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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2020-001144

Kierra Johnson,.....Appellant,

v.

Greenville County, Greater Greenville Sanitation District, the South Carolina
Department of Transportation, American Southern Insurance Company, and the
State Fiscal Accountability Authority,.....Defendants,

Of whom American Southern Insurance Company is the.....Respondent.

INITIAL REPLY BRIEF OF APPELLANT

s/ Joshua T. Hawkins

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TABLE OF AUTHORITIES

CASES

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Kleckley v. Northwestern Nat. Cas. Co., 526 S.E.2d 218 (2000)4

STATUTES

S.C. Code Ann. § 38-59-203

REPLY

The Respondents say in their 3rd footnote that they never took the position that insurers are immune from lawsuits and that the Circuit Court never made that ruling. Then, on the very next page, they start out with a heading titled “South Carolina law does not allow a direct action against an insurer.” They are correct. Despite the clear and unambiguous language of S.C. Code Ann. §38-59-20, our Courts have read into a statute clearly designed to create consequences for improper claims practices a meaning far different from what the statute says.

The Respondents then go on to attempt to create confusion surrounding American Southern and SFAA, but the matter is not confusing. An actual insurer, a third-party administrator, an adjusting company, and any other entity related to insurance and adjustment of claims can improperly handle claims and is presumably subject to the statute.

The Respondents then take the position that the Appellant’s abuse of process claim should have been dismissed because it was essentially the same claim as the Improper Claims Practices Act claim. Under South Carolina law, “[t]he abuse of process tort provides a remedy for one damaged by another’s perversion of a legal procedure for a purpose not intended by the procedure.” *Food Lion v. United Food & Commercial*, 351 S.C. 65, 567 S.E. 2d 251 (Ct. App. 2002). The simple fact is the causes of action are different, our Courts have addressed them separately in separate cases, and the Appellant plead the causes of action separately, under different headings, and with specific facts as to each. If the Respondents abused legal process and caused the Appellant to sustain damages, then a cause of action lies whether the defendant is an insurer or any other person or entity, regardless of the Improper Claims Practices statute. In fact, the Respondents did, and the Appellant described the abuse with specific facts and a prayer for damages.

The Respondents go back to the Improper Claims Practices Act by quoting *Gaskins*, 541 S.E.2d. and admit that the Act at a minimum entitles a claimant to a third-party administrative remedy. No such remedy exists, though. The undersigned has tried that in other cases, and it appears the Department simply does not grant the relief the Legislature sought to create with the statute. In fact, penalties have only been issued one time in the past nine (9) years.

It is curious that the Respondents continue to take the position that the Appellant's complaint was not well-pleaded. If the Respondent genuinely holds that position, it is uncertain what exactly the Respondents think is required to plead a case. The Appellant's complaint is eleven (11) pages long with twenty-six (26) paragraphs in the factual background section alone. The Appellant also included additional facts in her causes of action. The Appellant pled every element of every cause of action. Legally, it is impossible to dismiss the Appellant's abuse of process claim and if the Court applies the plain language of the Improper Claims Practices Act, that claim has been sufficiently pled, too, and *Gaskins* and *Kleckley* should be overruled.

CONCLUSION

For the foregoing reasons, the Appellant respectfully requests the Court reverse the Circuit Court's dismissal of the Appellant's claims against American Southern Insurance Company.

Respectfully submitted,

s/ Joshua T. Hawkins

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State Fiscal Accountability Authority,Defendants,

Of whom American Southern Insurance Company is theRespondent.

PROOF OF SERVICE

I certify that I have served a copy of the Appellant's Initial Reply Brief, electronically to the Court of Appeals, and to the following attorney of record for the Respondent to the following electronic addresses, on this date July 16, 2021.

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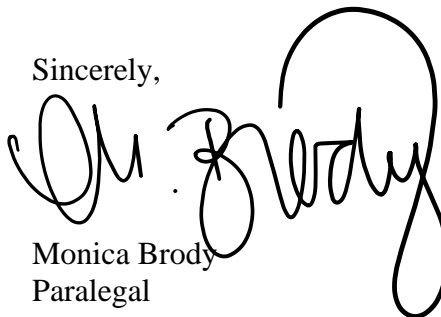
Re: *Kierra Johnson v. Greenville County, Greater Greenville Sanitation District, the South Carolina Department of Transportation, American Southern Insurance Company, and the State Fiscal Accountability Authority*
App. Case No.: 2020-001144

Dear Ms. Kitchings:

Please find enclosed for filing Appellant's Initial Reply Brief in the above-referenced case, along with a Proof of Service upon Respondent.

Should you need anything further, please do not hesitate to contact our office.

Sincerely,



Monica Brody
Paralegal

Enclosures

CC:
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