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S.C. SUPREME COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA CHARLESTON DIVISION



A TRUE COPY ATTEST: ROBIN L BLUME, CLERK

BY: [Signature] DEPUTY CLERK

ANTHONY DENSON, as personal representative of the estate of Garland Denson, Plaintiff, vs. NATIONAL CASUALTY COMPANY, Defendant.

No. 2:20-cv-4196-DCN

ORDER

This matter is before the court on defendant National Casualty Company’s (“National Casualty”) motion to dismiss, ECF No. 10. Plaintiff Anthony Denson (“Denson”) filed this action on behalf of the estate of Garland Denson (“the decedent”) against National Casualty, after the decedent was killed in a car accident. ECF No. 1, Compl. According to the complaint, the at-fault driver was served alcohol in excess by National Casualty’s insured. Denson brings a negligence claim, asserting that National Casualty was negligent in failing to notify the South Carolina Department of Revenue that its insured’s liquor liability coverage had lapsed or terminated. Denson claims that National Casualty bore a “statutory duty” to notify the South Carolina Department of Revenue about its insured’s lapse in coverage pursuant to S.C. Code Ann. § 61-2-145, Compl. ¶ 33, which provides, in relevant part:

(C) Each insurer writing liquor liability insurance policies or general liability insurance policies with a liquor liability endorsement to a person licensed or permitted to sell alcoholic beverages for on-premises consumption . . . must notify the department¹ . . . of the lapse or termination

¹ “The department” refers to the South Carolina Department of Revenue. S.C. Code Ann. § 61-2-10(1).

of the liquor liability insurance policy or the general liability insurance policy with a liquor liability endorsement.

(footnote added).

On January 29, 2021, National Casualty filed a motion to dismiss, arguing in relevant part that Denson does not have standing to bring the instant action because South Carolina law does not recognize a direct negligence action by an injured person against a tortfeasor's insurer. Denson disagrees, arguing that the Supreme Court of South Carolina would adopt his cause of action. On May 27, 2021, the court resolved to submit the issue to the South Carolina Supreme Court and requested that each party propose a question for certification. ECF No. 19. On July 1, 2021, the parties did just that. ECF Nos. 20 and 21. Having reviewed the proposed questions, the court determines that the following question is appropriate and hereby **ORDERS** that it be certified it to the South Carolina Supreme Court pursuant to South Carolina Appellate Court Rule 244:

1. May a person entitled to bring a dram-shop action against a business maintain a negligence action against the business's insurer where the insurer failed to notify the South Carolina Department of Revenue of the business's lapse in or termination of liquor liability coverage in violation of S.C. Code Ann. § 61-2-145(C) and the business did not have liquor liability coverage at the time of the underlying accident?

Accordingly, the court **HOLDS IN ABEYANCE** the motion to dismiss, ECF No.

10.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', written over a horizontal line.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

July 29, 2021
Charleston, South Carolina