

FILED IN OFFICE OF
STATE OF SOUTH CAROLINA CLERK OF COURT JUDGMENT IN A CIVIL CASE
COUNTY OF CHEROKEE CHEROKEE COUNTY, S.C. CASE NO: 2012CP1100061
IN THE COURT OF COMMON PLEAS 2013 MAR 21 PM 3 44

BRANDY W. MCBEE
Omni Insurance Company vs. Christopher Wright

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy:
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Order Denying Second Motion to Reconsider

Dated at Gaffney, South Carolina, this the 21st day of March, 2013.

Court Reporter:

s/ J. Mark Hayes

PRESIDING JUDGE - J. Mark Hayes

This judgment was entered on the the 19th day of March, 2013, and a copy mailed first class this the 21st day of March, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

J. Drayton Hastie III 1417 Calhoun St. Columbia,
SC 29201

James B. Richardson Jr. 1229 Lincoln St.
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee

Brandy W. McBee - Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
 Omni Insurance Company,)
)
 Plaintiff,)
)
 -vs-)
)
 Christopher Wright,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS

Case No. 12-CP-11-61

ORDER DENYING SECOND MOTION
 TO RECONSIDER

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2013 MAR 21 PM 10 56
 BRANDY W. MOORE

This case returns to the Court upon the plaintiff Omni's second motion to alter or amend the grant of defendant Wright's motion for judgment on the pleadings.

In the Order initially entered in this matter, dated October 25, 2012, the Court rejected Omni's contention that the terms of its automobile insurance policy precluded Wright from recovering under the underinsured motorist coverage of Omni's policy when he had already recovered under the liability coverage of the policy.

In opposition to Wright's motion for judgment on the pleadings, Omni filed a memorandum entitled "Memorandum in Support of Declaratory Judgment for Plaintiff." In the "Statement of Facts" part of its memorandum, Omni referred to the allegation of its complaint that its named insured, Anthony Barron, had failed to identify his daughter Jennifer as a driver in his insurance application. Omni alleged that it would have charged a greater premium, had it known. Omni's complaint sought no relief incident to this allegation. ~~Omni concluded its memorandum with the following statement:~~

As noted *supra*, this is not a circumstance where Omni is seeking to deny coverage to the very people who paid the premiums and obtained the Policy. Nor is this an instance where Omni is seeking to avoid coverage entirely, as Omni

has already paid its Policy limits. This is simply an instance where Omni seeks to uphold the Policy as it is written, which limits Defendant's ability to assert duplicate claims against a Policy that is not his own for damages arising from the same incident.

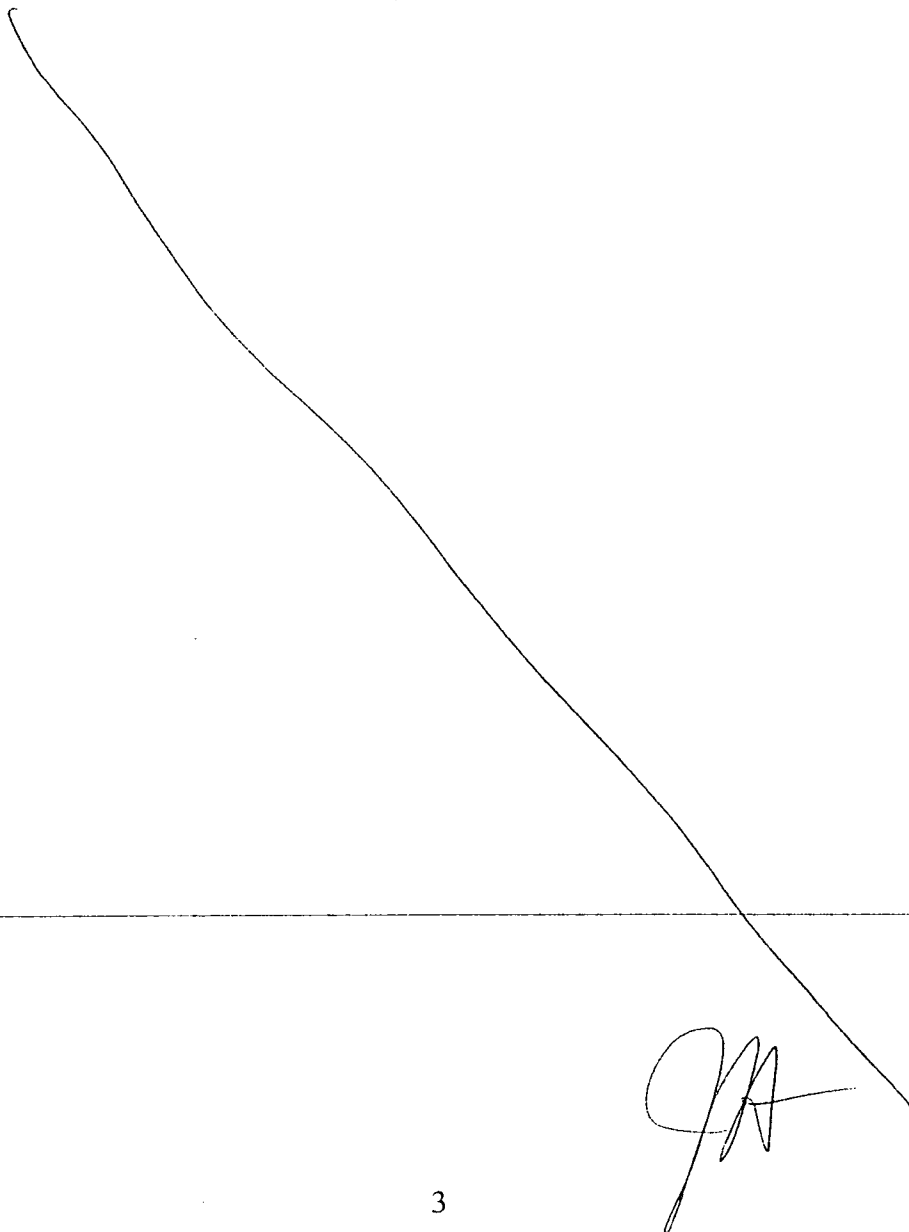
Although Omni did not seek to void the policy or any part thereof in its complaint, and expressly sought "to uphold the Policy as it is written," this Court found in its initial Order that, liberally construing Omni's complaint, the right should be reserved to Omni to attempt to void the policy. Since the policyholder would be a necessary party to such an effort, the Court dismissed Omni's complaint without prejudice "insofar as it may be construed to allege a cause of action to void the policy for fraud in the application." This left Omni free to bring a new action seeking such relief, if so minded.

Omni moved to alter or amend on the ground, *inter alia*, that it had no "intent to void the entire Policy." Rather, it took the position that the UIM portion of the policy, not the entire policy, was void — apparently meaning void *ab initio* — and moreover that its policyholder was not a necessary party to such a claim. Omni offered this position as what it called an "alternate sustaining ground for denying [UIM] coverage." Omni having disclaimed any intent to void the policy, the Court issued an Amended Order dated November 28, 2012, removing the reservation of such a right to Omni but reaffirming the judgment on the merits in all respects.

Omni has moved a second time to alter or amend on the ground of fraud in the inception, with immaterial variations in wording. Omni again asserts that UIM coverage is void because of its policyholder's alleged fraud in the application. In the Order of October 25, 2012, the Court rejected the contention that alleged fraud could be asserted as a ground for voiding UIM coverage in the absence of the policyholder as a necessary

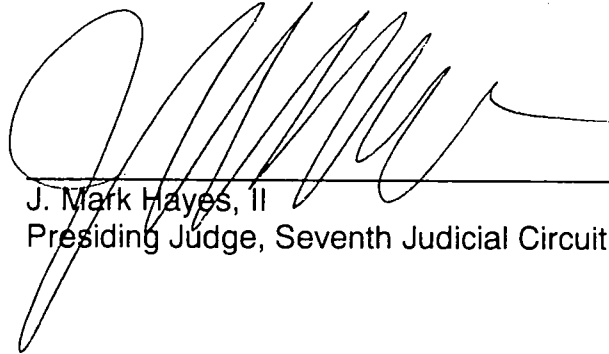
party. The Order of November 28, 2012, made no change in this ruling, but only withdrew the right accorded Omni to bring a new action — a right which Omni eschewed. Omni's successive motion raises no new ground in regard to whether the UIM coverage is void for fraud.

The remaining grounds raised in Omni's second motion to alter or amend are verbatim identical to those raised in the first such motion, with immaterial variations, and have already been rejected in the Order of November 28, 2012.



Accordingly,

IT IS ORDERED that the plaintiff's second motion to alter or amend, dated December 18, 2012, is denied.



J. Mark Hayes, II
Presiding Judge, Seventh Judicial Circuit

Spartanburg, South Carolina

March 19, 2013.

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