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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Case No. 2021-CP-01-00076

William F. Nickles, IV, Respondent,

v.

Howar Equipment, Inc., Sonoco Products Company, Palmetto State Transportation, LLC, KSC
Logistics, Inc., and John Doe Corporation, Defendants,

of which KSC Logistics, Inc. is the Appellant.

RECORD ON APPEAL

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INDEX

ORDERS

Form 4 Order Granting Stipulation of Dismissal Without Prejudice, filed September 2, 2021	5
Motion and Order for Continuance, filed April 8, 2022	8
Form 4 Order filed November 15, 2023 dismissing Howar Equipment Inc. and Palmetto State Transportation LLC With Prejudice.....	10
Order on Defendant KSC Logistics, Inc.'s Motion to Set Aside Default, filed February 7, 2024.....	13
Order Assessing Damages Against KSC Logistics, Inc., filed February 29, 2024	18
Order on Defendant's Motion to Reconsider and Setoff, filed July 31, 2024	24

PLEADINGS

Summons and Complaint, filed March 24, 2021	31
Affidavit of Service on Defendant KSC Logistics, Inc., filed April 12, 2021	35
Stipulation of Dismissal Without Prejudice as to Defendant KSC Logistics, Inc., filed August 23, 2021	36
Certificate of Service by Mail as to Defendant KSC Logistics, Inc., filed August 30, 2021	37
Consent to Amend Complaint, filed November 9, 2021	38
Amended Complaint, filed November 9, 2021	39
Affidavit of Service or Non-Service on Defendant KSC Logistics, Inc., filed February 7, 2022.....	50
Affidavit of Default as to Defendant KSC Logistics, Inc., filed February 7, 2022	51
Plaintiff's Motion to Set Damages and Fees on Default, filed February 7, 2022	53
Stipulation of Dismissal as to Defendant Sonoco Products Company Only, filed October 28, 2022.....	54
Stipulation of Dismissal with Prejudice Pursuant to Rule 41 as to Defendants Howar Equipment, Inc. and Palmetto State Transportation, LLC Only, filed November 14, 2023	55

Motion of Defendant KSC Logistics, Inc., to Set Aside Entry of Default, filed December 7, 2023.....	57
Motion of Defendant KSC Logistics, Inc., to Continue the December 18, 2023 Hearing on Plaintiff’s Motion for Damages, filed December 12, 2023	59
Plaintiff’s Memorandum in Response to Defendant KSC Logistics, Inc.’s Motion to Set Aside Default, filed December 18, 2023	62
Plaintiff’s Return to Defendant KSC Logistics, Inc.’s Motion for Continuance, filed December 18, 2023	71
Defendant KSC Logistics, Inc.’s Brief in Support of Motion to Set Aside Entry of Default, filed January 29, 2024.....	73
Plaintiff’s Additional Response to Defendant KSC Logistics, Inc.’s Motion to Set Aside Default, filed January 30, 2024, including Exhibits A-C.....	79
Exhibit A: Affidavit of April Powell	81
Exhibit B: Prysmian Group Purchase Order	83
Exhibit C: Cincinnati Email to Hite & Stone with Complaint Attached	90
Defendant KSC Logistics, Inc.’s Motion to Alter or Amend and, in the Alternative, to Provide for Setoff, filed March 11, 2024	103
Defendant KSC Logistics, Inc.’s Brief in Support of Motion to Alter or Amend and, in the Alternative, to Provide for Setoff, filed March 11, 2024, including Exhibits 1-6	105
Exhibit 1: Prysmian Incident Report Form.....	115
Exhibit 2: Excerpts from Deposition of Charles Ouzts	121
Exhibit 3: Excerpts from Deposition of Cecil Talley, Jr.	132
Exhibit 4: Email Correspondence Between Chuck Kelly of KSC Logistics and Attorney Thomas E. Hite III of Hite & Stone, with Stipulation of Dismissal Without Prejudice Attached	149
Exhibit 5: Excerpts from Deposition of Randall Gary.....	157
Exhibit 6: Affidavit of Brenda Nance, Including Exhibit A	163
Plaintiff’s Memorandum in Response to Defendant KSC Logistics, Inc.’s Motion to Reconsider and Offset, filed May 28, 2024, including Exhibits A and B	180
Exhibit A: Notice of Hearing	192

Exhibit B: Excerpts from Depositions of Charles Ouzts and Cecil Talley, Jr.; Prysmian Group Purchase Order	196

TRANSCRIPTS

Transcript of Record of Hearing on December 18, 2023	204
Direct Examination of Raymond Jeffrey Horne by Attorney Hite	210
Cross-Examination of Raymond Jeffrey Horne by Attorney Atkinson	222
Direct Examination of William F. Nickles, IV. by Attorney Hite	224
Cross-Examination of William F. Nickles, IV. by Attorney Atkinson	241
Direct Examination of Glenn Adams by Attorney Hite	246
Cross-Examination of Glenn Adams by Attorney Atkinson	252
Direct Examination of Dr. Oliver Wood by Attorney Hite	257
Cross-Examination of Dr. Oliver Wood by Attorney Atkinson	266
Exhibits	274
Transcript of Record of Hearing on January 30, 2024	330
Transcript of Record of Hearing on May 30, 2024	345
Direct Examination of Chuck Kelley by Attorney Atkinson	352
Cross-Examination of Chuck Kelley by Attorney Hite	355
Redirect Examination of Chuck Kelley by Attorney Atkinson	361
Direct Examination of Cecil Talley by Attorney Atkinson	363
Cross-Examination of Cecil Talley by Attorney Hite	365
Exhibits	380

EXHIBITS AND OTHER

Electronic Docket for Case No. 2021-CP-01-00076	393

Affidavit of William Ray Kelley, filed December 7, 2023 398

Second Affidavit of William Ray Kelley, filed March 11, 2024.....400

CERTIFICATE OF COUNSEL

Certificate of Counsel 409

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP0100076

William F Nickles Iv
PLAINTIFF(S)

Palmetto State Transportation Llc 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:

Stipulation Of Dismissal Without Prejudice

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/02/2021 .

Ksc Logistics Inc

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.



Abbeville Common Pleas

Case Caption: William F Nickles Iv VS Palmetto State Transportation Llc ,
defendant, et al
Case Number: 2021CP0100076
Type: Order/Electronic Form 4

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

Electronically signed on 2021-09-02 15:37:48 page 3 of 3

ELECTRONICALLY FILED - 2021 Sep 02 4:07 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2021-CP-01-00076
COUNTY OF ABBEVILLE	)	
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	MOTION AND ORDER FOR
	)	CONTINUANCE
V.	)	
	)	
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	
	)	

THE Plaintiff's Motion to Set Damages on Default is scheduled to come before the Court on April 8, 2022 at the appointed time of 9:30 AM. Thomas E. Hite, III, attorney for the Plaintiff is respectfully requesting that this Motion be continued past this term of court due to Plaintiff needing more time to properly serve the *Pro Se* Defendant, KSC Logistics, Inc. with Notice of Hearing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

That this matter is hereby continued until the next term of Common Pleas Court in Abbeville County.

IT IS SO ORDERED.

PRESIDING JUDGE OF THE EIGHTH
JUDICIAL CIRCUIT

_____, 2022
GREENWOOD, SOUTH CAROLINA

I SO MOVE:

s/Thomas E. Hite, III
THOMAS E. HITE, III
ATTORNEY FOR PLAINTIFF



Abbeville Common Pleas

Case Caption: William F Nickles Iv VS Palmetto State Transportation Llc ,
defendant, et al
Case Number: 2021CP0100076
Type: Order/Continuance

It is so ordered

Eugene C. Griffith, Jr. 2154

Electronically signed on 2022-04-08 08:40:12 page 2 of 2

ELECTRONICALLY FILED - 2022 Apr 08 9:36 AM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP0100076

William F Nickles Iv
PLAINTIFF(S)

Palmetto State Transportation Llc 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), SCRCPP; ☒ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ 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:

This action dismisses Howar Equipment Inc and Palmetto State Transportaion LLC with prejudice only.

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 11/15/2023 .

John Doe Corporation
Ksc Logistics Inc

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.



Abbeville Common Pleas

Case Caption: William F Nickles Iv VS Palmetto State Transportation Llc ,
defendant, et al
Case Number: 2021CP0100076
Type: Order/Electronic Form 4

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

Electronically signed on 2023-11-15 07:57:03 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2021-CP-01-00076
COUNTY OF ABBEVILLE	)	
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	
	)	ORDER ON DEFENDANT
V.	)	KSC LOGISTICS INC. MOTION
	)	TO SET ASIDE DEFAULT
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	

THIS MATTER came before the Court on January 30, 2024 in the Virtual Courtroom of the Honorable Donald B. Hocker at the appointed time of 11:00 AM. Present at the hearing were Thomas E. Hite, III, appearing on behalf of the Plaintiff, and Daniel Atkinson, appearing on behalf of Defendant KSC Logistics, Inc.

NOW THEREFORE BASED UPON MEMORANDUMS OF LAW, STATEMENTS OF COUNSEL AND EVIDENCE PRESENTED TO THIS COURT, I HEREBY MAKE THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. On April 12, 2021, the Plaintiff filed a Summons and Complaint against KSC and others as a result of his November 10, 2018 injury. KSC Registered Agent and President William Ray Kelley notified Plaintiff's counsel that they did not "deal in" high voltage reels during the time frame of the incident. Based on this information, KSC was dismissed without prejudice on August 23, 2021 and was notified that if it was discovered that this information was inaccurate

that they would be added back to the case.

2. Based on newly discovered information contradictory to Defendant's previous position, the Plaintiff filed an Amended Summons and Complaint on November 9, 2021.

3. The Amended Summons and Complaint was properly served on KSC's registered agent on December 16, 2021.

4. KSC did not respond to the Amended Summons and Complaint within thirty days. When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning. *Stark Truss Co. v. Superior Construction Corp.*, 360 S.C. 503, 602 S.E.2d 99 (Ct.App.2004). Pursuant to *Rule 12(a), SCRPC* unless an extension is granted, a defendant must serve his answer within thirty days after the service of the complaint upon him.

5. On February 7, 2022 an Affidavit of Default was filed with the Clerk of Court for Abbeville County. *Rule 55(a) SCRPC* provides that when a party fails to respond to a complaint, the clerk shall record an entry of default.

6. Notice of Hearing and Notice of Motion to Set Damages on Default was served on KSC on November 21, 2023.

7. KSC made no formal appearance until December 7, 2023.

8. On December 7, 2023 KSC filed a Motion to Set Aside Entry of Default.

9. The standard for granting relief from an entry of default under *Rule 55(c)* is "good cause." The law requires the moving party to put forth a satisfactory explanation for the default, and then the trial court must consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009)

citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App.1989).

10. KSC has not provided an adequate explanation for the default. KSC's excuse set forth in the Affidavit of President and Registered Agent of KSC, William Ray Kelley, is not a justifiable explanation for KSC's failure to answer. This scenario is very similar to the law of the case in *Dixon v. Besco Engineering, Inc.* (S.C.App. 1995) 320 S.C. 174, 463 S.E.2d 636, in which the defendant failed to establish sufficient cause for relief from an entry of default judgment where he mistakenly believed that plaintiff's counsel had given him an unlimited extension of time to respond to the complaint, and he thus failed to retain counsel until approximately 2 months after the extended deadline had passed.

11. KSC is beyond any reasonable amount of time that would allow for setting aside of the entry of default.

12. KSC did not present evidence sufficient to establish a meritorious defense.

13. Due to KSC's failure to show good cause, the time that has passed from date of service to date of the Defendant's motion, as well as the undue burden of further litigation, I find granting Defendant's Motion to Set Aside Entry of Default would unduly prejudice the Plaintiff.

14. Based upon the foregoing, and in my sound discretion, I find that the entry of default shall not be set aside because the Defendant did not present a satisfactory explanation for "good cause" and did not meet the factors set out in *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. at 465, 381 S.E.2d at 501-02.

15. At the hearing of this matter both counsel for Plaintiff and Defendant presented sufficient documentation and made thoughtful and well-crafted arguments to articulate their side's

position. That the ruling in this matter was not caused by the action or inaction of Defendant's counsel. Defendant's counsel is not at fault for the default.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

That the Defendant's Motion to Set Aside Entry of Default is denied.

AND IT IS SO ORDERED.

DONALD B. HOCKER
COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

FEBRUARY ____, 2024
LAURENS, SOUTH CAROLINA



Abbeville Common Pleas

Case Caption: William F Nickles Iv VS Palmetto State Transportation Llc ,
defendant, et al
Case Number: 2021CP0100076
Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

Electronically signed on 2024-02-07 10:30:39 page 5 of 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2021-CP-01-00076
COUNTY OF ABBEVILLE	)	
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	
	)	ORDER ASSESSING DAMAGES
V.	)	AGAINST KSC LOGISTICS, INC.
	)	
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	
	)	

THIS MATTER came before the Court on December 18, 2023 in the Abbeville County Courtroom of the Honorable Donald B. Hocker at the appointed time of 10:00 AM. Present at the hearing was the Plaintiff and his attorney Thomas E. Hite, III, and Daniel Atkinson, appearing on behalf of Defendant KSC Logistics, Inc.

This motion arises from a complaint seeking damages from negligence, gross negligence, negligence *per se*, and willful, wonton and reckless conduct related to the Plaintiff's injuries suffered from a November 10, 2018 incident in Abbeville County.

A trial judge has considerable discretion regarding the amount of damages, both actual or punitive. *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 310, 594 S.E.2d 867, 873 (Ct. App. 2004)(internal citations omitted.) The Court having conducted the damages hearing, and by the analysis set forth below, determines an appropriate measure of damages suffered by the Plaintiff to be **Nine Hundred Seventy-Two Thousand One Hundred and Seventeen and 33/100 (\$972,117.33) DOLLARS** against Defendant KSC Logistics, Inc. only.

BACKGROUND AND PROCEDURAL HISTORY

William F. Nickles, IV was gainfully employed at Prysmian Cable, located in Abbeville County. On November 10, 2018, Mr. Nickles sustained serious injuries when a D-Ring on a High Voltage Cable Reel snapped, causing a High Voltage Cable to fall approximately 15 feet onto him. As a result of this incident, Mr. Nickles suffered severe and permanent injuries to his shoulder, back, and leg. The impact of the fall rendered Mr. Nickles unconscious and resulted in a severe broken leg.

On April 12, 2021, the Plaintiff filed a Summons and Complaint against KSC and others as a result of his November 10, 2018 injury. Plaintiff later filed an Amended Summons and Complaint on November 9, 2021. The Amended Summons and Complaint were properly served on KSC's registered agent on December 16, 2021. KSC did not respond to the Amended Summons and Complaint within thirty days and was subsequently held in default and the Defendant's Motion To Set Aside Default was denied in previous Order of this Court.

LEGAL STANDARD AND DETERMINATION OF DAMAGES

Rule 55, SCRCP, provides in part:

If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties if a proper demand therefor has been made pursuant to Rule 38 and not withdrawn, or when and as required by any statute. SCRCP 55(b)(2)

No motion was before the court for reference, nor was there a jury demand made by the Defendant. Therefore, the Court held the hearing and acted as the finder of fact without objection.

The Court applied the burden of proof of by the preponderance of the evidence for actual

damages. The amount of actual damages in a default action must be proved by the preponderance of the evidence. *Jackson v. Midlands Human Res. Ctr.*, 296 S.C. 526, 529, 374 S.E.2d 505, 507 (Ct.App.1988) (“A judgment for money damages must be warranted by the proof of the party in whose favor it is rendered.”). At the damages hearing, the defendant may only participate by cross-examining witnesses and objecting to evidence. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241–42, 246 S.E.2d 880, 882 (1978) (citations omitted).

The Court now proceeds to determine the appropriate damages owed to Mr. Nickles based on the aforementioned facts and subsequent procedural developments. In reaching a decision on the damages due to the Plaintiff, the Court heard testimony from several key witnesses, each providing critical information in their areas of expertise.

Jeff Horne, a fact witness, provided detailed testimony about the incident that led to the Plaintiff's injuries. He described the accident as severe, with a faulty cable mechanism leading to gruesome injuries for the Plaintiff. Mr. Horne's account helped to establish the direct cause of the physical harm suffered by the Plaintiff.

Dr. Oliver Wood, an expert in economics, presented testimony which was accepted by the Court without objection following a proper voir dire by the Defense. Dr. Wood testified to the total economic losses sustained by the Plaintiff, providing a detailed analysis of past and future wage loss, medical expenses, and other financial impacts resulting from the injury.

Glen Adams, a Vocational Expert whose expertise was also accepted without objection, provided testimony on the Plaintiff's ability to work and earn a livelihood post-incident. His insights contributed to the Court's understanding of the Plaintiff's reduced earning capacity and the vocational rehabilitation needs following the injury.

Each expert witness was duly qualified in their respective fields and their testimonies were

given considerable weight in the Court's determination of damages.

Plaintiff William F. Nickles, IV, also took the stand. His testimony offered the Court valuable insight into the personal and emotional impact of the injuries he sustained. The Plaintiff spoke to the pain and suffering, the loss of enjoyment of life, and the mental and emotional anguish he experienced as a direct result of the incident.

The Court, having considered the testimonies provided, the evidence presented, and the applicable laws and precedents, and applying the burden of proof by the preponderance of the evidence for actual damages as required by *Jackson v. Midlands Human Res. Ctr.*, 296 S.C. 526, 529, 374 S.E.2d 505, 507 (Ct.App.1988), finds in favor of the Plaintiff, William F. Nickles, IV.

NOW THEREFORE BASED UPON EVIDENCE PRESENTED TO THIS COURT, AND THE PROCEDURAL HISTORY NOTED, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Defendant, KSC Logistics, Inc., is in default as determined by prior Order of this Court.
2. The Plaintiff suffered severe and lasting injuries as a result of the Defendant's negligence.
3. The Plaintiff has proven by the preponderance of the evidence that the actual damages are apportioned as follows:
 - Medical Expenses: \$62,849.33
 - Financial Loss: \$759,268.00
 - Pain and Suffering: \$75,000.00
 - Loss of Enjoyment of Life, Mental Anguish, and Suffering: \$75,000.00
 - **Total Damages \$972,117.33**
4. That judgment of **Nine Hundred Seventy-Two Thousand One Hundred and Seventeen**

and 33/100 (\$972,117.33) DOLLARS be entered in favor of the Plaintiff against KSC Logistics, Inc.against Defendant KSC Logistics, Inc.

AND IT IS SO ORDERED.

DONALD B. HOCKER
COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

FEBRUARY ____, 2024
LAURENS, SOUTH CAROLINA



Abbeville Common Pleas

Case Caption: William F Nickles Iv VS Palmetto State Transportation Llc ,
defendant, et al
Case Number: 2021CP0100076
Type: Order/Damages

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

Electronically signed on 2024-02-29 09:49:24 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2021-CP-01-00076
COUNTY OF ABBEVILLE	)	
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	
	)	ORDER ON DEFENDANT'S
HOWAR EQUIPMENT, INC.,	)	MOTION TO RECONSIDER AND SETOFF
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	
	)	

THIS MATTER came before the Court on Thursday, May 30, 2024 at 11:00 a.m. on Defendant KSC Logistics Inc.'s Motion to Alter or Amend and in the Alternative to Provide for Setoff. Thomas E. Hite, III, counsel for Plaintiff William F. Nickles, IV (hereinafter "Plaintiff Nickles") and Daniel Atkinson, counsel for Defendant KSC Logistics Inc. ("hereinafter Defendant KSC") appeared in person at the Laurens County Courthouse.

Based on the memorandum of law submitted by the parties, witness testimony, oral arguments presented at the hearing, and other evidence submitted to the Court, and for the reasons more fully set forth below, the Defendant's Motion to Alter or Amend is DENIED and the Motion for Setoff is GRANTED.

Brief Summary of the Facts

On April 12, 2021, the Plaintiff filed a Summons and Complaint against Defendant KSC and others for severe and permanent injuries he received after being struck by a faulty reel. Plaintiff's counsel dismissed KSC without prejudice on August 23, 2021. Thereafter, on November

19, 2021, the Plaintiff filed an Amended Summons and Complaint, renaming KSC as a Defendant in the case. The Affidavit of Service filed with the Court shows Plaintiff's process server personally served William Kelley, KSC's President and Registered Agent, with the Amended Summons and Complaint on December 16, 2021.

Plaintiff filed an Affidavit of Default on February 7, 2022. Plaintiff served a Notice of Hearing and Notice of Motion to Set Damages on Default on KSC on November 27, 2023. Counsel for Defendant KSC filed an appearance on December 7, 2023, along with a Motion to Set Aside Entry of Default. The undersigned held a hearing on the Motion to Set Damages on Default on December 18, 2023. On January 30, 2024, the undersigned also heard Defendant's Motion to Set Aside Entry of Default. On February 7, 2024, the undersigned issued an order denying Defendant KSC's Motion to Set Aside Entry of Default for lack of good cause. On February 29, 2024, an Order Assessing Damages was issued in the amount of \$972,117.33 against Defendant KSC.

On March 11, 2024, Defendant KSC's counsel filed a Motion to Alter or Amend pursuant to Rules 59 and 60, South Carolina Rules of Civil Procedure, and, in the alternative, to provide for setoff. Plaintiff Nickles' Counsel filed a Memorandum in Opposition, and the matter was heard on May 30, 2024, as stated above.

Standard of Review

"[T]he power to set aside a default judgment is addressed to the sound discretion of the trial court whose decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Fassett v. Evans*, 364 S.C. 42, 49, 610 S.E. 2d 841, 845 (Ct. App. 2005). It is well-established South Carolina law that a party cannot use a Rule 59(e) motion to present an issue the party could have raised prior to judgment but did not. *Hickman v. Hickman*, 301 S.C. 455,

456, 392 S.E. 2d 481, 482 (Ct. App. 1990). Pursuant to Rule 60(b) of the S.C. Rules of Civil Procedure, after the filing of a proper motion, “the court may relieve a party ... from a final judgment, order or proceeding for ... newly discovered evidence which *by due diligence* could not have been discovered in time to move for a new trial under Rule 59(b).” Rule 60(b), SCRCPP (emphasis added). The standard for granting relief from a default judgment under Rule 60(b) is *more rigorous* than the standard for granting relief from an entry of default under Rule 55(c). *Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E. 2d 535, 536 (Ct. App. 1987) (emphasis added). In order to be relieved from a default judgment pursuant to Rule 60(b), “a more particularized showing of mistake, inadvertence, excusable neglect, fraud, misrepresentation, or other misconduct of an adverse party” is required, making it “more difficult for a party to avoid default” once a judgment has been entered. *Sundown Operating Co. v. Intedg Industries, Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888-889 (2009). Finally, “when considering whether to grant relief from final judgments, ‘a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute.’” *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004)(citing *Chewning v. Ford Motor Co.*, 354 S.C. 72, 80, 579 S.E.2d 605, 609 (2003)).

Law and Analysis

Defendant KSC alleges, among other factors, that newly discovered evidence in its possession, namely deposition testimony and e-mails located within the office manager’s control, establish that it had no liability in the matter and that the Court should grant its Motion to Alter or Amend the Default Judgment and Order. In order to obtain relief based on newly discovered evidence under Rule 60, SCRCPP, the moving party must show that the evidence (1) is of such magnitude that had the court known of it earlier, the outcome would likely have been different; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the

issue; and (5) is not merely cumulative or impeaching. *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct.App.2004). In analyzing the evidence before the Court and arguments presented by Counsel pursuant to the test set forth in *Lanier*, I find that although the evidence submitted by Defendant KSC is likely enough to establish factors 1, 2, 4 and 5, factor 3 has not been met.

The *Lanier* court expounded upon factor 3, holding “evidence is not newly discovered evidence for the purposes of Rule 60(b)(2) where the evidence was (1) known to the party at the time of trial, and (2) in the party’s possession.” *Lanier*, 364 S.C. at 218, 612 S.E.2d at 459. If either or both of these factors are found in the affirmative, then the party’s attempt to find the evidence “newly discovered” fails. There is no question the evidence was in the party’s possession, as the e-mails Defendant references were accessible to the office manager and located on Defendant’s computer / hardware. Further, as mentioned above, the evidence should have been known to the party because Plaintiff referenced the depositions at issue in a Memorandum filed with this Court and served on Defendant’s Counsel. At a minimum, the Defendant had constructive knowledge of the existence of the evidence at issue. Further, it is without question that the evidence was in the possession of the Defendant.

In *Lanier*, the Court looked at the case of *Lans v. Gateway 2000, Inc.*, 110 F.Supp.2d 1 (D.D.C.2000), in analyzing whether evidence was in the party’s possession. In that case, Lans cited a Clarification Contract as the basis for the Rule 60 motion, noting he was aware of the contract at the time of trial but could not locate it. The *Lans* court explained that “documents in the possession of a party’s agent, such as an attorney or accountant, are deemed to be in the party’s possession because the party retains control over the documents.” *Id.* (citations omitted). In the instant case, the e-mails at issue were in the possession of Defendant KSC’s office manager. KSC’s

President, Chuck Kelley, admits in an Affidavit that only after the arguments on the Motion to Set Aside Default did he “initiate[] a search of third parties’ emails, to which he was not a party,” including emails sent to his office manager. *Defendant’s Memorandum*, p. 5. In fact, in Mr. Kelley’s Second Affidavit, he stated, under oath, that “*following learning of default in this case,*” he had reviewed company emails, found a string of emails from Prysmian employees, counsel and his office manager, which he believed confirmed the reels at issue were not in KSC’s possession. *Second Affidavit of Kelley*, filed March 11, 2024, at ¶ 7-8 (emphasis added). At the hearing of this matter, Mr. Kelley testified that he made reasonable efforts to track down this information as soon as possible but at no time did he deny that it was in the Defendant’s possession at the time of the trial. As President of Defendant KSC, Mr. Kelley had full authority to access those e-mails prior to trial but did not. “South Carolina’s strong policy towards finality of judgments trumps a party’s ability to set aside a judgment where, as here, the party could have discovered the evidence prior to trial.” *Bowman v. Bowman*, 357 S.C. 146, 152, 591 S.E.2d 654, 657 (Ct. App. 2004). For these reasons, the Court denies the Motion under Rule 60(b).

As to Defendant’s Motion for Setoff, Plaintiff concedes that setoff is proper pursuant S.C. Ann. §15-38-50 (2005). “When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death: (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, *but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater*; and (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.” S.C. Code Ann. § 15-38-50 (emphasis added). Plaintiff Nickles acknowledges settlement with each of the other Defendants prior to issuance of the default

judgment in the amount of \$15,000.00 each, for a total of \$30,000.00. Therefore, setoff in the amount of \$30,000.00 is proper and Defendant's Motion as to this point is granted.

Conclusion

For the reasons stated above, it is therefore ORDERED that Defendant's Motion to Alter or Amend based on Rule 60(b) is hereby DENIED. Defendant's Motion for Setoff is GRANTED, and the default judgement previously rendered shall be set off in the amount of \$30,000.00 making the final default judgment \$942,117.33 against Defendant KSC Logistics, Inc.

AND IT IS SO ORDERED.

The Honorable Judge Donald B. Hocker
Court of Common Pleas
Eighth Judicial Circuit

July ____, 2024
Laurens, South Carolina



Abbeville Common Pleas

Case Caption: William F Nickles Iv VS Palmetto State Transportation Llc ,
defendant, et al
Case Number: 2021CP0100076
Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

Electronically signed on 2024-07-31 08:53:28 page 7 of 7

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE)

WILLIAM F. NICKLES, IV,)
))
PLAINTIFF,)
))
V.)
))
PALMETTO STATE)
TRANSPORTATION, LLC, AND)
KSC LOGISTICS, INC.)
))
DEFENDANTS.)
_____)

SUMMONS
2021-CP-01-_____
(JURY TRIAL DEMANDED)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you and to serve a copy of your Answer on the subscribed at his office, 100 East Pickens Street, P. O. Box 805, Abbeville, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for relief demanded in the Complaint.

HITE & STONE

BY: s/ Thomas E. Hite, III (SC Bar #: 73750)
THOMAS E. HITE, III, ESQ.
P. O. BOX 805
ABBEVILLE, SC 29620
(864) 366-5400 TELEPHONE
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T3@hiteandstone.com
ATTORNEY FOR THE PLAINTIFF

ABBEVILLE, SOUTH CAROLINA
MARCH 24, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ABBEVILLE	)	
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	
	)	COMPLAINT
V.	)	2021-CP-01-_____
	)	(JURY TRIAL DEMANDED)
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC.	)	
	)	
DEFENDANTS.	)	
_____	)	

The Plaintiff complaining of the Defendants, would respectfully show unto the court and allege:

1. The Plaintiff William F. Nickles, IV, is a citizen and resident of the County of Abbeville, State of South Carolina.

2. That upon information and belief, at the times hereinafter mentioned, the Defendant Palmetto State Transportation, LLC is a limited liability corporation duly organized and existing under the law of the State of Pennsylvania, with its principal place of business in the County of Greenville, State of South Carolina. Defendant Palmetto State Transportation, LLC, is authorized to do business in the State of South Carolina. That upon information and belief, Defendant Palmetto State Transportation, LLC provided and provides metal reels, metal reel servicing, maintenance and repairs for Prysmian Cable in Abbeville, South Carolina.

3. That upon information and belief, at the times hereinafter mentioned, the Defendant KSC Logistics, Inc. is a corporation duly organized and existing under the law of the State of South Carolina, with its principal place of business in the County of Abbeville, State of

South Carolina. That upon information and belief, Defendant KSC Logistics, Inc. provided and provides metal reels, metal reel servicing, maintenance and repairs for Prysmian Cable in Abbeville, South Carolina.

4. That all persons and matters herein are within the jurisdiction of this Honorable Court and venue is proper in Abbeville County.

5. That on or about November 10, 2018, Plaintiff was working for Prysmian Cables & Systems, Inc. in Abbeville, South Carolina. Plaintiff was working as a lead line operator at Prysmian, an industrial cable manufacturing company. He was handling a 4.5-inch cable that weighs 30 pounds per foot on a reel that is manufactured, altered, or repaired by Defendant Palmetto State Transportation, LLC and/or Defendant KSC Logistics, Inc. Suddenly, the hook that attaches the cable to the reel broke off, causing the massive cable to come loose. The force of the heavy cable struck Plaintiff in the right side of the head and the impact knocked him off of his feet and left him unconscious. Two of his teeth were knocked out and he had fractures to his left tibia, fibula and ankle, as well as injuries to his shoulder, neck, and back. He endured two different surgeries to repair the damages and will continue to need medical attention.

6. That the said injuries and damages to the Plaintiff were the direct and proximate result of and were due to, caused and occasioned by the negligent, grossly negligent, careless, and/or willful and wanton conduct by the Defendants or Defendants' agents.

7. By reason of the careless, reckless, negligent, grossly negligent, and/or willful and wanton unlawful acts of the Defendants, the Plaintiff suffered permanent injuries resulting in substantial pain and suffering, permanent impairment, lost wages, and medical and hospital expenses, both now and in the future. That the Plaintiff is informed and believes that he is entitled to judgment against the Defendants for actual damages and for punitive damages in an

appropriate amount.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, for such actual and punitive damages, as may be determined, for the costs of this action, and for such other and further relief as this court deems just and proper.

HITE & STONE

BY: s/ Thomas E. Hite, III (SC Bar #: 73750)
THOMAS E. HITE, III, ESQ.
P. O. BOX 805
ABBEVILLE, SC 29620
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T3@hiteandstone.com
ATTORNEY FOR THE PLAINTIFF

ABBEVILLE, SOUTH CAROLINA
MARCH 24, 2021

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

) IN THE COURT OF COMMON PLEAS
) CIVIL ACTION NO.: 2021-CP-01-00076
)

WILLIAM F. NICKLES, IV,

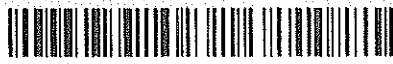
) AFFIDAVIT OF SERVICE
)

PLAINTIFF,

V.

PALMETTO STATE
TRANSPORTATION, LLC, AND
KSC LOGISTICS, INC.

DEFENDANTS.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
■ Complete Items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: KSC Logistics, Inc. William Kay Kelley 217 Old Cathoun Falls Rd Abbeville, SC 29620  9590 9402 6261 0265 0317 87 2. Article Number (Transfer from service label) 7020 1810 0001 7824 7411	A. Signature <i>Brenda Dance</i> ☐ Agent ☐ Addressee B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from Item 1? ☐ Yes If YES, enter delivery address below: ☐ No 3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☒ Certified Mail® ☒ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE) CIVIL ACTION NO.: 2021-CP-01-00076
)

WILLIAM F. NICKLES, IV,)
) STIPULATION OF DISMISSAL
) WITHOUT PREJUDICE
) PLAINTIFF,)
) V.)
) PALMETTO STATE)
) TRANSPORTATION, LLC, AND)
) KSC LOGISTICS, INC.)
) DEFENDANTS.)
)

It is hereby stipulated and agreed by and between Plaintiff, William F. Nickles, IV, and Defendant, KSC Logistics, Inc., signified by the signature of Plaintiff's counsel below, that all claims against the Defendant, KSC Logistics, Inc., in the above-entitled action are hereby dismissed without prejudice.

This 23rd day of August, 2021.

HITE & STONE

BY: s/ Thomas E. Hite, III(SC BAR NO.: 73750)
THOMAS E. HITE, III, ESQ.
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ABBEVILLE, SC 29620
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T3@hiteandstone.com
ATTORNEY FOR THE PLAINTIFF

Abbeville, South Carolina
August 23, 2021

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS

William F Nickles IV
Plaintiff,

v.

Palmetto State Transportation, LLC
And KSC Logistics, Inc.

Defendant.

CERTIFICATE OF SERVICE BY MAIL
2021-CP-01-076

The undersigned, an employee of the Office of the Clerk of Court for Abbeville County, hereby certifies that service of a copy of the Order/Stipulation of Dismissal Without Prejudice Form 4, was made upon the following by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelopes this 30th Day of August, 2021:

KSC LOGISTICS, INC.
WILLIAM KAY KELLEY
217 OLD CALHOUN FALLS RD
ABBEVILLE, SC 29620

STATE OF SOUTH CAROLINA
CLERK OF COURT
2021 AUG 30 PM 12:45
OFFICE OF THE CLERK OF COURT
2021

Vanessa Clark

Vanessa Clark, Common Pleas Clerk

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ABBEVILLE	)	
	)	
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	CONSENT TO AMEND
	)	COMPLAINT
V.	)	2021-CP-01-00076
	)	
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	
	)	

The above-captioned matter is now pending before this Court. The parties, pursuant to Rule 15, SCRPC and in the interest of justice, have agreed to the amendment of this lawsuit in order to name necessary Defendants.

THEREFORE, pursuant to Rule 15 SCRPC this Consent to Amend is hereby documented as written consent of Palmetto State Transportation. Therefore, the Plaintiff is permitted to amend the Summons and Complaint to name an additional and necessary parties.

I REQUEST AND CONSENT:

I CONSENT:

BY: s/Thomas E. Hite, III
 Thomas E. Hite, III, Esq.
 Attorney for Plaintiff

BY: s/John Harjehausen
 John Harjehausen
 Attorney for Palmetto State
 Transportation, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ABBEVILLE	)	
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	SUMMONS AS TO AMENDED
	)	COMPLAINT
V.	)	2021-CP-01-00076
	)	(JURY TRIAL DEMANDED)
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you and to serve a copy of your Answer on the subscribed at his office, 100 East Pickens Street, P. O. Box 805, Abbeville, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for relief demanded in the Complaint.

HITE & STONE

BY: s/ Thomas E. Hite, III (SC Bar #: 73750)
THOMAS E. HITE, III, ESQ.
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(864) 366-2638 FACSIMILE
T3@hiteandstone.com
ATTORNEY FOR THE PLAINTIFF

ABBEVILLE, SOUTH CAROLINA
 NOVEMBER 9, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ABBEVILLE	)	
	)	
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	
	)	AMENDED COMPLAINT
V.	)	2021-CP-01-00076
	)	(JURY TRIAL DEMANDED)
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	
	)	

COMES NOW, the Plaintiff, with a complaint of the negligence, gross negligence, recklessness, product defects, and strict liability by the Defendants, and alleges the following.

PARTIES AND JURISDICTION

1. The Plaintiff William F. Nickles, IV, is a citizen and resident of the County of Abbeville, State of South Carolina.

2. That upon information and belief, at the times hereinafter mentioned, the Defendant Howar Equipment, Inc. ("Howar") is a corporation duly organized and existing under the laws of Ontario, Canada, and is authorized to do business in the United States of America as Howar Equipment, Inc. with its principal place of business in the State of North Carolina. Defendant, Howar conducts business in the County of Abbeville, State of South Carolina. In particular, reels manufactured and sold by Howar flow through the stream of commerce and are purchased and used by Prysmian Cables & Systems, Inc. ("Prysmian") in Abbeville County, State of South Carolina.

3. That upon information and belief, at the times hereinafter mentioned, the Defendant Sonoco Products Company ("Sonoco") is a corporation duly organized and existing under the laws of the State of South Carolina with its principal place of business in Hartsville, South Carolina. Defendant, Sonoco conducts business in the County of Abbeville, State of South Carolina. In particular, reels manufactured and sold by Sonoco flow through the stream of commerce and are purchased and used by Prysmian in Abbeville County, State of South Carolina.

4. That upon information and belief, at the times hereinafter mentioned, the Defendant Palmetto State Transportation, LLC ("Palmetto State") is a limited liability corporation duly organized and existing under the law of the State of Pennsylvania, with its principal place of business in the County of Greenville, State of South Carolina. Defendant, Palmetto State is authorized to do business in the State of South Carolina. That upon information and belief, Defendant, Palmetto State provided and provides metal reels, metal reel servicing, maintenance and repairs for Prysmian in Abbeville, South Carolina.

5. That upon information and belief, at the times hereinafter mentioned, the Defendant KSC Logistics, Inc. ("KSC") is a corporation duly organized and existing under the law of the State of South Carolina, with its principal place of business in the County of Abbeville, State of South Carolina. That upon information and belief, Defendant, KSC provided and provides metal reels, metal reel servicing, maintenance and repairs for Prysmian in Abbeville, South Carolina.

6. That upon information and belief, at the times hereinafter mentioned, the Defendant, John Doe Corporation ("John Doe") is a corporation duly organized and existing under the laws of United States of America and did manufacture, maintain, build, alter or

construct high voltage reels that flow through the stream of commerce and are purchased and used by Prysmian in Abbeville County, State of South Carolina.

7. That all persons and matters herein are within the jurisdiction of this Honorable Court and venue is proper in Abbeville County.

FACTUAL ALLEGATIONS

8. That on or about November 10, 2018, Plaintiff was working for Prysmian, an industrial cable manufacturing company in Abbeville, South Carolina. Plaintiff was working as a lead line operator charged with getting the newly constructed high voltage cable onto a 13-foot-tall high voltage reel. The Plaintiff along with coworkers were beginning the process of rolling the cable onto a reel that is manufactured, altered, repaired, or refurbished by all Defendants, solely or jointly.

9. As the Plaintiff was diligently performing his work duties, suddenly and without warning the D-Ring mechanism that is part of the high voltage reel failed, broke off and caused the massive cable to come loose and fall onto the Plaintiff.

10. The force of the heavy cable struck Plaintiff in the right side of the head and landed on top of him smashing him to the ground. The impact knocked the Plaintiff off of his feet and left him unconscious. Two of his teeth were knocked out and he had fractures to his left tibia, fibula and ankle, as well as injuries to his shoulder, neck, and back. He has endured two surgeries to repair the damages and will continue to need medical treatment from the horrendous injuries sustained.

11. That the high voltage reel was improperly designed, constructed, maintained, stored, repaired or refurbished leading to the failure of the D-Ring causing the severe injuries to the Plaintiff.

12. That the acts or omissions of the Defendants solely or jointly were the proximate cause of the reel failure and subsequent injuries sustained by the Plaintiff.

13. Defendants Palmetto State and KSC are in the business of storing, refurbishing, and repairing reels for Prysmian.

14. Defendants Howar and Sonoco are in the business of manufacturing and selling reels to Prysmian.

15. Defendant John Doe represents a corporation in the business of refurbishing, storing, repairing, selling or manufacturing reels for Prysmian.

FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence as to Palmetto State / KSC/ John Doe)

16. Plaintiff incorporates by reference the above paragraphs as if fully stated herein.

17. Defendants Palmetto State, KSC, and John Doe owed a duty of care to the Plaintiff and the public to use reasonable care in the transportation, storage, repairs, or refurbishment of high voltage reels and in particular the high voltage reel that injured the Plaintiff.

18. Defendants or agents thereof while acting in the course and scope of their duties, were careless, negligent, reckless, and/or grossly negligent, in the following particulars:

- a. In failing to safely store the reel;
- b. In failing to weld the D-Ring to the metal reel properly;
- c. In failing to properly repair or refurbish the reel;
- d. In failing to use the strongest mechanism of attachment for the reel;
- e. In failing to properly inspect the reel;
- f. In failing to properly train employees on how to repair, replace, or refurbish a reel;
- g. In failing to properly transport the reel;
- h. In failing to evaluate and study design alternatives to the reel repairs;

- i. In failing to establish clear design specifications for repairs;
- j. In choosing to deliver the reel in a dangerous condition;
- k. In failing to have standards for when to take a reel out of service;
- l. In failing to use that degree of care and caution that a reasonable prudent person would have used under the same of similar circumstances;
- m. In such other particulars that may be discovered and/or shown in the discovery process and/or trial of this case.

All of which were a direct and proximate cause of the injuries and damages suffered by Plaintiff and alleged herein.

19. As a direct and proximate result of the negligence, carelessness, recklessness, wantonness, and/or gross negligence of the Defendants, the Plaintiff, has suffered and will continue to suffer in the future from:

- a. Severe and permanent personal and physical injury;
- b. Pain and suffering in the past, present, and future;
- c. Mental anguish and emotional distress;
- d. Loss of enjoyment of life in the past, present, future;
- e. Past medical expenses;
- f. Future medical expenses;
- g. Lost earning capacity;
- h. Disability;
- i. Any others that may be discovered

20. As a direct and proximate result of the negligence, carelessness, recklessness, wantonness, and/or gross negligence of the Defendants, the Plaintiff, is entitled to recover an amount of actual, punitive, special, and consequential damages to be determined by a jury at the trial of this action.

SECOND CAUSE OF ACTION
(Negligence, Gross Negligence as to Howar / Sonoco / John Doe)

21. Plaintiff incorporates by reference the above paragraphs as if fully stated herein.

22. That Defendants Howar and Sonoco owe a duty of care to the Plaintiff and the public to use reasonable care in the design, development, manufacture, sale, and distribution of high voltage reels.

23. That upon information and belief, Defendants Howar and/or Sonoco breached their duty of care and were negligent, careless, grossly negligent, reckless, willful, and wanton in one or more of the following particulars:

- a. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel in such a way that operators would be subjected to unreasonable and increased danger in the event of a product failure;
- b. By failing to design, manufacture, construct, assemble, market, distribute, and/or sell a high voltage reel that was free of defects and was fit and reasonably safe in all respects for its intended and foreseeable uses;
- c. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that was unnecessarily defective for its intended use;
- d. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that was unnecessarily dangerous to the workers of the school bus;
- e. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that was in an unsafe and unreasonably dangerous and/or defective condition;
- f. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that unnecessarily exposed operators and workers to an unnecessary danger;
- g. By failing to test the high voltage reel to ensure that it worked in a proper manner;
- h. By selling a defective high voltage reel and component parts;
- i. In generally failing to use the degree of care and caution that a reasonable prudent person would have used under the same or similar circumstances.

All of which were a direct and proximate cause of the injuries and damages suffered by

Plaintiff and alleged herein.

24. As a direct and proximate result of the negligence, carelessness, recklessness, wantonness, and/or gross negligence of the Defendants, Howar, Sonoco, and John Doe, the Plaintiff, has suffered and will continue to suffer in the future serious personal injuries as stated above.

25. As a direct and proximate result of the negligence, carelessness, recklessness, wantonness, and/or gross negligence of the Defendants Howar, Sonoco, and John Doe, the Plaintiff, is entitled to recover an amount of actual, punitive, special, and consequential damages to be determined by a jury at the trial of this action.

THIRD CAUSE OF ACTION
(Strict Liability / Product Defects as to Howar / Sonoco / John Doe)

26. Plaintiff incorporates by reference the above paragraphs as if fully stated herein.

27. That the high voltage reel used by the Plaintiff and sold by Defendants, Howar Sonoco and/or John Doe was defective and unreasonably dangerous to the Plaintiff and other similarly situated workers when it was sold by Defendant(s).

28. That the warnings provided by Defendants were inadequate, misleading, defective, and rendered the high voltage reel unreasonably dangerous to the Plaintiff and other workers.

29. That the subject reel, was in substantially the same condition as it was when it was originally sold by Defendants with the exception of normal wear and tear, and was being used in a reasonably foreseeable manner at the time Plaintiff was injured.

30. That the Defendants as sellers and distributors of subject reels, are strictly liable for all injuries and damages caused by the defective product, pursuant to S.C. Code § 15-73-10 *et seq.*

31. That upon information and belief, Defendants Howar, Sonoco and/or John Doe breached their duty of care and placed an unreasonably dangerous product in the market in one

or more of the following particulars:

- a. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel in such a way that workers would be subjected to unreasonable and increased danger;
- b. By failing to design, manufacture, construct, assembly, market, distribute, and/or sell a high voltage reel that was free of defects and was fit and reasonably safe in all respects for its intended and foreseeable uses;
- c. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that was unnecessarily defective for its intended use;
- d. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that was unnecessarily dangerous to workers or operators using it;
- e. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that was in an unsafe and unreasonably dangerous and defective condition;
- f. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that unnecessarily exposed workers to increased injury in the event of a failure;
- g. By failing to test the reel to ensure that it worked in a proper manner;
- h. By selling a defective reel and component parts, in particular the reel used by the Plaintiff that failed to work properly and as intended;
- i. In generally failing to use the degree of care and caution that a reasonable prudent person would have used under the same or similar circumstances.

All of which were a direct and proximate cause of the injuries and damages suffered by Plaintiff and alleged herein.

32. As a direct and proximate result of the Defendants, selling a high voltage reel in a defective condition unreasonable dangerous to workers, operators, or the general public, the Plaintiff, has suffered and will continue to suffer in the future serious personal injuries as stated above.

33. As a direct and proximate result of the Defendants Howar, Sonoco, and John Doe,

selling a high voltage reel in a defective condition unreasonable dangerous to workers, operators, or the general public, namely the Plaintiff, is entitled to recover an amount of actual, punitive, special, and consequential damages to be determined by a jury at the trial of this action.

FOURTH CAUSE OF ACTION
(Breach of Warranty as to Howar / Sonoco / John Doe)

34. Plaintiff incorporates by reference the above paragraphs as if fully stated herein.

35. That as merchants of reels, the Defendants, expressly and impliedly warranted that the subject reel was free from defects, merchantable, and fit for ordinary use.

36. That the Defendants breached express and implied warranties in the design, manufacture, and sale of the subject reel because it was defective, not merchantable, and unfit for ordinary use.

37. As a direct and proximate result of the breach of the breach of warranty by the Defendants, Howar, Sonoco, and/or John Doe, in selling a high voltage reel in a defective condition unreasonable dangerous to workers, operators, and the general public, namely the Plaintiff, has suffered and will continue to suffer in the future serious personal injuries as stated above.

38. As a direct and proximate result of the breach of warranty by the Defendants the Plaintiff, is entitled to recover an amount of actual, punitive, special, and consequential damages to be determined by a jury at the trial of this action.

WHEREFORE the Plaintiff, Nickles respectfully prays for judgment against the Defendants for all actual damages, special damages, consequential damages in an amount to be determined by the jury at the trial of this action, Additionally, the Plaintiff, respectfully prays for judgment against the Defendants for the costs and disbursements of this action and for any other relief as this Honorable Court deems just and proper. The Plaintiff demands a trial by jury.

HITE & STONE

BY: *s/ Thomas E. Hite, III (SC Bar #: 73750)*
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T3@hiteandstone.com
ATTORNEY FOR THE PLAINTIFF

ABBEVILLE, SOUTH CAROLINA
NOVEMBER 9, 2021

STATE OF SOUTH CAROLINA

Case # 2021-CP-01-00076COUNTY OF ABBEVILLEWilliam F. Nickles, IV

PLAINTIFF (S)

AFFIDAVIT OF SERVICE
OR
NON-SERVICE

VS.

Howar Equip, Inc, Sonoco
Products Co., Palmetto StateTransportation LLC, KSC

DEFENDANT (S)

Logistics, Inc., & John Doe Corp.Personally appeared before me Donald W. Reese, who being duly sworn, says that
he/she served the Summons & Complaintin this action on KSC Logistics, Inc.

() By delivering to him/her personally.

() By delivering to _____, a person of suitable age and
discretion residing at the residence of the Defendant and being at said residence at the
time of service.☒ By delivery to William Kelley, a person of discretion employed at
the place of business of the Defendant and being at said place of business at the time of
service.Place of Service: 217 Old Calhoun Falls Rd, Abbeville, SCDate of Service: 1-16-2021Time: 10:00 AM

Deponent is not a party to this action, and has no interest therein or connection therewith.

() Was not served for the following reason: _____

SWORN TO ME THIS 21st
DAY OF December 2021Apa Driell
NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: March 31, 2024

Deponent

Donald W. Reese

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2021-CP-01-00076
COUNTY OF ABBEVILLE	)	
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	AFFIDAVIT OF DEFAULT
	)	
V.	)	
	)	
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	

Personally appeared before me, the undersigned Notary Public duly authorized to administer oaths, Thomas E. Hite, who, being duly sworn, deposes and says.

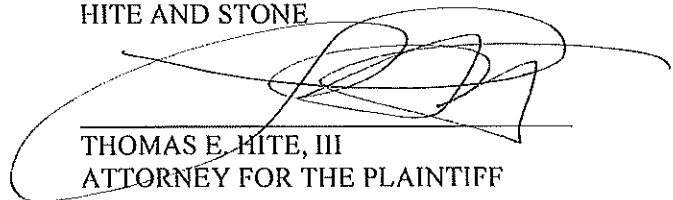
1. I am competent to testify as to the matters state herein.
2. I am admitted to the Bar of this State, Hite and Stone serves as counsel of record for Plaintiff.
3. Defendant, KSC Logistics, Inc., is in default. Service was perfected on Defendant, KSC Logistics, Inc., on December 16, 2021.
4. The Defendant, Sonoco Products Company, was served on December 16, 2021, as evidenced by an Affidavit of Service, that was served upon the registered agent for KSC Logistics, Inc., which was filed with this Court.
5. Based on the date of service along, Defendant, KSC Logistics, Inc., answer was due on or about December 16, 2021. Defendant, KSC

Logistics, Inc., as of today's date, has failed to file a Responsive Pleading, and I believe them to be in default.

6. The above referenced Defendant not subject to the protection or relief of an statutory provision, State or Federal that would relieve them of their obligation to file a timely answer or other plead.
7. Because the above referenced Defendant has not filed any responsive pleadings and the time for responding has passed, the Plaintiff is entitled to and Entry of Default.

SO SWORN:

HITE AND STONE



THOMAS E. HITE, III
ATTORNEY FOR THE PLAINTIFF

SWORN TO BEFORE ME this
7th day of February, 2022.

April Powell (L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: March 31, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE	)	CIVIL ACTION NO.: 2021-CP-01-00076
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	MOTION TO SET DAMAGES AND
	)	FEEES ON DEFAULT
V.	)	
	)	
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	

TO: DEFENDANT ABOVE LISTED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by his undersigned attorney, will move before the Presiding Judge of Abbeville County Court of Common Pleas on the tenth (10th) day after service hereof, or as soon thereafter as a hearing may be set, for an Order, pursuant to Rule 55 of the South Carolina Rules of Civil Procedure, setting damages based on the Default of the above listed Defendants, Sonoco Products Company and KSC Logistics, Inc. and allowing for a reasonable attorneys fee and expenses associated with this case.

HITE & STONE

BY: s/ Thomas E. Hite, III (SC Bar #: 73750)
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ATTORNEY FOR THE PLAINTIFF

ABBEVILLE, SOUTH CAROLINA
JANUARY 27, 2022

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

William F. Nickles

Plaintiff,

v.

Howar Equipment, Inc., Sonoco Products
Company, Palmetto State Transportation,
LLC, KSC Logistics, Inc., and John Doe
Corporation.

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE THIRD JUDICIAL CIRCUIT

Civil Action No. 2021-CP-01-00076

**STIPULATION OF DISMISSAL
AS TO DEFENDANT SONOCO
PRODUCTS COMPANY ONLY**

Pursuant to Rule 41(a) of the South Carolina Rules of Civil Procedure, Plaintiff dismisses all claims asserted against Defendant Sonoco Products Company, with each party bearing their own fees and costs.

WE SO STIPULATE THIS 28th DAY OF OCTOBER, 2022:

s/Thomas E. Hite, III
Thomas E. Hite, III, Esq.
Attorney for the Plaintiff

s/ S. Ross Shealy
(signature added by e-filer with express written consent)
S. Ross Shealy
*Attorney for Defendant Sonoco Products
Company*

s/ Patrick L. "Trey" Still, III
(signature added by e-filer with express written consent)
Patrick L. "Trey" Still, III
*Attorney for Defendant Howar Equipment,
Inc.*

s/ John Harjehausen
(signature added by e-filer with express written consent)
John Harjehausen
*Attorney for Defendant Palmetto State
Transport*

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

William F. Nickles, IV,

Plaintiff,

vs.

Howar Equipment, Inc., Palmetto State
Transportation, LLC, KSC Logistics, Inc.,
and John Doe Corporation,

Defendants.

COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-01-00076

**STIPULATION OF DISMISSAL WITH
PREJUDICE PURSUANT TO RULE 41
AS TO DEFENDANTS HOWAR
EQUIPMENT, INC AND PALMETTO
STATE TRANSPORTATION, LLC ONLY**

WHEREAS, the Plaintiff and the Defendants, Howar Equipment, Inc. and Palmetto State Transportation, LLC, have settled and compromised their differences pursuant to Rule 41(a). The Plaintiff hereby dismisses and ends this action with prejudice as to Defendants Howar Equipment, Inc. and Palmetto State Transportation, LLC ONLY. This is with the consent of all parties who have appeared in this action, with each side to bear its own costs and attorney's fees.

CLAWSON and STAUBES, LLC

s/Patrick L. "Trey" Still, III

Patrick L. "Trey" Still, III, Esq.

SC Bar No. 74875

200 E Broad Street, Suite 450

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Phone: (864) 331-8940

Attorney for Defendant Howar Equipment,
Inc.

Hite & Stone

s/Thomas E. Hite, III

Thomas E. Hite, III, Esq.

SC Bar No.

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Abbeville, SC 29620-0805

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Attorney for Plaintiff William F. Nickles

Clarkson, Walsh & Coulter, P.A.

s/John Harjehausen

John Harjehausen, Esq.

PO Box 6728

Greenville, SC 29606-6728

Phone: (864) 232-4400

Attorney for Defendant Palmetto State
Transportation, LLC

November 14, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	
		C.A. No.: 2021-CP-01-00076
William F. Nickles, IV,	)	
	)	
Plaintiff,	)	MOTION OF DEFENDANT KSC LOGISTICS,
	)	INC., TO SET ASIDE ENTRY OF DEFAULT
vs.	)	
	)	
Howar Equipment, Inc., Sunoco Products	)	
Company, Palmetto State Transportation,	)	
LLC, KSC Logistics, Inc., and John Doe	)	
Corporation,	)	
	)	
Defendants.	)	
_____	)	

Pursuant to Rule 55(c), Defendant KSC Logistics, Inc. ("KSC") seeks an Order setting aside the Entry of Default against KSC, and allowing KSC to answer and defend the claims presented. The bases for this Motion are the following:

1. There is good cause to set aside the entry of default, because KSC, through its President, erroneously believed the claim was not proceeding against his company.
2. KSC possesses a meritorious defense to the claim presented, because it never performed any work or handled any high voltage reels at the facility at issue, at the time that Plaintiff suffered his alleged injury. KSC's President advised Plaintiff's counsel of KSC's lack of involvement with the reel at issue. (See Affidavit of William Ray Kelley.)
3. William Ray Kelley notified Plaintiff's counsel of his company's lack of involvement with the reel at issue, and Kelley erroneously believed that the claim was not proceeding against KSC.
4. KSC received service of no other pleadings relating to this case, including the entry of default or the Motion for Damages, prior to service of the Notice of Hearing on

Damages in November, 2023. Upon receipt of same, KSC retained counsel and brought this Motion.

5. KSC has demonstrated good cause to set aside the Entry of Default in this case.

This Motion is based on the pleadings, South Carolina law, the affidavit of William Ray Kelley filed herewith, and any memorandum of law to be filed hereafter. Pursuant to Rule 11, SCRCP, the undersigned certifies that he consulted with counsel for Plaintiff prior to filing, and Plaintiff's counsel did not consent to setting aside the entry of default.

December 7, 2023

By: s/ C. Daniel Atkinson
C. Daniel Atkinson (S.C. Bar #72721)
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(864) 591-1113

Attorneys for Defendant KSC Logistics, Inc.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	
		C.A. No.: 2021-CP-01-00076
William F. Nickles, IV,	)	
	)	
Plaintiff,	)	MOTION OF DEFENDANT
	)	KSC LOGISTICS, INC., TO CONTINUE
vs.	)	THE DECEMBER 18, 2023 HEARING ON
	)	PLAINTIFF'S MOTION FOR DAMAGES
Howar Equipment, Inc., Sunoco Products	)	
Company, Palmetto State Transportation,	)	
LLC, KSC Logistics, Inc., and John Doe	)	
Corporation,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 40(i), SCRCP, Defendant KSC Logistics, Inc. ("KSC") seeks an Order to continue the December 18, 2023 Hearing on Plaintiff's Motion for Damages until this Court adjudicates KSC's pending Motion to Set Aside Entry of Default. The bases for this Motion are the following:

1. This case arises out of Plaintiff's allegations that he suffered personal injury while installing a cable on a high voltage reel in the course of his employment. *See* Am. Compl. at ¶¶ 8-9.
2. Plaintiff alleged, "upon information and belief," that Defendant KSC Logistics, Inc. provided the subject reel to Plaintiff's employer. *See* Am. Compl. at ¶¶ 2, 5, 8-9.
3. When William Ray Kelley, President of Defendant KSC Logistics, Inc., was notified of the lawsuit, he immediately contacted Plaintiff's counsel to explain that KSC never worked on the subject project where Plaintiff alleges he was injured, and therefore KSC never provided the subject reel to Plaintiff's employer. *See* 12.07.2023 Affidavit of William Ray Kelley at ¶¶ 4-6. After that conversation, William Ray Kelley believed the lawsuit against KSC would be

dismissed, and he never received other documents or notices related to the case. *See* 12.07.2023 Affidavit of William Ray Kelley at ¶¶ 6-7.

4. The next item William Ray Kelley received was the November 21, 2023 Notice of Hearing on Plaintiff's Motion for Damages, set for December 18, 2023. *See* 12.07.2023 Affidavit of William Ray Kelley at ¶ 7. After receiving that notice, William Ray Kelley sought legal counsel for KSC. *See* 12.07.2023 Affidavit of William Ray Kelley at ¶ 8.

5. On Thursday morning, December 7, 2023, the undersigned attorneys filed a Notice of Appearance, Motion of Defendant KSC Logistics, Inc. to Set Aside Entry of Default, and the December 7, 2023 Affidavit of William Ray Kelley.

6. On Monday, December 11, 2023, the Clerk advised that KSC's December 7, 2023 Motion to Set Aside Entry of Default would not be heard on December 18, 2023—the same day as the Motion for Damages hearing—because the 10-day notice period fell on a Sunday (December 17, 2023). *See* Rule 6(d), SCRCP.

7. As a result, this Court will hear Plaintiff's Motion for Damages, premised on the entry of default, prior to hearing KSC's Motion to Set Aside such Entry of Default.

8. Thereafter, should the Court enter judgment, the Court may decide to set aside the judgment of default, pursuant to Rule 55(c), SCRCP, which would render meaningless the time and resources spent by the Parties and the Court at the Motion for Damages hearing.

9. In addition, should this Court enter judgment, Defendant KSC will be deprived of having the Motion to Set Aside Entry of Default be considered by this Court under the "good cause shown" standard of Rule 55(c), SCRCP.

10. Under Rule 40(i)(1), SCRCP, "[i]f good and sufficient cause for continuance is shown, the continuance may be granted by the court."

11. Here, there is good and sufficient cause for continuance because Plaintiff's Motion for Damages depends on the existence of the entry of default, for which Defendant KSC has filed a Motion to Set Aside. Since the Motion for Damages logically depends on the entry of default, and the entry of default is contested, this Court should continue the hearing on the Motion for Damages until the Court has adjudicated Defendant KSC's Motion to Set Aside the Entry of Default.

12. Finally, should the Court decide to hear Defendant KSC's Motion to Set Aside the Entry of Default on December 18, 2023, then Defendant KSC will withdraw this Motion for Continuance and is willing to proceed with the Motion for Damages hearing set for the same day.

This Motion is based on the pleadings, South Carolina law, the affidavit of William Ray Kelley filed in this action, and any memorandum of law to be filed hereafter. Pursuant to Rule 11, SCRCF, the undersigned certifies that he consulted with counsel for Plaintiff prior to filing, and Plaintiff's counsel did not consent to continuing the hearing on the Motion for Damages.

December 12, 2023

By: s/ Brian M. Peters, Jr.
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(864) 591-1113

Attorneys for Defendant KSC Logistics, Inc.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2021-CP-01-00076
COUNTY OF ABBEVILLE	)	
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	PLAINTIFFS MEMORANDUM
	)	IN RESPONSE TO DEFENDANT
V.	)	KSC LOGISTICS INC. MOTION
	)	TO SET ASIDE DEFAULT
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	
	)	

COMES NOW Plaintiff William F. Nickles, IV by and through counsel, and submits this Memorandum in response to the KSC Logistics, Inc.'s Motion to Set Aside Default.

I. INTRODUCTION

The Defendant, KSC Logistics, Inc., hereafter referred to as "KSC", is a reel storage and repair company that works closely with Prysmian Cable in Abbeville County, South Carolina.

On November 10, 2018, Plaintiff did suffer from a severe and permanent injury at the fault of KSC as they did negligently store, repair, or maintain a high voltage reel that was used in rolling high voltage cable at Prysmian Cable.

On April 12, 2021, the Plaintiff filed a Summons and Complaint against KSC and others. Owner and Registered Agent William Ray Kelley notified Plaintiff's counsel that they did not "deal in" high voltage reels during the time frame of the incident. Based on this information, KSC was dismissed without prejudice on August 23, 2021 and was notified that if it was discovered that this information was inaccurate that they would be added back to the case.

On November 4th and 5th, 2021 Plaintiff's counsel deposed several representatives of Prysmian Cable and discovered that KSC was in fact a major party in the storage and repairing of high voltage reels at Prysmian Cable. Therefore, on November 9, 2021 the Plaintiff Amended his Summons and Complaint to rename KSC as a Defendant in the case. KSC was served with the Amended Summons and Complaint on December 16, 2021.

Plaintiff never received a response from the Amended Summons and Complaint and filed an Affidavit of Default on February 7, 2022.

KSC made no formal appearance in this case until December 7, 2023, 721 days after initial service of the Amended Summons and Complaint. The affidavit of William Ray Kelley, registered agent and CEO of KSC, states that the Amended Summons and Complaint was received on December 21, 2021, and he just assumed he was not involved with the case. KSC did not take any action in response to the Amended Summons and Complaint.

This scenario is very similar to law of the case in *Dixon v. Besco Engineering, Inc.* (S.C.App. 1995) 320 S.C. 174, 463 S.E.2d 636, in which the defendant failed to establish sufficient cause for relief from an entry of default judgment where he mistakenly believed that plaintiff's counsel had given him an unlimited extension of time to respond to the complaint, and he thus failed to retain counsel until approximately 2 months after the extended deadline had passed.

II. ARGUMENT

A. Entry of Default – Rule 12(a) SCRPC

When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning. Unless an extension is granted, a defendant must serve his answer within thirty days after the service of the complaint upon him. *Rule 12(a), SCRPC*.

If a party has failed to “plead or otherwise defend as provided by the South Carolina Rules of Civil Procedure and that fact is made to appear by affidavit or otherwise,” the clerk of court will enter default. *Rule 55(a), SCRCP*

Entry of default is a ministerial act, which a clerk is required to perform once default is made to appear by the affidavit of the moving party. *Thynes v. Lloyd*, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct.App.1987) (holding that “whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit” of the moving party). *Stark Truss Co. v. Superior Construction Corp.*, 360 S.C. 503, 602 S.E.2d 99 (Ct.App.2004).

Rule 55(a) SCRCP provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. However, under *Rule 55(c)* a party may move to set aside the entry of default.

The standard for granting relief from an entry of default under *Rule 55(c)* is “good cause.” *Rule 55(c), SCRCP*. This standard requires a party seeking relief from an entry of default under *Rule 55(c)* to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 607, 608, 681 S.E.2d 885, 888 (2009)

The law requires the moving party to put forth a satisfactory explanation for the default, and then the trial court must consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App.1989).

The South Carolina Rules of Civil Procedure were created to uphold uniformity in law and keep order. It is procedure that marks much of the difference between rule by law and rule by fiat. *Wisconsin v. Constantineu*, 400 U.S. 433, 436 (1971).

B. Satisfactory Explanation

In this case, KSC has not provided an adequate explanation for the default. KSC's excuse is that the Amended Complaint was overlooked, because the registered agent and/or CEO assumed that they were not a party to the suit. This is not a justifiable explanation for not answering the Amended Complaint. The courts of this State have found on numerous occasions that general forgetfulness, oversight, misguided reliance, and inadvertences are not justifiable grounds for setting aside an entry of default.

In *Sundown Operating Co. v. Intedge Industries Inc.*, the Plaintiff served the Defendant with the summons and complaint on August 28, 2001 in Myrtle Beach, South Carolina and again on September 4, 2001 at corporate offices in North Carolina. The summons and complaint went back and forth between insurance agent and corporate officers. On October 2, 2001 the Defendant's insurance agent contacted Plaintiff's counsel to ask for an extension. Plaintiff's counsel informed them that he already filed an affidavit of default on October 2, 2001 based on the August 28, 2001 service. The Defendant then filed a motion to set aside entry of default on October 18, 2001. The trial court eventually held that the Defendant could not show good cause as to why the entry of default should be set aside. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 607, 681 S.E.2d 885 (2009)

In *Sundown*, from the date of service to the date of the Defendant's motion to set aside entry of default is at most 41 days.

In *Stark Truss Co. v. Superior Construction Corp.*, the summons and

complaint were served upon Defendant, Superior on July 24, 2002 and upon Co-Defendant National on July 26, 2002. National gave its defense in the matter to Superior on August 5, 2002, apparently intending for Superior to answer on its behalf. Superior did not send a copy of Stark Truss's summons and complaint or National's suit papers to its attorneys until September 5, 2002. Upon receipt that same morning, Superior's attorney immediately telephoned Stark Truss's attorneys and requested an extension of time in which to file an answer. Later that day, Superior's attorneys were informed that default proceedings had already begun, with the motion for entry of default judgment and affidavit of default being mailed that morning prior to the initial call.

Superior and Nationals joint answer and counterclaim was filed with the court on September 6, 2002. Stark Truss's affidavit of default, motion for entry of default judgment, and a proposed order directing entry of default judgment, dated September 5, 2002, were filed on September 11, 2002. Based on Stark Truss's motion, the court issued an order, without a hearing, simultaneously granting entry of default and a default judgment against Superior and National.

Superior and National filed a "Motion to Set Aside Entry of Default Judgment" on October 22, 2002. Superior's attorney informed the circuit court that there was no good explanation for not filing an answer within thirty days, other than the fact that Superior's president was "struggling with some depression and a lot of things slipped through his fingers."

On November 15, 2002, the circuit court issued an order holding that Appellants had failed to present sufficient proof of either "good cause" for relief from default under Rule 55(c), SCRCp, or "mistake, inadvertence, surprise, or excusable neglect" under Rule 60(b), SCRCp sufficient to vacate the entry of default judgment.

In *Stark*, from the date of service to the date of the Defendants' answer and counterclaim was 43 days and from the date of service to the date of the Defendants' motion to set aside entry

of default was 89 days.

In *Bage, LLC v. Southeastern Roofing Co. of Spartanburg*, the summons and complaint was served on July 9, 2004. These documents were faxed to the insurance company on July 13, 2004. No cover letter was included in this facsimile nor was any follow-up with its insurance carrier ever taken by Southeastern Roofing.

Southeastern Roofing never responded to the complaint. Bage filed an affidavit of default and motion for an entry of default on September 7, 2004. By a motion filed on September 20, 2004, Southeastern Roofing moved to set aside the order granting the entry of default.

By an order dated April 28, 2005, the judge denied Southeastern Roofing's motion to set aside the entry of default, the judge found Southeastern Roofing had failed to show good cause as to allow relief from the entry of default. *Bage, LLC v. Southeastern Roofing Co. of Spartanburg Inc. S.C. 383 S.C. 489, 681 S.E.2d 867.*

In *Bage*, from the date of service to the date of the Defendants' motion to set aside entry of default was 83 days.

In *Pilgrim v. Miller*, Pilgrim served a summons and complaint on Miller on March 24, 2000. The next day, Miller took the suit papers to an attorney, who instructed her to take them to her insurance company. Miller promptly delivered the summons and complaint to an agent for Allstate Insurance Company. Allstate failed to timely file an answer on behalf of Miller, and Pilgrim obtained an entry of default on May 17, 2000. Miller moved for relief from the default pursuant to Rule 55(c), SCRCR. Pilgrim opposed the motion on the basis that it stated no grounds in support of the request and "good cause" did not exist to set aside the entry of default.

The trial court stated, "No specific reason was offered for the lack of response to the Summons and Complaint" and "[i]t is the finding of this Court that the Court has been presented with no reason to set aside this Default." The

appeals court upheld the trial courts ruling. *Pilgrim v. Miller*, 350 S.C. 637, 640-41, 567 S.E.2d 527, 528 (Ct.App.2002)

In *Bage*, from the date of service to the date of the Defendants' motion to set aside entry of default was 83 days.

In *Dixon v. Besco*, the defendant failed to establish sufficient cause for relief from an entry of default judgment where he mistakenly believed that plaintiff's counsel had given him an unlimited extension of time to respond to the complaint, and he thus failed to retain counsel until approximately 2 months after the extended deadline had passed. *Dixon v. Besco Engineering, Inc.* (S.C.App. 1995) 320 S.C. 174, 463 S.E.2d 636.

C. If the Court finds satisfactory explanation, then it must evaluate the factors set out in Wham v. Shearson Lehman Bros., Inc.

a. Timing of the Defendant's Motion for Relief

A defendant must serve his answer within thirty days "after the service of the complaint upon him." *Rule 12(a), SCRCP*.

In this case, 721 days passed from the date of service to the date of the Defendant's motion to set aside default. KSC's motions should be denied, because they are far beyond any reasonable amount of time that would allow for setting aside of the entry of default. In all cases cited above and attached hereto the timing between date of service and motion to set aside is far less than 721 days as in the case at hand.

b. No Meritorious Defense

KSC cannot establish a meritorious defense in this case and therefore their motion to set aside entry of default should be denied. KSC is known to be the main storage and repair company used by Prysmian Cable during the time period associated with this case. KSC for years has worked hand-in-hand with Prysmian Cable by repairing, refurbishing, and storing their reels on

their property that is located nearby Prysmian Cable. No other potential party was discovered to provide or weld D-Rings on high voltage reels. By not answering the Amended Summons and Complaint KSC has benefitted from not having to participate in the normal course of discovery associated with a civil trial which has allowed them to hide evidence and not disclosing its close involvement with Prysmian Cable.

In consideration of these facts, KSC's motions should be denied, because they do not have a meritorious defense.

c. Degree of Prejudice to Plaintiff

The Defendant's motion to set aside entry of default would provide a great deal of prejudice to this Plaintiff. The obvious reason for prejudice would be the fact that the Plaintiff has had to participate in protracted litigation against other Defendants without the benefit of discovery or participation of KSC. Plaintiff could not proceed on Default until litigation concluded against other Defendants. The continued litigation that would ensue from allowing this Defendant, who was 721 days late, out of default, would be unfair and egregious.

For the foregoing reasons, the Plaintiff would be severely prejudiced if KSC is allowed to set aside the entry of default, and therefore their motions should be denied.

CONCLUSION

Based on the foregoing, Defendant KSC Logistics, Inc. motion to set aside default should be denied.

HITE & STONE

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DECEMBER 18, 2023
ABBEVILLE, SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2021-CP-01-00076
COUNTY OF ABBEVILLE	)	
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	PLAINTIFFS RETURN TO
	)	DEFENDANT KSC LOGISTICS INC
V.	)	MOTION FOR CONTINUANCE
	)	
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	

COMES NOW Plaintiff William F. Nickles, IV by and through counsel, and submits this Return in response to the KSC Logistics, Inc.'s Motion for Continuance.

The Defendant, KSC Logistics, Inc., hereafter referred to as "KSC", has moved to continue the Plaintiff's Damages Hearing based on the fact that its Motion to Set Aside Default was not scheduled to be heard prior to the Plaintiff's Damages Hearing. KSC filed its Motion to Set Aside Default on December 7, 2023. The delay in filing its Motion should not be a basis for delaying the Plaintiff's pursuit of justice. The Plaintiff served Defendant with this action on December 16, 2021 and did not receive any response until December 7, 2023. This delay should not be rewarded with further delay of the proceedings.

In preparation for the damages hearing the Plaintiff has requested that appearance of two experts regarding evidence associated with the Plaintiff's damages. This expense should not be the burden of the Plaintiff if the Defendant's request is granted.

In the event that the Court deems it necessary to hear the Defendant's Motion to Set Aside

Default prior to the Plaintiff's Motion to Set Damages the Plaintiff is prepared to go forward on December 18, 2023. No further delay should be awarded to this Defendant.

Based on the foregoing, Defendant KSC Logistics, Inc. Motion to Continue should be denied.

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DECEMBER 18, 2023
ABBEVILLE, SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	
		C.A. No.: 2021-CP-01-00076
William F. Nickles, IV,	)	
	)	
Plaintiff,	)	DEFENDANT KSC LOGISTICS, INC.'S
	)	BRIEF IN SUPPORT OF MOTION TO SET
vs.	)	ASIDE ENTRY OF DEFAULT
	)	
Howar Equipment, Inc., Sunoco Products	)	
Company, Palmetto State Transportation,	)	
LLC, KSC Logistics, Inc., and John Doe	)	
Corporation,	)	
	)	
Defendants.	)	
_____	)	

Defendant KSC Logistics, Inc. ("KSC") submits this brief in support of its Motion to Set Aside Entry of Default in this case.

STANDARD OF REVIEW

"The decision whether to set aside an entry of default ... lies solely within the sound discretion of the trial judge." *Roberson v. Southern Fin. of South Carolina, Inc.*, 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005). "The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Id.* "The standard for granting relief from an entry of default is good cause under Rule 55(c)[, SCRCPP]." *Id.* "[A]n entry of default may be set aside for reasons that would be insufficient to relieve a party from a default judgment." *Sundown Operating Co., Inc. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

RELEVANT FACTS AND PROCEDURAL HISTORY

Plaintiff first filed a Summons and Complaint in this case on March 24, 2021. Brenda Nance signed for service of the Summons and Complaint, delivered by Certified Mail, with no specific delivery date listed. On August 23, 2021, Plaintiff, by signature of his counsel, discussed

claims against KSC, without prejudice. On August 30, 2021, the Clerk filed a Certificate of Service, demonstrating that the Form 4 showing dismissal by Plaintiff was sent to KSC. Judge Hocker filed a Form 4 acknowledging the dismissal on September 2, 2021. On November 9, 2021, Plaintiff filed a consent document purportedly allowing for amendment of the Complaint to name necessary defendants. On February 7, 2022, Plaintiff filed an affidavit of Donald Reese stating that he delivered the “Summons and Complaint” on December 16, 2021. The document does not state that he served the Amended Complaint. On the same date that Plaintiff filed the Affidavit of Service, Plaintiff filed an Affidavit of Default as to KSC, as well as Sonoco Products Company. On the same date, Plaintiff’s counsel filed a document, dated January 27, 2022, entitled “Motion to Set Damages and Fees on Default.” There is no evidence in the record that Plaintiff served the Affidavit of Default or the Motion for Damages on KSC.

Based on the docket, it appears as though the Motion for Damages was scheduled for hearing on April 8, 2022. On April 8, 2022, Judge Griffith signed an Order of Continuance, granted a continuance until the next term, based on “Plaintiff needing more time to properly serve the *Pro Se* Defendant, KSC Logistics, Inc. with Notice of Hearing.” (Order of Continuance, dated April 8, 2022. Plaintiff did not serve KSC with this Motion or Order, and Plaintiff gave no notice to KSC of the pending motion for another 19 months.

On August 4, 2022, the Court entered a Scheduling Order in the case.

The first document the KSC received in this case, following the service of the “Summons and Complaint” was mailed on November 21, 2023, giving notice of damages hearing on December 18, 2023. KSC filed its Motion to Set Aside Entry of Default on December 7, 2023, along with an affidavit of William Ray Kelley.

LEGAL ARGUMENT

1. The Affidavit of Service Does Not Establish Service of the Proper Document.

The Affidavit of Service filed in this case states that Donald Reese delivered a copy of the “Summons and Complaint.” Plaintiff has dismissed claims against KSC contained in the Summons and Complaint. Documents filed as to Defendants Sonoco and Howar, filed March 29, 2022, and February 15, 2022, respectively, correctly reference the documents served as the “Summons as to Amended Complaint and Amended Complaint.”

KSC is uncertain of the document received, as it does not have the served document. That said, the record does not reflect the Amended Complaint was served.

2. KSC Can Demonstrate Good Cause to Set Aside Default.

In a now-vacated opinion, our Court of Appeals has stated:

Public policy favors the disposition of cases on their merits rather than on technicalities. Rule 55(c) should be liberally construed to promote justice and dispose of cases on the merits.

Bage, LLC v. Southeastern Roofing Co. of Spartanburg, Inc., 373 S.C. 457, 471, 646 S.E.2d 153, 160 (Ct. App. 2007) (opinion vacated by Supreme Court due to resolution of claims during pending appeal before Supreme Court). “The good cause standard of Rule 55(c) requires, as a threshold burden, a party to put forth an explanation for the default and give reasons why the vacation of the default entry would serve the interests of justice.” *Limehouse v. Hulsey*, 397 S.C. 49, 70, 723 S.E.2d 211, 222 (Ct. App. 2011), *rev’d on other grounds by* 404 S.C. 93, 744 S.E.2d 566 (2013).

Here, KSC has provided evidence of good cause, noting that William Ray Kelley has provided sworn testimony by affidavit that he contact Plaintiff’s counsel via telephone immediately upon receipt of process, and that, based on his communication with Plaintiff’s counsel, he believe that the case was not proceeding against KSC. This, coupled with the fact that KSC never received service of any other documents, prior to the notice of the damage hearing

mailed on November 21, 2023, explains why KSC did not take action in this case.

Factually, this case is very different that the other cases cited because Mr. Kelley's affidavit stated that he did not take further action, based on a telephone conversation with Plaintiff's counsel, after which he did not believe the case was proceeding against his company. Following that telephone conversation, neither Kelley nor KSC received any further communication from Plaintiff or Plaintiff's counsel, until receipt of the Notice for the damages hearing.

The other critical difference between this case and the cases cited in Plaintiff's opposition brief is the prior dismissal of claims against KSC. KSC previously voluntarily dismissed claims against KSC, without involving KSC in that process. Accordingly, it is reasonable for KSC and its President to believe that the same event occurred again.

The interests of justice would be served by allowing KSC to defend this case on the merits, because neither fact witness presented at the damage hearing identified direct involvement with KSC on the issue of maintenance of reels.

In his opposition to this Motion, Plaintiff's counsel focused on the passage of time, and the reason given by KSC for failing to respond, but Plaintiff ignores Plaintiff's own role in the confusion. Plaintiff's prior voluntary dismissal of claims against KSC, without any action taken by KSC, helped contribute to KSC's misunderstanding of the status for the case. Because Plaintiff never served KSC with the Affidavit of Default or the Motion for Damages and did not serve KSC with the damages hearing notice until November, 2023, despite having asked the Court for a continuance of a damages hearing in April, 2022, to allow for proper notice on KSC.

In *Sundown Operating Co. v. Intedge Industries, Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009), our Supreme Court noted that "the presence of other factors, in the totality of the circumstances, may amount to a showing of good cause." *Id.* at 609, 681 S.E.2d at 889. Here, the totality of the

circumstances provide good cause to set aside the entry of default.

3. On Balance, the *Wham* Factors Favor Setting Aside the Entry of Default.

“Once a party has put forth a satisfactory explanation for [the entry of] default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if the relief is granted.” *Id.* at 607-8, 681 S.E.2d at 888, citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-2 (Ct. App. 1989). In opposing relief, Plaintiff argues that the delay in seeking relief requires dismissal; however, this argument ignores Plaintiff’s role in the delay. As noted above, Plaintiff sought a continuance of a damages hearing in April, 2022, to allow for service of the Motion for Damages on KSC – Plaintiff mailed that notice on November 21, 2023. Upon receipt of the Notice, KSC moved to set aside the entry of default 16 days later. As noted in the Kelley Affidavit, KSC did not believe an action was pending against it, until it received the damages hearing notice, and it acted promptly thereafter.

The Kelley Affidavit strongly supports the second *Wham* factor, because Kelley has testified that, at the time of the accident at issue, his company did no work on high voltage reels at the Prysmian facility; so his company could not have done work on the reel which injured Plaintiff. In his brief in opposition, Plaintiff argues that, because it could not determine who worked on the cable, KSC must have done the work. This is a *res ipsa* argument, which is not allowed in South Carolina.

Finally, Plaintiff has identified no prejudice. He has not stated what was involved in litigation with other parties, other than time. He has identified no number of depositions, cost of interrogatories or other items which would constitute unfair prejudice. He waited until the last day possible under the limitations period to file a claim against KSC; so he has not acted with time as

his primary motivator.

KSC seeks only an opportunity to demonstrate that it did not perform the work at issue, through discovery and a trial on the merits. Setting aside default insures that KSC will not be deemed liable on a misunderstanding. If KSC is proven to be at fault, it will still face a judgment, but it will face a judgment based entirely on the merits.

CONCLUSION

For the reasons set forth above, KSC's Motion to set aside the entry of default should be granted, and KSC should be allowed to file an answer in this case. KSC will act diligently to pursue trial as quickly as possible.

January 29, 2024

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Attorneys for Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2021-CP-01-00076
COUNTY OF ABBEVILLE	)	
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	PLAINTIFFS ADDITIONAL
	)	RESPONSE TO DEFENDANT
V.	)	KSC LOGISTICS INC. MOTION
	)	TO SET ASIDE DEFAULT
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	

COMES NOW Plaintiff William F. Nickles, IV by and through counsel, and submits this Memorandum in response to the KSC Logistics, Inc.'s Motion to Set Aside Default.

Plaintiff previously filed a Memorandum in Opposition to Defendant's Motion to Set Aside Default. This response is meant to include additional information related to statements made in the Defendant's memorandum in support of their motion.

Attached hereto are exhibits that clearly link KSC to storage and repairs of high voltage reels for Prysmian Cable at the critical times prior to the Plaintiff's injury. KSC through its CEO, William Kelley, had previously made statements that it was not involved in high voltage reels for Prysmian during the time of the Plaintiff's injury. This was clearly a false statement.

Also attached is an Affidavit of April Powell that outlines the service of the Amended Complaint in this case. Process Server, Don Reese inadvertently wrote Summons and Complaint rather than Amended Summons and Complaint on his Affidavit of Service. KSC has not attempted to assert that it has not been served with the Amended Summons and Complaint. In William

Kelley's affidavit he admits service of the Amended Complaint and specifically service on December 21, 2021. As it relates to service of the Amended Summons and Complaint the insurance carrier for KSC contacted Plaintiff's counsel on November 30, 2023 and advised that it received the Amended Complaint. The email and attachment are also provided herein. The attachment to that email was clearly a low-quality scan leading to proof that it came from the Defendant and not recovered from a court website.

For the foregoing reasons, the arguments raised in the memorandum of KSC are not sufficient to overcome the good cause standard and the entry of default should not be set aside, and therefore their motion should be denied.

CONCLUSION

Based on the foregoing, Defendant KSC Logistics, Inc. motion to set aside default should be denied.

HITE & STONE

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JANUARY 30, 2024
ABBEVILLE, SOUTH CAROLINA

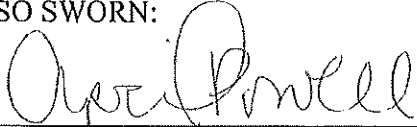
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE	)	CIVIL ACTION NO.: 2021-CP-01-00076
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	AFFIDAVIT OF APRIL POWELL
	)	
V.	)	
	)	
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	

Personally appeared before me, the undersigned Notary Public duly authorized to administer oaths, APRIL POWELL, who, being duly sworn, deposes and says.

1. I am competent to testify as to the matters state herein.
2. I am an employee of Hite and Stone and serve as counsel head paralegal for Thomas E. Hite, III and Heather Hite Stone and have since 2013.
3. I am a graduate of Lander University and a certified paralegal with a certificate from the University of South Carolina in 2016.
4. I prepared the packet for service on Defendant, KSC Logistics Inc. and personally delivered it to our process server, Don Reese.
5. Don Reese took this packet directly from me and served it on Defendant, KSC Logistics, Inc., on December 16, 2021.
6. Mr. Reese served the Amended Summons and Complaint on KSC Logistics, Inc. and only wrote "Summons and Complaint" on his

affidavit of service but I know for a fact that it was the Amended
Summons and Complaint served on KSC Logistics.

SO SWORN:



April Powell

SWORN TO BEFORE ME this
30th day of January 2024.



(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2.2.28

Purchase order

Page 1 / 3



Prysmian Cables and Systems USA LLC

Data to be reported on your documents:		
Order Num.	Issue Date	Vendor Code
4500942970	01/05/2018	7010007293

Delivery Address: Abbeville Prysmian Cables and Systems USA LLC 569 Highway 28 Bypass ABBEVILLE SC 29620 USA	Order Address: KSC LOGISTICS, INC. 217 Old Calhoun Falls Road ABBEVILLE SC 29620 USA
Invoicing Address: Prysmian Cables and Systems USA, LLC 569 Highway 28 Bypass Abbeville, SC 29620 lena.new@prysmiangroup.com	Vendor's Address: KSC LOGISTICS, INC. 217 Old Calhoun Falls Road ABBEVILLE SC 29620 USA Reference Ref: Mary Shumate Phone: 843-478-1547 Fax: 864-446-8154 E Mail: chuck.kelley@ksclogistics.net
Incoterms DAP Prysmian Plant Order Currency: USD Payment Terms End of Month plus 37 days	Buyer's contact data: Bryan McClain Telephone: +1 (864) 366-1276 E-mail: bryan.mcclain@prysmiangroup.com

Delivery to DC Delivery for Ouzts FOR INTERNATIONAL SHIPPING ONLY: Please send copy shipping documents by email to nacustoms@prysmiangroup.com ISF Form must be completed for ocean shipments and sent 72 hours before sailing#					
Blanket PO for Steel Reel Storage 2018 per Prysmian Contract					
Item	Material Description	Order qty.	Unit	Price per unit	Total Delivery date
10	Steel Reel Storage for KSC 2018		12 MON		12/31/2018
	1 Months still to be delivered				
	Non-Taxable Item				
	*** Item partially delivered ***				

All suppliers will be held accountable to the Prysmian Group ethical code -
https://www.prysmiangroup.com/sites/default/files/atoms/files/Code%20of%20Ethics_final_EN.pdf
 PO Number must be shown on all Shipping Documents and Invoices.
 CLICK!



Prysmian Cables and Systems USA LLC

Purchase order

Page 2 / 3

Data to be reported on your documents:		
Order Num.	Issue Date	Vendor Code
4500942970	01/05/2018	7010007293

Item	Material Description	Order qty, Unit	Price per unit	Total	Delivery date
					Net Order Value: USD XXXXXXXXXX
Prysmian Cables and Systems USA, LLC Signature not necessary, Purchase Order electronically authorized					

All suppliers will be held accountable to the Prysmian Group ethical code -
https://www.prysmiangroup.com/sites/default/files/atoms/files/Code%20of%20Ethics_final_EN.pdf
PO Number must be shown on all Shipping Documents and Invoices.
CLICK!

ELECTRONICALLY FILED - 2024 Jan 30 10:33 AM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076



Prysmian Cables and Systems USA LLC

Purchase order

Page 3 / 3

Data to be reported on your documents:		
Order Num.	Issue Date	Vendor Code
4500942970	01/05/2018	7010007293

TERMS AND CONDITIONS

1. **ACCEPTANCE.** Unless otherwise agreed in writing signed by the Buyer, acceptance is expressly limited to the terms and conditions herein, and the Seller by not rejecting this order in writing shall be deemed to have agreed to each and all of said terms and conditions, notwithstanding any term of condition or condition submitted by the seller.
2. **RESPONSIBILITY.** The Buyer will not be responsible for material furnished without an Order from its Purchasing Department.
3. **PRICES.** If price is not stated on this Order, the material can be billed only at the price of the referenced contract, valid at time of invoice, or at prevailing market price in the absence of either a valid contract or specific price. The Seller shall give to the Buyer the benefit of any price reduction made by the seller before the actual date of delivery or, if later, the specified delivery date.
4. **DELIVERY.** Time is of the essence in Seller's performance of this Order. Without limiting any right of cancellation for the Seller's breach or breach or default the Buyer reserves the right to cancel this Order or any portion of the same if for any reason delivery is not made, or cannot be made, when and as specified, and to charge the Seller for any loss entailed including, but not limited to special or consequential damages.
5. **QUALITY.** All material received is subject by the Buyer to inspection and to rejection if the material is defective or does not meet the Buyer's specifications. The Buyer specifically reserves the right at Buyer's option (1) to have rejected material replaced by the Seller at the purchase price stipulated in this Order or in the contract, (2) to find replacement material from another source and charge the cost thereof and any expenses or losses related thereto to the Seller, or (3) to return the rejected material for full credit at the order price plus transportation charges. The Buyer reserves the right to accept a part of any shipment and reject the balance, considering the contract breached to the extent of the rejected material. The Buyer's rights with respect to the rejection of material are not waived by failure of the Buyer to notify the Seller promptly upon receipt of delivery.
6. **QUANTITY.** The specific quantity ordered must not be changed without the Buyer's consent in writing. Early or partial shipments will not be accepted unless agreed upon by Buyer in writing.
7. **PACKING.** The Buyer will not pay any charges for packing unless agreed upon in writing.
8. **AUDITS, INSPECTIONS AND EXPEDITING ACTIVITIES.** Upon reasonable notice, Seller shall permit Buyer and Buyer's designated representative to visit Seller's offices and manufacturing facilities for the purpose of conducting audits, inspections or expediting activities and shall arrange for such visits with Seller's suppliers and subcontractors as Buyer deems necessary.
9. **CORRECTIONS; CHANGES.** Stenographic and clerical errors are subject to correction by the Buyer, but this Order may not otherwise be modified or rescinded except by a written change order approved by all parties.
10. **TERMINATION FOR CONVENIENCE.** Buyer may terminate this Order in whole or in part at any time without cause upon notice to Seller. For goods that are standard stock merchandise or services, Buyer's only obligation to Seller shall be to pay (i) the documented direct costs incurred by Seller until the effective date of termination, (ii) the documented direct costs incurred by Seller in complying with Buyer's instructions in termination notice, (iii) such other documented costs, such as overhead, as Buyer may approve; provided, however, that such payment, when added to all payments previously made to Seller under this Order, shall not exceed the total amount which Seller would have been entitled to receive had there been no termination.
11. **DEFAULT.** If Seller breaches any of its obligations or warranties under this order, Buyer may terminate this Order in whole or in part, upon notice, without incurring liability to Seller.
12. **SHIPPING.** If truckload shipment is made, shipping notice must be immediately sent to the Buyer, showing truck number, initials, routing, waybill number and date of shipment. Our instructions on the face of the Order shall govern.
13. **MARKINGS.** Each package shipped must be marked with this Order number, the package contents, gross, tare and net weight.
14. **INVOICES AND CASH DISCOUNT.** Unless otherwise provided on the front of this Order, Seller shall mail a separate invoice for each shipment within 24 hours after shipment, and such invoice shall be dated no earlier than the date of shipment. If Buyer fails to receive any invoice promptly, Buyer may extend the payment date without penalty or loss of discount.
15. **CLAIMS AND LIENS.** The Seller shall upon request of the Buyer at any time prior to any installment payment and as a condition precedent to final payment, deliver to the Buyer a satisfactory release of all claims and liens, including claims and liens of persons performing any labor and/or furnishing any material hereunder.
16. **PATENT INDEMNIFICATION.** The Seller warrants it has the right to sell and provide the goods or services ordered hereunder. Seller shall indemnify and hold Buyer, its affiliates, and respective officers, directors and employees (individually and collectively, the "indemnitees") harmless from and against any fine, penalty, loss, injury, claim, cost, expense or liability (individually and collectively "liabilities") relating to the sale or use by the indemnitee and/or its customers of products or services provided by the Seller which lead to allegations of (i) infringement of a patent, copyright, trademark, service mark, trade secret, or other legally protected proprietary right, and/or (ii) contamination or any adverse impact on the environment solely due to the use of such products in Buyer's products.
- With respect to any claim of infringement, if any indemnitee's use of products or services provided by Seller is enjoined, Seller shall, at its own expense either (i) procure for such indemnitee the right to continue using the products or services, or (ii) after consultation with such indemnitee replace or modify the product or services with substantially similar, functionally equivalent, non infringing products or services.
- Should any claim, suit demand or proceeding be threatened or filed against any indemnitee (hereinafter the "Claims") alleging (i) infringement of a patent, copyright, trademark, service mark, trade secret, or other legally protected proprietary right relating to the sale or use by the indemnitee and/or its customer of products and services provided by the Seller and/or (ii) contamination or any adverse impact on the environment solely due to the use of such products in Buyer's products, indemnitees will provide prompt notice to Seller of such claims and provide to Seller every document received by indemnitees relating to such claim. Seller shall, at no cost or expense to any indemnitee, defend any such claim against indemnitees for liabilities, whether or not litigation is actually commenced, or the allegations are groundless or contain language that created the potential for liabilities, and pay any costs, attorney fees, and any judgment and/or settlement that may be incurred by an indemnitee; under this section or the enforcement of its rights under this section, Seller agrees to keep indemnitees advised of the continuing status of its defense of such claims and indemnitees agree to fully cooperate in any such defense, included but not limited to making available to Seller all information in their possession necessary to the investigation and defense of such claims. Seller shall compensate indemnitees for the costs of such cooperation. In the event Seller does not promptly assume the defense of such claims, indemnitees may do so at Seller's cost.
17. **TAXES.** Any sales or excise tax applicable to the material covered by this Order but not in effect upon the date hereof shall not be chargeable to the Buyer directly or indirectly and if required to be paid by the Buyer the Seller will reimburse the Buyer thereof.
18. **WARRANTY.** The Seller warrants that the material furnished hereunder shall be free from defects in design, material or workmanship and shall be in full conformity with the specifications, drawings and/or samples, fit for its intended use for the period of its useful life. These warrants shall survive acceptance and payment for the material. Failure of the Buyer to reject said material shall not constitute a waiver of any of these warrants. The Seller, further, shall save the Buyer, its customers and any users harmless from any loss, damage or expense whatsoever, to any person on property including indirect, special, or consequential damages, including attorney's fees and court costs, whether these damages arise in contract, negligence (including strict liability) or otherwise.
19. **CONFIDENTIALITY.** Except as may be necessary for the execution of the Order or as the Buyer may authorize in writing the Seller shall not disclose or make any use of information contained in drawings, designs, instructions, descriptions, specifications and samples provided by the Buyer. All such drawings, designs, instructions, descriptions, specifications and samples and all copies thereof shall remain the property of the Buyer and shall be returned to the Buyer on completion of the Order, or earlier if required by Buyer.
20. **INDEMNITY AND LIABILITY.** The Seller expressly assumes and agrees to indemnify and hold Buyer harmless from all liabilities, claims, demands, and actions made by any person, firm or corporation, including employees, workmen, servants or agents of the Seller and his subcontractors that may have been caused, or alleged to have been caused, directly or indirectly, or by any act of omission or commission, negligent or otherwise, of the Seller, his subcontractors their employees, workmen servants or agents, or of the Buyer, its employees, workmen, servants or agents, or by reason of the premises when under the control or direction of Seller. In the event Buyer's machinery and/or equipment is used by Seller in performance of the work called for by this Order, such machinery and/or equipment shall be considered as being under the sole custody and control of the Seller during the period of such use by the Seller, and should any person or persons in the employ of Buyer be used to operate said machinery and/or equipment during the period of such use, such person or persons shall be deemed during such period or operation to be an employee or employees of the Seller.
21. **COMPLIANCE WITH APPLICABLE LAWS.** Seller shall comply with all applicable Federal, State and local statutes, laws, ordinances, codes, orders, rules, regulations, proclamations and other governmental requirements in the design manufacture and sale of the material, equipment or services furnished hereunder. All provisions required by any of the foregoing to be included in this Order are incorporated herein by reference. Specifically, since the Buyer is a Federal Government Contractor, contractor and subcontractors, where required by law, hereby agree to comply with Executive Order 11246 as amended, in its implementing regulations, including the equal opportunity clause set forth in section 202 of the order and the regulations of the secretary of labor Title 41 CFR, chapter 80, Parts 1-60, which are incorporated in this contract/subcontract by reference. In addition, the contract/subcontract incorporates by reference the affirmative action clauses of the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Act of 1974. Prysmian facilities are ISO 14001 registered. Prysmian suppliers are responsible for adhering to site specific safety and environmental procedures.

All suppliers will be held accountable to the Prysmian Group ethical code -
https://www.prysmiangroup.com/sites/default/files/atoms/files/Code%20of%20Ethics_final_BN.pdf
PO Number must be shown on all Shipping Documents and Invoices.
CLICK!

Purchase order

Page 1 / 3



Prysmian Cables and Systems USA LLC

Data to be reported on your documents:		
Order Num.	Issue Date	Vendor Code
4500943762	01/08/2018	7010007293

Delivery Address:
 Abbeville
 Prysmian Cables and Systems USA LLC
 569 Highway 28 Bypass
 ABBEVILLE SC 29620
 USA

Order Address:
 KSC LOGISTICS, INC.
 217 Old Calhoun Falls Road
 ABBEVILLE SC 29620
 USA

Invoicing Address:
 Prysmian Cables and Systems USA, LLC
 569 Highway 28 Bypass
 Abbeville, SC 29620
 lena.new@prysmiangroup.com

Vendor's Address:
 KSC LOGISTICS, INC.
 217 Old Calhoun Falls Road
 ABBEVILLE SC 29620
 USA

Reference
 Ref: Mary Shumate
 Phone: 843-478-1547 Fax: 864-446-8154
 E Mail: chuck.kelley@kscllogistics.net

Incoterms T-- Service

Order Currency: USD

Payment Terms
 End of Month plus 37 days

Buyer's contact data:
 Bryan McClain
 Telephone: +1 (864) 366-1276
 E-mail: bryan.mcclain@prysmiangroup.com

FOR INTERNATIONAL SHIPPING ONLY: Please send copy shipping documents by email to nacustoms@prysmiangroup.com ISF Form must be completed for ocean shipments and sent 72 hours before sailing#

Steel Shipping Reel Repair- Logistics 2018

This is not a commitment to purchase the full amount of repairs and is only an estimate. Invoices will be processed/paid as requested work is completed.

When the total value of this PO has been consumed, no additional work should be done. Vendor should contact plant logistics and purchasing to increase the amount of work authorized. Prysmian is not obligated to pay invoices that exceed the total value of this PO.

5-3-18 PO increased for 150k to 200K per George Hutton- Email attached To PR*

6-12-18 PO increased for 200K to 250K per George Hutton - Email attached to PR

*** 16-August, 2018 - PO increased to \$300-K from approved requisition 5125876469 (M.Carpenter)

All suppliers will be held accountable to the Prysmian Group ethical code - https://www.prysmiangroup.com/sites/default/files/atoms/files/Code%20of%20Ethics_final_EN.pdf
 PO Number must be shown on all Shipping Documents and Invoices.
 CLICK!



Prysmian Cables and Systems USA LLC

Purchase order

Page 2 / 3

Data to be reported on your documents:		
Order Num.	Issue Date	Vendor Code
4500943762	01/08/2018	7010007293

*** 18-September - added line for HV Steel Reel repair. MWC

*** 9-November, incased value from \$350-K to \$400-k for shipping reel repair - MWC.

Item	Material Description	Order qty.	Unit	Price per unit	Total	Delivery date
10	Steel SHIPPING Reel Repairs for KSC 26 each still to be delivered Non-Taxable Item Please deliver to DC for Ouzts *** Item partially delivered ***	400,000	EA			12/31/2018
20	HV Steel Reel Repair 28 each still to be delivered Non-Taxable Item Please deliver to Dock A for CharlesOuzts *** Item partially delivered ***	25,000	EA			12/31/2018

Net Order Value: USD

Prysmian Cables and Systems USA, LLC
Signature not necessary, Purchase Order electronically authorized

All suppliers will be held accountable to the Prysmian Group ethical code -
https://www.prysmiangroup.com/sites/default/files/atoms/files/Code%20of%20Ethics_final_EN.pdf
PO Number must be shown on all Shipping Documents and Invoices.
CLICK!



Prysmian Cables and Systems USA LLC

Purchase order

Page 3 / 3

Data to be reported on your documents:		
Order Num.	Issue Date	Vendor Code
4500943762	01/08/2018	7010007293

TERMS AND CONDITIONS

1. **ACCEPTANCE.** Unless otherwise agreed in writing signed by the Buyer, acceptance is expressly limited to the terms and conditions herein, and the Seller by not rejecting this order in writing shall be deemed to conclusively have agreed to each and all of said terms and conditions, notwithstanding any term of condition or condition submitted by the seller.
2. **RESPONSIBILITY.** The Buyer will not be responsible for material furnished without an Order from its Purchasing Department.
3. **PRICES.** If price is not stated on this Order, the material can be billed only at the price of the referenced contract, valid at time of invoice, or at prevailing market price in the absence of either a valid contract or specific price. The Seller shall give to the Buyer the benefit of any price reduction made by the seller before the actual date of delivery or, if later, the specified delivery date.
4. **DELIVERY.** Time is of the essence in Seller's performance of this Order. Without limiting any right of cancellation for the Seller's breach or breach or default the Buyer reserves the right to cancel this Order or any portion of the same if for any reason delivery is not made, or cannot be made, when and as specified, and to charge the Seller for any loss entailed including, but not limited to special or consequential damages.
5. **QUALITY.** All material received is subject by the Buyer to inspection and to rejection if the material is defective or does not meet the Buyer's specifications. The Buyer specifically reserves the right at Buyer's option (1) to have rejected material replaced by the Seller at the purchase price stipulated in this Order or in the contract, (2) to find replacement material from another source and charge the cost thereof and any expenses or losses related thereto to the Seller, or (3) to return the rejected material for full credit at the order price plus transportation charges. The Buyer reserves the right to accept a part of any shipment and reject the balance, considering the contract breached to the extent of the rejected material. The Buyer's rights with respect to the rejection of material are not waived by failure of the Buyer to notify the Seller promptly upon receipt of delivery.
6. **QUANTITY.** The specific quantity ordered must not be changed without the Buyer's consent in writing. Early or partial shipments will not be accepted unless agreed upon by Buyer in writing.
7. **PACKING.** The Buyer will not pay any charges for packing unless agreed upon in writing.
8. **AUDITS, INSPECTIONS AND EXPEDITING ACTIVITIES.** Upon reasonable notice, Seller shall permit Buyer and Buyer's designated representative to visit Seller's offices and manufacturing facilities for the purpose of conducting audits, inspections or expediting activities and shall arrange for such visits with Seller's suppliers and subcontractors as Buyer deems necessary.
9. **CORRECTIONS; CHANGES.** Stenographic and clerical errors are subject to correction by the Buyer, but this Order may not otherwise be modified or rescinded except by a written change order approved by all parties.
10. **TERMINATION FOR CONVENIENCE.** Buyer may terminate this Order in whole or in part at any time without cause upon notice to Seller. For goods that are standard stock merchandise or services, Buyer's only obligation to Seller shall be to pay (i) the documented direct costs incurred by Seller until the effective date of termination, (ii) the documented direct costs incurred by Seller in complying with Buyer's instructions in termination notice, (iii) such other documented costs, such as overhead, as Buyer may approve; provided, however, that such payment, when added to all payments previously made to Seller under this Order, shall not exceed the total amount which Seller would have been entitled to receive had there been no termination.
11. **DEFAULT.** If Seller breaches any of its obligations or warranties under this order, Buyer may terminate this Order in whole or in part, upon notice, without incurring liability to Seller.
12. **SHIPPING.** If truckload shipment is made, shipping notice must be immediately sent to the Buyer, showing truck number, initials, routing, waybill number and date of shipment. Our instructions on the face of the Order shall govern.
13. **MARKINGS.** Each package shipped must be marked with this Order number, the package contents, gross, tare and net weight.
14. **INVOICES AND CASH DISCOUNT.** Unless otherwise provided on the front of this Order, Seller shall mail a separate invoice for each shipment within 24 hours after shipment, and such invoice shall be dated no earlier than the date of shipment. If Buyer fails to receive any invoice promptly, Buyer may extend the payment date without penalty or loss of discount.
15. **CLAIMS AND LIENS.** The Seller shall upon request of the Buyer at anytime prior to any installment payment and as a condition precedent to final payment, deliver to the Buyer a satisfactory release of all claims and liens, including claims and liens of persons performing any labor and/or furnishing any material hereunder.
16. **PATENT INDEMNIFICATION.** The Seller warrants it has the right to sell and provide the goods or services ordered hereunder. Seller shall indemnify and hold Buyer, its affiliates, and respective officers, directors and employees (individually and collectively, the "indemnitee") harmless from and against any fine, penalty, loss, injury, claim, cost, expense or liability (individually and collectively "liabilities") relating to the sale or use by the indemnitee and/or its customers of products or services provided by the Seller which lead to allegations of (i) infringement of a patent, copyright, trademark, service mark, trade secret, or other legally protected proprietary right, and/or (ii) contamination or any adverse impact on the environment solely due to the use of such products in Buyer's products. With respect to any claim of infringement, if any indemnitee's use of products or services provided by Seller is enjoined, Seller shall, at its own expense either (i) procure for such indemnitee the right to continue using the products or services, or (ii) after consultation with such indemnitee replace or modify the product or services with substantially similar, functionally equivalent, non infringing products or services. Should any claim, suit demand or proceeding be threatened or filed against any indemnitee (hereinafter the "Claims") alleging (i) infringement of a patent, copyright, trademark, service mark, trade secret, or other legally protected proprietary right relating to the sale or use by the indemnitee and/or its customer of products and services provided by the Seller and/or (ii) contamination of or any adverse impact on the environment solely due to the use of such products in Buyer's products, the indemnitee will provide prompt notice to Seller of such claims and provide to Seller every document received by indemnitee relating to such claim. Seller shall, at no cost or expense to any indemnitee, defend any such claim against indemnitee for liabilities, whether or not litigation is actually commenced, or the allegations are groundless or contain language that created the potential for liabilities, and pay any costs, attorney fees, and any judgment and/or settlement that may be incurred by an indemnitee; under this section or the enforcement of its rights under this section, Seller agrees to keep indemnitee advised of the continuing status of its defense of such claims and indemnitee agrees to fully cooperate in any such defense, included but not limited to making available to Seller all information in their possession necessary to the investigation and defense of such claims. Seller shall compensate indemnitee for the costs of such cooperation. In the event Seller does not promptly assume the defense of such claims, indemnitee may do so at Seller's cost.
17. **TAXES.** Any sales or excise tax applicable to the material covered by this Order but not in effect upon the date hereof shall not be chargeable to the Buyer directly or indirectly and if required to be paid by the Buyer the Seller will reimburse the Buyer thereof.
18. **WARRANTY.** The Seller warrants that the material furnished hereunder shall be free from defects in design, material or workmanship and shall be in full conformity with the specifications, drawings and/or samples, fit for its intended use for the period of its useful life. These warrants shall survive acceptance and payment for the material. Failure of the Buyer to reject said material shall not constitute a waiver of any of these warrants. The Seller, further, shall save the Buyer, its customers and any users harmless from any loss, damage or expense whatsoever, to any person on property including indirect, special, or consequential damages, including attorney's fees and court costs, whether these damages arise in contract, negligence (including strict liability) or otherwise.
19. **CONFIDENTIALITY.** Except as may be necessary for the execution of the Order or as the Buyer may authorize in writing the Seller shall not disclose or make any use of information contained in drawings, designs, instructions, descriptions, specifications and samples provided by the Buyer. All such drawings, designs, instructions, descriptions, specifications and samples and all copies thereof shall remain the property of the Buyer and shall be returned to the Buyer on completion of the Order, or earlier if required by Buyer.
20. **INDEMNITY AND LIABILITY.** The Seller expressly assumes and agrees to indemnify and hold Buyer harmless from all liabilities, claims, demands, and actions made by any person, firm or corporation, including employees, workmen, servants or agents of the Seller and his subcontractors that may have been caused, or alleged to have been caused, directly or indirectly, or by any act of omission or commission, negligent or otherwise, of the Seller, his subcontractors their employees, workmen servants or agents, or of the Buyer, its employees, workmen, servants or agents, or by reason of the premises when under the control or direction of Seller. In the event Buyer's machinery and/or equipment is used by Seller in performance of the work called for by this Order, such machinery and/or equipment shall be considered as being under the sole custody and control of the Seller during the period of such use by the Seller, and should any person or persons in the employ of Buyer be used to operate said machinery and/or equipment during the period of such use, such person or persons shall be deemed during such period or operation to be an employee or employees of the Seller.
21. **COMPLIANCE WITH APPLICABLE LAWS.** Seller shall comply with all applicable Federal, State and local statutes, laws, ordinances, codes, orders, rules, regulations, proclamations and other governmental requirements in the design manufacture and sale of the material, equipment or services furnished hereunder. All provisions required by any of the foregoing to be included in this Order are incorporated herein by reference. Specifically, since the Buyer is a Federal Government Contractor, contractors and subcontractors, where required by law, hereby agree to comply with Executive Order 11246 as amended, in its implementing regulations, including the equal opportunity clause set forth in section 202 of the order and the regulations of the secretary of labor Title 41 CFR, chapter 60, Parts 1-60, which are incorporated in this contract/subcontract by reference. In addition, the contract/subcontract incorporates by reference the affirmative action clauses of the Rehabilitation Act of 1983 and the Vietnam Era Veterans Readjustment Act of 1974. Prysmian facilities are ISO 14001 registered. Prysmian suppliers are responsible for adhering to site specific safety and environmental procedures.

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 PO Number must be shown on all Shipping Documents and Invoices.
 CLICK!

PInt	Supplier/Suppl. PInt	Purch.Doc.	Short Text	Doc. Date	Net Value
US10	7010007293 KSC LOGISTICS, INC.	4500942970	Steel Reel Storage for KSC 2018	01/05/2018	
US10	7010007293 KSC LOGISTICS, INC.	4500943762	Steel SHIPPING Reel Repairs for KSC	01/08/2018	
US10	7010007293 KSC LOGISTICS, INC.	4500943762	HV Steel Reel Repair	01/08/2018	
US10	7010007293 KSC LOGISTICS, INC.	4500944515	EPR Storage / Delivery 2018 Inv. Monthly	01/09/2018	
US10	7010007293 KSC LOGISTICS, INC.	4500981933	Process Reel/Red Scrap reel repair	04/03/2018	
US10	7010007293 KSC LOGISTICS, INC.	4500981933	Process Reel/Red Scrap reel repair	04/03/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501008241	Inoex Socks	06/06/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501082167	Outside storage deposit	11/30/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501082167	Monthly rent outside	11/30/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501082167	Inside storage deposit	11/30/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501082167	Monthly Activities outside	11/30/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501082167	Contract transportation estimat	11/30/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501082167	Monthly rent outside	11/30/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501082167	Monthly Activities outside	11/30/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501082167	Contract transportation estimat	11/30/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501082167	Contract transportation estimat	11/30/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501093645	UNLOADING/LOGGING REELS KSC (ATL)	12/27/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501093645	TRANSPORT/LOAD/UNLOAD KSC	12/27/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501093645	UNLOADING/LOGGING REELS KSC (WARD)	12/27/2018	
US10	7010007293 KSC LOGISTICS, INC.	4501093645	TRANSPORT/LOAD/UNLOAD KSC	12/27/2018	

1/30/24, 9:42 AM

Hite and Stone Mail - Claim 4219142- Nickles vs. KSC Logistics Inc



Thomas Hite III <t3@hiteandstone.com>

Claim 4219142- Nickles vs. KSC Logistics Inc

Gandy, Laura <Laura_Gandy@cinfin.com>
To: "T3@hiteandstone.com" <t3@hiteandstone.com>

Thu, Nov 30, 2023 at 9:14 AM

Mr. Hite,

We received the attached Amended Complaint. It appears the original lawsuit was filed in 2021 before the statute of limitations expired but never submitted to us for review and response.

Can you advise if our insured is in default and status of this matter?

I look forward to hearing from you.

Best, Laura

Laura Beer Gandy CPCU, AIC, AICM
Senior Claims Specialist II
P.O. Box 487
White Rock SC 29177
803-212-8798 -phone
844-253-0112 -fax



Subsidiaries of Cincinnati Financial Corporation

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KSC Logistics LAWSUIT 11 23.pdf
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ELECTRONICALLY FILED - 2024 Jan 30 10:33 AM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

ELECTRONICALLY FILED - 2021 Nov 09 4:28 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

WILLIAM F. NICKLES, IV,

PLAINTIFF,

V.

HOWAR EQUIPMENT, INC.,
SONOCO PRODUCTS COMPANY,
PALMETTO STATE
TRANSPORTATION, LLC,
KSC LOGISTICS, INC., AND
JOHN DOE CORPORATION.

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

SUMMONS AS TO AMENDED

COMPLAINT

2021-CP-01-00076

(JURY TRIAL DEMANDED)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you and to serve a copy of your Answer on the subscribed at his office, 100 East Pickens Street, P. O. Box 805, Abbeville, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for relief demanded in the Complaint.

HITE & STONE

BY: /s/ Thomas E. Hite, III (SC Bar #: 73750)

THOMAS E. HITE, III, ESQ.

P. O. BOX 805

ABBEVILLE, SC 29620

(864) 366-5400 TELEPHONE

(864) 366-2638 FACSIMILE

T3@hiteandstone.com

ATTORNEY FOR THE PLAINTIFF

ABBEVILLE, SOUTH CAROLINA
NOVEMBER 9, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE	)	
WILLIAM F. NICKLES, IV,	)	
PLAINTIFF,	)	
V.	)	AMENDED COMPLAINT
	)	2021-CP-01-00076
	)	(JURY TRIAL DEMANDED)
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
DEFENDANTS.	)	

COMES NOW, the Plaintiff, with a complaint of the negligence, gross negligence, recklessness, product defects, and strict liability by the Defendants, and alleges the following.

PARTIES AND JURISDICTION

1. The Plaintiff William F. Nickles, IV, is a citizen and resident of the County of Abbeville, State of South Carolina.
2. That upon information and belief, at the times hereinafter mentioned, the Defendant Howar Equipment, Inc. ("Howar") is a corporation duly organized and existing under the laws of Ontario, Canada, and is authorized to do business in the United States of America as Howar Equipment, Inc. with its principal place of business in the State of North Carolina. Defendant, Howar conducts business in the County of Abbeville, State of South Carolina. In particular, reels manufactured and sold by Howar flow through the stream of commerce and are purchased and used by Prysmian Cables & Systems, Inc. ("Prysmian") in Abbeville County, State of South Carolina.

3. That upon information and belief, at the times hereinafter mentioned, the Defendant Sonoco Products Company ("Sonoco") is a corporation duly organized and existing under the laws of the State of South Carolina with its principal place of business in Hartsville, South Carolina. Defendant, Sonoco conducts business in the County of Abbeville, State of South Carolina. In particular, reels manufactured and sold by Sonoco flow through the stream of commerce and are purchased and used by Prysman in Abbeville County, State of South Carolina.

4. That upon information and belief, at the times hereinafter mentioned, the Defendant Palmetto State Transportation, LLC ("Palmetto State") is a limited liability corporation duly organized and existing under the law of the State of Pennsylvania, with its principal place of business in the County of Greenville, State of South Carolina. Defendant, Palmetto State is authorized to do business in the State of South Carolina. That upon information and belief, Defendant, Palmetto State provided and provides metal reels, metal reel servicing, maintenance and repairs for Prysman in Abbeville, South Carolina.

5. That upon information and belief, at the times hereinafter mentioned, the Defendant KSC Logistics, Inc. ("KSC") is a corporation duly organized and existing under the law of the State of South Carolina, with its principal place of business in the County of Abbeville, State of South Carolina. That upon information and belief, Defendant, KSC provided and provides metal reels, metal reel servicing, maintenance and repairs for Prysman in Abbeville, South Carolina.

6. That upon information and belief, at the times hereinafter mentioned, the Defendant, John Doe Corporation ("John Doe") is a corporation duly organized and existing under the laws of United States of America and did manufacture, maintain, build, alter or

construct high voltage reels that flow through the stream of commerce and are purchased and used by Pysmian in Abbeville County, State of South Carolina.

7. That all persons and matters herein are within the jurisdiction of this Honorable Court and venue is proper in Abbeville County.

FACTUAL ALLEGATIONS

8. That on or about November 10, 2018, Plaintiff was working for Pysmian, an industrial cable manufacturing company in Abbeville, South Carolina. Plaintiff was working as a lead line operator charged with getting the newly constructed high voltage cable onto a 13-foot-tall high voltage reel. The Plaintiff along with coworkers were beginning the process of rolling the cable onto a reel that is manufactured, altered, repaired, or refurbished by all Defendants, solely or jointly.

9. As the Plaintiff was diligently performing his work duties, suddenly and without warning the D-Ring mechanism that is part of the high voltage reel failed, broke off and caused the massive cable to come loose and fall onto the Plaintiff.

10. The force of the heavy cable struck Plaintiff in the right side of the head and landed on top of him smashing him to the ground. The impact knocked the Plaintiff off of his feet and left him unconscious. Two of his teeth were knocked out and he had fractures to his left tibia, fibula and ankle, as well as injuries to his shoulder, neck, and back. He has endured two surgeries to repair the damages and will continue to need medical treatment from the horrendous injuries sustained.

11. That the high voltage reel was improperly designed, constructed, maintained, stored, repaired or refurbished leading to the failure of the D-Ring causing the severe injuries to the Plaintiff.

12. That the acts or omissions of the Defendants solely or jointly were the proximate cause of the reel failure and subsequent injuries sustained by the Plaintiff.

13. Defendants Palmetto State and KSC are in the business of storing, refurbishing, and repairing reels for Prysman.

14. Defendants Howar and Sonoco are in the business of manufacturing and selling reels to Prysman.

15. Defendant John Doe represents a corporation in the business of refurbishing, storing, repairing, selling or manufacturing reels for Prysman.

FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence as to Palmetto State / KSC/ John Doe)

16. Plaintiff incorporates by reference the above paragraphs as if fully stated herein.

17. Defendants Palmetto State, KSC, and John Doe owed a duty of care to the Plaintiff and the public to use reasonable care in the transportation, storage, repairs, or refurbishment of high voltage reels and in particular the high voltage reel that injured the Plaintiff.

18. Defendants or agents thereof while acting in the course and scope of their duties, were careless, negligent, reckless, and/or grossly negligent, in the following particulars:

- a. In failing to safely store the reel;
- b. In failing to weld the D-Ring to the metal reel properly;
- c. In failing to properly repair or refurbish the reel;
- d. In failing to use the strongest mechanism of attachment for the reel;
- e. In failing to properly inspect the reel;
- f. In failing to properly train employees on how to repair, replace, or refurbish a reel;
- g. In failing to properly transport the reel;
- h. In failing to evaluate and study design alternatives to the reel repairs;

- i. In failing to establish clear design specifications for repairs;
- j. In choosing to deliver the reel in a dangerous condition;
- k. In failing to have standards for when to take a reel out of service;
- l. In failing to use that degree of care and caution that a reasonable prudent person would have used under the same of similar circumstances;
- m. In such other particulars that may be discovered and/or shown in the discovery process and/or trial of this case.

All of which were a direct and proximate cause of the injuries and damages suffered by Plaintiff and alleged herein.

19. As a direct and proximate result of the negligence, carelessness, recklessness, wantonness, and/or gross negligence of the Defendants, the Plaintiff, has suffered and will continue to suffer in the future from:

- a. Severe and permanent personal and physical injury;
- b. Pain and suffering in the past, present, and future;
- c. Mental anguish and emotional distress;
- d. Loss of enjoyment of life in the past, present, future;
- e. Past medical expenses;
- f. Future medical expenses;
- g. Lost earning capacity;
- h. Disability;
- i. Any others that may be discovered

20. As a direct and proximate result of the negligence, carelessness, recklessness, wantonness, and/or gross negligence of the Defendants, the Plaintiff, is entitled to recover an amount of actual, punitive, special, and consequential damages to be determined by a jury at the trial of this action.

SECOND CAUSE OF ACTION
(Negligence, Gross Negligence as to Howar / Sonoca / John Doe)

21. Plaintiff incorporates by reference the above paragraphs as if fully stated herein.

22. That Defendants Howar and Sonoco owe a duty of care to the Plaintiff and the public to use reasonable care in the design, development, manufacture, sale, and distribution of high voltage reels.

23. That upon information and belief, Defendants Howar and/or Sonoco breached their duty of care and were negligent, careless, grossly negligent, reckless, willful, and wanton in one or more of the following particulars:

- a. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel in such a way that operators would be subjected to unreasonable and increased danger in the event of a product failure;
- b. By failing to design, manufacture, construct, assemble, market, distribute, and/or sell a high voltage reel that was free of defects and was fit and reasonably safe in all respects for its intended and foreseeable uses;
- c. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that was unnecessarily defective for its intended use;
- d. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that was unnecessarily dangerous to the workers of the school bus;
- e. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that was in an unsafe and unreasonably dangerous and/or defective condition;
- f. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that unnecessarily exposed operators and workers to an unnecessary danger;
- g. By failing to test the high voltage reel to ensure that it worked in a proper manner;
- h. By selling a defective high voltage reel and component parts;
- i. In generally failing to use the degree of care and caution that a reasonable prudent person would have used under the same or similar circumstances.

All of which were a direct and proximate cause of the injuries and damages suffered by

Plaintiff and alleged herein.

24. As a direct and proximate result of the negligence, carelessness, recklessness, wantonness, and/or gross negligence of the Defendants, Howar, Sonoco, and John Doe, the Plaintiff, has suffered and will continue to suffer in the future serious personal injuries as stated above.

25. As a direct and proximate result of the negligence, carelessness, recklessness, wantonness, and/or gross negligence of the Defendants Howar, Sonoco, and John Doe, the Plaintiff, is entitled to recover an amount of actual, punitive, special, and consequential damages to be determined by a jury at the trial of this action.

THIRD CAUSE OF ACTION
(Strict Liability / Product Defects as to Howar / Sonoco / John Doe)

26. Plaintiff incorporates by reference the above paragraphs as if fully stated herein.

27. That the high voltage reel used by the Plaintiff and sold by Defendants, Howar Sonoco and/or John Doe was defective and unreasonably dangerous to the Plaintiff and other similarly situated workers when it was sold by Defendant(s).

28. That the warnings provided by Defendants were inadequate, misleading, defective, and rendered the high voltage reel unreasonably dangerous to the Plaintiff and other workers.

29. That the subject reel, was in substantially the same condition as it was when it was originally sold by Defendants with the exception of normal wear and tear, and was being used in a reasonably foreseeable manner at the time Plaintiff was injured.

30. That the Defendants as sellers and distributors of subject reels, are strictly liable for all injuries and damages caused by the defective product, pursuant to S.C. Code § 15-73-10 *et seq.*

31. That upon information and belief, Defendants Howar, Sonoco and/or John Doe breached their duty of care and placed an unreasonably dangerous product in the market in one

or more of the following particulars:

- a. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel in such a way that workers would be subjected to unreasonable and increased danger;
- b. By failing to design, manufacture, construct, assembly, market, distribute, and/or sell a high voltage reel that was free of defects and was fit and reasonably safe in all respects for its intended and foreseeable uses;
- c. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that was unnecessarily defective for its intended use;
- d. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that was unnecessarily dangerous to workers or operators using it;
- e. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that was in an unsafe and unreasonably dangerous and defective condition;
- f. By designing, manufacturing, constructing, assembling, inspecting, marketing, distributing, and/or selling a high voltage reel that unnecessarily exposed workers to increased injury in the event of a failure;
- g. By failing to test the reel to ensure that it worked in a proper manner;
- h. By selling a defective reel and component parts, in particular the reel used by the Plaintiff that failed to work properly and as intended;
- i. In generally failing to use the degree of care and caution that a reasonable prudent person would have used under the same or similar circumstances.

All of which were a direct and proximate cause of the injuries and damages suffered by Plaintiff and alleged herein.

32. As a direct and proximate result of the Defendants, selling a high voltage reel in a defective condition unreasonable dangerous to workers, operators, or the general public, the Plaintiff, has suffered and will continue to suffer in the future serious personal injuries as stated above.

33. As a direct and proximate result of the Defendants Howar, Sonoco, and John Doe,

selling a high voltage reel in a defective condition unreasonable dangerous to workers, operators, or the general public, namely the Plaintiff, is entitled to recover an amount of actual, punitive, special, and consequential damages to be determined by a jury at the trial of this action.

FOURTH CAUSE OF ACTION
(Breach of Warranty as to Howar / Sonoco / John Doe)

34. Plaintiff incorporates by reference the above paragraphs as if fully stated herein.

35. That as merchants of reels, the Defendants, expressly and impliedly warranted that the subject reel was free from defects, merchantable, and fit for ordinary use.

36. That the Defendants breached express and implied warranties in the design, manufacture, and sale of the subject reel because it was defective, not merchantable, and unfit for ordinary use.

37. As a direct and proximate result of the breach of the breach of warranty by the Defendants, Howar, Sonoco, and/or John Doe, in selling a high voltage reel in a defective condition unreasonable dangerous to workers, operators, and the general public, namely the Plaintiff, has suffered and will continue to suffer in the future serious personal injuries as stated above.

38. As a direct and proximate result of the breach of warranty by the Defendants the Plaintiff, is entitled to recover an amount of actual, punitive, special, and consequential damages to be determined by a jury at the trial of this action.

WHEREFORE the Plaintiff, Nickles respectfully prays for judgment against the Defendants for all actual damages, special damages, consequential damages in an amount to be determined by the jury at the trial of this action, Additionally, the Plaintiff, respectfully prays for judgment against the Defendants for the costs and disbursements of this action and for any other relief as this Honorable Court deems just and proper. The Plaintiff demands a trial by jury.

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NOVEMBER 9, 2021

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	
	)	C.A. No.: 2021-CP-01-00076
William F. Nickles, IV,	)	
	)	
Plaintiff,	)	MOTION TO ALTER OR AMEND AND,
	)	IN THE ALTERNATIVE,
vs.	)	TO PROVIDE FOR SETOFF
	)	
Howar Equipment, Inc., Sunoco Products	)	
Company, Palmetto State Transportation,	)	
LLC, KSC Logistics, Inc., and John Doe	)	
Corporation,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 59 and Rule 60, SCRCP, as well as S.C. Code Ann. § 15-38-50, Defendant KSC Logistics, Inc. ("KSC"), moves the following relief:

- (1) an Order setting off prior payments made by settling parties or other entities against the damages ordered against KSC. KSC raised this issue at the December, 2023 Damages Hearing, and the Court stated it would address the issue after issuing an Order for Damages. KSC has had no means to compel Plaintiff to produce this information, and requests for the Court to do so;
- (2) Pursuant to Rule 59(a), an Order reconsidering and amending the Order for Damages entered by the Court, and setting aside the entry of default and/or default judgment entered; and
- (3) Pursuant to Rule 60(b), a motion for relief from the damages order and setting aside the default judgment entered against KSC, based on subsequently discovered evidence which demonstrates that KSC was not involved in any handling of the reel at issue, which was not disclosed in Plaintiff's Opposition to KSC's Motion to Set Aside Entry

of Default.

This Motion is based upon the pleadings, the record of the case, South Carolina law, and the Memorandum of Authority and Affidavits filed herewith.

KSC received notice of the Order for Damages on February 29, 2024; therefore, this filing is within 10 days (as defined in the Rules of Civil Procedure) of the Order.

Pursuant to Rule 11, SCRCP, the undersigned certifies that there was no duty of consultation prior to filing, because this is akin to a Motion for New Trial, and consultation is not required.

March 11, 2024

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	
	)	C.A. No.: 2021-CP-01-00076
William F. Nickles, IV,	)	
	)	
Plaintiff,	)	BRIEF IN SUPPORT OF
	)	MOTION TO ALTER OR AMEND AND,
vs.	)	IN THE ALTERNATIVE,
	)	TO PROVIDE FOR SETOFF
Howar Equipment, Inc., Sunoco Products	)	
Company, Palmetto State Transportation,	)	
LLC, KSC Logistics, Inc., and John Doe	)	
Corporation,	)	
	)	
Defendants.	)	
_____	)	

Defendant KSC Logistics, LLC ("KSC") submits this Brief in Support of Its Motion to Alter or Amend, or, in the alternative, to provide for setoff.

RELEVANT PROCEDURAL HISTORY

Plaintiff obtained an Entry of Default on or around February 7, 2022, at which time Plaintiff moved for damages. On December 7, 2023, KSC filed a Motion to Set Aside Default, on which the Court conducted a hearing on January 30, 2024. Plaintiff submitted opposition to that Motion, and the Court denied that Motion by an Order dated February 7, 2024. The Court conducted a damages hearing on December 18, 2023. At that hearing, KSC raised the issue of setoff, and the Court advised that it would consider the issue after ruling on the Motion to Set Aside Entry of Default, and a ruling as to damages. Because of the default, KSC has had no ability to inquire as to payments received from Third Parties, and Plaintiff objected to consideration of such evidence at the damages hearing.

On August 9, 2023, Defendant Palmetto State Transportation filed a Motion for Summary Judgment, arguing "there is no evidence of actionable negligence by Palmetto State

Transportation, LLC, any breach of duty to the plaintiff, or that any breach proximately caused the plaintiff's injury and damages." (Palmetto State MSJ.) Three months later, and prior to any hearing on the Motion, Plaintiff dismissed claims against Palmetto State. In reality, based on review of depositions, other than the admissions impugned under the default, there is also no such evidence against KSC. Subsequently discovered evidence further supports this contention.

At the January 20, 2024, hearing on KSC's Motion to Set Aside the Entry of Default, Plaintiff argued he would suffer significant prejudice if the default were set aside, based on discovery engaged with other parties. Based on the undersigned's efforts to obtain depositions, it appears that two depositions were taken after the complaint was amended to add KSC – one of Plaintiff, and one of an employee of Palmetto State Transport, which lasted less than two hours.

NEWLY-DISCOVERED EVIDENCE

KSC was unaware of any depositions taken in this case, until Plaintiff presented limited excerpts of depositions in opposition to KSC's Motion to Set Aside Entry of Default, which occurred after the substantive damages hearing in this case. Upon learning of the existence of depositions, KSC immediately undertook research to obtain same. KSC's counsel requested pertinent damages and liability information at the December 18, 2023 hearing. Although the undersigned concedes that Plaintiff was not obligated to provide the information, he had the opportunity to do so, and did not do so. Importantly, even the documents that Plaintiff filed in his second return in opposition to KSC's Motion to Set Aside Entry of Default, filed on January 30, 2024, the day of the hearing, did not disclose depositions. The first reference to deposition came at that hearing.

Upon obtaining depositions after the January 30, 2024 reference, KSC obtained deposition testimony, and Exhibit 1 to Plaintiff's deposition included Prysmian's Accident report, filed

herewith as Exhibit 1, which identified a failed D-ring as the cause of the accident, and which further called for removal of all D-Rings from all High-voltage reels, to be replaced with eye bolts. This is significant, because KSC did not do work on reels with D-rings. (See Second Affidavit of William Ray Kelley, ¶ 8.) Further, KSC obtained testimony that all high voltage shipping reels at Prysmian have serial numbers on them. (Deposition of Charles Ouzts, hereafter “Ouzts Depo,” p. 20, ll. 12 – 16.)¹ Ouzts confirmed that he could likely identify the reel involved in the Accident at issue, if he had a serial number for it. Interestingly, Plaintiff’s counsel asked Ouzts if he could find all reels completed at the Prysmian plant on the high voltage line for the week leading up to the Accident, and Ouzts responded “I would expect [the SAP program used to track reels] to be able to.” (Ouzts Depo, p. 59, l. 16 – p. 60, l. 9.) Ouzts said he had no knowledge of whether the reel at issue had ever been repaired after it was purchased from the manufacturer. (Ouzts Depo, p. 65, l. 25 – p. 66, l. 16.) Ouzts testified it was possible that the reel was stored at KSC, but never could say whether it was. (Ouzts Depo, p. 27, ll. 2 – 8.) When Ouzts testified that high voltage reels “are primarily repaired by KSC,” he used the present tense, in November, 2021, which only references what was being done then – this analysis is supported by Ouzts’ testifying that Palmetto State had done it in the past. (Ouzts Depo, p. 51, ll. 10 – 24.)

At the hearing on KSC’s Motion to Set Aside Default, Plaintiff’s counsel made reference to the deposition of Cecil Talley as a basis to amend to add claims against KSC. Talley was director of operations for Prysmian’s Abbeville facility. (Cecil Talley Deposition, hereafter “Talley Depo,” p. 10, l. 24 – p. 11, l. 12.)² Talley testified that Charles Ouzts made decisions on when to move reels. (Talley Depo, p. 40, ll. 17 – 25.) Talley noted that reels were stored at KSC,

¹ Pertinent pages of Ouzts’ Depo are filed herewith as Exhibit 2.

² Pertinent pages of Talley Depo are filed herewith as Exhibit 3.

but that appears to refer to the time at which the deposition was taken. (Talley Depo, pp. 44 – 45.) Talley testified that there was no industry standard for refurbishing reels, and Charles Ouzts would determine when reels need to be refurbished. (Talley Depo, p. 51, ll. 3 – 20.) Talley testified that the high-voltage reel in the Accident would have come from the manufacturer with a d-ring on it. (Talley Depo, p. 55, ll. 16 – 19.) Talley testified that a determination of whether a D-ring was (Talley Depo, p. 67, l. 25 – p. 68, l. 13.) In his questioning, Plaintiff's counsel revealed that he had no knowledge, nor did Talley, of the age of the reel at issue. (Talley Depo, p. 74, l. 12 – p. 75, l. 10.) In opposition to KSC's Motion to Set Aside Default, Plaintiff's counsel incorrectly accused KSC's President of making a clearly false statement by saying that Kelley misrepresented that KSC was not involved in high voltage reels, with Plaintiff arguing that he was disclosing exhibits "that clearly link KSC to storage and repairs of high voltage reels for Pysmian Cable at the critical times prior to the Plaintiff's injury." (Pl Additional Opp to Def's Mt to Set Aside Entry of Default, p. 1.) This representation to the Court by Plaintiff appears to be factually inaccurate because the actual communications, in writing, are filed herewith as Exhibit 4. In writing, Kelley confirmed that KSAC [sic] Logistics, Inc. never had the size reel that was involved in the accident that took place on November 10, 2018. This size reel was not in possession by KSC Logistics, Inc. [sic] for 6 months prior to the accident and for 4 months after the accident. Therefore, KSC Logistics, Inc. couldn't have made any modifications to the reel involved in the accident." (Exhibit 4; see also Kelley Affidavit.) Interestingly, Plaintiff did not disclose (and KSC did not know about) the following testimony:

Q: And KSC has repaired high-voltage reels in the past?

A: I don't know that. You know, that's something, when this came up, I can't – I can't confirm or deny that either way, to be honest with you.

(Talley Depo, p. 86, ll. 1 -4.) That testimony provides no evidence that KSC made any repairs, and Talley deferred to Ouzts, who also provided no evidence that KSC had made any repairs on the reel at issue. Talley also conceded that, after the accident, a Prysmian employee, and not a KSC one, replaced D-ring with eyebolts. (Talley Depo, p. 91, ll. 8 – 20.)

Similarly, Randall Gary testified that he had no personal knowledge of whether the reel at issue was supplied by KSC. (Randall Gary Deposition, hereafter “Gary Depo,” p. 58, ll. 23 – 25.)³ Gary also had no knowledge of whether the reel had ever been refurbished. (Gary Depo, p. 59, ll. 4 – 10.)

Upon learning of the default in this case, and upon hearing the arguments presented in opposition to KSC’s Motion to Set Aside Entry of Default, Chuck Kelley initiated a search of third parties’ emails, to which he was not a party. He discovered an email between Charles Ouzts and Heath Booton, on which KSC’s Office Manager was copied, dated June 24, 2022, in which Prysmian asked Ms. Nance if KSC ever had High Voltage Reels 823053 and 823051 in inventory. Ms. Nance confirmed that those reels were never in inventory at KSC. Booton, Prysmian’s Associate Counsel, then ask Charles Ouzts, Prysmian’s inventory manager, “Would it be reasonable to assume that the reels were shipped back directly to Prysmian and Prysmian elected to reuse these reels upon a visual inspection?” (See Affidavit of Brenda Nance, filed herewith as Exhibit 6, as well as Exhibit A to Nance Affidavit.) Ouzts responded confirming that it was reasonable to assume that Prysmian had always possessed the reel and reused the reels on its own visual inspection. (Exhibit A to Nance Affidavit.) KSC has no way to know whether Plaintiff is in possession of this email.

³ Pertinent pages of Gary Depo are attached hereto as Exhibit 5.

LEGAL STANDARD

A court is required to apply setoff for settlements paid before entering judgment against a non-settling defendant. *Glenn v. 3M Company*, 440 S.C. 34, 84, 890 S.E.2d 569, 595 (Ct. App. 2023).

“The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law.” *Howard v. Roberson*, 376 S.C. 143, 149, 654 S.E.2d 877, 880 (Ct. App. 2007). “The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009). The trial court’s decision will not be disturbed on appeal absent a clear showing of the abuse of that discretion.” *Id.*

ARGUMENT

1. KSC is entitled to setoff for any amounts paid by any parties to settle claims presented by Plaintiff.

“[T]rial judges retain jurisdiction to alter judgments on their own initiative [or on motion of a party,] for ten days if a Rule 59(e), SCRCp, motion is filed.” *Ness v. Eckerd Corp.*, 350 S.C. 399, 402, 566 S.E.2d 193, 195 (Ct. App. 2002).

Our courts are clear on the issue of setoff:

The right to setoff has existed at common law in South Carolina for over 100 years. Allowing setoff prevents an injured person from obtaining a double recovery for the damage he sustained, for it is almost universally held that there can be only one satisfaction for an injury or wrong. In 1988, these equitable principles were codified as part of the South Carolina Contribution Among Joint Tortfeasors Act. ... Therefore, before entering judgment on a jury verdict [or on a damages award by a court], the court must reduce the amount

of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate *the same plaintiff* on a claim *for the same injury*. In other words, a nonsettling defendant is entitled to credit for the amount paid by another defendant who settles *for the same cause of action*.

When the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law. Under this circumstance, section 15-38-50 grants the court no discretion in applying a setoff. On the other hand, when the settlement involves more than one claim, the allocation of settlement proceeds between various causes of action impacts the amount a non-settling defendant may be entitled to offset.

Glenn v. 3M Company, 440 S.C. 34, 84, 890 S.E.2d 569, 595 (Ct. App. 2023) (internal quotations and citations omitted) (emphasis in original).

In the present case, Plaintiff claimed one injury – the 2018 accident. Any settlements are made for that injury, and they must be set off. At the damages hearing, KSC requested evidence for setoff, and the Court advised it would consider the issue after a damages ruling. The Court has made a damages hearing; therefore, Plaintiff should be compelled to disclose settlement payments, and the Court should set off any payments against the judgment.

2. Pursuant to Rule 59, SCRPC, the Court Should Grant a New Trial, and Hearing on the Merits, Based on New Evidence.

If the time for a Rule 59(b), SCRPC, Motion has not run, a party may move for a new trial under that rule, pursuant to Rule 59(b). *See Southeastern Housing Found. v. Smith*, 380 S.C. 621, 636-37, 670 S.E.2d 680, 688 (Ct. App. 2008)(noting that party can move for new trial under Rule 60(b), if the evidence could not have been discovered by due diligence in time to move for a new trial under Rule 59(b)). The evidence in this case demonstrates that, despite the default, Prysmian acknowledges that it was the sole entity to handle and evaluate the reel or reels at issue in this case. (See Exhibit A to Nance Affidavit.) Further, the evidence, in the form of complete citations to

affidavits, demonstrate that no party has provided any evidence that KSC handled the reel which caused Plaintiff's injury, and a statement against interest from Plaintiff's employer seems to confirm that the reel was handled entirely by Prysmian. This evidence, that both KSC and the Court did not have at the time of the hearing on KSC's Motion to Set Aside Entry of Default, powerfully demonstrates that the Court should reconsider its prior ruling maintaining default and its order of damages. "Just as a judge has the prerogative to change a ruling on a motion in limine based in other developments at trial, a judge has the prerogative to change his mind with respect to a ruling when reflection and information convince him that his prior ruling was incorrect." *State v. Smith*, 372 S.C. 404, 410, 642 S.E.2d 627, 630-31 (Ct. App. 2007), *vacated on other grounds by State v. Smith*, 383 S.C. 159, 679 S.E.2d 176 (2009)(finding State had no right of appeal).

KSC has previously sought to set aside the entry of default, and the Court has denied it; however, because this motion is before the same judge that heard the prior judge, the Court has free realm to revisit the decision. Previously, KSC attempted to set forth good cause to set aside the entry of default, noting the prior discussions and dismissal of claims against KSC. The newly-presented deposition testimony and internal Prysmian correspondence further demonstrate that, at the time Plaintiff amended his complaint to reassert claims against KSC, Plaintiff had obtained deposition testimony from both Cecil Talley, Randall Gary and Charles Ouzts, none of which provided any evidence that KSC played any role in modification of the reel that injured Plaintiff. At no time has Plaintiff obtained any evidence showing that KSC touched the reel that injured Plaintiff, and subsequently-discovered evidence from KSC shows that Prysmian's own employees believe that the reel was solely handled by Prysmian.

A good cause exists to set aside default prior to final judgment, which has not yet occurred in this case, requires a party "to provide an explanation for the default and give reasons why

vacation of the default would serve the interests of justice.” *Sundown Operating Co. v. Intedger Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). KSC has shown that it did not handle the reel at issue, and Prysmian appeared to agree with that conclusion – the interests of justice demand that KSC be allowed to defend the claim on the merits. The context of the Kelley emails with Plaintiff’s counsel shows why Kelley believed his company had no further involvement – he had stated the basis for his lack of exposure, and he had pointed Plaintiff’s counsel to the manufacturer of the reel that failed, against whom Plaintiff ultimately asserted claims. This made it reasonable for KSC to believe it was not at risk for further suit.

3. KSC Is Entitled to An Order Setting Aside the Judgment Pursuant to Rule 60(b), SCRCF.

KSC has cited the newly-discovered evidence it has obtained, demonstrating that KSC was not involved in any work on the reel at issue. Importantly, this exculpatory evidence was obtained by Plaintiff through depositions taken when KSC was not a party to any litigation. Plaintiff made an amendment to add claims against KSC, despite all witnesses who had been deposed testifying that they had no knowledge of KSC working on the reel at issue, and Plaintiff never obtained information at any later time showing that KSC was involved.

In fact, Plaintiff offered to this Court one work order as evidence that KSC worked on the reel at issue – it did not prove such work, and the deposition testimony in Plaintiff’s hands at the time it offered the work order to the Court shows that there is no evidence that KSC worked on the reel at issue. Rule 60(b), SCRCF, allows a court to set aside a default judgment based on a misrepresentation of an adverse party. By failing to disclose the deposition testimony of Ouzts, Talley, and Gary, all of which stated that they had no knowledge of whether the reel at issue had even been repaired, much less repaired by KSC, constitutes a misrepresentation of known facts.

Stated simply, reference to the Ouzts' deposition without disclosing that Ouzts could not state whether the reels in question had been repaired was not a complete representation of facts. This error in the facts led to denial of the Motion to Set Aside Entry of Default, and provides this Court a basis to set aside the default judgment.

Again, if Plaintiff can provide any evidence that KSC touched the reel in question, in a case it has litigated since 2021, it is free to do so, but the evidence in hand does not so demonstrate. Accordingly, it is in the interests of justice to obligate Plaintiff to prove its case. To-date, it appears that Plaintiff has obtained no evidence of fault by KSC or any other party – no experts to testify on defects or mishandling and no evidence of any handling by KSC. KSC seeks merely an opportunity to defend the claim on the merits.

CONCLUSION

For the reasons set forth above, the Court should set aside the default judgment and/or entry of default and allow for a resolution of the case on the merits. In the alternative, the Court should conduct a hearing to determine the amounts paid by settling defendants and apply setoff thereto.

March 11, 2024

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Attorneys for Defendant KSC Logistics, LLC

EXHIBIT 1

North America Safety Incident Reporting System

INCIDENT REPORT FORM
LOCATION: (Abbeville, SC)

1) Administrative

Team Member Name:	William Nickles
Team Member Job Title:	HV Operator
Department or Cell	High Voltage
Shift:	2nd
Supervisor Name:	Randall Gary
Date of Incident:	11/10/18
Time of Incident:	19:45
Years of Service:	5
Date Reported to Supervisor:	11/10/18

2) TYPE OF INCIDENT and or Affected Days (Place an X in applicable box)

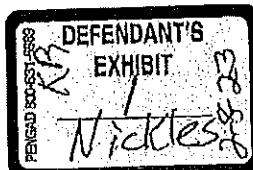
Near Miss/First Aid	Claim Only	OSHA Medical Only Incident (No Lost or Restricted Time)	OSHA Restricted Time Incident	Number of Restricted Day(s)	OSHA Lost Time Incident	Number of Lost Day(s)
					X	

3) Investigative Team:

Name	Title
Matt Hina	MV Process Unit Manger
Chris Brown	High Volt Supervisor
Cecil Talley	Plant Manager
Pete Illic	High Volt Manager

4) Job Safe Procedure (JSP) (Enter Y or N in box provided.)

Does JSP exist?	Was task covered by JSP?
Yes	Yes



North America Safety Incident Reporting System

5) Incident Description

Description of What happened before, during, and after Incident (bulleted sequence of events):

- Employee was tying cable to the take up
- Employee turned to walk away
- D-Ring holding bull rope for cable broke
- Cable hit employee in the right shoulder
- Employee fell to the ground
- Employees left leg was caught awkwardly underneath his body
- Employees left leg was broken
- Ambulance was immediately notified through 911
- Employee was transported to the hospital for observation and care
- Management was contacted properly

etc.

6) Injury/Treatment Information:

A. Description of Injury/Illness:

Broke left leg in three places

B. First Aid and/or Medical Treatment received to date:

Employee has been seen at Er and Ortho and employee received surgery on 11/16/18 to insert screws into broken leg

C. Future expected treatment:

Follow with Ortho with Physical Therapy after healing process. Employee will be out of work for 6 weeks

7) Contributing Factors:

Identify any possible Contributing Factors:

Method(s):

NA

Material(s):

D-Ring/ Take-up

Machine(s):

NA

Man (Behavioral/CT):

NA

Mother Nature (Environment):

NA

North America Safety Incident Reporting System

8) Root Cause(s) 5 Why Analysis

Complete 5 Why Analysis (Utilize 5 Why template on page 4) for contributing factors and list Root Causes below:

D-ring separated from Flange of reel

9) Corrective Action Plan/Accountability

Describe all the corrective action plans agreed to during 5 Why Analysis

Action Plan(s)	Responsible Team Member	Target Date
Remove all D-rings from HV reels	Reggie Hannah/Maintenance team	12/15/18
Update SOP to include inspection of new eye bolt before use	Pete Ilc	11/19/18
Train Operators on new SOP	Brett Boozer	12/3/18

10) Complete Safety Alert Posting Below.

- Locations that receive Incident Reports will use Safety Posting to cover with all affected team members in their location and Post for a minimum 14 days at all similar equipment/locations in their respective facility along with any corrective actions implemented at their respective facility.

11) Reported by

Name	Telephone Number
Randy Moore	864-828-0584

12) Email Completed Form to:**1. NA HSE:**

- Heather Stolper @ hstolper@generalcable.com
- David Mooney @ dmooney@generalcable.com
- Heather Monger @ hmonger@generalcable.com

2. Applicable Facility Director/VP of Operations**3. Your facility Leadership Team/Supervisors/etc.**

North America Safety Incident Reporting System

GCC 5 Why Analysis

Incident Outcome:

Contributing Factor(s) (Add more lines if needed)	Why 1	Why 2	Why 3	Why 4	Why 5	Root Cause	Reoccurrence Prevention
D-Ring	Broke	Rust and Corrosion	Time and outside storage	Limited space and usage	Impossible to store reels inside	Rust and corrosion over time caused D-ring to separate from the flange	Replacing all D rings on all High Voltage reels with 5/8 inch eye bolts and washers. Change to SOP for operator using reel to inspect eye bolt prior to use

SAFETY ALERT

Date: 11/10/2018

Location: Abbeville South Carolina

Incident Description

D-ring broke causing cable to strike employee on the shoulder knocking him to the ground causing broken left leg.

Injury

Broken left leg

Specific Location

High Voltage department

Corrective Action

All D-rings on High Volt reels removed and replaced with Eye Bolts. SOP changed to include inspection of Eye Bolt before use and All operators trained on updated SOP

(pictures)

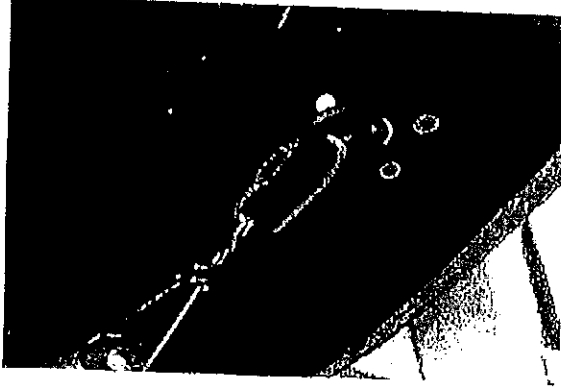


EXHIBIT 2

BISHOP
REPORTING SERVICES, LLC

Charles Ouzts
11/5/2021

ELECTRONICALLY FILED - 2024 Mar 11 3:03 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ABBEVILLE	)	C.A. NO. 2020-CP-01-00076
WILLIAM NICKLES, IV,	)	
	)	DEPOSITION
PLAINTIFF,	)	
	)	OF
VS.	)	
	)	CHARLES OUZTS
PALMETTO STATE	)	
TRANSPORATION, LLC, AND	)	
KSC LOGISTICS, INC.,	)	
	)	
DEFENDANTS.	)	

THE DEPOSITION OF CHARLES OUZTS, TAKEN BEFORE LISA P.
KOPCHO, PROFESSIONAL VERBATIM REPORTER AND NOTARY PUBLIC IN
AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR
OF 12:16 P.M., FRIDAY, THE 5TH DAY OF NOVEMBER, 2021, AT
HITE AND STONE, ATTORNEYS AT LAW, 100 EAST PICKENS STREET,
ABBEVILLE, SOUTH CAROLINA.

Page 2

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864-640-1634
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BISHOP
REPORTING SERVICES, LLC

Charles Ouzts
11/5/2021

ELECTRONICALLY FILED - 2024 Mar 11 3:03 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

Page 20

1 label has a serial number or a number for the reel.
2 A Correct.
3 Q Okay. So that's -- that's on there?
4 A Correct.
5 Q But when you go to look in the inventory necessarily,
6 you're not pulling for inventory -- or what is a reel
7 -- strike that.
8 Let me ask, what is the reel serial numbers
9 called? What do you call those?
10 A You know, people call them different things. I call
11 them serial numbers.
12 Q Okay. All right. Do reels that are out at Prysmian
13 have serial numbers on them?
14 A Shipping reels do.
15 Q Okay. High voltage shipping reels?
16 A Correct.
17 Q And so -- and I don't like to speak in "alls" or
18 "nevers", okay, but how many of the high voltage
19 shipping reels have serial numbers?
20 A They -- they should all have serial numbers.
21 Q Okay. All right. And when the shipment goes out, as
22 the reel planner, do you know what reels have gone out?
23 A If I have a reason to look, yeah.
24 Q But -- but I guess I should rephrase it. Prysmian can
25 find out what reels have gone out in a -- on a truck to

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Charles Ouzts
11/5/2021

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Page 27

1 A They weren't a part of it then.

2 Q Okay. All right. So two other reel -- two reel depots

3 where this reel could've been potentially stored was

4 Palmetto State Transport and KSC?

5 A Yes, possibly. But -- yeah, it's possible.

6 Q Okay. So, the three locations that it could have been

7 stored would be Prysmian, Palmetto State, and KSC?

8 A Yeah. I mean, less like Palmetto State, but --

9 Q Okay.

10 A But, yeah.

11 Q But it's possible that these reels were at one of those

12 three locations -- or it's more likely than not that

13 the reel was at one of these three locations?

14 A Correct.

15 Q And who would you give if -- if they weren't there, who

16 would you give a purchase request to?

17 A Well, it goes through a couple of hands. I would

18 submit the purchase request depending on -- if it were

19 for a shipping reel, it'd go through logistics. So

20 immediately my manager, Yamac, would -- would have to

21 approve or disapprove. And then from there, it would

22 most -- I think it goes to the plant controller, David

23 Joseph. And then from there, it'll go up to Robert

24 Kelly and Robert Kelly would be the final -- I'd say

25 the final person. I think there's a person above him

Page 51

1 Q Right. But in particular with this reel that we're
2 talking about failed with the D-Ring on it with Will,
3 more likely than not, the manufacturer would've been
4 Howar or Sonoco?
5 A Most likely from what I know.
6 Q Okay.
7 A But --
8 Q And that's all I'm asking.
9 A Yeah.
10 Q Yeah. Do you sign off on or request refurbishment of
11 the reels?
12 A I do.
13 Q Okay. And who do you primarily use for refurbishment
14 of reels?
15 A High voltage?
16 Q Yes, sir. And you can assume from here on out any
17 reels that I'm talking about, I'm talking about high
18 voltage.
19 A Okay. Primarily, high voltage reels are repaired by
20 KSC.
21 Q And do you dictate -- and who's the other person that
22 would -- who's the other company that would potentially
23 repair the high voltage reel?
24 A Palmetto State has --
25 MR. HARJEHAUSEN: Object (audio interruption).

Page 59

1 reels and --
2 A Oh, I don't know.
3 Q Okay. Does Prysmian have a document that says that
4 storage -- that dictates or tells you time frame for
5 allowing a reel to be left outside or stored outside?
6 A No.
7 Q Is there any industry practices or standards that
8 dictate how long is too long to leave a reel outside in
9 the conditions?
10 A No.
11 Q Do you --
12 A Not that I'm aware of anyway.
13 Q Right. Do you have a general practice as to how long
14 is too long to leave a reel outside?
15 A No.
16 Q If we go back and look at the -- if I charged you with
17 going and finding all reels that were completed at the
18 Prysmian plant on high voltage lines for the week after
19 this, November 10, 2018, could the SAP program do a
20 printout of all the reels that were finished?
21 A I would expect it to be able to.
22 Q Okay. And is that something that you can -- you can do
23 and provide to me?
24 A I'm not a hundred percent sure that I could or I
25 couldn't, to be honest with you. It -- it'd take some

Page 60

1 playing just to see if it's even possible. But, you
2 know, all I'm saying is SAP being SAP, I would expect
3 there to be a way to find that, but -- but I'm not
4 sure. Personally, I don't think that -- personally, I
5 don't know if I can do it.
6 Q Okay.
7 A You know...
8 Q But the information would be in there?
9 A Yeah, I mean in theory it should be.
10 Q Okay. And is there a -- is there like -- because here,
11 I'm the IT guy at our office; so if something screws
12 up, I've got to be the one fix it.
13 A I gotcha.
14 Q Is there anybody out there that you're like, "All
15 right. This is the SAP guru. We need something in
16 SAP, he can find it or she can find it"? Is there
17 anybody out there that --
18 A Nobody in Abbeville stands out --
19 Q Okay.
20 A -- to me as being a SAP guru.
21 Q Okay. Anybody outside of Abbeville that you know that
22 stands out as one?
23 A If I really, really needed help, I would -- I may lean
24 on William Hudson or maybe Valerio Farina, possibly.
25 Q Are they --

Page 65

1 Q Okay. Because of its -- because it's a blue one; is
2 that right?
3 A Correct.
4 Q Okay. And do you have any -- do you know what happened
5 to the reel that was involved in Mr. Nickle's accident?
6 A I don't; no.
7 Q And you don't have any personal knowledge as to whether
8 it was actually used to ship out product; is that
9 correct?
10 A No. I -- I don't have any knowledge of that.
11 Q And you don't -- you don't know whether or not it was
12 marked as damaged and so -- or set aside; correct?
13 A Correct.
14 Q You just don't know what happened to that reel; is that
15 fair to say?
16 A Yeah, that's -- that's fair to say.
17 Q Okay. Do you have any personal knowledge as to whether
18 or not Palmetto State ever did any repairs or
19 refurbishment of that reel?
20 A Not to my knowledge.
21 Q Okay. So are you saying that you have no knowledge or
22 not -- that Palmetto State did not?
23 A I have no knowledge of who -- who would've repaired the
24 reel last.
25 Q Okay. And is fair to say that you don't have any

Page 66

1 knowledge as to whether the reel had ever been repaired
2 after it was purchased from the manufacturer?

3 A I have no knowledge of that, yeah.

4 Q Okay. So, you don't have any knowledge of any repairs
5 with respect to the reel that was involved in Mr.
6 Nickle's accident. Is that -- is that correct?

7 A That's correct, yeah.

8 Q Okay. Do you have any personal knowledge as to whether
9 or not Palmetto State sold, supplied, or repaired that
10 reel, at all?

11 A No, sir.

12 Q Who would determine whether or not -- well, my
13 understanding is, is that you look for reels. But I
14 mean, who determines what attachment mechanism is
15 necessary for the size of cable going on the reel?

16 A The operator.

17 Q You weren't involved at all in investigating Mr.
18 Nickle's accident, were you?

19 A No.

20 Q Did you participate, at all, in preparing the incident
21 report that was prepared after his accident?

22 A No.

23 Q Those were all the questions I have for you.

24 MR. HARJEHAUSEN: Thank you very much.

25 MR. HITE: I don't have any more. Thank you.

Page 68

CERTIFICATE

This is to certify that the foregoing deposition of CHARLES OUZTS, consisting of 67 pages, is a true and correct transcript of the testimony given by said deponent after first being duly sworn; said deposition was reported by method of Stenomask with digital backup. This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 23rd day of December, 2021.

Lisa P. Kopcho

Lisa P. Kopcho
Professional Verbatim
Reporter

Notary in and for the State of South Carolina
My Commission Expires: November 2, 2030

EXHIBIT 3

BISHOP
REPORTING SERVICES, LLC

Cecil Talley
11/4/2021

ELECTRONICALLY FILED - 2024 Mar 11 3:03 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE) C.A. NO. 2020-CP-01-00076

WILLIAM F. NICKLES, IV,)
)
 PLAINTIFF,) DEPOSITION
)
 VS.) OF
)
PALMETTO STATE) CECIL TRENT TALLEY, JR.
TRANSPORTATION, LLC AND KSC)
LOGISTICS, INC.,)
)
 DEFENDANTS.)

THE DEPOSITION OF CECIL TRENT TALLEY, JR., TAKEN BEFORE
SHELLY M. JONES, PROFESSIONAL VERBATIM REPORTER AND NOTARY
PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT
THE HOUR OF 11:07 A.M., THURSDAY, THE 4TH DAY OF NOVEMBER,
2021, AT THE LAW OFFICES OF HITE AND STONE, ATTORNEYS AT
LAW, 100 EAST PICKENS STREET, ABBEVILLE, SOUTH CAROLINA.

Page 2

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Page 10

1 A Milan, Italy.
2 Q And the American home base is?
3 A In Highland Heights, Kentucky, a suburb of Cincinnati.
4 Q Okay.
5 A It used to be in Lexington. When we acquired General
6 Cable, we took the headquarters to that headquarters
7 out in Highland Heights. It's bigger, more centrally
8 located in that location.
9 Q Is Prysmian a publicly traded company?
10 A It is on the Milan stock exchange, yes.
11 Q Okay. Not in NASDAQ or --
12 A No. Milan, Milan stock exchange.
13 Q And General -- was the purchase of General, that's the
14 most -- that was your major competitor?
15 A U.S.-wise, but not globally; not globally. Nexans out
16 of France is the second largest. But General Cable was
17 our biggest in the U.S.
18 Q And out of -- out of the Abbeville plant, where --
19 what's the furthest, or where do you all ship cable?
20 A We ship it all over, all over the U.S., all over North
21 America, some into Mexico; Mexico, Canada.
22 Occasionally, we'll ship a product offshore in high
23 volt, but not -- no, most of our cable is domestic.
24 Q And what is the -- what is the corporate structure for
25 Prysmian in Abbeville?

Page 11

1 A I've been director of operations as a -- there's a
2 group of process unit managers that report to me, and
3 they're the manufacturing people. There's one over the
4 different organizations of manufacturing.

5 We are a matrix company, where there's a lot of
6 people that are on my staff that don't report to me.
7 They report to people externally in Highland Heights.
8 They work for me, but they don't report to me. We've
9 got a finance person. He works with me, but he doesn't
10 report to me. HR person works for me, but doesn't
11 report to me. Logistics person works for me, but
12 doesn't report to me.

13 Q Okay.

14 A A quality person works for me, but doesn't report to
15 me; so --

16 Q All right.

17 A They like a check and balance where people report
18 external to the plant, and the only part that I'm
19 responsible for is a maintenance manager and all of the
20 production people.

21 Q Okay. So let's -- and the -- let's stay within your
22 locus of control.

23 A Okay.

24 Q Director of operations, and then who is -- who is your
25 top line managers, or whatever the term that y'all

Page 40

1 will be documentation about where this wire was going,
2 or where this cable was going. And will they have a
3 designated -- will they have the reels designated on
4 there when they go out?

5 MS. STEWART: Objection.

6 MR. HITE: You can answer.

7 MS. STEWART: You can answer.

8 THE WITNESS: Oh, okay. They're not sure --
9 they'll know what size the reel's going to be, but as
10 far as any other information, I mean, that's the main
11 thing we -- our business is centered around the size of
12 the reel.

13 BY MR. HITE:

14 Q Okay.

15 A We know what size it was on for sure.

16 Q Okay. What size was this one on?

17 A I have no idea.

18 Q Okay. But there'll be a record of the size? There
19 should be a record.

20 A Should be; yeah.

21 MS. STEWART: Objection.

22 BY MR. HITE:

23 Q All right. And I didn't mention this part of it, but
24 at certain times during the course of a deposition like
25 this, your attorney might object to the form of the

Page 44

1 So I don't say that we own all the reels, but in
2 some cases we do, and some cases it's part of the
3 package when we sell it to the customer, that they pay
4 for the reel.

5 Q Okay. So there may be some that --

6 A Again, as best I know, because I don't -- again, this
7 is -- you're getting on out of my field of concern, to
8 be honest. I don't -- I don't know. I know for a fact
9 that there is multiple ways that reels are -- the cost
10 of the reels are included in price.

11 Q And I don't mean to oversimplify, but your job then
12 really is about getting the -- getting the cable on the
13 reel --

14 A Production.

15 Q -- and out the door?

16 A That's right; the production part of it.

17 Q Not so much about, obviously, reel purchases and reel
18 -- what about reel storage? Is that under your
19 purview?

20 A I'm -- I'm responsible for the space that's out there.
21 Yeah. We try to organize and coordinate, to keep them
22 all in a safe and orderly manner. But with the space
23 we've got, Charles and that group is really -- he --
24 he'll make decisions on moving reels. He'll make
25 decisions on moving them offsite.

Page 45

1 We own an annex up the hill. We put reels up
2 there. We actually store reels at KSC. KSC repairs
3 reels, and we also store reels over there, because he's
4 got a bigger footprint than we got. So Charles will
5 make a determination of what needs to be moved because
6 I don't need these right now, and these are for the
7 order I'm going to have, you know, next year.

8 So Charles is directly involved in that, and I
9 really don't -- you know, the space that they're --
10 right there on my space, yeah, whether they're
11 straight, or whether they're out in the road, or one's
12 not chocked and it could roll away, that's my
13 responsibility. But how many we have, and what kind
14 they are, or what they're for, I walk by a lot of reels
15 every day, and have no idea who they're for, or exactly
16 what the next order's out there for.

17 Q And that's -- that's -- that would be Charles' job?

18 A That would be Charles' job, reel manager.

19 Q And, all right, so you said KSC stores some reels?

20 A Uh-huh.

21 Q Does Palmetto -- that was a yes? Sorry.

22 A Yeah. I'm sorry. Yes, it was. Sorry, I --

23 Q We do it all the time. And KSC, I mean Palmetto State
24 Transport stores some reels there?

25 A I'm not sure that they store any. I don't know that.

Page 51

1 contracts, but we'll keep moving on.

2 BY MR. HITE:

3 Q Is there -- who is -- who is -- is there any broad-
4 based refurbishment done on the reels, or is it -- is
5 it a -- well, let me ask it this way.

6 Is there any standard in your industry that says
7 when you have to have a reel refurbished?

8 A Not as far as I know.

9 Q And is there a process that y'all go through, like, all
10 right, it's been three years; we've got to refurbish
11 all these reels?

12 A No, sir. There's not a standard like -- you know, like
13 an oil change at 5,000. No. There's nothing like
14 that.

15 Q And when y'all -- when you send up -- do you determine
16 whether the reel -- you don't determine whether the
17 reel needs to be refurbished or not?

18 A No.

19 Q That's another Charles Ouzts' job?

20 A That's correct.

21 Q Okay. Where -- who would -- Charles would -- Yamac or
22 -- if I'm pronouncing that --

23 A Yamac. Yamac.

24 Q Yamac to approve any purchases of new high-voltage
25 reels?

Page 55

1 A That's correct.

2 Q And then, other than the miniscule amount, maybe Grady

3 might have had one while he was working on it?

4 A That's right. Yeah.

5 Q All right.

6 A And again, that was 11-plus years in the past, for a

7 very short period of time in my tenure there.

8 Q Do you have -- do you have a welder that works for

9 Prysmian?

10 A We don't have a welder spot, per se. We've got

11 maintenance people who weld.

12 Q Okay. So y'all do welding?

13 A Yes, we do.

14 Q Would y'all have welded D-rings on high-voltage reels?

15 A No.

16 Q In this particular case, this high-voltage reel that

17 has this D-ring on it, that would have come from the

18 manufacturer that way?

19 A As best I know, yes.

20 Q I'm going to show you what's been marked as Exhibit 2

21 to your deposition, and there's -- how many did I say

22 -- I think 12; 12 pictures there. And this is a

23 picture -- I'll present to you that this is, on Page 1,

24 a picture of the D-ring weld, where it appears that the

25 D-ring was welded to the side of this high-voltage

Page 67

1 would have had an engineer review it?

2 A That's correct.

3 Q And that would have taken place in a matter of days?

4 A Day, I think; I want to say. I think we...

5 Q All right. Let's flip to -- we're going back to

6 Exhibit 2, Page 4, again, with -- with the reel there.

7 A Uh-huh.

8 Q What are those, the two holes there, that are above

9 where the D-ring was? What are those holes there for?

10 A I don't know. Reels are designed; again, reels are

11 very specific, and sometimes -- and sometimes not so

12 specific for a customer's needs. They could be there

13 for tie-downs. They could be there for different

14 reasons on different reels. I can't tell you

15 definitively what they're there for.

16 Q Okay. And is this portion, like where we're looking,

17 is it along the -- all right. You got to --

18 A Help you.

19 Q You got to help me. These are flanges?

20 A Flanges, yeah.

21 Q Is this along the flange?

22 A Yes.

23 Q So the D-ring is tied into the flange?

24 A That's right.

25 Q Okay. And you said you don't make any kind of

Page 68

1 determination as to whether the reel is satisfactory or
2 usable or not. That's not your job.
3 A None, whatsoever.
4 Q That would -- is that Charles' job, Charles Ouzts?
5 A Charles will visually inspect a reel and determine
6 whether, you know, it's got bad dents and holes.
7 Charles wouldn't make any engineering determination on
8 anything. He would just, you know, visual stuff that
9 we know is going to be problematic from a quality
10 standpoint, or a handling standpoint, or whatever. But
11 from a determination of the engineering, not Charles,
12 but anything he could do visually with his aptitudes
13 and skills.
14 Q All right. And then flip the page with this. It looks
15 like this is the guide post or something.
16 A That's --
17 Q What is that on Page 6?
18 A That's a -- that's on the jacket line where Will was
19 working that night. That's the part that -- it's a
20 box, what we call a box roller. It helps guide the
21 cable as it's moving, and that would have been a guide
22 that's in place there, or the foot of it that's at the
23 floor.
24 Q And then let's go to Number 11 there. What is that?
25 A I'm not a hundred percent sure. I can't tell you

Page 74

1 come from Charles Ouzts, if --

2 A Charles wouldn't direct anybody in the plant to do
3 welding on a reel. Charles would send them out for
4 repair. He would blank it out under whatever else he
5 saw that a reel needed to get done.

6 Q That's what I'm -- that's -- thank you. That's what I
7 was asking. You don't believe, and I can ask Charles
8 tomorrow, but you don't believe Charles would ever ask
9 any employee of Prysmian to do welding on a high-
10 voltage reel?

11 A I don't know that, but that's what I believe.

12 Q Do you have any kind of -- can you give me an estimate
13 as to how long a particular reel might be in service,
14 or sit out at Prysmian?

15 MS. STEWART: Objection.

16 THE WITNESS: No. I don't have any idea of that;
17 not even -- not even -- not even a vague idea.

18 BY MR. HITE:

19 Q In our job, we've got to try to narrow it down. Are
20 there reel -- I'm 40. Are there reels out there as old
21 as me?

22 A I don't know that, and I'm being honest when I say
23 that. I mean, there could be, but there may not be.

24 Q Okay. Right. No, that's --

25 A I'm not going to tell you I know, and I don't know.

Page 75

1 Q When Charles is laying out, or when the job is decided
2 upon, and the job is laid out, is there -- inside the
3 SAP program, is there a complete, like, job file, or
4 job sheet that lays out all of the purchases and all of
5 the design elements, and all the steps that are going
6 to be taken for that particular job?

7 MS. STEWART: Objection.

8 THE WITNESS: As far -- as far as I know, there's
9 not; but I don't know that. I don't know the level of
10 detail. I just -- I don't know.

11 BY MR. HITE:

12 Q Who would have that? Who would have -- like, say, for
13 instance, and I'll just use this as an example. I get
14 hired on, and I'm about to start my job in the same
15 position as a line operator like Will was working. And
16 I show up, and I say this is -- this is great. This is
17 a huge cable. Where's it going?

18 And my director or somebody could be able to pull
19 up a document and say, well, this -- we are producing
20 this to go to the City of New York, and it's on this
21 thing, and we've got to fill up ten reels. Is there a
22 document that would say that?

23 MS. STEWART: Objection.

24 THE WITNESS: I don't know the details, other than
25 the fact of, you know, the size of the reel. That's

Page 86

1 Q And KSC has repaired high-voltage reels in the past?
2 A I don't know that. You know, that's something, when
3 this came up, I can't -- I can't confirm or deny that
4 either way, to be honest with you.
5 Q Okay. And Charles Ouzts would know?
6 A Charles would -- he would be the person who would -- he
7 would be the person who would have made that direction,
8 made that determination.
9 Q Okay. Let's flip to the second page --
10 A Yeah. Yeah.
11 Q -- of that one, because that's the one where -- it says
12 like price per unit, and then it says order quantity is
13 like 400,000 each. What -- what is that, specifically,
14 talking about? Do you know?
15 A I don't. I don't.
16 Q The price is blacked out, I think, so that --
17 A Yeah, price right here.
18 Q -- KSC and Palmetto State aren't knowing what each
19 other's billing.
20 A Right. I think this is part of -- I mean, like you
21 look at it. It looks like just a continuation of the
22 blanket. You know, you've gone -- this is like a
23 progression, to me.
24 Q Okay. All right. Do you have -- from your position as
25 the director of operations, do you have a percentage

Page 91

1 Q No. And I appreciate that, and I'm only asking about
2 your own personal knowledge. But you don't have any
3 personal knowledge as to who decided 5/8-inch eyebolts
4 were appropriate for high-voltage reels. Is that fair
5 to say?

6 A That's fair to say. I don't have -- I didn't have
7 personal knowledge, no.

8 Q Okay. But is it fair to say that a maintenance
9 employee at Prysmian ultimately replaced any D-rings on
10 reels with 5/8-inch eyebolts?

11 A After the accident, that was our plan. We went back
12 and made a retrofit on the ones that we had there.
13 Again, I believe, after consultation with an
14 engineering group, whether it was external, internal,
15 or corporately driven.

16 Q Okay. So that retrofit and installation of the
17 eyebolts, that wasn't done by KSC or Palmetto State or
18 any third party. Is that correct?

19 A As best I can remember, we did that internally; but I'm
20 not a hundred percent sure.

21 Q Okay. Would I -- would the best person to ask be the
22 maintenance person on the incident report about that?
23 And I can pull it up. Let me get that --

24 A You're talking about -- Hanna, I think, was the name
25 there, Reggie Hanna.

Page 99

CERTIFICATE

This is to certify that the foregoing deposition of CECIL TRENT TALLEY, JUNIOR, consisting of 98 pages, is a true and correct transcript of the testimony given by said deponent after first being duly sworn; said deposition was reported by method of Stenomask with digital backup. This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 20th day of December, 2021.



SHELLY M. JONES
Verbatim Reporter

Notary in and for the State of South Carolina
My Commission Expires: November 7, 2023

EXHIBIT 4

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE) CIVIL ACTION NO.: 2021-CP-01-00076
)

WILLIAM F. NICKLES, IV,)
PLAINTIFF,) STIPULATION OF DISMISSAL
V.) WITHOUT PREJUDICE
PALMETTO STATE)
TRANSPORTATION, LLC, AND)
KSC LOGISTICS, INC.)
DEFENDANTS.)

It is hereby stipulated and agreed by and between Plaintiff, William F. Nickles, IV, and Defendant, KSC Logistics, Inc., signified by the signature of Plaintiff's counsel below, that all claims against the Defendant, KSC Logistics, Inc., in the above-entitled action are hereby dismissed without prejudice.

This 23rd day of August, 2021.

HITE & STONE

BY: s/ Thomas E. Hite, III(SC BAR NO.: 73750)
THOMAS E. HITE, III, ESQ.
P. O. BOX 805
ABBEVILLE, SC 29620
(864) 366-5400 TELEPHONE
(864) 366-2638 FACSIMILE
T3@hiteandstone.com
ATTORNEY FOR THE PLAINTIFF

Abbeville, South Carolina
August 23, 2021



Chuck Kelley <chuck.kelley@ksclogistics.net>

Civil Action No.; 2021-CP-01-00076

1 message

Chuck Kelley <chuck.kelley@ksclogistics.net>

Fri, Apr 9, 2021 at 11:45 AM

To: t3@hiteandstone.com

Cc: Brenda Nance <brenda.patton@ksclogistics.net>

Tombo,

This is to confirm and follow-up on our phone conversation that took place the morning of April 9, 2021. As I stated in the conversation, "KSAC Logistics, Inc. never had the size reel that was involved in the accident that took place on November 10, 2018. This size reel was not in possession by KSC Logistics, Inc. for 6 months prior to the accident and for 4 months after the accident. Therefore, KSC Logistics, Inc. couldn't have made any modifications to the reel involved in the accident.

I feel Howar Equipment may have been the original manufacturer on this size reel. Yhve locations all over and not sure what location it may have been delivered out of.

Please let me know if you have any questions.

Chuck Kelley
KSC Logistics
864-941-6076

ELECTRONICALLY FILED - 2024 Mar 11 3:03 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076



Chuck Kelley <chuck.kelley@ksclogistics.net>

Re: Civil Action No.; 2021-CP-01-00076

1 message

Chuck Kelley <chuck.kelley@ksclogistics.net>

Mon, Aug 23, 2021 at 1:59 PM

To: Tombo Hite <t3@hiteandstone.com>

Cc: Brenda Nance <brenda.patton@ksclogistics.net>, April Powell <april@hiteandstone.com>

Tombo,

Did this get filed?

Chuck Kelley
KSC Logistics
864-941-6076

On Sat, Apr 17, 2021 at 4:25 AM Tombo Hite <t3@hiteandstone.com> wrote:

Chuck

Thank you for your email.

As discussed I will prepare a stipulation of dismissal without prejudice and get it filed with the court.

I will get that to you first of next week.

Thank you for your information.

Tombo Hite

Thomas E. Hite III
Hite and Stone Attorneys at Law
P.O. Box 805
Abbeville, SC
Office - 864-366-5400
Fax - 864-366-2638
Cell - 864-538-9544
Please excuse typos - sent from my iPhone

On Apr 9, 2021, at 11:45 AM, Chuck Kelley <chuck.kelley@ksclogistics.net> wrote:

Tombo,

This is to confirm and follow-up on our phone conversation that took place the morning of April 9, 2021. As I stated in the conversation, "KSAC Logistics, Inc. never had the size reel that was involved in the accident that took place on November 10, 2018. This size reel was not in possession by KSC Logistics, Inc. for 6 months prior to the accident and for 4 months after the accident. Therefore, KSC Logistics, Inc. couldn't have made any modifications to the reel involved in the accident.

ELECTRONICALLY FILED - 2024 Mar 11 3:03 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

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Please let me know if you have any questions.

Chuck Kelley
KSC Logistics
864-941-6076



Chuck Kelley <chuck.kelley@ksclogistics.net>

Fwd: Civil Action No.; 2021-CP-01-00076

1 message

Chuck Kelley <chuck.kelley@ksclogistics.net>
To: Brenda Nance <brenda.patton@ksclogistics.net>

Wed, Aug 25, 2021 at 8:25 AM

I followed up with Tombo on this and he sent this to me.

Chuck Kelley
KSC Logistics
864-941-6076

----- Forwarded message -----

From: **Thomas Hite III** <t3@hiteandstone.com>
Date: Tue, Aug 24, 2021 at 4:45 PM
Subject: Re: Civil Action No.; 2021-CP-01-00076
To: Chuck Kelley <chuck.kelley@ksclogistics.net>
Cc: Brenda Nance <brenda.patton@ksclogistics.net>, April Powell <april@hiteandstone.com>

Here is a copy of the dismissal without prejudice.

Thanks
Tombo Hite

On Mon, Aug 23, 2021 at 2:03 PM Thomas Hite III <t3@hiteandstone.com> wrote:

Chuck,
No, I am going to file it today. It was just oversight on my part.

But I didn't get very much in terms of help from my subpoena from Prysman so I may need some help finding the manufacturer in this case.

I will email you a copy of the stipulation of dismissal in just a minute.

Tombo Hite

On Mon, Aug 23, 2021 at 1:59 PM Chuck Kelley <chuck.kelley@ksclogistics.net> wrote:

Tombo,

Did this get filed?

Chuck Kelley
KSC Logistics
864-941-6076

On Sat, Apr 17, 2021 at 4:25 AM Tombo Hite <t3@hiteandstone.com> wrote:

ELECTRONICALLY FILED - 2024 Mar 11 3:03 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

Chuck

Thank you for your email.

As discussed I will prepare a stipulation of dismissal without prejudice and get it filed with the court.

I will get that to you first of next week.

Thank you for your information.

Tombo Hite

Thomas E. Hite III

Hite and Stone Attorneys at Law

P.O. Box 805

Abbeville, SC

Office - 864-366-5400

Fax - 864-366-2638

Cell - 864-538-9544

Please excuse typos - sent from my iPhone

On Apr 9, 2021, at 11:45 AM, Chuck Kelley <chuck.kelley@ksclogistics.net> wrote:

Tombo,

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I feel Howar Equipment may have been the original manufacturer on this size reel. Yhve locations all over and not sure what location it may have been delivered out of.

Please let me know if you have any questions.

Chuck Kelley

KSC Logistics

864-941-6076

Thomas E. Hite III

P.O. Box 805

100 East Pickens

Abbeville, SC 29620

Office - 864-366-5400

Fax - 864-366-2638



www.hlteandstone.com

CONFIDENTIAL & PRIVILEGED:

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--
Thomas E. Hite III
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 Stipulation of Dismissal without prejudice KSC - Nickles.pdf
64K

EXHIBIT 5

B. SHOP
REPORTING SERVICES, LLC

Randall Gary
11/5/2021

ELECTRONICALLY FILED - 2024 Mar 11 3:03 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ABBEVILLE	)	C.A. NO. 2020-CP-01-00076
WILLIAM NICKLES, IV,	)	
	)	DEPOSITION
PLAINTIFF,	)	
	)	OF
VS.	)	
	)	RANDALL GARY
PALMETTO STATE	)	
TRANSPORATION, LLC, AND	)	
KSC LOGISTICS, INC.,	)	
	)	
DEFENDANTS.	)	

THE DEPOSITION OF RANDALL GARY, TAKEN BEFORE LISA P.
KOPCHO, PROFESSIONAL VERBATIM REPORTER AND NOTARY PUBLIC IN
AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR
OF 10:07 A.M., FRIDAY, THE 5TH DAY OF NOVEMBER, 2021, AT
HITE AND STONE, ATTORNEYS AT LAW, 100 EAST PICKENS STREET,
ABBEVILLE, SOUTH CAROLINA.

Page 2

APPEARANCES

FOR THE PLAINTIFF
THOMAS E. HITE, III, ESQUIRE
HITE AND STONE
100 EAST PICKETS STREET
POST OFFICE BOX 805
ABBEVILLE, SOUTH CAROLINA 29620
t3@hiteandstone.com

FOR THE DEFENDANT (PALMETTO STATE TRANSPORT)
VIA VIDEOCONFERENCE
JOHN D. HARJEHAUSEN, ESQUIRE
CLARKSON, WALSH & COULTER, P.A.
POST OFFICE BOX 6728
GREENVILLE, SOUTH CAROLINA 29606
jharjehausen@clarksonwalsh.com

FOR THE DEFENDANT
JULIA G. STEWART, ESQUIRE
NEXEN PRUET, LLC
104 SOUTH MAIN STREET, SUITE 900
GREENVILLE, SOUTH CAROLINA 29601
jgsteward@nexenpruit.com

REPORTED BY
LISA P. KOPCHO
BISHOP REPORTING SERVICES, LLC
POST OFFICE BOX 1207
GREENVILLE, SOUTH CAROLINA 29602
864-640-1634
Jill@BishopReporting.com

Page 58

1 take it off and put it right back in production. It's
2 really up to the individual.

3 Q Okay. Let me ask you a few questions about these HV
4 reels. Are the -- on the HV reels, are they the
5 biggest reels that Prysmian uses?

6 A Yes, sir.

7 Q And you mentioned 162, and I'm just trying to get an
8 idea. Is that essentially a thirteen-and-a-half-foot
9 tall reel?

10 A I don't know the exact measurements. Like, it can be
11 --

12 Q Well, it --

13 A It can be that or taller.

14 Q I'm sorry. I divided 162 by 12 inches and I get 13 and
15 a half feet, or 13.5 feet. Are these really big reels?

16 A I mean, yes, sir. Yeah. I'm not sitting here to be a
17 mathematician.

18 Q And I think you've probably answered these, but I'm
19 just going to go over them real quick. You don't have
20 any personal knowledge of who manufactured this reel;
21 is that correct?

22 A No, sir.

23 Q You don't have any personal knowledge of whether this
24 reel was supplied by KSC; is that correct?

25 A No, sir.

Page 59

1 Q You don't have any personal knowledge whether the reel
2 was supplied by Palmetto State Transport?

3 A No, sir.

4 Q You don't have any knowledge as to whether the reel
5 involved in the accident was ever refurbished; is that
6 correct?

7 A No, sir. Before or after the incident? I'm sorry.

8 Q Well, before the incident, do you have any personal
9 knowledge that that reel had been refurbished?

10 A No, sir.

11 Q And these reels sit outside on the plant property; is
12 that -- was -- am I correct about that?

13 A Yes, sir.

14 Q So they're exposed to the elements and the rain?

15 A Somewhat; yes, sir.

16 Q And do you know how long they sit outside before
17 they're used?

18 A No, sir.

19 Q I think those are all the questions I have for you.
20 Thank you.

21 MR. HITE: All right, that's it. Thank you

22 THE WITNESS: All right.

23 (WHEREUPON, THE DEPOSITION CONCLUDED AT 11:16 A.M.)
24
25

Page 60

CERTIFICATE

This is to certify that the foregoing deposition of RANDALL GARY, consisting of 59 pages, is a true and correct transcript of the testimony given by said deponent after first being duly sworn; said deposition was reported by method of Stenomask with digital backup. This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 27th day of December, 2021.

Lisa P Kopcho

Lisa P. Kopcho
Professional Verbatim
Reporter

Notary in and for the State of South Carolina
My Commission Expires: November 2, 2030

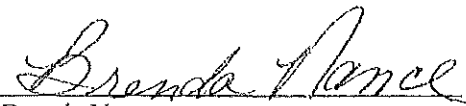
EXHIBIT 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	
	)	C.A. No.: 2021-CP-01-00076
William F. Nickles, IV,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF BRENDA NANCE
	)	
vs.	)	
	)	
Howar Equipment, Inc., Sunoco Products	)	
Company, Palmetto State Transportation,	)	
LLC, KSC Logistics, Inc., and John Doe	)	
Corporation,	)	
	)	
Defendants.	)	
	)	

Personally appeared before me, Brenda Nance, who being duly sworn, deposes and says:

1. I am a citizen and resident of Abbeville County, South Carolina;
2. I am over the age of twenty-one (21) years, and am competent to give testimony;
3. I am Office Manager for KSC Logistics, Inc.;
4. In June, 2021, when KSC had been told it would be dismissed from this case, I engaged in email correspondence with Charles Ouzts and Heath Booton of Prysmian.
5. A true and accurate copy of that correspondence is attached hereto as Exhibit A.
6. I maintained this email correspondence in the ordinary course of business for KSC.
7. I did not recall or discover this correspondence until after the Court denied KSC's Motion to Set Aside Entry of Default.

FURTHER AFFIANT SAYETH NAUGHT.


Brenda Nance

SWORN TO AND SUBSCRIBED before me
This 11th of March, 2024.

Michelle O Collins

Notary Public for South Carolina

My Commission Expires: 12/13/2026

Michelle O Collins

From: Ouzts Charles <charles.ouzs@prysmiangroup.com>
Sent: Saturday, June 25, 2022 4:54 PM
To: Booton Jameson Heath; Brenda Crocker
Cc: Brenda Nance
Subject: RE: HV Reels 823053 and 823051

Jameson,
Yes that is a reasonable assumption.

Thanks!
Charles M. Ouzts
Raw Materials Buyer
T + 1 (864) 366-1211



From: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>
Sent: Friday, June 24, 2022 2:21 PM
To: Brenda Crocker <brenda.crocker@ksclogistics.net>; Ouzts Charles <charles.ouzs@prysmiangroup.com>
Cc: Brenda Nance <Brenda.nance@ksclogistics.net>
Subject: RE: HV Reels 823053 and 823051

Brenda,

Thank you for looking into this for us.

Charles,

Would it be reasonable to assume that the reels were shipped back directly to Prysmian and Prysmian elected to reuse these reels upon a visual inspection?

Thanks,

J. Heath Booton
Associate Counsel
Prysmian Group

From: Brenda Crocker <brenda.crocker@ksclogistics.net>
Sent: Friday, June 24, 2022 12:42 PM
To: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>
Cc: Brenda Nance <Brenda.nance@ksclogistics.net>; Ouzts Charles <charles.ouzs@prysmiangroup.com>
Subject: Re: HV Reels 823053 and 823051

You don't often get email from brenda.crocker@ksclogistics.net. [Learn why this is important](#)

Neither of those reel numbers are in our inventory history at KSC, so we would not have any records on them. Had we made repairs or simply received them at KSC they would be in our inventory history.

On Fri, Jun 24, 2022 at 12:39 PM Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com> wrote:

Good Afternoon Brenda,

Thank you for your assistance. It is our understanding that these reels are currently with our customers. I am actually looking to see if you can provide historical information regarding these reels. For instance, it appears that we shipped material on reel number 823051 in 2015, 2017, 2018 and finally in 2020. I cannot tell if these reels were returned empty or with material at those times. Would you have any documentation available on what repairs or refurbishments were performed on this reel between those shipments?

I would also be looking for similar information regarding reel number 823053 in approximately 2015, 2017, and finally in 2018.

Thanks,

J. Heath Booton

Associate Counsel

Prysmian Group

From: Brenda Crocker <brenda.crocker@ksclogistics.net>

Sent: Friday, June 24, 2022 12:21 PM

To: Ouzts Charles <charles.ouzs@prysmiangroup.com>

Cc: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>; Brenda Nance <Brenda.nance@ksclogistics.net>

Subject: Re: HV Reels 823053 and 823051

You don't often get email from brenda.crocker@ksclogistics.net. [Learn why this is important](#)

I have checked my inventory system at KSC, we have no history of Reel#823051 or 823053 ever being in our Inventory.

Would these have been returned with product on the reels or were they empty on return?

I can double check the yard, just need to know am I looking for an empty reel or a reel with scrap?

On Fri, Jun 24, 2022 at 11:38 AM Ouzts Charles <charles.ouzs@prysmiangroup.com> wrote:

Jameson,

Happy to help. See attached for records in SAP for movements related to these reels.

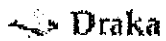
Both Brenda's with KSC (cc'd) may be able to help you with nay repair records.

Thanks!

Charles M. Ouzts

Raw Materials Buyer

T + 1 (864) 366-1211



From: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>

Sent: Friday, June 24, 2022 11:00 AM

To: Ouzts Charles <charles.ouzs@prysmiangroup.com>
 Subject: RE: HV Reels 823053 and 823051

Good Morning Charles,

Thank you very much for pointing me down the right path to locate these reels. Now that we know these reels no longer belong to us, we need to develop a story to present that essentially provides a historical account of these reels so that we can be done with this once and for all. Can you please help me collect the following information or direct me to the person that can assist?

1. A step-by-step history for each reel from the time we purchased the reel until it was delivered to the final customer, including shipping, finished goods, repair, inspection, etc. I realize our system has limitations so please help me understand what our system can provide in relation to this request and I will try to find a reasonable explanation for any gaps in data.
2. All repair records for these reels, including invoices, receipts, etc. My understanding is that we do not get individual repair records for each reel, so would there be a contact with our reel supplier that could provide this information?

Thanks,

J. Heath Booton

Associate Counsel

Prysmian Group

From: Toth Tracy <tracy.toth@prysmiangroup.com>
 Sent: Tuesday, June 21, 2022 2:13 PM
 To: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>; Malcolm Mark <mark.malcolm@prysmiangroup.com>
 Cc: Page John F <john.page2@prysmiangroup.com>; Ouzts Charles <charles.ouzs@prysmiangroup.com>; Cunningham Brad <Brad.Cunningham@prysmiangroup.com>
 Subject: RE: HV Reels 823053 and 823051

Ok, give me a little time to see what I can dig up for you.

Tracy Toth

Market Manager

High Voltage Cables and Systems

Prysmian Group

T +1 832 570 3994

E tracy.toth@prysmiangroup.com

From: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>

Sent: Tuesday, June 21, 2022 2:08 PM

To: Toth Tracy <tracy.toth@prysmiangroup.com>; Malcolm Mark <mark.malcolm@prysmiangroup.com>

Cc: Page John F <john.page2@prysmiangroup.com>; Ouzts Charles <charles.ouzs@prysmiangroup.com>;

Cunningham Brad <Brad.Cunningham@prysmiangroup.com>

Subject: RE: HV Reels 823053 and 823051

I completely understand, that makes sense. Is there possibly an email between us and the customer explaining the expectation that they will be purchasing these reels? If possible I need some form of documentation, no matter how informal, that we no longer own these reels.

Thanks,

J. Heath Booton

Associate Counsel

Prysmian Group

From: Toth Tracy <tracy.toth@prysmiangroup.com>

Sent: Tuesday, June 21, 2022 2:05 PM

To: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>; Malcolm Mark <mark.malcolm@prysmiangroup.com>

Cc: Page John F <john.page2@prysmiangroup.com>; Ouzts Charles <charles.ouzs@prysmiangroup.com>; Cunningham Brad <Brad.Cunningham@prysmiangroup.com>

Subject: RE: HV Reels 823053 and 823051

Hi Heath,

The reels are part of the cable pricing, so there isn't a separate line item on any invoices or POs for the reels. The sale of these becomes part of the cable revenues and margins.

Is there something else I can try to provide that might help?

Tracy Toth

Market Manager

High Voltage Cables and Systems

Prysmian Group

T +1 832 570 3994

E tracy.toth@prysmiangroup.com

From: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>

Sent: Tuesday, June 21, 2022 2:00 PM

To: Toth Tracy <tracy.toth@prysmiangroup.com>; Malcolm Mark <mark.malcolm@prysmiangroup.com>

Cc: Page John F <john.page2@prysmiangroup.com>; Ouzts Charles <charles.ouzs@prysmiangroup.com>;

Cunningham Brad <Brad.Cunningham@prysmiangroup.com>

Subject: RE: HV Reels 823053 and 823051

Thank you all very much for your diligence in tracking down this information. This is incredibly helpful. In an effort to not waste anyone else's time on this particular issue, would we have a purchase order or invoice available to substantiate this claim that these customer's purchased and paid for these reels?

Thanks,

J. Heath Booton

Associate Counsel

Prysmian Group

From: Toth Tracy <tracy.toth@prysmiangroup.com>

Sent: Tuesday, June 21, 2022 1:57 PM

To: Malcolm Mark <mark.malcolm@prysmiangroup.com>

Cc: Page John F <john.page2@prysmiangroup.com>; Ouzts Charles <charles.ouzs@prysmiangroup.com>; Booton

Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>; Cunningham Brad
<Brad.Cunningham@prysmiangroup.com>
Subject: RE: HV Reels 823053 and 823051

These are rather old orders, but from what I can tell, these reels were SOLD to the clients.

We were paid for them and would not have expected them back.

Tracy Toth

Market Manager

High Voltage Cables and Systems
Prysmian Group
T +1 832 570 3994

E tracy.toth@prysmiangroup.com

From: Malcolm Mark <mark.malcolm@prysmiangroup.com>
Sent: Tuesday, June 21, 2022 1:08 PM
To: Toth Tracy <tracy.toth@prysmiangroup.com>
Cc: Page John F <john.page2@prysmiangroup.com>; Ouzts Charles <charles.ouzs@prysmiangroup.com>; Booton
Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>; Cunningham Brad
<Brad.Cunningham@prysmiangroup.com>
Subject: RE: HV Reels 823053 and 823051
Importance: High

Good Afternoon Tracy,

Did we charge the customers a deposit for these HV Reels?

(See below. I show no further movement after delivering these reels to these customers)

Regards,

Mark Malcolm

Manager, Transportation

Transportation, HV Projects and Logistics - North America

O 803.951.4075

M 803.206.2776

E mark.malcolm@prysmiangroup.com

Prysmian Group

700 Industrial Drive

Lexington, SC 29072

<https://na.prysmiangroup.com>



Linking
the Future

Follow us



"If We Work Together, Nothing Can Oppose Us!"

From: Ouzts Charles <charles.ouzs@prysmiangroup.com>

Sent: Tuesday, June 21, 2022 1:05 PM

To: Malcolm Mark <mark.malcolm@prysmiangroup.com>; Booton Jameson Heath
<JamesonHeath.Booton@prysmiangroup.com>

Cc: Page John F <john.page2@prysmiangroup.com>

Subject: RE: HV Reels 823053 and 823051

Mark,

Would you have any idea when these 2 reels ay be returned to Abbeville?

Thanks!

Charles M. Ouzts

Raw Materials Buyer

T + 1 (864) 366-1211



From: Malcolm Mark <mark.malcolm@prysmiangroup.com>
 Sent: Tuesday, June 21, 2022 12:10 PM
 To: Ouzts Charles <charles.ouzs@prysmiangroup.com>; Booton Jameson Heath
 <JamesonHeath.Booton@prysmiangroup.com>
 Cc: Page John F <john.page2@prysmiangroup.com>
 Subject: RE: HV Reels 823053 and 823051
 Importance: High

Here are the deliveries. I do not see these HV Reels having been returned. (These are the last known deliveries/handling of these reels..

Origin:
 Prysmian
 250 Industrial Park Rd
 Abbeville SC 29620

Destination:
 South Houston S/C
 4700 S. Shaver Street
 Houston TX. 77034

Reel No.	Outbound Delivery #	Reel No.	Serial No.	Tracker Installed	Ftg	Cable Wt.	Reel Tare Wt.	Lagging	Gross
2	7050315561	DS31580	823051	NO	2,575	60,536	7,021	1,336	68,8

* 48 Hr. Pre-Call
 Richard Gaido

713-207-6498

Origin:

Prysmian

250 Industrial Park Rd
Abbeville SC 29620**Destination:**PSEG Shoreman Yard
1 Lilco Road
Shoreham, NY 11786

Reel No.	Outbound Delivery #	Reel No.	Serial No.	FTG	Cable Weight	Reel Tare Wt.	Lagging	Gross Wt.
7	7050209080	0801380	221003	2,320	29,884	7,021	1,336	38,24

* Add 4 Inches To
Height for Outside Lagging

Ken Lynn Office 631-284-
5299

Cell Phone: 516-903-6958

kenneth.lynn@pseg.com

Regards,

Mark Malcolm

Manager, Transportation

Transportation, HV Projects and Logistics - North America

O 803.951.4075

M 803.206.2776

E mark.malcolm@prysmiangroup.com

Prysmian Group

700 Industrial Drive

Lexington, SC 29072

<https://na.prysmiangroup.com>



Linking
the Future

Follow us



“If We Work Together, Nothing Can Oppose Us!”

From: Ouzts Charles <charles.ouzs@prysmiangroup.com>

Sent: Tuesday, June 21, 2022 11:47 AM

To: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>; Malcolm Mark <mark.malcolm@prysmiangroup.com>

Cc: Page John F <john.page2@prysmiangroup.com>

Subject: RE: HV Reels 823053 and 823051

Hi Jameson,

Both appear to be at customer locations.

Mark,

Would you know 100% where these 2 reels are?

823051 looks like it's with a customer

Company	PO Nr.	Customer	Customer name	Delivery	Drum type	Dru
0767	Company Code	70100071	CENTERPOINT ENERGY HOUSTON ELE	7059001576	DSU158D	823

823053 also looks like it's with a customer

0767	5000016192	70101206	LONG ISLAND ELECTRIC UTILITY SERV...	7050209080	DSU158D	823053

Thanks!

Charles M. Ouzts

Raw Materials Buyer

T + 1 (864) 366-1211



From: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>

Sent: Tuesday, June 21, 2022 11:32 AM

To: Ouzts Charles <charles.ouzs@prysmiangroup.com>

Subject: HV Reels 823053 and 823051

Good Afternoon Charles,

Prysmian was just served a subpoena for information regarding reels 823053 and 823051. In order to prevent these reels from being utilized or shipped to a customer in the near future, is there a way you can place a "hold" on them until we can determine how we need to proceed in this litigation? If these reels are currently with a customer can you please let me know which customer they are with and approximately where their location is? Finally, if we have scrapped these reels we will need to provide some sort of documentation evidencing this, would we be able to work with our reel supplier to obtain that documentation?

There is a significant amount of additional information the subpoena is requesting and I will reach out to you shortly to help collect this information once I have parsed the subpoena and developed our planned response. However, the above request to essentially remove these two reels from service is time sensitive so I appreciate your timely assistance with this.

Thanks,

J. Heath Booton

Associate Counsel

Prysmian Group

PrysmianPrysmian
Group Group

North America

T + 1 859 386 9743

JamesonHeath.Booton@prysmiangroup.com

General Cable

4 Tesseneer Drive

Highland Heights, Kentucky

USA

prysmiangroup.com

Brenda Crocker

KSC Logistics

217 Old Calhoun Falls Road

Abbeville, SC 29620

Email: Brenda.crocker@ksclogistics.net

Phone: (864) 446-9008

Work Cell: (864)447-7334

Fax: (864) 446-8704

--
Brenda Crocker

KSC Logistics

217 Old Calhoun Falls Road

Abbeville, SC 29620

Email: Brenda.crocker@ksclogistics.net

Phone: (864) 446-9008

Work Cell: (864)447-7334

Fax: (864) 446-8704

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2021-CP-01-00076
COUNTY OF ABBEVILLE	)	
WILLIAM F. NICKLES, IV,	)	
	)	
PLAINTIFF,	)	PLAINTIFF'S MEMORANDUM
	)	IN RESPONSE TO DEFENDANT
V.	)	KSC LOGISTICS INC. MOTION
	)	TO RECONSIDER AND OFFSET
HOWAR EQUIPMENT, INC.,	)	
SONOCO PRODUCTS COMPANY,	)	
PALMETTO STATE	)	
TRANSPORTATION, LLC,	)	
KSC LOGISTICS, INC., AND	)	
JOHN DOE CORPORATION.	)	
	)	
DEFENDANTS.	)	
	)	

COMES NOW, Plaintiff William F. Nickles, IV and submits this Memorandum in Opposition to Defendant's Motion to Alter or Amend.

PROCEDURAL HISTORY

On April 12, 2021, the Plaintiff filed a Summons and Complaint against Defendant KSC and others for severe and permanent injuries he received after being struck by a faulty reel. After receipt of information that KSC did not "deal in" high voltage reels during the timeframe of the incident, Plaintiff's counsel dismissed KSC without prejudice on August 23, 2021. Depositions held in November 2021 revealed that KSC was in fact a major party in the storage and repairing of high voltage reels at Prysmian Cable. Therefore, on November 19, 2021 the Plaintiff filed an Amended Summons and Complaint, renaming KSC as a Defendant in the case. According to the Affidavit of Service filed with the Court, Plaintiff's process server personally served William Kelley, KSC's President and Registered Agent, with the Amended Summons and Complaint on December 16, 2021.

Plaintiff never received a response from the Amended Summons and Complaint and filed an Affidavit of Default on February 7, 2022. Plaintiff served a Notice of Hearing and Notice of Motion to Set Damages on Default on KSC on November 27, 2023. *See* attached Exhibit A. KSC made no formal appearance in this case until December 7, 2023, 721 days after initial service of the Amended Summons and Complaint.

KSC's counsel appeared and filed a Motion to Set Aside Entry of Default on December 7, 2023. The Honorable Judge Donald Hocker held a hearing on the Motion to Set Damages on Default on December 18, 2023. Thereafter, on January 30, 2024, the Court heard Defendant's Motion to Set Aside Entry of Default. On January 31, 2024 Judge Hocker notified the parties of his ruling and on February 7, 2024, Judge Hocker issued an Order denying Defendant KSC's Motion to Set Aside Entry of Default based on the fact that he did not believe there was enough good cause shown to set aside default. On February 21, 2024 Judge Hocker notified the parties of his ruling following the damages hearing and an Order Assessing Damages in the amount of \$972,117.33 against KSC Logistics, Inc. followed on February 29, 2024.

On March 11, 2024, Defendant KSC's counsel filed a Motion to Alter or Amend pursuant to Rules 59 and 60, South Carolina Rules of Civil Procedure, and, in the alternative, to provide for setoff, along with a Brief in Support of said motion.

LEGAL STANDARD

"[T]he power to set aside a default judgment is addressed to the sound discretion of the trial court whose decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Fassett v. Evans*, 364 S.C. 42, 49, 610 S.E. 2d 841, 845 (Ct. App. 2005). It is well-established South Carolina law that a party cannot use a Rule 59(e) motion to present an issue the party could have raised prior to judgment but did not. *Hickman v. Hickman*, 301 S.C. 455,

456, 392 S.E. 2d 481, 482 (Ct. App. 1990). Pursuant to Rule 60(b) of the S.C. Rules of Civil Procedure, after the filing of a proper motion, “the court may relieve a party ... from a final judgment, order or proceeding for ... newly discovered evidence which *by due diligence* could not have been discovered in time to move for a new trial under Rule 59(b).” Rule 60(b), SCRCPP (emphasis added). The standard for granting relief from a default judgment under Rule 60(b) is *more rigorous* than the standard for granting relief from an entry of default under Rule 55(c). *Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E. 2d 535, 536 (Ct. App. 1987) (emphasis added). In order to be relieved from a default judgment pursuant to Rule 60(b), “a more particularized showing of mistake, inadvertence, excusable neglect, fraud, misrepresentation, or other misconduct of an adverse party” is required, making it “more difficult for a party to avoid default” once a judgment has been entered. *Sundown Operating Co. v. Intedge Industries, Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888-889 (2009). Finally, “it is significant to note that when considering whether to grant relief from final judgments, ‘a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute.’” *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004)(citing *Chewning v. Ford Motor Co.*, 354 S.C. 72, 80, 579 S.E.2d 605, 609 (2003)).

ARGUMENT

I. Defendant’s “Newly Submitted Evidence” Was Available at the Time of the Damages Hearing and Hearing on Motion to Set Aside Default, and Therefore the Motion to Alter or Amend Should be Denied

In support of its Motion, Defendant alleges it learned of “newly discovered evidence” in the form of deposition testimony at the hearing on January 30, 2024. Defendant alleges “the first reference to deposition came at that hearing.” *Defendant’s Memorandum in Support*, filed March 11, 2024, at page 2. Plaintiff adamantly disagrees, as the referenced deposition testimony was the

primary reason for Plaintiff to amend his Complaint and rename KSC as a Defendant in the instant litigation. In Plaintiff's Memorandum in Opposition to Motion to Set Aside Default, filed on December 18, 2023, Plaintiff describes deposition testimony taken of Prysmian employees in November 2021 which revealed KSC played a role in storing and repairing high voltage reels used at Prysmian cable. This Memorandum was served upon Defendant KSC's counsel and was available to Defendant well before the January 30, 2024 hearing. The Defendant had over a month to obtain the depositions in preparation for the motion hearing on January 30.

Further, KSC's President, Chuck Kelley admits in an Affidavit that only after the arguments on the Motion to Set Aside Default did he "initiate[] a search of third parties' emails, to which he was not a party," including emails sent to his office manager. *Defendant's Memorandum*, p. 5. In fact, in Mr. Kelley's Second Affidavit, he stated, under oath, that "*following learning of default in this case*," he had reviewed company emails, found a string of emails from Prysmian employees, counsel and his office manager, which he believed confirmed the reels at issue were not in KSC's possession. *Second Affidavit of Kelley*, filed March 11, 2024, at ¶ 7-8 (emphasis added). Plaintiff would suggest Mr. Kelley was aware of the default as early as November 27, 2023 when the Notice of Hearing was served. *See* Exhibit A. At the latest, he was aware of the default on December 7, 2023, because that is the date his counsel appeared and he filed an Affidavit stating he sought counsel upon receipt of notice of the [damages] hearing. *Affidavit of William Kelley*, filed December 7, 2023, at ¶ 7-8. Defendant offers no explanation as to why these emails were not submitted at either the Damages Hearing on December 18 or the hearing on the Motion to Set Aside Default on January 30, 2024.

As set forth in *Lanier v. Lanier*, 364 S.C. 211, 612 S.E.2d 456 (Ct.App.2004), our courts have held that "evidence is not newly discovered evidenced for the purposes of Rule 60(b)(2) where the

evidence was (1) known to the party at the time of trial, and (2) in the party's possession." *Lanier*, 364 S.C. at 218, 612 S.E.2d at 459. There is no question the evidence was in the party's possession, as the e-mails Defendants reference were located on Defendant's office manager's e-mail account. Further, as mentioned above, the evidence should have been known to the party because Plaintiff referenced the depositions at issue in a Memorandum filed with this Court and served on Defendant's Counsel.

The second part of the analysis under Rule 60(b) involves determining whether the party could have discovered the evidence using "due diligence." Plaintiff avers had Defendant used "due diligence" as required under Rule 60, this information on which Defendant now so heavily relies could have been presented and relied up at the initial Motion to Set Aside Default. Under Rule 60, the court can only grant a new trial in the event "the newly discovered evidence *could not have been* discovered by due diligence prior to trial." *Lanier* at 220, 612 S.E.2d at 460 (emphasis added). "Diligence looks not to what the litigant actually discovered, but what he or she could have discovered." *Id.* (quoting 12 Moore's Federal Practice § 60.42[5] (Matthew Bender 3rd ed.)(emphasis added)).

South Carolina law is clear that "[a] party cannot use a Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).¹ "[A] party cannot use a motion to alter or amend a judgment to present to the ... court an issue the party could have raised prior to judgment but did not." *Gartside v. Gartside*, 383 S.C. 35, 43, 677 S.E.2d 621, 625 (Ct. App. 2009). The e-mails and

¹ Additionally, Plaintiff argues Rule 59 is not the proper procedural mechanism for overturning the default judgment and award for damages. *See Sundown*, 383 S.C. at 608, 681 S.E.2d at 888 ("Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP."). Further, Defendant failed to file a Rule 59 motion within 10 days from the Order denying the Motion to Set Aside Entry of Default.

depositions that Defendant rely on in support of its Motion were readily available to Defendant prior to both hearings at issue in this case. The depositions were taken in November 2021, and the emails are dated June 2022. *See Fasset*, 364 S.C. at 50, 610 S.E. 2d at 846 (holding even though the evidence had not been presented to the Court before, because Defendant was “personally aware” of the evidence prior to the commencement of the action, “it was not newly discovered, but merely newly presented evidence”); *see also Spreuw v. Barker*, 385 S.C. 45, 68-69, 682 S.E.2d 843, 855 (Ct. App. 2009) (finding this court could not consider a document that was submitted to the family court “only as an attachment to [Barker’s] Rule 59(e) motion”). In her affidavit, Defendant KSC’s office manager states she simply “did not recall” these emails until after the denial of the Motion to Set Aside Default. Exh. 6 to Defendant’s Memorandum in Support, Affidavit, ¶7. This is not excusable delay pursuant to South Carolina case law and the Rules of Civil Procedure.

In a recent unpublished opinion, *Green v. Johnson*, Op. No. 2020-001254, 2024 WL 180690 (S.C. Ct. App. Jan. 17, 2024), the South Carolina Court of Appeals considered a case with very similar procedural issues as presented in the instant case. In that case, the Greens sued Mr. Johnson for injuries sustained in a car accident. A process server effectuated service by delivering the Summons and Complaint to Mr. Johnson’s mother, at the home where they both resided. Johnson did not Answer, and the Master entered default and an award of damages. At the hearing on the motion to set aside the default, Mr. Johnson presented Affidavits from claims personnel for the trucking company and insurer. The master declined to overturn the default based on the affidavits, and Mr. Johnson thereafter filed a Rule 59 motion to alter/amend the judgment. At that hearing, Johnson submitted a variety of new evidence, to include “correspondence between the Greens’ counsel and [the insurer], evidence of a subrogation claim for the Greens’ property damages, and

a photograph of the Greens' car after the accident," none of which had been provided at the initial motion to set aside the default or provided prior to the Rule 59 hearing. *Green*, 2024 WL 180690, at *2. The Court of Appeals determined that "[a]ll of the evidence Johnson presented at the Rule 59(e) motion hearing was available and could have been presented when he filed his motion to set aside the default and default judgment, but Johnson failed to present any evidence at that time other than the affidavits of [claims professionals]." *Id.* at *4. The Court held, therefore, that "the master erred in considering the evidence presented for the first time at the Rule 59(e) hearing when deciding to grant the motion in part and reduce the damages awarded the Greens in the default judgment." *Id.*

As in *Green*, the e-mails and deposition testimony that Defendant relies on so heavily in support of its current motion were readily available to Defendant prior to the initial hearing on the Motion to Set Aside Default. These emails could have been gathered and presented at either the damages hearing in December or the hearing on the motion to set aside default in late January. It appears Defendant did not take the case or the allegations against it seriously until the damages Order was issued on February 29, 2024.

Additionally, in order to obtain relief based on newly discovered evidence under Rule 60, the moving party must show that the evidence (1) is of such magnitude that had the court known of it earlier, the outcome would likely have been different; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. *Lanier*, 364 S.C. at 217, 612 S.E.2d at 459. In reviewing # 2 and # 3 of the *Lanier* factors, and as more fully set forth above, it is clear that this "new" evidence is not new at all, as it was available in 2021 and 2022, well over a year before the hearings to which Defendant participated. Further, the deposition testimony relied on by Defendants shows that the

folks at Prysmian did not distinguish between reels used at the time of the accident and reels used during the time of the deposition, therefore Plaintiff's counsel had no way to distinguish in which reels KSC had contact and/or control. Had KSC answered the complaint and engaged in discovery as did the other parties, perhaps this issue could have been more adequately flushed out. KSC did not even appear, and therefore, Plaintiff's counsel only had certain information available to it. Making these arguments at the ninth hour not only prejudices Plaintiff but shows Defendant's disregard for the rules of civil procedure. Even if these depositions and emails had been introduced at either the default hearing or hearing on damages, it is not likely that they would have changed the outcome because the information only attempts to show weakness in the Plaintiff's level of proof and does not even come close to proving that KSC did not have involvement with the reel that injured the Plaintiff. Therefore, factor # 1 of *Lanier* is not established as well. For these reasons, Plaintiff argues the Motions should be denied.

II. Plaintiff Does Not Object to Setoff

Defendant KSC avers it is entitled to setoff for any amounts paid by any parties to settle Plaintiff's claims. Plaintiff does not object, and believes setoff to be proper pursuant to Section 15-38-50 of the South Carolina Code (2005). Plaintiff settled with each of the other Defendants prior to default judgment being issued against KSC in the amount of \$15,000.00 each, for a total of \$30,000.00. Settlements were made in consideration of the Plaintiff continuing claims against KSC.

III. Plaintiff's Motion to Dismiss Based on Rule 60(b)(3) Should be Denied as Plaintiff's Counsel Did Not Misrepresent Any Facts

Defendant argues it is entitled to an order setting aside the judgment pursuant to Rule 60(b) based on misrepresentations made by Plaintiff's counsel at the hearing. Defendant states Plaintiff

failed to disclose the depositions of Ouzts, Talley, and Gary, which “constitute[d] a misrepresentation of known facts.” Defendant’s Memorandum in Support, p. 9. Plaintiff’s counsel adamantly disagrees with these assertions and Defendant’s characterization of the depositions of Prysmian employees. Plaintiff’s counsel, who was present at those depositions and deposed these witnesses, left the depositions with the impression that KSC did handle the reel at issue, or at least was the most likely candidate of doing the same. Plaintiff’s counsel stated such as the basis for amending the Complaint in this matter to add KSC. *See* Plaintiff’s Memo. in Response to KSC’s Mtn. to Set Aside Default at p. 2.

Included herewith are highlighted pages from the referenced depositions of Charles Ouzts and Cecil Talley along with the referenced Purchase Order that designated KSC for a “blanket” Purchase Order for storage and repair of HV reels in 2018. *See* Attached Exhibit B. These excerpts clearly show a basis for Plaintiff to amend his pleadings based on this testimony. Furthermore, Plaintiff was not in a position to need to prove his entire case in these depositions but instead a mere basis to make a claim against potential Defendants, and in particular KSC.

Furthermore, at the hearing on Motion to Set Aside Default, Plaintiff’s counsel referenced multiple conversations with Mr. Kelley. Plaintiff’s counsel merely referred to these conversations based on his recollection. These conversations are not contradicted by the emails between Mr. Kelley and Plaintiff’s counsel. Mr. Kelley’s emails in fact contradict themselves stating “KSAC [sic] Logistics, Inc. never had the reel size that was involved in this accident that took place on November 10, 2018. The size was not in possession by KSC Logistics, Inc. for 6 months prior and for 4 months after the accident...” These statements contradict themselves in that he states they “never” had this size reel and then limits his time of possession to a 10-month block of time. After these depositions, Plaintiff’s counsel was then privy to the above-referenced testimony and

documentation of the blanket Purchase Order for repairs of HV reels during and before this timeframe which necessitated the amendment of the pleadings.

KSC intends to avoid litigation by not responding to the Amended Summons and Complaint and then play “gotcha” based on the fact that a serial number and any specific work order don’t match up to their company and/or this particular reel. This reel was not documented or recovered by Prysmian or KSC even though both knew the magnitude of this incident as soon as it took place. Because of its constant and almost ubiquitous working arrangement with Prysmian, KSC could have easily documented this reel’s serial number. If in fact it wasn’t responsible for this reel, then KSC should have documented this fact immediately, any reasonable person or company would procure proof of its innocence.

KSC did not respond to the Amended Summons and Complaint therefore Plaintiff’s Counsel’s litigation strategy was directed at the Defendants that did respond to pleadings. Once KSC was in default, Plaintiff did not need to establish bolstering evidence against KSC because it was in default and is therefore unable to contest evidence presented. Even so, the overwhelming majority of evidence supports that KSC was the most likely culprit for storing this reel outside, repairing / or not repairing this reel, and / or welding and painting the D-Ring on this reel.

Plaintiff’s counsel was not in possession of emails between representatives of KSC and Prysmian and saw these emails for the first time at the time of the Defendant’s Motion to Alter or Amend. As previously cited, these emails were in the possession of KSC long before any of the proceedings dealt with herein and upon due diligence were easily discoverable and are therefore not “new evidence” for the court to consider.

Although Defendant does not raise fraud, it is logical the same standard would apply for allegations of misrepresentations under Rule 60(b)(3). “[A] party may not prevail on a Rule

60(b)(3) motion on the basis of fraud where he or she has access to disputed information or has knowledge of inaccuracies in an opponent's representations at the time of the alleged misconduct.” *Raby Const., L.L.P v. Orr*, 358 S.C. 10, 21, 594 S.E.2d 478, 484 (2004) (internal citations omitted). Where the Defendant had access to the disputed information, as Defendant did in this case, he or she should not be able to prevail on a Rule 60 motion. Defendant could have located the emails at issue and read the depositions that are now being relied upon well before any final order was issued on the damages hearing or Motion to Set Aside Default. South Carolina policy favors resolution of matters, and Plaintiff opposes Defendant receiving relief from judgment under Rule 60(b)(3). As explained in *Bowman v. Bowman*, 357 S.C. 146, 591 S.E.2d 654 (Ct.App.2004), “we conclude that South Carolina's strong policy towards finality of judgments trumps a party's ability to set aside a judgment where, as here, the party could have discovered the evidence prior to trial.” *Bowman*, 357 S.C. at 152, 591 S.E.2d at 657 (Ct. App. 2004).

CONCLUSION

Plaintiff respectfully requests this Court deny the Motion to Alter or Amend of Defendants, as the “new” evidence Defendant alleges to have discovered could have been, with due diligence, available to the Defendant at or before the hearings at issue in this case. Plaintiff does not oppose Defendant’s Motion for Setoff, and consents to the same.

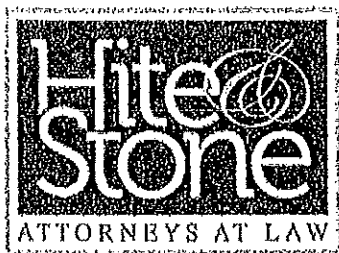
Respectfully submitted,

HITE & STONE

BY: s/Thomas E. Hite III SC Bar (73750)
THOMAS E. HITE, III, ESQ.
P. O. BOX 805
ABBEVILLE, SC 29620
(864) 366-5400 TELEPHONE

(864) 366-2638 FACSIMILE
T3@hiteandstone.com
ATTORNEY FOR PLAINTIFF

May 28, 2024
ABBEVILLE, SOUTH CAROLINA



Thomas E. Hite, Jr.* | Heather Hite Stone | Thomas E. Hite, III

November 21, 2023

US CERTIFIED MAIL

KSC Logistic, Inc.
Attn: William Ray Kelley
217 Old Calhoun Falls Road
Abbeville, South Carolina 29620

*RE: William F. Nickles, IV vs. Palmetto State Transportation, LLC, and KSC Logistics, Inc.
Civil Action No.: 2021-CP-01-00076*

To Whom It May Concern:

Enclosed, please find a Notice of Hearing in regards to the above referenced case. A hearing has been scheduled for Monday, December 18, 2023 at 10:00 a.m. in front of the Honorable Judge Donald B. Hocker. The hearing will take place at the Abbeville Courthouse, located at 102 Court Square, Abbeville, SC 29620.

Sincerely,

A handwritten signature in cursive script, appearing to read "April Powell".

April Powell
Paralegal to Thomas E. Hite, III

Enclosures

www.hiteandstone.com

100 East Pickens Street P.O. Box 805
Abbeville, South Carolina 29620
Office 864-366-5400 Fax 864-366-2638

*American Board of Trial Advocates
Personal Injury - Family Law - Real Estate
april@hiteandstone.com

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT
CASE NO.: 2021-CP-01-00076

William F. Nickles, IV,

Plaintiff,

vs.

Howar Equipment, Inc., Palmetto State
Transportation, LLC, KSC Logistics, Inc., and
John Doe Corporation,

Defendants.

NOTICE OF HEARING

TO: DEFENDANT, KSC LOGISTICS, INC.

Please take notice that the hearing on Plaintiff's Motion for Damages has been scheduled in this matter for Monday, December 18, 2023 at 10:00 a.m. located at the Abbeville County Courthouse, 102 Court Square, Abbeville, SC 29620 before the Honorable Donald B. Hocker, Circuit Judge, presiding.

HITE & STONE

BY: s/Thomas E. Hite, III(SC Bar #: 73750)
THOMAS E. HITE, III, ESQ.
P. O. BOX 805
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ATTORNEY FOR THE PLAINTIFF

ABBEVILLE, SOUTH CAROLINA
November 21, 2023

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <i>x Brenda Nance</i> ☒ Agent ☐ Addressee	
1. Article Addressed to: KSC LOGISTICS, LLC Attn: William Ray Kelley 217 Old Calhoun Falls Rd Abbeville, SC 29620		B. Received by (Printed Name) <i>Brenda Nance</i> C. Date of Delivery <i>11-27-23</i>	
2. Article Number (Transfer from service label) 7021 2720 0000 3200 3439		D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery		3. Service Type (over \$500) ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery	

PS Form 3811, July 2020 PSN 7530-02-000-9063

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B SHOP

REPORTING SERVICES, LLC

Charles Ouzts
11/5/2021

ELECTRONICALLY FILED - 2024 May 28 5:12 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

Page 51

1 Q Right. But in particular with this reel that we're
2 talking about failed with the D-Ring on it with Will,
3 more likely than not, the manufacturer would've been
4 Howar or Sonoco?
5 A Most likely from what I know.
6 Q Okay.
7 A But --
8 Q And that's all I'm asking.
9 A Yeah.
10 Q Yeah. Do you sign off on or request refurbishment of
11 the reels?
12 A I do.
13 Q Okay. And who do you primarily use for refurbishment
14 of reels?
15 A High voltage?
16 Q Yes, sir. And you can assume from here on out any
17 reels that I'm talking about, I'm talking about high
18 voltage.
19 A Okay. Primarily, high voltage reels are repaired by
20 KSC.
21 Q And do you dictate -- and who's the other person that
22 would -- who's the other company that would potentially
23 repair the high voltage reel?
24 A Palmetto State has --
25 MR. HARJEHAUSEN: Object (audio interruption).

B SHOP

REPORTING SERVICES, LLC

Charles Ouzts
11/5/2021

ELECTRONICALLY FILED - 2024 May 28 5:12 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

Page 56

1 Q Okay. And would you be responsible for -- for
2 supervising that, or would that be an operator job, or
3 would that be somebody else's job?
4 A If they were removing D-Rings --
5 Q Yes, sir.
6 A -- and putting eye bolts?
7 Q Yes, sir.
8 A I wouldn't supervise that, no. I mean, they may ask me
9 to manage the back-and-forth movements between the reel
10 depots and the plant, but as far as supervising those
11 guys making those changes, no, I wouldn't do that.
12 Q Who would?
13 A That would -- I would assume whoever's managing the
14 depot is going to -- going to -- the guys repairing it
15 are going to, you know, supervise it, and you know. I
16 can't -- I -- you know, I can't be at the plant and at
17 the depot supervising repairs and stuff, so I just have
18 to depend on -- depend on those guys to do the best job
19 possible.
20 Q Where's the depot?
21 A KSC, is on Cal- --
22 Q Oh, that's -- that's what you call the depot?
23 A Yeah, the reel repair depot.
24 Q Okay.
25 A Yeah, uh-huh.

B SHOP

REPORTING SERVICES, LLC

Cecil Talley
11/4/2021

ELECTRONICALLY FILED - 2024 May 28 5:12 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

Page 53

1 Q Okay. Would Hower ring a bell?

2 A No, it wouldn't.

3 Q Okay. So you wouldn't know any of the -- any of the
4 manufacturers of high-voltage reels?

5 A To be honest with you, no. I just don't. I don't
6 recall who -- who we buy from.

7 Q Okay.

8 A I don't even know who we buy medium-volt reel from, to
9 be honest. We buy them from different people, so it's
10 just -- it's not something that we -- you know. It's
11 not something I know.

12 Q Okay. All right. During your time there, has there
13 been anybody else, other than KSC or, I think -- I
14 believe you testified that nobody else has stored any
15 reels, other than KSC, and Palmetto State Transport;
16 correct?

17 A At the very start, when I got there in 2010, there was
18 an individual at the end of the road down past Pro
19 Towel, Grady Patterson. He had a shop that he was
20 doing before I arrived. He worked on them at ad hoc,
21 one or two reels. I mean, it was very small scale.
22 But he was over with within six months of when I got
23 there in 2010. By 2011, he was out.

24 But he's the only other person who's -- that I've
25 got any knowledge of to repairing any reels, and his --

B SHOP

REPORTING SERVICES, LLC

Cecil Talley
11/4/2021

ELECTRONICALLY FILED - 2024 May 28 5:12 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

Page 54

1 his involvement was miniscule as far as what we did; a
2 small operation and a handful. But, you know, to be
3 totally honest, he's the only other one, other than
4 these two folks.

5 Q And when you say that repairs, is that the same thing
6 as a refurbishment, or is a refurbishment different
7 than a repair?

8 A It's a -- it's nomenclature difference. I mean, you
9 know, one person may call what we do a refurbishment.
10 Charles would generally give information on his PO:
11 These only need to have dents out of them and paint.
12 I'm making this up. This is --

13 Q Right.

14 A This is just an example of something he could say. Or
15 it could be, you know, we've got a hole that needs to
16 be re-welded; or this one only needs painting because
17 it's got some rough places. There's a myriad of
18 different things; some of them more comprehensive than
19 others. But each one is -- and whether you call it
20 refurbishment, whether you call it repair, I think it's
21 strictly a nomenclature issue.

22 Q All right. And just so I'm clear. I've got it on my
23 list here. You said that the only other places that
24 have stored them for y'all would be on your property,
25 KSC, or Palmetto State Transport?

B SHOP

REPORTING SERVICES, LLC

Cecil Talley
11/4/2021

ELECTRONICALLY FILED - 2024 May 28 5:12 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

Page 55

1 A That's correct.

2 Q And then, other than the miniscule amount, maybe Grady
3 might have had one while he was working on it?

4 A That's right. Yeah.

5 Q All right.

6 A And again, that was 11-plus years in the past, for a
7 very short period of time in my tenure there.

8 Q Do you have -- do you have a welder that works for
9 Prysmian?

10 A We don't have a welder spot, per se. We've got
11 maintenance people who weld.

12 Q Okay. So y'all do welding?

13 A Yes, we do.

14 Q Would y'all have welded D-rings on high-voltage reels?

15 A No.

16 Q In this particular case, this high-voltage reel that
17 has this D-ring on it, that would have come from the
18 manufacturer that way?

19 A As best I know, yes.

20 Q I'm going to show you what's been marked as Exhibit 2
21 to your deposition, and there's -- how many did I say
22 -- I think 12; 12 pictures there. And this is a
23 picture -- I'll present to you that this is, on Page 1,
24 a picture of the D-ring weld, where it appears that the
25 D-ring was welded to the side of this high-voltage

B SHOP

REPORTING SERVICES, LLC

Cecil Talley
11/4/2021

ELECTRONICALLY FILED - 2024 May 28 5:12 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

Page 85

1 A Total increase for 100 -- yeah, okay. Yeah. Right,
2 right, right. 612, PO increased to 200; yeah. That's
3 what I said. So it was a blanket. In August the 16th,
4 we increased it to 300,000.

5 Q In that -- inside that PO, are those repairs only, or
6 storage and repairs? Do you know?

7 A This would have probably been repairs only. You know,
8 he does storage for us, and we got a PO. We looked at
9 some of those. It was some are repairs; some are
10 storage. I would assume this was all repairs based on
11 what it says.

12 Q And any repairs that he does, who approves those, or
13 looks at those, and --

14 A Charles would direct him on what he needs to do, and
15 how many he needs to do. Our relationship with KSC is
16 such that, you know, he has a price for painting, he
17 has a price for dents, he has a price for, you know; if
18 he needs to weld a hole, he needs to do. Whatever he
19 does is such that, you know, it's price-based on how
20 much -- how much time he spends.

21 It's a cost-added basis type thing, and then it
22 just -- it just consumes X amount, and when we get down
23 low, Charles will, you know, tell me or tell Yamac we
24 need to increase it to whatever, based on the amount of
25 work that's done.

Prysmian Group

Prysmian Cables and Systems USA LLC

Purchase order

Page 1 of 1

Data to be reported on your documents:

Order Num. Issue Date
4500943762 01/08/2018

Product Code
Material Code

Delivery Address: Abbeville Prysmian Cables and Systems USA LLC 569 Highway 28 Bypass ABBEVILLE SC 29620 USA	Order Address: KSC LOGISTICS, INC. 217 Old Callhoun Falls Road ABBEVILLE SC 29620 USA
Invoicing Address: Prysmian Cables and Systems USA, LLC 569 Highway 28 Bypass Abbeville, SC 29620 lena.new@prysmiangroup.com	Vendor's Address: KSC LOGISTICS, INC. 217 Old Callhoun Falls Road ABBEVILLE SC 29620 USA Reference Ref: Mary Shumate Phone: 843-478-1547 Fax: 864-446-8154 E Mail: chuck.kelley@ksclogistics.net
Incoterms T-- Service Order Currency: USD Payment Terms End of Month plus 37 days	Buyer's contact data: Bryan McClain Telephone: +1 (864) 366-1276 E-mail: bryan.mcclain@prysmiangroup.com

FOR INTERNATIONAL SHIPPING ONLY: Please send copy shipping documents by email to nacustoms@prysmiangroup.com ISF Form must be completed for ocean shipments and sent 72 hours before sailing!

Steel Shipping Reel Repair- Logistics 2018

This is not a commitment to purchase the full amount of repairs and is only an estimate. Invoices will be processed/paid as requested work is completed.

When the total value of this PO has been consumed, no additional work should be done. Vendor should contact plant logistics and purchasing to increase the amount of work authorized. Prysmian is not obligated to pay invoices that exceed the total value of this PO.

5-3-18 PO increased for 150k to 200K per George Hutton- Email attached To PR*

6-12-18 PO increased for 200K to 250K per George Hutton - Email attached to PR

*** 16-August, 2018 - PO increased to \$300-K from approved requisition 5125876469 (M.Carpenter)

All suppliers will be held accountable to the Prysmian Group ethical code - https://www.prysmiangroup.com/sites/default/files/atoms/files/Code%20of%20Ethics_final_EN.pdf
 PO Number must be shown on all Shipping Documents and Invoices.
 CLICK!





Prysmian Cables and Systems USA LLC

Purchase order

Page 2 / 3

Data to be reported on your documents:

Order Num. Issue Date
4500943762 01/08/2018

Vendor Code
7010907293

*** 18-September - added line for HV Steel Reel repair. MWC

*** 9-November, incased value from \$350-K to \$400-k for shipping reel repair - MWC.

Item	Material Description	Order qty. Unit	Price per unit	Total	Delivery date
10	Steel SHIPPING Reel Repairs for KSC 26 each still to be delivered Non-Taxable Item Please deliver to DC for Ouzts *** Item partially delivered ***	400,000 EA			12/31/2018
20	HV Steel Reel Repair 28 each still to be delivered Non-Taxable Item Please deliver to Dock A for CharlesOuzts *** Item partially delivered ***	25,000 EA			12/31/2018

Net Order Value: USD

Prysmian Cables and Systems USA, LLC
Signature not necessary, Purchase Order electronically authorized

All suppliers will be held accountable to the Prysmian Group ethical code -
https://www.prysmiangroup.com/sites/default/files/atoms/files/Code%20of%20Ethics_final_EN.pdf
PO Number must be shown on all Shipping Documents and Invoices.
CLICK!

ELECTRONICALLY FILED - 2024 May 28 5:12 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS

William F. Nickles, IV.,)
)
 PLAINTIFF,)
)
 -v-)
)
 KSC Logistics, Inc.,)
)
 DEFENDANT.)
 _____)

CASE NO: 2021-CP-01-00076
TRANSCRIPT OF RECORD

December 18, 2023
Abbeville, South Carolina

B E F O R E:

The Honorable Donald B. Hocker, Judge

A P P E A R A N C E S:

ATTORNEY FOR PLAINTIFF:
Thomas Erskine Hite, III., Esquire

ATTORNEY FOR DEFENDANT:
C. Daniel Atkinson, Esquire

Tara T. Scott, CVR
Official Court Reporter

IN D E XWITNESSPAGE NO.

Raymond Jeffrey Horne

Direct Examination by Mr. Hite.....7

Cross-Examination by Mr. Atkinson.....19

William F. Nickles, IV.

Direct Examination by Mr. Hite.....22

Cross-Examination by Mr. Atkinson.....38

Glenn Adams

Direct Examination by Mr. Hite.....42

Cross-Examination by Mr. Atkinson.....49

Dr. Oliver Wood

Direct Examination by Mr. Hite.....55

Cross-Examination by Mr. Atkinson.....63

Certificate of Court Reporter.....70

E X H I B I T S

Plaintiff's Exhibit No. 1: Photos	Evidence
Plaintiff's Exhibit No. 2: Medical bills	Evidence
Plaintiff's Exhibit No. 3: Medical summary	ID only
Plaintiff's Exhibit No. 4: Adams report	Evidence
Plaintiff's Exhibit No. 5: Woods report	Evidence
Plaintiff's Exhibit No. 6: Woods charts	Evidence

1 THE COURT: This is the case of William F. Nickles v
2 Palmetto State Transportation, and others, on case number
3 2021-CP-01-00076. My docket indicates this is a motion for
4 damages. Tombo Hite represents the Plaintiff. And I should
5 -- I know you, but help me with your name.

6 MR. ATKINSON: I'm from Laurens, Your Honor, Dan
7 Atkinson.

8 THE COURT: Yeah, Dan, good to see you. You represent
9 whom?

10 MR. ATKINSON: I represent KSC Logistics, Your Honor.

11 MR. HITE: Your Honor, I can brief you a little bit on
12 the procedural posture of the case.

13 MR. ATKINSON: If I may, briefly, before you start, if
14 you don't mind. Your Honor, I have filed a motion to set
15 aside default and a motion for a continuance. I understand
16 he's got experts here. I would propose resolving that by
17 letting him conduct the hearing and holding your final
18 ruling in abeyance until you hear on the motion to set aside
19 default, is my request, rather than continue.

20 THE COURT: All right, are you wanting to go forward on
21 your motion to set aside the default today?

22 MR. ATKINSON: Your Honor, I was advised by the Clerk's
23 office that it would not be heard today, so I did not brief
24 it, but I don't want him to have experts come twice, so I'm
25 fine with him proceeding with the hearing if that's under

1 advisement. I will do a hearing by WebEx, or however Your
2 Honor wishes.

3 THE COURT: So, what Mr. Atkinson is requesting, or
4 willing to do rather, is go ahead and let you proceed
5 forward on your damages hearing, because you have some
6 experts here, but hold any decision in abeyance until the
7 motion to set aside the default is heard. And of course, we
8 don't know how that's going to be decided.

9 MR. HITE: Yes, sir. I provided a memo in opposition to
10 the motion to set aside and I'm prepared to argue it today,
11 but I --

12 THE COURT: I think Mr. Atkinson says he is not ready.

13 MR. HITE: Yes, sir.

14 THE COURT: All right.

15 MR. HITE: But in lieu of paying to have experts come
16 back twice ---

17 THE COURT: Sure.

18 MR. HITE: I'd much rather Your Honor take it under
19 advisement ---

20 THE COURT: Sure.

21 MR. HITE: --- hear the testimony as it relates to the
22 damages, and then make a ruling as it relates to the motion
23 to set aside and the damages maybe concurrently.

24 THE COURT: All right. So, then it would appear that I
25 need to retain jurisdiction over the motion to set aside the

1 default as well. That just makes more sense if I do that.

2 So, Mr. Atkinson, again, your client is who?

3 MR. ATKINSON: KSC Logistics, Incorporated.

4 THE COURT: All right. Let me just make some notes here
5 real quick then, Mr. Hite, we can proceed forward on your
6 damages hearing.

7 (WHEREUPON, there was a brief pause in the proceeding.)

8 THE COURT: Mr. Hite, give me a little summary about the
9 nature of this case, and then you can put up your witnesses
10 concerning damages.

11 MR. HITE: Yes, sir, Your Honor. Your Honor, this is
12 involving a work-related accident that occurred to my
13 client, Mr. William Nickles, IV., who is sitting right here
14 beside me, on November 10, 2018. Mr. Nickles was working as
15 a line operator at Prysmian Cable Systems, and was running
16 cable onto a 158 inch reel, cable such as this, that was
17 rolling onto a 158 inch reel, which obviously is a very tall
18 reel. And in the mechanism of loading the cable onto the
19 reel, the D ring that is established or welded onto this
20 reel popped off and broke and Mr. Nickles was underneath the
21 weight of this giant cable that came down and smashed him in
22 the head, shoulder, and broke his leg. So, he had a head
23 injury, shoulder injury, neck injuries, back injuries, and a
24 broken leg, a broken ankle. This case was filed after the
25 conclusion of his Workers' Comp case. This is a third-party

1 case, and it was filed originally April 12, 2021. And then
2 we've had the Defendant -- We let the Defendant, KSC
3 Logistics, out on their word that they didn't have
4 involvement in high voltage reels, and then we brought them
5 back into the case after depositions and discovery from
6 Prysmian allocated KSC as a Defendant, as a true Defendant
7 in the case. We reissued our amended summons and complaint
8 on KSC prior to the extinguishment of the statute of
9 limitations and served them within the requisite time period
10 allowable by the code. And in doing so, they didn't respond
11 until December 7, 2023, and our damages hearing is resulting
12 in their default. And that's what we're here before you on
13 today.

14 THE COURT: Call your first witness.

15 MR. HITE: Your Honor, the Plaintiff calls Jeff Horne to
16 the stand.

17 WHEREUPON, Jeffrey Horne, having
18 first been duly sworn, testified as follows:

19 THE COURT: State your name and spell your last name,
20 sir.

21 WITNESS: My name is Raymond Jeffrey Horne. The last
22 name is H-o-r-n-e.

23 DIRECT EXAMINATION

24 BY MR. HITE:

25 Q Mr. Horne, How long have you lived in Abbeville?

- 1 A All my life, 59 years.
- 2 Q And do you know my client?
- 3 A Yes, I do.
- 4 Q How do you know Will?
- 5 A I went to school with Will in high school, known him
6 for quite a few years since then. Haven't seen him in a
7 long time until I went to work at Prysmian. We've been
8 friends, good friends, our whole life.
- 9 Q So, you worked with Will at Prysmian?
- 10 A Yes, sir.
- 11 Q And how long -- do you work at Prysmian now?
- 12 A No, sir. I do not.
- 13 Q And how long had you worked at Prysmian before Will's
14 injury?
- 15 A Probably three, three and a half years.
- 16 Q What was your role there?
- 17 A My job title was a jacket line operator.
- 18 Q So, tell us a little bit about what a jacket line
19 operator does.
- 20 A Basically what we do is once the cable is processed
21 into a cable form, the raw material is sent over to my scope
22 of work, and my job is to extrude the compound, the melted
23 pellets, onto the outside of that copper wiring as a shield
24 for underground cable.
- 25 Q I'm going to show you a picture of what's been marked

1 as Plaintiff's Exhibit 1.

2 MR. HITE: Your Honor, here's a copy for Court.

3 THE COURT: Thank you.

4 Q Would that cable that's designated in picture one on
5 Exhibit 1 be a close reflection of what size cable you were
6 operating with?

7 A Yes, sir.

8 Q At Prysmian.

9 A Yes, sir.

10 Q And why don't you tell us a little bit about what
11 happened on November 10, 2018? Do you remember that day?

12 A Yes, sir. I do.

13 Q Walk us through what happened.

14 A Normal day. Go into the plant. Hit the time clock. Go
15 out to my area where I'm working, which is considered a high
16 volt jacket line.

17 Q Describe that area for us. Take us there.

18 A It's a humongous building. There's several pieces of
19 equipment in there, different facets of what's going on.
20 You come through the -- when we come in, we go through the
21 bathroom. There's a cabinet at the end of my process, which
22 I do, filled with graphite. You can always smell, you know,
23 the rubber smell, the compound when it's melting. We come
24 in to work. I see exactly where my first shift operator --
25 because I'm working second. I have to understand where he's

1 at in his process, so that when he shuts down or whatever
2 he's doing, I have to pick up and take from there. But my
3 job that particular day was -- he was shutting down. I came
4 in, set up the line, got it ready for the next length of
5 cable to be ran, and after we got the cable -- or I got the
6 cable set up to be ran, the job requires two men to run it.
7 Now, Mr. Nickles runs a machine called the 88 wire strap.
8 So, we always -- I always had to get his help to start the
9 line. I could not run this line by myself. So, our
10 supervisors required him to come over and help when we
11 started the line, which was called "shooting the line". We
12 had -- I got the line prepped, loaded, ready to go. We went
13 to lunch at around 7:00.

14 Q This is 7 p.m.?

15 A Yes, sir. We come in at 3:00 p.m. Went to lunch.

16 Q Just so that we can see and envision this reel, page
17 two of Exhibit 1 displays a 158 reel. Is that correct?

18 A Yes, sir. That's typical of what we did. It is
19 humongous. On this reel, which is hard to see, is on the
20 left-hand side of that reel is what they consider a spiral.

21 Q So if we had the reel right here in this area, it would
22 be obviously taller than two of me to the top?

23 A Oh, absolutely.

24 Q This is equivalent to LeBron James standing up.

25 A Yes, sir.

1 Q So, imagine the reel being in this area. Where is the
2 line running from, if you're in your position?

3 A The line will be running straight towards that reel.
4 However, that reel has to be set up because of the spiral.
5 When Prysmian tests this cable, they have to take -- after
6 we run it and it's through and we unload it, it has to have
7 a length of cable that they can take off front and back in
8 order to run it through the high volt test. So, that spiral
9 -- when we start these reels up, that spiral is super
10 important. Some reels have spirals on the left hand. Some
11 have them on the right hand. It just depends on what reel
12 they require us to start up on.

13 Q And so let's go back to the November 10, 2018. Take us
14 there. You just got finished with lunch.

15 A Yes, sir.

16 Q 7:00 p.m. or 7:30. Tell me what happened.

17 A Well, we come out of the break room. We go out on the
18 floor, and I have the machine heating, running the compound
19 out. Will, Mr. Nickles, is behind me on what we consider
20 where we have to wrap the copper. On the cable is a shield
21 that the compound goes over, and we start the line up, which
22 me and him refer to as "shooting the line". That's what
23 everybody calls it out there, you got to "shoot the line".
24 You have a tow line at the front of that cable that is
25 literally pulling from one end of the plant, which is 110

1 yards long. We're in the middle of it. We're probably
2 about 50 yards out from either end. So, you have one that's
3 called a payoff reel, and one that's called the take up
4 reel, and we have to hook up with a tow line. That cable has
5 got to be pulled from that payoff reel, through that head,
6 as it's extruding the plastic on it. It runs through a
7 series of water troughs, for cooling purposes, to cool the
8 jacket down. Because the cable is so big, you've got to get
9 that jacket cooled down enough so it doesn't leave flat
10 spots in it. You know, so we start the machine up, we run
11 anywhere between 10, 13 feet a minute.

12 Q So, let's imagine that the reel is here and you're
13 operating somewhere down in this direction. Is that
14 correct?

15 A Yes, sir. I'm about middle ways down at the beginning
16 of that.

17 Q And middle ways would be how far?

18 A About 50 yards.

19 Q So, you're 50 yards in that direction?

20 A Yes, sir.

21 Q And describe to me what's happening. Thirteen feet, or
22 10 to 13 feet a minute?

23 A Yes, sir.

24 Q That would be a slow and steady pace?

25 A It's a steady pace.

1 Q And that cable is moving in this direction?

2 A Yes, sir. And it's got a lot of tension on it. We
3 have a -- where our biggest reel is what we call our take up
4 reel. We have a cable running underneath it that is actually
5 towing this cable through that head. That's where all the
6 tension is at. That cable is very heavy, and a lot of
7 tension, and you have to physically pick it up at certain
8 points to get it to ride over little rollers and get in the
9 water troughs. It's a lot going on. You have to be cutting
10 things on, cutting stuff off.

11 Q So, describe to us what happened that day with Will,
12 right here at the reel.

13 A As we get down to where the take up reel, we hook -- we
14 do a hookup is what we call it. We have to run that cable
15 through a graphite -- rags, is what we call it. We fill it
16 with graphite and we wrap it around the cable, which makes
17 that cable super extremely slick. And the floor is covered
18 in it. Pretty hard to maneuver around it. A lot of
19 machinery. But as the tow line is pulling that cable
20 through to get ready for the hookup, you already have your
21 reel set to whichever side the spirals on. If it's on the
22 left-hand side, you can't see it if you're operating the
23 machine. The reel is so large, you're actually looking at
24 the side of the reel. You can't see it. So, what Will's job
25 that particular day was when that cable, that tow line, is

1 pulling that cable down. I had to run around the take up
2 reel to cut off what we call the tow line take up. Which
3 you stop it, but the machine is still pulling that cable,
4 because it's ran through a cat at that point and it's
5 pushing it then. His job was to unhook the U-bolt and get
6 it ready to go onto the D-ring. I shut down the tow line.
7 I come around. Will's taking the ring off of it, and he's
8 getting ready to hook this thing up, but the cable is so
9 heavy it really requires both of us. We both have to get in
10 there and wait until that ring gets to that D-ring. And he
11 hooks it in, and he starts screwing that thing as fast as he
12 can go. And when he does that, I go to the other side
13 machine and I start it up at a very low tension, so that we
14 can get the cable started up on the spiral.

15 Q So you're hooking it in around this height?

16 A Yes, sir.

17 Q And then as the reel spins ---

18 A As it starts up, it will actually pick that cable up
19 with it. And we have a device in there called a densler (as
20 spoken). That's what -- as the cable goes through it, and it
21 rises and falls, it can actually tell the machine how much
22 tension is on that cable.

23 Q All right. And tell me what happened next.

24 A Started up like normal, but because I can't see the
25 spiral on that side, because I'm just looking at the side of

1 the reel, but I can see Will beside me. He would instruct
2 me to either move the reel this way, so that the cable would
3 be against the reel and stay on the spiral, or move it this
4 way because it, you know, it wouldn't be hitting the side of
5 the reel. I mean, it was one of those things that you had
6 to put that cable on that spiral just right, or it wouldn't
7 stay on it and it would cause a whole 'nother set of
8 problems. But Will stayed there with it, but in order for
9 him to stay there and watch it, he has to stay on that side
10 of the flange of the reel. And that cable, as it's
11 climbing, going over the reel -- and you understand it's 10
12 feet, 12 foot tall.

13 Q And what happened that day?

14 A Well, like I say, I was running the controller. I saw
15 Will standing beside me. He was giving me instructions
16 verbally to, "go to the wall", is what he called it. "Go to
17 the wall". He wanted me to move this thing right. And you
18 just move it ever so slightly. And he's watching it, but
19 he's got to stay there with it. And as this thing peaks, as
20 it starts to get to the top, I heard something snap (witness
21 snaps fingers). And when I turned around, Will was gone. I
22 thought -- I knew the cable had failed. I didn't know why
23 at the moment. And I looked around and I didn't see him.
24 But when I finally looked close enough, he was on the floor
25 and the cable was on top of him. You've got to understand

1 too, at this moment, this machine is still running. It's
2 pushing this humongous cable. I don't know how many pounds
3 a foot this thing weighs, but he's underneath it. So, I
4 immediately look down, and he's talking to me, but he's not
5 even talking right. So, I reach down and grab him under his
6 shoulders, and I go to pull him out from underneath this
7 machine, and he's screaming, hollering. He did tell me, "My
8 foot's broke. My foot's broke." And the other thing too is
9 on this particular day, our relief man for that shift was
10 doing a quote "safety walkthrough". He was there with us
11 that day, but he was on the other side of the reel. He did
12 not see it break, to my knowledge, but he knew what had
13 happened. So, when I got Will out, I could tell that his
14 pupils were just huge. And I'm no doctor, but I knew
15 exactly right then I said, with the safety training and
16 stuff we had, I said, "This cat's going in shock. He's
17 going into shock." So, I'm trying to talk to him. The whole
18 time, this machine is still running. You know, you don't
19 stop it.

20 Q You saw your safety instructor, Randall Gary. What was
21 he doing?

22 A It freaked him out so bad. He was standing -- I could
23 see him underneath this reel, because it was so huge. He
24 was bouncing up and down like he had no clue. I mean, he
25 was -- it scared him.

1 Q Did it scare you?

2 A Oh, yeah. I thought it killed him. People don't
3 understand how big that stuff is.

4 Q And Will was obviously in pain at that moment.

5 A Yes, he was screaming. And I tried to help him get out,
6 and I got him out partially from under the cable, but I had
7 to go hit the "E" stop, because this cable is just feeding
8 out in the floor. So, I got him out as best I could. I
9 hollered at Randall Gary, who was our lead man, to call
10 9-1-1, but what I did not realize is when that cable fell it
11 hit him in the shoulder, and when I grabbed him from
12 underneath to help get him out -- which I had to. I
13 couldn't have got him out no other way. It caused him a
14 great deal of pain. I did not know it had crushed his
15 shoulder and I did not realize his foot was broke until I
16 got him out, because I could tell by the way his foot was
17 twisted that it was bad. But again, like I say, I can see
18 he was going in shock. Told Randall to call 9-1-1. He did.
19 He started dialing his cell phone. When he got off the
20 phone, he said, "What do we do? What do we do?" I said,
21 "Look, this machine is still running. You've got to call
22 somebody to come down here." Because I knew I couldn't leave
23 him. He was not in the right frame of mind. And they
24 called upstairs to the tower, and another employee who
25 worked with us on second shift came down named Derek

1 Peterson. And when I saw him, I immediately hollered at him
2 and said, "Derek get down here. Keep him talking. Do not let
3 him close his eyes, whatever you do." And I ran up and hit
4 the emergency stop to stop the whole machine off. Which, in
5 Prysmian world, it was a big no, no. You know, it had to be
6 something super major to stop this machine.

7 Q It took the ambulance a while to get there, correct?

8 A Yes. Randall went outside to meet the ambulance. And
9 when he went outside to meet the ambulance, the ambulance
10 pulled in the parking lot. Now, I'm getting this account
11 from Randall. He had to call maintenance to come out there
12 and cut the locks off the gate because they had chained the
13 gates, locked them up with padlocks.

14 Q And all this time, Will is on the floor in pain.

15 A He was on the floor. Absolutely. It was -- I'll tell
16 you, it was horrific. And it's hard to describe sitting
17 here. Unless you were there, you have no idea.

18 Q And do you work out at Prysmian anymore?

19 A No, sir. I will not work out there anymore.

20 Q Why not?

21 A That place ain't killing me.

22 Q All right. I'm going to show you picture 3 of Exhibit
23 1. Is that a fair depiction of the reel and the D-ring that
24 broke?

25 A That is exactly that reel and that D-ring.

1 Q And the D-ring so big, that's your hand holding it,
2 correct?

3 A Yes, sir.

4 Q Just for a matter of perspective, to know how big that
5 D-ring is. Is that is that correct?

6 A Huge. Yes, sir.

7 Q And you've known Will since he's recovered from this?

8 A Yes, sir.

9 Q And how would you describe his recovery and his pain
10 during the period of time that you've known him after the
11 incident?

12 A He can't do what he used to. He can't do it. If the
13 weather changes the man can't hardly walk.

14 MR. HITE: Thank you, Jeff. No further questions, Your
15 Honor.

16 THE COURT: Mr. Atkinson, any questions of Mr. Horne?

17 MR. ATKINSON: Briefly, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. ATKINSON:

20 Q Mr. Horne, had there been any issues with D-rings
21 before the day at issue?

22 Q What were those?

23 A They would break off.

24 Q Did you report those to anyone?

25 A Absolutely we did.

1 Q Who came and fixed them when you reported it?

2 A No one.

3 MR. HITE: Objection, Your Honor. I'll just say that
4 this is a damages hearing and it needs to remain exclusively
5 related ---

6 THE COURT: I'll allow it. Go ahead.

7 Q Who did you report the problem to? Prysmian or someone
8 else?

9 A Our supervisor.

10 Q And is that a Prysmian employee?

11 A Yes, sir.

12 Q And how did you report it?

13 A Told him.

14 Q Orally?

15 A Or he witnessed it.

16 Q Okay. So, it's not the first time a D-ring broke? Is
17 that your testimony?

18 A No, it's not the first time. It doesn't mean that I
19 was there when it broke.

20 Q How many times did you report a D-ring breaking, or a
21 problem with a D-ring at all?

22 A I don't think I ever reported it, as far as the D-ring
23 breaking, but I would tell them that these things were in
24 bad shape.

25 Q And what do you mean by bad shape?

1 A You could just tell. Some of them didn't even have
2 none at all.

3 Q Well, if there wasn't a D-ring, how would you do the
4 process that you described earlier?

5 A Well, what they would tell us to do was -- they had
6 these eyebolt looking devices that they would put on the
7 reel. Some of the reel would just come in. We had a
8 certain specific style of reel we had to run with each
9 cable. That was pre-designated by the employer, so we had to
10 run them.

11 Q Have you ever talked to anybody at KSC Logistics about
12 D-rings?

13 A I didn't.

14 Q Did you ever see anybody from KSC Logistics work on D-
15 rings?

16 A Working with what? Excuse me.

17 Q On the D-rings at issue in the high voltage area.

18 A No, I never saw anyone working on anything.

19 MR. ATKINSON: That's all I have, Your Honor.

20 THE COURT: You can step down, sir. Let's take a just a
21 real short break.

22 (WHEREUPON, a brief recess was held.)

23 THE COURT: We are back on the record in Nickles v KSC
24 logistics. Mr. Hite, call your next witness.

25 MR. HITE: Your Honor, the Plaintiff calls William

1 Nickles to the stand.

2 WHEREUPON, William F. Nickles, IV, having
3 first been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HITE:

6 Q Mr. Nickles, please state your full name for the
7 record.

8 A William F. Nickles, IV.

9 Q And how old are you?

10 A Fifty-seven.

11 Q And where are you from?

12 A Abbeville.

13 Q How long have you lived here?

14 A I've been back about 15 years.

15 Q Where were you during the interim?

16 A Greenville, Anderson, Atlanta.

17 Q You were born here?

18 A I was born in Atlanta, but my family is here.

19 Q And why don't you tell us a little bit about what
20 happened on November 10, 2018.

21 A The night of the accident. I went to work as normal.

22 We work seven days a week, so every day is a day to work.

23 Hit the time clock, walked out on the floor just to see what
24 slack I got to pick up, and start working.

25 Q When you started working, what happened?

1 A I was running my machine, the 88 wire service, and Mr.
2 Horne runs the jacket line. He needed my help to shoot the
3 line, so we shot the line, and that's when the accident
4 happened.

5 Q You heard Mr. Horne describe the accident. I'm going
6 to also show you what's been marked as Plaintiff's Exhibit
7 1. Can you identify that cable that you handled that night
8 similar size to that amount?

9 A Yes.

10 Q Mr. Horne, I just want to make sure that you can
11 identify that the cable that you were dealing with on
12 November 10 is about the size of that cable in picture 1.

13 A That's correct, correct.

14 Q The reel that you were dealing with on that night is
15 the size or comparable what you're seeing in picture 2.

16 A Yep.

17 Q And the D-ring and reel that you see in picture 3?

18 A Correct.

19 MR. HITE: Your Honor, I would ask to enter Plaintiff's
20 Exhibit 1 into evidence.

21 THE COURT: I thought it was already in evidence. It was
22 not?

23 MR. HITE: I never entered it into evidence.

24 MR. ATKINSON: No objection, Your Honor.

25 THE COURT: Without objection, Exhibit 1 into evidence

1 for the Plaintiff.

2 MR. HITE: Thank you, Your Honor.

3 Q On the night of November 10th, 2018. Walk us through
4 what you were doing right before the accident occurred.

5 A Well, we just got the shot through the Caterpillar, and
6 unhooked the tow line and which was kind of my job while
7 Jeff was getting set up on the reel to where to put it to
8 where we could hook it into the reel. Hooked it into the
9 reel and told him to, you know, start it up and start
10 putting it on the reel. The last thing I remember is it was
11 almost to the top of the reel. I turned around to him and
12 said, "Take it to the wall a little bit", and that's the
13 last thing I remember. I don't know if you've ever had
14 somebody walk up behind you and just knock the hell out of
15 you. I saw stars and light and that was it.

16 Q When do you remember waking up?

17 A I woke up on the floor with this cable on top of me,
18 and I knew my leg was broken.

19 Q How did you know?

20 A Immediately. Like, I could see my foot turned around
21 backwards when I opened my eyes and excruciating pain. Hit
22 or miss from there. Somehow managed to get out from under
23 the cable with Mr. Horne's help.

24 Q Do you remember that?

25 A Vaguely, yes.

1 Q What happened next?

2 A He grabbed me up under the arm and it was like he was
3 pulling my arm off. So I told him to get his damn hands off
4 of me, and I managed to get out myself.

5 Q How?

6 A Just clawing and pushing myself out, pulling myself
7 out.

8 Q What happened next?

9 A I was sitting on the floor or laying -- excuse me,
10 laying on the floor and just -- I can't describe the pain.
11 I just wanted it to go away.

12 Q Have you ever had pain like that before?

13 A Not like that, no.

14 Q And where was the pain? What parts of your body?

15 A In my ankles. My shoulder wasn't so bad at the time,
16 as long as I wasn't like trying to pull something.

17 Q And where do you understand that the cable hit you?

18 A It had to hit me in this shoulder, and I think it hit
19 me in this head, in this side of my head too, because I
20 busted four teeth and I think it hit me in this shoulder so
21 hard it broke my leg in three places over here.

22 Q And you shattered teeth?

23 A Shattered teeth.

24 Q What were your injuries?

25 A Still got shattered teeth.

1 Q Still have shattered teeth?

2 A Yeah.

3 Q Do those hurt?

4 A Still haven't got them fixed yet. They're probably
5 going to rot out before I get them fixed.

6 Q So, what all have you had fixed? What kind of medical
7 treatment did you have?

8 A I've had an operation on my leg, operation on my
9 shoulder. I'm going to have to have future operation on my
10 back and neck. But workers' comp didn't take care of that
11 at the time.

12 Q And you've resolved your workers' comp claim?

13 A I have.

14 Q And they have a lien against your case; is that
15 correct?

16 A That's correct.

17 Q And you understand that lien to be \$242,000 dollars?

18 A \$242,000.

19 Q They paid for all your medical treatment?

20 A They did.

21 Q And they also paid for your impairment; is that
22 correct?

23 A Correct.

24 Q Now, a doctor, during the workers' comp case, gave you
25 impairment ratings. Do you know about those?

1 A I do.

2 Q What were they?

3 A Twenty percent in the shoulder, and twelve in the leg,
4 and five in the neck and back. Something like that.

5 Q So, during your workers' comp case, they rated three
6 separate body parts?

7 A Correct.

8 Q Now, I'm going to mark this as Plaintiff's Exhibit 2.
9 Now, for your case we prepared a medical summary; is that
10 correct?

11 A Yes.

12 Q And is this a good reflection of a medical summary
13 related to your injuries in this case?

14 A Yes, sir.

15 Q Now, the back page of that shows a medical cost sheet;
16 is that correct?

17 A Yes, sir.

18 Q Is that a fair understanding of what you understood
19 your medical expenses to be in this case?

20 A Yes.

21 Q But you also understand that those rates that are there
22 are the rates that are set by the Workers' Comp guidelines?

23 A Yes, sir.

24 Q So, those aren't necessarily what a total bill would
25 be, but what actually what Workers' Comp paid.

1 A Right.

2 MR. HITE: Your Honor, the Plaintiff would move,
3 pursuant to Rule 1,006, to enter Exhibit 2 into evidence.

4 MR. ATKINSON: Your Honor, I'm fine with the bills. I
5 object to the summary as hearsay. I'm taking a look.

6 THE COURT: The summary, is this what your office
7 prepared?

8 MR. HITE: Yes, sir.

9 THE COURT: Okay. Well, I guess what Mr. Hite can do is
10 ask Mr. Nickles if, even though he did not prepare it, if he
11 agrees with the -- if it's an accurate summary of the
12 treatment performed.

13 MR. HITE: And that's what we're only submitting it as,
14 a summary of his medical evidence that would be admissible.

15 MR. ATKINSON: Your Honor, I would object to him having
16 expertise has to diagnosis, if it's a summary of what he
17 said.

18 THE COURT: Let me ask this, Mr. Hite. Do you -- you've
19 got a couple of gentlemen out there that have indicated
20 they're experts. Are any of them medical?

21 MR. HITE: They're not, Your Honor. They're vocational
22 and economic, but the rules allow for my client to testify
23 about his medical history and his medical records.

24 THE COURT: But as far as rendering medical -- I mean, I
25 haven't read this. I mean, I can glance at it and tell it

1 contains some medical information, but it also would appear
2 that it does give some medical opinions which would have
3 come from his treating physicians.

4 MR. HITE: It's not necessary for me to get into
5 evidence, Your Honor, since he can testify primarily about
6 everything. So if the Court is ---

7 THE COURT: I think probably -- the list of medical
8 expenses, as far as what workers' comp paid, I'll mark that
9 as Exhibit 2, and I'll mark the medical summary for
10 identification only. Let's just say Number 3, ID. All
11 right.

12 MR. ATKINSON: Thank you, Your Honor.

13 THE COURT: You may proceed.

14 MR. HITE: Thank you, Your Honor.

15 BY MR. HITE:

16 Q Mr. Nickles, tell the Court a little bit about what
17 medical treatment that you had in this case.

18 A About a week after the accident, they set my leg and
19 operated on my ankle. It was, I mean, they had to cut it
20 open, put two screws in it, and do some work, and put me
21 back together.

22 Q And what kind of pain was associated with that injury
23 and that surgery? How would you describe it?

24 A After the surgery?

25 Q Yes, sir.

1 A Brutal.

2 THE COURT: What was your answer, sir?

3 WITNESS: Brutal. It was horrible. But I think the
4 week up to getting it worked on was actually worse. I mean,
5 I don't know why they didn't do it that night. I guess
6 that's workers' comp for you.

7 Q All right. And did you have to do physical therapy
8 associated with that?

9 A Yes, sir. I was in physical therapy for about 15
10 months with shoulder, and leg, and back and neck.

11 Q And then at sometime later, you had -- after your ankle
12 was completed, or the surgery was completed, you had
13 shoulder surgery. Is that correct?

14 A That's correct.

15 Q Can you describe what kind of shoulder surgery you had
16 and pain associated therewith?

17 A The doctor told me he was going to have to go in and
18 grind bone away from crushed bone or something. He was going
19 to have to go in and grind bone out, and put the AC ligament
20 back together.

21 Q And did they perform that surgery?

22 A They did.

23 Q And what was your pain like before, during the recovery
24 phase, and then now?

25 A Recovery was not so bad with the shoulder, but it still

1 hurts. I mean, I can't -- I have limited motion with it.

2 Q How is it limited?

3 A Lifting over my head, behind me, any kind of weight
4 feels like it's coming apart.

5 Q Feels like your shoulder is coming apart?

6 A Yes, sir.

7 Q What other pain do you have associated -- well, how
8 bad was the pain right after the incident?

9 A With my shoulder?

10 Q Yes, sir.

11 A Not as bad as my leg. No, I think my leg overshadowed
12 that. And a couple of shots of morphine at the hospital
13 pretty much dulled everything out.

14 Q And on a scale of one to 10, where would you rate your
15 pain, on your ankle, right after the incident?

16 A Twelve.

17 Q Off the scale?

18 A Off the scale. Off the scale.

19 Q And then what about your shoulder? What rating would
20 you give it?

21 A A good eight to ten.

22 Q What else hurts you?

23 A Are you talking about right this second?

24 Q No, not today. At the time of the incident.

25 A I can't say that my neck and back were a problem at

1 that time, only because, you know, my leg was hurting so
2 bad.

3 Q It masks the pain in the other areas?

4 A Yeah.

5 Q But you've had treatment to your neck and back from
6 this incident?

7 A No, they didn't do anything to it.

8 Q And they diagnosed you with an impairment rating from
9 it?

10 A They diagnosed it, and then did nothing about it, and
11 then kicked it out of Workers' Comp. They kind of washed it
12 out, or it closed before they could do anything.

13 Q And you understood you had to resolve your Workers'
14 Comp claim before you could proceed on a third-party claim?

15 A Yes.

16 Q And are you asking this Court today for a judgment
17 against KSC?

18 A Yes.

19 Q And do you believe KSC to be at fault for causing this
20 incident to occur?

21 A Yes.

22 Q And you have continued to have pain and suffering after
23 this incident, correct?

24 A Correct.

25 Q Now, where do you work now?

1 A I don't work. I'm on disability.

2 Q And you've been unable to work since the date of the
3 incident, correct?

4 A I haven't worked in five years and a month.

5 Q And that's since the date of the incident?

6 A Correct.

7 Q And at the time, you were earning about \$50,987 a year,
8 correct?

9 A Yeah, that or more. Yeah.

10 Q That was along with you were receiving a 401K plan.

11 A Yes.

12 Q That they were contributing about six percent of your
13 annual income to?

14 A Correct.

15 Q You also worked at Prysmian and since -- you started
16 work there January of 2015, correct.

17 A Correct.

18 Q And you intended to work until you were 67?

19 A Yeah, I was going to retire there. It was a good job.

20 Q Now, prior to this incident -- are you married now?

21 A I'm in the process of getting a divorce.

22 Q At the time of this incident, how many hours a week
23 were you spending, approximately, a week helping around the
24 house doing personal services such as cooking, washing
25 dishes, vacuuming, laundry, things like that?

1 A Ten, twelve hours a week and working sixty hours a
2 week.

3 Q And so you spent about ten hours doing those items
4 around the home prior to this incident, correct?

5 A Yes.

6 Q And you also during -- before this incident occurred --
7 or after this incident occurred and up to a year and a half
8 later, you weren't able to do any of those services, were
9 you?

10 A No.

11 Q And you also -- now, you would testify that you can do
12 about seven hours a week of that type of work, is that
13 correct?

14 A Maybe. Depends on how far I got to walk.

15 Q What primarily keeps you from being able to do those
16 things?

17 A I can't walk that far. If I have to walk more than a
18 couple hundred yards, I've got to sit down and take a break.
19 I can't, for my ankle.

20 Q And those personal services at home, a range of pay for
21 that would be around \$12.00 an hour, wouldn't you say?

22 A Yes.

23 Q If you were going to hire somebody, you'd have to at
24 least pay them \$12.00 an hour.

25 A You're going to have to hire somebody. It costs me

1 thirty now.

2 Q But twelve is a reasonable assumption of a value for
3 that.

4 A Sure.

5 Q Now, do you believe that you're going to continue to
6 require medical treatment in the future?

7 A Yes, I do.

8 Q And your permanent injuries have not subsided and gone
9 back to where you were prior to this incident occurred.

10 A No, sir.

11 Q And you're asking this court to award you a judgment in
12 lieu of that loss of earning capacity?

13 A Yes.

14 Q And you're also asking for this court to award you
15 damages in lieu of your pain and suffering?

16 A Yes.

17 Q Now, tell us a little bit about how much you've lost.
18 In terms of the enjoyment of your life, what are some of the
19 things that you could do prior to that you can't do now?

20 A I can't water ski anymore. I can't play golf anymore.
21 Even a hike through the woods. It's not going to happen
22 now.

23 Q Let's talk a little bit about your marriage. Do you
24 believe that this injury has contributed to your marriage
25 breakdown?

1 A Yes. I'd only been married six months when I got hurt
2 and evidently -- well, it just didn't work out.

3 Q Has this impacted your mental health any, being hurt
4 and not able to work?

5 A Yeah. I would say it's dinged my psych. Yeah.

6 Q And has that impacted your marriage?

7 A Probably.

8 Q Now, have you been able to do the the enjoyable things
9 that you used to do prior to this incident?

10 A No.

11 Q And are you asking this court to award you damages in
12 lieu of the inability to perform and have the same type of
13 enjoyment that you did with your life prior to this
14 incident?

15 A Yes.

16 Q Now, you also testified that you had excruciating pain
17 at the time of the incident, and you still are in pain,
18 correct?

19 A Correct.

20 Q And do you expect to be in pain for the rest of your
21 life?

22 A Yes, I do.

23 Q And you understand that South Carolina has a life
24 expectancy chart in the statute, in the code.

25 MR. ATKINSON: Your Honor, I haven't objected, but

1 there's been a lot of leading, and I think he needs to ask
2 it ---

3 THE COURT: Rephrase, please, Mr. Hite.

4 MR. HITE: I can get the life expectancy chart in
5 through another way, Your Honor. I don't need to go into
6 that.

7 Q Will, are you asking this court to award you damages
8 for your pain and suffering?

9 A Yes.

10 Q In the past? Your pain and suffering in the past?

11 A Yes.

12 Q And the pain and suffering going forward?

13 A Yes.

14 Q What do you think would be a reasonable amount to
15 justify your pain and suffering?

16 A I don't even know about putting a dollar amount on it.
17 There's no amount of money that would -- I wouldn't want
18 this for any amount of money. I just want my life back. So
19 I don't know what to answer to give you on ---

20 MR. HITE: No further questions ---

21 WITNESS: --- monetarily.

22 MR. HITE: I'm sorry. Go ahead and finish. I'm sorry.

23 WITNESS: No. I'm done.

24 MR. HITE: No further questions, Your Honor.

25 THE COURT: Mr. Atkinson, any questions?

1 MR. ATKINSON: Just a few, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. ATKINSON:

4 Q With regard to your shoulder surgery. Was that -- it
5 was on your AC joint?

6 A Yes.

7 Q So, that's the top, correct?

8 A Correct. I guess.

9 Q I can't hear you.

10 A I'm not familiar with the anatomy, but I assume it's on
11 top here.

12 Q Is that where your scar is?

13 A Excuse me?

14 Q Is that where your scar is?

15 A It was done arthroscopically, so I have several scars.

16 Q Are they all in this area?

17 A Some on back, some on top.

18 Q Do you know what AC stands ---

19 A Do you want me to pull my shirt off?

20 Q You don't need to. Do you know what AC stands for? Do
21 you know what the AC joint is?

22 A Acromaya (SIC) something.

23 Q Is it acromioclavicular?

24 A Acromio -- yeah.

25 Q Do you know that your clavicle is your shoulder bone --

1 your collarbone, correct?

2 A Correct.

3 Q And do you know what your acromion is?

4 A That's what was damaged in the accident.

5 Q The shoulder blade. So, it would make sense that it
6 would be where those come together. Is that where you think
7 you were injured?

8 A I guess so, yeah.

9 Q Okay. You testified that you thought KSC Logistics was
10 at fault for your injury. Why do you believe that?

11 A That's where the reels came from.

12 Q How do you know that?

13 A I've unloaded them off the trucks a hundred times from
14 KSC.

15 Q What about the D-rings?

16 A What about them?

17 Q Where did they come from, or do you know?

18 A They were on the reels. They were already attached to
19 the reels, so my understanding was KSC was repairing and
20 painting the reels before they shipped them over to us to
21 put wire on.

22 Q That's your understanding?

23 A And seeing them, and seeing them on their trucks that I
24 unloaded.

25 Q When did you get married?

- 1 A April of 2018.
- 2 Q And when were the divorce proceedings initiated?
- 3 A This July.
- 4 Q Who filed for divorce, you or your wife?
- 5 A I did.
- 6 Q And what was the reason given?
- 7 A Irreconcilable differences.
- 8 Q Have you been instructed by any physician not to walk a
- 9 certain limit, like a limit on how much you can walk?
- 10 A No.
- 11 Q You said you have neck and back pain. Where does that
- 12 hurt? Where in your neck and back?
- 13 A Right here, and low back.
- 14 Q So, I can't see where you're pointing. Just -- back of
- 15 your neck?
- 16 A Cervical 2, 3.
- 17 Q Okay.
- 18 A Lumbar 3, 4, 5.
- 19 Q And what do you believe is wrong?
- 20 A Herniated discs.
- 21 Q Had you had any neck or back pain prior to the
- 22 incident?
- 23 A No.
- 24 Q What kind of work did you do before you worked at
- 25 Prysmian?

1 A I worked at a pipe factory as a shipping manager.

2 Q Where was that?

3 A Here in Abbeville. Old Calhoun Falls Road. It's called
4 George Fisher.

5 Q And did you do any lifting there?

6 A Yes. Yeah.

7 Q Have you -- other than the workers' comp ---

8 A Fisher -- Excuse me. Go ahead.

9 Q You go ahead.

10 A KSC is in the same building that the pipe factory used
11 to be in.

12 Q Had you ever, prior to the Workers' Comp claim you
13 described today, had a Workers' Comp claim?

14 A I had.

15 Q And what were those for?

16 A It was for a back injury in 2003.

17 Q Was it your lumbar spine that was hurt?

18 A It was lumbar.

19 Q You gave us ratings on your shoulder and ankle pain.
20 Can you describe something else that you would describe as
21 an eight? Another pain you've experienced. I believe you
22 rated the shoulder as an eight to ten, so I'm just asking
23 what else is an eight? What's a comparable injury?

24 A Probably being burned.

25 Q Burned like picking up a hot pot or what are you

1 talking about?

2 A Yes, picking up a hot pot or something. It's an
3 aching, dull, you-can't-shake-it pain.

4 Q So, what number would be a number where you said, hey,
5 I need to take Tylenol or Advil or something like that?

6 A That would be like six, eight.

7 Q And what number is, hey, I need something prescribed?

8 A Ten.

9 Q Have you ever had a kidney stone?

10 A Hush. No.

11 Q I was going to ask you to compare that.

12 A Don't jinx me.

13 Q Okay. All right.

14 MR. ATKINSON: That's all I have, Your Honor.

15 THE COURT: Anything in follow up, Mr. Hite?

16 MR. HITE: No, sir, Your Honor.

17 THE COURT: You may step down, Mr. Nickles.

18 (WHEREUPON, there was a short break in the hearing.)

19 THE COURT: Okay, Mr. Hite, we're back on your case.

20 You want to call your next witness?

21 MR. HITE: The Plaintiff calls Glen Adams to the stand.

22 THE COURT: Come around, please.

23 WHEREUPON, Glen Adams, having first been
24 duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. HITE:

3 Q Please state your name and address for the record.

4 A Glen K. Adams, 7114 Sunview Circle, Columbia, SC 29209.

5 Q Where are you originally from, Mr. Adams?

6 A I'm from Greenville, South Carolina.

7 Q And how long have you lived in Columbia?

8 A Since 1984.

9 Q Can you describe your educational background for the
10 court?

11 A I sure can. I'll start with my undergraduate degree.
12 I obtained that in 1986 at the University of South Carolina.
13 That was a bachelor's degree in management.

14 Q Go Gamecocks.

15 A I returned to USC, University of South Carolina School
16 of Medicine, to obtain my master's degree in rehabilitation
17 counseling in 1997. So, that would be the summary of my
18 education.

19 Q Can you describe your professional background for the
20 court?

21 A I sure can. After finishing my master's degree, I went
22 to work for a company called Courvell Corporation. Did
23 primarily case management. That was in, I believe, 1999.
24 And also did vocational work at that time. And then in
25 2005, I started my own company, primarily doing vocational

1 consulting, as well as some medical case management and
2 ergonomics consulting.

3 Q What year was that?

4 A 2005.

5 Q So you've been employed, self employed since 2005?

6 A Correct.

7 Q In the industry of vocational evaluations.

8 Vocational evaluations, primarily vocational evaluations.

9 And a smaller part of my work was medical case management
10 and what we call ergonomics evaluation.

11 Q Can you explain what kind of practical experience
12 you've had in the business world related to those things?

13 A Well, sure. I mean, you know, when I started my own
14 business in 2005, I was wide open full time, as I said,
15 performing mostly vocational evaluations. Nearly all of the
16 work that I performed has been in the context of some
17 litigation or some claim in workers' comp claims, as well as
18 personal injury, other areas of liability, and family court
19 claims. So I've continued that work full time since 2005,
20 as well as the other areas that I mentioned, the ergonomics
21 and the medical case management.

22 Q And do you do any writing in part of your professional
23 career?

24 A If you're referring to professional publications, I
25 have not.

1 Q And what is your experience in assessing injury victims
2 on their vocational capabilities as it reports, as it
3 involves cases such as Will Nickles?

4 A Well, in most of the cases I evaluate, I'm looking at
5 someone, an individual who is had some type of an injury.
6 Typically it's an accident or an injury, either at the
7 workplace or some other personal or motor vehicle collision,
8 other areas of injury. I receive the case, typically when
9 someone has completed their treatment. They've reached what
10 we call maximum medical improvement. Their residual
11 abilities have been determined through the physicians and
12 through various tests that people go through. And that's
13 where I pick up and do my analysis. What I'm doing is
14 trying to assess someone's residual earnings capacity. What
15 does their future look like in terms of employment? Based
16 on all the factors that I've looked at.

17 Q And is the methodology you use and that you used
18 regarding Mr. Nickles, accepted among the vocational experts
19 in your field?

20 A It is.

21 MR. HITE: Your Honor, the Plaintiff would move for Glen
22 Adams to be accepted as a vocational expert in the
23 evaluation of Mr. Nickles in this case.

24 THE COURT: Mr. Atkinson, any questions of Mr. Adams
25 concerning qualifications?

1 MR. ATKINSON: Just one.

2 BY MR. ATKINSON:

3 Q Have you ever been denied admission in any court or
4 tribunal?

5 A I have not.

6 MR. ATKINSON: None, Your Honor.

7 THE COURT: Approximately how many cases have you been
8 declared to be an expert in vocational evaluation? Just
9 approximate.

10 WITNESS: Approximately five.

11 THE COURT: All right. I will find that Mr. Adams is
12 an expert in the area of vocational evaluations. You may
13 proceed.

14 BY MR. HITE:

15 Q Mr. Adams, were you hired by my firm to make a
16 vocational assessment as to Mr. Nickles?

17 A I was.

18 Q And you're also hired by Mr. Don Cam, who is Mr.
19 Nickles workers' comp injury attorney, correct?

20 A Correct.

21 Q And what facts have you considered?

22 A Well, initially, when I did the initial evaluation for
23 attorney Cam, I was provided with medical records, which is
24 typical in the cases that I review. I was provided with a
25 functional capacity evaluation. In the process of working

1 up his case, I met with him, conducted a vocational
2 interview, did some vocational testing, and then I performed
3 what they call a transferable skills analysis and a labor
4 market survey. Those are all standard components in most of
5 the cases that I look at. And I came up with a
6 determination as to how much money I believe that he was
7 able to earn at that time. Subsequently, I received -
8 Actually, I was contacted by Doctor Wood's office stating
9 that they had received the case. At the time, I was not
10 aware of this action or a third-party action that was
11 ongoing. And his office told me they really needed some
12 updated numbers on his earnings capacity. That's when I
13 contacted your office. And you instructed me to move
14 forward with the case. I interviewed Mr. Nichols over the
15 phone. I did some subsequent analysis and rendered a second
16 report at that time.

17 Q And what was the date on that second report? I believe
18 it's attached at the back of Plaintiff's Exhibit 3.

19 A The second report is dated August 9, 2023.

20 Q And that's a report that you prepared?

21 A Yes.

22 Q And you reviewed all of Mr. Nickles' medical records
23 that were provided for you, and you also met with Mr.
24 Nickles and evaluated the job market, correct?

25 A That's correct.

1 Q Could you provide a brief summary of your findings
2 associated with all of that information?

3 A Yes, sir. At that time, the time of my report of
4 August 9, 2023. After conducting my new analysis and new
5 labor market survey, looking at actual job listings in the
6 labor market, I concluded that he was capable of earning
7 between \$26,010 and \$30,480 annually.

8 Q And were you given more information after you prepared
9 that report for me?

10 A I was.

11 Q And there's a subsequent report dated -- I believe
12 it's August 23.

13 A It's August 21, 2023.

14 Q August 21. I'm sorry. And could you summarize your
15 findings in that report after you received the records from
16 Dr. Fugatt?

17 A Yes, sir. I did, of course, review Dr. Fugatt's
18 evaluation and his opinion regarding Mr. Nickles'
19 limitations. And after reviewing those limitations, I
20 concluded that Mr. Nickles is not able to work any of the
21 jobs that I previously proposed, and that there was no
22 stable labor market remaining, based on these restrictions.

23 Q So, it's your opinion, based on a reasonable degree of
24 vocational probability, that Mr. Nickles is unemployable,
25 totally and vocationally unemployable in this job market?

1 A That's correct.

2 MR. HITE: No further questions, Your Honor.

3 THE COURT: Okay, now, this report --

4 MR. HITE: Oh, I'm sorry. If you don't mind, Your
5 Honor. Mr. Adams, we marked those two reports that you
6 provided as Plaintiff's Exhibit 3.

7 THE COURT: It should be 4, because 3 is the medical
8 records summary marked for ID.

9 MR. HITE: Your Honor, we ask to enter Exhibit 4 into
10 evidence.

11 MR. ATKINSON: Your Honor, expert reports are not
12 admissible. He can testify as to what is in them.

13 THE COURT: Since this is a non-jury hearing, and
14 certainly I can use it for whatever purpose I feel like it's
15 important, so I'm going to allow it in as an exhibit at this
16 non-jury damages hearing.

17 MR. HITE: Thank you, Your Honor. No further
18 questions.

19 THE COURT: Any questions of Mr. Adams, Mr. Atkinson?

20 CROSS-EXAMINATION

21 BY MR. ATKINSON:

22 Q Mr. Adams, two weeks before your second report, you
23 found that Mr. Nickles was employable and could earn
24 somewhere between \$26,000 and \$30,000 per year?

25 A Yes, sir.

1 Q And after you produce that report two weeks later, you
2 changed it to unemployable completely? That's your opinion?

3 A I did subsequently determine that he was unemployable
4 based on Dr. Fugatt's opinions.

5 Q When did Dr. Fugatt evaluate Mr. Nickles?

6 A I believe it was in January of this year.

7 Q Did you have Dr. Fugatt's records when you issued the
8 first opinion?

9 A I did not.

10 Q Did you know that the Plaintiff had been treated by Dr.
11 Fuggat?

12 A It was my understanding that Dr. Fugatt evaluated him
13 in the context of his Social Security disability claim.

14 Q Do you know when?

15 A Yes, sir. Dr. Fugatt evaluated him on January 7, 2023.

16 Q Did you have Social Security disability documents when
17 you performed your August 9 report evaluation?

18 A I did not.

19 Q Did you ask for everything related to Social Security
20 disability when you performed your evaluation?

21 A I did not.

22 Q What do you normally ask for if you're going to do a
23 vocational evaluation?

24 A Well, I normally ask for, you know, all medical
25 records, all medical opinions regarding -- that would affect

1 someone's functional status and ability to work. I do, at
2 times, look at personnel files, and then as I'm reviewing a
3 file, I will ask for additional information that I believe
4 is pertinent.

5 Q Did you ask for all medical records in this case?

6 A I do. I always do.

7 Q So you did?

8 A I did, yes, sir.

9 Q And you just didn't get all of them, is that correct?

10 A Well, I mean, I certainly did not, clearly did not have
11 Dr. Fugatt's report at the time of the writing of my initial
12 report.

13 Q Are you uneasy making a change? Pretty drastic, in
14 your opinion, over a twelve-day period from employable to
15 completely unemployable?

16 A I have no problem rendering a new opinion based on new
17 information that I did not previously have.

18 Q How many times have you personally observe the
19 Plaintiff in doing your evaluation?

20 A Before today, one time.

21 Q When was that?

22 A That would have been the date of my initial evaluation
23 for attorney Cam in 2020.

24 Q Okay, so you rendered an evaluation, one, that he was
25 employable without a contemporaneous physical observation,

1 and then twelve days later said he was not employable
2 without contemporaneous observation. Is that correct?

3 A Well, that would be correct. Although I'm not a
4 medical doctor, I'm not the one to determine physical
5 limitations or functional capacity.

6 Q But you have to determine what kind of employment can
7 be done, correct? That's your role, right?

8 A That is my role. Yes, sir.

9 Q And how many interviews did you do in 2023 before you
10 rendered your first opinion with the Plaintiff?

11 A Well, I mean, I interviewed him initially in 2020, and
12 then I interviewed him, excuse me, in 2023, when I was asked
13 to get involved in this case.

14 Q So what time, roughly?

15 A I'm sorry?

16 Q When roughly in 2023?

17 A That would be -- that was on July 19, 2023.

18 Q Okay. And so after you did that interview, you found
19 him employable at a certain level. Did you do a second
20 interview before you changed your opinion that he was not
21 employable at all?

22 A No, sir.

23 Q Okay. You just relied on that one report that you got
24 from Plaintiff's counsel?

25 A I was asked to reevaluate the case based on that new

1 medical information.

2 Q It wasn't new medical information though, was it? It
3 was just information you didn't have, right?

4 A Well, it was new to me. That's what I mean.

5 Q But it wasn't new when you issued that opinion,
6 correct?

7 A I would agree with that.

8 Q How often, in your practice -- let me ask you this way.
9 What percentage of your work in vocational evaluation is
10 done by people seeking either workers' compensation or
11 plaintiff seeking payment?

12 A Sorry, could you repeat the question?

13 Q Sure. You testified earlier that almost all your work
14 was in cases litigated in some form, correct?

15 A Correct.

16 Q What percentage of that is done for either Plaintiffs
17 or claimants, people who are seeking payment?

18 A Oh, right now, approximately 70 percent plaintiff
19 versus 30 percent defense.

20 Q And in your practice, how many files do you have a
21 year, roughly?

22 A Roughly 120, 130.

23 Q How often, of that 120, 130 do you issue a report and
24 then get asked to change your opinion within two weeks? How
25 frequently does that occur?

1 A I have no idea. I review information when it comes in
2 and respond to the questions at hand.

3 Q How many times in your career have you had to go from
4 an opinion of someone is employable to they're completely
5 unemployable within twelve days.

6 A Well, within twelve days, I can't think of another one
7 that was that short of a timeframe.

8 Q And really where nothing had changed, correct?

9 A Well, for me, everything changed because I had new
10 medical information to consider and I was asked to analyze
11 this case based on that information.

12 Q But that medical information existed when you issued
13 the first report, correct?

14 A Evidently it did.

15 MR. ATKINSON: That's all I have. Thank you, Your
16 Honor.

17 THE COURT: Anything in follow up, Mr. Hite?

18 MR. HITE: No.

19 THE COURT: You can step down, sir. Thank you.

20 MR. HITE: Your Honor, the Plaintiff calls Dr. Oliver
21 Wood to the stand.

22 THE COURT: Come around, sir.

23 WHEREUPON, Oliver Wood, Jr., having
24 first been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. HITE:

2 Q Please state your name for the record.

3 A Oliver G. Wood, Jr..

4 Q And what's your address?

5 A Columbia.

6 Q And where are you from originally, Dr. Wood?

7 A Greer.

8 Q And how long have you lived in Columbia?

9 A Since 1965.

10 Q All right. Can you describe your educational
11 background for the court?

12 A I have a bachelor of science degree in business from
13 the University of South Carolina, a master's degree in
14 economics from the University of South Carolina, PhD in
15 economics from the University of Florida.

16 Q And how many children do you have?

17 A Two.

18 Q And one of them work with you?

19 A Yes. Andrew.

20 Q And how many degrees does Andrew have?

21 A Andrew has four degrees. He's got a bachelor of Science
22 in finance, a bachelor of science in accounting, a master's
23 of professional accounting, and a law degree. He's licensed
24 in South Carolina, North Carolina, and Tennessee. So he can
25 handle your parking tickets from Columbia to Knoxville.

1 Q And so, can you describe your professional background
2 for the court?

3 A I was hired by the University of South Carolina in 1965
4 to teach economics and banking and finance courses. I
5 taught at the University for 29 years. I'm now
6 Distinguished Professor Emeritus. Translated, that means
7 I'm retired from teaching.

8 Q And ever since you retired from teaching, what have you
9 been doing?

10 A I have been doing economic evaluations in personal
11 injury, wrongful death, business loss, and employment
12 termination cases.

13 Q And that's what you do now?

14 A Yes.

15 Q Did you serve in the military?

16 A Yes, I served on active duty with the Navy from 1959 to
17 1961.

18 Q And you served in the reserves after that?

19 A Yes, I served in the naval reserve from 1961 to 1987,
20 when I retired from the Navy.

21 Q As what rank?

22 A Captain.

23 Q And what practical experiences in the world, in the
24 business world, do you have that are relevant for what your
25 job is today?

1 A Well, all of them are finance or economics oriented.
2 I've helped start eleven banks, two savings and loan
3 associations. Served on the board of directors of Republic
4 National Bank, the advisory boards for the Lexington State
5 Bank, BBT&T, First South, and the board of Bank Meridian.
6 Served on the board of directors of Edisto Farm Credit in
7 Orangeburg. We made farm loans in the lower part of the
8 state. I own a farm in Tennessee, which is a business.
9 That's it.

10 Q All right. What special experiences have you had in
11 the field of investments?

12 A I taught a course on bank management for 27 years.
13 Taught a graduate course on money and capital markets for 27
14 years. I taught in the South Carolina Banker School for 25
15 years. I served on the investment committee at two banks
16 that I was associated with.

17 Q And have you written any books in the field of
18 economics or finance?

19 A Yes, I've authored or co-authored seven books or
20 monographs.

21 Q And what is your experience in estimating losses in
22 personal injury cases, or wrongful death or business law
23 cases?

24 A For the last 54 years, I've made studies in cases where
25 there's been an injury, or death, or a business loss, or an

1 informant termination and testified in those cases. I have
2 participated in about 25 CLE seminars on damages or related
3 topics. I was a guest lecturer in the damages course at the
4 University of South Carolina Law School from 1972 until
5 2004, when the professor, Ralph McCullough, retired and went
6 to start the Charleston School of Law. So I then switched
7 down there, and a few years ago they named me their
8 economist in residence.

9 Q Is the methodology that you use to evaluate economic
10 laws accepted among economists?

11 A Yes.

12 MR. HITE: Your Honor, we submit Dr. Oliver Wood as an
13 economic expert in the evaluation of economic loss in
14 personal injury cases.

15 THE COURT: Mr. Atkinson, any questions of Dr. Wood?

16 MR. ATKINSON: No, Your Honor.

17 THE COURT: All right. So found.

18 MR. HITE: Thank you, Your Honor.

19 Q Dr. Wood, were you hired by my firm to make a study of
20 economic loss in this case?

21 A Yes.

22 Q And what facts have you considered?

23 A In the case of Mr. Nickles, he was born on March 14,
24 1966. He was injured on November 10, 2018. His age was
25 52.66. According to South Carolina code section 19-1-150,

1 his life expectancy was 26.52 years, which would carry him
2 to his age 79.18 in the year 2045.38. According to Mr.
3 Nickles, before he was injured, he had no reason to expect
4 less than a normal life expectancy. According to Mr.
5 Nickles, he intended to work to age 67, which is normal
6 Social Security retirement age. At the time of his injury,
7 he was employed as an 88 wire server operator with Prysmian
8 Cables and Systems in Abbeville. According to Mr. Nickles,
9 he began employment in January of 2015 at that company, and
10 has not worked since his injury. According to Mr. Nickles,
11 at the time of his injury, his average weekly wage was
12 \$980.52. That equates to \$50,987 on an annual basis. He
13 was a member of the 401K retirement plan, contributed six
14 percent of his income to that plan, and the company matched
15 six percent. Mr. Glenn Adams evaluated Mr. Nickles' after
16 injury earning capacity. According to Mr. Adams, in respect
17 to after injury earning capacity, he is, quote, unable to
18 meet the demands of any remaining employment in the labor
19 market. End of quote. According to Mr. Adams, Mr. Nickles
20 has incurred a total loss of access to the competitive labor
21 market. Based on Dr. Fugatt's opinion. That's F-u-g-a-t-t
22 opinion. According to Mr. Adams, he has incurred a total
23 loss of earning ability, is classified as totally
24 vocationally disabled as a result of his injury on November
25 10, 2018. According to Mr. Adams' report dated August 9,

1 2023, he currently experienced his left ankle pain
2 continuously. Over the previous 30 days, the pain ranged
3 from a three to a ten on a ten scale. According to Mr.
4 Adams, he continues to experience swelling and then is to
5 experience right shoulder pain, stating that reaching behind
6 is bad. According to Mr. Adams, over the previous 30 days,
7 the pain ranged from three to ten on a scale of ten. His
8 lumbar pain is currently rated an eight on a scale of ten
9 after taking Motrin. Over the previous 30 days, the pain
10 ranged from a two to ten. According to Mr. Adams, he lies
11 down on the couch or recliner all day on some days. This
12 last occurred three or four weeks ago. He has experienced
13 some cervical problems. It is assumed that Mr. Nickles'
14 average annual wage of \$50,987 in 2018 is a reasonable
15 measure of his before injury earning capacity. It is
16 assumed that because of his injury, Mr. Nickles is
17 unemployable in the competitive labor market. Next,
18 according to Mr. Nickles, before he was injured, performing
19 an average of ten hours a week for personal services. This
20 included cooking, washing dishes, vacuuming, laundry,
21 vacuuming, general household cleaning, grocery shopping, and
22 lawn and yard care. According to Mr. Nickles, for
23 approximately one and a half years after he was injured, he
24 was unable to perform any personal services. According to
25 Mr. Nickles, since approximately May 11, 2020, he's been

1 able to perform about seven hours per week. That creates a
2 loss of three hours per week. I value that on a current
3 basis at \$12 per hour as the opportunity costs.

4 Q Based on these facts, do you have an opinion based on a
5 reasonable degree of economic certainty as to the future
6 economic loss and past economic loss to Mr. Nickles?

7 A Yes.

8 MR. HITE: Your Honor, I'm going to mark this as
9 Plaintiff's 5.

10 THE COURT: Okay. Same objection, I assume, Mr.
11 Atkinson on this report?

12 MR. ATKINSON: Correct, Your Honor.

13 MR. HITE: Why don't we make Plaintiff's 5 this, and
14 Plaintiff's 6 the charts.

15 THE COURT: 5 is the report, and 6 is the chart.

16 Q Dr. Wood, you prepared a report and you prepared
17 charts. Is that what's on this right here?

18 A Yes, but let me do it. I don't want you to break it.

19 Q All right. You want to do it?

20 A I know I do.

21 MR. HITE: Your Honor, may he step down?

22 THE COURT: Sure.

23 Q Dr. Wood, will you describe the findings?

24 A I have four charts. The first chart is called the
25 before trial loss. It's from November 11, 2018 to '23.

1 Period of 5.10 years. His annual wage was \$50,987.
2 Carrying that forward to date, with no pay increases, no
3 cost of living, I don't have a basis to do it. His earnings
4 would have been \$260,034. He contributed six percent to the
5 401K plan. They matched six percent is \$15,602. So his
6 total loss in earning capacity is \$275,636. In terms of
7 personal services, he was doing ten hours before, which is
8 the average for a man. He had a period of time when he
9 couldn't do anything, so his loss was ten hours. Then he
10 said he could do seven. So his loss was cut to three. I
11 value that at 9, 10, 11 dollars an hour on a current basis.
12 The federal minimum wage is \$7.25. We all know that's out
13 of date. My best estimate, the practical minimum wage in
14 the marketplace now is probably \$12. In the Walmart annual
15 report, it says their average worker earns \$17.50. And
16 there are a lot of people out there at \$15.00, so I use
17 \$12.00. That would be \$13,418 to replace that. Making his
18 total before trial loss \$289,054. Chart number 2 looks at
19 Mr. Nickles' after injury earning capacity. He said he
20 wanted to work to normal Social Security retirement age,
21 which is 67. I projected his income over this period of
22 time, giving him a wage rate increase of 3.18. That's the
23 average annual increase in wages in the economy from 1992 to
24 2022. I then discounted that to present value. Every court
25 in America requires that if we look at any sums in the

1 future, but they have to be paid now, they must be
2 discounted to present value. I discounted those at a rate
3 of five percent compounded annually. That's a rate that I
4 think an ordinary person with average financial knowledge
5 can earn in the marketplace over a long period of time. The
6 present value of his future earning capacity is \$418,258.
7 Chart number 3 is his after trial loss. It consists of his
8 loss in earning capacity. The six percent contribution to
9 the 401K plan, which totals \$443,353. The cost of replacing
10 his personal services, \$26,861. Making a total after trial
11 loss, \$470,214. This is the last chart. It's the sum of
12 the before trial loss, \$289,054. The after trial loss is
13 \$470,214, making a total of \$759,268. That's my estimate.

14 MR. HITE: No further questions, Your Honor.

15 THE COURT: Mr. Atkinson, any questions of Dr. Wood?

16 MR. ATKINSON: Yes, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. ATKINSON:

19 Q Dr. Wood, you're called upon to testify a lot, correct?
20 Either in depositions or hearings.

21 A Yes.

22 Q I'll tell you, I think I've deposed you ten times,
23 so...

24 A Nice to see you.

25 Q What percentage of your work is done by someone seeking

1 damages versus a defendant or an employer in Workers' Comp?

2 A I think, on the personal injury side, about 95 percent
3 is for the Plaintiff. As you know, they have the burden of
4 proof. In terms of business loss cases, it's about 50/50.
5 Employment termination cases, it's about 50/50.

6 Q I believe that I've heard you say this a lot, but your
7 role really is as a calculator, correct? You're taking
8 other people's numbers and making projections. Is that
9 fair?

10 A I have to have a basis, and it starts with an event, a
11 medical opinion, a vocational opinion, and then I take that
12 and apply the economics.

13 Q Your economic analysis is reliant or dependent on how
14 credible the opinions you receive from which you develop
15 numbers, correct?

16 A Yes.

17 Q Garbage in, garbage out, would be a way to describe
18 that, correct?

19 A Correct.

20 Q So, if you ran the analysis on the August 9 report of
21 vocational ability, your numbers would be drastically
22 different, would they not?

23 A If the August 9 report says he can earn \$30,000, that's
24 about 60 percent of what he was earning before at 50. So
25 the loss in earning capacity would be about 40 percent of my

1 after trial estimate.

2 Q Now, with regard to your 401K conclusions that you've
3 reached, did you review to see whether Mr. Nickles paid the
4 six percent of his contribution to get the full match each
5 year?

6 A That's what he said on interview.

7 Q Did you review any pay data to confirm that?

8 A I did not get a pay stub to show that.

9 Q And so your conclusions regarding both past 401K losses
10 and future 401K losses would be dependent on Mr. Nickles
11 making his six percent contribution to be matched?

12 A Correct. And telling the truth this morning.

13 Q Okay. With regard to the status of 401K programs, is
14 that something that is declining in use by employers?

15 A Increasing.

16 Q The matches?

17 A Yes, because the old pensions with fixed formula
18 benefits are pretty well gone. Except for railroad workers.
19 They have their tier one and tier two plans. And a good bit
20 of the civil service workers are drifting toward a
21 contribution, not a fixed formula.

22 Q Is there a requirement for a one-to-one match on a 401K
23 program?

24 A No.

25 Q And that was my question. What is the frequency of

1 employers matching employee contributions?

2 A Maybe 30 percent. Most of them are like, you put in
3 six, we match two. I had one I'm working on this week put
4 in ten, match ten. That was unusual. So, typically it's
5 two to three to four percent.

6 Q And an employer could change their contribution match
7 percentage ---

8 A Yes.

9 Q --- in future years, correct?

10 A Yes.

11 Q You are, from time to time, called to offer economic
12 opinions in Workers' Compensation proceedings. Is that
13 correct?

14 A Not recently.

15 Q But you have in the past?

16 A Yes.

17 Q You would agree that the Workers' Comp proceeding,
18 which creates a lien, is also trying to project lost future
19 income, correct?

20 A They determine an average weekly wage, and they act on
21 that wage number, so I guess you could say they use that,
22 but they don't, to my knowledge, project it.

23 Q I think I can ask the question cleaner so we're on the
24 same page.

25 A I think it's a flat deal.

1 Q It is my understanding, from what we've heard so far,
2 that Mr. Nickles is claiming a Workers' Comp lien as a type
3 of damages in this case. Isn't it true that your projected
4 economic loss would include everything that is covered by a
5 Workers' Comp lien? It is inclusive of that.

6 A Since day of injury, yes.

7 Q Correct. Well, that's -- and forward, correct?

8 A Yes.

9 MR. ATKINSON: That's all I have. Thank you.

10 THE COURT: Anything to follow up, Mr. Hite?

11 MR. HITE: Just that we would ask for Plaintiff's

12 Exhibit 6 to be entered as an exhibit in case.

13 THE COURT: So noted. You may step down.

14 WITNESS: Thank you.

15 MR. ATKINSON: Same objection to that document.

16 THE COURT: Sure. Certainly.

17 MR. HITE: Your Honor, that's the Plaintiff's case.

18 MR. ATKINSON: Just briefly, Your Honor. I'd ask for
19 the Court to take judicial notice of whatever has been paid
20 to the Plaintiff otherwise, because set off is required.
21 It's not an affirmative defense. It is required on any
22 judgment. And I don't know those amounts.

23 MR. HITE: I don't know if I'm at liberty to give those
24 amounts to the Court, with the understanding that those
25 amounts were in a confidential settlement.

1 MR. ATKINSON: Your Honor, I think the Court could order
2 it, Your Honor.

3 THE COURT: You're talking about the settlement with the
4 other Defendants?

5 MR. HITE: Yes, sir.

6 THE COURT: Yeah, I think it's going to have to be
7 known, as it would be a set off. I'm trying to figure out
8 the mechanism in order to do it.

9 MR. HITE: The set off argument would be for a different
10 day. I don't think they would be entitled to set off.

11 THE COURT: Well, the argument would have to be made,
12 you know, if -- a lot of this is going to hinge upon how the
13 motion to set aside default is ruled on.

14 MR. ATKINSON: Understood, Your Honor.

15 THE COURT: And while I mention that, I don't think I
16 need to retain jurisdiction for that, simply because I'm
17 going to be in the Sixth Circuit a good bit the next six
18 months, and I don't think I should make y'all travel to
19 Fairfield, Chester or Lancaster. So I think probably let's
20 just go ahead and put your motion to set aside the default
21 just on the next docket.

22 MR. ATKINSON: That's fine, Your Honor, or if it's
23 easier -- and I defer to Mr. Hite, but if you want to do it
24 by WebEx, I would consent to doing it wherever you're
25 located.

1 THE COURT: I just think probably -- let's just put it
2 on the next docket, and whoever the judge is going to be can
3 hear that, and then if you're not successful, I think the
4 set off is going to have to be -- if you're arguing set off,
5 you're opposing that, then I think at some point in time we
6 would need to create a record of that. I don't think we
7 necessarily need to do it today.

8 MR. ATKINSON: Understood. I just didn't want to --

9 THE COURT: That would need to be determined at some
10 point in time. So, the plan is this. Just get the motion
11 to set aside default on the next docket, subject to your
12 schedules, and then depending upon how that shakes out then
13 we can make a determination as far as damages.

14 MR. HITE: Thank you, Your Honor.

15 MR. ATKINSON: Yes, sir.

16 THE COURT: Anything else on the record before we
17 adjourn?

18 (END OF REQUESTED TRANSCRIPT OF RECORD.)

19

20

21

22

23

24

Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Abbeville County, South Carolina, on the 18th day of December, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



Tara T. Scott, CVR

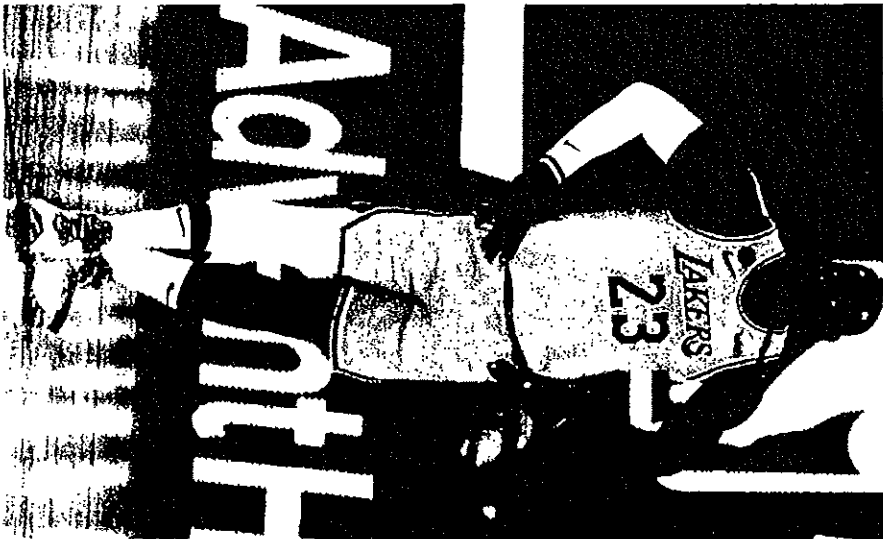
Official Court Reporter

September 23, 2024



EXHIBIT
P.L.#1
PENGAD 000-031-0000

HOW LARGE IS THIS REEL?



Lebron James is 6'9"



158" Reel
Is equivalent to almost two LeBron James
stacked on top of each other



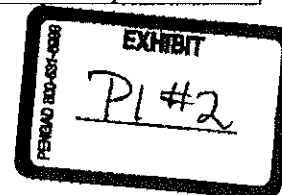


HIGH VOLTAGE REEL



Medical Summary - Nickles

	Date	Provider	Description
	11.10.2018	DATE OF ACCIDENT	
1	11.16.2018 – 05.17.2019	Surgery Center of the Lakelands	11.16.2018 – Diagnosis – displaced left medial malleolus fracture, proximal fibular fracture. Procedure – ORIF Medial Malleolus LT ankle Ortho Leg 05.17.2019 – Diagnosis – right subacromial impingement, right AC arthritis. Procedure – right subacromial decompression arthroscopic, right distal clavicle excision arthroscopic.
2	11.15.2018 – 12.12.2019	Lakelands Ortho.	11.15.2018 – c/o left leg pain and right shoulder pain. Pt. state that on 11/10 1500 lb cable fell on his right shoulder and caused him to fall and he twisted his left ankle and fell to the ground. Had x-rays that revealed a fracture. Continued to have pain in his right shoulder but has had no x-rays. Has been placed on crutches and are making symptoms worse. x-ray of right shoulder – early AC arthritic changes present in AC joint. x-ray of ankle reveal only displaced medial malleolus fracture. Minimally displaced proximal fibular shaft fracture. Pt. needs to undergo ORIF of the medial malleolus. Scheduled for surgery w/Dr. Gray tomorrow. Placed in splint for now. Will continue to monitor shoulder and ankle. 11.28.2018 – 12 days ORIF medial malleolus fracture. No c/o w/his ankle. c/o right shoulder pain. Cable fell and struck his right shoulder knocking him to the ground. Continues to have pain along his AC joint anterior lateral acromion. Will send for MRI of right shoulder. Cam Walker non weightbearing left lower extremity. 12.27.2018 – He is now 6 weeks post right ankle surgery . Ankle is doing well but does have stiffness and weakness. c/o of right shoulder pain. MRI report – right shoulder is that AC Sprain and mild AC arthritis. Full weightbearing left lower extremity w/cam walker for 2 weeks. Therapy for ankle and right shoulder rehab. Out of work for 6 weeks 02.08.2019 – 3 months post his injury to his right shoulder and left ankle. Continues to have pain in his shoulder and has difficulty w/everyday activities. His ankle is slowly improving but still has some discomfort. He does not feel that he can begin to return to his normal level of work prior to his



		work injury. Also having back discomfort. Pt. needs continued therapy for shoulder and ankle. X-ray of left knee – healed proximal fibula fracture-ray of left ankle – healed medial malleolus fracture. 03.08.2019 – He is continued to improve with his ankle. His right shoulder has gotten some better but still has discomfort in the region of the AC joint. His back is still getting problems and he has been told he was seen b Dr. Bucci. Inject right AC Joint. Continue w/PT. If not improved will consider surgical options. 04.19.2019 – Continues to have pain in his right shoulder. Injection gave complete resolution of pain for 1 week then pain returned. AC joint is source of pain. Recommends shoulder arthroscopy for a subacrominal decompression and distal clavicle excision. 05.01.2019 – Continues to have severe pain in his right shoulder. Pain is on a daily bases and had difficulty with any daily activities. 05.20.2019 – 3 days post op left shoulder scope. No lifting anything heavier than coffee mug. Will set up for PT. 05.29.2019 – 12 days post op right shoulder scope. Soreness in shoulder but it seems to be doing well. Sutures removed yesterday, therapy for ROM and gradual strengthening. 07.18.2019 – 8 weeks post surgery. States pain is slowly improving. Still has some discomfort in his shoulder will radiate into his neck. Therapy is discontinued last week. Slowly improving status post resection distal clavicle right shoulder. Continue therapy 3 weeks on shoulder rotator cuff strengthening. Light duty. 08.29.2019 – f/u of his right shoulder. Pt. states about 2 weeks ago he tried to open a door that was stuck with his arm and felt a sharp pain. Feels like it is slowly improving. Also continues to have some discomfort in his left ankle and cannot do any long walking. Continue HEP and restricted duty right arm. Obtain FCE of right shoulder and left ankle in November. 12.12.2019 – Pt. is having continued pain in his right shoulder difficulty with lifting especially overhead. Pain also radiates

			from his neck to his shoulder. Recently had MRI of his neck and lower back. His ankle overall seems to do well but still has some stiffness. Prescribed – Norco He has had FCE and he is not able to return to the level of work he was performing prior to his multiple injuries. Impairment Rating for his right shoulder is 20% to his right upper extremity or 12% whole person Impairment rating for his ankle is 14% lower extremity or 6% whole person.
3	11.10.2018 – 11.11.2018	Self Regional	11.10.2018 – 11.11.2018 – via EMS in full spinal precautions after a large cable weighting 300 lbs knocked him to the ground. Pt states he is not struck in the head and denies any midline neck pain. c/o distal left lower extremity pain. Cable initially struck him on the right shoulder and caused his left lower extremity to buckle. Edema noted to the distal left lower extremity most notable to the ankle mortise. He has tenderness to palpation along bilateral medial and lateral malleoli. Findings consistent w/compartment syndrome on exam. CT of left lower extremity – medial malleolus and posterior malleolus tibia fracture, fracture of the proximal fibula. CT of abdomen and CT of chest – both normal. Pt. was placed in a stirrup as well as posterior slab long-leg splint. Received crutches. Will send home with prescription for Percocet for breakthrough pain, f/u with Ortho on Monday.
4	01.06.2020	Southeastern Spine and Neuro	c/o stabbing pain in his posterior shoulder into his right scapular. Occasional numbness and shaking into his hand. Needed right shoulder and left leg surgery. Thoracic and lumbar/MRIs didn't show any significant finding. Cervical MRI shows age appropriate degenerative changes w/bulging at C507. Midline bulging at C4-5 w/severe C5-7, right unco vertebral hypertrophy and stenosis. Appears to have aggravated a pre existing degenerative condition, does not recommend anything surgical. MMI with a 5% impairment to his cervical spine, no restrictions regarding neck. May need physical therapy, injection and possible decompressive surgery in future.
5	10.24.2018 – 06.15.2020	Abbeville Area Medical Center	10.24.2018 – Prsoriasis/Bronchitis 10.23.2019 – injury at work resulting in left leg fracture and back injury. Needs MRI. Also requests Prednisone taper therapy for eczema flare. MRI of Lumbar and Thoracic Spine – Lumbar spine reveals – degenerative changes at L4-5 and L5-S1 MRI of cervical spine – multilevel degenerative changes most

		significant at C4-5 and C5-6 where a combination of central disc herniations along with posterior element thickening creates moderate to severe cervical spinal stenosis on the order of 5-7 mm. At C4-5 there is a faint signal change centrally. 06.15.2020 – Psoriasis

Client: William Nickles DOA: 11.10.2018

#	Dates of Service:	Medical Provider:	Amount of Service:
1	11.16.2018 and 05.17.2019	Surgery Center of the Lakelands	\$ 14,908.00
2	11.15.2018 - 12.12.2019	Lakelands Ortho.	\$ 1,402.00
3	01.02.2020	Garber PT (FCE)	\$ 400.00
4	01.07.2019 - 05.15.2020	Select Physical Therapy	\$ 13,302.12
5	11.10.2018	Self Regional Healthcare	\$ 14,562.56
6	01.06.2020	Southeastern Neuro and Spine	\$ 206.00
7	11.10.2018	Abbeville County EMS	\$ 855.65
8	11.16.2018- 05.17.2019	Greenwood Anesthesiology	\$ 8,650.00
9	10.23.2019- 10.29.2019	Abbeville Area Medical Center	\$ 8,563.00
		TOTAL	\$ 62,849.33

**Vocational Assessment**

Date August 9, 2023

Name of referral source Thomas E. Hite, III, Attorney at Law
Address Hite & Stone
100 E. Pickens Street
Abbeville, SC

Evaluee William Franklin Nickles, IV
Date of Birth March 14, 1966
Age (on date of accident) 53
SSN xxx-xx-4841

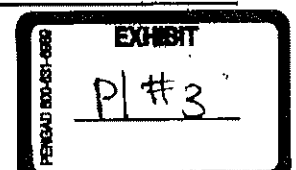
Employer Prysmian Cables & Systems
WCC # 1820858
File # 026 CB FJP3647 J & 2021-CP-01-00076.

Case Caption William F. Nickles, IV v. Howar Equipment, Inc., Sonoco Products Company, Palmetto State Transportation, LLC, KSC Logistics, Inc., and John Doe Corporation

Date of Injury November 10, 2018
Date of Assessment January 7, 2020
Date of Telephone Update July 19, 2023

Background information

This vocational assessment was initially requested by Mr. Nickles' attorney who represented him in his workers' compensation claim stemming from his work injury (Donald Kamb). Mr. Hite subsequently requested an updated assessment to determine the vocational impact of Mr. Nickles' injuries sustained on November 10, 2018 while working for Prysmian Cables & Systems. This report contains the findings from the original report dated January 24, 2020, as well as the updated information and subsequent analysis. The initial assessment was conducted at his attorney's office in Greenville. Prior to beginning the assessment, the following disclosures were provided to Mr. Nickles: the purpose of the assessment, referral source, the scope of services requested, and limits of confidentiality. Mr. Nickles was alert and oriented throughout the assessment. He was bearded and appropriately groomed, and he exhibited an appropriate mood. He exhibited no outward signs of difficulty sitting, standing or walking. The initial assessment was concluded in 2½ hours. The telephone interview was conducted over the course of 45 minutes on July 19, 2023. The information that was obtained in the telephone interview of July 19, 2023 and a review of new records is indicated in *italics*.



Medical Information

Mr. Nickles provided the following information in the vocational interview.

History of injury. Mr. Nickles sustained multiple injuries on November 10, 2018 while working as a lead line operator at Prysmian. He was handling a 4½-inch cable (30 pounds per foot) when the cable fell on him and struck him in the right side of the head, knocking him out. He sustained dental injuries, as well as injuries to his right shoulder, and fractures to the left tibia, fibula and ankle. He was transported by ambulance to Self Regional where he was treated and released. He followed up with Dr. Gray at Lakelands Orthopedics. He underwent surgery on the left leg approximately 5 days after the injury. He underwent left shoulder surgery on May 17, 2019. He developed neck pain and low back pain. He saw Dr. Kanos and was sent for an MRI. Dr. Kanos recommended no surgery but said he may need it for his neck. His last visit with Dr. Kanos occurred the week prior to this assessment. He has no appointments scheduled currently. His last visit with Dr. Gray occurred on December 12th, and he was released from medical care.

Secondary medical issues. Mr. Nickles has no other medical problems currently. When he was 8 years old he sustained burns to his right leg requiring grafts. He experiences no residual problems from these injuries.

Mr. Nickles has developed no other health problems.

Current medical status. Mr. Nickles' left ankle pain is currently rated at 4/10. Over the previous 30 days, the pain ranged from 0/10 to 10/10. He experiences a 10/10 when he experiences a twisting motion. He experiences ankle swelling. The right shoulder pain is currently rated at 2-3/10. Over the previous 30 days, the pain ranged from 0/10 to 10/10. He is able to reach overhead with his right arm. He is able to extend, although this motion is painful. He experiences lumbar pain that is currently rated at 3/10 with the 30-day range of 1/10 to 10/10. The left leg and foot are painful. He experiences "pins and needles" in the left foot.

Mr. Nickles currently experiences left ankle pain continuously. Over the previous 30 days the pain ranged from 3/10 – 10/10. He continues to experience swelling. He continues to experience right shoulder pain, stating that reaching behind is bad. Over the previous 30 days the pain ranged from 3/10 – 10/10. His lumbar pain is currently rated at 8/10 after taking Motrin. Over the previous 30 days the pain ranged from 2/10 – 10/10. He lays down on the couch or recliner all day on some days. This last occurred 3 – 4 weeks ago. He also experiences some cervical problems.

Daily activities. Mr. Nickles walks and moves around as much as possible. He is independent in the performance of his activities of daily living. He performs housework. He does not perform any yard work. He goes to his shop every day and builds items such as a birdhouse or a shelf. He cuts boards using a chop saw and skill saw. He and his wife handle the grocery shopping together.

William Franklin Nickles, IV
Vocational Assessment - Addendum

Mr. Nickles works out every day, using an inversion table, rowing machine, and light free weights. He is performing yardwork and gardening. He uses a riding mower and rakes. He avoids heavy lifting.

Education and Training

Mr. Nickles graduated from high school in 1984. He attended Lander University for 4 years, 1984 until 1988, and he did not obtain a degree. He need one year of credits to complete his degree. His declared major was business. He attended USC Upstate in approximately 1997. He attended Greenville Technical College from 1993 until 1995. He did not complete a degree due to his job, family, and financial considerations. He possesses a regular South Carolina driver's license. He obtained a Class 3 license in the 80s and he drove trucks. He is a private pilot. He has not flown since his injury. He was certified to operate a forklift at Prysmian Group High Voltage.

Mr. Nickles has obtained no additional education. He flew in September 2022 with another pilot in charge. He has not submitted to a class 3 medical.

Military Experience

Mr. Nickles was in ROTC while in college. He completed jump school at Fort Benning while in the ROTC.

Work History

1. Prysmian, January 2015, lead line operator. He installed the lead or plastic jacket on the cable. He filled the stockpot with lead bars. He operated the extruder and operated a forklift to carry materials. He performed change-outs and he lifted over 75 pounds. He was required to crawl and climb. He used a cold welder and a towline. He regulated the heat and speed of the machine. He used cutters, saws, nail guns, and impact wrenches. He walked 6 to 8 miles per shift.

557.382-010 Extruder Operator

SVP: 5

GED: 3 2 2

Strength: Medium

Strength Definitions	
Sedentary	Up to 10 lbs occasional
Light	Up to 20 lbs occasional
	Up to 10 lbs frequent
Medium	Negligible constant
	20-50 lbs occasional
	10-25 lbs frequent
Heavy	> negligible up to 10 lbs constant
	50-100 lbs occasional
	25-50 lbs frequent
Very Heavy	10-20 lbs constant
	> 100 lbs occasional
	> 50 lbs frequent
	> 20 lbs of force constant

Source: U.S. Department of Labor

2. George Fisher, plastic extrusion, pipe, water, sewer, high-density poly. He worked for 3 years as an extruder operator. He worked as the shipping and receiving manager for 2 years. He operated a forklift. He put orders together and repackaged. His lifting requirement was the same as Prysmian. He was not responsible for any employees.

557.382-010 Extruder Operator

921.683-050 Industrial Truck Operator

SVP: 3

GED: 2 1 1

William Franklin Nickles, IV
Vocational Assessment - Addendum

Strength: Medium

222.687-030 Shipping Checker

SVP: 4

GED: 3 3 2

Strength: Light

3. Independent carpenter, 4 years, 2007 to 2010. He performed roofing, framing, and finish carpentry. He worked on residential decks and other renovations. He also worked on new construction.

860.381-022 Carpenter

SVP: 7

GED: 4 3 3

Strength: Medium

4. Thornblade, 1 year, 2006. He also worked 28 years ago at Thornblade from 1992 to 1998 as an assistant golf course superintendent. In 2006, he was involved in bunker renovation. He operated some equipment and performed course maintenance.

406.683-010 Greenskeeper II

SVP: 3

GED: 2 1 2

Strength: Medium

5. Max Exterminating, 3 years, 2001 to 2004. He performed residential and commercial pest control, selling contracts and providing service. He was required to access attics and crawlspaces.

389.684-010 Pest Control Worker

SVP: 5

GED: 3 2 2

Strength: Light

6. In the distant past Mr. Nickles worked at BWI, performing chemical and fertilizer sales from 1998 to 2001. He performed golf course maintenance. He also operated a septic tank truck.

Analysis of Worker Traits

This information results from the analysis of Mr. Nickles' work history utilizing information provided in the Dictionary of Occupational Titles.

Mr. Nickles' work history indicates that he used the following aptitudes in his past work.

Aptitudes

From Work History

Cognition

G - General Learning Ability

3 (Average)

V - Verbal

3 (Average)

William Franklin Nickles, IV
Vocational Assessment - Addendum

N - Numerical 3 (Average)

Perception

S - Spatial Perception 3 (Average)

P - Form Perception 3 (Average)

Q - Clerical Perception 3 (Average)

C - Color Discrimination 3 (Average)

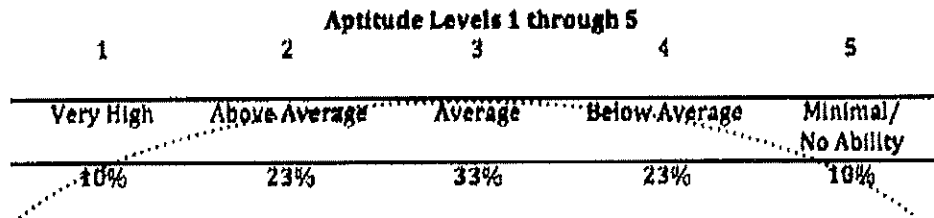
Dexterity

K - Motor Coordination 3 (Average)

F - Finger Dexterity 3 (Average)

M - Manual Dexterity 3 (Average)

E - Eye-Hand-Foot Coordination 4 (Below Average)



Mr. Nickles' work history indicates a specific vocational preparation level of 7 (skilled): 2 years up to and including 4 years. Specific vocational preparation is the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation (The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, 1991).

Level	Time	Descriptor
1	Short demo	Unskilled
2	Up to 1 month	
3	> 1 mo. to 3 mos.	
4	> 3 mos. to 6 mos.	Semi-skilled
5	> 6 mos. to 1 yr.	
6	> 1 yr. to 2 yrs.	Skilled
7	> 2 yrs. to 4 yrs.	
8	> 4 yrs. to 10 yrs.	
9	> 10 yrs.	

The occupations reported by Mr. Nickles indicate the following GED levels. GED levels are expressed on a scale of 1 – 6, with 1 representing the lowest level of function and 6 representing the highest.

General Education Development	From Work History
R - Reasoning	4 (High School)
M - Math	3 (Grade 7-8)
L - Language	3 (Grade 7-8)

GED embraces those aspects of education (formal and informal) which contribute to the worker's (a) reasoning development and ability to follow instructions, and (b) acquisition of "tool" knowledge such as language and mathematical skills. Ordinarily, such education is obtained in elementary school, high school, or college. However, it may be obtained from experience and self-study (source: The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, 1991).

Mr. Nickles' work history is reflective of the following **Job Temperaments**, defined as common situations to which the worker must adapt:

- Performing repetitive or short-cycle work
- Performing a variety of duties
- Attaining precise set limits, tolerances, and standards
- Making judgments and decisions

Mr. Nickles' work history is reflective of the following **Work Fields**, defined as categories of technologies that reflect how work gets done and what gets done as a result of the work activities of a job:

Semi Skilled

- Plant Cultivating
- Material Moving
- Transporting
- Stock Checking

Skilled

- Structural Fabricating-Installing-Repairing
- Die Sizing
- Protecting

Mr. Nickles' work history is reflective of the following **Materials, Products, Subject Matter, or Services (MPSMS)**:

- Horticultural Specialty, Forest Trees/Products
- Structures
- Lumber and Wood Products
- Furniture and Fixtures
- Plastics Materials & Synthetic Resins/Rubber/Fiber
- Production Services
- Deodorizing/Exterminating/Decontaminating Services

Personal Data

Mr. Nickles currently lives at 141 Deer Run in Abbeville (29620), where he owns his home and has lived for over 10 years. Mr. Nickles is right-hand dominant. He has been married for 2 years and his wife works as a server in a restaurant. He has no children. He was married from 1992 until 1997 and was divorced. No one else lives in the home. He was born in Atlanta. He has lived in Greenville and Anderson in the past. He smokes cigarettes and he consumes alcohol.

William Franklin Nickles, IV
Vocational Assessment - Addendum

Mr. Nickles is in the process of divorce. They have not been together since the accident. He is currently living by himself.

Basic Skills

Mr. Nickles reads nonfiction and history. He also reads "how-to" material. He started working at Prysmian in 2015. He used SAP for production jobs to verify when a reel was completed. He worked at BWI in the 90's selling chemicals, where he used an IBM ThinkPad to key in and transmit orders. He used Word to type a resume. He has never used Excel or PowerPoint. He visualizes the keyboard when he types. He does not maintain a checkbook register.

Avocational

Mr. Nickles has no hobbies currently. He does some light carpentry in his shop. Prior to his injury, he performed carpentry work. He also enjoyed flying airplanes. He was also certified in scuba although more than 10 years has lapsed since he engaged in this activity.

Financial Data

Mr. Nickles currently receives \$653.00 weekly in workers' compensation benefits. He was earning \$21.00 hourly plus overtime every pay period. He also received shift premium and bonuses. He earned \$48,000.00 in 2018. He earned in the high 50s in 2017. At the time of his injury he was making plans to start his own arborist business.

Dr. Gray advised him that he will possibly need one additional surgery. He was not going to be able to go back to his job. He was terminated from employment. He applied for disability after his termination in 2021. He has not worked since 2018.

He listed no conditions unrelated to the injuries on his disability application. He has experienced no additional accidents. He was awarded SSDI benefits on the first application. He receives approximately \$1600 monthly.

Work Restrictions

Physician's description.

01-08-20 – Garber FCE: see detailed results below

12-12-19 – Charles Gray, MD: "... He is had a functional capacity evaluation and this is on chart. It reveals that he is not able to return to the level work he was performing prior to his multiples injuries..."

11-05-19 – Select PT WorkStrategies FCE: see detailed results below

Vocational Plans

Mr. Nickles expressed no plans to resume employment.

Vocational Test Results

The Wide Range Achievement Test, Revision 5 (WRAT5, green form) was administered to the claimant. Mr. Nickles was able to complete all subtests administered according to standardized test conditions. The results of the test are shown below.

	Raw score	Standard Score	95 th % CI*	Qualitative Description	Percentile	Grade Equivalent
Word Reading	61	104	± 7	Average	61	>12.9
Spelling	43	98	± 6	Average	45	12.2
Math Computation	44	108	± 8	Average	70	>12.9
Sentence Comprehension	48	114	± 10	High Average	82	>12.9
Reading Composite	218	110	± 7	High Average	75	---

*CI = confidence interval

Review of Records

- 2019 1040 – William F. Nickles and Eleanor Wieters
 Wages, salaries, tips, etc. 24,020
- 2016 1040EZ – William F. Nickles
 Wages, salaries, tips, etc. 47,163
- Select PT records reviewed
- 10-24-18 Dawne Hershberger, NP, follow up
- 11-10-18 Abbeville County EMS patient care report
- 11-10-18 Self ED assessment
- 11-15-18 Jessica S. Willard, PA-C assessment for left leg and right shoulder pain
 "... Assessment/Plan:
 Maisonneuve injury left ankle with a minimally displaced medial malleolus
 fracture and proximal fibular shaft fracture with just minimal displacement.
 Severe contusion left shoulder..."
- 11-16-18 Charles D. Gray, MD, Operative Report: "Open reduction and internal
 fixation, left medial malleolus fracture"
- 11-28-18 Charles D. Gray, MD follow-up, 12 days post op
- 12-20-18 MRI right shoulder
- 12-27-18 Charles D. Gray, MD follow-up
- 02-08-19 Charles D. Gray, MD follow-up

William Franklin Nickles, IV
Vocational Assessment - Addendum

- 03-08-19 Charles D. Gray, MD follow-up
04-19-19 Charles D. Gray, MD follow-up
05-17-19 Charles D. Gray, MD operative report for right shoulder
05-29-19 Charles D. Gray, MD follow-up
07-18-19 Charles D. Gray, MD follow-up
08-29-19 Charles D. Gray, MD follow-up
10-23-19 Dawne Hershberger, NP, follow up
"He is still having significant pain with PT with radiculopathy pain from mid back to scapula/ cervical spine to top of back/shoulders/ lower back across to SI joint-"
10-29-19 MRI Thoracic Spine without Contrast
10-29-19 MRI Cervical Spine without Contrast
11-05-19 Select PT WorkStrategies FCE:
SUMMARY

The results of this evaluation indicate that William Nickles did not demonstrate the ability to meet the physical demand requirements of a Lead Line Operator based upon the job description provided by the employer. William Nickles demonstrated the ability to function in the Medium Physical Demand Category, according to the US Department of Labor.

William Nickles demonstrated the ability to occasionally lift up to 35 lbs. Floor to Waist, 35 lbs. Floor to Shoulder, 30 lbs. Waist to Shoulder, carry up to 45 lbs. bilaterally, push 80 lbs. of force, and pull 95 lbs of force. For positional tolerance see the chart on page 2. William Nickles completed a single stage treadmill test at 3.0 mph and 5% grade. This was sufficient to predict William Nickles's functional aerobic capacity at 4.44 METS for an 8 hour time period.

Potential Physical Barriers to Return to Work as a Lead Line Operator for Prysmian Cable include: decreased walking endurance, decreased muscular strength, decreased lifting ability, and decreased carrying tolerance.

The claimant reported a pre-test pain level of 3 on a 0- 10 scale and a post-test pain level of 3 on the same scale. The pre and post-test pain diagrams were similar with no exceptions. This was considered when reporting ability ratings, particularly walking, lifting, carrying, and overhead reaching which the claimant reported to increase his pain.

William Nickles demonstrated moderate signs of consistency and lacked observable signs of exertion throughout the evaluation. This, in combination

(Select PT FCE cont'd)

with physiological responses (heart rate and respiratory rate), movement and muscle recruitment patterns both aware and unaware of observation, The capabilities outlined would be considered to be William Nickles's minimal functional ability level.

Positional tolerance:

Sit – Constant
Stand – Frequent
Walk – Occasional
Climb Stairs – Occasional
Climb Ladders – Occasional
Reach Desk Level – Frequent
Reach Overhead – Occasional
Reach Floor Level – Frequent
Balance – Frequent
Stoop – Occasional
Kneel – Occasional
Crouch – Occasional
Crawl – Occasional

12-12-19 Charles D. Gray, MD follow-up:
“... He is had a functional capacity evaluation and this is on chart. It reveals that he is not able to return to the level work he was performing prior to his multiples injuries...”

12-19-19 Charles D. Gray, MD 14B

01-06-20 *Charles Christopher Kanos, MD, evaluation*
“Patient is a 53-year-old male states he was injured several months ago during a work-related accident. A large piece of cable struck him on the right side of his neck. He suffered other injuries including a left lower extremity fracture. He also suffered a right shoulder injury that required surgery. He complains of constant paresthesias in his bilateral arms into his hands. Denies any weakness. He states he has had physical therapy...

In regards to his neck, he doesn't have any restrictions”

01-08-20 Garber PT FCE:

CONCLUSION

The results of this evaluation indicate that William Nickles is capable of functioning at a Medium Level of work based on his material handling performance. He tolerated desk level reaching on a constant basis. He tolerated sitting, standing, walking, partial squatting, stair climbing, and overhead reaching on a frequent basis. He tolerated ladder climbing, floor-level reaching, stooping (bending), balancing, kneeling, crouching, and crawling on an occasional basis. The client demonstrated both upper extremity object handling, fingering, simple and firm grasping, and

(Garber FCE cont'd)

fine/gross manipulation on a constant basis. He demonstrated consistency of performance on all consistency tests pertaining to gripping and pinching (see page 10). A summary list of his performance is found on page 3 of this report...

Physical Abilities Assessment (PAA)

Material Handling:	Occasional (0 – 33%)
Floor to Waist	50 lbs.
Lift – Waist to Shld	35 lbs.
Lift – 12-inch to waist	50 lbs
Lift – Shoulder to Overhead	25 lbs
Carry – Bimanual	60 lbs.
Push (static)	140 lbs
Pull (static)	79 lbs
Positional Tolerance:	Frequency
Sit (static)	Frequent
Stand (dynamic)	Frequent
Walk (level surfaces)	Frequent
Climb Stairs	Frequent
Climb Ladders	Occasional
Reach Forward (desk level)	Constant
Reach Overhead	Frequent
Reach Floor Level	Occasional
Balance	Occasional
Stoop (Bend)	Occasional
Kneel (Full-tall)	Occasional
Crouch (Squat)	Frequent
Crawl	Occasional

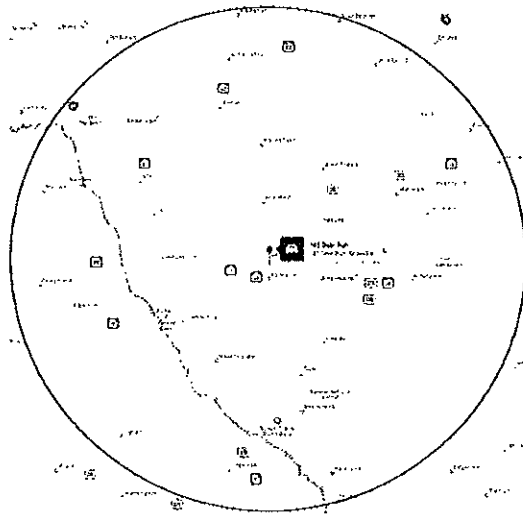
06-15-20 Brandon Scott, FNP-C, follow up: "psoriasis"

Adjusted vocational profile

The two functional capacity evaluations outlined above are similar in terms of Mr. Nickles' work capacities. He is classified in a "medium" strength category based on the U.S. Department of Labor categories of strength, although he is not able to fulfill the full requirements of "medium" work. Both FCEs reveal postural limitations, including "occasional" stooping. Utilizing both FCEs Mr. Nickles is unable to resume his employment at Prysmian. He is unable to resume employment as an extruder operator, carpenter, material handler, greens keeper, or pest control worker. He is able to resume alternative employment within the Production occupational group.

Labor Market Survey (updated August 2023)

An updated labor market survey was conducted using the South Carolina Department of Employment and Workforce (SCWorks.org). The map on the right shows the approximate geographical area available to Mr. Nickles.



Summary of labor market survey

Occupational Group: Production

Total jobs reviewed: 200

Vocational Analysis and Conclusions

Mr. Nickles is a 53-year-old former

Prysmian production worker who was working on November 10, 2018 when a cable fell on him, striking him in the right side of his head and right shoulder, knocking him to the ground. He sustained fractures to his right lower extremities, dental injuries and a right shoulder injury. He was transported to Self Regional emergency department where he was treated and released. He followed up with Dr. Gray and underwent surgery to stabilize his fractures. He underwent right shoulder surgery with Dr. Gray on May 17, 2019.

Mr. Nickles underwent a Select PT WorkStrategies FCE on November 5, 2019. The evaluator concluded that Mr. Nickles was functioning in a "medium" strength category based on a maximum occasional lifting capacity of 35 pounds. He was limited to "occasional" stair climbing, ladder climbing, walking, overhead reaching, stooping, kneeling, crouching and crawling. Mr. Nickles returned to Dr. Gray on December 12, 2019. Dr. Gray provided the following statement in his office note: "... He is had a functional capacity evaluation and this is on chart. It reveals that he is not able to return to the level work he was performing prior to his multiples injuries..."

Mr. Nickles participated in a Garber FCE on January 8, 2020. The results of this FCE were similar to the previous FCE, with some differences in lifting and postural abilities. He was classified in a "medium" strength category based on a maximum occasional lifting capacity of 50 pounds. He was limited to 35 pounds from waist to shoulder occasionally, and 25 pounds from shoulder to overhead occasionally. For additional report details, please refer to the "Review of Records" section of this report.

Mr. Nickles began working at Prysmian in January of 2015. He operated an extrusion process used to cover cable with insulation. He crawled, climbed and lifted over 75 pounds. He regulated the heat and speed of the machine in order to meet the specifications. He used cutters and impact wrenches. This work is classified as "heavy" in physical demands based on his description of the work. In the past he worked as an extruder operator, forklift operator, and shipping manager. He worked as a carpenter for

William Franklin Nickles, IV
Vocational Assessment - Addendum

4 years, performing residential installations and renovation work including roof installation. He worked at Thorneblade, operating machines and performing other tasks related to bunker renovation. He worked in the pest control industry, selling contracts and performing service work. Mr. Nickles' past relevant work ranges from "light" to "heavy" in physical demands. His past relevant work ranges from "semi-skilled" to "skilled". In the distant past he worked as a chemical salesman, assistant golf course superintendent and truck driver.

Positive factors in Mr. Nickles' vocational profile include his work experience in manufacturing jobs; the ability to engage in "medium" employment; possession of basic computer skills; and academic test results indicating "average" to "high average" abilities. Negative factors in his profile include the inability to engage in employment that exceeds a "medium" level; postural limitations, as outlined in both FCEs; and ongoing symptoms impacting the performance of his daily activities.

Mr. Nickles is unable to resume employment in his occupation at Prysmian. He is unable to resume past employment as an extruder operator, carpenter, material handler, greens keeper, or pest control worker. Given his "medium" residual strength capacity, he retains the ability to work in jobs found in the Production occupational group.

Updated market analysis

A labor market survey was conducted using the South Carolina Department of Labor and Workforce database (SCWorks.org) involving a review of 200 jobs within the Production occupational group. This review revealed that many of the remaining jobs in his area exceed his lifting and postural capabilities. These jobs frequently list a 50-pound lifting requirement, as well as a constant standing and walking requirement. Mr. Nickles would not be able to meet these requirements. However, residual employment was identified that is compatible with Mr. Nickles' vocational profile.

In order to quantify Mr. Nickles' current earnings capacity, the Bureau of Labor Statistics OEWS wage data was consulted. The transferable skills analysis identified the following OEWS-SOC occupational group: Shipping, Receiving and Inventory Clerks (43-5071). Mr. Nickles' access to jobs within this occupational group is reduced due to his lifting and postural limitations. The factors that reduce the quality and quantity of jobs to which he has access include his limited lifting capabilities, as well as the postural limitations outlined in the functional capacity evaluations. His documented standing and walking limitations significantly reduce his access to jobs in his labor market. Therefore, Mr. Nickles earnings are best represented by the 10th and 25th percentile of reported earnings as reported by the Bureau of Labor Statistics, May 2022. This estimate places Mr. Nickles' earnings capacity within a range of **\$12.50 hourly (\$26,010 annually)** and **\$14.66 hourly (\$30,480 annually)**.

Pre-injury earnings capacity. Mr. Nickles reported that he was earning \$21 hourly, with access to overtime, prior to his accident. His 2016 tax return documents annual earnings of \$47,163. This data should be used to determine his pre-injury earnings capacity. His loss of earnings capacity began at the time of his accident.

Post-injury earnings capacity. As of December 12, 2019 Mr. Nickles was released to work based on the FCE of 11-05-19, at which time he was capable of reduced earnings of approximately \$10 hourly, or \$20,800 annually. Based on the updated analysis, Mr. Nickles' post-earnings capacity currently falls within an approximate range of **\$26,010 and \$30,480 annually**. These conclusions are provided with a reasonable degree of vocational probability.

Thank you for this referral to Adams & Wilkinson.



Glen K. Adams, MRC, CRC, CEES, CCM
Vocational Consultant

References

- Bast, S., Williams, J.M., & Dunn, P.L. (2002). The Classic Model of Transferability of Work Skills: Issues Affecting the Accurate Assessment of Future Vocational Options in Earnings Capacity Assessment. *Journal of Forensic Vocational Analysis*, 5, 15-28.
- Darling, W.T., Growick, B.S., & Kontosh, L.G. (2002). Transferable Skills Analysis in Rehabilitation: Issues in definition and application. *Journal of Vocational Rehabilitation* 17, 217-224.
- Dunn, P.L. & Kontosh, L.G. (2002). Understanding Transferability and Occupational Classifications: Implications for vocational forensics. *Journal of Forensic Vocational Analysis*, 5, 41-48.
- Field, T.F. (1999). Strategies for the rehabilitation consultant: Transferability, loss of employment, lost earning capacity, Damages. Athens, GA: Elliott & Fitzpatrick.
- Field, T. (2002). Transferable Skills Analysis: A Common Sense Approach. *Journal of Forensic Vocational Analysis*, Vol. 5, p. 29-40, 2002
- Gibson, G.G., Earhart, J.H., and Lento, P.J. (2002). Toward a Foundation for Determining Loss of Earning Capacity: Transferability of Skills Definition, Method, and Application. *Journal of Forensic Vocational Analysis* 5, 5-14.
- Truthan, J.A. & Karman, S.E. (2003). Transferable Skills Analysis and Vocational Information During a Time of Transition. *Journal of Forensic Vocational Analysis*, June, 2003, 6 (1).
- U.S. Department of Labor. (1991a). Dictionary of Occupational Titles (4th ed. revised). Washington, D.C.: US Government Printing Office.
- U.S. Department of Labor. (1991b). The Revised Handbook for Analyzing Jobs. Washington, D.C.: US Government Printing Office.



August 21, 2023

Thomas E. Hite, III, Attorney at Law
Address Hite & Stone
100 E. Pickens Street
Abbeville, SC

Re: William F. Nickles, IV v. Howar Equipment, Inc., Sonoco Products Company,
Palmetto State Transportation, LLC, KSC Logistics, Inc., and John Doe
Corporation

Dear Attorney Hite,

As you know, I submitted a Vocational Assessment report regarding Mr. Nickles' current earnings capacity on August 9, 2023. This letter is in response to a review of additional records that I received from your office after I rendered that report.

Among those records is a report from Robert Blake Fugatt, Jr., MD dated January 7, 2023. Dr. Fugatt examined Mr. Nickles in the context of Mr. Nickles' application for Social Security Disability benefits. Dr. Fugatt addressed Ms. Nickles' work accident that occurred at Prysmian in detail. Dr. Fugatt provided the following assessment in his report:

"Based on today's consultation and the objective evidence, I believe the claimant:

- Can sit without significant problems but has difficulty with prolonged walking and standing due to above mentioned left foot/ankle/leg injury, surgery, pain, and decreased range of motion.
- Can balance without problems, but has difficulty standing on left foot due to pain.
- Has some difficulty with bending.
- May have difficulty with lifting and carrying heavy objects.
- Cannot forward and overhead reach with L hand.
- Has normal fine and gross motor movements with both hands.
- Can hold a conversation, respond appropriately to questions, carry out and remember instructions."

Given these new medical opinions regarding Mr. Nickles' functional disabilities, a new analysis of his earnings capacity is warranted.

The following Physical Demand Factors definitions are provided by the U.S. Department of Labor and are generally accepted definitions in the field of vocational assessment. A review of these definitions is necessary in order to place Dr. Fugatt's work statements context.

Sedentary Work

Exerting up to 10 pounds of force occasionally, or a negligible amount of force frequently to lift, carry, push, pull, or move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are Sedentary if walking and standing are required only occasionally and all other Sedentary criteria are met.

Light Work

Exerting up to 20 pounds of force occasionally or up to 10 pounds of force frequently, or a negligible amount of force constantly to move objects. Physical demand requirements are in excess of those for Sedentary work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking and standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing or pulling of arm or leg controls; or (3) when the job requires working at a production rate pace entailing the constant pushing or pulling of materials even though the weight of those materials is negligible. NOTE: The constant stress and strain of maintaining a production rate pace, especially in an industrial setting, can be and is physically demanding of a worker even though the amount of force exerted is negligible.

Given Mr. Nickles' difficulty with prolonged standing and walking, he is unable to engage in any of the occupations listed in my previous report. The inability to forward and overhead reach with the left hand is a significantly limiting factor. The additional limitations outlined by Dr. Fugatt further reduce and eliminate Mr. Nickles' access to any remaining employment. The limitations assigned by Dr. Fugatt are consistent with "sedentary" employment with additional restrictions as outlined in the report.

A new transferable skills analysis was conducted using OASYS based on Dr. Fugatt's work statements. No occupations were identified through this analysis. It is also noted that the previous work restrictions were provided on January 8, 2020 (Garber FCE). Dr. Fugatt's medical statements are considered to be more timely and relevant due to the time that has lapsed.

Given the new medical opinions provided by Dr. Fugatt, Mr. Nickles is unable to access any of the occupations suggested in my previous Vocational Assessment report. He is unable to meet the demands of any remaining employment that exists in his labor market. Mr. Nickles has incurred a total loss of access to the competitive labor market based on Dr. Fugatt's opinions. He has incurred a total loss of earnings ability. He is classified as **totally vocationally disabled** as a result of injuries sustained on November 10, 2018 while working at Prysmian Cables & Systems. These opinions and conclusions are provided with a reasonable degree of vocational probability.

Sincerely,



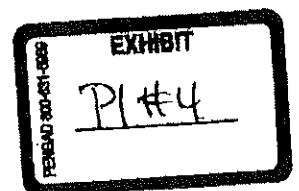
Glen K. Adams, MRC, CRC, CEES, CCM
Vocational Consultant

PRELIMINARY
APPRAISAL OF FINANCIAL LOSS
DUE TO INJURY
TO
MR. WILLIAM F. NICKLES IV

Prepared
for
Mr. Thomas E. Hite III
Attorney at Law

Prepared
by
Oliver G. Wood, Jr., Ph.D.
Andrew O. Wood, J.D., MPAcc

September 8, 2023



Mr. William F. Nickles IV sustained a financial loss because of his injury on November 10, 2018. The elements of loss considered in this preliminary report are earning capacity and personal services. Each element is appraised for the before- and after-trial periods with the after-trial losses discounted to present value as of December 4, 2023.

Mr. Nickles was born on March 14, 1966, and was 52.66 years old at the time of injury. According to South Carolina Code Section 19-1-150, his life expectancy was an additional 26.52 years to age 79.18 on 2045.38. Before he was injured, Mr. Nickles had no reason to expect less than a normal life expectancy. According to Mr. Nickles, he intended to work to age 67 (his normal Social Security retirement age).

FACTS TAKEN INTO CONSIDERATION

At the time of injury, Mr. Nickles was employed as an 88 Wire Server Operator with Prysmian Cables and Systems (Prysmian) in Abbeville, South Carolina. He began employment Prysmian in January 2015. According to Mr. Nickles, he has not worked since his injury. According to Mr. Nickles, at the time of injury, his average weekly wage was \$980.52. On an annualized basis, this equated to \$50,987.

According to Mr. Nickles, as an employee of Prysmian, he was a member of the company's 401(k) plan and contributed approximately 6 percent of his annual income to the plan. According to Mr. Nickles, the company's matching contribution was approximately 6 percent of his annual income.

Glen Adams, MRC, CRC, CEES, CCM, evaluated Mr. Nickles' after-injury earning capacity. According to Mr. Adams, with respect to after-injury earning capacity, Mr. Nickles "is unable to meet the demands of any remaining employment in his labor market. Mr.

Nickles has incurred a total loss of access to the competitive labor market based on Dr. Fugatt's opinions. He has incurred a total loss of earning ability. He is classified as totally vocationally disabled as a result of injuries sustained on November 10, 2018."

According to Mr. Adams' report dated August 9, 2023, "Mr. Nickles currently experiences left ankle pain continuously. Over the previous 30 days, the pain ranged from 3/10 – 10/10. He continues to experience swelling. He continues to experience right shoulder pain, stating that reaching behind is bad. Over the previous 30 days, the pain ranged from 3/10 – 10/10. His lumbar pain is currently rated at 8/10 after taking Motrin. Over the previous 30 days, the pain ranged from 2/10 – 10/10. He lies down on the couch or recliner all day on some days. This last occurred 3 – 4 weeks ago. He also experiences some cervical problems."

LOSS IN EARNING CAPACITY

For purposes of this report, it is assumed that Mr. Nickles' annualized average weekly wage of \$50,987 (in 2018 dollars) is a reasonable measure of his before-injury earning capacity. For purposes of this report, it is assumed that because of his injury, Mr. Nickles is unemployable in the competitive labor market.

The before-trial loss in earning capacity is \$258,504. The before-trial loss in employer contributions to the 401(k) plan is \$15,510. The before-trial total loss in earning capacity is \$274,015. The present value of the after-trial loss in earning capacity is \$419,533. The present value of the after-trial loss in employer contributions to the 401(k) plan is \$25,172. The present value of the total after-trial loss in earning capacity is \$444,705.

LOSS IN PERSONAL SERVICES

Before he was injured, Mr. Nickles performed an average of 10 hours per week of personal services. He performed personal services including cooking, washing dishes, laundry, vacuuming, general household cleaning, grocery shopping, and lawn and yard care. According to Mr. Nickles, for approximately 1½ years after he was injured, he was unable to perform any personal services. Since approximately May 11, 2020, he has been able to perform about 7 hours per week of personal services. This creates a net loss of 3 hours per week of personal services.

The loss in personal services is appraised on a current basis at \$12 per hour. The before-trial loss in personal services is \$13,364. The present value of the after-trial loss in personal services is \$26,883.

TOTAL FINANCIAL LOSS

The present value of the total financial loss is \$758,967. Elements of this loss are contained in Exhibit 1. This report does not contain an evaluation of past or future medical care costs. This report is subject to revision to reflect any additional information that may become available.

Oliver E. Wood Jr.

Andrew O. Wood

9/8/23

Exhibit 1

Present Value of Total Financial Loss

	Before-Trial Loss	After-Trial Loss	Total Financial Loss
Earning Capacity	\$258,504	\$419,533	\$678,037
Employer Contrib. to 401(k) plan @ 6%	15,610	25,172	40,682
Loss in Earning Capacity	274,015	444,705	718,720
Personal Services	13,364	26,883	40,247
Total Financial Loss	\$287,379	\$471,588	\$758,967

**Vocational Assessment**

Date	August 9, 2023
Name of referral source	Thomas E. Hite, III, Attorney at Law
Address	Hite & Stone 100 E. Pickens Street Abbeville, SC
Evaluee	William Franklin Nickles, IV
Date of Birth	March 14, 1966
Age (on date of accident)	53
SSN	xxx-xx-4841
Employer	Prysmian Cables & Systems
WCC #	1820858
File #	026 CB FJP3647 J & 2021-CP-01-00076.
Case Caption	William F. Nickles, IV v. Howar Equipment, Inc., Sonoco Products Company, Palmetto State Transportation, LLC, KSC Logistics, Inc., and John Doe Corporation
Date of Injury	November 10, 2018
Date of Assessment	January 7, 2020
Date of Telephone Update	July 19, 2023

Background information

This vocational assessment was initially requested by Mr. Nickles' attorney who represented him in his workers' compensation claim stemming from his work injury (Donald Kamb). Mr. Hite subsequently requested an updated assessment to determine the vocational impact of Mr. Nickles' injuries sustained on November 10, 2018 while working for Prysmian Cables & Systems. This report contains the findings from the original report dated January 24, 2020, as well as the updated information and subsequent analysis. The initial assessment was conducted at his attorney's office in Greenville. Prior to beginning the assessment, the following disclosures were provided to Mr. Nickles: the purpose of the assessment, referral source, the scope of services requested, and limits of confidentiality. Mr. Nickles was alert and oriented throughout the assessment. He was bearded and appropriately groomed, and he exhibited an appropriate mood. He exhibited no outward signs of difficulty sitting, standing or walking. The initial assessment was concluded in 2½ hours. The telephone interview was conducted over the course of 45 minutes on July 19, 2023. The information that was obtained in the telephone interview of July 19, 2023 and a review of new records is indicated in *italics*.

Medical Information

Mr. Nickles provided the following information in the vocational interview.

History of injury. Mr. Nickles sustained multiple injuries on November 10, 2018 while working as a lead line operator at Prysmian. He was handling a 4½-inch cable (30 pounds per foot) when the cable fell on him and struck him in the right side of the head, knocking him out. He sustained dental injuries, as well as injuries to his right shoulder, and fractures to the left tibia, fibula and ankle. He was transported by ambulance to Self Regional where he was treated and released. He followed up with Dr. Gray at Lakelands Orthopedics. He underwent surgery on the left leg approximately 5 days after the injury. He underwent left shoulder surgery on May 17, 2019. He developed neck pain and low back pain. He saw Dr. Kanos and was sent for an MRI. Dr. Kanos recommended no surgery but said he may need it for his neck. His last visit with Dr. Kanos occurred the week prior to this assessment. He has no appointments scheduled currently. His last visit with Dr. Gray occurred on December 12th, and he was released from medical care.

Secondary medical issues. Mr. Nickles has no other medical problems currently. When he was 8 years old he sustained burns to his right leg requiring grafts. He experiences no residual problems from these injuries.

Mr. Nickles has developed no other health problems.

Current medical status. Mr. Nickles' left ankle pain is currently rated at 4/10. Over the previous 30 days, the pain ranged from 0/10 to 10/10. He experiences a 10/10 when he experiences a twisting motion. He experiences ankle swelling. The right shoulder pain is currently rated at 2-3/10. Over the previous 30 days, the pain ranged from 0/10 to 10/10. He is able to reach overhead with his right arm. He is able to extend, although this motion is painful. He experiences lumbar pain that is currently rated at 3/10 with the 30-day range of 1/10 to 10/10. The left leg and foot are painful. He experiences "pins and needles" in the left foot.

Mr. Nickles currently experiences left ankle pain continuously. Over the previous 30 days the pain ranged from 3/10 – 10/10. He continues to experience swelling. He continues to experience right shoulder pain, stating that reaching behind is bad. Over the previous 30 days the pain ranged from 3/10 – 10/10. His lumbar pain is currently rated at 8/10 after taking Motrin. Over the previous 30 days the pain ranged from 2/10 – 10/10. He lays down on the couch or recliner all day on some days. This last occurred 3 – 4 weeks ago. He also experiences some cervical problems.

Daily activities. Mr. Nickles walks and moves around as much as possible. He is independent in the performance of his activities of daily living. He performs housework. He does not perform any yard work. He goes to his shop every day and builds items such as a birdhouse or a shelf. He cuts boards using a chop saw and skill saw. He and his wife handle the grocery shopping together.

William Franklin Nickles, IV
Vocational Assessment - Addendum

Mr. Nickles works out every day, using an inversion table, rowing machine, and light free weights. He is performing yardwork and gardening. He uses a riding mower and rakes. He avoids heavy lifting.

Education and Training

Mr. Nickles graduated from high school in 1984. He attended Lander University for 4 years, 1984 until 1988, and he did not obtain a degree. He need one year of credits to complete his degree. His declared major was business. He attended USC Upstate in approximately 1997. He attended Greenville Technical College from 1993 until 1995. He did not complete a degree due to his job, family, and financial considerations. He possesses a regular South Carolina driver's license. He obtained a Class 3 license in the 80s and he drove trucks. He is a private pilot. He has not flown since his injury. He was certified to operate a forklift at Prysmian Group High Voltage.

Mr. Nickles has obtained no additional education. He flew in September 2022 with another pilot in charge. He has not submitted to a class 3 medical.

Military Experience

Mr. Nickles was in ROTC while in college. He completed jump school at Fort Benning while in the ROTC.

Work History

1. Prysmian, January 2015, lead line operator. He installed the lead or plastic jacket on the cable. He filled the stockpot with lead bars. He operated the extruder and operated a forklift to carry materials. He performed change-outs and he lifted over 75 pounds. He was required to crawl and climb. He used a cold welder and a towline. He regulated the heat and speed of the machine. He used cutters, saws, nail guns, and impact wrenches. He walked 6 to 8 miles per shift.

557.382-010 Extruder Operator

SVP: 5

GED: 3 2 2

Strength: Medium

Strength Definitions	
Sedentary	Up to 10 lbs occasional
Light	Up to 20 lbs occasional
	Up to 10 lbs frequent
Medium	Negligible constant
	20-50 lbs occasional
	10-25 lbs frequent
	> negligible up to 10 lbs constant
Heavy	50-100 lbs occasional
	25-50 lbs frequent
	10-20 lbs constant
Very Heavy	> 100 lbs occasional
	> 50 lbs frequent
	> 20 lbs of force constant

Source: U.S. Department of Labor

2. George Fisher, plastic extrusion, pipe, water, sewer, high-density poly. He worked for 3 years as an extruder operator. He worked as the shipping and receiving manager for 2 years. He operated a forklift. He put orders together and repackaged. His lifting requirement was the same as Prysmian. He was not responsible for any employees.

557.382-010 Extruder Operator

921.683-050 Industrial Truck Operator

SVP: 3

GED: 2 1 1

Strength: Medium

222.687-030 Shipping Checker

SVP: 4

GED: 3 3 2

Strength: Light

3. Independent carpenter, 4 years, 2007 to 2010. He performed roofing, framing, and finish carpentry. He worked on residential decks and other renovations. He also worked on new construction.

860.381-022 Carpenter

SVP: 7

GED: 4 3 3

Strength: Medium

4. Thornblade, 1 year, 2006. He also worked 28 years ago at Thornblade from 1992 to 1998 as an assistant golf course superintendent. In 2006, he was involved in bunker renovation. He operated some equipment and performed course maintenance.

406.683-010 Greenskeeper II

SVP: 3

GED: 2 1 2

Strength: Medium

5. Max Exterminating, 3 years, 2001 to 2004. He performed residential and commercial pest control, selling contracts and providing service. He was required to access attics and crawlspaces.

389.684-010 Pest Control Worker

SVP: 5

GED: 3 2 2

Strength: Light

6. In the distant past Mr. Nickles worked at BWI, performing chemical and fertilizer sales from 1998 to 2001. He performed golf course maintenance. He also operated a septic tank truck.

Analysis of Worker Traits

This information results from the analysis of Mr. Nickles' work history utilizing information provided in the Dictionary of Occupational Titles.

Mr. Nickles' work history indicates that he used the following aptitudes in his past work.

Aptitudes

From Work History

Cognition

G - General Learning Ability

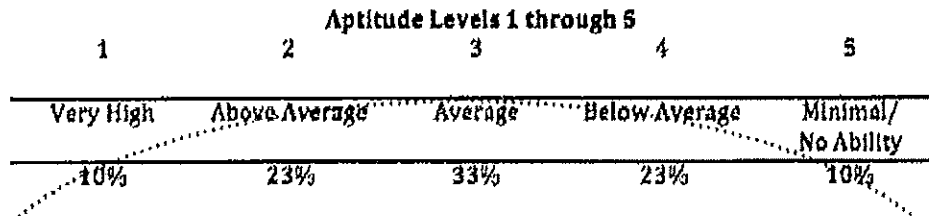
3 (Average)

V - Verbal

3 (Average)

William Franklin Nickles, IV
Vocational Assessment - Addendum

N - Numerical	3 (Average)
Perception	
S - Spatial Perception	3 (Average)
P - Form Perception	3 (Average)
Q - Clerical Perception	3 (Average)
C - Color Discrimination	3 (Average)
Dexterity	
K - Motor Coordination	3 (Average)
F - Finger Dexterity	3 (Average)
M - Manual Dexterity	3 (Average)
E - Eye-Hand-Foot Coordination	4 (Below Average)



Mr. Nickles' work history indicates a specific vocational preparation level of 7 (skilled); 2 years up to and including 4 years. Specific vocational preparation is the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation (The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, 1991).

Level	Time	Descriptor
1	Short demo	Unskilled
2	Up to 1 month	
3	> 1 mo. to 3 mos.	Semi-skilled
4	> 3 mos. to 6 mos.	
5	> 6 mos. to 1 yr.	Skilled
6	> 1 yr. to 2 yrs.	
7	> 2 yrs. to 4 yrs.	
8	> 4 yrs. to 10 yrs.	
9	> 10 yrs.	

The occupations reported by Mr. Nickles indicate the following GED levels. GED levels are expressed on a scale of 1 -- 6, with 1 representing the lowest level of function and 6 representing the highest.

General Education Development	From Work History
R - Reasoning	4 (High School)
M - Math	3 (Grade 7-8)
L - Language	3 (Grade 7-8)

GED embraces those aspects of education (formal and informal) which contribute to the worker's (a) reasoning development and ability to follow instructions, and (b) acquisition of "tool" knowledge such as language and mathematical skills. Ordinarily, such education is obtained in elementary school, high school, or college. However, it may be obtained from experience and self-study (source: The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, 1991).

Mr. Nickles' work history is reflective of the following **Job Temperaments**, defined as common situations to which the worker must adapt:

- Performing repetitive or short-cycle work
- Performing a variety of duties
- Attaining precise set limits, tolerances, and standards
- Making judgments and decisions

Mr. Nickles' work history is reflective of the following **Work Fields**, defined as categories of technologies that reflect how work gets done and what gets done as a result of the work activities of a job:

Semi Skilled

- Plant Cultivating
- Material Moving
- Transporting
- Stock Checking

Skilled

- Structural Fabricating-Installing-Repairing
- Die Sizing
- Protecting

Mr. Nickles' work history is reflective of the following **Materials, Products, Subject Matter, or Services (MPSMS)**:

- Horticultural Specialty, Forest Trees/Products
- Structures
- Lumber and Wood Products
- Furniture and Fixtures
- Plastics Materials & Synthetic Resins/Rubber/Fiber
- Production Services
- Deodorizing/Exterminating/Decontaminating Services

Personal Data

Mr. Nickles currently lives at 141 Deer Run in Abbeville (29620), where he owns his home and has lived for over 10 years. Mr. Nickles is right-hand dominant. He has been married for 2 years and his wife works as a server in a restaurant. He has no children. He was married from 1992 until 1997 and was divorced. No one else lives in the home. He was born in Atlanta. He has lived in Greenville and Anderson in the past. He smokes cigarettes and he consumes alcohol.

William Franklin Nickles, IV
Vocational Assessment - Addendum

Mr. Nickles is in the process of divorce. They have not been together since the accident. He is currently living by himself.

Basic Skills

Mr. Nickles reads nonfiction and history. He also reads "how-to" material. He started working at Prysmian in 2015. He used SAP for production jobs to verify when a reel was completed. He worked at BWI in the 90's selling chemicals, where he used an IBM ThinkPad to key in and transmit orders. He used Word to type a resume. He has never used Excel or PowerPoint. He visualizes the keyboard when he types. He does not maintain a checkbook register.

Avocational

Mr. Nickles has no hobbies currently. He does some light carpentry in his shop. Prior to his injury, he performed carpentry work. He also enjoyed flying airplanes. He was also certified in scuba although more than 10 years has lapsed since he engaged in this activity.

Financial Data

Mr. Nickles currently receives \$653.00 weekly in workers' compensation benefits. He was earning \$21.00 hourly plus overtime every pay period. He also received shift premium and bonuses. He earned \$48,000.00 in 2018. He earned in the high 50s in 2017. At the time of his injury he was making plans to start his own arborist business.

Dr. Gray advised him that he will possibly need one additional surgery. He was not going to be able to go back to his job. He was terminated from employment. He applied for disability after his termination in 2021. He has not worked since 2018. He listed no conditions unrelated to the injuries on his disability application. He has experienced no additional accidents. He was awarded SSDI benefits on the first application. He receives approximately \$1600 monthly.

Work Restrictions

Physician's description.

01-08-20 – Garber FCE: see detailed results below

12-12-19 – Charles Gray, MD: "... He is had a functional capacity evaluation and this is on chart. It reveals that he is not able to return to the level work he was performing prior to his multiples injuries..."

11-05-19 – Select PT WorkStrategies FCE: see detailed results below

Vocational Plans

Mr. Nickles expressed no plans to resume employment.

William Franklin Nickles, IV
Vocational Assessment - Addendum

Vocational Test Results

The Wide Range Achievement Test, Revision 5 (WRAT5, green form) was administered to the claimant. Mr. Nickles was able to complete all subtests administered according to standardized test conditions. The results of the test are shown below.

	Raw score	Standard Score	95 th % CI*	Qualitative Description	Percentile	Grade Equivalent
Word Reading	61	104	± 7	Average	61	>12.9
Spelling	43	98	± 6	Average	45	12.2
Math Computation	44	108	± 8	Average	70	>12.9
Sentence Comprehension	48	114	± 10	High Average	82	>12.9
Reading Composite	218	110	± 7	High Average	75	---

*CI = confidence interval

Review of Records

- 2019 *1040 – William F. Nickles and Eleanor Wieters
Wages, salaries, tips, etc. 24,020*
- 2016 *1040EZ – William F. Nickles
Wages, salaries, tips, etc. 47,163*
- Select PT records reviewed
- 10-24-18 *Dawne Hershberger, NP, follow up*
- 11-10-18 Abbeville County EMS patient care report
- 11-10-18 Self ED assessment
- 11-15-18 Jessica S. Willard, PA-C assessment for left leg and right shoulder pain
 "... Assessment/Plan:
 Maisonneuve injury left ankle with a minimally displaced medial malleolus
 fracture and proximal fibular shaft fracture with just minimal displacement.
 Severe contusion left shoulder..."
- 11-16-18 *Charles D. Gray, MD, Operative Report: "Open reduction and internal
fixation, left medial malleolus fracture"*
- 11-28-18 Charles D. Gray, MD follow-up, 12 days post op
- 12-20-18 MRI right shoulder
- 12-27-18 Charles D. Gray, MD follow-up
- 02-08-19 Charles D. Gray, MD follow-up

William Franklin Nickles, IV
Vocational Assessment - Addendum

- 03-08-19 Charles D. Gray, MD follow-up
- 04-19-19 Charles D. Gray, MD follow-up
- 05-17-19 Charles D. Gray, MD operative report for right shoulder
- 05-29-19 Charles D. Gray, MD follow-up
- 07-18-19 Charles D. Gray, MD follow-up
- 08-29-19 Charles D. Gray, MD follow-up
- 10-23-19 *Dawne Hershberger, NP, follow up*
"He is still having significant pain with PT with radiculopathy pain from mid back to scapula/ cervical spine to top of back/shoulders/ lower back across to SI joint-"
- 10-29-19 *MRI Thoracic Spine without Contrast*
- 10-29-19 *MRI Cervical Spine without Contrast*
- 11-05-19 Select PT WorkStrategies FCE:
SUMMARY

The results of this evaluation indicate that William Nickles did not demonstrate the ability to meet the physical demand requirements of a Lead Line Operator based upon the job description provided by the employer. William Nickles demonstrated the ability to function in the Medium Physical Demand Category, according to the US Department of Labor.

William Nickles demonstrated the ability to occasionally lift up to 35 lbs. Floor to Waist, 35 lbs. Floor to Shoulder, 30 lbs. Waist to Shoulder, carry up to 45 lbs. bilaterally, push 80 lbs. of force, and pull 95 lbs of force. For positional tolerance see the chart on page 2. William Nickles completed a single stage treadmill test at 3.0 mph and 5% grade. This was sufficient to predict William Nickles's functional aerobic capacity at 4.44 METS for an 8 hour time period.

Potential Physical Barriers to Return to Work as a Lead Line Operator for Prysmian Cable include: decreased walking endurance, decreased muscular strength, decreased lifting ability, and decreased carrying tolerance.

The claimant reported a pre-test pain level of 3 on a 0- 10 scale and a post-test pain level of 3 on the same scale. The pre and post-test pain diagrams were similar with no exceptions. This was considered when reporting ability ratings, particularly walking, lifting, carrying, and overhead reaching which the claimant reported to increase his pain.

William Nickles demonstrated moderate signs of consistency and lacked observable signs of exertion throughout the evaluation. This, in combination

(Select PT FCE cont'd)

with physiological responses (heart rate and respiratory rate), movement and muscle recruitment patterns both aware and unaware of observation, The capabilities outlined would be considered to be William Nickles's minimal functional ability level.

Positional tolerance:

Sit – Constant
Stand – Frequent
Walk – Occasional
Climb Stairs – Occasional
Climb Ladders – Occasional
Reach Desk Level – Frequent
Reach Overhead – Occasional
Reach Floor Level – Frequent
Balance – Frequent
Stoop – Occasional
Kneel – Occasional
Crouch – Occasional
Crawl – Occasional

- 12-12-19 Charles D. Gray, MD follow-up:
"... He is had a functional capacity evaluation and this is on chart. It reveals that he is not able to return to the level work he was performing prior to his multiples injuries..."
- 12-19-19 Charles D. Gray, MD 14B
- 01-06-20 *Charles Christopher Kanos, MD, evaluation*
"Patient is a 53-year-old male states he was injured several months ago during a work-related accident. A large piece of cable struck him on the right side of his neck. He suffered other injuries including a left lower extremity fracture. He also suffered a right shoulder injury that required surgery. He complains of constant paresthesias in his bilateral arms into his hands. Denies any weakness. He states he has had physical therapy...

In regards to his neck, he doesn't have any restrictions"

- 01-08-20 Garber PT FCE:

CONCLUSION

The results of this evaluation indicate that William Nickles is capable of functioning at a Medium Level of work based on his material handling performance. He tolerated desk level reaching on a constant basis. He tolerated sitting, standing, walking, partial squatting, stair climbing, and overhead reaching on a frequent basis. He tolerated ladder climbing, floor-level reaching, stooping (bending), balancing, kneeling, crouching, and crawling on an occasional basis. The client demonstrated both upper extremity object handling, fingering, simple and firm grasping, and

(Garber FCE cont'd)

fine/gross manipulation on a constant basis. He demonstrated consistency of performance on all consistency tests pertaining to gripping and pinching (see page 10). A summary list of his performance is found on page 3 of this report...

Physical Abilities Assessment (PAA)

Material Handling:	Occasional (0 – 33%)
Floor to Waist	50 lbs.
Lift – Waist to Shld	35 lbs.
Lift – 12-inch to waist	50 lbs
Lift – Shoulder to Overhead	25 lbs
Carry – Bimanual	60 lbs.
Push (static)	140 lbs
Pull (static)	79 lbs

Positional Tolerance:	Frequency
Sit (static)	Frequent
Stand (dynamic)	Frequent
Walk (level surfaces)	Frequent
Climb Stairs	Frequent
Climb Ladders	Occasional
Reach Forward (desk level)	Constant
Reach Overhead	Frequent
Reach Floor Level	Occasional
Balance	Occasional
Stoop (Bend)	Occasional
Kneel (Full-tall)	Occasional
Crouch (Squat)	Frequent
Crawl	Occasional

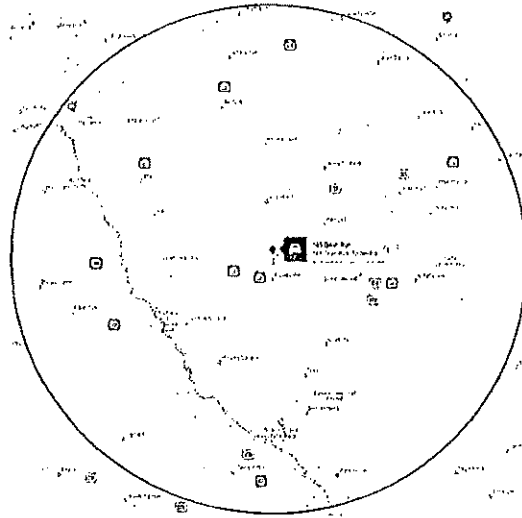
06-15-20 Brandon Scott, FNP-C, follow up: "psoriasis"

Adjusted vocational profile

The two functional capacity evaluations outlined above are similar in terms of Mr. Nickles' work capacities. He is classified in a "medium" strength category based on the U.S. Department of Labor categories of strength, although he is not able to fulfill the full requirements of "medium" work. Both FCEs reveal postural limitations, including "occasional" stooping. Utilizing both FCEs Mr. Nickles is unable to resume his employment at Prysmian. He is unable to resume employment as an extruder operator, carpenter, material handler, greens keeper, or pest control worker. He is able to resume alternative employment within the Production occupational group.

Labor Market Survey (updated August 2023)

An updated labor market survey was conducted using the South Carolina Department of Employment and Workforce (SCWorks.org). The map on the right shows the approximate geographical area available to Mr. Nickles.



Summary of labor market survey

Occupational Group: Production

Total jobs reviewed: 200

Vocational Analysis and Conclusions

Mr. Nickles is a 53-year-old former

Prysmian production worker who was working on November 10, 2018 when a cable fell on him, striking him in the right side of his head and right shoulder, knocking him to the ground. He sustained fractures to his right lower extremities, dental injuries and a right shoulder injury. He was transported to Self Regional emergency department where he was treated and released. He followed up with Dr. Gray and underwent surgery to stabilize his fractures. He underwent right shoulder surgery with Dr. Gray on May 17, 2019.

Mr. Nickles underwent a Select PT WorkStrategies FCE on November 5, 2019. The evaluator concluded that Mr. Nickles was functioning in a "medium" strength category based on a maximum occasional lifting capacity of 35 pounds. He was limited to "occasional" stair climbing, ladder climbing, walking, overhead reaching, stooping, kneeling, crouching and crawling. Mr. Nickles returned to Dr. Gray on December 12, 2019. Dr. Gray provided the following statement in his office note: "... He is had a functional capacity evaluation and this is on chart. It reveals that he is not able to return to the level work he was performing prior to his multiples injuries..."

Mr. Nickles participated in a Garber FCE on January 8, 2020. The results of this FCE were similar to the previous FCE, with some differences in lifting and postural abilities. He was classified in a "medium" strength category based on a maximum occasional lifting capacity of 50 pounds. He was limited to 35 pounds from waist to shoulder occasionally, and 25 pounds from shoulder to overhead occasionally. For additional report details, please refer to the "Review of Records" section of this report.

Mr. Nickles began working at Prysmian in January of 2015. He operated an extrusion process used to cover cable with insulation. He crawled, climbed and lifted over 75 pounds. He regulated the heat and speed of the machine in order to meet the specifications. He used cutters and impact wrenches. This work is classified as "heavy" in physical demands based on his description of the work. In the past he worked as an extruder operator, forklift operator, and shipping manager. He worked as a carpenter for

4 years, performing residential installations and renovation work including roof installation. He worked at Thorneblade, operating machines and performing other tasks related to bunker renovation. He worked in the pest control industry, selling contracts and performing service work. Mr. Nickles' past relevant work ranges from "light" to "heavy" in physical demands. His past relevant work ranges from "semi-skilled" to "skilled". In the distant past he worked as a chemical salesman, assistant golf course superintendent and truck driver.

Positive factors in Mr. Nickles' vocational profile include his work experience in manufacturing jobs; the ability to engage in "medium" employment; possession of basic computer skills; and academic test results indicating "average" to "high average" abilities. Negative factors in his profile include the inability to engage in employment that exceeds a "medium" level; postural limitations, as outlined in both FCEs; and ongoing symptoms impacting the performance of his daily activities.

Mr. Nickles is unable to resume employment in his occupation at Prysmian. He is unable to resume past employment as an extruder operator, carpenter, material handler, greens keeper, or pest control worker. Given his "medium" residual strength capacity, he retains the ability to work in jobs found in the Production occupational group.

Updated market analysis

A labor market survey was conducted using the South Carolina Department of Labor and Workforce database (SCWorks.org) involving a review of 200 jobs within the Production occupational group. This review revealed that many of the remaining jobs in his area exceed his lifting and postural capabilities. These jobs frequently list a 50-pound lifting requirement, as well as a constant standing and walking requirement. Mr. Nickles would not be able to meet these requirements. However, residual employment was identified that is compatible with Mr. Nickles' vocational profile.

In order to quantify Mr. Nickles' current earnings capacity, the Bureau of Labor Statistics OEWS wage data was consulted. The transferable skills analysis identified the following OEWS-SOC occupational group: Shipping, Receiving and Inventory Clerks (43-5071). Mr. Nickles' access to jobs within this occupational group is reduced due to his lifting and postural limitations. The factors that reduce the quality and quantity of jobs to which he has access include his limited lifting capabilities, as well as the postural limitations outlined in the functional capacity evaluations. His documented standing and walking limitations significantly reduce his access to jobs in his labor market. Therefore, Mr. Nickles earnings are best represented by the 10th and 25th percentile of reported earnings as reported by the Bureau of Labor Statistics, May 2022. This estimate places Mr. Nickles' earnings capacity within a range of **\$12.50 hourly (\$26,010 annually)** and **\$14.66 hourly (\$30,480 annually)**.

Pre-injury earnings capacity. Mr. Nickles reported that he was earning \$21 hourly, with access to overtime, prior to his accident. His 2016 tax return documents annual earnings of \$47,163. This data should be used to determine his pre-injury earnings capacity. His loss of earnings capacity began at the time of his accident.

William Franklin Nickles, IV
Vocational Assessment - Addendum

Post-injury earnings capacity. As of December 12, 2019 Mr. Nickles was released to work based on the FCE of 11-05-19, at which time he was capable of reduced earnings of approximately \$10 hourly, or \$20,800 annually. Based on the updated analysis, Mr. Nickles' post-earnings capacity currently falls within an approximate range of **\$26,010 and \$30,480 annually**. These conclusions are provided with a reasonable degree of vocational probability.

Thank you for this referral to Adams & Wilkinson.



Glen K. Adams, MRC, CRC, CEES, CCM
Vocational Consultant

References

- Bast, S., Williams, J.M., & Dunn, P.L. (2002). The Classic Model of Transferability of Work Skills: Issues Affecting the Accurate Assessment of Future Vocational Options in Earnings Capacity Assessment. *Journal of Forensic Vocational Analysis*, 5, 15-28.
- Darling, W.T., Growick, B.S., & Kontosh, L.G. (2002). Transferable Skills Analysis in Rehabilitation: Issues in definition and application. *Journal of Vocational Rehabilitation* 17, 217-224.
- Dunn, P.L. & Kontosh, L.G. (2002). Understanding Transferability and Occupational Classifications: Implications for vocational forensics. *Journal of Forensic Vocational Analysis*, 5, 41-48.
- Field, T.F. (1999). Strategies for the rehabilitation consultant: Transferability, loss of employment, lost earning capacity, Damages. Athens, GA: Elliott & Fitzpatrick.
- Field, T. (2002). Transferable Skills Analysis: A Common Sense Approach. *Journal of Forensic Vocational Analysis*, Vol. 5, p. 29-40, 2002
- Gibson, G.G., Earhart, J.H., and Lento, P.J. (2002). Toward a Foundation for Determining Loss of Earning Capacity: Transferability of Skills Definition, Method, and Application. *Journal of Forensic Vocational Analysis* 5, 5-14.
- Truthan, J.A. & Karman, S.E. (2003). Transferable Skills Analysis and Vocational Information During a Time of Transition. *Journal of Forensic Vocational Analysis*, June, 2003, 6 (1).
- U.S. Department of Labor. (1991a). Dictionary of Occupational Titles (4th ed. revised). Washington, D.C.: US Government Printing Office.
- U.S. Department of Labor. (1991b). The Revised Handbook for Analyzing Jobs. Washington, D.C.: US Government Printing Office.



August 21, 2023

Thomas E. Hite, III, Attorney at Law
Address Hite & Stone
100 E. Pickens Street
Abbeville, SC

Re: William F. Nickles, IV v. Howar Equipment, Inc., Sonoco Products Company,
Palmetto State Transportation, LLC, KSC Logistics, Inc., and John Doe
Corporation

Dear Attorney Hite,

As you know, I submitted a Vocational Assessment report regarding Mr. Nickles' current earnings capacity on August 9, 2023. This letter is in response to a review of additional records that I received from your office after I rendered that report.

Among those records is a report from Robert Blake Fugatt, Jr., MD dated January 7, 2023. Dr. Fugatt examined Mr. Nickles in the context of Mr. Nickles' application for Social Security Disability benefits. Dr. Fugatt addressed Ms. Nickles' work accident that occurred at Prysmian in detail. Dr. Fugatt provided the following assessment in his report:

"Based on today's consultation and the objective evidence, I believe the claimant:

- Can sit without significant problems but has difficulty with prolonged walking and standing due to above mentioned left foot/ankle/leg injury, surgery, pain, and decreased range of motion.
- Can balance without problems, but has difficulty standing on left foot due to pain.
- Has some difficulty with bending.
- May have difficulty with lifting and carrying heavy objects.
- Cannot forward and overhead reach with L hand.
- Has normal fine and gross motor movements with both hands.
- Can hold a conversation, respond appropriately to questions, carry out and remember instructions."

Given these new medical opinions regarding Mr. Nickles' functional disabilities, a new analysis of his earnings capacity is warranted.

The following Physical Demand Factors definitions are provided by the U.S. Department of Labor and are generally accepted definitions in the field of vocational assessment. A review of these definitions is necessary in order to place Dr. Fugatt's work statements context.

Sedentary Work

Exerting up to 10 pounds of force occasionally, or a negligible amount of force frequently to lift, carry, push, pull, or move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are Sedentary if walking and standing are required only occasionally and all other Sedentary criteria are met.

Light Work

Exerting up to 20 pounds of force occasionally or up to 10 pounds of force frequently, or a negligible amount of force constantly to move objects. Physical demand requirements are in excess of those for Sedentary work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking and standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing or pulling of arm or leg controls; or (3) when the job requires working at a production rate pace entailing the constant pushing or pulling of materials even though the weight of those materials is negligible. NOTE: The constant stress and strain of maintaining a production rate pace, especially in an industrial setting, can be and is physically demanding of a worker even though the amount of force exerted is negligible.

Given Mr. Nickles' difficulty with prolonged standing and walking, he is unable to engage in any of the occupations listed in my previous report. The inability to forward and overhead reach with the left hand is a significantly limiting factor. The additional limitations outlined by Dr. Fugatt further reduce and eliminate Mr. Nickles' access to any remaining employment. The limitations assigned by Dr. Fugatt are consistent with "sedentary" employment with additional restrictions as outlined in the report.

A new transferable skills analysis was conducted using OASYS based on Dr. Fugatt's work statements. No occupations were identified through this analysis. It is also noted that the previous work restrictions were provided on January 8, 2020 (Garber FCE). Dr. Fugatt's medical statements are considered to be more timely and relevant due to the time that has lapsed.

Given the new medical opinions provided by Dr. Fugatt, Mr. Nickles is unable to access any of the occupations suggested in my previous Vocational Assessment report. He is unable to meet the demands of any remaining employment that exists in his labor market. Mr. Nickles has incurred a total loss of access to the competitive labor market based on Dr. Fugatt's opinions. He has incurred a total loss of earnings ability. He is classified as **totally vocationally disabled** as a result of injuries sustained on November 10, 2018 while working at Prysmian Cables & Systems. These opinions and conclusions are provided with a reasonable degree of vocational probability.

Sincerely,



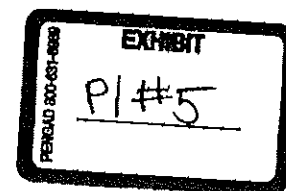
Glen K. Adams, MRC, CRC, CEES, CCM
Vocational Consultant

PRELIMINARY
APPRAISAL OF FINANCIAL LOSS
DUE TO INJURY
TO
MR. WILLIAM F. NICKLES IV

Prepared
for
Mr. Thomas E. Hite III
Attorney at Law

Prepared
by
Oliver G. Wood, Jr., Ph.D.
Andrew O. Wood, J.D., MPAcc

September 8, 2023



Mr. William F. Nickles IV sustained a financial loss because of his injury on November 10, 2018. The elements of loss considered in this preliminary report are earning capacity and personal services. Each element is appraised for the before- and after-trial periods with the after-trial losses discounted to present value as of December 4, 2023.

Mr. Nickles was born on March 14, 1966, and was 52.66 years old at the time of injury. According to South Carolina Code Section 19-1-150, his life expectancy was an additional 26.52 years to age 79.18 on 2045.38. Before he was injured, Mr. Nickles had no reason to expect less than a normal life expectancy. According to Mr. Nickles, he intended to work to age 67 (his normal Social Security retirement age).

FACTS TAKEN INTO CONSIDERATION

At the time of injury, Mr. Nickles was employed as an 88 Wire Server Operator with Prysmian Cables and Systems (Prysmian) in Abbeville, South Carolina. He began employment Prysmian in January 2015. According to Mr. Nickles, he has not worked since his injury. According to Mr. Nickles, at the time of injury, his average weekly wage was \$980.52. On an annualized basis, this equated to \$50,987.

According to Mr. Nickles, as an employee of Prysmian, he was a member of the company's 401(k) plan and contributed approximately 6 percent of his annual income to the plan. According to Mr. Nickles, the company's matching contribution was approximately 6 percent of his annual income.

Glen Adams, MRC, CRC, CEES, CCM, evaluated Mr. Nickles' after-injury earning capacity. According to Mr. Adams, with respect to after-injury earning capacity, Mr. Nickles "is unable to meet the demands of any remaining employment in his labor market. Mr.

Nickles has incurred a total loss of access to the competitive labor market based on Dr. Fugatt's opinions. He has incurred a total loss of earning ability. He is classified as totally vocationally disabled as a result of injuries sustained on November 10, 2018."

According to Mr. Adams' report dated August 9, 2023, "Mr. Nickles currently experiences left ankle pain continuously. Over the previous 30 days, the pain ranged from 3/10 -- 10/10. He continues to experience swelling. He continues to experience right shoulder pain, stating that reaching behind is bad. Over the previous 30 days, the pain ranged from 3/10 -- 10/10. His lumbar pain is currently rated at 8/10 after taking Motrin. Over the previous 30 days, the pain ranged from 2/10 -- 10/10. He lies down on the couch or recliner all day on some days. This last occurred 3 -- 4 weeks ago. He also experiences some cervical problems."

LOSS IN EARNING CAPACITY

For purposes of this report, it is assumed that Mr. Nickles' annualized average weekly wage of \$50,987 (in 2018 dollars) is a reasonable measure of his before-injury earning capacity. For purposes of this report, it is assumed that because of his injury, Mr. Nickles is unemployable in the competitive labor market.

The before-trial loss in earning capacity is \$258,504. The before-trial loss in employer contributions to the 401(k) plan is \$15,510. The before-trial total loss in earning capacity is \$274,015. The present value of the after-trial loss in earning capacity is \$419,533. The present value of the after-trial loss in employer contributions to the 401(k) plan is \$25,172. The present value of the total after-trial loss in earning capacity is \$444,705.

LOSS IN PERSONAL SERVICES

Before he was injured, Mr. Nickles performed an average of 10 hours per week of personal services. He performed personal services including cooking, washing dishes, laundry, vacuuming, general household cleaning, grocery shopping, and lawn and yard care. According to Mr. Nickles, for approximately 1½ years after he was injured, he was unable to perform any personal services. Since approximately May 11, 2020, he has been able to perform about 7 hours per week of personal services. This creates a net loss of 3 hours per week of personal services.

The loss in personal services is appraised on a current basis at \$12 per hour. The before-trial loss in personal services is \$13,364. The present value of the after-trial loss in personal services is \$26,883.

TOTAL FINANCIAL LOSS

The present value of the total financial loss is \$758,967. Elements of this loss are contained in Exhibit 1. This report does not contain an evaluation of past or future medical care costs. This report is subject to revision to reflect any additional information that may become available.

Quinn E. Wood Jr.

Andrew Q. Wood

9/8/23

Exhibit 1

Present Value of Total Financial Loss

	Before-Trial Loss	After-Trial Loss	Total Financial Loss
Earning Capacity	\$258,504	\$419,533	\$678,037
Employer Contrib. to 401(k) plan @ 6%	15,510	25,172	40,682
Loss in Earning Capacity	274,015	444,705	718,720
Personal Services	13,364	26,883	40,247
Total Financial Loss	\$287,379	\$471,588	\$758,967

CHART 1
BEFORE-TRIAL LOSS
(11/11/18 - 12/18/23 = 5.10 YEARS)

Earning Capacity		
2018 (11/11 - 12/31)	\$7,138	
2019	50,987	
2020	50,987	
2021	50,987	
2022	50,987	
2023 (01/01 - 12/18)	48,948	
Subtotal		\$260,034
Plus: Employer Contrib. to 401(k) plan @ 6%		
		15,602
Loss in Earning Capacity		275,636
Personal Services		
		<u>Hours lost per week:</u>
2018 (11/11 - 12/31)	630	10.00
2019	5,000	10.00
2020 (01/01 - 05/10)	1,800	10.00
2020 (05/11 - 12/31)	960	3.00
2021	1,500	3.00
2022	1,800	3.00
2023 (01/01 - 12/18)	1,728	3.00
Loss in Personal Services		13,418
Total Before-Trial Loss		\$289,054

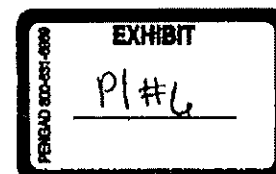


CHART 2
PRESENT VALUE OF AFTER-TRIAL LOSS IN
EARNING CAPACITY
(12/19/23 TO WORK-LIFE EXPECTANCY
AT AGE 67 ON 2033.20 = 9.24 YEARS)

Year Ending	Annual Amount	Discounted to Present Value
2024.96	\$50,987	\$48,559
2025.96	52,608	47,717
2026.96	54,281	46,890
2027.96	56,008	46,078
2028.96	57,789	45,279
2029.96	59,626	44,494
2030.96	61,522	43,723
2031.96	63,479	42,965
2032.96	65,497	42,220
2033.20	16,219	10,333
Totals	\$538,016	\$418,258

CHART 3
PRESENT VALUE OF AFTER-TRIAL LOSS
(12/19/23 - LIFE EXPECTANCY AT AGE 79.18
ON 2045.38 = 21.42 YEARS)

Earning Capacity	\$418,258
Employer Contrib. to 401(k) plan @ 6%	<u>25,095</u>
Loss in Earning Capacity	\$443,353
Personal Services	<u>26,861</u>
Total After-Trial Loss	<u>\$470,214</u>

CHART 4
TOTAL FINANCIAL LOSS
(11/11/18 - LIFE EXPECTANCY AT AGE 79.18
ON 2045.38 = 26.52 YEARS)

Before-Trial Loss	\$289,054
After-Trial Loss	<u>470,214</u>
Total Financial Loss	<u>\$759,268</u>

RECEIPT FOR EXHIBITS

CASE NO.: 2021-CP-01-00076 JUDGE Donald Hocker
 PLAINTIFF: William Nickles IV PLTF'S. ATTY. Tombo Hite
 DEFENDANT: Palmetto State Transportation DEF'S. ATTY. Charles Daniel Atkins
 DATE TRIAL STARTED: 12/18/2023 DATE TRIAL ENDED: 12/18/2023
 Received of Tara T. Scott, Court Reporter for the above case,

these exhibits:

	This space for Clerk of Court's use
1. <u>P1#1 Photos</u>	
2. <u>P1#2 Medical Summary</u>	
3. <u>P1#3 Voc assessment</u>	
4. <u>P1#4 Financial Loss</u>	
5. <u>P1#5 Financial Loss</u>	
6. <u>P1#6 Chart (Loss)</u>	
7. _____	
8. _____	
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20. _____	

This 18th day of December, 2023

Page 01 of 01

ABBEVILLE COUNTY CLERK OF COURT

By: Shandal Boggs

THE CLERK OF COURT WILL RETAIN THE WHITE COPY OF THIS RECEIPT IN CIVIL CASES.

THE CLERK OF COURT WILL RETAIN THE PINK COPY OF THIS RECEIPT IN CRIMINAL CASES.

1 State of South Carolina)
 2 County of Abbeville)
 3
 4 William F. Nickles IV,)
)
 5 Plaintiff,)
)
 6 vs.)
)
 7 KSC Logistics, Inc.,)
 et al.,)
 8)
)
 Defendant.)

10 January 30, 2024
 11 Laurens, South Carolina
 Via WebEx Video Conferencing

12 B E F O R E:

13 The Honorable Donald B. Hocker, Judge

15 A P P E A R A N C E S:

16 Thomas E. Hite III, Esquire
 On behalf of the Plaintiff

17 C. Daniel Atkinson, Esquire
 18 On behalf of KSC Logistics, Inc.

20 Stacy S. Johnson
 Circuit Court Reporter

1	<u>I N D E X</u>	
2		PAGE
3	Certificate of Reporter	15
4		
5	<u>E X H I B I T S</u>	
6	**NO EXHIBITS WERE INTRODUCED**	
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1 (The following proceedings were held January 30,
2 2024, beginning at 10:59 AM.)

3 THE COURT: All right. Let me go ahead and call
4 the case and we will get -- get started.

5 We're on the record this morning in the case of
6 William F. Nickles IV versus KSC Logistics, Inc., and
7 others. The Case Number is 2021-CP-01-00076. Tombo Hite
8 represents the plaintiff. KSC Logistics is represented
9 by Dan Atkinson.

10 And, Mr. Atkinson, this is your motion to set aside
11 entry of default. I have reviewed your -- your motion
12 and the attached affidavit, as well as the memorandum in
13 opposition from the -- from the plaintiff.

14 I'm glad to hear from you first, Mr. Atkinson.

15 MR. ATKINSON: Your Honor, thank you.

16 And I submitted a brief yesterday. I know you
17 probably hadn't had time to review it, but -- but it is
18 in the record.

19 THE COURT: Okay. And I have not -- I've not seen
20 that, but certainly will take a look at it after the
21 hearing.

22 MR. ATKINSON: Sure. And it is brief. It's not --
23 it's not a lengthy one.

24 Your Honor, the standard for this motion is -- is
25 pretty inherently discretionary of the Court and we

1 believe the totality of the circumstances establish
2 good cause to set aside default.

3 I go through the chronology of the filings with
4 the Court in the brief, but I will cover what I think
5 are the most relevant ones right now just for the Court's
6 consideration.

7 What is at issue is an amended complaint that was
8 filed in this case in November of 2021, the day before
9 the statute ran, which added new claims against KSC
10 Logistics.

11 By way of reference, Your Honor, KSC Logistics was
12 originally a party in the case and they were dismissed
13 without appearing, without any action taken, and then the
14 remaining defendant filed a consent with the plaintiff
15 for an amended complaint to be filed in November of 2021.

16 Your Honor, the affidavit in the case states that
17 KSC Logistics's president, a man named Chuck -- William
18 Ray Kelley, but he goes by Chuck, spoke with counsel for
19 plaintiff after that and left with the understanding that
20 further action would not be taken. I don't have more
21 detail than that because that's his memory of the
22 conversation.

23 Your Honor, what happened then is an affidavit of
24 default was filed and a damages hearing was set for
25 April 8th of 2022. Judge Griffith signed an order of

1 continuance, which is in the court record, on that date
2 stating based on the representation of plaintiff that,
3 quote, plaintiff needs more time to properly serve the
4 pro se defendant, KSC Logistics, with notice of the
5 hearing. Again, that is April of 2022.

6 KSC Logistics didn't get any notice of anything in
7 this case until November 21, 2023, after which they went
8 to their carrier, who immediately retained counsel, and,
9 Your Honor, I filed the motion to set aside the entry of
10 default on December 7th, shortly after being retained and
11 given the information necessary to file it.

12 The -- the standard, as I'm sure the Court is well
13 aware, is good cause, and the question is what's the good
14 cause here. And the cases cited by plaintiff sort of
15 focus on one of the issues, but I think, Your Honor, you
16 have to look at the whole universe of what happened in
17 this case to evaluate whether -- whether there is good
18 cause; the first being that there is what I would call
19 a sua sponte dismissal of the case originally against
20 KSC Logistics, which created some understanding with
21 KSC Logistics as to what was going on. So KSC Logistics
22 was a party and was dismissed within the case.

23 When the claim was re-added with an amended
24 complaint, KSC Logistics's CEO spoke to counsel for the
25 plaintiff and had an understanding it was not moving

1 forward and never received any further communication
2 from plaintiff or the Court regarding this case until
3 November of 2023, shortly after which it took action.

4 Mr. Hite has put in a document that he disputes the
5 testimony of Mr. Kelley that there was no work done by
6 KSC Logistics in the high voltage area of the plant. I
7 just received that document and reviewed it and, Your
8 Honor, I don't have any comment on it other than --
9 because I had not seen the document before today, other
10 than to say the terms and conditions attached to that
11 document filed state that any item on which KSC Logistics
12 had done work would have an order number from KSC
13 Logistics on the reel. I haven't seen any evidence of
14 that order number stamped on the reel at issue.

15 KSC Logistics is adamant they did not work on this
16 reel. That's the only way they are hooked in. I have
17 not seen anything establishing that they did work on
18 the reel. The arguments I'm seeing are they had to do
19 it because nobody -- we can't prove nobody else did.

20 Your Honor, that's res ipsa. That's not the law
21 in South Carolina. So I think the totality of the
22 circumstances establishes good cause and then we go
23 into the Wham versus Shearson Lehman factors, and
24 obviously the first one is there was a long delay before
25 KSC took action, but I think the plaintiff has to bear

1 part of the fault for that delay because they sought a
2 continuance -- continuance in April of '22 to give notice
3 to KSC Logistics, which they didn't give until November
4 of 2023.

5 So, Your Honor, I think that nineteen months can't
6 really count against KSC Logistics when they didn't get
7 the notice it was represented that they would receive.
8 If we take it back from that, we're at about a five-month
9 period, which I think is reasonable.

10 Your Honor, the meritorious defense, KSC Logistics
11 has said they didn't do the work on this reel at issue.
12 That's the entire hook for them being in there. It
13 wasn't one that they manufacture. If they did work, it
14 was a repair and, Your Honor, I don't think the facts
15 show they did a repair because I haven't see anything
16 showing that their order number is stamped on that reel.

17 Your Honor, the third consideration is prejudice and
18 I've reviewed the plaintiff's brief and the prejudice
19 argued is that it will a long time until they get paid.

20 Your Honor, we will defend this expeditiously,
21 but there was a damages hearing set in April of 2022
22 that got continued and nothing happened at that time.
23 That's not KSC Logistics's fault. I haven't seen any
24 allegation that any witnesses are dead or that anybody
25 who is relevant to this case is unavailable to provide

1 testimony, and what we seek merely is a decision on the
2 merits. We're not seeking that the case be cast out or
3 that plaintiff not be allowed to recover, if they're
4 entitled to recover. What we're seeking and what we hope
5 the Court will provide is an opportunity to determine
6 whether KSC did this work and, if so, we'll answer
7 accordingly and pay any judgment that's entered.

8 THE COURT: Thank you very much.

9 Mr. Hite, before I hear from your -- on your
10 argument, the communication that you had with the
11 president or CEO of KSC Logistics was just one
12 communication, correct? A phone call.

13 MR. HITE: Yes, and -- a phone call and -- and I
14 saw him at a Mexican restaurant, Marie's, here in -- in
15 town --

16 THE COURT: Okay.

17 MR. HITE: -- and there -- so there were two total
18 communications, but, yes, sir.

19 THE COURT: All right. And that was the
20 communication -- the phone communication was as a
21 result of the service of the initial complaint and not
22 the amended complaint?

23 MR. HITE: Correct.

24 THE COURT: Is that correct?

25 MR. HITE: That's correct.

1 THE COURT: Okay. So you talked with them -- got
2 served, you talked with them, you let them out of the
3 case, and then through whatever means you felt like
4 you needed to bring them back in, you brought them back
5 in, had them served, but no communication after that,
6 correct?

7 MR. HITE: That's my -- yes, sir. That's correct.

8 THE COURT: Okay. All right. I'll be glad to hear
9 from you.

10 MR. HITE: Yes, sir. And I was just -- as it
11 relates to that, I think Mr. Kelley is -- is confused
12 as to when those conversations took place. I saw him
13 at the -- at the Mexican restaurant and said Chuck, you
14 need to be -- you need to pass this along. I don't --
15 you know, I can't give you legal advice, you need to
16 pass this along, and he said well, I didn't have anything
17 to do with that, I'll call you and let you know about it.
18 So he called me and said I didn't have anything to do
19 with high voltage reels. I said I'll let you out, but
20 if I -- if I find out anything else because my client
21 believes that they were involved, but he said if -- I
22 said if I find anything out that you-all were involved
23 with the high voltage reels around this period of time,
24 then I'm gonna have to bring you back in, and he said
25 okay.

1 And -- and, you know, there's case law -- there's
2 cases upon cases that a misunderstanding of the law or
3 a -- an oversight is not enough of a standard to reach
4 good cause. There's a case Limehouse versus Hulsey where
5 an attorney misunderstands a timeline -- or a deadline,
6 and that's not even good enough good cause.

7 There's cases where the complaints go back and
8 forth. Campbell versus the City of North Charleston
9 where the City holds the complaint for a little while,
10 then they pass it off to an insurance agent, then they
11 pass it off to another insurance agent, and during all
12 of these times none of those show any kind of form of
13 good cause where people just kind of forget.

14 Now as it relates to the timing of this situation,
15 what's most relevant and what's most important is I had
16 two viable claims which remained against valid defendants.
17 They were valid defendants that also did some -- some
18 work on the reels out at Prysmian and also could have
19 manufactured this particular reel, and I had those claims
20 open so I couldn't go have a damages hearing that would
21 allocate some amount of damages related to KSC until I
22 resolved the cases or the claims against the defendants
23 that were in the -- in the litigation.

24 What -- how KSC has benefited and how my client
25 is prejudiced is they have not participated in this

1 litigation. I've had to depose employees from Prysmian
2 and I've had to impose -- depose employees from Palmetto
3 State. We've gone through protracted discovery with
4 Palmetto State Transport, which they turned over
5 everything to us, and Prysmian produced only two
6 contractors did repairs and did transportation, only
7 two, and Palmetto State Transport was able to produce
8 witnesses that testified that they did not perform this
9 particular repair on reels for Prysmian. Therefore, the
10 only other potential repair defendant that's responsible
11 for this case is KSC. Not to mention what I've just
12 provided is Mr. Kelley saying that they did not deal in
13 high voltage reels or weren't working on reels out there
14 at the time. When Prysmian submitted their evidence, it
15 was obviously in contradiction to what Mr. Kelley said.

16 So for him to be able to basically not participate
17 in the litigation of the case for over two years now and
18 now say well, I would have -- I should be allowed to
19 participate because I just misunderstood what I was being
20 served with the second time is an extreme injustice to
21 my client, and that's why we believe that the good cause
22 standard has not been met and even if the good cause
23 standard is met, the Wham factors allow for us to -- for
24 the entry of default to remain and we believe that the
25 Court should rule that KSC is, in fact, in default and

1 that -- also rule on our damage hearing that we had, I
2 believe, right before Christmas, Your Honor.

3 THE COURT: Okay.

4 All right. Thank you, Mr. Hite.

5 Mr. Atkinson, anything in brief response to
6 plaintiff's argument?

7 MR. ATKINSON: Briefly, Your Honor.

8 If the notice had been sent in April when the
9 Court issued the order saying we're gonna schedule this
10 for the next term of court, KSC would have appeared and
11 participated in discovery. It didn't happen. KSC got
12 nothing in the mail or any other kind of notice from
13 the time the complaint was filed until November of 2023,
14 and I don't think they can be put at fault for not
15 getting -- not acting on something they didn't get.

16 Again, it's the totality and we ask you to look at
17 the totality.

18 Thanks, Your Honor.

19 THE COURT: All right. Thank you very much.

20 I will take it under advisement so I can take a
21 look at your brief, Mr. Atkinson.

22 And, Mr. Hite, did you recently file something? I
23 think maybe an affidavit or something?

24 MR. HITE: Yeah, I -- for the record, Judge, I
25 reviewed Mr. Atkinson's memo this morning and I called

1 my process server. There's a -- there's a specific
2 mention to the -- on his service -- on his affidavit
3 of service that he said summons and complaint and not
4 an amended summons and complaint, and he's on -- he's
5 in Florence on his way back from the beach, so he
6 couldn't sign an affidavit, so my paralegal signed an
7 affidavit just saying that I know for a fact it was
8 the amended summons and complaint that he was served
9 with in December of '21.

10 THE COURT: Okay.

11 MR. HITE: And I can provide that if the Court --
12 I can try Mr. Reece to provide an affidavit after he
13 comes back, and that's soon.

14 THE COURT: Okay. Mr. Atkinson, I don't really
15 think you dispute that the second service was the
16 amended summons and complaint and not the original?

17 MR. ATKINSON: Your Honor, I referenced that the
18 affidavit said summons and complaint and that we were
19 not served with what we were served with, so I -- I don't
20 dispute it. I don't know that it was is how I would say
21 that, Your Honor.

22 THE COURT: Okay. All right. Very good.

23 All right. Thank you, guys. I appreciate you-all's
24 hard work and try to let you know something as soon as
25 possible.

1 MR. ATKINSON: Thank you, Judge.

2 MR. HITE: Thank you, Your Honor.

3 THE COURT: Thank you. You-all have a good rest of
4 your day.

5 MR. HITE: Thank you.

6 (Whereupon, the proceedings were concluded at
7 11:13 AM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete transcript of record of all
the proceedings had and the evidence introduced in the
hearing of the captioned case in Circuit Court on the
30th day of January, 2024, via WebEx Videoconferencing,
and transcribed by me to the best of my ability.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.
This transcript may also contain transmission
interruptions and/or technical difficulties and
inaudible or unintelligible indications due to being
conducted remotely via videoconferencing.

I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

October 14, 2024

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

State of South Carolina)
) Court of Common Pleas
County of Abbeville)

2021-CP-01-00076

William F. Nickles, IV)
) vs.) Transcript of Record
)
)
KSC Logistics, Inc.)
) Defendant)

May 30, 2024
Abbeville, South Carolina
(Heard in Laurens, S.C.)

B E F O R E:

Honorable Donald B. Hocker, Judge

A P P E A R A N C E S:

Thomas Hite, III, Esq.
Attorney for the Plaintiff

Charles Atkinson, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(DW) Chuck Kelley

Direct examination by Mr. Atkinson: 9
Cross-examination by Mr. Hite: 12
Redirect examination by Mr. Atkinson: 17

(DW) Cecil Talley

Direct examination by Mr. Atkinson: 19
Cross-examination by Mr. Hite: 21

Certificate of Reporter 34

E X H I B I T SPlaintiff's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Affidavit		X	15

Defendant's

1	Emails		X	8
2	Purchase Order		X	19

1 THE COURT: We are on the record this morning in the
2 case of William Nickles versus KSC Logistics and others.
3 It is an Abbeville case. The case number is
4 2021-CP-01-00076. The matter before the Court on motion
5 of the Defendant, KSC Logistics, to offer, amend or in the
6 alternative provide for setoff. Tombo Hite is present
7 representing the Plaintiff. Dan Atkinson is present
8 representing the Defendant, KSC. I received, Mr. Hite,
9 you sent in late yesterday, maybe some materials which I
10 have not had an opportunity to take a look at. So I will
11 be taking this under advisement. What I would like for
12 each side to do, just highlight your respective positions
13 and then I will certainly review what Mr. Hite submitted.
14 I will go back over what you submitted, Mr. Atkinson, and
15 then issue a ruling in the case. Your motion, you can go
16 first.

17 MR. ATKINSON: Thank you, Your Honor. Again, Dan
18 Atkinson for KSC. Because of the date of submission of
19 the Plaintiff's opposition, documents, we were not able to
20 timely submit an affidavit on our position.

21 THE COURT: Sure.

22 MR. ATKINSON: I do have witnesses to testify in
23 response to the issues identified therein, Your Honor.

24 THE COURT: Okay. Alright. So you want to put those
25 up today in response to what Mr. Hite has?

1 MR. ATKINSON: Yes, Your Honor.

2 THE COURT: Alright. Okay. Or would it not be, I am
3 just trying to think through this a little bit. I don't
4 have a problem with giving you some additional time in
5 lieu of testimony to submit an affidavit in response to
6 what Mr. Hite has filed. What would be your preference?

7 MR. ATKINSON: The witnesses are here. Since they
8 are here I am happy to put them up and that will give Mr.
9 Hite an opportunity to cross-examine.

10 THE COURT: Alright. Mr. Hite.

11 MR. HITE: I don't believe that they are entitled to
12 have excess witnesses or witnesses provide testimony to
13 other items that weren't present at the time of the
14 initial hearing on the matter. This is a 59 and a 60
15 motion and really is only a 59 motion as it relates to the
16 setoff, for the amount of the judgment. And the reason
17 for that is the time period for a 59 has passed or did
18 pass off of the motion to set aside. So I don't think
19 there is new evidence that can be considered as it relates
20 to the order that set aside, that denied their set aside.

21 THE COURT: So let me, procedurally let's go back
22 over this a little bit. I issued an order at some point
23 in time denying Defense motion to set aside the default.

24 MR. ATKINSON: Correct, Your Honor.

25 THE COURT: We heard that in Abbeville. Just as a

1 matter of convenience, Mr. Atkinson, you allowed Mr. Hite
2 to go ahead and put up his evidence concerning damages if,
3 in fact, I were to deny your motion to set aside the
4 default. So I issued an order, an initial order denying
5 your motion to set aside the default and then we followed
6 up with a subsequent order where I ordered judgment in
7 favor of the Plaintiff against your client. Procedurally
8 is that kind of how things went?

9 MR. ATKINSON: That is correct, Your Honor.

10 THE COURT: And a motion to reconsider, set aside or
11 alter the first order denying your motion, set aside the
12 default was not filed. Correct?

13 MR. ATKINSON: That is correct, Your Honor.

14 THE COURT: So this motion before the Court is purely
15 concerning the order awarding judgment of \$900 thousand
16 plus. Correct?

17 MR. ATKINSON: Correct, Your Honor. Also Rule 60
18 motion on newly discovered evidence. That is what the
19 testimony would be on here today.

20 THE COURT: Alright. Okay.

21 MR. ATKINSON: If I may, Your Honor.

22 THE COURT: Sure, I am just making some notes just so
23 I am clear as far as what we are doing today.

24 MR. ATKINSON: Specifically, Your Honor, the issue is
25 how, the email was Exhibit A to my motion, was discovered

1 and when it was discovered because that was raised in
2 opposition to the Rule 60 motion, Your Honor.

3 THE COURT: Alright. What I want to do and I
4 understand your argument, Mr. Hite, I am going to allow
5 the witnesses to testify. And then I will give it, if I
6 decide not to give it any consideration or weight then I
7 will do it. If I find that there is some, something that
8 they say may be applicable to the motions then certainly I
9 would consider that too. You certainly, since they are
10 going to testify you have a right without waiving any of
11 your objections you certainly have a right to
12 cross-examine. I am going to go ahead and allow it since
13 they are here. Okay. So you want to go ahead and put up
14 your witness or witnesses first?

15 MR. ATKINSON: Yes, Your Honor.

16 THE COURT: Okay. Alright.

17 MR. ATKINSON: I call Chuck Kelley.

18 THE COURT: Come around, Mr. Kelley, and I will swear
19 you in once you get up to the witness stand.

20 MR. HITE: And, Your Honor, we will be noting for the
21 record my objection to this preserved.

22 THE COURT: Oh, sure.

23 MR. HITE: All witnesses related to this matter.

24 THE COURT: Exactly and the fact that if you decide
25 to cross-examine any of their witnesses you are not

1 waiving any of your objections or rights.

2 MR. HITE: Thank you, Your Honor.

3 THE COURT: Mr. Kelley, raise your right hand.

4 Chuck Kelley, being
5 first duly sworn, testified as follows:

6 MR. ATKINSON: Your Honor, a brief procedural
7 question. This is regarding Exhibit A to the motion.
8 Would you like to have it marked in the hearing or is it
9 fine to refer to it as Exhibit A as filed.

10 THE COURT: Since it is part of the file and I don't
11 think it necessarily needs to be made for part of this
12 record. It is in the file, it is there so I think we are
13 okay.

14 You know, what you might want to do just so we can
15 keep things straight, you may want to go ahead and have it
16 marked.

17 MR. ATKINSON: I will just mark it, Your Honor.

18 THE COURT: Let's go ahead and mark it just so we are
19 kind of straight on everything.

20 COURT REPORTER: That will be Defendant's 1.

21 (Whereupon, Defendant's Exhibit 1 was admitted into
22 evidence.)

23 MR. ATKINSON: Your Honor, this is my only copy so I
24 may need to approach the witness.

25 THE COURT: That is fine. And if we need to we can

1 make copies.

2 DIRECT EXAMINATION

3 By Mr. Atkinson:

4 Q Mr. Kelley, I have marked for the record today
5 Defendant's exhibit 1 which was marked as Exhibit A to
6 your affidavit which was filed on March 11, 2024. Exhibit
7 A to Brenda Nance's affidavit filed.

8 THE COURT: Exhibit A is what?

9 MR. ATKINSON: Exhibit A to Brenda Nance's affidavit
10 filed.

11 THE COURT: But it is Exhibit 1 for the Defense for
12 purposes of this hearing?

13 MR. ATKINSON: That's correct, Your Honor.

14 THE COURT: Alright. You may proceed.

15 Q Mr. Kelley, my question, first of all, can you state
16 your name for the record.

17 A William Ray Kelley.

18 Q And you go by Chuck?

19 A Correct.

20 Q And what is your position with KSC Logistics?

21 A I am the owner.

22 Q And what is the document that has been marked as
23 Exhibit 1?

24 A This is an email from an employee, Mr. Charles Ouzts
25 at Prysmian to, legal attorney for Prysmian; Brenda

1 Crocker which is my operations lady with a carbon copy to
2 Brenda Nance who is my financial lady.

3 Q And did your company maintain emails in the course of
4 its business?

5 A Yes, sir.

6 Q Can you describe to me how you located the email that
7 is marked as Exhibit 1, how your company did?

8 A We had to go back to an old server to actually find
9 emails and find records or lack of records for the reel
10 that was in question with this accident.

11 Q Do you know approximately when you found that email?

12 A When we found the emails?

13 Q Yes.

14 A Was probably February, March of this year.

15 Q And were you copied on the email?

16 A No, sir. I had no knowledge of this email until we
17 found it.

18 Q And it was not something, did you search for emails
19 relevant to the project earlier, prior to February of
20 2024?

21 A Did I search for emails?

22 Q Yes.

23 A No, sir.

24 Q You didn't do any searches prior to the ones of the
25 old server?

1 A On the old server, yes sir. We searched the old
2 server and everything.

3 Q Does that email contain a reference to Mr. Nickles?

4 A Mr. Nickles. No, sir.

5 Q Does it state in the header or elsewhere that it
6 related to any litigation filed by Mr. Nickles?

7 A No, sir. This is only looking for two reel serial
8 numbers, high voltage reel serial.

9 Q Prior to finding it do you feel like you exercised
10 diligence and effort in finding emails prior to March of
11 2024?

12 A Yes, sir. Absolutely.

13 Q Did you search emails when you were first sued in
14 this case in 2021?

15 A Yes, sir.

16 Q And did you find that email?

17 A No.

18 Q Okay. And were you subsequently dismissed from that
19 case?

20 A I was.

21 MR. ATKINSON: That is all I have, Your Honor.

22 THE COURT: Okay. Mr. Hite, do you have any
23 questions of Mr. Kelley?

24 MR. HITE: Yes sir, Your Honor.

25 CROSS-EXAMINATION

1 By Mr. Hite:

2 Q Mr. Kelley, this email server, why don't you tell me
3 how you handle your emails at KSC.

4 A Are you talking today, what timeframe are you talking
5 about?

6 Q Let's go back to 2019.

7 A Okay, we kept all of our emails on an in-house
8 server.

9 Q And in 2021 was that in-house server still in use?

10 A Yes.

11 Q And in 2022 was it still in use?

12 A No. We changed over sometime there in 2022.

13 Q But it remained in your possession, is that correct?

14 A Yes.

15 Q And in 2023 when you were notified that you were in
16 default and we had hearings coming up was that server and
17 those emails still in KSC's possession?

18 A Yes.

19 Q And had it been searched, the emails that we are
20 talking about would have been found?

21 A Yes. It is kind of hard to say because we were
22 looking for reel serial numbers, is what we were trying to
23 identify because we had narrowed down, Prysmian had
24 narrowed down the serial numbers that were or could have
25 been involved in the accident. So we were more searching

1 for serial numbers which came out of a special program
2 that was written by a Lander student for us to do reel
3 inventory management for Prysmian.

4 Q But at the time that this case was filed and before
5 we had a hearing in Abbeville you had access to these
6 documents in KSC's possession?

7 A They were on our old server or that is where we were
8 able to obtain them.

9 Q Nothing changed between December; November, December
10 of 2023 and February or March of 2024 with the server and
11 access to the emails. Correct?

12 A I think the, what we should be looking for had a lot
13 more clarity, Mr. Hite.

14 Q Okay. But your due diligence and your opportunity to
15 find it, none of that has changed. That has been the
16 same, hasn't it, since December of 2023 to February of
17 2024?

18 A Our, what we, I think the biggest thing has changed
19 is clarity of what we should be looking for. That was a
20 big, that was like a light to us.

21 Q And what provided that clarity?

22 A Mr. Ouzts finally told us exactly what we should be
23 looking for and that he had gotten an email from us some
24 time. We didn't even know, I had no knowledge of any
25 emails about this since my conversation with you back in

1 '21. And then all of a sudden when I finally started, I
2 went back to my people and said, hey, Charles Ouzts says
3 he sent y'all an email. And they said, well, we don't
4 have any record. And I said, well, we need to go back and
5 search again for emails from Charles Ouzts in this
6 timeframe because he told me the timeframe I should
7 search.

8 Q And that question to Charles Ouzts, and to anybody
9 else, that could have happened in December of 2023, could
10 it not have?

11 A I think we were working, we just didn't realize that
12 there were emails that we should, we should, we were
13 looking more and scouring for certain reel numbers because
14 we knew we didn't have that side of reel on our property
15 but we were trying to make absolutely sure we never had
16 those reel numbers. That was our, that was our focus, was
17 the reel numbers not -- that is two different systems.
18 One is an email system, the other one was another
19 speciality system that we had written, Lander University
20 had written for us.

21 Q But isn't it true that you have these hearings coming
22 up about being in default and if you called Charles before
23 those, he could have told you that information or this
24 information could have been made available and you could
25 have searched this?

1 A On the initial conversation I had with Mr. Ouzts
 2 about, hey, do you know what reel numbers, written; I
 3 asked the specific question, do you know the reel numbers
 4 involved in this accident. He says I can't remember but
 5 he said I have got some emails that have the reel numbers.
 6 And I said, can you get those to me. It took him about
 7 two or three weeks before he responded. So he gave me
 8 those numbers. Then we started searching for those
 9 numbers. That took us well over a month before, because I
 10 had to get the student who actually wrote the program, to
 11 get us because back into the old server that had the
 12 serial numbers. Once all of that transpired it was quite
 13 a time before I found out anything about an email.

14 MR. HITE: Beg the Court's indulgence.

15 THE COURT: Sure, take your time.

16 MR. KELLEY: Sir?

17 THE COURT: No, he asked for the Court's indulgence
 18 to look through his notes and I said, yes, take your time.

19 Q I am going to show you what has been marked or what
 20 is your second affidavit of William Ray Kelley.

21 MR. HITE: I am going to go ahead and mark this as
 22 Plaintiff's 1.

23 (Whereupon, Plaintiff's Exhibit 1 was admitted into
 24 evidence.)

25 Q Mr. Kelley, if you could for the Court, this is your

1 signature here?

2 A Correct.

3 Q And this is your affidavit that you prepared, it
4 looks like it was signed March 11th of 2024?

5 A Correct.

6 Q And read for me at the top there what it says about
7 when, just that top paragraph for me.

8 A Following learning of the default in this case I
9 reviewed company emails and found an email string between
10 Charles Ouzts; Mr. Booton, Counsel for Prysmian; and my
11 office manager, Brenda Nance.

12 Q And that is true and accurate statement, correct?

13 A That's correct. And then it goes on to say, that
14 email, Mr. Ouzts confirmed that the reels at issue were
15 shipped to Prysmian. And that Prysmian, rather than KSC,
16 elected to reuse it. I did not discover this
17 communication to which I was not a party until after the
18 Court ruled on the pending motions in this case.

19 Q Okay. So you could have found it before the ruling,
20 before we had hearings but you didn't look until you got
21 served with a \$900,000.00 dollar plus judgment.

22 A I think, Mr. Hite, which I realize is, is I didn't
23 search for every email for every one of my employees for
24 communication between Prysmian and KSC Logistics. That
25 would have been millions of emails. I didn't know what we

1 were looking for.

2 Q But had you known, had you asked somebody like
3 Charles --

4 A I did ask, it just took a long time to get the
5 answer.

6 Q Okay. But in your affidavit you said you didn't ask
7 until after the judgment.

8 A I didn't ask, I didn't ask about the emails. I was
9 trying to find the reels. I thought that was the most
10 important thing, was to identify the history of the reel
11 that caused this accident.

12 MR. HITE: No further questions, Your Honor.

13 THE COURT: Mr. Atkinson, anything in redirect?

14 MR. ATKINSON: Very briefly.

15 THE COURT: Sure.

16 REDIRECT EXAMINATION

17 By Mr. Atkinson:

18 Q The search of the email, was it performed by you?

19 A No.

20 Q Who had to do the search?

21 A I had to get one of the, well it depends on again,
22 once, are you looking for the emails or are you looking
23 for the serial numbers out of the reel management system?

24 Q The emails.

25 A The emails we were able to do. Our current Cloud

1 base service and our old server. But there again, I was,
2 I knew the timeframe, I knew things then. By that
3 information from Prysmian, we were looking for emails with
4 these names. And the attorney, I will be honest with you,
5 the email of the attorney for Prysmian, which I have never
6 met, never seen that name until we, Charles Ouzts told me
7 was on it. That is how we really searched and found it.

8 Q Did you find that email almost immediately after
9 Charles Ouzts told you what to look for?

10 A No. It took us, it was three, four or five days of
11 searching before we found it.

12 MR. ATKINSON: That is all I have, Your Honor.

13 THE COURT: Okay. Anything in recross?

14 MR. HITE: No, Your Honor.

15 THE COURT: Okay. You can step down. Hand me both
16 of those exhibits. I am going to make copies of all the
17 exhibits for everybody as well as the Court. Do you have
18 any other witnesses, Mr. Atkinson?

19 MR. ATKINSON: Briefly, Your Honor.

20 THE COURT: Sure.

21 MR. ATKINSON: And, Your Honor, this is simply in
22 response to the documents on the Plaintiff's opposition.

23 THE COURT: Okay.

24 MR. HITE: Same objection, Your Honor.

25 MR. ATKINSON: We call Cecil Talley.

1 Cecil Talley, being
2 first duly sworn, testified as follows:

3 THE COURT: State your name for the record, please,
4 sir.

5 MR. TALLEY: Cecil Talley.

6 THE COURT: Okay. You may proceed.

7 DIRECT EXAMINATION

8 By Mr. Atkinson:

9 Q Mr. Talley, what was your role at Prysmian?

10 A I was Director of Operations.

11 Q Did you give a deposition in this case without KSC's
12 involvement?

13 A I did at Mr. Hite's office.

14 Q Okay. I am showing you a document that has been
15 marked as Defendant's exhibit 2. Does that document look
16 familiar to you generally?

17 A Purchase order issued.

18 (WHEREUPON, Plaintiff's Exhibit No. 2 was admitted
19 into evidence.)

20 Q Do you know if you were shown that document in your
21 deposition?

22 A I can't recall.

23 Q I am going to ask you and I am sorry to stand right
24 next to you.

25 A That's okay.

1 Q I am on page two of that document. And there is a
2 reference to line 20. What does that say?

3 A HV Steel, (inaudible), \$25,000.00, purchase order.

4 Q And just to clarify. At the top of that page do you
5 know if that is an amended document? If you want to look
6 at, what does that say?

7 A Steel reels.

8 Q So based on your understanding of that document the
9 HV was added in September of '18?

10 A That's correct.

11 Q And what is the delivery date indicated on that
12 purchase order for the HV?

13 A 2018.

14 Q And what is the delivery date?

15 A 12/31/18.

16 Q Okay. Do you have any knowledge as to whether the,
17 based on this purchase order or otherwise, whether the
18 steel reel that injured the Plaintiff was ever handled by
19 KSC?

20 A I don't have any definitive information.

21 Q What did you do to check?

22 A We moved through the records, you know, like said
23 during the deposition. We don't, we didn't pay that much
24 attention to the serial numbers, we always went by reel
25 sizes. The folks on the floor, we always went by reel

1 sizes and we look through reel sizes to see if we had, had
2 that reel in our possession.

3 Q And would you agree, based on the purchase order,
4 that the first order for HV steel repair was in September
5 of '18?

6 A Yes, sir.

7 MR. ATKINSON: That is all I have, Your Honor.

8 THE COURT: Mr. Hite?

9 MR. HITE: Your Honor, was the witness sworn?

10 THE COURT: He was, yes, he sure was.

11 MR. HITE: I must have missed that, I am sorry.

12 CROSS-EXAMINATION

13 By Mr. Hite:

14 Q Mr. Talley, what, you retired from Prysmian Cable,
15 correct?

16 A September of '22, yes sir.

17 Q And what was your interest in or involvement with KSC
18 Logistics?

19 A KSC was a vendor, did a variety of different things
20 for us.

21 Q And did you have personal ownership interest in KSC?

22 A Personal ownership?

23 Q Yes, sir.

24 A No, sir.

25 Q Did you have any personal management in KSC?

1 A No, sir.

2 Q Did you receive anything from KSC in terms of their
3 involvement and work with Prysmian?

4 A Just routine feedback, I mean activity.

5 Q And KSC was, would you say on-site at Prysmian daily?

6 A Regular, yes sir.

7 Q Is that daily or more than daily?

8 A Sometimes more than daily but generally, generally
9 six or seven days a week.

10 Q And overwhelmingly, at your deposition, did you sit
11 in on Mr. Ouzts or anybody else's?

12 A No, he did his separate from me.

13 Q Okay. Overwhelmingly the reel handlers outside of
14 Prysmian is KSC or was KSC during your period of time. I
15 believe you said that during your deposition?

16 A During the period of time, we did service people but
17 KSC applied a large percentage of the reels since time
18 moved on.

19 Q Yes, sir.

20 A They weren't involved when I first got there. But as
21 time went by they did.

22 MR. HITE: No further questions, Your Honor, thank
23 you.

24 THE COURT: Any redirect?

25 MR. ATKINSON: No, Your Honor.

1 THE COURT: You can step down, sir. Thank you. Any
2 other witnesses, Mr. Atkinson?

3 MR. ATKINSON: No, Your Honor.

4 THE COURT: Mr. Hite?

5 MR. HITE: No, Your Honor.

6 THE COURT: Okay. Any further argument on,
7 concerning your motions?

8 MR. ATKINSON: Yes, Your Honor.

9 THE COURT: I will be glad to hear from you.

10 MR. ATKINSON: Your Honor, before I begin I believe
11 you don't dispute the setoff portion, is that correct?

12 MR. HITE: I do not.

13 MR. ATKINSON: We won't argue, that will save some
14 time. Your Honor, the issue here predominately is a newly
15 discovered evidence motion and we believe newly discovered
16 evidence which was presented to the Court in our brief
17 shows that KSC never repaired a reel. We don't think that
18 there has ever been an argument that KSC manufactured. So
19 the issue is, was the reel handled at the time, a product
20 of KFC's, KFC, KSC's handling. And what we found is we
21 found these documents after the fact is, that Prysmian
22 issued an email that pretty much acknowledged that they
23 didn't send it out, it sat on the lot, they elected to
24 reuse it, KSC didn't handle it. That is pretty much a
25 dispositive on the issue of liability. What we have also

1 provided in the deposition which KSC did not participate
2 in, it was prior to them being a party in the case, where,
3 during the period between their dismissal and their
4 re-addition. And I think the depositions are
5 illustrative. And I want to be clear. I made a Rule
6 60(c) motion. I am not accusing Mr. Hite of doing
7 anything wrong, I am not accusing him of malfeasance and I
8 want to be clear on the record because I wouldn't want to
9 be accused of that. But what I do think is, there was
10 evidence in the record that tended to indicate that KSC
11 had no involvement with the project that was not presented
12 and therefore it is a basis to reopen this issue.
13 Specifically if you look at Mr. Ouzts deposition testimony
14 which we provided in full, Mr. Ouzts didn't know if that
15 reel was repaired. And this is prior to that email that
16 we have that shows, that Prysmian later determined the
17 email, that the reel was not handled by KSC. Mr. Ouzts
18 was asked some questions which are in Mr. Hite's brief
19 about who predominately handled high voltage reels. But
20 important in the question is a lack of timeframe. We
21 would agree that when Mr. Ouzts was deposed KSC was
22 handling high voltage reels at Prysmian Cable. The
23 question was not, who was handling those reels, if anyone,
24 in 2018. So we don't believe his answer is definitive one
25 way or the other. But when, and that is the portion

1 provided by Plaintiff in opposition to our motion. You
2 look at the broader context provided in the deposition
3 transcript we submitted to the Court. Mr. Ouzts didn't
4 know if the reel had been repaired. We get subsequent
5 information which we discovered as a result of a later
6 email search for an email that was not sent to Mr. Kelley
7 but was essentially between Prysmian employees copying an
8 office manager at KSC saying, we can assume that Prysmian
9 put this on-site and decided to reuse it. That is
10 dispositive on the issue of liability, KSC did not touch
11 the reel. And we believe that is after discovered
12 evidence in the full context of the depositions which were
13 taken, which we were not parties to show that is not
14 really evidence at any time that those reels were handled,
15 that they were repaired by KSC or by anybody. And the
16 issue here is a D-ring fact. And for KSC to have exposure
17 they would have had to undertake to examine the D-ring,
18 make a decision on the use of a D-ring. And we believe
19 that the exhibit that we just submitted as Exhibit 1
20 clearly shows that KSC didn't do it and that Prysmian
21 admitted that KSC did not do it. And that is dispositive
22 on the issue of liability in this case. Your Honor, as to
23 the reason we submitted the testimony of Mr. Kelley is the
24 after discovered evidence at issue, was this something
25 that could be discovered. This isn't a file that you can

1 go open a file and look for. It is a complicated system,
2 to get the reel numbers that were involved they had to get
3 a consultant, as Mr. Kelley testified, to go back and find
4 those reel numbers and then do the search. It would have
5 been very simple and I think you could argue they had a
6 duty to find it if the email header had said Nickles, or
7 anywhere in that email was Nickles. So if you did a
8 search of a server Nickles would come up. The only way
9 they could have found that email is to know the number of
10 the reel involved and that came after the consultation
11 with Mr. Ouzts as Mr. Kelley testified. The issue here
12 is, is there any evidence that KSC did anything which
13 would subject them to liability. Your Honor, I want to
14 reiterate, we are not asking for a Defense verdict here.
15 We are asking for the case to be opened and KSC to get an
16 opportunity to defend themselves when we believe the
17 evidence has been presented and discovered after the fact
18 makes it clear that KSC did not handle the reel, did not
19 undertake to fix it, did not investigate it, did not
20 inspect it, did not decide to put it in the service. We
21 believe that is clear from Exhibit 1 that we presented
22 today, Your Honor.

23 THE COURT: Alright. Thank you. Now the issue of
24 setoff, that is not in dispute and if I remember correctly
25 it seems like I saw something where, about \$15,000.00

1 dollars maybe was paid.

2 MR. HITE: Paid by two Defendants, so \$30,000.00
3 total.

4 THE COURT: \$30,000.00, okay. And that is not in
5 dispute regardless of how I am going to rule on the Rule
6 60 motion. It has been agreed that the Defendant is
7 entitled to a setoff of \$30,000.00 if, in fact, I were to
8 deny the motion. Is that correct?

9 MR. ATKINSON: Correct, Your Honor.

10 THE COURT: Okay. Alright, Mr. Hite.

11 MR. HITE: Yes sir, Your Honor. As Mr. Atkinson
12 said, the major issue here is Rule 60 because they were
13 outside of the time of Rule 59.

14 THE COURT: Sure.

15 MR. HITE: As it relates to Rule 60, the Lanier case
16 is a good case for you to look at. It is cited in our
17 brief. It says that due diligence for any new evidence
18 has been presented there has to have been, it couldn't
19 have been discovered with due diligence. And I think what
20 you found, and through Mr. Kelley's affidavit and his
21 testimony is that it could have been found. But
22 realistically what happened is they didn't take the
23 judgment, they didn't take the case seriously and then
24 they didn't take the judgment seriously until the award of
25 damages came down. And then they proceeded to make phone

1 calls, start looking and really start investigating. And
2 that is, that is the standard for Rule 60, you can't then
3 retry the case on the issue of liability. Now they want
4 to bring up cases, issues that affect liability and like
5 theories of liability but we could have had numerous
6 theories of liability as it relates to KSC's involvement
7 about leaving the reels outside, about delivering the reel
8 back rusty, about moving the reels a certain way. All
9 sorts of theories of liability that we are not here to
10 address, really is not even available to be addressed.
11 The real reason for the denial of the default was or for
12 the motion to set aside the default was that they didn't
13 have good cause to show they were in default. And that,
14 nothing has changed as it relates to that. They got the
15 pleadings, they didn't answer the pleadings. So the
16 ruling and the order that you have already issued denying
17 their motion to set aside default should be upheld because
18 they haven't submitted anything to change its reason or
19 good cause to show that they have made a mistake or didn't
20 know or mislead, any of the elements that are available
21 under our motion to set aside default. And so as it
22 relates to our prosecution of the case against two other
23 Defendants, they come in and say, well, you didn't, you
24 didn't lay out or I don't have any proof of any KSC
25 handling the reel or fixing this particular reel or

1 working on this D-ring. I didn't have to, they are in
2 default, I am prosecuting the case against other
3 Defendants to try to make sure that there is not another
4 potential at fault party. And so as we prosecute that
5 case, of course we are not going to have, you know, try to
6 point the finger at KSC during that litigation. Even
7 still, after all of that testimony, KSC was overwhelmingly
8 the party who handled the high voltage reels and even
9 still KSC's and Prsymian's relationship was so intertwined
10 and may still be that way, but was so intertwined at the
11 time I always felt that they were, Prsymian was not very
12 helpful in terms of overturning documentation about the
13 particular reel. We had, I had to talk to a bunch of
14 former employees and try to decipher coding, product line,
15 wording, numbers, numerals, try to find the exact reel
16 involved in the case. And Prsymian was not very helpful
17 with it. And I believe that, because KSC was always
18 there, they could have easily, when this happened, if they
19 were involved, taken a picture of the reel number and
20 said, here it is, Tombo, we never touched this reel. But
21 they never did that and so that is why the motion to set
22 aside should be denied. The Rule 60 motion obviously
23 should be denied because they haven't submitted any
24 evidence that changes newly discovered evidence that
25 changes your particular ruling previously.

1 THE COURT: Okay. Thank you, Mr. Hite. Mr.
2 Atkinson, anything in brief response?

3 MR. ATKINSON: Briefly, Your Honor. First, you have
4 the power as a Circuit Judge to amend your decision at any
5 time. So yes, you can always revisit that, that is your
6 authority. If I went to a different Judge then we would
7 have the ten day rule. You have authority as long as the
8 case is in your jurisdiction to make a decision as to
9 finding. I want to be clear to what the argument here is
10 though. It is not they don't have evidence that KSC
11 handled the document. It is that there is affirmative
12 evidence that KSC didn't handle the reel. And the
13 discussion as to KSC could have pointed this out, this
14 comes back to the good cause issue. As was presented
15 before to the Court, Mr. Kelley was dismissed from the
16 case after talking to Mr. Hite and explaining why he
17 believed they were not involved and that is why he made
18 the mistake and didn't timely respond, he thought he had
19 been dismissed from the case. He wasn't ever asked
20 subsequent to that call in 2021, at any time to provide
21 any information to the Plaintiff regarding the reel. If
22 he had he might have discovered these reels. The
23 allegation that there is some interaction between Prysmian
24 and KSC, I don't think there is any evidence to support
25 and I hope the Court won't consider that. What we have

1 here is an affirmative email showing KSC did not handle
2 the reel. That Prysmian had the reel on site, Prysmian
3 made a decision to reuse that KSC played no role, that is
4 very different than you have, there is evidence that they
5 didn't do it. That is the argument here, Your Honor. The
6 evidence in the record shows that KSC didn't touch the
7 reel, and that is an admission from Prysmian. The
8 Application Worker's Comp statutes and they are not
9 relevant to this case. The question is, did KSC touch the
10 reel, we have after discovered evidence which establishes
11 a meritorious defense. And we believe that the Court can
12 revisit the issue of good cause and say, because Mr.
13 Kelley spoke to Mr. Hite on the first complaint and was
14 dismissed and made the mistake and assumption that he was
15 out of the case, that is the basis to revisit the issue.
16 I want to briefly just touch on the case cited. I want to
17 be clear. You have to be in possession of the document
18 and know it at the time, it is not either or. And the due
19 diligence, to have to make a search of a server is
20 different that a document that is in a file. They
21 exercised due diligence and found it as quickly as they
22 could. Thank you, Your Honor.

23 THE COURT: Okay. Thank you, guys. I appreciate
24 your hard work.

25 MR. HITE: Your Honor?

1 THE COURT: You want to respond, that is fine.

2 MR. HITE: The evidence submitted with this email is
3 only relevant to a couple of reels, high voltage reel
4 numbers. And the proof of whether this reel number or
5 that reel number was the reel that broke on Mr. Nickles is
6 not into evidence. And what reel, the fact that that reel
7 number and particular serial number was never obtained we
8 believe had to do with the people who handle the reels at
9 Prsymian and at KSC. But even with that, this evidence
10 that was later discovered was in their possession and
11 could have, could have been available to us prior to your
12 ruling. Thank you, Your Honor.

13 MR. ATKINSON: One sentence, Your Honor.

14 THE COURT: Sure.

15 MR. ATKINSON: There is no reason to look for those
16 reels unless there is one relevant in the claim because
17 the reels were searched for while the lawsuit was going
18 on.

19 THE COURT: Alright. Thank you, guys. I am going to
20 make copies for both sides of the exhibits, I have got up
21 here, the third one. Defense exhibit number 2 is what I
22 don't have.

23 MR. ATKINSON: I have it.

24 THE COURT: Hang around for a few minutes and we will
25 make copies and so everybody can have. Thank you, guys, I

1 will let y'all know something.

2 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter do hereby
9 certify that the foregoing is a true, accurate and
10 complete transcript of record of the proceedings had and
11 evidence introduced in the trial of the captioned case,
12 relative to appeal, in the County of Abbeville, South
13 Carolina on the 30th day of May, 2024.14 I do further certify that I am neither of kin,
15 counsel nor interest to any party hereto.
16
17

18 September 22, 2024

19 S/ Joy E. Holston
20

21 Joy E. Holston, Court Reporter

22 My Commission expires: May 2, 2026
23
24
25

RECEIPT FOR EXHIBITS

Case No. 2021CP-0100076
 Plaintiff: William Nickles IV
 Defendant: KSC Logistics
 Date Trial Started: 5-30-2024

Judge Hockley
 Plt's Atty. Tombu H. H.
 Def's Atty. Charles Atkinson
 Date Trial Ended: 5-30-2024

Received of Spig E. Holston, Court Reporter for the above case, these exhibits:

		Clerk of Court Use
Plaintiff	Defendant	
① Affidavit	#1 = Emr. 1	
2	#2 = Purchase Order	
3		
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This 30 day of May 2024

Page 1 of 1

By: [Signature]
~~Clerk of Court~~ Judge

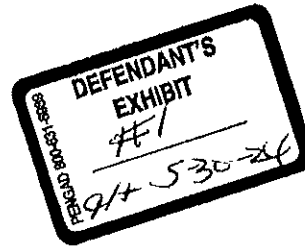
Clerk should retain white copy in Civil cases, yellow copy in Criminal cases.

Revised 3/96 Judge Hockley / Exhibits
5-30-2024

EXHIBIT A

ELECTRONICALLY FILED - 2024 Mar 11 3:03 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

From: Ouzts Charles <charles.ouzs@prysmiangroup.com>
Sent: Saturday, June 25, 2022 4:54 PM
To: Booton Jameson Heath; Brenda Crocker
Cc: Brenda Nance
Subject: RE: HV Reels 823053 and 823051



Jameson,
Yes that is a reasonable assumption.

Thanks!
Charles M. Ouzts
Raw Materials Buyer
T + 1 (864) 366-1211



From: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>
Sent: Friday, June 24, 2022 2:21 PM
To: Brenda Crocker <brenda.crocker@kscllogistics.net>; Ouzts Charles <charles.ouzs@prysmiangroup.com>
Cc: Brenda Nance <Brenda.nance@kscllogistics.net>
Subject: RE: HV Reels 823053 and 823051

Brenda,

Thank you for looking into this for us.

Charles,

Would it be reasonable to assume that the reels were shipped back directly to Prysmian and Prysmian elected to reuse these reels upon a visual inspection?

Thanks,

J. Heath Booton
Associate Counsel
Prysmian Group

From: Brenda Crocker <brenda.crocker@kscllogistics.net>
Sent: Friday, June 24, 2022 12:42 PM
To: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>
Cc: Brenda Nance <Brenda.nance@kscllogistics.net>; Ouzts Charles <charles.ouzs@prysmiangroup.com>
Subject: Re: HV Reels 823053 and 823051

You don't often get email from brenda.crocker@ksclogistics.net. [Learn why this is important](#)

Neither of those reel numbers are in our inventory history at KSC, so we would not have any records on them.

Had we made repairs or simply received them at KSC they would be in our inventory history.

On Fri, Jun 24, 2022 at 12:39 PM Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com> wrote:

Good Afternoon Brenda,

Thank you for your assistance. It is our understanding that these reels are currently with our customers. I am actually looking to see if you can provide historical information regarding these reels. For instance, it appears that we shipped material on reel number 823051 in 2015, 2017, 2018 and finally in 2020. I cannot tell if these reels were returned empty or with material at those times. Would you have any documentation available on what repairs or refurbishments were performed on this reel between those shipments?

I would also be looking for similar information regarding reel number 823053 in approximately 2015, 2017, and finally in 2018.

Thanks,

J. Heath Booton

Associate Counsel

Prysmian Group

From: Brenda Crocker <brenda.crocker@ksclogistics.net>

Sent: Friday, June 24, 2022 12:21 PM

To: Ouzts Charles <charles.ouzs@prysmiangroup.com>

Cc: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>; Brenda Nance <Brenda.nance@ksclogistics.net>

Subject: Re: HV Reels 823053 and 823051

You don't often get email from brenda.crocker@ksclogistics.net. [Learn why this is important](#)

I have checked my inventory system at KSC, we have no history of Reel#823051 or 823053 ever being in our Inventory.

Would these have been returned with product on the reels or were they empty on return?

I can double check the yard, just need to know am I looking for an empty reel or a reel with scrap?

On Fri, Jun 24, 2022 at 11:38 AM Ouzts Charles <charles.ouzs@prysmiangroup.com> wrote:

Jameson,

Happy to help. See attached for records in SAP for movements related to these reels.

Both Brenda's with KSC (cc'd) may be able to help you with nay repair records.

Thanks!

Charles M. Ouzts

Raw Materials Buyer

T + 1 (864) 366-1211



From: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>

Sent: Friday, June 24, 2022 11:00 AM

To: Ouzts Charles <charles.ouzs@prysmiangroup.com>
 Subject: RE: HV Reels 823053 and 823051

Good Morning Charles,

Thank you very much for pointing me down the right path to locate these reels. Now that we know these reels no longer belong to us, we need to develop a story to present that essentially provides a historical account of these reels so that we can be done with this once and for all. Can you please help me collect the following information or direct me to the person that can assist?

1. A step-by-step history for each reel from the time we purchased the reel until it was delivered to the final customer, including shipping, finished goods, repair, inspection, etc. I realize our system has limitations so please help me understand what our system can provide in relation to this request and I will try to find a reasonable explanation for any gaps in data.
2. All repair records for these reels, including invoices, receipts, etc. My understanding is that we do not get individual repair records for each reel, so would there be a contact with our reel supplier that could provide this information?

Thanks,

J. Heath Booton

Associate Counsel

Prysmian Group

From: Toth Tracy <tracy.toth@prysmiangroup.com>
 Sent: Tuesday, June 21, 2022 2:13 PM
 To: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>; Malcolm Mark <mark.malcolm@prysmiangroup.com>
 Cc: Page John F <john.page2@prysmiangroup.com>; Ouzts Charles <charles.ouzs@prysmiangroup.com>; Cunningham Brad <Brad.Cunningham@prysmiangroup.com>
 Subject: RE: HV Reels 823053 and 823051

Ok, give me a little time to see what I can dig up for you.

Tracy Toth

Market Manager

High Voltage Cables and Systems

Prysmian Group

T +1 832 570 3994

E tracy.toth@prysmiangroup.com

From: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>

Sent: Tuesday, June 21, 2022 2:08 PM

To: Toth Tracy <tracy.toth@prysmiangroup.com>; Malcolm Mark <mark.malcolm@prysmiangroup.com>

Cc: Page John F <john.page2@prysmiangroup.com>; Ouzts Charles <charles.ouzs@prysmiangroup.com>;

Cunningham Brad <Brad.Cunningham@prysmiangroup.com>

Subject: RE: HV Reels 823053 and 823051

I completely understand, that makes sense. Is there possibly an email between us and the customer explaining the expectation that they will be purchasing these reels? If possible I need some form of documentation, no matter how informal, that we no longer own these reels.

Thanks,

J. Heath Booton

Associate Counsel

Prysmian Group

From: Toth Tracy <tracy.toth@prysmiangroup.com>

Sent: Tuesday, June 21, 2022 2:05 PM

To: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>; Malcolm Mark <mark.malcolm@prysmiangroup.com>

Cc: Page John F <john.page2@prysmiangroup.com>; Ouzts Charles <charles.ouzs@prysmiangroup.com>; Cunningham Brad <Brad.Cunningham@prysmiangroup.com>

Subject: RE: HV Reels 823053 and 823051

Hi Heath,

The reels are part of the cable pricing, so there isn't a separate line item on any invoices or POs for the reels. The sale of these becomes part of the cable revenues and margins.

Is there something else I can try to provide that might help?

Tracy Toth

Market Manager

High Voltage Cables and Systems

Prysmian Group

T +1 832 570 3994

E tracy.toth@prysmiangroup.com

From: Booton Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>

Sent: Tuesday, June 21, 2022 2:00 PM

To: Toth Tracy <tracy.toth@prysmiangroup.com>; Malcolm Mark <mark.malcolm@prysmiangroup.com>

Cc: Page John F <john.page2@prysmiangroup.com>; Ouzts Charles <charles.ouzs@prysmiangroup.com>;

Cunningham Brad <Brad.Cunningham@prysmiangroup.com>

Subject: RE: HV Reels 823053 and 823051

Thank you all very much for your diligence in tracking down this information. This is incredibly helpful. In an effort to not waste anyone else's time on this particular issue, would we have a purchase order or invoice available to substantiate this claim that theses customer's purchased and paid for these reels?

Thanks,

J. Heath Booton

Associate Counsel

Prysmian Group

From: Toth Tracy <tracy.toth@prysmiangroup.com>

Sent: Tuesday, June 21, 2022 1:57 PM

To: Malcolm Mark <mark.malcolm@prysmiangroup.com>

Cc: Page John F <john.page2@prysmiangroup.com>; Ouzts Charles <charles.ouzs@prysmiangroup.com>; Booton

Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>; Cunningham Brad
<Brad.Cunningham@prysmiangroup.com>
Subject: RE: HV Reels 823053 and 823051

These are rather old orders, but from what I can tell, these reels were SOLD to the clients.

We were paid for them and would not have expected them back.

Tracy Toth

Market Manager

High Voltage Cables and Systems
Prysmian Group
T +1 832 570 3994

E tracy.toth@prysmiangroup.com

From: Malcolm Mark <mark.malcolm@prysmiangroup.com>
Sent: Tuesday, June 21, 2022 1:08 PM
To: Toth Tracy <tracy.toth@prysmiangroup.com>
Cc: Page John F <john.page2@prysmiangroup.com>; Ouzts Charles <charles.ouzs@prysmiangroup.com>; Booton
Jameson Heath <JamesonHeath.Booton@prysmiangroup.com>; Cunningham Brad
<Brad.Cunningham@prysmiangroup.com>
Subject: RE: HV Reels 823053 and 823051
Importance: High

Good Afternoon Tracy,

Did we charge the customers a deposit for these HV Reels?

(See below. I show no further movement after delivering these reels to these customers)

Regards,

Mark Malcolm

Manager, Transportation

Transportation, HV Projects and Logistics - North America

O 803.951.4075

M 803.206.2776

E mark.malcolm@prysmiangroup.com

Prysmian Group

700 Industrial Drive

Lexington, SC 29072

<https://na.prysmiangroup.com>



Linking
the Future

Follow us



"If We Work Together, Nothing Can Oppose Us!"

From: Ouzts Charles <charles.ouzs@prysmiangroup.com>

Sent: Tuesday, June 21, 2022 1:05 PM

To: Malcolm Mark <mark.malcolm@prysmiangroup.com>; Booton Jameson Heath
<JamesonHeath.Booton@prysmiangroup.com>

Cc: Page John F <john.page2@prysmiangroup.com>

Subject: RE: HV Reels 823053 and 823051

Mark,

Would you have any idea when these 2 reels ay be returned to Abbeville?

Thanks!

Charles M. Ouzts

Raw Materials Buyer

T + 1 (864) 366-1211



Draka

General Cable

From: Malcolm Mark <mark.malcolm@prysmiangroup.com>
 Sent: Tuesday, June 21, 2022 12:10 PM
 To: Ouzts Charles <charles.ouzs@prysmiangroup.com>; Booton Jameson Heath
 <JamesonHeath.Booton@prysmiangroup.com>
 Cc: Page John F <john.page2@prysmiangroup.com>
 Subject: RE: HV Reels 823053 and 823051
 Importance: High

Here are the deliveries. I do not see these HV Reels having been returned. (These are the last known deliveries/handling of these reels..

Origin:

Prysmian
 250 Industrial Park Rd
 Abbeville SC 29620

Destination:

South Houston S/C
 4700 S. Shaver Street
 Houston TX. 77034

Reel No.	Outbound Delivery #	Reel No.	Serial No.	Tracker Installed	Ftg	Cable Wt.	Reel Tare Wt.	Lagging	Gross
2	7050315561		823051		2,575	60,536	7,021	1,336	68,8

* 48 Hr. Pre-Call
 Richard Gaído

Prysmian Group

Prysmian Cables and Systems USA LLC

Purchase order

Data to be reported on year 10000

Order Num Issue Date

4500943762 01/08/2018

Delivery Address:

Abbeville
Prysmian Cables and Systems USA LLC
569 Highway 28 Bypass
ABBEVILLE SC 29620
USA

Order Address:

KSC LOGISTICS, INC.
217 Old Calhoun Falls Road
ABBEVILLE SC 29620
USA

Invoicing Address:

Prysmian Cables and Systems USA, LLC
569 Highway 28 Bypass
Abbeville, SC 29620
lena.new@prysmiangroup.com

Vendor's Address:

KSC LOGISTICS, INC.
217 Old Calhoun Falls Road
ABBEVILLE SC 29620
USA

Reference

Ref: Mary Shumate
Phone: 843-478-1547 Fax: 864-446-8154
E Mail: chuck.kelley@ksclogistics.net

Incoterms T-- Service

Order Currency: USD

Payment Terms

End of Month plus 37 days

Buyer's contact data:

Bryan McClain
Telephone: +1 (864) 366-1276
E-mail: bryan.mcclain@prysmiangroup.com

FOR INTERNATIONAL SHIPPING ONLY: Please send copy shipping documents by email to nacustoms@prysmiangroup.com ISF Form must be completed for ocean shipments and sent 72 hours before sailing#

Steel Shipping Reel Repair- Logistics 2018

This is not a commitment to purchase the full amount of repairs and is only an estimate. Invoices will be processed/paid as requested work is completed.

When the total value of this PO has been consumed, no additional work should be done. Vendor should contact plant logistics and purchasing to increase the amount of work authorized. Prysmian is not obligated to pay invoices that exceed the total value of this PO.

5-3-18 PO increased for 150k to 200K per George Hutton- Email attached To PR*

6-12-18 PO increased for 200K to 250K per George Hutton - Email attached to PR

*** 16-August, 2018 - PO increased to \$300-K from approved requisition 5125876469 (M.Carpenter)

All suppliers will be held accountable to the Prysmian Group ethical code -
https://www.prysmiangroup.com/sites/default/files/atoms/files/Code%20of%20Ethics_final_EN.pdf
PO Number must be shown on all Shipping Documents and Invoices.
CLICK!





Prysmian Cables and Systems USA LLC

Purchase order

Page 2 of 3

Data to be reported on your documents:

Order Num. Issue Date
4500943762 01/08/2018

Doc. Num.
0113118

*** 18-September - added line for HV Steel Reel repair. MWC
*** 9-November, incased value from \$350-K to \$400-k for shipping reel repair - MWC.

Item	Material Description	Order qty. Unit	Price per unit	Total	Delivery date
10	Steel SHIPPING Reel Repairs for KSC 26 each still to be delivered Non-Taxable Item Please deliver to DC for Ouzis *** Item partially delivered ***	400,000 EA			12/31/2018
20	HV Steel Reel Repair 28 each still to be delivered Non-Taxable Item Please deliver to Dock A for CharlesOuzts *** Item partially delivered ***	25,000 EA			12/31/2018
Net Order Value: USD					

Prysmian Cables and Systems USA, LLC
Signature not necessary, Purchase Order electronically authorized

All suppliers will be held accountable to the Prysmian Group ethical code -
https://www.prysmiangroup.com/sites/default/files/atoms/files/Code%20of%20Ethics_final_EN.pdf
PO Number must be shown on all Shipping Documents and Invoices.
CLICK!

ELECTRONICALLY FILED - 2024 May 28 5:12 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)
William F. Nickles, IV,)
Plaintiff,)
vs.)
Howar Equipment, Inc., Sunoco Products)
Company, Palmetto State Transportation,)
LLC, KSC Logistics, Inc., and John Doe)
Corporation,)
Defendants.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

C.A. No.: 2021-CP-01-00076

**SECOND AFFIDAVIT
OF
WILLIAM RAY KELLEY**



Personally appeared before me, William Ray Kelley, who being duly sworn, deposes and says:

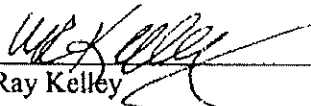
1. I am a citizen and resident of Abbeville County, South Carolina;
2. I am over the age of twenty-one (21) years, and am competent to give testimony;
3. I am President of KSC Logistics, Inc.;
4. On April 9, 2021, I called Tombo Hite, attorney for Plaintiff, to discuss why my company was not liable in this case.
5. I followed the telephone call with an email, a true and accurate copy of which is attached hereto as Exhibit A.
6. On August 25, 2021, Hite sent me a Stipulation of Dismissal, in an email attached hereto as Exhibit B.
7. As of November, 2018, KSC never repaired evaluated, installed or modified any D-rings on high voltage reels. In March, 2023, KSC was asked about doing D-ring work, but KSC never did that work.

Following learning of the default in this case, I reviewed company emails, and found an email string between Charles Ouzts, Heath Booton, counsel for Prysmian, and my office manager, Brenda Nance.

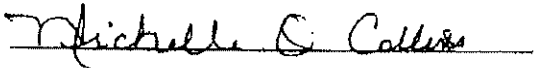
8. In that email, Ouzts confirmed that the reels at issue were shipped to Prysmian, and that Prysmian (rather than KSC) elected to reuse them.

9. I did not discover this communication, to which I was not a party, until after the Court ruled on pending Motions in this case.

FURTHER AFFIANT SAYETH NAUGHT.


William Ray Kelley

SWORN TO AND SUBSCRIBED before me
This 11th of March, 2024.


Michelle O Collins

Notary Public for South Carolina

My Commission Expires: 12/13/2024

Michelle O Collins



Abbeville County
Eighth Judicial Circuit
Public Index



[Abbeville County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Switch View

William F Nickles Iv VS Palmetto State Transportation Llc , defendant, et al

Case Number:	2021CP0100076	Court Agency:	Common Pleas	Filed Date:	03/24/2021
Case Type:	Common Pleas	Case Sub Type:	Products Liab 340	File Type:	Jury
Status:	Settled	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Withdrawn or Settled by Parties	Disposition Date:	02/29/2024	Disposition Judge:	Hocker, Donald B
Original Source Doc:		Original Case #:		Restore Reason:	Reopened Case
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Ksc Logistics Inc	NEF(08-29-2024 09:53:38 AM) Appeal/Notice of Appeal to C...	Filing		08/29/2024-10:53		
Ksc Logistics Inc	Appeal/Notice of Appeal to Court of Appeals	Filing		08/29/2024-09:53		
Ksc Logistics Inc	Service/Certificate Of Service	Filing		08/29/2024-09:53		
Nickles Iv, William F	NEF(07-31-2024 10:03:25 AM) Order/Other	Filing		07/31/2024-10:03		
Nickles Iv, William F	Order/Other	Order		07/31/2024-10:03		
Nickles Iv, William F	NEF(07-22-2024 11:39:44 AM) Order/Order Cover Sheet \$25....	Filing		07/22/2024-14:11		
Nickles Iv, William F	Order/Order Cover Sheet \$25.00	Filing		07/22/2024-11:39		
Nickles Iv, William F	NEF(05-28-2024 05:12:12 PM) Memo/Memo in Opposition	Filing		05/29/2024-08:54		
Nickles Iv, William F	Memo/Memo in Opposition	Filing		05/28/2024-17:12		
Ksc Logistics Inc	NEF(03-11-2024 03:03:29 PM) Motion/Alter and/or Amend	Filing		03/12/2024-10:16		
Ksc Logistics Inc	Motion/Alter and/or Amend	Motion		03/11/2024-15:03		
Ksc Logistics Inc	Memo/Memo in Support	Filing		03/11/2024-15:03		
Ksc Logistics Inc	Affidavit/Affidavit of	Filing		03/11/2024-15:03		
Nickles Iv, William F	NEF(02-29-2024 10:21:50 AM) Order/Damages	Filing		02/29/2024-10:22	02/29/2024-10:22	
Nickles Iv, William F	Order/Damages	Order		02/29/2024-10:21	02/29/2024-10:21	
Nickles Iv, William F	NEF(02-26-2024 04:10:15 PM) Order/Order Cover Sheet \$25....	Filing		02/26/2024-16:53	02/29/2024-16:53	
Nickles Iv, William F	Order/Order Cover Sheet \$25.00	Filing		02/26/2024-16:10	02/29/2024-16:10	
Nickles Iv, William F	NEF(02-07-2024 12:29:31 PM) Order/Other	Filing		02/07/2024-12:29	02/29/2024-12:29	

Nickles Iv, William F	Order/Other	Order		02/07/2024-12:29	02/29/2024-12:29	
Nickles Iv, William F	NEF(02-06-2024 03:10:58 PM) Order/Order Cover Sheet \$25....	Filing		02/06/2024-16:08	02/29/2024-16:08	
Nickles Iv, William F	Order/Order Cover Sheet \$25.00	Filing		02/06/2024-15:10	02/29/2024-15:10	
Nickles Iv, William F	NEF(01-30-2024 10:33:03 AM) Memo/Memo	Filing		01/30/2024-10:53	02/29/2024-10:53	
Nickles Iv, William F	Memo/Memo	Filing		01/30/2024-10:33	02/29/2024-10:33	
Ksc Logistics Inc	NEF(01-29-2024 02:58:00 PM) Memo/Memo in Support	Filing		01/29/2024-16:44	02/29/2024-16:44	
Ksc Logistics Inc	Memo/Memo in Support	Filing		01/29/2024-14:58	02/29/2024-14:58	
Nickles Iv, William F	NEF(12-18-2023 08:08:54 AM) Filing/Other	Filing		12/18/2023-08:39	02/29/2024-08:39	
Nickles Iv, William F	Filing/Other	Filing		12/18/2023-08:08	02/29/2024-08:08	
Nickles Iv, William F	Memo/Memo in Opposition	Filing		12/18/2023-08:08	02/29/2024-08:08	
Ksc Logistics Inc	NEF(12-12-2023 03:37:22 PM) Motion/Continuance	Filing		12/12/2023-16:12	02/29/2024-16:12	
Ksc Logistics Inc	Motion/Continuance	Motion		12/12/2023-15:37	02/29/2024-15:37	
Ksc Logistics Inc	NEF(12-07-2023 11:23:56 AM) Motion/Set Aside Default	Filing		12/07/2023-14:16	02/29/2024-14:16	
Ksc Logistics Inc	Motion/Set Aside Default	Motion		12/07/2023-11:23	02/29/2024-11:23	
Ksc Logistics Inc	Affidavit/Affidavit of	Filing		12/07/2023-11:23	02/29/2024-11:23	
Ksc Logistics Inc	NEF(12-07-2023 11:20:00 AM) Notice/Notice of Appearance	Filing		12/07/2023-11:20	02/29/2024-11:20	
Ksc Logistics Inc	Notice/Notice of Appearance	Filing		12/07/2023-11:20	02/29/2024-11:20	
Hite, Thomas Erskine III	12/18/2023_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/17/2023-15:49	02/29/2024-15:49	
Walsh, James P.	12/18/2023_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/17/2023-15:49	02/29/2024-15:49	
Harjehausen, John D.	12/18/2023_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/17/2023-15:49	02/29/2024-15:49	
Still, Patrick L. III	12/18/2023_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/17/2023-15:49	02/29/2024-15:49	
Shealy, Samuel Ross Beheler	12/18/2023_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/17/2023-15:49	02/29/2024-15:49	
Nickles Iv, William F	NEF(11-15-2023 08:34:58 AM) Order/Electronic Form 4	Filing		11/15/2023-08:35	02/29/2024-08:35	
Nickles Iv, William F	Order/Electronic Form 4	Order		11/15/2023-08:34	02/29/2024-08:34	
Howard Equipment, Inc	NEF(11-14-2023 10:59:45 AM) Stipulation Of Dismissal	Filing		11/14/2023-14:10	02/29/2024-14:10	
Howard Equipment, Inc	Stipulation Of Dismissal	Filing		11/14/2023-10:59	02/29/2024-10:59	
Shealy, Samuel Ross Beheler	9/11/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		08/14/2023-11:09	02/29/2024-11:09	
Shealy, Samuel Ross Beheler	9/11/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		08/14/2023-11:09	02/29/2024-11:09	
Still, Patrick L. III	9/11/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		08/14/2023-11:09	02/29/2024-11:09	
Still, Patrick L. III	9/11/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		08/14/2023-11:09	02/29/2024-11:09	
Harjehausen, John D.	9/11/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		08/14/2023-11:09	02/29/2024-11:09	
Harjehausen, John D.	9/11/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		08/14/2023-11:09	02/29/2024-11:09	
Walsh, James P.	9/11/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		08/14/2023-11:09	02/29/2024-11:09	

Walsh, James P.	9/11/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		08/14/2023-11:09	02/29/2024-11:09	
Hite, Thomas Erskine III	9/11/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		08/14/2023-11:09	02/29/2024-11:09	
Hite, Thomas Erskine III	9/11/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		08/14/2023-11:09	02/29/2024-11:09	
Howard Equipment, Inc	NEF(08-11-2023 03:44:23 PM) Motion/Summary Judgment	Filing		08/11/2023-16:03	02/29/2024-16:03	
Howard Equipment, Inc	Motion/Summary Judgment	Motion		08/11/2023-15:44	02/29/2024-15:44	
Palmetto State Transportation Llc	NEF(08-09-2023 02:29:04 PM) Motion/Summary Judgment	Filing		08/09/2023-14:43	02/29/2024-14:43	
Palmetto State Transportation Llc	Motion/Summary Judgment	Motion		08/09/2023-14:29	02/29/2024-14:29	
Nickles Iv, William F	NEF(05-17-2023 03:04:46 PM) Order/Electronic Form 4	Filing		05/17/2023-15:05	02/29/2024-15:05	
Nickles Iv, William F	Order/Electronic Form 4	Order		05/17/2023-15:04	02/29/2024-15:04	
Palmetto State Transportation Llc	NEF(05-08-2023 04:29:24 PM) Order/Scheduling Order	Filing		05/08/2023-16:29	02/29/2024-16:29	
Palmetto State Transportation Llc	Order/Scheduling Order	Order		05/08/2023-16:29	02/29/2024-16:29	
Palmetto State Transportation Llc	NEF(05-05-2023 12:25:58 PM) Order/Order Cover Sheet \$25....	Filing		05/05/2023-12:56	02/29/2024-12:56	
Palmetto State Transportation Llc	Order/Order Cover Sheet \$25.00	Filing		05/05/2023-12:25	02/29/2024-12:25	
Nickles Iv, William F	NEF(10-31-2022 01:42:34 PM) Order/Electronic Form 4	Filing		10/31/2022-13:50	02/29/2024-13:50	
Nickles Iv, William F	Order/Electronic Form 4	Order		10/31/2022-13:42	02/29/2024-13:42	
Nickles Iv, William F	NEF(10-28-2022 10:46:51 AM) Stipulation Of Dismissal	Filing		10/28/2022-12:33	02/29/2024-12:33	
Nickles Iv, William F	Stipulation Of Dismissal	Filing		10/28/2022-10:46	02/29/2024-10:46	
Howard Equipment, Inc	NEF(08-04-2022 08:35:51 AM) Order/Scheduling Order	Filing		08/04/2022-08:36	02/29/2024-08:36	
Howard Equipment, Inc	Order/Scheduling Order	Order		08/04/2022-08:35	02/29/2024-08:35	
Howard Equipment, Inc	NEF(08-02-2022 04:57:33 PM) Proposed Order/Scheduling Or...	Filing		08/03/2022-08:44	02/29/2024-08:44	
Howard Equipment, Inc	Order/Order Cover Sheet \$25.00	Filing		08/02/2022-16:57	02/29/2024-16:57	
Howard Equipment, Inc	NEF(06-16-2022 03:54:51 PM) Order/Continuance	Filing		06/16/2022-15:56	02/29/2024-15:56	
Howard Equipment, Inc	Order/Continuance	Order		06/16/2022-15:54	02/29/2024-15:54	
Howard Equipment, Inc	NEF(05-26-2022 10:15:29 AM) Proposed Order/Continuance	Filing		05/26/2022-10:26	02/29/2024-10:26	
Howard Equipment, Inc	Order/Order Cover Sheet \$25.00	Filing		05/26/2022-10:15	02/29/2024-10:15	
Harjehausen, John D.				05/06/2022-16:43	02/29/2024-16:43	
Shealy, Samuel Ross Beheler				05/06/2022-16:43	02/29/2024-16:43	
Hite, Thomas Erskine III				05/06/2022-16:43	02/29/2024-16:43	
Walsh, James P.				05/06/2022-16:43	02/29/2024-16:43	
Still, Patrick L. III				05/06/2022-16:43	02/29/2024-16:43	
Nickles Iv, William F	NEF(04-08-2022 09:36:01 AM) Order/Continuance	Filing		04/08/2022-09:36	02/29/2024-09:36	

Nickles Iv, William F	Order/Continuance	Order		04/08/2022-09:36	02/29/2024-09:36	
Nickles Iv, William F	NEF(04-06-2022 04:49:16 PM) Order/Order Cover Sheet \$25....	Filing		04/07/2022-08:39	02/29/2024-08:39	
Nickles Iv, William F	Order/Order Cover Sheet \$25.00	Filing		04/06/2022-16:49	02/29/2024-16:49	
Nickles Iv, William F	NEF(03-29-2022 10:43:39 AM) Service/Affidavit Of Service	Filing		03/29/2022-11:04	02/29/2024-11:04	
Nickles Iv, William F	Service/Affidavit Of Service on Sonoco Products Company	Filing		03/29/2022-10:43	02/29/2024-10:43	
Sonoco Products Company	NEF(03-15-2022 02:41:36 PM) Answer/Answer To Amended Com...	Filing		03/16/2022-09:07	02/29/2024-09:07	
Sonoco Products Company	Answer/Answer To Amended Complaint	Filing		03/15/2022-14:41	02/29/2024-14:41	
Sonoco Products Company	NEF(03-15-2022 02:35:31 PM) Notice/Notice of Appearance	Filing		03/15/2022-14:36	02/29/2024-14:36	
Sonoco Products Company	Notice/Notice of Appearance	Filing		03/15/2022-14:35	02/29/2024-14:35	
Howard Equipment, Inc	NEF(03-11-2022 08:46:20 AM) Notice/Notice of Appearance	Filing		03/11/2022-10:40	02/29/2024-10:40	
Howard Equipment, Inc	Notice/Notice of Appearance	Filing		03/11/2022-08:46	02/29/2024-08:46	
Howard Equipment, Inc	Answer/Answer	Filing		03/11/2022-08:46	02/29/2024-08:46	
Howard Equipment, Inc	NEF(03-08-2022 12:28:22 PM) Order/Protection from Court ...	Filing		03/08/2022-12:28	02/29/2024-12:28	
Howard Equipment, Inc	Order/Protection from Court Appearance	Order		03/08/2022-12:28	02/29/2024-12:28	
Still, Patrick L. III	4/8/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		03/04/2022-16:10	02/29/2024-16:10	
Harjehausen, John D.	4/8/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		03/04/2022-16:10	02/29/2024-16:10	
Walsh, James P.	4/8/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		03/04/2022-16:10	02/29/2024-16:10	
Hite, Thomas Erskine III	4/8/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		03/04/2022-16:10	02/29/2024-16:10	
Nickles Iv, William F	NEF(02-15-2022 02:48:57 PM) Service/Affidavit Of Service	Filing		02/15/2022-15:33	02/29/2024-15:33	
Nickles Iv, William F	Service/Affidavit Of Service on Howard Equipment, Inc	Filing		02/15/2022-14:48	02/29/2024-14:48	
Nickles Iv, William F	NEF(02-07-2022 10:09:33 AM) Service/Affidavit Of Service	Filing		02/07/2022-16:17	02/29/2024-16:17	
Nickles Iv, William F	NEF(02-07-2022 10:12:28 AM) Service/Affidavit Of Service	Filing		02/07/2022-16:15	02/29/2024-16:15	
Nickles Iv, William F	NEF(02-07-2022 10:19:47 AM) Motion/Damages	Filing		02/07/2022-16:13	02/29/2024-16:13	
Nickles Iv, William F	Motion/Damages	Motion		02/07/2022-10:19	02/29/2024-10:19	
Nickles Iv, William F	Affidavit/Default	Filing		02/07/2022-10:19	02/29/2024-10:19	
Nickles Iv, William F	Affidavit/Default	Filing		02/07/2022-10:19	02/29/2024-10:19	
Nickles Iv, William F	Service/Affidavit Of Service on Ksc Logistics Inc	Filing		02/07/2022-10:12	02/29/2024-10:12	
Nickles Iv, William F	Service/Affidavit Of Service on Sonoco Products Company	Filing		02/07/2022-10:09	02/29/2024-10:09	
Howard Equipment, Inc	NEF(02-03-2022 11:37:07 AM) Proposed Order/Protection fr...	Filing		02/03/2022-13:33	02/29/2024-13:33	
Howard Equipment, Inc	Notice/Notice of Appearance	Filing		02/03/2022-11:37	02/29/2024-11:37	
Howard Equipment, Inc	Order/Order Cover Sheet \$25.00	Filing		02/03/2022-11:37	02/29/2024-11:37	
Palmetto State Transportation	NEF(11-23-2021 03:00:31 PM) Answer/Answer To Amended Com...	Filing		11/23/2021-16:46	02/29/2024-16:46	

Llc						
Palmetto State Transportation Llc	Answer/Answer To Amended Complaint	Filing		11/23/2021-15:00	02/29/2024-15:00	
Nickles Iv, William F	NEF(11-09-2021 04:28:39 PM) Consent/Consent	Filing		11/10/2021-08:57	02/29/2024-08:57	
Nickles Iv, William F	Consent/Consent	Filing		11/09/2021-16:28	02/29/2024-16:28	
Nickles Iv, William F	Amended/Amended Summons And Complaint	Filing		11/09/2021-16:28	02/29/2024-16:28	
Palmetto State Transportation Llc	NEF(11-09-2021 02:23:21 PM) Notice/Notice of Appearance	Filing		11/09/2021-14:23	02/29/2024-14:23	
Palmetto State Transportation Llc	Notice/Notice of Appearance	Filing		11/09/2021-14:23	02/29/2024-14:23	
Nickles Iv, William F	ADR/Alternative Dispute Resolution (Workflow)	Action		10/20/2021-08:29	08/30/2021-08:29	
Nickles Iv, William F	NEF(09-02-2021 04:07:58 PM) Order/Electronic Form 4	Filing		09/02/2021-16:08	02/29/2024-16:08	
Nickles Iv, William F	Order/Electronic Form 4	Order		09/02/2021-16:07	02/29/2024-16:07	
Nickles Iv, William F	Service/Certificate Of Mailing	Filing		08/30/2021-12:59	08/30/2021-12:59	
Nickles Iv, William F	NEF(08-30-2021 12:37:54 PM) Order/Electronic Form 4	Filing		08/30/2021-12:40	08/30/2021-12:40	
Nickles Iv, William F	NEF(08-23-2021 05:00:33 PM) Stipulation Of Dismissal	Filing		08/24/2021-08:43	08/30/2021-08:43	
Nickles Iv, William F	Stipulation Of Dismissal	Filing		08/23/2021-17:00	08/30/2021-17:00	
Palmetto State Transportation Llc	NEF(06-16-2021 07:05:08 AM) Notice/Notice of Appearance	Filing		06/16/2021-09:49	08/30/2021-09:49	
Palmetto State Transportation Llc	Notice/Notice of Appearance	Filing		06/16/2021-07:05	08/30/2021-07:05	
Palmetto State Transportation Llc	Answer/Answer	Filing		06/16/2021-07:05	08/30/2021-07:05	
Nickles Iv, William F	NEF(04-26-2021 03:17:42 PM) Service/Certificate Of Servi...	Filing		04/26/2021-16:23	08/30/2021-16:23	
Nickles Iv, William F	Service/Certificate Of Service	Filing		04/26/2021-15:17	08/30/2021-15:17	
Nickles Iv, William F	NEF(04-12-2021 10:44:14 AM) Service/Affidavit Of Service	Filing		04/12/2021-11:24	08/30/2021-11:24	
Nickles Iv, William F	Service/Affidavit Of Service on Ksc Logistics Inc	Filing		04/12/2021-10:44	08/30/2021-10:44	
Nickles Iv, William F	Summons & Complaint	Filing		03/24/2021-08:29	08/30/2021-08:29	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	
		C.A. No.: 2021-CP-01-00076
William F. Nickles, IV,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF WILLIAM RAY KELLEY
	)	
vs.	)	
	)	
Howar Equipment, Inc., Sunoco Products	)	
Company, Palmetto State Transportation,	)	
LLC, KSC Logistics, Inc., and John Doe	)	
Corporation,	)	
	)	
Defendants.	)	
	)	

Personally appeared before me, William Ray Kelley, who being duly sworn, deposes and says:

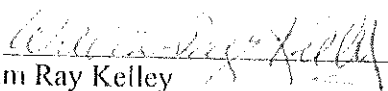
1. I am a citizen and resident of Abbeville County, South Carolina;
2. I am over the age of twenty-one (21) years, and am competent to give testimony;
3. I am President of KSC Logistics, Inc.;
4. Upon notice of the Amended Complaint in this case, I immediately contacted counsel for Plaintiff, by telephone. I informed Plaintiff's counsel that my company never did any work on or handled any reel which is alleged to have caused harm to Plaintiff;
5. At the time of the accident at issue in this case, my company did no work on high voltage reels at the Prysmian facility; therefore, it is impossible for my company to have done any work on the reel which Plaintiff claims to have injured him;
6. Upon notice of the Complaint in this case, I immediately contacted Tombo Hite, attorney for Plaintiff, and advised him that my company had no involvement in the accident at issue, advising that he should dismiss the case. Based on this communication, I did not believe

the case was proceeding against my company;

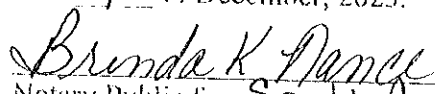
7. Other than service on December 21, 2021, the next item related to this lawsuit that KSC Logistics, Inc., received, was the Notice of Hearing for December 18, 2023.

8. Upon receipt of that notice, I sought counsel for the Company.

FURTHER AFFIANT SAYETH NAUGHT.


William Ray Kelley

SWORN TO AND SUBSCRIBED before me
This 17 of December, 2023.


Notary Public for South Carolina
My Commission Expires: 8/31/2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	
	)	C.A. No.: 2021-CP-01-00076
William F. Nickles, IV,	)	
	)	
Plaintiff,	)	SECOND AFFIDAVIT
	)	OF
vs.	)	WILLIAM RAY KELLEY
	)	
Howar Equipment, Inc., Sunoco Products	)	
Company, Palmetto State Transportation,	)	
LLC, KSC Logistics, Inc., and John Doe	)	
Corporation,	)	
	)	
Defendants.	)	
	)	

Personally appeared before me, William Ray Kelley, who being duly sworn, deposes and says:

1. I am a citizen and resident of Abbeville County, South Carolina;
2. I am over the age of twenty-one (21) years, and am competent to give testimony;
3. I am President of KSC Logistics, Inc.;
4. On April 9, 2021, I called Tombo Hite, attorney for Plaintiff, to discuss why my company was not liable in this case.
5. I followed the telephone call with an email, a true and accurate copy of which is attached hereto as Exhibit A.
6. On August 25, 2021, Hite sent me a Stipulation of Dismissal, in an email attached hereto as Exhibit B.
7. As of November, 2018, KSC never repaired evaluated, installed or modified any D-rings on high voltage reels. In March, 2023, KSC was asked about doing D-ring work, but KSC never did that work.

Following learning of the default in this case, I reviewed company emails, and found an email string between Charles Ouzts, Heath Booton, counsel for Prysmian, and my office manager, Brenda Nance.

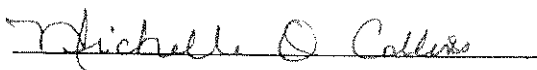
8. In that email, Ouzts confirmed that the reels at issue were shipped to Prysmian, and that Prysmian (rather than KSC) elected to reuse them.

9. I did not discover this communication, to which I was not a party, until after the Court ruled on pending Motions in this case.

FURTHER AFFIANT SAYETH NAUGHT.


William Ray Kelley

SWORN TO AND SUBSCRIBED before me
This 11th of March, 2024.



Notary Public for South Carolina

My Commission Expires: 12/13/2026

Michelle O Collins

) IN THE COURT OF COMMON PLEAS
) CIVIL ACTION NO.: 2021-CP-01-00076
)

STIPULATION OF DISMISSAL
WITHOUT PREJUDICE

PALMETTO STATE
TRANSPORTATION, LLC, AND
KSC LOGISTICS, INC.

DEFENDANTS.

This 23rd day of August, 2021.

BY: s/ Thomas E. Hite, III(SC BAR NO.: 73750)
THOMAS E. HITE, III, ESQ.
P. O. BOX 805
ABBEVILLE, SC 29620
(864) 366-5400 TELEPHONE
(864) 366-2638 FACSIMILE
T3@hiteandstone.com
ATTORNEY FOR THE PLAINTIFF

402



Chuck Kelley <chuck.kelley@ksclogistics.net>

Civil Action No.; 2021-CP-01-00076

1 message

Chuck Kelley <chuck.kelley@ksclogistics.net>

Fri, Apr 9, 2021 at 11:45 AM

To: t3@hiteandstone.com

Cc: Brenda Nance <brenda.patton@ksclogistics.net>

Tombo,

This is to confirm and follow-up on our phone conversation that took place the morning of April 9, 2021. As I stated in the conversation, "KSAC Logistics, Inc. never had the size reel that was involved in the accident that took place on November 10, 2018. This size reel was not in possession by KSC Logistics, Inc. for 6 months prior to the accident and for 4 months after the accident. Therefore, KSC Logistics, Inc. couldn't have made any modifications to the reel involved in the accident.

I feel Howar Equipment may have been the original manufacturer on this size reel. Yhve locations all over and not sure what location it may have been delivered out of.

Please let me know if you have any questions.

Chuck Kelley
KSC Logistics
864-941-6076

ELECTRONICALLY FILED - 2024 Mar 11 3:03 PM - ABBEVILLE - COMMON PLEAS - CASE#2021CP0100076



Chuck Kelley <chuck.kelley@ksclogistics.net>

Re: Civil Action No.; 2021-CP-01-00076

1 message

Chuck Kelley <chuck.kelley@ksclogistics.net>

Mon, Aug 23, 2021 at 1:59 PM

To: Tombo Hite <t3@hiteandstone.com>

Cc: Brenda Nance <brenda.patton@ksclogistics.net>, April Powell <april@hiteandstone.com>

Tombo,

Did this get filed?

Chuck Kelley
KSC Logistics
864-941-6076

On Sat, Apr 17, 2021 at 4:25 AM Tombo Hite <t3@hiteandstone.com> wrote:

Chuck

Thank you for your email.

As discussed I will prepare a stipulation of dismissal without prejudice and get it filed with the court.

I will get that to you first of next week.

Thank you for your information.

Tombo Hite

Thomas E. Hite III

Hite and Stone Attorneys at Law

P.O. Box 805

Abbeville, SC

Office - 864-366-5400

Fax - 864-366-2638

Cell - 864-538-9544

Please excuse typos - sent from my iPhone

On Apr 9, 2021, at 11:45 AM, Chuck Kelley <chuck.kelley@ksclogistics.net> wrote:

Tombo,

This is to confirm and follow-up on our phone conversation that took place the morning of April 9, 2021. As I stated in the conversation, "KSAC Logistics, Inc. never had the size reel that was involved in the accident that took place on November 10, 2018. This size reel was not in possession by KSC Logistics, Inc. for 6 months prior to the accident and for 4 months after the accident. Therefore, KSC Logistics, Inc. couldn't have made any modifications to the reel involved in the accident.

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Chuck Kelley
KSC Logistics
864-941-6076



Chuck Kelley <chuck.kelley@kscllogistics.net>

Fwd: Civil Action No.; 2021-CP-01-00076

1 message

Chuck Kelley <chuck.kelley@kscllogistics.net>
To: Brenda Nance <brenda.patton@kscllogistics.net>

Wed, Aug 25, 2021 at 8:25 AM

I followed up with Tombo on this and he sent this to me.

Chuck Kelley
KSC Logistics
864-941-6076

----- Forwarded message -----

From: **Thomas Hite III** <t3@hiteandstone.com>
Date: Tue, Aug 24, 2021 at 4:45 PM
Subject: Re: Civil Action No.; 2021-CP-01-00076
To: Chuck Kelley <chuck.kelley@kscllogistics.net>
Cc: Brenda Nance <brenda.patton@kscllogistics.net>, April Powell <april@hiteandstone.com>

Here is a copy of the dismissal without prejudice.

Thanks
Tombo Hite

On Mon, Aug 23, 2021 at 2:03 PM Thomas Hite III <t3@hiteandstone.com> wrote:

Chuck,
No, I am going to file it today. It was just oversight on my part.

But I didn't get very much in terms of help from my subpoena from Prysman so I may need some help finding the manufacturer in this case.

I will email you a copy of the stipulation of dismissal in just a minute.

Tombo Hite

On Mon, Aug 23, 2021 at 1:59 PM Chuck Kelley <chuck.kelley@kscllogistics.net> wrote:

Tombo,

Did this get filed?

Chuck Kelley
KSC Logistics
864-941-6076

On Sat, Apr 17, 2021 at 4:25 AM Tombo Hite <t3@hiteandstone.com> wrote:

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Chuck

Thank you for your email.

As discussed I will prepare a stipulation of dismissal without prejudice and get it filed with the court.

I will get that to you first of next week.

Thank you for your information.

Tombo Hite

Thomas E. Hite III
Hite and Stone Attorneys at Law
P.O. Box 805
Abbeville, SC
Office - 864-366-5400
Fax - 864-366-2638
Cell - 864-538-9544
Please excuse typos - sent from my iPhone

On Apr 9, 2021, at 11:45 AM, Chuck Kelley <chuck.kelley@ksclogistics.net> wrote:

Tombo,

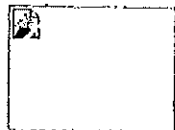
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Please let me know if you have any questions.

Chuck Kelley
KSC Logistics
864-941-6076

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P.O. Box 805
100 East Pickens
Abbeville, SC 29620
Office - 864-366-5400
Fax - 864-366-2638

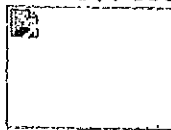


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--
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 Stipulation of Dismissal without prejudice KSC - Nickles.pdf
64K

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Aug 01 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Case No. 2021-CP-01-00076

William F. Nickles, IV, Respondent,

v.

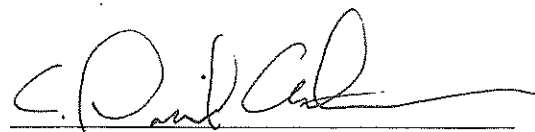
Howar Equipment, Inc., Sonoco Products Company, Palmetto State Transportation, LLC, KSC
Logistics, Inc., and John Doe Corporation, Defendants,

of which KSC Logistics, Inc. is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the foregoing Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

August 1, 2025



C. Daniel Atkinson (S.C. Bar #72721)
Wilkes Atkinson & Joyner, LLC
127 Dunbar St., Suite 200
Spartanburg, SC 29306
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datkinson@wajlawfirm.com

Attorney for Appellant