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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis
Circuit Court Judge

Case No.: 2014-CP-45-00132
(Court of Appeals Case No.: 2021-000494)

South Carolina Farm Bureau Ins. Co. . . . . Appellant,

v.

Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie, a/k/a Arther McKenzie, The Travelers Home and Marine Insurance Company, The United States of America acting by and through Its agency, The Internal Revenue Services and The South Carolina Tax Commission, ... Defendants,

Of whom The Travelers Home and Marine Insurance Company is the Respondent.

INITIAL BRIEF OF RESPONDENT THE TRAVELERS HOME AND MARINE INSURANCE COMPANY

Mariel D. Norton
S.C. Bar. No.: 100198
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Phone: (803) 799-9091; Fax: (803) 779-3423
File No.: 7746.1749
Attorneys for The Travelers Home and Marine Insurance Company
Columbia, South Carolina
October 13, 2021

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING NO VIABLE CLAIM OF EQUITABLE INDEMNIFICATION ON THE PART OF FARM BUREAU?

2. DID THE COURT ERR GRANTING TRAVELERS' MOTION FOR INTERPLEADER?

3. DID THE TRIAL COURT ERR IN DISMISSING TRAVELERS WITH PREJUDICE UNDER RULE 22?

STATEMENT OF THE CASE

This appeal arises out of a declaratory judgment action involving two insurance policies issued by two different insurers to two different insureds on the same house located in Williamsburg County, South Carolina:

(1) Policy number 984761288 633 1 – Respondent The Travelers Home and Marine Insurance Company ("Travelers") issued this homeowner's policy to Defendant Arthur McKenzie on a home located at 200 W. Highway 378 By-pass in Lake City, South Carolina for the period from May 7, 2009 to May 7, 2010. *See* Travelers Policy Number 984761288 633 1.

(2) Policy number FI 0401219 – Appellant South Carolina Farm Bureau Insurance Company ("Farm Bureau") issued this dwelling fire policy on the same property to Marion L. Driggers for the period from May 24, 2009 to May 24, 2010. *See* Farm Bureau Policy Number FI 0401219.

On or about April 25, 1997, Tammy Floyd and Lisa Gamble entered into a Contract for Sale and Purchase for the property that was insured under both policies. *See* Complaint, ¶ 10; Defendant Arthur McKenzie's Answer to Crossclaims, ¶ 5 and Ex. A thereto. On or about October 13, 2006, Ms. Gamble assigned the Contract for Sale and Purchase to McKenzie. *See* Defendant Arthur McKenzie's Answer to Crossclaims, ¶ 5 and Ex. B thereto.

On or about November 26, 2009, the insured home was damaged by fire. *See* Complaint, ¶ 8; Travelers' Answer and Cross-Claims for Interpleader, ¶ 26. McKenzie

made a claim under his Travelers policy for the damage that occurred to the insured property. *See* Travelers' Answer and Cross-Claims for Interpleader ¶¶ 41-42. The adjustment of McKenzie's losses by Travelers was complicated by tax liens of Defendants The United States of America, acting by and through its agency, The Internal Revenue Service, and The South Carolina Tax Commission. *See* Complaint, ¶¶ 25, 26; Travelers' Answer and Cross-Claims for Interpleader, ¶¶ 28, 29; The United States of America's Answer, ¶ 2. Travelers ultimately settled McKenzie's claims for $232,073.45, of which the sum of $116,933.05 has been paid for his attorneys' fees and expenses in connection with said claim, leaving a balance of $115,140.40. *See* Travelers' Motion for an Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b) of the SCRCP filed 02/12/2015.

Farm Bureau filed its declaratory judgment action on March 7, 2014, seeking a declaration on ownership and distribution of insurance coverages related to the subject property. *See* Complaint. On July 13, 2016, Farm Bureau amended its Complaint to include claims of misrepresentation and breach of contract against its insured, and an equitable indemnity claim against Travelers. *See* Amended Complaint.[1] In each of its Answers and subsequent Motions, Travelers sought to pay the remaining balance of its settlement with its insured in to court, pursuant to Rule 22 of the *South Carolina Rules of Civil Procedure*. *See* Travelers' Answer and Cross-Claims for Interpleader, ¶¶ 16-34; Answer to Amended Complaint, Cross-Claims for Interpleader, and Counterclaim for Contribution of

[1] Defendants Marion Driggers, Shiralee Driggers, and Tammy Floyd also cross-claimed against Travelers for breach of contract and bad faith. *See* Answer, Counter-Claims and Cross-Claims of Defendants Shiralee Driggers and Tammy D. Floyd to Plaintiff's Amended Complaint, ¶¶ 69-94; Answer, Counterclaims, and Crossclaims of Marion L. Driggers, Shiralee Driggers, and Tammy D. Floyd, ¶¶ 41-46. Travelers was granted summary judgment as to these cross-claims on March 4, 2021. *See* Order Granting Cross-Defendant The Travelers Home and Marine Insurance Company's Motion for Summary Judgment.

Defendant The Travelers Home and Marine Insurance Company, ¶¶ 31-49; Travelers' Motion for an Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b) of the SCRCP filed 02/12/2015. Its Motion was granted by an Order on January 5, 2021 by The Honorable Kristi F. Curtis, and Farm Bureau's Motion to Reconsider the order was denied on April 12, 2021. *See* Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b), SCRCP filed 01/05/2021; Notice of Motion and Motion to Alter/Amend/Reconsider and/or to Clarify filed 01/14/2021; Form 4 Judgment in Civil Case filed 04/12/2021. Travelers paid the money in to court pursuant to the Order.

As of March 2021, the last remaining claim against Travelers was Farm Bureau's equitable indemnity claim. Travelers filed a motion for summary judgment on this remaining claim on April 11, 2021. *See* Defendant The Travelers Home and Marine Insurance Company's Motion for Summary Judgment as to the Third Cause of Action for Equitable Indemnity of Plaintiff filed 04/11/2021. Travelers' Motion was granted by The Honorable Kristi F. Curtis on March 30, 2021, and Plaintiff's Motion to Alter, Amend, Reconsider the order was denied on April 12, 2021. *See* Order Granting Defendant The Travelers Home and Marine Insurance Company's Motion for Summary Judgment as to the Cause of Action for Equitable Indemnity of Plaintiff filed 03/30/2021; Motion to Alter, Amend, Reconsider filed 04/08/2021; Form 4 Judgment in a Civil Case filed 04/12/2021. With no further causes of action against Travelers and its funds paid in to court, pursuant to Rule 22(b), the lower court dismissed Travelers with prejudice on April 19, 2021. *See* Order of Dismissal with Prejudice filed 04/19/2021.

Farm Bureau has appealed the lower court's March 30, 2021 Order Granting Travelers Summary Judgment as to its equitable indemnity claim, the Form 4 Order

denying Farm Bureau's Motion to Reconsider that Order, and the Order Dismissing Travelers with Prejudice that eventually resulted. *See* Notice of Appeal and attachments.

STATEMENT OF FACTS

On April 25, 1997, a contract for sale and purchase, which was essentially a rent-to-own arrangement, was drawn up in relation to the subject property at 200 W Turbeville Hwy between Tammy Floyd, the daughter of the Driggers, and Lisa Gamble, the girlfriend of McKenzie at the time. *See* Defendant Arthur McKenzie's Answer to Crossclaims, ¶ 5 and Ex. A thereto; Order Granting Defendant The Travelers Home and Marine Insurance Company's Motion for Summary Judgment as to the Cause of Action for Equitable Indemnity of Plaintiff filed 03/30/2021, p. 1. Gamble assigned McKenzie her rights under the contract in 2006. *See* Defendant Arthur McKenzie's Answer to Crossclaims, ¶ 5 and Ex. B thereto. McKenzie also jointly signed the sale agreement, agreeing to share all responsibilities and liabilities. *See* Defendant Arthur McKenzie's Answer to Crossclaims, Ex. A thereto. The contract included a sale price of $80,000, with $8,000 down. *See id.* The remaining portion of the purchase price was secured by a mortgage held by the Driggers, with payments made to Marion L. Driggers. Gamble and/or McKenzie were to purchase insurance with a loss payable clause in favor of Floyd per the agreement. *See id.*

On November 26, 2009, the subject property was damaged by fire. *See* Defendant Arthur McKenzie's Answer to Crossclaims, ¶ 9. Travelers issued a homeowners policy on the property to Arthur McKenzie, insuring the dwelling for $287,000 and personal property for $250,900. *See id.* Travelers' policy included no loss payees or mortgagees. *See id.* Travelers investigated the fire and the losses claimed by its insured. The adjustment of McKenzie's losses by Travelers was complicated by tax liens. *See* Answer to Amended

Complaint, Cross-Claims for Interpleader, and Counterclaim for Contribution of Defendant The Travelers Home and Marine Insurance Company, ¶¶ 43-44. Travelers ultimately took McKenzie's examination under oath and settled with him, paying portions of the dwelling, personal property, and loss of use coverages under his Travelers' policy. *See* Motion for an Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b) of the SCRCP filed 02/12/2015; Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b), SCRCP filed 01/05/2021.

The Driggers allegedly held a mortgage on the property pursuant to the 1997 contract. *See* McKenzie's Answer to Crossclaims, Ex. A thereto. Farm Bureau's policy is a dwelling fire policy issued in the name of Marion L. Driggers, covering two residential properties, including the subject property. *See* Farm Bureau Policy Number FI 0401219. The limit of liability for the dwelling pursuant to Farm Bureau's policy is $118,000. *See id.* The Driggers claim that this policy was a means to protect their interest, because McKenzie could not be trusted to meet his obligation to provide insurance on the property per the 1997 contract. *See* Transcript of Record, September 17, 2020, p. 9, l. 18-20.

Farm Bureau, as its Brief makes clear, alleges that Travelers' policy should cover the Driggers, that the two insurance policies should be dealt with on a pro rata basis, if they are to owe anything under their policy, and that they have an equitable indemnity claim against Travelers based on an alleged "special relationship" of good faith and fair dealing between insurance carriers under South Carolina regulated insurance law. *See* Farm Bureau's Initial Brief.

Farm Bureau and Travelers clearly insure different insureds with separate and distinct interests in the subject property. *See* Travelers Policy Number 984761288 633 1;

Farm Bureau Policy Number FI 0401219. Travelers insured McKenzie in relation to his separate interests in the property, and the handling of his claim and losses remain the business of Travelers and its insured. *See* Travelers Policy Number 984761288 633 1; Transcript of Record September 17, 2020, pp. 7, l. 6 – p. 8, l. 2. Travelers had no obligation to the Driggers or Floyd, who are not listed on its policy and are separately insured for their interests in this property with Farm Bureau. *See id.*; Farm Bureau Policy Number FI 0401219. Travelers also owes no legal obligation or duty to Farm Bureau under any legal theory or statute in South Carolina. *See* Order Granting Defendant The Travelers Home and Marine Insurance Company's Motion for Summary Judgment as to the Cause of Action for Equitable Indemnity of Plaintiff filed 03/30/2021, p. 5.

The circuit court held that Travelers honored its obligation to its insured by investigating, handling, and settling McKenzie's claim under his policy. *See* Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b), SCRCP filed 01/05/2021. Travelers even sought, during the breadth of this action, to pay the remaining portion of its settlement with McKenzie (minus McKenzie's attorneys fees and costs where permissible by law), totaling $115,140.40, in to court, which was granted and deposited earlier this year. *See* Travelers' Motion for an Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b) of the SCRCP filed 02/12/2015; Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b), SCRCP filed 01/05/2021; Form 4 Judgment in a Civil Case filed 04/12/2021; Order of Dismissal with Prejudice filed 04/19/2021.

Additional discovery and depositions will not change what is known at this time, which led to the proper dismissal of Travelers in this action. *See* Farm Bureau's Initial

Brief. Seven years of litigation revealed two policies insuring two separate individual people for separate and distinct interests in a property located at 200 W Turbeville Hwy. *See* Travelers Policy Number 984761288 633 1; Farm Bureau Policy Number FI 0401219. Travelers has properly and reasonably handled the claim of its insured, McKenzie. Travelers recognized the potential dispute of multiple parties to the settlement proceeds, due to questions of money owed or not owed on a previous mortgage relationship, handled in a 1997 Contract for Sale and Purchase to which Travelers was not a party. Travelers properly sought and was granted an interpleader motion, depositing the money with the lower court for the remaining parties to present their claims to the funds. Travelers owes no further duty to its insured and owes no duty at any point, from 2009 to present, to the Driggers, Floyd, or Farm Bureau, who are all welcome to seek to prove their rights to the money sitting with the court in Williamsburg County, South Carolina.

STANDARD OF REVIEW

"In reviewing the grant of a summary judgment motion, the Court applies the same standard as the trial court under Rule 56(c), SCRCP . . . ." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438-39 (2003). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that 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." Rule 56(c), SCRCP

In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. *See Worley Cos., Inc. v. Town of Mount Pleasant*, 339 S.C. 51, 528 S.E.2d 657 (2000). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ,

summary judgment should be granted. *See Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). It is not sufficient that a party create an inference which is not reasonable or an issue of fact that is not genuine. *See Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984). Summary judgment should be granted against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case. *See Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993).

ARGUMENT

1. THE TRIAL COURT PROPERLY FOUND THAT FARM BUREAU HAD NO VIABLE CLAIM OF EQUITABLE INDEMNIFICATION AGAINST TRAVELERS.

Farm Bureau's first two Statement of Issues and Arguments focus entirely on the lower court's decision to grant Travelers' summary judgment on Farm Bureau's equitable indemnity claim. The basis of Farm Bureau's contention found in Arguments 1 and 2 is summarized in the following statement from its Brief:

> Farm Bureau contends that a special relationship exists between the carriers by virtue of the Pro Rata statute. This goes to the heart of Farm Bureau's Equitable Indemnity Claim.

See Farm Bureau's Initial Brief, p. 24. This issue is raised for the first time in this appeal.

"'Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.' At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge." *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (quoting *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct.App.2006) (internal citations omitted). As such, "[i]t

prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

In this instance, Farm Bureau's "novel issue" that a special relationship between insurers is created by S.C. Code Ann. § 38-75-20, to meet the requirements of equitable indemnity, was never raised at any point by Farm Bureau to the lower court for determination. In fact, Farm Bureau filed no memorandum in opposition to Travelers' Motion for Summary Judgment on its equitable indemnity claim. During the hearing on the matter, Farm Bureau's counsel only argued for additional discovery regarding who should have given notice to Farm Bureau in response to Travelers' Motion. *See* Transcript of Record, September 17, 2020, p. 11-12. Farm Bureau only spoke out against Travelers' Motion for Summary Judgment on its equitable indemnity claim in its Motion to Alter, Amend, Reconsider the Court's Order dated and filed March 30, 2021. *See* Motion to Alter, Amend, Reconsider filed 04/08/2021. This Motion to Alter did not argue the creation of a special relationship solely by virtue of S.C. Code Ann. § 38-75-20. Instead, arguing that its indemnity claim can stand in both a contractual and equitable format, Farm Bureau summarily argued the existence of a "special relationship" in the following way:

> In this case, Farm Bureau filed a claim against Travelers for Contractual and Equitable Indemnity. (See Complaint.) As to the contracts, there was an insurance policy between Travelers and McKenzie for homeowner's coverage as to the subject property, owned by Driggers and being purchased by McKenzie via a lease/option agreement. This agreement required McKenzie to insure Driggers, and separate litigation resulted in a Court Order requiring that McKenzie's maintain homeowner's insurance that also covered Driggers. Mr. Driggers was also the insured in a policy of homeowner's insurance that he obtained from Farm Bureau as a form of mortgagor insurance to protect him in the event McKenzie failed to do so.

> Drigger's pleadings and motions in this case indicate that he waited to file a claim with Farm Bureau after this fire until shortly prior to the Statute of Limitations running, because he was expecting payment from his claim with Travelers and was awaiting that payment. Thus, the delay in notice of the claim to Farm Bureau that deprived it of the opportunity to investigate the Fire loss resulted directly from Travelers failure to honor its insured, McKenzie's, contract with Driggers and Travelers failure to honor the Court Order that McKenzie's policy cover Driggers. In addition, Travelers and Farm Bureau are both insurance companies regulated by South Carolina law which governs many aspects of business, policies, and claims adjustment. As such, Travelers and Farm Bureau have a Special Relationship.

See Motion to Alter, Amend, Reconsider filed 04/08/2021, p. 6. Nowhere did Farm Bureau argue that the required "special relationship" with Travelers needed to support an equitable indemnity claim arises out of the South Carolina pro rata statute. Farm Bureau went as far as to claim in its Brief that "it does not contend that a special relationship existed between it and Travelers merely because they insured the same property," contrary to the above summary that sets forth that very argument in its own Motion to Alter, Amend, Reconsider. Farm Bureau's Initial Brief, p. 25. The novelty comes in Farm Bureau's next statements in its Brief, never once mentioned or argued at the lower level:

> Rather, [Farm Bureau] contends that the requirements and duties under the Pro Rata Statute create, of necessity, a special relationship between companies in circumstances to which the Statute applies. The scheme imposed by the Pro Rata Statute can only be carried out by insurers if the carriers act in good faith to communicate and cooperate to meet the requirements of the statute, including as to issues like those in this case . . . .

Id. The lower court judge was never presented with or asked to determine this issue and, as such, never ruled on the matter. Farm Bureau's "novel" argument that S.C. Code Ann. § 38-75-20 statutorily creates a special relationship between insurance carriers in South Carolina was not preserved for consideration by this Court, does not widen this Court's standard of review, and should be disregarded in its entirety.

Should this Court find that Farm Bureau preserved this "novel" issue, this argument does not warrant reversal of the lower court's grant of summary judgment to Travelers on Farm Bureau's equitable indemnity claim. Farm Bureau cited to no authority in its Brief to support a finding that S.C. Code. Ann. § 38-75-20 dictates the creation of a "special relationship" between carriers. Farm Bureau goes as far as asserting that a theoretical "bad faith" legal concept has arisen from this statute between insurers in South Carolina, wherein carriers must "act in good faith to communicate and cooperate to meet the requirements of the statute." Farm Bureau's Initial Brief, p. 25. Farm Bureau does not cite to any South Carolina authority to support this assertion and, instead, cites to Wisconsin law. Farm Bureau's Initial Brief, p. 25.[2]

Travelers has been unable to find any legislative history, case law, or secondary sources that support the creation of a "good faith and fair dealing" type-relationship or duty between property insurance carriers in South Carolina under S.C. Code Ann. § 38-75-20.[3] As will be discussed later, this unsupported argument could have far reaching implications for insurance carriers in South Carolina, including Farm Bureau's own business. *See infra.* Argument 4, p. 24. Ultimately, a review of the Wisconsin case law cited by Farm Bureau

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[2] Not only has Farm Bureau failed to establish why Wisconsin case law and statute should have any bearing on South Carolina law, but Farm Bureau also failed to point out several significant distinguishing aspects of these cases with the case at bar. For example, the Wisconsin cases and the Wisconsin statute, like the South Carolina statute, focus on instances where **an insured** takes out multiple policies on the same property for the same loss. This case involves **two different insureds** with different interests. Also, unlike the situation in *Wegner v. West Bend Mutual Insurance Co.*, 298 Wis2d 420, 2007 WI App 18 (Ct. App. 2006), Farm Bureau has not paid any money resulting in over payment, which could warrant an indemnification action. In fact, as Judge Curtis set forth in her email Order instructions in relation to Travelers' Motion for Interpleader, Travelers' payment in to Court, based on total coverage amounts available on the home and Farm Bureau's insured's original mortgage amount, would cover Travelers' pro rata share "under even a generous estimation of the value of the home." Judge Curtis email, dated 11/19/2020. Farm Bureau has not paid anything in relation to this fire loss, even to its own insured. Therefore, the Wisconsin cases cited do not support Farm Bureau's arguments.

[3] For a case providing a limited overview of the history of this statute, see *McNeely v. S.C. Farm Bureau Mutual Insurance Co.*, 259 S.C. 39, 190 S.E.2d 499 (1972).

does not suggest any special relationship created by these types of statutes nor does any South Carolina law support this contention.

Most importantly, S.C. Code Ann. § 38-75-20 does not apply to this case based on the very cases cited by Farm Bureau in its Brief. *See* Farm Bureau's Initial Brief, p. 23. While *S.C. Insurance Co. v. Fidelity & Guaranty Insurance Underwriters, Inc.*, 327 S.C. 207, 212, 489 S.E.2d 200, 202 (1997) dealt with "two policies which (1 [sic]) cover[ed] the same risk . . . (2) cover[ed] the same interest-commercial property, [and] (3) [were] for the benefit of the same insured . . . ," the Supreme Court clarified the cases cited by Farm Bureau in the following manner:

> Prior South Carolina precedents suggest that if two or more policies insure the same entity against the same risk to the same object, the policies are concurrent and losses should be prorated between the insurers who issued the policies. In *Lucas v. Garrett*, 209 S.C. 521, 41 S.E.2d 212 (1947), this Court found that there was no concurrent coverage under separate insurance policies where the policies did not insure against the same interest or the same casualty. One of the policies at issue insured against a party's legal liability, but the other policy insured against the destruction of property (bales of cotton). Given these facts, there was no concurrent coverage. However, the clear implication of the decision is that if policies do insure the same entity and the same interest against the same casualty, then coverage is concurrent, and the loss must be prorated, at least absent policy language to the contrary.
>
> Similarly, in *Murdaugh v. Traders & Mechanics Insurance Co.*, 218 S.C. 299, 62 S.E.2d 723 (1950), this Court found that two fire insurance policies protecting the same home did not provide concurrent coverage, because the policies did not insure the same interest. One of the policies protected the interest of the homeowner himself, but the other policy was intended to protect the interest of the mortgagee. Again, *Murdaugh* implies that if policies insure the same entity and interest against the same casualty, then the coverage provided by the policies is concurrent, thus requiring pro rata contribution absent a contrary provision in an "other insurance" clause contained in one of the policies.

Id. at 213–14, 489 S.E.2d at 203 (1997) (internal citations omitted). While "*Lucas* and *Murdaugh* suggest that the only prerequisite to proration of a loss among multiple insurers

is that all policies concerned provide coverage for the same peril to the same property and interest," Farm Bureau skipped the next step and fails to point out to the Court that this case falls squarely within both of these cases, particularly *Murdaugh*, which did not find concurrent coverage because the policies insured different interests. *Id.* at 214, 489 S.E.2d at 203.[4] Travelers and Farm Bureau's policies may cover the same residential property, but they do not cover the same interest. Owner, mortgagor, and mortgagee all have and insure separate interests, and, like the cases cited by Farm Bureau, the facts of this case do not trigger S.C. Code Ann. § 38-75-20, or any of its alleged "special relationship" implications.

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[4] Also, in *Johnson v. Fidelity & Guaranty Insurance Co.*, 245 S.C. 205, 140 S.E.2d 153 (1965), the South Carolina Supreme Court dealt with value policies issued by separate insurers to a mortgagee and another to the owner. The insurer for the owner refused to pay, asserting that it should only pay pro rata, if anything. *See id.* at 208, 245 S.C. at 154. The Court set forth the following:

> This Court has held that a mortgagor and mortgagee have separate and distinct interests in the same property which they may insure. In the last cited case it was stated that the owner's interest in insured property and the mortgagee's interest therein are separate and distinct for insurance purposes.
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> * * * *
>
> As a further defense, the appellant contends that the two insurance policies constitute contributive or concurrent insurance, that the loss should be borne by both insurers and prorated between them on the basis of the amount of insurance written by each. The cited Code section provides that two or more policies, 'written upon the same property', shall be deemed and held contributive insurance, and if the aggregate sum thereof exceeds the agreed insurable value, each company in the event of loss 'shall be liable for its prorata share of insurance.' In *Murdaugh v. Traders & Mechanics Ins. Co.*, 218 S.C. 299, 62 S.E.2d 723, we said: 'But it will be observed that the policies must be 'written upon the same property'; and evidently the word 'property' connotes the same *interest*.'
>
> In *Laurens Federal Savings & Loan* case we quoted with approval from *Lucas v. Garrett*, 209 S.C. 521, 41 S.E.2d 212, 214, 169 A.L.R. 660, the following:
>
> "'Without undertaking to give an allinclusive definition of concurrent insurance, all the authorities agree that as a prerequisite to enforcing contribution between insurers, it is essential that both policies insure the same interest against the same casualty. 46 C.J.S., Insurance, p. 150, § 1207; 29 Am.Jur., Section 1334, page 998.'
>
> "The rule as stated in 29 Am.Jur., page 998, Section 1334, is also, we believe, directly applicable here: Contribution between insurers cannot be enforced unless their policies cover the same interest. Accordingly, if an owner and a mortgagee of the same property have procured insurance on their separate interests therein, and the owner seeks to recover on his policy, the defendant insurer is not entitled to contribution against the insurer of the mortgagee's interest.'

Id. at 209–11, 140 S.E.2d at 155–56 (internal citations omitted).

Under South Carolina law, "[i]ndemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party." *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct. App. 1990), *aff'd*, 307 S.C. 128, 414 S.E.2d 118 (1992). "A right to indemnity may arise by contract (express or implied) or by operation of law as a matter of equity between the first and second party." *Id.* In the absence of a contractual right of indemnification, courts have required a "special relationship" between the parties. *See Fountain v. Fred's Inc.*, 429 S.C. 533, 839 S.E.2d 475 (Ct. App. 2020)("there must be some kind of relationship between the parties beyond the relationship established by virtue of one party alleging that he was sued because of another party's wrongdoing.").

As the lower court's Order granting Travelers summary judgment made clear, "[i]n South Carolina, a special relationship has been found to exist for the purposes of equitable indemnification between a contractor and subcontractor, a purchaser of a defective vehicle and a seller, a landlord and a general contractor who damaged a tenant's property, a home seller and an exterminator who were both sued by a home buyer for falsely representing that the purchased home was free of termites and moisture, and two former property owners who were both sued by a subsequent property owner for damage to the property. *See Town of Winnsboro*, 303 S.C. 57, 398 S.E.2d 503; *Stuck v. Pioneer Logging Mach., Inc.*, 279 S.C. 22, 301 S.E.2d 552 (1983); *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 445 S.E.2d 446 (1994); *Griffin v. Van Norman*, 302 S.C. 520, 397 S.E.2d 378 (Ct. App. 1990); *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971); *McCoy v. Greenwave Enterprises, Inc.*, 408 S.C. 355, 357, 759 S.E.2d 136, 137 (2014)." Order Granting Defendant Travelers Home and Marine Insurance Company's Motion for Summary

Judgment as to the Cause of Action for Equitable Indemnity of Plaintiff filed 03/30/2021, p. 3. The lower court correctly held that no comparable relationship exists here between Farm Bureau and Travelers, and, as stated, nothing in South Carolina legal precedent supports a finding that S.C. Code Ann. § 38-75-20 creates one, nor does the statute even apply.

Under South Carolina law, the lower court correctly held that Farm Bureau does not have a claim for contractual or equitable indemnity. Farm Bureau's Complaint established that there was no contractual right to indemnity between Travelers and either Farm Bureau or Farm Bureau's insured, Marion Driggers. *See* Complaint, ¶ 11 ("Defendant McKenzie did insure the property, insuring his ownership interest in the dwelling along with its contents. However, he did so **without noting the interest of Defendants Driggers** per the [contract of sale]. At the time of the said fire loss, the subject property was insured by Defendant McKenzie via a policy with Defendant Travelers."). The lower court also properly found that Farm Bureau failed to establish evidence of a "special relationship" for purposes of an equitable indemnity claim. At the lower level, Farm Bureau argued that its equitable indemnification claim arose from the following:

> Here, had Travelers timely paid properly [sic] Driggers claim, Farm Bureau would not have been liable. Further, had Travelers properly approached Farm Bureau to advise of the claim and to negotiate the pro rata issues, Farm Bureau would not face sole liability in this action, and would not have incurred years of costs and attorney's fees associated with this case, due to the unusual issues and complex facts involved . . . Had Travelers properly adjusted the claim, Farm Bureau would not be liable and would not have spent extensive funds for costs and attorney's fees in this action.

Motion to Alter, Amend, Reconsider filed 04/08/2021, p. 4. As previously discussed, S.C. Code Ann. § 38-75-20 clearly does not apply in this case, where each insurer insures a different insured with a different interest. *See supra*, p. 12-13. While Farm Bureau may

believe that Travelers' payment and handling of Farm Bureau's insured's, Driggers', claim would have eliminated Farm Bureau's "spen[ding of] extensive funds for costs and attorney's fees in this action," such a retrospective hope does not create a right to recover against Travelers or make Farm Bureau's path "more honorable" as asserted. Motion to Alter, Amend, Reconsider filed 04/08/2021 and Farm Bureau's Initial Brief, p. 30. No such duty exists. As properly found by the lower court, "[t]he insurance carrier's obligations are to the insured and do not pass with the property, unless assigned with the consent of the insurer, or unless 'by extraordinary or special and express stipulation of the parties it is made to run with the subject matter.'" Order Granting Travelers Home and Marine Insurance Company's Motion for Summary Judgment as to the Cause of Action for Equitable Indemnity of Plaintiff, filed 03/30/2021, p. 5 (quoting *Crook v. Hartford Ins. Co.*, 175 S.C. 42, 178 S.E. 254 (1935)). The lower court also specifically held:

> Travelers had no obligation to anyone except its own insured, Arthur McKenzie. Any duty McKenzie had to protect Floyd's or the Driggers' interests pursuant to the contract of sale did not implicate Travelers, which was not a party to the contract of sale. Moreover, there is no authority for the proposition that an insurance company has an obligation to investigate the existence of any other policies covering the insured property, or to notify another insurer of a potential claim where that company's own insured has decided not to file a claim. Ultimately, the only relationship between Travelers and Farm Bureau was that they happened to insure the same piece of property. With no special relationship between Farm Bureau and Travelers, Farm Bureau's claim for equitable indemnification fails.

Id. Farm Bureau has no grounds for its contractual or equitable indemnity claim against Travelers. Even if this Court finds consideration of Farm Bureau's novel pro rata statute argument to be properly before it, S.C. Code Ann. § 38-75-20 does not create a special relationship to support this claim. The lower court properly dismissed the equitable

indemnity claim, the last and only remaining claim against Travelers, prior to the dismissal of Travelers with prejudice pursuant to Rule 22, SCRCP.

2. THE COURT DID NOT ERR IN GRANTING TRAVELERS' MOTION FOR INTERPLEADER.

As an initial matter, Farm Bureau failed to properly appeal the lower court's rulings associated with its January 5, 2021 Order, which granted Travelers' Motion to Allow Funds to be Deposited in to Court. In its Notice of Appeal, Farm Bureau listed a total of five (5) lower court filings:

> (1) The Order of Dismissal With Prejudice issued by The Honorable Kristi F. Curtis on April 19, 2021, (2) The Order Of Dismissal With Prejudice issued by The Honorable [sic] Kristi F. Curtis on April 19, 2021, (3) The Form 4 Order by The Honorable Kristi F. Curtis on April 12, 2021 Dismissing Plaintiff's Motion to Alter/Amend/Reconsider, (4) The Form 4 Order by The Honorable Kristi F. Curtis on April 12, 2021 Dismissing Plaintiff's Motion to Alter/Amend/Reconsider, AND (5) The Order by The Honorable Kristi F. Curtis on March 30, 2021 Granting The Travelers Motion For Summary Judgment as to the Plaintiff's Claim For Equitable Indemnity.

See Notice of Appeal. Based on this list as well as the documents attached to the Notice of Appeal, orders one (1) and two (2) are duplicative. The orders numbered three (3) and four (4) are also the same Orders related to The Honorable Kristi F. Curtis's March 30, 2021 Order, attached to the Notice of Appeal, which granted Travelers' motion for summary judgment on Farm Bureau's claim for equitable indemnification. As such, Farm Bureau appealed the lower court's decision to grant Travelers' Motion for Summary Judgment on Farm Bureau's equitable indemnity claim, the lower court's denial of Farm Bureau's Motion to Alter this decision, and the lower court's Order of Dismissal of Travelers, which was granted because there were no further pending claims against Travelers and interpleader had been granted.

The Notice of Appeal fails to list or attach the orders related to the lower court's January 5, 2021 Order, which granted Travelers' Motion for Interpleader. Without a timely Notice of Appeal addressing the orders related to Travelers' interpleader motion, this Court has no jurisdiction to hear the matter. *See Conner v. City of Forest Acres*, 348 S.C. 454, 461, 560 S.E.2d 606, 609 (2002) ("Service of the notice of intent to appeal is a jurisdictional requirement, and the Court has no authority to extend or expand the time in which the notice of intent to appeal must be served."); *see also id.* at 461-62, 560 S.E.2d at 610 ("Here, the facts indicate that the Notice of Appeal did not contain a mere clerical error."); SCACR 203(e)(1) ("In appeals from lower courts, the notice of appeal shall contain the following information: (A) The name of the court, judge, and county from which the appeal is taken. (B) The docket number of the case in the lower court. (C) The date of the order, judgment, or sentence from which the appeal is taken . . ."); SCACR 203(d)(1)(B) ("The notice filed with the appellate court shall be accompanied by the following . . . (ii) A copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing. . . .").

Even if the orders related to the lower court's decision to grant Travelers' Motion for Interpleader were properly within this Court's appellate jurisdiction, which is respectfully denied, the lower court did not err in its determination to allow Travelers to pay in to court and be dismissed with prejudice under Rule 22, SCRCP.

Farm Bureau's third argument on appeal focuses on two main allegations: (1) Based on Rule 22, SCRCP, Travelers should not have been allowed to deposit less than the amount of Travelers' coverage; and (2) Attorney's fees and cost paid under the settlement should not have been allowed. *See* Farm Bureau's Initial Brief, pp. 26-27. Again, Farm

Bureau did not present these arguments to the lower court and they are not preserved for review by this Court. Farm Bureau only argued to the lower Court that the interpleader was improper because "the Court must first determine the amount of the loss, the ownership or insurable or property interests of the individual parties and what coverage is due from each carrier." Memorandum Opposing Or Responding to Motions by Travelers & Marion L. Driggers, filed 07/06/2020, p. 8. In it Motion to Amend the Order granting interpleader, Farm Bureau similarly argued that the lower court's Order allowing the deposit of the amount of money requested by Travelers would not suffice to cover pending claims against Travelers, related to the pro rata statute, equitable indemnity claim by Farm Bureau, and Farm Bureau's incurred attorney's fees and costs. Notice of Motion and Motion to Alter/Amend/Reconsider and/or to Clarify filed 01/14/2021, p. 2. Farm Bureau never raised either argument set forth in its Brief as to the interpleader amount for determination by the lower court and thus did not preserve the issues for this Court's determination.[5]

Even if this Court were to find the order properly appealed and Farm Bureau's arguments within its purview for review, neither argument warrants overruling the lower court's grant of Travelers' Motion to Pay in to Court. Rule 22, SCRCP allows for "[a] party potentially exposed to double or multiple liability . . . [to] obtain interpleader by way of cross-claim or counterclaim." The Travelers Home and Marine Insurance Companies Response in Opposition to Plaintiff's Motion to Alter/Amend/Reconsider and/or Clarify filed 02/17/2021, p. 3. "Any party seeking interpleader . . . may deposit with the court the

[5] While Marion L. Driggers may have raised some concerns regarding attorney's fee payments under Travelers' settlement agreement with its insured, Farm Bureau noted no such concern or objection on the record. *See* Transcript of Record September 17, 2020, p. 11. *See Tupper v. Dorchester Cty.*, 326 S.C. 318, 324, 487 S.E.2d 187, 190 (1997) ("Although the issue of the statute of frauds was raised by Dorchester County, appellant cannot bootstrap an issue for appeal by way of a codefendant's objection.").

amount claimed . . . . The court may thereupon order such party discharged from liability as to such claims, and the action continued as between claimants of such money or property." SCRCP 22(b). The primary purpose of interpleader is to allow a neutral stakeholder, usually a bank or an insurance company, to shield itself from liability for paying over the stake to the wrong party by bringing a single action in which all claimants are forced to litigate their claims to the stake. *See First Union Nat. Bank of South Carolina v. FCVS Communications*, 321 S.C. 496, 499, 469 S.E.2d 613, 616 (Ct. App. 1996). Rule 22 provisions are to be liberally construed to best effectuate their purposes. *See id.*

Farm Bureau provides no case law in South Carolina to support its argument that the lower court erred in the interpleader amount paid by Travelers. Cases involving South Carolina interpleader law are sparse, which Travelers has recognized. *See* The Travelers Home and Marine Insurance Company's Response in Opposition to Plaintiff's Motion to Alter/Amend/Reconsider and/or Clarify filed 02/17/2021, p. 4, note 2. Yet, this Court has directed that "Rule 22(a), SCRCP, is substantially the same as its counterpart in the Federal Rules of Civil Procedure; therefore, in the absence of prior state law on the issue in question, federal cases interpreting the rule are persuasive." *First Union Nat. Bank of S.C. v. FCVS Commc'ns*, 321 S.C. 496, 499, 469 S.E.2d 613, 616 (Ct. App. 1996), rev'd in part, 328 S.C. 290, 494 S.E.2d 429 (1997). Based on federal court interpretation of Rule 22, Farm Bureau's argument as to the amount of the interpleader deposit is not supported. *See United Ben. Life Ins. Co. v. Leech*, 326 F. Supp. 598, 600 (E.D. Pa. 1971) ("In interpleader actions under Rule 22, the matter in controversy is measured by the fund to be distributed as stated by the plaintiff[/interpleader]."); *see also Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Ambassador Grp., Inc.*, 691 F. Supp. 618, 621 (E.D.N.Y. 1988) ("Statutory

interpleader thus differs in a significant respect from rule interpleader. Whereas under rule interpleader a stakeholder may deposit the amount it believes to be in dispute, under statutory interpleader 'an interpleading plaintiff must deposit with the Court the highest amount claimed by defendants.'") (quoting *Nationwide Mutual Ins. Co. v. Eckman*, 555 F.Supp. 775, 778 (D.Del.1983)). Based the concepts of rule interpleader, the lower court correctly allowed Travelers, the interpleader, to deposit the disputed amount of its remaining settlement with its insured.

In this action, Farm Bureau seeks a declaratory judgment and an equitable indemnity claim against Travelers. Travelers faced multiple claims and brought a proper action for interpleader. The lower court granted Travelers' motion for summary judgment as to the cross claims brought by the Driggers and Floyd, eliminating the extra-contractual damage claims against Travelers and limiting its potential liability to the terms of its policy. Most importantly, Farm Bureau and Travelers' insureds are different. Travelers, pursuant to its duties to its insured, investigated its insured's claim under his policy for both dwelling and contents and ultimately agreed to pay a compromised amount of $132,006.91 for the dwelling. Farm Bureau has paid nothing toward the damages sustained at the residence at issue. As set forth above, the lower court properly dismissed Farm Bureau's equitable indemnity claim. *See supra* Argument No. 1, p. 8. Farm Bureau's recovery is limited to the amount the lower court determines it is entitled to from the money deposited by Travelers in to court, if Farm Bureau can even successfully argue that it is owed something from Travelers, having failed to contribute to any damage payments on the residence at issue.

Travelers faced multiple claims, fulfilled its insurance obligations to its insured, and sought a court order to pay the disputed amount of its compromised payment in to

court for the remaining parties to lay claim to. The lower court even astutely found that, under the pro rata argument sought by Farm Bureau and "even a generous estimation of the value of the home," Travelers' obligation will be covered by the portion paid, even though smaller than its entire dwelling coverage amount. *See* Judge Curtis email, dated 11/19/2020. Farm Bureau's claims that the amount paid, as negotiated with Travelers' insured and his counsel, is unpreserved, unfounded under Rule 22, and should be rejected by this Court.

3. THE TRIAL COURT DID NOT ERR IN DISMISSING TRAVELERS WITH PREJUDICE UNDER RULE 22.

Farm Bureau argues that multiple factual issues, from property ownership issues and percentages to property valuation and pro rata calculations, should have prevented the lower court's grant of Travelers' motion for summary judgment and dismissal with prejudice. As has been argued extensively, the lower court properly found that Farm Bureau had no viable equitable indemnity claim against Travelers under South Carolina law. *See supra* Argument No. 1, p. 8. The lower court also properly granted Travelers summary judgment on Driggers and Floyd's extra contractual claims, thereby eliminating all direct actions against Travelers in this matter.

South Carolina law provides, "[i]n granting interpleader under Rule 22(a), SCRCP, however, the trial judge necessarily found Bank was entitled to protection from the conflicting claims of the majority and minority partners. Accordingly, under Rule 22(b), SCRCP, Bank was entitled to be 'discharged from liability as to such claims.'" *First Union Nat. Bank of South Carolina v. FCVS Communications*, 328 S.C. 290, 292, 494 S.E.2d 429 (1997). With no direct claims against it and a payment of disputed funds properly made to court, Travelers was found to be "entitled to protection" from the

multiple claims against its funds. Under Rule 22(b), Travelers was "entitled to be 'discharged from liability'" and no outstanding, independent claims remained against funds above and beyond the compromised amount reached on the dwelling between Travelers and its insured. The court properly dismissed Travelers with prejudice, pursuant to Rule 22, and Farm Bureau can now lay claim to the amount deposited with the court along with all remaining defendants.

Farm Bureau's continuing discovery allegations, after seven years, should not warrant a reversal of the lower court's determination regarding Travelers' ultimate payment and dismissal.[6] Farm Bureau's arguments of a lack of notice of this fire loss has developed in to a legal theory of "good faith and fair dealing" not recognized in South Carolina between insurance carriers, regardless of S.C. Code Ann. § 38-75-20.[7] Travelers was under no obligation to file a declaratory judgment action, as suggested by Farm Bureau. *See* Farm Bureau's Initial Brief, p. 14-15.[8] Travelers upheld its contractual

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[6] Farm Bureau goes as far as alleging that discovery was somehow delayed or not completed due to the retirement of Travelers' counsel, William P. Davis. *See* Farm Bureau's Initial Brief, p. 18. Mr. Davis' last day, prior to retirement, was April 29, 2021. The lower court denied Farm Bureau's motions to alter its January 5, 2021 Order and its March 30, 2021 Order on April 12, 2021 and dismissed Travelers with prejudice on April 19, 2021, well before Mr. Davis' retirement. Moreover, at no point was there any lack of continuity of counsel for Travelers, as undersigned worked alongside Mr. Davis in the handling of this case since its inception. Farm Bureau's excuse for delayed discovery related to Travelers' counsel's retirement is misleading and untrue.

[7] The Court is encouraged to see the obvious challenges to this "lack of notice" assertion of Farm Bureau. From the transcript of the hearing on this matter alone, Farm Bureau made clear that its company only sells in South Carolina, priding itself on "its own adjusting folks." Transcript of Record, September 17, 2020, p. 17. In fact, Farm Bureau's sales agent and his supervisor, who were Farm Bureau employees, went out to investigate the residence with their insured shortly after the fire. *See id.*, pp. 36-37. Farm Bureau had notice of the fire early on, which is evident from the hearing Transcript of Record before the Court. Arguing for a duty on the part of Travelers to notify Farm Bureau's claims department directly to constitute "actual notice" that would have, in hindsight, changed the course of their claims handling is disingenuous. Travelers' responsibility was to its insured, and how Travelers handled its insured is outside Farm Bureau's business. Travelers performed its duty to its insured. Farm Bureau's handling of its policy with its individual and separate insured does not hinge on the actions of Travelers, and the evidence of Farm Bureau's notice furthers this point.

[8] Farm Bureau argues, "[i]f Travelers honored its obligation to Mr. Driggers, the claim would not have been filed and this DJ would not have been necessary." Farm Bureau's Initial Brief, p. 14. A complete reading of Farm Bureau's Brief, alongside this statement, reveals a circular and inconsistent argument. Like Travelers,

obligations with its insured, sought and was properly granted summary judgment on all direct claims against it in this action, and sought to pay the disputed amount of its compromise with its insured in to court. The lower court properly dismissed Travelers from this action with prejudice pursuant to Rule 22(b), SCRCP.

4. THE RULING SOUGHT BY FARM BUREAU WOULD HAVE FAR REACHING FUTURE IMPLICATIONS FOR INSURANCE CARRIERS AND INSUREDS IN SOUTH CAROLINA.

Farm Bureau argues that Travelers' Motion for Summary Judgment in regards to its equitable indemnity claim should not have been granted, thereby preventing Travelers from being dismissed with prejudice pursuant to its Rule 22 Motion. According to Farm Bureau, its equitable indemnity claim against Travelers is based on a lack of notice and knowledge surrounding the investigation of this claim. *See* Transcript of Record, September 17, 2020, p. 12. Specifically, Farm Bureau "think[s] Travelers at least in this unusual factual situation would have had some duty of the pro rata approach as to coverages or whatever to a least contact us and let us know what was taking place." *Id.* at p. 13-1. For the first time on appeal to this Court, as set forth above, Farm Bureau also argues that a "novel issue" exists under S.C. Code Ann. § 38-75-20 to warrant a finding that a special relationship is created between insurance carriers for fulfillment of the statute.

Such a duty of notice between carriers could undermine the state of South Carolina insurance law for decades to come. At the most basic level, Farm Bureau argues for the existence of a special relationship between all property insurance carriers within South

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Farm Bureau took premiums from its insured in exchange for a contractual agreement to pay out in the event of a loss under the terms of its insurance policy. On the one hand, Farm Bureau argues Travelers should have given it notice of the fire and immediately worked with it to pay out on a pro rata basis under each policy. Yet, on the other hand, Farm Bureau argues Travelers owed something to Farm Bureau's insured, alongside Travelers' insured, and Travelers' handling and payment to both its own and Farm Bureau's insured would have eliminated a claim against Farm Bureau and the DJ action that resulted. These arguments are contradictory and untenable.

Carolina. Farm Bureau is asking this Court to decide that an insurance carrier has a duty to investigate and notify other potential carriers of a claim, its circumstances, the carrier's investigation, and the development and adjustment of the claim. Farm Bureau is asking for such a duty to be established in the equitable indemnification context, without the existence of a contract between the carriers. Under Farm Bureau's argument, potentially owing money on the same claim or triggering a pro rata allocation or disbursement would create a statutory duty on the part of the first noticed insurance carrier to investigate, locate, and update all other potentially connected carriers of the pending claim. Additional investigation surrounding claims, whether limited to fire claims or not, translates in to more expensive claims processing, a cost often passed off on the consumers of South Carolina. Farm Bureau ignores the ramifications of the duty of notice it seemingly advocates for amongst carriers in South Carolina.

Furthermore, while Farm Bureau argues that it did not receive notice until a claim was made in November 2012, the record suggests Farm Bureau was aware of the fire and may have even visited the residence with its own insured soon after the loss. *See supra* p. 23, note 7. Farm Bureau had the ability and opportunity to act to protect its own interests as well as the interests of its insured. Farm Bureau failed to do so and should be precluded from seeking a cause of action against Travelers. Apparently, in hindsight, Farm Bureau believes additional notice from Travelers to a specific department would have induced a different reaction on its part to this fire claim. Nevertheless, such speculation does not warrant the creation of a far-reaching duty on the part of insurance carriers to investigate for other insurance carriers and provide notice of claims. Farm Bureau's contract is with its insured, and that is where the notice duties lie. To create a duty to investigate and notify

all potentially involved carriers of a claim after one insurance carrier is put on notice by its own insured creates an entirely new area of claims investigation, at the expense and delay of individual South Carolina insureds.

CONCLUSION

For the foregoing reasons and upon the foregoing authorities, Travelers submits that the orders of the trial court should be affirmed.

Mariel D. Norton
S.C. Bar. No.: 100198
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Phone:(803) 799-9091; Fax:(803) 779-3423
File No.: 7746.1749
Attorneys for Travelers The Travelers Home and Marine Insurance Company
Columbia, South Carolina
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