



South Carolina Bar
Continuing Legal Education Division

2026 SC BAR CONVENTION

Tort Law Section

“Torts, Reforms, and Risk: Navigating
the Shifting Landscape”

Saturday, January 24

SC Supreme Court Commission on CLE Course No. 260147

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South Carolina Bar

Continuing Legal Education Division

High Stakes & Hard Deadlines: Tyger River in 2025 and Beyond

Julie Moore

The Honorable Stephanie McDonald

2026: The Future of the *Tyger River* Doctrine

The Honorable Stephanie McDonald
South Carolina Court of Appeals

Julie L. Moore
Duffy & Young

1

*Tyger River Pine Company v. Maryland
Casualty Company*

2

1

Tyger River Pine Company v. Maryland Casualty Company



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- Applies to third-party insureds.
- Insurers owed insureds a duty of good faith and fair dealing.
- Insurer has a duty to settle a claim **"if that was a reasonable thing to do."**
- Insurer bound to **"sacrifice its interest in favor of those of the insured."**
- Liable for entire judgment + interest when insurer negligently/willfully refuses a reasonable settlement offer within policy limits.

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Why is the *Tyger River* doctrine important?

4

Plaintiff's Perspective - Patrick McLaughlin – Wukela Law Firm



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Insurer's Perspective – Thom Salane- Turner Padget



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LEGISLATIVE REFORM EFFORTS



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Last Year's Tort Reform Effort Re: Tyger River

- **S.244**

- No bad faith claim if policy limits tendered within 30 days of actual notice accompanied by "sufficient evidence" of liability and damages
- In a bad faith claim, "mere negligence" or "excess verdict" not enough to constitute bad faith.
- Jury can consider whether insured or claimant acted in bad faith and reduce damages accordingly.
- **Deleted** from the version of the Bill that passed by the Senate on March 27, 2025

- **H.3430**

- Did not address insurance bad faith.
- Passed.
- In effect January 1, 2026.

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House Judiciary Committee TORT REFORM AD HOC COMMITTEE

Hearing on November 21, 2025

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Insurer's Perspective

Hearing on November 21, 2025

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Insurer's Perspective – J.R. Murphy – Murphy & Grantland
Short Turnaround Time



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Insurer's Perspective – Christmas Tree Demands



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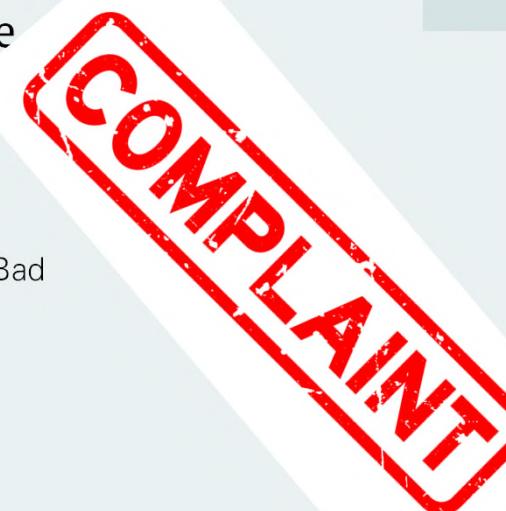
Insurer's Perspective – Setting Carrier Up to Fail



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Complaints Lodged: Insurance Companies

- Artificial Pressure to Settle Inflated or Meritless Claims
- Increased Litigation Costs from Satellite Bad Faith Lawsuits
- Incentives for Exaggerated Claims and Padded Settlements
- Undermining or Predictability and Risk Pooling Principles
- Abuse of *Tyger River* Doctrine



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Claimant's Perspective

Hearing on November 21, 2025

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Claimant's Perspective – Chris Pracht – Pracht Injury Lawyers - Anderson



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Claimant's Perspective – Bad Faith - Seven Years Later...



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Claimant's Perspective – Bad Faith - Trant Case

STATE OF SOUTH CAROLINA COUNTY OF MARION	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT 2025-CP-34-
Charles A. Trant, M.D., Plaintiff, vs. Mag Mutual Insurance Company and McLeod Physician Associates, II, Defendants.	COMPLAINT (Jury Trial Demanded)

TO THE DEFENDANTS ABOVE NAMED:

The Plaintiff, by and through undersigned counsel, hereby makes the following claims and allegations:

PRELIMINARY STATEMENT

1. Plaintiff, Charles A. Trant, M.D., seeks relief due to the Defendants' failure to honor their obligations under contracts, including the covenant of good faith and fair dealing implied

- \$30 Million Dollar Verdict.
- In 2022, Made a 30-day time limit demand for \$1.2M and filed OOJ. No response from insurer.
- Cancelled a second mediation in July 2024. No offer to settle.
- Against advice of defense counsel.
- Told doctor excess liability was his problem.
- Defense Attorney: "I have never pressed so hard to try to secure settlement authority."
- Insurer offered \$1.2M during trial.
- Doctor offers \$1.5M of his own money.
- "concern about a nuclear verdict"

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Claimant's Perspective – The Courts Have it Covered



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CASE LAW – Time-Limited Demands

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Appellate Decisions

- *Allstate v. Goodwin* – 2023 WL 3614268

"This is one of three cases before this court involving similar lengthy demand letters sent by this law firm. All three demand letters include **swift turnaround times** for compliance with numerous, and at times **internally inconsistent**, demands. In these cases, three veteran circuit court judges ruled in favor of the insurance companies; one on a motion to enforce the settlement and two on motions for summary judgment in declaratory judgment actions."

"After hearing the arguments of counsel, the circuit court noted it had addressed the same issue in a different case about a month or two before this summary judgment hearing. The court then explained, '**It doesn't matter what kind of check it is[,] it needs to be deposited and kept until it clears all banks.** And I've got a good friend who accepted a certified check ... and it was forged and caused some real problems.' The court then granted Allstate's motion for summary judgment, noting, 'I hope common sense prevails on this.'"

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Appellate Decisions

- *Allstate v. Hamilton* – 2023 WL 3614272

"In addition to the conflicting language within Law Firm's demand letter, Hamilton's own deposition testimony demonstrates **the form of the check was not an essential or material term of her settlement demand**. The only reason Hamilton could give as a basis for the rejection of Allstate's settlement check for the Policy limits and accompanying documentation was that the check 'didn't meet our demand and that's all I would like to say.' **She conceded the letter demanded \$25,000, Allstate issued a check for \$25,000, and she had no reason to be concerned that she might have problems cashing or depositing the check.** Neither Hamilton nor her attorneys could articulate an appropriate logical reason supporting the argument that the form of the check was essential or material to the parties' contract."

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2026 BILLS

23

H.4670

Weston Newton and Cody Mitchell
Prefiled on December 16, 2025

First Reading on January 13, 2026

Referred to Judiciary Committee on January 13, 2026

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Time-Limited Demand

- Must be in writing and be labeled "time sensitive."
- Must reference the statute – S.C. Code §15-1-350.
- Must be sent certified mail with return receipt OR overnight delivery to insurer.

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Demand: “MUST” Contain Material Terms

- Specific monetary sum to settle the tort claim.
- The type of release the claimant will execute in exchange.
- The persons/entities to be released.
- Description of claims to be released.
- Specific date and time by which offer must be accepted.
- “TIME-LIMITED DEMAND” in bold type, 12 pt. font, first page.
- Date and location of loss.
- Claim number, if known.
- Description of all known injuries.
- Explanation of liability theory.
- Disclosure of information sufficient to verify Medicare/liens

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Demand: “MUST” Include

- **Medical records and bills** – date of injury through date of demand.
- **Records of earnings** – employment records/tax records – lost wages.

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Additional Terms are “Nonmaterial”

- Any terms other than those above.
- Must be clearly designated: “Additional Terms Pursuant to South Carolina Code Section 15-1-350(C).
- Prior to expiration, nonmaterial terms can be negotiated – doesn’t constitute rejection or counteroffer of demand.
- Examples of **nonmaterial terms**:
 - Exact terms and conditions of release.
 - How liens will be satisfied.
 - Whether release will include claims not possessed by claimant.
 - Whether additional parties need to be included in release.

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At least 30 Days + Clarification Rights

- “A person or entity receiving a time-limited demand has at least thirty days from the receipt of the demand to accept the same.”
- Recipient has **right to seek clarification** of any terms in demand.
- Any time limit imposed is extended for a minimum of 30 days from the date of the clarification request or for 15 days after clarification is received by tortfeasor—whichever is greater.

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Payment

- Payment shall be delivered within **ten business days** from the date of written acceptance of the demand or from the date the settlement is approved by the court – unless a longer period is agreed upon.

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Bad Faith Lawsuit

- In any lawsuit filed by a claimant, or by a claimant as an assignee of the tortfeasor or by the tortfeasor for the benefit of the claimant, a time-limited demand that does not strictly comply with the terms of this section must not be considered as a reasonable opportunity to settle for the insurer and is not admissible in any lawsuit alleging extracontractual damages against the tortfeasor's liability insurer.

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H.4733

David Martin, Tommy Pope, Mark Smith, John McCravy, Cody Mitchell

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Bad Faith Presumption in Insurance Settlement Offer Act

A **rebuttable presumption of bad faith** by the insurer shall arise if all of the following conditions are satisfied:

- (a) a settlement agreement has been executed by the claimant, the defendant, and their respective counsel, in which the claimant agrees to resolve the claim within the available policy limits, and the defendant and counsel join in that agreement;
- (b) the insurer, after being timely notified of the settlement agreement and given a reasonable opportunity to accept and execute it, refuses or fails to accept the settlement agreement and effectuate payment within the policy limits; and
- (c) the case thereafter proceeds to trial, and a final judgment or binding arbitration award is entered in favor of the claimant in an amount that exceeds the insurer's policy limits.

The insurer may **rebut this presumption** by presenting evidence that the refusal to settle was reasonable under the circumstances including, but not limited to:

- (a) existence of a material factual or legal defense;
- (b) exposure to greater liability than reasonably anticipated at the time of the Settlement Agreement; or
- (c) information not reasonably available to the insurer at the time the Settlement Agreement was proposed.

If the presumption is not rebutted, the insurer may be liable for such additional damages, interest, and attorney's fees as provided under existing bad-faith law in this State.

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RESOURCES

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South Carolina House Judiciary Committee Website

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Committee Postings and Reports > House Judiciary Committee

South Carolina
HOUSE OF REPRESENTATIVES
Judiciary Committee

Message from Chairman

Wm. Weston J. Newton
District 120, Beaufort County

As chair of the South Carolina House of Representatives' Judiciary Committee, it is my pleasure to welcome you to the committee's webpage. Here you will find more information about the workings of the committee, which is one of the six standing committees in the House that vet legislation. Its official name in the House Rules is the Committee on the Judiciary (Privileges and Elections).

The official name is important as House Rule 4.3 provides that committees have

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House Judiciary Committee

Judiciary (Privileges & Elections) Contact | Subcommittee Assignments

<i>Newton, Wm. Weston J., Chairman</i>	<i>Jordan, Wallace H. "Jay", Jr., 1st V.C.</i>
<i>Bailey, William H.</i>	<i>Bamberg, Justin T.</i>
<i>Bernstein, Beth E.</i>	<i>Brittain, Thomas C. "Case", Jr.</i>
<i>Calhoon, Paula Rawl</i>	<i>Govan, Jerry N., Jr.</i>
<i>Guest, Thomas Duval "Val", Jr.</i>	<i>Hart, Christopher R. "Chris"</i>
<i>Henderson-Myers,, Rosalyn D., Ph.D.</i>	<i>Johnson, Jeffrey E. "Jeff"</i>
<i>King, John Richard C.</i>	<i>Landing, Kathy</i>
<i>Luck, Jason S.</i>	<i>Martin, David</i>
<i>McCabe, Donald Ryan, Jr.</i>	<i>McCravy, John R., III</i>
<i>Mitchell, Cody T.</i>	<i>Moore, Travis A.</i>
<i>Robbins, Robby</i>	<i>Rose, Seth</i>
<i>Spann-Wilder, Tiffany</i>	<i>Wetmore, Elizabeth "Spencer"</i>
<i>Wickensimer, Paul B.</i>	<i>Crater, Kate, Chief Counsel</i>
<i>Hinson, James "Jimmy", Deputy Chief Counsel</i>	<i>Umsted, Truxton, Asst. Legal Counsel</i>
<i>McQueen, Teague, Exec. Asst.</i>	

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Senate Judiciary Committee

Judiciary Contact

Rankin, Luke A., <i>Chairman</i>	Campsen, George E. "Chip", III
Massey, A. Shane	Cash, Richard J.
Adams, Brian	Johnson, Michael
Kimbrell, Josh	Reichenbach, Mike
Tedder, Deon T.	Devine, Tameika Isaac
Blackmon, Allen	Chaplin, JD
Elliott, Jason	Fernandez, Tom
Graham, Jeffrey R.	Kennedy, Carlisle
Leber, Matthew W. "Matt"	Ott, Russell L.
Stubbs, Everett	Sutton, Ed
Walker, Overture	Zell, Jeff
Bright, Lee	

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THANK YOU!

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South Carolina Bar

Continuing Legal Education Division

Tort Reform in Motion: What South Carolina Lawyers Need to Know Now

*Jay Berly
The Honorable Jane Merrill*

Tariffs: Practical Approaches to Navigating the New Landscape

James L. (Jay) Rogers

| Partner, Nelson Mullins

jay.rogers@nelsonmullins.com

 NELSON MULLINS



1

Historical Average US Tariff Rates

Post Civil War to Early 1920s

Rates As High As 50% as America Industrializes

1

Fordney-McCumber Act (1922)

Average Tariff Rate Around 15%

2

Smoot-Hawley Tariff Act (1930)

Average rate around 20%, but countermeasures by trading partners exacerbate the global trade slowdown

3

GATT (1947)

Average rate lowered to 10% as part of America's Cold War strategy

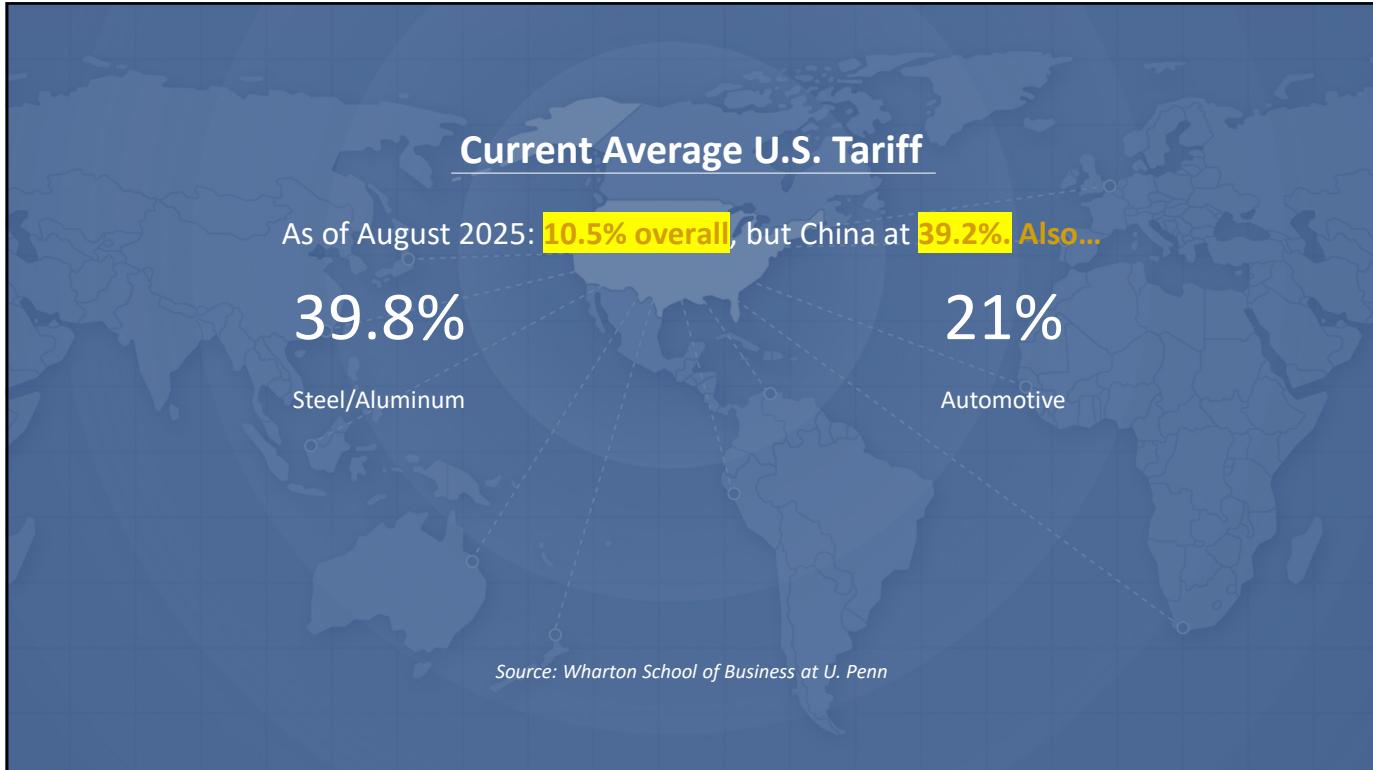
4

Post NAFTA (1994-2016)

Rates drift down to 1-3%, but Cold War ended in 1989, robbing the low tariff tariff strategy of its geopolitical rationale

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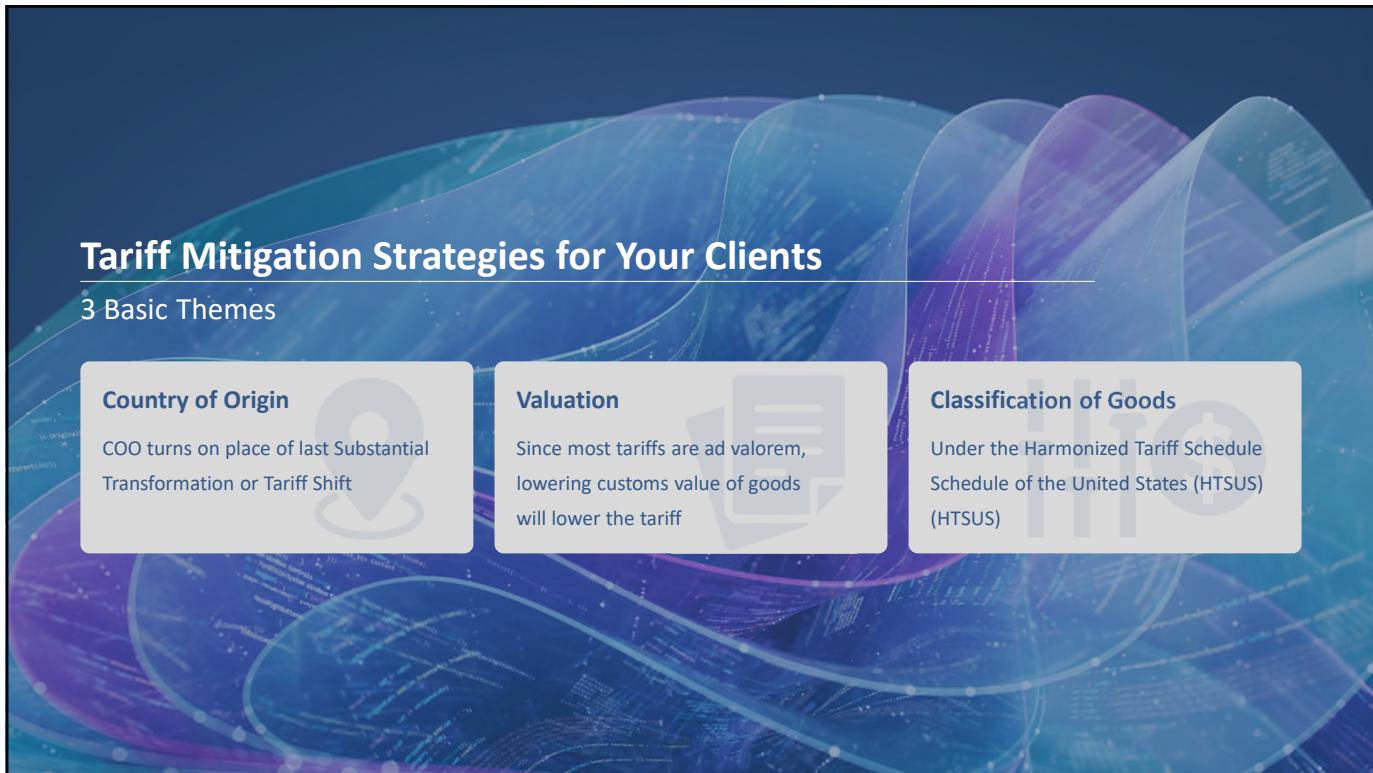
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Tariff Mitigation Strategies for Your Clients

3 Basic Themes

Country of Origin

COO turns on place of last Substantial Transformation or Tariff Shift

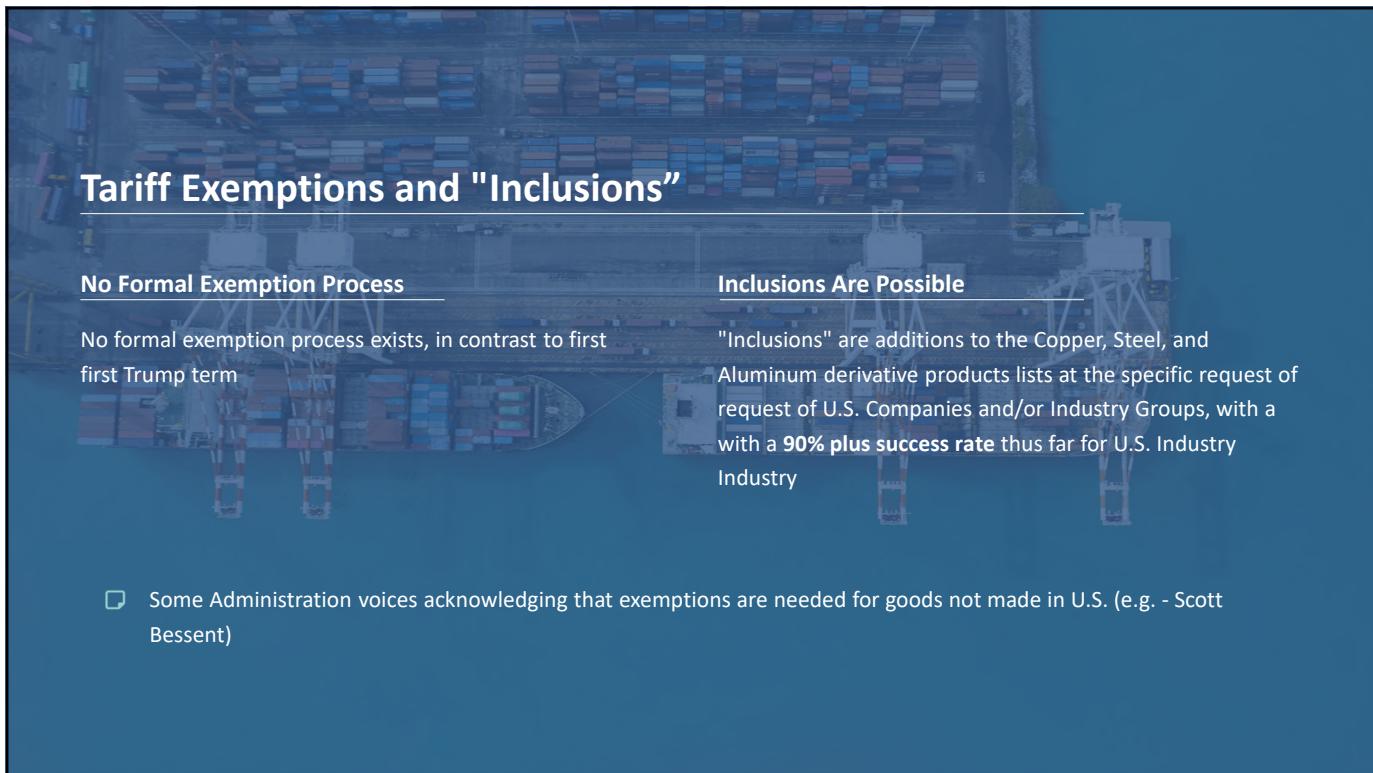
Valuation

Since most tariffs are ad valorem, lowering customs value of goods will lower the tariff

Classification of Goods

Under the Harmonized Tariff Schedule Schedule of the United States (HTSUS) (HTSUS)

5



Tariff Exemptions and "Inclusions"

No Formal Exemption Process

No formal exemption process exists, in contrast to first
first Trump term

Inclusions Are Possible

"Inclusions" are additions to the Copper, Steel, and Aluminum derivative products lists at the specific request of request of U.S. Companies and/or Industry Groups, with a with a **90% plus success rate** thus far for U.S. Industry Industry

- ❑ Some Administration voices acknowledging that exemptions are needed for goods not made in U.S. (e.g. - Scott Bessent)

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Refunds of IEEPA Tariffs?



South Carolina Bar

Continuing Legal Education Division

Words Matter: Strategic Drafting of Indemnity in High-Risk

*Heyward Grimball
Laura Paton*

Words Matter: Strategic Drafting of Indemnity in High-Risk Agreements

South Carolina contractors and their attorneys have struggled for years to perfect enforceable indemnity agreements. In the recent decision in *Retreat at Charleston National*, the court cited a 2018 decision echoing this ongoing conundrum: "In fact, none of our precedents appear to have found a provision that has met the standard," for clear and unequivocal indemnification language. *Retreat at Charleston National Country Club Home Owners Association, Inc. v. Winston Carlyle Charleston National, LLC*, 445 S.C. 566 (2025) citing *Concord and Cumberland Horizontal Property Regime v. Concord & Cumberland, LLC*, 424 S.C. 639 (2018).

This panel will analyze the language used in the contracts at issue in these cases, as well as the South Carolina anti-indemnity statute and discuss what may have gone wrong in each matter.

The cases include:

- *Retreat at Charleston National Country Club Home Owners Association, Inc. v. Winston Carlyle Charleston National, LLC*, 445 S.C. 566 (2025).
- *Concord and Cumberland Horizontal Property Regime v. Concord & Cumberland, LLC*, 424 S.C. 639 (2018).
- *D.R. Horton, Inc. v. Builders FirstSource–Southeast Group, LLC*, 422 S.C. 144 (2018).
- *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 879 S.E.2d 746 (2022).
- S.C. Code Ann. § 32-2-10 (1976)