

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02219
Appellate Case No. 2021-001009

RECEIVED

Mar 11 2022

SC Court of Appeals

Francine Steineman, ...Respondent.

v.

Eric Steineman, Sarah Smith, and Charles Griffin, ...Defendants.

And Meridian Security Insurance Company, ...Petitioner.

APPENDIX

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THE STATE OF SOUTH CAROLINA
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Sep 10 2021
SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02219

Francine Steineman.....Plaintiff.

v.

Eric Steineman, Sarah Smith, and Charles Griffin.....Defendants.

Meridian Security Insurance Company, an automobile insurer alleged to provide uninsured motorist coverage applicable to the accident from this matter arises is Appellant.

and

Francine Steineman is Respondent.

NOTICE OF APPEAL

Appellant Meridian Security Insurance Company (Meridian) appeals the Orders filed by the Honorable Daniel D. Hall on March 8, 2021, June 10, 2021, August 6, 2021, and August 13, 2021. Appellant received notice of the entry of the August 13, 2021 Order on August 13, 2021. Copies of the trial court's Orders are attached hereto.

[Signature on next page]

Date: September 10, 2021

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles Griffin,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-02219

ORDER OF DEFAULT AS TO
DEFENDANTS SMITH AND GRIFFIN

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Sep 10 2021

SC Court of Appeals

THIS MATTER comes before me on Plaintiff's Motion for Default. As evidenced in the Affidavit of Default filed by counsel for Plaintiff in this action and Exhibits A, B, C, and D attached to this Order, and to which reference is craved:

1. On December 5, 2020, as required by Rule 4, SCRPC, Defendant Smith was personally served with the Amended Summons and Complaint. Defendant Smith has not filed a responsive pleading or in any way answered the Amended Complaint served upon her.

2. On December 29, 2020, as required by Rule 4, SCRPC, Defendant Griffin was personally served with the Amended Summons and Complaint. Defendant Griffin has not filed a responsive pleading or in any way answered the Amended Complaint served upon him.

3. On December 16, 2020, as required by S.C. Code Ann. § 38-5-70 and § 38-77-150, Plaintiff's UM insurer Meridian Security Insurance Company (Meridian) was served through the South Carolina Department of Insurance. Meridian has not in any way made an appearance in this matter.

4. On December 4, 2020, as required by S.C. Code Ann. § 38-5-70 and § 38-77-160, Plaintiff's UIM insurer Meridian Security Insurance Company (Meridian) was served through the South Carolina Department of Insurance. Meridian has not in any way made an appearance in this matter.

I find that Rule 12(a), SCRCP requires a Defendant answer or otherwise respond to a Complaint within thirty days after service of such Complaint and that no such answer or response has been made by or on behalf of either Defendant Smith or Defendant Griffin in this action. Additionally, I find S.C. Code Ann. §§ 38–77–150 and 160 require a UM or UIM carrier to appear within thirty days after service of process is served upon it and that Meridian has not in any way made an appearance in this matter. Accordingly, as authorized by Rule 55, SCRCP, it is hereby ordered, adjudged and decreed that both Defendant Smith and Defendant Griffin is in default.

IT IS SO ORDERED.

Chief Administrative Judge, York County

_____, 2021



York Common Pleas

Case Caption: Francine Steineman VS Eric Steineman , defendant, et al

Case Number: 2020CP4602219

Type: Order/Entry of Default

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2021-03-08 09:32:59 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4602219

Francine Steineman
PLAINTIFF(S)

Eric Steineman et al
DEFENDANT(S)

DISPOSITION TYPE (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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 (formal order to follow) ☒ Statement of Judgment by the Court:

After careful consideration:

Meridian Security Company's Motion for Relief From Default is DENIED.

Meridian Security Company's Motion to Alter or Amend Order of Default is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/10/2021 .

Charles Griffin
Sarah Smith

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: Francine Steineman VS Eric Steineman , defendant, et al

Case Number: 2020CP4602219

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2021-06-10 14:54:12 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4602219

Francine Steineman
PLAINTIFF(S)

Eric Steineman et al
DEFENDANT(S)

DISPOSITION TYPE (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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 (formal order to follow) ☒ Statement of Judgment by the Court:

After careful consideration, Meiridan Security Insurance Company's Motion for Reconsideration is DENIED.

However, The Court directs Plaintiff's attorney to submit a proposed formal order for review by opposing counsel and the Court. The Court will then issue a written formal order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/06/2021 .

Charles Griffin
Trevor A. Cangelosi for Eric Steineman
Lonnie Ray Doles, Jr. for Eric Steineman
Ioannis (Ian) George Conits for Meridian Security Insurance Company
Sarah Smith
T. David Rheney for Meridian Security Insurance Company
Stephen Glenn Vicari, II for Francine Steineman

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: Francine Steineman VS Eric Steineman , defendant, et al

Case Number: 2020CP4602219

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2021-08-06 15:16:46 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles Griffin,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020–CP–46–02219

ORDER

This matter is before the Court on a Motion for Reconsideration filed by Meridian Security Insurance Company (“Meridian”), Plaintiff’s uninsured motorist (“UM”) carrier. For the reasons set forth below, the Court denies that motion.

A UM carrier may appear and defend in the name of the UM if the UM carrier appears within thirty days of being served. S.C. Code Ann. § 38–77–150(B). On August 10, 2020, and on December 16, 2020, Plaintiff served Meridian, the UM carrier, with pleadings in this action. But it was not until March 5, 2021, that Meridian filed a notice of appearance. Meridian did not make an appearance within thirty days of being served. It therefore has no right to defend in the name of the UM.

FACTS AND PROCEDURAL HISTORY

On July 28, 2020, Francine Steineman filed this action against Defendants Eric Steineman and Sarah Smith after suffering catastrophic bodily injuries in a car crash. On January 22, 2018, Mrs. Steineman was a passenger in her car, which was being operated by Defendant Steineman. Defendant Steineman was attempting a left turn when Defendant Smith collided into the passenger side of his car—where Mrs. Steineman was sitting. Mrs. Steineman’s damages purportedly exceed \$2,000,000.00. Defendant Smith’s car was uninsured at the time.

On August 10, 2020, Plaintiff served the Summons and Complaint (“Original Pleadings”) on Meridian through the S.C. Department of Insurance (“DOI”). There is no dispute that Meridian was served with and had notice of the Original Pleadings on August 10, 2020. Over two-hundred days later, on March 5, 2021, Meridian filed a notice of appearance.

On September 26, 2020, Defendant Smith was personally served with the Original Pleadings. Defendant Smith failed to answer the Complaint, so on November 12, 2020, the Clerk of Court entered a default as to Defendant Smith.

After that, Defendant Smith notified Plaintiff’s counsel by e-mail that she was not driving the uninsured car, alleging the uninsured-car’s owner Charles Griffin was driving at the time of the crash. Through discovery, a recording was produced of Defendant Smith admitting she was driving the uninsured car that collided into Plaintiff. But, out of an abundance of caution, Plaintiff amended her Complaint, adding Charles Griffin as an additional Defendant.

On November 30, 2020, Plaintiff filed an Amended Summons and Complaint (“Amended Pleadings”). The amendment adds Charles Griffin as an alternative UM driver, and the circumstances giving rise to Meridian’s UM exposure remain unchanged.

On December 5, 2020, Defendant Smith was personally served with the Amended Pleadings. On December 29, 2020, Defendant Griffin was personally served with the Amended Pleadings. Neither filed an answer, so the Clerk entered a default against those Defendants.

On December 16, 2020, Plaintiff served the Amended Pleadings on Meridian through the DOI. But it wasn’t until February 3, 2021, that Meridian apparently actually receive the Amended Pleadings.

On March 5, 2021—two-hundred-seven days after it was served with the Original Pleadings and seventy-nine days after it was served with the Amended Pleadings—Meridian filed a notice of appearance. This was the first time Meridian appeared or attempted to participate in this action.

At the same time, Meridian filed a motion to relieve Defendants Smith and Griffin from default or in the alternative for additional time to file an Answer, and Plaintiff moved to strike Meridian's appearance because it failed to appear within thirty days of service.

On March 8, 2021, the Court issued an Order finding Defendants Smith and Griffin in default. The Order further found Meridian had no right to defend this action in the name of the UM because it failed to make an appearance as required by S.C. Code Ann. § 38-77-150(B).

On March 11, 2021, Meridian moved to alter or amend the March 8, 2021 Order of Default.

On May 12, 2021, the Court held a hearing on Meridian's motion to set aside, for additional time to answer, and to alter or amend the March 8, 2021 Order. After considering Plaintiff's and Meridian's filed written memoranda and oral argument, on June 10, 2021, the Court issued a Form 4, denying Meridian's motions.

On June 21, 2021, Meridian filed a Motion for Reconsideration, raising seven points requiring clarification. On July 28, 2021, the Court held a hearing on that motion. At the hearing, Meridian offered no intervening change in controlling law, new evidence, or basis on which to correct a clear error of law or prevent manifest injustice. Instead, it asked the Court to clarify the reasons for its ruling.

STANDARD OF REVIEW

The South Carolina Rules of Civil Procedure do not expressly provide for a motion for reconsideration. Rather, Rule 59(e), SCRPC, is the equivalent of a motion for reconsideration, regardless of whether it is labelled as a motion for reconsideration or as a motion to alter or amend. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004). When a party has previously filed a Rule 59(e) motion which was denied, "[a] second [Rule 59(e)] motion 'is appropriate only if it challenges something that was altered from the original judgment as a result of the initial motion. . . .'" Robinson v. Robinson, 365 S.C. 583, 585, 619 S.E.2d 425, 426 (2005), quoting Coward Hund Constr. Co. v. Ball Corp., 336 S.C. 1, 3, 518 S.E.2d 56, 58 (Ct. App. 1999).

A Rule 59(e) motion will not be granted absent “highly unusual circumstances.” U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).¹ Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); see also Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015). Rather, a court may grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993).

DISCUSSION

With respect to the March 8, 2021 Order, this is Meridian’s second Rule 59(e) motion. The Court denied Meridian’s Motion to Alter or Amend the March 8, 2021 Order. The current motion is not

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) (“Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”).

appropriate because it does not challenge something that was altered from the original judgment. It is therefore not properly before the Court and is denied on this basis.

The motion is likewise denied on its merits. If it wishes to defend, a UM carrier must appear within thirty days of service. Meridian failed to appear within thirty days of service. It cannot therefore defend in the name of the UM. Even if the Court were to find Meridian appeared within thirty days of service, no satisfactory explanation for the default of Defendants Smith and Griffin has been put forth, so it cannot be set aside. Nor is Meridian entitled to any additional time to file an Answer because its failure to answer was not due to its excusable neglect or fault. And because Meridian did not appear within thirty days of service, the March 8, 2021 Order properly found Meridian had not timely appeared.

1. The Court denies Meridian's successive Rule 59(e) motion as it fails to address any new ruling from the initial Rule 59(e) motion.

The Court denied Meridian's initial Rule 59(e) motion when it declined to alter or amend the March 8, 2021 Order. As a result, there is no ruling which Meridian's successive Rule 59(e) motion can properly address.

Because there are no South Carolina cases directly on point [regarding the effect of a successive Rule 59(e) motion], we must look to the construction placed on the corresponding federal rules of civil procedure. Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 404 S.E.2d 200 (1991).

[T]he prevailing rule in the federal courts is that a second motion for reconsideration is appropriate only if it challenges something that was altered from the original judgment as a result of the initial motion for reconsideration. In such a case, a new judgment has replaced the previous judgment and the party aggrieved by the alteration may move for reconsideration. See 12 James W. Moore et al., Moore's Federal Practice ¶ 59.37 at 59-123 (3d ed. 1999) ("When a court alters a judgment, the party aggrieved by the alteration may ask for correction."). If, on the other hand, the trial court denies such a motion, the finality of the judgment is restored and the appeal time begins to run from the date the order is entered. *Id.* ¶ 59.36 at 59-123.

Coward Hund Construction Co. v. Ball Corp., 336 S.C. 1, 3, 518 S.E.2d 56, 58 (Ct. App. 1999).

Accordingly, the Court's denial of Meridian's initial Rule 59(e) motion stands, and the Court denies the present Rule 59(e) motion as procedurally improper.

2. Because Meridian failed to appear within thirty days of service, it cannot exercise its right to defend or participate in the underlying litigation.

Plaintiff and Meridian agree that Meridian must appear within thirty days. They disagree over when the thirty-day clock starts. Plaintiff argues a UM carrier must appear within thirty days of service. Meridian argues it must appear within thirty days of when it actually received the pleadings. But under either scenario, Meridian failed to appear within thirty days. It cannot therefore exercise its right to defend or participate in the underlying litigation.

A

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the words in the statute are clear and unambiguous, we cannot give them a different meaning. Id. And if the statute is in derogation of a common law right, it “must be strictly construed and not extended in application beyond clear legislative intent.” Doe v. Marion, 361 S.C. 463, 473, 605 S.E.2d 556, 561 (Ct. App. 2004). A statute must also be read as a whole and in harmony with its purpose. State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). In that vein, “[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). Similarly, Courts are to construe a statute so “that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” In re Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995). In the end, the Court should reject any interpretation which would lead to a result so absurd that the General Assembly could not have intended it. Sweat, 386 S.C. at 351, 688 S.E.2d at 575. 16 Jade St., LLC v. R. Design Constr. Co., 398 S.C. 338, 343, 728 S.E.2d 448, 450-1 (2012).

In relevant part, S.C. Code Ann. § 38–77–150(B) provides “[t]he insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear” (emphasis added). No argument has been made

that this language is ambiguous. Nor does the Court find that it is. Indeed, § 150(B) clearly grants the insurer the right to defend if it first appears within thirty days of service.

This reading harmonizes perfectly with the intent of the legislature. An insurer in South Carolina has no common-law right to participate in an action to which it is not a party. See Rule 24, SCRPC (a non-party cannot participate in an action unless the Court permits it to intervene); Ex Parte Allstate Ins. Co., 339 S.C. 202, 205, 528 S.E.2d 679 (Ct. App. 2000) (purpose of serving underinsured motorist insurer under S.C. Code Ann. § 38-77-160 is to provide that insurer with an opportunity to appear in the action, to defend the action, and to protect its interests); cf. Criterion Ins. Co. v. Hoffman, 258 S.C. 282, 290, 188 S.E.2d 459, 462; Squires v. Nat'l Grange Mut. Ins. Co., 247 S.C. 58, 66, 145 S.E.2d 673, 677 (1965); Steven Plitt et al., 9 Couch on Ins. § 122.1 (3rd ed. 2020). And an insured has no right to name the UM insurer in a direct action to establish liability and damages but only in a subsequent contractual action relating to coverage. See, e.g., Vernon v. Harleysville Mut. Cas. Co., 244 S.C. 152, 135 S.E.2d 841 (1964). Indeed, the right of a UM insurer to defend in the name of a party to an action is a right that is created by statute.

Prior to 1952, no insurance coverage was required to operate a vehicle on South Carolina's roads.

The Motor Vehicle Safety Responsibility Act was enacted in 1952 and did not require a motorist to carry liability insurance until after he had an accident. This left those who carried insurance exposed to the possibility of financial loss from a collision with the uninsured and financially irresponsible motorist. The General Assembly sought to remedy this by the adoption of the Uninsured Motorist Act as a means of shifting the cost of the uninsured motorist's negligence to the uninsured motorist himself. . . . Therefore, every person who registers and licenses a motor vehicle in this State must show that the vehicle is one as to which there is a liability insurance policy in effect or he must pay the uninsured motorist fee.

Southern Farm Bureau Cas. Ins. Co. v. Fulton, 244 S.C. 559, 562, 137 S.E.2d 769, 770 (1964).

Of course, requiring liability insurance offered protection to a person injured by a negligent driver, but it offered no protection to the injured person for injuries caused by a negligent-but-uninsured driver.

To offer greater protection to those innocently injured in a car wreck, the General Assembly passed statutes requiring UM coverage. See S.C. Code Ann. § 38–77–150.

But requiring UM coverage did not bridge the gap between an entitlement to benefits and enforcing the entitlement to those benefits. To be sure, there is no common-law right “to recover [damages for a personal injury] from one’s own insurance carrier.” Carter v. Standard Fire Ins. Co., 406 S.C. 609, 753 S.E.2d 515, 522 (2014). The tortfeasor is responsible.

So the General Assembly created a workaround in passing S.C. Code Ann. § 38–77–150.² An injured party may enforce her entitlement to UM by meeting the statutory condition of serving the pleading on her UM carrier. And the condition is applied without exception. See Williams v. Selective Ins. Co. of Southeast, 315 S.C. 532, 534, 446 S.E.2d 402, 404 (1994) (applying § 38-77-160 (which has identical language as § 150—except for exchanging “underinsured” for “uninsured”) and finding it bars an action for underinsured benefits absent compliance with the requirement that pleadings in the action establishing liability be served on the underinsured carrier).

And the General Assembly imposed a similar condition on UM carriers who wish to protect their interests. A UM carrier may defend in the name of the UM if the UM carrier appears within thirty days of being served. S.C. Code Ann. § 38–77–150.³ And the condition is applied without exception. See Ex Parte Allstate Ins. Co., 339 S.C. 202, 205, 528 S.E.2d 679 (Ct. App. 2000) (purpose of serving underinsured motorist insurer under S.C. Code Ann. § 38-77-160 is to provide that insurer with an opportunity to appear in the action, to defend the action, and to protect its interests); cf. Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2005) (limiting the construction of a UM/UIM

² “No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision.”

³ “The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear.” (emphasis added.)

statute, § 38–77–350, to its “plain and unambiguous terms” and holding: “The insurer may not benefit from the protections of the statute when [it] does not comply with the statute.”).

Moreover, the right of a UM carrier to appear and defend is not a natural right but wholly statutory, so S.C. Code Ann. § 38–77–150 is in derogation of the common law and must be strictly construed. See Crowder v. Carroll, 251 S.C. 192, 161 S.E.2d 235 (1968); see Hucks v. Dolan, 288 S.C. 468, 470 S.E.2d 613, 615 (1986) (illustrating the point: “Since the right of adoption in South Carolina is not a natural right but wholly statutory, it must be strictly construed.”). Strictly construing the statute solidifies that the legislature intended § 150(B) to grant the UM insurer the right to defend if it first appears within thirty days of service.

The legislature therefore clearly intended S.C. Code Ann. § 38–77–150 to (1) require a plaintiff to put her UM insurer on notice (if she wishes to enforce her right to UM coverage) by serving the pleadings on the insurer through the DOI and (2) require the UM insurer to act (if it wishes to exercise its right to defend) by appearing within thirty days of service. See Donze v. General Motors, 420 S.C. 8, 22, 800 S.E.2d 479 (2017), quoting Barnwell v. Barber-Colman Co., 301 S.C. 534, 538, 393 S.E.2d 162, 163–64 (1989) (“[Courts] cannot read into a statute something that is not within the manifest intention of the Legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. The responsibility for the justice or wisdom of legislation rests with the Legislature, and it is the province of the Courts to construe, not to make, the laws.”) (internal citations omitted).

And this reading also harmonizes with statutes controlling service of process on insurance carriers. Service of process on an insurance carrier is perfected when the pleadings is delivered to the Director of the DOI. S.C. Code Ann. § 15–9–270⁴ (“The [pleadings] must be served on an insurance

⁴ “The summons and any other legal process in any action or proceeding against it must be served on an insurance company as defined in Section 38-1-20, including fraternal benefit associations, by delivering two copies of the summons or any other legal process to the Director of the Department of Insurance, as attorney of the

company . . . by delivering [the pleadings] to the Director of the Department of Insurance, as attorney of the company . . . This service is considered sufficient service upon the company.”) (emphasis added); S.C. Code Ann. § 38–5–70⁵ (service on the DOI is of the same “legal force and validity as if served upon the insurer. . .”).

In the end, the only reading that would not lead to an absurd result is that the thirty-day clock starts when the DOI is served for the UM carrier. No other reading “as a whole [provides] a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

Here, Plaintiff put Meridian on notice of this litigation by serving the pleadings on it through the DOI. On August 10, 2020, the DOI was served as attorney for Meridian with the Original Pleadings. For over two-hundred days Meridian did not act to exercise its right to defend. And On December 16, 2020, the Amended Pleadings was served on the DOI as attorney for Meridian. The Amended Pleadings did not change Meridian’s UM exposure in any way—it simply added an alternative UM driver. And for over seventy days, Meridian did not exercise its right to defend. Meridian cannot now exercise its right to defend.

B

company with a fee of ten dollars, of which five dollars must be retained by the director to offset the costs he incurs in service of process and of which five dollars must be deposited to the credit of the general fund of the State. A company shall appoint the director as its attorney pursuant to the provisions of Section 38-5-70. This service is considered sufficient service upon the company. When legal process against any company with the fee provided in this section is served upon the director, he shall immediately forward by registered or certified mail one of the duplicate copies prepaid directed toward the company at its home office or, in the case of a fraternal benefit association, to its secretary or corresponding officer at the head of the association.”

⁵ “Every insurer shall, before being licensed, appoint in writing the director and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it must be served and in this writing shall agree that any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon the insurer and that the authority continues in force so long as any liability remains outstanding in the State. Copies of the appointment, certified by the director, are sufficient evidence of the appointment and must be admitted in evidence with the same force and effect as the original might be admitted.” S.C. Code Ann. § 38–5–70.

Meridian argues it timely appeared because it appeared within thirty days of actual service. And it relies on Southhampton Pointe Property Owners Assoc., Inc. vs. Onebeacon Ins. Co., 2012 WL 130058 (D.S.C. Nov. 7, 2012) and Skidaway Assocs, Ltd. vs. Glens Falls Ins. Co., 738 F. Supp. 980 (D.S.C. 1990) for the proposition that actual service, not service on a statutory agent, starts the running of a limitations period. Neither case is controlling; both apply federal law to a federal statute. But even if the general principle Meridian derives from these cases controls, it still failed to appear within thirty days. On August 10, 2020, Meridian was served with the Original Pleadings. And Meridian does not dispute that this service was actual service. Still, Meridian did not appear within thirty days.

Attempting to seek higher ground, Meridian argues actual service of the Original Pleadings does not matter because it was amended. While this is true in the Fourth Circuit that as a general matter amended pleadings supersede original pleadings, Young v. City of Mt. Rainier, 283 F. 3d 567 (4th Cir. 2001), South Carolina tends to lean in the opposite direction. See White Oak Manor, Inc. v. Lexington Ins. Co., 407 S.C. 1, 753 S.E.2d 537 (2014) (finding implicitly that amending the pleadings does not necessarily supersede the original pleadings). But even if amended pleadings always supersede original pleadings, it is hard to imagine how notice of the claim and lawsuit (as the legislature intended) would somehow disappear with the amending of a complaint.

In any event, unlike in Southhampton and Skidaway, specific statutes control. S.C. Code Ann. § 38–77–150 unambiguously requires Meridian to appear within thirty days of service if it wishes to defend. And S.C. Code Ann. §§ 15–9–270 and 38–5–70 unambiguously instruct that Meridian is served when the DOI is served.⁶

⁶ South Carolina courts have construed the language of § 38-77-150 as “requiring” service on the UM carrier through the Department of Insurance. Franklin v. Devore, 327 S.C. 418, 423, 489 S.E.2d 651 (Ct. App. 1997). Thus, because Plaintiff could not validly serve Meridian in any other fashion, Plaintiff’s service through the Department of Insurance was “actual service” on Meridian which commenced the time for Meridian to exercise its statutory right to defend this action.

And there are no constitutional or due process concerns here. The McCarran-Ferguson Act, 5 U.S.C. 1011 et seq., allow states to regulate insurance and to establish mandatory licensing requirements. By their plain language, S.C. Code Ann. §§ 15–9–270 and 38–5–70 condition an insurance company’s ability to be licensed in South Carolina on it appointing in writing the Director of Insurance as its attorney for service of process and that service on the Director is of the same legal force and validity as if served upon the insurer. Nor are Meridian’s due process rights violated by requiring it to appearing within thirty days from the date of service. To be sure, Meridian agreed in writing to appoint the Director of Insurance as its attorney for service of process and that service on the Director is the same as if actually served. See D.H. Overmyer Co. v. Frick Co., 405 U.S. 174 (1972) (holding due process may be waived even in advance of any alleged violation). Plus, Meridian does not dispute that it was served with the Original Pleadings on August 10, 2020 and obtained actual notice of this action thereby. See Olds v. City of Goose Creek, 418 S.C. 573, 585, 795 S.E.2d 163, 170 (Ct. App. 2016) (“To prevail on a claim of denial of due process, there must be a showing of substantial prejudice.”).

Meridian may not benefit from the protections of the statute when it does not comply with the statute. It cannot exercise its right to defend or participate in the underlying litigation.

3. Assuming for the sake of argument that Meridian appeared within thirty days, the default cannot be set aside because Meridian cannot put forth a satisfactory explanation for the default.⁷

Meridian cannot show good cause to set aside the entry of default.⁸ Before a default may be set aside, the defaulting party must put forth a satisfactory explanation for the default. Sundown Operating

⁷ This portion of the Order assumes, without deciding, that the default provisions of Rule 55, SCRCp, apply to S.C. Code Ann. § 38–77–150. In fact, there is no statutory equivalent to Rule 55 and no reported case appears to have applied that rule to a UM carrier’s limited statutory right to defend an action.

⁸ Meridian moved the Court to set aside the default of Defendants Smith and Griffin. Neither Defendant Smith nor Defendant Griffin has put forth even an explanation for the default. Meridian has provided no testimony from either Defendant. It has filed no affidavits from either Defendant. There is nothing in the record that may be construed as an explanation for the default. And opposing counsel represents Meridian, not Defendant Smith and not Defendant Griffin. There is no explanation, much less a satisfactory explanation, for the default.

Co. v. Intedge Industries, 383 S.C. 601, 607-08, 681 S.E.2d 885 (2009) (emphasis added). Only once a party has put forth a satisfactory explanation for the default, must the trial court also evaluate whether vacation of the default entry would serve the interests of justice by considering: (1) the timing of the motion for relief; (2) whether the defendant has meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. Id. (citing Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465 (Ct. App. 1989)).

Meridian has not provided a satisfactory explanation for the default.⁹ Meridian argues it failed to answer the complaint because it did not receive actual service of it until February 3, 2021. No other explanation has been presented. This conclusory statement does not explain the default. Moreover, Meridian offers no reason for its delay of an additional thirty days before seeking relief from default.

Assuming it is a satisfactory explanation for the default, Plaintiff will be prejudiced if relief is granted. Defendant Smith has already admitted on recorded audio that she was driving at the time of the accident. But in an e-mail from her to Plaintiff's counsel, she attempts to shift liability to Defendant Griffin. Setting aside the default will tend to provide greater opportunity for fraud or collusion because either or both Defendants will likely continue to engage liability-shifting shenanigans. The statute of limitations has run, so Plaintiff is unable to add any new parties. Plaintiff would therefore be prejudiced.

4. Meridian is not entitled to any additional time to answer.

An enlargement in the time to answer may arguably be allowed if the failure to answer was due to some excusable neglect or fault. See Livingston v. South Carolina Farm Bureau Mut. Ins. Co., 254

⁹ As Meridian points out, it is not necessarily bound by the default of the Defendants Smith and Griffin. See Broome v. Watts, 319 S.C. 337, 461 S.E.2d 46 (1995). Indeed, if S.C. Code Ann. § 38-77-150 means anything by granting the UM insurer "the right to appear and defend in the name of the uninsured motorist," it is that a UM carrier can assert defenses, which necessarily must be asserted irrespective of whether a UM defendant is in default. Otherwise, plaintiffs would be incentivized to postpone serving the UM carrier until the UM defendant is in default. But that is not the case here. In this case, Meridian failed to file an Answer or responsive pleading at all.

S.C. 161, 174 S.E.2d 163 (1970).¹⁰ Meridian has been on notice of this UM claim and litigation since August 10, 2020, when it was served with the Original Pleadings through the DOI. Even looking at the facts most favorable to Meridian, it was on notice for thirty days prior to its filing the Motion to Set Aside Default or in the alternative for Leave to File a Late Answer. Meridian had plenty of notice and time to file an answer. It either decided not to or simply failed to file an answer or responsive pleading at all. And neither can be excused.

CONCLUSION

For the reasons set forth above, Meridian's motion for reconsideration is denied. Meridian cannot defend this action in the name of Defendant Smith or Defendant Griffin. Meridian's notice of appearance is hereby stricken.

¹⁰ Notably, the statute upon which Livingston relied was repealed by 1985 Act No. 100. Thus, the statutory right to an enlarged time to file an answer probably no longer exists. Any such right would depend on the Rules of Civil Procedure, to the extent they apply to the statutory inquiry before the Court. See n.6, supra.



York Common Pleas

Case Caption: Francine Steineman VS Eric Steineman , defendant, et al

Case Number: 2020CP4602219

Type: Order/Other

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2021-08-13 09:10:44 page 15 of 15

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02219

Francine Steineman.....Plaintiff.

v.

Eric Steineman, Sarah Smith, and Charles Griffin.....Defendants.

Meridian Security Insurance Company, an automobile insurer alleged to provide uninsured motorist coverage applicable to the accident from this matter arises is Appellant.

and

Francine Steineman is Respondent.

PROOF OF SERVICE

I, the undersigned employee of the law firm of Gallivan, White & Boyd, P.A., do hereby certify that on September 10, 2021, I served the following documents on Respondent Francine Steineman, through counsel of record, via electronic mail and U.S. Mail, with postage prepaid, at the addresses shown below:

1. Notice of Appeal;
2. Copy of the Order to be challenged on appeal, which was filed by the Honorable Daniel D. Hall on March 8, 2021;

3. Copy of the Order to be challenged on appeal, which was filed by the Honorable Daniel D. Hall on June 10, 2021;
4. Copy of the Order to be challenged on appeal, which was filed by the Honorable Daniel D. Hall on August 6, 2021; and
5. Copy of the Order to be challenged on appeal, which was filed by the Honorable Daniel D. Hall on August 13, 2021.

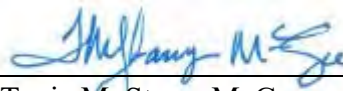
PARTIES SERVED:

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DATED: September 10, 2021
Greenville, South Carolina



Tania M. Starry McGee
Legal Assistant

From: [Tania McGee](#)
To: ["Stephen@stewartlawoffices.net"; "bert@cfulaw.com"](#)
Cc: ["nina@stewartlawoffices.net"; "trevor@cangelosilawfirm.com"; "lonnie@cangelosilawfirm.com"; "hanna@cangelosilawfirm.com"; David Rheney \(drheney@GWBlawfirm.com\); Jan Conits; Kim Pedersoli \(kpedersoli@gwblawfirm.com\)"](#)
Bcc: ["2276 512 Francine Steineman v Eric Steineman Sarah Smith and Charles Griffin Email 2276 512 "](#)
Subject: Steineman v. Steineman - Notice of Appeal [GWB-IMANMAIN.FID869142]
Date: Friday, September 10, 2021 4:17:09 PM
Attachments: [2021.09.10 LT Plaintiff's Counsel encl Notice of Appeal.pdf](#)
[Notice of Appeal with Orders.pdf](#)

Dear Counsel:

In connection with the above-captioned matter, please see attached letter serving the Notice of Appeal, with referenced Orders, which is being filed with the South Carolina Court of Appeals today.

Kind regards,
Tania

RECEIVED
Sep 10 2021
SC Court of Appeals



Tania Starry McGee
Legal Assistant
tmcgee@gwblawfirm.com

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This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02219

RECEIVED

Sep 20 2021

SC Court of Appeals

Francine Steineman Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles Griffin Defendants,

Meridian Security Insurance Company, an automobile insurer alleged to
provide uninsured motorist coverage applicable to the accident from this
matter arises is Appellant,

and

Francine Steineman is Respondent.

MOTION TO DISMISS

Respondent hereby moves the Court for an Order dismissing Appellant Meridian Security Insurance Company's ("Meridian's") appeal on the basis that the appealed orders are interlocutory and not immediately appealable as outlined in this Court's decision in *5Star Life Insurance Co. v. Peck Performance*, Op. No. 5837 (S.C. Ct. App. filed July 21, 2021) (Howard Adv. Sh. No. 25 at 9) or, alternatively, that the appeal is untimely for the reasons set forth in this Court's decision in *Coward Hund Construction Co. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999).

Respondent reserves all other arguments in opposition to this appeal.

Interlocutory Appeal

The appealed orders ruled:

- March 8, 2021 Order – Defendants Smith and Griffin are in default. Meridian did not make an appearance in this action within 30 days of being served as uninsured motorist (“UM”) and underinsured motorist (“UIM”) carrier.
- June 10, 2021 Order (Form 4) – Denies Meridian’s Motion to Alter or Amend the March 8, 2021 Order. Denies Meridian’s Motion for Relief from Default.
- August 6, 2021 Order (Form 4) – Denies Meridian’s Motion for Reconsideration. Formal Order to follow.
- August 13, 2021 Order – Denies Meridian’s Motion for Reconsideration, concluding:
 - “With respect to the March 8, 2021 Order, this is Meridian’s second Rule 59(e) motion. The Court denied Meridian’s Motion to Alter or Amend the March 8, 2021 Order. The current motion is not appropriate because it does not challenge something that was altered from the original judgment. It is therefore not properly before the Court and is denied on this basis.” (Order, pp. 4-5).
 - Meridian did not make an appearance in this action within 30 days of being served as UM and UIM carrier.
 - Meridian did not demonstrate good cause to set aside the entry of default.

At this point, the Circuit Court has not held a default damages hearing, nor has it entered judgment against Defendants Smith or Griffin (the alleged uninsured and underinsured motorists) or against Meridian. In that regard, this matter is in the same procedural posture as the action in *5Star*, wherein this Court noted:

A default judgment can only be entered once damages have been determined either following a damages hearing or without a hearing if the claimant seeks “a liquidated amount, a sum certain[,] or a sum which can by computation be made certain.” Rule 55(b). Until damages are entered, there is no default judgment. *See Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App. 1987) (“[Under Rule 55(b),] a court is unable to enter judgment until damages are determined. The entry of default is an official recognition of the failure to appear or otherwise respond, but is not a judgment by default.”)....

[T]he court’s order is not a final judgment because damages have not been entered against *5Star*. ... *see also Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017) (“A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution. An order reserving an issue, or leaving open

the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory.” (citation omitted)). Therefore, we dismiss the appeal and remand to allow the trial court to conduct a damages hearing.

5Star Life Insurance Co. v. Peck Performance, Op. No. 5837 (Howard Adv. Sh. No. 25 at 11).

Accordingly, the Court should dismiss the present appeal and remand it to the Circuit Court to conduct a damages hearing and enter final judgment.

Untimely Appeal

If this appeal is not interlocutory, it is untimely.

In its March 8, 2021 Order, the Circuit Court found that neither Defendant Smith, Defendant Griffin, nor Meridian had made an appearance in this action within 30 days of service and concluded that Defendants Smith and Griffin were in default.

In response to that Order, Meridian filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRPC, dated March 11, 2021 (copy attached) in which it asked the Circuit Court “to grant Defendant Griffin and Defendant Smith relief from default and/or to allow Meridian to file responsive pleadings and defend this matter on the merits in the name of Defendant Smith and Defendant Griffin.” As noted above, the Circuit Court denied this motion on June 10, 2021.

Meridian did not appeal the June 10, 2021 Order but filed a Motion for Reconsideration pursuant to Rule 59(e), SCRPC,¹ dated June 21, 2021 (copy attached) contending the Circuit Court “misunderstood the facts related to the procedural history of this lawsuit and/or misconstrued the law applicable to this matter.” The motion challenged the court’s findings regarding the timeliness of Meridian’s response to this action and ruling that Defendants Smith and Griffin were in default.

¹ Meridian also cited Rules 55(c) and 54(b), SCRPC. While these rules were implicated in the motion, Meridian’s Motion for Reconsideration was made pursuant to Rule 59(e), SCRPC, which authorizes a motion to alter or amend; the motion is the same even if the movant labels it as a motion for reconsideration. See *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004).

The similarity of the relief sought by the two Rule 59(e) motions should be evident. Moreover, as the Circuit Court readily appreciated, the Motion for Reconsideration not only sought the same relief as the earlier Motion to Alter or Amend but did not challenge any alteration of the original judgment in response to the Motion to Alter or Amend (because there was none). Consequently, the Circuit Court denied the Motion for Reconsideration as procedurally improper.

Importantly, in the present context, Meridian's filing of its second Rule 59(e) motion – the Motion for Reconsideration – did not extend the time for appeal of the Circuit Court's Order dated March 8, 2021.² *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004). (“An appeal may be barred due to untimely service of the notice of appeal when a party – instead of serving a notice of appeal – files a successive Rule 59(e) motion, where the trial judge's ruling on the first Rule 59(e) motion does not result in a substantial alteration of the original judgment.”).

Thus, Meridian's time to appeal from the March 8, 2021 Order began on June 10, 2021, when the Circuit Court denied its Motion to Alter or Amend. Its deadline to perfect the appeal thus became July 12, 2021, considering July 10, 2021 was a Saturday. Rules 203(b)(1) & 263(a), SCACR. Meridian did not file the present appeal until September 10, 2021. As such, it was untimely and mandates dismissal of the present appeal. *See, e.g., Wells Fargo Bank, N.A. v. Fallon Props. S.C.*, 422 S.C. 211, 810 S.E.2d 856 (2018).

CONCLUSION

For the foregoing reasons, Respondent respectfully requests the Court of Appeals to dismiss this appeal.

² All other Orders from which Meridian has appealed relate back to the March 8, 2021 Order.

Respectfully submitted,

CLAWSON FARGNOLI UTSEY, LLC

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Attorneys for Respondent

September 20, 2021
Charleston, South Carolina

**Meridian Security Insurance
Company's Notice and
Motion to Alter or Amend
filed March 11, 2021
C.A. No. 2020-CP-46-02219**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	Civil Action No. 2020-CP-46-02219
	)	
Francine Steineman,	)	
	)	MERIDIAN SECURITY INSURANCE
Plaintiff,	)	COMPANY'S NOTICE AND MOTION TO
	)	ALTER OR AMEND
v.	)	
	)	
Eric Steineman, Sarah Smith and	)	
Charles Griffin,	)	
	)	
Defendants.	)	

TO: Plaintiff Francine Steineman, and her attorney, Stephen G. Vicari, II of Stewart Law Offices, LLC:

PLEASE TAKE NOTICE that counsel for Meridian Security Insurance Company, as the alleged uninsured motorist carrier (hereinafter "Meridian"), by and through its undersigned counsel, will appear before the resident or presiding judge of the York County Court of Common Pleas, at such date and time as the Court shall direct, for an Order pursuant to the South Carolina Rules of Civil Procedure 52(b) and 59(e) to alter or amend the Order of Default filed March 8, 2021, to amend its findings in the Order, and to allow the Court to hear Meridian's previously filed motion, or, alternatively, to grant Defendant Griffin and Defendant Smith relief from default and/or to allow Meridian to file responsive pleadings and defend this matter on the merits in the name of Defendant Smith and Defendant Griffin.¹

This Motion is supported by the following grounds:

1. The Court erred in finding that Meridian, as the uninsured motorist carrier, had not in any way made an appearance in this matter.

¹ On March 5, 2021, Meridian filed a Motion for Relief from Default or File a Late Answer pursuant to Rules 6(b), 12(a), 55(c), and Rule 60(b) of the South Carolina Rules of Civil Procedure.

2. The Court erred by allowing evidence of service upon Meridian to be made part of the record and by including service upon Meridian as part of its Order.

3. The Court erred in finding that S.C. Code Ann. §38-77-150 required Meridian, as the uninsured motorist carrier, to appear within thirty (30) days after service of process.

WHEREFORE, Meridian respectfully requests that this Court alter or amend its March 8, 2021 Order to allow the Court to rule upon Meridian's March 5, 2021 Motion and enter an order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure altering or amending the March 8, 2021 Order as detailed above.

Meridian specifically reserves the right to add additional grounds and supplement this motion in the future. This motion is based upon the pleadings, any memorandum submitted in support of the same, affidavits filed or to be filed, the pleadings and other filings in this case, the applicable case and statutory law, and any such matters as the Court may deem just and proper.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: s/ R. Batten Farrar

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Email: bfarrar@gwblawfirm.com

March 11, 2021
Greenville, SC

*Attorneys for Meridian Security Insurance
Company, as the alleged uninsured motorist carrier*

**Meridian Security Insurance
Company's Motion for
Reconsideration
filed June 21, 2021
C.A. No. 2020-CP-46-02219**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 16TH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	C.A. NO.: 2020-CP-46-02219
Francine Steineman,	)	
	)	
	)	MERIDIAN SECURITY INSURANCE
Plaintiff,	)	COMPANY'S MOTION FOR
vs.	)	RECONSIDERATION
	)	
Eric Steineman, Sarah Smith, and Charles	)	
Griffin,	)	
	)	
Defendants.	)	
	)	

TO: Plaintiff Francine Steineman, and her attorney, Stephen G. Vicari, II of Stewart Law Offices, LLC

PLEASE TAKE NOTICE, that ten (10) days after the service hereof, or at such time and place as the Court may deem appropriate, counsel for Meridian Security Insurance Company, as the alleged uninsured motorist carrier (hereafter "Meridian"), for itself and on behalf of Sarah Smith and Charles Griffin, by and through its undersigned counsel, will move the Court, pursuant to S.C. Code Ann. §38-77-150, and Rules 59(e), 55(c) and 54(b) of the *South Carolina Rules of Civil Procedure*, for reconsideration and/or clarification of its Order of June 10, 2021, denying Meridian's previously filed motion for relief from default and motion to alter or amend the order of default.

The grounds for the motion are that the previously entered Order lacks sufficient specificity for Meridian and/or the individual defendants to understand the legal and factual basis for denial of the motions. Alternatively, the Court misunderstood the facts related to the procedural history of this lawsuit and/or misconstrued the law applicable to this matter, including:

1. The legal effect of the filing of the Amended Complaint on the individual defendants;

2. The statutory right of Meridian to appear and defend the complaints against the individual defendants;
3. The actual date of service of the Amended Summons and Complaint on Meridian as the provider of uninsured motorist coverage for the accident;
4. Meridian's timely filed notice of appearance on behalf of itself and the individual defendants;
5. The plaintiff's improper motion to strike the appearance of Meridian as the uninsured motorist carrier in this matter;
6. The Court's improper finding in its March 8, 2021, Order that Meridian had not timely appeared on behalf of the individual defendants prior to the expiration of the time to appear; and
7. The Court's improper finding that the alleged default of the individual defendants is binding on Meridian as the uninsured motorist carrier in this matter.

Meridian submits the pleadings in this matter, all previously filed motions and exhibits and such memorandum of law as may be submitted prior to the hearing of this motion in support hereof.

By: s/T. David Rheney

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**Attorneys for Meridian Security Insurance
 Company**

Date: June 21, 2021
 Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Sep 20 2021

SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02219

Francine Steineman Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles Griffin Defendants,

Meridian Security Insurance Company, an automobile insurer alleged to
provide uninsured motorist coverage applicable to the accident from this
matter arises is Appellant,

and

Francine Steineman is Respondent.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal upon the Appellant Meridian
Security Insurance Company by mailing same via E-mail addressed to counsel of record

T. David Rheney
Drheney@gwblawfirm.com
Ioannis (Ian) G. Conits
Iconits@gwblawfirm.com
GALLIVAN, WHITE & BOYD, P.A.
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Greenville, SC 29603

Attorneys for Appellant Meridian Security Insurance Company

/s/ Bert G. Utsey, III
Bert G. Utsey, III
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September 20, 2021
Charleston, South Carolina

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Sep 30 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02219

Francine Steineman.....Plaintiff.

v.

Eric Steineman, Sarah Smith, and Charles Griffin.....Defendants.

Meridian Security Insurance Company, an automobile insurer alleged to provide uninsured motorist coverage applicable to the accident from this matter arises is Appellant.

and

Francine Steineman is Respondent.

RETURN TO MOTION TO DISMISS

Pursuant to South Carolina Appellate Court Rule 240(e), Appellant Meridian Security Insurance Company, an automobile insurer alleged to provide uninsured motorist coverage applicable to the accident from which this matter arises (Appellant), files this Return to Respondent Francine Steineman's (Respondent) Motion to Dismiss dated September 20, 2021 (the Motion). The Motion moves for dismissal on the basis that the appealed orders are interlocutory and thus not immediately appealable. Alternatively, the Motion contends the appeal is untimely. As

detailed below, South Carolina law provides that the appealed orders are immediately appealable, and that Appellant's appeal is timely. Thus, the Motion lacks merit and should be denied.

Appellant reserves all other arguments in support of this appeal.

FACTS

This matter arises out of an automobile accident that occurred on or about January 22, 2018, on Highway 160 at the intersection of Highway 160 and Textile Way in Fort Mill, York County, South Carolina. At that time, Respondent was traveling as a passenger in a motor vehicle being operated by her husband, Eric Steineman (Defendant Steineman). Defendant Steineman attempted to make a left turn onto Textile Way, requiring his vehicle to cross the lanes of traffic traveling the opposite direction. Respondent alleges that Sarah Smith (Defendant Smith) or Charles Griffin (Defendant Griffin) was operating a vehicle that was approaching the intersection from the opposite direction on Highway 160 in the outside lane. As Defendant Steineman attempted to complete his left turn, the Steineman vehicle was impacted on the passenger's side by the vehicle operated by either Defendant Smith or Defendant Griffin.

PROCEDURAL HISTORY

On July 28, 2020, Respondent filed a summons and complaint against Defendant Steineman and Defendant Smith (the Original Summons and Complaint).

On November 30, 2020, Respondent filed an amended summons and complaint (the Amended Summons and Complaint) to add Defendant Griffin and amend the action to include claims against Defendant Griffin.

On December 5, 2020, Respondent purportedly served Defendant Smith with the Amended Summons and Complaint. On December 29, 2020, Respondent purportedly served Defendant Griffin with the Amended Summons and Complaint.

On December 16, 2020, the South Carolina Department of Insurance accepted service of the Amended Summons and Complaint, Interrogatories, Requests for Production, and Requests for Admission on behalf of Appellant as the alleged uninsured motorist carrier. **See Exhibit A.** The Department of Insurance's letter forwarding the same and providing notice to Appellant is dated December 17, 2020. **See Exhibit A.** However, Appellant did not actually receive the Department of Insurance's December 17, 2020, letter until February 3, 2021. **See Exhibit A.** Based on the tracking information, the letter departed from a USPS Regional Facility on January 27, 2021 and was "in transit" to the final postal facility on Saturday, January 30, 2021. It was picked up at a postal facility on February 3, 2021, the following Monday.

On March 1, 2021, less than thirty days after receipt of the Amended Summons and Complaint by Appellant, Respondent filed her Motion for Default as to Defendants Smith and Griffin.

On March 5, 2021, thirty days after receipt of the Amended Summons and Complaint by Appellant, the undersigned, on behalf of Appellant as the alleged uninsured motorist carrier, filed a notice of appearance and a Motion for Relief from Default or, in the Alternative, to File Late Answers. **See Exhibit B.** Later that same day, Respondent filed a motion to strike Appellant's notice of appearance as untimely.

On March 8, 2021, three days after Appellant appeared and filed the March 5, 2021 motion, the trial court entered an Order of Default as to Defendants Smith and Griffin (**see Exhibit C**), which did not rule on Appellant's Motion for Relief from Default and also incorrectly found that "[Appellant] has not in any way made an appearance in this matter." Exhibit C, p. 2.

On March 11, 2021, Appellant filed its Motion to Alter or Amend the March 8, 2021 Order pursuant to Rules 52(b) and 59(e), SCRPC (**see Exhibit D**), seeking, in part, for the trial court to

alter or amend its March 8, 2021 Order to allow the trial court to (a) rule on Meridian's March 5, 2021 Motion for Relief from Default and (b) amend the incorrect finding that "[Appellant] has not in any way made an appearance in this matter."

On May 12, 2021, an in-person hearing was held on Appellant's Motion to Alter or Amend the March 8, 2021 Order.

On June 10, 2021, the trial court issued a Form 4 Order from the May 12, 2021 hearing (*see Exhibit E*), which provided:

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After careful consideration:

Meridian Security Company's Motion for Relief From Default is DENIED.

Meridian Security Company's Motion to Alter or Amend Order of Default is DENIED.

On June 21, 2021, Appellant filed a motion for reconsideration and/or clarification of the June 10, 2021 Order (Appellant's Motion to Reconsider and/or Clarify the June 10, 2021 Order). *See Exhibit F*. An in-person hearing was scheduled for July 28, 2021 to address said motion.

On July 26, 2021, two days prior to the hearing on Appellant's Motion to Reconsider and/or Clarify the June 10, 2021 Order, Respondent filed a Motion for Default as to Appellant.

On July 28, 2021, an in-person hearing was held on Appellant's Motion to Reconsider the June 10, 2021 Order. Respondent's Motion for Default as to Appellant was not addressed at this hearing.

On July 29, 2021, just three days after Respondent filed a Motion for Default as to Appellant and without having heard from Appellant on said motion, the Court entered an Order of Default as to Appellant.

On August 6, 2021, Appellant filed a Motion to Reconsider the Order of Default as to Appellant. A virtual hearing was scheduled for August 24, 2021.

Later that same day, the Court issued a Form 4 Order, which denied Appellant's Motion to Reconsider and/or Clarify the June 10, 2021 Order (the Final Judgment), directed Respondent's counsel submit a proposed formal order for the trial court's review, and ended the case. *See Exhibit G.*

On August 13, 2021, the trial court issued the formal order (the Formal Final Judgment). *See Exhibit H.*

On August 24, 2021, a virtual hearing was held on Appellant's Motion to Reconsider the Order of Default as to Appellant.

On August 27, 2021, the trial court issued a Form 4 Order granting Appellant's Motion to Reconsider the Order of Default as to Appellant and denying Respondent's Motion for Order of Default as to Appellant.

On September 10, 2021, Appellant timely¹ served its Notice of Appeal (the Appeal), which appeals the Orders the Honorable Daniel D. Hall on March 8, 2021, June 10, 2021, August 6, 2021, and August 13, 2021 (collectively, the Appealed Orders).

ARGUMENT

I. The Appealed Orders are immediately appealable.

Respondent's contention that the Appealed Orders are not immediately appealable is incorrect.

¹ "When a form or other short order or judgment indicate that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order of judgment." Rule 203(b)(1), South Carolina Appellate Court Rules.

A. The Appeal is not interlocutory.

The August 6, 2021 Form 4 Order entered by the trial court **ends** the case:

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After careful consideration, Meiridan Security Insurance Company's Motion for Reconsideration is DENIED.

However, The Court directs Plaintiff's attorney to submit a proposed formal order for review by opposing counsel and the Court. The Court will then issue a written formal order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

“A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution. An order reserving an issue or leaving open the possibility of further action before the rights of the parties are resolved, is interlocutory.” *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017). The Final Judgment, as formalized by the Formal Final Judgment, plainly ends the action:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

Further, the Final Judgment, as formalized by the Formal Final Judgment, does not reserve an issue, or leave open any possibility of further action. Accordingly, the Final Judgment, as formalized by the Formal Final Judgment, is a final judgment, not an interlocutory order, that leaves the trial court with nothing to do.

B. Even if the Final Judgment did not end the case (which it did), the trial court's holding that Appellant cannot defend this action in the name of Defendant Smith or Griffin is immediately appealable.

Even if the Final Judgment did not end the case (which it did), the trial court also held that “[Appellant] cannot defend this action in the name of Defendant Smith or Defendant Griffin.”

Exhibit H, p. 14. This holding is immediately appealable pursuant to S.C. Code § 14-3-330(2), which provides, in part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

...

(2) **An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action,** (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action

....

(emphasis added).

In addition to the Final Judgment discontinuing the case as detailed in the Section I.A. hereinabove, the trial court's holding that Appellant cannot defend this action in the name of Defendant Smith or Defendant Griffin affects a substantial right and in effect determines the action and prevents a judgment from which an appeal might be taken.

- i. *The trial court's holding that Appellant cannot defend this action affects a substantial right.*

S.C. Code § 38-77-150 states, in part:

No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. **The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it which to appear.**

(emphasis added).

Importantly, this Court interprets the above-quoted language of S.C. Code § 38-77-150 as identical to the language of the underinsured motorist statute, S.C. Code § 38-77-160, except that the word "underinsured" is substituted for "uninsured." *Franklin v. Devore*, 327 S.C. 418, 423

(Ct. App. 1997). Consequently, this Court has affirmed that a “UIM [and UM] carrier **always has the right** to ‘appear and defend in the name of the underinsured [or uninsured] in any action which may affect its liability’”. *Ex parte Allstate Ins. Co.*, 339 S.C. 202, 206, 528 S.E.2d 679, 681 (Ct. App. 2000) (emphasis added).

The trial court’s holding that Appellant cannot defend this action deprives Appellant of a substantial right it “always has”, which is its statutory right to appear and defend in the name of an uninsured motorist in any action which may affect its liability.

- ii. *Even if the Final Judgment did not discontinue the action (which it did), the trial court’s holding that Appellant cannot defend this action in effect determines the action and prevents a judgment from which an appeal might be taken.*

Even if the Final Judgment did not end the case (which it did) and Respondent had sought a damages hearing before the case was discontinued (which she did not), this Court has previously determined that an order which “could determine the action and prevent a judgment from which an appeal might be taken” is immediately appealable. *Hagood v. Sommerville*, 362 S.C. 191, 198, 607 S.E.2d 707, 710 (2005). In *Hagood*, the Supreme Court determined that an order disqualifying a party’s attorney is immediately appealable as it affects a party’s substantial right to choose counsel and could effectively determine the case as it bears upon the attorney/client relationship. *Id.* 197-198.

Here, the trial court’s holding disqualifies Appellant from defending in this action would almost certainly determine this case. A defaulting party may “cross-examin[e] witnesses and [object] to evidence” at a damages hearing. *Roche v. Young Bros., of Florence*, 332 S.C. 75, 81–82, 504 S.E.2d 311, 314 (1998). Because of the trial court’s holding, Appellant would be unable to do either at a damages hearing.

Furthermore, the *Hagood* court also held that “an appeal after final judgment and a new trial, if granted, would not adequately protect a party’s interests because it would be difficult or impossible for the affected party or the appellate court to ascertain by any objective standard whether prejudice resulted from the disqualification.” *Id.* at 198. Here, even if Respondent had sought a damages hearing before the case was discontinued (which again she did not), an appeal after the entry of the trial court’s order from said hearing would not adequately protect Defendant Smith, Defendant Griffin, and/or Appellant’s interests as it would almost certainly be impossible, or at the very least difficult, for this Court to ascertain by any objective standard whether prejudice resulted from the trial court disallowing Appellant to appear and defend.

II. The Appeal is timely.

Alternatively, Respondent incorrectly contends this Appeal is not timely.

A. Appellant timely appealed the trial court’s final order.

On August 6, 2021, the trial court entered the Final Judgment, which, in addition to ending the case, directed Respondent’s counsel to prepare a formal order for the Court’s review. The Formal Final Judgment was entered on August 13, 2021. Rule 203(b)(1) of the South Carolina Appellate Court Rules plainly provides that “[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment” and further provides that “[w]hen a form or other short order or judgment indicate that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order of judgment.” Thus, on September 10, 2021, less than thirty days after the Formal Final Judgment was entered, Appellant timely served the Appeal.

Furthermore, each of the Appealed Orders are properly before the Court, as S.C. Code § 14-3-330 provides “that if no appeal be taken until final judgment is entered the court may upon

appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.”

B. Even if the trial court had not entered the Final Judgment (which it did), the Appeal would still be timely.

Even if the trial court had not entered the Final Judgment (which it did), the Appeal would still be timely. In the Formal Final Judgment, the trial court held that “[Appellant] cannot defend in this action in the name of Defendant Smith or Defendant Griffin.” As detailed in Section I.B. hereinabove, the trial court’s holding as to Appellant’s right to defend is immediately appealable pursuant to S.C. Code § 14-3-330(2). Additionally, the Appeal was served within thirty days of entry of the Formal Final Judgment pursuant to Rule 203(b)(1) of the South Carolina Appellate Court Rules.

Finally, given that the trial court’s holding that Appellant cannot defend is immediately appealable, all rulings that are not otherwise immediately appealable may also be reviewed by this Court. *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005).

Accordingly, each of the Appealed Orders are properly before the Court.

Date: September 30, 2021

s/Ioannis (Ian) G. Conits

T. David Rheney, SC Bar #13148

Ioannis (Ian) G. Conits, SC Bar #102675

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Attorneys for Eric Steineman

EXHIBIT A



FAQs >

Track Another Package +

Tracking Number: 9489009000276032627747

Remove X

Your item was picked up at a postal facility at 5:55 am on February 3, 2021 in COLUMBUS, OH 43216.

Delivered, Individual Picked Up at Postal Facility

February 3, 2021 at 5:55 am
COLUMBUS, OH 43216

Feedback

Text & Email Updates



Tracking History



February 3, 2021, 5:55 am

Delivered, Individual Picked Up at Postal Facility

COLUMBUS, OH 43216

Your item was picked up at a postal facility at 5:55 am on February 3, 2021 in COLUMBUS, OH 43216.

January 30, 2021

In Transit to Next Facility

January 27, 2021, 4:30 pm

Departed USPS Regional Facility

COLUMBUS OH DISTRIBUTION CENTER

ELECTRONICALLY FILED - 2021 May 03 2:48 PM - YORK - COMMON PLEAS - CASE#2020CP4602219

ELECTRONICALLY FILED - 2021 May 03 2:48 PM - YORK - COMMON PLEAS - CASE#2020CP4602219

January 19, 2021, 8:07 pm
Arrived at USPS Regional Facility
COLUMBUS OH DISTRIBUTION CENTER

January 15, 2021, 11:33 pm
Departed USPS Regional Facility
COLUMBUS OH DISTRIBUTION CENTER

January 15, 2021, 10:48 am
Arrived at USPS Regional Facility
COLUMBUS OH DISTRIBUTION CENTER

January 13, 2021, 11:56 am
Departed USPS Regional Facility
COLUMBUS OH DISTRIBUTION CENTER

December 20, 2020, 8:31 pm
Arrived at USPS Regional Facility
COLUMBUS OH DISTRIBUTION CENTER

December 17, 2020, 10:36 pm
Arrived at USPS Regional Facility
COLUMBIA SC PROCESSING CENTER

Feedback

Product Information



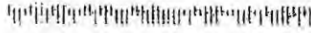
See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

STATE OF
DEPARTMENT
P.O. BOX 100105
COLUMBIA, S.C. 29202-3105



Post Net Int'l. Oct. 2015
Postage Payment



U.S. POSTAGE
ZIP 29201
02 4M
0000345957 DEC
\$ 00

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

SERVICE OF PROCESS

STATE AUTO INSURANCE

FEB 03 2021

P-#3

MERIDIAN SECURITY INSURANCE COMPANY
518 East Broad Street
Columbus, OH 43215

State Auto CHQ

2/3/2021 8:21:32 AM

Carrier: USPS Certified
Sender:
Dest: Office Services
Building: PavLL
MailStop:
EUID: GIR1967



9489009000275032E27747

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**South Carolina
Department of Insurance**

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

HENRY McMASTER
Governor

RAYMOND G. FARMER
Director

Mailing Address:
P.O. Box 140105, Columbia, S.C. 29202-3105

December 17, 2020

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
MERIDIAN SECURITY INSURANCE COMPANY
518 East Broad Street
Columbus, OH 43215

Dear Sir:

On December 16, 2020, I accepted service of the attached Summons, Complaint, Interrogatories, Request for Production and Request for Admissions on your behalf. I am, hereby, forwarding that accepted process on to you pursuant to the provisions of S.C. Code Ann. § 38-5-70. By forwarding accepted process on to you, I am meeting a ministerial duty imposed upon me by S.C. Code Ann. § 38-77-150. I am not a party to this case. The State of South Carolina Department of Insurance is not a party to this case. It is important for you to realize that service was effected upon your insurer on my date of acceptance for service.

You must promptly acknowledge in writing your receipt of this accepted process to sdubois@doi.sc.gov. When replying, please refer to File Number 181807, Francine Steineman v. Eric Steineman et al., 2020-CP-46-02219.

By

Sincerely Yours,


Gwendolyn L. Fuller
General Counsel
(803)737-6732

Raymond G. Farmer
Director
State of South Carolina
Department of Insurance

Attachment

CC: Stephen G. Vicar II
Post Office Box 6787
Columbia, SC 29260

STATE OF SOUTH CAROLINA
COUNTY OF YORK
Francine Steineman,
Plaintiff,
v.
Eric Steineman, Sarah Smith, and Charles Griffin,
Defendants.

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2020-CP-46-
AMENDED SUMMONS
(Jury Trial Demand)

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said complaint on the subscribed, Stewart Law Offices, LLC., 10 Calendar Court, Suite 100, Columbia, South Carolina 29206, within THIRTY (30) days after the service hereof, exclusive of the date of such service. If you fail to answer the complaint within the time aforesaid, then a default judgment will be rendered against you for the relief demanded in the complaint.

Respectfully Submitted,
Stewart Law Offices, LLC
s/Stephen G. Vicari, II
Stephen G. Vicari, II (S.C. Bar No. 102395)
10 Calendar Court, Suite 100
Post Office Box 6787 (29260)
Columbia, SC 29206
803-743-4200 (o)
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stephen@stewartlawoffices.net
Attorney for Plaintiff

Columbia, South Carolina
November 30, 2020

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Eric Steineman Sarah Smith, and Charles Griffin,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-

AMENDED COMPLAINT
(Jury Trial Demand)

The Plaintiff would respectfully show this Honorable Court that:

JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of York County, South Carolina.
2. Defendant Eric Steineman is a citizen and resident of York County, South Carolina.
3. Defendant Sarah Smith is a citizen and resident of Mecklenburg County, North Carolina.
4. Defendant Charles Griffin is a citizen and resident of Mecklenburg County, North Carolina.
5. The car crash giving rise to this Complaint occurred in York County, South Carolina.
6. Jurisdiction and venue are proper over the Defendant.

FACTS

7. On January 22, 2018, Defendant Smith was permissively operating a vehicle owned by Defendant Griffin, traveling west on Highway 160 in Fort Mill, SC, near Kingsley Park Drive and Textile Way, headed toward I 77.

8. At the same time, Defendant Griffin was operating his vehicle, traveling west on Highway 160 in Fort Mill, SC, near Kingsley Park Drive and Textile Way, headed toward I 77.

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9. At the same time, Defendant Steineman was operating his vehicle, traveling east on Highway 160 in Fort Mill, SC, in the inside lane, headed away from I 77.

10. Highway 160 is a five-lane road with two lanes of traffic traveling east, away from I 77, and three lanes traveling west, toward I 77.

11. Defendant Smith or Defendant Griffin was traveling west, toward I 77, in the far outside lane.

12. Francine was a passenger in the car operated by Defendant Steineman.

13. Around 5:40 p.m., Defendant Steineman attempted to make a left turn, across the three lanes of traffic, onto Textile Way.

14. At this time, traffic headed west on Highway 160 was heavy, and the traffic in the inside and middle lane was at a complete stop.

15. Defendant Steineman attempted to make the left turn, but Defendant Smith or Defendant Griffin was traveling in the outside lane at over thirty-five miles an hour.

16. Defendant Smith or Defendant Griffin violently collided into the passenger side of Defendant Steineman's vehicle, where Francine was seated.

17. The collision was so catastrophic, Francine's car was pushed sideways across Textile Way.

18. As a result of the collision, Plaintiff sustained serious and permanent injuries.

19. Defendants are jointly and severally responsible for the damages Plaintiff incurred.

20. These injuries have caused Plaintiff to spend significant sums of money for the services of doctors and medical professionals, under whose care she has been, and for medical treatment and care. Plaintiff likewise may be compelled to spend significant sums of money in the future for the services of doctors and medical professionals and for medical treatment and care.

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21. Plaintiff's injuries have caused and will continue to cause her to suffer and endure considerable pain and discomfort and have caused her to lose the enjoyment of her life.

FOR A FIRST CAUSE OF ACTION

(Negligence)

22. Plaintiff restates and realleges each and every allegation as if repeated herein verbatim.

23. Defendants had a duty to operate its vehicles in a reasonable manner and to comply with the rules governing the operation of vehicles on South Carolina roadways.

24. Defendants were negligent, careless, reckless, grossly negligent, willful and wanton in the following particulars:

- a. In failing to maintain proper look out;
- b. In failing to maintain proper control of his vehicle;
- c. In failing to apply his brakes or to maintain the same;
- d. In failing to take evasive action to avoid the accident;
- e. In being inattentive;
- f. In failing to exercise the degree of care which a reasonable prudent person would have exercised under the same circumstances;
- g. In colliding with another vehicle;
- h. In driving too fast for conditions; and
- i. In any other manners as may be ascertained during discovery or trial of this case.

25. Defendants' negligence directly and proximately caused the injuries and damages suffered by the Plaintiff.

26. Defendants are jointly and severally responsible for the damages Plaintiff incurred.

FOR A SECOND CAUSE OF ACTION(Negligence Per Se as to Defendant Smith or Defendant Griffin)

27. Plaintiff restates and realleges each and every cause of action as if repeated herein verbatim.

28. Defendant failed to comply with state laws, rules, regulations, and guidelines designed to protect the health and safety of Plaintiff and all persons traveling on the highway.

29. Defendant was negligent per se in violating the following statutes and regulations:

- a. S.C. Code Ann. § 56-5-1520 which relates to driving too fast for conditions;
- b. S.C. Code Ann. § 56-5-3890 which relates to use of a wireless electronic communication device while operating a motor vehicle; and
- c. any other regulations which were violated as ascertained during the course of discovery.

30. These laws prescribe certain actions and define certain standards of conduct. Plaintiff is in the class of persons sought to be protected by these laws. Plaintiff's injuries represent the type of harm the regulations were intended to prevent. Defendants' conduct violated these regulations, and such conduct constitutes negligence per se.

JURY DEMAND

31. Plaintiff demands all causes of action that may be tried before a jury be so tried.

WHEREFORE, Plaintiff prays for judgment against Defendants in a sum sufficient to adequately compensate her for actual damages, punitive damages, the costs of this action, and any relief a jury may award, and for such other and further relief as this court may deem just and proper.

DEFENDANTS AND THEIR ATTORNEYS ARE HEREBY NOTIFIED THAT PLAINTIFF HAS SERVED INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSIONS WITH THE SUMMONS AND COMPLAINT. AS

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REQUIRED BY RULES 33(A) & 34(B), SCRPC. RESPONSES TO THESE DISCOVERY REQUESTS ARE DUE WITHIN 45 DAYS OF SERVICE. IF DEFENSE COUNSEL LACKS COPIES OF ANY DISCOVERY REQUEST, HE/SHE IS ADVISED TO CONTACT PLAINTIFF'S COUNSEL IMMEDIATELY TO OBTAIN COPIES.

Respectfully Submitted,

Stewart Law Offices, LLC

s/Stephen G. Vicari, II
Stephen G. Vicari, II (S.C. Bar No. 102395)
10 Calendar Court, Suite 100
Post Office Box 6787 (29260)
Columbia, SC 29206
803-743-4200 (o)
803-743-4204 (f)
stephen@stewartlawoffices.net
Attorney for Plaintiff

Columbia, South Carolina
November 30, 2020

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles
Griffin,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-02219

PLAINTIFF'S REQUESTS FOR
ADMISSIONS TO DEFENDANT
CHARLES GRIFFIN

TO: DEFENDANT CHARLES GRIFFIN:

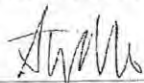
As authorized by Rule 36, SCRPC, Plaintiff, by and through undersigned counsel, submit the following statements to Defendants for the purpose of determining the truth of such statements.

REQUESTED ADMISSIONS

1. Admit that on January 22, 2018, the vehicle Defendant Griffin was operating collided into the vehicle operated by Defendant Steineman and occupied by Plaintiff.
2. Admit that on January 22, 2018, just before the collision with described above, Defendant Griffin was traveling at a higher rate of speed than she should have been.
3. Admit Defendant Griffin is responsible for causing the collision that occurred on January 22, 2018, described above.
4. Admit the injuries Plaintiff sustained in the January 22, 2018 collision alleged in the Complaint were the direct result of Defendant Griffin's negligence.
5. As a direct result of the collision alleged in Plaintiff's Complaint, she suffered over \$2,000,000.00 in damages.

Respectfully Submitted,

Stewart Law Offices, LLC



Stephen C. Vicari, II (S.C. Bar No. 102395)
10 Calendar Court, Suite 100
Post Office Box 6787 (29260)
Columbia, SC 29206
803-743-4200 (o)
803-743-4204 (f)
stephen@stewartlawoffices.net
Attorney for Plaintiff

Columbia, South Carolina
November 30, 2020

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles
Griffin,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-02219

PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO
DEFENDANT'S

TO: DEFENDANTS NAMED ABOVE:

As authorized by Rule 33, SCRPC, Plaintiff requests Defendant answer the following interrogatories and—within thirty (30) days of service or forty-five (45) days of service of the summons and complaint, whichever is longer—serve a copy of the answers to the undersigned.

INSTRUCTIONS

(A) Every interrogatory herein shall be deemed a continuing interrogatory, and you are to supplement your answers promptly, if and when you obtain relevant information in addition to, or in any way inconsistent with, your initial answer to any such interrogatory, in accordance with Rule 26 (e) of the South Carolina Rules of Civil Procedure.

(B) Should privilege be claimed with regard to any information requested herein, the answer must in each instance state specifically the information sought, the privilege claimed, and the ground on which the claim of such privilege is based. Should Defendant be unable for reasons other than privilege to provide any information requested herein, the answer must in each such instance indicate specifically the information sought, the reason such information is presently unavailable, and an estimate of the time within which such information will be presented to the undersigned.

If you object to any portion of an interrogatory on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted, and the dates of any communications for which privilege is asserted.

If you object to an interrogatory on the ground that it is too broad (i.e., that it calls for some information which is relevant to the subject matter of the action and some information which is not), provide such information which is concededly relevant. If you object to an interrogatory on the ground that to provide an answer would constitute an undue burden, provide such requested information as can be supplied without undertaking an undue burden. For those portions of any interrogatory to which you object to or otherwise decline to answer, state the reason for such objection or declination.

(C) When an interrogatory requests the identity of a natural person, the answer thereto should contain the following: (1) the full name of such person; (2) the employer and job title of such person at the time of the event, transaction, or occurrence to which the interrogatory relates; (3) the present employer and job title of such person, if known, and (4) the last known residential address and telephone number of such person. When an interrogatory requests the identity of a corporation, partnership, association, or other entity, the answer thereto should contain the following: (1) the full legal name of such entity; (2) all names by or under which such entity operates or otherwise conducts business; (3) the address of the principal place of business of such entity; (4) the State in which the organizational documents for such entity were filed or registered; (5) the name and address of the entity's agent for service of process, if known; and (6) the name of all persons who acted on behalf of such entity with respect to the subject matter of this interrogatory.

(D) When an interrogatory asks for the identity of or a description of a document, the answer thereto should contain the following: (1) the title, heading, or caption of such document; (2) identifying numbers or letters or combination thereof, if any, and an explanation of the significance

of such numbers, letters of combination thereof; (3) all dates appearing on such document as dates that such document was dictated, prepared, mailed, received, or any combination thereof or, if no such date appears thereon, the answer should so state and should give the exact or approximate date that such document was prepared; (4) a description of the general nature of the document and the number of pages of which it consists; (5) the name of each person known to have participated in the preparation thereof; (6) the name of the addressee of the document and the names of all persons to whom such document or copy thereof was sent; and (7) the name of the person who has custody of the original of such document and the name of each person with custody over a copy thereof. The foregoing information shall be given in sufficient detail to enable a person to whom a subpoena is directed to identify fully the document to be produced and to enable this party to determine that the document produced in response to such subpoena is, in fact, the document identified in the answer to the interrogatory. The document itself may be produced as an alternative to providing such description.

DEFINITIONS

(A) As used in these requests, the term "document" means any handwritten, typewritten, printed, recorded, electronic or graphic matter including all copies of the above, however produced or reproduced, in the possession, custody or under the control of Plaintiff and whether or not claimed to be privileged, including, but not limited to, correspondence, reports, meeting minutes, memoranda, notes, schedules, photographs, ledgers, requisitions, journals, books of accounts, contracts, drawings, blueprints, checks, diaries and electronically stored data.

(B) "Identify" or "identity" when used in reference to a person means to state his full name, his present or last known address, telephone number and his present or last known position and business affiliation.

(C) "Describe" or "description" (i) if used in reference to a person means to identify each individual person and (ii) when used in reference to a document means to state the following as to each document.

- (a) The nature and contents thereof;
- (b) The date thereof;
- (c) The name, present address and position of the author or signer thereof;
- (d) The name, address and position of the addressee, if any, and
- (e) The present location thereof and the name, present address and position of the person or persons having present custody thereof.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relates to the claim or defense in this case.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy. Also indicate whether any reservation of rights, controversy, or coverage dispute exists between you and the insurance company, and, if so, its nature.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case, and include in your response a complete statement of all opinions to be expressed and the basis and reasons therefor; the data and other information considered by the

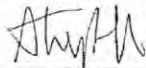
expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; and citations of any treatise, text or other authority upon which each expert especially relied.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

6. If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

Respectfully Submitted,

Stewart Law Offices, LLC



Stephen G. Vicari, II (S.C. Bar No. 102395)
10 Calendar Court, Suite 100
Post Office Box 6787 (29260)
Columbia, SC 29206
803-743-4200 (o)
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stephen@stewartlawoffices.net
Attorney for Plaintiff

Columbia, South Carolina
November 30, 2020

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles
Griffin,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-02219

PLAINTIFF'S SECOND SET OF
INTERROGATORIES TO
DEFENDANTS

TO: DEFENDANTS NAMED ABOVE:

As authorized by Rule 33, SCRPC, Plaintiff requests Defendant answer the following interrogatories and—within thirty (30) days of service or forty-five (45) days of service of the summons and complaint, whichever is longer—serve a copy of the answers to the undersigned.

INSTRUCTIONS

(A) Every interrogatory herein shall be deemed a continuing interrogatory, and you are to supplement your answers promptly, if and when you obtain relevant information in addition to, or in any way inconsistent with, your initial answer to any such interrogatory, in accordance with Rule 26 (e) of the South Carolina Rules of Civil Procedure.

(B) Should privilege be claimed with regard to any information requested herein, the answer must in each instance state specifically the information sought, the privilege claimed, and the ground on which the claim of such privilege is based. Should Defendant be unable for reasons other than privilege to provide any information requested herein, the answer must in each such instance indicate specifically the information sought, the reason such information is presently unavailable, and an estimate of the time within which such information will be presented to the undersigned.

If you object to any portion of an interrogatory on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted, and the dates of any communications for which privilege is asserted.

If you object to an interrogatory on the ground that it is too broad (i.e., that it calls for some information which is relevant to the subject matter of the action and some information which is not), provide such information which is concededly relevant. If you object to an interrogatory on the ground that to provide an answer would constitute an undue burden, provide such requested information as can be supplied without undertaking an undue burden. For those portions of any interrogatory to which you object to or otherwise decline to answer, state the reason for such objection or declination.

(C) When an interrogatory requests the identity of a natural person, the answer thereto should contain the following: (1) the full name of such person; (2) the employer and job title of such person at the time of the event, transaction, or occurrence to which the interrogatory relates; (3) the present employer and job title of such person, if known, and (4) the last known residential address and telephone number of such person. When an interrogatory requests the identity of a corporation, partnership, association, or other entity, the answer thereto should contain the following: (1) the full legal name of such entity; (2) all names by or under which such entity operates or otherwise conducts business; (3) the address of the principal place of business of such entity; (4) the State in which the organizational documents for such entity were filed or registered; (5) the name and address of the entity's agent for service of process, if known; and (6) the name of all persons who acted on behalf of such entity with respect to the subject matter of this interrogatory.

(D) When an interrogatory asks for the identity of or a description of a document, the answer thereto should contain the following: (1) the title, heading, or caption of such document; (2) identifying numbers or letters or combination thereof, if any, and an explanation of the significance

of such numbers, letters of combination thereof; (3) all dates appearing on such document as dates that such document was dictated, prepared, mailed, received, or any combination thereof or, if no such date appears thereon, the answer should so state and should give the exact or approximate date that such document was prepared; (4) a description of the general nature of the document and the number of pages of which it consists; (5) the name of each person known to have participated in the preparation thereof; (6) the name of the addressee of the document and the names of all persons to whom such document or copy thereof was sent; and (7) the name of the person who has custody of the original of such document and the name of each person with custody over a copy thereof. The foregoing information shall be given in sufficient detail to enable a person to whom a subpoena is directed to identify fully the document to be produced and to enable this party to determine that the document produced in response to such subpoena is, in fact, the document identified in the answer to the interrogatory. The document itself may be produced as an alternative to providing such description.

DEFINITIONS

(A) As used in these requests, the term "document" means any handwritten, typewritten, printed, recorded, electronic or graphic matter including all copies of the above, however produced or reproduced, in the possession, custody or under the control of Plaintiff and whether or not claimed to be privileged, including, but not limited to, correspondence, reports, meeting minutes, memoranda, notes, schedules, photographs, ledgers, requisitions, journals, books of accounts, contracts, drawings, blueprints, checks, diaries and electronically stored data.

(B) "Identify" or "identity" when used in reference to a person means to state his full name, his present or last known address, telephone number and his present or last known position and business affiliation.

(C) "Describe" or "description" (i) if used in reference to a person means to identify each individual person and (ii) when used in reference to a document means to state the following as to each document.

- (a) The nature and contents thereof;
- (b) The date thereof;
- (c) The name, present address and position of the author or signer thereof;
- (d) The name, address and position of the addressee, if any, and
- (e) The present location thereof and the name, present address and position of the person or persons having present custody thereof.

INTERROGATORIES

1. State the Defendant's full name, address, date of birth, driver's license number and issuing state, and social security number.
2. If Defendant was issued a driver's license from any state other than that state identified in its answer to Interrogatory number 1, provide the driver's license number(s) and issuing state(s) for the ten years prior to the date of the collision alleged in the Complaint.
3. State the restrictions Defendant has on its driver's license and whether it was in compliance with those restrictions at the time of the collision alleged in the Complaint.
4. Please state in detail Defendant's itinerary on the date of the auto accident, including each place at which you were present, your length of stay at each such place, a detailed account of whom you saw and what you did at each such place, and Defendant's intended destination.
5. Excluding any conversation with Defendant's lawyer, if Defendant had any conversations with the Plaintiff, witnesses to the accident, or investigators at the scene of the accident or anytime since the accident, identify the person the conversation was with and state the substance of such conversations.

6. Excluding any conversation with Defendant's lawyer, identify every person Defendant has had a conversation with regarding the accident and state the substance of such conversation.

7. Since your eighteenth birthday, have you been convicted or pled guilty to (including nolle prosequi) of a crime or felony?

8. Set forth a summary, including caption, date of filing and docket number for each legal action either brought against Defendant or brought by Defendant in the past ten years.

9. Please set forth a 10-year complete driving record of Defendant, including a list of all accidents and violations and citations of state or federal laws or regulations, setting forth the date of each accident or citation, brief description of each accident or nature of each citation or violation, state of violation or citation, specifically to include a narrative summary of all of the information requested.

10. Please state who your cell phone service provider was at the time of the accident and what your cell phone number was at the time of the accident.

11. State whether you consumed any alcoholic beverage of any type or any sedative, tranquilizer, or other drug, medicine or pill during the forty-eight (48) hours immediately preceding the incident referred to in the Complaint? If so, please state:

- a. The location where the consumption took place;
- b. The nature, amount, and type of item consumed;
- c. The amount of time over which consumed; and
- d. The names and accurate addresses of any and all person who have any knowledge as to Defendant's consumption of these items.

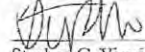
12. Identify all medical providers, psychiatrists, psychologists, therapists, counselors, or other such ancillary mental health personnel whose care Defendant was under for any mental or

physical condition during the five-year period immediately before the date of the incident, and identify the specific illness or condition for which Defendant was treated and list all medications prescribed.

13. If Defendant alleges it is not at fault in causing the collision alleged in the Complaint, state facts to support its allegation that it is not at fault.

Respectfully Submitted,

Stewart Law Offices, LLC



Stephen G. Vicari, II (S.C. Bar No. 102395)

10 Calendar Court, Suite 100

Post Office Box 6787 (29260)

Columbia, SC 29206

803-743-4200 (o)

803-743-4204 (f)

stephen@stewartlawoffices.net

Attorney for Plaintiff

Columbia, South Carolina
November 30, 2020

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles
Griffin,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-02219

**PLAINTIFF'S REQUEST FOR
PRODUCTION TO DEFENDANTS**

TO: DEFENDANTS NAMED ABOVE:

As authorized by Rule 34, SCRCP, Plaintiff requests Defendant produce the requested documents for inspection and copying—within thirty (30) days of service or forty-five (45) days of service of the summons and complaint, whichever is longer—at the office of the undersigned attorney for Plaintiff, at Stewart Law Offices, LLC, 10 Calendar Court, Suite 100, Columbia, South Carolina 29206.

DEFINITIONS AND INSTRUCTIONS

- A. As used herein, the term “you”, “your”, or “Defendant” shall mean Jasmine Disnal, and her employees, contractors, servants, attorneys, agents, and all other natural persons or business or legal entities acting or purporting to act for or on behalf of you whether authorized to do so or not.
- B. The term “documents” shall mean all writings, papers, books, accounts, drawings, graphs, charts, photographs, and electronic and videotape recordings of every kind, source, and authorship, both originals and all nonidentical copies thereof, in your possession, custody, or control, or known by you to exist, irrespective of whether such was intended for or transmitted internally by you, or intended for or transmitted to any other person or entity, including without limitation any government agency, department, administrative, or private entity or person. The term shall include handwritten, typewritten, printed, photocopied, photographic, or recorded matter. It shall include communications in words, symbols, pictures, sound recordings, films, tapes, and information stored in, or accessible through, computer or other information storage or accessible through, computer or other information storage or retrieval systems, together with the codes and/or programming instructions and other materials necessary to understand and use such systems. For purposes of illustration and not limitation, the term shall include affidavits; agendas; agreements; analyses;

announcements; bills, statements, and other records of obligations and expenditures; books; brochures; bulletins; calendars; cancelled checks, vouchers, receipts and other records of payments; charts, drawings; check registers; checkbooks; circulars; collateral files and contents; contracts; corporate by-laws; corporate charters; correspondence; credit files and guaranty agreements; financial statements; instructions; invoices; ledgers, journals, balance sheets, profit and loss statements, and other sources of financial data; letters; loan applications; logs, notes, or memoranda of telephonic or face-to-face conversations; manuals; memoranda of all kinds, to and from any persons, agencies, or entities, and specifically including inter-office and intra-office memos; minutes; minute books; notes; notices; parts lists; papers; press releases; printed matter (including published books, articles, speeches, and newspaper clippings); purchase orders; records; records of administrative, technical, and financial actions taken or recommended; reports; safety deposit boxes and contents and records of entry; schedules; security agreements; specifications; statement of bank accounts; statements, interviews; stock transfer ledger; technical and engineering reports, evaluations, advice, recommendations, commentaries, conclusions, studies, test plans, manuals, procedures, data, reports, results, and conclusions; summaries, notes, and other records and recordings of any conferences, meetings, visits, statements, interviews or telephone conversations; telegrams; teletypes and other communications sent or received, transcripts of testimony; UCC instruments; workpapers; and all other writings, the contents of which relate to, discuss, consider, or otherwise refer to the subject matter of the particular discovery requested.

- C. The term "Person" shall include individuals, associations, partnerships, corporations, and any other type of entity or institution whether formed for business purposes or any other purposes.
- D. Unless defined otherwise in an individual Request for Production "Identify", "Identity", or "Identification" have the following meanings:
 - 1. When used in reference to a person, "Identify", "identity", or "identification" means to state his/her full name, present or last known residence address, present or last known business address, and residence and business telephone numbers.
 - 2. When used in reference to a public or private corporation, governmental entity, partnership, association, or any other business entity, "Identify", "identity", or "identification" means to state its full name, present or last known business address or operating address, the name of its chief executive officer and telephone number.
 - 3. When used in reference to a document, "Identify", "identity", or "identification" shall include a statement of the following:
 - (a) the title, heading, or caption, if any, or such document; and
 - (b) the identifying numbers, letters, or combination thereof, if any, and the significance or meaning of such numbers, letters, or combination thereof, if necessary to an understanding of the document and evaluation of any claim of protection from discovery; and

- (c) the date appearing on such document; and if no date appears thereon, the answer shall so state and shall give the date or approximate date on which such document was prepared; and
 - (d) the number of pages and the general nature of description of such document (i.e., whether it is a letter, memorandum, minutes of a meeting, etc.) with sufficient particularity so as to enable such document to be precisely identified; and
 - (e) the name and capacity of the person who signed such document; if it was not signed, the answer shall so state and shall give the name of the person or persons who prepared it; and
 - (f) the name and capacity of the person to whom such document was addressed and the name and capacity of such persons, other than such addressee, to whom such document, or a copy thereof, was sent; and
 - (g) the physical location of the document and the name of its custodian or custodians.
4. When used in reference to a statement, "identify", "identity", or "identification" means the following:
- a. the identity of the person who made the statement, the person who took or recorded the statement, and all persons present during the making of the statement; and
 - b. the date, location, and method by which the statement was taken and/or recorded; and
 - c. the identity of the person or persons who has present or last known possession, custody, or control of the statement.
- E. If any document which would be responsive to any Request for Production herein was, but is no longer, in your possession or subject to your control, or is no longer in existence, identify each document, in the manner defined herein above, and by additionally stating whether it is missing or lost, it has been destroyed, it has been transferred voluntarily to others, or it has been otherwise disposed of, and in each instance in which it has been destroyed, transferred, or disposed of:
- 1. Explain the circumstances surrounding such disposition; and
 - 2. Identify the persons(s) directing or authorizing its destruction or transfer; and
 - 3. The date(s) of such direction or authorization; and
 - 4. Whether the document (or copies) are still in existence, and if so, identify the custodians(s) and its (or their) present locations(s).

- F "Expert" means any expert who may, will, or is expected to testify at trial, either in your case in chief or rebuttal, by deposition or live testimony, and any expert who has been informally consulted, retained, or specially employed in anticipation of litigation or preparation for trial but who will not be called to testify and whose opinions, test results, factual observations, data, or work product forms a basis either in whole or in part of any expert who will or may be called as a witness.

OBJECTIONS

If you object to any interrogatory or any portion thereof on the grounds it requests information that is privileged or falls within the work-product doctrine, provide the following information, except as it may call for the precise information you object to disclosing:

1. State the nature of the privilege or doctrine you claim.
2. If a document:
 - a. Identify it; and
 - b. Identify all persons known to you to have seen the document.
3. If an oral communication:
 - a. Identify it; and
 - b. Identify all persons known to you to whom the substance of the oral communication has been disclosed.

REQUESTS FOR PRODUCTION

1. Produce a certified copy of all liability, uninsured, and underinsured policies, including any excess or umbrella policies, covering the Defendant on the date of the collision.
2. Produce all reports, correspondence, notes, diaries, calendars, videotapes, diagrams, charts, memos, and any other documents concerning any issues raised by this lawsuit, including any reports, correspondence, notes, diaries, calendars, videotapes, diagrams, charts, memos, and any other documents produced by any witness, expert witness, or any other person having or claiming to have knowledge of any matter relevant to the issues in this case.

3. Produce copies of all statements, whether written, oral, or transcribed, that relate in any manner to the allegations of the Complaint or to any defense of the Defendant, regardless of who took the statement.

4. Produce a complete copy of all office records, law enforcement records, public reports, accident reports, drawings, etc. related to this action.

5. Produce every document, tangible object, or other item of real, demonstrative, or documentary evidence which contains, or may contain, information which is or may be relevant to any of the issues involved in this action.

6. Produce copies of all photographs relevant to the issues in this case.

7. Produce all resumes, reports, opinions, correspondence, memoranda, or other documentation provided to Defendant or Defendant's attorneys from any expert consulted by or retained by Defendant in this litigation, regardless of whether the expert witness will be called as a witness by Defendant at the trial of this matter.

8. Produce a complete and accurate copy of all documents referenced in Defendant's Answers to Interrogatories.

9. Produce all diagrams, sketches, drawings, prints, negatives, and layouts that relate in any manner to the allegations of the Complaint, the defenses of the Defendant, or the incident scene.

10. Produce all the evidence Defendant relied upon in denying the allegations set forth in the Plaintiff's Complaint.

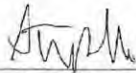
11. Produce all the evidence Defendant relied upon in denying that Plaintiff is entitled to the relief sought in their prayer for relief.

12. Produce all demonstrative or physical evidence which Defendant intends to introduce into evidence in this case.

13. Produce all videos or photographs of the Plaintiff, Plaintiff's family members, or any other witnesses.
14. Produce all documents received using subpoena, FOIA, or authorization.
15. Produce a copy of the Defendant's cell phone records for the date of the accident alleged in the Complaint.

Respectfully Submitted,

Stewart Law Offices, LLC



Stephen G. Vicari, II (S.C. Bar No. 102395)
10 Calendar Court, Suite 100
Post Office Box 6787 (29260)
Columbia, SC 29206
803-743-4200 (o)
803-743-4204 (f)
stephen@stewartlawoffices.net
Attorney for Plaintiff

Columbia, South Carolina
November 30, 2020

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	Civil Action No. 2020-CP-46-02219
	)	
Francine Steineman,	)	
	)	NOTICE AND MOTION FOR RELIEF
Plaintiff,	)	FROM DEFAULT OR, IN THE
	)	ALTERNATIVE, FOR LEAVE TO FILE
v.	)	LATE ANSWERS
	)	
Eric Steineman, Sarah Smith and	)	
Charles Griffin,	)	
	)	
Defendants.	)	

TO: Plaintiff Francine Steineman, and her attorney, Stephen G. Vicari, II of Stewart Law Offices, LLC:

PLEASE TAKE NOTICE that counsel for Meridian Security Insurance Company, as the alleged uninsured motorist carrier (hereinafter “Meridian”), by and through its undersigned counsel, will appear before the resident or presiding judge of the York County Court of Common Pleas, at such date and time as the Court shall direct, for an Order granting relief from any entry of default against Sarah Smith and Charles Griffin, in this matter or, alternatively, granting it leave to file responsive pleadings in the name of Sarah Smith and Charles Griffin out of time, pursuant to Rules 6(b), 12(a), 55(c), and Rule 60(b) of the South Carolina Rules of Civil Procedure.

This Motion is based on the pleadings filed in this case, any affidavits or other evidence submitted to the Court prior to the hearing on this matter, and all applicable common and statutory law of the State of South Carolina. Further, the support for this motion is set forth in Meridian’s Memorandum in Support of Motion to Set Aside Entry of Default to be filed prior to hearing. Pursuant to Rule 11, SCRCP, Movant's counsel, prior to filing this Motion,

attempted to communicate with opposing counsel to attempt to resolve the matter contained in this Motion.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: s/ R. Batten Farrar

T. David Rheney (S.C. Bar No. 13148)

R. Batten Farrar (S.C. Bar No. 100077)

Post Office Box 10589 (29603)

55 Beattie Place, Suite 1200

Greenville, SC 29601

Phone: (864) 271-9580/ Fax: (864) 271-7502

Email: drheney@gwblawfirm.com

bfarrar@gwblawfirm.com

*Attorneys for Meridian Security Insurance
Company, as the alleged uninsured motorist carrier*

March 5, 2021
Greenville, SC

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles Griffin,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-02219

ORDER OF DEFAULT AS TO
DEFENDANTS SMITH AND GRIFFIN

THIS MATTER comes before me on Plaintiff's Motion for Default. As evidenced in the Affidavit of Default filed by counsel for Plaintiff in this action and Exhibits A, B, C, and D attached to this Order, and to which reference is craved:

1. On December 5, 2020, as required by Rule 4, SCRCF, Defendant Smith was personally served with the Amended Summons and Complaint. Defendant Smith has not filed a responsive pleading or in any way answered the Amended Complaint served upon her.

2. On December 29, 2020, as required by Rule 4, SCRCF, Defendant Griffin was personally served with the Amended Summons and Complaint. Defendant Griffin has not filed a responsive pleading or in any way answered the Amended Complaint served upon him.

3. On December 16, 2020, as required by S.C. Code Ann. § 38-5-70 and § 38-77-150, Plaintiff's UM insurer Meridian Security Insurance Company (Meridian) was served through the South Carolina Department of Insurance. Meridian has not in any way made an appearance in this matter.

4. On December 4, 2020, as required by S.C. Code Ann. § 38-5-70 and § 38-77-160, Plaintiff's UIM insurer Meridian Security Insurance Company (Meridian) was served through the South Carolina Department of Insurance. Meridian has not in any way made an appearance in this matter.

I find that Rule 12(a), SCRCP requires a Defendant answer or otherwise respond to a Complaint within thirty days after service of such Complaint and that no such answer or response has been made by or on behalf of either Defendant Smith or Defendant Griffin in this action. Additionally, I find S.C. Code Ann. §§ 38–77–150 and 160 require a UM or UIM carrier to appear within thirty days after service of process is served upon it and that Meridian has not in any way made an appearance in this matter. Accordingly, as authorized by Rule 55, SCRCP, it is hereby ordered, adjudged and decreed that both Defendant Smith and Defendant Griffin is in default.

IT IS SO ORDERED.

Chief Administrative Judge, York County

_____, 2021



York Common Pleas

Case Caption: Francine Steineman VS Eric Steineman , defendant, et al

Case Number: 2020CP4602219

Type: Order/Entry of Default

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2021-03-08 09:32:59 page 3 of 3

EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	Civil Action No. 2020-CP-46-02219
	)	
Francine Steineman,	)	
	)	MERIDIAN SECURITY INSURANCE
Plaintiff,	)	COMPANY'S NOTICE AND MOTION TO
	)	ALTER OR AMEND
v.	)	
	)	
Eric Steineman, Sarah Smith and	)	
Charles Griffin,	)	
	)	
Defendants.	)	

TO: Plaintiff Francine Steineman, and her attorney, Stephen G. Vicari, II of Stewart Law Offices, LLC:

PLEASE TAKE NOTICE that counsel for Meridian Security Insurance Company, as the alleged uninsured motorist carrier (hereinafter "Meridian"), by and through its undersigned counsel, will appear before the resident or presiding judge of the York County Court of Common Pleas, at such date and time as the Court shall direct, for an Order pursuant to the South Carolina Rules of Civil Procedure 52(b) and 59(e) to alter or amend the Order of Default filed March 8, 2021, to amend its findings in the Order, and to allow the Court to hear Meridian's previously filed motion, or, alternatively, to grant Defendant Griffin and Defendant Smith relief from default and/or to allow Meridian to file responsive pleadings and defend this matter on the merits in the name of Defendant Smith and Defendant Griffin.¹

This Motion is supported by the following grounds:

1. The Court erred in finding that Meridian, as the uninsured motorist carrier, had not in any way made an appearance in this matter.

¹ On March 5, 2021, Meridian filed a Motion for Relief from Default or File a Late Answer pursuant to Rules 6(b), 12(a), 55(c), and Rule 60(b) of the South Carolina Rules of Civil Procedure.

2. The Court erred by allowing evidence of service upon Meridian to be made part of the record and by including service upon Meridian as part of its Order.

3. The Court erred in finding that S.C. Code Ann. §38-77-150 required Meridian, as the uninsured motorist carrier, to appear within thirty (30) days after service of process.

WHEREFORE, Meridian respectfully requests that this Court alter or amend its March 8, 2021 Order to allow the Court to rule upon Meridian's March 5, 2021 Motion and enter an order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure altering or amending the March 8, 2021 Order as detailed above.

Meridian specifically reserves the right to add additional grounds and supplement this motion in the future. This motion is based upon the pleadings, any memorandum submitted in support of the same, affidavits filed or to be filed, the pleadings and other filings in this case, the applicable case and statutory law, and any such matters as the Court may deem just and proper.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: s/ R. Batten Farrar

T. David Rheney (S.C. Bar No. 13148)

R. Batten Farrar (S.C. Bar No. 100077)

Post Office Box 10589 (29603)

55 Beattie Place, Suite 1200

Greenville, SC 29601

Phone: (864) 271-9580/ Fax: (864) 271-7502

Email: bfarrar@gwblawfirm.com

March 11, 2021
Greenville, SC

*Attorneys for Meridian Security Insurance
Company, as the alleged uninsured motorist carrier*

EXHIBIT E

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4602219

Francine Steineman
PLAINTIFF(S)

Eric Steineman et al
DEFENDANT(S)

DISPOSITION TYPE (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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 (formal order to follow) ☒ Statement of Judgment by the Court:

After careful consideration:

Meridian Security Company's Motion for Relief From Default is DENIED.

Meridian Security Company's Motion to Alter or Amend Order of Default is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/10/2021 .

Charles Griffin
Sarah Smith

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: Francine Steineman VS Eric Steineman , defendant, et al

Case Number: 2020CP4602219

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2021-06-10 14:54:12 page 3 of 3

EXHIBIT F

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 16TH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	C.A. NO.: 2020-CP-46-02219
Francine Steineman,	)	
	)	
	)	MERIDIAN SECURITY INSURANCE
Plaintiff,	)	COMPANY'S MOTION FOR
vs.	)	RECONSIDERATION
	)	
Eric Steineman, Sarah Smith, and Charles	)	
Griffin,	)	
	)	
Defendants.	)	
	)	

TO: Plaintiff Francine Steineman, and her attorney, Stephen G. Vicari, II of Stewart Law Offices, LLC

PLEASE TAKE NOTICE, that ten (10) days after the service hereof, or at such time and place as the Court may deem appropriate, counsel for Meridian Security Insurance Company, as the alleged uninsured motorist carrier (hereafter "Meridian"), for itself and on behalf of Sarah Smith and Charles Griffin, by and through its undersigned counsel, will move the Court, pursuant to S.C. Code Ann. §38-77-150, and Rules 59(e), 55(c) and 54(b) of the *South Carolina Rules of Civil Procedure*, for reconsideration and/or clarification of its Order of June 10, 2021, denying Meridian's previously filed motion for relief from default and motion to alter or amend the order of default.

The grounds for the motion are that the previously entered Order lacks sufficient specificity for Meridian and/or the individual defendants to understand the legal and factual basis for denial of the motions. Alternatively, the Court misunderstood the facts related to the procedural history of this lawsuit and/or misconstrued the law applicable to this matter, including:

1. The legal effect of the filing of the Amended Complaint on the individual defendants;

2. The statutory right of Meridian to appear and defend the complaints against the individual defendants;
3. The actual date of service of the Amended Summons and Complaint on Meridian as the provider of uninsured motorist coverage for the accident;
4. Meridian's timely filed notice of appearance on behalf of itself and the individual defendants;
5. The plaintiff's improper motion to strike the appearance of Meridian as the uninsured motorist carrier in this matter;
6. The Court's improper finding in its March 8, 2021, Order that Meridian had not timely appeared on behalf of the individual defendants prior to the expiration of the time to appear; and
7. The Court's improper finding that the alleged default of the individual defendants is binding on Meridian as the uninsured motorist carrier in this matter.

Meridian submits the pleadings in this matter, all previously filed motions and exhibits and such memorandum of law as may be submitted prior to the hearing of this motion in support hereof.

By: s/T. David Rheney

T. David Rheney, SC Bar #13148
Ioannis G. Conits, SC Bar #102675
GALLIVAN, WHITE & BOYD, P.A.
PO Box 10589
Greenville, SC 29603
Tel.: (864) 271-9580
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iconits@gwblawfirm.com

**Attorneys for Meridian Security Insurance
Company**

Date: June 21, 2021
Greenville, South Carolina

EXHIBIT G

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4602219

Francine Steineman
PLAINTIFF(S)

Eric Steineman et al
DEFENDANT(S)

DISPOSITION TYPE (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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 (formal order to follow) ☒ Statement of Judgment by the Court:

After careful consideration, Meiridan Security Insurance Company's Motion for Reconsideration is DENIED.

However, The Court directs Plaintiff's attorney to submit a proposed formal order for review by opposing counsel and the Court. The Court will then issue a written formal order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/06/2021 .

Charles Griffin
Trevor A. Cangelosi for Eric Steineman
Lonnie Ray Doles, Jr. for Eric Steineman
Ioannis (Ian) George Conits for Meridian Security Insurance Company
Sarah Smith
T. David Rheney for Meridian Security Insurance Company
Stephen Glenn Vicari, II for Francine Steineman

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: Francine Steineman VS Eric Steineman , defendant, et al

Case Number: 2020CP4602219

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2021-08-06 15:16:46 page 3 of 3

EXHIBIT H

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles Griffin,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020–CP–46–02219

ORDER

This matter is before the Court on a Motion for Reconsideration filed by Meridian Security Insurance Company (“Meridian”), Plaintiff’s uninsured motorist (“UM”) carrier. For the reasons set forth below, the Court denies that motion.

A UM carrier may appear and defend in the name of the UM if the UM carrier appears within thirty days of being served. S.C. Code Ann. § 38–77–150(B). On August 10, 2020, and on December 16, 2020, Plaintiff served Meridian, the UM carrier, with pleadings in this action. But it was not until March 5, 2021, that Meridian filed a notice of appearance. Meridian did not make an appearance within thirty days of being served. It therefore has no right to defend in the name of the UM.

FACTS AND PROCEDURAL HISTORY

On July 28, 2020, Francine Steineman filed this action against Defendants Eric Steineman and Sarah Smith after suffering catastrophic bodily injuries in a car crash. On January 22, 2018, Mrs. Steineman was a passenger in her car, which was being operated by Defendant Steineman. Defendant Steineman was attempting a left turn when Defendant Smith collided into the passenger side of his car—where Mrs. Steineman was sitting. Mrs. Steineman’s damages purportedly exceed \$2,000,000.00. Defendant Smith’s car was uninsured at the time.

On August 10, 2020, Plaintiff served the Summons and Complaint (“Original Pleadings”) on Meridian through the S.C. Department of Insurance (“DOI”). There is no dispute that Meridian was served with and had notice of the Original Pleadings on August 10, 2020. Over two-hundred days later, on March 5, 2021, Meridian filed a notice of appearance.

On September 26, 2020, Defendant Smith was personally served with the Original Pleadings. Defendant Smith failed to answer the Complaint, so on November 12, 2020, the Clerk of Court entered a default as to Defendant Smith.

After that, Defendant Smith notified Plaintiff’s counsel by e-mail that she was not driving the uninsured car, alleging the uninsured-car’s owner Charles Griffin was driving at the time of the crash. Through discovery, a recording was produced of Defendant Smith admitting she was driving the uninsured car that collided into Plaintiff. But, out of an abundance of caution, Plaintiff amended her Complaint, adding Charles Griffin as an additional Defendant.

On November 30, 2020, Plaintiff filed an Amended Summons and Complaint (“Amended Pleadings”). The amendment adds Charles Griffin as an alternative UM driver, and the circumstances giving rise to Meridian’s UM exposure remain unchanged.

On December 5, 2020, Defendant Smith was personally served with the Amended Pleadings. On December 29, 2020, Defendant Griffin was personally served with the Amended Pleadings. Neither filed an answer, so the Clerk entered a default against those Defendants.

On December 16, 2020, Plaintiff served the Amended Pleadings on Meridian through the DOI. But it wasn’t until February 3, 2021, that Meridian apparently actually receive the Amended Pleadings.

On March 5, 2021—two-hundred-seven days after it was served with the Original Pleadings and seventy-nine days after it was served with the Amended Pleadings—Meridian filed a notice of appearance. This was the first time Meridian appeared or attempted to participate in this action.

At the same time, Meridian filed a motion to relieve Defendants Smith and Griffin from default or in the alternative for additional time to file an Answer, and Plaintiff moved to strike Meridian's appearance because it failed to appear within thirty days of service.

On March 8, 2021, the Court issued an Order finding Defendants Smith and Griffin in default. The Order further found Meridian had no right to defend this action in the name of the UM because it failed to make an appearance as required by S.C. Code Ann. § 38-77-150(B).

On March 11, 2021, Meridian moved to alter or amend the March 8, 2021 Order of Default.

On May 12, 2021, the Court held a hearing on Meridian's motion to set aside, for additional time to answer, and to alter or amend the March 8, 2021 Order. After considering Plaintiff's and Meridian's filed written memoranda and oral argument, on June 10, 2021, the Court issued a Form 4, denying Meridian's motions.

On June 21, 2021, Meridian filed a Motion for Reconsideration, raising seven points requiring clarification. On July 28, 2021, the Court held a hearing on that motion. At the hearing, Meridian offered no intervening change in controlling law, new evidence, or basis on which to correct a clear error of law or prevent manifest injustice. Instead, it asked the Court to clarify the reasons for its ruling.

STANDARD OF REVIEW

The South Carolina Rules of Civil Procedure do not expressly provide for a motion for reconsideration. Rather, Rule 59(e), SCRPC, is the equivalent of a motion for reconsideration, regardless of whether it is labelled as a motion for reconsideration or as a motion to alter or amend. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004). When a party has previously filed a Rule 59(e) motion which was denied, "[a] second [Rule 59(e)] motion 'is appropriate only if it challenges something that was altered from the original judgment as a result of the initial motion. . . .'" Robinson v. Robinson, 365 S.C. 583, 585, 619 S.E.2d 425, 426 (2005), quoting Coward Hund Constr. Co. v. Ball Corp., 336 S.C. 1, 3, 518 S.E.2d 56, 58 (Ct. App. 1999).

A Rule 59(e) motion will not be granted absent “highly unusual circumstances.” U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).¹ Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); see also Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015). Rather, a court may grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993).

DISCUSSION

With respect to the March 8, 2021 Order, this is Meridian’s second Rule 59(e) motion. The Court denied Meridian’s Motion to Alter or Amend the March 8, 2021 Order. The current motion is not

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) (“Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”).

appropriate because it does not challenge something that was altered from the original judgment. It is therefore not properly before the Court and is denied on this basis.

The motion is likewise denied on its merits. If it wishes to defend, a UM carrier must appear within thirty days of service. Meridian failed to appear within thirty days of service. It cannot therefore defend in the name of the UM. Even if the Court were to find Meridian appeared within thirty days of service, no satisfactory explanation for the default of Defendants Smith and Griffin has been put forth, so it cannot be set aside. Nor is Meridian entitled to any additional time to file an Answer because its failure to answer was not due to its excusable neglect or fault. And because Meridian did not appear within thirty days of service, the March 8, 2021 Order properly found Meridian had not timely appeared.

1. The Court denies Meridian's successive Rule 59(e) motion as it fails to address any new ruling from the initial Rule 59(e) motion.

The Court denied Meridian's initial Rule 59(e) motion when it declined to alter or amend the March 8, 2021 Order. As a result, there is no ruling which Meridian's successive Rule 59(e) motion can properly address.

Because there are no South Carolina cases directly on point [regarding the effect of a successive Rule 59(e) motion], we must look to the construction placed on the corresponding federal rules of civil procedure. Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 404 S.E.2d 200 (1991).

[T]he prevailing rule in the federal courts is that a second motion for reconsideration is appropriate only if it challenges something that was altered from the original judgment as a result of the initial motion for reconsideration. In such a case, a new judgment has replaced the previous judgment and the party aggrieved by the alteration may move for reconsideration. See 12 James W. Moore et al., Moore's Federal Practice ¶ 59.37 at 59-123 (3d ed. 1999) ("When a court alters a judgment, the party aggrieved by the alteration may ask for correction."). If, on the other hand, the trial court denies such a motion, the finality of the judgment is restored and the appeal time begins to run from the date the order is entered. *Id.* ¶ 59.36 at 59-123.

Coward Hund Construction Co. v. Ball Corp., 336 S.C. 1, 3, 518 S.E.2d 56, 58 (Ct. App. 1999).

Accordingly, the Court's denial of Meridian's initial Rule 59(e) motion stands, and the Court denies the present Rule 59(e) motion as procedurally improper.

2. Because Meridian failed to appear within thirty days of service, it cannot exercise its right to defend or participate in the underlying litigation.

Plaintiff and Meridian agree that Meridian must appear within thirty days. They disagree over when the thirty-day clock starts. Plaintiff argues a UM carrier must appear within thirty days of service. Meridian argues it must appear within thirty days of when it actually received the pleadings. But under either scenario, Meridian failed to appear within thirty days. It cannot therefore exercise its right to defend or participate in the underlying litigation.

A

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the words in the statute are clear and unambiguous, we cannot give them a different meaning. Id. And if the statute is in derogation of a common law right, it “must be strictly construed and not extended in application beyond clear legislative intent.” Doe v. Marion, 361 S.C. 463, 473, 605 S.E.2d 556, 561 (Ct. App. 2004). A statute must also be read as a whole and in harmony with its purpose. State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). In that vein, “[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). Similarly, Courts are to construe a statute so “that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” In re Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995). In the end, the Court should reject any interpretation which would lead to a result so absurd that the General Assembly could not have intended it. Sweat, 386 S.C. at 351, 688 S.E.2d at 575. 16 Jade St., LLC v. R. Design Constr. Co., 398 S.C. 338, 343, 728 S.E.2d 448, 450-1 (2012).

In relevant part, S.C. Code Ann. § 38–77–150(B) provides “[t]he insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear” (emphasis added). No argument has been made

that this language is ambiguous. Nor does the Court find that it is. Indeed, § 150(B) clearly grants the insurer the right to defend if it first appears within thirty days of service.

This reading harmonizes perfectly with the intent of the legislature. An insurer in South Carolina has no common-law right to participate in an action to which it is not a party. See Rule 24, SCRPC (a non-party cannot participate in an action unless the Court permits it to intervene); Ex Parte Allstate Ins. Co., 339 S.C. 202, 205, 528 S.E.2d 679 (Ct. App. 2000) (purpose of serving underinsured motorist insurer under S.C. Code Ann. § 38-77-160 is to provide that insurer with an opportunity to appear in the action, to defend the action, and to protect its interests); cf. Criterion Ins. Co. v. Hoffman, 258 S.C. 282, 290, 188 S.E.2d 459, 462; Squires v. Nat'l Grange Mut. Ins. Co., 247 S.C. 58, 66, 145 S.E.2d 673, 677 (1965); Steven Plitt et al., 9 Couch on Ins. § 122.1 (3rd ed. 2020). And an insured has no right to name the UM insurer in a direct action to establish liability and damages but only in a subsequent contractual action relating to coverage. See, e.g., Vernon v. Harleysville Mut. Cas. Co., 244 S.C. 152, 135 S.E.2d 841 (1964). Indeed, the right of a UM insurer to defend in the name of a party to an action is a right that is created by statute.

Prior to 1952, no insurance coverage was required to operate a vehicle on South Carolina's roads.

The Motor Vehicle Safety Responsibility Act was enacted in 1952 and did not require a motorist to carry liability insurance until after he had an accident. This left those who carried insurance exposed to the possibility of financial loss from a collision with the uninsured and financially irresponsible motorist. The General Assembly sought to remedy this by the adoption of the Uninsured Motorist Act as a means of shifting the cost of the uninsured motorist's negligence to the uninsured motorist himself. . . . Therefore, every person who registers and licenses a motor vehicle in this State must show that the vehicle is one as to which there is a liability insurance policy in effect or he must pay the uninsured motorist fee.

Southern Farm Bureau Cas. Ins. Co. v. Fulton, 244 S.C. 559, 562, 137 S.E.2d 769, 770 (1964).

Of course, requiring liability insurance offered protection to a person injured by a negligent driver, but it offered no protection to the injured person for injuries caused by a negligent-but-uninsured driver.

To offer greater protection to those innocently injured in a car wreck, the General Assembly passed statutes requiring UM coverage. See S.C. Code Ann. § 38–77–150.

But requiring UM coverage did not bridge the gap between an entitlement to benefits and enforcing the entitlement to those benefits. To be sure, there is no common-law right “to recover [damages for a personal injury] from one’s own insurance carrier.” Carter v. Standard Fire Ins. Co., 406 S.C. 609, 753 S.E.2d 515, 522 (2014). The tortfeasor is responsible.

So the General Assembly created a workaround in passing S.C. Code Ann. § 38–77–150.² An injured party may enforce her entitlement to UM by meeting the statutory condition of serving the pleading on her UM carrier. And the condition is applied without exception. See Williams v. Selective Ins. Co. of Southeast, 315 S.C. 532, 534, 446 S.E.2d 402, 404 (1994) (applying § 38-77-160 (which has identical language as § 150—except for exchanging “underinsured” for “uninsured”) and finding it bars an action for underinsured benefits absent compliance with the requirement that pleadings in the action establishing liability be served on the underinsured carrier).

And the General Assembly imposed a similar condition on UM carriers who wish to protect their interests. A UM carrier may defend in the name of the UM if the UM carrier appears within thirty days of being served. S.C. Code Ann. § 38–77–150.³ And the condition is applied without exception. See Ex Parte Allstate Ins. Co., 339 S.C. 202, 205, 528 S.E.2d 679 (Ct. App. 2000) (purpose of serving underinsured motorist insurer under S.C. Code Ann. § 38-77-160 is to provide that insurer with an opportunity to appear in the action, to defend the action, and to protect its interests); cf. Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2005) (limiting the construction of a UM/UIM

² “No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision.”

³ “The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear.” (emphasis added.)

statute, § 38–77–350, to its “plain and unambiguous terms” and holding: “The insurer may not benefit from the protections of the statute when [it] does not comply with the statute.”).

Moreover, the right of a UM carrier to appear and defend is not a natural right but wholly statutory, so S.C. Code Ann. § 38–77–150 is in derogation of the common law and must be strictly construed. See Crowder v. Carroll, 251 S.C. 192, 161 S.E.2d 235 (1968); see Hucks v. Dolan, 288 S.C. 468, 470 S.E.2d 613, 615 (1986) (illustrating the point: “Since the right of adoption in South Carolina is not a natural right but wholly statutory, it must be strictly construed.”). Strictly construing the statute solidifies that the legislature intended § 150(B) to grant the UM insurer the right to defend if it first appears within thirty days of service.

The legislature therefore clearly intended S.C. Code Ann. § 38–77–150 to (1) require a plaintiff to put her UM insurer on notice (if she wishes to enforce her right to UM coverage) by serving the pleadings on the insurer through the DOI and (2) require the UM insurer to act (if it wishes to exercise its right to defend) by appearing within thirty days of service. See Donze v. General Motors, 420 S.C. 8, 22, 800 S.E.2d 479 (2017), quoting Barnwell v. Barber-Colman Co., 301 S.C. 534, 538, 393 S.E.2d 162, 163–64 (1989) (“[Courts] cannot read into a statute something that is not within the manifest intention of the Legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. The responsibility for the justice or wisdom of legislation rests with the Legislature, and it is the province of the Courts to construe, not to make, the laws.”) (internal citations omitted).

And this reading also harmonizes with statutes controlling service of process on insurance carriers. Service of process on an insurance carrier is perfected when the pleadings is delivered to the Director of the DOI. S.C. Code Ann. § 15–9–270⁴ (“The [pleadings] must be served on an insurance

⁴ “The summons and any other legal process in any action or proceeding against it must be served on an insurance company as defined in Section 38-1-20, including fraternal benefit associations, by delivering two copies of the summons or any other legal process to the Director of the Department of Insurance, as attorney of the

company . . . by delivering [the pleadings] to the Director of the Department of Insurance, as attorney of the company . . . This service is considered sufficient service upon the company.”) (emphasis added); S.C. Code Ann. § 38–5–70⁵ (service on the DOI is of the same “legal force and validity as if served upon the insurer. . .”).

In the end, the only reading that would not lead to an absurd result is that the thirty-day clock starts when the DOI is served for the UM carrier. No other reading “as a whole [provides] a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

Here, Plaintiff put Meridian on notice of this litigation by serving the pleadings on it through the DOI. On August 10, 2020, the DOI was served as attorney for Meridian with the Original Pleadings. For over two-hundred days Meridian did not act to exercise its right to defend. And On December 16, 2020, the Amended Pleadings was served on the DOI as attorney for Meridian. The Amended Pleadings did not change Meridian’s UM exposure in any way—it simply added an alternative UM driver. And for over seventy days, Meridian did not exercise its right to defend. Meridian cannot now exercise its right to defend.

B

company with a fee of ten dollars, of which five dollars must be retained by the director to offset the costs he incurs in service of process and of which five dollars must be deposited to the credit of the general fund of the State. A company shall appoint the director as its attorney pursuant to the provisions of Section 38-5-70. This service is considered sufficient service upon the company. When legal process against any company with the fee provided in this section is served upon the director, he shall immediately forward by registered or certified mail one of the duplicate copies prepaid directed toward the company at its home office or, in the case of a fraternal benefit association, to its secretary or corresponding officer at the head of the association.”

⁵ “Every insurer shall, before being licensed, appoint in writing the director and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it must be served and in this writing shall agree that any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon the insurer and that the authority continues in force so long as any liability remains outstanding in the State. Copies of the appointment, certified by the director, are sufficient evidence of the appointment and must be admitted in evidence with the same force and effect as the original might be admitted.” S.C. Code Ann. § 38–5–70.

Meridian argues it timely appeared because it appeared within thirty days of actual service. And it relies on Southhampton Pointe Property Owners Assoc., Inc. vs. Onebeacon Ins. Co., 2012 WL 130058 (D.S.C. Nov. 7, 2012) and Skidaway Assocs, Ltd. vs. Glens Falls Ins. Co., 738 F. Supp. 980 (D.S.C. 1990) for the proposition that actual service, not service on a statutory agent, starts the running of a limitations period. Neither case is controlling; both apply federal law to a federal statute. But even if the general principle Meridian derives from these cases controls, it still failed to appear within thirty days. On August 10, 2020, Meridian was served with the Original Pleadings. And Meridian does not dispute that this service was actual service. Still, Meridian did not appear within thirty days.

Attempting to seek higher ground, Meridian argues actual service of the Original Pleadings does not matter because it was amended. While this is true in the Fourth Circuit that as a general matter amended pleadings supersede original pleadings, Young v. City of Mt. Rainier, 283 F. 3d 567 (4th Cir. 2001), South Carolina tends to lean in the opposite direction. See White Oak Manor, Inc. v. Lexington Ins. Co., 407 S.C. 1, 753 S.E.2d 537 (2014) (finding implicitly that amending the pleadings does not necessarily supersede the original pleadings). But even if amended pleadings always supersede original pleadings, it is hard to imagine how notice of the claim and lawsuit (as the legislature intended) would somehow disappear with the amending of a complaint.

In any event, unlike in Southhampton and Skidaway, specific statutes control. S.C. Code Ann. § 38–77–150 unambiguously requires Meridian to appear within thirty days of service if it wishes to defend. And S.C. Code Ann. §§ 15–9–270 and 38–5–70 unambiguously instruct that Meridian is served when the DOI is served.⁶

⁶ South Carolina courts have construed the language of § 38-77-150 as “requiring” service on the UM carrier through the Department of Insurance. Franklin v. Devore, 327 S.C. 418, 423, 489 S.E.2d 651 (Ct. App. 1997). Thus, because Plaintiff could not validly serve Meridian in any other fashion, Plaintiff’s service through the Department of Insurance was “actual service” on Meridian which commenced the time for Meridian to exercise its statutory right to defend this action.

And there are no constitutional or due process concerns here. The McCarran-Ferguson Act, 5 U.S.C. 1011 et seq., allow states to regulate insurance and to establish mandatory licensing requirements. By their plain language, S.C. Code Ann. §§ 15–9–270 and 38–5–70 condition an insurance company’s ability to be licensed in South Carolina on it appointing in writing the Director of Insurance as its attorney for service of process and that service on the Director is of the same legal force and validity as if served upon the insurer. Nor are Meridian’s due process rights violated by requiring it to appearing within thirty days from the date of service. To be sure, Meridian agreed in writing to appoint the Director of Insurance as its attorney for service of process and that service on the Director is the same as if actually served. See D.H. Overmyer Co. v. Frick Co., 405 U.S. 174 (1972) (holding due process may be waived even in advance of any alleged violation). Plus, Meridian does not dispute that it was served with the Original Pleadings on August 10, 2020 and obtained actual notice of this action thereby. See Olds v. City of Goose Creek, 418 S.C. 573, 585, 795 S.E.2d 163, 170 (Ct. App. 2016) (“To prevail on a claim of denial of due process, there must be a showing of substantial prejudice.”).

Meridian may not benefit from the protections of the statute when it does not comply with the statute. It cannot exercise its right to defend or participate in the underlying litigation.

3. Assuming for the sake of argument that Meridian appeared within thirty days, the default cannot be set aside because Meridian cannot put forth a satisfactory explanation for the default.⁷

Meridian cannot show good cause to set aside the entry of default.⁸ Before a default may be set aside, the defaulting party must put forth a satisfactory explanation for the default. Sundown Operating

⁷ This portion of the Order assumes, without deciding, that the default provisions of Rule 55, SCRCp, apply to S.C. Code Ann. § 38–77–150. In fact, there is no statutory equivalent to Rule 55 and no reported case appears to have applied that rule to a UM carrier’s limited statutory right to defend an action.

⁸ Meridian moved the Court to set aside the default of Defendants Smith and Griffin. Neither Defendant Smith nor Defendant Griffin has put forth even an explanation for the default. Meridian has provided no testimony from either Defendant. It has filed no affidavits from either Defendant. There is nothing in the record that may be construed as an explanation for the default. And opposing counsel represents Meridian, not Defendant Smith and not Defendant Griffin. There is no explanation, much less a satisfactory explanation, for the default.

Co. v. Intedge Industries, 383 S.C. 601, 607-08, 681 S.E.2d 885 (2009) (emphasis added). Only once a party has put forth a satisfactory explanation for the default, must the trial court also evaluate whether vacation of the default entry would serve the interests of justice by considering: (1) the timing of the motion for relief; (2) whether the defendant has meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. Id. (citing Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465 (Ct. App. 1989)).

Meridian has not provided a satisfactory explanation for the default.⁹ Meridian argues it failed to answer the complaint because it did not receive actual service of it until February 3, 2021. No other explanation has been presented. This conclusory statement does not explain the default. Moreover, Meridian offers no reason for its delay of an additional thirty days before seeking relief from default.

Assuming it is a satisfactory explanation for the default, Plaintiff will be prejudiced if relief is granted. Defendant Smith has already admitted on recorded audio that she was driving at the time of the accident. But in an e-mail from her to Plaintiff's counsel, she attempts to shift liability to Defendant Griffin. Setting aside the default will tend to provide greater opportunity for fraud or collusion because either or both Defendants will likely continue to engage liability-shifting shenanigans. The statute of limitations has run, so Plaintiff is unable to add any new parties. Plaintiff would therefore be prejudiced.

4. Meridian is not entitled to any additional time to answer.

An enlargement in the time to answer may arguably be allowed if the failure to answer was due to some excusable neglect or fault. See Livingston v. South Carolina Farm Bureau Mut. Ins. Co., 254

⁹ As Meridian points out, it is not necessarily bound by the default of the Defendants Smith and Griffin. See Broome v. Watts, 319 S.C. 337, 461 S.E.2d 46 (1995). Indeed, if S.C. Code Ann. § 38-77-150 means anything by granting the UM insurer "the right to appear and defend in the name of the uninsured motorist," it is that a UM carrier can assert defenses, which necessarily must be asserted irrespective of whether a UM defendant is in default. Otherwise, plaintiffs would be incentivized to postpone serving the UM carrier until the UM defendant is in default. But that is not the case here. In this case, Meridian failed to file an Answer or responsive pleading at all.

S.C. 161, 174 S.E.2d 163 (1970).¹⁰ Meridian has been on notice of this UM claim and litigation since August 10, 2020, when it was served with the Original Pleadings through the DOI. Even looking at the facts most favorable to Meridian, it was on notice for thirty days prior to its filing the Motion to Set Aside Default or in the alternative for Leave to File a Late Answer. Meridian had plenty of notice and time to file an answer. It either decided not to or simply failed to file an answer or responsive pleading at all. And neither can be excused.

CONCLUSION

For the reasons set forth above, Meridian's motion for reconsideration is denied. Meridian cannot defend this action in the name of Defendant Smith or Defendant Griffin. Meridian's notice of appearance is hereby stricken.

¹⁰ Notably, the statute upon which Livingston relied was repealed by 1985 Act No. 100. Thus, the statutory right to an enlarged time to file an answer probably no longer exists. Any such right would depend on the Rules of Civil Procedure, to the extent they apply to the statutory inquiry before the Court. See n.6, supra.



York Common Pleas

Case Caption: Francine Steineman VS Eric Steineman , defendant, et al

Case Number: 2020CP4602219

Type: Order/Other

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2021-08-13 09:10:44 page 15 of 15

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Sep 30 2021

SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02219

Francine Steineman.....Plaintiff.

v.

Eric Steineman, Sarah Smith, and Charles Griffin.....Defendants.

Meridian Security Insurance Company, an automobile insurer alleged to provide uninsured motorist coverage applicable to the accident from this matter arises is Appellant.

and

Francine Steineman is Respondent.

PROOF OF SERVICE

I, the undersigned employee of the law firm of Gallivan, White & Boyd, P.A., do hereby certify that on September 30, 2021, I served Appellant's **Return to Motion to Dismiss** on Respondent Francine Steineman, through counsel of record, via electronic mail addressed as follows:

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DATED: September 30, 2021
Greenville, South Carolina



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Kim Pedersoli

From: Kim Pedersoli
Sent: Thursday, September 30, 2021 5:53 PM
To: Stephen@stewartlawoffices.net; 'bert@cfulaw.com'; trevor@cangelosilawfirm.com; lonnie@cangelosilawfirm.com
Cc: nina@stewartlawoffices.net; hanna@cangelosilawfirm.com; David Rheney; Ian Conits; Tania McGee
Subject: Steineman v. Steineman, Smith & Griffin - Return to Motion to Dismiss [GWB-IMANMAIN.FID869142]
Attachments: Return to Motion to Dismiss.pdf

Good Afternoon,

Attached is Appellant's Return to Motion to Dismiss with respect to the above-referenced matter which is being filed with the court today.

Kim



Kim M. Pedersoli
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This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

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Oct 04 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02219

Francine Steineman Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles Griffin Defendants,

Meridian Security Insurance Company, an automobile insurer alleged to
provide uninsured motorist coverage applicable to the accident from this
matter arises is Appellant,

and

Francine Steineman is Respondent.

REPLY

As authorized by Rule 240(f), SCACR, Respondent files this Reply to Appellant Meridian Security Insurance Company's ("Meridian's") September 30, 2021 Return to Motion to Dismiss.

When a motion to alter or amend the judgment is made, any appeal must be taken within 30 days of the order denying the motion. Rule 203(b)(1), SCACR. On June 10, 2021, Meridian received written notice of the Circuit Court's entry of the Order denying its Motion to Alter or Amend. That Form 4 Order does not indicate a more full and complete order or judgment would follow. Because Meridian failed to appeal the Order within thirty days, the current appeal is

untimely and should therefore be dismissed. *See Coward Hund Construction Co. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999).

Also, Meridian’s appeal of the Order refusing to set aside the default of Defendants Smith and Griffin is interlocutory. *See 5Star Life Insurance Co. v. Peck Performance*, Op. No. 5837 (S.C. Ct. App. filed July 21, 2021) (Howard Adv. Sh. No. 25 at 9). This appeal should therefore be dismissed.

Respondent reserves all other arguments in opposition to this appeal.

I. Meridian’s appeal of the Order finding Meridian did not make an appearance in this action within 30 days of service as contemplated by S.C. Code Ann § 38–77–150 is not timely.

An appeal must be taken, if at all, “within thirty days after receipt of written notice of entry of the order or judgment.” Rule 203(b)(1), SCACR. “When a timely motion . . . to alter or amend the judgment (Rules 52 and 59, SCRCP) . . . has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.” *Id.*

Here, the Circuit Court’s March 8, 2021 Order found Meridian did not make an appearance in this action within 30 days of service as contemplated by S.C. CODE ANN. § 38–77–150 (1976, as amended). On March 11, 2021, Meridian filed a Motion to Alter or Amend that Order. On June 10, 2021, the Circuit Court, in a Form 4 Order, denied the Motion to Alter or Amend and did not indicate a more full and complete order or judgment would follow.¹ Meridian’s time to appeal began running at that time. Its deadline to perfect the appeal thus became July 12, 2021, considering July 10, 2021, was a Saturday. Rules 203(b)(1) & 263(a), SCACR.

¹ The Form 4 Order did not “indicate[] that a more full and complete order or judgment [was] to follow.” See Rule 203(b)(1), SCACR. Instead, it clearly provided:

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Meridian did not appeal the Order. Instead, it filed another Motion for Reconsideration. The subsequent motion did not challenge a new ruling. Thus, Meridian is incorrect that its time for appeal began to run on August 13, 2021, when the Circuit Court issued an Order denying Meridian's successive Rule 59(e) motion.

On September 10, 2021, Appellant filed its appeal. But the July 12, 2021, deadline for filing the appeal was not stayed or tolled. Meridian's appeal is therefore untimely.

Just like the appellant in *Coward Hund*, Meridian failed to appeal within thirty days from the denial of its first Rule 59(e) motion and its second Rule 59(e) motion did not challenge a new ruling. Meridian's second motion did not stay or toll the time for filing its notice of appeal.

Meridian argues in its Return that the Order finding Meridian did not make an appearance in this action within 30 days of service as contemplated by Section 38–77–150 was immediately appealable. This concession is fatal to Meridian's argument that its appeal is timely because the June 10, 2021 Form 4 Order did not indicate a more full and complete order or judgment would follow and Meridian did not appeal within 30 days of that Order.

II. Meridian's appeal of the Order refusing to set aside the default of Defendants Smith and Griffin is interlocutory.

As Respondent's September 20, 2021 Motion to Dismiss points out, the Circuit Court has not held a default damages hearing, nor has it entered judgment against Defendants Smith or Griffin (the alleged uninsured and underinsured motorists) or against Meridian. In that regard, this matter is in the same procedural posture as the action in *5Star Life Insurance Co. v. Peck Performance*.

The fact that the August 6, 2021 Form 4 Order incorrectly included a checked box indicating it "ends" the case does not mean that it did so nor did that Order result in a judgment enforceable via execution, which Meridian acknowledges is necessary to make it a final judgment.

(Return to Motion to Dismiss, p. 6). Because a damages hearing remains necessary for the Circuit Court to enter a final judgment, the August 6, 2021 Order was interlocutory.

Accordingly, the Court should dismiss the present appeal and remand it to the Circuit Court to conduct a damages hearing and enter final judgment.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court of Appeals dismiss this appeal.

Respectfully submitted,

CLAWSON FARGNOLI UTSEY, LLC

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Attorneys for Respondent

October 4, 2021
Charleston, South Carolina

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Oct 04 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02219

Francine Steineman Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles Griffin Defendants,

Meridian Security Insurance Company, an automobile insurer alleged to
provide uninsured motorist coverage applicable to the accident from this
matter arises is Appellant,

and

Francine Steineman is Respondent.

PROOF OF SERVICE

I certify that I have served the Reply to Return to Motion to Dismiss Appeal upon the
Appellant Meridian Security Insurance Company by mailing same via E-mail addressed to
counsel of record

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October 4, 2021
Charleston, South Carolina



The South Carolina Court of Appeals

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October 07, 2021

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Re: Francine Steineman v. Meridian Security Insurance Company
Appellate Case No. 2021-001009

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with

the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Francine Steineman, Respondent,

v.

Eric Steineman, Sarah Smith, and Charles Griffin, Defendants,

And Meridian Security Insurance Company, Appellant.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine J. Fanning, deputy". The signature is written in a cursive style.

CLERK

cc: Stephen Glenn Vicari, II, Esquire
Bert Glenn Utsey, III, Esquire
Trevor A. Cangelosi, Esquire

The South Carolina Court of Appeals

Francine Steineman, Respondent,

v.

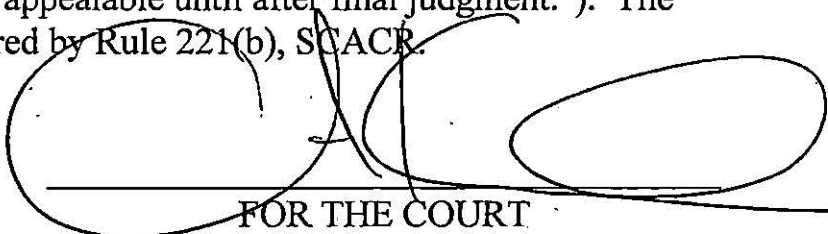
Eric Steineman, Sarah Smith, and Charles Griffin,
Defendants,

And Meridian Security Insurance Company, Appellant.

Appellate Case No. 2021-001009

ORDER

After careful consideration, Respondent's motion to dismiss is granted. *See Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 428 S.C. 261, 266, 834 S.E.2d 204, 206 (Ct. App. 2019), *cert. granted* (June 16, 2020), *aff'd as modified*, 432 S.C. 633, 856 S.E.2d 150 (2021) ("[T]he denial of a motion to set aside an entry of default is not appealable until after final judgment."). The remittitur will be sent as required by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

FILED
Nov 10 2021

cc:

Ioannis (Ian) George Conits, Esquire
T. David Rheney, Esquire
Stephen Glenn Vicari, II, Esquire
Bert Glenn Utsey, III, Esquire
Trevor A. Cangelosi, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02219
Appellate Case No. 2021-001009

Francine Steineman.....Respondent.

v.

Eric Steineman, Sarah Smith, and Charles Griffin.....Defendants.

And Meridian Security Insurance Company, ...Appellant.

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Appellant Meridian Security Insurance Company (Appellant) petitions this Court to rehear its Order filed November 10, 2021, which granted Respondent Francine Steineman’s (Respondent) motion to dismiss this appeal.

In opposing Respondent’s motion to dismiss, Appellant raised numerous matters which appear to have been overlooked or misapprehended by the Court in dismissing this appeal. Appellant does not dispute that when considered in a vacuum “[t]he denial of a motion to set aside an entry of default is not appealable until after final judgment.” *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 428 S.C. 261, 266, 834 S.E.2d 204, 206 (Ct. App. 2019, *cert granted* (June 16, 2020), *aff’d as modified*, 432 S.C. 633, 856 S.E.2d 150 (2021)). Importantly, Appellant

did not file its notice of appeal merely due to the trial court's denial of its motion to set aside entries of default against Defendant Sarah Smith (Defendant Smith) and Defendant Charles Griffin (Defendant Griffin). Rather, as detailed below, Appellant, in consideration of the totality of the facts and circumstances of this specific case, filed its notice of appeal pursuant to all applicable South Carolina law, which plainly provides that each of the trial court orders appealed are immediately appealable.

FACTS

This matter arises out of an automobile accident that occurred on or about January 22, 2018, on Highway 160 at the intersection of Highway 160 and Textile Way in Fort Mill, York County, South Carolina. At that time, Respondent was traveling as a passenger in a motor vehicle being operated by her husband, Eric Steineman (Defendant Steineman). Defendant Steineman attempted to make a left turn onto Textile Way, requiring his vehicle to cross the lanes of traffic traveling the opposite direction. Respondent alleges that Defendant Smith or Defendant Griffin was operating a vehicle that was approaching the intersection from the opposite direction on Highway 160 in the outside lane. As Defendant Steineman attempted to complete his left turn, the Steineman vehicle was impacted on the passenger's side by the vehicle operated by either Defendant Smith or Defendant Griffin.

PROCEDURAL HISTORY

On July 28, 2020, Respondent filed a summons and complaint against Defendant Steineman and Defendant Smith (the Original Summons and Complaint).

On November 30, 2020, Respondent filed an amended summons and complaint (the Amended Summons and Complaint) to add Defendant Griffin and amend the action to include claims against Defendant Griffin.

On December 5, 2020, Respondent purportedly served Defendant Smith with the Amended Summons and Complaint. On December 29, 2020, Respondent purportedly served Defendant Griffin with the Amended Summons and Complaint.

On December 16, 2020, the South Carolina Department of Insurance accepted service of the Amended Summons and Complaint, Interrogatories, Requests for Production, and Requests for Admission on behalf of Appellant as the alleged uninsured motorist carrier. **See Exhibit A.** The Department of Insurance's letter forwarding the same and providing notice to Appellant is dated December 17, 2020. **See Exhibit A.** However, Appellant did not actually receive the Department of Insurance's December 17, 2020, letter until February 3, 2021. **See Exhibit A.** Based on the tracking information, the letter departed from a USPS Regional Facility on January 27, 2021 and was "in transit" to the final postal facility on Saturday, January 30, 2021. It was picked up at a postal facility on February 3, 2021, the following Monday.

On March 1, 2021, less than thirty days after receipt of the Amended Summons and Complaint by Appellant, Respondent filed her Motion for Default as to Defendants Smith and Griffin.

On March 5, 2021, thirty days after receipt of the Amended Summons and Complaint by Appellant, the undersigned, on behalf of Appellant as the alleged uninsured motorist carrier, filed a notice of appearance and a Motion for Relief from Default or, in the Alternative, to File Late Answers. **See Exhibit B.** Later that same day, Respondent filed a motion to strike Appellant's notice of appearance as untimely.

On March 8, 2021, three days after Appellant appeared and filed the March 5, 2021 motion, the trial court entered an Order of Default as to Defendants Smith and Griffin (**see Exhibit**

C), which did not rule on Appellant’s Motion for Relief from Default and also incorrectly found that “[Appellant] has not in any way made an appearance in this matter.” Exhibit C, p. 2.

On March 11, 2021, Appellant filed its Motion to Alter or Amend the March 8, 2021 Order pursuant to Rules 52(b) and 59(e), SCRCP (*see Exhibit D*), seeking, in part, for the trial court to alter or amend its March 8, 2021 Order to allow the trial court to (a) rule on Meridian’s March 5, 2021 Motion for Relief from Default and (b) amend the incorrect finding that “[Appellant] has not in any way made an appearance in this matter.”

On May 12, 2021, an in-person hearing was held on Appellant’s Motion to Alter or Amend the March 8, 2021 Order.

On June 10, 2021, the trial court issued a Form 4 Order from the May 12, 2021 hearing (*see Exhibit E*), which provided:

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After careful consideration:

Meridian Security Company’s Motion for Relief From Default is DENIED.

Meridian Security Company’s Motion to Alter or Amend Order of Default is DENIED.

On June 21, 2021, Appellant filed a motion for reconsideration and/or clarification of the June 10, 2021 Order (Appellant’s Motion to Reconsider and/or Clarify the June 10, 2021 Order). *See Exhibit F*. An in-person hearing was scheduled for July 28, 2021 to address said motion.

On July 26, 2021, two days prior to the hearing on Appellant’s Motion to Reconsider and/or Clarify the June 10, 2021 Order, Respondent filed a Motion for Default as to Appellant.

On July 28, 2021, an in-person hearing was held on Appellant’s Motion to Reconsider the June 10, 2021 Order. Respondent’s Motion for Default as to Appellant was not addressed at this hearing.

On July 29, 2021, just three days after Respondent filed a Motion for Default as to Appellant and without having heard from Appellant on said motion, the Court entered an Order of Default as to Appellant.

On August 6, 2021, Appellant filed a Motion to Reconsider the Order of Default as to Appellant. A virtual hearing was scheduled for August 24, 2021.

Later that same day, the Court issued a Form 4 Order, which denied Appellant's Motion to Reconsider and/or Clarify the June 10, 2021 Order (the Final Judgment), directed Respondent's counsel submit a proposed formal order for the trial court's review, and ended the case. *See Exhibit G.*

On August 13, 2021, the trial court issued the formal order (the Formal Final Judgment). *See Exhibit H.*

On August 24, 2021, a virtual hearing was held on Appellant's Motion to Reconsider the Order of Default as to Appellant.

On August 27, 2021, the trial court issued a Form 4 Order granting Appellant's Motion to Reconsider the Order of Default as to Appellant and denying Respondent's Motion for Order of Default as to Appellant.

On September 10, 2021, Appellant timely¹ served its Notice of Appeal (the Appeal), which appeals the Orders the Honorable Daniel D. Hall on March 8, 2021, June 10, 2021, August 6, 2021, and August 13, 2021 (collectively, the Appealed Orders).

On September 20, 2021, Respondent filed a Motion to Dismiss this appeal (the Motion). *See Exhibit I.*

¹ "When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order of judgment." Rule 203(b)(1), South Carolina Appellate Court Rules.

On September 30, 2021, Appellant filed a Return to the Motion (the Return). **See Exhibit**

J.

On October 4, 2021, Respondent filed a Reply to the Return (the Reply). **See Exhibit K.**

On November 10, 2021, this Court filed the Order. **See Exhibit L.**

ARGUMENT

In dismissing this appeal, the Court’s Order relies solely on *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 428 S.C. 261, 266, 834 S.E.2d 204, 206 (Ct. App. 2019, *cert granted* (June 16, 2020), *aff’d as modified*, 432 S.C. 633, 856 S.E.2d 150 (2021) (“[T]he denial of a motion to set aside an entry of default is not appealable until after final judgment”). But Appellant is not merely appealing the denial of a motion to set aside an entry of default. Rather, this appeal stems from two separate immediately appealable grounds: (a) a final judgment has been entered by the trial court and (b) the trial court has held that Appellant cannot appear and defend this action in the name of Defendant Smith or Griffin.

A. The trial court entered a final judgment.

As noted above, *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 428 S.C. 261, 266, 834 S.E.2d 204, 206 (Ct. App. 2019, *cert granted* (June 16, 2020), *aff’d as modified*, 432 S.C. 633, 856 S.E.2d 150 (2021) provides that “[t]he denial of a motion to set aside an entry of default is not appealable until after **final judgment**.” *Palmetto Constr. Grp., LLC* at 266 (emphasis added). Importantly, the Final Judgment entered by the trial court plainly provides that it **ends** the case:

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After careful consideration, Meiridan Security Insurance Company’s Motion for Reconsideration is DENIED.

However, The Court directs Plaintiff’s attorney to submit a proposed formal order for review by opposing counsel and the Court. The Court will then issue a written formal order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

“A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution.” *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017). In addition to ending the action, the Final Judgment, as formalized by the Formal Final Judgment, does not reserve an issue, or leave open any possibility of further action. Accordingly, the Final Judgment, as formalized by the Formal Final Judgment, is a final judgment, not an interlocutory order.

B. Even if the trial court had not entered a final judgment (which it did), the Appealed Orders are still immediately appealable.

The trial court’s holding that Appellant cannot appear and defend in this action in the name of Defendant Smith or Griffin is immediately appealable. Also, because said holding is immediately appealable, all other holdings by the trial court not otherwise immediately appealable may also be reviewed by this Court.

1. The trial court’s holding that Appellant cannot defend this action is immediately appealable.

Even if the Final Judgment, as formalized by the Formal Final Judgment, did not end the case (which it does), the trial court held in the Formal Final Judgment that “[Appellant] cannot defend this action in the name of Defendant Smith or Defendant Griffin.” Exhibit H, p. 14. Such a holding is immediately appealable pursuant to S.C. Code § 14-3-330(2), which provides, in part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

...

(2) **An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action,** (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action

....

(emphasis added).

The trial court's holding that Appellant cannot defend this action in the name of Defendant Smith or Defendant Griffin affects a substantial right of Appellant. S.C. Code § 38-77-150 states, in part:

No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. **The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it which to appear.**

(emphasis added).

This Court interprets the above-quoted language of S.C. Code § 38-77-150 as identical to the language of the underinsured motorist statute, S.C. Code § 38-77-160, except that the word “underinsured” is substituted for “uninsured.” *Franklin v. Devore*, 327 S.C. 418, 423 (Ct. App. 1997). Consequently, this Court has affirmed that a “UIM [and UM] carrier **always has the right** to ‘appear and defend in the name of the underinsured [or uninsured] in any action which may affect its liability’”. *Ex parte Allstate Ins. Co.*, 339 S.C. 202, 206, 528 S.E.2d 679, 681 (Ct. App. 2000) (emphasis added).

The trial court's holding that Appellant cannot defend this action deprives Appellant of a substantial right it “always has”, which is its statutory right to appear and defend in the name of an uninsured motorist in any action which may affect its liability.

Further, this Court has previously determined that an order which “could determine the action and prevent a judgment from which an appeal might be taken” is immediately appealable. *Hagood v. Sommerville*, 362 S.C. 191, 198, 607 S.E.2d 707, 710 (2005). In *Hagood*, the Supreme Court determined that an order disqualifying a party's attorney is immediately appealable as it

affects a party's substantial right to choose counsel and could effectively determine the case as it bears upon the attorney/client relationship. *Id.* 197-198.

Here, the trial court's holding, which disqualifies Appellant from defending in this action, would almost certainly determine the result of any future damages hearing in this action.² A defaulting party may "cross-examin[e] witnesses and [object] to evidence" at a damages hearing. *Roche v. Young Bros., of Florence*, 332 S.C. 75, 81–82, 504 S.E.2d 311, 314 (1998). Because of the trial court's holding, Appellant's attorneys would be prohibited from doing either at a future damages hearing.

The *Hagood* court also held that "an appeal after final judgment and a new trial, if granted, would not adequately protect a party's interests because it would be difficult or impossible for the affected party or the appellate court to ascertain by any objective standard whether prejudice resulted from the disqualification." *Id.* at 198. Here, even if Respondent had sought a damages hearing before the case was ended by the trial court (which she did not), an appeal after the entry of the trial court's order from said hearing would not adequately protect Defendant Smith, Defendant Griffin, and/or Appellant's interests as it would almost certainly be impossible, or at the very least difficult, for this Court to ascertain by any objective standard whether prejudice resulted from the trial court disallowing Appellant to appear and defend.

2. Because the trial court's holding that Appellant cannot defend this action is immediately appealable, all other holdings not otherwise immediately appealable may also be reviewed.

For the reasons set forth in Section B.1. above, the trial court's holding that Appellant cannot defend the trial court action in the name of Defendant Smith or Griffin is immediately appealable. Crucially, "an order that is not directly appealable may be considered if there is an

² Respondent did not request a damages hearing prior to the action being ended by the trial court.

appealable issue before the court.” *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005); *see Briggs v. Richardson*, 273 S.C. 376, 379, 256 S.E.2d 544, 546 n.1 (1979). Accordingly, because the court’s ruling that Appellant cannot appear and defend the trial court action is immediately appealable, the Court may consider all other issues presented in the Appealed Orders, including the Court’s decision to deny Appellant’s motion to set aside the entries of default against Defendants Smith and Griffin.

CONCLUSION

Based on the foregoing, Appellant requests this Court rehear its Order granting Respondent’s motion to dismiss and allow this appeal to proceed.

[signature page follows]

Date: November 16, 2021

s/Ioannis (Ian) G. Conits

T. David Rheney, SC Bar #13148
Ioannis (Ian) G. Conits, SC Bar #102675
GALLIVAN, WHITE & BOYD, P.A.
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Insurance Company**

Other Counsel of Record:

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lonnie@cangelosilawfirm.com
Attorneys for Eric Steineman

EXHIBIT A



FAQs >

Track Another Package +

Tracking Number: 9489009000276032627747

Remove X

Your item was picked up at a postal facility at 5:55 am on February 3, 2021 in COLUMBUS, OH 43216.

Delivered, Individual Picked Up at Postal Facility

February 3, 2021 at 5:55 am
COLUMBUS, OH 43216

Feedback

Text & Email Updates



Tracking History



February 3, 2021, 5:55 am

Delivered, Individual Picked Up at Postal Facility
COLUMBUS, OH 43216

Your item was picked up at a postal facility at 5:55 am on February 3, 2021 in COLUMBUS, OH 43216.

January 30, 2021

In Transit to Next Facility

January 27, 2021, 4:30 pm

Departed USPS Regional Facility
COLUMBUS OH DISTRIBUTION CENTER

ELECTRONICALLY FILED - 2021 May 03 2:48 PM - YORK - COMMON PLEAS - CASE#2020CP4602219

January 19, 2021, 8:07 pm

Arrived at USPS Regional Facility

COLUMBUS OH DISTRIBUTION CENTER

January 15, 2021, 11:33 pm

Departed USPS Regional Facility

COLUMBUS OH DISTRIBUTION CENTER

January 15, 2021, 10:48 am

Arrived at USPS Regional Facility

COLUMBUS OH DISTRIBUTION CENTER

January 13, 2021, 11:56 am

Departed USPS Regional Facility

COLUMBUS OH DISTRIBUTION CENTER

December 20, 2020, 8:31 pm

Arrived at USPS Regional Facility

COLUMBUS OH DISTRIBUTION CENTER

December 17, 2020, 10:36 pm

Arrived at USPS Regional Facility

COLUMBIA SC PROCESSING CENTER

Feedback

Product Information



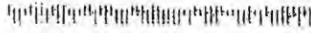
See Less ^

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Go to our FAQs section to find answers to your tracking questions.

FAQs

STATE OF
DEPARTMENT
P.O. BOX 100105
COLUMBIA, S.C. 29202-3105



Post Net Int'l. Oct. 2015
Postage



U.S. POSTAGE
ZIP 29201
02 4M
\$ 00
0000345957 DEC

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

STATE AUTO INSURANCE

FEB 03 2021

P-#3

SERVICE OF PROCESS

MERIDIAN SECURITY INSURANCE COMPANY
518 East Broad Street
Columbus, OH 43215

State Auto CHQ

2/3/2021 8:21:32 AM

Carrier: USPS Certified
Sender:
Dest: Office Services
Building: PavLL
MailStop:
EUID: GIR1967



ELECTRONICALLY FILED - 2021 May 03 2:48 PM - YORK - COMMON PLEAS - CASE#2020CP4602219

**South Carolina
Department of Insurance**

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

HENRY McMASTER
Governor

RAYMOND G. FARMER
Director

Mailing Address:
P.O. Box 140105, Columbia, S.C. 29202-3105

December 17, 2020

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
MERIDIAN SECURITY INSURANCE COMPANY
518 East Broad Street
Columbus, OH 43215

Dear Sir:

On December 16, 2020, I accepted service of the attached Summons, Complaint, Interrogatories, Request for Production and Request for Admissions on your behalf. I am, hereby, forwarding that accepted process on to you pursuant to the provisions of S.C. Code Ann. § 38-5-70. By forwarding accepted process on to you, I am meeting a ministerial duty imposed upon me by S.C. Code Ann. § 38-77-150. I am not a party to this case. The State of South Carolina Department of Insurance is not a party to this case. It is important for you to realize that service was effected upon your insurer on my date of acceptance for service.

You must promptly acknowledge in writing your receipt of this accepted process to sdubois@doi.sc.gov. When replying, please refer to File Number 181807, Francine Steineman v. Eric Steineman et al., 2020-CP-46-02219.

By

Sincerely Yours,


Gwendolyn L. Fuller
General Counsel
(803)737-6732

Raymond G. Farmer
Director
State of South Carolina
Department of Insurance

Attachment

CC: Stephen G. Vicar II
Post Office Box 6787
Columbia, SC 29260

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles Griffin,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-

AMENDED SUMMONS
(Jury Trial Demand)

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said complaint on the subscribed, Stewart Law Offices, LLC., 10 Calendar Court, Suite 100, Columbia, South Carolina 29206, within THIRTY (30) days after the service hereof, exclusive of the date of such service. If you fail to answer the complaint within the time aforesaid, then a default judgment will be rendered against you for the relief demanded in the complaint.

Respectfully Submitted,

Stewart Law Offices, LLC

s/Stephen G. Vicari, II
Stephen G. Vicari, II (S.C. Bar No. 102395)
10 Calendar Court, Suite 100
Post Office Box 6787 (29260)
Columbia, SC 29206
803-743-4200 (o)
803-743-4204 (f)
stephen@stewartlawoffices.net
Attorney for Plaintiff

Columbia, South Carolina
November 30, 2020

ELECTRONICALLY FILED - 2020 Nov 30 9:54 AM - YORK - COMMON PLEAS - CASE#2020CP4602219

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Eric Steineman Sarah Smith, and Charles Griffin,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-

AMENDED COMPLAINT
(Jury Trial Demand)

The Plaintiff would respectfully show this Honorable Court that:

JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of York County, South Carolina.
2. Defendant Eric Steineman is a citizen and resident of York County, South Carolina.
3. Defendant Sarah Smith is a citizen and resident of Mecklenburg County, North Carolina.
4. Defendant Charles Griffin is a citizen and resident of Mecklenburg County, North Carolina.
5. The car crash giving rise to this Complaint occurred in York County, South Carolina.
6. Jurisdiction and venue are proper over the Defendant.

FACTS

7. On January 22, 2018, Defendant Smith was permissively operating a vehicle owned by Defendant Griffin, traveling west on Highway 160 in Fort Mill, SC, near Kingsley Park Drive and Textile Way, headed toward I 77.

8. At the same time, Defendant Griffin was operating his vehicle, traveling west on Highway 160 in Fort Mill, SC, near Kingsley Park Drive and Textile Way, headed toward I 77.

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9. At the same time, Defendant Steineman was operating his vehicle, traveling east on Highway 160 in Fort Mill, SC, in the inside lane, headed away from I 77.

10. Highway 160 is a five-lane road with two lanes of traffic traveling east, away from I 77, and three lanes traveling west, toward I 77.

11. Defendant Smith or Defendant Griffin was traveling west, toward I 77, in the far outside lane.

12. Francine was a passenger in the car operated by Defendant Steineman.

13. Around 5:40 p.m., Defendant Steineman attempted to make a left turn, across the three lanes of traffic, onto Textile Way.

14. At this time, traffic headed west on Highway 160 was heavy, and the traffic in the inside and middle lane was at a complete stop.

15. Defendant Steineman attempted to make the left turn, but Defendant Smith or Defendant Griffin was traveling in the outside lane at over thirty-five miles an hour.

16. Defendant Smith or Defendant Griffin violently collided into the passenger side of Defendant Steineman's vehicle, where Francine was seated.

17. The collision was so catastrophic, Francine's car was pushed sideways across Textile Way.

18. As a result of the collision, Plaintiff sustained serious and permanent injuries.

19. Defendants are jointly and severally responsible for the damages Plaintiff incurred.

20. These injuries have caused Plaintiff to spend significant sums of money for the services of doctors and medical professionals, under whose care she has been, and for medical treatment and care. Plaintiff likewise may be compelled to spend significant sums of money in the future for the services of doctors and medical professionals and for medical treatment and care.

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21. Plaintiff's injuries have caused and will continue to cause her to suffer and endure considerable pain and discomfort and have caused her to lose the enjoyment of her life.

FOR A FIRST CAUSE OF ACTION

(Negligence)

22. Plaintiff restates and realleges each and every allegation as if repeated herein verbatim.

23. Defendants had a duty to operate its vehicles in a reasonable manner and to comply with the rules governing the operation of vehicles on South Carolina roadways.

24. Defendants were negligent, careless, reckless, grossly negligent, willful and wanton in the following particulars:

- a. In failing to maintain proper look out;
- b. In failing to maintain proper control of his vehicle;
- c. In failing to apply his brakes or to maintain the same;
- d. In failing to take evasive action to avoid the accident;
- e. In being inattentive;
- f. In failing to exercise the degree of care which a reasonable prudent person would have exercised under the same circumstances;
- g. In colliding with another vehicle;
- h. In driving too fast for conditions; and
- i. In any other manners as may be ascertained during discovery or trial of this case.

25. Defendants' negligence directly and proximately caused the injuries and damages suffered by the Plaintiff.

26. Defendants are jointly and severally responsible for the damages Plaintiff incurred.

FOR A SECOND CAUSE OF ACTION(Negligence Per Se as to Defendant Smith or Defendant Griffin)

27. Plaintiff restates and realleges each and every cause of action as if repeated herein verbatim.

28. Defendant failed to comply with state laws, rules, regulations, and guidelines designed to protect the health and safety of Plaintiff and all persons traveling on the highway.

29. Defendant was negligent per se in violating the following statutes and regulations:

- a. S.C. Code Ann. § 56-5-1520 which relates to driving too fast for conditions;
- b. S.C. Code Ann. § 56-5-3890 which relates to use of a wireless electronic communication device while operating a motor vehicle; and
- c. any other regulations which were violated as ascertained during the course of discovery.

30. These laws prescribe certain actions and define certain standards of conduct. Plaintiff is in the class of persons sought to be protected by these laws. Plaintiff's injuries represent the type of harm the regulations were intended to prevent. Defendants' conduct violated these regulations, and such conduct constitutes negligence per se.

JURY DEMAND

31. Plaintiff demands all causes of action that may be tried before a jury be so tried.

WHEREFORE, Plaintiff prays for judgment against Defendants in a sum sufficient to adequately compensate her for actual damages, punitive damages, the costs of this action, and any relief a jury may award, and for such other and further relief as this court may deem just and proper.

DEFENDANTS AND THEIR ATTORNEYS ARE HEREBY NOTIFIED THAT PLAINTIFF HAS SERVED INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSIONS WITH THE SUMMONS AND COMPLAINT. AS

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REQUIRED BY RULES 33(A) & 34(B), SCRPC. RESPONSES TO THESE DISCOVERY REQUESTS ARE DUE WITHIN 45 DAYS OF SERVICE. IF DEFENSE COUNSEL LACKS COPIES OF ANY DISCOVERY REQUEST, HE/SHE IS ADVISED TO CONTACT PLAINTIFF'S COUNSEL IMMEDIATELY TO OBTAIN COPIES.

Respectfully Submitted,

Stewart Law Offices, LLC

s/Stephen G. Vicari, II
Stephen G. Vicari, II (S.C. Bar No. 102395)
10 Calendar Court, Suite 100
Post Office Box 6787 (29260)
Columbia, SC 29206
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Attorney for Plaintiff

Columbia, South Carolina
November 30, 2020

ELECTRONICALLY FILED - 2020 Nov 30 8:54 AM - YORK - COMMON PLEAS - CASE#2020CP4602219

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles
Griffin,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-02219

PLAINTIFF'S REQUESTS FOR
ADMISSIONS TO DEFENDANT
CHARLES GRIFFIN

TO: DEFENDANT CHARLES GRIFFIN:

As authorized by Rule 36, SCRCP, Plaintiff, by and through undersigned counsel, submit the following statements to Defendants for the purpose of determining the truth of such statements.

REQUESTED ADMISSIONS

1. Admit that on January 22, 2018, the vehicle Defendant Griffin was operating collided into the vehicle operated by Defendant Steineman and occupied by Plaintiff.
2. Admit that on January 22, 2018, just before the collision with described above, Defendant Griffin was traveling at a higher rate of speed than she should have been.
3. Admit Defendant Griffin is responsible for causing the collision that occurred on January 22, 2018, described above.
4. Admit the injuries Plaintiff sustained in the January 22, 2018 collision alleged in the Complaint were the direct result of Defendant Griffin's negligence.
5. As a direct result of the collision alleged in Plaintiff's Complaint, she suffered over \$2,000,000.00 in damages.

Respectfully Submitted,

Stewart Law Offices, LLC



Stephen C. Vicari, II (S.C. Bar No. 102395)
10 Calendar Court, Suite 100
Post Office Box 6787 (29260)
Columbia, SC 29206
803-743-4200 (o)
803-743-4204 (f)
stephen@stewartlawoffices.net
Attorney for Plaintiff

Columbia, South Carolina
November 30, 2020

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Eric Steineman, Sarah Smith, and Charles
Griffin,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-02219

PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO
DEFENDANT'S

TO: DEFENDANTS NAMED ABOVE:

As authorized by Rule 33, SCRPC, Plaintiff requests Defendant answer the following interrogatories and—within thirty (30) days of service or forty-five (45) days of service of the summons and complaint, whichever is longer—serve a copy of the answers to the undersigned.

INSTRUCTIONS

(A) Every interrogatory herein shall be deemed a continuing interrogatory, and you are to supplement your answers promptly, if and when you obtain relevant information in addition to, or in any way inconsistent with, your initial answer to any such interrogatory, in accordance with Rule 26 (e) of the South Carolina Rules of Civil Procedure.

(B) Should privilege be claimed with regard to any information requested herein, the answer must in each instance state specifically the information sought, the privilege claimed, and the ground on which the claim of such privilege is based. Should Defendant be unable for reasons other than privilege to provide any information requested herein, the answer must in each such instance indicate specifically the information sought, the reason such information is presently unavailable, and an estimate of the time within which such information will be presented to the undersigned.