THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2022-000286

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Apr 21 2022

S.C. SUPREME COURT

Francine Steineman, ……..……..……...…….Respondent.

v.

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

And Meridian Security Insurance Company, ……...…….Petitioner.

PETITIONER'S REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI

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Petitioner Meridian Security Insurance Company, an alleged uninsured motorist carrier (Petitioner), submits this Reply to Respondent Francine Steineman's (Respondent) Return to Petition for Writ of Certiorari.

I. THE CIRCUIT COURT'S RULING THAT PETITIONER CANNOT DEFEND THIS ACTION ON BEHALF OF DEFENDANT SMITH OR GRIFFIN, INCLUDING, BUT NOT LIMITED TO, AT A FUTURE DAMAGES HEARING, IS IMMEDIATELY APPEALABLE.

As noted in the petition, in *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), this Court determined that an order disqualifying an attorney is immediately appealable. In her Return, Respondent argues *Hagood* "does not apply here." However, in doing so, Respondent actually confirms the opposite:

> [Petitioner's] attorney was not disqualified. Rather the Circuit Court simply found Petitioner failed to comply with the statutory requirements that it must satisfy **to exercise the right to appear and defend this action**.

Return, p. 6.

The term "disqualification" is defined as "[s]omething that incapacitates, disables, or makes one ineligible." Black's Law Dictionary (11th ed. 2019). To be sure, the circuit court's order in this case disables undersigned counsel from appearing and defending any part of the action. Accordingly, such a holding, which "*could* determine the action and prevent a judgment from which an appeal might be taken," *Id*., 362 S.C. at 198,[1] is immediately appealable pursuant to *Hagood*.

Respondent also contends Petitioner does not have a substantial right at issue. South Carolina law, however, provides otherwise. 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

[1] Petitioner would be barred from defending the case going forward, including, but not limited to, at a future damages hearing.

> 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, the above-quoted language of S.C. Code § 38-77-150 has been interpreted 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, it has been affirmed in South Carolina that "the intent of § 38–77–1[5]0 is to protect an insurance carrier's right to contest its liability for [un]insured benefits, *Williams v. Selective Ins. Co. of Se.*, 315 S.C. 532, 534, 446 S.E.2d 402, 404 (1994), and that a "[UM] carrier **always has the right** to 'appear and defend in the name of the [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). Respondent's contention that a right Petitioner "always has" is not substantial is facially meritless and would be at odds with the intent of S.C. Code § 38-77-150 as stated by this Court.

Also, as part of her flawed argument that the right to appear and defend is not substantial, Respondent incorrectly limits Rule 55 of the South Carolina Rules of Civil Procedure's application to parties only. Such an interpretation contradicts the plain language of Rule 55(b)(2):

> If the party against whom judgment by default is sought has appeared in the action, the party **(or, if appearing by representative, the party's representative)** shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application.

(emphasis added).

Undersigned counsel has appeared in this action to defend on behalf of Defendants Smith and Griffin. *See* Appx. pp. 175-176. Thus, undersigned counsel, as Defendants Smith and

Griffin's representative(s), is, at the very least, entitled, pursuant to Rule 55(b)(2) and *Roche v. Young Bros., of Florence*, 332 S.C. 75, 81–82, 504 S.E.2d 311, 314 (1998)("[a] defaulting party [is] entitled to notice of the damages hearing" and may "cross-examin[e] witnesses and [object] to evidence" at such hearing"), to defend this action at a future damages hearing. The circuit court's ruling improperly disables undersigned counsel doing so and therefore cannot stand.

II. AN ORDER WHICH ENDS THE CASE IS IMMEDIATELY APPEALABLE.

After arguing at length that an order which "ends the case" does not end the case, Respondent briefly contemplates the scenario in which an order which "ends the case" does, in fact, end the case before ultimately concluding that the pertinent August 6, 2021 Form 4 order was a "mistake" that should be brushed under the rug. Even if said order was a mistake, it is now a mistake that has gone unchallenged for **more than eight months** and remains uncorrected as of the date of this filing. Accordingly, a final order still exists in this case and should not be ignored in determining whether the petition is properly before this Court.

III. THE APPEAL WAS TIMELY.

Respondent also contends the notice of appeal was not served timely. This is wrong.

A. Petitioner timely appealed the circuit court's final order.

On August 6, 2021, the trial court entered a Form 4 Order, which, in addition to ending the case, directed Respondent's counsel to prepare a formal order for the Court's review. Said order was formalized by the order 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 order was entered, Petitioner timely served its notice of appeal.

B. Even if the circuit court had not entered an order which "ends the case" (which it did), the appeal was still timely.

In the August 13, 2021 order, the circuit court held for the first time that "[Petitioner] cannot defend in this action in the name of Defendant Smith or Defendant Griffin." *See* Appx. p. 209. This holding raises a new issue, namely whether the circuit court can bar undersigned counsel from appearing and defending any part of this action, including, but not limited to, a future damages hearing. As detailed in the petition and herein, the circuit court's novel August 13, 2021 holding as to undersigned counsel's right to appear and defend is immediately appealable pursuant to S.C. Code § 14-3-330(2). Consequently, within thirty days of written notice of such holding, the notice of appeal was served pursuant to Rule 203(b)(1) of the South Carolina Appellate Court Rules.

CONCLUSION

For the reasons stated in its Petition and herein, Petitioner asks this Court to grant the petition for a writ of certiorari.

Date: April 21, 2022

s/Ioannis (Ian) G. Conits

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