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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Case No.: 2024-CP-40-05809

Franklin J. Boyles,

Appellant,

v.

C & C Masonry, INC.,

Juneau Construction Company, LLC, and

University of South Carolina,

Respondents,

RECORD ON APPEAL

Respectfully submitted,

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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2024-CP-40-0580

Franklin J. Boyles,

Appellant,

vs.

C and C Masonry, Inc.,
Juneau Construction Company, LLC., and
University of South Carolina,

Respondents.

NOTICE OF APPEAL

Franklin J. Boyles appeals the improper granting and order of the Honorable Jocelyn Newman dated February 3, 2025. The Appellant received written notice of entry of this order on February 4, 2025, improperly granting the University of South Carolina's 12(b)(6) Motion of Dismissal on a legal issue and question of law.

Date: Wednesday, February 5, 2025

Respectfully submitted,
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Franklin J Boyles et al
PLAINTIFF(S)

C And C Masonry Inc et al
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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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:

Following a hearing on February 3, 2025, Defendant University of South Carolina's Motion to Dismiss (filed on 10/31/24) is GRANTED. Defense counsel shall efile proposed order within 20 days.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

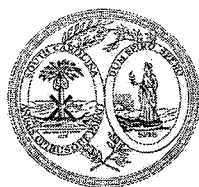
This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/04/2025 .

Island Masonry Construction
Island Masonry Construction
John Doe Llc
Juneau Construction Company Llc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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), SCRCF.



Richland Common Pleas

Case Caption: Franklin J Boyles vs C And C Masonry Inc , defendant, et al
Case Number: 2024CP4005809
Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2025-02-04 11:18:25 page 3 of 3



Lola Richey <lawfirm@richeyandrichey.com>

Courtesy NEF RE: 2024CP4005809

1 message

efiledonotreply@sccourts.org <efiledonotreply@sccourts.org>

Tue, Feb 4, 2025 at 6:46 PM

To: lolarichey@bellsouth.net

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***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2024CP4005809

Official File Stamp:	02-04-2025 06:46:15 PM
Court:	CIRCUIT COURT Common Pleas Richland
Case Caption:	Franklin J Boyles vs C And C Masonry Inc , defendant, et al Form 4 Following a hearing on February 3, 2025, Defendant Un Form 4 Following a hearing on February 3, 2025, Defendant University of South Carolina's Motion to Dismiss (filed on 10/31/24) is GRANTED. Defense counsel shall efile proposed order wi...
Document(s) Submitted:	
Filed by or on behalf of:	Jocelyn Newman

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

- Cameron W. DeBoy for Juneau Construction Company Llc
- Lake Eric Summers for University Of South Carolina
- Christian Stegmaier for Juneau Construction Company Llc
- Robert Trippett Boineau, III for C And C Masonry Inc
- Maire Elizabeth Flynn for Juneau Construction Company Llc
- Hugh Michael Gallagher, IV for C And C Masonry Inc
- Lola Stradford Richey for Franklin J Boyles

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

- Island Masonry Construction
- Island Masonry Construction
- John Doe Llc
- Juneau Construction Company Llc

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**PROOF OF SERVICE OF A NOTICE OF APPEAL**

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2024-CP-40-0580

Franklin J. Boyles,

Appellant,

vs.

C and C Masonry, Inc.,  
Juneau Construction Company, LLC., and  
University of South Carolina,

Respondents.

PROOF OF SERVICE

I certify that our law office has served the Notice of Appeal on the counsels of record via email on February 5, 2025, addressed to the counsel of record as follows:

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Dated: Wednesday, February 5, 2025

|                                       |   |                                    |
|---------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS       |
|                                       | ) |                                    |
| COUNTY OF RICHLAND                    | ) | FOR THE FIFTH JUDICIAL CIRCUIT     |
| <br>                                  |   |                                    |
| Franklin J. Boyles,                   | ) | Civil Action No. 2024-CP-40-05809  |
|                                       | ) |                                    |
| Plaintiff,                            | ) |                                    |
|                                       | ) |                                    |
|                                       | ) | <b>ORDER GRANTING DEFENDANT</b>    |
| vs.                                   | ) | <b>UNIVERSITY OF SOUTH</b>         |
|                                       | ) | <b>CAROLINA’S MOTION UNDER</b>     |
| C and C Masonry, Inc.,                | ) | <b>SCRCP 12(b)(6) TO DISMISS</b>   |
| Juneau Construction Company, LLC, and | ) | <b>THE PLAINTIFF’S TWO (2)</b>     |
| University of South Carolina,         | ) | <b>CAUSES OF ACTION AGAINST IT</b> |
|                                       | ) |                                    |
| Defendants.                           | ) |                                    |
|                                       | ) |                                    |
| _____                                 | ) |                                    |

On February 3, 2025, the Court conducted a hearing on the motion filed October 31, 2024 by Defendant University of South Carolina [USC] to dismiss the two (2) causes of action asserted against it in the complaint filed September 25, 2024 by Plaintiff Franklin J. Boyles.

USC filed its motion under the provisions of South Carolina Rule of Civil Procedure [SCRCP] 12(b)(6), and it filed its motion in lieu of filing an answer to the Plaintiff’s complaint.

Lake E. Summers, Esquire, appeared at the hearing on behalf of USC, and Lola Stradford Richey, Esquire appeared on behalf of Plaintiff Franklin J. Boyles.

After careful consideration of the argument offered by counsel during the hearing, the parties’ filings, and for good cause shown, the Court hereby **GRANTS** USC’s motion and **DISMISSES WITH PREJUDICE** the two (2) causes of action asserted by the Plaintiff against USC.

## I. APPLICABLE LEGAL STANDARD UNDER SCRCP 12(b)(6)

The title of SCRCP 12 is “Defenses and Objections – When and How Presented – by Pleading or Motion – Motion for Judgment on Pleadings,” and the title of SCRCP 12(b) is “How Presented.” The operative passage of SCRCP 12(b)(6) read as follows:

Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, crossclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ... **(6) failure to state facts sufficient to constitute a cause of action**, ... A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. [emphasis supplied].

In *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 648 S.E.2d 295, 298 (S.C. Ct. App. 2007), our Court of Appeals articulated the following standard of review for the instant motion under SCRCP 12(b)(6):

Under [SCRCP 12(b)(6)], a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. ... A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. “Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint.” ... “A motion to dismiss under [SCRCP] 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.” ... In deciding whether the trial court properly granted the motion to dismiss, this court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. ... [citations omitted].

Where the alleged facts and inferences reasonably deducible therefrom, in the light most favorable to the plaintiff, do not state any valid claim for relief, dismissal is appropriate. *See Doe v. Marion*, 645 S.E.2d 245, 246 (S.C. 2007).

## II. THE PLAINTIFF’S COMPLAINT

The Plaintiff filed his complaint on September 25, 2024, and he identified USC as the third and final defendant.

### A. THE PLAINTIFF’S CLAIMS AGAINST USC

After asserting a claim for “Negligence” in his first cause of action against USC’s two (2) co-Defendants, the Plaintiff asserted a separate claim for “Negligence” against USC in his second cause of action. (Complaint, ¶¶50 – 70).

The Plaintiff did not identify USC as a Defendant in his third cause of action, but in his fourth cause of action, the Plaintiff asserted a claim of “Intentional Infliction of Emotional Distress” against USC and its two (2) co-Defendants. (Id., ¶¶85 – 93).

### B. OPERATIVE FACTUAL ALLEGATIONS

The Plaintiff offered the following operative factual allegations in his pleading (Complaint, ¶¶5, 11 – 14, and 17 – 21):

The underlying accident that is the subject matter of this lawsuit occurred at the premises of USC at 1315 Whaley Street, Richland County, Columbia, South Carolina (“University of SC – Campus Village”).

...

Plaintiff was an employee of Island Masonry Construction (hereinafter “Island Masonry”) located at 301 McCullough Drive, Suite 400, Charlotte, North Carolina 28262 and an address at 10169 Forest Landing Drive, Charlotte, North Carolina which upon information and belief, is the subcontractor of C and C, licensed to do business in South Carolina.

Juneau and Cand C are part of a massive four-building student housing complex construction (“USC Campus Project”) for USC at the University of SC – Campus Village.

USC owns the construction site property, the University of SC – Campus Village.

On or about **September 13, 2022**, Plaintiff worked as a forklift operator with Island Masonry at the University of SC – Campus Village.

...

On **September 13, 2022**, at the time of the incident, Plaintiff was operating a forklift on the North side of Building 4 on the construction site at the University of SC – Campus Village for the USC Campus Project.

At the relevant time and place, the forklift tripped over and fell to the ground while Plaintiff lowered a mason box to the ground from a mast climber scaffold positioned just beneath the roof awning of the building.

At that time, the forklift was positioned on a temporary base – a pile of sand. While Plaintiff was operating the forklift, the front right outrigger of the forklift began to sink into the unstable soft sand, causing a shift in balance and a sudden loss of stability, resulting in the forklift tipping to the right and overturning.

Despite Plaintiff using safety measures, including seatbelt and stabilizer pads, the force and sudden movement caused by the overturning forklift were so severe that Plaintiff was thrown from his seated position, resulting in a forceful fall on the ground.

The impact and the force of the fall were significant, resulting in substantial and serious injuries to the Plaintiff.

[emphasis supplied].

### **III. THE PLAINTIFF’S CLAIMS AGAINST USC ARE TIME-BARRED, AND THE DOCTRINE OF EQUITABLE TOLLING DOES NOT APPLY**

USC moved the Court under SCRCP 12(b)(6) for an order dismissing the two (2) claims asserted by the Plaintiff against it in his complaint. In its August 31, 2024 motion, USC invoked the provisions of the South Carolina Tort Claims Act [SCTCA], S.C. Code Ann. §§ 15-78-10, *et seq.*, and it asserted that the Plaintiff’s claims against USC are time-barred by the applicable statute of limitations under § 15-78-110. The Court agrees with USC.

When a valid verified claim is properly filed per the requirements of § 15-78-80, the SCTCA extends the statute of limitations from two (2) years to three (3) years from the date of loss. *See Joubert v. S.C. Dep’t of Soc. Servs.*, 534 S.E.2d 1, 6 (S.C. Ct. App. 2000) (citing § 15-78-110). If, however, a verified claim is not filed per the requirements of § 15-78-80, the statute of limitations remains two (2) years from the date of loss. *Id.* If made, a verified claim must be

filed within “one year of the date of loss ...” *See* § 15-78-80(d). “Filing” is accomplished by “receipt” of the verified claim, if sent by certified mail. *See* § 15-78-80(c). Filing may also be accomplished by otherwise serving a verified claim by “compliance with the provisions of law relating to service of process.” *Id.*

The record reveals the Plaintiff did not timely file a verified claim against USC per the requirements of § 15-78-80. More precisely, the Plaintiff acknowledged in the response he filed November 18, 2024 to USC’s motion, as well as during the February 3, 2025 hearing conducted by the Court, that he never filed a verified claim against USC.

As the Plaintiff did not file a verified claim, the Court finds that the applicable statute of limitations pursuant § 15-78-110 was two (2) years after the date of loss on September 13, 2022. The Court also finds that, as the record indisputably reflects, the Plaintiff filed his complaint on September 25, 2024, nearly two (2) weeks *after* the two (2) year statute of limitations expired on September 13, 2024.

In his November 18, 2024 response to USC’s motion and during the February 3, 2025 hearing, the Plaintiff asserted that the Court should deny USC’s motion under the doctrine of equitable tolling. The Plaintiff, however, recognized in his November 18, 2024 response that “equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.” *See Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 687 S.E.2d 29, 33 (S.C. 2009) and *Ross v. Ross*, 715 S.E.2d 359, 361 (S.C. Ct. App. 2011) (*quoting Hooper*).

The Plaintiff, however, relied on *Pelzer v. State*, 662 S.E.2d 618 (S.C. Ct. App. 2008) to support his invocation of equitable tolling, and he provided the following passage from *Pelzer* to support his assertion, *Id.* at 620 – 21:

Equitable tolling has been deemed available where —

- extraordinary circumstances prevented the plaintiff from filing despite his or her diligence.
- the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or **the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass.**
- the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim.

[emphasis supplied].

The Plaintiff, however, omitted from his November 18, 2024 response the following passage from *Pelzer, Id.* at 621, in which our Court of Appeals recognized as follows:

It has been held that **equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights.** However, it has also been held that the equitable tolling doctrine does not require wrongful conduct on the part of the defendant, such as fraud or misrepresentation. [emphasis supplied].

The Court finds that the Plaintiff did not allege any wrongdoing by USC in his November 18, 2024 response. Even if he had so alleged, the Court finds that nothing in the record supports any allegation of wrongdoing by USC such that USC actively misled the Plaintiff about his two (2) causes of action against it or that USC prevented the Plaintiff in some extraordinary way from asserting his right to file them.

Not only does the record fail to support any allegation of wrongdoing by USC, but the Plaintiff's counsel acknowledged during the February 3, 2025 hearing that USC helpfully provided, in a timely fashion, materials responsive to a subpoena she served in the workers' compensation case the Plaintiff filed after the September 13, 2022 forklift accident in which he was involved. As reflected on pages 6 and 7 of his November 18, 2024 response, as well as by materials she filed in support of the same, the Plaintiff's counsel served the workers'

compensation case subpoena on USC on August 12, 2024, and USC provided materials responsive to it on August 22, 2024, 22 days before the expiration of the two-year statute of limitations associated with the Plaintiff's two (2) causes of action against USC.

For these reasons, the Court concludes that the doctrine of equitable tolling does not apply to the Plaintiff's failure to file the complaint in which he asserted his two (2) causes of action against USC within the applicable two-year statute of limitations. *See Pelzer, Id.* at 620 ("Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations.").

Accordingly, the Court concludes that the Plaintiff's two (2) causes of action against USC are time-barred, and it **GRANTS** the motion to dismiss them filed by USC pursuant to SCRCP 12(b)(6).

#### **IV. ANY RECOVERY BY THE PLAINTIFF AGAINST USC ON HIS INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIM IS BARRED**

Along with asserting the two (2) causes of action he asserted against it in his complaint are time-barred, USC separately addressed in its October 31, 2024 motion the second cause of action the Plaintiff asserted against it. Although it rules above that both of causes of action the Plaintiff articulated against USC are time-barred, the Court considers USC's motion to dismiss the second cause of action the Plaintiff asserted against it out of an abundance of caution.

The Plaintiff's second cause of action against USC, in which he also named C and C Masonry and Juneau Construction as Defendants, constituted the fourth cause of action in his complaint. In this cause of action, the Plaintiff asserted an intentional infliction of emotional distress claim against USC, and he alleged as follows (Complaint, ¶¶86, 88, and 92):

Defendants' conduct, as described in the preceding counts, including their failures and breach of duty, were not merely negligent but constituted extreme and outrageous behavior.

...

USC's failure to provide safe premises for persons lawfully present at the University of SC – Campus Village, particularly given its knowledge of the instability of the sand for supporting heavy machinery, constitutes a clear and reckless disregard for the safety of workers and others at the premises.

...

The emotional impact of the forklift accident and the subsequent events has been profound. The Plaintiff has experienced ongoing psychological trauma, including persistent anxiety and depression, which has significantly impaired his ability to lead a normal life. The distress has manifested in various ways, including but not limited to:

- a) Persistent anxiety about returning to work or operating heavy machinery.
- b) Depression resulting from the physical injuries and the loss of the ability to perform daily activities.
- c) Psychological trauma stemming from the physical pain and suffering endured as a result of the accident.

As recognized by USC in its August 31, 2024 motion and during the February 3, 2025 hearing, the South Carolina Supreme Court, in *Gore v. Dorchester County Sheriff's Office*, 900 S.E.2d 428, 439 (S.C. 2024), examined, on certification from the United States District Court for the District of South Carolina, the tort of intentional infliction of emotional distress, and it did so within the context of the SCTCA. The *Gore* court, 900 S.E.2d at 441, observed as follows:

As the certified question reveals, one limitation upon liability and damages is found in the definition of a recoverable “loss” contained in [§] 15-78-30(f):

“Loss” means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

*Id.* § 15-78-30(f) (emphasis added).

[underlined emphasis in original].

The *Gore* court next observed as follows, *Id.*, at 441 – 42:

**Gore concedes [§] 15-78-30(f) bars recovery for the intentional infliction of emotional distress**, but she contends she is entitled to pursue recovery for the reckless infliction of emotional distress. In that sense, she splits the tort of outrage into two torts from which she claims she may choose—intentional infliction of emotional distress and reckless infliction of emotional distress. [emphasis supplied].

Our Supreme Court rejected Appellant Gore’s contention that she was entitled to pursue recovery for the reckless infliction of emotional distress, and it concluded as follows, *Id.*, at 443:

**The bar to recovery for the intentional infliction of emotional distress in [§] 15-78-30(f) applies to the subset of claims for the reckless infliction of emotional distress.** [emphasis supplied].

On pages 7 and 8 of his November 18, 2024 response to USC’s October 31, 2024 motion, the Plaintiff tried to counter *Gore* by offering the following purportedly applicable decisions issued by federal courts in our district:

In South Carolina, “[a] governmental employee is not afforded immunity under the Tort Claims Act for conduct outside the scope of his official duties, or for conduct that amounts to actual fraud, actual malice, or an intent to harm.” *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019) (citing § 15-78-70(b)). Moreover, the South Carolina federal district court has observed that the claims for “assault and battery and claim for intentional infliction of emotional distress fall outside the SCTCA.” [*Gee Gary v. S.C. Dep’t of Corr.*, 2011 WL 2746307 (D.S.C. Jul. 14, 2011)]. Thus, “a state employee can . . . be held personally liable by a federal court for some intentional torts committed within the scope of his employment.” *Smith v. Ozmint*, 394 F. Supp. 2d 787, 792 (D.S.C. 2005) (citing *Roberts v. City of Forest Acres*, 902 F.Supp. 662, 671 (D.S.C. 1995) (finding that the governmental entity is not liable under the Act, and the employee is personally liable, when the employee’s conduct falls within the exceptions listed in §15-78-70(b)).

At the February 3, 2025 hearing, the Plaintiff’s counsel specifically referenced the federal court’s unpublished opinion in *Gary*, a copy of which she filed in support of the Plaintiff’s November 18, 2024 response.

Setting aside the reality that the Plaintiff did not name a USC employee as a defendant in his second cause of action against USC, the Court concludes that in *Gore* is dispositive, and

accordingly, under *Gore* and by operation of § 15-78-30(f), any recovery by the Plaintiff against USC under his intentional infliction of emotional distress claim is barred.

Thus, the Court concludes the Plaintiff failed to state facts sufficient to sustain his intentional infliction of emotional distress cause of action against USC, and it **GRANTS** the motion to dismiss it filed by USC pursuant to SCRCP 12(b)(6).

**V. RULING AND ORDER**

For the foregoing reasons, this Court **GRANTS** Defendant USC's motion to dismiss the two (2) causes of action the Plaintiff asserted against it in his complaint, and Defendant USC is **DISMISSED WITH PREJUDICE** from this action.

**IT IS SO ORDERED.**

---

**The Honorable Jocelyn Newman  
Presiding Judge  
Fifth Judicial Circuit**



Richland Common Pleas

**Case Caption:** Franklin J Boyles vs C And C Masonry Inc , defendant, et al

**Case Number:** 2024CP4005809

**Type:** Order/Dismissal

So Ordered

Jocelyn Newman

Electronically signed on 2025-02-20 16:49:36 page 11 of 11

Franklin J Boyles et al  
PLAINTIFF(S)

C And C Masonry Inc et al  
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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  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:

Following a hearing on February 3, 2025, Defendant University of South Carolina's Motion to Dismiss (filed on 10/31/24) is GRANTED. Defense counsel shall efile proposed order within 20 days.

**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 02/04/2025 .

Island Masonry Construction  
Island Masonry Construction  
John Doe Llc  
Juneau Construction Company Llc

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**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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Richland Common Pleas

**Case Caption:** Franklin J Boyles vs C And C Masonry Inc , defendant, et al

**Case Number:** 2024CP4005809

**Type:** Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2025-02-04 11:18:25 page 3 of 3

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Franklin J. Boyles

Plaintiff,

vs.

C and C Masonry, Inc.,  
Juneau Construction Company, LLC., and  
University of South Carolina,

Defendants,

SUMMONS  
(Negligence)

JURY TRIAL

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber, Richey and Richey PA at Post Office Box 10916, Greenville, South Carolina, 29603. You must serve your answer to the said complaint on the subscriber within thirty days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within THIRTY DAYS, the Plaintiff will apply to the court for a judgment by default against you for the relief demanded in the Complaint.

Date: Wednesday, September 25, 2024

Respectfully submitted,

By: s/ Lola Stradford Richey  
Lola Stradford Richey  
South Carolina Bar Number: 8931  
RICHEY and RICHEY, PA  
Attorney for the Plaintiff  
Post Office Box 10916  
Greenville, South Carolina 29603  
(864) 467-0503 (Office)  
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[lawfirm@richeyandrichey.com](mailto:lawfirm@richeyandrichey.com)

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Franklin J. Boyles

Plaintiff,

vs.

C and C Masonry, Inc.,  
Juneau Construction Company, LLC., and  
University of South Carolina,

Defendants,

COMPLAINT  
(Negligence Claim Against  
General Contractors and Property  
Owner)

JURY TRIAL

Plaintiff hereby makes the following complaint against the Defendants:

**PARTIES**

1. Plaintiff Franklin J. Boyles (hereinafter "Plaintiff") is an individual residing at 2816 Howell Avenue, Apartment B, Columbia, South Carolina 29203.

2. Defendant C and C Masonry, Inc., (hereinafter "C and C") is a Georgia corporation having its address at 790 West Highway 5, Roopville, Georgia 30170 and at 10169 Forest Landing Drive, Charlotte, North Carolina and, upon information and belief, doing business in South Carolina.

3. Defendant Juneau Construction Company LLC, (hereinafter "Juneau") is a Georgia corporation having its address at 210 Interstate North Parkway SE, Suite 700 Atlanta, Georgia 30339, and upon information and belief, doing business in South Carolina.

4. Defendant University of South Carolina (hereinafter "USC") is a public research university having its address at 109 Osborne, Administrative Building, Columbia, South Carolina 29208.

5. The underlying accident that is the subject matter of this lawsuit occurred at the premises of USC at 1315 Whaley Street, Richland County, Columbia, South Carolina (“University of SC - Campus Village”).

6. C and C, Juneau, and USC are collectively referred to as “Defendants.”

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over the parties, and the subject matter herein set forth.

8. The venue is proper under South Carolina Code Annotated §15-7-30 (C)(2) and §15-7-30 (D)(1) and (2) as the place of residence of the Plaintiff and the actions and/or omissions causing the underlying accident at the University of SC - Campus Village, which is the subject matter of this lawsuit, took place in Columbia, Richland County, South Carolina.

9. Jurisdiction is proper under South Carolina Code Annotated §36-2-803 as the Defendants committed a tortious act within the state, causing injury within the state arising out of their acts or omissions.

### **GENERAL ALLEGATIONS**

10. Plaintiff reaffirms and reiterates all the allegations above as if fully repeated and are incorporated herein verbatim.

11. Plaintiff was an employee of Island Masonry Construction (hereinafter “Island Masonry”) located at 301 McCullough Drive, Suite 400, Charlotte, North Carolina 28262 and an address at 10169 Forest Landing Drive, Charlotte, North Carolina which upon information and belief, is the subcontractor of C and C, licensed to do business in South Carolina.

12. Juneau and Cand C are part of a massive four-building student housing complex construction (“USC Campus Project”) for USC at the University of SC - Campus Village.

13. USC owns the construction site property, the University of SC – Campus Village.

14. On or about September 13, 2022, Plaintiff worked as a forklift operator with Island Masonry at the University of SC – Campus Village.

15. Upon information and belief, Juneau contracted with C and C, as a subcontractor, to manage the construction activities associated with the USC Campus Project for USC, located at University of SC – Campus Village.

16. The construction site at the University of SC – Campus Village required precise operation of heavy machinery to ensure the correct movement and placement of materials.

17. On September 13, 2022, at the time of the incident, Plaintiff was operating a forklift on the North side of Building 4 on the construction site at the University of SC – Campus Village for the USC Campus Project.

18. At the relevant time and place, the forklift tripped over and fell to the ground while Plaintiff lowered a mason box to the ground from a mast climber scaffold positioned just beneath the roof awning of the building.

19. At that time, the forklift was positioned on a temporary base – a pile of sand. While Plaintiff was operating the forklift, the front right outrigger of the forklift began to sink into the unstable soft sand, causing a shift in balance and a sudden loss of stability, resulting in the forklift tipping to the right and overturning.

20. Despite Plaintiff using safety measures, including seatbelt and stabilizer pads, the force and sudden movement caused by the overturning forklift were so severe that Plaintiff was thrown from his seated position, resulting in a forceful fall on the ground.

21. The impact and the force of the fall were significant, resulting in substantial and serious injuries to the Plaintiff.

22. Immediately following the accident, Plaintiff experienced intense pain, particularly in his right shoulder. He was subsequently transported by C and C staff to a medical facility, where he underwent drug screening and initial medical observation.

23. Immediately following the accident, C and C held a stand-down meeting to address forklift safety and implemented corrective actions, including weekly visits by the C and C safety officer to monitor forklift operations and handling of loads.

24. The construction site at the USC Campus lacked adequate safety measures to prevent the forklift from tipping over. There were no proper protocols or mechanisms to secure the forklift's stability in the University of SC - Campus Village which could have prevented Plaintiff from being ejected from the forklift.

25. USC, as the property owner, has a legal and ethical duty to ensure a safe environment for all individuals on its premises, particularly within a construction zone at University of SC - Campus Village where risks are inherently greater. This duty includes taking reasonable steps to oversee and ensure that contractors and subcontractors, such as C and C and Juneau, comply with safety standards, provide adequate training, and equip their employees with the necessary resources.

26. Juneau and, its subcontractor, C and C had a legal duty to ensure the safety and well-being of all the workers at the construction site in University of SC - Campus Village, including Plaintiff. This duty encompassed their obligation to provide a safe working environment, adequate training, and necessary safety equipment.

27. Juneau and C and C had a further duty to provide immediate first aid and emergency medical care services to any injured worker, including Plaintiff, upon the occurrence of an incident, to mitigate the consequences of injuries sustained.

28. After the accident, Plaintiff's medical examinations revealed a contusion to his right shoulder and right neck. The imaging showed a questionable fracture in his right

shoulder. Subsequently, the Plaintiff was prescribed medication to manage his pain and discomfort and was placed in a splint to immobilize the affected area.

29. Apart from the injuries in diagnostic imaging, the Plaintiff experienced persistent headaches, and his pain extended to his neck, right shoulder, right arm, and chest.

30. The physical trauma related to the accident was accompanied by significant psychological distress, contributing to the overall impact on Plaintiff's well-being.

31. As a proximate result of Juneau's and C and C's failure and breaches, Plaintiff sustained a contusion to his right shoulder and right neck and suffered a fracture in the right shoulder. The Plaintiff has persistent headaches, and his pain extends to his neck, right shoulder, and right arm. The physical trauma related to the incident is accompanied by significant psychological distress, contributing to the overall impact on his well-being.

32. Aggrieved by the pain and damage suffered by Plaintiff related to his workplace injuries due to the omissions or actions of the Defendants, Plaintiff brings this Third-Party Claim against Defendants for damages under the following causes of action.

**FIRST CAUSE OF ACTION**  
**Negligence**  
**(Against C and C and Juneau)**

33. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

34. Plaintiff was a forklift operator with Island Masonry, a sub-contractor of C and C, in the construction site of the USC Campus Project at University of SC - Campus Village.

35. C and C is a sub-contractor for the University of SC - Campus Village under Juneau, the general contractor.

36. The general contractors, C and C and Juneau, have a duty to provide safe working conditions on the construction site at University of SC - Campus Village.

37. The general contractors, C and C and Juneau, were negligent in managing the construction activities at the University of SC - Campus Village.

38. On September 13, 2022, the forklift accident occurred when the Plaintiff was lawfully performing his duties on the construction site at University of SC - Campus Village.

39. The unsafe working conditions at the University of SC - Campus Village was a result of Juneau's and C and C's breach of this duty.

40. Juneau and C and C had a duty to ensure that the construction site and all equipment, including the forklift, were maintained in a safe and functional condition.

41. The Juneau and C and C owe this duty to all its workers on the construction site of the USC Campus Project, including Plaintiff, to protect them from foreseeable hazards and to ensure a safe working environment.

42. The accident was a direct consequence of Juneau's and C and C's failure to properly maintain the forklift and the surrounding work environment.

43. Due to Juneau's and C and C's negligence in managing the construction activities on the University of SC - Campus Village, the Plaintiff was seriously injured.

44. Plaintiff's accident was a direct result of the lack of appropriate safety measures, such as ensuring that the forklift was on a solid base and maintaining the equipment. The sand, being an unstable and unsuitable surface, was a critical factor in the forklift's failure to remain upright.

45. Additionally, Juneau and C and C did not adhere to the standard safety practices required for construction sites, including regular maintenance and inspection of equipment to ensure its safety and functionality.

46. Juneau and C and C breached their duty to maintain a safe working environment for their employees and properly manage the equipment. This breach of duty was a proximate cause of the forklift accident and Plaintiff's injuries. The failure to address

known risks and to implement necessary safety measures directly led to the hazardous conditions that caused Plaintiff's accident.

47. As a direct and proximate result of Juneau's and C and C's breach of duties and negligence, Plaintiff sustained significant injuries. These injuries include contusions, fractures, and psychological trauma. The physical impact of the accident, including the force of the fall and the instability of the forklift, led to Plaintiff's serious injuries. The Plaintiff's psychological trauma resulted from the severe nature of the accident and the ensuing pain and suffering.

48. As a direct result of the breach, Plaintiff suffered significant physical pain, emotional distress, and substantial medical expenses. The injuries sustained have not only caused immediate suffering but have also resulted in ongoing medical treatment and potential long-term effects. The negligence of Juneau and C and C in failing to provide a safe working environment and properly maintain the equipment directly contributed to Plaintiff's damages.

49. Because of Juneau's and C and C's acts as set forth above, Plaintiff is entitled to an award for actual and consequential damages in an appropriate amount and for the costs of this action.

## **SECOND CAUSE OF ACTION**

### **Negligence (Against USC)**

50. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

51. Plaintiff was a forklift operator with at the construction site on the USC Campus Project at University of SC - Campus Village.

52. The general contractors, Juneau and C and C, work for USC on the USC Campus Project construction site at University of SC - Campus Village.

53. USC owns the University of SC - Campus Village construction site.

54. As the property owner, USC had a heightened responsibility to ensure that the construction site at University of SC – Campus Village was safe for all those invitees who were lawfully on the premises of University of SC – Campus Village, including the workers and contract employees.

55. USC had a duty of care to adequately inspect the construction site at the University of SC - Campus Village. This duty is critical in identifying unsafe conditions, such as unstable ground, inadequate support for heavy machinery, or the presence of hazardous materials.

56. As invitees of the construction workers, including Plaintiff, USC must take reasonable steps to ensure that the premises, University of SC – Campus Village, are safe for them.

57. USC had a duty to warn of any known dangerous conditions on the premises at the University of SC – Campus Village.

58. Specifically, USC is required to either correct or warn workers of any known hazards on the University of SC – Campus Village that could not be easily discovered by them.

59. USC must also act reasonably in identifying potential hazards, including any unique risks posed by the construction site at University of SC – Campus Village.

60. On September 13, 2022, Plaintiff was lawfully on the construction site at University of SC - Campus Village for his employment purpose.

61. The construction site at University of SC – Campus Village was unsafe for the use of heavy machinery like a forklift because of the unstable soil base and unsuitable surface, which is known to USC.

62. USC failed in its duty to warn about the lack of a solid base for forklift operations to prevent accidents.

63. USC's failure to warn contributed directly to Plaintiff's accident. The sand, being an unstable and unsuitable surface, was a critical factor in the forklift's failure to remain upright.

64. Additionally, USC failed to oversee and inspect if Juneau and C and C had adhered to the standard safety practices required for construction sites, including regular maintenance and inspection of equipment to ensure its safety and functionality.

65. USC's neglect in maintaining the University of SC – Campus Village is a breach of its duty. USC failed to take appropriate measures to rectify the defect once the hazard was identified.

66. USC breached its duty to maintain the premises, University of SC – Campus Village, for its invitees, including construction workers, in a safe manner for a construction site.

67. This breach of duty was a proximate cause of the forklift accident and Plaintiff's injuries.

68. As a direct and proximate result of USC's breach of duties and negligence, Plaintiff sustained significant injuries. These injuries include contusions, fractures, and psychological trauma. The physical impact of the accident, including the force of the fall and the instability of the forklift, led to Plaintiff's serious injuries. The Plaintiff's psychological trauma resulted from the severe nature of the accident and the ensuing pain and suffering.

69. As a direct result of the breach, Plaintiff suffered significant physical pain, emotional distress, and substantial medical expenses. The injuries sustained have not only caused immediate suffering but have also resulted in ongoing medical treatment and potential long-term effects. The negligence of USC directly contributed to Plaintiff's damages.

70. Because of USC's acts as set forth above, Plaintiff is entitled to an award for actual and consequential damages in an appropriate amount and for the costs of this action.

**THIRD CAUSE OF ACTION**  
**(Violation of Workplace Safety Standards)**  
**(Against Juneau and C and C)**

71. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

72. Island Masonry is a subcontractor of C and C. C and C was subcontracted by Juneau for managing the construction activities at University of SC – Campus Village for the USC Campus Project for USC.

73. Defendants Juneau and C and C had a duty to maintain the workplace safe and secure for all workers, including Plaintiff.

74. Juneau and C and C had a legal and contractual duty to adhere to all applicable workplace safety standards, including but not limited to those mandated by the North Carolina workplace safety standards and other relevant federal, state, and local regulations. These standards are designed to ensure the safety and well-being of employees working on construction sites and include requirements for safe equipment use, proper site conditions, and general workplace safety.

75. Juneau and C and C are responsible for conducting inspections and ensuring the safety of the equipment on the University of SC - Campus Village construction site where Plaintiff worked.

76. Juneau and C and C are authorized to take corrective measures related to construction site accidents, including the University of SC – Campus Village.

77. On September 13, 2022, at the time of the accident, the Plaintiff had to operate the forklift by positioning it on a pile of sand, which was not a stable or suitable surface for such equipment.

78. The Defendants Juneau and C and C knew that the surface for using the forklift at the University of SC – Campus Village construction site was not stable. The front

right outrigger of the forklift sank into the sand, causing the forklift to tip over. The placement of the forklift on unstable ground shows the failure to comply with safety standards that require stable and appropriate surfaces for heavy equipment operations.

79. Juneau and C and C failed to ensure appropriate safety measures to prevent such accidents. This includes failure to:

- a) Properly assess and prepare the site for equipment use, ensuring that surfaces are stable and capable of supporting heavy machinery.
- b) Implement safety protocols for the operation of forklifts and other heavy equipment, including regular inspections and maintenance.
- c) Provide adequate training and supervision to employees operating heavy machinery to ensure compliance with safety standards.

80. Plaintiff's injuries were a direct and proximate result of Juneau's and C AND C's violation of workplace safety standards. Specifically, the unstable condition of the surface where the forklift was positioned caused the forklift to overturn, throwing the Plaintiff to the ground.

81. Plaintiff sustained significant injuries, including contusions to his right shoulder and neck, headaches, pain in the head, neck, right shoulder, right arm, and chest, and psychological distress. These injuries were directly attributable to the unsafe working conditions created by Juneau's and C and C's failure to adhere to safety standards.

82. The injuries suffered by Plaintiff were foreseeable and preventable had Juneau and C AND C complied with the applicable safety regulations and industry standards.

83. Juneau's and C and C's negligence in failing to ensure a safe working environment directly contributed to the unsafe conditions leading to the forklift accident.

84. As a direct and proximate result of the aforesaid conduct of Juneau and

C and C, Plaintiff sustained serious injuries and is entitled to an award of actual, consequential, and punitive damages in an appropriate amount and for the costs of this action.

**FOURTH CAUSE OF ACTION**  
**(Intentional Infliction of Emotional Distress)**  
**(Against all Defendants)**

85. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

86. Defendants' conduct, as described in the preceding counts, including their failures and breach of duty, were not merely negligent but constituted extreme and outrageous behavior.

87. Juneau's and C and C's failure to ensure a safe working environment, particularly in the context of operating heavy machinery such as a forklift on an unstable surface, reflects a blatant disregard for fundamental safety practices and the welfare of workers.

88. USC's failure to provide safe premises for persons lawfully present at the University of SC – Campus Village, particularly given its knowledge of the instability of the sand for supporting heavy machinery, constitutes a clear and reckless disregard for the safety of workers and others at the premises.

89. Juneau's and C and C's overall disregard for Plaintiff's safety and well-being, including any failure to properly address the hazardous conditions or the psychological impact of the accident, further exemplifies the extreme nature of their conduct.

90. Juneau's and C and C's actions were intended to cause emotional distress or were undertaken with reckless disregard for the probability of causing such distress.

91. The blatant disregard for established safety standards and the welfare of employees on the job site indicates that Juneau and C and C either intended to cause

emotional distress or acted with complete disregard for the likely emotional impact of their actions on employees, including Plaintiff.

92. The emotional impact of the forklift accident and the subsequent events has been profound. The Plaintiff has experienced ongoing psychological trauma, including persistent anxiety and depression, which has significantly impaired his ability to lead a normal life. The distress has manifested in various ways, including but not limited to:

- a) Persistent anxiety about returning to work or operating heavy machinery.
- b) Depression resulting from the physical injuries and the loss of the ability to perform daily activities.
- c) Psychological trauma stemming from the physical pain and suffering endured as a result of the accident.

93. As a direct and proximate result of Juneau's and C and C's outrageous conduct and recklessness, as set forth above, Plaintiff has suffered severe emotional distress amounting to significant anxiety, depression, and other psychological harm and is entitled to an award of actual, consequential, and punitive damages in an appropriate amount and for the costs of this action.

WHEREFORE, Plaintiff Franklin J. Boyles prays for a judgment against Defendants C and C Masonry, Inc., Juneau Construction Company, LLC, and University of South Carolina, for actual, special, consequential, and punitive damages in an appropriate amount, for the costs of this action, and such other and further relief as this Court might deem just and proper.

Date: Wednesday, September 25, 2024

Respectfully submitted,

By: s/ Lola Stradford Richey  
Lola Stradford Richey  
South Carolina Bar Number: 8931  
RICHEY and RICHEY, PA  
Attorney for the Plaintiff  
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Richland County, South Carolina



49), the Plaintiff asserted a separate claim for “Negligence” against USC in his second cause of action. (Complaint, ¶¶50 – 70).

The Plaintiff did not identify USC as a Defendant in his third cause of action (Id., ¶¶71 - 84), but in his fourth cause of action, the Plaintiff asserted a claim of “Intentional Infliction of Emotional Distress” against USC and its two (2) co-Defendants. (Id., ¶¶85 – 93).

## II. STANDARD ASSOCIATED WITH A MOTION TO DISMISS UNDER SCRCP 12(b)(6)

The title of SCRCP 12 is “Defenses and Objections – When and How Presented – by Pleading or Motion – Motion for Judgment on Pleadings,” and the title of SCRCP 12(b) is “How Presented.” The operative passage of SCRCP 12(b)(6) read as follows:

Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, crossclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ... **(6) failure to state facts sufficient to constitute a cause of action**, ... A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. [emphasis supplied].

In *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 648 S.E.2d 295, 298 (S.C. Ct. App. 2007), our Court of Appeals articulated the following standard of review for the instant motion under SCRCP 12(b)(6):

Under [SCRCP 12(b)(6)], a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. ... A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. “Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint.” ... “A motion to dismiss under [SCRCP] 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.” ... In deciding whether the trial court properly granted the motion to dismiss, this court must consider whether

the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. ... [citations omitted].

Where the alleged facts and inferences reasonably deducible therefrom, in the light most favorable to the plaintiff, do not state any valid claim for relief, dismissal is appropriate. *See Doe v. Marion*, 645 S.E.2d 245, 246 (S.C. 2007).

### III. THE PLAINTIFF'S TWO (2) CLAIMS AGAINST USC ARE TIME-BARRED

The Plaintiff offered the following operative factual allegations in his pleading (Complaint, ¶¶5, 11 – 14, and 17 – 21):

The underlying accident that is the subject matter of this lawsuit occurred at the premises of USC at 1315 Whaley Street, Richland County, Columbia, South Carolina (“University of SC – Campus Village”).

...

Plaintiff was an employee of Island Masonry Construction (hereinafter “Island Masonry”) located at 301 McCullough Drive, Suite 400, Charlotte, North Carolina 28262 and an address at 10169 Forest Landing Drive, Charlotte, North Carolina which upon information and belief, is the subcontractor of C and C, licensed to do business in South Carolina.

Juneau and Cand C are part of a massive four-building student housing complex construction (“USC Campus Project”) for USC at the University of SC – Campus Village.

USC owns the construction site property, the University of SC – Campus Village.

On or about **September 13, 2022**, Plaintiff worked as a forklift operator with Island Masonry at the University of SC – Campus Village.

...

On **September 13, 2022**, at the time of the incident, Plaintiff was operating a forklift on the North side of Building 4 on the construction site at the University of SC – Campus Village for the USC Campus Project.

At the relevant time and place, the forklift tripped over and fell to the ground while Plaintiff lowered a mason box to the ground from a mast climber scaffold positioned just beneath the roof awning of the building.

At that time, the forklift was positioned on a temporary base – a pile of sand. While Plaintiff was operating the forklift, the front right outrigger of the forklift began to sink into the unstable soft sand, causing a shift in

balance and a sudden loss of stability, resulting in the forklift tipping to the right and overturning.

Despite Plaintiff using safety measures, including seatbelt and stabilizer pads, the force and sudden movement caused by the overturning forklift were so severe that Plaintiff was thrown from his seated position, resulting in a forceful fall on the ground.

The impact and the force of the fall were significant, resulting in substantial and serious injuries to the Plaintiff.

[emphasis supplied].

USC moves the Court under SCRCP 12(b)(6) for an order dismissing the two (2) claims asserted by the Plaintiff against it in his complaint. USC so moves, because it is subject to the provisions of the South Carolina Tort Claims Act [SCTCA], S.C. Code Ann. §§ 15-78-10, *et seq.*, and, as such, the Plaintiff's claims against USC are time-barred by the applicable statute of limitations under § 15-78-110.

When a valid verified claim is properly filed per the requirements of § 15-78-80, the SCTCA extends the statute of limitations from two (2) years to three (3) years from the date of loss. *See Joubert v. S.C. Dep't of Soc. Servs.*, 534 S.E.2d 1, 6 (S.C. Ct. App. 2000) (citing § 15-78-110). If, however, a verified claim is not filed per the requirements of § 15-78-80, the statute of limitations remains two (2) years from the date of loss. *Id.* If made, a verified claim must be filed within "one year of the date of loss ..." *See* § 15-78-80(d). "Filing" is accomplished by "receipt" of the verified claim, if sent by certified mail. *See* § 15-78-80(c). Filing may also be accomplished by otherwise serving a verified claim by "compliance with the provisions of law relating to service of process." *Id.*

In the case at bar, the Plaintiff did not timely file a valid verified claim against USC, per the requirements § 15-78-80, as USC received no verified claim. As the Plaintiff did not timely file a verified claim, the applicable statute of limitations pursuant § 15-78-110 was two (2) years

after the date of loss on September 13, 2022. However, as explained above, the Plaintiff filed his complaint on September 25, 2024, nearly two (2) weeks *after* the two (2) year statute of limitations expired on September 13, 2024.

Therefore, the Plaintiff's two (2) claims against USC should be dismissed, because he failed to file the complaint in which he asserted them within the applicable two-year statute of limitations. Accordingly, USC respectfully asserts the Plaintiff failed to state facts sufficient to sustain either of her two (2) causes of action against it, and it respectfully moves the Court to dismiss the same pursuant to SCRCP 12(b)(6).

#### **IV. ANY RECOVERY BY THE PLAINTIFF AGAINST USC ON HER INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIM IS BARRED**

In his fourth cause of action, in which he asserted an intentional infliction of emotional distress claim against USC, the Plaintiff alleged as follows (Complaint, ¶¶86, 88, and 92):

Defendants' conduct, as described in the preceding counts, including their failures and breach of duty, were not merely negligent but constituted extreme and outrageous behavior.

...

USC's failure to provide safe premises for persons lawfully present at the University of SC – Campus Village, particularly given its knowledge of the instability of the sand for supporting heavy machinery, constitutes a clear and reckless disregard for the safety of workers and others at the premises.

...

The emotional impact of the forklift accident and the subsequent events has been profound. The Plaintiff has experienced ongoing psychological trauma, including persistent anxiety and depression, which has significantly impaired his ability to lead a normal life. The distress has manifested in various ways, including but not limited to:

- a) Persistent anxiety about returning to work or operating heavy machinery.
- b) Depression resulting from the physical injuries and the loss of the ability to perform daily activities.
- c) Psychological trauma stemming from the physical pain and suffering endured as a result of the accident.

In *Gore v. Dorchester County Sheriff's Office*, 900 S.E.2d 428, 439 (S.C. 2024), our Supreme Court, on certification from the United States District Court for the District of South Carolina, examined the tort of intentional infliction of emotional distress, and it did so within the context of the SCTCA.

In the analysis necessitated by the certified question, our Supreme Court in *Gore*, 900 S.E.2d at 441, observed as follows:

As the certified question reveals, one limitation upon liability and damages is found in the definition of a recoverable “loss” contained in [§] 15-78-30(f):

“Loss” means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

*Id.* § 15-78-30(f) (emphasis added).

[underlined emphasis in original].

Our Supreme Court next observed as follows, *Id.*, at 441 – 42:

**Gore concedes [§] 15-78-30(f) bars recovery for the intentional infliction of emotional distress**, but she contends she is entitled to pursue recovery for the reckless infliction of emotional distress. In that sense, she splits the tort of outrage into two torts from which she claims she may choose—intentional infliction of emotional distress and reckless infliction of emotional distress. [emphasis supplied].

Our Supreme Court rejected Appellant Gore’s contention that she was entitled to pursue recovery for the reckless infliction of emotional distress, and it concluded as follows, *Id.*, at 443:

**The bar to recovery for the intentional infliction of emotional distress in [§] 15-78-30(f) applies to the subset of claims for the reckless infliction of emotional distress.** [emphasis supplied].

Under the above-quoted ruling by our Supreme Court in *Gore* and by operation of § 15-78-30(f), any recovery by the Plaintiff against USC under her intentional infliction of emotional distress claim is barred. Accordingly, USC respectfully asserts the Plaintiff failed to state facts sufficient to sustain her intentional infliction of emotional distress cause of action against it, and it respectfully moves the Court to dismiss the same pursuant to SCRPC 12(b)(6).

## V. CONCLUSION

For the grounds articulated above, USC respectfully urges the Court to dismiss with prejudice the two (2) claims asserted by the Plaintiff against it in his complaint under SCRPC 12(b)(6), and as stated above, USC respectfully reserves the right to supplement its instant motion with a more robust memorandum of law.

### RESPECTFULLY SUBMITTED:

*s/Lake E. Summers*

Lake E. Summers

S.C. Bar #064146

### Malone, Thompson & Summers LLC

339 Heyward Street

Columbia, South Carolina 29201

(803) 413-2094 - Mobile

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Columbia, South Carolina  
October 31, 2024

**ATTORNEYS FOR THE UNIVERSITY  
OF SOUTH CAROLINA**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

Franklin J. Boyles,

**RESPONSE TO DEFENDANT  
UNIVERSITY OF SOUTH CAROLINA’S  
MOTION TO DISMISS PLAINTIFF’S  
CLAIMS**

Plaintiff,

Civil Action No.: 2024CP4005809

vs.

C and C Masonry, Inc.,  
Juneau Construction Company, LLC., and  
University of South Carolina,

Defendants.

**PLAINTIFF FRANKLIN J. BOYLES’ RESPONSE TO DEFENDANT UNIVERSITY  
OF SOUTH CAROLINA’S MOTION TO DISMISS**

Plaintiff, Franklin J. Boyles, by and through his attorney, Richey and Richey PA, hereby submits this Response to Defendant University Of South Carolina’s Motion to Dismiss. For the reasons set forth below, Plaintiff respectfully requests that the Court deny the Motion.

**STATEMENT OF FACTS**

**A. Background**

C and C Masonry, Inc. (“C and C”) and Juneau Construction Company LLC (“Juneau”) were managing various construction activities for the University of South Carolina (“USC”) Campus Project at the Campus Village. (“USC Campus Project”). USC owned the construction site property. Franklin J. Boyles (“Mr. Boyles”) worked for Island Masonry Construction (“Island Masonry”), a subcontractor of C and C.

On September 13, 2022, Mr. Boyles worked as a forklift operator at USC’s construction site. During this time, while Mr. Boyles attempted to lower a mason box from a mast climber scaffold, the forklift tripped and fell to the ground. The forklift was positioned on an unstable

base of loose sand at the USC Campus Project, and the faulty grounds and soil of USC Campus Project caused the forklift to lose stability and tip over. Despite Mr. Boyles' use of safety measures, the sudden and severe shift in balance caused Mr. Boyles to eject from his seat causing him to fall onto the ground. This incident resulted in substantial acute physical and mental injuries to Mr. Boyles, including psychological distress due to the physical trauma of the event.

Mr. Boyles' injuries required immediate medical attention, and he continues to suffer from the physical and emotional impact of the accident. USC's construction site lacked adequate safety measures to prevent the forklift from tipping over and USC, as the property owner failed to ensure the safety of all individuals on-site by overseeing compliance with safety standards and ensuring that the contractors provided adequate training and resources.

USC Campus Project's faulty grounds and soil were discovered during the discovery produced by USC Campus Project on or about August 22, 2024, from the Deputy General Counsel of the University of South Carolina and emails from Juneau Construction's attorney on or about September 12, 2024. See attached email communications from the herein Defendants' attorneys. In addition, Mr. Boyles' employer failed to produce any discovery evidence or employment records as to his forklift accident despite numerous emails and request for such evidence. See attached email communications from the employer's attorney.

## **B. Procedural History**

On September 25, 2024, Mr. Boyles filed a Summons and Complaint seeking damages against Juneau, C and C, and USC, citing multiple causes of action, including negligence against Juneau, C and C, and USC; violation of workplace safety standards against Juneau and C and C; and intentional infliction of emotional distress against all three Defendants, failure of duty to provide a safe work environment and proper oversight on the construction site. In response, on October 31, 2024, USC filed a Motion to Dismiss Mr. Boyles' claims under South Carolina Rules of Civil Procedure Rule 12(b)(6). USC argues that Mr. Boyles' negligence claim is barred

by the two-year statute of limitation under the South Carolina Tort Claims Act and that he cannot recover for intentional infliction of emotional distress claim against USC. Mr. Boyles now files this Response to USC's Motion to Dismiss.

### STANDARD OF REVIEW

“The decision to grant a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint.” *Clearwater Tr. v. Bunting*, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006) (citing *Carolina Care Plan, Inc. v. United Healthcare Services, Inc.*, 361 S.C. 544, 606 S.E.2d 752 (2004)). “In considering [a Rule 12(b)(6)] motion, the trial court must base its ruling solely on allegations set forth in the complaint.” *Bergstrom v. Palmetto Health All.*, 358 S.C. 388, 395, 596 S.E.2d 42, 45 (2004). “If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper.” *Id.* (citing *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999)). However, in a motion to dismiss based on the statute of limitation, “[e]quitable tolling may be applied where it is justified under all the circumstances.” *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009). The courts apply this doctrine “to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.” *Id.* (internal quotation marks and citation omitted).

### ARGUMENTS

#### I. DOCTRINE OF EQUITABLE TOLLING APPLIES TO MR. BOYLES' NEGLIGENCE CLAIM AGAINST USC.

South Carolina Code Annotated §15-78-110 provides that, “any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered . . . .” South Carolina Code Annotated §15-78-110.

However, “if the claimant first filed a claim[,]” “then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.” *Id.*

“Equitable tolling is judicially created; it stems from the judiciary’s inherent power to formulate rules of procedure where justice demands it.” *Magnolia N. Prop. Owners' Ass'n v. Heritage Cmty., Inc.*, 397 S.C. 348, 371, 725 S.E.2d 112, 125 (Ct. App. 2012) (quoting *Hooper*, 386 S.C. at 115). “Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.” *Id.* (quoting *Hooper*, 386 S.C. at 115).

“The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff . . . [.]” *Ross v. Ross*, 394 S.C. 261, 264, 715 S.E.2d 359, 360 (Ct. App. 2011) (internal quotation marks and citation omitted). “The supreme court explained the doctrine of equitable tolling may be applied to toll the running of the statute of limitations ‘to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits . . . .’” *Id.* (quoting *Hooper*, 386 S.C. at 115).

In South Carolina, equitable tolling has been deemed available where:

- extraordinary circumstances prevented the plaintiff from filing despite his or her diligence.
- the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass.
- the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim.

*Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 620-21 (Ct. App. 2008) (citation omitted). It has also been held that “equitable tolling doctrine should be used sparingly and only when the interests of justice compel its use.” *Hooper*, 386 S.C. at 117.

USC argues that Mr. Boyles’ negligence and intentional infliction of emotional distress

against USC is time-barred by the applicable statute of limitations under §15-78-110. Mr. Boyles was injured while he was at work at USC's construction site on September 13, 2022. Mr. Boyles filed his complaint on September 25, 2024, just twelve days after the statute of limitations expired on September 13, 2024.

Despite exercising due diligence, the Plaintiff encountered exceptional circumstances that prevented a timely filing. The delay occurred due to the complex nature of the legal relationships among the various entities involved at the project site. Specifically, Plaintiff was employed by a subcontractor of a contractor working on the Property owned by USC, creating layers of legal relationships and responsibilities that were not straightforward. Due to the involvement of multiple parties with varying contractual and legal obligations, there was a justifiable delay in determining the proper party to be sued. The USC's relationship to the Project and its responsibilities to the Plaintiff required careful legal examination to establish liability, which contributed to the delay. These factors amount to exceptional circumstances, where the plaintiff was required to resolve complex legal questions about the roles, relationships, and liabilities of multiple entities before bringing the claim.

This case calls for the application of the doctrine of equitable tolling to prevent a technical forfeiture of Mr. Boyles' claim due to a minor delay in filing. The complaint was filed only 12 days after the expiration of the statute of limitations, indicating that the Plaintiff moved promptly to file the complaint once the legal relationships were sufficiently understood. This diligence reflects an intention to comply with the limitations period and underscores that the brief delay was not due to inaction but rather due to resolving complex legal issues.

South Carolina courts recognize equitable tolling to avoid unjust outcomes, particularly where fairness and practicality demand it. In this case, Mr. Boyles suffered serious injuries and ongoing physical and psychological challenges following the accident. Mr. Boyles' slight delay in filing the complaint does not reflect a lack of diligence but rather suggests that his

extraordinary circumstances due to the continuing physical and psychological challenges reasonably affected his ability to meet the precise filing deadline. Additionally, Mr. Boyles' actions indicate a genuine intent to seek redress, as he actively pursued medical treatment and eventually initiated legal proceedings to address his injuries. The Plaintiff exercised due diligence by investigating the contractual relationships among the subcontractor, contractor, and USC to ascertain the appropriate party for the claim.

The South Carolina courts favor equitable tolling where the barring of a claim would affect the fair adjudication of the claim on its merits. Here, Mr. Boyles' claim concerns significant workplace safety issues, and USC, as the property owner, bears a responsibility for ensuring a safe environment, including compliance with safety standards by subcontractors and employees. The brief delay in filing the complaint do not prejudice USC in any meaningful way. Given that the incident occurred on USC's property, USC likely had knowledge of the accident and potential liability risks associated with it. This mitigates any potential prejudice to USC from the brief delay. USC remains fully capable of defending itself against the claims, given the proximity of the filing date to the expiration of the statute of limitations. A 12-day delay does not significantly impact the availability of evidence, witnesses, or USC's ability to defend against the claim, especially since USC likely documented the incident. Courts have the discretion to overlook minimal delays where no harm or prejudice has resulted, especially in cases involving claims of serious injury as here. Thus, the interest of justice and USC's ability to mount a defense weigh against strict enforcement of the statute of limitations.

Moreover, Defendant does not dispute the occurrence of the injury within its premises or its responsibility to provide adequate safety for the invitees who were legally present at the construction site. Hence, it would be unjust to dismiss the claim solely on a technicality when USC's negligence is not disputed. As the court in *Hooper* noted, "equitable tolling may be applied where it is justified under all the circumstances," particularly when dismissing the case

would cause a “gross wrong” to Plaintiff, who has suffered harm due to Defendant’s negligence.

Moreover, USC Campus Project’s faulty grounds and soil were discovered during the discovery produced by USC Campus Project on or about August 22, 2024, from the Deputy General Counsel of the University of South Carolina and emails from Juneau Construction’s attorney on or about September 12, 2024. See attached email communications from the herein Defendants’ attorneys. In addition, Mr. Boyles’ employer failed to produce any discovery evidence or employment records as to his forklift accident despite numerous emails and request for such evidence. See attached email communications from the employer’s attorney. Therefore, the interests of justice strongly support granting Mr. Boyles an opportunity to pursue his claim.

## **II. MR. BOYLES HAS A VALID INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIM AGAINST USC**

A plaintiff can recover for intentional infliction of emotional distress by establishing that:

(1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so 'extreme and outrageous' as to exceed 'all possible bounds of decency' and must be regarded as 'atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was 'severe' so that 'no reasonable man could be expected to endure it.

*Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981).

In South Carolina, “[a] governmental employee is not afforded immunity under the Tort Claims Act for conduct outside the scope of his official duties, or for conduct that amounts to actual fraud, actual malice, or an intent to harm.” *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019) (citing § 15-78-70(b)). Moreover, the South Carolina federal district court has observed that the claims for “assault and battery and claim for intentional infliction of emotional distress fall outside the SCTCA.” *Gee Gary v. S.C. Dep't of Corr.*, No. 8:10-2037-MBS-JDA, 2011 U.S. Dist. LEXIS 76518, at \*4-5 (D.S.C. July 14, 2011). Thus, “a state employee can . . . be held personally liable by a federal court

for some intentional torts committed within the scope of his employment.” *Smith v. Ozmint*, 394 F. Supp. 2d 787, 792 (D.S.C. 2005) (citing *Roberts v. City of Forest Acres*, 902 F.Supp. 662, 671 (D.S.C. 1995) (finding that the governmental entity is not liable under the Act, and the employee is personally liable, when the employee’s conduct falls within the exceptions listed in §15-78-70(b)).

In this case, Mr. Boyles’ intentional infliction of emotional distress claim alleges USC’s intent to harm. Defendant’s motion relies on *Gore v. Dorchester County Sheriff’s Office*, 900 S.E.2d 428, 439 (S.C. 2024) and the definition of “loss” in S.C. Code §15-78-30(f). However, Mr. Boyles requests that like the court in *Gee Gary, supra*, this Court should hold that the intentional infliction of emotional distress claim falls outside the South Carolina Tort Claims Act and should permit the claim to stand.

Here, it is undisputed that Mr. Boyles suffered severe physical and mental injuries. USC’s failure to provide safe premises for persons lawfully present at its premises particularly when it knows the instability of the sand for supporting heavy machinery constitutes a clear and reckless disregard for the safety of workers and others at the construction site. USC’s reckless disregard was a cause for Mr. Boyles’ injuries resulting in emotional distress on Mr. Boyles. Furthermore, Mr. Boyles experiences psychological trauma, including persistent anxiety and depression making it difficult for him to lead a normal life. USC’s conduct in disregarding the safety at the construction site was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. All the psychological trauma caused emotional distress to Mr. Boyles.

As a direct and proximate result of USC’s intentional acts and recklessness, Mr. Boyles sustained serious injuries that are ongoing and causing psychological trauma. All these prevent Mr. Boyles performing his day-to-day activities, adding to his emotional

distress. Hence, Mr. Boyles is entitled to an award of damages in an appropriate amount and for the costs of this action. Therefore, Mr. Boyles' Intentional Infliction of Emotional Distress claim should not be barred and may be permitted to proceed outside the South Carolina Tort Claims Act against the staff/agents of USC Additionally, as IIED claims have a three-year statute of limitations under South Carolina Code Annotated §15-3-530, the Plaintiff's claim remains timely and should be allowed to stand.

### CONCLUSION

Based on the foregoing law and argument, Plaintiff Franklin J. Boyles respectfully requests that this Honorable Court deny Defendant University Of South Carolina's Motion to Dismiss.

Respectfully submitted,

Dated: Monday, November 18, 2024

By: s/ Lola Stradford Richey  
Lola Stradford Richey  
South Carolina Bar Number: 8931  
Attorney for Plaintiff  
Post Office Box 10916  
Greenville, South Carolina 29607  
(864) 467-0503 (Office)  
(864) 467-0646 (Fax)  
[lawfirm@richeyandrichey.com](mailto:lawfirm@richeyandrichey.com)

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Franklin J. Boyles,

**ADDITIONAL RESPONSE TO  
DEFENDANT UNIVERSITY OF SOUTH  
CAROLINA'S MOTION TO DISMISS  
PLAINTIFF'S CLAIMS**

Plaintiff,

Civil Action No.: 2024CP4005809

vs.

C and C Masonry, Inc.,  
Juneau Construction Company, LLC., and  
University of South Carolina,

Defendants.

**PLAINTIFF FRANKLIN J. BOYLES' ADDITIONAL RESPONSE TO DEFENDANT  
UNIVERSITY OF SOUTH CAROLINA'S MOTION TO DISMISS**

Plaintiff Franklin J. Boyles, by and through his attorney Richey and Richey PA, hereby submits this as an additional response to Defendant University of South Carolina's Motion to Dismiss. The Plaintiff requested his Employer's attorney for evidence and records regarding his September 13, 2022, forklift accident at the University of South Carolina ("USC") Campus Project at the Campus Village. ("USC Campus Project"). (See Exhibit One). Finally, Plaintiff issued subpoenas to the Defendants herein on August 12, 2024, and the facts and evidence surrounding his accident were discovered. (See Exhibit Two). Plaintiff received documents from USC Campus Project on August 28, 2024, and Defendant Juneau Construction on September 12, 2024. After reviewing the evidence received from the Defendants on the USC Campus Project and Juneau Construction, the Plaintiff filed the pending action against the University of South Carolina and other Defendants responsible for the accident. (See Exhibit Three). C and C Masonry has yet to respond to the August 12, 2024, subpoena.

## CONCLUSION

Based on additional evidence and responses, Plaintiff Franklin J. Boyles respectfully requests that this Honorable Court deny Defendant University Of South Carolina's Motion to Dismiss.

Respectfully submitted,

Dated: Friday, December 6, 2024

By: s/ Lola Stradford Richey  
Lola Stradford Richey  
South Carolina Bar Number: 8931  
Attorney for Plaintiff  
Post Office Box 10916  
Greenville, South Carolina 29607  
(864) 467-0503 (Office)  
(864) 467-0646 (Fax)  
[lawfirm@richeyandrichey.com](mailto:lawfirm@richeyandrichey.com)

# Exhibit One

ELECTRONICALLY FILED - 2024 Dec 06 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4005809

For Christ's Glory,  
Lola Richey, Attorney at Law  
Richey and Richey, PA  
Office: (864) 467-0503  
Facsimile: (864) 467-0646  
Website: richeyandrichey.com

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**Carrie M. Hurley** <CHurley@hedrickgardner.com> Wed, Jul 31, 2024 at 6:11 PM  
To: Lola Richey <lawfirm@richeyandrichey.com>  
Cc: Tawanda Smith-Gray <tsmith-gray@hedrickgardner.com>, "John W. Rabb, Jr." <JRabb@hedrickgardner.com>

Ms. Richey:

We are continuing to try to communicate with someone at Island Masonry Construction regarding the personnel records and upcoming deposition. As soon as we have any information, we will let you know.

Thank you.

**Carrie M. Hurley** | Paralegal  
Hedrick Gardner Kincheloe & Garofalo, L.L.P.  
1230 Main St. Suite 325 | Columbia, SC 29201  
Phone: 803-727-1203 | Fax: 803-727-1259  
CHurley@hedrickgardner.com | www.hedrickgardner.com



**From:** Lola Richey <lawfirm@richeyandrichey.com>  
**Sent:** Tuesday, July 23, 2024 11:23 AM  
**To:** Carrie M. Hurley <CHurley@hedrickgardner.com>  
**Cc:** Tawanda Smith-Gray <tsmith-gray@hedrickgardner.com>; John W. Rabb, Jr.

<JRabb@hedrickgardner.com>

**Subject:** Re: NOD-CLMT-09.11.24-Boyles, Franklin v. Island Masonry Construction (Frank Crum)

[Redacted]

Good morning Carrie,

Any updates on Franklin Boyles' employment files and the 30(b)(6) witness deposition in this pending matter?

[Redacted]

---

**Lola Richey** <lawfirm@richeyandrichey.com>

Mon, Sep 2, 2024 at 4:44 PM

To: "Carrie M. Hurley" <CHurley@hedrickgardner.com>

Cc: Tawanda Smith-Gray <tsmith-gray@hedrickgardner.com>, "John W. Rabb, Jr." <JRabb@hedrickgardner.com>

Hi Carrie,

Any news on Franklin Boyles' employment files and the 30(b)(6) witness deposition in this pending matter?

[Redacted]

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which arise as a result of e-mail transmission. If verification is required please request a hard-copy version.

 **Notice of Deposition of Claimant - 10-16-2024 - MAILER.pdf**  
127K

**Lola Richey** <lawfirm@richeyandrichey.com> Mon, Sep 9, 2024 at 6:00 PM  
To: "Jillian S. Cataline" <jcataline@hedrickgardner.com>  
Cc: "lolarichey@bellsouth.net" <LOLARICHEY@bellsouth.net>, "John W. Rabb, Jr." <JRabb@hedrickgardner.com>, Tawanda Smith-Gray <tsmith-gray@hedrickgardner.com>, "bscott@scottreporting.com" <bscott@scottreporting.com>

Hi Jillian,

Does your office have the name of the 30(b)(6) witness for Island Masonry Construction?

Also, our law firm has yet to receive Franklin Boyles' employment and payroll records. Please advise.

[Quoted text hidden]

For Christ's Glory,  
Lola Richey Attorney at Law  
Richey and Richey PA  
Office: (864) 467-0503  
Facsimile: (864) 467-0648  
Website: [richeyandrichey.com](http://richeyandrichey.com)

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**Jillian S. Cataline** | Paralegal  
Hedrick Gardner Kincheloe & Garofalo, L.L.P.  
1230 Main St. Suite 325 | Columbia, SC 29201  
Phone: 803-727-1218 | Fax: 803-727-1259  
jcataline@hedrickgardner.com | www.hedrickgardner.com



**From:** Lola Richey <lawfirm@richeyandrichey.com>  
**Sent:** Monday, September 9, 2024 12:01 PM  
**To:** Jillian S. Cataline <jcataline@hedrickgardner.com>  
**Cc:** lolarichey@bellsouth.net; Carrie M. Hurley <CHurley@hedrickgardner.com>; nickiacampbell4@gmail.com; John W. Rabb, Jr. <JRabb@hedrickgardner.com>  
**Subject:** Re: Depo Dates - S.C.WCC: 2216656 - Franklin Boyles v. Island Masonry Construction

...  
...  
[Quoted text hidden]

---

**lolarichey@bellsouth.net** <lolarichey@bellsouth.net> Mon, Sep 9, 2024 at 2:48 PM  
To: Lola Richey <lawfirm@richeyandrichey.com>, "Jillian S. Cataline" <jcataline@hedrickgardner.com>  
Cc: "Carrie M. Hurley" <churley@hedrickgardner.com>, "nickiacampbell4@gmail.com" <nickiacampbell4@gmail.com>, "John W. Rabb, Jr." <jrabb@hedrickgardner.com>

Hi Jillian and John,

I have Franklin Boyles' deposition rescheduled to October 16, 2024 starting at 10:00 via ZOOM.

Any luck with the employer witness 30(b)(6) deposition and Franklin Boyles' employment records?

Also, our office reviewed Franklin Boyles' case and noted that he is bring drastically unpaid in his temporary total disability. Franklin Boyles only worked for Island Masonry for a short-period of time. At your earliest convenience, please provide our law office compensation wages for a similarly situated employee from Island Masonry since Mr. Boyles did not complete 52 weeks of work prior to his September 13, 2022, work accident.

For Christ's Glory,  
Lola Richey, Attorney at Law  
Richey and Richey, PA  
Office: (864) 467-0503  
Facsimile: (864) 467-0646  
Website: richeyandrichey.com

[Quoted text hidden]

# Exhibit Two

---

**Richey and  
Richey, P.A.  
Attorneys at Law**

33 Market Point Drive  
Greenville, South Carolina 29607

(864) 467-0503 Office  
(888) 882-4878 Toll-Free  
(864) 467-0646 Facsimile  
lawfirm@richeyandrichey.com Email

---

Workers' Compensation  
Personal Injury  
Criminal Law

August 12, 2024

Attn: Records Custodian  
Juneau Construction Company  
210 Interstate North Parkway SE, Suite 700  
Atlanta, Georgia 30339

Juneau Construction Company  
c/o Registered Agent  
2 Office Park Court, Suite 103  
Columbia, South Carolina 29223

University Of South Carolina - Columbia  
c/o Registered Agent  
2 Office Park Court, Suite 103  
Columbia, South Carolina 29223

Walter "Terry" Parham  
General Counsel and Executive Director of Compliance Programs  
University Of South Carolina - Columbia  
109 Osborne Administrative Building  
Columbia, South Carolina 29208

Attn: Registered Agent  
C and C Masonry Inc.  
Post Office Box 36  
Roopville, Georgia 30170

Attn: Registered Agent  
C and C Masonry, Inc.  
790 West Highway 5  
Roopville, Georgia 30170

RE: *Franklin J. Boyles -vs- Island Masonry Construction*  
Date of Accident: September 13, 2022  
WCC File Number: 2216656  
Claim Number: 22G99K456275

Dear Records Custodian:

Please find enclosed for service upon you in the above-referenced matter a Form 27 Subpoena to produce documents. **As you will note, the Subpoena is requesting copies of your entire investigative file including all records, reports, accident reports, videos, photos, phone calls, emails, or messages regarding the incident occurring on Tuesday, September 13, 2022, at the University of South Carolina Student Village Main Campus located in Columbia, South Carolina involving a forklift accident and our client, Franklin J. Boyles and Island Masonry Construction. Please also include any copies of any contracts, agreements, accident reports, videos, pictures, and correspondence confirming details of the arrangements and contracts regarding Island Masonry Construction, Juneau Construction Company, C and C Masonry, and the University of South Carolina, Main Campus at Columbia, South Carolina and the Overturned Rough Terrain Forklift Super Duty with Outriggers.**

As you are aware, under South Carolina Rule of Civil Procedure 45, a Subpoena must be responded to appropriately or a Motion to Quash must be filed. If upon receipt of this subpoena you cannot voluntarily produce these records, and a deposition is necessary, please let me know immediately. Otherwise, as always, we appreciate your assistance and cooperation in this matter and look forward to receiving these records from you.

Our law office looks forward to working with you. If you should have any questions, please feel free to call our law office directly.

Yours truly,

*Lola S. Richey*

Lola S. Richey  
Attorney at Law

Enclosure

Copy: Franklin Juan Boyles  
2816 Howell Avenue  
Apartment B  
Columbia, South Carolina 29203

John W. Rabb, Jr.  
Special Counsel  
Hedrick Gardner Kincheloe & Garofalo, L.L.P.  
1230 Main Street, Suite 325  
Columbia, South Carolina 29201



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Claimant's Name: Franklin J. Boyles SSN: 249-27-1809 Employer's Name: Island Masonry Construction  
Address: 3019 Howell Court, Apt J Address: 301 McCullough Drive, Suite 400  
City: Columbia State: SC Zip: 29203 City: Charlotte State: S Zip: 28212  
Home Phone: 80 26 001 Work Phone: \_\_\_\_\_ Insurance Carrier: Benchmark Insurance Co.  
Preparer's Name: Lola S. Richey Law Firm: Richey and Richey, PA Preparer's Phone #: \_\_\_\_\_

**SUBPOENA**

To: Registered Agent: Juneau Construction Company, University of South Carolina and C and C Masonry

**YOU ARE COMMANDED** to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

**PLACE OF TESTIMONY:**

ROOM:

DATE AND TIME:

**YOU ARE COMMANDED** to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

**PLACE OF DEPOSITION:**

DATE AND TIME:

**YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

**LIST OF DOCUMENTS:** All contracts, agreements, and investigative correspondence, related to the project occurring at USC Student Village on September 13, 2022. See attached.

**PLACE:** Richey and Richey PA  
33 Market Point Drive, Greenville SC 29607

**DATE AND TIME:** August 22, 2024

**YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

**PREMISES:**

DATE AND TIME:

*THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.*

RICHEY AND RICHEY, PA  
ATTORNEYS AT LAW

864 467 0503

August 12, 2024

ISSUING OFFICER'S SIGNATURE AND TITLE  
Greenville, South Carolina 29603

PHONE NUMBER

DATE

Serve this form according to R.67-211(C). Refer to R.67-211 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5675.

## **ADDENDUM TO SUBPOENA**

RE: *Franklin J. Boyles -vs- Island Masonry Construction*  
Date of Accident: September 13, 2022  
WCC File Number: 2216656  
Claim Number: 22G99K456275

**The Subpoena is requesting copies of your entire investigative file including all records, reports, accident reports, videos, photos, phone calls, emails, or messages regarding the incident occurring on Tuesday, September 13, 2022, at the University of South Carolina Student Village Main Campus located in Columbia, South Carolina involving a forklift accident and our client, Franklin J. Boyles and Island Masonry Construction. Please also include any copies of any contracts, agreements, accident reports, videos, pictures, and correspondence confirming details of the arrangements, investigative reports, and contracts regarding Island Masonry Construction, Juneau Construction Company, C and C Masonry, and the University of South Carolina, Main Campus at Columbia, South Carolina and the Overturned Rough Terrain Forklift Super Duty with Outriggers.**

**The records and documents covered by the terms of this subpoena should be produced whether kept in a physical file or folder, or kept loose, scattered, at large, free form, etc.**

**Unless otherwise indicated, this subpoena seeks original documents and records. Copies or reproductions are unacceptable unless authorized by separate cover.**

**Records, documents, and files sought herein should be produced whether in written, recorded, electronic, digital, or any other format.**

# Exhibit Three



Lola Richey <lawfirm@richeyandrichey.com>

**MGQ-Juneau-16674-RE: Service of Process - South Carolina - Franklin J. Boyles vs. Island Masonry Construction**

1 message

**Marty G. Quirk** <mgq@quirklaw.com>  
To: "lawfirm@richeyandrichey.com" <lawfirm@richeyandrichey.com>  
Cc: Sarah Boustead <sjb@quirklaw.com>

Mon, Aug 19, 2024 at 1:40 PM

Lola:

Thank you for getting on the telephone with me today. Per our conversation, we represent Juneau Construction Company, LLC ("Juneau"), are in receipt of the attached, and will get all Juneau documents to you by September 12, 2024. My contact information is below. Thanks.

-Marty

Martin G. Quirk, Esq.  
Quirk & Quirk, LLC  
300 Century Springs West  
6000 Lake Forrest Drive, NW  
Atlanta, Georgia 30328  
Website: www.quirklaw.com  
Email: mgq@quirklaw.com  
Facsimile: (404) 671-9135  
Direct Line: (404) 218-9500  
Main Lines: (855) 213-5224, ext. 702  
(404) 252-1425, ext. 702

Paralegal: Sarah Boustead (770) 313-6216; Email: sjb@quirklaw.com; Main Line Ext. 726


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 **SC Subpoena.pdf**  
298K

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Lola Richey <lawfirm@richeyandrichey.com>

**RE: Subpoena to USC re WCC File 2216656**

2 messages

**White, Henry** <HJWHITE@mailbox.sc.edu>  
To: Lola Richey <lawfirm@richeyandrichey.com>  
Cc: "lolarichey@bellsouth.net" <lolarichey@bellsouth.net>

Wed, Aug 28, 2024 at 11:19 AM

Ms. Richey,

Below are links you can use to download the requested PDF and JPEG links and the contracts responsive to your subpoena.

Links

Contracts

Please let me know if you have any questions or difficulties downloading the records.

Henry J. White  
Deputy General Counsel  
Office of the General Counsel  
University of South Carolina  
Osborne Administration Building, Suite 109  
915 Bull Street  
Columbia, SC 29208  
803-777-3763 (direct line)  
hjwhite@mailbox.sc.edu

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**From:** Lola Richey <lawfirm@richeyandrichey.com>  
**Sent:** Saturday, August 24, 2024 11:42 AM  
**To:** White, Henry <HJWHITE@mailbox.sc.edu>  
**Cc:** lolarichey@bellsouth.net  
**Subject:** Re: Subpoena to USC re WCC File 2216656

Good morning, Henry,

I hope all is well.

Our office has received your discovery responses. Please provide the completed documents with the PDF and JPEG links from Mr. Franklin Boyles's work-lift accident on September 13, 2022. I noticed various PDF and JPEG links in your report. Please provide these supporting documents from the Juneau Construction incident.

Thanks in advance for your prompt assistance. I have attached your responses provided to our office for your reference.

On Thu, Aug 22, 2024 at 4:12 PM White, Henry <HJWHITE@mailbox.sc.edu> wrote:

Ms. Richey,

This is in response to the workers' compensation case subpoena dated August 12, 2024, you issued to the University seeking records pertaining to an incident that occurred on September 13, 2022, involving a forklift accident and Franklin J. Boyles and Island Masonry Construction. I have attached the responsive records located by the University. We are still gathering the requested contracts and will provide them to you next week.

Please let me know if you have any questions.

Henry J. White  
Deputy General Counsel  
Office of the General Counsel  
University of South Carolina  
Osborne Administration Building, Suite 109  
915 Bull Street  
Columbia, SC 29208  
803-777-3763 (direct line)  
hjwhite@mailbox.sc.edu

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ELECTRONICALLY FILED - 2024 Dec 06 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4005809

--  
For Christ's Glory,  
Lola Richey, Attorney at Law  
Richey and Richey, PA  
Office: (864) 467-0503  
Facsimile: (864) 467-0646  
Website: richeyandrichey.com

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---

**lolarichey@bellsouth.net** <lolarichey@bellsouth.net> Wed, Aug 28, 2024 at 1:28 PM  
To: Lola Richey <lawfirm@richeyandrichey.com>, "White, Henry" <hjwhite@mailbox.sc.edu>

Mr. White,

Received and thank you.

For Christ's Glory,  
Lola Richey, Attorney at Law  
Richey and Richey, PA  
Office: (864) 467-0503  
Facsimile: (864) 467-0646  
Website: richeyandrichey.com

„Kilobits/sec“

Re: Civil Action Number: 2024-CP-40-05809. Franklin J. Boyles v. C and C Masonry, Inc. et. al

From: lolarichey@bellsouth.net (lolarichey@bellsouth.net)  
To: hugh.gallagher@mgclaw.com; lawfirm@richeyandrichey.com; trippett.boineau@mgclaw.com; mflynn@collinsandlacy.com  
Cc: alisha.tabor@mgclaw.com; cstegmaier@collinsandlacy.com; cameron@dmorrison-law.com; summers@mtsolawfirm.com  
Date: Wednesday, February 5, 2025 at 02:36 PM EST

Thanks everyone for letting me know about the non-responsiveness of Island Masonry Construction.

Blessings.

For Christ's Glory,  
Lola Richey, Attorney at Law  
Richey and Richey, PA  
Office: (864) 467-0503  
Facsimile: (864) 467-0646  
Website: [richeyandrichey.com](http://richeyandrichey.com)

On Wednesday, February 5, 2025 at 01:45:01 PM EST, Molly Flynn <mflynn@collinsandlacy.com> wrote:

Lola,

We have not had any communication or responses from Island Masonry either.

Molly

**From:** Hugh Gallagher <Hugh.Gallagher@mgclaw.com>  
**Sent:** Wednesday, February 5, 2025 1:41 PM  
**To:** Lola Richey <lawfirm@richeyandrichey.com>; Trippett Boineau <trippett.boineau@mgclaw.com>  
**Cc:** Alisha Tabor <alisha.tabor@mgclaw.com>; lolarichey@bellsouth.net; Christian Stegmaier <cstegmaier@collinsandlacy.com>; Molly Flynn <mflynn@collinsandlacy.com>; cameron@dmorrison-law.com; summers@mtsolawfirm.com  
**Subject:** RE: Civil Action Number: 2024-CP-40-05809. Franklin J. Boyles v. C and C Masonry, Inc. et. al

You don't often get email from [hugh.gallagher@mgclaw.com](mailto:hugh.gallagher@mgclaw.com). [Learn why this is important](#)

**Caution:** This is an external email. Please take care when clicking links or opening attachments.

Lola,

I hope you are doing well. We have had no response or communication from Island Masonry.

Best,

Hugh



**Hugh Gallagher, Attorney**  
[hugh.gallagher@mgclaw.com](mailto:hugh.gallagher@mgclaw.com)  
1320 Main St, 10th Floor, Columbia, SC 29201  
**Mail:** PO Box 12519, Columbia, SC 29211-2519  
**Main:** 803-779-2300 | **Direct:** 803-227-4949 | **Fax:** 803-748-0526  
[VCARD](#)

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Please consider the environment before printing this email.

**From:** Lola Richey <lawfirm@richeyandrichey.com>  
**Sent:** Friday, January 31, 2025 2:11 PM  
**To:** Trippett Boineau <trippett.boineau@mgclaw.com>; Hugh Gallagher <Hugh.Gallagher@mgclaw.com>  
**Cc:** Alisha Tabor <alisha.tabor@mgclaw.com>; lolarichey@bellsouth.net; cstegmaier@collinsandlacy.com; mflynn@collinsandlacy.com; cameron@dmorrison-law.com; summers@mtsolawfirm.com  
**Subject:** Civil Action Number: 2024-CP-40-05809. Franklin J. Boyles v. C and C Masonry, Inc. et. al

Hi Folks,

I hope all is well with you

Our office wanted to determine if Island Masonry Construction responded to the third-party complaint filed and whether your office has received any discovery from Island Masonry Construction.

Island Masonry Construction has been unresponsive in Franklin Boyles' workers' compensation case with producing any records and evidence. Any responses would be appreciated.

Thanks in advance.

--  
For Christ's Glory,  
Lola Richey, Attorney at Law  
Richey and Richey, PA  
Office: (864) 467-0503  
Facsimile: (864) 467-0646  
Website: [richeyandrichey.com](http://richeyandrichey.com)

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**Molly Flynn**

Direct: 803.255.0404  
Main: 803.256.2660  
Fax: 803.771.4484  
Vcard: [download vcard](#)  
Web: [www.collinsandlacy.com](http://www.collinsandlacy.com)

1330 Lady Street, 6th Floor  
Columbia, SC 29201



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Lola Richey <lawfirm@richeyandrichey.com>

**Re: Boyles v. Juneau - Answer Ext/AOS (C&L 2235-100)**

7 messages

**lolarichey@bellsouth.net** <lolarichey@bellsouth.net> Thu, Oct 24, 2024 at 1:34 PM  
To: "Candace M. Oxner" <coxner@collinsandlacy.com>  
Cc: "Molly E. Flynn" <mflynn@collinsandlacy.com>, Christian Stegmaier <cstegmaier@collinsandlacy.com>, "Stephanie M. Roberts" <sroberts@collinsandlacy.com>, Lola Richey <lawfirm@richeyandrichey.com>

Hi Candace and Molly,

Thank you for your email.

Per our conversation with Molly, your office has agreed to accept service on behalf of Juneau Construction and your client's Answer is now due November 25, 2024.

I look forward to working with your law office.

For Christ's Glory,  
Lola Richey, Attorney at Law  
Richey and Richey, PA  
Office: (864) 467-0503  
Facsimile: (864) 467-0646  
Website: [richeyandrichey.com](http://richeyandrichey.com)

On Thursday, October 24, 2024 at 12:58:52 PM EDT, Candace M. Oxner <coxner@collinsandlacy.com> wrote:

Good afternoon Lola,

We hope you are doing well and appreciate your time today to speak with Molly. Pursuant to your conversation, we are confirming your office will provide an Acceptance of Service regarding this matter and Juneau's Answer deadline will be based upon the date of acceptance. If you are agreement, we would like to accept service tomorrow, making Juneau's Answer due on Monday, November 25<sup>th</sup> (30 days would be 11.24.2024 which is a Saturday).

Please confirm the above at your earliest convenience. If you would like us to draft an Acceptance of Service, we are happy to so and send the same to you for your approval prior to filing.

Thank you,

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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Franklin J. Boyles

Plaintiff,

vs.

C and C Masonry, Inc.,  
Juneau Construction Company, LLC, and  
University of South Carolina,

Defendants,

ACCEPTANCE OF SERVICE

Civil Action Number: 2024CP4005809

Service of the Summons and Complaint filed on September 25, 2024, is hereby accepted by Attorney Maire Elizabeth Flynn of Collins and Lacy, P.C. on behalf of the herein Defendant, Juneau Construction Company, LLC.

Date: Monday, October 28, 2024

s/Molly Flynn (with permission)

CHRISTIAN STEGMAIER

SC Bar No.: 68648

[cstegmaier@collinsandlacy.com](mailto:cstegmaier@collinsandlacy.com)

MOLLY FLYNN

SC Bar No.: 100927

[mflynn@collinsandlacy.com](mailto:mflynn@collinsandlacy.com)

1330 Lady Street, Sixth Floor (29201)

Post Office Box 12487

Columbia, SC 29211

803.256.2660 (voice)

803.771.4484 (fax)

Columbia, South Carolina

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Franklin J. Boyles v. C and C Masonry, Inc., Juneau Construction Compa (Claim No.: C00368369\_01)

From: Liz Davison (liz.davison@mgclaw.com)  
To: lawfirm@richeyandrichey.com; lolarichey@bellsouth.net  
Cc: trippett.boineau@mgclaw.com; hugh.gallagher@mgclaw.com  
Date: Friday, December 6, 2024 at 01:15 PM EST

**SENT ON BEHALF OF TRIPPETT BOINEAU**

Dear Lola,

I hope you are doing well. It was good speaking with you on the phone this week. Per our conversation, I have drafted a Motion to Set Aside Default along with a Consent Order setting aside any default that may exist as to C and C Masonry, Inc. If the Motion and Order meet with your approval, please let us know if we can e-sign on your behalf and file the same with the Court. As we discussed, based upon your agreement to set aside the Default, I will be coming into the case for C and C Masonry. We look forward to working with you on the matter. I hope you have a great weekend. With kind regards, I am



Yours truly,  
Trippett/ltd  
Attachments



**Elizabeth Davison, Legal Assistant**  
[liz.davison@mgclaw.com](mailto:liz.davison@mgclaw.com)  
1320 Main St, 10th Floor, Columbia, SC 29201  
Mail: PO Box 12519, Columbia, SC 29211-2519  
Main: 803-779-2300 | Direct: 803-227-4914 | Fax: 803-748-0526

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-  Consent Order to Set Aside Default.doc  
38kB
-  48048365.doc  
37.5kB

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

FRANKLIN J. BOYLES, )  
 )  
Plaintiff, )

Civil Action No. 2024-CP-40-05809

vs. )

**MOTION TO SET ASIDE DEFAULT**

C AND C MASONRY, INC., JUNEAU )  
CONSTRUCTION COMPANY, LLC, )  
AND UNIVERSITY OF SOUTH )  
CAROLINA, )

Defendants. )

TO: LOLA STRATFORD RICHEY, ATTORNEY FOR PLAINTIFF:

You will please take notice that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant, C and C Masonry, Inc., by and through its undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas, Richland County, for an order setting aside any entry of default and/or default judgment against this Defendant pursuant to Rules 55(c) and 60(b) of the South Carolina Rules of Civil Procedure. The basis of this motion is as follows: (1) there exists good cause to set aside the entry of default and/or default judgment in this case; (2) the default occurred due to mistake and/or excusable neglect; (3) this motion has been made within a reasonable time of the discovery of the default; (4) this Defendant was improperly and/or insufficiently served; (5) this Defendant was improperly placed into default without proper notice and without proper service; and, (6) this Defendant has valid defenses to the Plaintiff's Complaint. Accordingly, Defendant, , requests that this Court set aside any entry of default and/or default judgment, deny any motions by the Plaintiff for entry of default and/or default judgment, and allow this matter to proceed to trial.

This motion may be supported by affidavits, memoranda, briefs and evidence which may be received and/or required by the Court.

MCANGUS GOUDELOCK & COURIE, LLC

---

R. TRIPPETT BOINEAU, III (SC Bar No. 73769)  
trippett.boineau@mgclaw.com  
HUGH M. GALLAGHER, IV (SC Bar No. 105222)  
hugh.gallagher@mgclaw.com  
1320 Main Street, 10th Floor  
Columbia, South Carolina 29201  
Telephone: (803) 779-2300  
Facsimile: (803) 748-0526  
ATTORNEY FOR C AND C MASONRY, INC.

December 6, 2024

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
  
FRANKLIN J. BOYLES, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
C AND C MASONRY, INC., JUNEAU )  
CONSTRUCTION COMPANY, LLC, )  
AND UNIVERSITY OF SOUTH )  
CAROLINA, )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2024-CP-40-05809

**CONSENT ORDER TO SET  
ASIDE DEFAULT**

This matter appears before me on the Motion of the Defendant C and C Masonry, Inc. and consent of the Plaintiff requesting an Order to set aside Default for C and C Masonry, Inc. in the above captioned matter.

This matter was filed in the Richland County Court of Common Pleas on September 25, 2024. One of the Defendants named in the case was C and C Masonry, Inc. There has been no proof of service filed as to C and C Masonry, Inc. to date. It is alleged that C and C Masonry, Inc. has been served with a copy of the Summons and Complaint. In order to avoid the time and expense of filing and arguing a Motion to Set Aside Default, the Plaintiff and C and C Masonry, Inc. have agreed to resolve the issue by way of waiving any default which might exist, setting aside any Entry of Default which may have been entered and allowing C and C Masonry, Inc. until January 2, 2025 to Answer or otherwise plead in the above matter

Now, therefore, **IT IS ORDERED** that based upon the above, there is no Entry of Default entering default judgment against C and C in this matter and C and C Masonry, Inc. has until January 2, 2025 to Answer or otherwise plead.

**AND IT IS SO ORDERED**

Richland, South Carolina  
December 9, 2024

*Electronic Signature to Follow*

I CONSENT:

s/Lola S. Richey

---

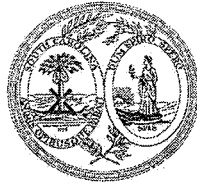
Lola S. Richey, Esquire  
Richey & Richey  
Attorney for Plaintiff

I SO MOVE AND CONSENT:

s/R. Trippett Boineau, III

---

R. Trippett Boineau, III, Esquire  
Bar No: 73769  
McAngus Goudelock & Courie, LLC  
Attorney for Defendant C and C Masonry, Inc.



Richland Common Pleas

**Case Caption:** Franklin J Boyles vs C And C Masonry Inc , defendant, et al  
**Case Number:** 2024CP4005809  
**Type:** Order/Set Aside Judgment

So Ordered

s/ Daniel Coble, 2774

Electronically signed on 2024-12-10 14:44:47 page 3 of 3

## Gee Gary v. S.C. Dep't of Corr.

United States District Court for the District of South Carolina

July 14, 2011, Decided; July 14, 2011, Filed

C/A No. 8:10-2037-MBS-JDA

### Reporter

2011 U.S. Dist. LEXIS 76518 \*

Eugene Gee Gary, Plaintiff, vs. South Carolina Department of Corrections; Jon Ozmint, Director, et al.; Jane and John Doe, SCDC Officers; and other Unknown Defendants, Official and Individual Capacity, Defendants.

**Subsequent History:** Magistrate's recommendation at [Gary v. S.C. Dep't of Corr., 2012 U.S. Dist. LEXIS 72077 \(D.S.C., Apr. 24, 2012\)](#)

**Prior History:** [Gee Gary v. S.C. Dep't of Corr., 2011 U.S. Dist. LEXIS 81727 \(D.S.C., June 3, 2011\)](#)

**Counsel:** [\*1] Eugene Gee Gary, Plaintiff, Pro se, Ridgeville, SC.

For South Carolina Department of Corrections, Other Unknown Defendants, Official and Individual Capacity, SCDC Officers, John Doe, Jane Doe, Jon Ozmint, Director, et al, Defendants: G Wade Cooper, LEAD ATTORNEY, Hugh Willcox Buyck, Buyck Law Firm, Mt Pleasant, SC.

**Judges:** Margaret B. Seymour, United States District Judge.

**Opinion by:** Margaret B. Seymour

## Opinion

### ORDER

Plaintiff Eugene G. Gary is an inmate currently in the custody of the South Carolina Department of Corrections (SCDC) who currently is incarcerated at the Lieber Correctional Institution in Ridgeville, South Carolina. Plaintiff, proceeding pro se, filed this action in the Court of Common Pleas for Dorchester County, South Carolina, alleging that he was denied medical care in violation of his constitutional rights (Seventh Cause of Action). He also asserts state law claims arising under the South Carolina Tort Claims Act, [S.C.](#)

[Code Ann. §§ 15-78-10 et seq.](#) (SCTCA); [S.C. Code Ann. § 24-1-130](#); and common law. Specifically, Plaintiff alleges negligence in responding to grievances and maintaining Plaintiff's property; negligence in exposing him to chemical munitions; assault and battery; and intentional infliction [\*2] of emotional distress. The case was removed to this court on August 4, 2010 based on federal question jurisdiction. See [42 U.S.C. § 1983](#); [28 U.S.C. §§ 1331, 1441](#). An amended complaint was filed on November 8, 2010.

This matter is before the court on motion to dismiss filed by Defendants on December 28, 2010. Defendants assert that Plaintiff's complaint is barred by the SCTCA two-year statute of limitations, which provides, in relevant part, that claims brought pursuant to the SCTCA are barred "unless commenced within two years after the date of the loss was or should have been discovered[.]" [S.C. Code Ann. § 15-78-110](#). On December 29, 2010, an order was issued pursuant to [Roseboro v. Garrison, 528 F.2d 309 \(4th Cir. 1975\)](#), advising Plaintiff of the summary judgment procedures and the possible consequences of failing to respond adequately. Plaintiff filed a response in opposition to the motion to dismiss on March 8, 2011.

In accordance with [28 U.S.C. § 636\(b\)](#) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pretrial handling. On June 3, 2011, the Magistrate Judge filed a Report and Recommendation in which she noted that the [\*3] [§ 1983](#) claim (Seventh Cause of Action) was not subject to the SCTCA limitations period. The Magistrate Judge further determined that, based upon a state court filing date of April 1, 2010, only claims asserted by Plaintiff that were or should have been discovered on or after April 1, 2008 are timely. Accordingly, the Magistrate Judge recommended that Defendants' motion to dismiss be granted with respect to (1) Plaintiff's Third and Fourth Causes of Action relating to grievances filed in October 2007 and November 2007; (2) Plaintiff's Fifth and Sixth Causes of Action; (3) Plaintiff's Eighth and Ninth Causes of Action

relating to items discovered missing on March 20, 2008; and (4) Plaintiff's claim for intentional infliction of emotional distress. The Magistrate Judge further recommended that Defendants' motion to dismiss be denied as to (1) Plaintiff's First and Second Causes of Action; (2) Plaintiff's Third and Fourth Causes of Action relating to grievances filed in March 2008, March 20, 2008, and May 9, 2008; (3) Plaintiff's Sixth and Seventh Cause of Action; (4) Plaintiff's Eighth and Ninth Causes of Action relating to items discovered missing on May 5, 2008; and (5) Plaintiff's [\*4] cause of action alleging a violation of duty of care pursuant to [S.C. Code Ann. § 24-1-130](#). No party filed objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. [Mathews v. Weber, 423 U.S. 261, 270, 96 S. Ct. 549, 46 L. Ed. 2d 483 \(1976\)](#). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. [28 U.S.C. § 636\(b\)\(1\)](#). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." [Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 \(4th Cir. 2005\)](#).

The court has carefully reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference, with the following modification. The SCTCA disclaims liability for conduct that constitutes intent to harm. [S.C. Code Ann. § 15-78-70\(b\)](#). Plaintiff's Sixth Cause of Action for assault [\*5] and battery and claim for intentional infliction of emotional distress fall outside the SCTCA. [See e.g., Smith v. Ozmint, 394 F. Supp. 2d 787 \(D.S.C. 2005\)](#).

South Carolina has a three-year statute of limitations for personal injury actions. [See S.C. Code Ann. 15-3-530\(5\)](#). Plaintiff's claims of assault and battery and intentional infliction of emotional distress arise from an incident that allegedly took place on February 27, 2008. Thus, Plaintiff's Sixth Cause of action for assault and battery and claim for intentional infliction of emotional distress are timely.

Defendants' motion to dismiss is **granted** with respect to (1) Plaintiff's Third and Fourth Causes of Action relating to grievances filed in October 2007 and November

2007; (2) Plaintiff's Fifth Cause of Action; (3) Plaintiff's Eighth and Ninth Causes of Action relating to items discovered missing on March 20, 2008. Defendants' motion to dismiss is **denied** as to (1) Plaintiff's First and Second Causes of Action; (2) Plaintiff's Third and Fourth Causes of Action relating to grievances filed in March 2008, March 20, 2008, and May 9, 2008; (3) Plaintiff's Sixth and Seventh Causes of Action; (4) Plaintiff's Eighth and Ninth Causes [\*6] of Action relating to items discovered missing on May 5, 2008; (5) Plaintiff's cause of action alleging a violation of duty of care pursuant to [S.C. Code Ann. § 24-1-130](#); and (6) Plaintiff's claim for intentional infliction of emotional distress. The case is recommitted to the Magistrate Judge for further pretrial handling.

#### IT IS SO ORDERED.

/s/ Margaret B. Seymour

United States District Judge

Columbia, South Carolina

July 14, 2011.

---

End of Document

MGQ-Juneau-16674-RE: Service of Process - South Carolina - Franklin J. Boyles vs. Island Masonry Construction

6 messages Mon, Aug 19, 2024 at 1:40 PM

Marty G. Quirk <mgq@quirklaw.com> To: "lawfirm@richeyandrichey.com" <lawfirm@richeyandrichey.com> Cc: Sarah Boustead <sjb@quirklaw.com>

Lola: Thank you for getting on the telephone with me today. Per our conversation, we represent Juneau Construction Company, LLC ("Juneau"), are in receipt of the attached, and will get all Juneau documents to you by September 12, 2024. My contact information is below. Thanks. -Marty

Martin G. Quirk, Esq. Quirk & Quirk, LLC 300 Century Springs West 6000 Lake Forrest Drive, NW Atlanta, Georgia 30328 Website: www.quirklaw.com Email: mgq@quirklaw.com Facsimile: (404) 671-9135 Direct Line: (404) 218-9500 Main Lines: (855) 213-5224, ext. 702 (404) 252-1425, ext. 702 Paralegal: Sarah Boustead (770) 313-6216; Email: sjb@quirklaw.com; Main Line Ext. 726

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SC Subpoena.pdf 298K

Lola Richey <lawfirm@richeyandrichey.com> To: "Marty G. Quirk" <mgq@quirklaw.com> Cc: Sarah Boustead <sjb@quirklaw.com> Mon, Aug 19, 2024 at 4:54 PM

Hi Marty, Thank you so much. Our office has confirmed receipt of your email and the new subpoena deadline of September 12, 2024.

For Christ's Glory. Lola Richey, Attorney at Law Richey and Richey, PA Office: (864) 467-0503 Facsimile: (864) 467-0646 Website: richeyandrichey.com

This e-mail transmission is confidential. It may contain information which is privileged or subject to other confidentiality requirements and exemptions from disclosure under applicable law. It is intended solely for the use of the individual named above. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution or copying of this communication is prohibited. If you have this e-mail transmission in error, please immediately notify the sender by telephone collect and return the original transmission to the sender by U.S. Mail. Thank you.

Lola Richey <lawfirm@richeyandrichey.com> To: Caitlin Clancy <Caitlin@yarboroughhapplegate.com> Cc: nickiacampbell4@gmail.com, Emily Cowan <emily@yarboroughhapplegate.com>, David Yarborough <David@yarboroughhapplegate.com> Wed, Aug 28, 2024 at 3:58 PM

Caitlin, Please see below the email our office received from Juneau Construction's attorney's office. Our office will forward any responses upon receipt.

SC Subpoena.pdf 298K

Marty G. Quirk <mgq@quirklaw.com> To: "lawfirm@richeyandrichey.com" <lawfirm@richeyandrichey.com> Cc: Sarah Boustead <sjb@quirklaw.com> Thu, Sep 12, 2024 at 10:37 AM

Lola: Per our agreement, attached are the documents responsive to your attached subpoena. Please let me know if you have any questions or concerns. Thanks. -Marty

Martin G. Quirk, Esq. Quirk & Quirk, LLC 300 Century Springs West 6000 Lake Forrest Drive, NW Atlanta, Georgia 30328 Website: www.quirklaw.com Email: mgq@quirklaw.com Facsimile: (404) 671-9135 Direct Line: (404) 218-9500 Main Lines: (855) 213-5224, ext. 702 (404) 252-1425, ext. 702 Paralegal: Sarah Boustead (770) 313-6216; Email: sjb@quirklaw.com; Main Line Ext. 726

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From: Marty G. Quirk Sent: Monday, August 19, 2024 1:40 PM To: lawfirm@richeyandrichey.com Cc: Sarah Boustead (sjb@quirklaw.com) <sjb@quirklaw.com> Subject: MGQ-Juneau-16674-RE: Service of Process - South Carolina - Franklin J. Boyles vs. Island Masonry Construction

Lola: [Quoted text hidden]

3 attachments SC Subpoena.pdf 298K 20-001-UofSC-Campus\_Village-13-C\_amp\_C\_Masonry\_Forklift\_accident\_2-2024-08-22.pdf 661K 20001-04010\_Exe\_Sub\_C&CMasonry.pdf 15027K

Lola Richey <lawfirm@richeyandrichey.com> To: "Marty G. Quirk" <mgq@quirklaw.com> Cc: Sarah Boustead <sjb@quirklaw.com> Thu, Sep 12, 2024 at 10:50 AM

Good morning Marty, I hope all is well with you. Thank you so much for your prompt response. Also, do you or your clients have any contact information or documentation between Juneau Construction, C and C Masonry, and Island Masonry Construction?

Lola Richey <lawfirm@richeyandrichey.com> To: Caitlin Clancy <Caitlin@yarboroughhapplegate.com>, David Yarborough <David@yarboroughhapplegate.com> Cc: Emily Cowan <emily@yarboroughhapplegate.com>, nickiacampbell4@gmail.com Thu, Sep 12, 2024 at 10:52 AM

Good morning Caitlin and David, I hope this email finds you well. Please see below and attached the subpoena response our law firm received today from Juneau Construction regarding Franklin J. Boyles' September 13, 2022, for lift accident. Our office will keep you posted with any more updates in this matter.

Forwarded Conversation Subject: MGQ-Juneau-16674-RE: Service of Process - South Carolina - Franklin J. Boyles vs. Island Masonry Construction

From: Marty G. Quirk <mgq@quirklaw.com> Date: Mon, Aug 19, 2024 at 1:40 PM To: lawfirm@richeyandrichey.com <lawfirm@richeyandrichey.com> Cc: Sarah Boustead <sjb@quirklaw.com>

Lola: Thank you for getting on the telephone with me today. Per our conversation, we represent Juneau Construction Company, LLC ("Juneau"), are in receipt of the attached, and will get all Juneau documents to you by September 12, 2024. My contact information is below. Thanks. -Marty

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From: Lola Richey <lawfirm@richeyandrichey.com> Date: Mon, Aug 19, 2024 at 4:54 PM To: Marty G. Quirk <mgq@quirklaw.com> Cc: Sarah Boustead <sjb@quirklaw.com>

Hi Marty, Thank you so much. Our office has confirmed receipt of your email and the new subpoena deadline of September 12, 2024.

For Christ's Glory. Lola Richey, Attorney at Law Richey and Richey, PA Office: (864) 467-0503 Facsimile: (864) 467-0646 Website: richeyandrichey.com

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From: Lola Richey <lawfirm@richeyandrichey.com> Date: Wed, Aug 28, 2024 at 3:58 PM To: Caitlin Clancy <Caitlin@yarboroughhapplegate.com> Cc: <nickiacampbell4@gmail.com>, Emily Cowan <emily@yarboroughhapplegate.com>, David Yarborough <David@yarboroughhapplegate.com>

Caitlin, Please see below the email our office received from Juneau Construction's attorney's office. Our office will forward any responses upon receipt.

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Good morning Marty, I hope all is well with you. Thank you so much for your prompt response. Also, do you or your clients have any contact information or documentation between Juneau Construction, C and C Masonry, and Island Masonry Construction?

[Quoted text hidden]

4 attachments SC Subpoena.pdf 298K SC Subpoena.pdf 298K 20-001-UofSC-Campus\_Village-13-C\_amp\_C\_Masonry\_Forklift\_accident\_2-2024-08-22.pdf 661K 20001-04010\_Exe\_Sub\_C&CMasonry.pdf 15027K

**Subpoena to USC re WCC File 2216656**  
7 messages

**White, Henry** <HJWHITE@mailbox.sc.edu>  
To: "lolarichey@bellsouth.net" <lolarichey@bellsouth.net>  
Cc: "lawfirm@richeyandrichey.com" <lawfirm@richeyandrichey.com>

Thu, Aug 22, 2024 at 4:12 PM

Ms. Richey,

This is in response to the workers' compensation case subpoena dated August 12, 2024, you issued to the University seeking records pertaining to an incident that occurred on September 13, 2022, involving a forklift accident and Franklin J. Boyles and Island Masonry Construction. I have attached the responsive records located by the University. We are still gathering the requested contracts and will provide them to you next week.

Please let me know if you have any questions.

Henry J. White  
Deputy General Counsel  
Office of the General Counsel  
University of South Carolina  
Osborne Administration Building, Suite 109  
915 Bull Street  
Columbia, SC 29208  
803-777-3763 (direct line)  
hjwhite@mailbox.sc.edu

**2 attachments**  
 **20-001-UofSC-Campus\_Village-13-C\_amp\_C\_Masonry\_Forklift\_accident\_2-2022-09-21.pdf**  
622K  
 **Campus Village Forklift Incident Pictures 9-13-2022.pdf**  
4834K

**lolarichey@bellsouth.net** <lolarichey@bellsouth.net>  
To: "White, Henry" <hjwhite@mailbox.sc.edu>  
Cc: "lawfirm@richeyandrichey.com" <lawfirm@richeyandrichey.com>

Fri, Aug 23, 2024 at 10:26 AM

Good morning Henry,

Thank you so much for these documents and our office will await for the additional discovery items.

For Christ's Glory,  
Lola Richey, Attorney at Law  
Richey and Richey, PA  
Office: (864) 467-0503  
Facsimile: (864) 467-0646  
Website: [richeyandrichey.com](http://richeyandrichey.com)

[Quoted text hidden]

**Lola Richey** <lawfirm@richeyandrichey.com>  
To: "White, Henry" <HJWHITE@mailbox.sc.edu>  
Cc: "lolarichey@bellsouth.net" <lolarichey@bellsouth.net>

Sat, Aug 24, 2024 at 11:42 AM

Good morning, Henry,

I hope all is well.

Our office has received your discovery responses. Please provide the completed documents with the PDF and JPEG links from Mr. Franklin Boyles's work-lift accident on September 13, 2022. I noticed various PDF and JPEG links in your report. Please provide these supporting documents from the Juneau Construction incident.

Thanks in advance for your prompt assistance. I have attached your responses provided to our office for your reference.

[Quoted text hidden]

For Christ's Glory,  
Lola Richey, Attorney at Law  
Richey and Richey, PA  
Office: (864) 467-0503  
Facsimile: (864) 467-0646  
Website: [richeyandrichey.com](http://richeyandrichey.com)

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622K

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To: Lola Richey <lawfirm@richeyandrichey.com>  
Cc: "lolarichey@bellsouth.net" <lolarichey@bellsouth.net>

Wed, Aug 28, 2024 at 11:19 AM

Ms. Richey,

Below are links you can use to download the requested PDF and JPEG links and the contracts responsive to your subpoena.

[Links](#)

[Contracts](#)

Please let me know if you have any questions or difficulties downloading the records.

[Quoted text hidden]

**lolarichey@bellsouth.net** <lolarichey@bellsouth.net>  
To: Lola Richey <lawfirm@richeyandrichey.com>, "White, Henry" <hjwhite@mailbox.sc.edu>

Wed, Aug 28, 2024 at 1:28 PM

Mr. White,

Received and thank you.

For Christ's Glory,  
Lola Richey, Attorney at Law  
Richey and Richey, PA  
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To: Megan Early-Soppa <megan@yarboroughapplegate.com>, "John W. Rabb" <JRabb@hedrickgardner.com>  
Cc: "Carrie M. Hurley" <CHurley@hedrickgardner.com>, nickiacampbell4@gmail.com

Wed, Aug 28, 2024 at 3:36 PM

Hi Megan and John,

I hope this email finds you well.

Please find the attached discovery below our law firm has received from the University of South Carolina regarding Franklin J. Boyles' September 13, 2022, work-related forklift accident.

**Forwarded Conversation**  
**Subject: Subpoena to USC re WCC File 2216656**

[Quoted text hidden]

From: **lolarichey@bellsouth.net** <lolarichey@bellsouth.net>  
Date: Wed, Aug 28, 2024 at 1:28 PM  
To: Lola Richey <lawfirm@richeyandrichey.com>, White, Henry <hjwhite@mailbox.sc.edu>

Mr. White,

Received and thank you.

For Christ's Glory,  
Lola Richey, Attorney at Law  
Richey and Richey, PA  
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803-777-3763 (direct line)  
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Website: [richeyandrichey.com](http://richeyandrichey.com)

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Date: Wed, Aug 28, 2024 at 1:28 PM  
To: Lola Richey <lawfirm@richeyandrichey.com>, White, Henry <hjwhite@mailbox.sc.edu>

Mr. White,

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For Christ's Glory,  
Lola Richey, Attorney at Law  
Richey and Richey, PA  
Office: (864) 467-0503  
Facsimile: (864) 467-0646  
Website: [richeyandrichey.com](http://richeyandrichey.com)

[Quoted text hidden]

**3 attachments**  
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4834K  
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622K

ELECTRONICALLY FILED 2024 Nov 18 3:52 PM - RICHLAND COMMON PL.EAS - CASE#2024CP4089589

**RECEIVED**

**Jul 31 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

---

Appellate Case Number: 2025-000221

---

Franklin J. Boyles,

Appellant,

v.

C and C Masonry, Inc.,  
Juneau Construction Company, LLC., and  
University of South Carolina,

Respondents.

---

PROOF OF SERVICE

---

I certify that I served the RECORD ON APPEAL on the counsel of record via email at the following address:

Lake Summers [summers@mtsolaw.com](mailto:summers@mtsolaw.com)  
Molly E. Flynn [mflynn@collinsandlacy.com](mailto:mflynn@collinsandlacy.com)  
Cameron W. DeBoy [cdeboy@collinsandlacy.com](mailto:cdeboy@collinsandlacy.com)  
Christian Stegmaier [cstegmaier@collinsandlacy.com](mailto:cstegmaier@collinsandlacy.com)  
Stephanie M. Roberts [sroberts@collinsandlacy.com](mailto:sroberts@collinsandlacy.com)  
Candace M. Oxner [coxner@collinsandlacy.com](mailto:coxner@collinsandlacy.com)

Respectfully submitted,

By: s/ *Lola Stradford Richey*

Lola Stradford Richey  
South Carolina Bar Number: 8931  
RICHEY and RICHEY, PA  
Attorney for the Appellant  
Post Office Box 10916  
Greenville, South Carolina 29603  
(864) 467-0503 (Office)  
(864) 467-0646 (Facsimile)  
[lawfirm@richeyandrichey.com](mailto:lawfirm@richeyandrichey.com)  
South Carolina Bar Number: 8931

Dated: Thursday, July 31, 2025

---

**Richey and  
Richey, P.A.  
Attorneys at Law**

33 Market Point Drive  
Greenville, South Carolina 29607

(864) 467-0503 Office

(888) 882-4878 Toll-Free

(864) 467-0646 Facsimile

[lawfirm@richeyandrichey.com](mailto:lawfirm@richeyandrichey.com) Email

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Workers' Compensation  
Personal Injury  
Criminal Law

July 31, 2025

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: *Franklin J. Boyles v. C and C Masonry, Inc.*  
Appellate Case No. 2025-000221

Dear Ms. Kitchings:

Enclosed for filing the RECORD ON APPEAL and PROOF OF SERVICE in the above-referenced matter. If you should have any questions, please do not hesitate to contact our office.

With best wishes and warmest regards, I am

Truly yours,

*Lola S. Richey*

Lola S. Richey  
Attorney at Law  
Enclosures

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