

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Daniel Coble, Circuit Court Judge

Case No. 2024-CP-40-3454

Appellate Case No. 2025-000378

Bernard Bagley, #175851,

Appellant,

v.

Palmetto Richland Hospital Prisma,  
Health,

Respondent.

BRIEF OF APPELLANT

Bernard Bagley  
#175851/SB21b/KER.CI  
4848 Goldmine Hwy.  
Kershaw, SC 29067

Pro Se

**RECEIVED**

APR 03 2025

SC Court of Appeals

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## STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL JUDGE ERR IN FAILING TO FIND THIS ACTION IS RESPONDENT'S DUTY TO ITS EMERGENCY SURGERY PATIENT TO PROVIDE COMPETENT MEDICAL CARE THAT HAS EVOLVED INTO ABSOLUTE DUTY THAT IS INCAPABLE OF BEING DELEGATED, THUS, HOSPITALS ARE LIABLE FOR NEGLIGENCE OF EMERGENCY SURGERY CAREGIVERS EVEN IF THEY ARE DESIGNATED AS INDEPENDENT CONTRACTORS?
- II. DID THE TRIAL JUDGE ERR IN FAILING TO FIND THAT RESPONDENT IS LIABLE UNDER DOCTRINE OF OSTENSIBLE AGENCY FOR NEGLIGENCE ACTS OF PHYSICIAN HIRED AS INDEPENDENT CONTRACTOR, BECAUSE THE RESPONDENT HELD ITSELF OUT TO PUBLIC BY OFFERING TO PROVIDE SERVICES; THE RESPONDENT PROVIDED CARE TO APPELLANT; AND ADMITTED AND TREATED APPELLANT UNDER ITS CARE?

## STATEMENT OF THE CASE

On December 29, 2023, Bernard Bagley, pro se, Appellant brought this action alleging one of the C3 screws protruding and extending from the anterior hardware plate in his cervical spine causing unnecessary and wanton infliction of severe pain. On March 1, 2021, Appellant was admitted in the Palmetto Richland Hospital Prisma (d/b/a) Prisma Health Richland for emergency cervical spine surgery to decompress his spinal cord and pinched nerves in C3, C4, and C5, in which he underwent a multi-level fusions of the same. The surgery was performed on March 2, 2021. A few weeks afterwards, Bagley was having post-surgery complications swallowing, and suffering excruciating pain throughout his neck and throat, and back, along with other related complications. In August 22, 2022, an x-ray exam of Bagley's cervical spine image shows a finding C3-C5 ACDF with one of the C3 screws loose protruding and extending from the plate.

On June 6, 2024, Richland County Office of the Clerk of Court finally filed the Appellant's Complaint. The Respondent produced an Affidavit in which its Director of HR Operations, Jim Reames, stated that when Gregory Grabowski, MD, treated and admission of the Appellant to Prisma Health Richland Hospital from March 1, 2021 to March 5, 2021, Dr. Grabowski was not employed by the Respondent by Prisma health- Richland. Appellant did not know the name of the doctor whom treated and admitted him into the hospital, in which he was trying to obtain those records without success to show that the Respondent is vicariously liable for negligence and deviations of accepted standards of practice by the Respondent's independent contractor employee.

On January 16, 2025, Appellant appeared before Presiding Judge Daniel Coble via virtual, in which Respondent's attorney James E. Parham, Jr., P.A., of the Richland County Bar appeared on its behalf. Judge Coble granted Respondent's Motion for Summary Judgment as hereby dismissed, discontinued and forever ended with prejudice without meaningful consideration of Appellant's filed pleadings and extension for time to obtain proof to overcome Respondent's Motion for Summary Judgment, whereby a genuine issue as to any material to show that Respondent is not entitled to judgment as a matter of law.

#### FACTS

Appellant submit Appendix page 2, MRN: 977417279 Discharge Summary dated 3/3/21, at 3:21pm, by Amanda Mickey, [180884], showing admission diagnoses and admitting physician in support and relevant to the arguments at this point in his brief.

#### ARGUMENTS

- I. THE TRIAL JUDGE DID ERR IN FAILING TO FIND THIS ACTION IS RESPONDENT'S DUTY TO ITS EMERGENCY SURGERY PATIENT TO PROVIDE COMPETENT MEDICAL CARE THAT HAS EVOLVED INTO ABSOLUTE DUTY THAT IS INCAPABLE OF BEING DELEGATED, THUS, HOSPITALS ARE LIABLE FOR NEGLIGENCE OF EMERGENCY SURGERY CAREGIVERS EVEN IF THEY ARE DESIGNATED AS INDEPENDENT CONTRACTORS.

Appellant avers that one of the screws at C3 in his cervical spine is protruding and extending from the anterior hardware plate falls under common-knowledge exception to requirement of expert testimony in malpractice and medical negligence action because the claim falls within a laymen's common knowledge or experience of not being able to swallow with complications and having excruciating severe pain, resulting in a breach of duty owed to him. S.C. Code §15-36-100(C)(2), states, that "the contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant." SEE Appendix page 3, MUSC Health Neurosurgery Clinic Note established Appellant's chief complaint of hardware failure and other medical complications related to to the same. An Assessment/Recommendation by Nathan C. Davis, MD, Physician Specialty Neurosurgery.

Nevertheless, it is the Respondent's duty to its emergency surgery admitted patient to provide competent medical care to prevent a cervical spine screw from loosening. In addition, being the emergency surgery admitted hospital and caregiver they are liable for negligence even if they have a designated independent contractor. In *Simmons v. Tuomey Regional Medical Center*, 330 S.C. 115, 498 S.E.2d 408 (1998), held that questions of law or fact regarding duties and liabilities of practitioners negligence and malpractice, states, "even though emergency room physicians who treated accident victim for contusions and then released him were designated as independent contractors, hospital could be liable in medical malpractice action for their allegedly negligent diagnosis and treatment, which purportedly resulted in patient's death from subdural hematoma six weeks later." SEE: Restatement (Second) of Agency §250 (1958). Also, *Durkin v. Hansen*, 313 S.C. 343, 437 S.E.2d 550 (1993), "Respondent's cannot insulate themselves from liability which has been assumed by agreement and, additionally, imposed by statute, by the mere employment of an independent contractor." SEE: *Osborne v. Adams*, 346 S.C. 4, 550 S.E.2d 319 (2001), the Court held that, "fact questions precluded summary judgment for hospital, and decision adopting doctrine of ostensible agency would be given retroactive effect. In addition, the Court granted certiorari to review the Court of Appeals' decision, in light of its modification of *Simmons I.*" SEE: *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 533 S.E.2d 312 (2000), ("*Simmons II*").

II. THE TRIAL JUDGE DID ERR IN FAILING TO FIND THAT RESPONDENT IS LIABLE UNDER DOCTRINE OF OSTENSIBLE AGENCY FOR NEGLIGENT ACTS OF PHYSICIAN HIRED AS INDEPENDENT CONTRACTOR, BECAUSE THE RESPONDENT HELD ITSELF OUT TO PUBLIC BY OFFERING TO PROVIDE SERVICES; THE RESPONDENT PROVIDED CARE TO APPELLANT; AND ADMITTED AND TREATED APPELLANT UNDER ITS CARE.

Appellant avers that the emergency cervical spine surgery was performed at Prisma Health Richland (d/b/a), or Palmetto Richland Hospital Prisma, and received care at the same on March 1, 2021 through March 5, 2021. Appellant developed serious excruciating pain and difficult swallowing, along with other related medical complications a few weeks afterwards. In addition, Appellant asserts that under the Restatement (Second) of Torts §429, a plaintiff must show that:

(1) the hospital held itself out to the public by offering to provide services; (2) the plaintiff looked to the hospital, rather than the individual physician, for care; and (3) a person in similar circumstances reasonably would have believed that the physician who treated him or her was a hospital employee. When the plaintiff does so, the hospital will be held vicariously liable for any negligent or wrongful acts committed by the treating physician. The hospital may attempt to avoid liability for the physician's acts by demonstrating the plaintiff failed to prove these factors.

The Appellant further asserts that the Respondent provided services March 1, 2021 through March 5, 2021; Appellant looked to the hospital, rather than the individual physician for care, because he was told that the chief surgeon for the hospital would performed the cervical spine surgery because of the material SCDC was only willing to pay the cost for, i.e. surgery and hardware; and the Appellant honestly believed that the hospital Chief Orthopaedic Spine Surgeon performed the cervical spine surgery, but more importantly, a hospital employee. (Appendix pages 1-2). SEE: Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001), fact questions precluded summary judgment for hospital, and decision adopting doctrine of ostensible agency in accordance to Restatement (Second) of Torts §429.

Additionally, Appellant contends that S.C. Codes §15-32-220(A)(B)(D)(1)(2)(E); §15-32-230(C)(1)(2); §15-38-15; and §15-78-10, et. seq., South Carolina Tort Claims Act may apply.

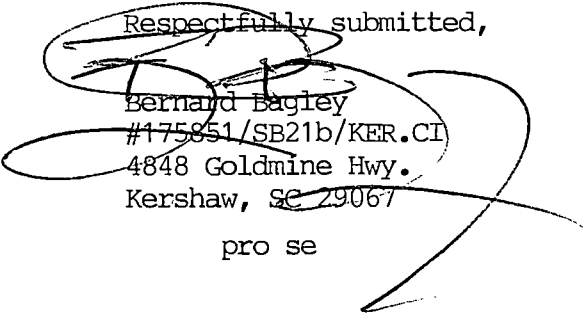
In short, Appellant avers that the trial judge and Respondent is continually causing him psychological damages and causing him economical or non-economical loss.

CONCLUSION

WHEREFORE, for the reasons stated, this Court should reverse the judgment of the circuit court, and appoint counsel and a psychological professional to demonstrate economical and non-economical loss.

March 28, 2025

Respectfully submitted,

  
Bernard Bagley  
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Kershaw, SC 29067

pro se

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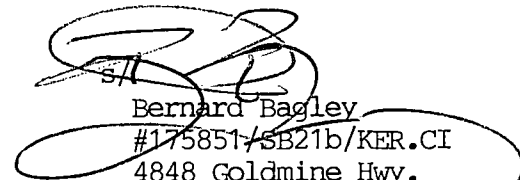
Palmetto Richland Hospital Prisma  
Health,

Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant; Designation of Matter to be Included in the Record on Appeal; and Appendix on the Respondent's attorney on record James E. Parham, Jr., P.A., by depositing a copy of each in the U.S. Mail, postage prepaid, on March 28, 2025, addressed to James E. Parham, Jr., P.O. Box 1516, Irmo, SC 29063.

March 28, 2025

  
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SC Court of Appeals  
Jenny A. Kitchings, Clerk  
P.O. Box 11629  
Columbia, SC 29211

RE: Bernard Bagley v. Palmetto Richland Hospital Prisma Health,  
Appellate Case No. 2025-000378.

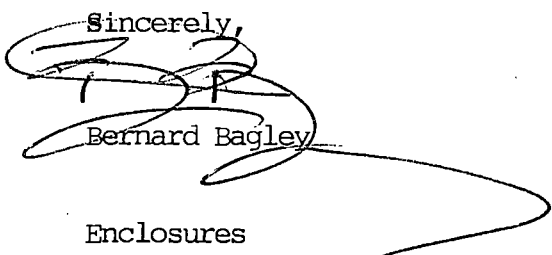
Dear Ms. Kitchings:

Enclosed for filing are the following:

1. Brief of Appellant;
2. Designation of Matter to be included in the Record on Appeal;
3. Appendix; and
4. Proof of Service for each.

Thank you for your consideration and time.

Sincerely,



Bernard Bagley

Enclosures

cc: James E. Parham, Esq.

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JAMES A. K. THOMAS, Clerk of Court  
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APPENDIX


Bernard Bagley  
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Attorney at Law  
P.O. Box 1516  
Irmo, SC 29063  
Attorney for Respondent

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SCDC Cervical Exam dated 8/24/22	4

# Bagley, Bernard

MRN: 977417279

Hightower, Cody Lee, MD      Discharge Summary !   
Resident Physician              Cosign Needed Addendum  
Orthopaedic Spine  
Date of Service: 3/3/2021 11:09 AM

ADMISSION DATE: 3/1/2021  
DISCHARGE DATE: 3/3/2021

ADMITTING PHYSICIAN: Grabowski, Gregory, MD

DISCHARGING PHYSICIAN: Grabowski, Gregory, MD

ADMISSION DIAGNOSES: Cervical Myelopathy

DISCHARGE DIAGNOSES: Same as above

*MSO.022*

CONSULTS: PT/OT

PROCEDURES: C5/6 ACDF

**HOSPITAL COURSE:**

Patient was admitted to inpatient bed postoperatively. The patient was started immediately on a clear liquid diet which was advanced to a regular diet as tolerated. Patient reported no issues with oral intake and was tolerating PO intake prior to discharge without issues. Patient had perioperative antibiotics of Ancef. The patient was on a scheduled PO multimodal pain regiment with IV analgesic for severe breakthrough pain. Pain was well controlled on orals prior to discharge. Patient started physical therapy and occupational therapy on postoperative day one. They were cleared by therapy to be discharged to infirmary at his facility. Patient's weight bearing status is As tolerated all four extremities, no lifting more than 10 pounds. No twisting, bending, and lifting over 10 lbs. The patient was restarted on their home medications while inpatient. The patient was on SCDs/ambulation. The patient was urinating without difficulty prior to discharge. No other acute issues during hospitalization.

CONDITION AT DISCHARGE: Stable.

DISPOSITION: Back to infirmary.

*3-4-21  
(w)*

**DISCHARGE MEDICATIONS:**

Ultram 50 mg PO q4 hours prn for moderate pain  
Tylenol 500 mg PO TID  
Celebrex 200 mg PO qDay for 14 days

**DISCHARGE/FOLLOW-UP INSTRUCTIONS:**

Please take medicines as prescribed  
Keep dressings intact until post operative day 5 then ok to shower and remove dressing.  
Replace with dry bandage is ok  
No twisting, bending, and lifting over 10 lbs.  
If fevers or chills please call office or present to the emergency department

2025-000378

Bagley, Bernard (MRN 977417...9) Printed by Mickey, Amanda [180884] at 3/3/21 3:21 PM

If recurrent headaches call the office

Follow up with Dr. Grabowski or Dustin Keenan, PA-C 2 weeks post operatively in his office at 14 MP or 300 palmetto health pkwy, or at SCDC clinic with Dr. Koon. Will need AP/Lateral cervical x-rays at post op visit.  
Please call to schedule/confirm appointment.

Revision History

Printed by MICKEY, AMANDA [180884] at 3/3/2021 3:21:16 PM

Bagley, Bernard

Nathan Chadwick Davis, MD  
Physician  
Specialty: Neurosurgery  
Progress Notes Signed Encounter Date 10/7/2024

2025-000378



Neurosurgery Clinic Note - Established Patient

Name: Bernard Bagley  
MRN:  
DOB:

Chief Complaint: hardware failure, hand weakness, arm pain

Assessment/Recommendations:

Bernard Bagley is a 57 yo male who previously presented with hand numbness previous history of cervical surgery for myelopathy, hardware failure with prominent screw and arm pain in an approximate C8 distribution

In my assessment this is a complex patient with multiple considerations. On personal review of his MRI he has facet hypertrophy contributing to severe bilateral foraminal stenosis at C6-7 and C7-T1 and at least moderate at C5-6 inferior to his C3-5 construct. In addition, a cervical x-ray shows prominence of an anterior screw that is likely affecting his swallowing. We discussed options today. I do believe he needs a revision of his C3-5 construct for the prominent screw as this is affecting his swallowing and would be expected with time to erode into his esophagus which would bring significant complication. In addition his hand weakness is not resolving over time so this is likely not related to his original myelopathy given his progression and is most likely related to his severe foraminal stenosis at C8 which contributes to his hand intrinsic. He has physical exam evidence of hand atrophy to support. His additionally has severe foraminal stenosis superior to this at C6-7 which would be an interesting level between 2 fusion constructs and would make sense to make this level into this construct. Counselled patient that based on his x-ray review we may have difficulty visualizing/accessing the C7-T1 space anteriorly. Regardless will need a posterior back up given the degree of fusion from C3-T1 anteriorly. If I can adequately visualize C7-T1 we will try to place anterior stand-alone interbody's to provide distraction to his foramina at this level and C6/7. If unable to visualize this will perform foraminotomies posteriorly during the C3-T2 fusion.

We discussed the nature, purpose, benefits, usual and most frequent risks of, and alternatives to, the procedure have been explained to the patient. We further discussed the risks discussed include but are not limited to the general risks of bleeding, infection and death as well as more specific risks to include potential new or preserved weakness/paralysis/sensory changes around and below the level of operation, the potential need for a reoperation, the potential for hardware failure, the potential for cerebrospinal fluid leak, the need for intraoperative changes to the procedural plan for unforeseen events and damage to the spinal cord, nerve or nerve roots as well as surrounding important vasculature. The patient has had an opportunity to ask questions, and that those questions have been answered.

The patient will need an orthotic brace for treatment to facilitate healing secondary to surgery for a painful spine condition. Bracing will reduce pain by restricting mobility of the trunk while allowing support to weak spinal muscles. A qualified individual will perform the proper fitting, adjustment and education of the product with the patient.

Plan:

- 1st stage: C3/4 Pivision fusion separate incision, C6/7 and C7/T1 ACDF separate incision 2nd stage: Posterior C3-T2 fusion with C6 foraminotomy C7 foraminotomy
- C7 cervical
- Follow up for surgery

Imaging: MRI Cervical



Allergies

Nalbuphine, Sulfamethoxazole trimethoprim, and Trimethoprim

Medications

Current Outpatient Medications

Medication	Dose	Frequency	Notes
amitriptyline (Elavil) 50 mg tablet	50 mg	Take 1 tablet by mouth at bedtime	
aspirin 81 mg chewable tablet	81 mg	Chew 1 tablet daily	
cyclobenzaprine (Flexeril) 10 mg tablet	10 mg	Take 1 tablet by mouth 3 times daily (Patient not taking. Reported on 1/12/2024)	
docusate sodium (Colace) 100 mg capsule	100 mg	Take 1 capsule by mouth 2 times daily	
meclizem (Mobic) 7.5 mg tablet	7.5 mg	Take 1 tablet by mouth. Take 1 tablet by mouth two times every day	
OXCarbazepine (Inleptal) 300 mg tablet	300 mg	Take 1 tablet by mouth 2 times daily	
sertraline (Zoloft) 25 mg tablet	25 mg	Take 1 tablet by mouth at bedtime (Patient not taking. Reported on 3/22/2024)	

No current facility administered medications for this visit.

Name: BAGLEY, BERNARD

DOB:

B

2025-000378

EXHIBIT-A

Name: Bernard Bagley  
Patient ID: 175851  
DOB:  
Acc#:

Exam Date: 08/24/2022  
Exam: Cervical spine  
Reason:  
Referrer: SCDC

THIS EXAMINATION WAS PERFORMED AT:  
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

DATE OF EXAM 08/24/2022

EXAM PERFORMED AT SCDC

PROCEDURE: CERVICAL SPINE, AP AND LATERAL VIEWS

CLINICAL HISTORY: Status post-surgery.

COMPARISON: MRI of cervical spine performed February 23, 2021.

TECHNIQUE: AP and lateral views of the cervical spine were obtained including open-mouth odontoid view, including swimmer's lateral view.

**FINDINGS:**

From the earlier study, the patient has undergone anterior cervical discectomy and fusion at C3-C4 and C4-C5. One of the screws at C3 appears incompletely embedded and projects anterior of the remainder of the plate. The remaining screws appear unremarkable. There is normal alignment through the cervical spine. There is moderate to severe narrowing of C5-C6 and C6-C7 disc spaces. Alignment in the frontal projection is normal as well.

**IMPRESSION:**

1. STATUS POST ACDF AT C3-4 AND C4-5 AS ABOVE.
2. DEGENERATIVE CERVICAL DISC DISEASE C5-C6 AND C6-C7.

Electronically signed by:  
Timothy P. Closs, M.D.

TPC:ats1  
Voice File: 0825.001  
Audio Position: 0.00

This interpretation was provided by IMAGECARE RADIOLOGY ASSOCIATES

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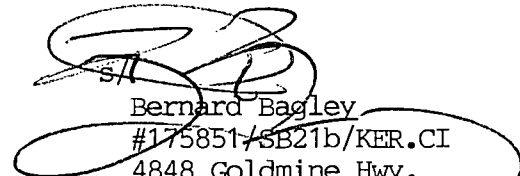
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March 28, 2025

  
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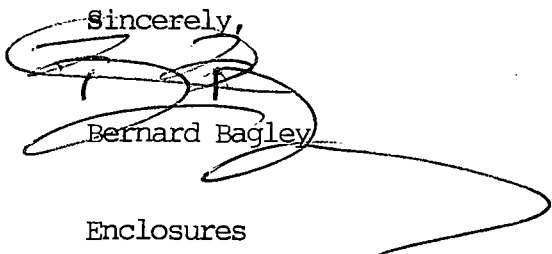
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Thank you for your consideration and time.

Sincerely,



Bernard Bagley

Enclosures

cc: James E. Parham, Esq.

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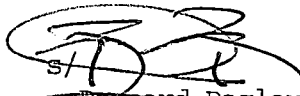
DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Order of January 16, 2025;
2. Complaint; Amended Complaint, and Motions;
3. Motion for Summary Judgment;
4. Transcript of the Proceedings;
5. Exhibits A, and 2.

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

March 28, 2025

  
s/ Bernard Bagley  
Bernard Bagley  
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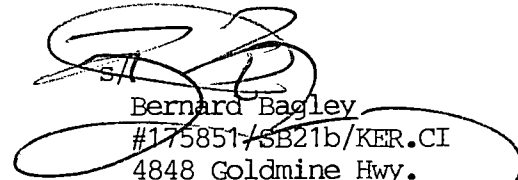
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Kershaw, SC 29067

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SC Court of Appeals

March 28, 2025

SC Court of Appeals  
Jenny A. Kitchings, Clerk  
P.O. Box 11629  
Columbia, SC 29211

RE: Bernard Bagley v. Palmetto Richland Hospital Prisma Health,  
Appellate Case No. 2025-000378.

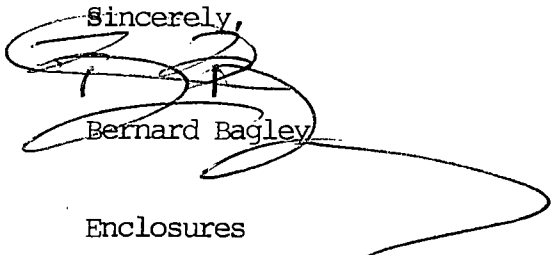
Dear Ms. Kitchings:

Enclosed for filing are the following:

1. Brief of Appellant;
2. Designation of Matter to be Included in the Record on Appeal;
3. Appendix; and
4. Proof of Service for each.

Thank you for your consideration and time.

Sincerely,

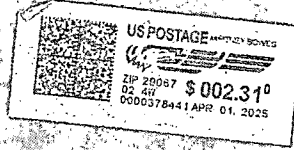


Bernard Bagley

Enclosures

cc: James E. Parham, Esq.

BERNARD Bisset  
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JAMES A. KITCHENS, Clerk of Court  
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