you said you
4 didn't know him independent of his playing golf -
5 - and by playing golf, I mean hitting golf balls
6 in his backyard into the field. Is that -- is
7 that fair?

8 A. Fair, yes.

9 Q. Okay. You know -- you don't know him socially?

10 A. No.

11 Q. All right. Have you met -- ever -- ever met Mr.
12 Santos or his wife or anybody connected with him
13 other than just when he's been out in that field?

14 A. When we first moved in; okay?

15 Q. Okay.

16 A. He had two kids and I was out there. We fixed
17 the lawn mower up so we could mow the field and
18 he had two kids out there, you know, lived there
19 and they could play in the field and I'm
20 thinking, okay, fine. They can play in the
21 field; okay? And even though it wasn't their
22 property; okay? So, they could play in the field
23 and I went over and talked to him because in
24 mowing the field a couple of times with the
25 tractor, I'd drive down the field and I'd hit a

1 log or a rock in the field.

2 Q. Right.

3 A. Okay? The -- one of these kids had gotten down -
4 - there's a ditch that runs down through the
5 field.

6 Q. Right.

7 A. They had gotten up out of the field, they'd
8 thrown this stuff up on the ground; okay? And
9 the first time was -- wasn't too bad of an issue;
10 okay? I said, yeah, kids are kids; okay?
11 They'll make a mistake. So I got -- talk --
12 talked to the kids and I said kids, come on now.
13 I'm mowing this -- it's very expensive to fix the
14 tractor when we hit a rock or a chunk of wood
15 like this. We can't see because the grass would
16 get high and you don't see it. So, I said please
17 pick all of your stuff up. And well, a week
18 later, same thing; okay? And so, I talked to
19 them again; okay? So, the third time that
20 happened, I just had to tell them. I said,
21 sorry, but you can't use the field anymore, you
22 know, you've been warned three times to clean
23 things up. If you're not going to abide by the
24 rules, you just don't have access to that field.
25 It's not your property; okay?

- 1 Q. Did you know these were Mr. Santos' kids?
- 2 A. Oh, yeah.
- 3 Q. Okay.
- 4 A. Yeah.
- 5 Q. Do you know about how old they were, ballpark?
- 6 A. Twelve to sixteen.
- 7 Q. Okay.
- 8 A. In that neighborhood, I guess. I don't know.
- 9 Q. Okay.
- 10 A. Old enough to know better.
- 11 Q. Okay. And when you're talking about the ditch,
- 12 is that the ditch that you can see there on that
- 13 plat?
- 14 A. Right there. Yes.
- 15 Q. Okay.
- 16 A. That's the drainage easement.
- 17 Q. Okay.
- 18 A. That's the drainage ditch.
- 19 Q. And what followed after you told them they
- 20 couldn't use the field anymore?
- 21 A. Oh, they -- they got irate and the mother and
- 22 father came over and got on our property. Walked
- 23 up to our house on our back deck and started
- 24 arguing with us about that. You can't do that
- 25 and you can't -- they're just children and all

1 this. I said, I'm sorry ma'am, you know, I said
2 they've had three chances and they dropped the
3 ball. And I said, it cost me several hundred
4 dollars. I'm a school teacher. I can't afford
5 to pay several hundred dollars to fix a riding
6 tractor.

7 Q. And -- and you may have said, but how long --
8 about how long ago was that?

9 A. I guess right after they first built that house.

10 Q. Okay. You -- I don't know exactly when that was.
11 Do you have --

12 A. Don't have a clue.

13 Q. Okay.

14 A. After we were there.

15 Q. Okay.

16 A. So, within the last, you know, 19 years.

17 Q. Okay. But when was the next time you would have
18 had some sort of encounter with -- with the
19 Santos'?

20 A. Oh. When he started hitting his golf balls.
21 When he started hitting his golf balls over.

22 Q. Okay. And when -- how long would that have been
23 after the incident with the rocks and the kids?

24 A. A couple of years, maybe.

25 Q. Okay. So, how long would you say that Mr. Santos

- 1 has been hitting golf balls into the field?
- 2 A. Well, I had to warn -- warn him about it at least
- 3 a half a dozen times over the years.
- 4 Q. Okay. And again, I don't -- I'm not trying to
- 5 get you to too much specificity, but are you
- 6 talking about two years? Or ten years? Twelve
- 7 years?
- 8 A. Maybe within ten years, five years, ten years.
- 9 Something like that.
- 10 Q. Okay. And you say you've warned him about
- 11 hitting golf balls in the field?
- 12 A. Yeah. Toward our house.
- 13 Q. Okay.
- 14 A. From his house.
- 15 Q. Okay.
- 16 A. He'd go out in the back of his house and hit golf
- 17 balls over across the field, toward our house.
- 18 Q. Okay. And when you say towards your house, is it
- 19 fair to say he never actually hit a gold ball in
- 20 -- into your yard?
- 21 A. No. That would not be fair to say because --
- 22 Q. Okay.
- 23 A. -- I've picked up golf balls out of my yard
- 24 before.
- 25 Q. Okay.

1 A. I don't know.

2 Q. Okay.

3 A. I don't know that.

4 Q. Okay. Is there any sort of issue that has
5 developed over the years between the people that
6 live in your neighborhood and the people that
7 live in Mr. Santos' neighborhood?

8 A. Not that I'm aware of.

9 Q. Okay. Okay. If you can then, Mr. Longphre, if
10 you will -- what I would like to do is give you a
11 chance to tell me -- convey to me what transpired
12 on 12/28/17 and then I'm going to go back through
13 and ask you questions about it. So, if you will
14 tell me -- and I'll let you talk. I won't
15 interrupt you. And then I'll go back after you
16 finish and I will ask you questions about it.
17 So, if you could tell me what transpired on
18 12/28/17.

19 A. It was about -- around six, 6:30 at night and
20 remember this is December 28th, so things were
21 pretty dark outside; okay? And my wife noticed
22 these -- what she thought was fireworks or lights
23 in the back field; okay? And I said, okay, I'll
24 check it out for you, babe. And I went in and
25 got my flashlight off the dryer in the laundry

1 room and I went outside and shined my spotlight
2 down in the field and there were these two guys
3 down there hitting these glow in the dark golf
4 balls in the back of our house. So, I know the
5 back of our house. I could tell they were
6 standing on our property hitting these golf
7 balls; okay? Because that's where they were
8 laying. So, I shined the flashlight on them and
9 I said, Walter, now, please stop hitting those
10 golf balls. I've asked you at least a half a
11 dozen times before not to hit golf balls toward
12 our house; okay? You need to pick your golf
13 balls up and go home. He just ignored me. He
14 kept on hitting his golf balls. I said now
15 Walter, you don't need to be hitting golf balls.
16 You know I've told you that before. So, I walked
17 down to the field and I was going to pick the
18 golf balls up -- the golf ball up and throw it
19 back in his yard and that would end his hitting
20 golf balls in my yard. Thinking that he's going
21 to go home and that would end it all. So, I bent
22 down to pick up the golf ball. When I bent down
23 to pick up the golf ball, he pushed me away.
24 When he pushed me away, this guy was -- and I
25 didn't know who this guy was that was with him at

1 that time. He pushed me away. When he pushed me
2 away, this guy beside me, off to the side that I
3 didn't see -- I had my back half turned to him,
4 he tackled me to the ground and got me in a choke
5 hold, okay? And then Walter said to him -- he
6 said, I think you better let him up, Travis. I
7 think you're hurting him, Travis. You better let
8 him up. And Travis said, you want me to let him
9 up? And Walter said, yeah, I think you need -- I
10 think you're hurting him. You better let him up.
11 So, that's when he re -- released his hold on me
12 and I started to get up; okay? And then when I
13 started to get up; okay? In the process of
14 getting up or whatever -- it all happened so
15 fast; okay? We got entangled somehow. I don't
16 know. Our bodies came in contact with each other
17 and I went back down on the ground like a ton of
18 bricks and I couldn't get up. That's when my
19 quad tendon was torn on my leg and it's --
20 couldn't get up. There's no way you can get --
21 get up with the quad tendon tear. You can't
22 raise your leg. So, when I was knocked down,
23 broke my glasses, I still thank God I had my cell
24 phone. I called the house and my wife answered
25 the phone and I asked her to have my neighbor I

1 -- and you say -- and again, correct me if I'm
2 wrong, but it was you wife that saw what she
3 thought might be fireworks?

4 A. That's what she thought.

5 Q. Okay. And then you went outside and that's when
6 -- where did you see the glow in the dark golf
7 balls? Where were they when you went out back?

8 A. In my back -- in the field right behind our
9 house.

10 Q. Okay. They -- you -- they were in the field;
11 correct? Is that what you're saying?

12 A. Yeah. Right about in this area. Right here.

13 Q. Okay. They weren't actually in your yard?

14 A. Not in my yard.

15 Q. Right.

16 A. But they were in the -- our property on the
17 field.

18 Q. Okay. Okay. And when you went out there, was
19 there one ball or more than one ball?

20 A. There were a couple of balls --

21 Q. Okay.

22 A. -- that I know of. I mean, I didn't count them
23 all. I don't know whether they had hit all of
24 them back there or just hit a few. I don't know
25 how many they had.

- 1 A. Addressing the ball -- getting ready to hit the
- 2 ball back over to his house.
- 3 Q. He was addressing the ball as they say in golf;
- 4 right?
- 5 A. Yes.
- 6 Q. And that's the ball that you went to pick up?
- 7 A. Correct.
- 8 Q. Okay. Did he -- had he swung his club back --
- 9 A. No.
- 10 Q. -- before? Okay. But he was -- he was
- 11 addressing the ball and you went and picked up
- 12 the ball?
- 13 A. Yeah. It was on my property.
- 14 Q. Okay. And you -- did you ever pick it up?
- 15 A. Tried to and he pushed me away.
- 16 Q. Okay. But you never actually picked up the ball?
- 17 A. No.
- 18 Q. Okay. And then he pushed you away?
- 19 A. Correct.
- 20 Q. Did you fall?
- 21 A. No. I -- he pushed me back and I stumbled back
- 22 and at the instant he pushed me back, that's when
- 23 I got tackled from the side. From behind really.
- 24 Q. By Travis Simpson?
- 25 A. Exactly.

- 1 Q. Okay. And then you and Travis went to the
2 ground?
- 3 A. Yes.
- 4 Q. Okay. And that's when some dialogue took place
5 between Walter and Travis about letting you up?
- 6 A. Correct.
- 7 Q. Okay. And did Travis let you up?
- 8 A. Yes.
- 9 Q. Okay. And what happened when he let you up?
- 10 A. As we were getting up -- that's all I know -- is
11 when we were getting up, we somehow got entangled
12 and I went back down to the ground and that's
13 when my quad tendons were severed.
- 14 Q. Okay. When you were getting up and you got
15 entangled, was there anything that Travis did
16 that caused the entanglement, if you know?
- 17 A. I don't -- I don't think so. I don't think it
18 was intentional. I think it was just simply an
19 accident. Wrong position or whatever you want to
20 call it.
- 21 Q. Okay. But whenever you got up and then you fell
22 and hurt your quad, Travis didn't push you down
23 or anything?
- 24 A. I don't think so.
- 25 Q. Okay.

- 1 A. Right.
- 2 Q. And then Travis Simpson tackled you and you both
3 went on the ground?
- 4 A. Correct.
- 5 Q. At this point, you were not injured. Is that --
6 that fair?
- 7 A. That's fair.
- 8 Q. Okay. And then you and Mr. Simpson -- he
9 released you and then you both --
- 10 A. Started to stand up; okay?
- 11 Q. And he started to stand up?
- 12 A. Right.
- 13 Q. And you accidentally fell. Is that your
14 testimony?
- 15 A. Somehow we got entangled and I went back down
16 again and when I went back down again, that's
17 when I couldn't get back up because my tendons
18 were torn, but I was fine because I stood up at
19 first before we got entangled I went back down.
20 When I went back down, my tendons were torn.
- 21 Q. Okay.
- 22 A. And I couldn't get back up.
- 23 Q. Did Travis Simpson do anything to cause you to
24 fall once you got back up?
- 25 A. I don't think he did anything intentionally to

1 cause me to fall.

2 Q. Did he do anything unintentionally to cause you
3 to fall?

4 A. Somehow because I wouldn't have fallen unless he
5 had got entangled with me somehow.

6 Q. Okay. But what you -- you were in entangled on
7 the ground; correct?

8 A. Well, yeah. He was on top of me.

9 Q. And then y'all got up?

10 A. Correct.

11 Q. Okay. And then you fell?

12 A. Correct.

13 Q. Okay. Did he do anything to cause you to fall?
14 What -- after you were no longer entangled and
15 after you stood up, did he do anything to cause
16 you to fall?

17 A. I don't know whether we were clear of each other
18 or whether we were still wrapped up with each
19 other when I stood up. All I know is I went back
20 down and my leg tendons got torn when I went back
21 down the second time.

22 Q. Okay. How did -- just if -- if you can, how did
23 you wind up tearing your tendons or your
24 ligaments? What -- what exactly happened? As
25 best you can describe.

- 1 A. Freak accident. That's all I can say. I don't
2 know.
- 3 Q. Did you -- did you go turn sideways? Did you
4 fall straight down on your knees or what?
- 5 A. I don't know. It happened so fast. I'm trying
6 to be honest with you. I don't know how it
7 happened. I just know when I was laying on my
8 back and I tried to get back up, my tendons were
9 torn. I couldn't raise that leg to get back up -
10 -
- 11 Q. Okay.
- 12 A. -- at all.
- 13 Q. Okay. But again, is -- is it fair that when Mr.
14 Simpson came in contact with you and the two of
15 you went on the ground, you were not, at that
16 point, injured?
- 17 A. That's correct.
- 18 Q. And then Mr. Santos encouraged, that's my word,
19 Mr. Simpson to let you go and he did. Is that
20 correct?
- 21 A. Correct.
- 22 Q. And then the two of you simply just got up off
23 the ground and you fell and that's when you were
24 hurt. Is that correct?
- 25 A. That's correct.

- 1 Q. Okay. How did you break your glasses?
- 2 A. Well, when somebody tackles you from behind and
- 3 grabs you, you know, and smashes your head into
- 4 the ground, your face into the ground and you're
- 5 wearing glasses, they tend to break.
- 6 Q. Okay.
- 7 A. Okay?
- 8 Q. Fair enough.
- 9 A. Right. I'm surprised my cell phone didn't break.
- 10 Q. When was the last time -- strike that. When was
- 11 the next time you had any sort of communication
- 12 with Mr. Santos?
- 13 A. I don't think anybody called me at the hospital
- 14 to see how I was doing.
- 15 Q. Did you ever call him?
- 16 A. No. Don't think so.
- 17 Q. His wife ever call you? Or your wife?
- 18 A. Don't think so.
- 19 Q. Okay. You ever have any communication with Mr.
- 20 Simpson?
- 21 A. No.
- 22 Q. Okay. All right. I want to ask you questions
- 23 now about your medicals and your condition
- 24 following this incident. And my goal for the
- 25 next 15 or 20 minutes is to learn as much as I

Exhibit B

State of South Carolina	)	
	)	
County of Lexington	)	
Richard Longphre,	)	2018-CP-32-03314
	)	
Plaintiff,	)	
	)	
v.	)	Deposition
	)	
Travis Simpson,	)	of
	)	
Defendant.	)	Travis Simpson
	)	
	)	

Date: November 21, 2019

Time: 10:12 a.m.

Location: Davis Frawley, LLC, 140 E. Main Street,
Lexington, South Carolina

Reported by
Kathleen R. Tackett, CVR-M

ELECTRONICALLY FILED - 2020 Apr 23 1:34 PM - LEXINGTON - COMMON PLEAS - CASE#2019CP3201671

1 Q This -- this matter, December 28, 2017?

2 A Right.

3 Q Okay. All right. So tell me: You -- you went

4 over. You were going to have some beers with Mr.

5 Santos; is that right?

6 A Yes.

7 Q And then did you?

8 A Yes.

9 Q How many beers did you have?

10 A I brought a six pack for us to share while we hit

11 golf balls. They were -- I was only there for 30

12 minutes when this -- the event happened, so two

13 beers? Two -- one to two, three.

14 Q Domestic beer? Craft beer?

15 A Bud Light.

16 Q Oh, man. Understand that.

17 So what kind of golf balls were y'all hitting

18 that day?

19 A Glow balls.

20 Q All right. Tell me about glow balls. I'm

21 unfamiliar.

22 A They -- upon impact, they start blinking, and

23 they'll blink for ten minutes. So you hit them;

24 you have ten minutes to go retrieve it before it

25 stops blinking.

1 A I heard the neighbor say, "You know you're not
2 supposed to be hitting golf balls on my property."
3 And he pushed -- as Walter was bending over to grab
4 one of his golf balls, he pushed Walter. And
5 that's when I reacted, to try to separate them, and
6 ended up putting him -- the easiest way to get him
7 away was to get him in a headlock. And I -- as I
8 was pulling him away, we both went to the ground.
9 And, at that point, I was going to let him up and
10 try to get away with him -- get away from him.
11 And, as he was getting up and I was getting up at
12 the same time, I used him to help get -- get myself
13 up and move away from him, and he fell back down.
14 Q Oh, okay. So, while you were getting up, there was
15 -- explain that to me again.
16 A I had him in the headlock.
17 Q Uh-huh.
18 A And we ended up going to the ground. And I
19 mentioned to him, "Do you -- do you want to stop?"
20 And he -- "And I'll let you up."
21 And he said, "Yes. Stop." And I -- I let him
22 up. And, as we were both getting up, I used him to
23 help myself get up, and I pushed him back. And he
24 fell back to the ground.
25 Q Did you notice or observe whether or not he was in

1 A Yes.

2 Q Okay. Now, when you put Mr. Longphre in the
3 headlock, did you have any intention of hurting him
4 at that point?

5 A No.

6 Q Okay. And when you -- and -- put Mr. Longphre in a
7 headlock, did y'all go to the ground together?

8 A Yes.

9 Q Okay. And so that's why he was getting up, and you
10 were getting up afterwards; is that right?

11 A Yes.

12 Q I'm just trying to make sure I understand all this,
13 and I'm trying to break it down into time periods
14 that I can understand it to make sure it's clear.

15 So while you and Mr. Longphre -- while you had
16 Mr. Longphre in a headlock, y'all went to the
17 ground, right?

18 A Yes.

19 Q Okay. And then was Mr. Longphre hurt when y'all
20 went to the ground?

21 A Not that I could tell.

22 Q Okay. And then, after that, you -- you were -- you
23 released Mr. Longphre; is that right?

24 A Yes.

25 Q And then you were getting up yourself?

1 A Yes.

2 Q And then what happened next?

3 A As we were both getting up, we were getting up
4 beside each other, so, to separate myself from him
5 and to get myself up, I used him to get up and
6 pushed him away and then started walking away from
7 him.

8 Q And --

9 A And I think he started walking to his house.

10 Q And when you pushed him, did he fall back to the
11 ground a second time?

12 A Yes.

13 Q Okay. Did you intend to hurt Mr. Longphre when you
14 pushed him to get yourself up?

15 A No.

16 Q Do you have any idea, whatsoever, Mr. Longphre's
17 age? I'm talking about on December 28, 2017, while
18 y'all are out there -- you, Mr. Santos, and Mr.
19 Longphre. Do you have any idea how -- how old he
20 is at that point in time?

21 A No.

22 Q Would you -- how would you describe Mr. Longphre's
23 physical appearance: size? height?

24 A Taller than me, stout. You know, a bigger guy that
25 -- that's all, you know, stout and taller than me.

1 pop a sand wedge 100-plus yards?

2 A Yes.

3 Q Okay. All right. Okay. And so when I asked,
4 "Admit that there was an initial event where you
5 tackled Mr. Longphre to the ground," you deny that,
6 right?

7 A Yes.

8 Q And the reason is because you, as you explained
9 earlier, went to separate Mr. Santos and Mr.
10 Longphre, and you put him in a headlock?

11 A Yes.

12 Q Okay. But then y'all did eventually go to the
13 ground while you had Mr. Longphre in a headlock; is
14 that right?

15 A Yes.

16 Q I'm just trying to make sure I understand it.

17 Okay. And when I asked, "Admit that Mr.
18 Longphre was unharmed in the initial event where
19 you tackled him to the ground," you denied that you
20 tackled him to the ground because it was a
21 headlock, and then you took him to the ground; is
22 that right?

23 A Yes.

24 Q But you admit that Mr. Longphre was not harmed at
25 all in that initial altercation?

1 Q Okay. And so when I asked next, "Admit that as a
2 result of Defendant Simpson's lack of due care
3 and/or disregard of surroundings, wherein you made
4 subsequent physical contact with Mr. Longphre, Mr.
5 Longphre was injured," you denied that request to
6 admit?

7 A I didn't know whether he was or was not.

8 Q And that's because you didn't know whether or not
9 he was injured?

10 A (Nods head up and down.)

11 Q Okay. Is that fair?

12 THE COURT REPORTER: Is that yes?

13 A Yes.

14 Q Okay. And that was the reason for the denial of
15 that request; is that right?

16 A Yes.

17 Q Because, at that time, you didn't know whether or
18 not he was severely injured?

19 A Yes.

20 Q Okay. But you don't deny that while you were
21 getting up you pushed him back to the ground; is
22 that right?

23 A Repeat that.

24 Q But you don't deny the fact that while you were
25 getting up the second time -- I guess he was

1 getting up. Let me make sure I'm asking this
2 right.

3 You don't deny that as you were getting up you
4 pushed him to the ground?

5 A I do not deny that.

6 Q Right. You admit that?

7 A Yes.

8 Q Okay. You just denied whether or not he was
9 severely injured because you didn't know; is that
10 right?

11 A Yes.

12 Q Okay. Do you know, sitting here today, that Mr.
13 Longphre was severally injured?

14 A I have heard that he had to have some type of
15 surgery.

16 Q Okay. Do you know that he has approximately
17 \$70,000 in medical bills?

18 A No.

19 Q Okay. I asked you, in Request to Admit Number 9,
20 "Admit that Defendant Simpson's subsequent physical
21 contact," what I'm now going to call "the push,"
22 okay? "Admit that the 'push' to Mr. Longphre was
23 negligent," you denied that; is that correct?

24 A What do you mean by "negligent"?

25 Q Well, what does it mean to you?

1 A It wasn't intentional. It was to get -- to get up
2 and to get him away from me where I could get out
3 of there.

4 Q Okay. Could there have been a different way for
5 you to have gotten up where you didn't have to push
6 Mr. Longphre?

7 A Yes.

8 Q Okay. But, again, you -- you'd -- you've already
9 admitted that that push was not an attempt to or
10 intended to harm Mr. Longphre?

11 A Correct.

12 Q Now, I asked you, in Request to Admit Number 12,
13 "Admit that your" -- what I called your "negligent
14 subsequent physical contact" -- I'm just going to
15 call it "the shove." "Admit that the shove to Mr.
16 Longphre was the proximate cause of his severe
17 injuries," that's denied according to this. Is
18 that denied because you didn't know the extent of
19 the injuries? Or why -- why'd you deny that?

20 A I -- I didn't know if he was hurt or not.

21 Q Okay.

22 A I -- the only reason I denied that is that I didn't
23 know that he was injured from me pushing him back
24 to the ground.

25 Q Okay. If -- if you were to find out that Mr.

Exhibit C



Lexington County Sheriff's Department

VOLUNTARY STATEMENT
(Not Under Arrest)CASE No.: 17-025837

I, RICHARD K. LONGPHE, Social Security Number _____, am not under arrest, nor am I being detained for any criminal offenses concerning the events I am about to make known to Dip G. Love
Title First Initial and Last Name

I volunteer the following information of my own free will, for whatever purposes it may serve. I am 72 years of age, and my birthday _____

and can be _____

Alternate _____

Alternate Contact Name _____

Home Phone Number _____

Work Phone Number _____

Cell Phone Number _____

I NOTICED SOME ROUND SMALL COLORADO LIGHTS IN THE FIELD OUT BEHIND OUR HOUSE AFTER DARK. I GOT MY FLASHLIGHT FROM THE LAUNDRY ROOM AND WENT OUT TO THE EDGE OF THE FIELD BEHIND OUR HOUSE. I SHINED MY LIGHT ON TWO MEN IN THE FIELD WHO WERE STANDING NEXT TO THE COLORADO LIGHTS. ONE OF THE MEN WHO ^{IS} MY NEIGHBOR BEHIND OUR HOUSE HAD A GOLF CLUB IN HIS HAND AND WAS HITTING SING GLOW IN THE BACK GOLF BALLS AS THE OTHER MAN, TRAVIS, WAS WATCHING. I TOLD THEM TO STOP HITTING THE GOLF BALLS BECAUSE I HAD WARNED MY NEIGHBOR NUMEROUS TIMES IN THE PAST THAT HE WAS NOT TO BE ON OUR PROPERTY HITTING GOLF BALLS BECAUSE HE MIGHT BREAK ONE OF THE WINDOWS IN OUR NEW SUN ROOM. HE IGNORED ME AND KEPT HITTING THE BALLS. I WALKED OVER TO THEM AND BENT OVER TO PICK UP THE LAST BALL AND THROW IT INTO HIS YARD. HE PUSHED ME AWAY AND AS MY BACK WAS TURNED, TRAVIS ATTACKED ME AS MY BACK WAS TURNED ^{KNOWING} ~~FROM~~ ME TO THE GROUND, JUMPED ON TOP OF ME AND GOT ME IN A CHOKER HOLD, BREAKING MY GLASSES. HE WAS YELLING "I'M GOING TO KILL YOU YOU F--KING A--HOLE". MY NEIGHBOR TOLD HIM TO GET OFF OF ME BECAUSE HE WAS HURTING ME. TRAVIS THEN ASKED MY NEIGHBOR IF HE WANTED HIM TO GET OFF OF ME AND MY NEIGHBOR SAID YES. TRAVIS GOT OFF AND I STOOD UP THINKING THE CONFRONTATION WAS OVER AND AS I TURNED HE HIT ME AGAIN THIS TIME IN MY LEFT KNEE KNOCKING ME BACK TO THE GROUND AND DAMAGING MY KNEE SO BADLY I COULD NOT I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained here in are true and correct.

Dated at PARK RIDGE HOSPITAL, this 28 day of DEC 20 17

Richard K. Longphe
Signature of person giving voluntary statement.

LCSD 005, 03/17

VOLUNTARY STATEMENT

Page 2 of 2 pages.

GET UP OFF GROUND. IT HURT SO BAD I COULDN'T GET UP.
MY NEIGHBOR RAN INTO HIS HOUSE AND TRAVIS JUMPED INTO
HIS TRUCK THAT WAS PARKED IN MY NEIGHBORS DRIVEWAY AND
SPED OFF.

END OF STATEMENT.

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.

Richard K. Longhorn
Signature of person giving voluntary statement

Sworn to before me this ____ day of ____ 20 ____.

Notary Public of South Carolina

LCSD 006, Revised 7/07

Exhibit D

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
RICHARD LONGPHRE,	)	C.A. Number:
	)	
Plaintiff,	)	
	)	
v.	)	SUMMONS
	)	(Jury Trial Demanded)
TRAVIS SIMPSON and WALTER	)	
SANTOS,	)	
	)	
Defendants.	)	
_____	)	

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber, at his office at his mailing address: Post Office Box 1465, Columbia, SC 29202 (Physical address is 914 Richland Street, Suite B-102, Columbia, South Carolina, 29201) within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

[SIGNATURE ON FOLLOWING PAGE.]

Truslow & Truslow Law Firm

s/Neal D. Truslow

NEAL D. TRUSLOW

(SC Bar # 77806)

DOUGLAS N. TRUSLOW

(SC Bar #5642)

Attorneys for Plaintiff

P.O. Box 1465

Columbia, SC 29202

(803) 256-6276

Fax (803) 256-7659

douglastruslow@truslowlaw.com

nealtruslow@truslowlaw.com

_____, 2018

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
RICHARD LONGPHRE,	)	C.A. Number:
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	(Jury Trial Demanded)
TRAVIS SIMPSON and WALTER	)	
SANTOS,	)	
	)	
Defendants.	)	

Plaintiff alleges:

1. Plaintiff is a citizen and resident of Lexington County, South Carolina.
2. On information and belief, Defendants Santos ("Santos") and Simpson ("Simpson") are both citizens and residents of Lexington County, South Carolina.
3. Simpson was at all pertinent times was employed by Farm Bureau and Santos was a client of Simpson.
4. This Court has jurisdiction over the parties hereto and subject matter herein, and venue is proper in Lexington County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Assault and Battery as to Santos and Simpson)

5. Each and every allegation herein is repeated as if verbatim.
6. On the evening of December 28, 2017, Plaintiff and his wife observed Defendants hitting golf balls both into their yard and towards their home from the direction of Santos' residence (not on Santos' property).
7. Plaintiff had requested Santos not to do so on a number of previous occasions.
8. Defendant Santos ignored Plaintiff's requests and directives even after "No Trespassing" signs were erected (the signs were torn down, presumably by Defendant(s) and/or others).

9. Plaintiff previously found golf balls hit by Santos in his yard on numerous occasions and near a new sun porch – on the evening in question, he requested that Santos and Simpson cease hitting gold balls onto his property.
10. Defendants Santos and Simpson were acting together and ignored Plaintiff's requests and kept hitting golf balls on Plaintiff's property (and not on Defendant Santos' property).
11. As Plaintiff bent over to pick one of the golf balls, Santos violently and unexpectedly shoved Plaintiff.
12. In conjunction, Simpson much more violently and unexpectedly tackled or "speared" Plaintiff, brutally throwing him to the ground. During the attack, Simpson called Plaintiff obscene names and expressed an intent to kill Plaintiff with Defendant Santos' approval.
13. Upon throwing Plaintiff to the ground, Simpson began to strangle Plaintiff, again using obscene words and again expressing that he (Simpson) was going to kill Plaintiff.
14. As Plaintiff was laid helpless on the ground, Simpson inquired of Santos what he should do and Santos told Simpson that it might not be a good idea to actually kill Plaintiff; that they had already harmed him enough given Plaintiff's advanced age as compared with Defendants.
15. Simpson asked Santos if he should then release Plaintiff – Santos directed Simpson to do so.
16. Thereafter, as Plaintiff was attempting to get up and stand up from his helpless position, Simpson (with Santos' approval) brutally hit Plaintiff in the side of the left leg with such force as to severely damage Plaintiff's knee and leg, causing Plaintiff much pain and immobilizing him – causing him permanent injury to incur extensive medical bills.
17. Defendants together continued to express disdain for Plaintiff and used words indicating a joint enterprise to continue to harm Plaintiff.
18. Defendants then ran away in the direction of Santos' residence, leaving Plaintiff in a helpless condition on the cold ground.

19. Defendant Simpson reportedly refused to cooperate with law enforcement in the investigation of this attack.
20. The attack by Defendants Santos and Simpson was unprovoked, unjustifiable, and extreme.
21. At the time, Plaintiff was seventy-two (72) years of age, while Defendants Santos and Simpson appeared to be in their late thirties or early forties.
22. Further, the attack on Plaintiff was offensive, particularly outrageous, and harmful. This brutal attack was without consent and resulted in permanent damages to Plaintiff, including medical expenses, and permanent disabling injuries.
23. Defendants Santos and Simpson acted and intended to wrongfully touch and assault Plaintiff and to do him harm.
24. As a result of Defendants Santos' and Simpson's assault and battery on Plaintiff, he was put in fear of imminent bodily harm and was, in fact, severely injured.
25. Plaintiff has suffered permanent pain and suffering as a result of Defendants Santos' and Simpson's acts.
 - a. He had to be transported by ambulance to a hospital and had to have extensive knee surgery.
 - b. As a result of the Defendants' attack and the surgery that it necessitated, Plaintiff developed life threatening medical conditions. Plaintiff is told these include blood clots; two pulmonary embolisms in his left lung; and a deep vein thrombosis in his left leg resulting in permanent damage to the veins of his left leg and life-long edema in his left leg.
 - c. Plaintiff has incurred extensive medical expenses as a proximate result of the attack and will require future medical treatment and expenses.
 - d. Finally, Plaintiff has been left with a permanent and severe injury to his leg.
26. Defendants Santos' and Simpson's actions have caused Plaintiff to lose income, incur expenses, pain and suffering, and permanent injury as a direct and proximate result of Defendants Santos' and Simpson's individual and joint bad

actions for which Plaintiff seeks actual and punitive damages in excess of \$100,000.00 as a jury may find proper.

FOR A SECOND CAUSE OF ACTION
(Civil Conspiracy as to Santos and Simpson)

27. Each and every allegation herein is repeated as if verbatim.
28. Defendants Santos and Simpson combined and conspired with one another for the purpose and/or object of harming and damaging Plaintiff.
29. Defendants Santos and Simpson did in fact cause physical and financial harm to Plaintiff and Defendants engaged in overt acts to do so.
30. Defendants Santos' and Simpson's actions have caused Plaintiff to lose income, incur expenses, pain and suffering, and permanent injury as a direct and proximate result of Defendants Santos' and Simpson's individual and joint bad actions for which Plaintiff seeks actual and punitive damages in excess of \$100,000.00 as a jury may find proper.

FOR A THIRD CAUSE OF ACTION
(Outrage and Intentional Infliction of Emotional Distress as to Santos and Simpson)

31. Each and every allegation herein is repeated as if verbatim.
32. Defendants Santos' and Simpson's actions jointly and severely were outrageous and extreme.
33. Defendants Santos' and Simpson's actions exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.
34. Defendants Santos' and Simpson's acts were intentional and/or reckless so as to cause severe emotional and physical harm to Plaintiff.
35. The actions of Defendants Santos and Simpson caused Plaintiff emotional and physical distress and harm, and the emotional distress suffered by Plaintiff is/was so severe that no reasonable person could be expected to endure it.
36. Defendants Santos' and Simpson's actions have caused Plaintiff to lose income, incur expenses, pain and suffering, and permanent injury as a direct and

proximate result of Defendants Santos' and Simpson's individual and joint bad actions for which Plaintiff seeks actual and punitive damages in excess of \$100,000.00 as a jury may find proper.

FOR A FOURTH CAUSE OF ACTION
(Negligence and Gross Negligence as to Santos and Simpson)

37. Each and every allegation herein is repeated as if verbatim.
38. As an additional and alternative cause of action, Defendants Santos and Simpson were negligent, careless and/or reckless, willful or wanton and/or grossly negligent in attacking and harming Plaintiff, and presumably Defendants Santos and Simpson did not attempt or intend to harm Plaintiff to the severe degree they did.
39. Nonetheless, Defendants Santos' and Simpson's conduct, whether negligent or grossly negligent, was the proximate cause of Plaintiff's damages.
40. Because of, resulting therefrom, and as a proximate and/or direct result of Defendants Santos' and Simpson's actions as outlined above, Plaintiff has and will suffer pecuniary loss (past and future) for which Plaintiff seeks actual and punitive damages.

Wherefore, having set forth his complaint herein, Plaintiff prays for the following relief, *to wit*: For actual and punitive damages against Defendants jointly and severally as may be found to be appropriate, for the costs of this action and for such other and further relief as the Court may find proper.

[SIGNATURE ON FOLLOWING PAGE]

Truslow & Truslow Law Firm

/s/Neal D. Truslow
NEAL D. TRUSLOW
(SC Bar # 77806)
DOUGLAS N. TRUSLOW

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nealtruslow@truslowlaw.com

_____, 2018

Exhibit E

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
RICHARD LONGPHRE,	)	C.A. Number: 2018-CP-32-03314
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED COMPLAINT
	)	(Jury Trial Demanded)
TRAVIS SIMPSON	)	
	)	
	)	
Defendants.	)	

Plaintiff alleges:

1. Plaintiff is a citizen and resident of Lexington County, South Carolina.
2. On information and belief, Defendant Simpson ("Simpson") is a citizen and resident of Lexington County, South Carolina.
3. This Court has jurisdiction over the parties hereto and subject matter herein, and venue is proper in Lexington County, South Carolina.

CAUSE OF ACTION
(Negligence)

4. Each and every allegation herein is repeated as if verbatim.
5. On December 28, 2017, Plaintiff and his wife observed Simpson and a neighbor, Walter Santos ("Santos") hitting golf balls both into their yard and towards their home from the direction of Santos' residence (not on Santos' property).
6. Plaintiff had requested Santos not to do so on a number of previous occasions.
7. Santos ignored Plaintiff's requests and directives even after "No Trespassing" signs were erected (the signs were torn down).
8. Plaintiff previously found golf balls hit by Santos in his yard on numerous occasions and near a new sun porch – on the evening in question, he requested that Santos and Simpson cease hitting golf balls onto his property.

9. Simpson and Santos were acting together and ignored Plaintiff's requests and kept hitting golf balls on Plaintiff's property (and not on Santos' property).
10. As Plaintiff bent over to pick one of the golf balls, Santos and Plaintiff came into contact with one another and mistakenly perceiving that Santos was shoved, Simpson tackled Plaintiff to the ground. A scuffle ensued but, at that point, Plaintiff was unharmed and/or was uninjured.
11. Thereafter, as Plaintiff was attempting to stand up, Simpson negligently made contact with Plaintiff, injuring him.
12. On information and belief, Simpson's accidental contact with Plaintiff was negligent, and presumably Simpson did not attempt or intend to harm Plaintiff.
13. Nonetheless, Defendant Simpson's negligent conduct was the proximate cause of Plaintiff's damages.
14. The result of Simpson's accidental contact with Plaintiff's leg severely damaged Plaintiff's left knee and leg. Plaintiff suffered much pain and was immobilized – causing him permanent injury to incur extensive medical bills.
15. At the time, Plaintiff was seventy-two (72) years of age.
16. Plaintiff has suffered permanent pain and suffering as a result of Simpson's negligence.
 - a. He had to be transported by ambulance to a hospital and had to have extensive knee surgery.
 - b. As a result of the injury and the surgery that it necessitated, Plaintiff developed life threatening medical conditions. Plaintiff is told these include blood clots; two pulmonary embolisms in his left lung; and a deep vein thrombosis in his left leg resulting in permanent damage to the veins of his left leg and life-long edema in his left leg.
 - c. Plaintiff has incurred extensive medical expenses as a proximate result of the injury and will require future medical treatment and expenses.
 - d. Finally, Plaintiff has been left with a permanent and severe injury to his leg.
17. Defendant Simpson's negligent actions have caused Plaintiff to lose income, incur expenses, pain and suffering, and permanent injury as a direct and proximate result

of Defendant Simpson's negligent action for which Plaintiff seeks actual damages in an amount that a jury may find proper.

Wherefore, having set forth his Amended Complaint herein, Plaintiff prays for the following relief, *to wit*: For actual damages against Simpson, for the costs of this action, and for such other and further relief as the Court may find proper.

Truslow & Truslow Law Firm

/s/Neal D. Truslow
NEAL D. TRUSLOW
(SC Bar # 77806)
DOUGLAS N. TRUSLOW
(SC Bar #5642)
Attorneys for Plaintiff
P.O. Box 1465
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June 11, 2019

Exhibit F

2018 WL 4078579

Only the Westlaw citation is currently available.

United States District Court, D.
South Carolina, Aiken Division.

AUTO-OWNERS INSURANCE COMPANY, Plaintiff,

v.

David and Kathy TAYLOR, Defendants.

Civil Action No.: 1:17-cv-02632-JMC

Signed 08/24/2018

Attorneys and Law Firms[Morgan S. Templeton](#), Wall Templeton and Haldrup,
Charleston, SC, for Plaintiff.[Kent Clinton Kirkland, Jr.](#), Kirkland and Kirkland, Barnwell,
SC, for Defendants.**ORDER AND OPINION**[J. MICHELLE CHILDS](#), United States District Judge

*1 This matter is before the court pursuant to Plaintiff Auto-Owner Insurance Company's Motion for Summary Judgment (ECF No. 15). For the reasons below, the court **GRANTS** Plaintiff's Motion for Summary Judgment (ECF No. 15), **AWARDS** declaratory judgment to Plaintiff, and **DISMISSES** Defendants' counterclaims.

I. JURISDICTION

Pursuant to [28 U.S.C. § 1332\(a\)](#), "district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000 ... and is between [] citizens of different States...." Moreover, "[a] case falls within the federal district court's 'original' diversity 'jurisdiction' only if diversity of citizenship among the parties is complete, *i.e.*, only if there is no plaintiff and no defendant who are citizens of the same State." [Wis. Dep't of Corrs. v. Schacht](#), 524 U.S. 381, 388 (1998) (citing [Carden v. Arkoma Assocs.](#), 494 U.S. 185, 187 (1990); [Strawbridge v. Curtiss](#), 3 Cranch 267, 2 L.Ed. 435 (1806)). Furthermore,

"[a] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business." ¹ [28 U.S.C. § 1332\(c\)\(1\)](#).

Plaintiff admits it is a corporation incorporated in Michigan with its primary place of business in Michigan. (ECF No. 1 at 1 ¶ 1.) Defendants are citizens and residents of South Carolina. (*Id.* at ¶ 2; ECF No. 10 at 1 ¶ 2.) Plaintiff seeks a declaratory judgment regarding its liability to Defendants under a policy providing \$116,500.00 in coverage. (ECF No. 1 at 5.) The parties are citizens of different states, and the amount in controversy is greater than \$75,000.00, exclusive of interest and costs. Therefore, the court has jurisdiction pursuant to [28 U.S.C. § 1332\(a\)](#).

Plaintiff seeks a declaratory judgment under the Federal Declaratory Judgment Act, [28 U.S.C. § 2201](#). (ECF No. 1 at 5.) Pursuant to [28 U.S.C. § 2201\(a\)](#), "[i]n a case of actual controversy within its jurisdiction, ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights ... of any interested party seeking such declaration, whether or not further relief is or could be sought." The parties contest whether an insurance policy provides coverage for damage to a home sustained in a 2016 fire (*See* ECF No. 1; ECF No. 10), and such a contest is a justiciable controversy, *see e.g.*, [Miles v. Nationwide Mut. Fire Ins. Co.](#), No. 8:13-2445-TMC, 2014 WL 12609859, at *1-3 (D.S.C. June 23, 2014) (adjudicating whether an insurance company was liable to an insured under the terms of a policy). Therefore, the court has the authority to adjudicate this matter.

II. FACTUAL AND PROCEDURAL HISTORY

*2 Plaintiff issued Defendants an insurance policy, Policy Number 43-372-281-00 ("the Policy"), covering their house from April 5, 2016 to April 5, 2017. (ECF No. 37-1 at 3.) ² The Policy provided \$116,500.00 in coverage for damage to Defendants' home (*Id.*) but excluded coverage for "loss to covered property caused directly or indirectly by any of the following, whether or not any other cause or event contributes concurrently or in any sequence to the loss ... an action by or at the direction of any insured committed with the intent to cause a loss" ("the Intentional Act Exclusion"). (*Id.* at 26.) The Policy's definition of "[i]nsured" includes "your relatives" (*Id.* at 17), and according to the Policy, "[r]elative

means a person who resides with you and who is related to you by blood....” (*Id.* at 19).

On August 23, 2016, Jeffrey Taylor (“Jeffrey”) set Defendants’ house on fire. (ECF No. 1 at ¶ 6.) Jeffrey was indicted for second degree arson in state court (ECF No. 15-3) and pleaded guilty but mentally ill to that offense (ECF No. 15-4). Jeffrey is Defendants’ adult son and lived with Defendants at the time of the fire. (ECF No. 10 at ¶ 6.)³ Defendants filed an insurance claim with Plaintiff. (ECF No. 10 at ¶ 30.) Plaintiff asserted that Jeffrey was an insured under the Policy and his actions qualified as an intentional act, and thus, the Intentional Act Exclusion applied. (ECF No. 1 at 3 ¶ 10.) Because of the Intentional Act Exclusion, Plaintiff claimed it was not liable to Defendants for damages sustained during the fire (*Id.*) and refused to pay the insurance claim (*Id.* at ¶ 31).

Plaintiff filed this action seeking a declaratory judgment that it is not liable to Defendants. (ECF No. 1.) Defendants answered by denying Plaintiff’s assertion and counterclaiming for damages stemming from various bad faith actions by Plaintiff and Plaintiff’s alleged breach of contract accompanied by a fraudulent act. (ECF No. 10.) After replying to the counterclaims (ECF No. 13), Plaintiff moved for summary judgment (ECF No. 15). Defendants responded in opposition (ECF No. 23), and Plaintiff replied (ECF No. 24). On July 9, 2018, the court heard arguments regarding Plaintiff’s Motion for Summary Judgment. (ECF No. 36.)

III. LEGAL STANDARD

Summary judgment is appropriate when the materials in the record show that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Fed. R. Civ. P. 56(a)*. “[I]n ruling on a motion for summary judgment, ‘the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.’” *Tolan v. Cotton*, 134 S. Ct. 1861, 1863 (2014) (per curiam) (brackets omitted) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). A dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party,” and a fact is material if it “might affect the outcome of the suit under the governing law.” *Anderson*, 477 U.S. at 248.

The party seeking summary judgment bears the initial burden of demonstrating that there is no genuine issue of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this demonstration, the nonmoving party must demonstrate that specific, material facts exist which give rise to a genuine issue. See *id.* at 324. In other words, the nonmovant may not rest on the allegations averred in its pleadings. See *id.*

IV. ANALYSIS

*3 Plaintiff contends that there is not a genuine dispute as to whether Jeffrey acted with an intent to cause loss, and thus, it is not liable to Defendants as a matter of law. (ECF No. 15.) Plaintiff argues that Jeffrey’s plea of guilty but mentally ill establishes his intent to cause loss (*Id.* at 8-12). However, Plaintiff also maintains that the record establishes Jeffrey’s intent to cause loss regardless of his plea (ECF No. 24 at 7-9). In response, Defendants assert the Intentional Act Exclusion’s language creates a genuine dispute as to a material fact because it is ambiguous; Defendants should not be barred from recovering because they are innocent co-insureds; Jeffrey’s plea does not conclusively establish his intent to cause loss in this case; and Jeffrey’s actions do not demonstrate an intent to cause loss. (ECF No. 23.)

1. The Ambiguity of the Policy’s Intentional Action Exclusion

Defendants argue that “[t]he phrase ‘intent to cause loss’ is subject to multiple interpretations and therefore ambiguous,” and that ambiguity creates a genuine issue as to a material fact. (ECF No. 23 at 1-2.) A contract is ambiguous when it is reasonably susceptible to more than one interpretation.⁴

Hawkins v. Greenwood Dev. Corp., 493 S.E.2d 875, 878 (S.C. Ct. App. 1997). In *S.C. Farm Bureau Mut. Ins. Co. v. Kelly*, the South Carolina Supreme Court held that the following language was unambiguous: “[W]e do not insure for loss caused directly or indirectly ... out of any act committed by any insured with the intent to cause a loss.” 547 S.E.2d 871, 876 (S.C. 2001); see also *Auto-Owners Ins. Co. v. Hamin*, 629 S.E.2d 683, 685-86 (S.C. 2006) (finding no ambiguity in similar language addressing “intent to cause a loss”). The Intentional Act Exclusion does not differ materially from the language in *Kelly* or *Hamin*. Therefore, the court finds that the relevant Policy language is

not ambiguous and does not create a genuine dispute as to a material fact.

2. Defendants' Status as Innocent Co-Insureds

Defendants argue that they are innocent co-insureds and should be able to recover under *McCracken v. Gov't Emps. Ins. Co.*, 325 S.E.2d 62 (S.C. 1985). (ECF No. 23 at 2.) In *McCracken*, the South Carolina Supreme Court held that “in the absence of any statute or specific policy language denying coverage to a co-insured for the arson of another co-insured, the innocent co-insured shall be entitled to recover his or her share of the insurance proceeds.” 325 S.E.2d at 64. In *Hamin*, the South Carolina Supreme Court held that language in a policy preventing coverage for any loss “caused directly or indirectly by ... an action by or at the direction of any insured committed with the intent to cause a loss” prevented an innocent co-insured from recovering. 629 S.E.2d at 685. The Intentional Act Exclusion excludes “loss to covered property caused directly or indirectly by ... an action by or at the direction of any insured committed with the intent to cause a loss.” (ECF No. 37-1 at 25-26.) The language of the insurance policy in this case is identical to the language in *Hamin*. 629 S.E.2d at 685-86. In *Hamin*, the South Carolina Supreme Court decided that the same insurance policy language at issue was unambiguous and prevented the policyholders from recovering under the policy. *Id.* Thus, the issue is not whether Defendants are innocent co-insureds under the policy but whether Plaintiff can demonstrate Jeffery had an intent to cause a loss. *Id.*

3. The Effect of Jeffrey's Plea of Guilty but Mentally Ill in the Present Case

*4 Plaintiff posits that Jeffrey's plea of guilty but mentally ill conclusively establishes his intent to cause loss. (ECF No. 1 at ¶¶ 10-12.) Jeffrey pleaded guilty but mentally ill to second degree arson. (ECF No. 15-4.) Under South Carolina law, a person is guilty of second degree arson if they “willfully and maliciously cause[] an explosion, set[] fire to, burn[], or cause[] to be burned ... a dwelling house ... whether the property of the person or another.” S.C. Code Ann. § 16-11-110(B) (2015). By the inclusion of willful and malicious in the definition, second-degree arson requires intent. See *State v. Leach*, 318 S.E.2d 267, 268 (S.C. 1984). “A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong ... but because of mental disease or defect

he lacked sufficient capacity to conform his conduct to the requirements of the law.” S.C. Code Ann. § 17-24-20(A). Notably, a plea of guilty but mentally ill is an adjudication of guilt and carries the full consequences thereof. *State v. Hornsby*, 484 S.E.2d 869, 872 (S.C. 1997) (“A verdict of [guilty but mentally ill] does not absolve a defendant of guilt. A defendant found [guilty but mentally ill] must be sentenced as provided by law for a defendant found guilty. However, under the [guilty but mentally ill] statute, a defendant found [guilty but mentally ill] is entitled to immediate treatment and evaluation.” (citations omitted)). In short, the presence of mental illness serves as a mitigating factor at sentencing, but it does not absolve the defendant of guilt or responsibility. *Id.* at 872.

In *Doe v. Doe*, the South Carolina Supreme Court, under a theory of collateral estoppel, adopted the rule that “once a person has been criminally convicted he is bound by that adjudication in a subsequent civil proceeding based on the same facts....” 551 S.E.2d 257, 258 (S.C. 2001). In *Zurcher v. Bilton*, the South Carolina Supreme Court extended the preclusive effect of convictions to guilty pleas.⁵ 666 S.E.2d 224, 226 (S.C. 2008). Collateral estoppel does not require identical parties, see *S.C. Prop. & Cas. Ins. Guar. Assoc. v. Wal-Mart Stores, Inc.*, 403 S.E.2d 625, 627 (S.C. 1991), but a party must have had the opportunity to litigate the facts involved in order to be collaterally estopped from challenging them. *Zurcher*, 666 S.E.2d at 226 (“[Collateral estoppel] may not be invoked unless the precluded party has had a full and fair opportunity to litigate the issue in the first action.” (citing *S.C. Prop. & Cas. Ins. Guar. Assoc.*, 403 S.E.2d at 627)).⁶ Jeffrey pleaded guilty, not Defendants. As such, Defendants did not have any opportunity to fully and fairly litigate the facts at issue in Jeffrey's conviction and are not collaterally estopped from challenging the facts surrounding Jeffrey's plea.

4. Jeffrey's Intent to Cause Loss

Jeffrey's plea does not conclusively establish that he acted with an intent to cause loss, so the court must consider whether the record, when taken in the light most favorable to the Defendants, establishes that Jeffrey acted with an intent to cause loss. In *Miller v. Fidelity-Phoenix Ins. Co.*, 231 S.E.2d 701 (S.C. 1977), the South Carolina Supreme Court considered what is necessary for an individual to act with intent to cause loss. The court created a two-part test for whether loss caused by an insured individual was intentional.

 231 S.E.2d at 702. In order to be intentional, “the insured must be shown not only to have intentionally acted in setting the fire but must also have intended that the fire cause the type of loss or injury which resulted.” *Id.*

*5 An insurance policy can be written to exclude the application of *Miller*. See, e.g.,  *S.C. Farm Bureau Mut. Ins. Co. v. Dawsey*, 638 S.E.2d 103, 104-05 (S.C. Ct. App. 2006); see also *Miles*, 2014 WL 12609859, at *3. Thus, before determining whether Jeffrey fulfilled the *Miller* requirements, the court must determine if *Miller* applies to the Policy. In *Miles* and *Dawsey*, the policies in question were written such that the *Miller* test was not applicable. In *Dawsey*, the policy excluded injuries “resulting from intentional acts or directions of you or any insured. The expected or unexpected results or (sic) these acts or directions are not covered.”  *Dawsey*, 638 S.E.2d at 104. The policy in *Miles* provided:

We do not cover loss to any property resulting directly or indirectly from any of the following.... Intentional Acts, meaning loss resulting from an act committed by or at the direction of an insured that may reasonably be expected to result from such acts, or is the intended result from such acts. Intentional acts include criminal acts. Such acts exclude coverage for all insureds.

Miles, 2014 WL 12069859, at *1. Because the policies addressed both intended and unintended, or unexpected, results, courts held that they did not require intentionality and did not implicate the *Miller* test. *Id.* at *3;  *Dawsey*, 638 S.E.2d at 105.

The Intentional Act Exclusion in the Policy addresses “loss to covered property caused *directly or indirectly* by any of the following, whether or not any other cause or event contributes concurrently or in any sequence to the loss ... an action by or at the direction of any insured committed with the intent to cause a loss.” (ECF No. 37-1 at 25-26) (emphasis added). The language of the Intentional Act Exclusion is substantially similar to the policies in *Miles* and *Dawsey* in that it excludes coverage for losses occurring both directly and indirectly

from the intentional act of an insured. Therefore, the court finds that an action by an insured does not have to fulfill the requirements of *Miller* to fall into the Intentional Act Exclusion of the Policy.

Because the Intentional Act Exclusion is not ambiguous, when interpreting the term “intent to cause loss,” the court looks to the plain and ordinary meaning of the words. *Nationwide Mut. Ins. Co. v. Commercial Bank*, 479 S.E.2d 524, 526 (S.C. Ct. App. 1996). As a result, Jeffrey must simply have intended to set the fire, regardless of whether he intended the house to burn down. Neither party contests that Jeffrey intended to set the fire. (ECF No. 1 at ¶ 8; ECF No. 10 at ¶ 7; ECF No. 23 at 6-7.) Therefore, his actions fall into the Intentional Act Exclusion, and Plaintiff is not liable.

Moreover, even if *Miller* were applicable to this case, Jeffrey intended the fire and intended to cause the kind of loss that resulted. In arguing that Jeffrey lacked intent, Defendants submitted a mental examination of Jeffrey which details his history of mental illness. (ECF No. 23-2.) In the examination, Jeffrey explains that he started the fire in order to escape from the voices he was hearing and the threat he believed they posed to him. (ECF No. 23-2 at 9-10.) Jeffrey’s awareness that the house would burn down stands in contrast to the arsonist in *Miller*. In *Miller*, a child set a house on fire because he wanted to see the fire trucks come.  231 S.E.2d at 702. The court reasoned that the child had no awareness that the house would burn down in the process, so the child did not intend to cause the loss. *Id.* Jeffrey was delusional, but he was aware that the house would burn down. (ECF No. 23-2 at 9.) Thus, Jeffrey had the requisite intent to cause loss.

*6 Accordingly, the court finds that there is not a genuine dispute of material fact, and Plaintiff is entitled to summary judgment as a matter of law on its declaratory judgment action because the Intentional Act Exclusion applies to Jeffrey’s actions. As a result, Plaintiff is not liable to Defendants.

5. Defendants' Counterclaims

Defendants counterclaimed for various bad faith actions by Auto-Owners. (ECF No. 10 at ¶¶ 26-63.) Defendants allege: bad faith – breach of contract; bad faith – statutory liability for attorneys’ fees; and bad faith – negligence. (ECF No. 10 at ¶¶ 40-59.) Under South Carolina law:

The elements of a cause of action for bad faith refusal to pay first party benefits under a contract of insurance are: (1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured.

Crossley v. State Farm Mut. Auto Ins. Co., 415 S.E.2d 393, 396 (S.C. 1992). “If there is a reasonable basis for contesting a claim, there is no bad faith.” *Id.* at 397. Additionally, Defendants counterclaimed for breach of contract accompanied by a fraudulent act. (ECF No. 23 at ¶¶ 60-63.) Breach of contract accompanied by a fraudulent act requires “(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach.”

Conner v. City of Forest Acres, 560 S.E.2d 606, 612 (S.C.

2002) (citing *Harper v. Ethridge*, 348 S.E.2d 374, 378 (S.C. Ct. App. 1986)).

As explained above, Plaintiff was not obligated to pay Defendants under the Policy. Because Plaintiff is not liable to Defendants, Defendants cannot prove a refusal by the insurer to pay benefits due under an insurance contract or a breach of contract. These elements are necessary for a claim of bad faith or breach of contract accompanied by a fraudulent act. *Id.* Because Defendants cannot prove the elements of these claims, Plaintiff is entitled to judgment as a matter of law.

V. CONCLUSION

Construing the relevant facts in the light most favorable to Defendants, Plaintiff is not liable to Defendants for damage sustained in the 2016 fire because Jeffrey's actions satisfy the Policy's Intentional Act Exclusion. Therefore, the court **GRANTS** Plaintiff's Motion for Summary Judgment (ECF No. 15), **AWARDS** declaratory judgment to Plaintiff, and **DISMISSES** Defendants' counterclaims.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2018 WL 4078579

Footnotes

- 1  Section 1332(c) contains a different rule for direct actions against an insurer. See  28 U.S.C. § 1332(c)(1). However, this is not a direct action against an insurer and that rule does not apply. See, e.g.,  *Camelback Props. v. Phoenix Ins. Co.*, No. 10 C 01467, 2010 WL 2402929, at *2-3 (N.D. Ill. June 15, 2010) (“ ‘A suit by an insured against his or her own insurer is denominated a first-party action. The direct-action rule of  Section 1332(c) does not apply to a first party action, whether the action is based on denial of coverage or bad-faith insurance practices.’ ... Plaintiffs argue that this is a direct action by the insured against the insurer, and that under these circumstances, the insurer is deemed a citizen of the state of the insured under  section 1332(c) Plaintiffs are wrong. Plaintiffs' action is one by an insured against its insurer. It is a contract dispute. It is not a direct action, as that term is used by  section 1332(c). The proviso of  section 1332(c) does not apply.”) (quoting 15 *Moore's Federal Practice* ¶ 102.58[4] (3d ed. 2009) (citations omitted)).
- 2 Plaintiff attached an uncertified copy of the Policy to its Complaint (See ECF No. 1-1); however, the court granted Plaintiff leave to file a certified copy with the court, which Plaintiff has done (see ECF No. 37-1).

- 3 Both parties agree that Jeffrey is an insured under the Policy. See Plaintiff's Complaint (ECF No. 1 at 2-3 ¶ 10). Defendants made this admission at the July 9, 2018, hearing.
- 4 Generally, the court applies South Carolina law when a contract dispute is brought pursuant to the court's diversity jurisdiction. See *Episcopal Church in S.C. v. Church Ins. Co. of Vt.*, 993 F. Supp. 2d 581, 586 (D.S.C. 2014) ("Because this action falls under the diversity jurisdiction granted to the federal courts by 28 U.S.C. § 1332, the [c]ourt looks to the law of South Carolina to determine the standards by which to evaluate the contract." (citing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938))).
- 5 In *Zurcher*, the defendant entered an *Alford* plea, and the court analyzed it as if it were a normal guilty plea. See 666 S.E.2d at 226. South Carolina courts have not expanded *Zurcher* and *Doe* to pleas of guilty but mentally ill, but the logic of *Zurcher* suggests that the rule would also apply to pleas of guilty but mentally ill. See *id.* ("For this reason, so long as a defendant has entered a guilty plea freely and voluntarily, an admission of guilt fully and fairly litigates the matter in the same manner as a contested trial in which a defendant is adjudicated guilty."). In their Response to Plaintiff's Motion for Summary Judgment (ECF No. 23), Defendants suggest that the novelty of this issue creates grounds for a certified question to the South Carolina Supreme Court. (ECF No. 23 at 10-11.) However, because the court finds that Jeffrey's plea does not have a preclusive effect on Defendants, certifying a question to the South Carolina Supreme Court is unnecessary for the resolution of this case.
- 6 Plaintiff has not cited to, and the court is not aware of, any cases modifying this rule for arson committed by a co-insured, relative, or other similar party.

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
SOUTH CAROLINA FARM BUREAU	)	C.A. Number: 2019-CP-32-01671
MUTUAL INSURANCE COMPANY,	)	
Plaintiff,	)	
	)	DEFENDANT RICHARD
v.	)	LONGPHRE'S,
	)	MEMORANDUM IN
RICHARD LONGPHRE AND TRAVIS	)	OPPOSITION TO
SIMPSON,	)	PLAINTIFF'S MOTION FOR
	)	SUMMARY JUDGMENT
Defendants.	)	
_____	)	

Defendant Richard Longphre asserts that the pleadings, depositions, responses to discovery, affidavits, and all reasonable inferences to be drawn therefrom, support denial of Plaintiff South Carolina Farm Bureau Mutual Insurance Company's Motion for Summary Judgment.

In support of his position, Defendant Longphre asserts the following:

BACKGROUND AND SUMMARY OF FACTS

1. This "declaratory judgment" case arises out of an underlying action (*Richard Longphre v. Travis Simpson*, Case No. 2018-CP-32-03314) for negligence¹.
2. In the underlying action, a single cause of action Complaint, Longphre has alleged Defendant Simpson was negligent, on or about December 28, 2017 when he (Simpson) accidentally and unintentionally made contact with Longphre in such a way as to cause severe, extensive damage to Longphre's leg and knee.

¹ See Amended Complaint (filed June 11, 2019), paragraphs 5, 11 – 14, and 16.

3. Longphre underwent surgery, and he developed life-threatening complications that required further medical treatment.
4. Through discovery², Defendant Simpson indicated that he was covered under an insurance policy, Policy Number HO 0411374, (“the insurance policy”), issued by Plaintiff South Carolina Farm Bureau Mutual Insurance Company, that may have afforded coverage to Simpson (that could be used to compensate Longphre).
5. At the time of the injury, Longphre, was within the “coverage territory³”, as defined by the insurance policy.
6. At the time of the injury, Longphre, was within the August 11, 2017 – August 11, 2018 coverage period of the insurance policy.
7. Plaintiff South Carolina Farm Bureau Mutual Insurance Company’s Motion for Summary Judgement alleges that there are no genuine issues of material facts as to two (2) specific policy sections:
 - a. the definition of “occurrence⁴”, and
 - b. the applicability of an exclusion for “Intentional Acts⁵”
 and asserts one or both of these provisions preclude insurance coverage for Defendant Simpson.

² See Defendant Travis Simpson’s Response #3 in Answers to First Interrogatories of the Plaintiff dated September 11, 2019.

³ See Insurance Policy, Page 2, Definition Section, Definition #7: “‘Coverage territory’ means all parts of the world.”

⁴ See Insurance Policy, Page 3, Definition Section, Definition #11: “‘**Occurrence’ means an accident**, but does not include exposure to conditions, which results during the policy period in: (a.) bodily injury; or (b.) property damage.” (emphasis added).

⁵ See Insurance Policy, Page 23, Section I - Exclusions, #9: “Intentional Acts, meaning any loss arising out of any act committed: (a.) by or at the direction of any insured; or (b.) **with the intent to cause a loss**; or (c.) in a domestic dispute between insureds, family members, or others.” (emphasis added).

8. As explained further herein, Longphre asserts that there are genuine issues of material fact exists as to whether Longphre's allegations in the underlying case create (a) jury question(s) as to the insurance policy's applicability/coverage based on the definition of an "occurrence" and genuine issues of material fact exist as to whether the "intentional act exclusion" is applicable.
9. Longphre requests that the Court **deny** Plaintiff South Carolina Farm Bureau Mutual Insurance Company's Motion for Summary Judgement.

STANDARD OF REVIEW

10. Since it is a drastic remedy summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Baughman v. Am. Tel. & Tel. co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (quoting *Watson v. Southern Ry. co.*, 420 F. supp. 483, 486 (D.S.C. 1975)); *see also* *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). Summary judgment is only appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. SCRCP 56(c).
11. "The party seeking summary judgment has the burden of clearly establishing the absence of a material fact." *Bennett v. Inv'rs Title Ins. co.*, 370 S.C. 578, 588-89, 635 S.E.2d 649, 654 (Ct. App. 2006).
12. In determining whether any triable issues of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *See also Grimsley v. SC Law Enf't Div.*, 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015).

GENUINE ISSUES AS TO MATERIAL FACTS

13. As a threshold matter in his Amended Complaint (in the underlying action), Longphre alleges the essential elements of a negligence claim.
- a. Longphre alleges that he was injured when Defendant Simpson was negligent in making accidental contact with him.
 - b. Longphre alleges that Defendant Simpson's contact with him was not intentional.
 - c. Longphre goes on to allege that Defendant Simpson's negligent conduct in making contact with Longphre was the actual and proximate cause of his damages⁶.
14. On September 9, 2019, Longphre was deposed in the underlying action. Longphre was repeatedly asked about the incident with Defendant Simpson where he was injured.
15. In his deposition, Longphre consistently described, when questioned, that he (Longphre) believed that the contact that Defendant Simpson made with him **was not intentional and was accidental** (emphasis added). Plaintiff South Carolina Farm Bureau Mutual Insurance Company disputes this contention, for pecuniary reasons.
16. This is a disputed question of fact, of which there is direct, testimonial evidence that, if believed by a jury, would support a verdict in favor of Longphre. If the finder of fact determined that the contact was accidental, this would trigger coverage under the applicable policy's definition of "occurrence" and would not fall under an exclusion for an Intentional Act. This alone should defeat Plaintiff's request for Summary Judgment.

⁶ See Amended Complaint, paragraphs 11 – 13, and 17

17. Additional, pertinent examples from Longphre's deposition testimony showing genuine issues of material facts as to lack of intent (and thus, applicability of Defendant Simpson's policy) follow:

Q. Okay. When you were getting up and you got entangled, was there anything that Travis did that caused the entanglement, if you know?

A. I don't -- I don't think so. I don't think it was intentional. I think it was just simply an accident. Wrong position or whatever you want to call it.

Q. Okay. But whenever you got up and then you fell and hurt your quad, Travis didn't push you down or anything?

A. I don't think so.

Deposition of Richard Longphre, Page 69, ll. 14-24;

...

A. No. It all happened so fast. I really, you know, can't say exactly what did happen. It was dark outside, you know, adrenaline was pumping.

Q. Okay. And you just said -- you just used the word accident. So, after you and Travis were on the ground and Travis did let -- let you go --

A. Yes.

Q. -- and you and Travis stood up, do I understand you to say that after that, you consider your falling and hurting your knee an accident?

A. Yes.

Deposition of Richard Longphre, Page 70, ll. 1-11;

...

Q. And you accidentally fell. Is that your testimony?

A. Somehow we got entangled and I went back down again and when I went back down again, that's when I couldn't get back up because my tendons were torn, but I was fine because I stood up at first before we got entangled I went back down. When I went back down, my tendons were torn.

Q. Okay.

A. And I couldn't get back up.

Q. Did Travis Simpson do anything to cause you to fall once you got back up?

A. I don't think he did anything intentionally to cause me to fall.

Q. Did he do anything unintentionally to cause you to fall?

A. Somehow because I wouldn't have fallen unless he had got entangled with me somehow.

Deposition of Richard Longphre, Pages 72 - 73, ll. 13-5;

...

Q. Okay. And then the second incident of this was that when Mr. Simpson knocked you to the ground. Is that right? Is that what I understood you to say?

A. Right. He tackled me to the ground. Yes.

Q. Okay. And then when he tackled you to the ground, were you hurt at -- or injured at that period in time?

A. No.

Q. Okay. And then there was the part where you were getting up. What were you getting up to go do at that point?

A. I was getting up to leave because I thought it was all over with.

Q. Okay. And Mr. Ayer was asking you how you fell and what I'm trying to understand is whether or not you -- you were saying that you were entangled. I'm trying to understand. Did you fall on your own? Or did you fall because you were contacted by Mr. Simpson at some point?

A. Because we were entangled. We were contacted some way. I don't know how; okay? Because I was standing up fine, you know, trying to stand up fine and then I went back down because we were entangled.

Deposition of Richard Longphre, Pages 97 - 98, ll. 19-18.

...

18. On November 21, 2019, Defendant Simpson was deposed in the underlying action. Defendant Simpson was asked about the incident where Longphre was injured.
19. In his deposition testimony, Defendant Simpson consistently described, when questioned, that he (Simpson) believed that the contact that he made with Longphre **was not intentional and was accidental** (emphasis added).
20. Plaintiff South Carolina Farm Bureau Mutual Insurance Company, in their own pecuniary interest *and to the detriment of their own insured*, asserts that Defendant's Simpson's own testimony is inaccurate.
21. As was the case with Mr. Longphre's testimony, what happened during this incident is a disputed question of fact to be resolved by the finder of fact. The statement(s) made to law enforcement at the time of the injury provide grounds for cross-examination, and resolution of any discrepancies should be determinations for the finder of fact to make, not matters to be resolved in Summary Judgment.

22. If the finder of fact determined that the contact between Defendant Simpson and Longphre was unintentional and/or accidental, this would trigger coverage under the applicable policy's definition of "occurrence" and would not fall under an exclusion for an Intentional Act.
23. Additional, pertinent samples of Defendant Simpson's testimony showing genuine issues of material facts as to lack of intent (and applicability of Defendant Simpson's policy) follow:

A. ... And that's when I reacted, to try to separate them, and ended up putting him -- the easiest way to get him away was to get him in a headlock. And I -- as I was pulling him away, we both went to the ground. And, at that point, I was going to let him up and try to get away with him -- get away from him. And, as he was getting up and I was getting up at the same time, I used him to help get -- get myself up and move away from him, and he fell back down.

Deposition of Travis Simpson, Page 26, ll. 4-13;

...

Q. Okay. Now, when you put Mr. Longphre in the headlock, did you have any intention of hurting him at that point?

A. No.

Q. Okay. And when you -- and -- put Mr. Longphre in a headlock, did y'all go to the ground together?

A. Yes.

...

Q. Okay. And then was Mr. Longphre hurt when y'all went to the ground?

A. Not that I could tell.

Q. Okay. And then, after that, you -- you were -- you released Mr. Longphre; is that right?

A. Yes.

Deposition of Travis Simpson, Page 31, ll. 2-8, 19-24;

...

Q. And then what happened next?

A As we were both getting up, we were getting up beside each other, so, to separate myself from him and to get myself up, I used him to get up and pushed him away and then started walking away from him.

Q. And –

A. And I think he started walking to his house.

Q. And when you pushed him, did he fall back to the ground a second time?

A. Yes.

Q. Okay. Did you intend to hurt Mr. Longphre when you pushed him to get yourself up?

A. No.

Deposition of Travis Simpson, Page 32, ll. 2-15;

...

Q. Okay. All right. Okay. And so when I asked, "Admit that there was an initial event where you tackled Mr. Longphre to the ground," you deny that, right?

A. Yes.

Q. And the reason is because you, as you explained earlier, went to separate Mr. Santos and Mr. Longphre, and you put him in a headlock?

A. Yes.

Q. Okay. But then y'all did eventually go to the ground while you had Mr. Longphre in a headlock; is that right?

A. Yes.

Q. I'm just trying to make sure I understand it. Okay. And when I asked, "Admit that Mr. Longphre was unharmed in the initial event where you tackled him to the ground," you denied that you tackled him to the ground because it was a headlock, and then you took him to the ground; is that right?

A. Yes.

Q. But you admit that Mr. Longphre was not harmed at all in that initial altercation?

A. Yes.

Q. Okay. All right. And so, when I asked that, "You admit that as you were getting up off the ground, you did so hastily and without due care and/or in disregard of your surroundings, and subsequently made physical contact with Mr. Longphre," you say that you admit that you made physical contact with Mr. Longphre, but you deny the rest of that request. You understand that?

A. Yes.

Q. And that's because, as you've explained today, it wasn't that you were getting up hastily, is it? It's that you were getting up and you pushed Mr. Longphre back down so that you could get up; is that right?

A. Yes.

Q. And, again, I want to make sure I understand this: Was that intentional or intended to harm Mr. Longphre in any way, that shove?

A. No.

Q. Okay. But you do admit that you did the action, the pushing; is that right?

A. Yes.

Q. Okay. And that was to get yourself back up, right?

A. Yes.

Q. Okay. And so when I asked next, "Admit that as a result of Defendant Simpson's lack of due care and/or disregard of surroundings, wherein you made subsequent physical contact with Mr. Longphre, Mr. Longphre was injured," you denied that request to admit?

A. I didn't know whether he was or was not.

Q. And that's because you didn't know whether or not he was injured?

A. (Nods head up and down.)

Q. Okay. Is that fair?

THE COURT REPORTER: Is that yes?

A. Yes.

Q. Okay. And that was the reason for the denial of that request; is that right?

A. Yes.

Q. Because, at that time, you didn't know whether or not he was severely injured?

A. Yes.

Q. Okay. But you don't deny that while you were getting up you pushed him back to the ground; is that right?

A. Repeat that.

Q. But you don't deny the fact that while you were getting up the second time -- I guess he was getting up. Let me make sure I'm asking this right. You don't deny that as you were getting up you pushed him to the ground?

A. I do not deny that.

Q. Right. You admit that?

A. Yes.

Q. Okay. You just denied whether or not he was severely injured because you didn't know; is that right?

A. Yes.

...

Q. Okay. Do you know that he has approximately \$70,000 in medical bills?

A. No.

Q. Okay. I asked you, in Request to Admit Number 9, "Admit that Defendant Simpson's subsequent physical contact," what I'm now going to call "the push, "okay? "Admit that the 'push' to Mr. Longphre was negligent," you denied that; is that correct?

A. What do you mean by "negligent"?

Q. Well, what does it mean to you?

A. It wasn't intentional. It was to get -- to get up and to get him away from me where I could get out of there.

Q. Okay. Could there have been a different way for you to have gotten up where you didn't have to push Mr. Longphre?

A. Yes.

Q. Okay. But, again, you -- you'd -- you've already admitted that that push was not an attempt to or intended to harm Mr. Longphre?

A. Correct.

Q. Now, I asked you, in Request to Admit Number 12, "Admit that your" -- what I called your "negligent subsequent physical contact" -- I'm just going to call it "the shove." "Admit that the shove to Mr. Longphre was the proximate cause of his severe injuries," that's denied according to this. Is that denied because you didn't know the extent of the injuries? Or why -- why'd you deny that?

A. I -- I didn't know if he was hurt or not.

Q. Okay.

A. I – the only reason I denied that is that I didn't know that he was injured from me pushing him back to the ground.

Q. Okay. If -- if you were to find out that Mr. Longphre was severely injured because of that push, that he -- that he twisted his knee or quadricep in some way and became severely injured, would that impact your answer to that question?

A. Yes. If I knew I – what I did hurt him, it would change my answer, yes.

Q. So assuming that that -- that shove is what hurt Mr. Longphre in this case, if that was the case, would you admit this answer?

A. Yes.

Q. Okay. And the same question goes to Number 14, where I asked, "Admit that he suffered severe damages as a result of that shove." If you knew that he had been hurt badly, you would not deny that? You would admit it; is that right?

A. Yes.

Deposition of Travis Simpson, Page 42, ll. 3 – Page 47. ll. 16.

24. "In a negligence action, a plaintiff must show that the
- (1) defendant owes a duty of care to the plaintiff,
 - (2) defendant breached the duty by a negligent act or omission,
 - (3) defendant's breach was the actual and proximate cause of the plaintiff's injury,
- and
- (4) plaintiff suffered an injury or damages⁷." *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998); *Shipes v. Piggiy Wiggly St.*

⁷ *Steinke v. South Carolina Dep't of Labor, Licensing, & Regulation*, 520 S.E.2d 142

Andrews, Inc., 269 S.C. 479, 238 S.E.2d 167 (1977); *W. Keeton, D. Dobbs, R. Keeton, and D. Owen, Prosser and Keeton on the Law of Torts*, 164-65 (1984).

Longphre has certainly pled the proper elements to a negligence action.

25. Questions of negligence, proximate cause and comparative negligence are ordinarily questions of fact for the jury, as to which the trial court's only function is to inquire whether particular conclusions are or are not the only reasonable inferences to be drawn from the evidence⁸. Here, there are reasonable inferences to draw from the testimonial evidence of both Longphre and Defendant Simpson that there was a negligent "occurrence" that was accidental and/or unintentional that caused Longphre to suffer injuries.
26. Whether Defendant Simpson breached his duty of care to Longphre and proximately caused his injury is a mixed question of law and fact for the jury to determine⁹.

CONCLUSION

27. Summary judgment is proper only when no genuine issue of material fact exists.
28. Taken in a light most favorable to Longphre, evidence exists showing that Defendant Simpson had a duty not to cause harm to Longphre – and though Simpson's actions were, by his own admission, accidental and unintentional, they were in breach of this duty, and caused Longphre to suffer damages.

⁸ *Kennedy v. Custom Ice Equipment Co.*, 271 S.C. 171, 246 S.E.2d 176 (1978).

⁹ *Mahaffey v. Ahl*, 214 S.E.2d 119

29. Unfortunately, and to the direct detriment of their own insured, Plaintiff South Carolina Farm Bureau Mutual Insurance Company is attempting to use this declaratory judgment action to void any obligation of coverage in the underlying case.
30. Therefore, Plaintiff South Carolina Farm Bureau Mutual Insurance Company's Motion for Summary Judgment should be denied.

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
RICHARD LONGPHRE,	)	C.A. Number: 2018-CP-32-03314
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED COMPLAINT
	)	(Jury Trial Demanded)
TRAVIS SIMPSON	)	
	)	
	)	
Defendants.	)	
	)	

Plaintiff alleges:

1. Plaintiff is a citizen and resident of Lexington County, South Carolina.
2. On information and belief, Defendant Simpson ("Simpson") is a citizen and resident of Lexington County, South Carolina.
3. This Court has jurisdiction over the parties hereto and subject matter herein, and venue is proper in Lexington County, South Carolina.

CAUSE OF ACTION
(Negligence)

4. Each and every allegation herein is repeated as if verbatim.
5. On December 28, 2017, Plaintiff and his wife observed Simpson and a neighbor, Walter Santos ("Santos") hitting golf balls both into their yard and towards their home from the direction of Santos' residence (not on Santos' property).
6. Plaintiff had requested Santos not to do so on a number of previous occasions.
7. Santos ignored Plaintiff's requests and directives even after "No Trespassing" signs were erected (the signs were torn down).
8. Plaintiff previously found golf balls hit by Santos in his yard on numerous occasions and near a new sun porch – on the evening in question, he requested that Santos and Simpson cease hitting golf balls onto his property.

9. Simpson and Santos were acting together and ignored Plaintiff's requests and kept hitting golf balls on Plaintiff's property (and not on Santos' property).
10. As Plaintiff bent over to pick one of the golf balls, Santos and Plaintiff came into contact with one another and mistakenly perceiving that Santos was shoved, Simpson tackled Plaintiff to the ground. A scuffle ensued but, at that point, Plaintiff was unharmed and/or was uninjured.
11. Thereafter, as Plaintiff was attempting to stand up, Simpson negligently made contact with Plaintiff, injuring him.
12. On information and belief, Simpson's accidental contact with Plaintiff was negligent, and presumably Simpson did not attempt or intend to harm Plaintiff.
13. Nonetheless, Defendant Simpson's negligent conduct was the proximate cause of Plaintiff's damages.
14. The result of Simpson's accidental contact with Plaintiff's leg severely damaged Plaintiff's left knee and leg. Plaintiff suffered much pain and was immobilized – causing him permanent injury to incur extensive medical bills.
15. At the time, Plaintiff was seventy-two (72) years of age.
16. Plaintiff has suffered permanent pain and suffering as a result of Simpson's negligence.
 - a. He had to be transported by ambulance to a hospital and had to have extensive knee surgery.
 - b. As a result of the injury and the surgery that it necessitated, Plaintiff developed life threatening medical conditions. Plaintiff is told these include blood clots; two pulmonary embolisms in his left lung; and a deep vein thrombosis in his left leg resulting in permanent damage to the veins of his left leg and life-long edema in his left leg.
 - c. Plaintiff has incurred extensive medical expenses as a proximate result of the injury and will require future medical treatment and expenses.
 - d. Finally, Plaintiff has been left with a permanent and severe injury to his leg.
17. Defendant Simpson's negligent actions have caused Plaintiff to lose income, incur expenses, pain and suffering, and permanent injury as a direct and proximate result

of Defendant Simpson's negligent action for which Plaintiff seeks actual damages in an amount that a jury may find proper.

Wherefore, having set forth his Amended Complaint herein, Plaintiff prays for the following relief, *to wit*: For actual damages against Simpson, for the costs of this action, and for such other and further relief as the Court may find proper.

Truslow & Truslow Law Firm

s/Neal D. Truslow
NEAL D. TRUSLOW
(SC Bar # 77806)
DOUGLAS N. TRUSLOW
(SC Bar #5642)
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June 11, 2019

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

) ELEVENTH JUDICIAL CIRCUIT

RICHARD LONGPHRE,

)

Plaintiff,

)

vs.

)

TRAVIS SIMPSON,

)

Defendant.

)

Case No: 2018-CP-32-03314

**DEFENDANT TRAVIS SIMPSON'S
ANSWERS TO
FIRST INTERROGATORIES OF THE
PLAINTIFF**

**TO: NEAL D. TRUSLOW AND DOUGLAS N. TRUSLOW, ATTORNEYS FOR THE
PLAINTIFF:**

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendant Travis Simpson (hereinafter "Defendant"), by and through undersigned counsel, hereby answers to the Interrogatories of Richard Longphre as follows:

1. Give the names and addresses of persons known to the parties or to counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE: In addition to any witnesses listed by the Plaintiff in this case, Defendant adds the following witnesses:

- A. **Travis Simpson
c/o Carey M. Ayer
DAVIS FRAWLEY, LLC
140 East Main Street
Lexington, SC 29072
No written or recorded statements have been obtained at this time.**
- B. **Officer Gregory Love
Lexington County Sheriff's Department
521 Gibson Road
Lexington, SC 29072**

No recorded statements have been obtained at this time. We are in possession of the incident report.

C. **Richard Longphre**
c/o Neal D. Truslow, Esquire
Douglas N. Truslow, Esquire
TRUSLOW & TRUSLOW LAW FIRM
P.O. Box 1465
Columbia, SC 29202

No written or recorded statements have been obtained at this time.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party or counsel that relate to the claim or defense in the case.

RESPONSE:

Lexington County Sheriff's Department Incident Report
Google maps view of the property boundaries

3. Set forth the names and addresses of all insurance companies which may have liability or applicable insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

RESPONSE:

South Carolina Farm Bureau Mutual Insurance Company
P.O. Box 2124
West Columbia, SC 29171
Policy No.: HO 411374
Limits of Liability: \$300,000.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

RESPONSE:

Defendant names no expert at this time, but reserves the right to supplement these interrogatories and name an expert witness at a later date, if he chooses to do so.

**South Carolina Farm Bureau Mutual Insurance Company or
Southern Farm Bureau Casualty or
Palmetto Casualty Insurance Company**

**Homeowners Policy Form 9
Special Plus Form Policy Provisions**

Your policy consists of this booklet and the appropriate Declarations, forms and endorsements. Coverages apply only when properly shown on the Declarations page.



Visit our website at www.scfbins.com

Post Office Box 2124
West Columbia, SC
29171

724 Knox Abbott Drive
Cayce, SC 29033
(803) 796-6700

Policy conditions require immediate notice of any accident or claim.

**To report an accident or claim, call us toll-free,
at 1-800-799-7500**

- b. a student enrolled in school full-time as defined by that school, who was a resident of **your** household immediately before leaving to attend school, provided this student is under age:

- (1) 24 and **your** relative; or
- (2) 21 and in **your** care or the care of the person listed in a. (1) above.

Under Section II, **insured** also means:

- c. with respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by **you** or any person included in 3a or 3b above. A person or organization using or having custody of these animals or watercraft in the course of any **business**, or without consent of the owner, is not an **insured**;
 - d. with respect to any vehicle to which this policy applies, persons while engaged in **your** employ or that of any person included in 3a or 3b above.
4. **"Actual cash value"** means the cost to replace new today with materials of like kind and quality, less physical depreciation and economic obsolescence.
 5. **"Bodily injury"** means bodily harm, sickness or disease, including required care, loss of services and death resulting there from. It does not include **personal injury**.
 6. **"Business"** means a full-time, part-time or occasional trade, profession or occupation, whether permanent or temporary, including farming.
 7. **"Coverage territory"** means all parts of the world.
 8. **"Electronic Data"** means information facts or programs stored as, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, servers, cells, data processing devices, or any other media which are used with electronically controlled equipment.
 9. **"Fungi"** means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or byproducts produced or released by any fungus, but does not include any fungus that is, is on, or is contained in, any goods or products intended for consumption.
 10. **"Insured location"** means:
 - a. the **residence premises**;
 - b. the part of other premises, other structures and grounds used by **you** as a residence and;

- (1) which is shown in the Declarations or by Endorsement; or
- (2) which is acquired by **you** during the current policy period for **your** use as a residence;
- c. any premises used by **you** in connection with a premises in 10a or 10b above;
- d. any part of a premises:
 - (1) not owned by an **insured**; and
 - (2) where an **insured** is temporarily residing;
- e. up to 100 acres total of any and all vacant land, owned by or rented to an **insured**. This does not include:
 - (1) farm land;
 - (2) land held for **business** purposes; or
 - (3) land away from the **residence premises** unless the location is listed on a policy endorsement.
- f. land owned by or rented to an **insured** on which a one, two, three or four family dwelling is being built as a residence for an **insured**;
- g. individual or family cemetery plots or burial vaults of an **insured**; or
- h. any part of a premises occasionally rented to an **insured** for other than **business** use.

11. "Occurrence" means an accident, but does not include exposure to conditions, which results during the policy period in:

a. **bodily injury**; or

b. **property damage**.

12. "Personal Injury" means injury arising out of one or more of the following:

- a. false arrest, detention or imprisonment, malicious prosecution;
- b. libel, slander, defamation of character;
- c. invasion of privacy, or wrongful eviction by a person from or wrongful entry by a person into or onto a room, dwelling or premises that another person occupies, by or on behalf of its owner, landlord, or lessor;

However, **personal injury** does not include actual, alleged, threatened, or witnessing of humiliation, embarrassment or alienation of affection.

regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

But if **Terrorism** results in fire, we will pay for the loss or damage caused by that fire. However, this exception for fire applies only to direct loss or damage by fire to Covered Property.

With respect to any such activity that also comes within the terms of the War and Military Action Exclusion, that exclusion supersedes the **Terrorism** Exclusion.

In the event of an act of **Terrorism** that involves nuclear reaction or radiation, or radioactive contamination, this **Terrorism** Exclusion supersedes the Nuclear Hazard Exclusion.

8. **Nuclear Hazard**, to the extent set forth in the Nuclear Hazard Clause of Section I – Conditions.

9. **Intentional Acts**, meaning any loss arising out of any act committed:

- a. by or at the direction of any **insured**; or
- b. with the intent to cause a loss; or
- c. in a domestic dispute between **insureds**, family members, or others.

10. **We do not insure** under any coverage for loss resulting from one or more of the items below:

- a. conduct, act, failure to act, or decision of any person, group, organization, or governmental body whether intentional, wrongful, negligent, or without fault;
- b. defect, weakness, inadequacy, fault or unsoundness in:
 - (1) planning, zoning, development surveying, siting;
 - (2) design, specifications, workmanship, construction, grading, compaction;
 - (3) materials used in construction or repair; or
 - (4) maintenance;

of any property (including land, structures, or improvements of any kind) whether on or off the **residence premises**.

However, **we do insure** for any ensuing covered loss from items a. and b. unless the ensuing loss is itself a loss excluded by this section.

11. **We do not insure** for loss under any coverage regardless of whether one or more of the items listed in paragraph 10 above:

1 Q. Okay. And then you and Travis went to the
2 ground?

3 A. Yes.

4 Q. Okay. And that's when some dialogue took place
5 between Walter and Travis about letting you up?

6 A. Correct.

7 Q. Okay. And did Travis let you up?

8 A. Yes.

9 Q. Okay. And what happened when he let you up?

10 A. As we were getting up -- that's all I know -- is
11 when we were getting up, we somehow got entangled
12 and I went back down to the ground and that's
13 when my quad tendons were severed.

14 Q. Okay. When you were getting up and you got
15 entangled, was there anything that Travis did
16 that caused the entanglement, if you know?

17 A. I don't -- I don't think so. I don't think it
18 was intentional. I think it was just simply an
19 accident. Wrong position or whatever you want to
20 call it.

21 Q. Okay. But whenever you got up and then you fell
22 and hurt your quad, Travis didn't push you down
23 or anything?

24 A. I don't think so.

25 Q. Okay.

1 A. No. It all happened so fast. I really, you
2 know, can't say exactly what did happen. It was
3 dark outside, you know, adrenaline was pumping.

4 Q. Okay. And you just said -- you just used the
5 word accident. So, after you and Travis were on
6 the ground and Travis did let -- let you go --

7 A. Yes.

8 Q. -- and you and Travis stood up, do I understand
9 you to say that after that, you consider your
10 falling and hurting your knee an accident?

11 A. Yes.

12 Q. Okay. And you mentioned that you used your cell
13 phone to call 9-1-1?

14 A. Yes.

15 Q. Where were Travis and Walter at that point?

16 A. Well, as soon as all this happened -- like I
17 said, it happened so quick -- I'm laying there on
18 the ground, can't get up. My knee is hurting
19 like heck and I crawl over on my back and see my
20 cell phone -- the light on the cell phone. I
21 grabbed my cell phone, that's when I called 9-1-
22 1; okay? But at that time, I heard -- at this
23 time I -- I now know it was Travis' truck peeling
24 out of the driveway as he sped off. And Walter
25 went back to his house.

1 A. Right.

2 Q. And then Travis Simpson tackled you and you both

3 went on the ground?

4 A. Correct.

5 Q. At this point, you were not injured. Is that --

6 that fair?

7 A. That's fair.

8 Q. Okay. And then you and Mr. Simpson -- he

9 released you and then you both --

10 A. Started to stand up; okay?

11 Q. And he started to stand up?

12 A. Right.

13 Q. And you accidentally fell. Is that your

14 testimony?

15 A. Somehow we got entangled and I went back down

16 again and when I went back down again, that's

17 when I couldn't get back up because my tendons

18 were torn, but I was fine because I stood up at

19 first before we got entangled I went back down.

20 When I went back down, my tendons were torn.

21 Q. Okay.

22 A. And I couldn't get back up.

23 Q. Did Travis Simpson do anything to cause you to

24 fall once you got back up?

25 A. I don't think he did anything intentionally to

1 cause me to fall.

2 Q. Did he do anything unintentionally to cause you
3 to fall?

4 A. Somehow because I wouldn't have fallen unless he
5 had got entangled with me somehow.

6 Q. Okay. But what you -- you were in entangled on
7 the ground; correct?

8 A. Well, yeah. He was on top of me.

9 Q. And then y'all got up?

10 A. Correct.

11 Q. Okay. And then you fell?

12 A. Correct.

13 Q. Okay. Did he do anything to cause you to fall?
14 What -- after you were no longer entangled and
15 after you stood up, did he do anything to cause
16 you to fall?

17 A. I don't know whether we were clear of each other
18 or whether we were still wrapped up with each
19 other when I stood up. All I know is I went back
20 down and my leg tendons got torn when I went back
21 down the second time.

22 Q. Okay. How did -- just if -- if you can, how did
23 you wind up tearing your tendons or your
24 ligaments? What -- what exactly happened? As
25 best you can describe.

1 Q. All right. I think that's all I have. I
2 appreciate it. Mr. Truslow may or may not have
3 questions for you.

4 MR. LONGPHRE - CROSS EXAMINATION BY MR. TRUSLOW:

5 Q. Mr. Longphre, I have a couple of questions based
6 on what Mr. Ayer asked you regarding the incident
7 with Mr. Simpson and Mr. Santos. The way I
8 understood he was asking the question to me was
9 almost in three parts, so I want to make sure
10 I've got this right. There was the time when you
11 were walking up to Mr. Santos and so it's your
12 testimony you went to go pick up the golf ball?

13 A. Yes.

14 Q. And then did I understand you to say that Mr.
15 Santos pushed you at that time?

16 A. Yes.

17 Q. Okay. Were you hurt when Mr. Santos pushed you?

18 A. No. He just pushed me away.

19 Q. Okay. And then the second incident of this was
20 that when Mr. Simpson knocked you to the ground.
21 Is that right? Is that what I understood you to
22 say?

23 A. Right. He tackled me to the ground. Yes.

24 Q. Okay. And then when he tackled you to the
25 ground, were you hurt at -- or injured at that

1 period in time?

2 A. No.

3 Q. Okay. And then there was the part where you were
4 getting up. What were you getting up to go do at
5 that point?

6 A. I was getting up to leave because I thought it
7 was all over with.

8 Q. Okay. And Mr. Ayer was asking you how you fell
9 and what I'm trying to understand is whether or
10 not you -- you were saying that you were
11 entangled. I'm trying to understand. Did you
12 fall on your own? Or did you fall because you
13 were contacted by Mr. Simpson at some point?

14 A. Because we were entangled. We were contacted
15 some way. I don't know how; okay? Because I was
16 standing up fine, you know, trying to stand up
17 find and then I went back down because we were
18 entangled.

19 Q. Okay. That's all the questions I have.

20 MR. AYER: I don't have any.

21 (There being no further questions, the deposition
22 concluded at 3:03 p.m.)

23

24

25

1 A I heard the neighbor say, "You know you're not
2 supposed to be hitting golf balls on my property."
3 And he pushed -- as Walter was bending over to grab
4 one of his golf balls, he pushed Walter. And
5 that's when I reacted, to try to separate them, and
6 ended up putting him -- the easiest way to get him
7 away was to get him in a headlock. And I -- as I
8 was pulling him away, we both went to the ground.
9 And, at that point, I was going to let him up and
10 try to get away with him -- get away from him.
11 And, as he was getting up and I was getting up at
12 the same time, I used him to help get -- get myself
13 up and move away from him, and he fell back down.

14 Q Oh, okay. So, while you were getting up, there was
15 -- explain that to me again.

16 A I had him in the headlock.

17 Q Uh-huh.

18 A And we ended up going to the ground. And I
19 mentioned to him, "Do you -- do you want to stop?"
20 And he -- "And I'll let you up."

21 And he said, "Yes. Stop." And I -- I let him
22 up. And, as we were both getting up, I used him to
23 help myself get up, and I pushed him back. And he
24 fell back to the ground.

25 Q Did you notice or observe whether or not he was in

1 A Yes.

2 Q Okay. Now, when you put Mr. Longphre in the
3 headlock, did you have any intention of hurting him
4 at that point?

5 A No.

6 Q Okay. And when you -- and -- put Mr. Longphre in a
7 headlock, did y'all go to the ground together?

8 A Yes.

9 Q Okay. And so that's why he was getting up, and you
10 were getting up afterwards; is that right?

11 A Yes.

12 Q I'm just trying to make sure I understand all this,
13 and I'm trying to break it down into time periods
14 that I can understand it to make sure it's clear.

15 So while you and Mr. Longphre -- while you had
16 Mr. Longphre in a headlock, y'all went to the
17 ground, right?

18 A Yes.

19 Q Okay. And then was Mr. Longphre hurt when y'all
20 went to the ground?

21 A Not that I could tell.

22 Q Okay. And then, after that, you -- you were -- you
23 released Mr. Longphre; is that right?

24 A Yes.

25 Q And then you were getting up yourself?

1 A Yes.

2 Q And then what happened next?

3 A As we were both getting up, we were getting up
4 beside each other, so, to separate myself from him
5 and to get myself up, I used him to get up and
6 pushed him away and then started walking away from
7 him.

8 Q And --

9 A And I think he started walking to his house.

10 Q And when you pushed him, did he fall back to the
11 ground a second time?

12 A Yes.

13 Q Okay. Did you intend to hurt Mr. Longphre when you
14 pushed him to get yourself up?

15 A No.

16 Q Do you have any idea, whatsoever, Mr. Longphre's
17 age? I'm talking about on December 28, 2017, while
18 y'all are out there -- you, Mr. Santos, and Mr.
19 Longphre. Do you have any idea how -- how old he
20 is at that point in time?

21 A No.

22 Q Would you -- how would you describe Mr. Longphre's
23 physical appearance: size? height?

24 A Taller than me, stout. You know, a bigger guy that
25 -- that's all, you know, stout and taller than me.

1 pop a sand wedge 100-plus yards?

2 A Yes.

3 Q Okay. All right. Okay. And so when I asked,
4 "Admit that there was an initial event where you
5 tackled Mr. Longphre to the ground," you deny that,
6 right?

7 A Yes.

8 Q And the reason is because you, as you explained
9 earlier, went to separate Mr. Santos and Mr.
10 Longphre, and you put him in a headlock?

11 A Yes.

12 Q Okay. But then y'all did eventually go to the
13 ground while you had Mr. Longphre in a headlock; is
14 that right?

15 A Yes.

16 Q I'm just trying to make sure I understand it.

17 Okay. And when I asked, "Admit that Mr.
18 Longphre was unharmed in the initial event where
19 you tackled him to the ground," you denied that you
20 tackled him to the ground because it was a
21 headlock, and then you took him to the ground; is
22 that right?

23 A Yes.

24 Q But you admit that Mr. Longphre was not harmed at
25 all in that initial altercation?

1 A Yes.

2 Q Okay. All right. And so, when I asked that, "You

3 admit that as you were getting up off the ground,

4 you did so hastily and without due care and/or in

5 disregard of your surroundings, and subsequently

6 made physical contact with Mr. Longphre," you say

7 that you admit that you made physical contact with

8 Mr. Longphre, but you deny the rest of that

9 request. You understand that?

10 A Yes.

11 Q And that's because, as you've explained today, it

12 wasn't that you were getting up hastily, is it?

13 It's that you were getting up and you pushed Mr.

14 Longphre back down so that you could get up; is

15 that right?

16 A Yes.

17 Q And, again, I want to make sure I understand this:

18 Was that intentional or intended to harm Mr.

19 Longphre in any way, that shove?

20 A No.

21 Q Okay. But you do admit that you did the action,

22 the pushing; is that right?

23 A Yes.

24 Q Okay. And that was to get yourself back up, right?

25 A Yes.

1 Q Okay. And so when I asked next, "Admit that as a
2 result of Defendant Simpson's lack of due care
3 and/or disregard of surroundings, wherein you made
4 subsequent physical contact with Mr. Longphre, Mr.
5 Longphre was injured," you denied that request to
6 admit?

7 A I didn't know whether he was or was not.

8 Q And that's because you didn't know whether or not
9 he was injured?

10 A (Nods head up and down.)

11 Q Okay. Is that fair?

12 THE COURT REPORTER: Is that yes?

13 A Yes.

14 Q Okay. And that was the reason for the denial of
15 that request; is that right?

16 A Yes.

17 Q Because, at that time, you didn't know whether or
18 not he was severely injured?

19 A Yes.

20 Q Okay. But you don't deny that while you were
21 getting up you pushed him back to the ground; is
22 that right?

23 A Repeat that.

24 Q But you don't deny the fact that while you were
25 getting up the second time -- I guess he was

1 getting up. Let me make sure I'm asking this
2 right.

3 You don't deny that as you were getting up you
4 pushed him to the ground?

5 A I do not deny that.

6 Q Right. You admit that?

7 A Yes.

8 Q Okay. You just denied whether or not he was
9 severely injured because you didn't know; is that
10 right?

11 A Yes.

12 Q Okay. Do you know, sitting here today, that Mr.
13 Longphre was severally injured?

14 A I have heard that he had to have some type of
15 surgery.

16 Q Okay. Do you know that he has approximately
17 \$70,000 in medical bills?

18 A No.

19 Q Okay. I asked you, in Request to Admit Number 9,
20 "Admit that Defendant Simpson's subsequent physical
21 contact," what I'm now going to call "the push,"
22 okay? "Admit that the 'push' to Mr. Longphre was
23 negligent," you denied that; is that correct?

24 A What do you mean by "negligent"?

25 Q Well, what does it mean to you?

1 A It wasn't intentional. It was to get -- to get up
2 and to get him away from me where I could get out
3 of there.

4 Q Okay. Could there have been a different way for
5 you to have gotten up where you didn't have to push
6 Mr. Longphre?

7 A Yes.

8 Q Okay. But, again, you -- you'd -- you've already
9 admitted that that push was not an attempt to or
10 intended to harm Mr. Longphre?

11 A Correct.

12 Q Now, I asked you, in Request to Admit Number 12,
13 "Admit that your" -- what I called your "negligent
14 subsequent physical contact" -- I'm just going to
15 call it "the shove." "Admit that the shove to Mr.
16 Longphre was the proximate cause of his severe
17 injuries," that's denied according to this. Is
18 that denied because you didn't know the extent of
19 the injuries? Or why -- why'd you deny that?

20 A I -- I didn't know if he was hurt or not.

21 Q Okay.

22 A I -- the only reason I denied that is that I didn't
23 know that he was injured from me pushing him back
24 to the ground.

25 Q Okay. If -- if you were to find out that Mr.

1 Longphre was severally injured because of that
2 push, that he -- that he twisted his knee or
3 quadricep in some way and became severally injured,
4 would that impact your answer to that question?

5 A Yes. If I knew I -- what I did hurt him, it would
6 change my answer, yes.

7 Q So assuming that that -- that shove is what hurt
8 Mr. Longphre in this case, if that was the case,
9 would you admit this answer?

10 Q Yes.

11 A Okay. And the same question goes to Number 14,
12 where I asked, "Admit that he suffered severe
13 damages as a result of that shove." If you knew
14 that he had been hurt badly, you would not deny
15 that? You would admit it; is that right?

16 Q Yes.

17 A Okay.

18 MR. TRUSLOW: (To the deponent) I need about a
19 five-minute break. Are you okay with that?

20 THE DEPONENT: Sure.

21 MR. TRUSLOW: Okay.

22 (Off the record at 11:03 a.m.
23 until 11:11 a.m.)

24 THE EXAMINATION BY MR. TRUSLOW CONTINUES.

25 Q Mr. Simpson, thank you for accommodating me for

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
South Carolina Farm Bureau Mutual	)	Civil Action No.: 2019-CP-32-01671
Insurance Company,	)	
	)	DEFENDANT TRAVIS SIMPSON'S
Plaintiff,	)	MEMORANDUM IN OPPOSITION
	)	TO PLAINTIFF'S MOTION FOR
vs.	)	SUMMARY JUDGMENT
	)	
Richard Longphre and Travis Simpson,	)	
	)	
Defendants.	)	

Defendant Travis Simpson, by and through his undersigned attorney, submits this Memorandum in Opposition of Plaintiff's Motion for Summary Judgment. Defendant Travis Simpson respectfully requests that the Court deny Plaintiff's motion and allow the issue to proceed to a jury.

I. FACTS

This declaratory judgment action arises out of an underlying action (*Richard Longphre v. Travis Simpson*, Case No. 2018-CP-32-03314) for negligence. On or about December 28, 2017, Simpson made accidental contact with Longphre, causing severe injury to Defendant Longphre's leg. Amended Compl. ¶¶ 5, 11, 14. While there was intentional contact between the Defendants, the Defendants have agreed that the injuries did not arise from the intentional contact; rather, the injuries arose from accidental and unintentional contact later. Longphre Dep. 69:11, 14-24; Simpson Dep. 42:3-47:16. The Amended Complaint clearly alleges that these injuries occurred through the negligence of Defendant Simpson. Amended Compl. ¶ 14. Defendant Simpson is covered by an insurance policy with Plaintiff. This coverage could be used to compensate Defendant Longphre for the injuries caused by Defendant Simpson's negligence.

II. STANDARD OF REVIEW

Summary Judgment is only appropriate when there “is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” SCRCP 56(c). In determining whether or not there is a triable issue of fact, the Court must draw all inferences in favor of the non-moving party. *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003).

III. ARGUMENT

A. The Amended Complaint states that the contact resulting in the injuries was unintentional.

The Amended Complaint clearly states that the contact between the Defendants that resulted in Defendant Longphre’s injuries was unintentional. Amended Compl. ¶ 14. Plaintiff goes into detail explaining the differences in the Complaint and the Amended Complaint. Plaintiff’s Memorandum 3-4. While there are discrepancies, this is not a basis for summary judgment. Both of Defendant Longphre’s sets of allegations are evidence that may be submitted to a jury, and a jury could believe either account. The Amended Complaint establishes a genuine issue of material fact sufficient to deny summary judgment.

B. Defendants agree that the contact which caused the injuries to Defendant Longphre were not intentional.

Both Defendant Longphre and Defendant Simpson’s deposition testimony reflects that the injuries were caused by accidental contact. Longphre Dep. 69:14-24; Simpson Dep. 42:3-47:16. The depositions are quotes extensively in Defendant Longphre’s memorandum. Defendant Longphre’s Memorandum 5-13. Defendant Longphre clearly states that after the altercation between himself and Defendant Simpson stopped, they “somehow...got entangled.” Longphre Dep. 72:13-73:5. Defendant Longphre also testified that Defendant Simpson did nothing to intentionally cause the fall, which resulted in Defendant Longphre’s leg injury. Longphre Dep.

72:13-73:5. Defendant Simpson's testimony corroborates this account. Simpson Dep. 42:3-47:16. The Defendants' testimony constitutes evidence that can be submitted to a jury and the jury may fully believe. Therefore, there is a genuine issue of material fact and the matter should be submitted to a jury.

C. There is a genuine dispute as to whether these injuries arose from an intentional act or not.

Based on the language of the policy, as cited in Plaintiff's memorandum, intentional acts are not considered an "occurrence" that the policy will cover. Section II – Liability Coverages; Section II – Exclusions; Plaintiff's memorandum p. 5. Defendant Longphre testified that he does not believe Defendant Simpson intended to cause the injury and that the fall which caused his injury was purely accidental. Longphre Dep. 72:13-73:5. Defendant Simpson testified that he did not intend to injury Defendant Longphre and that Defendant Longphre was only injured when the altercation had ended and Defendant Simpson acted negligently, which lead to the injury. Simpson Dep. 42:3-47:16. Their testimony is evidence which creates a genuine issue of material fact.

Plaintiff relies on *S.C. Farm Bureau Mutual Insurance Co. v. Dawsey* to establish that the injury to Defendant Longphre is excluded from coverage. 371 S.C. 353, 357, 638 S.E.2d 103, 105. In that case, the defendant was shooting at his son's vehicle, but claimed he did not intend to hit his son. *Id.* at 355, 638 S.E.2d at 104. Unfortunately, a bullet ricocheted off of the tire and hit the son in the jaw. *Id.* In the instant case, Defendant Simpson did have intentional contact with Defendant Longphre, but the intentional contact ceased. Then, per Defendant Longphre's testimony, the two became accidentally entangled, leading to the injury. Longphre Dep. 72:13-73:5. This is more similar to if the defendant in *Dawsey* ceased shooting at his son, dropped the gun, and it accidentally went off, injuring his son. The Plaintiff does not cite case law in line with

the set of facts in Longphre v. Simpson. Therefore, the issue has not been decided and there is a genuine dispute of material fact.

IV. CONCLUSION

To grant summary judgment to the Plaintiff, the court must find that either there was not an “occurrence” under the policy or that coverage is excluded as an “intentional act. The only available evidence of whether or not this incident was an “occurrence” is the testimony and statements of the Defendants. In this case, they have both offered testimony that this was an accident. Furthermore, both parties have offered testimony that the intentional acts had ended and that there was no intent to cause the second fall by Defendant Longphre. The Plaintiff is ignoring the testimony of the only witnesses and attempting to substitute its interpretation of events in lieu of those of the parties who were involved. The evidence, when viewed in the light most favorable to the nonmoving parties, clearly establishes that there is a genuine issue of material fact as to whether or not this was an “occurrence” and whether or not the “intentional act” exclusion applies in this case. Therefore, Defendant Simpson respectfully asks that the Court deny Plaintiff’s Motion for Summary Judgment.

KOON COOK & WALTERS, LLC

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 ATTORNEY FOR DEFENDANT
 SIMPSON

Columbia, South Carolina
 May 1, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
South Carolina Farm Bureau Mutual Insurance Company,	)	Civil Action No.: 2019-CP-32-01671
	)	
Plaintiff,	)	PLAINTIFF’S REPLY MEMORANDUM IN
	)	SUPPORT OF MOTION FOR
vs.	)	SUMMARY JUDGMENT
	)	
Richard K. Longphre and Travis E. Simpson,	)	
	)	
Defendants.	)	
	)	

COMES NOW Plaintiff South Carolina Farm Bureau Mutual Insurance Company (“Farm Bureau”), through its undersigned counsel, in reply to Defendant Travis Simpson (“Simpson”) and Defendant Richard Longphre’s (“Longphre”) Memoranda in Response in Opposition to Plaintiff’s Motion for Summary Judgment.

First, Longphre references the incorrect intentional act exclusion in the Policy. On page 2, footnote #5, Longphre quotes Section I – Exclusion #9. However, Section I of the Policy pertains to coverage for dwelling, other structures, and personal property. It does not apply to liability coverage, and therefore the exclusions in that section are inapplicable.

The exclusion that applies in this matter is found in Section II (Liability Coverages), and states the following in **SECTION II – EXCLUSIONS**, paragraph 1a:

1. ***Coverage E – Personal Liability and Coverage F – Medical Payments to Others do not apply to **bodily injury** or **property damage**:***
 - a. *resulting from intentional acts or directions of **you** or any **insured**. The expected or unexpected results or these acts or directions are not covered.*

Both Longphre and Simpson go to lengths to show that while Simpson may have intended the physical assault, Simpson did not intend any injury or loss. Because of the language of the exclusion, it does not matter that Simpson may not have intended the injurious result. See S.C. Farm Bureau Mut. Ins. Co. v. Dawsey, 371 S.C. 353, 357, 638 S.E.2d 103, 105 (Ct. App. 2006) (holding that the policy language excludes unexpected results of intentional acts in addition to expected results). The testimony is uncontroverted that Simpson tackled Longphre to the ground, put him in a headlock, and pushed him to the ground. (Ex A., Longphre Dep. at 62-63, 68, 72, 75, 97-98; Ex B, Simpson Dep. at 26, 42-45.) Simpson intended those acts, and the intentional act exclusion applies.

Both Simpson and Longphre also attempt to argue that the actual injury may have occurred when Simpson was getting up or disentangling himself from Longphre but not on initial contact. According to Simpson, his contact with Longphre was intentional but getting entangled was accidental. (Simpson Response to Mot. for Summ. J., at 3.) This is a distinction without a difference and also flies in the face of common sense. Both parties describe a single and continuous physical altercation. The Court does not have to determine which particular physical movement in this brawl was the injurious one. The Court does not have to decide if it was the shove, the headlock, or the tackle that caused the injury. This would require a medical opinion, and it does not create a genuine issue of material fact regarding insurance coverage.

There is no genuine issue of material fact that Simpson's actions were not accidental, not an occurrence under the policy, and therefore not covered. Even if the Court finds this incident was an occurrence and should be covered, there is no genuine issue of material fact that the intentional act exclusion applies to defeat that coverage. The Court should grant summary

judgment to Farm Bureau and hold there is no duty to defend or indemnify Simpson in the Underlying Action.

Respectfully submitted,
ROE CASSIDY COATES & PRICE PA

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COUNSEL FOR PLAINTIFF
SOUTH CAROLINA FARM BUREAU MUTUAL
INSURANCE COMPANY

Greenville, South Carolina
May 4, 2020

Exhibit A

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF LEXINGTON) CASE NO.: 2018-CP-32-03314
3

4 Richard Longphre,)
5)
6 Plaintiff,) DEPOSITION OF
7) RICHARD LONGPHRE
8 vs.) SEPTEMBER 9, 2019
9 Travis Simpson,)
10)
11 Defendants.)
12 _____)

13 Deposition on oral examination of RICHARD LONGPHRE,
14 reported by Barbara S. Ham, Court Reporter and Notary
15 Public in and for the State of South Carolina; pursuant to
16 Rule 30 of the South Carolina Rules of Civil Procedure;
17 said Deposition was taken at the law office of Davis
18 Frawley, LLC, 140 East Main Street, Lexington, South
19 Carolina, on Monday, the 9th day of September, 2019,
20 commencing at the hour of 1:09 p.m.
21
22
23
24
25

1 room and I went outside and shined my spotlight
2 down in the field and there were these two guys
3 down there hitting these glow in the dark golf
4 balls in the back of our house. So, I know the
5 back of our house. I could tell they were
6 standing on our property hitting these golf
7 balls; okay? Because that's where they were
8 laying. So, I shined the flashlight on them and
9 I said, Walter, now, please stop hitting those
10 golf balls. I've asked you at least a half a
11 dozen times before not to hit golf balls toward
12 our house; okay? You need to pick your golf
13 balls up and go home. He just ignored me. He
14 kept on hitting his golf balls. I said now
15 Walter, you don't need to be hitting golf balls.
16 You know I've told you that before. So, I walked
17 down to the field and I was going to pick the
18 golf balls up -- the golf ball up and throw it
19 back in his yard and that would end his hitting
20 golf balls in my yard. Thinking that he's going
21 to go home and that would end it all. So, I bent
22 down to pick up the golf ball. When I bent down
23 to pick up the golf ball, he pushed me away.
24 When he pushed me away, this guy was -- and I
25 didn't know who this guy was that was with him at

1 that time. He pushed me away. When he pushed me
2 away, this guy beside me, off to the side that I
3 didn't see -- I had my back half turned to him,
4 he tackled me to the ground and got me in a choke
5 hold, okay? And then Walter said to him -- he
6 said, I think you better let him up, Travis. I
7 think you're hurting him, Travis. You better let
8 him up. And Travis said, you want me to let him
9 up? And Walter said, yeah, I think you need -- I
10 think you're hurting him. You better let him up.
11 So, that's when he re -- released his hold on me
12 and I started to get up; okay? And then when I
13 started to get up; okay? In the process of
14 getting up or whatever -- it all happened so
15 fast; okay? We got entangled somehow. I don't
16 know. Our bodies came in contact with each other
17 and I went back down on the ground like a ton of
18 bricks and I couldn't get up. That's when my
19 quad tendon was torn on my leg and it's --
20 couldn't get up. There's no way you can get --
21 get up with the quad tendon tear. You can't
22 raise your leg. So, when I was knocked down,
23 broke my glasses, I still thank God I had my cell
24 phone. I called the house and my wife answered
25 the phone and I asked her to have my neighbor I

1 A. Addressing the ball -- getting ready to hit the
2 ball back over to his house.

3 Q. He was addressing the ball as they say in golf;
4 right?

5 A. Yes.

6 Q. And that's the ball that you went to pick up?

7 A. Correct.

8 Q. Okay. Did he -- had he swung his club back --

9 A. No.

10 Q. -- before? Okay. But he was -- he was
11 addressing the ball and you went and picked up
12 the ball?

13 A. Yeah. It was on my property.

14 Q. Okay. And you -- did you ever pick it up?

15 A. Tried to and he pushed me away.

16 Q. Okay. But you never actually picked up the ball?

17 A. No.

18 Q. Okay. And then he pushed you away?

19 A. Correct.

20 Q. Did you fall?

21 A. No. I -- he pushed me back and I stumbled back
22 and at the instant he pushed me back, that's when
23 I got tackled from the side. From behind really.

24 Q. By Travis Simpson?

25 A. Exactly.

1 A. Right.

2 Q. And then Travis Simpson tackled you and you both
3 went on the ground?

4 A. Correct.

5 Q. At this point, you were not injured. Is that --
6 that fair?

7 A. That's fair.

8 Q. Okay. And then you and Mr. Simpson -- he
9 released you and then you both --

10 A. Started to stand up; okay?

11 Q. And he started to stand up?

12 A. Right.

13 Q. And you accidentally fell. Is that your
14 testimony?

15 A. Somehow we got entangled and I went back down
16 again and when I went back down again, that's
17 when I couldn't get back up because my tendons
18 were torn, but I was fine because I stood up at
19 first before we got entangled I went back down.
20 When I went back down, my tendons were torn.

21 Q. Okay.

22 A. And I couldn't get back up.

23 Q. Did Travis Simpson do anything to cause you to
24 fall once you got back up?

25 A. I don't think he did anything intentionally to

1 **Q. Okay. How did you break your glasses?**

2 A. Well, when somebody tackles you from behind and
3 grabs you, you know, and smashes your head into
4 the ground, your face into the ground and you're
5 wearing glasses, they tend to break.

6 **Q. Okay.**

7 A. Okay?

8 **Q. Fair enough.**

9 A. Right. I'm surprised my cell phone didn't break.

10 **Q. When was the last time -- strike that. When was**
11 **the next time you had any sort of communication**
12 **with Mr. Santos?**

13 A. I don't think anybody called me at the hospital
14 to see how I was doing.

15 **Q. Did you ever call him?**

16 A. No. Don't think so.

17 **Q. His wife ever call you? Or your wife?**

18 A. Don't think so.

19 **Q. Okay. You ever have any communication with Mr.**
20 **Simpson?**

21 A. No.

22 **Q. Okay. All right. I want to ask you questions**
23 **now about your medicals and your condition**
24 **following this incident. And my goal for the**
25 **next 15 or 20 minutes is to learn as much as I**

1 Q. All right. I think that's all I have. I
2 appreciate it. Mr. Truslow may or may not have
3 questions for you.

4 MR. LONGPHRE - CROSS EXAMINATION BY MR. TRUSLOW:

5 Q. Mr. Longphre, I have a couple of questions based
6 on what Mr. Ayer asked you regarding the incident
7 with Mr. Simpson and Mr. Santos. The way I
8 understood he was asking the question to me was
9 almost in three parts, so I want to make sure
10 I've got this right. There was the time when you
11 were walking up to Mr. Santos and so it's your
12 testimony you went to go pick up the golf ball?

13 A. Yes.

14 Q. And then did I understand you to say that Mr.
15 Santos pushed you at that time?

16 A. Yes.

17 Q. Okay. Were you hurt when Mr. Santos pushed you?

18 A. No. He just pushed me away.

19 Q. Okay. And then the second incident of this was
20 that when Mr. Simpson knocked you to the ground.
21 Is that right? Is that what I understood you to
22 say?

23 A. Right. He tackled me to the ground. Yes.

24 Q. Okay. And then when he tackled you to the
25 ground, were you hurt at -- or injured at that

1 period in time?

2 A. No.

3 Q. Okay. And then there was the part where you were
4 getting up. What were you getting up to go do at
5 that point?

6 A. I was getting up to leave because I thought it
7 was all over with.

8 Q. Okay. And Mr. Ayer was asking you how you fell
9 and what I'm trying to understand is whether or
10 not you -- you were saying that you were
11 entangled. I'm trying to understand. Did you
12 fall on your own? Or did you fall because you
13 were contacted by Mr. Simpson at some point?

14 A. Because we were entangled. We were contacted
15 some way. I don't know how; okay? Because I was
16 standing up fine, you know, trying to stand up
17 find and then I went back down because we were
18 entangled.

19 Q. Okay. That's all the questions I have.

20 MR. AYER: I don't have any.

21 (There being no further questions, the deposition
22 concluded at 3:03 p.m.)
23
24
25

Exhibit B

State of South Carolina	)	
	)	
County of Lexington	)	
Richard Longphre,	)	2018-CP-32-03314
	)	
Plaintiff,	)	
	)	
v.	)	Deposition
	)	
Travis Simpson,	)	of
	)	
Defendant.	)	Travis Simpson
	)	
	)	

Date: November 21, 2019

Time: 10:12 a.m.

Location: Davis Frawley, LLC, 140 E. Main Street,
Lexington, South Carolina

Reported by
Kathleen R. Tackett, CVR-M

1 A I heard the neighbor say, "You know you're not
2 supposed to be hitting golf balls on my property."
3 And he pushed -- as Walter was bending over to grab
4 one of his golf balls, he pushed Walter. And
5 that's when I reacted, to try to separate them, and
6 ended up putting him -- the easiest way to get him
7 away was to get him in a headlock. And I -- as I
8 was pulling him away, we both went to the ground.
9 And, at that point, I was going to let him up and
10 try to get away with him -- get away from him.
11 And, as he was getting up and I was getting up at
12 the same time, I used him to help get -- get myself
13 up and move away from him, and he fell back down.
14 Q Oh, okay. So, while you were getting up, there was
15 -- explain that to me again.
16 A I had him in the headlock.
17 Q Uh-huh.
18 A And we ended up going to the ground. And I
19 mentioned to him, "Do you -- do you want to stop?"
20 And he -- "And I'll let you up."
21 And he said, "Yes. Stop." And I -- I let him
22 up. And, as we were both getting up, I used him to
23 help myself get up, and I pushed him back. And he
24 fell back to the ground.
25 Q Did you notice or observe whether or not he was in

1 pop a sand wedge 100-plus yards?

2 A Yes.

3 Q Okay. All right. Okay. And so when I asked,
4 "Admit that there was an initial event where you
5 tackled Mr. Longphre to the ground," you deny that,
6 right?

7 A Yes.

8 Q And the reason is because you, as you explained
9 earlier, went to separate Mr. Santos and Mr.
10 Longphre, and you put him in a headlock?

11 A Yes.

12 Q Okay. But then y'all did eventually go to the
13 ground while you had Mr. Longphre in a headlock; is
14 that right?

15 A Yes.

16 Q I'm just trying to make sure I understand it.

17 Okay. And when I asked, "Admit that Mr.
18 Longphre was unharmed in the initial event where
19 you tackled him to the ground," you denied that you
20 tackled him to the ground because it was a
21 headlock, and then you took him to the ground; is
22 that right?

23 A Yes.

24 Q But you admit that Mr. Longphre was not harmed at
25 all in that initial altercation?

1 A Yes.

2 Q Okay. All right. And so, when I asked that, "You
3 admit that as you were getting up off the ground,
4 you did so hastily and without due care and/or in
5 disregard of your surroundings, and subsequently
6 made physical contact with Mr. Longphre," you say
7 that you admit that you made physical contact with
8 Mr. Longphre, but you deny the rest of that
9 request. You understand that?

10 A Yes.

11 Q And that's because, as you've explained today, it
12 wasn't that you were getting up hastily, is it?
13 It's that you were getting up and you pushed Mr.
14 Longphre back down so that you could get up; is
15 that right?

16 A Yes.

17 Q And, again, I want to make sure I understand this:
18 Was that intentional or intended to harm Mr.
19 Longphre in any way, that shove?

20 A No.

21 Q Okay. But you do admit that you did the action,
22 the pushing; is that right?

23 A Yes.

24 Q Okay. And that was to get yourself back up, right?

25 A Yes.

1 Q Okay. And so when I asked next, "Admit that as a
2 result of Defendant Simpson's lack of due care
3 and/or disregard of surroundings, wherein you made
4 subsequent physical contact with Mr. Longphre, Mr.
5 Longphre was injured," you denied that request to
6 admit?

7 A I didn't know whether he was or was not.

8 Q And that's because you didn't know whether or not
9 he was injured?

10 A (Nods head up and down.)

11 Q Okay. Is that fair?

12 THE COURT REPORTER: Is that yes?

13 A Yes.

14 Q Okay. And that was the reason for the denial of
15 that request; is that right?

16 A Yes.

17 Q Because, at that time, you didn't know whether or
18 not he was severely injured?

19 A Yes.

20 Q Okay. But you don't deny that while you were
21 getting up you pushed him back to the ground; is
22 that right?

23 A Repeat that.

24 Q But you don't deny the fact that while you were
25 getting up the second time -- I guess he was

1 getting up. Let me make sure I'm asking this
2 right.

3 You don't deny that as you were getting up you
4 pushed him to the ground?

5 A I do not deny that.

6 Q Right. You admit that?

7 A Yes.

8 Q Okay. You just denied whether or not he was
9 severely injured because you didn't know; is that
10 right?

11 A Yes.

12 Q Okay. Do you know, sitting here today, that Mr.
13 Longphre was severally injured?

14 A I have heard that he had to have some type of
15 surgery.

16 Q Okay. Do you know that he has approximately
17 \$70,000 in medical bills?

18 A No.

19 Q Okay. I asked you, in Request to Admit Number 9,
20 "Admit that Defendant Simpson's subsequent physical
21 contact," what I'm now going to call "the push,"
22 okay? "Admit that the 'push' to Mr. Longphre was
23 negligent," you denied that; is that correct?

24 A What do you mean by "negligent"?

25 Q Well, what does it mean to you?

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
SOUTH CAROLINA FARM BUREAU	)	C.A. Number: 2019-CP-32-01671
MUTUAL INSURANCE COMPANY,	)	
Plaintiff,	)	
	)	DEFENDANT RICHARD
v.	)	LONGPHRE'S MOTION TO
	)	RECONSIDER AND
RICHARD LONGPHRE AND TRAVIS	)	MEMORANDUM IN
SIMPSON,	)	SUPPORT
	)	
Defendants.	)	
_____	)	

PLEASE TAKE NOTICE that Defendant Richard Longphre, by and through the undersigned, moves the Court, pursuant to SCRCP 59, to reconsider or vacate the Order Granting Summary Judgment for the Plaintiff, South Carolina Farm Bureau Mutual Insurance Company, dated July 17, 2020 (received by counsel for Longphre on the same day via NEF). In support of this Motion, Longphre asserts the following:

As a threshold matter, Longphre adopts and incorporates by reference the filed pleadings that are of record, to include the memoranda¹ filed by the undersigned and counsel for Defendant Simpson.

Longphre respectfully submits that the Court's Order fails to address a disputed and critical factual issue, namely: conflicting evidence on a material issue. As such and when viewed in a light most favorable to Longphre, the Court should reconsider its order and deny Summary Judgment to Plaintiff.

¹ Including case law referenced, and allied documents therein.

STANDARD OF REVIEW

Since it is a drastic remedy summary judgment "should be cautiously invoked so that **no person will be improperly deprived of a trial of the disputed factual issues.**" (emphasis added) *Baughman v. Am. Tel. & Tel. co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (quoting *Watson v. Southern Ry. co.*, 420 F. supp. 483, 486 (D.S.C. 1975)); see also *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). **Summary judgment is only appropriate when there is no genuine issue of material fact** such that the moving party must prevail as a matter of law. (emphasis added) SCRCP 56(c).

"The party seeking summary judgment has the burden of clearly establishing the absence of a material fact." (emphasis added) *Bennett v. Inv'rs Title Ins. co.*, 370 S.C. 578, 588-89, 635 S.E.2d 649, 654 (Ct. App. 2006).

In determining whether any triable issues of fact exists, **the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.**" (emphasis added) See also *Grimsley v. SC Law Enft Div.*, 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015).

"When there is conflicting evidence on some material issue, the court may not grant summary judgment." (emphasis added) *Stevens & Wilkinson of South Carolina, Inc v. City of Columbia*, 396 S.C. 338, 343, 721 S.E.2d 455, 458 (Ct. App. 2011)

MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER

In its Order granting Summary Judgment, the Court appears to have made (a) factual determination(s) and premised its decision on Plaintiff's position² that Longphre's injuries resulted from one, continuous and intentional physical conflict/confrontation; not two distinct events³. In doing as it did, the Court failed to account for, or improperly decided the merits of competing, factual accounts, chiefly: that there was not one continuous confrontation, and that injuries only occurred in a second, unintentional physical contact situation. Plaintiff specifically disputes Longphre's and Defendant Simpson's competing factual account that two, separate events occurred on December 27, 2018 involving physical contact between the men, and that there was only an injury to Longphre in the second event that involved accidental and unintentional contact. There is ample evidence that the first confrontation ended and that Longphre had suffered no injury or damages, and after that ended, there was a second event that involved accidental contact between Longphre and Defendant Simpson. A reasonable finder of fact could reach that same conclusion. The two pertinent events involving physical contact between Longphre and Defendant Simpson can be distinguished as follows:

a. The first event occurred after a verbal confrontation and involved an intentional, physical engagement wherein Defendant Simpson intentionally tackled Longphre to the ground. There was a brief scuffle, and thereafter, the men agreed that they should get up off the ground and go their separate ways. Most notably, Longphre suffered no injuries or damages related to this intentional act. According to both Longphre and Defendant Simpson, any physical confrontation then ceased.

² A position that is hotly contested by both Longphre's and Defendant Simpson's sworn deposition testimony.

³ As posited by both Longphre and Defendant Simpson in sworn deposition testimony.

b. The second event took place after the first event concluded. Any “fight” was already over, and the men were simply getting up off the ground to go their separate ways. Both Longphre and Defendant Simpson testified that as the two men were getting up off the ground, there was accidental and unintentional physical contact by Defendant Simpson which caused Longphre to suffer damage to his knee. Defendant Simpson testified that he did not intend to injure Longphre, and Longphre was only injured when the altercation had ended and Defendant Simpson acted negligently, which lead to the injury. Defendant Simpson was only trying to get off the ground when he accidentally came into contact with Longphre; which was the negligent contact that caused Longphre to be injured.

Importantly, as it relates to the second event, both Longphre and Defendant Simpson testified that:

- a. both men had been on the ground;
- b. any physical “confrontation” was already over and neither man was actively fighting or planning to fight or otherwise engage the other at that time;
- c. Longphre was not injured or harmed in the first confrontation;
- d. both men were simply getting up off the ground intending to separate; and
- e. negligent, accidental, and unintentional contact occurred while both men were in the process of getting up,
- f. that unintentional contact caused Longphre to suffer the damages complained of in the underlying action for negligence.

The Court cites *S.C. Farm Bureau Mutual Insurance Co. v. Dawsey* (371 S.C. 353, 357, 638 S.E.2d 103, 105) in support of Plaintiff’s argument that Longphre is excluded from coverage; however, the facts of *Dawsey* can be easily distinguished with this matter. In

Dawsey, the defendant was intentionally shooting at his son's vehicle, but claimed he did not intentionally hit his son. The defendant did not expect the result, but while he was intentionally firing the gun at the vehicle with his son in it, a bullet ricocheted and hit the son. *Id.* In this matter, Defendant Simpson intentionally made physical contact with Longphre; however, that intentional physical contact had ceased. Thereafter, the two men were going to go their separate ways. Then, in a second event, Defendant Simpson unintentionally, accidentally, and negligently made contact with Longphre, causing an injury. Both Longphre and Defendant Simpson testify that the contact was accidental and unintentional. Applying the facts of this case to *Dawsey* would require an alteration where that defendant ceased shooting at his son's vehicle, unintentionally or otherwise negligently dropped the gun, and then the gun fired and injured the son. That fact pattern and issue was not decided by *Dawsey* and is factually distinct from the issues in this case.

The testimony clearly establishes that there are contested, genuine issues of material fact that exist and create (a) jury question(s) as to whether there was a second event where the contact causing injury to Longphre was unintentional. Nevertheless, the Court appears to have discounted or ignored the material, sworn testimonial evidence Longphre and Defendant Simpson provided (that there was only an injury caused by unintentional, accidental contact as two men were separating after the first event ended) – a factual position disputed by Plaintiff South Carolina Farm Bureau Mutual Insurance Company (as it attempts to defeat providing coverage to its insured). Ironically, by directly disputing the factual accounts of both Longphre and Defendant Simpson, Plaintiff South Carolina Farm Bureau Mutual Insurance Company directly demonstrates that it cannot meet its burden of clearly establishing the absence of (a)

disputed material fact(s). Resolution of the material, disputed accounts of factual events is not properly decided in a Motion for Summary Judgment.

CONCLUSION

There are material, distinct, and disputed facts as to the events surrounding Longphre's injuries. There is direct, testimonial evidence that, if believed by the finder of fact, would support a verdict in favor of Longphre. If the finder of fact determined that there were two separate events, the second event being the one where there was unintentional contact causing injury to Longphre, this would trigger coverage under the Plaintiff's applicable policy.

Summary judgment is proper only when no genuine issue of material fact exists. Taken in a light most favorable to Longphre, vast evidence exists showing that Defendant Simpson had a duty not to cause harm to Longphre – and though Defendant Simpson's contact with Longphre in the second event was accidental and unintentional, that contact was negligent and caused Longphre to suffer damages.

In neglecting to consider the disputed factual accounts, and/or in making factual determinations as to the veracity of the merits Plaintiff's contrary assertions⁴ as undisputed facts, the Court will deprive Longphre of a trial of these disputed factual issues. Based upon the pleadings and discovery conducted at this stage in the lifecycle of the proceedings, and viewing all the evidence in the light most favorable to Longphre, genuine issues of material fact exist, and Summary Judgment is inappropriate.

⁴ That Longphre's injuries were a result of intentional conduct with unexpected results.

Longphre requests that the Court reconsider its Order and issue a new Order denying Plaintiff South Carolina Farm Bureau Mutual Insurance Company's Motion for Summary Judgement.

Truslow & Truslow Law Firm

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
South Carolina Farm Bureau Mutual Insurance Company,	)	Civil Action No.: 2019-CP-32-01671
	)	
Plaintiff,	)	PLAINTIFF'S RESPONSE IN OPPOSITION
	)	TO DEFENDANT LONGPHRE'S MOTION
vs.	)	TO ALTER OR AMEND
	)	
Richard K. Longphre and Travis E. Simpson,	)	
	)	
Defendants.	)	
	)	

COMES NOW Plaintiff South Carolina Farm Bureau Mutual Insurance Company ("Farm Bureau"), through its undersigned counsel, in opposition to Defendant Richard Longphre's ("Longphre") motion to alter or amend a judgment pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure*.

Factual and Procedural History

Farm Bureau filed a motion for summary judgment on March 2, 2020 and a supporting memorandum on April 23, 2020, arguing there was no genuine issue of material fact and that Farm Bureau was entitled to a judgment as a matter of law that there was no insurance coverage available to Defendant Travis E. Simpson ("Simpson") in the underlying lawsuit filed by Longphre. Longphre filed a memorandum in opposition to Farm Bureau's motion on April 29, 2020, and Simpson filed a memorandum in opposition on May 1, 2020. Farm Bureau filed a short reply memorandum on May 4, 2020. On July 17, 2020, the Court granted Farm Bureau's motion for summary judgment. Longphre filed a timely motion to alter or amend (to reconsider) on July 24, 2020.

Motion to Reconsider

“The losing party must first try to convince the lower court it is [sic] has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred.” I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). “If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.” Id.

In his motion to alter or amend, Longphre argues that the Court did not acknowledge conflicting evidence, specifically that the physical altercation between Longphre and Simpson was actually two separate and distinct events—one intentional physical engagement without resulting injury followed by separate accidental conduct when the two men were trying to separate that did result in injury. Second, Longphre argues the Court misapplied S.C. Farm Bureau Mut. Ins. Co. v. Dawsey, 371 S.C. 353, 357, 638 S.E.2d 103, 105 (Ct. App. 2006) because the facts of Dawsey do not contemplate this “two event” theory. Both these issues were raised with the Court and ruled upon in the Court’s July 17, 2020 Order, and the Court should deny Longphre’s motion to alter or amend.

In now arguing there were two distinct events, Longphre says his actual injury occurred when Simpson was getting up or disentangling himself from Longphre but not during Simpson’s initial tackle and headlock of Longphre. This is a distinction without a difference and also flies in the face of common sense. Both parties describe a single and continuous physical altercation. A boxing match can have up to twelve (12) rounds, but it is still a single match. The testimony is uncontroverted that Simpson tackled Longphre to the ground, put him in a headlock, and pushed him to the ground, breaking Longphre’s glasses. (Ex A. to Reply Brief, Longphre Dep. at 62-63,

68, 72, 75, 97-98; Ex B, Simpson Dep. at 26, 42-45.)¹ Simpson intended each of those acts, and the intentional act exclusion applies. The Court squarely addressed this in its Order characterizing the incident as a “verbal confrontation that devolved into a physical engagement” (Order, p.2) and in stating that “having reviewed the deposition testimony, it is abundantly clear that the confrontation was the result of intentional acts.” (Order, p. 4).

Longphre also now argues that S.C. Farm Bureau Mut. Ins. Co. v. Dawsey, 371 S.C. 353, 357, 638 S.E.2d 103, 105 (Ct. App. 2006) does not apply because Dawsey does not have the “two event” factual scenario that Longphre now sets forth. In fact, the Court correctly applied Dawsey because that case looked at the same intentional act exclusion cited by Farm Bureau and found it “excludes both intended and unintended results of intentional acts.” (Order, p. 4.) Because of the language of the exclusion, it does not matter that Simpson may not have intended the injurious result. See S.C. Farm Bureau Mut. Ins. Co. v. Dawsey, 371 S.C. 353, 357, 638 S.E.2d 103, 105 (Ct. App. 2006) (holding that the policy language excludes unexpected results of intentional acts in addition to expected results). The only important question is whether Simpson committed intentional acts, a question the Court answers in the affirmative based on the clear and uncontroverted testimony of Longphre and Simpson. Because there is no genuine issue of material fact that Simpson’s acts were intentional and because of the applicability of the intentional act exclusion (confirmed by Dawsey), summary judgment for Farm Bureau was proper.

¹ The deposition excerpts cited herein were included as Exhibits A and B respectively to Farm Bureau’s Reply Memorandum in Support of Motion for Summary Judgment filed on May 4, 2020.

Conclusion

The Court correctly found there is no genuine issue of material fact that Simpson's actions were not accidental and thus not an occurrence under the policy, and that the intentional act exclusion applies to defeat coverage. The Court should deny Longphre's motion to alter or amend its Order granting summary judgment to Farm Bureau.

Respectfully submitted,
ROE CASSIDY COATES & PRICE PA

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COUNSEL FOR PLAINTIFF
SOUTH CAROLINA FARM BUREAU MUTUAL
INSURANCE COMPANY

Greenville, South Carolina
July 28, 2020

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NOTICE OF APPEAL IN A CIVIL CASE

AUG 17 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Case No. 2019-CP-32-01671

Richard K. Longphre,

Appellant,

v.

South Carolina Farm Bureau Mutual Insurance Company,

Respondent.

NOTICE OF APPEAL

Defendant Richard K. Longphre hereby appeals the Orders of the Honorable Walton J. McLeod dated and filed July 17, 2020 granting Summary Judgment to the Plaintiff/Respondent and the Order dated and filed July 30, 2020 denying Defendant Longphre's Motion to Reconsider or Vacate the Summary Judgment Order.

Copies of both orders are attached hereto.

August 13, 2020



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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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AUG 17 2020

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
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Walton J. McLeod, Circuit Court Judge

Case No. 2019-CP-32-01671

Richard K. Longphre,

Appellant,

v.

South Carolina Farm Bureau Mutual Insurance Company,

Respondent.

PROOF OF SERVICE

I, Mackenzie Woodward, paralegal for Neal D. Truslow, Esquire, attorney for Appellant, certify I have this date served the forgoing document(s) on the individual(s) listed below by placing a copy in the United States Mail to the following address:

Attorney for Respondent

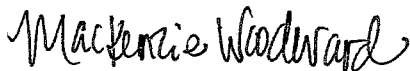
Ross B. Plyler, Esquire

Roe Cassidy

P.O. Box 10529

Greenville, SC 29603

DOCUMENT(S): 1. *Notice of Appeal*



Mackenzie Woodward

Columbia, South Carolina

8/13

, 2020

ROA0204

+STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)

South Carolina Farm Bureau Mutual Insurance) C/A No. 2019-CP-32-01671
Company,)

Plaintiff,)

Versus)

Richard K. Longphre and Travis E. Simpson,)

Defendant.)

**ORDER GRANTING SUMMARY
JUDGMENT FOR THE PLAINTIFF**

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AUG 17 2020

SC Court of Appeals

This matter is before the Court on South Carolina Farm Bureau Mutual Insurance Company's (hereinafter "the Plaintiff") Motion for Summary Judgment. This declaratory judgment arises out of a physical altercation between the Defendants resulting in injury. The parties agreed to have this matter decided upon written submissions to the court, and waived a formal hearing on the matter. The Court received substantive legal memoranda and exhibits from each party. Ross Plyler, Esquire appeared for the Plaintiff, while Neal Truslow, Esquire appeared for Defendant Richard K. Longphre (hereinafter "Longphre").

FACTUAL AND PROCEDURAL BACKGROUND

On December 28, 2017, at approximately 6:30 p.m., Walter Santos ("Santos") and Defendant Simpson were hitting golf balls on Defendant Longphre's property in a grassy area between Longphre's house and Santos' house. Apparently, there was a history of tension between Longphre and Santos regarding use of the surrounding property. Longphre, aggravated by this activity, shined his flashlight on the men and went outside to confront them about hitting golf balls on his property. Simpson admitted to drinking "two – one to two, three" beers on the night of the incident. They were hitting "glow balls" which are golf balls that blink for ten minutes after they are struck. While each person's account of the events does not match perfectly, it is nonetheless

evident that a verbal confrontation devolved into a physical engagement, and Longphre suffered physical injuries as a result.¹

Plaintiff filed this declaratory action on April 30, 2019, seeking the Court to declare that the claims asserted against Defendant Simpson by Defendant Longphre are excluded under the applicable policy terms and conditions, and further, that there is no duty to defend Simpson under the policy. Plaintiff filed its Motion for Summary Judgment on March 2, 2020, and its Memorandum in Support of Motion for Summary Judgment on April 23, 2020. Defendant Lamphre filed his Memorandum in Opposition on April 29, 2020. Plaintiff filed its Reply on May 4, 2020. This matter is ripe for a decision, and this Court finds as follows.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. S.C.R.C.P. 56. In determining whether any true triable issues of fact exist, the Court should view the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493 (2002). Naturally, a court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth the facts that remain undisputed. *David v. McLeod Regional Medical Center*, 367 S.C. 242, 250 (2006).

The plain language of S.C.R.C.P. 56 mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case. *Baughman v. At&T*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-546 (1991). In such a situation, there can be no genuine

¹ This underlying action involving the Defendants is *Richard Longphre v. Travis Simpson*, Case No. 2018-CP-32-03314.

issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *Id.* The moving party is entitled to a judgment as a matter of law because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. *Id.*

ANALYSIS

The primary issue before this court is whether the evidence, both documentary and through sworn testimony, creates an issue of material fact as to the question of coverage and exclusions thereof. On one hand, Plaintiff asserts that Lamphre's injuries were the result of intentional conduct and therefore excluded from coverage. On the other, Lamphre asserts that the deposition testimony provides an issue of fact as to whether the injuries were accidental and subject to coverage.² Since "accident" is not specifically defined in the policies, the term should be defined according to the usual understanding of the term's significance to the ordinary person. *Manufacturers and Merchants Mut. Ins. Co. v. Harvey*, 498 S.E.2d 222, 225, 330 S.C. 152, 158–59 (S.C.App.,1998); *USAA Property and Casualty Ins. Co. v. Rowland*, 312 S.C. 536, 435 S.E.2d 879 (Ct.App.1993). The South Carolina Supreme Court has interpreted the term "accident" to mean "an effect which the actor did not intend to produce and cannot be charged with the design of producing." *Goethe v. New York Life Ins. Co.*, 183 S.C. 199, 190 S.E. 451 (1937). More plainly stated, an intended injury cannot be accidental. *Id.*

² The applicable policy language provides:

SECTION II – EXCLUSIONS, paragraph 1a:

1. Coverage E – Personal Liability and Coverage F – Medical Payments to Others do not apply to bodily injury or property damage:

a. resulting from intentional acts or directions of you or any insured. The expected or unexpected results or these acts or directions are not covered.

Although South Carolina allows alternative pleading, a party may not invoke coverage by couching intentional acts in negligence terms. *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 11, 530 S.E.2d 132, 137 (Ct. App. 2000). In South Carolina, the general rule, for an act to be excluded by the intentional act exclusion of a policy, requires: 1) that the act which produced the loss must be intentional; and 2) that the results of the act must be intended. *See Miller v. Fidelity-Phoenix Ins. Co.*, 268 S.C. 72, 231 S.E.2d 701 (1977). However, “[a]n insurance policy can be written to exclude the application of Miller.” *Auto-Owners Ins. Co. v. Taylor*, 2018 WL 4078579 at *5, C/A 1:17-cv-02632-JMC (D.S.C. August 24, 2018). Plaintiff Farm Bureau’s intentional act exclusion is written specifically to exclude both intended and unintended results of intentional acts, and the Court has applied and upheld this exact exclusion.³ *See S.C. Farm Bureau Mut. Ins. Co. v. Dawsey*, 371 S.C. 353, 357, 638 S.E.2d 103, 105 (Ct. App. 2006) (holding that the policy language excludes unexpected results of intentional acts in addition to expected results).

Having reviewed the relevant deposition testimony, it is abundantly clear that the confrontation was the result of intentional acts. While Simpson may not have intended serious injury and Longphre may not have expected to be seriously injured, Simpson’s acts appear to be precisely the type of acts contemplated by his insurance policy. The confrontation between the Defendants was not by accident. Simpson may ultimately be found legally liable in the underlying case for Longphre’s injuries, however his conduct in bringing about the injuries was intentional,

³ Insurance policies are subject to the general rules of contract construction. *South Carolina Farm Bureau Mut. Ins. Co. v. Dawsey*, 638 S.E.2d 103, 104–05, 371 S.C. 353, 356 (S.C.App.,2006); *Century Indem. Co. v. Golden Hills Builders, Inc.*, 348 S.C. 559, 565, 561 S.E.2d 355, 358 (2002). The court must give policy language its plain, ordinary, and popular meaning. *Id.* Although exclusions in a policy are construed against the insurer, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or a statutory prohibition. *B.L.G. Enters. v. First Fin. Ins. Co.*, 334 S.C. 529, 535–36, 514 S.E.2d 327, 330 (1999). The court cannot torture the meaning of policy language to extend coverage not intended by the parties. *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 8, 530 S.E.2d 132, 135 (Ct.App.2000).

and the harmful results arising from that intentional conduct (“expected or unexpected”) are not covered under Plaintiff’s policy with Simpson.

The Plaintiff’s Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

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Lexington Common Pleas

Case Caption: South Carolina Farm Bureau Ins Co VS Richard K Longphre ,
defendant, et al
Case Number: 2019CP3201671
Type: Order/Summary Judgment

It Is So Ordered

s/ Walton J. McLeod

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ROA0210

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	
	)	
South Carolina Farm Bureau Mutual Insurance Company,	)	C/A No. 2019-CP-32-01671
	)	
<i>Plaintiff,</i>	)	
	)	
Versus	)	
	)	
Richard K. Longphre and Travis E. Simpson,	)	
	)	
<i>Defendant.</i>	)	

ORDER

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AUG 17 2020

SC Court of Appeals

This matter came before this Court on Defendant Richard K. Longphre's Motion to Reconsider or Vacate the Order Granting Summary Judgment for the Plaintiff pursuant to Rule 59(e), SCRCF. Specifically, Defendant seeks this Court to alter or amend its judgment entered on July 17, 2020. Defendant's motion was timely filed and provided to this Court on July 24, 2020. Plaintiff, S.C. Farm Bureau Mutual Insurance Company, filed a response in opposition to Defendant's motion on July 28, 2020.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby DENIES Defendant's Motion to Reconsider pursuant to Rule 59(e) SCRCF to Alter or Amend Judgment of this Court's Order entered on or about July 17, 2020. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: South Carolina Farm Bureau Ins Co VS Richard K Longphre ,
defendant, et al
Case Number: 2019CP3201671
Type: Order/Amend

It Is So Ordered

s/ Walton J. McLeod

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ROA0212

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AUG 17 2020

SC Court of Appeals

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Case No. 2019-CP-32-01671

Richard K. Longphre,

Appellant,

v.

South Carolina Farm Bureau Mutual Insurance Company,

Respondent.

NOTICE OF APPEAL

Defendant Richard K. Longphre hereby appeals the Orders of the Honorable Walton J. McLeod dated and filed July 17, 2020 granting Summary Judgment to the Plaintiff/Respondent and the Order dated and filed July 30, 2020 denying Defendant Longphre's Motion to Reconsider or Vacate the Summary Judgment Order.

Copies of both orders are attached hereto.

August 13, 2020



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ATTORNEY FOR APPELLANT LONGPHRE

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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Case No. 2019-CP-32-01671

Richard K. Longphre,

Appellant,

v.

South Carolina Farm Bureau Mutual Insurance Company,

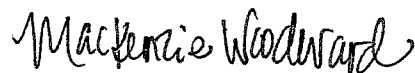
Respondent.

PROOF OF SERVICE

I, Mackenzie Woodward, paralegal for Neal D. Truslow, Esquire, attorney for Appellant, certify I have this date served the forgoing document(s) on the individual(s) listed below by placing a copy in the United States Mail to the following address:

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DOCUMENT(S): 1. *Notice of Appeal*



Mackenzie Woodward

Columbia, South Carolina

8/13, 2020

ROA0215

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SC Court of Appeals

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+STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)

South Carolina Farm Bureau Mutual Insurance) C/A No. 2019-CP-32-01671
Company,)

Plaintiff,)

Versus)

Richard K. Longphre and Travis E. Simpson,)

Defendant.)

**ORDER GRANTING SUMMARY
JUDGMENT FOR THE PLAINTIFF**

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AUG 17 2020

SC Court of Appeals

This matter is before the Court on South Carolina Farm Bureau Mutual Insurance Company's (hereinafter "the Plaintiff") Motion for Summary Judgment. This declaratory judgment arises out of a physical altercation between the Defendants resulting in injury. The parties agreed to have this matter decided upon written submissions to the court, and waived a formal hearing on the matter. The Court received substantive legal memoranda and exhibits from each party. Ross Plyler, Esquire appeared for the Plaintiff, while Neal Truslow, Esquire appeared for Defendant Richard K. Longphre (hereinafter "Longphre").

FACTUAL AND PROCEDURAL BACKGROUND

On December 28, 2017, at approximately 6:30 p.m., Walter Santos ("Santos") and Defendant Simpson were hitting golf balls on Defendant Longphre's property in a grassy area between Longphre's house and Santos' house. Apparently, there was a history of tension between Longphre and Santos regarding use of the surrounding property. Longphre, aggravated by this activity, shined his flashlight on the men and went outside to confront them about hitting golf balls on his property. Simpson admitted to drinking "two – one to two, three" beers on the night of the incident. They were hitting "glow balls" which are golf balls that blink for ten minutes after they are struck. While each person's account of the events does not match perfectly, it is nonetheless

evident that a verbal confrontation devolved into a physical engagement, and Longphre suffered physical injuries as a result.¹

Plaintiff filed this declaratory action on April 30, 2019, seeking the Court to declare that the claims asserted against Defendant Simpson by Defendant Longphre are excluded under the applicable policy terms and conditions, and further, that there is no duty to defend Simpson under the policy. Plaintiff filed its Motion for Summary Judgment on March 2, 2020, and its Memorandum in Support of Motion for Summary Judgment on April 23, 2020. Defendant Lamphre filed his Memorandum in Opposition on April 29, 2020. Plaintiff filed its Reply on May 4, 2020. This matter is ripe for a decision, and this Court finds as follows.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. S.C.R.C.P. 56. In determining whether any true triable issues of fact exist, the Court should view the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493 (2002). Naturally, a court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth the facts that remain undisputed. *David v. McLeod Regional Medical Center*, 367 S.C. 242, 250 (2006).

The plain language of S.C.R.C.P. 56 mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case. *Baughman v. At&T*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-546 (1991). In such a situation, there can be no genuine

¹ This underlying action involving the Defendants is *Richard Longphre v. Travis Simpson*, Case No. 2018-CP-32-03314.

issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *Id.* The moving party is entitled to a judgment as a matter of law because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. *Id.*

ANALYSIS

The primary issue before this court is whether the evidence, both documentary and through sworn testimony, creates an issue of material fact as to the question of coverage and exclusions thereof. On one hand, Plaintiff asserts that Lamphre's injuries were the result of intentional conduct and therefore excluded from coverage. On the other, Lamphre asserts that the deposition testimony provides an issue of fact as to whether the injuries were accidental and subject to coverage.² Since "accident" is not specifically defined in the policies, the term should be defined according to the usual understanding of the term's significance to the ordinary person. *Manufacturers and Merchants Mut. Ins. Co. v. Harvey*, 498 S.E.2d 222, 225, 330 S.C. 152, 158–59 (S.C.App.,1998); *USAA Property and Casualty Ins. Co. v. Rowland*, 312 S.C. 536, 435 S.E.2d 879 (Ct.App.1993). The South Carolina Supreme Court has interpreted the term "accident" to mean "an effect which the actor did not intend to produce and cannot be charged with the design of producing." *Goethe v. New York Life Ins. Co.*, 183 S.C. 199, 190 S.E. 451 (1937). More plainly stated, an intended injury cannot be accidental. *Id.*

² The applicable policy language provides:

SECTION II – EXCLUSIONS, paragraph 1a:

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a. resulting from intentional acts or directions of you or any insured. The expected or unexpected results or these acts or directions are not covered.

Although South Carolina allows alternative pleading, a party may not invoke coverage by couching intentional acts in negligence terms. *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 11, 530 S.E.2d 132, 137 (Ct. App. 2000). In South Carolina, the general rule, for an act to be excluded by the intentional act exclusion of a policy, requires: 1) that the act which produced the loss must be intentional; and 2) that the results of the act must be intended. *See Miller v. Fidelity-Phoenix Ins. Co.*, 268 S.C. 72, 231 S.E.2d 701 (1977). However, “[a]n insurance policy can be written to exclude the application of Miller.” *Auto-Owners Ins. Co. v. Taylor*, 2018 WL 4078579 at *5, C/A 1:17-cv-02632-JMC (D.S.C. August 24, 2018). Plaintiff Farm Bureau’s intentional act exclusion is written specifically to exclude both intended and unintended results of intentional acts, and the Court has applied and upheld this exact exclusion.³ *See S.C. Farm Bureau Mut. Ins. Co. v. Dawsey*, 371 S.C. 353, 357, 638 S.E.2d 103, 105 (Ct. App. 2006) (holding that the policy language excludes unexpected results of intentional acts in addition to expected results).

Having reviewed the relevant deposition testimony, it is abundantly clear that the confrontation was the result of intentional acts. While Simpson may not have intended serious injury and Longphre may not have expected to be seriously injured, Simpson’s acts appear to be precisely the type of acts contemplated by his insurance policy. The confrontation between the Defendants was not by accident. Simpson may ultimately be found legally liable in the underlying case for Longphre’s injuries, however his conduct in bringing about the injuries was intentional,

³ Insurance policies are subject to the general rules of contract construction. *South Carolina Farm Bureau Mut. Ins. Co. v. Dawsey*, 638 S.E.2d 103, 104–05, 371 S.C. 353, 356 (S.C.App.,2006); *Century Indem. Co. v. Golden Hills Builders, Inc.*, 348 S.C. 559, 565, 561 S.E.2d 355, 358 (2002). The court must give policy language its plain, ordinary, and popular meaning. *Id.* Although exclusions in a policy are construed against the insurer, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or a statutory prohibition. *B.L.G. Enters. v. First Fin. Ins. Co.*, 334 S.C. 529, 535–36, 514 S.E.2d 327, 330 (1999). The court cannot torture the meaning of policy language to extend coverage not intended by the parties. *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 8, 530 S.E.2d 132, 135 (Ct.App.2000).

and the harmful results arising from that intentional conduct (“expected or unexpected”) are not covered under Plaintiff’s policy with Simpson.

The Plaintiff’s Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

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Lexington Common Pleas

Case Caption: South Carolina Farm Bureau Ins Co VS Richard K Longphre ,
defendant, et al
Case Number: 2019CP3201671
Type: Order/Summary Judgment

It Is So Ordered

s/ Walton J. McLeod

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	
	)	
South Carolina Farm Bureau Mutual Insurance Company,	)	C/A No. 2019-CP-32-01671
	)	
<i>Plaintiff,</i>	)	
	)	
Versus	)	
	)	
Richard K. Longphre and Travis E. Simpson,	)	
	)	
<i>Defendant.</i>	)	

ORDER
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AUG 17 2020
SC Court of Appeals

This matter came before this Court on Defendant Richard K. Longphre's Motion to Reconsider or Vacate the Order Granting Summary Judgment for the Plaintiff pursuant to Rule 59(e), SCRCF. Specifically, Defendant seeks this Court to alter or amend its judgment entered on July 17, 2020. Defendant's motion was timely filed and provided to this Court on July 24, 2020. Plaintiff, S.C. Farm Bureau Mutual Insurance Company, filed a response in opposition to Defendant's motion on July 28, 2020.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby DENIES Defendant's Motion to Reconsider pursuant to Rule 59(e) SCRCF to Alter or Amend Judgment of this Court's Order entered on or about July 17, 2020. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

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Lexington Common Pleas

Case Caption: South Carolina Farm Bureau Ins Co VS Richard K Longphre ,
defendant, et al
Case Number: 2019CP3201671
Type: Order/Amend

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2020-07-30 13:49:02 page 2 of 2

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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Case No. 2019-CP-32-01671

South Carolina Farm Bureau Mutual Insurance Company,
Respondent,

v.

Richard K. Longphre and Travis E. Simpson, Defendants,
of Whom Richard K. Longphre is Appellant Appellant.

PROOF OF SERVICE

I, Mackenzie Woodward, paralegal for Neal D. Truslow, Esquire, attorney for Appellant, certify I have this date served the forgoing document(s) on the individual(s) listed below by placing a copy in the United States Mail to the following address:

The Honorable Lisa M. Comer
Clerk of Court
Lexington County Common Pleas
205 East Main Street, Suite 128
Lexington, SC 29072

DOCUMENT(S): 1. *Notice of Appeal*


Mackenzie Woodward

Columbia, South Carolina

8/24, 2020

ROA0224

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Mar 11 2021

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/Neal D. Truslow
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ATTORNEY FOR APPELLANT

March 11, 2021