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SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS
C.A. NO.: 2024CP2300001

ANA TERESA MARTHA HERRERA

PLAINTIFF,

VS.

GENERAL MOTORS, LLC.,

DEFENDANT.

H E A R I N G

BEFORE THE HONORABLE WILLIAM C. MCMASTER, III

DATE: AUGUST 26, 2025

LOCATION: SOUTH CAROLINA CIRCUIT COURT 13

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ALSO PRESENT :

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(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

P R O C E E D I N G S

1
2
3 THE COURT: This will be on 2024CP230001, and there are
4 a number of motions here, obviously. We've got an hour
5 scheduled for this. So what I'm -- what I was thinking about
6 when I was reviewing this, and I'll just -- I'll run this by
7 the parties, and we can go into this in a minute, and you can
8 identify yourself for the record, and all those things.
9 Looks like one and three would be good to argue together.

10 MS. EIBLING: Yes, Your Honor.

11 THE COURT: Then two, six, and eight together.

12 MR. AHMAD: Yes.

13 THE COURT: Then four, motion to compel discovery is
14 kind of standing on its own.

15 MR. AHMAD: Yes, Your Honor.

16 THE COURT: And then five, Plaintiff's motion to strike.
17 That kind of stands on its own there.

18 MR. AHMAD: Yes, Your Honor.

19 MS. EIBLING: I think that kind of goes with two, six,
20 and eight.

21 THE COURT: Okay, you want to go, so put five and two --
22 so do two, five, six, and eight.

23 MS. EIBLING: Yes, Your Honor.

24 THE COURT: Okay. And then -- and then I wrote
25 something down. And then we have Davis -- the Davis Towing

1 motion for judgment on the pleadings.

2 MR. AHMAD: Yes, sir.

3 THE COURT: Okay. We could do that one kind of at the
4 end. I think that's the easier way to do it. And like I
5 said, I'm -- I'm not married to that. I just was trying to
6 think of an easier way so we wouldn't have to repeat a lot of
7 the same arguments, because it looks like based on the
8 information. All right. So what we're going to do is I want
9 the parties to identify themselves and who they represent.
10 And then let's move into one and three, which is going to be
11 Defendant's motion compelled deposition. And then three is
12 the motion to quash. All right, go ahead.

13 MR. AHMAD: Good morning, your honor. Solemn Ahmad,
14 appearing on behalf of the Plaintiffs.

15 MS. EIBLING: Good morning, Your Honor. Sarah Eibling
16 appearing on behalf of General Motors, LLC and Kevin Whitaker
17 Chevrolet, LLC.

18 THE COURT: All right. First is going to be Defendant's
19 motion to compel deposition. Be happy to hear from you.

20 MS. EIBLING: Thank you, Your Honor. So General Motors
21 is moving for an order compelling the deposition of Chad
22 Jones, who is an expert at Warren Forensics. In the
23 alternative, if we are not permitted to depose Mr. Jones, we
24 seek alternative relief precluding Plaintiff, Plaintiff's
25 Counsel, and Plaintiff's experts from using, referring, or

1 relying on any of the photographs or information Mr. Jones
2 obtained while inspecting the vehicle. Now just let me give
3 you a little bit of background, Your Honor. I know you're
4 new to this one, but the -- there was an accident that
5 occurred on April 18, 2021, involving Anna Martinez driving a
6 2010 Chevrolet Cobalt.

7 The vehicle was towed by Davis Towing to 511A, South
8 Florida Avenue in Greenville, South Carolina, at the
9 direction of the South Carolina Highway Patrol. Plaintiffs
10 retained counsel sometime around May of 2021. Mr. Jones
11 inspected the vehicle in August of 2021. During that
12 inspection, he took photographs. Obviously, he did other
13 activities. He observed the vehicle. GM was first put on
14 notice of this claim in October of 2023. Immediately upon
15 receiving notification from Plaintiff, I had emailed and said
16 we'd like to inspect the vehicle, at which time, I was
17 notified that the vehicle has been destroyed.

18 So the subject vehicle that forms the foundation of this
19 claim is no longer available. Through discovery, we learned
20 that the vehicle had been destroyed sometime in April through
21 October of 2023. So the vehicle was at Davis Towing for a
22 period of two to two and a half years, and GM was never put
23 on notice or given an opportunity to inspect. So Chad Jones
24 has been the only identified expert who has inspected the
25 vehicle before it was destroyed. And that's based on the

1 Plaintiff's discovery responses that he was out to the scene.
2 And he's the only one that has information about its post-
3 accident collision condition. And so he's a mechanical
4 engineer. He's a fire investigation, explosion expert, and
5 he does this type of thing.

6 He provides outside services in litigation to assist
7 with -- with cases. So since he is the only identified
8 individual who has observed the vehicle, we compelled -- or
9 we subpoenaed him for deposition to question him about his
10 observations, his photographing, as well as any
11 communications he may have had with Davis Towing about the
12 continued preservation of the vehicle. Plaintiffs are
13 claiming Davis Towing let it get destroyed. Davis Towing is
14 saying Plaintiff let it get destroyed. The sum total of all
15 that is GM is severely prejudiced because the one thing
16 that's tantamount in this case is gone.

17 So GM is requesting that it be permitted to depose Mr.
18 Jones because they have no other way to get information that
19 the Plaintiff has unfettered access to. The Plaintiff has
20 not identified Mr. Jones as a testifying expert. And South
21 Carolina recognizes three, four different categories of
22 experts, one that's been retained and plans to testify at
23 trial. That's not in dispute. Discovery is permissible.
24 The second category is an expert who's been retained but who
25 will not testify at trial.

1 The Court allows the deposition of that type of expert
2 upon a showing of exceptional circumstances, which we argue
3 exist in this case. The third is an expert who is consulted
4 informally, or one that is not specially employed or
5 retained. It's GM's position that Mr. Jones falls within the
6 second category. Now we understand the Plaintiff is going to
7 take the position that he falls within the third category,
8 someone who is just consulted informally. But Your honor,
9 Mr. Jones, undoubtedly, was retained, paid for his time to
10 travel from Columbia, South Carolina, to Greenville, South
11 Carolina, spent several hours inspecting the scene. I mean,
12 sorry, inspecting the vehicle. Has observations, has other
13 information for which we believe we're entitled to discover
14 because the vehicle no longer exists.

15 And he is the only person of which we are aware that has
16 inspected the vehicle in its post-accident condition. Now
17 it's no doubt that if the Plaintiffs decide to call Mr. Jones
18 at trial, he would be fair game for discovery. But we're at
19 a point in time, Your Honor, we don't have any other way to
20 get the information other than to depose Mr. Jones. So our
21 position is exceptional circumstances under Category Two
22 exist, and we would ask the court to allow us permission to
23 depose Chad Jones based on the information. Thank you.

24 THE COURT: Yes, sir.

25 MR. AHMAD: Good afternoon or good morning, Your Honor,

1 excuse me. So your honor, it's our position that we have no
2 intention of calling Mr. Jones. He simply took some photos,
3 and we provided those photos and photos to all of Defense
4 Counsels. And additionally, Your Honor, at the end of the
5 day, we are prejudiced by the actions of InsureMax and Davis
6 Towing. In a previous ruling, Judge Dunbar found that
7 InsureMax's motion to dismiss on grounds of conversion and
8 incidences -- incidents related to the disposition of the
9 vehicle, whatever that may be.

10 Ultimately, we don't have that vehicle, and that's due
11 the fact that it was in possession of InsureMax and Davis
12 Towing. And so we are prejudiced by not being able to attain
13 -- obtain that vehicle. But Your Honor, according to
14 *Esposito v. Southend Exteriors*, in such instances where the -
15 - where like this, where we plan on using these photos, but
16 we don't plan on calling Mr. Jones as an expert witness or to
17 testify. The court found that that sort of subpoenas should
18 be quashed specifically because it requires all records. And
19 Your Honor, if you look at their subpoena, which was attached
20 to the motion to quash as Exhibit A. All the way at the
21 bottom Attachment A states, please produce copies of your
22 entire file, any and all reports, preliminary reports,
23 analysis communications with Plaintiff, Plaintiff's
24 representatives, including council or other experts,
25 inspection photos, video, scans, videos, scans, notes,

1 diagrams, etc.

2 So this goes beyond just a mere deposition of the facts
3 surrounding the vehicle. This is requesting the entire
4 production of Mr. Jones's company file here. And it's --
5 it's over (indiscernible) on its face, and it shouldn't be
6 allowed. But Your Honor, we'd be amenable to providing an
7 affidavit for Mr. Jones testifying how he took the photos and
8 the state of the vehicle based on the photos themselves. But
9 as far as we're concerned, there's no needs -- no need to
10 depose Mr. Jones.

11 THE COURT: All right. Response?

12 MS. EIBLING: Yes, Your Honor. The Plaintiff has
13 identified two named testifying experts. They have
14 unfettered access to Mr. Jones. They can ask him all the
15 questions they want about his observations of the vehicle in
16 the post-collision condition. GM does not have that
17 opportunity. What's more important, Your Honor, is we want
18 to see if Mr. Jones has any information about what was going
19 on for the 30 months that the vehicle sat at Davis Towing.
20 Was -- and any subsequent inspections that he may or may not
21 have done, any that he may or may not have requested.

22 What did he do in the interim to assist the Plaintiffs
23 in preserving the vehicle because it's going to be GM's
24 position that the Plaintiff himself or herself was actually
25 responsible for the destruction of the vehicle. And we were

1 going to -- we are going to move for some dispositive motions
2 related to their conduct. But Mr. Jones is the one that has
3 that available information. And I again, without knowing
4 that all he did was take 92 photographs. I'd like to ask him
5 about whether he observed the vehicles under- carriage,
6 whether he observed burn patterns, whether he observed or
7 smelled anything related to flammable or -- or in -- liquids
8 that might relate to what caused the fire in this incident.
9 Again ---

10 THE COURT: What about the entire file argument that you
11 made. What's your position?

12 MS. EIBLING: Well, Your Honor, if he has videos, if he
13 did any type of attempted vehicle download, all of that is
14 important information because he's the only person that went
15 to it. If the answer is he has none, then the answer is he
16 has none. But if he has videos in his possession, if he has
17 (indiscernible) scans in his possession, if he has any of
18 that information, he's the only source of that information
19 that exists. That is why the exceptional circumstances
20 exist. Importantly, as well Your Honor, you don't know too
21 much about the history of the case, but we've had a lot of
22 motions before the court regarding requests to admit.

23 And the Plaintiffs have admitted that they did not
24 anticipate litigation prior to October 4th of 2023. That is
25 when the vehicle had already been destroyed. So our position

1 is that if they did in fact anticipate litigation prior to
2 putting General Motors on notice, what were they doing
3 because in -- in essence, it ultimately prejudiced GM by not
4 giving us an opportunity to physically inspect it ourselves.
5 If the court wants to limit what we can request of him to
6 bring to the deposition, happy to have that discussion. But
7 if he scanned the vehicle, he's the only person that has that
8 information. If he -- if he took any samples, he's the only
9 person that has that information. The vehicle is gone.

10 Believe me, I'm -- we have looked at nauseam to locate
11 this vehicle and figure out where it went. And I think Davis
12 Towing will -- will help fill in the gaps with that, Your
13 Honor. But knowing when he had communications about the
14 preservation of the vehicle, if he had any communications
15 with Davis Towing. All of that is going to be certainly
16 relevant and the only individual that has that information.

17 THE COURT: I'll give you a brief response.

18 MR. AHMAD: Yes, Your Honor, for a couple things.
19 So ---

20 THE COURT: Let's first look at it that about the
21 exceptional circumstances, I'd like you to address that
22 first.

23 MR. AHMAD: Yes, Your Honor. As exceptional
24 circumstances, again, your honor, we -- as attached to the
25 memo, we sent letters to Davis Towing and InsureMax

1 (indiscernible) the preservation. So any sort of claim here
2 about us spoiling the evidence, simply unfounded. And so we
3 have provided ---

4 THE COURT: (Indiscernible) going that route. She's
5 saying that she has exceptional circumstances because nobody
6 else has the information. I don't think she's on the
7 spoliation argument at this point. But it seems like to me,
8 it's exceptional circumstances are that no one else has
9 information other than this -- this individual, Mr. Jones.

10 MR. AHMAD: And again, Mr. Jones, Your Honor, all he did
11 was take photos. I mean, she's -- she's claimed, just right
12 now, that our experts can rely on Mr. Jones's observations,
13 but she's free to depose our experts and ask those experts if
14 they relied on that information.

15 THE COURT: Wouldn't be anything else in his file, other
16 than just photos based on what you just told The Court; is
17 that right?

18 MR. AHMAD: Well, again, Your Honor, that's why I was
19 saying that they're -- I don't know what they mean by entire
20 file. There's no specificity in this Attachment A.

21 THE COURT: Well, she was mentioning things like the
22 vehicle downloads and things like that. You just indicated
23 there's nothing but photos; is that correct?

24 MR. AHMAD: Yes, Your Honor.

25 THE COURT: Okay. All right. You can continue.

1 MR. AHMAD: But once again, as read on its face, please
2 produce copies of your entire file, including any and all
3 reports, preliminary reports. It goes on and on. It doesn't
4 specifically state, as related this case, it's not specific.
5 But Your Honor, again, she just stated if he has none, he can
6 say there is none. Your Honor, we're telling the court here
7 today that Mr. Jones had these photos. We provided those
8 photos, letters of preservation. They have everything. This
9 is unnecessary.

10 THE COURT: We'll give you the final word on that far as
11 Mr. Jones, if they were to produce an affidavit saying that
12 all that he has are the photos.

13 MS. EIBLING: But Your Honor, the exceptional
14 circumstances is to question him about his observations
15 because he was the only one who physically observed the
16 vehicle. The photographs are just pictures, but we have the
17 ability to ask him, did you look at X. Did you look at Y.
18 Did you see X. Did you see Y. Those are very important,
19 here's why, Your Honor. What we do know about this -- this
20 vehicle is that in 2010, it was involved in a high-speed
21 collision where the air bags deployed. The vehicle was then
22 put through the auction system throughout the states of North
23 Carolina, South Carolina, and Tennessee.

24 I want to be able to ask Mr. Jones, did you determine
25 whether there were air bags in the vehicle? He's the only

1 one that will know that. Nobody else will be able to give
2 that information because the vehicle is gone. He might say,
3 I wasn't able to determine that. But he might say, I did
4 determine it and there were. Or I did determine it, and
5 there weren't. I have no other way how to get this
6 information other than asking Mr. Jones what he did, how he
7 observed the vehicle in its post-collision condition.

8 THE COURT: All right. Based on that information, I'm
9 going to grant the motion to compel the deposition. I find
10 there are exceptional circumstances in this case based on the
11 situation with Mr. Jones and the vehicle being destroyed.
12 Also, I'm going to allow -- I'm not going to quash subpoena
13 on Mr. Jones. I am going to limit the subpoena to his
14 observations and any photographs. And I will -- and then the
15 -- I'll allow the Plaintiff to supplement with a affidavit,
16 but no scans or anything like that nature, download a black
17 box or whatever you want to call it. We're done on the
18 vehicle. I'll allow that as well.

19 MR. AHMAD: Thank you, Your Honor.

20 THE COURT: And so those two motions, I'm going to grant
21 one completely, obviously. The other one will be with some
22 limitations on the quash on (indiscernible) subpoenas
23 concerned. So if you'll all have Defense counsel draft a
24 short order on those two items.

25 MS. EIBLING: Yes, Your Honor. Thank you.

1 THE COURT: Let's go on now, and let's move to the next
2 set of motions which involve -- appears to involve some what
3 have been classified -- been said or were minor, but there's
4 some argument that they were not minor. There's been some
5 ability to amend, but then there's also some statute of
6 limitations issues, I think, with the amendments is the way I
7 read it. So we're going to move on into that so we can --
8 All right, so we'll start with -- if you, you know, I have no
9 problem starting with number two, Plaintiff's motion to
10 (Indiscernible) amended complaint.

11 MR. AHMAD: Yes, Your Honor.

12 THE COURT: Start with that?

13 MR. AHMAD: Yes, sir.

14 THE COURT: All right, let's go.

15 MR. AHMAD: So Your Honor, frankly, these group of
16 motions should -- couldn't even be here before your court
17 today, and that's because Judge Dunbar has already granted
18 our motion to amend, to lead the amend -- leave to amend,
19 which we've done. And Your Honor, may I approach in tinder?

20 THE COURT: Yes. You got something to show just make
21 sure she has a copy.

22 MR. AHMAD: Yes, sir. Your Honor, that's Judge Dunbar's
23 ruling in the previous motion regarding a motion to dismiss.
24 This is the exact same argument that GM is currently making
25 today. And in fact, Your Honor, they filed a motion to

1 reconsider under Rule 59(e) and it was denied. So this makes
2 this whole argument relating to issue five and eight, excuse
3 me, yes, five, six, eight -- the whole thing is moot,
4 honestly. All of these motions are moot at this point
5 because we've already amended our -- our complaint and Judge
6 Dunbar ---

7 THE COURT: I have five as a Plaintiff's motion to
8 strike.

9 MR. AHMAD: Yes, Your Honor, and that was -- I did that.
10 And to give a little back background on that, Your Honor.

11 THE COURT: Well let's stay on task where we are right
12 now.

13 MR. AHMAD: Okay.

14 THE COURT: Go ahead.

15 MR. AHMAD: So Your Honor, may I also approach in
16 tinder?

17 THE COURT: Sure.

18 MR. AHMAD: Okay. Your Honor, that's Judge Dunbar's
19 motion to reconsider denied. So going back to this issue at
20 hand, procedurally, all of these are moot at this point.
21 We've amended the complaint, and therefore, at this -- at
22 this point, we would withdraw our motion. The only reason we
23 kept in front of Your Court is because we had to ensure that
24 the court upheld Judge Dunbar's ruling, given the fact that
25 GM's and Kevin Whitaker has moved to -- for the same

1 dismissal in a procedural violation.

2 THE COURT: All right. So let's just address -- I'll
3 let Defense address just the Plaintiff's -- he's going to
4 withdraw Plaintiff's motion for leave to amend the amended
5 complaint.

6 MS. EIBLING: That's correct, Your Honor.

7 THE COURT: Okay. So we're good.

8 MS. EIBLING: Judge -- yes, Judge Dunbar has granted him
9 leave to amend.

10 THE COURT: All right. So he has done that. So two is
11 now moot. We'll put that down. So we've got that based on
12 it's been withdrawn by Plaintiff's counsel. Okay. Now -- so
13 now we need to move in to -- do we have a motion to dismiss
14 by GM and Kevin Whitaker. Those are the next two? Is that -
15 - that rolls us in to that?

16 MS. EIBLING: Yes, that's correct, Your Honor.

17 THE COURT: All right. Let's hear about those.

18 MS. EIBLING: So although Mr. Ahmad has provided The
19 Court some background, what's important to understand is what
20 The Court ordered was permission to file an amended
21 complaint, which he has done as of July 11th of 2025. The
22 court did not make any findings about the correctness or
23 properness of GM's arguments that the claims are, in fact,
24 barred by the statute of limitations. So as soon as the
25 Plaintiff amended her complaint, filed it, GM and Kevin

1 Whitaker moved to dismiss the claims of Yasmine Herrera and
2 Ashley (Indiscernible) as being barred by the statute of
3 limitations.

4 First, Your Honor, it is undisputed that Yasmine's
5 birthday is June 13th of 2004, and Ashley's birthday is July
6 10th of 2004. The date of this incident was April 18, 2021.
7 And I know we're all having to do math, but at the time of
8 the accident, Your Honor, they were almost 17 years old. Now
9 putting aside the biological impossibility of having two
10 daughters born one month apart, Anna Martinez initially filed
11 a lawsuit on December 29, 2023, bringing claims on her behalf
12 and as the guardian of her minor daughters, Ashley and
13 Yasmin. In December of 2023, Yasmine and Ashley were 19 and
14 a half years old.

15 Ms. Martinez lacked standing to bring causes of action
16 on their behalf because they were, in fact, adults. Now,
17 Your Honor, there is a minor tolling statute. And the minor
18 tolling statute under 15-3-40, Subsection One, Sub part B,
19 claims that a minor's claims are barred one year after the
20 minor reaches the age of majority. Again, doing math, both
21 of them turned 18 in 2022, giving them one year to bring
22 claims would bring us to June and July of 2023. The
23 complaint was filed in December of 2023. So under the
24 reading of the minor tolling statute, their claims expired in
25 June and July of 2023.

1 Now, Your Honor, there is a case *Lail v. Hartness, DSC*,
2 August 7, 2012. And in that case, they clearly state that
3 the -- the statute is only intended to provide minors one
4 year from the date their disability ceases. And again, that
5 would bring us to 2023. The Lail Court found that the
6 Plaintiff cite to a case, Dovie Crooks from 2005, for their
7 position that SC Code Annotated 15-3-40, allows a plaintiff
8 the full limitation period after turning 18 to file a
9 complaint. Not only is this interpretation contrary to the
10 plain language of the statute, it was also unnecessary to the
11 holding in Crooks.

12 Thus the undersigned declines to adopt the same
13 interpretation here. Section 15-3-40, clearly limits the
14 tolling to one year after infancy ceases. So if we are to
15 use the minor tolling statute interpretation of *Lail v.*
16 *Hartness*, the claims that they brought in July of 2025, or
17 more than two years after the one year application of the
18 minor tolling statute. There's an alternative application,
19 or interpretation, of the mine -- mining -- minor tolling
20 statute. Because the accident occurred in 2021, there is a
21 three year statute of limitations, which would bring us to
22 April 18th of 2024.

23 If we were to give the minors one year after the
24 expiration of this -- of the statute of limitations by which
25 to bring their claims, they would have expired in April of

1 2025. Again, filing a complaint in July of 2025, is outside
2 the statute of limitations. Finally, there's just yet a
3 third interpretation, and that minors tolling statute is that
4 three years from the date they turn 18. So both girls turned
5 18, respectively, in June of 2024, I'm sorry, June of 2022,
6 July of 2022. Applying a three year statute of limitations
7 means their claims expired June 13th of 2025, which was 25
8 days before the filing of the second amended complaint. And
9 the other one turned 18 plus three years on July 10 of 2025,
10 which is one day prior to the filing of the second amended
11 complaint.

12 While we take the position that the *Lail v. Hartness*
13 case is the correct interpretation under 15-3-40, under any
14 interpretation of the minor tolling statute, both girls
15 claims expired before the filing of the second amended
16 complaint on July 11th of 2025. What's really important to
17 note here, Your Honor, is we didn't just run to The Court and
18 say, haha, gotcha. We actually sent a letter to the
19 Plaintiffs on March 26th of 2025, and brought it to their
20 attention that we believed both of the girls were, in fact,
21 adults, and we agreed to consent to amendment allowing them
22 to be substituted in and -- and then we would answer the
23 complaint as them in their individual capacities.

24 We didn't get any kind of response to that March 26,
25 2025, letter. We were here before the court on a motion to

1 strike portions of the Plaintiff's pleadings. The Court
2 ordered the Plaintiff, unrelated to this issue, amend their
3 complaint. They filed an first amended complaint, May 23,
4 2025. They did not, at any point in time in that filing,
5 attempt to correct the naming of Ashley and Yasmin as adults.
6 It took GM filing a motion to dismiss under Rule 17, as they
7 not being the correct parties and interest, for the Plaintiff
8 to do anything. And Your Honor, there will be a reply in
9 your inbox later today that we are filing this morning. It
10 took them 79 days to do anything related to these two
11 individuals when it was brought to their attention. That's
12 not only dilatory, but it's bad faith.

13 Ms. Martinez, as their guardian and mother of these
14 children, verified a complaint on December 29, 2023, that
15 they were minor children. That was a misrepresentation to
16 The Court, because they were 19 and a half years old. All of
17 the information available to avoid this -- avoid this was in
18 the hands of the Plaintiff. This is not a simple mistake
19 that is -- that is contemplated under Rule 15. The problem
20 is, again, the Plaintiff had the ability to correct,
21 neglected to do so, and as a result, when they filed their
22 Second Amendment complaint in July 11th of 2025, under any
23 version of the tolling -- minor tolling statute, all of those
24 claims had been barred.

25 So it is GM's position that both Ashley and Yasmine's

1 claims be dismissed. Now we do -- we did get the Plaintiff's
2 opposition regarding the relation back doctrine. Follow me
3 on this one. The relation back doctrine salvages a simple
4 mistake. As I've already said, this is not a simple mistake.
5 The information that was available to the Plaintiff was well
6 within her possession at the time she verified a complaint
7 with this court. More importantly, Ms. Martinez did not have
8 standing to bring a claim for adult individuals in the first
9 instance in December of 2023.

10 So what we in essence have with the filing of the July
11 11, 2025, complaint, new parties, new claims. And the
12 court's very clear, and you'll see in the case law that we've
13 cited in our reply, Rule 15 does not salvage new parties and
14 new complaints and new claims. What it is intended to do is
15 to correct a mistake. If, for example, the defendant was
16 unknown, or if they had sued General Motors Corporation, and
17 it was, in fact, General Motors LLC. But because of
18 diligence, they couldn't determine the proper party. That's
19 not what we have here, Your Honor. Again, all of the
20 information related to the ages of these two individuals was
21 within the -- within the possession of the Plaintiffs. So
22 because Ms. Martinez lacked standing, we cannot relate these
23 claims back to the original filing in December of 2023. So
24 it is our position that these claims should be dismissed.
25 Okay. That's all I have.

1 THE COURT: Yes, sir.

2 MR. AHMAD: Your Honor, again, I just heard Counsel talk
3 about bad faith. And the reason why I wanted to talk about
4 that motion to strike is because when Judge Dunbar said he
5 would take it under advisement in relating and allowing us to
6 to amend the complaint, he stated that he wanted us to reach
7 out to Counsel regarding any sort of discovery issues or any
8 other issues that they may have. So following that ruling,
9 Counsel filed an amended answer to our first amended
10 complaint and listed all of the defenses that she's now
11 raising in that answer.

12 I talked to Counsel. I told her on the phone I said,
13 hey, we're waiting on Judge Dunbar's ruling. Can you remove
14 this from your filings because I don't understand - we're,
15 you know, why you filed this. Judge Dunbar said he was going
16 to issue a ruling about this because we already discussed
17 this in court. And Your Honor, he told me that The Court may
18 have their ruling, but GM was going to do what they're going
19 to do. Now that's in the spirit of Andrew Jackson if I've
20 ever heard of anything like that. So if you want to talk
21 about bad faith, that's an example. But even further than
22 that, Your Honor, after Judge Dunbar issued his ruling, he
23 instructed GM's counsel to pay fees. They still haven't paid
24 fees. I didn't want to bring that up, but I'm doing that
25 today because my character has been attacked.

1 Further, Your Honor, I'm having deja vu. And the reason
2 I'm having deja vu is because in that motion to strike, I go
3 at length discussing why it should be stricken. And it goes
4 to all the arguments she raised in front of Judge Dunbar, in
5 which Judge Dunbar still deemed it relevant for us to amend
6 the complaint. And on top of that, when they file their
7 59(e) motion for reconsideration, he denied that too. So at
8 this rate, they're taking a third bite at the apple, and on
9 top of that, they're using Kevin Whitaker to make it a
10 fourth. So, Your Honor, I would ask you to uphold Judge
11 Dunbar's ruling. Procedurally, this argument is moot and it
12 should not be before This Court. And frankly, you should
13 reward us fees for even having to come before Your Court and
14 argue this over and over and over again. Thank you.

15 THE COURT: I'll let you respond to the Judge Dunbar
16 part.

17 MS. EIBLING: Thank you, because most of that was
18 absolutely irrelevant to the arguments of the statute of
19 limitations. Your Honor, again, what was proper before the
20 court, what the court was doing was a motion for leave. May
21 I have permission to file. And The Court in denying GM's
22 motion to dismiss under Rule 17, which is the real parties
23 and interest, what Judge Dunbar said is it would be improper
24 for me to grant your motion to dismiss without affording them
25 an opportunity to amend. That's what they've done. They

1 have, in essence, moved the needle back to square one.

2 Simply because they've been given permission to file an
3 amended complaint does not thereby then negate GM and Kevin
4 Whitaker's opportunities to contest what's inside that
5 amended complaint. The Judge did not hear these arguments
6 because they filed their motion for leave to amend the
7 complaint. And you can find this a day before the hearing in
8 front of Judge -- Judge Dunbar giving GM no opportunity to
9 provide its defense or its objection to the motion for leave.
10 Fine, the Judge has granted them permission to file.

11 What we are now here in front of this court is
12 basically looking at the amended complaint that they have
13 filed July 11, 2025, and asking The Court to look at that
14 complaint and take into consideration the arguments we're
15 making with regards to the statute of limitations. He did
16 not hear this information. He did not hear about relation
17 back. He did not hear about the minor tolling statute. All
18 he did was give them permission to correct what they had made
19 a mistake about in their previous filings. Your Honor, it
20 would be error to then say GM does not have the ability, or
21 even Kevin Whitaker have the ability, to come back before the
22 court and provide information relative to a new complaint
23 with new parties, asserting new causes of action, simply
24 because Judge Dunbar, two months ago, gave them permission to
25 file an amended complaint.

1 And, Your Honor, he gave them that permission never
2 seeing the amended complaint because the Plaintiffs did not
3 attach a proposed amended complaint to their motion for
4 leave. They simply filed a motion for leave to amend. That
5 was then put on your calendar for you to hear today. But
6 instead, Judge -- Judge Dunbar ruled on it in June of 2025,
7 again, not having given GM an opportunity. And yes, Your
8 Honor, we did file a motion for reconsideration so we can be
9 sure to preserve the issue for appeal, because he did not
10 make any findings relative to the statute of limitations. He
11 did not make any findings or rulings about whether or not the
12 parties that they were going to add to the complaint had any
13 relation back to the original filing date.

14 He made no findings. He simply gave them permission to
15 file. Your Honor, that would be akin to saying that we're
16 not now allowed to file motion for summary judgment on a
17 statute of limitations claim because judge Dunbar, three
18 months ago, gave them permission to file an amended
19 complaint. That's nonsense. We have the right to file based
20 on the filed amended complaint in July of 2025, and that's
21 what we've done.

22 THE COURT: Yes, sir.

23 MR. AHMAD: Your Honor, again, the reason why we were
24 granted fees last time by Judge Dunbar is because counsel
25 forgot the court's ruling by Judge Salvini, causing us to

1 come before The Court last time. And again, now they're all
2 of a sudden remembering what Judge Dunbar said verbatim,
3 which isn't true. And if it is true, then she should have
4 brought the transcript showing that. But, Your Honor, I
5 remember quite clearly making those arguments before Judge
6 Dunbar, and I'm frankly astonished that council is now making
7 this argument that, oh, it was just a permission for leave.
8 It wasn't actually, you know, granted for curing any alleged
9 defect, which is in the order. And when they argued their
10 motion to reconsider, and we raised the arguments in a memo
11 in opposition, we made that clear to the Judge again and
12 through this motion to strike.

13 Your Honor, she even said that, you know, that we were
14 on notice. But that was the argument that we made to Judge
15 Dunbar, that Defense Counsel has been on notice regarding
16 these Plaintiffs, and it would be a grave injustice for a
17 technicality to stop them from being able to litigate their
18 issues beforehand. Your Honor, this has been procedurally
19 moot. This is about children who saw their mother burn. And
20 I understand it's GM and Kevin Whitaker's position to stop
21 that sort of litigation coming before a jury of 12
22 individuals. But this needs to see the light of day, and
23 they need to have their day in court, Your Honor.

24 So I respectfully ask you again to uphold Judge Dunbar's
25 ruling, and please find in favor of the Plaintiff and allow

1 us to obtain fees and costs.

2 THE COURT: I'll take it under advisement. Has anybody
3 got a transcript from Judge Dunbar's hearing?

4 MS. EIBLING: I will take my office, Your Honor. I
5 don't know.

6 THE COURT: If you did, would you please provide that to
7 me with your -- I think since you're sending in a reply brief
8 as well.

9 MS. EIBLING: Yes, it has been filed.

10 THE COURT: All right. That takes care of that. We're
11 next to the motion to compel discovery, I believe, which is
12 four.

13 MS. EIBLING: Yes, Your Honor. Again, this -- this
14 relates back to the very tortured history that this case has
15 seen. Because originally it was filed in state court, we
16 then moved it to federal court. It was then remanded about a
17 year later back to state court. So this involves discovery
18 that was served prior to removal, but before remand, in
19 essence, the discovery remains deficient. Plaintiff did, in
20 fact, supplement some of the responses. But Your Honor, what
21 we've now heard from the Plaintiff, on countless occasions,
22 is the vast number of medical bills that Ms. Anna Martinez
23 has suffered as a result of the vehicle collision on April
24 18, 2021.

25 They have now proposed to the -- to General Motors that

1 at 7 million, then it got to 11 million. And in many
2 representations to the court since then, that number is now
3 up to 20 million. We have no medical records or bills that
4 come close to asserting a value of \$20 million. In fact, in
5 their own discovery responses that they've provided, the
6 bills that they've given us totaled \$2,300,000. Far cry from
7 7 million, 11 million, 20 million. We need to get access to
8 the medical bills, medical records that are within their
9 Clients' possession, custody, or control.

10 Alternatively, we even offered to go do it ourselves,
11 and we submitted five medical authorizations that included
12 pharmacies, medicals, insurance, and then employment. Now,
13 Your Honor, Ms. Martinez is claiming lost wages. We've asked
14 for tax returns. We've asked for anything that shows her
15 income. And so far, we've gotten nothing. We've got nothing
16 but objections. And I think if -- if the Plaintiffs are
17 going to continue to pursue claims for lost wages, GM is
18 entitled to get the foundation for that request. What wages
19 was she making, how did that compare before the incident and
20 after the incident. We've gotten nothing.

21 We even asked for simple things like copy of your
22 driver's license. Although we now have a copy of her
23 identification, we were never told she did or does not have a
24 driver's license. We asked for whether or not she's insured,
25 and we got no response. These are very simple questions that

1 we're asking for information about so that we can properly
2 defend this case. If, in fact, Ms. Martinez had insurance,
3 did her insurance company have conversations with Davis
4 Towing? Did her insurance company have conversations with
5 the Plaintiff? We need to understand why, for 30 months,
6 this vehicle sat at Davis Towing without payment of fees,
7 payment of towing charges, so that ultimately it was
8 abandoned property and therefore destroyed. Without having
9 answers to this discovery from the Plaintiff, we have no
10 other way to get it.

11 So our motion to compel is complete and full responses
12 to discovery, including medical records, medical bills, and -
13 - or sign our authorizations, and we'll go get them
14 ourselves, Your Honor. We have a very capable team to make
15 those requests. We do not have the volume that the Plaintiff
16 has proposed to The Court time and time again. We do not
17 have information regarding her driving status or her
18 insurance status. That's just simple questions we've asked
19 for in discovery, and have yet to get a response. Thank you,
20 Your Honor.

21 THE COURT: Yes, sir.

22 MR. AHMAD: Your Honor, attached to my memo and
23 opposition to their motion to compel, I attached several
24 Exhibits A through C. Each one relates to supplemental
25 responses that we provided on the dates that GM requested.

1 So on 6/27, we provided GM with supplemental responses to
2 their interrogatories request for production. On July 2nd, I
3 provided them with second set of requests for production.
4 And then finally, on July 11th, because they represent Kevin
5 Whitaker and GM, I gave them their third set of requests for
6 production, second set of interrogatories, as well as
7 responses to Kevin Whitaker's request for production
8 interrogatories and requests interrogatories and request for
9 admission.

10 So, Your Honor, we've been more than willing to reach
11 their deadlines, respond efficiently and timely. And, Your
12 Honor, we are entitled to make objections to providing
13 certain documents. We attach case law in response to one of
14 their requests as to identification. I'll have to pull up
15 that document again just to make sure that I have the correct
16 case law in front of the court. But Counsel is in possession
17 of that. As to medical bills, Your Honor, this case is
18 ongoing. We haven't held any depositions yet, even. So we
19 are still garnering all of these medical bills. And if
20 you've seen some of the photos, Your Honor, the burns are
21 extensive.

22 The damages to Mrs. Herrera is it's just -- it's bad.
23 So we will supplement those documents as soon as we have a
24 totality of them. But right now, it's too premature. And
25 we're not trying to hide anything, Your Honor. We want this

1 case to see the light of day, and that's given by our quick
2 responses to GM and to Kevin Whitaker. Your Honor, further,
3 they talk about preservation of evidence, but again, we've
4 sent our preservation letters to them. We've shown how we
5 asked some sure masks and Davis Towing to make sure that our
6 vehicle was not destroyed, and obviously that didn't happen.
7 So under those grounds, Your Honor, we believe that we've
8 more than complied with with GM and I've also attached a
9 letter as Exhibit E in which we sent GM's Counsel on July
10 31st regarding their deficiency and their issues with their
11 discovery.

12 And, Your Honor, we met with them on August 4th, and
13 they have to now pro hac vice in a GM's discovery -- National
14 Discovery Counsel as to the responses and requests that we
15 made to them making allegations or asserting that fire
16 allegation is too vague and broad, etc, etc. But you just
17 heard GM's Counsel here today say, provide us what you got.
18 So we had asked for that, and they didn't do that. And then
19 on top of that, we asked for a 30(b)(6) deposition that was
20 supposed to happen on Monday, which was 30 days before the
21 required ten day notice. And they had issue with that as
22 well. So in terms of discovery gains and trying to comply
23 with things, it seems like this is a back and forth issue and
24 -- and frankly, I think that we've more than met our side of
25 the bargain.

1 THE COURT: Let's just -- you said medical bills are
2 ongoing. You indicated that. How about the driver's license
3 status?

4 MR. AHMAD: Yes, Your Honor. I was going to -- we
5 provided a response to them, and I'll have to pull it up
6 here. But there's case law asserting that that's a violation
7 of right to privacy by -- from the South Carolina Supreme
8 Court stating that you do not have to provide a driver's
9 license. And your honor, we've provided that response to
10 them, so that's what -- the grounds that we asserted as to
11 why we don't need to provide a driver's license to them.

12 THE COURT: How about the insurance?

13 MR. AHMAD: I believe that there was another similar
14 response, but I'll have to check. One second, Your Honor. I
15 beg the court's indulgence.

16 THE COURT: That's fine.

17 MR. AHMAD: Yes, Your Honor. So we responded to
18 question two. Identify all insurance providers, planned
19 contact with the insurance companies after this the incident,
20 and this was on July 11th, the most recent supplemental
21 response. InsureMax Insurance Company, Insured
22 (indiscernible), Padilla Saucedo, covered driver, Cesar Lopez
23 Santos, and that's in relation to one of their questions.
24 There's a lot of documents here, so I apologize, Your Honor.
25 There's another service packet on July 2nd.

1 THE COURT: Defense Counsel, is that still outstanding
2 about the insurance?

3 MS. EIBLING: Yes, Your Honor. We've never been -- no
4 name for an insurance company has ever been provided for us
5 to ask any questions of that insurance company, as well as
6 Your Honor, I'll address the rest of it later. But ---

7 MR. AHMAD: So, Your Honor, it's for the valid driver's
8 license, I just found it. The case law is *Sloan v. SE*
9 *Department of Public Safety* from the Supreme Court South
10 Carolina. They held a private person may not use
11 electronically stored version of information obtained from a
12 driver's license for record for any purpose. And then as to
13 the insurance, I believe that there's an answer in here one
14 second. Yeah -- sorry, Your Honor. That's under nine --
15 question nine. According to our client, she's not in
16 possession of the requested materials at this time.
17 Investigation continues, and Plaintiff will supplement once
18 we obtain that information.

19 THE COURT: How about the income? That was the last one
20 that you said.

21 MR. AHMAD: I could be wrong, but I'm looking at each
22 service packet that I sent with the responses. I don't see
23 any question in here related to income. If you could tell me
24 which question it was, then I could probably find it.

25 MS. EIBLING: We asked for her tax returns.

1 MR. AHMAD: Okay.

2 MS. EIBLING: Number 13.

3 MR. AHMAD: Yes, we responded. Counsel is working with
4 Plaintiff to obtain the documents requested. Plaintiff will
5 supplement this request as soon as information becomes
6 available.

7 THE COURT: How long ago was that response?

8 MR. AHMAD: That was sent on June 27th.

9 THE COURT: Give me that case site again on the driver's
10 license.

11 MR. AHMAD: Yes, Your Honor.

12 THE COURT: It's one ---

13 MR. AHMAD: Yes. It's going to be -- the
14 (indiscernible) site is, 355-SC-321. And you want the
15 southeastern report?

16 THE COURT: That's all right.

17 MR. AHMAD: Okay. And then there's an additional
18 related to that footnote in there. It cites a United States
19 Supreme Court case, *Reno V Condon*, 528-US-141.

20 THE COURT: All right.

21 MS. EIBLING: Your Honor, if I may respond ---

22 THE COURT: I'll let you respond.

23 MS. EIBLING: Just briefly, Your Honor. He's correct.
24 No depositions have taken place because we don't have the
25 records. This case is coming up on two years old, and

1 allegedly, Ms. Martinez has been receiving treatment for the
2 last four and a half years. And we have a fraction of what
3 they've claimed the damages to have been. We can't move
4 forward with this case because we haven't been given the
5 records to move forward with the case. Although those things
6 are coming in, he does have a duty to seasonably supplement.
7 So even if he doesn't have all of them, he has to provide
8 what he has or sign our authorizations and allow us to go get
9 them. We are happy to take on that burden, to go request
10 records from Ms. Martinez's medical providers.

11 One, if we know who they are, and two, if we have a
12 signed authorization. Again, we're not trying to be
13 difficult, but we were just before this court two weeks ago
14 on a status conference to set it for trial. We haven't taken
15 the first deposition because we haven't gotten information
16 relative to Ms. Martinez's injuries, to know who to depose
17 and depose them on what. So we would request that the
18 medical records that have been compiled to date be produced.
19 It's been four years since the date of the accident and
20 almost two years since the institution of litigation. If
21 more come in, they can supplement those.

22 But to tell us, and to tell this court repeatedly that
23 she has seven million, 11 million and \$20 million worth of
24 medical expenses, and to have only provided two million so
25 far seems really inconsistent with how this discovery

1 procedure is supposed to go. We're supposed to have access
2 to the information that the Plaintiff has access to. And if,
3 again, they don't want to produce it or can't produce it,
4 give us the authority to go get it ourselves. Thank you.

5 THE COURT: I want you to address the authorization
6 statement about asking whether you would give authorization
7 for them to go get it if you can't come up with it. What's
8 your position on that?

9 MR. AHMAD: Your Honor, we would first like the
10 opportunity again ask our client for those documents before
11 any sort of intrusive authorization is granted to GM's
12 Counsel. I don't believe I've seen any proposed
13 authorization yet, but again, I would take that under
14 consideration with Co-Counsel. But further than that, Your
15 Honor, the reason we haven't had a deposition yet is because
16 GM's Counsel hasn't allowed us to. They again, have brought
17 in GM National Discovery Counsel with the set up barriers as
18 to what we can investigate, what we can't. And you just
19 heard Counsel talk about the issues of preservation of
20 evidence.

21 It sounds like they could easily depose InsureMax and
22 Davis Towing, which we plan on doing as well, but they
23 haven't done that either. And then on top of that, Your
24 Honor, they misstated a record to you. She's actually
25 subpoenaed various other fire departments, police

1 departments, for records and information. So discovery is
2 ongoing. This case is probably going to go on for another
3 year or two, if not longer than that, given just the
4 magnitude and scope of it all. So again, Your Honor, we're
5 not trying to hide anything. We're more than -- we've been
6 more than willing to cooperate with GM's deadlines and their
7 multiple discovery requests. And we are doing our best to
8 get our responses.

9 THE COURT: All right. I'll take it under advisement.
10 I'm gonna look at that DL case and take a look at that. But
11 I'm going to take it under advisement. But ---

12 MS. EIBLING: And Your Honor, just -- in the record they
13 were the authorizations were attached to the discovery served
14 in February of 2025. There's an authorization to disclose
15 pharmaceutical, medical records, employment information, and
16 insurance information.

17 THE COURT: And like I said, I'm going to take it under
18 advisement. I'm going to look at the DL. But far as the
19 other issues, insurance, income, medical bills, -- and I'm
20 beginning to -- I think I'm gonna give you some time to do
21 it, but I think we're gonna have to start buttoning this up.
22 I think these -- these -- this case has some age on it now.
23 We've got to get moving.

24 MR. AHMAD: Yes, Your Honor.

25 THE COURT: As you know, these cases are on status

1 conferences now they're moving forward a little bit quicker
2 than in the past. So -- but I'll come up with something on
3 that. But I want to look at the DL case first. I'm
4 interested to see it exactly how they word all that, but I'll
5 take a look at that. Thank you.

6 MS. EIBLING: And then, Your Honor, I just have one
7 final request, as it pertains to all of the motions, is that
8 we request a formal order instead of just a Form 4. Thank
9 you.

10 THE COURT: All right. And what I'll -- like I said now
11 on the two I've asked you to draft.

12 MS. EIBLING: Correct. Yes.

13 THE COURT: And what I normally do, just so -- usually
14 I'll do a Form 4 and request the party to prepare a formal
15 order.

16 MS. EIBLING: Perfect. Thank you.

17 THE COURT: You can do that. And if you want to
18 reconsider it, then I'm gonna let both sides get a chance to
19 respond to that, and we can go from there. So that's
20 normally the way I would do.

21 MS. EIBLING: I appreciate that. Thank you.

22 THE COURT: All right, thank you. And so now we've got
23 one more. This is the Davis towing. All right, come on up.
24 They kept it in -- they gave you three minutes. Are you
25 fast? I'm just kidding with you. Go ahead. You've been

1 sitting there the whole time, patiently. So I'd be happy to
2 hear from you. Come on up and identify yourself and who you
3 represent, sir.

4 MR. CUSHMAN: Your Honor, my name is Lynn Cushman. I'm
5 here for Davis Towing, one of the defendants in this case.

6 THE COURT: All right.

7 MR. CUSHMAN: We filed a motion for a judgment on the
8 pleadings, Your Honor, seeking dismissal of what were all of
9 Plaintiff's claims against Davis towing. But since the
10 filing of the motion, the Plaintiff amended their complaint
11 and added a claim for conversion, which is not included in
12 our motion today. But effectively the claims made by the
13 plaintiff against Davis towing in this case were
14 negligence/gross negligence, and violation of the Unfair
15 Trade Practices Act. The basis for both of Plaintiffs'
16 claims in the original complaint, or prior to the addition of
17 the conversion claim, was this spoliation, or the disposal
18 of, the Plaintiff's vehicle.

19 THE COURT: Just so I got this on record. This is
20 motion number seven, just so everybody's keeping up with it.
21 All right, go ahead.

22 MR. CUSHMAN: Yes, Your Honor. Their claim is it was
23 basically or entirely based on the disposal of the vehicle,
24 which would constitute a negligence spoliation claim. The
25 issue of negligent spoliation has been taken up before by the

1 Supreme Court in this state and on issues that are identical
2 to those in this case, the Supreme Court held that the claim
3 of negligent spoliation is not recognized in South Carolina,
4 regardless of what you call it. And I have that case with me
5 here. It's (Indiscernible) versus Hobbes. I have a copy of
6 the case for the court that I've highlighted the relevant
7 provisions. May I approach, your honor?

8 THE COURT: Yeah, absolutely.

9 MR. CUSHMAN: In this case, Your Honor, the circuit
10 court granted dismissal of a plaintiff's claims against the
11 defendant for negligent spoliation. The Court of Appeals
12 reversed the circuit court and then went up to the Supreme
13 Court, and the Supreme Court reversed the Court of Appeals,
14 saying that the court -- the circuit court, had properly held
15 or properly ruled that no claim for negligent spoliation
16 exists in South Carolina. If you look at the allegations in
17 the Plaintiff's complaint, Your Honor, under their
18 negligence, gross negligence, and violation of The Unfair
19 Trade Practices Act.

20 The basis for those claims is the disposal of this
21 vehicle, a vehicle which I might add, was in our possession
22 for 803 plus days. It was disposed of sometime in July of
23 2023. And during that time, Your Honor, well, this -- I
24 guess the underlying facts of that aren't really relevant,
25 but I think the holding in full vision would require the

1 court to dismiss any claims that are based on the disposal of
2 the vehicle.

3 THE COURT: All right, sir. All right. Thank you. All
4 right, yes, sir. Be happy to hear from you.

5 MR. AHMAD: Your Honor, we agree that (indiscernible)
6 holds that there's no claim in South Carolina for negligent
7 spoliation. However, that's not what our basis is based on
8 the -- the complaint. And first, Your Honor, according to
9 Home Builders Association, pin site 405-SC-458, the court
10 must regard all properly pleaded factual allegations as
11 admitted and liberally -- liberally construed the complaint
12 to ensure substantial justice. So, Your Honor, we have a
13 bail or (indiscernible) relationship here, and it was Davis
14 Towing's job to ensure that our vehicle was not destroyed.
15 They didn't uphold their end of the bargain, and therefore
16 they should be held liable for that.

17 And that's why we allege the conversion claim. But
18 further than that, Your Honor, we have alleged a viable claim
19 under (indiscernible) because they've engaged in an unfair or
20 deceptive act in promising to maintain the vehicle. And if
21 you look at the memo which we sent to the court, I believe
22 when this was first heard, it was in response to this motion
23 that was before the court before. In that memo, there's an
24 Exhibit B, which is a letter that we sent Davis towing asking
25 them to ensure preservation of the vehicle. And

1 additionally, Your Honor, this is something that's capable of
2 repetition by Davis Towing, and so that's why we believe that
3 we have a viable claim under scoot. But ultimately our
4 biggest claim here is the fact that there was a negligent
5 handling of this vehicle and that it rises under a duty of a
6 bail or (indiscernible) relationship, Your Honor.

7 THE COURT: All right. Response, sir?

8 MR. CUSHMAN: Yes, Your Honor. I would still -- well to
9 those points, there was no bail or (indiscernible)
10 relationship. In this case, Your Honor, there's a statute
11 that exists in South Carolina. I don't have the exact
12 statute number, but it basically sets out the steps and
13 procedures for a towing company to have a relationship with a
14 highway patrol and to retrieve towed vehicles and to hold
15 them until the the owner of the car comes and receives them.
16 That's that's the first sort of point I want to make.

17 The second is, if you apply the facts in this case and
18 you evaluate the legal issues, implants claims for negligence
19 and scope to violations, if you analyze those in light of the
20 holding of the Supreme Court in this full vision case, Your
21 Honor, the claims that they make are independent court claims
22 for spoliation of evidence, and as The Court has held, there
23 is no recognized tort spoliation of evidence in South
24 Carolina. It doesn't apply that holding in this case would
25 not apply to their conversion claim. But if you look at the

1 allegations that they make in their complaint, it is because
2 we didn't.

3 They alleged that we did not properly preserve this
4 vehicle, which is not true in any way, shape or form. They
5 did send us a present preservation letter a month after the
6 accident, saying that they wanted us to hold the vehicle for
7 them so they come to look at it. They did look at it. Then
8 three months later, and then we heard nothing from them for
9 23 months. There is a statute in South Carolina. It's not
10 relevant to the argument to the argument, (indiscernible)
11 but there is a statute that allows a towing company to
12 dispose of a vehicle under certain conditions if it's been
13 with them for a certain period of time. And that's what
14 happened here.

15 And that's an argument I plan to make at the summary
16 judgment phase against their conversion claim. But in this
17 instance, Your Honor, if you look at the allegations in this
18 complaint and evaluate them in light of The Court's holding
19 in (indiscernible), it is clear that the Plaintiff's claims
20 for negligence, gross negligence, and violation of the unfair
21 trade practices that claim are based entirely on spoliation
22 of this vehicle and should therefore be dismissed.

23 THE COURT: All right. I'll let you have the final
24 word.

25 MR. AHMAD: Yes, Your Honor. Just one last thing, Judge

1 Dunbar ruled to a similar motion made by InsureMax. They
2 moved for the same dismissal on the same grounds, and he
3 denied their motion. The only reason that -- that Davis
4 Towing's motion was not heard that day was because we were
5 trying to reach an agreement and to settle this thing. But
6 that didn't happen. And, Your Honor, therefore we stand by
7 our belief that ultimately this is a (indiscernible)
8 relationship. They had a duty, they didn't uphold it. That
9 duty and the spoliation of evidence is just a secondary
10 subsidiary issue to the greater issue, which is that they
11 destroyed our property.

12 THE COURT: Thank you both for your arguments. I'll
13 take it under advisement. Take a look at it. I'll take a
14 look at the information from Judge Dunbar as well. I'll take
15 a look at that as well. Thank you all for your arguments.
16 Appreciate y'all being here. Appreciate you being on time.

17 MR. AHMAD: Thank you.

18 THE COURT: All right, thank you. All right.

19
20
21
22
23
24
25 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED.)

CERTIFICATE OF TRANSCRIBER

I, Pam Gray, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 26th day of August, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 27, 2026

Pam Gray

Pam Gray
Certified Transcriber