

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2011-CP-10-4867

Permanent General Assurance CompanyRespondent,

v.

Karen D. Givens, Individually and as Personal

Representative of the Estate of E. Cierra

Givens, and Kayla Givens.....Appellants.

INITIAL REPLY BRIEF OF APPELLANTS

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ATTORNEYS FOR APPELLANTS

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SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities ii

Arguments:

1. THE LOWER COURT ERRED IN GRANTING SUMMARY
JUDGMENT TO RESPONDENT BECAUSE THE PARTIES'
CONTRACT OF INSURANCE, WHEN READ IN HARMONY
WITH S.C. CODE ANN. §56-10-280, LEADS TO THE
INELUCTABLE CONCLUSION THAT RESPONDENT
MUST PROVIDE APPELLANT'S BUICK CENTURY
WITH A MINIMUM OF 30 DAYS OF LIABILITY
INSURANCE COVERAGE..... 1

Conclusion 5

TABLE OF AUTHORITIES

CASES

Smith v South Carolina Insurance Company, 350 S.C. 82, 564 S.E.2d 358
(S.C. App. 2002) 1, 2

STATUTES

S.C. Code Ann. § 56-9-10 et seq. (Supp. 2011) 2, 3, 5
S.C. Code Ann. § 56-10-280 (Supp. 2011) 1, 2, 3, 4, 5

OTHER AUTHORITIES

Maybank, Jedziniak, Fuller, Sumwalt, Moise, Covington and Gray,
“*The Law of Automobile Insurance*” (4th Ed. 2000), Section 1-130(A)..... 2

ARGUMENT

I. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT TO RESPONDENT BECAUSE THE PARTIES' CONTRACT OF INSURANCE, WHEN READ IN HARMONY WITH S.C. CODE ANN. §56-10-280, LEADS TO THE INELUCTABLE CONCLUSION THAT RESPONDENT MUST PROVIDE APPELLANT'S BUICK CENTURY WITH A MINIMUM OF 30 DAYS OF LIABILITY INSURANCE COVERAGE.

Respondent, Permanent General, mailed a Notice of Cancellation to Karen Givens on February 25, 2011 – the very day that it agreed to insure her Buick Century on the same policy. Respondent, in agreeing to insure the Buick on February 25, 2011, had to know the possibility existed that the statutory thirty (30) day minimum liability insurance requirement might be violated.

Respondents cite the case of Smith v South Carolina Insurance Company, 350 S.C. 82, 564 S.E.2d 358 (S.C. App. 2002) to support its decision to deny liability coverage in this case. The Smith case doesn't apply here because Smith involves an interpretation of S. C. Code Ann. § 38-77-350(C). That statute pertains to underinsured motorist coverage, which is an issue that is not a part of this case.

This case involves the interpretation of S. C. Code Ann. § 56-10-280, a statute enacted well after the 2002 Smith case. The applicable statute mandates a minimum of thirty (30) days of liability insurance coverage on every automobile insurance policy. This court has set forth its "cardinal rules of statutory construction." Smith v South Carolina Insurance Company, at S.E. 2d 361. According to the rules, "[T]he Court is to ascertain and effectuate the actual intent of the legislature" "[W]ords used must be given plain and ordinary meaning" and "[T]he language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose." Id. At S.E.2d 361.

Applying these “cardinal rules” to the applicable statute leads to the ineluctable conclusion that liability insurance coverage is available on the Buick Century at the time of Enriqua Sierra Given’s death. In order to “ascertain and effect the actual intent of the legislature,” we must be cognizant of the policy behind The Motor Vehicle Financial Responsibility Act, S. C. Ann. § 56-9-10, et seq., which policy is “to provide a financially responsible defendant for every person injured in a motor vehicle accident.” Maybank, Jedziniak, Fuller, Sumwalt, Moise, Covington and Gray, “*The Law of Automobile Insurance*” (4th Ed. 2000), Section 1-130(A).

If the statute is read “in a sense which harmonizes with its subject matter and accord with its general purpose in a manner to provide liability coverage,” § 56-10-280 cannot be frustrated by the language of the contract of insurance. The contract of insurance must be read in a manner which is consistent with the statute. S.C. Code Ann. § 56-9-20 (5)(b)(6). The statute, § 56-10-280, states that the “contract or policy of insurance must remain in effect for at least thirty (30) days.” The “contract or policy of insurance” referred to in the statute can only mean one that covers vehicles listed within the policy. Respondent argues that the words “every vehicle” could have been written into the statute. But, what else could the terms “contract or policy of insurance” refer to, if not *every vehicle* insured under that contract or policy of insurance? To interpret the statute in the manner suggested by Permanent General obfuscates the meaning of the statute. Rather than having vehicles insured for a minimum of thirty (30) days, Respondent’s reading could easily result in vehicles being insured under existing policies for twenty (20) days, or ten (10) days, or even one (1) day. That could not be the intent of the legislature. It is not consistent with the policy behind the Motor Vehicle Financial Responsibility Act.

Permanent General should review its billing and collection policies in order to comply with the statute. It easily can, and should, collect the initial thirty (30) day premium for all vehicles before covering or binding coverage; just as it did with the appellant's Ford Taurus, the first vehicle on appellant's policy. This simple task would get Permanent General paid, and would give Permanent General the opportunity to have its contracts of insurance comply with the statute by affording at least 30 days minimum liability coverage to all vehicles that are initially or subsequently insured under that policy. Their contracts of insurance would then be in harmony with § 56-10-280 and would also satisfy the purpose of the Motor Vehicle Financial Responsibility Act.

Respondent claims that there should be no coverage because appellants never paid for liability coverage on the Buick. The fatal accident occurred on March 19, 2011. Appellants did not pay a premium for liability coverage on the Buick because appellants were never billed for a premium for liability coverage on the Buick. The first time appellants were billed for liability coverage on the Buick, as admitted in Respondent's brief, was on April 1, 2011- eleven days after the fatal accident. Appellants should have been billed at the time the coverage was bound, on February 25, 2011. If they had been billed then, Permanent General would have been in compliance with § 56-10-280 and Appellants would have had a minimum of 30 days coverage (This assumes appellants would have paid the premium at that time. But, if they had not paid then, they would not have been able to drive the Buick off of the seller's car lot). For appellants to wait to be invoiced for an insurance premium before paying is reasonable and prudent behavior. For appellants to not pay an insurance premium before it becomes due and payable is commonplace, and can be considered reasonable and prudent behavior.

If respondent is correct in claiming appellants seek to obtain coverage for which they never paid, it is because the respondent never sent appellants a bill representing the premium for the insurance coverage.

Appellants claim that being given a number of various dates as to when the initial insurance policy to terminate lead to their confusion as to when payment was actually due. Respondents claim that the latest of the different dates given by Permanent General for the payment prior to cancellation of the subject policy was March 16, 2011. This is incorrect. The insurance binder itself, which bound coverage on the Buick, states on its face an expiration date of March 24, 2011, well after the subject collision.

CONCLUSION

The Motor Vehicle Financial Responsibility Act was designed to provide insurance coverage to people injured in automobile collisions. A reasonable interpretation of § 56-10-280, reflecting the policy behind the Act, should be read to provide a thirty (30) day minimum coverage period for liability insurance contracts on vehicles insured under those policies. The respondent's contract of insurance should be read in a manner consistent with the statute. At fault here is the respondent's method of collecting premiums. Had respondent required payment for the binder on the Buick, then it would have given at least thirty (30) days of coverage. Instead, by allowing the Buick to be covered under the initial policy of insurance, the thirty (30) day coverage mandate is frustrated, and leads to situations such as this.

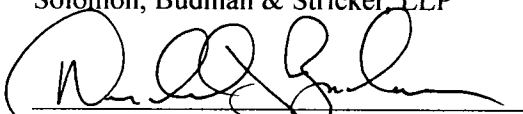
Therefore, this Court should determine that the lower court's grant of summary judgment to respondent was in error of law, and this court should grant summary judgment to the appellants, or alternatively find that there are genuine issues of material fact in dispute and which

need to be resolved. This would require a remand of this case back to the trial court for a trial on all disputed factual issues.

Respectfully Submitted,

May 13, 2013

Solomon, Budman & Stricker, LLP

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

By: Donald J. Budman

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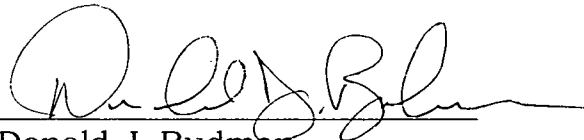
Karen D. Givens, Individually and as Personal
Representative of the Estate of E. Cierra
Givens, and Kayla Givens.....Appellants.

PROOF OF SERVICE

I certify that I have served a copy of the Appellants' Initial Reply Brief and Designation of Matter to be Included in the Record on Appeal on Permanent General Assurance Company by depositing a copy of it in the United States Mail, postage prepaid, on May 13, 2013, addressed to its counsel of record, as follows:

Adam J. Neil, Esq.
P.O. Box 6648
Columbia, SC 29260

May 13, 2013


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DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellants propose the following be included in the Record on Appeal:

1. Summons and Complaint filed July 11, 2011;
2. Probate Court Certificate of Appointment;
3. Amended Complaint filed August 4, 2011;
4. Answer and Counterclaim filed 18, 2011;
5. Answer to Counterclaim filed August 25, 2011;
6. Plaintiff's notice of motion and motion for summary judgment filed February 6, 2012;
7. Defendants' notice of motion and motion for summary judgment filed February 22, 2012;
8. Defendants' amended motion for summary judgment filed March 9, 2012;

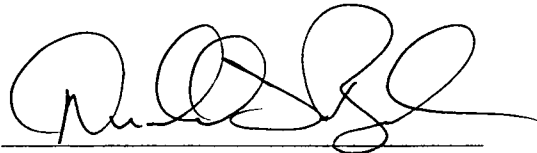
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9. Defendant's Memorandum in Support of Summary Judgment
10. Affidavit of Allison Garretson dated February 1, 2012;
11. Affidavit of Karen Givens dated February 20, 2012;
12. Application to Permanent General for Automobile Insurance from Karen Givens;
13. Permanent General Automobile Insurance Policy #SC7623245, with original policy declarations premium statements and coverages;
14. Policy Change Request (quote only 1432870);
15. Policy payment voucher dated 02-21-12
16. Policy Binder dated 02-21-2012;
17. Insurance I.D. cards from Policy #SC7623245 ;
18. Endorsement Policy Declarations dated 03-10-2012 with coverages and premiums;
19. Notice of Cancellation dated 02-25-2012
20. Order granting plaintiff summary judgment dated June 19, 2012;
21. Defendants' notice of motion and motion for reconsideration dated June 29, 2012;
22. Final order denying defendant's motion for reconsideration filed December 31, 2012;
23. Notice of appeal and certificate of service served January 29, 2013.

May 13, 2013



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ATTORNEY CERTIFICATION

I certify that this designation contains no matter which is irrelevant to this appeal.

May 13, 2013

A handwritten signature in black ink, appearing to read 'Donald J. Budman', written over a horizontal line.

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