

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Sabrina P. Davis — PETITIONER
(Your Name)

VS.

Bankers Life and — RESPONDENT(S)
Casualty Company

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

United States District Court Greenville SC

United States Court of Appeals 4th Circuit

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____, or _____

a copy of the order of appointment is appended.

Sabrina P. Davis
(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

I, Sabrina L. Davis, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>619</u>	\$ <u>NA</u>	\$ <u>619</u>	\$ <u>NA</u>
Self-employment	\$ <u>0</u>	\$ <u> </u>	\$ <u>0</u>	\$ <u> </u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u> </u>	\$ <u>0</u>	\$ <u> </u>
Interest and dividends	\$ <u>0</u>	\$ <u> </u>	\$ <u>0</u>	\$ <u> </u>
Gifts	\$ <u>0</u>	\$ <u> </u>	\$ <u>0</u>	\$ <u> </u>
Alimony	\$ <u>0</u>	\$ <u> </u>	\$ <u>0</u>	\$ <u> </u>
Child Support	\$ <u>0</u>	\$ <u> </u>	\$ <u>0</u>	\$ <u> </u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u> </u>	\$ <u>0</u>	\$ <u> </u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u> </u>	\$ <u>0</u>	\$ <u> </u>
Unemployment payments	\$ <u>0</u>	\$ <u> </u>	\$ <u>0</u>	\$ <u> </u>
Public-assistance (such as welfare)	\$ <u>242</u>	\$ <u> </u>	\$ <u>242</u>	\$ <u> </u>
Other (specify): _____	\$ <u>0</u>	\$ <u> </u>	\$ <u>0</u>	\$ <u> </u>
Total monthly income:	\$ <u>861</u>		\$ <u>861</u>	

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Maid Pro	345 Prada Way Greenville SC 29681	11-2021- 2-2023	\$ 2174
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NA			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 1.58
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Checking	\$.58	\$ NA
Saving	\$ 1.00	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value NA

Other real estate
Value NA

Motor Vehicle #1
Year, make & model
Value NA

Motor Vehicle #2
Year, make & model NA
Value

Other assets
Description NA
Value

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>NA</u>	\$ <u>NA</u>	\$ <u>NA</u>
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
<u>NA</u>	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>193</u>	\$ <u>NA</u>
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>114</u>	\$ _____
Home maintenance (repairs and upkeep)	\$ _____	\$ _____
Food	\$ <u>242</u>	\$ _____
Clothing	\$ <u>0</u>	\$ _____
Laundry and dry-cleaning	\$ <u>0</u>	\$ _____
Medical and dental expenses	\$ <u>0</u>	\$ _____

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 45	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ 24.79	\$ _____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0	\$ _____
Life	\$ 57.00	\$ _____
Health	\$ 0	\$ _____
Motor Vehicle	\$ 0	\$ _____
Other: _____	\$ 0	\$ _____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ 0	\$ _____
Installment payments		
Motor Vehicle	\$ 0	\$ _____
Credit card(s)	\$ 0	\$ _____
Department store(s)	\$ 0	\$ _____
Other: _____	\$ 0	\$ _____
Alimony, maintenance, and support paid to others	\$ 0	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 80	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses:	\$ 641.79	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

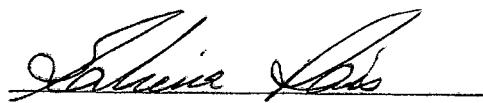
If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 8, 2023


(Signature)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SABRINA D DAVIS (PETITIONER)

vs.

BANKERS LIFE AND CASUALTY COMPANY (RESPONDENT)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE UNITED STATES AND UNITED STATES COURT OF
APPEALS 4TH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Sabrina D Davis

P.O. Box 238

Clinton SC 29325

864-982-1799

QUESTION(S) PRESENTED

CAN THE FULL FAITH AND CREDIT CLAUSE BE PAIRED WITH THE ROOKER-FELDMAN DOCTRINE TO ALLOW STATE COURTS TO ISSUE JUDGMENTS FOR CASES FILED IN STATE COURT THAT FAIL TO SATISFY THE REQUIREMENTS OF 28 U.S.C. §§ 1331 AND 1332 BE RECOGNIZED AND ENFORCEABLE IN THE FEDERAL COURTS?

SHOULD THE JUDICIARY ACT OF 1925 BE DECLARED UNCONSTITUTIONAL BECAUSE THE ACT ALLOWS THE LOWER COURTS TO DISCRIMINATE AGAINST *PRO SE* LITIGANT DUE TO THE LACK OF PROVISIONS THAT PERMIT LOWER COURTS TO IGNORE LAWS AND COURT RULES TO USE THE ACT AS A MEANS TO DENY CONSTITUTIONAL PROTECTIONS BASED ON THE FACT THAT THE UNITED STATES SUPREME COURT WILL NOT GRANT CERTIORARI TO INDILIGENT LITIGANTS IN CIVIL CASES?

DOES THE JUDICIARY ACT OF 1925 PERMIT THE DRED SCOTT RULING TO BE APPLIED AGAINST *PRO SE* LITIGANTS BY DENYING CERTIORARI TO *INFORMA PAUPERIS PRO SE* LITIGANTS?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Adiches v. S.H. Kress & Co</i> , 398 U.S. 144, 157(1970).....	9
<i>Anderson v. Liberty Lobby</i> , 477 U.S. at 249(1986).....	8,9
<i>Dred Scott v. Sanford</i> 60 U.S. 19(How) 393 (1857).....	12,13
<i>Henderson v. U.S.</i> 517 U.S. 654(1996).....	5,10
<i>State Farm Fire & Cas. Co. v. Smith</i> , 39 So. 2d. 1172, 1176(Ala, Ct. App. 2009)....	5
<i>Tolan v. Cotton</i> , 572 U.S. 650(2014).....	7,8
<i>Sabrina D Davis v. Kia Motors of America Inc.</i>	11

STATUTES AND RULES

15 U.S.C. §§ 2301-2312(Magnuson-Moss Warranty Act).....	11
28 U.S.C. § 1331.....	6-8,11
28 U.S.C. § 1332.....	6-8,11
Rule 56 of Federal Rules of Civil Procedure (FRCP).....	7-9
Discovery Rule.....	10
Judiciary Act of 1925.....	7,10-12
Judicial and Misconduct Act.....	10
S.C.Code 14-3-330.....	5
S.C. Code 15-30-20(A & B).....	5
S.C. Code 38-59-20.....	9
South Carolina Rules of Civil Procedure Rule 3(a)(1).....	5
South Carolina Appellate Court Rule 203 (B)(2)(iii).....	6

OTHER

Rooker-Feldman Doctrine.....	6-8
Relate Back Doctrine.....	8

TABLE OF CONTENTS

	PAGE NUMBER
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4-10
REASONS FOR GRANTING THE WRIT.....	11
CONCLUSION.....	12

INDEX TO APPENDICES

APPENDIX A.....	A-1
APPENDIX B.....	B1-B3
APPENDIX C.....	C1-C9
APPENDIX D.....	D1-D2
APPENDIX E.....	E1-E3
APPENDIX F.....	F1-F3
APPENDIX G.....	G1-G2
APPENDIX H.....	H1-H3
APPENDIX I.....	I1-2
APPENDIX J.....	J1-J10

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Supreme Court of the United States appears at Appendix A to the petition and is unpublished

The opinion of the United States court of appeals appears at Appendix B to the petition and is unpublished

The opinion of the United States district court appears at Appendix C to the petition and is unpublished

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is unpublished

The opinion of the South Carolina Court of Appeals appears at Appendix E to the petition and is unpublished

The opinion of the Greenville, South Carolina Court of Common Pleas appears at Appendix F to the petition and is unpublished

The opinion of the Greenville, South Carolina Court of Common Pleas appears at Appendix G to the petition and is unpublished

The opinion of the South Carolina Court of Appeals appears at Appendix H to the petition and is unpublished

The opinion of the United States court of appeals appears at Appendix I to the petition and is unpublished

The opinion of the United States district court appears at Appendix J to the petition and is unpublished

JURISDICTION

The jurisdiction of this Court is invoked under Article 3, Section 2 of the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5 TH Amendment.....	12
7 th Amendment.....	11
14 th Amendment.....	9
Article III, Section II.....	10-11
Full Faith and Credit Clause.....	6-8
Supremacy Clause.....	7

STATEMENT OF THE CASE

Ms. Davis filed a badfaith action against Bankers Life and Casualty (hereafter Bankers Life) concerning a life insurance policy granted to Willie M. Godley. Mr. Godley purchased this policy in December of 2012 and sadly passed away March 29, 2013. When Ms. Davis, his beneficiary submitted a claim for his death benefits, Bankers Life stated Mr. Godley's policy was null and void without providing the reason for why the policy was null and void. In December 2013, Bankers submitted a final letter stating that Mr. Godley's policy was null and void due to a question he incorrectly answered concerning his diabetes and heart conditions. Mr. Godley during the application process provided Bankers Life all the contact information concerning his medical file and furnished Bankers Life the name of his new doctor and office information. This information was available to Bankers before Mr. Godley's life insurance application was approved. On February 14, 2014, Ms. Davis filed a badfaith action in the Greenville, South Carolina Court of Common Pleas and served the complaint without the summons on Bankers Life office location in Greenville, South Carolina. Around March 23, 2014, Ms. Davis received a motion for dismissal from Turner, Padgett, Graham & Laney stating that Sarah Day Hurley was Bankers Life's attorney and that service of process was insufficient. In response, Ms. Davis mailed the complaint and the summons to Sarah Day Hurley. On May 20, 2014, Presiding Judge Alison Renee Lee heard arguments concerning the motion for dismissal for insufficient service and issued a judgment that dismissed the complaint without prejudice for insufficient service. Ms. Davis filed a motion for reconsideration that was not granted (Appendix H). Ms. Davis filed an appeal with the South Carolina Court of Appeals (Appendix G). Ms. Davis's appeal sat in the South Carolina Court of Appeals for 1 year and 10 months. It is Ms. Davis belief that this court deliberately delayed ruling on her case because this court was waiting for the statute of

limitations to expire. The SC Appeals Court ruled that the order was not appealable pursuant to section 14-3-330 of the South Carolina Code (1976)¹. The Court issued the remittitur that gave jurisdiction back to the Court of Common Pleas on July 15, 2016. Ms. Davis refiled the case against Bankers Life on August 10, 2016 and the Defendant removed the case to federal court in September 2013. Bankers Life filed a motion for summary judgment stating the statute of limitations had expired. Ms. Davis argued that Bankers Life had stated Mr. Godley's policy was voided and that the letter was false and Bankers had not provided a cause for the denial and therefore the denial was not final. The summary judgment was granted (Appendix J). Ms. Davis appealed the ruling to the 4th Circuit Court and submitted the prior court filing to show that she had not waited until 2016 to file a suit against Bankers Life and that the South Carolina Court of Appeals waited until June 29, 2016 to rule on her case and the order to dismiss without prejudice did not remit back to the Court of Common Pleas until after July 16, 2016. Appendix J4 footnote 3 and J5 footnote 4 prove that the statute of limitations based on the denial letter made the ruling of the South Carolina Court of Appeals a dismissal with prejudice. As Ms. Davis was calculating her tolling time, she realized that the common pleas court and the South Carolina appeals court had failed to observe SC Code 15-30-20(A and B) and Rule 3(a)(1) of the South Carolina Rules of Civil Procedure. Ms. Davis filed a motion to vacate the judgment in the prior case citing *Henderson v. US* 517 U.S. 654(1996). In *Henderson*, it was determined that time limits set for service of process is not subjected to reduction. It was improper and premature to dismiss a suit for insufficient service of process before the time for service had expired (*See State Farm Fire & Cas. Co. v. Smith*, 39 So. 2d 1172, 1176 (Ala. Ct. App. 2009). The Greenville,

¹ SC Code 14-3-330 states an order must be a final order for the appeals court to make a ruling. The appeals claim the circuit court's dismissal without prejudice allows appellant to serve and file a complaint alleging the same causes of action in a new case. It seems this court was not aware of the statute of limitations because the remittitur was filed 4 days after the statute of limitations expired.

South Carolina issued a judgment stating that the motion was not properly before the court and that the federal courts had jurisdiction in the 2014 case (Appendix F). Ms. Davis appealed explaining to the South Carolina appeals court that the 2014 case did not satisfy the federal requirement for removal and therefore the jurisdiction remained with the state court. The appeals court ruled that because Ms. Davis could not pay the filing fee and the court would not accept documents from litigant that could not afford to pay the filing fee, the case was dismissed for failure to pay the fee (Appendix E²). Ms. Davis filed a motion to vacate a void judgment with the South Carolina Supreme Court citing the failure of the 2014 case that was filed in South Carolina state did not satisfy federal law for removal to federal court. The SC Supreme Court stated no extraordinary reason exists to consider the motion (Appendix D). As required by the Rooker-Feldman doctrine³, Ms. Davis filed a writ of certiorari with the United States Supreme Court and it was denied (Appendix A). Ms. Davis reasoned that since no court would rule the state court's judgment as void, she would file a new complaint with the federal courts demanding under the Full Faith and Credit Clause⁴ that the state court's judgment be recognized by the federal courts. The South Carolina Greenville Division Federal District Court ruled that the court lacked subject-matter jurisdiction to declare that the state court's judgment was null and void (Appendix C). The 4th Circuit Court affirmed that ruling (Appendix B). Ms. Davis is submitting this writ to seek a solution to the bitter conflict between a void judgment, the Full Faith and Credit Clause, Rooker-Feldman doctrine and 28 U.S.C. §§ 1331 and 1332(a).

² South Carolina Rules of Civil Procedure Rule 203(B)(2)(iii) allows the SC appeals court to dismiss a case for failure to pay the filing fee. This law conflicts and impedes not only state constitutional rights but also interferes with the 14th Amendment of the United States Constitution.

³ Rooker Feldman doctrine dictates that federal courts cannot sit in review of state court judgments. The United States Supreme Court is the only court that can review state court judgments.

⁴ Full Faith and Credit Clause (Article IV, Section 1.1) dictates that states judicial proceeding be recognized. The judgment issued by the common pleas court is not being recognized.

REASON FOR GRANTING THE PETITION

This case is about the law and who gets to use those laws. Ms. Davis case is not about new law nor does it require the Supreme Court's powers of interpreting a law. This case is about poor people not allowed to use existing laws. As in *Tolan*⁵, judges were abusing and misapplying Rule 56 of the Federal Rule of Civil Procedure (hereafter FRCP). In this case judges are abusing the Judiciary Act of 1925 to deny pro se litigants equal access to laws and court rules.

CAN THE FULL FAITH AND CREDIT CLAUSE BE PAIRED WITH THE ROOKER-FELDMAN DOCTRINE TO ALLOW STATE COURTS TO ISSUE JUDGMENTS FOR CASES FILED IN STATE COURT THAT FAIL TO SATISFY THE REQUIREMENTS OF 28 U.S.C. §§ 1331 AND 1332 BE RECOGNIZED AND ENFORCEABLE IN THE FEDERAL COURTS?

The district court judgment contained some of the same issues Ms. Davis presented. The judgment relies heavily on the Rooker-Feldman doctrine, yet there are some flaws in the district court's assessment. Stating that a federal court cannot declare a state court's judgment void is not true. The Supremacy Clause⁶ establishes that federal law takes precedence over state laws.

⁵ *Tolan v. Cotton*, 572 U.S. 650 (2014) case that revealed the abuse of summary judgment

⁶ Supremacy Clause of the Constitution established that federal law takes precedence over state law. Ms. Davis received a judgment from the state court that conflicts with U.S.C. 1332 requiring the amount-in-controversy to be \$75,000. The federal courts had grounds to strike this state judgment down but relied on the Rooker-Feldman doctrine to state the federal court could not involve the court in state court judgments.

28 U.S.C. 1332(a) is a federal law that requires the amount in controversy to be \$75,000(Appendix C). Case 2014-CP-23-00815 did not satisfy this requirement and cannot be removed from state court to the federal jurisdiction. The gray area in this matter is that the US Supreme court denied certiorari in Ms. Davis case after she could not get this judgment voided in the state courts(A1). This denial left the state court's judgment of ceding jurisdiction in the 2014 case still in place (Appendix F). Under the Full Faith and Credit Clause, the federal court are required to acknowledge this judgment. However, the lower federal courts both issued judgments that revealed neither court had an understanding what impact the state court's judgment would have on Case 6:16-cv-3100. The state court's judgment was basically combining both cases and destroying the federal court's prior judgment that ruled the statute of limitations had expired. Under the relate-back doctrine⁷, the federal court would have to accept the date of filing the complaint as February 14, 2014. Ms. Davis had requested the 4th Circuit Court to treat the refiled case against Bankers Life as an amended complaint and not a refiled complaint because the cases were identical. In the district court order, the fact that the cases are identical does not make the court question the tolling argument nor makes the court reconsider the statute of limitations ruling (Appendix C). The district court's order also revealed that the lower federal courts were not aware that Ms. Davis had followed the requirements of the Rooker-Feldman doctrine and had submitted documents both to the South Carolina Supreme Court and the United States Supreme Court. Ms. Davis is not an attorney by far but she did inform the courts that her writ of certiorari was denied. This left the state court's judgment still in place and it should be enforced by the federal courts regardless if it is legal or not. In *Tolan v. Cotton*, it was revealed that federal judges were abusing and misapplying the requirements for rule 56 of

⁷ Under the relate back doctrine all of the state errors would be fixed. The violation of Ms. Davis due process rights would be restored if the federal would acknowledge the prior filing and Ms. Davis asked the federal court to treat the 2014 filing and the 2016 filing as one because the filing were identical.

FRCP and issuing summary judgments for issues that belonged in the hands of a jury. The United States Supreme Court articulated the summary judgment standard: “Courts may not resolve genuine disputes of facts in favor of the party seeking summary judgment a “judge’s function” at summary judgment is not “to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial” Anderson, 477 U.S., at 249. “Summary judgment is appropriate only if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” FRCP 56(a). In making that determination, a court must view the evidence “in the light most favorable to the opposing party.” *Adiches v. S.H. Kress & Co.*, 398 U.S. 144, 157(1970). Judge Cain based the statute of limitation on a denial letter that Ms. Davis received from Bankers Life stating that Mr. Godley’s life insurance policy was null and void without any explanation to what specific misrepresentations Mr. Godley made on his application for life insurance (Appendix J1-10, See footnote 3 on page J4-J5). In addition, Ms. Davis received several letters from Bankers with the same statement and finally received a denial letter dated October 23, 2013 that listed the medical condition that was the reason for the denial. The letter was still claiming that Mr. Godley’s policy was null and void, however South Carolina have a law that list the requirement for an insurer claiming misrepresentation as a means to void a life insurance policy. According to SC Code 38-59-20 the insurer must show not only that the insured’s statements were untrue, but also that the insured was aware of the falsity of the statements, and that the statements were material to the risk, relied on by the insurer, and made by the insured with the intent to deceive and defraud the insurer. Bankers Life has never received a declaratory ruling from any court in South Carolina that stated the contact between Mr. Godley and Bankers Life was declared void. An Insurer cannot void a policy by mailing a letter to the beneficiary in South

Carolina, instead the insurer must prove in court that the policy was obtained by fraudulent means. Ms. Davis could not rely on a letter stating something that was false and under the Discovery Rule⁸ a jury is the one to determine what a reasonable person should have known. This case is a gray area because Ms. Davis presented her issues to the appropriate courts and the highest court in this country did not resolve the issues in this case.

**SHOULD THE JUDICIARY ACT OF 1925 BE DECLARED UNCONSTITUTIONAL
BECAUSE THE ACT ALLOWS THE LOWER COURTS TO DISCRIMINATE AGAINST
PRO SE LITIGANT DUE TO THE LACK OF PROVISIONS THAT PERMIT LOWER
COURTS TO IGNORE LAWS AND COURT RULES TO USE THE ACT AS A MEANS
TO DENY CONSTITUTIONAL PROTECTIONS BASED ON THE FACT THAT THE
UNITED STATES SUPREME COURT WILL NOT GRANT CERTIORARI TO
INDILIGENT LITIGANTS IN CIVIL CASES?**

The Judiciary Act of 1925 does not contain one single provision for *pro se* litigants in the event lower courts decide to uphold court rulings that deprive *pro se* litigants of equal access of federal laws. In the past decade, the US Supreme Court has granted certiorari in fewer than 20 cases filed by *pro se* litigants and none filed by *pro se* litigant filing as *Informa pauperis*. In a civil case, litigant do not have a right to counsel and in the event a litigant cannot afford an attorney the court will not appoint an attorney. *Pro se* litigants do not have a choice but to represent themselves in a civil lawsuit. Under the Rooker-Feldman doctrine, the US Supreme Court is the only court that can sit in review of a state court's judgments. Ms. Davis went to the SC Supreme

⁸ Ms. Davis was aware of the laws in South Carolina regarding an insurer making a claim for misrepresentation. Bankers Life would have to prove intent to defraud. Therefore, Ms. Davis was waiting for Bankers Life to file the required documents with the South Carolina courts. This is information that Ms. Davis never got a chance to provide to a jury.

Court(Appendix B) and then she went to the US Supreme Court(Appendix A) and still her matter was not resolved. Ms. Davis cannot be granted her 120 days to serve her complaint as accorded by SC law and supported by *Henderson*. She cannot use the Full Faith and Credit Clause to have the judgment enforced. She cannot get the judgment voided. She cannot use any state or federal laws, she cannot use any court rules, and she cannot use any US Supreme Court rulings. Where does this leave Ms. Davis? She cannot file a judicial complaint. The Judicial Conduct and Disability Act⁹ does not address the issue of judges ignoring laws and issuing void judgments as intention to rid the courts of pro se litigant lawsuits. In a previous case that Ms. Davis brought against Kia Motors of America, Inc. Judge Harwell used a *sua sponte* to reduce the amount in controversy as a means to dismiss the case for lack of subject-matter jurisdiction¹⁰. The problem with the judge's action is that Kia Motors breached a sole remedy warranty and the limited liability clause did not restrict any damages. The judge used the incorrect clause and violated the Magnuson-Moss Warranty Act. Ms. Davis appealed this ruling to the 4th Circuit Court of Appeals and the US Supreme Court. Neither court would correct the errors of the district court and allowed Ms. Davis's 7th Amendments rights to be ignored. She filed a judicial compliant that was summarily dismissed. Article 3, Section 2 of the United States Constitution states "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States..." 28 U.S.C. §§ 1331 (a) & 1332 is a federal law that Ms. Davis is

⁹ The Judicial Conduct and Disability Act was used in the Kia Motors case because judge Harwell abused a court power that allowed him to bring up an issue before the court, decide that issue without the benefit of the law and get the case dismissed. While Tolan may address what parties are able to do in a summary judgment action, it states nothing about the behavior of the judge. Ms. Davis even filed a fraud on the court motion and it was not investigated.

¹⁰ *Sabrina D Davis v. Kia Motors of America, Inc.* US Supreme Case No. 11-11080, 10-1374, & 09-11424
4th Circuit Case No. 092296, 092296A, & 11-2410
District Court Case No. 6:08-cv-01937-RBH & 6:10-cv-02931-TMC

entitled to use unless this Court has ruled that the Judiciary Act of 1925 have the legal means to strip *pro se* litigants of their access to any federal or state laws.

DOES THE JUDICLARY ACT OF 1925 PERMIT THE DRED SCOTT RULING TO BE APPLIED AGAINST *PRO SE* LITIGANTS BY DENYING CERTIORARI TO *INFORMA PAUPERIS PRO SE* LITIGANTS?

*Dred Scott v. Sanford*¹¹ established that all people of African descent, free or enslaved, were not United States citizens and could not enjoy the rights and privileges of the Constitution. This Court needs to address if the same applies to *pro se* litigants. The US Constitution does not state that a citizen must be represented by an attorney as the only means that courts can enforce or recognize their constitutional rights nor does it grant powers to the US Supreme Court to deny anyone constitutional protections guaranteed by the US Constitution. The 14th Amendment is stated to have nullified the *Dred Scott* ruling but in truth the *Dred Scott* ruling was never overturned. The Judiciary Act of 1925 acts as the catalyst to enforce the *Dred Scott* ruling against *pro se* litigants. Ms. Davis's rights are invisible. No court has acknowledged her rights even when she is handed an answer by the US Supreme Court. Ms. Davis is left with a judgment that no court will void or enforce. The 5th Amendment holds that all levels of the federal government must operate within the law. However, if you are a *pro se* litigant, the 5th Amendment does not apply to you. The laws only are appropriate if Ms. Davis is represented by counsel. As stated earlier, in a civil case, litigant do not have a right to counsel and in the event a

¹¹ *Dred Scott v. Sanford* 60 U.S. (How.) 393 (1857) established that the Constitution did not extend to people of African descent. The Constitution contained no language that excluded people of African descent.

and in the event a litigant cannot afford an attorney the court will not appoint an attorney. The South Carolina Appellate Court has a court rule that requires litigants to pay the filing fee. Failure to pay this fee will result in the case being dismissed. The United States Constitution and the South Carolina State Constitution does not contain any language that gives courts the right to deny laws to *pro se* litigants or those that cannot pay a filing fee. As with *Dred Scott*, the US Constitution has never contained language that restricted rights based on race. However, with the interpretations by the Supreme Court, rights could be denied based on race. The question this court must now answer and make clear to the citizens of this country is can rights be denied based on a person's financial status?

STATEMENT WHY THIS PETITION IS BEING FILED OUT OF TIME

This petition is being filed out of time due to money. The United States Supreme Court has only granted certiorari to a few *pro se* cases in the past 20 years and none to *pro se* litigant that file *Informa pauperis*. Ms. Davis tried unsuccessfully to persuade any of the *pro bono* attorneys to take her case. Therefore, I respectfully request that this Court recall case No. 195854.

CONCLUSION

The petition for a writ of certiorari should be granted

Respectfully submitted,

Sabrina D. Rais

July 16, 2023

TABLE OF CONTENT FOR THE APPENDIX

	PAGE NUMBER
APPENDIX A	1-2
APPENDIX B	3-6
APPENDIX C	7-16
APPENDIX D	17-19
APPENDIX E	20-23
APPENDIX F	24-27
APPENDIX G	28-30
APPENDIX H	31-34
APPENDIX I	35-37
APPENDIX J	38-48

APPENDIX A

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

October 15, 2019

**Scott S. Harris
Clerk of the Court
(202) 479-3011**

Ms. Sabrina D. Davis
P.O. Box 238
Clinton, SC 29325

Re: Sabrina D. Davis
v. Bankers Life and Casualty Company
No. 19-5854

Dear Ms. Davis:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

A-1

2

APPENDIX B

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 21-1343

SABRINA D. DAVIS,

Plaintiff - Appellant,

v.

BANKERS LIFE AND CASUALTY COMPANY,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Timothy M. Cain, District Judge. (6:20-cv-04130-TMC)

Submitted: September 9, 2021

Decided: September 13, 2021

Before MOTZ, KING, and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Sabrina D. Davis, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

B-1

4

PER CURIAM:

Sabrina D. Davis appeals the district court's order accepting the recommendation of the magistrate judge and dismissing Davis' civil action related to a life insurance claim. We have reviewed the record and find no reversible error. Accordingly, we affirm the court's order. *Davis v. Bankers Life & Cas. Co.*, 6:20-cv-04130-TMC (D.S.C. Mar. 9, 2021). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

B - 2

5

FILED: February 23, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1343
(6:20-cv-04130-TMC)

SABRINA D. DAVIS

Plaintiff - Appellant

v.

BANKERS LIFE AND CASUALTY COMPANY

Defendant - Appellee

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Motz, Judge King and Judge

Wynn.

For the Court

/s/ Patricia S. Connor, Clerk

B-3

6

APPENDIX C

Other Orders/Judgments

6:20-cv-04130-TMC-KFM Davis
v. Bankers Life and Casualty
Company

JURY,PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 2/2/2021 at 11:36 AM EST and filed on 2/2/2021

Case Name: Davis v. Bankers Life and Casualty Company

Case Number: 6:20-cv-04130-TMC

Filer:

Document Number: 15

Docket Text:

REPORT AND RECOMMENDATION re [1] Complaint filed by Sabrina D Davis. The Court recommends that the District Court dismiss this action without prejudice and without issuance and service of process. It is further recommended that the United States District Judge assigned to this case consider the entry of sanctions against the plaintiff in the future should the plaintiff continue to file duplicative litigation in this court. Objections to R&R due by 2/16/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. Signed by Magistrate Judge Kevin McDonald on 2/2/2021. (kric,)

6:20-cv-04130-TMC Notice has been electronically mailed to:

6:20-cv-04130-TMC Notice will not be electronically mailed to:

Sabrina D Davis
P O Box 238
Clinton, SC 29325

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP_dcecfStamp_ID=1091130295 [Date=2/2/2021] [FileNumber=10031626-0
] [71d386d43ef73e5b115ceab0aa7c6c8366c5e658b7f9e8cfe981f196329d70d6861
3fd9226f2ca42e6b5fc05d9688fbe9866bf2c7d4a2c04a71ca07ccb1e40be]]

C-1

8

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

Sabrina D. Davis,)	C/A No. 6:20-cv-04130-TMC-KFM
)	
)	<u>REPORT OF MAGISTRATE JUDGE</u>
Plaintiff,)	
)	
vs.)	
)	
Bankers Life and Casualty Company,)	
)	
Defendant.)	
)	

The plaintiff, a non-prisoner proceeding *pro se* and *in forma pauperis*, brings this action seeking damages from the defendant. Pursuant to the provisions of 28 U.S.C. § 636(b), and Local Civil Rule 73.02(B)(2) (D.S.C.), this magistrate judge is authorized to review all pretrial matters in this case and submit findings and recommendations to the district court.

The plaintiff's complaint was entered on the docket on November 30, 2020 (doc. 1). By order filed December 22, 2020, the plaintiff was given a specific time frame in which to bring her case into proper form for judicial screening (doc. 10). The plaintiff complied with the court's order, and the case is now in proper form. Nevertheless, upon review, the plaintiff's complaint is subject to summary dismissal.

ALLEGATIONS AND LITIGATION HISTORY

As an initial matter, the court takes judicial notice of the plaintiff's prior proceedings in this court as well as in the South Carolina State Courts.¹ This action represents the plaintiff's third case regarding a certain insurance contract with the defendant. The plaintiff's first action concerning this contract was filed in the Greenville

¹ *Phillips v. Pitt Cnty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts "may properly take judicial notice of matters of public record."); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that '[t]he most frequent use of judicial notice . . . is in noticing the content of court records.'").

County Court of Common Pleas on February 14, 2014. See Greenville County Public Index, <https://publicindex.sccourts.org/Greenville/PublicIndex/PISearch.aspx> (enter the plaintiff's name and 2014-CP-23-00815) (last visited February 1, 2021). In that case, the defendant filed a motion to dismiss based upon insufficient service. *Id.* The motion was granted and the case dismissed without prejudice, and the plaintiff's motion for reconsideration was denied. *Id.* The plaintiff appealed the dismissal, and the first appeal was dismissed because the order was not a final appealable order (because the order dismissed the case without prejudice and allowed the plaintiff to open a new action). *Id.*; See *Davis v. Bankers Life and Casualty Co.*, C/A No. 2014-001867 (S.C. Ct. App.). The plaintiff then filed an emergency motion to vacate, which was denied on September 6, 2018, as not properly before the court because the case had been dismissed and the plaintiff had another pending action addressing her claims. See Greenville County Public Index (enter the plaintiff's name and 2014-CP-23-00815, 2016-CP-23-04733) (last visited February 1, 2021). The plaintiff appealed the denial of her emergency motion to vacate, but the appeal was dismissed and remittitur entered March 15, 2019. *Id.*; see *Davis v. Bankers Life and Casualty Co.*, C/A No. 2018-001716 (S.C. Ct. App.).

During this same time, on August 10, 2016, the plaintiff filed a second action in the Greenville County Court of Common Pleas regarding the insurance contract in question. See Greenville County Public Index (enter the plaintiff's name and 2016-CP-23-04733) (last visited February 1, 2021). The case was removed to this court on September 19, 2016, by the defendant. See *Davis v. Bankers Life and Casualty Co.*, C/A No. 6:16-cv-03100-TMC, at doc. 1 (D.S.C.). After being considered on the merits, the case was dismissed based upon the statute of limitations on June 23, 2017. *Davis v. Bankers Life and Casualty Co.*, 2017 WL 2703972 (D.S.C. June 23, 2017). The plaintiff appealed, and the dismissal was affirmed. *Id.* at docs. 41; 43; 44; *Davis v. Bankers Life and Casualty Co.*, 699 F. App'x 234 (4th Cir. 2017).

Here, the plaintiff alleges jurisdiction based upon violations of her Fourteenth Amendment Equal Protection and Due Process rights along with the Supremacy Clause

(doc. 1 at 3). She contends that a case in the Greenville County Court of Common Pleas was dismissed for insufficient service before the 120-day service deadline had expired (*id.* at 5). For relief, the plaintiff seeks to have the state court case reopened so she can serve the defendant (*id.*).

STANDARD OF REVIEW

The plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action “fails to state a claim on which relief may be granted,” is “frivolous or malicious,” or “seeks monetary relief against a Defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). As a *pro se* litigant, the plaintiff’s pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89 (2007) (*per curiam*). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

“The Federal Rules of Civil Procedure recognize that courts must have the authority to control litigation before them.” *Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) (citing Fed. R. Civ. P. 41(b)). Federal courts are courts of limited jurisdiction, “constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by federal statute.” *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir. 1998). Since federal courts have limited subject matter jurisdiction, there is no presumption that the court has jurisdiction. *Pinkley, Inc. v. City of Frederick*, 191 F.3d 394, 399 (4th Cir. 1999) (citing *Lehigh Mining & Mfg. Co. v. Kelly*, 160 U.S. 337 (1895)). Accordingly, a federal court is required, *sua sponte*, to determine if a valid basis for its jurisdiction exists, “and to dismiss the action if no such ground appears.” *Bulldog Trucking*, 147 F.3d at 352; see also Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

DISCUSSION

The plaintiff's complaint is barred by claim preclusion (*res judicata*)

In the instant matter, the plaintiff seeks to re-litigate claims that have already been adjudicated and decided adversely to her by this court. Under the doctrine of claim preclusion—or *res judicata*—a final judgment on the merits of an action bars the parties from re-litigating claims that were or could have been raised in the prior action. See *Pueschel v. United States*, 369 F.3d 345, 354 (4th Cir. 2004). In order for *res judicata* to apply, there must have been (1) a final judgment on the merits in a prior suit; (2) the identity of the cause of action in both suits; and (3) the same parties or their privies in the two suits. *Id.* at 354–55 (citing *Nash Cnty. Bd. of Educ. v. Biltmore Co.*, 640 F.2d 484, 486 (4th Cir. 1981)); see *Orca Yachts L.L.C. v. Mollicam, Inc.*, 287 F.3d 316, 318 (4th Cir. 2002) (noting that claim preclusion applies when there has been a valid and final judgment—even if the matter was not actually litigated (quoting *In re Varat Enters., Inc.*, 81 F.3d 1310, 1315 (4th Cir. 1996))). In evaluating whether the same cause of action is brought in both suits, the court ascertains whether the claim in the new litigation “arises out of the same transaction or series of transactions as the claim resolved by the prior judgment.” *Pittston Co. v. United States*, 199 F.3d 694, 704 (4th Cir. 1999) (internal quotation marks omitted) (quoting *Harnett v. Billman*, 800 F.2d 1308, 1313 (4th Cir. 1986)). Here, the plaintiff’s allegations involve the same insurance contract as alleged previously (compare doc. 1 with *Davis v. Bankers Life and Casualty Co.*, C/A No. 6:16-cv-03100-TMC, at doc. 1); however, the plaintiff’s previous claims against the defendant were dismissed *with prejudice* based upon the statute of limitations. *Davis v. Bankers Life and Casualty Co.*, 2017 WL 2703972. Accordingly, the plaintiff’s claims against the defendant here are barred.

Additionally, to the extent the plaintiff now seeks an order from this court instructing the Greenville County Court of Common Pleas to re-open Case Number 2014-CP-23-00815, such a request cannot be granted by this court because, under the *Rooker-Feldman* doctrine,

*Feldman*² doctrine, this Court is without jurisdiction to interfere in state court proceedings. *Weathers v. Pou*, No. 2:09-cv-270-JFA-RSC, 2009 WL 1139984, at *2 (D.S.C. Apr. 27, 2009). The *Rooker-Feldman* doctrine is jurisdictional and may be raised by the Court *sua sponte*. *Am. Reliable Ins. Co. v. Stillwell*, 336 F.3d 311, 316 (4th Cir. 2003). “[T]he *Rooker-Feldman* doctrine applies . . . when the loser in state court files suit in federal district court seeking redress for an injury allegedly caused by the state court’s decision itself.” *Davani v. Virginia Dep’t of Transp.*, 434 F.3d 712, 713 (4th Cir. 2006). Here, the plaintiff asserts her claim with this court because she feels that she was injured by the Greenville County Court of Common Pleas when her prior civil action was dismissed without prejudice before the service deadline had passed (see generally doc. 1). It is well-settled, however, that the *Rooker-Feldman* doctrine applies to bar the exercise of federal jurisdiction even when a challenge to state court decisions or rulings concerns federal constitutional issues; instead, only the United States Supreme Court may review those state-court decisions. See *Feldman*, 460 U.S. at 476–82 (a federal district court lacks authority to review final determinations of state or local courts because such review can be conducted only by the Supreme Court of the United States under 28 U.S.C. § 1257); *Davani*, 434 F.3d at 719 (explaining how the expansive interpretation of the *Rooker-Feldman* doctrine was limited by *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005)); see also *Dukes v. Stone*, C.A. No. 3:08-cv-505-PMD-JRM, 2009 WL 398079, at *4 (D.S.C. Feb. 17, 2009) (explaining that only the United States Supreme Court is empowered with appellate authority to reverse or modify a state court judgment).

The doctrine applies even if the state court litigation has not reached a state’s highest court. See *Worldwide Church of God v. McNair*, 805 F.2d 888, 892–93 & nn.3–4 (9th Cir. 1986); see also 28 U.S.C. § 1738 (providing that a federal court must accord full

² The *Rooker-Feldman* Doctrine gets its name from two cases decided by the United States Supreme Court finding that the district court lacks subject matter jurisdiction over cases brought by state-court losers complaining of injuries caused by state-court judgments where the district court is requested to review and reject those judgments. See *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

faith and credit to a state court judgment); *Robart Wood & Wire Prods. Corp. v. Namaco Indus.*, 797 F.2d 176, 178 (4th Cir. 1986); *Anderson v. Colorado*, 793 F.2d 262, 263 (10th Cir. 1986) (“It is well settled that federal district courts are without authority to review state court judgments where the relief sought is in the nature of appellate review.”); *Hagerty v. Succession of Clement*, 749 F.2d 217, 219–20 (5th Cir. 1984) (collecting cases). To rule in favor of the plaintiff in the present action would, necessarily, require this court to overrule, or otherwise find invalid, orders from the Greenville County Court of Common Pleas and the South Carolina Court of Appeals. Cf. *In re Genesys Data Tech., Inc.*, 204 F.3d 124, 127 (4th Cir. 2000) (noting that pursuant to 28 U.S.C. § 1738 all federal courts must give full faith and credit to valid state court judgments). Such a result is prohibited under the *Rooker-Feldman* doctrine. *Rooker*, 263 U.S. at 414–15 (noting that the district court lacked subject matter jurisdiction to issue a declaration that a state court judgment was null and void as the power to so review a state court judgment lied with the United States Supreme Court); see *Auto-Owners Ins. Co. v. Tuggle*, 289 F. Supp. 2d 1061, 1067 (W.D. Ark. 2003) (finding that *Rooker-Feldman* barred suit because “any such findings would be in direct conflict with and undermine one of the state court judgments”). Therefore, even presuming the plaintiff’s claims in this action fell outside of the *res judicata* bar, the complaint is subject to summary dismissal for lack of subject matter jurisdiction based upon the *Rooker-Feldman* doctrine.

RECOMMENDATION

The undersigned is of the opinion that the plaintiff cannot cure the defects identified above by amending her complaint. See *Bing v. Brivo Sys., LLC*, 959 F.3d 605 (4th Cir. 2020) (citing *Goode v. Cent. Va. Legal Aid Soc’y*, 807 F.3d 619 (4th Cir. 2015); *In re GNC Corp.*, 789 F.3d 505 (4th Cir. 2015); *Chao v. Rivendell Woods, Inc.*, 415 F.3d 342 (4th Cir. 2005); *Domino Sugar Corp. v. Sugar Workers Local Union 392 of United Food and Commercial Workers Int’l Union*, 10 F.3d 1064 (4th Cir. 1993)). As noted in more detail above, the present action by the plaintiff is duplicative of prior actions; thus, the undersigned recommends that the court decline to automatically give the plaintiff leave to

amend her complaint. Accordingly, based upon the foregoing, the Court recommends that the District Court dismiss this action without prejudice and without issuance and service of process. Additionally, in light of the plaintiff's filing history in this court (as well as in the South Carolina state court), it is further recommended that the United States District Judge assigned to this case consider the entry of sanctions against the plaintiff in the future should the plaintiff continue to file duplicative litigation in this court.

IT IS SO RECOMMENDED.

s/Kevin F. McDonald
United States Magistrate Judge

February 2, 2021
Greenville, South Carolina

The attention of the parties is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

APPENDIX D

The Supreme Court of South Carolina

ORDER

The following matters are dismissed pursuant to *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991), because no extraordinary reason exists to entertain them in this Court's original jurisdiction:

1. *Heyward L. Rogers v. State*, Letter to the Clerk of Court, dated February 12, 2019; Letter to the Clerk of Court, dated March 25, 2019; Petition for Rehearing, dated March 28, 2019; and Motion for Appointment of Counsel, dated April 2, 2019. Appellate Case No. 2019-000156.
2. *Noel Gray v. The Honorable Chief Admin. Judge for the Third Judicial Circuit Court Clifton Newman At Large*, Petition for Writ of Mandamus and Motion for Leave to Proceed *In Forma Pauperis*, dated March 19, 2019. Appellate Case No. 2019-000485.
3. *Ex parte John L. Mills*, Notice of Appeal, dated March 18, 2019. Appellate Case No. 2019-000351. (Few, J., not participating).
4. *John L. Mills #198973 v. Justice, Paul E. Short, Jr., S. Carolina*, Motion Against Judge, dated March 12, 2019. Appellate Case No. 2019-000450. (Few, J., not participating).
5. *Yolanda Shatten v. Sampit River Investments, LLC*, Complaint, dated March 18, 2019. Appellate Case No. 2019-000453.
6. *Calvin L. Gaddy # 323551 v. State Government Agency, State Attorney General Office*, Informal Complaint, Causation, Petition for Writs: Mandamus, received March 22, 2019. Appellate Case No. 2019-000482.
7. *Sabrina D. Davis v. Bankers Life and Casualty Company*, Motion to Vacate Void Judgment and Motion to Proceed *In Forma Pauperis*, dated February 27, 2019. Appellate Case No. 2019-000348.

8. *Pete S. Bryant v. State*, Declaratory Judgment Complaint, dated February 19, 2019. Appellate Case No. 2019-000294.
9. *John Erin Wilson, Jr., #295493 v. State*, Motion: Petitioning to be Heard 1st Const. Amend., dated February 20, 2019. Appellate Case No. 2019-000293.

Tom Beatty C.J.
Patricia K. Miller J.
Kaye L. Beam J.
John Cannon Jr. J.
Jack Fenwick J.

Columbia, South Carolina

June 18, 2019

10 - 2

19

APPENDIX E

The South Carolina Court of Appeals

Sabrina D. Davis, Appellant,

v.

Bankers Life and Casualty Company, Respondent.

Appellate Case No. 2018-001716

The Honorable Perry H. Gravely
Greenville County
Trial Court Case No. 2014CP2300815

ORDER

Appellant has failed to provide the notice of appeal fee as required by Rule 203 of the South Carolina Appellate Court Rules and by the Court's Order filed December 14, 2018. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Sabrina D. Davis
Sarah Day Hurley, Esquire

FILED

February 12, 2019

E-1

21



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK.

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11628
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 28, 2019

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: Sabrina Davis v. Bankers Life (2)
Lower Court Case No. 2014CP2300815
Appellate Case No. 2018-001716

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Sabrina D. Davis
Sarah Day Hurley, Esquire

E - 2

1

Q2

The South Carolina Court of Appeals

Sabrina D. Davis, Appellant,

v.

Bankers Life and Casualty Company, Respondent.

Appellate Case No. 2018-001716

The Honorable Perry H. Gravely
Greenville County
Trial Court Case No. 2014CP2300815

ORDER

Appellant has failed to provide the notice of appeal fee as required by Rule 203 of the South Carolina Appellate Court Rules and by the Court's Order filed December 14, 2018. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Clark Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Sabrina D. Davis
Sarah Day Hurley, Esquire

FILED

February 12, 2019

E - 3

23

APPENDIX F

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP2300815

Sabrina D Davis
 PLAINTIFF(S)

Bankers Life And Casualty Company
 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), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled);
 Other

ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRCP; 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:

The Emergency Motion to Vacate is not properly before the court. The case was dismissed without prejudice on July 18, 2014. The decision was appealed and the appeal was dismissed on June 29, 2016. Plaintiff refilled the case (2016CP2304733) and that has been removed to Federal District Court under case number 6:16-CV-03100-TMC-KFM. Therefore, all matters should be resolved through the Federal Court.

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 09/06/2018.

Sabrina D Davis for Sabrina D Davis
 Sabrina D Davis for Sabrina D Davis

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

F-1

25

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP2300815

Sabrina D Davis
 PLAINTIFF(S)

Bankers Life And Casualty Company
 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), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled);
 Other

ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRCP; 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:

See Page 2

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 07/17/2019.

Sabrina D Davis for Sabrina D Davis
 Sabrina D Davis for Sabrina D Davis

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

F - 2

26

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.

This matter comes before the Court upon the Plaintiff's Motion to Vacate Void Judgment. First, no judgment was entered from which to vacate. The matter was dismissed on May 28, 2014 with Plaintiff having the right to refile the case and various motions and appeals followed. By Order dated February 12, 2019, the Court of Appeals dismissed the last appeal for the failure of the Plaintiff/Appellant to pay the fee for the appeal and the remittitur was filed with the Greenville County Clerk's Office on March 15, 2019. Therefore, the underlying Orders would be the law of the case and this case is dismissed pursuant to the May 28, 2014 order.

F-3



27

APPENDIX G



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 15, 2016

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: Sabrina Davis v. Bankers Life
Lower Court Case No. 2014CP2300815
Appellate Case No. 2014-001867

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jenny A. Kitchens". The signature is fluid and cursive, with "Jenny" and "A." on the first line and "Kitchens" on the second line.

CLERK

Enclosure

cc: Sabrina D. Davis
Sarah Day Hurley, Esquire

G-1

29

The South Carolina Court of Appeals

Sabrina D. Davis, Appellant,

v.

Bankers Life and Casualty Company, Respondent.

Appellate Case No. 2014-001867

ORDER

Appellant filed a notice of appeal from the circuit court's order, which granted Respondent's motion to dismiss her case without prejudice for failure to properly serve respondent with the summons and complaint.

After careful review, this court dismisses the appeal because the underlying order is not immediately appealable pursuant to section 14-3-330 of the South Carolina Code (1976). The court notes the underlying order is not a final adjudication of the case because the circuit court's dismissal without prejudice specifically allows Appellant to serve and file a complaint alleging the same causes of action in a new case. *See Int'l Fidelity Ins. Co. v. China Constr. America (SC) Inc.*, 375 S.C. 175, 181, 650 S.E.2d 677, 680 (Ct. App. 2007) ("[A] dismissal of a claim without prejudice is not an adjudication of the merits of the controversy and has no preclusive effect as a matter of law."); *Collins v. Sigmon*, 299 S.C. 464, 467, 385 S.E.2d 835, 837 (1989) (recognizing when a court dismisses a case without prejudice, "the plaintiff can reassert the same cause(s) of action" in another case). This case will be remitted to the circuit court pursuant to Rule 221, SCACR.


FOR THE COURT

Columbia, South Carolina

FILED
16/29/11
[Signature]

APPENDIX H

FORM 4

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

Sabrina D Davis

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2300815

FILED-CLERK OF COURT

GREENVILLE CO. S.C.

PAUL B. WICKENSIMER
Bankers Life And
Casualty Company

2014 JUL 29 PM 2 44

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

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. See Page 2 for additional information.

ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRCM; Rule 41(a), SCRCM (Vol. Nonsuit);
 Rule 43(k), SCRCM (Settled); Other: _____

ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRCM; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

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

IT IS ORDERED AND ADJUDGED: See attached order. (Formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

7/29/2014

Circuit Court Judge

Judge Code

Date

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Sabrina D. Davis,

Plaintiff,

vs.

Bankers Life and Casualty Company,

Defendant.

FILED - CLERK IN THE COURT OF COMMON PLEAS
GREENVILLE THIRTEENTH JUDICIAL CIRCUIT

PAUL B. WICKENSIMER

) CASE NO. 2014-CP-23-00815

2014 JUL 29 PM 2 44

ORDER

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Plaintiff argues in her Motion for Re-examination filed June 20, 2014 that the case *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E.2d 537 (2014), provides that insurance policy provisions and agreements creating alternative methods of service for the insurer are valid and binding. However, at the hearing on the Motion to Dismiss on May 20, 2014, Plaintiff did not present any evidence that her insurance policy provided for an alternative method of service or that there was an agreement between the parties to alternative methods of service, and the case is therefore distinguishable. Accordingly, this Court hereby **DENIES** Plaintiff's Motion for Re-examination. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary. As stated in the Court's Order filed May 28, 2014, Plaintiff's case was dismissed without prejudice, and Plaintiff may refile and reserve Defendant pursuant to S.C. Code Ann. § 15-9-270.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

July 10, 2014
Columbia, South Carolina

ENTERED COMPUTER

H-2

33

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2300815

Sabrina D Davis

PAGE 1 OF 1Bankers Life And
Casualty Company

2014 MAY 23 PM 4:25

ENTERED COMPUTER

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

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. See Page 2 for additional information.

ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____

ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

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

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

Defendant's Motion to Dismiss for improper service is GRANTED. This case is dismissed without prejudice. Plaintiff may refile and reserve Defendant pursuant to S.C. Code Ann. § 15-9-270.

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

CPFORM4Cm

SOCIA SCRCP Form 4C (Revised 3/2013)

H - 3

34

APPENDIX I

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-1869

SABRINA D. DAVIS,

Plaintiff - Appellant,

v.

BANKERS LIFE AND CASUALTY COMPANY,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Timothy M. Cain, District Judge. (6:16-cv-03100-TMC)

Submitted: October 19, 2017

Decided: October 23, 2017

Before NIEMEYER, MOTZ, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Sabrina D. Davis, Appellant Pro Se. Carmelo Barone Sammataro, TURNER, PADGET, GRAHAM & LANEY, PA, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

I-1

36

PER CURIAM:

Sabrina D. Davis appeals the district court's order adopting the recommendation of the magistrate judge and granting summary judgment for Defendant in Davis's civil action related to a life insurance claim. We have reviewed the record and find no reversible error. Accordingly, although we grant leave to proceed in forma pauperis, we affirm for the reasons stated by the district court. *Davis v. Bankers Life & Cas. Co.*, No. 6:16-cv-03100-TMC (D.S.C. June 23, 2017). We deny Davis's request to remove this appeal to another United States Circuit Court and her motion for Defendant to correct its informal brief. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

I - 2



APPENDIX J

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

Sabrina D. Davis,)
Plaintiff,) Civil Action No. 6:16-3100-TMC
vs.)
Bankers Life and Casualty Company,)
Defendant.)

ORDER

Plaintiff Sabrina D. Davis (“Davis”), proceeding *pro se*, filed this action against Defendant Bankers Life and Casualty Company (“Bankers Life”) in the Greenville County Court of Common Pleas, alleging that Bankers Life engaged in bad faith and “post-claim underwriting” in denying her claims for benefits from a life insurance policy. On September 13, 2016, Bankers Life timely removed the case to this court. (ECF No. 1). In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02, D.S.C., this matter was referred to a magistrate judge for pretrial handling. Because the magistrate judge received various documents outside the pleadings, he treated the motion to dismiss as a motion for summary judgment. (ECF No. 18 at 2–3). Before the court is the magistrate judge’s Report and Recommendation (“Report”), recommending that the court grant Bankers Life’s motion for summary judgment. (ECF No. 18). The parties were advised of their right to file objections to the Report. (ECF No. 18 at 5). On March 14, 2017, Davis filed objections. (ECF No. 21). Bankers Life filed a response on March 29, 2017 (ECF No. 27), to which Davis filed a reply on April 6, 2017 (ECF No. 28). On June 16, 2017, Davis filed an emergency motion to remand. (ECF No. 32).

The recommendations set forth in the Report have no presumptive weight and the responsibility to make a final determination in this matter remains with this court. *See Mathews*

v. *Weber*, 423 U.S. 261, 270–71 (1976). The court is charged with making a de novo determination of those portions of the Reports to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the magistrate judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, the court need not conduct a de novo review when a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of a timely filed, specific objection, the magistrate judge’s conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

I. Motion to Remand

The record makes clear that this action was removed to this court pursuant to 28 U.S.C. §§ 1441(a) & 1332(a). “When a plaintiff files in state court a civil action over which the federal district courts would have original jurisdiction based on diversity of citizenship, the defendant . . . may remove the action to federal court, provided that no defendant is a citizen of the State in which such action is brought.” *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996) (internal citations and quotations omitted). The magistrate judge found that Bankers Life’s removal of this action was timely. (ECF No. 18 at 1).

Davis argues that because an agent of Bankers Life, Ursula Schneider-Wewer, is a resident of Spartanburg, South Carolina, diversity is destroyed for the purpose of this court’s jurisdiction. (ECF No. 32 at 2). However, a corporation’s citizenship is based on its state of incorporation and principal place of business. 28 U.S.C. § 1332(c)(1). The Supreme Court defines principal place of business to mean “the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77,

80 (2010). According to Bankers Life's notice of removal (ECF No. 1 at 5) supported by an affidavit of Karl Kindig¹ (ECF No. 1-2), Bankers Life is an Illinois corporation with its principal place of business in Illinois. Davis has not alleged that South Carolina is Bankers Life's principal place of business or that South Carolina is where the corporation maintains its "nerve center." *Hertz*, 559 U.S. at 81, 93. Further, Davis' argument that remand is warranted because South Carolina law is the basis of this case fails because this case was removed for diversity and this court must apply South Carolina law. *See 28 U.S.C. §§ 1441 & 1332; Interstate Fire & Cas. Co. v. Dimensions Assurance Ltd.*, 843 F.3d 133, 136 (4th Cir. 2016) (citing *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941) (explaining that a federal court sitting in diversity jurisdiction must apply the choice of law principles of the forum state)). Therefore, Davis fails to demonstrate that this court lacks subject matter jurisdiction and her motion to remand is denied. *See 28 U.S.C. § 1447(c).*²

II. Motion to Strike

On April 6, 2017, Davis filed a reply to Bankers Life's response to her objections. (ECF No. 28). On April 14, 2017, Bankers Life filed a motion to strike Davis' reply, asserting that when replies are allowed they cannot contain new issues, and that Davis' reply centers around previously unpled allegations. (ECF No. 29). Replies are governed by Local Rule 7.07, which states that, "Replies to responses are discouraged. However, a party desiring to reply to matters raised initially in a response to a motion or in accompanying supporting documents shall file the reply within seven (7) days after service of the response, unless otherwise ordered by the court."

Local Rule 7.07, D.S.C.

¹ Senior Vice President and Secretary of Bankers Life and Casualty Company, authorized to make an affidavit on Bankers Life's behalf. (ECF No. 1-2).

² In relevant part, 28 U.S.C. § 1447(c) provides, "A motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded . . ."

Construing Davis' pleadings liberally, *Gordon v. Leake*, 574 F.2d 1147, 1151 (4th Cir. 1978), the court will consider Davis' reply to the extent that it does not go beyond the scope of issues addressed or raised in Bankers Life's response. Accordingly, Bankers Life's motion to strike is denied.

III. Motion for Summary Judgment

The magistrate judge recommended that the court dismiss Davis' claim because she filed her claim outside of the statutory limitations period. (ECF No. 18 at 4). In South Carolina, claims for breach of insurance contract and insurance bad faith are subject to a three-year statute of limitations, *Liberty Mut. Fire Ins. Co. v. J.T. Walker Indus., Inc.*, No. 2:08-2043-MBS, 2010 WL 1345287 (D.S.C. Mar. 30, 2010) (citing S.C. Code Ann. § 15-3-530), which begins to run when the underlying cause of action reasonably ought to have been discovered, *Martin v. Companion Healthcare Corp.*, 593 S.E.2d 624, 627 (S.C. Ct. App. 2004). According to Davis' complaint, Bankers Life denied her claim for benefits on July 12, 2013.³ (ECF No. 1-1 at 7). Thus, because it is undisputed that Davis did not file her case in state court until August 10, 2016, the Report recommends that this case is outside of the limitations period and untimely. Despite Davis' argument that she did not actually discover her claim until November or December 2013 (after she and her attorney unsuccessfully attempted to convince Bankers Life to reverse its decision) the magistrate judge found that the limitations period began when Bankers Life denied the claim—July 12, 2013 according to Davis' own admission. (ECF No. 18 at 4); *see e.g., Jeri M. Suber Credit Shelter Trust v. State Auto Prop. And Cas. Ins. Co.*, No. 3:08-3387,

³ In her complaint, Davis asserted that her claim for benefits was denied on July 12, 2013. (ECF No. 1-1 at 7). In her reply, she stated that July 8, 2013, was the date that the denial letter was issued. (ECF No. 28 at 1). The July 8, 2013 letter was submitted as an exhibit to Bankers Life's reply. (ECF No. 16-1 at 2). For the purposes of this order, the court will accept the date asserted by Davis in her complaint as the date she *received* or became aware of the denial letter. *See, e.g., Amgen Inc. v. Connecticut Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1197 n.6 (2013) ("Factual assertions in pleadings . . . unless amended, are considered judicial admissions conclusively binding on the party who made them.").

2009 WL 4730630, at *4 n.10 (D.S.C. Dec. 4, 2009) (noting that “the statute of limitations for a bad faith action against [insurer] for denial of additional insurance benefits would begin running when [insurer] denied coverage”).

As her objection, Davis argues that the magistrate judge incorrectly calculated the statute of limitations. Her argument is based on language in the July 15, 2013 letter⁴ stating:

If you believe this claim was denied in error, please submit written comments, documents, or records not already provided to our company for further review. . . . [Bankers Life] will consider your appeal and will contact you upon conclusion of the review.

(ECF Nos. 14-1 at 22 and 21 at 2).⁵ Davis alleges that the cause of action did not accrue until December 2, 2013, when Bankers Life declined to change its position. (ECF No. 21 at 2). She argues that Bankers Life did not reach its final decision until December 2, 2013, due to the “appeal” process and that she believed that the additional information that she submitted would change the insurer’s position. (ECF No. 21 at 2-3).

Under South Carolina law, claims for bad faith refusal to pay insurance benefits and breach of insurance contract are subject to a three-year statute of limitations. S.C. Code Ann. § 15-3-530(8); *Liberty Mut. Fire Ins. Co. v. J.T. Walker Indus., Inc.*, No. 2:08-2043-MBS, 2010 WL 1345287, at *9 (D.S.C. Mar. 30, 2010). “These statutes of limitations are modified by a doctrine known as the ‘discovery rule,’ ” pursuant to which “ ‘the statute of limitations [only] begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct.’ ” *Wellin v. Wellin*, No. 2:13-1831-DCN, 2014 WL 234216 at *3 (quoting *True v. Monteith*, 489 S.E.2d 615, 616

⁴ In her objections, Davis incorrectly cites the magistrate judge as calculating the date of denial as July 15, 2013. (ECF No. 21 at 2). The magistrate judge stated, as did Davis in her complaint, that the date of denial was July 12, 2013. (ECF Nos. 1-1 at 7 and 18 at 4). The letter dated July 15, 2013, was not the original denial letter, but, rather, a follow up from Bankers Life to a communication with Davis regarding the denial. (ECF No. 28-1).

⁵ The July 8, 2013 letter also contained similar language. (ECF No. 16-1 at 2).

(S.C. 1997)). To exercise reasonable diligence, “ ‘the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on *notice* that a claim against another party might exist.’ ” *Id.* (quoting *Dean v. Ruscon Corp.*, 468 S.E.2d 645, 647 (S.C. 1996)). “[W]hether the particular plaintiff actually knew he had a claim is not the test.” *Id.* (quoting *Bayle v. S.C. Dep’t of Transp.*, 542 S.E.2d 736, 740 (S.C. Ct. App. 2001)).

The facts in the record support dismissal of Davis’ claim pursuant to the applicable statute of limitations. As noted above, the statute of limitations begins to run when the facts and circumstances place a reasonable person of common knowledge on notice that a claim against another person might exist. *Wellin*, 2014 WL 234216, at *3; see *Jeri M. Suber Credit Shelter Trust*, 2009 WL 4730630, at *4 n.10 (noting that “the statute of limitations for a bad faith action against [insurer] for denial of additional insurance benefits would begin running when [insurer] denied coverage”).

Courts in this district have considered factually similar circumstances in *Sink v. BB&T Ins. Servs., Inc.*, C.A. No. 6:14-375, 2015 WL 12838971 (D.S.C. Feb. 18, 2015) and *Parsons v. Standard Ins. Co.*, 185 F. Supp. 3d 909 (N.D. W. Va. 2016). *Sink* involved an insured party asserting in a suit filed January 8, 2014, *inter alia*, bad faith refusal to pay insurance benefits and breach of contract against an insurance company with which he had a policy. 2015 WL 12838971. The Plaintiff in *Sink* conceded that he was told by the defendant that he did not have coverage in June 2010 through a letter,⁶ but argued that the insurer had yet to make its final determination because the letter stated, “[t]he position of Travelers on this matter is based upon our assessment of the information you feel would be relevant to our coverage determination,

⁶ The letter stated, “a determination was made that the theft of your personal property is not covered by your policy.” *Sink*, 2015 WL 12838971, at *2.

please forward that information to me for our consideration [sic].” *Id.* at *3. The court found that the foregoing sentence did not contradict the unambiguous language of the letter, which stated, “Since theft is not one of the named perils there is no coverage for this loss.” *Id.* Further, the court found that the plaintiff’s hope that his further communications with his agent and with the insurer would result in coverage did not change the fact that the language of the letter as well as his own admissions indicated that he knew or should have known that a cause of action existed when he received the letter; thus the statute of limitations began to run upon the letter’s receipt. *Id.*

Similarly, *Parsons* involved an insured suing an insurer for bad faith and breach of contract. 185 F. Supp. 3d 909. The insurer denied coverage and ceased payments under the disability income insurance policy on February 13, 2014. *Id.* at 911. The plaintiff appealed the denial and the parties engaged in several rounds of correspondence and requests for additional documentation until, by letter dated January 15, 2015, the defendants affirmed their denial of benefits and refused to pay further under the policy. *Id.* The court found that the denial of coverage occurred on February 13, 2014, when plaintiff received the first denial letter, and therefore, his cause of action accrued and the statute of limitations began to run on that date.⁷ *Id.* at 912–13. The court further addressed the plaintiff’s argument that pursuant to equitable estoppel, the statute of limitations should not have begun to run until January 15, 2015, the date on which the plaintiff received the letter denying his appeal, because there was a chance that the defendants would change their minds at some point.⁸ *Id.* at 913. However, the court found that:

⁷ Under the “discovery rule,” West Virginia law, like South Carolina law, states that the statute of limitations begins to run when the plaintiff knew or should have known of the elements of a possible cause of action. *Parsons*, 185 F. Supp. 3d at 913.

⁸ The insurer’s initial denial letter informed the plaintiff of his right to seek review of the denial and a subsequent letter seeking documentation informed him that, “[b]ecause we believe the above proof of loss documentation is required before we are able to make a *final determination* on your claim, we ask that you take appropriate steps necessary to provide the requested information. . . .” *Id.* at 915.

An insured's appeal is simply a hope that the insurer will reconsider the decision it has already made. The mere potential that an insurer might reverse its position cannot qualify as an affirmative act sufficient to induce a plaintiff to forego filing suit, and it certainly is not a promise that it will not plead the statute of limitations.

Id. at 915.

In the present case, it is clear from the face of the complaint that the initial denial of coverage letter was issued on July 8, 2013 (ECF No. 16-1 at 2), and that Davis was aware of the denial of coverage on July 12, 2013. (ECF No. 1-1 at 7). Her complaint states, "A claim for benefits was submitted on April , 2013 [sic] and *denied on July 12, 2013.*" *Id.* In fact, Davis sought out and hired an attorney on July 23, 2013. (ECF Nos. 14 at 1 and 14-1 at 3). The July 8, 2013 letter stated, "Based on the medical facts received and our underwriting guidelines, Bankers Life and Casualty must declare [the policy] null and void from its date of issue. . . . [W]e regret we cannot provide the policy's benefits now or at any time in the future. . ." (ECF No. 16-1 at 2). The unambiguous language of the letter, Davis' retaining of legal counsel promptly after receiving the letter, and Davis' admission in her complaint all indicate that she knew or reasonably should have known that a claim against Bankers Life might have existed at that time. *See Wellin*, 2014 WL 234216, at *3. Davis' further communication with Bankers Life and filing of additional information with the hope of receiving a different result, subsequent to the initial denial, was not sufficient to stay the statute of limitations.

In her reply, Davis attempted to distinguish the facts of *Sink*, 2015 WL 12838971, from the present situation because the insurer in *Sink*, Traveler's, specifically informed Sink that theft was not covered under the policy. (ECF No. 28 at 2). Davis argues that Bankers Life was not specific enough in the letter, in which it stated the policy was null and void due to medical misrepresentation on the insurance application in the form of a health question answered

negatively which should have been answered positively. (ECF Nos. 16-1 and 28 at 2-3). Davis claimed that she was led to believe that the denial was not final. *Id.* However, the July 8, 2013 denial letter was unambiguous in stating that the policy was null and void and that Bankers life would not provide benefits. (ECF No. 16-1). The July 15, 2013 letter clarified exactly which response contained a material misrepresentation. (ECF No. 28). Even if the second letter, dated July 15, 2013, was deemed to start the statute of limitations, Davis' claim would remain barred. Furthermore, Davis' argument regarding an unrelated lawsuit in which Bankers Life was a defendant is without merit; the court will not consider the "prior bad acts" of the insurer based on the facts of an unrelated lawsuit. Additionally, Davis argues for the first time in her reply that the July 8, 2013 letter was a faxed copy and that she did not receive a refund of premiums (as provided for in the letter) until over a year later. (ECF Nos. 28 at 3 and 28-2); *see also Penguin Restoration, Inc. v. Nationwide Mut. Ins., Co.*, C.A. No. 5:13-63-BO, 2014 WL 715123 (E.D.N.C. Feb. 21, 2014) ("The Court has ample authority to strike arguments made for the first time in a reply brief."). Davis provides no authority supporting the relevance of insurance premium refunds to a statute of limitations issue. Accordingly, for the above reasons, the applicable Statute of limitations began to run on July 12, 2013, and Davis' suit filed August 10, 2016, in state court is barred because of South Carolina's three-year statute of limitation.

Finally, the court notes that following the denial of Davis' "appeal" in the December 2, 2013 letter (ECF No. 14-1 at 22), Davis had over two and a half years remaining in which to timely file her claim. She waited approximately two years and eight months following the denial of her "appeal" to file suit in state court (ECF No. 1). This undercuts the assertion that she delayed filing suit solely because of the belief that the insurer might change its decision.

IV. Conclusion

After a thorough review of the Report and the record in this case, the court adopts the magistrate judge's Report (ECF No. 18) and incorporates it herein. For the foregoing reasons, Davis' emergency motion to remand (ECF No. 32) is **DENIED**; Bankers Life's motion to strike Davis' reply (ECF No. 29) is **DENIED**; and Bankers Life's motion for summary judgment (ECF No. 6), is **GRANTED**.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Court Judge

June 23, 2017
Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

RECORD PAGE 64

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SABRINA D DAVIS (PETITIONER)

VS.

BANKERS LIFE AND CASUALTY COMPANY (RESPONDENT)

PROOF OF SERVICE

I, Sabrina D Davis, do swear or declare that on this date, July 8, 2023, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Bose McKinney & Evans LLP , 111 Monument Circle Suite 2700 Indianapolis IN 46204

United States Attorney General Attn: Merrick B. Garland 950 Pennsylvania Ave NW Room 2242 Washington, DC 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 16, 2023

