

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Clifton B. Newman, Circuit Judge

Case No. 2021-000461

**RECEIVED**

**May 21 2021**

**SC Court of Appeals**

Ex Parte: Lashelle Burnette,

Appellant,

Ex Parte: James Monroe  
Elliott, Sr. as Personal  
Representative of the Estate of  
Tamesha Singletary,

Respondent,

v.

In re: Petition for approval of  
wrongful death claim settlement for  
the estate of Tamesha Singletary, by  
and through its personal representative,  
James Monroe Elliott, Sr.

**MEMORANDUM IN SUPPORT OF APPELLANT’S RETURN TO  
MOTION TO DISMISS**

Lashelle Burnette (“Appellant”), by and through her undersigned attorney, respectfully submits  
this memorandum in support of her return to Respondent’s motion to dismiss.

## **FACTUAL AND PROCEDURAL BACKGROUND**

This matter arises out of a tractor trailer collision involving a commercial motor vehicle operated by Ray Dennis Russell under the authority of Hansen Pallet Company, a vehicle operated by Appellant Lashelle Burnette, and a pedestrian, Tamesha Singletary. Appellant alleges that she incurred property damage and personal injuries in the collision and the Respondent Estate of Tamesha Singletary alleges that she suffered personal injuries and died as a result of the collision. Appellant and Respondent each asserted claims against Hansen Pallet Company and Ray Dennis Russell. Progressive Northern Insurance Company (“Progressive”) insured Hansen Pallet Company and Ray Dennis Russell through policy of insurance with a single limit of \$1,000,000.00.

Progressive then tendered its \$1,000,000 policy to both Appellant and Respondent. (Ex. 1 - “the Tender Letter”). The Tender Letter requested that the claimants attempt to agree on an allocation and suggested mediation if the claimants could not agree. The claimants could not reach an agreed upon allocation, and both Appellant and Respondent informed Progressive and proposed filing an interpleader action. Thereafter, Progressive attempted to pay the full \$1,000,000 to Respondent, and Respondent file the instant Petition to have that proposed settlement approved. Appellant timely moved to intervene to protect her rights and interest in the \$1,000,000 created by the Tender Letter and her response to the same. Appellant’s right to intervene is not as a general claimant to liability insurance funds, but as the recipient of the Tender Letter who agreed to Progressive’s terms.

Respondent's Motion to Dismiss should be denied because Appellant has sufficient standing to file this appeal and this appeal presents a novel question of law regarding the effects of an accepted tender letter on the rights and duties of an insurer and claimants.

## **DISCUSSION**

### **I. APPELLANT HAS SUFFICIENT STANDING.**

Respondent's Motion to Dismiss should be denied because Appellant has standing sufficient to file this appeal and fully brief her position. First, issue of standing is tied to the substantive merits of the issues on appeal, and not an issue wholly separate from the merits. Respondent's Motion concedes this point. (R. Mot. Dismiss, p. 6). The primary issue on appeal in this case is whether the trial court properly denied Appellant's Motion to Intervene, and standing is a threshold issue in determining whether a party may intervene under Rule 24(a), SCRPC. (R. Mot. Dismiss, p. 6)(citing *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994); see also *Ex Parte GEICO*, 373 S.C. 132, 644 S.E.2d 699, 702 (2007)). As standing goes to the merits of Appellant's issue on appeal, the parties should be afforded full briefing on a fully developed record.

Second, the Tender Letter alone, as well as the accompanied acceptance of all material terms, created rights and duties that support Appellant's standing to appeal. "Standing has been called one of 'the most amorphous [concepts] in the entire domain of public law.'" *Preservation Soc. of Charleston v. SCDHEC*, 430 S.C. 200, 208, 845 S.E.2d 481, 486 (2020)(citing *Flast v. Cohen*, 392 U.S. 83, 99, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968) (alteration in original) (citation omitted). "Standing may be acquired: (1) by statute; (2) through the rubric of "constitutional standing;" or (3)

under the ‘public importance’” exception.” *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 195, 669 S.E.2d 337, 340 (2008)

Progressive made the decision to send the Tender Letter, Appellant agreed to the terms of the Tender Letter, and relied on the representations of Progressive and its attorneys. None of the cases cited by the Respondent mirror the facts of this case. None of them discuss what effects the Tender Letter has, and whether it may or may not confer rights and duties on Appellant with regards to the \$1,000,000 insurance policy. This appeal presents a specific factual and legal question – whether an insurer’s tender letter, followed by agreement from a claimant confers any rights or duties on the claimant. The facts of this case differentiate it from existing caselaw and present a question of first impression that should be decided after full briefing based on a complete record.

### CONCLUSION

For the reasons stated above, Appellant respectfully requests that Respondent’s Motion to Dismiss be denied.

*s/W. Hugh McAngus, Jr.*  
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Attorney for Lashealle Burnett, Appellant

May 21, 2021

# **EXHIBIT 1**



## BAKER RAVENEL BENDER

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RE: Claimant: Estate of Tamesha Elliott-Singletary/Lashealle Burnett  
D/Incident: 04/03/2020  
Insured: Hansen Pallet Company  
Claim Number: 20-3360292  
Our File Number: 10716.215

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Gentlemen:

On behalf of Hansen Pallet Company and Progressive Northern Insurance Company, I am hereby tendering to your clients the \$1,000,000 limit of liability coverage available under the Progressive policy issued to Hansen in exchange for releases of all claims against Hansen Pallet Company and its driver, Ray Dennis Russell. Please let me know if you can agree as to how this fund should be divided between your clients if this tender is accepted. If it is not possible to reach an agreement in that regard, we suggest that we enlist the help of a mediator.

I have attached a copy of the Progressive policy for your review. I look forward to hearing from you soon.

Sincerely yours,

*s/William P. Davis*

William P. Davis

WPD:jo

Enclosure

cc: Lisa Hansen, Hansen Pallet Company (via email)  
Karen M. Castelli, Progressive Group of Insurance Companies (via email)