

2012-212374

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Roger M. Young, Presiding Judge

Case Nos. 2006 CP-07-1125
2006 CP-07-1126

Deborah J. Clegg, as Personal Representative of the
Estate of Allison Clegg, ...Respondent,

v.

Elliot M. Lambrecht, Douglas A. Lambrecht, Rhett Barker,
Jan Horan, and Anna C. Lambrecht, Defendants,
Of Whom Douglas A. Lambrecht is the.....Appellant.

**RECORD ON APPEAL
VOLUME I**

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 02-07-CP-1159

DEBORAH J. CLEGG, as)
Personal Representative of)
The Estate of Allison T. Clegg,)
Plaintiff,)

vs.)

ELLIOTT M. LAMBRECHT,)
DOUGLAS A. LAMBRECHT,)
RHETT BARKER, JAN HORAN,)
and ANNA C. LAMBRECHT,)
Defendants.)

ORDER STRIKING
ACTION PURSUANT TO RULE 40(J)

(SURVIVAL ACTION)
(\$ 15-5-90, S.C. CODE ANN.)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 02-07-CP-1160

DEBORAH J. CLEGG, as)
Personal Representative of)
The Estate of Allison T. Clegg,)
Plaintiff,)

vs.)

ELLIOTT M. LAMBRECHT,)
DOUGLAS A. LAMBRECHT,)
RHETT BARKER, JAN HORAN,)
and ANNA C. LAMBRECHT,)
Defendants.)

ORDER STRIKING
ACTION PURSUANT TO RULE 40(J)

(WRONGFUL DEATH ACTION)
(\$ 15-51-10, S.C. CODE ANN.)

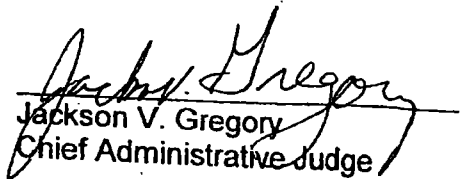
THIS MATTER comes before the Court upon the agreement of counsel for all parties as to the dismissal of these actions pursuant to Rule 40(j), SCRCP. The court being otherwise advised, it is therefore

ORDERED AND ADJUDGED AS FOLLOWS:

1. The above-referenced actions are hereby dismissed pursuant to Rule 40J), SCRCF, per agreement of counsel, to be restored upon motion made within one (1) year of the date stricken, with the statute of limitations tolled as to all consenting parties during the time the case is stricken.

2. Discovery shall continued while this matter is in 40(j) status.

AND IT IS SO ORDERED:


Jackson V. Gregory
Chief Administrative Judge

Dated this 7 day of April, 2005
Beaufort, South Carolina



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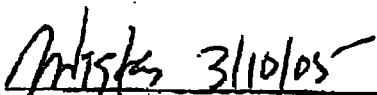
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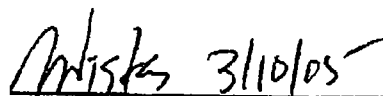
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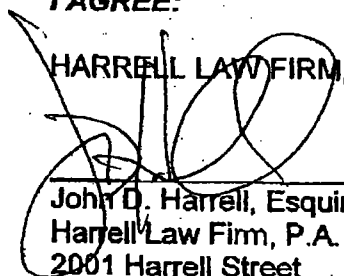
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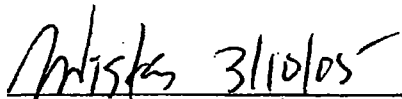
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Counsel for Defendant
Rhett Barker

DEBORAH J. CLEGG, as Personal
Representative of The Estate of Allison T.
Clegg,

Plaintiff,

vs.

ELLIOTT M. LAMBRECHT, DOUGLAS A.
LAMBRECHT, RHETT BARKER, JAN
HORAN and ANNA C. LAMBRECHT

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: No. 02-CP-07-1159

ORDER TO RESTORE CASES TO
TRIAL ROSTER

DEBORAH J. CLEGG, as Personal
Representative of The Estate of Allison T.
Clegg,

Plaintiff,

vs.

ELLIOTT M. LAMBRECHT, DOUGLAS A.
LAMBRECHT, RHETT BARKER, JAN
HORAN and ANNA C. LAMBRECHT

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: No. 02-CP-07-1160

Received
MAY 10 2006
G. Richardson Wieters, P.C.

MAY -4- PM 4:23
CLERK OF COURT
BEAUFORT, SC

#1
PnB

A hearing came before me by telephone conference. Attending the telephone conference were G. Richardson Wieters, attorney for the Plaintiff and William Thrower, attorney for the Defendant Rhett Barker. I am satisfied based upon the representations of counsel for the Plaintiff that the other parties through their counsel Messieurs North, Finger and Carter have consented to have these matters restored to the trial roster and further it appears to the satisfaction of the Court that Defendant Elliott Lambrecht has not appeared in this action either pro se or through counsel.

Upon review of the Order dismissing these cases pursuant to Rule 40(j) S.C.R.C.P. it appears appropriate that these cases be restored to the active trial roster and it is so ordered that the cases are to be restored to the active trial in the Court of Common Pleas for Beaufort County effective March 28, 2006. It is also ordered that the attorney for the

000008

DEBORAH J. CLEGG, as Personal
Representative of The Estate of Allison T.
Clegg,

Plaintiff,

vs.

ELLIOTT M. LAMBRECHT, DOUGLAS A.
LAMBRECHT, RHETT BARKER, JAN
HORAN and ANNA C. LAMBRECHT

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: No. 02-CP-07-1159

ORDER TO RESTORE CASES TO
TRIAL ROSTER

DEBORAH J. CLEGG, as Personal
Representative of The Estate of Allison T.
Clegg,

Plaintiff,

vs.

ELLIOTT M. LAMBRECHT, DOUGLAS A.
LAMBRECHT, RHETT BARKER, JAN
HORAN and ANNA C. LAMBRECHT

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: No. 02-CP-07-1160

Received
MAY 10 2006
G. Richardson Wieters, P.C.

MAY -4- PM 4:23
CLERK OF COURT
BEAUFORT, SC

#1
PnB

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000009

BLANK

000010

Plaintiff is to notify the Clerk of Court for Beaufort County to have all motions filed in this case to be scheduled at the earliest possible date so that they might be heard and disposed of without further delay.

It also appears that the Order that placed these cases in 40(j) status provided that discovery could continue and that a motion to amend the complaint has been filed by the Plaintiff as a result of that discovery. That motion shall be addressed first prior to any of the summary judgment motions that are pending being heard.

AND IT IS SO ORDERED.


Honorable Perry M. Buckner
Chief Administrative Judge
Fourteenth Judicial Circuit

Walterboro, SC

This 19th day of April, 2006.
nunc pro tunc March 28, 2006

BLANK

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

DEBORAH J. CLEGG, as
Personal representative of the
Estate of Alison Clegg,

Plaintiff,

vs

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO. 02-CP-07-1159; 1160
06-CP-07-1125ORDER GRANTING IN PART
DEFENDANT RHETT BARKER'S
MOTION TO RECONSIDER
DENIAL OF MOTION FOR
SUMMARY JUDGMENTCLERK OF COURT
BEAUFORT, S.C.

06 OCT 20 AM 11:54

The Defendants Douglas A. Lambrecht and Jan Horan filed motions for summary judgment as to all causes of action. After considering the evidence and arguments submitted by counsel, I find it appropriate to grant both Defendants' motion for summary judgment. There is no evidence which could reasonably being construed by a jury that either owned the vehicle in question at the time of the accident or had control over it which would support a negligent entrustment cause of action. Furthermore, the evidence is uncontroverted that at the time of the accident the Defendant Elliott Lambrecht was an emancipated adult. As such, neither parent had a duty to control the conduct of their son, and there is no evidence which indicates they exercised any dominion or control over him on the date and time of the accident which could give rise to an inference that he was acting as their agent at the time of the accident.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendants Douglas A. Lambrecht's and Jan Horan's motions for summary judgment are GRANTED.

01/20/2007 18:11 0433003100

JUDGE YOUNG

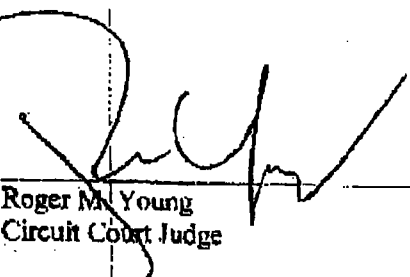
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JAN-09-2007 18:11 From:

To 39585108

P.3/4

It is so ordered.


Roger M. Young
Circuit Court Judge

10/20, 2006
Beaufort, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No.: 2006-CP-07-1125
Case No.: 2006-CP-07-1126

Deborah J. Clegg, as Personal)
Representative of the Estate of)
Allison T. Clegg,)

Plaintiff,)

v.)

Elliot M. Lambrecht, Douglas A.)
Lambrecht, Rhett Barker, Jan)
Horan, and Anna C. Lambrecht,)

Defendants.)

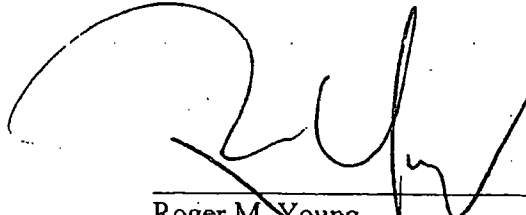
ORDER GRANTING
SUMMARY JUDGMENT FOR
ANNA C. LAMBRECHT,

2007 APR 26 PM 3:47
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

This matter came before this Court upon Defendants' Douglas A. Lambrecht, Jan Horan, and Anna C. Lambrecht Motion for Summary Judgment. Upon consideration of the evidence and arguments submitted by counsel, this Court granted Summary Judgment to all three defendants. Therefore, my Order dated October 20, 2006 granting Summary Judgment should have included Defendant Anna C. Lambrecht but did not due to an oversight.

IT IS THEREFORE ORDERED that Defendant's Anna C. Lambrecht Motion for Summary Judgment is **GRANTED** and it is incorporated by reference to the Order dated October 20, 2006.

AND IT IS SO ORDERED.



Roger M. Young
Presiding Judge

April 24, 2007

Beaufort, South Carolina.

JAN-09-2007 18:11 From:

To 39585108

P.4/4

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

DEBORAH J. CLEGG, as
Personal representative of the
Estate of Alison Clegg,

Plaintiff,

vs

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

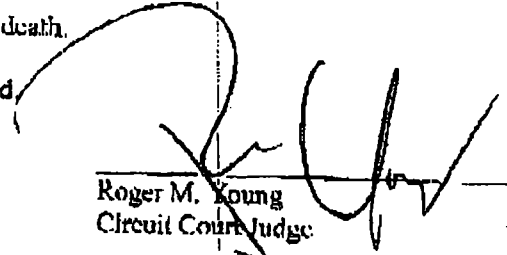
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO. 02-CP-07-1159; 1160
06-CP-07-1125ORDER GRANTING IN PART
DEFENDANT RHETT BARKER
MOTION TO RECONSIDER
DENIAL OF MOTION FOR
SUMMARY JUDGMENT06 OCT 20 AM 11:54
CLERK OF COURT
BEAUFORT, S.C.

On September 11, 2006, this court denied Defendant Rhett Barker's motion for summary judgment as to all causes of action. After reconsideration, I find it appropriate to grant Defendant Barker's motion for summary judgment on the negligent entrustment cause of action as there is no evidence he either owned the vehicle in question or had control over it, nor was there any evidence the vehicle was ever entrusted to him or that he was responsible for its use.

However, the Defendant Barker's motion for summary judgment as to negligence remains denied as there is evidence which could be construed by a jury that the Defendants Barker and Elliott Lambrecht were raising at the time of the accident which led to the decedent's death.

It is so ordered.


 Roger M. Young
 Circuit Court Judge

 10/20, 2006
 Beaufort, SC

000016

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

Deborah J. Clegg, as Personal)
Representative of the Estate of)
Allison T. Clegg,)

Plaintiff,)

v.)

Elliot M. Lambrecht, Douglas A.)
Lambrecht, Rhett Barker, Jan)
Horan, and Anna C. Lambrecht,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2006-CP-07-1125

Case No.: 2006-CP-07-1126

ORDER DENYING
DEFENDANT'S MOTION FOR
SANCTIONS PURSUANT TO
SCRCP and SC Code § 15-36-10

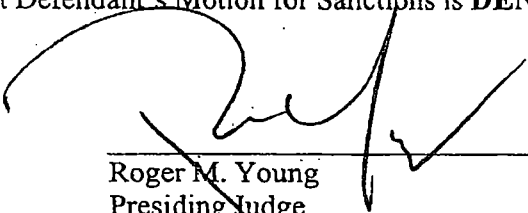
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

07 MAR - 5 AM 11:02

This matter came before this Court upon Defendant's Motion for Sanctions pursuant to Rule 11, SCRCP and South Carolina Code § 15-36-10 against the Plaintiff and her attorneys. Upon consideration, the Plaintiff's Defendant's motion is denied.

IT IS THEREFORE ORDERED that Defendant's Motion for Sanctions is **DENIED**.

AND IT IS SO ORDERED.



Roger M. Young
Presiding Judge

March 1, 2007

Beaufort, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Deborah J. Clegg, as Personal)
Representative of the Estate of)
Allison T. Clegg,)

Plaintiff,)

v.)

Elliot M. Lambrecht, Douglas A.)
Lambrecht, Rhett Barker, Jan)
Horan, and Anna C. Lambrecht,)

Defendants:)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2006-CP-07-1125

Case No.: 2006-CP-07-1126

ORDER DENYING
DEFENDANT'S MOTION TO
ALTER OR AMEND

2007 MAY -1 PM 3:40
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

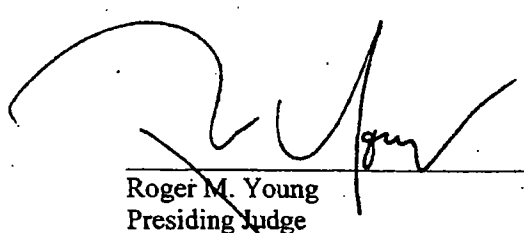
This matter came before this Court upon Defendant Douglas S. Lambrecht's Motion to Alter or Amend this Court's Order dated March 1, 2007 denying Defendant's Motion for Sanctions pursuant to Rule 11, SCRCP and South Carolina Code § 15-36-10 against the Plaintiff and her attorneys. Accordingly, a hearing was conducted on May 1, 2007.

Upon consideration, I find that the case was brought in good faith by experienced, competent lawyers who in good faith believed the facts of the case warranted bringing the lawsuit under the theory it was pursued. Additionally, I find that the Defendant argued that this Court should find that that a reasonable attorney in the same position as Plaintiff's counsel would believe that the Plaintiff's claims and case against the Defendant Douglas A Lambrecht were not warranted under existing law and were not reasonably founded in fact. However, the Defendant, while not required to, has not brought forth any expert who would opine the case was frivolous and no reasonable attorney would have prosecuted it. Instead, the Defendant defers to this court

to determine whether the filing of the lawsuit against him was reasonable. I find that it was reasonable.

IT IS THEREFORE ORDERED that Defendant's Motion to Alter or Amend is DENIED.

AND IT IS SO ORDERED.



Roger M. Young
Presiding Judge

May 1, 2007

Beaufort, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Deborah J. Clegg, as Personal
Representative of the Estate of
Allison T. Clegg,)

Plaintiff,)

v.)

Elliot M. Lambrecht, Douglas A.
Lambrecht, Rhett Barker, Jan
Horan, and Anna C. Lambrecht,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2006-CP-07-1125

Case No.: 2006-CP-07-1126

ORDER DENYING
PLAINTIFF'S MOTION FOR
RECONSIDERATION

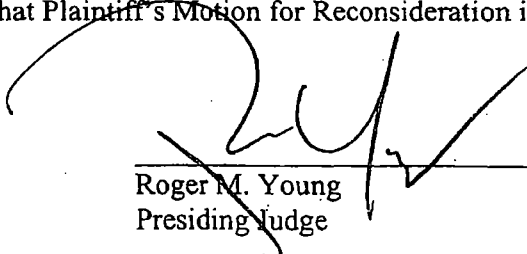
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

07 MAR -5 AM 11:02

This matter came before this Court upon Plaintiff's Motion for Reconsideration this Court's Order granting summary judgment to Defendant Douglas A. Lambrecht. Upon consideration, the Plaintiff's Motion is denied.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Reconsideration is **DENIED**.

AND IT IS SO ORDERED.



Roger M. Young
Presiding Judge

March 1, 2007

Beaufort, South Carolina.

000020

The South Carolina Court of Appeals

Deborah J. Clegg, as Personal Representative
of the Estate of Allison Clegg,

Appellant,

v.

Elliott M. Lambrecht, Douglas A. Lambrecht,
Rhett Barker, Jan Horan, and Anna C.
Lambrecht,

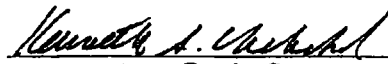
Respondents.

The Honorable Roger M. Young
Beaufort County
Trial Court Case No. 2002-CP-07-01159
2002-CP-07-01160
2006-CP-07-01125
2006-CP-07-01126

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of appellant to file proof of service of the Record on Appeal in the above matter, as provided for in Rule 210 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Beaufort County after fifteen (15) days, exclusive of the date of filing this Order.

 CLERK
For the Court

Columbia, South Carolina
1/16/2008

cc: G. Richardson Wieters, Esquire
H. Fred Kuhn, Jr., Esquire
Elliott M. Lambrecht
John E. North, Jr., Esq.
Pamela K. Black, Esq.
Stephen Edward Carter, Esquire
Terry A. Finger, Esq.
William J. Thrower, Esq.
Joseph Dubois, Esq.
The Honorable Elizabeth M. Smith

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

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

Deborah J. Clegg, as Personal
Representative of the Estate of
Allison Clegg,

Respondent,

v.

Elliot M. Lambrecht, Douglas A.
Lambrecht, Rhett Barker, Jan
Horan, and Anna C. Lambrecht,
Defendants, Of Whom Douglas
A. Lambrecht is the

Appellant.

Appeal From Beaufort County
Roger M. Young, Circuit Court Judge

Unpublished Opinion No. 2009-UP-376
Withdrawn, Substituted and Refiled June 30, 2009
Formerly Opinion No.4498
Heard December 2, 2008 – Filed February 5, 2009
Withdrawn, Substituted, and Refiled May 13, 2009

VACATED AND REMANDED

John E. North, Jr., and Pamela K. Black, both
of Beaufort, for Appellant.

H. Fred Kuhn, Jr., of Beaufort and Richardson
Wieters, of Hilton Head, for Respondent.

PER CURIAM: Douglas Lambrecht appeals the denial of a motion to impose sanctions under Rule 11, SCRCP, or pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act (FCPSA) under Sections 15-36-10, et seq. of the South Carolina Code (Supp. 2008). We now withdraw our previous opinion from publication and substitute this revised opinion. We vacate and remand.

Under the peculiar facts of this case, more specific findings and conclusions by the trial court are necessary because a duty to dismiss or withdraw frivolous litigation may arise at a subsequent point in the litigation based on whether an attorney knew or should have known a claim is frivolous. This type of review requires an intensive factual consideration of the record, including discovery. We are unable to determine which facts the trial court relied upon in its decision. We therefore vacate the denial of sanctions and remand the matter to the trial judge for an order "identifying the facts and accompanying legal analysis on which [he] relied" to enable meaningful appellate review of this issue. Doe v. Howe, 367 S.C. 432, 449, 626 S.E.2d 25, 34 (Ct. App. 2005); Bowen v. Lee Process Sys. Co., 342 S.C. 232, 234, 536 S.E.2d 86, 88 (Ct. App. 2000); see also Ackra Direct Mktg. Corp. v. Fingerhut Corp., 86 F.3d 852, 857 (8th Cir. 1996) (explaining that although courts are not normally required to make findings of fact or conclusions of law in ruling on motions, the court "may remand when the lack of findings by the district court would substantially hinder" appellate

review). Upon remand, the trial court shall conduct a separate evaluation under Rule 11, SCRCP, and under FCPSA, and make findings and conclusions as to each sanction mechanism asserted.

VACATED AND REMANDED.

WILLIAMS, PIEPER, and GEATHERS, JJ., concur.

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

DEBORAH J. CLEGG, as
Personal Representative of the
Estate of Allison T. Clegg,

Plaintiff,

v.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants.

THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 06-CP-07-1125

and

Case No.: 06-CP-07-1126

ORDER

10 JAN -8 PM 4:02
CLERK OF COURT
BEAUFORT COUNTY, S.C.

THIS MATTER came before the Court on remand from the Court of Appeals pursuant to the Opinion, dated June 30, 2009 ("Opinion"). In the Opinion, the Court of Appeals directed this Court to evaluate the record in this matter to determine whether or not the Plaintiff's claims as pursued against the Defendant, Douglas A. Lambrecht ("Douglas"), were frivolous and in violation of the South Carolina Frivolous Civil Proceedings Act, SC Code § 15-36-10 ("FCPSA") and Rule 11, SCRCP. This Court was instructed to conduct a "separate evaluation under Rule 11, SCRCP, and under FCPSA, and make findings and conclusions as to each sanction mechanism asserted".

These wrongful death and survival actions were initiated on July 10, 2002, by Deborah J. Clegg ("Plaintiff"), as the Personal Representative of the Estate of Allison T. Clegg ("Decedent") to recover damages for the death of the Decedent,

who was killed in a one car automobile accident on January 9, 2002, while a passenger in an automobile driven by Douglas' adult son, Elliott ("Elliott"). The alleged basis for the claims against Douglas was that Douglas owned the automobile involved in the accident, knew that Elliott had a poor driving record and that his driver's license had been suspended, but negligently entrusted the automobile to him. The initial Complaints further alleged that Douglas was liable to the Plaintiff because he had failed to prevent Elliott from driving and had failed to warn others of Elliott's alleged dangerous propensities.

On May 11, 2004, sixteen months after the accident, the Plaintiff served and filed an Amended Complaint in both actions alleging that Douglas was the *de facto* owner of the automobile involved in the accident and that Douglas, as the *de facto* owner, negligently entrusted the automobile to Elliott. In the Amended Complaints, the Plaintiff further alleged that Douglas was liable to the Plaintiff for allowing or permitting Elliott to drive and for failing to prevent him from driving when he knew or should have known that Elliott's operation of the automobile would pose an unreasonable risk of harm to others. Similar allegations were made against Elliott's mother, his sister, and a friend.

On June 16, 2004, Douglas filed his Motions for Summary Judgment with respect to both actions. On April 17, 2005, before Douglas' Motions for Summary Judgment were heard, the actions were dismissed by the Plaintiff pursuant to Rule 40(j) SCRCP. On April 19, 2006, one year after being dismissed, upon the motion of the Plaintiff, the cases were restored to the trial docket.

On August 10, 2006, second Amended Complaints were served in both actions. The essence of the allegations of the second Amended Complaints against Douglas were, once again, that he was the *de facto* owner of the automobile, that he negligently entrusted it to Elliott, that Douglas failed to prevent Elliott from driving, and that Douglas failed to warn others of Elliott's dangerous propensities.

On October 20, 2006, this Court granted summary judgment to Douglas.¹

On January 17, 2007, Douglas filed his Motion for Sanctions ("Motion") in each action pursuant to the FCPSA and Rule 11, which was denied.

Douglas pursued an appeal of the denial of his Motion and the appeal resulted in the June 30, 2009, Opinion of the Court of Appeals and the subsequent remand.

After consideration of the directives of the Opinion, the record, and the provisions of the FCPSA and Rule 11, this Court finds that the claims pursued by the Plaintiff against Douglas were frivolous from the outset of the litigation and that sanctions are both mandated and appropriate.

I.

STANDARD FOR DETERMINING FRIVOLITY
UNDER THE FCPSA

As the Court of Appeals determined, the version of the FCPSA which became effective in 2005 applies to this case. The statute provides that when a case is dismissed on summary judgment, as this one was, the Court must evaluate whether it was frivolous as defined by the statute and sanctions "shall"

¹ All claims against Elliott's mother, sister and friend were also dismissed, except one discreet claim which went to trial against Elliott's friend. The jury found no liability on that claim.

be imposed if the claim is, in fact, frivolous. The statute provides its own, internal, definition of frivolity and implements a specific mechanism by which to evaluate it.²

In his Motion and supporting Memorandum, Douglas asserted that he was entitled to mandatory sanctions under sections (C)(1)(a) and (C)(1)(c) of the statute. Under those sections, if a reasonable attorney would have believed that the Plaintiff's claims were either: 1) legally unwarranted; or 2) not founded in fact, or both, they were, by definition, frivolous. The specific language utilized in the relevant sections is:

(C)(1)(a): a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(C)(1)(c): a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

In its Order granting Douglas summary judgment, this Court found that the Plaintiff's claims against Douglas had no factual or legal merit.

There is no evidence which could reasonably being (sic) construed by a jury that [Douglas] either owned the vehicle in question at the time of the accident or had control over it which would support a negligent entrustment cause of action. Furthermore, the evidence is uncontroverted that at the time of the accident the Defendant Elliott Lambrecht was an emancipated adult. As such, neither parent had a duty to control the conduct of their son and there is no evidence which indicates they exercised any dominion or control

² The FCPSA also provides for discretionary sanctions for the filing of frivolous motions or making frivolous arguments.

over him on the date and time of the accident which could rise to an inference that he was acting as their agent at the time of the accident.

Because the claims against Douglas were, in fact, both factually and legally meritless, this Court must determine whether a reasonable lawyer, knowing what Plaintiff's counsel knew or should have known, would have filed the claims asserted against Douglas and continued to pursue them.

II.

THE APPLICABLE LAW AND RELEVANT FACTS WERE NOT IN DISPUTE

1. The Applicable Law:

The Plaintiff sued Douglas on theories of negligent entrustment and failure to warn.

In South Carolina, a negligent entrustment case is only viable if the defendant owns or controls an automobile involved in an accident, and has entrusted it to a person whom he knows is addicted to intoxicants, in the habit of drinking, and who he knew was likely to drive while intoxicated. *Jackson v. Price*, 288 S.C. 377, 342 S. E. 2d 628 (Ct. App. 1986). Without ownership or control of the automobile, and without entrustment to an addicted or intoxicated driver, no negligent entrustment claim is legally cognizable.

It is also clear under South Carolina law that no tort liability arises from the failure to control the conduct of another person or to warn third parties of the danger posed by such a person. *Doe v. Marion*, 361 S.C. 463, 605 S.E. 2d 560 (Ct. App. 2004), *reh denied, cert. granted*; *Gilmer v. Martin*, 323 S.C. 154, 473 S.E. 2d 812 (Ct. App. 1996), *rehearing den., cert. granted, cert. dismissed*.

The state of the law did not change during the time the Plaintiff pursued her claims against Douglas nor did she at any point argue that the law applicable to either of her claims should be changed.

2. The Facts:

It was undisputed that Douglas was not the owner of the automobile involved in the accident. It was further undisputed that the automobile that was involved in the accident was being driven by Elliott and was owned by him. It was also undisputed that Elliott was an emancipated adult and did not reside with Douglas. There was no claim or evidence that Elliott was intoxicated at the time of the accident.³ Douglas had no knowledge of Elliott's plans to drive on the night of the accident. All of these facts were known to or knowable by the Plaintiff from the outset of the litigation.

III.

PLAINTIFF'S ATTORNEYS KNEW OR SHOULD HAVE KNOWN THE
APPLICABLE LAW AND THE RELEVANT FACTS

Under Rule 3.1, RPC and case law authorities, an attorney has the obligation to investigate the legal and factual basis underlying his client's claims and cannot bring an action unless a good faith argument can be made in support of the client's position. Rule 3.1, RPC; *In Re Young*, 371 S.C. 394, 639 S. E. 2d 674 (2007).

Had Plaintiff's attorneys met their obligation to investigate the facts in the six months between the accident and filing the Complaints, they could have

³ See, *Gadson v. Eco Services of South Carolina, Inc.*, 374 S. C. 171, 648 S. E. 2d 585 (2007) in which the Supreme Court specifically declined to expand negligent entrustment liability beyond the scope of *Jackson v. Price*.

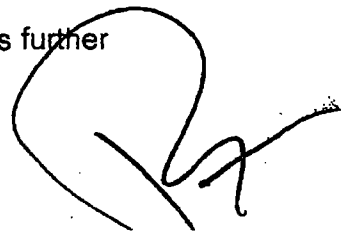
easily determined that Elliott, and not Douglas, owned the automobile involved in the accident and that Elliott was of legal age. They could further have easily determined that there were no facts suggesting that intoxicants were in any way involved in the accident in which Plaintiff's decedent was killed.

Had Plaintiff's attorneys done any legal research, whatsoever, concerning the basic concepts of legal duty, they would also have concluded that Douglas had no duty to control the conduct of another adult or to warn others about him and thus had no potential liability for allegedly failing to do so.

Either choosing not to investigate the facts and research the legal merits of their claims, or despite doing so and ignoring the obvious, the Plaintiff's attorneys proceeded to file factually and legally meritless claims against Douglas.

Even if this Court were inclined to excuse Plaintiff's attorneys for failing to investigate the facts and to do the necessary research before filing the Complaints, within three months thereafter through discovery responses, Plaintiff's attorneys were provided with the Certificate of Title for the automobile, showing that Elliott, and not Douglas, was the owner. At that point, it was patently clear that there was no factual basis to allege that Douglas was the "owner" of the automobile as a basis for a negligent entrustment claim.

In February, 2003, when these actions had been on file for seven months, Plaintiff's attorneys took the sworn statements of Elliott's mother, Jan, and sister, Anna. The statements of Jan and Anna established that Elliott had been emancipated and living on his own since the summer of 2001 and that on the date of the accident, he was nineteen years old. The statements further



established that for some time prior to the accident, Elliott's automobile had been in the possession of Anna, Elliott's minor sister, and that it was from his mother's and Anna's home that Elliott picked up the automobile on the evening of the accident.⁴

Despite knowledge of these facts, in May, 2004, almost two years after the cases were initially filed, the Plaintiff filed Amended Complaints asserting essentially the same causes of action, but modifying her allegation against Douglas alleging that he was the *de facto* owner of the automobile. That allegation had absolutely no legal merit since the law is clear that a certificate of title is *prima facie* evidence of ownership and can only be overcome if the evidence demonstrates that the failure to have record title was the result of a technicality and, then, only in the context of insurance disputes. *Goldston v. State Farm Mutual*, 358 SC 157, 169, 594 S. E. 2d 517 (Ct. App. 2004) *rehearing denied; cert. denied*.

In June, 2004, Douglas filed his Motion for Summary Judgment supported by his own Affidavit and that of Elliott affirming Elliott's legal age and emancipation at the time of the accident, the ownership of the automobile, Douglas' lack of possession or control of the automobile, and Douglas' lack of knowledge concerning Elliott's intention to drive on the night of accident.

Douglas' Memorandum In Support of Motion for Summary Judgment set forth the uncontroverted facts, and cited both *American Mutual Fire Insurance Company v. Passmore*, 275 S.C. 618, 621, 274 S.E. 2d 416, 418 (1981) with respect to the elements of a negligent entrustment claim and *Doe v. Marion*, 361

⁴ Douglas and Elliott's mother Jan were divorced and living in separate households.

S.C. 463, 605 S.E. 2d 560 (Ct. App. 2004), *reh denied, cert. granted* and *Gilmer v. Martin*, 323 S.C. 154, 473 S.E. 2d 812 (Ct. App. 1996), *rehearing den., cert. granted, cert. dismissed* for the proposition that there is no general duty to control the conduct of another or to warn a third person or potential victim of danger.

Despite being forced to confront the undisputed facts, as corroborated by all fact witnesses, and the law, Plaintiff and her attorneys insisted on deposing all parties before Douglas' summary judgment motion was decided. Those depositions were completed in early 2005. Jan and Anna affirmed the truth of their prior sworn statements.

The deposition testimony of Douglas and Elliott with respect to the relevant and material facts was consistent with the Affidavits which had been submitted in support of Douglas' Motion for Summary Judgment. Elliott testified that the automobile had been purchased by and titled to him, that he made all the payments and paid for repairs. He further testified that only he controlled the use of the automobile, that he had given permission for his sister Anna to use it, and that, when he picked up the automobile, it was at his mother's home where it had been for some time. He further testified that Douglas did not know Elliott would be picking up the automobile or driving it.

There was no suggestion in these depositions or in any of the sworn statements that alcohol or any other intoxicant was a factor in the accident. Elliott testified that the accident occurred when he swerved to avoid a deer, ran off the roadway, and hit a tree.

After Douglas filed his Motion for Summary Judgment, supported by his Affidavit and that of Elliott, and after all of the depositions of the witnesses had been taken, in August, 2006, the Plaintiff filed second Amended Complaints including essentially the same allegations as the Amended Complaint, and, in addition, alleging that Douglas "controlled" the use of Elliott's vehicle.

Any attorney doing minimal research and applying minimal analytical skills would recognize that Douglas had no duty, right, or ability to control the use of an automobile owned by his adult son even if the evidence showed, which it did not, that Douglas knew of Elliott's intention to drive. "Control" of the use of a vehicle is a legal right or power, not the mere exertion of influence. *Broadwater v. Dorsey*, 344 MD 548, 688 A. 2d 436 (MD, 1997) [right of control of a vehicle belongs to title holder]; *DeBlanc v. Jensen*, 59 S.W. 3d 373 (Tex. App. Div. 1, 2001) [parents had no legal right to prevent adult son from operating vehicle he owned and no liability for negligent entrustment].

Neither the law nor the facts were in any manner different at the time summary judgment was granted than they were at the inception of the cases.

IV.

NO REASONABLE ATTORNEY WOULD HAVE FILED AND CONTINUED TO PURSUE THE CLAIMS ASSERTED AGAINST DOUGLAS

The FCPSA mandates sanctions for pursuing claims which a "reasonable attorney" would recognize as factually or legally without merit. Appellate courts in this state have yet to address the "reasonable attorney" standard in the context of the version of the FCPSA applicable here. It is clear, however, that a

reasonable attorney is one who has done the necessary factual investigation and legal research to form an objective, not subjective, belief in the merits of a claim.

In *Ex Parte Gregory*, 378 S. C. 430, 663 S. E. 2d 46 (2008), the Supreme Court upheld sanctions under the prior version of the FCPSA because the attorney had failed to conduct a proper investigation before filing a conversion action against another attorney.

In *Rutland v. Holler, et al*, 371 S. C. 91, 637 S. E. 2d 316 (Ct. App. 2006), also decided under the former version of the FCPSA, sanctions were upheld against a *pro se* litigant when the Court found, based upon the procedural history of serial dismissals in the record, "it is inconceivable that Rutland reasonably believed that his claims against Respondents were valid." *Id.* at 98, 320.

In *Russell v. Wachovia Bank*, 370 S. C. 5, 17, 633 S. E. 2d 722, 728 (2006), sanctions under the former FPCSA were upheld from the point after which the litigant had access to affidavits and other evidence which should have led her to realize that the facts did not support her claims. When the litigant was in possession of the facts which demonstrated her claims to be without merit, she could no longer assert that she acted in "good faith" in continuing to pursue them.

In *In Re Young*, 366 S. C. 180, 621 S. E. 2d 359 (2007), the Supreme Court disciplined an attorney for violation of Rule 3.1, which precludes filing frivolous claims, for bringing an action with no factual basis, for which he had not done any research, and for which he could not explain the legal basis for pursuing.

In all of these cases, the common thread is that there must be evidence in the record which would demonstrate that the litigant and/or her attorney had sufficient facts and had conducted sufficient research and investigation to support a "reasonable" belief in the existence and continuing existence of a meritorious claim. Subjective "good faith" belief in the merits of the claims is not the equivalent of the required "reasonable" belief reached after investigation and research.

The standard is the same under Rule 11. The rule provides that an attorney's signature on a filing is a certification that "to the best of his knowledge, information and belief" there is "good ground to support it". In *Gibbes v. Rose Hill Plantation Development Company*, 794 F. Supp. 1327 (D. S.C. 1992), the Court held:

Rule 11 requires that an attorney conduct a reasonable investigation of the factual and legal basis for a claim before filing (citation omitted). "The prefiling factual investigation must uncover some information to support the allegations in the complaint" and some basis in law to support the claims in the complaint. (citation omitted) An attorney violates rule 11 if the complaint has "absolutely no chance of success under the existing precedent." (citation omitted) Rule 11 no longer requires a showing of bad faith. (citation omitted) Rather, the relevant inquiry is whether a specific filing was, if not successful, at least well founded at the time of the filing.

Id. at 1340. See, also: *Russell*, at 19, 729,730.

In these cases, the attorneys for each of Douglas' co-defendants, the mother, the sister, and the friend of Elliott, immediately, and without any discovery, filed motions to dismiss or for summary judgment on the basis that the allegations of the Amended Complaints did not give rise to any legal duty

breached by the defendants. The attorneys, bound by the same ethical and legal obligations as the attorneys for the Plaintiff, concluded that the Plaintiff's claims were so without legal merit as to warrant an immediate dispositive motion. This Court agreed, dismissing all claims founded on the same alleged facts and law as the claims asserted against Douglas.⁵

Because the Plaintiff's attorneys either failed to do the necessary investigation of the factual and legal basis for the claims or chose to ignore the obvious, they did not meet the "reasonable attorney" standard that underpins all versions of the FCPSA and Rule 11. An objective analysis of what Plaintiff's attorneys knew or should have known about the facts and the applicable law must lead this Court to conclude that a reasonable lawyer could not have reasonably believed from the outset that the claims were meritorious, and certainly must have so concluded within months after filing them.⁶

If not sufficiently clear based on the foregoing analysis alone, the Supreme Court, in a case involving whether or not Douglas' automobile insurer owed him a defense to the Plaintiff's claims, concluded that the claims had no merit, *from the outset*. In *USAA Property and Casualty Insurance Company v. Clegg, et. al.* 377 S. C. 643, 661 S. E. 2d 791 (2008), the same facts, the same liability issues, and the same individuals were before that Court. In its Opinion, the Court noted that the "initial Complaint and Amended Complaints alleged causes of action against Lambrecht for negligent entrustment and negligence".

⁵ There was only one claim ("racing") asserted against one Defendant other than Elliott that was not dismissed by this Court.

⁶ If a subjective "good faith belief" was the standard, it would be essentially impossible to impose sanctions no matter how frivolous the claim.

the cases were meritorious before they were filed. All the relevant facts were known to Plaintiff's attorneys through the sworn statements of the Elliott's family members, Elliott's Affidavit, and Douglas' Affidavit years before the litigation was ultimately dismissed on summary judgment. All of the material facts and the applicable law were unchanged during the entire four years it took to get the claims heard on summary judgment and dismissed.

Each of the factors to be considered, including the failure of the Plaintiff and her attorneys to make any explanation for their conduct, leads the Court to conclude that the claims against Douglas were frivolous and that sanctions are mandatory.

VI.

DISCRETIONARY SANCTIONS WERE PROPER WHEN THE PLAINTIFF FILED A COMPLAINT AND TWO AMENDED COMPLAINTS WITH FACTUALLY AND LEGALLY UNSUPPORTED CLAIMS.

In addition to mandatory sanctions, FCPSA § 15-36-10(A)(4)(a) provides for discretionary sanctions against an attorney who files a frivolous pleading, motion or document, if a reasonable attorney: (ii) in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law; or (iv) presented with the same circumstances would believe the pleading, motion or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

Pursuant to FCPSA § 15-36-10(A)(4)(b) and (c), an attorney may be sanctioned for making frivolous arguments that a reasonable attorney would believe were not reasonably supported by the facts or the existing law and that there is no good faith argument that exists for the extension, modification, or reversal of existing law.

The rationale set forth above with respect to the propriety of mandatory sanctions applies to all of the filings and arguments asserted in this case. No reasonable attorney would have filed the two amended Complaints which asserted facts and legal claims absolutely known to be untrue and without merit at that time, or taken depositions or filed the papers in opposition to summary judgment which Plaintiff's attorneys did⁸, or reinstated the cases after dismissal pursuant to Rule 40(j) after all of the depositions had been taken and the facts fully explored. Accordingly, discretionary sanctions are also proper in this case.

VII.

REIMBURSEMENT OF DOUGLAS' CONSEQUENTIAL EXPENSES
RESULTING FROM THE FRIVOLOUS PROCEEDING IS APPROPRIATE
UNDER THE FCPSA AND RULE 11

The FCPSA, in subsection (G), provides that attorney fees, costs, and "additional reasonable consequential expenses . . . resulting from the frivolous proceeding" are properly awardable as sanctions. This was true under prior versions of the statute as well. Under the statute, sanctions are properly imposed upon both the litigant and her attorneys.

⁸ As set forth in Douglas' Reply Memorandum In Support of Motion for Summary Judgment, Plaintiff's attorneys made patently false representations to this Court concerning what the evidence demonstrated with respect to the ownership of the automobile.

In this Court's view, as supported by prior precedent, Douglas is entitled to recover the entirety of the costs of defending the litigation brought by the Plaintiff, and in pursuing sanctions in this Court and on appeal.

In *Russell v. Wachovia Bank*, 370 S.C. 5, 633 S.E. 2d 722 (2006), an award of more than \$525,000 in attorney fees and costs was upheld when the plaintiff in a will contest persisted in asserting claims of undue influence after being provided with numerous affidavits affirming the testator's clear state of mind. *Id.* at 18, 729. In *Russell*, the Court made it perfectly clear that a party should be required to pay the opposing party's entire cost of defense when the party has no legitimate claim *from the outset*. *Id.* at 20, 730 FN. 9.

In *Ex Parte: Gregory*, 378 SC 430, 440, 663 S. E. 2d 46, 52 (2008), the Supreme Court affirmed an award of attorney fees incurred by a litigant both for the defense of the claim and for the pursuit of sanctions.⁹ . . . we find the language of S.C. Code Ann/ §15-36-30 (2005), which entitles a person to recover attorney fees and court costs reasonably incurred in litigating the proceedings, also entitles respondent to recover the fees and costs he incurred in seeking sanctions. The language "reasonably incurred in litigating the proceedings," contemplates the fees and costs that represent the underlying proceedings wherein respondent sought to recover the fees and costs he had to pay to defend the suit against him and the proceedings wherein respondent sought sanctions for the underlying frivolous suit.

Id. at 15, 52.

In this Court's view, the clear intent of the FCPSA is to shift the financial burden of frivolous litigation to those who initiated it, and not to those who were forced to defend it and, accordingly, the entirety of the reasonable attorney fees and expenses incurred in both defending the underlying claim and in pursuing sanctions should be recovered by Douglas.

⁹ Gregory was decided under the predecessor to the current statute.

IT IS, THEREFORE ORDERED, ADJUDGED AND DECREED that the claims brought by the Plaintiff and her attorneys against Defendant Douglas A. Lambrecht were frivolous from the outset and in violation of S. C. Code §15-36-10 and Rule 11, SCRPC.

IT IS FURTHER ADJUDGED AND DECREED that Defendant Douglas A. Lambrecht is awarded judgment against the Plaintiff and her attorneys, G. Richardson Wieters, Wieters Law Firm, LLC, H. Fred Kuhn, Jr., and Moss, Kuhn, & Fleming, PA, jointly and severally, for the reasonable consequential expenses resulting from the frivolous proceeding, including attorney fees and costs incurred by the Defendant in the defense of this litigation and in the pursuit of sanctions, in an amount to be established by the evidence.

IT IS FURTHER ORDERED that within 10 days of the date hereof, Defendant shall submit to the Court an affidavit or affidavits setting forth his evidence in support the award of sanctions as allowed by the statute and that the Plaintiff shall have 15 days thereafter to submit opposing affidavits. Defendant shall have 10 days thereafter to submit rebuttal evidence to that offered by the Plaintiff and her attorneys, if any.

Dated this 4th day of January 2010, 2009.

By the Court:

The Honorable Roger M. Young

BLANK

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No.: 06-CP-07-1125 and
Case No.: 06-CP-07-1126

DEBORAH J. CLEGG, as Personal
Representative of the Estate of
Allison T. Clegg,

Plaintiff,

v.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants.

ORDER DENYING
SANCTIONS

10 AUG -5 PM 3:07
BEAUFORT COUNTY
S.C.

THIS MATTER comes before me pursuant to the Plaintiff's Motion to Reconsider my Order dated January 8, 2010. Upon reconsideration, I grant the Motion to Reconsider, vacate my January 8, 2010 Order, and substitute this Order in its place.

This matter originates with my Order, dated March 1, 2007, denying the Defendant Douglas A. Lambrecht's Motion for Sanctions and is now before me on remand from the South Carolina Court of Appeals pursuant to its Opinion, dated June 30, 2009 ("Opinion"), in which the Court of Appeals states:

Under the peculiar facts of this case, more specific findings and conclusions by the trial court are necessary because a duty to dismiss or withdraw frivolous litigation may arise at a subsequent point in the litigation based on whether an attorney knew or should have known a claim is frivolous. This type of review requires an intensive factual consideration of the record, including discovery. We are unable to determine which facts the trial court relied upon in its decision. We

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therefore vacate the denial of sanctions and remand the matter to the trial judge for an order "identifying the facts and accompanying legal analysis on which [he] relied" to enable meaningful appellate review of this issue.

Unpublished Opinion No. 2009-UP-376, pg. 1 (June 30, 2009).

As requested by the Court of Appeals, I set forth in this Order "the facts and accompanying legal analysis on which (I) relied" in issuing my original Order, with separate evaluations under the South Carolina Frivolous Civil Proceedings Sanctions Act (FCPSA) and Rule 11, SCRPC.

I. Chronology and Procedural Background

These companion cases for wrongful death and conscious pain and suffering were commenced by the filing of Summonses and Complaints in the Beaufort County Court of Common Pleas on July 10, 2002. (ROA, pp. 22 - 31; and ROA, pp. 32 - 44).¹ In her Complaints, the Plaintiff alleges that she is the Personal Representative of the Estate of her daughter, Allison T. Clegg, and that her daughter was killed when she was riding as a passenger in an automobile being operated by Elliott M. Lambrecht ("Elliott") when Elliott drove the vehicle off the road at a high rate of speed and into a tree. The Plaintiff has alleged that the Defendant-Movant Douglas A. Lambrecht, the father of Elliott, is liable for Allison's death and injuries under theories of Negligent Entrustment, the Family Purpose Doctrine, and Agency. *Id.* Intertwining throughout these causes of action is the doctrine of combining and concurring negligence.

The Defendant Douglas Lambrecht filed his Answer on August 26, 2002. In addition to a qualified general denial, his Answer alleges that the decedent, Allison Clegg

¹These references are to the Record on Appeal filed with the Court of Appeals in these cases.

"knew or should have known of the . . . disposition of . . . Elliott M. Lambrecht to operate a vehicle improperly and . . . that the Defendant Elliott M. Lambrecht posed an unreasonable risk of harm to the public at large and specifically, to . . . those who might be passengers in his automobile."

ROA, pg. 44, para. 1 (Second Defense to All Causes of Action).

On May 4, 2004, Plaintiff served and filed Amended Complaints in both actions, joining various individuals as additional Defendants. ROA, pp. 85 - 95 and ROA, pp. 96-106. In these Amended Complaints, the Plaintiff alleges that the Defendant Douglas Lambrecht was the *de facto* owner of the 1994 Mazda automobile that Elliott was driving at the time of the fatal wreck. *Id.*

On May 26, 2004, the Defendant Douglas Lambrecht served his Answer to these Amended Complaints, generally denying the allegations against him. (ROA, pp. 107 - 113 and ROA, pp. 114 1-20). Significantly, these Answers omit his prior affirmative allegation in his original Answers that the decedent should have known that Elliott had a disposition to operate vehicles improperly and that Elliot posed an unreasonable risk of harm to both the public and his passengers. *Id.* Although this specific allegation is omitted, however, in his Answers to the Amended Complaints the Defendant Douglas Lambrecht alleges as an affirmative defense that the Plaintiff cannot recover because her decedent assumed the risk of riding with Elliott. *Id.*, p. 112, para. 50.

On June 15, 2004, the Defendant Douglas Lambrecht filed a motion seeking the entry of summary judgment on his behalf. (ROA, pg. 121). Although the motion is nonspecific and contains no grounds for relief, it references a contemporaneously filed Memorandum in Support of Motion for Summary Judgment (ROA, pg. 123) , in which the Defendant argues that he is entitled to the entry of summary judgment because there was no duty of care owed by him to the

Plaintiff's decedent. (ROA, pg. 127).

On April 7, 2005, while the summary judgment motion was pending, these cases were removed from the active roster pursuant to Rule 40(j) SCRCF (Rule 40(j) Order, ROA, pg. 9, in Cases 02-CP-07-1159 and 02-CP-07-1160). Pursuant to an Order filed on May 4, 2006, both cases were restored to the active roster and assigned their current Civil Action Numbers, 2006-CP-07-1125 and 1126 (ROA, pg. 16).

On August 10, 2006, the Plaintiff filed her second, and final, Amended Complaints (ROA, pp. 165 - 188). In his Answers to the final Amended Complaints, the Defendant Douglas Lambrecht again omits his prior specific allegation that it was known that his son Elliott had a disposition to operate a vehicle improperly and that his son Elliott posed an unreasonable risk of harm to both the public at large and to his passengers, but continues to assert the affirmative defense that the Plaintiff's decedent assumed the risk of being killed when she chose to be a passenger in Elliott's vehicle. See ROA, pg. 193.

On September 11, 2006, the Defendant Douglas Lambrecht's pending Motion for Summary Judgment was heard by me in my then capacity as Circuit Court Judge for the Beaufort County Court of Common Pleas. (ROA, pg. 489). In opposing the request for summary judgment, the Plaintiff argued that there were genuine issues of material fact as to the Defendant Douglas Lambrecht's ownership or control of the subject 1994 Mazda automobile (Negligent Entrustment), as to whether or not Elliott was a member of the Plaintiff's household (Family Purpose Doctrine) and as to whether Elliott was performing an errand on behalf of the Plaintiff at the time of the wreck (Agency). See ROA, pp. 201- 208.

Pursuant to an Order dated October 20, 2006, I granted the Defendant's Motion for Summary Judgment. See Order.² ROA, pg. 8.

On January 17, 2007, the Defendant Douglas Lambrecht filed his Motion for Sanctions in each case, requesting sanctions pursuant to S.C. Code Ann. §15-36-10 (the Frivolous Civil Proceedings Sanctions Act, FCPSA) and Rule 11, SCRCF. (ROA, pg. 227).

Pursuant to an Order dated March 1, 2007, I denied the Defendant's Motion for Sanctions in each action. (ROA, pg. 3).

On March 19, 2007, the Defendant filed a Motion in each case asking me to alter or amend my Order denying sanctions. (ROA, pg. 306). A hearing on the record was held on these requests to reconsider on May 1, 2007, and at the conclusion of the hearing the motions were denied by me from the bench, and I issued a written Order confirming my denial of sanctions that same day. (ROA, pg. 544; and ROA, pg. 4.) In that Order, I expressly found that this lawsuit was brought in good faith, stating:

²This Order is erroneously entitled "Order Granting In Part Defendant Rhett Barker's Motion to Reconsider Denial of Motion for Summary Judgment." The Plaintiff's Motion pursuant to Rule 59, SCRCF, to reconsider the granting of summary judgment of the Defendant Douglas Lambrecht was denied by Order filed on March 5, 2007 (ROA, pg. 6).

Upon consideration, **I find that the case was brought in good faith** by experienced, competent lawyers who in good faith believed the facts of the case warranted bringing the lawsuit under the theory it was pursued.

ROA, pg. 4 (emphasis added). I also expressly found that the bringing of this lawsuit was reasonable, stating:

“Additionally, I find that the Defendant argued that this Court should find that a reasonable attorney in the same position as Plaintiff’s counsel would believe that the Plaintiff’s claims and case against the Defendant Douglas A. Lambrecht were not warranted under existing law and were not reasonably founded in fact. However, the Defendant, while not required to, has not brought forth any expert who would opine the case was frivolous and no reasonable attorney would have prosecuted it. Instead, the Defendant defers to this Court to determine whether the filing of the lawsuit against him was reasonable. **I find that it was reasonable.**”

ROA, pp. 4 - 5 (emphasis added).

On May 23, 2007, the Defendant filed his Notices of Appeal, appealing the denial of his request for sanctions to the South Carolina Court of Appeals. The Court of Appeals initially issued an Opinion affirming my Order Denying Sanctions, but upon reconsideration, vacated that Opinion and substituted it with the Opinion quoted above, remanding the case to me and requesting specific findings of fact and conclusions of law. In this Order, I make such findings and conclusions, dealing first with the FCPSA, and secondly with Rule 11.

I. Frivolous Civil Proceedings Sanctions Act

A. Standard For Determining Frivolity

As the Court of Appeals determined, the version of the FCPSA which became effective in 2005 applies to this case. The statute provides that when a case is dismissed on summary

judgment, as this one was, the Court must evaluate whether it was frivolous as defined by the statute and provides that sanctions "shall" be imposed if the claim is, in fact, frivolous.³

In his Motion and supporting Memorandum, Douglas asserted that he was entitled to mandatory sanctions under sections (C)(1)(a) and (C)(1)(c) of the statute. These sections provide that an "attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

(C)(1)(a): a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(C)(1)(c): a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

S.C. Code Ann. §15-36-10 (2010).

³The FCPSA also provides for discretionary sanctions for the filing of frivolous motions or making frivolous arguments. See Section II E, *infra*.

The next step in the analysis is to apply the foregoing standards to the case before me, examining the facts of this case and then applying those facts to the applicable law. The foundation of Defendant's request for sanctions is the fact that his summary judgment motion was granted. In opposition to Defendant's Motion for Summary Judgment, the Plaintiff argued three (3) theories of liability, i.e., Negligent Entrustment, Family Purpose Doctrine, and Agency. ROA, pg. 201.

B. Negligent Entrustment

1. Ownership and Control

The Defendant argued that the negligent entrustment theory of liability was fatally defective because no reasonable person could possibly entertain the good faith belief that he exercised any ownership or control over the subject vehicle, a 1994 Mazda. Defendant's Brief, pp. 19 and 21.

In *American Mutual Fire Insurance Company v. Passmore*, 275 S.C. 618, 621, 274 S.E.2d 416, 418 (1981) the South Carolina Supreme Court held:

"The theory of negligent entrustment provides: The owner **or one in control** of the vehicle and responsible for its use who is negligent in entrusting it to another can be held liable for such negligent entrustment."
Id. (emphasis added). An essential element of a negligent entrustment cause of action, accordingly, is **either** the ownership **or** the control of the subject vehicle. *Id.* Furthermore, the South Carolina Code of Laws expressly provides as follows:

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized to do so by this article or in violation of the provisions of this article.

S.C. Code Ann. §56-1-480 (2007) (emphasis added). At the time of the wreck, Elliott's driver's license was under suspension, and the Mazda automobile was uninsured, unregistered and had no tags.

The basis of the Defendant's summary judgment motion on the negligent entrustment cause of action was that there was no genuine issue of material fact as to the Defendant's ownership or control over the subject Mazda automobile. ROA, pg. 131. In this case, however, there is evidence supporting the good faith belief that Defendant exercised ownership or control over the Mazda vehicle. This evidence can be summarized as follows.

When the Mazda was first purchased, it was titled in Elliott's name alone. How the Mazda was titled, however, is not dispositive. South Carolina's motor vehicle statute expressly defines the "owner" of a vehicle to include a person who is entitled to "the use and possession" of a vehicle. S.C. Code Ann. §56-1-10(3)(2010). Even so, as noted above, only ownership or control need be shown, not both, in order for negligent entrustment to apply.

The Defendant cosigned the loan allowing the vehicle to be purchased. The Defendant testified that the only reason that the Mazda was titled in Elliott's name is because "he (Elliott) was anxious to establish credit in his own name." ROA, pg. 666, lines 18 - 19.

After the Mazda was purchased, it was insured on the Defendant's insurance policy with USAA. *Id.*, pg. 556, lines 15 - 18. On that policy the Defendant's son, Elliott, was identified not as the owner, but simply as an "operator." *Id.*, pg. 556, lines 19 - 20.

Under normal circumstances, of course, an insurance company will not allow one person to insure a vehicle that belongs to another person. See, e.g., *South Carolina Farm Bureau v. Scott*, 274 S.C. 264, 266, 262 S.E.2d 739, 740 (1980). The question naturally arises, accordingly, as to

how the Defendant managed to insure the Mazda on his policy of insurance with USAA. The answer is simple - the Defendant represented to USAA that he was, in fact, the true owner of the Mazda automobile. ROA, pg. 359, line 14 to pg. 360, line 13; and ROA, pg. 426.

On June 14, 2001, the Mazda was involved in a wreck in a parking lot, and as a result, it was totaled by USAA under the Defendant's comprehensive automotive insurance coverage. On August 20, 2001, several months prior to the fatal wreck that killed Plaintiff's daughter, USAA **sold the vehicle to the Defendant** for its salvage value of \$500.00. ROA, pg. 426. Additionally, USAA paid \$2,273.67, representing the payment for the total loss of the Mazda, **to the Defendant**. These settlement documents with USAA were executed by the Defendant, as the **owner** of the Mazda. See also USAA Total Loss Cover Sheet ("Owner: Douglas Lambrecht"); USAA CD Log No. 1180 ("Owner: Lambrecht, Douglas A."); and Wilson Appraisal Service Estimate ("Owner: Lambrecht, Douglas A."). ROA, pg. 358, line 7 to pg. 359, line 20; and pg. 382, line 9 to pg. 389, line 25; ROA, pg. 612, lines 13 - 20. In fact, the Defendant's son, Elliott, never even knew that the Mazda had been totaled, that his father, the Defendant, had received an insurance check, or that his father had purchased the salvage value. ROA, pg. 360, line 2 to pg. 46, line 361. From this point forward, the Defendant had physical control over the vehicle itself, as it was normally kept at his house. Douglas Lambrecht Deposition, pg. 33, lines 8 - 17. The Defendant, not Elliott, was the one who kept the keys to the vehicle. *Id.*, pg. 565, lines 12 - 15.

If this Mazda was truly Elliott's car, as the Defendant claims, then it would be logical to assume that when Anna (Elliott's sister and the Defendant's daughter) asked to borrow the vehicle shortly before the fatal wreck occurred, Elliott would have simply called the Defendant and informed him that Anna was coming to get the car. Instead, the Defendant testified that "He

(Elliott) asked me (the Defendant) to **allow** her (Anna) to pick the car up." ROA, pg. 581, lines 6 - 9 (emphasis added). A reasonable conclusion that can be drawn from the fact that Elliott needed the Defendant's permission for the use of the Mazda is that, in fact, the Defendant was the one who either owned or controlled the use of the Mazda.

The Defendant additionally made several statements to his USAA claims adjuster following the fatal wreck indicative of his exercise of control over the Mazda. ROA, pg. 797 ("He was not allowed by me to drive the car. . . . I would not allow him to drive the car.")

Finally, after the fatal wreck occurred, it was the Defendant, not Elliott, who paid off the outstanding loan on the vehicle. *Id.*, pg. 649, lines 14 - 15.

Perhaps the strongest testimony, however, regarding the Defendant's ownership or control over the Mazda automobile came from the Defendant's own mouth. In a recorded interview with USAA immediately following the fatal wreck the Defendant was asked who is the "primary driver of the Mazda automobile." The Defendant replied that there was no primary driver for this car, and explained:

We considered it to be kind of a **household car** we have a couple of teenagers⁴ and occasionally one or the other might have had occasion to use that car I might have had in fact I - I drove it a couple of times just to make sure that the engine stayed fresh and to check out its mechan . . . (tape cut off had to be turned over on second side) in fact the car was not driven a lot it was driven a couple of times on an occasional basis by what I would deem to be occasional drivers.

⁴The Defendant had remarried following his divorce from Elliott and Anna's mother, and his new wife had two (2) teenage children who resided with them.

Douglas Lambrecht Deposition, Plaintiff's Exhibit 13, pg. 796 (emphasis added). The Defendant also implicitly affirmed to USAA the Defendant's superior exercise of control over the Mazda with respect to Elliott, telling USAA that in the past he had forbidden Elliott from driving the car. *Id.*

Additionally, there is evidence that the Defendant, while not the titled owner of the Mazda, was the *de facto* owner.

In *Automobile Insurance Company of Hartford v. Curran*, 994 F.Supp. 324 (DC Pa. 1998) the subject automobile, a Mercedes, was titled in the name of Caitlin Curran. The Court held, however, that her father, James Curran, was the *de facto* owner of the Mercedes. In so holding, the Court summarized the evidence as follows:

As the foregoing evidence demonstrates, Caitlin Curran had none of the attributes of ownership to the Mercedes, with the exception of the title, while her father, James Curran, Jr. had virtually all of those attributes. Indeed, Mr. Curran had easy access to and could freely use the vehicle whenever he so chose and it is clear that he, more than anyone else, had responsibility for the car's maintenance, repairs and insurance and had control over who used the car and when. Likewise, it appears that it was (her father James) Curran who had the ability to control whether, how, when and where the vehicle could have been disposed following the accident. We thus conclude that he was the *de facto* owner of the vehicle.

Id., 994 F.Supp. at 330.

South Carolina has recognized that the issue of *de facto* ownership or control over the use of an automobile is not answered simply by looking at how the vehicle was last titled. In *Campbell v. Paschal*, 290 S.C. 1, 347 S.E.2d 892 (S.C. App. 1986) the subject automobile was titled in the name of the son, Mark. The daughter, Kimberly, asked her father, Paschal, if she could use Mark's car and the father consented. She was subsequently involved in a wreck, injuring the Plaintiff and the Plaintiff sought to hold the father, Paschal, responsible. Paschal

sought to have the suit against him dismissed because he was not the owner of the vehicle. The Court denied his request noting that there was evidence that the father, Paschal, was the one who controlled the use of the automobile. The Court expressly held that the father could not avoid liability simply because he was not the titled owner to vehicle. *Id.*, 290 S.C. at 9, 347 S.E.2d at 897. Although the *Paschal* case was decided under the Family Purpose Doctrine as opposed to negligent entrustment, it was reasonable for the Plaintiff to rely upon it, since the bottom line analysis - - did the Defendant exercise control over the vehicle - - is the same.

Likewise, in the instant case there is evidence to support the reasonable and good faith belief that it was the Defendant who held the attributes of ownership and control over the Mazda. Like the father in *Curran, supra*, Defendant had easy access to and could freely use the Mazda whenever he so chose, since the vehicle was kept at his house and he kept the keys. He was the one who maintained insurance on the vehicle. He was the one identified as the owner on the insurance policy. He is the one who negotiated the settlement of the claim for damages to the vehicle when it was involved in the prior parking lot accident, and he is the one who received the proceeds for the repairs to the vehicle. He represented to USAA that he was the owner and he negotiated and received the salvage following the parking lot accident. He is the one to whom others went for permission to use the vehicle and, as he admitted in his statement to USAA, he is the one who controlled when the vehicle was used by others and considered it to be his household car. Although the Defendant was not the original titled owner, the foregoing evidence of control supports my finding that the claim for negligent entrustment was brought both in good faith and was reasonable.

2. Unreasonable Risk of Harm

The Defendant has argued that a negligent entrustment case is viable, not only if the Defendant owns or controls the automobile involved in the accident, but also only if the vehicle was entrusted to a person he knows is addicted to intoxicants, in the habit of drinking, or who he knew was likely to drive while intoxicated.

The response to this argument is twofold, as follows.

First, the case upon which Defendant relies in arguing that knowledge of the driver's addiction to intoxicants is an essential element of negligent entrustment "as opposed to knowledge that for reasons other than an addiction to intoxicants the driver posed unreasonable risk of harm to others" was not decided until July 16, 2007, well after summary judgment was granted in this case to Defendant on October 20, 2006. See, *Gadson Ex Rel. Gadson v. ECHO Services of South Carolina, Inc.*, 374 S.C. 171, 648 S.E.2d 585 (2007). Until the Supreme Court's decision in *Gadson*, *supra*, was announced on July 16, 2007, the authoritative South Carolina Appellate ruling on negligent entrustment in South Carolina was the decision by the South Carolina Court of Appeals, in that same case, which extended negligent entrustment liability to a Defendant who knew that a driver was likely, **for any reason**, to create an unreasonable risk of physical harm to himself and others. *Gadson Ex Rel. Gadson v. ECHO Services of South Carolina, Inc.*, 374 S.C. at 176 - 77, 648 S.E.2d 585, 588 (reversing the Court of Appeals' Application of the Restatement (Second) of Torts Sections 308 and 390, which extended liability when the owner knows or had reason to know that such person is likely because of his youth, inexperience, **or otherwise**, to create an unreasonable risk of physical harm to himself and others).

It was certainly not unreasonable, nor was it not in good faith, for the Plaintiff to argue for the extension of negligent entrustment beyond cases involving addiction to intoxication, where at the time this very issue was pending on appeal in an unrelated case.

Second, the South Carolina Supreme Court in *Gadson* did not close the door completely on refusing to extend negligent entrustment liability beyond the factual scenario in which the Defendant knew that the driver was either addicted to intoxicants or had the habit of drinking. Rather, the Supreme Court declined to adopt Sections 308 and 390 of the Restatement based on the set of facts currently before the Court, *Id.*, 374 S.C. at 177, 648 S.E.2d at 588, which was that the Plaintiff had presented no evidence that the Defendant had any knowledge of the driver's drinking habits, driving record, or general behavior. *Id.* 374 S.C. at 178, 648 S.E.2d at 589.

The FCPSA expressly excludes sanctions where a claim, even if not warranted under existing law, would be supported by a good faith or reasonable argument for the "extension, modification, or reversal of existing law." S.C. Code Ann. §15-36-10(c)(1)(a) (2010). The position advocated by Plaintiff in this case - that negligent entrustment liability be extended to any reason a drive may pose an unreasonable risk of harm - is the same position advocated by the Restatement (Second) of Torts (Sections 308 and 390) and adopted by the S.C. Court of Appeals in *Ex Rel. Gadson v. ECHO Services of South Carolina, Inc.*, *supra*.

As noted earlier, the Defendant admitted in his original Answer that Elliott "posed an unreasonable risk of harm to the public at large and specifically, to . . . those who might be passengers in his automobile" and that even the decedent "knew or should have known of the . . . disposition of . . . Elliott . . . to operate a vehicle improperly." ROA, pg. 42.

This admission by the Defendant in his pleading, although watered down by his subsequent

amended Answer, is sufficient to support a reasonable argument to the same effect.

It has been held that a party is bound by an admission contained in a pleading prepared by his attorney, although he did not swear to, or know of, the statements therein and even though he had no actual knowledge of the existence of the pleading, and that the right of the party to show that the statements therein were inadvertently made, or not authorized by him, or made under a mistake of fact, affects only the weight, and not the admissibility, of such statement.

Young v. Martin, 254 S.C. 50, 58, 173 S.E.2d 361, 365 (1970). See also, *Lucht v. Youngblood*, 266 S.C. 127, 134, 221 S.E.2d 854, 858 (1976) ("Generally, the prior pleadings in an action may be received in evidence against the pleader.") Plaintiff was reasonably justified in relying on Defendant's own judicial admission in his Answer.

3. Combining and Concurring Negligence

One of the particulars of negligence under which Douglas A. Lambrecht was sued was the alleged violation of §56-1-480 of the South Carolina Code Ann. which provides as follows:

SECTION 56-1-480. Unlawful to permit unauthorized person to drive. No person shall *authorize* or *knowingly permit* a motor vehicle owned by him *or under his control* to be driven upon any highway by any person who is not authorized to do so by this article or in violation of any of the provisions of this article.

S.C. Code Ann. §56-1-480 (2010) (emphasis added).

As noted in oral arguments on the Motions for Summary Judgment, this Court was apprised that no cases have interpreted this statute. Under applicable rules of statutory construction, however, it is clear that the words "permit" "or" "control" are the operative words. The legislature saw fit when it enacted §56-1-480 to make a distinction between ownership and control. The legislature did not say "*own and control*" it said "*own or control*".

This statute is the legal basis of the negligent *per se* allegations as to Lambrecht. The violation of an applicable statute is negligence *per se*, and whether or not such breach contributed

as a proximate cause to plaintiff's injury is ordinarily a question for the jury. *Eickhoff v. Beard-Laney, Inc.*, 199 S.C. 500, 20 S.E.2d 153, 141 A. L. R. 1010; *Lawrence v. Southern Ry.-Carolina Division*, 169 S.C. 1, 167 S.E. 839; *Dickson v. Inter-Carolinas Motor Bus Co.*, 161 S.C. 297, 159 S.E. 625." *Chapman v. Associated Transport, Inc.*, 218 S.C. 554, 63 S.E.2d 465. *Skipper v. Hartley*, 242 S.C. 221, 224 (S.C. 1963).

Additionally, negligence need not be the sole cause of injury in order to impose liability, but need only be a "proximate concurring cause," which is a cause so efficient in causation *that but for it the injury would not have occurred, even though one of several concurring causes may not have been reasonably anticipated.* *Horne v. Southern Railway Company*, 186 S.C. 197 S.E. 31, 116 A.L.R. 745 (emphasis added by Counsel), *Skipper v. Hartley*, 242, S.C. 221, 224 (S.C. 1963).

The law of combined and concurrent negligence intertwines all the allegations made against the Defendant. In *Bridge v. Orange Crush Bottlers*, 164 S.C. 351 162 S.E. 325 (S.C. 1932) the Court stated:

"Where one is injured by the concurrent negligence of two or more, all or any of the tort-feasors are liable to the injured party."

Id., 164 S.C. 351, 62 S.E. at 327.

Likewise, in *Kennedy v. Carter*, 249 S.C. 168, 153 S.E.2d 312 (1967), the Court stated: As a general rule, it may be said that negligence to render a person liable need not be the sole cause of an injury. It is sufficient that his negligence, concurring with one or more efficient causes, other than Plaintiff's fault, is the proximate cause of the injury. So that where several causes combine to produce injuries, a person is not relieved from liability because he is responsible for only one of them, it being sufficient that his negligence is an efficient cause, without which the injury would not have resulted, to as great an extent, and that such other cause is not attributable to the person injured. . . .

No negligence is "insulated" so long as it plays a substantial and proximate part in the injury. In order to relieve the Defendant of responsibility for the event, the intervening cause must be a superseding cause. It is a superseding cause if it so entirely supersedes the operation of the Defendant's negligence that it alone, without his negligence contributing thereto in the **slightest degree**, produces the injury. . . .

As to the question of foreseeability, it is well settled that it is not necessary that the Appellant should have contemplated the particular event which occurred. It is enough that Appellant should have contemplated the probably happening of some accident of this kind involving bodily injury to others which ought to have been guarded against. . . . Negligence need not be the sole cause of injury in order to impose liability, but need only be a proximate concurring cause, which is a cause so efficient in causation that but for it the injury would not have occurred, even though one of several concurring causes may not have been reasonably anticipated.

Id., 249 S.C. at 185, 153 S.E.2d at 320 (emphasis added and citations omitted).

Finally, in *Culbertson v. Johnson Motor Lines*, 226 S.C. 13, 83 S.E.2d 338 (1954) the South Carolina Supreme Court held:

Where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributable to all or any of the causes, and recovery may be had against either or all of the responsible persons, although one of them was more culpable, and the duty owed by them to the injured person was not the same. . . .

The intervening negligence of another will not excuse the first tort-feasor, if the intermediate wrong or a similar one should have been foreseen in the exercise of due care; the original negligence remains active and constitutes a concurring proximate cause of the ultimate injury. We repeat that it matters not that this supervening and concurrent cause was an act of negligence of a third person or **even a willful or criminal act**. . . .

If the injury complained of is a natural and probable consequence of a violation of the statute, then that violation is correctly taken as the proximate cause of the injury. If the very injury has happened which was intended to be prevented by the statute law, that injury must be considered as directly caused by the nonobservance of the law.

Id., 226 S.C. at 23 - 24, 83 S.E.2d at 343 (emphasis added and original ellipse omitted). See also, *Shearer v. De Shon*, 240 S.C. 472, 475-485, 126 S.E.2d 514, 519 (S.C. 1962).

C. Family Purpose Doctrine

The Family Purpose Doctrine has been recognized in South Carolina since at least 1914. See, *Davis v. Littlefield*, 97 S.C. 171, 81 S.E.2d 487 (1914). "Under this Doctrine, a head of a family, who owns, furnishes and maintains a vehicle for the general use, pleasure and convenience of his family is liable for the negligence of a member of the family having general authority to operate the vehicle for such a purpose." *Lucht v. Youngblood*, 266 S.C. 127, 133, 221 S.E.2d 854, 857 (1976). The Family Purpose Doctrine has its genesis in, and is an expansion of, the concept of agency. *Id.*: *Evans v. Stewart*, 370 S.C. 522, 527, 636 S.E.2d 632, 635 (Ct. App. 2006).

The head of the household need not be the titled or "legal" owner of the car involved in the accident in order for the Family Purpose Doctrine to apply. *Campbell v. Paschal*, 290 S.C. 1, 7, 347 S.E.2d 892, 896 (Ct. App. 1986). See also *Porter v. Hardee*, 241 S.C. 474, 477, 129 S.E.2d 131, 132 (1963). "A necessary requisite to the imposition of liability under the Family Purpose Doctrine . . . is that the head of the family own, maintain, or furnish the automobile . . . for general family use" *Id.*, (emphasis added).

Additionally, it is ordinarily immaterial that the operation of the family purpose automobile was by a person other than the driver to whom it was entrusted as long as a family purpose is being pursued. *Crowder v. Carroll*, 251 S.C. 192, 198, 161 S.E.2d 235, 237 (1968).

The Defendant argues that one of the reasons that this lawsuit is frivolous is because the evidence is uncontroverted that Elliott was an emancipated adult and therefore was not a member of Defendant's household. The record in this case, however, contains evidence supporting my finding that it was both reasonable and in good faith to assert that at the time of the fatal wreck

giving rise to this lawsuit Elliott was living with the Defendant and was a member of the Defendant's household. The evidence is as follows:

The night of the fatal wreck, Elliott told the investigating police officer that his home address was 22 Spartina Point Drive. ROA, pg. 599, line 14. This is the Defendant's address. *Id.*, pg. 551, lines 4 - 6.

The most compelling evidence on this issue, however, came from the Defendant's own lips. Shortly following the wreck, the Defendant himself told his USAA agent that Elliott had all of his things at the Defendant's home. ROA, pg. 596, lines 3 - 11. The Defendant stated that Elliott's address was the same as the Defendant's address. *Id.*, pg. 612, lines 23 - 24.

Even more significantly, when interviewed shortly after the fatal wreck by a USAA claims agent, the Defendant, point blank, told the agent that Elliott was a member of his household. ROA, pg. 778. In fact, when asked about the time period during which Elliott's driver's license was suspended, the Defendant answered the following question from the agent as follows:

Q. Okay was he (Elliott) still in your opinion still a member of your household at that time (while his license was suspended)?

A. Yes.

ROA, pg. 795. Elliott's license was still under suspension at the time of the fatal wreck.

There is, accordingly, ample evidence supporting a good faith and reasonable belief that Elliott was a member of Defendant's household at the time of the wreck.

C. Agency

The final theory of liability propounded by the Plaintiff is that Elliot was acting as the Defendant's agent at the time of the fatal wreck. More specifically, Plaintiff contended that there was evidence that Elliott was performing an errand or favor for the Defendant at the time of the wreck by bringing the Mazda back to Defendant's residence on Hilton Head from Beaufort.

During oral argument, the Defendant argued neither agency nor the Family Purpose Doctrine should be considered by me because these theories of liability were never issues in this case. This is incorrect. The Complaint squarely raises the issue of agency alleging that the purpose of the trip "was to obtain the automobile" and that at the time of the wreck Elliott was acting "in compliance . . . with instructions from the Defendant Douglas A. Lambrecht." ROA, pg. 168 ¶17 and 20. As previously noted, the Family Purpose Doctrine has its genesis in, and is simply an expansion of, the concept of agency. *Evans v. Stewart*, 370 S.C. 522, 527, 636 S.E.2d 632, 635 (Ct. App. 2006). See also, *Smith v. Smith*, 386 S.C. 251, 261, 687 S.E.2d 720, 726 (Ct.App. 2009) ("To ensure substantial justice to the parties, the pleadings must be liberally construed."). Furthermore, these issues of agency and Family Purpose Doctrine were squarely argued and addressed at the time of the summary judgment motion, ROA, pg. 201-08, as well as on the appeal of the Order granting summary judgment. See Appellant's Brief, Issues II and III.

There is evidence to support the reasonableness (and the good faith) of the allegation that at, the time of fatal wreck Elliott was acting pursuant to instructions from the Defendant to retrieve the Mazda, as follows.

Prior to the fatal wreck, the Defendant had lent the Mazda automobile to his daughter, Anna, for her to use while her car was being repaired. At the time, Anna was residing with her mother in Beaufort. Anna's car was eventually repaired and she no longer needed the Mazda for her use.

In a statement the Defendant gave to USAA shortly following the fatal wreck, the Defendant told the USAA claims agent that Elliott was bringing the car back from Beaufort because he, the Defendant, wanted the Mazda brought back to his Hilton Head residence. ROA, pg. 628, lines 3 - 7 and ROA, pg. 801 In fact, just the day before the wreck, the Defendant talked to his daughter, Anna, about bringing the Mazda back to his residence because he wanted the car in his "safekeeping." *Id.*

Defendant also stated that the day before the fatal wreck he had a discussion about "bringing the car back to my home because I wanted the car in safe keeping" and that there was "a general understanding that I wanted the car brought back at our (presumably Defendant and Elliott's) Hilton Head home and to be parked." ROA, pg. 801.

There is, accordingly, evidence to support the reasonable and good faith belief that Elliott was performing an errand on behalf of the Defendant when he was bringing the automobile back from Beaufort to Hilton Head.

Granted, there is evidence to the contrary, but the credibility of this evidence is suspect.

The Defendant later claimed stated that the reason Elliott was driving the Mazda back to Hilton Head from Beaufort the night of the fatal wreck was so Elliot's friend, Rhett Barker, could use it. ROA, pg. 621, line 11 - 13. This, however, was news to Rhett Barker, who knew nothing about it. ROA, pg. 460, lines 6 - 11. ROA, pg. 335, lines 8 - 17. Likewise, Douglas and Elliott Lambrecht's "story" was that at the time of the wreck, Elliott was living with the Barkers. ROA, pg. 324, lines 12 - 14. Again, this was news to the Barkers, with Rhett Barker testifying that at the time of the wreck he was mainly a resident of Defendant's home, although sometimes he

stayed at his mother's house, and that only occasionally did he stay at his house. ROA, pg. 460, line 23 to pg. 461, line 6.

Defendant's questionable credibility, however, is understandable, because Defendant, ironically, candidly admitted in his deposition that he had no qualms about "spinning" the facts if it suited his purposes. ROA, pg. 622, lines 5 - 8. In his deposition, when he was finally forced to admit to some previous false statements, he testified that he preferred not to "characterize them (his false statements) as lies", but preferred to state that he had "conveniently blurred" the truth to suit his purposes. ROA, pg. 679, lines 13 - 24.

D. FCPSA Factors

In determining whether to impose sanctions, the FCPSA provides that the court shall take into account:

- (1) the number of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
- (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
- (5) previous violations of the provisions of this section;
- (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
- (7) other factors the court considers just, equitable, or appropriate

under the circumstances.

SC Code 15-36-10(E)(2009). Addressing these factors in order, I find as follows.

(1) The number of parties involved is small. Although there are six parties in this lawsuit, only the Plaintiff and Defendant Lambrecht are involved in the motion for sanctions.

(2) Although this is a car wreck case, it is a fairly complex case, involving, as noted above, issues of negligent entrustment, the Family Purpose Doctrine, agency and combining and concurrent negligence. Rational people can reach different conclusions when issues of proximate cause and negligence are raised, since is foreseeable and what is reasonable often depend upon one's point of view or life experiences.

(3) There was ample time for all parties to investigate and conduct discovery.

(4) The information that was discovered through investigation and discovery has already been addressed above under each theory of liability. Summarizing, under negligent entrustment, there was evidence that the Defendant Lambrecht owned (*de facto*) or controlled the Mazda at the time of the wreck, inasmuch as he had just purchased the car for its salvage value from USAA, he listed himself as the owner on the insurance documents, he kept the insurance proceeds when the car was in a prior wreck, he paid the car off after the fatal wreck, his children came to him for permission to use the car, he kept the car at his house, he had the keys, and he referred to the car as his "household" car. See pp.10-14, *supra*. Likewise, there was good reason to believe that negligent entrustment was not limited to

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alcohol-related cases, since at the time the Court of Appeals had adopted the more expansive approach of the Restatement (Second) of Torts. See, *Gadson Ex Rel. Gadson v. ECHO Services of South Carolina, Inc.*, 374 S.C. 171, 648 S.E.2d 585 (2007). As to the Family Purpose Doctrine, there was evidence from the Defendant's own mouth that Elliot was a member of his household and that the Mazda was a household car. See pp. 12 and 18, *supra*. Finally, as to agency, there was evidence that at the time of the fatal wreck Elliot was performing an errand for Defendant by bringing the Mazda back to Defendant's home on Hilton Head Island from Beaufort. See pp. 19-20, *supra*.

(5) There are no previous violations of the Act.

(6) The Plaintiff and her attorneys have responded to the Motion by vigorously opposing it, briefing the issues and supplying the Court with discovery documents, statements and depositions relevant to the issues raised.

(7) I have personally heard, observed and witnessed the conduct, demeanor and arguments of the parties and their counsel in this case, both at the summary judgment stage and during this motion for sanctions. The summary judgment was a difficult and complex issue. I am impressed by the earnestness and good faith of Plaintiff and her attorneys. As I previously found in my Order dated May 1, 2007: "I find that the case was brought by experienced, competent lawyers who in good faith believed the facts of the case warranted bringing the lawsuit under the theory it was pursued." Much of this case focused upon the theory of negligent entrustment, and but for the fact that the Court of Appeals' attempted expansion

of negligent entrustment was subsequently reversed by the Supreme Court in *Gadson Ex Rel. Gadson v. ECHO Services of South Carolina, Inc.*, 374 S.C. 171, 648 S.E.2d 585 (2007), as noted above, this case might have turned out differently.

I have reviewed the appellate decisions in *Ex Parte Gregory*, 378 S. C. 430, 663 S. E. 2d 46 (2008)(sanctions upheld under the prior version of the FCPSA because the attorney had failed to conduct a proper investigation before filing a conversion action against another attorney); *Rutland v. Holler, et al*, 371 S. C. 91, 637 S. E. 2d 316 (Ct. App. 2006)(also decided under the former version of the FCPSA, in which sanctions were upheld against a *pro se* litigant when the Court found, based upon the procedural history of serial dismissals in the record, "it is inconceivable that Rutland reasonably believed that his claims against Plaintiffs were valid."); *Russell v. Wachovia Bank*, 370 S. C. 5, 17, 633 S. E. 2d 722, 728 (2006)(sanctions under the former FPCSA were upheld from the point after which the litigant had access to affidavits and other evidence which should have led her to realize that the facts did not support her claims); and *In Re Young*, 366 S. C. 180, 621 S. E. 2d 359 (2007)(attorney disciplined for violation of Rule 3.1, which precludes filing frivolous claims, for bringing an action with no factual basis, for which he had not done any research, and for which he could not explain the legal basis for pursuing). In all of these cases, the common thread is that there must be evidence in the record which would demonstrate that the litigant and/or her attorney had sufficient facts and had conducted sufficient research and investigation to support a "reasonable" belief in the existence and continuing existence of a meritorious claim. Subjective "good faith" belief in the merits of

the claims is not the equivalent of the required "reasonable" belief reached after investigation and research.

The case before me is easily distinguishable from the above cited cases, in that there exists in the record, from the time litigation was commenced until the motion for summary judgment was granted, evidence supporting my finding of the objective, reasonable belief in the existence and continuing existence of a meritorious claim.

E. Discretionary FCPSA Sanctions

In addition to mandatory sanctions, FCPSA § 15-36-10(A)(4)(a)§§ provides for discretionary sanctions against an attorney who files a frivolous pleading, motion or document, if a reasonable attorney: "(ii) in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law; or (iv) presented with the same circumstances would believe the pleading, motion or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based". *Id.*

Pursuant to FCPSA § 15-36-10(A)(4)(b) and (c)§§, an attorney may be sanctioned for making frivolous arguments that a reasonable attorney would believe were not reasonably supported by the facts or the existing law and that there is no good faith argument that exists for the extension, modification, or reversal of existing law.

I decline to impose discretionary sanctions under the FCPSA, relying upon the same factual findings and legal analysis as set forth above in declining to impose mandatory sanctions.

II. Rule 11, FRCP

As an alternative theory to the FCPSA, the Defendant Lambrecht also moves for sanctions under Rule 11, FRCP. This rule provides that an attorney's signature on a filing is a certification that "to the best of his knowledge, information and belief" there is "good ground to support it". In *Gibbes v. Rose Hill Plantation Development Company*, 794 F. Supp. 1327 (D. S.C. 1992), the South Carolina Court of Appeals held:

Rule 11 requires that an attorney conduct a reasonable investigation of the factual and legal basis for a claim before filing (citation omitted). "The prefiling factual investigation must uncover some information to support the allegations in the complaint" and some basis in law to support the claims in the complaint. (citation omitted) An attorney violates rule 11 if the complaint has "absolutely no chance of success under the existing precedent." (citation omitted) Rule 11 no longer requires a showing of bad faith. (citation omitted) Rather, the relevant inquiry is whether a specific filing was, if not successful, at least well founded at the time of the filing.

Id. at 1340. See, also *Russell v. Wachovia Bank*, 370 S. C. 5, 17, 19, 633 S. E. 2d 722, 728-29 (2006).

In these cases, the Plaintiff and/or her attorneys conducted a reasonable investigation into the circumstances surrounding the wreck and the Defendant Lambrecht's potential liability. The investigation included obtaining the accident report (including not just the routine accident report prepared by the investigating officer, but the in-depth investigation conducted by the Highway Patrol's Multi-Disciplinary Accident Investigation Team), witness statements (both sworn and unsworn), as well as discovery that encompassed interrogatories, requests to produce, and depositions.

As noted earlier in discussing the FCPSA, the investigation and subsequent discovery resulted in uncovering "some information to support the allegations of the complaint." An

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objective analysis of what Plaintiff and her attorneys knew or should have known about the facts and the applicable law lead this Court to conclude that a reasonable lawyer would have reasonably believed that the claims were meritorious and that there was "good ground" to support them. Rather than be repetitious, these facts, and the accompanying legal analysis as to each theory of liability is set forth above. See pp. 8-23, *supra*.

In requesting sanctions under Rule 11 (as well as under the FCPSA), Defendant Lambrecht places emphasis upon the fact that he was granted summary judgment. While the fact that I granted summary judgment is something that I have considered, it is certainly not dispositive. Clearly, not every litigant in whose favor summary judgment is granted is entitled to sanctions. The standard for granting summary judgment and the standards under the FCPSA and Rule 11 are different. In this case, while the evidence was not sufficient to defeat summary judgment, it is sufficient to support the reasonableness of the claims made.

In denying sanctions, I have also considered the decision in *USAA Property and Casualty Insurance Company v. Clegg*, 377 S. C. 643, 661 S. E. 2d 791 (2008) which was decided over a year after I granted summary judgment in this case. I do not find that this case compels the granting of sanctions. The issue of sanctions was not addressed in that opinion, and it appears from the decision that most, if not all, of the facts in the record on the cases before me (discussed on pages 8-23, *supra*) were not part of the record in that case.⁵ I, of course, must decide the cases before me based on the record in these cases, not the record in an appeal in which Plaintiff was not involved.

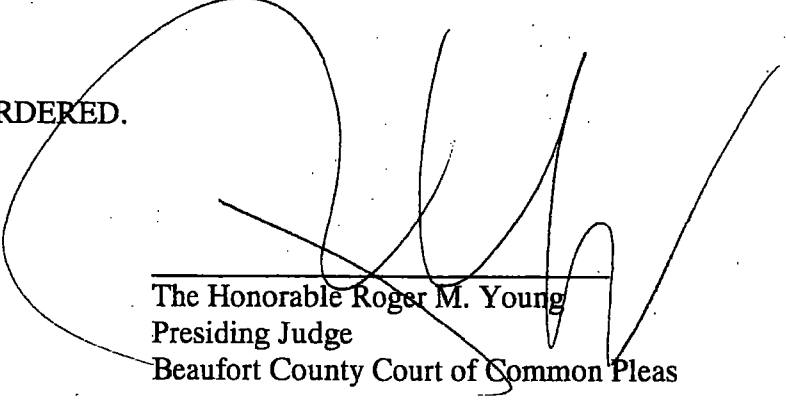
⁵The only two parties to the appeal were USAA and the Defendant, neither of which had any incentive to make as part of the record any of the facts discussed herein which would have tended to establish liability on Defendant's behalf.

Conclusion

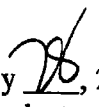
As requested by the Court of Appeals in its Unpublished Opinion No. 2009-UP-376 (June 30, 2009), I have set forth in this Order "the facts and accompanying legal analysis on which (I) relied" in issuing my original Order, with separate evaluations under the South Carolina Frivolous Civil Proceedings Sanctions Act (FCPSA) and Rule 11, SCRCP. I find and conclude that the Defendant Lambrecht is not entitled to sanctions under either the FCPSA or Rule 11.

IT IS, THEREFORE ORDERED, ADJUDGED AND DECREED that the motions of the Defendant Douglas A. Lambrecht for sanctions under the FCPSA and Rule 11 shall be and are hereby DENIED.

AND IT IS SO ORDERED.



The Honorable Roger M. Young
Presiding Judge
Beaufort County Court of Common Pleas

July , 2010
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Deborah J. Clegg, as Personal)
Representative of the Estate of)
Allison T. Clegg,)

Plaintiff,)

v.)

Elliot M. Lambrecht, Douglas A.)
Lambrecht, Rhett Barker, Jan)
Horan, and Anna C. Lambrecht,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2006-CP-07-1125

Case No.: 2006-CP-07-1126

ORDER DENYING
DEFENDANT'S MOTION TO
ALTER OR AMEND

BEAUFORT COUNTY, S.C.
CLERK OF COURT

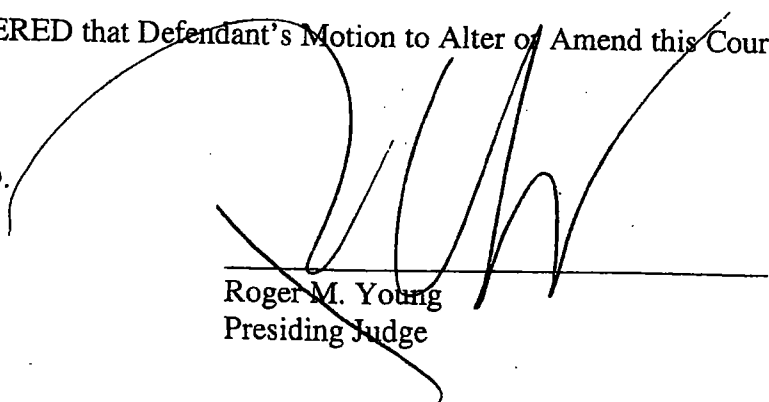
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This matter came before this Court upon Defendant Douglas S. Lambrecht's Motion to Alter or Amend this Court's Order dated July 28, 2010 denying Lambrecht's Motion for Sanctions pursuant to Rule 11, SCRPC and South Carolina Code § 15-36-10 against the Plaintiff and her attorneys.

Upon consideration, I find that the case was brought in good faith by experienced, competent lawyers who in good faith believed the facts of the case warranted bringing the lawsuit under the theory it was pursued.

IT IS THEREFORE ORDERED that Defendant's Motion to Alter or Amend this Court's July 28, 2010 order is **DENIED**.

AND IT IS SO ORDERED.



Roger M. Young
Presiding Judge

September 14, 2010

Charleston, South Carolina.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 02-07-CP- 1159

DEBORAH J. CLEGG, as
Personal Representative of
The Estate of Allison T. Clegg,

Plaintiff,

vs.

ELLIOTT M. LAMBRECHT
and DOUGLAS A. LAMBRECHT,

Defendants.

COMPLAINT
JURY TRIAL DEMANDED AS TO ALL
CAUSES OF ACTION
(SURVIVAL ACTION)
(\$ 15-5-90, S.C. CODE ANN.)

2002 JUL 10 AM 10 41
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT

The Plaintiff, complaining of the Defendants, would respectfully show unto this honorable Court as follows:

For a First Cause of Action

(Survival Action - § 15-5-90, S. C. Code Ann.)

1. Plaintiff, Deborah J. Clegg is the duly appointed personal representative of The Estate of Allison T. Clegg. Letters testamentary were issued on or about March 15, 2002.
2. This action is brought pursuant to §15-5-90, *et seq.*, S. C. Code Ann. (1976), as amended.
3. On information and belief, the Defendant Elliott M. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina.
4. The Defendant Douglas A. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina.

5. The Defendant Douglas A. Lambrecht was, at all times mentioned herein, the owner of a 1994 two-door Mazda automobile.

6. On information and belief, the Defendant Elliott M. Lambrecht was, at all times mentioned herein, operating the automobile owned by the Defendant Douglas A. Lambrecht.

7. Defendant Elliott M. Lambrecht's driver's license had, prior to January 9, 2002, been suspended and he was operating Defendant Douglas A. Lambrecht's automobile without a valid South Carolina driver's license.

8. On information and belief, the Defendant Elliott M. Lambrecht is the son of Defendant Douglas A. Lambrecht.

9. On or prior to January 9, 2002, the Defendant Douglas A. Lambrecht knew, or should have known, that Defendant Elliott M. Lambrecht did not have a valid South Carolina driver's license.

10. On further information and belief, prior to January 9, 2002, Defendant Douglas A. Lambrecht knew, or should have known, that Defendant Elliott M. Lambrecht had a history of repeated speeding violations and license suspensions; however, Defendant Douglas A. Lambrecht allowed the permissive use by Defendant Elliott M. Lambrecht of the Mazda automobile or otherwise failed to prevent Defendant Elliott M. Lambrecht's use of the automobile.

11. Plaintiff's decedent was a passenger in the automobile being operated by Defendant Elliott M. Lambrecht.

12. At approximately 9:15 p.m. on January 9, 2002, the automobile being driven by the Defendant Elliott M. Lambrecht struck a tree located off of the paved roadway on Indigo Run Drive and caused the death of Plaintiff's decedent.

13. The Defendant Elliott M. Lambrecht was negligent, wilful, wanton, grossly negligent and negligent *per se* in one or more of the following particulars, including, but not limited to the following:

- a. Failure to maintain proper control of a vehicle;
- b. Operating a vehicle without a valid South Carolina driver's license;
- c. Operating a vehicle at excessive, high and dangerous speeds above the posted speed limit;
- d. Failure to maintain proper control; and
- e. Failure to observe the posted speed limit.

14. On information and belief, the Defendant Douglas A. Lambrecht knew or should have known that Defendant Elliott M. Lambrecht would have access to the automobile, the keys to the automobile, and the means and methods by which to use the automobile in a manner so as to create an unreasonable risk of harm to others, including Plaintiff's decedent.

15. The Defendant Douglas A. Lambrecht was negligent in entrusting the automobile to the Defendant Elliott M. Lambrecht, either directly, through a third party or permissively.

16. All of the foregoing were the direct and proximate cause of the injuries and death to Plaintiff's decedent.

17. The negligence of the Defendant Douglas A. Lambrecht, combined with the negligence of the Defendant Elliott M. Lambrecht, was the direct and proximate cause of the injuries and death of Plaintiff's decedent.

18. On information and belief, Plaintiff's decedent, prior to death, suffered and endured conscious pain and suffering, knowing that she had sustained serious injuries, or alternatively, that she was faced with life threatening injuries and was otherwise *in extremis*.

19. As a direct result and proximate cause of Defendant Elliott M. Lambrecht's negligence, wilfulness, wantonness, gross negligence and negligence *per se* combined with the negligence, wilfulness, wantonness and gross negligence of Defendant Douglas A. Lambrecht, Plaintiff's decedent lost her life and the Plaintiff is informed and believes that the Estate is entitled to all actual and punitive damages in an amount to be determined by this honorable Court from the Defendants, jointly and severally.

For a Second Cause of Action as to the Defendant Douglas A. Lambrecht
(Negligent Entrustment)

20. The allegations contained in paragraphs 1 through 19 of this Complaint are realleged as fully as if repeated verbatim herein.

21. Defendant Douglas A. Lambrecht knew, or should have known, that the automobile would be operated by his son and, as such, Defendant Douglas A. Lambrecht negligently entrusted the automobile to his son, either directly or indirectly, and failed to use proper safeguards to ensure that his son, who was an unlicensed driver, his license having been suspended, did not operate the automobile.

22. Defendant Douglas A. Lambrecht was the owner of the automobile in which Plaintiff's decedent was killed.

23. Defendant Douglas A. Lambrecht as the owner of the automobile was responsible for controlling the automobile and was responsible for its use.

24. Defendant Douglas A. Lambrecht as the owner of the automobile, which was under his control as the owner, permitted Defendant Elliott M. Lambrecht to use the automobile and to engage in an unlawful and dangerous activity, to wit, operating the automobile, on roads and highways in Beaufort County, South Carolina, when the Defendant Douglas A. Lambrecht knew, or should have known, that Defendant Elliott M. Lambrecht had no valid driver's license and intended to or was likely to use the automobile in a manner which would create the unreasonable risk of harm to others, including Plaintiff's decedent.

25. On information and belief, the Defendant Douglas A. Lambrecht knew or should have known that Defendant Elliott M. Lambrecht would have access to the automobile, the keys to the automobile, and the means and methods by which to use the automobile in a manner so as to create an unreasonable risk of harm to others, including Plaintiff's decedent.

26. The Defendant Douglas A. Lambrecht was negligent, wilful, wanton and grossly negligent in entrusting the automobile to the Defendant Elliott M. Lambrecht, either directly or through a third party or permissively.

27. The negligence of the Defendant Douglas A. Lambrecht was the direct and proximate cause of the injuries and death of Plaintiff's decedent.

28. As a direct result and proximate cause of Defendant Douglas A. Lambrecht's negligent entrustment, Plaintiff's decedent sustained serious bodily injury which resulted in her death.

29. Plaintiff is informed and believes that the Estate is entitled to judgment against the Defendant Douglas A. Lambrecht for all actual and punitive damages in an amount to be determined by this honorable Court.

For a Third Cause of Action

(Negligence)

30. The allegations contained in paragraphs 1 - 29 are realleged as fully as if repeated verbatim herein.

31. Alternatively, the Defendant Douglas A. Lambrecht, as the owner of the automobile, failed to take action sufficient to prevent the use of the automobile in which Plaintiff's decedent was a passenger at the time she was killed.

32. On information and belief, the Defendant Douglas A. Lambrecht knew, or should have known, of his son's propensities to drive the automobile in excess of the posted speed limits; knew, or should have known, that his license had been previously suspended on two (2) occasions; and knew, or should have known, that at the time of Plaintiff's decedent's death, his son had no valid South Carolina driver's license.

33. As the owner of the automobile, the Defendant Douglas A. Lambrecht had a duty to make certain that only duly licensed and qualified drivers operated his automobile on the roads within Beaufort County.

34. The Defendant Douglas A. Lambrecht failed to conform his conduct to a reasonable standard sufficient to protect others, and, specifically, Plaintiff's decedent from the unreasonable risk of harm.

35. The Defendant Douglas A. Lambrecht knew, or should have known, because of the previous traffic violations and disposition of the Defendant Elliott M. Lambrecht to operate a vehicle improperly and in excess of speed limits or while using or in possession of controlled substances, that the Defendant Elliott M. Lambrecht posed an unreasonable risk of harm to the public at large and specifically, to those who would come into contact with him or those who might be passengers in his automobile.

36. The Defendant Douglas A. Lambrecht knew, or should have known, that if Defendant Elliott M. Lambrecht operated the automobile owned by Defendant Douglas A. Lambrecht, he posed a substantial risk of serious harm to others.

37. The Defendant Douglas A. Lambrecht was negligent, wilful, wanton and grossly negligent in one or more of the following particulars, including, but not limited to the following:

- a. In failing to properly supervise Defendant Elliott M. Lambrecht insofar as such pertains to the use of his automobile;
- b. In failing to prevent the Defendant Elliott M. Lambrecht from operating the automobile without a valid South Carolina driver's license;
- c. In failing to take action to prevent the Defendant Elliott M. Lambrecht from obtaining the keys to the automobile and in otherwise preventing the automobile from being used by Defendant Elliott M. Lambrecht;

d. In failing to impart to those that might be in temporary possession of the automobile to act so as to prevent Defendant Elliott M. Lambrecht from using the automobile;

e. In failing to know the location of the automobile at all times;

f. In failing to know who was operating the automobile at all times; and

g. In failing to properly act so as to prevent Defendant Elliott M. Lambrecht from operating the automobile.

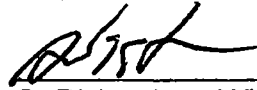
38. All of the foregoing were the direct and proximate result and cause of the Plaintiff's decedent's death.

39. As a direct and proximate cause of Defendant Douglas A. Lambrecht's negligence, Plaintiff's decedent sustained serious bodily injuries which resulted in her death.

40. Plaintiff is informed and believes that the Estate is entitled to judgment against the Defendant Douglas A. Lambrecht for all actual and punitive damages, all in an amount to be determined by this honorable Court.

WHEREFORE, Plaintiff prays this honorable Court inquire into the matters set forth herein; that Plaintiff have judgment against Defendants, jointly and severally for all actual damages arising out of the wrongful death of Plaintiff's decedent; for punitive damages in an amount to be determined by this honorable Court; for the costs and disbursements of this action; and for such other relief as this honorable Court deems just and proper.

G. RICHARDSON WIETERS, P.C.



G. Richardson Wieters, Esquire
Post Office Box 24158
Hilton Head Island, SC 29925
Telephone: 843/681-7177
Facsimile: 843/681-7101

Dated this 27th day of June, 2002
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

DEBORAH J. CLEGG, as)
Personal Representative of)
The Estate of Allison T. Clegg,)

Plaintiff,)

vs.)

ELLIOTT M. LAMBRECHT)
and DOUGLAS A. LAMBRECHT,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 02-07-CP- 1160

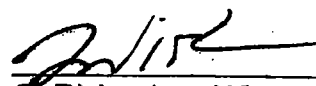
SUMMONS
JURY TRIAL DEMANDED AS TO ALL
CAUSES OF ACTION
(WRONGFUL DEATH)
(§ 15-51-10, S.C. CODE ANN.)

2002 JUL 11 PM 42
BEAUFORT
CLERK

TO: THE DEFENDANTS, ELLIOTT M. LAMBRECHT and DOUGLAS A. LAMBRECHT

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber at his office located at G. Richardson Wieters, P.C., Suite 201, The Prudential Building, 8 Lafayette Place, Post Office Box 24158 Hilton Head Island, SC 29925, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the said Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the Complaint.

G. RICHARDSON WIETERS



G. Richardson Wieters, Esquire
Suite 201 The Prudential Building
Post Office Box 24158
Hilton Head Island, South Carolina 29925
Telephone: 843/681-7177
Facsimile: 843/681-7101

Dated this 27th day of June, 2002
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 02-07-CP- 1160

DEBORAH J. CLEGG, as)
Personal Representative of)
The Estate of Allison T. Clegg,)
Plaintiff,)

vs.)

ELLIOTT M. LAMBRECHT)
and DOUGLAS A. LAMBRECHT,)
Defendants.)

COMPLAINT
JURY TRIAL DEMANDED AS TO ALL
CAUSES OF ACTION
(WRONGFUL DEATH)
(\$ 15-51-10, S.C. CODE ANN.)

BEAUFORT COUNTY
CLERK OF COURT
JUL 10 AM 10 42

The Plaintiff, complaining of the Defendants, would respectfully show unto this honorable Court as follows:

For a First Cause of Action

(Wrongful Death)

1. Plaintiff, Deborah J. Clegg is the duly appointed personal representative of The Estate of Allison T. Clegg. Letters testamentary were issued on or about March 15, 2002.
2. This action is brought pursuant to §15-51-10, *et seq.*, S. C. Code Ann. (1976), for the wrongful acts of the Defendants causing the death of Plaintiff's decedent.
3. On information and belief, the Defendant Elliott M. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina.
4. The Defendant Douglas A. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina.

5. The Defendant Douglas A. Lambrecht was, at all times mentioned herein, the owner of a 1994 two-door Mazda automobile.

6. On information and belief, the Defendant Elliott M. Lambrecht was, at all times mentioned herein, operating the automobile owned by the Defendant Douglas A. Lambrecht.

7. Defendant Elliott M. Lambrecht's driver's license had, prior to January 9, 2002, been suspended and he was operating Defendant Douglas A. Lambrecht's automobile without a valid South Carolina driver's license.

8. On information and belief, the Defendant Elliott M. Lambrecht is the son of Defendant Douglas A. Lambrecht.

9. On or prior to January 9, 2002, the Defendant Douglas A. Lambrecht knew, or should have known, that Defendant Elliott M. Lambrecht did not have a valid South Carolina driver's license.

10. On further information and belief, prior to January 9, 2002, Defendant Douglas A. Lambrecht knew, or should have known, that Defendant Elliott M. Lambrecht had a history of repeated speeding violations and license suspensions; however, on information and belief, Defendant Douglas A. Lambrecht allowed the permissive use by Defendant Elliott M. Lambrecht of the Mazda automobile or otherwise failed to prevent Defendant Elliott M. Lambrecht's use of the automobile.

11. Plaintiff's decedent was a passenger in the automobile being operated by Defendant Elliott M. Lambrecht.

12. At approximately 9:15 p.m. on January 9, 2002, the automobile being driven by the Defendant Elliott M. Lambrecht struck a tree located off of the paved roadway on Indigo Run Drive and caused the death of Plaintiff's decedent.

13. The Defendant Elliott M. Lambrecht was negligent, wilful, wanton, grossly negligent and negligent *per se* in one or more of the following particulars, including, but not limited to the following:

- a. Failure to maintain proper control of a vehicle;
- b. Operating a vehicle without a valid South Carolina driver's license;
- c. Operating a vehicle at excessive, high and dangerous speeds above the posted speed limit;
- d. Failure to maintain proper control; and
- e. Failure to observe the posted speed limit.

14. On information and belief, the Defendant Douglas A. Lambrecht knew or should have known that Defendant Elliott M. Lambrecht would have access to the automobile, the keys to the automobile, and the means and methods by which to use the automobile in a manner so as to create an unreasonable risk of harm to others, including Plaintiff's decedent.

15. The Defendant Douglas A. Lambrecht was negligent in entrusting the automobile to the Defendant Elliott M. Lambrecht, either directly, through a third party or permissively.

16. All of the foregoing were the direct and proximate cause of the injuries and death to Plaintiff's decedent.

17. The negligence of the Defendant Douglas A. Lambrecht, combined with the negligence of the Defendant Elliott M. Lambrecht, was the direct and proximate cause of the injuries and death of Plaintiff's decedent.

18. As a direct result and proximate cause of Defendant Elliott M. Lambrecht's negligence, wilfulness, wantonness, gross negligence and negligence *per se* combined with the negligence, wilfulness, wantonness and gross negligence of Defendant Douglas A. Lambrecht, Plaintiff's decedent lost her life and the Plaintiff is informed and believes that the Estate is entitled to all actual and punitive damages in an amount to be determined by this honorable Court from the Defendants jointly and severally.

19. The Plaintiff, on behalf of the beneficiaries of the Estate of Allison T. Clegg, seeks pecuniary loss, funeral expenses as set forth in § 15-5-100, S. C. Code Ann. (1976), damages for mental shock and suffering, wounded feelings, grief, sorrow, loss of companionship, and the deprivation of the use and comfort of decedent's society, including her experience, knowledge and judgments.

For a Second Cause of Action as to the Defendant Douglas A. Lambrecht

(Wrongful Death - Negligent Entrustment)

20. The allegations contained in paragraphs 1 through 19 of this Complaint are realleged as fully as if repeated verbatim herein.

21. Defendant Douglas A. Lambrecht knew, or should have known, that the automobile would be operated by his son and, as such, Defendant Douglas A. Lambrecht negligently entrusted the automobile to his son, either directly or indirectly, and failed to

use proper safeguards to ensure that his son, who was an unlicensed driver, his license having been suspended, did not operate the automobile.

22. Defendant Douglas A. Lambrecht was the owner of the automobile in which Plaintiff's decedent was killed.

23. Defendant Douglas A. Lambrecht as the owner of the automobile was responsible for controlling the vehicle and was responsible for its use.

24. Defendant Douglas A. Lambrecht as the owner of the automobile, which was under his control as the owner, permitted Defendant Elliott M. Lambrecht to use the automobile and to engage in an unlawful and dangerous activity, to wit, operating the automobile on roads and highways in Beaufort County, South Carolina, when the Defendant Douglas A. Lambrecht knew, or should have known, that Defendant Elliott M. Lambrecht had no valid driver's license and intended to or was likely to use the automobile in a manner which would create the unreasonable risk of harm to others, including Plaintiff's decedent.

25. On information and belief, the Defendant Douglas A. Lambrecht knew or should have known that Defendant Elliott M. Lambrecht would have access to the automobile, the keys to the automobile, and the means and methods by which to use the automobile in a manner so as to create an unreasonable risk of harm to others, including Plaintiff's decedent.

26. The Defendant Douglas A. Lambrecht was negligent, wilful, wanton and grossly negligent in entrusting the automobile to Defendant Elliott M. Lambrecht, either directly, through a third party or permissively.

27. The negligence of the Defendant Douglas A. Lambrecht was the direct and proximate cause of the injuries and death of Plaintiff's decedent.

28. As a direct result and proximate cause of Defendant Douglas A. Lambrecht's negligent entrustment, Plaintiff's decedent sustained serious bodily injury which resulted in her death.

29. Plaintiff is informed and believes that the Estate is entitled to judgment against the Defendant Douglas A. Lambrecht for all actual and punitive damages in an amount to be determined by this honorable Court.

For a Third Cause of Action

(Negligence)

30. The allegations contained in paragraphs 1 - 29 are realleged as fully as if repeated verbatim herein.

31. Alternatively, the Defendant Douglas A. Lambrecht, as the owner of the automobile, failed to take actions sufficient to prevent the use of the automobile in which Plaintiff's decedent was a passenger at the time she was killed.

32. On information and belief, the Defendant Douglas A. Lambrecht knew, or should have known, of his son's propensities to drive the automobile in excess of the posted speed limits; knew, or should have known, that his license had been previously suspended on two (2) occasions; and knew, or should have known, that at the time of Plaintiff's decedent's death, his son had no valid South Carolina driver's license.

33. As the owner of the vehicle, the Defendant Douglas A. Lambrecht had a duty to make certain that only duly licensed and qualified drivers operated his automobile on the roads within Beaufort County.

34. The Defendant Douglas A. Lambrecht failed to conform his conduct to a reasonable standard sufficient to protect others, and, specifically, Plaintiff's decedent from the unreasonable risk of harm.

35. The Defendant Douglas A. Lambrecht knew, or should have known, because of the previous traffic violations and disposition of the Defendant Elliott M. Lambrecht to operate a vehicle improperly and in excess of speed limits or while using or in possession of controlled substances, that the Defendant Elliott M. Lambrecht posed an unreasonable risk of harm to the public at large and specifically, to those who would come into contact with him or those who might be passengers in his automobile.

36. The Defendant Douglas A. Lambrecht knew, or should have known, that if Defendant Elliott M. Lambrecht operated the automobile owned by Defendant Douglas A. Lambrecht, he posed a substantial risk of serious harm to others.

37. The Defendant Douglas A. Lambrecht was negligent, wilful, wanton and grossly negligent in one or more of the following particulars, including, but not limited to the following:

- a. In failing to properly supervise Defendant Elliott M. Lambrecht insofar as such pertains to the use of his automobile;
- b. In failing to prevent the Defendant Elliott M. Lambrecht from operating the automobile without a valid South Carolina driver's license;

c. In failing to take action to prevent the Defendant Elliott M. Lambrecht from obtaining the keys to the automobile and in otherwise preventing the automobile from being used by Defendant Elliott M. Lambrecht;

d. In failing to impart to those that might be in temporary possession of the automobile to act so as to prevent Defendant Elliott M. Lambrecht from using the automobile;

e. In failing to know the location of the automobile at all times;

f. In failing to know who was operating the automobile at all times; and

g. In failing to properly act so as to prevent Defendant Elliott M. Lambrecht from operating the automobile.

38. All of the foregoing were the direct and proximate result and cause of the Plaintiff's decedent's death.

39. As a direct and proximate cause of Defendant Douglas A. Lambrecht's negligence, Plaintiff's decedent sustained serious bodily injuries which resulted in her death.

40. Plaintiff is informed and believes that the Estate is entitled to judgment against the Defendant Douglas A. Lambrecht for all actual and punitive damages, all in an amount to be determined by this honorable Court.

WHEREFORE, Plaintiff prays this honorable Court inquire into the matters set forth herein; that Plaintiff have judgment against Defendants, jointly and severally for all actual damages arising out of the wrongful death of Plaintiff's decedent; for punitive damages in

an amount to be determined by this honorable Court; for the costs and disbursements of this action; and for such other relief as this honorable Court deems just and proper.

G. RICHARDSON WIETERS, P.C.



G. Richardson Wieters, Esquire
Post Office Box 24158
Hilton Head Island, SC 29925
Telephone: 843/681-7177
Facsimile: 843/681-7101

Dated this 27th day of June, 2002
Hilton Head Island, South Carolina

2007 MAR 17 PM 12:03
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
CLERK OF COURT
BEAUFORT, S.C.

DEBORAH J. CLEGG, as Personal
Representative of The Estate of Allison T.
Clegg,

Plaintiff,

vs.

ELLIOTT M. LAMBRECHT and
DOUGLAS A. LAMBRECHT,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 02-CP-07-1159

CR. 06-CP-07-1125

DEFENDANT DOUGLAS A.
LAMBRECHT'S RESPONSES TO
PLAINTIFF'S REQUEST FOR
PRODUCTION
(Survival Action)

DATE & TIME CANCELLED

-AND-

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

DEBORAH J. CLEGG, as Personal
Representative of The Estate of Allison T.
Clegg,

Plaintiff,

vs.

ELLIOTT M. LAMBRECHT and
DOUGLAS A. LAMBRECHT,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 02-CP-07-1160

CR. 06-CP-07-1126

DEFENDANT DOUGLAS A.
LAMBRECHT'S RESPONSES TO
PLAINTIFF'S REQUEST FOR
PRODUCTION
(Wrongful Death)

TO: G. RICHARDSON WIETERS, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant Douglas A. Lambrecht herein responds to the request for production
propounded by the Plaintiffs. In setting forth answers thereto, this Defendant does not waive the
attorney-client, work product, or any other privilege or immunity from disclosure which may

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attach to information called for herein or responsive to these discovery requests, and the subject matters to which these discovery requests refer. These answers are submitted by this Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intended to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of any of the documents referred to or answers given, or the subject matter thereof in any subsequent proceeding in, or the trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matters of the discovery requests herein responded to; and

C. The right at any time to revise, correct, add to or clarify any of the answers set forth herein or documentation referred to herein.

1. Copies of all liability insurance policies for the Defendant, regardless of form, and any endorsements and modifications thereto.

RESPONSE:

Douglas Lambrecht's USAA insurance policy with liability limits of 300/500/50 effective September 20, 2001 to March 20, 2002. USAA contests that the vehicle in question was not insured because the insurance was not renewed.

Such documents are at the Office of Attorney A. Parker Barnes, Jr. and may be inspected between 9:00a.m. and 5:00p.m. on dates to be agreed upon at the inspecting parties expense.

2. Copies of the registration of the vehicle in question.

RESPONSE:

Registration from the South Carolina Department of Motor Vehicles for the vehicle in question.

Such documents are at the Office of Attorney A. Parker Barnes, Jr. and may be inspected between 9:00a.m. and 5:00p.m. on dates to be agreed upon at the inspecting parties expense.

3. Copies of all correspondence sent by, between and among Defendant, Douglas A. Lambrecht and anyone purporting to act on his behalf and any insurance company purporting to have liability automobile insurance as required by law in the State of South Carolina for such automobile.

RESPONSE:

Defendant's counsel is in possession of a box of USAA documents produced by USAA's attorney, James Gibson. This Request will be supplemented upon receipt of such documents.

Such documents are at the Office of Attorney A. Parker Barnes, Jr. and may be inspected between 9:00a.m. and 5:00p.m. on dates to be agreed upon at the inspecting parties expense.

4. Copies of all documents, regardless of form or how maintained, whether on hard drive, floppy disk, CD-ROM or any other type or form of storage device or memory drive or whether written or typed, regardless of form, as set forth in the Definitions on pages 1-2 of this Request that relate or pertain to the accident which is the subject of the action as set forth in the Complaint.

RESPONSE:

1. Defendant's counsel is in possession of a box of USAA documents produced by USAA's attorney, James Gibson.
2. Recorded statement of Douglas Lambrecht dated January 16, 2002.
3. Beaufort Gazette article titled "Investigation team reconstructs wreck" dated February 25, 2002.
4. USAA's letter denying coverage.
5. A copy of the title to the 1994 Mazda MX6 VIN #1YVGE31D3R5215787

Such documents are at the Office of Attorney A. Parker Barnes, Jr. and may be inspected between 9:00a.m. and 5:00p.m. on dates to be agreed upon at

the inspecting parties expense.

6. Copies of all documents, regardless of form or how maintained, whether on hard drive, floppy disk, CD-ROM or any other type or form of storage device or memory drive or whether written or typed, regardless of form, as set forth in the Definitions on pages 1-2 of this Request that relate or pertain to the vehicle/automobile which is identified in the Complaint.

RESPONSE:

1. Defendant's counsel is in possession of a box of USAA documents produced by USAA's attorney, James Gibson.
2. Recorded statement of Douglas Lambrecht dated January 16, 2002.
3. Beaufort Gazette article titled "Investigation team reconstructs wreck" dated February 25, 2002.
4. USAA's letter denying coverage.
5. A copy of the title to the 1994 Mazda MX6 VIN #1YVGE31D3R5215787

Such documents are at the Office of Attorney A. Parker Barnes, Jr. and may be inspected between 9:00a.m. and 5:00p.m. on dates to be agreed upon at the inspecting parties expense.

7. Copies of all correspondence sent by, between and among Defendant, Douglas A. Lambrecht and anyone purporting to act on his behalf with any that pertains to the subject matter of this lawsuit.

RESPONSE:

Unknown at this time. This Request will be supplemented upon receipt of such documents.

8. Copies of all documents reflecting liability insurance for this Defendant regardless of form.

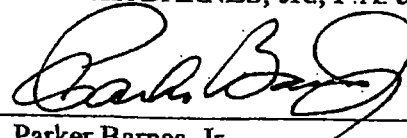
RESPONSE:

Douglas Lambrecht's USAA insurance policy with liability limits of 300/500/50 effective September 20, 2001 to March 20, 2002.

Such documents are at the Office of Attorney A. Parker Barnes, Jr. and may

be inspected between 9:00a.m. and 5:00p.m. on dates to be agreed upon at the inspecting parties expense.

A. PARKER BARNES, JR., P.A. & ASSOCIATES



A. Parker Barnes, Jr.
Post Office Drawer 1729
Beaufort, South Carolina 29901-1729
(843) 522-2600
Attorney for Defendant Douglas A. Lambrecht

Beaufort, South Carolina

October 11, 2002

A. PARKER BARNES JR., P.A. & ASSOCIATES

ATTORNEYS AT LAW
P. O. DRAWER 1729
500 CARTERET STREET
BEAUFORT, SOUTH CAROLINA 29901-1729

A. PARKER BARNES JR.

TELEPHONE (843) 522-2600
FACSIMILE (843) 522-2610

October 11, 2002

G. Richardson Wieters, Esquire
Suite 201, The Prudential Building
P.O. Box 24158
Hilton Head Island, South Carolina 29925

RE: Clegg v. Lambrecht (Survival Action)
Civil Action No.: 02-CP-07-1159
Clegg v. Lambrecht (Wrongful Death)
Civil Action No.: 02-CP-07-1160
Our File No.: 4303

Dear Mr. Wieters:

Please find enclosed Defendant Douglas A. Lambrecht's Answers to Plaintiff's Interrogatories, Defendant Douglas A. Lambrecht's Responses to Plaintiff's Request for Production, Verification, and Certificate of Service in the above captioned cases. I have enclosed all documents to be produced except for the box of USAA documents which are voluminous in size.

With kindest regards, I am

Yours very truly,



A. Parker Barnes, Jr.

APB:jpk

Enclosures

cc: James Gibson, Esquire
Dale Akins, Esquire

000103

STATE OF SOUTH CAROLINA
CERTIFICATE OF TITLE
OF A VEHICLE

VEHICLE ID NUMBER
1YVGE31D3R5215787

YEAR MAKE
1994 MAZD

BODY STYLE
2DR

MODEL
UML

WEIGHT NEW/USED
030 USED

TITLE NUMBER
29614542

ODDOMETER
91,308 *

DATE ISSUED
10-05-2000

FULL NAME OF OWNER(S)
LAMBRECHT ELLIOTT

VEHICLE BRAND(S)
*ACTUAL MILEAGE

WILTON HEAD SC 29926

FIRST LIENHOLDER
LIBERTY SAVING BANK
120W 2NT ST CONSUMER LOAN
DAYTON OH 45402
DATE OF LIEN 08-15-2000

1ST LIEN RELEASED 1-23-02
Liberty Savings Bank, F.S.B. DATE
BY *James M. McLean*
AUTHORIZED AGENT

THE SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY
THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE
DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH.

B. BOYKIN ROSE
DIRECTOR
DEPT. OF PUBLIC SAFETY

JIM HODGES
GOVERNOR

031391573

000104

2001 BEAUFORT COUNTY PROPERTY TAX/REGISTRATION RENEWAL NOTICE

Acct Key Account Number
 09768352 AM09 765HYN
 District SOUTH ISLAND PSD
 Type Property Code: 3011
 Month/Year: SEP 2002

Tag: 765HYN Make: MAZD Year: 1994
 Body: 2DR Model: UML Class: RP
 Vehicle ID-Number: 1YVGE31D3R5215787

Vehicle Value: 460
 Less Exemptions: 0
 Total Assessed: 460

The Insurance Certification Below
 IS NOT REQUIRED THIS YEAR.

LAMBRECHT ELLIOTT

HILTON HEAD SC 29926-0000

~~Total Taxes Due: 102.84~~
 Registration Fee Due: .00
 Prior Year Taxes Due: .00
 Total Amount Due: 102.84

Breakdown of 2001 Taxes

Account	Mill	Taxes
COUNTY	52.10	20.94
SCHOOL	119.80	55.11
MUNICIPAL	30.50	14.03
INDG CARE	2.00	1.92
CONT EDUC	4.00	1.84
ROAD PV		10.00
TOTALS	208.40	102.84

*VEHICLE REGISTRATION SUSPENDED. CONTACT
 THE DEPARTMENT OF MOTOR VEHICLES.

Total Includes SC Tax Relief: 3.02

If you have sold or otherwise disposed of
 this vehicle, contact the County Auditor.

KEEP UPPER PART FOR YOUR RECORDS

SC Department of Public Safety

Tag # _____ VIN # _____
 Make _____ VCS _____
 Year _____ Vehicle Renewal Fee \$ _____

Insurance Certification

Under penalties of perjury, I declare this vehicle is insured with a
 company named below and I will maintain liability insurance through
 the registration period.

Name of Insurance Company _____

Signature of Owner _____

Date _____

PLEASE PRINT CLEARLY

Name _____

SC Street Address _____

City _____

SC

Zip Code _____

Mailing Address (if different from above) _____

NOTE: If you don't have insurance, you may be eligible to pay an uninsured
 motorist fee to your local DMV Office for more information.

Form FR-402 (Rev. 7/99)

- MAIL PAYMENT AND INSURANCE CERTIFICATION, IF NEEDED, WITH THE BOTTOM PART OF THE BILL -

** If your address is not correct, contact the Auditor prior to payment **

Month/Year: SEP 2002

Acct Key Account Number
 09768352 AM09 765HYN
 District: SOUTH ISLAND PSD

Tag: 765HYN Make: MAZD Year: 1994
 Body: 2DR Model: UML Class: RP
 Vehicle ID-Number: 1YVGE31D3R5215787

The total amount due must be paid by SEP 30, 2001 to avoid DMV penalties. Please make checks payable to:
 Joy Logan, Beaufort County Treasurer

LAMBRECHT ELLIOTT

HILTON HEAD SC 29926-0000

Total Taxes Due: 102.84
 Registration Fee Due: .00
 Prior Year Taxes Due: .00
 Total Amount Due: 102.84

RECORDED STATEMENT

January 31, 2002

Re: Our Member : DOUGLAS LAMBRECHT
Our Claim Number : 409 33 62-6-7995-42
Date of Loss : 01 09 2002

THIS IS APRYL SAUNDERS CALLING FROM 1-800-531-8222 TODAY IS WEDNESDAY JANUARY 16 2002 AT 1:15 PM EASTERN STANDARD TIME I'M SPEAKING WITH DOUGLAS LAMBRECHT REGARDING AN AUTO ACCIDENT UH THAT HIS SON ELLIOTT WAS INVOLVED IN THE ACCIDENT OCCURRED ON JANUARY 9 2002 UH MORE SPECIFICALLY UH THE STATEMENT IS REGARDING THE '94 MAZDA

Q. MR LAMBRECHT ARE YOU AWARE THAT THIS STATEMENT IS BEING RECORDED

A. I AM

Q. DO I HAVE YOUR PERMISSION TO DO SO

A. YES

Q. WOULD YOU PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR ME

A. IT'S DOUGLAS A LAMBRECHT AND THE LAST NAME IS L-A-M-B-R-E-C-H-T

Q. HOME ADDRESS

A. ~~2200 S. 10TH AVE. ON THE BEACHES OF ISLAND SOUTH CAROLINA 29926~~

~~Q. AND HOW LONG HAVE YOU RESIDED AT THAT ADDRESS~~

A. SEVERAL YEARS

Q. SEVERAL MEANING MORE THAN FIVE

A. UH MORE THAN THREE

Q. MORE THAN THREE WHO RESIDES THERE WITH YOU

RECEIVED
FEB 01 2002

A. UH WELL WE HAVE A A CHANGING HOUSEHOLD UH MY WIFE RENEE RESIDES THERE FULL TIME WE BOTH HAVE UH CHILDREN UH BY PREVIOUS MARRIAGES AND THE CHILDREN COME AND GO UH MAINTAIN UH ROOMS THERE FOR MOST OR SOME OF THEM AND UH YOU KNOW SOME ARE AWAY AT SCHOOL AND SOME ARE ARE UH OCCASIONALLY LIVING WITH THEIR OTHER PARENT BECAUSE WE WE ALL UH KINDA' CO-PARENT

Q. OKAY LET'S BE MORE SPECIFIC IF WE COULD CAN YOU NAME THE CHILDREN

A. I CAN NAME THE CHILDREN AND THE FAMILY THAT THAT UH ARE

Q. RIGHT

A. ARE IN THE HOUSEHOLD UH AS FAR AS WE'RE CONCERNED AND THOSE ARE

Q. OKAY

A. UH CAMERON (TALKING OVER EACH OTHER)

Q. CAM... (TALKING OVER EACH OTHER)

A. BROWER CAMERON BOWER IS RENEE'S OLDEST SON HE'S AWAY AT CHARLES OF UH EXCUSE ME COLLEGE OF CHARLESTON UH HER DAUGHTER UH

Q. HOW OLD IS UM CAMERON I'M SORRY

A. OH I BELIEVE HE'S 20

Q. 20

A. UM UH 20 NO HE TURNED 21

Q. OH OKAY

~~A. SO HE'S HE'S AWAY AT COLLEGE OF CHARLESTON BUT STILL CONSIDERED~~
PART OF OUR HOUSEHOLD UH ABIGAIL BROWER IS UH IS THE SECOND CHILD
OF OF THAT OF OF THAT FAMILY M' MARRIAGE IF YOU WILL

Q. UH HUH RIGHT

A. UH PREVIOUS MARRIAGE UH ABIGAIL IS 17 I BELIEVE SHE ATTENDS HILTON HEAD PREPARATORY AND AGAIN SHE LIVES WITH US PART TIME AND PART TIME WITH HER FATHER UH

Q. SO SHE'S IN STILL IN HIGH SCHOOL

A. THAT IS CORRECT

Q. OKAY

A. UH TRIP (SP?) BROWER WHOSE WHOSE GIVE NAME IS PRENTISS (SP?) BROWER UH RESIDES AGAIN WITH US PART TIME AND WITH UH PETER PART TIME UM AND TRIP IS IN THE SIXTH GRADE I BELIEVE HE'S GOSH I'M NOT SURE

Q. OKA... (TALKING OVER EACH OTHER)

A. THIRTEEN

Q. RIGHT

A. TWELVE OR THIRTEEN

Q. WHERE'S THEIR PRIMARY RESIDENCE ABIGAIL AND TRIP

A. WELL THEIR THEIR PRIMARY RESIDENCE HAS BEEN WITH US THEY'RE CURRENTLY STAYING WITH THEIR FATHER

Q. UH HUH

A. UH BUT UH AGAIN THESE ARE THESE ARE BOTH UH BLENDED UH FAMILIES THEY'RE UH CHILDREN OF OF PREVIOUS MARRIAGES AND AS IS COMMON IN THESE SITUATIONS UH THEY MAINTAIN TWO HOUSEHOLDS

Q. UH HUH

A. UM SO UH I GUESS THAT'S A TAX QUESTION I DON'T KNOW HOW TO ANSWER IT

Q. (LAUGHED) OKAY

~~A. UM MY OLDEST SON IS ELLIOTT AS YOU KNOW HE IS NINETEEN YEARS OLD~~
UH HI... HE USES UH MY RESIDENCE AS A MAILING ADDRESS AND UH UH HE HAS NOT BEEN STAYING WITH US RECENTLY BUT UH HAS AGAIN HE IS PART OF THE HOUSEHOLD AND AND MAINTAINS UH FREQUENT CONTACT HE WAS THERE WITH US DURING THE HOLIDAYS FOR EXAMPLE AS WERE MOST OF THE KIDS MY OLDEST DAUGHTER ANNA UH EXCU... YES MY OLDEST DAUGHTER ANNA IS UM UH SEVENTEEN YEARS OLD UH SH' HER SHE SPENDS MOST OF HER TIME IN BEAUFORT WITH HER MOTHER JAN HORAN (SP?) AND HER STEPFATHER ERIC HORAN AND SHE ATTENDS SCHOOL IN BEAUFORT UH

Q. IS SHE STILL IN HIGH SCHOOL

A. SHE IS STILL IN HIGH SCHOOL AND THEN I HAVE A YOUNG DAUGHTER FROM A PREVIOUS RELATIONSHIP WHO UH RESIDES WITH HER MOTHER AND AND REALLY DOES NOT HAVE A LOT TO DO WITH US

Q. HOW OLD IS THAT DAUGHTER

A. UH SHE I BELIEVE IS EIGHT

Q. EIGHT

A. EIGHT YEARS OLD RIGHT

Q. YEARS OLD OKAY AND YOU DON'T SEE HER SHE DOESN'T STAY AT THE HOUSE

A. NO

Q. KAY' UM ELLIOTT IS A IS A RESIDENT HE USES YOUR MAILING ADDRESS FOR UM BILL PURPOSES AND SO FORTH

A. GENERALLY SPEAKING YES

Q. OKAY DOES HE PAY HIS BILLS OR DO YOU SOMETIMES PAY HIS BILLS

A. UM WELL ELLIOTT IS UH IS IS JUST MOVING INTO UH HIS OWN CAPACITY IF YOU WILL HE'S

Q. UH HUH

A. NINETEEN HE'S UH HE'S GOT A JOB UH SO HE'S BEEN UH PAYING HIS OWN BILLS AS OF LATE UM UP UP UNTIL OH GOSH FAIRLY RECENTLY I'VE BEEN HE'S BEEN PRETTY DEPENDENT UPON ME FOR SUPPORT BUT UH

Q. TILL LIKE LET'S SAY OCTOBER OR NOVEMBER OF LAST YEAR THE SUMMER

A. UH HE STARTED TO MOVE INTO MORE AND MORE INDEPENDENCE OVER THE SUMMER AND LAST YEAR

Q. KAY' SO UH HIS (TALKING OVER EACH OTHER)

A. I I CAN'T UH I CAN'T TRUTHFULLY SAY HE'S COMPLETELY INDEPENDENT YET BECAUSE UH UH CHILDREN NEVER CLEAR... REALLY ARE

Q. (LAUGHED)

A. ARE

Q. UH HUH ALRIGHT UH WHEN HE WHERE WHEN HE'S NOT WITH YOU WHERE DOES HE RESIDE

A. UM SOMETIMES HE STAYS WITH HIS MOTHER AND ERIC IN UM IN IN BEAUFORT UM AND LATELY HE HAS BEEN UH SPENDING SOME TIME LIVING WITH A FRIEND OF HIS OR STAYING WITH A FRIEND OF HIS I SHOULD SAY UH RHETT BARKER AND THAT WAS THE UH THE YOUNG MAN WHOSE GIRLFRIEND UH UH WAS KILLED IN THIS TERRIBLE ACCIDENT AND UH UH HE HAS UH HE HAS STAYED OCCASIONALLY AT THE BARKERS' HOUSE

Q. AT THE PARKERS' HOUSE THAT'S

A. THAT'S IN INDIGO RUN ON HILTON HEAD ISLAND

Q. OH I'M SORRY WHO WHO ARE THE PARKERS

A. BARKER B-A-R... (TALKING OVER EACH OTHER)

Q. OH BARKER

A. K-E-R-

Q. UH HUH

A. RHETT BARKER IS ONE OF HIS CLOSE FRIENDS

Q. OH I SEE OKAY

A. AND UH HE IS WAS THE BOYFRIEND OF THE GIRL THAT WAS KILLED IN ELLIOTT'S CAR THEY IN FACT THEY WERE ON THEIR WAY TO THE BARKERS' HOUSE TO WATCH A MOVIE

Q. OKAY SO UM DO ARE YOU FAMILIAR WITH AN ADDRESS THE NUMBER 9C
~~EDGEWOOD CIRCLE IN BLUF... BLUFFINGTON (SOUNDED LIKE) SOUTH~~
CAROLINA

A. UH YES I AM FAMILIAR WITH THAT ADDRESS THAT WAS THIS I' WAS SCUSE' ME THE ADDRESS OF UH OH I DON'T KNOW HIS LAST NAME UH VICTOR I DON'T REMEMBER HIS LAST IT'S AN APARTMENT AND UH ELLIOTT STAYED WITH HIM FOR A WHILE AS WELL

Q. A WHILE HOW LONG IS A WHILE

A. UM I DON'T KNOW THE EXACT ANSWER TO THAT I WOULD ESTIMATE UH OFF AND ON FOR ABOUT THREE MONTHS

Q. THREE MONTHS WAS HE PAYING VICTOR RENT

A. YOU'D HAVE TO ASK HIM THAT

Q. OKAY WAS HE PAYING THE UH BARKERS' RENT

A. YOU'D HAVE TO ASK HIM THAT I DON'T BELIEVE SO

Q. OKAY SO AT ANY TIME DID YOU CONSIDER HIM NOT A RESIDENT OR A PART OF YOUR HOUSEHOLD

A. UH I DON'T KNOW HOW TO ANSWER THAT I I I BELIEVE I'VE GIVEN YOU MY PERSPECTIVE WHICH IS UH IN A BLENDED CHILDREN FAMILY UH THEY'RE ALL CONSIDERED PART OF THE HOUSEHOLD IF YOU WILL UM I MEAN ELLIOTT HAS ALL OF HIS THINGS AT MY HOME NOW UM SO (TALKING OVER EACH OTHER)

Q. DID HE DID HE EVER REMOVE THEM

A. NOT ALL OF THEM NO

Q. OKAY DID HE HAVE HIS OWN SEPARATE BEDROOM

A. UH WELL HE STAYED DOWNSTAIRS MOST OF THE TIME IN THE IN WHAT WE IT'S KIND OF A FAMILY ROOM AREA

Q. RIGHT

A. BUT YEAH WE WE CALLED IT ELLIOTT'S ROOM AT TIMES

Q. UM NOW UM TALKING ABOUT THE UH 1994 MAZDA UM CAN YOU JUST CLARIFY WHAT TYPE OF MODEL THAT IS THE THAT THAT VEHICLE

A. YES IT'S A MAZDA MX6 I BELIEVE UH IT'S A TWO DOOR COUPE UH KIND OF A NON DESCRIPT JAPANESE CAR

Q. OKAY WHAT COLOR

A. OH KIND OF A ROBIN EGG BLUE

Q. AND WHEN DID YOU PURCHASE THIS VEHICLE WHEN DID YOU FIRST PURCHASE THIS VEHICLE

A. I I DON'T KNOW THE EXACT DATE UM

Q. KAY' MONTH

A. I I WANNA S' UH WELL I DON'T KNOW THE EXACT MONTH EITHER (TALKING OVER EACH OTHER)

Q. (LAUGHED) OKAY

A. I I WANNA S' AND AND PLEASE UNDERSTAND I I I NEED TO JUST SAY AS A GENERAL STATEMENT HERE THAT UM SINCE LAST WEDNESDAY WHEN THE ACCIDENT OCCURRED UH I'VE BEEN PRIMARILY UH BY MY SON'S SIDE IN THE HOSPITAL I HAVE HA ... NOT HAD THE OPPORTUNITY TO LOOK AT ANY OF THE RECORDS UH UH A' OR GO THROUGH ANY FILES AND

Q. KAY'

A. I'VE BEEN UH YOU KNOW WITHOUT SLEEP A GREAT DEAL OF THE TIME AND NOT EATING PROPERLY SO I I JUST I I WANT YOU TO KNOW THAT I'M IF I'M STUMBLING ABOUT FOR WORDS OR TRYING TO UH YOU KNOW TRYING TO UH REMEMBER IT'S BECAUSE I I TRULY DON'T UH UH I'M TRYING TO FIND OUT THE ANSWERS TO SOME OF THESE QUESTIONS I DON'T

Q. OKAY

A. KNOW ALL OF THEM OFF THE TOP OF MY (TALKING OVER EACH OTHER)

Q. OKAY THAT'S OKAY IF YOU DON'T KNOW SOMETHIN' THAT'S FINE UH JUST JUST TO ANSWER THAT THAT'S NO PROBLEM

A. I'LL DO THE BEST I CAN

Q. OKAY YOU'RE DOING GREAT (LAUGHED)

A. WELL THE THE ANSWER TO YOUR QUESTION IS UH I BELIEVE IT WAS ~~PURCHASED APPROXIMATELY A YEAR AGO YEAR UH THE TIME THAT IT~~ WENT ON THE INSURANCE COVERAGE WOULD CERTAINLY TELL YOU THAT UH THERE WAS A LOAN TAKEN OUT TO PURCHASE THE CAR UH WITH LIBERTY BANK UM THE THE UM UM

Q. AT THAT TI ... SO YOU SAY A YEAR AGO LIKE LAST DECEMBER

A. NO I MEAN APPROXIMATELY A YEAR I DON'T REALLY REMEMBER HONESTLY UH

Q. OKAY

A. I'D HAVE TO REALLY LOOK AT THE RECORDS AND THE LOAN STATEMENTS TO FIND OUT

Q. OKAY

A. IT MAY HAVE BEEN OVER A YEAR AGO I (TALKING OVER EACH OTHER)

Q. OKAY

A. I DON'T RECALL BUT UH (TALKING OVER EACH OTHER)

Q. SO YOU PURCHASED IT USED

A. YES WE PURCHASED THE VEHICLE USED

Q. UH HUH

A. UH WE PURCHASED IT FROM A DEALER I BELIEVE WE PAID APPROXIMATELY \$7,000 \$7,200 FOR IT

Q. OKAY

A. UH IT WAS IN UH GOOD MECHANICAL CONDITION AT THE TIME OF PURCHASE UH IT HAD A COUPLE OF PROBLEMS BUT NOTHING MAJOR UM

Q. DID YOU HAVE A TRADE IN FOR IT AT THAT TIME

A. NO

Q. OR WERE YOU JUST BUYING A A NEW CAR

A. NO WE JUST BOUGHT IT AS A AS A USED VEHICLE THERE WAS NO TRADE IN AT THAT TIME

Q. WHO WAS GOING TO BE THE PRIMARY DRIVER OF THIS VEHICLE

A. ELLIOTT WAS

Q. ELLIOTT SO IT WAS REALLY PURCHASED FOR ELLIOTT

A. YES THAT'S CORRECT

Q. OKAY

A. I I HAVE MY OWN VEHICLES

- Q. KAY' ALRIGHT UM AS UM YOU ALL OWNED THE THE MAZDA UH WAS THERE AN AUTO ACCIDENT THAT ACTUALLY TOTALED OUT THE MAZDA
- A. NO THERE WASN'T UH THERE WAS A UM THERE WAS SOME ENGINE DIFFICULTIES UM WITH THE MAZDA THE THE OIL UH UH R' APPARENTLY RAN LOW ENOUGH THAT THE UH ENGINE WAS UH DEEMED UH UH UNFIXABLE AND WE ENDED UP REPLACING THE ENGINE THERE WAS ALSO UM UH UH UH SOME DAMAGE DONE THERE WAS A UH A WINDOW BROKEN AND A STEREO STOLEN FROM THE VEHICLE
- Q. UH HUH
- A. THERE WAS A CLAIM IN THAT REGARD THAT I'M SURE YOUR RECORDS UH WILL DOCUMENT UH THERE WAS SOME THEFT LOSS UM
- Q. UH HUH BUT THERE WASN'T ONE (TALKING OVER EACH OTHER)
- A. {INAUDIBLE}
- Q. PARTICULAR LIKE THE ACCIDENT OF JUNE 14TH
- A. NO I'M GOING TO ANSWER YOUR QUESTION
- Q. OH I'M SORRY OKAY
- A. {INAUDIBLE} EXCUSE MY RAMBLING
- Q. (LAUGHED) THAT'S OKAY
- A. BUT I'M TRYING TO GIVE YOU ENOUGH INFORMATION TO MAKE A DETERMINATION HERE UM THERE WERE THERE WERE A SERIES OF OF UH INCIDENTS IF YOU WILL I WOULDN'T CALL EM' ACCIDENTS CAUSE THERE WAS NO ACCIDENT PER SE THERE WAS UH AGAIN THE ENGINE FAILURE ISSUE CAUSED THE CAR TO BE PARKED WHILE THE CAR WAS PARKED UH TWO THINGS HAPPENED UH THE WINDOW WAS BROKEN AND UH A NUMBER OF ~~THINGS WERE STOLEN FROM THE CAR AND APPARENTLY OR CONCURRENT~~ WITH THIS SOMEBODY HIT THE BACK OF THE VEHICLE UH THERE WAS NOT A GREAT DEAL OF DAMAGE EVIDENT BUT APPARENTLY I'M TOLD BY THE INSURANCE ADJUSTER THAT CAME OUT THAT THIS MODEL OF VEHICLE IS WHAT'S CALLED A UNIBODY (SP?) SO WHEN THE BUMPER WAS HIT AND IT WASN'T A IT WASN'T A MOVING ACCIDENT PER SE SOMETH' SOMEBODY UNKNOWN TO US HIT THE VEHICLE AND IT RESULTED IN SOME CRUMPLING OF THE BODY
- Q. UH HUH

A. OR ON THE RIGHT HAND SIDE NOT SEVERE BUT UH SUFFICIENT ENOUGH THAT COLLECTIVELY BETWEEN THE ENGINE DAMAGE AND THE UH THE UH DAMAGE TO THE STEREO AND THE DAMAGE UH MINOR DAMAGE TO THE BODY ON THE RIGHT HAND SIDE IT WAS UH DETERMINED BY UH USAA THAT THE CAR WAS UH IN A TOTAL LOSS CATEGORY I UH I DEBATED THAT DETERMINATION WITH USAA WITH THE CLAIMS ADJUSTER UM I UH DID NOT FEEL THAT WAS THE CASE ESPECIALLY BECAUSE THERE WAS STILL A SUBSTANTIAL LOAN AGAINST THE CAR AND THE CAR WAS OTHERWISE IN IN UH GOOD MECHANICAL CONDITION UH WE ELECTED TO HAVE A REPLACEMENT ENGINE PUT IN THE CAR AND UH ELEC ... (TALKING OVER EACH OTHER)

Q. AND WHEN WAS THAT DONE

A. UH SUBSEQUENT TO THE JUNE 14TH REPORT UH

Q. SO SUBSEQUENT A'A' AFTER UH AT THE SAME TIME (TALKING OVER EACH OTHER)

A. {INAUDIBLE} THE CAR

Q. OR AFTER

A. NO SUBSEQ ... SUBSEQUENT TO THAT AFTER THAT

Q. AFTER THAT

A. UH UH WELL AFTER THAT PERIOD OF TIME THE CAR WAS UH THERE WAS A GREAT DEAL OF DISCUSSION AND BACK AND FORTH AND DETERMINATION AS TO WHAT TO DO SO AND AND THEN WE HAD TO GO AND DO A SEARCH TO FIND THE ENGINE SO THERE WAS A PERIOD OF TIME DURING WHICH THE CAR WAS WAS NOT DRIVEN AT ALL UH IT WAS IN UH IN THE SHOP OR IN THE THE WORK F' AREA OF THE THE SHOP WHERE THE CAR WAS UH UH BEING STORED AT UH TOMMY'S TOWING IN BLUFFTON UH WHILE THE CAR WAS BEING WORKED-ON UM SO UH THERE THERE WAS UH I WANNA SAY A PERIOD OF A ~~COUPLE OF MONTHS WHEN THE CAR WAS WAS COMPLETELY INACTIVE AND~~ NOT DRIVEN UH WHILE IT WAS BEING REPAIRED

Q. OKAY AND TOMMY'S TOWING WOULD HAVE ALL THE THE RECORDS AND THE AND THE REPAIR ORDERS AND THINGS LIKE THAT OF WHEN THE ENGINE WAS REPLACED

A. THAT'S CORRECT AND I

Q. OKAY

- A. I BELIEVE I'VE GOT THE THAT UH RECEIPT SOMEWHERE AS WELL IT WAS APPROXIMATELY UH I WELL I WROTE A CHECK FOR IT {INAUDIBLE} IT WAS APPROXIMATELY \$2,600 THAT UH THAT THAT UH I PAID TO HAVE A NEW ENGINE PUT IN THAT CAR
- Q. OKAY SO SO WHEN THEY SAID THAT IT WAS A TOTAL LOSS YOU ELECTED TO KEEP THE THE THE CAR
- A. I BEG YOUR PARDON
- Q. SO YOU ELECTED TO KEEP THE CAR AFTER THE INSURANCE COMPANY SAID IT WAS A TOTAL LOSS
- A. UH WELL THERE WAS A GREAT DEAL OF DISCUSSION ABOUT THAT I DON'T KNOW HOW HOW TO RESPOND TO THAT STATEMENT I I WE TALKED WITH USAA ABOUT WHETHER THE CAR WAS A TOTAL LOSS OR NOT UH TH' THEIR I DID NOT AGREE THAT IT WAS A TOTAL I FELT THAT THE CAR HAD VALUE UH THEY TOLD ME THAT FOR INSURANCE PURPOSES IT WAS CONSIDERED UH A UH I WAS COMMUNICATING WITH THE TOTAL LOSS DEPARTMENT
- Q. UH HUH
- A. I ASSUME THAT MEANS THAT'S WHAT THEY MEANT BUT IT WAS UNDERSTOOD ACROSS THE BOARD THAT UH THE CAR WAS GOING TO BE RETAINED IN FACT THERE WAS UH SOME CONSIDERATION UH FINANCIALLY FOR THAT UH TAKEN AWAY FROM THE UH INSURANCE SETTLEMENT UH BECAUSE OF THE RETENTION
- Q. UH HUH
- A. UH HOLD ON JUST ONE MOMENT UH I'LL HAVE TO CALL HIM BACK UM UH THEN THERE WAS DISCUSSION WITH LIBERTY BANK WITH REGARD TO THE INSURANCE COVERAGE GOING FORWARD IT WAS AGREED UH IN FACT THEY HAD TO SIGN A WAIVER THAT UH UH WITH USAA THAT THEY WERE NOT GOING TO HAVE COLLISION INSURANCE THAT THERE WOULD BE LIABILITY ~~INSURANCE ONLY ON THE VEHICLE UH THAT WAS (TALKING OVER EACH OTHER)~~
- Q. WHO SIGNED THAT WAIVER
- A. I DON'T KNOW THE ANSWER TO THAT QUESTION BUT SOMEBODY AT LIBERTY BANK I S' I RECEIVED A COPY OF THAT MEMO AND UM THAT WAS REQUESTED BY USAA IN ORDER TO CONTINUE LIABILITY COVERAGE ON THE CAR

Q. OKAY SO WHEN WHEN YOU CALLED LIBERTY BANK AND SAID THE INSURANCE COMPANY WANTS TO TOTAL OUT MY CAR BUT I DON'T WANT THEM TO WHAT WAS LIBERTY BANK'S POSITION DID THEY CONTINUE YOUR LOAN OR DID THEY SAY NO WE'RE GONNA HAVE TO GET THIS PAID OFF

A. NO THEY CONTINUED THE LOAN

Q. UH HUH

A. AND IT WAS NOT MY COMMUNICATION WITH LIBERTY BANK IT WAS UH IT WAS USAA'S COMMUNICATION WITH LIBERTY BANK

Q. UH HUH

A. AND THEY DETERMINED UH I I BELIEVE THAT'S UH THAT'S EXCLUSIVELY ACCURATE I AGAIN I'M I'M GONNA HAVE TO GO BACK AND LOOK AT MY RECORDS I MAY HAVE HAD A CONVERSATION WITH THEM BUT I DON'T RECALL CLEARLY MY ANY MY HAVING ANY DIRECT COMMUNICATION WITH LIBERTY BANK UH THERE WAS SOME DISCUSSION ABOUT IT AND AND IT WAS UH AGREE THAT THEY WOULD ACCEPT CONTINUING THE LOAN UM IN ABSENCE OF OF UH COLLISION COVERAGE ON THE CAR BECAUSE IT WAS DETERMINED THAT THAT ALTHOUGH THE CAR WAS MECHANICALLY SOUND THAT IS WAS NOT GOING TO BE WORTH INSURING FOR COLLISION UH IT WOULD IT WOULD BE UH RETAINED AND DRIVEN BY ELLIOTT EVERYBODY UNDERSTOOD THAT UH THERE WOULD BE UM UH THE LOAN IS STILL IN FACT UH UH OUTSTANDING I'VE JUST PUT A CALL INTO THE BANK TODAY TELLING THEM I WANNA CLOSE THAT OUT

Q. SO YOU'RE YOU WERE STILL PAYING ON THE LOAN

A. YES MA'AM

Q. OKAY UM WITH THE DISCUSSION WITH AS FAR AS USAA WITH THE INSURANCE SO THEY THEY SAID THAT YOU KNOW YOU COULD RETAIN UH THE SALVAGE AND SO FORTH WHAT WAS YOUR UNDERSTANDING OF UM ~~HOW THE INSURANCE WAS GOING TO PLAY AT THAT TIME~~

A. AT THAT TIME MY UNDERSTANDING WAS THE INSURANCE WAS GOING TO BE LIABILITY COVERAGE ONLY UH THAT THERE WOULD BE NO COLLISION UH AVAILABLE ON THE AUTOMOBILE

Q. WHAT ABOUT COMP DID THEY EVER MENTION THAT

A. UH WHAT IS COMP

Q. COMPREHENSIVE OTHER THAN COLLISION COVERAGE

A. YES

Q. FOR VANDALISM TYPE (TALKING OVER EACH OTHER)

A. YEAH

Q. ACCIDENTS DID THAT EVER MENTION THAT COVERAGE

A. I WELL NOW YOU'RE CONFUSING ME WITH TERMS I I

Q. OKAY

A. BELIEVE COMP I' IS PART OF THE WHEN I SAY LIABILITY IT WAS COMP YOU KNOW WHATEVER'S REQUIRED BY LAW COMP COMPREHENSIVE COVERAGE UH UH AND LIABILITY COVERAGE BUT NOT COLLISION

Q. OKAY YEAH COMP IS IS A A COVERAGE THAT'S FOR VANDALISM UM IT'S ANYTHING OTHER THAN COLLISION UH IT'S NOT PART OF LIABILITY

A. I DON'T KNOW THE ANSWER TO THAT BUT I BU ... (TALKING OVER EACH OTHER)

Q. NO I'M TELLIN' YOU (LAUGHED) JUST JUST SO THAT YOU KNOW

A. OH WELL I WELL I BELIEVE THAT THE COVERAGE THAT THAT I I BELIEVE I JUST MISPOKE (SP?) UH WHEN I SAID EXCLUSIVELY LIABILITY UH THE COVERAGE WAS EVERYTHING BUT COLLISION IN MY I' IN MY MEMORY AND AND AGAIN I'D HAVE TO GO BACK

Q. OKAY

A. UM

Q. DID YOU AT ANYTIME AFTER THIS HAPPENED AND THIS WAS YOUR
~~UNDERSTANDING UH DID YOU GET A A CONFIRMATION A DEC PAGE IF YOU~~
WILL OF THE CHANGES THAT HAD MADE TO YOUR POLICY

A. I I DON'T KNOW THE ANSWER TO THAT QUESTION UM I'D HAVE TO LOOK AT MY FILES I THERE WERE THERE WAS SEVERAL UH UH DISCUSSIONS AND THERE WERE SOME CHANGES TO THE POLICY OVER THE PAST YEAR

Q. UH HUH

A. SO I DO RECALL RECEIVING UH CORRESPONDENCE FROM USAA ABOUT CHANGES IN THE POLICY BUT THAT WAS UH I I CAN'T AT THIS MOMENT UH

DIFFERENTIATE AS TO WHETHER OR NOT I GOT A SPECIFIC PACKAGE RELATING TO THE CHANGES IN THE COVERAGE FOR THE MAZDA I DON'T RECALL THAT

Q. UM BUT AS YOU GOT YOUR RENEWAL PACKETS FOR YOUR OTHER AUTOMOBILES THAT ARE ON THE YOUR POLICY UM DID YOU NOTICE AT THOSE TIMES THAT THE '94 MAZDA WAS NOT ON THERE AT ALL

A. NO

Q. DID YOU HAPPEN TO OBSERVE THOSE

A. NO

Q. KAY' BUT DID YOU (TALKING OVER EACH OTHER)

A. I DO ... (TALKING OVER EACH OTHER)

Q. DID YOU GET RENEWAL UH CO' POLICIES DURING THAT SIX MONTH PERIOD

A. WHICH SIX MONTH PERIOD (TALKING OVER EACH OTHER)

Q. WELL BETWEEN THE JUNE 1ST (TALKING OVER EACH OTHER)

A. {INAUDIBLE} WE'RE TALKING NOW ABOUT JUNE TO A COUPLE OF MONTHS AFTER JUNE

Q. WELL UNTIL JANUARY YOU WOULD (TALKING OVER EACH OTHER)

A. {INAUDIBLE} SI ... WHAT SIX MONTHS ARE YOU TALKING ABOUT

Q. UM FROM THE TIME OF THE ACCIDENT THAT JUNE 14TH ACCIDENT OR NOT ACCIDENT (TALKING OVER EACH OTHER)

A. {INAUDIBLE}

Q. WELL YOU KNOW AN INCIDENT

A. OKAY

Q. UM AND BETWEEN NOW YOU YOU SHOULD HAVE GOTTEN A POLICY EFFECTIVE UH BEGINNING OF SEPTEMBER UM DO YOU RECALL GETTING THAT

A. YES I R' I RECALL UH RENEWING THE POLICY SOME TIME AROUND SEPTEMBER

Q. OKAY

A. UH YEAH AND I (TALKING OVER EACH OTHER)

Q. AND DO YOU RECALL IF YOU SAW THE '94 MAZDA ON THERE

A. I DON'T RECALL THAT

Q. OKAY

A. UM I DO RECALL SOME DISCUSSIONS WITH REGARD TO WHETHER OR NOT ELLIOTT WAS GOING TO SPECIFICALLY BE A NAMED DRIVER UH IN OUR HOUSEHOLD AND I RECALL DISCUSSIONS WITH USAA ABOUT THAT

Q. OKAY

A. BUT I DON'T RECALL ANY SPECIFIC DISCUSSIONS ABOUT THE MAZDA WHICH WAS UH STILL A PART OF OF THE UM UH THE HOUSEHOLD'S CARS UH (TALKING OVER EACH OTHER)

Q. SO WHEN THEY (TALKING OVER EACH OTHER)

A. {INAUDIBLE}

Q. REMOVED IT OFF THE POLICY AND YOU GOT THOSE DEC PAGES YOU DIDN'T REALIZE THAT IT WASN'T ON THERE

A. NO I I DON'T UH I DON'T RECALL SPECIFICALLY LOOKING UH FOR THE INCLUSION OR THE ABSENCE OF THE MAZDA IN IN THOSE DEC PAGES I D' A' AS YOU CALL THEM

Q. UH HUH

A. AND I I DON'T RECALL BEING CONCERNED ABOUT THAT BECAUSE THE MAZDA WAS AS FAR AS I'M CONCERNED PART OF THE HOUSEHOLD PART OF UH UH POTENTIALLY PART OF OUR PERSONAL PROPERTY IF YOU WILL UH THE FAMILY'S PERSONAL PROPERTY IT WAS OCCASIONALLY DRIVEN BY MY UH MY DAUGHTER ANNA AND ALTHOUGH SHE HAD UH UH SHE HAD DRIVER COVERAGE UNDER HER MOTHER'S POLICY SHE WAS STILL UH CONSIDERED AN OCCASIONAL PART OF OUR HOUSEHOLD SO I WOULD CERTAINLY NOT HAVE HAVE LET LET HER UH OCCASIONALLY THAT CAR IF I DIDN'T BELIEVE IT HAD INSURANCE

Q. UH HUH EVEN THOUGH YOU DIDN'T SEE IT ON THE THAT RENEWAL POLICY

A. NOW YOU'RE I BELIEVE YOU'RE KIND OF TWISTING THINGS HERE I DIDN'T SAY THAT I DIDN'T SEE IT

Q. OKAY

A. I DIDN'T I I DON'T RECALL LOOKING FOR IT PERIOD I DIDN'T

Q. OKAY

A. I DIDN'T SEE IT AND I DIDN'T NOT SEE IT

Q. OKAY UM (TALKING OVER EACH OTHER)

A. {INAUDIBLE} (TALKING OVER EACH OTHER)

Q. WAS ELLIOTT REMOVED OFF YOUR POLICY AS A DRIVER AT ANY POINT

A. AS I SAID I RECALL UH DISCUSSIONS SPECIFICALLY WITH USAA ABOUT THE ADVISABILITY OF REMOVING ELLIOTT FROM OUR POLICY AND UM (TALKING OVER EACH OTHER)

Q. WA... (TALKING OVER EACH OTHER)

A. I RECALL THOSE DISCUSSION

Q. OKAY WAS HE REMOVED

A. I DON'T KNOW THE ANSWER TO THAT QUESTION

Q. YOU DON'T KNOW IF YOU'VE BEEN PAYING PREMIUMS FOR ELLIOTT OR NOT

A. I DON'T I AM NOT POSITIVE I DON'T BELIEVE THAT UH I DON'T BELIEVE THAT ELLIOTT IS LISTED ON OUR POLICY ANYMORE AS A DRIVER BUT I DON'T KNOW THAT I HAVE NOT LOOKED UH

~~Q. OKAY SO YOU DON'T BELIEVE HE IS IF THAT'S THE CASE WHEN DO YOU THINK HE WAS REMOVED~~

A. SCUSE' ME IF IF THIS CONVERSATION IS GOING TO TAKE A A TURN WHERE I'M HAVING WORDS PUT IN MY MOUTH THEN I'M GONNA HAVE TO S' (TALKING OVER EACH OTHER)

Q. OH NO I DON'T MEAN TO DO THAT I'M SORRY (TALKING OVER EACH OTHER)

A. {INAUDIBLE} PLEASE (TALKING OVER EACH OTHER)

Q. I'M JUST SAYING (TALK

A. PLEASE LET'S SLOW DOWN A LITTLE BIT AND JUST (TALKING OVER EACH OTHER)

Q. OKAY

A. BE A LITTLE BIT MORE CAREFUL WITH THE WORDING BECAUSE I DIDN'T SAY THAT

Q. OKAY

A. UH I I'M TELLING YOU THAT A I'VE BEEN THROUGH A VERY DIFFICULT FEW DAYS AND MY RECOLLECTION OF THESE EVENTS IS UH IS NOT {INAUDIBLE} BY REVIEW OF RECORDS SO I'M GOING FROM UH FROM THE TOP OF MY HEAD AND I'M I'M COOPERATING WITH YOU AS FULLY AS I CAN

Q. YEAH

A. BUT I I DON'T WANT TO HAVE THIS GET ADVERSARIAL AND FEEL LIKE I HAVE TO BE ON THE DEFENSIVE

Q. OKAY WELL I TE' (TALKING OVER EACH OTHER)

A. {INAUDIBLE} (TALKING OVER EACH OTHER)

Q. AND I DON'T WANT THAT EITHER MR LAMBRECHT DO YOU THINK THAT MAYBE WE SHOULD CONCLUDE THIS AT THIS POINT AND THEN LET YOU GET (TALKING OVER EACH OTHER)

A. THAT'S UP TO YOU (TALKING OVER EACH OTHER)

Q. A CHANCE TO TO REVIEW THOSE THOSE DOCUMENTS THEN WE CAN RESUME IT

~~A. THAT'S UP TO YOU (TALKING OVER EACH OTHER)~~

Q. THINK THAT WOULD BE BETTER

A. I'M JUST I'M SIMPLY ANSWERING YOUR QUESTIONS AS HONESTLY AND OPENLY AS I CAN AND (TALKING OVER EACH OTHER)

Q. UH HUH

- A. WHEN I HEAR YOU TAKE A TONE UH OR UH OR OR ASK ME TO CONFIRM INFORMATION UH THAT THAT I CANNOT CONFIRM I'M I'M GOING TO TAKE EXCEPTION TO THAT
- Q. OKAY
- A. OTHER THAN THAT I HAVE NO PROBLEM WITH (TALKING OVER EACH OTHER)
- Q. OKAY WELL THE ONLY THING WAS WHEN YOU SAID THERE WAS A POSSIBILITY I'M JUST GOING WELL I KN' I UNDERSTAND THAT IT IS A POSSIBILITY THAT YOU UNDERSTAND THAT HE MAY HAVE BEEN REMOVED IF THAT IS THE CASE (TALKING OVER EACH OTHER)
- A. THAT THAT IS AN ACCURATE STATEMENT YES
- Q. I'M SORRY RIGHT OKAY SO IF THA' IF THAT IS THE CASE IF IT IS POSSIBLE THAT HE WAS REMOVED WHEN MIGHT HE HAVE BEEN REMOVED
- A. I WOULD SAY IN THE EARLY FALL TIMEFRAME AND BY THAT I MEAN SOME TIME BETWEEN UH S' S' SAY THE EARLY OR MIDDLE OF SEPTEMBER TO THE MIDDLE OF OCTOBER WHICH IF I RECALL CORRECT IS APPROXIMATELY THE RENEWAL DATE OF THE POLICY
- Q. OKAY
- A. I DO RECALL DISCUSSIONS WITH I DON'T REMEMBER THE PERSON'S NAME
- Q. OKAY
- A. BUT I RECALL DISCUSSIONS ABOUT THAT POSSIBILITY OF HIM BEING REMOVED BECAUSE HE HAD RECEIVED A COUPLE OF SPEEDING CITATIONS
- Q. UH HUH
- A. AND THERE WAS SOME CONCERN ABOUT ELLIOTT UH UH CHANGING THE ~~RATING OF OUR HOUSEHOLD THA' THAT'S ALL I RECALL (TALKING OVER EACH OTHER)~~
- Q. OKAY
- A. I DON'T REMEMBER I DON'T (TALKING OVER EACH OTHER)
- Q. AT THE TI... (TALKING OVER EACH OTHER)

A. REMEMBER SEEING THE DEC AS YOU CALL IT I DON'T REMEMBER LOOKING AT THE POLICY I REMEMBER THERE BEING SOME DISCUSSION ABOUT THAT LET ME ADD ONE OTHER THING

Q. OKAY

A. I REMEMBER NOT BEING TERRIBLY CONCERNED AT THAT TIME BECAUSE NUMBER ONE THE AUTOMOBILE IN QUESTIONS WAS IN THE SHOP BEING FIXED AND IT WAS GOING TO BE SOME TIME BEFORE IT WAS FIXED NUMBER TWO ELLIOTT HAD GONE UH THROUGH A LICENSE SUSPENSION WHICH I WAS AWARE OF BECAUSE HE DID NOT NOT BECAUSE HE HAD EXCESSIVE VIOLATIONS BUT BECAUSE UH HE HAS A MEMORY PROBLEM AND IT DISCONNECT BETWEEN RESPONSIBILITY AND CONSEQUENCE AND HE HAD NOT GONE TO COURT

Q. UH HUH

A. AND SO THAT RESULTED IN UH A A TEMPORARY SUSPENSION OF HIS LICENSE SO I WAS NOT TERRIBLY CONCERNED ABOUT WHETHER UH ELLIOTT WAS LISTED AS A DRIVER AT THAT TIME BECAUSE UH HE WAS NOT GOING TO BE DRIVING

Q. OKAY WAS HE STILL IN YOUR OPINION STILL A MEMBER OF YOUR HOUSEHOLD AT THAT TIME

A. YES

Q. OKAY AND WHEN WAS THE VEHICLE REPAIRED AND AND ABLE TO BE DRIVEN AGAIN

A. I DON'T THE ANSWER EXACTLY TO YOUR QUESTION BUT I'M GOING TO SAY APPROXIMATELY NOVEMBER MIDDLE OF NOVEMBER I DON'T REMEMBER WHEN THE CAR WAS ACTUALLY PICKED UP UH UH THE EXACT DATE AND I YOU'LL FORGIVE ME PLEASE I I WILL HAVE TO CHECK MY RECORDS BUT

Q. OKAY

A. LET'S JUST SAY LATE FALL

Q. OKAY

A. UH UH SOME TIME IN THE LATE FALL THE CAR WAS PICKED UP AND UH UM TAKEN OVER TO IN FACT IT WASN'T UH PICKED IT WAS DELIVERED TO UH OUR DRIVEWAY AND PARKED NEXT TO THE GARAGE

Q. OKAY AND AT THAT POINT DID YOU UH HAVE INTENTIONS TO ADD COLLISION BACK TO THE CAR

A. OH NO NO THERE WAS A THERE WAS A {INAUDIBLE} UNDERSTANDING THAT THERE WAS NOT GOING TO BE COLLISION AND WHEN YOU SAY COLLISION I I INTERPRET THAT TO MEAN UH BODY REPAIR

Q. OKAY

A. OKAY

Q. UH HUH

A. OR OR OR REPAIR TO THE CAR BECAUSE OF A COLLISION

Q. UH HUH

A. UH TH' UH IT WAS UNDERSTOOD THAT THE CAR WAS GOING TO BE UM UH UH THE CAR WAS {INAUDIBLE} THE CAR W' AND MY UNDERSTANDING WAS GOING TO BE THAT THAT IS REQUIRED BY LAW WITH NO EXCESSIVE INSURANCE NO EXTRA INSURANCE {INAUDIBLE}

Q. SO OKAY

A. I DON'T HOW {INAUDIBLE} SAY IT

Q. ALRIGHT AND WHO WAS AGAIN TO BE THE PRIMARY DRIVER SINCE THE VEHICLE WAS AB' ABLE TO BE DRIVEN NOW AT THIS POINT WHO WAS GONNA BE THE PRIMARY DRIVER OF THE CAR WAS THERE A PRIMARY DRIVER ON THE CAR

A. I I DON'T UH THANK YOU FOR REPHRASING THAT I DON'T UM I DON'T KNOW HOW TO RESPOND TO THAT AT AT THAT POINT IN TIME UM THERE WAS NOT GOING TO BE A PRIMARY DRIVER OF THE CAR IT WAS WE CONSIDERED IT TO BE A IT'S STILL ELLIOTT'S CAR IN OUR MIND BUT UH WE CONSIDERED IT TO BE KIND OF A HOUSEHOLD CAR WE HAVE A COUPLE OF TEENAGERS AND OCCASIONALLY UH ONE OR THE OTHER MIGHT HAVE HAD OCCASION TO USE THAT CAR UH I MIGHT HAVE HAD IN FACT I I DROVE IT A COUPLE OF TIMES JUST TO MAKE SURE THAT THE ENGINE STAYED FRESH UH AND TO CHECK OUT IT'S MECHAN... (TAPE CUT OFF HAD TO BE TURNED OVER ON SECOND SIDE) IN FACT THE CAR WAS NOT DRIVEN A LOT IT WAS DRIVEN A COUPLE OF TIMES UH ON AN OCCASIONAL BASIS BY WHAT I WOULD DEEM TO BE OCCASIONAL DRIVERS

Q. KAY' AND SO SO UM UH WAS ELLIOTT WELL DID ELLIOTT HAVE A JOB AT THAT TIME

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A. UM WHICH TIME ARE YOU TALKING ABOUT

Q. THE TIME WHILE THE CAR WAS UH IN IN AS YOU SAY AVAILABLE TO EVERYONE IN THE HOUSEHOLD UM I'M ASKING I GUESS UH JUST LET ME LET ME UH GO ON WITH THAT UM WAS HE IF HE HAD A JOB WAS HE DRIVING THE CAR BACK AND FORTH TO WORK

A. NO MA'AM HE WAS

Q. OKAY

A. NOT DRIVING THE CAR BACK AND FORTH TO WORK BECAUSE HE WAS NOT A UH HIS LICENSE WAS IN TEMPORARY SUSPENSION

Q. OKAY

A. AND ELLIOTT WAS WAS NOT UH HE WAS NOT ALLOWED BY ME TO DRIVE THE CAR

Q. OKAY

A. UH I WOULD NOT ALLOW HIM TO DRIVE THE CAR UNTIL UH SUCH TIME AS AS HE UH GOT HIS LICENSE UH CLEARED UP NOW PLEASE UNDERSTAND ELLIOTT'S A 19 YEAR OLD AND HE CAN MAKE HIS OWN DECISIONS BUT AS FAR AS COMING TO MY HOUSE AND GETTING THE KEY AND GETTING THE CAR UH HE WASN'T GOING TO UH TO GET BY ME TO GET THAT CAR

Q. KAY' WHEN DID HIS LICENSE UH GET RENEWED WHEN WAS IT RENEWED

A. I DON'T KNOW UH I DON'T KNOW THE ANSWER TO THAT QUESTION

Q. HAD IT BEEN RENEWED

A. I DON'T KNOW THE ANSWER TO THAT QUESTION I SPECIFICALLY TOLD ELLIOTT THAT WHEN HE SHOWED ME UH UH THAT HIS LICENSE WAS RENEWED WE WOULD DISCUSS HIS GETTING THE CAR BACK UH YOU KNOW I'M TRY...

Q. UH HUH

A. UNDERSTAND AS A PARENT I WAS TRYING TO UH UPHOLD THE TOUGH LOVE THEORY AND KEEP HIM FOCUSED ON UH FULFILLING ALL OF HIS RESPONSIBILITIES

- Q. KAY' SO ON UM THE DATE OF JANUARY 9TH HOW WAS HOW DID UM HE
BECOME THE DRIVER OF THAT VEHICLE
- A. WELL YOU YOU YOU'RE A' YOU'RE ASKING ME QUESTIONS I CAN'T
DIRECTLY ANSWER UH (TALKING OVER EACH OTHER)
- Q. OKAY
- A. FROM PERSONAL KNOWLEDGE BUT I'LL TELL YOU WHAT I KNOW
- Q. OKAY
- A. UH THE CAR HAD BEEN TAKEN TO BEAUFORT BY MY DAUGHTER ANNA UH
BECAUSE HER CAR WHICH IS NOT ON USAA'S POLICY IT'S ON HER MOTHER'S
POLICY WITH GEICO
- Q. UH HUH
- A. HER CAR WAS UH IT WAS IN THE REPAIR SHOP FOR A VERY SHORT PERIOD OF
TIME AND SHE STUDIES BALLET ON THE ISLAND AND GOES BACK AND FORTH
AND HER MOTHER I IF I RECALL CORRECTLY HER MOTHER CALLED AND SAID
COULD SHE UH HER MOTHER COULDN'T PICK HER UP AND COULD SHE DRIVE
ELLIOTT'S CAR OVER TO BEAUFORT UH AND THAT FOR THAT ONE TIME
EVENT AND I SAID YES SHE COULD AND UH AGAIN WITH THE
UNDERSTANDING THAT SHE WAS COVERED UNDER HER MOTHER'S POLICY
- Q. UH HUH
- A. UH AS (TALKING OVER EACH OTHER)
- Q. WHEN HER VEHICLE WAS IN THE SHOP
- A. DRIVER AND WITH THE UNDERSTANDING THAT THAT UH THE MAZDA WAS
UH WAS LICENSED AND INSURED UH PROPERLY SO SHE DROVE THE CAR TO
BEAUFORT WHICH IS ABOUT A THIRTYF ... I WANNA SAY A THIRTY-FIVE
MINUTE DRIVE AND PARKED THE CAR AT AT HER MOM'S HOUSE UM UH UH
AND AGAIN UH THI' THIS IS ALL MY UNDERSTANDING I CA' I'M NOT TELLING
YOU THAT I KNOW THIS TO BE FACT IT'S JUST MY UNDERSTANDING FROM
WHAT I'VE HEARD OVER THE PAST FEW DAYS
- Q. UH HUH
- A. UM UNBEKNOWNST TO ME COMPLETELY UNBEKNOWNST TO ME MY SON
ELLIOTT AND HIS FRIEND RHETT AND HIS RHETT'S GIRLFRIEND ALLISON UH
WERE APPARENTLY IN BEAUFORT FOR SOME OTHER ACTIVITY UH I DON'T
KNOW WHAT IT WAS BUT THEY UM UH ELLIOTT TALKED WITH JAN HIS

MOTHER BY PHONE AND UH JAN ENCOURAGED THEM TO COME BY AND HAVE SUPPER OR SOMETHING LIKE THAT SOMEWHERE IN THE COURSE OF THE EVENING'S DISCUSSION UH IT WAS AGREED THAT UH THAT THEY WOULD TAKE THE CAR BACK TO HILTON HEAD NOW IT'S MY IMPRESSION AGAIN PLEASE DON'T HOLD ME TO THESE AS FACTS BUT UH IT'S MY IMPRESSION THAT THAT UH RHETT AND ALLISON WERE THE DRIVERS OF THE VEHICLES UH AND THE REASONING WAS RHETT AN' AND I'M SORRY THIS IS SO CONVOLUTED BUT I'M TRYIN' TO GIVE YOU A FULL PICTURE

Q: UH HUH

A. RHETT HAD SOLD HIS CAR AND ELLIOTT HAD OFFERED HIS CAR TO BE USED BY RHETT UNTIL UH UH UNTIL THEY UH GOT A REPLACEMENT AND I DIDN'T KNOW ANY OF THIS WAS GOING ON UM BUT THIS WAS WHAT WAS APPARENTLY GOING ON UM NOW IT'S MY UNDERSTANDING THAT THEY DROVE THE VEHICLES UH UH MEANING ELLIOTT'S '94 MAZDA AND RHETT WAS DRIVING HIS MOTHER'S BMW AND THEY DROVE THEM TO ALLISON'S HOUSE WHICH IS JUST OFF OF HILTON HEAD ISLAND IT'S RIGHT RIGHT IN IN WHAT WE CALL THE MOSS CREEK AREA NEAR OUR HOME AND A' AGAIN IT IS MY IMPRESSION THAT SOMEHOW UH AT THAT POINT UH ELLIOTT AND ALLISON GOT INTO ELLIOTT'S CAR AND RHETT GOT INTO HIS MOTHER'S CAR AND THEY WERE GOING UP THEY WERE SIMPLY MOVING THE CARS UP TO RHETT'S HOUSE GOING TO SEE A MOVIE AND UH AND SPEND THE EVENING THERE AND APPARENTLY UH RHETT WAS IN FRONT OF ELLIOTT THEY TRAVELED UP 278 FOR A DISTANCE OF UH IT IT'S NOT MORE THAN THREE OR FOUR MILES IF I IF I'M ACCURATELY ESTIMATING IT THEY TURNED RIGHT FROM 278 ON TO INDIGO RUN UH ROAD AND UM UH WENT UH STARTED TO PROGRESS INTO THE UH PLANTATION AND UH AT THAT POINT UH THINGS GET A LITTLE BIT UH CLOUDY BECAUSE THE ACTUAL NATURE OF THE ACCIDENT WAS WAS NOT WITNESSED BY ANYBODY UH RHETT WAS IN FRONT OF ELLIOTT UH RHETT SAID THEY WEREN'T GOING UH E' EXCESSIVELY FAST OR ANYTHING THEY WERE DRIVING UH HE SAID NORMALLY AND UH THAT ELLIOTT WAS BEHIND HIM AND UH HE SAID AND I'M SPEAKING OF RHETT NOW HE SAID HE HEARD A VERY LOUD NOISE AND HE LOOKED IN HIS REARVIEW MIRROR AND DIDN'T SEE ELLIOTT'S LIGHTS AND HE HAD BEEN JUST BEHIND HIM AND SO HE TURNED AROUND AND WENT BACK AND FOUND ELLIOTT'S CAR WRAPPED AROUND A TREE

Q. NOW MR LAMBRECHT DID YOU GIVE PERMISSION FOR ELLIOTT TO DRIVE THAT MAZDA

A. NO MA'AM I WAS NOT ASKED

Q. WOULD HE KNOW THAT OR WOULD HE WOULD HE HAVE CLEAR KNOWLEDGE THAT THAT WAS THE AGREEMENT BETWEEN YOU AND HE

A. UH I BELIEVE HE WOULD HAVE YES I BELIEVE HE WOULD HAVE CLEAR KNOWLEDGE THAT HE AND I HAD AN UNDERSTANDING THAT HE WAS NOT GOING TO DRIVE THE CAR UNTIL SUCH TIME AS UH HE HAD COME TO ME WITH PROOF THAT HIS LICENSE WAS REINSTATED

Q. OKAY DID ANNA KNOW ABOUT THIS SITUATION WITH YOU AND ELLIOTT WAS SHE AWARE OF THAT AGREEMENT

A. I DON'T KNOW THE ANSWER TO THAT QUESTION

Q. A' AND UH I'M JUST I GUESS I'M TRYIN' TO TO UH

A. ARE YOU ARE YOU LET ME ASK YOU A QUESTION ARE YOU SPEAKING WITH SOMEBODY ELSE THERE

Q. NO NO

A. OKAY

Q. UH UH

A. I DIDN'T KNOW I DON'T KNOW (TALKING OVER EACH OTHER)

Q. UH HUH

A. WHETHER YOU'RE TALKING TO ME ON YOUR OWN OR

Q. OH NO NO I'M TRYING TO FIGURE OUT IF IF ELLIOTT UM THOUGHT HE HAD PERMISSION OR IF ANYONE GAVE HIM PERMISSION UH SO MY NEXT QUESTION IS WOULD WOULD HIS MOTHER HAVE GIVEN HIM PERMISSION TO DRIVE THIS CAR

A. I DON'T KNOW THE ANSWER TO THAT YOU'LL HAVE TO ASK HER

Q. OKAY BUT DOES SHE (TALKING OVER EACH OTHER)

A. BUT BUT BUT LET ME BE CLEAR WITH SOMETHING

Q. OKAY

A. ELLIOTT IS A NINETEEN YEAR OLD HE'S HE'S A AN EMANCIPATED ADULT UH HE UH HE AS MANY TEENAGERS DO HE WAS PROUD OF HIS INDEPENDENCE AND HE MADE HIS OWN DECISIONS

Q. OKAY

A. UH SO EVEN IF HE HAD UH UH IF HE HAD ASKED MY PERMISSION TO DRIVE THE CAR I WOULD HAVE SAID NO AND I BELIEVE THAT UH IN MY HEART OF HEARTS I BELIEVE THAT ELLIOTT KNOWS THAT UH BUT HE DID NOT ASK ME HE DID NOT UH HIS MOTHER DID NOT ASK ME I WAS NOT IN THAT CONVERSATION NOW JUST PREVIOUS TO THIS THE DAY BEFORE THERE WAS DISCUSSION OF OF ANNA MY DAUGHTER BRINGING THE CAR BACK TO MY HOME BECAUSE I WANTED THE CAR IN SAFE KEEPING IF YOU WILL

Q. UH HUH UH HUH

A. UM BUT UH I DID NOT UH UH I DID NOT ELLIOTT PERMISSION TO DRIVE THE CAR OVER TO HILTON HEAD BY ANY STRETCH OF THE IMAGINATION

Q. WHAT WAS THE AGREEMENT WITH ANNA WAS SHE GONNA BE BRINGIN' IT BACK OR HOW DID THAT

A. IT WAS NOT LEFT UH CLEAR UH SHE AT ONE POINT SHE WAS GOING TO BE BRINGING IT BACK AND THEN UH THEIR SCHEDULED CHANGED AND DID NOT ALLOW HER TO HAVE TIME TO PICK THE CAR UP SO IT WAS NOT IT WAS NOT A SPECIFIC AGREEMENT BUT THERE WAS A GENERAL UNDERSTANDING THAT I WANTED THE CAR BACK AT UH AT OUR HILTON HEAD HOME UH TO BE PARKED UNTIL SUCH TIME AS THE DISPOSITION WAS DETERMINED

Q. OKAY

A. IT WAS REALLY ONLY UH LEFT FOR ANNA TO TO TAKE TO BEAUFORT FOR THAT ONE TIME NEED AND THAT WAS GENERALLY UNDERSTOOD SHE WAS NOT YOU KNOW DRIVING IT A LOT

Q. UH HUH CAUSE SHE HAD HER OWN CAR

A. SHE GOT HER OWN CAR BA ... SHE JUST RECENTLY GOT HER CAR AND SHE GOT HER CAR BACK

Q. KAY'

A. YEAH

Q. OKAY UM WOULD YOU SAY THAT ELLIOTT RESIDES WITH HIS MOTHER AS MUCH TIME AS HE RESIDES WITH YOU

A. UH NO NO HE SPENDS MORE TIME IN THE HILTON HEAD AREA THAN HE SPENDS IN THE BEAUFORT AREA HE HAS SPENT YOU KNOW AGAIN IT COMES AND GOES DEPENDING ON ON THE SEASON AND ALL

Q. UH HUH

A. HE'S PRE . . . EARLY IN 2001 HE SPENT A LITTLE BIT MORE TIME OVER THERE BUT UH NO HE UM UH RECENTLY IN THE LAST YOU KNOW FEW MONTHS IT'S BEEN MORE ON ON THE HILTON SIDE OF THE COUNTY

Q. OKAY SO BUT WOULD YOU CONSIDER HIM MAYBE A RESIDENT OF HER HOUSEHOLD ALSO KINDA' LIKE THE OPEN TEENAGER HOUSEHOLD LIKE YOU HAVE

A. WELL UH THAT'S A QUESTION BEST FOR HER HOUSEHOLD I DON'T UM

Q. OKAY

A. I DON'T PRESUME TO ANSWER THAT

Q. OKAY ALRIGHT UH MR LAMBRECHT IS THERE ANYTHING ELSE THAT YOU'D LIKE TO ADD UH REGARDING THE DISCUSSIONS WE HAD TODAY UH THAT WE'VE NOT DISCUSSED OR THAT YOU WOULD LIKE TO ADD BEFORE WE UM CONCLUDE THIS

A. WELL UH UH I I'M CURIOUS ABOUT UH THE NATURE OF THE QUESTIONING AND ALL UM I UNDERSTAND THERE'S SOME SOME QUESTIONS AS TO THE AMOUNT OF COVERAGE UH OR WHAT TYPE OF COVERAGE UH UH IS POTENTIALLY IN EFFECT HERE BUT I'M CURIOUS AS TO WHY WE'RE FOCUSED ON THAT AND AND THERE HAVEN'T BEEN ANY QUESTIONS ABOUT THE ACCIDENT PER SE OR

Q. RIGHT

A. OR ANYTHING THAT HAS HAPPENED SO

Q. OKAY MY INVESTIGATION WITH YOU IS IS REGARDING COVERAGE UM JUST

A. OH YOU DIDN'T TELL ME THAT YOU TOLD ME YOU WERE A CLAIMS ADJUSTER

Q. OH I AM BUT I HAVE TO I HAVE TO THAT'S PART OF ALL MY INVESTIGATION IS

A. I SEE

Q. THE POLICY UH THAT WE'RE DEALING WITH AND AND UH YOUR UH THE VEHICLE AND THE THE ACCIDENT AND EVERYTHING I DIDN'T ASK YOU QUESTIONS REGARDING THE FACTS OF THE ACCIDENT BECAUSE UH YOU WEREN'T A PARTY OF THAT UM SO I WOULD NEED TO ELLIOTT'S STATEMENT

REGARDING WHAT HAPPENED IN THE ACCIDENT (TALKING OVER EACH OTHER)

A. {INAUDIBLE} (TALKING OVER EACH OTHER)

Q. UH FOR MORE SPECIFIC CAUSE YOU WOULD JUST BE SAYING WHAT SOMEONE ELSE TOLD YOU

A. THAT'S CORRECT THE ONLY THING (TALKING OVER EACH OTHER)

Q. SO THAT'S WHY

A. THE ONLY THING UH THE ONL ... OKAY I APPRECIATE THAT THE ONLY THING I UM UH THE ONLY THING THAT I THINK MIGHT BE OF ANY BEARING THAT I CAN ADD UH UH UH YOU KNOW UH IS IS A COUPLE OF PERSPECTIVES ONE IS UH WE TALKED WITH A PSYCHOLOGIST UH AND I HAVE TO SAY THIS IS A GENERAL HEADS UP WE TALKED WITH A PSYCHOLOGIST WHEN WE LEFT UH MEMORIAL HOSPITAL YESTERDAY ABOUT ELLIOTT'S UH MENTAL CONDITION AND HE UH HE SAID SOMETHING THAT I WAS NOT AWARE OF AND THAT WAS THAT ELLIOTT APPARENTLY BLACKED OUT DURING THE ACCIDENT OR AS A RESULT OF THE ACCIDENT FOR UH SOME PERIOD OF TIME I I DON'T KNOW HOW HOW LONG THAT WAS BUT APPARENTLY IT WAS NOT VERY LONG AND THE PSYCHOLOGIST UH INFORMED US THAT ELLIOTT UH HAD CERTAIN PIECES OF MEMORY MISSING UH THAT HE DID NOT CLEARLY RECALL WHAT HAD HAPPENED DURING THE ACCIDENT

Q. UH HUH

A. UH AND THAT HE WOULD NEVER RECALL THAT IN FACT HE SPECIFICALLY TOLD UH ELLIOTT'S MOTHER AND I THAT UM EVEN IF HE WAS UNDER HYPNOSIS HE WOULD NOT CLEARLY RECALL THE CIRCUMSTANCES OF THE ACCIDENT AND THAT IT IT WAS LIKELY THAT ANY RECALL HE HAD WAS A RECONSTRUCTION BASED UPON WHAT HE HAD HEARD FROM OTHER PEOPLE

Q. UH HUH UH HUH

A. NOW ALL OF THAT SAID THE THE ONLY OTHER THING I CAN CAN SAY THAT MAY OR MAY NOT BE OF ANY IMPORTANCE IS THAT UH WEDNESDAY NIGHT SUBSEQUENT TO THE ACCIDENT AND HE HAD GONE UNDER UH UH ANESTHESIA IN ORDER TO HAVE THEY PUT HIM UNDER IN ORDER TO CLEAN HIM UP CAUSE UH HE HAD COMPOUND FRACTURE OF THE ANKLE AND AND SEVEN OR EIGHT BREAKS OF OF THE UH SHIN BONE AND AND ONE BREAK OF THE UH SEVEN OR EIGHT BREAKS OVERALL UH

Q. UH HUH

A. INCLUDING HIS THIGH BONE AND HIS UH SHIN BONE AND HIS ANKLE UH

Q. WHICH SIDE IS THAT ON I'M SORRY LEFT OR RIGHT

A. THAT'S HIS LEFT LEG

Q. OKAY

A. UH BUT DURING THE NIGHT WHEN I WAS THERE WITH HIM UH HE ASKED ME SEVERAL TIMES ABOUT THE DEER HE SAID DID I HIT THE DEER AND I SAID WHAT DEER AND HE S' AND HE RECALLED SWERVING TO AVOID A DEER

Q. UH HUH

A. UM AN. AN I I DON'T KNOW WHETHER THAT'S IMPORTANT OR NOT IMPORTANT I I JUST MENTION IT BECAUSE THAT'S WHAT HE SAID TO ME UM HE ALSO DID NOT KNOW ABOUT ALLISON UH HE ASKED ABOUT HER THIS WAS WHEN HE WAS IN THE EMERGENCY ROOM AND I HAD TO TELL HIM THAT SHE HAD PASSED AWAY SO UM THAT'S REALLY I CAN I I THINK THAT'S ALL I CAN TELL YOU FROM MY VANTAGE POINT UH RHETT UH MIGHT HAVE SOMETHING TO ADD BUT AS FAR AS I KNOW THERE WERE NO WITNESSES UH OR ANY OTHER CARS AROUND OR ANYTHING LIKE OH THERE'S ONE OTHER THING I SHOULD MENTION TO YOU I GOT A CALL THIS MORNING FROM UH A WOMAN NAMED DONNA NEAL N-E-A-L AND SHE IS APPARENTLY THE CLAIMS ADJUSTER FOR NATIONWIDE INSURANCE AND ACCORDING TO MS NEAL SHE GOT A CALL FROM THE UH UH ALLISON KLEGG'S FAMILY'S UH AGENT SHE DID NOT GET A CALL FROM THE KLEGG'S BUT SHE GOT A CALL FROM THIS AGENT UH THAT HAD SOLD THE KLEGG'S AN INSURANCE POLICY HE APPARENTLY SAW A NEWSPAPER ARTICLE ABOUT THE ACCIDENT AND CALLED NATIONWIDE AND REPORTED THE CLAIM BUT ACCORDING TO MS NEAL THE KLEGG'S HAVE NOT MADE ANY CLAIM THEMSELVES AND UH SHE CALLED MR KLEGG AND HE AS MUCH AS SAID IT WASN'T TIME TO DEAL WITH THIS RIGHT NOW

Q. OKAY

A. WE HAVE BEEN CONTACTED BY THE KLEGG FAMILY AND BEEN TOLD THAT THEY ARE NOT HOLDING ELLIOTT RESPONSIBLE UM FOR WHAT THAT'S WORTH UM BUT UH UH DONNA NEAL ASKED ME TO PASS ALONG HER NUMBER TO YOU

Q. GREAT OKAY

A. AND IF YOU HAVE A PEN I'LL GIVE THAT TO YOU

Q. UH HUH

A. IT IS 877

Q. UH HUH

A. 544

Q. UH HUH

A. 7296 AND UH I GAVE HER WHAT INFORMATION I HAD AND SHE UH AGAIN SHE JUST CALLED ME THIS MORNING AND ASKED ME SIMILAR QUESTIONS BUT OBVIOUSLY NOT AS DETAILED AS YOU AND I HAVE GONE INTO

Q. OKAY ALRIGHT MR LAMBRECHT WERE YOU AWARE THAT THIS STATEMENT HAS BEEN RECORDED

A. YES I'M AWARE OF THAT

Q. AND DID I HAVE YOUR PERMISSION TO DO SO

A. YOU ASKED ME PRIOR TO THAT AND I AGREED I TOLD YOU THAT I HAD BEEN UNDER A LOT OF STRESS AND THAT I'VE BEEN UH WITHOUT THE OPPORTUNITY TO REVIEW MY RECORDS BUT I AGREED TO TALK TO YOU ON TAPE YES

Q. OKAY THANK YOU VERY MUCH THE TIME IS 2:04 PM I'M GONNA TURN THE RECORDER OFF NOW

END OF STATEMENT

SB/68149

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOR THE FOURTEENTH JUDICIAL CIRCUIT
MAY 11, 2004) CIVIL ACTION NO. 02-CP-07-1159

DEBORAH J. CLEGG, as
Personal Representative of
The Estate of Allison T. Clegg,

Plaintiff,

vs.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants.

AMENDED COMPLAINT
JURY TRIAL DEMANDED AS TO ALL
CAUSES OF ACTION
(SURVIVAL ACTION)
(\$ 15-5-90, S.C. CODE ANN.)

The Plaintiff, complaining of the Defendants, would respectfully show unto this honorable Court as follows:

For a First Cause of Action

(Survival Action - § 15-5-90, S. C. Code Ann.)

1. Plaintiff, Deborah J. Clegg is the duly appointed personal representative of The Estate of Allison T. Clegg. Letters testamentary were issued on or about March 15, 2002.
2. This action is brought pursuant to §15-5-90, *et seq.*, S. C. Code Ann. (1976), as amended.
3. On information and belief, the Defendant Elliott M. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina.

4. The Defendant Douglas A. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina and the father of Defendant Elliott M. Lambrecht and Defendant Anna C. Lambrecht.

5. The Defendant, Jan Horan, is a citizen and resident of the County of Beaufort, State of South Carolina and the mother of Defendant Elliott M. Lambrecht and Defendant Anna C. Lambrecht.

6. The Defendant, Anna C. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina.

7. The Defendant, Rhett Barker, is, on information and belief, a citizen and resident of the County of Beaufort, State of South Carolina.

8. The Defendant Douglas A. Lambrecht was, at all times mentioned herein, the *de facto* owner of a 1994 two-door Mazda automobile and controlled who operated such automobile.

9. Defendant Elliott M. Lambrecht's driver's license had, prior to January 9, 2002, been suspended and he was operating the automobile without a valid South Carolina driver's license.

10. On or prior to January 9, 2002, all of the Defendants knew, or should have known, that Defendant Elliott M. Lambrecht did not have a valid South Carolina driver's license and should not have been operating the automobile.

11. On information and belief, at the time of Plaintiff's decedent's death, she was a passenger in the automobile being unlawfully operated by the Defendant Elliott M. Lambrecht.

12. Several days prior to January 9, 2002, the Defendant Douglas A. Lambrecht, permitted and allowed the Defendant, his daughter, Anna C. Lambrecht, to operate the automobile and to drive the automobile from Defendant Douglas A. Lambrecht's house on Hilton Head Island to Beaufort, South Carolina.

13. At all times, the Defendant Douglas A. Lambrecht, knew, or should have known, that the vehicle was not insured, was not currently registered and had no valid license plate, and that the vehicle should not have been driven on the roads and highways.

14. Defendants Anna C. Lambrecht, Jan Horan and Rhett Barker, all knew, or should have known, that the vehicle should not have been operated on the public highways of the State of South Carolina as such vehicle was not insured, registered or otherwise properly licensed.

15. Thereafter, on information and belief, on January 9, 2002, the Defendant Rhett Barker, drove the Defendant Elliott M. Lambrecht from southern Beaufort County, either Hilton Head Island or Bluffton, South Carolina, to Beaufort, South Carolina, where Defendant Elliott M. Lambrecht obtained the keys to the vehicle, either from the Defendant Anna C. Lambrecht or the Defendant, Jan Horan, or the Defendant, Rhett Barker.

16. At all times, the Defendants knew or should have known that Defendant Elliott M. Lambrecht was not properly licensed, that his license had been suspended and he should not have been operating the automobile.

17. Defendant Rhett Barker knew that the sole purpose in transporting Elliott M. Lambrecht to Beaufort was to obtain the automobile which Barker knew the Defendant Elliott M. Lambrecht was not properly licensed to operate or drive.

18. On information and belief, prior to January 9, 2002, all the Defendants knew, or should have known, that Defendant Elliott M. Lambrecht had a history of speeding violations and license suspensions; the Defendants jointly and severally, permitted the use by Defendant Elliott M. Lambrecht of the Mazda automobile or otherwise failed to prevent Defendant Elliott M. Lambrecht's use of the automobile.

19. While Plaintiff's decedent was a passenger in the automobile being operated by Defendant Elliott M. Lambrecht, at approximately 9:15 p.m. on January 9, 2002, the automobile struck a tree located off of the paved roadway on Indigo Run Drive, causing the death of Plaintiff's decedent.

20. The Defendant Elliott M. Lambrecht was negligent, willful, wanton, grossly negligent and negligent *per se* in one or more of the following particulars, including, but not limited to the following:

- a. Failure to maintain proper control of a vehicle;
- b. Operating a vehicle without a valid South Carolina driver's license;
- c. Operating a vehicle at excessive, high and dangerous speeds above the posted speed limit;
- d. Failure to maintain proper control;
- e. Failure to observe the posted speed limit; and
- f. Operating a vehicle that was not licensed or insured.

21. On information and belief, the Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht knew or should have known that Defendant Elliott M. Lambrecht would use the automobile in a manner so as to create an unreasonable risk of harm to others, including Plaintiff's decedent.

22. The Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht were negligent in entrusting, allowing or permitting the automobile to the Defendant Elliott M. Lambrecht, either directly or indirectly, jointly and severally, when all the Defendants knew, or should have known, that Defendant Elliott M. Lambrecht should not be operating the vehicle and that Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht were negligent, grossly negligent, willful, wanton and negligent *per se* in allowing Defendant Elliott M. Lambrecht or permitting Defendant Elliott M. Lambrecht to drive the automobile when Defendant Elliott M. Lambrecht was not authorized to do so, all in violation of the common law of this State and in violation of § 56-1-480, S.C. Code Ann (1976).

23. As a direct and proximate result of the Defendants' negligence, gross negligence, willfulness, wantonness and negligence *per se*, injury was caused to Plaintiff's decedent.

24. The negligence of the Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht, combined with the negligence of the Defendant Elliott M. Lambrecht and was the direct and proximate cause of the injuries and death of Plaintiff's decedent.

25. On information and belief, Plaintiff's decedent, prior to death, suffered and endured conscious pain and suffering, knowing that she had sustained serious injuries, or alternatively, that she was faced with life threatening injuries and was otherwise *in extremis*.

26. As a direct result and proximate cause of Defendant Elliott M. Lambrecht's negligence, willfulness, wantonness, gross negligence and negligence *per se* combined with the negligence, willfulness, wantonness, gross negligence and negligence *per se* of Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht, Plaintiff's decedent was injured and lost her life and the Plaintiff is informed and believes that the Estate is entitled to all actual and punitive damages in an amount to be determined by this honorable Court from the Defendants jointly and severally.

For a Second Cause of Action as to the Defendants Douglas A. Lambrecht,

Rhett Barker, Jan Horan and Anna C. Lambrecht

(Wrongful Death - Negligent Entrustment)

§ 56-1-480, S.C. Code Ann.

27. The allegations contained in paragraphs 1 through 26 of this Amended Complaint are realleged as fully as if repeated verbatim herein.

28. Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht knew, or should have known, that the automobile would be operated by Defendant Elliott M. Lambrecht and, as such, these Defendants negligently permitted the use of the automobile by Defendant Elliott M. Lambrecht, either directly or indirectly, and failed to use proper safeguards to ensure that Elliott M. Lambrecht, who was an unlicensed driver, his license having been suspended, did not operate the automobile.

29. Defendant Douglas A. Lambrecht was the *de facto* owner of the automobile in which Plaintiff's decedent was killed, and, together with Defendants Jan Horan and Anna C. Lambrecht, controlled its use.

30. Defendants permitted Defendant Elliott M. Lambrecht to use the automobile and to engage in an unlawful and dangerous activity, to wit, operating the automobile on roads and highways in Beaufort County, South Carolina, when the Defendants knew, or should have known, that Defendant Elliott M. Lambrecht had no valid driver's license and intended to or was likely to use the automobile in a manner which would create the unreasonable risk of harm to others, including Plaintiff's decedent.

31. On information and belief, the Defendants knew or should have known that Defendant Elliott M. Lambrecht would have access to the automobile, the keys to the automobile, and the means and methods by which to use the automobile in a manner so as to create an unreasonable risk of harm to others, including Plaintiff's decedent.

32. The Defendants were negligent, willful, wanton and grossly negligent in entrusting the automobile to Defendant Elliott M. Lambrecht, either directly or indirectly, or permissively.

33. The negligence of the Defendants was the direct and proximate cause of the injuries and death of Plaintiff's decedent.

34. As a direct result and proximate cause of Defendants' negligent entrustment, Plaintiff's decedent sustained serious bodily injury which resulted in her death.

35. Plaintiff is informed and believes that the Estate is entitled to judgment against the Defendants joint and severally for all actual and punitive damages in an amount to be determined by this honorable Court.

For a Third Cause of Action

(Negligence)

36. The allegations contained in paragraphs 1 - 35 of this Amended Complaint are realleged as fully as if repeated verbatim herein.

37. The Defendants failed to take actions sufficient to prevent the use of the automobile in which Plaintiff's decedent was a passenger at the time she was killed.

38. On information and belief, the Defendants knew, or should have known, of Defendant Elliott M. Lambrecht's propensities to drive automobiles in excess of the posted speed limits; knew, or should have known, that his license had been suspended on two (2) occasions; and knew, or should have known, that at the time of Plaintiff's decedent's death, Defendant Elliott M. Lambrecht had no valid South Carolina driver's license.

39. As the *de facto* owner of the vehicle, the Defendant Douglas A. Lambrecht had a duty to make certain that only duly licensed and qualified drivers operated his automobile on the roads within Beaufort County. Defendants Jan Horan, Rhett Barker and Anna C. Lambrecht knew that the Defendant Elliott M. Lambrecht should not have been permitted to drive the automobile.

40. The Defendants failed to conform their conduct to a reasonable standard sufficient to protect others, and, specifically, Plaintiff's decedent, from the unreasonable risk of harm.

41. The Defendants knew, or should have known, because of the previous traffic violations and disposition of the Defendant Elliott M. Lambrecht to operate a vehicle improperly and in excess of speed limits or while using or in possession of controlled

substances, that the Defendant Elliott M. Lambrecht posed an unreasonable risk of harm to the public at large and specifically, to those who would come into contact with him or those who might be passengers in his automobile.

42. The Defendants knew, or should have known, that if Defendant Elliott M. Lambrecht operated the automobile controlled by the Defendant, he posed a substantial risk of serious harm to others.

43. The Defendants were negligent, willful, wanton and grossly negligent in one or more of the following particulars, including, but not limited to the following:

- a. In failing to properly supervise Defendant Elliott M. Lambrecht insofar as such pertains to the use of his automobile;
- b. In failing to prevent the Defendant Elliott M. Lambrecht from operating the automobile without a valid South Carolina driver's license;
- c. In failing to take action to prevent the Defendant Elliott M. Lambrecht from obtaining the keys to the automobile and in otherwise preventing the automobile from being used by Defendant Elliott M. Lambrecht;
- d. In failing to impart to those that might be in temporary possession of the automobile to act so as to prevent Defendant Elliott M. Lambrecht from using the automobile;
- e. In failing to know the location of the automobile at all times;
- f. In failing to know who was operating the automobile at all times;
- g. In failing to properly act so as to prevent Defendant Elliott M. Lambrecht from operating the automobile; and

h. In allowing and permitting Defendant Elliott M. Lambrecht to drive a vehicle under their control.

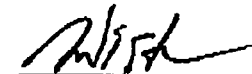
44. All of the foregoing was the direct and proximate result and cause of the Plaintiff's decedent's death.

45. As a direct and proximate cause of Defendant Douglas A. Lambrecht's negligence, Plaintiff's decedent sustained serious bodily injuries which resulted in her death.

46. Plaintiff is informed and believes that the Estate is entitled to judgment against the Defendants, jointly and severally, for all actual and punitive damages, all in an amount to be determined by this honorable Court.

WHEREFORE, Plaintiff prays this honorable Court inquire into the matters set forth herein; that Plaintiff have judgment against Defendants, jointly and severally, for all actual damages arising out of the wrongful death of Plaintiff's decedent; for punitive damages in an amount to be determined by this honorable Court; for the costs and disbursements of this action; and for such other relief as this honorable Court deems just and proper.

G. RICHARDSON WIETERS, P.C.



G. Richardson Wieters, Esquire
Post Office Box 24158
Hilton Head Island, SC 29925
Telephone: 843/341-7000
Facsimile: 843/341-7007

-and-

MOSS, KUHN & FLEMING, P.A.

H. Fred Kuhn, Jr. by [signature]
H. Fred Kuhn, Jr., Esquire
Post Office Drawer 507
Beaufort, SC 29901
Telephone: 843/524-3373
Facsimile: 843/524-1302

Dated this *11th* day of May, 2004
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)
2004 MAY 14 4:08:56 PM
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.
CIVIL ACTION NO. 02-CP-07-1160

DEBORAH J. CLEGG, as
Personal Representative of
The Estate of Allison T. Clegg,

Plaintiff,

vs.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants.

AMENDED COMPLAINT
JURY TRIAL DEMANDED AS TO ALL
CAUSES OF ACTION
(WRONGFUL DEATH)
(\$ 15-51-10, S.C. CODE ANN.)

The Plaintiff, complaining of the Defendants, would respectfully show unto this honorable Court as follows:

For a First Cause of Action

(Wrongful Death)

1. Plaintiff, Deborah J. Clegg is the duly appointed personal representative of The Estate of Allison T. Clegg. Letters testamentary were issued on or about March 15, 2002.
2. This action is brought pursuant to §15-51-10, *et seq.*, S. C. Code Ann. (1976), for the wrongful acts of the Defendants causing the death of Plaintiff's decedent.
3. On information and belief, the Defendant Elliott M. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina.

4. The Defendant Douglas A. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina and the father of Defendant Elliott M. Lambrecht and Defendant Anna C. Lambrecht.

5. The Defendant, Jan Horan, is a citizen and resident of the County of Beaufort, State of South Carolina and the mother of Defendant Elliott M. Lambrecht and Defendant Anna C. Lambrecht.

6. The Defendant, Anna C. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina.

7. The Defendant, Rhett Barker, is, on information and belief, a citizen and resident of the County of Beaufort, State of South Carolina.

8. The Defendant Douglas A. Lambrecht was, at all times mentioned herein, the *de facto* owner of a 1994 two-door Mazda automobile and controlled who operated such automobile.

9. Defendant Elliott M. Lambrecht's driver's license had, prior to January 9, 2002, been suspended and he was operating the automobile without a valid South Carolina driver's license.

10. On or prior to January 9, 2002, all of the Defendants knew, or should have known, that Defendant Elliott M. Lambrecht did not have a valid South Carolina driver's license and should not have been operating the automobile.

11. On information and belief, at the time of Plaintiff's decedent's death, she was a passenger in the automobile being unlawfully operated by the Defendant Elliott M. Lambrecht.

12. Several days prior to January 9, 2002, the Defendant Douglas A. Lambrecht, permitted and allowed the Defendant, his daughter, Anna C. Lambrecht, to operate the automobile and to drive the automobile from Defendant Douglas A. Lambrecht's house on Hilton Head Island to Beaufort, South Carolina.

13. At all times, the Defendant Douglas A. Lambrecht, knew, or should have known, that the vehicle was not insured, was not currently registered and had no valid license plate, and that the vehicle should not have been driven on the roads and highways.

14. Defendants Anna C. Lambrecht, Jan Horan and Rhett Barker, all knew, or should have known, that the vehicle should not have been operated on the public highways of the State of South Carolina as such vehicle was not insured, registered or otherwise properly licensed.

15. Thereafter, on information and belief, on January 9, 2002, the Defendant Rhett Barker, drove the Defendant Elliott M. Lambrecht from southern Beaufort County, either Hilton Head Island or Bluffton, South Carolina, to Beaufort, South Carolina, where Defendant Elliott M. Lambrecht obtained the keys to the vehicle, either from the Defendant Anna C. Lambrecht or the Defendant, Jan Horan, or the Defendant, Rhett Barker.

16. At all times, the Defendants knew or should have known that Defendant Elliott M. Lambrecht was not properly licensed, that his license had been suspended and he should not have been operating the automobile.

17. Defendant Rhett Barker knew that the sole purpose in transporting Elliott M. Lambrecht to Beaufort was to obtain the automobile which Barker knew the Defendant Elliott M. Lambrecht was not properly licensed to operate or drive.

18. On Information and belief, prior to January 9, 2002, all the Defendants knew, or should have known, that Defendant Elliott M. Lambrecht had a history of speeding violations and license suspensions; the Defendants jointly and severally, permitted the use by Defendant Elliott M. Lambrecht of the Mazda automobile or otherwise failed to prevent Defendant Elliott M. Lambrecht's use of the automobile.

19. While Plaintiff's decedent was a passenger in the automobile being operated by Defendant Elliott M. Lambrecht, at approximately 9:15 p.m. on January 9, 2002, the automobile struck a tree located off of the paved roadway on Indigo Run Drive, causing the death of Plaintiff's decedent.

20. The Defendant Elliott M. Lambrecht was negligent, willful, wanton, grossly negligent and negligent *per se* in one or more of the following particulars, including, but not limited to the following:

- a. Failure to maintain proper control of a vehicle;
- b. Operating a vehicle without a valid South Carolina driver's license;
- c. Operating a vehicle at excessive, high and dangerous speeds above the posted speed limit;
- d. Failure to maintain proper control;
- e. Failure to observe the posted speed limit; and
- f. Operating a vehicle that was not licensed or insured.

21. On information and belief, the Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht knew or should have known that Defendant Elliott M. Lambrecht would use the automobile in a manner so as to create an unreasonable risk of harm to others, including Plaintiff's decedent.

22. The Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht were negligent in entrusting, allowing or permitting the automobile to the Defendant Elliott M. Lambrecht, either directly or indirectly, jointly and severally, when all the Defendants knew, or should have known, that Defendant Elliott M. Lambrecht should not be operating the vehicle and that Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht were negligent, grossly negligent, willful, wanton and negligent *per se* in allowing Defendant Elliott M. Lambrecht or permitting Defendant Elliott M. Lambrecht to drive the automobile when Defendant Elliott M. Lambrecht was not authorized to do so, all in violation of the common law of this State and in violation of § 56-1-480, S.C. Code Ann (1976).

23. As a direct and proximate result of the Defendants' negligence, gross negligence, willfulness, wantonness and negligence *per se*, injury was caused to Plaintiff's decedent.

24. The negligence of the Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht, combined with the negligence of the Defendant Elliott M. Lambrecht and was the direct and proximate cause of the injuries and death of Plaintiff's decedent.

25. As a direct result and proximate cause of Defendant Elliott M. Lambrecht's, negligence, willfulness, wantonness, gross negligence and negligence *per se* combined with the negligence, willfulness, wantonness, gross negligence and negligence *per se* of Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht, Plaintiff's decedent was injured and lost her life and the Plaintiff is informed and believes

that the Estate is entitled to all actual and punitive damages in an amount to be determined by this honorable Court from the Defendants jointly and severally.

26. The Plaintiff, on behalf of the beneficiaries of the Estate of Allison T. Clegg, seeks pecuniary loss, funeral expenses as set forth in § 15-5-100, S. C. Code Ann. (1976), damages for mental shock and suffering, wounded feelings, grief, sorrow, loss of companionship, and the deprivation of the use and comfort of decedent's society, including her experience, knowledge and judgments.

**For a Second Cause of Action as to the Defendants Douglas A. Lambrecht,
Rhett Barker, Jan Horan and Anna C. Lambrecht**

(Wrongful Death - Negligent Entrustment)

§ 56-1-480, S.C. Code Ann.

27. The allegations contained in paragraphs 1 through 26 of this Amended Complaint are realleged as fully as if repeated verbatim herein.

28. Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht knew, or should have known, that the automobile would be operated by Defendant Elliott M. Lambrecht and, as such, these Defendants negligently permitted the use of the automobile by Defendant Elliott M. Lambrecht, either directly or indirectly, and failed to use proper safeguards to ensure that Elliott M. Lambrecht, who was an unlicensed driver, his license having been suspended, did not operate the automobile.

29. Defendant Douglas A. Lambrecht was the *de facto* owner of the automobile in which Plaintiff's decedent was killed, and, together with Defendants Jan Horan and Anna C. Lambrecht, controlled its use.

30. Defendants permitted Defendant Elliott M. Lambrecht to use the automobile and to engage in an unlawful and dangerous activity, to wit, operating the automobile on roads and highways in Beaufort County, South Carolina, when the Defendants knew, or should have known, that Defendant Elliott M. Lambrecht had no valid driver's license and intended to or was likely to use the automobile in a manner which would create the unreasonable risk of harm to others, including Plaintiff's decedent.

31. On information and belief, the Defendants knew or should have known that Defendant Elliott M. Lambrecht would have access to the automobile, the keys to the automobile, and the means and methods by which to use the automobile in a manner so as to create an unreasonable risk of harm to others, including Plaintiff's decedent.

32. The Defendants were negligent, willful, wanton and grossly negligent in entrusting the automobile to Defendant Elliott M. Lambrecht, either directly or indirectly, or permissively.

33. The negligence of the Defendants was the direct and proximate cause of the injuries and death of Plaintiff's decedent.

34. As a direct result and proximate cause of Defendants' negligent entrustment, Plaintiff's decedent sustained serious bodily injury which resulted in her death.

35. Plaintiff is informed and believes that the Estate is entitled to judgment against the Defendants joint and severally for all actual and punitive damages in an amount to be determined by this honorable Court.

For a Third Cause of Action

(Negligence)

36. The allegations contained in paragraphs 1 - 35 of this Amended Complaint are realleged as fully as if repeated verbatim herein.

37. The Defendants failed to take actions sufficient to prevent the use of the automobile in which Plaintiff's decedent was a passenger at the time she was killed.

38. On information and belief, the Defendants knew, or should have known, of Defendant Elliott M. Lambrecht's propensities to drive automobiles in excess of the posted speed limits; knew, or should have known, that his license had been suspended on two (2) occasions; and knew, or should have known, that at the time of Plaintiff's decedent's death, Defendant Elliott M. Lambrecht had no valid South Carolina driver's license.

39. As the *de facto* owner of the vehicle, the Defendant Douglas A. Lambrecht had a duty to make certain that only duly licensed and qualified drivers operated his automobile on the roads within Beaufort County. Defendants Jan Horan, Rhett Barker and Anna C. Lambrecht knew that the Defendant Elliott M. Lambrecht should not have been permitted to drive the automobile.

40. The Defendants failed to conform their conduct to a reasonable standard sufficient to protect others, and, specifically, Plaintiff's decedent, from the unreasonable risk of harm.

41. The Defendants knew, or should have known, because of the previous traffic violations and disposition of the Defendant Elliott M. Lambrecht to operate a vehicle improperly and in excess of speed limits or while using or in possession of controlled

substances, that the Defendant Elliott M. Lambrecht posed an unreasonable risk of harm to the public at large and specifically, to those who would come into contact with him or those who might be passengers in his automobile.

42. The Defendants knew, or should have known, that if Defendant Elliott M. Lambrecht operated the automobile controlled by the Defendant, he posed a substantial risk of serious harm to others.

43. The Defendants were negligent, willful, wanton and grossly negligent in one or more of the following particulars, including, but not limited to the following:

- a. In failing to properly supervise Defendant Elliott M. Lambrecht insofar as such pertains to the use of his automobile;
- b. In failing to prevent the Defendant Elliott M. Lambrecht from operating the automobile without a valid South Carolina driver's license;
- c. In failing to take action to prevent the Defendant Elliott M. Lambrecht from obtaining the keys to the automobile and in otherwise preventing the automobile from being used by Defendant Elliott M. Lambrecht;
- d. In failing to impart to those that might be in temporary possession of the automobile to act so as to prevent Defendant Elliott M. Lambrecht from using the automobile;
- e. In failing to know the location of the automobile at all times;
- f. In failing to know who was operating the automobile at all times;
- g. In failing to properly act so as to prevent Defendant Elliott M. Lambrecht from operating the automobile; and

h. In allowing and permitting Defendant Elliott M. Lambrecht to drive a vehicle under their control.

44. All of the foregoing was the direct and proximate result and cause of the Plaintiff's decedent's death.

45. As a direct and proximate cause of Defendant Douglas A. Lambrecht's negligence, Plaintiff's decedent sustained serious bodily injuries which resulted in her death.

46. Plaintiff is informed and believes that the Estate is entitled to judgment against the Defendants, jointly and severally, for all actual and punitive damages, all in an amount to be determined by this honorable Court.

WHEREFORE, Plaintiff prays this honorable Court inquire into the matters set forth herein; that Plaintiff have judgment against Defendants, jointly and severally, for all actual damages arising out of the wrongful death of Plaintiff's decedent; for punitive damages in an amount to be determined by this honorable Court; for the costs and disbursements of this action; and for such other relief as this honorable Court deems just and proper.

G. RICHARDSON WIETERS, P.C.



G. Richardson Wieters, Esquire
Post Office Box 24158
Hilton Head Island, SC 29925
Telephone: 843/341-7000
Facsimile: 843/341-7007

-and-

MOSS, KUHN & FLEMING, P.A.

H. Fred Kuhn, Jr. Esquire
H. Fred Kuhn, Jr., Esquire
Post Office Drawer 507
Beaufort, SC 29901
Telephone: 843/524-3373
Facsimile: 843/524-1302

Dated this 11th day of May, 2004
Hilton Head Island, South Carolina

STATE OF SOUTH CROlina
COUNTY OF BEAUFORT

DEBORAH J. CLEGG, as
Personal Representative of the
Estate of Allison T. Clegg,

Plaintiff,

v.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 02-CP-07-1159

ANSWER TO AMENDED COMPLAINT

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT S.C.

2004 MAY 26 PM 4:06

COMES NOW the Defendant, Douglas A. Lambrecht, and for his Answer
to the Amended Complaint, admits, denies, and alleges as follows:

1. Admits upon information and belief the allegations contained in paragraph 1 of the Amended Complaint.
2. Admits the allegations contained in paragraph 2 of the Amended Complaint;
3. Denies the allegations contained in paragraph 3 of the Amended Complaint.
4. Admits the allegations contained in paragraph 4 of the Amended Complaint;
5. Admits the allegations contained in paragraph 5 of the Complaint.

000157

6. Admits the allegations contained in paragraph 6 of the Amended Complaint.
7. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 7 of the Amended Complaint, and, therefore, denies same.
8. Denies the allegations contained in paragraph 8 of the Amended Complaint.
9. Admits that Defendant Elliott M. Lambrecht's driver's license had, prior to January 9, 2002, been suspended. Denies the remainder of the allegations contained in paragraph 9 of the Amended Complaint.
10. Admits that on or prior to January 9, 2002, Defendant knew that Defendant Elliot M. Lambrecht did not have a valid South Carolina driver's license as alleged in paragraph 10 of the Amended Complaint; denies or is with out information sufficient to form a belief as to the truth or falsity of the of the remainder of the allegations contained in paragraph 10 of the Amended Complaint, and, therefore, denies same.
11. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 11 of the Amended Complaint, and, therefore, denies same.
12. Denies the allegations contained in paragraph 12 of the Amended Complaint.
13. Denies the allegations contained in paragraph 13 of the Amended Complaint.

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14. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 14 of the Amended Complaint, and, therefore, denies same.
15. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 15 of the Amended Complaint, and, therefore, denies same.
16. Admits that Defendant knew that Defendant Elliot M. Lambrecht did not have a driver's license as alleged in paragraph 16 of the Amended Complaint; denies or is with out information sufficient to form a belief as to the truth or falsity of the of the remainder of the allegations contained in paragraph 16 of the Amended Complaint, and, therefore, denies same.
17. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 17 of the Amended Complaint and, therefore, denies same.
18. Denies the allegations contained in paragraph 18 of the Amended Complaint.
19. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 19 of the Amended Complaint, and, therefore, denies same.
20. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 20 of the Amended Complaint, and, therefore, denies same.

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21. Denies the allegations contained in paragraph 21 of the Amended Complaint.
22. Denies the allegations contained in paragraph 22 of the Amended Complaint.
23. Denies the allegations contained in paragraph 23 of the Amended Complaint.
24. Denies the allegations contained in paragraph 24 of the Amended Complaint.
25. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 25 of the Amended Complaint, and, therefore, denies same.
26. Denies the allegations contained in paragraph 26 of the Amended Complaint.
27. The allegations contained in paragraph 27 of the Amended Complaint do not require a separate response from this Defendant.
28. Denies the allegations contained in paragraph 28 of the Amended Complaint.
29. Denies the allegations contained in paragraph 29 of the Amended Complaint.
30. Denies the allegations contained in paragraph 30 of the Amended Complaint.
31. Denies the allegations contained in paragraph 31 of the Amended Complaint.

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32. Denies the allegations contained in paragraph 32 of the Amended Complaint.
33. Denies the allegations contained in paragraph 33 of the Amended Complaint.
34. Denies the allegations contained in paragraph 34 of the Amended Complaint.
35. Denies the allegations contained in paragraph 35 of the Amended Complaint.
36. The allegations contained in paragraph 36 of the Amended Complaint do not require a separate response from this Defendant.
37. Denies the allegations contained in paragraph 37 of the Amended Complaint.
38. Denies the allegations contained in paragraph 38 of the Amended Complaint.
39. Denies the allegations contained in paragraph 39 of the Amended Complaint.
40. Denies the allegations contained in paragraph 40 of the Amended Complaint.
41. Denies the allegations contained in paragraph 41 of the Amended Complaint.
42. Denies the allegations contained in paragraph 42 of the Amended Complaint.

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43. Denies the allegations contained in paragraph 43 of the Amended Complaint.

44. Denies the allegations contained in paragraph 44 of the Amended Complaint.

45. Denies the allegations contained in paragraph 45 of the Amended Complaint.

46. Denies the allegations contained in paragraph 46 of the Amended Complaint.

47. Denies each and every allegation contained in the Amended Complaint unless specifically admitted or unless such allegation constitutes an admission against the interests of Plaintiff.

48. Alleges that the Amended Complaint fails to state facts sufficient to constitute a cause of action against this Defendant.

49. Alleges that no act or failure to act of this Defendant was the proximate cause of the death of Plaintiff's decedent.

50. Alleges that the doctrines of assumption of the risk and contributory negligence operate to bar or reduce any recovery by the Plaintiff.

WHEREFORE, having fully answered, Defendant prays the Court make and enter an Order dismissing the Complaint, in its entirety, with prejudice, and that Defendant have and recover his costs herein expended.

Dated: May 26, 2004.

000162

DOUGLAS A. LAMBRECHT, Defendant

By: Pamela K. Black

John E. North, Jr. # 6570

Pamela K. Black #3884

NORTH & BLACK, PC

1103 Bay Street

Beaufort, SC 29902

(843) 575-0800 (tel)

(843) 575-0900 (fax)

north@northblack.com (email)

Certificate of Service

The undersigned hereby certifies that on the 26 day of May, 2004, a true and correct copy of the foregoing was sent by U.S. Mail, first class, postage prepaid, to the attorneys for the Plaintiff, H. Fred Kuhn, Jr., PO Drawer 507, Beaufort, SC 29901 and G. Richardson Wieters, P.C., Suite 300 Watersedge at Shelter Cove, 19 Shelter Cove Lane, PO Box 24158, Hilton Head, SC 29925.

Pamela K. Black

BEAUFORT COUNTY
CLERK OF COURT
JULIA A. WILSON
JUL 1 2004

2004 MAY 26 PM 4:06

000163

STATE OF SOUTH CROlina
COUNTY OF BEAUFORT

DEBORAH J. CLEGG, as
Personal Representative of the
Estate of Allison T. Clegg,

Plaintiff,

v.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 02-CP-07-1160

ANSWER TO AMENDED COMPLAINT

RECEIVED
JAN 26 11 14 AM '07

COMES NOW the Defendant, Douglas A. Lambrecht, and for his Answer
to the Amended Complaint, admits, denies, and alleges as follows:

1. Admits upon information and belief the allegations contained in paragraph 1 of the Amended Complaint.
2. Admits the allegations contained in paragraph 2 of the Amended Complaint;
3. Denies the allegations contained in paragraph 3 of the Amended Complaint.
4. Admits the allegations contained in paragraph 4 of the Amended Complaint;
5. Admits the allegations contained in paragraph 5 of the Complaint.

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6. Admits the allegations contained in paragraph 6 of the Amended Complaint.
7. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 7 of the Amended Complaint, and, therefore, denies same.
8. Denies the allegations contained in paragraph 8 of the Amended Complaint.
9. Admits that Defendant Elliott M. Lambrecht's driver's license had, prior to January 9, 2002, been suspended. Denies the remainder of the allegations contained in paragraph 9 of the Amended Complaint.
10. Admits that on or prior to January 9, 2002, Defendant knew that Defendant Elliot M. Lambrecht did not have a valid South Carolina driver's license as alleged in paragraph 10 of the Amended Complaint; denies or is with out information sufficient to form a belief as to the truth or falsity of the of the remainder of the allegations contained in paragraph 10 of the Amended Complaint, and, therefore, denies same.
11. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 11 of the Amended Complaint, and, therefore, denies same.
12. Denies the allegations contained in paragraph 12 of the Amended Complaint.
13. Denies the allegations contained in paragraph 13 of the Amended Complaint.

000165

14. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 14 of the Amended Complaint, and, therefore, denies same.
15. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 15 of the Amended Complaint, and, therefore, denies same.
16. Admits that Defendant knew that Defendant Elliot M. Lambrecht did not have a driver's license as alleged in paragraph 16 of the Amended Complaint; denies or is without information sufficient to form a belief as to the truth or falsity of the of the remainder of the allegations contained in paragraph 16 of the Amended Complaint, and, therefore, denies same.
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000166

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26. Denies the allegations contained in paragraph 26 of the Amended Complaint.
27. The allegations contained in paragraph 27 of the Amended Complaint do not require a separate response from this Defendant.
28. Denies the allegations contained in paragraph 28 of the Amended Complaint.
29. Denies the allegations contained in paragraph 29 of the Amended Complaint.
30. Denies the allegations contained in paragraph 30 of the Amended Complaint.
31. Denies the allegations contained in paragraph 31 of the Amended Complaint.

000167

32. Denies the allegations contained in paragraph 32 of the Amended Complaint.
33. Denies the allegations contained in paragraph 33 of the Amended Complaint.
34. Denies the allegations contained in paragraph 34 of the Amended Complaint.
35. Denies the allegations contained in paragraph 35 of the Amended Complaint.
36. The allegations contained in paragraph 36 of the Amended Complaint do not require a separate response from this Defendant.
37. Denies the allegations contained in paragraph 37 of the Amended Complaint.
38. Denies the allegations contained in paragraph 38 of the Amended Complaint.
39. Denies the allegations contained in paragraph 39 of the Amended Complaint.
40. Denies the allegations contained in paragraph 40 of the Amended Complaint.
41. Denies the allegations contained in paragraph 41 of the Amended Complaint.
42. Denies the allegations contained in paragraph 42 of the Amended Complaint.

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43. Denies the allegations contained in paragraph 43 of the Amended Complaint.
44. Denies the allegations contained in paragraph 44 of the Amended Complaint.
45. Denies the allegations contained in paragraph 45 of the Amended Complaint.
46. Denies the allegations contained in paragraph 46 of the Amended Complaint.
47. Denies each and every allegation contained in the Amended Complaint unless specifically admitted or unless such allegation constitutes an admission against the interests of Plaintiff.
48. Alleges that the Amended Complaint fails to state facts sufficient to constitute a cause of action against this Defendant.
49. Alleges that no act or failure to act of this Defendant was the proximate cause of the death of Plaintiff's decedent.
50. Alleges that the doctrines of assumption of the risk and contributory negligence operate to bar or reduce any recovery by the Plaintiff.

WHEREFORE, having fully answered, Defendant prays the Court make and enter an Order dismissing the Complaint, in its entirety, with prejudice, and that Defendant have and recover his costs herein expended.

Dated: May 26, 2004.

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DOUGLAS A. LAMBRECHT, Defendant

By: 

John E. North, Jr. # 6570

Pamela K. Black #3884

NORTH & BLACK, PC

1103 Bay Street

Beaufort, SC 29902

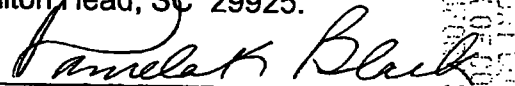
(843) 575-0800 (tel)

(843) 575-0900 (fax)

north@northblack.com (email)

Certificate of Service

The undersigned hereby certifies that on the 26 day of May, 2004, a true and correct copy of the foregoing was sent by U.S. Mail, first class, postage prepaid, to the attorneys for the Plaintiff, H. Fred Kuhn, Jr., PO Drawer 507, Beaufort, SC 29901 and G. Richardson Wieters, P.C., Suite 300 Watersedge at Shelter Cove, 19 Shelter Cove Lane, PO Box 24158, Hilton Head, SC 29925.



2004 MAY 26 PM 4:07

000170

STATE OF SOUTH CROlina
COUNTY OF BEAUFORT

DEBORAH J. CLEGG, as
Personal Representative of the
Estate of Allison T. Clegg,

Plaintiff,

v.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 02-CP-07-1159

MOTION FOR SUMMARY JUDGMENT

2009 JUN 16 AM 10:35

COMES NOW the Defendant, Douglas A. Lambrecht, and pursuant to Rule 56, SCRCP, moves the Court for summary judgment in his favor dismissing the Amended Complaint filed herein.

In support of his Motion, Defendant relies upon the pleadings herein, the sworn statements of Jan Horan and Anna C. Lambrecht, and the Affidavits of Elliott M. Lambrecht and Douglas A. Lambrecht.

In further support of his Motion, Defendant directs the attention of the Court to his Memorandum in Support of Motion for Summary Judgment submitted contemporaneously herewith.

WHEREFORE, Defendant Douglas A. Lambrecht prays that the Court make and enter an Order granting summary judgment in his favor on the

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Amended Complaint, dismissing same, with prejudice, and awarding costs to the Defendant.

Dated: June 15, 2004.

DOUGLAS A. LAMBRECHT, Defendant

By: Pamela K. Black
John E. North, Jr. # 6570
Pamela K. Black #3884
NORTH & BLACK, PC
1103 Bay Street
Beaufort, SC 29902
(843) 575-0800 (tel)
(843) 575-0900 (fax)
north@northblack.com (email)

Certificate of Service

The undersigned hereby certifies that on the 15 day of June, 2004, a true and correct copy of the foregoing was sent by U.S. Mail, first class, postage prepaid, to the attorneys for the Plaintiff, H. Fred Kuhn, Jr., PO Drawer 507, Beaufort, SC 29901 and G. Richardson Wieters, P.C., Suite 300 Watersedge at Shelter Cove, 19 Shelter Cove Lane, PO Box 24158, Hilton Head, SC 29925.

Pamela K. Black

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STATE OF SOUTH CROlina
COUNTY OF BEAUFORT

DEBORAH J. CLEGG, as
Personal Representative of the
Estate of Allison T. Clegg,

Plaintiff,

v.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 02-CP-07-1160

MOTION FOR SUMMARY JUDGMENT

2004 JUL 16 AM 10:35

COMES NOW the Defendant, Douglas A. Lambrecht, and pursuant to Rule 56, SCRCP, moves the Court for summary judgment in his favor dismissing the Amended Complaint filed herein.

In support of his Motion, Defendant relies upon the pleadings herein, the sworn statements of Jan Horan and Anna C. Lambrecht, and the Affidavits of Elliott M. Lambrecht and Douglas A. Lambrecht.

In further support of his Motion, Defendant directs the attention of the Court to his Memorandum in Support of Motion for Summary Judgment submitted contemporaneously herewith.

WHEREFORE, Defendant Douglas A. Lambrecht prays that the Court make and enter an Order granting summary judgment in his favor on the

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Amended Complaint, dismissing same, with prejudice, and awarding costs to the Defendant.

Dated: June 15, 2004.

DOUGLAS A. LAMBRECHT, Defendant

By: Pamela K. Black
John E. North, Jr. # 6570
Pamela K. Black #3884
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1103 Bay Street
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north@northblack.com (email)

Certificate of Service

The undersigned hereby certifies that on the 15 day of June, 2004, a true and correct copy of the foregoing was sent by U.S. Mail, first class, postage prepaid, to the attorneys for the Plaintiff, H. Fred Kuhn, Jr., PO Drawer 507, Beaufort, SC 29901 and G. Richardson Wieters, P.C., Suite 300 Watersedge at Shelter Cove, 19 Shelter Cove Lane, PO Box 24158, Hilton Head, SC 29925.

Pamela K. Black

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STATE OF SOUTH CROlina
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

DEBORAH J. CLEGG, as
Personal Representative of the
Estate of Allison T. Clegg,

CIVIL ACTION NO. 02-CP-07-1159

and

Plaintiff,

v.

CIVIL ACTION NO. 02-CP-07-1160

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

Defendants.

2004 JUN 16 AM 10:36

INTRODUCTION

This Memorandum is submitted in support of the Motions for Summary Judgment filed on behalf of Defendant Douglas A. Lambrecht in Civil Action No. 02-CP-07-1159 (the "Survival Action") and Civil Action No. 02-CP-07-1160 (the "Wrongful Death Action").

STATEMENT OF THE CASE

These Survival and Wrongful Death Actions were commenced by the Plaintiff, Deborah J. Clegg ("Plaintiff"), as the Personal Representative of the Estate of Allison T. Clegg ("Decedent") against multiple Defendants to recover damages for the death of the Decedent in a one car automobile accident occurring on January 9, 2002.

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In the Amended Complaint in both actions, the Plaintiff alleges that the Defendant Elliott M. Lambrecht ("Elliott") negligently operated a certain 1994 Mazda (the "Mazda") in which the Decedent was a passenger and, as a result thereof, Decedent was killed. The Plaintiff further alleges that Douglas A. Lambrecht ("Douglas"), Rhett Barker ("Rhett"), Jan Horan ("Jan"), and Anna C. Lambrecht ("Anna") negligently entrusted the Mazda to Elliott, or failed to prevent Elliott from operating the Mazda when they knew or should have known that his operation of the Mazda would pose an unreasonable risk of harm to others.

Douglas appeared and answered, generally denying the allegations of the Amended Complaint in both actions. Douglas has now filed his Motions for Summary Judgment in both the Survival Action and the Wrongful Death Action, (the "Motions"). Both of those Motions are before the Court for decision.

SUMMARY OF THE ARGUMENT

In these cases, the Plaintiff asks the Court to impose liability upon the father of an adult child, who was no longer living in his household or under his control, for the negligence of that child in operating a vehicle owned by the child. Quite simply, there is no South Carolina authority which supports such a proposition, and there shouldn't be. If that were the rule of law, all parents would forever be responsible in tort for the acts of their progeny, no matter how old and how removed from their control those children became. The law cannot impose such an onerous burden.

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STATEMENT OF UNDISPUTED FACTS

In considering the pending Motions, the Court should consider the following undisputed facts:

1. Elliott's date of birth is June 16, 1982. (Statement, Jan, 6:7-8)¹
2. Douglas is Elliott's father and Jan is Elliott's mother. (Amended Complaint, ¶ 4,5)²
3. At the time of the events in question, Douglas and Jan were no longer married and lived in separate households. (Statement, Jan, 3:24-7)
4. Anna is the daughter of Jan and Douglas, and at the time of the accident resided with her mother, Jan, and her stepfather. (Statement, Jan, 4:8-16)
5. The accident in question occurred on January 9, 2002, when Elliott was nineteen years of age. (Affidavit, Douglas, ¶ 5, Amended Complaint, ¶ 10)
6. Elliott completed his formal education in May, 2001, eight months prior to the accident, and from and after May 2001, had lived at his own residence and did not reside at the home of either of his parents. (Affidavit, Elliott, ¶ 6; Statement, Jan, 5:12-23)
7. From and after May, 2001, Elliott did not receive any form of support from his father Douglas, other than occasional gifts. (Affidavit, Douglas, ¶ 8)

¹ The statements of Jan Horan and Anna Lambrecht were taken, under oath, by the attorney for the Plaintiff and transcribed.

² The Amended Complaint in both the Wrongful Death and the Survival actions are virtually identical.

8. Douglas did not claim Elliott as a dependent on his federal and state income tax returns for tax years subsequent to 1999. (Affidavit, Douglas, ¶ 9)
9. The Mazda which was involved in the accident was purchased by Elliott in 2000 and titled in his name, alone. (Affidavit, Douglas ¶ 10 , Exhibit A)
10. Douglas co-signed the loan obtained by Elliott so that a better interest rate could be obtained. (Affidavit, Douglas ¶ 11)
11. The Mazda was a replacement automobile for a Ford Taurus, also purchased by Elliott, and also titled in Elliott's name. (Affidavit, Douglas ¶ 12)
12. On or about July 14, 2001, the Mazda became disabled and unable to be driven as the result of engine trouble. (Affidavit, Elliott, ¶ 11)
13. The Mazda was subsequent towed to a repair shop, where it remained from July, 2001, until mid-November, 2001. (Affidavit, Elliott, ¶ 12)
14. On or about October 3, 2001, Elliott's driver's license was suspended for a period of six months. (Affidavit, Elliott, ¶ 14)
15. After the repair of the Mazda in November, 2001, the Mazda was delivered to Douglas' home at Elliott's request, where it remained parked beside the driveway. (Affidavit, Douglas, ¶ 13; Affidavit Elliott ¶ 15)
16. In mid December, 2001, Anna asked Elliott if she could drive the Mazda while her automobile was being repaired. (Affidavit, Elliott, ¶ 17; Statement, Anna, 7:15-8:11)

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17. Elliott gave permission to Anna, his sister, to drive the Mazda and in accordance with that permission, Douglas delivered the keys to the Mazda to Anna so that she could use the vehicle. (Affidavit, Douglas ¶ 15; Affidavit Elliott ¶ 18; Statement, Anna, 7:15-8:11)
18. In mid December, 2001, several weeks before the accident, Anna removed the Mazda from Douglas' home in accordance with permission granted by Elliott, the owner of the Mazda. (Affidavit, Douglas ¶ 15, 16)
19. After mid-December, the Mazda was never again at Douglas' residence or in his possession, nor did Douglas ever have the keys to or access to the Mazda after that date. (Affidavit, Douglas, ¶ 17)
20. At no time after mid-December did Douglas have information from any source that Elliott had access to the Mazda or would be driving it. (Affidavit, Douglas ¶ 18; Affidavit Elliott, ¶ 20)
21. At no time between the date that possession of the Mazda was delivered to Anna and the date of the accident did Douglas have any information that Elliott intended to or was attempting to obtain possession of the Mazda. (Affidavit, Douglas ¶ 18)

LAW AND ARGUMENT

I.

Standard on Summary Judgment

Summary judgment is appropriate when there is no remaining issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In evaluating the evidence, the Court must afford the

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nonmoving party the benefit of all inferences. *Trico Surveying, Inc. v. Godley Auction Co.*, 314 S. Ct. 542, 431 S.E. 2d 565 (1993).

II.

Douglas Breached No Legal Duty

In a negligence action, the plaintiff must establish: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately caused by a breach of duty. "A breach of duty exists when it is foreseeable that one's conduct may likely injure the person to whom the duty is owed." *Olson v. Faculty House of Caroline, Inc., et al*, 344 S.C. 194, 544 S.E. 2d 38 (Ct. App. 2001).

The gist of the Plaintiff's complaint is that Douglas (and the other Defendants) knew that Elliott posed a "substantial risk of serious harm to others" if he were allowed to operate the Mazda and that Douglas and the other Defendants failed to take steps to prevent Elliott from operating the Mazda. (Amended Complaint, ¶¶42, 43). Cutting through the verbiage in the Amended Complaint, the Plaintiff is seeking to recover under the theory 1) that Douglas negligently entrusted the Mazda to Elliott; or 2) that Douglas had a duty to the Decedent to control the actions of his adult child. Neither theory finds any basis in the law of this state, or in other jurisdictions.

NEGLIGENT ENTRUSTMENT

Under South Carolina law, negligent entrustment by the owner of an automobile to another may give rise to tort liability.

The theory of negligent entrustment provides: 'the owner or one in control of the vehicle and responsible

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for its use who is negligent in entrusting it to another
can be held liable for such negligent entrustment.'

American Mutual Fire Insurance Company v. Passmore, 275 S.C. 618, 621, 274
S.E. 2d 416, 418 (1981)

In this case, however, it is undisputed that Douglas neither owned nor was in possession or control of the Mazda. It is further undisputed that Douglas did not "entrust" the Mazda to Elliott. Elliott, the owner of the Mazda, stored the vehicle at the residence of Douglas until Elliott gave his sister Anna permission to use it. Thereafter, Elliott took possession of his own property from Anna without the knowledge of Douglas. Even if there was evidence that Douglas had knowledge of such use, which is not the case, Douglas had no legal right or control over the Mazda. Absent some legal right of ownership or control, there can be no claim for negligent entrustment. Under such undisputed facts, no liability for negligent entrustment will lie.

Essential elements of this cause of action are absent:
(1) [defendant] did not own the car; (2) he did not have
control over the car; and (3) he is not responsible for
its use. There was no potential liability for negligent
entrustment.

American Mutual, 621, 418.

Under South Carolina law, the Plaintiff's claim for negligent entrustment must fail.

DUTY TO CONTROL OR WARN

The Plaintiff alleges that Douglas and the other Defendants knew that Elliott's operation of the Mazda would pose an unreasonable risk of harm and that they had a duty to prevent him from using his own vehicle. Under South

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Carolina law there is no duty warn even if one knows of the dangerous propensity of another unless there is a simultaneous ability to "monitor, supervise, and control" that person.³ *Gilmer v. Martin*, 323 S.C. 154, 157, 473 S.E. 2d 812, 814 (Ct. App. 1996), *rehearing den.*, 1996, *cert. granted*, 1996, *cert. dismissed*, 1996.

There is no case in South Carolina that holds that a parent has the ability or duty to "monitor, supervise, and control" an adult child who is no longer a member of his household. The only case which even tangentially discusses the subject is *Doe v. Batson*, 338 S.C. 291, 525 S.E. 2d 909 (Ct. App. 1999), *reversed and remanded*, 345 S.C. 316, 548 S.E. 2d 854 (2001). In the *Batson* case, the issue presented was whether a mother of an adult son had the duty to warn the parents of boys who were sexually molested in her home by her adult son, who resided there. It was alleged that the defendant had actual knowledge of the conduct of her adult son which took place in her home.

Although the Court of Appeals had suggested that a cause of action might lie under a premises liability theory or on the basis of the duty to warn arising from a special relationship or circumstance, the Supreme Court reversed that portion of the opinion, certainly telegraphing its disinclination to expand the concept of duty to such an extent. The *Batson* case was again before the Court of Appeals very recently. In a *per curiam* opinion, that Court affirmed the Circuit Court's grant of summary judgment for the defendant, stating that there is no

³ Defendant does not concede that Elliott's operation of a motor vehicle posed an unreasonable risk of harm.

duty to warn of danger of which the defendant is unaware. (South Carolina Lawyers Weekly, June 7, 2004, 03SCLW0764)

In a subsequent decision, *Huggins v. Citibank, N.A.*, 585 S.E. 2d 275 (2003), the South Carolina Supreme Court answered a certified question concerning the basis for duty in a negligence claim.

Duty arises from the relationship between the alleged tortfeasor and the injured party (citation omitted) In order for negligence liability to attach, the parties must have a relationship recognized by law as the foundation of a duty of care. (citation omitted) In the absence of a duty to prevent an injury, foreseeability of that injury is an insufficient basis on which to rest liability. (citation omitted) The concept of duty in tort liability will not be extended beyond reasonable limits. (citation omitted)

Huggins, at 333.

Without a legal duty to the Decedent, Douglas can have no liability even if he knew, which clearly he did not, that Elliott was intending to drive the Mazda and that it posed a risk of harm to the Decedent. The Plaintiff cannot direct this Court to any South Carolina authority upon which to base the imposition of a duty upon Douglas to control the conduct of his adult son.

AUTHORITY FROM OTHER JURISDICTIONS

Although there is no South Carolina authority directly on point, cases from other jurisdictions consistently decline to impose liability on a parent for the torts committed by an adult child living away from the parental home. Two of these cases, *Broadwater v. Dorsey*, 344 MD 548, 688 A. 2d 436 (MD, 1997) and *DeBlanc v. Jensen*, 59 S.W. 3d 373 (Tex. App. Div. 1, 2001), copies of which are attached hereto for the convenience of the Court, involve facts essentially

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identical to those here. In both cases, under facts certainly more egregious than those presented here, the Court declined to impose liability on the parent for the negligence of an adult child operating a motor vehicle.

In the *Broadwater* case, the parents were sued when their adult, drug addicted son, crossed the center line and stuck the plaintiff's vehicle, head on, causing serious injuries. The parents were well aware of their son's addiction problems and irresponsibility. They had "bailed him out" of numerous previous difficulties and, at the time of the accident, he was supported by them and resided in their home. The evidence showed that they had provided him with the sports car involved in the accident. Even so, the Court declined to hold them responsible for his conduct and reversed a jury verdict in favor of the plaintiff.

Generally, when a child reaches the age of majority, the parent's legal responsibility ends and, concomitantly, the parent's legal right to control the actions of the child also ends,

Dr. and Mrs. Broadwater had no legal right to control Ronald, Jr. at the time of the accident because he was an adult. Their continuing financial support of their son does not confer on them any legally cognizable right to control his actions. Nor did Petitioners have any right of control over the Mazda involved in the accident. Regardless of whether Dr. and Mrs. Broadwater sold Ronald, Jr., the car or gave it to him as a gift, under the circumstances of this case, their ability to exercise control over the car ended when they relinquished title.

Id. at 563.

The *Broadwater* opinion includes an extensive list of cases from other jurisdictions consistent with its holding.

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In the *LeBlanc* case, the parents of adult child who was responsible for the death of another motorist in a drunk driving accident were sued because they had sold the adult child the pickup truck he was driving, and had retained a first lien on it. The evidence further demonstrated that the parents had attempted to keep their son from driving while his driver's license was suspended and he had no insurance. The Court granted summary judgment in favor of the parents.

Regardless of whether his parents exercised control over the truck when Heuermann was incarcerated, they did not have the *right* (emphasis by the Court) to control it. Heuermann was an adult. He held title to the truck, and had for several years at the time of the accident.

* * *

The fact that his parents attempted to prevent his use of the truck upon his release until he had obtained insurance and a drivers' license does not change this fact. Further, even if the Jensens exercised control over the truck before Heuermann took possession of it, they certain did not once he had the truck towed to his own residence. In order for the Jensens to be liable under a theory of negligent entrustment, we would have to conclude that it is negligent for a nonowner to return control of a vehicle to its owner. We decline to so hold.

Id. at 376.

As in the *Broadwater* case, the Court included in its opinion an extensive list of cases from other jurisdictions consistent with its holding.

The rationale of the *Broadwater* and *LeBlanc* cases are not only reasonable and well supported, but there is no authority in this jurisdiction which suggests that there should be some other result under the facts of this case.

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CONCLUSION

Under the undisputed facts of this case, Douglas Lambrecht did not own or control the vehicle that his adult son, Elliott Lambrecht, was allegedly operating at the time of the accident in which the Decedent was killed. At the time of the accident, Elliott was not only a legal adult, but was living on his own and providing for his own support. Douglas Lambrecht had no legal right and no ability to control the use of the Mazda or the conduct of his son. Douglas Lambrecht had no knowledge of the actions or intentions of his son on the day of the accident. Under these undisputed facts Douglas Lambrecht had no duty to the Decedent and, therefore, is not liable under any theory of recovery cognizable under South Carolina law.

For all of the foregoing reasons, Defendant Douglas Lambrecht respectfully requests that the Court grant Summary Judgment in his favor and dismiss the Amended Complaint, in both the Wrongful Death and the Survival actions, in their entirety, as to him.

Dated this 15 day of June, 2004.

DOUGLAS A. LAMBRECHT, Defendant,

By: Pamela K. Black

John E. North, Jr. # 6570

Pamela K. Black #3884

NORTH & BLACK, PC

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000186

Certificate of Service

The undersigned hereby certifies that on the 15 day of June, 2004, a true and correct copy of the foregoing was sent by U.S. Mail, first class, postage prepaid, to the attorneys for the Plaintiff, H. Fred Kuhn, Jr., PO Drawer 507, Beaufort, SC 29901 and G. Richardson Wieters, P.C., Suite 300 Watersedge at Shelter Cove, 19 Shelter Cove Lane, PO Box 24158, Hilton Head, SC 29925.

Doreen K. Black

2004 JUN 16 AM 10:36
CLERK OF DISTRICT COURT
BEAUFORT, SC

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Page 1

C

Paul De BLANC as Guardian of The ESTATES OF
Kristina N. De BLANC and Ryan P. De
Blanc, Appellant,
v.

No. 01-00-00782-CV.

Oct. 18, 2001.

Affirmed.

West Headnotes

[1] Judgment 178
228k178 Most Cited Cases

A no-evidence summary judgment is similar to a directed verdict. Vernon's Ann.Texas Rules Civ.Proc., Rule 166a(i).

[2] Judgment 185(5)
228k185(5) Most Cited Cases

A trial court must grant a motion for no-evidence summary judgment unless the nonmovant produces more than a scintilla of evidence raising a genuine issue of material fact on each of the challenged elements. Vernon's Ann.Texas Rules Civ.Proc., Rule 166a(i).

[3] Appeal and Error 934(1)

30k934(1) Most Cited Cases

In reviewing a no-evidence summary judgment, an appellate court must indulge every reasonable inference in favor of the nonmovant and resolve any doubts in its favor. Vernon's Ann. Texas Rules Civ.Proc., Rule 166a(i).

[4] Automobiles 192(11)
48Ak192(11) Most Cited Cases

To establish negligent entrustment of an automobile, a plaintiff must prove the following elements: (1) the owner entrusted the automobile (2) to a person who was an incompetent or reckless driver, (3) who the owner knew or should have known was incompetent or reckless, (4) the driver was negligent, and (5) and the driver's negligence proximately caused the accident and the plaintiff's injuries.

[5] Automobiles 195(3)
48Ak195(3) Most Cited Cases

Parents of driver involved in fatal truck collision did not have right to control it, and thus were not liable for negligent entrustment, although driver's father held lien on truck, and parents had exercised control over truck while driver was incarcerated, where driver had held title to truck, and towed truck to his own residence after release from incarceration.

*374 Robert F. Stein, Robert F. Stein & Associates, Inc., Houston, for Appellant.

James F. Tyson, Houston, for Appellees.

Panel consists of Justices MIRABAL, NUCHIA,
and PRICE. [FN*]

FN* The Honorable Frank C. Price, former Justice, Court of Appeals, First District of Texas at Houston, participating by assignment.

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FRANK C. PRICE, Justice.

OPINION

Appellant Paul De Blanc, as guardian of the estates of his minor children, Kristina N. De Blanc and Ryan P. De Blanc, appeals a summary judgment rendered against him pursuant to Texas Rule of Civil Procedure 166a(i). De Blanc alleged that appellees, Owen F. Jensen, III and Caroline Jensen, were liable for negligently entrusting a automobile to their adult son, Kevin Shay Heuermann. In six points of error, De Blanc asserts the trial court erred when it determined that the Jensens were not liable as a matter of law because there was no evidence they owned the vehicle.

We affirm the trial court's judgment.

Background

On July 2, 1995, Laurie Ann De Blanc was killed when Heuermann's 1979 Ford pickup truck struck the vehicle in which she was riding. Her two children, Kristina and Ryan, survived her.

Heuermann admitted to speeding and reckless driving. Tests done after the accident showed he was legally intoxicated; his blood alcohol level was 0.17 and his breath alcohol level was 0.13. See Tex. Pen.Code Ann. § 49.01 (Vernon 1994). Heuermann was convicted of intoxication manslaughter as a result of his conduct. Because he had two prior DWI convictions (one from May 1994 and one from June 1994) and a prior conviction for possession of cocaine, Heuermann was assessed punishment of life in prison as a habitual offender.

In June 1999, appellant filed suit against Heuermann, alleging Heuermann's negligence caused Laurie De Blanc's death. In February 2000, appellant added the Jensens as defendants under the theory that the Jensens negligently entrusted to Heuermann the pickup truck he was driving at the time of the accident. Caroline Jensen is Heuermann's mother; Owen Jensen is his stepfather.

The Jensens filed a motion for summary judgment under Texas Rule of Civil Procedure 166a(i) in which they argued there was no evidence they owned the 1979 Ford pickup truck Heuermann was driving at the time of the accident. The certificate

of title, attached to the motion, established that Heuermann had owned the vehicle since December 1, 1993. Owen Jensen was listed as the first lienholder.

In response, appellant argued the Jensens were liable under the theory of negligent entrustment because they had exercised control over the vehicle. Appellant submitted summary judgment evidence in support of his theory: the police accident report, Heuermann's driving record, and the deposition transcript of Caroline Jensen. The police accident report listed Heuermann as the pickup truck's owner.

At her deposition, Caroline Jensen testified her husband had conveyed the pickup #375 truck to Heuermann on December 1, 1993. Heuermann was 25 years old at the time. Mr. Jensen retained a first lien on the vehicle. In July 1994, Heuermann was incarcerated at the Esmor rehabilitation facility. While he was incarcerated, the Jensens had the vehicle moved to Mrs. Jensen's parents' home in Conroe. Heuermann remained at Esmor until February 1995. When he was released, Heuermann did not live with the Jensens. [FN1] Nonetheless, Mrs. Jensen testified that she and her husband attempted to keep him from driving the truck. They told him he could not have the truck until he had obtained insurance and had a valid drivers' license. [FN2] However, Mrs. Jensen also testified Heuermann's grandparents would have returned the truck to him without the Jensens' permission.

FN1. Heuermann had not lived with the Jensens since he was 19 years old.

FN2. Heuermann's drivers' license had been suspended in connection with his 1994 DWI convictions.

The truck, along with its keys, remained at Heuermann's grandparents' home until June 1995. On June 6, 1995, Progressive Insurance issued Heuermann an automobile liability insurance policy. On June 19, 1995, the Texas Department of Public Safety issued him a drivers' license. Heuermann subsequently towed the truck, which was not running at the time, to his residence. He repaired the truck, then began to drive it. On July 2, 1995, Heuermann's 27th birthday, the collision

that resulted in Ms. De Blanc's death occurred.

On May 18, 2000, the trial court granted summary judgment in favor of all defendants, including Heuermann. The trial court amended the order on June 14, 2000, to apply only to the Jensens. On June 19, 2000, the trial court severed appellant's claims against the Jensens, making the summary judgment in their favor final. Appellant filed a timely notice of appeal.

Standard of Review

[1] Under rule 166a(i), a party is entitled to summary judgment if, after adequate time for discovery, there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. Tex.R. Civ. P. 166a(i). Thus, a no-evidence summary judgment is similar to a directed verdict. *Flameout Design & Fabrication, Inc. v. Pennzoil Caspian Corp.*, 994 S.W.2d 830, 834 (Tex.App.--Houston [1st Dist.] 1999, no pet.). The motion for summary judgment may not be general, but must state the elements on which there is no evidence. Tex.R. Civ. P. 166a(i). [FN3]

FN3. As we noted above, the Jensens argued in their motion for summary judgment that there was no evidence that they owned the vehicle in question. Therefore, they contended they could not be held liable for entrusting it to their son.

[2][3] The trial court must grant the motion unless the nonmovant produces more than a scintilla of evidence raising a genuine issue of material fact on each of the challenged elements. *See id.*; *Macias v. Fiesta Mart, Inc.*, 988 S.W.2d 316, 317 (Tex.App.--Houston [1st Dist.] 1999, no pet.). In reviewing a summary judgment, we must indulge every reasonable inference in favor of the nonmovant and resolve any doubts in its favor. *Flameout*, 994 S.W.2d at 834.

Analysis

[4] To establish negligent entrustment of an automobile, a plaintiff must prove the following elements: (1) the owner entrusted the automobile (2) to a person who was an incompetent or reckless

driver, (3) who *376 the owner knew or should have known was incompetent or reckless, (4) the driver was negligent, and (5) and the driver's negligence proximately caused the accident and the plaintiff's injuries. *Schneider v. Esperanza Transmission Co.*, 744 S.W.2d 595, 596 (Tex.1987); *Soodeen v. Rychel*, 802 S.W.2d 361, 362 (Tex.App.--Houston [1st Dist.] 1990, writ denied).

With respect to the "ownership" requirement, however, several courts have concluded that a non-owner of a vehicle may be held liable for negligent entrustment of a vehicle if the non-owner has the right to control the vehicle. *See Garcia v. Cross*, 27 S.W.3d 152, 155 (Tex.App.--San Antonio 2000, pet. denied) (child of owner); *Rodriguez v. Sciano*, 18 S.W.3d 725, 728 (Tex.App.--San Antonio 2000, no pet.) (renters of vehicle); *Loom Craft Carpet Mills, Inc. v. Gorrell*, 823 S.W.2d 431, 432 (Tex.App.--Texarkana 1992, no writ) (successor corporation).

[5] Appellant argues that a certificate of title is merely an "administrative presumption" of ownership that vanishes when positive evidence of other ownership is introduced. *See Pioneer Mut. Compensation Co. v. Diaz*, 142 Tex. 184, 177 S.W.2d 202, 204 (1944); *Villa v. Alvarado State Bank*, 611 S.W.2d 483, 485 (Tex.Civ.App.--Waco 1981, no writ). Therefore, according to appellant, evidence that the Jensens exercised control over the truck when Heuermann was incarcerated and, once he was released, attempted to prevent him from driving the truck until he had insurance and a drivers' license, is a sufficient exercise of control over the vehicle to satisfy the ownership requirement.

We disagree. In each of the cases appellant cites, the entrustor with the right of control possessed a superior right to the vehicle over the person to whom it was entrusted. None involved a situation where, as here, the purported entrustor allowed the owner to drive it. Regardless of whether his parents exercised control over the truck when Heuermann was incarcerated, they did not have the right to control it. Heuermann was an adult. He held title to the truck, and had for several years at the time of the accident. Appellant did not present any evidence that Heuermann had defaulted on the note or that the Jensens, as first lienholder, had repossessed the truck because of nonpayment. The fact that his parents attempted to prevent his use of

extinguished when they relinquished title to automobile. Restatement (Second) of Torts § 390.

[6] Child Support  **390**
76Ek390 Most Cited Cases
(Formerly 285k3.1(4))

Generally, when child reaches age of majority, parent's legal responsibility ends and, concomitantly, parent's legal right to control actions of child also ends.

****436*550** Matthew S. Sturtz, E. Hutchinson
Robbins, Jr., Miles & Stockbridge, on brief,
Baltimore, for Petitioners.

****437 John T. Ward, Ward, Kershaw and Minton,**
on brief, Baltimore, for Respondents.

Argued before - BELL, C.J., ELDRIDGE,
RODOWSKY, CHASANOW, KARWACKI and
RAKER, JJ., and ROBERT C. MURPHY, Judge
(retired), specially assigned.

RAKER, Judge.

This case concerns the tort doctrine of negligent entrustment. The issue we must decide is whether the parents of an adult child who sell or who make a gift of an automobile to their adult child, with knowledge of the child's reckless conduct, may be held answerable in damages to a third person subsequently injured by the son's negligent operation of the automobile. The claim of liability is predicated upon the principle of legal responsibility for the negligent entrustment of an automobile to an allegedly incompetent driver. Specifically, we must decide whether a parent who negligently entrusts a chattel to an adult son is responsible for damages subsequently incurred by a third party when the parent does not have the power of control over either the automobile or the son at the time of the accident. We conclude that parents who sell or give an automobile to an adult child are not responsible for damages when they lack the power to control the child or the automobile.

On October 2, 1992, Ronald L. Broadwater, Jr., then age twenty-six, drove his automobile across the center line, colliding head-on into the vehicle driven by Matilda Dorsey and seriously injuring her. Along with her husband Dr. James H. Dorsey, she filed a lawsuit against Ronald, Jr., and Dr. and Mrs. Ronald L. Broadwater, Sr. The complaint alleged that Ronald, Jr., the owner of the automobile, breached his duty to drive his vehicle in a safe, reasonable and non-negligent manner, and the breach of that duty resulted in injury to the plaintiff. The complaint further alleged that Dr. and Mrs. *551 Broadwater negligently entrusted the automobile to Ronald, Jr., their adult son, by purchasing the vehicle and giving it to Ronald, Jr., knowing at the time they gave the vehicle to Ronald, Jr. it was likely, because of his driving record and drug abuse problems, that he would drive the vehicle recklessly and pose an unreasonable risk of physical harm to others.

The case proceeded to trial in the Circuit Court for Baltimore County. The Broadwaters filed a motion for summary judgment on the grounds that they had no power to control the use of the vehicle at the time of the accident, and that they lacked sufficient knowledge to put them on notice that their son posed an unreasonable risk of harm to others. The court denied the motion. The jury found that Ronald, Jr. negligently operated his motor vehicle on October 2, 1992, and as a result caused injury to Mrs. Dorsey. The jury also found that Dr. and Mrs. Broadwater had negligently entrusted the Mazda RX 7 to Ronald, Jr. The jury awarded damages to the plaintiffs, Dr. and Mrs. Dorsey.

Dr. and Mrs. Broadwater appealed to the Court of Special Appeals, contending that the trial court had erred in concluding that they could be liable on a theory of negligent entrustment. The Court of Special Appeals, by a divided panel, affirmed the judgment. *Broadwater v. Dorsey*, 107 Md.App. 58, 666 A.2d 1282 (1995). This Court granted certiorari.

The facts were set out in great detail by the intermediate appellate court as follows:

"In November, 1990, appellants owned or had in their possession five cars, all insured by State Farm Mutual Automobile Insurance Company--a 1986 Mercedes, a 1988 Toyota, a 1990 Plymouth Laser, a 1956 Ford Thunderbird, and a 1988 Corvette.

"Although the Broadwaters insist that the transfer was an arms-length sale, the fact is that the son paid nothing for the car and the Broadwaters paid the insurance premium to permit their son to obtain the minimum required insurance coverage from the Maryland Automobile Insurance Fund. In a document dated February 2, 1993, which he captioned as "Agreement of repayment," and on which he referenced the Mazda, Ronald, Jr. stated "I, Ronald L. Broadwater, Jr. noted *554 on this date that I agree to pay back Eleanor V. and Ronald

****439 "Once the car was turned over to Ronald, Jr., he apparently used and regarded it as his own. As noted, the Broadwaters disclaimed much knowledge about their son's activities and whereabouts thereafter. The accident that led to this lawsuit occurred in October, 1992. Ronald, Jr. was driving the Mazda that had been given to him by his mother eight months earlier."**

Broadwater, 107 Md.App. at 62-65, 666 A.2d at 1284-85.

[1] The doctrine of negligent entrustment as stated in the Second Restatement of Torts § 390 and adopted in Maryland provides:

One who supplies directly or through a third person a chattel for use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

Restatement (Second) of Torts § 390 (1965); *see, e.g., Neale v. Wright*, 322 Md. 8, 13-14, 585 A.2d 196, 198-99 (1991); *Kahlenberg v. Goldstein*, 290 Md. 477, 488-89, 431 A.2d 76, 83 (1981); *Morrell v. Williams*, 279 Md. 497, 503, 366 A.2d 1040, 1043 (1976); *Curley v. General Valet Service*, 270 Md. 248, 255, 311 A.2d 231, 235 (1973); *Snowwhite v. State, Use of Tennant*, 243 Md. 291, 311, 221 A.2d 342, 353-54 (1966); *Rounds v. Phillips (Rounds I)*, 166 Md. 151, 160-61, 170 A. 532, 535 (1934).

[2] The issue at the heart of this case is whether the parents of an adult child, who with knowledge of their child's incompetence, give or sell that child an automobile are to be considered "suppliers" for purposes of § 390 of the Restatement. Because a "supplier," in terms of the Restatement, *555 must have the right to control the chattel, we must determine whether the supplier's control over the chattel should be measured at the time of the "entrustment" or at the time of the negligent act of the "trustee" resulting in injury.

In its review of this case, the Court of Special

Appeals held that "[t]he right to permit and the power to prohibit must be considered as of the time of the entrustment." *Id.* at 68, 666 A.2d at 1287.

The court concluded that the continuing ability to control the chattel is not required for a *prima facie* case of negligent entrustment; control need only exist at the time of the entrustment. The court noted:

The tort is founded upon an entrustment—the supply of a chattel by the defendant to another person. That necessarily presumes that the defendant had a choice whether to supply the chattel or not. Control has to be viewed in that context. The tort does not rest on any vicarious liability—on imputing to the supplier the negligence of the entrustee—but rather on the direct negligence of the supplier in supplying the chattel in the first place. That negligence must, of necessity, be viewed as of the time of the entrustment, not as of the time the entrustee improperly uses the entrusted chattel.

Id. at 67, 666 A.2d at 1287. The court further reasoned that a person cannot escape liability by deliberately and negligently placing a chattel in the hands of another under circumstances set out in Restatement § 390 and thereby

effectively relinquish[] all practical ability thereafter to prohibit or limit the use of the chattel by the trustee. It would be wholly inconsistent with the public policy underlying the tort to regard such an act as providing a greater advantage to the supplier than if he retained the power of control but declined to exercise it.

Id. at 69, 666 A.2d at 1287-88. The intermediate appellate court held that Petitioners had control at the time of entrustment, that they knew of Ronald, Jr.'s reckless propensities, and that the negligent entrustment of the vehicle was the *556 proximate cause of Respondents' injuries. *Id.* at 67-72, 666 A.2d at 1286-89.

Judge Cathell dissented. He agreed with the majority's view of the facts, the character of Ronald, Jr., and the Broadwaters' knowledge of their son's behavior. He parted company with the majority on the scope and application of the doctrine of negligent entrustment. Recognizing that the "position of **440 the majority is one that is logically supportable under an expansive (virtually all inclusive) interpretation of the applicability of the tort," the dissent suggested that the better position for this Court to adopt would be a more limited application of the doctrine which would, "in

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a sales context, require the transferor to retain the legal right to control the instrumentality or have a legal responsibility to control the buyer." *Id.* at 75, 666 A.2d at 1291 (Cathell, J., dissenting).

The dissent further suggested that in order to limit the application of negligent entrustment appropriately, the entrustor must retain a legal right of control over either the chattel or its user. The dissent noted:

If (1) the power to control the vehicle or (2) the power to control its operator—or both—exists and the "entrustor" has knowledge of dangerous propensities of the driver, it is clear that the requirements of the tort are met.

Id. at 83, 666 A.2d at 1295. Otherwise, the dissent reasoned, liability for negligent entrustment would be too expansive and would subject all vendors to liability long after the vendor had relinquished control over the chattel.

Dr. and Mrs. Broadwater contend that the relevant time period is the time of the recipient's subsequent negligent use of the chattel. If the defendant has the right to permit or the power to prohibit the use of the chattel entrusted at that time, then the defendant may be liable. The Broadwaters maintain that the power to permit or prohibit use of the chattel is inherent in an entrustment, as opposed to a mere transfer, because that power to control imposes a duty upon the entrustor to guard against negligent use of the property. A *557 transferor without the power to control would have no such duty.

Respondents argue that the significant point in time is the time of the entrustment and that there need only be negligence at the time of entrustment, not a continuing right to control. If the entrustment was negligent when made, and that negligence was a proximate cause of the foreseeable injury complained of, the entrustor will be liable to the injured party. Respondents recognize that an entrustment can be, but need not be, a continuing event. As such, they argue, an entrustment can occur even if the entrustor was not the owner of the chattel, if the entrustor has the ability to control use of the chattel. Respondents rely on § 390 of the Second Restatement of Torts and *Kahlenberg v. Goldstein*, 290 Md. 477, 431 A.2d 76 (1981), for the proposition that Maryland law does not require continuing control of the chattel. Alternatively, they suggest that even if continuing control is

required to impose liability under the doctrine of negligent entrustment, the evidence at trial established that Dr. and Mrs. Broadwater in fact had the power to control Ronald, Jr.

The doctrine of negligent entrustment has been part of the law of Maryland since 1934. In *Rounds v. Phillips (Rounds I)*, 166 Md. 151, 170 A. 532 (1934), the first case in this State recognizing the doctrine of negligent entrustment, this Court quoted with approval § 260 of the Restatement of the Law of Torts, the precursor of § 390 in the Second Restatement. The Court noted:

We are of [the] opinion ... that the principle contained in the quotation from the *Restatement* is a fair and accurate statement of the rule, deduced from opinions representing the great weight of authority in this country. Of course, there are, and must be, *limitations upon the application of the rule*

Rounds I, 166 Md. at 166-67, 170 A. at 538 (emphasis added).

[3][4] Section 390 of the Second Restatement of Torts, Chattel for Use by Person Known to be Incompetent, is a "special application" of § 308, Permitting Improper Persons to *558 Use Things or Engage in Activities. Restatement (Second) of Torts, *supra*, § 390 cmt. b; see also *Casebolt v. Cowan*, 829 P.2d 352, 357 (Colo.1992). Section 308 provides that

[i]t is negligence to permit a third person to use a thing or to engage in an activity which is *under the control of the actor*, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.

**441 Restatement (Second) of Torts, *supra*, § 308 (emphasis added). Sections 390 and 308 are *in pari materia*, and must be read together. Cf. *State v. Bricker*, 321 Md. 86, 93, 581 A.2d 9, 12 (1990) (statutes that are *in pari materia* should be harmonized as much as possible). Thus, § 308's reference to a "thing or ... activity which is under the control of the actor" limits § 390's broad reference to "one who supplies ... a chattel for the use of another." The comments to § 308 elaborate on this limitation:

The words "under the control of the actor" are used to indicate that the third person is entitled to possess or use the thing or engage in the activity only by the consent of the actor, and that the actor

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has reason to believe that by withholding consent he can prevent the third person from using the thing or engaging in the activity.

Restatement (Second) of Torts, *supra*, § 308 cmt. a. Reading § 308 and § 390 together, we hold that the doctrine of negligent entrustment is generally limited to those situations in which the chattel is under the control of the supplier at the time of the accident. Ordinarily, without the right to permit or prohibit use of the chattel at the time of the accident, an individual cannot be liable for negligent entrustment.

[5] In *Rounds v. Phillips (Rounds I)*, 166 Md. 151, 170 A. 532 (1934), this Court held that parents of a minor child, known to the parents to be a reckless driver, were responsible for damages to a third party resulting from the son's negligent use of an automobile owned by the mother. *Id.* at 167, 170 A. at 538. The Court explained that

*559 the theory upon which the [plaintiffs] declaration is drawn ... rests solely upon the primary negligence of the [parents] themselves in permitting their son, alleged to have been habitually reckless, negligent, and incompetent in the operation of automobiles, to be in possession of and operate the Buick ... at the time of the accident....

Id. at 160, 170 A. at 535 (emphasis added). We established in *Rounds I* that the basis for liability under the doctrine of negligent entrustment is the power to permit and prohibit the use of the entrusted chattel. The father in the *Rounds* case, although he did not own the car, was nonetheless responsible for the damages caused by his son because he "had the authority and power to permit the use by the son of the mother's automobile, or to prohibit it." *Rounds v. Phillips (Rounds II)*, 168 Md. 120, 124, 177 A. 174, 175 (1935).

In *Neale v. Wright*, 322 Md. 8, 585 A.2d 196 (1991), our most recent case to consider negligent entrustment, this Court held that a co-owner of an automobile lacks the right to control the use of the co-owned property and may not be held liable on a theory of negligent entrustment for damages resulting from the other co-owner's negligent use of the car. Mr. and Mrs. Neale co-owned an automobile. The husband had a poor driving record and injured the plaintiff while driving the jointly owned car. The plaintiff sued Mrs. Neale on a theory that Mrs. Neale had negligently entrusted the co-owned automobile to her husband.

The Court concluded:

[I]n order for Mrs. Neale to have "supplied" the car to Mr. Neale at the time of the accident, and thus be liable under a negligent entrustment theory, she had to have the power to permit or prohibit Mr. Neale from using the vehicle. That power could emanate from a superior right to control the operation of the car, or from a special relationship between the "entrustor" and the driver, such as a parent-child relationship....

Id. at 19, 585 A.2d at 201 (citations omitted); see also *Snowwhite v. State, Use of Tennant*, 243 Md. 291, 314, 221 A.2d 342, 355 (1966) (limiting negligent entrustment liability to those *560 suppliers who have the right to permit as well as power to prohibit).

Respondents rely on *Kahlenberg v. Goldstein*, 290 Md. 477, 431 A.2d 76 (1981), for the proposition that control at the time of the accident is not a prerequisite for liability under the doctrine of negligent entrustment. In *Kahlenberg*, a father provided funds for his son to purchase an automobile and shortly thereafter the son was involved in a single car accident, injuring the plaintiff, a passenger in his car. *Kahlenberg*, 290 Md. at 484, 431 A.2d at 81. Despite the father's protest that he did not have the right to permit and **442 prohibit the son's use of the car, we held that the father was liable for the damages caused by the son's accident because he gave his son the car knowing his reckless propensities. *Id.* at 491, 431 A.2d at 84. The Court noted:

The holding in this case goes no further than to recognize that the principle expressed in § 390 applies where a gift of an automobile is made to a member of the donor's immediate family.

Id. at 489, 431 A.2d at 83.

Kahlenberg is distinguishable from the case before us because *Kahlenberg* involved a minor child. *Id.* at 479 n. 1, 431 A.2d at 78 n. 1. The father in *Kahlenberg*, like the father in *Rounds*, had the right to control his minor son's use of the car, even if he did not have the right to control the car directly. In *Neale*, 322 Md. at 18, 585 A.2d at 201, we noted:

"[I]n *Kahlenberg* ... there existed a parent-child relationship between the defendants and the trustees. Mr. Kahlenberg's son was living at home with his parents and was still a minor.

We intended to limit the application of *Kahlenberg* to those cases involving a parent/minor-child relationship. *Id.* at 18-19, 585 A.2d at 201.

We agree with our sister states that have concluded that "the paramount requirement for liability under a theory of negligent entrustment is whether or not the defendant had a right to control the vehicle." *561 *Lopez v. Langer*, 114 Idaho 873, 761 P.2d 1225, 1227 (1988); see *Casebolt v. Cowan*, 829 P.2d 352, 359 (Colo.1992); *Alioto v. Marnell*, 402 Mass. 36, 520 N.E.2d 1284, 1286 (1988); *Mills v. Continental Parking Corp.*, 86 Nev. 724, 475 P.2d 673, 674 (1970); see also 1 S. SPEISER ET AL., THE AMERICAN LAW OF TORTS § 4:10, at 594 (1983) ("The gist of the negligent entrustment is the right of control of the entrustor over the vehicle or instrumentality entrusted."); cf. *Mejia v. Erwin*, 45 Wash.App. 700, 726 P.2d 1032, 1034 (1986). Among the states that have decided cases involving a parent's sale or gift of an automobile to an adult child, nearly all reach the same conclusion as we do today. See *Shipp v. Davis*, 25 Ala.App. 104, 141 So. 366, 367 (1932); *Peterson v. Halsted*, 829 P.2d 373, 379 (Colo.1992); *Estes v. Gibson*, 257 S.W.2d 604, 607-08 (Ky.Ct.App.1953); *Lopez*, 761 P.2d at 1228; *Zedella v. Gibson*, 165 Ill.2d 181, 209 Ill.Dec. 27, 31, 650 N.E.2d 1000, 1004 (1995); *Tosh v. Scott*, 129 Ill.App.3d 322, 84 Ill.Dec. 631, 632, 472 N.E.2d 591, 592 (1984); *Fischer v. Lunt*, 162 A.D.2d 1016, 557 N.Y.S.2d 220, 221 (1990); *Rosenfeld v. Tisi*, 151 A.D.2d 739, 542 N.Y.S.2d 762, 763 (1989); *Brown v. Harkleroad*, 39 Tenn.App. 657, 287 S.W.2d 92, 96 (1955). For example, in *Peterson v. Halsted*, 829 P.2d 373, the Petersons helped their twenty-five-year old daughter purchase an automobile, knowing that she had a history of excessive alcohol consumption. While intoxicated, she drove her car into the plaintiff's vehicle, injuring the plaintiff. The court concluded that the Petersons could not be liable for negligent entrustment because they had no control over the driving activities of their adult daughter. [FN1] *Peterson*, 829 P.2d at 379. In summary, *562 we agree with the description of the doctrine expressed by the Kentucky intermediate appellate court in *Estes v. Gibson*, 257 S.W.2d at 607-08: "The doctrine ought not to be extended where the party sought to be charged had no control over the machine and the other party actually committing the injurious wrong was the owner, *sui juris*."

FN1. In a footnote, the Colorado Supreme Court noted that although there was evidence that the Petersons had once taken away their daughter's keys and kept them

overnight, the parents had no right to do so. *Peterson v. Halsted*, 829 P.2d 373, 379 n. 9 (Colo.1992).

Similarly, in 1989, when Ronald, Jr. was twenty-three years old, Mrs. Broadwater told Ronald, Jr. that he must remove his name from the title to a Corvette that was titled jointly in Ronald, Jr.'s and Dr. Broadwater's names. Ronald, Jr. complied and removed his name from the title.

Although this incident may illustrate Mrs. Broadwater's influence, she apparently had no legal right to force Ronald, Jr. to remove his name from the title.

We found only one case holding parents liable for damages caused by an adult child's negligent use of an automobile that the parents had provided. In *Golembe v. Blumberg*, 262 A.D. 759, 27 N.Y.S.2d 692, 692 (1941), the appellate division of the Supreme Court held parents liable for having purchased a car for their adult, epileptic son who then had an epileptic seizure while driving the car, injuring **443 the passengers. We find this case unpersuasive. See *Brown v. Harkleroad*, 39 Tenn.App. 657, 287 S.W.2d 92, 96 (1956) (rejecting *Golembe*). Two subsequent New York cases reach an opposite conclusion and undermine the authority of this holding. *Fischer*, 557 N.Y.S.2d at 221 ("[Father] cannot be liable to third parties under a theory of negligent entrustment of a dangerous instrumentality in the hands of his adult son."); *Rosenfeld v. Tisi*, 542 N.Y.S.2d at 763 (holding that mother who "neither owned vehicle in question nor had control over her daughter" could not be liable, as a matter of law, for damages caused by daughter's negligent driving).

We turn now to the facts of the case before us. Undoubtedly, Dr. and Mrs. Broadwater significantly influenced their adult son. Except for a brief period when he lived in an apartment paid for by his parents, Ronald, Jr. has lived with Dr. and Mrs. Broadwater his entire life. Petitioners have always provided the financial support for Ronald, Jr. They gave him spending money, included him on their automobile insurance policy, paid traffic fines, and hired counsel to represent him in traffic proceedings. To the limited extent Ronald, Jr. has been employed, his father has been his only employer.

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[6] We must, however, focus on Petitioners' rights as the parents of an adult child, not their influence on Ronald, Jr. Generally, when a child reaches the age of majority, the *563 parent's legal responsibility ends and, concomitantly, the parent's legal right to control the actions of the child also ends.

Dr. and Mrs. Broadwater had no legal right to control Ronald, Jr. at the time of the accident because he was an adult. Their continuing financial support of their son does not confer on them any legally cognizable right to control his actions. Nor did Petitioners have any right of control over the Mazda involved in the accident. Regardless of whether Dr. and Mrs. Broadwater sold Ronald, Jr., the car or gave it to him as a gift, under the circumstances of this case, their ability to exercise control over the car ended when they relinquished title. [FN2] Accordingly, we reverse.

FN2. This is not to suggest that title is always dispositive of the legal right to control chattel. This Court has acknowledged that the legal right to control can exist independent of title, such as when a bailee permits an intoxicated person to drive a car that is in the bailee's possession. See *Smith v. Branscome*, 251 Md. 582, 600-01, 248 A.2d 455, 466-67 (1968). In *Branscome*, this Court wrote: "Milton as the bailee of the owner, Green, had the right to control the Green automobile. He was given the power to exercise this right by the delivery by Green of the automobile keys to Milton." *Id.* at 601, 248 A.2d at 467; see *Rounds v. Phillips (Rounds I)*, 166 Md. 151, 167, 170 A. 532, 538 (1934).

In the present case, however, the car was retitled in Ronald, Jr.'s name, indicating that Dr. and Mrs. Broadwater did not intend a bailment or any other arrangement in which they would maintain legal control over the automobile.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED. CASE REMANDED TO THE COURT OF SPECIAL APPEALS WITH DIRECTIONS TO REVERSE THE JUDGMENT OF CIRCUIT COURT FOR BALTIMORE COUNTY

AND TO REMAND THE CASE TO THAT COURT WITH DIRECTIONS TO ENTER JUDGMENT IN FAVOR OF PETITIONERS. COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY RESPONDENTS.

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STATE OF SOUTH CROlina
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

DEBORAH J. CLEGG, as
Personal Representative of the
Estate of Allison T. Clegg,

CIVIL ACTION NO. 02-CP-07-1159

CIVIL ACTION NO. 02-CP-1160

Plaintiff,

AFFIDAVIT OF ELLIOTT M.
LAMBRECHT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

v.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants

State of California

ss

County of San Diego

ELLIOTT M. LAMBRECHT, being of lawful age and first duly sworn upon
oath deposes and states as follows:

1. This Affidavit is given in support of the Motion for Summary Judgment filed on behalf of the Defendant Douglas A. Lambrecht ("Douglas")
2. Affiant is one of the Defendants herein and has personal knowledge of the following facts.
3. At the time of the accident in question in this litigation, Affiant was a resident of Hilton Head, South Carolina, and is now a resident of California.

000200

4. Affiant is the son of the Defendant Elliott M. Lambrecht and the brother of Defendant Anna C. Lambrecht.
5. On January 9, 2002, Affiant was nineteen years of age and had not resided with either of his parents, Douglas or Defendant Jan Horan since May, 2001.
6. Affiant completed his formal education in May, 2001, and from and after May, 2001, was employed, lived at his own residence, and provided his own living.
7. From and after May, 2001, Affiant did receive any financial support from Douglas, other than occasional gifts.
8. The Mazda involved in the accident in question in this litigation was purchased by Affiant and titled in his name.
9. Affiant asked that Douglas co-sign the loan for the Mazda so that a better interest rate could be obtained, and Douglas did so.
10. The Mazda was a replacement for Affiant's previous vehicle, a Ford, Taurus, which was also purchased by Affiant and titled in his name.
11. On or about July 14, 2001, the Mazda had engine trouble and ultimately had to be towed to a repair shop.
12. The Mazda remained at the repair shop from July, 2001, until mid November, 2001 when it was repaired.
13. The repair costs for the Mazda were paid with the proceeds of a property loss claim for a previous incident involving the Mazda.

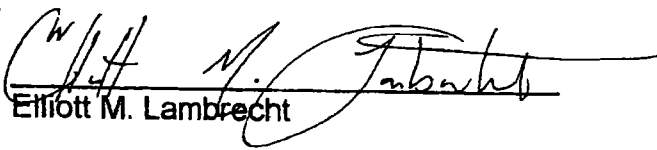
000201

14. During the period in which the Mazda was being repaired, Affiant's South Carolina driver's license was suspended.
15. After the repair of the Mazda was completed, Affiant requested that the Mazda be stored at Douglas' home until Affiant's driving privileges were restored and Douglas agreed to do so.
16. In November, 2001, the Mazda was delivered to Douglas' home.
17. In mid December, Affiant's sister Anna asked permission from Affiant to use the Mazda while her car was being repaired.
18. Affiant gave Anna permission to use the Mazda and asked Douglas to deliver the keys to her.
19. On the date of the accident in question in this litigation, Affiant obtained the keys to the Mazda from Anna at their mother's home in Beaufort, South Carolina.
20. Before obtaining the keys to the Mazda, Affiant did not inform Douglas that he intended to remove the Mazda from Anna's possession or drive the Mazda.

FURTHER AFFIANT SAYETH NOT.

000202

Dated: 6/9, 2004.


Elliott M. Lambrecht

000203

Subscribed and sworn to before me this 9 day of June, 2004.

Mary A. Owen
Notary Public

My Commission Expires: 1/18/2007



Certificate of Service

The undersigned hereby certifies that on the 15 day of June, 2004, a true and correct copy of the foregoing was sent by U.S. Mail, first class, postage prepaid, to the attorneys for the Plaintiff, H. Fred Kuhn, Jr., PO Drawer 507, Beaufort, SC 29901 and G. Richardson Wieters, P.C., Suite 300 Watersedge at Shelter Cove, 19 Shelter Cove Lane, PO Box 24158, Hilton Head, SC 29925.

Donald K. Black

000204

STATE OF SOUTH CROLINA
COUNTY OF BEAUFORT

DEBORAH J. CLEGG, as
Personal Representative of the
Estate of Allison T. Clegg,

Plaintiff,

v.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 02-CP-07-1159

CIVIL ACTION NO. 02-CP-1160

2004 JUN 16 AM 10:35

AFFIDAVIT OF DOUGLAS A.
LAMBRECHT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

State of South Carolina

ss

County of Beaufort

DOUGLAS A. LAMBRECHT, being of lawful age and first duly sworn upon
oath deposes and states as follows:

1. This Affidavit is given in support of the Motion for Summary Judgment filed on behalf of the Affiant.
2. Affiant is one of the Defendants herein and has personal knowledge of the following facts.
3. Affiant at all times relevant to these matters was a resident of Bluffton, South Carolina.

000205

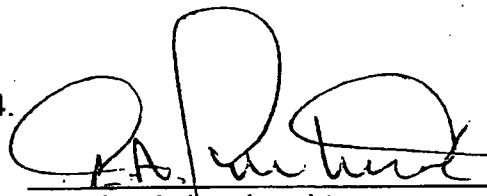
4. Affiant is the father of the Defendant Elliott M. Lambrecht, whose date of birth is June 19, 1982 and Defendant Anna C. Lambrecht, whose date of birth is September 30, 1985.
5. On the date of the accident in question in this litigation, January 9, 2002, Elliott was nineteen years of age and no longer residing with Affiant.
6. At all times relevant, Anna resided with her mother, Jan Horan, in Beaufort, South Carolina.
7. Elliott completed his formal education in May, 2001, and from and after May, 2001, was employed, lived at his own residence, and provided his own living.
8. From and after May, 2001, Affiant did not provide any financial support for Elliott, other than occasional gifts.
9. Affiant did not claim Elliott as a dependent on his federal or state income tax returns after 1999.
10. The vehicle, a Mazda, involved in the accident in question in this litigation was purchased by Elliott and titled in his name. Attached hereto as Exhibit A is a true and correct copy of the Certificate of Title for that automobile.
11. Affiant co-signed the loan for Elliott's vehicle as an accommodation in order to enable Elliott to obtain a better rate of interest.
12. The Mazda which Elliott purchased was a replacement for a previous vehicle, a Ford, Taurus, which was also purchased by Elliott and titled in his name.

000206

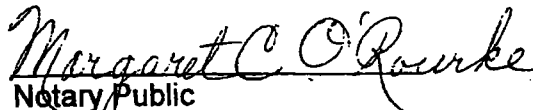
13. In November, 2001, the Mazda was delivered to Affiant's home from a repair shop where it remained parked until mid December, 2001.
14. Elliott was not driving the Mazda because his driver's license had been suspended and had requested that Affiant store the Mazda for him.
15. In mid December, 2001, Affiant delivered the keys to the Mazda to his daughter and Elliott's sister, Anna, as requested by Elliott so that Anna could use the Mazda.
16. Anna then drove the Mazda to her mother's home in Beaufort, South Carolina.
17. After the date in mid December, 2001, when Anna removed the Mazda from Affiant's home, Affiant never again was in possession of the Mazda, nor did Affiant have keys to or access to the Mazda.
18. At no time after the Mazda was removed from his residence was Affiant informed or did he discover from any source that Elliott had access to the Mazda or was intending to operate the Mazda.

FURTHER AFFIANT SAYETH NOT.

Dated: JUNE 8th, 2004.


Douglas A. Lambrecht

Subscribed and sworn to before me this 8th day of June, 2004.


Notary Public

My Commission Expires: July 9, 2007

MY COMMISSION EXPIRES JULY 9, 2007

Beaufort City, SC

000207

Certificate of Service

The undersigned hereby certifies that on the 15 day of June, 2004, a true and correct copy of the foregoing was sent by U.S. Mail, first class, postage prepaid, to the attorneys for the Plaintiff, H. Fred Kuhn, Jr., PO Drawer 507, Beaufort, SC 29901 and G. Richardson Wieters, P.C., Suite 300 Watersedge at Shelter Cove, 19 Shelter Cove Lane, PO Box 24158, Hilton Head, SC 29925.

Donald B. Black

CLERK OF COURT
JUN 16 2004
HILTON HEAD, S.C.

2004 JUN 16 AM 10:35

000208



STATE OF SOUTH CAROLINA
CERTIFICATE OF TITLE
OF A VEHICLE

VEHICLE ID NUMBER
1YVGE31D3R5215787

YEAR MAKE
1994 MAZD

BODY STYLE MODEL
2DR UML

WEIGHT NEW/USED TITLE NUMBER
030 USED 29614542

ODOMETER DATE ISSUED
91,308 * 10-05-2000

FULL NAME OF OWNER(S)
LAMBRECHT FILIOTT

VEHICLE BRAND(S)
*ACTUAL MILEAGE

HILTON HEAD SC 29926

FIRST LIENHOLDER
LIBERTY SAVING BANK
120W 2NT ST CONSUMER LOAN
DAYTON OH 45402

1ST LIEN RELEASED 1-23-02
Liberty Savings Bank, F.S.B. DATE
BY *James J. McLean*
AUTHORIZED AGENT

DATE OF LIEN 08-15-2000

THE SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY
THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE
DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH.

B. BOYKIN ROSE
DIRECTOR
DEPT. OF PUBLIC SAFETY

JIM HODGES
GOVERNOR

031391573

000209

Exhibit A

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CASE NO. 2002-CP-07-1159

DEBORAH J. CLEGG, as Personal)
Representative of The Estate of Allison)
T. Clegg,)

Plaintiff,)

v.)

NOTICE OF MOTION AND MOTION
TO DISMISS PURSUANT TO
RULE 12(b)(6), *SCRPC*

ELLIOTT M. LAMBRECHT,)
DOUGLAS A. LAMBRECHT,)
RHETT BARKER, JAN HORAN,)
and ANNA C. LAMBRECHT,)

Defendants.)

TO: G. RICHARDSON WIETERS, P.C., ATTORNEY FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that, on the tenth (10th) day after service hereof, or as soon thereafter as counsel can be heard, the Defendant, Anna C. Lambrecht, through her undersigned attorneys, will move before the presiding Judge of the Fourteenth Judicial Circuit in the Beaufort County Courthouse, Beaufort, South Carolina, for an Order dismissing the Plaintiff's Amended Complaint, pursuant to Rule 12 (b)(6), *SCRPC*, for failure to state facts sufficient to constitute a cause of action because the Amended Complaint alleges at paragraph 8 that Defendant Douglas A. Lambrecht is the "*de facto* owner of a 1994, two-door Mazda automobile . . ." Where there is a record title holder of a motor vehicle, there can be no other "*de facto*" ownership.

This Motion is based upon the fact that Plaintiff's Amended Complaint fails to state facts sufficient to constitute a cause of action against Defendant Anna C. Lambrecht.

In accordance with Rule 11 (a), *SCRPC*, counsel certifies that consultation with other counsel of record would serve no useful purpose.

This Motion is further based upon the applicable Statutory and Case Law of the State of South Carolina and upon the South Carolina Rules of Civil Procedure.

BETHEA JORDAN & GRIFFIN, P.A.

By: 

Stephen E. Carter
S.C. Bar No. 12859
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 785-2171
ATTORNEYS FOR DEFENDANT
ANNA C. LAMBRECHT

000210

Hilton Head Island, South Carolina
July 9, 2004

{333594.1} 17370-001

BETHEA, JORDAN
& GRIFFIN, P.A.
ATTORNEYS AND
COUNSELORS AT LAW

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

DEBORAH J. CLEGG, as
Personal Representative of
The Estate of Allison T. Clegg,)

Plaintiff,)

vs.)

ELLIOTT M. LAMBRECHT)
and DOUGLAS A. LAMBRECHT,)
RHETT BARKER, JAN HORAN,)
and ANNA C. LAMBRECHT,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 02-CP-07-1159

NOTICE OF MOTION AND MOTION
TO DISMISS PURSUANT TO
RULE 12(B)(6), SCRPC

TO: G. RICHARDSON WIETERS, P.C., ATTORNEY FOR PLAINTIFF

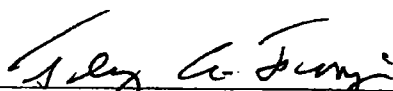
YOU WILL PLEASE TAKE NOTICE that, on the tenth (10th) day after service hereof, or as soon thereafter as counsel can be heard, the Defendant, Jan Horan, through her undersigned attorneys, will move before the presiding Judge of the Fourteenth Judicial Circuit in the Beaufort County Courthouse, Beaufort, South Carolina, for an Order dismissing the Plaintiff's amended Complaint, pursuant to Rule 12 (b)(c), SCRPC, for failure to state facts sufficient to constitute a cause of action because the Amended Complaint alleges at paragraph 8 that Defendant Douglas A. Lambrecht is the "*de facto* owner of a 1994, two-door Mazda automobile . . ." Where there is a record title holder of a motor vehicle, there can be no other "*de facto*" ownership. The driver of the automobile, Elliott M. Lambrecht, was the owner. Elliott M. Lambrecht was the emancipated adult son of Jan Horan and was not living with Jan Horan at the time of the accident. Jan Horan cannot be held liable under the undisputed facts.

000211

This Motion is based upon the fact that Plaintiff's Amended Complaint fails to state facts sufficient to constitute a cause of action against Defendant Jan Horan

This Motion is further based upon the applicable Statutory and Case Law of the State of South Carolina and upon the South Carolina Rules of Civil Procedure.

FINGER & ANDREWS, P.A.



Terry A. Finger
Attorney for Defendant Jan Horan
Northridge Professional Center
11 Palmetto Parkway, Suite 101
P. O. Box 24005
Hilton Head Island, SC 29925-4005
(843) 681-7000

Hilton Head Island, South Carolina
July 26, 2004

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
DEBORAH J. CLEGG, as Personal)
Representative of The Estate of)
Alison T. Clegg,)
)
Plaintiff,)
)
v.)
)
ELLIOTT M. LAMBRECHT,)
DOUGLAS A. LAMBRECHT,)
RHETT BARKER, JAN HORAN,)
And ANNA C. LAMBRECHT,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 02-CP-07-1159

DEFENDANT RHETT BARKER'S
MOTION FOR SUMMARY JUDGMENT

(Survival Action)

TO: G. RICHARDSON WIETERS, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, the Defendant, Rhett Barker, by and through his undersigned attorney, will move before the Presiding Judge of the Fourteenth Judicial Circuit for an Order granting the Defendant, Rhett Barker, Summary Judgment and dismissing the Amended Complaint of the Plaintiff against the Defendant, Rhett Barker, pursuant to South Carolina Rules of Civil Procedure, Rule 56, on the grounds that pleadings, sworn statements and depositions previously taken, or taken hereto, and any affidavits that may be served upon counsel prior to the hearing show that there is no genuine issue as to any material fact which would entitle the Plaintiff to a recovery against the Defendant, Rhett Barker, and therefore, the Defendant, Rhett Barker, is entitled to Summary Judgment as a matter of law.

000213

WHEREFORE, Defendant Rhett Barker, prays that the Court make and enter an Order granting Summary Judgment in his favor on the Amended Complaint, dismissing same, with prejudice, and awarding costs to the Defendant, Rhett Barker.

HARRELL LAW FIRM, P.A.

BY: William J. Thrower
John D. Harrell, Esquire
William J. Thrower, Esquire
2001 Harrell Square
Charleston, SC 29407
(843) 766-4700
Attorneys for the Defendant
Rhett Barker

Charleston, South Carolina
Dated: 11/22, 2004.

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING PLEADING
WAS MAILED TO ALL COUNSEL OF RECORD IN THIS PROCEEDING
THIS 22nd DAY OF November, 2004.

000214

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 02-CP-07-1159

DEBORAH J. CLEGG, as
Personal Representative of
the Estate of Allison T Clegg,

Plaintiff,

vs.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN
and ANNA C. LAMBRECHT,

Defendants.

) AMENDED COMPLAINT
) JURTY TRIAL DEMAND AS TO ALL
) CAUSES OF ACTION
) (SURVIVAL ACTION)
) (§ 15-5-90, S.C. CODE ANN.)
)
)
)
)
)
)
)

The Plaintiff, complaining of the Defendants, would respectfully show
unto this honorable Court as follows;

FOR A FIRST CAUSE OF ACTION

(Survival Action - § 15-5-90, S.C. Code Ann.)

1. Plaintiff, Deborah J. Clegg is the duly appointed Personal
Representative of the Estate of Allison T. Clegg. Letters Testamentary were
issued on or about March 15, 2002.

2. This action is brought pursuant to §15-5-90, et seq., S.C. Code
Ann. (1976), as amended.

3. On information and belief, the Defendant Elliott M. Lambrecht is a
citizen and resident of the County of Beaufort, State of South Carolina.

4. The Defendant Douglas A. Lambrecht is a citizen and resident of
the County of Beaufort, State of South Carolina and the father of Defendant
Elliott M. Lambrecht and Defendant Anna C. Lambrecht.

5. The Defendant, Jan Horan, is a citizen and resident of the County of Beaufort, State of South Carolina and the mother of Defendant Elliott M. Lambrecht and Defendant Anna C. Lambrecht.

6. The Defendant, Anna C. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina.

7. The Defendant, Rhett Barker, is, on information and belief, a citizen and resident of the County of Beaufort, State of South Carolina.

8. The Defendant, Douglas A. Lambrecht, was at all times mentioned herein, the *de facto* owner of a 1994 two-door Mazda automobile and controlled who operated such automobile and which automobile was at the time on the Defendant Douglas A. Lambrecht's insurance policy with USAA Insurance Company.

9. Defendant, Elliott M. Lambrecht's driver's license had, prior to January 9, 2002, been suspended and he was operating the automobile without a valid South Carolina driver's license.

10. On or prior to January 9, 2002, all of the Defendants knew, or should have known, that Defendant Elliott M. Lambrecht did not have a valid South Carolina driver's license and should not have been operating the Mazda automobile.

11. On information and belief, at the time of Plaintiff's decedent's death, she was a passenger in the automobile being unlawfully operated by the Defendant Elliott M. Lambrecht.

12. Several days prior to January 9, 2002, the Defendant Douglas A. Lambrecht, permitted and allowed the Defendant, his daughter, Anna C.

Lambrecht, to operate the automobile and to drive the automobile from Defendant Douglas A. Lambrecht's house on Hilton Head Island to Beaufort, South Carolina.

13. At all times, the Defendant Douglas A. Lambrecht, knew or should have known, that the vehicle was not insured, was not currently registered and had no valid license plate, and that the vehicle should not have been driven on the roads and highways in South Carolina.

14. Defendants Anna C. Lambrecht, Jan Horan and Rhett Barker, all knew, or should have known, that the vehicle should not have been operated on the public highways of the State of South Carolina as such vehicle was not insured, registered or otherwise properly licensed.

15. Upon information and belief the Defendant Douglas A. Lambrecht and the Defendant Jan Horan had a discussion with the respect to the use of the automobile by the Defendant Anna C. Lambrecht; that, further, upon information and belief, the Defendants Douglas A. Lambrecht and Jan Horan knew or should have known that the car was unregistered, that the tags had expired and that the car was not insured.

16. Upon information and belief, with the consent, approval and knowledge of the Defendants Douglas A. Lambrecht and Jan Horan permitted the automobile to be used by Defendant Anna C. Lambrecht that the Defendants Douglas A. Lambrecht, Jan Horan and Anna C. Lambrecht either knew, or should have known, that the car was unregistered, the tags had expired and that the vehicle was not insured.

17. That upon information and belief, the Defendant Jan C. Horan contacted the Defendant Douglas A. Lambrecht to have the car removed from the driveway of the Horan residence in Beaufort, South Carolina; that, further, upon information and belief, numerous requests were made by the Defendant Jan Horan to the Defendant Douglas A. Lambrecht and that upon information and belief as a result of such requests the Defendant Elliott M. Lambrecht in compliance upon information and belief with instructions from the Defendant Douglas A. Lambrecht and/or Jan Horan traveled with the aid and assistance of Defendant Rhett Barker to Beaufort for Elliott M. Lambrecht to drive the car and that further, on information and belief, the Defendants Douglas M. Lambrecht, Jan Horan, Anna C. Lambrecht and Rhett Barker permitted the Defendant to drive the Mazda automobile.

18. On January 9, 2002, the Defendant Rhett Barker, drove the Defendant Elliott M. Lambrecht from southern Beaufort County, either Hilton Head Island or Bluffton, South Carolina, to Beaufort, South Carolina, where Defendant Elliott M. Lambrecht obtained the keys to the vehicle, either from the Defendant Anna C. Lambrecht or the Defendant, Jan Horan, or the Defendant Rhett Barker.

19. At all times, the Defendants knew or should have known that Defendant Elliott M. Lambrecht was not properly licensed, that his license had been suspended and he should not have been operating the automobile.

20. Defendant Rhett Barker knew that the sole purpose in transporting Elliott M. Lambrecht to Beaufort was to obtain the automobile which Barker knew the Defendant Elliott M. Lambrecht was not properly licensed to operate

or drive and in so doing Defendant Rhett Barker and the other Defendants made possible and permitted the Defendant Elliott M. Lambrecht to drive the Mazda automobile.

21. On information and belief, prior to January 9, 2002, all the Defendants know, or should have known that Defendant Elliott M. Lambrecht had a history of speeding violations and license suspensions; the Defendants, jointly and severally, permitted and made possible the use by Defendant Elliott M. Lambrecht of the Mazda automobile or otherwise failed to prevent Defendant Elliott M. Lambrecht's use of the automobile.

22. Upon information and belief, the Defendant Rhett Barker was traveling close by, near and adjacent to the car being operated by the Defendant Elliott M. Lambrecht at a speed in excess of the posted speed limit with both vehicles racing or being driven in excess of the posted speed limit or otherwise being driven at speed grossly in excess of the posted speed limit in a reckless and dangerous manner. That such speeding combined with the negligence of the Defendants Elliott M. Lambrecht and the other Defendants causing the collision which resulted in the death of Plaintiff's decedent. Such actions by the Defendant Rhett Barker in racing and speeding with the Elliott M. Lambrecht was in violation of South Carolina Code §56-5-1590 and, upon information and belief, other statutory provisions related to speeding and reckless operation of a motor vehicle.

23. While Plaintiff's decedent was a passenger in the automobile being operated by Defendant Elliott M. Lambrecht, at approximately 9:15 p.m.

on January 9, 2002, the automobile struck a tree located off the paved roadway on Indigo Run Drive, causing the death of Plaintiff's decedent.

24. The Defendant Elliott M. Lambrecht was negligent, willful, wanton, grossly negligent and negligent *per se* in one or more of the following particulars, including, but not limited to, the following:

- a. Failure to maintain proper control of a vehicle;
- b. Operating a vehicle without a valid South Carolina driver's license;
- c. Operating a vehicle at excessive, high and dangerous speeds above the posted speed limit;
- d. Failure to maintain proper control;
- e. Failure to observe the posted speed limit; and
- f. Operating a vehicle that was not licensed or insured.

25. On information and belief, the Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht knew or should have known that Defendant Elliott M. Lambrecht would use the automobile in a manner so as to create an unreasonable risk of harm to others, including Plaintiff's decedent.

26. The Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht were negligent in entrusting, allowing, permitting and making possible the use of the automobile to the Defendant Elliott M. Lambrecht, either directly or indirectly, jointly and severally, when all the Defendants knew, or should have known, that Defendant Elliott M. Lambrecht should not be operating the vehicle and that Defendants Douglas A. Lambrecht,

Rhett Barker, Jan Horan and Anna C. Lambrecht were negligent, grossly negligent, willful, wanton and negligent *per se* in allowing Defendant Elliott M. Lambrecht or permitting and making it possible for Defendant Elliott M. Lambrecht to drive the automobile when Defendant Elliott M. Lambrecht was not authorized to do so, all in violation of the common law of this State and in violation of §56-1-480, S.C. Ann. (1976).

27. As a direct and proximate result of the Defendants' negligence, gross negligence, willfulness, wantonness and negligence *per se*, injury was caused to Plaintiff's decedent.

28. The negligence of the Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht, combined with the negligence of the Defendant Elliott M. Lambrecht and was the direct and proximate cause of the injuries and death of Plaintiff's decedent.

29. On information and belief, Plaintiff's decedent, prior to death, suffered and endured conscious pain and suffering, knowing that she had sustained serious injuries, or alternatively, that she was faced with life threatening injuries and was otherwise *in extremis*.

30. As a direct result and proximate cause of Defendant Elliott M. Lambrecht's negligence, willfulness, wantonness, gross negligence and negligence *per se* combined with the negligence, willfulness, wantonness, gross negligence and negligence *per se* of Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht, Plaintiff's decedent was injured and lost her life and the Plaintiff is informed and believes that the Estate is entitled to all actual and punitive damages in an amount to be determined by this

honorable Court from the Defendants jointly and severally.

FOR A SECOND CAUSE OF ACTION AS TO THE DEFENDANTS

DOUGLAS A. LAMBRECHT, RHETT BARKER, JAN HORAN

AND ANNA C. LAMBRECHT

(WRONGFUL DEATH – NEGLIGENT ENTRUSTMENT)

§56-1-480, S.C. CODE ANN.

31. The allegations contained in Paragraphs 1 through 30 of this Amended Complaint are realleged as fully as if repeated verbatim herein.

32. Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht knew, or should have known that the automobile would be operated by Defendant Elliott M. Lambrecht and, as such, these Defendants negligently permitted the use of the automobile by Defendant Elliott M. Lambrecht, either directly or indirectly, and failed to use proper safeguards to ensure that Elliott M. Lambrecht, who was an unlicensed driver, his license having been suspended, did not operate the automobile.

33. Defendant Douglas A. Lambrecht was the *de facto* owner of the automobile in which Plaintiff's decedent was killed, and, together with Defendants Jan Horan and Anna C. Lambrecht, controlled its use.

34. Defendants permitted Defendant Elliott M. Lambrecht to use the automobile and to engage in an unlawful and dangerous activity, to-wit: operating the automobile on roads and highways in Beaufort County, South Carolina, when the Defendants knew, or should have known, that Defendant Elliott M. Lambrecht had no valid driver's license and intended to or was likely to use the automobile in a manner which would create the unreasonable risk of

harm to others, including Plaintiff's decedent.

35. On information and belief, the Defendants knew or should have known that Defendant Elliott M. Lambrecht would have access to the automobile, the keys to the automobile, and the means and methods by which to use the automobile in a manner so as to create an unreasonable risk of harm to others, including Plaintiff's decedent.

36. The Defendants were negligent, willful, wanton and grossly negligent in entrusting the automobile to Defendant Elliott M. Lambrecht, either directly or indirectly, or permissively.

37. The negligence of the Defendants was the direct and proximate cause of the injuries and death of Plaintiff's decedent.

38. As a direct result and proximate cause of Defendants' negligent entrustment, Plaintiff's decedent sustained serious bodily injury which resulted in her death.

39. Plaintiff is informed and believes that the Estate is entitled to judgment against the Defendants, jointly and severally, for all actual and punitive damages in an amount to be determined by this honorable Court.

FOR A THIRD CAUSE OF ACTION

(Negligence)

40. The allegations contained in Paragraphs 1 through 39 of this Amended Complaint are realleged as fully as if repeated verbatim herein.

41. The Defendants failed to take actions sufficient to prevent the use of the automobile in which Plaintiff's decedent was a passenger at the time she was killed.

42. On information and belief, the Defendants knew, or should have known, of Defendant Elliott M. Lambrecht's propensities to drive automobiles in excess of the posted speed limits; knew or should have known, that his license had been suspended on two (2) occasions; and knew, or should have known that at the time of Plaintiff's decedent's death, Defendant Elliott M. Lambrecht had no valid South Carolina driver's license.

43. As to the *de facto* owner of the vehicle, the Defendant Douglas A. Lambrecht had a duty to make certain that only duly licensed and qualified drivers operated his automobile on the roads within Beaufort County. Defendants Jan Horan, Rhett Barker and Anna C. Lambrecht knew that the Defendant Elliott M. Lambrecht should not have been permitted to drive the automobile.

44. The Defendants failed to conform their conduct to a reasonable standard sufficient to protect others, and specifically, Plaintiff's decedent, from the unreasonable risk of harm.

45. The Defendants knew, or should have known, because of the previous traffic violations and disposition of the Defendant Elliott M. Lambrecht to operate a vehicle improperly and in excess of speed limits or while using or in possession of controlled substances, that the Defendant Elliott M. Lambrecht posed an unreasonable risk of harm to the public at large and specifically, to those who would come into contact with him or those who might be passengers in his automobile."

46. The Defendants knew, or should have known, that if Defendant Elliott M. Lambrecht operated the automobile controlled by the Defendant, he

posed a substantial risk of serious harm to others.

47. The Defendants were negligent, willful, wanton and grossly negligent in one or more of the following particulars including, but not limited to, the following:

- a. In failing to properly supervise Defendant Elliott M. Lambrecht insofar as such pertains to the use of his automobile;
- b. In failing to prevent the Defendant Elliott M. Lambrecht from operating the automobile without a valid South Carolina driver's license;
- c. In failing to take action to prevent the Defendant Elliott M. Lambrecht from obtaining the keys to the automobile and in otherwise preventing the automobile from being used by Defendant Elliott M. Lambrecht;
- d. In failing to impart to those that might be in temporary possession of the automobile to act so as to prevent Defendant Elliott M. Lambrecht from using the automobile;
- e. In failing to know the location of the automobile at all times;
- f. In failing to know who was operating the automobile at all times;
- g. In failing to properly act so as to prevent Defendant Elliott M. Lambrecht from operating the automobile; and
- h. In allowing and permitting Defendant Elliott M. Lambrecht to drive a vehicle under their control.

48. All of the foregoing was the direct and proximate result and cause of the Plaintiff's decedent's death.

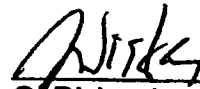
49. As a direct and proximate cause of Defendant Douglas A.

Lambrecht's negligence, Plaintiff's decedent sustained bodily injuries which resulted in her death.

50. Plaintiff is informed and believes that the Estate is entitled to judgment against the Defendants, jointly and severally, for all actual and punitive damages, all in an amount to be determined by this Honorable Court.

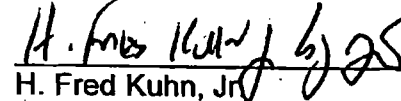
WHEREFORE, Plaintiff prays this honorable Court inquire into the matters set forth herein; that Plaintiff have judgment against the Defendants, jointly and severally, for all actual damages arising out of the wrongful death of Plaintiff's decedent; for all punitive damages in an amount to be determined by this honorable Court; for all costs and disbursements of this action; and for such other relief as this honorable Court deems just and proper.

G. RICHARDSON WIETERS, P.C.



G. Richardson Wieters
Post Office Box 7682
Hilton Head Island, SC 29938
Telephone: 843-341-7000
Facsimile: 843-341-7007
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MOSS, KUHN & FLEMING, PA



H. Fred Kuhn, Jr.
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Beaufort, SC 29901
Telephone: 843-524-3373
Facsimile: 843-524-1302

ATTORNEYS FOR PLAINTIFF

Dated this 10th day of August, 2006
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 02-CP-07-1160

DEBORAH J. CLEGG, as
Personal Representative of
the Estate of Allison T Clegg,

Plaintiff,

vs.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN
and ANNA C. LAMBRECHT,

Defendants.

) AMENDED COMPLAINT
) JURTY TRIAL DEMAND AS TO ALL
) CAUSES OF ACTION
) (WRONGFUL DEATH)
) (§ 15-51-10, S.C. CODE ANN.)

The Plaintiff, complaining of the Defendants, would respectfully show
unto this honorable Court as follows;

FOR A FIRST CAUSE OF ACTION

(WRONGFUL DEATH)

1. Plaintiff, Deborah J. Clegg is the duly appointed Personal Representative of the Estate of Allison T. Clegg. Letters Testamentary were issued on or about March 15, 2002.

2. This action is brought pursuant to §15-51-10, et seq., S.C. Code Ann. (1976), for the wrongful acts of the Defendants causing the death of Plaintiff's decedent.

3. On information and belief, the Defendant Elliott M. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina.

4. The Defendant Douglas A. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina and the father of Defendant Elliott M. Lambrecht and Defendant Anna C. Lambrecht.

5. The Defendant, Jan Horan, is a citizen and resident of the County of Beaufort, State of South Carolina and the mother of Defendant Elliott M. Lambrecht and Defendant Anna C. Lambrecht.

6. The Defendant, Anna C. Lambrecht is a citizen and resident of the County of Beaufort, State of South Carolina.

7. The Defendant, Rhett Barker, is, on information and belief, a citizen and resident of the County of Beaufort, State of South Carolina.

8. The Defendant, Douglas A. Lambrecht, was at all times mentioned herein, the *de facto* owner of a 1994 two-door Mazda automobile and controlled who operated such automobile and which automobile was at the time on the Defendant Douglas A. Lambrecht's insurance policy with USAA Insurance Company.

9. Defendant, Elliott M. Lambrecht's driver's license had, prior to January 9, 2002, been suspended and he was operating the automobile without a valid South Carolina driver's license.

10. On or prior to January 9, 2002, all of the Defendants knew, or should have known, that Defendant Elliott M. Lambrecht did not have a valid South Carolina driver's license and should not have been operating the Mazda automobile.

11. On information and belief, at the time of Plaintiff's decedent's death, she was a passenger in the automobile being unlawfully operated by the Defendant Elliott M. Lambrecht.

12. Several days prior to January 9, 2002, the Defendant Douglas A. Lambrecht, permitted and allowed the Defendant, his daughter, Anna C.

Lambrecht, to operate the automobile and to drive the automobile from Defendant Douglas A. Lambrecht's house on Hilton Head Island to Beaufort, South Carolina.

13. At all times, the Defendant Douglas A. Lambrecht, knew or should have known, that the vehicle was not insured, was not currently registered and had no valid license plate, and that the vehicle should not have been driven on the roads and highways in South Carolina.

14. Defendants Anna C. Lambrecht, Jan Horan and Rhett Barker, all knew, or should have known, that the vehicle should not have been operated on the public highways of the State of South Carolina as such vehicle was not insured, registered or otherwise properly licensed.

15. Upon information and belief the Defendant Douglas A. Lambrecht and the Defendant Jan Horan had a discussion with the respect to the use of the automobile by the Defendant Anna C. Lambrecht; that, further, upon information and belief, the Defendants Douglas A. Lambrecht and Jan Horan knew or should have known that the car was unregistered, that the tags had expired and that the car was not insured.

16. Upon information and belief, with the consent, approval and knowledge of the Defendants Douglas A. Lambrecht and Jan Horan permitted the automobile to be used by Defendant Anna C. Lambrecht that the Defendants Douglas A. Lambrecht, Jan Horan and Anna C. Lambrecht knew or should have known, that the car was unregistered, the tags had expired and that the vehicle was not insured.

17. That upon information and belief, the Defendant Jan C. Horan contacted the Defendant Douglas A. Lambrecht to have the car removed from the driveway of the Horan residence in Beaufort, South Carolina; that, further, upon information and belief, numerous requests were made by the Defendant Jan Horan to the Defendant Douglas A. Lambrecht and that upon information and belief as a result of such requests the Defendant Elliott M. Lambrecht in compliance upon information and belief with instructions from the Defendant Douglas A. Lambrecht and/or Jan Horan traveled with the aid and assistance of Defendant Rhett Barker to Beaufort for Defendant Elliott M. Lambrecht to drive the car and that further, on information and belief Defendants Douglas A. Lambrecht, Jan Horan, Anna C. Lambrecht and Rhett Barker permitted the Defendant Elliott M. Lambrecht to drive the Mazda automobile.

18. On January 9, 2002, the Defendant Rhett Barker, drove the Defendant Elliott M. Lambrecht from southern Beaufort County, either Hilton Head Island or Bluffton, South Carolina, to Beaufort, South Carolina, where Defendant Elliott M. Lambrecht obtained the keys to the vehicle, either from the Defendant Anna C. Lambrecht or the Defendant, Jan Horan, or the Defendant Rhett Barker.

19. At all times, the Defendants knew or should have known that Defendant Elliott M. Lambrecht was not properly licensed, that his license had been suspended and he should not have been operating the automobile.

20. Defendant Rhett Barker knew that the sole purpose in transporting Elliott M. Lambrecht to Beaufort was to obtain the automobile which Barker knew the Defendant Elliott M. Lambrecht was not properly licensed to operate

or drive and in so doing Defendant Rhett Barker and the other Defendants made possible and permitted the Defendant Elliott M. Lambrecht to drive the Mazda automobile.

21. On information and belief, prior to January 9, 2002, all the Defendants know, or should have known that Defendant Elliott M. Lambrecht had a history of speeding violations and license suspensions; the Defendants, jointly and severally, permitted and made possible the use by Defendant Elliott M. Lambrecht of the Mazda automobile or otherwise failed to prevent Defendant Elliott M. Lambrecht's use of the automobile.

22. Upon information and belief, the Defendant Rhett Barker was traveling close by, near and adjacent to the car being operated by the Defendant Elliott M. Lambrecht at a speed in excess of the posted speed limit with both vehicles racing or being driven in excess of the posted speed limit or otherwise being driven at speed grossly in excess of the posted speed limit in a reckless and dangerous manner. That such speeding combined with the negligence of the Defendants Elliott M. Lambrecht and the other Defendants causing the collision which resulted in the death of Plaintiff's decedent. Such actions by the Defendant Rhett Barker in racing and speeding with the Elliott M. Lambrecht was in violation of South Carolina Code §56-5-1590 and, upon information and belief, other statutory provisions related to speeding and reckless operation of a motor vehicle.

23. While Plaintiff's decedent was a passenger in the automobile being operated by Defendant Elliott M. Lambrecht, at approximately 9:15 p.m.

on January 9, 2002, the automobile struck a tree located off the paved roadway on Indigo Run Drive, causing the death of Plaintiff's decedent.

24. The Defendant Elliott M. Lambrecht was negligent, willful, wanton, grossly negligent and negligent *per se* in one or more of the following particulars, including, but not limited to, the following:

- a. Failure to maintain proper control of a vehicle;
- b. Operating a vehicle without a valid South Carolina driver's license;
- c. Operating a vehicle at excessive, high and dangerous speeds above the posted speed limit;
- d. Failure to maintain proper control;
- e. Failure to observe the posted speed limit; and
- f. Operating a vehicle that was not licensed or insured.

25. On information and belief, the Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht knew or should have known that Defendant Elliott M. Lambrecht would use the automobile in a manner so as to create an unreasonable risk of harm to others, including Plaintiff's decedent.

26. The Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht were negligent in entrusting, allowing, permitting and making possible the use of the automobile to the Defendant Elliott M. Lambrecht, either directly or indirectly, jointly and severally, when all the Defendants knew, or should have known, that Defendant Elliott M. Lambrecht should not be operating the vehicle and that Defendants Douglas A. Lambrecht,

Rhett Barker, Jan Horan and Anna C. Lambrecht were negligent, grossly negligent, willful, wanton and negligent *per se* in allowing Defendant Elliott M. Lambrecht or permitting and making possible for Defendant Elliott M. Lambrecht to drive the automobile when Defendant Elliott M. Lambrecht was not authorized to do so, all in violation of the common law of this State and in violation of §56-1-480, S.C. Ann. (1976).

27. As a direct and proximate result of the Defendants' negligence, gross negligence, willfulness, wantonness and negligence *per se*, injury was caused to Plaintiff's decedent.

28. The negligence of the Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht, combined with the negligence of the Defendant Elliott M. Lambrecht and was the direct and proximate cause of the injuries and death of Plaintiff's decedent.

29. As a direct result and proximate cause of Defendant Elliott M. Lambrecht's negligence, willfulness, wantonness, gross negligence and negligence *per se* combined with the negligence, willfulness, wantonness, gross negligence and negligence *per se* of Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht, Plaintiff's decedent was injured and lost her life and the Plaintiff is informed and believes that the Estate is entitled to all actual and punitive damages in an amount to be determined by this honorable Court from the Defendants jointly and severally.

30. The Plaintiff, on behalf of the beneficiaries of the Estate of Allison T. Clegg, seek pecuniary loss, funeral expenses as set forth in §15-5-100, S.C. Code Ann (1976), damages for mental shock and suffering, wounded feelings,

grief, sorrow, loss of companionship, and the deprivation of the use and comfort of decedent's society, including her experience, knowledge and judgments.

FOR A SECOND CAUSE OF ACTION AS TO THE DEFENDANTS

DOUGLAS A. LAMBRECHT, RHETT BARKER, JAN HORAN

AND ANNA C. LAMBRECHT

(WRONGFUL DEATH – NEGLIGENT ENTRUSTMENT)

§56-1-480, S.C. CODE ANN.

31. The allegations contained in Paragraphs 1 through 30 of this Amended Complaint are realleged as fully as if repeated verbatim herein.

32. Defendants Douglas A. Lambrecht, Rhett Barker, Jan Horan and Anna C. Lambrecht knew, or should have known that the automobile would be operated by Defendant Elliott M. Lambrecht and, as such, these Defendants negligently permitted the use of the automobile by Defendant Elliott M. Lambrecht, either directly or indirectly, and failed to use proper safeguards to ensure that Elliott M. Lambrecht, who was an unlicensed driver, his license having been suspended, did not operate the automobile.

33. Defendant Douglas A. Lambrecht was the *de facto* owner of the automobile in which Plaintiff's decedent was killed, and, together with Defendants Jan Horan and Anna C. Lambrecht, controlled its use.

34. Defendants permitted Defendant Elliott M. Lambrecht to use the automobile and to engage in an unlawful and dangerous activity, to-wit: operating the automobile on roads and highways in Beaufort County, South Carolina, when the Defendants knew, or should have known, that Defendant

Elliott M. Lambrecht had no valid driver's license and intended to or was likely to use the automobile in a manner which would create the unreasonable risk of harm to others, including Plaintiff's decedent.

35. On information and belief, the Defendants knew or should have known that Defendant Elliott M. Lambrecht would have access to the automobile, the keys to the automobile, and the means and methods by which to use the automobile in a manner so as to create an unreasonable risk of harm to others, including Plaintiff's decedent.

36. The Defendants were negligent, willful, wanton and grossly negligent in entrusting the automobile to Defendant Elliott M. Lambrecht, either directly or indirectly, or permissively.

37. The negligence of the Defendants was the direct and proximate cause of the injuries and death of Plaintiff's decedent.

38. As a direct result and proximate cause of Defendants' negligent entrustment, Plaintiff's decedent sustained serious bodily injury which resulted in her death.

39. Plaintiff is informed and believes that the Estate is entitled to judgment against the Defendants, jointly and severally, for all actual and punitive damages in an amount to be determined by this honorable Court.

FOR A THIRD CAUSE OF ACTION

(Negligence)

40. The allegations contained in Paragraphs 1 through 39 of this Amended Complaint are realleged as fully as if repeated verbatim herein.

41. The Defendants failed to take actions sufficient to prevent the use

of the automobile in which Plaintiff's decedent was a passenger at the time she was killed.

42. On information and belief, the Defendants knew, or should have known, of Defendant Elliott M. Lambrecht's propensities to drive automobiles in excess of the posted speed limits; knew or should have known, that his license had been suspended on two (2) occasions; and knew, or should have known that at the time of Plaintiff's decedent's death, Defendant Elliott M. Lambrecht had no valid South Carolina driver's license.

43. As to the *de facto* owner of the vehicle, the Defendant Douglas A. Lambrecht had a duty to make certain that only duly licensed and qualified drivers operated his automobile on the roads within Beaufort County. Defendants Jan Horan, Rhett Barker and Anna C. Lambrecht knew that the Defendant Elliott M. Lambrecht should not have been permitted to drive the automobile.

44. The Defendants failed to conform their conduct to a reasonable standard sufficient to protect others, and specifically, Plaintiff's decedent, from the unreasonable risk of harm.

45. The Defendants knew, or should have known, because of the previous traffic violations and disposition of the Defendant Elliott M. Lambrecht to operate a vehicle improperly and in excess of speed limits or while using or in possession of controlled substances, that the Defendant Elliott M. Lambrecht posed an unreasonable risk of harm to the public at large and specifically, to those who would come into contact with him or those who might be passengers in his automobile.

46. The Defendants knew, or should have known, that if the Defendant Elliott M. Lambrecht operated the automobile controlled by the Defendant, he posed a substantial risk of serious harm to others.

47. The Defendants were negligent, willful, wanton and grossly negligent in one or more of the following particulars including, but not limited to, the following:

- a. In failing to properly supervise Defendant Elliott M. Lambrecht insofar as such pertains to the use of his automobile;
- b. In failing to prevent the Defendant Elliott M. Lambrecht from operating the automobile without a valid South Carolina driver's license;
- c. In failing to take action to prevent the Defendant Elliott M. Lambrecht from obtaining the keys to the automobile and in otherwise preventing the automobile from being used by Defendant Elliott M. Lambrecht;
- d. In failing to impart to those that might be in temporary possession of the automobile to act so as to prevent Defendant Elliott M. Lambrecht from using the automobile;
- e. In failing to know the location of the automobile at all times;
- f. In failing to know who was operating the automobile at all times;
- g. In failing to properly act so as to prevent Defendant Elliott M. Lambrecht from operating the automobile; and
- h. In allowing and permitting Defendant Elliott M. Lambrecht to drive a vehicle under their control.

48. All of the foregoing was the direct and proximate result and cause

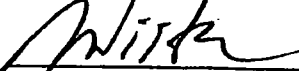
of the Plaintiff's decedent's death.

49. As a direct and proximate cause of Defendant Douglas A. Lambrecht's negligence, Plaintiff's decedent sustained serious bodily injuries which resulted in her death.

50. Plaintiff is informed and believes that the Estate is entitled to judgment against the Defendants, jointly and severally, for all actual and punitive damages, all in an amount to be determined by this Honorable Court.

WHEREFORE, Plaintiff prays this honorable Court inquire into the matters set forth herein; that Plaintiff have judgment against the Defendants, jointly and severally, for all actual damages arising out of the wrongful death of Plaintiff's decedent; for all punitive damages in an amount to be determined by this honorable Court; for all costs and disbursements of this action; and for such other relief as this honorable Court deems just and proper.

G. RICHARDSON WIETERS, P.C.



G. Richardson Wieters
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H. Fred Kuhn, Jr.
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Beaufort, SC 29901
Telephone: 843-524-3373
Facsimile: 843-524-1302

ATTORNEYS FOR PLAINTIFF

Dated this 10th day of August, 2006
Hilton Head Island, South Carolina

STATE OF SOUTH CROlina
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

DEBORAH J. CLEGG, as
Personal Representative of the
Estate of Allison T. Clegg,

Plaintiff,

v.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants

CIVIL ACTION NO. 02-CP-07-1159

ANSWER TO SECOND
AMENDED COMPLAINT

06 AUG 23 PM 2:37
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

COMES NOW the Defendant, Douglas A. Lambrecht, and for his Answer to the Second Amended Complaint served August 10, 2006, admits, denies, and alleges as follows:

1. Admits upon information and belief the allegations contained in paragraph 1.
2. Admits the allegations contained in paragraph 2.
3. Denies the allegations contained in paragraph 3.
4. Admits the allegations contained in paragraph 4.
5. Admits the allegations contained in paragraph 5.
6. Denies the allegations contained in paragraph 6.

000239

7. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 7, and, therefore, denies same.
8. Denies the allegations contained in paragraph 8.
9. Admits that Defendant Elliott M. Lambrecht's driver's license had, prior to January 9, 2002, been suspended and denies the remainder of the allegations contained in paragraph 9.
10. Admits that on or prior to January 9, 2002, Defendant knew that Defendant Elliot M. Lambrecht did not have a valid South Carolina driver's license as alleged in paragraph 10 and denies or is with out information sufficient to form a belief as to the truth or falsity of the of the remainder of the allegations contained in paragraph 10, and, therefore, denies same.
11. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 11, and, therefore, denies same.
12. Denies the allegations contained in paragraph 12 of the Amended Complaint.
13. Denies the allegations contained in paragraph 13.
14. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 14 and, therefore, denies same.
15. Admits that there was a discussion between Defendant and Defendant Jan Horan concerning use of the automobile which belonged to Defendant Elliott Lambrecht, but denies the balance of the allegations contained in paragraph 15.

000240

16. Admits that Defendant knew that Defendant Anna Lambrecht had been given permission by Defendant Elliott Lambrecht to use the automobile which belonged to Defendant Elliott Lambrecht, but denies the balance of the allegations contained in paragraph 16.
17. Denies the allegations contained in paragraph 17.
18. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 18, and, therefore, denies same.
19. Admits that Defendant knew that Defendant Elliott Lambrecht's driver's license had been suspended but denies the balance of the allegations contained in paragraph 19.
20. Denies that Defendant "made possible and permitted" Defendant Elliott Lambrecht to drive the automobile owned by Defendant Elliott Lambrecht and is without information sufficient to form a belief of the truth or falsity of the balance of the allegations contained in paragraph 20 and, therefore, denies same.
21. Denies the allegations contained in paragraph 21..
22. Denies that Defendant was negligent as alleged in paragraph 22 and is without information sufficient to form a belief as to the truth or falsity of the balance of the allegations contained in paragraph 22 and, therefore, denies same.
23. Admits the allegations contained in paragraph 23.
24. Denies upon information and belief the allegations contained in paragraph 24.

000241

25. Denies the allegations contained in paragraph 25.
26. Denies the allegations contained in paragraph 26.
27. Denies the allegations contained in paragraph 27.
28. Denies the allegations contained in paragraph 28.
29. Denies the allegations contained in paragraph 29.
30. The allegations contained in paragraph 30 do not require a response from this Defendant.
31. The allegations contained in paragraph 31 do not require a response from this Defendant.
32. Denies the allegations contained in paragraph 32.
33. Denies the allegations contained in paragraph 33.
34. Denies the allegations in paragraph 34.
35. Denies the allegations contained in paragraph 35.
36. Denies the allegations contained in paragraph 36.
37. Denies the allegations contained in paragraph 37.
38. Denies the allegations contained in paragraph 38.
39. Denies the allegations contained in paragraph 39.
40. The allegations contained in paragraph 40 do not require a response from this Defendant.
41. Denies the allegations contained in paragraph 41.
42. Denies the allegations contained in paragraph 42.
43. Denies the allegations contained in paragraph 43.
44. Denies the allegations contained in paragraph 44.

000242

45. Denies the allegations contained in paragraph 45.
46. Denies the allegations contained in paragraph 46.
47. Denies the allegations contained in paragraph 47.
48. Denies the allegations contained in paragraph 48.
49. Denies the allegations contained in paragraph 49.
50. Denies the allegations contained in paragraph 50.
51. Denies each and every allegation contained in the Second Amended Complaint unless specifically admitted or unless such allegation constitutes an admission against the interests of Plaintiff.
52. Alleges that the Second Amended Complaint fails to state facts sufficient to constitute a cause of action against this Defendant.
53. Alleges that no act or failure to act of this Defendant was the proximate cause of the death of Plaintiff's decedent.
54. Alleges that the doctrines of assumption of the risk and contributory negligence operate to bar or reduce any recovery by the Plaintiff.

WHEREFORE, having fully answered, Defendant prays the Court make and enter an Order dismissing the Second Amended Complaint, in its entirety, with prejudice, and that Defendant have and recover his costs herein expended.

Dated: August 22, 2006.

000243

DOUGLAS A. LAMBRECHT, Defendant

By: 
John E. North, Jr.
Pamela K. Black
NORTH & BLACK, PC
1103 Bay Street
Beaufort, SC 29902
(843) 575-0800 (tel)
(843) 575-0900 (fax)
north@northblack.com (email)

Certificate of Service

The undersigned hereby certifies that on the 22 day of August, 2008, a true and correct copy of the foregoing was sent by U.S. Mail, first class, postage prepaid, to all counsel of record: G. Richardson Wieters, P.C., PO Box 3682, Hilton Head, SC 29925, Hilton Head, SC 29925, H. Fred Kuhn, Jr., PO Drawer 507, Beaufort, SC 29901, Terry A. Finger, 11 Palmetto Parkway, Suite 1019, PO Box 24005, Hilton Head, SC 29925, Stephen E. Carter, Bethea, Jordan & Giffing P.A., PO Drawer 3, Hilton Head, SC 29938, and William J. Thrower, 2000 Sam Rittenburg Blvd - Suite 2001, Charleston, SC 29407.



000244

STATE OF SOUTH CROlina
COUNTY OF BEAUFORT

DEBORAH J. CLEGG, as
Personal Representative of the
Estate of Allison T. Clegg,

Plaintiff,

v.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 02-CP-07-1160

ANSWER TO SECOND
AMENDED COMPLAINT

06 AUG 23 PM 2:38
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

COMES NOW the Defendant, Douglas A. Lambrecht, and for his Answer
to the Second Amended Complaint served August 10, 2006, admits, denies, and
alleges as follows:

1. Admits upon information and belief the allegations contained in paragraph
1.
2. Admits the allegations contained in paragraph 2.
3. Denies the allegations contained in paragraph 3.
4. Admits the allegations contained in paragraph 4.
5. Admits the allegations contained in paragraph 5.
6. Denies the allegations contained in paragraph 6.

000245

7. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 7, and, therefore, denies same.
8. Denies the allegations contained in paragraph 8.
9. Admits that Defendant Elliott M. Lambrecht's driver's license had, prior to January 9, 2002, been suspended and denies the remainder of the allegations contained in paragraph 9.
10. Admits that on or prior to January 9, 2002, Defendant knew that Defendant Elliot M. Lambrecht did not have a valid South Carolina driver's license as alleged in paragraph 10 and denies or is with out information sufficient to form a belief as to the truth or falsity of the of the remainder of the allegations contained in paragraph 10, and, therefore, denies same.
11. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 11, and, therefore, denies same.
12. Denies the allegations contained in paragraph 12 of the Amended Complaint.
13. Denies the allegations contained in paragraph 13.
14. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 14 and, therefore, denies same.
15. Admits that there was a discussion between Defendant and Defendant Jan Horan concerning use of the automobile which belonged to Defendant Elliott Lambrecht, but denies the balance of the allegations contained in paragraph 15.

000246

16. Admits that Defendant knew that Defendant Anna Lambrecht had been given permission by Defendant Elliott Lambrecht to use the automobile which belonged to Defendant Elliott Lambrecht, but denies the balance of the allegations contained in paragraph 16.
17. Denies the allegations contained in paragraph 17.
18. Is without information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 18, and, therefore, denies same.
19. Admits that Defendant knew that Defendant Elliott Lambrecht's driver's license had been suspended but denies the balance of the allegations contained in paragraph 19.
20. Denies that Defendant "made possible and permitted" Defendant Elliott Lambrecht to drive the automobile owned by Defendant Elliott Lambrecht and is without information sufficient to form a belief of the truth or falsity of the balance of the allegations contained in paragraph 20 and, therefore, denies same.
21. Denies the allegations contained in paragraph 21..
22. Denies that Defendant was negligent as alleged in paragraph 22 and is without information sufficient to form a belief as to the truth or falsity of the balance of the allegations contained in paragraph 22 and, therefore, denies same.
23. Admits the allegations contained in paragraph 23.
24. Denies upon information and belief the allegations contained in paragraph 24.

000247

25. Denies the allegations contained in paragraph 25.
26. Denies the allegations contained in paragraph 26.
27. Denies the allegations contained in paragraph 27.
28. Denies the allegations contained in paragraph 28.
29. Denies the allegations contained in paragraph 29.
30. The allegations contained in paragraph 30 do not require a response from this Defendant.
31. The allegations contained in paragraph 31 do not require a response from this Defendant.
32. Denies the allegations contained in paragraph 32.
33. Denies the allegations contained in paragraph 33.
34. Denies the allegations in paragraph 34.
35. Denies the allegations contained in paragraph 35.
36. Denies the allegations contained in paragraph 36.
37. Denies the allegations contained in paragraph 37.
38. Denies the allegations contained in paragraph 38.
39. Denies the allegations contained in paragraph 39.
40. The allegations contained in paragraph 40 do not require a response from this Defendant.
41. Denies the allegations contained in paragraph 41.
42. Denies the allegations contained in paragraph 42.
43. Denies the allegations contained in paragraph 43.
44. Denies the allegations contained in paragraph 44.

000248

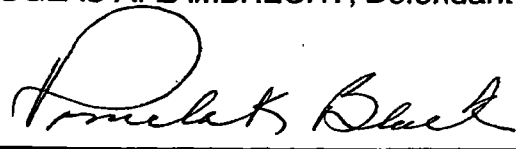
45. Denies the allegations contained in paragraph 45.
46. Denies the allegations contained in paragraph 46.
47. Denies the allegations contained in paragraph 47.
48. Denies the allegations contained in paragraph 48.
49. Denies the allegations contained in paragraph 49.
50. Denies the allegations contained in paragraph 50.
51. Denies each and every allegation contained in the Second Amended Complaint unless specifically admitted or unless such allegation constitutes an admission against the interests of Plaintiff.
52. Alleges that the Second Amended Complaint fails to state facts sufficient to constitute a cause of action against this Defendant.
53. Alleges that no act or failure to act of this Defendant was the proximate cause of the death of Plaintiff's decedent.
54. Alleges that the doctrines of assumption of the risk and contributory negligence operate to bar or reduce any recovery by the Plaintiff.

WHEREFORE, having fully answered, Defendant prays the Court make and enter an Order dismissing the Second Amended Complaint, in its entirety, with prejudice, and that Defendant have and recover his costs herein expended.

Dated August 22, 2006.

000249

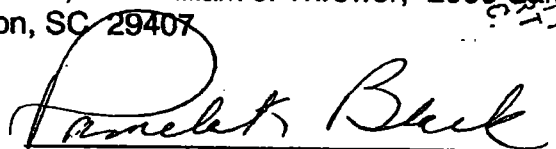
DOUGLAS A. LAMBRECHT, Defendant

By: 

John E. North, Jr.
Pamela K. Black
NORTH & BLACK, PC
1103 Bay Street
Beaufort, SC 29902
(843) 575-0800 (tel)
(843) 575-0900 (fax)
north@northblack.com (email)

Certificate of Service

The undersigned hereby certifies that on the 22 day of August, 2006, a true and correct copy of the foregoing was sent by U.S. Mail, first class, postage prepaid, to all counsel of record: G. Richardson Wleters, P.C., PO Box 2582, Hilton Head, SC 29925, Hilton Head, SC 29925, H. Fred Kuhn, Jr., PO Drawer 507, Beaufort, SC 29901, Terry A. Finger, 11 Palmetto Parkway, Suite 1040, PO Box 24005, Hilton Head, SC 29925, Stephen E. Carter, Bethea, Jordan & Griffin, P.A., PO Drawer 3, Hilton Head, SC 29938, and William J. Thrower, 2000 Sam Rittenburg Blvd – Suite 2001, Charleston, SC 29407.



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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CASE NOS: 06-CP-07-1125
06-CP-07-1126

DEBORAH J. CLEGG, a Personal
Representative of The Estate of
Alison T. Clegg,

Plaintiff,

vs.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants.

PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN OPPOSITION
TO DOUGLAS A. LAMBRECHT'S
MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE ROGER YOUNG:

At the conclusion of a hearing held in this matter in the Beaufort County Courthouse on September 11, 2006, the Plaintiff was given the opportunity to submit a short supplemental memorandum in opposition to the motion of the Defendant Douglas A. Lambrecht seeking summary judgment. The Plaintiff accordingly respectfully submits this Memorandum.

A. SUMMARY JUDGMENT STANDARD

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

Under Rule 56(c), SCRCP, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of

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law. See also, *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Peterson v. West American Insurance Company*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003).

In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the nonmoving party. *Manning v. Quinn*, 294 S.C. 383, ___, 365 S.E.2d 24, ___ (1988). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Redwend Limited Partnership v. Edwards*, 354 S.C. 459, 468, 581 S.E.2d 496, 501 (Ct. App. 2003). Similarly, "summary judgment is inappropriate when further development of the facts is desirable to clarify the application of the law." *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct. App. 1989).

Numerous South Carolina cases point out that summary judgment is a "drastic remedy" which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Schmidt v. Courtney*, 357 S.C. 310, 318, 592 S.E.2d 326, 331 (Ct. App. 2004).

The case currently before the Court is particularly inappropriate for resolution by summary judgment, inasmuch as it involves issues of negligence, foreseeability, and

proximate cause. In *Schmidt v. Courtney*, supra., the South Carolina Court of Appeals stated:

Because this is a negligence claim, it is important to note that, generally, negligence claims are not susceptible of summary adjudication because of the many questions normally present in such cases concerning the reasonableness of a party's conduct, foreseeability, and proximate cause.

Schmidt v. Courtney, supra, 357 S.C. at 323, 592 S.E.2d at 333. Citing *Folkens v. Hunt*, 290 S.C. 194, 199, 348 S.E.2d 839, 842 (Ct. App. 1986).

B. OWNERSHIP OR CONTROL

The Defendant Douglas Lambrecht asserts that there is no genuine issue of material fact as to the issue of whether he exercised any ownership or control over the subject vehicle, a 1994 Mazda. This issue is crucial to his summary judgment motion, because of the following provision of the South Carolina Code of Laws:

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized to do so by this article or in violation of any of the provisions of this article.

S.C. Code Ann. §56-1-480 (1976 and as amended)(emphasis added). Douglas Lambrecht asserts that there is no genuine issue of material fact because the Court's inquiry into this issue should begin and end with the simple fact that, when purchased, the Mazda automobile was titled in the name of his son, Elliott.

It is respectfully submitted that this one simple fact of how title was originally held is not dispositive of the issue. The statute expressly does not only apply to a vehicle owner, but to anyone that has a vehicle "under his control." *Id.*

The record in this case contains ample evidence that Douglas Lambrecht not only

had control over the Mazda, but even held himself out to be the true owner.

The evidence in the record which tends to indicate that Douglas Lambrecht had control over the Mazda automobile can be summarized as follows:

1. Douglas Lambrecht had physical control over the vehicle itself, as it was normally kept at his house. Douglas Lambrecht Deposition, pg. 33, lines 8 - 17.
2. Douglas Lambrecht had the keys to the vehicle. *Id.*, pg. 20, lines 12 - 15.
3. The Mazda was insured on Douglas Lambrecht's insurance policy with USAA. *Id.*, pg. 11, lines 15 - 18. On that policy Douglas' son Elliott was identified not as the owner, but simply as an "operator." *Id.*, pg. 11, lines 19 - 20.
4. The question naturally arises, how did Douglas Lambrecht manage to insure the Mazda on his policy of insurance with USAA? The answer is simple, Douglas Lambrecht represented to USAA that he was, in fact, the true owner of the Mazda automobile. Deposition of Elliott Lambrecht, pg. 44, line 14 to pg. 45, line 13, and Plaintiff's Exhibit 11.
5. On or around August 20, 2001 (about four months before the fatal wreck which is the subject of this lawsuit, and well after the Mazda was titled in the name of Elliott) as a result of the Mazda being deemed a total loss because of a wreck, USAA sold the vehicle to Douglas Lambrecht as salvage for \$500.00. Elliott Lambrecht Deposition, Plaintiff's Exhibit 11.
6. Not only did Douglas Lambrecht purchase the vehicle from USAA for its agreed upon salvage value when it was involved in the prior wreck, but the check from USAA representing the total loss of the vehicle was made payable to Douglas Lambrecht. Douglas Lambrecht Deposition, pg. 16, lines 13 - 20. Douglas' son, Elliott, never even

knew that the Mazda had been totaled, that his father had received an insurance check, or that his father had purchased the salvage value. Elliott Lambrecht Deposition, pg. 45, line 2 to pg. 46, line 19.

7. If, as Douglas now claims, this Mazda was Elliott's car, then you would think that when Anna (Elliott's sister) asked to borrow the car shortly before the wreck which is the subject of this lawsuit occurred, Elliott would have called his father and simply told him that Anna was coming to get the car, instead, Douglas Lambrecht testified that "he (Elliott) asked me (Douglas) to allow her (Anna) to pick the car up." Douglas Lambrecht Deposition, pg. 36, lines 6 - 9. (Emphasis added).

8. After the fatal wreck which is the subject of this lawsuit occurred, it was Douglas Lambrecht who paid off the outstanding loan on the vehicle. *Id.*, pg. 104, lines 14 - 15.

9. In a recorded interview with USAA immediately following the fatal wreck which is the subject of this lawsuit, Douglas Lambrecht was asked who was the "primary driver" of the Mazda automobile. Douglas Lambrecht replied that there was no primary driver for this car, and explained in pertinent part:

We considered it to be kind of a household car we have a couple of teenagers¹ and occasionally one or the other might have had occasion to use that car I might have had in fact I - I drove it a couple of times just to make sure that the engine stayed fresh and to check out its mechan . . . (tape cut off had to be turned over on second side) in fact the car was not driven a lot it was driven a couple of times on an occasional basis by what I would deem to be occasional drivers.

Douglas Lambrecht Deposition, Plaintiff's Exhibit 13, pg. DAL 40 (emphasis added).

¹Mr. Lambrecht had remarried following his divorce from Elliott and Anna's mother, and his new wife had two (2) teenage children who were residing with him at the time.

10. Finally, Douglas Lambrecht testified that the only reason that the Mazda was titled in Elliott's name is because "he (Elliott) was anxious to establish credit in his own name." Douglas Lambrecht Deposition, pg. 121, lines 18 - 19.

There is accordingly ample evidence in the record which tends to show that Douglas Lambrecht had control of the Mazda vehicle and, by the time of the wreck which led to this lawsuit, was the true owner of the vehicle.

C. MEMBER OF HOUSEHOLD

In support of his request for summary judgment, Douglas Lambrecht asserts that it is undisputed that his son, Elliott, had moved out of the house and had been living on his own for many years prior to the time of the wreck. Unfortunately for Douglas Lambrecht, the only evidence which tends to support this assertion are the conclusory statements to this effect in the affidavits submitted in support of his summary judgment motion.

The record in this case is replete with evidence that at the time of the fatal wreck giving rise to this lawsuit Elliott Lambrecht was living with his father and was a member of his father's household. This evidence can be summarized as follows:

1. The night of the fatal wreck, Elliott told the police officer that his address was 22 Spartina Point Drive. Douglas Lambrecht Deposition, pg. 24, lines 4 - 13 and Plaintiff's Exhibit 4. This is Douglas Lambrecht's address. *Id.*, pg. 6, lines 4 - 6.
2. When interviewed shortly after the fatal wreck by a USAA claims agent, Douglas Lambrecht told the agent that Elliott was a member of his household. Douglas Lambrecht Deposition, Plaintiff's Exhibit 13, pg. DAL 22. In fact, when asked about the time period during which Elliott's driver's license was suspended, Douglas Lambrecht answered the following question from the agent as follows:

Q. Okay was he (Elliott) still in your opinion still a member of your household at that time (while his license was suspended)?

A. Yes.

Douglas Lambrecht Deposition, Plaintiff's Exhibit 13, pg. DAL 39. Elliott's license was still under suspension at the time of the fatal wreck.

3. At the time of the wreck, Douglas Lambrecht's residence was Elliott's mailing address. Douglas Lambrecht Deposition, pg. 67, lines 23 - 24.
4. Douglas also told the USAA agent that Elliott had all his things at Douglas' home. *Id.*, pg. 51, lines 3 - 11.
5. The co-Defendant, Rhett Barker, who was described by Douglas Lambrecht's attorney at the hearing on this motion as Elliott's best friend, testified in his deposition that Elliott moved out of an apartment in which he had been staying the Christmas prior to the fatal wreck, and moved into his Dad's house and "I know he stayed at his Dad's house." Rhett Barker Deposition, pg. 74, lines 9 - 19. In fact, Rhett testified that Douglas Lambrecht helped Elliott move out and into his house. Rhett Barker Deposition, pg. 75, lines 10 - 22.

D. WHOSE AGENT WAS ELLIOTT?

In his request for summary judgment, Douglas Lambrecht fails to mention on whose behalf Elliott was acting at the time of the wreck. Although there is evidence in the record that at the time of the wreck Elliott was acting on behalf of his mother, Jan Horan², or on behalf of his friend Rhett Barker³, there is also evidence that he was acting on behalf of Douglas Lambrecht. In the statement he gave to USAA shortly after the wreck, Douglas

²At one point in his deposition, Douglas Lambrecht testified that Jan Horan wanted the car off her property because she didn't have enough room for it. Douglas Lambrecht Deposition, pg. 111, lines 2 - 11.

³At another point in his deposition, Douglas Lambrecht testified that Elliott was getting the car and bringing it back to Hilton Head so that Rhett Barker could use it. Douglas Lambrecht Deposition, pg. 76, lines 11 - 13. This is the version that Elliott Lambrecht supported, stating that Rhett's car was going to be sold in the next couple of days and Rhett drove him to Beaufort to get the Mazda so that he, Rhett, could use it once his car was sold. Elliott Lambrecht deposition, pg. 20, lines 8 - 20.

Lambrecht told the USAA agent that Elliott was bringing the car back from Beaufort because he, Douglas, wanted the car brought back to his Hilton Head house. Douglas Lambrecht Deposition, pg. 83, lines 3 - 7 and Plaintiff's Exhibit 13, pg. DAL 45. In fact, just the day before this wreck, Douglas Lambrecht talked to his daughter, Anna, about bringing the car back to his home because he wanted the car in his "safe keeping." *Id.*

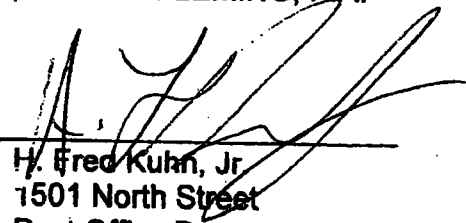
There is, accordingly, evidence that Elliott Lambrecht was performing an errand on behalf of Douglas Lambrecht when he was bringing the automobile back to Hilton Head.

E. CONCLUSION

Accordingly, whether the theory of liability is negligent entrustment, family purpose, or simple agency, the evidence, when viewed in the light most favorable to the Plaintiff, establishes that there are, at the very least, genuine issues of material fact. It is accordingly respectfully requested that the Motion for Summary Judgment be denied.

Respectfully submitted,

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September 13, 2006

STATE OF SOUTH CROlina
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

DEBORAH J. CLEGG, as
Personal Representative of the
Estate of Allison T. Clegg,

CIVIL ACTION NO. 06-CP-07-1125

and

Plaintiff,

v.

CIVIL ACTION NO. 06-CP-07-1126

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

REPLY MEMORANDUM IN SUPPORT
OF MOTIONS FOR SUMMARY
JUDGMENT

Defendants.

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I.

THE COURT AND NOT THE JURY DETERMINES
THE EXISTENCE OF A LEGAL DUTY

Whether Douglas Lambrecht owed a legal duty to the Plaintiff's decedent
is not a question for the jury but must be decided by this Court.

The determination of the existence of a duty is solely the
responsibility of the court. (citations omitted) Whether the law
recognizes a particular duty is an issue of law to be decided by the
Court.

R. J. Hendricks, II v. Clemson University, 353 S.C. 449, 456, 578 S.E. 2d 711,
714 (2003).

A legal duty is that which the law requires to be done or forborne
with respect to a particular individual or the public at large. (citation
omitted) Without a violation of such a legal duty, there is no
negligence. (citation omitted)

Byerly v. Connor, 307 S.C. 441, 443, 415 S. E. 2d 796, 798 (1992).

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Before allowing this case to proceed, the Court must affirmatively determine that, under the undisputed and material facts, South Carolina law imposes a legal duty upon a father to control the conduct of his adult, emancipated son, in the use of the son's own vehicle. Only if the Court finds such a duty can the case be submitted to the jury for a determination of factual issues. If the Court finds no basis in the law for imposing responsibility upon Douglas Lambrecht for the alleged negligent acts of his son, the case against him must be dismissed. *Huggins v. Citibank, N.A.*, 355 S.C. 329, 332, 585 S.E. 2d 275, 276-277 (2003).

II.

IT IS THE FUNCTION OF SUMMARY JUDGMENT TO DISPOSE OF
CLAIMS WHICH FAIL AS A MATTER OF LAW

The Plaintiff strenuously asserts that summary judgment is a "drastic" remedy which should not be imposed to deprive a litigant of a trial to the jury. However, not every claim is entitled to be presented to the jury. Rule 56 was adopted for a purpose and that purpose is to ensure that litigants are not required to expend the time and expense of defending legally insufficient or meritless claims. Defendants, as well as plaintiffs, are entitled to the protections of the law and Rule 56 is designed to dispose of cases in which there is no issue to be presented to a finder of fact. *Dawkins v. Fields*, 354 S.C. 58, 580 S.C. 2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E. 2d 868 (2001).

Clearly, negligence claims in which the Court finds that no legal duty exists are properly dismissed on summary judgment. In each of the following cases, the trial court granted summary judgment on the basis of lack of legal duty

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and its decision was upheld on appeal: *Byerly v. Connor*, 307 S.C. 441, 415 S. E. 2d 796 (1992) [no duty to discover and warn of latent defect]; *Foster v. Greenville County Medical Soc.*, 295 S.C. 190, 367 S.E.2d 468 (Ct. App. 1988) [no duty of peer review board to act on complaints against physician to prevent injury to patients]; *Hubbard v. Taylor*, 339 S.C. 582, 529 S.E.2d 549 (Ct. App. 2000) [no duty to lock an automobile to prevent persons from entering it]; *Cowburn v. Leventis*, 366 S.C. 20, 619 S.E.2d 437 (Ct. App. 2005) [no duty to investigate investment scheme]; *Rice v. School Dist. of Fairfield*, 317 S.C. 87, 452 S.E.2d 352 (Ct. App. 1994) [no duty to investigate accuracy of rumors in the workplace before reporting to supervising agency]; *Dennis by Evans v. Timmons*, 313 S. C. 338, 437 S.E. 2d 138 (Ct. App. 1993) [no duty to supervise or monitor children playing in one's yard].

This Court is perfectly correct when it determines that summary judgment should be granted because there is no legal duty imposed upon Douglas Lambrecht with regard to the decedent.

III.

AN UNSIGNED, UNSWORN TAPE RECORDED STATEMENT IS NOT COMPETENT EVIDENCE IN A SUMMARY JUDGMENT PROCEEDING

Rule 56 provides that a Motion for Summary Judgment is to be decided based upon the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any". To attempt to raise a fact issue and contradict the evidence adduced from the affidavits and deposition testimony offered by Douglas Lambrecht in support of his motion, the Plaintiff

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relies almost exclusively on an unsigned, unsworn tape recorded statement given to an insurance adjuster by Douglas within days of the accident. The Plaintiff makes no attempt to establish the accuracy of the transcription of that recorded statement, which Douglas disputes, or to otherwise comply with the rules of evidence as to its authenticity or admissibility.

Generally, unsworn statements are not competent evidence.

The only allegation of bias was an unsworn juror's statement that in her opinion the forelady was prejudiced and might have influenced some other jurors. In the circumstances, an unsworn statement was not competent evidence. Cf. *Lineberger v. Colonial Life & Accident Insurance Company*, 12 N.C. App. 135, 182 S.E. 2d 643 (1971) (unsworn allegations not evidence); *Bertha Mineral Co. V. Bute*, 27 Ga. App. 660, 109 S. E. 539 (1921) (unsworn affidavit not evidence)); *Walters v. State*, 128 Ga. App. 232, 196 S.E. 2d 326 (1973) (defendant's unsworn statement not evidence).

Morris v. Jensen, 309 S. C. 153, 157, 420 S. E. 2d 710, 712, (Ct. App. 1992), *reh denied*. See, also: *South Carolina National Bank v. S & L Investment Partnership*, 308 S.C. 511, 419 S.E. 2d 243 (1992), *reh denied*; *cert. denied* [appraiser's unsworn statement insufficient].

More significantly, as set forth hereinafter, the statements allegedly made to the insurance adjuster by Douglas do not raise any dispute as to the material facts and should be disregarded both as incompetent and irrelevant.

IV.

THERE IS NO FACTUAL DISPUTE THAT DOUGLAS LAMBRECHT
NEITHER OWNED NOR CONTROLLED THE MAZDA

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Apparently, Plaintiff now relies upon SC Code §56-1-480, which prohibits the owner or one in control of a vehicle from allowing an unlicensed driver to operate it, to establish the duty in this case.¹

However, there is no factual issue with regard to the fact that Douglas Lambrecht did not own the Mazda involved in the accident. It is undisputed that the car was purchased by Elliott, paid for by Elliott, Elliott paid for the insurance and other costs associated with the Mazda², and it was titled in his name. Pursuant to SC Code § 46-150.11, the title certificate is *prima facie* evidence that the Mazda was owned by Elliott and there is no evidence in this case to overcome that presumption.

Plaintiff attempts to manufacture a factual issue on this point by misstating the evidence and providing counsel's speculation and conjecture. As the Court will recall, prior to the accident giving rise to this litigation, the Mazda owned by Elliott was involved in an accident and USAA, which insured it at that time, determined to "total" it.³ Plaintiff states that Douglas "represented to USAA that he was, in fact, the true owner of the Mazda" and as evidence of that statement directs the Court to the Affidavit of Salvage Retention submitted to USAA as part of the salvage procedure. (Plaintiff's Memorandum, P. 4, paragraph 4).

In fact, that Affidavit was signed by Douglas Lambrecht as owner of the USAA policy and not as the owner of the Mazda. The Affidavit clearly identified **Elliott Lambrecht** as the owner of the Mazda. (See Exhibit 10 to the deposition

¹ Reliance upon this statute was not a part of any of the various Complaints filed in these matters.

² The Mazda was registered in Elliott's name as well and the tax statements came to him. Elliott Lambrecht Deposition, Exhibit 7)

³ It is undisputed that the Mazda was not an "insured vehicle" on the USAA policy at the time of the accident at issue.

of Elliott Lambrecht attached hereto as a convenience to the Court.) Thus, Douglas Lambrecht made absolutely no misrepresentation about the ownership of the Mazda, as stated by the Plaintiff, but actually affirmed, under oath, that his son was the owner of the Mazda. Either the Plaintiff made an error about the evidence or seeks to mislead in order to create a factual issue where none exists.

Plaintiff also attempts to misconstrue the evidence concerning the disposition of proceeds of the damage claim on the Mazda by stating that Douglas "purchased the Mazda for its agreed upon salvage value", that it was "sold" to him for its salvage value, and that the check was made payable to him. (Memorandum, Page 4, paragraphs 5 and 6).

As Douglas Lambrecht testified, the check for the Mazda came to him because he was the owner of the USAA policy and it was USAA's requirement that it do so, that he conferred with his son Elliott with respect to Elliott's intention for the funds, and that Elliott directed that the funds be applied to repairing the car, which was done. (Deposition, Douglas Lambrecht, p. 16:13-17:14). There is no evidence to contradict Douglas's testimony on that point and no evidence that the Mazda was "sold" to him.⁴ Title consistently remained in Elliott and Elliot made all decisions concerning the automobile.

Plaintiff blatantly misstates Douglas' testimony with respect to titling of the Mazda. Plaintiff represents to this Court that Douglas at page 121 of his deposition "testified that the only reason that the Mazda was titled in Elliott's

⁴ The Mazda could not have been "sold" to Douglas by USAA because USAA did not own it and there is no evidence of any transaction that could be construed as a transfer of ownership from Elliott to Douglas.

name is because he (Elliott) was anxious to establish credit in his own name."

(Memorandum, p. 6).

The actual testimony involved not title, but the necessity for Douglas to co-sign his son's loan to purchase the automobile. Douglas did not testify as represented by Plaintiff.

Q. Did you have any involvement in shopping for or actually purchasing the Mazda?

A. Elliott shopped for the Mazda and asked me to come look at it with him. And then he was applying for a loan at the car dealer, which is then - - since gone out of business and they quoted him a high rate. And he said: Dad, is there anything else we can do? And I made a phone call and helped him get a loan through Liberty. But he picked out the car himself.

Deposition, Douglas Lambrecht, P. 121: 11-23.

Elliott Lambrecht's testimony was consistent with that of Douglas. Elliott testified that Elliott chose the Mazda, but that Douglas had to co-sign on the note because Elliott had no credit. (Deposition, Elliott Lambrecht p. 80: 18-81:6).

Despite Plaintiff's attempts to misrepresent the record, there are no facts which raise an issue with respect to the ownership of the Mazda. It was owned by Elliott and not by Douglas.

Further, there is not one shred of evidence that Douglas was in control of the Mazda at any time, let alone immediately prior to the accident.

Plaintiff represents that Douglas testified on page 33 of his deposition that the Mazda was "normally kept at his house". (Memorandum, P. 4, paragraph 1). Douglas **did not** testify that the Mazda was "normally" kept at his house. He testified that, after it was repaired, it was towed to his house at Elliot's request

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and that it remained parked there for about two or three weeks. (Deposition, Douglas Lambrecht, p. 18: 9- 19:10; 33:5-17; Elliott Lambrecht Deposition 82: 9-15).

There is not one bit of evidence that Douglas attempted to, did, or could have "controlled" the use of the Mazda. The parties, including Elliott, and Elliott's sister Anna, testified consistently that it was Elliott, and not Douglas, who had the power to give permission for the use of the Mazda. (Elliott Lambrecht Deposition, p. 97:19-98:23). In mid-December, 2001, Anna asked Elliott if she could drive the Mazda while her automobile was being repaired. (Elliott Lambrecht Deposition 97:25-98:23; Statement, Anna, 7:15-8:11). Elliott gave permission to Anna, his sister, to drive the Mazda and informed Douglas that the keys to the automobile could be given to her so that she could use it. (Affidavit Douglas ¶ 15; Elliott Lambrecht Deposition 98:10-23; Statement, Anna, 7:15-8:11). Elliot testified:

Q. Had your father told you not to drive the car because of your suspension?

A. No, maybe he suggested it.

Q. Is that how he phrased it, or do you recall?

A. Well, he can't give me a direct order. It wasn't his car.

Deposition, Elliott Lambrecht, p. 29: 2- 10.

Anna testified:

Q. Okay, tell me about that, how did that come to pass?

A. Well, my car was in the shop and my parents, both of them worked during the day so they kind of couldn't really drive me around when I had to go to school, you know, because we would meet at places so they would drive me over to Hilton Head. And I didn't have any way to do that so I asked if I could borrow Elliott's

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car. And, of course, he said you need to ask Elliott because it's his car.

Deposition, Anna Lambrecht, p. 7: 15-25.

Even in his unsworn statement to the USAA insurance adjuster, which the Plaintiff heralds as evidence that Douglas owned or controlled the Mazda, Douglas was very clear in stating that "Elliott is a nineteen year old. He's an emancipated adult. He as many teenagers do he was proud of his independence and made his own decisions." DAL 0044.

Even if Douglas had attempted to "control" the actions of his emancipated son, he had no legal right to any "control" over the use of the Mazda. Douglas had no legal right to interfere with an adult owner's use of his own vehicle. The cases quoted and cited in Defendant's initial Memorandum make it clear that "control" refers to a legal right or power, not the mere exertion of influence. The Court in *Broadwater v. Dorsey*, 344 MD 548, 688 A. 2d 436 (MD, 1997) stated:

Generally, when a child reaches the age of majority, the parent's legal responsibility ends and, concomitantly, the parent's legal right to control the actions of the child also ends.

Dr. and Mrs. Broadwater had no legal right to control Ronald, Jr. at the time of the accident because he was an adult. Their continuing financial support of their son does not confer on them any legally cognizable right to control his actions. Nor did Petitioners have any right of control over the Mazda involved in the accident. Regardless of whether Dr. and Mrs. Broadwater sold Ronald, Jr., the car or gave it to him as a gift, under the circumstances of this case, their ability to exercise control over the car ended when they relinquished title.

Id. at 563.

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Similarly, in *DeBlanc v. Jensen*, 59 S.W. 3d 373 (Tex. App. Div. 1, 2001),

the Court stated:

Regardless of whether his parents exercised control over the truck when Heuermann was incarcerated, they did not have the *right* (emphasis by the Court) to control it. Heuermann was an adult. He held title to the truck, and had for several years at the time of the accident.

* * *

The fact that his parents attempted to prevent his use of the truck upon his release until he had obtained insurance and a drivers' license does not change this fact. Further, even if the Jensens exercised control over the truck before Heuermann took possession of it, they certain did not once he had the truck towed to his own residence. In order for the Jensens to be liable under a theory of negligent entrustment, we would have to conclude that it is negligent for a nonowner to return control of a vehicle to its owner. We decline to so hold.

Id. at 376.

As in the *Broadwater* case, the Court included in its opinion an extensive list of cases from other jurisdictions consistent with its holding. There is no authority cited by Plaintiff for the proposition that Douglas can be liable for "controlling" a vehicle over which he has no legal right to control. If Douglas were the lessee of the Mazda or had some other legal right to exercise control over the vehicle, perhaps the situation would be different. However, there is no evidence that would demonstrate any right or power of Douglas to exercise legal control over the Mazda. Accordingly, he cannot be said to have breached any duty with regard to control of the Mazda.

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Finally, and most significantly, there can be no question that, even if Douglas could have controlled the use of the Mazda, which he could not, he did not surrender that control to Elliott. The statute upon which Plaintiff relies provides that no person shall allow an unlicensed driver to drive. Douglas is accused of allowed Anna, who was licensed, to drive the Mazda, not Elliott. There is absolutely no evidence that Douglas knew or could have known that Elliott would ultimately obtain the car from Anna and drive it on the day of the accident. Elliott did not tell Douglas that he intended to go to Beaufort and retrieve the Mazda. (Elliott Lambrecht Deposition 28:17 -25; 82:20-23; 95: 23-96:2).

When Elliot retrieved his own car from Anna, the Mazda had been out of Douglas's possession for some time and was with Anna in Beaufort. The Plaintiff claims that Elliot went to the residence of his mother, lied to her about whether he was going to drive the car, and then took the keys to his own car from that residence and drove away with his friend. There is no evidence that Douglas had any knowledge of these facts until after the accident. Douglas can not be liable for failing to prevent an act of which he had no knowledge.

While Plaintiff tries to characterize the delivery of the Mazda to Anna as the first step in the chain of events ultimately culminating in the accident, the same can be said about Douglas getting up in the morning or allowing the tow truck to deliver the Mazda to his driveway. Even if effectuating Anna's use of the Mazda could be said to be wrongful in the sense that the car was not registered,

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liability cannot be predicated upon an act for which there is no proximal link between the act and accident.

As set forth in Douglas' Initial Memorandum, the fact that a car is not registered has no proximate cause to an accident in which the car is involved. Driving an unregistered automobile or driving without a valid driver's license is not negligence *per se* and does not result in liability unless those acts are the proximate cause of the accident. 8 Am Jr. 2d § 810, § 812.

Merely operating an unregistered automobile, without other negligent acts, is, as a matter of law, not the proximate cause of an automobile accident. *Cirosky v. Smathers*, 128 S. C. 358, 122 S. E. 864 (1924); 29 ALR 2d 963, § 3. Even if the Court were to conclude that Douglas could have prevented an unregistered vehicle from being driven, as a matter of law, there is no relationship between that conduct and the accident. No one can say that "but for" the registration, the Plaintiff's Decedent would be alive today.

V.

ELLIOTT WAS NOT A MEMBER OF DOUGLAS' HOUSEHOLD
AT THE TIME OF THE ACCIDENT AND HIS RESIDENCE
IS IRRELEVANT TO DOUGLAS' LIABILITY IN ANY EVENT

Douglas and Elliott both testified in their depositions and stated in their Affidavits that Elliott had not lived in Douglas' household for some time prior the accident. They were cross examined thoroughly on that point and no contrary evidence was adduced. While the Plaintiff characterizes this evidence as "conclusory", it is not a conclusion, but an evidentiary fact.

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In order to attempt to raise a factual issue on this point, once again the Plaintiff misrepresents the testimony of the witness. The Plaintiff first states that Elliott told the police on the night of the accident that he lived at Douglas' address, citing Douglas Lambrecht's deposition. (Memorandum, p. 6, paragraph 1). Douglas' actual testimony was that he had no idea why his address was on the accident report as Elliott's home address. (Deposition, Douglas Lambrecht, p. 24: 10-18). Elliott testified that he was unconscious after the accident and thus could not have communicated with the investigating police officer and never gave a statement concerning the accident. (Deposition, Elliott Lambrecht, p. 39: 11-23).

The alleged testimony of Rhett Barker summarized and relied upon by Plaintiff to raise a factual issue as to Elliott's residence was "I know he stayed at his dad's house" and that Douglas helped Elliott move into Douglas' house. In reality, Mr. Barker testified that it was "one night" that Elliott stayed with Douglas over Christmas and that Douglas picked up some of Elliott's possessions from Elliott's apartment to store for him, not that he moved into Douglas' home. (Deposition, Barker, 74: 74:14-75:22).

Most significantly, even if Elliott was living at Douglas' home at the time of the accident, that fact does not make Douglas legally responsible for Elliott's conduct and the Plaintiff has not cited any authority to the contrary. It is undisputed that Elliott was an adult and that he owned the automobile involved in the accident. If merely residing with or providing a home for an adult gave rise to legal responsibility for his conduct, every claim arising from an automobile

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accident involving a married person would be made against both the driver and the spouse. This Court is quite aware that is not the state of the law.

VI.

WHEN DRIVING HIS OWN CAR, ELLIOTT
WAS NOT THE AGENT OF DOUGLAS

The Plaintiff seems to suggest that Elliott was acting as the "agent" of Douglas at the time of the accident and that Douglas, as the alleged principal, should be responsible for his conduct. This peculiar argument has no foundation in fact or law and was never pled in the various versions of the Complaint as a basis for liability.

Both Douglas and Jan Horan, Elliott's mother, testified that there had been a discussion between them concerning moving Elliott's car off the Horan property. However, there is absolutely no evidence to suggest that Douglas was either responsible for moving the car or that he asked Elliott to do so.

Q. So you don't recall your mother saying to your sister or to you or to your father, that the car needed to be moved?

A. No, never.

Q. Or were you not aware of that?

A. It wouldn't have been told to anybody but me, because it was my car and my responsibility to get it moved. So if it wasn't said to me, then chances are it was never said.

Deposition, Elliott Lambrecht, p. 32: 3-14.

The only motivation for Elliott to pick up his car the evening of the accident was to allow his friend Rhett to use it.

Q. Okay. So the only reason that you went to get the car, then, was because Rhett needed to use it?

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A. Yes, I was gonna let Rhett use it.

Deposition, Elliott Lambrecht, p. 32: 15- 18.

An agency relationship is created when the principal, either expressly or impliedly, confers authority upon the agent to act in his behalf. *Roberson v. Southern Financial of South Carolina*, 365 S.C. 6, 10, 615 S.E. 2d 112, 115 (2005). There is no evidence, whatsoever, that Douglas undertook the responsibility to move his son's automobile, or that he authorized his son to do so on his behalf. The suggestion that there was some "agency" relationship created between Douglas and Elliott so that Elliott was acting on Douglas' behalf when he drove the night of the accident is unsupported by any evidence.

CONCLUSION

The Plaintiff cannot articulate the basis for any legal duty breached by Douglas Lambrecht that proximally resulted in the death of Plaintiff's decedent. There is no duty under South Carolina law to control the conduct of another absent special circumstances not found here. *Doe v. Marion*, 361 S.C. 463, 605 S.E. 2d 560 (Ct. App. 2004), *reh denied, cert. granted*.

The Plaintiff has shown no legal basis to impose responsibility on Douglas for the acts of his adult and emancipated son. The un rebutted evidence of all of the parties involved makes it clear that Douglas neither owned nor controlled the Mazda. The Plaintiff's attempts to raise a factual issue on these points are based on misrepresentations of the record, which the Court can readily ascertain, or counsel's speculation and conjecture, which is not evidence.

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All of the witnesses testified consistently with respect to the material facts relevant to the resolution of this case. To the extent that the Plaintiff can show that some aspects of Douglas' unsworn statement may have been inconsistent with his deposition testimony,⁵ there was no inconsistency with respect to the relevant and material facts. Elliott was an adult, he owned the Mazda, he controlled its use, and he was driving it on the night of the accident by his own volition, without any knowledge or involvement of his father.

Without the existence of a legal duty which has been breached, there can be no responsibility imposed upon Douglas, without regard to the fact that the accident was, indeed, tragic. The Plaintiff has shown no basis in law or fact for the imposition of such a duty upon Douglas. This case should be dismissed.

For all of the foregoing reasons and the reasons set forth in his Memorandum in Support of Motion for Summary Judgment, Douglas Lambrecht respectfully requests that the Court dismiss the Plaintiff's Second Amended Complaint and for such other relief is as proper.

Dated this 22nd day of September, 2006.

⁵ As previously set out, Douglas disputes the accuracy of the transcription of this statement and the Plaintiff has made no efforts to authenticate it. However, even if it were accurate, at best that could indicate that Douglas was untruthful when speaking with the insurance adjuster in attempting to find insurance coverage for the accident for his son's benefit. It does not raise a material issue of fact where all of the undisputable evidence clearly shows that Elliott was an adult and the owner of the Mazda.

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DOUGLAS A. LAMBRECHT, Defendant

By: John E. North Jr.
John E. North, Jr. # 6570
Pamela K. Black #3884
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1103 Bay Street
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north@northblack.com (email)

Certificate of Service

The undersigned hereby certifies that on the 22nd day of September, 2006, a true and correct copy of the foregoing was emailed to the following persons and will be additionally sent by U.S. Mail, first class, postage prepaid, to all counsel of record on September 25, 2006: G. Richardson Wieters, P.C., PO Box 7682 Hilton Head, SC 29925, Hilton Head, SC 29925, H. Fred Kuhn, Jr., PO Drawer 507, Beaufort, SC 29901, Terry A. Finger, 11 Palmetto Parkway, Suite 1010, PO Box 24005, Hilton Head, SC 29925, Stephen E. Carter, Bethea, Jordan & Griffin, P.A., PO Drawer 3, Hilton Head, SC 29938, and William J. Thrower, 2000 Sam Rittenburg Blvd – Suite 2001, Charleston, SC 29407.

J North

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ADJUDICATION OF SALVAGE RETENTION

001

AA No.	Date of Loss	Name of Owner
305	06-14-2001	Elliott Lambrecht
6-14-2001	my 1994	Mazda MX6
		1YVGE31D3R5215787
DATE	YEAR	MAKE & MODEL
		SERIAL NO.

involved in an accident. As a result of this accident my car was deemed a Total Loss with an actual cash value of \$ 5,435.00 ACV, Less \$500.00 Salv, Plus \$246.75 Tax, Less \$500.00 Ded = \$4,681.75

I have elected to keep the salvage for an agreed value of \$ 500.00 I agree that this amount will be deducted from the settlement of my claim. It is further agreed that towing and storage fees in the amount of \$ 0.00 will be paid by n/a

I agree that collision and/or comprehensive coverage, including rental reimbursement if available, for this vehicle will be deleted effective the day after the loss.

Statutes, Section 817.234 states: "Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of application containing any false, incomplete, or misleading information is guilty of a felony of the third degree."

Statutes, Chapter 304, Section 19 states: "Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material to the claim, commits a fraudulent insurance act, which is a crime."

Walter C. O'Rourke
WITNESS

[Signature]
SIGNATURE OF OWNER

0 August 2001
DATE

843 842 7972
TELEPHONE NUMBER OF OWNER



AM
AUG 24 2001

20304-0896 SE

000276

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EXHIBIT 11

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

DEBORAH J. CLEGG, as Personal
Representative of the Estate of
Allison T. Clegg,

Plaintiff,

v.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 06-CP-07-1159¹¹³⁵
(formerly 02-CP-07-1159)

CIVIL ACTION NO. 06-CP-07-1160¹¹³⁶
(formerly 02-CP-07-1160)

MOTION FOR SANCTIONS
PURSUANT TO RULE 11, SCRPC and
SC CODE § 15-36-10

2007 JAN 17 PM 3:42
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

COMES NOW the Defendant, Douglas A. Lambrecht, ("Lambrecht") and hereby moves the Court for an Order, pursuant to Rule 11, SCRPC and SC Code § 15-36-10 (the "Frivolous Action Statute"), imposing sanctions against the Plaintiff herein, and her attorney, and awarding Lambrecht his attorney fees and costs incurred in the defense of this action. In support of his Motion, Lambrecht shows to the Court as follows:

1. In July, 2002, Plaintiff brought these actions against Lambrecht, and against his adult, emancipated son, Elliott, seeking damages for the death of Plaintiff's decedent allegedly resulting from the negligence of Elliott in operating Elliott's own vehicle.

2. It was undisputed throughout these proceedings that Elliott was a legal adult at the time of the accident, that Elliott was driving a vehicle titled solely in Elliott's name, and that Elliott did not reside with Lambrecht.

3. That information was known to the Plaintiff and her attorney at the outset of the litigation. That information was further established by the statement of Lambrecht given immediately after the accident to an insurance investigator, and the sworn statements taken in February, 2003, by the attorney for the Plaintiff of Jan Horan ("Horan"), who is the mother of Elliott and former wife of Lambrecht, and Anna Lambrecht, ("Anna"), then a minor, who is Elliott's sister, and the daughter of Lambrecht and Horan.

4. In April, 2004, almost two years after the original Complaints were filed, Plaintiff filed Amended Complaints renewing the allegations against Lambrecht and adding Horan and Anna, as additional defendants. At that time, a friend of Elliott, Rhett Barker, was also added as a defendant.

5. In June, 2004, Lambrecht filed his Motion for Summary Judgment, supported by his affidavit and the affidavit of Elliott to the effect that Lambrecht did not own or control the automobile which was involved in the accident, that the automobile involved in the accident was owned by Elliott and titled in his name, and that Elliott was of legal age, fully emancipated, and did not live with Lambrecht at the time of the accident.¹

6. Lambrecht's Memorandum in Support of Motion for Summary Judgment citing applicable law was served at the time the Motion and Affidavits were filed.

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¹ Lambrecht had been appearing *pro se* until March, 2004 when he retained counsel to present his defense.

7. Horan and Anna were served in May, 2004, and Rhett Barker at a later date. All immediately filed motions for summary judgment or to dismiss, based on the lack of a factual or legal basis for the claims asserted against them.²

8. In early 2005, the Plaintiff deposed all Defendants, five depositions in all, over several days.

9. In April, 2005, these actions were dismissed pursuant to Rule 40(j).

10. In March, 2006, upon the motion of the Plaintiff, these actions were reinstated to the trial docket with a specific order that the pending motions be heard as expeditiously as possible.

11. Summary judgment was granted to Lambrecht by an Order dated October 20, 2006, but of which Defendant had no notice, as a result of the error of the Clerk of Court, until January 10, 2007.³

12. Rule 11 provides that the signature of an attorney on any pleading is a certification that there is good ground to support it and not filed for the purpose of delay.

13. The Frivolous Action Statute provides that the signature of an attorney on any pleading is his certification that:

(b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law;

(c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and

² A Motion to Dismiss was filed by Anna Lambrecht on July 9, 2004. A Motion to Dismiss was filed on behalf of Jan Horan on July 26, 2004. A Motion for Summary Judgment was filed on behalf of Rhett Barker on November 22, 2004.

³ Of all claims asserted against all Defendants, all were dismissed except a racing claim asserted against Rhett Barker.

(d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

14. Pursuant to SC § 15-36-10 (C)(1), an attorney or party "shall be sanctioned for a frivolous claim or defense" if the court finds that a reasonable attorney in the same circumstances : (a) "would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law"; or (c) "would believe that the case or defense was frivolous as not reasonably founded in fact".

15. In opposing summary judgment, the Plaintiff did not come forward with any authority in South Carolina which would: (a) impose legal responsibility on Lambrecht for the negligence of his adult son, (b) impose an obligation on Lambrecht to control the conduct of his son, or (c) impose on Lambrecht a duty to warn third parties.

16. Lambrecht's Memorandum in Support of Motion for Summary Judgment, which Lambrecht served in June, 2004, cited *American Mutual Fire Insurance Company v. Passmore*, 275 S.C. 618, 621, 274 S.E. 2d 416, 418 (1981), which held that when a defendant does not own, control, or have responsibility for the use of an automobile, he has no legal duty to anyone injured by the use of that automobile. At no point in the litigation did Plaintiff attempt to distinguish that case, argue that she should be given an opportunity to overturn it, or set forth facts that took her case out of the general rule

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17. In his Memorandum, Lambrecht also cited *Doe v. Marion*, 361 S.C. 463, 605 S.E. 2d 560 (Ct. App. 2004), *reh denied, cert. granted*, which articulated the rule that South Carolina law does not recognize a general duty to warn of the dangerous propensities of another absent special circumstances. At no point in this litigation did Plaintiff attempt to distinguish that case, argue that she should be given an opportunity to overturn it, or set forth facts that took her case out of the general rule.

18. In her Memorandum, Plaintiff did not even address those controlling authorities.

19. The authorities, which were cited by Lambrecht two and one half years before summary judgment was ultimately granted, clearly precluded any claim against Lambrecht, as a matter of law, since Plaintiff could not articulate any legal duty which he breached.

20. In this case, the Plaintiff was put on notice that Lambrecht and all of the other Defendants considered the claims against them to be without any factual or legal basis. Evidence and case authorities were presented to Plaintiff. However, Plaintiff continued to pursue the claims for more than two years thereafter.

21. During this litigation, Lambrecht was required to appear and defend these meritless actions against him, incurring \$29,066.00 in attorney fees and \$1,382.33 in expenses through December 31, 2006, incurring additional expenses after that date, and spending numerous hours of his personal time in representing himself *pro se*.⁴

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⁴ Defendant's own automobile liability insurer declined coverage and there was no other source of insurance to provide a defense for Defendant.

22. In its Order granting summary judgment, the Court found that there was no evidence that Lambrecht owned the vehicle involved in the accident or had any control over it. The Court further found that it was uncontroverted that Elliott was an emancipated adult and that Lambrecht had no legal duty to control his conduct and no evidence that he attempted to do so or that Elliott was acting as his agent at the time of the accident.

23. The state of the law and the undisputed facts were clear and have been since before this litigation was filed.

24. No reasonable attorney would have pursued a claim for damages against the parent of a legal adult arising from the operation a vehicle owned by and titled in the name of his adult son, who was emancipated and living on his own at the time of the accident. The law is clear in this jurisdiction that Lambrecht had no legal duty to anyone with respect to the conduct of his son Elliott under the undisputed and undisputable facts of this case.

25. The Frivolous Action Statute was enacted to provide relief to litigants who have incurred damage as the result of the pursuit of claims that no reasonable attorney would pursue. The statute makes it clear that if these claims are found to be frivolous, sanctions shall be awarded as a matter of equity. When a person such as Lambrecht is sued and has to incur expenses to defend a groundless claim, it is only equitable that the person who initiated the groundless claim and continued to pursue it when there was no doubt concerning the state of the law or the facts should reimburse those expenses.

In further support of his Motion, Lambrecht directs the attention of the Court to his Memorandum in Support of Motion for Sanctions, which will be filed herein

prior to the hearing on his Motion, and to all pleadings, filings, affidavits, and other evidence filed in this proceeding or offered at the hearing on his Motion.

WHEREFORE, for all of the foregoing reasons, Defendant Douglas A. Lambrecht moves the Court for an Order pursuant to Rule 11 SCRPC and SC Code §15-36-10 awarding him his attorney fees and costs expended in defense of these actions, together with such other sanctions as are appropriate under the circumstances.

DOUGLAS A. LAMBRECHT, Defendant

By: John E. North, Jr.
John E. North, Jr.
Pamela K. Black
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(843) 575-0800 (tel)
(843) 575-0900 (fax)
north@northblack.com (email)

Certificate of Service

The undersigned hereby certifies that on the 17th day of January, 2007, a true and correct copy of the foregoing was sent by U.S. Mail, first class, postage prepaid, to all counsel of record: G. Richardson Wieters, P.C., PO Box 7682, Hilton Head, SC 29925, Hilton Head, SC 29925, H. Fred Kuhn, Jr., PO Drawer 507, Beaufort, SC 29901, Terry A. Finger, 11 Palmetto Parkway, Suite 1010, PO Box 24005, Hilton Head, SC 29925, Stephen E. Carter, Bethea, Jordan & Griffin, P.A., PO Drawer 3, Hilton Head, SC 29938, and William J. Thrower, 2000 Sam Rittenburg Blvd – Suite 2001, Charleston, SC 29407.

John E. North, Jr.
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**PAGES 284 THROUGH 298 WITHDRAWN AS UNDESIGNATED BY EITHER
PARTY AND NOT PROPERLY INCLUDED IN THE RECORD.**

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

2010 JAN 19 PM 3:50

THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

DEBORAH J. CLEGG, as
Personal Representative of the
Estate of Allison T. Clegg,

Plaintiff,

v.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants.

Case No.: 06-CP-07-1125

and

Case No.: 06-CP-07-1126

MOTION FOR
RECONSIDERATION

TO: JOHN E. NORTH, JR. and PAMELA K. BLACK, ATTORNEYS FOR THE
DEFENDANTS DOUGLAS A. LAMBRECHT:

PLEASE TAKE NOTICE that the Plaintiff and her attorneys hereby move pursuant
Rules 59 and 60 of the South Carolina Rules of Civil Procedure for a new trial, and to alter,
amend, or set aside that Order granting sanctions filed January 8, 2010 and received on
January 11, 2010, on the following grounds:

1. The Court erred in reconsidering, altering, and amending its Orders denying
sanctions filed March 5, 2007 and May 1, 2007, where there was no motion requesting
such relief pending before the Court.

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2. The Court erred in reconsidering, altering, or amending its Orders denying sanctions, filed March 5, 2007 and May 1, 2007, without notice to the Plaintiff or her attorneys.

3. The Court erred in issuing its Order granting sanctions, where said Order exceeds the jurisdiction or scope of remand from the Court of Appeals, where the Court of Appeals "remand(ed) the matter to the trial Judge for an Order identifying the facts and accompanying legal analysis on which he relied" in denying sanctions.

4. The Court erred in granting the Defendant's Motion for Sanctions without first allowing the Plaintiff and her attorneys the opportunity to present evidence contesting the request for sanctions. When the initial hearing was held on the Defendant's Motion for Sanctions, the Defendant, as the party with the burden of proof, was given the opportunity to present any evidence Defendant desired in support of his motion. The Defendant declined the opportunity to present any evidence in support of the Motion for Sanctions, and instead, asked the Court to rely on the existing record in this case. At that point, the Plaintiff and her attorneys indicated that they had expert testimony which they wished to present in opposition to the motion but the Court, upon reviewing the record in this case, determined the Defendant had not carried his burden of proof justifying sanctions and denied the request for sanctions. In effect, the Court granted a directed verdict against the motion, and the Plaintiff did not get the opportunity to put up her case in opposition to the motion. The net effect of the current Order is that the Defendant has had the opportunity to fully present his case in support of the request for sanctions, but the Plaintiff has not yet had the opportunity to put up her case in opposition to the request for sanctions. If the

Court has now determined that its Order Denying Sanctions based solely upon the evidence presented by the Defendant was improper, then the appropriate procedure would be to now allow the Plaintiff to present her evidence in opposition to the motion, rather than to summarily grant the motion without having given the Plaintiff the opportunity to present her case in opposition to the motion.

5. The Court overlooked the fact that under negligent entrustment, liability may be imposed not only on the one who is the titled owner of the vehicle, but liability may also be imposed upon one who is in control of the vehicle and responsible for its use.

6. The Court overlooked the fact that there is evidence in the record in this case supporting the good faith belief that the Defendant exercised ownership or control over the Mazda vehicle, as follows:

When the Mazda was first purchased, it was titled in Elliott's name alone. The Defendant, however, cosigned the loan allowing the vehicle to be purchased. The Defendant testified that the only reason that the Mazda was titled in Elliott's name is because "he (Elliott) was anxious to establish credit in his own name." ROA, pg. 666, lines 18 - 19.

After the Mazda was purchased, it was insured on the Defendant's insurance policy with USAA. *Id.*, pg. 556, lines 15 - 18. On that policy the Defendant's son, Elliott, was identified not as the owner, but simply as an "operator." *Id.*, pg. 556, lines 19 - 20.

Under normal circumstances, of course, an insurance company will not allow one person to insure a vehicle that belongs to another person. See, e.g., *South Carolina Farm*

Bureau v. Scott, 274 S.C. 264, 266, 262 S.E.2d 739, 740 (1980). The question naturally arises, accordingly, as to how the Defendant managed to insure the Mazda on his policy of insurance with USAA. The answer is simple - the Defendant represented to USAA that he was, in fact, the true owner of the Mazda automobile. ROA, pg. 359, line 14 to pg. 360, line 13; and ROA, pg. 426.

On June 14, 2001, the Mazda was involved in a wreck in a parking lot, and as a result, it was totaled by USAA under the Defendant's comprehensive automotive insurance coverage. On August 20, 2001, several months prior to the fatal wreck that killed Plaintiff's daughter, USAA sold the vehicle to the Defendant for its salvage value of \$500.00. ROA, pg. 426. Additionally, USAA paid \$2,273.67, representing the payment for the total loss of the Mazda, to the Defendant. These settlement documents with USAA were executed by the Defendant, as the owner of the Mazda. ROA, pg. 358, line 7 to pg. 359, line 20; and pg. 382, line 9 to pg. 389, line 25; ROA, pg. 612, lines 13 - 20. In fact, the Defendant's son, Elliott, never even knew that the Mazda had been totaled, that his father, the Defendant, had received an insurance check, or that his father had purchased the salvage value. ROA, pg. 360, line 2 to pg. 46, line 361. From this point forward, the Defendant had physical control over the vehicle itself, as it was normally kept at his house. Douglas Lambrecht Deposition, pg. 33, lines 8 - 17. The Defendant, not Elliott, was the one who kept the keys to the vehicle. *Id.*, pg. 565, lines 12 - 15.

Additionally, if this Mazda was truly Elliott's car, as the Defendant claims, then it would be logical to assume that when Anna (Elliott's sister and the Defendant's daughter) asked to borrow the vehicle shortly before the fatal wreck occurred, Elliott would have simply

called the Defendant and informed him that Anna was coming to get the car. Instead, the Defendant testified that "He (Elliott) asked me (the Defendant) to allow her (Anna) to pick the car up." ROA, pg. 581, lines 6 - 9 (emphasis added). The only reasonable conclusion that can be drawn from the fact that Elliott needed the Defendant's permission for the use of the Mazda is that, in fact, the Defendant was the one who either owned or controlled the use of the Mazda.

Finally, after the fatal wreck occurred, it was the Defendant, not Elliott, who paid off the outstanding loan on the vehicle. *Id.*, pg. 649, lines 14 - 15.

Perhaps the strongest testimony, however, regarding the Defendant's ownership or control over the Mazda automobile came from the Defendant's own mouth. In a recorded interview with USAA immediately following the fatal wreck the Defendant was asked who is the "primary driver of the Mazda automobile." The Defendant relied that there was no primary driver for this car, and explained:

We considered it to be kind of a household car we have a couple of teenagers¹ and occasionally one or the other might have had occasion to use that car I might have had in fact I - I drove it a couple of times just to make sure that the engine stayed fresh and to check out its mechan . . . (tape cut off had to be turned over on second side) in fact the car was not driven a lot it was driven a couple of times on an occasional basis by what I would deem to be occasional drivers.

¹The Defendant had remarried following his divorce from Elliott and Anna's mother, and his new wife had two (2) teenage children who resided with them.

Douglas Lambrecht Deposition, Plaintiff's Exhibit 13, pg. 796 (emphasis added). The Defendant also implicitly affirmed to USAA the Defendant's superior exercise of control over the Mazda with respect to Elliott, telling USAA that in the past he had forbidden Elliott from driving the car. *Id.*

7. The Court erred in overlooking the fact that there is evidence in the record supporting the good faith belief that the Defendant was a *de facto* owner of the Mazda automobile. In other words, in this case there is evidence to support the reasonable and good faith belief that it was the Defendant who held the attributes of ownership and control over the Mazda, consistent with the holding and definition of *de facto* ownership set forth in *Automobile Insurance Company of Hartford v. Curran*, 994 F.Supp. 324 (DC Pa 1998). In this case, the Defendant had easy access to and could freely use the Mazda whenever he so chose, since the vehicle was kept at his house and he kept the keys. He was the one who maintained insurance on the vehicle. He was the one identified as the owner on the insurance policy. He is the one who negotiated the settlement of the claim for damages to the vehicle when it was involved in the prior parking lot accident, and he is the one who received the proceeds for the repairs to the vehicle. He represented to USAA that he was the owner and he negotiated and received the salvage following the parking lot accident. He is the one to whom others went for permission to use the vehicle and, as he admitted in his statement to USAA, he is the one who controlled when the vehicle was used by others and considered it to be his household car. Although the Defendant was not the original titled owner, the foregoing evidence of control or evidence supports my finding that the claim for negligent entrustment was brought both in good faith and was

reasonable. These attributes of *de facto* ownership are similar to those present in the case of *Campbell v. Paschal*, 290 S.C. 1, 347 S.E.2d 892 (SC App. 1986).

8. The Court overlooked the fact that S.C. Code Ann. §56-1-480 (2007) makes it illegal for anyone to authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized to do so by that article or in violation of the provisions of that article, and in this case, there is evidence that the Defendant authorized and knowingly permitted the Mazda vehicle to be driven at a time when it was uninsured, unregistered, and had no tags, and further, when the Defendant was aware that Elliott's driver's license was under suspension.

9. The Court erred in concluding that sanctions were appropriate because a negligent entrustment case is only viable if the vehicle is entrusted to a person who is addicted to intoxicants, in the habit of drinking, or likely to drive while intoxicated. This conclusion is erroneous, for two (2) reasons.

First, the case upon which Defendant relies in arguing that knowledge of the driver's addiction to intoxicants is an essential element of negligent entrustment "as opposed to knowledge that for reasons other than had addiction to intoxicants the driver posed unreasonable risk of harm to others" was not decided until July 16, 2007, well after summary judgment was granted in this case to Defendant on October 20, 2006. See, *Gadson Ex Rel. Gadson v. ECHO Services of South Carolina, Inc.*, 374 S.C. 171, 648 S.E.2d 585 (2007). Until the Supreme Court's decision in *Gadson*, *supra*, was announced on July 16, 2007, the authoritative South Carolina Appellate ruling on negligent entrustment in South Carolina was the decision by the South Carolina Court of Appeals, in that same

case, which extended negligent entrustment liability to a Defendant who knew that a driver was likely, for any reason, to create an unreasonable risk of physical harm to himself and others. *Gadson Ex Rel. Gadson v. ECHO Services of South Carolina, Inc.*, 374 S.C. at 176 - 77, 648 S.E.2d 585, 588 (reversing the Court of Appeals' Application of the Restatement (Second) of Torts Sections 308 and 390, which extended liability when the owner knows or had reason to know that such person is likely because of his youth, inexperience, or otherwise, to create an unreasonable risk of physical harm to himself and others).

It was certainly not unreasonable, nor was it not in good faith, for the Plaintiff to argue for the extension of negligent entrustment beyond cases involving addiction to intoxication, where at the time this very issue was pending on appeal in an unrelated case.

Second, the South Carolina Supreme Court in *Gadson* did not close the door completely on refusing to extend negligent entrustment liability beyond the factual scenario in which the Defendant knew that the driver was either addicted to intoxicants or had the habit of drinking. Rather, the Supreme Court declined to adopt Sections 308 and 390 of the Restatement based on the set of facts currently before the Court, *Id.*, 374 S.C. at 177, 648 S.E.2d at 588, which was that the Plaintiff had presented no evidence that the Defendant had any knowledge of the driver's drinking habits, driving record, or general behavior. *Id.* 374 S.C. at 178, 648 S.E.2d at 589.

As noted earlier, the Defendant admitted in his original Answer that Elliott "posed an unreasonable risk of harm to the public at large and specifically, to . . . those who might be passengers in his automobile" and that even the decedent "knew or should have known

of the . . . disposition of . . . Elliott . . . to operate a vehicle improperly." ROA, pg. 42.

10. The Court erred in concluding that it is an undisputed fact that Douglas was not was the owner of the automobile involved in the accident. As noted above, there is ample evidence that Douglas was the *de facto* owner of the automobile. Likewise, there is evidence that Douglas was the legal owner of the automobile, inasmuch as he had purchased the salvage value of the automobile from the insurance company, as a result of a prior wreck, before the fatal wreck which is the subject of this lawsuit.

11. The Court erred in finding that it is undisputed that Elliott was an emancipated adult who did not reside with the Defendant. The record in this case contains evidence that it was both reasonable and in good faith to assert that at the time of the fatal wreck giving rise to this lawsuit Elliott was living with the Defendant and was a member of the Defendant's household. This evidence is as follows:

The night of the fatal wreck, Elliott told the investigating police officer that his home address was 22 Spartina Point Drive. ROA, pg. 599, line 14. This is the Defendant's address. *Id.*, pg. 551, lines 4 - 6.

The most compelling evidence on this issue, however, came from the Defendant's own lips. Shortly following the wreck, the Defendant himself told his USAA agent that Elliott had all of his things at the Defendant's home. ROA, pg. 596, lines 3 - 11. The Defendant stated that Elliott's address was the same as the Defendant's address. *Id.*, pg. 612, lines 23 - 24.

Even more significantly, when interviewed shortly after the fatal wreck by a USAA claims agent, the Defendant, point blank, told the agent that Elliott was a member of his

household. ROA, pg. 778. In fact, when asked about the time period during which Elliott's driver's license was suspended, the Defendant answered the following question from the agent as follows:

Q. Okay was he (Elliott) still in your opinion still a member of your household at that time (while his license was suspended)?

A. Yes.

ROA, pg. 795.

12. The Court overlooked the fact that, in addition to negligent entrustment, the Family Purpose Doctrine was argued as an alternative theory of liability and, as noted above, there is evidence that the Defendant admitted to his own insurance agent that Elliott was a member of his household at the time of the wreck, and that the Mazda automobile was considered by the Defendant to be a household car available for his family's use.

13. The Court overlooked the fact that in addition to negligent entrustment and the Family Purpose Doctrine, liability against the Defendant was also asserted on the theory of agency and that there is evidence in this case that Elliott was acting as the Defendant's agent at the time of the fatal wreck. More specifically, there was evidence that Elliott was performing an errand or favor for the Defendant at the wreck by bringing the Mazda back to the Defendant's residence on Hilton Head Island from Beaufort. The evidence supporting the reasonableness and good faith of this agency theory of liability can be summarized as follows:

Prior to the fatal wreck, the Defendant had lent the Mazda automobile to his daughter, Anna, for her to use while her car was being repaired. At the time, Anna was residing with

her mother in Beaufort. Anna's car was eventually repaired and she no longer needed the Mazda for her use. In a statement the Defendant gave to USAA shortly following the fatal wreck, the Defendant told the USAA claims agent that Elliott was bringing the car back from Beaufort because he, the Defendant, wanted the Mazda brought back to his Hilton Head residence. ROA, pg. 628, lines 3 - 7 and ROA, pg. 801 In fact, just the day before the wreck, the Defendant talked to his daughter, Anna, about bringing the Mazda back to his residence because he wanted the car in his "safekeeping." *Id.*

Defendant also stated that the day before the fatal wreck he had a discussion about "bringing the car back to my home because I wanted the car in safe keeping" and that there was "a general understanding that I wanted the car brought back at our (presumably Defendant and Elliott's) Hilton Head home and to be parked." ROA, pg. 801.

There is, accordingly, evidence to support the good faith belief that Elliott was performing an errand on behalf of the Defendant when he was bringing the automobile back from Beaufort to Hilton Head.

14. The Court overlooked the fact that the Defendant's credibility in this case was questionable, at best. For example, the Defendant claimed that the reason Elliott was driving the Mazda back to Hilton Head from Beaufort the night of the fatal wreck was so Elliot's friend, Rhett Barker, could use it. ROA, pg. 621, line 11 - 13. This, however, was news to Rhett Barker, who knew nothing about it. ROA, pg. 460, lines 6 - 11. ROA, pg. 335, lines 8 - 17. Likewise, Douglas and Elliott Lambrecht's "story" was that at the time of the wreck, Elliott was living with the Barkers. ROA, pg. 324, lines 12 - 14. Again, this was news to the Barkers, with Rhett Barker testifying that at the time of the wreck he was

mainly a resident of Defendant's home, although sometimes he stayed at his mother's house, and that only occasionally did he stay at his house. ROA, pg. 460, line 23 to pg. 461, line 6.

Defendant's questionable credibility, however, is understandable, because Defendant, ironically, candidly admitted in his deposition that he had no qualms about "spinning" the facts if it suited his purposes.

when he was finally forced to admit to some previous false statements, he testified that he preferred not to "characterize them (his false statements) as lies," but preferred to state that he had "conveniently blurred" the truth to suit his purposes. ROA, pg. 679, lines 13 - 24.

15. In evaluating the seven (7) factors set forth in S.C. Code §15-36-10(E)(2009) the Court erred in concluding that all of the factors, except previous violations of the Statute, support the conclusion that the Plaintiff's attorneys acted unreasonably and that the claims were frivolous. In fact, proper consideration of these factors indicates that sanctions are not appropriate, as follows:

(1) The number of parties involved is small. Although there are six parties in this lawsuit, only the Plaintiff and Defendant Lambrecht are involved in the motion for sanctions.

(2) Although this is a car wreck case, it is a fairly complex case, involving, as noted above, issues of negligent entrustment, the Family Purpose Doctrine, and agency.

(3) There was ample time for all parties to investigate and conduct discovery.

(4) The information that was discovered through investigation and discovery supported each theory of liability. Summarizing, under negligent entrustment, there was evidence that the Defendant Lambrecht owned or controlled the Mazda at the time of the wreck, inasmuch as he had just purchased the car for its salvage value from USAA, he listed himself as the owner on the insurance documents, he kept the insurance proceeds when the car was in a prior wreck, he paid the car off after the fatal wreck, his children came to him for permission to use the car, he kept the car at his house, he had the keys, and he referred to the car as his "household" car. See pp.10-14, *supra*. Likewise, there was good reason to believe that negligent entrustment was not limited to alcohol-related cases, since at the time the Court of Appeals had adopted the more expansive approach of the Restatement (Second) of Torts. See, *Gadson Ex Rel. Gadson v. ECHO Services of South Carolina, Inc.*, 374 S.C. 171, 648 S.E.2d 585 (2007). As to the Family Purpose Doctrine, there was evidence from the Defendant's own mouth that Elliot was a member of his household and that the Mazda was a household car. See pp. 12 and 18, *supra*. Finally, as to agency, there was evidence that at the time of the fatal wreck Elliot was performing an errand for Defendant by bringing the Mazda back to Defendant's home on Hilton Head Island from Beaufort. See pp, 19-20, *supra*.

(5) There are no previous violations of the Act.

(6) The Plaintiff and her attorneys have responded to the Motion by vigorously opposing it, briefing the issues and supplying the Court with discovery documents, statements and depositions relevant to the issues raised.

(7) The summary judgment was a difficult and complex issue. The Court previously found in its Order dated May 1, 2007: "I find that the case was brought by experienced, competent lawyers who in good faith believed the facts of the case warranted bringing the lawsuit under the theory it was pursued." Much of this case focused upon the theory of negligent entrustment, and but for the fact that the Court of Appeals' attempted expansion of negligent entrustment was subsequently reversed by the Supreme Court in *Gadson Ex Rel. Gadson v. ECHO Services of South Carolina, Inc.*, 374 S.C. 171, 648 S.E.2d 585 (2007), this case might have turned out differently.

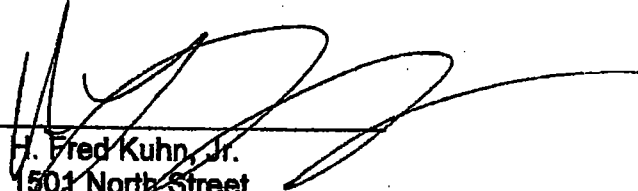
16. In its Order, the Court overlooked the fact that the Plaintiff and her attorneys conducted a reasonable investigation into the circumstances surrounding the wreck and the Defendant Lambrecht's potential liability. In these cases, the Plaintiff and/or her attorneys conducted a reasonable investigation into the circumstances surrounding the wreck and the Defendant Lambrecht's potential liability. The investigation included obtaining the accident report (including not just the routine accident report prepared by the investigating officer, but the in-depth investigation conducted by the Highway Patrol's Multi-Disciplinary Accident Investigation Team), witness statements (both sworn and unsworn), as well as discovery that encompassed interrogatories, requests to produce, and numerous depositions.

The Plaintiff and her attorneys accordingly respectfully request that the Court reconsider, alter, or amend its Order filed January 8, 2010, grant to the Plaintiff the opportunity to present evidence in opposition to the motion requesting sanctions, and enter

its Order denying the Defendant's Motion for Sanctions, together with such other relief as this Court may deem to be just and proper.

Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Plaintiff

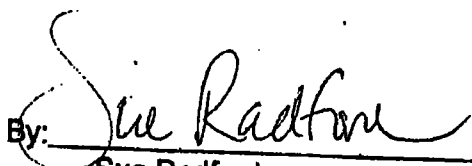
Beaufort, South Carolina
January 19, 2010

CERTIFICATE OF SERVICE

Undersigned certifies that the **Motion for Reconsideration**, to which this certificate is affixed, was served upon the party (s) to this action by emailing and by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

John E. North, Jr., Esquire
Pamela Black, Esquire
916 Bay Street, Suite 100
Beaufort, SC 29902

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on January 19, 2010.

By: 
Sue Radford
Secretary for H. Fred Kuhn, Jr.

000314

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

DEBORAH J. CLEGG, as Personal
Representative of the Estate of
Allison T. Clegg,

Plaintiff,

v.

ELLIOTT M. LAMBRECHT,
DOUGLAS A. LAMBRECHT,
RHETT BARKER, JAN HORAN,
and ANNA C. LAMBRECHT,

Defendants.

IN THE COURT OF COMMON
PLEAS FOR THE
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 06-CP-07-1125

and

Case No.: 06-CP-07-1126

JOINT AFFIDAVIT OF
JOHN E. NORTH, JR. AND
PAMELA K. BLACK
IN SUPPORT OF REQUEST FOR
ATTORNEY FEES AS
SANCTIONS PURSUANT TO SC
CODE § 15-36-10 ("FCPSA") AND
RULE 11, SCRCP

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) ss

John E. North, Jr. and Pamela K. Black, each being of lawful age and first duly
sworn on oath, depose and state as follows:

1. This Affidavit is given in support of the Motion for Sanctions filed herein by the
Defendant, Douglas A. Lambrecht ("Douglas") and pursuant to the Order of this
Court, filed on January 8, 2010.
2. Affiants are the attorneys for Douglas and practice with the firm of North & Black,
PC. ("NB").

3. All work performed by NB on behalf of Douglas as hereinafter set forth was performed by NB by and through the Affiants and Affiants have personal knowledge of the matters set forth herein.
4. Affiants graduated from Creighton University School of Law in Omaha, Nebraska, in 1977 and have from that time been engaged continuously in the practice of law, with an emphasis on business matters and litigation, including insurance coverage litigation and contract and commercial litigation.
5. Affiants are members in good standing of both the Nebraska and South Carolina bar associations and have been admitted to practice before numerous federal and state courts on a *pro hac vice* basis.
6. In March, 2004, Douglas retained NB to conduct his defense of this litigation (the "Clegg litigation") and in all matters related to those cases.
7. NB provided Douglas' defense in the Clegg litigation, including the Plaintiff's appeal of the summary judgment granted to Douglas, Douglas' Motion for Sanctions, and the appeal of the denial of the Motion for Sanctions and its remand, and defended a declaratory judgment action by Douglas' automobile insurer, USAA Property and Casualty Insurance Company ("USAA litigation") and the appeal by USAA of the decision by the trial court in favor of Douglas.
8. The hourly rate of both Affiants was \$175.00 per hour through the end of 2005 and then increased to \$195 per hour for all work performed thereafter.
9. In accordance with his agreement with NB, Douglas was also responsible for all out of pocket expenses incurred by NB in connection with the representation and

was charged interest at the rate of 7.5 % for all amounts outstanding that were not paid within thirty days.

10. NB provided Douglas with a monthly billing statement itemizing by date and description the work performed on his behalf and the expenses incurred.
11. Attached hereto as Exhibit A are true and correct copies of the billing statements sent to Douglas, with the exception of those months in which no work was performed or expenses incurred, in connection with the proceedings before the Circuit Court, together with copies of client billing summaries and an interest calculation report related thereto.
12. Attached hereto as Exhibit B are true and correct copies of the billing statements sent to Douglas, with the exception of those months in which no work was performed or expenses incurred, in connection with the appeal of the grant of Summary Judgment, together with copies of client billing summaries and an interest calculation report related thereto.
13. Attached hereto as Exhibit C are true and correct copies of the billing statements sent to Douglas, with the exception of those months in which no work was performed or expenses incurred, in connection with the appeal of the denial of sanctions, together with copies of client billing summaries and an interest calculation report related thereto.
14. Attached hereto as Exhibit D is a true and correct copies of the billing statement sent to Douglas in connection with the remand of the sanctions proceeding, the presentation to the Circuit Court in connection therewith, and the documentation

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of expenses to be awarded, together with copies of client billing summaries related thereto.

15. Attached hereto as Exhibit E are true and correct copies of the billing statements sent to Douglas, with the exception of those months in which no work was performed or expenses incurred, in connection with the proceedings before the Circuit Court in connection with USAA v. Lambrecht, together with copies of client billing summaries and an interest calculation report related thereto.
16. Attached hereto as Exhibit F are true and correct copies of the billing statements sent to Douglas, with the exception of those months in which no work was performed or expenses incurred, in connection with the appeal by USAA of the Order of the Circuit Court, together with copies of client billing summaries and an interest calculation report related thereto.
17. Attached hereto as Exhibit G is a summary of the fees and expenses incurred by Douglas A. Lambrecht in connection with the above referenced matters.
18. Exhibits A through G and the billing statements attached thereto accurately describe the work necessarily performed for Douglas, the time expended on his behalf, and the fees and expenses for which he is responsible as a result of his representation during the nearly six years that NB has been involved in defending the claims and asserting his rights in matters arising from the filing of this frivolous litigation. All of such work was performed by Affiants, was reasonably required to protect the rights asserted on behalf of Douglas, including his right to an award of sanctions, and to defend the claims made against Douglas as a result of the filing of lawsuit by Plaintiff and her counsel against

Douglas. All of the fees and expenses on said billing statements were reasonable, necessary, and reasonably incurred by Douglas. This Affidavit, together with the Affidavit of Douglas A. Lambrecht, dated January 15, 2010, and the evidence previously made a part of the record of these proceedings, is offered in support of the award of sanctions.

19. The hourly rates set forth in the billing statements are the standard rates charged by Affiants for their services to Douglas for other matters and all other clients of NB for the time frames described, and are within the range of the hourly rates charged within the state and in Beaufort County by attorneys with similar education, experience, and expertise for similar services.

20. Affiants have applied to and been awarded attorney fees in several other cases in this judicial circuit on the basis of the same hourly rates charged to Douglas.

21. The outcome of the matters handled by NB on behalf of Douglas has been favorable. Douglas was granted summary judgment in the Clegg litigation and, although that Order was appealed by the Plaintiff, the appeal was dismissed. Douglas was successful in persuading the Court of Appeals to vacate the Order denying him sanctions and successfully persuaded this Court thereafter that, under the relevant statute and Rule 11, the Clegg litigation was frivolous and that sanctions were warranted.

22. The Plaintiff and her counsel strongly opposed the defense of Douglas. The sanctions claim was made more difficult due to the fact that it was the first time that the Court of Appeals had addressed the application of the new sanctions statute. While Douglas has paid NB substantial sums through the nearly six

- years in which he has been represented by NB in these matters, he was unable to currently pay the entirety of the cost of this lengthy and time consuming litigation and there remains a large, unpaid balance due to NB from Douglas.
23. NB and Douglas have no agreement to compromise or reduce the fees and expenses owed to it and both NB and Douglas recognize it as a continuing obligation.
24. In the Clegg litigation, including the initiation of the Motion for Sanctions, Douglas incurred an obligation to NB of \$40,522.25 in attorney fees, \$1,549.20 in expenses, and \$7,815.13 in interest.
25. After the Plaintiff appealed the grant of summary judgment to Douglas in the Clegg litigation, Douglas incurred an additional obligation to NB of \$8,639.50 in attorney fees, \$314.66 in expenses, and \$1,070.67 in interest for representing him in the appeal.
26. For its efforts on his behalf in the Court of Appeals with respect to the Motion for Sanctions, Douglas incurred an additional obligation to NB through this date in the amount of \$33,813.00 in attorney fees, \$3,090.02 in expenses, and \$1,793.31 in interest.
27. After remand of this matter to the Circuit Court, Douglas incurred an additional obligation to NB through this date in the amount of \$11,251.50 in attorney fees and \$27.00 in expenses.
28. In the USAA litigation, Douglas incurred an obligation to NB of \$13,421.75 in attorney fees, \$397.01 in expenses, and \$4,666.20 in interest for representation

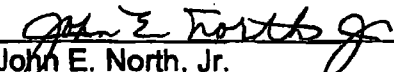
in the trial court and an additional \$23,061.25 in attorney fees, \$2,052.27 in expenses, and \$4,167.91 in interest on appeal.

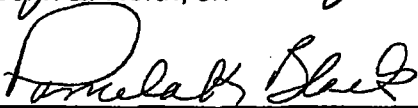
29. Through the date of this Affidavit, the attorney fees and expenses incurred for representation in all of these matters is \$130,708.25 in attorney fees, \$7,430.16 in expenses, and \$19,513.22 in interest, for a total of \$157,651.63.

30. Unless Plaintiff and her counsel confirm that the award of sanctions will not be appealed, Douglas will incur additional expenses to defend a Rule 59(e) Motion, which is anticipated by the undersigned to cost an additional \$1,500.00, and additional expenses to defend an appeal of this Court's Order, which is anticipated by Affiants to cost an additional \$10,000.00.

FURTHER, AFFIANTS SAY NOT.

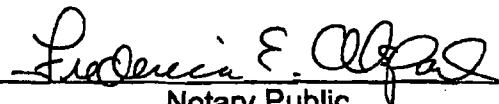
Dated this 15th day of January, 2010.



John E. North, Jr.


Pamela K. Black

John E. North, Jr., being first duly sworn on oath, deposed and swore to me on this 15th day of January, 2010, that the facts set forth above were true and correct.



Notary Public

My Commission Expires: 9/11/2018

000321

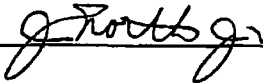
Pamela K. Black, being first duly sworn on oath, deposed and swore to me on this 15th day of January, 2010, that the facts set forth above were true and correct.


Notary Public

My Commission Expires: 9/11/2018

Certificate of Service

I hereby certify that on January 15, 2010, I served a copy of the foregoing upon the attorneys for the Plaintiff, H. Fred Kuhn, Jr., PO Drawer 507, Beaufort, SC 29902 and G. Richardson Wieters, PO Box 7682, Hilton Head, SC 29938 by United States Mail, first class, postage prepaid.



000322

Douglas Lambrecht

April 1, 2004

Hilton Head, SC
29926

Attention:

448

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Mar-03-04	Meeting with Doug; letter to Finger; letter to Carter; review of USAA Policy; outline of coverage and exclusion issues; letter to USAA counsel re; coverage of policy; review of client files; outline of legal and factual issues; memo to counsel re: course.	4.50
Mar-08-04	Phone call from Doug re: status and course; letter from Attorney Carter; review of statement of Anna; letter to Doug re: same; conference with Doug re: same.	0.75
Mar-11-04	Phone call from Steve Johnson of USAA; negotiations with Johnson.	0.50
Mar-13-04	Letter from Wieters; review of statements of Jan and Doug; preparation for hearing; review of Wieters Memorandums on pending Motions.	1.00
Mar-15-04	Review of files; travel to Courthouse for calling of Motion Roster; attendance at hearing on Motions.	2.00
Mar-16-04	Conference with Doug re: status and course; letter from Wieters; review of draft Orders.	0.50
Mar-19-04	Review of proposed amended complaint;	1.40

000323



legal research re status of family purpose
doctrine and elements

Mar-30-04 Letter from Attorney Gibson.

0.25

Totals

10.90

DISBURSEMENTS

Mar-31-04 WestLaw

26.38

Totals

\$26.38

Total Fee & Disbursements

\$1,933.88

Cumulative Interest Due

\$0.00

Balance Now Due

\$1,933.88

Douglas Lambrecht

May 3, 2004

Hilton Head, SC
29926

Attention:

465

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Apr-20-04	Conference with Doug re: status, course, and financial issues.	0.25
	Totals	0.25
	Total Fee & Disbursements	\$43.75
	Previous Balance	1,933.88
	Cumulative Interest Due	\$0.79
	Balance Now Due	\$1,978.42

000325

Douglas Lambrecht

June 14, 2004

Hilton Head, SC
29926

Attention:

481

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
May-21-04	Draft of Answer	0.90
May-24-04	Conference with Doug re: facts and course.	0.25
	Complete draft of Answer in both cases	1.50
May-25-04	Work on Summary Judgment materials; conference with client re facts	2.90
May-26-04	Review of and revision of Answers to Amended Complaints; meeting with counsel re: same.	0.50
	Finalize answers and file; letter to client re same; email from client re additional facts	0.80
May-28-04	Complete Memorandum re summary judgment; email to Doug	4.40
	Totals	11.25
	Total Fee & Disbursements	\$1,968.75
	Retainers Applied	22.37
	Previous Balance	1,977.63
	Previous Payments	1,977.63

000326

Y-Invoice #: 481

Page 2

June 14, 2004

Cumulative Interest Due

\$0.00

Balance Now Due

\$1,946.38

000327

Douglas Lambrecht

July 15, 2004

Hilton Head, SC
29926

Attention:

510

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
~~Jun-01-04~~	~~Begin affidavits of clients~~	0.70
Jun-02-04	Conference with client re facts, course and brief	0.50
Jun-03-04	Complete affidavit of Doug and Elliott	1.30
Jun-07-04	Email to Elliott and Doug re affidavits	0.50
Jun-08-04	Prepare Motions for Summary Judgment; email to client; review of new Batson decision	1.20
Jun-09-04	Phone call from Doug; letter from Wieters; review of Interrogatories and Request for Admissions; letter to Doug re: same; conference with Doug re: defense of claim.	1.00
	Emails to and from Doug re affidavit	0.30
Jun-14-04	Attendance at Jury Roster meeting.	1.50
	Conference with Wieters re trial setting; preparation of summary judgment materials	0.50

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Jun-15-04	Phone call from Doug re: Answers to Interrogatories.	0.25
	Letter to Wieters re trial setting; finalize all documents necessary for filing summary judgment; filing same; letter to client re same	3.50
Jun-16-04	Conference with Wieters re trial continuance	0.20
Jun-21-04	Review of Answer of Jan; letter to Doug re: same; letter from Wieters.	0.50
Jun-22-04	Letter to Carter and Finger re summary judgment	0.30
Jun-28-04	Review of current term and Master Jury Rosters; email to Clerk; conference with Attorney Weeters; memo to file re: same.	0.75
Jun-29-04	Email from Clerk; phone call to Judge Coltrane re: hearing on Motion for Summary Judgment.	0.50
Jun-30-04	Conference with Court staff re: scheduling of hearing; letter to Judge Coltrane re: same.	0.50
	Totals	14.00

DISBURSEMENTS

Jun-14-04	Westlaw	56.02
	Totals	\$56.02
	Total Fee & Disbursements	\$2,506.02
	Previous Balance	1,946.38
	Cumulative Interest Due	\$0.40
	Balance Now Due	\$4,452.80

Douglas Lambrecht

September 1, 2004

Hilton Head, SC
29926

Attention:

531

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Jul-08-04	Conference with client; preparation of discovery responses; email to client re same	0.90
Jul-12-04	Review of Motions of Anna to dismiss; conference with counsel re: same.	0.50
Aug-02-04	Review of Motion to Dismiss in Wrongful Death action; analysis of course; conference with counsel re: same.	0.50
Aug-04-04	Conference with Clerk and Judge's staff re: scheduling of Motions; conference with Doug re: status.	0.50
Aug-09-04	Phone call to Judge Gregory's staff re: hearing date.	0.25
Aug-10-04	Phone call to Judge Goodstein's staff.	0.25
Aug-16-04	Review of Notices of Depositions and Subpoena; conference with Doug re: status, course, strategy, letter to Attorney Weitzers.	0.75
Aug-19-04	Email to Clerk of Court re: scheduling of Motions.	0.25
Aug-27-04	Letter from Weitzers.	0.25

000330

September 1, 2004

Totals

4.15**DISBURSEMENTS**

Jul-07-04 Copies

27.56

Totals

\$27.56**Total Fee & Disbursements**

\$753.81

Previous Balance

4,452.40

Previous Payments

4,452.40

Cumulative Interest Due

\$0.00

Balance Now Due

\$753.81

Douglas Lambrecht

December 6, 2004

Hilton Head, SC
29926

Attention:

581

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Sep-27-04	Review of Motion and Trial Roster; phone call to Judge Pieper's staff.	0.50
Sep-28-04	Phone call from Attorney Carter.	0.25
Oct-07-04	Review of letters from Attorney Wieters; review of file; letter to Wieters re: hearing on Motions for Summary Judgment.	0.75
Oct-18-04	Review of correspondence from Weilers; letter to Weilers.	0.25
Oct-19-04	Review of Rhett Barker's Answer to Amended Complaint	0.80
Oct-22-04	Preparation of Motion; letter to all counsel	0.50
Oct-25-04	Preparation of Motion and Order	0.50
Nov-09-04	Review of Notices of Deposition; letter to Doug; letter to Wieters	0.50
Nov-13-04	Letter from Wieters; review of Wieters document production	0.75
Nov-29-04	Review of Barker Motions for Summary Judgment	0.25
Nov-30-04	Conference with Doug re depositions; conference with Wieters re same	0.50

000332

Totals

5.55**DISBURSEMENTS**

Oct-26-04	Motion Fee	50.00
Nov-16-04	Wieters - copies and mailing	16.15

Totals

\$66.15**Total Fee & Disbursements**

\$1,037.40

Previous Balance

753.81

Cumulative Interest Due

\$10.22

Balance Now Due

\$1,801.43

Douglas Lambrecht

January 4, 2005

Hilton Head, SC
29926

Attention:

600

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Dec-02-04	Letter from Atty. Wieters; Review of Amended Notices; Letter to Atty. Wieters; Letter from Atty. Carter.	0.50
Dec-08-04	Phone call from Doug regarding status.	0.25
Dec-13-04	Letter from Atty. Wieters; Phone call to Atty. Wieters; Conference with Doug; Phone call to Atty. Wieters.	0.50
Dec-14-04	Phone call to Wieters; preparation for depositions; phone call from Wieters; letter to Wieters.	1.00
Dec-16-04	Phone call from Wieters; phone call to Doug; conference with Doug; phone call to Wieters	0.25
Dec-28-04	Review of trial and motion rosters; Negotiation with Atty. Wieters regarding scheduling and discovery; Letter to Court Coordinator regarding same.	0.75
Dec-30-04	Letter from Atty. Harrell; Conference with Gloria Williams; Letter to counsel of record.	0.50
	Totals	3.75

000334

Total Fee & Disbursements

\$656.25

Previous Balance

1,791.21

Cumulative Interest Due

\$14.71

Balance Now Due

\$2,462.17

000335

Douglas Lambrecht

February 2, 2005

Hilton Head, SC
29926

Attention:

623

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Jan-04-05	Letter from Wieters; Review of trial roster; Conference with Gloria Williams regarding scheduling of hearing; Letter to Doug regarding same.	0.75
Jan-06-05	Conference with Doug regarding depositions.	0.25
Jan-10-05	Review of files; Outline of key facts and issues; Conference with Elliott; Preparation for depositions; Review of transcripts; Outline of key facts and issues for Elliott and Doug.	7.25
Jan-11-05	Meeting with Elliott; Travel to Hilton Head Island and attendance at depositions of Rhett Barker and Elliott; Conference with Doug; Review of deposition notes and transcripts; Prepared for deposition of Doug; Conference with Doug regarding same; Prepared for deposition.	8.75
Jan-12-05	Review of deposition notes; Travel to Hilton Head Island and attendance at deposition of Doug.	8.50
Jan-13-05	Evaluation of Nationwide subrogation claim; preparation of subpoena	0.60
Jan-14-05	E-mail from Doug; Letter to counsel.	0.25

000336

Jan-17-05 Review of Nationwide subpoena;
Negotiation with Atty. Woodward
regarding production; Letter to Woodward
regarding same.

0.75

Totals

27.10**DISBURSEMENTS**

Jan-31-05 Deposition copies Rhett Barker & Elliott
Lambrecht

497.75

Totals

\$497.75**Total Fee & Disbursements**

\$5,240.25

Previous Balance

2,447.46

Cumulative Interest Due

\$25.18

Balance Now Due

\$7,712.89

Douglas Lambrecht

March 16, 2005

Hilton Head, SC
29926

Attention:

645

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Feb-09-05	Preparation for hearing on Motion for Summary Judgment; Phone call from Atty. Wieters; Phone call to clerk; Negotiation with Atty. Wieters; Phone call to Doug.	1.75
Feb-10-05	Letter from Atty. Wieters; Conference with Atty. Wieters.	0.25
Feb-14-05	Phone call from Atty. Carter; Phone call to Atty. Carter; Phone call to Atty. Wieters.	0.50
Feb-15-05	Conference with Atty. Carter regarding scheduling; Phone call from Doug regarding transcript of depositions.	0.25
Feb-16-05	Letter from Atty. Harrell; Analysis of course.	0.25
Feb-17-05	Letter from Atty. Finger; Letter to Atty. Wieters.	0.25
Feb-21-05	Letter from Atty. Wieters; Conference with Atty. Carter; Phone call to Atty. Finger; Conference call with Attys. Carter and Harrell; Phone call to Atty. Wieters; E-mail to Atty. Wieters; E-mails to Attys. Harrell, Wieters, Finger and Carter regarding 40(j) and trial call; Review of discovery from Atty. Harrell.	2.50

000338

Invoice #: 645

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March 16, 2005

Totals

5.75

DISBURSEMENTS

Feb-17-05 Coastal Court Reporting - Deposition,
Doug Lambrecht

412.70

Totals

\$412.70

Total Fee & Disbursements

\$1,418.95

Previous Balance

7,687.71

Cumulative Interest Due

\$59.08

Balance Now Due

\$9,165.74

000339

Douglas Lambrecht

April 1, 2005

Hilton Head, SC
29926

Attention:

658

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Mar-03-05	Review of Barker Interrogatories and review of documents; Memo to counsel regarding same.	0.50
Mar-07-05	Letter from Atty. Harrell; Phone call to clerk; Phone call to Atty. Wieters; Meeting with counsel.	0.75
	Review and preparation of responses to discovery requests; email Doug re same	0.50
Mar-08-05	Conference with Atty. Wieters regarding hearing.	0.25
	Totals	2.00

DISBURSEMENTS

Mar-31-05	Copies	4.50
	Totals	\$4.50
	Total Fee & Disbursements	\$354.50
	Previous Balance	9,106.66

000340

Douglas Lambrecht

May 11, 2005

Hilton Head, SC
29926

Attention:

688

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Apr-01-05	Letter from Atty. Harrell.	0.25
Apr-05-05	Letter from Atty. Finger; Letter to Atty. Finger.	0.50
Apr-19-05	Review of Order; Letter from Atty. Harrell.	0.25
	Totals	1.00
	Total Fee & Disbursements	\$175.00
	Previous Balance	9,461.16
	Cumulative Interest Due	\$155.86
	Balance Now Due	\$9,792.02

000341

Invoice #: 658

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April 1, 2005

Cumulative Interest Due

\$84.36

Balance Now Due

\$9,545.52

000342

Douglas Lambrecht

May 9, 2006

Hilton Head, SC
29926

Attention:

871

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Apr-06-06	Letter from Wieters; Review of Order of Judge Buckner; Letter to Atty. Wieters regarding Amended Complaint.	0.50
Apr-07-06	Letter from Atty. Wieters; Review of Amended Complaint in both actions; Conference with Doug regarding status.	0.75
	Totals	1.25
	Total Fee & Disbursements	\$243.75
	Previous Balance	12,407.26
	Cumulative Interest Due	\$1,004.94
	Balance Now Due	\$13,655.95

000343

Douglas Lambrecht

April 6, 2006

Hilton Head, SC
29926

Attention:

860

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Mar-28-06	Phone call from Atty. Weilers; Letter from Atty. Weilers; Preparation for conference call; Review of Notice of Hearing; E-mail to Atty. Weilers regarding same.	1.00
	Totals	1.00
	Total Fee & Disbursements	\$195.00
	Previous Balance	12,212.26
	Cumulative Interest Due	\$922.01
	Balance Now Due	\$13,329.27

000344

Douglas Lambrecht

March 2, 2006

Hilton Head, SC
29926

Attention:

836

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Feb-07-06	Conference with Doug re status and course	0.25
Feb-08-06	Review of Answer re claim for sanctions for frivolous action; review of frivolous action statute and email to co-counsel re same	0.80
	Totals	1.05
	Total Fee & Disbursements	\$204.75
	Previous Balance	12,007.51
	Cumulative Interest Due	\$835.49
	Balance Now Due	\$13,047.75

000345

Douglas Lambrecht

February 1, 2006

Hilton Head, SC
29926

Attention:

810

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Dec-19-05	Review of Motions to Restore to Roster; Letter from Atty. Thrower; Phone call to Atty. Thrower.	0.50
Dec-20-05	Letter from Atty. Wieters.	0.25
Jan-04-06	Conference with Doug re status and course	0.30
	Totals	1.05
	Total Fee & Disbursements	\$204.75
	Previous Balance	11,802.76
	Cumulative Interest Due	\$765.16
	Balance Now Due	\$12,772.67

000346

Douglas Lambrecht

October 10, 2005

Hilton Head, SC
29926

Attention:

763

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Aug-02-05	Letter from Thrower; Review of Motion for Summary Judgment; Conference with counsel regarding course.	0.50
	Totals	0.50
	Total Fee & Disbursements	\$87.50
	Previous Balance	11,715.26
	Cumulative Interest Due	\$489.22
	Balance Now Due	\$12,291.98

000347

Douglas Lambrecht

August 5, 2005

Hilton Head, SC
29926

Attention:

737

RE: Clegg v. Lambrecht

DISBURSEMENTS

Jul-05-05	Coastal Court Reporting - deposition of Anna Lambrecht	48.25
	Coastal Court Reporting - deposition of Jan Horan	149.60
	Totals	\$197.85
	Total Fee & Disbursements	\$197.85
	Previous Balance	11,517.41
	Cumulative Interest Due	\$331.56
	Balance Now Due	\$12,046.82

000348

Douglas Lambrecht

July 5, 2005

"
Hilton Head, SC
29926

Attention:

723

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
May-25-05	Review of file; Travel to Hilton Head Island and attendance at depositions of Jan Horan and Anna Lambrecht; Conference with Doug regarding testimony and course.	5.50
Jun-23-05	Letter from Atty. Wieters; Letter from Thrower.	0.25
	Totals	5.75
	Total Fee & Disbursements	\$1,006.25
	Previous Balance	10,511.16
	Cumulative Interest Due	\$264.40
	Balance Now Due	\$11,781.81

000349

Douglas Lambrecht

June 1, 2005

Hilton Head, SC
29926

Attention:

710

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
May-02-05	Review of correspondence and Notice of Depositions; Letter to client regarding same; Conference with co-counsel regarding course.	0.75
May-11-05	Conference with Doug regarding depositions of Jan and Anna.	0.50
May-23-05	Conference with Doug regarding depositions of Anna and Jan; Review of witness files regarding same.	1.50
May-24-05	Review of transcripts of depositions and statements; Preparation for depositions; Phone call to Atty. Finger.	2.25
Totals		5.00
Total Fee & Disbursements		\$875.00
Previous Balance		9,636.16
Cumulative Interest Due		\$196.68
Balance Now Due		\$10,707.84

000350

Douglas Lambrecht

June 8, 2006

Hilton Head, SC
29926

Attention:

897

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
May-01-06	Letter from Wieters; review of Order; email to Wieters re hearing on Motion for Summary Judgment; phone call to Judge Coltrane	1.00
May-23-06	Letter from Atty. Wieters; Review of Orders; E-mails from Elizabeth Smith regarding scheduling.	0.25
	Totals	1.25
	Total Fee & Disbursements	\$243.75
	Previous Balance	12,651.01
	Cumulative Interest Due	\$1,081.41
	Balance Now Due	\$13,976.17

000351

Douglas Lambrecht

July 13, 2006

Hilton Head, SC
29926

Attention:

915

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Jun-05-06	Review of motion roster regarding hearing on Motion to Reinstate and pending motions for Summary Judgment.	0.25
Jun-30-06	Letter from Atty. Harrell; Review of Motion for Summary Judgment; Memo to counsel regarding Amended Complaint.	0.50
	Totals	0.75
	Total Fee & Disbursements	\$146.25
	Previous Balance	12,894.76
	Cumulative Interest Due	\$1,172.62
	Balance Now Due	\$14,213.63

Douglas Lambrecht

August 3, 2006

Hilton Head, SC
29926

Attention:

933

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Jul-31-06	Review of motion roster; email to and from Clerk of Court re hearing in all pending motions; multiple emails re hearings; phone call to attorney Weiters	1.25
	Totals	<u>1.25</u>
	Total Fee & Disbursements	<u>\$243.75</u>
	Previous Balance	13,041.01
	Cumulative Interest Due	\$1,228.30
	Balance Now Due	<u>\$14,513.06</u>

000353

Douglas Lambrecht

September 11, 2006

Hilton Head, SC
29926

Attention:

953

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Aug-01-06	Review of and revision of Schedule of Pending Motions; E-mail to Clerk of Court regarding same; E-mail to all counsel regarding pending Motions; E-mails to and from Atty. Carter.	1.50
Aug-02-06	Letter from Atty. Wieters.	0.25
Aug-03-06	Letter from Atty. Wieters; Review of pleadings; E-mail to Atty. Wieters regarding Amendment to Complaint; E-mails from and to Atty. Wieters regarding hearing and amendment.	1.50
Aug-04-06	Preparation for hearing on pending motions.	0.75
Aug-07-06	Review of arguments; Travel to courthouse and appearance on Motion to Amend; Meeting with defense counsel; Conference with Doug regarding status and course.	3.75
Aug-09-06	Review of deposition testimony and revisions to Memorandum in Support of Motion for Summary Judgment.	2.40
Aug-11-06	Review of Second Amended Complaint; Analysis of changes.	0.50

000354

Invoice#: 953

Page 2

September 11, 2006

Aug-15-06	Letter from Atty. Harrell; Conference with counsel regarding Answers to Second Amended Complaints.	0.50
	Revisions to Memo re summary judgment	4.20
Aug-22-06	Preparation of Answer to Second Amended Complaints	2.70
	Complete draft of Memo re Summary Judgment to include subsequent discovery material and case authority.	2.40
Aug-24-06	Review of Motion Roster; Letter to Clerk of Court regarding hearing on Motions for Summary Judgment.	0.50
Aug-28-06	Review of and revision of Summary Judgment Memorandum; Analysis of arguments and issues; Conference with counsel regarding same.	2.50
Aug-31-06	Letter from Atty. Harrell; Review of Barker Answers to Second Amended Complaints.	0.75
	Totals	24.20
DISBURSEMENTS		
Aug-22-06	Copies	12.60
	Postage	8.49
	Totals	\$21.09
	Total Fee & Disbursements	\$4,740.09
	Previous Balance	13,284.76
	Cumulative Interest Due	\$1,332.98
	Balance Now Due	\$19,357.83

000355

Douglas Lambrecht

September 27, 2006

Hilton Head, SC
29926

Attention:

964

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Sep-05-06	Review of Answers and Motions of Jan Horan; Letter to Doug regarding same.	0.75
Sep-08-06	Review of files; Preparation for hearing on motions for summary judgment.	2.00
Sep-11-06	Preparation or oral arguments; Review of evidence for rebuttal of Plaintiff claims; Travel to courthouse and hearing on all pending motions for summary judgment; Review of pleadings files; E-mail to Attys. Weiters and Kuhn regarding claimed responses.	4.75
Sep-12-06	E-mails from and to Doug regarding status and course; Review of Barker Memorandum regarding Summary Judgment Motion; Conference with Atty. DuBois regarding same.	1.00
Sep-13-06	Letter from Atty. Weiters; Phone call to Atty. Kuhn; Phone call from Atty. Carter regarding coordination of presentation; Review of file; E-mail to Carter regarding same.	1.25
Sep-14-06	Phone call to Atty. Kuhn.	0.25
Sep-15-06	Review of Memorandum of Clegg in opposition to Motion to Dismiss	2.00

000356

Lambrecht; Review of Memorandum of Clegg in opposition to Motion for Summary Judgment; Letter to Doug regarding same; Conference with counsel regarding same.

Sep-19-06	Conference with Doug regarding status and course.	0.25
Sep-20-06	Letter from DuBois; Review of motion.	0.25
Sep-21-06	Review and analysis of Brief of Plaintiff in Opposition to Summary Judgment; Legal research regarding issues raised; Begin draft of Reply Brief.	4.90
Sep-22-06	Review of deposition testimony; review of and revisions to Reply Memorandum; email to Judge Young; letter to Judge Young	4.75
	Finalize Reply Memorandum and legal research proximate cause and admissibility of unsworn statements.	5.10
	Totals	27.25
 DISBURSEMENTS		
Sep-07-06	copies/postage	4.05
Sep-08-06	copies	31.50
Sep-25-06	Copies	24.30
	Postage	12.48
	Totals	\$72.33
	Total Fee & Disbursements	\$5,386.08
	Previous Balance	18,024.85
	Cumulative Interest Due	\$1,376.64
	Balance Now Due	\$24,787.57

Douglas Lambrecht

November 1, 2006

Hilton Head, SC
29926

Attention:

985

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Oct-16-06	Letter from Atty. Lovoti; Review of Notice of Appearance; Letter from DuBois; Review of Barker Memorandum for Reconsideration and Brief; Conference with counsel regarding new case; E-mail to Atty. Marshner regarding same.	1.75
Oct-20-06	Letter from attorney Finger; review of supplemental documentation and case authority; conference with counsel re same	0.75
	Totals	2.50
	Total Fee & Disbursements	\$487.50
	Previous Balance	23,410.93
	Cumulative Interest Due	\$1,498.16
	Balance Now Due	\$25,396.59

000358

Douglas Lambrecht

December 7, 2006

Hilton Head, SC
29926

Attention:

1014

RE: Clegg v. Lambrecht

DATE

DESCRIPTION

HOURS

Nov-14-06

Phone call from attorney Dubois

0.25

Nov-20-06

Letter from Welters; review of Order

0.25

Totals

0.50

Total Fee & Disbursements

\$97.50

Previous Balance

23,898.43

Cumulative Interest Due

\$1,671.98

Balance Now Due

\$25,667.91

000359

Douglas Lambrecht

February 2, 2007

Hilton Head, SC
29926

Attention:

1063

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Jan-09-07	Review of pleadings; phone call to attorney Marscher; email from Marscher; phone call to Judge Young's office; emails and phone calls to Clerk of Court; conference with Law Clerk to Judge Young; conference with Doug	1.75
Jan-10-07	Review of Order; conference with Doug re Order and Motion for Sanctions	0.50
	Review of summary judgment order; review frivolous action statute and requirements; letter to Wieters re service of order	1.50
Jan-11-07	Phone call from attorney Marscher; fax to Finger; meeting with counsel re sanctions; email to Doug	0.75
Jan-12-07	Meeting with counsel re facts and arguments re sanctions	0.50
Jan-15-07	Meeting with counsel re formulation of arguments and strategy; investigation of previous complaints against Wieters; conference with Doug re course; review of and revisions to Motion for Sanctions	3.50
	Work on Motion for Sanctions and Memorandum; conference with	3.10

000360

	co-counsel; review of and respond to inquiry from Doug	
Jan-16-07	Email from Doug re position on sanctions; conference with Doug re same; meeting with Doug re facts in support of sanctions; meeting with counsel	2.75
	Finalize Motion; letter to Judge Young; preparation of Motion cover sheet; letter to Clerk; email from and to Doug; conference with Doug	2.10
Jan-17-07	Review of files; review of and revisions to factual basis for Motion for Sanctions; travel to Court House and meeting with Clerk re filing and hearing	3.75
Jan-25-07	Email to and from Judge Young's clerk re scheduling of hearing	0.25
Jan-26-07	Phone call from Barker counsel; review of Clegg Motion for Reconsideration; meeting with counsel re same; conference with Doug re status	1.25
	Initial review of 59(e) Motion	0.50
Jan-31-07	Review of 59(e) Motion; preparation of Memorandum in Opposition; letter to Judge Young	1.10
	Totals	23.30
DISBURSEMENTS		
Jan-17-07	Motion Fee	50.00
	Postage	6.30
	Totals	\$56.30
	Total Fee & Disbursements	\$4,599.80
	Previous Balance	23,995.93
	Previous Payments	5,000.00

Invoice #: 1063

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February 2, 2007

Cumulative Interest Due

\$1,551.34

Balance Now Due

\$25,147.07

000362

March 3, 2007

Douglas Lambrecht

Hilton Head, SC
29926

1084

Attention:

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Feb-06-07	Letter from Dubois; review of Barker Motion to Compel	0.25
Feb-07-07	Conference with co-counsel re evidence and proof re Motion for Sanctions, necessity for depositions and Affidavits	1.20
Feb-23-07	Review of Harrell Motions and correspondence	0.25
Feb-26-07	Conference with counsel re course; email to Judge Young re same; conference with Doug	0.75
	Conference with co-counsel re Wieters failure to respond and course; email to Doug	0.80
Feb-27-07	Emails with clerk to Judge Young; review of Motion and Memorandum; emails with Clerk re hearing and Memorandum; meeting with co-counsel re arguments and evidence	2.25
	Preparation of Memorandum in support of Motion for Sanctions; legal research re recent sanction cases; conference with co-counsel re presentation of evidence; review of previous file	5.90

Invoice #: 1084

Page 2

March 3, 2007

Feb-28-07 Review of discovery documents; review of
of and revisions to Memorandum re
Sanctions; email to Judge Young re same;
filing of Memorandum and evidence with
Clerk of Court

2.75

Preparation of Affidavit in Support of
Motion for Sanctions; review of additional
materials; revisions to Memorandum

0.70

Totals

14.85

DISBURSEMENTS

Feb-13-07 WestLaw

35.57

Totals

\$35.57

Total Fee & Disbursements

\$2,931.32

Previous Balance

23,595.73

Cumulative Interest Due

\$1,664.54

Balance Now Due

\$28,191.59

Douglas Lambrecht

March 28, 2007

Hilton Head, SC
29926

Attention:

1102

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Mar-12-07	Letter from DuBois; review of Notice of Depositions; review of subpoena; review of correspondence to clerk; letter from Weiters; review of Motion to Stay; analysis of course	1.50
Mar-14-07	Review of Motion to Stay; conference counsel re response to motion; conference with Doug re denial of sanctions and options for appeal; memo to counsel re same; meeting with counsel re course	1.50
	Review of response from Weiters; work on revisions to Rule 59(e) Motion	0.90
Mar-15-07	Review of and revisions to 59(e) Motion; email to and from Doug re same	1.00
	Work on revisions to Rule 59(e) Motion	2.90
Mar-16-07	Conference with Doug re costs on appeal	0.20
Mar-19-07	Letter from Thrower; review of subpoena attachments	0.25
	Totals	8.25

000365

Invoice #: 1102

Page 2

March 28, 2007

DISBURSEMENTS

Mar-15-07 Motion fees - Rule 59(e)

50.00

Totals

\$50.00

Total Fee & Disbursements

\$1,658.75

Previous Balance

26,527.05

Cumulative Interest Due

\$1,784.78

Balance Now Due

\$29,970.58

000366

Douglas Lambrecht

May 2, 2007

Hilton Head, SC
29926

Attention:

1121

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Apr-11-07	Phone call from attorney DuBois re appeal and deposition of plaintiffs; review of pleadings re same; conference with counsel re same	0.75
Apr-12-07	Phone call from Judge Young's clerk; conference with counsel; phone call to Clerk; conference with attorney Carter re Anna Motion; conference with Judge Young's clerk re Anna Motion and hearings; conference with attorney Carter	1.25
Apr-20-07	Review of motion Roster; conference with Judge Mullen's staff re same; email from staff re hearing date	0.50
Apr-23-07	Prepare materials for Rule 59 hearing	1.10
Apr-24-07	Preparation for hearing on motion for sanctions	1.50
Apr-30-07	Review of file; preparation for hearing on Motion for Sanctions; outline of oral argument	2.25
	Totals	7.35
	Total Fee & Disbursements	\$1,433.25

000367

Invoice #: 1121

Page 2

May 2, 2007

Previous Balance

28,185.80

Cumulative Interest Due

\$1,974.26

Balance Now Due

\$31,593.31

000368

Douglas Lambrecht

June 4, 2007

Hilton Head, SC
29926

Attention:

1147

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
May-01-07	Travel to Courthouse and appearance on Rule 59(e) Motion; conference with Doug re status	2.75
May-14-07	Letter from Wieters; review of Motion for Reconsideration; Review of correspondence to Clerk	0.75
	Totals	3.50
	Total Fee & Disbursements	\$682.50
	Previous Balance	29,619.05
	Cumulative Interest Due	\$2,166.28
	Balance Now Due	\$32,467.83

Douglas Lambrecht

September 5, 2007

Hilton Head, SC
29926

Attention:

1216

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Aug-27-07	Review of Barker status report	0.25
	Totals	0.25
	Total Fee & Disbursements	\$48.75
	Previous Balance	29,552.21
	Cumulative Interest Due	\$2,730.67
	Balance Now Due	\$32,331.63

000370

Douglas Lambrecht

March 3, 2008

Hilton Head, SC
29926

Attention:

1364

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Feb-07-08	Phone call from Barker counsel	0.25
	Totals	0.25

DISBURSEMENTS

Feb-04-08	Motion Fee Clerk	25.00
	Totals	\$25.00
	Total Fee & Disbursements	\$73.75
	Previous Balance	28,450.94
	Cumulative Interest Due	\$3,787.73
	Balance Now Due	\$32,312.42

000371

Douglas Lambrecht

April 3, 2008

Hilton Head, SC
29926

Attention:

1399

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Mar-21-08	Email from Judge Mullen; review of appeal filings; email to Judge Mullen and counsel of record re status of appeal	0.50
Mar-31-08	Letter from US Post Office re alleged non-delivery; phone call to Postmaster	0.25
	Totals	0.75
	Total Fee & Disbursements	\$146.25
	Previous Balance	28,524.69
	Cumulative Interest Due	\$3,969.01
	Balance Now Due	\$32,639.95

000372

Douglas Lambrecht

May 1, 2008

Hilton Head, SC
29926

Attention:

1419

RE: Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Apr-03-08	Email from Strong re status conference; email to Judge Mullen re same	0.25
	Totals	0.25
	Total Fee & Disbursements	\$48.75
	Previous Balance	28,670.94
	Cumulative Interest Due	\$4,133.09
	Balance Now Due	\$32,852.78

000373

Douglas Lambrecht

January 15, 2010

Hilton Head, SC
29926

Attention:

1911

RE: Clegg v. Lambrecht

Total Fee & Disbursements

\$0.00

Previous Balance

28,719.69

Cumulative Interest Due

\$7,815.14

Balance Now Due

\$36,534.83

000374

Jan 15/2010

North & Black, PC
Interest Calculation Report
ALL DATES

Page 1

Client Information		Client Lawyer		Activity			Balance Owning		
Matter	Description	Inv#	Type	Int. Rate	Principal	Interest	Principal	Interest	Total
Entry #	Date								
Lambre - Lambrecht, Douglas JEN									
Lambre-001 Clegg v. Lambrecht									
2705	Apr 1/2004	448	Invoice	7.50%	1933.88		1933.88	0.00	1933.88
	May 21/2004		Interest			7.95	1933.88	7.95	1941.83
			Inv. Paid Int. not Collected			-7.95	1933.88	0.00	1933.88
2945	May 21/2004		Payment		-1662.50		271.38	0.00	271.38
2945	May 21/2004		Payment		-245.00		26.38	0.00	26.38
2945	May 21/2004		Payment		-26.38		0.00	0.00	0.00
2853	May 3/2004	465	Invoice	7.50%	43.75		43.75	0.00	43.75
2945	May 21/2004		Payment		-43.75		0.00	0.00	0.00
3122	Jun 14/2004	481	Invoice	7.50%	1968.75		1968.75	0.00	1968.75
3122	Jun 14/2004	481	Payment		-22.37		1946.38		1946.38
	Jul 30/2004		Interest			6.40	1946.38	6.40	1952.78
			Inv. Paid Int. not Collected			-6.40	1946.38	0.00	1946.38
3436	Jul 30/2004		Payment		-1816.62		129.76	0.00	129.76
3436	Jul 30/2004		Payment		-129.76		0.00	0.00	0.00
3383	Jul 15/2004	510	Invoice	7.50%	2506.02		2506.02	0.00	2506.02
3436	Jul 30/2004		Payment		-875.00		1631.02	0.00	1631.02
3436	Jul 30/2004		Payment		-1575.00		56.02	0.00	56.02
3436	Jul 30/2004		Payment		-56.02		0.00	0.00	0.00
3764	Sep 1/2004	531	Invoice	7.50%	753.81		753.81	0.00	753.81
	Jan 16/2007		Interest			129.64	753.81	129.64	883.45
			Inv. Paid Int. not Collected			-129.64	753.81	0.00	753.81
8190	Jan 16/2007		Payment		-568.75		185.06	0.00	185.06
8190	Jan 16/2007		Payment		-157.50		27.56	0.00	27.56
8190	Jan 16/2007		Payment		-27.56		0.00	0.00	0.00
4372	Dec 6/2004	581	Invoice	7.50%	1037.40		1037.40	0.00	1037.40
	Jan 16/2007		Interest			157.95	1037.40	157.95	1195.35
			Inv. Paid Int. not Collected			-157.95	1037.40	0.00	1037.40
8190	Jan 16/2007		Payment		-656.25		381.15	0.00	381.15
8190	Jan 16/2007		Payment		-315.00		66.15	0.00	66.15
8190	Jan 16/2007		Payment		-66.15		0.00	0.00	0.00
4557	Jan 4/2005	600	Invoice	7.50%	656.25		656.25	0.00	656.25
	Jan 16/2007		Interest			96.01	656.25	96.01	752.26
			Inv. Paid Int. not Collected			-96.01	656.25	0.00	656.25
8190	Jan 16/2007		Payment		-656.25		0.00	0.00	0.00
4806	Feb 2/2005	623	Invoice	7.50%	5240.25		5240.25	0.00	5240.25
	Jan 16/2007		Interest			735.43	5240.25	735.43	5975.68
8190	Jan 16/2007		Payment		-2009.30		3230.95	735.43	3966.38
8190	Jan 16/2007		Payment		-45.49		3185.46	735.43	3920.89
8190	Jan 16/2007		Payment		-497.75		2687.71	735.43	3423.14
	Jun 29/2007		Interest			90.57	2687.71	826.00	3513.71
9121	Jun 29/2007		Payment		-732.75		1954.96	826.00	2780.96
9121	Jun 29/2007		Payment		-16.59		1938.37	826.00	2764.37
	Sep 11/2007		Interest			29.47	1938.37	855.47	2793.84
9434	Sep 11/2007		Payment		-22.62		1915.75	855.47	2771.22
9434	Sep 11/2007		Payment		-998.75		917.00	855.47	1772.47
	Jan 28/2008		Interest			26.19	917.00	881.66	1798.66
10088	Jan 28/2008		Payment		-2.85		914.15	881.66	1795.81
10088	Jan 28/2008		Payment		-125.80		788.35	881.66	1670.01
	Jan 15/2010		Interest			116.31	788.35	997.97	1786.32
5018	Mar 16/2005	645	Invoice	7.50%	1418.95		1418.95	0.00	1418.95
	Jan 15/2010		Interest			506.16	1418.95	506.16	1925.11
5147	Apr 1/2005	658	Invoice	7.50%	354.50		354.50	0.00	354.50
	Jan 15/2010		Interest			125.29	354.50	125.29	479.79
5298	May 11/2005	688	Invoice	7.50%	175.00		175.00	0.00	175.00
	Jan 15/2010		Interest			60.41	175.00	60.41	235.41
5410	Jun 1/2005	710	Invoice	7.50%	875.00		875.00	0.00	875.00
	Jan 15/2010		Interest			298.28	875.00	298.28	1173.28
5529	Jul 5/2005	723	Invoice	7.50%	1006.25		1006.25	0.00	1006.25
	Jan 15/2010		Interest			335.99	1006.25	335.99	1342.24
5669	Aug 5/2005	737	Invoice	7.50%	197.85		197.85	0.00	197.85
	Jan 15/2010		Interest			64.80	197.85	64.80	262.65
6006	Oct 10/2005	763	Invoice	7.50%	87.50		87.50	0.00	87.50
	Jan 15/2010		Interest			27.47	87.50	27.47	114.97
6106	Nov 7/2005	774	Invoice	7.50%			0.00	0.00	0.00
6258	Dec 5/2005	799	Invoice	7.50%			0.00	0.00	0.00
6438	Feb 1/2006	810	Invoice	7.50%	204.75		204.75	0.00	204.75
	Jan 15/2010		Interest			59.49	204.75	59.49	264.24
6640	Mar 2/2006	836	Invoice	7.50%	204.75		204.75	0.00	204.75
	Jan 15/2010		Interest			58.27	204.75	58.27	263.02
6803	Apr 6/2006	860	Invoice	7.50%	195.00		195.00	0.00	195.00
	Jan 15/2010		Interest			54.09	195.00	54.09	249.09
6913	May 9/2006	871	Invoice	7.50%	243.75		243.75	0.00	243.75
	Jan 15/2010		Interest			65.96	243.75	65.96	309.71
7076	Jun 8/2006	897	Invoice	7.50%	243.75		243.75	0.00	243.75
	Jan 15/2010		Interest			64.46	243.75	64.46	308.21
7221	Jul 13/2006	915	Invoice	7.50%	146.25		146.25	0.00	146.25
	Jan 15/2010		Interest			37.62	146.25	37.62	183.87
7345	Aug 3/2006	933	Invoice	7.50%	243.75		243.75	0.00	243.75
	Jan 15/2010		Interest			61.66	243.75	61.66	305.41
7537	Sep 11/2006	953	Invoice	7.50%	4740.09		4740.09	0.00	4740.09
	Jan 15/2010		Interest			1161.00	4740.09	1161.00	5901.09

000375

Client Information		Clnt Lawyer		Activity			Balance Owng		
Matter	Description						Principal	Interest	Total
	Entry #	Date	Inv#	Type	Int. Rate	Principal	Interest		
		Jan 15/2010		Interest			1301.51	5386.08	6687.59
7898		Nov 1/2006 985		Invoice	7.50%	487.50		487.50	487.50
		Jan 15/2010		Interest			114.30	487.50	601.80
8038		Dec 7/2006 1014		Invoice	7.50%	97.50		97.50	97.50
		Jan 15/2010		Interest			22.14	97.50	119.64
8174		Jan 15/2007 1037		Invoice	7.50%			0.00	0.00
8348		Feb 2/2007 1063		Invoice	7.50%	4599.80		4599.80	4599.80
		Jan 15/2010		Interest			990.53	4599.80	5590.33
8531		Mar 3/2007 1084		Invoice	7.50%	2931.32		2931.32	2931.32
		Jan 15/2010		Interest			613.77	2931.32	3545.09
8678		Mar 28/2007 1102		Invoice	7.50%	1658.75		1658.75	1658.75
		Jan 15/2010		Interest			338.79	1658.75	1997.54
8871		May 2/2007 1121		Invoice	7.50%	1433.25		1433.25	1433.25
		Jan 15/2010		Interest			282.43	1433.25	1715.68
9016		Jun 4/2007 1147		Invoice	7.50%	682.50		682.50	682.50
		Jan 15/2010		Interest			129.86	682.50	812.36
9174		Jul 2/2007 1187		Invoice	7.50%			0.00	0.00
9274		Aug 3/2007 1200		Invoice	7.50%			0.00	0.00
9408		Sep 5/2007 1216		Invoice	7.50%	48.75		48.75	48.75
		Jan 15/2010		Interest			8.34	48.75	57.09
9530		Oct 3/2007 1247		Invoice	7.50%			0.00	0.00
9677		Nov 5/2007 1271		Invoice	7.50%			0.00	0.00
9830		Dec 6/2007 1306		Invoice	7.50%			0.00	0.00
9970		Jan 4/2008 1316		Invoice	7.50%			0.00	0.00
10173		Feb 4/2008 1345		Invoice	7.50%			0.00	0.00
10383		Mar 3/2008 1364		Invoice	7.50%	73.75		73.75	73.75
		Jan 15/2010		Interest			9.90	73.75	83.65
10596		Apr 3/2008 1399		Invoice	7.50%	146.25		146.25	146.25
		Jan 15/2010		Interest			18.69	146.25	164.94
10758		May 1/2008 1419		Invoice	7.50%	48.75		48.75	48.75
		Jan 15/2010		Interest			5.95	48.75	54.70
10949		Jun 7/2008 1451		Invoice	7.50%			0.00	0.00
11128		Jul 1/2008 1473		Invoice	7.50%			0.00	0.00
11293		Aug 4/2008 1495		Invoice	7.50%			0.00	0.00
11530		Sep 2/2008 1539		Invoice	7.50%			0.00	0.00
11676		Oct 2/2008 1553		Invoice	7.50%			0.00	0.00
11867		Nov 5/2008 1592		Invoice	7.50%			0.00	0.00
11960		Nov 30/2008 1600		Invoice	7.50%			0.00	0.00
12146		Jan 6/2009 1629		Invoice	7.50%			0.00	0.00
12327		Feb 14/2009 1656		Invoice	7.50%			0.00	0.00
12436		Mar 2/2009 1679		Invoice	7.50%			0.00	0.00
12547		Apr 2/2009 1701		Invoice	7.50%			0.00	0.00
12640		May 1/2009 1720		Invoice	7.50%			0.00	0.00
12778		Jun 11/2009 1732		Invoice	7.50%			0.00	0.00
12920		Aug 3/2009 1756		Invoice	7.50%			0.00	0.00
12938		Aug 3/2009 1770		Invoice	7.50%			0.00	0.00
13136		Sep 1/2009 1797		Invoice	7.50%			0.00	0.00
13364		Nov 5/2009 1821		Invoice	7.50%			0.00	0.00
13649		Jan 15/2010 1911		Invoice	7.50%			0.00	0.00
Matter Total						28719.69	7815.13	28719.69	36534.82
Firm Total						28719.69	7815.13	28719.69	36534.82

REPORT SELECTIONS - Interest Calculation Report

Layout Template: All
 Requested by: ADMIN
 Finished: Friday, January 15, 2010 at 01:20:26 PM
 Date Range: ALL DATES
 Matters: Lambre-001
 Clients: All
 Major Clients: All
 Client Intro Lawyer: All
 Type of Law: All
 New Page for Each Lawyer: No
 Interest Up To: 1/15/2010
 Select From: Active, Inactive, Archived Matters
 Ver: 9.20d
 Responsible Lawyer: All
 Assigned Lawyer: All
 Invoice: All
 Matters Sort by: Default
 Matter Security Enabled: No

Jan 4/2010

North & Black, PC
Client Summary

Page: 1

			ALL DATES				Retainers Taxes	Last Bld AR Bal	Ac#	Balance	Last Entry
Client Name Matter	Resp	Assign	Open Date Last Entry	Unbld Hrs Bld Hrs	Unbld Fees Bld Fees	Unbld Disb Bld Disb					
Description											
Lambrecht, Douglas			Mar 21/2004	0.00	0.00	0.00	0.00	Nov 5/2009			
Lambre-001	JEN	JEN	Nov 5/2009	217.75	40522.25	1549.20	0.00	28719.69			
Clegg v. Lambrecht											
Firm Totals:				0.00	0.00	0.00	0.00				
				217.75	40522.25	1549.20	0.00	28719.69			

*** Summary by Responsible Lawyer ***

Responsible Lawyer	Total Clients	Total Matters	Unbilled Fees	Unbilled Disb	Billed Fees	Billed Disb+Tax	A/R	Trust	Retainer
JEN -John E. North,	1	1	0.00	0.00	40522.25	1549.20	28719.69	0.00	0.00
Total:	1	1	0.00	0.00	40522.25	1549.20	28719.69	0.00	0.00

REPORT SELECTIONS - Client Summary

Layout Template	Default
Advanced Search Filter	None
Requested by	ADMIN
Finished by	Monday, January 04, 2010 at 04:10:37 PM
Ver	9.20d
Matters	Lambre-001
Clients	All
Major Clients	All
Client Intro Lawyer	All
Responsible Lawyer	All
Assigned Lawyer	All
Type of Law	All
Select From	Active, Inactive, Archived Matters
Matters Sort by	Default
New Page for Each Lawyer	No
No Activity Date	Dec 31/2199
Working Lawyer	All
Incl. Unbilled Over	0.00
Incl. Matters with Neg Unbld Disb	No
Incl. Zero Balances	Yes
Incl. Non-zero Balances	Yes
Client Totals Only	No
Totals Only	No

000377

Douglas Lambrecht

May 2, 2007

Hilton Head, SC
29926

Attention:

1123

RE: Appeal of Summary Judgment in Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Mar-28-07	Review of Notice of Appeal and related matters; email to Doug re same	0.80
	Totals	<u>0.80</u>
	Total Fee & Disbursements	<u>\$156.00</u>
	Cumulative Interest Due	\$0.00
	Balance Now Due	<u>\$156.00</u>

000378



Douglas Lambrecht

June 4, 2007

Hilton Head, SC
29926

Attention:

1151

RE: Appeal of Summary Judgment in Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
May-14-07	Review of correspondence to Court of Appeals; review of motion to Extend filings; conference with counsel	0.50
	Review of request for extension and response re same	1.50
May-15-07	Finalize response to request for extension; preparation of proof of service and letter to Clerk re same	1.10
	Totals	3.10

DISBURSEMENTS

May-15-07	Postage	6.04
	Totals	\$6.04
	Total Fee & Disbursements	\$610.54
	Previous Balance	156.00
	Cumulative Interest Due	\$0.10
	Balance Now Due	\$766.64

000379

Douglas Lambrecht

August 3, 2007

Hilton Head, SC
29926

Attention:

1204

RE: Appeal of Summary Judgment in Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Jul-30-07	Letter from Kuhn; review of Clegg Amended Notice of Appeal; review of order denying Clegg Motion to Consolidate and Extend Deadlines; review of second Clegg motion	0.50
	Totals	0.50
	Total Fee & Disbursements	\$97.50
	Previous Balance	766.54
	Cumulative Interest Due	\$5.78
	Balance Now Due	\$869.82

000380

Douglas Lambrecht

September 5, 2007

Hilton Head, SC
29926

Attention:

1220

RE: Appeal of Summary Judgment in Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Aug-24-07	Preliminary review of initial brief and research re deficiencies	1.30
Aug-27-07	Preparation of Motion to Strike Brief and Dismiss appeal; letter to client re same	2.20
	Totals	<u>3.50</u>

DISBURSEMENTS

Aug-27-07	Postage	5.70
	Motion Fee	25.00
	Totals	<u>\$30.70</u>
	Total Fee & Disbursements	\$713.20
	Previous Balance	864.04
	Cumulative Interest Due	\$11.04
	Balance Now Due	<u>\$1,588.28</u>

000381

Douglas Lambrecht

October 3, 2007

Hilton Head, SC
29926

Attention:

1250

RE: Appeal of Summary Judgment in Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Sep-28-07	Review of various letters from Clerk of Court of Appeals outlining deficiencies of Plaintiff's filings and setting deadlines for compliance	0.25
	Totals	0.25

DISBURSEMENTS

Sep-05-07	Postage	10.14
	Totals	\$10.14
	Total Fee & Disbursements	\$58.89
	Previous Balance	1,577.24
	Previous Payments	1,577.24
	Cumulative Interest Due	\$0.00
	Balance Now Due	\$58.89

000382

Douglas Lambrecht

December 6, 2007

Hilton Head, SC
29926

Attention:

1310

RE: Appeal of Summary Judgment in Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Nov-08-07	Work on Initial Brief	4.60
Nov-12-07	Work on Initial Brief	5.80
Nov-14-07	Review of and revision to Initial Brief	1.50
	Work on Initial Brief	3.10
Nov-15-07	Work on Initial Brief	1.25
	Totals	16.25

DISBURSEMENTS

Nov-15-07	WestLaw	75.00
Nov-19-07	Motion fee	25.00
	Totals	\$100.00

Total Fee & Disbursements
Previous Balance

\$3,268.75
58.89

000383

Invoice #: 1310

Page 2

December 6, 2007

Cumulative Interest Due

\$0.41

Balance Now Due

\$3,328.05

000384

Douglas Lambrecht

January 4, 2008

Hilton Head, SC
29926

Attention:

1312

RE: Appeal of Summary Judgment in Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Dec-05-07	Review of and revisions to Brief of Respondent	2.00
	Work on finalizing Initial Brief	2.10
Dec-06-07	Finalize Initial Brief	1.90
Dec-10-07	Finalize and serve initial brief; designation of material for the record, proof of service; letter to clerk	3.10
	Totals	9.10

DISBURSEMENTS

Dec-10-07	Postage - Initial Brief and related materials	16.60
	Copies - Initial Brief and related materials	38.85
	Totals	\$55.45
	Total Fee & Disbursements	\$1,829.95
	Previous Balance	3,327.64

000385

Invoice #: 1312

Page 2

January 4, 2008

Cumulative Interest Due

\$0.76

Balance Now Due

\$5,158.35

000386

Douglas Lambrecht

February 4, 2008

Hilton Head, SC
29926

Attention:

1348

RE: Appeal of Summary Judgment in Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Jan-17-08	Review of Order of Dismissal; email to client re same	0.40
	Totals	0.40

DISBURSEMENTS

Jan-14-08	Westlaw	112.33
	Totals	\$112.33
	Total Fee & Disbursements	\$190.33
	Previous Balance	5,157.59
	Cumulative Interest Due	\$21.67
	Balance Now Due	\$5,369.59

000387

Douglas Lambrecht

March 3, 2008

Hilton Head, SC
29926

Attention:

1368

RE: Appeal of Summary Judgment in Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Feb-04-08	Review of Remittitur; preparation of Motion for Costs and related documents; letter to Clerk; conference with client re same	1.10
Feb-08-08	Review of and revision of Return to Motion to Recall Remittitur	0.50
	Review of Motion to Recall Remittitur and supporting affidavits; preparation of response; letter to Clerk re filing same	3.10
	Review of Motion to Recall Remittitur; review of affidavits; conference with co-counsel; legal research re jurisdiction of court of appeals; prepare and serve Return to Motion and Proof of Service; letter to Clerk	3.10
	Totals	7.80
	Total Fee & Disbursements	\$1,521.00
	Previous Balance	5,347.92
	Cumulative Interest Due	\$51.34
	Balance Now Due	\$6,920.26

000388

Douglas Lambrecht

April 3, 2008

Hilton Head, SC
29926

Attention:

1401

RE: Appeal of Summary Judgment in Clegg v. Lambrecht

DATE	DESCRIPTION	HOURS
Mar-07-08	Review of Motion to Reconsider dismissal; review of relevant statutes; preparation of Return to Motion and Proof of service; letter to clerk	2.60
	Totals	2.60
	Total Fee & Disbursements	\$507.00
	Previous Balance	6,868.92
	Cumulative Interest Due	\$85.63
	Balance Now Due	\$7,461.55

Douglas Lambrecht

January 15, 2010

Hilton Head, SC
29926

Attention:

1912

RE: Appeal of Summary Judgment in Clegg v. Lambrecht

Total Fee & Disbursements

\$0.00

Previous Balance

7,375.92

Cumulative Interest Due

\$1,070.67

Balance Now Due

\$8,446.59

000390

Jan 25/2010

North & Black, PC
Interest Calculation Report
ALL DATES

Page 1

Client Information			Clt Lawyer		Activity			Balance Owing		
Matter	Description		Inv#	Type	Int. Rate	Principal	Interest	Principal	Interest	Total
Entry #	Date									
Lambre - Lambrecht, Douglas JEN										
Lambre-002 Appeal of Summary Judgment i										
8873	May 2/2007	1123	Invoice	7.50%	156.00			156.00	0.00	156.00
	Sep 11/2007		Interest				3.27	156.00	3.27	159.27
	Inv. Paid	Int. not	Collected				-3.27	156.00	0.00	156.00
9434	Sep 11/2007		Payment		-156.00			0.00	0.00	0.00
9020	Jun 4/2007	1151	Invoice	7.50%	610.54			610.54	0.00	610.54
	Sep 11/2007		Interest				8.66	610.54	8.66	619.20
	Inv. Paid	Int. not	Collected				-8.66	610.54	0.00	610.54
9434	Sep 11/2007		Payment		-97.50			513.04	0.00	513.04
9434	Sep 11/2007		Payment		-507.00			6.04	0.00	6.04
9434	Sep 11/2007		Payment		-6.04			0.00	0.00	0.00
9171	Jul 2/2007	1184	Invoice	7.50%				0.00	0.00	0.00
9278	Aug 3/2007	1204	Invoice	7.50%	97.50			97.50	0.00	97.50
	Sep 11/2007		Interest				0.18	97.50	0.18	97.68
	Inv. Paid	Int. not	Collected				-0.18	97.50	0.00	97.50
9434	Sep 11/2007		Payment		-97.50			0.00	0.00	0.00
9412	Sep 5/2007	1220	Invoice	7.50%	713.20			713.20	0.00	713.20
9434	Sep 11/2007		Payment		-682.50			30.70	0.00	30.70
9434	Sep 11/2007		Payment		-30.70			0.00	0.00	0.00
9533	Oct 3/2007	1250	Invoice	7.50%	58.89			58.89	0.00	58.89
	Jan 15/2010		Interest				9.74	58.89	9.74	68.63
9680	Nov 5/2007	1274	Invoice	7.50%				0.00	0.00	0.00
9834	Dec 6/2007	1310	Invoice	7.50%	3268.75			3268.75	0.00	3268.75
	Jan 15/2010		Interest				497.70	3268.75	497.70	3766.45
9966	Jan 4/2008	1312	Invoice	7.50%	1829.95			1829.95	0.00	1829.95
	Jan 15/2010		Interest				267.72	1829.95	267.72	2097.67
10176	Feb 4/2008	1348	Invoice	7.50%	190.33			190.33	0.00	190.33
	Jan 15/2010		Interest				26.63	190.33	26.63	216.96
10388	Mar 3/2008	1368	Invoice	7.50%	1521.00			1521.00	0.00	1521.00
	Jan 15/2010		Interest				204.08	1521.00	204.08	1725.08
10598	Apr 3/2008	1401	Invoice	7.50%	507.00			507.00	0.00	507.00
	Jan 15/2010		Interest				64.80	507.00	64.80	571.80
10761	May 1/2008	1422	Invoice	7.50%				0.00	0.00	0.00
10960	Jun 7/2008	1455	Invoice	7.50%				0.00	0.00	0.00
11129	Jul 1/2008	1474	Invoice	7.50%				0.00	0.00	0.00
11294	Aug 4/2008	1496	Invoice	7.50%				0.00	0.00	0.00
11531	Sep 2/2008	1540	Invoice	7.50%				0.00	0.00	0.00
11677	Oct 2/2008	1554	Invoice	7.50%				0.00	0.00	0.00
11868	Nov 5/2008	1593	Invoice	7.50%				0.00	0.00	0.00
11961	Nov 30/2008	1601	Invoice	7.50%				0.00	0.00	0.00
12147	Jan 6/2009	1630	Invoice	7.50%				0.00	0.00	0.00
12328	Feb 14/2009	1657	Invoice	7.50%				0.00	0.00	0.00
12437	Mar 2/2009	1680	Invoice	7.50%				0.00	0.00	0.00
12548	Apr 2/2009	1702	Invoice	7.50%				0.00	0.00	0.00
12641	May 1/2009	1721	Invoice	7.50%				0.00	0.00	0.00
12779	Jun 11/2009	1733	Invoice	7.50%				0.00	0.00	0.00
12939	Aug 3/2009	1771	Invoice	7.50%				0.00	0.00	0.00
13137	Sep 1/2009	1798	Invoice	7.50%				0.00	0.00	0.00
13365	Nov 5/2009	1822	Invoice	7.50%				0.00	0.00	0.00
13650	Jan 15/2010	1912	Invoice	7.50%				0.00	0.00	0.00
Matter Total						7375.92	1070.67	7375.92	1070.67	8446.59
Firm Total						7375.92	1070.67	7375.92	1070.67	8446.59

REPORT SELECTIONS - Interest Calculation Report

Layout Template: All
 Requested by: ADMIN
 Finished: Friday, January 15, 2010 at 01:21:15 PM
 Date Range: ALL DATES
 Matters: Lambre-002
 Clients: All
 Major Clients: All
 Client Intro Lawyer: All
 Type of Law: All
 New Page for Each Lawyer: No
 Interest Up To: 1/15/2010
 Select From: Active, Inactive, Archived Matters
 Ver: 9.20d
 Responsible Lawyer: All
 Assigned Lawyer: All
 Invoice: All
 Matters Sort by: Default
 Matter Security Enabled: No

000391

Jan 4 2010

North & Black, PC
Client Summary
ALL DATES

Page: 1

Client Name Matter Description	Resp	Assign	Open Date Last Entry	Unbld Hrs Bld Hrs	Unbld Fees Bld Fees	Unbld Disb Bld Disb	Retainers Taxes	Last Bld AR Bal	Ac#	Balance	Last Entry
Lambrecht, Douglas			Mar 28/2007	0.00	0.00	0.00	0.00	Nov 5/2009			
Lambre-002	JEN	JEN	Nov 5/2009	44.30	8638.50	314.66	0.00	7375.92			
Appeal of Summary Judgment in Clegg v. Lambrecht											
Firm Totals:				0.00 44.30	0.00 8638.50	0.00 314.66	0.00 0.00			7375.92	

*** Summary by Responsible Lawyer ***

Responsible Lawyer	Total Clients	Total Matters	Unbilled Fees	Unbilled Disb	Billed Fees	Billed Disb+Tax	A/R	Trust	Retainer
JEN -John E. North,	1	1	0.00	0.00	8638.50	314.66	7375.92	0.00	0.00
Total:	1	1	0.00	0.00	8638.50	314.66	7375.92	0.00	0.00

REPORT SELECTIONS - Client Summary

Layout Template	Default
Advanced Search Filter	None
Requested by.	ADMIN
Finished	Monday, January 04, 2010 at 04:25:12 PM
Ver	9.20d
Matters	Lambre-002
Clients	All
Major Clients	All
Client Intro Lawyer	All
Responsible Lawyer	All
Assigned Lawyer	All
Type of Law	All
Select From	Active, Inactive, Archived Matters
Matters Sort by	Default
New Page for Each Lawyer	No
No Activity Date	Dec 31/2199
Working Lawyer	All
Incl. Unbilled Over	0.00
Incl. Matters with Neg Unbld Disb	No
Incl. Zero Balances	Yes
Incl. Non-zero Balances	Yes
Client Totals Only	No
Totals Only	No

000392

Douglas Lambrecht

June 4, 2007

Hilton Head, SC
29926

Attention:

1152

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
May-18-07	Phone call to Judge Young's clerk; conference with Doug re appeal of sanctions ruling; meeting with counsel re strategy and course	1.50
May-21-07	Conference with Judge Young's clerk re Order; review of Order; review of Clerk's docket; conference with counsel re course	0.75
May-22-07	Review of Order re denial of sanctions; preparation of notice of appeal, letter to Clerk of Court of Appeals; letter to Smith; letter to Court reporters re transcripts; preparation of proof of service.	2.50
May-23-07	Review of standard of review on appeal of denial of sanctions	0.60
Totals		5.35

DISBURSEMENTS

May-22-07	Filing Fee Court of Appeals	200.00
May-23-07	Postage for perfection of appeal	7.41
Totals		\$207.41

000393



Invoice #: 1152

Page 2

June 4, 2007

Total Fee & Disbursements

\$1,250.66

Cumulative Interest Due

\$0.00

Balance Now Due

\$1,250.66

000394

Douglas Lambrecht

July 2, 2007

Hilton Head, SC
29926

Attention:

1183

RE: Appeal of Denial of Motion for Sanctions

DISBURSEMENTS

Jun-27-07	Brenda Sigwald - Transcript	23.65
	Totals	<u>\$23.65</u>
	Total Fee & Disbursements	\$23.65
	Previous Balance	1,250.66
	Previous Payments	1,250.66
	Cumulative Interest Due	\$0.00
	Balance Now Due	<u>\$23.65</u>

000395

Douglas Lambrecht

August 3, 2007

Hilton Head, SC
29926

Attention:

1205

RE: Appeal of Denial of Motion for Sanctions

DISBURSEMENTS

Jul-31-07	Transcript	54.50
	Totals	<u>\$54.50</u>
	Total Fee & Disbursements	\$54.50
	Previous Balance	23.65
	Cumulative Interest Due	\$0.01
	Balance Now Due	<u>\$78.16</u>

000396

Douglas Lambrecht

October 3, 2007

Hilton Head, SC
29926

Attention:

1251

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
Sep-27-07	Meeting with counsel re assignments of error on appeal	0.25
	Begin initial brief re sanctions appeal - draft Issues on Appeal, Statement of Facts	2.60
Sep-28-07	Work on initial brief	2.80
	Totals	5.65
 DISBURSEMENTS		
Sep-05-07	Postage	1.23
	Transcript	30.75
	Totals	\$31.98
	Total Fee & Disbursements	\$1,133.73
	Previous Balance	78.15
	Cumulative Interest Due	\$0.66
	Balance Now Due	\$1,212.54

000397

Douglas Lambrecht

November 5, 2007

Hilton Head, SC
29926

Attention:

1275

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
Oct-05-07	Work on Initial Brief	2.90
Oct-16-07	Work on Initial Brief	4.20
Oct-29-07	Review and revision Initial Brief; conference with counsel re same	2.25
Oct-30-07	Work on Initial Brief	3.70
Oct-31-07	Final edits to Initial Brief; email to client	2.40
	Totals	15.45

DISBURSEMENTS

Oct-03-07	Motion Fee	25.00
	Postage	4.22
	Totals	\$29.22
	Total Fee & Disbursements	\$3,041.97
	Previous Balance	1,211.88

000398

Invoice #: 1275

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November 5, 2007

Cumulative Interest Due

\$1.89

Balance Now Due

\$4,255.74

000399

Douglas Lambrecht

December 6, 2007

Hilton Head, SC
29926

Attention:

1311

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
Nov-01-07	Review of and revisions to final draft of Initial Brief	1.00
	Preparation of Table of Contents and Authorities; Designation of Material for the Record	1.90
	Totals	2.90

DISBURSEMENTS

Nov-15-07	Westlaw	52.00
	Totals	\$52.00
	Total Fee & Disbursements	\$617.50
	Previous Balance	4,253.85
	Cumulative Interest Due	\$10.23
	Balance Now Due	\$4,881.58

000400

Douglas Lambrecht

February 4, 2008

Hilton Head, SC
29926

Attention:

1349

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
Jan-30-08	Preliminary review of Respondents' Initial Brief; telephone call to clerk of Correspondence to. of Appeals re status	1.10
	Totals	1.10
	Total Fee & Disbursements	\$214.50
	Previous Balance	4,871.35
	Previous Payments	4,871.35
	Cumulative Interest Due	\$0.00
	Balance Now Due	\$214.50

Douglas Lambrecht

March 3, 2008

Hilton Head, SC
29926

Attention:

1369

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
Feb-18-08	Review of Amended Designation; preparation of Motion and Proof of Service; letter to Clerk; calendar date for Reply	0.90
Feb-20-08	Work on Reply Brief	3.10
Feb-22-08	Work on Reply Brief	2.20
Feb-28-08	Work on Reply Brief	3.10
	Totals	9.30

DISBURSEMENTS

Feb-18-08	Motion Fee	25.00
	Totals	\$25.00
	Total Fee & Disbursements	\$1,838.50
	Previous Balance	214.50

000402

Invoice #: 1369

Page 2

March 3, 2008

Cumulative Interest Due

\$0.00

Balance Now Due

\$2,053.00

000403

Douglas Lambrecht

April 3, 2008

Hilton Head, SC
29926

Attention:

1402

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
Mar-03-08	Work on Reply Brief	3.10
Mar-07-08	Review of Appellant and Respondents; Briefs; outline of rebuttal facts and issues; review and revision of Reply Brief	5.25
Mar-08-08	Review of and revision of Brief; work on designation of record	5.75
Mar-17-08	Conference with attorney Harrell; meeting with counsel re strategy; conference with Doug re position; travel to courthouse re completion of record	2.25
Mar-18-08	Email and letter from attorney Thrower; email from Clerk re revised filings for Record	0.50
Mar-31-08	Preparation of Record, Index, Certificate of Counsel; letter to printer	2.90
	Totals	19.75

DISBURSEMENTS

Mar-19-08	Copy costs Circuit Court	20.00
	Westlaw	110.00

000404

Invoice #: 1402

Page 2

April 3, 2008

Totals

\$130.00

Total Fee & Disbursements

\$3,981.25

Previous Balance

2,053.00

Cumulative Interest Due

\$1.66

Balance Now Due

\$6,035.91

Douglas Lambrecht

May 1, 2008

Hilton Head, SC
29926

Attention:

1423

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
Apr-16-08	Preparation of Certificate of Counsel for each brief; letter to Counsel Press re same	0.50
Apr-17-08	Insert references to the record into Initial and Reply briefs; emails to and from printer re arrangements; related matters	5.90
Apr-22-08	Final arrangements for printing and serving of final briefs	1.10
	Totals	7.50

DISBURSEMENTS

Apr-02-08	Copies of Record	1,476.41
	Totals	\$1,476.41
	Total Fee & Disbursements	\$2,938.91
	Previous Balance	6,034.25
	Cumulative Interest Due	\$13.47
	Balance Now Due	\$8,986.63

June 7, 2008

Douglas Lambrecht

Hilton Head, SC
29926

Attention:

1454

RE: Appeal of Denial of Motion for Sanctions

DISBURSEMENTS

May-02-08 UPS charges for final brief
May-19-08 Printing costs

25.68
730.00

Totals

\$755.68

Total Fee & Disbursements

\$755.68

Previous Balance

8,973.16

Cumulative Interest Due

\$61.93

Balance Now Due

\$9,790.77

Douglas Lambrecht

Hilton Head, SC
29926

November 30, 2008

Attention:

1614

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
Nov-05-08	Review of scheduling Order; confirmation to Clerk of Notice; email to Doug	0.25
Nov-30-08	Review of Record on Appeal, Brief of parties, and outlines of evidence; preparation for oral argument	4.75
	Totals	5.00
	Total Fee & Disbursements	\$975.00
	Previous Balance	6,728.84
	Cumulative Interest Due	\$270.57
	Balance Now Due	\$7,974.41

000408

Douglas Lambrecht

Hilton Head, SC
29926

January 6, 2009

Attention:

1633

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
Dec-01-08	Review of files, legal research, and transcripts of evidence and proceedings; preparation of oral argument; outline of potential inquiries and arguments with citations to authorities and record	10.25
Dec-02-08	Review of oral argument; travel to Columbia; appearance before Court of Appeals	8.25
	Totals	18.50

DISBURSEMENTS

Dec-02-08	Mileage to and from Columbia	110.00
	Totals	\$110.00
	Total Fee & Disbursements	\$3,717.50
	Previous Balance	7,703.84
	Cumulative Interest Due	\$323.13
	Balance Now Due	\$11,744.47

Douglas Lambrecht

March 2, 2009

Hilton Head, SC
29926

Attention:-

1683

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
Feb-13-09	Review of Court of Appeals opinion; email to Doug re same; meeting with counsel re issues and arguments	1.50
	Review of Opinion; conference with counsel; begin preparation of Petition for Review	1.90
Feb-14-09	Work on Petition for Rehearing	2.75
	Work on Petition for Rehearing	2.90
Feb-15-09	Work on Petition for Rehearing	8.50
	Work on Petition for Rehearing	3.80
Feb-16-09	Work on Petition for Rehearing	7.25
Feb-17-09	Conference with Doug re issues and course	0.75
	Totals	29.35

DISBURSEMENTS

Feb-14-09	Filing fee Petition for Rehearing	25.00
Feb-25-09	Copies of Petition for Rehearing	24.20

March 2, 2009

Invoice #: 1683

Page 2

Totals

\$49.20

Total Fee & Disbursements

\$5,772.45

Previous Balance

11,421.34

Cumulative Interest Due

\$429.30

Balance Now Due

\$17,623.09

000411

Douglas Lambrecht

April 2, 2009

Milton Head, SC
29926

Attention:

1705

RE: Appeal of Denial of Motion for Sanctions

DISBURSEMENTS

Mar-17-09	Shipping Court of Appeals materials	15.59
	Totals	<u>\$15.59</u>
	Total Fee & Disbursements	\$15.59
	Previous Balance	17,193.79
	Cumulative Interest Due	\$503.24
	Balance Now Due	<u>\$17,712.62</u>

Douglas Lambrecht

May 1, 2009

Hilton Head, SC
29926

Attention:

1724

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
Apr-07-09	Phone call to Court of Appeals re response to Petition; conference with Court of Appeals	0.25
	Totals	<u>0.25</u>
	Total Fee & Disbursements	<u>\$48.75</u>
	Previous Balance	17,209.38
	Cumulative Interest Due	\$605.68
	Balance Now Due	<u>\$17,863.81</u>

Douglas Lambrecht

June 11, 2009

Hilton Head, SC
29926

Attention:

1736

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
May-14-09	Review of Opinion; meeting with counsel; review of rules of Cert; phone call to Clerk of Court re record on appeal; email to Doug; conference with Doug; meeting with counsel re course	2.50
May-15-09	Phone call to clerk of Court of Court of Appeals; conferences with counsel re factual and legal arguments	1.75
May-17-09	Meeting with counsel re factual and legal arguments	0.50
	Work on Petition for Rehearing	6.80
May-18-09	Phone call to Renee Johnson re Record on Appeal; conference with Jeanette Barber; email to Ms. Barber; conference with Renee Johnson re record; letter to Clerk of Court; meeting with counsel re factual and legal arguments	1.50
	Work on Petition for Rehearing	8.50
May-19-09	Legal research re issues on Petition; review of and revision of Petition; meetings with counsel re facts and arguments	7.25

Invoice #: 1736

Page 2

June 11, 2009

	Work on Petition for Rehearing	2.60
May-20-09	Review of and revision of Petition for Rehearing; email to Doug re final draft	6.50
	Totals	<u>37.90</u>

DISBURSEMENTS

May-20-09	Fee - Petition for Rehearing	25.00
	Totals	<u>\$25.00</u>
	Total Fee & Disbursements	<u>\$7,415.50</u>
	Previous Balance	17,258.13
	Previous Payments	500.00
	Cumulative Interest Due	\$750.78
	Balance Now Due	<u>\$24,924.41</u>

000415

Douglas Lambrecht

August 3, 2009

Hilton Head, SC
29926

Attention:

1769

RE: Appeal of Denial of Motion for Sanctions

DATE	DESCRIPTION	HOURS
Jun-09-09	Conference with Doug re status and course	0.25
Jul-01-09	Review of opinion; conference with Doug re course; review of appellate court options; email to Doug; review of authorities re scope of review; draft Petition for Rehearing; preparation of Certificate of Service; letter to Clerk of Court	6.75
Jul-27-09	Review of Order denying Petition for Rehearing; analysis of options; meeting with counsel re same	1.25
	Totals	8.25

DISBURSEMENTS

Jun-09-09	Copy and Express mail charges	45.98
Jul-01-09	copies	30.00
Jul-27-09	postage	9.60
Aug-03-09	Costs for return of record	7.50
	Totals	\$93.08

Total Fee & Disbursements

\$1,701.83

Invoice #: 1769

Page 2

August 3, 2009

Previous Balance

24,173.63

Cumulative Interest Due

\$968.33

Balance Now Due

\$26,843.79

Douglas Lambrecht

November 5, 2009

Hilton Head, SC
29926

Attention:

1825

RE: Appeal of Denial of Motion for Sanctions

DISBURSEMENTS

Oct-05-09	UPS	11.30
	Totals	<u>\$11.30</u>
	Total Fee & Disbursements	\$11.30
	Previous Balance	26,548.21
	Previous Payments	2,000.00
	Cumulative Interest Due	\$1,449.72
	Balance Now Due	<u>\$26,009.23</u>

Douglas Lambrecht

January 15, 2010

Hilton Head, SC
29926

Attention:

1915

RE: Appeal of Denial of Motion for Sanctions

Total Fee & Disbursements

\$0.00

Previous Balance

23,886.76

Cumulative Interest Due

\$1,793.30

Balance Now Due

\$25,680.06

Jan 25/2010

North & Black, PC
Interest Calculation Report
ALL DATES

Page 1

Client Information		Client Lawyer		Activity			Balance Owing		
Matter	Description			Int. Rate	Principal	Interest	Principal	Interest	Total
Entry #	Date	Inv#	Type						
Lambre - Lambrecht, Douglas JEN									
Lambre-005 Appeal of Denial of Motion 2									
9021	Jun 4/2007	1152	Invoice	7.50%	1250.66		1250.66	0.00	1250.66
9121	Jun 29/2007		Payment		-438.75		811.91	0.00	811.91
9121	Jun 29/2007		Payment		-604.50		207.41	0.00	207.41
9121	Jun 29/2007		Payment		-207.41		0.00	0.00	0.00
9170	Jul 2/2007	1183	Invoice	7.50%	23.65		23.65	0.00	23.65
	Jan 28/2008		Interest			0.87	23.65	0.87	24.52
	Inv. Paid Int. not		Collected			-0.87	23.65	0.00	23.65
10088	Jan 28/2008		Payment		-23.65		0.00	0.00	0.00
9279	Aug 3/2007	1205	Invoice	7.50%	54.50		54.50	0.00	54.50
	Jan 28/2008		Interest			1.66	54.50	1.66	56.16
	Inv. Paid Int. not		Collected			-1.66	54.50	0.00	54.50
10088	Jan 28/2008		Payment		-54.50		0.00	0.00	0.00
9413	Sep 5/2007	1221	Invoice	7.50%			0.00	0.00	0.00
9534	Oct 3/2007	1251	Invoice	7.50%	1133.73		1133.73	0.00	1133.73
	Jan 28/2008		Interest			20.27	1133.73	20.27	1154.00
	Inv. Paid Int. not		Collected			-20.27	1133.73	0.00	1133.73
10088	Jan 28/2008		Payment		-48.75		1084.98	0.00	1084.98
10088	Jan 28/2008		Payment		-1053.00		31.98	0.00	31.98
10088	Jan 28/2008		Payment		-31.98		0.00	0.00	0.00
9682	Nov 5/2007	1275	Invoice	7.50%	3041.97		3041.97	0.00	3041.97
	Jan 28/2008		Interest			33.75	3041.97	33.75	3075.72
	Inv. Paid Int. not		Collected			-33.75	3041.97	0.00	3041.97
10088	Jan 28/2008		Payment		-438.75		2603.22	0.00	2603.22
10088	Jan 28/2008		Payment		-2574.00		29.22	0.00	29.22
10088	Jan 28/2008		Payment		-29.22		0.00	0.00	0.00
9835	Dec 6/2007	1311	Invoice	7.50%	617.50		617.50	0.00	617.50
	Jan 28/2008		Interest			2.92	617.50	2.92	620.42
	Inv. Paid Int. not		Collected			-2.92	617.50	0.00	617.50
10088	Jan 28/2008		Payment		-195.00		422.50	0.00	422.50
10088	Jan 28/2008		Payment		-370.50		52.00	0.00	52.00
10088	Jan 28/2008		Payment		-52.00		0.00	0.00	0.00
9973	Jan 4/2008	1319	Invoice	7.50%			0.00	0.00	0.00
10177	Feb 4/2008	1349	Invoice	7.50%	214.50		214.50	0.00	214.50
	Jun 2/2008		Interest			3.92	214.50	3.92	218.42
	Inv. Paid Int. not		Collected			-3.92	214.50	0.00	214.50
10956	Jun 2/2008		Payment		-214.50		0.00	0.00	0.00
10389	Mar 3/2008	1369	Invoice	7.50%	1838.50		1838.50	0.00	1838.50
	Jun 2/2008		Interest			23.04	1838.50	23.04	1861.54
	Inv. Paid Int. not		Collected			-23.04	1838.50	0.00	1838.50
10956	Jun 2/2008		Payment		-25.00		1813.50	0.00	1813.50
10956	Jun 2/2008		Payment		-1813.50		0.00	0.00	0.00
10599	Apr 3/2008	1402	Invoice	7.50%	3981.25		3981.25	0.00	3981.25
	Jun 2/2008		Interest			24.54	3981.25	24.54	4005.79
10956	Jun 2/2008		Payment		-568.80		3412.45	24.54	3436.99
10956	Jun 2/2008		Payment		-130.00		3282.45	24.54	3306.99
10956	Jun 2/2008		Payment		-248.20		3034.25	24.54	3058.79
	Jun 11/2009		Interest			233.18	3034.25	257.72	3291.97
12733	Jun 11/2009		Payment		-151.90		2882.35	257.72	3140.07
12733	Jun 11/2009		Payment		-348.10		2534.25	257.72	2791.97
	Oct 5/2009		Interest			60.41	2534.25	318.13	2852.38
13151	Oct 5/2009		Payment		-607.60		1926.65	318.13	2244.78
13151	Oct 5/2009		Payment		-1392.40		534.25	318.13	852.38
	Jan 15/2010		Interest			11.20	534.25	329.33	863.58
10762	May 1/2008	1423	Invoice	7.50%	2938.91		2938.91	0.00	2938.91
	Jan 15/2010		Interest			358.71	2938.91	358.71	3297.62
10955	Jun 7/2008	1454	Invoice	7.50%	755.68		755.68	0.00	755.68
	Jan 15/2010		Interest			86.49	755.68	86.49	842.17
11131	Jul 1/2008	1476	Invoice	7.50%			0.00	0.00	0.00
11297	Aug 4/2008	1499	Invoice	7.50%			0.00	0.00	0.00
11534	Sep 2/2008	1543	Invoice	7.50%			0.00	0.00	0.00
11680	Oct 2/2008	1557	Invoice	7.50%			0.00	0.00	0.00
11871	Nov 5/2008	1596	Invoice	7.50%			0.00	0.00	0.00
11986	Nov 30/2008	1614	Invoice	7.50%	975.00		975.00	0.00	975.00
	Jan 15/2010		Interest			76.33	975.00	76.33	1051.33
12150	Jan 6/2009	1633	Invoice	7.50%	3717.50		3717.50	0.00	3717.50
	Jan 15/2010		Interest			262.77	3717.50	262.77	3980.27
12331	Feb 14/2009	1660	Invoice	7.50%			0.00	0.00	0.00
12440	Mar 2/2009	1683	Invoice	7.50%	5772.45		5772.45	0.00	5772.45
	Jan 15/2010		Interest			342.79	5772.45	342.79	6115.24
12551	Apr 2/2009	1705	Invoice	7.50%	15.59		15.59	0.00	15.59
	Jan 15/2010		Interest			0.83	15.59	0.83	16.42
12644	May 1/2009	1724	Invoice	7.50%	48.75		48.75	0.00	48.75
	Jan 15/2010		Interest			2.29	48.75	2.29	51.04
12782	Jun 11/2009	1736	Invoice	7.50%	7415.50		7415.50	0.00	7415.50
	Jan 15/2010		Interest			286.46	7415.50	286.46	7701.96
12937	Aug 3/2009	1769	Invoice	7.50%	1701.83		1701.83	0.00	1701.83
	Jan 15/2010		Interest			47.21	1701.83	47.21	1749.04
13368	Nov 5/2009	1825	Invoice	7.50%	11.30		11.30	0.00	11.30
	Jan 15/2010		Interest			0.10	11.30	0.10	11.40
13653	Jan 15/2010	1915	Invoice	7.50%			0.00	0.00	0.00
Matter Total					23886.76	1793.31	23886.76	1793.31	25680.07

Jan 15/2010

North & Black, PC
Interest Calculation Report
ALL DATES

Page 2

Client Information		Clnt Lawyer		Activity			Balance Owning		
Matter	Description						Principal	Interest	Total
Entry #	Date	Inv#	Type	Int. Rate	Principal	Interest			

REPORT SELECTIONS - Interest Calculation Report

Layout Template:	All		
Requested by:	ADMIN		
Finished:	Friday, January 15, 2010 at 01:23:57 PM		
Date Range:	ALL DATES		
Matters:	Lambre-005		
Clients:	All		
Major Clients:	All	Responsible Lawyer:	All
Client Intro Lawyer:	All	Assigned Lawyer:	All
Type of Law:	All	Invoice:	All
New Page for Each Lawyer:	No	Matters Sort by:	Default
Interest Up To:	1/15/2010		
Select From:	Active, Inactive, Archived Matters		
Ver:	9.20d	Matter Security Enabled:	No

Jan 4 2010

North & Black, PC
Client Summary

Page: 1

Client Name	Open Date	Unbld Hrs	Unbld Fees	Unbld Disb	Retainers	Last Bld	Ac#	Balance	Last Entry	
Matter	Resp Assign	Last Entry	Bld Hrs	Bld Fees	Bld Disb	Taxes				AR Bal
Description										
Lambrech, Douglas		May 22/2007	0.00	0.00	0.00	0.00	Dec 1/2009			
Lambre-005	JEN	JEN	Dec 1/2009	173.40	33813.00	3090.02	0.00	25281.01		
Appeal of Denial of Motion for Sanctions										
Firm Totals:			0.00	0.00	0.00	0.00				
			173.40	33813.00	3090.02	0.00	25281.01			

*** Summary by Responsible Lawyer ***

Responsible Lawyer	Total Clients	Total Matters	Unbilled Fees	Unbilled Disb	Billed Fees	Billed Disb+Tax	A/R	Trust	Retainer
JEN -John E. North,	1	1	0.00	0.00	33813.00	3090.02	25281.01	0.00	0.00
Total:	1	1	0.00	0.00	33813.00	3090.02	25281.01	0.00	0.00

REPORT SELECTIONS - Client Summary

Layout Template	Default
Advanced Search Filter	None
Requested by	ADMIN
Finished	Monday, January 04, 2010 at 04:31:15 PM
Ver	9.20d
Matters	Lambre-005
Clients	All
Major Clients	All
Client Intro Lawyer	All
Responsible Lawyer	All
Assigned Lawyer	All
Type of Law	All
Select From	Active, Inactive; Archived Matters
Matters Sort by	Default
New Page for Each Lawyer	No
No Activity Date	Dec 31/2199
Working Lawyer	All
Incl. Unbilled Over	0.00
Incl. Matters with Neg Unbld Disb	No
Incl. Zero Balances	Yes
Incl. Non-zero Balances	Yes
Client Totals Only	No
Totals Only	No

000422

Douglas Lambrecht

January 15, 2010

Hilton Head, SC
29926

Attention:

1917

RE: Remand of Sanctions Appeal

DATE	DESCRIPTION	HOURS
Aug-10-09	Begin revision of appellate briefs for consideration of lower court	1.10
Aug-11-09	Prepare materials for court on remand	6.10
Aug-14-09	Finalize memorandum in support of Motion for Sanctions	3.60
Aug-26-09	Review of and revision to memorandum to trial judge	2.20
Aug-27-09	Review of final brief	0.50
Aug-29-09	Review of Court of Appeals opinion; revision of correspondence to Judge Young re same	0.75
Nov-04-09	Phone call to Judge Young's office; email to Doug re status	0.25
Nov-27-09	Preparation of proposed Order	2.20
Nov-30-09	Review of and revision of proposed Order	1.25
	Preparation of draft proposed Order; conference with co-counsel re same	3.20
Dec-01-09	Meeting with counsel re Order; conference with Doug re scope of	2.75



sanctions; meeting with counsel re same; conference with Doug re recoverable expenses; review of and revision of proposed Order; email same to Judge Young's clerk

Conference with co-counsel re scope of sanctions; review of proposed Order and revisions

3.10

Dec-02-09 Review of Kuhn email to Court; meeting with counsel re grounds for objection; draft of objections; email to Judge Young re same; review of email from Wieters to Judge Young; draft of objections; email to Judge Young re same; email from Kuhn re additional arguments; email to Judge Young re same; emails from and to Judge's office re supplemental Memorandums

4.25

Conferences with co-counsel re response to Kuhn and Wieters

0.90

Dec-03-09 Email from and to Doug; conference with counsel re course

0.50

Dec-04-09 Conference with Doug re scope of sanctions and evidence; email to Doug re same; review of records re documentation of costs; email to Doug re same

1.50

Jan-04-10 Phone call to Judge Young's clerk re status of response; conference with counsel; conference with Doug re affidavit of expenses; email to Doug re scope of expenses allowed by statute

1.25

Jan-06-10 Review of file; prepare draft affidavit of client and John E. North, Jr.; email to client re facts

5.70

Jan-08-10 Conferences with clerk; review of signed Order; letter to counsel; fax and email to Wieters and Kuhn; hand delivery to Kuhn office of Order; email to client

1.50

Jan-11-10 Email from Doug; review of documentation of expenses; email to Doug; conference with counsel re scope of claim

0.75

Invoice #: 1917

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January 15, 2010

Jan-12-10	Review of records re documentation of expenses; review of and revision of Affidavit; meeting with counsel	2.75
	Preparation of draft Affidavits of JEN, PKB and Lambrecht; assembly and organization of all bills	3.20
Jan-14-10	Work on proof of expenses; email to and from Doug re same	1.25
	Review of client's material for expenses; lengthy conference with client re recoverable amounts and statutory scheme; conference with client re corrections to time and expense material	2.40
Jan-15-10	Review of billing records for six years; work with client on documentation of time and expenses; review of and revision of North and client affidavits re proof of expenditures and attorney fees and expenses incurred	4.75

Totals

57.70

DISBURSEMENTS

Aug-31-09	Postage for post appeal matters to Judge Young	27.00

Totals

\$27.00

Total Fee & Disbursements

\$11,278.50

Cumulative Interest Due

\$0.00

Balance Now Due

\$11,278.50

North & Black, PC
Interest Calculation Report
ALL DATES

Client Information		Clnt Lawyer		Activity				Balance Owng		
Matter	Description							Principal	Interest	Total
Entry #	Date	Inv#	Type	Int. Rate	Principal	Interest				
Lambre - Lambrecht, Douglas		JEN								
Lambre-007	Remand of Sanctions Appeal									
13657	Jan 15/2010	917	Advance	7.400%	11278.50	0.00		11278.50	0.00	11278.50
			Matter Total		11278.50	0.00		11278.50	0.00	11278.50
			Firm Total		11278.50	0.00		11278.50	0.00	11278.50

Interest Calculation Report			
Layout Template:	All		
Requested by:	ADMIN		
Finished:	Friday, January 15, 2010 at 01:24:23 PM		
Date Range:	ALL DATES		
Matters:	Lambre-007		
Clients:	All		
Major Clients:	All	Responsible Lawyer:	All
Client Intro Lawyer:	All	Assigned Lawyer:	All
Type of Law:	All	Invoice:	All
New Page for Each Lawyer:	No	Matters Sort by:	Default
Interest Up To:	1/15/2010		
Select From:	Active, Inactive, Archived Matters		
Ver:	9.20d	Matter Security Enabled:	No

Jan 15/2010

North & Black, PC
Client Summary
ALL DATES

Page: 1

Client Name Matter Description	Resp	Assign	Open Date Last Entry	Unbld Hrs Bld Hrs	Unbld Fees Bld Fees	Unbld Disb Bld Disb	Retainers Taxes	Last Bld AR Bal	Ac#	Balance	Last Entry
Lambrecht, Douglas			Aug 11/2009	0.00	0.00	0.00	0.00	Jan 15/2010			
Lambre-007	JEN	JEN	Jan 15/2010	57.70	11251.50	27.00	0.00	11278.50			
Remand of Sanctions Appeal											
Firm Totals:				0.00 57.70	0.00 11251.50	0.00 27.00	0.00	11278.50			

*** Summary by Responsible Lawyer ***

Responsible Lawyer	Total Clients	Total Matters	Unbilled Fees	Unbilled Disb	Billed Fees	Billed Disb+Tax	A/R	Trust	Retainer
JEN -John E. North,	1	1	0.00	0.00	11251.50	27.00	11278.50	0.00	0.00
Total:	1	1	0.00	0.00	11251.50	27.00	11278.50	0.00	0.00

REPORT SELECTIONS - Client Summary

Layout Template Default
 Advanced Search Filter None
 Requested by ADMIN
 Finished Friday, January 15, 2010 at 01:16:59 PM
 Ver 9.20d
 Matters Lambre-007
 Clients All
 Major Clients All
 Client Intro Lawyer All
 Responsible Lawyer All
 Assigned Lawyer All
 Type of Law All
 Select From Active, Inactive, Archived Matters
 Matters Sort by Default
 New Page for Each Lawyer No
 No Activity Date Dec 31/2199
 Working Lawyer All
 Incl. Unbilled Over 0.00
 Incl. Matters with Neg Unbld Disb No
 Incl. Zero Balances Yes
 Incl. Non-zero Balances Yes
 Client Totals Only No
 Totals Only No

Douglas Lambrecht

December 7, 2004

Hilton Head, SC
29926

Attention:

589

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Jun-08-04	Letter from Attorney Lohr; review of Declaratory Judgment Complaint; memo to counsel; letter to client re: same.	1.00
Jun-09-04	Review of Complaint; legal research re res judicata effect of default judgment; partial preparation of Answer and Counterclaim	1.90
Jun-10-04	Final preparation of Answer and Counterclaim	0.10
Jun-15-04	Preparation of Interrogatories; preparation of Requests for Production.	0.75
Jun-22-04	Legal research re issues on coverage; email to and from client re status	1.90
Jun-23-04	Review of and revision of Answer and Counterclaim; review of files re: facts, policy, and claims.	1.25
Jun-25-04	Begin preparation of Memo in support of Motion for Summary Judgment; legal research re issues re same	3.90
Jul-02-04	Review of and revision of Answer and Counterclaim; conference with counsel re: course.	1.25
Jul-09-04	Review of Answer (sic) to Counterclaim; conference with counsel.	0.50

Invoice #: 589

Page 2

December 7, 2004

Aug-02-04	Review of Motion to Dismiss in Declaratory Judgment Action.	0.25
Nov-17-04	Work on Memorandum in Support of Partial Summary Judgment	3.90
Nov-18-04	Review of and revisions to Memorandum in support of motion for partial summary judgment; review of USAA policy and pleadings; conference with Doug; email to Doug re Memorandum	2.75
	Preparation of Motion for Partial SJ and Affidavit in Support thereof; email to co-counsel re status	0.80
Nov-19-04	Email to client re Affidavit; conference with Co-counsel re course	0.50
Nov-29-04	Preparation of Motion Information sheet; letter to Clerk re filing	0.60
Nov-30-04	Organize and serve Summary Judgment materials; email to client re status	0.50
	Totals	21.85
DISBURSEMENTS		
Nov-29-04	Motion Fee	25.00
Nov-30-04	November Westlaw	94.78
	Totals	\$119.78
	Total Fee & Disbursements	\$3,943.53
	Cumulative Interest Due	\$0.00
	Balance Now Due	\$3,943.53

Douglas Lambrecht

February 2, 2005

Hilton Head, SC
29926

Attention:

624

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Jan-16-05	Review of trial and motion rosters; Preparation of Notice of Hearing.	0.50
Jan-21-05	Review of roster; Phone call to court coordinator; Preparation of Notice of Hearing; E-mail to clerk of court.	0.75
	Totals	1.25
	Total Fee & Disbursements	\$218.75
	Previous Balance	3,943.53
	Cumulative Interest Due	\$21.88
	Balance Now Due	\$4,184.16

000430

Douglas Lambrecht

March 16, 2005

Hilton Head, SC
29926

Attention:

646

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Feb-08-05	Review of file; E-mail to clerk of court.	0.25
	Totals	0.25
	Total Fee & Disbursements	\$43.75
	Previous Balance	4,162.28
	Cumulative Interest Due	\$56.45
	Balance Now Due	\$4,262.48

Douglas Lambrecht

April 1, 2005

Hilton Head, SC
29926

Attention:

659

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Mar-08-05	Review of pleadings; Review of Summary Judgment Memorandum and evidence; Preparation for oral argument; Preparation for hearing.	3.75
Mar-09-05	Prepared for hearing; Review of evidence; Travel to courthouse and appearance on Summary Judgment hearing; Meeting with Atty. Lohr; Conference with counsel; Phone call from Doug.	3.25
	Conference with co-counsel re outcome of hearing; telephone call to client	0.40
Mar-10-05	Review of pleadings; Preparation of Order granting Partial Summary Judgment.	1.50
Mar-16-05	Revise Order; letter to Atty. Lohr	1.10
Mar-17-05	Conference with Doug regarding terms of Order and course.	0.50
Mar-22-05	Phone call to Atty. Lohr.	0.25
Mar-24-05	Phone call from Atty. Lohr; Review of files regarding billings; Phone call to Atty. Lohr; Letter to Atty. Lohr.	0.75
Mar-30-05	Phone call to Atty. Lohr	0.50

regarding Order; Conference with Doug
regarding status and course.

Mar-31-05 Conference with Atty. Lohr regarding
approval and entry of Order; Revision of
letter to Judge Gregory.

0.50

Totals

12.50**DISBURSEMENTS**

Mar-31-05 Copies

6.60

Totals

\$6.60**Total Fee & Disbursements**

\$2,194.10

Previous Balance

4,206.03

Cumulative Interest Due

\$70.14

Balance Now Due

\$6,470.27

Douglas Lambrecht

May 11, 2005

Milton Head, SC
29926

Attention:

689

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Apr-01-05	Review of billings for submission to USAA.	0.25
Apr-05-05	Conference with Doug regarding potential bad faith claims and course of litigation.	0.25
Apr-18-05	Review of Order granting Partial Summary Judgment; Letter to Atty. Lohr; Conference with counsel regarding course.	1.25
	Totals	1.75
	Total Fee & Disbursements	\$306.25
	Previous Balance	6,400.13
	Cumulative Interest Due	\$109.09
	Balance Now Due	\$6,815.47

000434

Douglas Lambrecht

June 1, 2005

Hilton Head, SC
29926

Attention:

697

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
May-11-05	Review of file; Review of Order; Phone call to Atty. Lohr regarding hearing.	0.50
May-16-05	Phone call from Atty. Lohr; Review of file; Review of Order; Letter to Atty. Lohr.	0.75
May-23-05	Conference with Doug regarding finality of Order and course.	0.25
May-31-05	Review of Motion for Reconsideration; Review of and revision of correspondence to Atty. Lohr regarding withdrawal of Motion.	1.50
	Legal research re timeliness of Rule 59 Motion; letter to Lohr; conference with counsel re same	1.60
	Totals	4.60

DISBURSEMENTS

May-31-05	WestLaw Research	24.46
	Totals	\$24.46
	Total Fee & Disbursements	\$829.46
	Previous Balance	6,706.38

Invoice #: 697

Page 2

June 1, 2005

Cumulative Interest Due

\$136.71

Balance Now Due

\$7,672.55

000436

Douglas Lambrecht

July 19, 2005

Hilton Head, SC
29926

Attention:

725

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Jun-01-05	Review of and revision of correspondence; Conference with Atty. Lohr regarding USAA positions and course; Conference with counsel regarding course.	1.00
	Conference with co-counsel re withdrawal of motion to reconsider	0.30
Jun-02-05	Review of and revision of Memorandum and Affidavit regarding reconsideration.	1.25
	Review of Motion for Reconsideration; preparation of response re same; legal research re various issues raised; preparation of affidavit of John E. North, Jr.	5.75
Jun-13-05	Review of correspondence from Atty. Lohr to Judge Gregory; Meeting with counsel regarding course.	0.50
Jun-15-05	Conference with Gloria regarding hearing date.	0.25
Jun-29-05	Conference with Doug regarding status; Conferences with Gloria regarding scheduling of motion.	0.50
	Totals	9.55

Invoice #: 725

Page 2

July 19, 2005

DISBURSEMENTS

Jun-30-05	Copies (78); postage	16.63
	Westlaw	80.00
	Totals	<u>\$96.63</u>
	Total Fee & Disbursements	<u>\$1,767.88</u>
	Previous Balance	7,535.84
	Cumulative Interest Due	\$205.35
	Balance Now Due	<u>\$9,509.07</u>

000438

Douglas Lambrecht

October 10, 2005

Hilton Head, SC
29926

Attention:

762

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Jul-19-05	Review of files; Preparation for oral argument on Motion to Reconsider.	1.75
Jul-20-05	Preparation for hearing; Travel to courthouse and oral argument on Motion for Reconsideration; Preparation of Order; E-mail to Atty. Lohr regarding same.	2.50
Aug-02-05	E-mail from Atty. Lohr; Negotiations with Atty. Lohr regarding terms of Order; Review of previous Order regarding same.	0.50
Aug-05-05	E-mail from and to Atty. Lohr.	0.25
Aug-15-05	Review of e-mail; Review of proposed forms of Orders; E-mail to Atty. Lohr regarding objections; Review of draft Order; E-mail to Judge Gregory regarding same.	1.50
Aug-16-05	E-mail from and to Judge Gregory; E-mails from Atty. Lohr; Analysis of course; E-mail to Judge Gregory regarding position of defendant.	1.75
Aug-25-05	Review of Order; Letter from Atty. Lohr; Conference with counsel regarding course.	0.50

Invoice #: 762

Page 2

October 10, 2005

Sep-02-05	Phone call to Atty. Lohr; E-mail to Atty. Lohr.	0.25
Sep-06-05	E-mail from Atty. Lohr; E-mail to Gloria Williams.	0.50
Sep-09-05	Conference with Doug regarding status.	0.25
Sep-24-05	Review of file; draft letter to Sweeny re settlement	1.10
	Totals	10.85

DISBURSEMENTS

Sep-29-05	Westlaw	80.58
	Totals	\$80.58
	Total Fee & Disbursements	\$1,979.33
	Previous Balance	9,303.72
	Cumulative Interest Due	\$353.13
	Balance Now Due	\$11,636.18

000440

Douglas Lambrecht

November 7, 2005

Hilton Head, SC
29926

Attention:

780

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Oct-10-05	Conference with Gloria re hearing date; preparation of notice of hearing and client and attorney affidavits re fees; Review of and organization of affidavit exhibits; conference with attorney Calhoun	3.40
Oct-12-05	Phone call from Mary Lohr's office; Phone call to Judge Gregory; Preparation of Amended Notice of Hearing; Conference with counsel regarding same.	0.75
	Totals	4.15
	Total Fee & Disbursements	\$809.25
	Previous Balance	11,283.05
	Cumulative Interest Due	\$406.66
	Balance Now Due	\$12,498.96

Douglas Lambrecht

December 5, 2005

Hilton Head, SC
29926

Attention:

800

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Nov-28-05	Negotiations with attorney Lohr re settlement options and status of underlying litigation; meeting with counsel re settlement options and course; review of correspondence from attorney Calhoun	1.00
	Conference with counsel re settlement options and continuance of attorney fee matter; review of rule 40(j) requirements for reinstatement and procedure	0.50
	Totals	1.50

DISBURSEMENTS

Nov-09-05	Photocopies	31.20
	Postage	11.77
Nov-15-05	Court Transcript	15.75
Nov-30-05	Westlaw	10.24
	Totals	\$68.96
	Total Fee & Disbursements	\$361.46
	Previous Balance	12,092.30

Invoice #: 800

Page 2

December 5, 2005

Cumulative Interest Due

\$470.75

Balance Now Due

\$12,924.51

000443

Douglas Lambrecht

February 1, 2006

Hilton Head, SC
29926

Attention:

812

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Dec-05-05	Negotiations with Atty. Lohr; Review of pleadings; Outline of facts and arguments for hearing; Conference with Gloria Williams; E-mail to Judge Gregory; Review of files and preparation for hearing.	1.75
Dec-06-05	Preparation for hearing; Conference call with Judge Gregory and Atty. Lohr; E-mail to Atty. Lohr regarding Order.	1.00
Dec-13-05	Review of proposed Orders.	0.25
	Totals	3.00
	Total Fee & Disbursements	\$585.00
	Previous Balance	12,453.76
	Cumulative Interest Due	\$616.60
	Balance Now Due	\$13,655.36

000444

Douglas Lambrecht

May 9, 2006

Hilton Head, SC
29926

Attention:

872

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Apr-07-06	Conference with Doug regarding status.	0.25
	Totals	0.25
	Total Fee & Disbursements	\$48.75
	Previous Balance	13,038.76
	Cumulative Interest Due	\$872.88
	Balance Now Due	\$13,960.39

Douglas Lambrecht

July 13, 2006

Hilton Head, SC
29926

Attention:

916

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Jun-05-06	Letter from Atty. Lohr; Review of draft Order.	0.25
	Totals	0.25
	Total Fee & Disbursements	\$48.75
	Previous Balance	13,087.51
	Cumulative Interest Due	\$1,047.38
	Balance Now Due	\$14,183.64

Douglas Lambrecht

September 27, 2006

Hilton Head, SC
29926

Attention:

976

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Sep-07-06	Review of USAA Order regarding collateral estoppel argument; Preparation for summary judgment hearing.	2.25
Sep-13-06	Conference with deputy clerk regarding pending motion; Letter to clerk of Court of Appeals regarding pending motion and progression.	0.75
Totals		3.00
Total Fee & Disbursements		\$585.00
Previous Balance		13,136.26
Cumulative Interest Due		\$1,252.23
Balance Now Due		\$14,973.49

Douglas Lambrecht

February 2, 2007

Hilton Head, SC
29926

Attention:

1064

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Jan-09-07	Conference with Doug re case status	0.25
	Totals	0.25
	Total Fee & Disbursements	\$48.75
	Previous Balance	13,721.26
	Cumulative Interest Due	\$1,609.50
	Balance Now Due	\$15,379.51

000448

Douglas Lambrecht

February 4, 2008

Hilton Head, SC
29926

Attention:

1346

RE: USAA v. Lambrecht

DATE	DESCRIPTION	HOURS
Jan-23-08	Letter from Supreme Court; review of docket and scheduling of oral argument	0.25
	Totals	0.25
	Total Fee & Disbursements	\$48.75
	Previous Balance	13,770.01
	Cumulative Interest Due	\$2,647.62
	Balance Now Due	\$16,466.38

Douglas Lambrecht

January 15, 2010

Hilton Head, SC
29926

Attention:

1913

RE: USAA v. Lambrecht

Total Fee & Disbursements	<u>\$0.00</u>
Previous Balance	13,818.76
Cumulative Interest Due	\$4,666.20
Balance Now Due	<u>\$18,484.96</u>

000450

Client Information		Clnt Lawyer		Activity			Balance Owing		
Matter	Description	Inv#	Type	Int. Rate	Principal	Interest	Principal	Interest	Total
Entry #	Date								
Lambre - Lambrecht, Douglas JEN									
Lambre-003	USAA v. Lambrecht								
4382	Dec 7/2004	589	Invoice	7.50%	3943.53		3943.53	0.00	3943.53
	Jan 15/2010		Interest			1486.93	3943.53	1486.93	5430.46
4558	Jan 4/2005	601	Invoice	7.50%			0.00	0.00	0.00
4807	Feb 2/2005	624	Invoice	7.50%	218.75		218.75	0.00	218.75
	Jan 15/2010		Interest			79.92	218.75	79.92	298.67
5019	Mar 16/2005	646	Invoice	7.50%	43.75		43.75	0.00	43.75
	Jan 15/2010		Interest			15.61	43.75	15.61	59.36
5148	Apr 1/2005	659	Invoice	7.50%	2194.10		2194.10	0.00	2194.10
	Jan 15/2010		Interest			775.45	2194.10	775.45	2969.55
5299	May 11/2005	689	Invoice	7.50%	306.25		306.25	0.00	306.25
	Jan 15/2010		Interest			105.72	306.25	105.72	411.97
5395	Jun 1/2005	697	Invoice	7.50%	829.46		829.46	0.00	829.46
	Jan 15/2010		Interest			282.75	829.46	282.75	1112.21
5566	Jul 19/2005	725	Invoice	7.50%	1767.88		1767.88	0.00	1767.88
	Jan 15/2010		Interest			585.22	1767.88	585.22	2353.10
6005	Oct 10/2005	762	Invoice	7.50%	1979.33		1979.33	0.00	1979.33
	Jan 15/2010		Interest			621.46	1979.33	621.46	2600.79
6125	Nov 7/2005	780	Invoice	7.50%	809.25		809.25	0.00	809.25
	Jan 15/2010		Interest			249.43	809.25	249.43	1058.68
6259	Dec 5/2005	800	Invoice	7.50%	361.46		361.46	0.00	361.46
	Jan 15/2010		Interest			109.33	361.46	109.33	470.79
6442	Feb 1/2006	812	Invoice	7.50%	585.00		585.00	0.00	585.00
	Jan 15/2010		Interest			169.97	585.00	169.97	754.97
6789	Apr 6/2006	849	Invoice	7.50%			0.00	0.00	0.00
6914	May 9/2006	872	Invoice	7.50%	48.75		48.75	0.00	48.75
	Jan 15/2010		Interest			13.19	48.75	13.19	61.94
7057	Jun 8/2006	890	Invoice	7.50%			0.00	0.00	0.00
7222	Jul 13/2006	916	Invoice	7.50%	48.75		48.75	0.00	48.75
	Jan 15/2010		Interest			12.54	48.75	12.54	61.29
7347	Aug 3/2006	935	Invoice	7.50%			0.00	0.00	0.00
7538	Sep 11/2006	954	Invoice	7.50%			0.00	0.00	0.00
7782	Sep 27/2006	976	Invoice	7.50%	585.00		585.00	0.00	585.00
	Jan 15/2010		Interest			141.36	585.00	141.36	726.36
7899	Nov 1/2006	986	Invoice	7.50%			0.00	0.00	0.00
8039	Dec 7/2006	1015	Invoice	7.50%			0.00	0.00	0.00
8349	Feb 2/2007	1064	Invoice	7.50%	48.75		48.75	0.00	48.75
	Jan 15/2010		Interest			10.50	48.75	10.50	59.25
8532	Mar 3/2007	1085	Invoice	7.50%			0.00	0.00	0.00
8901	May 2/2007	1132	Invoice	7.50%			0.00	0.00	0.00
9017	Jun 4/2007	1148	Invoice	7.50%			0.00	0.00	0.00
9173	Jul 2/2007	1186	Invoice	7.50%			0.00	0.00	0.00
9275	Aug 3/2007	1201	Invoice	7.50%			0.00	0.00	0.00
9409	Sep 5/2007	1217	Invoice	7.50%			0.00	0.00	0.00
9531	Oct 3/2007	1248	Invoice	7.50%			0.00	0.00	0.00
9831	Dec 6/2007	1307	Invoice	7.50%			0.00	0.00	0.00
9971	Jan 4/2008	1317	Invoice	7.50%			0.00	0.00	0.00
10174	Feb 4/2008	1346	Invoice	7.50%	48.75		48.75	0.00	48.75
	Jan 15/2010		Interest			6.82	48.75	6.82	55.57
10386	Mar 3/2008	1366	Invoice	7.50%			0.00	0.00	0.00
10569	Apr 2/2008	1386	Invoice	7.50%			0.00	0.00	0.00
10759	May 1/2008	1420	Invoice	7.50%			0.00	0.00	0.00
10961	Jun 7/2008	1456	Invoice	7.50%			0.00	0.00	0.00
11130	Jul 1/2008	1475	Invoice	7.50%			0.00	0.00	0.00
11295	Aug 4/2008	1497	Invoice	7.50%			0.00	0.00	0.00
11532	Sep 2/2008	1541	Invoice	7.50%			0.00	0.00	0.00
11678	Oct 2/2008	1555	Invoice	7.50%			0.00	0.00	0.00
11869	Nov 5/2008	1594	Invoice	7.50%			0.00	0.00	0.00
11962	Nov 30/2008	1602	Invoice	7.50%			0.00	0.00	0.00
12148	Jan 6/2009	1631	Invoice	7.50%			0.00	0.00	0.00
12329	Feb 14/2009	1658	Invoice	7.50%			0.00	0.00	0.00
12438	Mar 2/2009	1681	Invoice	7.50%			0.00	0.00	0.00
12549	Apr 2/2009	1703	Invoice	7.50%			0.00	0.00	0.00
12642	May 1/2009	1722	Invoice	7.50%			0.00	0.00	0.00
12780	Jun 11/2009	1734	Invoice	7.50%			0.00	0.00	0.00
12940	Aug 3/2009	1772	Invoice	7.50%			0.00	0.00	0.00
13138	Sep 1/2009	1799	Invoice	7.50%			0.00	0.00	0.00
13366	Nov 5/2009	1823	Invoice	7.50%			0.00	0.00	0.00
13651	Jan 15/2010	1913	Invoice	7.50%			0.00	0.00	0.00
Matter Total					13818.76	4666.20	13818.76	4666.20	18484.96
Firm Total					13818.76	4666.20	13818.76	4666.20	18484.96

REPORT SELECTIONS - Interest Calculation Report

Layout Template: All
 Requested by: ADMIN
 Finished: Friday, January 15, 2010 at 01:21:41 PM
 Date Range: ALL DATES
 Matters: Lambre-003
 Clients: All
 Major Clients: All
 Client Intro Lawyer: All
 Two of Law: All

Responsible Lawyer: All
 Assigned Lawyer: All
 Invoices: All

000451

Jan 15/2010

North & Black, PC
Interest Calculation Report
ALL DATES

Page 2

Client Information		Clnt Lawyer		Activity		Balance Owning		Total
Matter	Description	Inv#	Type	Principal	Interest	Principal	Interest	
Entry #	Date			Int. Rate				

New Page for Each Lawyer:
Interest Up To:
Select From:
Ver:

No
1/15/2010
Active, Inactive, Archived Matters
9.20d

Matters Sort by:

Default

Matter Security Enabled:

No

000452

Jan 5/2010

North & Black, PC

Page: 1

Client Summary

ALL DATES

Client Name	Resp	Assign	Open Date	Unbld Hrs	Unbld Fees	Unbld Disb	Retainers	Last Bld	Ac#	Balance	Last Entry
Matter			Last Entry	Bld Hrs	Bld Fees	Bld Disb	Taxes	AR Bal			
Description											
Lambrecht, Douglas			Jun 7/2004	0.00	0.00	0.00	0.00	Nov 5/2009			
Lambre-003 JEN	JEN		Nov 5/2009	75.25	13421.75	397.01	0.00	13818.76			
USAA v. Lambrecht											
Firm Totals:				0.00	0.00	0.00	0.00				
				75.25	13421.75	397.01	0.00	13818.76			

*** Summary by Responsible Lawyer ***

Responsible Lawyer	Total Clients	Total Matters	Unbilled Fees	Unbilled Disb	Billed Fees	Billed Disb+Tax	A/R	Trust	Retainer
JEN -John E. North,	1	1	0.00	0.00	13421.75	397.01	13818.76	0.00	0.00
Total:	1	1	0.00	0.00	13421.75	397.01	13818.76	0.00	0.00

REPORT SELECTIONS - Client Summary

Layout Template
 Advanced Search Filter
 Requested by
 Finished
 Ver
 Matters
 Clients
 Major Clients
 Client Intro Lawyer
 Responsible Lawyer
 Assigned Lawyer
 Type of Law
 Select From
 Matters Sort-by
 New Page for Each Lawyer
 No Activity Date
 Working Lawyer
 Incl. Unbilled Over
 Incl. Matters with Neg Unbld Disb
 Incl. Zero Balances
 Incl. Non-zero Balances
 Client Totals Only
 Totals Only

Default
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 ADMIN
 Tuesday, January 05, 2010 at 11:10:54 AM
 9.20d
 Lambre-003
 All
 All
 All
 All
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 Active, Inactive, Archived Matters
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 Dec 31/2199
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 No
 Yes
 Yes
 No
 No

000453

Douglas Lambrecht

February 1, 2006

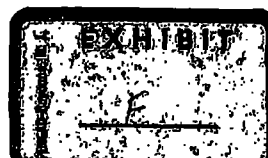
Hilton Head, SC
29926

Attention:

813

RE: Lambrecht - USAA Appeal

DATE	DESCRIPTION	HOURS
Sep-16-05	Letter from Atty. Sweeny; Review of Notice of Appeal; Meeting with counsel regarding course.	0.75
Sep-20-05	Review cross appeal requirements; prepare notice of appeal and proof of service; instructions to paralegal re filing and review of circuit court file	1.20
Sep-21-05	Letter from Atty. Calhoun regarding transcript; Conference with counsel regarding cross-appeal.	0.50
Sep-26-05	Review of and revision of correspondence to USAA counsel; Review of correspondence from Atty. Calhoun; Conference with counsel regarding course.	0.75
Sep-29-05	Review of correspondence from Clerk of Court; conference with co-counsel re timing; docket brief date	0.80
Dec-07-05	Confer re extension of time and instruct assistant; review of USAA brief and designation of record	4.10
Dec-19-05	Preparation of Motion re Enlargement of Time; letter to Clerk; preparation of Proof of Service; conference with Clerk's office	0.60



000151

February 1, 2006

Jan-03-06	Preparation of first draft of responsive brief; reserach re leagl issues raised by same	6.40
Jan-09-06	Continued work on intial brief on cross appeal; responsive brief on USAA appeal and Motion to Strike and brief re same	5.20
Jan-10-06	Continued work on initial drafts of various briefs and motions; legal research re issues raised	4.80
Jan-15-06	Review of and revision of Appellate Briefs; Conference with counsel regarding issues and course.	2.50
Jan-16-06	Review and revise first drafts of briefs and motions	5.30
Jan-18-06	Work on various appeal documents and brief	7.20
Jan-19-06	Review of and revision of Briefs on Appeal; Review of case authorities; Meeting with counsel regarding final arguments and record on appeal.	3.50
	Finalize briefs, motion, proof of service, designation of record	2.20
	Totals	45.80

DISBURSEMENTS

Sep-21-05	Court of Appeals filing fee	100.00
	Photocopies	7.80
	Postage	7.09
Dec-19-05	Motion Fee	25.00
	Copies/Postage	3.67
Jan-19-06	Copies	49.20
	Postage	14.48
	Motion Fee	25.00
Jan-25-06	Postage	5.10
	Copies	13.05
	Totals	\$250.39

Total Fee & Disbursements

\$9,125.39

Invoice #: 813

Page 3

February 1, 2006

Cumulative Interest Due

\$0.00

Balance Now Due

\$9,125.39

000456

Douglas Lambrecht

March 2, 2006

Hilton Head, SC
29926

Attention:

847

RE: Lambrecht - USAA Appeal

DATE	DESCRIPTION	HOURS
Feb-02-06	Review of Initial Brief re cross appeal; legal research re issues	3.10
Feb-03-06	Review of and revision of Reply Brief on Motion to Strike.	1.50
	Review of Return to Motion to Strike; prepare draft of Reply and legal research re issues raised	2.90
Feb-06-06	Review of and revision of Brief.	0.50
	Complete Reply brief Motion to Strike; begin Reply brief Cross Appeal	4.10
Feb-07-06	Complete first draft Reply brief cross appeal	2.70
Feb-08-06	Review of and revisions of Reply to Initial Brief.	0.75
Feb-10-06	Review and finalize Reply brief on cross appeal; letter to clerk; letter to client re transmittal of briefs	0.70
Feb-22-06	Review of letter from Court of Appeals re briefing schedule	0.10
	Totals	16.35

000457

Invoice #: 847

Page 2

March 2, 2006

DISBURSEMENTS

Jan-31-06	Westlaw research	296.06
Feb-03-06	Copies	17.25
Feb-06-06	Copies	7.95
	Postage	3.81
Feb-28-06	WestLaw	206.26
Totals		<u>\$531.33</u>
Total Fee & Disbursements		<u>\$3,719.58</u>
Previous Balance		9,125.39
Cumulative Interest Due		\$0.00
Balance Now Due		<u>\$12,844.97</u>

000458

Douglas Lambrecht

July 13, 2006

Hilton Head, SC
29926

Attention:

917

RE: Lambrecht - USAA Appeal

DATE	DESCRIPTION	HOURS
Apr-17-06	Phone call from Atty. Calhoun regarding record on appeal; Phone call to Atty. Calhoun.	0.25
	Totals	0.25
	Total Fee & Disbursements	\$48.75
	Previous Balance	12,844.97
	Cumulative Interest Due	\$326.23
	Balance Now Due	\$13,219.95

Douglas Lambrecht

November 1, 2006

Hilton Head, SC
29926

Attention:

987

RE: Lambrecht - USAA Appeal

DATE	DESCRIPTION	HOURS
Oct-16-06	Letter from Clerk of Court of Appeals; Letter from Atty. Calhoun.	0.25
	Totals	0.25
	Total Fee & Disbursements	\$48.75
	Previous Balance	12,893.72
	Previous Payments	2,500.00
	Cumulative Interest Due	\$615.39
	Balance Now Due	\$11,057.86

000460

Douglas Lambrecht

January 15, 2007

Hilton Head, SC
29926

Attention:

1038

RE: Lambrecht - USAA Appeal

DATE	DESCRIPTION	HOURS
Dec-04-06	Letter from Court of Appeals; meeting with counsel re settlement options and course; email to attorney Calhoun re same; letter from Calhoun; review of amended designations and amended Initial Brief	1.50
	Review of Order; Review and compare Amended brief re changes; conference with co-counsel re settlement options	1.30
Dec-05-06	Negotiations with attorney Calhoun re settlement; email to Doug re status; conference with Doug re same	1.00
	Letter to Clerk re Respondent's Initial Brief; letter to attorney Calhoun re amendment of the record	0.80
Dec-22-06	Review of correspondence to Clerk; review of final Record on Appeal and three briefs of Appellant	1.25
Dec-27-06	Review of Record; complete citations to the record for all briefs; work with printing company to prepare briefs; letter to Clerk; letter to opposing counsel	3.90
	Totals	9.75

000461

Invoice #: 1038

Page 2

January 15, 2007

DISBURSEMENTS

Dec-27-06	Motion Fee	25.00
Dec-29-06	Express Mail	21.19
Totals		\$46.19
Total Fee & Disbursements		\$1,947.44
Previous Balance		10,442.47
Previous Payments		2,500.00
Cumulative Interest Due		\$766.25
Balance Now Due		\$10,656.16

000462

Douglas Lambrecht

February 2, 2007

Hilton Head, SC
29926

Attention:

1065

RE: Lambrecht - USAA Appeal

DATE	DESCRIPTION	HOURS
Jan-08-07	Confer with opposing counsel re record; conference with Clerk of Court of Appeals; preparation of final brief; letter to Counsel Press re printing.	2.40
Totals		2.40

DISBURSEMENTS

Jan-26-07	Counsel Press - Preparation and printing of final briefs	1,069.00
Totals		\$1,069.00
Total Fee & Disbursements		\$1,537.00
Previous Balance		9,889.91
Cumulative Interest Due		\$795.63
Balance Now Due		\$12,222.54

000463

Douglas Lambrecht

March 3, 2007

Hilton Head, SC
29926

Attention:

1087

RE: Lambrecht - USAA Appeal

DISBURSEMENTS

Feb-06-07	Express Delivery to Counsel Press re printing of briefs	22.48
	Totals	\$22.48
	Total Fee & Disbursements	\$22.48
	Previous Balance	11,426.91
	Cumulative Interest Due	\$849.76
	Balance Now Due	\$12,299.15

000464

Douglas Lambrecht

March 28, 2007

Hilton Head, SC
29926

Attention:

1101

RE: Lambrecht - USAA Appeal

DATE	DESCRIPTION	HOURS
Mar-13-07	Letter from clerk of Court of Appeals re docketing of requirements	0.25
Mar-14-07	Conference with Doug re Court of Appeals status	0.10
	Totals	0.35
	Total Fee & Disbursements	\$68.25
	Previous Balance	11,449.39
	Cumulative Interest Due	\$908.15
	Balance Now Due	\$12,425.79

000465

Douglas Lambrecht

June 4, 2007

Hilton Head, SC
29926

Attention:

1150

RE: Lambrecht - USAA Appeal

DATE	DESCRIPTION	HOURS
May-31-07	Letter from Clerk of Court; letter to Clerk re directives of Chief Administrative Judge	0.25
	Totals	0.25
	Total Fee & Disbursements	\$48.75
	Previous Balance	11,517.64
	Cumulative Interest Due	\$1,068.64
	Balance Now Due	\$12,635.03

Douglas Lambrecht

March 3, 2008

Hilton Head, SC
29926

Attention:

1367

RE: Lambrecht - USAA Appeal

DATE	DESCRIPTION	HOURS
Feb-04-08	Conference with Doug re status and course; negotiations with attorney Calhoun re potential settlement; email to Doug re same	0.75
Feb-28-08	Phone call from attorney Sweeney; review of client damages for breach of insurance contract; conference with attorney Sweeney re settlement position	1.75
Totals		2.50
Total Fee & Disbursements		\$487.50
Previous Balance		11,566.39
Cumulative Interest Due		\$1,717.17
Balance Now Due		\$13,771.06

000467

Douglas Lambrecht

April 3, 2008

Hilton Head, SC
29926

Attention:

1400

RE: Lambrecht - USAA Appeal

DATE	DESCRIPTION	HOURS
Mar-04-08	Review of briefs; preparation for oral argument	2.25
	Review of briefs and cited case authority; conference with co-counsel	1.10
Mar-05-08	Review of Briefs and evidence; legal research re open issues; preparation for oral argument	7.75
	Conferences with co-counsel re preparation for oral argument	1.10
Mar-06-08	Review of notes; travel to Columbia and appearance before Supreme Court	8.00
	Totals	20.20
DISBURSEMENTS		
Mar-06-08	Mileage to and from Columbia	80.00
	Totals	\$80.00
	Total Fee & Disbursements	\$4,019.00
	Previous Balance	12,053.89

000468

Invoice#: 1400

Page 2

April 3, 2008

Cumulative Interest Due

\$1,790.96

Balance Now Due

\$17,863.85

000469

Douglas Lambrecht

May 1, 2008

Hilton Head, SC
29926

Attention:

1421

RE: Lambrecht - USAA Appeal

DATE	DESCRIPTION	HOURS
Apr-28-08	Phone call from Clerk; review of website and Supreme Court Opinion; outline of comments; conference with co-counsel; conference with Doug; email to Doug; review of case authorities re subject matter jurisdiction and grounds for reconsideration	3.50
Apr-29-08	Review of various aspects of decision; review of procedures for rehearing; conference with co-counsel re same	0.80
Totals		4.30
Total Fee & Disbursements		\$838.50
Previous Balance		16,072.89
Cumulative Interest Due		\$1,860.29
Balance Now Due		\$18,771.68

000470

Douglas Lambrecht

June 7, 2008

Hilton Head, SC
29926

Attention:

1453

RE: Lambrecht - USAA Appeal

DATE	DESCRIPTION	HOURS
May-05-08	Conference with Doug re Petition for Rehearing; meeting with counsel re issues and arguments	0.75
May-06-08	Preparation of Petition for Rehearing	9.90
May-12-08	Review of and revision of Petition for Rehearing	5.50
	Totals	16.15

DISBURSEMENTS

May-06-08	Motion fee Petition for Rehearing	25.00
	Totals	\$25.00
	Total Fee & Disbursements	\$3,174.25
	Previous Balance	16,911.39
	Cumulative Interest Due	\$1,982.06
	Balance Now Due	\$22,067.70

000471

Douglas Lambrecht

July 1, 2008

Hilton Head, SC
29926

Attention:

1477

RE: Lambrecht - USAA Appeal

DISBURSEMENTS

Jun-04-08	Postage for Motion for Rehearing to Supreme Court	27.88
	Totals	\$27.88
	Total Fee & Disbursements	\$27.88
	Previous Balance	20,085.64
	Cumulative Interest Due	\$2,065.44
	Balance Now Due	\$22,178.96

000472

Douglas Lambrecht

January 15, 2010

Hilton Head, SC
29926

Attention:

1914

RE: Lambrecht - USAA Appeal

Total Fee & Disbursements

\$0.00

Previous Balance

18,113.52

Cumulative Interest Due

\$4,167.91

Balance Now Due

\$22,281.43

Jan 15/2010

North & Black, PC
Interest Calculation Report
ALL DATES

Page 1

Client Information		Client Lawyer		Activity			Balance Owning		
Matter	Description	Inv#	Type	Int. Rate	Principal	Interest	Principal	Interest	Total
Entry #	Date								
Lambre - Lambrecht, Douglas JEN									
Lambre-004 Lambrecht - USAA Appeal									
6448	Feb 1/2006	813	Invoice	7.50%	9125.39		9125.39	0.00	9125.39
	Oct 23/2006		Interest			438.77	9125.39	438.77	9564.16
7843	Oct 23/2006		Payment		-385.29		8740.10	438.77	9178.87
7843	Oct 23/2006		Payment		-1864.32		6875.78	438.77	7314.55
7843	Oct 23/2006		Payment		-250.39		6625.39	438.77	7064.16
	Dec 27/2006		Interest			88.49	6625.39	527.26	7152.65
8076	Dec 27/2006		Payment		-2071.83		4553.56	527.26	5080.82
8076	Dec 27/2006		Payment		-428.17		4125.39	527.26	4652.65
	Jul 28/2008		Interest			490.81	4125.39	1018.07	5143.46
11238	Jul 28/2008		Payment		-1657.47		2467.92	1018.07	3485.99
11238	Jul 28/2008		Payment		-342.53		2125.39	1018.07	3143.46
	Jan 15/2010		Interest			234.08	2125.39	1252.15	3377.54
6658	Mar 2/2006	847	Invoice	7.50%	3719.58		3719.58	0.00	3719.58
	Jan 15/2010		Interest			1058.55	3719.58	1058.55	4778.13
6659	Mar 2/2006	848	Invoice	7.50%			0.00	0.00	0.00
7223	Jul 13/2006	917	Invoice	7.50%	48.75		48.75	0.00	48.75
	Jan 15/2010		Interest			12.54	48.75	12.54	61.29
7346	Aug 3/2006	934	Invoice	7.50%			0.00	0.00	0.00
7539	Sep 11/2006	955	Invoice	7.50%			0.00	0.00	0.00
7900	Nov 1/2006	987	Invoice	7.50%			0.00	0.00	0.00
	Jan 15/2010		Interest		48.75		48.75	0.00	48.75
8040	Dec 7/2006	1016	Invoice	7.50%		11.43	48.75	11.43	60.18
8177	Jan 15/2007	1038	Invoice	7.50%			0.00	0.00	0.00
	Jan 15/2010		Interest		1947.44		1947.44	0.00	1947.44
8350	Feb 2/2007	1065	Invoice	7.50%	1537.00	426.57	1947.44	426.57	2374.01
	Jan 15/2010		Interest				1537.00	0.00	1537.00
8534	Mar 3/2007	1087	Invoice	7.50%		330.98	1537.00	330.98	1867.98
	Jan 15/2010		Interest		22.48		22.48	0.00	22.48
8677	Mar 28/2007	1101	Invoice	7.50%		4.71	22.48	4.71	27.19
	Jan 15/2010		Interest		68.25		68.25	0.00	68.25
8902	May 2/2007	1133	Invoice	7.50%		13.94	68.25	13.94	82.19
9019	Jun 4/2007	1150	Invoice	7.50%			0.00	0.00	0.00
	Jan 15/2010		Interest		48.75		48.75	0.00	48.75
9277	Aug 3/2007	1203	Invoice	7.50%		9.28	48.75	9.28	58.03
9411	Sep 5/2007	1219	Invoice	7.50%			0.00	0.00	0.00
9532	Oct 3/2007	1249	Invoice	7.50%			0.00	0.00	0.00
9678	Nov 5/2007	1272	Invoice	7.50%			0.00	0.00	0.00
9679	Nov 5/2007	1273	Invoice	7.50%			0.00	0.00	0.00
9832	Dec 6/2007	1308	Invoice	7.50%			0.00	0.00	0.00
9972	Jan 4/2008	1318	Invoice	7.50%			0.00	0.00	0.00
10175	Feb 4/2008	1347	Invoice	7.50%			0.00	0.00	0.00
10387	Mar 3/2008	1367	Invoice	7.50%			0.00	0.00	0.00
	Jan 15/2010		Interest		487.50		487.50	0.00	487.50
10597	Apr 3/2008	1400	Invoice	7.50%	4019.00	65.41	487.50	65.41	552.91
	Jan 15/2010		Interest				4019.00	0.00	4019.00
10760	May 1/2008	1421	Invoice	7.50%		513.66	4019.00	513.66	4532.66
	Jan 15/2010		Interest		838.50		838.50	0.00	838.50
10954	Jun 7/2008	1453	Invoice	7.50%	3174.25	102.34	838.50	102.34	940.84
	Jan 15/2010		Interest				3174.25	0.00	3174.25
11132	Jul 1/2008	1477	Invoice	7.50%		363.30	3174.25	363.30	3537.55
	Jan 15/2010		Interest		27.88		27.88	0.00	27.88
11296	Aug 4/2008	1498	Invoice	7.50%		3.05	27.88	3.05	30.93
11533	Sep 2/2008	1542	Invoice	7.50%			0.00	0.00	0.00
11679	Oct 2/2008	1556	Invoice	7.50%			0.00	0.00	0.00
11870	Nov 5/2008	1595	Invoice	7.50%			0.00	0.00	0.00
11963	Nov 30/2008	1603	Invoice	7.50%			0.00	0.00	0.00
12149	Jan 6/2009	1632	Invoice	7.50%			0.00	0.00	0.00
12330	Feb 14/2009	1659	Invoice	7.50%			0.00	0.00	0.00
12439	Mar 2/2009	1682	Invoice	7.50%			0.00	0.00	0.00
12550	Apr 2/2009	1704	Invoice	7.50%			0.00	0.00	0.00
12643	May 1/2009	1723	Invoice	7.50%			0.00	0.00	0.00
12781	Jun 11/2009	1735	Invoice	7.50%			0.00	0.00	0.00
12941	Aug 3/2009	1773	Invoice	7.50%			0.00	0.00	0.00
13139	Sep 1/2009	1800	Invoice	7.50%			0.00	0.00	0.00
13367	Nov 5/2009	1824	Invoice	7.50%			0.00	0.00	0.00
13652	Jan 15/2010	1914	Invoice	7.50%			0.00	0.00	0.00
Matter Total					18113.52	4167.91	18113.52	4167.91	22281.43
Firm Total					18113.52	4167.91	18113.52	4167.91	22281.43

REPORT SELECTIONS - Interest Calculation Report

Layout Template: All
 Requested by: ADMIN
 Finished: Friday, January 15, 2010 at 02:22:29 PM
 Date Range: ALL DATES
 Matters: Lambre-004
 Clients: All
 Major Clients: All
 Client Intro Lawyer: All
 Type of Law: All
 New Page for Each Lawyer: No

Responsible Lawyer: All
 Assigned Lawyer: All
 Invoice: All
 Matters Sort by: Default

000474

Jan 15/2010

North & Black, PC
Receivables by Client
To Jan 15/2010

Page: 1

Client No. & Name

Bus #:

Home #:

Intro

Outstanding

Matter No.

Last Receipt

Inv # AR Date

Date

Amount

Col. Lwr

Billed

<= 30

<= 60

<= 90

> 90

Total

Trust Bal

Lambre	Lambrecht, Douglas	JEN									
Lambre-004	Lambrecht - USAA Appeal	JEN									
813 Feb 1/2006	Jul 28/2008	2000.00	JEN	9125.39				2125.39	2125.39		0.00
847 Mar 2/2006			JEN	48.75				48.75	48.75		
917 Jul 13/2006			JEN	48.75				48.75	48.75		
987 Nov 1/2006			JEN	1947.44				1947.44	1947.44		
1038 Jan 15/2007			JEN	22.48				22.48	22.48		
1065 Feb 2/2007			JEN	48.75				48.75	48.75		
1087 Mar 3/2007			JEN	4019.00				4019.00	4019.00		
1101 Mar 28/2007			JEN	3174.25				3174.25	3174.25		
1150 Jun 4/2007			JEN	48.75				48.75	48.75		
1367 Mar 3/2008			JEN	4019.00				4019.00	4019.00		
1400 Apr 3/2008			JEN	3174.25				3174.25	3174.25		
1421 May 1/2008			JEN	3174.25				3174.25	3174.25		
1453 Jun 7/2008			JEN	3174.25				3174.25	3174.25		
1477 Jul 1/2008			JEN	3174.25				3174.25	3174.25		
Matter Total				0.00	0.00	0.00	0.00	18113.52	18113.52		
Total:				0.00	0.00	0.00	0.00	18113.52	18113.52		

*** Summary by Collecting Lawyer ***

	<= 30	<= 60	<= 90	> 90	Total
JEN - John E. North, Jr.	0.00	0.00	0.00	18113.52	18113.52
Total:	0.00	0.00	0.00	18113.52	18113.52
Firm Total	0.00	0.00	0.00	18113.52	18113.52

REPORT SELECTIONS - Receivables by Client

Layout Template

Advanced Search Filter

Requested by

Finished

Ver

Matters

Clients

Major Clients

Responsible Lawyer

Client Intro Lawyer

Assigned Lawyer

Type of Law

Select From

Matters Sort by

New Page for Each Lawyer

Collecting Lawyer

Show Balances As of End Date

Receipts Up To

Age From

Aging Category-1

Aging Category-2

Aging Category-3

Firm Totals Only

Matter Totals

Client Totals Only

A/R balance is greater than or equal to (\$)

Invoice is outstanding for at least (days)

Show all invoices for included matters

Collecting Lawyer

Summarize by Resp. Lawyer

Summarize by Client Intr. Lawyer

Default

None

ADMIN

Friday, January 15, 2010 at 01:23:04 PM

9:20d

Lambre-004

All

All

All

All

All

All

Active, Inactive, Archived Matters

Default

No

All

Yes

1/15/2010

Jan 15/2010

30

60

90

No

No

No

0.00

0

No

Yes

No

No

000475

Jan 5/2010

North & Black, PC
Client Summary

Client Name	Matter	Resp	Assign	Open Date	Last Entry	Unbld Hrs	Unbld Fees	Unbld Disb	Retainers	Last Bld	Ac#	Balance	Last Entry
Description						Bld Hrs	Bld Fees	Bld Disb	Taxes	AR Bal			
Lambrech, Douglas				Sep 26/2005		0.00	0.00	0.00	0.00	Nov 5/2009			
Lambre-004	JEN	JEN		Nov 5/2009		118.55	23061.25	2052.27	0.00	18113.52			
Lambrech - USAA Appeal													
Firm Totals:						0.00	0.00	0.00	0.00				
						118.55	23061.25	2052.27	0.00	18113.52			

*** Summary by Responsible Lawyer ***

Responsible Lawyer	Total Clients	Total Matters	Unbilled Fees	Unbilled Disb	Billed Fees	Billed Disb+Tax	A/R	Trust	Retainer
JEN -John E. North,	1	1	0.00	0.00	23061.25	2052.27	18113.52	0.00	0.00
Total:	1	1	0.00	0.00	23061.25	2052.27	18113.52	0.00	0.00

REPORT SELECTIONS - Client Summary

Layout Template
Advanced Search Filter
Requested by
Finished
Ver
Matters
Clients
Major Clients
Client Intro Lawyer
Responsible Lawyer
Assigned Lawyer
Type of Law
Select From
Matters Sort by
New Page for Each Lawyer
No Activity Date
Working Lawyer
Incl. Unbilled Over
Incl. Matters with Neg Unbld Disb
Incl. Zero Balances
Incl. Non-zero Balances
Client Totals Only
Totals Only

Default
None
ADMIN
Tuesday, January 05, 2010 at 11:17:31 AM
9.20d
Lambre-004
All
All
All
All
All
All
Active, Inactive, Archived Matters
Default
No
Dec 31/2199
All
0.00
No
Yes
Yes
No
No

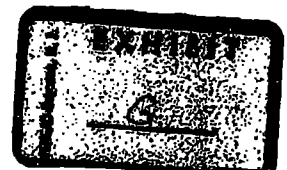
**SUMMARY OF LEGAL FEES AND EXPENSES INCURRED
BY DOUGLAS A. LAMBRECHT**

	Legal Fees	Costs	Interest	Total
Clegg v. Lambrecht Circuit Court proceedings	\$40,522.25	\$1,549.20	\$7,815.13	\$49,886.58
Appeal of Summary Judgment	\$8,638.50	\$314.66	\$1,070.67	\$10,023.83
Appeal of Denial of Sanctions	~~\$33,813.90~~	~~\$3,090.02~~	~~\$1,793.31~~	\$38,696.33
Sanctions Remand	\$11,251.50	\$27.00	0	\$11,278.50
USAA v. Lambrecht	\$13,421.75	\$397.01	\$4,666.20	\$18,484.96
USAA v. Lambrecht Appeal	\$23,061.25	\$2,052.27	\$4,167.91	\$29,281.43
Total fees and costs incurred due to filing of frivolous claims	\$130,708.25	\$7,430.16	\$19,513.22	\$157,651.63

**SUMMARY OF TIME AND EXPENSES INCURRED
BY DOUGLAS A. LAMBRECHT**

	Personal Time	Costs	Total
Time and expenses per Affidavit of Douglas Lambrecht			
Clegg v Lambrecht - <i>Pro se</i>	\$4,875.00		
Clegg v Lambrecht - <i>Pro se</i> Costs		\$519.56	
Clegg v Lambrecht - represented by Counsel	\$16,815.00		
Total Clegg v Lambrecht			\$22,209.56
Appeal of Summary Judgment	\$825.00		\$825.00
Appeal of Denial of Sanctions	\$2,437.50		\$2,437.50
USAA v. Lambrecht including Appeal	\$4,440.00		\$4,440.00
Total time & costs to Douglas Lambrecht - all actions	\$29,392.50	\$519.56	<u>\$29,912.06</u>

Total of all "Costs" and expenses incurred for attorney fees, time of Defendant, and expenses - \$187,563.69



BLANK

000478