

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 II

John E. North, Jr.
Pamela K. Black
North & Black, PC
916 Bay Street, Suite 100
Beaufort, SC 29902
(843) 379-0800
Attorneys for Appellant

H. Fred Kuhn, Jr.
Moss, Kuhn & Fleming, P.A.
1501 North Street
PO Drawer 507
Beaufort, SC 29901
(843) 524-3373

G. Richardson Wieters
G. Richardson Wieters, P.C.
PO Box 7682
Hilton Head Island, SC 29925
(843) 341-7000
Attorneys for Respondent

INDEX
VOLUME I

ORDERS	PAGE NO.
Order Striking Pursuant to Rule 40(j) March 10, 2005	001
Order Restoring to Trial Docket April 19, 2006	008
Order Granting Summary Judgment – Douglas and Jan, October 20, 2006	013
Order Granting Summary Judgment – Anna April 26, 2007, effective October 20, 2006	015
Order Granting Partial Summary Judgment – Rhett Barker, October 20, 2006	016
Order Denying Douglas' Motion for Sanctions, March 1, 2007	017
Order Denying Douglas' Motion to Alter or Amend as to Sanctions, May 1, 2007	018
Order Denying Plaintiff's Motion for Reconsideration as to Summary Judgment in favor of Douglas, March 1, 2007	020
Order of Dismissal, Court of Appeals, as to Plaintiff's Appeal of grant of Summary Judgment to Douglas, January 16, 2008	021
Unpublished Opinion, Remanding To the Circuit Court, May 13, 2009,	023
Order, January 8, 2010 Granting Sanctions	027
Order, August 10, 2010 Denying Sanctions	047
Order, September 20, 2010 Denying Douglas' Motion to Alter or Amend	077

PLEADINGS	PAGE NO.
Complaint, 02-07-CP-1159 ("1159"), filed July 10, 2002	079
Complaint, 02-07-CP-1160 ("1160"), filed July 10, 2002	089
Douglas' Response to Request for Production, October 11, 2002	098
Amended Complaint, 1159, filed May 11, 2004	135
Amended Complaint, 1160, filed May 11, 2004	146
Answer to Amended Complaint, 1159, served May 26, 2004	157
Answer to Amended Complaint, 1160, served May 26, 2004	164
Motion for Summary Judgment, 1159, served June 15, 2004	171
Motion for Summary Judgment, 1160, served June 15, 2004	173
Memorandum in Support of Motion for Summary Judgment, served June 15, 2004	175
Affidavit of Elliott Lambrecht served June 15, 2004	200
Affidavit of Douglas Lambrecht served June 15, 2004	205
Motion to Dismiss (Anna) dated July 9, 2004	210
Motion to Dismiss (Jan) dated July 26, 2004	211
Motion for Summary Judgment (Rhett) dated November 11, 2004	213
Amended Complaint 1159 served August 10, 2006	215
Amended Complaint 1160 served August 10, 2006	227
Answer to Second Amended Complaint 1159 served August 22, 2006	239
Answer to Second Amended Complaint 1160 served August 22, 2006	245
Plaintiff's Supplemental Memorandum in Opposition to Douglas A. Lambrecht's Motion for Summary Judgment dated September 13, 2006	251
Reply Memorandum in Support of Motion for Summary Judgment served September 22, 2006	259

Motion for Sanctions served January 17, 2007	277
--	-----

Pages 284 through 298 withdrawn as undesigned by either party
and not properly included in the record

Motion for Reconsideration, served January 19, 2010

Joint Affidavit of John E. North, Jr, and Pamela K. Black In Support of Request for Attorney Fees served January 15, 2010	315
--	-----

VOLUME II

Affidavit of Douglas A. Lambrecht in Support of Request for Payment Of Time and Expenses served January 15, 2010	479
---	-----

Plaintiff's Memorandum in Support of Motion for Reconsideration	507
---	-----

Motion of Defendant Douglas A. Lambrecht to Alter or Amend Served September 3, 2010	554
--	-----

Affidavit of John E. North, Jr. served November 1, 2010	592
---	-----

TRANSCRIPT

Transcript of hearing on July 9, 2010 on Motion for Reconsideration	624
---	-----

DEPOSITIONS

Deposition of Elliott Lambrecht	668
---------------------------------	-----

Deposition of Douglas A. Lambrecht	708
------------------------------------	-----

Deposition of Jan Horan	730
-------------------------	-----

Deposition of Anna Lambrecht	740
------------------------------	-----

Deposition of Rhett Barker	748
----------------------------	-----

CERTIFICATE OF COUNSEL

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

AFFIDAVIT OF DOUGLAS A.
LAMBRECHT IN SUPPORT OF
REQUEST FOR PAYMENT OF TIME
AND EXPENSES AS SANCTIONS
PURSUANT TO SC CODE § 15-36-10
("FCPSA") AND RULE 11, SCRCP

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

) ss
)

DOUGLAS A. LAMBRECHT, being of lawful age and first duly sworn upon oath,
deposes and says as follows:

1. I am a resident of Beaufort County, South Carolina, and have personal knowledge of the facts set forth herein.
2. On July 10, 2002, the Plaintiff, Deborah J. Clegg, commenced these actions (the "Clegg litigation") against me and, ultimately, against other of my family members, to recover damages resulting from an accident wherein a car owned and driven by my adult and emancipated son collided with a tree in a one car accident.

3. On October 20, 2006, the Court granted me summary judgment on the basis that there was no factual or legal basis upon which to impose liability on me for the consequences of my adult son's automobile accident.
4. The Plaintiff appealed the grant of Summary judgment to me and that appeal was ultimately dismissed after initial briefs were completed when the Plaintiff failed to timely prepare and file the record.
5. On January 17, 2007, I filed a Motion for Sanctions pursuant to S.C. Code §15-36-10 and Rule 11, SCRCP, in the Clegg litigation, but that Motion was denied.
6. I appealed the denial of the Motion for Sanctions and, after full briefing and oral argument in the Court of Appeals, and several Motions for Rehearing, the Order denying my Motion for Sanctions was vacated and the matter remanded.
7. On January 8, 2010, the Court's Order was filed finding that Plaintiff's claims against me were frivolous from the outset under the standard of S.C. Code § 15-36-10 and were in violation of Rule 11, SCRCP, and awarded me sanctions.
8. In addition to the Clegg litigation and the sanctions proceedings arising therefrom, and as the direct and proximate result of the claims made against me by the Plaintiff, on June 2, 2004, I was sued by my own automobile insurer, USAA Property and Casualty Insurance Company ("USAA litigation") for a declaration that it was not responsible for defending me for the claims made by the Plaintiff. But for the filing of the frivolous claims against me by Plaintiff, I would not have been sued by USAA and would not have incurred legal fees and expenses to defend that litigation.

9. On April 8, 2005, the lower court in the USAA litigation found that USAA did have the obligation to provide me with a defense in the Clegg litigation.
10. On September 14, 2005, USAA appealed the decision of the lower Court and the Supreme Court reversed the decision of the lower court, finding that USAA had no obligation to defend me.
11. At no time did USAA provide a defense for me.
12. Initially, I retained Parker Barnes to defend me, but after I was unable to continue to meet his requirement for a substantial retainer for continuing the representation, in mid November, 2002, the Court allowed him to withdraw as my attorney.
13. Thereafter, until March, 2004, I appeared *pro se* in the Clegg litigation and was required to expend my own time and efforts defending myself.
14. In March, 2004, I retained North & Black, PC, ("NB") to assume my defense in the Clegg litigation and that firm has represented me in both the Clegg litigation and appeals arising from that matter and in the USAA litigation and the appeal thereof.
15. The hourly rate of NB was \$175.00 per hour through the end of 2005 and then increased to \$195 per hour for all work performed thereafter. This hourly rate is the same as I have paid to NB for representation in matters other than the Clegg litigation and the USAA litigation and, based upon my experience, is within the range of hourly rates charged by other attorneys with litigation experience in this area.

16. Since March, 2004, I have paid NB substantial sums for its representation of me, but I am not a wealthy person and was simply unable to pay the majority of the fees and expenses that I have incurred and substantial sums remain unpaid and due to NB from me. I owe to NB the totality of the unpaid fees and expenses reflected on the attachments to the Affidavit of John E. North, Jr., dated January 15, 2009, which I have reviewed. I have no agreement with NB to either reduce the amount owed to it or for forgiveness of the obligation. During the time it has represented me, I have received from NB monthly billings setting forth by date and description the services performed on my behalf and itemized expenses. I do not believe that any of the time and expense for which I was billed was unwarranted or unreasonable in any way.

17. In the Clegg litigation, I incurred an obligation to NB of \$40,522.25 in attorney fees, \$1,549.20 in expenses, and \$7,815.13 in interest as of this date, which included the time spent before the trial court seeking sanctions.

18. After the Plaintiff appealed the grant of summary judgment to me, I 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 me in the appeal.

19. For its efforts on my behalf in the Court of Appeals on the sanctions issue, I have incurred an additional obligation to NB of \$33,813.00 in attorney fees, \$3,090.02 in expenses, and \$1,793.31 in interest.

20. Following remand of this case, I have incurred an additional obligation to NB of \$11,251.50 in attorney fees and \$27.00 in expenses.

21. In the USAA litigation, I incurred an obligation to NB of \$13,421.75 in attorney fees, \$397.01 in expenses, and \$4,666.20 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 for the appeal by USAA.
22. Due to my inability to currently pay the totality of the cost of the legal fees and expenses incurred on my behalf, NB has charged interest on the unpaid amounts of the sums owed at the rate of 7½ % per annum over the six years that I have been represented by NB in these matters.
23. To date, the attorney fees and expenses I have incurred for representation in all of these matters is \$130,708.25 in attorney fees, \$ 7,403.16 in expenses, and \$19,513.22 in interest, for a total of \$157,651.63.
24. Attached hereto as Exhibit A is a schedule prepared by me depicting the date, description of activity, amount of time expended by me, and costs incurred by me, other than legal fees and expenses, as a result of the filing of the Clegg litigation against me.
25. Attached hereto as Exhibit B is a schedule prepared by me depicting the date, description of activity, amount of additional time expended by me, and costs incurred by me, other than legal fees and expenses, as a result of the appeal by Clegg of the granting of Summary Judgment in my favor.
26. Attached hereto as Exhibit C is a schedule prepared by me depicting the date, description of activity, amount of additional time expended by me, and costs incurred by me, other than legal fees and expenses, as a result of the appeal of the denial of sanctions in the Clegg litigation against me.

27. Attached hereto as Exhibit D is a schedule prepared by me depicting the date, description of activity, amount of additional time expended by me, and costs incurred by me, other than legal fees and expenses, as a result of the filing by USAA of a lawsuit against me seeking a declaration that it was not responsible for defending me from the frivolous claims made by the Plaintiff.

28. Attached hereto as Exhibit E is a schedule that summarizes my time expended between 2002 and 2010 as a direct consequence of the filing of this frivolous proceeding against me and the expenses incurred by me. In addition, I have incurred the expenses shown on the Affidavit of John E. North, Jr., dated January 15, 2010, with regard to attorney fees and other legal expenses.

29. Exhibits A, B, C, D, and E accurately describe the time expended by me in connection with the defense of the Clegg litigation, in seeking sanctions before the Circuit Court and the Court of Appeals, and in defending litigation filed against me as a result of having the Clegg claims filed against me. All of such time was necessary and reasonably required to protect my rights, including my right to an award of sanctions, and to defend the claims made against me as a result of the filing of lawsuit by Plaintiff and her counsel against me. All of the expenses on said Exhibits were reasonable, necessary, and reasonably incurred by me.

30. The hourly rate set forth in Exhibits A, B, C, D, and E is the standard rate charged to my clients by me during the periods of time depicted on said Exhibits for my time in providing professional services as a Certified Investment Management Consultant licensed in the state of South Carolina and reflects the

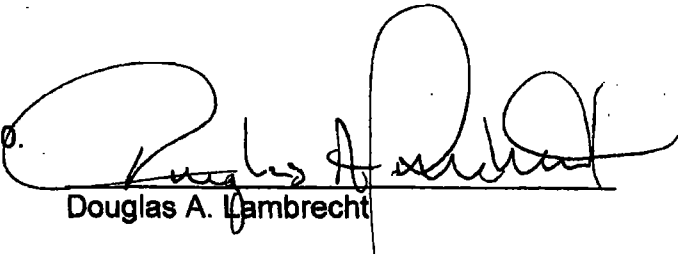
reasonable value of my time. Attached hereto as Exhibit F is a copy of my curriculum vitae, which sets forth my qualifications and substantiates the basis for the hourly rate charged to my clients and the value of my time. My hourly rate is within the range of hourly rates charged within the state and in Beaufort County by financial advisors with similar education, experience, and expertise for similar services. Attached hereto as Exhibit G is a copy of the Schedule of Services and Fees charged to my clients for my services, including the hourly rate charged for financial services.

31. The total hours expended by me as a result of the filing of this frivolous litigation is in excess of 195.95 hours, the reasonable value of which is \$29,392.50. In addition, I have incurred out-of-pocket expenses in the amount of \$519.56, for a total of \$29,912.06.

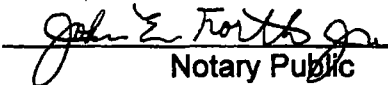
32. The facts set forth in this Affidavit are true and correct.

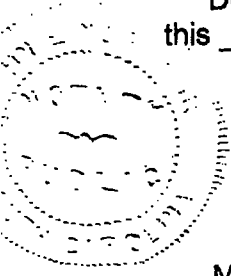
FURTHER AFFIANT SAYS NOT.

Dated this 15th day of January, 2010.


Douglas A. Lambrecht

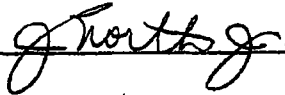
Douglas A. Lambrecht, being first duly sworn on oath, deposed and swore to me on this 15th day of January, 2010, that the facts set forth above were true and correct.


Notary Public


John E. North, Jr.
NOTARY PUBLIC
My Commission Expires: South Carolina
My Commission Expires 7/29/2017

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.



Douglas Lambrecht's (Defendant) activity and hours regarding:

Clegg v. Lambrecht (Survival Action) 02-CP-07-1159

Clegg v. Lambrecht (Wrongful Death) 02-CP-07-1160

<u>Date</u>	<u>Activity</u>	<u>Documentation</u>	<u>Atty</u>	<u>Hours</u>
2/1/2002	Conference w/ Chuck Scarminach as to recommendation for Defense Counsel for suits Wieters says he preparing	Calendar, Docs, Notes in DAL Files	Chuck Scarminach	0.5
2/21/2002	Telephone Conference w/ Attorney Parker Barnes to engage as Defense Counsel for suits Wieters says he preparing	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.4
2/22/2002	Initial Office Meeting w/ Attorney Parker Barnes to secure representation as Defense Counsel (includes travel time)	Calendar, Docs, Notes in DAL Files	Parker Barnes	4.5
2/27/2002	Telephone Conference w/ Attorney Parker Barnes	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.5
3/5/2002	Telephone Conference w/ Attorney Parker Barnes	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.25
7/11/2002	Telephone Conference w/ Attorney Parker Barnes	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.3
7/24/2002	Receive and Review Clegg Summons and Complaint	Calendar, Docs, Notes in DAL Files	Parker Barnes	2
7/24/2002	Telephone Conference w/ Attorney Parker Barnes to discuss Summons and Complaint sent to him by Attorney Wieters	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.9
7/25/2002	Telephone Conference w/ Attorney Parker Barnes to discuss Vehicle Title...send fax of Mazda Title and other Docs	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.5
7/26/2002	Prepare and send letter to Apryl Saunders USAA requesting cooperation / coordination of Defense with Attorney Barnes	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.5
7/31/2002	Review of files and Research Negligent Entrustment and prepare/send fax and email to Parker Barnes re same	Calendar, Docs, Notes in DAL Files	Parker Barnes	1
8/7/2002	Prepare and send letter to Attorney Barnes regarding USAA letters rescinding coverage and Denying (non) claim	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.75
8/19/2002	Telephone conference with Attorney Barnes. Re:information he needs sent to him to prepare Response to complaint	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.4
8/21/2002	Telephone conference with Attorney Barnes. Re:information he requested sent to him to prepare Response to Complaint	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.4
8/21/2002	Review internet files re:Negligent Entrustment cases and prepare/send fax and email to Parker Barnes re same	Calendar, Docs, Notes in DAL Files	Parker Barnes	1.25



Douglas Lambrecht's (Defendant) activity and hours regarding:

**Clegg v. Lambrecht (Survival Action) 02-CP-07-1159
Clegg v. Lambrecht (Wrongful Death) 02-CP-07-1160**

8/22/2002	Telephone conference with Attorney Barnes. Re:information	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.25
9/19/2002	Receive/Review letter from Attorney Barnes containing discovery requests from Attorney Wieters for Plaintiff	Calendar, Docs, Notes in DAL Files	Parker Barnes	1
9/25/2002	Telephone conference with Attorney Barnes. Re:information authorization form. Prepare and send signed authorization	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.5
10/1/2002	Review files to obtain information required for responses	Calendar, Docs, Notes in DAL Files	Parker Barnes	4.5
10/5/2002	to First Request for Production of Documents and Things			
10/8/2002	Prepare and send answers to Attorney Barnes regarding	Calendar, Docs, Notes in DAL Files	Parker Barnes	1
10/9/2002	First Request for Production of Documents and Things			
10/10/2002	Office conference with Attorney Barnes to discuss case and request for \$10,000 additional Retainer	Calendar, Docs, Notes in DAL Files	Parker Barnes	2
11/11/2002	Receive/Review 11/08 letter from Attorney Barnes containing correspondences between Attorneys Gibson and Wieters	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.25
11/5/2002	Receive/Review 10/31 letter from Attorney Barnes containing documents and letters from Attorneys Gibson and Wieters	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.5
11/15/2002	Receive/Review 11/12 letter from Attorney Barnes containing Motion to Withdraw as Counsel, Motion Slip and Certificate	Calendar, Docs, Notes in DAL Files	Pro se	0.5
11/19/2002	Prepare/send Letter to Judge Kemmerlin regarding Parker Barne's Motion to Withdraw as Counsel for Defendant	Calendar, Docs, Notes in DAL Files	Pro se	0.75
11/20/2002	Research internet files re: SC Procedures and Rules of Law and case theories behind Negligent Entrustment claims	Calendar, Docs, Notes in DAL Files	Pro se	3
11/22/2002	Research southeastern case law relevant to Agency, Negligent Entrustment and Family Purpose Doctrine.	Calendar, Docs, Notes in DAL Files	Pro se	2
11/27/2002	Receive and Review Judge Kemmerlin's Order relieving Parker Barnes as Counsel and ordering him to disgorge fees	Calendar, Docs, Notes in DAL Files	Pro se	0.5
12/10/2002	Letter to Wieters requesting he correct error of naming me as a Defendant with no basis but animus	Calendar, Docs, Notes in DAL Files	Pro se	0.75
12/18/2002	Research Family Purpose Doctrine. Review SC case law rulings. Review Rules of Civil Procedure	Calendar, Docs, Notes in DAL Files	Pro se	4.25

000488

Douglas Lambrecht's (Defendant) activity and hours regarding:

Clegg v. Lambrecht (Survival Action) 02-CP-07-1159 Clegg v. Lambrecht (Wrongful Death) 02-CP-07-1160

12/18/2002	Prepare and send Responses to Plaintiff's Request for Documents and Things.	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	3.5
12/19/2002	Review Plaintiff's Second Request for Production and letter from Wieters. Research rules & issues.	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	3.25
12/20/2002	Prepare/send letter to Wieters requesting 30 Day extension to obtain legal counsel and for Production	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	0.5
12/20/2002	Prepare/send letter to Clerk of Court requesting 30 Day extension to obtain legal counsel and for Production	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	0.5
7/16/2003	Letter to Wieters to protest his obtaining a statement from daughter Anna (a minor) without my consent - request copy	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	0.75
11/14/2003	Prepare/send letter to Perry Buckner requesting time extension to obtain legal counsel and Production	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	1
11/14/2003	Prepare/send letters to Attorneys Carter, Finger and Gibson re: extension to obtain legal counsel and for Production	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	1
11/15/2003	Receive, Review and Research Wieter's Motion to Amend and Motion to Join Additional Parties as Defendants	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	1.25
11/17/2003	Prepare/send letters to Attorney Wieters reiterating request for time extension to obtain legal counsel and for Production	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	0.25
11/19/2003	Send form to South Carolina Bar Client Assistance Program requesting assistance against Wieter's Abusive Process	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	0.25
11/19/2003	Prepare and File with Clerk of Court Motion to Remove a Defendant. Copy all Attorneys Carter, Finger, Gibson	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	1.5
11/19/2003	Phone calls and faxes to and from The South Carolina Bar Client Assistance Program in search of legal representation	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	1.25
11/19/2003	Prepare Certificate of Service (Motion) by Hand Delivery File with Clerk and Copy all Attorneys Carter, Finger, Gibson	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	0.75
11/20/2003	Prepare First Affidavit of Defendant Douglas A. Lambrecht File with Clerk and Copy all Attorneys Carter, Finger, Gibson	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	2.25
11/21/2003	Motions Hearing before Master in Equity - Special Judge Curtis Coltrane - who recused himself (includes travel time)	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	2.75
3/3/2004	Initial Office Meeting w/ Attorney North & Black to secure	Calendar, Docs,	North &	6

Douglas Lambrecht's (Defendant) activity and hours regarding:

Clegg v. Lambrecht (Survival Action) 02-CP-07-1159

Clegg v. Lambrecht (Wrongful Death) 02-CP-07-1160

	representation as Defense Counsel (includes travel time)	Notes in DAL Files	Black	
3/8/2004	Meetings and Phone calls with John North regarding information, facts, circumstances , course and actions	Calendar, Docs, Notes in DAL Files	North & Black	0.5
3/16/2004	Office Conference with John North regarding Survival And Negligent Entrustment Actions, facts and course	Calendar, Docs, Notes in DAL Files	North & Black	2.25
4/20/2004	Phone call Conference with North & Black regarding information, facts, circumstances , course and actions	Calendar, Docs, Notes in DAL Files	North & Black	0.25
5/22/2004	Emails and phone call with North & Black regarding timeline and details of Elliott's residency and employment	Calendar, Docs, Notes in DAL Files	North & Black	0.5
5/24/2004	Phone Conference with Attorney Pamela Black regarding preparation of information needed for Summary Judgment	Calendar, Docs, Notes in DAL Files	North & Black	0.25
5/25/2004	Meet with Attorneys re: Answers to Amended Complaints review & revise draft of Answers to Amended Complaints	Calendar, Docs, Notes in DAL Files	North & Black	3.25
5/30/2004	Emails and phone call with North & Black regarding Memorandum in Support of Motion for Summary Judgment	Calendar, Docs, Notes in DAL Files	North & Black	0.5
6/7/2004 6/10/2004	Receive and Review initial drafts of Affidavits in support of of Motion for Summary Judgment Emails exchanged	Calendar, Docs, Notes in DAL Files	North & Black	2.75
6/15/2004 6/19/2004	Phone calls and emails with Pamela Black regarding Answers to Interrogatories & Wieters request for continuance	Calendar, Docs, Notes in DAL Files	North & Black	0.75
6/22/2004	Emails and phone call with North & Black regarding Affidavits in Support of Motion for Summary Judgment	Calendar, Docs, Notes in DAL Files	North & Black	0.25
7/8/2004	Phone call Conference with Pamela Black regarding preparation of Discovery responses , course and actions	Calendar, Docs, Notes in DAL Files	North & Black	0.75
8/4/2004	Phone call Conference with Atty John North regarding preparation of Motion to Dismiss , course and actions	Calendar, Docs, Notes in DAL Files	North & Black	0.5
8/16/2004	Phone call Conference with Atty John North regarding preparation of Motion to Dismiss , course and actions	Calendar, Docs, Notes in DAL Files	North & Black	0.5
11/10/2004	Receive and Review Letter from Pamela Black regarding Notices of Depositions. Emails regarding preparations	Calendar, Docs, Notes in DAL Files	North & Black	0.5
11/30/2004	Phone Conference with Attorney John North regarding preparation of information needed for Depositions	Calendar, Docs, Notes in DAL Files	North & Black	0.5

Douglas Lambrecht's (Defendant) activity and hours regarding:

Clegg v. Lambrecht (Survival Action) 02-CP-07-1159

Clegg v. Lambrecht (Wrongful Death) 02-CP-07-1160

12/8/2004	Phone Conference with Attorney John North regarding status and direction	Calendar, Docs, Notes in DAL Files	North & Black	0.25
12/13/2004	Phone Conference with Attorney John North regarding status and direction	Calendar, Docs, Notes in DAL Files	North & Black	0.25
12/16/2004	Phone Conference with Attorney John North regarding status and direction	Calendar, Docs, Notes in DAL Files	North & Black	0.25
1/4/2005	Receive and Review Letter from John North regarding Depositions and exchange emails w/ counsel regarding facts	Calendar, Docs, Notes in DAL Files	North & Black	1.25
1/5/2005				
1/6/2005	Phone Conference with Attorney John North regarding preparation of facts for Depositions to be held 1/12/2005	Calendar, Docs, Notes in DAL Files	North & Black	0.25
1/7/2005	Review files to obtain information required for responses to Deposition. Calls and emails to counsel in Preparation	Calendar, Docs, Notes in DAL Files	North & Black	8.5
1/10/2005				
1/12/2005	Travel to Hilton Head to attend Deposition.	Calendar, Docs, Notes in DAL Files	North & Black	6
2/7/2005	Phone Conference with Attorney John North regarding status and course of Motion for Summary Judgment, etc.	Calendar, Docs, Notes in DAL Files	North & Black	0.25
2/9/2005	Phone Conference with Attorney John North regarding update of activity, course of Depositions, etc.	Calendar, Docs, Notes in DAL Files	North & Black	0.75
2/9/2005	Phone Conference with Attorney John North regarding transcript of Depositions, etc.	Calendar, Docs, Notes in DAL Files	North & Black	0.75
5/4/2005	Receive and Review Letter from John North regarding Depositions and exchange emails w/ counsel regarding facts	Calendar, Docs, Notes in DAL Files	North & Black	0.5
5/11/2005	Conference w/ counsel re: Depositions of daughter Anna Lambrecht and ex-wife Jan Horan	Calendar, Docs, Notes in DAL Files	North & Black	0.5
5/23/2005	Conference w/ counsel re: Depositions of daughter Anna Lambrecht and ex-wife Jan Horan	Calendar, Docs, Notes in DAL Files	North & Black	1.5
5/18/2005	Review files to prepare for conference w/ counsel re: scheduled depositions	Calendar, Docs, Notes in DAL Files	North & Black	3
5/25/2005	Conference w/ counsel re: depositions of Anna Lambrecht and Jan Horan	Calendar, Docs, Notes in DAL Files	North & Black	2

000491

Douglas Lambrecht's (Defendant) activity and hours regarding:

**Clegg v. Lambrecht (Survival Action) 02-CP-07-1159
Clegg v. Lambrecht (Wrongful Death) 02-CP-07-1160**

7/15/2005	Receive and Review transcripts of Depositions of Jan Horan and Anna Lambrecht -	Calendar, Docs, Notes in DAL Files	North & Black	2.25
1/4/2006	Conference w/ counsel re: status and course of efforts to defend and finalize Summary Judgment	Calendar, Docs, Notes in DAL Files	North & Black	0.5
2/7/2006	Conference w/ counsel re: status and course of efforts to defend and finalize Summary Judgment	Calendar, Docs, Notes in DAL Files	North & Black	0.25
2/10/2006	Receive and Review letter from John North containing Memorandum of Plaintiff in Opposition to SJ Motion	Calendar, Docs, Notes in DAL Files	North & Black	0.75
4/6/2006 4/8/2006	Receive and Review of Order from Judge Buckner exchange of emails regarding ruling and meaning	Calendar, Docs, Notes in DAL Files	North & Black	0.25
4/7/2006	Phone Conference w/ counsel re: status and course, Order from Judge Buckner and Wieter's Amended Complaint	Calendar, Docs, Notes in DAL Files	North & Black	0.25
8/7/2006	Conference w/ counsel re: status and course of Motions and preparation of Documents in Support of Summary Judgment	Calendar, Docs, Notes in DAL Files	North & Black	1.5
8/12/2006	Receive and Review Plaintiff's Second Amended Complaint	Calendar, Docs, Notes in DAL Files	North & Black	0.5
9/6/2006	Review counsel's 9/6/06 letter re: Efforts toward Summary Judgment. Prepare/send response.	Calendar, Docs, Notes in DAL Files	North & Black	0.5
9/11/2006	Review counsel's 9/11/06 emails re: Motions and Wieter's request for delay . Prepare/send responses.	Calendar, Docs, Notes in DAL Files	North & Black	0.25
9/14/2006	Review emails re: Court Hearings and Motions submitted by Jan Horan. Prepare/send response.	Calendar, Docs, Notes in DAL Files	North & Black	0.75
9/14/2006	Receive and Review Plaintiff's Supplemental Memorandum in Opposition to D. Lambrecht's Motion for Summary Judgment	Calendar, Docs, Notes in DAL Files	North & Black	1.25
9/17/2006	Review counsel's 9/15/06 letter re: Efforts toward Summary Judgments. Prepare for Status Meeting.	Calendar, Docs, Notes in DAL Files	North & Black	0.5
9/19/2006	Conference w/ counsel re: status and course of efforts to defend and finalize Summary Judgment	Calendar, Docs, Notes in DAL Files	North & Black	0.5
9/22/2006	Receive and Review Reply Memorandum in Support of Motion for Summary Judgment in Clegg v Lambrecht	Calendar, Docs, Notes in DAL Files	North & Black	1.25
9/30/2006	Review counsel's 9/27/06 email re: request for more	Calendar, Docs,	North &	0.5

000492

Douglas Lambrecht's (Defendant) activity and hours regarding:

Clegg v. Lambrecht (Survival Action) 02-CP-07-1159

Clegg v. Lambrecht (Wrongful Death) 02-CP-07-1160

	money to fund defense efforts. Prepare/send response.	Notes in DAL Files	Black	
2/7/2006	Conference w/ counsel re: status and course of efforts to defend and finalize Summary Judgment	Calendar, Docs, Notes in DAL Files	North & Black	0.25
1/9/2007 1/15/2007	Phone Conference and emails w/ counsel re: status and efforts to defend and finalize Summary Judgment	Calendar, Docs, Notes in DAL Files	North & Black	3
1/15/2007	Emails to North & Black regarding frivolous actions & potential pursuit of Sanction or Civil Action against Wieters & Kuhn	Calendar, Docs, Notes in DAL Files	North & Black	1.5
1/16/2007	Meeting w/ John North regarding frivolous actions & potential pursuit of Sanction or Civil Action against Wieters & Kuhn	Calendar, Docs, Notes in DAL Files	North & Black	4.25
1/17/2007	Phone Conference and emails w/ Pamela Black re: status of case law for Sanctions under Frivolous Proceeding Act	Calendar, Docs, Notes in DAL Files	North & Black	1
1/22/2007	Receive/Review Motion to Reconsider (59e) Order Granting Summary Judgment to Douglas Lambrecht and Jan Horan	Calendar, Docs, Notes in DAL Files	North & Black	1.5
1/25/2007	Receive and Review draft Motion for Sanctions Pursuant to Rule 11 SCRCP and SC Code 15-36-10	Calendar, Docs, Notes in DAL Files	North & Black	1.25
2/28/2007	Receive and Review Memorandum in Support of Motion for Sanctions Pursuant to Rule 11 SCRCP and SC Code 15-36-10	Calendar, Docs, Notes in DAL Files	North & Black	1.75
1/30/2007	Receive and Review letter from Pamela Black regarding Plaintiff's Motion to Reconsider Order dismissing case.	Calendar, Docs, Notes in DAL Files	North & Black	1
1/31/2007	Receive and Review letter from Pamela Black containing Defendant's Opposition to Plaintiff's Rule 59(e) Motion	Calendar, Docs, Notes in DAL Files	North & Black	0.75
2/26/2007	Phone Conference and emails regarding Motion for Sanctions and Memorandum in Support of the Motion for Sanctions	Calendar, Docs, Notes in DAL Files	North & Black	1
2/26/2007 2/28/2007	Receive and Review copy of Wieter's 59(e) Motion and exchange emails w/ counsel regarding ruling and meaning	Calendar, Docs, Notes in DAL Files	North & Black	1.25
2/28/2007	Receive and Review emails and copy of Defendant's Memorandum in Support of the Motion for Sanctions	Calendar, Docs, Notes in DAL Files	North & Black	1.5
3/12/2007 3/14/2007	Phone Conference and emails regarding Motion to Stay Judge Young's Order denying the Motion for Sanctions	Calendar, Docs, Notes in DAL Files	North & Black	1
4/19/2007 4/20/2007	Emails exchanged regarding Anna Lambrecht's Motion for Summary Judgment and Judge Young's approval of same	Calendar, Docs, Notes in DAL Files	North & Black	1.25

000493

Douglas Lambrecht's (Defendant) activity and hours regarding:

Clegg v. Lambrecht (Survival Action) 02-CP-07-1159

Clegg v. Lambrecht (Wrongful Death) 02-CP-07-1160

5/1/2007	Phone Conference and emails regarding Motion for Sanctions Rule 59(e) Motion in Support of the Motion for Sanctions	Calendar, Docs, Notes in DAL Files	North & Black	0.75
5/15/2007	Receive and Review plaintiff's Motion to Reconsideration and Memorandum in Support of the Motion for Sanctions	Calendar, Docs, Notes in DAL Files	North & Black	1
5/23/2007	Receive and Review letter from Pamela Black regarding Plaintiff's Notices of Appeal of SJ and explanation of course	Calendar, Docs, Notes in DAL Files	North & Black	0.5
8/20/2007	Receive and Review Appellant Clegg's Initial Brief in Appeal of Order Granting Summary Judgment	Calendar, Docs, Notes in DAL Files	North & Black	2
8/27/2007	Receive and Review Motion to Strike Initial Brief of Appellant and to Dismiss Appeal	Calendar, Docs, Notes in DAL Files	North & Black	1.2
1/28/2008	Receive/Review Respondent's (mistitled)- actually Appellant's Initial Brief - in Appeal of Summary Judgment (36 pages)	Calendar, Docs, Notes in DAL Files	North & Black	2.5

Hours spent dealing with Clegg v Lambrecht 144.6

Hourly Rate \$150

Total for Time spent on Clegg v Lambrecht \$21,690.00

000494

Costs incurred by Defendant Douglas A. Lambrecht in defense of:

Clegg v. Lambrecht (Survival Action) 02-CP-07-1159

Clegg v. Lambrecht (Wrongful Death) 02-CP-07-1160

<u>Date</u>	<u>For</u>	<u>Description</u>	<u>Total</u>	<u>Amount</u>
2/22/2002	RT Travel	Drive to Beaufort for Meeting w/ Attorney Parker Barnes	66 miles	\$ 33.00
June 2002	Travel	Drive to Beaufort for Meeting w/ Attorney Mitchell Griffith	66 miles	\$ 33.00
June 2002	RT Travel	Drive to & from Hardeeville Meeting w/ Attorney Murdoch	60 miles	\$ 30.00
10/10/2002	Travel	Drive to Beaufort for Meeting w/ Attorney Parker Barnes	66 miles	\$ 33.00
11/19/2002	postage	postage for letters and documents sent during Oct & Nov	numerous	\$ 30.22
11/19/2002	copies	photocopies and facsimilie transmissions for Nov 2002	numerous	\$ 150.78
11/12/2002	filing fee	Court Filing Fee for Parker Barne's Motion to Withdraw	n/a	\$ 25.00
11/18/2003	filing fee	Court Filing Fee for <i>Pro se</i> Motion to Remove Defendant	n/a	\$ 25.00
11/21/2003	Travel	Drive to Beaufort for Motions Hearing Judge Curtis Coltrane	66 miles	\$ 33.00
3/3/2004	travel	Drive to Beaufort for Meeting w/ Attorneys North & Black	66 miles	\$ 33.00
3/16/2004	travel	Drive to Beaufort for Meeting w/ Attorneys North & Black	66 miles	\$ 33.00
5/24/2004	travel	Drive to Beaufort for Meeting w/ Attorneys North & Black	66 miles	\$ 33.00
6/7/2004	copies	photocopies and facsimilie transmissions for July 2004	numerous	\$ 27.56
Total direct costs incurred by Defendant				\$ 519.56

000495

**Douglas Lambrecht's (Defendant) activity and hours
regarding Appeal of Summary Judgment:**

**Clegg v. Lambrecht (Survival Action) 02-CP-07-1159
Clegg v. Lambrecht (Wrongful Death) 02-CP-07-1160**

<u>Date</u>	<u>Activity</u>	<u>Documentation</u>	<u>Atty</u>	<u>Hours</u>
2/28/2007	Email exchange w North & Black regarding Kuhn's Notice of Appeal of Summary judgment granted by Judge Young	Calendar, Docs, Notes in DAL Files	North & Black	0.25
3/28/2007	Email and Phone w Pamela Black regarding Service copy of Appeal of Summary judgment granted by Judge Young	Calendar, Docs, Notes in DAL Files	North & Black	0.5
8/28/2007	Receive/Review 8/27 letter from Pamela Black containing Motion to Strike Brief and Dismiss Kuhn's Appeal of SJ	Calendar, Docs, Notes in DAL Files	North & Black	0.5
10/10/2007	Receive/Review 10/10 email from Pamela Black regarding Weiters efforts to revive Appeal and opinion of Malpractice	Calendar, Docs, Notes in DAL Files	North & Black	0.25
11/5/2007	Receive/Review 11/5 letter from Pamela Black containing overview of status and course of Clegg's Appeal of SJ	Calendar, Docs, Notes in DAL Files	North & Black	0.5
12/6/2007	Receive/Review 12/6 email from Pamela Black containing Initial Brief of Respondent Douglas Lambrecht for SJ Appeal	Calendar, Docs, Notes in DAL Files	North & Black	0.75
1/17/2008	Receive/Review 1/17 letter from Pamela Black regarding Dismissal of Kuhn's Appeal for failure to prepare/serve record	Calendar, Docs, Notes in DAL Files	North & Black	0.25
1/22/2008	Receive/Review 1/22 emails from Pamela Black regarding Court of Appeals ruling dismissing Clegg Appeal of SJ	Calendar, Docs, Notes in DAL Files	North & Black	0.25
2/4/2008	Telephone conference w/ Pamela Black regarding Motion for Costs and related documents, Review of Remittur	Calendar, Docs, Notes in DAL Files	North & Black	1
2/26/2008	Receive/Review/Respond emails from Pamela Black regarding Weiters Motion to Recall Remittur and Response to same	Calendar, Docs, Notes in DAL Files	North & Black	0.75
3/21/2008	Receive/Review 3/21 emails from Pamela Black regarding information by Weiters/Kuhn to Judge Mullen	Calendar, Docs, Notes in DAL Files	North & Black	0.25
3/21/2008	Receive/Review 3/21 emails from Pamela Black regarding Order granting Dismissal of Appeal and granting \$1000 costs	Calendar, Docs, Notes in DAL Files	North & Black	0.25
Hours spent dealing with Appeal of Summary Judgment				5.5
Hourly Rate				\$150
Total for Time spent on Appeal of Summary Judgment				\$825.00

000496

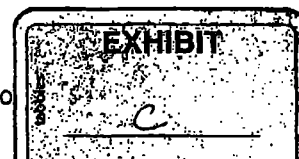


**Douglas Lambrecht's (Defendant) activity and hours
regarding Appeal of Denial of Sanctions in:**

**Clegg v. Lambrecht, et al (Survival Action) 06-CP-07-1125
Clegg v. Lambrecht et al (Wrongful Death) 06-CP-07-1126**

<u>Date</u>	<u>Activity</u>	<u>Documentation</u>	<u>Atty</u>	<u>Hours</u>
10/31/2007	Receive/Review draft of brief of Douglas Lambrecht in Support of Motion for Sanctions to be submitted on Remittur	Calendar, Docs, Notes in DAL Files	North & Black	0.75
3/17/2008	Phone Conference and emails w/ counsel re: status and position on Appeal of Denial of Sanctions Ruling.	Calendar, Docs, Notes in DAL Files	North & Black	1
5/18/2008	Phone Conference and emails w/ counsel re: status and efforts to Appeal Sanctions Ruling. Discuss next steps	Calendar, Docs, Notes in DAL Files	North & Black	1
5/22/2008	Receive/Review Order denying Motion for Sanctions and notice of intent to Appeal. Review standards of Appeal	Calendar, Docs, Notes in DAL Files	North & Black	1
7/1/2009	Receive/Review 7/1 emails from John North containing Appeal ruling to Remand Motion for Sanctions back to Judge Young	Calendar, Docs, Notes in DAL Files	North & Black	1
8/27/2009	Receive/Review draft of Memorandum of Douglas Lambrecht in Support of Motion for Sanctions to be submitted on Remittur	Calendar, Docs, Notes in DAL Files	North & Black	0.5
2/16/2009	Receive/Review draft from John North of Petition for ReHearing and Memorandum in Support Thereof (28 pages)	Calendar, Docs, Notes in DAL Files	North & Black	1.25
5/14/2009	Receive/Review Order from Appeals Court denying Petition for ReHearing. Call to discuss same and course	Calendar, Docs, Notes in DAL Files	North & Black	1
5/14/2009	Phone Conference and emails w/ counsel re: Opinion of Appeal of Denial of Sanctions Ruling. Need for Re-Hearing	Calendar, Docs, Notes in DAL Files	North & Black	1
5/14/2009	Receive/Review final draft of Memorandum in Support of Petition for ReHearing of Appeal of Denial of Sanctions	Calendar, Docs, Notes in DAL Files	North & Black	1.5
5/20/2009	Receive/Review from John North 2nd Petition for ReHearing En Banc and Memorandum in Support Thereof (35 pages)	Calendar, Docs, Notes in DAL Files	North & Black	1.25
6/30/2009 7/1/2009	Receive/Review emails from John North re: Court's Opinion Vacating and Remanding previous opinions of Sanctions	Calendar, Docs, Notes in DAL Files	North & Black	0.75
7/1/2009	Phone Conference and emails w/ counsel re: status and Petition for ReHearing of Appeal of Denial of Sanctions	Calendar, Docs, Notes in DAL Files	North & Black	1
8/27/2009	Receive/Review from John North Defendant's Memorandum submitted in Support of Motions for Sanctions (33 pages)	Calendar, Docs, Notes in DAL Files	North & Black	1

000497



**Douglas Lambrecht's (Defendant) activity and hours
regarding Appeal of Denial of Sanctions in:**

**Clegg v. Lambrecht, et al (Survival Action) 06-CP-07-1125
Clegg v. Lambrecht et al (Wrongful Death) 06-CP-07-1126**

9/9/2009	Phone Conference and emails w/ counsel re: status and position on Appeal of Denial of Sanctions Ruling.	Calendar, Docs, Notes in DAL Files	North & Black	0.25
11/9/2009	Receive/Review email from John North re: status and course	Calendar, Docs, Notes in DAL Files	North & Black	0.5
11/9/2009	Receive/Review Proposed Order to award Sanctions	Calendar, Docs, Notes in DAL Files	North & Black	0.75
1/9/2010	Receive/Review Judge Young's Order to award Sanctions	Calendar, Docs, Notes in DAL Files	North & Black	0.75

Hours spent dealing with Appeal of Denial of Sanctions 16.25

Hourly Rate \$150

Total for Time spent on Appeal of Denial of Sanctions \$2,437.50

000498

Douglas A. Lambrecht's (Defendant) activity and hours spent on:

USAA v Lambrecht et al 04-CP-07-1036

<u>Date</u>	<u>Activity</u>	<u>Documentation</u>	<u>Atty</u>	<u>Hours</u>
2/18/2002	Prepare and send letter to USAA challenging accuracy of Transcription of Telephone Conversation and request copy.	Calendar, Docs, Notes in DAL Files	<i>Pro se</i>	0.75
8/7/2002	Prepare and Send email to Parker Barnes regarding USAA Correspondence and Cancelled Auto coverage	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.25
8/7/2002	Prepare and send faxes to Attorney Barnes regarding USAA letters rescinding coverage and Denying (non) claim	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.25
9/8/2002	Receive and Review Attorney Gibson's Motion for USAA to Quash Subpoena and Copy of Documents	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.5
9/8/2002	Prepare and Send package to Parker Barnes regarding USAA Correspondence and Cancelled Auto coverage	Calendar, Docs, Notes in DAL Files	Parker Barnes	0.75
9/11/2002	Telephone Conference w/ Attorney Parker Barnes to discuss USAA's efforts to thwart Discovery; course and actions	Calendar, Docs, Notes in DAL Files	Parker Barnes	1
10/15/2004	Receive and Review Motion for Summary Judgment	Calendar, Docs, Notes in DAL Files	North & Black	1.75
3/18//2005	Receive and Review Judge Gregory's Order granting Partial Summary Judgment against USAA	Calendar, Docs, Notes in DAL Files	North & Black	1
4/1/2005	Telephone Conference with John North regarding potential bad faith claims and course of litigation against USAA	Calendar, Docs, Notes in DAL Files	North & Black	0.25
5/23/2005	Telephone Conference with John North regarding finality of order , course and potential next steps	Calendar, Docs, Notes in DAL Files	North & Black	0.25
6/29/2005	Telephone Conference with John North regarding status of motion for Reconsideration of USAA ruling	Calendar, Docs, Notes in DAL Files	North & Black	0.5
11/3/2005	Receive and Review Affidavit of Douglas A. Lambrecht regarding Attorney Fees award in USAA v. Lambrecht	Calendar, Docs, Notes in DAL Files	North & Black	1.25
8/22/2005	Receive and Review Respondent/Appellant's Motion to Strike Portion of Appellant/ Respondent's Designation of....Record	Calendar, Docs, Notes in DAL Files	North & Black	1.5
9/9/2005	Telephone Conference with John North regarding status of motion for Reconsideration of USAA ruling	Calendar, Docs, Notes in DAL Files	North & Black	0.25
12/8/2005	Receive and Review Initial Brief of Appellant/Respondent in USAA's Appeal of Order of Duty to Defend (26 pgs)	Calendar, Docs, Notes in DAL Files	North & Black	2.25



Douglas A. Lambrecht's (Defendant) activity and hours spent on:

USAA v Lambrecht et al 04-CP-07-1036

12/8/2005	Receive and Review Appellant's Amended Initial Brief on Behalf of Respondent/Appellant in USAA Appeal (26 pgs)	Calendar, Docs, Notes in DAL Files	North & Black	1.25
1/19/2006	Receive and Review Respondent's Initial Brief on Behalf of Respondent/Appellant in USAA Appeal (24 pages)	Calendar, Docs, Notes in DAL Files	North & Black	1.75
1/30/2006	Receive and Review Appellant's Initial Reply Brief on Behalf of Appellant/ Respondent's in USAA's Appeal of case	Calendar, Docs, Notes in DAL Files	North & Black	1.25
1/30/2006	Receive and Review Respondent/Appellant's Return to Appellant/ Respondent's Motion to Strike Portion of Record	Calendar, Docs, Notes in DAL Files	North & Black	1.25
2/1/2006	Receive and Review Respondent's Initial Brief on Behalf Appellant/ Respondent in Clegg's Appeal of USAA case	Calendar, Docs, Notes in DAL Files	North & Black	1.5
2/8/2006	Receive and Review Respondent/Appellant's Reply to Appellant/ Respondent's Return re Motion to Strike	Calendar, Docs, Notes in DAL Files	North & Black	1.25
2/12/2006	Receive and Review Respondent/Appellant's Reply to Appellant/ Respondent's Initial Brief on Behalf of Appellant/	Calendar, Docs, Notes in DAL Files	North & Black	1.25
4/7/2006	Telephone Conference with John North regarding status of motion for Reconsideration of USAA ruling	Calendar, Docs, Notes in DAL Files	North & Black	0.25
9/19/2006	Receive and Review letter from John North containing copies of Documents and Brief of USAA Appeal	Calendar, Docs, Notes in DAL Files	North & Black	1
12/5/2006	Receive and Review emails from John North regarding Appeals Court granting our Motion to Strike...USAA	Calendar, Docs, Notes in DAL Files	North & Black	0.25
1/9/2007	Telephone Conference with John North regarding status of motion for Reconsideration of USAA ruling	Calendar, Docs, Notes in DAL Files	North & Black	0.25
2/28/2007	Email exchange w John North regarding Appeals granting of Motion to Strike and settlement discussions with USAA	Calendar, Docs, Notes in DAL Files	North & Black	0.5
3/14/2007	Telephone Conference with John North regarding status of motion for Reconsideration of USAA ruling	Calendar, Docs, Notes in DAL Files	North & Black	0.1
4/10/2007	Receive and Review emails from Pamela Black regarding Supreme Court involvement in Certification of USAA matters	Calendar, Docs, Notes in DAL Files	North & Black	0.25
2/4/2008	Telephone Conference with John North regarding status and course of USAA Appeal...emails of potential settlement	Calendar, Docs, Notes in DAL Files	North & Black	0.5
4/28/2008	Telephone Conference with John North regarding status Supreme Court ruling for Reconsideration of USAA ruling	Calendar, Docs, Notes in DAL Files	North & Black	1
4/28/2008	Receive and Review emails from John North containing	Calendar, Docs,	North &	1

Douglas A. Lambrecht's (Defendant) activity and hours spent on:

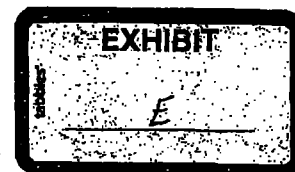
USAA v Lambrecht et al 04-CP-07-1036

	Supreme Court's Opinion denying Duty to Defend (16 pgs)	Notes In DAL Files	Black	
5/5/2008	Telephone Conference with John North regarding status petition for ReHearing of Reconsideration of USAA ruling	Calendar, Docs, Notes in DAL Files	North & Black	0.75
5/21/2008	Receive and Review emails from John North containing Petition for ReHearing and Memorandum in Support (28 pgs)	Calendar, Docs, Notes in DAL Files	North & Black	1.5
6/20/2008	Receive and Review emails from Pamela Black regarding Supreme Court's summary denial of Petition for ReHearing	Calendar, Docs, Notes In DAL Files	North & Black	0.25
Hours spent dealing with USAA v Lambrecht				29.6
Hourly Rate				\$150
Total for Time spent on USAA v Lambrecht				\$4,440.00

000501

	Time	Costs	Total
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>

000502





**INVESTMENT
RESOURCE, LLC**

Knowledge, Wisely Applied SM

DOUGLAS A. LAMBRECHT - INVESTMENT ADVISOR

DOUGLAS A. LAMBRECHT, CIMC born 1951, is Managing Director of Investment Resource, LLC. He has been involved professionally with securities, investments and financial consulting since 1986, is a Certified Investment Management Consultant and is registered with the South Carolina Attorney General as principal and as an Advisor/ Representative of Investment Resource Group, LLC.

Prior to forming Investment Resource Group LLC he was Managing Director / Senior Vice President for Lighthouse Investment Advisors, the financial planning and investment management division of Lighthouse Financial Services, a Hilton Head Island, SC., based Holding Company, where, from June 1997 to February 1999, he served as architect and coordinator for its formation, oversaw all aspects of operations, served on its board of directors, on the investment committee and as Senior Investment Advisor.

Immediately prior to joining Lighthouse, he was a Vice President / Financial Consultant at the Robinson-Humphrey Company, a division of Salomon Smith Barney. There, he served clients in the firm's Hilton Head Island office for eleven years, also coordinating outside money managers and mutual fund services for that office for eight years, while specializing in fee-based investment management consulting.

Mr. Lambrecht was the founding Chairman of the Hilton Head Council of Estate and Financial Advisors in 1992, served as President in 1992 and 1993 and was Chairman of the Council's 1996 and 1997 Symposiums on Estate and Financial Planning.

An active participant in the Hilton Head Island community, he was involved in the formation of the Hilton Head Community Foundation as Treasurer, and also served as an instructor on Financial Planning in the Bank for the local education chapter of the American Bankers Association. He has been a full-time resident of Hilton Head Island since 1985.



000503



**INVESTMENT
RESOURCE, LLC**

Knowledge, Wisely AppliedSM



SCHEDULE OF SERVICES AND FEES

Investment Resource, LLC, offers financial and investment advisory, portfolio management, performance monitoring and reporting services to individuals, attorneys, accountants, consultants, fiduciaries, trustees, companies, banks and financial institutions on a fee-only basis. Estate or financial planning services and or analytical advice, testimony or other financial services are offered on an hourly basis. To encourage objectivity, Investment Resource, LLC does not participate in commissions, contingency fees, cross-selling or soft-dollar compensation arrangements.

DISCRETIONARY INVESTMENT MANAGEMENT

Investment Resource, LLC, offers custom tailored, fully discretionary investment portfolio management services in conjunction with access to various institutional level custodial and brokerage services. Portfolios may consist of individual stocks, bonds, and mutual funds, Exchange Traded Funds, Limited Partnerships, MLPs, Closed End Funds sub-advised or individually managed accounts or a blend of such, depending upon individual client objectives, risk tolerance, resources and time horizon.

NON-DISCRETIONARY ADVISORY SERVICES

Investment Resource, LLC, offers investment advisory reporting services to assist clients in assessing and monitoring portfolios for suitability, selection and performance. This objective, non-discretionary analytics reporting service is available to advisors, consultants or clients who manage investment portfolios yet want access to advice and out-sourced assistance with investment research, analysis and detailed performance reporting.

Advisory clients authorize their brokers or custodians to allow electronic linkage to account data and information by Investment Resource, LLC, which, in turn, analyzes and prepares custom-tailored analytic reports for clients on various aspects and details of comparative portfolio performance. This service is generally, but not exclusively, offered to clients in conjunction with access to institutional custodial and transaction services arranged by Investment Resource, LLC, for such clients.

ACCESS TO INSTITUTIONAL SERVICES

In conjunction with advisory, management or reporting services, Investment Resource, LLC, may, from time to time, provide clients with access to institutional-level custodial, transactional, management or research services provided by, or in conjunction with, brokerage firms, registered investment advisers, portfolio managers or other financial service providers.

Investment Resource, LLC, does not participate in, "mark-up", "bundle" or "wrap" any fees for such services, electing instead to pass the savings of low negotiated institutional rates directly on to its clients, forgoing participation in any such fees to encourage objective, unbiased and ethical decision-making.

000504

CUSTODY AND TRANSACTION SERVICES

Clients choose from services offered by independent brokerage firms to facilitate security transactions and safe custody of assets. Investment Resource. LLC typically advises client as to types, quality and costs of available services and may assist client in preparing forms, establishing accounts and negotiating transactions and rates. Because of personal preferences, the range or quality of services provided or other reasons, clients may elect to use services that cost more than the lowest rates available.

Investment Resource. LLC is neither a broker/dealer nor exclusively affiliated with any broker/dealer, holding company, insurance firm, bank or other financial institution. Investment Resource. LLC may receive information, data, research materials, market opinions, software or consulting services from such providers, but it does not direct client business in exchange for these services. Generally, all clients of Investment Resource. LLC derive benefit from research materials obtained in this manner.

PORTFOLIO MANAGEMENT DECISIONS

Clients desiring portfolio management services typically delegate complete discretion to Investment Resource. LLC, or an independent sub-advisor working with Investment Resource. LLC, to determine and execute security buy and sell decisions in their account(s) in accordance with their objectives and any specified constraints. In such circumstances, Investment Resource. LLC shall be guided by parameters delineated in a custom-tailored Personal Investment Policy Statement, which will be reviewed and approved by the client and advisor at least annually. Advisory or Planning clients typically reserve the right to make and execute transaction decisions on their own, while receiving independent advice and reports from Investment Resource. LLC on an hourly basis.

FEES FOR SERVICES

Investment Resource. LLC's services are offered on an eminently fair, fee-only basis computed as a percentage of assets or as a flat fee or hourly fee. No revenues are derived from sales commissions or participation in soft-dollar compensation arrangements. Costs for brokerage transactions, commissions, sub-advisor charges or maintenance fees are typically paid directly by the client to the account custodian and are not included in Investment Resource Group LLC's fees. Client agreements with Investment Resource. LLC for investment services may be terminated upon ten days written notice, subject to payment of any fees for services rendered. Any unearned, prepaid fees will be proportionately rebated to client within thirty days of account closure or transfer.

Fees for investment advisory or portfolio management services are determined by the annual rates shown below, calculated on the market value of a portfolio on the last day of the prior calendar quarter. Unless otherwise agreed, fees are payable quarterly in advance upon billing and are typically deducted directly from client accounts and paid to Investment Resource. LLC, by the account(s) custodian on notification by Investment Resource. LLC.

DESCRIPTION OF SERVICE	FIRST \$ MILLION	NEXT \$1.5 MILLION	OVER \$2.5 MILLION	MINIMUM ANNUAL FEE
Discretionary Management	1.50%	1.25%	1.00%	\$ 5,000

Non Discretionary, Estate Planning or other Financial Services are billed at \$150 per hour.

BLANK

000506

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

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NOS. 06-CP-07-1125
06-CP-07-1126

) ON REMAND WITH INSTRUCTIONS
) FROM THE COURT OF APPEALS
)

) **PLAINTIFF'S MEMORANDUM**
) **IN SUPPORT OF MOTION FOR**
) **RECONSIDERATION FOR RULE 11**
) **SANCTIONS AND SANCTIONS UNDER**
) **THE SOUTH CAROLINA CIVIL**
) **FRIVOLOUS PROCEEDINGS ACT**

TO: THE HONORABLE ROGER YOUNG, CIRCUIT COURT JUDGE

The Plaintiff Deborah J. Clegg as the Personal Representative of the Estate of Allison T. Clegg and her attorneys G. Richardson Wieters and H. Fred Kuhn, Jr. submit this Memorandum in Support of their Motion for Reconsideration of this Court's order granting Sanctions and for Attorney Fees under Rule 11, SCRCP and the South Carolina Civil Frivolous Proceedings Act.

The gravamen of Defendant Lambrecht's Motion, both under Rule 11 and under the South Carolina Civil Frivolous Proceedings Act, is that Douglas A. Lambrecht was not the titled owner of the vehicle in which Plaintiff's decedent was killed and that the vehicle's driver was his emancipated son, Elliott; therefore, he has no liability and should not have been sued.

This matter is before the Court on the Motion for Reconsideration filed

by the Plaintiff and her counsel for reconsideration of this Court's order (submitted to this Court initially *ex parte* by Mr. North) imposing sanctions against the Plaintiff and her attorneys under Rule 11 S.C.R.Civ.P. and the Civil Frivolous Proceedings Act. For ease of reference the two will be referred to as the "sanctions".

By way of understanding the history of the sanction efforts by Douglas Lambrecht and his attorney, this Court has twice denied the motion. The first time without a hearing.¹ Thereafter a hearing was held on the motion for reconsideration of the sanctions motion at which time this Court heard from Mr. North and again denied the motions for sanctions.² While counsel for the Plaintiff offered to testify, this Court ruled that such was not necessary.

Lambrecht appealed the denial to the Court of Appeals which affirmed this Court's denial.³ Lambrecht then moved for reconsideration and the Court of Appeals denied Lambrecht's motion for reconsideration. Lambrecht then moved the Court of Appeals for reconsideration *en banc* and the Court of

Appeals remanded the matter to this Court to make "a detailed review of the facts" and to determine what was known by the Plaintiff and her counsel at each stage of the proceedings⁴.

It is respectfully submitted that the Order submitted by Mr. North does not comply with above the instructions from the Court of Appeals.

Following the remand order from the Court of Appeals, nothing was

¹ See Exhibit A attached hereto.

² See Exhibit B attached hereto.

³ See Exhibit C attached hereto.

⁴ See Exhibit D attached hereto.

done to the knowledge of the Plaintiff and her counsel until an order written by Mr. North was sent to this Court. To date, the Plaintiff and her counsel are unaware of any request by this Court to Mr. North for such an order and are still unclear as to how Mr. North deemed it appropriate to submit an order written by him without the knowledge of the Plaintiff and her counsel.

Quite frankly, the Plaintiff relied on her attorneys to prosecute the claims against those believed to be liable in the death of her daughter. The Plaintiff is a lay person and any imposition of sanctions should not in fairness and justice apply to the Plaintiff.

Inexplicably, and with all due respect, this Court has by its adoption of Mr. North's order imposed sanctions on two attorneys with considerable trial experience and whose professional standing at the bar has never been in question - all without ever having heard any testimony from the very attorneys against whom the sanctions were sought. In fact, this Court ruled that such testimony was not necessary at the reconsideration hearing.

As the decision of whether or not sanctions are appropriate sounds in equity, it would seem that equity, justice and fairness would require that this Court allow the attorneys to testify as what they knew and why Douglas Lambrecht was made a defendant to this case and why after legal title to the subject Mazda automobile was found to be in his son's name he remained a defendant in the case - which seems from the North Order to be a key finding relied upon in awarding sanctions. The fundamental flaw in the North Order is that it is extremely one-sided in its recitation of the evidence and fails to

mention the evidence, both documentary and by sworn statements and depositions, that support the claims made against Douglas Lambrecht.

As counsel for the Plaintiff, it appears to us that, with all due respect, that this Court overlooked what the Amended Complaint states as to Douglas Lambrecht. As instructed by the Court of Appeals, the sworn statements of Anna Lambrecht and the ex-wife Jan Horan and the statement by Douglas Lambrecht made to USAA a few days after the Allison was killed were available and known to counsel for the Plaintiff and were the basis upon which the Amended Complaint was made.

For each allegation of the Amended Complaint there was a factual basis supporting each such allegations, the excerpts from the sworn statements and Douglas Lambrecht's own words are in part set forth below. *It is extraordinary by its omission from the North order that not one shred of this evidence was addressed by Mr. North in the order he sent to Judge Young.* Douglas Lambrecht gave the key to a vehicle that he knew was not insured (and that had no current registration and no license plate) to his minor daughter-in so doing he violated the common law and the statutory law of this state and set in motion the events that led to Allison's death-under the law of combined and concurrent negligence Douglas Lambrecht was properly joined as a party defendant to this lawsuit.

It would also be helpful with all due respect be to set forth the law on which the Amended Complaint is based. This Court from a reading of the North order did not address the applicable law as it applies to Douglas

Lambrecht which was set forth in the Amended Complaint.

The Amended Complaint has both direct allegations of negligence as to Douglas Lambrecht ~~but also allegations imposing liability on Lambrecht based on the law of combined and concurrent negligence.~~ Unfairly missing in the North order is there any mention or attention paid to the body of jurisprudence in this state for liability based on combined and concurrent negligence. The instructions from the Court of Appeals required a detailed review of the facts and by necessity the law as applied to those facts.

It is as if that part of the Amended Complaint doesn't exist-but with all due respect, it does exist and this is exactly the type of fact scenario where combined negligence would otherwise have held Lambrecht liable. By way of illustration, the North order makes reference to a duty to warn-no such ⁰ allegation is even found in the Amended Complaint. If this Court with all due respect, were to apply the law of combined and concurrent negligence to the actions of Douglas Lambrecht it makes it clear very quickly why Douglas Lambrecht was made a defendant and remained a defendant in this case. It is also clear that the statute under which liability against Douglas Lambrecht was based does apply to Lambrecht's actions and delicts. But what is truly disturbing is that there is not a single mention of the law of combined and concurrent negligence or the statute in the North Order. (It goes without saying that as an officer of the Court Mr. North had as his first duty to present all applicable law and facts to this Court - and not to engage in a creative legal writing exercise designed to "bullet proof" the order so that it would be

✓
harder for the Plaintiff and her attorneys on appeal. Sadly the North order is devoid of a single culpable fact as to Douglas Lambrecht - a stranger reading the North Order would be left with the belief, albeit incorrectly, that Douglas Lambrecht had no role whatsoever in the events that caused the death of Allison Clegg. That is not the truth and this Court has been misled by Mr. North. The sarcasm in the North order would make one think that Counsel did nothing to explain why Douglas Lambrecht was sued-we did do something - we engaged in discovery - took sworn statements and determined that Douglas Lambrecht was culpable for his negligent acts-the record as filed with the Clerk of Court supports the Amended Complaint - Mr. North does not mention any of the sworn statements - or any of the depositions and the statement given to USAA and offers no basis for explaining how this evidence does not satisfy Counsel's obligations so as to preclude sanctions-that is Douglas Lambrecht's burden to overcome, Mr. North and his client get around that by not telling this Court about this evidence-and had this Court taken testimony this Court would have known about as all of this was on file with the Beaufort County Clerk of Court.

Begging this Court's indulgence, there was a factual and evidentiary basis that showed not only that Douglas Lambrecht set in motion the events that ended with the tragic death of Allison Clegg but that his statements to USAA Insurance Company prove that he had taken control of the vehicle in which Allison was later killed - and a detailed factual review of the record in this matter as ordered by the Court of Appeals would have supported this

Court's denial of the sanctions, the denial of reconsideration and the Court of Appeals affirmation of this Court's initial decision. Lambrecht's own words vividly demonstrate that he was the one who controlled the use of the Mazda, as he explained to his USAA insurance adjuster following Anna's death:

ANSWER: *And Elliott was not a uh he was not allowed by me to drive the car.* [Emphasis added].

QUESTION: Okay.

ANSWER: *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 nineteen 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 get by me to get that car."*

Mr. North intentionally omitted this and the other facts and evidence that prove the culpability of his client from the order he sent this Court. Neither of undersigned counsel for the Plaintiff are, with all due respect, prescient-we had no way of knowing or even thinking that on the facts of this case that this Court would decide as a matter of law that what Douglas Lambrecht did or did not do was lawful.

We had no way of knowing that a vehicle that Lambrecht admits he had taken control of and which he then entrusted on his to his minor daughter-even giving her the keys-all while Douglas Lambrecht knew that the vehicle was not registered-had no insurance and had he looked no license

plate-and we as Counsel for the Plaintiff had no way of knowing that this Court would find those acts acceptable. It was Douglas Lambrecht that had possession of the vehicle and it was Douglas Lambrecht that had possession of the vehicle's key-and it was Douglas Lambrecht that told his ex-wife and the mother of his minor daughter that the vehicle was covered by the ex-wife's automobile policy-it was Douglas Lambrecht that failed to tell the truth-that the vehicle was not insured- it was Douglas Lambrecht that failed to tell his ex-wife and daughter the truth the vehicle was not registered and it was Douglas Lambrecht that failed to tell the truth - that the vehicle had no license plate-and It was Douglas that failed to tell the truth that his daughter would not have any insurance coverage because the vehicle was not on the ex-wife's policy-and that automobile insurance follows the vehicle-and it was Douglas Lambrecht that allowed and permitted his minor daughter to drive a vehicle on the roads of this state when Lambrecht knew that nobody should be driving the vehicle-and it was Douglas Lambrecht that set in motion the events that led to the death of Allison Clegg-and when Lambrecht's ex-wife wanted the vehicle out of her driveway-she called only one person-actually she called more than once and that was Douglas Lambrecht-and Douglas Lambrecht again had an opportunity to stop anyone from driving the vehicle but Lambrecht did not-and then after the phone calls Elliott Lambrecht shows up-gets the keys from his sister and off he went --and shortly after picking up Allison -while she was a passenger in the vehicle driven by Lambrecht's son - while his driver's license was under suspension for the second time-Allison

was killed.

So as Counsel for the Plaintiff whose daughter is dead, we thought that Douglas Lambrecht was negligent, negligent per se, and that his negligence combined with others to cause Allison's death. We believed so in good faith under applicable law then and we believe so today-with all due respect to this Court.

I. THE LAW AS IT APPLIES TO LAMBRECHT:

1. One of the theories 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. [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 [***5] 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).

2. Douglas Lambrecht was also sued under the theory of negligent entrustment. The common law principle of negligent entrustment is set forth in American Mut. Fire Ins. Co. v. Passmore, 275 S.C. 618, 274 S.E.2d 416 (1981), in which our Supreme Court held that 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." 19 A.L.R.3d 1175, 1192, cited in Bahm v. Dormanen, 168 Mont. 408, 543 P.2d 379, 381 (Montana 1975) 168 Mont. 408, 543 P.2d 379, 381 (Montana 1975). [*382] American Mut. Fire Ins. Co. v. Passmore, 275 S.C. at 621, 274 S.E.2d at 418.

In Howell v. Hairston, 261 S.C. 292, 199 S.E.2d 766 (1973), the Court held that whether one is negligent or prudent depends in large measure on all of the surrounding circumstances, and failure to use due care, amounting to negligence, may be [**106] proved by direct as well as by circumstantial evidence.

3. The law of combined and concurrent negligence was central in the allegations made against Douglas Lambrecht. 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 ellipses omitted). See also, Shearer v. De Shon, 240 S.C. 472, 475-485, 126 S.E.2d 514, 519 (S.C. 1962).

4. Other legal theories applicable to the allegations against Douglas Lambrecht include the law of agency and *de facto* ownership of an automobile. The law on these principles has been previously briefed and will not be repeated herein.

II. FACTUAL SUMMARY

The facts that are known to the Plaintiff and Plaintiff's counsel as to the Defendant Douglas A. Lambrecht are as follows:

1. Loan documents from the bank identified Douglas A. Lambrecht as to be on the title of the car.
2. USAA Insurance documents identify *Douglas A. Lambrecht as the named insured when the vehicle was insured.*
3. USAA Insurance documents identified Douglas A. Lambrecht as the insured and as a co-driver.
4. Douglas A. Lambrecht commenced a separate legal action against his insurance company to obtain a defense in connection with this action from which he obtained a favorable ruling claiming benefits under the insurance policy.
5. The car was insured under Defendant Douglas A. Lambrecht's

policy.

6. The car was to be garaged or housed at Douglas A. Lambrecht's residence.

7. The driver's license of Defendant Elliott Lambrecht identifies Douglas A. Lambrecht's address as his place of residence.

Some of the most damaging evidence against Douglas Lambrecht comes from a recorded statement given to USAA Insurance Company on January 16, 2002 several days after the tragic death of Allison Clegg. In that interview Douglas A. Lambrecht made the following statements to his insurance agent:

- "...The children come and go uh maintain uh rooms there for most or some of them"
- "my oldest son is Elliott as you know he is nineteen years old...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..."
- "....recently I've been he's been pretty dependent upon me for support but uh"
- "I can't truthfully say he is completely independent..."
- "they're all considered part of the household....you will um I mean Elliott has all of his things at my home now..."
- "but yeah we called it Elliott's room at times"

- "QUESTION: So you purchased it used?

ANSWER: yes **we** purchased the vehicle used [emphasis added].

- "...uh, we purchased it from a dealer I believe we paid approximately \$7,000 \$7200 for it [emphasis added].

"no, we just bought it as a as a used vehicle there was no trade in at that time" [emphasis added].

- "QUESTION: right young right (sic) do you know whose name is on the title?

ANSWER: I don't know the answer to that I am trying to find out uh I believe that it may be in uh joint name uh or its gonna be in Elliott's name alone I am not certain of that"

"ANSWER: I insured it with USAA and Elliott was the named driver on the policy. "

- "...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 on the vehicle uh that was"

- "...I recall uh renewing the policy sometime around September..."

- ***"and I don't recall being concerned about that***

because the Mazda as far as I'm concerned part of the household part of uh uh of a potentially part of our personal property if you will uh the family's personal property. It was occasionally driven by my uh daughter Anna and although they had uh uh she had driver coverage under her mother's policy she was uh considered an occasional part of our household so I certainly would not have let let (sic) her uh occasionally that car if I didn't believe it had insurance.

- "...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"

- "I remember not being terribly concerned at that time because number one the automobile in question 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 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"

- "QUESTION: ***Okay was he still in your opinion still a member of your household at that time?***"

ANSWER: Yes."

- "QUESTION: Alright and who was again to be the

primary driver since the vehicle was ab' able (sic) 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?

ANSWER: 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 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 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 its mechan..."* "in fact the car was not driven a lot it was driven a couple of times uh an occasional basis by what I would deem to be occasional drivers. "

• QUESTION: The time while the car was uh in as you say available to everyone in the household um I am asking I guess uh just let me just let me uh go on with that um was if he had a job was he driving the car back and forth to work.

ANSWER: No ma'am. He was.

QUESTION: Okay.

ANSWER: Not driving the car back and forth to work because he was not uh his license was in temporary

suspension.

QUESTION: Okay.

ANSWER: *And Elliott was not a uh he was not allowed by me to drive the car.* [Emphasis added].

QUESTION: Okay.

ANSWER: *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 nineteen 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 get by me to get that car."*

On the basis of Lambrecht's statements to USAA alone, Lambrecht exercised control over the vehicle. Lambrecht also through the documents of USAA knew that the car no longer had insurance. All that Douglas A. Lambrecht was required to do was either (a) look at his insurance card (b) look at the insurance policy (c) or call USAA or (d) look at the license plate to determine that the tags on the car had expired. Any one of these would have told him that no one in his household, himself included, should have been operating the vehicle on any road in this State.

Douglas A. Lambrecht allowed and permitted in violation of the statute and the common law his minor daughter Anna Lambrecht to drive the car to Beaufort. At that point, Douglas A. Lambrecht set the negligent acts in motion under the theories of combined and concurrent negligence, as well as,

common law negligent entrustment, and a *per se* violation of §56-1-480.

The Court of Appeals in Lydia v. Horton, 540 S.E.2d 102, 343 S.C. 376 (Ct. App. 2000), notes the adaptation of the Restatement Second of Torts. The restatement is particularly germane, in the lawsuit against Douglas A. Lambrecht. The principles of combined and concurrent negligence, likewise, are germane to the actions as to Lambrecht when he set the course of conduct in play by entrusting the car to his minor daughter. That led to the keys being exchanged in the presence of Defendant Jan Horan from Anna Lambrecht with the aid and assistance of Defendant Rhett Barker. Statements by Lambrecht alone to USAA are sufficient to indicate that he was exercising dominion and control over the vehicle. A full copy of Lambrecht's sworn statement recorded by USAA was filed with this Court.

It is also clear under the law of combined and concurrent negligence that one need not foresee the consequences of his acts if they were otherwise negligent. The holding in Skipper v Hartley, 242 S.C. 221, 130 S.E. 2d 486 (1963) is clear on that point. Under common law principles of negligent entrustment, it is not necessary that the negligent act be the owner of an item or personalty that it is entrusted be it a vehicle, firearm or other personalty. Defendant Lambrecht's negligence need not be the sole cause of injury in order to impose liability, but needs only to 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. Skipper v. Hartley, *Id.*

It is also clear that violation of an applicable statute is negligence *per se* and whether such breach constitutes proximate cause to Plaintiff's injury is ordinarily a question for the jury. On these facts, that is, the own statements made by the Defendants in this case, and specifically, Douglas A. Lambrecht, there is no question that the keys were in Mr. Lambrecht's home, the vehicle was parked at his home and that he had decided who would drive the car and when. To say that he did not exercise sufficient control over it, or otherwise authorize or permit someone to use the vehicle is negligence, and with all due respect to this Court, counsel for the Plaintiff thought was a question of fact for the trier of fact. As practitioners looking at these facts, the statements of the Defendants, the statements made by Defendant Douglas A. Lambrecht to USAA and the course of conduct that ensued with respect to who was driving this car, how it was safeguarded and maintained, who was authorized, who was in control or who permitted it to be driven, Counsel for the Plaintiff had a good faith basis in believing that all of the evidence should have been submitted to the trier of fact. No practitioner could reasonably expect or anticipate that this Court on these facts, on this record would grant a motion for summary judgment under a statute that has no case authority under it when it is confronted with a defendant that exercises sufficient control over it to raise it to a level which at a minimum is a question of fact.

No reasonable practitioner, or experienced practitioner, (which is true of both counsel for the Plaintiff) would have been doing their job had they not named Douglas A. Lambrecht as a Defendant. He allowed and permitted the

vehicle to be in the hands of his minor daughter knowing, that the car was uninsured, unregistered, the taxes had not been paid and it should not be operated on the streets and highways of this State. That was the first act. There is an inference that can be drawn that when Defendant Horan called Defendant Douglas A. Lambrecht and she requested that the car be picked up and because of her repeated phone calls that Douglas Lambrecht knew that the vehicle was going to be driven-if not why did Douglas Lambrecht tell his ex-wife I am not in control of the vehicle-you need to call Elliott- No attorney should be required to be prescient and a granting of summary judgment is not an automatic grant of a right to Rule 11 sanctions or is a frivolous proceeding. Certainly not on this record.

Douglas Lambrecht relies upon the case of American Mutual Fire Insurance Co. v. Passmore, 275 S.C. 618, 621, 274 S.E. 2d 416, 418 (1981) and cites to this Court the proposition that a defendant that does not own, control or have responsibility for the use an automobile, has no legal duty to anyone injured by the use of that automobile. Lambrecht in his moving papers argues that Plaintiff did not attempt to distinguish that case. The case did not require distinguishing. The operative word is "control" or having "responsibility" for the use of the automobile. Defendant Douglas A. Lambrecht had the keys in his possession. The keys were in his home. The car was parked at his house. He instructed his son to park the car at his house. Lambrecht's own words to USAA show who was in control- Lambrecht's discussion with his ex-wife about whether or not their daughter

could drive the vehicle further support his control. The code section upon which Plaintiff's rely has no case authority interpreting it. Even under common law principles of negligent entrustment, a question of fact exists as to whether or not Douglas A. Lambrecht controlled the use of the vehicle. His earliest and first statement on the subject was to his insurance company. It is noted that Defendant Douglas A. Lambrecht's own statements raise a question as to whether or not he controlled the vehicle. Otherwise, why did he have the keys and why was the car parked at his residence, because in a later deposition, he indicates that his son was not living at that house and was not a member of the household(all different from what he told USAA a few days after Allison was killed). Defendant Douglas A. Lambrecht acknowledges spinning his story in order to invoke coverage with USAA. What is clear is that Douglas A. Lambrecht gave the keys to the vehicle to Defendant Anna Lambrecht after discussion with Defendant Jan Horan, and telling Defendant Horan that Defendant Anna Lambrecht's insurance policy would cover the Mazda automobile for which no insurance was in force was not only wrong it was negligent. Defendant Lambrecht argues in his moving papers that no reasonable attorney would pursue the claim for damages against the parent of an adult arising from the operation of a vehicle owned in the name of the adult son who was emancipated and living on his own at the time of the accident. The problem with that analysis is that Douglas Lambrecht's own statements on this subject, the physical location at the time of the keys were given to Anna Lambrecht, the location of the keys and the discussion with

Defendant Horan about whether or not Anna Lambrecht could operate the vehicle all show that Defendant Douglas A. Lambrecht was in control of the vehicle. Two or more persons may operate concurrently as an efficient cause of an injury and in such cases each of the contributing acts is regarded as a proximate cause for which each of the participants may be held liable. O'Neal v. Carolina Farm Supply, Inc., 279 S.C. 490, 309 S.E. 2d 776 (1983).

Lambrecht, likewise, notes in his statement to USAA as follows:

- "...now just previous to the day before there was discussion of -- of -- Anna, my daughter, bringing the car back to my home because I wanted the car in safekeeping if you will"

Lambrecht continues in his statement to USAA to demonstrate that he exercised control of the vehicle as follows:

- "...but there was a general understanding that I wanted the car back at our Hilton Head home -- uh -- to be part until such time as the disposition was determined..."

Furthermore, in a sworn statement taken on February 19, 2003, Jan Horan, the former spouse of Defendant Douglas A. Lambrecht and mother of Elliott Lambrecht and Anna Lambrecht, testified as follows:

- Page 7 Lines 7 through 16: "It was merely to be used for transportation back from her father's visitation. She visits her father on every other weekend and on the weekend that she brought it back to our house she - - her car had been in the shop for some reason or other and so her father sent her home with that car, instead of bringing

her or whatever. But that was just for transportation. She then had her own car to get around in."

- Page 8 Lines 20 through 25:

"QUESTION: Okay. And then its is your understanding that her father gave her the keys to the Mazda - -

ANSWER: Yes.

QUESTION: - - to drive back to Beaufort?

ANSWER: Yes."

- Page 9 Lines 2 through 11:

"QUESTION: Okay. Did you know whether or not Elliott's license had been suspended at that time; and I'm talking about prior to the accident?

ANSWER: Yes, I did know.

QUESTION: So, you were aware of that?

ANSWER: Yes.

QUESTION: So, you knew he was not supposed to be driving it?

ANSWER: Yes."

- Page 9 Lines 16 through Page 10 Line 18:

QUESTION: Did you have any discussion with Doug Lambrick (sic) about whether or not there was insurance on the Mazda?

ANSWER: Yes.

QUESTION: Tell me about those.

ANSWER: Well, he - - - - when she was going to come back with that

car, we were out of town, we had been in Charleston, and he asked if it was okay for her to bring the car at that time and I asked if it was insured and he said yes that it was and I said then she could drive it back.

QUESTION: This was a conversation that you had with Doug Lambrick (sic) over the telephone?

ANSWER: Yes.

QUESTION: Okay. All right. So, you want to make sure that the car was insured?

ANSWER: Yes, because I know that it was not being used in - -

QUESTION: It had not been used for sometime; is that correct?

ANSWER: Yes. But I'm not - - you know, I just don't know how long that was. I don't even know. I just know that it was sitting at his house.

QUESTION: At Doug's house?

ANSWER: Yes. Because he had offered it, you know, for Anna to have or something and I - -

It is significant to note at the time of Jan Horan's statement, she was not a Defendant to the lawsuit but indicates in her testimony that she had discussions with Douglas A. Lambrecht about whether or not there was insurance on the Mazda. According to Ms. Horan, Douglas A. Lambrecht asked if it was okay for Anna Lambrecht to bring the car at that time causing Ms. Horan to make inquiry of her former husband as to whether or not there was insurance. Mr. Lambrecht apparently said yes that there was insurance

and at that juncture it was agreed that Anna Lambrecht could drive the car from Hilton Head to Beaufort. Of course, there was no insurance on the vehicle at that time and no one should have been driving the car. Jan Horan confirms what Douglas A. Lambrecht had already confirmed to USAA that the car was not to be driven by Elliott.

- Page 13 Lines 21 through Line 25:

QUESTION: Okay. So, before Anna could drive the car back from Doug Lambrick's (sic) house to your house in Beaufort, you spoke with Doug and he's confirmed it was insured?

ANSWER: That's correct.

- Page 14 Lines 2 through Line 5:

QUESTION: And Doug is the one that gave Anna the keys?

ANSWER: I'm - - yes, I'm sure he did. I mean, I would - - yeah, nobody else had them."

Ms. Horan stated in her unsworn deposition at Page 15 Line 5 as follows:

- "I had been conversation with the father asking him to bring - - you know - get, you know, pick up the car, get rid of the car. And I wasn't going to take of it. We weren't bringing it but we needed the car gone. We just, you know, it was on our property. And Elliott and Rhett showed up saying they were going to get the car."

According to Defendant Jan Horan's testimony Defendant Douglas A.

Lambrecht attempted to influence the testimony of Anna Lambrecht. See unsworn statement of Jan Horan Page 23 Line 4 through Line 21:

- "I said that's not the way you do it. And she said well he wants me to - - you know, more phone calls and there's more pressure on her. I can, you know, overhear her in kind of a heated discussion and then she would inform me that he wanted her to say that I gave Elliott the keys. Do what you said before, sort of leading her into saying things that she didn't want or weren't true is what she said. And that he's - - needs - - this is his life on the line or something, kind of thing, so it was - - that's - - it's distorted information coming through her, just sort of distorted information, what can I say. I overheard things and then Anna and I would talk and she told me specifically that he wants me to say that you gave him the keys, but you didn't mom, you know, that kind of thing."

Indeed, Ms. Horan addressed her concerns about having the car removed from her driveway in Beaufort.

- Page 26 Line 16 through Page 27 Line 4:

QUESTION: But he knew that you wanted to get the car out of -

ANSWER: The only thing is that there had been - - and let me just say That (sic) I don't talk to Doug very often, except when

there is something that has to be done or exchange between the kids. And I know that in that - - I'd say the prior week, two weeks period, let's say, just kind of an estimated time frame That (sic) I'd said that car needs to go. Please arrange to have that car gone, maybe once or twice and it was clear that Anna was not going to bring it back. We were just not going to bring it back."

- Page 43 Line 6 through Line 12:

"QUESTION: Well, let me - - let me see if I can ask you this. I mean, is it your understanding that that car was controlled by Doug up until the point he gave the keys to Anna to come back to Beaufort with it?

ANSWER: Well, I understood him to be in control of that car, that's correct."

1. Also see the sworn statement of Anna C. Lambrecht taken on July 16, 2003:

- Page 8 Line 20 through Page 9 Line 15:

QUESTION: Okay. So the car had not been driven in a while, or do you know?

ANSWER: Right, it hadn't been.

QUESTION: Okay. It was at your father's house?

ANSWER: Yes.

QUESTION: Okay. And you knew all that?

ANSWER: Yes.

QUESTION: Okay. So your mother knew that you were going to get Elliott's car?

ANSWER: Right.

QUESTION: Okay. And your dad knew?

ANSWER: Yes.

QUESTION: Okay. Who gave you the keys?

ANSWER: My dad did.

QUESTION: Okay. And he gave you the keys to Elliott's car?

ANSWER: Yes, sir.

QUESTION: Okay. So you drive the car back to Beaufort.

ANSWER: Yes."

Anna's sworn statement was even more illustrative with respect to Douglas A. Lambrecht's control over the vehicle.

- Page 10 Line 18 through Line 25: "...And, you know, I was upstairs and I just heard them talking downstairs because I have a small house, so you can hear. And I guess Mom was sort of like, you know, I don't think - - you know, did your dad, because she knows that it is my dad's car and he is the one that said he couldn't drive it [emphasis added.]
- Page 11 Line 21 through Line 25: "You know, I was like, you know, Dad said no and did you talk to Dad. He's like yes, yes, I talked to Dad, you know, but I am not driving.

I'm like okay. So I give him the keys and he leaves" :

2. Elliott Lambrecht's deposition testimony:

• Page 29 Line 2 through Line 22:

QUESTION: Had your father told you not to drive the car because of your suspension?

ANSWER: No, maybe he suggested it.

QUESTION: He suggested that you don't drive?

ANSWER: (Witness nodded head.)

QUESTION: Is that how he phrased it, or do you recall?

ANSWER: Well, he can't give me a direct order. It wasn't his car.

QUESTION: He had the keys; did he not?

ANSWER: I gave them to him.

QUESTION: You gave him the keys when you got suspended?

ANSWER: Right.

QUESTION: Did he ask for the keys or you just turned the keys over to him?

ANSWER: No, I gave them to him.

QUESTION: Okay.

ANSWER: I left it with the car.

QUESTION: You left the car with him?

ANSWER: Right. I left the keys with him. "

In her deposition, Jan Horan testified as follows:

- Page 13 Line 10 through Line 21:

QUESTION: So once Anna was given the keys, and she was given those keys by her father, Douglas Lambrecht, is that what you understand?

ANSWER: That's what I understand.

QUESTION: And you understand that from Anna?

ANSWER: I understand that from the discussion I had with her father, the discussion with Anna. Yes.

QUESTION: And is it a fair statement to say that from the time that Douglas Lambrecht gave Anna the keys, she retained possession of the keys?

ANSWER: Yes.

- Page 14 Line 8 through Line 17:

QUESTION: Can you tell me about that.

ANSWER: I just know that I specifically spoke with him and said, and wanted to know is that car insured that she is going to be driving back to Beaufort from your house. And he said yes that the car was insured. I just remember that was what I wanted to secure.

QUESTION: Do you recall specifically what Douglas Lambrecht said to you on that subject?

ANSWER: Yes, it's insured.

- Page 24 Line 20 through Page 26 Line 1:

QUESTION: Well, as I understand it, and correct me if I'm wrong, if you have a different understanding than I do, the keys to the car that was involved in the accident were given to Anna by her father?

ANSWER: That's true.

QUESTION: And that was done so she could get back from Hilton Head to Beaufort following a ballet class?

ANSWER: No, the ballet classes are on Fridays and Saturday. And then Sunday, she just at her father's house. I mean, that where she's staying over that weekend. But that particular weekend, when she - - when she received the car, she - - typically he would bring her back. But that particular Sunday, he, I don't know if he couldn't bring her back, or whatever, said is it okay if she drive Elliott's car back. And that's how she ended up with the car.

QUESTION: Did Douglas Lambrecht call you to secure permission for her to do that?

ANSWER: I can't remember how that was, but it was either she called - - there was a - - there was a question to me whether he called me or Anna called. I spoke to him I know that much. And that was the end of the exchange. Yes, she can come back. The car's insured? Yes. Okay. And that was just to bring the car - - just to come back. It was not anything more than she can have

the car to drive back this one time, because she wasn't driving it back and forth.

- Page 27 Line 17 through Line 23:

QUESTION: Would it be a fair statement to say that when Douglas Lambrecht gave Anna the keys to drive the car, that was involved in the accident, back to Beaufort, that that was the first time she had driven a car by herself from Hilton Head Island to Beaufort?

ANSWER: I believe that's true. Yes.

- Page 28 Line 17 through Page 30 Line 8:

QUESTION: As I understand it, you had - - you wanted the car out of your driveway because you had limited driveway space at your house?

ANSWER: That's correct.

QUESTION: Did you tell - - who did you tell that you wanted the car out of your driveway?

ANSWER: Doug. I called him and said it's time to get the car. For him to pick up the car because it didn't - - complicated arranging all this driving over whoever was going to drive back. He needed to pick the car up.

QUESTION: What did he tell you? I'm talking about Douglas Lambrecht when you called him and told him it was time to come - ANSWER: We will. We will. I will. Whatever. I don't

remember. Yes. Okay. And it was two or three times that I made the request to come and get the car.

QUESTION: So I take it you called Douglas Lambrecht more than one time - -

ANSWER: Yes.

QUESTION: - - to say I need the car out of my driveway?

ANSWER: I think so.

QUESTION: When Elliott came the night of the accident with Rhett Barker, did they or had Doug or Elliott Lambrecht called ahead of time to tell you they were coming?

ANSWER: No.

QUESTION: They just showed up?

ANSWER: Yes.

QUESTION: Out of the blue?

ANSWER: Yes, they did.

QUESTION: And announced that they were there to get the car? ANSWER: Yes.

QUESTION: So that was the first you knew they were coming was when they showed up on your doorstep?

ANSWER: Yes.

In his deposition, Douglas A. Lambrecht testified as follows:

- The testimony on Page 16 Line 7 through Page 17 Line 23:

QUESTION: Now correct me if I'm wrong, as I understand it, the car, the Mazda, had had an engine problem and had been under repair for some period of time? Is - - am I correct in that understanding?

ANSWER: I believe you are.

QUESTION: Okay. And I - - also as I understand it, you received a check from USAA for a total loss of that vehicle?

ANSWER: We received a check in conjunction with - - I say "we" because I was the owner of the policy and the policy dated that the check be made out to the policy holder not the name insured. So we received a check to compensate for damage to the vehicle. I believe it was for a crumpled fender and some - - some stolen items, some stereo equipment.

QUESTION: It wasn't any - - any claim made for the engine? I understood the engine had either run out of oil or had a - - blown up or something. Was there any payment ever made on that?

ANSWER: I don't recall.

QUESTION: Okay. When the check was received from USAA for the crumpled fender and for the stolen items, who - - who - - what happened to the money?

ANSWER: I asked Elliott what he wanted to do with the money. He wanted to repair his car, so we put those funds towards the

replacement of the engine for the car.

QUESTION: So it did need a replacement engine?

ANSWER: It needed a used engine, yes.

QUESTION: Okay. So that money was used to repair the engine. And I understand that while it was undergoing repair or before it started, there had been a - - his license had been suspended; is that correct?

ANSWER: I don't know the timing of his license suspension but that's my impression. During that period of time, his license was suspended or we became aware of the fact.

- Page 17 Line 24 through Page 20 Line 15:

QUESTION: Now, the Mazda automobile was purchased with proceeds of the loan from Liberty Bank; is that right?

ANSWER: This is correct.

QUESTION: And you co-signed that with Elliott?

ANSWER: I did that in order to provide him a lower rate of interest. That is correct.

QUESTION: So you did co-sign?

ANSWER: Yes, I did.

QUESTION: Okay. And after the vehicle was repaired, what - - where did it go? Was it returned to Elliott?

ANSWER: What time period are you talking about?

QUESTION: Well, it'd been in the shop getting a new engine, as

I understand it; and assume it had some damage. I think you said it had a crumpled fender. When it was ready to drive again, did Elliott drive it or what happened to it?

ANSWER: No, he did not drive it. It was delivered by tow truck to our driveway at Spartina Point.

QUESTION: Okay. And was that at your request?

ANSWER: That was at Elliott's request. It was his car.

QUESTION: So Elliott requested that the car be, I guess for lack of a better term, stored at Spartina?

ANSWER: Parked, yes.

QUESTION: Parked. Okay. How long was it parked there?

ANSWER: Maybe two weeks. I don't recall the exact date in November when the car was repaired, but it was a fairly short period of time. Two or three weeks.

QUESTION: When the car was delivered by tow truck at Elliott's request to Spartina, were you aware that his license had been suspended?

ANSWER: I believe I was.

QUESTION: Okay. Did he tell you why it had been suspended?

ANSWER: Yes, he did.

QUESTION: Okay. Did you have any discussion with him, at that point, about whether or not he should be operating the vehicle?

ANSWER: Most certainly.

QUESTION: Tell me about those conversations or conversation, as it may be.

ANSWER: As a father, I tried to implore upon him the responsibility to not drive without proper insurance and a license.

QUESTION: Did he understand to your way of thinking, as part of that conversation, he knew he should not be driving?

ANSWER: You'd have to ask him that.

QUESTION: What was the impression that you were left with after you spoke with him?

ANSWER: That I had tried my hardest to influence my son and he was gonna do what he decided to do.

QUESTION: Who had the keys to the car after it was parked at your house?

ANSWER: The keys hung on a common-key ring in our pantry.

The check for the comprehensive claim with USAA was made payable to Defendant Douglas A. Lambrecht as the named insured for the vehicle in which Plaintiff's decedent was killed.

- Page 26 Line 17 through Line 21 of Douglas A. Lambrecht's Deposition.

QUESTION: Okay. Now, the check that came from USAA, did you - - was it - - it was made payable to you, as I understand it?

ANSWER: I don't recall. I suspect so as owner of the policy.

- Page 32 Line 17 through Page 35 through Line 13 :

QUESTION: When it came out of the junkyard and it was delivered by tow truck to be parked at 22 Spartina, did you become concerned about insurance on the car?

ANSWER: Not at that time. The car was parked and it was not intended to be used.

QUESTION: Now, I believe you indicated earlier to me that you had driven the car, I believe you said around the block or so?

ANSWER: We have a cul-de-sac and I simply ran it around the block to refresh the engine, nothing more.

QUESTION: And that was after it had the engine replaced and was delivered by Tommy's tow truck?

ANSWER: If I recall correctly, yes.

QUESTION: Okay. And that would have been sometime between, what, the end of September and the end of December 2001?

ANSWER: It would have been sometime after the delivery of the vehicle to our driveway, which was in late November and before the vehicle left our driveway, which was early December.

QUESTION: Okay. When it left your driveway, it left with your daughter Anna?

ANSWER: That is correct.

QUESTION: Okay. How did that come to pass? By that, I mean, how did Anna end up driving the Mazda?

ANSWER: I think she put it in gear and stepped on the gas.

QUESTION: Well, were the keys still hanging in the pantry?

ANSWER: I don't recall.

QUESTION: Who gave her the keys?

ANSWER: I don't recall. I believe the keys were probably in the pantry and she may have fetched them herself.

QUESTION: Were you at home when she fetched the keys?

ANSWER: I believe I was. I don't recall.

QUESTION: Well, if you were home and you came, and you - -

ANSWER: Well, somebody was certainly home, Mr. Wieters. I believe I probably was home because, generally, I would take care of situations with my family, as opposed to leaving them with my wife. So I suspect I was home. I don't recall whether Anna picked up the keys herself from the pantry or not. I just simply don't recall.

QUESTION: Could you have given the keys to Anna?

ANSWER: I don't recall.

QUESTION: Is that possible?

ANSWER: I guess its possible the dog could have given them to her too, Mr. Wieters. I don't recall.

QUESTION: Do you have a dog that capable of delivering keys?

ANSWER: Yes, we do.

QUESTION: Okay. Does the dog frequently deliver keys to people?

ANSWER: I've never seen him do it.

QUESTION: Have you ever given your daughter keys to a vehicle?

ANSWER: I am sure I have.

QUESTION: What was the occasion when she got the Mazda and left your home at ~~222~~, one of those occasions?

ANSWER: I don't recall.

Although Defendant Douglas A. Lambrecht in his deposition could not remember giving the keys, his Affidavit attached hereto as Exhibit "D" makes it clear that he gave the keys to his daughter (with knowledge, either constructive, actual or otherwise that the car was uninsured, the taxes had not been paid and the tags were expired).

• Page 75 Line 22 through Page 78 Line 4:

QUESTION: You don't recall having had a conversation with your son after the accident, wherein you discussed with him why he was driving the car?

ANSWER: Immediately following the accident, I was very concerned with his physical well-being. I was discussing why he was behind the wheel with his mother but not with, as I recall.

QUESTION: At what point or did there come a time after the

accident where you did discuss with him why he was driving the Mazda automobile the night of the accident?

ANSWER: Yes, of course, it came up.

QUESTION: Okay. What did your son say?

ANSWER: He wanted to bring the car back to Hilton Head so that Rhett Barker could use it.

QUESTION: Did you discuss with him that he should not have been driving?

ANSWER: Absolutely.

QUESTION: Did you discuss with him whether or not he had obtained liability insurance on the car?

ANSWER: No, I didn't.

QUESTION: When did you first learn that there was no liability insurance on the car?

ANSWER: I don't recall that date.

QUESTION: Would it have been before or after you talked to USAA on January the 16th of 2002?

ANSWER: I do not accurately recall that answer, Mr. Wieters. It may, it may have been before, I don't recall. It appears from my statement to USAA, that I was not clear about the insurance on the Mazda. But it is also clear, I will candidly say, that I was attempting to get coverage for the accident, and I may have been spinning things. So I - - you know, at this late date, three

years later, I don't remember the exact date that I found that there was no insurance on the Mazda.

QUESTION: Well, you've indicated to me, Mr. Lambrecht, that you were spinning things in an effort to discover whether or not there was coverage on the Mazda, when you spoke with USAA on January the 16th, 2002; is that correct?

ANSWER: Yes, I've indicated I had a bias towards trying to get coverage.

QUESTION: So I take it at sometime between January 9, 2002 when Allison Clegg was killed, at 1:15 p.m. and on January 16th of 2002, when you spoke with Ms. Saunders, you had a question as to whether or not the Mazda automobile had liability coverage?

ANSWER: Yes, there was a question. I called USAA to report the accident - - and I, obviously, was not clear as to whether or not there was coverage on the car.

On these facts, there is no basis for an award of sanctions or for any judgment under the Civil Frivolous Proceedings Act, particularly as this matter remains on appeal. Douglas A. Lambrecht's statements to USAA stand in contrast to his deposition. The statement is clear that he had possession, custody and control of the vehicle at the time the keys passed from his hand to the hand of his daughter. That act in and of itself constitutes negligent entrustment. Mr. Lambrecht's daughter was a minor. She should not have

been driving that vehicle. The vehicle had no insurance and the tags had not only expired there was no license plate on the vehicle. To say that Douglas A. Lambrecht did not exercise control or permit the use of that vehicle is inaccurate. A more favorable inference, however, comes from the deposition testimony and sworn statement of Jan Horan that after repeated requests to Douglas A. Lambrecht, Defendant Rhett Barker and Defendant Elliott Lambrecht appeared in Ms. Horan's kitchen and obtained the keys to the vehicle leaving and picking up Allison Clegg and shortly thereafter Ms. Clegg was dead. Had the car never left Douglas A. Lambrecht's control, this lawsuit would not be necessary. Any attorney reading the statement of Douglas A. Lambrecht would find that he exercised dominion and control over the vehicle. The statements to USAA were clear. Discussion with the mother of his daughter were, likewise, clear with respect to whether or not there was insurance that would allow the daughter to operate the vehicle. The Mazda vehicle had been removed from Defendant Douglas A. Lambrecht's policy after a loss and a check had been paid to Douglas A. Lambrecht which he negotiated and placed into his account. Defendant Douglas A. Lambrecht's testimony at his deposition:

- **Testimony at Page 91 Line 11 through Line 23:**

QUESTION: At the - - towards the top of the page, the fourth answer down says: (Reading) And Elliott was want, uh, he was not allowed to drive the car? Is that a true statement?

ANSWER: Not exactly, no. It's not true. It's not that I could allow

Elliott do anything. I could try and influence him, but he's kind of beyond the age being allowed to do something. He's an emancipated adult at that point, so ...

QUESTION: Did you say that?

ANSWER: I don't know whether I said that or not.

- Page 91 Line 24 through Page 92 Line 14:

QUESTION: Okay. The next answer: (Reading) Uh, I would not allow him to drive the car until, uh, such time 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 in the car, he wasn't going to, uh, get by me to get that car. Did you say that?

ANSWER: I probably did say that. And as long as he was - -

QUESTION: Is that the truth? In the last answer that I just read you from Page 41?

ANSWER: Yes, that's the truth.

Counsel asks that this Court vacate its Order and enter an order consistent with the facts as are on the record and find that no sanctions are warranted.

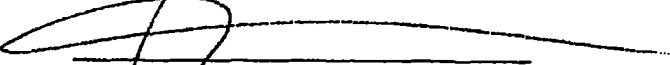
Respectfully submitted,

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
Email: grwlaw@att.net

- and -

MOSS, KUHN & FLEMING, P.A.



H. Fred Kuhn, Jr., Esquire
Post Office Drawer 507
Beaufort, SC 29901-0507
Telephone: 843-524-3373
Facsimile: 843-524-1302
Email: fred@mossandkuhn.com

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

Beaufort County, South Carolina
July 8, 2010

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

2010 SEP -3 AM 11:40
RECEIVED
CLERK OF COURT
BEAUFORT COUNTY
SOUTH CAROLINA
MOTION OF DEFENDANT
DOUGLAS A. LAMBRECHT TO
ALTER OR AMEND JUDGMENT
PURSUANT TO RULES 52 AND 59,
SCRCP AND MEMORANDUM IN
SUPPORT THEREOF

COMES NOW the Defendant, Douglas A. Lambrecht ("Lambrecht"), and hereby moves the Court for an Order, pursuant to Rules 52 (b) and 59 (e), SCRCP, altering or amending the Order, dated July 28, 2010, ("Order"). The Order was received by the Clerk of Court on August 5, 2010, entered in Case No. 06-CP-07-1125 on August 24, 2010, and entered in Case No. 06-CP-07-1126 on September 1, 2010. Written notice of the entry of the Order in both cases was received by Lambrecht on September 1, 2010.

The Order denied Lambrecht's Motion for Sanctions ("Motion") pursuant to SC Code § 15-36-10 (the "FCPSA"), and Rule 11, SCRCP. The Order contained multiple errors and should be altered and amended for the reasons set forth hereinafter.

000554

PRELIMINARY STATEMENT

In an inexplicable and complete reversal of its January 8, 2010, order granting sanctions, this Court has granted the Plaintiff's Motion to alter or amend on the basis of findings of fact and conclusions of law which are diametrically opposed to its first order and not substantiated by the record or the applicable law. How and on what basis this Court completely reversed itself is not explained.

Not only did this Court completely reverse itself on each and every one of its previous findings of fact and conclusions of law, but, by apparently adopting the Plaintiff's proposed order, verbatim, it has entered an Order that is erroneous, both legally and factually.

In vacating its January 8 order awarding sanctions, this Court made findings contrary to the findings upon which it awarded the Defendant ("Douglas") summary judgment, ignored the law of the case, and relied upon "facts" not supported by the record. This Court further failed to follow the directive of the Court of Appeals to conduct a "separate evaluation under Rule 11, SCRCP, and under FCPSA, and make findings and conclusions as to each sanction mechanism asserted" and, instead, relying on the same "good faith" basis rejected by the Court of Appeals, simply attempted to state grounds to justify its 2007 order denying sanctions.

This Motion and Memorandum sets forth the factual and legal basis upon which Douglas contends that the Court erred in vacating its January 8 order

granting sanctions and in entering the Order denying sanctions promulgated by the Plaintiff.

I.

THE COURT ERRED WHEN IT DISREGARDED ITS OWN FACTUAL AND LEGAL FINDINGS, WHICH BECAME THE LAW OF THE CASE, THAT THERE WAS NO FACTUAL OR LEGAL BASIS FOR PURSUIT OF DOUGLAS ON THE THEORIES OF LIABILITY ASSERTED BY THE PLAINTIFF AND FURTHER ERRED WHEN IT DISREGARDED THE HOLDING OF THE SUPREME COURT THAT THE CLAIMS HAD NO VIABILITY FROM THE OUTSET.

In its order granting summary judgment, this Court determined that the Plaintiff's claims against Douglas had **no factual or legal merit** on any of the theories pursued by the Plaintiff. This Court reviewed the record and found that, based on the undisputed facts: 1) there was **no** evidence that Douglas owned the vehicle involved in the accident; 2) there was **no** evidence that Douglas had control over the vehicle; 3) Douglas had **no duty** to control the actions of his emancipated adult son; 4) there was **no** evidence that Douglas had dominion or control over his son; and 5) there was **no** evidence that Douglas' son was acting as Douglas' agent at the time.

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 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.

Order, R. p. 1¹

Each of the claims against Douglas pursued by the Plaintiff had as a necessary element that Douglas either owned or controlled the vehicle involved in the accident. When this Court found that there was no evidence of ownership or control, as a matter of law, there was no merit to any of the theories of liability pursued against Douglas by the Plaintiff. When Plaintiff's appeal of the summary judgment against her was dismissed, these findings became the law of the case and no longer subject to attack.

Further, as pointed out by Douglas, 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 Complaint and Amended Complaints in this action were reviewed, together with the same facts, the same liability issues, and the same individuals. In its Opinion, the Court noted that the "initial Complaint and Amended Complaints alleged causes of action against Lambrecht for negligent entrustment and negligence". *Id.* at 656. 797.

After reviewing the case authorities on the liability of parents for negligent operation of automobiles owned by their emancipated children, the Court held that Douglas was not even "potentially liable" under the negligent entrustment theory, that "we do not believe that Lambrecht could be held "legally liable," . . . for Elliott's negligence" and that, therefore, there had been no duty of Appellant's

¹ References to the record are to the record on appeal, a copy of which has been provided to the Court.

liability insurer to defend the claim "from the onset of the litigation". *Id.* at 655, 797; 658, 798; 659, 799.

Thus, this Court and the Supreme Court have both found that Douglas had no potential liability to the Plaintiff on the theories pursued against him. The finding of the Supreme Court that the claims set forth in the Complaint and the Amended Complaint do not state a viable claim is precedent that is binding on this Court.

II.

THE COURT ERRED WHEN IT FAILED TO CONSIDER THE NATURE OF FRIVOLITY.

During oral argument, the Court was obviously concerned about the distinction between a claim that is ultimately dismissed on summary judgment and one which is frivolous. Douglas recognizes that not every case in which summary judgment is granted is frivolous. However, as herein after set forth, under S.C. Code § 15-36-10 ("FCPSA"), which the Court of Appeals directed this Court to apply, a case is frivolous if "a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law". The issue is not whether the litigant prevailed, but whether the litigant had any factual or legal basis for filing or continuing to pursue these claims. This is an objective standard and requires that the case be evaluated not on what a litigant wishes the law or facts to be, but on what they are in reality. A litigant is not entitled to continue to beat a dead horse when the law and the facts do not support his position, no matter how confident an attorney is in his power of persuasion.

In a case decided under Rule 38, FRAP, which permits the imposition of sanctions for frivolous appeals, the Court described the nature of frivolity:

The "empty head and pure heart" defense will not excuse objectively unreasonable conduct. (citation omitted) Counsel's good faith beliefs that are unreasonable in light of clear law and dispositive authority will not immunize him from Rule 38 sanctions. (citation omitted) Nor does an honest belief in the merits of a claim excuse an appellate brief that "ignores significant issues and facts while deploying a smokescreen of irrelevant and tangential issues."

In Re Perry, 918 F. 2d 931, 934, 935 (Fed. Cir. 1990).

In an Oklahoma case, the difference between evaluating frivolity on an objective rather than subjective basis was addressed:

The propriety of sanctions under § 2011 in regard to legal or factual frivolity of a claim or defense does not depend on the attorney's subjective good faith and having a pure heart, but empty head provides no defense to a sanction order under the statute. (citations omitted). When faced with deciding if sanctions should be imposed under §2011 a court must view the matter through the eyes of a competent attorney who is advocating the claim of his/her client(s). An objective test is used to decide if a competent lawyer could make a reasonable argument supporting the legal theory advanced (citation omitted) but the test is not whether the argument, claim or defense being presented is ultimately successful. (citations omitted) To constitute a frivolous legal position it must be clear under existing precedents that there is no chance for success and no reasonable argument to extend, modify or reverse the law as it stands. (citation omitted).

State ex rel Tal v. City of Oklahoma City, 61 P. 3d 234, 244, 245 (Ok., 2002).

In *USAA*, the Supreme Court found that the Plaintiff's claims against Douglas had "no chance for success" and denied him insurance coverage on that basis. The Court in this case also concluded that there was no factual or legal basis for a claim against Douglas. In reversing its January 8 order imposing sanctions and in denying the Motion for Sanctions, this Court erroneously relied

upon the Plaintiff's "smokescreen of irrelevant and tangential issues" and failed to determine whether a reasonable and objective attorney, knowing what the Plaintiff knew or should have known, would have recognized that there was no chance for success on the claims under existing precedents and should have terminated any pursuit of the claims against Douglas.

III.

THE COURT ERRED WHEN IT FAILED TO PURSUE THE INQUIRY MANDATED BY THE OPINION OF THE COURT OF APPEALS UNDER THE SPECIFIED STANDARDS.

As the Court of Appeals made clear, this Court must consider the entirety of the record before it in determining whether the cases against Douglas were frivolous from the outset or whether, at some later point in time, the Plaintiff learned of facts which would make continued litigation frivolous.

In its Opinion vacating this Court's prior order, the Court of Appeals "vacated the denial of sanctions and remanded the matter to the trial judge for an Order identifying the facts and accompanying legal analysis" and stated that "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". The Court of Appeals further makes it clear that this analysis is conducted of the entire record, including discovery, not only with respect to frivolity from the outset, but also in connection with the "duty to dismiss or withdraw frivolous litigation [that] may arise at a subsequent point in the litigation based on whether an attorney knew or should have known a claim is frivolous."

The Order demonstrates that the Court failed to make the required analysis and to consider the relevant factors. By simply signing an order prepared by Plaintiff's counsel, this Court has glossed over the nature of the analysis to be made, made no specific evaluation from the record of what facts and law were known or should have been known by the Plaintiff and at what point in time, and has only made a superficial reference to the objective reasonable attorney standard pursuant to which frivolity is to be evaluated.

IV.

THE COURT ERRED IN BASING ITS FINDINGS ON THE "GOOD FAITH" OF THE PLAINTIFF AND HER ATTORNEYS, AND THE "CONDUCT, EARNESTNESS AND DEMEANOR" OF THE PARTIES AND COUNSEL AND NOT ON THE STANDARD APPLICABLE UNDER THE FCPSA.

Throughout its Order, the Court once again erroneously evaluates the evidence of frivolity under the standard of subjective good faith. Although the Court occasionally pays lip service to the word "reasonable" in conjunction with its "good faith" finding, it clearly has not applied the FCPSA objective standard of "reasonableness".

Under the FCPSA, 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 are, 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.

It is apparent from its Order that this Court, once again, evaluated frivolity on the basis of the subjective good faith of these particular attorneys and not objectively.

On page 9 of the Order, the Court states "there is evidence supporting the **good faith belief** that Defendant exercised ownership or control over the Mazda vehicle." On page 13 of the Order, the Court states "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". On page 13, the Court finds "that the claim of negligent entrustment was **brought both in good faith and was reasonable**". On page 19, the Court finds that "it is both reasonable and in good faith to assert that" On page 20, the Court finds "ample evidence **supporting a good faith and reasonable belief** that Elliott was a member of Defendant's household at the time of the wreck." The same "good faith" is referenced in the Order at pages 15, 21, 22, and 23 of the Order. Then, on page 25 of the Order, the Court reiterates and adopts its previous finding from 2007 that "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". The good faith of Plaintiff's counsel is not the appropriate standard for evaluating whether sanctions are

required under the FCPSA. At no point in its Order does this Court explain how a reasonable and objective attorney could have concluded, based on the undisputed facts and existing legal precedent, that some viable claim existed against Douglas. That kind of analysis is what the Court of Appeals directed and what is completely absent from this Court's most recent Order.

At no point in its Order does this Court explain how it can simultaneously grant summary judgment to Douglas and his co-defendants on the basis that there is no factual or legal basis for the claims against them and also find that the Plaintiff could have "reasonably believed" that the claims were well founded in law and fact.

Most incredibly, the Court relies upon the "conduct and demeanor" of the "parties and their counsel" and notes how "impressed" the Court was "by the earnestness and good faith of Plaintiff and her attorneys" to find that sanctions were not warranted. Order, page 25.

Not only is the conduct, demeanor, and earnestness of the parties completely irrelevant to whether or not a claim was frivolous, but it is impossible for the Court to have made this evaluation. This case was adjudicated on summary judgment. The record does not reflect one instance in which the Plaintiff Clegg or Douglas ever appeared before the Court in any capacity or for any purpose. Thus, it was a factual impossibility for the Court to have judged the demeanor or conduct of the parties, even if it had any relevance to the issue of sanctions, which it does not.

For the Court to base any part of its frivolity analysis on the conduct, demeanor or earnestness" of counsel is absolutely without any basis in law and is the antithesis of the legal analysis this Court was to directed to conduct and the role of the judiciary in general. Without regard to whether the Plaintiff's counsel presented their specious arguments with gusto, whether they were earnest, or whether the Court found their conduct appealing, the bottom line is that they sued Douglas without any factual or legal basis and pursued meritless claims against him for years, all the while requiring him to continue to spend time and money defending their groundless claims.

In addition to its erroneous reliance on the Plaintiff and her counsel's "good faith", the Court relies also the holding of its vacated judgment that the "case was brought by experienced, competent lawyers" who believe that the case was "warranted". Order, P. 25. There is not one reference in the FCPSA that excuses pursuit of frivolous cases on the basis of the experience and competency of the attorney pursuing it. In fact, experience and competency should militate in favor of frivolity in this case because clearly, by the Court's own finding, ignorance is no excuse.

Finally, in its conclusion, the Court demonstrates, unequivocally, that the subjective "good faith" of the Plaintiff's counsel is the Court's basis for denying sanctions and not whether the claims were, when viewed objectively, had a reasonable basis in law and fact.

V.

THE COURT ERRED WHEN IT DISREGARDED ITS PRIOR FINDING THAT EVEN A REASONABLE LAY PERSON COULD NOT HAVE CONCLUDED THAT DOUGLAS OWNED OR CONTROLLED THE VEHICLE AND THAT THE ATTORNEYS FOR ALL OTHER DEFENDANTS SOUGHT SUMMARY DISMISSAL ON THE BASIS THAT THE CLAIMS WERE NOT LEGALLY VIABLE.

The current Order is totally contrary to this Court's prior findings with respect to the objective reasonableness standard and ignores the fact that all other counsel involved in the case sought and received summary dismissal of the same claims.

The record before the Court on summary judgment is the same record it was required to evaluate here. In its Order granting summary judgment, this Court found, based on that record, **no juror could "reasonably" conclude that Douglas either owned or controlled the vehicle** involved in the accident. If no juror, as an ordinary citizen, could reasonably reach such a conclusion, how can this Court find in its Order that a reasonable **attorney**, presumably more literate in the law, could reach the opposite conclusion on the same facts? Certainly an attorney is held to a higher standard than a lay person when evaluating the legal and factual merits of a claim. If no lay person could conclude that Douglas owned or controlled his son's car, how can this Court find that the Plaintiff's attorneys were justified in pursuing the claims when in possession of the same facts?

The attorneys for each of the Defendants, in addition to Douglas, 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. (R. p. 160; R. p. 161; R. p. 163). The attorneys for each of those parties had the same obligation not to file frivolous pleadings as did the attorneys for the Plaintiff, and all of them concluded that the Plaintiff's claims were without legal merit. In fact, this Court agreed, dismissing all claims against each of the co-defendants founded on the same alleged facts and law as the claims asserted against Douglas.²

If no reasonable juror could find merit in the Plaintiff's claims and if each of three attorneys in addition to Douglas' attorney did not, and if this Court did not, it is inconceivable that the Court in the context of sanctions finds them not to be frivolous and the Court erred in failing to do so.

VI.

THE COURT MISREADS THE RECORD AND MISAPPLIES THE LAW WITH RESPECT TO THE ISSUE OF OWNERSHIP AND CONTROL.

The necessary factual basis for all of Plaintiff's claims against Douglas was that he owned or controlled the vehicle involved in the accident. Without ownership or control, Douglas cannot, as a matter of law, be liable for his son's accident on a negligent entrustment theory.³ *American Mutual Fire Insurance Co. v. Passmore*, 275 S. C. 618, 274 S. E. 2d. 416 (1981) [without ownership or control of the vehicle involved in the accident, no claim of negligent entrustment is viable].

² There was only one claim ("racing") asserted against one Defendant (Rhett) other than Elliott that was not dismissed by this Court. That claim was ultimately established at trial to be without merit.

³ As later set out, ownership or control is an essential element of the agency and Family Purpose Doctrine claims the Plaintiff now contends were also pursued but which were never part of the pleadings.

Despite the fact that this Court previously held in its Order granting summary judgment that there was no evidence that would allow a reasonable juror to conclude that Douglas either owned or controlled his son's vehicle, in its current Order, the Court attempts to find evidence that would support the Plaintiff's "good faith belief" that Douglas owned or controlled his son's vehicle. (Order, p. 9 - 13).

1. *Ownership*

The Court first relies on S.C. Code § 56-1-10(3) for the proposition that the owner of a vehicle includes a person "who is entitled to the use and possession" of the vehicle. Not only was there NO evidence in the record that Douglas was "entitled" to the "use and possession" of his adult son's car, the paraphrase of the statute by this Court is not accurate. In fact, the statute further supports the fact that as a matter of law, Douglas' adult son, Elliott, was the owner of the vehicle.

(3) "Owner" means a person, other than a lienholder, **having the property or title** to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security.

The clear reading of the statute is that the owner of a vehicle is one who has title to it, except where title is held as security for a loan. In this case, it was undisputed that Elliott held title to the vehicle.

Under South Carolina law, a certificate of title constitutes *prima facie* evidence of vehicle ownership which can be overcome only in litigation involving insurance coverage and then only in the limited circumstances.

This Court has held that under certain circumstances, someone other than the actual titleholder should be deemed the owner *for*

insurance purposes. (emphasis supplied) In those cases, however, the owners' failure to hold title (or its equivalent) resulted from mere technicalities.

Unisun Insurance Company v. First Southern Insurance Company, 319 S.C. 419, 424, 462 S. E. 2d 260, 262 (1995) *reh. Denied*.

It was undisputed that Douglas' son, Elliott, held title to the vehicle involved in the accident and all other incidents of ownership in addition to the title were attributable to Elliott and not to Douglas. Elliott paid the purchase price for the vehicle and for repairs to it (R. p. 396: 7 – 22). Elliott paid for the insurance on the vehicle and the policy was in his name. (R. p. 330:20 – 331:2; R. p. 556: 25 – 557: 3). Elliott paid the property taxes on the vehicle. (R. p. 332:8-12).

The Court in its Order cites certain evidence in the record which it finds would allow a reasonable attorney to believe that there was a genuine issue with respect to whether or not Douglas "owned" his son's vehicle. This "evidence" contains claimed "facts" that are not relevant to the issue of ownership, describe situations that far predated the time of the accident, relate to insurance that had not been in place on the vehicle since the previous June, and contain inaccurate statements of the record. In other words, this Court bases its analysis on a smokescreen of irrelevant and tangential issues rather than the relevant facts in evaluating whether the Plaintiff's claims were frivolous.

First, while Douglas may have co-signed this son's car loan, that fact could not suggest to an objective attorney that Douglas was, therefore, an owner of the vehicle. Merely being liable on another's debt does not transform the obligor into an owner of the property for which the debt was incurred.

Second, the insurance policy referenced by the Court at pages 9 and 10 of its Order does not appear anywhere in the record. For the Court to conclude that, because the alleged policy was described by a witness as identifying Elliott as the "operator" of the vehicle,⁴ that Douglas "must" have "represented to USAA that he (Douglas) was, in fact, the true owner of the Mazda" is rank speculation and not fact. Contrary to the Court's finding, nowhere in the record is there any evidence at all that "the Defendant represented to USAA that he was, in fact, the true owner of the Mazda automobile". Even if he had, a person's representation to another that he owns a vehicle does not change the fact that he does not.

Third, the Affidavit of Salvage (R. p. 425) with respect to Elliott's vehicle is a document prepared and forwarded to Douglas by the insurer, USAA (R. p. 426), which at that time insured Elliott's vehicle. That Affidavit of Salvage, as prepared by USAA, identifies **Elliott Lambrecht** – not Douglas – as the **owner of the vehicle**. This Affidavit was signed by Douglas, under oath, as the owner of the USAA policy and not the owner of the vehicle. Rather than a representation that Douglas owned the vehicle, as found by this Court, in that Affidavit Douglas affirmed, under oath, that Elliott was the owner of the vehicle. The proceeds of the USAA insurance policy were used to repair the vehicle, at Elliott's direction. (R. p. 561:13 – 562:12; 571: 11 – 572:6).⁵

⁴ The witness was not asked what, if anything, was reflected in the policy with respect ownership of the vehicle.

⁵ There was no "sale" of the vehicle to Douglas. USAA could not "sell" it to anyone because it did not have title. After the accident there was no transfer of ownership to the vehicle. It remained titled to Elliott who agreed to have its salvage value deducted from the USAA insurance proceeds and retain possession.

Even the Court's reliance on *Automobile Insurance Company of Hartford v. Curran*, 994 F. Supp. 324 (D.C.Pa.1998) is completely misplaced. In that case, the alleged owner had all of the incidents of ownership **except** title. In this case, Douglas' son, Elliott, had title **and** all other incidents of ownership discussed in *Curran* and Douglas had none of them. The Court cannot find that the claims were not frivolous on the basis of authority that does not factually apply to this case.

In South Carolina, ownership of a vehicle is established by title, unless, but only in the context of insurance disputes, it can be established that a non-title holder has all other incidents of ownership such as paying all expenses for the vehicle, insuring it, and having sole possession of it. *Unisun Insurance Company v. First Southern Insurance Company*, 319 S.C. 419, 424, 462. S. E. 2d 260 (1995). Not only is this case not an insurance dispute, but the record reflects that Elliott and not Douglas had all the incidents of ownership described in *Unisun*.

This Court's Order finding that some evidence existed which would allow a reasonable attorney to conclude there was a legitimate issue as to whether Douglas "owned" his son's vehicle is without support in the record or under existing law.

2. Control

The facts recited by the Court in the Order as related to the issue of whether Douglas "controlled" his son's vehicle simply are not true and do not appear in the record. Contrary to the Court's finding that "the Defendant had physical control over the vehicle itself, as it was normally kept at his house", the

record shows that the vehicle and its keys had been in the possession of Elliott's sister for weeks prior the accident and that, prior to that, it was parked at Douglas' house for only two to three weeks at Douglas' son's request. (R. p. 563:16 - 564:10).

In direct contradiction of this Court's factual finding that Douglas was the one "to whom others went for permission to use the vehicle", each witness who testified on this point stated that it was Elliott and not Douglas who decided who could use the vehicle and it was Elliott's permission, not Douglas', that was required. R. p. 477:22 - 25 (Anna); R. p. 654: 10 - 15 (Douglas); R. p. 334:9 - 20 (Elliott) There is not one shred of evidence in the record that supports this Court's finding that Douglas gave or was entitled to give permission to use Elliott's vehicle.

Not only is there not one fact upon which to find that a reasonable attorney could concluded that Douglas' "controlled" the use of Elliott's car, as a matter of law, he had no such ability. The right to control the use of a vehicle is a legal right or power incident to the ownership of the vehicle, 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].

Elliott, an emancipated adult, who held title to the vehicle and all other incidents of ownership, was quite clear on who controlled the use of his vehicle.

Q. Had your father told you not to drive the car because of your suspension?

A. No, maybe he suggested it.
Q. He suggested that you don't drive?
A. (Witness nods head.)
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.
Q. He had the keys; did he not?
A. I gave them to him.
Q. You gave him the keys when you got suspended?
A. Right.
Q. Did he ask you for the keys or you just turned the keys over to him?
A. No, I gave them to him.
Q. Okay.
A. I left it with the car.
Q. You left the car with him?
A. Right. And I left the keys with him.

R. p. 344: 2 - 22

Q. While it was at your father's house did anyone have permission to use the vehicle, other than the permission you gave to Anna.
A. No.

R. p. 397: 16 -19

In order to find the Plaintiff's claims not frivolous, the Court erroneously relied upon facts not in the record, did not consider the facts actually demonstrated in the record, and failed to apply the law of South Carolina with respect to the ownership and control of a vehicle.

VII.

**THE COURT ERRED IN RELYING ON AN UNSWORN STATEMENT
DISAVOWED BY DOUGLAS AND NOT COMPETENT EVIDENCE WITH
RESPECT TO ANY ISSUE TO CONCLUDE THAT THE PLAINTIFF'S CLAIMS
WERE NOT FRIVOLOUS.**

In multiple places in its Order, this Court relies for its findings that Plaintiff had a reasonable basis to pursue claims against Douglas on an unsworn statement given by Douglas to an insurance adjuster immediately after his son's

accident. This unsworn statement was disavowed by Douglas as inaccurate and the Plaintiff never made any effort to authenticate the transcript or in any way establish its bona fides. (R. p. 594:8 – 595:15; 603:24 – 604:17).

Unsworn statements are not competent evidence for any purpose. *Morris v. Jensen*, 309 S. C. 153, 420 S. E. 2d 710, (Ct. App. 1992), *reh denied* [collecting numerous cases in which such statements were deemed incompetent]. 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]. This Court cannot find that the Plaintiff had a reasonable basis for pursuing Douglas on the basis of "evidence" which any reasonably objective lawyer would know could not be used for any purpose.

Finally, and most importantly, the alleged statements of Douglas relied upon by the Court are completely irrelevant to the ownership or control of the vehicle.⁶ Those statements, when read as a whole, establish that the car was owned and controlled by Elliott, which was consistent with the undisputed evidence from every witness and with the documentary evidence that Elliott owned the vehicle and controlled its use. There is no basis for this Court to conclude that a reasonable attorney would continue, on the basis of the facts in

⁶ As set forth in a following section, although the Court finds evidentiary support for the Family Purpose Doctrine claim in the unsworn statement, this claim was never pled and could never have any viability unless Douglas owned, controlled or furnished the vehicle for the general use of his household. The evidence was undisputed that Elliott and not Douglas owned and controlled the vehicle and it was used only by Elliott and those to whom he, and not Douglas, gave permission.

the unsworn statement and the law with respect to its evidentiary viability, to attempt to prove that Douglas and not Elliott owned and controlled the vehicle.

VIII.

THE COURT ERRED WHEN IT RELIED UPON THE GADSON CASE TO FIND THAT THE CLAIMS AGAINST DOUGLAS WERE OBJECTIVELY REASONABLE SINCE IT DID NOT CHANGE THE LAW WITH RESPECT TO THE ROLE OF INTOXICANTS IN A NEGLIGENT ENTRUSTMENT CASE AND THE PLAINTIFF COULD NOT ESTABLISH OWNERSHIP OR CONTROL IN ANY EVENT.

In its Order, this Court finds that *Gadson v. Echo Services of South Carolina, Inc.*, 374 S. C. 171, 648 S. E. 2d 558 (2007), changed the law in South Carolina to require the involvement of intoxicants in a negligent entrustment case and, but for that change, the Plaintiff had a viable negligent entrustment claim. The Court is mistaken with respect to the holding of *Gadson*.

First, with or without *Gadson*, the Plaintiff could not establish the basic fact of a negligent entrustment case and that is that Douglas owned or controlled his son's car. The *Gadson* decision is, in reality, merely icing on the cake with respect to the viability of any such claim.

In *Gadson*, the Supreme Court did not modify the law of negligent entrustment. It merely rejected any attempt to expand the scope of negligent entrustment liability beyond what which had been South Carolina law since 1986.

According to our case law, the elements of negligent entrustment are: (1) knowledge of or knowledge imputable to the owners that the driver was either addicted to intoxicants or had the habit of drinking; (2) the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated; and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver. *Jackson v. Price*, 288 S. C. 377, 342 S. E. 2d 628 (Ct. App. 1986)

Gadson at 176.

Thus, based on *Jackson v. Price*, in South Carolina, **in addition** to showing ownership or control, a plaintiff needed to show the involvement of intoxicants in order to support a negligent entrustment claim. The only effect of *Gadson* was to reaffirm that intoxicants were a necessary element of such a claim and that by applying the broader standard of liability articulated by the Restatement of Torts, the Court of Appeals erred.

...in determining whether Respondent met her burden of proving the elements of negligent entrustment, the Court of Appeals applied *Restatement (Second) of Torts* §§ 308 and 390 which extends 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. *We decline* (emphasis supplied) to adopt section 308 and 390 of the *Restatement* based on this set of facts, and we analyze this case under the elements of negligent entrustment set forth in *Jackson*.

Id. at 176, 177.

The ruling of the Court of Appeals in *Gadson* was reversed and at no point was it the law in South Carolina. These claims were filed in 2002, when the applicable law was, and still is, as articulated in *Jackson*.

There is no indication in the record that Plaintiff's counsel ever relied on the pending *Gadson* decision. At no point in time did the Plaintiff argue that the law should be modified or expanded to include the scope of liability set forth in the Restatement §§ 308 and 390.⁷ Even if such an argument would have been

⁷ The second Amended Complaint (R. pp. 165 -176; R. pp. 177 - 188), like its predecessors alleged that Douglas 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.

made, it could not have justified pursuit of the claims when the basic element of any negligent entrustment claim, ownership or control, could not be established.

These cases were just as baseless under the law and facts as the one described in *Jones v. Enterprise Leasing Company*, 383 S. C. 259, 678 S. E. 2d 819 (Ct. App. 2009), in which, without regard to whether §§ 308 and 390 *should* become the law, the Court found "it unnecessary to adopt those sections for the purposes of this appeal, as Jones cannot prove the compulsory element of ownership or control under either rubric." *Id.* at 266, 823.

The Court erred when it found, on the basis of *Gadson*, that the Plaintiff was reasonable in pursuing a negligent entrustment claim.

IX.

THE COURT ERRED IN RELYING UPON THE LAW OF COMBINING AND CONCURRING NEGLIGENCE WHEN IT MADE NO FINDINGS OF FACT WITH RESPECT TO ANY NEGLIGENT ACT OF DOUGLAS.

On page 16 of its Order, this Court discusses the concept of "combining and concurring negligence" in the abstract and refers to S. C. Code § 56-1-480.

The statute referenced by the Court makes it unlawful for a person to "authorize" or "knowingly permit" a vehicle "owned" by him or "under his control" to be driven by a person not authorized to do so or in "violation" of the motor vehicle statute. Not only does this statute, for its application, require a finding that the violator had some power of ownership or control over the particular vehicle, which Douglas did not, the Court does not even articulate what violation of the motor vehicle act it finds occurred. Assuming that the Court intended to relate this statute to Elliott's operation of the vehicle without a license, registration, or

insurance, those acts are not negligence *per se*, **even as to Elliott**, and are not actionable because there is no causal link between those statutory violations and the accident. *Unisun Insurance v. Hawkins*, 342 S. C. 537, 537 S. E. 2d 559 (Ct. App. 2000) *rehearing denied, cert. granted, cert dismissed*; 8 Am Jr. 2d *Automobiles and Highway Traffic*, § 812.

Second, while Elliott may have operated his vehicle in violation of §56-1-480, the Court does not articulate in its finding one negligent act committed by Douglas which combined with Elliott's acts, or the acts of any other person, that "combined or concurred" to result in the death of the Plaintiff's decedent.

As previously set forth, Douglas did not own his son's vehicle and had no right to control its use. The record is undisputed that, after Elliott's vehicle was picked up from Douglas' home, after being parked there for two to three weeks, Douglas knew nothing about his adult son's intentions with respect to the vehicle.

Q: Now, on January 9, 2002, did your father have any knowledge that you were going to Beaufort to pick up your car from Anna?

A. No.

R. p. 397: 20 – 23. *See, also:* R. p. 152; 157.

Thus, there is not one shred of evidence in this record to establish any finding that Douglas "authorized" or "permitted" a vehicle "owned" or "controlled" by him to be driven.

This aspect of the Court's Order, instead of supporting the Plaintiff's position that the claims were not frivolous, in fact demonstrates precisely how frivolous they were. Even if Douglas had a legal right to control the vehicle, which was not the case, all of the evidence shows that he had no knowledge that

the vehicle, which at that time was in the possession of Elliott's sister, would be driven by Elliott. Absent such evidence, there is no factual basis to claim that Douglas entrusted the vehicle to Elliott and, thus, no basis for any negligent entrustment claim.

The Court erred when it found that violation of § 56-1-480 was negligence. *per se*, and erred when it implicitly found that Douglas violated the statute or that some negligent act of his combined with those of others and proximately caused the death of the Plaintiff's decedent.

X.

THE COURT ERRED WHEN IT ANALYZED FRIVOLITY ON THE BASIS OF THEORIES OF LIABILITY NEVER PLED BY THE PLAINTIFF.

1. *Family Purpose Doctrine*

In none of the versions of the Complaints filed by the Plaintiff was liability under the Family Purpose Doctrine alleged. The Amended Complaints filed in August, 2006, made no allegations that Douglas was liable under that theory. (R. p. 165; R. p. 177). This Court in its Order granting summary judgment did not address the Family Purpose Doctrine because it was not raised by the pleadings or in the Plaintiff's Memorandum in opposition to summary judgment. (R. p. 201). The Court cannot find that the Plaintiff's claims were not frivolous on the basis of some theory of liability that was not even pled.

Further, even if had been pled, the Plaintiff had no factual basis for asserting it. As the Court recognizes, liability under the Family Purpose Doctrine is predicated on the defendant being the head of a household and owning, maintaining, or furnishing a vehicle for general household family use. There was

no factual basis upon which to allege that Douglas owned, maintained, or furnished Elliott's vehicle for "general household use".

The record unequivocally establishes through the testimony of Elliott, his mother, and his father that he was an emancipated adult who had been living independently for some time before the accident. (R. p. 389:19 – 394:6; R. p. 487:4 – 488:8; R. p.156). The Court's reliance on the address referenced in an accident report and Douglas' purported characterization that he considered Elliott as a member of his household in the disavowed statement to the insurance adjuster is misplaced. This Court erroneously states, without any reference to the record, that Elliott "told" the investigating officer that his address was Douglas' home. In fact, Elliott was unconscious after the accident and gave no statement to anyone at any time. (R. p. 354:11 – 23). The Court also erroneously states, without any reference to the record, that "Douglas and Elliott Lambrecht's 'story' was that at the time of the wreck, Elliott was living with the Barkers" and that "Rhett Barker testified that at the time of the wreck he was mainly a resident of Defendant's home". (Order, p.22). The actual testimony was that the only time that Elliott spent the night at his father's house in the six months prior to the accident was for Thanksgiving or a holiday (R. p. 326:15 – 22), that Elliott had been staying with the Barkers at the time of the accident while he looked for a new apartment (R. p. 324:12 – 25), and that his apartment had been at Old South (R. p. 327: 3- 5). This testimony was consistent with Elliott's Affidavit that established that he had been living on his own and supporting himself since at least May of 2001. (R. p. 427 – 429). The actual

testimony of Barker was not that Elliott was a resident of Defendant's home. It was that Elliott resided in his own apartment at Old South for six months to a year, vacated the apartment between Christmas and New Years of 2001, and that, during the period between moving out of Old South and moving into his new apartment, Elliott stayed multiple places, including one night with his father and multiple nights with Barker. (Dep. of Barker, p. 70:12 – 75:9).

With respect to Douglas' purported statement about Elliott's membership in his household, Douglas testified that "I used the word household interchangeably with the term family in my conversation with USAA." (R. p. 686:16 – 25).

The undisputed facts demonstrate that Douglas did not own, control, or furnish Elliott's vehicle and that Elliott, in any event, was not a member of his household. Even if it had been pled, there was never a factual basis for liability under the Family Purpose Doctrine. In using some theory of liability not actually asserted and for which there never was a factual basis to excuse the Plaintiff's conduct is erroneous.

2. Agency

In none of the three versions of the Complaints did Plaintiff allege that Elliott was acting as Douglas' agent at the time of the accident. Instead, Plaintiff consistently pursued the theory that Douglas owned or controlled his son's vehicle and was liable for negligently entrusting it to Elliott and/or failing to warn others of the danger posed by Elliott's driving.

The first mention of an agency theory of liability was in Plaintiff's Supplemental Memorandum filed three days after Douglas' Motion for Summary Judgment was argued. (R. p. 207). Douglas noted in his Reply Memorandum that this issue had never been previously raised. (R. p. 222).

To find some basis for the advancement of an agency theory of liability, the Court refers to one paragraph of the final version of the Complaint, filed in August, 2006, two months before summary judgment was granted, which was pled on "information and belief". That paragraph is *verbatim* as follows:

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.

(R. p. 168)

Not only does this sole paragraph fail to allege the basic elements of an agency relationship between Douglas and his son with respect to the vehicle, at the point in the litigation when the Amended Complaint was filed, discovery was complete and there was absolutely no basis upon which to plead these facts on "information and belief". They either existed or they did not, and the Plaintiff knew they did not.

As set forth hereinbefore, there is no factual basis upon which the Plaintiff could have claimed that Elliott was acting on behalf of Douglas when he drove to Hilton Head on the night of the accident. It was undisputed that Douglas and his son had no communication on that subject and that Douglas had no idea of his intentions.

Elliott testified that the purpose for picking up the vehicle was only so his friend Rhett could use it and that he was unaware of any alleged conversation of his parents about getting the vehicle moved from his mother's home.

- 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. I beg your pardon?
- A. No, never.
- Q. Or are you not aware of that?
- A. It wouldn't have been told to anybody but me, because it was my car and would have been my responsibility to get it moved. So if it wasn't said to me, then chances are it was never said.
- Q. Okay. So the only reason you went to get the car, then, was because Rhett needed to use it?
- A. Yes, I was gonna let Rhett use it.

R. p. 347: 3 - 18

- Q. How do you know what your father knew?
- A. Well, if I didn't tell him, I'm assuming he doesn't have any psychic ability to know where I'm going.
- Q. Well, did you know whether or not your mother had had a conversation with your father about getting the Mazda car out of her driveway in Beaufort?
- A. I didn't know anything about that.
- Q. You didn't know anything about that?
- A. No.

R. p. 410:23 - 411:9

Elliott's deposition was taken on January 11, 2005. The Amended Complaint by which the Plaintiff purported to assert her "agency" theory was filed in August, 2006, long after the Plaintiff knew that there was absolutely no evidence to support any such theory.

The actual record supports Douglas' claim that the claims against him were frivolous and that any reasonable attorney would not have pursued them. The Court erred when it found otherwise.

XI.

THE COURT ERRED WHEN IT APPLIED THE FACTORS TO BE CONSIDERED UNDER THE FCPSA IN DETERMINING WHETHER SANCTIONS ARE APPROPRIATE.

In its Order, the Court completely misapplies the factors to be considered in determining whether sanctions are appropriate.

In conducting the frivolity analysis required under the FCPSA, this 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 or party to investigate and conduct discovery; 4) information disclosed to the attorney or party through discovery and investigation; 5) previous violations of the act; 6) the response of the attorney or party to allegations that the act was violated; and 7) other facts which to the court are just, equitable, and appropriate. (SC Code § 15-3610 (D)).

All of these factors are relevant to what a "reasonable" attorney could or should have known. If a claim involves numerous parties, was legally or factually complex, and in which there was no opportunity to obtain the material facts, or

those facts were withheld or obscured by the opposing party, or if the applicable law was unclear, the Court might conclude that it was not unreasonable to initiate or pursue the claim, even if it was ultimately dismissed. That is not the case here. All of the factors to be considered, except previous violations of the statute, support the conclusion that the Plaintiff's attorneys acted unreasonably and that the claims were frivolous.

The Plaintiff and her counsel made no response, whatsoever, to the Motion for Sanctions filed by Douglas or to the supporting memorandum which detailed the basis for Douglas' contentions that the claims were frivolous. Despite this Court's finding that "the Plaintiff and her attorneys have responded to the Motion by vigorously opposing it" the record reflects that they did **absolutely nothing** until the Court entered its Order imposing sanctions. Then and only then, did the Plaintiff and her attorneys make any response – in the form of a Rule 59 Motion.

Second, as the Court found, the parties were not numerous. Although the Court characterizes the claims as "fairly complex", that finding has no basis. As ordinary tort claims, no specialized or sophisticated investigation or legal analysis was necessary. There was no aspect of the applicable law that was subject to misunderstanding or undecided. The facts were easily discoverable, and, in fact, were known to Plaintiff's attorneys from the outset.

As the Court concluded, Plaintiff's attorneys had ample time to investigate the claims prior to filing them. There was no statute of limitations or other basis which would have precluded a full investigation and thorough legal research to

determine whether the cases were meritorious before they were filed. After the claims were filed, Plaintiff's attorneys had the facts 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 and those facts were confirmed by deposition. 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.

This case is unique in that all discovery was concluded prior to the case being dismissed under Rule 40(j). As such, the Plaintiff's attorneys had all of the sworn testimony of the witnesses in hand at the time that they filed their Second Amended Complaint in 2006. There were no any additional proceedings in the case prior to the presentation to the Court of the Motion for Summary Judgment, which had been on file, together with an extensive Memorandum detailing all of the applicable law, since 2004. With access to all of the law courtesy of the Plaintiff's counsel, and all of the facts, courtesy of the actual witnesses, there was nothing to distinguish the factual and legal basis for the filing of the claims from the factual and legal basis of this Court when it found the claims had no factual or legal merit.

Despite this Court's finding that "[r]ational people can reach different conclusions when issues of proximate cause and negligence are raised", that statement is completely irrelevant in this case. It was never a question of whether the Plaintiff could win before a jury. The problem is that the Plaintiff had no factual or legal basis for even pursuing a claim.

testimony of Douglas, Jan, and Anna were likewise in agreement with Elliott's testimony.

Despite all of these undisputed facts, in 2006, the Plaintiff reinstated the cases after a Rule 40(j) dismissal and filed Amended Complaints on the same factually and legally unsubstantiated claims.

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.

In *Russell v. Wachovia*, 370 SC 5, 633 S.E. 2d 722 (2006), the Supreme Court affirmed sanctions against a litigant under the predecessor to the current version of the SCFCPSA for continuing litigation after "she realized that the facts did not support her claims". *Id.* at 16, 728. The situation is no different here.

All of the other cases which the Court attempts to distinguish, in fact, require the imposition of sanctions. With the facts Plaintiff had and the law the Plaintiff was bound to know, there was no basis for her to continue to erect a smokescreen of irrelevant and unsubstantiated facts to continue her pursuit of Douglas, who had no legally cognizable responsibility for his adult son's automobile accident.

The foregoing facts, as well as the evidence that was cited by the Defendant in its Memorandum and Reply Memorandum in Support of Motion for Summary Judgment, which is incorporated herein by reference, establish that there was never any legal or factual basis for a reasonable attorney to conclude that the claims had any merit. The Court erred when it failed to find that a

preponderance of the evidence demonstrates that the claims were frivolous and that sanctions should be imposed.

XIII.

THE COURT ERRED BY FAILING TO CONSIDER THE FACT THAT PLAINTIFF MADE NO TIMELY RESPONSE TO THE MOTION FOR SANCTIONS BY WAY OF EXPLANATION OR MITIGATION.

Pursuant to FCPSA subsection (D), a litigant against whom a motion under the act is filed has thirty days in which to "respond to the allegations" in any appropriate way, including withdrawing any offending document or argument or "offering an explanation of mitigation." In making a determination of frivolity, the Court, pursuant to subsection (E)(6), is to consider "the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section".

In this case, Plaintiff made no response, whatsoever, to the Motion within the thirty day statutory time period. Since Plaintiff offered no explanation, whatsoever, of her filing and continued pursuit of non-meritorious claims, there was no evidence of non-frivolity for the Court to consider. Accordingly, the Court should have concluded that there was no reasonable explanation for the Plaintiff's and her attorneys' conduct, and, for that reason, alone, should have found the claims to be frivolous. Its failure to do so is error.

XIV.

THE COURT ERRED IN FAILING TO AWARD DISCRETIONARY SANCTIONS AND SANCTIONS PURSUANT TO RULE 11.

000587

The conduct of the Plaintiff in continuing to file amended pleadings and to make unsubstantiated arguments certainly justified the imposition of discretionary standards as set forth in the FCPSA.

Pursuant to Rule 11, an attorney who signs a pleading warrants that "there is good ground to support it". The criteria for imposing sanctions under Rule 11 are the same as that under the frivolous action statute. *In re Beard*, 359 S.C. 351, 360, 597 S.E. 2d 835, 839 (Ct. App.2004), *rehearing denied*, 2004, *cert. denied*, 2005.

Accordingly, Plaintiffs' attorneys are subject to sanctions for filing the Complaint, the Amended Complaint, the opposition to Lambrecht's Motion for Summary Judgment, and the Plaintiff's Rule 59(e) Motion. It was error to deny discretionary sanctions under the FCPSA and Rule 11.

CONCLUSION

This Court, in vacating its prior January 8 Order awarding sanctions, completely contradicts its prior findings on summary judgment that the claims had no factual or legal merit and that no reasonable juror could have reached the conclusion that Douglas either owned or controlled his son's vehicle. The finding that Douglas owned or controlled his son's vehicle was necessary as a basis for all the claims asserted against Douglas. The finding that no reasonable juror could have concluded that Douglas owned or controlled the vehicle is now the law of the case. In the absence of ownership or control, Douglas could not have been held liable under any theory of liability asserted against him.

The complete reversal of its prior Order was not made on the basis of any error of law or misapprehension of fact pointed out by the Plaintiff in its Motion to Alter or Amend. The Court simply, and inexplicably, reversed itself on the basis of facts that do not exist in the record and by the application of clearly erroneous standards upon which frivolity is adjudicated.

In its current Order, this Court ignores its previous findings with respect to what the Plaintiff knew or should have known about the absence of a factual and legal basis for the claims being pursued and does not even address how any reasonably objective attorney could re-file in 2006 litigation which he had known from the outset had no factual or legal basis.

For all of the reasons set forth herein, the Defendant respectfully requests that the Court grant Defendant's Motion to Alter or Amend, reinstate its January 8 Order awarding sanctions, and find that Douglas is entitled to both discretionary and mandatory sanctions against Plaintiff and her attorneys pursuant to the FCPSA, and against Plaintiff's attorneys pursuant to Rule 11. The Defendant further requests that the Court find that the appropriate sanction to be imposed is reimbursement of Douglas' reasonable attorney fees, costs, and expenses incurred as a result of the pursuit of the claims against him, as established by the Affidavits previously filed here, and of the value of his own time and expense in accordance with his Affidavit previously filed herein, and for such other relief as is appropriate under the circumstances.

DOUGLAS A. LAMBRECHT, Defendant

By John E. North Jr.

John E. North, Jr.
Pamela K. Black
North & Black, P.C.
Regions Bank Building
916 Bay Street, Suite 100
Beaufort, SC 29902
(843) 379-0800 (tel)
(843) 379-0900 (fax)

Certificate of Service

I hereby certify that on the 3rd day of September, 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.

John E. North Jr.

000590

BLANK

000591

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

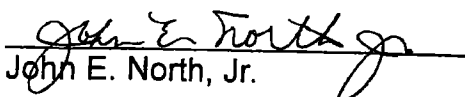
Case No.: 06-CP-07-1126

AFFIDAVIT

JOHN E. NORTH, JR., being of lawful age and first duly sworn upon oath
deposes and states as follows:

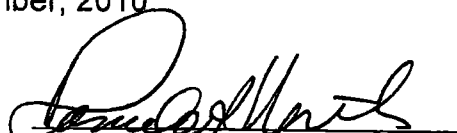
1. That Affiant is one of the attorneys for the Defendant, Douglas A. Lambrecht, and has personal knowledge of the facts stated herein.
2. That attached hereto as Exhibit A is a true and correct copy of an email communication from Plaintiff's counsel to the Court, dated July 16, 2010, together with a true and correct copy of the proposed form of Order Denying Sanctions sent to the Court by Defendants' counsel as an attachment to said email.

Dated this 3rd day of September, 2010.

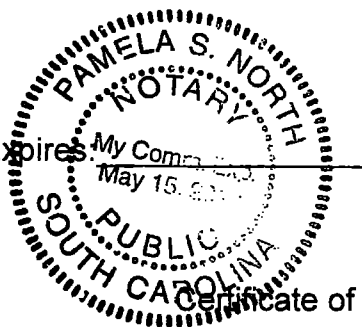

John E. North, Jr.

000592

Sworn to before me this 3rd day of September, 2010

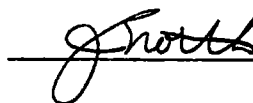

Notary Public

My Commission Expires



Certificate of Service

I hereby certify that on the 1st day of ^{Nov.} ~~September~~, 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.



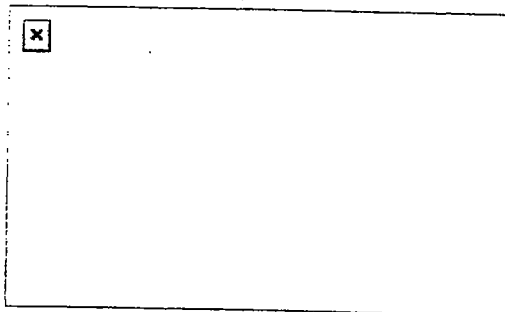
John E. North, Jr.

From: H. Fred Kuhn, Jr. [fred@mossandkuhn.com]
Sent: Friday, July 16, 2010 11:57 AM
To: ryoungj@sccourts.org
Cc: 'Rick Wieters'; 'Frances C. Daniel, Esq.'; John E. North, Jr.; 'Sue Radford'
Subject: Clegg v. Lambrecht Proposed Order
Attachments: H Fred Kuhn Jr .vcf; Order Denying Sanctions.doc; Order Denying Sanctions.wpd

Judge Young:

Attached is the Plaintiff's proposed order denying sanctions in the above referenced matter, in both Word and WordPerfect formats. Thank you for your attention to this matter, and if anything else is needed, please do not hesitate to let me know.

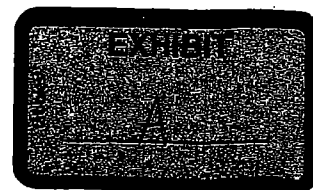
Fred



 Please consider the environment before printing this e-mail

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by a lawyer or law firm employee. It may contain information that is confidential, privileged, proprietary, or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy or disseminate this message, any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your computer system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may be attached to this communication. Thank you for your cooperation.

RS CIRCULAR 230 NOTICE: Internal Revenue Service regulations generally provide that, for the purpose of avoiding federal tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this message, or in any attachment to this message, does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters.



7/2/2010

000594

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 06-CP-07-1125

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

and

Case No.: 06-CP-07-1126

Plaintiff,

v.

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

ORDER DENYING

SANCTIONS

Defendants.

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 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, SCRCP.

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

"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

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

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) SCRPC (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, SCRCP. (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, SCRCP, 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). 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.

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.

Douglas Lambrecht Deposition, Plaintiff's Exhibit 13, pg. 796 (emphasis added). The

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

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 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

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

BLANK

000623

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BEAUFORT 06-CP-07-1125
 06-CP-07-1126

DEBORAH J. CLEGG, as)
personal representative of) TRANSCRIPT OF RECORD
the estate of ALLISON T.)
CLEGG,)

Plaintiff,)
) July 9, 2010

-VS-

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

Defendants.

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

A P P E A R A N C E S:

G. Richardson Wieters, Esquire
Fred Kuhn, Jr., Esquire

John E. North, Jr., Esquire

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 THE COURT: Okay. All right. We are here on
2 a case of Clegg versus Lambrecht, 2006-CP-07-1125 and
3 1126. This is a case that seems to have followed me
4 around for several years now, from the time I was in
5 Beaufort, but let's see if I can summarize where we're at
6 and why I'm here. It was back sometime ago, several
7 years ago, apparently, I granted the defendant's summary
8 judgment against the plaintiff and moved for sanctions
9 for frivolous lawsuit, which I denied. They filed a
10 motion to reconsider; I denied that. That was appealed.

11 The Court of Appeals upheld my opinion and
12 then later changed their minds and withdrew their opinion
13 and said, Oh, you need to go back and state your reasons
14 for your denial in a little bit more detail.

15 So that worked its way through the appellate
16 courts to where that left us back last summer or fall. I
17 get the transcripts and start to work on an order, and
18 after some time of reading, going back, looking at the
19 transcripts, discussing that with my law clerk, we had
20 come to the conclusion that maybe I had needed to issue
21 sanctions in the first place, but I was up in the air
22 about it, and so I had my law clerk at that time call and
23 request proposed orders.

24 And it looks like, according to Ms. Daniel's
25 notes -- she's not here today, she had a funeral to go to

1 out of state -- she contacts, back in the middle of
2 November, it looks like she says Mr. North about a
3 proposed order. I assume you recall there was a question
4 of both sides submitting a proposed order, but at any
5 rate, she says that back in November or December, the
6 first of last, year she got a proposed order from
7 Mr. North, and then Mr. Lambrecht got a copy of that
8 proposed order and requested an opportunity to submit a
9 proposed order, which, of course, was granted which. I
10 thought my communications were to get them from both
11 parties, at any rate.

12 So on December the 2nd, she, thankfully not
13 me, got roughly 10 e-mails arguing back and forth,
14 lawyers arguing back and forth about the case, and I
15 said, again, have both sides submit proposed orders, and
16 she says she sent an e-mail to Mr. North, Mr. Kuhn, and
17 Mr. Wieters saying, Please provide us with a memo
18 outlining these issues that Judge Young may review.
19 Mr. North, we have your previous memorandum, but if you
20 choose to provide another copy, that is fine as well.
21 This order will not be signed until all memoranda are
22 reviewed.

23 December the 2nd Mr. Kuhn responded, Thank
24 you, Francie. I will be in Atlanta Thursday and Friday
25 and will have it to you next week. Thanks for your

1 patience. This would be the week of December 7 through
2 the 11th. Mr. North responds that after Mr. Kuhn
3 submitted his memorandum he may choose to supplement his
4 memorandum. Sometime before the Christmas holidays she
5 called Mr. Kuhn to remind him about the memo. He assured
6 me it would be done before the holiday.

7 So then on the first week in January, I was
8 in the office. It was a chambers week. I'm clearing my
9 desk off. I ask about pending matters. Francie brings
10 me up to speed on the fact that despite Mr. Kuhn's having
11 said we would have it by the middle of December, we still
12 hadn't received it, and since four and a half weeks had
13 passed, I said, well, maybe he doesn't quite see the need
14 to send one.

15 So I filed an order, which was basically
16 Mr. North's proposed order, what, January 8th, and then
17 Mr. Kuhn filed this motion to reconsider January the
18 19th, and it's been taking us, because of Mr. Wieters'
19 health and Mr. North's being out of town, this amount of
20 time to get this for a hearing today.

21 So that's where we're at, is we're here on
22 Mr. Kuhn's motion to reconsider my order of January the
23 8th. So, Mr. Kuhn, it's your motion. You get to go
24 first.

25 MR. KUHN: Yes, Your Honor. Fred Kuhn on

1 behalf of the plaintiff, and also, I guess myself and
2 Mr. Wieters in this situation, and I apologize for not
3 getting the proposed order to the Court. I thought it
4 had gone out before Christmas. When I came back after
5 the Christmas holidays discovering it had not, I put it
6 in final form and sent it out when my proposed order went
7 to you while your executed order was being filed, and I
8 apologize for that. I should have gotten it to you on a
9 timely basis.

10 We do take this matter very seriously.
11 Obviously, it's a serious matter. I've never been in
12 this situation, nor has Mr. Wieters. A frivolous lawsuit
13 is a serious thing. It's not good for the judicial
14 system. It takes up the Court's time, and, likewise,
15 it's not good for the litigants. There is no dispute
16 about that.

17 In this particular case, it's a car wreck
18 case for personal injuries, the wrongful death of a
19 16-year-old girl. We are on a contingency fee basis so
20 there is no financial basis to bring a frivolous lawsuit.
21 Obviously, if we bring a lawsuit that has no reasonable
22 basis of success, we've wasted our time as well as
23 everybody else's.

24 Secondly, we do not know the defendant.
25 There is no personal animosity, no reason to go after

6
1 him This is just a -- from our point of view, this is a
2 car wreck case. It's good public policy to discourage
3 frivolous lawsuits. On the other hand, Your Honor, I
4 respectfully submit it's good public policy to encourage
5 vigorous advocacy and litigation. Our judicial system is
6 founded on the concept that the truth will prevail. If
7 both sides go at each other with competent, vigorous
8 counsel who will pursue their client's interest and
9 within the balance of the law, it's to obtain justice
10 through vindication for their client's rights.

11 In this particular case, we filed the
12 lawsuit. As I said, it's a car wreck case. I'm sure
13 Your Honor remembers some of the facts, but, in essence,
14 my client's decedent, my client was a passenger in the
15 car drive by Elliott Lambrecht, who is son of the
16 original movant for sanctions, Douglas Lambrecht. He ran
17 off the road, struck a tree, and she was killed.

18 When we initially filed the lawsuit, Douglas
19 Lambrecht filed an answer which basically said that his
20 son was such a bad driver that he posed a risk of harm to
21 the public at large and that my client's daughter should
22 have known that she was assuming the risk of being
23 injured just by riding with him as a passenger in the
24 vehicle, and, of course, that raised a red flag to us
25 that this guy was a terrible driver. Even his own father

1 is saying that if he's gets behind the wheel, he is a
2 risk of harm to anybody in the area, and particularly to
3 his passengers.

4 We had information that showed that contrary
5 to what they assert now that the son lived with his
6 father at the time of the wreck. He gave his father's
7 address as his address. His father had given a statement
8 to his own insurance company saying that yes, my son
9 keeps all his things at my house. I consider him to be a
10 member of my household, so we had a basis to proceed on
11 the lawsuit based on this negligence entrustment theory
12 and based upon the family purpose doctrine.

13 We also had information, because we had been
14 taking statements from the mother, who is separated from
15 the father, that the reason that the car was being driven
16 at all is because the father, Douglas Lambrecht, wanted
17 the car brought back to Hilton Head Island because he
18 wanted it, quote, in his safety, so we also had a theory
19 of agency against Douglas Lambrecht that at the time his
20 son was actually performing an errand on his behalf,
21 bringing the car back from Hilton Head to Beaufort so he
22 could have it in his safety.

23 In looking at the history of the records, of
24 course. for negligent entrustment. we need to show that
25 Mr. Douglas Lambrecht either owned or controlled the

1 vehicle, and we saw the vehicle was titled in the son's
2 name, but the inquiry, of course, doesn't stop there.
3 It's ownership or control, and even under the ownership
4 theory, titled ownership is not the end of the inquiry.
5 You can be a de facto owner in South Carolina, even
6 though title is not held in your name, so he looked to
7 see, and we have investigated, are there -- is there
8 evidence tending to show that he owned or controlled this
9 vehicle? And through the course of discovery, as well as
10 the statements we had gotten from the mother and daughter
11 beforehand, we have learned that this vehicle as
12 initially brought was titled in the son's name. where it
13 appeared it was son for convenience only. The father had
14 obtained the loan, co-signed the loan, put in his son's
15 name, and he stated the purpose was to establish credit
16 for his son, not necessarily because this was his son's
17 car and he was just helping his son buy a car, and the
18 car had been in a wreck before the fatal wreck.

19 And at the time of the wreck, the insurance
20 company paid the proceeds to the father, Douglas
21 Lambrecht, and we further found out Douglas Lambrecht was
22 the one who insured the vehicle, and, of course, we
23 wondered how can he insure a vehicle that supposedly is
24 on his insurance policy that supposedly belongs to
25 someone else who is not even a member of his household:

1 That is when we backed into the fact that he
2 was representing to USAA, his insurance company, that his
3 son was a member of his household and that he, Douglas
4 Lambrecht, was actually the owner of the car and that is
5 how he got insurance on the car.

6 When the car was in this earlier wreck,
7 USAA had dealt with the father, sent the check to the
8 father for the damages. The father used the proceeds to
9 fix the car, and the salvage -- the car was totalled.
10 The father signed the salvage affidavit as the owner of
11 the vehicle. This is all several months prior to the
12 fatal wreck. From that time forward, we learned that the
13 father kept the vehicle at his house, and he kept the
14 keys to the vehicle. All those are factors that would
15 tend to show de facto ownership of the vehicle, even
16 though title was held in someone else's name.

17 We also learned that if anybody wanted to use
18 the vehicle, they went to Douglas Lambrecht for
19 permission. The daughter got the car shortly before the
20 fatal wreck by going to him for permission, because he
21 had the car. He had the keys.

22 It was our feeling that the father set the
23 chain of events in motion that led up to the fatal wreck
24 when the daughter came and asked for the keys and he gave
25 them to her, knowing at the time the vehicle was not

1 insured, not registered, no license plate, and that is
2 what set the whole chain of events in motion.

3 The daughter went to borrow the car. She
4 lived in Beaufort, he lived in Hilton Head. He gave her
5 the keys, drove the car to Beaufort, used it. The mother
6 then said the father wanted the vehicle back in his
7 safekeeping because the daughter was done with it. He
8 wanted it brought back from Beaufort to Hilton Head, and
9 the next thing we see is the son is bringing the car back
10 from Beaufort to Hilton Head, so it appears as if the son
11 is performing this errand on his father's behalf,
12 retrieving what is really his father's vehicle to bring
13 it back to Hilton Head where his father lives and that
14 gets us into the agency theory. The son was performing
15 an errand on behalf of his father in order to get the car
16 back in father's safekeeping to comply with the father's
17 safe wishes.

18 In his statement to USAA, Mr. Lambrecht was
19 adamant this was a household car. The son was a member
20 of his household, and that gets us under the family
21 purpose doctrine. So if we looked at the theories of
22 combining current negligence, where admittedly the son
23 was at fault, going off the road and striking the tree,
24 and we went through a jury trial and subsequently got a
25 verdict against the son for his negligence, which

1 unfortunately is pretty inflexible because the son, no
2 insurance.

3 But, admittedly, his son was negligent, but
4 that doesn't mean that the father cannot also be
5 negligent. so we felt it was negligent to turn the key
6 over to the daughter, knowing that probably the son was
7 going to bring the car back because the father wanted it
8 brought back to Beaufort, and he asked his son to do it.
9 He wanted it brought back to Beaufort. We knew the son
10 was bringing it back to Beaufort.

11 The precise manner in which the wreck
12 occurred, whether he ran off the road or ran a red light,
13 under negligence law, of course, we got issues of what is
14 reasonably foreseeable, and we get into what is proximate
15 cause, how far down the chain of events can you go before
16 its too remote? Those are all, I would submit, jury
17 questions, what is reasonable. In this particular case
18 we get beyond the summary judgment standard of -- I think
19 it's even a higher standard that in this case the
20 defendant has to show, it's just so out there that it's
21 just -- anybody looking at this would conclude that there
22 is no way that you could possibly recover.

23 And this case, where the father keeps the
24 vehicle at his house, keeps the keys, signs numerous
25 documents representing he's the owner of the car, the son

1 tells the policeman at the scene that he lives with his
2 father, the father tells his own insurance agency that
3 the son keeps his things at his house, he's a member of
4 this household, father tells his own insurance agency
5 that yes, this is a household car, I use it, my other
6 children use it, I consider it to be a household car,
7 family purpose doctrine. I wanted the car bought to my
8 house for safekeeping. Mother confirms that yes, he
9 wanted the car brought back to Hilton Head. Son is
10 bringing the car back to Hilton Head, all those factors
11 together show that we had at least a case that was not a
12 frivolous case.

13 It's my belief that we had a good case, and
14 if we could have gotten all this into evidence in front
15 of the jury, no disrespect to Your Honor granting summary
16 judgment motion, Mr. Lambrecht admitted later on
17 disavowed all his statements that he had made to the
18 insurance agents and admitted, basically, that he lied
19 or, as he put it, he colored the truth because it was to
20 his advantage to do so because he thought that would help
21 him get insurance coverage.

22 He did not have insurance coverage. I know
23 that in the order, a big issue is made about the separate
24 case he brought against USAA, the declaratory judgment
25 action to determine if he had coverage under the

1 USAA policy that he had with USAA on other vehicles that
2 USAA determined or the Supreme Court determined there was
3 no coverage. Well, that decision came out after the
4 fact, after summary judgment was granted and the appeal
5 was over with.

6 And, likewise, Your Honor, under the
7 negligent entrustment theory, I see there is an issue
8 made about negligent entrustment. Not only do you have
9 to show ownership or control, which I believe we have in
10 this case, you have to show that the person is basically
11 a bad driver.

12 At that time, the leading case in South
13 Carolina was a court of appeals decision that said in
14 addition to the traditional theories of negligent
15 entrustment of drinking and use of intoxicants that any
16 other reason would also apply, that case was later
17 overturned by the South Carolina Supreme Court, but,
18 again, that overturning came after all the operative
19 facts in this case, a summary judgment was granted, and
20 the appeal was over with. So the law at that time was
21 that if we can show any reason for negligent entrustment,
22 that would -- that was a controlling appellate decision,
23 and, of course, in this case we had his own admission
24 that his son was such a bad driver that he posed a risk
25 of harm to the public at large and to his passengers.

1 All this is set forth in more detail with
2 references to the specific areas in the record, the
3 depositions and so forth. I'll be happy to go into
4 details on that, but that is the summary of our position.
5 We had evidence that tended to indicate combining the
6 current negligence, negligent entrustment family purpose
7 doctrine and agency, and we pursued those in good faith
8 and with a reasonable basis for pursuing those.

9 THE COURT: All right. Mr. North, do you
10 want to be heard?

11 MR. NORTH: Yes, Your Honor. First of all,
12 the only thing I would add with regard to the Court's
13 recitation of the record and how we got here is that when
14 Francie called me, she indicated that you had decided
15 that you would be granting the motion for sanctions and
16 requested that I send her a proposed order.

17 I sent that order to the Court with a copy to
18 both counsel, so any argument or statement in the
19 memorandum filed yesterday, or maybe not even filed yet,
20 but e-mailed yesterday suggesting there was some sort of
21 ex parte communication with the Court, we would object.
22 We certainly want the record clarified with regard to
23 that.

24 There is some procedural matters that give me
25 cause for concern. First of all, when Mr. Kuhn gets up

1 and says there is no financial motive in a contingency
2 fee case and there is no personal animosity with the
3 defendant, those are factual assertions of counsel. They
4 are unsworn statements of counsel that are not evidence,
5 cannot be considered as evidence. The period for
6 responding to the motion for sanctions was a 30-day
7 period, established by statute, that expired three years
8 ago. So we would ask for a continuing objection with
9 regard to all of the submittals of the defendants in
10 connection with this motion that the Court cannot
11 consider new evidence. This Court is on remand to
12 consider the record, and that is the record that was made
13 three years --

14 THE COURT: I consider that statement more
15 argument than it is a fact.

16 MR. NORTH: I understand, but to the extent
17 that somebody could assume that those statements are
18 going to be considered as evidence, or the fact that
19 Mr. Kuhn is making them, I just, for the record, want an
20 objection to be noted that there is no ability of the
21 plaintiff in the context of their memorandums or their
22 other submittals for the Court to be injecting new
23 evidence into the record that this Court is to be
24 considering now on remand.

25 Now, part of the difficulty that I find in

1 responding to the plaintiffs is that I have this
2 perception that they have this huge basket of facts and
3 all of them are without citation of the order. All of
4 them we disagree with. We have submitted a response, a
5 memorandum in opposition to their Rule 59 motion that
6 sets forth and corrects all of what we consider to be the
7 factual inaccuracies that they are asserting.

8 For instance, when they say that the
9 USAA statement was disavowed, that's true. That USAA
10 statement was unsworn. Nobody at any point in this case
11 ever went to a USAA representative and had any testimony
12 in depositions, any sworn statement, anything that would
13 make any statement or any of the records of
14 USAA competent evidence, and we have objected from day
15 one to the Court in the summary judgment context or any
16 other context considering any of that information, and
17 the information that they are relying on is absolutely
18 contradicted by every single witness in this entire case.

19 Now, they argue that Elliott was a terrible
20 driver, that he lived at his father's address, that he
21 was considered a member of the household, and that there
22 is liability under the family purpose doctrine and under
23 some agency theory. In the second amended complaint that
24 was the last complaint filed and which superceded all the
25 other complaints, there is no agency alleged. There is

1 no family purpose doctrine alleged. Those issues were
2 not before the Court when this Court granted summary
3 judgment. Those issues weren't before the Court of
4 Appeals when it reviewed all of this factual mess and
5 remanded the case with directions to do a proper
6 evaluation under the statute and under Rule 11.

7 They make these factual assertions that
8 Mr. Lambrecht is the de facto owner and that the title
9 was for convenient only. Those types of assertions have
10 no citation in the record. They are completely
11 inconsistent with the assertions and the actual sworn
12 testimony of all of the witnesses in the case, and I
13 think that rather than get bogged down in what to me is
14 just this morass of confusing, disjointed, and, frankly,
15 irrelevant and misstated facts, the proper analysis is to
16 back up and look at the complaint.

17 That complaint -- and the issue is whether or
18 not the claims set forth in that complaint are frivolous.
19 That complaint alleged that the father, the mother, and
20 the 16-year-old sister of Elliott Lambrecht jointly
21 controlled the use of the car titled to the adult son
22 Elliott. Anybody would know that that, on its face, does
23 not state the cause of action. It alleges that these
24 three individuals, the father, the mother, and the
25 16 year old daughter, were negligent in allowing or

1 making possible the use of the car by the adult owner of
2 that car.

3 On its face, ludicrous. It alleges that the
4 father, the mother, and the little sister should have
5 known that due to previous traffic violations the son
6 posed an unreasonable risk of harm to the public. If
7 that were a cause of action, the State of South Carolina
8 would be liable every time it continued to allow bad
9 drivers to drive on the highways. It makes no sense.
10 There is no duty of these people to stop or control or
11 somehow prevent an adult from acting.

12 They allege that they failed to supervise the
13 adult son, to prevent him from driving, and they failed
14 to prevent him from obtaining the keys to his own car
15 that was titled to him. Those are the allegations in the
16 second amended complaint, and when this Court -- this
17 Court, you may not remember because it's been so long,
18 but three years ago or more this Court was faced with a
19 motion for summary judgment, and we had to go through all
20 of these disjointed facts, and we had all the citations
21 in the record and we had briefs and we showed that all
22 these factual assertions that they're trying to hang
23 their hat on have been false from day one.

24 This Court, after doing the hard work of
25 going through all of that, granted summary judgment, made

1 a find that there was no factual or legal basis for theses
2 claims to be pursued. This Court dismissed those claims.
3 That dismissal was appealed. The appeal is over. The
4 judgment is affirmed. Your judgment is affirmed, and
5 that is the law of the case. There is no factual or
6 legal basis for these claims to have been pursued. This
7 same morass of confusing facts was then presented to the
8 Court of Appeals in the context of our appeal of the
9 denial of sanctions, and the Court of Appeals, after
10 flushing through all of it, set aside your denial of
11 sanctions and sent it back for a proper evaluation under
12 the statute that would give mandatory sanctions for the
13 fight over frivolous claim.

14 The Supreme Court happened to also be looking
15 at the same allegations of the complaints filed in this
16 action, the original complaint and the two amended
17 complaints, and the Supreme Court made a ruling that
18 there was -- it was -- let me use the exact wording: Not
19 possible for there to be any liability based upon the
20 allegations that these people filed of record have
21 pursued tenaciously, that they filed eight years ago and
22 pursued tenaciously ever since. So the issue before the
23 Court is whether or not those claims that I just
24 described are frivolous.

25 No employer, frankly, no first year law

1 student, having completed a torts course, would say that
2 those claims were not frivolous, and I think that the
3 Court's order in this case was perfectly appropriate,
4 perfectly correct, and perfectly evaluated the evidence
5 under the appropriate standard, and it doesn't matter if
6 the lawyers had good faith or bad faith. Good faith is
7 no longer the standard. It's an objective standard, were
8 these claims frivolous and these claims clearly were, and
9 it's already been reviewed by three different Courts that
10 have done things that make it pretty clear to me that
11 this case, even under the review of your court, the Court
12 of Appeals and the Supreme Court, these allegations have
13 no merit and have had no merit since day one.

14 There are a few issues that were raised by
15 the motion that I think are important. The first one is
16 the scope of your remand. What should we be doing here?
17 The plaintiff argues that the Court was only supposed to
18 provide its rationale for denying sanction. That
19 argument assumes that order denying the sanctions is
20 still effective and that the Court of Appeals needs now
21 to know the rationale for your prior order denying
22 sanction.

23 That order has been vacated. It makes no
24 sense to say that the Court of Appeals needs to know now
25 your rationale for an order that they have completely

1 vacated. What the Court of Appeals did is to direct this
2 Court, quote, the trial Court shall conduct a separate
3 evaluation under Rule 11 and under FC PSA and make
4 findings and conclusions as to each sanction mechanism
5 asserted. The Court of Appeals directed a new
6 evaluation, not simply a recitation of the rationale of a
7 vacated order.

8 The Court of Appeals also directed the trial
9 Court make, quote, an intensive factual consideration of
10 the record, end quote. That does not mean reopening the
11 record or taking additional evidence after the expiration
12 of the statutory 30-day period that these plaintiffs had
13 three years ago for responding to the motion for
14 sanctions.

15 The other issue that I think is important is
16 was the plaintiff precluded from presenting evidence?
17 They make a big deal of that in all of their answers.
18 The opportunity and the time frame for presenting
19 evidence in opposition to this motion for sanctions is
20 set by statute. It's not set by the Court. It's not
21 discretionary. It's a statutory time frame that gives
22 them 30 days to respond. They had their 30 days over
23 three years ago, and they did absolutely nothing.

24 They didn't bring in any evidence to try and
25 explain their rationale for pursuing claims that on their

1 face had merit. They made no response at all. They
2 claim that they asked to adduce evidence and that this
3 Court said it wasn't necessary. Frankly, that misstates
4 the record.

5 The Court did not make any such ruling, and
6 the dialogue that they're talking about occurred at our
7 hearing on our Rule 59(e) motion, and that is not an
8 evidentiary proceeding. It's not the time or place to
9 adduce evidence, and the evidence that they suggested
10 could be available was the testimony of an expert as to
11 what a reasonable attorney would subjectively believe.

12 Subjective views under the new statute are
13 completely irrelevant. It's an objective standard at
14 this stage, and so my point is they were never precluded
15 from adducing evidence. They have that opportunity.
16 They had that for the period of 30 days, and they did
17 nothing.

18 The directive of the Court of Appeals for
19 this Court is to now review the record. That record
20 included no evidence offered by the plaintiff during that
21 30-day period, and then the third major general topic is
22 was there a factual basis to assert these claims? And
23 they argue in their materials extensively that they had a
24 good faith basis to believe in the claims. Good faith is
25 not relevant. The empty head pure heart theory has been

1 thrown out. It doesn't matter if they had an empty head
2 and a good heart. If the claims were frivolous, the
3 statute has mandatory sanctions, and they argue the facts
4 by, in our view, misrepresenting the evidence.

5 In our memorandum in opposition to their Rule
6 59 motion, we set forth the quotations and the citations
7 to the record that establish that all of these things
8 that Mr. Kuhn just spoke of and all the things in their
9 submittals do not accurately represent any of the actual
10 testimony that was adduced. It may represent things that
11 they wish were the facts, but it doesn't represent the
12 facts.

13 The issue of whether the allegations and the
14 substance of their claims as set forth in their
15 complaints, as I said before, has already been evaluated
16 by the Supreme Court, and when they, the Court, ruled,
17 and here is my quote, that these claims do not make the
18 defendant, quote, potentially liable, end of quote, and
19 on that basis, even his insurance company didn't have to
20 defend these claims.

21 They have already ruled that none of these
22 complaints state a viable cause of action and the reason
23 is clear: A parent is not responsible for the acts of an
24 adult child.

25 The plaintiff also argues that there might be

1 facts that can support some claim under the family
2 purpose doctrine or an agency theory. Again, neither
3 were pled in this case. Neither were supported by the
4 record. Neither had anything to do with the summary
5 judgment that you granted in this case, and none of their
6 assertions address or negate the fact that the mother,
7 the father, and the little sister of an adult have no
8 legal duty to control the conduct of the adult. Had they
9 done any research before filing these claims, or pursuing
10 these claims, they would have known from day one that
11 there is no legal duty to control the conduct of an adult
12 and that control of a vehicle means a legal right of
13 control, not merely the ability to assert influence.

14 And that is a key flaw in their whole theory
15 of this thing, and what makes sanctions especially
16 appropriate in this case is that this case was originally
17 filed in 2002. By June of 2004, we had, on file, an
18 extensive summary judgment brief that spelled out all of
19 the citations, all of the deposition testimony. We
20 spelled out all of the law applicable to this thing. We
21 had all of that on the table, yet they continued to
22 pursue it. The case was then dismissed under 40(j), and
23 in 2006, they reinstated that case after all the
24 discovery had been completed, after they had had our
25 memorandum spelling out the applicable law for over two

1 years. They then reinstate the case and continue to
2 pursue it.

3 In a situation -- that's the type of
4 situation that absolutely mandates sanctions. My client
5 has been a defendant in a case for eight years. He has
6 incurred all kinds of damages because these people
7 elected to pursue claims that had absolutely no merit.
8 It is blatantly unfair for the victim of that decision to
9 have to pay the expense of defending these claims, and
10 our legislature, I believe, became tired of the good
11 faith, empty head, pure heart argument that had to do
12 with sanctions. Rule 11 was around for a long time, but
13 the legislature changed the rules, and now the case is
14 frivolous. Sanctions are mandatory, and that is a
15 perfectly fair result, and I can't imagine anything in
16 this case being more fair and equitable than to give this
17 victim a reimbursement of his expenses and damages
18 because of this bad conduct.

19 Thank you.

20 THE COURT: Let me ask a question: What
21 distinguishes a frivolous claim from any other claim
22 where the Court grants a summary judgment?

23 MR. NORTH: When a Court grants a summary
24 judgment, the Court is finding that there is no factual
25 or legal basis for the claim. Then I think the issue --

1 THE COURT: That is basically what you just
2 said.

3 MR. NORTH: Exactly.

4 THE COURT: So how come every time we grant a
5 summary judgment we don't also impose sanctions?

6 MR. NORTH: I think that when a Court finds
7 that there is no factual or legal basis for the claim, I
8 think that the next step -- first of all, you have to
9 assume the plaintiff asked for it within ten days, which
10 we did, and many times the plaintiffs don't ask for it,
11 and that just falls by the wayside.

12 But under the new statute, once the Court
13 finds there is no factual or legal basis for the claim
14 and grants a summary judgment, then the plaintiff has a
15 right to come in and say, I have been sued without any
16 factual or legal basis. There is a factual issue as to
17 at what point in time should the plaintiff as counsel
18 have determined that the claim was up without merit?

19 There are many situations where cases are
20 filed and you go to the depositions and the witnesses
21 don't testify the way you thought they would and there
22 are many things that could happen, but even in that
23 situation, once those witnesses have testified, it is a
24 violation of the statute to continue to pursue litigation
25 that a reasonable attorney would know is frivolous, that

1 has no factual or legal basis.

2 The beauty of our pending motion for
3 sanctions is that it's not a close case. This is a case
4 where you can look at these allegations and a first year
5 law student would say, This doesn't state a cause of
6 action. Our Supreme Court looks at it. This doesn't
7 state a cause of action. There is no possible liability
8 under the facts that they have alleged and continue to
9 doggedly pursue for all of these years, and then when we
10 ask for our motion for sanctions and they have 30 days to
11 provide some explanation, some excuse, some rationale,
12 the evidence is zero and that 30 day window is statutory.
13 It can't be reopened, and so they have made your decision
14 in this case very, very easy, and the order that you have
15 entered exactly does what the Court of Appeals asked you
16 to do: Make an evaluation of the record, a factual,
17 intensive evaluation of the record, determine whether or
18 not sanctions are appropriate, and your order spells it
19 out in a very crystal clear manner: It's perfectly
20 appropriate, and there is not one ground that I have seen
21 raised in their 59(e) motion that can even begin to touch
22 the wisdom, the accuracy, and the appropriateness of your
23 order.

24 THE COURT: Let me ask you, most of the time
25 factual disputes develop along the way. You have

1 discovery, and you don't know how the facts are going to
2 pan out until you finished the lawsuit, or you get to the
3 summary judgment stage and they don't all come out to
4 your advantage.

5 You know, as a judge, I'm sitting here
6 struggling, going, Okay. On the one hand, from the
7 plaintiff's side, you run the risk of every time you file
8 a lawsuit, if you do it without knowing how all of the
9 facts are going to play out down the road, which is an
10 impossible standard to meet, you run the risk of having
11 sanctions filed against you if you don't win your
12 lawsuit.

13 MR. NORTH: Our Supreme Court has already
14 answered that issue. They said before you file a
15 lawsuit, you have a duty to investigate the facts. You
16 have a duty to research the law. You have a duty to know
17 that you have a factual and legal basis. I agree that in
18 many lawsuits those facts can change.

19 If a lawyer has investigated the facts and a
20 witness changes his testimony or some unforeseeable set
21 of facts --

22 THE COURT: You don't get to take what the
23 testimony is offered before you file a lawsuit.

24 MR. NORTH: But you have some factual basis
25 to file the claim. You cannot file it without having a

1 factual and legal basis to file the claim, and, again,
2 this case it's very simple: They go out and file an
3 action alleging that Douglas Lambrecht is the owner of
4 the car. We forward them the title. They had the duty
5 to know that ahead of time. It's easily discoverable.
6 You could look at the police report from the very
7 accident they sued over and see who the owner of the car
8 was. They didn't do the most rudimentary or factual
9 legal examination, and then when they are presented with
10 the real facts, then it morphs into some de facto owner.

11 Our Supreme Court has made it clear that
12 title -- this is a title state. Ownership is determined
13 by the title. There is one case that has a weird anomaly
14 where a person was allowed to recover insurance proceeds
15 as a de facto owner but that was a very limited situation
16 involving only insurance. There is no suggestion
17 anywhere that there is some theory in this state that a
18 car can have a de facto owner. It's a title state and
19 that it made perfectly clear.

20 And none of the witnesses had testimony that
21 supported their hoped for theory of facts. You know,
22 Elliott Lambrecht paid for this car. The insurance that
23 they talk about was something that happened six months
24 before this accident. In the six months prior to this
25 accident, there was no insurance through Doug Lambrecht.

1 They made these factual assertions that Doug Lambrecht
2 filed paperwork with the insurance company that he was
3 owner of the car.

4 We are pointing out since 2003 that is bald
5 faced misrepresentation. We have attached to our
6 pleading the paperwork they're talking about. The very
7 top line, owner of vehicle, Elliott Lambrecht, yet they
8 continue to make these groundless assertions over and
9 over and over, in spite of the very clear evidence.

10 You know, again, this has got to be the
11 easiest case on a sanctions issue that I will ever see in
12 my entire life. I mean, they have made it so easy on a
13 sanctions issue that it's impossible for the Court of
14 Appeals to ignore it. The Supreme Court has already
15 expressed their opinion about the viability of the
16 claims, and I think it's a mistake to get caught up in
17 all of their distortions of the record.

18 Again, you look at the -- what did they
19 allege? What were those components that were the gist of
20 what they pursued since 2002, that the father, the
21 mother, and the 16-year-old daughter jointly controlled a
22 car titled to the adult son? They sued an entire family
23 because their hate and their resentment toward Elliott
24 Lambrecht wasn't enough. They had to nail every single
25 person that had any contact with them. They sued his

1 best friend. They sued everybody with all these
2 groundless claims, and all those claims are now
3 dismissed.

4 The only thing that isn't resolved is the
5 fact that my client was the victim of their wrongful
6 conduct, and that is the only thing left for this Court
7 to resolve.

8

9 THE COURT: All right.

10 MR. WIETERS: Your Honor, may I be heard?

11 THE COURT: You may.

12 MR. WIETERS: May it please the Court, if I
13 can clarify a few things that I think we need to address,
14 first of all, when Your Honor heard the motion for
15 reconsideration of the sanctions order, that was the
16 first hearing. They were initially denied without any
17 hearing. The reason that there was no evidence was
18 because all of the statements that had been taken in the
19 depositions had already been filed with the Clerk of
20 Court in Beaufort County.

21 The record is clear that we had offered to
22 testify and to date have not yet testified. We have
23 Mr. North now for the last 15 minutes telling this Court
24 what Mr. Kuhn and I did or did not do, and to date, this
25 Court has never heard from either one of us.

1 In point of fact, the accident report does
2 not give the title owner to a car. That's not on a
3 report. It gives the registration, but the problem here
4 was they couldn't determine the registration because
5 there was no license plate. I was told, and I'm prepared
6 to take that stand, under oath, by Elliott's criminal
7 defense attorney the car was owned by Douglas Lambrecht.
8 The bank's paperwork says that he was supposed to be on
9 the title.

10 When we find out that Douglas Lambrecht did
11 not have title to the car, I had already by that time had
12 extensive conversations with both Steve Carr of the
13 McNair Law Firm, who represented Anna Lambrecht, and
14 Terry Finger, of Finger & Frasier who represented Jan
15 Horan, the mother. So I had a pretty good feeling from
16 where this was going, as did Mr. King, and the one thing
17 that is clear from the citations in this memorandum about
18 what was said and who did what and how the wheels got put
19 in motion all relate to one person, and that is Douglas
20 Lambrecht. He gave the keys to his daughter.

21 That is a violation of the common law and the
22 statutory law of this state, period. We've got a statute
23 that has absolutely no case law interpreting it. We'll
24 get to the common law in a minute.

25 Douglas Lambrecht took the keys of a vehicle

1 that he controlled because nobody told this insurance
2 company. I told him to park it. He wasn't going to get
3 past me. He wasn't going to drive that car because
4 Douglas Lambrecht knew that the car had no insurance.
5 The only policy it had ever been on was his policy with
6 USAA. They totaled it off, wrote it off, he cashed the
7 check. That was the end of it.

8 Car was parked at his house. He had a key.
9 On this particular day, he did not want to take his
10 daughter back to his ex-wife's house where she lived from
11 ballet lessons. He cooked up the idea of letting her
12 drive the Mazda in which Allison Clegg was killed.

13 She said to me under a sworn statement that
14 her father gave her the keys. That act alone is
15 negligence per se. Mr. Kuhn and I have been practicing
16 law together in Beaufort for 60 some odd years. We have
17 a fair number of cases on appeal. You can do a Lexis or
18 Westlaw search. We're not strangers to the courtroom.
19 We don't file frivolous lawsuit.

20 I would have no more sued Douglas Lambrecht
21 unless I thought I had a good faith basis and a factual
22 basis and a legal basis than the man in the moon. I
23 don't go around doing that, nor does Fred Kuhn.

24 I have a factual record that tells me that
25 this man gave the key to a car that had no insurance, no

1 registration no, license plate to his minor daughter and
2 turned it loose. and that started this thing in motion.
3 He told her mother, Yeah, she can drive it. She'll be
4 insured on her policy.

5 The law of combined and concurrent negligence
6 says if I commit a negligent act and it flows together
7 and combines and concurs with the acts or omissions of
8 another person that causes the harm, I'm liable. If I
9 push the car down the hill, I set the brake loose and you
10 push it faster, we're both on board for where the car
11 ends up.

12 No person shall authorize or knowingly permit
13 a motor vehicle owned by him or under his control to be
14 driven, and that is exactly what Doug Lambrecht did.
15 When Mrs. Horan, the ex-wife of Mr. Lambrecht, wanted the
16 car out of her driveway she called one person: She
17 called him repeatedly. She called Doug Lambrecht, and
18 the statements and depositions that gave rise to the
19 amended complaint, particularly the statements of Jan
20 Horan, Anna Lambrecht, and the statement from USAA were
21 on file when Your Honor heard this motion.

22 So for Mr. North to tell you we didn't file
23 any response is absolutely misleading. We were right
24 there, ready to testify, ready to testify today. You're
25 imposing sanctions on us after twice denying them, being

1 affirmed by the Court of Appeals, and for the life of me,
2 Your Honor, with all due respect, I can't understand it
3 as a lawyer. The principles of combined concurrent
4 negligence are applicable to this case, and, by the way,
5 from Mr. North's edification, I aced torts under
6 Professor McCullough. I have a pretty good understanding
7 of law of negligence. I handled death cases on both
8 sides of the aisle, as has Mr. Kuhn

9 And when these people got hold of that car,
10 we had the keys, and every single one of them knew that
11 Elliott Lambrecht should not be driving, and he still
12 kept getting the keys and the daughter got the keys and
13 he went and got the car, and Allison is dead. And if
14 Doug Lambrecht had followed the law and said, No, my
15 daughter can't have that car, none of this would be a
16 problem.

17 But he gave her the keys. He tells his
18 insurance company, and that is largely the basis of the
19 amended complaint, were his own words, they don't have to
20 be sworn when I'm investigating a case or Mr. Kuhn's
21 investigating it. We had this thing with the insurance
22 company. It is a crime to make a false statement to the
23 insurance company in this state. He tells the insurance
24 company, I had him park the car. He wasn't going to get
25 past me.

1 Why? Because he knew his son had no license.
2 His driving record is atrocious, mostly for speeding.
3 That was his first suspension, one that he was under
4 suspension for was possession of a controlled substance
5 the second time. Nobody should have been driving the
6 car. All you had to do was look at it. The pictures we
7 got from the medic report, of the license plate on it,
8 when I talked to the state trooper, no license plate was
9 on the car. It shouldn't have been on any road at any
10 time. And once Doug Lambrecht let that car out of his
11 control, because there is no doubt he had it, it was at
12 his house, he told his son, park it, that's when things
13 got bad.

14 And I would no more change what I did today,
15 and I think Fred Kuhn would join me. I wouldn't change a
16 thing. I still believe that Mr. Lambrecht and the other
17 actors in this case join together and violate the law of
18 this state. With all due respect, Your Honor, if we say
19 that this is okay, then we're really stretching it,
20 because the common law doesn't require, doesn't require
21 ownership. It requires control.

22 If you and I were in a car, and you got
23 drunk, and you handed me your keys and you said, Rick,
24 I'm too drunk to drive, don't let me drive, and then
25 later on you change your mind, and you say, No, I've

1 decided I'm going to drive, and I give you your keys, you
2 think I'm liable? Because the statute doesn't want me to
3 let someone who shouldn't be driving drive.

4 And that is exactly what's happened here. I
5 mean, we did not investigate. Our research file on this
6 would fill a bankers box. I'm very comfortable, as is
7 Mr. Kuhn, that all of these actors combined and concurred
8 to produce this harm because every one of them at every
9 stage along here had the ability to stop the car from
10 being on the roads and highways of this state.

11 They had the key, and they knew he had no
12 license and it didn't have a license plate and it didn't
13 have insurance. And that is exactly what he told USAA.
14 If you look at Jan Horan's statement, if you look at Anna
15 Lambrecht's testimony, she called it her dad's car. He
16 was the one that was called to get the car out of
17 Beaufort. They didn't call Ghost Busters. They called
18 Doug Lambrecht, and she had to call him repeatedly, and
19 all of this was on file in the clerk's office, so when
20 Mr. North says we didn't do anything, yeah, we did some
21 things. We took sworn statements. We talked to the
22 state trooper. We looked at the photograph. We looked
23 at the car. We got information from the USAA insurance
24 company. We got the statement from Doug Lambrecht where
25 he acknowledges having control of the car, and that

1 statute is pretty clear to me.

2 There is not one case law under it. The
3 common law of negligent entrustment is crystal clear, and
4 the law of combining the current negligence says once I
5 commit a negligent act, if it flows together with yours,
6 I'm liable. I don't get to step away from what I've done
7 wrong, and Doug Lambrecht started the thing in motion
8 when he put the key in the hand of his daughter and
9 started this thing in motion.

10 And what he should have done was said, no,
11 you can't have the car. It has no insurance and it has
12 no license plate, and you shouldn't drive it. But he
13 didn't do it.

14 THE COURT: Who is Anna Lambrecht?

15 MR. WIETERS: She is the 16-year-old
16 daughter.

17 THE COURT: What is your theory on suing her?

18 MR. WIETERS: She had the keys in her hand,
19 put them in her brother's hand, acknowledging that she
20 knew he did not have a license and shouldn't be driving.

21 THE COURT: So your theory was a 16-year-old
22 girl is responsible then?

23 MR. WIETERS: Not only that, she was the one
24 that was driving the car. She had a driver's license.
25 She was the one that was operating the car for a week

1 without a license plate, as near as we can determine,
2 because we've got no indications to the contrary that the
3 car managed to be driven for a week without a license
4 plate around Beaufort because her car was in the shop.

5 THE COURT: All right.

6 MR. WIETERS: It was Doug Lambrecht that told
7 Jan Horan, the mother -- the ex-wife, the mother of
8 Elliott, Don't worry, this car is going to be on your
9 insurance policy. It's okay for our daughter to drive
10 it. He was wrong. And there is no question that he had
11 control when they let control go to his daughter, and I
12 don't know but the inference is there that the phone call
13 resulted in someone going to get the car, and that
14 someone happened to be Elliott and one of his buddies.

15 In the USAA case was a DJ action brought by
16 the insurance company to say we don't have any coverage
17 on this car because it's not on the policy anymore. The
18 footnote in that case talks about negligent entrustment.
19 I don't know what the record was in that case, but I
20 don't think that it had all of the information that we
21 had because that wasn't the issue before the Court. That
22 was a coverage issue, a contract dispute, and I am
23 crystal clear about that statute.

24 And the law of combining concurrent
25 negligence, Your Honor, is very easy to read. If two

1 people independently commit negligent acts and they flow
2 together to cause a harm, they're all liable. I can't
3 think of a better case for the application of that rule
4 than the actors in this case and specifically Douglas
5 Lambrecht.

6 Thank you, Your Honor.

7 MR. NORTH: Your Honor, may I respond
8 briefly?

9 THE COURT: Sure.

10 MR. NORTH: First of all, again, we have
11 Mr. Wieters in effect making factual assertions that are
12 nowhere in the record, and I would ask that the Court not
13 consider the unsworn statements of counsel three years
14 after the 30-day period to be somehow evidence to be
15 considered in the context of this motion.

16 Some of Mr. Wieters comments really do shed
17 light on why sanctions are appropriate. They seem to
18 think that when Anna puts the keys of this car into
19 Elliott's hand, which, frankly was disputed, Elliott went
20 to his mother's house and picked up the keys, nobody knew
21 he was coming, he just showed up. It was his car. He
22 got the keys, but even if Anna had put the keys in his
23 hand, if Anna had refused to put the keys in Elliott's
24 hand, she would, in my view, be liable for convergence.
25 She would be refusing to give the keys to the car owned

1 by Elliott to Elliott when Elliott demands them, and from
2 a causation standpoint, they take the position that
3 Douglas Lambrecht, the father, set this all in motion
4 when he gave the keys to this car to his daughter three
5 weeks before the accident.

6 They readily admit that Douglas Lambrecht
7 said to the son, You're not getting near that car. Your
8 license is suspended. You're not driving it.

9 That's not control. That's the assertion of
10 influence, but be that as it may, that would be what I
11 would think is a perfectly appropriate thing for a father
12 to do. On the other hand, they're saying that giving the
13 keys to the daughter so that she could drive 30 miles to
14 her home in Beaufort and use the car while her car was
15 being fixed, that somehow that sets in stage a sequence
16 of events where the father, who didn't give the keys to
17 the son, gave the keys to the daughter, didn't know the
18 son was even going to go retrieve the car, even though he
19 had told them he shouldn't do that, that somehow the
20 father set a chain reaction that then resulted in
21 liability for the bad driving of Elliott Lambrecht. None
22 of that makes any sense.

23 There is no duty to control the acts of an
24 adult. Elliott Lambrecht was an adult. There is no duty
25 on the part of an adult. There is no duty on the part of

1 the father or the mother. All them were sued. There is
2 no duty, and control of this vehicle is, again, a legal
3 right. It's not the ability to assert influence. They
4 would take the position that somehow -- and their actual
5 allegation in the complaint is that Douglas Lambrecht is
6 liable because he failed to affirmatively prevent Elliott
7 from getting the keys to Elliott's car.

8 Our Supreme Court looked at these complaints.
9 The issues in the USAA case was whether or not the
10 allegations of any of the complaints filed in this action
11 gave rise to any potential liability. If there was any
12 potential liability under these facts, then the insurance
13 company had to provide a defense, but if there was no
14 possibility of coverage under these alleged facts, they
15 didn't, and the Supreme Court evaluated their allegations
16 in all three of their complaints and made a factual
17 ruling that there is no possibility of liability, and the
18 insurance company didn't have to defend it.

19 So the Supreme Court has already said what
20 their allegations add up to. That is, there is no
21 liability. There is no duty, no causation. They have
22 been wrong since day one. They had a duty under the law
23 to know the law before they filed these claims. They
24 have no excuse after 2004 when they are given a 20 or 30
25 page brief, spelling it all out, to continue to pursue

1 this stuff. Sanctions are appropriate.

2 I don't think the Court -- the Court may not
3 like to award sanctions. It may be something that you
4 wish more than anything you could avoid, but if ever
5 there was a case where the Court has no choice, this is
6 the case. Thank you.

7 THE COURT: All right.

8 MR. KUHN: If it please the Court, Your
9 Honor --

10 THE COURT: No. I've given both sides twice
11 on this, so that is enough. What I'm going to do is I'm
12 going to give y'all one week to send me orders, proposed
13 orders; one, yours would be to vacate and substitute back
14 an order not for any sanctions, and yours would be to
15 deny the motion to reconsider.

16 Let me have those by noon of next Friday.
17 All right? Any question about when they're due?

18 MR. WIETERS: None, Your Honor.

19 THE COURT: Okay.

20 MR. WIETERS: Thank you, Your Honor.

21 THE COURT: All right. Thank you.

22 - - -

23 (Whereupon, the proceedings were concluded.)

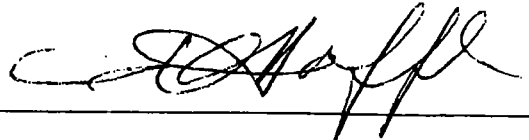
24 - - -

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 9th of July 2010.

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

September 30, 2010



Circuit Court Reporter

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

COUNTY OF BEAUFORT

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

Plaintiff,

vs.

CIVIL ACTION NUMBER
02-CP-07-1159
02-CP-07-1160

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

Defendants.

COPY

-----/

The deposition of ELLIOTT LAMBRECHT, a
witness in the above-entitled cause, taken
pursuant to notice and agreement by the
Plaintiffs, before Shannon H. Walker, Certified
Court Reporter and Notary Public, at Coastal
Court Reporting & Video, Inc., One Corpus
Christi Place, Executive Center, Suite 107,
Hilton Head Island, South Carolina, 29928, on
the 11th day of January 2005, commencing at or
about the hour of 11:18 a.m.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

316

000668

1
2 APPEARANCES OF COUNSEL:

3 FOR THE PLAINTIFF:

4
5 G. RICHARDSON WIETERS, ESQUIRE
6 WatersEdge at Shelter Cove
7 19 Shelter Cove Lane
8 Suite 300
Post Office Box 24158
Hilton Head, South Carolina 29925

9 FOR THE DEFENDANT JAN HORAN:

10 NOT PRESENT

11 STEPHEN CARTER, ESQUIRE
12 The McNair Law Firm
13 23-B Shelter Cove Lane
Suite 400
Hilton Head, South Carolina 29928

14 AND

15 TERRY A. FINGER, ESQUIRE
16 Finger & Andrews, P.A.
17 Northridge Professional Center
18 11 Palmetto Parkway
Suite 101
Post Office Box 24005
Hilton Head, South Carolina 29925-4005

19 FOR THE DEFENDANT DOUGLAS LAMBRECHT:

20
21 JOHN E. NORTH, JR., ESQUIRE
22 North & Black, P.C.
23 1103 Bay Street
24 Beaufort, South Carolina 29901
25

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000669

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 license had been suspended.

3 Q So I take it, it was parked at your
4 father's house after your license was suspended?

5 A Right.

6 Q Your father knew your license had been
7 suspended?

8 A Right.

9 Q Okay. Who was the insurance with on
10 that car, on the Mazda?

11 A I think it was USAA up until the point
12 when my license was suspended and then we took
13 it off.

14 Q You say "we took it off," that was you
15 and your father?

16 A Yes.

17 Q Now, that Mazda was the second car that
18 you had driven; is that right?

19 A Yes.

20 Q Did your father handle the insurance
21 for both cars?

22 A It was under my name. The insurance
23 was under my name, but I didn't fully understand
24 insurance 'cause I was young so I got some help.

25 Q Was it his policy?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000670

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 A It was my policy, I believe.

3 Q Well, are you a member with USAA?

4 A Not today.

5 Q Were you then?

6 A Yes.

7 Q Do you recall your member number?

8 A No.

9 MR. WIETERS: Off the record a
10 second, please.

11 (Whereupon, an off-the-record
12 discussion was held.)

13 BY MR. WIETERS:

14 Q After your license was suspended, I
15 believe you said that you took the Mazda off the
16 insurance?

17 A I believe so.

18 Q Okay. And did you obtain, or did your
19 father obtain, any new insurance policy for that
20 vehicle?

21 A No.

22 Q Do you know whether the car, on the
23 night of the accident, was registered?

24 A With the insurance?

25 Q No, sir, with the state of South

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000671

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 Carolina.

3 A It might have been expired. I don't
4 remember.

5 Q Okay. Did you have a registration with
6 you in the vehicle?

7 A I don't know.

8 Q Do you know whether the property taxes
9 on the vehicle had been paid?

10 A I'm assuming that they did, yes.

11 Q Who would have paid those?

12 A Me.

13 Q So you think they were paid but you
14 don't know?

15 A I can't remember.

16 Q Okay. Was the license tag valid or had
17 it expired?

18 A Is that not the registration?

19 Q Well, the registration is a little
20 piece of paper. The license tag also has some
21 other additional information on it.

22 Do you know whether the tag was valid?

23 A I'm not sure.

24 Q How did the car get to Beaufort?

25 A My sister drove it there.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000672

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 MR. NORTH: Objection to the form.

3 BY MR. WIETERS:

4 Q And did you think there was insurance
5 on the car?

6 A When I was driving it?

7 Q No, sir, when your sister drove it.

8 A I believe so.

9 Q How did your sister come to get -- get
10 the keys to the car?

11 A My father called me and asked me
12 permission to let her use the car.

13 Q Okay. Your father called and asked you
14 for permission to let her use the car?

15 A Yes.

16 Q Did he tell you why?

17 A There was something wrong with her car.
18 It broke down. She needed transportation.

19 Q Okay. And you said?

20 A I said: Yes.

21 Q Okay. Did you understand how long she
22 was to be driving your car?

23 A I believe she was only driving it for a
24 week.

25 Q The night of the accident, how did you

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000673

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 get to Beaufort?

3 A I rode with Rhett in his mother's car.

4 Q Did you call him and ask for a ride?

5 A I was at his house.

6 Q You were already living at his house?

7 A Yes.

8 Q Did you tell him why you were going to
9 Beaufort?

10 A Tell Rhett?

11 Q Yes.

12 A I was going to get the car so he could
13 use it, because his car was to be sold in the
14 next couple of days.

15 Q But he was driving you to Beaufort to
16 get the car so that he could drive it?

17 A Right.

18 Q Okay. And when you left for Beaufort,
19 you left from Rhett Barker's house?

20 A Yes.

21 Q And you went to your mother's home in
22 Beaufort?

23 A Correct.

24 Q How long were you at your mother's
25 house?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000674

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 as opposed to out of the drawer?

3 A I don't believe so. I think I got them
4 out of the drawer.

5 Q Did you tell your sister you were
6 taking the car?

7 A Yes.

8 Q Okay. What did she say?

9 A I don't remember exactly.

10 Q Did she discuss with you who was to be
11 driving?

12 A Who was to be driving?

13 Q Yes.

14 A Yes, I told her that I was driving the
15 car.

16 Q So you told your sister that you were
17 going to be driving the car?

18 A Right.

19 Q And you had gotten the keys by that
20 point, or you got the keys after you told your
21 sister that?

22 A I got the keys first.

23 Q You got the keys first, and told your
24 sister: I've got the keys and I'm -- I'm -- I'm
25 leaving with my car?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000675

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 Beaufort, was to get it into Rhett's possession?

3 A Right.

4 Q Did Rhett come in your mother's house
5 that night when you got the keys?

6 A I believe he stayed outside.

7 Q Okay. Did he go to Drug Court that
8 night?

9 A I don't remember.

10 Q How long were you in your mother's
11 house?

12 A A few minutes.

13 Q When you say "a few," I mean, can you
14 give me a number between --

15 A I can't remember if I talked to my mom,
16 so the time frame between there I can't
17 remember.

18 Q Well, you were there, you didn't have
19 dinner there?

20 A No.

21 Q You weren't there for two hours?

22 A No, a few minutes as in between, maybe
23 two or five.

24 Q Okay. Between two and five. That's
25 what I was looking for. Thank you very much.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000676

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 So you were there between two and five
3 minutes, you got the keys, told your sister that
4 you had the keys and that you were going to take
5 the car and leave?

6 A Right.

7 Q Okay. Did you tell your sister that
8 you were taking the car to Rhett Barker's house?

9 A Right.

10 Q I beg your pardon?

11 A Yes.

12 Q So she knew you were going to take it
13 to Rhett Barker's house?

14 A I believe so.

15 Q Okay. And your sister never discussed
16 with you whether you should be driving or not
17 driving that night?

18 A She may have given me her opinion. I
19 don't believe -- I don't remember.

20 Q You don't remember any conversation
21 with your sister, about whether or not you
22 should be driving that night?

23 A Not exactly.

24 Q Do you remember any conversation with
25 your mother, about whether or not you should be

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000677

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 Numbers 3 through 6 were marked
3 for identification.)

4 BY MR. WIETERS:

5 Q Let me show you, Mr. Lambrecht, what
6 we've marked as Plaintiff's Exhibit Number 3 and
7 ask you if you've ever seen that before?

8 A Yes.

9 Q That is a copy of your Notice of
10 Suspension?

11 A Yes.

12 Q Okay. What was the date of that, sir?

13 A Of the date of suspension?

14 Q Yes, sir.

15 A 9/5/2001.

16 Q Does it tell you the length of the
17 suspension?

18 A Yes.

19 Q How long?

20 A Trying to read it. It looks like -- it
21 looks like the beginning of October till -- till
22 May or April.

23 Q Of the following year?

24 A Right.

25 Q All right. Thank you, sir.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000678

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 Let me show you what we've marked as
3 Plaintiff's Exhibit Number 4. Is that a copy of
4 the Uniform Traffic Ticket you received or the
5 Uniform Traffic Summons or Uniform Summons you
6 got in connection with the possession of
7 marijuana?

8 A Yes.

9 Q Let me show you what we've marked as
10 Plaintiff's Exhibit 5. Do you recall receiving
11 that, sir?

12 A Yes.

13 Q Let me show you what we've marked as
14 Plaintiff's Exhibit Number 6. Have you seen
15 that before?

16 A Yes.

17 Q Did your father know that you were
18 going to be driving the Mazda car the night that
19 Allison Clegg was killed?

20 A I don't believe so.

21 Q Did your mother know?

22 A I don't believe so.

23 Q So the only person that knew, was Rhett
24 Barker and your sister and yourself?

25 A Yes.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000679

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 Q Had your father told you not to drive
3 the car because of your suspension?

4 A No, maybe he suggested it.

5 Q He suggested that you don't drive?

6 A (Witness nodded head.)

7 Q Is that how he phrased it, or do you
8 recall?

9 A Well, he can't give me direct order.
10 It wasn't his car.

11 Q He had the keys; did he not?

12 A I gave them to him.

13 Q You gave him the keys when you got
14 suspended?

15 A Right.

16 Q Did he ask for the keys or you just
17 turned the keys over to him?

18 A No, I gave them to him.

19 Q Okay.

20 A I left it with the car.

21 Q You left the car with him?

22 A Right. And I left the keys with him.

23 Q And left the keys with him.

24 And he knew you'd been suspended --

25 your license had been suspended?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000680

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)
2 went to go pick up the car that she had stopped
3 using it.

4 Q How long did she use it?

5 A About a week, I believe.

6 Q Okay. Did she have to call you every
7 time she wanted to use it?

8 A No, I told her she could use it for a
9 week.

10 Q Okay. So you told her she could use
11 it. And then you decided to go pick it up so
12 that Rhett could use it?

13 A Right.

14 Q And the car, prior to that, had been
15 with your father?

16 A Right.

17 Q Okay.

18 (Pause.)

19 Had your mother complained about there
20 were too many cars in her driveway and it needed
21 to be moved?

22 A No.

23 Q You don't recall that?

24 A No. There's plenty of room there.

25 Q I beg your pardon?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000681

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 A There's plenty of room.

3 Q So you don't recall your mother saying
4 to your sister or to you or to your father, that
5 the car needed to be moved?

6 A No, never.

7 Q I beg your pardon?

8 A No, never.

9 Q Or were you not aware of that?

10 A It wouldn't have been told to anybody
11 but me, because it was my car and would have
12 been my responsibility to get it moved. So if
13 it wasn't said to me, then chances are it was
14 never said.

15 Q Okay. So the only reason that you went
16 to get the car, then, was because Rhett needed
17 to use it?

18 A Yes, I was gonna let Rhett use it.

19 Q Okay. When you left your mother's
20 house that evening, where did you go next?

21 A We went to the Clegg's house.

22 Q Did you go inside the Clegg residence?

23 A No, we waited outside.

24 Q How was it that Allison was in your car
25 that night?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000682

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 A She was going to ride with Rhett and
3 Rhett said that she wasn't allowed to smoke a
4 cigarette in his mom's car, so she came and said
5 she was gonna ride with me.

6 Q Did you tell her that your license had
7 been suspended?

8 A Yes.

9 Q I beg your pardon?

10 A Yes.

11 Q So before she got in the car with you,
12 you told her?

13 A Yes.

14 Q Tell me exactly what you said to her.

15 A I said: You probably shouldn't ride
16 with me, my license is suspended. And I don't
17 have a license place on the car. So she went to
18 go ride in Rhett's car, and Rhett told her she
19 couldn't smoke so she came back to my car.

20 Q Why was your sister driving a car that
21 didn't have valid plates on it?

22 A I believe it still had valid plates
23 when my sister had driven it.

24 Q Do you know when the tags on your car
25 expired?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000683

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 Q And USAA wrote a check for some engine
3 repair; is that correct?

4 A No.

5 Q What was the check for?

6 A No. I said, no.

7 Q Did you not receive any check from USAA
8 in settlement of the car?

9 A I don't believe so.

10 Q You don't recall the car being totalled
11 by USAA?

12 A No.

13 Which car are we talking about?

14 Q The Mazda.

15 A No.

16 Q Okay. Did you receive or were you
17 charged in connection with the accident that
18 killed Allison Clegg?

19 A I'm sorry, could you repeat the
20 question?

21 Q Yes, sir.

22 Were you charged with any offenses in
23 connection with the accident that killed Allison
24 Clegg?

25 A Yes.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000684

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 Q What were you charged with?

3 A Driving under suspended license,
4 driving without vehicle registration, and
5 driving too fast for conditions.

6 Q Did you plead guilty to those charges?

7 A I pleaded no contest.

8 Q How fast were you driving at the time
9 the car hit the tree?

10 A I don't believe I was going any faster
11 than 35 miles an hour.

12 Q Do you know how fast you were going?

13 A Not exactly.

14 Q Did you see your car after the
15 accident, after you got out of the hospital?

16 A No, I did not.

17 Q Where was Rhett Barker?

18 A He was in front of me.

19 Q How far?

20 A I couldn't say exactly. Probably,
21 maybe, 100 yards.

22 Q Did Mr. Barker, Rhett Barker, pass you
23 on the road that evening?

24 A Yes.

25 Q Where?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 Q Do all of those pictures represent your
3 car?

4 A Yes.

5 Q And you believe you were going no
6 faster than 35 miles an hour?

7 A Yes.

8 Q You believe all of this damage was
9 caused from an impact of 35 miles an hour?

10 A Yes.

11 Q Did you give any statement to the South
12 Carolina Highway Patrol?

13 A I don't believe so.

14 Q I beg your pardon?

15 A I don't believe so.

16 Q You didn't talk to them?

17 A I don't believe so.

18 Q Did you refuse to talk to them?

19 A I don't believe I was conscious.

20 Q Well, at any time, did you give a
21 statement to the South Carolina Highway Patrol
22 investigating this accident?

23 A No.

24 MR. WIETERS: Let's go off the
25 record for about five minutes, please.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000686

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 A Yep.

3 Q What lane did he pass you in, left or
4 right?

5 A I don't remember.

6 Q You don't remember?

7 A No.

8 Q Do you remember why your car, that
9 night, left the roadway and hit that tree?

10 A Yes.

11 Q Why?

12 A I saw a deer in front of my car and I
13 swerved and lost control.

14 Q You saw a deer in front of your car.
15 Which way was the deer going?

16 A From the left -- or the right side to
17 the left side.

18 Q Okay. Had the deer come over the
19 fence?

20 A I didn't see that much.

21 Q I beg your pardon?

22 A I didn't see that much.

23 Q Did you hit the deer?

24 A No.

25 Q I beg your pardon?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000687

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 A No.

3 Q What size was the deer?

4 A I don't know.

5 Q Did Rhett Barker see the deer? Did you
6 discuss that with him?

7 A I don't think he did.

8 Q And he had just passed you, had he not?

9 A (Witness nodded head.)

10 Q Okay. Was there a fence along the
11 right-hand side of the roadway there?

12 A Yes.

13 Q So did the deer jump the fence?

14 A I told you, I didn't see that far.

15 MR. WIETERS: Off the record,
16 please.

17 (Whereupon, an off-the-record
18 discussion was held.)

19 BY MR. WIETERS:

20 Q Was the deer running or standing?

21 A It was running.

22 Q Was the deer in the street or on the
23 shoulder?

24 A It was in the street.

25 Q Which lane was it in?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000688

1 WIETERS - E. LAMBRECHT (DIRECT EXAMINATION)

2 A Whatever lane I was in.

3 Q Did you apply your brakes?

4 A I don't believe. I just cut the wheel.

5 Q You just jerked the wheel?

6 A (Witness nodded head.)

7 Q Which way did you jerk it?

8 A To the right.

9 Q To the right?

10 A (Witness nodded head.)

11 Q How close did you come to the deer?

12 A Close enough for me to have to jerk the
13 wheel.

14 Q Let me show you from Exhibit 8, the
15 South Carolina Highway Patrol photograph we've
16 marked as number 143. The tree that is in the
17 center of the photograph, is the tree that you
18 hit.

19 Do you see that fence next to it?

20 A Yes.

21 Q Okay. So when you saw the deer, it was
22 in which lane, your lane or the other lane?

23 A My lane.

24 Q And the lane you were driving in was
25 which, the left lane or the right lane?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000689

1 FINGER - E. LAMBRECHT (CROSS- EXAMINATION)

2 mother's house and drove right back?

3 A Right.

4 Q You said something a moment ago, that
5 you assumed that your father had taken care of
6 the insurance on this car. What's the basis of
7 that assumption?

8 A Originally?

9 Q No, at the time of the accident. You
10 said you assumed that there was insurance. When
11 your dad called you to see if -- I guess go back
12 a couple weeks beforehand. Did your dad call
13 you to get permission for Anna to use the car?

14 A I don't believe I opened the letter
15 for -- that said that my insurance had -- that
16 the registration had -- had -- was suspended
17 because I hadn't paid it. I don't believe I
18 opened that, so I assumed that it was still
19 current. I wasn't taking care of the paperwork
20 that I needed to for the car. And I just
21 assumed that everything was still there.

22 Q Your sister used the car for
23 approximately a week, was your testimony?

24 A I believe so.

25 Q Then after she quit using it, it sat in

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000690

1 FINGER - E. LAMBRECHT (CROSS- EXAMINATION)

2 your mother's driveway for how long before you
3 went and picked it up?

4 A Maybe a month or two.

5 Q At any time during the drive from the
6 Clegg's home towards Indigo Run, did you and/or
7 Rhett turn your headlights off, at all?

8 A No, I don't think so. It was dark
9 there, so no.

10 Q When your father first called you to
11 get your permission to let Anna use your car,
12 did he say that he would like for you to do
13 that, so he didn't have to take her back that
14 night to Beaufort?

15 A I don't remember any of that.

16 Q Tell me about all the conversations you
17 recall with Anna, when you went to pick up the
18 car at your mother's house. What do you recall
19 about the conversations?

20 A I don't recall the exact conversation.
21 I remember saying something about taking the car
22 to Rhett's house and probably filled her in on
23 why I was taking it there.

24 Q Okay. What do you recall her saying to
25 you, if anything?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000691

1 NORTH - E. LAMBRECHT (CROSS- EXAMINATION)
2 Hilton Head Elementary. Sixth, seventh and
3 eighth I went to Aiken Preparatory School, which
4 is a boarding school. And ninth and tenth grade
5 I went to Hilton Head High. And 11th and 12th I
6 went to Battery Creek.

7 Q Okay. Do you remember approximately,
8 how old you were when your parents were
9 divorced?

10 A Eight.

11 Q Okay. And was the boarding school for
12 sixth, seventh, and eighth grades?

13 A Yes.

14 Q Where did you live when you attended
15 Hilton Head High in ninth grade?

16 A I lived at my father's house.

17 Q And this was after their divorce?

18 A Yes.

19 Q And how long did you live with your
20 father after starting high school?

21 A Until about halfway through tenth
22 grade, I want to say.

23 Q Okay. And where did you move at that
24 time?

25 A My friend Jay Watson's house.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000692

1 NORTH - E. LAMBRECHT (CROSS- EXAMINATION)

2 Q Jay Watson?

3 A Yes.

4 Q Was that his own personal residence or
5 did you live with Jay's parents?

6 A No, it was with his parents.

7 Q At that point in time, were you old
8 enough to have a driver's license?

9 A I don't believe so.

10 Q Were you still 15?

11 A Yes.

12 Q Yes?

13 A Yes.

14 Q How long did you live with Jay Watson
15 and his parents?

16 A I think it was until the end of the
17 tenth grade.

18 Q Okay. And at that time, where did you
19 move?

20 A I moved -- I moved to Beaufort with my
21 mama.

22 Q Okay. How long did you live with your
23 mother in Beaufort?

24 A Six months. Halfway through 11th
25 grade.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000693

1 NORTH - E. LAMBRECHT (CROSS- EXAMINATION)

2 Q Okay. And then where did you move?

3 A I moved into my friend Steve's house.

4 Q And what's Steve's last name?

5 A Nedley, N-e-d-l-e-y.

6 Q And was that Steve's personal residence
7 or did Steve live with his parents?

8 A He lived with his parents.

9 Q How long did you live with Steve Nedley
10 and his parents?

11 A Till halfway through senior year.

12 Q The first semester of senior year?

13 A Yes.

14 Q Did you complete the first semester of
15 senior year?

16 A Yes, I think so.

17 Q And is that the point in time that you
18 dropped out of high school?

19 A Yes.

20 Q Where did you live after that?

21 A I moved into an apartment in ~~Sutton~~

22 ~~Hape~~

23 Q ~~Condominium?~~

24 A ~~Condominium~~ It's an apartment complex
25 in ~~Hilton Head~~.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 NORTH - E. LAMBRECHT (CROSS- EXAMINATION)

2 Q Who did you reside there with?

3 A Craig Ridder.

4 Q Okay. And how long did you live at
5 Cotton Hope?

6 A Probably six months.

7 Q And where did you move after that?

8 A Old South.

9 Q And how long were you at Old South?

10 A I'll say close to a year.

11 Q When did your lease at Old South end?

12 A December 30, I think.

13 Q December 30th of 2001?

14 A Yes.

15 Q So, approximately, ten days before the
16 accident?

17 A Yes.

18 Q After you moved out of Old South, where
19 did you reside between the time of moving out
20 and the time of the accident?

21 A Stayed at Rhett's house.

22 Q Okay. Did you stay anywhere else?

23 A I think I may have stayed at my dad's
24 maybe once over the holidays.

25 Q Are you talking about back at

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000695

1 NORTH - E. LAMBRECHT (CROSS- EXAMINATION)

2 Christmas?

3 A Right.

4 Q Okay. For one night at Christmas?

5 A Right.

6 Q Okay. But during the period of time
7 after moving out of your apartment at Old South
8 until the date of the accident --

9 A No, I stayed just at Rhett's.

10 Q Just at Rhett's?

11 A Yes.

12 Q Where were you planning to move after
13 your stay at Rhett's house?

14 A I was looking into apartment complexes.

15 Q Okay. So are you saying that during
16 that ten-day period, you were looking for
17 another apartment complex to move into?

18 A Right.

19 Q Were you intending to reside in the new
20 apartment complex with the same roommate that
21 you had at Old South?

22 A No, I don't think so. No. I was
23 looking for a one bedroom.

24 Q Okay. Now, going back to when you were
25 15 and you moved out of your father's house and

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000696

1 NORTH - E. LAMBRECHT (CROSS- EXAMINATION)

2 started living with Jay Watson and his parents,
3 did you receive any sort of support from your
4 parents, financial support, at that point in
5 time?

6 A No.

7 Q Since that point in time, since you
8 were 15 years old, have you received -- other
9 than the months just after you moved to
10 Beaufort, did you receive any financial support
11 from your parents?

12 A Besides presents on birthdays and
13 Christmas, no.

14 Q How do you pay your bills or support
15 yourself?

16 A I work.

17 Q Has that been true since you were 15?

18 A Yes.

19 Q How many vehicles have you owned in
20 your life.

21 A Two.

22 Q What was the first one?

23 A Ford Taurus SHO.

24 Q Okay. How did you pay for the first
25 one?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 NORTH - E. LAMBRECHT (CROSS- EXAMINATION)

2 A My father paid for it and I made
3 payments to him.

4 Q So he loaned you the money and you
5 repaid him?

6 A Right.

7 Q Did you, ultimately, repay every penny
8 of the purchase price?

9 A Yes.

10 Q And during the time that you owned that
11 car, did you take sole responsibility for making
12 the insurance payments and the license payments
13 and all the other costs associated with
14 ownership?

15 A Yes.

16 Q Was that car titled in your name?

17 A Yes.

18 Q Who purchased the Mazda?

19 A I did.

20 Q Did anybody else participate with you
21 in shopping for the car or negotiating the price
22 or agreeing to buy the car?

23 A No. My dad helped me co-sign for it,
24 but it wasn't until after I had gone and found
25 the car and picked it out and gone to the bank

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000698

1 NORTH - E. LAMBRECHT (CROSS- EXAMINATION)

2 and figured out of the financing.

3 Q Okay. Now, you say your father
4 co-signed it. He guaranteed the note?

5 A Yes. I didn't have enough -- I didn't
6 have any credit at that point.

7 Q Okay. Now, as far as the payments on
8 that note, you were liable on that note also,
9 weren't you?

10 A No. That was -- I made all the
11 payments.

12 Q Okay. And you were one of the persons
13 that signed the promissory note to the bank?

14 A Right.

15 Q When the -- when you had this engine
16 problem, are you the one that paid to fix the
17 engine?

18 A Yes.

19 Q Was the car laid up for some period of
20 time awaiting cash to pay for repairs?

21 A Yes. I had to work for a while to get
22 the money.

23 Q Okay. During the -- try and tie that
24 in to a time frame for me, will you. When did
25 the engine have problems?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000699

1 NORTH - E. LAMBRECHT (CROSS- EXAMINATION)

2 A I'd say early 2001, I think.

3 Q Okay.

4 A I honestly can't really remember.

5 Q And do you remember, approximately,
6 when the repairs to the engine were made?

7 A I don't remember exactly. I don't
8 remember the date.

9 Q Okay. Do you remember, approximately,
10 when the Mazda was moved to your father's house?

11 A After I had gotten the letter saying
12 that it was suspended.

13 Q So somewhere in the October 2001 time
14 frame; is that your recollection?

15 A Yep.

16 Q While it was at your father's house did
17 anyone have permission to use the vehicle, other
18 than the permission you gave to Anna?

19 A No.

20 Q Now, on January 9, 2002; did your
21 father have any knowledge that you were going to
22 Beaufort to pick up your car from Anna?

23 A No.

24 MR. WIETERS: Mark that question
25 for me, please.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000700

1 NORTH - E. LAMBRECHT (CROSS- EXAMINATION)

2 BY MR. NORTH:

3 Q When you moved out of the Old South
4 apartment, what did you do with your personal
5 belongings?

6 A I think I took them to Rhett's.

7 Q Okay.

8 A And I may have taken some to my friend
9 Steve's house, just to have him hold them for
10 me.

11 Q Okay. Was any of your personal
12 property taken to your father's house?

13 A No.

14 Q You indicated that you picked up the
15 car from Beaufort so that Rhett could use it. I
16 could not hear what your answer was in terms of
17 why Rhett needed to use your car.

18 A His car was being sold. He was selling
19 his -- he had a BMW 3 Series and he was selling
20 it. And he didn't have a car -- he wouldn't
21 have a car then. And because Rhett was my
22 transportation as well, to and from work, I
23 offered him -- I offered to let him use my car
24 so that he could get around, and in turn get me
25 around as well.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000701

1 WIETERS - E. LAMBRECHT (REDIRECT EXAMINATION)

2 anything further.

3 REDIRECT EXAMINATION

4 BY MR. WIETERS:

5 Q Mr. Lambrecht, I believe you told me
6 that your birth date was June the 19th of '82;
7 is that right?

8 A Yes.

9 Q So you would have turned 20 in June of
10 2002 -- I'm sorry, you would have turned 19 in
11 June --

12 A Nineteen.

13 Q -- is that right?

14 A Yes.

15 Q Okay. And in your affidavit, you don't
16 mention that it was actually your father that
17 called you on behalf of Anna; is that right?

18 A I don't know.

19 MR. FINGER: Paragraph 17.

20 THE WITNESS: I thought I did.

21 BY MR. WIETERS:

22 Q Anna never asked you, did she? It was
23 her -- it was your father that called, is what
24 you told us today. Do you recall that?

25 A Yes.

1 WIETERS - E. LAMBRECHT (REDIRECT EXAMINATION)

2 A I don't think so. Is that not -- is
3 that common practice?

4 Q Did he have his signal on to indicate
5 he was passing?

6 A He was probably in the opposite lane,
7 so he could pass me and I could see him passing
8 me.

9 Q Well, when you say "probably," did he
10 come up behind you in your lane and then pass,
11 or was he already in the other lane?

12 A I can't remember which lane it was so
13 ...

14 MR. WIETERS: Would you go back to
15 that question that I asked you to mark
16 for me, please.

17 COURT REPORTER: The question
18 was -- do you want me to read it?

19 MR. WIETERS: Yes.

20 (Whereupon, the record
21 was read back as requested.)

22 BY MR. WIETERS:

23 Q How do you know what your father knew?

24 A Well, if I didn't tell him, I'm
25 assuming he doesn't have any psychic ability to

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000703

1 WIETERS - E. LAMBRECHT (REDIRECT EXAMINATION)

2 know where I'm going.

3 Q Well, did you know whether or not your
4 mother had had a conversation with your father,
5 about getting the Mazda car out of her driveway
6 in Beaufort?

7 A I didn't know anything about that.

8 Q You didn't know anything about that?

9 A No.

10 Q Okay. And did your father ever tell
11 you that he had been in touch with USAA, or he
12 had gotten paperwork from USAA, and that your
13 car had no insurance on it? Did that ever
14 occur?

15 A I don't remember.

16 Q You don't remember him telling you, you
17 need to get insurance for your car?

18 A I didn't have a license so it wasn't a
19 problem.

20 Q Well, I wasn't asking you about a
21 license. I was asking you whether your father
22 ever told you that USAA was no longer insuring
23 your car and you needed to get insurance?

24 A I don't remember if it was him that
25 told me or if I had gotten a letter and opened

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000704

1 FINGER - E. LAMBRECHT (RE CROSS- EXAMINATION)
2 it and read it that way.

3 Q Okay. Have you ever had a USAA member
4 number?

5 A Yes.

6 Q Do you know what it is?

7 A No.

8 MR. WIETERS: Okay. That's all I
9 have.

10 Thank you very much.

11 RE CROSS-EXAMINATION

12 BY MR. FINGER:

13 Q One follow up.

14 Mr. Wieters had you look at Paragraph
15 17 of your affidavit, which is Defendants'
16 Exhibit 1. And you indicate that Paragraph 17
17 in your affidavit is, in fact, wrong --

18 A Wrong --

19 Q -- that it was your father that asked
20 for permission, it was not your sister that
21 asked for permission?

22 A Anna probably asked me and my dad asked
23 me after that to make sure that she could drive
24 the car, because it was him holding the keys.

25 Q The day that your father called you to

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 FINGER - E. LAMBRECHT (RECROSS- EXAMINATION)

2 ask for permission for Anna to use the car, he
3 called you not Anna; am I correct?

4 A Right.

5 Q Are you now saying that some time after
6 that, your sister asked you for permission?

7 A No. Anna probably asked me permission
8 before that, and then my dad called when she was
9 there to pick up the car.

10 Q So your sister asked you for permission
11 or asked your father for permission?

12 A She asked me permission to use the car.

13 Q Then what was the need for your father
14 to then call you thereafter?

15 A Because he was the one holding the
16 keys, and he called me to make sure that she
17 could drive.

18 Q Tell me, specifically, when Anna asked
19 you for permission to drive the car.

20 A Well, before my dad, before my father
21 called me.

22 Q Before the keys were given to her?

23 A Right.

24 Q Tell me why -- what did she tell you
25 she needed the car for?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161



Affidavit of Salvage Retention

USAA No. 4093362-005	Date of Loss 06-14-2001	Name of Owner Elliott Lambrecht
On 06-14-2001	my 1994	Mazda MX6
DATE	YEAR	MAKE & MODEL
		SERIAL NO. 1YVGE31D3R5215787

was 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 charges in the amount of \$ 0.00 will be paid by n/a

Also, I agree that collision and/or comprehensive coverage, including rental reimbursement if applicable, for this vehicle will be deleted effective the day after the loss.

FLORIDA Statutes, Section 817.234 states: "Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree."

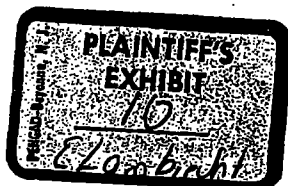
KENTUCKY Statutes, Chapter 304, Section 19 states: "Any person who knowingly and with intent to defraud any insurance company or other person files statement of claim containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material and commits a fraudulent insurance act, which is a crime."

Margaret C. O'Rourke
WITNESS

[Signature]
SIGNATURE OF OWNER

20 August 2001
DATE

843 842 7972
TELEPHONE NUMBER OF OWNER



AM
AUG 24 2001

20304-0896 SE

000707

000017

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

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

Plaintiff,

vs.

CIVIL ACTION NUMBER
02-CP-07-1159
02-CP-07-1160

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

Defendants.

COPY

-----/

The deposition of DOUGLAS LAMBRECHT, a
witness in the above-entitled cause, taken
pursuant to notice and agreement by the
Plaintiffs, before Shannon H. Walker, Certified
Court Reporter and Notary Public, at Coastal
Court Reporting & Video, Inc., One Corpus
Christi Place, Executive Center, Suite 107,
Hilton Head Island, South Carolina, 29928, on
the 12th day of January 2005, commencing at or
about the hour of 2:00 p.m.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

BLANK

000709

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 insurance premiums, on the Ford?

3 A He paid me and I paid them.

4 Q Okay. And was that true also with the
5 Mazda?

6 A He paid me and I paid them.

7 Q Did he have direct contact with respect
8 to determining coverage limits and types of
9 insurance products that he wanted to purchase,
10 or did you do that for him?

11 A He had direct contact, but he would ask
12 my opinion. To the best of my recollection,
13 he -- he had direct contact.

14 Q And as I understand it, you have a
15 lawsuit pending in Beaufort County against USAA?

16 A No, sir. That's inaccurate.

17 Q It's not an --

18 A Well, actually it's -- it's partially
19 accurate. There is a lawsuit pending in
20 Beaufort County whereby USAA is suing me for --
21 I believe, to determine limits of coverage, and
22 if I'm accurately portraying it, we're
23 countersuing them for due to defame.

24 Q Did the USAA policies come addressed to
25 you or to Elliott?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 was a Ford and one was a Mazda; is that right?

3 A That's correct.

4 Q Okay. When he left Spartina, did he
5 have the Ford automobile at that time?

6 A I don't believe so. I don't remember
7 when the Ford was purchased, but it was, I
8 believe, subsequent to that time.

9 Q And when the Mazda was purchased, was
10 he living at Spartina?

11 A No.

12 Q Was the Ford that Elliott drove, was
13 that put on your insurance policy with USAA?

14 A Yes.

15 Q And was the Mazda, when that car was
16 purchased, was that also put on your policy with
17 USAA?

18 A Yes.

19 Q Was he identified as the operator?

20 A Yes.

21 Q Do you still have any of those
22 policies?

23 A I -- probably. I don't know where they
24 are exactly.

25 Q Okay. Now, who paid the insurance,

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000711

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 Q Or Abigail?

3 A Not to my knowledge.

4 Q What about Anna?

5 A Anna used the car for a short period of
6 time during December 2001.

7 Q Now, correct me if I'm wrong, as I
8 understand it, the car, the Mazda, had had an
9 engine problem and had been under repair for
10 some period of time? Is that -- am I correct in
11 that understanding?

12 A I believe you are.

13 Q Okay. And I -- also as I understand
14 it, you received a check from USAA for a total
15 loss of that vehicle?

16 A We received a check in conjunction
17 with -- I say "we" because I was the owner of
18 the policy and the policy dictated that the
19 check be made out to the policyholder not the
20 named insured. So we received a check to
21 compensate for damage to the vehicle. I believe
22 it was for a crumpled fender and some -- some
23 stolen items, some stereo equipment.

24 Q It wasn't any -- any claim made for the
25 engine? I understood the engine had either run

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000712

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 out of oil or had a -- had blown up or
3 something. Was there any payment ever made on
4 that?

5 A I don't recall.

6 Q Okay. When the check was received from
7 USAA for the crumpled fender and for the stolen
8 items, who -- who -- what happened to the money?

9 A I asked Elliott what he wanted to do
10 with the money. He wanted to repair his car, so
11 we put those funds towards the replacement of
12 the engine for the car.

13 Q So it did need a replacement engine?

14 A It needed a used engine, yes.

15 Q Okay. So that money was used to repair
16 the engine. And I understand that while it was
17 undergoing repair or before it started, there
18 had been a -- his license had been suspended; is
19 that correct?

20 A I don't know the timing of his license
21 suspension but that's my impression. During
22 that period of time, his license was suspended
23 or we became aware of the fact.

24 Q Now, the Mazda automobile was purchased
25 with proceeds of the loan from Liberty Bank; is

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 that right?

3 A That is correct.

4 Q And you co-signed that with Elliott?

5 A I did that in order to provide him a
6 lower rate of interest. That is correct.

7 Q So you did co-sign?

8 A Yes, I did.

9 Q Okay. And after the vehicle was
10 repaired, what -- where did it go? Was it
11 returned to Elliott?

12 A What time period are you talking about?

13 Q Well, it'd been in the shop getting a
14 new engine, as I understand it; and I assume it
15 had some damage. I think you said it had a
16 crumpled fender. When it was ready to drive
17 again, did Elliott drive it or what happened to
18 it?

19 A No, he did not drive it. It was
20 delivered by tow truck to our driveway at
21 Spartina Point.

22 Q Okay. And was that at your request?

23 A That was at Elliott's request. It was
24 his car.

25 Q So Elliott requested that the car be, I

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 guess for lack of a better term, stored at
3 Spartina?

4 A Parked, yes.

5 Q Parked. Okay. How long was it parked
6 there?

7 A Maybe two weeks. I don't recall the
8 exact date in November when the car was
9 repaired, but it was a fairly short period of
10 time. Two or three weeks.

11 Q When the car was delivered by tow truck
12 at Elliott's request to Spartina, were you aware
13 that his license had been suspended?

14 A I believe I was.

15 Q Okay. Did he tell you why it had been
16 suspended?

17 A Yes, he did.

18 Q Okay. Did you have any discussion with
19 him, at that point, about whether or not he
20 should be operating the vehicle?

21 A Most certainly.

22 Q Tell me about those conversations or
23 conversation, as it may be.

24 A As a father, I tried to implore upon
25 him the responsibility to not drive without

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 madam reporter, the witness is
3 referring to Plaintiff's Exhibit Number
4 11.

5 BY MR. WIETERS:

6 Q Do you have any reason to think that
7 you did not receive Plaintiffs's Exhibit Number
8 11 from USAA in the ordinary course of the US
9 mail?

10 A No, I have no reason to believe that.

11 Q Let me show you the enclosure to
12 Plaintiff's Exhibit 11, which we marked as
13 Plaintiff's 10, and ask you if that is your
14 signature?

15 A That's my signature as owner of -- the
16 policy, yes.

17 Q Okay. Now, the check that came from
18 USAA, did you -- was it -- it was made payable
19 to you, as I understand it?

20 A I don't recall. I suspect so as owner
21 of the policy.

22 Q Do you recall whether you endorsed the
23 check over to your son, or whether you deposited
24 it into your bank account and wrote him a check?
25 How was that handled?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 A I believe I deposited it in my account.
3 I did not write him a check. I wrote a check to
4 the Tommy's Towing to pay for the engine.

5 Q Tommy's Towing did the engine?

6 A That is correct. Replacement.

7 Q And in 2001, that time frame, what bank
8 was your checking account with?

9 A Probably Liberty. I don't recall.

10 Q Looking, if you would Mr. Lambrecht, at
11 Plaintiff's Exhibit Number 10, it contains an
12 indication that comprehensive and collision
13 coverage would end on the vehicle as of that
14 date.

15 Do you see that language?

16 A I do.

17 Q Okay. What happened to the vehicle in
18 terms of comprehensive and collision coverage
19 after that date?

20 A I believe this is self-explanatory, it
21 ended.

22 Q What happened to the liability
23 coverage?

24 A I believe it continued until the
25 renewal date of the policy, sometime in

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 September.

3 Q Okay. And then what happened?

4 A Well, it -- apparently the car and the
5 driver was removed from the policy as of that
6 date.

7 Q Who removed the car and the driver from
8 the policy?

9 A USAA.

10 Q Were you aware of that?

11 A I became aware of it.

12 Q When?

13 A Here again, I don't know the exact date
14 that I became aware of it. I know that in -- in
15 hindsight, I know that it was on the anniversary
16 date of the policy.

17 (Whereupon, Plaintiff's Exhibit
18 Number 12 was marked for
19 identification.)

20 BY MR. WIETERS:

21 Q I want to show you a -- what I'm going
22 to mark as a composite Exhibit Number 12,
23 which consists of a series of pages that have
24 been Bates stamped DAL 51 through 100. And I
25 would ask if you would take a look at that and

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 see if you recall receiving any or all of these
3 documents from USAA?

4 (Witness reviewed documents.)

5 A These appear to be automobile policies
6 that I received from USAA on a fairly routine
7 basis. (Pause.)

8 MR. NORTH: Don't wait on me.

9 MR. WIETERS: I am waiting on you.
10 I need those documents back, that's the
11 only copy I have. Sorry. Actually,
12 while you're doing that, I ask -- do a
13 couple of other things.

14 BY MR. WIETERS:

15 Q What is your present address in North
16 Carolina, Mr. Lambrecht?

17 A 1861 Poor Ridge Road.

18 Q And your present occupation?

19 A I'm a farmer consultant.

20 Q And you have your own business
21 consulting with farmers?

22 A I'm a part-time farmer and a part-time
23 consultant.

24 MR. FINGER: Did you say what
25 town?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 A September 30, 1985.

3 Q Mr. Lambrecht, if you would please,
4 looking at Plaintiff's Exhibit Number 12, and
5 specifically the page marked DAL 53, and it
6 appears to be for a policy period of September
7 20, 2001, to March 20, 2002, and it has two
8 vehicles, a BMW Z3 and a Ford Explorer; is that
9 correct?

10 A That is correct.

11 Q Okay. And it has the operator, the
12 only operator on there, is that yourself,
13 Douglas A. Lambrecht?

14 A That is myself.

15 Q When you received this, did you take
16 note that the Mazda was no longer on your
17 policy?

18 A I do not recall taking note that the
19 Mazda was no longer on the policy, at that point
20 in time.

21 Q Okay. When did you find out for the
22 first time that the Mazda was not insured?

23 A Again, my impression is that when I was
24 going through copious amounts of documents, that
25 it came up. But I believe that prior to that,

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000720

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 in a discussion with USAA, it was confirmed that
3 the policy did not contain the Mazda nor did it
4 contain Elliott. I do not recall receiving this
5 document, you know, at that time. But these
6 came in every six months, whether I needed them
7 or not.

8 Q Well, they were, in fact, needed to
9 establish that the car was properly insured;
10 were they not?

11 A They would be needed by the owner of
12 the car to determine whether or not insurance
13 was in force. At that point in time, the car
14 was not being used so I was not concerned with
15 insurance on the Mazda. The Mazda was in the
16 junkyard.

17 Q When it came out of the junkyard and it
18 was delivered by tow truck to be parked at ~~22~~
19 ~~22~~, did you become concerned about
20 insurance on the car?

21 A Not at that time. The car was parked
22 and it was not intended to be used.

23 Q Now, I believe you indicated earlier to
24 me that you had driven the car, I believe you
25 said around the block or so?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 A We have a cul-de-sac and I simply ran
3 it around the block to refresh the engine,
4 nothing more.

5 Q And that was after it had the engine
6 replaced and was delivered by Tommy's tow truck?

7 A If I recall correctly, yes.

8 Q Okay. And that would have been
9 sometime between, what, the end of September and
10 the end of December 2001?

11 A It would have been sometime after the
12 delivery of the vehicle to our driveway, which
13 was in late November and before the vehicle left
14 our driveway, which was early December.

15 Q Okay. When it left your driveway, it
16 left with your daughter Anna?

17 A That is correct.

18 Q Okay. How did that come to pass? By
19 that, I mean, how did Anna end up driving the
20 Mazda?

21 A I think she put it in gear and stepped
22 on the gas.

23 Q Well, were the keys still hanging in
24 the pantry?

25 A I don't recall.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000722

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)
2 again, with the understanding that she was
3 covered under her mother's policy.

4 A I believe that's an accurate
5 statement.

6 Q Do you believe that to be accurate?

7 A Yes, I do.

8 Q Now, after the accident, did you
9 discuss with Ms. Horan or your daughter, whether
10 or not their insurance policy provided coverage
11 for the Mazda?

12 MR. NORTH: Objection to the form.

13 THE WITNESS: I don't recall that
14 discussion.

15 BY MR. WIETERS:

16 Q Okay. Did you have any discussions
17 with your son Elliott, about whether or not he
18 had obtained liability insurance on the Mazda?

19 A I believe I answered that question.
20 The answer is no. Not to my recollection.

21 Q Did you discuss with Elliott, whether
22 or not the taxes on the Mazda that were due had
23 been paid?

24 A No, I did not discuss that with him.

25 Q Did you discuss with him, whether the

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - D.LAMBRECHT (DIRECT EXAMINATION)

2 car was still lawfully registered with the state
3 of South Carolina?

4 A I was not aware it was un -- not
5 lawfully registered.

6 Q Did you discuss with Elliott, whether
7 or not the license tag on the car had expired?

8 A No, I did not.

9 Q Okay. Did you have any conversations
10 with Elliott, about Anna using the Mazda before
11 Anna obtained the keys to the car?

12 A Yes, I did.

13 Q Okay. And in that conversation, did
14 you discuss with him insurance or registration
15 of the car?

16 A I don't recall doing so, no.

17 Q Okay. You would agree with me,
18 Mr. Lambrecht, that Anna should not have driven
19 the car out of ~~your property at 22 Spaulding St.~~
20 December of 2001?

21 A I didn't say I would agree with you on
22 that.

23 Q Well, let me ask you, do you agree with
24 me or not?

25 A I believe if -- my understanding at

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 FINGER - D.LAMBRECHT (CROSS-EXAMINATION)

2 Q Is that the suspension notice?

3 A It is.

4 Q And is that addressed to Elliott?

5 A It is.

6 Q Is it to Spartina?

7 A It is.

8 Q And you -- I think you indicated to Mr.
9 Wieters that you remember seeing that at some
10 point, but you couldn't remember when?

11 A I believe I indicated, I remembered
12 seeing this in the course of document
13 exploration after the accident. It's
14 addressed -- excuse me. It's dated 9/5/2001 so
15 ... I apparently didn't see anything during --
16 in the summer, but I was aware that he had a
17 suspended license.

18 Q Okay. When did you become aware that
19 Elliott had been charged and ultimately found
20 guilty of simple possession of marijuana?

21 A Again, I don't remember the exact date.
22 But it was subsequent to him not showing up for
23 court, and I was very upset with him. He was
24 apparently at a nightclub passing a joint around
25 behind a tree, and he was the one caught holding

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 FINGER - D.LAMBRECHT (CROSS-EXAMINATION)

2 the joint.

3 Q The loan to Liberty Savings, on the
4 Mazda --

5 A Right.

6 Q -- has that been paid off now?

7 A Yes.

8 Q Okay. And did you pay that off
9 yourself after the accident or ...

10 A Yes. There was a -- a -- not minor but
11 not very significant balance due, and since the
12 car was totalled and Elliott was disabled and
13 unable to work and wasn't gonna be making
14 payments at that time, I went ahead and paid it
15 off.

16 Q But up until the time of the accident,
17 Elliott was making payments to you, to reimburse
18 you for what you were sending to Liberty?

19 A That's correct.

20 Q And the payments that Elliott was
21 making to you included a pro-rata insurance
22 premium?

23 A Ad hoc. There was not a -- there was
24 not a specific amount set aside. In fact, I
25 don't remember the exact amount of the loan

1 FINGER - D. LAMBRECHT (CROSS-EXAMINATION)

2 payment to Liberty. I do remember Elliott's
3 agreement with me was to attempt to make regular
4 \$200 a month payments so ...

5 Q And that was the principal interest on
6 the loan and also some insurance factor?

7 A Conceivably, yes. It was not a
8 specific amount and then a specific agreement.
9 But he was understanding that it was his
10 responsibility to pay for his vehicle and
11 insurance and maintenance.

12 Q And you paid for the taxes and he would
13 reimburse you for the taxes also, you testified?

14 A Well, it's -- you know, this is an 18
15 or 19 year old who is moving off on his own. So
16 I was trying to get him to pay everything on his
17 own. There wasn't a specific breaking point
18 where -- it was his car. And so it was his
19 responsibility. And I was encouraging him to
20 take all of those matters into his own hands.

21 Q Now, I believe you testified that, in
22 the September '01 time frame, you received a
23 renewal from USAA and you did not notice that
24 the Mazda and Elliott had been deleted; is
25 that -- do I recall what you said?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000727

1 FINGER - D.LAMBRECHT (CROSS-EXAMINATION)

2 did you have any other conversations with Anna
3 about the car, prior to her coming and getting
4 possession of the keys and taking it?

5 A I'm sure I probably did. Yes. I'm
6 sure she called me and told me that she had
7 talked to Elliott and that this was gonna be
8 occurring. And, I mean, Anna and I talked
9 frequently.

10 Q And did you have any conversations with
11 Elliott about Anna using the automobile?

12 A Yes, I believe I did. There again, I
13 don't remember the time sequence, but I remember
14 confirming with Elliott that it was okay for
15 Anna to use his car.

16 Q When you talked with Jan, did she
17 indicate where she was and where she was calling
18 from?

19 A No. There were -- I mean, phone
20 records may indicate what -- you know, who
21 called when and where, but I -- I -- I -- again,
22 it's three years ago, Terry. I don't remember
23 the exact time that we talked. But I seem to
24 recall it being, gosh, after thanksgiving or,
25 you know, the first week of December, something

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - D.LAMBRECHT (REDIRECT EXAMINATION)

2 them is true.

3 Q Would that some include Elliott?

4 A No.

5 Q So Elliott had no room at your home?

6 A No.

7 Q Okay. Anything else on 21?

8 A The answer that I believe he's 20 is
9 not true, because I subsequently said: No, he
10 turned 21. There was not an intentional
11 falsehood. It was not intentionally or
12 conveniently blurred, it was simply an
13 inaccurate statement.

14 Q So you corrected that on 21?

15 A I believe I did.

16 Q All right. Anything else on 21?

17 A I make the statement that Cameron is
18 away at college but still considered a part of
19 our household. What I meant was, part of the
20 family.

21 Q So did you use the word household when
22 you responded to USAA?

23 A I used the word household
24 interchangeably with the term family in my
25 conversation with USAA. Other than --

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

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

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

Plaintiff,

vs.

CIVIL ACTION NUMBER
02-CP-07-1159
02-CP-07-1160

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

Defendants.

COPY

-----/
The deposition of JAN HORAN, a
defendant in the above-entitled cause, taken
pursuant to notice and agreement by the
Plaintiff, before Shannon H. Walker, Certified
Court Reporter and Notary Public, at Coastal
Court Reporting & Video Services, One Corpus
Christi Place, Executive Center, Suite 107,
Hilton Head Island, South Carolina, on the 25th
day of May 2005, commencing at or about the hour
of 10:14 a.m.

000730

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1
2 APPEARANCES OF COUNSEL:

3 FOR THE PLAINTIFF:

4 G. RICHARDSON WIETERS, ESQUIRE
5 WatersEdge at Shelter Cove
6 19 Shelter Cove Lane
7 Suite 300
8 Post Office Box 24158
9 Hilton Head, South Carolina 29925

10 FOR THE DEFENDANT ANNA LAMBRECHT:

11 NOT PRESENT
12 STEPHEN CARTER, ESQUIRE
13 The McNair Law Firm
14 23-B Shelter Cove Lane
15 Suite 400
16 Hilton Head, South Carolina 29928

17 FOR THE DEFENDANT JAN HORAN:

18 TERRY A. FINGER, ESQUIRE
19 Finger & Andrews, P.A.
20 Northridge Professional Center
21 11 Palmetto Parkway
22 Suite 101
23 Post Office Box 24005
24 Hilton Head, South Carolina 29925-4005

25 FOR THE DEFENDANT DOUGLAS LAMBRECHT:

JOHN E. NORTH, JR., ESQUIRE
North & Black, P.C.
1103 Bay Street
Beaufort, South Carolina 29901

FOR THE DEFENDANT RHETT BARKER:

WILLIAM J. THROWER, ESQUIRE
Harrell Law Firm, PA
2001 Harrell Square
Charleston, South Carolina 29407

ALSO PRESENT:

Anna Lambrecht

000731

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PAGE

EXHIBIT INDEX ----- 4

OPENING REMARKS AND STIPULATIONS ----- 5

DIRECT EXAMINATION:

By Mr. Wieters ----- 5

CROSS-EXAMINATION:

By Mr. Thrower ----- 39

CROSS-EXAMINATION:

By Mr. North ----- 41

CERTIFICATE ----- 42

000732

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

D O C U M E N T A R Y E V I D E N C E

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
PX-1	Jan Horan's Sworn Statement of February 19, 2003	5

000733

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - HORAN (DIRECT EXAMINATION)

2 they were close friends.

3 Q Did Elliott ever spend anytime at the
4 Barker home?

5 A When are you talking about?

6 Q At any time since they met each
7 other --

8 A Sure.

9 Q -- did he ever spend time over there or
10 do things?

11 A Sure.

12 Q Did he ever spend any extended time at
13 the Barker residence?

14 A Extended time? I'm not sure I
15 understand that.

16 Q Would he stay there for several weeks?

17 A I don't know. I honestly don't know
18 that. I don't know.

19 Q In front of you, Ms. Horan, is a
20 document that I've marked as Plaintiff's Exhibit
21 Number 1, and it is a copy of a sworn statement
22 that you were kind enough to provide to me on
23 February 19, 2003. Have you had an opportunity
24 to review that statement --

25 A Yes.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - HORAN (DIRECT EXAMINATION)

2 Q -- since it was transcribed?

3 A Yes, I have.

4 Q How recently did you do that?

5 A The last couple of days we've been
6 reviewing.

7 Q And that was provided to you by
8 Mr. Finger?

9 A Yes.

10 Q And in going through what we've marked
11 as Plaintiff's Exhibit Number 1, is there
12 anything in there that you saw was inaccurate
13 or, otherwise, not true?

14 A No.

15 Q I want to talk a little bit with you
16 about a couple of things and I'm hopeful that
17 our time together, at least as far as my
18 examination, will be relatively brief and I will
19 certainly try and do that.

20 The night that Elliott came to pick up
21 the car that was involved in the accident where
22 Allison Clegg was killed, as I understand it
23 from your statement that we marked as
24 Plaintiff's Exhibit Number 1, both Elliott and
25 Rhett came into your home?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

SWORN STATEMENT



-----/

The sworn statement of **JAN HORAN**, a
witness in the above-entitled cause, taken
pursuant to Notice and agreement, before M.
Shields Monteith, Certified Court Reporter and
Notary Public, at the Law Offices of G.
Richardson Wieters, 8 Lafayette Place, Hilton
Head, South Carolina, on the 19th day of
February, 2003, commencing at or about the hour
of 9:40 a.m.

000736

1

2 APPEARANCES OF COUNSEL:

3

G. RICHARDSON WIETERS, ESQUIRE

4

The Prudential Building

Indigo Park

5

8 Lafayette Place

Suite 201

6

Hilton Head, South Carolina 29928

7

FOR THE WITNESS:

8

TERRY A. FINGER, ESQUIRE

Finger & Andrews, P.A.

9

11 Palmetto Parkway

Suite 101

10

Hilton Head, South Carolina 29928

11

12

I N D E X

13

PAGE

14

15 OPENING REMARKS AND STIPULATIONS ----- 3

16

17

18

19

20

DIRECT EXAMINATION:

By Mr. Wieters ----- 3

21

22

23

24

000737

25

CERTIFICATE ----- 46

COASTAL COURT REPORTING & VIDEO SERVICES**POST OFFICE BOX 7349 HILTON HEAD, SC 29938****HILTON HEAD - BEAUFORT - SAVANNAH****843-785-7739 - 843-525-9600 - 912-232-6161**

1

2 well?

3 A Yes.

4 Q At the time of the accident, where was
5 he living?6 A I think he was in transition between
7 living with -- on his own. He had been on his
8 own. I'm not sure if he had moved out at that
9 point or if he was moving in with his friend,
10 Rhett Barker. I think he was just -- it was
11 just happening.12 Q Well, had he been living with you in
13 Beaufort prior to that, or had he been living
14 with the --15 A No. He had been living on his own as
16 of the summer, 2000. Well, what year, 2000, I
17 guess. No, it was 2001. I have to get my
18 calendar and think about that but he --

19 Q Well, the accident happened in 2- --

20 A -- 2001.

21 Q -- 2002, actually.

22 A It happened in 2002. So, 2001 summer
23 he had been living on his own.

24 Q Okay.

000738

25 A And prior to that, he was living with

1
2 his father for that last school year, half of
3 the school year.

4 Q Now, he had just turned 18 in the Fall
5 of 2000?

6 A Yes.

7 Q What's his birthday?

8 A 6/19/82.

9 Q In January of 2002, that's the month of
10 the accident, did Anna have a car of her own --

11 A Yes, she did.

12 Q -- that she drove?

13 A She had a Celica; I'm not sure what
14 year it is. She had her own car.

15 Q Okay. And was that car on your
16 insurance policy --

17 A Yes.

18 Q -- or your husband's insurance policy?

19 A It was on our insurance policy.

20 Q Now what about Elliott, he had a Mazda;
21 is that correct?

22 A That's correct.

23 Q Okay. Was he on your policy?

24 A No.

000739

25 Q Whose policy was he on?

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

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

Plaintiff,

vs.

CIVIL ACTION NUMBER
02-CP-07-1159
02-CP-07-1160

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

Defendants.

COPY

-----/

The deposition of ANNA LAMBRECHT, a
defendant in the above-entitled cause, taken
pursuant to notice and agreement by the
Plaintiff, before Shannon H. Walker, Certified
Court Reporter and Notary Public, at Coastal
Court Reporting & Video Services, One Corpus
Christi Place, Executive Center, Suite 107,
Hilton Head Island, South Carolina, on the 25th
day of May 2005, commencing at or about the hour
of 11:06 a.m.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000740

1

2

APPEARANCES OF COUNSEL:

3

FOR THE PLAINTIFF:

4

G. RICHARDSON WIETERS, ESQUIRE

5

WatersEdge at Shelter Cove

19 Shelter Cove Lane

6

Suite 300

Post Office Box 24158

7

Hilton Head, South Carolina 29925

8

FOR THE DEFENDANT ANNA LAMBRECHT:

9

NOT PRESENT

10

STEPHEN CARTER, ESQUIRE

The McNair Law Firm

23-B Shelter Cove Lane

11

Suite 400

Hilton Head, South Carolina 29928

12

FOR THE DEFENDANT JAN HORAN:

13

TERRY A. FINGER, ESQUIRE

14

Finger & Andrews, P.A.

Northridge Professional Center

15

11 Palmetto Parkway

Suite 101

16

Post Office Box 24005

Hilton Head, South Carolina 29925-4005

17

FOR THE DEFENDANT DOUGLAS LAMBRECHT:

18

JOHN E. NORTH, JR., ESQUIRE

19

North & Black, P.C.

1103 Bay Street

20

Beaufort, South Carolina 29901

21

FOR THE DEFENDANT RHETT BARKER:

22

WILLIAM J. THROWER, ESQUIRE

Harrell Law Firm, PA

23

2001 Harrell Square

Charleston, South Carolina 29407

24

ALSO PRESENT:

25

Jan Horan

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000741

1 WIETERS - A. LAMBRECHT (DIRECT EXAMINATION)

2 please.

3 A Anna Christine Lambrecht.

4 Q And where do you reside?

5 A In Beaufort.

6 Q And that's your home now?

7 A Yes.

8 Q I thought you were living in Florida
9 for some reason.

10 A I moved about two days ago.

11 Q Okay. So what's the phase? Is it
12 boomerang? Is that what -- you're just in
13 Beaufort waiting for your next assignment
14 dancing; is that right?

15 A Yes.

16 Q Let me show you what we've marked as
17 Plaintiff's Exhibit Number 1, and ask you if
18 you'd take a look at that. Have you seen that
19 document before?

20 A Yes.

21 Q That's a transcript of a sworn
22 statement that you gave to me on July 16, 2003;
23 is that correct?

24 A Yes.

25 Q Have you had an opportunity to review

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - A: LAMBRECHT (DIRECT EXAMINATION)

2 that in the last few days?

3 A I have.

4 Q And you've reviewed that with
5 Mr. Finger or Mr. Carter?

6 A Mr. Carter.

7 Q Was there anything in that Exhibit,
8 that we've marked as Plaintiff's 1, that is not
9 true and accurate?

10 A (Witness shook head.)

11 Q You need to --

12 A No. I'm sorry. No.

13 Q Okay. When you got the keys to the
14 Mazda, did you have any discussion with your
15 father about whether you would be covered for
16 insurance purposes or not?

17 A Not that I remember.

18 Q Did you, at any time, notice that the
19 tags were expired?

20 A I think I did.

21 Q Okay. When did you notice the tags
22 being expired?

23 A I don't know.

24 Q Did you have any discussions with
25 anyone about that?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000743

1
2 BEAUFORT COUNTY
3 STATE OF SOUTH CAROLINA
4
5
6
7
8



9 SWORN STATEMENT OF:
10 ANNA CHRISTINE LAMBRECHT
11
12
13
14
15 -----/

16
17 The sworn statement of ANNA CHRISTINE
18 LAMBRECHT, a witness in the above-entitled
19 cause, taken pursuant to Notice and agreement,
20 before Cathy M. Knoettner, Certified Court
21 Reporter and Notary Public, at the Law Offices
22 of G. Richardson Wieters, P.C., 8 Lafayette
23 Place, Suite 201, Hilton Head Island, South
24 Carolina, on the 16th day of July, 2003, [
25 commencing at or about the hour of 8:40 a.m.

000744

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7730 - 843-525-0600 - 912-232-6161

1
2 APPEARANCES OF COUNSEL:

3 FOR THE PLAINTIFF:

4
5 G. RICHARDSON WIETERS, ESQUIRE
6 WatersEdge at Shelter Cove
7 19 Shelter Cove Lane
8 Suite 300
Post Office Box 24158
Hilton Head, South Carolina 29925

9 FOR THE DEFENDANT JAN HORAN:

10 NOT PRESENT

11 STEPHEN CARTER, ESQUIRE
12 The McNair Law Firm
23-B Shelter Cove Lane
Suite 400
13 Hilton Head, South Carolina 29928

14 AND

15 TERRY A. FINGER, ESQUIRE
16 Finger & Andrews, P.A.
Northridge Professional Center
11 Palmetto Parkway
Suite 101
17 Post Office Box 24005
18 Hilton Head, South Carolina 29925-4005

19 FOR THE DEFENDANT DOUGLAS LAMBRECHT:

20
21 JOHN E. NORTH, JR., ESQUIRE
22 North & Black, P.C.
1103 Bay Street
23 Beaufort, South Carolina 29901

24
25
COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000749

1 NORTH - BARKER (CROSS-EXAMINATION)

2 parent's home in Beaufort; do you recall that?

3 A Yes.

4 Q You're aware, aren't you, that
5 Elliott's father and mother were divorced a long
6 time ago?

7 A Yes.

8 Q When you referred to his parent's home
9 in Beaufort, are you referring to the home of
10 his mother and her new husband?

11 A Yes, that's what I'm referring to.

12 Q Are you familiar with the apartment
13 that Elliott lived in at the Hilton Head or
14 Bluffton area?

15 A Yes, Old South.

16 Q Yes, tell me about that.

17 A It's an apartment I used to hang out
18 at, play video games.

19 Q It's where Elliott lived?

20 A Yes.

21 Q Okay. And was that up until just
22 before the accident?

23 A Pretty close. I think he left there on
24 Christmas Day.

25 Q Left that apartment?

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

000750

1 NORTH - BARKER (CROSS-EXAMINATION)

2 A Uh-huh. Yes, so ...

3 Q And do you have any knowledge about the
4 apartment that he was intending to move into?

5 A No.

6 Q Do you know where it was located?

7 A Huh-uh. I'm not sure what was going on
8 at the time.

9 Q Did you have some arrangement with
10 Elliott, whereby he would stay at your house
11 between the time he vacated his apartment at Old
12 South and the time he moved into his new
13 apartment?

14 A It wasn't any kind or real, like,
15 arrangement, you know. If he didn't have --
16 'cause he was kind of hopping around. So like,
17 if he didn't have a place to stay, I mean, I
18 wasn't gonna make him sleep on the street.

19 Q How long had he resided at the
20 apartment at Old South?

21 A Six months to a year, I think. I'm
22 pretty sure.

23 Q And do you know which apartment he was
24 in before Old South?

25 A I'm not sure about that.

000751

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

1 NORTH - BARKER (CROSS-EXAMINATION)

2 Q But do you recall that he did have some
3 apartment prior to --

4 A He did.

5 Q -- residing at Old South?

6 A I'm pretty sure. I'd never been over
7 there, but I'd heard -- heard somebody say
8 something about it.

9 Q Okay. And who did Elliott live with at
10 the apartment at Old South?

11 A Victor Smith.

12 Q Okay. And was Victor and Elliott going
13 to continue to reside in a different apartment
14 after they moved out of Old South?

15 A I'm not sure what they were planning on
16 doing. If they were doing that or -- they were
17 talking about some things like that, but I'm not
18 exactly sure.

19 Q How long have you known Elliott?

20 A About eight, nine years, something like
21 that.

22 Q Did you go to school with him at Hilton
23 Head High?

24 A Yes. I -- I think I've known him since
25 the eighth grade, possibly. Maybe the ninth

000752

1 NORTH - BARKER (CROSS-EXAMINATION)

2 grade.

3 Q Okay. Do you recall that when Elliott
4 was about 15 years old, he moved out of his
5 father's house in with a friend?

6 A Somewhat.

7 Q Do you remember the name of the friend
8 he moved in with?

9 A Was it in Beaufort?

10 Q No, in Hilton Head or Bluffton.

11 A No, I can't recall.

12 Q Okay. Do you know a friend of his by
13 the name of Steve?

14 A Yes.

15 Q Is Steve somebody he lived with in
16 Beaufort?

17 A Yes.

18 MR. NORTH: Okay. I have no
19 further questions.

20 MR. THROWER: Nothing for me.

21 BY MR. NORTH:

22 Q Oh, one more question.

23 How many nights did Elliott stay with
24 you prior to the accident?

25 A I'd say within that three weeks,

000753

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - 843-525-9600 - 912-232-6161

NORTH - BARKER (CROSS-EXAMINATION)

probably about five times; I'd say at the most.

Q When you say three weeks, the accident was on January 9th of 2002; was it not?

A So I guess it's only two weeks -- almost, a little less than two weeks. It's a good -- a couple of times. I'm not even exactly sure.

Q Do you recall whether Elliott was still in his apartment as of New Year's Eve?

A I don't think he was. I'm pretty sure it was Christmas, but it may be a couple days after Christmas. But I'm not exactly sure.

Q Other than your house, where else do you know that he stayed between the time he moved out of Old South and the time he moved in -- or was planning to move into his new apartment?

A I know he stayed at his dad's house.

Q How do you know that?

A At one time.

Q One night?

A Yes, one night or something. I'm not positive, actually. But I know he stayed some couple other -- a couple of other places.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SC 29938
HILTON HEAD - BEAUFORT - SAVANNAH
43-785-7739 - 843-525-9600 - 912-232-6161

1 WIETERS - BARKER (REDIRECT EXAMINATION)

2 Because I know he wasn't in my house every
3 night.

4 Q But do you know for sure where he
5 stayed on any of those nights, other than the
6 nights he stayed in your house?

7 A Not for sure, I mean. You know, it
8 wasn't at my house but he's somewhere, I guess,
9 you know.

10 Q Do you know what he did with his
11 personal property or belongings between moves?

12 A I think he had a bag at my house of
13 some stuff and then he put a lot of stuff at his
14 dad's house. His dad came and picked up some
15 stuff from the apartment.

16 Q At Old South?

17 A Uh-huh. And he picked up the majority
18 of, like, any kind of furniture that he wanted
19 to keep. And then he just had -- like, he had
20 a -- I think he had a bag of clothes in my car.
21 But it's kind of hopping around, moving stuff
22 around.

23 MR. NORTH: No further questions.

24 REDIRECT EXAMINATION

25 BY MR. WIETERS:

000755

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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.



John E. North, Jr.
North & Black, P.C.
916 Bay Street, Suite 100
Beaufort, SC 29902
(843) 379-0800 (tel)
(843) 379-0900 (fax)
Attorney for Appellant