

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-07125

David Pendarvis

Respondent,

v.

Wilson Miranda and Glendy M. Aguilar

Appellants.

RECORD ON APPEAL

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Albert R. Pierce, Jr.
HOWSER, NEWMAN &
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(803) 758-6000
Attorneys for Appellants

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Paige B. George
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Columbia, SC 29201
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Attorneys for Respondent

RECEIVED

FEB 28 2014

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

David Pendarvis,

Plaintiff,

vs.

Wilson Miranda and Glendy M. Aguilar,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

) Docket No 2012-CP-40-07125

ORDER

2013 AUG -8 AM 10:37
JEANETTE W. MERRIDGE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter came before the Court on June 18, 2013 upon Defendants' Motion to Set Aside Entry of Default. Because a judgment was entered against the Defendants at the time Defendants' Motion was filed, the Motion is more aptly a Motion for Relief from Judgment, pursuant to Rule 60, SCRPC. Present at the hearing were Barry B. George, counsel for David Pendarvis, and Caroline H. Raines, counsel for Meyvis Miranda and Wilson Orozco. After considering the law, the arguments, and all matters submitted, the Motion is **DENIED**.

Plaintiff commenced this action on October 22, 2012 and Defendants were served with the Summons and Complaint by delivery to their residence on November 1, 2012. Defendants failed to file any responsive pleadings. An Affidavit of Default was filed on January 14, 2013. A damages hearing was held on February 20, 2013, after which Plaintiff was granted a \$20,000 judgment against Defendants. On March 18, 2013 Defendants filed their Motion.

The power to set aside a default judgment is addressed to the sound discretion of the trial court and will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Mitchell Supply Co., Inc. v Gaffney*, 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct. App. 1988). An abuse of discretion arises when the court issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support. *Goodson v Am Bankers Ins. Co. of Fla.*, 295 S.C. 400, 402, 368 S.E.2d 687, 689 (Ct. App. 1988).

Rule 60(b)(1), SCRPC states, "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertance, surprise, or excusable neglect." In a Rule 60(b) motion, the movant has the burden of presenting evidence proving the essential facts to entitle

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relief *BB&T v Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006). To determine whether to grant relief under Rule 60(b)(1), the court must consider the following factors: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party" *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010) (citing *Micronics, Inc v S C Dep't of Revenue*, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001)).

As to the first factor, the Court finds that the Defendants' Motion was timely made because it was filed within one year of the default judgment. As to the second factor, the Court evaluates the reasons for Defendants' failure to act promptly. To explain the default, Defendants assert they are both native Spanish speakers and are not conversational in the English language. (Aff ¶¶ 3) Defendants state that they did not immediately understand Plaintiff's Summons and Complaint and that their names were misstated in the documents. (Aff ¶¶ 4, 7) However, statements made by Defendants in their affidavits show Defendants understood the serious nature of the legal matter and thereafter contacted their insurance company about the motor vehicle accident with the Plaintiff. (Aff ¶¶ 5) Moreover, the "lack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney" *Rouvet v Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010) (citing *Hill v Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001)).

As to the third factor, Defendants assert that the Plaintiff's misstatement of the parties' names establish a meritorious defense to set aside the entry of the default judgment. In the Summons, Complaint, and other court documents, Defendant Wilson Orozco's name was written as "Wilson Miranda," and Defendant Meyvis Miranda's name was written as "Glendy M. Aguilar." (Aff ¶¶ 7.) South Carolina's case law indicates that the misstatement of a party's name does not invalidate service of process or a judgment subsequently rendered. While examining Rule 4, SCRC, the South Carolina Supreme Court wrote: "[The Court has] never required exacting compliance with the rule to effect service of process. Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Roche v Young Bros., Inc of Florence*, 318 S.C. 207, 210, 456 S.E.2d 897 (1995). In *Waldrop v Leonard*, the South Carolina Supreme Court considered whether an error of a name in issuing service invalidates the service and enables a default judgment to be set aside. 22 S.C. 118, 1885 WL

and #2

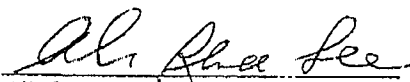
3571 (1885) After comparing the rules from various jurisdictions, the *Waldrop* Court aligned itself with the Court of Appeals of Maryland, which held:

Where a party is served by a wrong name, and the writ is served on the party intended to be served and he fails to appear and plead the misnomer in abatement, and suffers judgment to be obtained by default against him in the erroneous name, he is concluded, and execution may be issued on the judgment in the name and levied upon the property and effects of the real defendant *Id* at 127

Although the Defendants in the present case were served with a Summons and Complaint that included the wrong name, the documents were served upon the intended parties. The Defendants failed to file an answer or appear in court to address the error in the documents or the issues in the personal injury case. See *Tunstall v The Lerner Shops, Inc*, 160 S.C. 557, 159 S.E. 386 (1931) (a misnomer of a Defendant is immaterial, and a judgment in the action will be binding if it is duly served with process, or the defendant appears and does not plead the misnomer in abatement); *Tri-County Ice and Fuel Company, Inc. v Palmetto Ice Company*, 303 S.C. 237, 399 S.E.2d 779 (1990) (default judgment entered against Defendant in the wrong name is valid and may be amended by changing the name). Because of Defendants' inaction, the Court issued a default and subsequent judgment against Defendants, following a damages hearing. "Where a defendant sued by a wrong name omits to plead in abatement and suffers the plaintiff to proceed to judgment, though he has never appeared to the wrong name, this Court will not interfere to set aside the proceedings." *Waldrop*, 22 S.C. at 123. Pursuant to the rule stated in *Waldrop*, the Defendants' defense is barred. As to the final factor, which considers the degree of prejudice to the Plaintiff if relief is granted, the Court finds the Plaintiff would be unduly prejudiced by further expense and delay.

Because the four factors have not been satisfied, the Court cannot grant relief to Defendants under Rule 60(b)(1). For the reasons set forth above, it is **ORDERED** that the Defendants' Motion to Set Aside Entry of Default Judgment is **DENIED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
August 5, 2013

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND)
 David Pendarvis,) Civil Action #2012-CP-40-07125
)
 Plaintiff,)
)
 vs.)
)
 Wilson Miranda and Glendy M. Aguilar,)
)
 Defendants.)

ORDER

2013 FEB 20 AM 11:07
 JEANETTE W. McBRIDE
 C. P. & G. S.
 RICHLAND COUNTY
 FILED

A Damages Hearing was held before me at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on February 20, 2013 in Courtroom 2-C at 11:00 a.m. against the Defendant, Wilson Miranda. Present at this hearing was the Plaintiff, David Pendarvis, and his attorney, Barry B. George. The Defendant, Wilson Miranda, was/was not present at the hearing.

Evidence was presented at the hearing on behalf of the Plaintiff. The Plaintiff testified that he was injured in an automobile accident on April 20, 2012 when he the vehicle he was operating was struck from the rear by a vehicle driven by the Defendant, Wilson Miranda.

The Plaintiff testified that he was injured in this accident. The Plaintiff testified that he injured his low back, pelvic region and hips in the accident. The Plaintiff further testified that he was treated by initially treated at Spring Valley Family Practice. The Plaintiff testified that he received further treatment from Dr. Ben Barton of Midlands Physical Medicine through September 11, 2012. The Plaintiff further testified that he continues to have trouble with his low back and takes over the counter medicine for the pain.

The Plaintiff presented to the Court the following medical information: Spring Valley Family Practice; and Midlands Physical Medicine in the amount of \$2,082.00.

Barry B George, Attorney for the Plaintiff, presented to the Court a letter dated February 1, 2013 wherein the Defendant, Wilson Miranda, was notified of the Damages Hearing scheduled for February 20, 2013 at 11:00 a.m. in Courtroom 2-C of the Richland County Judicial Center.

7
After considering the evidence presented, I FIND:

A) That an Order of Default was signed against the Defendant, Wilson Miranda, on January 11, 2013 by the Honorable L. Casey Manning.

B) That the Plaintiff, David Pendarvis, was injured in the automobile accident on April 20, 2012, when the vehicle he was operating was struck by a vehicle driven by the Defendant, Wilson Miranda.

C) That the Plaintiff, David Pendarvis, was injured in the accident on April 20, 2012 and had the following medical expense: Spring Valley Family Practice; and Midlands Physical Medicine in the amount of \$2,082.00.

D) That the Plaintiff, David Pendarvis, testified that he still suffers pain in his lower back and takes over the counter medication for the pain

E) That Barry B. George, Attorney for the Plaintiff, presented to the Court a letter dated February 1, 2013 wherein the Defendant, Wilson Miranda, was notified of the Damages Hearing scheduled for February 20, 2013 at 11:00 a.m. in Courtroom 2-C.

THEREFORE, IT IS ORDERED that the Plaintiff, David Pendarvis, have judgment against the Defendant, Wilson Miranda, for actual damages for personal injury in the amount of

\$20,000

Dollars.

AND IT IS SO ORDERED.

Re Hood

HONORABLE ROBERT E. HOOD
JUDGE, FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina

Dated: 2/20/13

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4007125

David Pendarvis

Wilson Miranda

Glendy M Aguilar

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. No. suit);
 - Rule 43(k), SCRPC (Settled);
 - Other _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j), SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

RICHLAND COUNTY
 FILED
 2013 MAR 14 AM 12:31
 ANNETTE W. MCBRIDE
 CLERK OF COURT

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

Motion for Damages, Granted, \$20,000.

This order ends does not end the case.

Additional Information for the Clerk: _____

Judge Hood signed Order.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Jce Hood

Judge Code 2164

Date 2-20-2013

For Clerk of Court Office Use Only

This judgment was entered on the 4 day of March, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Barry B. George

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W McBride

Court Reporter _____

Clerk of Court _____

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

David Pendarvis,) Case #2012-CP-40-07125
)
)

Plaintiff,)
)

vs.)

MOTION and ORDER OF DEFAULT

Wilson Miranda and Glendy M. Aguilar,)
)

Defendants.)

2014 JAN 14 PM 3:10
RICHLAND COUNTY
FILED
JEANETTE W. McBRIDE
C.P. & G.S.

It appears from the Affidavit of Service signed by Deputy Sheriff B. Jones that the Summons and Complaint in this action was served on Defendant, **Wilson Miranda**, on the 1st day November 2012. It also appears from the Affidavit of Plaintiff's attorney that no Answer or motion to the Complaint has been served on the Plaintiff's attorney as required by law, and that Defendant, **Wilson Miranda**, has not otherwise appeared. Furthermore, it appears that Defendants are not entitled to relief under the Soldiers' & Sailors' Relief Act and that Plaintiff's damages are unliquidated.

NOW, ON MOTION of Plaintiff's attorney, it is ordered and adjudged that Defendant, **Wilson Miranda**, is in default and that Plaintiff is awarded judgment against Defendant for damages to be determined at a non-jury hearing held in accordance with applicable law.

Finally, the Clerk of Court is directed to schedule a hearing during the next available non-jury term at which the extent of Plaintiff's damages shall be determined.

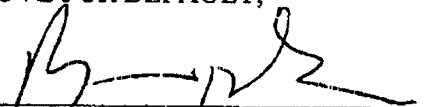
AND IT IS SO ORDERED.


JUDGE, FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina

Dated: 1/11/13

I MOVE FOR DEFAULT;


BARRY B. GEORGE

PAIGE B. GEORGE

Attorney for the Plaintiff

1419 Bull Street

Columbia, South Carolina 29201

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-40-07125

David Pendarvis

Wilson Miranda and Glendy M. Aguilar

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BARRY B. GEORGE	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

[Signature] 2061 1/11/13

RICHLAND COUNTY
 FILED
 2014 JAN 14 PM 3:09
 JEANETTE W. McBRIDE
 C.J.P. & G.S.

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of Jan, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter:

CLERK OF COURT

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS
)

David Pendarvis,
Plaintiff,

) Civil Action #
)
)

vs.

SUMMONS
(Jury Trial Requested)


Wilson Miranda and Glendy M. Aguilar,
Defendants.

)
)
)
)

TO THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you and to serve a copy of your Answer to the said Complaint on the subscriber at his office, 1419 Bull Street, Columbia, SC 29201, within thirty (30) days from the date of service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

FILED
2012 OCT 22 AM 9:07
C.C.P. & G.S.
BARRY B. GEORGE



BARRY B. GEORGE
PAIGE B. GEORGE
ATTORNEY FOR THE PLAINTIFF
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222

October 19, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

David Pendarvis,) Civil Action #

Plaintiff,)

vs.)

Wilson Miranda and Glendy M. Aguilar,)

Defendants.)

COMPLAINT
(Jury Trial Requested)

FILED
2012 OCT 22 AM 9:07
C.C.P. & G.S.
W. M. BRADY

The Plaintiff, complaining of the Defendants herein, alleges:

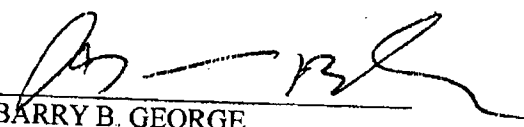
1. That the Plaintiff is a citizen and resident of the County of Richland, State of South Carolina; and that, upon information and belief, the Defendants are residents of the County of Richland, State of South Carolina.
2. That on or about April 20, 2012, the Plaintiff, David Pendarvis, was operating a 1995 BMW automobile east on S.C. Highway Section S-1196, in the County of Richland, State of South Carolina; that the Defendant, Wilson Miranda, while acting as agent and servant of the Defendant, Glendy M. Aguilar, was operating a 2005 Honda automobile east on S.C. Highway Section S-1196, in the County of Richland, State of South Carolina, and the Plaintiff crashed into the vehicle the Plaintiff was operating, throwing the Plaintiff in and about the interior of said vehicle, thus causing him severe and painful bodily injuries.
3. That as a result of the above, the Plaintiff suffered injuries in and about his body, all of which has and will cause him to undergo much physical pain and suffering, has and will cause him to have to spend money on medical services, and has and will cause him to lose money in the nature of wages and earnings.
4. That the Defendant, Wilson Miranda, while driving the vehicle as agent and servant of the Defendant, Glendy M. Aguilar, was willful, wanton, negligent, grossly negligent, careless and reckless in the following particulars, to-wit:
 - a) in failing to maintain a proper lookout;
 - b) in failing to keep his vehicle under proper control;
 - c) in driving too fast for conditions;
 - d) in following too closely;
 - e) in failing to apply his brakes, if any he had;
 - f) in failing to take evasive action of any kind to avoid the accident;
 - g) in failing to use the degree of care and caution that a reasonable and prudent person would have used under the same or similar

circumstances; and,
h) such other particulars as the evidence at trial may show;

All of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of the case and statute laws of the State of South Carolina.

5. That the Plaintiff is informed and believes he is entitled to judgment against the Defendants for actual damages in the amount of Fifty thousand (\$50,000.00) Dollars; and punitive damages in the amount of Twenty thousand (\$20,000.00) Dollars.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages in the amount of Fifty thousand (\$50,000.00) Dollars; punitive damages in the amount of Twenty thousand (\$20,000.00) Dollars; for the costs of this action; and for such other and further relief as this Court may deem just and proper.



BARRY B. GEORGE
PAIGE B. GEORGE
ATTORNEY FOR THE PLAINTIFF
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222

October 19, 2012

State of South Carolina) In the Court of Common Pleas
) 2012-CP-40-07125
County of Richland)

David Pendarvis,)
)
Plaintiff,)
)
Vs.) Transcript of Record
)
Wilson Miranda and Glendy)
M Aguilar)
)
Defendants.)
)
_____)

June 18, 2013
Columbia, South Carolina

B e f o r e:

The Honorable Allison R. Lee, Judge

A p p e a r a n c e s:

Caroline Raines, Esquire
Attorney for the Plaintiff

Barry George, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
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Response/Mr. George	8
Reply/Ms. Raines	12
Decision of the Court	12
Certificate Page	17

EXHIBITS

NO.	DESCRIPTION	I.D.	EV.
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-- NO EXHIBITS ENTERED --

1 THE COURT: Okay This is Docket No 2012-CP-40-
2 07125; *David Pendarvis vs. Wilson Miranda, et al.*

3 The plaintiff is represented by Barry George; the
4 defendant's represented by Caroline Raines. And we're
5 here on a motion to set aside default judgement

6 MS. RAINES: Yes, Your Honor.

7 THE COURT: Yes, ma'am

8 MS. RAINES: May it please the Court.

9 THE COURT: Yes.

10 MS. RAINES: The defendants filed a motion to set
11 aside default judgement. Default judgement was entered
12 against the defendant as stated in the caption, Wilson
13 Miranda. It was entered on the 20th of February, 2013.

14 The standard for a motion to set aside a default
15 judgement, as the Court is aware, is under Rule 60(B), for
16 mistake, inadvertent surprise, or excusable neglect. And
17 there's a three-prong test that the case law lays out or
18 reasons -- providing one -- first prong is "promptness of
19 relief sought; the second is the reasons for the failure
20 to respond; and the third is whether there is a
21 meritorious defense.

22 Regarding the reasons for failure, there are several
23 reasons and they're laid out in my client's affidavits,
24 which had previously been filed to the Court, filed May
25 17th. I've got defendant of Wilson Orosco and defendant

1 of his wife, Meyvis Miranda And these are the folks who
2 are in the caption The names are actually misstated
3 They told me their -- their actual names, who's stated as
4 "Wilson Miranda" in the caption of this action, as he
5 testifies to in his affidavit, his name is Wilson Orosco;
6 and the woman who is titled as "Glendy Aguilar" in the
7 caption of this action, has testified that her name is
8 Meyvis Miranda. And I have affidavits from my -- my
9 client, who's the defendant in this action.

10 Regarding -- which I can pass up to the Court so ---

11 THE COURT: I -- I have the affidavits. I've read
12 them.

13 MS. RAINES: Thank you. Promptness of relief sought:
14 We filed our motion to set aside the default judgement on
15 March 13th. On February 20th, the default judgement was
16 entered So that is less than a month afterwards. We
17 filed it as quickly as we could.

18 This action -- taking the -- you through the entire
19 time line, this accident occurred on the 20th of April,
20 2012. On the 25th of September, 2012, the plaintiff,
21 through their attorney Barry George, made a -- Barry made
22 a telephone demand to United Automobile Insurance Company
23 for \$18,000. That was denied on October 11, 2012, by
24 letter. And I have this letter that I can introduce as a
25 Court's exhibit that memorializes and confirms that And

1 I can bring that up afterwards and get that entered in.

2 On October 22nd, eleven days after the -- the request
3 for \$18,000 was denied by United Automobile Insurance
4 Company, the complaint was filed. Service occurred the
5 15th of November. Upon only one of the defendants; one
6 has never been served. The defendant who was served is
7 Wilson Miranda.

8 And on the 11th of January, 2013, an entry of default
9 was entered.

10 So that -- that is the complete time -- time line that
11 -- the relief was sought as soon as possible after the
12 default judgement -- we were made aware of the default
13 judgement.

14 Which leads me to the next, the reasons for failure to
15 respond: The clients, neither -- they're husband and
16 wife, and neither one understands or speaks English
17 language. They're not fluent, so they didn't realize the
18 significance of these -- these papers, didn't know what to
19 do with them. They made various attempts and it took a
20 period of time, various phone calls, and it's not clear
21 when they made it, how soon after they got these papers.
22 They didn't, themselves, know.

23 So at any rate, it took a period of time to get this -
24 - to try to speak with someone, and in fact, they were --
25 they were never really able to -- to -- to notify the

1 appropriate party.

2 The names were misstated on the pleadings. That's
3 another reason for -- for the failure to respond
4 appropriately.

5 And also, the insurance company had some expectation
6 that they would be notified of the summons and complaint
7 based on the fact that they were negotiating with the
8 plaintiff prior to suit being filed. And they were never,
9 in fact, notified of the summons and complaint

10 And under *Edwards v. Ferguson*, it can be grounds to
11 set aside when -- when -- under the proper circumstances,
12 can be proper grounds to set aside a default judgement
13 when the -- when the insured's involved in ongoing
14 negotiations with claimant, but is not informed that the
15 defendant has been served with a summons and complaint.
16 They were not in fact informed.

17 Regarding meritorious defenses: The driver defendant
18 testified to in his affidavit the car in front of him
19 stopped suddenly. And this was an accident that occurred
20 at a stop sign at the crest of a hill. And it was a rear-
21 end collision. And he testified that it looked like the
22 cars were all going through the intersection, and then the
23 one in front of him came to a sudden stop

24 Also he was going at a very low speed; and he
25 testifies in his affidavit that no one was hurt and it was

1 a very low-impact accident Which leads to the
2 meritorious defense, one, there's some suggestion of a
3 defense as to liability based on the sudden stop
4 testimony; and also, certainly as to damages.

5 This plaintiff did not start treating -- this
6 accident, again, occurred on April 20th, and the treatment
7 -- first treatment was May 23rd, a little -- month after
8 an accident. And that was just a visit at Spring Valley
9 Family Physicians, and does not start chiropractic
10 treatment until July 20th

11 So at that point, three months after the accident is
12 when he first begins. And the first record of
13 chiropractic treatment says, in the record, that he was
14 injured in an automobile accident that occurred six weeks
15 ago

16 So based on -- on those reasons, we think we certainly
17 have defenses as to damages, and also may have one as to
18 liability.

19 THE COURT: Thank you.

20 MS. RAINES: Thank you.

21 THE COURT: Mr. George?

22 MR. GEORGE: Your Honor, basically, this is a rear-end
23 accident where the -- Mr Miranda ran into the rear of --
24 of Mr. Pendarvis. And I'd like to hand up a couple of
25 documents to the Court so you'll know why we sued who we

1 did.

2 (Mr. George hands documents to the Court.)

3 MR GEORGE: This is the names they used on the police
4 report as the driver. You'll see one -- and this is the
5 declaration page from the insurance company that insures
6 them.

7 These folks that -- are playing a shell game with
8 everybody. They're using a name when they have an
9 accident -- they gave the police officers the name of the
10 driver and the owner of the car. As -- as you will see,
11 that's the defendant's on the summons and complaint,
12 Wilson Miranda and Glendy M. Aguilar. Those are the
13 people listed on the police report as driver and owner of
14 the car. And they live on Morning Glow Lane.

15 The summons and complaint was served on Wilson Miranda
16 -- according to the affidavit from the Richland County
17 Sheriff's Department, it was served there on a lady named
18 "Brenda Miranda," who is the sister of the driver Wilson
19 Miranda. Now they pass up an affidavit that purports the
20 driver of the car had no driver's license, so he could
21 have used any name that he wanted to. He didn't have any
22 identification of any kind.

23 So he -- the name "Wilson Miranda" is on the police
24 report, and the driver on the police report is "Glendy M.
25 Aguilar."

1 Then, if you look at the correspondence that she sent
2 up from United Automobile Insurance Company, shows the
3 insured as Miranda Aguilar. I have a copy of a letter
4 here from them.

5 THE COURT: Is that the same -- same letter?

6 (Mr. George hands a document to the Court.)

7 MR. GEORGE: I assume it's the same one I don't
8 know.

9 MS. RAINES: October 11, 2012.

10 THE COURT: Yes, sir -- yes, ma'am.

11 MR. GEORGE: Okay. Well, and then on the -- in the
12 affidavit, they're using names that they didn't use when -
13 - when they insured the car. She says in her affidavit it
14 was her car in the accident. And in the affidavit, she
15 says her name is (as read): "M-e-y-v-i-s Miranda " On
16 the declaration page from UAIC, the -- the insured and
17 owner of the car is (as read): "Miranda Aguilar." So
18 this -- this lady is using a lot of names

19 And so the driver of the car has another name also
20 that he did not give to the policeman What did they --
21 what are supposed to do? I'm talking about we have to
22 rely on something that they -- that they would present to
23 the police officer when we bring a suit We can't just
24 guess at a name The names we used were the names given
25 to the police officer. And they gave a false name -- I

1 assume it's a false name -- to their insurance company
2 when they insured the car.

3 And now they're giving us affidavits saying their
4 names are something else. So we know that the owner of
5 the car has now used three different names

6 And I would ask the nice lady here has she ever seen
7 an ID from any of these people saying who they really are?
8 I would like to know if -- what name they have on an ID,
9 if they have an ID. We've done everything we have --
10 could do to find these people and serve them. We served
11 them at the address that was given to the police officer

12 There's no question that -- Your Honor, they got the
13 papers. They say in the affidavit they got the papers.
14 And then they say they called their insurance company.

15 So what's -- what is -- I -- I don't understand why
16 they're trying to set it aside if they got the papers.
17 You assume that they're going to drive a car in the United
18 States they have to know something about the laws of the
19 United States. They have no driver's license, then -- so
20 they're coming into this court saying we're using two or
21 three different names, and now we want you to excuse us
22 for this.

23 And far as negotiation with the insurance company,
24 there's been no negotiation with these people. If you
25 define "negotiation," I assume negotiation is when two

1 people talk, that they are trying to accomplish some
2 means I hadn't talked to this man; I don't talk to this
3 insurance company I sue them; I sue them constantly. I
4 sent them the medical He wrote me a letter back saying
5 he wasn't going to pay me a penny I sued him. So there
6 was never any negotiation, like, he's going to pay me
7 3,000 and I said no. That's not true. There was no
8 negotiation

9 And that's all I have.

10 THE COURT: Yes, ma'am. Anything further?

11 MS. RAINES: Just briefly in response I do. These --
12 these affidavits are sworn testimony as to their names
13 There could be a variety of other reasons. I don't know
14 the reason why the names aren't stated correctly on these
15 other documents, but a language barrier is one that comes
16 to mind

17 But you know, none of these documents are sworn
18 testimony from the defendants as these affidavits are
19 regarding their names.

20 (Brief pause.)

21 THE COURT: I'll -- I'm going to give it some thought,
22 but I -- I will say I find persuasive the fact that, based
23 upon the letter that was handed up -- which is the same
24 letter, Ms. Raines, that you were going to hand up to me --
25 -- that it -- it doesn't indicate that there's been any

1 real negotiations I think there's been a review of the
2 medical records, and you know, it was -- I guess a
3 discussion, presentation of the medicals and the
4 information about the motor vehicle accident. And the
5 insurance company indicated that -- that they had some
6 difficulties because they didn't believe any of the
7 medicals would have been related to the accident

8 I do have to agree with Mr. George in terms of the
9 names. You know, the names either have to come off of the
10 driver's license, or it has to come off of the
11 registration -- the vehicle registration. And if the
12 owner of the vehicle's listed as "Glen" -- "Glendy M
13 Aguilar" at a different address, which is not even the
14 address where the individuals were -- were served, and the
15 other one -- and the driver was listed as "Miranda
16 Wilson," and that's the a name that's given to the -- the
17 law enforcement officers, I -- I think it -- that it's not
18 unreasonable and it's not a basis to excuse a failure to
19 respond based upon the fact that the names are different -
20 - their actual names are different. I think there's a
21 procedure by which to make such a correction. And that
22 doesn't excuse them from answering, at all, the documents.

23 I am somewhat sympathetic to the argument about not
24 being able to speak language, but I -- I'll just have to
25 give some thought on that one.

1 MS. RAINES: Can we submit proposed orders, Your
2 Honor?

3 THE COURT: If -- if you want to do that, you can.
4 And I -- and I understand the standard -- certainly it --
5 certainly there's always the argument that there's a
6 meritorious defense, and I understand that that standard
7 is really not a very high standard in terms of just being
8 able to -- to raise some type of defense would be
9 sufficient. Doesn't mean that you have to prevail on the
10 defense, but it's a -- it's a defense that would be
11 significant enough to raise an issue to be tried

12 And -- and I -- I certainly would agree that -- that
13 it was timely I mean, the -- the period of time between
14 the -- the -- the default and the filing of the motion was
15 a relatively short period of time, which -- which in --
16 which somewhat lends credence to the claim about the
17 language barrier, but I'm not so -- I'm not sure that --
18 under the circumstances, that there was really an
19 expectation that he notify the insurance company. I don't
20 think there's an obligation to do so when at the time, you
21 know, the response was that we're not -- you know, there
22 wasn't -- there wasn't a negotiation about the claim It
23 was, you know, we deny your claim and that's it.

24 And it says (as read): "Please convey your -- our
25 position to your client and we are closing our file." So

1 that tells me that there's -- there's not a negotiation
2 there There's not a back and forth in an attempt to
3 resolve it, and that -- and -- and the law suit was filed
4 during that particular period of time

5 So I'm -- I'm -- I'm leaning in Mr. George's
6 direction, but I -- that language barrier gives me some
7 pause. If you want to submit proposed orders, you can do
8 that.

9 MR. GEORGE: Your Honor, we'll just go with -- any
10 order you prepare.

11 THE COURT: I know you wouldn't -- you wouldn't give
12 me an order, Mr. George. I know that. You -- you have
13 stated your position You figure that's fine. If she'd
14 like to give me one, that's fine, too And if you -- you
15 want to respond to it, that's fine. If not, that's okay,
16 too. I -- I -- I won't -- I don't hold that against you
17 at all.

18 MR. GEORGE: Thank you, Your Honor. I appreciate
19 that. I thank you very much

20 THE COURT: I know you well enough over the years.
21 That's just not your style.

22 And since it's -- and since it's optional, you know,
23 if you'll just submit it within the next week, I'll --
24 I'll look at it.

25 MS. RAINES: Thank you, Your Honor.

1
2
3

MR. GEORGE: Thank you, Your Honor.

-- END OF TRANSCRIPT OF RECORD --

CERTIFICATE

I, the undersigned Bonnie H Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, and to the best of my ability, in the Fifth Circuit Court, for Richland County, South Carolina, on the 18th day of June, 2013.

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

Bonnie H. Kelly, CVR
Official Court Reporter

Columbia, South Carolina

November 9, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Fifth Circuit
C/A NUMBER: 2012-CP-40-07125

David Pendarvis,

Plaintiff,

vs.

Wilson Miranda and Glendy M. Aguilar,

Defendant.

**NOTICE OF MOTION AND MOTION
TO SET ASIDE ENTRY OF DEFAULT**

2013 MAR 18 AM 10:42
FILED
C.P. & G.S.

PLEASE TAKE NOTICE that ten (10) days hereafter, or as soon thereafter as counsel may be heard, the Defendants will move pursuant to Rule 55(c) and/or Rule 60(b) of the South Carolina Rules of Civil Procedure, for an order setting aside entry of default for good cause shown and/or for surprise or excusable neglect. Further, the Defendants assert that they have meritorious defenses as to both liability and damages.

This Motion will be supported by the pleadings, a memorandum of law, affidavits, the applicable case law, the South Carolina Rules of Civil Procedure, the record before the Court, and such other evidence as the Court may choose to hear and take into account.

RESPECTFULLY SUBMITTED,

HOWSER, NEWMAN & BESLEY, L.L.C.

By: 

Kelley Cannon
Caroline H. Raines
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29201
(803) 758-6000
ATTORNEYS FOR THE DEFENDANTS

March 13, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Fifth Circuit
C/A NUMBER: 2012-CP-40-07125

David Pendarvis,

Plaintiff,

vs.

Wilson Miranda and Glendy M. Aguilar,

Defendant.

**AFFIDAVIT OF DEFENDANT
WILSON OROZCO IN SUPPORT OF
MOTION TO SET ASIDE ENTRY OF
DEFAULT**

RICHLAND COUNTY
FILED
MAY 17 PM 12:52
JENNIFER W. MCBRIDE
CLERK OF COURT

Personally appeared before me the undersigned, after being duly sworn, deposes and says:

1. The contents of this affidavit are based on my own personal knowledge.
2. I am of sound mind and at least eighteen years of age.
3. I am a native Spanish Speaker. I am not conversational in the English language.
4. The Summons and Complaint ("papers") in this matter were delivered to my wife, Meyvis Miranda. My wife called me because she did not understand the papers and did not know what she was supposed to do with them. Sometime later, my wife and I looked at the papers together.
5. I did not understand the papers either but saw that they had something to do with the accident and tried to call the insurance company. It took many calls over a period of time to speak with someone who spoke Spanish and then try to communicate to that person about the papers. This was difficult since I wasn't exactly sure what the papers were or meant.
6. The accident that is the subject of the Plaintiff's Complaint occurred at an intersection. I was approaching the intersection and it looked like the cars in front of me were going through the intersection. However the car in front of me stopped suddenly and my vehicle impacted that car in the rear. Both my vehicle and the vehicle in front of me were traveling very slowly at the

time of the accident. There were only minor scratches to the vehicles and no one was hurt in this minor accident.

7. My name is misstated in the caption of this action as Wilson Miranda. My correct name is Wilson Orozco. My wife's name is Meyvis Miranda and is misstated in this caption as Glendy M. Aguilar

FURTHER, Affiant Sayeth Naught,

Wilson Orozco
Wilson Orozco

May 13, 2013

Sworn to before me this 13th

day of May, 2013

Dr. Crutchfield (L.S.)
Notary Public for South Carolina

My commission expires: 8/19/20

I, Rachel Weldon, certify that I understand the English language and the Spanish language, and that I have truly interpreted to the affiant, Wilson Orozco, the contents of this affidavit and the oath or affirmation which was administered.

Rachel Weldon
Signature of the interpreter Rachel Weldon

Date: 5/13/13

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Fifth Circuit
C/A NUMBER: 2012-CP-40-07125

David Pendarvis,

Plaintiff,

vs.

Wilson Miranda and Glendy M. Aguilar,
Defendant.

**AFFIDAVIT OF DEFENDANT
MEYVIS MIRANDA IN SUPPORT OF
MOTION TO SET ASIDE ENTRY OF
DEFAULT**

RICHLAND COUNTY
FILED
APR 17 PM 12:52
CHRISTIE W. MOBRIDGE
CLERK

Personally appeared before me the undersigned, after being duly sworn, deposes and says:

1. The contents of this affidavit are based on my own personal knowledge.
2. I am of sound mind and at least eighteen years of age.
3. I am a native Spanish Speaker. I am not conversational in the English language.
4. The Summons and Complaint ("papers") in this matter were delivered to me. I called my husband because I did not understand the papers and did not know what to do with them. Sometime later, my husband and I looked at the papers together.
5. My husband did not understand the papers either but saw that they had something to do with the accident and tried to call the insurance company. It took many calls over a period of time to speak with someone who spoke Spanish and then try to communicate to that person about the papers. This was difficult since I wasn't exactly sure what the papers were or meant.
6. The accident that is the subject of the Plaintiff's Complaint occurred at an intersection. Although my car was involved in this accident, I was not in the vehicle at the time. My husband was driving my car at the time of the accident.

7. My name is misstated in this caption as Glendy M. Aguilar My correct name is Meyvis Miranda. My husband's name is Wilson Orozco and is mistated in this caption as Wilson Miranda.

FURTHER, Affiant Sayeth Naught,

Meyvis Miranda
Meyvis Miranda

May 13, 2013

Sworn to before me this 13th

day of May, 2013

Mr. Crutchfield (L.S.)
Notary Public for South Carolina

My commission expires: 8/19/20

I, Rachel Weldon, certify that I understand the English language and the Spanish language, and that I have truly interpreted to the affiant, Meyvis Miranda, the contents of this affidavit and the oath or affirmation which was administered.

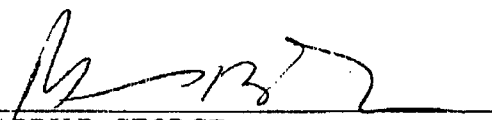
Rachel Weldon
Signature of the interpreter Rachel Weldon

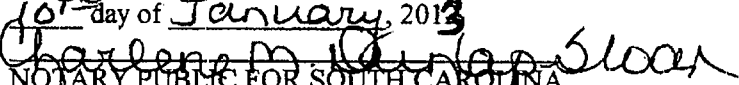
Date: 5/13/13

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND)
 David Pendarvis,) Case #12-CP-40-0230
)
 Plaintiff,)
)
 vs.) AFFIDAVIT OF DEFAULT
)
 Wilson Miranda and Glendy M. Aguilar,)
)
 Defendants.)

RICHLAND COUNTY
 FILED
 2014 JAN 14 PM 3:10
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

PERSONALLY, appeared before me, Barry B. George, who being duly sworn, says that he is the attorney for the Plaintiff in the above-entitled action; that the Summons and Complaint therein was duly served on the Defendant, Wilson Miranda, on the 1st day of November 2012, as shown by the Affidavit of Service signed by Deputy Sheriff B. Jones; that more than thirty (30) days exclusive of the day of service has elapsed since the service of said Summons and Complaint; and no Answer, Demurrer, Notice of Appearance or other pleading has been served on the Plaintiff's attorney, as required by said Summons and Complaint, and that said Defendant is now in default. That said Defendant is not member of the Armed Services of the United States, as is contemplated under the Soldiers' & Sailors' Relief Act, as amended


 BARRY B. GEORGE
 PAIGE B. GEORGE
 ATTORNEY FOR THE PLAINTIFF
 1419 Bull Street
 Columbia, South Carolina 29201
 (803) 254-7222

SWORN to & subscribed before me this
 10th day of January, 2013

 NOTARY PUBLIC FOR SOUTH CAROLINA
 My Commission Expires: 03-06-17



Richland County Sheriff's Department

OCT 31 2012

AFFIDAVIT OF SERVICE or NON-SERVICE

Date Entered: 10/30/2012
File Number: C201211392
DSS Number: 0
Foreign Case #:
Court Date: 01/01/1900

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Date _____

Plaintiff Attorney

Barry B. George Attorney At Law 1419 Bull St. Columbia, SC 29201
Phone: (803)254-7222 Work:

Plaintiff

David Pendarvis , 0
Phone: Work:

CIA# 2012-CP-40-7125

Defendant(s)

Wilson Miranda 2109 Morninglo Lane Columbia, SC 29223
Phone: Work:

PERSONALLY APPEARED Before Me B. Jones duty sworn says that he/she served, or attempted to serve, the following civil paper(s):

Summons & Complaint

2012 NOV 15 AM 9:31
JEANETTE W. MCBRIDE
C.P. & C.S.
FILED
RICHLAND COUNTY

on the defendant, Wilson Miranda, as follows:

() By personally handing the process to the defendant at _____, SC on _____, (Date/Time)

(X) By handing the process to Brenda Miranda (Sister) at 2109 Morninglo Lane, SC on 11-1-12 7:34am, a person of suitable age and discretion then residing in the defendant's usual place of abode.

() By handing the process to _____, the registered corporate agent or officer of the company at _____, SC on _____, and leaving him/her a copy

() WAS UNABLE to locate and serve the above process on the defendant, after diligent efforts by checking the City/Telephone Directory, and going to the address given for the defendant, and by questioning persons in the vicinity of the address THE PROCESS IS RETURNED UNEXECUTED

() COMMENTS: _____

Deponent knows the person served to be the defendant and Deponent is not a party to the action. SWORN TO Before me this

1 day of November, 2012

B. Jones 260
Deputy Sheriff, Richland County

Kenneth Coleman
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES August 11, 2014
P.O. Box 143 Columbia, SC 29202
Office: (803) 576-3151 Fax: (803) 576-1598



UNITED AUTOMOBILE INSURANCE COMPANY

«DocAddress1», «DocAddress2» «DocCity», «DocState» «DocZip»

Toll Free: «DocPhone» «DocFax»

Faxed to (803) 779-9351 and also mailed

October 11, 2012

Attorney Barry B. George
1419 Bull Street
Columbia, SC 29201

REF: Claim No.: 1800011336-001-G15
Policy No: SCU 669935
Insured: MIRANDA AGUILAR
Loss Date: April 20, 2012

Dear Barry B. George, Esq.:

This letter is to follow up our telephone conversation of this afternoon.

As discussed, after careful review of the medical records which your office provided, there does not appear to be any correlation between your client's treatment and this accident.

The bills show that your client did not seek any treatment until 05/23/12, with the Spring Valley Family Practice. The medical CPT coding shows that your client went in for an earwax problem (impacted cerumen).

The other specials show that your client initially sought chiropractic treatment on 07/20/12, which is 90 days since the loss. Due to the time lapse between this minor accident and his treatment, we cannot relate this to this loss. As a result, you have not confirmed that your client was injured from this accident.

Based upon your lack of documentation, United Automobile Insurance Company is not able to honor any injury claim which you or your client may present.

Please convey our position to your client and we are closing our file. Thank you.

Sincerely,

Bruce Creller
SC/GA Claims Specialist
866-913-6866 x52093

"Any person who knowingly presents false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison".

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-07125

David Pendarvis

Respondent,

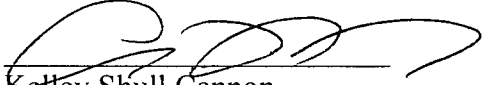
v.

Wilson Miranda and Glendy M. Aguilar

Appellants.

CERTIFICATE OF COUNSEL

I hereby certify that the *Record on Appeal* in this matter contains all material proposed to be included by all parties and not any other material pursuant to Rule 210(g), SCACR.



Kelley Shull Cannon
Albert R. Pierce, Jr.
HOWSER, NEWMAN &
BESLEY, L.L.C.
1508 Washington Street
P.O. Box 12009
Columbia, SC 29211
(803) 758-6000
Attorneys for Appellants

February 28, 2014

RECEIVED

FEB 28 2014

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-07125

David Pendarvis

Respondent,

v.


Wilson Miranda and Glendy M. Aguilar

Appellants.

PROOF OF SERVICE

I hereby certify that I served one copy of the *Record on Appeal* on Respondent David Pendarvis by depositing it in the United States Mail, postage prepaid, on February 11, 2014, addressed to his attorneys of record, Barry B. George and Paige B. George, as follows:

Barry B. George
Paige B. George
Law Office of Barry B. George
1419 Bull Street
Columbia, SC 29201


Kelley Shull Cannon, Esquire
Albert R. Pierce, Jr., Esquire
HOWSER, NEWMAN &
BESLEY, L.L.C.
1508 Washington Street
P.O. Box 12009
Columbia, SC 29211
(803) 758-6000
Attorneys for Appellants

February 11, 2014

RECEIVED

FEB 18 2014

SC Court of Appeals