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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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Appellate Case No.: 2022-000082

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Case No. 2019-CP-26-005892

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RONALD L. MIMS

Appellant

vs.

DIANE W. RAY

Respondent.

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**RECORD ON APPEAL**

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2605892

Ronald L Mims
PLAINTIFF(S)

Diane W Ray
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:

Plaintiff's Motion to Reconsider is DENIED.

This motion is decided without oral arguments.

**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 01/04/2022 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**



ELECTRONICALLY FILED - 2022 Jan 05 8:30 AM - HORRY - COMMON PLEAS - CASE#2019CP2605892

## 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.**

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Horry Common Pleas

**Case Caption:** Ronald L Mims VS Diane W Ray

**Case Number:** 2019CP2605892

**Type:** Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2605892

Ronald L Mims
PLAINTIFF(S)

Diane W Ray
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

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☐ **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:

Defendant's Motion for Summary Judgment is GRANTED.
See S.C. Code Ann. section 56-5-3150(a).
See also Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000).

**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 01/20/2021 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**



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## 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.**

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ELECTRONICALLY FILED - 2021 Jan 20 2:28 PM - HORRY - COMMON PLEAS - CASE#2019CP2605892

Horry Common Pleas

**Case Caption:** Ronald L Mims VS Diane W Ray

**Case Number:** 2019CP2605892

**Type:** Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

ELECTRONICALLY FILED - 2019 Sep 18 2:17 PM - HORRY - COMMON PLEAS - CASE#2019CP2605892

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF HORRY | ) | CASE NO: 2019-CP-26- |
| | ) | |
| RONALD L. MIMS, | ) | |
| | ) | **SUMMONS** |
| Plaintiff, | ) | (Tort - Automobile Collision) |
| | ) | (Jury Trial Requested) |
| -vs- | ) | |
| | ) | |
| DIANE W. RAY, | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

TO: THE ABOVE-NAMED DEFENDANT AND DEFENDANT'S ATTORNEY(S):

YOU WILL PLEASE TAKE NOTICE that you are hereby summoned and required to Answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the attorney(s) for the Plaintiff listed below at his office at 7011 Rivers Avenue, Ste 105, North Charleston, South Carolina, 29406, within thirty (30) days after service hereof excluding the date of such service. IF YOU FAIL TO ANSWER THE COMPLAINT WITHIN THE TIME AFORESAID, PLAINTIFF WILL APPLY TO THE COURT FOR A JUDGMENT BY DEFAULT FOR THE RELIEF DEMANDED IN THE COMPLAINT AND ANY OTHER RELIEF DEEMED APPROPRIATE.

GEORGE SINK, P.A. INJURY LAWYERS

*s/* Patrick T. Napolski

Robert E. Treacy, Jr. SC Bar#12102
Patrick T. Napolski SC Bar#100966
Attorneys for the Plaintiff
7011 Rivers Avenue, Suite 105
North Charleston, SC 29460
P: (843) 569-1700

North Charleston, South Carolina
Dated: September 18, 2019

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| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF HORRY | ) | CASE NO: 2019-CP-26- |
| | ) | |
| RONALD L. MIMS, | ) | |
| | ) | **COMPLAINT** |
| Plaintiff, | ) | (Tort - Automobile Collision) |
| | ) | (Jury Trial Requested) |
| -vs- | ) | |
| | ) | |
| DIANE W. RAY, | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

The Plaintiff above named complaining of the Defendant herein say as follows:

1. The Plaintiff, Ronald L. Mims (hereinafter "Mims"), is a citizen and resident of the County of Horry, State of South Carolina.

2. That the Defendant, Diane W. Ray (hereinafter "Ray"), upon information and belief, is a citizen and resident of the County of Horry, State of South Carolina.

3. That the substantial acts and omissions alleged herein occurred in the County of Horry, State of South Carolina.

4. That venue is proper in Horry County, as the situs of substantial acts and omissions alleged herein.

5. That on or about June 20, 2019, at approximately 5:45 p.m., Plaintiff was lawfully crossing South Dogwood Drive, near the intersection of Atlantic Avenue, in Murrell's Inlet, County of Horry, State of South Carolina.

6. That at or about the aforementioned time, date, and location, Defendant Ray, was driving and operating a 2015 BMW SUV traveling east on Atlantic Avenue and turned south on South Dogwood Drive.

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7. That suddenly and without warning Defendant Ray slammed into Plaintiff Mims, knocking him to the ground, resulting in severe injuries to Plaintiff Mims.

8. That Defendant Ray was negligent, grossly negligent, negligent *per se*, careless, reckless, willful and wanton in one or more of the following particulars, to-wit:

(a) In then and there failing to keep a proper lookout;

(b) In then and there failing to maintain proper control over the aforesaid motor vehicle;

(c) In failing to yield the right-of-way to the Plaintiff;

(d) In striking Plaintiff with a motor vehicle;

(e) In then and there failing to take advantage of any last clear chance to avoid striking the Plaintiff;

(f) In then and there failing to properly observe the road and traffic conditions;

(g) In failing to exercise due care in the safe operation of a motor vehicle;

(h) In failing to equip said motor vehicle with adequate and proper brakes, or if so equipped, in failing to properly apply the same;

(i) In failing to equip said motor vehicle with adequate and proper steering mechanism, or if so equipped, in failing to properly utilize the same;

(j) In failing to equip said motor vehicle with an adequate signaling device or horn, or if so equipped, in failing to properly utilize the same;

(k) All of which were the direct and proximate cause of the injuries and damages the Plaintiff suffered, as are more fully set forth below, said acts being in violation of the laws of the State of South Carolina.

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9. That as the direct and proximate result of the aforesaid negligent, grossly negligent, careless, reckless, willful and wanton acts or omissions of Defendant Ray, Plaintiff Mims suffered great and permanent physical harm and injury from being struck by Defendant Ray's vehicle, all of which has and will, upon information and belief, in the future cause Plaintiff Mims to undergo tremendous medical treatment, physical pain, suffering, and mental anguish, and has and will, upon information and belief, in the future cause him to have to spend money for medicine and medical services and to suffer economic losses present and future.

12. Plaintiff Mims is informed and believes that he is entitled to judgment against Defendant Ray in such sum of actual and punitive damages that a trier of fact may determine, together with the costs of this action and for such other relief as this Court may deem just and proper.

WHEREFORE, the Plaintiff, Ronald L. Mims, prays for a trial by jury, judgment against Defendant Diane W. Ray on claims of negligence, gross negligence, carelessness, recklessness, negligence *per se,* and willfulness in such sum of actual and punitive damages, as well as general damages, that a trier of fact may determine together with such other relief this Court may deem just and proper.

[Attorney Signature on Following Page]

Respectfully submitted,

GEORGE SINK, P.A. INJURY LAWYERS

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*Attorneys for the Plaintiff*

North Charleston, SC
September 18, 2019

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ELECTRONICALLY FILED - 2019 Oct 23 4:40 PM - HORRY - COMMON PLEAS - CASE#2019CP2605892

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF HORRY | ) | Civil Action No. 2019-CP-26-05892 |
| Ronald L. Mims,<br>Plaintiff,<br>vs.<br>Diane W. Ray,<br>Defendant. | | **DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT**<br>**[JURY TRIAL DEMANDED]** |

Diane W. Ray (hereinafter referred to as "Defendant"), by and through her undersigned counsel, hereby answers Plaintiff Ronald L. Mims' (hereinafter referred to as "Plaintiff") Complaint and would otherwise show unto this Honorable Court as follows:

**FOR A FIRST DEFENSE**

1. A Jury Trial is hereby demanded on all issues so triable.
2. Each and every allegation of the Complaint not expressly admitted herein is denied.
3. Upon information and belief, Defendant admits Paragraph 1 of the Plaintiff's Complaint.
4. Defendant admits Paragraphs 2, 3 and 4 of the Complaint.
5. Defendant lacks sufficient information to form a belief as to the allegations of Paragraphs 5 and 6 of the Plaintiff's Complaint; and therefore, denies same.
6. Defendant denies the allegations contained in Paragraphs 7, 8, and 9, including all subparagraphs, of the Complaint.
7. Paragraphs 10 and 11 appear to be omitted from the Complaint and, therefore, do not require a response from this Defendant.
8. Defendant denies the allegations contained in Paragraph 12, including all subparagraphs, of the Complaint.

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**FOR A SECOND AND FURTHER DEFENSE**

9. That the foregoing defenses are incorporated herein by reference as if fully repeated verbatim herein.

10. Defendant asserts that pursuant to Rule 12(b)(6), SCRCP, Plaintiff has failed to state facts sufficient to state a cause of action against him for negligence or any other cause of action.

**FOR A THIRD AND FURTHER DEFENSE**

11. That the foregoing defenses are incorporated herein by reference as if fully repeated verbatim herein.

12. The Defendants alleges that any award of punitive damages in a civil action violates the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution in that civil punitive damages violate the Defendant's right to due process, equal protection of the laws and that civil punitive damages are sufficiently criminal in nature so as to require criminal procedure safeguards. Further, the Defendant alleges that any award of punitive damages in a civil action violates Article I, Section 3 of the Constitution of the State of South Carolina in that:

a. The judiciary's ability to correct a punitive damage award is on upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

c. Any award of punitive damages based upon the wealth of the Defendant violate due process guarantees;

d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of any meaningful standards and is inconsistent with due process guarantees; and

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e. Even if it would be argued that the standards governing the imposition of punitive damages exist, the standard is void for vagueness and/or ambiguity.

13. That the Defendant's conduct did not rise to the level of gross negligence, carelessness, recklessness, willfulness, or wantonness so as to justify an award of punitive damages in this matter.

**FOR A FOURTH AND FURTHER DEFENSE**

14. That the foregoing defenses are incorporated herein by reference as if fully repeated verbatim herein.

15. Defendant alleges that any damages sustained by the Plaintiff were caused by the greater negligence and/or willfulness of the Plaintiff, which exceeds the negligence and/or willfulness, if any, on the part of the Defendant, without which greater negligence and/or willfulness on the part of the Plaintiff, the Plaintiff's alleged damages would not have occurred or been sustained, and for that reason, the Plaintiff is totally barred from recovery from the Defendant.

16. Alternatively, the Defendant alleges that if any injuries and damages were sustained by the Plaintiff, said damages were caused by the negligence and/or willfulness of the Plaintiff, combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of the Defendant, and for that reason, the Plaintiff's recovery against the Defendant, if any, shall be reduced in proportion to the amount of the Plaintiff's negligence.

**FOR A FIFTH AND FURTHER DEFENSE**

17. That the foregoing defenses are incorporated herein by reference as if fully repeated verbatim herein.

18. The Defendant alleges, upon information and belief, that the Plaintiff has failed to act reasonably to mitigate the damages alleged in this matter.

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**FOR A SIXTH AND FURTHER DEFENSE**

19. That the foregoing defenses are incorporated herein by reference as if fully repeated verbatim herein.

20. The Defendant reserves and does not waive any additional or further defenses as may be revealed through additional information that may be revealed by future discovery in this matter or discovered otherwise.

WHEREFORE, the Defendant prays that the Plaintiff's Complaint be dismissed, for costs and disbursements, and for such other and further relief as this Honorable Court may deem just and proper.

THE PEARCE LAW GROUP, P.C.

By: **S/ Marissa A. VanCamp**

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ATTORNEYS FOR DEFENDANT

October 23, 2019

ELECTRONICALLY FILED - 2020 Jul 15 2:17 PM - HORRY - COMMON PLEAS - CASE#2019CP2605892

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF HORRY | ) | C/A No.: 2019-CP-26-05892 |
| Ronald L. Mims,<br><br>Plaintiff,<br><br>vs.<br><br>Diane W. Ray,<br><br>Defendant. | | **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** |

COMES NOW Defendant Dianne W. Ray, improperly identified as Diane W. Ray, by and through the undersigned counsel, and hereby submits this Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. For the reasons set forth herein, counsel would show that the Motion should be granted as a matter of law.

## FACTUAL BACKGROUND

This is a negligence action arising out of an accident involving an automobile and a pedestrian that occurred on June 20, 2019, on South Dogwood Drive ("Dogwood") in Surfside Beach, South Carolina. Since the filing of this suit, Plaintiff, Defendant, and the investigating police officer, Trooper Brendan Delaney, have been deposed. In Defendant's deposition, she testified that she was driving east on Dogwood when she saw a delivery truck parked ahead of her on the right side of the road and partially in her lane. As Defendant approached the truck, she stopped to look for traffic and proceeded with caution. As the front of Defendant's vehicle began to pass the front of the truck, Plaintiff walked into the passenger side of her vehicle. Defendant testified that she was familiar with the area where the accident occurred and that there was no crosswalk in the spot where the accident occurred.

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In his deposition, Plaintiff also testified that he did not cross the street using a crosswalk at the time of the accident. The relevant testimony is as follows:

Q. Is there a crosswalk or anything like that at the area where you cross the street?

A. No, ma'am, they're all eroded.

Q. They were eroded?

A. Yes, ma'am.

Q. Could you see lines in the road for a crosswalk that had been there before?

A. No, ma'am.

Q. What makes you say they're eroded?

A: Well, the one – that's what I mean. The one at Atlantic, it used to be yellow years and years ago. I've lived here my whole life, and it hasn't been painted in, I don't think ever.

Q. At Atlantic where the intersection is?

A. Yes, ma'am.

Exhibit A, Dep. of Ronald Mims, 30;4 – 30;20, June 1, 2020.

Trooper Delaney testified in his deposition that, after speaking with both parties and observing the scene of the accident, he determined that Plaintiff contributed to the accident and Defendant did not. Regarding the issue of whether Plaintiff attempted to use a crosswalk when crossing the street at the time of the accident, Trooper Delaney testified as follows:

Q. And are you familiar with that area where this crash had taken place?

A. Yes, sir.

Q. And when you arrived on the scene of this crash, had you observed any crosswalks?

A. The only crosswalk is when you turn right off, and I can't remember the, the main road that feeds into that area, but off Dogwood Drive there's a crosswalk on that corner.

Q. On the corner of Dogwood Drive and Atlantic Avenue?

A. I think it's Atlantic Avenue, yes, sir, 'cause I think there's a row of restaurants and stuff right there.

Q. And is that a painted pedestrian walkway? When you say the pedestrian crosswalk, what are you referring to?

A. The crosswalk.

Q. Well, what is a crosswalk?

A. Painted crosswalk.

Q. Was there a painted crosswalk at the corner of Dogwood Drive and Atlantic Avenue on the date of this crash?

A. To my knowledge, yes.

Exhibit B, Dep. of Trooper Delaney, 14;25 – 15;24, June 1, 2020.

Q. And I think you said a moment ago you marked Mr. Mims as contributing to that crash; is that correct?

A. Yes, sir.

Q. What evidence did you use to reach that conclusion?

A. With where the driver of the BMW stated she hit the pedestrian was outside the crosswalk and where Fire –

Q. So ---



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A. Sorry, where Fire and EMS said they – where Fire and EMS treated him, also, we put all that together. Well, I put it all together.

Exhibit B, Dep. of Trooper Delaney, 17;9 – 17;22, June 1, 2020.

Q. So just to be clear, the reason you marked Mr. Mims as contributing to this crash is because he was outside the painted crosswalk there on South Dogwood Drive; is that correct?

A. Yes, sir. Yes, sir.

Exhibit B, Dep. of Trooper Delaney, 19;3 – 19;8, June 1, 2020.

Based on the testimony of Defendant, Plaintiff, and the investigating officer, it is clear that the accident occurred outside of a legal pedestrian crossing. In light of this undisputed testimony, Defendant files this Motion for Summary Judgment on the grounds that Plaintiff's own negligence bars him from recovery against Defendant.

**LEGAL STANDARD**

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See Rule 56(c), SCRCP; see also Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). In determining whether any triable issue of fact exists so as to preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Strother v. Lexington Cty. Recreation Comm'n, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998). In ruling on a motion for summary judgment, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of material fact for trial. See Thomas v. Waters, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994).

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After the party seeking summary judgment shows a genuine issue of material fact does not exist, the opposing party may not rest on the allegations averred in his pleadings; rather, he must demonstrate that specific, material facts exist which give rise to a genuine issue. See id. at 526, 445 S.E.2d at 661. Summary judgment may be granted where the evidence favoring the nonmoving party is merely colorable or not significantly probative. See Bean v. S.C. Cent. R. Co., Inc., 392 S.C. 532, 546, 709 S.E.2d 99, 106 (Ct. App. 2011). Pursuant to the plain language of Rule 56(c), an entry of summary judgment is mandated against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof. See Hansson v. Scalise Builders of S.C., 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007) (citing Baughman v. Amer. Tel. & Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991)).

**ARGUMENT**

To establish a cause of action in negligence, a plaintiff must prove the following elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. See Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998). However, under the doctrine of comparative negligence, the plaintiff's recovery is barred if his negligence is greater than that of the defendant. See Hopson v. Clary, 321 S.C. 312, 468 S.E.2d 305 (Ct. App. 1996) (holding that plaintiff's claim was barred under comparative negligence doctrine because plaintiff's own negligence was, as a matter of law, greater than any negligence attributable to defendant and the more determinative factor in causing the accident).

In this action, Defendant asserted comparative negligence as an affirmative defense in her Answer to the Plaintiff's Complaint. Though comparative negligence is typically deemed to be a jury question, courts have granted summary judgment to a defendant based on comparative

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negligence where the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent. See Bloom v. Ravoira, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000); see also Hopson v. Clary, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct. App. 1996) ("If the evidence as a whole is susceptible to only one reasonable inference, no jury issue is created"), and Creech v. S.C. Wildlife and Marine Resources Dep't, 328 S.C. 24, 33, 491 S.E.2d 571, 575 (1997) (discussing directed verdict standard).

For example, the South Carolina Supreme Court upheld the circuit court's decision to grant the defendant's motion for summary judgment based on the plaintiff's comparative negligence in Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000). The facts in Bloom are directly on point with this matter: in an attempt to cross a street, a pedestrian entered the street between two parked vehicles and ran into the side of the Defendant driver's vehicle. The pedestrian did not enter the street at a crosswalk or any other pedestrian crossing, so the driver had no warning of the impact. Additionally, the evidence showed that the driver was driving no more than 25 miles per hour and was not driving recklessly at the time of the impact. Ultimately, the Supreme Court of South Carolina affirmed the circuit court's decision to grant the defendant driver's motion for summary judgment and held that the only reasonable inference was that the pedestrian's own negligence was more than fifty percent, thus precluding his recovery in a negligence action against the motorist. Specifically, the Court held the following:

> Here, the undisputed facts establish that [the pedestrian] attempted to cross the street but did not do so in a safe, reasonable manner. Any factual issues that might exist as to [the motorist's] fault in this accident cannot alter the inescapable conclusion that, as a matter of law, [the pedestrian's] fault exceeded fifty percent. Where evidence of the plaintiff's greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury.

Id. at 424, 529 S.E.2d at 714.

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Trooper Delaney did not testify as to a specific statute but stated that he determined Plaintiff had been outside a crosswalk when the impact occurred. Pursuant to S.C. Code Ann. § 56-5-3150(a) (1976, as amended), "[e]very pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway." As stated above, Plaintiff does not dispute that he did not use a crosswalk or other pedestrian crossing when he entered the street. Because he was not crossing within a marked crosswalk or within an unmarked crosswalk at an intersection, Plaintiff should have yielded the right-of-way to Defendant.

If Defendant is said to have any duty to the Plaintiff, it would be a duty to exercise due care to avoid colliding with any pedestrian. See S.C. Code Ann. § 56-5-320 (1976, as amended). Defendant testified that the headlights in her vehicle were turned on, as "[t]hey're on all, all the time on my car." Exhibit C, Dep. of Diane Ray, 20;21, June 1, 2020. Further, Defendant testified that she was watching for traffic as she attempted to pass the delivery truck:

Q. Do you recall any detail, any of the vehicles that were on the road with you?

A. When I went to make the right turn onto Dogwood, there was a tractor-trailer food truck, I can't think of the name of it, partially in the road and sitting off the road, and I had to stop when I started going around, to make sure there was no oncoming traffic, that I had enough room to get through.

Exhibit C, Dep. of Diane Ray, 21;2 – 21;11, June 1, 2020.

Finally, Defendant testified that she was driving at a low speed at the time of the accident:

Q. Do you recall how fast you were driving once you returned onto Dogwood Drive?

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A. Well, like I said, I come to a full stop when I realized the truck was partially in the road, and it couldn't have been more than past the first little notch there on your speedometer. I think it has ten on mine, couldn't have been going past that.

Exhibit C, Dep. of Diane Ray, 24;1 – 24;10, June 1, 2020.

The evidence shows that Defendant was being cautious and keeping a proper lookout at the time of the accident, and in fact, Defendant did not hit Plaintiff that day, as Plaintiff struck her vehicle. Even if there was some evidence that indicated Defendant contributed to the accident, the conclusion that Plaintiff's fault exceeded fifty percent is inescapable. Therefore, Plaintiff's own negligence in attempting to cross the street outside of a legal crossing was greater than any negligence attributable to Defendant and was the more determinative factor in causing the accident.

## CONCLUSION

Based on the above, Defendant contends that no reasonable jury could find that Plaintiff's negligence was not greater than any negligence on the part of Defendant. Therefore, Defendant respectfully requests that this Court grant her Motion for Summary Judgment.

[SIGNATURE PAGE TO FOLLOW]

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THE PEARCE LAW GROUP, P.C.

By: */s/ Marissa A. VanCamp*

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ATTORNEYS FOR DEFENDANT

Dated: July 15, 2020

# EXHIBIT "A"

# Dep. of Ronald Mims, June 1, 2020.

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State of South Carolina ) In the Court of Common Pleas
)
County of Horry ) Case No: 2019-CP-26-05892

Ronald L. Mims, )
)
Plaintiff, )
)
vs. )
)
Diane W. Ray, )
)
Defendant. )

# THE DEPOSITION OF RONALD MIMS

Monday, June 1, 2020
10:53 a.m. - 2:21 p.m.

The deposition of RONALD MIMS, taken on behalf of the Defendant, was taken before Sharon B. Brock Via Remote Videoconferencing for All Parties, on Monday, June 1, 2020.

***Sharon Brock Court Reporting***
Post Office Box 32157
Myrtle Beach, South Carolina 29588
(843) 685-7179

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## REMOTE APPEARANCES:

**THE WITNESS:**
RONALD MIMS
722 6th Avenue
Surfside Beach, South Carolina 29575

**FOR THE PLAINTIFF:**
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SHARON BROCK COURT REPORTING
Myrtle Beach, South Carolina 29588

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## RONALD MIMS

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## EXHIBITS

(No exhibits were marked during this proceeding.)

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## STIPULATIONS

Pursuant to the Notice and/or consent of the parties, the deposition herein captioned was conducted at the time and place mentioned before Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina.

The deposition was taken for use in accordance to the South Carolina Rules of Civil Procedure unless herein stipulated and agreed to by the parties.

The reading and signing of the deposition by the deponent was waived by the deponent.

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RONALD MIMS HAVING BEEN DULY SWORN, WAS DEPOSED AS FOLLOWS:

**EXAMINATION**

**BY MS. VANCAMP:**

Q: Thank you, Mr. Mims. My name is Marissa VanCamp. I represent Diane Ray, and we're here so that I can ask you some questions about yourself and about an accident that occurred back in 2019. Have you ever had your deposition taken before?

A: No, ma'am.

Q: Okay. I'm going to go over a few rules and guidelines right now. If at any point you don't hear me, please feel free to interrupt and I'll rephrase or restate my question or try to speak louder, okay?

A: Yes, ma'am.

Q: And since we're all on video today, if you can wait until I'm done asking my question before you give your answer, I will do my very best not to interrupt you before I ask my next question. You know, normal conversation it's easy to kind of anticipate where the question is going

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and you start your answer, but if you could please try not to do that just so I can hear you, Patrick can hear you, and most importantly Sharon can hear you since she's recording everything that's being said, okay?

A: Yes, ma'am.

Q: Along those same lines, if you could keep all of your answers verbal just as you're doing, yeses and noes. Even though I can see you, if you're nodding your head or shaking your head and I'm going to probably know what you're saying, I'll ask you, "Is that a yes or a no," and I'm not trying to be rude or ugly or anything like that, I just want to make sure we have a clean record; does that make sense?

A: Yes, ma'am.

Q: Okay. And same thing with uh-huh (affirmative response) and huh-uh (negative response), if I ask you, "Is that a yes or no," I'm not trying to be rude or anything like that. Do you understand that the court reporter is

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recording everything that's being said?
A: Yes, ma'am.
Q: And do you understand that you're testifying under oath and there's penalties that come along with lying or being dishonest?
A: Yes, ma'am.
Q: Okay. If you need to take a break at any point, let me know. I'm going to try to get through this as quickly as we can. I don't want to keep you any longer than necessary, but if you need to take a break to stretch your legs or get some air, feel free to let me know. I'll tell you, one thing about breaks is it's one of the only times in the case when the attorney-client privilege doesn't apply, which basically means if we take a break and you speak with your attorney during the break, once we come back on the record, I can ask you about that conversation; does that make sense?
A: Yes, ma'am.
Q: Are you under the influence of any medications or alcohol or anything like

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that, that could inhibit your ability to answer my questions today?
A: No, ma'am.
Q: Okay. And if you do give me an answer to my question, I'm going to assume that you heard my question and that you understood it; does that make sense?
A: Yes, ma'am.
Q: Okay. So, feel free to have me restate or rephrase at any time. We're going to go ahead and get started. Could you state your full name for the record, Mr. Mims?
A: Yes. Ronald Lee Mims, Jr.
Q: What's your date of birth?
A: 5/6/83.
Q: Were you born here in South Carolina?
A: Yes, ma'am.
Q: Which city?
A: Georgetown, Georgetown County.
Q: What's your current address?
A: 722 6th Avenue South, Surfside Beach 29575.
Q: Do you know approximately how long you've been living at that address?

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A: About two and a half years, three.
Q: And I know these questions are difficult, but do you remember where you were living prior to the 6th Avenue Address?
A: Yes, I was living on 2nd Avenue South, I meant, North, excuse me, ---
Q: Second Avenue.
A: --- in Surfside Beach.
Q: Do you know approximately how long you lived at the 2nd Avenue address?
A: Just about two years.
Q: Besides South Carolina, have you lived in any other states?
A: No, ma'am.
Q: All right. Are you on any social media websites like Facebook or Instagram?
A: I have Facebook. I rarely mess with it.
Q: Okay. Have you ever made any posts related to the accident that we're going to talk about today?
A: No, ma'am.
Q: What's your phone number?
A: 843-315-5140.
Q: Do you know who the carrier is?
A: Straight Talk.

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Q: Would you walk me through your educational background, starting with where you went to high school?
A: Yes, I went to Socastee High School for ninth and tenth grade, and then I went to the Academy For Arts Science & Technology for eleventh and twelfth, graduated.
Q: Do you remember which year you graduated?
A: 2001.
Q: After graduating, did you pursue any additional education?
A: Some college at Horry-Georgetown Technical.
Q: Okay. How long did you attend Horry-Georgetown?
A: About three semesters.
Q: What program were you in or what was your major?
A: Golf Course Management and Horticulture.
Q: All right. And after you stopped taking those courses, did you attend any other colleges or institutions?
A: No, ma'am.
Q: Do you have any professional licenses or certifications?

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A: No, ma'am.
Q: Okay. Are you currently employed?
A: Yes, ma'am.
Q: Where do you work?
A: Save More Super Store.
Q: What's your position?
A: Basically, bicycle mechanic, and we assemble, you know, furniture, pool tables, you know, it's a surplus store.
Q: Okay. Approximately how long have you been doing that?
A: About a month and a half, maybe two months.
Q: Where were you working prior to that position?
A: I was with the family business called SpruceUp.
Q: SpruceUp?
A: Yes, ma'am, SpruceUp.
Q: What was your position there?
A: Landscaping and irrigation.
Q: Do you know roughly how long you were working at SpruceUp?
A: I would say twelve years.
Q: Were you working at SpruceUp at the time

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of the accident in 2019?

A: Yes, ma'am.

Q: Okay. And while we're on that subject, I'll go ahead and ask you now, are you making a claim for lost wages or income as a result of the accident in 2019?

A: I'm sorry?

Q: Are you making a claim for lost wages or income as a result of the accident in 2019?

A: I'm not sure, I presume.

Q: Usually, it's kind of a claim that, due to the accident, you missed work or you lost income because you weren't able to work; does that sound like something you're claiming? I'll tell you, I do see that claim in your discovery responses.

A: Yes, ma'am.

Q: Could you tell me about how much income you're claiming you lost?

A: Well, at the time I've, I've been getting -- the pay fluctuated. It was $13 an hour or if we had big jobs, it was by the job.

Q: Do you have any documentation from your

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employer that would show the jobs you ***missed, the wages you would've earned, do you remember***938*?

A: Yes, ma'am.

Q: Do you have documentation that shows the days of work you missed?

A: Yes, ma'am.

Q: Do you know the estimate of what your lost wages ***came in, what amount of money?

A: Not at the exact moment, but I can get it to you as soon as possible.

Q: If you can get that information to your attorney, he can give it to me.

A: Yes, ma'am.

Q: And I'm not going to hold you to specifics, but do you know, roughly, how many days you missed from work?

A: It was about -- it was seven, eight months.

Q: Okay. During that time period, at the end of eight months, were you able to work at all?

A: No, ma'am, I was -- no, ma'am.

Q: So that would've been seven to eight

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months, starting in June 2019, when the accident occurred?

A: Correct.

Q: Were you able to return to work, eventually?

A: Yes. That's why I got this new job, it's easy on my body.

Q: Did you go back to SpruceUp at all after the accident or did you immediately stop?

A: No, ma'am.

Q: Okay. So, once you were able to start working, you were working in your new position?

A: Yes, ma'am.

Q: And I think you were starting to say something along the lines of the job at Save More is easier on your body; is that right?

A: Yes, ma'am.

Q: Can you tell me more about that?

A: Yes. Well, everything -- they know my situation, and everything is like lightweight, light work, you know, it's nothing strenuous.

Q: Okay. Are you working full-time or part-

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time?
A: Full-time.
Q: Do you know the name of your supervisor at Save More?
A: Jimmy and Andrea, but I don't know their last name at the moment.
Q: Do you remember who your supervisor was when you were working at SpruceUp?
A: Yes, it was my father, Ronald Mims, and my mother, Fran Mims. My father passed away.
Q: And I'm sorry, what was your mother's name?
A: Fran Mims.
Q: Is your mother still working at SpruceUp?
A: No, ma'am.
Q: Do you know of a supervisor or an employee that's currently working at SpruceUp?
A: No, ma'am.
Q: I hope this question doesn't offend you, I have to ask this of everyone, but have you ever been arrested or convicted of any crimes?
A: Yes, ma'am.

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Q: Could you tell me what year you remember that occurring?
A: I couldn't -- you want me to go with the most recent?
Q: Sure.
A: Okay. That was early 2019, and I am currently in Mental Health Court, and will be graduating in August, and it is a program that is amazing. It has changed my entire outlook upon life and just really has turned any kind of negative into a positive thought.
Q: That's good to hear.
A: Yes.
Q: And I don't want to dig too much into this, could you tell me what the charge was?
A: Yes, it was drugs, methamphetamine.
Q: Possession charge?
A: No, ma'am, distribution.
Q: Okay. And, then, walking back, it sounds like you had been arrested prior to 2019 **1524?
A: Yes, ma'am, I had a -- I'm sorry?
Q: Sorry, I didn't mean to interrupt you,

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just want to make sure if there was more than one, that we heard them all.

A: Yeah, DUI. I can't remember the exact date, but it was a long -- it was a while ago. It's six, six years, seven.

Q: Do you remember if that took place in Horry County or Georgetown or somewhere else?

A: Horry County.

Q: Okay. Do you remember how that charge was resolved?

A: Yes, ma'am. I took the classes at -- on Wise Road at Shoreline, Shoreline Behavioral Health Services.

Q: Okay. Besides the 2019 charge and then the DUI charge that was about six years ago, can you think of any other charges?

A: A DUS, driving under suspension, a while ago, as well.

Q: Okay. Would that have been sometime after the DUI?

A: Yes, ma'am.

Q: And what happened with that charge?

A: I paid the fine and -- yeah.

Q: Has your driver's license been revoked at

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any point?
A: It had been.
Q: And, then, has it been reinstated since then?
A: Yes, ma'am.
Q: Okay. Are there any other criminal charges that you can recall?
A: No, ma'am1743*.
Q: Prior to the accident in June 2019, do you recall ever being involved in any other motor vehicle accidents either as a driver, a passenger, or a pedestrian?
A: No, ma'am.
Q: And, then, can you recall any accidents after that 2019 accident?
A: No, ma'am.
Q: Before I get into the actual accident and your treatment, I'm going to ask you a little bit about your past medical history. Do you suffer from any chronic condition like diabetes or high blood pressure or anything like that?
A: No, ma'am.
Q: Have you ever been hospitalized prior to the 2019 accident?

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A: Yes, ma'am.
Q: Do you remember what year or roughly when it was?
A: 2018, maybe early 2019, around in there.
Q: And I've looked through your medical record and it looks like, correct me if I'm wrong, was that for alcohol withdrawals and things like that?
A: Yes, ma'am.
Q: And it looked like as part of that history you suffered from some seizures; is that right?
A: Yes, ma'am.
Q: Do you currently suffer from any seizures?
A: No, ma'am.
Q: Besides that treatment, have you ever been hospitalized for anything else, surgeries, anything like that?
A: I'm sorry, you broke up a little bit.
Q: Besides the seizures and alcohol withdrawal issues, have you ever been hospitalized for anything else like any other surgeries or illnesses?
A: No, ma'am.

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Q: Okay. Do you have a primary care physician or a family doctor that you see?
A: Yes, ma'am.
Q: What's the doctor's name?
A: Dr. Archambeau.
Q: Do you know what practice that doctor is with?
A: No, ma'am, he's just a primary care physician.
Q: Do you know, like, where the location is; is that ---
A: Pawleys Island.
Q: Okay. Roughly, how long have you been seeing that doctor?
A: Roughly, five years.
Q: Did you see that doctor for anything related to this accident in 2019?
A: No, ma'am.
Q: I just want to make sure I wasn't missing anything, because I didn't see his name or her name. All right. Have you ever suffered from neck or back pain prior to the 2019 accident?
A: Yes, ma'am.

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Q: Can you tell me when that was?
A: That was about the same time, 2018, '19, from seizures.
Q: And I guess, just to be clear, is that neck pain or back pain or both?
A: Back pain.
Q: And that would occur whenever you had seizures?
A: Yes, ma'am, I fell.
Q: Okay. Was there a serious injury to your back?
A: No, ma'am, no surgery.
Q: No surgery, did you have treatment for it?
A: Yes, ma'am.
Q: Do you remember where you treated?
A: Tidelands Health.
Q: Do you remember if that was all over your back or upper back, lower back, mid-back?
A: Mid to lower.
Q: And what was the pain like, can you describe it for me?
A: Yeah, it was very -- it was more stabbing and shooting pains. It would go down my left leg sometimes and right.

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Occasionally, it was like the sciatica nerve, and like certain positions, I couldn't, I couldn't do, you know, as far as lifting, bending. I couldn't sit for a while without being uncomfortable.

Q: Was that constant pain or did it come and go, do you remember?

A: It was pretty constant, and certain things would alleviate it temporarily.

Q: What kind of things would alleviate it?

A: Laying in certain positions, sometimes just walking would help it.

Q: Do you remember if you took any pain medications or prescriptions or anything to help with the back pain?

A: I can't recall, except for Ibuprofen 800s. I'm not really sure. I don't think so.

Q: What was your treatment like at Tidelands, was it like physical therapy where you would do stretches and exercises or do you remember what that treatment was?

A: Yes, ma'am, it was physical therapy.

Q: Okay. Did that back pain resolve prior

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to the 2019 motor vehicle accident?

A: I'm sorry?

Q: Do you remember if that back pain resolved or went away before you were involved in the accident in 2019 with Ms. Ray?

A: Yes, ma'am, it got much better.

Q: Were you still experiencing pain at that point in time?

A: Only if I did something extreme and then that'd be immediately quick.

Q: Okay. Do you know when you stopped going to Tidelands for PT prior to the accident?

A: A year and a half ago-ish.

Q: Was it close in time to the accident or had it been a few months, do you remember? And, again, I won't hold you to specific dates, I'm just trying to get an idea.

A: It was months, it was months before.

Q: Okay. Prior to the 2019 accident, had you ever experienced any pain or issues with your right wrist?

A: No, ma'am.

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Q: Besides the physical therapy we've already talked about, have you ever completed any chiropractic treatment or other physical therapy before that 2019 accident with Ms. Ray?

A: No, ma'am.

Q: All right. Before I start asking you about the accident, I just have a quick follow-up to your background questions. Are you currently married?

A: No, ma'am.

Q: Have you ever been married?

A: Yes, ma'am.

Q: Okay. What was your spouse's name?

A: Tina Clifford.

Q: Do you remember what year you were divorced?

A: About four years ago.

Q: Okay. And, then, if we do go to trial at some point down the road when we're looking at a jury, I'm going to avoid putting any family members on the jury, so do you have any relatives that are over the age of eighteen that currently reside in Horry County?

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A: No, ma'am.
Q: Do you know if Tina is still in Horry County?
A: I don't.
Q: Okay. Do you live with anyone right now?
A: My mother.
Q: Do you have any siblings that are over the age of eighteen that live in this county?
A: No, ma'am.
Q: The date of the accident that I have is June 20th, 2019; does that sound about right to you?
A: Yes, ma'am.
Q: Do you remember what time of day the accident occurred?
A: It was afternoon.
Q: Do you remember what the weather was like?
A: Yeah, it was sunny.
Q: Tell me what you remember ---
A: And it rained.
Q: It was ---
A: It was like a popcorn, excuse me, it was like a popcorn shower, typical summer

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stuff.

Q: At the time of the accident, was it raining?

A: Not at the time.

Q: Do you remember if it rained at all before the accident?

A: Maybe a little. Like I say, it was the summertime hit and miss storms.

Q: Do you remember if it rained after the accident?

A: Yes, ma'am.

Q: All right. And just to start off, I want to be clear, you were a pedestrian at the time of the accident, correct?

A: Yes, ma'am.

Q: Do you remember where you were walking from?

A: Yes. I was walking across the street from the fire station, going to cross the street, go towards the beach.

Q: Was the beach your destination?

A: Yes, ma'am.

Q: All right. And you were coming from the fire station?

A: Across the street from the fire station,

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yes, ma'am, Dogwood.
Q: Had you been at your home or is there a business you were at?
A: No, ma'am, I had parked my car.
Q: Where had you been prior to parking your car?
A: My house.
Q: All right. If you could tell me, what do you remember from the minutes leading up to the accident?
A: I left my house, parked my car, went to go to the beach across the street, and that's when it happened.
Q: Okay. Just to get a little more detail, can you describe what the road is like in that area?
A: Describe the road?
Q: Do you know, is it one lane in each direction, is it multiple lanes in each direction, is there ---
A: Yeah, one in ---
Q: --- an intersection?
A: One in each direction.
Q: Were you crossing near an intersection?
A: I was crossing to another street, not off

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of the main street, Atlantic, the secondary street.

Q: Do you know if there's any traffic signals or stop signs or anything like that at the spot where you were crossing or nearby?

A: Nearby.

Q: About how far away?

A: Maybe fifty to eighty feet.

Q: Is that a traffic signal or a stop sign?

A: No, it's the direct turn off of Atlantic.

Q: Okay. Do you remember what traffic was like that day?

A: Typical summer traffic.

Q: Prior to crossing the street, do you remember, you know, checking for traffic and things like that?

A: Yes, ma'am.

Q: Tell me what you remember about that. Did you see vehicles in the road?

A: Not at the time, no, ma'am.

Q: From either direction?

A: No, ma'am.

Q: Were any vehicles parked alongside the road?

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A: Yes, ma'am.
Q: What kind of vehicle, do you remember?
A: A delivery truck and other regular cars.
Q: Where were those vehicles parked in relation to where the accident occurred?
A: They were parked at the corner by Atlantic coming off of that turn from Atlantic.
Q: Were there any vehicles parked near, right near where the accident occurred or were they all closer to Atlantic?
A: They were closer to Atlantic and spread along, along the other side of the street.
Q: Was the delivery truck parked nearby where the accident occurred or was that close to Atlantic?
A: Right in between.
Q: Okay. So, am I correct that there are vehicles parked along the road, but no moving traffic that you saw along Dogwood?
A: Yes, ma'am.
Q: Okay. Do you know, roughly, how long you paused to check for traffic before you

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crossed the street?
A: Yes, maybe five seconds, looked both ways, checked, you know.
Q: Is there a crosswalk or anything like that at the area where you cross the street?
A: No, ma'am, they're all eroded.
Q: They were eroded?
A: Yes, ma'am.
Q: Could you see lines in the road for a crosswalk that had been there before?
A: No, ma'am.
Q: What makes you say they're eroded?
A: Well, the one -- that's what I mean. The one at Atlantic, it used to be yellow years and years ago. I've lived here my whole life, and it hasn't been painted in, I don't think ever.
Q: At Atlantic where the intersection is?
A: Yes, ma'am.
Q: Okay. Tell me what you remember about the actual impact.
A: The actual impact, I just heard the engine, looked over, saw a blue hood, and I don't remember anything after that.

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Q: Do you know if you lost consciousness?
A: Yes, ma'am.
Q: And just to backtrack, did you say you heard the engine or you heard a car?
A: Yes, ma'am, it was real quick.
Q: What do you remember or what's the first thing you remember when you came to after losing consciousness?
A: Just shaky and, you know, in shock, freaked out, stood up, went to kind of shake off, you know, like, "Whoa," and that's when I noticed my arm, and went over to the firehouse.
Q: All right. When you say you noticed your arm, I just want to be clear about what that means. Is that your right arm or your left arm?
A: My right arm was completely broke.
Q: Were you experiencing any pain at that point in time?
A: (Audio was muted.)
Q: I couldn't hear you. Try to say something now.
A: Okay, sorry.
Q: That's okay. I can hear you now. I'll

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repeat that question. Were you experiencing any pain in your arm at that point in time?

A: Yes, ma'am, once I started coming to.

Q: Besides your arm, do you recall experiencing pain in any other areas of your body?

A: Yes, ma'am. Oh, I am so sorry. Can -- may we please continue shortly?

Q: Do you need to take a short break or do you need to step away for a longer period of time?

A: Maybe -- how about one o'clock. I am so sorry.

Q: Do you need to leave for a meeting or a class or something?

A: Yes, ma'am. I had a meeting and it's starting a little early. That's why it was breaking through on me, they're telling me to come in.

Q: Okay.

MS. VANCAMP: SHARON, ARE YOU AVAILABLE THIS AFTERNOON?

COURT REPORTER: I AM.

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MS. VANCAMP: OKAY. AND, PATRICK, IS THAT OKAY WITH YOU IF WE TAKE A BREAK AND RESUME AT ONE?

MR. NAPOLSKI: YEAH. THAT WORKS JUST FINE FOR ME IF THAT'S OKAY WITH EVERYONE ELSE.

MS. VANCAMP: THAT WORKS FOR ME. MR. MIMS, IF YOU CAN SIGN BACK ON AROUND 1:00 P.M., I'LL SIGN BACK ON, TOO.

******OFF THE RECORD******

**11:33 a.m. - 1:46 p.m.**

**(ON THE RECORD.)**

MS. VANCAMP: I KNOW WE JUST TOOK A LONG BREAK. SHARON, IF YOU WOULDN'T MIND JUST READING INTO THE RECORD THE LAST QUESTION SO THAT WE CAN KIND OF START WHERE WE LEFT OFF.

(COURT REPORTER COMPLIES WITH REQUEST).

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**MS. VANCAMP CONTINUES:**

Q: Okay. So, circling back to where we're talking about the accident, Mr. Mims, could you tell me what areas of your body you started feeling pain in immediately after the impact?

A: My left leg, it, it triggered my sciatic nerve, and my lower back.

Q: And I apologize, I might ask you some repeat questions, but ---

A: That's okay.

Q: --- I believe you said you did lose consciousness; is that right?

A: Yes, I did.

Q: Do you have any idea how long?

A: Honestly, I'm not too sure. It wasn't, you know, terribly long, maybe thirty seconds to a minute, maybe, somewhere around in there.

Q: And, then, you were able to stand up; is that right?

A: Yeah. It took, it took me a second, but I, you know, got up, a little dizzy, shaken.

Q: All right. And, then, I believe you had

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said you spoke with the Defendant; is that right, just briefly?

A: I'm not sure, maybe briefly.

Q: And, then, you walked over to the fire station?

A: Yes, I just went straight there.

Q: Did any of the firefighters come to you or did you go straight over there?

A: A gentleman helped me to walk over there.

Q: Do you know who he was?

A: I do not.

Q: Do you know if he was a firefighter?

A: No, sir, I mean, no, no, he was not.

Q: Okay. Tell me what you remember from your time at the fire station.

A: They put a temporary sling on my arm, like, I believe some kind of wrap just to, you know, give it a little help so I didn't have to keep holding it, like a little sling, and that was when, you know, they stayed with me, and my mother came to take me to the hospital.

Q: Do you know how long after the accident it was before she arrived?

A: Oh, it wasn't that long, maybe ten

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minutes-ish.

Q: Do you remember if you called your mom or if one of the firefighters did or somebody else?

A: I -- I'm pretty sure I did.

Q: Do you remember calling anyone besides your mother?

A: No, just my mother.

Q: Okay. And you said that she took you to the hospital?

A: Yes, ma'am.

Q: So, no ambulance showed up at any point that you remember?

A: No, ma'am, because my mother was right there.

Q: Do you remember if you spoke with the Defendant at any point before you left for the hospital once you're at the fire station?

A: The only thing I recall was her apologizing, and that was it.

Q: Do you remember which hospital you went to?

A: Tidelands Health.

Q: And tell me what you remember from your

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treatment there.

A: They took me into the emergency room, put me on -- I'm not sure what it's called, but I have a picture of it, but it looked like Chinese handcuffs like they attach to my fingers and attached something to my bicep muscle and pulled down as those -- they were trying to gently let the bone come back together, which it didn't, you know, and then they sent me home in a sling, and then that's when I -- after that, a little bit of time passed, I went to Dr. Lewis to have surgery.

Q: All right. Going back to the ER treatment, do you remember if they did any x-rays or diagnostic scans when you were at the hospital?

A: Yes, they did.

Q: Do you remember speaking with a doctor about the results?

A: Not, I mean, not really. I was pretty -- I'm not sure. I was kind of, you know, I was just shaken up.

Q: And you said they put you in a sling and sent you home?

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A: That, I do remember.
Q: Do you know if they gave you any pain medication?
A: I refused. I, I just -- like Ibuprofen.
Q: Can you tell me why you refused the pain medication?
A: Yes, 'cause I don't like -- I don't take drugs. I'd, I'd rather be clean and deal with it.
Q: All right. After you were released from the hospital, did you just go home that night, do you remember anything specific about what you did that night?
A: Just went home.
Q: And I believe you said you saw Dr. Lewis next?
A: Yes, ma'am.
Q: Do you know when that was?
A: I don't have the paper in front of me, no, ma'am.
Q: Was it shortly after the accident, was it a couple weeks later, do you have any estimate?
A: It was, you know, a week or two, something like that. That's when he told

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me, you know, for sure I needed surgery. I was like, "Well, yeah, it's hanging out."

Q: Do you know what practice Dr. Lewis is with?

A: He's with Tidelands Health. He's -- he does arms and wrists and stuff, you know, bone, ortho -- orthopaedic.

Q: I think the first date that I have with Tidelands Health Orthopaedics is July 2nd; does that maybe sound about right?

A: Okay, yes.

Q: Do you remember any treatment between the date of the accident on June 20th and then that visit with Dr. Lewis on July 2nd?

A: Any treatment, no.

Q: And was Dr. Lewis the one that performed the surgery?

A: Yes, ma'am.

Q: Were there any complications from the surgery?

A: No, ma'am.

Q: All right. Will you tell me about the treatment you remember having after your

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surgery was completed?
A: Yes, ma'am. I had two months' worth of physical therapy for my right arm and for my back. That was from December to January.
Q: December 2019 to January 2020?
A: Yes, ma'am.
Q: Have you had any treatment since that ended in January 2020?
A: I went to Dr. Yee's office and got a epidural, a shot in the spine.
Q: Could you say the doctor's name? Did you say Yee with a "Y"?
A: Yeah, Y-E-E.
Q: Do you know which practice -- Which practice is Dr. Yee with?
A: It's Pain Management with Tidelands Health.
Q: And you said you had an epidural injection?
A: Yes, ma'am.
Q: And I'm assuming that was in your back?
A: Yes, and -- yes, ma'am.
Q: Have you just had one injection?
A: I had two.

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Q: Is there any other treatment since January 2020 that you can think of besides those two injections?
A: No, ma'am.
Q: Do you have any additional injections planned or additional appointments set up?
A: No, ma'am, just a follow up.
Q: I want to circle back to the physical therapy you had right after your surgery. Do you feel like that physical therapy helped with your issues or how would you describe your progress?
A: You broke up a little.
Q: How would you describe your progress during your therapy right after your surgery; do you feel like you improved?
A: You know, it was getting there, you know, there was, there was a little progress, you know, they told me it'd take a while. My hand doctor or the physical therapy said I had about forty-six percent, kind of wish I could've got a little bit more, but, you know, it was all I could do at the time.

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Q: At this point in time, are you still experiencing any pain in your right arm?
A: Yes, ma'am.
Q: How often do you experience the pain?
A: Pretty much, every day.
Q: Is it constant pain or does it come and go?
A: Comes and goes.
Q: And how would you describe it, like stabbing, or how would you describe it?
A: It's, it's just sharp, you know, bad pain. That, that extreme pain is, you know, very short-lived and then it hurts, you know, mildly after that for a while.
Q: All right. At this point in time when you get that pain, how do you treat it?
A: I put my brace back on, you know, I, I keep it on most of the time anyway, but it just -- it doesn't matter, but I, you know, I keep it super tight, you know, just to try to limit any kind of tweaking of it, you know.
Q: Are you wearing your brace right now?
A: No, ma'am.
Q: How often do you wear your brace?

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A: When I go to work, whenever I'm doing anything with my hands, I've always got it handy.
Q: Okay. At this point in time, are you still experiencing back pain?
A: Yes, ma'am.
Q: How often do you feel that pain?
A: Once, again, when it's just something, you know, that would tweak it, you know, just certain movements, you know, lifting certain things, you know, just difficult. Sitting too long, it starts, you know, cramping up and everything, it starts getting real painful, you know, just twisting, bending, lifting.
Q: Do you feel like the injections helped with your pain?
A: Yes, *1315.
Q: Sounds like that pain is not constant; is that right?
A: No, ma'am.
Q: And that's a no, it's not constant? I just want to make sure I'm clear.
A: Yes.
Q: Earlier, you had said that your back pain

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would radiate into one of your legs, is it one leg or the other or the both legs?

A: The left leg.

Q: Does it still do that to this day?

A: Yes.

Q: All right. When you have back pain at this point in time or pain that radiates into your legs, do you have any treatment that you're doing for it?

A: No, just personal things that I can do to alleviate it, not professional.

Q: Like stretches and things like that?

A: Yes, ma'am.

Q: And I know you said you didn't want to take any medications before, but do you have any medications that you take now for your pain?

A: Gabapentin.

Q: Do you remember when you first started taking that?

A: Not really, maybe October-ish of last year, maybe.

Q: How often do you take it?

A: In the morning and in the late afternoon, evening.

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Q: Is that every day?
A: Yes, ma'am.
Q: Do you have a pharmacy that you regularly refill that prescription at?
A: Yes, ma'am.
Q: Where's that at?
A: The Wal-Mart Pharmacy in Garden City.
Q: Okay. Do you know if that's prescribed by your primary care physician or is it the Pain Management doctor?
A: Pain Management.
Q: Besides the Gabapentin, are you taking any other medications right now?
A: Yes.
Q: Medications for pain?
A: No, ma'am, for sleep. It's been tough to, you know, sleep, tossing and turning.
Q: Do you know what medication you take for sleep?
A: Trazadone.
Q: Do you take that every night?
A: Yes, ma'am.
Q: Are there any other medications you're currently taking?
A: I take Lexapro as well, once in the

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morning.

Q: All right. And since you've told me you still have pain at this point in time, can you tell me, is there anything that you absolutely can no longer do following the accident?

A: Yes, you know, like the work I used to do, landscaping, irrigation, because I can't use any force, you know, like as far as digging, moving plants, pruning trees, you know, 'cause all those movements, I, I just can't do it, it hurts too bad, you know, having to lift, so I can't do that. Leisurely, sports-wife, I used to surf a lot, haven't tried, but I don't see how I could do that, because my wrist does not bend back, nor, you know, fishing kind of, you know, that hurts. I've tried that twice. Yeah, it's knocked out a couple of things out of my life.

Q: And you said you haven't tried surfing since the accident; is that right?

A: Correct. I doubt I could, I mean, you know, I don't know if you know anything

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about surfing, but, you know, you got to pop up, and my wrist doesn't bend back. That's all it does, it goes straight, maybe two degrees.

Q: Can you estimate for me how often you would go surfing before the accident?

A: Any time there was waves.

Q: That sounds like a surfer answer.

A: I mean, you know.

Q: Are there any areas of your body that we haven't talked about yet that you're claiming were affected in the accident? I know we've talked about your right wrist and your back and kind of your leg. Is there any other area we haven't covered?

A: No, ma'am.

Q: Okay. In one of your, I think it was your final note from your therapy in January 2020, it said that you were planning on joining a gym and starting Yoga because you were feeling better; were you able to do that?

A: No, ma'am, because Covid-19, everything, you know.

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Q: At the time you stopped therapy, were you feeling like your issues were resolving?
A: I mean, like I say, they, they weren't getting worse. There was slow improvement, but it was an improvement.
Q: Okay, that's fair. Do you remember anything about the conversation you had with the police officer at the hospital?
A: Not really, no, ma'am.
Q: Do you remember that a police officer came?
A: Yes. I, I vaguely remember that, yes, I remember that, uh-huh (affirmative response).
Q: Besides the brace that you've been talking about, do you have any other devices or other braces that you use for your arm or anything for your back?
A: I just have a heating pad for when I lay down for my back.
Q: Okay. At one point, I think you mentioned photos, do you have photos that you took after the accident?
A: Yes, ma'am.
Q: What are they photos of? Is it of your

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arm or things like that?
A: Yeah, it's just a picture of the break and the Chinese handcuff hookup they had at the hospital.
Q: Do you know if you've given all those photos to your attorney?
A: I'm not sure, but I sure can.
Q: Okay. I think I have some, but I don't know if I have all of those. Let's see.
A: And I have some as well from doing the stim, the electrode shock stim in my back, too. That was interesting.
Q: And I promise I'm just about done, but I do have some follow-up, so I apologize for being ---
A: Okay.
Q: --- all over the place. Prior to the accident in 2019, do you remember if you'd ever made any Workers' Compensation claims?
A: No, ma'am.
Q: Have you ever made any other personal injury claims?
A: No, ma'am.
Q: I do not want to know anything that

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you've discussed with your attorney, but do you remember when you first contacted an attorney after the accident?

A: It was very shortly.

Q: Okay. I have a damages summary. This was produced to me in the discovery responses that your attorney sent me, and I apologize, I don't have a way to get it to you right this second, but it lists, kind of, the different damages you're claiming.

MS. VANCAMP: AND, PATRICK, YOU PROBABLY HAVE THIS.

Q: ****2300. One of the ones that I see is deprivation of normal life expectancy, can you tell me about that claim?

A: Yes. Like I mentioned before, everything up until then, you know, I, I lost my work, I lost my personal hobbies, and like I say, everything that I love is physical and involves my right hand. I'm right-handed, for one thing, you know, it just, it disables every part of my life that I've known and grown to love.

Q: Okay. Another one on here, and I'm not

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trying to embarrass you at all, but these are claims that are listed, so I want to ask you about them. One of them listed is sexual dysfunction, can you tell me about that claim?

A: Yes. Well, something has -- okay, how do I -- okay. It's not getting proper blood flow, like even when, after I sleep, I mean, I'll get kind of technical, you know, usually when you wake up there's blood, you know, flow, nothing.

Q: Had that ever happened prior to the accident in 2019?

A: No. I kind of had some issues a while back, but that got resolved.

Q: When you say a while back, do you know, roughly, how long ago you're talking about?

A: Probably ten years.

Q: Were you seeing a doctor to help resolve that?

A: I saw a doctor one time.

Q: Do you remember the name of the doctor or where that was?

A: No, I, I do not. It was such a long time

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ago, I don't.
Q: And you said it resolved?
A: Yes. Yes.
Q: How long after the accident did you start having this issue?
A: Immediately.
Q: Like the next morning?
A: Every morning.
Q: Starting back since the accident?
A: Yes, a little awkward, but it's okay.
Q: And like I said, I'm not trying to embarrass you, but this is my only chance to really ask you questions, and that's part of your claim, so I just want to make sure that I am clear.
A: No, that's fine, I get it.
Q: Let's see. And, again, I'm not trying to embarrass you or make you uncomfortable, but some of the other ones I see are mental anguish, mental distress, apprehension and depression. Can you tell me how those things are related to the accident?
A: Okay. Could you start with one at a time?

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Q: Sure. We can start with mental anguish.
A: Yeah, the mental anguish is, you know, the daily frustrations, you know, from being limited to what I, you know, am able to do well and enjoy, you know, it's quite frustrating.
Q: Okay. Mental distress, kind of same thing?
A: Along those same lines, yes, ma'am.
Q: And, then, there's apprehension?
A: Apprehension?
Q: Yes.
A: Elaborate.
Q: It just says apprehension, and I just want to know what that means to you.
A: Would you mind elaborating, please?
Q: Well, what do you think of when you hear apprehension?
A: Apprehension basically, to me, sounds like, you know, everything, you know, that I love was stripped from me as far as like I, I would love to hopefully say that I could be able to do a few of them. I'm sorry, I'm, I'm kind of drawing a blank at the moment.

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Q: It's okay, and like I said, I just want to get your perspective on these. Well, I do want to ask you, though, about depression. Can you tell me about how that's related to this car accident?

A: Yes, you know, the depression part, it's, it's -- like I say, it's another daily feat that I, I have to try to overcome, you know, by, you know, I, I just don't see anything else that I would love nearly as much as everything I used to do. You know, I was really, really well at it, you know, it took my confidence down tremendously, that sucks. You know, just basically trying to, trying new things, and, and it gets, it gets very aggravating, just, you know, even trying to talk about it, because I had such love and passion for what I did. I took pride in everything I did, you know, and pride was huge for me, you know. You know, as, as, as far as my work ethics go and, you know, making people happy by doing what I did, knowing now I can't, so that would, you know, it just, it puts me in a dump

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once in a while, you know, it's just -- and then I hear people talking about this job or that and then the waves are good, and I'm like, "Yeah, cool, must be nice."

Q: Are you seeking any treatment for depression or for your mental anguish and distress at this point in time?

A: I talk with my counselor through Mental Health Court, which is amazing, by the way.

Q: Outside of the Mental Health Court, do you have any psychiatrists or therapists that you go to?

A: Not at the moment.

Q: All right. Just to circle back to the accident, Mr. Mims, I'm just going to put you on the spot. Do you take any responsibility for the accident?

A: Do I take any responsibility?

Q: Yes, sir.

A: I, I was just trying to go check the babes.

Q: Is that a no?

A: That would be a no.

Q: Okay. Do you understand that the police

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officer that investigated the accident determined that you were at fault?

A: Don't see how.

Q: So, you disagree with that finding?

A: Right. Yes, ma'am.

Q: Can you just explain to me a little bit more about why you would disagree with that finding?

A: Well, because I was a pedestrian, for one. She should've been paying attention coming off around a, you know, a turn like that, for one. She had to be, I mean, I know she was going fast. It wasn't -- I'm six, three. It wouldn't have knocked me out and sent me flying and broke bones if she was putting.

Q: When you say it sent you flying, can you tell me how far away from the vehicle you landed?

A: Honestly, I couldn't tell you, because it knocked me out, so I, I don't, you know.

Q: When you stood up, how far away from the vehicle were you?

A: I'm -- honestly, there, again, I couldn't really tell you. I just remember being

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dirty, you know, off in the sand and rocks, and I was kind of just looking at myself first, you know, I wasn't worried about where the car was. I was trying to -- I was -- had to make sure I was okay. I wasn't worried about where the car was and this, that, and the other, you know, I was in shock. I don't know.

Q: Okay. I just want to make sure I understand since you had testified that it kind of knocked you. It sounded like you were saying it knocked you far away. Now, I want to make sure I understand. I think earlier you had said you did not see her vehicle prior to the accident; is that right?

A: That is correct. All I remember, like I say, is blue hood, and that was it, okay, that's it.

Q: Okay. Mr. Mims, I think that's all I have for you today. Thanks for coming back after your meeting and making the time to finish this. If your attorney has any questions, please go ahead and answer those.

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MR. NAPOLSKI: I DON'T HAVE ANY QUESTIONS FOR YOU, MR. MIMS, AND SHARON, WE'LL GO AHEAD AND WAIVE.

(The deposition concluded at 2:21 p.m.)

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY ) CERTIFICATE

I, Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina, do hereby certify that the foregoing proceedings of **RONALD MIMS**, after first being duly sworn; was taken by me and thereafter transcribed by me. That the **FIFTY-NINE (59)** pages contain a full, true, and correct transcription of all the proceedings; that I am not of kin to any parties to this cause of action, nor am I interested in its outcome.

This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker. Said proceedings were reported by method of steno mask with backup.

IN WITNESS WHEREOF I have hereunto set my hand and seal this **14TH** day of **JUNE, 2020.**

Sharon B. Brock
Verbatim Court Reporter
Notary in and for the
State of South Carolina
My Commission Expires:5/31/2021

# EXHIBIT "B"

# Dep. of Trooper Delaney, June 1, 2020.

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State of South Carolina ) In the Court of Common Pleas
)
County of Horry ) Case No: 2019-CP-26-05892

Ronald L. Mims,

Plaintiff,

vs.

Diane W. Ray,

Defendant.

# THE DEPOSITION OF TROOPER BRENDAN DELANEY

Monday, June 1, 2020
12:00 p.m. - 12:26 p.m.

The deposition of TROOPER BRENDAN DELANEY, taken on behalf of the Plaintiff, was taken before Sharon B. Brock Via Remote Videoconferencing for All Parties, on Monday, June 1, 2020.

***Sharon Brock Court Reporting***
Post Office Box 32157
Myrtle Beach, South Carolina 29588
(843) 685-7179

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## REMOTE APPEARANCES:

**THE WITNESS:**
TROOPER BRENDAN DELANEY
South Carolina Highway Patrol Station
4195 US-701
Conway, South Carolina 29526

**FOR THE PLAINTIFF:**
Patrick T. Napolski, Esquire
GEORGE SINK, P.A.
7011 Rivers Avenue, Suite 105
North Charleston, South Carolina 29460

**FOR THE DEFENDANT:**
Marissa VanCamp, Esquire
PEARCE LAW GROUP
1314 Professional Drive
Myrtle Beach, South Carolina 29577

**COURT REPORTER:**
Sharon B. Brock
Home Office
SHARON BROCK COURT REPORTING
Myrtle Beach, South Carolina 29588

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## TROOPER BRENDAN DELANEY

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## EXHIBITS

(No exhibits were marked during this proceeding.)

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## STIPULATIONS

Pursuant to the Notice and/or consent of the parties, the deposition herein captioned was conducted at the time and place mentioned before Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina.

The deposition was taken for use in accordance to the South Carolina Rules of Civil Procedure unless herein stipulated and agreed to by the parties.

The reading and signing of the deposition by the deponent was **NOT** waived by the deponent.

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TROOPER BRENDAN DELANEY HAVING BEEN DULY SWORN, WAS DEPOSED AS FOLLOWS:

**EXAMINATION**

**BY MR. NAPOLSKI:**

Q: Trooper Delaney, could you please give your full name for the record?

A: Brendan Thomas Delaney.

Q: Trooper Delaney, what police agency are you with?

A: South Carolina Highway Patrol.

Q: And, Trooper Delaney, have you ever been -- I'm sorry, what's your current rank?

A: Trooper.

Q: Trooper Delaney, have you ever been deposed before?

A: Not in this aspect, but personally, yes.

Q: All right. Well, then, I just want to go over just some of the ground rules for a deposition so they're fresh in your head. This is my opportunity and Marissa VanCamp, who's the attorney for Diane Ray, and her opportunity to ask you questions about the accident for which we're here today. When I'm referring to the accident or the crash, what I'm

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referring to is the June 20th, 2019 automobile crash that happened on South Dogwood Drive in Surfside Beach. Do you remember that crash?

A: Yes, I do.

Q: Okay. The difference between a deposition and just a casual interview is twofold; one, you've been put under oath to tell the truth, the whole truth, and nothing but the truth; do you understand that?

A: Yes, sir.

Q: And the other difference is that everything is being taken down by the court reporter here on an audio reporting and stenographically; therefore, it's very important that you and I try not to speak over one another. We have a tendency to always do it in casual conversation because we like to anticipate the question that's being asked. For purposes of today, if you give me the courtesy of allowing me to fully ask my question, I'll return that courtesy and allow you to fully answer

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that question before I move on to my next question; is that fair?

A: Absolutely, yes, sir.

Q: And you're doing a great job so far, continue to give verbal responses and try to avoid the use of uh-huh (affirmative response) or huh-uh (negative response). If you do say uh-huh (affirmative response) or huh-uh (negative response), I'm probably going to ask you, "Is that a yes or is that a no." Understand, I'm not being rude, I'm just trying to make sure that we got a nice, clear record here.

If at any time during this deposition you want to take a break, we can go ahead and do that. Honestly, Trooper Delaney, I don't have a whole lot of questions for you, but nonetheless, you're in control of today's deposition. If you want to take a break, we can go ahead and do that.

The assumption is going to be made that if you answer a question, you understood that question; therefore, if

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you don't understand a question that's being asked, go ahead and ask me to clarify or to restate the question. I want to make sure that we're all reading from the same sheet of music here, and I'm not trying to trick you, I'm not trying to hide the ball, by any means, just trying to find out a little bit about this particular crash, fair enough?

A: Yes, sir.

Q: All right. And, Trooper Delaney, are you under the influence of any drugs or alcohol that may impair your ability to give truthful answers this afternoon?

A: No, sir.

Q: All right. Then, we're going to go ahead and get started. Trooper Delaney, what is your date of birth?

A: Is January 31st, 1991.

Q: And are you originally from South Carolina?

A: No, sir, I'm not.

Q: Where are you from?

A: Long Island, New York.

Q: And when did you come down to South

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Carolina from Long Island?
A: August, just before the hurricane, Florence.
Q: And did you attend the academy down here in South Carolina?
A: Yes, sir.
Q: What year did you graduate?
A: 2019.
Q: Do you know what month?
A: December, I believe December 23rd.
Q: And this accident took place on June 20th, 2019, had you not yet graduated the academy prior to this wreck?
A: I was already out. I was on my own during this wreck.
Q: Okay. So, would that have been December 23rd of 2018?
A: Correct, I'm sorry. Yes, sir. Yes, sir.
Q: I'm just making sure the record reflects that graduation date. And, Trooper, what's the highest level of education you've obtained?
A: Working towards college degree.
Q: And are you currently enrolled in classes?

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A: No.
Q: And have you taken any college courses?
A: Yes.
Q: Where have you taken those courses?
A: Back home in New York.
Q: Are you working towards a bachelor's degree or an associate's degree?
A: Undecided right now.
Q: And do you have an area of focus of study?
A: Criminal Justice and Business.
Q: Did you go to high school in New York?
A: Yes, sir.
Q: And what brought you down from New York to South Carolina?
A: We've been coming here since we were kids and (unintelligible). The weather is one big ---
Q: There you go. I get that answer quite often. Did you usually come down to the Grand Strand area?
A: Yeah. Actually, that's -- basically, it was Myrtle Beach that we came down to all the time and then -- I don't think I've been to Charleston yet, but just, you

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know, Myrtle Beach area.

Q: I hear you. And where are you currently living?

A: Myrtle Beach.

Q: And what team are you out of with the Highway Patrol?

A: Horry County.

Q: And after graduating the academy, have you worked for any other police agencies in South Carolina?

A: No, sir.

Q: Is this your first and only job after graduating from the academy?

A: Yes, sir.

Q: And I think you said a moment ago your rank is trooper with South Carolina Highway Patrol, that's correct?

A: Yes, sir.

Q: And what do your duties entail as a trooper with the South Carolina Highway Patrol?

A: Enforce traffic laws, investigate collisions, and ensuring that the driving public is safe on South Carolina roadways.

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Q: Was there a portion of your training dedicated to accident investigation at the academy?
A: Yes, sir.
Q: And what was that, a particular course or a particular group of courses?
A: Group of courses.
Q: If you can remember specifically, do you remember what each course was?
A: No, it was a block of courses like a, I guess you would say a presentation. It was more than one course multiple days.
Q: And I apologize for the pause, I'm just writing down some notes here.
A: No, you're fine.
Q: Did you complete that block of courses successfully?
A: Yes, sir.
Q: Was any one of those courses accident reconstruction?
A: Yes. We don't -- we have advanced accident reconstruction, but we -- that's something we have to be sent to.
Q: Are you a member of the MAIT team?
A: No, sir.

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Q: And when you say that there's advanced courses that you need to be sent to, is that something different than the MAIT team?
A: No, that's what I was referring to as the MAIT team.
Q: Okay. I just want to make sure I understand. Do you know, on average, how many wrecks you handle in a month?
A: I don't think I could put a number on that.
Q: I mean, is it, you know, ten?
A: I can, I can work zero, I can work zero in a day or I can work up to eight a day.
Q: Okay. And have you ever testified in court as a trooper with the South Carolina Highway Patrol?
A: Yes, sir.
Q: How many times?
A: When we do Traffic Court, we're testifying for every case if there's, you know, an opportunity to testify.
Q: What about any civil cases like a personal injury case like the one that we're here for today?

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A: No, sir.
Q: All right. Have you ever been sworn or identified as an expert?
A: Say again, you came a little broken up.
Q: Have you ever been identified as an expert witness in any case?
A: No, sir.
Q: Tell me what you remember, if anything, about the June 20th, 2019 crash that we're here for today.
A: I remember I was responding to a pedestrian struck on South Dogwood Drive involving a BMW SUV and a pedestrian. It was in the afternoon, but afternoon time, and it was stated that the pedestrian that was struck was struck by the BMW outside the crosswalk, coming from the driver of the BMW.
Q: You had arrived at the scene of this crash; is that correct?
A: Yes, sir.
Q: And upon your arrival, did you take any photographs of the scene?
A: No, sir.
Q: And are you familiar with that area where

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this crash had taken place?
A: Yes, sir.
Q: And when you arrived on the scene of this crash, had you observed any crosswalks?
A: The only crosswalk is when you turn right off, and I can't remember the, the main road that feeds into that area, but off Dogwood Drive there's a crosswalk on that corner.
Q: On the corner of Dogwood Drive and Atlantic Avenue?
A: I think it's Atlantic Avenue, yes, sir, 'cause I think there's a row of restaurants and stuff right there.
Q: And is that a painted pedestrian walkway? When you say the pedestrian crosswalk, what are you referring to?
A: The crosswalk.
Q: Well, what is a crosswalk?
A: Painted crosswalk.
Q: Was there a painted crosswalk at the corner of Dogwood Drive and Atlantic Avenue on the date of this crash?
A: To my knowledge, yes.
Q: And do you remember speaking to the

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driver of the BMW when you arrived on the scene?

A: Yes, ma'am -- yes, sir, sorry.

Q: Do you remember what, if anything, she said to you?

A: She was saying that she was driving down Dogwood and someone came out in front of her vehicle.

Q: And did you come to learn that the person that she was referring to coming out in front of her vehicle was Ronald Mims?

A: I wasn't able to see him, 'cause he was already transported to the hospital, but I spoke to him after.

Q: Okay. Did you mark a party at fault on the accident report?

A: Yes, sir.

Q: And who was that?

A: Mr. Mims, Ronald.

Q: And had you completed that accident report prior to speaking to Ronald Mims?

A: No, we -- well, we initially start a report to gather all the information, but we don't complete it 'til we talk to both parties.

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Q: Did you eventually speak with Mr. Mims?
A: Yes, sir.
Q: And where was it that you spoke with him?
A: It was the hospital. I want to say it was Waccamaw in Murrells Inlet.
Q: And do you remember what, if anything, he told you about the crash.
A: I don't remember what he told me.
Q: And I think you said a moment ago you marked Mr. Mims as contributing to that crash; is that correct?
A: Yes, sir.
Q: What evidence did you use to reach that conclusion?
A: With where the driver of the BMW stated she hit the pedestrian was outside the crosswalk and where Fire ---
Q: So ---
A: Sorry, where Fire and EMS said they -- where Fire and EMS treated him, also, we put all that together. Well, I put it all together.
Q: So, is it my understanding any time that a pedestrian is struck outside a crosswalk, they are at fault for a

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collision?
A: To my knowledge, yes.
Q: All right. If you were to learn that that, in fact, is not the law in South Carolina, would you have reached a different collision in this crash?
A: Say -- repeat the last half, I got the first half of your question.
Q: Sure. I said if you were to find out that that, in fact, is not the law in South Carolina, would you have changed the contributing parties in this crash?
A: Well, I, I went to clarify it with a few other people, so I, I was informed no, that wouldn't have changed.
Q: Who were the people that you clarified it with?
A: My supervisor at the time.
Q: And who was your supervisor at the time?
A: Corporal Boyette.
Q: What was the last name?
A: Boyette, B-O-Y-E-T-T-E.
Q: And is Corporal Boyette still with the South Carolina Highway Patrol?
A: Yes, sir.

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Q: Is he still your supervisor?
A: Yes, he is.
Q: So just to be clear, the reason you marked Mr. Mims as contributing to this crash is because he was outside the painted crosswalk there on South Dogwood Drive; is that correct?
A: Yes, sir. Yes, sir.
Q: Other than speaking with the driver of the BMW who did -- Have you come to learn that her name is Diane Ray?
A: Yes, sir, that's her name.
Q: Other than speaking with Diane Ray and Ronald Mims, did you speak with anyone else about this crash?
A: Other than my supervisor, no.
Q: Did you speak to any other witnesses to the crash?
A: No. I spoke to Fire and EMS, that was it.
Q: And I should've asked this earlier, Trooper Delaney, did you yourself witness this actual crash?
A: No.
Q: To your knowledge, other than Mr. Mims

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and Ms. Ray, did anyone else witness this crash?

A: To my knowledge, no.

Q: All right. Trooper Delaney, I think I'm all through. Marissa may have some additional questions for you, though, okay?

A: Okay.

**EXAMINATION**

**BY MS. VANCAMP:**

Q: I just have a few questions, Trooper Delaney. First of all, did your investigation lead to any findings that the driver, Ms. Ray, did anything wrong?

A: No.

Q: And you spoke with Mr. Mims at the hospital after you had started your report, correct?

A: Yes.

Q: If any of your findings had changed after speaking with Mr. Mims, would your accident report reflect that change?

A: Yes, 'cause, I mean, if there's anything that could be, you know, initially, we go off of what we can see and whoever is

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there, still, and then we go to the hospital, get their side of the story, that can change it, yes.

Q: And it appears that after speaking with Mr. Mims you stayed with your position that he contributed to the accident, correct?

A: Yes.

Q: And just to be clear, when we're talking about the accident today, is your testimony based off of your personal memory or have you referred to other documents today?

A: Memory and documents.

Q: What documents have you been referring to?

A: The 310 report.

Q: Okay. Do you have a copy of that report in front of you right now?

A: Yes, I do.

Q: I do have a quick question, if you'd turn to the second page, the very last section where it's talking about contributing factors at the bottom of the page.

A: What box? I'm sorry.

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Q: It looks like the very last box, ---
A: Yes.
Q: --- contributing factors. I probably just have a poorly printed out copy, but I want to make sure that I understand what it says. It looks like the number assigned in the primary box is fifty-one; is that correct?
A: Yes, ma'am.
Q: Okay. And it looks like, if you look at fifty-one, that falls under the non-motorist acts; is that right?
A: Yes, ma'am.
Q: And this is what I can't quite read on my copy, is it something like lying in a crossing, in a roadway or do you know what that says?
A: Lying and/or illegally in the roadway.
Q: Okay, illegally in the roadway. And one other thing, just for my clarification, when you refer to EMS as some people that you spoke with, do you remember specifically who those were, was it the firefighters?
A: Firefighters, EMS, I put them all under

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the same, 'cause usually, they will come out of the same area. I don't, I don't know what the name was.

Q: And I'll represent to you that based on the information I have, Mr. Mims was not taken to the hospital by ambulance. Did you speak with anybody that would've been a paramedic or somebody like that with the EMS workers?

A: Yes.

Q: Those are all the questions I have for you, Trooper Delaney. Mr. Napolski might have a few follow-ups.

MR. NAPOLSKI: YES, I GOT A COUPLE FOLLOW-UPS.

**EXAMINATION**

**BY MR. NAPOLSKI:**

Q: Trooper Delaney, you said you're aware, you're familiar with that general area where the accident took place; is that correct?

A: Yes, sir.

Q: Are you aware of any other crosswalks on South Dogwood Avenue?

A: Not to my knowledge, sir.

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Q: My understanding is South Dogwood Avenue goes down several blocks; is that correct?
A: Yes, sir, it does.
Q: And it's also my understanding that people can parallel park on the side of the road or the grass on South Dogwood Drive in order to go to the beach; is that correct?
A: Yes, sir.
Q: Using a hypothetical here, if someone were to park, say, four blocks away from the corner of Dogwood Drive and Atlantic Avenue, is it your understanding that to be within the word of the law, they need to walk all the way down to the nearest crosswalk which you testified to was at the corner of Atlantic Drive and South Dogwood Avenue?
A: Yes.
Q: So, to be clear, anyone that is -- even if you're four blocks away, in order to get to the beach, you need to walk all the way down to that corner?
A: Any crosswalk to cross.

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Q: And you're not aware of any other crosswalks there on South Dogwood Avenue?

A: No, sir.

Q: All right. Trooper Delaney, I don't have anything further for you. I appreciate your time.

MR. NAPOLSKI: MARISSA, DO YOU HAVE ANYTHING ELSE?

MS. VANCAMP: NO. THANK YOU VERY MUCH, TROOPER DELANEY.

(The deposition concluded at 12:26 p.m.)

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June 15, 2020

Patrick Napolski, Esquire
GEORGE SINK, P.A.
7011 Rivers Avenue, Suite 105
North Charleston, South Carolina 29460

RE: Ronald L. Mims vs. Diane W. Ray
CASE NO: 2019-CP-26-05892

Dear Mr. Napolski;

Enclosed you will find both the original and copy of the deposition of TROOPER BRENDAN DELANEY, taken Monday, June 1, 2020, in the above referenced action.

As you may recall, Trooper Delaney, requested to read and sign his deposition. Therefore, by copy of this letter, I am forwarding a copy of the transcript to Trooper Delaney, along with the original signature page, errata sheet and instructions for reading and signing so he may complete the same.

Upon completion of the signature page and errata sheet, the original of these pages will be sealed under separate cover and forwarded to you with a copy to all parties involved. *If the said pages are not completed within the thirty-day period or when required in court, the original deposition shall be considered complete with this letter in lieu of the signature page.*

It was a pleasure working with you. If we can be of assistance to you in the future, please give us a call.

Very truly yours,

**SHARON BROCK**
**COURT REPORTING**

Sharon B. Brock

Enclosures
cc: Marissa A. VanCamp, Esquire
Original Deposition
Copy of Deposition

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# SIGNATURE PAGE

I do hereby certify that I have read the foregoing deposition given by me before Sharon B. Brock, a Notary Public for South Carolina, Horry County, South Carolina.

(A) Said deposition is correct as is and requires no changes.

(B) I desire that the changes attached hereto, described on the "Errata Sheet" be incorporated into said deposition.

State of South Carolina
County of _____

On this _____ day of _____, 20____, before me personally appeared **TROOPER BRENDAN DELANEY**, who provided satisfactory evidence of his Document Holder identification to be the person whose name is subscribed to this instrument and he acknowledged that he executed the foregoing instrument by his signature here.

_____
Document Holder's Signature

Sworn to (or affirmed) and subscribed before me this the _____ day of _____, 20_____.

_____
Official Signature of Notary (Official Seal)

_____
Notary Public Notary's printed or typed name

My commission expires: _____

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# ERRATA SHEET
# FOR THE DEPOSITION
# OF TROOPER BRENDAN DELANEY
# (TAKEN JUNE 1, 2020)

PAGE LINE CHANGE AND REASON FOR CHANGE:

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY ) CERTIFICATE

I, Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina, do hereby certify that the foregoing proceedings of **TROOPER BRENDAN DELANEY**, after first being duly sworn; was taken by me and thereafter transcribed by me. That the **TWENTY-NINE (29)** pages contain a full, true, and correct transcription of all the proceedings; that I am not of kin to any parties to this cause of action, nor am I interested in its outcome.

This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker. Said proceedings were reported by method of steno mask with backup.

IN WITNESS WHEREOF I have hereunto set my hand and seal this **15TH** day of **JUNE, 2020.**

Sharon B. Brock
Verbatim Court Reporter
Notary in and for the
State of South Carolina
My Commission Expires:5/31/2021

# EXHIBIT "C"

# Dep. of Diane Ray, June 1, 2020.

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State of South Carolina ) In the Court of Common Pleas
)
County of Horry ) Case No: 2019-CP-26-05892

Ronald L. Mims,
Plaintiff,
vs.
Diane W. Ray,
Defendant.

# THE DEPOSITION OF DIANE RAY

Monday, June 1, 2020
10:02 a.m. - 10:48 a.m.

The deposition of DIANE RAY, taken on behalf of the Plaintiff, was taken before Sharon B. Brock Via Remote Videoconferencing for All Parties, on Monday, June 1, 2020.

***Sharon Brock Court Reporting***
Post Office Box 32157
Myrtle Beach, South Carolina 29588
(843) 685-7179

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## REMOTE APPEARANCES:

**THE WITNESS:**
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**DIANE RAY**

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## EXHIBITS

(No exhibits were marked during this proceeding.)

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## STIPULATIONS

Pursuant to the Notice and/or consent of the parties, the deposition herein captioned was conducted at the time and place mentioned before Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina.

The deposition was taken for use in accordance to the South Carolina Rules of Civil Procedure unless herein stipulated and agreed to by the parties.

The reading and signing of the deposition by the deponent was waived by the deponent.

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DIANE W. RAY HAVING BEEN DULY SWORN, WAS DEPOSED AS FOLLOWS:

**EXAMINATION**

**BY MR. NAPOLSKI:**

Q: Good morning, Ms. Ray. My name is Patrick Thomas Napolski, and I'm an attorney with George Sink's office in Charleston, South Carolina. I am, though, not there right now, I am in the spare bedroom here taking your deposition this morning. Have you ever been deposed before?

A: No.

Q: Okay. Well, as I mentioned a moment ago, I'm an attorney, and I represent Ronald Mims with regard to injuries sustained in a June 20th of 2019 automobile collision. What we're doing today is taking your deposition which is my opportunity to ask you questions about your background and about this particular incident; do you understand that?

A: Yes.

Q: Okay. The difference between this being a casual interview and a deposition is

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two main things; first, you've been put under oath to tell the truth, the whole truth, and nothing but the truth; do you understand that?

A: Yes.

Q: Okay. And the second difference between this being a casual interview and a deposition is that we have a court reporter taking down everything that we say, both stenographically and on audio recording; therefore, it's very important that you and I try our best not to speak over one another. If you give me the courtesy of allowing me to fully ask my question, I'll give you the courtesy of fully answering the question before I ask a follow-up question; is that fair?

A: Yes.

Q: Because this is being taken down stenographically and on an audio recording, I'm going to ask that you continue to do what you've been doing thus far, and that's been verbal responses. Try to avoid shaking your head, if you do, I'm going to ask you,

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"Is that a yes or a no." Understand, I'm not being rude, I'm just trying to make sure that Marissa and I have a nice, clean record so that we don't have to get in a fight in front of a judge later on as to whether shaking your head or nodding your head is a yes or a no, okay?

A: Yes.

Q: Same thing goes for avoiding the use of uh-huh (affirmative response) or huh-uh (negative response), again, I'll probably just ask you, "Is that a yes or a no," just to make sure that we've got a nice, clean record, understand?

A: Yes.

Q: Okay. Ms. Ray, are you under the influence of any drugs or alcohol which may impair your ability to give truthful answers his morning?

A: No.

Q: Okay. I want you to know that you are in complete control of this deposition this morning, okay? If at any moment you need to take a break, we'll go ahead and take that break, if you need a bottle of water

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or if you need to use the restroom. The only thing that I ask is that if I've posed a question that you answer that question before we take a break; is that okay?

A: Yes.

Q: And the second thing that I ask is that you not communicate with your attorney while this deposition is going on. You are here to give your testimony this morning, not your attorney. There may be times where I ask a question that is worded a little funny or I use some legalese, your attorney may step in and say, "Patrick, I object to the form of the question." I get the opportunity to rephrase that question, but if I think the question is posed just fine, then I'm going to ask you to answer that question as it's been worded, okay?

A: Okay.

Q: And one final thing, Ms. Ray, the assumption is going to be made that if you answer a question that you understood that question; therefore, it's very

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important if you don't understand a question, go ahead and ask me to either rephrase the question or clarify and I'll do my best to do that for you. Under no means am I trying to trick you or hide the ball or play any games with you. This is simply my opportunity to ask you questions about your background and about this accident, fair enough?

A: Yes.

Q: All right. Ms. Ray, could you please give your full legal name?

A: Diane Watson Ray.

Q: And, Ms. Ray, what's your address?

A: 1216 Lakeland Drive, Conway, South Carolina 29526.

Q: And was that the same address that you had on the date of the accident that we're here for today?

A: I stay at 642 South Dogwood in Garden City, because it's so close to my business, a lot.

Q: Do you own that residence as well?

A: Yes.

Q: All right. And, Ms. Ray, does anyone

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live with you at the 1216 Lakeland Drive address?

A: My husband.

Q: And what's his name?

A: Charlie Ray.

Q: And how long have you and Mr. Ray been married?

A: About fifty-two years. Let's see, we got married in '69, so yeah, a long time, a long time.

Q: You wouldn't have thought that was going to be the most difficult question of the morning.

A: Yeah. Oh, me.

Q: And does Mr. Ray also live with you at the 642 South Dogwood address as well?

A: Yes.

Q: Anyone else live with you and Mr. Ray at either of those addresses?

A: No.

Q: And, Ms. Ray, do you have any relatives over the age of eighteen with a last name other than Ray that live in Horry County? And let me tell you why I'm asking that. If Marissa and I need to impanel a jury

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for a trial in this case, I want to make sure that I'm not putting any of your family members on the jury, so I'm looking for anyone that has a last name other than Ray that lives in Horry County that's over the age of eighteen.

A: We have some cousins around somewhere, but not very close with them, so I, I, I would probably say, no. As far as close family, I do not, so.

Q: And, Ms. Ray, what's your maiden name?

A: Watson, W-A-T-S-O-N.

Q: Did you grow up in the Grand Strand area?

A: I grew up in Conway.

Q: In Conway, okay.

A: Uh-huh (affirmative response), yeah.

Q: Are there some Watsons in Horry County, living in Conway?

A: Marion County is where most of the relatives are from, and, gee, I can't think of anybody else close around here.

Q: That's fair enough. If you think of someone, just interrupt me any time during this deposition.

A: Okay. I'll have to think on that, too.

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Q: Sure, sure. And what's your date of birth?
A: 5/14/47.
Q: And what's the highest level of education that you completed?
A: College.
Q: Where did you attend college?
A: Winthrop.
Q: What was your degree?
A: Education.
Q: I think most people from Winthrop are Education majors, if I'm not mistaken, right?
A: Right. I did teach school a couple of years before I started working at the furniture store. It was a good experience, it taught me a lot of patience.
Q: Where was it that you taught?
A: I'm sorry, what?
Q: Where was it that you taught?
A: Repeat that one more time.
Q: Where was it that you were a teacher?
A: Oh, in Conway, at Conway -- I think it was called Conway Elementary at that

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time. I taught one year at Waccamaw Elementary, and then the rest of the time I was at Conway Elementary on 12th Avenue.

Q: And when did you stop being -- what was your last year teaching?

A: '74. I taught from '69 through '74.

Q: What did you do after you left teaching?

A: Well, I have a child, and then I went to work at the furniture store, at Garden City Furniture, when she was around two and a half or three.

Q: Okay. And are you the owner of Garden City Furniture?

A: It's a family corporation. I am one of the owners, and my husband is part-owner and my two children.

Q: You said your husband, and then there's another ---

A: Owns a percentage. He has a small percentage. My two children have a percentage of the stock of Garden City. I run the store, so.

Q: What is your title?

A: President.

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Q: And is that an hourly position or are you salary?
A: Salaried.
Q: And what's your salary?
A: For the year or ---
Q: Correct.
A: For the year would be sixty, sixty thousand. All this Direct Deposit, you don't even get to look at your salary anymore.
Q: Sure, sure. Other than working as president at Garden City Furniture, have you had any other jobs in the past ten years?
A: None.
Q: What's the address of the Garden City Furniture store?
A: 2444 Highway 17 South, and they use Murrells Inlet, because Garden City doesn't have a zip code, and it'd be 29576.
Q: And what type of vehicle were you driving on the date of this incident?
A: A X5 BMW.
Q: And am I correct in saying that vehicle

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was owned by Garden City Furniture?

A: It is, yes. Yes.

Q: Do you still own that vehicle or does Garden City Furniture still own that vehicle?

A: Yes.

Q: Does Garden City Furniture own any other vehicles?

A: We have -- my son has a truck he drives, and we have the vehicles, the delivery vehicles at the store.

Q: So, the BMW X5, the truck that your son drives, and delivery vehicles?

A: And, then, we have three of the, what we call, what we call box trucks, three box trucks that we deliver in. We have a pickup truck and a small service van.

Q: Ms. Ray, have you ever been arrested?

A: No.

Q: Have you ever been involved in any other motor vehicle crashes?

A: I, I mean, I was involved in a chain reaction thing back in the -- gosh, that was forty years ago, I reckon, you know, where you were stopped at a stop light

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and somebody hits and it goes down, I did that, and other than that, no other accident.

Q: And the way you described it, it sounds like you weren't placed at fault for that chain reaction ---

A: No.

Q: --- accident; is that correct?

A: No, I was not.

Q: And you have a valid driver's license?

A: Yes.

Q: And did you at the time of this accident?

A: Yes.

Q: Are there any restrictions on that driver's license?

A: I wear glasses.

Q: And were you wearing glasses at the time of this accident?

A: Yes.

Q: Do you have an optometrist?

A: Yes.

Q: And what's that optometrist's name?

A: When I get my eyes checked, I go to the -- I go to Duke University for my physicals, and I can't remember the name,

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but I use 20/20 Vision to do my glasses.

Q: Why is it that you go to Duke University for your physicals?

A: I've been doing this for twenty years now. I go up and -- we have a history of cancer in our family and I go there and get all my checkups done, and I continue to do it.

Q: I'm sorry, it broke up right when you told me the history of your family.

A: My family has a history of cancer and I chose to go to this clinic at Duke and I go once a year for a complete physical even though I still have a doctor here locally.

Q: Do you see a particular doctor at Duke University?

A: Yes, it's called Duke Executive Health, Dr. Orlando is her name.

Q: Orlando like the City in Florida?

A: Yes, Orlando.

Q: And what's the name of your doctor locally?

A: Well, it's not really a doctor. I go to Conway Physicians Group, and I see, you

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know, what, what they call a part-time person?

Q: Is it a physician's assistant?

A: Conway Physicians, in fact, I have my first appointment with her since they changed over. The office I was going to, the doctor retired, and then I was put in this clinic, so now I'm going to her for the first time. I'm very rarely sick, so.

Q: At the time of this accident, were you prescribed any prescription medications?

A: The only prescription that I take is Ambien, and that's a half tablet at night to sleep, and that's not an every night, when I feel like I need it to go to sleep.

Q: Do you recall whether or not you took a half of Ambien on the evening prior to this wreck?

A: I do not.

Q: You do not recall?

A: I do not recall, no.

Q: Has your driver's license ever been revoked or suspended for any reason?

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A: No.
Q: And you said that you, and I see that you wear glasses, do you have difficulty seeing far away or close up or both?
A: Close up.
Q: Ms. Ray, do you have any social media accounts like Twitter, Facebook or Instagram?
A: Yes.
Q: Can you please list those accounts? Well, let me ask you this, on any of those accounts, have you posted anything about this accident?
A: No.
Q: And up to this point when I've said, "This accident," do you understand that I'm referring to a June 20th, 2019 crash that took place on South Dogwood Drive in Surfside Beach?
A: Yes.
Q: All right. And do you recall that crash?
A: Yes.
Q: Can you tell me where you were coming from and where you were going to?
A: I had left my son's house. I was coming

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down Atlantic Avenue turning right on Dogwood to go home.

Q: And what's your son's address?

A: 568 Mt. Gilead Road.

Q: Is that in Murrells Inlet or Garden City, Murrells Inlet?

A: That's Murrells Inlet. Garden City is next door to Murrells Inlet?

Q: Do you recall what the weather was like?

A: It was getting ready to storm.

Q: Was it raining yet?

A: Not at the time of the accident. It started shortly thereafter.

Q: Was it sunny or cloudy?

A: I would say cloudy.

Q: Do you recall whether or not you had your windshield wipers on?

A: I do not recall.

Q: Do you recall whether or not you had your headlights on?

A: They're on all, all the time on my car.

Q: Was there any other traffic, any other vehicles in front of you after you made the right turn?

A: I'm sure there was. There's a lot of

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traffic going.

Q: Do you recall any detail, any of the vehicles that were on that road with you?

A: When I went to make the right turn onto Dogwood, there was a tractor-trailer food truck, I can't think of the name of it, partially in the road and sitting off the road, and I had to stop when I started going around, to make sure there was no oncoming traffic, that I had enough room to get through.

Q: I'm sorry, that broke up. Can you say that one more time?

A: Do you want me to repeat?

Q: Yeah, could you repeat that? It was kind of choppy there.

A: Okay. When I got ready to turn right onto Dogwood, I had to stop because there was a food service truck simply -- it was a small delivering food to some restaurant. I stopped, I looked and eased around to make sure there was nothing coming in my lane so I could get by, you know, the truck, and proceed down Dogwood, and that's when the accident

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happened. When I got level at the end of the truck, the man stepped out in front of the truck.

Q: And did you come to understand that that man was Ronald Mims?

A: I didn't know at the time 'til after the accident.

Q: Okay. Had you passed the semi-truck?

A: No, I was kind of dead even with the front end.

Q: When is the first time that you saw Mr. Mims?

A: When he hit the side of the car.

Q: What side of your vehicle -- What part of your vehicle hit Mr. Mims?

A: The right front fender area, what you call it.

Q: Was there any damage to your vehicle?

A: None.

Q: Do you know how many lanes there are there on Dogwood Drive?

A: Just two, just a regular road.

Q: And were you in the right-hand lane or the left-hand lane?

A: Going south, I was in the right-hand

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lane.

Q: And when you took that right-hand turn, had you ever crossed into the -- did you ever cross into the left-hand lane?

A: I don't recall. I would probably be very close to it, because it was very narrow through there.

Q: And did you speak to Mr. Mims after the crash?

A: Yes, I went up to him and told him, you know, I apologized for it happening, and then, you know, that was all. We, we didn't exchange any names or have any conversation.

Q: Okay. And do you take responsibility for causing this crash?

A: No.

Q: You said a moment ago you apologized to Mr. Mims, what did you ---

A: That it happened, that the crashed happened.

Q: Do you think there's anyone else to blame for this crash other than you?

A: I would say he, Mr. Mims, contributed to the crash. Is that what you're asking?

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Q: Correct, yes, ma'am. Do you recall how fast you were driving once you turned onto Dogwood Drive?

A: Well, like I said, I come to a full stop when I realized the truck was partially in the road, and it couldn't have been more than past the first little notch there on your speedometer. I think it has ten on mine, couldn't have been going past that.

Q: I'm sorry, we cut out for a moment there. Can you repeat that?

A: You know, as you stop and then you start to accelerate, I -- if I had to look at a speedometer, I would say it wouldn't be past that first mark on mine, which is a ten on it or something. It would be less than that. I would say less than a mile, two miles an hour, if you want to put a number to it, just kind of rolling along, as they say.

Q: Did you see Mr. Mims at all prior to impact?

A: No.

Q: Had you driven down Dogwood Drive before?

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A: Every day.
Q: And have you ever seen pedestrians in the general vicinity where this accident took place?
A: You know how the beach is, you could walk all over the place.
Q: And I apologize, Ms. Ray, so is that a yes, ---
A: Yes.
Q: --- you are aware that pedestrians are in that area?
A: Yes.
Q: Do you have any reason or any explanation as to why you didn't see Mr. Mims prior to the impact?
A: Well, because the truck was parked on the right-hand side and he stepped out in front of that truck.
Q: And you said that you drive down Dogwood Drive every day, have you ever seen a truck, a delivery truck like that parked in that same location?
A: Yes.
Q: So, you're aware that there's pedestrians that cross in that general area and that

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there have been a delivery truck in that general area previously; is my understanding correct?

A: Yes.

Q: And did you receive a ticket for this crash?

A: No.

Q: Other than apologizing to Mr. Mims, did you speak with anyone else at the scene of the crash?

A: No, I didn't, except the fire people that were at the fire station. They were the ones that came over when it happened.

Q: Did you ever speak with the police officer that responded to the crash?

A: When he got there, yes.

Q: Do you remember what, if anything, you said to the employees at the fire station?

A: No.

Q: Do you remember what you said to the police officer?

A: Only that -- I responded only to the questions he asked me about the accident.

Q: At any time at the scene of the crash,

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did you see the police officer speaking with Mr. Mims?

A: After he spoke with me, he went to speak to Mr. Mims at the hospital, and the officer was two hours getting to the scene of the accident.

Q: It took the police officer two hours after the accident took place to arrive at the accident scene?

A: Yes.

Q: And did you wait there until the police officer arrived?

A: What I did, the fire marshal, I reckon you'd call him, the fire chief, came from the, over there when it happened, and so, I was sitting in the road, of course, you know, and he said, "I want you to pull your car over to the shoulder of the road toward the firehouse, but do not leave," and that's what I did, I pulled over there and sat. So then he came back to the car sometime later on, I don't remember how long, and he said, "It's going to be a while before the policemen get here, I want you to pull your car up

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to the fire station and come inside and wait with us because you can't leave the scene." Of course, it was pouring down rain by then, too, so that's what I did. I just sat at the police station until the officer arrived to do the report.

Q: Okay. Did you ever follow up with Mr. Mims to find out the extent of his injuries?

A: No.

Q: Okay. At the time of this crash, did you have a cell phone?

A: Yes.

Q: Do you recall what the phone number was for that cell phone?

A: Yes, it's my same one, 843-997-6861.

Q: Do you know who the carrier is for that phone?

A: Oh, gee, it's not Spectrum, Verizon, and the phone is owned by the store, also.

Q: And immediately before the impact, were you talking on your cell phone?

A: No.

Q: Were you distracted by anything inside your vehicle immediately prior to the

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impact?
A: No.
Q: Were you distracted by anything outside your vehicle immediately before the impact?
A: Well, of course, I was, you know, observing what was going on with traffic.
Q: Where were you looking, observing that traffic?
A: Everywhere there. You have to watch when you're in the beach area.
Q: Including looking to your right?
A: Well, I would be looking to the right and to the left.
Q: And Mr. Mims came from your right, is that my understanding?
A: Came from my right, yes.
Q: After the crash and then the two hours before the police officer got there, did you make any phone calls from your cell phone?
A: No.
Q: Did you send any text messages?
A: Not to my knowledge.
Q: Other than your attorney, and I don't

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want to know anything about that conversation, but other than your attorney, have you spoken to anybody else about this crash?

A: Well, of course, I told my husband, and I -- we had let my son know at the store what had happened. Other than that, no, no one else.

Q: What's your son's name?

A: Joey Ray.

Q: Does Joey have a cell phone?

A: Yes.

Q: What's his phone number?

A: I knew you would ask me that.

Q: And I'm going to ask you your husband's as well, so if you're ---

A: You know you just hit the number. Hold on just a minute.

Q: Sure.

A: I, I want to give it to you correct. I don't want to give it to you wrong, so. This is terrible. We just depend on this all the time. All right. My son's phone number is 843-877-2496, and Charlie's mobile number is 843-222-3144.

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Q: And, Ms. Ray, I'm almost done, I just got a couple of questions left for you, okay? Were there any mechanical problems with that BMW X5 that you were driving on the date of the accident?

A: No.

Q: Did any issues with that vehicle's maintenance or mechanics contribute at all to this crash?

A: No. No.

Q: All right. And, Ms. Ray, would you agree with me that a driver has a duty to maintain a proper lookout?

A: Yes.

Q: And would you agree with me that the driver has a duty to yield the right-of-way?

A: Yes.

Q: And would you agree with me that a driver has a duty to yield the right-of-way to pedestrians?

A: Yes.

Q: All right. Ms. Ray, is there anything at all that we haven't yet discussed that you think is important for me to know?

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A: Not at this -- I, I just, you know, I can't think of anything, right off the top of my head, unless, you know, Mr. Mims was not paying attention, didn't see me or what. I don't know what his thoughts were.

Q: All right. Ms. Ray, just give me one moment to go through my notes and then we may be almost squared away with you, okay? Ms. Ray, where were you prior to your son's house?

A: I would've been at work.

Q: All right. Ms. Ray, I don't have any further questions for you, but your attorney may have some additional questions for you, okay?

A: Okay.

Q: Thank you very much for your time this morning. It was a pleasure to speak with you. I appreciate you making yourself available.

A: Thank you.

**EXAMINATION**

**BY MS. VANCAMP:**

Q: I think I just have two follow-up

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questions. Ms. Ray, at the location where the impact occurred, were there any crosswalks or anything like that in the road?

A: No. There is a corner that, that you're supposed to cross at, is the only thing.

Q: Okay. And the accident did not occur at the corner?

A: No, it was, you know, like halfway to the street there.

Q: Are there any signs indicating that there's a pedestrian crossing nearby?

A: No. No.

Q: That's all I have.

MS. VANCAMP: PATRICK, DO YOU HAVE ANY FOLLOW-UP QUESTIONS?

**RE-EXAMINATION**

**BY MR. NAPOLSKI:**

Q: Ms. Ray, you said a moment ago that there's a corner that you're supposed to cross at, what's the authority that you cite saying that you're supposed to cross at that corner?

A: Well, I don't know of any authority.

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It's -- you always go to the corner and cross the street, is what I was taught, you know, there's a sidewalk there and it ends and the road, you know, a sidewalk picks up the next block, and I would just think that people that were crossing the street in that area would go to the corner and do it.

Q: Okay. Just give me one more moment.

A: I'm sorry?

Q: Just give me one moment here. Ms. Ray, am I understanding correctly this accident took place near the same corner as the Causeway Grill & Raw Bar?

A: Yes, you cross the Causeway, it's the first street to the right, South Dogwood.

Q: And you said that you take South Dogwood Drive every day to get home; is that correct?

A: Yes.

Q: Do you ever see vehicles parked alongside South Dogwood Drive?

A: Yes. Yes.

Q: And anywhere between Atlantic Avenue on South Dogwood Drive, are you aware of any

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pedestrian crossings?
A: Just the one at the corner.
Q: So, is my understanding correct that if someone were to be at your home and park in front of your home, they need to walk all the way to the corner where Causeway Grill & Bar is in order to cross the street?
A: That's kind of a hard question to ask at the -- because we don't have any sidewalks on Dogwood, so it's, you know, my home is about a full block down from Atlantic Avenue, so I, I don't know an answer that, you know, people cross the street if there's nothing coming or you can walk to the corner and cross the street.
Q: And, Ms. Ray, do you ever go to the beach, ever walk to the beach from your home?
A: On occasion, yes.
Q: And do you ever walk to the corner where Causeway Grill & Raw Bar is in order to get to the beach?
A: I -- no, I can get access to the beach

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before that.

Q: Do you have to cross South Dogwood Drive in order to get to the beach?

A: Yes, at the corner, you turn right on, I think it's called Yaka Street and walk over to the beach. There's a, you know, a public access at the end of that street.

Q: And is there a pedestrian crossing at the corner of South Dogwood and Yaka Avenue?

A: No. No, there's no pedestrian. The only pedestrian -- no, there wouldn't be any markings, we, we just cross the street.

Q: So, when you're going to the beach, you typically cross South Dogwood Drive, not at a pedestrian crossing; is that my understanding?

A: Yes. Yes.

Q: Ms. Ray, I don't have any further questions for you.

A: Okay.

MS. VANCAMP: I DON'T HAVE ANYMORE QUESTIONS EITHER.

MS. RAY: ALL RIGHT.

(The deposition concluded at 10:48 a.m.)

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY ) CERTIFICATE

I, Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina, do hereby certify that the foregoing proceedings of **DIANE RAY**, after first being duly sworn; was taken by me and thereafter transcribed by me. That the **THIRTY-SEVEN (37)** pages contain a full, true, and correct transcription of all the proceedings; that I am not of kin to any parties to this cause of action, nor am I interested in its outcome.

This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker. Said proceedings were reported by method of steno mask with backup.

IN WITNESS WHEREOF I have hereunto set my hand and seal this **14TH** day of **JUNE, 2020.**

Sharon B. Brock
Verbatim Court Reporter
Notary in and for the
State of South Carolina
My Commission Expires:5/31/2021

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| | |
|---|---|
| STATE OF SOUTH CAROLINA ) | IN THE COURT OF COMMON PLEAS |
| ) | |
| COUNTY OF HORRY ) | Case No.: 2019-CP-26-05892 |
| ) | |
| Ronald L. Mims, ) | |
| ) | |
| Plaintiff, ) | **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION SUMMARY JUDGMENT** |
| ) | |
| v. ) | |
| ) | |
| Diane W. Ray, ) | |
| ) | |
| Defendant. ) | |
| ) | |

## INTRODUCTION

Plaintiff Ronald L. Mims (hereinafter "Plaintiff" or "Plaintiff Mims") respectfully submits that genuine issues of material fact exist as to the negligence of Defendant Diane W. Ray (hereinafter "Defendant" or "Defendant Ray") and that Plaintiff has clearly presented a "mere scintilla of evidence" as required by law to defeat Defendant's motion for summary judgement as outlined below.

## STATEMENT OF THE FACTS

Plaintiff Ronald L. Mims was severely injured at the hands of Defendant Diane W. Ray who was not paying attention when she struck Plaintiff Mims while he was crossing the roadway on June 20, 2019.

At approximately 5:45 P.M., in clear and daylight conditions, Ronald L. Mims was crossing South Dogwood Drive near the intersection of Atlantic Avenue in Murrell's Inlet when Defendant Ray, traveling east on Atlantic Avenue turned south onto South Dogwood Drive heading towards her beach house and slammed into Ronald L. Mims. As a result of the collision, Plaintiff Mims suffered injuries to his back and right upper extremity.

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Plaintiff Mims filed suit alleging Defendant Ray was negligent in failing to keep a proper lookout; in failing to maintain proper control over her vehicle; in failing to yield the right-of-way to Plaintiff; in striking Plaintiff with her vehicle; in failing to take advantage of any last clear chance to avoid striking Plaintiff; in failing to properly observe the road and traffic conditions; in failing to exercise due care in the safe operation of a vehicle; in failing to equip and/or apply adequate brakes; in failing to equip and/or apply a proper steering mechanism; and in failing to equip and/or apply an adequate signaling device or horn.

Defendant Ray answered and raised the following defenses: failure to state a claim pursuant to SCRCP 12(b)(6); unconstitutionality of punitive damages; comparative negligence; and failure to mitigate damages.

## STANDARD OF REVIEW

Rule 56(c) SCRCP provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c) SCRCP. "In determining whether any triable issues of fact exists, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in that light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C 326, 329-30, 673 S.E.2d 801, 802 (2009). "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock*, 381 S.C. at 330, 673 S.E.2d at 803.

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"Since it is a drastic remedy, summary judgment 'should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.'" *Baughman v. American Tel. and Tel. Co.*, 306 S.C 101, 410 S.E.2d 537 (S.C. 1990).

**ARGUMENT**

In her motion for summary judgment, Defendant attempts to convince this Court that the facts in *Bloom v. Ravoira*, 339 S.C. 417, 529 S.E.2d 710 are analogous to those in the case at bar.

In *Bloom*, the Supreme Court of South Carolina held the Court of Appeals erred in reversing the trial court's grant of summary judgment. The *Bloom* decision was decided on a specific set of narrow undisputed facts. ("[I]n the rare case where a verdict is not reasonably possible under the facts presented, summary judgement is proper.") *Bloom*, 339 S.C. at 425. In *Bloom*, both Bloom and Ravoira were visiting Charleston. *Id.* at 421. Plaintiff Bloom was crossing Meeting Street in Charleston, between Market and Cumberland Streets. *Id.* at 420. At both ends of this block of Meeting Street, there were crosswalks, traffic lights, and walk/don't walks signals. *Id.* Bloom testified that while carrying a taxidermically stuffed, mounted pig – before crossing Meeting Street, he looked to the left and then to the right and as he crossed the street, he was struck on his left by Ravoira's car. *Id.* At the time, there was a misty rain and it was dark. *Id.* Bloom was wearing a navy-colored overcoat. *Id.* Ravoira testified that his car's lights and windshield wipers were on at the time of the wreck. *Id.* Witnesses testified that there were cars parked in front of where Bloom was crossing the street and therefore, Bloom must have entered the street from between parked cars or in front of a parked car. *Id.* at 421.

Here, unlike in *Bloom*, there were no crosswalks, traffic lights, or walk/don't walk signals in the immediate proximity of where Plaintiff was crossing S. Dogwood Drive. In fact, Dogwood Drive, an approximate 1.1 mile road that runs parallel to the South Carolina coast in Garden City

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from Cyprus Road to Moonfish Lane, does not have a single crosswalk, traffic light, or walk/don't walk signal. Plaintiff testified that in his entire life he never remembers a crosswalk on Dogwood Avenue. (Depo of Mims 30:13-18). Further, Plaintiff's **Exhibits 1-6** attached hereto demonstrate that as far back as 2008 there has not been a painted crosswalk, traffic light, or walk/don't walk signal at or near the subject location. Unlike in *Bloom*, Defendant Ray was not a visitor to the area, rather she was intimately familiar with the location and in fact owns a second home on Dogwood Avenue where she frequently stays. (Depo of Ray 9:17-22). Defendant Ray admits that she was unable to see because of a delivery truck parked along Dogwood Avenue. (Depo of Ray 25:13-18). In the same breath, Defendant Ray testified that she drives on Dogwood Avenue everyday (Depo of Ray 24:25-25:1) and is aware pedestrians and delivery trucks are often in the vicinity (Depo of Ray 25:2-26:4). Defendant Ray also mentioned that there are no signs directing pedestrians to a pedestrian crossing. (Depo of Ray 33:11-13). Further, unlike in *Bloom*, before crossing Plaintiff waited five second and checked both directions (Depo. of Mims 29:24-30:3). After checking, Plaintiff did not see any traffic on Dogwood Avenue (Depo of Mims 28:19-21). Additionally, the weather was clear and it was daylight outside (Depo of Mims 25:18-26:4). Further, Defendant Ray admitted that a driver has a duty to yield the right-of-way to pedestrians (Depo of Ray 31:19-22). Finally, Defendant Ray admits that when she walks to the beach from her home on Dogwood Avenue, she does not go to the corner of Dogwood Avenue and Atlantic Avenue, like she argues is the duty of Plaintiff, but rather crosses Dogwood Avenue not at a pedestrian crossing. (Depo of Ray 35:18-36:21).

## CONCLUSION

For the reasons stated more fully above, Defendant Ray's Motion for Summary Judgment must be denied. Although Defendant Ray argues the facts of the case at bar are analogous to the

narrow set of facts in which *Bloom* was decided, Plaintiff has demonstrated the same is not true. Unlike the Court held in *Bloom*, here, the negligent acts and/or omissions of Defendant Ray proximately caused the injuries sustained and damages incurred by Plaintiff Mims. Given the facts viewed in the light most favorable to Plaintiff, the non-moving party, Defendant Ray's Motion for Summary Judgement must be denied.

Respectfully submitted,

GEORGE SINK, P.A. INJURY LAWYERS

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*Attorneys for Plaintiff*

Dated: October 20, 2020
North Charleston, South Carolina

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# Exhibit 1

# (Google Maps Image Capture: Feb 2008)

Google Maps 100 Dogwood Dr N

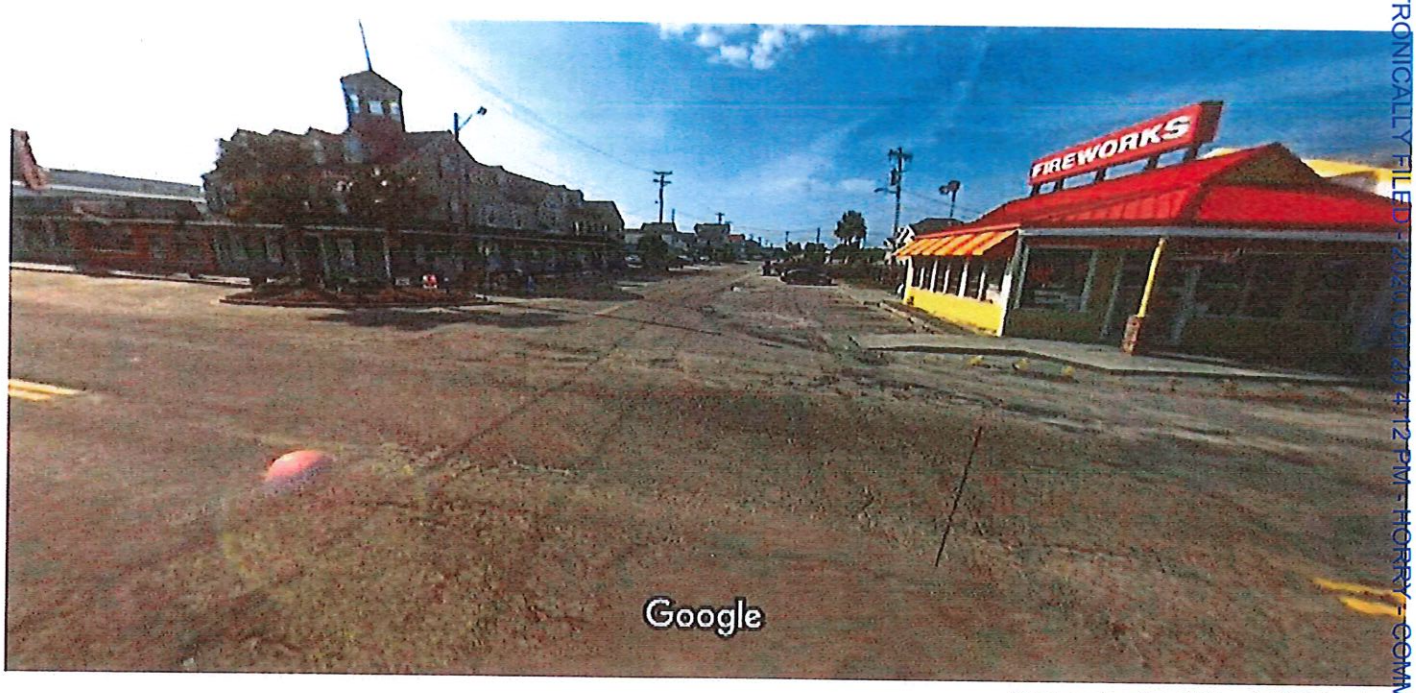



Image capture: Feb 2008 © 2020 Google

Murrells Inlet, South Carolina

Google

Street View




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# Exhibit 2

# (Google Maps Image Capture: Jul 2012)

Google Maps 101 Dogwood Dr N




Image capture: Jul 2012 © 2020 Google

Murrells Inlet, South Carolina

Google

Street View




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# Exhibit 3

# (Google Maps Image Capture: Nov 2014)

Google Maps 101 Dogwood Dr N




Image capture: Nov 2014 © 2020 Google

Murrells Inlet, South Carolina

Google

Street View




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# Exhibit 4

# (Google Maps Image Capture: Jan 2017)

Google Maps 146 Atlantic Ave

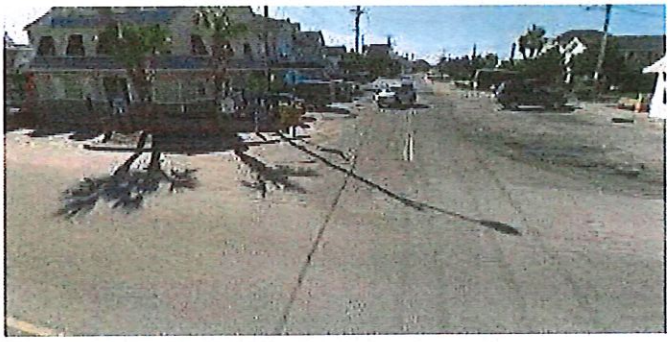



Image capture: Jan 2017 © 2020 Google

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Google

Street View



Currently shown: Jan 2017




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# Exhibit 5

# (Google Maps Image Capture: May 2017)

Google Maps 146 Atlantic Ave




Image capture: May 2017 © 2020 Google

Murrells Inlet, South Carolina

Google

Street View



Currently shown: May 2017




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# Exhibit 6

# (Google Maps Image Capture: Jul 2019)

Google Maps 148 Atlantic Ave




Image capture: Jul 2019 © 2020 Google

Murrells Inlet, South Carolina

Google

Street View




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# Exhibit 7

# (Deposition of Plaintiff Mims (relevant portions only))

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State of South Carolina ) In the Court of Common Pleas
)
County of Horry ) Case No: 2019-CP-26-05892

Ronald L. Mims, )
)
Plaintiff, )
)
vs. )
)
Diane W. Ray, )
)
Defendant. )

# THE DEPOSITION OF RONALD MIMS

Monday, June 1, 2020
10:53 a.m. - 2:21 p.m.

The deposition of RONALD MIMS, taken on behalf of the Defendant, was taken before Sharon B. Brock Via Remote Videoconferencing for All Parties, on Monday, June 1, 2020.

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A: No, ma'am.
Q: Do you know if Tina is still in Horry County?
A: I don't.
Q: Okay. Do you live with anyone right now?
A: My mother.
Q: Do you have any siblings that are over the age of eighteen that live in this county?
A: No, ma'am.
Q: The date of the accident that I have is June 20th, 2019; does that sound about right to you?
A: Yes, ma'am.
Q: Do you remember what time of day the accident occurred?
A: It was afternoon.
Q: Do you remember what the weather was like?
A: Yeah, it was sunny.
Q: Tell me what you remember ---
A: And it rained.
Q: It was ---
A: It was like a popcorn, excuse me, it was like a popcorn shower, typical summer

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stuff.
Q: At the time of the accident, was it raining?
A: Not at the time.
Q: Do you remember if it rained at all before the accident?
A: Maybe a little. Like I say, it was the summertime hit and miss storms.
Q: Do you remember if it rained after the accident?
A: Yes, ma'am.
Q: All right. And just to start off, I want to be clear, you were a pedestrian at the time of the accident, correct?
A: Yes, ma'am.
Q: Do you remember where you were walking from?
A: Yes. I was walking across the street from the fire station, going to cross the street, go towards the beach.
Q: Was the beach your destination?
A: Yes, ma'am.
Q: All right. And you were coming from the fire station?
A: Across the street from the fire station,

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of the main street, Atlantic, the secondary street.

Q: Do you know if there's any traffic signals or stop signs or anything like that at the spot where you were crossing or nearby?

A: Nearby.

Q: About how far away?

A: Maybe fifty to eighty feet.

Q: Is that a traffic signal or a stop sign?

A: No, it's the direct turn off of Atlantic.

Q: Okay. Do you remember what traffic was like that day?

A: Typical summer traffic.

Q: Prior to crossing the street, do you remember, you know, checking for traffic and things like that?

A: Yes, ma'am.

Q: Tell me what you remember about that. Did you see vehicles in the road?

A: Not at the time, no, ma'am.

Q: From either direction?

A: No, ma'am.

Q: Were any vehicles parked alongside the road?

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A: Yes, ma'am.
Q: What kind of vehicle, do you remember?
A: A delivery truck and other regular cars.
Q: Where were those vehicles parked in relation to where the accident occurred?
A: They were parked at the corner by Atlantic coming off of that turn from Atlantic.
Q: Were there any vehicles parked near, right near where the accident occurred or were they all closer to Atlantic?
A: They were closer to Atlantic and spread along, along the other side of the street.
Q: Was the delivery truck parked nearby where the accident occurred or was that close to Atlantic?
A: Right in between.
Q: Okay. So, am I correct that there are vehicles parked along the road, but no moving traffic that you saw along Dogwood?
A: Yes, ma'am.
Q: Okay. Do you know, roughly, how long you paused to check for traffic before you

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crossed the street?
A: Yes, maybe five seconds, looked both ways, checked, you know.
Q: Is there a crosswalk or anything like that at the area where you cross the street?
A: No, ma'am, they're all eroded.
Q: They were eroded?
A: Yes, ma'am.
Q: Could you see lines in the road for a crosswalk that had been there before?
A: No, ma'am.
Q: What makes you say they're eroded?
A: Well, the one -- that's what I mean. The one at Atlantic, it used to be yellow years and years ago. I've lived here my whole life, and it hasn't been painted in, I don't think ever.
Q: At Atlantic where the intersection is?
A: Yes, ma'am.
Q: Okay. Tell me what you remember about the actual impact.
A: The actual impact, I just heard the engine, looked over, saw a blue hood, and I don't remember anything after that.

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# Exhibit 8

# (Deposition of Defendant Ray (relevant portions only))

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State of South Carolina ) In the Court of Common Pleas
)
County of Horry ) Case No: 2019-CP-26-05892

Ronald L. Mims, )
)
Plaintiff, )
)
vs. )
)
Diane W. Ray, )
)
Defendant. )

# THE DEPOSITION OF DIANE RAY

Monday, June 1, 2020
10:02 a.m. - 10:48 a.m.

The deposition of DIANE RAY, taken on behalf of the Plaintiff, was taken before Sharon B. Brock Via Remote Videoconferencing for All Parties, on Monday, June 1, 2020.

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important if you don't understand a question, go ahead and ask me to either rephrase the question or clarify and I'll do my best to do that for you. Under no means am I trying to trick you or hide the ball or play any games with you. This is simply my opportunity to ask you questions about your background and about this accident, fair enough?

A: Yes.

Q: All right. Ms. Ray, could you please give your full legal name?

A: Diane Watson Ray.

Q: And, Ms. Ray, what's your address?

A: 1216 Lakeland Drive, Conway, South Carolina 29526.

Q: And was that the same address that you had on the date of the accident that we're here for today?

A: I stay at 642 South Dogwood in Garden City, because it's so close to my business, a lot.

Q: Do you own that residence as well?

A: Yes.

Q: All right. And, Ms. Ray, does anyone

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Q: Correct, yes, ma'am. Do you recall how fast you were driving once you turned onto Dogwood Drive?

A: Well, like I said, I come to a full stop when I realized the truck was partially in the road, and it couldn't have been more than past the first little notch there on your speedometer. I think it has ten on mine, couldn't have been going past that.

Q: I'm sorry, we cut out for a moment there. Can you repeat that?

A: You know, as you stop and then you start to accelerate, I -- if I had to look at a speedometer, I would say it wouldn't be past that first mark on mine, which is a ten on it or something. It would be less than that. I would say less than a mile, two miles an hour, if you want to put a number to it, just kind of rolling along, as they say.

Q: Did you see Mr. Mims at all prior to impact?

A: No.

Q: Had you driven down Dogwood Drive before?

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A: Every day.
Q: And have you ever seen pedestrians in the general vicinity where this accident took place?
A: You know how the beach is, you could walk all over the place.
Q: And I apologize, Ms. Ray, so is that a yes, ---
A: Yes.
Q: --- you are aware that pedestrians are in that area?
A: Yes.
Q: Do you have any reason or any explanation as to why you didn't see Mr. Mims prior to the impact?
A: Well, because the truck was parked on the right-hand side and he stepped out in front of that truck.
Q: And you said that you drive down Dogwood Drive every day, have you ever seen a truck, a delivery truck like that parked in that same location?
A: Yes.
Q: So, you're aware that there's pedestrians that cross in that general area and that

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there have been a delivery truck in that general area previously; is my understanding correct?

A: Yes.

Q: And did you receive a ticket for this crash?

A: No.

Q: Other than apologizing to Mr. Mims, did you speak with anyone else at the scene of the crash?

A: No, I didn't, except the fire people that were at the fire station. They were the ones that came over when it happened.

Q: Did you ever speak with the police officer that responded to the crash?

A: When he got there, yes.

Q: Do you remember what, if anything, you said to the employees at the fire station?

A: No.

Q: Do you remember what you said to the police officer?

A: Only that -- I responded only to the questions he asked me about the accident.

Q: At any time at the scene of the crash,

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Q: And, Ms. Ray, I'm almost done, I just got a couple of questions left for you, okay? Were there any mechanical problems with that BMW X5 that you were driving on the date of the accident?
A: No.
Q: Did any issues with that vehicle's maintenance or mechanics contribute at all to this crash?
A: No. No.
Q: All right. And, Ms. Ray, would you agree with me that a driver has a duty to maintain a proper lookout?
A: Yes.
Q: And would you agree with me that the driver has a duty to yield the right-of-way?
A: Yes.
Q: And would you agree with me that a driver has a duty to yield the right-of-way to pedestrians?
A: Yes.
Q: All right. Ms. Ray, is there anything at all that we haven't yet discussed that you think is important for me to know?

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questions. Ms. Ray, at the location where the impact occurred, were there any crosswalks or anything like that in the road?

A: No. There is a corner that, that you're supposed to cross at, is the only thing.

Q: Okay. And the accident did not occur at the corner?

A: No, it was, you know, like halfway to the street there.

Q: Are there any signs indicating that there's a pedestrian crossing nearby?

A: No. No.

Q: That's all I have.

MS. VANCAMP: PATRICK, DO YOU HAVE ANY FOLLOW-UP QUESTIONS?

**RE-EXAMINATION**

**BY MR. NAPOLSKI:**

Q: Ms. Ray, you said a moment ago that there's a corner that you're supposed to cross at, what's the authority that you cite saying that you're supposed to cross at that corner?

A: Well, I don't know of any authority.

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pedestrian crossings?
A: Just the one at the corner.
Q: So, is my understanding correct that if someone were to be at your home and park in front of your home, they need to walk all the way to the corner where Causeway Grill & Bar is in order to cross the street?
A: That's kind of a hard question to ask at the -- because we don't have any sidewalks on Dogwood, so it's, you know, my home is about a full block down from Atlantic Avenue, so I, I don't know an answer that, you know, people cross the street if there's nothing coming or you can walk to the corner and cross the street.
Q: And, Ms. Ray, do you ever go to the beach, ever walk to the beach from your home?
A: On occasion, yes.
Q: And do you ever walk to the corner where Causeway Grill & Raw Bar is in order to get to the beach?
A: I -- no, I can get access to the beach

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before that.

Q: Do you have to cross South Dogwood Drive in order to get to the beach?

A: Yes, at the corner, you turn right on, I think it's called Yaka Street and walk over to the beach. There's a, you know, a public access at the end of that street.

Q: And is there a pedestrian crossing at the corner of South Dogwood and Yaka Avenue?

A: No. No, there's no pedestrian. The only pedestrian -- no, there wouldn't be any markings, we, we just cross the street.

Q: So, when you're going to the beach, you typically cross South Dogwood Drive, not at a pedestrian crossing; is that my understanding?

A: Yes. Yes.

Q: Ms. Ray, I don't have any further questions for you.

A: Okay.

MS. VANCAMP: I DON'T HAVE ANYMORE QUESTIONS EITHER.

MS. RAY: ALL RIGHT.

(The deposition concluded at 10:48 a.m.)

ELECTRONICALLY FILED - 2020 Nov 02 8:47 AM - HORRY - COMMON PLEAS - CASE#2019CP2605892

| | |
|---|---|
| STATE OF SOUTH CAROLINA ) | IN THE COURT OF COMMON PLEAS |
| ) | |
| COUNTY OF HORRY ) | |
| ) | Case No.: 2019-CP-26-05892 |
| Ronald L. Mims, ) | |
| ) | |
| Plaintiff, ) | |
| ) | **RECENT LEGAL AUTHORITY IN SUPPORT OF PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** |
| v. ) | |
| ) | |
| Diane W. Ray, ) | |
| ) | |
| Defendant. ) | |
| ) | |

Plaintiff incorporates his October 20, 2020 *Memorandum In Opposition to Defendant's Motion for Summary Judgment* as if fully set forth and restated herein verbatim. In support of the same, Plaintiff directs this Court to the South Carolina Court of Appeals' October 28, 2020 opinion in Abdelgheny v. Moody, No. 5780 (S.C. Ct. App. Oct. 28, 2020). A copy of the *Abdelgheny* case is attached hereto as **Exhibit A** for the Court's convenience.

Respectfully submitted,

GEORGE SINK, P.A. INJURY LAWYERS

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October 30, 2020
North Charleston, South Carolina

ELECTRONICALLY FILED - 2020 Nov 02 8:47 AM - HORRY - COMMON PLEAS - CASE#2019CP2605892

**THE STATE OF SOUTH CAROLINA**
**In The Court of Appeals**

Chelsea Abdelgheny f/k/a Chelsea Jackson, Appellant,

v.

Gerald L. Moody, Respondent.

Appellate Case No. 2018-000102

---

Appeal From Pickens County
Perry H. Gravely, Circuit Court Judge

---

Opinion No. 5780
Heard September 10, 2020 – Filed October 28, 2020

---

**REVERSED**

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Raymond Talmage Wooten, of Smith, Jordan and Lavery, P.A., of Easley, for Appellant.

Thomas Frank Dougall, of Dougall & Collins, of Elgin; Chad McQueen Graham, of The Ward Law Firm, P.A., of Spartanburg; and Langdon Cheves, III, of Turner Padget Graham & Laney, P.A., of Greenville, all for Respondent.

---

**HILL, J.:** A little before 8:00 p.m. on October 26, 2015, Chelsea Abdelgheny had just finished teaching a Zumba class at Mission Fitness in Easley when her boss asked her to check on an order he had placed at the sign store across the street. Wearing a neon pink hooded sweatshirt and bright blue exercise pants, Chelsea

State of South Carolina ) In the Court of Common Pleas
)
County of Horry ) Case No: 2019-CP-26-05892

Ronald L. Mims, )
)
Plaintiff, )
)
vs. )
)
Diane W. Ray, )
)
Defendant. )

# THE DEPOSITION OF DIANE RAY

Monday, June 1, 2020
10:02 a.m. - 10:48 a.m.

The deposition of DIANE RAY, taken on behalf of the Plaintiff, was taken before Sharon B. Brock Via Remote Videoconferencing for All Parties, on Monday, June 1, 2020.

***Sharon Brock Court Reporting***
Post Office Box 32157
Myrtle Beach, South Carolina 29588
(843) 685-7179

## REMOTE APPEARANCES:

**THE WITNESS:**
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**COURT REPORTER:**
Sharon B. Brock
Home Office
SHARON BROCK COURT REPORTING
Myrtle Beach, South Carolina 29588

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## DIANE RAY

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## EXHIBITS

(No exhibits were marked during this proceeding.)

## STIPULATIONS

Pursuant to the Notice and/or consent of the parties, the deposition herein captioned was conducted at the time and place mentioned before Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina.

The deposition was taken for use in accordance to the South Carolina Rules of Civil Procedure unless herein stipulated and agreed to by the parties.

The reading and signing of the deposition by the deponent was waived by the deponent.

DIANE W. RAY HAVING BEEN DULY SWORN, WAS DEPOSED AS FOLLOWS:

**EXAMINATION**

**BY MR. NAPOLSKI:**

Q: Good morning, Ms. Ray. My name is Patrick Thomas Napolski, and I'm an attorney with George Sink's office in Charleston, South Carolina. I am, though, not there right now, I am in the spare bedroom here taking your deposition this morning. Have you ever been deposed before?

A: No.

Q: Okay. Well, as I mentioned a moment ago, I'm an attorney, and I represent Ronald Mims with regard to injuries sustained in a June 20th of 2019 automobile collision. What we're doing today is taking your deposition which is my opportunity to ask you questions about your background and about this particular incident; do you understand that?

A: Yes.

Q: Okay. The difference between this being a casual interview and a deposition is

two main things; first, you've been put under oath to tell the truth, the whole truth, and nothing but the truth; do you understand that?

A: Yes.

Q: Okay. And the second difference between this being a casual interview and a deposition is that we have a court reporter taking down everything that we say, both stenographically and on audio recording; therefore, it's very important that you and I try our best not to speak over one another. If you give me the courtesy of allowing me to fully ask my question, I'll give you the courtesy of fully answering the question before I ask a follow-up question; is that fair?

A: Yes.

Q: Because this is being taken down stenographically and on an audio recording, I'm going to ask that you continue to do what you've been doing thus far, and that's been verbal responses. Try to avoid shaking your head, if you do, I'm going to ask you,

"Is that a yes or a no." Understand, I'm not being rude, I'm just trying to make sure that Marissa and I have a nice, clean record so that we don't have to get in a fight in front of a judge later on as to whether shaking your head or nodding your head is a yes or a no, okay?

A: Yes.

Q: Same thing goes for avoiding the use of uh-huh (affirmative response) or huh-uh (negative response), again, I'll probably just ask you, "Is that a yes or a no," just to make sure that we've got a nice, clean record, understand?

A: Yes.

Q: Okay. Ms. Ray, are you under the influence of any drugs or alcohol which may impair your ability to give truthful answers his morning?

A: No.

Q: Okay. I want you to know that you are in complete control of this deposition this morning, okay? If at any moment you need to take a break, we'll go ahead and take that break, if you need a bottle of water

or if you need to use the restroom. The only thing that I ask is that if I've posed a question that you answer that question before we take a break; is that okay?

A: Yes.

Q: And the second thing that I ask is that you not communicate with your attorney while this deposition is going on. You are here to give your testimony this morning, not your attorney. There may be times where I ask a question that is worded a little funny or I use some legalese, your attorney may step in and say, "Patrick, I object to the form of the question." I get the opportunity to rephrase that question, but if I think the question is posed just fine, then I'm going to ask you to answer that question as it's been worded, okay?

A: Okay.

Q: And one final thing, Ms. Ray, the assumption is going to be made that if you answer a question that you understood that question; therefore, it's very

important if you don't understand a question, go ahead and ask me to either rephrase the question or clarify and I'll do my best to do that for you. Under no means am I trying to trick you or hide the ball or play any games with you. This is simply my opportunity to ask you questions about your background and about this accident, fair enough?

A: Yes.

Q: All right. Ms. Ray, could you please give your full legal name?

A: Diane Watson Ray.

Q: And, Ms. Ray, what's your address?

A: 1216 Lakeland Drive, Conway, South Carolina 29526.

Q: And was that the same address that you had on the date of the accident that we're here for today?

A: I stay at 642 South Dogwood in Garden City, because it's so close to my business, a lot.

Q: Do you own that residence as well?

A: Yes.

Q: All right. And, Ms. Ray, does anyone

live with you at the 1216 Lakeland Drive address?
A: My husband.
Q: And what's his name?
A: Charlie Ray.
Q: And how long have you and Mr. Ray been married?
A: About fifty-two years. Let's see, we got married in '69, so yeah, a long time, a long time.
Q: You wouldn't have thought that was going to be the most difficult question of the morning.
A: Yeah. Oh, me.
Q: And does Mr. Ray also live with you at the 642 South Dogwood address as well?
A: Yes.
Q: Anyone else live with you and Mr. Ray at either of those addresses?
A: No.
Q: And, Ms. Ray, do you have any relatives over the age of eighteen with a last name other than Ray that live in Horry County? And let me tell you why I'm asking that. If Marissa and I need to impanel a jury

for a trial in this case, I want to make sure that I'm not putting any of your family members on the jury, so I'm looking for anyone that has a last name other than Ray that lives in Horry County that's over the age of eighteen.

A: We have some cousins around somewhere, but not very close with them, so I, I, I would probably say, no. As far as close family, I do not, so.

Q: And, Ms. Ray, what's your maiden name?

A: Watson, W-A-T-S-O-N.

Q: Did you grow up in the Grand Strand area?

A: I grew up in Conway.

Q: In Conway, okay.

A: Uh-huh (affirmative response), yeah.

Q: Are there some Watsons in Horry County, living in Conway?

A: Marion County is where most of the relatives are from, and, gee, I can't think of anybody else close around here.

Q: That's fair enough. If you think of someone, just interrupt me any time during this deposition.

A: Okay. I'll have to think on that, too.

Q: Sure, sure. And what's your date of birth?
A: 5/14/47.
Q: And what's the highest level of education that you completed?
A: College.
Q: Where did you attend college?
A: Winthrop.
Q: What was your degree?
A: Education.
Q: I think most people from Winthrop are Education majors, if I'm not mistaken, right?
A: Right. I did teach school a couple of years before I started working at the furniture store. It was a good experience, it taught me a lot of patience.
Q: Where was it that you taught?
A: I'm sorry, what?
Q: Where was it that you taught?
A: Repeat that one more time.
Q: Where was it that you were a teacher?
A: Oh, in Conway, at Conway -- I think it was called Conway Elementary at that

time. I taught one year at Waccamaw Elementary, and then the rest of the time I was at Conway Elementary on 12th Avenue.

Q: And when did you stop being -- what was your last year teaching?

A: '74. I taught from '69 through '74.

Q: What did you do after you left teaching?

A: Well, I have a child, and then I went to work at the furniture store, at Garden City Furniture, when she was around two and a half or three.

Q: Okay. And are you the owner of Garden City Furniture?

A: It's a family corporation. I am one of the owners, and my husband is part-owner and my two children.

Q: You said your husband, and then there's another ---

A: Owns a percentage. He has a small percentage. My two children have a percentage of the stock of Garden City. I run the store, so.

Q: What is your title?

A: President.

Q: And is that an hourly position or are you salary?
A: Salaried.
Q: And what's your salary?
A: For the year or ---
Q: Correct.
A: For the year would be sixty, sixty thousand. All this Direct Deposit, you don't even get to look at your salary anymore.
Q: Sure, sure. Other than working as president at Garden City Furniture, have you had any other jobs in the past ten years?
A: None.
Q: What's the address of the Garden City Furniture store?
A: 2444 Highway 17 South, and they use Murrells Inlet, because Garden City doesn't have a zip code, and it'd be 29576.
Q: And what type of vehicle were you driving on the date of this incident?
A: A X5 BMW.
Q: And am I correct in saying that vehicle

was owned by Garden City Furniture?
A: It is, yes. Yes.
Q: Do you still own that vehicle or does Garden City Furniture still own that vehicle?
A: Yes.
Q: Does Garden City Furniture own any other vehicles?
A: We have -- my son has a truck he drives, and we have the vehicles, the delivery vehicles at the store.
Q: So, the BMW X5, the truck that your son drives, and delivery vehicles?
A: And, then, we have three of the, what we call, what we call box trucks, three box trucks that we deliver in. We have a pickup truck and a small service van.
Q: Ms. Ray, have you ever been arrested?
A: No.
Q: Have you ever been involved in any other motor vehicle crashes?
A: I, I mean, I was involved in a chain reaction thing back in the -- gosh, that was forty years ago, I reckon, you know, where you were stopped at a stop light

and somebody hits and it goes down, I did that, and other than that, no other accident.
Q: And the way you described it, it sounds like you weren't placed at fault for that chain reaction ---
A: No.
Q: --- accident; is that correct?
A: No, I was not.
Q: And you have a valid driver's license?
A: Yes.
Q: And did you at the time of this accident?
A: Yes.
Q: Are there any restrictions on that driver's license?
A: I wear glasses.
Q: And were you wearing glasses at the time of this accident?
A: Yes.
Q: Do you have an optometrist?
A: Yes.
Q: And what's that optometrist's name?
A: When I get my eyes checked, I go to the -- I go to Duke University for my physicals, and I can't remember the name,

but I use 20/20 Vision to do my glasses.
Q: Why is it that you go to Duke University for your physicals?
A: I've been doing this for twenty years now. I go up and -- we have a history of cancer in our family and I go there and get all my checkups done, and I continue to do it.
Q: I'm sorry, it broke up right when you told me the history of your family.
A: My family has a history of cancer and I chose to go to this clinic at Duke and I go once a year for a complete physical even though I still have a doctor here locally.
Q: Do you see a particular doctor at Duke University?
A: Yes, it's called Duke Executive Health, Dr. Orlando is her name.
Q: Orlando like the City in Florida?
A: Yes, Orlando.
Q: And what's the name of your doctor locally?
A: Well, it's not really a doctor. I go to Conway Physicians Group, and I see, you

know, what, what they call a part-time person?

Q: Is it a physician's assistant?

A: Conway Physicians, in fact, I have my first appointment with her since they changed over. The office I was going to, the doctor retired, and then I was put in this clinic, so now I'm going to her for the first time. I'm very rarely sick, so.

Q: At the time of this accident, were you prescribed any prescription medications?

A: The only prescription that I take is Ambien, and that's a half tablet at night to sleep, and that's not an every night, when I feel like I need it to go to sleep.

Q: Do you recall whether or not you took a half of Ambien on the evening prior to this wreck?

A: I do not.

Q: You do not recall?

A: I do not recall, no.

Q: Has your driver's license ever been revoked or suspended for any reason?

A: No.
Q: And you said that you, and I see that you wear glasses, do you have difficulty seeing far away or close up or both?
A: Close up.
Q: Ms. Ray, do you have any social media accounts like Twitter, Facebook or Instagram?
A: Yes.
Q: Can you please list those accounts? Well, let me ask you this, on any of those accounts, have you posted anything about this accident?
A: No.
Q: And up to this point when I've said, "This accident," do you understand that I'm referring to a June 20th, 2019 crash that took place on South Dogwood Drive in Surfside Beach?
A: Yes.
Q: All right. And do you recall that crash?
A: Yes.
Q: Can you tell me where you were coming from and where you were going to?
A: I had left my son's house. I was coming

down Atlantic Avenue turning right on Dogwood to go home.

Q: And what's your son's address?

A: 568 Mt. Gilead Road.

Q: Is that in Murrells Inlet or Garden City, Murrells Inlet?

A: That's Murrells Inlet. Garden City is next door to Murrells Inlet?

Q: Do you recall what the weather was like?

A: It was getting ready to storm.

Q: Was it raining yet?

A: Not at the time of the accident. It started shortly thereafter.

Q: Was it sunny or cloudy?

A: I would say cloudy.

Q: Do you recall whether or not you had your windshield wipers on?

A: I do not recall.

Q: Do you recall whether or not you had your headlights on?

A: They're on all, all the time on my car.

Q: Was there any other traffic, any other vehicles in front of you after you made the right turn?

A: I'm sure there was. There's a lot of

traffic going.

Q: Do you recall any detail, any of the vehicles that were on that road with you?

A: When I went to make the right turn onto Dogwood, there was a tractor-trailer food truck, I can't think of the name of it, partially in the road and sitting off the road, and I had to stop when I started going around, to make sure there was no oncoming traffic, that I had enough room to get through.

Q: I'm sorry, that broke up. Can you say that one more time?

A: Do you want me to repeat?

Q: Yeah, could you repeat that? It was kind of choppy there.

A: Okay. When I got ready to turn right onto Dogwood, I had to stop because there was a food service truck simply -- it was a small delivering food to some restaurant. I stopped, I looked and eased around to make sure there was nothing coming in my lane so I could get by, you know, the truck, and proceed down Dogwood, and that's when the accident

happened. When I got level at the end of the truck, the man stepped out in front of the truck.

Q: And did you come to understand that that man was Ronald Mims?

A: I didn't know at the time 'til after the accident.

Q: Okay. Had you passed the semi-truck?

A: No, I was kind of dead even with the front end.

Q: When is the first time that you saw Mr. Mims?

A: When he hit the side of the car.

Q: What side of your vehicle -- What part of your vehicle hit Mr. Mims?

A: The right front fender area, what you call it.

Q: Was there any damage to your vehicle?

A: None.

Q: Do you know how many lanes there are there on Dogwood Drive?

A: Just two, just a regular road.

Q: And were you in the right-hand lane or the left-hand lane?

A: Going south, I was in the right-hand

lane.
Q: And when you took that right-hand turn, had you ever crossed into the -- did you ever cross into the left-hand lane?
A: I don't recall. I would probably be very close to it, because it was very narrow through there.
Q: And did you speak to Mr. Mims after the crash?
A: Yes, I went up to him and told him, you know, I apologized for it happening, and then, you know, that was all. We, we didn't exchange any names or have any conversation.
Q: Okay. And do you take responsibility for causing this crash?
A: No.
Q: You said a moment ago you apologized to Mr. Mims, what did you ---
A: That it happened, that the crashed happened.
Q: Do you think there's anyone else to blame for this crash other than you?
A: I would say he, Mr. Mims, contributed to the crash. Is that what you're asking?

Q: Correct, yes, ma'am. Do you recall how fast you were driving once you turned onto Dogwood Drive?
A: Well, like I said, I come to a full stop when I realized the truck was partially in the road, and it couldn't have been more than past the first little notch there on your speedometer. I think it has ten on mine, couldn't have been going past that.
Q: I'm sorry, we cut out for a moment there. Can you repeat that?
A: You know, as you stop and then you start to accelerate, I -- if I had to look at a speedometer, I would say it wouldn't be past that first mark on mine, which is a ten on it or something. It would be less than that. I would say less than a mile, two miles an hour, if you want to put a number to it, just kind of rolling along, as they say.
Q: Did you see Mr. Mims at all prior to impact?
A: No.
Q: Had you driven down Dogwood Drive before?

A: Every day.
Q: And have you ever seen pedestrians in the general vicinity where this accident took place?
A: You know how the beach is, you could walk all over the place.
Q: And I apologize, Ms. Ray, so is that a yes, ---
A: Yes.
Q: --- you are aware that pedestrians are in that area?
A: Yes.
Q: Do you have any reason or any explanation as to why you didn't see Mr. Mims prior to the impact?
A: Well, because the truck was parked on the right-hand side and he stepped out in front of that truck.
Q: And you said that you drive down Dogwood Drive every day, have you ever seen a truck, a delivery truck like that parked in that same location?
A: Yes.
Q: So, you're aware that there's pedestrians that cross in that general area and that

there have been a delivery truck in that general area previously; is my understanding correct?

A: Yes.

Q: And did you receive a ticket for this crash?

A: No.

Q: Other than apologizing to Mr. Mims, did you speak with anyone else at the scene of the crash?

A: No, I didn't, except the fire people that were at the fire station. They were the ones that came over when it happened.

Q: Did you ever speak with the police officer that responded to the crash?

A: When he got there, yes.

Q: Do you remember what, if anything, you said to the employees at the fire station?

A: No.

Q: Do you remember what you said to the police officer?

A: Only that -- I responded only to the questions he asked me about the accident.

Q: At any time at the scene of the crash,

did you see the police officer speaking with Mr. Mims?

A: After he spoke with me, he went to speak to Mr. Mims at the hospital, and the officer was two hours getting to the scene of the accident.

Q: It took the police officer two hours after the accident took place to arrive at the accident scene?

A: Yes.

Q: And did you wait there until the police officer arrived?

A: What I did, the fire marshal, I reckon you'd call him, the fire chief, came from the, over there when it happened, and so, I was sitting in the road, of course, you know, and he said, "I want you to pull your car over to the shoulder of the road toward the firehouse, but do not leave," and that's what I did, I pulled over there and sat. So then he came back to the car sometime later on, I don't remember how long, and he said, "It's going to be a while before the policemen get here, I want you to pull your car up

to the fire station and come inside and wait with us because you can't leave the scene." Of course, it was pouring down rain by then, too, so that's what I did. I just sat at the police station until the officer arrived to do the report.

Q: Okay. Did you ever follow up with Mr. Mims to find out the extent of his injuries?

A: No.

Q: Okay. At the time of this crash, did you have a cell phone?

A: Yes.

Q: Do you recall what the phone number was for that cell phone?

A: Yes, it's my same one, 843-997-6861.

Q: Do you know who the carrier is for that phone?

A: Oh, gee, it's not Spectrum, Verizon, and the phone is owned by the store, also.

Q: And immediately before the impact, were you talking on your cell phone?

A: No.

Q: Were you distracted by anything inside your vehicle immediately prior to the

impact?
A: No.
Q: Were you distracted by anything outside your vehicle immediately before the impact?
A: Well, of course, I was, you know, observing what was going on with traffic.
Q: Where were you looking, observing that traffic?
A: Everywhere there. You have to watch when you're in the beach area.
Q: Including looking to your right?
A: Well, I would be looking to the right and to the left.
Q: And Mr. Mims came from your right, is that my understanding?
A: Came from my right, yes.
Q: After the crash and then the two hours before the police officer got there, did you make any phone calls from your cell phone?
A: No.
Q: Did you send any text messages?
A: Not to my knowledge.
Q: Other than your attorney, and I don't

want to know anything about that conversation, but other than your attorney, have you spoken to anybody else about this crash?

A: Well, of course, I told my husband, and I -- we had let my son know at the store what had happened. Other than that, no, no one else.

Q: What's your son's name?

A: Joey Ray.

Q: Does Joey have a cell phone?

A: Yes.

Q: What's his phone number?

A: I knew you would ask me that.

Q: And I'm going to ask you your husband's as well, so if you're ---

A: You know you just hit the number. Hold on just a minute.

Q: Sure.

A: I, I want to give it to you correct. I don't want to give it to you wrong, so. This is terrible. We just depend on this all the time. All right. My son's phone number is 843-877-2496, and Charlie's mobile number is 843-222-3144.

Q: And, Ms. Ray, I'm almost done, I just got a couple of questions left for you, okay? Were there any mechanical problems with that BMW X5 that you were driving on the date of the accident?
A: No.
Q: Did any issues with that vehicle's maintenance or mechanics contribute at all to this crash?
A: No. No.
Q: All right. And, Ms. Ray, would you agree with me that a driver has a duty to maintain a proper lookout?
A: Yes.
Q: And would you agree with me that the driver has a duty to yield the right-of-way?
A: Yes.
Q: And would you agree with me that a driver has a duty to yield the right-of-way to pedestrians?
A: Yes.
Q: All right. Ms. Ray, is there anything at all that we haven't yet discussed that you think is important for me to know?

A: Not at this -- I, I just, you know, I can't think of anything, right off the top of my head, unless, you know, Mr. Mims was not paying attention, didn't see me or what. I don't know what his thoughts were.

Q: All right. Ms. Ray, just give me one moment to go through my notes and then we may be almost squared away with you, okay? Ms. Ray, where were you prior to your son's house?

A: I would've been at work.

Q: All right. Ms. Ray, I don't have any further questions for you, but your attorney may have some additional questions for you, okay?

A: Okay.

Q: Thank you very much for your time this morning. It was a pleasure to speak with you. I appreciate you making yourself available.

A: Thank you.

**EXAMINATION**

**BY MS. VANCAMP:**

Q: I think I just have two follow-up

questions. Ms. Ray, at the location where the impact occurred, were there any crosswalks or anything like that in the road?

A: No. There is a corner that, that you're supposed to cross at, is the only thing.

Q: Okay. And the accident did not occur at the corner?

A: No, it was, you know, like halfway to the street there.

Q: Are there any signs indicating that there's a pedestrian crossing nearby?

A: No. No.

Q: That's all I have.

MS. VANCAMP: PATRICK, DO YOU HAVE ANY FOLLOW-UP QUESTIONS?

**RE-EXAMINATION**

**BY MR. NAPOLSKI:**

Q: Ms. Ray, you said a moment ago that there's a corner that you're supposed to cross at, what's the authority that you cite saying that you're supposed to cross at that corner?

A: Well, I don't know of any authority.

It's -- you always go to the corner and cross the street, is what I was taught, you know, there's a sidewalk there and it ends and the road, you know, a sidewalk picks up the next block, and I would just think that people that were crossing the street in that area would go to the corner and do it.

Q: Okay. Just give me one more moment.

A: I'm sorry?

Q: Just give me one moment here. Ms. Ray, am I understanding correctly this accident took place near the same corner as the Causeway Grill & Raw Bar?

A: Yes, you cross the Causeway, it's the first street to the right, South Dogwood.

Q: And you said that you take South Dogwood Drive every day to get home; is that correct?

A: Yes.

Q: Do you ever see vehicles parked alongside South Dogwood Drive?

A: Yes. Yes.

Q: And anywhere between Atlantic Avenue on South Dogwood Drive, are you aware of any

pedestrian crossings?
A: Just the one at the corner.
Q: So, is my understanding correct that if someone were to be at your home and park in front of your home, they need to walk all the way to the corner where Causeway Grill & Bar is in order to cross the street?
A: That's kind of a hard question to ask at the -- because we don't have any sidewalks on Dogwood, so it's, you know, my home is about a full block down from Atlantic Avenue, so I, I don't know an answer that, you know, people cross the street if there's nothing coming or you can walk to the corner and cross the street.
Q: And, Ms. Ray, do you ever go to the beach, ever walk to the beach from your home?
A: On occasion, yes.
Q: And do you ever walk to the corner where Causeway Grill & Raw Bar is in order to get to the beach?
A: I -- no, I can get access to the beach

before that.

Q: Do you have to cross South Dogwood Drive in order to get to the beach?

A: Yes, at the corner, you turn right on, I think it's called Yaka Street and walk over to the beach. There's a, you know, a public access at the end of that street.

Q: And is there a pedestrian crossing at the corner of South Dogwood and Yaka Avenue?

A: No. No, there's no pedestrian. The only pedestrian -- no, there wouldn't be any markings, we, we just cross the street.

Q: So, when you're going to the beach, you typically cross South Dogwood Drive, not at a pedestrian crossing; is that my understanding?

A: Yes. Yes.

Q: Ms. Ray, I don't have any further questions for you.

A: Okay.

MS. VANCAMP: I DON'T HAVE ANYMORE QUESTIONS EITHER.

MS. RAY: ALL RIGHT.

(The deposition concluded at 10:48 a.m.)

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY ) CERTIFICATE

I, Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina, do hereby certify that the foregoing proceedings of **DIANE RAY**, after first being duly sworn; was taken by me and thereafter transcribed by me. That the **THIRTY-SEVEN (37)** pages contain a full, true, and correct transcription of all the proceedings; that I am not of kin to any parties to this cause of action, nor am I interested in its outcome.

This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker. Said proceedings were reported by method of steno mask with backup.

IN WITNESS WHEREOF I have hereunto set my hand and seal this **14TH** day of **JUNE, 2020.**

Sharon B. Brock
Verbatim Court Reporter
Notary in and for the
State of South Carolina
My Commission Expires:5/31/2021

| | |
|---|---|
| State of South Carolina | ) In the Court of Common Pleas |
| | ) |
| County of Horry | ) Case No: 2019-CP-26-05892 |

Ronald L. Mims,

Plaintiff,

vs.

Diane W. Ray,

Defendant.

# THE DEPOSITION OF RONALD MIMS

Monday, June 1, 2020
10:53 a.m. - 2:21 p.m.

The deposition of RONALD MIMS, taken on behalf of the Defendant, was taken before Sharon B. Brock Via Remote Videoconferencing for All Parties, on Monday, June 1, 2020.

## REMOTE APPEARANCES:

**THE WITNESS:**
RONALD MIMS
722 6th Avenue
Surfside Beach, South Carolina 29575

**FOR THE PLAINTIFF:**
Patrick T. Napolski, Esquire
GEORGE SINK, P.A.
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North Charleston, South Carolina 29460

**FOR THE DEFENDANT:**
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**COURT REPORTER:**
Sharon B. Brock
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SHARON BROCK COURT REPORTING
Myrtle Beach, South Carolina 29588

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## RONALD MIMS

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## EXHIBITS

(No exhibits were marked during this proceeding.)

## STIPULATIONS

Pursuant to the Notice and/or consent of the parties, the deposition herein captioned was conducted at the time and place mentioned before Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina.

The deposition was taken for use in accordance to the South Carolina Rules of Civil Procedure unless herein stipulated and agreed to by the parties.

The reading and signing of the deposition by the deponent was waived by the deponent.

RONALD MIMS HAVING BEEN DULY SWORN, WAS DEPOSED AS FOLLOWS:

**EXAMINATION**

**BY MS. VANCAMP:**

Q: Thank you, Mr. Mims. My name is Marissa VanCamp. I represent Diane Ray, and we're here so that I can ask you some questions about yourself and about an accident that occurred back in 2019. Have you ever had your deposition taken before?

A: No, ma'am.

Q: Okay. I'm going to go over a few rules and guidelines right now. If at any point you don't hear me, please feel free to interrupt and I'll rephrase or restate my question or try to speak louder, okay?

A: Yes, ma'am.

Q: And since we're all on video today, if you can wait until I'm done asking my question before you give your answer, I will do my very best not to interrupt you before I ask my next question. You know, normal conversation it's easy to kind of anticipate where the question is going

and you start your answer, but if you could please try not to do that just so I can hear you, Patrick can hear you, and most importantly Sharon can hear you since she's recording everything that's being said, okay?

A: Yes, ma'am.

Q: Along those same lines, if you could keep all of your answers verbal just as you're doing, yeses and noes. Even though I can see you, if you're nodding your head or shaking your head and I'm going to probably know what you're saying, I'll ask you, "Is that a yes or a no," and I'm not trying to be rude or ugly or anything like that, I just want to make sure we have a clean record; does that make sense?

A: Yes, ma'am.

Q: Okay. And same thing with uh-huh (affirmative response) and huh-uh (negative response), if I ask you, "Is that a yes or no," I'm not trying to be rude or anything like that. Do you understand that the court reporter is

recording everything that's being said?
A: Yes, ma'am.
Q: And do you understand that you're testifying under oath and there's penalties that come along with lying or being dishonest?
A: Yes, ma'am.
Q: Okay. If you need to take a break at any point, let me know. I'm going to try to get through this as quickly as we can. I don't want to keep you any longer than necessary, but if you need to take a break to stretch your legs or get some air, feel free to let me know. I'll tell you, one thing about breaks is it's one of the only times in the case when the attorney-client privilege doesn't apply, which basically means if we take a break and you speak with your attorney during the break, once we come back on the record, I can ask you about that conversation; does that make sense?
A: Yes, ma'am.
Q: Are you under the influence of any medications or alcohol or anything like

that, that could inhibit your ability to answer my questions today?

A: No, ma'am.

Q: Okay. And if you do give me an answer to my question, I'm going to assume that you heard my question and that you understood it; does that make sense?

A: Yes, ma'am.

Q: Okay. So, feel free to have me restate or rephrase at any time. We're going to go ahead and get started. Could you state your full name for the record, Mr. Mims?

A: Yes. Ronald Lee Mims, Jr.

Q: What's your date of birth?

A: 5/6/83.

Q: Were you born here in South Carolina?

A: Yes, ma'am.

Q: Which city?

A: Georgetown, Georgetown County.

Q: What's your current address?

A: 722 6th Avenue South, Surfside Beach 29575.

Q: Do you know approximately how long you've been living at that address?

A: About two and a half years, three.
Q: And I know these questions are difficult, but do you remember where you were living prior to the 6th Avenue Address?
A: Yes, I was living on 2nd Avenue South, I meant, North, excuse me, ---
Q: Second Avenue.
A: --- in Surfside Beach.
Q: Do you know approximately how long you lived at the 2nd Avenue address?
A: Just about two years.
Q: Besides South Carolina, have you lived in any other states?
A: No, ma'am.
Q: All right. Are you on any social media websites like Facebook or Instagram?
A: I have Facebook. I rarely mess with it.
Q: Okay. Have you ever made any posts related to the accident that we're going to talk about today?
A: No, ma'am.
Q: What's your phone number?
A: 843-315-5140.
Q: Do you know who the carrier is?
A: Straight Talk.

Q: Would you walk me through your educational background, starting with where you went to high school?
A: Yes, I went to Socastee High School for ninth and tenth grade, and then I went to the Academy For Arts Science & Technology for eleventh and twelfth, graduated.
Q: Do you remember which year you graduated?
A: 2001.
Q: After graduating, did you pursue any additional education?
A: Some college at Horry-Georgetown Technical.
Q: Okay. How long did you attend Horry-Georgetown?
A: About three semesters.
Q: What program were you in or what was your major?
A: Golf Course Management and Horticulture.
Q: All right. And after you stopped taking those courses, did you attend any other colleges or institutions?
A: No, ma'am.
Q: Do you have any professional licenses or certifications?

A: No, ma'am.
Q: Okay. Are you currently employed?
A: Yes, ma'am.
Q: Where do you work?
A: Save More Super Store.
Q: What's your position?
A: Basically, bicycle mechanic, and we assemble, you know, furniture, pool tables, you know, it's a surplus store.
Q: Okay. Approximately how long have you been doing that?
A: About a month and a half, maybe two months.
Q: Where were you working prior to that position?
A: I was with the family business called SpruceUp.
Q: SpruceUp?
A: Yes, ma'am, SpruceUp.
Q: What was your position there?
A: Landscaping and irrigation.
Q: Do you know roughly how long you were working at SpruceUp?
A: I would say twelve years.
Q: Were you working at SpruceUp at the time

of the accident in 2019?
A: Yes, ma'am.
Q: Okay. And while we're on that subject, I'll go ahead and ask you now, are you making a claim for lost wages or income as a result of the accident in 2019?
A: I'm sorry?
Q: Are you making a claim for lost wages or income as a result of the accident in 2019?
A: I'm not sure, I presume.
Q: Usually, it's kind of a claim that, due to the accident, you missed work or you lost income because you weren't able to work; does that sound like something you're claiming? I'll tell you, I do see that claim in your discovery responses.
A: Yes, ma'am.
Q: Could you tell me about how much income you're claiming you lost?
A: Well, at the time I've, I've been getting -- the pay fluctuated. It was $13 an hour or if we had big jobs, it was by the job.
Q: Do you have any documentation from your

employer that would show the jobs you missed, the wages you would've earned if you had been working, anything like that?

A: Yes, ma'am.

Q: Do you have documentation that shows the days of work you missed?

A: Yes, ma'am.

Q: Do you know the estimate of what your lost wages claim is, what amount of money?

A: Not at the exact moment, but I can get it to you as soon as possible.

Q: If you can get that information to your attorney, he can give it to me.

A: Yes, ma'am.

Q: And I'm not going to hold you to specifics, but do you know, roughly, how many days you missed from work?

A: It was about -- it was seven, eight months.

Q: Okay. During that time period, at the end of eight months, were you able to work at all?

A: No, ma'am, I was -- no, ma'am.

Q: So that would've been seven to eight

months, starting in June 2019, when the accident occurred?

A: Correct.

Q: Were you able to return to work, eventually?

A: Yes. That's why I got this new job, it's easy on my body.

Q: Did you go back to SpruceUp at all after the accident or did you immediately stop?

A: No, ma'am.

Q: Okay. So, once you were able to start working, you were working in your new position?

A: Yes, ma'am.

Q: And I think you were starting to say something along the lines of the job at Save More is easier on your body; is that right?

A: Yes, ma'am.

Q: Can you tell me more about that?

A: Yes. Well, everything -- they know my situation, and everything is like lightweight, light work, you know, it's nothing strenuous.

Q: Okay. Are you working full-time or part-

time?
A: Full-time.
Q: Do you know the name of your supervisor at Save More?
A: Jimmy and Andrea, but I don't know their last name at the moment.
Q: Do you remember who your supervisor was when you were working at SpruceUp?
A: Yes, it was my father, Ronald Mims, and my mother, Fran Mims. My father passed away.
Q: And I'm sorry, what was your mother's name?
A: Fran Mims.
Q: Is your mother still working at SpruceUp?
A: No, ma'am.
Q: Do you know of a supervisor or an employee that's currently working at SpruceUp?
A: No, ma'am.
Q: I hope this question doesn't offend you, I have to ask this of everyone, but have you ever been arrested or convicted of any crimes?
A: Yes, ma'am.

Q: Could you tell me what year you remember that occurring?
A: I couldn't -- you want me to go with the most recent?
Q: Sure.
A: Okay. That was early 2019, and I am currently in Mental Health Court, and will be graduating in August, and it is a program that is amazing. It has changed my entire outlook upon life and just really has turned any kind of negative into a positive thought.
Q: That's good to hear.
A: Yes.
Q: And I don't want to dig too much into this, could you tell me what the charge was?
A: Yes, it was drugs, methamphetamine.
Q: Possession charge?
A: No, ma'am, distribution.
Q: Okay. And, then, walking back, it sounds like you had been arrested prior to 2019 or is there another ---
A: Yes, ma'am, I had a -- I'm sorry?
Q: Sorry, I didn't mean to interrupt you,

just want to make sure if there was more than one, that we heard them all.

A: Yeah, DUI. I can't remember the exact date, but it was a long -- it was a while ago. It's six, six years, seven.

Q: Do you remember if that took place in Horry County or Georgetown or somewhere else?

A: Horry County.

Q: Okay. Do you remember how that charge was resolved?

A: Yes, ma'am. I took the classes at -- on Wise Road at Shoreline, Shoreline Behavioral Health Services.

Q: Okay. Besides the 2019 charge and then the DUI charge that was about six years ago, can you think of any other charges?

A: A DUS, driving under suspension, a while ago, as well.

Q: Okay. Would that have been sometime after the DUI?

A: Yes, ma'am.

Q: And what happened with that charge?

A: I paid the fine and -- yeah.

Q: Has your driver's license been revoked at

any point?
A: It had been.
Q: And, then, has it been reinstated since then?
A: Yes, ma'am.
Q: Okay. Are there any other criminal charges that you can recall?
A: No, ma'am.
Q: Prior to the accident in June 2019, do you recall ever being involved in any other motor vehicle accidents either as a driver, a passenger, or a pedestrian?
A: No, ma'am.
Q: And, then, can you recall any accidents after that 2019 accident?
A: No, ma'am.
Q: Before I get into the actual accident and your treatment, I'm going to ask you a little bit about your past medical history. Do you suffer from any chronic condition like diabetes or high blood pressure or anything like that?
A: No, ma'am.
Q: Have you ever been hospitalized prior to the 2019 accident?

A: Yes, ma'am.
Q: Do you remember what year or roughly when it was?
A: 2018, maybe early 2019, around in there.
Q: And I've looked through your medical record and it looks like, correct me if I'm wrong, was that for alcohol withdrawals and things like that?
A: Yes, ma'am.
Q: And it looked like as part of that history you suffered from some seizures; is that right?
A: Yes, ma'am.
Q: Do you currently suffer from any seizures?
A: No, ma'am.
Q: Besides that treatment, have you ever been hospitalized for anything else, surgeries, anything like that?
A: I'm sorry, you broke up a little bit.
Q: Besides the seizures and alcohol withdrawal issues, have you ever been hospitalized for anything else like any other surgeries or illnesses?
A: No, ma'am.

Q: Okay. Do you have a primary care physician or a family doctor that you see?
A: Yes, ma'am.
Q: What's the doctor's name?
A: Dr. Archambeau.
Q: Do you know what practice that doctor is with?
A: No, ma'am, he's just a primary care physician.
Q: Do you know, like, where the location is; is that ---
A: Pawleys Island.
Q: Okay. Roughly, how long have you been seeing that doctor?
A: Roughly, five years.
Q: Did you see that doctor for anything related to this accident in 2019?
A: No, ma'am.
Q: I just want to make sure I wasn't missing anything, because I didn't see his name or her name. All right. Have you ever suffered from neck or back pain prior to the 2019 accident?
A: Yes, ma'am.

Q: Can you tell me when that was?
A: That was about the same time, 2018, '19, from seizures.
Q: And I guess, just to be clear, is that neck pain or back pain or both?
A: Back pain.
Q: And that would occur whenever you had seizures?
A: Yes, ma'am, I fell.
Q: Okay. Was there a serious injury to your back?
A: No, ma'am, no surgery.
Q: No surgery, did you have treatment for it?
A: Yes, ma'am.
Q: Do you remember where you treated?
A: Tidelands Health.
Q: Do you remember if that was all over your back or upper back, lower back, mid-back?
A: Mid to lower.
Q: And what was the pain like, can you describe it for me?
A: Yeah, it was very -- it was more stabbing and shooting pains. It would go down my left leg sometimes and right.

Occasionally, it was like the sciatica nerve, and like certain positions, I couldn't, I couldn't do, you know, as far as lifting, bending. I couldn't sit for a while without being uncomfortable.

Q: Was that constant pain or did it come and go, do you remember?

A: It was pretty constant, and certain things would alleviate it temporarily.

Q: What kind of things would alleviate it?

A: Laying in certain positions, sometimes just walking would help it.

Q: Do you remember if you took any pain medications or prescriptions or anything to help with the back pain?

A: I can't recall, except for Ibuprofen 800s. I'm not really sure. I don't think so.

Q: What was your treatment like at Tidelands, was it like physical therapy where you would do stretches and exercises or do you remember what that treatment was?

A: Yes, ma'am, it was physical therapy.

Q: Okay. Did that back pain resolve prior

to the 2019 motor vehicle accident?
A: I'm sorry?
Q: Do you remember if that back pain resolved or went away before you were involved in the accident in 2019 with Ms. Ray?
A: Yes, ma'am, it got much better.
Q: Were you still experiencing pain at that point in time?
A: Only if I did something extreme and then that'd be immediately quick.
Q: Okay. Do you know when you stopped going to Tidelands for PT prior to the accident?
A: A year and a half ago-ish.
Q: Was it close in time to the accident or had it been a few months, do you remember? And, again, I won't hold you to specific dates, I'm just trying to get an idea.
A: It was months, it was months before.
Q: Okay. Prior to the 2019 accident, had you ever experienced any pain or issues with your right wrist?
A: No, ma'am.

Q: Besides the physical therapy we've already talked about, have you ever completed any chiropractic treatment or other physical therapy before that 2019 accident with Ms. Ray?
A: No, ma'am.
Q: All right. Before I start asking you about the accident, I just have a quick follow-up to your background questions. Are you currently married?
A: No, ma'am.
Q: Have you ever been married?
A: Yes, ma'am.
Q: Okay. What was your spouse's name?
A: Tina Clifford.
Q: Do you remember what year you were divorced?
A: About four years ago.
Q: Okay. And, then, if we do go to trial at some point down the road when we're looking at a jury, I'm going to avoid putting any family members on the jury, so do you have any relatives that are over the age of eighteen that currently reside in Horry County?

A: No, ma'am.
Q: Do you know if Tina is still in Horry County?
A: I don't.
Q: Okay. Do you live with anyone right now?
A: My mother.
Q: Do you have any siblings that are over the age of eighteen that live in this county?
A: No, ma'am.
Q: The date of the accident that I have is June 20th, 2019; does that sound about right to you?
A: Yes, ma'am.
Q: Do you remember what time of day the accident occurred?
A: It was afternoon.
Q: Do you remember what the weather was like?
A: Yeah, it was sunny.
Q: Tell me what you remember ---
A: And it rained.
Q: It was ---
A: It was like a popcorn, excuse me, it was like a popcorn shower, typical summer

stuff.
Q: At the time of the accident, was it raining?
A: Not at the time.
Q: Do you remember if it rained at all before the accident?
A: Maybe a little. Like I say, it was the summertime hit and miss storms.
Q: Do you remember if it rained after the accident?
A: Yes, ma'am.
Q: All right. And just to start off, I want to be clear, you were a pedestrian at the time of the accident, correct?
A: Yes, ma'am.
Q: Do you remember where you were walking from?
A: Yes. I was walking across the street from the fire station, going to cross the street, go towards the beach.
Q: Was the beach your destination?
A: Yes, ma'am.
Q: All right. And you were coming from the fire station?
A: Across the street from the fire station,

yes, ma'am, Dogwood.
Q: Had you been at your home or is there a business you were at?
A: No, ma'am, I had parked my car.
Q: Where had you been prior to parking your car?
A: My house.
Q: All right. If you could tell me, what do you remember from the minutes leading up to the accident?
A: I left my house, parked my car, went to go to the beach across the street, and that's when it happened.
Q: Okay. Just to get a little more detail, can you describe what the road is like in that area?
A: Describe the road?
Q: Do you know, is it one lane in each direction, is it multiple lanes in each direction, is there ---
A: Yeah, one in ---
Q: --- an intersection?
A: One in each direction.
Q: Were you crossing near an intersection?
A: I was crossing to another street, not off

of the main street, Atlantic, the secondary street.

Q: Do you know if there's any traffic signals or stop signs or anything like that at the spot where you were crossing or nearby?

A: Nearby.

Q: About how far away?

A: Maybe fifty to eighty feet.

Q: Is that a traffic signal or a stop sign?

A: No, it's the direct turn off of Atlantic.

Q: Okay. Do you remember what traffic was like that day?

A: Typical summer traffic.

Q: Prior to crossing the street, do you remember, you know, checking for traffic and things like that?

A: Yes, ma'am.

Q: Tell me what you remember about that. Did you see vehicles in the road?

A: Not at the time, no, ma'am.

Q: From either direction?

A: No, ma'am.

Q: Were any vehicles parked alongside the road?

A: Yes, ma'am.
Q: What kind of vehicle, do you remember?
A: A delivery truck and other regular cars.
Q: Where were those vehicles parked in relation to where the accident occurred?
A: They were parked at the corner by Atlantic coming off of that turn from Atlantic.
Q: Were there any vehicles parked near, right near where the accident occurred or were they all closer to Atlantic?
A: They were closer to Atlantic and spread along, along the other side of the street.
Q: Was the delivery truck parked nearby where the accident occurred or was that close to Atlantic?
A: Right in between.
Q: Okay. So, am I correct that there are vehicles parked along the road, but no moving traffic that you saw along Dogwood?
A: Yes, ma'am.
Q: Okay. Do you know, roughly, how long you paused to check for traffic before you

crossed the street?
A: Yes, maybe five seconds, looked both ways, checked, you know.
Q: Is there a crosswalk or anything like that at the area where you cross the street?
A: No, ma'am, they're all eroded.
Q: They were eroded?
A: Yes, ma'am.
Q: Could you see lines in the road for a crosswalk that had been there before?
A: No, ma'am.
Q: What makes you say they're eroded?
A: Well, the one -- that's what I mean. The one at Atlantic, it used to be yellow years and years ago. I've lived here my whole life, and it hasn't been painted in, I don't think ever.
Q: At Atlantic where the intersection is?
A: Yes, ma'am.
Q: Okay. Tell me what you remember about the actual impact.
A: The actual impact, I just heard the engine, looked over, saw a blue hood, and I don't remember anything after that.

Q: Do you know if you lost consciousness?
A: Yes, ma'am.
Q: And just to backtrack, did you say you heard the engine or you heard a car?
A: Yes, ma'am, it was real quick.
Q: What do you remember or what's the first thing you remember when you came to after losing consciousness?
A: Just shaky and, you know, in shock, freaked out, stood up, went to kind of shake off, you know, like, "Whoa," and that's when I noticed my arm, and went over to the firehouse.
Q: All right. When you say you noticed your arm, I just want to be clear about what that means. Is that your right arm or your left arm?
A: My right arm was completely broke.
Q: Were you experiencing any pain at that point in time?
A: (Audio was muted.)
Q: I couldn't hear you. Try to say something now.
A: Okay, sorry.
Q: That's okay. I can hear you now. I'll

repeat that question. Were you experiencing any pain in your arm at that point in time?

A: Yes, ma'am, once I started coming to.

Q: Besides your arm, do you recall experiencing pain in any other areas of your body?

A: Yes, ma'am. Oh, I am so sorry. Can -- may we please continue shortly?

Q: Do you need to take a short break or do you need to step away for a longer period of time?

A: Maybe -- how about one o'clock. I am so sorry.

Q: Do you need to leave for a meeting or a class or something?

A: Yes, ma'am. I had a meeting and it's starting a little early. That's why it was breaking through on me, they're telling me to come in.

Q: Okay.

MS. VANCAMP: SHARON, ARE YOU AVAILABLE THIS AFTERNOON?

COURT REPORTER: I AM.

MS. VANCAMP: OKAY. AND, PATRICK, IS THAT OKAY WITH YOU IF WE TAKE A BREAK AND RESUME AT ONE?

MR. NAPOLSKI: YEAH. THAT WORKS JUST FINE FOR ME IF THAT'S OKAY WITH EVERYONE ELSE.

MS. VANCAMP: THAT WORKS FOR ME. MR. MIMS, IF YOU CAN SIGN BACK ON AROUND 1:00 P.M., I'LL SIGN BACK ON, TOO.

******OFF THE RECORD******

**11:33 a.m. - 1:46 p.m.**

**(ON THE RECORD.)**

MS. VANCAMP: I KNOW WE JUST TOOK A LONG BREAK. SHARON, IF YOU WOULDN'T MIND JUST READING INTO THE RECORD THE LAST QUESTION SO THAT WE CAN KIND OF START WHERE WE LEFT OFF.

(COURT REPORTER COMPLIES WITH REQUEST).

**MS. VANCAMP CONTINUES:**

Q: Okay. So, circling back to where we're talking about the accident, Mr. Mims, could you tell me what areas of your body you started feeling pain in immediately after the impact?

A: My left leg, it, it triggered my sciatic nerve, and my lower back.

Q: And I apologize, I might ask you some repeat questions, but ---

A: That's okay.

Q: --- I believe you said you did lose consciousness; is that right?

A: Yes, I did.

Q: Do you have any idea how long?

A: Honestly, I'm not too sure. It wasn't, you know, terribly long, maybe thirty seconds to a minute, maybe, somewhere around in there.

Q: And, then, you were able to stand up; is that right?

A: Yeah. It took, it took me a second, but I, you know, got up, a little dizzy, shaken.

Q: All right. And, then, I believe you had

said you spoke with the Defendant; is that right, just briefly?
A: I'm not sure, maybe briefly.
Q: And, then, you walked over to the fire station?
A: Yes, I just went straight there.
Q: Did any of the firefighters come to you or did you go straight over there?
A: A gentleman helped me to walk over there.
Q: Do you know who he was?
A: I do not.
Q: Do you know if he was a firefighter?
A: No, sir, I mean, no, no, he was not.
Q: Okay. Tell me what you remember from your time at the fire station.
A: They put a temporary sling on my arm, like, I believe some kind of wrap just to, you know, give it a little help so I didn't have to keep holding it, like a little sling, and that was when, you know, they stayed with me, and my mother came to take me to the hospital.
Q: Do you know how long after the accident it was before she arrived?
A: Oh, it wasn't that long, maybe ten

minutes-ish.
Q: Do you remember if you called your mom or if one of the firefighters did or somebody else?
A: I -- I'm pretty sure I did.
Q: Do you remember calling anyone besides your mother?
A: No, just my mother.
Q: Okay. And you said that she took you to the hospital?
A: Yes, ma'am.
Q: So, no ambulance showed up at any point that you remember?
A: No, ma'am, because my mother was right there.
Q: Do you remember if you spoke with the Defendant at any point before you left for the hospital once you're at the fire station?
A: The only thing I recall was her apologizing, and that was it.
Q: Do you remember which hospital you went to?
A: Tidelands Health.
Q: And tell me what you remember from your

treatment there.

A: They took me into the emergency room, put me on -- I'm not sure what it's called, but I have a picture of it, but it looked like Chinese handcuffs like they attach to my fingers and attached something to my bicep muscle and pulled down as those -- they were trying to gently let the bone come back together, which it didn't, you know, and then they sent me home in a sling, and then that's when I -- after that, a little bit of time passed, I went to Dr. Lewis to have surgery.

Q: All right. Going back to the ER treatment, do you remember if they did any x-rays or diagnostic scans when you were at the hospital?

A: Yes, they did.

Q: Do you remember speaking with a doctor about the results?

A: Not, I mean, not really. I was pretty -- I'm not sure. I was kind of, you know, I was just shaken up.

Q: And you said they put you in a sling and sent you home?

A: That, I do remember.
Q: Do you know if they gave you any pain medication?
A: I refused. I, I just -- like Ibuprofen.
Q: Can you tell me why you refused the pain medication?
A: Yes, 'cause I don't like -- I don't take drugs. I'd, I'd rather be clean and deal with it.
Q: All right. After you were released from the hospital, did you just go home that night, do you remember anything specific about what you did that night?
A: Just went home.
Q: And I believe you said you saw Dr. Lewis next?
A: Yes, ma'am.
Q: Do you know when that was?
A: I don't have the paper in front of me, no, ma'am.
Q: Was it shortly after the accident, was it a couple weeks later, do you have any estimate?
A: It was, you know, a week or two, something like that. That's when he told

me, you know, for sure I needed surgery. I was like, "Well, yeah, it's hanging out."

Q: Do you know what practice Dr. Lewis is with?

A: He's with Tidelands Health. He's -- he does arms and wrists and stuff, you know, bone, ortho -- orthopaedic.

Q: I think the first date that I have with Tidelands Health Orthopaedics is July 2nd; does that maybe sound about right?

A: Okay, yes.

Q: Do you remember any treatment between the date of the accident on June 20th and then that visit with Dr. Lewis on July 2nd?

A: Any treatment, no.

Q: And was Dr. Lewis the one that performed the surgery?

A: Yes, ma'am.

Q: Were there any complications from the surgery?

A: No, ma'am.

Q: All right. Will you tell me about the treatment you remember having after your

surgery was completed?
A: Yes, ma'am. I had two months' worth of physical therapy for my right arm and for my back. That was from December to January.
Q: December 2019 to January 2020?
A: Yes, ma'am.
Q: Have you had any treatment since that ended in January 2020?
A: I went to Dr. Yee's office and got a epidural, a shot in the spine.
Q: Could you say the doctor's name? Did you say Yee with a "Y"?
A: Yeah, Y-E-E.
Q: Do you know which practice -- Which practice is Dr. Yee with?
A: It's Pain Management with Tidelands Health.
Q: And you said you had an epidural injection?
A: Yes, ma'am.
Q: And I'm assuming that was in your back?
A: Yes, and -- yes, ma'am.
Q: Have you just had one injection?
A: I had two.

Q: Is there any other treatment since January 2020 that you can think of besides those two injections?
A: No, ma'am.
Q: Do you have any additional injections planned or additional appointments set up?
A: No, ma'am, just a follow up.
Q: I want to circle back to the physical therapy you had right after your surgery. Do you feel like that physical therapy helped with your issues or how would you describe your progress?
A: You broke up a little.
Q: How would you describe your progress during your therapy right after your surgery; do you feel like you improved?
A: You know, it was getting there, you know, there was, there was a little progress, you know, they told me it'd take a while. My hand doctor or the physical therapy said I had about forty-six percent, kind of wish I could've got a little bit more, but, you know, it was all I could do at the time.

Q: At this point in time, are you still experiencing any pain in your right arm?
A: Yes, ma'am.
Q: How often do you experience the pain?
A: Pretty much, every day.
Q: Is it constant pain or does it come and go?
A: Comes and goes.
Q: And how would you describe it, like stabbing, or how would you describe it?
A: It's, it's just sharp, you know, bad pain. That, that extreme pain is, you know, very short-lived and then it hurts, you know, mildly after that for a while.
Q: All right. At this point in time when you get that pain, how do you treat it?
A: I put my brace back on, you know, I, I keep it on most of the time anyway, but it just -- it doesn't matter, but I, you know, I keep it super tight, you know, just to try to limit any kind of tweaking of it, you know.
Q: Are you wearing your brace right now?
A: No, ma'am.
Q: How often do you wear your brace?

A: When I go to work, whenever I'm doing anything with my hands, I've always got it handy.
Q: Okay. At this point in time, are you still experiencing back pain?
A: Yes, ma'am.
Q: How often do you feel that pain?
A: Once, again, when it's just something, you know, that would tweak it, you know, just certain movements, you know, lifting certain things, you know, just difficult. Sitting too long, it starts, you know, cramping up and everything, it starts getting real painful, you know, just twisting, bending, lifting.
Q: Do you feel like the injections helped with your pain?
A: Yes, strongly.
Q: Sounds like that pain is not constant; is that right?
A: No, ma'am.
Q: And that's a no, it's not constant? I just want to make sure I'm clear.
A: Yes.
Q: Earlier, you had said that your back pain

would radiate into one of your legs, is it one leg or the other or the both legs?
A: The left leg.
Q: Does it still do that to this day?
A: Yes.
Q: All right. When you have back pain at this point in time or pain that radiates into your legs, do you have any treatment that you're doing for it?
A: No, just personal things that I can do to alleviate it, not professional.
Q: Like stretches and things like that?
A: Yes, ma'am.
Q: And I know you said you didn't want to take any medications before, but do you have any medications that you take now for your pain?
A: Gabapentin.
Q: Do you remember when you first started taking that?
A: Not really, maybe October-ish of last year, maybe.
Q: How often do you take it?
A: In the morning and in the late afternoon, evening.

Q: Is that every day?
A: Yes, ma'am.
Q: Do you have a pharmacy that you regularly refill that prescription at?
A: Yes, ma'am.
Q: Where's that at?
A: The Wal-Mart Pharmacy in Garden City.
Q: Okay. Do you know if that's prescribed by your primary care physician or is it the Pain Management doctor?
A: Pain Management.
Q: Besides the Gabapentin, are you taking any other medications right now?
A: Yes.
Q: Medications for pain?
A: No, ma'am, for sleep. It's been tough to, you know, sleep, tossing and turning.
Q: Do you know what medication you take for sleep?
A: Trazadone.
Q: Do you take that every night?
A: Yes, ma'am.
Q: Are there any other medications you're currently taking?
A: I take Lexapro as well, once in the

morning.
Q: All right. And since you've told me you still have pain at this point in time, can you tell me, is there anything that you absolutely can no longer do following the accident?
A: Yes, you know, like the work I used to do, landscaping, irrigation, because I can't use any force, you know, like as far as digging, moving plants, pruning trees, you know, 'cause all those movements, I, I just can't do it, it hurts too bad, you know, having to lift, so I can't do that. Leisurely, sports-wife, I used to surf a lot, haven't tried, but I don't see how I could do that, because my wrist does not bend back, nor, you know, fishing kind of, you know, that hurts. I've tried that twice. Yeah, it's knocked out a couple of things out of my life.
Q: And you said you haven't tried surfing since the accident; is that right?
A: Correct. I doubt I could, I mean, you know, I don't know if you know anything

about surfing, but, you know, you got to pop up, and my wrist doesn't bend back. That's all it does, it goes straight, maybe two degrees.

Q: Can you estimate for me how often you would go surfing before the accident?

A: Any time there was waves.

Q: That sounds like a surfer answer.

A: I mean, you know.

Q: Are there any areas of your body that we haven't talked about yet that you're claiming were affected in the accident? I know we've talked about your right wrist and your back and kind of your leg. Is there any other area we haven't covered?

A: No, ma'am.

Q: Okay. In one of your, I think it was your final note from your therapy in January 2020, it said that you were planning on joining a gym and starting Yoga because you were feeling better; were you able to do that?

A: No, ma'am, because Covid 19, everything, you know.

Q: At the time you stopped therapy, were you feeling like your issues were resolving?
A: I mean, like I say, they, they weren't getting worse. There was slow improvement, but it was an improvement.
Q: Okay, that's fair. Do you remember anything about the conversation you had with the police officer at the hospital?
A: Not really, no, ma'am.
Q: Do you remember that a police officer came?
A: Yes. I, I vaguely remember that, yes, I remember that, uh-huh (affirmative response).
Q: Besides the brace that you've been talking about, do you have any other devices or other braces that you use for your arm or anything for your back?
A: I just have a heating pad for when I lay down for my back.
Q: Okay. At one point, I think you mentioned photos, do you have photos that you took after the accident?
A: Yes, ma'am.
Q: What are they photos of? Is it of your

arm or things like that?
A: Yeah, it's just a picture of the break and the Chinese handcuff hookup they had at the hospital.
Q: Do you know if you've given all those photos to your attorney?
A: I'm not sure, but I sure can.
Q: Okay. I think I have some, but I don't know if I have all of those. Let's see.
A: And I have some as well from doing the stim, the electrode shock stim in my back, too. That was interesting.
Q: And I promise I'm just about done, but I do have some follow-up, so I apologize for being ---
A: Okay.
Q: --- all over the place. Prior to the accident in 2019, do you remember if you'd ever made any Workers' Compensation claims?
A: No, ma'am.
Q: Have you ever made any other personal injury claims?
A: No, ma'am.
Q: I do not want to know anything that

you've discussed with your attorney, but do you remember when you first contacted an attorney after the accident?

A: It was very shortly.

Q: Okay. I have a damages summary. This was produced to me in the discovery responses that your attorney sent me, and I apologize, I don't have a way to get it to you right this second, but it lists, kind of, the different damages you're claiming.

MS. VANCAMP: AND, I BELIEVE, PATRICK, YOU PROBABLY HAVE THIS.

Q: I just want to ask you about a few of these. One of the ones that I see is deprivation of normal life expectancy, can you tell me about that claim?

A: Yes. Like I mentioned before, everything up until then, you know, I, I lost my work, I lost my personal hobbies, and like I say, everything that I love is physical and involves my right hand. I'm right-handed, for one thing, you know, it just, it disables every part of my life

that I've known and grown to love.
Q: Okay. Another one on here, and I'm not trying to embarrass you at all, but these are claims that are listed, so I want to ask you about them. One of them listed is sexual dysfunction, can you tell me about that claim?
A: Yes. Well, something has -- okay, how do I -- okay. It's not getting proper blood flow, like even when, after I sleep, I mean, I'll get kind of technical, you know, usually when you wake up there's blood, you know, flow, nothing.
Q: Had that ever happened prior to the accident in 2019?
A: No. I kind of had some issues a while back, but that got resolved.
Q: When you say a while back, do you know, roughly, how long ago you're talking about?
A: Probably ten years.
Q: Were you seeing a doctor to help resolve that?
A: I saw a doctor one time.
Q: Do you remember the name of the doctor or

where that was?
A: No, I, I do not. It was such a long time ago, I don't.
Q: And you said it resolved?
A: Yes. Yes.
Q: How long after the accident did you start having this issue?
A: Immediately.
Q: Like the next morning?
A: Every morning.
Q: Starting back since the accident?
A: Yes, a little awkward, but it's okay.
Q: And like I said, I'm not trying to embarrass you, but this is my only chance to really ask you questions, and that's part of your claim, so I just want to make sure that I am clear.
A: No, that's fine, I get it.
Q: Let's see. And, again, I'm not trying to embarrass you or make you uncomfortable, but some of the other ones I see are mental anguish, mental distress, apprehension and depression. Can you tell me how those things are related to the accident?

A: Okay. Could you start with one at a time?
Q: Sure. We can start with mental anguish.
A: Yeah, the mental anguish is, you know, the daily frustrations, you know, from being limited to what I, you know, am able to do well and enjoy, you know, it's quite frustrating.
Q: Okay. Mental distress, kind of same thing?
A: Along those same lines, yes, ma'am.
Q: And, then, there's apprehension?
A: Apprehension?
Q: Yes.
A: Elaborate.
Q: It just says apprehension, and I just want to know what that means to you.
A: Would you mind elaborating, please?
Q: Well, what do you think of when you hear apprehension?
A: Apprehension basically, to me, sounds like, you know, everything, you know, that I love was stripped from me as far as like I, I would love to hopefully say that I could be able to do a few of them.

I'm sorry, I'm, I'm kind of drawing a blank at the moment.

Q: It's okay, and like I said, I just want to get your perspective on these. Well, I do want to ask you, though, about depression. Can you tell me about how that's related to this car accident?

A: Yes, you know, the depression part, it's, it's -- like I say, it's another daily feat that I, I have to try to overcome, you know, by, you know, I, I just don't see anything else that I would love nearly as much as everything I used to do. You know, I was really, really well at it, you know, it took my confidence down tremendously, that sucks. You know, just basically trying to, trying new things, and, and it gets, it gets very aggravating, just, you know, even trying to talk about it, because I had such love and passion for what I did. I took pride in everything I did, you know, and pride was huge for me, you know. You know, as, as, as far as my work ethics go and, you know, making people happy by doing what I

did, knowing now I can't, so that would, you know, it just, it puts me in a dump once in a while, you know, it's just -- and then I hear people talking about this job or that and then the waves are good, and I'm like, "Yeah, cool, must be nice."

Q: Are you seeking any treatment for depression or for your mental anguish and distress at this point in time?

A: I talk with my counselor through Mental Health Court, which is amazing, by the way.

Q: Outside of the Mental Health Court, do you have any psychiatrists or therapists that you go to?

A: Not at the moment.

Q: All right. Just to circle back to the accident, Mr. Mims, I'm just going to put you on the spot. Do you take any responsibility for the accident?

A: Do I take any responsibility?

Q: Yes, sir.

A: I, I was just trying to go check the babes.

Q: Is that a no?

A: That would be a no.
Q: Okay. Do you understand that the police officer that investigated the accident determined that you were at fault?
A: Don't see how.
Q: So, you disagree with that finding?
A: Right. Yes, ma'am.
Q: Can you just explain to me a little bit more about why you would disagree with that finding?
A: Well, because I was a pedestrian, for one. She should've been paying attention coming off around a, you know, a turn like that, for one. She had to be, I mean, I know she was going fast. It wasn't -- I'm six, three. It wouldn't have knocked me out and sent me flying and broke bones if she was putting.
Q: When you say it sent you flying, can you tell me how far away from the vehicle you landed?
A: Honestly, I couldn't tell you, because it knocked me out, so I, I don't, you know.
Q: When you stood up, how far away from the vehicle were you?

A: I'm -- honestly, there, again, I couldn't really tell you. I just remember being dirty, you know, off in the sand and rocks, and I was kind of just looking at myself first, you know, I wasn't worried about where the car was. I was trying to -- I was -- had to make sure I was okay. I wasn't worried about where the car was and this, that, and the other, you know, I was in shock. I don't know.

Q: Okay. I just want to make sure I understand since you had testified that it kind of knocked you. It sounded like you were saying it knocked you far away. Now, I want to make sure I understand. I think earlier you had said you did not see her vehicle prior to the accident; is that right?

A: That is correct. All I remember, like I say, is blue hood, and that was it, okay, that's it.

Q: Okay. Mr. Mims, I think that's all I have for you today. Thanks for coming back after your meeting and making the time to finish this. If your attorney

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY ) CERTIFICATE

I, Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina, do hereby certify that the foregoing proceedings of **RONALD MIMS**, after first being duly sworn; was taken by me and thereafter transcribed by me. That the **FIFTY-NINE (59)** pages contain a full, true, and correct transcription of all the proceedings; that I am not of kin to any parties to this cause of action, nor am I interested in its outcome.

This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker. Said proceedings were reported by method of steno mask with backup.

IN WITNESS WHEREOF I have hereunto set my hand and seal this **14TH** day of **JUNE, 2020.**

Sharon B. Brock
Verbatim Court Reporter
Notary in and for the
State of South Carolina
My Commission Expires:5/31/2021

**STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS**

**COUNTY OF HORRY ) 2019-CP-26-05892**

| | | |
|---|---|---|
| Ronald L. Mims, | ) | |
| | ) | |
| Plaintiff, | ) | **Transcript of Record** |
| | ) | |
| vs. | ) | |
| | ) | JANUARY 20, 2021 |
| Diane W. Ray, | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

**B E F O R E:**

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

**A P P E A R A N C E S:**

Patrick T. Napolski, Esquire
**Attorney for Plaintiff**

Marissa A. VanCamp, Esquire
**Attorney for Defendant**

Sallie Beth Todd
**Circuit Court Reporter**

# I N D E X

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(THERE WERE NO WITNESSES CALLED DURING THIS HEARING.)

Certificate of Court Reporter..... 14

# E X H I B I T S

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(THERE WERE NO EXHIBITS MARKED DURING THIS HEARING.)

**THE COURT:** All right. Next is 2019-CP-26-05892, Ronald L. Mims versus Diane W. Ray.

All right. Can everyone see and hear me?

**MR. NAPOLSKI:** Yes, Your Honor.

**MS. VANCAMP:** Yes, Your Honor.

**THE COURT:** All right. This is 2 ---

**REPORTER'S NOTE:** (Break in internet connection. Reporter was dropped from the hearing.)

**THE COURT:** Ms. Todd, are you back with us?

**REPORTER:** Yes, Judge. I don't know what happened. It completely shut me down.

**THE COURT:** Yes. It said it lost band strength, but you were the only one that went out. So we'll go ahead and we'll start all over on this one. Okay.

**REPORTER:** All right. Thank you.

**THE COURT:** All right. This is 2019-CP-26-05892, Ronald L. Mims versus Diane W. Ray. According to my roster the matter is before the Court on a motion for summary judgment. Appearing on behalf of the plaintiff is Attorney Patrick Thomas Napolski. Appearing on behalf of the defendant is Attorney Marissa Ann VanCamp.

All right. Ms. VanCamp, this is your motion?

**MS. VANCAMP:** Yes, Your Honor.

**THE COURT:** All right. Let me hear from you.

**MS. VANCAMP:** Your Honor, this is a motion for summary

judgment in a case involving a negligence action arising out of a motor vehicle accident that occurred between a defendant driver and a plaintiff pedestrian.

So the basic facts of our case are that the accident occurred in June 2019 around 5:45P.M. on Dogwood Drive in Surfside Beach. The defendant was driving on Dogwood Avenue and she saw a delivery van parked up ahead to the right that was still partially in the roadway. So she came to a stop and tried to look and see if it was safe for her to pass because she knew she would have to go over a little bit into the opposite lane. She didn't see any vehicles, so she proceeded to pass the truck. As she reached about the front of the truck and was about to be even with the front, the plaintiff appeared from the right and basically walked into her vehicle from her perspective.

The plaintiff testified in his deposition that he was attempting to cross the street and seen some vehicles parked along the side, including the delivery truck, but did not see any vehicles approaching so he started to walk out into the street and almost immediately the impact occurred. The defendant testified that she was going slow, and she had been at a stop. She was paying attention, watching for pedestrians and vehicles.

The weather conditions were that it was cloudy but not quite raining. It did end up start raining later on, but at

the time of the impact, no rain from either perspective.

All parties that have been deposed so far are the plaintiff and defendant and also the investigating officer. The defendant did testify that there was no crosswalk at the location where the impact occurred. The plaintiff testified that there was no crosswalk where he was attempting to cross the street. And the investigating officer also testified that he was not -- the plaintiff was not attempting to cross the street at a crosswalk.

The investigating officer did his investigation and determined that the plaintiff was at fault for the accident because he was illegally in the roadway and was attempting to cross the road where there was no crosswalk.

The motion is made on the grounds of comparative negligence and that the plaintiff's own negligence exceeds that of the defendant's, and that no reasonable jury could find otherwise. So there is a line of cases that are directly on point with this. The main one that I will address is called Bloom v Ravoira. It's a South Carolina Supreme Court case, Your Honor. I'll get into the facts of them in a second, but the Supreme Court found in that case that even though comparative negligence is typically deemed to be a jury issue, Courts have granted summary judgment to a defendant based on comparative negligence for the sole reasonable inference which may be drawn from the evidence that the

plaintiff's negligence exceeded 50 percent.

Like I said, the facts in Bloom are that there was a defendant driver proceeding in Charleston. There was a light rain that day and it was around 6:30P.M. That accident occurred in the winter, so the lighting conditions were probably a bit different. But the defendant was driving down the street, he was going slow because he was looking for an intersecting street where he needed to turn. The plaintiff in that matter was attempting to cross the street to get to his car. And the testimony is that he glanced both ways, did not see any oncoming traffic and went out into the street. Almost immediately that impact occurred and there was an accident. The trial court in that matter, it was a Circuit Court in that matter, granted the defendant's summary judgment on this same argument. The Court of Appeals reversed that decision, but then the Supreme Court of South Carolina reversed the Court of Appeals decision and said that summary judgment was proper to the defendant in that case. The Bloom case also distinguished the duties between a driver and a pedestrian in that instance and said that a driver is charged with the duty to exercise due care to avoid colliding with any pedestrian. That was pursuant to South Carolina Code 56-5-3230. Whereas a pedestrian is charged with a duty to yield to all vehicles on the roadway when they are crossing on a roadway at any point other than within a marked crosswalk. That is pursuant to

South Carolina Code section 56-5-3150 (a).

Now in the plaintiff's reply and I think his subsequent reply where he has pointed out caselaw, he referenced a Court of Appeals case from, I might pronounce this wrong, Abdelgheny v Moody. Your Honor, the facts that I will argue in Moody are vastly different from those in our case and in the Bloom case. Plaintiff argues that the Moody facts align more with ours than the Bloom do. But just to point out some of the major differences, in our matter the accident occurred around 5:45P.M., cloudy but no rain, rain later on. I'm not looking to debate the timeline of that. But in Bloom, 6:30P.M. in the winter and there was a light misty rain. In the Moody case the accident occurred around 8P.M. where it was very dark and a very heavy rain downpour.

The speed of the vehicles, in our case the defendant was driving slow. She testified she believes around 10 miles per hour, that's what the police officer determined her speed to have been. She had been stopped to make sure she could get around the truck and was proceeding carefully. In the Bloom matter the defendant driver was also proceeding carefully and watching the road. The testimony was that he was driving around 20 miles per hour. In the Moody case the testimony is that the defendant driver was traveling approximately 25 to 30 miles per hour. But his testimony was that he looked up and the plaintiff was in the road. So there's debate as to

whether he was paying attention to the roadway when the accident occurred.

As far as the actual road goes, in our case Dogwood Drive is a basic road, one lane on each side of the line. There was a delivery van parked off to the right side of the road. And in the Bloom case there's also testimony that there were parked vehicles along the roadway. Where the plaintiff would have entered the roadway there was an SUV parked to his left, so very similar to the way the layout was for our case with the delivery van. In the Moody case the plaintiff was crossing the road on a 4-lane open highway where there were no parked vehicles on the side. And she had already, in fact, made it across two lanes and was in the median before she attempted to continue going across additional lanes.

The time of the impact, so in our case and in the Bloom case the pedestrian crosses into the roadway and almost immediately the accident occurs. The Moody case, like I said, the pedestrian had already crossed two lanes of traffic without difficulty and was attempting to cross two more lanes.

And as far as citations go or the investigating officer's determinations, in our case the defendant was not cited for any violations. And in fact, the officer determined that the plaintiff was at fault. In the Bloom case the South Carolina Supreme Court case doesn't make it clear what the testimony is that there was no fault on the part of the defendant's or no

evidence that the defendant was driving in any negligent way. In the Moody case the defendant was cited for driving too fast for conditions and was found at fault.

So there are some great differences between our case and the Moody case that the plaintiff points to. And I would argue that our case is very closely in line with the Bloom case in which the Supreme Court stated that summary judgment is proper in this case.

So I'm asking you today to find that summary judgment is appropriate. There is no reasonable jury that could find that the plaintiff's negligence did not exceed the defendant's. So we would ask you to grant our summary judgment motion.

**THE COURT:** All right.

All right. Mr. Napolski, let me hear from you.

**MR. NAPOLSKI:** Sure, Your Honor.

As the defendant has argued, they're trying to take the position that plaintiff is barred by comparative negligence. As you're aware, comparative negligence is a question reserved for a jury. The reason for that is that more than one reasonable inference can be raised by this set of facts which causes it to be an issue to be heard by a jury.

In the Bloom case the Court had decided that matter on a very narrow set of specific facts. The defendant has taken the position that the facts in Bloom are indistinguishable from the facts in the case at bar. In fact the facts are

incredibly different in our matter versus in the Bloom matter.

In Bloom, which the defendant failed to point out, there was a crosswalk on each end of the block on Meeting Street where the plaintiff was struck. Here there is not a crosswalk on the 1.1 mile stretch on Dogwood Avenue in Surfside Beach, so the entire length of the street doesn't have a crosswalk anywhere. Plaintiff has provided photographs going all of the way back to 2008 showing the intersection nearest where this accident took place that there is no crosswalk.

In Bloom there was a misty rain, it was dark, and the plaintiff was wearing a dark coat. In our case, by way of plaintiff's testimony, it was clear, and it was daylight.

In the Bloom matter the defendant was -- both the plaintiff and defendant were visitors to Charleston, unfamiliar with the area. In our case Defendant Ray lives on Dogwood Avenue. She lives past the point of impact. She testified that she was aware of the location of those delivery trucks that was present on the date of this crash. She says that she's aware that pedestrians typically cross Dogwood Avenue where this accident took place.

In Bloom defendant is correct in saying that the accident took place almost immediately after the plaintiff started crossing the street. The Court pointed out that the plaintiff ran into the street in Bloom. In this matter plaintiff testified he had waited five seconds and looked both ways

before crossing the street.

Further, Defendant Ray who lives on Dogwood Avenue, or has a beach home here on Dogwood Avenue, testified that she lives on the same side of the street where the impact took place, that she often goes to the beach, and that she doesn't use any sort of pedestrian crosswalk in order to cross Dogwood Avenue in order to get to the beach.

The Abdelgheny case that was decided back in October of 2020 by the Court of Appeals I think is correcting the decision of the Supreme Court in the Bloom case. I think the point of that case is to show that there is a very specific set, narrow set of facts in which, as extreme as it may be, that no more than one reasonable inference can be made. In this case more than one reasonable inference can be made and that question needs to go to the jury. And for those reasons the plaintiff asks that defendant's motion for summary judgment be denied.

**THE COURT:** All right. Ms. VanCamp, anything in reply?

**MS. VANCAMP:** Yes, just briefly, Your Honor.

I think the second to last paragraph in the Moody case lays it out very well. I'm not going to read the paragraph to you at this time. But the very first sentence is that Moody sees little difference between his facts and those justifying summary judgment to the driver who struck a pedestrian in Bloom versus Ravoira. We see many. And then it goes on to

talk about those differences again. So I don't know that I agree with the plaintiff's position that the Moody case is an attempt to correct the Bloom versus Ravoira case. It does point out all of the stark differences between the facts and why they reached different conclusions.

Also, Your Honor, even if the plaintiff is right and that there was not a crosswalk convenient to him, that does not change his statutory duty to yield to oncoming vehicles when he's attempting to cross the street at an area outside of a crosswalk.

So, Your Honor, I think no matter how you look at the facts if you shine the light -- the facts in the light most favorable to the plaintiff, the bottom line is that he crossed the roadway at a spot where there is no crosswalk and the accident occurred. The defendant was driving carefully and was looking for vehicles. So again, Your Honor, I don't think a reasonable jury would find that her negligence exceeded that of the plaintiff's.

**THE COURT:** All right.

**MR. NAPOLSKI:** Your Honor, briefly?

**THE COURT:** No. She argues, you argue against, and then she gets a reply.

I'm going to take it under advisement. I need to check these cases. I'll read the cases and I'll let you know my decision. I'll probably just issue a Form 4 that either

grants or denies the motion. It sounds like from your arguments that if I grant the motion it's going to be on the Bloom case; if I deny the motion, it's probably because I see a distinction and that there is a dispute as to a material fact. Okay.

**MS. VANCAMP:** Thank you, Your Honor.

**MR. NAPOLSKI:** Thank you, Your Honor.

**THE COURT:** Thank you.

**(END OF HEARING)**

C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the Transcript of Record of the hearing held in the interest of Ronald L. Mims versus Diane W. Ray in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on January 20, 2021.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

SBTodd

Sallie Beth Todd, CVR
Official Reporter

February 10, 2022.

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| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF HORRY<br><br>Ronald L. Mims,<br><br>Plaintiff,<br><br>v.<br><br>Diane W. Ray,<br><br>Defendant. | IN THE COURT OF COMMON PLEAS<br><br>Case No.: 2019-CP-26-05892<br><br>**PLAINTIFF'S MEMORANDUM IN SUPPORT OF HIS MOTION TO ALTER OR AMEND AND/OR RECONSIDER** |

Plaintiff submits this memorandum in Support of His Motion to Alter or Amend and/or Reconsider:

## FACTS

Plaintiff Ronald L. Mims was severely injured at the hands of Defendant Diane W. Ray who was not paying attention when she struck Plaintiff Mims while he was crossing the roadway on June 20, 2019.

At approximately 5:45 P.M., in clear and daylight conditions, Ronald L. Mims was crossing South Dogwood Drive near the intersection of Atlantic Avenue in Murrell's Inlet when Defendant Ray, traveling east on Atlantic Avenue turned south onto South Dogwood Drive heading towards her beach house and slammed into Ronald L. Mims. As a result of the collision, Plaintiff Mims suffered injuries to his back and right upper extremity.

Plaintiff Mims filed suit alleging Defendant Ray was negligent in failing to keep a proper lookout; in failing to maintain proper control over her vehicle; in failing to yield the right-of-way to Plaintiff; in striking Plaintiff with her vehicle; in failing to take advantage of any last clear chance to avoid striking Plaintiff; in failing to properly observe the road and traffic conditions; in failing to exercise due care in the safe operation of a vehicle; in failing to equip and/or apply

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adequate brakes; in failing to equip and/or apply a proper steering mechanism; and in failing to equip and/or apply an adequate signaling device or horn.

Defendant Ray answered and raised the following defenses: failure to state a claim pursuant to SCRCP 12(b)(6); unconstitutionality of punitive damages; comparative negligence; and failure to mitigate damages.

## ARGUMENT

### 1. SUMMARY JUDGMENT WAS INAPPROPRIATE AS A JURY COULD REASONABLY CONCLUDE THAT DEFENDANT'S NEGLIGENCE EXCEEDED PLAINTIFF'S NEGLIGENCE

"Summary judgment is a drastic remedy that should be cautiously invoked in order not to improperly deprive a litigant of a trial of the disputed factual issues." *HK New Plan Exch. Prop. Owner I, LLC v. Coker*, 375 S.C. 18, 22, 649 S.E.2d 181, 183 (Ct. App. 2007). Rule 56(c), *SCRCP* provides that a trial court may grant a motion for summary judgement "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." "In determining whether any triable issue of fact exists, the evidence and all inference which can be reasonably drawn from the evidence must be viewed in that light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock,*, 381 S.C. 330, 673 S.E.2d at 803.

It has recently been established that,

> Because reasonableness depends upon the evidence and the rational inferences that may be drawn from them in their context, granting summary judgment in a negligence case is infrequent, for the court's duty at this stage is to presume the credibility of the evidence. When inferences conflict as to a material fact in a comparative negligence

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> case, choosing between them – that is, choosing the facts that bear upon the percent of negligence attributable to the plaintiff and to the defendant – is up to the jury, whose duty is to decide what the facts are, not what they are presumed to be. If a reasonable juror looking at the evidence in the light most favorable to the non-movant could draw more than one inference about a material fact from it, summary judgment must be denied. It is only in the "rare" instance – when the evidence generates only a single inference – that summary judgment is proper in a comparative negligence action.

*Abdelgheny v. Moody*, No. 5780 (S.C. Cot. App., Oct. 28, 2020) (internal citations omitted).

"Ordinarily, comparison of the plaintiff's negligence with that of the defendant is a question of fact for the jury to decide." *Bloom v. Ravoira*, 529 S.E.2d 710, 713 (S.C. 2000). Further, "summary judgment is generally not appropriate in a comparative negligence case." *Bloom*, 529 S.E.2d at 713.

The South Carolina Supreme Court has held,

> [Q]uestions of negligence, proximate cause and contributory negligence are ordinarily questions of fact for the jury, as to which the trial court's only function is to inquire whether particular conclusions are or not the only reasonable inference to be drawn from the evidence. If the facts in controversy and the inferences deducible therefrom are doubtful, or if they tend to show both parties guilty of negligence or willfulness, and there may be a fair difference of opinion as to whose act or whose acts produced or contributed to the injury complained of as a direct and proximate cause, questions of negligence, proximate cause and contributory negligence should be submitted to the jury."

*Wilson v. Marshall*, 195 S.E.2d 610, 611 (S.C. 1973).

*Bloom*, the case upon which Defendant's Motion for Summary Judgement was granted, found a narrow exception to the general rule that negligence is a question for the jury. The *Bloom* court stated that "[i]n a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent." *Bloom*, 339 S.C. at 422. The court went on to say that "[t]herefore, summary judgement is generally not appropriate in a comparative

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negligence case." *Id.* Summary judgment was not appropriate in the presenct case because, when viewed in a light most favorable to the Plaintiff, a jury could reasonably conclude that Plaintiff's negligence was less than fifty percent.

**a. The Present Case is Factually Distinguishable from *Bloom*.**

The facts in the case at bar are distinguishable from the narrow set of facts which led to *Bloom's* conclusion. In *Bloom*, both Bloom, a pedestrian, and Ravoira, a driver, were visiting Charleston. *Bloom*, 339 S.C. at 421. Ostensibly, both visitors were unfamiliar with the area and vicinity. Pedestrian Bloom was crossing Meeting Street in Charleston, between Market and Cumberland Streets in front of the Meeting Street Inn. *Id.* at 420. At both ends of this block of Meeting Street, there were crosswalks, traffic lights, and walk/don't walk signals. *Id.* Bloom, while carrying a taxidermically stuffed pig in the rain, "ran" across the street between two parked cars. *Id.* at 419-21. At the time, there was misty rain and it was dark. *Id.* Bloom was wearing a navy-colored overcoat. *Id.*

In the present case, Defendant Diane Ray was not a visitor to the area, rather she was intimately familiar with the location and owns a second home on Dogwood Avenue past where the crash took place and where she frequently stays. (Depo. of Ray, 9:17-22). Ray testified that she drives on Dogwood Avenue everyday (Depo. of Ray, 24:25-25:1) and is aware pedestrians and delivery trucks are often in the vicinity (Depo. of Ray, 25:2-26:4). Ray estimates her speed at the time of the crash to be anywhere between one and ten miles per-hour (Depo. of Ray 24:1-21). Unlike Bloom, Plaintiff Mims waited five seconds and checked both directions before crossing the road (Depo. of Mims 29:24-30:3). After checking, Plaintiff did not see any traffic on Dogwood Avenue (Depo of Mims 28:19-21). At the time of the crash, the weather was clear and it was daylight outside (Depo. of Mims 25:18-26:4).

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The key point in *Bloom* is that the pedestrian ran from in between a parked car wearing a dark jacket, in the dark, and in the rain directly into the path of a car. Under these narrow and specific circumstances, the driver could neither see the pedestrian approaching nor have any time to react to him entering the road before he was hit given the driver's speed. Therefore, there was nothing the driver in *Bloom* could do to avoid hitting the pedestrian, even if he had been keeping a proper lookout and driving at an appropriate speed. In the present case, Mims waited five seconds and checked both directions before he began to cross the street.[1] Ray on the other hand, despite driving significantly slower than the driver in *Bloom*, and fully expecting pedestrians and delivery trucks at this location at the beach, failed to see Plaintiff Mims before striking him. Mims' choice to cross the street where he did does not excuse Ray from her urgent duty to not only look, but to see. *See Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002) (whether driver kept a proper lookout is a jury question if the evidence yields multiple inferences); *Mahaffey v. Ahl*, 264 S.C. 241, 248, 214 S.E.2d 119, 122 (1975) ("It is inescapable that the respondent was in the road to be seen. Whether the driver-appellant should have seen him in time to stop or slow down to avoid the accident was a question of fact for the jury."); *see also* S.C. Code 56-5-3230 (2018) ("[E]very driver of a vehicle shall exercise due care to avoid colliding with any pedestrian . . . ").

Considering Defendant Ray's speed, the weather, Plaintiff's caution, and Defendant's failure to avoid striking Plaintiff, Defendant's behavior cannot be described other than negligent. Comparison of the plaintiff's negligence with that of the defendant is a question of fact for the jury to decide Because the facts in the case at bar are distinguishable from the narrow circumstances in *Bloom* and because those facts could lead a jury to reasonably conclude Plaintiff's negligence did

[1] At most, a jury could reasonably absolve Mims of any liability based on this fact alone. At a minimum, it is a mere scintilla of evidence of Mims' appropriate actions and behavior in seeking to avoid a collision at all costs.

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not exceed that of the Defendant, the Court should alter or amend and/or reconsider its Order granting summary judgment.

## 2. PLAINTIFF NOT CROSSING THE ROAD AT A DESIGNATED CROSS WALK IS NOT A PROPER GROUNDS FOR SUMMARY JUDGMENT

In its Order, the court references S. C. Code § 56-5-3150(a) ("every pedestrian crossing a roadway at any point other than within a marked crosswalk . . . shall yield the right-of-way to all vehicles on the roadway") as authority for granting Defendant's Motion for Summary Judgement. However, "[t]he fact that a motorist, by statute, has the right-of-way over a pedestrian does not relieve the motorist of the duty to use reasonable care for the safety of such pedestrian." § 28-36 Motor Vehicles – Pedestrians on Highway, Anderson, S.C. Requests to Charge – Civil, § 28-36. While it may be that a driver does have the right of way when a pedestrian is crossing the road somewhere other than a designated crosswalk, S.C. Code § 56-5-3230 provides that "[n]otwithstanding other provisions of any local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human-powered vehicle and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person." This statute applies in situations where a pedestrian is crossing the road outside of a crosswalk such as the present case. These duties are noted in *Bloom*, and the fact that the plaintiff did not cross the road in a crosswalk in *Bloom* did not serve as the basis for summary judgment.

Additionally, in the case at bar, there are no crosswalks, traffic light, or walk/don't walk signal in the immediate proximity of where Plaintiff Mims was crossing Dogwood Drive. As evidenced by Exhibit C, Dogwood Drive, an approximate 1.1 mile road that runs along the South Carolina coast in Garden City from Cyprus Road to Moonfish Lane, does not have a single crosswalk, traffic light, or walk/don't walk signal. Plaintiff had no choice but to cross where he

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did, and in fact adequately fulfilled his duty to yield the right-of-way to all vehicles in the roadway by way of pausing for five seconds, looking both ways, and crossing the street after not seeing any moving traffic along Dogwood Drive (Depo. of Mims 29:19-30:3).

Finally, by way of the Court granting Defendant's Motion for Summary Judgment it is encouraging Defendant Ray to argue "do as I say, not as I do." By her testimony, when Ray walks to the beach from her beach house, she does not use the non-existent crosswalk either. Rather, she too crosses Dogwood Drive not using a pedestrian crossing. (Depo of Ray, 35:-3-36:18).

Plaintiff Mims' decision to not use a non-existent crosswalk is an improper bases for this Court's conclusion, as to find so would ignore Defendant's responsibilities pursuant to S.C. Code § 56-5-3230.

## CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests and Order of this Court vacating its prior Order, and/or altering its prior Order, and/or amending its prior Order, and/or denying Defendant's Motion for Summary Judgement.

Respectfully submitted,

GEORGE SINK, P.A. INJURY LAWYERS

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*Attorneys for Plaintiff*

January 29, 2021
North Charleston, South Carolina

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# Exhibit A
# (Deposition of Plaintiff Ronald L. Mims)

A: No, ma'am.
Q: Do you know if Tina is still in Horry County?
A: I don't.
Q: Okay. Do you live with anyone right now?
A: My mother.
Q: Do you have any siblings that are over the age of eighteen that live in this county?
A: No, ma'am.
Q: The date of the accident that I have is June 20th, 2019; does that sound about right to you?
A: Yes, ma'am.
Q: Do you remember what time of day the accident occurred?
A: It was afternoon.
Q: Do you remember what the weather was like?
A: Yeah, it was sunny.
Q: Tell me what you remember ---
A: And it rained.
Q: It was ---
A: It was like a popcorn, excuse me, it was like a popcorn shower, typical summer



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stuff.
Q: At the time of the accident, was it raining?
A: Not at the time.
Q: Do you remember if it rained at all before the accident?
A: Maybe a little. Like I say, it was the summertime hit and miss storms.
Q: Do you remember if it rained after the accident?
A: Yes, ma'am.
Q: All right. And just to start off, I want to be clear, you were a pedestrian at the time of the accident, correct?
A: Yes, ma'am.
Q: Do you remember where you were walking from?
A: Yes. I was walking across the street from the fire station, going to cross the street, go towards the beach.
Q: Was the beach your destination?
A: Yes, ma'am.
Q: All right. And you were coming from the fire station?
A: Across the street from the fire station,

of the main street, Atlantic, the secondary street.
Q: Do you know if there's any traffic signals or stop signs or anything like that at the spot where you were crossing or nearby?
A: Nearby.
Q: About how far away?
A: Maybe fifty to eighty feet.
Q: Is that a traffic signal or a stop sign?
A: No, it's the direct turn off of Atlantic.
Q: Okay. Do you remember what traffic was like that day?
A: Typical summer traffic.
Q: Prior to crossing the street, do you remember, you know, checking for traffic and things like that?
A: Yes, ma'am.
Q: Tell me what you remember about that. Did you see vehicles in the road?
A: Not at the time, no, ma'am.
Q: From either direction?
A: No, ma'am.
Q: Were any vehicles parked alongside the road?



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A: Yes, ma'am.
Q: What kind of vehicle, do you remember?
A: A delivery truck and other regular cars.
Q: Where were those vehicles parked in relation to where the accident occurred?
A: They were parked at the corner by Atlantic coming off of that turn from Atlantic.
Q: Were there any vehicles parked near, right near where the accident occurred or were they all closer to Atlantic?
A: They were closer to Atlantic and spread along, along the other side of the street.
Q: Was the delivery truck parked nearby where the accident occurred or was that close to Atlantic?
A: Right in between.
Q: Okay. So, am I correct that there are vehicles parked along the road, but no moving traffic that you saw along Dogwood?
A: Yes, ma'am.
Q: Okay. Do you know, roughly, how long you paused to check for traffic before you



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crossed the street?
A: Yes, maybe five seconds, looked both ways, checked, you know.
Q: Is there a crosswalk or anything like that at the area where you cross the street?
A: No, ma'am, they're all eroded.
Q: They were eroded?
A: Yes, ma'am.
Q: Could you see lines in the road for a crosswalk that had been there before?
A: No, ma'am.
Q: What makes you say they're eroded?
A: Well, the one -- that's what I mean. The one at Atlantic, it used to be yellow years and years ago. I've lived here my whole life, and it hasn't been painted in, I don't think ever.
Q: At Atlantic where the intersection is?
A: Yes, ma'am.
Q: Okay. Tell me what you remember about the actual impact.
A: The actual impact, I just heard the engine, looked over, saw a blue hood, and I don't remember anything after that.



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# Exhibit B

# (Deposition of Defendant Diane W. Ray)

important if you don't understand a question, go ahead and ask me to either rephrase the question or clarify and I'll do my best to do that for you. Under no means am I trying to trick you or hide the ball or play any games with you. This is simply my opportunity to ask you questions about your background and about this accident, fair enough?

A: Yes.

Q: All right. Ms. Ray, could you please give your full legal name?

A: Diane Watson Ray.

Q: And, Ms. Ray, what's your address?

A: 1216 Lakeland Drive, Conway, South Carolina 29526.

Q: And was that the same address that you had on the date of the accident that we're here for today?

A: I stay at 642 South Dogwood in Garden City, because it's so close to my business, a lot.

Q: Do you own that residence as well?

A: Yes.

Q: All right. And, Ms. Ray, does anyone



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Q: Correct, yes, ma'am. Do you recall how fast you were driving once you turned onto Dogwood Drive?
A: Well, like I said, I come to a full stop when I realized the truck was partially in the road, and it couldn't have been more than past the first little notch there on your speedometer. I think it has ten on mine, couldn't have been going past that.
Q: I'm sorry, we cut out for a moment there. Can you repeat that?
A: You know, as you stop and then you start to accelerate, I -- if I had to look at a speedometer, I would say it wouldn't be past that first mark on mine, which is a ten on it or something. It would be less than that. I would say less than a mile, two miles an hour, if you want to put a number to it, just kind of rolling along, as they say.
Q: Did you see Mr. Mims at all prior to impact?
A: No.
Q: Had you driven down Dogwood Drive before?



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A: Every day.
Q: And have you ever seen pedestrians in the general vicinity where this accident took place?
A: You know how the beach is, you could walk all over the place.
Q: And I apologize, Ms. Ray, so is that a yes, ---
A: Yes.
Q: --- you are aware that pedestrians are in that area?
A: Yes.
Q: Do you have any reason or any explanation as to why you didn't see Mr. Mims prior to the impact?
A: Well, because the truck was parked on the right-hand side and he stepped out in front of that truck.
Q: And you said that you drive down Dogwood Drive every day, have you ever seen a truck, a delivery truck like that parked in that same location?
A: Yes.
Q: So, you're aware that there's pedestrians that cross in that general area and that



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there have been a delivery truck in that general area previously; is my understanding correct?
A: Yes.
Q: And did you receive a ticket for this crash?
A: No.
Q: Other than apologizing to Mr. Mims, did you speak with anyone else at the scene of the crash?
A: No, I didn't, except the fire people that were at the fire station. They were the ones that came over when it happened.
Q: Did you ever speak with the police officer that responded to the crash?
A: When he got there, yes.
Q: Do you remember what, if anything, you said to the employees at the fire station?
A: No.
Q: Do you remember what you said to the police officer?
A: Only that -- I responded only to the questions he asked me about the accident.
Q: At any time at the scene of the crash,



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pedestrian crossings?
A: Just the one at the corner.
Q: So, is my understanding correct that if someone were to be at your home and park in front of your home, they need to walk all the way to the corner where Causeway Grill & Bar is in order to cross the street?
A: That's kind of a hard question to ask at the -- because we don't have any sidewalks on Dogwood, so it's, you know, my home is about a full block down from Atlantic Avenue, so I, I don't know an answer that, you know, people cross the street if there's nothing coming or you can walk to the corner and cross the street.
Q: And, Ms. Ray, do you ever go to the beach, ever walk to the beach from your home?
A: On occasion, yes.
Q: And do you ever walk to the corner where Causeway Grill & Raw Bar is in order to get to the beach?
A: I -- no, I can get access to the beach



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before that.

Q: Do you have to cross South Dogwood Drive in order to get to the beach?

A: Yes, at the corner, you turn right on, I think it's called Yaka Street and walk over to the beach. There's a, you know, a public access at the end of that street.

Q: And is there a pedestrian crossing at the corner of South Dogwood and Yaka Avenue?

A: No. No, there's no pedestrian. The only pedestrian -- no, there wouldn't be any markings, we, we just cross the street.

Q: So, when you're going to the beach, you typically cross South Dogwood Drive, not at a pedestrian crossing; is that my understanding?

A: Yes. Yes.

Q: Ms. Ray, I don't have any further questions for you.

A: Okay.

MS. VANCAMP: I DON'T HAVE ANYMORE QUESTIONS EITHER.

MS. RAY: ALL RIGHT.

(The deposition concluded at 10:48 a.m.)

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# Exhibit C
# (Overhead View of Dogwood Drive)

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Google Maps State Rd S-26-530




Map data ©2021 , Map data ©2021 20 ft

MIMS v. RAY - RECORD ON APPEAL: 320

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Google Maps State Rd S-26-530




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MIMS v. RAY - RECORD ON APPEAL: 321

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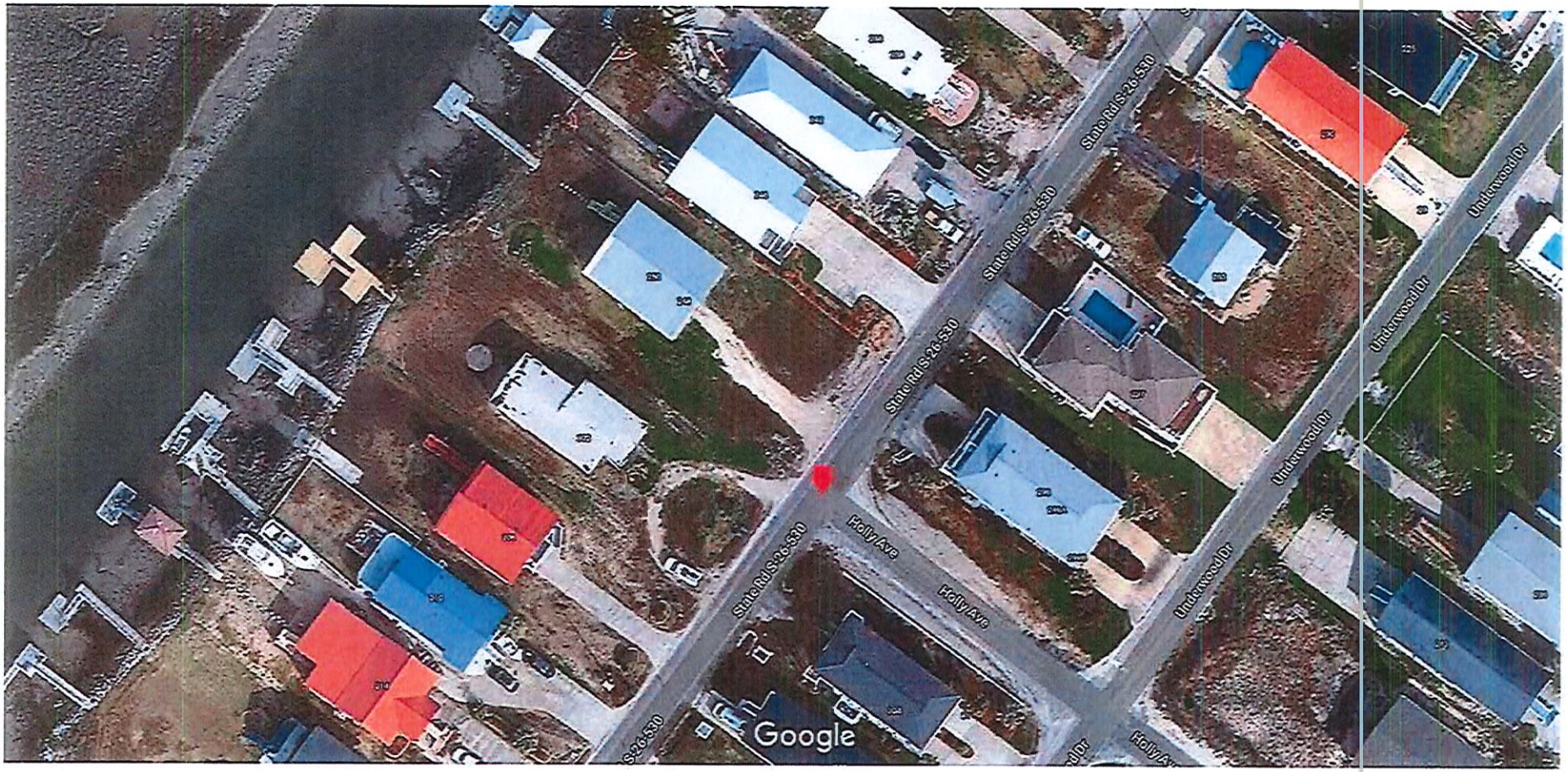

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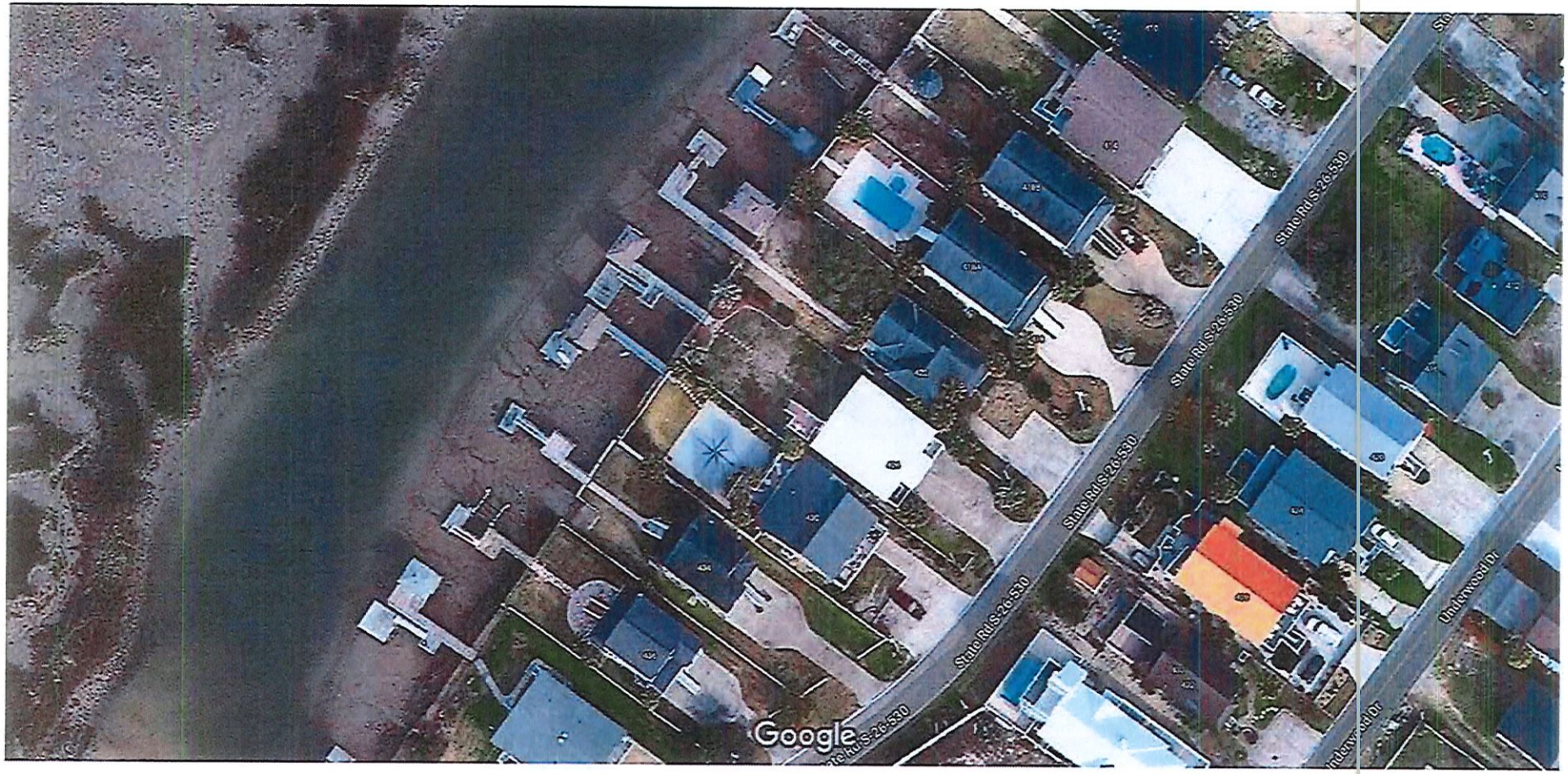



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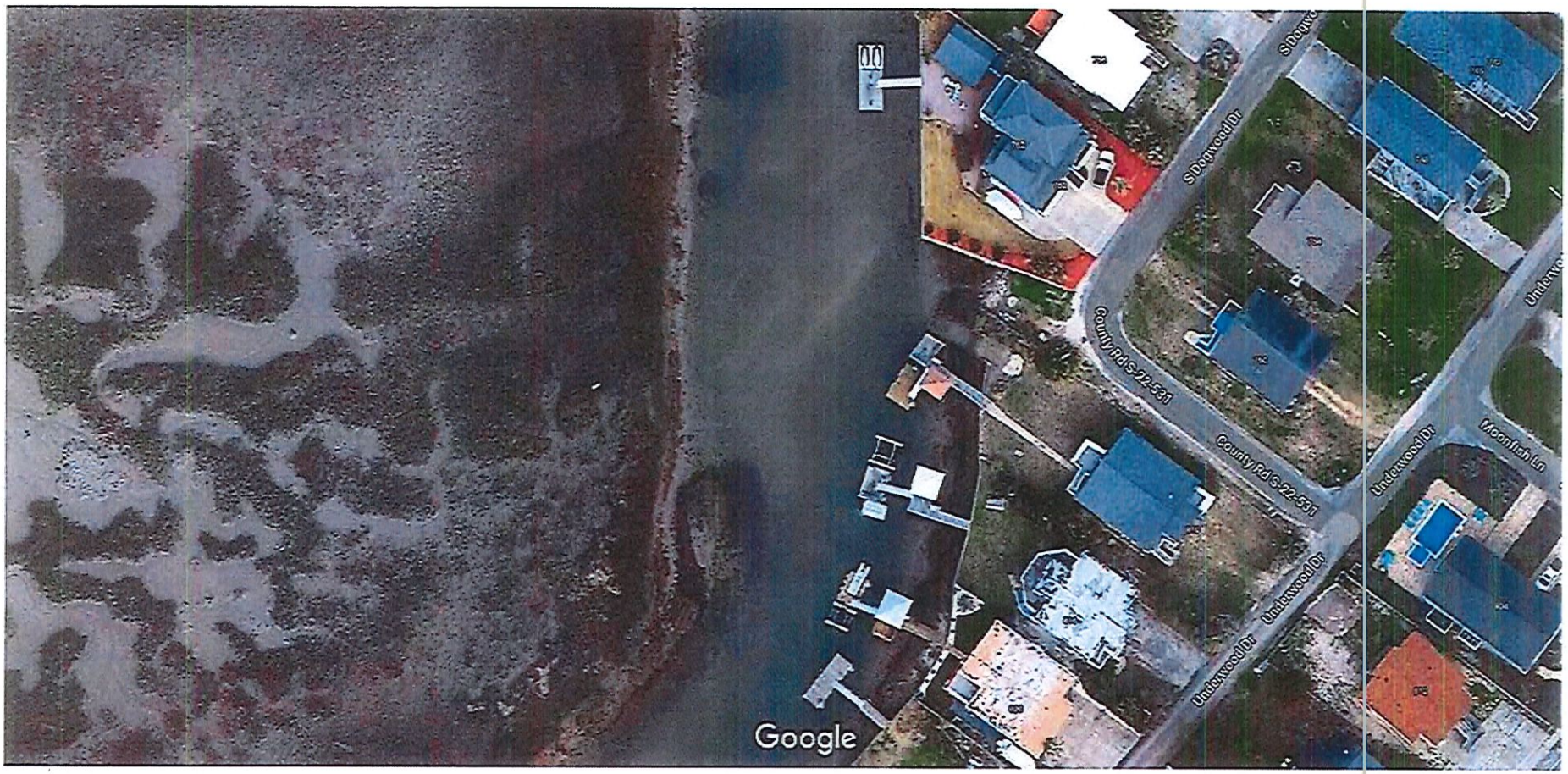



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MIMS v. RAY - RECORD ON APPEAL: 335

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| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF HORRY | ) | C/A No.: 2019-CP-26-05892 |

Ronald L. Mims,

Plaintiff,

vs.

Diane W. Ray,

Defendant.

**DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59, *SCRCP*, AND MOTION TO RECONSIDER PURSUANT TO RULE 52, *SCRCP***

Defendant Dianne W. Ray, improperly identified as Diane W. Ray, by and through the undersigned counsel and pursuant to Rule 59 of the South Carolina Rules of Civil Procedure ("SCRCP") hereby submits this Memorandum in Opposition to Plaintiff's Motion to Alter or Amend Judgment Pursuant to Rule 59, SCRCP, and Motion to Reconsider Pursuant to Rule 52, SCRCP. This Court should deny Plaintiff's Motion as the Court has previously considered all arguments presented therein and appropriately granted Defendant summary judgment in this action.

## FACTUAL AND PROCEDURAL BACKGROUND

Defendant incorporates the factual background as outlined in Defendant's Motion for Summary Judgment and further contends the following:

Defendant filed her Motion for Summary Judgment on the grounds that Plaintiff's own negligence bars him from recovery against Defendant under the theory of comparative negligence, as no reasonable jury could find that Plaintiff's own negligence in failing to yield to vehicles while attempting to cross a street at an area outside of a designated pedestrian crossing did not exceed any negligence on the part of Defendant. After oral arguments on January 20, 2021, the Court

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issued a Form 4 Order granting Defendant summary judgment, specifically referencing S.C. Code Ann. § 56-5-3150(a) and Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000). Plaintiff subsequently filed his Motion to Alter or Amend Judgment Pursuant to Rule 59, SCRCP, and Motion to Reconsider Pursuant to Rule 52, SCRCP (as the Motion were filed collectively, Defendant refers to them to herein collectively as Plaintiff's "Motion for Reconsideration").

## STANDARD OF REVIEW

Rule 59(e), SCRCP, permits a party to request a court "reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). As indicated in the "Notes" to Rule 59(e), SCRCP, it is "substantially" the same as the Federal Rule. Rule 59 permits a court to amend a judgment for three reasons: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." See E.E.O.C. v. Lockhead Martin Corp., 116 F.3d 110, 112 (4th Cir. 1997).

Rule 52(b), SCRCP, allows a party to request a court "amend its findings or make additional findings" and amend the judgment.

## ARGUMENT

As argued in Defendant's Motion for Summary Judgment, under the doctrine of comparative negligence a plaintiff's recovery is barred if his negligence is greater than that of the defendant. See Hopson v. Clary, 321 S.C. 312, 468 S.E.2d 305 (Ct. App. 1996) (holding that plaintiff's claim was barred under comparative negligence doctrine because plaintiff's own negligence was, as a matter of law, greater than any negligence attributable to defendant and the more determinative factor in causing the accident). Though comparative negligence is typically deemed to be a jury question, courts have granted summary judgment to a defendant based on comparative negligence where the sole reasonable inference which may be drawn from the

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evidence is that the plaintiff's negligence exceeded fifty percent. See Bloom v. Ravoira, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000); see also Hopson v. Clary, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct. App. 1996) ("If the evidence as a whole is susceptible to only one reasonable inference, no jury issue is created"), and Creech v. S.C. Wildlife and Marine Resources Dep't, 328 S.C. 24, 33, 491 S.E.2d 571, 575 (1997) (discussing directed verdict standard).

In her Motion for Summary Judgment, Defendant cited Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710, a South Carolina Supreme Court case in which the Court upheld the circuit court's decision to grant the defendant's motion for summary judgment based on the plaintiff's comparative negligence. The basic facts in Bloom are that a pedestrian entered the street outside of a designated crosswalk and from in between two parked vehicles and ran into the side of the Defendant driver's vehicle. The driver had no warning of the pedestrian's attempt to cross the street, was driving no more than 25 miles per hour, and was not driving recklessly at the time of the impact. Ultimately, the Supreme Court of South Carolina affirmed the circuit court's decision to grant the defendant driver's motion for summary judgment and held that the only reasonable inference was that the pedestrian's own negligence was more than fifty percent, thus precluding his recovery in a negligence action against the motorist.

As argued in her Motion for Summary Judgment, a driver has a duty to exercise due care to avoid colliding with any pedestrian. See S.C. Code Ann. § 56-5-320 (1976, as amended). Defendant testified that at the time of the accident, she was watching the roadway for traffic and was proceeding around the parked delivery truck at a slow speed to make sure she had enough room to get through. Additionally, Plaintiff also had a duty to yield: "[e]very pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway." See S.C. Code Ann.

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§ 56-5-3150(a) (1976, as amended). Plaintiff does not dispute that he did not use a crosswalk or other pedestrian crossing when he entered the street. Because he was not crossing within a marked crosswalk or within an unmarked crosswalk at an intersection, Plaintiff should have yielded the right-of-way to Defendant.

Even if there was some evidence that indicated Defendant contributed to the accident, the conclusion that Plaintiff's fault exceeded fifty percent is inescapable. Therefore, the circuit court's decision to grant the Defendant's Motion for Summary Judgment was proper. Plaintiff has not raised and Defendant is unaware of any intervening change in controlling law since the date of the Form 4 Order, Plaintiff has not presented any new evidence, and Defendant sees no clear error of law in the Court's decision to grant Defendant's Motion for Summary Judgment. Therefore, the Court should deny Plaintiff's Motion for Reconsideration.

## CONCLUSION

Based on the above, Defendant contends that the Court made no error in determining that summary judgment was proper, as no reasonable jury could find that Plaintiff's negligence was not greater than any negligence on the part of Defendant. Additionally, Plaintiff's Motion for Reconsideration appears to be a mere re-argument of his opposition to Defendant's Motion for Summary Judgment and asserts no new facts or controlling law for the Court to consider. Therefore, Defendant respectfully requests that this Court deny Plaintiff's Motion for Reconsideration.

[SIGNATURE PAGE TO FOLLOW]

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February 16, 2021

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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Case No. 2019-CP-26-005892

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RONALD L. MIMS

Appellant

vs.

DIANE W. RAY

Respondent.

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# NOTICE OF APPEAL

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Ronald L. Mims appeals the order of the Honorable Benjamin H. Culbertson dated and filed January 20, 2021 as well as the order dated January 4, 2022 and filed January 5, 2022. Appellant received written notice of entry of the order denying his Motion to Reconsider on January 5, 2022.

January 19, 2022

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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Case No. 2019-CP-26-005892

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RONALD L. MIMS

Appellant

vs.

DIANE W. RAY

Respondent.

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**CERTIFICATE OF COUNSEL**

---

Appellant's counsel certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

GEORGE SINK, P.A. INJURY LAWYERS

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