THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Newberry County
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge
Civil Action No. 2008-CP-36-417

Appellate Case No. 2013-000602
South Carolina Court of Appeals Unpublished Opinion No. 2013-UP-015

Travelers Property Casualty Co.,

Respondent

v.

Senn Freight Lines, Inc.,

Petitioner

PETITION FOR WRIT OF CERTIORARI

W. Chad Jenkins, Esquire
POPE AND HUDGENS, P.A.
1508 College Street
Post Office Box 190
Newberry, SC 29108
Tel: (803) 276-2532
Fax: (803) 276-8684
cjenkins@popeandhudgens.com

ATTORNEYS FOR PETIONER-
SENN FREIGHT LINES, INC.

Newberry, South Carolina
April 24, 2013

OTHER COUNSEL OF RECORD

M. Dawes Cooke, Jr.
John W. Fletcher
Barnwell, Whaley, Patterson, & Helms, LLC
885 Island Park Drive (29492)
PO Drawer H
Charleston, SC 29402
(843) 577-7700
FAX: (843) 577-7708
mdc@barnwell-whaley.com
jfletcher@barnwell-whaley.com
Attorneys for Travelers Property Casualty Co.

INDEX

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on February 22, 2013.

POPE AND HUDGENS, P.A.
PO Box 190
Newberry, South Carolina 29108
P: (803) 276-2532; F: (803) 276-8684
cjenkins@popeandhudgens.com

By: _____
W. Chad Jenkins
Attorneys for Petitioner Senn Freight Lines, Inc.

April 24, 2013

Newberry, SC

QUESTIONS PRESENTED

1. After correctly defining the term "lawfully secured their workers' compensation obligations" as meaning "proof of compliance with workers' compensation laws," did the Court of Appeals err in overturning the trial court's denial of JNOV and new trial motions when there is specific evidence in the Record to support the jury's findings that Senn Freight Lines, Inc. (hereinafter "Senn") complied with the Worker's Compensation laws and provided Travelers Property Casualty Co. (hereinafter "Travelers") with all requested and necessary documents to show proof of said compliance?

2. Where there is ample evidence to support the jurors' determination that Travelers cancelled Senn's assigned risk workers' compensation insurance policy without justification and in bad faith, including actions by Travelers after the policy was cancelled, did the Court of Appeals err in overturning the trial court's denial of Travelers' JNOV motion regarding Senn's counterclaim for bad faith cancellation of the insurance policy?

STATEMENT OF THE CASE

The South Carolina Court of Appeals issued Unpublished Option No. 2013-UP-015, filed January 9, 2013 (hereinafter "Opinion") in which the court reversed the lower court's denial of JNOV and New Trial Motions on Respondent-Appellant Travelers Property Casualty Co.'s (hereinafter "Travelers") breach of contract claim and Petitioner-Respondent Senn Freight Lines, Inc.'s (hereinafter "Senn") counterclaim for bad faith cancellation and remanded the case for a damages hearing on the breach of contract claim.

The case centers around a workers' compensation insurance policy obtained through the South Carolina Assigned Risk Plan whereby Senn requested coverage for its office and clerical employees. Travelers provided said policy and renewed it several times. Travelers cancelled the policy during the third and final policy period for alleged non-cooperation with an audit and on September 3, 2008 filed a non-jury debt collection action. (R. p. 19). Senn answered and counterclaimed, alleging breach of contract and bad-faith cancellation of the policy. (R. p. 25). At trial before the Honorable Eugene C. Griffith, the jury found for Senn on all causes of action and awarded Senn $4,851.06 on its breach of contract claim, $6,000.00 in actual damages on its insurance bad faith claim and $100,000.00 in punitive damages on its insurance bad faith claim. (R. p. 15).

Travelers filed its Motion for Judgment Notwithstanding the Verdict/New Trial Absolute and The Honorable Eugene C. Griffith, Jr. heard oral arguments on same. Travelers alleged there was no evidence to support the jury's verdict and award of damages on each claim and counterclaim and that the jury acted improperly, necessitating that the trial court grant a new trial absolute under the thirteenth juror doctrine. (R. p.

38). The trial court issued its Order filed March 7, 2011 denying Travelers Motions on the Complaint and Counterclaims for breach of contract and insurance bad faith and affirming the jury's damages awards, including the punitive damage award. [1] (R. p. 1).

The Opinion determined that the phrase "lawfully secured their workers' compensation obligations" means "proof of compliance with workers' compensation laws" but also finds that no evidence in the record indicates Senn provided "proof" that the owner/operators complied with said laws. The Opinion reverses the trial court's denial of Traveler's JNOV motion on the breach of contract claim and remands for a hearing on damages. Secondly, the Opinion finds that there is no evidence to support Senn's claim for bad faith cancellation of the insurance policy. Senn's Petition contends that bad faith cancellation of a policy of insurance is a proper cause of action and that the testimony of Senn's president and Traveler's actions subsequent to said cancellation are sufficient to uphold the findings of the jury and the trial court's Order dated March 4, 2011, (filed March 7, 2011) reasoning that conduct after the cancellation cannot be utilized to show bad faith at the time the decision was made.

[1] Senn also counterclaimed on a bond. The trial court granted Traveler's post trial motions related to same and this decision was not appealed and therefore not germane to this Petition.

STATEMENT OF FACTS

Senn Freight Lines, Inc., or its corporate predecessors, has been in the flat bed trucking business for decades. (R. p. 56, lines 11-14). Senn applied for workers' compensation insurance coverage for its office and clerical staff through the South Carolina Assigned Risk Plan. (R. p. 96, lines 10-18; R. p. 121, lines 13-21). Senn limited its request for coverage to the office staff and at no time did they seek coverage for any driver and no claims were ever submitted to Travelers for drivers. (R. p. 93, lines 1-11).

Senn Freight has not directly employed drivers since 1994, utilizing leased drivers from Professional Employee Organizations, aka PEO's, and owner-operators who provide their own trucks and are responsible for their own insurance, maintenance, taxes, food, etc. (R. p. 92, lines 19-23; R. p. 61, lines 16-21; R. p. 90, lines 4-21). Senn Freight utilized no more than four or five owner-operators at any given time. (R. p. 64, lines 15-25).

Travelers provided the assigned risk plan policies for Senn. During the third policy period, Travelers unilaterally cancelled the policy and later filed its non-jury debt collection action via Complaint filed on September 3, 2008 in the Newberry County Clerk of Court's office (R. p. 19). The policy periods applicable to this case began on July 10, 2003 and ended on October 25, 2005. (R. pp. 133-148; pp. 149-166; pp. 167-185). If the last policy, which was cancelled early by Travelers, had run to its end date, it would have run only until July 10, 2006. (R. pp. 167-185). Travelers waited over two

years, until after the expiration of any possible claims period for worker's compensation claims under the policies, before filing this lawsuit in September 2008. (R. p. 19).

Originally, Travelers' was concerned with leased drivers and the auditor who visited Senn Freight in October 2005 focused on those leased drivers. (R. p. 19; R. p. 97, lines 7-9). Over $300,000.00 worth of worker's compensation claims were filed for drivers covered by the PEOs during the policy terms at issue in this case and each claim was covered by the worker's compensation carrier provided by the PEO. Travelers was not asked to cover any of them. (R. p. 97, lines 10-25). Although the PEO drivers were discussed at length during the trial, Travelers turned their attention to the owner-operator drivers, arguing that they should be classified as employees or statutory employees and that therefore Travelers was owed premiums for these independent contractors. The owner-operators utilized their own vehicles, maintained their own vehicles, were responsible for their own insurance, gas and incidentals and signed an owner-operator agreement with Senn Freight declaring that they were in fact independent contractors. (R. p. 65, lines 12-13; R. p. 90, lines 4-21). These independent contractors are paid on a different basis because they are responsible for their own trucks, maintenance, repair, gas and other incidentals so the funds received by them cannot be viewed in the same light as would be for a leased driver who is paid a salary. (R. p. 90, lines 4-21). Senn Freight did not have the right to control the owner operators as they could choose their own route and what work they wanted. (R. p. 94, line 18 – p. 95, line 11).

Senn Freight required each owner-operator to produce proof of insurance coverage, which was normally in the form of an occupational accident policy. (R. p. 78, lines 12-24; R. p. 79, lines 17-22). The individual owner-operators are not legally

required to carry statutory worker's compensation insurance due to the fact that they have less than four employees so Senn Freight allowed for occupational accident polices and these policies have always covered the claims. (R. p. 90, line 22; R. p. 91, lines 10-20). These occupational accident policies provide legal coverage that is sufficient to show compliance with the South Carolina Workers' Compensation Act and to show that the owner-operators "lawfully secured their workers' compensation obligations" pursuant to the contract.

Travelers argued at trial that any policy cancellation was due to "non-cooperation" by Senn Freight in the audit process. (R. p. 106, line 18 – p. 107, line 1). Travelers did not produce as a witness at trial any person who participated in the 2005 audit of Senn Freight. An auditor who had never visited Senn, who was named as a witness the day before trial and who had only reviewed the Senn file a few weeks before the trial was called in his place. The auditor testified that both IRS Form 1099s and a Form 1096 were made available to Travelers during the audit. (R. p. 103, lines 1-12; R. p. 120, lines 12-22). He further testified that auditors typically just look at records at the place of business and do not take the records with them. (R. p. 116, lines 1-4). This witness never went to Senn Freight's office, never talked to the actual auditor and never spoke to Senn Freight employees regarding this matter. (R. p. 116, lines 1-25).

Senn testified repeatedly that full cooperation was given. As evidenced by the 10 day notice requirement in the contract and the date of the actual cancellation by Travelers, the Notice of Cancellation was sent before the October 17, 2005 audit at which non-compliance was complained was set to take place. (R. p. 71, lines 9-11; R. p. 96, line 19 – p. 97, line 9; R. pp. 167-185). The president of Senn testified repeatedly that

the records were provided. (R. p. 71, lines 9-22; R. p. 73, lines 1-14; R. p. 74, line 20 – p. 75, line 4). Travelers called no witness to refute this testimony.

Over two years later, Travelers instituted its action seeking to collect a "debt" in the amount of $197,958.00 for workers' compensation insurance premiums. Senn Freight denied the allegations of the Complaint and Counter-claimed, alleging breach of contract, bad faith insurance cancellation and damages on a surety bond.

ARGUMENT I

THE COURT OF APPEALS ERRED IN REVERSING THE TRIAL COURT'S DENIAL OF TRAVELERS' JNOV AND NEW TRIAL MOTIONS AS TO THE DEBT COLLECTION CLAIM AND SENN'S COUNTERCLAIM FOR BREACH OF CONTRACT.

The trial court properly denied Travelers' Motion for JNOV and Motion for New Trial on the debt collection claim and breach of contract counterclaim. The trial court must deny motions for directed verdict or judgment notwithstanding the verdict (JNOV) when the evidence yields more than one inference or its inference is in doubt. Steinke v. S. Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999). Appellate courts should reverse the trial court's ruling on a motion for directed verdict or a motion for judgment notwithstanding the verdict (JNOV) only when there is no evidence to support the ruling below. Id. at 386.

This Court should grant Senn's Petition for Writ of Certiorari to review and remedy the errors of the lower court in reversing the trial court's properly supported rulings. There was ample evidence the owner-operators were independent contractors and that they secured proper coverage for any on the job injuries and therefore the trial

court was correct in upholding the jury's findings. Even assuming, *arguendo*, that the owner-operators were statutory employees, the Opinion ignores the evidence in the record showing proper proof of insurance coverage was provided.

The pertinent clause from the Assigned Risk Plan policy provides that the premium will be based upon remuneration paid for the services of:

> "2. All other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. . . . . This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations." (R. p. 175).

The Opinion was 100% correct in determining that the phrase "lawfully secured their workers compensation obligations" is ambiguous and should be construed to mean simple proof of compliance with workers' compensation laws, not proof of statutory workers' compensation coverage. An insurance contract which is in any respect ambiguous or capable of two meanings must be construed in favor of the insured. Beaufort Cnty. Sch. Dist. v. United Nat. Ins. Co., 392 S.C. 506, 709 S.E.2d 85 (Ct. App. 2011), reh'g denied (May 25, 2011), cert. dismissed (Dec. 20, 2011). "Where the words of an insurance policy are capable of two reasonable interpretations, that construction will be adopted which is most favorable to the insured." Greenville Cnty. v. Ins. Reserve Fund, a Div. of S. Carolina Budget & Control Bd., 313 S.C. 546, 547, 443 S.E.2d 552, 553 (1994).

As evidenced by the testimony of Danny Senn, President of Senn Freight, most of the owner-operators were one or two man operations and all employed four or less employees. (R. p. 90, line 220 - p. 91, line 2). Pursuant to S.C. Code Ann. §42-1-360(2)(Supp. 2009), employers with four or less employees are not required to carry

statutory workers' compensation insurance. Therefore, their workers' compensation obligations could be lawfully secured by the occupational accident policies provided by Senn.

The Opinion noted that "Senn consistently testified all of the owner/operators had less than four employees and he provided Travelers with all the information Travelers asked for. . . ." This evidence, if believed by the jury, in and of itself, would meet the burden of proof for Senn to prevail against Travelers on Travelers debt collection action. In other words, if the owner/operators did not need statutory coverage, the occupational accident policies would suffice pursuant to the terms of Travelers' own contract of insurance.

It would seem clear the evidence supports the jury's verdict on Travelers' debt collection action and Senn's counterclaim for breach of contract. However, the Opinion continued and stated that Danny Senn "did not testify he provided Travelers with proof either the owner/operators had statutory workers' compensation insurance or employed less than four people." This is simply incorrect. Danny Senn testified as follows under direct examination from Travelers trial attorney:

- "The Traveler's policy requires us to prove we have coverage for the drivers and **we did so, over and over again**. That is what the policy requires." (R. p. 76, lines 13-15).

- "Q: Did you get a contract with each one of these guys?"
  A: Absolutely
  Q: And you verified they had workers' compensation insurance coverage?
  A: Yes Sir." (R. P. 65, lines 12-16).

- "Q: Do you recall me asking you about the documentation you provided to me for what coverage they had?
  A: We probably provided proof of the coverage.
  Q: You, in fact, provided documentation of an occupational accident policy. Is that correct?

A: Yes, sir.
Q: That's not workers' compensation is it?
A: Yes, it is. It's not statutory, but it is workers' compensation."
(R. p. 67, lines 10-18).

- "Q: Okay. That's for one of the occupational accident policies. Is that right?
  A: Yes, sir.
  Q: Is that -- would that be an example of what you provided to Traveler's when they asked for proof of that coverage?
  A: Yes, sir." (R. p. 68, lines 10-16; R. p. 207).

- "Q: Now, Mr. Senn, following this audit in October 2005, you received correspondence from Travelers, early December 2005. Is that correct?
  A: There was a subsequent letter, which we responded to.
  Q: Okay. And they were requesting certain information. Is that right?
  A: **Requesting the same information that had been given to the auditor, but we gave it to Ms. Smeltzer again**.
  Q: They were asking for valid certificates of insurance for your sub-contractors?
  A: That was part of it.
  Q: These drivers here?
  A: **It was provided**." (R. p. 78, lines 12-24).

- "Q: Do you recall them asking you for proof of workers' compensation for your drivers through March 2004?
  A: **We provided it**.
  Q: And the last two weeks of January -- I mean, February of 2005?
  A: **We provided it twice**." (R. p. 79, lines 17-22).

The Opinion insinuated that Mr. Senn was confused regarding the difference between leased drivers and owner-operators but this is simply not shown in the record. Mr. Senn was crystal clear that he provided everything Traveler's asked for. If the Opinion is to surmise Mr. Senn did not testify he provided proof the owner-operators employed fewer than four employees, it should also surmise Travelers never asked. It is counter-intuitive for Travelers to argue they did not get something they never testified they asked for.

Furthermore, Steven Evangilista, the auditor who only reviewed Travelers' file on Senn a few weeks before the trial and who had no contact with the person who actually

performed the audit nor with Senn Trucking or its employees, testified that auditors typically just look at the records and do not remove them from the place of business. (R. p. 116, lines 1-17). The jury clearly believed Mr. Senn's testimony that he provided EVERYTHING sought by Travelers. It is hard for an auditor, who obtained his only knowledge of the case by reviewing an incomplete file at Travelers' offices, to make a credible claim of non-compliance.

Clearly there is ample evidence that Senn provided proof of proper coverage for everyone, including the owner-operators. To insinuate otherwise is to ignore the clear evidence in the record - mainly the testimony of Danny Senn which was relied upon by the jury. The Opinion attempts to shift the burden of proof on Traveler's debt collection claim by asserting Senn had to prove something in order to prevail. The burden of proof is upon the plaintiff, whereby it must prove its claim by a preponderance of the evidence. M & T Grp., LLC v. Palmetto Point of Williamston, LLC, 391 S.C. 73, 705 S.E.2d 20 (2011), reh'g denied (Feb. 2, 2011). It is the jury's job to weigh the evidence, whether it be testimonial or documentary, and assign what value they wish to each morsel obtained from the trial. Smith v. Durham Life Ins. Co., 202 S.C. 392, 25 S.E.2d 247, 248 (1943). Here, the Court of Appeals improperly substituted its own interpretation of the evidence for that of the jury.

If there is any evidence to support the jury's verdict, a JNOV should be denied. Steinke at 386. The Opinion was in error in overturning the trial court's and jury's finding that Senn provided proper proof of proper coverage for its owner-operators when the record is replete with evidence to support that finding.

ARGUMENT II

THE COURT OF APPEALS ERRED IN REVERSING THE TRIAL COURT'S DENIAL OF TRAVELERS' JNOV AND NEW TRIAL MOTIONS AS TO SENN'S COUNTERCLAIM FOR BAD FAITH CANCELLATION.

The Opinion skirts the issue of whether or not "bad faith cancellation of insurance policy" is a valid cause of action by determining that even if the cause of action is recognized, "no evidence in the record can reasonably support the claim in this case." Senn Freight's Counterclaim pled a valid cause of action for bad faith cancellation of the insurance policy pursuant to the standards set forth in Mitchell v. Fortis, 385 S.C. 570, 686 S.E.2d 176 (2009). The trial court correctly charged that the elements of an insurance bad faith claim are: 1) a mutually binding contract of insurance; 2) refusal by the insurer to provide benefits under the contract; and 3) that the refusal resulted from bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealings. Id; Cock-N-Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 466 S.E. 2d 727, 730 (1996).

It is admitted by Travelers that there was a binding contract of insurance and that it did in fact refuse to provide benefits under the contract. Travelers admitted that it unilaterally cancelled the contract of insurance effective October 25, 2005 for alleged non-compliance. Instead of producing witnesses and documents to establish any alleged non-compliance, Travelers called an auditor who had no relation to Senn Freight and who had not visited Senn Freight or spoken to Senn Freight prior to testifying at trial. This auditor was named as a witness only one day prior to trial and provided no evidence or testimony that Senn Freight did not comply with all requests by Travelers other than to

say some materials were not "in the file." The auditor went on to testify that the normal process includes a review of documentation at the business location and that the documents are not normally included with the insurance company's file. He did not visit the business; he only reviewed Travelers' incomplete file the week before trial. (Tr., p. 132, l. 20 – p. 133, l. 7; Tr., p. 160, ll. 1-25). Furthermore, Danny Senn testified specifically and repeatedly that he provided all documentation sought by Travelers during the audit process. (See detailed statements in Argument I above) (Tr., p. 76, ll. 1-14; Tr., p. 77, ll. 20-25). There is simply no possible way for the witness that was present to know what type of cooperation was provided by Senn. The jury believed Danny Senn and not Traveler's newfound auditor, and that determination should not be disturbed. [2] The jury determined that those actions were in bad faith as evidenced by their verdict and damages award. (R. p. 15-16).

The lower court decided the policy was cancelled simply because Senn Freight did not provide the documentation requested in their workers' compensation audit. Once again, the lower court attempts to usurp the jury's finding of facts and these new "facts" are simply not supported by the evidence contained in the record. At the very least, there is evidence which supports the jury's findings.

Evidence of bad faith exists in abundance. It is undisputed that the policy was cancelled before the term expired and after the plaintiff had received the agreed upon premiums. (Tr., p. 118, ll. 5-22; Def. Ex. 1). Furthermore, Travelers refused to refund the premium despite the cancellation of the policy. (R. p. 124, line 15- R. p. 125, line2).

[2] The trial court offered the jury the opportunity to speak privately with him following their verdict. After doing so, the court stated: "You know the main question? Where was Mr. Barnette?" (Tr., p. 305. ll. 9-12). It is clear that in his absence, the jury believed Danny Senn's testimony.

Most importantly, Travelers attempted to unilaterally raise the premium without justification and instituted a lawsuit regarding this unilateral raise in premium only after the worker's compensation claims period had passed. S.C. Code Ann. §42-15-40 (Supp. 2009); (Tr., p. 170, l. 20 – p. 171, l. 11). It is important to remember this is a policy of adhesion. Senn Freight had no choice as to the terms or who the insurer would be pursuant to the S.C. Assigned Risk Plan. S.C. Code Ann. §38-73-540 (Rev. 2002).

The lower court further failed to consider the fact that this was a forced or placed insurance policy pursuant to the S.C. Assigned Risked Plan. The Assigned Risk Plan is for employers who have a hard time obtaining insurance on the open market, making the unilateral cancellation of this policy all the more alarming. This is not a policy that can simply be cancelled at the insurer's whim. The Assigned Risk Plan specifies that the carrier must provide an opportunity to cure and assist the employer on problems relating to coverage and service under the Plan. Crew v. W.R. Crews, Inc., 390 S.C. 15, 699 S.E.2d 189 (Ct. App. 2010). Even compliance with statutory notice requirements is of no effect when dealing with an Assigned Risk Plan policy. Id. at p. 27.

The jury obviously had an unfavorable view of Travelers' scheme of waiting until the statute of limitations would bar any possible worker's compensation claims before seeking premiums. S.C. Code Ann. §42-15-40 (Supp. 2009). The lower court surmised that Travelers' conduct after the cancellation should not be used to show bad faith at the time the cancellation decision was made. This is not correct as this was a major factor in determining whether or not Travelers' breach of contract was in fact in bad faith. Travelers' actions, both before and after the cancellation, show a plan or scheme to collect premiums for workers who cannot possibly file a claim, including their waiting for the

passage of the statute of limitations before filing suit and their turning their focus away from the leased drivers when they realized $300,000 in claims were made on those drivers.

Travelers asserted in its briefs that South Carolina does not recognize a cause of action for bad faith cancellation of insurance policy. Although the Opinion avoids this issue, this is a novel question of law best decided by this Court. South Carolina does recognize a bad faith cancellation cause of action. Mitchell specifically allowed a cause of action for bad faith cancellation of a health insurance policy. Mitchell v. Fortis, 385 S.C. 570, 686 S.E.2d 176 (2009). While Senn Freight has been unable to locate any South Carolina case law whereby a bad faith cancellation of policy has been applied in the worker's compensation arena, other jurisdictions allow for a cause of action regarding bad faith in any area of an insurance policy, not simply the denial of claims.[3]

The Ohio court in Pate v. Guarantee Trust Life Ins. Co. stated it best: "the insurer has a duty to act in good faith toward its insured in carrying out its responsibilities under the policy of insurance." (Pate *citing* Hoskins v. Aetna Life Ins. Co., 452 N.E.2d, 1315, 1319 (Ohio 1983). The case of Mitchell v. Fortis has already extended the bad faith cause of action to cases involving wrongful termination of a policy of insurance. If, for

[3] Johnson v. Liberty Mutual Fire Ins. Co., 653 F.Supp.2d 1133 (D. Colo. 2009) (District Court in Colorado found that the insurer and insured have a special relationship with an implied duty of good faith and fair dealing that is actionable in torte, even if the claim is eventually defended and/or paid.); Ballow v. Phico Ins. Co., 875 P.2d 1354 (Colo. 1993) (Colorado Supreme Court found that there is a duty of good faith that is broad and wide ranging and extends to "everything pertaining" to previsions of insurance services, including bad faith as it relates to renewal or nonrenewal of policies); Bariski v. Reassure America Life Ins. Co. 2011 WL 2651427 (M.D. PA. 2011) (In a case dealing with a statute of limitations, the 2 years statute of limitations for instituting a bad faith suit on a life insurance policy begins on the date the insured knew it was cancelled which was well before the death of the insured and well before payment would be due.); Dune v. American Ins. 251 P.3d 1232 (Col. App. 2010.) (The duty of good faith for an insurer extended to the "duty to adequately and promptly communicate in response to Plaintiff's claim."); Pate v. Guarantee Trust Life Ins. Co. 2010 WL 987090 (ND Ohio 2010) (The case found that bad faith liability may rise from the legal duty created by the party's relationship and not merely from a breach of the policy terms.)

the sake of argument, the Mitchell case does not extend said causes of action to include bad faith cancellation of a policy, this Court should, given the facts of this case, follow the lead taken by other states in similar situations.

CONCLUSION

The Opinion is in error in reversing the trial court's rulings in this matter. The Court of Appeals improperly replaced the jury's and trial court's determination of facts with a wholly unsupported view of the evidence present in the Record. This Court should grant the Petition for Writ of Certiorari to review and correct those errors. Furthermore, this Court should grant the Petition for Writ of Certiorari to consider the novel question of law pertaining to the bad faith cancellation cause of action asserted in Senn's Counterclaim.

Respectfully Submitted,

POPE AND HUDGENS, P.A.
PO Box 190
Newberry, South Carolina 29108
P: (803) 276-2532; F: (803) 276-8684
cjenkins@popeandhudgens.com

By: _____
W. Chad Jenkins
Attorneys for Petitioner Senn Freight Lines, Inc.

April 24, 2013

Newberry, SC

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Newberry County
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge
Civil Action No. 2008-CP-36-417

Appellate Case No. 2013-000602
South Carolina Court of Appeals Unpublished Opinion No. 2013-UP-015

Travelers Property Casualty Co.,

Respondent

v.

Senn Freight Lines, Inc.,

Petitioner.

PROOF OF SERVICE

The undersigned employee of Pope & Hudgens, P.A., Attorneys at Law, Post Office Box 190, 1508 College Street, Newberry, South Carolina 29108, does hereby certify that she has served the following named individual(s) with a copy of the pleading(s) indicated below by mailing a copy of same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the **24th** day of **April 2013**:

COUNSEL SERVED:
M. Dawes Cooke, Jr., Esquire
John W. Fletcher, Esquire
Barnwell Whaley Paterson & Helms, LLC
PO Drawer H
Charleston, SC 29402

PLEADING SERVED:
Petition For Writ Of Certiorari
Appendix