

The Supreme Court of South Carolina

Don D Gause,

Respondent,

v

Nathan Dale Smithers and
Edward W Hunt,

Defendants,

of Whom Edward W Hunt is
the,

Appellant

The Honorable William Seals Jr
Horry County
Trial Court Case No 2006-CP-26-05391

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules,
this appeal is hereby certified for review by the South Carolina Supreme
Court Upon receipt of this order, the Court of Appeals is hereby directed to
forward the case file, all records and briefs and any exhibits on file to this
Court

IT IS SO ORDERED


C J
FOR THE COURT

Columbia, South Carolina

July 25, 2012

cc Linda Weeks Gangi, Esquire
David Eliot Rothstein, Esquire
John S. Nichols, Esquire
The Honorable Jenny Kitchings

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February 7, 2012

David E Rothstein, Esq
Rothstein Law Firm, P A
514 Pettigru Street
Greenville, SC 29601

Re *Don D Gause vs Nathan D Smuthers and Edward W Hunt*
Civil Action No 2006-CP-26-5391
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Dear David

Please find enclosed herewith two of the labels that I am having placed on the Record on Appeal pursuant to the Court's order of February 1, 2012

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/avs

Enclosures

pc John S Nichols, Esq
V Claire Allen

RECEIVED

FEB 08 2012

SC Court of Appeals



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January 25, 2012

Hon Tanya A Gee
Clerk
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

RECEIVED

JAN 27 2012

SC Court of Appeals

Re Don D Gause v Nathan Dale Smithers et al.
Case No 2011183646

Dear Ms Gee

Enclosed please find the original and one copy of the Amended Proof of Service in the above-referenced case. Please file the original and return the extra copy to me via the enclosed return envelope. As Deputy Clerk, V. Claire Allen, noted in her letter of January 18, 2012, I inadvertently cut-and-pasted the language from my prior Proof of Service, reflecting service of the Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on Appeal, instead of the Final Brief of Respondent. I apologize for my oversight and I appreciate your bringing this matter to my attention.

By copy of this letter, I am hereby serving a copy of the Amended Proof of Service on Counsel for Appellant.

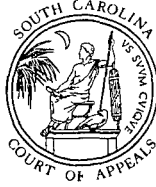
Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to call me.

Sincerely yours,

David E Rothstein

Enclosure

cc Linda Weeks Gangi, Esq
John S Nichols, Esq



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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February 1, 2012

Linda Weeks Gangi, Esquire
Thompson & Henry, PA
P O Box 1740
Conway, SC 29528

Re Gause, Don v Smithers, Nathan (2)
2011183646

Dear Ms Gangi

In our letter dated January 18, 2012, we requested that John S Nichols, counsel for the Respondent, be added to the cover of the Record on Appeal

Within ten days of the date of this letter, please arrange for a representative from your office to come to the Court of Appeals filing desk on the 1st floor of the Edgar A Brown Building to make the required corrections to the record We request that you notify this office when someone will be arriving to make the corrections so the documents will be available without delay

Very truly yours,

V Claire Allen, Deputy
CLERK

TAG/laf

cc David Eliot Rothstein, Esquire
John S Nichols, Esquire

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DEC 28 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Hon William H Seals, Jr , Circuit Court Judge

Case No 2006-CP-26-5391

Don D Gause,

Respondent,

v

Nathan Dale Smithers and Edward W Hunt,

Defendants,

Of Whom, Edward W Hunt is

Appellant

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on Appeal, on Appellant, Edward W Hunt, by depositing a copy of both documents in the United States Mail, postage prepaid, on December 27, 2011, addressed to his attorney of record, Linda Weeks Gangi, 1300 Second Avenue, Third Floor, P O Box 1740, Conway, SC 29528

December 27, 2011



David E Rothstein
Rothstein Law Firm, PA
514 Pettigru Street
Greenville, SC 29601
(864) 232-5870

Attorney for Respondent



The South Carolina Court of Appeals

TANYA A. GEE
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January 18, 2012

Linda Weeks Gangi, Esquire
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Conway, SC 29528

David Eliot Rothstein, Esquire
Rothstein Law Firm, P A
514 Pettigru St
Greenville, SC 29601

Re Gause, Don v Smithers, Nathan (2)
2011183646

Dear Counsel

We have received the Record on Appeal, Appellant's Final Brief and the Respondent's Final Brief in the above case. However, the Certificate of Counsel for the Record on Appeal appears to be a copy. Additionally, John S. Nichols, Esquire must be added as counsel of record for the respondent.

The caption on the Record on Appeal should show

Don D. Gause,

Respondent,

v

Nathan Dale Smithers and Edward W. Hunt,

Defendants,

of Whom, Edward W. Hunt is the,

Appellant

Within ten days of the date of this letter, the appellant must arrange to come to the Court of Appeals filing desk on the 1st floor of the Edgar A. Brown Building to make the required corrections to the record and provide an original Certificate of Counsel. **We request that you notify this office when someone will be arriving to make the corrections so the documents will be available without delay.**

Furthermore, the Proof of Service for the Respondent's Final Brief shows the initial brief and designation of matter as being served. Please provide an Amended Proof of Service within ten days of the date of this letter.

Very truly yours,

V. Claude Allen, Deputy
CLERK

TAG/laf

cc John S. Nichols, Esquire



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December 27, 2011

Hon Tanya A Gee

Clerk

South Carolina Court of Appeals

P O Box 11629

Columbia, SC 29211

SC Court of Appeals

DEC 28 2011

RECEIVED

Re Don D. Gause v Nathan Dale Smithers et al.,
Case No 2011183646

Dear Ms Gee

Enclosed please find the original (unbound) and fifteen (15) copies of the Final Brief of Respondent, including the Certificate of Counsel pursuant to Rule 211(b), and the original and one copy of the Proof of Service in the above-referenced case. Please file the original and 14 copies and return the extra copy to me via the enclosed return envelope.

By copy of this letter, and as indicated on the Proof of Service, I am hereby serving a copy of the brief on Counsel for Appellant.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to call me.

Sincerely yours,

David E Rothstein

Enclosures

cc Linda Weeks Gangi, Esq
John S Nichols, Esq

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December 20, 2011

The Honorable Tanya A Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

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DEC 21 2011
SC Court of Appeals

Dear Ms Gee

Please find enclosed herewith the following documents

- a The unbound original and fifteen (15) copies of the Appellant's Final Brief,
- b The original and two copies of the Certificate of Counsel for the Appellant's Final Brief,
- c The original and two copies of the Certificate of Mailing of the Appellant's Final Brief,
and
- d The unbound original and fifteen (15) copies of the Record on Appeal

These documents were sent to the Court in three separate boxes Please file the originals,
clock one copy of each document and return the clocked copies to me in the enclosed self-
addressed stamped envelope Your assistance in this matter is greatly appreciated

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A

A handwritten signature in black ink, appearing to read 'Linda Weeks Gangi', with a stylized flourish at the end.

Linda Weeks Gangi

LWG/sag

Enclosures

pc David Rothstein, Esq

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December 8, 2011

The Honorable Tanya A Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re *Don D Gause vs Nathan D Smithers and Edward W*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

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DEC 12 2011
SC Court of Appeals

Dear Ms Gee

Please find enclosed herewith the original and one (1) copy of the Certificate of Mailing for the Record on Appeal

Please file the original, clock the copy and return the clocked copy to me in the enclosed self-addressed stamped envelope

If you have any questions with regard to this matter, please do not hesitate to contact me

The Honorable Tonya A Gee
October 11, 2011
Page 2

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/sag

Enclosures

pc David E Rothstein, Esq - derothstein@mindspring.com

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DEC 12 2011
SC Court of Appeals

THOMPSON & HENRY, P A

The South Carolina Court of Appeals

Don D Gause,

Respondent,

v

Nathan Dale Smithers and Edward W
Hunt,

Defendants,

of Whom, Edward W Hunt is the,

Appellant

The Honorable William Seals Jr
Horry County
Trial Court Case No 2006-CP-26-05391

PARTIAL ORDER of DISMISSAL AND REMITTITUR

The above entitled case is pending on appeal in this Court. It now appears that the Don Gause wishes to withdraw his appeal and moves the Court for an Order dismissing the appeal of Don Gause.

IT IS ORDERED that the appeal of Don Gause be and hereby is dismissed. The case of Don Gause is REMITTED to the Clerk of Court for Horry County. The appeal of Appellant Edward W Hunt remains pending in this Court.

V. Claude Allen, Deputy Clerk
For the Court

Columbia, South Carolina

Original to The Honorable Melanie Huggins-Ward

cc Gene M Connell, Jr, Esquire
Linda Weeks Gangi, Esquire
David Eliot Rothstein, Esquire
John S Nichols, Esquire
The Honorable Melanie Huggins

FILED
11/30/11 *HE*



The South Carolina Court of Appeals

TANYA A GFE
CLERK

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November 28, 2011

Gene M Connell, Jr, Esquire
Kelaher, Connell & Connor, P C
P O Drawer 14547
Surfside Beach, SC 29587

Re Gause, Don v Smithers, Nathan (2)
2011183646

Dear Counsel

Enclosed is a copy of an Order of the Court regarding your Notice of Motion and Motion to Approve Consent Order in the above case

All parties are advised that the originals of all records on appeal and final briefs filed with the appellate courts are scanned. Therefore, in accordance with the May 1, 2008 Amendments to the South Carolina Appellate Court Rules, DO NOT staple, spiral bind, velobind, or otherwise permanently bind the ORIGINALS of these documents. The original brief(s) and record on appeal should still have front and back covers in compliance with Rule 267(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole-punching. All COPIES of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address 1205 Pendleton Street, Columbia, S C 29201. Thank you for your attention to this.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc Linda Weeks Gangi, Esquire
David Eliot Rothstein, Esquire
John S Nichols, Esquire

The South Carolina Court of Appeals

Don D Gause,

Respondent,

v

Nathan Dale Smithers and Edward W
Hunt,

Defendants,

of Whom, Edward W Hunt is the,

Appellant

The Honorable William Seals Jr
Horry County
Trial Court Case No 2006-CP-26-05391

ORDER

On June 14, 2011, Gene M Connell Jr , counsel for Appellant, filed a "Consent Order on Control of Defense and Relieving Counsel" requesting this Court relieve him as counsel of record for Appellant On June 30, 2011, Respondent and Appellant filed a joint Consent Order requesting this Court approve a Settlement Agreement entitled "Confession of Judgment and Covenant Not to Execute " On July 20, 2011, pursuant to S C Code Ann, § 38-77-160 (2002), this Court executed an Order relieving Gene M Connell Jr as counsel for Appellant and permitting State Farm Mutual Automobile Insurance Company and its attorney, Linda Weeks Gangi, to assume control of the defense in the name of Appellant After assuming control of the defense, State Farm refused to consent to the proposed Settlement Agreement Consequently, this Court requested memoranda from both parties addressing the validity of the proposed

Settlement Agreement After careful consideration, the motion to approve the "Confession of Judgment and Covenant Not to Execute" is denied

AND IT IS SO ORDERED

A handwritten signature in cursive script, reading "John D. Seatter", written over a horizontal line.

Columbia, South Carolina

cc Gene M Connell, Jr , Esquire
Linda Weeks Gangi, Esquire
David Eliot Rothstein, Esquire
John S Nichols, Esquire

FILED
11/28/11 *JS*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Hon William H Seals, Jr , Circuit Court Judge

Case No 2006-CP-26-5391

Don D Gause,

Respondent,

v

Nathan Dale Smithers and Edward W Hunt,

Defendants,

Of Whom, Edward W Hunt is

Appellant

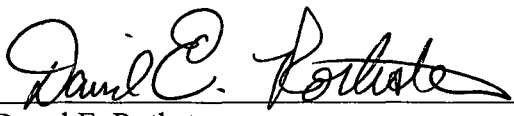
RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN RECORD ON APPEAL

Respondent agrees that the matter previously designated by Appellant is appropriate to be included in the Record on Appeal In addition, Respondent proposes that the following be included in the Record on Appeal

- 1 Transcript of Record, Hearing on Defendants' Motion to Dismiss, October 24, 2007 (pp 1-16) (entire transcript), and
- 2 Transcript of Oral Argument before S C Court of Appeals, Docket No 16749, April 23, 2009 (pp 1-20) (entire transcript)

I certify that this designation contains no matter which is irrelevant to this appeal

November 10, 2011


David E Rothstein
Rothstein Law Firm, PA
514 Pettigru Street
Greenville, SC 29601
(864) 232-5870
Attorney for Respondent

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NOV 15 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Hon William H Seals, Jr , Circuit Court Judge

Case No 2006-CP-26-5391

Don D Gause,

Respondent,

v

Nathan Dale Smithers and Edward W Hunt,

Defendants,

Of Whom, Edward W Hunt is

Appellant

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on Appeal, on Appellant, Edward W Hunt, by depositing a copy of both documents in the United States Mail, postage prepaid, on November 10, 2011, addressed to his attorney of record, Linda Weeks Gangi, 1300 Second Avenue, Third Floor, P O Box 1740, Conway, SC 29528

November 10, 2011



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NOV 15 2011

SC Court of Appeals



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November 10, 2011

Hon Tanya A Gee
Clerk
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Don D. Gause v Nathan Dale Smithers et al,
Case No 2011183646

Dear Ms Gee

Enclosed please find the original and one copy of the Initial Brief of Respondent, Respondent's Designation of Matter to be Included in Record on Appeal, and Proof of Service in the above-referenced case. Please file the originals and return the extra copies to me via the enclosed return envelope.

By copy of this letter, and as indicated on the Proof of Service, I am hereby serving a copy of these documents on Counsel for Appellant.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to call me.

Sincerely yours,


David E Rothstein

Enclosures

cc Linda Weeks Gangi, Esq
John S Nichols, Esq

RECEIVED

NOV 15 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Hon William H Seals, Jr , Circuit Court Judge

Case No 2006-CP-26-5391

Don D Gause,

Respondent,

v

Nathan Dale Smithers and Edward W Hunt,

Defendants,

Of Whom, Edward W Hunt is

Appellant

INITIAL BRIEF OF RESPONDENT

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Attorneys for Respondent

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OTHER AUTHORITIES

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COUNTER-STATEMENT OF ISSUES ON APPEAL

1 Did the trial court correctly rule that Appellant could be held liable under the family purpose doctrine for the tortious acts of his son where the son had previously been dismissed from the case on statute of limitations grounds because of a mistaken identification of the driver and where Appellant previously argued that the existence of the claims against him under the family purpose doctrine prevented the Amended Complaint from relating back as to the son?

2 Did the trial court properly determine that Appellant's liability under the family purpose doctrine was a question of fact for the jury where there was sufficient evidence that Appellant owned the car in question, that he still maintained control over the car, that he furnished the car to his son for his convenience, pleasure, and general use, and that the son was still living in the father's household at the time of the collision?

3 Did the trial court properly rule that punitive damages are appropriate against Appellant under the family purpose doctrine where Appellant's son, who was the actual wrongdoer, has been dismissed from the case, because settled agency principles allow punitive damages to be awarded against a principal for the egregious acts of his agent?

4 Did the trial court properly determine that any confusion caused by including Appellant's son in the case caption on the verdict form was remedied by the supplemental, curative instructions to the jury?

5 Did the trial court properly rule that the issue of whether Plaintiff's injuries were proximately caused by the negligence of Appellant's son was a question of fact for the jury where the son's negligence set the stage for Plaintiff to be injured in a foreseeable

collision with a subsequent tortfeasor?

6 Did the trial court properly deny Appellant's motion for new trial because the court's disallowance of certain evidence and cautionary instructions to the jury to disregard such evidence cured any alleged error, and because Appellant cannot show any material prejudice from two limited references to the allegedly improper evidence?

COUNTER-STATEMENT OF THE CASE

Plaintiff commenced this action on November 2, 2006, by filing a complaint against Defendants, Nathan Dale Smithers and Edward W Hunt. Plaintiff incorrectly named "Edward W Hunt" as the driver of one of the cars involved in the collision. The driver's name was actually "Edward Raymond Hunt," the son of Edward W Hunt. The confusion arose because the name "Edward W Hunt" as listed as the owner of the vehicle in question was the only identifying information on the accident report for the driver of that vehicle. Defendant Hunt filed his answer and motion to dismiss, asserting that he was not the driver of the first vehicle in question, that he was merely the owner of the vehicle, and that the vehicle was being operated by his son, Edward Raymond Hunt, at the relevant time. Plaintiff immediately amended the Complaint to name Edward Raymond Hunt as a defendant and to add two causes of action against Edward W Hunt under the family purpose doctrine and for negligent entrustment. The Amended Complaint was filed more than three years after the date of the accident.

Edward Raymond Hunt was dismissed from the case based on the statute of limitations, because the trial court refused to allow the Amended Complaint to relate back to the filing of the original complaint under Rule 15(c), SCRCP, despite the obvious

mistaken identity of the original Defendant Hunt. The Court of Appeals affirmed the dismissal of Edward Raymond Hunt, holding that the relation back rule did not apply because Plaintiff did not merely substitute the mistakenly identified party, but instead added a party, since the Amended Complaint added two new claims against Edward W. Hunt (family purpose doctrine and negligent entrustment). Gause v. Smithers, 384 S.C. 130, 133, 681 S.E.2d 607, 609 (Ct. App. 2009).

The case was tried to a jury in Horry County on January 4-6, 2011. The jury returned a verdict in favor of Plaintiff against both Defendants Smithers and Hunt jointly in the amount of \$155,432.64 in actual damages, which was the exact amount of Plaintiff's past medical bills. The jury also awarded punitive damages against Defendant Smithers in the amount of \$60,000.00 and punitive damages against Defendant Hunt in the amount of \$40,000.00.

Both Plaintiff and Defendant Hunt filed motions for new trial, which were denied by the trial judge. Defendant Hunt initiated this appeal by filing a notice of appeal on January 20, 2011. Plaintiff filed a notice of cross appeal on February 4, 2011. Plaintiff has now withdrawn his cross appeal, after settling with Defendant Hunt and his liability insurer on a covenant not to execute. Plaintiff's own underinsured motorist carrier has now taken over the appeal on behalf of Defendant Hunt.

FACTS

This case arises out of an automobile collision in the early morning hours of Saturday, November 15, 2003, near Conway, involving two drunken drivers. Respondent, Don D. Gause, was a patrol officer for the City of Conway Police Department and was on

duty on the morning in question, when he was dispatched at approximately 5 30 a m to assist a highway patrol officer with the arrest of a motorist who had been stopped for suspicion of driving under the influence (Tr at 26, l 25 to 28, l 10) When Mr Gause arrived on the scene at Highway 501 N, near the intersection of Highway 701 heading into Conway, Appellant's son, Edward Raymond Hunt, was being taken into custody Appellant's son had stopped the vehicle he was driving in the left-lane of traffic, rather than pulling off the roadway, in response to the trooper's blue lights (Tr at 29, ll 2-22) The arresting officer asked Mr Gause to wait at the scene for a tow truck to remove the Hunt vehicle from the roadway (Tr at 32, ll 18-24) Mr Gause pulled his vehicle immediately behind the Hunt vehicle with his emergency flashers, signal bar, and blue lights activated (Tr at 33, ll 6-16) While Mr Gause was sitting in his patrol car, waiting for the tow truck to arrive, his patrol car was struck from behind by another vehicle, being operated by co-Defendant Nathan Dale Smithers, who was also driving under the influence of alcohol (Tr at 35, ll 12-24, 165, ll 16-25)

Mr Gause suffered severe injuries in the collision, and all three vehicles were rendered total losses (Tr at 36, ll 7-25)

The jury found in favor of Mr Gause against both Defendants at trial Defendant Smithers for crashing into the back of the patrol car, and Appellant for the negligence of his son, under the family purpose doctrine, for improperly stopping Appellant's vehicle in the roadway in response to a blue light instead of pulling off the right shoulder of the road The jury specifically found that the actions of both drivers were contributing, proximate causes of Mr Gause's injuries The jury also found that Defendant Hunt was liable for his son's

negligence under the family purpose doctrine because Defendant owned, maintained, or furnished the car in question for the general use, pleasure, and convenience of the members of his family

ARGUMENTS

I THE TRIAL COURT CORRECTLY RULED THAT APPELLANT COULD BE HELD LIABLE UNDER THE FAMILY PURPOSE DOCTRINE FOR THE TORTIOUS ACTS OF HIS SON WHERE THE SON HAD PREVIOUSLY BEEN DISMISSED FROM THE CASE ON STATUTE OF LIMITATIONS GROUNDS BECAUSE OF A MISTAKEN IDENTIFICATION OF THE DRIVER AND WHERE APPELLANT PREVIOUSLY ARGUED THAT THE EXISTENCE OF THE CLAIMS AGAINST HIM UNDER THE FAMILY PURPOSE DOCTRINE PREVENTED THE AMENDED COMPLAINT FROM RELATING BACK AS TO THE SON

Appellant first asserts that the trial judge should have dismissed the claim against him under the family purpose doctrine because the liability of the father and son are indivisible. Appellant argues that because the son was dismissed from this action based on the statute of limitations, the claims against the father under the family purpose doctrine must fail.

As an initial matter, Appellant's argument would work a tremendous injustice in this case because it is based on the logical fallacy of circular reasoning. Appellant previously convinced the circuit court and the court of appeals that the son, Edward Raymond Hunt, should not be substituted as a party on the negligence claim so as to fit within the relation-back provisions of Rule 15(c), SCRCP, because the amended complaint also added the claim against the father under the family purpose doctrine. In essence, the Appellant used the existence of the claim under the family purpose doctrine as the premise for having the claims against the son dismissed on statute of limitations grounds. See Gause v. Smithers, 384 S. C.

at 133, 681 S E 2d at 609 (“We are mindful that this produces a harsh result, although Gause’s claims against Father remain viable”) (emphasis added) Now, Appellant is trying to bootstrap the dismissal of the son as the basis for arguing that the claims against the father under the family purpose doctrine must fail Appellant should not be allowed to whip-saw the Plaintiff’s claims and thereby avoid responsibility for the clear negligence of the son in the operation of Appellant’s car on the night in question

This situation is analogous to the doctrine of judicial estoppel, which “precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation” Hayne Fed Credit Union v Bailey, 327 S C 242, 251, 489 S E 2d 472, 477 (1997), see also Cothran v Brown, 357 S C 210, 215-16, 592 S E 2d 629, 632 (2004) (elements of judicial estoppel are “(1) two inconsistent positions taken by the same party or parties in privity with one another, (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other, (3) the party taking the position must have been successful in maintaining that position and have received some benefit, (4) the inconsistency must be part of an intentional effort to mislead the court, and (5) the two positions must be totally inconsistent”) Appellant’s argument to dismiss his son on statute of limitations grounds presumed that the claim against the father under the family purpose doctrine was viable (Transcript of Hearing on Motion to Dismiss, 10/24/07, at 9, 1 23 to 10, 1 2) (“MR CONNELL He’s [Edward W Hunt] been served and if they want to make – just put in the complaint he’s the owner of the vehicle and argue some sort of respondeat superior or whatever they want to argue that’s fine I don’t have any problem with them reshaping the complaint”) Now, after the son has been dismissed as a defendant,

Appellant asserts that the dismissal of the son renders the family purpose claim invalid. Appellant should not be able to use the presumed validity of the claim under the family purpose doctrine to obtain a beneficial result at the beginning of the litigation and then turn around and use the fact of the dismissal of the son as a basis for attacking the validity of the family purpose claim against the father.

Appellant cites the case of Jordan v. Payton, 305 S. C. 537, 409 S. E. 2d 793 (Ct. App. 1991), for the proposition that liability under the family purpose doctrine is indivisible; that liability of the father under the family purpose doctrine depends upon liability first being imposed on the driver of the vehicle. Appellant overreads the holding of the Jordan case.

The Jordan case was an appeal from the trial court's refusal to set aside a default judgment entered against a minor driver and his legal guardian under the family purpose doctrine. The court of appeals invalidated the default judgment against the minor under Rule 55, SCRPC, because no guardian ad litem had been appointed to represent the child. Rule 55 plainly provides that "no judgment by default shall be entered against a minor unless represented in the action by a guardian ad litem who has appeared therein." Rule 55, SCRPC, quoted in Jordan, 305 S. C. at 538, 409 S. E. 2d at 793. The court of appeals rejected the plaintiff's attempt nevertheless to impose the default judgment against the legal guardian alone under the family purpose doctrine because the court noted that the liability of the guardian under the family purpose doctrine depended on the liability of the child. Id. at 539, 409 S. E. 2d at 794.

The Jordan court relied on the case of Johnson v. Atlantic Coast Line R. Co., 142 S. C. 125, 140 S. E. 443 (1927), which held that where both a principal and an agent are sued

based on the tort of the agent, it would be logically impossible for the jury to render a verdict against only the principal, while exonerating the agent Jordan, 305 S C at 539, 409 S E 2d at 794 (citing Johnson, 142 S C at 133, 140 S E at 445) In this sense, the liability of the principal must be consistent with the actions of the agent the jury must find some wrongdoing by the agent before the principal can ever be held liable If the jury finds no negligence by the agent or no proximate cause from the acts of the agent, then the principal cannot be held liable for the plaintiff's injuries Here, there was no prior determination on the substantive issue of whether Edward Raymond Hunt acted negligently or whether such negligence was a proximate and contributing cause of Mr Gause's injuries, as alleged in the Complaint

The Georgia case of Medlin v Church, 278 S E 2d 747 (Ga Ct App 1981), which is cited by the Jordan court and also by Appellant, does not support Appellant's arguments for dismissing the family purpose doctrine claims here The Medlin case involved a judgment against a father and son, who were South Carolina residents, for an automobile accident that occurred in Georgia The plaintiff obtained a verdict against both the son, who was a minor child, and his father under the family purpose doctrine The trial court had previously determined that the son was an indispensable party and required that he be joined as a defendant under the Georgia Non-Resident Motorist Statute The plaintiff failed to have the son served properly, so no jurisdiction ever existed against the son The court invalidated the judgment against both the son and the father because of this procedural defect Interestingly, the Medlin court actually observed that "Under Georgia law, where the head of the family is sought to be held liable for some wrong committed by a member of his

family within the scope of the family purpose doctrine, that member of the family need not necessarily be joined as a party defendant ” Id. at 748 n 1

The Jordan case does not stand for the proposition that a plaintiff must sue the child and obtain a verdict against the child as a prerequisite to establishing liability against the father under the family purpose doctrine. In fact, such a holding would be directly contrary to South Carolina precedent on agency law. Under established principles of agency law, where the negligence of an agent acting within the course and scope of his agency causes injury to another, the injured party can elect to sue the principal directly, without also suing the agent. See Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 319, 594 S.E.2d 867, 878 (Ct. App. 2004) (“Respondents were not required to sue both principal and agent to recover from the principal under respondeat superior. They had the choice to sue either the agent or principal or join both”), see also Lane v. Home Ins. Co., 190 S.C. 84, 91, 2 S.E.2d 30, 32 (1939). In the Austin case, the plaintiff brought claims against an individual driver and his employer under respondeat superior for injuries caused in a tractor-trailer collision. After both defendants defaulted, the plaintiff voluntarily dismissed her claims against the individual driver. The case proceeded against the employer under respondeat superior. The Court rejected the appellant’s argument that the plaintiff first had to get a verdict against the individual driver before the employer could be liable under respondeat superior. Austin, 358 S.C. at 319, 594 S.E.2d at 878.

It is well established under South Carolina law that the family purpose doctrine is an expression of the agency concept of respondeat superior. In Lucht v. Youngblood, 266 S.C. 127, 221 S.E.2d 854 (1976), the South Carolina Supreme Court stated that the family

purpose doctrine “is an extension of the concept of agency” Id at 133, 221 S E 2d at 857. Similarly, this Court has stated that the family purpose doctrine “has its genesis in the law of agency, and it will impose liability on a parent when a child is acting as his agent. Thus, ‘one who has made it his business to furnish a car for the use of his family is liable as principal or master when such business is being carried out by a family member using the vehicle for its intended purpose, the family member thereby filling the role of agent or servant.’” Evans v. Stewart, 370 S C 522, 527, 636 S E 2d 632, 635 (Ct App 2006) (internal citations omitted), see also Norwood v. Parthemos, 230 S C 207, 209, 95 S E 2d 168, 169 (1956) (“Agency is the genesis of the [family purpose] doctrine.”)

Accordingly, a plaintiff suing under the family purpose doctrine need not obtain a verdict against the child driver before holding the parent liable as the head of the household. Indeed, in Crowder v. Carroll, 251 S C 192, 161 S E 2d 235 (1968), the plaintiff sued the father directly under the family purpose doctrine without naming the driver son as a party defendant at all in the case.

Furthermore, the family purpose doctrine is a liberal doctrine intended to provide additional protection to motorists in South Carolina by providing access to the person in the family who usually has the deeper pockets. In Lollar v. Dewitt, 255 S C 452, 179 S E 2d 607 (1971), the South Carolina Supreme Court stated, “The rationale of the family purpose doctrine is that it serves to place financial responsibility upon the head of the family who is more likely to respond in damages when the family vehicle is used negligently by a person without sufficient assets of his own.” Id at 456, 179 S E 2d at 608. The court should not construe the family purpose doctrine to allow Appellant to avoid responsibility for his son’s

negligence after the son was dismissed from the case on a technical defect understandably caused by the unfortunate similarity between the father's and son's names

The result in the Jordan case was not "unduly harsh" to the plaintiff. The court of appeals merely set aside the default judgment and remanded the case to allow the plaintiff to properly serve the minor child and his guardian ad litem. The plaintiff's claims were not extinguished on a technicality. Here, Appellant seeks to flip the family purpose doctrine on its head so as to completely extinguish a claim that Appellant previously argued was valid. The court should not deprive Plaintiff of a remedy here against a party who bears ultimate responsibility for the negligence of a family member while using a family purpose vehicle.

II THE TRIAL COURT PROPERLY HELD THAT APPELLANT'S LIABILITY UNDER THE FAMILY PURPOSE DOCTRINE WAS A QUESTION OF FACT FOR THE JURY, WHERE THERE WAS SUFFICIENT EVIDENCE THAT APPELLANT OWNED THE CAR IN QUESTION, THAT HE STILL MAINTAINED CONTROL OVER THE CAR, THAT HE FURNISHED THE CAR TO HIS SON FOR HIS CONVENIENCE, PLEASURE, AND GENERAL USE, AND THAT THE SON WAS STILL LIVING IN THE FATHER'S HOUSEHOLD

Appellant next attacks the underlying factual findings of the jury under the family purpose doctrine. Appellant ignores the fundamental rule that after a jury verdict, the appellate court "must adopt the view of the evidence most favorable to the verdict and give it the strongest probative force of which it will admit." Reid v Swindler, 249 S C 483, 489, 154 S E 2d 910, 913 (1967). It is well established that an appellate court reviewing a trial judge's refusal to grant a motion for directed verdict or a new trial "must consider the evidence and all inferences reasonably deducible therefrom most strongly against the moving party and most favorably to the non-moving party." Id., see also South Carolina Fed Credit

Union v Higgins, 394 S C 189, 714 S E 2d 550 (2011) (when considering a directed verdict motion, the trial court should view the evidence and all reasonable inferences in the light most favorable to the non-moving party, and if more than one reasonable inference can be drawn, the case should be submitted to the jury, the trial court should only be concerned with the existence or nonexistence of evidence, not its credibility or weight), Carolina Chloride, Inc v Richland County, 394 S C 154, 714 S E 2d 869 (2011) (the trial judge must deny a motion for directed verdict when the evidence yields more than one inference or its inferences are in doubt) Here, Appellant's counsel improperly attempts to cherry-pick certain testimony from the trial and wrongly portrays sharply disputed facts and inferences in favor of Appellant, rather than in favor of the jury's verdict for Respondent

In Lucht v Youngblood, 266 S C 127, 221 S E 2d 854 (1976), the South Carolina Supreme Court recognized that "ordinarily the applicability of the Family Purpose Doctrine is a question of fact for the jury" Id at 133, 221 S E 2d at 857 Under the family purpose 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" Id Other expressions of the family purpose doctrine have used the disjunctive "or" in the statement of the essential elements, such that liability under the family purpose doctrine can be established by showing that the head of the household owned, maintained, or furnished the car to a family member Campbell v Paschal, 290 S C 1, 347 S E 2d 892 (Ct App 1986), 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 the general family use”) (emphasis added)

The Campbell case involved a car that was actually owned by the at-fault driver’s brother, who had left the car with his father while stationed overseas in the Navy. The brother’s younger sister injured the plaintiff while negligently operating her brother’s car. The father moved for an involuntary non-suit on the claim against him under the family purpose doctrine, arguing that he could not be liable for his daughter’s operation of the car because he was not actually the legal owner of the car. The court of appeals determined that legal ownership of the vehicle in question is not a requirement of the family purpose doctrine, thus, the use of the word “or” is actually proper between the words own, maintain, and furnish. The key issue in a family purpose doctrine case is whether the head of the household “controlled the use of the automobile.” Campbell, 290 S.C. at 9, 347 S.E.2d at 897.

Here, Appellant admitted during the trial that he was the head of his household in November 2003, (Tr. at 278, ll. 13-15), that his son, Edward Raymond Hunt, lived with him at the time of the collision, (Tr. at 268, ll. 7-9), that Appellant was the title owner of the Firebird automobile that was involved in the collision, (Tr. at 273, ll. 3-5, at 274, ll. 1-3), and that his son used the car for his general use, pleasure, and convenience, (Tr. at 275, ll. 16-25). Appellant further testified that he had keys to the Firebird, (Tr. at 276, ll. 21-23), and that the car was available for his use, (Tr. at 286, ll. 13-15). He also testified that he paid the property taxes on the car, (Tr. at 274, ll. 4-6), and that he had recently paid to put new tires on the car, (Tr. at 276, ll. 13-20). Most importantly, Appellant stated that at the time of the

accident, he had the power to take the car away from his son, (Tr at 274, ll 7-9) All of these facts clearly create a sufficient evidentiary basis for the jury to have found Appellant liable under the family purpose doctrine

Appellant's current counsel, who did not appear at trial in this case, now attempts to portray a very different picture of the son (Edward Raymond Hunt), his arrangement with his father's car, and even his living arrangements at the time—none of which is availing Appellant argues that the family purpose doctrine does not apply here because Edward Raymond Hunt was a grown man at the time, living in a trailer beside his parents' house, with his own life and supporting himself, and that he was actually purchasing the Firebird from his father at the time of the collision

The fact that Edward Raymond Hunt was 25 years old at the time of the collision does not preclude application of the family purpose doctrine Although many family purpose doctrine cases have involved minor children, there is no requirement that the driver be an unemancipated minor at the time of the collision There are numerous cases in South Carolina where the courts have applied the family purpose doctrine in a situation where the driver of the vehicle was 18 years or older See Reid v Swindler, 154 S C 483, 154 S E 2d 910 (1967) (18-year old driver), Crowder v Carroll, 251 S C 192, 161 S E 2d 235 (1968) (18-year old driver living at home with parents) Indeed, the two earliest cases under the family purpose doctrine in South Carolina involved drivers who were not minor children See Davis v Littlefield, 97 S C 171, 81 S E 487 (1914) (19-year old driver), Mooney v Gilreath, 124 S C 1, 117 S E 186 (1923) (driver was “about 18-years old”) Other cases have actually applied the family purpose doctrine between spouses See Lollar v Dewitt,

255 S C 452, 179 S E 2d 607 (1971), cf Mock v Atlantic Coast Line R Co, 227 S C 245, 87 S E 2d 830 (1955) (applying family purpose doctrine to defense of contributory negligence where wife-driver was acting as agent for husband-owner of the vehicle and named plaintiff in suit for injuries to couple's child) Appellant's statement that "The family purpose doctrine was created in order to make parents responsible for the actions of their minor children" (Br at 9) is simply not an accurate statement of the law

There is also no conclusive evidence that the son was independent and self-supporting at the time of the collision so as to remove him from Appellant's household Edward Raymond Hunt testified that he lived with his parents in November 2003 at the time of the collision (Tr at 288, ll 11-15) Appellant confirmed that his son was living with him at the time (Tr at 268, ll 7-9) Under pointed questioning from Defendant Hunt's trial counsel, the Hunts tried to establish that the son was actually living in a broken down trailer or motor home next to Appellant's house, with an electrical chord running from the house to the trailer (Tr at 281, l 25 to 282, l 3) Edward Raymond Hunt also testified that he was not sure whether he was even employed at the time of the collision (Tr at 303, ll 2-6) He was clearly dependent on his father as part of the same household Whether or not Appellant had any control over his son's comings and going is not relevant, the key inquiry is whether Appellant had control over the use of the car Appellant's testimony that he had the power to take the car away from his son is compelling, if not conclusive, evidence of such control (Tr at 274, ll 7-9) ("Q Okay, at the time of the wreck could you have taken the car away from your son? A Yeah, sure ")

There was also conflicting evidence about the actual ownership of the Firebird

Clearly, Appellant was the record owner of the car at the time of the collision. He was the sole owner listed on the title, (Tr. at 273, ll. 3-5, 274, ll. 1-3), and he paid the property taxes on the vehicle, (Tr. at 274, ll. 4-6). The Hunts' story at trial that the son was in the process of purchasing the vehicle is not dispositive on the issue of ownership of the vehicle, especially when viewed in the light most favorable to Respondent. There was no bill of sale, contract, note, or other documentary evidence introduced at trial to corroborate the Hunts' trial testimony that the Firebird was being sold to the son just prior to the time of the collision. The \$200.00 that the son allegedly paid down on the car was used to bail the son out of jail after his arrest on the morning in question. (Tr. at 273, ll. 12-15). Edward Raymond Hunt clearly testified on direct exam that his father owned the car at the time of the collision. (Tr. at 296, ll. 8-10). He also testified that he had purchased an Impala before the accident because the Firebird was not his. (Tr. at 300, ll. 6-9). Approximately six weeks after the wreck, Appellant gave the Firebird to his son as a Christmas gift. (Tr. at 298, ll. 9-17). Perhaps most tellingly, Defendant Hunt filed an affidavit early on in the case in which he testified as follows: "While the vehicle was owned by me, it was being driven by my son, Edward Raymond Hunt." (Affidavit of Edward W. Hunt, ¶ 3) (emphasis added). In addition, at oral argument on the motion to dismiss the Amended Complaint, counsel for Edward W. Hunt also conceded that his client (the father) was the owner of the vehicle. "THE COURT: I got you. Edward R. is the driver son, Edward W. is the owner dad. MR. CONNELL: Yes, sir." (Transcript of Hearing on Motion to Dismiss, 10/24/07, at 5, ll. 7-9). Appellant cannot play fast and loose with the testimony about who owned the car in a post hoc effort to avoid liability under the family purpose doctrine. See Quinn v. Sharon Corp., 343 S.C. 411, 416,

540 S E 2d 474, 477 (Ct App 2000) (“A court invokes judicial estoppel to prevent a party from changing its position over the course of judicial proceedings. The doctrine estops a party from playing ‘fast-and-loose’ with the courts or to trifle with the proceedings.”) (internal citations omitted)

The evidence of record at trial, when properly viewed in the light most favorable to Respondent, amply supports the jury’s verdict on the family purpose doctrine. The trial court properly found that this was a factual determination for the jury and appropriately instructed the jury about the elements of the family purpose doctrine. (Tr., at 491, l. 25 to 492, l. 6) (“The first thing I want to say [is that] the Plaintiff claims Defendant Hunt is liable under a doctrine of law known as the family purpose doctrine. Where a parent owns, furnishes, or maintains a motor vehicle for the family’s general use and convenience the parent is responsible for the negligence of a family member having general authority to drive the vehicle for such purpose.”) The jury resolved any dispute about the ownership of the vehicle against Appellant.

III THE TRIAL COURT PROPERLY RULED THAT PUNITIVE DAMAGES ARE APPROPRIATE AGAINST APPELLANT UNDER THE FAMILY PURPOSE DOCTRINE, EVEN WHERE APPELLANT’S SON, WHO WAS THE ACTUAL WRONGDOER, HAS BEEN DISMISSED FROM THE CASE, BECAUSE SETTLED AGENCY PRINCIPLES ALLOW PUNITIVE DAMAGES TO BE AWARDED AGAINST A PRINCIPAL FOR THE EGREGIOUS ACTS OF HIS AGENT

Appellant next challenges the jury’s award of punitive damages. Appellant argues that punitive damages are not available against the owner of the vehicle under the family purpose doctrine for the grossly negligent, reckless, willful, or wanton acts of the driver.

Appellant's argument in this regard is not supported by any precedent in South Carolina and disregards settled agency law that principals can be liable for punitive damages based on the egregious conduct of their agents under the rules of vicarious liability. Appellant's argument also ignores several of the underlying purposes of punitive damages.

It is well established under South Carolina law that a principal can be held liable for punitive damages based on the acts of his agent acting within the course and scope of his agency, under the doctrine of respondeat superior. In Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 594 S.E.2d 867 (Ct. App. 2004), the court of appeals affirmed an award of punitive damages against an employer even after the individual employee had been voluntarily dismissed from the case. Id. at 319, 594 S.E.2d at 878, see also Johnson v. Atlantic Coast Line R. Co., 142 S.C. 125, ___, 140 S.E. 443, 455 (1927) ("When one person invests another with authority to act as his agent for a specified purpose, all of the acts done by the agent in pursuance, or within the scope of his agency, are, and should be, regarded as really the acts of the principal. If, therefore, the agent, in doing the act which he is deputed to do, does it in such a manner as would render him liable for exemplary damages, his principal is likewise liable, for the act is really done by him.") (quoting Rucker v. Smoke, 37 S.C. 377, ___, 16 S.E. 40, 41 (1892)).

As discussed above, because the family purpose doctrine is a form of agency, there is no reason to shield the head of a household from punitive damages for the acts of a family member using a family purpose vehicle.

The North Carolina case of Byrne v. Bordeaux, 354 S.E.2d 277 (N.C. Ct. App. 1987), is not particularly persuasive. The Byrne case involved a situation the defendant's wife

deliberately crashed into the back of the car in which plaintiff was a passenger, then followed plaintiff's car to a gas station, where the wife and another passenger in her car pulled plaintiff from the vehicle, knocked her to the ground, pulled her hair, and beat her Id at 278 The North Carolina Court of Appeals dismissed the punitive damages claim against the husband under the family purpose doctrine The court stated, " We are unwilling to say that when a driver uses a family member's automobile wilfully, wantonly, or maliciously to injure another that the family purpose doctrine should be applied so as to allow recovery of punitive damages against the owner based on such use " Id at 279 The court did not announce a broad prohibition against imposing punitive damages against the head of the household under the family purpose doctrine That case is limited to its unique facts, which obviously have no similarity to the facts presented here

Appellant next argues that punitive damages are not appropriate against him under the family purpose doctrine because the actual wrongdoer who is deserving of punishment was no longer in the case at the time of trial Appellant improperly focuses only on the punishment and specific deterrence aspects of punitive damages Appellant's argument is foreclosed by the South Carolina Supreme Court's decision in O'Neill v Smith, 388 S C 246, 695 S E 2d 531 (2010), which allowed a claim for punitive damages after the at-fault driver had settled on a covenant not to execute and was, therefore, insulated from personal liability for punitive damages The O'Neill court held that "punitive damage awards, even though not paid directly by the tortfeasor because of the covenant, continue to serve several public policy aims, specifically, deterring similar conduct by the tortfeasor and others, as well as vindicating the private rights of the injured plaintiff These purposes are fulfilled even

if a specific defendant is not financially punished by imposition of an award ” Id. at 253, 695 S E 2d at 534

South Carolina courts have historically recognized that punitive damages serve several important, underlying societal purposes (1) punishment of the defendant for grossly negligent, reckless, willful, or wanton conduct, (2) deterrence against similar conduct in the future, not just as specific deterrence for the defendant against whom the punitive damages are actually awarded, but also as general deterrence to the public at large by serving as an example of the consequences of such behavior, and (3) vindication of the private rights of the plaintiff, beyond the usual measure of compensatory damages Id. (citing Clark v Cantrell, 339 S C 369, 379, 529 S E 2d 528, 533 (2000))

Although Appellant himself was not the tortfeasor, his son’s wrongful conduct is imputed to him under the family purpose doctrine, just like an employer is liable for the actions of his employees under respondeat superior. The jury’s award of punitive damages against Appellant will most certainly have a deterrent effect on the conduct of the actual tortfeasor, Edward Raymond Hunt, in the future, even though he is not personally liable for the judgment. The jury’s award of punitive damages against Appellant under the family purpose doctrine should be affirmed.

IV THE TRIAL COURT PROPERLY DETERMINED THAT ANY
CONFUSION CAUSED BY INCLUDING APPELLANT’S SON IN
THE CASE CAPTION ON THE VERDICT FORM WAS
REMEDIED BY THE SUPPLEMENTAL CURATIVE
INSTRUCTIONS TO THE JURY

The fourth issue raised by Appellant is that the verdict form erroneously included Edward Raymond Hunt in the caption as a named Defendant, even though he had been

dismissed from the case Appellant asserts that the jury verdict form was confusing and ambiguous because the jury could have interpreted the words “Defendant Hunt” to refer to either Edward W Hunt (the father) or Edward Raymond Hunt (the son)

Any ambiguity in this regard or confusion in the mind of the jury was specifically addressed by the trial court’s curative instructions in response to the jury’s questions The jury’s first question sought clarification about who the actual Defendants in the case were and also asked for clarification about the family purpose doctrine (Tr at 494, ll 14-18) The trial court simply and properly instructed the jury, “All right, I received your question and I’m going to tell you that the Defendant in this case in regards to the family purpose doctrine is the father, not his son who was the driver of the car ” (Tr at 498, ll 20-23) The judge also properly re-instructed the jury on the elements of the family purpose doctrine (Tr at 498, l 25 to 499, l 15) Appellant’s trial counsel objected to the Court’s re-charging the jury on the elements of the family purpose doctrine at all (Tr at 499, ll 22-24) The court’s supplemental instruction clearly cured any confusion in the jury’s mind about whether the son—Edward Raymond Hunt—was a Defendant in the case

The jury’s second question was prompted by a clerical error in the verdict form, where the judge’s law clerk added a parenthetical statement to the verdict form after it was approved by counsel The incorrect parenthetical was an explanation beside the special interrogatory for Defendant Hunt that essentially would have made it impossible for the jury to award punitive damages against Defendant Hunt Any confusion on this point would have actually been detrimental to Plaintiff The trial court responded to the second question by bringing in the jury foreperson, explaining the clerical error, and providing her with a revised

verdict form Counsel for the parties specifically approved the amended verdict form, which simply struck out the incorrectly worded parenthetical Neither Defendant's counsel raised any objection to the revised verdict form at the time it was given to the jury (Tr at 502-03) After the revised verdict form was provided to the foreperson, the jury returned its verdict approximately six minutes later Only after the clerk published the verdict form in open court did Defendants' counsel raise an issue about the name "Edward Raymond Hunt" being in the caption on the verdict form

"A jury verdict should be upheld when it is possible to do so and carry into effect the jury's clear intention " Johnson v Parker, 279 S C 132, 135, 303 S E 2d 95, 97 (1983) Only where the verdict is "so confused that the jury's intent is unclear" should the court order a new trial Id Here, the jury very carefully and methodically analyzed the case, even catching the error in the original verdict form After the trial court sent the foreperson back to the jury room following the second question, the court remarked, "Obviously, the forelady is very intelligent " (Tr at 504, ll 2-3) Counsel for Defendant Smithers agreed (Tr at 504, l 4) Any confusion in the jury's mind was addressed sufficiently by the Court's curative instruction Manios v Nelson, Mullins, Riley & Scarborough, LLP, 389 S C 126, 697 S E 2d 644 (Ct App 2010) (a curative instruction is generally deemed to have cured any alleged error) The jury's verdict represents a considered determination of this action The jury awarded two different amounts of punitive damages against Defendant Smithers and Defendant Hunt, reflecting the differing degree of culpability by each individual Defendant in causing harm to Mr Gause There is no indication that the jury was confused at all, much less that it was so confused that its intent is unclear so as to warrant a new trial

Most of the trial focused on the application of the family purpose doctrine, because Defendant Smithers did not mount much of a defense, other than arguing proximate cause on some of Respondent's damages. The opening statements, closing arguments and jury instructions all featured extensive discussions of the family purpose doctrine. The court clarified the elements of the family purpose doctrine and reiterated that the father, Edward W. Hunt, was the Defendant, not his son the driver, Edward Raymond Hunt, in response to the jury's first question, which further indicates that the jury intended to hold Appellant liable under the family purpose doctrine. The trial court appropriately determined that a new trial was not necessary. The lower court's decision in that regard should be given substantial deference, and the verdict against Appellant should be affirmed.

V THE TRIAL COURT PROPERLY RULED THAT THE QUESTION OF WHETHER PLAINTIFF'S INJURIES WERE PROXIMATELY CAUSED BY THE NEGLIGENCE OF APPELLANT'S SON WAS A QUESTION OF FACT FOR THE JURY WHERE THE SON'S NEGLIGENCE SET THE STAGE FOR PLAINTIFF TO BE INJURED IN A FORESEEABLE COLLISION WITH A SUBSEQUENT TORTFEASOR

The fifth issue raised by Appellant relates to proximate cause. Appellant argues that Defendant Smithers's action in smashing into the back of Respondent's patrol car was a superceding, intervening act that cut off the causal chain and should absolve Defendant Hunt of any liability for the negligence of his son in stopping improperly and unlawfully in the roadway.

Issues of proximate cause are quintessentially questions of fact for the jury. Small v. Pioneer Mach., Inc., 329 S.C. 448, 464, 494 S.E.2d 835, 843 (Ct. App. 1997). "The touchstone of proximate cause is foreseeability." Id. at 463, 494 S.E.2d at 842. The test is

whether the plaintiff's injuries are a "natural and probable consequence of the complained-of act." Id. A single injury can have more than one proximate cause. Id. at 464, 494 S.E.2d at 843. In Matthews v. Porter, 239 S.C. 620, 124 S.E.2d 321 (1962), the South Carolina Supreme Court stated as follows:

The intervening negligence of a third person will not excuse the first wrongdoer, if such intervention ought to have been foreseen in the exercise of due care. In such case, the original negligence still remains active, and a contributing cause of the injury. The test is to be found in the probable consequences reasonably to be anticipated, and not in the number or exact character of events subsequently arising.

Id. at 626, 124 S.E.2d at 324.

The facts of this case are very similar to the facts in the Matthews case. There, the plaintiff was injured after stopping to provide aid to injured passengers in a wreck caused by appellant, Porter. As the plaintiff was standing at the scene, another vehicle driven by a motorist named McKnight sideswiped one of the cars at the scene and crashed into the plaintiff. A jury determined that the driver responsible for causing the original crash which blocked the road was a proximate cause of the plaintiff's injuries, even though McKnight may also have been negligent. The Supreme Court held that there was sufficient evidence for the jury to determine that the chain of events set in motion by the original negligence of Porter was a proximate cause of the plaintiff's injuries and that the subsequent negligence of McKnight did not break the causal chain. Id. at 632, 124 S.E.2d at 327.

The case of Gibson v. Gross, 280 S.C. 194, 311 S.E.2d 736 (Ct. App. 1983), which is heavily relied on by Appellant, is easily distinguished from this case. In the Gibson case, the plaintiff, Gibson, had stopped at the scene of an accident to intervene in an altercation

between the two or three other drivers following an accident caused by defendant Gross. Apparently Gibson succeeded in breaking up the argument, but while he was standing next to Gross's vehicle, he was struck by another car driven by a third person, Edwards. The trial court granted involuntary non-suit in favor of Gross because there was no testimony from which a jury could conclude that Gross's negligence in causing the original collision was a proximate cause of Gibson's injuries. The court determined that the negligence of the final driver, Edwards, was the sole proximate cause of Gibson's injuries. The Gibson court held that Gibson was not among the class of persons intended to be protected by the statute prohibiting a motorist from blocking the roadway. Id. at 197, 311 S E 2d at 739. The court distinguished the facts presented there from the holding of Matthews v. Porter, 239 S C 620, 124 S E 2d 321 (1962), by stating that the plaintiff, Gibson, did not produce any evidence that the second driver (Edwards) struck the plaintiff because of the partially blocked roadway. Gibson, 280 S C at 198-99, 311 S E 2d at 739.

Here, the trial court properly submitted to the jury the question of whether the negligence of Appellant's son was a contributing, proximate cause of Respondent's injuries. The court properly charged the jury on proximate cause and intervening and superceding causes. (Tr. at 452, l 18 to 456, l 17). Respondent, an on-duty police officer, was squarely within the class of persons protected by the statute requiring a motorist not to stop his vehicle in the roadway when it is practical to stop the vehicle off the roadway. See S C Code Ann § 56-5-2510(A) ("No person shall stop, park, or leave standing a vehicle, whether attended or unattended, upon the roadway outside a business or residential district when it is practicable to stop, park, or leave the vehicle off the roadway.") It is reasonably foreseeable

that leaving a car parked in the left lane of traffic could cause another motorist to crash into the back of Respondent's police cruiser See Ayers v. Atlantic Greyhound Corp., 208 S. C. 267, 277, 37 S. E. 2d 737, 741 (1946) ("A violator of a safety statute or ordinance may justly and logically be held to foresight of injury within the prospect of the enactment, even though it be contributed to by the concurrent delict of another. The latter should be foreseen if it is of the nature of injuries sought to have been guarded against by the regulation.") Appellant's son's negligence set into motion a chain of events that culminated in Respondent's injuries. Defendant Smithers's subsequent negligence was foreseeable. Significantly, if Appellant's car was not improperly stopped in the roadway, the co-Defendant never would have crashed into the back of the patrol car. Accordingly, the jury properly found that the negligence of Appellant's son, which was imputed to Appellant under the family purpose doctrine, was a proximate cause of Respondent's injuries.

VI THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION FOR NEW TRIAL BECAUSE THE COURT'S DISALLOWANCE OF CERTAIN EVIDENCE AND CAUTIONARY INSTRUCTIONS TO THE JURY TO DISREGARD SUCH EVIDENCE CURED ANY ALLEGED ERROR, AND APPELLANT CANNOT SHOW ANY MATERIAL PREJUDICE FROM TWO LIMITED REFERENCES TO THE ALLEGEDLY IMPROPER EVIDENCE

Finally, Appellant argues that a new trial is necessary because there were "repeated" references during the trial to the fact that Edward Raymond Hunt was intoxicated at the time he was initially pulled over by the highway patrol officer at the scene.

First of all, with all due respect, the trial judge was wrong in excluding evidence of Edward Raymond Hunt's intoxication. That evidence was directly relevant to the issue of

the son's negligence, gross negligence, and recklessness in operating the vehicle while intoxicated, as well as his violation of several statutes regarding the operation of a motor vehicle. Respondent's counsel made a proffer of the anticipated trial testimony based on the son's previous deposition testimony (Tr at 247, l 22 to 248, l 24). The judge ruled that the prejudicial effect of such testimony outweighed any probative value, and he excluded the evidence under Rule 403, SCRE. Because the evidence should have been admitted in the first place, Appellant cannot show any prejudice by the exclusion of such evidence.

Nevertheless, Appellant's counsel grossly overstates the significance of this issue, perhaps because she was not trial counsel for Defendant Hunt. What Appellant's counsel now describes as "pervasive" was actually only two very minor occurrences: one in opening statement and one during the direct examination of Mr. Gause. In both instances, Defendant Hunt's counsel objected, and the judge sustained the objection and gave a curative instruction to the jury to disregard any reference to alcohol with regard to Defendant Hunt's son. Defendant Hunt's trial counsel did not move for a mistrial, nor did he object to the court's curative instruction as being inadequate. Even in a criminal case, two innocent references to objectionable evidence are not grounds for a new trial, especially when followed by a curative instruction. See State v. White, 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006) ("Because a trial court's curative instruction is considered to cure any error regarding improper testimony, a party must contemporaneously object to a curative instruction as insufficient or move for a mistrial to preserve an issue for review.") (quoting State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 850 (Ct. App. 1999)). The trial judge's curative instruction and his exclusion of evidence relating to alcohol consumption

was not materially prejudicial to Appellant so as to warrant a new trial

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this court affirm the judgment against Appellant under the family purpose doctrine based on the jury's verdict in this case

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David E. Rothstein", written over a horizontal line.

David E Rothstein
Rothstein Law Firm, PA
514 Pettigru Street
Greenville, SC 29601
(864) 232-5870

John S Nichols
Bluestein Nichols Thompson & Delgado, LLC
P O Box 7965
Columbia, SC 29202
(803) 779-7599

Attorneys for Respondent

November 10, 2011

Greenville, SC

**THE STATE OF SOUTH CAROLINA
in the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

William H Seals, Jr , Circuit Court Judge

CASE NO 2006-CP-26-5391

**RECEIVED
OCT 26 2011
SC Court of Appeals**

Don D Gause,

Respondent/Appellant

vs

Nathan Dale Smithers and Edward W Hunt
of Whom Edward W Hunt is

Appellant/Respondent

RETURN TO RESPONDENT'S MEMORANDUM

The Respondent, Don D Gause, asserts in his Memorandum that this Court should execute the Consent Order Approving the Settlement Agreement because the actual damage verdict is the exact amount of the medical bills which the Plaintiff asserted were related to the automobile accident and that verdict cannot be upheld. Our Supreme Court has upheld just such a verdict in the case of *Todd v Joyner* 385, S C 421, 685 S E 2d 595 (2009), affirming the Court of Appeals' decision found in 385 S C 509, 685 S E 2d 613 (2007). A motion and consent order are not the proper avenue to raise this issue. The Respondent should have appealed that issue if he thought the Lower Court committed that error, but chose not to pursue a cross-appeal.

State Farm has taken all actions necessary to preserve its rights under S C Code Ann §38-77-160 As soon as the liability carrier settled the claim, State Farm through the undersigned immediately took over the appeal, ordered the transcript and has timely perfected the appeal Up until that point in time, the Defendant, Hunt, was being represented by Gene M Connell, Jr who was employed by Mr Hunt's automobile liability insurance carrier, Allstate

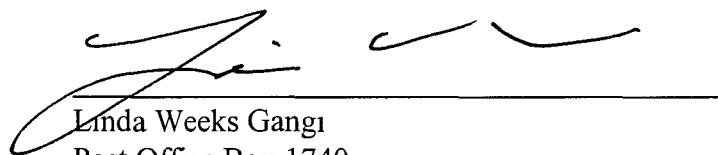
This entire matters boils down to the Respondent attempting to collect underinsured motorist coverage by increasing the amount of the actual damages verdict State Farm as the underinsured carrier is entitled to a set off of all the liability coverage, uninsured motorist coverage and Worker's Compensation benefits paid to or for the benefit of the Respondent When all of those sums are added up, the Respondent has been paid more than the amount of the verdict found by the jury against Hunt and Gause is not entitled to any underinsured motorist benefits The Confession of Judgment and Consent Order are an attempt by the Respondent to obtain additional funds, underinsured motorist benefits

Respectfully submitted,

Conway, South Carolina

THOMPSON & HENRY, P A

October 24, 2011



Linda Weeks Gangi
Post Office Box 1740
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lgangi@thompsonlaw.com
Attorneys for the Appellant/Respondent
SC Bar # 002365

**THE STATE OF SOUTH CAROLINA
in the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

William H Seals, Jr , Circuit Court Judge

CASE NO 2006-CP-26-5391

RECEIVED
OCT 26 2011
SC Court of Appeals

Don D Gause,

Respondent/Appellant

vs

Nathan Dale Smithers and Edward W Hunt
of Whom Edward W Hunt is

Appellant/Respondent

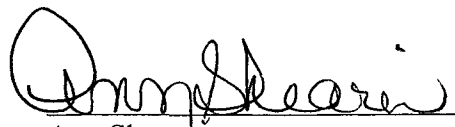
CERTIFICATE OF MAILING

I, Ann Shearin, am an employee for the law firm of Thompson & Henry, P A , attorney for the Respondent in the above-captioned action, certify that I have this 24th day of October, 2011 mailed a copy of the following documents

- a Return to Respondent's Memorandum, and
- b Certificate of Mailing

to the undersigned at his address of record, with sufficient postage attached thereto as follows

David E Rothstein, Esq
Rothstein Law Firm, P A
514 Pettigru Street
Greenville, SC 29601
Attorney for Don D Gause


Ann Shearin

**THOMPSON & HENRY, P A
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October 24, 2011

The Honorable Tanya A Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
OCT 26 2011
SC Court of Appeals

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Dear Ms Gee

Please find enclosed herewith the unbound original and seven (7) copies of the following documents with regard to the above-referenced action

- a Return to Respondent's Memorandum, and
- b Certificate of Mailing

Please file the originals, clock the copies and return a clocked copy of each to me in the enclosed self-addressed stamped envelope

If you have any questions with regard to this matter, please do not hesitate to contact me

The Honorable Tonya A Gee
October 24, 2011
Page 2

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/avs

Enclosures

pc David E Rothstein, Esq - derothstein@mindspring.com
John S Nichols, Esq - jsnichols@bntdlaw.com
Gene M Connell, Jr, Esq - gconnell@classactlaw.net
William E Lawson, Esq - wlawson@turnerpadget.com
Mike Mashburn - mike.mashburn.gsjb@statefarm.com
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Claim No 40-2929-606

THOMPSON & HENRY, P A



ROTHSTEIN LAW FIRM, PA

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October 12, 2011

VIA FACSIMILE (803) 734-1839

AND U S MAIL

Hon Tanya A Gee
Clerk, South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

RECEIVED
OCT 12 2011
SOUTH CAROLINA COURT OF APPEALS

Re Don D Gause v Nathan Dale Smithers et al,
Case No 2011183646

Dear Ms Gee

I represent Respondent-Appellant, Don D Gause, in the above-referenced case. I previously filed a Notice of Cross Appeal on behalf of Mr Gause. After further consideration of the issues on appeal, Mr Gause has decided to withdraw his cross appeal.

Please accept this letter as a formal request for voluntary dismissal of the cross appeal pursuant to Rule 260(b), SCACR. I have spoken with Linda Weeks Gangi, Counsel for Appellant-Respondent, about the withdrawal of the cross-appeal, and she has consented to the dismissal. No briefs have been filed regarding the issues on the cross appeal.

Thank you in advance for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to call me.

Sincerely yours,

David E Rothstein

cc Linda Weeks Gangi, Esq

ROTHSTEIN LAW FIRM, PA

514 Pettigru Street
Greenville, SC 29601
Telephone 864-232-5870
Facsimile 864-241-1386

FACSIMILE TRANSMITTAL SHEET

DATE October 12, 2011
TO Hon Tanya A Gee
FAX NO (803) 734-1839
FROM David E Rothstein, Esq
RE Don D Gause v Nathan Dale Smuthers, et al

MESSAGE *See attached*

Original X will will not follow via first class mail

Number of pages including Transmittal Sheet 2

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Fax Cover Sheet

Axelrod & Associates, P.A.

ATTORNEYS AT LAW
604 16th Ave N
Myrtle Beach, South Carolina 29577

Send to Hon Tanya A Gee	From Danielle Switzer, criminal paralegal to Stuart M Axelrod
Attention	Date October 12, 2011
Phone 803-734-1890	Direct Phone 843-848 6714
Fax 803-734-1839	Direct Fax 843-848 6715

☐ Urgent ☐ Reply ASAP ☐ Please comment ☐ Please review ☐ For your information

Total pages including cover 2

Comments

Re State v Sturdivant (2011196490)

Please be advised the transcript in the above matter was received by this office on October 20, 2011 from court reported Dixie Eubanks. If you have any further questions please let me know.

CONFIDENTIAL

The statements or representations made in this communication or its attachments are intended for the named recipient identified above and are made solely within the privileged context of either (1) attorney client communications or (2) reasonably necessary business communications not intended for general public dissemination. If anyone other than the recipient has received this communication in error you should destroy this correspondence and avoid any further dissemination of the contents hereof.

CC: Sally W. Elliott 803 734-4113

KELAHER, CONNELL & CONNOR, PC

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GENE M CONNELL JR
L SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843

238-5648

FAX 238 5050

October 12, 2011

The Honorable Tanya A Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re **Don D Gause vs Nathan Dale Smithers and Edward W Hunt**
Civil Action No 06-CP-26-5391
Our File No 2006-0551D
Case Tracking Number 2011183646

Dear Ms Gee

I have spoken to David Rothstein, attorney for Plaintiff Don D Gause, in regard to the Brief that the Court of Appeals had requested concerning the Settlement Order Mr Rothstein will be filing a response on behalf of the Plaintiff and the Defendant Edward Hunt The reason for this response is that a Covenant Not To Execute has been signed by the Plaintiff and the Defendant Hunt is completely protected Accordingly, Mr Rothstein advised me by telephone that the Brief would be served as required by October 12, 2011

Sincerely yours,



Gene M Connell, Jr

GMC,Jr smt

cc David E Rothstein, Esquire
Linda Weeks Gangi, Esquire

RECEIVED
OCT 17 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Hon William H Seals, Jr , Circuit Court Judge

Case No 2006-CP-26-5391

RECEIVED
OCT 14 2011
SC Court of Appeals

Don D Gause,

Respondent-Appellant,

v

Nathan Dale Smithers and Edward W Hunt,

Defendants,

Of Whom

Edward W Hunt is

Appellant-Respondent

RESPONDENT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION
TO APPROVE CONFESSION OF JUDGMENT AND COVENANT NOT TO EXECUTE

Respondent, Don D Gause, by and through his undersigned counsel, hereby submits this Memorandum of Law in Support of Motion to Approve Confession of Judgment and Covenant Not to Execute. The grounds for this motion are as follows: that Respondent and Appellant, Edward W Hunt, entered into a settlement agreement after the trial of this matter, which agreement was the product of good-faith negotiations that led to settlement with the underinsured Defendant in the amount Plaintiff had sought in his previous motion for new trial nisi additur, that the settlement was an arms' length transaction that was not the product of fraud or collusion, and the underinsured carrier did not participate in the trial of this case and refused to engage in any settlement negotiations prior to the parties' reaching the agreement in question. As set forth in detail below, Respondent

respectfully requests the Court to approve the settlement agreement in this matter

This case arose out of an automobile collision on November 15, 2003, in Horry County, South Carolina. Briefly, Respondent was an on-duty police officer for the City of Conway Police Department, who was injured when his patrol car was struck from behind by a drunk driver, co-Defendant Nathan Dale Smithers. Mr. Smithers was uninsured and did not appear at trial. Appellant, Edward W. Hunt, was the owner of the vehicle that had improperly stopped in the roadway, causing Mr. Gause's patrol car to be in the lane of travel at the time of the collision. Mr. Hunt was sued under the family purposed doctrine for the unlawful actions of his son, Edward Raymond Hunt, in operating the vehicle. This Court previously affirmed the dismissal of the claims against Edward Raymond Hunt as being barred by the statute of limitations, because the original complaint contained a misidentification of the correct Hunt Defendant. Plaintiff amended the complaint after the statute of limitations had expired to fix the misidentification, but the Court did not allow the amended complaint to relate back under Rule 15, SCRCP, because the amended complaint added the claims under the family purpose doctrine.

The case was tried to a jury in Horry County, South Carolina on January 4-6, 2011. The jury returned a verdict in favor of Plaintiff against both Defendants in the amount of \$155,432.64 in actual damages, which was the exact amount of Plaintiff's past medical bills. The jury also awarded punitive damages against Defendant Smithers in the amount of \$60,000.00 and punitive damages against Defendant Hunt in the amount of \$40,000.00. Plaintiff filed a motion for new trial nisi additur in the amount of \$300,000.00 actual damages, because the jury verdict was inadequate under settled precedent. See Waring v. Johnson, 341 S.C. 248, 533 S.E.2d 906 (Ct. App. 2000) (holding that where jury returned verdict for exact amount of medical bills alone, new trial nisi additur was

appropriate because of inadequacy of verdict) Defendant Hunt also filed a motion for new trial raising several grounds regarding the merits of the case and the propriety of the jury verdict form Both parties' motions for new trial were denied by the trial judge Thereafter, Appellant filed a notice of appeal, and Respondent filed a notice of cross appeal Respondent has now withdrawn his cross appeal

While the appeal was pending, counsel for Respondent and Appellant engaged in further settlement discussions, and the parties reached the instant settlement agreement Pursuant to the agreement, Appellant agreed to confess judgment in the amount of \$300,000 00, with a covenant not to execute providing that Respondent would not seek to enforce the judgment against any personal assets of Appellant, but would only collect \$30,000 00 from his liability insurance carrier, Allstate Insurance Company, and would retain his rights to proceed against his UIM carrier Mr Hunt's liability limits were \$15,000 00 per person, in accordance with the minimum limits under South Carolina law at the time of the collision Respondent had previously made a demand on Allstate to settle for within the liability insurance policy limits prior to trial

Respondent's UIM carrier, State Farm, did not participate in the settlement discussions post trial, and had refused to respond to Respondent's settlement demands pre-trial or during the trial Although State Farm was served with the lawsuit under the underinsured motorist statute and entered an appearance of record, no one appeared at trial on behalf of the UIM carrier to represent State Farm's interests in a verdict in excess of the liability limits, nor did the UIM carrier file a notice of appeal (although the UIM carrier has now been substituted to represent Appellant in this matter)

Respondent requests a ruling from the Court of Appeals that the settlement agreement is valid and is a fair, just, and equitable resolution of this matter

As an initial matter, Respondent contends that State Farm, as the UIM carrier, has waived its right to contest the settlement with the liability carrier because it did not appear at the trial, nor did it seek to participate in the appeal until after the settlement with the liability carrier. As this Court recognized in Ex Parte Allstate Ins. Co., 339 S.C. 202, 528 S.E.2d 679 (Ct. App. 2000), “the UIM carrier always has the right to ‘appear and defend in the name of the underinsured in any action which may affect its liability,’ notwithstanding the fact that it may not have the right to ‘control’ the defense.” Id. at 206, 528 S.E.2d at 681 (citations in footnotes omitted). The UIM carrier elected not to participate in the trial, even though the same insurer (State Farm) defended the uninsured motorist, co-Defendant Smithers, who never appeared personally in the case. Because the UIM carrier chose not to protect its own interests by participating in the defense of the case at trial, it should be precluded from objecting to the settlement with the liability insurer and the at-fault motorist on a covenant not to execute during the appeal of this matter.

This case is similar to Fowler v. Hunter, 388 S.C. 355, 697 S.E.2d 531 (2010). In the Fowler case, the plaintiffs took an assignment of the at-fault driver’s professional negligence claim against his insurance agent for failure to procure adequate liability coverage, in exchange for a covenant not to execute. The Court recognized that “South Carolina courts favor settlement.” Id. at 363, 697 S.E.2d at 535 (2010). Although courts must be careful to scrutinize such settlement to ensure that there is no collusion or fraud, the Fowler court approved the settlement agreement at issue there as an arms’ length transaction. See also Poston by Poston v. Barnes, 294 S.C. 261, 264, 363 S.E.2d 888, 890 (1987) (“We are cognizant that litigants are free to devise a settlement agreement in any manner that does not contravene public policy or the law. In fact, this Court encourages such compromise agreements because they avoid costly litigation and delay to an injured party. However,

these settlement agreements must be carefully scrutinized in order to determine their efficiency and impact upon the integrity of the judicial process ”)

Here, the settlement agreement between Mr Hunt, his liability carrier, and Respondent was the product of good-faith negotiations, after a jury had already found liability and awarded damages, including punitive damages. The settlement amount set forth in the confession of judgment was for the same amount Plaintiff had asked the trial judge for on his motion for new trial nisi additur, and is a reasonable amount based on the evidence at trial and in light of Plaintiff’s extensive medical bills. There is no evidence of collusion or wrongdoing by the parties to the settlement.

Nor has Respondent violated any duty of cooperation to his UIM carrier by entering into the settlement agreement with Hunt and Allstate. The liability carrier and its insured desired to limit their potential liability and the potential exposure of Mr Hunt’s personal assets to a judgment in excess of the liability limits of the Allstate policy, as well as the additional costs of appeal. Respondent sought and received payment in an amount that exhausted the liability limits of the at-fault vehicle so as to enable him to proceed against his own UIM carrier, which is exactly why he purchased excess UIM coverage in the first place.

The fact that the UIM carrier failed to negotiate in good faith with Respondent either before, during, or immediately after the trial of this case relieves Respondent of any duty to cooperate with State Farm in connection with the UIM proceeds.

The cases cited by State Farm’s counsel in arguing that the settlement agreement between Allstate, Hunt, and Respondent is “presumptively unreasonable and therefore invalid” are clearly inapposite. Broome v. Watts, 319 S. C. 337, 461 S. E. 2d 46 (1995), involved a pre-trial settlement between an at-fault motorist and the injured party on a covenant not to execute, whereby the parties

to the settlement agreement attempted to waive the right to a jury trial. The UIM carrier assumed the defense of the case and successfully requested a jury trial. The Supreme Court held that the UIM carrier was not bound by the provision in the settlement agreement waiving the right to a jury trial, because the UIM statute, S.C. Code Ann. § 38-77-160, gave the UIM carrier the right to assume control of the defense of the action for its own benefit.

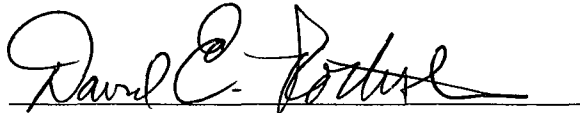
Here, the UIM carrier chose not to participate in the trial of this case and chose not to file a notice of appeal. State Farm's refusal to participate in joint settlement negotiations with the liability carrier forced Plaintiff to negotiate separately with the liability carrier, which led to the confession of judgment and the covenant at issue here.

Next, the case of St. Paul Travelers v. Payne, 444 F. Supp. 2d 519 (D.S.C. 2006), is also distinguishable. The Payne case involved a underlying lawsuit for defective construction. The contractor's liability carrier denied coverage for the liability claim and defended under a reservation of rights. Shortly before trial, the contractor signed a confession of judgment for \$250,000 on a covenant not to execute, and the contractor assigned to plaintiffs all rights the contractor had under its liability policies for indemnification for the liability. The Court recognized that "a settlement agreement between an insured and an injured party in which the insurer remains liable while the insured is insulated from any personal liability is presumptively unreasonable and therefore invalid." Id. at 521. The Payne court relied on similar holdings from the Fourth Circuit in Hitt v. Cox, 737 F.2d 421 (4th Cir. 1984) and Stonehenge Engineering Corp. v. Employers Ins. of Wausau, 201 F.3d 296 (4th Cir. 2000). Those cases also involved situations where a defendant tried to avoid personal liability at the expense of his own liability carrier.

Here, we are dealing with Underinsured Motorist Coverage, not indemnification under a

liability insurance policy Through the settlement agreement, Plaintiff has exhausted the liability limits of the at-fault vehicle, thereby triggering coverage under his own UIM policy Respondent respectfully requests that the Court examine the terms of the settlement and determine that the amount is fair, reasonable, and equitable and that the settlement was not the product of fraud or collusion The trial court has already established the liability of the at-fault drivers and that the damages suffered by Plaintiff were directly and proximately caused by that conduct The amount of the settlement agreement is wholly in line with the underlying verdict in this case

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David E. Rothstein", written over a horizontal line.

David E Rothstein
Rothstein Law Firm, PA
514 Pettigru Street
Greenville, SC 29601
(864) 232-5870

Attorney for Respondent-Appellant

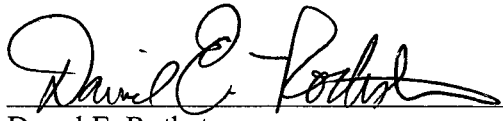
October 12, 2011

Greenville, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing **MEMORANDUM OF LAW IN SUPPORT OF MOTION TO APPROVE CONFESSION OF JUDGMENT AND COVENANT NOT TO EXECUTE** upon counsel for Appellant by depositing a copy of the same in the United States mail, proper first-class postage pre-paid, this 12th day of October, addressed as follows

Linda Weeks Gangi, Esq
Thompson & Henry, P A
P O Box 1740
Conway, SC 29528



David E Rothstein

Greenville, SC

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OCT 14 2011
SC Court of Appeals



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October 12, 2011

Hon Tanya A Gee
Clerk
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Don D Gause v Nathan Dale Smithers et al,
Case No 2011183646

Dear Ms Gee

Enclosed please find the original and seven copies of Respondent's Memorandum of Law in Support of Motion to Approve Confession of Judgment and Covenant not to Execute in the above-referenced case. Please file the original and six copies pursuant to Rule 240(d), and return the extra copy to me via the enclosed return envelope.

By copy of this letter, and as indicated on the Certificate of Service, I am hereby serving a copy of this Memorandum on Counsel for Appellant.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to call me.

Sincerely yours,

David E Rothstein

Enclosure

cc Linda Weeks Gangi, Esq
John S Nichols, Esq

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

SC Court of Appeals

William H Seals, Jr , Circuit Court Judge

CASE NO 2006-CP-26-5391

Don D Gause,

Respondent/Appellant

vs

Nathan Dale Smithers and Edward W Hunt
of Whom Edward W Hunt is

Appellant/Respondent

**APPELLANT/RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN RECORD ON APPEAL**

Appellant/Respondent proposes the following to be included in the Record on Appeal

- 1 Complaint filed November 2, 2006,
- 2 Answer of the Defendant Edward William Hunt filed December 7, 2006,
- 3 Motion to Dismiss With Prejudice the Defendant Edward William Hunt filed
December 8, 2006,
- 4 Affidavit of Edward William Hunt filed December 12, 2006,
- 5 Amended Complaint filed December 19, 2006,
- 6 Motion to Dismiss Edward Raymond Hunt filed December 21, 2006,

- 7 Notice of Motion and Motion to Dismiss With Prejudice Amended Summons and Complaint filed December 21, 2006,
- 8 Answer of Edward W Hunt and Edward Raymond Hunt filed February 8, 2007,
- 9 Notice of Motion and Motion to Dismiss With Prejudice Amended Summons and Complaint filed February 8, 2007,
- 10 Form Order filed October 24, 2007 denying the Defendant Edward William Hunt's Motion to Dismiss and noting that the Motion to Dismiss Edward Raymond Hunt as a Defendant was taken under advisement,
- 11 Order Granting Motion to Dismiss as to Edward Raymond Hunt filed October 29, 2007,
- 12 Plaintiff's Motion for Reconsideration filed November 15, 2007,
- 13 Form - 4 denying Plaintiff's Motion for Reconsideration filed November 30, 2007,
- 14 Notice of Appeal filed with the lower court on January 9, 2008,
- 15 Order of the Court of Appeals upholding the lower court's dismissal of Edward Raymond Hunt on the statute of limitations,
- 16 Notice of Motion and Motion for Summary Judgment as to Edward W Hunt filed April 23, 2010,
- 17 Form Order denying Motion for Summary Judgment filed August 12, 2010,
- 18 Verdict Form filed January 7, 2011,
- 19 Notice of Motion and Motion for New Trial filed January 11, 2011 by and on behalf of Edward W Hunt,
- 20 Order denying the Defendant Hunt's Motion for New Trial filed February 11, 2011,
- 21 Transcript
1-4-11
p 19, l 5 - p 34, l 16
p 36, l 11 - p 38, l 19
p 39, l 14 - p 40, l 11

p 41, ll 4-19

1-5-11 and 1-6-11

p 5, ll 5-16

p 9, l 7 - p 11, l 19

p 25, l 16 - p 90, l 6

p 154, l 3 - p 519, l 25

22 Exhibits

D-2 CMC - Gause history

C-3 Jury Question

C-4 Jury Question

C-5 Verdict Form

We certify that this designation contains no matter which is irrelevant to this appeal

THOMPSON & HENRY, P A

Conway, South Carolina

October 11, 2011



Linda Weeks Gangi

1300 Second Avenue, Third Floor

Post Office Box 1740

Conway, SC 29528

(843) 248-5741

Attorney for Appellant/Respondent

Edward W Hunt

**THE STATE OF SOUTH CAROLINA
in the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

William H Seals, Jr , Circuit Court Judge

CASE NO 2006-CP-26-5391

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SC Court of Appeals

Don D Gause,

Respondent/Appellant

vs

Nathan Dale Smithers and Edward W Hunt
of Whom Edward W Hunt is

Appellant/Respondent

CERTIFICATE OF MAILING

I, Ann Shearin, am an employee for the law firm of Thompson & Henry, P A , attorney for the Respondent in the above-captioned action, certify that I have this 11th day of October, 2011 mailed a copy of the following documents

- a Appellant/Respondent's Initial Brief,
- b Appellant/Respondent's Designation of Matter to be Included in the Transcript of Record, and
- c Certificate of Mailing

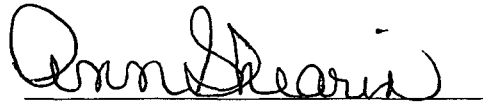
to the undersigned at his address of record, with sufficient postage attached thereto as follows

David E Rothstein, Esq
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A handwritten signature in black ink, appearing to read "Ann Shearin", written over a horizontal line.

Ann Shearin

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October 11, 2011

The Honorable Tanya A Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
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OCT 13 2011
SC Court of Appeals

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Dear Ms Gee

Please find enclosed herewith the unbound original and seven (7) copies of the following documents with regard to the above-referenced action

- a Appellant/Respondent's Initial Brief,
- b Appellant/Respondent's Designation of Matter to be Included in the Transcript of Record, and
- c Certificate of Mailing

Please file the originals, clock the copies and return a clocked copy of each to me in the enclosed self-addressed stamped envelope

If you have any questions with regard to this matter, please do not hesitate to contact me

The Honorable Tonya A Gee
October 11, 2011
Page 2

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/avs

Enclosures

pc David E Rothstein, Esq - derothstein@mindspring.com
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Gene M Connell, Jr, Esq - gconnell@classactlaw.net
William E Lawson, Esq - wlawson@turnerpadget.com
Mike Mashburn - mike.mashburn.gsjb@statefarm.com
Genie Potts - genie.potts.autt@statefarm.com
Claim No 40-2929-606

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Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

RECEIVED

OCT 13 2011

SC Court of Appeals

Counselors

Please find enclosed herewith copies of the following documents which I have forwarded to the Court for filing

- a Appellant/Respondent's Initial Brief,
- b Appellant/Respondent's Designation of Matter to be Included in the Transcript of Record, and
- c Certificate of Mailing

David E Rothstein, Esq
William E Lawson, Esq
John S Nichols, Esq
Gene M Connell, Jr , Esq
October 11, 2011
Page 2

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/avs
Enclosures

pc The Honorable Tanya A Gee
Mike Mashburn - mike.mashburn_gsjb@statefarm.com
Genie Potts - genie.potts_autt@statefarm.com

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H Seals, Jr , Circuit Court Judge

RECEIVED
OCT 13 2011

CASE NO 2006-CP-26-5391

SC Court of Appeals

Don D Gause,

Respondent/Appellant

vs

Nathan Dale Smithers and Edward W Hunt
of Whom Edward W Hunt is

Appellant/Respondent

APPELLANT/RESPONDENT'S INITIAL BRIEF

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Attorney for Appellant/Respondent
Edward W Hunt

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STATEMENT OF ISSUES ON APPEAL

- I DID THE TRIAL COURT ERR IN FAILING TO DISMISS THIS ACTION AGAINST EDWARD WILLIAM HUNT BECAUSE THE OWNER OF A VEHICLE CANNOT BE HELD LIABLE UNDER THE FAMILY PURPOSE DOCTRINE AFTER THE DRIVER IS DISMISSED AS A PARTY BECAUSE THE LIABILITY OF THE OWNER AND THE LIABILITY OF THE DRIVER ARE INDIVISIBLE?**

- II DID THE TRIAL COURT ERR IN ALLOWING THIS CASE TO GO TO THE JURY AGAINST EDWARD WILLIAM HUNT WHEN THE FAMILY PURPOSE DOCTRINE DOES NOT APPLY TO THE FACTS OF THIS CASE?**

- III DID THE TRIAL COURT ERR IN ALLOWING THE ISSUE OF PUNITIVE DAMAGES TO GO TO THE JURY AGAINST EDWARD WILLIAM HUNT, THE OWNER OF THE VEHICLE, WHEN HIS LIABILITY IS BASED ON THE FAMILY PURPOSE DOCTRINE?**

- IV SHOULD THE TRIAL COURT HAVE GRANTED A NEW TRIAL TO EDWARD WILLIAM HUNT AS A RESULT OF THE AMBIGUOUS AND UNCLEAR VERDICT FORM SUBMITTED TO THE JURY?**

- V DID THE TRIAL COURT ERR IN FAILING TO FIND THAT THE ACTIONS OF THE DEFENDANT, NATHAN DALE SMITHERS, CONSTITUTE A SUPERCEDING INTERVENING ACT WHICH ABSOLVES EDWARD WILLIAM HUNT OF ALL LIABILITY IN THIS ACTION?**

- VI WERE THE REPEATED REFERENCES TO EDWARD RAYMOND HUNT BEING UNDER THE INFLUENCE OF ALCOHOL AT THE TIME OF THIS ACCIDENT PREJUDICIAL TO HIS FATHER, EDWARD WILLIAM HUNT, AND DID THAT PREJUDICE OUTWEIGH ANY PROBATIVE VALUE?**

STATEMENT OF THE CASE

This case involves an automobile accident which occurred in Horry County, South Carolina on November 15, 2003. The Plaintiff filed a Summons and Complaint on November 2, 2006. The Defendant, Edward William Hunt, filed his Answer setting forth as defenses a general denial, failure to state facts sufficient to constitute a cause of action, comparative negligence and negligence of others. Also, the Defendant, Edward W. Hunt, filed a Notice of Motion and Motion to Dismiss With Prejudice the Defendant, Edward W. Hunt, on the basis that the Plaintiff's Complaint failed to state a cause of action against him. The Affidavit of Edward W. Hunt was also filed in support of same. The Plaintiff filed an Amended Summons and Complaint adding as a party Defendant, Edward Raymond Hunt. The Defendant, Edward W. Hunt, moved to strike the Amended Summons and Complaint for failure to file the proper Motion to Amend and on the basis that the statute of limitations had run as to the newly added party. An Answer was filed by Edward W. Hunt and Edward Raymond Hunt on February 8, 2007. On February 8, 2007, an additional Notice of Motion and Motion to Dismiss With Prejudice the Amended Summons and Complaint was filed by the Defendant, Edward W. Hunt. After a hearing held on October 24, 2007, by Order dated October 24, 2007, the Motion to Dismiss Edward W. Hunt was denied. An Order Granting the Motion to Dismiss the Defendant, Edward Raymond Hunt, was issued on October 26, 2007. The Plaintiff's Motion for Reconsideration was filed with the Court on November 15, 2007. By Order dated November 28, 2007, the Plaintiff's Motion for Reconsideration was denied. A Notice of Intent to Appeal was filed by Plaintiff on January 9, 2008. The Court of Appeals issued its Opinion on June 16, 2009, upholding the lower court's Order dismissing the Defendant, Edward Raymond Hunt, with prejudice. On April 23, 2010, the Defendant, Edward Hunt, filed a Notice of Motion and Motion for

Summary Judgment Judge Seals issued a Form Order dated October 10, 2010 and filed on October 12, 2010 denying the Motion for Summary Judgment. The case came for trial before a jury on January 4, 2011 and was concluded on January 6, 2011. The Plaintiff voluntarily dismissed the cause of action for negligent entrustment against Edward William Hunt. At trial, the Plaintiff sought to recover from the Defendant, Edward William Hunt, under the Family Purpose Doctrine. The jury returned a verdict for actual damages against both Defendants in the amount of \$155,432.64 as well as punitive damages against the Defendant, Smithers, in the amount of \$60,000.00 and punitive damages against the Defendant, Hunt, in the amount of \$40,000.00. The Plaintiff moved for a New Trial *Nisi Additur*. The Defendant, Hunt, moved for a new trial on the basis that the Verdict Form that was sent to the jury was in error because included in the caption was Edward Raymond Hunt who was not a party to this action and the body of the Verdict Form referred to the Defendant Hunt several times. Both Motions were denied. Thereafter, on January 11, 2011, the Defendant Hunt filed and served a Notice of Motion and Motion for New Trial. That Motion was denied through e-mail received from the Court on January 18, 2011 and this appeal timely followed. The Notice of Appeal was served on January 20, 2011.

STATEMENT OF FACTS

This action arises out of an automobile accident that occurred on November 15, 2003. Edward Raymond Hunt was pulled over by a South Carolina Highway Patrolman (TR2 p 29, ll 2-7). The Plaintiff, a City of Conway police officer, was called to come to the scene (TR2 p 28, ll 3-10). Another City of Conway police officer came to the scene (TR2 p 28, ll 11-14). The four cars were in a row in a lane of travel on Highway 501 with the police officers having emergency flashers and blue lights on (TR2 p 29, ll 2-7, TR2 p 34, ll 14-23). The Highway Patrolman left the scene (TR2 p 33, ll 3-5). The other City of Conway police officer left the scene with Edward Raymond Hunt in the car (TR2 p 32, ll 16-25, TR2 p 33, ll 1-2). While the Plaintiff was seated in his patrol car, Nathan Dale Smithers ran into the rear of the patrol car (TR2 p 35, ll 12-21, TR2 p 38, ll 10-18).

At the time of the automobile accident, which is the subject matter of this action, Edward William Hunt, the father of William Raymond Hunt, was at home in bed (TR2 p 279, l 21 - p 280, l 3). Edward Raymond Hunt was 25 years old at the time of this accident (TR2 p 270, l 25 - p 271, l 6). Edward William Hunt was the titled owner of the Firebird that his son, Edward Raymond Hunt, was driving at the time of the accident (TR2 p 273, ll 3-9). Edward Raymond Hunt was purchasing the 1991 Firebird from his father for \$700.00 (TR2 p 269, ll 17-25 and TR2 p 273, ll 10-15). Edward Raymond Hunt had paid \$200.00 down and had made several other payments (TR2 p 273, ll 10-17, p 281, ll 1-9). The title was transferred to Edward Raymond Hunt after the accident (TR2 p 273, ll 18-25). In November of 2003, Edward Raymond Hunt was providing all of the maintenance for the vehicle (TR2 p 276, ll 5-15). At the time of the wreck, Edward Raymond Hunt was living in a motor home next to the home that Edward William Hunt lived in (TR2 p 280, ll 13 - 21). Also at the time of the wreck, Edward Raymond Hunt had a job (TR2 p 280, ll 22-23).

ARGUMENTS

I THE OWNER OF A VEHICLE CANNOT BE HELD LIABLE UNDER THE FAMILY PURPOSE DOCTRINE AFTER THE DRIVER IS DISMISSED AS A PARTY BECAUSE THE LIABILITY OF THE OWNER AND THE LIABILITY OF THE DRIVER ARE INDIVISIBLE

The Plaintiff filed suit against the Defendant, Smithers and Edward William Hunt (Complaint) Thereafter, the Plaintiff filed an Amended Complaint adding as a Defendant Edward Raymond Hunt the driver of the vehicle that was titled in the name of Edward William Hunt, his father (Amended Complaint) A Motion was made to dismiss Edward Raymond Hunt from the suit on the basis that the suit was not filed against him within the statute of limitations (Motion to Dismiss) The Order was granted (Order filed October 29, 2009) The Plaintiff appealed the Order and the Court of Appeals upheld that ruling (Order of Court of Appeals) The Plaintiff went to trial against Edward William Hunt and Nathan Dale Smithers The Plaintiff sought to recover against Edward William Hunt on the basis of the Family Purpose Doctrine (Complaint) The Plaintiff withdrew the negligent entrustment cause of action before the trial started (TR1, p 36, ll 4-9) Edward William Hunt would assert that the Plaintiff cannot recover against him since his son, the driver, was dismissed from the action

The South Carolina Court of Appeals set aside a default judgment against a mother because the judgment against the child was set aside based on Rule 55, SCRCp, disallowing default judgments against a minor when a guardian ad litem is not appointed, where the mother's sole liability rested on the family purpose doctrine *Jordan v Payton*, 305 S C 537, 539, 409 S E 2d 793 (Ct App 1991) The Court stated that the liability of the mother under the family purpose doctrine "depends upon the liability of the child " *Id* "Therefore, the judgment must be valid against both

or it is valid against neither” *Id* (citing *Johnson v Atlantic Coast Line R Co* , 142 S C 125, 133, 140 S E 443, 445 (1927))

Similarly, the Court of Appeals of Georgia has held that the liability of a father and child is indivisible where a child is released from a judgment rendered against him for reasons other than on the merits of the case, such as for lack of sufficient service *Medlin v Church*, 157 Ga App 876, 878, 278 S E 2d 747 (1981) (citing *Ammons v Horton*, 128 Ga App 273, 275, 196 S E 2d 318 (1973)), see also *O Hara v Gilmore*, 310 Ga App 620, 713 S E 2d 869 (2011) Once the son was released from judgment for lack of sufficient service, the Court of Appeals of Georgia ordered that the judgment against the father also be reversed since the liability of the father and the son was indivisible *Id*

In the current case, Edward Raymond Hunt was dismissed as a defendant in the case because the statute of limitations ran Once the suit was dismissed as to the son, the suit against the father should have been dismissed (Order filed October 29, 2009 and Court of Appeals Order) If the son can no longer be held liable because the statute of limitations has run, the father also cannot be liable because the father’s liability depends upon the liability of the son Since the liability of the son and the father are indivisible and the son has been dismissed as a party to this law suit, the jury verdict against Edward William Hunt should be reversed and Edward William Hunt should be dismissed from the action

II THE TRIAL COURT ERRED IN ALLOWING THE CASE TO GO TO THE JURY AGAINST EDWARD WILLIAM HUNT ON THEORY OF THE FAMILY PURPOSE DOCTRINE AS THAT DOCTRINE DOES NOT APPLY TO THE FACTS OF THIS CASE

Edward Raymond Hunt was 25 years of age at the time of this accident (TR2 p 271, ll 4-6) He lived in a motor home on the same property where his father's house was located (TR2 p 280, ll 13-21) Edward Raymond Hunt was purchasing the vehicle he was driving at the time of this accident from his father, Edward William Hunt (TR2 p 273, ll 10-15) He had paid his father \$200 00 as a down payment and had made several additional payments (TR2 p 273, ll 10-15) In November of 2003, Edward Raymond Hunt was providing all of the maintenance to the vehicle (TR2 p 276, ll 5-15) The Title to the vehicle had not been transferred from Edward William Hunt's name to Edward Raymond Hunt's name at the time of this accident, however, it was transferred three or four months thereafter (TR2 p 273, ll 18-25) Edward William Hunt owned his own vehicle at the time of this accident as did his wife and daughter (TR2 p 270, ll 23-24, TR2 p 278, ll 21-24) Edward William Hunt had no reason whatsoever to drive the vehicle which his son, Edward Raymond Hunt, was driving at the time of this accident (TR2 p 278, l 25 - p 279, l 7) At the time of the wreck, Edward Raymond Hunt had a job (TR2 p 280, ll 22-23) Edward Raymond Hunt was a grown man who Edward William Hunt exercised no control over at the time of the accident (TR2 p 281, ll 10-24) Also, on the evening of the accident, William Raymond Hunt was not operating the vehicle for any family purpose He had been to a club at the beach and was returning home when he was pulled over by the police (TR2 p 291, ll 9-12, TR2 p 293, ll 16-19, TR2 p 294, ll 4-11) Neither of the Hunts were involved in the accident or even at the scene of the accident when it occurred (TR2 p 277, ll 1-9)

The family purpose doctrine was created in order to make parents responsible for the actions of their minor children. Under the family purpose doctrine, the head of a household who “owns, furnishes, and maintains a vehicle for the general use and convenience his family” may be held liable for the negligence of a family member who is operating the vehicle for a family purpose. *Thompson v Michael*, 315 S C 268, 433 S E 2d 853 (1993) (citing *Lucht v Youngblood*, 266 S C 127, 221 S E 2d 854 (1976)). The family purpose doctrine holds a parent liable when the child is acting as the parent’s agent. *Id.* (citing *Norwood v Coley*, 235 S C 314, 111 S E 3d 550 (1959)). If the parent did not provide the vehicle for the family’s general use and convenience, then no principal-agent relationship exists at the time of the accident, and liability cannot be imposed on the parent under the family purpose doctrine. *Id.* Furthermore, the “rationale of the family purpose doctrine is that it serves to place financial responsibility upon the head of the family who is more likely to respond to damages when the family vehicle is used negligently by a person without sufficient assets of his own.” *Lollar v Dewitt*, 255 S C 452, 456, 179 S E 2d 607 (1971).

In the current case, Edward Raymond Hunt was not acting as his father’s agent at the time of the accident. No family purpose was being served at the time of the incident. Edward Raymond Hunt had been to the beach to a club and was returning home at the time he was stopped by the police. (TR2 p 291, ll 9-12, TR2 p 293, ll 16-19, TR2 p 294, ll 4-11) Edward Raymond Hunt was twenty-five at the time of the accident. (TR2 p 271, ll 4-6) He was employed and lived in a separate residence on the family’s property. (TR2 p 280, ll 13-23) Edward Raymond Hunt was purchasing the car from his father. (TR2 p 273, ll 10-15) Edward Raymond Hunt was responsible for the maintenance on the vehicle. (TR2 p 276, ll 5-7) The family purpose doctrine does not apply. Further, the elements of the family purpose doctrine as delineated in the *Lollar* case are not met.

when a parent exercises no control over his adult son and the son provides for himself, lives separate and apart from his family members, provides maintenance for the vehicle, and was not using the vehicle for any family purpose when the incident occurred. In conclusion, the family purpose doctrine does not apply to the facts of this case, therefore, the verdict against Defendant Edward William Hunt should be reversed and he should be dismissed from this action.

III UNDER THE FAMILY PURPOSE DOCTRINE, PUNITIVE DAMAGES CANNOT BE AWARDED AGAINST THE OWNER OF THE VEHICLE

The Plaintiff withdrew his cause of action for negligent entrustment prior to taking any testimony in this case (TR1 p 36, ll 4-9) The only basis for asserting any liability with regard to the Defendant, Edward William Hunt, in this action was through the Family Purpose Doctrine (Complaint) The jury returned a verdict against Hunt for actual and punitive damages (Verdict Form)

Punitive damages cannot be awarded against the owner of a vehicle under the Family Purpose Doctrine North Carolina courts have disallowed punitive damages awards against automobile owners who are found liable through the family purpose doctrine See *Byrne v Bordeaux*, 85 N C App 262, 264, 354 S E 2d 277 (N C Ct App 1987) Furthermore, the main purposes of punitive damages are punishment and deterrence *Clark v Cantrell*, 339 S C 369, 378, 529 S E 2d 528 (2000) These purposes are not served by awarding punitive damages against the owner who did not recklessly, willfully, or maliciously injure anyone

a North Carolina Courts Hold that Punitive Damages Cannot be Awarded Against the Owner of a Car Under the Family Purpose Doctrine

The Court of Appeals of North Carolina upheld a trial judge's dismissal of a plaintiff's punitive damages claim against a husband under the family purpose doctrine for the willful and wanton actions of his wife *Byrne v Bordeaux*, 85 N C App 262, 264, 354 S E 2d 277 (N C Ct App 1987) The Court further stated that the Court was "unwilling to say that when a driver uses a family member's automobile willfully, wantonly, or maliciously to injure another that the family

purpose doctrine should be applied so as to allow recovery of punitive damages against the owner based on such use *Id* at 265

- b The Primary Purposes of Punitive Damages are to Punish the Wrongdoer and Deter the Wrongdoer and Others from Similar Conduct These Purposes are not Fulfilled when Punitive Damages are Awarded Against the Owner of an Automobile who is not Reckless, Willful, Wanton, or Malicious

“The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future ” *Clark v Cantrell*, 339 S C 369, 378, 529 S E 2d 528 (2000) (citing *Barnwell v Barber-Colman Co* , 301 S C 534, 537, 393 S E 2d, 162, 163 (1989)) “Punitive damages also serve to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party ” *Id* at 379 (citing *Harris v Burnside*, 261 S C 190, 196, 199 S E 2d 65, 68 (1973)) Three “important” purposes of punitive damages are punishment, deterrence, and “compensation for the reckless or willful invasion of the plaintiff’s rights ” *Id* at 379 “However, the paramount purpose for awarding exemplary damages is *not* to compensate the plaintiff, but to punish and set an example for others ” *Id* at 380 (emphasis in original) Furthermore, punitive damage awards should be viewed from a public policy standpoint not from the viewpoint of a recovering plaintiff *Id*

Furthermore, the Supreme Court of the United States has stated that the purposes of punitive damages are to punish the wrongdoer and deter similar conduct In fact, the Court stated that “the consensus today is that punitive damages are aimed not at compensation but principally at retribution and deterring harmful conduct *Exxon Shipping Co v Baker*, 554 U S 471, 492, 128 S Ct 2605 (2008) “The prevailing rule in American courts also limits punitive damages to cases of what the Court in *Day*, at 371, spoke of as ‘enormity’, where a defendant’s conduct is ‘outrageous,’ 4

Restatement §908(2), owing to ‘gross negligence,’ ‘willful, wanton, and reckless indifference for the rights of others,’ or behavior even more deplorable, 1 Schuler §9 3(A)” *Id* at 493

In the current case, the Defendant Edward William Hunt was not the wrongdoer Edward William Hunt should not be punished because he did not recklessly, willfully, or wantonly injure anyone Edward William Hunt was at home in his bed at the time of the accident (TR2 p 279, l 21 - p 280, l 3) Furthermore, the Defendant, Edward William Hunt, was selling the car involved in the accident to his son, Edward Raymond Hunt (TR2 p 273, ll 10-15) Edward Raymond Hunt had already paid the down payment and made several payments to his father (TR2 p 273, ll 10-15) Edward Raymond Hunt was an adult who lived in a motor home on the property where his father’s home was located, not with his parents (TR2 p 280, ll 13-23) Edward Raymond Hunt was responsible for all of the maintenance on the vehicle he was driving at the time of the accident and Edward Raymond Hunt had a job (TR2 p 276, ll 5-7, TR2 p 280, ll 22-23) Edward William Hunt had no control whatsoever over the actions of his adult son, Edward Raymond Hunt, at the time of this accident (TR2 p 281, ll 10-14) The Family Purpose Doctrine is not the proper tool to seek punitive damages against anyone Certainly, in this particular case taking all of the facts into consideration, it was inappropriate for the trial court to allow the jury to award punitive damages against Edward William Hunt The verdict should be overturned

IV A NEW TRIAL SHOULD BE AWARDED BECAUSE THE VERDICT FORM IS AMBIGUOUS, UNCLEAR AND INCLUDES THE NAME OF A WITNESS WHO WAS NOT A DEFENDANT AT THE TIME OF TRIAL

The caption of the Verdict Form included as Defendants, Nathan Dale Smithers, Edward William Hunt and his son, Edward Raymond Hunt, who was a witness but not a party (Verdict Form) The jury first had a choice of finding in favor of the Defendant Hunt or the Plaintiff The actual damage verdict was against Smithers and Hunt The jury also found “for the Plaintiff against the Defendant Hunt in the amount of \$40,000 punitive damages” (TR2 p 505, ll 8-9) Although the caption includes the names of both of the Hunts, the body of the Verdict Form does not make it clear which Hunt the Verdict was against The jury’s verdict is ambiguous because two reasonable but differing conclusions can be drawn from the verdict The verdict against “Defendant Hunt” could be construed to mean a verdict against the father, Edward William Hunt, or the son, Edward Raymond Hunt At trial, the son was a witness, but not a party to the lawsuit, however, his name mistakenly appeared on the caption of the jury verdict form given to the jury (TR2 p 508, ll 3-5) Because the jury’s Verdict Form awarding actual and punitive damages against the Defendant Hunt is ambiguous and the intent of the jury is unclear, the proper remedy is a new trial

Counsel for Edward William Hunt asked for separate verdict forms to prevent confusion of the jury (TR2 p 381, l 5 - p 383, l 25) The Court did not allow separate verdict forms The verdict form that was shown to the attorneys was not the verdict form that was sent to the jurors (TR2 p 493, l 16 - p 494, l 11) The jurors sent out with two questions The first jury question asked that the Court clarify the Family Purpose law and clarify the Defendants (TR2 p 494, l 19 - p 499, l 25) The jurors sent out a second question asking for clarification with regard to assessing “punitive

damages for Hunt ” It was determined at that time that the body of the Verdict Form was wrong The law clerk apologized and indicated that he changed the Verdict Form and gave it to the jurors without showing it to the attorneys (see Exhibit 5 and TR2 p 500, l 5 - p 504, l 11) The jury was given another Verdict Form The jury came back with its verdict and awarded actual damages against Smithers and Hunt and awarded punitive damages against Smithers in the amount of \$60,000 00 and punitive damages against Hunt in the amount of \$40,000 00 When the verdict is read, the Clerk reads the caption and it includes as a Defendant, Edward Raymond Hunt, who was not a party to this action Edward William Hunt’s attorney then asked that he take up a matter outside the presence of the jury, but before the jury is let go (TR2, p 507, l 18 - p 512, l 25) Both attorneys and the Judge all agree that the jurors need to be brought back in to cure the issue raised by the Verdict Form (TR2 p 509, l 23 - p 510, l 7) However, when the Court attempted to bring the jurors back into the courtroom, the bailiff had let the jurors go and the jury could not be reconvened (TR2 p 510, l 12 - p 511, l 18) At that point in time, Edward William Hunts’s attorney moved for a mistrial (TR2 p 510, ll 16-19) That Motion was denied (TR2 p 512, ll 13-24)

“Once the jury in a civil case is discharged, the trial judge has little power to correct or amend a jury’s verdict which, on its face, is unambiguous ” *Vinson v Jackson*, 327 S C 290, 293, 491 SE 2d 249 (citing *Anderson v Aetna Casualty & Sur Co* , 175 S C 254, 178 S E 819 (1934)) “A jury verdict should be upheld when it is possible to do so and carry into effect the jury’s clear intention However, when a verdict is so confused that the jury’s intent is unclear, the safest and best course is to order a new trial ” *Id* at 293 (quoting *Johnston v Parker*, 279 S C 132, 303 S E 2d 95 (1983))

Where it is at least possible, if not probable that a special question or interrogatory submitted by the trial judge misleads the jury, reversal is required *Sellers v Public Sav Life Insurance Co* , 255 S C 251, 178 S E 2d 241 (1970) “The jury’s verdict should be upheld when possible to do so and to carry into effect what was clearly the intentions ” *Camden v Hilton*, 360 S C 164, 600 S E 2d 88 (Ct App 2004), “but when the verdict is so confused that it is not absolutely clear what was intended, the court should order a new trial ” *Camden Supra* at 173-174 “The authority of a circuit judge to correct, modify, or interfere with the verdict of the jury in a case properly triable by a jury is embraced in and limited to the power to grant new trials ” *Camden Supra* at 174

This court should grant Edward William Hunt a new trial

**V THE ACTIONS OF THE DEFENDANT, NATHAN DALE SMITHERS,
ARE A SUPERCEDING INTERVENING ACT WHICH ABSOLVES
EDWARD WILLIAM HUNT OF ALL LIABILITY IN THIS ACTION**

Edward Raymond Hunt was stopped by a South Carolina Highway Patrolman (TR2 p 29, ll 2-7) The Plaintiff, a City of Conway Police Officer, was called to the scene as was a second City of Conway Police Officer (TR2 p 28, ll 3-14) All four cars were in a line in the same lane of travel (TR2 p 239, ll 13-25) The Plaintiff's police car was the third car in the line (TR2 p 239, ll 13-18) The car driven by Edward Raymond Hunt was first, the Highway Patrol car was second and the other Conway City Police officer's car was fourth in line (TR2 p 239, ll 13-25) The Highway Patrolman left the scene as did the second City Police Officer leaving the car driven by Edward Raymond Hunt in the roadway and the car driven by the Plaintiff in the roadway with some distance between both vehicles (TR2 p 32, l 16 - p 33 l 16) Along came the Defendant Smithers He struck the Plaintiff's vehicle while the Plaintiff was sitting in his patrol car with his blue lights and flashers on (TR2 p 35, ll 12-21, TR2 p 38, ll 10-18) Neither William Raymond Hunt or his father, Edward William Hunt, were at the scene of the accident at the time that the Defendant Smithers drove his vehicle into the Plaintiff's police car (TR2 p 277, ll 1-9)

To recover for negligence, a plaintiff must prove that the defendant proximately caused the plaintiff's injuries S C Jurisprudence Vol 18, § 21 However, if a third party negligently injures the plaintiff and that third party's negligence was unforeseeable, then the defendant cannot be held liable for the injuries caused by the third party's superceding, intervening act In *Gibson v Gross*, the Court of Appeals stated that "[t]he test, therefore, by which the negligent conduct of the original wrongdoer is to be insulated as a matter of law by the independent negligent act of another, is whether the intervening act and the injury resulting therefrom are of such character that the author

of the primary negligence should have reasonably foreseen and anticipated them in light of attendant circumstances ” *Gibson v Gross*, 280 S C 194, 197, 311 S E 2d 736 (1983) (citing *Stone v Bethea*, 251 S C 157, 161 S E 2d 171, 173 (1968)) If the injury is not reasonably foreseeable, then the defendant cannot be held liable *Id* “When the negligence appears merely to have brought about a condition of affairs, or a situation in which another and entirely independent and efficient agency intervenes to cause the injury, the latter is to be deemed the direct or proximate cause, and the former only the indirect or remote cause ” *Id* (citing *Locklear v Southeastern Stages Inc* , 193 S C 309, 8 S E 2d 736) The Court of Appeals in *Gibson* held that a defendant who was involved in an automobile accident was not liable to a passerby who was hit by a third party while standing on the side of the road following the automobile accident The Court held that the actions of the third party in hitting the passerby were superceding, intervening acts that absolved the defendant of liability to the passerby

The facts of this case are very similar to the facts of *Gibson v Gross* The injuries to the Plaintiff were directly caused by the negligence of Defendant Nathan Smithers following the traffic stop of Edward Raymond Hunt Defendant Nathan Smithers’ negligence was a superceding, intervening cause of Donald Gause’s injuries Therefore, Edward William Hunt should be absolved of all liability because Defendant Nathan Smithers caused the injuries to the Plaintiff and any negligence of the Edward Raymond Hunt was superceded by the negligence of Defendant Nathan Smithers Therefore, the jury verdict against Edward William Hunt should be reversed and Edward William Hunt dismissed from this action

VI THE REPEATED REFERENCES TO EDWARD RAYMOND HUNT WHO IS NOT A PARTY TO THIS ACTION BEING UNDER THE INFLUENCE OF ALCOHOL AT THE TIME OF THE ACCIDENT WERE HIGHLY PREJUDICIAL TO EDWARD WILLIAM HUNT AND THE PREJUDICE OUTWEIGHED ANY PROBATIVE VALUE

At the very outset of the case, counsel for Edward William Hunt brought up the issue to the Court of whether or not the Plaintiff was going to be allowed to go into the issue of Edward Raymond Hunt being under the influence of alcohol on the evening of this accident (TR1 p 41, ll 4-19) The court ruled that the alcohol consumption of Edward Raymond Hunt could not come into evidence (TR1 p 41, ll 13-19) Disregarding the ruling of the Court, Plaintiff's counsel during his opening statement tells the jury that Edward Raymond Hunt was pulled over by the police officer on suspected drunk driving (TR2 p 9, l 7 - p 11, l 6) Thereafter, the Court gives a curative instruction to the jury to disregard the comment about drinking and driving (TR2, p 11, ll 14 - 19) Plaintiff's counsel then goes on to elicit testimony from his client as to Edward Raymond Hunt having a strong odor of alcohol (TR2 p 31, l 25 - p 32, l 5) Edward William Hunt's attorney then objected to that testimony The Court sustained that objection and admonished the jury to disregard completely any reference to alcohol (TR2 p 32, ll 6-10) At that point, Edward William Hunt's attorney continues to object to Plaintiff's counsel attempting to put into evidence the use of alcohol by Edward Raymond Hunt (TR2 p 32, ll 11 - 14) Plaintiff's counsel once again argues with the Court before putting the Hunts on the stand that he should be able to bring out the issue of the intoxication of Edward Raymond Hunt (TR2 p 247, ll 8 - 15) The Court once again finds that the issue of intoxication is substantially prejudicial and he indicates that the jury has already heard three, four or five times about the use of alcohol so that the jury at that point knows as the court said

“exactly why he was pulled” (TR2 p 247, ll 16-21) The trial court once again indicates to the lawyers that testimony regarding alcohol consumption by Edward Raymond Hunt is inappropriate for the jury to hear (TR2 p 264, l 5 - p 265, l 1)

Relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice ” Rule 403, SCRE “Unfair prejudice means an undue tendency to suggest a decision on an improper basis ” *Johnson v Horry County Solid Waste Authority*, 389 S C 528, 534, 698 S E 2d 835 (Ct App 2010) (quoting *State v Owens*, 346 S C 637, 666, 552 S E 2d 745, 760 (2001) *overruled on other grounds by State v Gentry*, 363 S C 93, 610 S E 2d 494 (2005)) On appeal, a trial court’s Rule 403 ruling is reviewed “pursuant to an abuse of discretion standard ” *Id* (quoting *Lee v Bunch*, 373 S C 654, 658, 647 S E 2d 197, 199 (2007)) Furthermore, great deference should be given to the trial court’s decision *Id* In *Johnson v Horry County Solid Waste Authority*, the South Carolina Court of Appeals upheld the trial court’s ruling that evidence of the Decedent’s blood alcohol level could not be introduced because the prejudice of admitting the evidence substantially outweighed the probative value *Id* at 536 In the *Johnson* case, the Decedent was involved in a single car accident After the first accident, the Decedent got out of her car and then was struck by another vehicle while standing on the side of the road near her vehicle *Id* at 531 The Court of Appeals upheld the trial court’s decision disallowing evidence involving the Decedent’s intoxication because the evidence was insufficient to prove that the Decedent’s intoxication caused the second accident *Id* at 536

In the present case, Defendant Smithers caused the injuries to the Plaintiff Because Edward Raymond Hunt’s driving under the influence of alcohol did not cause the accident, all evidence relating to Edward Raymond Hunt’s driving under the influence of alcohol should have been

“exactly why he was pulled” (TR2 p 247, ll 16-21) The trial court once again indicates to the lawyers that testimony regarding alcohol consumption by Edward Raymond Hunt is inappropriate for the jury to hear (TR2 p 264, l 5 - p 265, l 1)

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excluded Edward William Hunt's attorney made the appropriate Motion in Limine (TR1 p 41, ll 4-18) The court ruled that alcohol consumption by Edward Raymond Hunt could not come into evidence, however, that information was repeatedly put before the jury (TR1 p 41, ll 13-19, TR2 p 9, l 7 - p 11, l 6 and TR2 p 31, l 25 - p 32, l 6) It was so pervasive that the trial judge indicated that the jury had heard three, four or five times about the use of alcohol by Edward Raymond Hunt so the jury knew exactly why Edward Raymond Hunt was pulled over by the police (TR2 p 247, ll 16-21) Edward William Hunt is entitled to have this court grant him a new trial

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CONCLUSION

If the Court determines that Mr Gause cannot pursue his claim against Edward William Hunt under the theory of the Family Purpose Doctrine, then the jury verdict against Edward William Hunt should be reversed. Furthermore, if this Court determines that the actions of Nathan Dale Smithers constitute a superceding intervening act, then the jury verdict against Edward William Hunt should be reversed. If the Court determines that the Plaintiff can go forward against Edward William Hunt under the theory of the Family Purpose Doctrine and the actions of Mr Smithes do not constitute a superceding intervening act of negligence, then this court should grant Edward William Hunt a new trial because the Verdict Form is ambiguous and unclear. It includes the name William Raymond Hunt in the caption. The body of the Verdict Form simply refers to giving a judgment against Hunt and does not make it clear which Hunt it is referring to. Finally, if this court determines that Mr Gause can proceed against Edward William Hunt under the Family Purpose Doctrine, Mr Smithers' actions do not constitute a superceding intervening act of negligence and the Verdict Form is not defective, then the court should grant Edward William Hunt a new trial on the basis of the prejudice created by the repeated actions of the Plaintiff in putting before the jury the fact that Edward Raymond Hunt was driving his vehicle under the influence of alcohol on the evening of the incident.

Respectfully submitted,

Conway, South Carolina

October 11, 2011

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Attorney for Appellant/Respondent
Edward W Hunt

**THE STATE OF SOUTH CAROLINA
in the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

William H. Seals, Jr., Circuit Court Judge

CASE NO 2006-CP-26-5391

RECEIVED

OCT 13 2011

SC Court of Appeals

Don D. Gause,

Respondent/Appellant

vs

Nathan Dale Smithers and Edward W. Hunt
of Whom Edward W. Hunt is

Appellant/Respondent

**MEMORANDUM IN OPPOSITION TO THE NOTICE OF MOTION
AND MOTION TO APPROVE CONSENT ORDER**

The above-captioned action is presently pending before this Court on appeal. The case was tried before a jury on January 4 - January 6, 2011. The jury returned a verdict of \$155,432.64 in actual damages against the Defendants as well as a punitive damage verdict in the amount of \$60,000.00 against Smithers and a punitive damage award against Hunt in the amount of \$40,000.00. Gause moved for a New Trial *Nisi Additur* in the amount of \$300,000.00 actual damages. The trial court denied the Motion. (See Exhibit 1). Thereafter, a Notice of Appeal was timely filed by Edward W. Hunt and by Don Gause. Subsequent to the appeal being undertaken, the Plaintiff and the Defendant, Edward W. Hunt, through his liability carrier, Allstate, entered into an agreement

whereby the Plaintiff and the Defendant, Edward W Hunt, would sign a document entitled “Confession of Judgment and Covenant Not to Execute” (See Exhibit 2) Allstate agreed to pay the Plaintiff \$30,000 00 In return, Edward W Hunt would be protected from all personal liability and Edward W Hunt would agree to confess judgment in the amount of \$300,000 00 actual damages State Farm Mutual Automobile Insurance Company, the underinsured motorist carrier for the Plaintiff, through Linda Weeks Gangi took over the appeal of this case on behalf of Edward William Hunt pursuant to S C Code Ann §38-77-160

The South Carolina Courts and the Federal District Courts for the Fourth Circuit have found that settlement documents such as entered into by the Plaintiff and Edward W Hunt are presumptively unreasonable and therefore invalid See *Hitt v Cox*, 737 F 2d 421 (4th Cir 1984), *Broome v Watts*, 319 S C 337, 461 S E 2d 46 (1995), *Stonehenge Engineering Corp v Employers Insurance of Wausau*, 201 F 3d 296 (4th Cir 2000), and *St Paul Travelers v Payne* 444 F Supp 2d 519 (2006) In the *Hitt* case, the insured and injured parties entered into a conditional settlement whereby the insured party agreed to pay the injured party an additional \$150,000 in damages if the liability carrier was held obligated to indemnify the insured Applying Virginia law, the Fourth Circuit held that such a conditional settlement was presumptively unreasonable and therefore invalid because the negotiating parties no longer had an adverse interest *Id* at 426 The rationale for the holding in *Hitt* was that an insured should not be allowed to seek indemnity from a liability carrier for amounts that the insured does not expect to pay out of its own resources Further, the court in *Hitt* stated that a finding that the agreement was a product of fraud and collusion was not necessary to its determination that the agreement was unreasonable and invalid

The South Carolina Supreme Court in the case of *Broome v Watts*, 319 S C 337, 461 S E 2d 46 (1995) involved an underinsured motorist carrier. The Plaintiff and the liability carrier for the Defendant settled by payment of all of the available coverage. In the settlement agreement, the Defendant waived his right to a jury trial. Also, the Plaintiff agreed not to execute against the Defendant or its carrier for any judgment obtained against the Defendant and allowed the Plaintiff to proceed with the action to determine his damages for purposes of collecting underinsured motorist coverage. The underinsured motorist carrier was not a party to that agreement. In the appeal, the Plaintiff argued that the Defendant could bind the underinsured motorist carrier to a non-jury forum even though the underinsured motorist carrier was not a party to the settlement agreement. The Supreme Court disagreed. The Supreme Court relying on S C Code Ann §38-77-160 stated “although the underinsured carrier ‘steps into the shoes’ of the underinsured motorist, it has rights separate and distinct from those of the underinsured motorist” *Id* at 340. The Court went on to state that the underinsured motorist could not give up a right to a jury trial which was properly possessed by the underinsured motorist carrier.

In the more recent case of *Stonehenge Engineering Corp v Employers Insurance of Wausau*, 201 F 3d 296 (4th Cir 2000), two insureds signed Confessions of Judgment for \$750,000, but the injured Plaintiff agreed to accept \$625,000 to settle its claim. Three of the carriers paid a total of \$475,000. Wausau would not pay any amount toward settlement of that claim. The Confession of Judgment did allow the Owners Association to execute on the Confession of Judgment if the insured, Stonehenge Engineering, was not successful in obtaining indemnification from Wausau. However, Stonehenge Engineering had no assets from which to pay any Confession of Judgment and this was

made known to the parties prior to the settlement being entered into. Two different Stonehenge companies were sued. National Stonehenge Corporation had assets. The Plaintiff agreed not to file the Confession of Judgment or attempt to execute upon the Confession of Judgment against the company with assets. The insured brought suit against Wausau for breach of contract among other causes of action. The trial court found that Wausau was responsible for 25.4% of the \$750,000 Confession of Judgment based on time on risk. The Court of Appeals overturned the damages award and found that the Plaintiff was entitled to a verdict against Wausau on the breach of contract cause of action for 25.4% of the \$475,000 paid by the other insurers to settle the claim. The Fourth Circuit in interpreting South Carolina law held that Stonehenge (the insured) never intended to pay the Owners Association any excess of its confession of judgment not covered by Wausau. The Court in *Stonehenge* reached this conclusion despite the District Court's finding that the settlement agreement between the Owners Association and Stonehenge was not the product of fraud or collusion. The court found that *Hitt* does not require the presence of fraud or collusion between the insured and the injured party in order to prevent full indemnification on a conditional settlement when the insured never expected to pay the conditional amount out of its own resources.

In *St. Paul Travelers v. Payne*, 444 F. Supp. 2d 519 (2006), the South Carolina District Court applying South Carolina law found that a settlement agreement with an insured under which the insured confessed a judgment for a specified amount and was promised, through the same document, that satisfaction of the judgment would not be sought against him was presumably unreasonable and, therefore, invalid. Thus, the insurer was not obligated to indemnify the insured for the Confession of Judgment entered into pursuant to the settlement agreement. The U.S. District

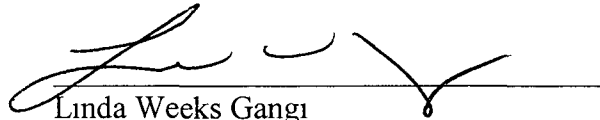
Count found that courts must carefully scrutinize these settlement agreements in order to determine their impact upon the integrity of the judicial process. The Fourth Circuit applying South Carolina law has held that a settlement agreement between an insured and an injured party in which the insurer remains liable while the insured is insulated from any personal liability is presumptively unreasonable and therefore invalid.

In the case at bar, the document entitled “Confession of Judgment and Covenant Not to Execute” which the Plaintiff and the Defendant, Edward W. Hunt, have entered into is presumptively unreasonable and therefore invalid. The Plaintiff, Edward W. Hunt and Allstate attempt to usurp the power of the trial court by entering into this agreement. At trial, the Plaintiff moved for a New Trial *Nisi Additur* in the amount of \$300,000.00. The Court denied this Motion. (See Exhibit 1). As part of the settlement agreement, Edward William Hunt has confessed judgment for \$300,000, but the Plaintiff has agreed not to execute on the judgment against Edward W. Hunt’s assets. The Plaintiff seeks to bind State Farm to the Confession of Judgment. The agreement has no binding effect whatsoever on State Farm. However, through the Consent Order which was attached to the Notice of Motion and Motion to Approve Consent Order, the Plaintiff, Edward W. Hunt and Allstate attempt to have this Court approve the Settlement Agreement and bind State Farm with a judgment of \$300,000.00 in actual damages against Mr. Hunt. This Court should not sanction this collusive settlement agreement or assist the Plaintiff and Edward W. Hunt in circumventing the ruling of the trial court as well as State Farm’s right as the underinsured motorist carrier pursuant to S.C. Code Ann. §38-77-160 to appear, defend and perfect this appeal.

This court should find that the Confession of Judgment and Covenant Not to Execute is presumptively unreasonable and invalid. Further, this court should not execute the Consent Order Approving this Agreement.

Respectfully submitted,

THOMPSON & HENRY, P A

A handwritten signature in black ink, appearing to read 'Linda Weeks Gangi', is written over a horizontal line.

Linda Weeks Gangi
1300 Second Avenue, Third Floor
Post Office Box 1740
Conway, SC 29528
(843) 248-5741
Attorney for Appellant/Respondent
Edward W Hunt

Conway, South Carolina

October 10, 2011

EXHIBIT 1

1 MR ROTHSTEIN YOUR HONOR, WE, WE DO HAVE A
2 POST TRIAL MOTION ALSO

3 THE COURT SURE

4 MR ROTHSTEIN WE WOULD LIKE TO MOVE FOR A NEW
5 TRIAL NISI ADDITUR THERE'S A SPECIFIC CASE RIGHT ON POINT
6 THAT OBVIOUSLY THE JURY FOUND LIABILITY ON GROSS NEGLIGENCE
7 AND GAVE PUNITIVE DAMAGES THE AWARD HERE WAS THE
8 UNCONTROVERTED ONLY THE AMOUNT OF THE MEDICAL BILLS AND
9 YOUR HONOR INSTRUCTED THE JURY THAT PAIN AND SUFFERING IS
10 SEPARATE, FUTURE WAGES ARE SEPARATE, LOSS WAGES ARE
11 SEPARATE, AND I BELIEVE THE CASE, THERE'S A CASE WARING V
12 JOHNSON 2000 SOUTH CAROLINA COURT OF APPEALS CASE 300, 341
13 S C 248, 533, S E 2ND, 906, WHICH IS EXACTLY ON POINT
14 HERE, YOUR HONOR, WHERE THE JURY RETURNS EXACTLY THE
15 MEDICAL BILLS, THAT'S A GROUND FOR A NEW TRIAL NISI
16 ADDITUR, AND WE WOULD SUGGEST AN APPROPRIATE AMOUNT WOULD
17 BE \$300,000 FOR COMPENSATORY DAMAGES

18 THE COURT I'LL BE GLAD TO HEAR FROM THE
19 DEFENSE

20 MR LAWSON YOUR HONOR, THE, WHILE THE VERDICT
21 WAS FOR THE AMOUNT OF THE MEDICAL BILLS THERE WERE A
22 CONTENTIOUS DEBATE ABOUT WHAT WAS RELATED TO THE ACCIDENT
23 AND WHILE I AGREE THAT THAT IS THE AMOUNT OF THE MEDICAL
24 BILLS I DON'T KNOW IF THE COURT SHOULD GO BEHIND THE JURY
25 AND SAY THAT THAT'S WHAT THEY CAME UP WITH IT'S A NUMBER

1 THEY COULD HAVE PICKED BASED ON A LOT OF THINGS
2 DISCUSSIONS COULD HAVE GONE IN ANY DIRECTION THAT SOME
3 JURORS THINK THAT 19,000 WAS RELATED, SOME THINKING THEY'RE
4 ALL RELATED, AND THAT WAS, THEY REACHED A COMPROMISE AND
5 THAT WAS THEIR VERDICT I THINK THERE'S PLENTY IN THE
6 RECORD TO SUGGEST THAT IF THEY, SOME JURORS BELIEVED OUR
7 VERSION OF THE CASE THAT IT COULD VERY WELL BE THE MEDICAL
8 PLUS SOME FOR PAIN AND SUFFERING, SOME FOR MENTAL ANGUISH,
9 AND WHATEVER BUT I DON'T THINK THE COURT SHOULD GO BEHIND
10 THE PROVINCE OF THE JURY WHEN THAT HAS BEEN ONE OF THE
11 ISSUES THAT WE HAVE BEEN DEBATING FOR THE LAST THREE DAYS

12 THE COURT SURE, MR CONNELL?

13 MR CONNELL AND, YOUR HONOR, WE, I ALSO CONCUR
14 WITH THAT ISSUE OF CAUSATION, PROXIMATE CAUSE DR MILLS
15 WAS HERE, THERE'S EXTENSIVE TESTIMONY ABOUT THAT I DON'T
16 THINK YOUR HONOR SHOULD GO BEYOND THAT EITHER

17 MR ROTHSTEIN JUST BRIEFLY, THIS ISN'T JUST
18 ANY NUMBER, THIS IS TO THE DOLLAR THE AMOUNT OF THE
19 SUMMARY, YOUR HONOR THEY DIDN'T JUST, THEY, THEY, IT'S
20 NOT A CAUSATION QUESTION OF WHETHER THE SURGERY IS RELATED
21 THEY GAVE US THE SURGERY AND, AND THE LAW SAYS THAT YOU'RE
22 ENTITLED TO, YOU KNOW, SEPARATELY, THE MEDICALS ARE
23 SEPARATE, PAIN AND SUFFERING, YOU KNOW, LOST WAGES
24 THERE'S UNCONTROVERTED TESTIMONY THAT HE LOST TIME FROM
25 WORK CERTAINLY UNCONTROVERTED TESTIMONY ABOUT PAIN AND

1 SUFFERING THAT'S HE'S ENDURED AND WILL CONTINUE TO ENDURE
2 IN THE FUTURE THERE'S TESTIMONY FROM DR MILLS THAT THERE
3 WAS A FIFTEEN PERCENT IMPAIRMENT RATING BEFORE THE SURGERY
4 SO IT'S CLEAR THAT THE JURY, YES, THEY DID REACH A
5 COMPROMISE VERDICT, AND I THINK THAT IT WOULD BE
6 APPROPRIATE TO DO AN ADDITUR IN THIS CASE, YOUR HONOR

7 MR CONNELL YOUR HONOR, WE WON'T AGREE WE
8 WOULDN'T AGREE ON ADDITUR BASED ON WHAT WE'VE ALREADY SAID
9 THEIR OTHER REQUEST IS A NEW TRIAL, THERE ARE PLENTY OF
10 REASONS TO HAVE A NEW TRIAL IN THIS CASE AS YOUR HONOR
11 KNOWS WHAT WE'VE ALREADY TALKED ABOUT SO ---

12 THE COURT I'M GOING TO DENY YOUR MOTION

13 MR LAWSON THANK YOU, JUDGE

14 THE COURT ANYTHING FURTHER FROM THE PLAINTIFF?

15 MR NICHOLS NO, SIR

16 THE COURT ANYTHING FURTHER FROM THE DEFENSE?

17 MR LAWSON NO, SIR

18 THE COURT ALL RIGHT, ANYBODY LIKE TO WEIGH IN
19 ON THE PUNITIVE DAMAGES?

20 MR NICHOLS I THINK THE PUNITIVES ARE
21 PERFECTLY APPROPRIATE, YOUR HONOR, IT'S A VERY CONSERVATIVE

22 ---

23 MR LAWSON I GUESS FOR THE RECORD, YOUR HONOR,
24 WE WOULD ASK FOR A POST TRIAL REVIEW OF PUNITIVE DAMAGES
25 UNDER THE LATEST CASE I GUESS IS ---

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO 2006-CP-26-5391

Don D Gause,)
)
 Plaintiff,)

vs)

Nathan Dale Smithers, and)
 Edward W Hunt,)
)
 Defendants)
 _____)

**CONFESSION OF JUDGMENT AND
 COVENANT NOT TO EXECUTE**

This Confession of Judgment and Covenant Not to Execute is hereby made this 12th day of April, 2011, by and between Don D Gause, individually, hereinafter referred to as "Covenantor," and Edward W Hunt, hereinafter referred to as "Covenantee "

WHEREAS, the undersigned Covenantor was involved in an automobile accident on or about the 15th day of November, 2003, at or near Highway 501 North in Horry County, South Carolina, and

WHEREAS, Covenantor has asserted claims for damages against the Covenantee seeking compensation for personal injuries and other damages allegedly sustained as a result of said collision and

WHEREAS, this matter was tried to a jury in Horry County, South Carolina, on January 4 6, 2011, and the jury returned a verdict of \$155,432 64 in actual damages against both Defendants, plus \$60,000 00 in punitive damages against co-Defendant Smithers and \$40,000 00 in punitive damages against Covenantee, and

WHEREAS, the jury verdict for actual damages included only the exact amount of medical bills Plaintiff claimed to have incurred, with no compensatory damages for pain and suffering, lost wages, future medical bills, future disability or other damages, and

WHEREAS Plaintiff filed a post-trial motion for new trial in additur for \$300,000 00 actual damages on the grounds that the jury verdict was inadequate under settled precedent, and Defendant Hunt filed a motion for new trial raising several grounds regarding the merits of the case under the family purpose doctrine as well as the potential jury confusion based on the verdict form, both motions were denied by the trial judge, and

WHEREAS, Defendant Hunt timely filed and served a Notice of Appeal to the South Carolina Court of Appeals, and Plaintiff timely filed and served a Notice of Cross Appeal to the South Carolina Court of Appeals, and

WHEREAS, Allstate Insurance Company issued a policy of liability insurance to Edward W Hunt, on the vehicle involved in the collision, Policy Number 030694595 with liability limits of \$15,000, and

WHEREAS, Covenantor alleges to have sustained substantial damages arising out of the above accident and the Covenantor further alleges that these damages will exceed the amount of the liability insurance coverage available to Covenantor, and

WHEREAS, Covenantor and Allstate Insurance Company would wish to limit any liability for damages in excess of \$30,000 00, and

WHEREAS, the parties recognize that if a new trial were granted, the verdict based on the damages sustained by the Covenantor in the accident might substantially exceed the liability limits of the Allstate Policy, and the Covenantor is desirous of protecting his right to proceed against the Covenantor's underinsured motorist coverage (State Farm Insurance Company), and

WHEREAS, Covenantor and Allstate have reached an agreement with regard to payment of any and all of the Covenantor's claims against Covenantor, and

WHEREAS, the parties are desirous of setting forth herein the terms of the agreement which they have now reached,

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS that the undersigned parties, Don D Gause (Covenantor) and Edward W Hunt (Covenantor), for and in consideration of the mutual promises and covenants contained herein and for good and valuable consideration of Thirty Thousand and No/100 Dollars (\$30,000 00) [Said amount shall be paid by check payable jointly to Covenantor and his attorney, Rothstein Law Firm, PA] in hand paid by Covenantor and Allstate Insurance Company receipt of sufficiency whereof is hereby acknowledged, by these presents, for themselves, their heirs, executors, administrators, successors and assigns, do hereby covenant, promise and agree as follows

1 That Covenantor hereby confesses judgment in the amount of Three Hundred Thousand and No/100 Dollars (\$300,000 00) actual damages in favor of Covenantor for injuries arising out of the automobile collision on November 15, 2003, which is the amount Plaintiff's counsel requested in his motion for new trial nisi additur

2 That Allstate agrees to pay, and delivers herewith, the sum of Thirty Thousand and No/100 Dollars (\$30,000 00), which sum exhausts the obligation of Allstate

3 That Covenantor, his heirs, representatives, successors and assigns, and all other persons and entities that can or may make claim by or through Covenantor, hereby release, acquit and forever discharge Allstate Insurance Company, its parent entities, companies, subsidiaries, insurers, affiliates, agents, divisions, departments, agencies, attorneys, representatives, consultants, investigators, adjusters, employees, officers, directors, officials, servants, successors, and assigns and other persons and entities that can or may be liable associated in any manner with Allstate (hereinafter collectively referred to as "Allstate") of and from any and all known or unknown injuries, damages, actions, causes of action, claims, demands, damages, loss of services, loss of profits, loss of income, expenses, compensation, rights, suits of whatever kind or nature, whether past, present or future, on account of, arising out of or in any way growing out of the previously mentioned automobile accident between Covenantor and Covenantee on or about November 15, 2003

4 That Covenantor, his heirs, representatives, successors and assigns, and all other persons and entities that can or may make claim by or through Covenantor do hereby promise and covenant not to execute against Covenantee, his heirs, representatives, successors and assigns and all other persons and entities that can or may be liable, on any judgment that Covenantor, or any other person or entity acting on Covenantor's behalf, may obtain on account of any and all known or unknown injuries, damages, actions, causes of action, claims, demands, damages, loss of services, loss of profits, loss of income, expenses, compensation, rights, suits of whatever kind or nature, whether past, present or future, on account of, arising out of or in any way growing out of the previously mentioned automobile accident, forever covenanting not to execute against the personal assets of Covenantee, but reserving all rights and claims against Covenantee necessary for proceedings to recover UIM insurance coverage from entities other than Allstate (such as State Farm Insurance Company)

5 That Covenantor will accept the sum of Thirty Thousand and No/100 Dollars (\$30,000 00), which constitutes a negotiated amount above the liability limits of the Allstate policy, in satisfaction of his claims against Covenantee and will never at any time execute or attempt to execute any judgment against Covenantee, his heirs, personal representatives, agents, employees, successors, or assigns for any and all personal injuries arising out of the accident of November 15, 2003. However, nothing in this Covenant Not To Execute and Policy Release shall in any way affect the rights of Covenantor to recover any other underinsured motorist benefits afforded by any other policy by virtue of which Covenantor may be an insured for underinsured motorist coverage covering Covenantor at the time of the accident

6 That Covenantor will not execute or otherwise attempt to collect from or against Covenantee or Allstate in satisfaction out of any claims arising out of the accident any amounts, it being expressly understood and agreed that the personal assets of Covenantee are off-limits and protected from a judgment arising out of the aforesaid accident

7 Upon receipt of all such other underinsured motorist benefits determined to be available and to which the said Covenantor may be entitled, Covenantor will refrain from instituting, instituting, prosecuting, commencing, or in any way aiding a claim or suit against Covenantee or Allstate and/or any other persons connected therewith and all heirs, personal representatives, agents, agents, successors and assigns thereof, for and on account of any injuries, damage to person, property property or both for loss of time, loss of services, expenses, impairments or loss of any right or for for any other loss, costs or damages in any way and every nature whatsoever, sustained by or accrued accrued by the said Covenantor whether known or unknown, resulting from or in any manner connected with, related to, or growing out of the accident of November 15, 2003

8 That Covenantor, upon receipt of all other underinsured motorist benefits determined to be available, will, for himself, his heirs, personal representatives and assigns, execute any and all documents, including, but not limited to a complete Release and/or Releases as may be necessary to fully and forever release the said Covenantee and Allstate from all liability for any and all injuries whatsoever resulting to the said Covenantor as a result of the aforesaid collision and satisfy any such judgments as may be obtained against Covenantee or Allstate. Covenantor, however, agrees that this Policy Release and Covenant Not to Execute fully protects the Covenantee and Allstate from any and all liability to Covenantor and that any complete Release and/or Releases as may be necessary to fully and forever release the said Covenantee and Allstate upon the receipt of all other underinsured motorist benefits is merely a matter of formality, as this present document fully protects the Covenantee's personal assets and Allstate in regard to the previously mentioned policy. Covenantor agrees that this Policy Release completely bars any right of Covenantor to proceed against Allstate because of the paid consideration. Further, Covenantor agrees that the Covenant Not to Execute forever protects the personal assets of Covenantee from any and all claims of Covenantor.

9 Covenantor does hereby release and discharge and does for himself, his heirs, personal representatives and assigns, release, discharge, defend and indemnify Allstate Insurance Company, its agents and employees, successors and assigns, from any and all actions, causes of action, claims, demands, damages, costs, expenses, compensation and other responsibilities of any sort which are based on or in any way growing out of or connected with any and all known or unknown personal injuries and damages of any other nature resulting out of or connected with the accident of November 15, 2003, arising under or out of the aforementioned Allstate Policy including, but not limited to, all contractual obligations of the company under said policy and any other obligations or responsibilities imposed thereupon by law, furthermore, these claims, damages and other responsibilities which the parties hereto are hereby settling and releasing include any and all actions or rights of action in contract or in tort, including but not limited to libel, slander, invasion of privacy, Kinard claims, loss of consortium claims, or any other action or for which remedy is provided by virtue of any state or federal law. This Policy Release in favor of Allstate is limited to Allstate and is not to be construed as a Release of any other person, firm or corporation.

10 Unless expressly set forth, Covenantor understands that he is responsible for the payment of all outstanding medical expenses and satisfaction of all liens whatsoever, including health care service providers for health care services provided, and he expressly agrees to indemnify and hold Covenantee and Allstate harmless of and from any and all claims, damages, demands, actions or causes of action by any person, firm or corporation for medical expenses or liens for health care services provided or for any other liens. This agreement to indemnify includes the payment of all costs and reasonable attorney fees incurred in defending any and all such claims or suits. Further, Covenantee advises that he is not a Medicare recipient.

11 That the undersigned Covenantor does hereby promise and covenant for himself, his executors, administrators, successors, and assigns not to execute against Covenantee and/or Allstate their heirs, executors, administrators, legal representatives, successors or assigns, on any judgment that may be obtained by the undersigned on account of any and all claims, demands, damages, costs or expenses, including, but not limited to, any medical or hospital expenses, loss of services, actions and cause of action, arising from any act, omission, or occurrence, resulting or to result from the above referenced automobile accident.

12 That furthermore, the undersigned Covenantor does further covenant and promise that he will not execute on the judgment set forth herein against Covenantee and/or Allstate and that, upon a final determination of whether any other underinsured motorist benefits will be paid, he or his attorney will cause the judgment to be marked and entered as satisfied within ten (10) days, therein.

13 That should the undersigned Covenantor or his attorney refuse to mark and enter any judgment obtained against Covenantee and/or Allstate Insurance Company as satisfied as provided hereinabove, the undersigned and his attorney do hereby authorize the Clerk of Court for the county in which any action is pending, to mark and enter the judgment as satisfied upon receiving a copy of this agreement from counsel for Covenantee and/or Allstate Insurance Company.

14 That the undersigned Covenantor agrees that the payment made by Covenantee and Allstate Insurance Company is in compromise of a disputed claim and that the payment made is not to be construed as an admission of liability on the part of Covenantee, or of any other person hereby benefitting from this Covenant.

15 That the undersigned Covenantor hereby declares and represents that no promise or inducement or agreement not herein expressed has been made to him and that this Covenant contains the entire agreement between the parties hereto, and the terms of this Covenant are contractual and not merely a recital and that Covenantee and Allstate have made no representations as to the possibility of recovery of any monies by the undersigned against any other underinsured motorist carrier.

16 That, the undersigned Covenantor further covenants and agrees that this Covenant shall apply to all known, unknown, anticipated, and unanticipated injuries and damages resulting from the above accident

17 That, unless expressly set forth to the contrary herein, the undersigned Covenantor and his attorney do further agree that should there be any liens for health care services provided whether by statute or contract or otherwise, that they will cause the health care provider to be reimbursed from the proceeds of this Covenant payments for said liens and that they will indemnify and hold harmless Covenantee and Allstate Insurance Company, their heirs, executors, administrators, legal representatives, successors and assigns, from any and all claims, demands, actions or causes of action of whatsoever kind or nature, including the reimbursement of a reasonable attorneys fee in defending such actions brought by any such purported lienholders

18 That the undersigned Covenantor hereby acknowledges that he relies wholly upon his own judgment, belief, and knowledge of the nature, extent of duration of his injuries and damages, and the possibility of recovery from said injuries and damages, and that no representations or statements of any kind regarding these injuries and damages or any other matter made by Covenantee, or Allstate Insurance Company or by his agents or representatives, have been relied on to any extent whatsoever in making this Covenant

19 That it is mutually understood and agreed that this Covenant is not intended as a release or discharge, nor as an accord and satisfaction with any person whatsoever, other than a Policy Release of Allstate and a Covenant Not to Execute against Covenantee and Allstate Insurance Company, their heirs, executives, administrators, legal representatives, successors and assigns, and is executed simply to purchase freedom from the threat of execution upon any judgment that may be attained against Covenantee and/or Allstate The undersigned Covenantor hereby expressly reserves the right to prosecute a legal action in court against Covenantee solely for the purpose of establishing a claim for any other underinsured motorist benefits under any other automobile policy applicable to this accident

20 FOR SAID CONSIDERATION, IT IS HEREBY FURTHER AGREED that no agreement not herein expressed has been made, that this agreement is not executed in reliance upon upon any statement or representation made by the said Covenantee or by any persons employed by or by or representing them, or any of them, that the payment of said consideration is not to be construed construed as an admission of liability, all liability being expressly denied by the said Covenantee Finally, it is agreed that the terms hereof are contractual and not merely a recital and are to be construed pursuant to the laws of the State of South Carolina The provisions and stipulations hereof hereof shall inure to the benefit of, and shall be binding upon, the heirs, personal representatives, successors and assigns of the parties hereto The undersigned Covenantor has read and understood understood the foregoing Covenant Not to Execute and Policy Release and understands that for the the above consideration the undersigned Covenantor will for himself, his heirs, personal representatives and assigns, and upon payment of all additional coverage determined to be available

available to the undersigned under any underinsured motorist coverage, if any, executes such documents so as to fully release Covenantees, their insurers and indemnitors, their heirs, personal representatives, agents, employees, successors or assigns, from any and all claims which the undersigned has or may have in the future against the said Covenantees for any and all injuries arising out of the accident of November 15, 2003

21 The Covenantee and Allstate make no representation as to whether, or if, Covenantor is able to collect the \$300,000.00 judgment against State Farm Insurance Company, the underinsured carrier in this case. Covenantor assumes all risks in collecting or enforcing the \$300,000.00 judgment against State Farm Insurance Company. If Covenantor is unsuccessful in doing so against State Farm Insurance Company, he shall immediately satisfy the judgment which is entered at the behest of Covenantor's Counsel to collect underinsured motorist coverage.

22 Each party shall bear its own costs and counsel for Covenantee shall waive the costs incurred in the prior Appeal as further consideration of the execution of the Covenant.

WITNESSES

Libbia Cinterfeld

Don D. Gause
Don D. Gause

Sharon M. Trayer

Edward W. Hunt
Edward W. Hunt

The undersigned attorneys for Covenantor and Covenantee, respectively, hereby certify that the contents, meanings and effects of the foregoing Covenant Not to Execute and Policy Release have been carefully and fully explained by them to their respective clients and that they recommend the execution of said Covenant Not to Execute and Policy Release for the consideration therein expressed.

David E. Rothstein
David Rothstein, Esquire
Attorney for Covenantor

Gene M. Connell, Jr.
Gene M. Connell, Jr., Esquire
Attorney for Covenantee

**THE STATE OF SOUTH CAROLINA
in the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

William H Seals, Jr , Circuit Court Judge

CASE NO 2006-CP-26-5391

RECEIVED
OCT 13 2011
SC Court of Appeals

Don D Gause,

Respondent/Appellant

vs

Nathan Dale Smithers and Edward W Hunt
of Whom Edward W Hunt is

Appellant/Respondent

CERTIFICATE OF MAILING

I, Ann Shearin, am an employee for the law firm of Thompson & Henry, P A , attorney for the Respondent in the above-captioned action, certify that I have this 11th day of October 2011 mailed a copy of the following documents

- a Memorandum in Opposition to the Notice of Motion and Motion to Approve Consent Order, and
- b Certificate of Mailing

to the undersigned at his address of record, with sufficient postage attached thereto as follows

David E Rothstein, Esq
Rothstein Law Firm, P A
514 Pettigru Street
Greenville, SC 29601

William E Lawson, Esq
Turner Padget Graham & Laney, P A
P O Box 2116
Myrtle Beach, SC 29578

John S Nichols, Esq
Bluestein, Nichols Thompson
& Delgado, LLC
1614 Taylor Street
Columbia, SC 29202

Gene M Connell, Jr , Esq
Kelaher, Connell & Connor, P C
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Ann Shearin

THOMPSON & HENRY, P A
ATTORNEYS AT LAW
1300 SECOND AVENUE, THIRD FLOOR
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CONWAY, SOUTH CAROLINA 29528

LINDA WEEKS GANGI
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(843) 248 5741
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MYRTLE BEACH OFFICE
1314 PROFESSIONAL DRIVE
POST OFFICE BOX 1290
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October 10, 2011

The Honorable Tanya A Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Dear Ms Gee

Please find enclosed herewith the original and seven (7) copies of the Memorandum in Opposition to the Notice of Motion and Motion to Approve Consent Order and Certificate of Mailing Please file the originals, clock the copies and return a clocked copy of each to me in the enclosed self-addressed stamped envelope

If you have any questions with regard to this matter, please do not hesitate to contact me

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OCT 13 2011
SC Court of Appeals

The Honorable Tonya A Gee
October 10, 2011
Page 2

With kindest personal regards, I remain

Yours very truly,

THOMPSON, & HENRY, P A



Linda Weeks Gangi

LWG/avs

Enclosures

pc David E Rothstein, Esq - derothstein@mindspring.com
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William E Lawson, Esq - wlawson@turnerpadget.com
Mike Mashburn - mike.mashburn.gsjb@statefarm.com
Genie Potts - genie.potts.autt@statefarm.com
Claim No 40-2929-606

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October 10, 2011

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Surfside Beach, SC 29587

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Counselors

Please find enclosed herewith copies of the Memorandum in Opposition to the Notice of Motion and Motion to Approve Consent Order and Certificate of Mailing with regard to the above-referenced action which I have forwarded to the Court for filing

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A


Linda Weeks Gangi

LWG/avs
Enclosures

pc The Honorable Tanya A Gee
Mike Mashburn - mike.mashburn.gsib@statefarm.com
Genie Potts - genie.potts.autt@statefarm.com

RECEIVED
OCT 13 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

September 22, 2011

Gene M. Connell, Jr., Esquire
Kelahei, Connell & Connor, P.C.
P.O. Drawer 14547
Surfside Beach, SC 29587

Linda Weeks Gangi, Esquire
Thompson & Henry, P.A.
P.O. Box 1740
Conway, SC 29528

David Eliot Rothstein, Esquire
Rothstein Law Firm, P.A.
514 Pettigrew St.
Greenville, SC 29601

John S. Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
1614 Taylor St.
Columbia, SC 29202

Re Gause, Don v. Smithers, Nathan (2)
2011183646

Dear Counsel

Please prepare a memorandum for the Court addressing the proposed Settlement Agreement and Consent Order. Because there is a dispute as to its validity, the Court requests that the parties address this issue within twenty (20) days.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 1169
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
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FAX (803) 734-1839
www.sccourts.org

September 21, 2011

Linda Weeks Gangi, Esquire
Thompson & Henry, PA
P O Box 1740
Conway, SC 29528

David Eliot Rothstein, Esquire
Rothstein Law Firm, P A
514 Pettigru St
Greenville, SC 29601

Re Gause, Don v. Smithers, Nathan (2)
2011183646

Dear Counsel

The following Order has been endorsed on the Appellant/Respondent's Extension Request in the above entitled case on appeal

"Granted

John Cannon Few C J
For the Court

By s/ V. Claire Allen
Deputy Clerk

~ September 21, 2011 ~

Please be advised the Appellant's Initial Brief of the Appellant/Respondent must be served and filed no later than October 12, 2011

The following Order has been endorsed on the Respondent/Appellant's Extension Request in the above entitled case on appeal

Granted

John Cannon Few C J
For the Court

By s/ V. Claire Allen
Deputy Clerk

September 21, 2011 "

Please be advised the Appellant's Initial Brief of the Respondent/Appellant must be served and filed no later than October 12, 2011

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc Gene M. Connell, Jr., Esquire
John S. Nichols, Esquire

THOMPSON & HENRY, P A
ATTORNEYS AT LAW
1300 SECOND AVENUE, THIRD FLOOR
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LINDA WEEKS GANGI
lgangi@thompsonlaw.com

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MYRTLE BEACH OFFICE
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POST OFFICE BOX 1290
(843) 692 2628 (p)
(843) 692 0918 (f)

September 16, 2011

VIA FAX - 1-803-734-1839

The Honorable V Claire Allen
Deputy Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re *Don D Gause vs Nathan D Smuthers and Edward W Hunt*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Dear Ms Allen

I am in receipt of your letter of September 13, 2011 Mr Connell's Motion was dated June 27, 2011 and filed with the Court on June 30, 2011 The Court of Appeals executed a Consent Order on July 20, 2011 relieving Gene Connell of his duties to represent the Defendant Edward W Hunt and allowing me to take over the defense on behalf of State Farm as the underinsured motorist carrier pursuant to S C Code Ann §38-77-160

I do not consent to the Order proposed by Mr Connell and consented to by Mr Rothstein I believe that the Settlement Agreement and the proposed Consent Order are presumptively unreasonable and therefore invalid I further believe that they are of no effect whatsoever on State Farm as the underinsured motorist carrier I would appreciate the opportunity to file a memorandum in opposition to this motion

I look forward to hearing from you

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SEP 19 2011
SC Court of Appeals

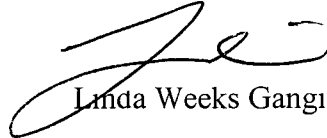
RECEIVED
SEP 19 2011
SC Court of Appeals

The Honorable V Claire Allen
September 16, 2011
Page 2

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/avs

pc David E Rothstein, Esq - derothstein@mindspring.com
John S Nichols, Esq - jsnichols@bntdlaw.com
Gene M Connell, Jr , Esq - gconnell@classactlaw.net
Mike Mashburn - mike.mashburn.gsjb@statefarm.com
Genie Potts - genie.potts.autt@statefarm.com

THOMPSON & HENRY, P A



ROTHSTEIN LAW FIRM, PA

Certified Specialist in Employment and Labor Law

David E Rothstein

derothstein@mindspring.com

Also licensed in North Carolina

514 Pettigru Street
Greenville, SC 29601
Telephone 864 232 5870
Facsimile 864 241 1386

September 12, 2011

VIA FACSIMILE (803) 734-1839

AND U S MAIL

Hon Tanya A Gee

Clerk

South Carolina Court of Appeals

P O Box 11629

Columbia, SC 29211

Re Don D Gause v Nathan Dale Smithers et al,
Case No 2011183646

RECEIVED

SEP 14 2011

SC Court of Appeals

Dear Ms Gee

I represent Respondent-Appellant, Don D Gause, in the above-referenced matter I have received a letter from Appellant-Respondent's counsel, Linda Weeks Gangi, requesting a 30-day extension to file her initial brief and designation of the record I consent to Ms Gangi's request

I would also request a 30-day extension to file the initial brief on my cross appeal Enclosed is a check for \$25 00 for the filing fee for my request If you need a formal motion or memorandum or otherwise need any additional information, please do not hesitate to call me

I would also like to inquire about the status of a motion filed by Gene Connell to approve a settlement he and I reached on behalf of our respective clients

Thank you for your attention to this matter

Sincerely yours,

David E Rothstein

Enclosure

cc Linda Weeks Gangi, Esq
John S Nichols, Esq

GRANTED

JOHN CANNON FEW, C J
FOR THE COURT

By V. Claire Allan
(Clerk) (Deputy Clerk)

FILED
9/21/11

THOMPSON & HENRY, P A
ATTORNEYS AT LAW
1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
CONWAY SOUTH CAROLINA 29528

LINDA WEEKS GANGI
lgangi@thompsonlaw.com

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FAX
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MYRTLE BEACH OFFICE
1314 PROFESSIONAL DRIVE
POST OFFICE BOX 1290
(843) 692 2628 (p)
(843) 692 0918 (f)

September 9, 2011

VIA U S MAIL AND VIA
FAX - 1-803-734-1839

Honorable Jeanette Barber
Office of the Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

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SEP 12 2011
SC Court of Appeals

Dear Ms Barber

I would respectfully request that you grant me a thirty (30) day extension of time in which to file the Appellant/Respondent's Initial Brief, Designation of Matter to be Included in the Record on Appeal in the above-referenced action. I have enclosed a check in the amount of \$25 for the cost of same.

If you desire that I file a Motion and Memorandum, please do not hesitate to contact me.

With kindest personal regards, I remain

GRANTED
JOHN CANNON FEW, C J
FOR THE COURT

Yours very truly,

THOMPSON & HENRY, P A

By *V. Claus Allen*
(Clerk) (Deputy Clerk)

[Signature]
Linda Weeks Gangi

LWG/avs

Enclosure

pc David E Rothstein, Esq - derothstein@mindspring.com

FILED
9-21-11
9/12/11
10/12/11
1st motion

THOMPSON & HENRY, P A
ATTORNEYS AT LAW
1300 SECOND AVENUE THIRD FLOOR
POST OFFICE BOX 1740
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LINDA WEEKS GANGI
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MYRTLE BEACH OFFICE
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POST OFFICE BOX 1290
(843) 692 2628 (p)
(843) 692 0918 (f)

August 15, 2011

VIA FAX - 1-(803) 734-1839 AND U S MAIL

Clerk of Court South Carolina Court of Appeals
ATTN LORI FIELD
Post Office Box 11629
Columbia, SC 29211

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

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AUG 17 2011
SC Court of Appeals

Dear Lori

Please be advised that I have now received the Transcript of the portion of the trial that occurred on January 4, 2011 from Hilda Jordan, the Court Reporter I received this Transcript on August 12, 2011

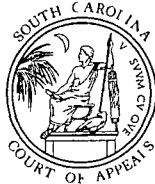
With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A


Linda Weeks Gangi

LWG/avs
pc David E Rothstein, Esq - derothstein@mindspring.com
Mike Mashburn - mike.mashburn.gsib@statefarm.com
Genie Potts - genie.potts.autt@statefarm.com
Claim No 40-2929-606



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29 01
TELEPHONE (803) 7 4 1890
FAX (803) 734 1839
www.sccourts.org

September 13, 2011

- Linda Weeks Gangi, Esquire
Thompson & Henry, PA
P O Box 1740
Conway, SC 29528

Re Gause, Don v. Smithers, Nathan (2)
2011183646

Dear Ms. Gangi,

This Court granted a motion filed June 14, 2011, by Gene M. Connell, Jr., to be relieved as Appellant's counsel of record in favor of Linda Weeks Gangi. On June 30, 2011, Mr. Connell filed a motion to approve a settlement agreement between the parties. Kindly notify the Court whether you, as Appellant's counsel of record, consent to the proposed settlement agreement.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc Gene M. Connell, Jr., Esquire
David Eliot Rothstein, Esquire
John S. Nichols, Esquire



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H Seals, Jr , Circuit Court Judge

Case No 2006-CP-26-5391

DON D GAUSE

Respondent

v

NATHAN DALE SMITHERS and EDWARD W HUNT
of Whom, EDWARD W HUNT is

Defendants
Appellant

NOTICE OF MOTION AND MOTION
TO APPROVE CONSENT ORDER

YOU WILL PLEASE TAKE NOTICE that the undersigned moves this Court to approve the attached Consent Order and to relieve Gene M Connell, Jr as Counsel and allow Linda Weeks Gangi to be Counsel of Record (Attorney Linda Weeks Gangi has previously provided a Motion and Consent Order to be Relieved as Counsel of Record in this case)

RECEIVED

JUN 30 2011

SC Court of Appeals

Respectfully submitted,

Gene M Connell, Jr
Kelaher, Connell & Connor, P C
1500 U S Highway 17 North
Suite 209, The Courtyard
Post Office Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648

Attorney for Appellant

June 27, 2011
Surfside Beach, South Carolina

Other Counsel of Record

David E Rothstein, Esquire
Rothstein Law Firm, P A
514 Pettigru Street
Greenville, SC 29601
(864) 232-5870
Attorney for Respondent

John S Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
1614 Taylor Street
P O Box 7965
Columbia, SC 29202
(803) 779-7599
Attorney for Respondent

William E Lawson, Esquire
Turner Padgett Graham & Laney
Post Office Box 2116
Myrtle Beach, SC 29578-2116
(843) 213-5501
Attorney for Defendant Smithers

Linda Weeks Gangi, Esquire
Thompson & Henry, P A
Post Office Box 1740
Conway, SC 29528
(843) 248-5741
Attorney for State Farm (Underinsured Motorist Carrier)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2006-CP-26-5391

RECEIVED
JUN 30 2011
SC Court of Appeals

DON D. GAUSE

Respondent

v

NATHAN DALE SMITHERS and EDWARD W. HUNT
of Whom, EDWARD W. HUNT is

Defendants
Appellant

CONSENT ORDER

This matter is before the Court based on consent of the Defendant Edward W. Hunt to enter into a Confession of Judgment and Covenant Not To Execute. Briefly stated, the case was tried to a jury in Horry County South Carolina on January 4 through 6, 2011, and the jury returned a verdict of \$155,432.64 in actual damages against both Defendants, plus \$60,000.00 in punitive damages against Co-Defendant Smithers and \$40,000.00 in punitive damages against Edward W. Hunt.

Subsequently, an appeal was undertaken by Edward W. Hunt and the parties have agreed that Edward W. Hunt will enter into a Confession of Judgment and Covenant Not To Execute which will fully protect any and all personal assets. Further, in exchange for the Covenant Not To Execute, Defendant Hunt agrees to Plaintiff's motion at trial for a new trial *nisi additur* in the sum of \$300,000.00. It is specifically agreed between the parties that the \$300,000.00 judgment shall not in any way be executed against the personal assets of Defendant Hunt by the Plaintiff and that

this judgment is for the sole purpose of allowing the Plaintiff to proceed against the underinsured motorist carrier

It is further agreed by the parties that the attached Confession of Judgment and Covenant Not To Execute fully and completely protects the personal assets of Edward W Hunt and satisfies any and all liability of Defendant Hunt's automobile insurance carrier, Allstate Insurance Company Respondent Gause expressly reserves the right to proceed against his underinsured motorist coverage

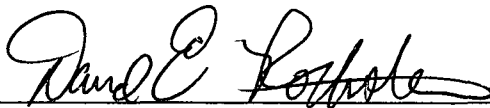
Accordingly, it is ordered that the settlement agreement among the parties is approved

IT IS SO ORDERED

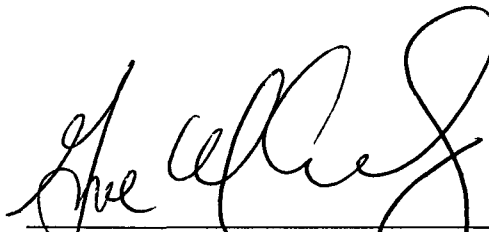
**JUDGE, SOUTH CAROLINA
COURT OF APPEALS**

Date _____
Columbia, SC

WE SO MOVE AND CONSENT



**David Rothstein, Esq
ATTORNEY FOR PLAINTIFF**



**Gene M Connell, Jr , Esq
ATTORNEY FOR DEFENDANT HUNT**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H Seals, Jr , Circuit Court Judge

Case No 2006-CP-26-5391

DON D GAUSE

Respondent

v

NATHAN DALE SMITHERS and EDWARD W HUNT
of Whom, EDWARD W HUNT is

Defendants
Appellant

PROOF OF SERVICE

PERSONALLY appeared before me, Sharon M Tyler, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P C , Attorneys at Law, and that she has served the **Notice of Motion and Motion to Approve Consent Order** to all attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to

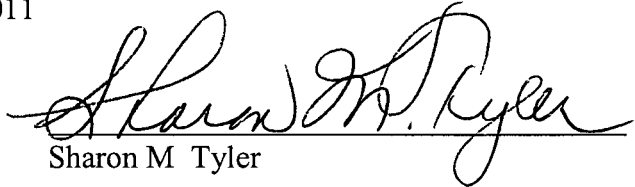
David E Rothstein, Esquire
Rothstein Law Firm, PA
514 Pettigru Street
Greenville, SC 29601

John S Nichols, Esq
Bluestein, Nichols, Thompson & Delgado, LLC
1614 Taylor Street
P O Box 7965
Columbia, SC 29202

William E Lawson, Esquire
Turner Padget Graham & Laney
Post Office Box 2116
Myrtle Beach, SC 29578-2116

Linda Weeks Gangi, Esquire
Thompson & Henry, P A
Post Office Box 1740
Conway, SC 29528

DATE OF MAILING June 28, 2011


Sharon M Tyler

SWORN AND SUBSCRIBED before me,
this 28th day of June, 2011


Notary Public for South Carolina
My Commission Expires 5/12/20

KELAHER, CONNELL & CONNOR, PC

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U S HIGHWAY 17 NORTH

PO DRAWER 14547

SURFSIDE BEACH SOUTH CAROLINA 29587

EDWARD T KELAHER
GENE M CONNELL JR
L SIDNEY CONNOR IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843

238 5648

FAX 238 5050

June 28, 2011

The Honorable V Claire Allen
Deputy Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re Don D Gause vs Nathan Dale Smithers and Edward W Hunt
Civil Action No 06-CP-26-5391
Our File No 2006-0551D
Case Tracking Number 2011183646

Dear Ms Allen

Enclosed please find a Consent Order settling partially the liability insurance coverage in this case, along with six (6) copies. Also enclosed is our check in the amount of \$25.00 for filing of this motion. Linda Gangi has made an appearance for the underinsured motorist carrier and is also now handling the appeal. If the proposed Consent Order meets with your approval, I would ask that it be signed and return a stamped copy to me and all counsel of record. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,


Gene M Connell, Jr

GMC,Jr smt
Enclosures
cc w/enc

David E Rothstein, Esquire
John S Nichols, Esquire
William E Lawson, Esquire
Linda Weeks Gangi, Esquire
Mr Henry Johnson, Allstate Insurance Company (Claim No 4934665284)

RECEIVED

JUN 30 2011

SC Court of Appeals



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

July 20, 2011

Gene M Connell, Jr, Esquire
Kelaher, Connell & Connor, P C
P O Drawer 14547
Surfside Beach, SC 29587

Linda Weeks Gangi, Esquire
Thompson & Henry, PA
P O Box 1740
Conway, SC 29528

Re Gause, Don v Smithers, Nathan (2)
2011183646

Dear Counsel

Enclosed is a copy of an Order of the Court regarding your Consent Order on Control of Defense and Relieving Counsel in the above case

Our records have been amended to show Linda Weeks Gangi as counsel of record and Gene M Connell, Jr is no longer counsel of record for Edward W Hunt

Please notify the court when the transcript is received

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc David Eliot Rothstein, Esquire
John S Nichols, Esquire

**THE STATE OF SOUTH CAROLINA
in the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2006-CP-26-5391

RECEIVED
JUN 14 2011
SC Court of Appeals

Don D. Gause,

Respondent/Appellant

vs

Nathan Dale Smithers and Edward W. Hunt
of Whom Edward W. Hunt is

Appellant/Respondent

**CONSENT ORDER ON CONTROL OF DEFENSE
AND RELIEVING COUNSEL**

This matter comes before the Court on Motion of Gene M. Connell, Jr., as attorney for the Defendant, Edward W. Hunt, and Linda Weeks Gangi, as attorney for State Farm Mutual Automobile Insurance Company, the underinsured motorist carrier for the Plaintiff.

It appears to the satisfaction of the Court that the Plaintiff and the Defendant, Edward W. Hunt, have entered into a Covenant Not to Execute which protects the Defendant, Edward W. Hunt, from any further liability in this case. Plaintiff continues to pursue this action for the purpose of collecting underinsured motorist coverage under §38-77-160 of the South Carolina Code.

It further appears to the satisfaction of the Court that State Farm Mutual Automobile

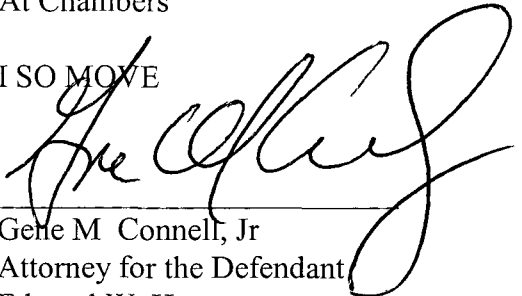
Insurance Company has exercised its right to assume the control of the defense and that it is appropriate for counsel for the Defendant to withdraw from the active defense of this action. It is therefore,

ORDERED, ADJUDGED AND DECREED that State Farm Mutual Automobile Insurance Company and Linda Weeks Gangi as its attorney shall have the right to control the defense of this action in the name of the Defendant, Edward W. Hunt, and that Gene M. Connell, Jr. shall be allowed to withdraw as counsel for the Defendant Edward W. Hunt.

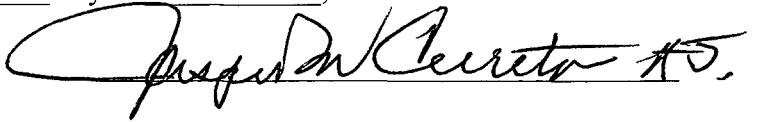
AND IT IS SO ORDERED this _____ day of _____, 2011

At Chambers

ISO MOVE



Gene M. Connell, Jr.
Attorney for the Defendant
Edward W. Hunt

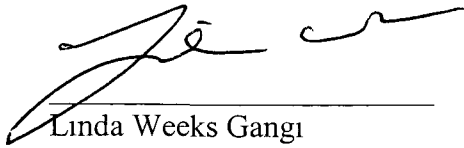
 #5.

FILED

7/29/11 

**DON D GAUSE VS NATHAN DALE SMITHERS AND EDWARD W HUNT
CONSENT ORDER ON CONTROL OF DEFENSE AND RELIEVING COUNSEL
CASE NO 2011183646**

I CONSENT

A handwritten signature in black ink, appearing to read 'Linda Weeks Gangi', written over a horizontal line.

Linda Weeks Gangi
Attorney for State Farm
Mutual Automobile Insurance Company



The Supreme Court of South Carolina

(Don D Gause
(
(
(
TITLE OF (V 2006CP2605391A
CASE (
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(Nathan D Smithers and Edward W Hunt
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(

RECEIVED

JUL 12 2011

SC Court of Appeals

Notice

Upon request and for good cause shown, Hilda Jordan, Court Reporter, is hereby granted an extension up to and including August 11, 2011 to prepare and deliver the Transcript of Record in the above case

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
07/12/2011

cc Linda Weeks Gangi
Hilda Jordan

THOMPSON & HENRY, P A
ATTORNEYS AT LAW
1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528

LINDA WEEKS GANGI
lgangi@thompsonlaw.com

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FAX
(843) 248 5112

MYRTLE BEACH OFFICE
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(843) 692 2628 (p)
(843) 692 0918 (f)

July 18, 2011

Ms Hilda M Jordan
Court Reporter
Post Office Box 435
Lexington, SC 29071

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Civil Action No 2006-CP-26-5391
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Dear Ms Jordan

Pursuant to the attached Notice from Desiree Allen, Court Services Manager, for the Supreme Court, you were to prepare and deliver the Transcript of Record in the above-captioned action to me by July 11, 2011. As of today's date, I have not received the requested Transcript.

Please contact me if you have any questions.

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

RECEIVED

JUL 18 2011

SC Court of Appeals

LWG/avs

pc The Honorable Tanya G Gee -Clerk of the South Carolina
Court of Appeals - VIA FAX - 1-(803) 734-1839
David E Rothstein, Esq - derothstein@mindspring.com
John S Nichols, Esq - jsnichols@bntdlaw.com
Gene M Connell, Jr, Esq - gconnell@classactlaw.net
William E Lawson, Esq - wlawson@turnerpadget.com
Mike Mashburn - mike.mashburn.gsib@statefarm.com
Gene Potts - gene.potts.auff@statefarm.com
Clint Cudd - clint.cudd.cyq5@statefarm.com
Claim No 40-2929-606
Roselyn W Frierson, Director, South Carolina
Court Administration -1-(803) 734-1355



The Supreme Court of South Carolina

(Don D Gause
(
(
(
TITLE OF (V 2006CP265391A
CASE (
(
(
(Nathan D Smithers and Edward W Hunt
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Notice

Upon request and for good cause shown, Hilda Jordan, Court Reporter, is hereby granted an extension up to and including July 11, 2011 to prepare and deliver the Transcript of Record in the above case

Desiree Allen
Court Services Manager
South Carolina Court Administration

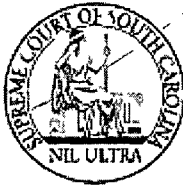
Columbia, South Carolina
06/23/2011

cc Linda Weeks Gangi

Hilda Jordan

RECEIVED
JUL 18 2011

SC Court of Appeals



The Supreme Court of South Carolina

(Don D Gause
(
(
(
TITLE OF (V 2006CP265391A
CASE (
(
(
(Nathan D Smithers and Edward W Hunt
(
(

RECEIVED
JUN 24 2011
SC Court of Appeals

Notice

Upon request and for good cause shown, Hilda Jordan, Court Reporter, is hereby granted an extension up to and including July 11, 2011 to prepare and deliver the Transcript of Record in the above case

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
06/23/2011

cc Linda Weeks Gangi

Hilda Jordan

**THE STATE OF SOUTH CAROLINA
in the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

William H Seals, Jr , Circuit Court Judge

CASE NO 2006-CP-26-5391

Don D Gause,

Respondent/Appellant

vs

Nathan Dale Smithers and Edward W Hunt
of Whom Edward W Hunt is

Appellant/Respondent

CERTIFICATE OF SERVICE BY E-MAIL

I, Ann Shearin, am an employee for the law firm of Thompson & Henry, P A , attorney for the Respondent in the above-captioned action, certify that on June 13, 2011, I mailed the attached letter and enclosed consent order to The Honorable Tonya A Gee On June 13, 2011 I e-mailed the June 13, 2011 letter and consent order to all attorneys reflected on the attached e-mail transmittal sheet as follows

RECEIVED
JUN 21 2011
SC Court of Appeals

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Ann Shearin

Message Id 4DF628D5 727 58 29296
Subject DON D GAUSE V NATHAN D SMITHERS AND EDWARD W HUNT
Created By ANN@thompsonlaw.com
Scheduled Date
Creation Date 6/13/2011 3 12 PM
From Ann Shearin

Recipients

Recipient	Action	Date & Time	Comment
 BNTDLAW.com To jsnICHOLS@BNTDLAW.com (jsnICHOLS@BNTDLAW.com)	Transferred	6/13/2011 3 12 PM	
 classactlaw.net To Gene Connell (gconnell@classactlaw.net)	Transferred	6/13/2011 3 12 PM	
 Conway PO Conway BC Ann Shearin (ANN@thompsonlaw.com)	Delivered	6/13/2011 3 12 PM	
	Read	6/13/2011 3 18 PM	
 mindspring.com To DEROTHSTEIN@MINDSPRING.COM (DERothstein@mindspring.com)	Transferred	6/13/2011 3 13 PM	
 TurnerPadget.com To wlawson@turnerpadget.com (wlawson@TurnerPadget.com)	Transferred	6/13/2011 3 13 PM	

Post Offices

Post Office	Delivered	Route
BNTDLAW.com		BNTDLAW.com
classactlaw.net		classactlaw.net
Conway PO Conway	6/13/2011 3 12 PM	thompsonlaw.com
mindspring.com		mindspring.com
TurnerPadget.com		TurnerPadget.com

Files

File	Size	Date & Time
COURT OF APPEALS 3 RE ORDER.pdf	100722	6/13/2011 2 37 PM
MESSAGE	868	6/13/2011 11 12 AM
TEXT.htm	516	6/13/2011 3 12 PM

Options

Auto Delete	No
Concealed Subject	No
Expiration Date	None
Notify Recipients	Yes
Priority	Standard
Reply requested by	None
Security	Standard
To Be Delivered	Immediate

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June 17, 2011

The Honorable V Claire Allen
Deputy Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re *Don D Gause vs Nathan D Smuthers and Edward W Hunt*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

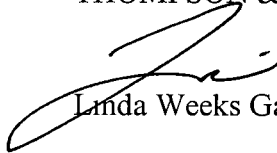
Dear Ms Allen

Pursuant to your letter of June 15, 2011, a copy of which is enclosed herewith, I enclose a check for \$25 along with an Affidavit of Service via e-mail and my letter of June 13, 2011 to Tayna A Gee Please find enclosed herewith two copies of the Consent Order on Control of Defense and Relieving Counsel The original was sent in my letter of June 13, 2011 and was not returned to me I would ask that you obtain the signature of the Chief Justice of the Court of Appeals, file this Order and return to me a clocked copy in the enclosed self-addressed stamped envelope If you need anything further please do not hesitate to contact me

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A


Linda Weeks Gangi

LWG/avs
Enclosures

pc David E Rothstein, Esq - derothstein@mindspring.com
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Gene M Connell, Jr, Esq - gconnell@classactlaw.net
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Mike Mashburn - mike.mashburn.gsib@statefarm.com
Genie Potts - genie.potts.autt@statefarm.com

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JUN 21 2011
SC Court of Appeals

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June 20, 2011

South Carolina Office of Court Administration
 1015 Sumter Street, Suite 201
 Columbia, SC 29201

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
 Civil Action No 2006-CP-26-5391
 Claim No 40-2929-606
 SF Insured Don Gause
 Date of Loss November 15, 2003
 Claim Rep Mike Mashburn

Ladies and Gentlemen

Please find attached hereto my April 11, 2011 letter to Hilda M Jordan requesting a transcript of the testimony taken by Ms Jordan on January 4, 2011 in the above-captioned action Pursuant to Rule 207 of the *South Carolina Appellate Court Rules*, I am notifying the Court that I have not received the transcript from Ms Jordan within the sixty (60) day time frame

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A


 Linda Weeks Gangi

LWG/avs

pc Hilda M Jordan
 Ms Lori Field
 The Honorable Tanya G Gee -Clerk of the South Carolina
 Court of Appeals - VIA FAX - 1-(803) 734-1839
 David E Rothstein, Esq - derothstein@mindspring.com
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 Gene M Connell, Jr, Esq - gconnell@classactlaw.net
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 Mike Mashburn - mike mashburn gsjb@statefarm.com
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 JUN 21 2011
 SC Court of Appeals

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April 11, 2011

Ms Hilda M Jordan
Court Reporter
Post Office Box 435
Lexington, SC 29071

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Civil Action No 2006-CP-26-5391
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Dear Ms Jordan

By my letter of March 25, 2011, I requested that Brenda Babb forward to me the transcript of the trial taken on January 4 - 6, 2011 in the above-referenced action. By e-mail of April 10, 2011, Ms Babb notified my office that you were the Court Reporter on January 4, 2011 while she was out sick on that date. I am hereby requesting that you prepare and forward to me as counsel of record for State Farm Mutual Automobile Insurance Company, the underinsured motorist carrier for Don Gause, a copy of the transcript of the trial in the above matter which you took on January 4, 2011 at the Horry County Courthouse before the Honorable William H Seals, Jr. This request is made pursuant to Rule 207(a) of the South Carolina Appellate Court Rules. If you will furnish a reasonable estimate of the cost of preparation of the transcript, I will forward a firm check in payment of your fees for preparing the transcript.

Pursuant to Rule 207(b) of the South Carolina Appellate Court Rules, you are required to transcribe and deliver the transcript to us within sixty (60) days. Please contact me if you have any questions.

RECEIVED
JUN 21 2011
SC Court of Appeals

Ms Hilda M Jordan
April 11, 2011
Page 2

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/avs

pc The Honorable Tanya G Gee -Clerk of the South Carolina
Court of Appeals - VIA FAX - 1-(803) 734-1839
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Claim No 40-2929-606
Rosalyn W Frierson, Director, South Carolina
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JUN 21 2011
SC Court of Appeals

THOMPSON & HENRY, P A



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29201
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June 15, 2011

Linda Weeks Gangi, Esquire
Thompson & Henry, PA
P O Box 1740
Conway, SC 29528

Re Gause, Don v Smithers, Nathan (2)
2011183646

Dear Ms Gangi

We have received your letter dated June 13, 2011 in the above case. However, if you wish to the Court to act on your request, you must provide proof you have served all parties to the appeal and the \$25 motion filing fee.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc Gene M Connell, Jr, Esquire
David Eliot Rothstein, Esquire
John S Nichols, Esquire

**THE STATE OF SOUTH CAROLINA
in the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

William H. Seals, Jr., Circuit Court Judge

CASE NO. 2006-CP-26-5391

RECEIVED

JUN 14 2011

SC Court of Appeals

Don D. Gause,

Respondent/Appellant

vs

Nathan Dale Smithers and Edward W. Hunt
of Whom Edward W. Hunt is

Appellant/Respondent

**CONSENT ORDER ON CONTROL OF DEFENSE
AND RELIEVING COUNSEL**

This matter comes before the Court on Motion of Gene M. Connell, Jr., as attorney for the Defendant, Edward W. Hunt, and Linda Weeks Gangi, as attorney for State Farm Mutual Automobile Insurance Company, the underinsured motorist carrier for the Plaintiff.

It appears to the satisfaction of the Court that the Plaintiff and the Defendant, Edward W. Hunt, have entered into a Covenant Not to Execute which protects the Defendant, Edward W. Hunt, from any further liability in this case. Plaintiff continues to pursue this action for the purpose of collecting underinsured motorist coverage under §38-77-160 of the South Carolina Code.

It further appears to the satisfaction of the Court that State Farm Mutual Automobile

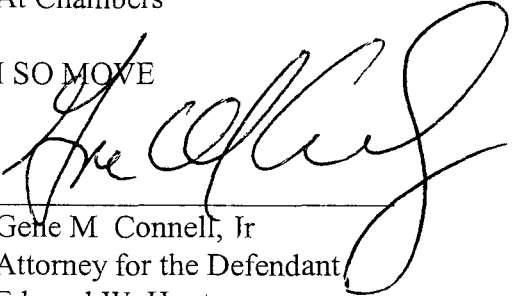
Insurance Company has exercised its right to assume the control of the defense and that it is appropriate for counsel for the Defendant to withdraw from the active defense of this action. It is therefore,

ORDERED, ADJUDGED AND DECREED that State Farm Mutual Automobile Insurance Company and Linda Weeks Gangi as its attorney shall have the right to control the defense of this action in the name of the Defendant, Edward W. Hunt, and that Gene M. Connell, Jr. shall be allowed to withdraw as counsel for the Defendant Edward W. Hunt.

AND IT IS SO ORDERED this _____ day of _____, 2011

At Chambers

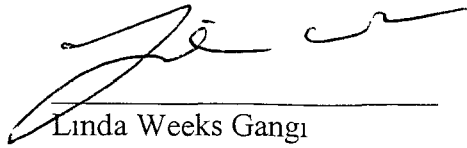
I SO MOVE



Gene M. Connell, Jr.
Attorney for the Defendant,
Edward W. Hunt

**DON D GAUSE VS NATHAN DALE SMITHERS AND EDWARD W HUNT
CONSENT ORDER ON CONTROL OF DEFENSE AND RELIEVING COUNSEL
CASE NO 2011183646**

I CONSENT

A handwritten signature in black ink, appearing to read 'Linda Weeks Gangi', is written over a horizontal line.

Linda Weeks Gangi
Attorney for State Farm
Mutual Automobile Insurance Company

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June 13, 2011

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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JUN 14 2011

SC Court of Appeals

Re *Don D. Gause vs Nathan D. Smithers and Edward W. Hunt*
Case #2011183646
Claim No. 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Dear Ms. Gee

Please find enclosed herewith the original and one copy of the Consent Order on Control of Defense and Relieving Counsel with regard to the above-referenced action. Gene Connell was hired by Mr. Hunt's liability insurance carrier to defend him in the above-captioned matter. I represent State Farm Mutual Automobile Insurance Company who is the underinsured motorist carrier for Don D. Gause. Mr. Hunt's liability insurance carrier has settled that portion of this matter on a Consent Not to Execute. Pursuant to S.C. Code Ann. §38-77-160, I am going to take over the defense of Mr. Hunt through State Farm. I have prepared the enclosed Consent Order on Control of Defense and Relieving Counsel which has been consented to by Mr. Connell and myself. I would ask that you obtain the signature of the Chief Justice of the Court of Appeals, file this Order and return to me a clocked copy in the enclosed self-addressed stamped envelope.

If you have any questions with regard to this matter, please do not hesitate to contact me.

The Honorable Tonya A Gee
June 13, 2011
Page 2

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/avs

pc David E Rothstein, Esq - derothstein@mindspring.com
John S Nichols, Esq - jsnichols@bntdlaw.com
Gene M Connell, Jr , Esq - gconnell@classactlaw.net
William E Lawson, Esq - wlawson@turnerpadget.com
Mike Mashburn - mike.mashburn.gsjb@statefarm.com
Genie Potts - genie.potts.autt@statefarm.com
Claim No 40-2929-606

THOMPSON & HENRY, P A

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May 9, 2011

VIA FAX - 1-(803) 734-1839 AND U S MAIL

Clerk of Court South Carolina Court of Appeals
ATTN LORI FIELD
Post Office Box 11629
Columbia, SC 29211

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

RECEIVED
MAY 11 2011
SC Court of Appeals

Dear Lori

I greatly appreciate your taking time to speak with me today about the above-captioned matter. I represent State Farm as the underinsured motorist carrier for Don Gause. I will be taking over the defense of Edward W. Hunt, the Appellant/Respondent in the above-captioned action who is now represented by Gene M. Connell, Jr. pursuant to S.C. Code Ann. §38-77-160 once Mr. Connell settles his portion of the case. Mr. Connell and Mr. Rothstein are working out the particulars of the language in the settlement documents for Mr. Connell's portion of the case. Please find enclosed herewith a copy of the letter I sent to Brenda Babb requesting the transcript in the above-captioned action. I have received the transcript from Ms. Babb. This case was tried on January 4, 5 and 6, 2011. Ms. Babb was the Court Reporter for January 5 and 6, 2011. It is my understanding that Hilda M. Jordan was the Court Reporter for January 4, 2011. As soon as I learned that, I sent Ms. Jordan the enclosed letter dated April 11, 2011. As of today's date, I have not received the transcript from Ms. Jordan. I enclose herewith a copy of the letter that I sent to Tonya A. Gee dated May 2, 2011 explaining that I had received the transcript from Brenda Babb, but had not received the transcript from Hilda Jordan. It is my understanding that Mr. Connell also ordered the transcript as the Appellant/Respondent.

If you have any questions with regard to this matter, please do not hesitate to contact me.

Ms Lori Field
May 9, 2011
Page 2

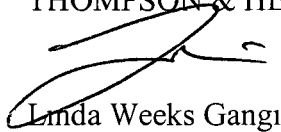
Please find enclosed herewith my letter addressed to the South Carolina Office of Court Administration. It is my understanding from our conversation that once I receive the transcript from Hilda Jordan I am to notify you of same. Receipt of the transcript from Hilda Jordan will begin the time running for filing of the Initial Brief by the Appellant-Respondent.

If you have any further questions, please do not hesitate to contact me.

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/avs

Enclosures

pc David E Rothstein, Esq - derothstein@mindspring.com
John S Nichols, Esq - jsnichols@bntdlaw.com
Gene M Connell, Jr, Esq - gconnell@classactlaw.net
William E Lawson, Esq - wlawson@turnerpadget.com
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Genie Potts - genie.potts.autt@statefarm.com
Claim No 40-2929-606

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May 9, 2011

South Carolina Office of Court Administration
1015 Sumter Street, Suite 201
Columbia, SC 29201

Re *Don D Gause vs Nathan D Smuthers and Edward W Hunt*
Civil Action No 2006-CP-26-5391
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Ladies and Gentlemen

I received the enclosed letter from Clarie Allen, the Deputy Clerk for the Court of Appeals, and in response to that letter, I am providing you with the information

It is my understanding that Gene Connell who presently represents the Appellant-Respondent has previously requested the transcript from Ms Babb and Ms Jordan Please be advised that I requested a copy of the trial transcript in the above-captioned from Brenda Babb, a copy of my March 25, 2011 letter is attached This case was tried on January 4, 5 and 6, 2011 before The Honorable William H Seals, Jr at the Horry County Courthouse Ms Babb notified my office by e-mail on April 10, 2011 that Hilda M Jordan was the Court Reporter on January 4, 2011 while Ms Babb was out sick on that day Please find enclosed herewith a copy of my letter addressed to Hilda M Jordan dated April 11, 2011 requesting the transcript of January 4, 2011 As of today's date, I have not received the transcript from Ms Jordan

If you have any questions about this matter, please do not hesitate to contact me or Mr Connell Mr Connell can be reached at the following address and phone number

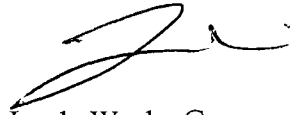
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South Carolina Office of Court Administration
May 9, 2011
Page 2

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/avs

pc

Ms Lori Field

The Honorable Tanya G Gee -Clerk of the South Carolina
Court of Appeals - VIA FAX - 1-(803) 734-1839

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Claim No 40-2929-606

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May 2, 2011

VIA FAX - 1-(803) 734-1839 AND U S MAIL

The Honorable Tanya A Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
MAY 04 2011
SC Court of Appeals

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Dear Ms Gee

Please be advised that I have received the transcript of the trial in the above-captioned matter from Brenda Babb who took the trial on January 5 and 6, 2011. Hilda M Jordan was the Court Reporter who took the transcript of the first day of the trial on January 4, 2011. We have requested from Ms Jordan that she provide us with the transcript from that day. As of today's date, we have not received same. Once we receive that transcript, we will notify the Court.

If you have any questions with regard to this matter, please do not hesitate to contact me.

The Honorable Tonya A Gee
May 2, 2011
Page 2

With kindest personal regards, I remain

Yours very truly

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/av5

pc David E Rothstein, Esq - derothstein@mindspring.com
John S Nichols, Esq - jsnichols@bntdlaw.com
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Claim No 40-2929-606

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April 11, 2011

Ms Hilda M Jordan
Court Reporter
Post Office Box 435
Lexington, SC 29071

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Civil Action No 2006-CP-26-5391
Claim No 40-2929-606
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Pursuant to Rule 207(b) of the South Carolina Appellate Court Rules, you are required to transcribe and deliver the transcript to us within sixty (60) days. Please contact me if you have any questions.

Ms Hilda M Jordan
April 11, 2011
Page 2

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/avs

pc The Honorable Tanya G Gee -Clerk of the South Carolina
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Gene M Connell, Jr , Esq - gconnell@classactlaw.net
William E Lawson, Esq - wlawson@turnerpadget.com
Mike Mashburn - mike.mashburn.gsib@statefarm.com
Genie Potts - genie.potts.autt@statefarm.com
Clint Cudd - clint.cudd.cvq5@statefarm.com
Claim No 40-2929-606
Rosalyn W Frerson, Director, South Carolina
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1300 SECOND AVENUE, THIRD FLOOR
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CONWAY, SOUTH CAROLINA 29528

LINDA WEEKS GANGI
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MYRTLE BEACH OFFICE
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(843) 692 2628 (p)
(843) 692-0918 (f)

March 25, 2011

bbabb@sccourts.org

Ms Brenda Babb

Court Reporter

Post Office Box 4800

Calabash, NC 28467-9820

Re *Don D Gause vs Nathan D Smithers and Edward W Hunt*
Civil Action No 2006-CP-26 5391
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Dear Ms Babb

I am hereby requesting that you prepare and forward to me, as counsel of record for State Farm Mutual Automobile Insurance Company, the underinsured motorist carrier for Don Gause, a copy of the transcript of the trial in the above matter which was held on January 4-6, 2011 at the Horry County Courthouse before the Honorable William H Seals, Jr. This request is made pursuant to Rule 207(a) of the South Carolina Appellate Court Rules. If you will furnish a reasonable estimate of the cost of preparation of the transcript, I will forward a firm check in payment of your fees for preparing the transcript.

Pursuant to Rule 207(b) of the South Carolina Appellate Court Rules, you are required to transcribe and deliver the transcript to us within sixty (60) days. Please contact me if you have any questions.

Ms Brenda Babb
March 25, 2011
Page 2

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/avs

pc The Honorable Tanya G Gee -Clerk of the South Carolina
Court of Appeals - VIA FAX - 1-(803) 734-1839
David E Rothstein, Esq - derothstein@mindspring.com
John S Nichols, Esq - jsnichols@bntdlaw.com
Gene M Connell, Jr , Esq - gconnell@classactlaw.net
William E Lawson, Esq - wlawson@turnerpadget.com
Mike Mashburn - mike.mashburn.gsib@statefarm.com
Genie Potts - genie.potts.auff@statefarm.com
Clint Cudd - clint.cudd.cvq5@statefarm.com
Claim No 40-2929-606
Rosalyn W Frierson, Director, South Carolina
Court Administration -1-(803) 734-1355



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1809
WWW.SCCOURTS.ORG

May 6, 2011

Gene M. Connell, Jr., Esquire
Kelaher, Connell & Connor, P.C.
P.O. Drawer 14547
Surfside Beach, SC 29587

Re Gause, Don v. Smithers, Nathan (2)
2011183646

Dear Counsel

Our records indicate that Court Reporter, *Brenda Barb* Suzie McGowan, was granted an extension to prepare and deliver the transcript in the above matter up to and including April 14, 2011. As of today's date, we have received no information that the court reporter has been granted an additional extension, nor have we received your initial brief.

If you have not yet received the transcript, you must contact the Office of Court Administration per Rule 207 of the South Carolina Appellate Court Rules. The address for Court Administration is as follows:

South Carolina Office of Court Administration
1015 Sumter Street, Suite 201
Columbia, SC 29201

Be sure to copy the Court and opposing counsel with all correspondence concerning the transcript.

Please advise the Court of the status of the transcript with ten (10) days of the date of this letter, or your appeal may be dismissed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc David Eliot Rothstein, Esquire
John S. Nichols, Esquire
Linda Weeks Gangi, Esquire

**THOMPSON & HENRY, P A
ATTORNEYS AT LAW
1300 SECOND AVENUE, THIRD FLOOR
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CONWAY SOUTH CAROLINA 29528**

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(843) 692 2628 (p)
(843) 692 0918 (f)

March 24, 2011

VIA FAX - 1-(803) 734-1839 AND U S MAIL

The Honorable Tanya A Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re *Don D Gause vs Nathan D Smuthers and Edward W Hunt*
Case #2011183646
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Dear Ms Gee

Please find enclosed herewith the original and two (2) copies of my Notice of Appearance I represent State Farm Mutual Automobile Insurance Company as the underinsured motorist carrier for Don D Gause It is my understanding that Mr Gause has now resolved his claim against Ed and Hunt, therefore, I will take over the defense of Mr Hunt pursuant to S C Code Ann §38-77-160 and proceed to timely perfect this appeal

If you have any questions with regard to this matter, please do not hesitate to contact me

RECEIVED

MAR 25 2011

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
in the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

William H. Seals, Jr., Circuit Court Judge

CASE NO 2006-CP-26-5391

RECEIVED

MAR 25 2011

SC Court of Appeals

Don D. Gause,

Respondent/Appellant

vs

Nathan Dale Smithers and Edward W. Hunt
of Whom Edward W. Hunt is

Appellant/Respondent

NOTICE OF APPEARANCE

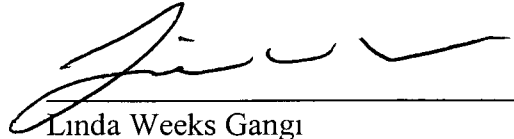
The undersigned as attorneys for State Farm Mutual Automobile Insurance Company, hereby notify and advise this Court, the parties above-named, and their attorneys that they are appearing on behalf of State Farm Mutual Automobile Insurance Company, an insurance carrier which is alleged to provide underinsured motorist coverage to Don D. Gause with regard to this action, and that in making this appearance, State Farm Mutual Automobile Insurance Company, specifically reserves and does not waive any rights pursuant to its policy of insurance, including, but not limited to the

applicability of underinsured motorist coverage to this action and further intends to preserve all rights which it may have pursuant to S C Code Ann §38-77-160 (1976 as amended)

Conway, South Carolina

March 24, 2011

THOMPSON & HENRY, P A

A handwritten signature in black ink, appearing to read 'Linda Weeks Gangi', is written over a horizontal line.

Linda Weeks Gangi
Attorneys for State Farm
Mutual Automobile Insurance Company
Post Office Box 1740
Conway, South Carolina 29528
Telephone (843) 248-5741
Fax (843) 248-5112
lgang@thompsonlaw.com
SC Bar # 002365

**THE STATE OF SOUTH CAROLINA
in the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

William H Seals, Jr , Circuit Court Judge

CASE NO 2006-CP-26-5391

RECEIVED

MAR 25 2011

SC Court of Appeals

Don D Gause,

Respondent/Appellant

vs

Nathan Dale Smithers and Edward W Hunt
of Whom Edward W Hunt is

Appellant/Respondent

CERTIFICATE OF MAILING

I, Ann Shearin, am an employee for the law firm of Thompson & Henry, P A , attorney for the Respondent in the above-captioned action, certify that I have this 24th day of March, 2011 mailed a copy of the following documents

- a Notice of Appearance, and
- b Certificate of Mailing

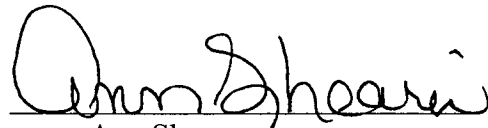
to the undersigned at his address of record, with sufficient postage attached thereto as follows

David E Rothstein, Esq
Burnette & Rothstein, P A
2322 Devine Street
Columbia, SC 29205
(803) 251-0202 (t)
(803) 251-0222 (f)
derothstein@mindspring.com

William E Lawson, Esq
Turner Padget Graham & Laney, P A
P O Box 2116
Myrtle Beach, SC 29578
(843) 213-5500 (t)
(843) 213-5555
wlawson@turnerpadget.com

John S Nichols, Esq
Bluestein, Nichols Thompson
& Delgado, LLC
1614 Taylor Street
Columbia, SC 29202
(803) 779-7599 (t)
(803) 779-8995 (f)
jsnichols@bntdlaw.net

Gene M Connell, Jr, Esq
Kelaher, Connell & Connor, P C
Post Office Drawer 14547
Surfside Beach, SC 29587
gconnell@classactlaw.net



Ann Shearin

The Honorable Kenneth A Richstad
March 24, 2011
Page 2

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/avs

Enclosures

pc David E Rothstein, Esq - derothstein@mindspring.com
John S Nichols, Esq - jsnichols@bntdlaw.com
Gene M Connell, Jr , Esq - gconnell@classactlaw.net
William E Lawson, Esq - wlawson@turnerpadget.com
Mike Mashburn - mike.mashburn.gsjb@statefarm.com
Genie Potts - genie.potts.autt@statefarm.com
Clint Cudd - clint.cudd.cyq5@statefarm.com
Claim No 40-2929-606

THOMPSON & HENRY, P A

RECEIVED

MAR 28 2011

SC Court of Appeals

THOMPSON & HENRY, P A
ATTORNEYS AT LAW
1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528

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MYRTLE BEACH OFFICE
1314 PROFESSIONAL DRIVE
POST OFFICE BOX 1290
(843) 692-2628 (p)
(843) 692-0918 (f)

March 25, 2011

bbabb@sccourts.org

Ms Brenda Babb

Court Reporter

Post Office Box 4800

Calabash, NC 28467-9820

Re *Don D Gause vs Nathan D Smuthers and Edward W Hunt*
Civil Action No 2006-CP-26-5391
Claim No 40-2929-606
SF Insured Don Gause
Date of Loss November 15, 2003
Claim Rep Mike Mashburn

Dear Ms Babb

I am hereby requesting that you prepare and forward to me, as counsel of record for State Farm Mutual Automobile Insurance Company, the undersigned motorist carrier for Don Gause, a copy of the transcript of the trial in the above matter which was held on January 4-6, 2011 at the Horry County Courthouse before the Honorable William H Seals, Jr. This request is made pursuant to Rule 207(a) of the South Carolina Appellate Court Rules. If you will furnish a reasonable estimate of the cost of preparation of the transcript, I will forward a firm check in payment of your fees for preparing the transcript.

Pursuant to Rule 207(b) of the South Carolina Appellate Court Rules, you are required to transcribe and deliver the transcript to us within sixty (60) days. Please contact me if you have any questions.

Ms Brenda Babb
March 25, 2011
Page 2

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P A



Linda Weeks Gangi

LWG/avs

pc The Honorable Tanya G Gee -Clerk of the South Carolina
Court of Appeals - VIA FAX - 1-(803) 734-1839
David E Rothstein, Esq - derothstein@mindspring.com
John S Nichols, Esq - jsnichols@bntdlaw.com
Gene M Connell, Jr, Esq - gconnell@classactlaw.net
William E Lawson, Esq - wlawson@turnerpadgett.com
Mike Mashburn - mike.mashburn.gsib@statefarm.com
Genie Potts - genie.potts.auff@statefarm.com
Clint Cudd - clint.cudd.cvq5@statefarm.com
Claim No 40-2929-606
Roselyn W Frierson, Director, South Carolina
Court Administration -1-(803) 734-1355

THOMPSON & HENRY, P A



The Supreme Court of South Carolina

(Don D Gause
(
(
(
TITLE OF (V 2006CP2605391
CASE (
(
(
(Nathan Dale Smither, et al
(
(

Notice

Upon request and for good cause shown, Brenda Babb, Court Reporter, is hereby granted an extension up to and including April 14, 2011 to prepare and deliver the Transcript of Record in the above case

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
03/14/2011

cc David E Rothstein, Esquire
Gene M Connell, Jr , Esquire
Brenda Babb

RECEIVED

MAR 17 2011

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Don D Gause

Plaintiff

v

Nathan Dale Smithers and Edward W
Hunt

Defendants

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

C A No 2006-CP-26-5391

ORDER

RECEIVED

MAR 03 2011

SC Court of Appeals

This is an automobile wreck case. The matter was tried before a jury on January 4th and 5th and 6th 2011. Appearing for the Plaintiff were David E. Rothstein Esquire, of Greenville South Carolina and John S. Nichols, Esquire of Columbia, South Carolina. Appearing for the Defendant Edward W. Hunt was Gene M. Connell Jr Esquire, of Surfside Beach South Carolina. Appearing for the Defendant Nathan Dale Smithers was William E. Lawson, Esquire, of Myrtle Beach South Carolina.

Following two days of testimony the jury rendered a verdict against the Defendants for actual and punitive damages on January 6, 2011. Each Defendant orally made motions after the verdict, and the Court denied those motions.

On January 12, 2011 Defendant Hunt made a subsequent Motion for New Trial alleging errors in the caption of the verdict form that confused the jury. Defendant Hunt also relied upon his affidavit in which he related purported conversations he had with jurors immediately following the trial. The Court requested memoranda on the Motion within ten days. Plaintiff Gause responded on January 14, 2011, contending the Motion was not timely pursuant to Rule 59 SCRPC. Plaintiff also objected to the court considering Mr. Hunt's affidavit pursuant to Rule

606 SCRE Finally Plaintiff contended that the Court s instructions to the jury adequately informed the jury as to the identity of the parties before the Court Defendant Hunt did not file anything further on the Motion Defendant Smuthers also did not file any response to the Motion

Having considered the Motion and related filings, I find that the Defendant Hunt's subsequent Motion for New Trial was timely made Rule 59(b), SCRC¹ I also find the curative instructions I gave to the jury clarifying the identity of the defendant in the action were sufficient In light of these rulings there is no need for me to reach any of the other arguments made in the Motion or the response

Accordingly, the Defendant Hunt s Motion for New Trial filed on January 12, 2011 is

DENIED



William H Seals Jr
Circuit Court Judge

February
January 7 2011

¹ The Court did not consider Mr Hunt s affidavit in making this decision Rule 606, SCRE (juror testimony inappropriate to impeach verdict) *Shumpert v State*, 378 S C 62, 661 S E 2d 369 (2008) (Rule 606 prohibits evidence of comments of jurors occurring during deliberations)

KELAHER, CONNELL & CONNOR, P C

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U S HIGHWAY 17 NORTH

P O DRAWER 14547

SURFSIDE BEACH SOUTH CAROLINA 29587

EDWARD T KELAHER*
GENE M CONNELL JR
L SIDNEY CONNOR IV
LISA POE DAVIS
OF COUNSEL

AREA CODE 843
238 5648
FAX 238 5050

March 2, 2011

The Honorable V Claire Allen
Deputy Clerk South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
MAR 03 2011
SC Court of Appeals

Re **Don D Gause vs Nathan Dale Smithers and Edward W Hunt**
Civil Action No 06-CP-26-5391
Our File No 2006-0551D
Case Tracking Number 2011183646

Dear Ms Allen

We recently filed a Notice of Appeal in the above-captioned case upon receipt of an email from the Court denying our Motion for New Trial. At that time we did not have a signed formal order to include with our Notice of Appeal. Subsequently, on January 28, 2011 you sent me a letter indicating the Order being challenged on appeal was not included with our Notice of Appeal. I then sent you a letter on February 1, 2011, with a copy of a letter to Judge Seals requesting he sign the Order and provide me with a copy. Further, I requested the Court hold the Appeal in abeyance until we received the Order. We have now been provided with a clocked copy of the Order denying our Motion for New Trial signed by the Honorable William H Seals, Jr, a copy of which is enclosed. It is my understanding that it is not necessary to file an Amended Notice of Appeal.

Should you need anything further to file our Notice of Appeal, please do not hesitate to contact my office.

Sincerely yours,



Gene M Connell, Jr

GMC,Jr smt
Enclosures
cc w/enc

David E Rothstein, Esquire
John S Nichols, Esquire
William E Lawson, Esquire
Mr Henry Johnson, Allstate Insurance Company (Claim No 4934665284)



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

February 11, 2011

Gene M Connell, Jr , Esquire
Kelaher, Connell
& Connor, P C
P O Drawer 14547
Surfside Beach, SC 29587

David Eliot Rothstein, Esquire
Rothstein Law Firm, P A
514 Pettigru St
Greenville, SC 29601

Re Gause, Don v Smithers, Nathan (2)
2011183646

Dear Counsel

We have received a Notice of Appeal from each of you in the above matter Unless notified by you to the contrary, these appeals will be consolidated for consideration by the Court under the South Carolina Appellate Court Rules, and we anticipate receiving one Record on Appeal

In this consolidated appeal, the party filing the first Notice of Appeal, Edward W Hunt, has been designated the Appellant/Respondent, and is responsible for serving and filing the Record on Appeal The party filing the second Notice of Appeal, Don D Gause, has been designated the Respondent/Appellant Under Appellate Court Rules 206 and 207, Appellant/Respondent must order the transcript within ten (10) days after the date of service of the Notice of Appeal **Appellant/Respondent shall notify this Court in writing as soon as the transcript is delivered by the court reporter**

The briefing schedule for both appeals shall be as set forth in Appellate Court Rules 208 and 209 Each party is allowed to serve and file an Initial Appellant's Brief along with Designation of Matter to be included in the Record on Appeal, a Respondent's Brief, and a Reply Brief

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc John S Nichols, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H Seals, Jr, Circuit Court Judge

Case No 2006-CP-26-5391

RECEIVED

FEB 07 2011

SC Court of Appeals

Don D Gause,

Respondent-Appellant,

v

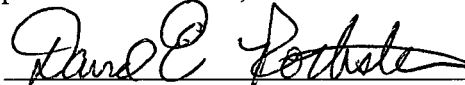
 Nathan Dale Smithers and Edward W Hunt,

Of Whom, Edward W Hunt is
Appellant-Respondent

NOTICE OF CROSS APPEAL

Respondent-Appellant, Don D Gause, hereby files this Notice of Cross Appeal from the order of the Honorable William H Seals, Jr, following the jury verdict on January 6, 2011. Respondent-Appellant received written notice of the entry of judgment on the verdict on January 21, 2011, and received Appellant's Notice of Appeal on January 21, 2011.

February 4, 2011



David E Rothstein
Rothstein Law Firm, PA
514 Pettigru Street
Greenville, SC 29601
(864) 232-5870
Attorney for Respondent-Appellant

Other Counsel of Record

Gene M Connell, Jr
KELAHHER, CONNELL & CONNER, P C
P O Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
Attorney for Appellant, Edward W Hunt
[Other counsel continued on following page]

William E Lawson, Esq
TURNER PADGET GRAHAM & LANEY
P O Box 2116
Myrtle Beach, SC 29578-2116
(843) 213-5501
Attorney for Defendant Nathan Dale Smithers

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H Seals, Jr , Circuit Court Judge

Case No 2006-CP-26-5391

Don D Gause,

Respondent-Appellant,

v

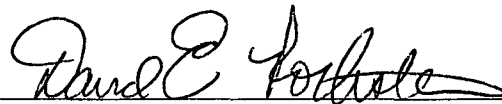
Nathan Dale Smithers and Edward W Hunt,

Of Whom, Edward W Hunt is
Appellant-Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Cross Appeal on Appellant, Edward W Hunt, by depositing a copy of it in the United States Mail, postage prepaid, on February 4, 2011, addressed to his attorney of record, Gene M Connell, Jr , P O Drawer 14547, Surfside Beach, SC 29587 I have also served a copy of the Notice on co-Defendant, Nathan Dale Smithers, by mailing a copy to his counsel, William E Lawson, P O Box 2116, Myrtle Beach, SC 29578, on February 4, 2011

February 4, 2011



David E Rothstein
Rothstein Law Firm, PA
514 Pettigru Street
Greenville, SC 29601
(864) 232-5870
Attorney for Respondent-Appellant



ROTHSTEIN LAW FIRM, PA

Certified Specialist in Employment and Labor Law

David E. Rothstein

derothstein@mindspring.com

Also licensed in North Carolina

514 Pettigru Street
Greenville, SC 29601
Telephone 864 232 5870
Facsimile 864 241 1386

February 4, 2011

Hon Tanya A. Gee
Clerk
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

RECEIVED
FEB 07 2011
SC Court of Appeals

Re Don D. Gause v. Nathan Dale Smithers et al.
Case No. 2011183646

Dear Ms. Gee

I represent Respondent, Don D. Gause, in the above-referenced matter. Enclosed please find the original and one copy of the Notice of Cross Appeal, which was served on Appellant's counsel on February 4, 2011. Please file the notice and return the extra copy to me, clogged in, via the enclosed return envelope. I am also enclosing a copy of the following items:

- (1) Proof of service showing that the notice has been served on Appellant and counsel for the co-Defendant,
- (2) A copy of the judgment to be challenged on appeal, and
- (3) A check for the filing fee of \$100.00

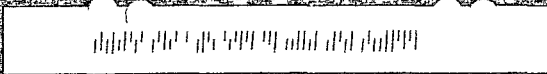
Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to call me.

Sincerely yours,

David E. Rothstein

Enclosures

cc Gene M. Connell, Jr., Esq.
William E. Lawson, Esq.
John S. Nichols, Esq.



ROTHSTEIN LAW FIRM, PA

514 P. S. G. II SC 29601

Hon. Tanya A. Gee
Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
~

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO 2006- CP-26-05391

DON D GAUSE

NATHAN DALE SMITHERS, ETAL

VS

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

- ☒ **JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and a verdict rendered
- ☐ **DECISION BY THE COURT** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered
- ☐ **ACTION DISMISSED** (CHECK REASON) ☐ Rule 12(b), SCRPC ☐ Rule 41(a), SCRPC (Vol Nonsuit) ☐ Rule 43(k) SCRPC (Settled) ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON) ☐ Rule 40(j) SCRPC, ☒ Bankruptcy ☐ Binding arbitration subject to right to restore to confirm, vacate or modify arbitration award ☐ Other See Below
- ☐ **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

WE THE JURY, FIND FOR THE PLAINTIFF AGAINST Nathan Dale Smithers and Edward W Hunt in the amount of \$155,432 64 actual damages We find for the Plaintiff against Nathan Dale Smithers in the amount of \$60 000 00 punitive damages We find for the Plaintiff against Edward W Hunt in the amount of \$40 000 punitive damages

RECEIVED

FEB 07 2011

Dated JANUARY 6, 2011

SC Court of Appeals

Conway SC


RESIDENT JUDGE

FILED
HOPKINS
2011 JAN -7 AM 8:13
CLERK OF COURT

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows

DAVID ELIOTT ROTHSTEIN

WILLIAM E LAWSON

GENE M CONNELL JR

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Don D Gause,

Plaintiff,

vs

Nathan Dale Smithers, Edward Raymond
Hunt and Edward W Hunt

Defendants

C/A NO 2006-CP-26-5391

Verdict

HOR
FILED
2011 JAN -7 AM 8 13
ME-ANITA HUNT
CLERK OF COURT

VERDICT

Defendant Smithers has admitted negligence

We the jury find in favor of _____ Defendant Hunt OR X Plaintiff

If you selected 'Defendant Hunt' above, the following actual damages only apply to Defendant Smithers

If you selected "Plaintiff" above, the following actual damages apply to both Defendant Smithers and Defendant Hunt

We the Jury, find for the Plaintiff against the Defendant(s) in the amount of

\$ 155,432.64 actual damages

We, the Jury, find for the Plaintiff against the Defendant Smithers in the amount of

\$ 60,000.00 punitive damages

We the Jury, find for the Plaintiff against the Defendant Hunt in the amount of

\$ 40,000.00 punitive damages

Heather B. Cox

FOREPERSON
January 6, 2011

KELAHER, CONNELL & CONNOR, PC

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U S HIGHWAY 17 NORTH

P O DRAWER 14547

SURFSIDE BEACH SOUTH CAROLINA 29587

EDWARD T KELAHER*
GENE M CONNELL JR
L SIDNEY CONNOR IV
LISA POE DAVIS
OF COUNSEL

AREA CODE 843
238-5648
FAX 238 5050

February 1, 2011

The Honorable V Claire Allen
Deputy Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

FEB 03 2011

SC Court of Appeals

Re Don D Gause vs Nathan Dale Smithers and Edward W Hunt
Civil Action No 06-CP-26-5391
Our File No 2006-0551D
Case Tracking Number 2011183646

Dear Ms Allen

I received a letter from your office dated January 28, 2011 regarding the above-referenced matter. I have contacted Judge Seals' office to get a copy of the Order. I would ask that the Court hold the Appeal in abeyance until I receive a copy of the Order. I am enclosing a copy of the letter I wrote to Judge Seals via regular mail and email.

Sincerely yours,



Gene M. Connell, Jr

GMC,Jr smt
Enclosures

cc w/enc David E Rothstein, Esquire
John S Nichols, Esquire
William E Lawson, Esquire
Linda Weeks Gangi, Esquire
Mr Michael Reeser, Allstate Insurance Company (Claim No 4934665284)

KELAHER, CONNELL & CONNOR, P C

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U S HIGHWAY 17 NORTH

P O DRAWER 14547

SURFSIDE BEACH SOUTH CAROLINA 29587

EDWARD T KELAHER
GENE M CONNELL JR
L SIDNEY CONNOR, IV
LISA POE DAVIS

OF COUNSEL

AREA CODE 843

238 5648

FAX 238 5050

February 1, 2011

SENT VIA EMAIL AND REGULAR MAIL TO

The Honorable William H Seals, Jr
Circuit Court Judge
Post Office Box 143
Marion, SC 29571

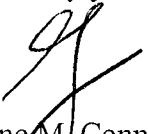
Re Don D Gause vs Nathan Dale Smithers and Edward W Hunt
Civil Action No 06-CP-26-5391
Our File No 2006-0551D
Case Tracking Number 2011183646

Dear Judge Seals

The Court of Appeals has sent me a letter, a copy of which is attached hereto, wherein, they ask that I provide them with a copy of the Order being challenged on Appeal I know you have the draft Order in your office as it was emailed to your law clerk by John Nichols on January 28, 2011 The Court requests that I provide them with a copy of the signed Order within (10) days of the date of their letter Accordingly, I am requesting that the Court provide me with a signed copy so that I might provide it to the Court of Appeals

I greatly appreciate Your Honor taking the time to execute the Order

Sincerely yours,



Gene M Connell, Jr

GMC,Jr smt

Enc

cc David E Rothstein, Esquire
 John S Nichols, Esquire
 William E Lawson, Esquire
 Linda Weeks Gangi, Esquire
 Mr Michael Reese, Allstate Insurance Company (Claim No 4934665284)
 Clerk, S C Court of Appeals

KELAHER, CONNELL & CONNOR, P C

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EDWARD T KELAHER*
GENE M CONNELL JR
L SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843
238-5648
FAX 238 5050

January 20, 2011

Brenda R Babb
Circuit Court Report
P O Box 4800
Calabash, NC 28467-9820

Re Don D Gause vs Nathan Dale Smithers and Edward W Hunt
Civil Action No 06-CP-26-5391
Our File No 2006-0551D

RECEIVED
JAN 21 2011
SC Court of Appeals

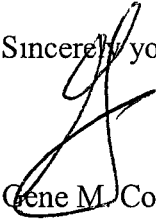
Dear Ms Babb

On January 4, 5 and 6, 2011, the above case was tried in Horry County before the Honorable William H Seals, Jr, Circuit Court Judge My records indicate that you were the court reporter for this case

I request that you provide me with a transcript of the proceedings

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR

Sincerely yours,


Gene M. Connell, Jr

GMC,Jr sm

cc David E Rothstein, Esquire
John S Nichols, Esquire
William E Lawson, Esquire
Mr Larry Brace, Allstate Insurance Company (Claim No 4934665284)
S C Court Administration
Clerk, S C Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H Seals, Jr, Circuit Court Judge

Case No 2006-CP-26-5391

RECEIVED

JAN 24 2011

SC Court of Appeals
Respondent

DON D GAUSE

v

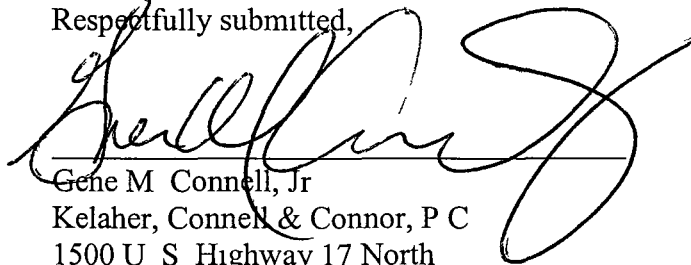
NATHAN DALE SMITHERS and EDWARD W HUNT
of Whom, EDWARD W HUNT is

Defendants
Appellant

NOTICE OF APPEAL

The Defendant, Edward W Hunt, appeals the various rulings and the jury verdict rendered on January 6, 2011 before The Honorable William H Seals, Jr Appellant received notice of this jury verdict on January 6, 2011 and denial of the Motion for New Trial via email from the Court on January 18, 2010

Respectfully submitted,



Gene M Connell, Jr
Kelaher, Connell & Connor, P C
1500 U S Highway 17 North
Suite 209, The Courtyard
Post Office Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648

Attorney for Appellant

January 20, 2011
Surfside Beach, South Carolina

Other Counsel of Record

David E Rothstein, Esquire
Rothstein Law Firm, P A
514 Pettigru Street
Greenville, SC 29601
(864) 232-5870
Attorney for Respondent

John S Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
1614 Taylor Street
P O Box 7965
Columbia, SC 29202
(803) 779-7599
Attorney for Respondent

William E Lawson, Esquire
Turner Padget Graham & Laney
Post Office Box 2116
Myrtle Beach, SC 29578-2116
(843) 213-5501
Attorney for Defendant Smithers

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H Seals, Jr , Circuit Court Judge

Case No 2006-CP-26-5391

DON D GAUSE

Respondent

v

NATHAN DALE SMITHERS and EDWARD W HUNT
of Whom, EDWARD W HUNT is

Defendants
Appellant

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P C , Attorneys at Law, and that she has served a **Notice of Appeal** on the Respondent, through his attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to

David E Rothstein, Esquire
Rothstein Law Firm, P A
514 Pettigru Street
Greenville, SC 29601
Attorney for Respondent

John S Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
1614 Taylor Street
P O Box 7965
Columbia, SC 29202
Attorney for Respondent

William E Lawson, Esquire
Turner Padget Graham & Laney
Post Office Box 2116
Myrtle Beach, SC 29578-2116
Attorney for Defendant Smithers

DATE OF MAILING January 20, 2011

Shelia Y McCumbee
Shelia Y McCumbee

SWORN AND SUBSCRIBED before me,
this 20th day of January, 2011

Mary J O'Donnell
Notary Public for South Carolina
My Commission Expires 6/1/16

RECEIVED
JAN 24 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEF
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

January 28, 2011

Gene M. Connell, Jr., Esquire
Kelaher, Connell
& Connor, P.C.
P.O. Drawer 14547
Surfside Beach, SC 29587

Re: Gause, Don v. Smithers, Nathan (2)
Case #2011183646

Dear Counsel:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Upon review, it has come to the Court's attention that a copy of the court order being challenged on appeal was not included. Please provide this Court with a copy of the court order being challenged on appeal within ten (10) days of this letter.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the

RECEIVED
1/31/11

transcript) with the Court Reporter for furnishing the transcript You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript

NOTE If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S C Code Ann Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases

- 1) any final judgment from the circuit court which includes a sentence of death,
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58,
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance,
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state,
- 5) any final judgment from the circuit court pertaining to elections and election procedure,
- 6) any order limiting an investigation by a State Grand Jury under S C Code Ann Section 14-7-1630,
- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41-33

Very truly yours,

V. Claire Allen, Deputy

Tanya A. Gee
CLERK

TAG/jt

cc David Eliot Rothstein, Esquire
John S. Nichols, Esquire



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
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1015 SUMTER STREET
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www.sccourts.org

January 28, 2011

Gene M Connell, Jr , Esquire
Kelaher, Connell
& Connor, P C
P O Drawer 14547
Surfside Beach, SC 29587

Re Gause, Don v Smithers, Nathan (2)
Case #**2011183646**

Dear Counsel

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transcript) with the Court Register for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also please advise the Court in writing upon receipt of the transcript.

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- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state,
- 5) any final judgment from the circuit court pertaining to elections and election procedure,
- 6) any order limiting an investigation by a State Grand Jury under S C Code Ann Section 14-7-1630,
- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41-33

Very truly yours,

V. Claire Allen, Deputy

Tanya A. Gee
CLERK

TAG/jt

cc David Eliot Rothstein, Esquire
John S. Nichols, Esquire



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
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January 28, 2011

Gene M Connell, Jr , Esquire
Kelaher, Connell
& Connor, P C
P O Drawer 14547
Surfside Beach, SC 29587

Re Gause, Don v Smithers, Nathan (2)
Case #2011183646

Dear Counsel

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V Claire Allen, Deputy
CLERK

TAG/jt

cc David Eliot Rothstein, Esquire
John S Nichols, Esquire

The Supreme Court of South Carolina

RE Interim Guidance Regarding Personal Data Identifiers and
Other Sensitive Information in Appellate Court Filings

ORDER

Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006); Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991). Therefore, with some few exceptions,¹ documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

Several commercial vendors have recently requested copies of briefs filed with the appellate courts, and it is anticipated that these and other appellate filings will be available electronically from both private and public sources in the future. The ready availability of these documents raises significant privacy concerns. While this problem is currently under review by the Chief Justice's Task Force on Public Access to Court Records, we adopt the following interim guidance regarding personal data identifiers and other sensitive information in documents filed in the appellate courts:

Parties shall not include, or will partially redact where inclusion is necessary, the following personal data identifiers from documents filed with an appellate court:²

1. Social Security Numbers. If a social security number must be included, only the last four digits of that number should be used.

2. Names of Minor Children. If a minor is the victim of a sexual assault or is involved in an abuse or neglect case, the minor's name will be completely redacted and a term such as "victim" or "child" should be used. In all other cases, only the minor's first name and first initial of the last name (i.e., John S.) should be used.

3. Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.

4. Home Addresses. If a home address must be included, only the city and state should be used.

Parties wishing to file documents containing the personal data identifiers listed above may file unredacted documents under seal, together with redacted versions for the public file. The sealed unredacted documents shall be filed in a separate Appendix, and the bottom of each page of the Appendix shall be marked "Sealed." No order of the appellate court will be required to file this sealed Appendix. The number of copies of the Appendix to be served and filed shall be the same as that required for the brief, record on appeal, motion or other filing that includes the redacted documents.

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend the caption to redact the identifier. This should be done contemporaneously with the filing of the notice of appeal or the commencement of the case with the appellate court. Without a motion to the appellate court, the caption of a juvenile delinquency matter from the family court shall be redacted to only use the juvenile's first name and first letter of the juvenile's last name (i.e., In the Interest of John S., a Juvenile).

A party seeking to seal material beyond those personal identifiers listed above, must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed. Parties and counsel are reminded that the standard established in Ex parte Capital U-Drive-It, Inc. and Davis v. Jennings, *supra*, must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The appellate courts and their staff will not review filings for redaction or to determine if materials should be sealed, the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.

IT IS SO ORDERED

s/Jean H. Toal C. J.
s/James E. Moore J.
s/John H. Waller, Jr. J.
s/E. C. Burnett, III J.
s/Costa M. Pleicones J.

Columbia, South Carolina

August 13, 2007

¹ See, e.g., Rule 12 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR, Rule 12 of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR, Rule 402(n) SCACR, and Rule 403(l), SCACR.

² This restriction shall not apply when this information is required or requested by the appellate court. For example, the application for admission to practice law under Rule 402 SCACR, requires many of these personal identifiers to be disclosed.

PM - 1 20 2011
POS - 1 20 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H Seals, Jr, Circuit Court Judge

RECEIVED
JAN 24 2011

Case No 2006-CP-26-5391

SC Court of Appeals

DON D GAUSE

Respondent

v

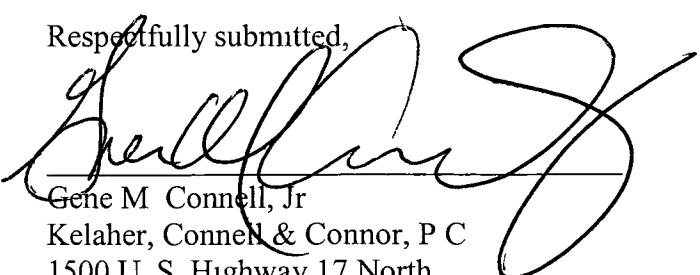
NATHAN DALE SMITHERS and EDWARD W HUNT
of Whom, EDWARD W HUNT is

Defendants
Appellant

NOTICE OF APPEAL

The Defendant, Edward W Hunt, appeals the various rulings and the jury verdict rendered on January 6, 2011 before The Honorable William H Seals, Jr Appellant received notice of this jury verdict on January 6, 2011 and denial of the Motion for New Trial via email from the Court on January 18, 2010

Respectfully submitted,


Gene M Connell, Jr
Kelaher, Connell & Connor, P C
1500 U S Highway 17 North
Suite 209, The Courtyard
Post Office Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
Attorney for Appellant

January 20, 2011
Surfside Beach, South Carolina

Other Counsel of Record

David E Rothstein, Esquire
Rothstein Law Firm, P A
514 Pettigru Street
Greenville, SC 29601
(864) 232-5870
Attorney for Respondent

John S Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
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Attorney for Respondent

William E Lawson, Esquire
Turner Padgett Graham & Laney
Post Office Box 2116
Myrtle Beach, SC 29578-2116
(843) 213-5501
Attorney for Defendant Smithers

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H Seals, Jr , Circuit Court Judge

Case No 2006-CP-26-5391

RECEIVED

JAN 24 2011

SC Court of Appeals

DON D GAUSE

Respondent

v

NATHAN DALE SMITHERS and EDWARD W HUNT
of Whom, EDWARD W HUNT is

Defendants
Appellant

PROOF OF SERVICE

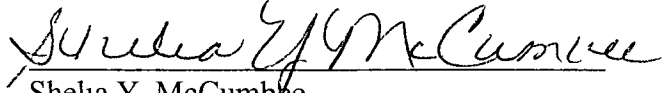
PERSONALLY appeared before me, Shelia Y McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P C , Attorneys at Law, and that she has served a **Notice of Appeal** on the Respondent, through his attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to

David E Rothstein, Esquire
Rothstein Law Firm, P A
514 Pettigru Street
Greenville, SC 29601
Attorney for Respondent

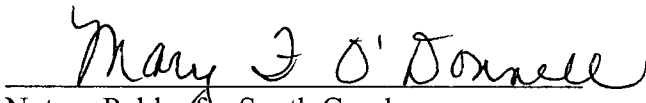
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1614 Taylor Street
P O Box 7965
Columbia, SC 29202
Attorney for Respondent

William E Lawson, Esquire
Turner Padget Graham & Laney
Post Office Box 2116
Myrtle Beach, SC 29578-2116
Attorney for Defendant Smithers

DATE OF MAILING January 20, 2011


Shelia Y McCumbee

SWORN AND SUBSCRIBED before me,
this 20th day of January, 2011


Notary Public for South Carolina
My Commission Expires 6/1/16

KELAHER, CONNELL & CONNOR, PC

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U S HIGHWAY 17 NORTH

PO DRAWER 14547

SURFSIDE BEACH SOUTH CAROLINA 29587

EDWARD T KELAHER*
GENE M CONNELL JR
L SIDNEY CONNOR IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843

238-5648

FAX 238 5050

January 20, 2011

RECEIVED

JAN 24 2011

SC Court of Appeals

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re Don D Gause vs Nathan Dale Smithers and Edward W Hunt
Civil Action No 06-CP-26-5391
Our File No 2006-0551D

Dear Ms Gee

Enclosed for filing is a Notice of Appeal in the above-captioned case. Also enclosed are the following:

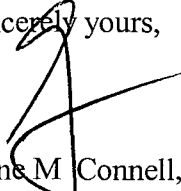
- 1 Proof of Service of the Notice of Appeal on the Respondent
- 2 Our check for the \$100.00 filing fee

Please return clocked copies to us in the self-addressed, stamped envelope provided.

By copy of this letter, I hereby serve the Respondent, through his attorney of record, with the Notice of Appeal.

Thank you for your kind assistance in this matter.

Sincerely yours,


Gene M. Connell, Jr.

GMC,Jr sm
Enclosures

cc w/enc David E Rothstein, Esquire
 John S Nichols, Esquire
 William E Lawson, Esquire
 Mr Larry Brace, Allstate Insurance Company (Claim No 4934665284)

KELAHHER, CONNELL & CONNOR, P C

ATTORNEYS AT LAW

P O DRAWER 14547

SURFSIDE BEACH SOUTH CAROLINA 29587



The Honorable Lanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 29
Columbia South Carolina 29211