



SWEENEY WINGATE & BARROW P.A.

December 19, 2014

Reply to: Main Office

J. Eric Cavanaugh
(803) 256-2233 x7150
jec@swblaw.com

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: Anthony Fischetti, et. al. v. SeaTruck, Inc., KC Freight, LLC and Carlos L. Ceballos
Appellate Case No.: 2014-001626 / Civil Action No.: 2013-CP-21-2395
Our File: 2870-8959

Dear Ms. Kitchings:

Pursuant to Rule 211, SCRAP, please find enclosed fifteen (15) copies of Appellants' Final Brief in the above-referenced matter. In addition, pursuant to Rule 210, SCRAP, please find enclosed fifteen (15) copies of the Record on Appeal. Please return one stamped copy of each to me.

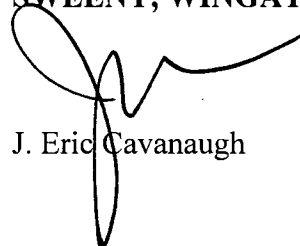
Pursuant to both of the above-referenced Rules, I have also enclosed 1 unbound copy of Appellants' Final Brief, Reply Brief and the Record on Appeal.

I have also attached a Proof of Service certifying that the Appellants' Final Briefs have been served on the Respondent. The Certificate of Counsel certifying that the Final Briefs comply with Rule 211(b) are attached as part of both the initial and reply brief of Appellants.

As always, please feel free to contact me should you have any questions or concerns.

Best Regards,

SWEENEY, WINGATE & BARROW, P.A.



J. Eric Cavanaugh

JEC/elw
Enclosures

cc: W. Hugh McAngus, Jr., Esquire
Office of Court Administration

RECEIVED

DEC 19 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Case No. 2013-CP-21-2395

Appeal Tracking No. 2014-001626

Anthony Fischetti as Executor of the Estate of Concetta Fischetti,.....Respondent,

v.

SeaTruck, Inc., KC Freight LLC and Carlos L.Ceballos,..... Appellants.

RECORD ON APPEAL

Mark. S. Barrow
J. Eric Cavanaugh
William R. Calhoun, Jr.
Post Office Box 12129
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Attorneys for Appellants

RECEIVED

DEC 19 2014

SC Court of Appeals

W. Hugh McAngus, Jr.
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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2102395Anthony Fischetti As
Executor
Concetta Fischetti

Estate Of Concetta Fischetti

Seatruck Inc

Carlos L Ceballos

Kc Freight

RECEIVED

JUL 23 2014

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(d), 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: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		CERTIFIED: A TRUE COPY
		<i>[Signature]</i>
		CLERK OF COURT C.P. & G.S. FLORENCE COUNTY, S.C.

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

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

Circuit Court Judge

Judge Code

7/17/2014

Date

CPFORM4Cm

SCCA SCRPC Form 4C (Revised 3/2013)

JUL 18 2014

2870-8959

For Clerk of Court Office Use Only

This judgment was entered on July 16, 2014, and a copy mailed first class or placed in the appropriate attorney's box on July 17, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

William Hugh McAngus Jr. 1510 Calhoun St. Columbia,
SC 29201

James Eric Cavanaugh P.O. 12129 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Court Reporter

Connie Reel-Shearin - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Anthony Fischetti, as the Executor of the
Estate of Concetta Fischetti,

Plaintiff,

vs.

SeaTruck, Inc., KC Freight, LLC, and
Carlos L. Ceballos,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2013-CP-21-2395

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AS TO CERTAIN AFFIRMATIVE
DEFENSES**

2014 JUL 16 PM 3:32
CONNIE REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

In this wrongful death and survival action arising out of a motor vehicle collision involving a passenger vehicle and a tractor-trailer, this matter comes before the Court on Plaintiff's Motion for Summary Judgment as to Certain Affirmative Defenses.

A hearing was held on June 16, 2014. All parties submitted memorandums of law. The Plaintiff was represented by W. Hugh McAngus, Jr., and the Defendants were represented by J. Eric Cavanaugh.

After hearing the arguments of counsel and reviewing the memorandums and evidence submitted by the parties, the Court rules as follows:

1. Plaintiff's Motion for Summary Judgment regarding Defendants' Third Defense, Comparative Negligence, is denied.
2. Plaintiff's Motion for Summary Judgment regarding Defendants' Fourth Defense, Sudden Emergency, is denied.

CERTIFIED: A TRUE COPY

Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

3. Plaintiff's Motion for Summary Judgment regarding Defendants' Fifth Defense, Assumption of Risk, is granted.

4. Plaintiff's Motion for Summary Judgment regarding Defendants' Sixth Defense, Unavoidable Accident, is granted.

5. Plaintiff's Motion for Summary Judgment regarding Defendants' Eighth Defense, Improper Venue, is granted.

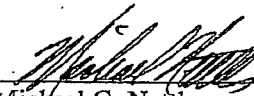
6. Plaintiff's Motion for Summary Judgment regarding Defendants' Ninth Defense, Waiver of Estoppel, is held in abeyance until further order of this Court.

7. Plaintiff's Motion for Summary Judgment regarding Defendants' Tenth Defense, Statute of Limitations, is granted.

8. Plaintiff's Motion for Summary Judgment regarding Defendants' Eleventh Defense, Spoliation, is granted, but the Defendants may seek a spoliation jury instruction at the trial of this case if applicable and proper.

WHEREFORE, Plaintiff's Motion for Summary Judgment as to Certain Affirmative Defenses is hereby DENIED in part and GRANTED in part as stated above.

IT IS SO ORDERED.


Michael G. Nettles
Circuit Court Judge
Twelfth Judicial Circuit

Florence, South Carolina

June, 2014

July 16, 2014

2014 JUL 16 PM 3:32
CORANIE REEL-SHEARIN
CCJP & GS
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY


CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

FILED

Anthony Fischetti as Executor of the Estate of
Concetta Fischetti

CIVIL ACTION COVERSHEET

2013 SEP 12 PM 2:25
Plaintiff(s)

vs.

CONNIE REEL-SHEARMAN
CCCP & GS
FLORENCE COUNTY, SC

2013 CP - 21 - 2395

SeaTruck, Inc., KC Freight, LLC and Carlos
L. Ceballos

Defendant(s)

Submitted By: W. Hugh McAngus, Jr.
Address: Chappell Smith & Arden
P.O. Box 12330
Columbia, SC 29211SC Bar #: 74941
Telephone #: 803-929-3600
Fax #: 803-929-3604
Other:
E-mail: hmcangus@csa-law.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☒ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstatement Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of-State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (610)		

Submitting Party Signature: _____

Date: 09-05-2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (06/2013)

Page 1 of 2

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Anthony Fischetti, as Executor of the
Estate of Concetta Fischetti,

Plaintiff,

vs.

SeaTruck, Inc., KC Freight, LLC and
Carlos L. Ceballos,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.:

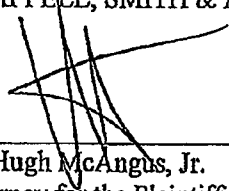
2013 SEP 12 PM 2:25
FILED
CONNIE REEL-SHEARIN
C.C.P. & G.S.
FLORENCE COUNTY, SC

SUMMONS
(JURY TRIAL REQUESTED)

TO: THE DEFENDANTS, ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein,
a copy of which is herewith served upon you, and to serve a copy of your answer to said
complaint upon the subscriber, at his office at 1510 Calhoun Street, Columbia, South
Carolina 29211, within thirty (30) days after the service thereof, exclusive of the day of
such service, and if you fail to answer the complaint within the time aforesaid, judgment
by default will be rendered against you for the relief demanded in the complaint.

CHAPPELL, SMITH & ARDEN, P.A.



W. Hugh McAngus, Jr.
Attorney for the Plaintiff
1510 Calhoun Street
Post Office Box 12330
Columbia, South Carolina 29211
(803)929-3600

September 5, 2013

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Anthony Fischetti, as Executor
Of the Estate of Concetta Fischetti,)

Plaintiff,)

vs.)

SeaTruck, Inc., KC Freight, LLC, and)
Carlos L. Ceballos,)

Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.:

2013 CP 21 2395

2013 SEP 12 PM 2:25
CONNIE REEL-SHEARIN
CCOP & GS
FLORENCE COUNTY, SC

FILED

COMPLAINT
(JURY TRIAL REQUESTED)

The Plaintiff would respectfully show unto the Court that:

1. The Plaintiff is a citizen and resident of Orange County, Florida, and is the appointed Executor of the Estate of Concetta Fischetti in the Surrogate's Court of the State of New York, Kings County.
2. Upon information and belief, the Defendant SeaTruck, Inc. ("SeaTruck"), is a corporation organized under the laws of the State of Florida with its principal place of business in Florida. SeaTruck is a commercial motor carrier bearing USDOT number 763374 and transports goods or property in interstate commerce.
3. Upon information and belief, KC Freight, LLC ("KC Freight"), is a limited liability company organized under the laws of the State of Florida, with its principal place of business in Florida. KC Freight is a commercial motor carrier bearing USDOT number 2264528 and is the owner of the commercial motor vehicle involved in this litigation. At all times relevant to the allegations in this Complaint, KC Freight had leased the commercial motor vehicle involved in the collision to SeaTruck.

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

4. Upon information and belief Defendant Carlos L. Ceballos is citizen and resident of the State of Florida and possesses a commercial driver's license issued by the State of Florida. Defendant Ceballos is also the manager and registered agent for the KC Freight at 7850 W. 8th Ave., Hialeah, Florida, 33014.

5. Upon information and belief, Defendant Ceballos is an owner of Defendant KC Freight, and at all times relevant to this Complaint was operating a commercial motor vehicle in the furtherance of KC Freight and SeaTruck's business pursuant to an owner operator agreement, tractor lease agreement, or other employment or agency agreement.

6. The wreck that is the subject of this Complaint occurred in Florence County, State of South Carolina on or about October 9, 2012.

7. On or about October 9, 2012, Anthony Fischetti, Jennifer Fischetti, and Plaintiff's decedent Concetta Fischetti were traveling from Florida to New York via I-95 North.

8. At approximately 6:00 p.m., the Fischettis stopped at a restaurant in Florence County and ate dinner. Following dinner, Jennifer Fischetti began driving their vehicle and resumed their trip on I-95 North.

9. Plaintiff's Decedent Concetta Fischetti was in a rear passenger seat and Anthony Fischetti was in the front passenger seat.

10. The Defendant Ceballos was also operating a commercial motor vehicle in the outside lane of I-95 north and was beside the Fischetti's vehicle.

11. The Defendant Ceballos operated his vehicle in such a way that it came into Mrs. Fischetti's lane of travel, forcing her off the road towards the median and guardrail.

12. Jennifer Fischetti attempted to bring her vehicle back into her lane of travel, but the Defendant Ceballos's vehicle was still in her lane. The Fischetti's vehicle then struck the

trailer portion of the Defendant Ceballos's vehicle, lost control, spun around, and ejected Concetta Fischetti, ultimately leading to her death.

13. Prior to her death, Concetta Fischetti endured physical and mental pain and suffering, mental anguish, extreme fright, shock, knowledge of her impending death, and incurred medical expenses in excess of \$300,000.00.

14. Further, Concetta Fischetti's statutory heirs and/or wrongful death beneficiaries have suffered the following injuries and damages:

- a) pecuniary loss;
- b) mental shock and suffering;
- c) wounded feeling;
- d) grief and sorrow;
- e) loss of companionship;
- f) loss of Concetta Fischetti's experience, knowledge and judgment; and,
- g) funeral expenses.

FOR A FIRST CAUSE OF ACTION, AGAINST DEFENDANT CEBALLOS

15. At all times relevant to this Complaint, Defendant Ceballos was operating a commercial motor vehicle transporting property in interstate commerce.

16. In order to undertake such actions, the Defendant Ceballos must have the knowledge and skills necessary for the safe operation of the commercial motor vehicle.

17. The safe operation of commercial motor vehicles requires specialized knowledge and additional training, not necessary for the safe operation of passenger vehicles because:

- a. commercial motor vehicles are heavier than passenger vehicles and take longer to stop, as compared to a passenger car operating at the same pre-braking speed;
- b. commercial motor vehicles are heavier and longer than passenger vehicles and take longer to execute turning and lane change maneuvers, as compared to passenger vehicles operating at the same pre-turn or lane change speed;
- c. commercial motor vehicles are heavier than passenger vehicles and cause more significant property damage and/or personal injury or death in collisions, as compared to passenger cars operating at the same pre-collision speed and trajectory; and,
- d. commercial motor vehicles pose more of a risk of causing personal injury, death, or property damage in a collision, as compared to a collision involving a passenger vehicle operating at the same-pre-collision speed and trajectory.

18. In order to undertake the safe operation of a commercial motor vehicle, the Defendant Ceballos must have knowledge and skills in many areas, including the following:

- a. the procedures for safe vehicle operations;
- b. the proper procedures for performing basic maneuvers such as turning;
- c. the importance of conducting a proper visual search;
- d. the importance of proper visual search methods, including seeing ahead and to the sides, using mirrors, and seeing to the rear;

- e. the principles and procedures for proper communications and the hazards of failing to signal properly, including signaling intent and communicating presence;
- f. the importance of understanding the effects of speed, including speed and visibility and speed and traffic flow;
- g. the procedures and techniques for controlling the space around the vehicle, including the importance of space management, space cushions, space to the sides, and space for traffic gaps; and,
- h. preparations and procedures for night driving, including night driving factors such as vision, fatigue, and inexperience; roadway factors, including low illumination, variation in illumination, unfamiliarity with the roads, other road users, and vehicle factors.

19. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to make regular checks of their mirrors to be aware of traffic, including for vehicles on either side and to the rear.

20. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to use mirrors to spot overtaking vehicles.

21. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to understand that there may be "blind spots" where mirrors cannot see, and to check mirrors regularly enough to know where other vehicles are, and to see if they move into the vehicle's blind spots.

22. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to check their mirrors prior to a lane change to make sure no one is alongside or about to pass.

23. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to understand that commercial motor vehicles are often wide and take up most of a lane. Safe drivers manage what little space they have by keeping the commercial vehicle centered in the lane and avoiding driving alongside others.

24. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to adjust their speed depending on driving conditions, including traction, curves, visibility, and traffic.

25. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to have knowledge of and understand the total stopping distance of their commercial motor vehicle, including perception distance, reaction distance, and total stopping time.

26. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, it is standard in the industry for drivers to understand and recognize the signs and symptoms of fatigue.

27. In addition to the basic knowledge and skills required of commercial motor vehicle drivers, commercial motor vehicle drivers should never operate their vehicles while using a cell phone, computer, tablet, or while sending or reviewing text messages or emails.

28. The injuries and damages incurred by Connie Fischetti and her wrongful death beneficiaries as stated in paragraphs 13 and 14 were directly and proximately caused by the

Defendant Ceballos's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars:

- a) in failing to apply the brakes of the vehicle and/or maintain them in proper working condition;
- b) in failing to steer or take other evasive action so as to avoid the collision;
- c) in failing to keep a proper lookout;
- d) in failing to yield as required by law;
- e) in operating the vehicle too fast for existing conditions;
- f) in failing to observe the condition of traffic;
- g) in operating a commercial motor vehicle when he was not qualified to do so;
- h) in failing to follow the proper procedures for safe commercial vehicle operations;
- i) in failing to conduct a proper visual search which would have alerted the Defendant Ceballos to the Plaintiff's presence, location, and intention;
- j) in failing to keep his vehicle centered in its lane;
- k) in driving his commercial motor vehicle directly alongside the Fischettis' vehicle;
- l) in failing to properly control the space around his vehicle, including failing to maintain a proper space cushion or proper space to the sides;
- m) in making an improper lane change;
- n) in failing to properly check his mirrors, to account for his blind spots, or to know where the vehicles around him were; and,

- o) in failing to shift his attention back and forth, near and far, so as to see the Plaintiff's vehicle and avoid a sudden braking or lane change maneuver;
- p) in scheduling a trip during the hours when Defendant Ceballos was normally asleep;
- r) in operating a commercial motor vehicle while fatigued; and,
- s) in operating a commercial motor vehicle while using a cell phone, tablet, computer, or otherwise sending or receiving data, messages, or phone calls.

29. The Defendant Ceballos's careless, negligent, willful, wanton, reckless and unlawful acts were the direct and proximate cause of the collision, and the injuries and damages suffered by Concetta Fischetti prior to her death and as referenced in Paragraph 13.

30. The Defendant Ceballos's careless, negligent, willful, wanton, reckless and unlawful acts were the direct and proximate cause of the collision, the death of Concetta Fischetti, and the injuries and damages suffered by Concetta Fischetti's wrongful death beneficiaries as referenced in Paragraph 14.

31. Plaintiff is informed and believes that he is entitled to judgment against the Defendant Ceballos for actual and punitive damages in an appropriate amount.

FOR A SECOND CAUSE OF ACTION, AGAINST DEFENDANT SEATRUCK, INC.

32. The Defendant SeaTruck operates as a commercial motor carrier.

33. In return for the privilege to operate commercial motor vehicles on the public roadways, prospective motor carriers must make certain safety related certifications and verifications.

34. Motor carriers such as Defendant SeaTruck are required to submit a Form MCS-150 to the Federal Motor Carrier Administration and obtain an USDOT number.

35. Each Form MCS-150 SeaTruck submitted or will submit contains a Certification Statement whereby SeaTruck declares under the penalty of perjury that it is familiar with the Federal Motor Carrier Safety Regulations and/or Federal Hazardous Materials Regulations.

36. Motor carriers such as Defendant SeaTruck are required to submit a Form OP-1 to the Federal Motor Carrier Administration to gain operating authority.

37. Each Form OP-1 submitted by Defendant SeaTruck contains a "Safety Certification", certifying to the Federal Motor Carrier Safety Administration that they are subject to the pertinent portions of the U.S. DOT's Federal Motor Carrier Safety Regulations ("FMCSR") at 49 CFR, Chapter 3, Subchapter B (Parts 350-399).

38. Each Form OP-1 submitted by Defendant SeaTruck contains a "Safety Certification", certifying to the Federal Motor Carrier Safety Administration that they have access to and are familiar with all applicable U.S. DOT regulations relating to the safe operation of commercial vehicles and that they will comply with the regulations.

39. Each Form OP-1 submitted by Defendant SeaTruck contains a "Safety Certification", certifying to the Federal Motor Carrier Safety Administration that, at a minimum, they:

- a. have in place a system and an individual responsible for ensuring overall compliance with the FMCSR;
- b. Can produce a copy of the FMCSR;
- c. have in place a driver safety training/orientation program;

- d. are familiar with DOT regulations governing driver qualifications and have in place a system for overseeing driver qualification requirements (49 CFR Parts 391); and,
- e. have in place policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles;

40. To be qualified to operate a commercial motor vehicle, a driver must have experience and/or training to safely operate the type of vehicle; must be physically qualified; must have a currently valid CDL, and must furnish the motor carrier a list of current driving violations.

41. To operate a commercial motor vehicle under SeaTruck's operating authority, the prospective driver is required to complete a written application containing the following information:

- a. the nature and extent of the driver's experience;
- b. a list of all accidents in the previous 3 years;
- c. a list of all violations of motor vehicle laws in the previous 3 years;
- d. a detailed description of any denial, revocation, or suspension of any drivers licenses or permits;
- e. employment information for the previous 3 years; and,
- f. the names of all employers for whom the driver has operated a commercial motor vehicle for the previous 7 years.

42. Before a motor carrier such as Defendant SeaTruck may allow or permit a driver to operate a commercial motor vehicle under its operating authority, the motor carrier must:

- a. obtain the driver's motor vehicle record from the applicable state agency for the previous 3 years; and,
- b. investigate the driver's safety performance history with all DOT regulated employers for the previous 3 years;

43. Once a motor carrier such as Defendant SeaTruck hires a commercial driver, every twelve months thereafter the driver must submit a written list of all traffic violations the driver received in those twelve months.

44. Once a motor carrier such as Defendant SeaTruck hires a commercial driver, every twelve months thereafter the motor carrier must obtain from the relevant state agency a list of traffic violations for the previous year and maintain a copy of the record in the driver's qualification file.

45. Motor carriers such as SeaTruck are required to maintain a Driver Qualification File meeting the requirements of 49 CFR § 391.51 for the duration of the driver's employment with the motor carrier plus three years.

46. In addition, drivers employed by, or operating under the direction of, motor carriers such as Defendant SeaTruck, are required to complete and turn in to their employer trip envelopes at least every 13 days. Such trip envelopes include, but are not limited to, the driver's daily Record of Duty Status logs and pre-trip and post-trip vehicle inspection reports.

47. Drivers' daily logs record how much time each driver spends on duty, on duty not driving, off duty, and in a sleeper berth. Driver logs also require drivers to indicate how many miles they drove during each 24 hour period and their locations at each change of duty status.

48. In addition to the required daily logs and vehicle inspection reports, it is standard in the industry for careful motor carriers also to collect information from their drivers, such as

fuel receipts, entry and departure records, and other supporting documentation that verifies the times that their drivers were at specific locations.

49. In addition to the required daily logs, vehicle inspection reports, and supporting documentation utilized by careful motor carriers, SeaTruck's website states that its "entire fleet is equipped with state-of-the-art in cab communication via our partnership with PeopleNet. We have GPS tracking on all trucks in our fleet to provide real time tracking and cargo theft provision."

50. It is standard in the industry for careful motor carriers to use the information contained in the required daily driver logs, vehicle inspection reports, and other supporting documents to audit the safety performance of their drivers.

51. It is also standard in the industry for careful motor carriers to use any additional information, such as PeopleNet communications and GPS tracking to audit the safety performance of their drivers.

52. It is standard in the industry for careful motor carriers use the information contained in the required daily driver logs, vehicle inspection reports, and other supporting documentation to audit the safety performance of their drivers to ensure that their drivers are not violating hour of service rules, to ensure that their drivers do not average speeds in excess of what is safe, and otherwise verify that the information contained in the driver's logs is accurate and truthful.

53. Auditing drivers' daily logs, vehicle inspection report, supporting documents, PeopleNet communications, and GPS tracking information increases the likelihood that a motor carrier's drivers are operating their commercial vehicles safely and decreases the risk of a preventable crash.

54. Motor carriers should never allow or permit a driver to operate their commercial motor vehicles if the driver is not qualified to do so.

55. Motor carriers should never allow or permit a driver to operate their commercial motor vehicles if an audit of the driver's logs, vehicle inspection reports, supporting documents, PeopleNet communications, and GPS tracking information indicates that the driver has a higher than safe average speed.

56. Motor carriers should never allow or permit a driver to operate their commercial motor vehicles if an audit of the driver's logs, vehicle inspection reports, supporting documents, PeopleNet communications, and GPS tracking information indicates that the driver operates his vehicle in violation of the hours of service rules.

57. Motor carriers should never allow or permit a driver to operate their commercial motor vehicles if an audit of the driver's logs, vehicle inspection reports, supporting documents, PeopleNet communications, and GPS tracking information indicates that the driver is not accurate and truthful in the completion of his logs.

58. Motor carriers should never allow or permit a driver to operate their commercial motor vehicles if the driver does not have the required knowledge or skill to safely operate the vehicle.

59. It is standard in the industry for careful motor carriers to regularly check their Safety Measurement System details.

60. The FMCSA's Safety Measurement System (SMS) provides an assessment of a motor carrier's on-road performance results within seven safety related categories. Motor carriers are scored on a percentile basis as compared to other similar carriers.

61. The injuries and damages incurred by the Plaintiff were directly and proximately caused by the Defendant SeaTruck's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars by failing to use reasonable care in the:

- a) Hiring of the Defendant Ceballos;
- b) Retention of the Defendant Ceballos;
- c) Training of Defendant Ceballos;
- d) Supervision of its business operations in failing to properly monitor the driving habits and records of its drivers, employees, and/or agents, specifically the Defendant Ceballos;
- e) Supervision of its drivers, employees, and/or agents, specifically the Defendant Ceballos;
- f) Instruction of its drivers, employees, and/or agents, specifically the Defendant Ceballos;
- g) Entrustment of a tractor trailer to its drivers, employees, and/or agents, specifically the Defendant Ceballos;
- i) Compliance with federal and/or state regulations and industry standards, as referenced in this Complaint and as developed during the discovery in this case:
- j) Improperly auditing the logs and supporting documentation of its drivers, employees, and/or agents, specifically the Defendant Ceballos;

- k) Failing to utilize available information to properly monitor its drivers, employees, and/or agents, specifically the Defendant Ceballos for compliance with company policies and/or state and federal regulations;
- l) in allowing the Defendant Ceballos to operate a commercial motor vehicle despite knowledge of his inability to do so safely; and,
- m) in failing to properly monitor and improve its SMS Results, or to investigate whether Defendant Ceballos was responsible for SeaTruck's deficient SMS Results.

62. The Defendant SeaTruck's careless, negligent, willful, wanton, reckless and unlawful acts were the direct and proximate cause of the collision, and the injuries and damages suffered by Concetta Fischetti prior to her death and as referenced in Paragraph 13.

63. The Defendant SeaTruck's careless, negligent, willful, wanton, reckless and unlawful acts were the direct and proximate cause of the collision, the death of Concetta Fischetti, and the injuries and damages suffered by Concetta Fischetti's wrongful death beneficiaries as referenced in Paragraph 14.

64. Plaintiff is informed and believes that he is entitled to judgment against the Defendant SeaTruck for actual and punitive damages in an appropriate amount.

FOR A THIRD CAUSE OF ACTION, AGAINST KC FREIGHT, LLC

65. The Defendant KC Freight operates as a commercial motor carrier.

66. In return for the privilege to operate commercial motor vehicles on the public roadways, prospective motor carriers must make certain safety related certifications and verifications.

67. Motor carriers such as Defendant KC Freight are required to submit a Form MCS-150 to the Federal Motor Carrier Administration and obtain an USDOT number.

68. Each Form MCS-150 KC Freight submitted or will submit contains a Certification Statement whereby KC Freight declares under the penalty of perjury that it is familiar with the Federal Motor Carrier Safety Regulations and/or Federal Hazardous Materials Regulations.

69. Motor carriers such as Defendant KC Freight are required to submit a Form OP-1 to the Federal Motor Carrier Administration to gain operating authority.

70. Each Form OP-1 submitted by Defendant KC Freight contains a "Safety Certification", certifying to the Federal Motor Carrier Safety Administration that they are subject to the pertinent portions of the U.S. DOT's Federal Motor Carrier Safety Regulations ("FMCSR") at 49 CFR, Chapter 3, Subchapter B (Parts 350-399).

71. Each Form OP-1 submitted by Defendant KC Freight contains a "Safety Certification", certifying to the Federal Motor Carrier Safety Administration that they have access to and are familiar with all applicable U.S. DOT regulations relating to the safe operation of commercial vehicles and that they will comply with the regulations.

72. Each Form OP-1 submitted by Defendant KC Freight contains a "Safety Certification", certifying to the Federal Motor Carrier Safety Administration that, at a minimum, they:

- a. have in place a system and an individual responsible for ensuring overall compliance with the FMCSR;
- b. Can produce a copy of the FMCSR;
- c. have in place a driver safety training/orientation program;

- d. are familiar with DOT regulations governing driver qualifications and have in place a system for overseeing driver qualification requirements (49 CFR Parts 391); and,
- e. have in place policies and procedures consistent with DOT regulations governing driving and operational safety of motor vehicles;

73. To be qualified to operate a commercial motor vehicle, a driver must have experience and/or training to safely operate the type of vehicle; must be physically qualified; must have a currently valid CDL, and must furnish the motor carrier a list of current driving violations.

74. To operate a commercial motor vehicle under KC Freight's operating authority, the prospective driver is required to complete a written application containing the following information:

- a. the nature and extent of the driver's experience;
- b. a list of all accidents in the previous 3 years;
- c. a list of all violations of motor vehicle laws in the previous 3 years;
- d. a detailed description of any denial, revocation, or suspension of any drivers licenses or permits;
- e. employment information for the previous 3 years; and,
- f. the names of all employers for whom the driver has operated a commercial motor vehicle for the previous 7 years.

75. Before a motor carrier such as Defendant KC Freight may allow or permit a driver to operate a commercial motor vehicle under its operating authority, the motor carrier must:

- a. obtain the driver's motor vehicle record from the applicable state agency for the previous 3 years; and,
- b. investigate the driver's safety performance history with all DOT regulated employers for the previous 3 years;

76. Once a motor carrier such as Defendant KC Freight hires a commercial driver, every twelve months thereafter the driver must submit a written list of all traffic violations the driver received in those twelve months.

77. Once a motor carrier such as Defendant KC Freight hires a commercial driver, every twelve months thereafter the motor carrier must obtain from the relevant state agency a list of traffic violations for the previous year and maintain a copy of the record in the driver's qualification file.

78. Motor carriers such as KC Freight are required to maintain a Driver Qualification File meeting the requirements of 49 CFR § 391.51 for the duration of the driver's employment with the motor carrier plus three years.

79. In addition, drivers employed by, or operating under the direction of, motor carriers such as Defendant KC Freight, are required to complete and turn in to their employer trip envelopes at least every 13 days. Such trip envelopes include, but are not limited to, the driver's daily Record of Duty Status logs and pre-trip and post-trip vehicle inspection reports.

80. Drivers' daily logs record how much time each driver spends on duty, on duty not driving, off duty, and in a sleeper berth. Driver logs also require drivers to indicate how many miles they drove during each 24 hour period and their locations at each change of duty status.

81. In addition to the required daily logs and vehicle inspection reports, it is standard in the industry for careful motor carriers also collect information from their drivers, such as fuel

receipts, entry and departure records, and other supporting documentation that verifies the times that their drivers were at specific locations.

82. It is standard in the industry for careful motor carriers to use the information contained in the required daily driver logs, vehicle inspection reports, and other supporting documents to audit the safety performance of their drivers.

83. It is standard in the industry for careful motor carriers use the information contained in the required daily driver logs, vehicle inspection reports, and other supporting documentation to audit the safety performance of their drivers to ensure that their drivers are not violating hour of service rules, to ensure that their drivers do not average speeds in excess of what is safe, and otherwise verify that the information contained in the driver's logs is accurate and truthful.

84. Auditing drivers' daily logs, vehicle inspection report, and supporting documents increases the likelihood that a motor carrier's drivers are operating their commercial vehicles safely and decreases the risk of a preventable crash.

85. Motor carriers should never allow or permit a driver to operate their commercial motor vehicles if the driver is not qualified to do so.

86. Motor carriers should never allow or permit a driver to operate their commercial motor vehicles if an audit of the driver's logs, vehicle inspection reports, and supporting documents indicates that the driver has a higher than safe average speed.

87. Motor carriers should never allow or permit a driver to operate their commercial motor vehicles if an audit of the driver's logs, vehicle inspection reports, and supporting documents indicates that the driver operates his vehicle in violation of the hours of service rules.

88. Motor carriers should never allow or permit a driver to operate their commercial motor vehicles if an audit of the driver's logs, vehicle inspection reports, and supporting documents indicates that the driver is not accurate and truthful in the completion of his logs.

89. Motor carriers should never allow or permit a driver to operate their commercial motor vehicles if the driver does not have the required knowledge or skill to safely operate the vehicle.

90. It is standard in the industry for careful motor carriers to regularly check their Safety Measurement System details.

91. The FMCSA's Safety Measurement System (SMS) provides an assessment of a motor carrier's on-road performance results within seven safety related categories. Motor carriers are scored on a percentile basis as compared to other similar carriers.

92. It is standard in the industry for motor carriers to utilize their SMS results and to take steps to improve any deficient or unsafe SMS results.

93. The injuries and damages incurred by the Plaintiff were directly and proximately caused by the Defendant KC Freight's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars by failing to use reasonable care in the:

- a) Hiring of the Defendant Ceballos;
- b) Retention of the Defendant Ceballos;
- c) Training of Defendant Ceballos;
- d) Supervision of its business operations in failing to properly monitor the driving habits and records of its drivers, employees, and/or agents, specifically the Defendant Ceballos;

- e) Supervision of its drivers, employees, and/or agents, specifically the Defendant Ceballos;
- f) Instruction of its drivers, employees, and/or agents, specifically the Defendant Ceballos;
- g) Entrustment of a tractor trailer to its drivers, employees, and/or agents, specifically the Defendant Ceballos;
- i) Compliance with federal and/or state regulations and industry standards, as referenced in this Complaint and as developed during the discovery in this case;
- j) Improperly auditing the logs and supporting documentation of its drivers, employees, and/or agents, specifically the Defendant Ceballos;
- k) Failing to utilize available information to properly monitor its drivers, employees, and/or agents, specifically the Defendant Ceballos for compliance with company policies and/or state and federal regulations;
- l) in allowing the Defendant Ceballos to operate a commercial motor vehicle despite knowledge of his inability to do so safely; and,
- m) in failing to properly monitor and improve its SMS Results, or to investigate whether Defendant Ceballos was responsible for KC Freight's deficient SMS Results.

94. The Defendant KC Freight's careless, negligent, willful, wanton, reckless and unlawful acts were the direct and proximate cause of the collision, and the injuries and damages suffered by Concetta Fishcetti prior to her death and as referenced in Paragraph 13.

95. The Defendant KC Freight's careless, negligent, willful, wanton, reckless and unlawful acts were the direct and proximate cause of the collision, the death of Concett Fischetti, and the injuries and damages suffered by Concetta Fischetti's wrongful death beneficiaries as referenced in Paragraph 14.

96. Plaintiff is informed and believes that he is entitled to judgment against the Defendant KC Freight for actual and punitive damages in an appropriate amount.

FOR A FORTH CAUSE OF ACTION, AGAINST
SEATRUCK AND/OR KC FREIGHT

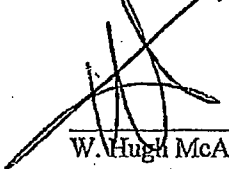
97. At all times relevant to the allegations contained in this Complaint, the Defendant Ceballos was working in the course and scope of his employment for the Defendant KC Freight and/or SeaTruck, was otherwise acting as an agent or servant of the Defendant KC Freight and/or SeaTruck, and/or was operating a commercial motor vehicle under KC Freight and/or SeaTruck's operating authority.

98. The Defendant KC Freight and/or SeaTruck is/are liable for the acts and omissions of the Defendant Ceballos under the doctrines of respondeat superior, master/servant, and/or agent/principal.

99. The Plaintiff is informed and believes that he is entitled to judgment against the Defendants KC Freight and/or SeaTruck for actual and punitive damages in an appropriate amount.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for actual and punitive damages in an appropriate amount to be determined at trial, the costs of this action, and for such other and further relief as the Court may deem just and proper.

CHAPPELL, SMITH & ARDEN, P.A.



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(803)929-3600

David L. Hood
The Law Offices of David L. Hood
PO Box 535
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Attorneys for the Plaintiff

September 4, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
Anthony Fischetti as Executor of the	)	Case No.: 2013-CP-21-2395
Estate of Concetta Fischetti	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	DEFENDANT
SeaTruck, Inc., KC Freight, LLC and	)	SEATRUCK, INC.'S
Carlos L. Ceballos,	)	ANSWER
	)	
Defendants.	)	(JURY TRIAL DEMANDED)

COMES NOW, Defendant, SeaTruck, Inc., by and through its undersigned attorneys,
answering the Complaint of the Plaintiff, would allege and show unto the Court:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Complaint not specifically admitted herein is denied.

2. Admits so much of paragraph 1 that alleges that the Plaintiff is a citizen and resident of Orange County, Florida. Lacks sufficient knowledge and information to form a belief as to the remaining allegations of paragraph 1 and thereby deny the same.

3. Admits so much of paragraph 2 which alleges that SeaTruck, Inc. is a corporation organized under the laws of the State of Florida with a principle place of business in Florida. Lacks sufficient knowledge and information to form a belief as to the remaining allegations of paragraph 2 and thereby deny the same.

4. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraph 3 and thereby deny the same.

5. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraph 4 and thereby deny the same.

6. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraph 5 through paragraph 14, and thereby deny the same.

7. The allegations contained in paragraphs 15 through 31 are not directed at SeaTruck, Inc. and therefore do not require a response from this Defendant. To the extent a response is required, the allegations contained in paragraphs 15 through 31 are hereby denied.

8. Admits, upon information and belief, the allegation of paragraph 32.

9. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraph 33, and thereby deny the same.

10. In responding to paragraph 34 through paragraph 48, the Defendant craves reference to the Federal Motor Carrier Administration Requirements and to the extent that paragraph 34 through paragraph 48 is inconsistent therewith, denies the same.

11. In responding to paragraph 49, the Defendant craves reference to the Defendant's website for the specific information contained therein and to the extent that paragraph 49 is inconsistent therewith, denies the same.

12. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraphs 50, 51, 52 and 53, and thereby deny the same.

13. In responding to paragraph 54, the Defendant would show that its drivers are qualified to operate commercial motor vehicles. Denies the remaining allegations of paragraph 54 and demands strict proof thereof.

14. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraphs 55, 56 and 57, and thereby deny the same.

15. Denies the allegations of paragraph 58 which alleges or may be construed to alleged that SeaTruck, Inc. allows unskilled drivers to operate its commercial motor vehicles.

The remaining allegations of paragraph 58 are denied.

16. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraphs 59, and thereby deny the same.

17. In responding to paragraph 60, the Defendant craves reference to the Federal Motor Carrier Safety Regulations for all recommendations and/or requirements contained therein. Lacks sufficient knowledge and information to form a belief as to the remaining allegations of paragraph 60, and thereby denies the same.

18. Denies the allegations of paragraphs 61, 62, 63, and 64, and demands strict proof thereof.

19. The allegations contained in paragraphs 65 through 96 are not directed at SeaTruck, Inc. and therefore do not require a response from this Defendant. To the extent a response is required, the allegations contained in paragraphs 65 through 96 are hereby denied.

20. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraphs 97, 98, 99, and demands strict thereof.

FOR A SECOND DEFENSE

(Failure to State Claim)

21. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

22. The Defendant would show that the Plaintiff's Complaint fails to state a claim upon which relief can be granted, and, therefore should be dismissed pursuant to Rule 12(b)(6) of the South Carolina of Civil Procedure.

FOR A THIRD DEFENSE

(Comparative Negligence)

23. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

24. The Defendant would show that such injuries or losses that Plaintiff sustained, if any, were due to and caused by the sole negligence, gross negligence, willfulness, wantonness, carelessness and recklessness of the Plaintiff, combining, concurring and contributing with the negligence, if any, on the part of this Defendant, to such a degree that Plaintiff's recovery is barred by the doctrine of comparative negligence in South Carolina.

FOR A FOURTH DEFENSE

(Sudden Emergency)

25. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

26. Even assuming Defendant was negligent in any respect, which is expressly denied, this Defendant would show that the Plaintiff's injuries or losses were the result of and reaction to a sudden emergency over which Defendant had no control and, therefore, Plaintiff's action is barred.

FOR A FIFTH DEFENSE

(Assumption of the Risk)

27. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

28. The Defendant would show that the Plaintiff knew of the probable risk of injury or harm resulting from Plaintiff's actions, and therefore, the Defendant would plead the doctrine of assumption of the risk as a complete bar to this action.

FOR A SIXTH DEFENSE

(Unavoidable Accident)

29. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

30. The Defendant would show that such injuries or losses that the Plaintiff sustained, if any, as alleged in Plaintiff's Complaint, were not due to or caused by the negligence on the part of the Defendant, but was rather due to and caused by an unavoidable accident, thereby barring any claim whatsoever.

FOR A SEVENTH DEFENSE

(Intervening or Superseding Negligence)

31. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

32. The Defendant would show that such injuries or losses that Plaintiff sustained, if any, as alleged in Plaintiff's Complaint, were not due to or caused by any negligence on the part of the Defendant, but were rather due to and caused by the contributing, concurring, intervening or superseding fault, breach of warranty or act or omission of a third party, over which this Defendant had no control.

FOR AN EIGHTH DEFENSE

(Improper Venue)

33. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

34. Defendant pleads the defense of improper venue in the County of Florence, State of South Carolina.

FOR A NINTH DEFENSE

(Waiver and Estoppel)

35. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

36. The Defendant would show that Plaintiff's Complaint is barred by the doctrine of waiver and estoppel.

FOR A TENTH DEFENSE

(Statute of Limitations)

37. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

38. The Defendant would show that this action is barred by the applicable Statute of Limitations.

FOR AN ELEVENTH DEFENSE

(Spoliation)

39. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

40. The Defendant would show that Plaintiff's Complaint is barred by the doctrine of spoliation.

FOR A TWELFTH DEFENSE

(Punitive Damages)

41. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

42. The Defendant alleges that the Plaintiff's claim for punitive damages violates both the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South

Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

43. The Defendant alleges that the Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the South Carolina Constitution because, even if it could be argued the standard governing the imposition of punitive damages exists, the standard would be void due to vagueness.

44. The Defendant alleges that the Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of this Defendant.

45. The Defendant alleges that the Plaintiff's claim of punitive damages violates the doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution because punitive damages are a creation of the Judicial Branch of government which invades the province of the Legislative Branch of government.

46. Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in

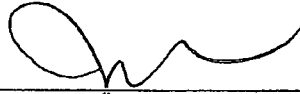
nature; Plaintiff's claim for punitive damages violates Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills these Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, the Defendant prays that the Plaintiff's Complaint be dismissed with costs, for attorney's fees and such other and further relief this Court deems just and proper.

The Defendant demands a jury trial.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
J. Eric Cavanaugh
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

**ATTORNEYS FOR DEFENDANT
SEATRUCK, INC.**

Columbia, South Carolina

November 14, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
	)	
Anthony Fischetti as Executor of the	)	Case No.: 2013-CP-21-2395
Estate of Concetta Fischetti	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS
	)	KC FREIGHT, LLC AND
SeaTruck, Inc., KC Freight, LLC and	)	CARLOS L. CEBALLOS'
Carlos L. Ceballos,	)	ANSWER
	)	
Defendants.	)	(JURY TRIAL DEMANDED

COMES NOW, Defendants, KC Freight, LLC and Carlos L. Ceballos, by and through their undersigned attorneys, answering the Complaint of the Plaintiff, would allege and show unto the Court:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Complaint not specifically admitted herein is denied.
2. Admits so much of paragraph 1 that alleges that the Plaintiff is a citizen and resident of Orange County, Florida. Lacks sufficient knowledge and information to form a belief as to the remaining allegations of paragraph 1 and thereby deny the same.
3. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraph 2 and thereby deny the same.
4. Admits so much of paragraph 3 which alleges that KC Freight, LLC is a limited liability company organized under the laws of the State of Florida with a principle place of

business in Florida. Lacks sufficient knowledge and information to form a belief as to the remaining allegations of paragraph 3 and thereby deny the same.

5. Admits so much of paragraph 4 which alleges or may be construed to allege that Defendant Carlos Ceballos is a citizen and resident of the State of Florida. Lacks sufficient knowledge and information to form a belief as to the remaining allegations of paragraph 4 and thereby deny the same.

6. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraph 5 through paragraph 15, and thereby deny the same.

7. Admits so much of paragraph 16 which alleges or may be construed to allege that if the Defendant Ceballos was operating a commercial motor vehicle then he would have the skills necessary for the safe operation of said vehicle. Denies the remaining allegations of paragraph 16 and demands strict proof thereof.

8. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraph 17, and thereby deny the same.

9. Admits so much of paragraph 18 which alleges or may be construed to allege that the skills necessary to operate a commercial motor vehicle are established and tested through the commercial driver's license program. The extent paragraph 18 differs from the skills required to obtain commercial driver's license, are hereby denied.

10. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraph 19 through paragraph 27, and thereby deny the same.

11. Denies the allegations of paragraphs 28, 29, 30 and 31, and demands strict proof thereof.

12. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraph 32 through paragraph 64, and thereby deny the same.

13. Admits, upon information and belief, the allegation of paragraph 54.

14. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraph 66, and thereby deny the same.

15. In responding to paragraph 67 through paragraph 81, the Defendant craves reference to the Federal Motor Carrier Administration Requirements and to the extent that paragraph 67 through paragraph 81 is inconsistent therewith, denies the same.

16. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraphs 82, 83 and 84, and thereby deny the same.

17. In responding to paragraph 85, the Defendant would show that its drivers are qualified to operate commercial motor vehicles. Denies the remaining allegations of paragraph 85 and demands strict proof thereof.

18. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraphs 86, 87 and 88, and thereby deny the same.

19. Denies the allegations of paragraph 89 which alleges or may be construed to alleged that KC Freight, Inc. allows unskilled drivers to operate its commercial motor vehicles. The remaining allegations of paragraph 89 are denied.

20. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraphs 90, and thereby deny the same.

21. In responding to paragraph 91, the Defendant craves reference to the Federal Motor Carrier Safety Regulations for all recommendations and/or requirements contained

therein. Lacks sufficient knowledge and information to form a belief as to the remaining allegations of paragraph 91, and thereby denies the same.

22. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraphs 92, and thereby deny the same.

23. Denies the allegations of paragraphs 93, 94, 95, and 96, and demands strict proof thereof.

24. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraphs 97, 98, 99, and demands strict thereof.

FOR A SECOND DEFENSE

(Failure to State Claim)

25. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

26. The Defendants would show that the Plaintiff's Complaint fails to state a claim upon which relief can be granted, and, therefore should be dismissed pursuant to Rule 12(b)(6) of the South Carolina of Civil Procedure.

FOR A THIRD DEFENSE

(Comparative Negligence)

27. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

28. The Defendants would show that such injuries or losses that Plaintiff sustained, if any, were due to and caused by the sole negligence, gross negligence, willfulness, wantonness, carelessness and recklessness of the Plaintiff, combining, concurring and contributing with the negligence, if any, on the part of these Defendants, to such a degree that Plaintiff's recovery is barred by the doctrine of comparative negligence in South Carolina.

FOR A FOURTH DEFENSE

(Sudden Emergency)

29. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

30. Even assuming Defendants were negligent in any respect, which is expressly denied, these Defendants would show that the Plaintiff's injuries or losses were the result of and reaction to a sudden emergency over which Defendants had no control and, therefore, Plaintiff's action is barred.

FOR A FIFTH DEFENSE

(Assumption of the Risk)

31. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

32. The Defendants would show that the Plaintiff knew of the probable risk of injury or harm resulting from Plaintiff's actions, and therefore, the Defendants would plead the doctrine of assumption of the risk as a complete bar to this action.

FOR A SIXTH DEFENSE

(Unavoidable Accident)

33. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

34. The Defendants would show that such injuries or losses that the Plaintiff sustained, if any, as alleged in Plaintiff's Complaint, were not due to or caused by the negligence on the part of the Defendants, but was rather due to and caused by an unavoidable accident, thereby barring any claim whatsoever.

FOR A SEVENTH DEFENSE

(Intervening or Superseding Negligence)

35. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

36. The Defendants would show that such injuries or losses that Plaintiff sustained, if any, as alleged in Plaintiff's Complaint, were not due to or caused by any negligence on the part of the Defendants, but were rather due to and caused by the contributing, concurring, intervening or superseding fault, breach of warranty or act or omission of a third party, over which these Defendants had no control.

FOR AN EIGHTH DEFENSE

(Improper Venue)

37. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

38. Defendants plead the defense of improper venue in the County of Florence, State of South Carolina.

FOR A NINTH DEFENSE

(Waiver and Estoppel)

39. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

40. The Defendants would show that Plaintiff's Complaint is barred by the doctrine of waiver and estoppel.

FOR A TENTH DEFENSE

(Statute of Limitations)

41. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

42. The Defendants would show that this action is barred by the applicable Statute of Limitations.

FOR AN ELEVENTH DEFENSE

(Spoliation)

43. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

44. The Defendants would show that Plaintiff's Complaint is barred by the doctrine of spoliation.

FOR A TWELFTH DEFENSE

(Punitive Damages)

45. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

46. The Defendants allege that the Plaintiff's claim for punitive damages violates both the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

47. The Defendants allege that the Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 3

of the South Carolina Constitution because, even if it could be argued the standard governing the imposition of punitive damages exists, the standard would be void due to vagueness.

48. The Defendants allege that the Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of these Defendants.

49. The Defendants allege that the Plaintiff's claim of punitive damages violates the doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution because punitive damages are a creation of the Judicial Branch of government which invades the province of the Legislative Branch of government.

50. Defendants would show, upon information and belief, that the Plaintiff's claim for punitive Damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Defendants can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates Defendants' right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills these Defendants' exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the

Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, the Defendants pray that the Plaintiff's Complaint be dismissed with costs, for attorney's fees and such other and further relief this Court deems just and proper.

The Defendants demand a jury trial.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
J. Eric Cavanaugh
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

November 13, 2013

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

FILED

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

2014 MAY 15 PM 2:03

CASE NO.: 2013-CP-21-2395

Anthony Fischetti, as Executor of the Estate
of Concetta Fischetti

**COMMON PLEAS - SHEAFFER
COURT & GS
FLORENCE COUNTY, SC**

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

vs.

SeaTruck, Inc., KC Freight, LLC and Carlos
L. Ceballos

Defendant.

Plaintiff's Attorney:
W. Hugh McAngus, Bar No. 74941
Address:
P.O. Box 12330, Columbia, SC 29211
Phone: 803-929-3600 Fax 803-929-3604
E-mail: hmcangus@csa-law.com Other:

Defendant's Attorney:
Eric Cavanaugh, Bar No. _____
Address:
P.O. Box 12129, Columbia, SC 29211
Phone: (803) 256-2233 Fax (803) 256-9177
E-mail: JEC@swblaw.com Other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 45 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

5-13-14

Date submitted

SECTION III: Motion Fee

- ☒ **PAID - AMOUNT: \$**
☐ **EXEMPT:** (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: dp Date Filed: 26
☐ **MOTION FEE COLLECTED: \$**
☐ **CONTESTED - AMOUNT DUE: \$**

CERTIFIED - A TRUE COPY
Cristie R. L. Spain
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Anthony Fischetti, as Executor Of the
Estate of Concetta Fischetti,

Plaintiff,

vs.

Seatruck, Inc., KC Freight, LLC and
Carlos Ceballos,

Defendant.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2013-CP-21

FILED
2014 MAY 15 PM 2:03
CORINNE BOEL-SHEPHERD
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

**PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AS TO CERTAIN
AFFIRMATIVE DEFENSES**

TO: MARK S. BARROW AND J. ERIC CAVANAUGH, ATTORNEYS FOR THE
DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE on the tenth day after service of this motion or as soon thereafter as practicable, the Plaintiff, pursuant to Rule 56, SCRCP, shall move the presiding judge of the Florence County Court of Common Pleas for an order granting summary judgment in the Plaintiff's favor regarding the following affirmative defenses:

1. Defendants' Third Defense (Comparative Negligence);
2. Defendants' Fourth Defense (Sudden Emergency);
3. Defendants' Fifth Defense (Assumption of the Risk);
4. Defendants' Sixth Defense (Unavoidable Accident);
5. Defendants' Eighth Defense (Improper Venue)
6. Defendants' Ninth Defense (Waiver and Estoppel);
7. Defendants' Tenth Defense (Statute of Limitations); and,
8. Defendants' Eleventh Defense (Spoliation).

CERTIFIED: A TRUE COPY
Corinne Boel-Shepherd
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

"It is well established that a party pleading an affirmative defense has the burden of proving it." Cole v. South Carolina Elec. & Gas. Inc., 355 S.C. 183, 584 S.E.2d 405 (Ct. App.

2003) (citing Pike v. South Carolina Dep't of Transp., 343 S.C. 224, 540 S.E.2d 87 (2000);
Hoffman v. County of Greenville, 242 S.C. 34, 129 S.E.2d 757 (1963)).

Plaintiff is entitled to judgment as a matter of law regarding the above-listed affirmative defenses because Defendants can offer no genuine issues of material fact to support any of the defenses.

WHEREFORE, the Plaintiff respectfully requests that the court grant summary judgment in favor of the Plaintiff as to the above-referenced affirmative defenses.

CHAPPELL, SMITH AND ARDEN, P.A.

W. Hugh McAngus, Jr.
Attorneys for Plaintiff
Post Office Box 12330
Columbia, SC 29211
(803) 929-3600

May 13, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
Anthony Fischetti, as Executor)
Of the Estate of Concetta Fischetti,)
)
Plaintiff,)
)
vs.)
)
SeaTruck, Inc., KC Freight, LLC,)
And Carlos L. Ceballos,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2013-CP-21-2395

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT AS TO
CERTAIN AFFIRMATIVE DEFENSES**

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2013 JUN 12 PM 1:21
CONNIE REEL-SHEARIN
C.C.P. & G.S.
FLORENCE COUNTY, SC

FILED

INTRODUCTION

In this commercial motor vehicle wrongful death and survival action, this matter comes before the Court on Plaintiff's Motion for Summary Judgment as to Certain Affirmative Defenses. For the reasons stated below, Plaintiff's motion should be granted in full.

FACTUAL BACKGROUND

According to the October 8, 2012, GPS tracking data from Defendant Ceballos's tractor trailer, he started his tractor's engine at 11:56 am, began driving at approximately 12:02 pm, and ultimately turned his vehicle off at 8:55 pm that night. (Ex. 1). If Ceballos had followed SeaTruck's safety policy and performed a 15 minute pretrip inspection, he must have come on duty no later than 11:47 am. (Ex. 2).

Defendant Ceballos's handwritten Driver's Daily Log for October 8, 2012, however, indicates that he did not come on duty until 12:30 p.m., and was off duty and in his sleeper berth by 7:00 p.m. (Ex. 3). Ceballos's cell phone records indicate that he was on his cell phone at least twice when his logs indicate he was in his sleeper berth-- at 7:09 pm and 8:32 pm, with each call lasting 9 minutes. (Ex. 4)

According to Ceballos's GPS tracking data, he turned his tractor on at 6:10 a.m. on October 9, 2012, and began driving by 6:20 a.m. (Ex. 5). Ceballos's handwritten driver logs for October 9, 2012, contradict the GPS data, and indicate that he did not come on duty until 8:15 am. (Ex. 6).

Utilizing Ceballos's GPS tracking data, and not Ceballos's handwritten logs, Ceballos did not have the required 10 hours off duty after his October 8 shift, and reached his 11 hour driving Hours of Service limit at approximately 10:30 am on October 9, 2012, and his 14 hour on duty limit by 11:45 a.m. (See 49 CFR §§ 395.3, et seq.). According to Ceballos's GPS tracking data, the entire 510 minutes he drove past 10:30 a.m. on October 9, 2012, was in violation of the FMCSR Hours of Service limits for the number of hours a commercial driver can drive a vehicle before taking a 10 hour rest break. (See 49 CFR § 395.3). In addition, and also according to Ceballos's GPS tracking data, for the entire 435 minutes he was on duty after 11:45 a.m. on October 9, 2012, he was in violation of the FMCSR Hours of Service limits on the number of hours a driver can spend on duty without a 10 hour rest break.

Ceballos agrees that commercial vehicles are slower to maneuver than passenger vehicles, take up more space in a lane than passenger vehicles, that commercial drivers must conduct proper visual searches to prevent collisions, that commercial drivers must control the space around their vehicles, that commercial drivers should not crowd other drivers, and that commercial vehicles should not travel alongside other vehicles for long periods of time. (Ex. 7).

At approximately 7:00 pm on October 9, 2012, Defendant Ceballos was still on duty and still driving a commercial vehicle heading north on I-95 in Florence County, South Carolina. (Ex. 8). According to Ceballos, he was traveling in the right hand lane when the Fischetti's vehicle struck his trailer, then ran off the road and struck a guardrail. (Ex. 9). After the

Fischetti's vehicle struck the guardrail, Ceballos testified that he saw Mrs. Fischetti fly out of the vehicle and into the woods. (Ex. 10).

According to the Fischettis, on October 9, 2012, they were traveling on I-95 from Orlando, Florida to Brooklyn, New York. (Ex. 11). Anthony Fischetti had driven from Florida until the Fischettis, stopped at an exit in Florence County for dinner. (Ex. 11). After dinner the Fischetti's resumed their trip, and Jennifer Fischetti took over driving their vehicle. (Ex. 11). According to the Fischettis, Jennifer began driving, Anthony Fischetti was a front seat passenger, and Plaintiff's Decedent Concetta Fischetti was a rear passenger. (Ex. 12).

The Fischettis testified that they were traveling in the left hand lane of I-95 with the Defendants' vehicle to their right, when Ceballos's vehicle moved into their lane, forcing Jennifer Fischetti to move their vehicle to the left, with the two left tires of the Fischetti vehicle off the road and onto the grass. Jennifer attempted to bring the vehicle back onto the highway, but when she did so, they struck the Defendants' vehicle. (Ex. 13).

According to Anthony Fischetti, Ceballos looked tired and had red, bloodshot eyes following the wreck. (Ex. 14).

None of the witnesses or parties have testified that any other persons or entities contributed to the cause of the collision or that the collision was the result of some weather or road conditions or Act of God.

PROCEDURAL BACKGROUND

Plaintiff filed the Complaint on September 12, 2013. Plaintiff alleges that the Defendant Ceballos, operating a commercial motor vehicle owned by Defendant KC Freight, LLC, and leased to Defendant SeaTruck, Inc., improperly moved his commercial vehicle into the Fischetti's lane, causing Jennifer Fischetti to move her vehicle partly onto the grass median in

response. Plaintiff has alleged that Ceballos was negligent in failing to yield, failing to observe traffic, failing to conduct a proper visual search, failing to keep his vehicle centered in his lane, driving his vehicle alongside the Fischettis, failing to maintain a proper space cushion, making an improper lane change, failing to check his mirrors, and operating his vehicle while fatigued. (Compl. ¶28)

Plaintiff has alleged respondeat superior claims against KC Freight and SeaTruck, as well as direct negligence claims against SeaTruck, including claims that SeaTruck negligently audited Ceballos's driver logs and other available information, negligently trained Ceballos, negligently monitored Ceballos's driving habits, and negligently utilized available information to properly monitor Ceballos.

Defendant SeaTruck filed its Answer on November 15, 2013, and the Defendants Ceballos and KC Freight filed their Answer on November 18, 2013. Each of the Defendants

included the following affirmative defenses, which are the subject of this motion:

1. Defendants' Third Defense (Comparative Negligence);
2. Defendants' Fourth Defense (Sudden Emergency);
3. Defendants' Fifth Defense (Assumption of the Risk);
4. Defendants' Sixth Defense (Unavoidable Accident);
5. Defendants' Eighth Defense (Improper Venue)
6. Defendants' Ninth Defense (Waiver and Estoppel);
7. Defendants' Tenth Defense (Statute of Limitations); and,
8. Defendants' Eleventh Defense (Spoliation).

On October 22, 2013, Plaintiff served Interrogatories and Requests to Produce on Defendant Ceballos. Defendant SeaTruck was served with Interrogatories and Requests to

Produce on October 30, 2013. Plaintiff served Defendant KC Freight, LLC with Interrogatories and Requests to Produce on November 13, 2013.

Plaintiff's discovery requests asked the Defendants: (1) whether they contend that the Plaintiff's Decedent contributed to her claimed injuries and to describe the facts, evidence, and witnesses supporting that affirmative defense; whether they contend that some other person or entity is liable for Plaintiff's claims, and to describe the facts, evidence, and witnesses supporting that affirmative defense; and (3) to provide the facts, evidence, and basis for the Defendants' other affirmative defenses.

As of the date of the filing of this memorandum, Defendants have not identified any facts, witnesses, or evidence to support the affirmative defenses that are the subject of this motion.

STANDARD OF REVIEW

"It is well established that a party pleading an affirmative defense has the burden of proving it." Cole v. South Carolina Elec. & Gas, Inc., 355 S.C. 183, 584 S.E.2d 405 (Ct. App. 2003) (citing Pike v. South Carolina Dep't of Transp., 343 S.C. 224, 540 S.E.2d 87 (2000); Hoffman v. County of Greenville, 242 S.C. 34, 129 S.E.2d 757 (1963)).

"Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999); Rule 56(c), SCRCP. See also Bruce v. Durney, 341 S.C. 563, 534 S.E.2d 720 (Ct. App. 2000).

"All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant." Bayle v. SCDOT, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (S.C. Ct. App. 2001). "Even when there is no dispute as to evidentiary facts, but only as

to the conclusions or inferences to be drawn from them, summary judgment should be denied.”

Id. (citing Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000)).

ARGUMENT

I. BECAUSE THERE IS NO EVIDENCE THAT PLAINTIFF OR PLAINTIFF'S DECEDENT WERE COMPARATIVELY NEGLIGENT SUMMARY JUDGMENT SHOULD BE GRANTED IN PLAINTIFF'S FAVOR AS TO THE DEFENSE OF COMPARATIVE NEGLIGENCE.

Defendants' Third Defense alleges that Plaintiff's losses “were due to and caused by the sole negligence, gross negligence, willfulness, wantonness, carelessness, and recklessness of the Plaintiff.”

“Although the issue of a plaintiff's own comparative negligence is ordinarily a question of fact for the jury, where the evidence presented yields only one conclusion concerning liability, the trial court may determine the issue as a matter of law.” Rivera v. Newton, 401 S.C. 402, 409, 737 S.E.2d 193, 197 (Ct. App. 2012)(citing Bloom v. Ravoira, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000) (explaining comparative negligence is ordinarily a question of fact for the jury); Fairchild v. S.C. Dep't of Transp., 385 S.C. 344, 353, 683 S.E.2d 818, 823 (Ct. App.2009) (“When evidence presented at trial yields only one conclusion concerning liability, the trial court may properly grant a motion for directed verdict.”), *aff'd*, 398 S.C. 90, 727 S.E.2d 407 (2012).

Indirect evidence of plaintiff/decedent's seat belt use or non-use is not admissible on the issue of comparative negligence. S.C. Code Ann. § 56-5-6540(C); Clark v. Cantrell, 332 S.C. 433, 451, 504 S.E.2d 605, 614-15 (Ct. App.1998) (holding indirect evidence that plaintiff/decedent was not wearing a seatbelt was not inadmissible, but the court correctly instructed the jury it should not consider the seatbelt evidence in its deliberations), *aff'd as modified by* 339 S.C. 369, 529 S.E.2d 528 (2000).

As stated above, Plaintiff served discovery requests specifically asking for the facts, witnesses, and evidence supporting a comparative negligence defense. As of the date of the filing of this memorandum, Defendants have not identified a single witness, fact, document, or other piece of evidence to show that the Plaintiff or Mrs. Concetta Fischetti were in any way negligent.

Both Plaintiff and his mother were passengers in an automobile. Neither was driving at the time of the wreck and there is no evidence at either Plaintiff or his mother contributed to the cause of the collision. Plaintiff's motion should therefore be granted as to Defendants' Third Defense (Comparative Negligence).

II. BECAUSE THERE IS NO EVIDENCE THAT DEFENDANTS FACED A SUDDEN EMERGENCY, SUMMARY JUDGMENT SHOULD BE GRANTED IN PLAINTIFF'S FAVOR AS TO THE DEFENDANTS' FOURTH DEFENSE.

Defendants' Fourth Defense alleges that "the Plaintiff's injuries or losses were the result of and reaction to a sudden emergency over which Defendants had no control, and therefore, Plaintiff's action is barred."

The doctrine of sudden emergency requires 1) a lack of negligence on the part of the Defendant, and 2) the defendant's reasonable choice of one of two choices of action once confronted with such an emergency.

"Where a motorist is suddenly placed in an emergency situation, *through no fault of his own*, and is compelled to act instantly to avoid a collision, he is not negligent if he makes a choice that a person of ordinary judgment might make if placed in the same emergency situation." Estate of Haley ex rel Haley v. Brown, 634 S.E.2d 62, n. 4 (S.C. Ct. App. 2006) (quoting Singletary v. S.C. Dept. of Education, 316 S.C. 153, 157, 447 S.E.2d 231, 233 (Ct. App. 1994) (emphasis added). The sudden emergency doctrine "does not apply when a party's own

negligence creates the very emergency in which he finds himself." Estate of Haley, 634 S.E.2d at 73 (Anderson, J., dissenting) (citing Clark v. Cantrell, 339 S.C. 369, 392, 529 S.E.2d 528, 540 (2000)); Clark, 339 S.C. at ___, 529 S.E.2d at ___ (Holding that the defendant's "allegedly excessive speed created the emergency. Accordingly, the Court of Appeals correctly affirmed the trial judge's refusal to instruct the jury on the sudden emergency doctrine.").

For the sudden emergency doctrine to apply, the defendant must make a choice of action once confronted with the sudden emergency not of his making. If granted the protection of sudden emergency, the defendant "is not guilty of negligence if he makes such a choice as a person of ordinary prudence placed in a like position might make, even though he did not make the wisest choice." Clark, 339 S.C. at ___, 529 S.E.2d at ___ (quoting Still v. Blake, 255 S.C. 95, 105, 177 S.E.2d 469, 474 (1970)). Therefore, an essential element is the defendant's choice of action between two possible alternatives.

Although the parties dispute the manner in which the wreck occurred neither of the potential versions contains a sudden emergency. The wreck either happened one of two ways: 1) Ceballos was traveling entirely within his own lane of travel and Jennifer Fischetti ran off the side of the road because of her own negligence and caused the wreck; or, 2) Ceballos, driving while fatigued and over his hours of service limits, made an improper lane departure, ran Jennifer Fischetti off the road, and caused the collision. Neither of those fits the elements of a sudden emergency. Either Ceballos was negligent or Jennifer Fischetti was negligent, but there is no emergency.

Second, even if Ceballos was free of negligence, he did not make a choice of action even if confronted with a sudden emergency. Through his own testimony Ceballos has admitted that he did not make any kind of choice of action, as the sudden emergency doctrine requires:

Q: Tell me in your own words what happened in the wreck.

A: I'm driving normally in my right lane. And all of a sudden I felt the truck – a car hitting my truck. I am driving and all of a sudden I feel a boom.

(Ex. 9, Ceballos Dep. 71:15-19).

Q: If I'm hearing you – I'm just making sure we're clear – is that you didn't do anything – according to your testimony, you didn't do anything other than driving down the road until after an impact occurred; is that a true statement?

A: As soon as I felt impact, I parked to the right on the shoulder.

Q: But it wasn't the situation that – you didn't see – glance in your mirror and see their van and then in response you didn't slam on your brakes or swerve to the right or take any action before the impact occurred; is that right?

A: Automatically, after the impact, I braked the vehicle.

(Ex. 15, Ceballos Dep. 78:22-79:10).

~~The sudden emergency doctrine requires a choice of action when confronted with an~~
emergency not of one's own making. It is the choice of action, judged in light of the presence of the emergency, that is given protection. Here, Ceballos admits that he made no choice of action. He did not choose between one of two courses of action; in fact, he testified he made no decisions and took no actions until after the impact.

Because either the Defendant Ceballos is not free of negligence, or if faced with an emergency he made no choice of action, the sudden emergency defense is inapplicable. Therefore, summary judgment should be granted in Plaintiff's favor as to Defendants' Fourth Defense.

III. BECAUSE ASSUMPTION OF THE RISK IS NO LONGER A COMPLETE BAR TO RECOVERY, SUMMARY JUDGMENT SHOULD BE GRANTED IN PLAINTIFF'S FAVOR AS TO DEFENDANTS' FIFTH DEFENSE.

Defendants' Fifth Defense alleges that "Plaintiff knew of the probable risk of injury or harm resulting from Plaintiff's actions, and therefore, the Defendants would plead the doctrine of assumption of the risk as a complete bar to this action." As with all other affirmative defenses, Defendants have not provided any facts, witnesses, or other evidence to support this defense.

Defendants' own pleadings seek an absolute defense to Plaintiff's claims; however, assumption of the risk has been abolished as an absolute defense. With South Carolina's adoption of comparative negligence, "a plaintiff's conduct in assuming a risk can be compared with the defendants' negligence" but assumption of the risk as an absolute defense has been abolished. Davenport v. Cotton Hope Plantation Horizontal Property Regime, 333 S.C. 71, 508 S.E.2d 565 (1998). "In the absence of any fact or circumstance indicating the driver is

incompetent or careless, an occupant of a vehicle is not required to anticipate negligence on the part of the driver." Thompson v. Michael, 315 S.C. 268, 271, 433 S.E.2d 853, 854 (1993).

Because Defendants have pleaded assumption of the risk as a complete bar to Plaintiff's claims and that defense has been abolished, summary judgment should be granted in Plaintiff's favor as to Defendants' Fifth Defense.

IV. BECAUSE DEFENDANTS HAVE OFFERED NO EVIDENCE OF AN UNAVOIDABLE ACCIDENT, SUMMARY JUDGMENT SHOULD BE GRANTED IN PLAINTIFF'S FAVOR AS TO DEFENDANTS' SIXTH DEFENSE.

Defendants' Sixth Defense alleges Plaintiff's injuries were "rather due to and caused by an unavoidable accident, thereby barring any claim whatsoever."

The defense of unavoidable accident is not applicable if either party's negligence contributed to the accident. Reid v. Swindler, 249 S.C. 483, 494-5, 154 S.E.2d 910, 916 (1967)

("a charge on unavoidable accident was 'inappropriate where the evidence shows clearly that the accident was caused or contributed to by the negligence of one or more of the parties.'").

An "unavoidable accident" is an inevitable accident. It has been defined as an accident which could not have been prevented by the exercise of due care by both parties under the circumstances. An unavoidable accident is present when an event occurs *which was not proximately caused by the negligence of any party to the event.*

* * *

An unavoidable accident is the happening of an event free from human agency, such as an act of God

Ralph King Anderson, Jr., *South Carolina Requests to Charge – Civil*, 2002, § 20-10 (emphasis added).

Once again, Defendants have not offered any proof, fact, document, witness, or other evidence to support this affirmative defense. However, as stated above, this wreck occurred one of two ways: either Ceballos was travelling within his lane and Jennifer Fischetti negligently ran off the side of the highway and caused the collision or a fatigued and over his hours of service Ceballos improperly merged into the Fischetti's lane and negligently ran them off the road. It is either Jennifer Fischetti's fault or Ceballos's fault, which precludes an unavoidable accident as the cause.

Since the Defendants have provided no evidence that the accident was an unavoidable Act of God, there is no genuine issue of material fact and the Plaintiff is entitled to judgment as a matter of law as to the Defendants' Sixth Defense.

V. BECAUSE VENUE IS PROPER IN FLORENCE COUNTY, SUMMARY JUDGMENT SHOULD BE GRANTED IN PLAINTIFF'S FAVOR AS TO DEFENDANTS' EIGHTH DEFENSE.

Defendants' Eighth Defense "pleads the defense of improper venue in the County of Florence, State of South Carolina."

A civil action against a non-resident individual defendant may be brought in the county "in which the most substantial part of the alleged act or omission giving rise to the cause of action occurred." S.C. Code Ann. § 15-7-30(D)(1). An action against a foreign corporation may be brought in the county in which "the most substantial part of the alleged act or omission giving rise to the cause of action occurred." S.C. Code Ann. § 15-7-30(F)(1). Actions against multiple defendants may be brought in any county where it may be brought against any one of them. S.C. Code Ann. § 15-7-30(B).

As reflected in the MAIT Investigative Report and TR-310, the wreck that is the subject of this litigation occurred in Florence County. (Ex's 16 and 8).

Plaintiff brought this action in the county which the most substantial part of the acts or omissions giving rise to the wreck occurred; therefore, venue is appropriate on Florence County. Because there is no genuine issue of material fact related to the propriety of venue in Florence

County, summary judgment should be granted in Plaintiff's favor as to Defendants' Eighth Defense.

VI. BECAUSE PLAINTIFF HAS NOT WAIVED HIS CLAIMS AND IS NOT ESTOPPED, SUMMARY JUDGMENT SHOULD BE GRANTED IN PLAINTIFF'S FAVOR AS TO DEFENDANTS' NINTH DEFENSE.

Defendants' Ninth Defense alleges that "Plaintiff's Complaint is barred by the doctrine of waiver of estoppel." Once again, Plaintiff has requested that the Defendants produce some facts, witnesses, or other evidence to support this defense. Defendants have produced nothing to support this defense. Plaintiff has not waived his claims and is not estopped from bringing this lawsuit. Therefore, summary judgment should be granted in Plaintiff's favor as to Defendants' Ninth Defense.

VI. BECAUSE PLAINTIFF FILED SUIT WELL BEFORE THE STATUTE OF LIMITATIONS, SUMMARY JUDGMENT SHOULD BE GRANTED IN PLAINTIFF'S FAVOR AS TO DEFENDANTS' TENTH DEFENSE.

Defendants' Tenth Defense alleges that "this action is barred by the applicable Statute of Limitations." Actions for "any injury to the person" must be brought within 3 years of the injury. S.C. Code Ann. § 15-3-530(5). Actions "for death by wrongful act" must be brought within 3 years of "the death of the person on account of whose death the action is brought. S.C. Code Ann. § 15-3-530(6). An action "is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing." S.C. Code Ann. § 15-3-20(B).

The wreck that is the subject of this litigation occurred on October 9, 2012. (Ex's 16 and 8). Concetta Fischetti died on October 17, 2012. (Ex. 17). Plaintiff filed the Summons and Complaint on September 12, 2013, and served all parties within 120 days. Therefore, the action

was commenced on September 12, 2013, well within any applicable statute of limitations.

Because Plaintiff's action was commenced within the applicable statute of limitations, summary judgment should be granted in Plaintiff's favor as to Defendants' Tenth Defense.

VII. BECAUSE DEFENDANTS HAVE PRODUCED NO EVIDENCE OF SPOILIATION, SUMMARY JUDGMENT SHOULD BE GRANTED IN PLAINTIFF'S FAVOR AS TO DEFENDANTS' ELEVENTH DEFENSE.

Defendants' Eleventh Defense alleges that "Plaintiff's Complaint is barred by the doctrine of spoliation." Spoliation may "allow a defendant to exculpate itself from liability because the plaintiff has barred it from obtaining evidence." *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 714 S.E.2d 537 (2011). Here, Defendants have not identified or produced any allegations that Plaintiff has actually spoliated critical evidence.

Plaintiff's interrogatories ask the Defendants to provide the witnesses, and evidence supporting their affirmative defenses. To date, Defendants have not provided any witnesses or evidence to support a spoliation defense against the Plaintiff. Therefore, no genuine issues of material fact exist with respect to Defendants' Eleventh Defense and summary judgment should be granted in Plaintiff's favor.

CONCLUSION

Plaintiff respectfully requests an Order, consistent with the contents of this Memorandum granting summary judgment in Plaintiff's favor as to Defendants' Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Defenses.

CHAPPELL, SMITH & ARDEN, P.A.

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Attorney for Plaintiffs

June 11, 2014

Friday, October 5, 2012	6:29:17 PM	25.86472	-80.32652	0	0	Parked, Ignition Off	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Friday, October 5, 2012	8:29:17 PM	25.86467	-80.32651	0	0	Parked, Ignition Off	9976 NW 79th Ave	Hialeah Gardens	FL	33016	US
Friday, October 5, 2012	10:29:22 PM	25.86472	-80.32653	0	0	Parked, Ignition Off	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	12:29:23 AM	25.86468	-80.32647	0	250	Parked, Ignition Off	9976 NW 79th Ave	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	2:29:42 AM	25.86472	-80.32647	0	147	Parked, Ignition Off	9980 NW 79th Ave	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	4:30:07 AM	25.86476	-80.32646	0	295	Parked, Ignition Off	9984 NW 79th Ave	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	6:30:28 AM	25.86475	-80.32648	0	0	Parked, Ignition Off	9982 NW 79th Ave	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	8:31:23 AM	25.86473	-80.32652	0	0	Parked, Ignition Off	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	10:32:58 AM	25.86474	-80.32654	0	156	Engine Stalled	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	12:33:53 PM	25.86474	-80.32655	0	0	Ignition Ignition On	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	2:34:33 PM	25.86476	-80.32654	0	0	Ignition Ignition On	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	4:34:03 AM	25.86476	-80.3265	0	0	Ignition Ignition On	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	6:34:33 AM	25.86475	-80.3265	0	0	Engine Stalled	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	8:34:33 AM	25.86475	-80.3265	0	0	Parked, Ignition Off	9980 NW 79th Ave	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	10:34:33 AM	25.86475	-80.3265	0	0	Parked, Ignition Off	9982 NW 79th Ave	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	12:44:34 PM	25.86474	-80.32646	0	0	Parked, Ignition Off	9984 NW 79th Ave	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	2:49:28 PM	25.86472	-80.32649	0	279	Parked, Ignition Off	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	4:49:33 PM	25.86463	-80.31631	0	109	Parked, Ignition Off	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	6:49:33 PM	25.86474	-80.32645	0	0	Parked, Ignition Off	9982 NW 79th Ave	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	8:49:38 PM	25.86471	-80.3265	0	0	Parked, Ignition Off	9980 NW 79th Ave	Hialeah Gardens	FL	33016	US
Saturday, October 6, 2012	10:49:38 PM	25.86472	-80.32647	0	0	Parked, Ignition Off	9984 NW 79th Ave	Hialeah Gardens	FL	33016	US
Sunday, October 7, 2012	2:49:45 AM	25.86474	-80.32646	0	0	Parked, Ignition Off	9982 NW 79th Ave	Hialeah Gardens	FL	33016	US
Sunday, October 7, 2012	4:49:45 AM	25.86476	-80.32647	0	0	Parked, Ignition Off	9984 NW 79th Ave	Hialeah Gardens	FL	33016	US
Sunday, October 7, 2012	6:49:50 AM	25.86474	-80.32645	0	0	Parked, Ignition Off	9982 NW 79th Ave	Hialeah Gardens	FL	33016	US
Sunday, October 7, 2012	8:49:50 AM	25.86476	-80.32644	0	0	Parked, Ignition Off	9984 NW 79th Ave	Hialeah Gardens	FL	33016	US
Sunday, October 7, 2012	10:50:15 AM	25.86475	-80.32651	0	239	Parked, Ignition Off	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Sunday, October 7, 2012	12:50:20 PM	25.8647	-80.32649	0	2	Parked, Ignition Off	9978 NW 79th Ave	Hialeah Gardens	FL	33016	US
Sunday, October 7, 2012	2:50:20 PM	25.86474	-80.32652	1	261	Parked, Ignition Off	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Sunday, October 7, 2012	4:50:25 PM	25.86478	-80.32646	0	108	Parked, Ignition Off	9986 NW 79th Ave	Hialeah Gardens	FL	33016	US
Sunday, October 7, 2012	6:50:25 PM	25.86473	-80.32646	0	0	Parked, Ignition Off	9982 NW 79th Ave	Hialeah Gardens	FL	33016	US
Sunday, October 7, 2012	8:50:25 PM	25.86472	-80.3265	0	13	Parked, Ignition Off	9980 NW 79th Ave	Hialeah Gardens	FL	33016	US
Sunday, October 7, 2012	10:50:30 PM	25.86477	-80.32651	0	17	Parked, Ignition Off	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Monday, October 8, 2012	12:50:55 AM	25.86472	-80.3265	0	0	Parked, Ignition Off	9980 NW 79th Ave	Hialeah Gardens	FL	33016	US
Monday, October 8, 2012	1:51:53 AM	25.86473	-80.32646	0	0	Parked, Ignition Off	9982 NW 79th Ave	Hialeah Gardens	FL	33016	US
Monday, October 8, 2012	4:51:10 AM	25.86473	-80.32646	0	0	Parked, Ignition Off	9982 NW 79th Ave	Hialeah Gardens	FL	33016	US
Monday, October 8, 2012	6:51:24 AM	25.86473	-80.32646	0	0	Parked, Ignition Off	9980 NW 79th Ave	Hialeah Gardens	FL	33016	US
Monday, October 8, 2012	8:51:15 AM	25.86473	-80.32646	0	0	Parked, Ignition Off	9980 NW 79th Ave	Hialeah Gardens	FL	33016	US
Monday, October 8, 2012	10:51:10 AM	25.86477	-80.32646	0	0	Parked, Ignition Off	9984 NW 79th Ave	Hialeah Gardens	FL	33016	US
Monday, October 8, 2012	1:51:45 AM	25.86476	-80.32647	0	0	Engine Stalled	8000 NW 98th Ln	Hialeah Gardens	FL	33016	US
Monday, October 8, 2012	3:52:23 PM	25.86809	-80.33705	14	342	Driving, Heading Change	8007 NW 103rd St	Hialeah Gardens	FL	33016	US
Monday, October 8, 2012	5:53:25 PM	25.86919	-80.33107	23	257	Driving, Heading Change	8005 NW 103rd St	Hialeah Gardens	FL	33016	US
Monday, October 8, 2012	7:04:36 PM	25.86822	-80.33917	24	239	Driving, Heading Change	8647 NW 103rd St	Hialeah Gardens	FL	33016	US
Monday, October 8, 2012	9:05:30 PM	25.86915	-80.34269	22	300	Driving, Normal Report	W Okeechobee Rd	Hialeah Gardens	FL	33018	US
Monday, October 8, 2012	11:06:50 PM	25.86926	-80.34381	23	243	Driving, Heading Change	10624 W Okeechobee Rd	Hialeah Gardens	FL	33018	US
Monday, October 8, 2012	12:09:43 PM	25.87772	-80.33538	5	298	Driving, Heading Change	12482 NW South Ave Dr	Medley	FL	33178	US
Monday, October 8, 2012	1:15:45 PM	25.87793	-80.35601	0	0	Idle With Ignition On	11512 NW South Ave Dr	Medley	FL	33178	US
Monday, October 8, 2012	3:32:46 PM	25.87882	-80.35778	5	19	Driving, Heading Change	11553 NW South Ave Dr	Medley	FL	33178	US
Monday, October 8, 2012	5:43:26 PM	25.88074	-80.35746	27	310	Driving, Normal Report	11893 W Okeechobee Rd	Hialeah Gardens	FL	33018	US
Monday, October 8, 2012	7:45:31 PM	25.88602	-80.379	9	264	Driving, Heading Change	13776 W Okeechobee Rd	Hialeah Gardens	FL	33018	US
Monday, October 8, 2012	10:06:06 PM	25.89426	-80.3808	12	266	Driving, Heading Change	12523 NW 113th Ct	Medley	FL	33178	US
Monday, October 8, 2012	12:05:23 PM	25.89511	-80.38203	10	347	Driving, Heading Change	7651 NW 113th Ct	Medley	FL	33178	US
Monday, October 8, 2012	12:31:55 PM	25.89616	-80.38166	0	0	Idle With Ignition On	NW 128th St	Medley	FL	33178	US
Monday, October 8, 2012	12:42:08 PM	25.8961	-80.38133	0	0	Idle With Ignition On	11616 NW 128th St	Medley	FL	33178	US
Monday, October 8, 2012	12:47:40 PM	25.89637	-80.38161	0	0	Idle With Ignition On	7532 NW 113th Ct	Medley	FL	33178	US
Monday, October 8, 2012	12:56:03 PM	25.89502	-80.38163	171	285	Driving, Heading Change	11320 NW 113th Ct	Medley	FL	33178	US
Monday, October 8, 2012	12:56:43 PM	25.89413	-80.38074	16	285	Driving, Heading Change	11159 NW 113th St	Medley	FL	33178	US
Monday, October 8, 2012	12:57:31 PM	25.89583	-80.38101	5	106	Driving, Heading Change	13670 W Okeechobee Rd	Hialeah Gardens	FL	33018	US
Monday, October 8, 2012	1:59:36 PM	25.89726	-80.38722	44	112	Driving, Normal Report	12652 W Okeechobee Rd	Hialeah Gardens	FL	33018	US



SeaTruck541

Monday, October 8, 2012	4:33:06 PM	27.44477	-80.39262	63	338
Monday, October 8, 2012	4:33:46 PM	27.45337	-80.39886	63	320
Monday, October 8, 2012	4:39:16 PM	27.51951	-80.44948	62	334
Monday, October 8, 2012	4:45:21 PM	27.59888	-80.50566	64	335
Monday, October 8, 2012	4:46:51 PM	27.61997	-80.51532	64	356
Monday, October 8, 2012	4:51:31 PM	27.68861	-80.53603	64	344
Monday, October 8, 2012	4:57:36 PM	27.78137	-80.5501	64	3
Monday, October 8, 2012	5:11:51 PM	27.86262	-80.59085	64	338
Monday, October 8, 2012	5:11:51 PM	27.95513	-80.60994	64	347
Monday, October 8, 2012	5:16:56 PM	27.99859	-80.62982	9	117
Monday, October 8, 2012	5:18:16 PM	27.99848	-80.6332	7	210
Monday, October 8, 2012	5:19:01 PM	27.99781	-80.63214	8	49
Monday, October 8, 2012	5:24:26 PM	27.99817	-80.63238	0	0
Monday, October 8, 2012	5:34:16 PM	27.99869	-80.6297	10	18
Monday, October 8, 2012	5:34:31 PM	27.99933	-80.6302	17	317
Monday, October 8, 2012	5:35:41 PM	28.00713	-80.63642	47	327
Monday, October 8, 2012	5:41:51 PM	28.0741	-80.70558	64	348
Monday, October 8, 2012	5:47:56 PM	28.1681	-80.70576	64	360
Monday, October 8, 2012	5:54:01 PM	28.26025	-80.72705	64	346
Monday, October 8, 2012	6:00:11 PM	28.33939	-80.78105	64	330
Monday, October 8, 2012	6:06:16 PM	28.42524	-80.82023	63	360
Monday, October 8, 2012	6:12:21 PM	28.51239	-80.84711	64	324
Monday, October 8, 2012	6:18:31 PM	28.60561	-80.85115	63	360
Monday, October 8, 2012	6:24:36 PM	28.69532	-80.88155	64	340
Monday, October 8, 2012	6:30:41 PM	28.78585	-80.89782	64	346
Monday, October 8, 2012	6:36:46 PM	28.87751	-80.92183	64	341
Monday, October 8, 2012	6:42:56 PM	28.96637	-80.95758	64	337
Monday, October 8, 2012	6:49:01 PM	29.04925	-81.00685	64	355
Monday, October 8, 2012	6:55:11 PM	29.12793	-81.05645	64	304
Monday, October 8, 2012	7:01:16 PM	29.21253	-81.10039	64	343
Monday, October 8, 2012	7:07:36 PM	29.30259	-81.13143	63	351
Monday, October 8, 2012	7:13:26 PM	29.39377	-81.15063	63	339
Monday, October 8, 2012	7:19:36 PM	29.4825	-81.1881	63	341
Monday, October 8, 2012	7:25:41 PM	29.56872	-81.22823	64	330
Monday, October 8, 2012	7:31:46 PM	29.65255	-81.2766	64	335
Monday, October 8, 2012	7:34:11 PM	29.65255	-81.2766	64	335
Monday, October 8, 2012	7:34:16 PM	29.66206	-81.2866	61	302
Monday, October 8, 2012	7:35:31 PM	29.69051	-81.32329	63	342
Monday, October 8, 2012	7:37:56 PM	29.72545	-81.33735	64	340
Monday, October 8, 2012	7:44:01 PM	29.81536	-81.37398	64	336
Monday, October 8, 2012	7:51:31 PM	29.90609	-81.40836	65	345
Monday, October 8, 2012	7:56:16 PM	29.98785	-81.46268	65	332
Monday, October 8, 2012	8:02:21 PM	30.07644	-81.49842	65	4
Monday, October 8, 2012	8:03:21 PM	30.08976	-81.49708	26	25
Monday, October 8, 2012	8:03:46 PM	30.09051	-81.49575	13	5
Monday, October 8, 2012	8:55:46 PM	30.09134	-81.49557	0	0
Monday, October 8, 2012	8:55:46 PM	30.09137	-81.49558	0	218
Monday, October 8, 2012	8:55:56 PM	30.09134	-81.49556	0	0
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Tuesday, October 9, 2012	2:53:06 AM	30.09139	-81.49557	0	0
Tuesday, October 9, 2012	2:53:06 AM	30.09128	-81.49553	0	0
Tuesday, October 9, 2012	3:00:11 AM	30.09134	-81.49551	0	0
Tuesday, October 9, 2012	5:57:56 AM	30.09137	-81.49553	0	0
Tuesday, October 9, 2012	6:23:26 AM	30.09134	-81.49553	1	0
Tuesday, October 9, 2012	6:23:26 AM	30.09132	-81.49553	0	0
Tuesday, October 9, 2012	6:23:26 AM	30.09276	-81.49574	9	299

Driving, Normal Report	I-95	FL	US		
Driving, Heading Change	I-95	FL	US		
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	I-95	FL	US		
Driving, Heading Change	I-95	FL	US		
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	I-95	Fellsmere	FL	US	
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	I-95	Grant-Valkaria	FL	US	
Driving, Heading Change	Malabar Rd NE	Palm Bay	FL	US	
Driving, Heading Change	100 Interstate Way NE	Palm Bay	FL	32907	US
Driving, Heading Change	101 Interstate Way NE	Palm Bay	FL	32907	US
Idle with Ignition On	101 Interstate Way NE	Palm Bay	FL	32907	US
Driving, Heading Change	Malabar Rd NE	Palm Bay	FL	32907	US
Driving, Normal Report	134 Ring Ave NE	Palm Bay	FL	US	
Driving, Normal Report	I-95	Palm Bay	FL	US	
Driving, Normal Report	I-95	West Melbourne	FL	US	
Driving, Normal Report	I-95	Melbourne	FL	US	
Driving, Normal Report	I-95	Viera East	FL	US	
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	4788 Citrus Blvd	FL	US		
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	I-95	Titusville	FL	US	
Driving, Normal Report	I-95	Mims	FL	US	
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	I-95	Edgewater	FL	US	
Driving, Normal Report	I-95	Port Orange	FL	US	
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	I-95	Daytona Beach	FL	US	
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	I-95	Palm Coast	FL	US	
Driving, Normal Report	I-95	Palm Coast	FL	US	
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	I-95	FL	US		
Driving, Heading Change	I-95	FL	US		
Driving, Heading Change	I-95	FL	US		
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	I-95	FL	US		
Driving, Normal Report	I-95	World Golf Village	FL	US	
Driving, Normal Report	I-95	FL	US		
Driving, Heading Change	I-95	FL	US		
Driving, Heading Change	I-95	FL	US		
Idle with Ignition On	FL	FL	US		
Idle with Ignition On	FL	FL	US		
Idle with Ignition On	FL	FL	US		
Engine Turned Off	FL	FL	US		
Parked, Ignition Off	FL	FL	US		
Parked, Ignition Off	FL	FL	US		
Parked, Ignition Off	FL	FL	US		
Engine Started	FL	FL	US		
Idle with Ignition On	FL	FL	US		
Driving, Heading Change	FL	FL	US		



SEATRUCK COMPANY POLICIES ON LOG VIOLATIONS

Failure to complete the Daily Log, failure to preserve a Daily Log, or making false reports in connection with the Daily Log shall make the driver and/or the Company liable to prosecution under Federal Regulations.

Every driver can avoid the enforcement exposure of the above requirements by preparing the daily Log and keeping it current. Do not wait until the end of the day, or worse, until the end of the trip to prepare your Log.

1. Log Missing- There must be a log sheet for each day. Exception: two or more consecutive off duty days may be on one sheet.
2. Date Missing/Duplicate Logs-Each log sheet must be dated and there must be only one for each day.
3. Miles Driven Missing- The driver who prepares the log must insert the actual miles he drove in that 24-hour period.
4. Name of Carrier Missing/In Error-Use the full company name and the full city name and state abbreviation.
5. Vehicle Numbers Missing-Show the unit numbers of all vehicles operated in the 24-hour period. If unit numbers are not available, the state and license number must be used.
6. Driver's Signature/Employee Number Missing- The driver must sign his legal name and write his employee number next to it.
7. Co-Driver Name Missing- The driver inserts at least the first initial and last name of the co-driver. If no co-driver, put a line or N/A.
8. Home Terminal Address Missing/In Error- The Company requires the full city name and state abbreviation for the normal work reporting location. If you are off duty for that day you still must put the city and state location on your log sheet.
9. Hours Missing/In Error-Record the total hours at the end of each line of the graph. They must total 24 hours. Enter 0 if you did not log any time on that line.
10. Ten Hour Violation-A driver, after 8 consecutive hours off duty may not drive more than 10 hours without taking another 8 hour break.
11. Missing Shipping Document/In Error-Show a shipping document number (trip number) for each trip in the 24-hour period.
12. Over Maximum Average MPH-Based on a pre-selected average-currently 65-MPH.
13. Changes In Duty Status/In Error-Use the full city name and state abbreviation for each duty status change. If not in a named city, town or village, use the marker and highway number or the name of the service/plaza area and the highway number, or the names of the nearest two intersecting roadways. In all cases use the full city name and state abbreviation of the nearest city.
14. Start Stop Locations not Same-The starting location on one log must be the same as the ending location on the previous log.
15. Fifteen Hour Violation-A driver, after 8 consecutive hours off duty, may not drive after being on duty for 15 hours without another 8-hour break.

16. Corrections- The driver must initial all corrections on a log.
17. Violation of the 70-Hour Rule-A driver cannot drive after being on duty for 70 hours in any 8 consecutive day period.
18. Trip Lease Incorrect-Use the full carrier name and Full City name and state abbreviation of the main office of the trip lease carrier. The beginning and ending times of the lease must be shown.
19. Log Falsification- The times and locations on the log must agree with supporting documentation such as motel receipts, fuel receipts, state vehicle inspections reports, accident reports, and dispatch sign-in sheets. If you fuel your truck you must show this time as "ON DUTY- NOT DRIVING". If someone else fuels your truck, you show that time as OFF DUTY but you are required to make notations in the "Remarks" section of your log to show fuel stops.

All of the above are routinely checked for dates and times to further verify the accuracy of the Log. It is vital that these records all agree with one another.
20. Pre- Trip Inspection- The driver must log 15 minutes after coming off an 8-hour break. If you take two 8-hour breaks in a 24-hour period you do not have to show 15 minutes on the second break, but you must draw a line on the bottom to show a PTI.
21. Graph Incomplete/In Error- All time on the graph must be completed. Overlapping time is not allowed.
- ~~22. No-Driving-Time for Miles Driven- There must be time shown on Line 3 when driving miles are shown.~~
23. Different Logs for Same Day-Each log graph or day can carry only one set of information.
24. Total Team Mileage- Team drivers must show same miles in "total mileage today" and total miles driving for each driver must add up to "total mileage today" amount.
25. Team Conflict- Team drivers cannot show driving at the same time and cannot be off duty while the other is driving. Exception to the second part: In home terminal one driver can show driving time associated with loading while other driver is off duty.
26. Recaps-Do your recap before driving to show how many hours you have available to work. Each driver must do a recap daily unless off duty.
27. Loading Yard-Each driver must show "on duty" driving time to the loading yard.
28. Post-Trip Inspection-All Drivers must show at least 15 minutes PTI and must fill out a vehicle inspection report unless the driver is off duty for that day.
29. Abbreviations-All city names must be spelled out on your logs-they cannot be abbreviated; only the state may be abbreviated.
30. Legibility-All logs must be legible and neat.

The hours of Service Law is reasonable.... It is designated to protect the driver and the public.
Your Log must be a perfect reflection of your daily activities.

Prepare your Log as if your profession, your job and your very life depended on it.....
It just may.



DRIVER'S DAILY LOG

(24 HOURS)

(Month) (Day) (Year)

Original - File at home terminal
Duplicate - Driver retains in his/her possession for eight days

RECAP
Complete at
end of workday.

Total Miles Driving Today . Total Mileage Today

Name of Carrier or Carriers

Main Office Address

Home Terminal Address

I certify these entries are true and correct:

Truck/Tractor and Trailer Numbers or
License Plate(s) / State (show each unit)

Driver's Full Signature

Co-Driver's Name

MID-NIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11 TOTAL HOURS

1. OFF DUTY

2. SLEEPER
BERTH

3. DRIVING

4. ON DUTY
(NOT DRIVING)

REMARKS

SHIPPING
DOCUMENTS:

B/L or Manifest No.
or

Shipper & Commodity

Enter name of place you reported and where released from work and when and where each change of duty occurred.

From:

To:

USE TIME STANDARD AT HOME TERMINAL

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613-MP (Rev. 8/05) 8524

On-duty hours
today. (Total
lines 3 & 4)

**70 Hour/
8 Day
Drivers**

A. Total hours on
duty last 7 days,
including today.

B. Total hours
available
tomorrow.
70 hr. minus A.*

C. Total hours on
duty last 8 days,
including today.

**60 Hour/
7 Day
Drivers**

A. Total hours on
duty last 6 days,
including today.

B. Total hours
available
tomorrow.
60 hr. minus A.*

C. Total hours on
duty last 7 days,
including today.

*If you took
34 consecutive
hours off duty,
you have 60/70
hours available
again.





Ciiente
Carlos I Ceballos

No. de Cuenta 542240622
Ciclo Facturado Sep 25- Oct 24
Fecha Fact Oct 28, 2012

A11 de 27

Detalle de Llamadas

(786) 256-9599 (Continuación)

Detalle de Llamadas de Voz

Fecha	Hora	Número Teléfono	Destino Llamada	Tipo Tarí.	Minutos Usados	Cargos Totales
448						
449						
450						
451						
452						
453						
454						
455						
456						
457						
458						
459						
460						
461						
462						
463						
464						
465						
466						
467						
468						
469						
470						
471						
472						
473						
474						
475	10/07					
476	10/08 09:57 AM	305-455-4392	MIAMI, FL	AU	2:00	
477	10/08 11:01 AM	305-455-4392	Entrante	AU	1:00	
478	10/08 11:22 AM	305-507-4639	MIAMI, FL	AU	2:00	
479	10/08 11:24 AM	305-507-4639	MIAMI, FL	AU	9:00	
480	10/08 11:42 AM	305-507-4639	MIAMI, FL	AU	1:00	
481	10/08 11:42 AM	305-968-1440	MIAMI, FL	WC/AU	1:00	
482	10/08 11:48 AM	305-968-1440	Entrante	WC/AU	1:00	
483	10/08 12:01 PM	305-476-6100	MIAMI, FL	AU	2:00	
484	10/08 12:44 PM	305-455-4392	MIAMI, FL	AU	1:00	
485	10/08 02:12 PM	305-455-4392	Entrante	AU	2:00	
486	10/08 02:44 PM	305-455-4392	MIAMI, FL	AU	1:00	
487	10/08 02:45 PM	305-455-4392	MIAMI, FL	AU	1:00	
488	10/08 02:46 PM	305-968-1440	MIAMI, FL	WC/AU	1:00	
489	10/08 02:47 PM	786-314-4282	MIAMI, FL	WC/AU	1:00	
490	10/08 02:49 PM	786-314-4282	MIAMI, FL	WC/AU	12:00	
491	10/08 03:02 PM	786-314-4282	MIAMI, FL	WC/AU	1:00	
492	10/08 03:20 PM	305-968-1440	Entrante	WC/AU	26:00	

NS - Noche y Fin de Semana WC-Any Mobile, Anytime AU - Uso de Plan/Promocional LE - Llamada en Espera





Cliente
Carlos | Ceballos

No. de Cuenta 542240622
Ciclo Facturado Sep 25- Oct 24

Fecha Fact.
Oct 28, 2012

A12de 27

Detalle de Llamadas

(786) 256-9599 (Continuación)

Detalle de Llamadas de Voz

	Fecha	Hora	Número Teléfono	Destino Llamada	Tipo Tari.	Minutos Usados	Cargos Totales
493	10/08	04:09 PM	786-238-2728	Entrante	WCAU	5:00	
494	10/08	04:21 PM	786-238-2728	Entrante	WCAU	4:00	
495	10/08	04:27 PM	954-300-8478	FTLAUDERD, FL	WCAU	1:00	
496	10/08	04:58 PM	305-812-2551	MIAMI, FL	WCAU	3:00	
497	10/08	05:01 PM	305-968-1440	MIAMI, FL	WCAU	1:00	
498	10/08	05:16 PM	305-968-1440	Entrante	WCAU	3:00	
499	10/08	05:33 PM	954-300-8478	FTLAUDERD, FL	WCAU	1:00	
500	10/08	05:51 PM	786-365-1054	Entrante	WCAU	5:00	
501	10/08	06:00 PM	305-968-1440	MIAMI, FL	WCAU	3:00	
502	10/08	06:03 PM	786-379-8525	HOMESTEAD, FL	WCAU	1:00	
503	10/08	06:04 PM	786-399-7857	MIAMI, FL	WCAU	22:00	
504	10/08	06:26 PM	305-968-1440	MIAMI, FL	WCAU	2:00	
505	10/08	07:08 PM	305-986-5010	Entrante	NS/WCAU	9:00	
506	10/08	08:32 PM	305-986-5010	Entrante	NS/WCAU	9:00	
507	10/09						

WC-Any Mobile,Anytime AU - Uso de Plan/Promocional NS - Noche y Fin de Semana PA - Fuera de Red - Plan América Incl.
LE - Llamada en Espera

Page 1 of 5

Report Type: Detailed
Start: 10/09/2012
End:
Unit: 409 CARLOS CEBALLOS
Event: All Events



SeaTruck 093

Date	Event	Speed	Heading	Address	TD	DFL
10/09/12 02:55 AM	Parked, Ignition Off	00 mph	N/A	FL	00.00	00.00
10/09/12 04:58 AM	Parked, Ignition Off	00 mph	N/A	FL	00.00	00.00
10/09/12 06:10 AM	Engine Started	01 mph	N/A	FL	00.00	00.00
10/09/12 06:15 AM	Idle with Ignition On	00 mph	N/A	FL	00.00	00.00
10/09/12 06:20 AM	Driving, Heading Change	09 mph	North NW	FL	00.00	00.00
10/09/12 06:21 AM	Driving, Heading Change	15 mph	North NW	I-95FL	00.00	00.00
10/09/12 06:23 AM	Driving, Normal Report	54 mph	Northwest	I-95Jacksonville, FL	01.32	01.32
10/09/12 06:29 AM	Driving, Normal Report	51 mph	North	I-95Jacksonville, FL	07.12	05.80
10/09/12 06:29 AM	Driving, Heading Change	23 mph	Northeast	I-95Jacksonville, FL	07.38	00.76
10/09/12 06:30 AM	Driving, Heading Change	23 mph	South	Amues ApJacksonville, FL	07.30	00.00
10/09/12 06:30 AM	Driving, Heading Change	20 mph	Northwest	10203 Phillips HwyJacksonville, FL32256	07.38	00.00
10/09/12 06:33 AM	Driving, Heading Change	05 mph	West	9400 Phillips HwyJacksonville, FL32256	08.47	01.09
10/09/12 06:34 AM	Driving, Heading Change	07 mph	South SW	W Florida Mining BlvdJacksonville, FL	08.87	00.40
10/09/12 06:36 AM	Driving, Heading Change	19 mph	Southeast	5699 Florida Mining Blvd Jacksonville, FL32257	09.43	00.56
10/09/12 06:36 AM	Driving, Heading Change	11 mph	Northeast	5593 Florida Mining Blvd Jacksonville, FL32257	09.43	00.00
10/09/12 06:37 AM	Driving, Heading Change	09 mph	Northeast	10370 Florida Mining Blvd Jacksonville, FL32257	09.43	00.00
10/09/12 06:42 AM	Idle with Ignition On	01 mph	N/A	10388 Florida Mining Blvd Jacksonville, FL32257	09.43	00.00
10/09/12 06:50 AM	Engine Turned Off	00 mph	N/A	10380 Florida Mining Blvd Jacksonville, FL32257	09.43	00.00
10/09/12 07:52 AM	Engine Started	00 mph	N/A	10370 Florida Mining Blvd Jacksonville, FL32257	09.43	00.00
10/09/12 07:53 AM	Driving, Heading Change	10 mph	South	10366 Florida Mining Blvd Jacksonville, FL32257	09.43	00.00
10/09/12 07:55 AM	Engine Turned Off	00 mph	N/A	5507 Florida Mining Blvd Jacksonville, FL32257	09.43	00.00
10/09/12 07:59 AM	Engine Started	01 mph	N/A	5511 Florida Mining Blvd Jacksonville, FL32257	09.43	00.00
10/09/12 08:04 AM	Idle with Ignition On	00 mph	N/A	5509 Florida Mining Blvd Jacksonville, FL32257	09.43	00.00
10/09/12 08:14 AM	Driving, Heading Change	07 mph	South SW	5587 Florida Mining Blvd Jacksonville, FL32257	09.43	00.00
10/09/12 08:14 AM	Driving, Heading Change	21 mph	North NE	9415 Florida Mining Blvd Jacksonville, FL32257	09.43	00.00
10/09/12 08:15 AM	Driving, Heading Change	18 mph	Northwest	9497 Florida Mining Blvd Jacksonville, FL32257	09.43	00.00
10/09/12 08:15 AM	Driving, Normal Report	26 mph	Northwest	9555 Florida Mining Blvd Jacksonville, FL32257	09.43	00.00
10/09/12 08:16 AM	Driving, Heading Change	05 mph	North	5402 Shad RdJacksonville, FL32257	09.81	00.30
10/09/12 08:17 AM	Driving, Heading Change	07 mph	East	9404 Phillips HwyJacksonville, FL32256	09.81	00.00
10/09/12 08:19 AM	Driving, Heading Change	36 mph	South	I-95Jacksonville, FL	10.89	01.08
10/09/12 08:21 AM	Driving, Heading Change	55 mph	Southwest	I-29Jacksonville, FL	11.97	01.08
10/09/12 08:23 AM	Driving, Heading Change	61 mph	North NW	I-29Jacksonville, FL	14.65	02.68
10/09/12 08:24 AM	Driving, Normal Report	61 mph	North NW	I-29Jacksonville, FL	14.99	00.34
10/09/12 08:30 AM	Driving, Normal Report	58 mph	West	I-29Jacksonville, FL	20.92	05.93
10/09/12 08:33 AM	Driving, Heading Change	61 mph	Northwest	I-29Jacksonville, FL	24.08	01.16
10/09/12 08:36 AM	Driving, Normal Report	61 mph	North	I-29Jacksonville, FL	27.02	02.94
10/09/12 08:40 AM	Driving, Heading Change	63 mph	North	I-29Jacksonville, FL	31.33	04.31
10/09/12 08:42 AM	Driving, Normal Report	57 mph	North NE	I-29Jacksonville, FL	33.14	01.81
10/09/12 08:47 AM	Driving, Heading Change	60 mph	Northeast	I-29Jacksonville, FL	38.40	05.26
10/09/12 08:48 AM	Driving, Heading Change	32 mph	East	I-29Jacksonville, FL	38.69	00.78
10/09/12 08:40 AM	Driving, Heading Change	33 mph	South SW	8799 New Kings RdJacksonville, FL32219	38.60	00.00
10/09/12 08:54 AM	Driving, Normal Report	51 mph	North NW	11643 New Kings RdJacksonville, FL32219	41.62	02.94
10/09/12 09:00 AM	Driving, Normal Report	60 mph	Northwest	54024 US Hwy 1Nassau Village-Florida, FL	47.49	05.87
10/09/12 09:08 AM	Driving, Heading Change	25 mph	North NE	1501 Historical LnFL32011	51.02	03.53
10/09/12 09:12 AM	Driving, Heading Change	60 mph	North NW	US Hwy 1FL	54.07	01.05
10/09/12 09:13 AM	Driving, Normal Report	61 mph	Northwest	US Hwy 1FL	55.31	01.24
10/09/12 09:19 AM	Driving, Normal Report	37 mph	Northwest	US Hwy 1Hillbnd, FL	60.74	05.43
10/09/12 09:45 AM	Battery Backup (POWER RESTORED)	65 mph	North NW	US Hwy 1GA	81.68	20.94
10/09/12 10:08 AM	Driving, Heading Change	39 mph	Northwest	Jacksonville HwyWaycross, GA31503	103.88	22.20
10/09/12 10:10 AM	Driving, Heading Change	13 mph	South SW	Memorial DrWaycross, GA	104.51	00.63
10/09/12 10:13 AM	Driving, Heading Change	36 mph	North NW	595 Haines AveWaycross, GA	105.81	01.30
10/09/12 10:16 AM	Driving, Normal Report	27 mph	West	Francis StWaycross, GA	107.18	01.37
10/09/12 10:21 AM	Driving, Heading Change	65 mph	North NW	S Georgia PkwyGA	109.68	02.50
10/09/12 10:22 AM	Driving, Normal Report	65 mph	Northwest	S Georgia PkwyGA	111.46	01.70
10/09/12 10:23 AM	Driving, Heading Change	65 mph	North NW	S Georgia PkwyGA	111.90	00.44
10/09/12 10:28 AM	Driving, Heading Change	05 mph	South SW	3298 Ross LnGA	117.52	05.62
10/09/12 10:30 AM	Driving, Heading Change	09 mph	Northeast	Albany HwyGA	118.28	00.76
10/09/12 10:35 AM	Driving, Normal Report	57 mph	Northwest	Douglas HwyGA	122.10	03.82
10/09/12 10:41 AM	Driving, Normal Report	59 mph	Northwest	Douglas HwyGA31552	127.82	05.72
10/09/12 10:47 AM	Driving, Normal Report	57 mph	Northwest	10005 E Baker HwyGA	134.03	06.21
10/09/12 10:53 AM	Driving, Normal Report	54 mph	North NW	2168 Clyde Kilbnd RdGA31535	139.73	05.70
10/09/12 10:57 AM	Driving, Heading Change	12 mph	North NE	1081 E Baker HwyDouglas, GA31533	142.94	03.21
10/09/12 10:57 AM	Driving, Normal Report	13 mph	Northeast	1077 E Baker HwyDouglas, GA31533	142.94	00.00
10/09/12 10:59 AM	Driving, Heading Change	05 mph	North	198 Bowens Mill Rd SEDouglas, GA	143.42	00.48
10/09/12 11:00 AM	Driving, Heading Change	05 mph	Southwest	500 Lupo LnDouglas, GA	143.72	00.30
10/09/12 11:00 AM	Driving, Heading Change	08 mph	North NW	1601 Spivey StDouglas, GA31533	143.72	00.00
10/09/12 11:05 AM	Idle with Ignition On	02 mph	N/A	Lupo LnDouglas, GA	143.72	00.00
10/09/12 11:07 AM	Engine Turned Off	00 mph	N/A	Lupo LnDouglas, GA	143.72	00.00
10/09/12 11:40 AM	Engine Started	00 mph	N/A	Lupo LnDouglas, GA	143.72	00.00
10/09/12 11:40 AM	Engine Started	00 mph	N/A	Lupo LnDouglas, GA	143.72	00.00
10/09/12 11:45 AM	Idle with Ignition On	00 mph	N/A	Lupo LnDouglas, GA	143.72	00.00
10/09/12 11:56 AM	Driving, Heading Change	06 mph	North NE	196 Bowens Mill Rd SEDouglas, GA	144.02	00.30

10/09/12 11:57 AM	Driving, Heading Change	32 mph Northwest 138 Boyens Mill Rd SE Douglas, GA	144.28	00.26
10/09/12 11:57 AM	Driving, Normal Report	30 mph Northwest 124 Boyens Mill Rd SE Douglas, GA	144.28	00.00
10/09/12 12:00 PM	Driving, Heading Change	07 mph North 272 Westgreen Rd Douglas, GA 31533	144.28	00.00
10/09/12 12:00 PM	Driving, Normal Report	36 mph Northeast 456 Westgreen Rd Douglas, GA 31533	144.28	00.00
10/09/12 12:07 PM	Driving, Normal Report	50 mph East NE 5730 US Hwy 221 GA	149.39	05.11
10/09/12 12:13 PM	Driving, Normal Report	53 mph North US Hwy 221 GA	154.00	04.61
10/09/12 12:19 PM	Driving, Normal Report	56 mph North NE Broxton Rd GA	159.84	03.84
10/09/12 12:26 PM	Driving, Normal Report	56 mph North NE Douglas Hwy GA	165.50	03.66
10/09/12 12:32 PM	Driving, Normal Report	50 mph Northeast 301 S Tallahassee St Hazlehurst, GA 31539	171.19	03.69
10/09/12 12:33 PM	Driving, Heading Change	07 mph East NE 103 S Tallahassee St Hazlehurst, GA 31539	172.22	01.03
10/09/12 12:34 PM	Driving, Normal Report	14 mph Southeast 4 E Jefferson St Hazlehurst, GA 31539	172.22	00.00
10/09/12 12:34 PM	Driving, Heading Change	11 mph East 27 E Jefferson St Hazlehurst, GA 31539	172.22	00.00
10/09/12 12:37 PM	Driving, Heading Change	07 mph North 44 E Jarman St Hazlehurst, GA 31539	172.99	00.77
10/09/12 12:38 PM	Driving, Heading Change	23 mph North W Coffee St Hazlehurst, GA	172.99	00.00
10/09/12 12:41 PM	Driving, Heading Change	54 mph Northeast 494 Uvalde Hwy GA 31539	175.16	02.17
10/09/12 12:41 PM	Driving, Normal Report	53 mph Northeast 1100 Uvalde Hwy GA 31539	178.34	03.18
10/09/12 12:48 PM	Driving, Heading Change	56 mph North US Hwy 221 GA	181.43	01.09
10/09/12 12:51 PM	Driving, Normal Report	53 mph North 6221 US Hwy 221 GA 30473	184.00	02.57
10/09/12 12:57 PM	Driving, Heading Change	52 mph Northeast Hwy 135 GA	188.05	04.05
10/09/12 12:57 PM	Driving, Normal Report	50 mph Northeast Hwy 135 GA	188.79	00.74
10/09/12 12:59 PM	Driving, Heading Change	31 mph North Hwy 135 Aiston, GA	189.72	00.93
10/09/12 12:59 PM	Driving, Heading Change	05 mph Northeast Hwy 135 Aiston, GA	189.72	00.00
10/09/12 01:00 PM	Driving, Heading Change	43 mph Northeast Dees St Aiston, GA	190.17	00.45
10/09/12 01:04 PM	Driving, Normal Report	56 mph Northeast 4939 Lyons Center Rd GA 30474	193.63	02.86
10/09/12 01:07 PM	Driving, Heading Change	10 mph East NE 3529 Lyons Center Rd GA 30474	195.51	01.48
10/09/12 01:10 PM	Driving, Normal Report	54 mph North NE 2285 Lyons Center Rd GA 30436	197.88	01.37
10/09/12 01:15 PM	Driving, Heading Change	30 mph North Lyons Center Rd Lyons, GA	201.87	03.99
10/09/12 01:16 PM	Driving, Heading Change	05 mph East 604 W Liberty Ave Lyons, GA	201.87	00.00
10/09/12 01:23 PM	Driving, Normal Report	55 mph Southeast 1868 US Hwy 280 GA 30436	205.53	03.66
10/09/12 01:23 PM	Driving, Heading Change	56 mph Southeast 1946 US Hwy 280 GA 30436	205.53	00.00
10/09/12 01:29 PM	Driving, Normal Report	61 mph Southeast US Hwy 280 GA	211.03	05.50
10/09/12 01:34 PM	Driving, Heading Change	41 mph South SE W Brazel St Reidsville, GA	216.01	04.98
10/09/12 01:35 PM	Driving, Heading Change	38 mph East NE W Brazel St Reidsville, GA	216.50	00.49
10/09/12 01:35 PM	Driving, Normal Report	38 mph East NE W Brazel St Reidsville, GA	216.50	00.00
10/09/12 01:41 PM	Driving, Normal Report	58 mph Northeast US Hwy 280 GA	221.23	04.73
10/09/12 01:47 PM	Driving, Normal Report	50 mph East 2211 US Hwy 280 Belville, GA 30417	226.73	05.50
10/09/12 01:53 PM	Driving, Normal Report	28 mph East W Main St Clayton, GA	230.23	03.50
10/09/12 01:56 PM	Driving, Heading Change	56 mph South SE 11704 US Hwy 280 GA 30417	232.50	01.27
10/09/12 02:00 PM	Driving, Normal Report	57 mph East 11547 US Hwy 280 GA 30417	235.98	03.48
10/09/12 02:06 PM	Driving, Normal Report	56 mph East US Hwy 280 W GA	241.79	05.81
10/09/12 02:19 PM	Driving, Normal Report	54 mph East State Rte 204 GA	253.12	11.33
10/09/12 02:25 PM	Driving, Normal Report	53 mph Southeast 6402 State Rte 204 GA 31308	258.10	04.98
10/09/12 02:25 PM	Driving, Heading Change	55 mph Southeast Bill Putch Rd GA	258.36	00.76
10/09/12 02:30 PM	Driving, Heading Change	56 mph South SE State Rte 204 GA	262.40	04.04
10/09/12 02:31 PM	Driving, Heading Change	05 mph Northeast 1176 John Carter Rd GA 31302	263.41	01.01
10/09/12 02:33 PM	Driving, Heading Change	20 mph South SE Old River Rd GA	263.41	00.00
10/09/12 02:38 PM	Driving, Normal Report	56 mph Southeast Fort Argyle Rd GA	267.28	03.87
10/09/12 02:40 PM	Driving, Heading Change	47 mph Southeast 579 Fort Argyle Rd GA 31419	269.13	01.85
10/09/12 02:49 PM	Driving, Heading Change	13 mph East NE State Rte 204 Henderson, GA	270.94	01.81
10/09/12 02:50 PM	Driving, Normal Report	60 mph North NE I-95 Henderson, GA	271.96	01.02
10/09/12 02:56 PM	Driving, Normal Report	59 mph North I-95 Pooler, GA	278.09	05.13
10/09/12 03:03 PM	Driving, Normal Report	62 mph Northeast I-95 Port Wentworth, GA	283.68	05.59
10/09/12 03:09 PM	Driving, Normal Report	61 mph Northeast I-95 SC	289.82	06.14
10/09/12 03:10 PM	Driving, Heading Change	61 mph East NE I-95 SC	290.77	00.05
10/09/12 03:14 PM	Driving, Heading Change	60 mph Northeast I-95 Hardeeville, SC	294.65	03.00
10/09/12 03:15 PM	Driving, Normal Report	60 mph North NE I-95 SC	295.79	01.34
10/09/12 03:16 PM	Driving, Normal Report	31 mph Northeast SC	296.70	00.91
10/09/12 03:16 PM	Driving, Heading Change	05 mph East NE Independence Blvd Hardeeville, SC	296.70	00.00
10/09/12 03:18 PM	Engine Turned Off	00 mph N/A Independence Blvd Hardeeville, SC	296.70	00.00
10/09/12 03:38 PM	Engine Started	00 mph N/A Independence Blvd Hardeeville, SC	296.70	00.00
10/09/12 03:40 PM	Driving, Heading Change	05 mph West Independence Blvd Hardeeville, SC	296.70	00.00
10/09/12 03:41 PM	Driving, Heading Change	05 mph North Independence Blvd Hardeeville, SC	296.70	00.00
10/09/12 03:43 PM	Driving, Heading Change	12 mph Northwest Independence Blvd Hardeeville, SC	296.70	00.00
10/09/12 03:43 PM	Driving, Normal Report	34 mph North I-95 Hardeeville, SC	296.70	00.00
10/09/12 03:43 PM	Driving, Heading Change	37 mph North I-95 Hardeeville, SC	296.70	00.00
10/09/12 03:47 PM	Driving, Normal Report	63 mph North NE I-95 Hardeeville, SC	301.28	04.58
10/09/12 03:54 PM	Driving, Normal Report	64 mph Northeast I-95 Sedgefield, SC	307.71	06.43
10/09/12 04:00 PM	Driving, Normal Report	64 mph North NE I-95 SC	314.09	06.38
10/09/12 04:02 PM	Driving, Heading Change	64 mph Northeast I-95 SC	316.19	02.10
10/09/12 04:06 PM	Driving, Normal Report	64 mph Northeast I-95 SC	320.45	04.26
10/09/12 04:06 PM	Driving, Heading Change	63 mph North I-95 SC	321.13	00.68
10/09/12 04:12 PM	Driving, Normal Report	64 mph Northeast I-95 SC	326.73	05.60
10/09/12 04:15 PM	Driving, Heading Change	64 mph Northeast I-95 SC	330.35	03.62
10/09/12 04:18 PM	Driving, Normal Report	64 mph Northeast I-95 SC	333.20	02.05

SeaTruck 095

10/09/12 04:24 PM	Driving, Normal Report	64 mph North NE I-95SC	339.62	06.42
10/09/12 04:30 PM	Driving, Normal Report	63 mph North NE I-95SC	346.07	06.45
10/09/12 04:35 PM	Driving, Heading Change	64 mph North NE I-95SC	351.40	06.33
10/09/12 04:36 PM	Driving, Normal Report	64 mph North NW I-95SC	352.57	01.17
10/09/12 04:43 PM	Driving, Normal Report	63 mph North NE I-95SC	359.03	06.46
10/09/12 04:45 PM	Driving, Heading Change	15 mph Northeast I-95SC	361.44	02.41
10/09/12 04:47 PM	Driving, Heading Change	13 mph North I-95SC	361.44	00.00
10/09/12 04:49 PM	Driving, Normal Report	62 mph North NE I-95SC	362.82	01.38
10/09/12 04:50 PM	Driving, Heading Change	29 mph Northeast I-95SC, George, SC	364.03	01.21
10/09/12 04:50 PM	Driving, Heading Change	22 mph South 5990 W Jim Billon BlvdSt. George, SC	364.03	00.00
10/09/12 04:51 PM	Driving, Heading Change	00 mph Southeast Doyle StSt. George, SC	364.03	00.00
10/09/12 04:52 PM	Driving, Heading Change	13 mph Southwest Doyle StSt. George, SC	364.03	00.00
10/09/12 04:53 PM	Engine Turned Off	00 mph N/A Doyle StSt. George, SC29477	364.03	00.00
10/09/12 05:13 PM	Engine Started	00 mph N/A Doyle StSt. George, SC29477	364.03	00.00
10/09/12 05:18 PM	Idle with Ignition On	00 mph N/A Doyle StSt. George, SC29477	364.03	00.00
10/09/12 05:24 PM	Driving, Heading Change	13 mph Northeast Doyle StSt. George, SC	364.03	00.00
10/09/12 05:25 PM	Driving, Heading Change	09 mph North Doyle StSt. George, SC	364.03	00.00
10/09/12 05:26 PM	Driving, Heading Change	22 mph Northwest 112 Motel DrSt. George, SC29477	364.03	00.00
10/09/12 05:26 PM	Driving, Heading Change	38 mph North NE I-95SC, George, SC	364.03	00.00
10/09/12 05:27 PM	Driving, Normal Report	61 mph North NE I-95SC	364.03	00.00
10/09/12 05:33 PM	Driving, Normal Report	64 mph North NE I-95SC	371.35	06.52
10/09/12 05:39 PM	Driving, Normal Report	66 mph North NE I-95SC	377.92	06.57
10/09/12 05:45 PM	Driving, Normal Report	64 mph North NE I-95SC	384.36	06.44
10/09/12 05:51 PM	Driving, Normal Report	65 mph Northeast I-95SC	390.83	06.47
10/09/12 05:55 PM	Driving, Heading Change	64 mph East NE I-95Summerton, SC	395.08	04.25
10/09/12 05:57 PM	Driving, Normal Report	65 mph Northeast I-95SC	397.37	02.29
10/09/12 06:01 PM	Driving, Heading Change	65 mph North NE I-95SC	400.99	03.62
10/09/12 06:03 PM	Driving, Normal Report	64 mph North NE I-95SC	403.85	02.86
10/09/12 06:08 PM	Driving, Heading Change	63 mph Northeast I-95SC	408.63	04.78
10/09/12 06:10 PM	Driving, Normal Report	65 mph Northeast I-95SC	410.42	01.79
10/09/12 06:11 PM	Driving, Heading Change	65 mph North NE I-95SC	412.36	01.94
10/09/12 06:16 PM	Driving, Normal Report	64 mph Northeast I-95SC	416.97	04.61
10/09/12 06:22 PM	Driving, Normal Report	64 mph Northeast I-95SC	423.50	06.53
10/09/12 06:28 PM	Driving, Normal Report	65 mph Northeast I-95SC	429.98	06.48
10/09/12 06:34 PM	Driving, Normal Report	65 mph Northeast I-95SC	436.41	06.43
10/09/12 06:40 PM	Driving, Normal Report	65 mph North NE I-95SC	442.96	06.55
10/09/12 06:46 PM	Driving, Normal Report	65 mph Northeast I-95SC	449.29	06.33
10/09/12 06:48 PM	Driving, Heading Change	65 mph Northeast 2291 Mechanicsville RdSC29501	451.15	01.86
10/09/12 06:52 PM	Driving, Normal Report	60 mph East I-95SC	455.59	04.44
10/09/12 07:00 PM	Idle with Ignition On	01 mph N/A I-95SC	458.16	02.37
10/09/12 07:10 PM	Idle with Ignition On	01 mph N/A I-95SC	458.16	00.00
10/09/12 07:21 PM	Idle with Ignition On	00 mph N/A I-95SC	458.16	00.00
10/09/12 07:31 PM	Idle with Ignition On	00 mph N/A I-95SC	458.16	00.00
10/09/12 07:41 PM	Idle with Ignition On	01 mph N/A I-95SC	458.16	00.00
10/09/12 07:51 PM	Idle with Ignition On	00 mph N/A I-95SC	458.16	00.00
10/09/12 08:01 PM	Idle with Ignition On	00 mph N/A I-95SC	458.16	00.00
10/09/12 08:11 PM	Idle with Ignition On	00 mph N/A I-95SC	458.16	00.00
10/09/12 08:22 PM	Driving, Normal Report	58 mph East NE I-95SC	459.44	01.28
10/09/12 08:28 PM	Driving, Normal Report	62 mph East NE 578 Tracy DrSC29565	465.50	06.06
10/09/12 08:30 PM	Driving, Heading Change	07 mph South SE Hwy 38 WSC	467.41	01.91
10/09/12 08:31 PM	Driving, Heading Change	07 mph South Mill Branch RdSC	467.41	00.00
10/09/12 08:31 PM	Driving, Normal Report	09 mph Southwest Mill Branch RdSC	467.41	00.00
10/09/12 08:32 PM	Driving, Heading Change	10 mph Northwest Mill Branch RdSC	467.41	00.00
10/09/12 08:32 PM	Driving, Heading Change	11 mph South SW 139 Mill Branch RdSC29565	467.41	00.00
10/09/12 08:38 PM	Idle with Ignition On	00 mph N/A 143 Mill Branch RdSC29565	467.41	00.00
10/09/12 08:42 PM	Driving, Heading Change	06 mph East NE Mill Branch RdSC	467.41	00.00
10/09/12 08:43 PM	Engine Turned Off	00 mph N/A Bassett RdSC	467.41	00.00
10/09/12 09:09 PM	Engine Started	00 mph N/A Bassett RdSC	467.41	00.00
10/09/12 09:14 PM	Idle with Ignition On	00 mph N/A Hill Branch RdSC	467.41	00.00
10/09/12 09:17 PM	Driving, Heading Change	05 mph West Bassett RdSC	467.41	00.00
10/09/12 09:18 PM	Driving, Heading Change	10 mph South SE Bassett RdSC	467.41	00.00
10/09/12 09:19 PM	Driving, Heading Change	16 mph Northeast 111 Old Stage RdSC29565	467.41	00.00
10/09/12 09:20 PM	Driving, Heading Change	16 mph North 2492 Cattle Farm RdSC29565	467.41	00.00
10/09/12 09:21 PM	Driving, Normal Report	51 mph Northeast 2286 Cattle Farm RdSC29565	468.02	00.61
10/09/12 09:27 PM	Driving, Normal Report	64 mph East NE I-95SC	474.50	05.48
10/09/12 09:33 PM	Driving, Normal Report	64 mph North NE I-95SC	480.92	06.42
10/09/12 09:36 PM	Driving, Heading Change	64 mph East NE 3198 Hazy Grove RdSC29547	483.41	02.49
10/09/12 09:39 PM	Driving, Normal Report	65 mph East NE I-95SC	487.45	04.04
10/09/12 09:47 PM	Idle with Ignition On	00 mph N/A I-95 HwyNC	489.27	01.82
10/09/12 09:57 PM	Idle with Ignition On	00 mph N/A I-95 HwyNC	489.27	00.00
10/09/12 10:07 PM	Engine Turned Off	00 mph N/A I-95 HwyNC	489.27	00.00
10/09/12 10:51 PM	Engine Started	01 mph N/A I-95SC	489.27	00.00
10/09/12 10:54 PM	Engine Turned Off	01 mph N/A I-95 HwyNC	489.27	00.00

SeaTruck 096

Print Close Window

SeaTruck 097

<http://gps.gpswebtracking.com/Units/MyTrackingAJXGeo.aspx>

10/10/2012



DRIVER'S DAILY LOG

(24 HOURS)

(Month) / (Day) / (Year)

Original - File at home terminal
Duplicate - Driver retains in his/her possession for eight days

RECAP
Complete at
end of week/day.

Total Miles Driving Today
Total Mileage Today

Name of Carrier or Carriers

Main Office Address

Home Terminal Address

I certify these entries are true and correct.

Truck/Tractor and Trailer Numbers or
License Plate(s) / State (show each unit)

Driver's Full Signature

Co-Driver's Name

On-duty hours
today (Total
Lines 3 & 4)
**70 Hour/
8 Day
Drivers**

A.
Total hours on
duty last 7 days,
including today.

B.
Total hours
available
tomorrow,
70 hr. minus A.*

C.
Total hours on
duty last 8 days,
including today.

**60 Hour/
7 Day
Drivers**

A.
Total hours on
duty last 6 days,
including today.

B.
Total hours
available
tomorrow,
60 hr. minus A.*

C.
Total hours on
duty last 7 days,
including today.

*If you took
34 consecutive
hours off duty,
you have 60/70
hours available
again.

1. OFF DUTY
2. SLEEPER
BERTH
3. DRIVING
4. ON DUTY
(NOT DRIVING)

REMARKS

SHIPPING
DOCUMENTS:

B/L or Manifest No.
or

Shipper & Commodity

Enter name of place you reported and where released from work and when and where each change of duty occurred.

From:

To:

USE TIME STANDARD AT HOME TERMINAL

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613-MP (Rev. 8/05) 8524

EXHIBIT

6

tabbles

1 MR. McANGUS: Okay. Can you read the last
2 question back, please.

3 (The requested portion of the record was read
4 by the court reporter.)

5 A. Yes, correct.

6 Q. And those can be the federal motor carrier
7 safety rules, right?

8 A. Yes. Those are rules.

9 Q. And those mot- -- federal motor carrier
10 safety rules are there, in part, to prevent unsafe or
11 unqualified truck drivers from causing wrecks on the
12 highways, right?

13 MR. BARROW: Objection to form.

14 A. Yes.

15 Q. And those additional rules -- or rules are
16 important because 18-wheelers are different than
17 passenger cars, right?

18 MR. BARROW: Objection to form.

19 A. Yes, of course.

20 Q. Commercial vehicles are larger, both longer
21 and wider than passenger vehicles, correct?

22 A. Yes, correct.

23 Q. They are slower to maneuver than a passenger
24 vehicle?

25 A. Yes, correct.



1 Q. They are much heavier than a passenger
2 vehicle?

3 A. Yes, correct.

4 Q. They take up more space in a lane of travel
5 than a passenger vehicle?

6 A. Yes.

7 (Motor Vehicle Driver Certification of
8 Compliance with Driver's License Requirements was
9 marked as Exhibit 1 for identification.)

10 Q. Mr. Ceballos, the court reporter just handed
11 you what I've had marked as Exhibit 1 to your
12 deposition. This is a document entitled "Motor Vehicle

13 Driver Certification of Compliance with Driver's
14 License Requirements."

15 At the bottom of this document there is a
16 line that says "Driver's signature."

17 Is that your signature, Mr. Ceballos?

18 A. Yes.

19 Q. And above that -- I know you told me that you
20 can read some English. Above that there is a "Driver
21 certification."

22 A. Yes.

23 Q. And it says that: "I certify that I have
24 read and understand the above requirements."

25 Is that correct?

1 top just to make it easy for you. And it says that
2 this -- this section is: "All commercial motor vehicle
3 operators must have knowledge of the following 20
4 general areas."

5 A. Yes.

6 Q. And as a safe commercial driver, these are
7 areas that you do possess this knowledge in?

8 A. Yes, of course, correct.

9 Q. And I want to come down to number 7. And it
10 says that you "must have knowledge of the importance of
11 proper visual search and proper visual search methods,
12 including seeing to the sides."

13 A. Yes, of course, logical.

14 Q. And do you agree that it's important for you
15 to be able to conduct a proper visual search when
16 you're operating a big 18-wheeler?

17 MR. BARROW: Objection to form.

18 A. What was the question?

19 Q. Do you agree that it is important for a
20 commercial truck driver to understand the importance of
21 conducting a proper visual search?

22 A. Yes, of course, correct.

23 Q. And that includes seeing to the sides?

24 A. Both sides, yes.

25 Q. And if a truck -- if a commercial truck

1 driver does not conduct a proper visual search and does
2 not conduct a proper visual search to the sides, it
3 could potentially cause a wreck and injure or kill
4 people?

5 MR. BARROW: Objection to form.

6 A. Of course. He has to do it.

7 Q. Number 8 below that. It says: "Commercial
8 drivers must have knowledge of the principles and
9 procedures for proper communications and the hazards of
10 failing to signal properly, including signaling when
11 changing direction in traffic."

12 A. Could you repeat that again?

13 Q. Sure.

14 Do you agree that -- that a commercial
15 vehicle driver should have knowledge in the principles
16 and procedures for proper communications and the
17 hazards of failure to signal properly, including
18 signaling when changing direction in traffic?

19 A. Yes, you have to signal correctly.

20 Q. If a commercial truck driver does not signal
21 correctly, it could cause a wreck and injure or kill
22 someone on the highway?

23 A. Yes, of course.

24 Q. Number 10, "Space management." Do you agree
25 that a commercial driver should have knowledge of the

1 procedures and techniques for controlling the space
2 around the vehicle, including the importance of space
3 management and space to the sides?

4 A. Yes.

5 Q. If a commercial driver does not control the
6 space around his vehicle, including the space to the
7 sides, it can cause a wreck and injure or kill people,
8 correct?

9 MR. BARROW: Objection to form.

10 A. Yes. The driver has to calculate all the
11 spaces for turning, all the spaces in the lane.

12 (Lease Agreement was marked as Exhibit 3 for
13 identification.)

14 Q. Mr. Ceballos, I have handed you what we've
15 marked as Exhibit Number 3 to your deposition.

16 A. The lease agreement.

17 Q. Correct.

18 Is this the lease agreement between your
19 company, KC Freight, LLC, and SeaTruck?

20 A. Yes. Yes, correct.

21 Q. If you turn to page 6 of 7.

22 A. This is my signature and the signature of the
23 company manager.

24 Q. You anticipated my question.

25 MR. BARROW: He's not supposed to do that.

1 Q. And on Exhibit Number 4, that's your name at
2 the top, Carlos L. Ceballos, right?

3 A. Yes.

4 Q. And on the back of the document, under
5 "Driver's name," is that -- is that your signature or
6 is that something someone else wrote?

7 A. It's me, Carlos.

8 Q. Okay. Do you see -- and, again, I
9 highlighted a few places on that page just to make it
10 easier to reference.

11 Do you see where the part of that test
12 included determining whether you -- you crowded other
13 drivers?

14 A. It was a driving test. I had to drive.

15 Q. But one of the areas they tested was whether
16 or not you crowded other drivers, correct?

17 A. Yes, everything. And the turns, on the
18 corners and everything, parking.

19 Q. You -- you agree that commercial drivers
20 should not crowd other drivers on the roadway?

21 A. No, no, no.

22 Q. No, they shouldn't crowd or no, you disagree
23 with me?

24 A. No. You have to keep your distance always
25 while you're driving.

1 Q. If a commercial driver crowds another
2 vehicle, it can cause a wreck and injure or kill
3 someone on the highway?

4 MR. BARROW: Objection to form.

5 A. Since you're driving a commercial vehicle,
6 you have to keep your distance.

7 Q. Do you see that they also tested whether you
8 keep to the right and in your own lane?

9 A. Yes, yes.

10 Q. Do you also agree it's important for
11 commercial drivers to keep to the right and in their
12 own lane?

13 A. Yes, correct.

14 Q. And if a -- do you agree that if a commercial
15 driver does not keep to the right and in his own lane,
16 it can cause a wreck and injure or kill someone?

17 MR. BARROW: Objection to form.

18 A. Yes, you have to maintain yourself in your
19 lane of traffic.

20 Q. Mr. Ceballos, earlier you told me that you
21 have read and are familiar with the Florida CDL manual,
22 correct?

23 A. Yes.

24 (Copy of Portions of Florida's CDL Manual was
25 marked as Exhibit 5 for identification.)

1 contained information on space management, correct?

2 A. Yes, correct.

3 Q. And the -- that Florida CDL manual contains
4 rules on space management as you know you have to
5 follow, right?

6 A. Correct.

7 Q. And now we have as Exhibit Number 7, SeaTruck
8 also has rules on space management, correct?

9 A. Yes.

10 Q. And SeaTruck's policy says: "To be a safe
11 driver, you must know the importance of managing both
12 your speed and the physical space around your vehicle."

13 A. Yes, correct.

14 Q. And it also says that: "Managing space
15 around your vehicle gives you time to think and take
16 action when things go wrong." Correct?

17 A. Yes, correct.

18 Q. And on the second page of that exhibit
19 there's a specific section about "Space to the sides,"
20 correct?

21 A. Yes.

22 Q. And part of that space to the side section
23 says: "Try not to drive beside another vehicle for
24 long periods of time. And if you must travel beside
25 another vehicle, make sure the other driver can see you

1 and keep as much space as possible between the two
2 vehicles."

3 A. Yes.

4 Q. And at the very bottom it says: "You, as a
5 professional driver, must maintain control of your
6 speed and the space around your vehicle."

7 A. Yes.

8 Q. And these are all rules that you knew you had
9 to follow when you began driving for SeaTruck?

10 A. Yes.

11 Q. And these rules, if they're followed, are
12 there to prevent wrecks and injuries and deaths on the
13 road, right?

14 A. Yes, logically.

15 (SeaTruck's Safety Attitude Section was
16 marked as Exhibit 8 for identification.)

17 Q. Mr. Ceballos, we've marked Exhibit Number 8
18 to your deposition, which is the "Safety Attitude
19 Section" from SeaTruck's safety manual.

20 Is this part of the SeaTruck company safety
21 manual that you've read as well?

22 A. Yes, yes.

23 Q. And in the middle it says: "You will be
24 driving a tractor-trailer that is 75 feet long and
25 weighs, loaded, around 80,000 pounds, and that in all

ORIGINAL

FATAL

FINDING #1		Page # 1		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR - 310 (Rev. 7/2010)		# Of Units 02		Amended - of Original Report		1904 1914	
Date 10-09-2012	Time of Collision 1900	County 21	1- Interstate 4- Secondary 2- US Primary 5- County 3- SC Primary 6- PP		Collision Location (RL # / Name) E 95 /		0- Main 6- Connection 2- Alternate 7- Business 5- Spur		Miles 8	Dir. N E S W	In (Near) City or Town of: FLORENCE
Lane # / Dir. # 1 4 S W		Distance Offset 2.00	Direction N E S W	Base Intersection (Rt # / Name) 327 / N. WILLISTON RD.		0- Main 6- Connection 2- Alternate 7- Business 5- Spur		GPS COORDINATES 00 00' 00.00"			
R.R. Id.		From N E 1- Entrance S W 2- Exit	Ramp Only N E S W	To 1- Interstate 4- Secondary 2- US Primary 5- County 3- SC Primary 6- Other	Second Intersection (Rt # / Name) 219 / ELBERRY RD.		0- Main 6- Connection 2- Alternate 7- Business 5- Spur		DEGREES MINUTES SECONDS Latitude 34 16 56.89 Longitude 79 40 46.88		
E-290390 Driver/Pedestrian's Full Name CEBALLOS CARLOS L						E-290391 Driver/Pedestrian's Full Name FISCHETTI JENNIFER D					
Unit # 01	Sex M	Race W	Street/R.F.D. 7850 W 8TH AVE		Unit # 02	Sex F	Race W	Street/R.F.D. 2285 BRAGG ST APT 1C			
# Occ 1	Birth Date 12-17-1968		City, State, & Zip HIALEAH FL 33014		# Occ 5	Birth Date 10-30-1969		City, State, & Zip BROOKLYN NY 11229			
State FL	Driver's License # C142112684570		Class E	Insurance Company GREAT WEST	State NY	Driver's License # 438376216		Class D	Insurance Company STATE FARM		
Year 2002	Body TR	Vehicle Make FRHT	VIN # 1FUJBBAY22LK04717	Year 2001		Body VN	Vehicle Make MAZD	VIN # JM3LW28Y110181281			
State FL	Year 2013	License Plate # Z0124T	Owner's D.L. # NONE		State NY	Year 2013	License Plate # BEU7529	Owner's D.L. # NONE			
Home Telephone (786) 2569599		Owner's Full Name KC FREIGHT		Home Telephone (718) 5136334		Owner's Full Name FISCHETTI CONNIE					
Bus. Telephone (305) 4564146		Street/R.F.D. 7850 W 8TH AVE		Bus. Telephone (718) 4907956		Street/R.F.D. 305 AVE O					
Contributed To Collision Yes		City, State, & Zip HIALEAH FL 33014		Contributed To Collision Yes		City, State, & Zip BROOKLYN NY 11230					
Estimated Speed 70	Speed Limit 70	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg Info (see back): Yes No	Estimated Speed 70	Speed Limit 70	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg Info (see back): Yes No		
Driver/Pedestrian's Full Name		State		Year	License Plate #		Owner's D.L. #				
Unit # # Occ	Sex	Race	Street/R.F.D.		Home Telephone		Owner's Full Name				
Birth Date		City, State, & Zip		Bus. Telephone		Street/R.F.D.					
State	Driver's License #		Class	Insurance Company	Contributed To Collision Yes No		City, State, & Zip				
Year	Body	Vehicle Make	VIN #	Estimated Speed		Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg Info (see back): Yes No		
Dir. of Travel: Unit 1: (N) S E W Unit 2: (N) S E W Unit 3: N S E W		Summons #		Code	Summons #		Code	Towed	Yes No		

Unit 1 Dam.	Unit 2 Dam.	Unit 3 Dam.	Prop. Dam. 1	Prop. Dam. 2
\$15000	\$1000	\$	GUARD RAIL	\$
Property Owner/Witness SCDOT		Property Owner/Witness		
Address 3018 E. PALMETTO ST.		City FLORENCE		
State SC	Zip 29505	Phone 8436614715	State	Zip
Photo: Describe What Happened (Refer to Units by Number) (Y) N				

UNIT #1 NORTH BOUND ON I-95 IN LANE #1. UNIT #2 NORTH BOUND ON I-95 IN LANE #2. UNIT #1, AFTER RUNNING INTO THE MEDIAN AND OVER-CORRECTING, UNIT #1 ENTERED LANE #2 AND STRUCK THE TRAILER PORTION OF UNIT #2. AFTER CONTACT WITH UNIT #2, UNIT #1 RAN OFF THE LEFT SIDE OF THE ROAD AND STRUCK THE GUARD RAIL. AFTER CONTACT WITH THE GUARD RAIL, UNIT #1 ENTERED THE ROAD WAY AND SPUN AROUND SEVERAL TIMES BEFORE COMING TO REST UP RIGHT. WHILE UNIT #1 WAS SPINNING AROUND, THE BACK PASSENGER WAS EJECTED FROM THE VEHICLE AND THROWN IN THE MEDIAN.

EXHIBIT

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOW BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name MCKENZIE - D P	Rank LCPL	Badge # 1310	Jurisdiction Code H P O S	Review Date 10-18-2012	Reviewer's Name N A Tart	Rank Cpl	Internal Agency Code 12FL140580

FINDING #1

FATAL
DA-163-12

Unit	Date of Birth	Sex	Race	INJ	Seat	R/SD	A&D	Eject	LA	Tran	Name	Street Address	Zip Code
01	12-17-1968	M	W	0	01	13	4	1	1	2	CEBALLOS CARLOS L	7850 W 8TH AVE HIALEAH FL	33014
02	10-30-1969	F	W	0	01	13	4	1	1	2	FISCHEIT JENNIFER D	2285 BRAGG ST APT 1C BROOKLYN NY	11229
02	07-11-1984	M	W	0	03	13	4	1	1	2			
02	08-02-1955	M	W	1	04	13	7	3	1	1	FISCHEIT CARLOS	305 AVE O BROOKLYN NY	11230
02	04-10-1944	F	W	4	05	00	7	3	1	1	FISCHEIT CONNIE T	305 AVE O BROOKLYN NY	11230
02	06-25-1997	M	W	0	07	00	7	3	1	2			

Race		A - Asian/Pacific Islander		W - Caucasian		a) Injury Status		2-Non-Incapacitating		Seating Loc.		20-Pedestrian		60-Sleeper of Cab		Restrain/Safety Device	
B - African American		H - Hispanic		O - Other		0-Not Injured		3-Incapacitating		01 02 03		30-Trailing Unit		70-Riding on Unit Exterior		00-None Used	
1-Alaskan Native or American Indian		U - Unk.				1-Possible Injury		4-Fatal		04 05 06		40-Bus or Van (4th row or Higher)		80-Lap		21-Child	
										07 08 09		50-Other Enclosed Area (nontrailing)		99-Unk./NA		11-Shoulder belt	
												51-Other Unenclosed Area (nontrailing)				12-Lap Belt Only	
																13-Shoulder & Lap Belt	
																88-Other	
																99-Unk.	
																Pedestrian, Motor/Pedalcycle Only	
																31-Helmet	
																51-Reflective Clothing	
																41-Protective Pads	
																61-Lighting	

Air Bag Deployment / Switch		Ejection		b) 2 or 3 Wheel Motorized Vehicle		Location After Impact		3-Freed (non-mech.)		a) Transported to Medical Facility	
1-Deployed Front 4-Not Deployed		1-Not Ejected		1-Yes		2-No				1-Yes	
2-Deployed Side 7-Not Applicable		2-Part Ejected								2-No	
3-Deployed Both 9-Deployment Unk.		3-Tot Ejected								3-Unknown	
1-Switch In On Position 3-No Switch		7-Not App.								b) By: 1-EMS 2-Police 8-Other 9-Unk.	
2-Switch In Off Position 8-Unknown		9-Unk.									

Non-Collision		04-Equipment Failure		Collision: Not Fixed		27-Pedestrian		Collision: Fixed Object		47-Embankment		55-Mail Box		69-Other	
01-Car/Equip Loss or Shift		05-Fire/Explosion		20-Air/Mal (Dcr Only)		28-Railway Veh.		40-Bridge Overhead Structure		48-Equipment		56-Median Barrier		69-Unk.	
02-Cross Median/Center		06-Immersion		21-Air/Mal (All Other)		29-Work Zone Main Equip.		41-Bridge Pier/End		49-Fence		57-Overhead Sign Support			
03-Downhill Runaway		07-Jackknife		22-Motor Veh. (In Transport)		30-Other Moveable Object		42-Bridge Pier or Abutment		50-Guardrail End		58-Other (Post, Pole, Support, Etc.)			
				23-Motor Veh. (Stopped)		31-Unk. Moveable Object		43-Bridge Rail		51-Guardrail Face		59-Other (Wall, Balcony, Tunnel, Etc.)			
				24-Motor Veh. (Other Roadway)		32-Unk. Moveable Object		44-Culvert		52-Highway Traffic Sign Post		60-Tree			
				25-Motor Veh. (Parked)		33-Unk. Moveable Object		45-Curb		53-Impact Attenuator/Crash Cushion		61-Utility Pole			
				26-Pedalcycle				46-Ditch		54-Light/Luminance Support		62-Work Zone Main Equip.			

Manner of Collision (Struck Veh.)		30-Rear-to-Rear		50-Sideswipe Same Dir.		1st / Most Deformed Area		1st Deformed		1st Most Deformed		1st Most Deformed		1st Most Deformed	
143 00-Not Coll. w/ Motor Veh.		41-Angle		60-Sideswipe Opposite Dir.		1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80		1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80		1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80		1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80		1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80	

Vehicle Type		15-Full Size Van		27-Pedalcycle		61-School Bus		21-Pedestrian		81-None		92-Rollover		93-Total		94-Under Carriage		98-Other		99-Unk.	
113 01-Automobile		16-Mini Van		38-Air/Mal Drawn Veh		62-Passenger Bus		A1 01		1-Given - Known Results		3-Given - Pending		5-Refused		1-Under-Compartment Intrusion		Under/Override		16	
215 12-Pickup Truck		17-Sport Utility		39-Air/Mal (Ridden)		98-Other		A2 01		2-Given - Unusable		5-Refused				2-Under-No Intrusion		4-Over-MV in transport		6-None	
3 13-Truck Tractor		25-Motorcycle		41-Pedestrian		99-Unk. (Hit and Run Only)		A3 01		1-Breath (Alc Only)		4-Serum		1-Under-Unknown		5-Over-Other Vehicle		9-Unk.		3	
3 14-Other Truck		26-Other Motorbike		51-Train				A3 02		2-Blood		8-Other				3-Disabling Damage		4-Severe/Totalled		9-Unk.	
								01		Drug Results		3-Marijuana		0-None/Minor		2-Functional Damage		4-Severe/Totalled		9-Unk.	
								02		1-Amphetamines		4-Opates		2-Disabling Damage		5-Not Applicable					
								03		2-Cocaine		5-PCP		8-Other							
								03		Alc Test Results		1-Two-way, Not Divided		3-Two-way, Divided, Barrier		Trafficway					
								A1-		2-Two-way, Divided, Unprotected Median		4-One-Way		8-Other							
								A2-		1-Coro 3-Median		5-Roadway		7-Sidewalk		8-Unk.		B: X-wall		1st Harmful Event Loc.	
								A3-		2-Island 4-Roadside		8-Shoulder		8-Outside Trafficway		1-Y 2-N 3-U					
										1-Straight - Level		3-Straight - Hillcrest		5-Curve - On grade		6-Curve - Hillcrest		Road Character		1	
										2-Straight - On grade		4-Curve - Level		7-Water (Standing, etc.)		9-Unk.		Road Surface Condition		1	
										1-Dry 3-Snow 5-Ice		7-Water (Standing, etc.)		9-Unk.				Traffic Control Type		98	
										2-Wet 4-Slush 6-Contaminate		8-Other		9-Unk.							
										01-Stop and Go Light		21-Officer or Flagman									
										02-Flashing Traffic Signal		22-Oncoming Emergency Vehicle									
										11-RR (X-bucks, Lights & Gates)		31-Pavement Markings (only)		43-Yield Sign		51-Flashing Beacon					
										12-RR (X-bucks & Lights)		41-Stop Sign		44-Work Zone		98-None					
										13-RR (X-bucks Only)		42-School zone Sign		45-Other Warning Signs		99-Unk.					
										1-Yes, Directly		2-Yes, Indirectly		3-No		9-Unk.		School Bus Involved:		3	
										1-Before 1st Sign		3-Transition Area		5-Termination		1-Yes 2-No		Work Zone:		2	
										2-Advanced Warning Area		4-Activity Area		Area				Work Zone Location			
										1-Shoulder/Median Work		3-Intermittent/Moving Work						Work Zone Type			
										2-Lane Shift/Crossover		4-Lane Closure		8-Other		9-Unk.		1-Yes 2-No		Workers Present:	

Primary		Contributing Factors		09-Made an Improper Turn		Roadway		Non-Motorist		Environmental		62-Obstruction		63-Weather Cond.		68-Other		69-Unk.	
03		Driver		10-Medical Related		30-Debris		48-Other		50-Inattentive		60-Animal in Road		63-Weather Cond.		68-Other		69-Unk.	
		01-Disregarded Signs, Signals, Etc.		12-Aggressive Operation of Vehicle		31-Non-Highway Work		49-Unk.		51-Lying &/or Illegally in Roadway		61-Glare		68-Other		69-Unk.			
		02-Distracted/Inattention		13-Over-correcting/Over-steering		32-Obstruction in Roadway				52-Failure to Yield R. of W.		62-Obstruction		63-Weather Cond.		68-Other		69-Unk.	
		03-Driving Too Fast for Conditions		14-Swerving to Avoiding Object		33-Road Surface Condition (i.e., Wet)				53-Not Visible (Dark Clothing)		63-Weather Cond.		68-Other		69-Unk.			
		04-Exceeded Authorized Speed Limit		15-Wrong Side or Wrong Way		34-Rut, Holes, Bumps				54-Disregard Signs, Signals, Etc.		63-Weather Cond.		68-Other		69-Unk.			
		05-Failed to Yield Right of Way		16-Under the Influence		35-Shoulders (None, Low, Soft, High)				55-Improper Crossing		63-Weather Cond.		68-Other		69-Unk.			
		06-Ran off Road		17-Vision Obscured (Within Unit)		36-Traffic Control Device (i.e., Missing)				56-Drifting		63-Weather Cond.		68-Other		69-Unk.			
		07-Fatigued/Asleep		18-Improper Lane Usage/Change		37-Work Zone (Const./Main/Utility)				57-Wrong Side of Road		63-Weather Cond.		68-Other		69-Unk.			
		08-Followed Too Closely		19-Cell Phone		38-Work Zone (Const./Main/Utility)				58-Other		63-Weather Cond.		68-Other		69-Unk.			
				20-Taxiing		39-Work Zone (Const./Main/Utility)				59-Unk.		63-Weather Cond.		68-Other		69-Unk.			
				21-Other Improper Action		40-Work Zone (Const./Main/Utility)				60-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						41-Work Zone (Const./Main/Utility)				61-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						42-Work Zone (Const./Main/Utility)				62-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						43-Work Zone (Const./Main/Utility)				63-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						44-Work Zone (Const./Main/Utility)				64-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						45-Work Zone (Const./Main/Utility)				65-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						46-Work Zone (Const./Main/Utility)				66-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						47-Work Zone (Const./Main/Utility)				67-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						48-Work Zone (Const./Main/Utility)				68-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						49-Work Zone (Const./Main/Utility)				69-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						50-Work Zone (Const./Main/Utility)				70-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						51-Work Zone (Const./Main/Utility)				71-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						52-Work Zone (Const./Main/Utility)				72-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						53-Work Zone (Const./Main/Utility)				73-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						54-Work Zone (Const./Main/Utility)				74-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						55-Work Zone (Const./Main/Utility)				75-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						56-Work Zone (Const./Main/Utility)				76-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						57-Work Zone (Const./Main/Utility)				77-Under the Influence		63-Weather Cond.		68-Other		69-Unk.			
						58-Work Zone (													

1 Flying J between 4:45 and 5:15, did you refuel; did you
2 just make a pit stop? What did you do?

3 A. It must have been to go to the bathroom
4 because I had fueled up here in Miami.

5 Q. Okay. And then you began driving again,
6 according to your logs, at 5:15 p.m.; is that correct?

7 A. Yes.

8 Q. And then you drove until the wreck happened;
9 is that correct?

10 A. Yes.

11 Q. I'm sure I'll come back and ask you a lot of
12 follow-up questions, but go ahead now, in your own

13 words tell me what you recall happening in the wreck.

14 A. Yes.

15 Q. Tell me in your own words what happened in
16 the wreck.

17 A. I'm driving normally in my right lane. And
18 all of a sudden I felt the truck -- a car hitting my
19 truck. I am driving and all of a sudden I feel a boom.

20 Q. Okay. You said you were in the right lane?

21 A. Yes, on the right lane.

22 Q. Do you recall what time the wreck occurred?

23 A. It must have been around 6:50 something.
24 6:55 it must have been.

25 Q. What was -- what was the weather like that

EXHIBIT

1 day; was it raining, cloudy, dry, clear?

2 A. It was normal, clear.

3 Q. Was it particularly windy?

4 A. No, I don't think so.

5 Q. What were the lighting conditions like?

6 A. It was a normal day. It was clear.

7 Q. With it being about 6:50 something p.m.,
8 that's about -- around the time -- turn of the evening.
9 Was the sun -- had the sun set all the way; was it
10 dusk?

11 A. It was a clear day, not as -- not when the
12 sun goes down.

13 Q. Had the sun started to go down?

14 A. I don't recall. It was still clear.

15 Q. Do you recall if you had your headlights on?

16 A. Yes.

17 Q. Are your headlights on the entire time you're
18 driving or did you actually turn them on because the
19 sun was going down?

20 A. No. When you turn on the truck, the lights
21 turn on normally.

22 Q. Was it -- strike that.

23 Was it light enough at the time of the wreck
24 that you could still see other cars without them
25 turning their headlights on?

1 A. I was in my vehicle on the right side of the
2 road. I wasn't touching either lane.

3 Q. Do you know approximately how far your right
4 tires were from the line on the right side of the road?

5 MR. BARROW: Objection, form.

6 A. I always keep my vehicle in the center of the
7 right lane.

8 Q. Okay. So your vehicle was -- you were in the
9 right-hand lane. Within the right-hand lane, your
10 vehicle was centered?

11 A. I always drive in the right lane normally.

12 Q. And that's where you were when the impact
13 occurred?

14 A. Yes, in my right lane.

15 Q. After you felt the impact with your vehicle,
16 did you see anything that the Fischetti's vehicle did
17 after that?

18 A. When I felt the impact, I kept on looking at
19 the car the entire time. And I see that the car
20 crashed into the trailer, then goes backwards. And I
21 saw something dressed in red coming out of the car and
22 when it crashed into the pieces of metal on the
23 shoulder.

24 Q. Did you see that out of your window or did
25 you see that through your mirrors?

EXHIBIT

10

1 Q. You wanted to make sure the van was safe for
2 you to drive down there?

3 A. Well, yeah. I didn't want to get caught in a
4 rainstorm without new wiper blades. You know, we always
5 get an oil change before we leave, things like that.

6 Q. Sure. Okay.

7 All right. Ever been in a wreck before?

8 A. Have I ever had a wreck?

9 Q. Has the Mazda ever been wrecked before prior
10 to the accident?

11 A. No.

12 Q. All right. What time did you-all leave

13 Orlando to head back to Brooklyn or Kissimmee?

14 A. I believe it was 10:45.

15 Q. In the morning?

16 A. That's correct. A.m.

17 Q. How long would it take you to drive back?

18 A. Seventeen, 18 hours.

19 Q. And were you going to stop, spend the night
20 somewhere?

21 A. At that point, we hadn't decided yet.

22 Normally, we don't stop until like 11:00 p.m.

23 Q. With that many people in the van, were you
24 anticipating driving all the way there?

25 A. No. We always stopped.



1 Q. And where do you usually stop?

2 A. Most of the time, we stop at the -- we pull
3 over and rest for three hours at one of the resting
4 points. Rarely we get a hotel. We've done it once or
5 twice, depending on the weather. When the weather's
6 nice, we just pull over and take a sleep.

7 Q. Who started out driving?

8 A. Me.

9 Q. How far did you drive?

10 A. I drove all the way up to South Carolina.

11 Q. And how long did it take you to get there?

12 A. I'm not really sure. I drove for -- from
13 11:00 till, I believe, 4:30, where we stopped at the TA
14 to get something to eat.

15 Q. Okay.

16 A. And that's when my wife took over.

17 Q. Now, when you were driving, where was your
18 wife seated?

19 A. She was seated next to me in the passenger's
20 seat.

21 Q. Okay.

22 A. We were both in the front the whole trip.

23 Q. Okay. How was the weather?

24 A. The weather was good.

25 Q. What time was it when this accident happened?

1 Q. -- because you usually drove, right?

2 A. Yes.

3 Q. And did you usually stop at that TA place in
4 South Carolina on the way back to eat?

5 A. Sometimes, yeah.

6 Q. And then you start driving, correct?

7 A. Yes.

8 Q. Tell me who was in the car with you and where
9 they were seated.

10 A. I was in the driver's seat. My husband was
11 next to me in the passenger's seat.

12 Q. Okay.

13 A. Behind my husband was my mother-in-law.
14 Behind me was Angelo. And my son was laying down in the
15 back.

16 Q. Okay. So your mother-in-law was behind you?

17 A. No. Behind my husband.

18 Q. Okay. And Angelo was behind you.

19 A. Yes.

20 Q. And Angelo is who? Who is he?

21 A. Then?

22 Q. Yeah.

23 A. He was dating my mother-in-law.

24 Q. And how is he related to your husband? They
25 both have the same last name, so I'm assuming they're

1 related.

2 A. They're like third or fourth cousins. But my
3 mother-in-law and Angelo weren't blood related.

4 Q. Right. But they were dating.

5 A. Yeah.

6 Q. How long had they been dating?

7 A. Off and on, I think, like four years, I think.

8 Q. All right. So he would -- Angelo would have
9 been someone that your husband knew growing up, correct?

10 A. Correct.

11 Q. Because he lived in Brooklyn, as well.

12 A. Correct.

13 Q. Did he live with your mother-in-law at the
14 time of the accident?

15 A. Unfortunately.

16 Q. Yeah. And how long had he lived with her?

17 A. I know they were living together for a while,
18 and then he moved out.

19 Q. Okay.

20 A. And then maybe six or seven months again
21 before we left for Florida.

22 Q. Okay.

23 A. Maybe a little less.

24 Q. All right. Okay. All right. So you start
25 driving. And tell me how the accident happened.



1 A. I was doing fine. And the truck was, like, in
2 the right lane. I was in the left lane doing 65.
3 Everything was fine. I'm looking straight. And I
4 noticed that his wheels were getting closer to the line.
5 They were, like, right on the line. And as we went
6 around the bend, I saw that it was coming closer over
7 the line. So since I had the dirt next to me, I kind of
8 swerved away so he wouldn't hit me.

9 And, I guess, as I tried getting back on the
10 highway, like, the back wheels hit, like, some dirt or
11 something. And it swerved. And next thing I know, we
12 hit the van and then we hit the railing. It's -- and
13 then after that, I just -- I remember swerving and it
14 happened very fast. But I do know that he was in my
15 lane in the back -- my husband's like, Jen, watch. The
16 back is swerving into our lane.

17 Q. The back of the what?

18 A. Like, his truck.

19 Q. Truck or trailer?

20 A. The trailer part. I'm sorry.

21 Q. Okay. All right. We're going to go through
22 that in a little more detail.

23 You're in the left lane.

24 A. Yes, I am.

25 Q. That's the passing lane, typically, correct,

1 heading towards your right. It was -- it would be
2 towards the right.

3 Q. Right. So the curve or the bend was from your
4 left and it bent to your right.

5 A. That's correct.

6 Q. Is that right?

7 A. I believe so.

8 Q. Sure. Okay. And so when -- when you first
9 noticed him start to come in your lane, I guess you saw
10 his front left tire move over into your lane?

11 A. The cab, the front -- the cab never came into
12 our lane.

13 Q. Okay.

14 A. Okay? The back of the trailer came into our
15 lane. What happened was, as he came into our lane, we
16 moved all the way over. And two of our tires were on
17 the dirt, okay? And at that point -- this happened so
18 quickly now, within a matter of eight seconds, six to
19 eight seconds. I mean, we went over because he came in,
20 to give him sufficient room so we wouldn't hit him. And
21 before we went around that little turn, we -- the
22 accident happened.

23 Q. All right. Let's talk about that a little
24 bit, Mr. Fischetti.

25 Okay. So when he first starts moving into

1 handle it. The sheriff asked us both for our licenses.
2 He separated us immediately. He brought him over to one
3 side. He brought us over to another side. He took our
4 information. He took his information. He asked us a
5 couple of minor questions, and that was it.

6 Q. So after that, neither you nor your wife or
7 anyone else with you had any conversations with the
8 truck driver.

9 A. We had no conversations.

10 Q. How would you describe the driver?

11 A. He -- the cop asked me -- the sheriff asked
12 me, actually. And he asked me, do you think he was
13 drunk? And I said no. He did look tired. His eyes
14 were a little red.

15 Q. Let's talk about that. When you say he looked
16 tired, is it your opinion he looked tired because his
17 eyes were red?

18 A. His eyes were bloodshot, but not like he was
19 drunk. It looked like he was rubbing his eyes. You
20 know what I'm saying? Like, you know when you rub your
21 eyes and they get really red? That's what it looked
22 like.

23 Q. Did he have glasses on?

24 A. No, sir.

25 Q. You didn't say anything to him --



1 Q. I think you said you saw the car going
2 backwards; is that correct?

3 A. It hit like this front into the truck and
4 then it went in reverse. When I felt impact, I looked
5 in the mirror and I saw the car going back, backwards.

6 Q. Did you actually see that the -- their
7 vehicle hit the guardrail?

8 A. The way it bounced off, it must have hit it.
9 Yeah. Because there is a metal separator or else it
10 would have gone off the shoulder.

11 Q. Well, with your -- did you see with your eyes
12 what part of the Fischetti's vehicle first hit the
13 guardrail?

14 A. No. That way, as such, no. I know it hit
15 something.

16 Q. If I'm hearing you correctly, you didn't take
17 any action, other than driving down the road, until
18 after the impact occurred; is that right?

19 MR. BARROW: Objection, form.

20 A. Could you repeat that?

21 Q. Sure.

22 If I'm hearing you -- I'm just making sure
23 we're clear -- is that you didn't do -- according to
24 your testimony, you didn't do anything other than
25 driving down the road until after an impact occurred;



1 is that a true statement?

2 A. As soon as I felt impact, I parked to the
3 right on the shoulder.

4 Q. But it wasn't the situation that -- you
5 didn't see -- glance in your mirror and see their van
6 and then in response you didn't slam on your brakes or
7 swerve to the right or take any action before the
8 impact occurred; is that right?

9 A. Automatically, after the impact, I braked the
10 vehicle.

11 Q. I believe you said you pulled your vehicle
12 off to the side of the road and stopped; is that right?

13 A. Towards the right, yes.

14 Q. Once you stopped your vehicle, what did you
15 do then?

16 A. I called 911.

17 Q. And what -- I don't think I've asked you,
18 your cell phone number is what?

19 A. 786-256-9599.

20 Q. And who's your cell phone provider?

21 A. Sprint.

22 Q. And was that the only cell phone or mobile
23 phone you had in your tractor-trailer that day?

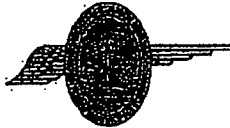
24 A. Yes, the only one.

25 Q. All right. So you stopped your truck and you

SOUTH CAROLINA HIGHWAY PATROL

MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

Leroy Smith
Director



M.R. Oliver
Colonel

INVESTIGATIVE REPORT

The South Carolina Highway Patrol Multi-Disciplinary Accident Investigation Team reserves the right to amend, correct, or detract any or all inferences, conclusions, or opinions presented in this report. This report is the intellectual property of the South Carolina Department of Public Safety and shall not be duplicated or copied for distribution, unless written permission is granted by the Office of General Counsel.

MAIT CASE NO:	DA-163-12	CAD/CASE NO:	12FL140580
REQUESTING AGENCY:	SCHP		
TROOP:	5		
COUNTY:	FLORENCE	COLLISION LOCATION:	INTERSTATE 95
INVESTIGATING OFFICER:	L/CPL. D.P. MCKENZIE		
DATE:	10/09/2012		
MAIT REGION:	PEE DEE	TEAM LEADER:	SGT. M.A. DANGERFIELD

1. CONCLUSION.

MAIT has completed its investigation of the above collision and concurs with the findings of the primary investigating officer.

2. MAPPING / CAD.

MAIT completed a forensic mapping of the collision scene.

3. AUDIO / INTERVIEWS.

MAIT conducted audio recordings during the course of this investigation.

4. PHOTOGRAPHS.

MAIT took digital photographs during the course of this investigation.

5. VIDEO.

MAIT took digital video footage during the course of this investigation.



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
Post Office Box 1993
Blythewood, SC 29016



Ma Dange

Team Leader / Region Commander

ACTAR Number: 1661



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
Post Office Box 1993
Blythewood, SC 29016



STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 139-12-033168 AMENDED

DECEDENT'S NAME: *CONNIE FISCHETTI*

SEX: FEMALE

SOCIAL SECURITY NUMBER: 051-32-6638

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH: APRIL 10, 1942

AGE: 70 YEARS

COUNTY OF DEATH: FLORENCE

TYPE OF PLACE OF DEATH: HOSPITAL INPATIENT

NAME AND ADDRESS OF PLACE OF DEATH: MCLEOD REGIONAL MEDICAL CENTER OF THE PEE DEE, INC, FLORENCE, SC 29506

PLACE OF DISPOSITION: ST CHARLES CEMETERY

DISPOSITION LOCATION: FARMINGDALE, NEW YORK

METHOD OF DISPOSITION: REMOVAL FROM STATE

DECEDENT'S RESIDENCE: 305 AVENUE O, BROOKLYN, KINGS COUNTY, NY, 11230

PLACE OF BIRTH: NEW YORK

MARITAL STATUS: WIDOWED (AND NOT REMARRIED)

SURVIVING SPOUSE'S NAME: NA

FATHER'S NAME: JOSEPH FORZANO

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: VINCENZA LIPARI

INFORMANT'S NAME: VIVIAN FISCHETTI SALVANO

RELATIONSHIP: DAUGHTER

MAILING ADDRESS: 305 AVENUE O, BROOKLYN, NY, 11230

FUNERAL HOME: MCMILLAN-SMALL FUNERAL HOME, 910 67TH AVENUE N/PO BOX 7506, MYRTLE BEACH, SC, 29572-7506

FUNERAL DIRECTOR: DAVID C. THOMAS

LICENSE NUMBER: 2810

EMBALMER'S NAME: DAVID C. THOMAS

LICENSE NUMBER: 2810

ACTUAL OR PRESUMED DATE OF DEATH: OCTOBER 17, 2012

MANNER OF DEATH: ACCIDENT

ACTUAL OR PRESUMED TIME OF DEATH: 1841

CAUSE OF DEATH - PART I

SEVERE TRAUMATIC BRAIN INJURY

MULTIPLE TRAUMA

MOTOR VEHICLE CRASH

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? YES

AUTOPSY PERFORMED? NO

AUTOPSY AVAILABLE? NA

DATE OF INJURY: OCTOBER 09, 2012

TIME OF INJURY: 1900

INJURY AT WORK? NO

PLACE OF INJURY: STREET I-95

LOCATION OF INJURY: I-95 NR MM 170, FLORENCE, FLORENCE COUNTY, SC

HOW THE INJURY OCCURRED?

EJECTED FROM VEHICLE AT HIGH SPEED.

CERTIFIER NAME AND TITLE: DR. MARK REYNOLDS

LICENSE NUMBER: 19841

CERTIFIER'S ADDRESS: NA

DATE FILED: NOVEMBER 19, 2012

DATE OF ISSUANCE: NOVEMBER 19, 2012

SPECIAL INSTRUCTIONS:

NA

SC02576338

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine Templeton
Catherine Templeton
Director and State Registrar

Guang Zhao
Guang Zhao
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 03/21/2012



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) THE TWELFTH JUDICIAL CIRCUIT

Anthony Fischetti as Executor of the
Estate of Concetta Fischetti,

Plaintiff,

v.

SeaTruck, Inc., KC Freight, LLC and
Carlos L. Ceballos,

Defendants.

Civil Action No.: 2013-CP-21-2395

DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

FILED
2014 JUN 16 PM 1:40
CONNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

INTRODUCTION

Defendants submit this Memorandum in Opposition to Plaintiff's Motion for Summary Judgment in the above-captioned action pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

FACTS/BACKGROUND

This wrongful death and survival action case arises out of an October 9, 2012 motor vehicle accident on I-95 in Florence County, SC. Compl. ¶6. At the time of the accident, the Plaintiff, Anthony Fischetti, was riding in the passenger seat of a minivan driven by his wife, Jennifer Fischetti, which was traveling north on Interstate 95. Anthony Fischetti Dep. 38:19-21, March 31, 2014. The Plaintiff's mother, Concetta Fischetti, her boyfriend Angelo Fischetti and the Plaintiff's son Salvatore Fischetti were also passengers in the van. A. Fischetti Dep. 40:21-23. Defendant Carlos Ceballos was also driving north on Interstate 95 in his tractor trailer at the time of the accident.

It is uncontested that the minivan operated by Jennifer Fischetti struck the trailer portion of a commercial vehicle operated by Mr. Ceballos. Compl. ¶ 12. However, the cause of the

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

accident is disputed. The Plaintiff maintains that the accident was precipitated by Mr. Ceballos' vehicle entering her lane of travel, causing her to enter the median and over-correct, at which time she struck the trailer and lost control. Compl. ¶¶ 11, 12. Defendant Ceballos has testified that he never entered the Plaintiff's lane of travel but rather constantly maintained his lane of travel. Carlos Ceballos Dep. 71-73, April 2, 2014. Suddenly and without warning, Mr. Ceballos testified that he felt the impact from the Fischetti's minivan and reacted to the ongoing emergency situation by immediately braking and pulling to the side. Id.

An investigation by a South Carolina Highway Patrol MAIT unit found that the Fischetti's minivan, for unknown reasons, entered the median and over-corrected, thereafter entering the Mr. Ceballos' lane of travel and striking his vehicle before crossing back across her lane and into the guardrail. See MAIT Report attached as Exhibit A. When the Fischetti's minivan struck the guardrail, the right rear door opened and ejected the decedent, who was unrestrained in the back seat. See Id. It is unknown whether the door failed or whether the unrestrained decedent mistakenly grabbed the door handle during the accident; however, in her recorded statement, Jennifer Fischetti indicated that she believed that the decedent's hand was on the handle and that she must have opened the door and fell out. See Recorded Statement of Jennifer Fischetti attached as Exhibit B. After hitting the guardrail, the Fischetti's minivan spun back into the interstate, before ultimately coming to rest.

STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56, SCRPC. A court should invoke this harsh remedy cautiously in order to

guard against depriving a deserving party of a trial of the disputed factual issues. Metts v. Mims, 384 S.C. 491, 500, 682 S.E.2d 813, 818 (2009). In this spirit, a court must always “view the facts in the light most favorable to the non-moving party.” Id. “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009). Moreover, in a preponderance of the evidence case, the nonmoving party “is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Id. at 330, 673 S.E.2d at 803.

ARGUMENT

I. The Plaintiff’s recitation of the factual background of this case presents numerous assumptions and disputed matters as fact while omitting other key details.

The Plaintiff’s factual recitation begins with a lengthy comparison of Defendant Ceballos’ daily driving logs with GPS data from his tractor-trailer. In particular, the Plaintiff appears to imply that Mr. Ceballos’ daily log, which states that he was in his sleeper by 7 p.m., conflicts with his cell phone records, which reflect calls at 7:09 p.m. and 8:32 p.m. This implication ignores the fact that a commercial driver is merely required to be in the sleeper—not asleep—by federal regulations. The times at which Mr. Ceballos may have used his phone while in the sleeper cabin of his tractor are irrelevant to his driving/duty hours, and are used by the Plaintiff to create an otherwise unsupported inference that Mr. Ceballos violated driving time regulations.

The Plaintiff’s use of GPS logs from the tractor trailer is also problematic in that Plaintiff has not authenticated these logs by showing how they were created and why they should be

relied upon. The Defendants produced these logs, but made no representations as to the manner in which they were created or recorded. It is therefore incumbent upon the Plaintiff to prove their reliability, particularly when the logs are used to support the Plaintiff's summary judgment motion. Even if Mr. Ceballos' logs are wrong, a factual question for the jury exists as to whether the logs or the GPS data are more reliable, and therefore summary judgment is improper at this stage since the logs constitute at least a scintilla of evidence upon which the jury could find that Mr. Ceballos' records should be trusted above the GPS data.

While highlighting perceived inconsistencies in Mr. Ceballos' testimony, the Plaintiff omits or avoids clearly inaccurate testimony by the Jennifer Fischetti and Anthony Fischetti. For example, the Plaintiff's Memorandum correctly states that Ceballos testified he was traveling in the right hand lane. Ceballos Dep. 71:17-21. However, it neglects to mention that Mr. Fischetti testified that the Fischetti's vehicle was in the middle lane when the accident occurred, when in fact there is no middle lane where the accident occurred on I-95; it is a two lane road. A. Fischetti Dep. 93:7-12.

Strikingly absent from the Plaintiff's statement of the facts is any mention that Connie Fischetti was not wearing her seatbelt when the accident occurred. However, even if evidence regarding the Plaintiff's failure to use her seatbelt is inadmissible, there is also confusion in the record as to why the door of the Fischetti's car opened during the accident. Cf. Jennifer Fischetti Dep. 53:10-18, March 31, 2014; A. Fischetti Dep. 129:24-130:22.

II. The Plaintiff's arguments for summary judgment as to the Defendants' affirmative defenses are premature, insufficient, and ignore the scintilla standard.

A. Comparative Negligence

Though the Plaintiff's Memorandum portrays the decedent's failure to use her seatbelt as the sole comparative negligence issue, there is also a scintilla of evidence from which a jury could reasonably determine that the decedent negligently contributed to her injuries by causing one of the rear doors of the car to open. Additionally, the Plaintiff has put forth no evidence or expert testimony linking the door opening to a mechanical cause. Accordingly, it is possible that further discovery or the evidence at trial will show that the decedent opened the door, perhaps either mistakenly while grabbing for something to hold on to during the accident or in a panicked attempt to escape the out-of-control vehicle.

Plaintiff cites 56-5-6540(C) and Clark v. Cantrell, 332 S.C. 433, 451, 504 S.E.2d 605, 614 (Ct. App. 1998) for the proposition that indirect evidence of seat belt use is not admissible. However, there is direct testimony in this case by both Jennifer and Anthony Fischetti that the decedent was not wearing her seat belt "because she did not feel she needed to in the back seat". (See cites to their testimony above). Statements given by Jennifer and Anthony Fischetti also say that the decedent did not have her seat belt on. See Exhibit B; See also Recorded Statement of Anthony Fischetti attached as Exhibit C. Additionally, as previously noted, the MAIT report concludes that the Plaintiff did not have her seat belt on. See Exhibit A.

B. Sudden Emergency

The sudden emergency doctrine "protects a driver who is suddenly placed in an emergency and is compelled to act instantly to avoid a collision or an injury." Clark v. Cantrell, 332 S.C. 433, 445, 504 S.E.2d 605, 611 (Ct. App. 1998) *aff'd as modified*, 339 S.C. 369, 529

S.E.2d 528 (2000) (emphasis added). A jury question exists as to whether the Plaintiff's vehicle entering Ceballos' lane of travel and hitting his trailer created a sudden emergency for Ceballos. The MAIT investigation indicates the following timeline: (1) the vehicle in which Plaintiff was a passenger ran onto the center median; (2) the driver (Jennifer Fischetti) overcorrected; (3) the Plaintiff's vehicle crossed back across the road and into Ceballos's lane of travel where it struck his trailer; (4) the Plaintiff's vehicle then crossed back across the road and into the guardrail (where Ms. Fischetti was ejected); and (5) the vehicle then spun out of control before ultimately ending up in the center of the interstate. See Exhibit A. This report and deposition testimony of Ceballos and the Fischettis potentially offer the jury the option of finding no negligence on the part of the Defendant, and therefore satisfy the first element of the sudden emergency test requiring that the emergency not be of one's own making.

In response to the emergency described above, Defendant Ceballos testified that he "automatically" braked his vehicle. Despite quoting this testimony, the Plaintiff argues that Ceballos made no choice of action. In fact, when confronted with the sudden emergency created by Jennifer Fischetti striking the trailer, Defendant Ceballos has stated that he chose to brake to avoid further contact between the vehicles. At that point the emergency was still evolving as set forth above, as the Plaintiff's car was still out of control and crossed back into the median, where it struck the metal guardrail and ejected the decedent.

Accordingly, both elements of the sudden emergency affirmative defense are met since there is evidence from which a jury could determine that the accident occurred through no fault of Defendant Ceballos and presented him with an emergency situation to which he reacted appropriately to avoid further collision and injury. Therefore, more than a mere scintilla of

evidence exists that Defendants were not negligent and was forced to act only because the other vehicle came into his lane of travel.

C. Assumption of the Risk

Plaintiff claims entitlement to summary judgment as to assumption of the risk based on language in the Defendants' Answer pleading the doctrine as a "complete bar to this action." It is longstanding precedent in South Carolina that "[t]o ensure substantial justice to the parties, the pleadings must be liberally construed." Gaskins v. S. Farm Bureau Cas. Ins. Co., 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000) *aff'd as modified*, 354 S.C. 416, 581 S.E.2d 169 (2003). To the extent that the doctrine of assumption of the risk is no longer an absolute defense in South Carolina, there is still at least a scintilla of evidence from which a jury could conclude that Ms. Fischetti assumed the risk of her accident. First, Ceballos's testimony indicated that Jennifer Fischetti apologized to him for causing the accident. Second, the MAIT Report and accident report indicate both that the Plaintiff was not wearing a seatbelt and that the person with whom she chose to ride, her daughter Jennifer, caused the accident, potentially by going to sleep at the wheel, not paying attention, or carelessly drifting off the road.

D. Unavoidable Accident

The defense of unavoidable accident must be either pled or waived. As outlined above, the cause of the accident is disputed. Furthermore, discovery is still ongoing and this suit is not yet a year old. Accordingly, it would be prejudicial to the Defendant for the Court to strike this defense at this time.

E. Improper Venue

While the accident occurred in Florence County, discovery is still ongoing and this suit is not yet a year old. Thus it would be prejudicial to the Defendant for the Court to strike this defense while the possibility for removal to federal court within one year still exists.

F. Waiver and Estoppel

Again, waiver and estoppel must be either pled or waived. Rule 7(c), SCRPC. As discovery is still on-going, it would be prejudicial to strike this defense at this stage in the litigation.

G. Statute of Limitations

This defense must also be pled or waived pursuant to Rule 7(c), SCRPC. Defendant pled this defense at the earliest stage of litigation, and it is unclear what practical advantage Plaintiff seeks to achieve by moving for summary judgment as to the statute of limitations. Nevertheless, as discovery is still ongoing, it would be prejudicial to strike this defense at this stage in the litigation.

H. Spoliation

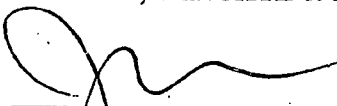
Dismissal of the affirmative defense of spoliation at this stage in the litigation would be particularly prejudicial to the Defendants as discovery is still on-going and the Defendants have not yet had the opportunity to fully assess this claim and the exhibits and evidence which may be requested for use at trial. Accordingly, this Court should allow defendants to retain the protections of this affirmative defense at least until the stage of pre-trial motions for this case.

CONCLUSION

Given the foregoing, Defendants respectfully request that this Court deny the Plaintiff's motion for summary judgment as to the above-listed affirmative defenses.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
J. Eric Cavanaugh
Sweeney, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia SC 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

June 16, 2014



South Carolina Department of Public Safety

South Carolina Highway Patrol

DA-163-12

Florence

County

Pee Dee

M.A.I.T.

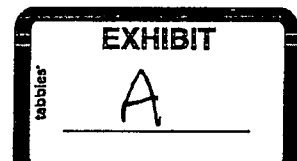
Team Members

Sgt. M.A. Dangerfield
Cpl. T.W. Dewitt
Cpl. J.R. Shull, Jr.
L/Cpl. K.L. Craig
L/Cpl. J.A. Alban
L/Cpl. J.T. Leach
L/Cpl. T.J. Luther
L/Cpl. M.A. Ligocki
S/Tpr. W.C. Epps

FOIA Officer

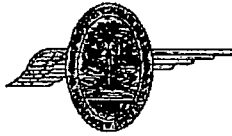
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LeighWatkins@scdps.net

**Forward all Subpoenas for MAIT to
the FOIA Officer**



SOUTH CAROLINA HIGHWAY PATROL

MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM



Leroy Smith
Director

M.R. Oliver
Colonel

INVESTIGATIVE REPORT

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MAIT CASE NO:	DA-163-12	CAD/CASE NO:	12FL140580
REQUESTING AGENCY:	SCHP		
TROOP:	5		
COUNTY:	FLORENCE	COLLISION LOCATION:	INTERSTATE 95
INVESTIGATING OFFICER:	L/CPL. D.P. MCKENZIE		
DATE:	10/09/2012		
MAIT REGION:	PEE DEE	TEAM LEADER:	SGT. M.A. DANGERFIELD

1. CONCLUSION.

MAIT has completed its investigation of the above collision and concurs with the findings of the primary investigating officer.

2. MAPPING / CAD.

MAIT completed a forensic mapping of the collision scene.

3. AUDIO / INTERVIEWS.

MAIT conducted audio recordings during the course of this investigation.

4. PHOTOGRAPHS.

MAIT took digital photographs during the course of this investigation.

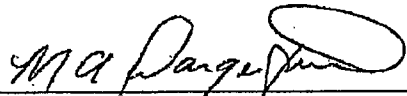
5. VIDEO.

MAIT took digital video footage during the course of this investigation.



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
Post Office Box 1993
Blythewood, SC 29016




Team Leader / Region Commander

ACTAR Number: 1661



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
Post Office Box 1993
Blythewood, SC 29016



ORIGINAL

FATAL

SOUTH CAROLINA FINDING #1		Page # 1		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 7/2010)		# Of Units 02		Amended - Attached Original Report Corrected		1904		1914										
Date 10-09-2012	Time of Collision 1900	County 21	1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- PP		Collision Location (Rt. # / Name) E 95 /		Main 2- Alternate 5- Spur		6- Connection 7- Business		Miles: 8	Dir. N E S W	In (Near) City or Town of: FLORENCE							
Lane # / Dir. # 1 4 S W		Distance Offset 2.00	Direction N E	1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- Other		Base Intersection (Rt # / Name) 327 / N. WILLISTON RD.		Main 2- Alternate 5- Spur		6- Connection 7- Business 9- Other		GPS COORDINATES 00 00' 00.00"								
R.R. Id. N E 1- Entrance S W 2- Exit		From N E 1- Entrance S W 2- Exit	To N E 1- Entrance S W 2- Exit	1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- Other		Second Intersection (Rt # / Name) 219 / ELBERRY RD.		Main 2- Alternate 5- Spur		6- Connection 7- Business 9- Other		DEGREES MINUTES SECONDS Latitude 34 16 56.89 Longitude 79 40 46.88								
E-290390 Driver/Pedestrian's Full Name CEBALLOS CARLOS L								E-290391 Driver/Pedestrian's Full Name FISCHETTI JENNIFER D														
Unit # 01	Sex M	Race W	Street/R.F.D. 7850 W 8TH AVE		State FL		Driver's License # C142112684570	Class E	Insurance Company GREAT WEST	Unit # 02	Sex F	Race W	Street/R.F.D. 2285 BRAGG ST APT 1C		State NY	Driver's License # 438376216	Class D	Insurance Company STATE FARM				
# Occ 1	Birth Date 12-17-1968		City, State, & Zip HIALEAH FL 33014		Year 2002		Body TR	Vehicle Make FRHT	VIN # 1FUJBBV22LK04717	# Occ 5		Birth Date 10-30-1969		City, State, & Zip BROOKLYN NY 11229		Year 2001	Body VN	Vehicle Make MAZD	VIN # JM3LW28Y110181281			
State FL	Year 2013	License Plate # Z0124T	Owner's D.L. # NONE		Home Telephone (786) 2569599		Owner's Full Name KC FREIGHT		State NY		Year 2013	License Plate # BEU7529	Owner's D.L. # NONE		Home Telephone (718) 5136334		Owner's Full Name FISCHETTI CONNIE					
Bus. Telephone (305) 4564146		Street/R.F.D. 7850 W 8TH AVE		City, State, & Zip HIALEAH FL 33014		Contributed To Collision Yes (No)		Home Telephone (718) 4907956		Street/R.F.D. 305 AVE O		City, State, & Zip BROOKLYN NY 11230		Contributed To Collision Yes (No)		Bus. Telephone		Street/R.F.D.				
Estimated Speed 70	Speed Limit 70	C.D.L. Req: Yes (No)	T/B S Req: Yes (No)	Alc/Drg Info (see back): Yes (No)	Yes (No)	Code	Summons #	Code	Towed	Yes (No)	Estimated Speed 70	Speed Limit 70	C.D.L. Req: Yes (No)	T/B S Req: Yes (No)	Alc/Drg Info (see back): Yes (No)	Yes (No)	Code	Summons #	Code	Towed	Yes (No)	
Driver/Pedestrian's Full Name										State Year License Plate # Owner's D.L. #												
Unit # # Occ	Sex	Race	Street/R.F.D.		Home Telephone		Owner's Full Name		Bus. Telephone		Street/R.F.D.		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip	
State	Driver's License #	Class	Insurance Company	Year		Body	Vehicle Make	VIN #	Estimated Speed		Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg Info (see back): Yes No	Yes No	Code	Summons #	Code	Towed	Yes No		
Dir. of Travel: Unit 1: (N) S E W Unit 2: (N) S E W Unit 3: N S E W																						

UNIT #1
SPINNING AROUND

UNIT #2

UNIT #1

MEDIAN

GUARD RAIL

Unit 1 Dam.	Unit 2 Dam.	Unit 3 Dam.	Prop. Dam. 1	Prop. Dam. 2
\$15000	\$1000		GUARD RAIL	\$1500
Property Owner/Witness SCDOT		Property Owner/Witness		
Address 3018 E. PALMETTO ST.		Address FLORENCE		
State SC	Zip 29505	Phone 8436614715	State SC	Zip 29505
Photo: Describe What Happened (Refer to Units by Number) (7) N				
UNIT #1 NORTH BOUND ON I-95 IN LANE #1. UNIT #2 NORTH BOUND ON I-95 IN LANE #2. UNIT #1, AFTER RUNNING INTO THE MEDIAN AND OVER-CORRECTING, UNIT #1 ENTERED LANE #2 AND STRUCK THE TRAILER PORTION OF UNIT #2. AFTER CONTACT WITH UNIT #2, UNIT #1 RAN OFF THE LEFT SIDE OF THE ROAD AND STRUCK THE GUARD RAIL. AFTER CONTACT WITH THE GUARD RAIL, UNIT #1 ENTERED THE ROAD WAY AND SPUN AROUND SEVERAL TIMES BEFORE COMING TO REST UP RIGHT. WHILE UNIT #1 WAS SPINNING AROUND, THE BACK PASSENGER WAS EJECTED FROM THE VEHICLE AND THROWN IN THE MEDIAN.				

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name MCKENZIE - D P	Rank L/CPL	Badge # T 3 1 0	Jurisdiction Code H P 0 5	Review Date 10-18-2012	Reviewer's Name N A Tart	Rank Cpl	Internal Agency Code 12FL140580

FATAL
DA-163-12

120



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

MAIT Notes

- ☒ Field Case Notes
- ☒ TR310
- ☐ Case Opinions / Findings
- ☒ Field Sketch
- ☒ CAD Printout (if applicable)
- ☐ MAIT Investigating Officer Notes

**SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
SCENE CASE NOTES**



MAIT CASE #: DA-163-12		DATE OF COLLISION / INCIDENT: 10-09-2012		
TIME / DATE NOTIFIED: 0945 / 10-18-2012		PRIMARY INVESTIGATING OFFICER: D.P. McKenzie		
COLLISION / INCIDENT LOCATION: I95 NB north of SC327		AGENCY ASSISTED / NOTIFIED BY: SCHP 5B / FSgt. Castles		
TIME / DATE ARRIVED ON-SCENE: 0800 / 10-19-2012		ISSUES: Scene Documentation		
TEAM MEMBERS ON-SCENE: Dangerfield, Dewitt, Shull, Alban, Luther, Ligocki		CHARGES FILED / PENDING: None		
PHOTOGRAPHS TAKEN BY MAIT OF SCENE: ☒ Y ☐ N BY: Alban DATE: 10-19-2012				
PHOTOGRAPHS TAKEN BY MAIT OF VEHICLES: ☒ Y ☐ N BY: Ligocki DATE: 10-18-2012				
OTHER PHOTOGRAPHS: ☐ Y ☒ N BY: DATE:				
I/O PHOTOGRAPHS SECURED: ☒ Y ☐ N ☐ N/A BY: Shull DATE: 10-18-2012				
VIDEO: ☒ Y ☐ N ☒ MAIT ☐ I/O ☐ OTHER LEO ☐ OTHER MAIT VIDEOGRAPHER: Luther DATE: 10-19-2012				
MAPPING: ☒ Y ☐ N ☒ SCENE ☐ VEHICLE(S) ☐ OTHER Station: Alban, Shull Architect(s): Luther, Dewitt				
FIELD SKETCH: ☒ Y ☐ N By: Ligocki				
YAW: ☐ Y ☒ N If Yes: Chord M/O Rotation: CW / CCW Tire: F R L R				
AIRBORNE: ☐ Y ☒ N Takeoff ☐ L ☐ U ☐ D Landing + / -				
DRAG SLED PULLED: ☐ Y ☒ N Pulled by: Date:				
Read by: Weight:				
#1	#2	#3	#4	#5
#6	#7	#8	#9	#10
VEHICLE INSPECTION: ☒ Y ☐ N Date: 10-18-2012				
MECHANICAL EXAM: ☐ Y ☒ N Date:				
SDM DOWNLOAD: ☐ Y ☒ N Date:				
E-FRICTION READING: ☐ Y ☒ N Date: By:				
Readings: Equip:				
AUTOPSY: ☐ Y ☒ N Date:				
Attended by: @				
Notes: Passenger died of injuries 10/17/2012.				

* Indicates MAIT Scene Supervisor

ORIGINAL

FATAL

SOUTH CAROLINA DPS/OHS & DMV USE ONLY				Page # 1 Of 1		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR - 310 (Rev. 7/2010)				# of Units 02		Amended - ☐ Corrected ☐		DA-103-12		1904		1914	
Date 10-09-2012		Time of Collision 1900		County 21		1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- PP		Collision Location (Rt. # / Name) E 95 /		1- Main 2- Alternate 3- Spur 4- Connection 5- Business 6- Connection 7- Business		Miles: 8		Dir. N E S W		In (Near) City or Town of: FLORENCE			
Lane # / Dir. # 1 Of 4 S W		Distance Offset 2.00 Miles		Direction N E		1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- Other		Base Intersection (Rt. # / Name) 327 / N. WILLISTON RD.		1- Main 2- Alternate 3- Spur 4- Connection 5- Business 6- Connection 7- Business		GPS COORDINATES 00 00 00.00"		DEGREES MINUTES SECONDS		Latitude 34 16 58.89		Longitude 79 40 46.88	
R.R. Id.		From N E 1- Entrance S W 2- Exit		To N E 2- US Primary S W 3- SC Primary		1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- Other		Second Intersection (Rt. # / Name) 219 / ELBERRY RD.		1- Main 2- Alternate 3- Spur 4- Connection 5- Business 6- Connection 7- Business		GPS COORDINATES 00 00 00.00"		DEGREES MINUTES SECONDS		Latitude 34 16 58.89		Longitude 79 40 46.88	

E-290390										E-290391									
Driver's Full Name CEBALLOS CARLOS L										Driver's Full Name FISCHETTI JENNIFER D									
Unit # 01		Sex M		Race W		Street/R.F.D. 7850 W 8TH AVE		City, State, & Zip HIALEAH FL 33014		Unit # 02		Sex F		Race W		Street/R.F.D. 2285 BRAGG ST APT 1C		City, State, & Zip BROOKLYN NY 11229	
# Occ 1		Birth Date 12-17-1968		Class FL		Insurance Company GREAT WEST				# Occ 5		Birth Date 10-30-1969		Class NY		Insurance Company STATE FARM			
State FL		Driver's License # C142112684570		Class E		Insurance Company GREAT WEST				State NY		Driver's License # 438376216		Class D		Insurance Company STATE FARM			
Year 2002		Body TR		Vehicle Make FRHT		VIN # 1FUJBBAY22LK04717				Year 2001		Body VN		Vehicle Make MAZD		VIN # JM3LW28Y110181281			
State FL		Year 2013		License Plate # Z0124T		Owner's D.L. # NONE				State NY		Year 2013		License Plate # BEU7529		Owner's D.L. # NONE			
Home Telephone (786) 2569599		Owner's Full Name KC FREIGHT		Street/R.F.D. 7850 W 8TH AVE		City, State, & Zip HIALEAH FL 33014				Home Telephone (718) 5136334		Owner's Full Name FISCHETTI CONNIE		Street/R.F.D. 305 AVE O		City, State, & Zip BROOKLYN NY 11230			
Bus. Telephone (305) 4564146		Contributed To Collision Yes		No		HIALEAH				Bus. Telephone (718) 4907956		Contributed To Collision Yes		No		BROOKLYN			
Estimated Speed 70		Speed Limit 70		C.D.L. Req: Yes No		T/B S Req: Yes No		Alc/Drg Info (see back): Yes No		Estimated Speed 70		Speed Limit 70		C.D.L. Req: Yes No		T/B S Req: Yes No		Alc/Drg Info (see back): Yes No	
Summons #		Code		Summons #		Code		Towed Yes No		Summons #		Code		Summons #		Code		Towed Yes No	

Driver's Full Name										State Year License Plate # Owner's D.L. #													
Unit #		Sex		Race		Street/R.F.D.		Home Telephone		Owner's Full Name		Unit #		Sex		Race		Street/R.F.D.		Home Telephone		Owner's Full Name	
# Occ		Birth Date		City, State, & Zip		Bus. Telephone		State		Driver's License #		Class		Insurance Company		Contributed To Collision		Yes		No		City, State, & Zip	
Year		Body		Vehicle Make		VIN #		Estimated Speed		Speed Limit		C.D.L. Req: Yes No		T/B S Req: Yes No		Alc/Drg Info (see back): Yes No							
Dir. of Travel:		Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W																	

Unit 1 Dam.		Unit 2 Dam.		Unit 3 Dam.		Prop. Dam. 1		Prop. Dam. 2	
\$15000		\$1000		\$		GUARD RAIL		\$	
Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness	
SCDOT		City		Address		City		Address	
3018 E. PALMETTO ST.		FLORENCE		State		Zip		Phone	
SC		29505		8436614715					
Photo:		Describe What Happened (Refer to Units by Number)							
(Y) N									

UNIT #1 NORTH BOUND ON I-95 IN LANE #1. UNIT #2 NORTH BOUND ON I-95 IN LANE #2. UNIT #1, AFTER RUNNING INTO THE MEDIAN AND OVER-CORRECTING, UNIT #1 ENTERED LANE #2 AND STRUCK THE TRAILER PORTION OF UNIT #2. AFTER CONTACT WITH UNIT #2, UNIT #1 RAN OFF THE LEFT SIDE OF THE ROAD AND STRUCK THE GUARD RAIL. AFTER CONTACT WITH THE GUARD RAIL, UNIT #1 ENTERED THE ROAD WAY AND SPUN AROUND SEVERAL TIMES BEFORE COMING TO REST UP RIGHT. WHILE UNIT #1 WAS SPINNING AROUND, THE BACK PASSENGER WAS EJECTED FROM THE VEHICLE AND THROWN IN THE MEDIAN.

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.															
Investigating Officer's Name MCKENZIE - DP		Rank LCPL		Badge # T 3 1 0		Jurisdiction Code H P O 5		Review Date 10-18-2012		Reviewer's Name NA Tart		Rank Cpl		Internal Agency Code 12FL140580	

[illegible]

**SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM**

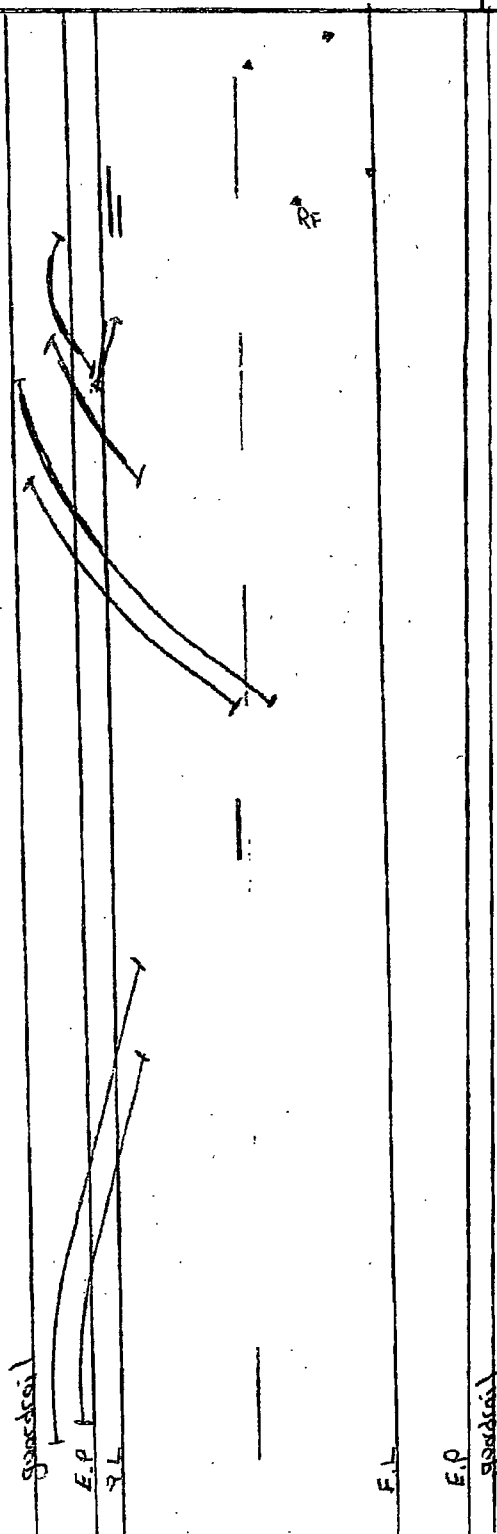


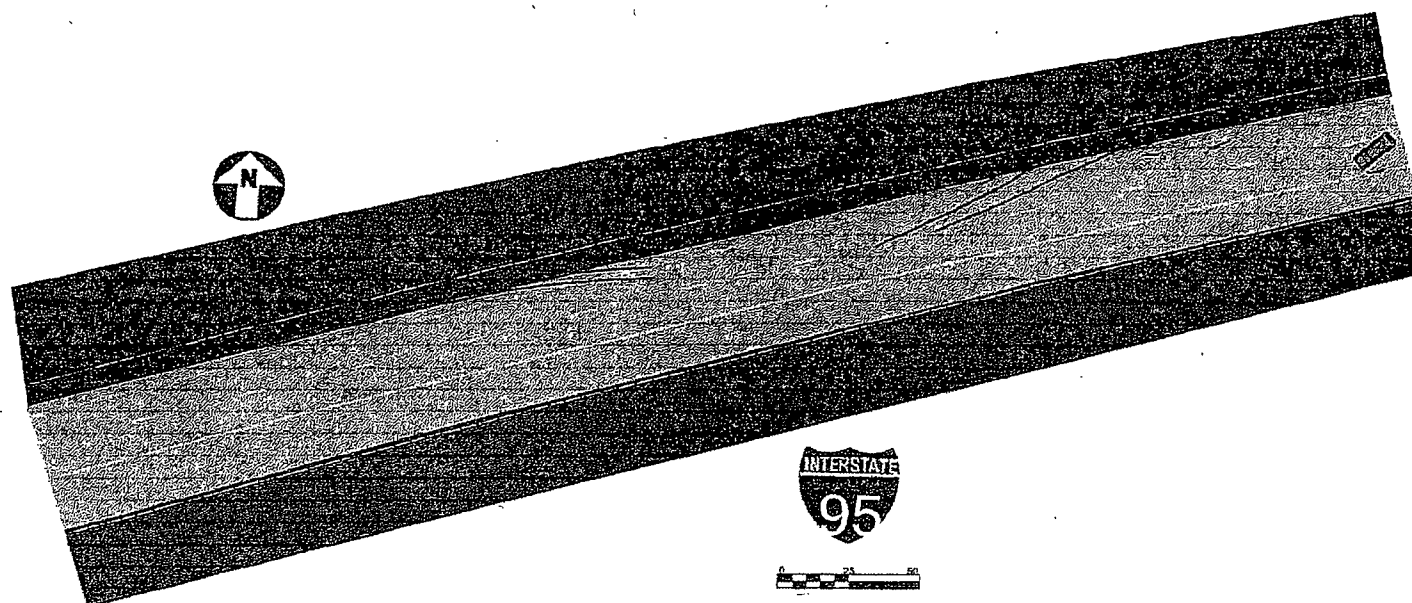
MAIT FIELD SKETCH

Case # <u>DA-163-12</u>	Drawn By <u>L. Lock</u>	North
Date Drawn <u>10-19-2012</u>	Not To Scale	

I-95
(Northbound Lanes)
Florence County

I = fire mark
| = gouge





SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
MAIT Case Notes



MAIT Case #	DA-163-12	Investigator:	Shull

Date:	Notes:
10-18-2012	No SCDMV information for either driver or vehicle (Unit #1 from Florida, Unit #2 from New York). Unit 1 not inspected (resumed out-of-state operations after collision 10-09-2012)
10-30-2012	No vehicle specs for Unit #2 due to age.

DA-163-12

CASE #



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

Vehicle Specifications

- ☐ N/A
- ☒ Vehicle Specifications
- ☒ VIN Information
- ☒ Recall
- ☐ None for Unit #

Version 5.2.0
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SOUTH CAROLINA MAIT
3415 EAST PALMETTO STREET
FLORENCE SC 29506-4011

10/19/2012

2001 MAZDA MPV LX 4 DOOR MINI VAN

Curb Weight: lbs. kg.
Curb Weight Distribution - Front: % Rear: %
Gross Vehicle Weight Rating: lbs. kg.
Number of Tires on Vehicle:
Drive Wheels:

Horizontal Dimensions	Inches	Feet	Meters
Total Length	187	15.58	4.75
Wheelbase:	112	9.33	2.84
Front Bumper to Front Axle:	36	3.00	0.91
Front Bumper to Front of Front Well:	20	1.67	0.51
Front Bumper to Front of Hood:	7	0.58	0.18
Front Bumper to Base of Windshield:	38	3.17	0.97
Front Bumper to Top of Windshield:	72	6.00	1.83
Rear Bumper to Rear Axle:	39	3.25	0.99
Rear Bumper to Rear of Rear Well:	24	2.00	0.61
Rear Bumper to Rear of Trunk:	4	0.33	0.10
Rear Bumper to Base of Rear Window:	6	0.50	0.15
Width Dimensions			
Maximum Width:	72	6.00	1.83
Front Track:	61	5.08	1.55
Rear Track:	61	5.08	1.55
Vertical Dimensions			
Height:	69	5.75	1.75
Ground to -			
Front Bumper (Top)	26	2.17	0.66
Headlight - center	31	2.58	0.79
Hood - top front:	34	2.83	0.86
Base of Windshield	44	3.67	1.12
Rear Bumper - top:	22	1.83	0.56
Trunk - top rear:	39	3.25	0.99
Base of Rear Window:	46	3.83	1.17

2001 MAZDA MPV LX 4 DOOR MINI VAN

Interior Dimensions

	Inches	Feet	Meters
Front Seat Shoulder Width	60	5.00	1.52
Front Seat to Headliner	41	3.42	1.04
Front Leg Room - seatback to floor (max)	41	3.42	1.04
Rear Seat Shoulder Width	61	5.08	1.55
Rear Seat to Headliner	39	3.25	0.99
Front Leg Room - seatback to floor (min)	37	3.08	0.94

Seatbelts: 3pt - front and rear

Airbags: FRONT SEAT AIRBAGS + OPTIONAL SIDE AIRBAGS

Steering Data

Turning Circle (Diameter)	492	41.00	12.50
Steering Ratio:	:1		
Wheel Radius:	12	1.00	0.30
Tire Size (OEM):	P205/65R15		

Acceleration & Braking Information

Brake Type: ALL DISC

ABS System: ABS

Braking, 60 mph to 0 (Hard pedal, no skid, dry pavement):

d = 132.0 ft t = 3.0 sec a = -29.3 ft/sec² G-force = -0.91

Acceleration:

0 to 30mph	t = 4.4 sec	a = 10.0 ft/sec ²	G-force = 0.31
0 to 60mph	t = 12.5 sec	a = 7.0 ft/sec ²	G-force = 0.22
45 to 65mph	t = 7.4 sec	a = 4.0 ft/sec ²	G-force = 0.12

Transmission Type: 4spd AUTOMATIC

Notes:

Federal Bumper Standard Requirements:

No Requirement

N.S.D.C = 2000 - 2003

2001 MAZDA MPV LX 4 DOOR MINI VAN

Other Information

Tip-Over Stability Ratio =
NHTSA Star Rating (calculated)

1.13

Reasonably Stable

**

Center of Gravity (No Load):

Inches behind front axle	=	45.92
Inches in front of rear axle	=	66.08
Inches from side of vehicle	=	36.00
Inches from ground	=	27.01
Inches from front corner	=	89.48
Inches from rear corner	=	111.08
Inches from front bumper	=	81.92
Inches from rear bumper	=	105.08

Moments of Inertia Approximations (No Load):

Yaw Moment of Inertia	=	2423.71	lb*ft*sec ²
Pitch Moment of Inertia	=	2438.84	lb*ft*sec ²
Roll Moment of Inertia	=	569.54	lb*ft*sec ²

Front Profile Information

Angle Front Bumper to Hood Front	=	48.8	deg
Angle Front of Hood to Windshield Base	=	17.9	deg
Angle Front of Hood to Windshield Top	=	26.9	deg
Angle of Windshield	=	34.1	deg
Angle of Steering Tires at Max Turn	=	26.1	deg

First Approximation Crush Factors:

Speed Equivalent (mph) of Kinetic Energy (KE) used in causing crush of indentation may be evaluated using the following formula, the appropriated Crush Factor (CF), and Maximum Indentation Depth (MID), in feet:

$$V(\text{mph}) = \sqrt{(30 * CF * MID)}$$

KE Equivalent Speed (Front/Rear/Side) = 21 CF

Bullet vehicle IMPACT SPEED estimation
based on TARGET VEHICLE damage ONLY = 27 CF
(Tested for Rear/Side Impact only)

These CF values are based upon analysis of NHTSA Barrier Crash data, and from over 1000 vehicle accidents where independent evaluation of speed was possible. (These are NOT 'A', 'B', 'C', or 'G' values)

The rear Impact data with more then 2-3 inches of crush damage should be looked at carefully, since some vehicles have very weak trunk & fender strength. Therefore, on some cars, especially GM, you estimate from the rear crush data may be high by as much as 4-5 mph (on a crush of 18 inches).

DA-163-12

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VIN Decoding with NICB VINassist

The current DOS version of VINassist. (Last updated 7/1/2009)

[Download](#)Enter or verify VIN, then click **SUBMIT**.

VIN: 1FUJBBAV22LK04717

[Submit](#)[Print](#) [?](#)

DIGIT	DESCRIPTION	MEANING
<u>1</u>	Country of Origin	UNITED STATES OF AMERICA
<u>E</u>	Manufacturer	FRHT FREIGHTLINER
<u>U</u>	Vehicle Type	TRUCK
<u>J</u>	Bed/Chassis Type	6X4 TRUCK-TRACTOR
<u>BB</u>	Model	CST120 CNV./EF FT ENG BUS CHAS(4UZ)
<u>AV</u>	Brake Horsepower	CAT. C15/DSL/14.6L I6/AIR BRAKES
<u>2</u>	Check Digit	Check Digit Matches
<u>2</u>	Year	2002
<u>L</u>	Plant	CLEVELAND, NC
<u>K04717</u>	Serial Number	Sequence in Range
VIN indicates a 2002 FREIGHTLINER CST120 CNV./EF FT ENG BUS CHAS(4UZ)		
Shipping record not on file.		
EDR Available?:	NO	

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DA-163-12



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VIN Decoding with NICB VINassist

The current DOS version of VINassist. (Last updated 7/1/2009)

[Download](#)Enter or verify VIN, then click **SUBMIT**.

VIN: JM3LW28Y110181281

[Submit](#)[Print](#) [?](#)

DIGIT	DESCRIPTION	MEANING
J	Country of Origin	JAPAN
M	Manufacturer	MAZD MAZDA
3	Vehicle Type	MPV
LW28Y	Model	MPV, 4 DR WGN,2.5L,D&P FRT+ SD ARBGS
1	Check Digit	Check Digit Matches
1	Year	2001
0	Plant	HIROSHIMA, JAPAN
181281	Serial Number	Sequence in Range

VIN indicates a 2001 MAZDA MPV, 4 DR WGN,2.5L,D&P FRT+ SD ARBGS

Shipping record on file.

EDR Available?: NO

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DA-163-12



Recalls - Search Results

1 Record(s) Displayed.

Report Date : October 18, 2012 at 11:11 AM
Search Type : VEHICLE
Make: FREIGHTLINER
Model or Model No.: CONVENTIONAL
Model Year: 2002

Make: FREIGHTLINER

Model: CONVENTIONAL

Model Year: 2002

Manufacturer: FREIGHTLINER CORPORATION

Report Receipt Date: DEC 17, 2002

NHTSA CAMPAIGN ID Number: 02V337000

NHTSA Action Number: N/A

Component: TRAILER HITCHES:FIFTH WHEEL ASSEMBLY

Summary:

ON CERTAIN TRUCK-TRACTOR MODEL VEHICLES EQUIPPED WITH CONMET SIMPLEX STATIONARY OR SLIDING FIFTH-WHEEL, THE CLINCH PINS THAT RETAIN THE FIFTH-WHEEL PIVOT PINS MAY NOT BE FULLY INSTALLED.

Consequence:

THE FIFTH WHEEL COULD SEPARATE FROM THE VEHICLE INCREASING THE RISK OF A CRASH.

Remedy:

DEALERS WILL INSPECT THE FIFTH WHEEL TO VERIFY THE CORRECT INSTALLATION OF THE CLINCH PIN AND PIVOT PIN. MISSING PINS WILL BE REPLACED. OWNER NOTIFICATION BEGAN NOVEMBER 15, 2002. OWNERS WHO TAKE THEIR VEHICLES TO AN AUTHORIZED DEALER ON AN AGREED UPON SERVICE DATE AND DO NOT RECEIVE THE FREE REMEDY WITHIN A REASONABLE TIME SHOULD CONTACT FREIGHTLINER AT 1-800-547-0712.

Notes:

FREIGHTLINER RECALL NO. FL-399. CUSTOMERS CAN ALSO CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S AUTO SAFETY HOTLINE AT 1-888-DASH-2-DOT (1-888-327-4236).

1200 New Jersey Avenue, SE, West Building Washington DC 20590 USA
1.888.327.4236 TTY 1.800.424.9153



DA-163-12



Recalls - Search Results

3 Record(s) Displayed.

Report Date : October 18, 2012 at 11:04 AM

Search Type : VEHICLE

Make: MAZDA

Model or Model No.: MPV

Model Year: 2001

Make: MAZDA

Model: MPV

Model Year: 2001

Manufacturer: MAZDA NORTH AMERICAN OPERATIONS

Report Receipt Date: MAY 19, 2004

NHTSA CAMPAIGN ID Number: 04V234000

NHTSA Action Number: N/A

Component: VEHICLE SPEED CONTROL:CABLES

Summary:

ON CERTAIN MINIVANS EQUIPPED WITH CRUISE CONTROL, THE CRUISE CONTROL ACTUATOR CABLE MAY BE BROKEN DUE TO INSUFFICIENT STRENGTH (GROUP 1). ALSO INCLUDED ARE CERTAIN 2000-2001 MINIVANS EQUIPPED WITH CRUISE CONTROL BUILT BETWEEN MARCH 31, 1999 AND MARCH 31, 2001, THAT HAVE HAD THE CRUISE CONTROL REPAIRED AND POSSIBLY HAD A DEFECTIVE CABLE INSTALLED DURING THAT REPAIR (GROUP 2).

Consequence:

IT IS POSSIBLE THAT THE BROKEN ACTUATOR CABLE MAY BE OUT OF POSITION AND COULD INTERFERE WITH THE OPERATION OF THE ACCELERATOR CABLE, PREVENTING A DECREASE IN ENGINE SPEED WHILE DRIVING, INCREASING THE RISK OF A CRASH.

Remedy:

DEALERS WILL REPLACE THE ACTUATOR CABLE. OWNER NOTIFICATION FOR VEHICLES INVOLVED IN GROUP 1 BEGAN ON JULY 7, 2004. OWNER NOTIFICATION FOR VEHICLES INVOLVED IN GROUP 2 BEGAN ON SEPTEMBER 10, 2004. OWNERS SHOULD CONTACT MAZDA AT 1-800-222-5500.

Notes:

MAZDA RECALL NO. 2004F. CUSTOMERS CAN ALSO CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S AUTO SAFETY HOTLINE AT 1-888-DASH-2-DOT (1-888-327-4236).

Make: MAZDA

Model: MPV

Model Year: 2001

Manufacturer: MAZDA NORTH AMERICAN OPERATIONS

Report Receipt Date: AUG 05, 2002

NHTSA CAMPAIGN ID Number: 02V196001

NHTSA Action Number: N/A

Component: AIR BAGS:FRONTAL

Potential Number of Units Affected: 25

Summary:

ON CERTAIN PASSENGER VEHICLES, SOME OF THE PASSENGER AIR BAG MODULES WERE NOT PROPERLY WELDED AND MAY NOT DEPLOY IN A COLLISION.

Consequence:

THE SEAT OCCUPANT MAY NOT BE PROPERLY PROTECTED IN THE EVENT OF A COLLISION, INCREASING THE RISK OF PERSONAL INJURY.

Remedy:

DEALERS WILL REPLACE THE PASSENGER AIR BAG MODULE. OWNER NOTIFICATION BEGAN OCTOBER 4, 2002. OWNERS WHO TAKE THEIR VEHICLES TO AN AUTHORIZED DEALER ON AN AGREED UPON SERVICE DATE AND DO NOT RECEIVE THE FREE REMEDY WITHIN A REASONABLE TIME SHOULD CONTACT MAZDA AT 1-800-222-5500.

Notes:

ALSO, CUSTOMERS CAN CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S AUTO SAFETY HOTLINE AT 1-888-DASH-2-DOT (1-888-327-4236).

Make: MAZDA

Model: MPV

Model Year: 2001

Manufacturer: MAZDA NORTH AMERICAN OPERATIONS

Report Receipt Date: DEC 17, 2001

NHTSA CAMPAIGN ID Number: 01V382000

NHTSA Action Number: N/A

Component: SERVICE BRAKES, HYDRAULIC:FOUNDATION COMPONENTS:HOSES, LINES/PIPING, AND FITTINGS

DA-163-12

Summary:

VEHICLE DESCRIPTION: CERTAIN MINI VANS WITHOUT ANTI-LOCK BRAKING SYSTEMS (ABS) FAIL TO COMPLY WITH THE REQUIREMENTS OF FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 135, "PASSENGER CAR BRAKE SYSTEMS." DUE TO INAPPROPRIATE BRAKE PIPE LAYOUT, THESE VEHICLES DO NOT MEET THE BRAKE STOPPING DISTANCE WITH PARTIAL FAILURE REQUIREMENTS OF THE STANDARD.

Consequence:

IF PARTIAL FAILURE OCCURRED IN THE BRAKING SYSTEM, THE STOPPING DISTANCE OF THE VEHICLE COULD INCREASE, INCREASING THE RISK OF A CRASH.

Remedy:

DEALERS WILL MODIFY THE BRAKE SYSTEM. OWNER NOTIFICATION BEGAN JANUARY 15, 2002. OWNERS WHO TAKE THEIR VEHICLES TO AN AUTHORIZED DEALER ON AN AGREED UPON SERVICE DATE AND DO NOT RECEIVE THE FREE REMEDY WITHIN A REASONABLE TIME SHOULD CONTACT MAZDA AT 1-800-222-5500, OPTION #4.

Notes:

ALSO CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S AUTO SAFETY HOTLINE AT 1-888-DASH-2-DOT (1-888-327-4236).

1200 New Jersey Avenue, SE, West Building Washington DC 20590 USA
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DA-163-12

CASE #



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

Calculations

☒ N/A

☐ Calculations



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

Mechanical

- ☐ N/A
- ☐ Mechanical Notes
- ☒ General Vehicle Examination Notes
- ☐ Motorcycle Examination Notes
- ☐ CMV Examination Notes
- ☐ Lamp Analysis
- ☐ CDR Report
- ☐ Other _____
- ☐ Other _____
- ☐ Other _____

**SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
GENERAL VEHICLE EXAMINATION**



DA-163-12

MAIT CASE #: <u>DA-163-12</u>		DATE OF EXAMINATION: <u>10-18-2012</u>	
YEAR / MAKE / MODEL / COLOR <u>2001 / Mazda / MPV L / light beige</u>		TAG # / STATE <u>BEU 7529 / NY (Not displayed)</u>	
EXAMINED BY: <u>L160CK1</u>		VIN: ☐ Dash ☒ Door ☐ Other <u>3M32W287110181281</u>	
EXAMINED AT: ☐ SCENE ☒ TOW YARD <u>Milless</u>		☐ FINAL REST ☒ AFTER BEING MOVED	
VEHICLE PHOTOGRAPHED BY: <u>L160CK1</u>			
LEFT FRONT MAKE / MODEL / SIZE <u>Designity / Ex600</u>		PRESSURE / TREAD DEPTH <u>-0 / 8mm</u>	
DOT #: <u>Not Visible</u> <u>P205/65R15</u>			
RIGHT FRONT MAKE / MODEL / SIZE <u>Designity / Ex600</u>		PRESSURE / TREAD DEPTH <u>-0- / 8mm</u>	
DOT #: <u>Not Visible</u> <u>P205/65R15</u>			
LEFT REAR MAKE / MODEL / SIZE <u>Goodyear / Integrity</u>		PRESSURE / TREAD DEPTH <u>-0- / 8mm</u>	
DOT #: <u>M60R B31R 21010</u> <u>P205/65R15</u>			
RIGHT REAR MAKE / MODEL / SIZE <u>Designity / Ex600</u>		PRESSURE / TREAD DEPTH <u>-0- / 8mm</u>	
DOT #: <u>Not Visible</u> <u>P205/65R15</u>			
ADDITIONAL TIRES / NOTES		PRESSURE / TREAD DEPTH	
DOT #:			
BRAKE PEDAL: ☒ TIGHT ☐ FREE TO FLOOR ☐ UNABLE TO CHECK			
STEERING WHEEL: ☒ TIGHT ☐ TURNS FREELY ☐ UNABLE TO CHECK ☐ IMPACT DAMAGE ☐ OCCUPANT DAMAGE			
MECHANICAL FAILURE SUSPECTED: ☐ YES ☒ NO IF YES: ☐ STEERING ☐ BRAKES ☐ TIRES ☐ SUSPENSION ☐ OTHER: _____			
MECHANIC NOTIFIED: ☐ YES ☐ NO DATE OF MECHANICAL EXAMINATION: _____			
ACM DOWNLOADABLE: ☐ YES ☒ NO DOWNLOADED: ☐ YES ☐ NO on: _____			
BULB ANALYSIS NEEDED: ☐ YES ☒ NO TIRE / WHEEL EXAMINATION NEEDED: ☐ YES ☒ NO			
AIRBAGS DEPLOYED: ☐ N/A ☒ NO ☐ DRIVER ☐ PASSENGER ☐ DRIVER SIDE CURTAIN ☐ PASSENGER SIDE CURTAIN ☐ OTHER _____			
SEATBELT USAGE REQUESTED: ☐ YES ☐ NO			
DRIVER: ☒ YES ☐ NO ☐ N/A	MIDDLE: ☐ YES ☐ NO ☒ N/A	RIGHT: ☒ YES ☐ NO ☐ N/A	
2nd ROW: ☒ YES ☐ NO ☐ N/A	2nd ROW: ☐ YES ☐ NO ☒ N/A	2nd ROW: ☐ YES ☒ NO ☐ N/A	
3rd ROW: ☐ YES ☒ NO ☐ N/A	3rd ROW: ☐ YES ☐ NO ☒ N/A	3rd ROW: ☐ YES ☐ NO ☒ N/A	
OTHER: ☐ YES ☐ NO ☒ N/A	OTHER: ☐ YES ☐ NO ☒ N/A	OTHER: ☐ YES ☐ NO ☒ N/A	
EJECTION ANALYSIS NEEDED: ☐ YES ☐ NO			

NOTES:

10/18/12

DA-163-12

CASE # _____



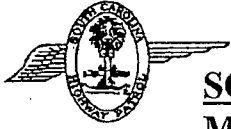
SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

Miscellaneous

- ☒ N/A
- ☐ DMV Driving Record(s)
- ☐ DMV Vehicle Record (s)
- ☐ Warrants
- ☐ SLED Reports
- ☐ Coroner's Report
- ☐ Autopsy Report
- ☐ Other _____
- ☐ Other _____
- ☐ Other _____
- ☐ Other _____

DA-163-12

CASE # _____



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

Officer Notes

- ☐ N/A
- ☒ Bus / Truck Supplemental
- ☒ Case Fact Sheet
- ☒ Witness Sheet
- ☒ Supervisor Form
- ☐ Incident Report
- ☐ Other _____
- ☐ Other _____
- ☐ Other _____

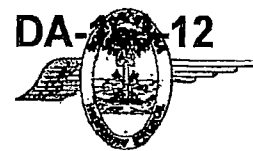
ORIGINAL

DA-163-12

SOUTH CAROLINA DPS AND DMV USE ONLY			South Carolina Uniform Traffic Collision Report (For Investigating Officers) Supplemental Bus & Truck Collision Report (Revised 04/2009)		Amended-Attach Copy of Original Report		Corrected	
			Page <u>1</u> of <u>1</u> Pages					
Date 10-09-2012	Time 1900	County 21	Route Category 1-Interstate 2-US Primary 3-SC Primary 4-Secondary 5-County 6-PP		Accident Location (Route Number and Name if Any) ON 95 /		Auxiliary 0-Mainline 2-Alternate 5-Spur 6-Connection 7-Business 9-Other	
IF THIS CRASH INCLUDES:					Access Control			
Any truck that has a gross vehicle weight rating (GVWR) of more than 10,000 pounds or a gross combination weight rating (GCWR) of more than 10,000 pounds and is used on public highways, How Many? 1					1- No Access Control 2- Full Access Control 3- Partial Access Control 2			
					Vehicle Information			
OR Any motor vehicle with seating to transport nine (9) or more people, including the driver How Many? 					Gross Vehicle Weight Rating/ Gross Combination Weight Rating 01- Less than or Equal to 10,000 Pounds 02- 10,001-26,000 Pounds 03- More than 26,000 Pounds 99- Unknown/ Hit and Run 03			
					Vehicle Configuration			
OR Any motor vehicle (regardless of weight) displaying a hazardous materials placard; How Many? 					00- Passenger Car (only w/ HAZMAT placard) 01- Light Truck (only w/ HAZMAT placard) 02- Bus (seats for 9-15 people) 03- Bus (seats for 16+ people) 04- Single Unit Truck (2-axes/6+ tires) 05- Single Unit Truck (3 or more axles) 06- Truck w/ Trailer 07- Truck-Tractor Only (Bobtail) 08- Tractor w/ Semi-Trailer 09- Tractor w/ Double Trailers 10- Tractor w/ Triple Trailers 99- Other/Unable to Classify 99- Unknown/ Hit and Run 08			
					Bus Use			
AND RESULTS IN:					01- Not used as a bus 02- School 03- Transit/Commuter/Sch service 04- Interdity 05- Charter/Tour 06- Shuttle/Church 07- Unknown 01			
Any fatality or fatalities How Many? 					Cargo Body Type			
					00- Bus (seats for 9-15 people) 01- Bus (seats for 16+ people) 02- Enclosed Box 03- Cargo Tank 04- Flat Bed 05- Dump 06- Concrete Mixer 07- Auto Transporter 08- Garbage/Refuse 09- Grain, Chips, Gravel 10- Pole 11- Intermodal Container 12- Log 13- Veh. Towing Vehicle 97- N/A 98- Other 99- Unknown/Hit & Run 02			
Any person(s) transported for immediate medical services How Many? 2					Trailer Length and Width			
					Length 00- No Trailer 01- Less than 480 in. (40 ft) 02- 481 in. - 576 in (48 ft) 03- 577 in. or more 99- Unknown/ Hit and Run Width 00- No Trailer 01- Less than 60 in. (5 ft) 02- 61 in. - 84 in. (7 ft) 03- 85 in. or more 99- Unknown/ Hit and Run 02			
Number of Vehicles Towed How Many? 1					Hazardous Material Involvement			
					Was This Vehicle Carrying Hazardous Materials? 1- Yes 2- No 3- Unknown/Hit and Run 2			
Any disabled motor vehicle(s) towed away from the scene How Many? 1					Did the Vehicle Have a Hazardous Material Placard? 1- Yes 2- No 3- Unknown/Hit and Run 2			
					If "Yes", What Class of Hazardous Material (off placard/shipping papers)? 01- Class 1 (Explosives) 02- Class 2 (Gases) 03- Class 3 (Flammable Liquids) 04- Class 4 (Flammable Solids) 05- Class 5 (Oxidizing Substance) 06- Class 6 (Poison/Infectious Substance) 07- Class 7 (Radioactive) 08- Class 8 (Corrosives) 09- Class 9 (Misc. Goods) 10- No Placard 99- Other/Unknown/Hit and Run If "YES", enter 4 digit HAZMAT ID (Look on placard/shipping papers) 			
Complete This Form Only If: One or More Qualifying Vehicle(s) was Involved - AND One or More Qualifying Injuries/Fatalities was Sustained - OR One or More Disabled Vehicle(s) was Towed Away From the Scene					Did Hazardous Material Release from this Vehicle?			
					1- Yes 2- No 3- Unknown/Hit and Run 2			
Total Number of Supplemental Forms Required for this Collision : 1					Name of Agency Notified (in Case of Release):			
Unit Number <u>01</u> FR-10 Number <u>E-290390</u>								
Carrier Information								
Name: <u>KC FREIGHT</u>								
Address: <u>7850 W 8THAVE</u>								
City: <u>HIALEAH</u> State: <u>F L</u> Zip: <u>3 3 0 1 4</u>								
Business Phone Number: <u>3 0 6 4 5 6 4 1 4 6</u>								
Identification Numbers								
U.S. DOT <u> </u> None = 0 <u> </u>								
State Number <u> </u> <u>S C</u> (3) Not in Commerce - Other Truck/Bus (4) Not in Commerce - Government (5) Other Operation/Not Specified Carrier? 1								
Carrier Type: Is this vehicle a(n) (1) Interstate, (2) Intrastate Was a Citation Issued to this Vehicle? 1- Yes 2- No 3- Pending 2								
Investigator's Name <u>MCKENZIE - D P</u> Rank <u>L/CPL</u> Date <u> </u>					Reviewer's Name <u> </u> Rank <u> </u>			



SOUTH CAROLINA HIGHWAY PATROL MAJOR CASE INVESTIGATION FACT SHEET



CAD Number **12FL140580**

Date: 10/09/2012 Time: 1900 hours County: Florence

Primary Investigating Officer: D.P. McKenzie Scene Supervisor: Cpl. D.A. Dean

Incident Type Collision Number of Units Involved: 2

MAIT Associate / First Responder: None CRO Notified: L/Cpl E. W. Collins 10/17/2012

Assisting Troopers: Cpl Dean, L/Cpl B. T. Lee

Coroner On-Scene: No If yes, give name and contact number: Died 10/17/2012@1841 hrs

Were photographs taken? Yes If yes # taken: 32 Taken by: M.A. Dangerfield

Were vehicles towed? Yes If yes provide towing companies telephone number:

Unit # 1 , Unit # 2 B. Millers, Unit # 3 , Unit # 4

Notes:

Is MAIT Assisting? Yes # of Witnesses Located 0

Will Charges Be Filed? No If yes complete below:

Defendants Name: _____

Charges: _____

Summons / Warrant Numbers: _____

Was the Solicitors Office Contacted? Yes. If yes, complete below:

Contact Name: Emily Creighton Number: 665-3091

Other Agencies on the Scene and Names of Their Personnel (If Applicable):

Agency	Name
FCEMS	
Windy Hill VFD	



Witnesses

DA-163-12



CAD Number _____

Name: _____

Address: _____

City / State / Zip: _____

Home Phone: _____ Work Phone: _____

Notes:

Name: _____

Address: _____

City / State / Zip: _____

Home Phone: _____ Work Phone: _____

Notes:

Name: _____

Address: _____

City / State / Zip: _____

Home Phone: _____ Work Phone: _____

Notes:

Name: _____

Address: _____

City / State / Zip: _____

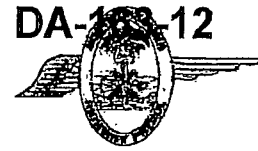
Home Phone: _____ Work Phone: _____

Notes:

Additional Witness? No



**SOUTH CAROLINA HIGHWAY PATROL
MAJOR CASE INVESTIGATION
SUPERVISOR CHECKLIST**



CAD Number 12FL140580

Deferred MAIT Response

☒ Yes	No	Scene Secured
☒ Yes	No	Determine Initial MAIT Need
☒ Yes	No	Evidence Photographed
☒ Yes	No	Evidence Marked
Yes	☒ No	Witnesses Identified / Interviewed
☒ Yes	No	Field Sketch Completed
☒ Yes	No	Scene Photographed
☒ Yes	No	Vehicles Photographed
☒ Yes	No	Primary Investigator Form(s) Completed
☒ Yes	No	South Carolina Traffic Collision Report (TR-310) Completed Neatly
☒ Yes	No	Media Downloaded to Proper Folder

Notes:

PASSENGER DIED 10/17/2012 @ 1844 HRS. WE WERE NOTIFIED BY Det. Corbett
Don Reynolds.

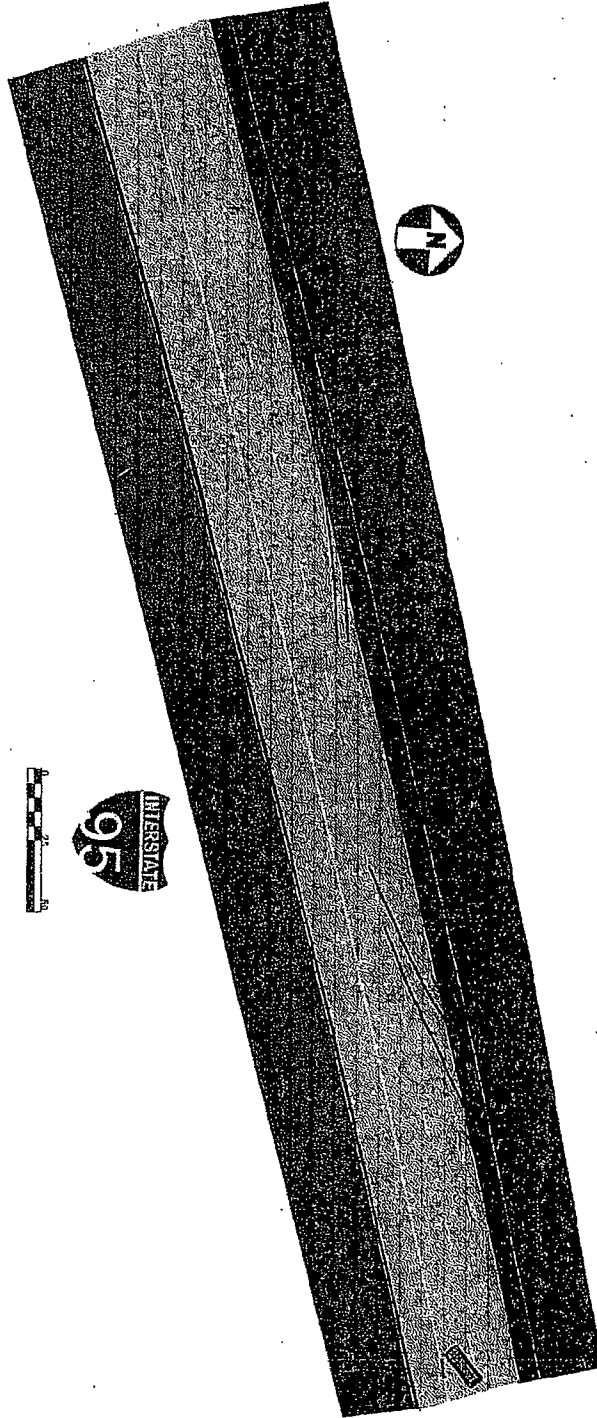
Immediate MAIT Response

Yes	No	Scene Secured
Yes	No	Determine Initial MAIT Need
Yes	No	Short Lived Evidence Marked
Yes	No	Short Lived Evidence Photographed
Yes	No	Witnesses Identified / Interviewed
Yes	No	Primary Investigator Form(s) Completed
Yes	No	South Carolina Traffic Collision Report (TR-310) Completed Neatly
Yes	No	Media Downloaded to Proper Folder

Notes:

[Signature]
Scene Supervisor or Designee Signature

10/18/2012
Date



RECORDED STATEMENT OF JENNIFER FISCHETTI

Q. This is Bill Howell on the 10/9/12 at 11:15 interviewing in person a Ms. Jennifer Fischetti. Would you state your name for me please?

A. Jennifer Fischetti.

Q. Ms. Fischetti, you do realize I'm recording your interview?

A. Yes.

Q. Is with your permission?

A. Yes.

Q. Ms. Fischetti, how old are you?

A. 42.

Q. And married?

A. Yes.

Q. Husband's name?

A. Anthony.

Q. And your home address?

A. 2385 Bragg Street, Brooklyn, New York, 11229.

Q. And Ms. Fischetti, um, the 12/9/12, were you driving a 2012 um, Mazda?

A. Yes.

Q. And do you own this vehicle?

A. No.

Q. And you were involved in an accident?

A. Yes.

Q. And what time of day did this accident happen?

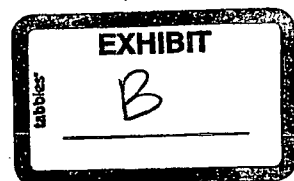
A. I don't remember what time it was.

Q. Ok. You don't know where it was in, it was in, in, the afternoon, late afternoon or?

A. Late after, early evening.

Q. Ok.

A. Late afternoon, early evening. It wasn't dark yet. It was just about before the sun getting dark, before it was getting dark.



SeaTruck 170

Q. Ok. And where'd the accident happen at?
A. On I-95 north.

Q. And where were you coming from?
A. Florida.

Q. And how long had you been on the road?
A. We left Florida 11:00 AM.

Q. Ok. And you're traveling down north on I-95?
A. Yes.

Q. And what lane were you in?
A. Left lane.

Q. In the passing lane? Which, which is the left lane?
A. Yes.

Q. Ok. In your own words, tell me what happened?
A. I was driving in the left lane. I saw the trailer truck come over the line and get really close to me so I swerved so I wouldn't hit him and I went into the grass and then when I turned to get back onto the road I hit him and then we swerved and I hit the rail (inaudible).

Q. And uh, do you know what mile marker this was at?
A. No, I don't.

Q. And was anybody with you?
A. Yes.

Q. And who was with you?
A. My husband, my mother-in-law, her boyfriend and my son.

Q. And uh, what's your husband's name?
A. Anthony.

Q. And your son's name?
A. Salvador.

Q. And how old is Salvador?
A. 15.

Q. Ok. Was he injured?
A. NO.

Q. Um, and your husband?

A. NO.

Q. How about yourself?

A. No.

Q. Ok. Um, how about your mother-in-law?

A. Yes.

Q. And what type of injuries did she receive?

A. A lot, she's in the emergency room right now. She's in critical condition.

Q. Ok. Um, what happened?

A. Apparently her hand, her boyfriend just remembered a little while ago. Her hand, her hand was on the handle so the door must've opened when we swerved around and she fell out of the car. She's got a couple of fractured ribs, fractured hip and I don't know what else.

Q. Was she wearing a seatbelt?

A. No.

Q. She was not wearing a seatbelt?

A. No.

Q. Ok. And um, and what's her boyfriend's name?

A. Angelo.

Q. And was he injured?

A. Not that I know of, no.

Q. Ok. So the only person was your mother-in-law that um, the door came open and she was uh, ejected from the car?

A. Yes.

Q. Alright. Did the highway patrol investigate the accident?

A. They all showed up, yeah.

Q. Ok. Did, the state troopers?

A. Yes.

Q. Alright. And who was the put at fault for the accident?

A. He swerved into my lane so I swerved. I don't.

Q. Were you, were you charged or given a ticket for the accident?

A. I wasn't given a ticket.

Q. Ok.

A. Handed a police report afterwards when they came here.

Q. Did?

A. I wasn't handed no ticket.

Q. Well, did it the uh, officer uh, say who was at fault for the accident?

A. Not to me. He didn't tell me.

Q. Ok. And um, how fast were you traveling?

A. 70.

Q. Ok. Was this in a 70 mile an hour speed zone?

A. Uh, yeah.

Q. Ok. And uh, to recap you, you had come from Florida. You had left about 11:00 AM that morning and um, you're traveling north on 95?

A. We had, we actually just got back on the highway about a half hour before this. We stopped to eat.

Q. Ok.

A. At a TA.

Q. Alright. Af, after you stopped to eat you got back on?

A. I got behind the wheel. We was driving before that.

Q. Ok.

A. My husband.

Q. And um, you were in the left lane?

A. Yes.

Q. And the truck was in the right lane, you said he came over, you thought and?

A. He came over.

Q. You swerved to miss him and hit the medium and lost control of the vehicle?

A. Yes. When I got back on, onto the road, I lost control.

Q. Alright. And um, what was the weather conditions?

A. It was nice out.

Q. Uh, no rain or?

A. No.

Q. Roads?

A. No.

Q. Were not wet?

A. No rain.

Q. Ok.

A. No sun in my eyes.

Q. Alrighty. And the highway patrol had investigated but you did not know who he put at fault for the accident?

A. The officer didn't tell me and I didn't get no ticket.

Q. Ok. Well, you've understood the questions I've asked you?

A. Yes, I have.

Q. You've answered them as truthful as you could?

A. Yes, I have.

Q. And it, he recorded, you know I recorded your interview?

A. Yes, I do.

Q. And it was with your permission?

A. Yes, it was.

Q. Is there anything you'd like to add to this statement?

A. No.

Q. Ok. This ends my interview with Ms. Fischetti and I'm not turning off the recorder.

This recorded statement was transcribed at Great West Casualty Company on November 9, 2012, by Erin Langemeier, MRO.

F82464rs/el

RECORDED STATEMENT OF ANTHONY FISCHETTI

Q. This is Bill Howell on the 10/9/12 at 11:24 PM interviewing in person a Mr. Anthony Fischetti. Would you state your name for me please?

A. My name is Anthony Joseph Fischetti.

Q. Mr. Fischetti, you do realize I'm recording the interview?

A. I do realize that, yes.

Q. And it is with your permission?

A. Absolutely with my permission.

Q. Mr. Fischetti, how old are you?

A. I'm 48 years old.

Q. And you married?

A. I'm married, yes.

Q. Your wife's name?

A. Jennifer Fischetti.

Q. And your home address?

A. 2285 Bragg Street, Brooklyn, New York, 11229.

Q. And Mr. Fischetti, um, were you a guest passenger in a vehicle driven by your wife, Mrs. Fischetti?

A. I was in the passenger seat next to her.

Q. And um, what were, what highway were ya'll traveling on?

A. I'm sorry I didn't hear you.

Q. What highway were you traveling on?

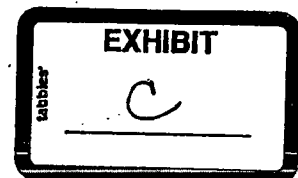
A. Oh, uh, I-95 north.

Q. And do you know what time of day this accident happened?

A. Yeah, it was 7:00, 7:00, uh, what was it like 6:30, 7:00. Uh, I really wasn't aware of the time. It was, I wasn't aware of the time. It was somewhere, it was, it was between 6:30, 7:00 PM.

Q. Ok, and you um, and you were guest, again a guest passenger um, in the front?

A. Yes, I was.



SeaTruck 175

Q. And were you, did you have your seatbelt on?

A. Yes, I did.

Q. And um, do you know how fast you were traveling?

A. Yeah, about 65.

Q. And was this in um, a, a 65 or 70 mile an hour speed zone?

A. That is correct, uh, yeah. 70 miles an hour I believe that the speed limit was.

Q. Ok, and um, in your own words tell me what happened?

A. We were, we were all talking in the car and we were going along and we came, we, we were traveling with the tractor trailer to the right of us and everything was fine and then all of a sudden he just moved over a little bit into our lane. My wife got a little nervous and she went to the, the left and she went up on the dirt and then she came back up and when she came back up he was still a little bit in our lane. And I don't know if she lost control of the vehicle or what happened but we hit the side of the tractor trailer. Alright, and that's where my window shattered and the back window shattered. And uh, my mom was directly behind me. As we hit him, now my wife bounced off, she definitely lost control. She went all the way into the railing, she hit the railing. Uh, my mother's door apparently opened and she flew into the woods and we spun into a circle.

Q. Ok. Was your mother wearing a seatbelt?

A. No, she was not wearing a seatbelt.

Q. And who else was in the vehicle with you?

A. It was my wife, me, my son, my mother and uh, my cousin, Angelo.

Q. And um, your um, mother, how old is she?

A. My mother's 70 years old.

Q. And does she live with you or in?

A. No, she lives in her own home.

Q. Ok. Also in New York?

A. Also, yes, she lives at 305 Avenue O, in uh, Brooklyn, New York.

Q. And the zip codes same uh, 11229?

A. No, sir. Her zip code is 11230.

Q. And, and she received what type of injuries?

A. She received injuries to her, she has a minor concussion. She has a, a, a fractured bone in her neck. Uh, she has coup, multiple broken ribs. Uh,

her knee bone uh, the bone above her knee is uh, destroyed and her hip uh, she has a, a fracture in her shoulder and her, her hip on one side is also fractured.

Q. Ok. Um, were you injured?

A. I got a piece of glass in my arm, that was it.

Q. Now how about your son?

A. He's got some scratches on the back of his neck but no major injuries.

Q. Ok, and the other guest passenger?

A. No, no injuries that I'm aware of.

Q. Ok. And um, the weather conditions?

A. Weather conditions were nice. It was sun was going down, it was still light out. Uh, there was no rain. It was about I would say about 60 degrees outside. It was uh, 60, 65 it was cool. It was nice. We were actually having a good time, uh. Weather conditions were fine.

Q. Ok. Alright, and uh, and to kind of recap um, statement um, ya'll were traveling down 95 and you say the truck eas, eased over into your lane, um. Your, your wife kind of moved over. Uh, and lost control of the vehicle and came back and hit the truck and went back into the medium, hitting the railing?

A. That's correct except she, she moved over to avoid.

Q. Mmmhmm.

A. Slamming into him at, at first. She, she moved over because he moved into our lane.

Q. And um, then the car came back uh, out of control and?

A. Yeah, and came back out of con, we were out of control once we hit and that's when we hit the railing and that's when the car span, span, spun a, across the highway.

Q. And that's when your mother was ejected from the car?

A. I believe.

Q. And her injuries?

A. I believe she was ejected after we hit the rail when we went through the first spin.

Q. Mmmhmm.

A. I believe that's when she was ejected out.

Recorded statement of Anthony Fischetti

Page 4

Q. Ok. Well, you've understood the questions I've asked you?

A. Absolutely.

Q. And you do uh, realize I recorded your interview?

A. Yes, I do.

Q. And it was with your permission?

A. Yes, it was.

Q. Alright. Well this ends my interview with Mr. uh, Fischetti. And Mr. Fischetti, uh, is there anything you'd like to add to this interview?

A. Not at the moment. NO uh, just except the driver looked a little tired, that's it of the tractor trailer.

Q. Ok. Well, this ends my interview. I am now turning off the recorder.

This recorded statement was transcribed at Great West Casualty Company on November 9, 2012, by Erin Langemeier, MRO.

F82464rs/el

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Case No. 2013-CP-21-2395

RECEIVED
JUL 23 2014
SC Court of Appeals

Angelo Fischetti as Executor of the Estate of Concetta Fischetti,.....Respondent,

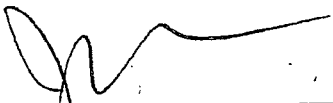
v.

SeaTruck, Inc., KC Freight LLC and Carlos L.Ceballos.....Appellants.

NOTICE OF APPEAL

SeaTruck, Inc., KC Freight LLC and Carlos Ceballos (collectively "Appellants") appeal the July 16, 2014 Order of the Honorable Michael G. Nettles, granting partial summary judgment to Respondent. The Order deprives Appellants of defenses presented by their Answer to Respondent's claims. Immediate appeal is, therefore, provided for in S.C. CODE ANN. §14-3-330 (2). A copy of the Order is attached. Appellant received a written copy of the appealed order by U.S. Mail from the Court on July 18, 2014.

July 23, 2014



Mark S. Barrow
J. Eric Cavanaugh
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233
Attorneys for Appellants

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
ANTHONY FISCHETTI, et al.,)
PLAINTIFFS,)
VERSUS)
SEATRUCK, INC., et al.,)
DEFENDANTS.)

TWELFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
2013-CP-21-02395

DATE: JUNE 16, 2014
FLORENCE, SOUTH CAROLINA

MOTIONS HEARING

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES

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

WILLIAM HUGH MCANGUS, JR., ESQUIRE
ATTORNEY FOR THE PLAINTIFFS

JAMES ERIC CAVANAUGH, ESQUIRE
ATTORNEY FOR THE DEFENDANTS

PROVIDED FOR: JAMES ERIC CAVANAUGH, ESQUIRE

FOR COPIES CONTACT: Jo Rice
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Official Court Reporter
South Carolina Judicial Department

CERTIFICATE

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TWELFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, IN THE COURT OF COMMON PLEAS FOR FLORENCE COUNTY, SOUTH CAROLINA ON JUNE 16, 2014, AT THE FLORENCE COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

SEPTEMBER 3, 2014

S/ Jo Rice
JO RICE

ANTHONY FISCHETTI et al. versus SEATRUCK INC. et al.

1 THE COURT: The next case is Anthony Fischetti versus
2 SeaTruck, Inc., KC Freight, LLC and Carlos L. Ceballos. Glad
3 to hear from the moving party.

4 MR. MCANGUS: May it please the Court, Your Honor. Hugh
5 McAngus on behalf of Anthony Fischetti, who is the personal
6 representative of his mother's estate. This is a wrongful
7 death commercial motor vehicle case. The motion before the
8 Court today is the Plaintiff's motion as it relates to
9 several affirmative defenses the Defendant's filed.

10 Just by way of brief background, Your Honor, this is a
11 wreck that happened on I-95, northbound, here in Florence
12 County. The Fischetties, in a vehicle driven by Anthony
13 Fischetti's wife, Jennifer, with Anthony's mom, Connie, in
14 the back seat as a passenger. They were traveling north from
15 Florida on their way back to New York. The Defendant,
16 Ceballos, operating a tractor/trailer that he owned and had
17 leased to the Defendant, Seatruck, was traveling from Florida
18 up to New Jersey and the wreck happened here on I-95.

19 The Plaintiffs' allegations are, basically, that the
20 Defendant/truck driver improperly merged into their lane
21 forcing Jennifer Fischetti off the side of the road, she got
22 two tires in the grass, lost control of her vehicle and came
23 back and struck SeaTruck's vehicle, causing a wreck.

24 Ms. Fischetti, Connie Fischetti, was ejected out of the
25 vehicle and later died several weeks later at McCleod. I

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1 believe from the Defendant's perspective, Mr. Ceballos says
2 that he was just driving down the highway and the Fischetti
3 vehicle ran off the road, ran into the back of him, and he
4 didn't do anything wrong, he was just driving along.

5 Those are the general facts. The Defense filed several
6 affirmative defenses, Your Honor, that I don't think are
7 applicable to the case and we are entitled to get summary
8 judgment on. I think we've got eight total. I don't know if
9 you want me to go through ---

10 THE COURT: Why don't we go through them one at a time
11 and we'll hear his response to each.

12 MR. MCANGUS: The first one, Judge, is the defense of
13 comparative negligence. Our argument on this one is pretty
14 simple. Mrs. Fischetti, the decedent, was a backseat
15 passenger in the vehicle. She wasn't driving. She didn't do
16 anything wrong. There have been no allegations that the
17 operator of the vehicle was drunk or incompetent or
18 intoxicated or otherwise, anything else that may trigger a
19 passenger's potential comparative negligence. Since seatbelt
20 use is inadmissible in determining negligence, an occupant of
21 a motor vehicle, even if she wasn't wearing her seatbelt, we
22 don't think that is negligence. It's simply not a case of
23 comparative negligence. Mrs. Fischetti was a backseat
24 passenger in the van at the time of the wreck.

25 THE COURT: Yes, sir. What do you have to say about

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1 that?

2 MR. CAVANAUGH: Your Honor, if I may, I would like to
3 hand up my memorandum in opposition to, if I may approach,
4 Your Honor ---

5 THE COURT: Sure.

6 --- in opposition to Mr. McAngus's motion for summary
7 judgment.

8 MR. CAVANAUGH: Before I begin, your Honor, I just would
9 like to clear up the fact that Mr. Ceballos, the driver,
10 testified, in fact, that he maintained his right lane of
11 travel, not that he didn't do anything, that he maintained
12 his right lane of travel. Ms. Jennifer Fischetti, who was
13 driving the minivan, ran off the road for no reason,
14 overcorrected, swerved back into the road, shot into Mr.
15 Ceballos's lane of travel at which time she collided with his
16 tracker/trailer, spun around, and the decedent, who was
17 sitting in the rear right passenger seat, in the middle right
18 passenger seat, and was not wearing her seatbelt actually
19 opened the door to the minivan and fell out of the car, Your
20 Honor. So, that's just sort of just to clear that up a
21 little bit.

22 With regards to comparative negligence, I would agree
23 with Mr. McAngus, that while seatbelt use or non-use of a
24 seatbelt is not admissible, there is another fact that
25 strikes comparative negligence in this case, Your Honor, and

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1 that would be the fact that the Plaintiff's own personal
2 representative and the driver of the Plaintiff's car, the
3 Decedent's car, both testified that when they struck the
4 guardrail, the Decedent apparently reached up and grabbed the
5 handle of the car and opened the door and fell out of the
6 vehicle. There is no allegation that she flew through the
7 windshield, through the front windshield to the outside, none
8 of that, Your Honor. We believe that that is a scintilla
9 such that granting Plaintiff's motion for summary judgment is
10 not prudent at this time.

11 Furthermore, Your Honor, I would just like to make the
12 argument, and this will be a continued argument throughout
13 all these different, from all the defenses he's seeking
14 summary judgment on. This case was filed in September. We
15 still have not gotten close to a year. The case won't be
16 eligible for trial until October 12th. The Court's term is,
17 I believe, October 21st or 27th at that time. Your Honor,
18 Mr. McAngus has already noticed two or three more depositions
19 including members of the MAIT team who did a full scale
20 investigation and determined that they concurred with the
21 investigating officer's findings at the time who determined
22 that Ms. Fischetti, the driver of the vehicle, was at fault,
23 a contributor to the accident and came into the Plaintiff's
24 lane of travel and so there's a lot more to do and I believe
25 on any of these defenses it is certainly premature to grant

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1 summary judgment at this time. But as far as contributory,
2 we certainly believe that there is certainly a scintilla,
3 more than a scintilla ---

4 THE COURT: You mean comparative?

5 MR. CAVANAUGH: I'm sorry. Comparative. I apologize,
6 your Honor.

7 THE COURT: I would have granted, contributor.

8 MR. CAVANAUGH: Comparative, Your Honor. We believe
9 that there is at least a scintilla, perhaps more than a
10 scintilla.

11 THE COURT: Do you agree that there is some evidence
12 that she might have opened the door, regardless of whether
13 that is something a jury could find would be of significance,
14 is there evidence that she opened the door?

15 MR. MCANGUS: There's evidence, Judge, that the door and
16 a lot of the back windows -- the car ended up in a 360 or
17 more spin. After the collision, I believe the vehicle door
18 was open, several back windows were shattered. There hasn't
19 been a witness -- we've taken the depositions of everybody in
20 the vehicle. Nobody saw Mrs. Fischetti open the door. That's
21 just the family's, kind of, speculation to say, "Well, I
22 don't know, maybe she opened the door, maybe her hand hit the
23 door," but that's kind of what the testimony was.

24 THE COURT: But there is some testimony that would seem
25 to indicate that that was within the realm of possibility?

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1 MR. MCANGUS: Yes, Your Honor.

2 THE COURT: Okay. Based on that and that alone, I'm
3 going to deny the motion for summary judgment. I think your
4 position is well-founded. Ultimately, it's a factual
5 question, but the standard I have to deal with now is a
6 scintilla of evidence. A mere scintilla, I think they've met
7 that, not much more than that, but I think they've met that.
8 All right.

9 MR. MCANGUS: Thank you.

10 THE COURT: Very good.

11 MR. MCANGUS: The second defense, Your Honor -- and I did
12 submit a memo to your office last week. I'm not sure you got
13 it, but I have a copy I can hand up.

14 THE COURT: You can -- I have it right here and you can
15 set forth whatever your position is and I'll follow along.

16 MR. MCANGUS: Sure. Your Honor, the second defense is
17 sudden emergency. For sudden emergency to apply, you need
18 two things: the Defendant needs to be free of negligence and
19 then has to make a reasonable choice of action when
20 confronted with an emergency not of his making. In this
21 case, there are really two factual scenarios, one of which --
22 and I think we have a follow-up for the standard. But in
23 this case, I think Mr. Ceballos, or his motion, he was
24 maintaining his lane, as he said, driving down the road and
25 the car just ran into the side of him. If that's the case,

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1 even if he was not free of negligence, in his deposition, I
2 pulled the highlights on page 9 of our memo, Judge. His
3 testimony is simply that he was riding down the highway, as
4 normal, then all of a sudden felt a bump on the rear of his
5 trailer and that's when the car came in and hit him. I asked
6 him, specifically, "Is it your testimony that you didn't do
7 any other driving down the road after the impact occurred,
8 that you didn't take any actions in response; you didn't
9 swerve, you didn't slow down, didn't hit your brakes, didn't
10 take an evasive maneuver?" He said, "no", and after the
11 impact, he slowed down. So, we're missing the crucial
12 element of, you have to make a reasonable choice of one or
13 two among possible choices of actions once confronted with an
14 emergency. Even in the light by the driver, he was just
15 driving down the road and then he felt a bump and then a car
16 hit him, but he took no actions to swerve, to slam on brakes,
17 to change lanes or do anything and so we think it's missing
18 that crucial element of some kind of response to a potential
19 sudden emergency which means that this defense should not
20 apply to the case.

21 THE COURT: Mr. Cavanaugh.

22 MR. CAVANAUGH: Again, Your Honor, I would argue, a mere
23 scintilla does exist. In fact, on page 77 on Mr. Ceballos's
24 transcript, Mr. McAngus asked him, "Did you, after the
25 impact, did you make a hard brake with your truck, or did you

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1 just slow down and stop normally?" He did say, "Normally,"
2 but he said, "I merged onto the right shoulder," and I remind
3 Your Honor that no collision occurred until after the minivan
4 swerved off the road and came back onto the road and hit the
5 Defendant's trailer in his lane of travel, Your Honor. At
6 that point, Your Honor, the Defendant, Mr. Ceballos, didn't
7 know what was going to happen, so he did act to avoid further
8 collision or further injury by coming, by slowing down and
9 merging onto the right shoulder to avoid the Plaintiff's
10 vehicle from shotgunning back and into the interstate hitting
11 him and causing further injury to anyone in the vehicle.
12 Again, I believe the scintilla standard is met and this, as
13 with many of these defenses, I believe that a lot of these
14 defenses still have discovery to be conducted and a lot of
15 these should be more properly be a motion in limine right
16 before trial to clear up any potential issues for the jury
17 and streamline the trial at that time, but as I said, we are
18 still three months away from a year in this case and there's
19 still significant discovery to do. In fact, Mr. McAngus,
20 like I said, has noticed three more depositions already.

21 THE COURT: All right. What is your position on that?
22 Would you like for me to rule on it now or do you think there
23 should be any additional discovery?

24 MR. McANGUS: I don't think additional discovery has any
25 bearing on what the Defendant said or did and I will point

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1 out briefly, Judge, he said, "I'm driving normally in my
2 right lane. All of a sudden, I felt the truck, a car hitting
3 my truck. I'm driving and all of a sudden I feel a boom.
4 Any actions taken after the accident, essentially, don't
5 matter. Everybody's got to stop a car after a wreck happens.
6 What matters is what happens when confronted with the
7 emergency before the wreck happened, so any actions he took
8 afterwards I don't think are relevant to the cause of the
9 wreck, because they occurred after the collision.

10 THE COURT: I'm going to deny the motion for summary
11 judgment at this juncture. However, it will probably be
12 best, after all the discovery has been conducted, after the
13 Plaintiff presents their case, it will probably be best
14 presented at the summary judgment stage.

15 MR. McANGUS: Is that denied without prejudice, then,
16 Your Honor? Do we have leave to re-file? I just want to
17 make sure I understand the ruling.

18 THE COURT: Well, I'm denying the motion for summary
19 judgment, which is not prejudicial at all, anyway. I mean,
20 it's just, it's going forward and at the juncture at the
21 trial when the Plaintiff has put up their case, then you,
22 anybody can move for a directed verdict at that time, for
23 whatever reason. All right. What's your next one?

24 MR. McANGUS: The next one, Your Honor, is the
25 Defendant's fifth defense, which is, they've pled assumption

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1 of the risk is a complete bar to recovery. Our position to
2 that is just simply that comparative negligence assumption of
3 the risk is kind of and comparative risk is no longer a
4 complete bar to recovery when Plaintiff assumes the risk and
5 in this case, I don't think there is any evidence that Ms.
6 Fischetti is assuming any risk and there was no evidence that
7 the driver of her vehicle was intoxicated or incompetent or
8 otherwise unfit to operate a motor vehicle, so to the extent
9 that its been pled as a complete bar, I think that has been
10 done away with, at least I have the Davenport case in our
11 memo, and that just rolls into the comparative negligence
12 defense.

13 THE COURT: Well, what does the Defense have to say about
14 that?

15 MR. CAVANAUGH: Well, Your Honor, we do believe that the
16 Plaintiff, Ms. Fischetti, potentially assumed the risk that
17 she would be thrown from the vehicle by not locking the door
18 and by not seatbelting in and I realize the seatbelt issue is
19 not admissible. There are certain actions that she did take,
20 that she assumed the risk of potentially being thrown from
21 the car if an accident occurred. I mean, it's well within
22 anyone's knowledge who drives a vehicle that an accident
23 could occur, that you should wear your seatbelt, you should
24 take all precautions necessary to avoid ---

25 THE COURT: Well, I think the issue with regard to a

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1 seatbelt really is not admissible. Is it?

2 MR. CAVANAUGH: Well, it is not admissible, Your Honor.
3 There are cases out there that the Court has allowed the
4 evidence to be introduced, but instructed the jury not to
5 consider it during deliberations, but I would state again
6 that the door---

7 THE COURT: I'm sorry. I didn't mean to interrupt you,
8 but I'm going to grant his motion in that regard. I think
9 the law is very clear that comparative negligence does
10 address the issue of assumption of risk. You can make the
11 same arguments to the jury in saying they are negligent in
12 this regard for whatever reason, but the concept of
13 assumption of risk no longer exists in my mind. But if I'm
14 wrong on that, I'm certain you know your way to Columbia and
15 they will straighten me out, but I'm pretty confident that
16 there is no such thing as the concept of assumption to risk
17 as we speak today. All right.

18 MR. MCANGUS: The next offense, Your Honor, is
19 unavoidable accident defense, which they pled. This goes
20 into page 10 of our brief, Your Honor. Our position on that
21 one is pretty simple. Unavoidable accident, as a defense,
22 applies when there is no negligence on behalf of any party to
23 an event who causes it. That it is an action without
24 negligence, an act of God, something beyond human control.
25 In this case, the two causes of the accident, potentially,

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1 are either the way the Plaintiffs see it, Mr. Ceballos
2 crowding into her lane, forces them off the road or Ms.
3 Fischetti is at fault for just running off the road and
4 hitting this truck. We know the two potential parties that
5 are possibly negligent that caused this wreck. This is not a
6 lightening strike, a tree falling down, an imminent hail
7 storm. Someone's negligence caused this wreck. It's not one
8 of the facts that fit an unavoidable accident or act of God.

9 THE COURT: I think you might have a point on that one.
10 Clearly, this is an automobile accident that involves
11 negligence either on one party or the other and it's not
12 really an unavoidable accident, I wouldn't think. Tell me
13 why I would be wrong in that.

14 MR. CAVANAUGH: Well, Your Honor, I would just call the
15 Court's attention to, the facts are the accident didn't occur
16 until Mr. Fischetti re-entered the interstate after exiting
17 the interstate. Of course, she could have easily gotten her
18 car back on the road, but her own husband testified on page
19 69 of his deposition that, the vehicle that we were in hit
20 like, I don't know if it was an impression or a bump, okay,
21 but the truck jumped up, the vehicle jumped up and brought
22 us, brought us, back onto the blacktop and that's when we
23 collided with the tracker-trailer, in the middle of the back.
24 Your Honor, again, I think that's a scintilla. Mr. McAngus
25 continues to mention an act of God, but his own law says,

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1 which I think is accurate regarding an unavoidable accident,
2 it is the having an event free from human agency. Your
3 Honor, that testimony, alone, from the Plaintiff's own
4 personal representative, the Decedent's own PR, indicates the
5 accident occurred from a bump in the road. It shot them back
6 onto the interstate and into the Defendant's vehicle. I
7 think that, alone, creates a scintilla.

8 THE COURT: What do you have to say about that?

9 MR. MCANGUS: It's still, I imagine, from the Defense's
10 perspective, that it was Ms. Fischetti's negligent action of
11 running out into the roadway that got her off the roadway. I
12 don't deny that Mr. Fischetti said they hit a bump, but I
13 don't think that is -- that is not an act of God. I don't
14 think she still -- from the Defense's perspective, not mine,
15 I think the best case scenario was she went off the side of
16 the road but then lost control and then came back on, for
17 whatever reason.

18 THE COURT: In the deposition, do they maintain the bump
19 was in the middle of the road or on ---

20 MR. MCANGUS: I believe it was on the outside of the road
21 when her two left tires that had left the interstate were in
22 the grass median. I believe -- I don't have that cite in
23 front of me, but I think that's the time period he's talking
24 about.

25 THE COURT: I'm going to grant the motion with regard to

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1 unavoidable accident, because even if there's a bump in the
2 road, there is some, there is at least a factual question as
3 to whether or not they should have seen the bump or how they
4 should have reacted. I think this is different than what is
5 contemplated by an unavoidable accident.

6 MR. MCANGUS: Thank you, Judge. The next one is the
7 defense of improper venue. Our position is pretty clear on
8 this. The wreck happened in Florence County by all accounts.
9 We've attached exhibits from the highway department's MAIT
10 team saying it's a Florence County wreck. The Defendant's
11 were all from Florida and so the venue is proper in the
12 county where the accident occurred and that's Florence County
13 and that's where we are.

14 THE COURT: I think that's what the most recent tenor of
15 law is. They put a lot of emphasis on where the accident
16 takes place. Do you disagree with that and where do you want
17 it?

18 MR. CAVANAUGH: Your Honor, I don't disagree with that.
19 I would just raise Your Honor's attention to many of the
20 defenses we are getting ready to discuss again are
21 affirmative defenses, which if we don't raise in our answer,
22 are waived, as Your Honor is well aware. Again, the case is
23 eight months old. We don't, you know, particularly, having
24 not gotten to even a year in the case and I think, again,
25 these are one of those defenses that's more proper for a

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1 motion in limine versus a summary judgment and I ---

2 THE COURT: Are you talking about venue?

3 MR. CAVANAUGH: Just striking defenses, which, to me, is
4 similar to striking a cause of action in a Plaintiff's
5 Complaint or striking an answer all together and I believe
6 that it is an extreme remedy, Your Honor, and it should be,
7 again, preserved until the time of trial.

8 THE COURT: My question to you is about venue.

9 MR. CAVANAUGH: Is venue proper?

10 THE COURT: Yes.

11 MR. CAVANAUGH: At this time, I think it's proper.

12 There's nothing in the record, currently, that I see that
13 would be of venue concern, Your Honor.

14 THE COURT: So, we are in agreement that Florence County
15 is the place for it to be?

16 MR. CAVANAUGH: Currently, yes, Your Honor.

17 THE COURT: Okay. Well, that's my ruling.

18 MR. MCANGUS: The next defense is a defense of waiver and
19 estoppel. This is one I don't have a lot of law on and I've
20 asked in discovery requests to identify facts, circumstances,
21 documents, or evidence that the Plaintiff claims have been
22 waived or estopped and they have produced no evidence and so
23 simply by lack of any evidence, the Plaintiff waives these
24 claims or estopped bringing them and I think this is proper
25 for summary judgment.

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1 THE COURT: What do you have to say about that?

2 MR. CAVANAUGH: Same refrain, Your Honor, that discovery
3 is ongoing and granting summary judgment to the Defendant
4 could potentially be prejudicial in the possibility that more
5 evidence comes through depositions or otherwise that would
6 indicate the Defendant is entitled to a waiver or estoppel
7 defense. Discovery is ongoing and more evidence could be
8 produced prior to trial.

9 THE COURT: I'm going to hold that one in abeyance at
10 this time.

11 MR. MCANGUS: The next one, Your Honor, is aa statute of
12 limitations defense. We filed a claim, or we filed a lawsuit
13 a year after the wreck took place and had it served within a
14 month, I think, so the filing date of the Complaint was
15 initiated on September 12, 2013. The wreck took place
16 September 9, 2012. We have less than a year. I don't think
17 there is any improper statute of limitations and it is proper
18 to strike that defense.

19 THE COURT: What do you think about that?

20 MR. CAVANAUGH: We don't have a statute problem, but Your
21 Honor, I would just object to summary judgment being granted.

22 THE COURT: I will take you at your word. If you think
23 they have sued you in enough time and clearly you've gotten
24 notice, you're here defending it, you've answered it. I am
25 ruling the statute of limitations is not a viable defense.

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1 MR. CAVANAUGH: Thank you, Your Honor.

2 MR. MCANGUS: The last one, Your Honor, is the defense of
3 spoliation as a bar to Plaintiff's claims, and again, we've
4 sent discovery requests to say, what did we spoliage? What
5 evidence do you have to support your affirmative defenses?
6 Identify witnesses and documents, something, to prove your
7 defense. They haven't produced anything. I don't know what
8 we're alleged to have spoliated. I don't think there's any
9 evidence that spoliation has occurred. I think summary
10 judgment is proper.

11 THE COURT: Spoliation, would you agree that that is not
12 really a defense, but really a remedy? For instance, if you
13 can prove that he destroyed documents, then I can charge
14 them, you can assume those documents would be damaging to
15 their position. What do you think about that?

16 MR. CAVANAUGH: I mean, we pleaded, as a defense, but I
17 agree with the Court, yeah, it is a jury charge if there is
18 evidence in the record that shows ---

19 THE COURT: You can't say, you can't get sued and say
20 they destroyed documents and therefore I ought not be sued.

21 MR. CAVANAUGH: I would agree with the Court, Your Honor.
22 I would just, you know, we've pled it as a defense. I agree
23 that the Court can instruct the jury if there is evidence ---

24 THE COURT: That's rather premature. So, the issue with
25 regard to spoliation, to the extent they are alleging it as a

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1 defense, I think it's appropriate for them to put it in their
2 Complaint. They are saying that y'all destroyed documents.
3 If, indeed, they can put their finger on something that's
4 been destroyed, they would be entitled to a jury charge in
5 that regard. Is everybody clear on that?

6 MR. MCANGUS: So, it's denied on that basis or the
7 defense is there, the motion is granted, but they still have
8 leave to bring it up at a later date? I'm a little confused,
9 Your Honor.

10 THE COURT: Well, I think what I'm saying is, I don't
11 think spoliation is a defense. I think it's a remedy to be
12 sought if they can prove that you destroyed documents. So,
13 to the extent it is a defense, I'm granting your motion. But
14 it doesn't alleviate it from the action, because if, indeed,
15 you destroyed documents, he's going to be able to tender
16 evidence to that effect and I will tell the jury how to
17 handle destroyed documents, which essentially says, that if
18 they destroy documents, then they must have been real, real,
19 real bad documents for your position and that you can assume
20 the very worst, is essentially what it says. Something in
21 that general area.

22 MR. MCANGUS: And that's the extent of Plaintiffs'
23 motions, Judge.

24 THE COURT: Can you think of anything else?

25 MR. MCANGUS: Not right now.

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1 THE COURT: Now, who is going to be in charge of drafting
2 this award winning order?

3 MR. MCANGUS: I would be happy to have my law clerk,
4 who's sitting here learning about motions, Your Honor.

5 THE COURT: All right. That would be good. Good luck to
6 all of you.

7 MR. CAVANAUGH: Your Honor, if I could. Just to preserve
8 my ability to preserve my defense in case I need to go to
9 Columbia, can I put Mr. Fischetti's deposition in the record?

10 THE COURT: You certainly can.

11 MR. CAVANAUGH: May I hand it up, Your Honor?

12 THE COURT: You certainly may.

13 MR. CAVANAUGH: Thank you for your time today, Your
14 Honor.

15 THE COURT: All right. Very good.

16 MR. MCANGUS: Thank you, Your Honor.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) THE TWELFTH JUDICIAL CIRCUIT

Anthony Fischetti as) Civil Action No.:
Executor of the Estate) 2013-CP-21-2395
of Concetta Fischetti,)
Plaintiff,)

vs.)

SeaTruck, Inc.; KC)
Freight, LLC; and)
Carlos L. Ceballos,)
Defendants.)

DEPOSITION OF: ANTHONY JOSEPH FISCHETTI

TAKEN ON BEHALF OF: THE DEFENDANTS

DATE TAKEN: MONDAY, MARCH 31, 2014

TIME: 9:05 A.M. - 11:48 A.M.

PLACE: 121 SOUTH ORANGE AVENUE
SUITE 800
ORLANDO, FLORIDA 32801

TAKEN BEFORE: NINETTE BUTLER, RPR, CRR,
FPR AND NOTARY PUBLIC

1 A P P E A R A N C E S

2

3

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7 APPEARING ON BEHALF OF THE PLAINTIFF

8

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13 APPEARING ON BEHALF OF THE DEFENDANTS

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C O N T E N T S

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TESTIMONY OF ANTHONY JOSEPH FISCHETTI:

Direct Examination by Mr. Barrow

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S T I P U L A T I O N S

It is hereby agreed and so stipulated by and
between the parties hereto, through their respective
counsel, that the reading and signing of the transcript
are expressly waived by the Deponent.

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1 P R O C E E D I N G S

2 ANTHONY JOSEPH FISCHETTI,

3 having been first duly sworn to tell the truth, was

4 examined and testified as follows:

5 THE WITNESS: Yes, I do.

6 DIRECT EXAMINATION

7 BY MR. BARROW:

8 Q. All right. Would you state your full name for
9 me, please?

10 A. My full name?

11 Q. Yes.

12 A. Okay. I don't hear in this ear, so excuse me
13 if I --

14 Q. I'll talk to your right ear, if I can.

15 A. That's perfect.

16 My full name is Anthony Joseph Fischetti.

17 Q. All right. Mr. Fischetti, my name is Mark
18 Barrow and I represent the defendants, SeaTruck, KC
19 Freight and Carlos Ceballos, in a lawsuit that you have
20 brought on behalf of the estate of Concetta Fischetti,
21 who I believe is your mother; is that correct?

22 A. That's correct.

23 Q. And we're here today to take your deposition.
24 And have you had a chance to meet with your lawyer and
25 talk about what we're going to do today?

1 **A. He just explained to me that --**

2 MR. McANGUS: Hang on a minute.

3 BY MR. BARROW:

4 Q. No, no. Don't tell me what he said. Just --
5 have you had a chance to meet with him and talk about
6 the deposition?

7 **A. Yes.**

8 Q. Okay. Good.

9 Let me give you some of the ground rules,
10 then, just to reinforce what I'm sure he told you.

11 I'll be asking you various questions,
12 Mr. Fischetti, some of them personal to get to know you
13 a little bit and then, of course, about this accident,
14 about your mother and about the allegations of your
15 lawsuit. If at any time you don't understand my
16 question and would like me to stop, repeat it or
17 rephrase it, just ask me and I'll be glad to do so,
18 okay?

19 **A. I understand.**

20 Q. So, then, we'll have the understanding that,
21 obviously, if you respond to one of my questions, you
22 both heard it and understood it. Is that fair?

23 **A. Yes.**

24 Q. You'll always need to give me a verbal
25 response. You're doing great right now. I'll just tell

1 you that I've been doing this 27 years, and almost every
2 witness nods their head at some point in the deposition.
3 The court reporter can't transcribe a nod of the head.
4 So if you do that, I'll just ask you for a verbal
5 response, okay?

6 **A. I understand.**

7 **Q. Very good.**

8 This isn't a track meet. Anytime you want to
9 take a break, ask me. We're glad to do that, as well,
10 okay?

11 **A. Okay.**

12 **Q. Now that we've started the deposition, even if**
13 **we take a break, you cannot have any conversation with**
14 **your lawyer about this case until the deposition is**
15 **over. Do you understand that?**

16 **A. I understand.**

17 **Q. Very good.**

18 All right, Mr. Fischetti. Give me your date
19 of birth, please.

20 **A. 7/11/1964.**

21 **Q. Where were you born?**

22 **A. Brooklyn, New York.**

23 **Q. Where were you raised?**

24 **A. Brooklyn, New York.**

25 **Q. All right. And your current address?**

1 **A. 2900 Lazlo Lanè.**
2 **Q. How do you spell Lazlo?**
3 **A. L-A-Z-L-O.**
4 **Q. Okay.**
5 **A. Orlando, Florida 32837.**
6 **Q. Who do you live there with?**
7 **A. My wife and son.**
8 **Q. And their names, please?**
9 **A. My wife is Jennifer Dawn Fischetti.**
10 **Q. Uh-huh.**
11 **A. My son's name is Salvatore Anthony Fischetti.**
12 **Q. And how old is Salvatore?**
13 **A. He's 16 and a half.**
14 **Q. Okay. When did you move to Orlando?**
15 **A. Moved here January 22nd -- we officially moved**
16 **in January 22nd, 2013.**
17 **Q. All right. When you say "officially," had you**
18 **been here?**
19 **A. We purchased the home in November of 2012.**
20 **Q. And was it this home that you're living in**
21 **now?**
22 **A. That's correct.**
23 **Q. All right. And prior to purchasing that home,**
24 **you were residing in Brooklyn?**
25 **A. Yes.**

1 Q. And where is your wife from?

2 A. **Brooklyn, New York.**

3 Q. Okay. Good.

4 Are you employed anywhere, Mr. Fischetti?

5 A. **I'm employed at Luna Park Housing.**

6 Q. All right. Where is that located?

7 A. **That's Located in Brooklyn, New York.**

8 Q. And what do you do for --

9 A. **I was the --**

10 Q. -- Luna Park?

11 A. **-- head engineer.**

12 MR. McANGUS: Try to let him finish his
13 questions, Anthony. When you talk over one
14 another, it's hard for her. Let him get his
15 questions in.

16 BY MR. BARROW:

17 Q. Go ahead.

18 A. **And I'm presently out on disability.**

19 Q. How long have you been out on disability?

20 A. **A year and a half.**

21 Q. What was the disability?

22 A. **I hurt my back.**

23 Q. How did you hurt it?

24 A. **In an accident -- a boiler accident.**

25 Q. In Brooklyn or down here?

1 A. No. In Brooklyn.
2 Q. While you were at work?
3 A. While I was at work.
4 Q. What year would that have been, Mr. Fischetti?
5 A. I got hurt twice: once in 2010 and once in
6 2011.
7 Q. Tell me about the 2010 accident.
8 A. I was climbing out of a boiler and -- I was
9 climbing out of a boiler and I blew a couple of discs in
10 my neck and lower back.
11 Q. Did you have surgery?
12 A. No, I did not have surgery.
13 Q. All right. And from -- were you deemed
14 totally disabled as a result of the 2010 accident?
15 A. Between both accidents, I was, yes.
16 Q. All right. Tell me about the 2011 accident.
17 A. I fell into a sub -- I fell into a sub pump
18 pit backwards.
19 Q. And how were you injured in that one?
20 A. My arm, leg and back. I fell five feet into a
21 concrete pit.
22 Q. Were you hospitalized?
23 A. I went to the hospital, yes.
24 Q. And tell me more about your injuries. When
25 you say your arm, leg and back, specifically --

1 A. Okay. I have seven bad discs in my back,
2 total.

3 Q. Okay.

4 A. I also have some fiberglass in one of my lungs
5 from the insulation of the boiler.

6 Q. Okay.

7 A. And I think that's it.

8 Q. And you were deemed totally disabled by Social
9 Security Administration?

10 A. That's correct.

11 Q. And was that in 2012?

12 A. That came in September of 2013. They declared
13 me fully disabled.

14 Q. Did you work after the fall into the pit in
15 2011?

16 A. I stopped working August 28 of 2012. That's
17 the official date.

18 Q. And that was because of the injuries you've
19 just told me about.

20 A. That's correct. That's correct. I could no
21 longer function.

22 Q. Do you have any trouble walking,
23 Mr. Fischetti?

24 A. It varies, sir, to be honest with you. I have
25 good and bad days.

1 Q. And I take it on the bad days, you do have
2 trouble walking?

3 A. I have some trouble walking, yes.

4 Q. Primarily because of your back?

5 A. Yes.

6 Q. Is that lower back?

7 A. It's lower, yeah.

8 Q. And do you have a physician in Orlando who
9 treats you?

10 A. Yes.

11 Q. What is his name?

12 A. I don't have that with me. I have a physician
13 who treats me for the lungs, Susan Metcalf. I know her
14 name.

15 Q. How do you spell her last name?

16 A. I have no idea. I'm not good with spelling.

17 Q. Metcalf?

18 A. Metcalf.

19 Q. Metcalf?

20 A. Yeah. Metcalf.

21 Q. Dr. Susan Metcalf. All right.

22 And the doctor who treats you for your back,
23 is that an orthopedic surgeon?

24 A. The doctor that's officially been treating me
25 for my back is -- was in Brooklyn. I'm sorry. My wife

1 would know his name better than me.

2 Q. Okay. But whoever that is, that physician's
3 in Brooklyn so you don't see him anymore; is that
4 correct?

5 A. No. I've been finding doctors down here.

6 Q. So who treats you for your back down in
7 Orlando?

8 A. Nobody at the moment. I'm just -- I see
9 doctors down here. They send -- Compensation sends me
10 the doctors to be evaluated and to be checked because
11 the surgeon said the nerve was wrapped around the bones
12 in the back. They don't recommend surgery. So,
13 basically, I'm just not doing anything at the moment
14 with it.

15 Q. All right. What other doctors have you seen?
16 Give me the names of the other doctors you've seen in
17 Orlando other than Dr. Metcalf, of course.

18 A. Well, that's basically it. The lungs are more
19 of a priority than the lower back.

20 Q. So the other physicians that you've seen in
21 Orlando that you indicated --

22 A. Or doctors that they send me to.

23 Q. Let me finish my question.

24 The other doctors that the Workers'

25 Compensation has sent you to in Orlando, you cannot tell

1 me the names of any of those physicians.

2 A. No. I didn't think it was relevant to this
3 case.

4 Q. You don't recall those names.

5 A. I don't -- I'm not good with names. I don't
6 remember them, offhand.

7 Q. Sure. Sure.

8 A. And, you know, I see them once every five, six
9 months. It's not like I see them every day.

10 Q. Okay. All right. And do you have a regular
11 physician in Orlando --

12 A. No.

13 Q. -- if you get a cold or a flu or something
14 like that?

15 A. No, not yet.

16 Q. Where do you go if you need to see a doctor?

17 A. I see doctor -- go to the pulmonary doctor.

18 Q. All right. So if you have a cold or a flu,
19 you go to Metcalf?

20 A. Yeah.

21 Q. Have you been to like a doc in a box, a
22 Doctors Care or one of those practices of physicians
23 where you can walk in and be treated?

24 A. No.

25 Q. All right. Are you currently on any

1 medication?

2 A. I take insulin for diabetes. I have Proventil
3 inhaler. I take Spiriva for my lungs. And I take a
4 high blood pressure medicine, which I'm not sure of the
5 name.

6 Q. How long have you been on diabetic medication?

7 A. Since I -- the last -- since -- I'm 39. I
8 started taking --

9 Q. I'm sorry?

10 A. Thirty-nine years old is when I started.

11 Q. And so that's a medication, not insulin, that
12 you give yourself; is that right?

13 A. I take insulin now.

14 Q. Is that a shot?

15 A. Yes.

16 Q. You give yourself a shot once a day?

17 A. Twice a day.

18 Q. All right.

19 A. I have Type 2 diabetes.

20 Q. And you've had that since you were 39?

21 A. Yes.

22 Q. Who treats you for that in Orlando? Who takes
23 care of that? Who prescribes the medication, takes your
24 readings?

25 A. Well, actually, my doctor in Brooklyn has been

1 prescribing that. Ira Shafran [ph]. She's also
2 affiliated with Florida. And she's been -- I was
3 actually going to her up until a couple of months ago.
4 I was going into New York back and forth.

5 Q. All right. When you say she's associated in
6 Florida, what do you mean?

7 A. She's licensed in Florida as an M.D.

8 Q. She doesn't come down here, though.

9 A. No. I go see her.

10 Q. All right. When you said that up until a
11 couple of months ago you were going to see --

12 A. I went and saw her three times last year.

13 Q. All right. Let me get my question out.

14 A. Sorry.

15 Q. Have you transferred to another physician in
16 Orlando to take care of your diabetics?

17 A. I'm still presently looking for a physician
18 that I'm comfortable with for that.

19 Q. And have you seen a physician in Orlando for
20 your diabetes?

21 A. No.

22 Q. What happens if you don't take your diabetic
23 medication?

24 A. My sugar will go high.

25 Q. Right. And what sort of effect does that have

1 on you, Mr. Fischetti? You get nauseous or dizzy or
2 lightheaded?

3 **A. I would assume lightheaded.**

4 Q. All right. And other than diabetes medicine,
5 you're taking medicine for your lung, correct?

6 **A. Uh-huh.**

7 Q. And what else did you say? High blood
8 pressure?

9 **A. I take one high blood pressure pill a day.**

10 Q. Okay. Any other medication?

11 **A. I take 10 milligrams of Lipitor every evening.**
12 **My cholesterol's 159 at the moment. I just had blood**
13 **work done.**

14 Q. Okay. What else do you take?

15 **A. That's it.**

16 Q. What's your cell phone number?

17 **A. (718) 490-1289.**

18 Q. And who's your provider?

19 **A. Verizon Wireless.**

20 Q. And was that the number and provider you had
21 at the time of this accident?

22 **A. Yes.**

23 Q. Do you have a land line number at your house?

24 **A. Yes, I do.**

25 Q. What number is that?

1 **A. (407) 567-9934.**

2 **Q. Do you have a driver's license?**

3 **A. Yes, I do.**

4 **Q. Okay. Have you ever had your driver's license**
5 **suspended or revoked?**

6 **A. No, sir.**

7 **Q. Have you ever been charged with a crime?**

8 **A. No, sir.**

9 **Q. Have you ever brought any other lawsuits or**
10 **claims other than the Workers' Compensation action**
11 **against your employer?**

12 **A. No.**

13 **Q. What do you receive in Social Security**
14 **disability benefits per month?**

15 **A. Two thousand fifty -- I think it's \$2,054.**

16 **Q. All right. Do you receive any other income?**

17 **A. I receive a check from compensation.**

18 **Q. And is that action over with now? Are you**
19 **going to receive a check?**

20 **A. That's still going on.**

21 **Q. That's still going on?**

22 **Who represents you in the Workers' Comp claim?**
23 **Who's your lawyer?**

24 **A. Woolf.. His name is Woolf. The company's name**
25 **is Woolf. I don't know his first name.**

1 Q. Where is his office?
2 A. 26 Court Street.
3 Q. In Brooklyn?
4 A. That's correct.
5 Q. And how long has he been your lawyer?
6 A. Since -- since July of 2012.
7 Q. His last name is Woolf.
8 A. That's correct. That's also the company name.
9 Q. All right. You just don't remember his first
10 name.
11 A. I don't, no. My wife handles most of this.
12 Q. Okay. And how much do you receive monthly --
13 A. 2600.
14 Q. -- from Workers' Comp?
15 How long have you been receiving that? Since
16 2012?
17 A. I didn't start receiving it until, I believe
18 it was, November of 2012.
19 Q. Okay. All right. Any other sources of income
20 other than Social Security disability and Workers' Comp?
21 A. No.
22 Q. How about your wife? What sources of income
23 does she have?
24 A. She works for Disney.
25 Q. What does she do for Disney?

1 **A. Merchandise.**

2 Q. And where does she work?

3 **A. The Magic Kingdom.**

4 Q. How long has she been employed there?

5 **A. It's about 11 months now.**

6 Q. Okay. And what does she make?

7 **A. She makes about \$8 and change an hour, plus**
8 **benefits.**

9 Q. Does she work full time?

10 **A. At the moment, yes. She recently went full**
11 **time.**

12 Q. And that's 40 hours? Is that based on 40
13 hours?

14 **A. That's correct. Yeah. That's max, you know.**

15 Q. All right. What does your son Salvatore do?
16 Is he in high school?

17 **A. He's in high school.**

18 Q. What year is he?

19 **A. The 11th.**

20 Q. Now, you were employed with the company in
21 Brooklyn, I think you said, as an engineer?

22 **A. That's correct.**

23 Q. Is that right?

24 Tell me exactly what your job duties were.

25 **A. I was the supervisor in charge of heating and**

1 hot water. I worked directly under the head of
2 maintenance. And my job was to make sure the men
3 performed all their duties. I troubleshooted anything
4 wrong with the boiler system, made repairs when needed.
5 I was employed there for 21 and a half years. I never
6 had a problem at work.

7 Q. What kind of company is it?

8 A. It's a -- it's a housing development.

9 Q. Is it owned by --

10 A. It's a Michelano.

11 Q. Privately owned?

12 A. It's privately owned, but it's City -- I think
13 they -- it's privately owned, but because they had loans
14 with the City, the City was involved with it.

15 Q. All right. What's your educational
16 background?

17 A. I have -- I went up to the 10th grade in high
18 school, and I went to private school for the boilers and
19 the licenses for four and a half years.

20 Q. So you went to -- you took a -- was it
21 continuous all day for four and a half years to learn
22 how to do what? Operate a boiler, fix a boiler?

23 A. Well, it was more than that.

24 Q. Okay. Tell me about it.

25 A. Okay. I went to school to learn how to do

1 boilers, air pollution, sprinklers, stair pipes, fire
2 safety director. I held licenses in all that stuff.

3 Q. Where did you go to school?

4 A. Thomas Shoreman [ph] through my union,
5 32B-32J.

6 Q. I'm sorry. Thomas Shoreman?

7 A. That's the name of the school. It was called
8 the Thomas Shoreman Educational Fund or whatever it was,
9 through my union.

10 Q. And that was in Brooklyn?

11 A. It was actually based at 101 Avenue of the
12 Americas in Manhattan.

13 Q. Now, was that full time for four and a half
14 years or did you take classes?

15 A. I went part time. I went night and weekends.

16 Q. Yeah. And you were working during that period
17 of time.

18 A. Of course.

19 Q. And where were you working?

20 A. At Winter Park.

21 Q. Okay. So give me the time frame when you
22 attended the school.

23 A. I attended at night, from 6:00 --

24 Q. Oh, sorry. The date, if you will. 1996 to
25 2000 or --

1 A. Oh. Actually, you're actually correct. I
2 started in 1996.

3 Q. There you have it. See, I have a crystal
4 ball.

5 A. And I didn't really finish until 2001, I went
6 up there.

7 Q. That's okay.

8 All right. Any other education, then, other
9 than grade school and that?

10 A. No, sir.

11 Q. All right. And you got a certificate in what?

12 A. I hold a license in supervising low
13 pressure -- low pressure boilers, air pollution, stair
14 pipe and sprinkler, fire safety director. And the last
15 one, I believe, was compressors.

16 Q. Okay. Good.

17 Now, what other -- where did you work before
18 you went to work for the Housing Authority?

19 A. I was a butcher.

20 Q. And where did you work as a butcher?

21 A. The last job I had before this one was Western
22 Beef.

23 Q. Western Beef?

24 A. Yeah.

25 Q. And is that in Brooklyn?

1 A. That was in Queens.

2 Q. How long did you work there?

3 A. I worked there about a year.

4 Q. All right. And when you left that job, you
5 would have went to work with the Housing Authority; is
6 that right?

7 A. That's correct.

8 Q. Did you voluntarily leave that job,
9 Mr. Fischetti, or were you terminated or let go or what
10 were the circumstances?

11 A. No. I voluntarily left.

12 Q. You wanted to get out of the butchering
13 business.

14 A. Yeah. I wanted benefits.

15 Q. All right. Have you ever been in the
16 military?

17 A. No, sir.

18 Q. Have you ever undergone any drug or alcohol
19 counseling?

20 A. No. I did go to a rehab for depression after
21 my first divorce in Arizona.

22 Q. What year was that?

23 A. Oh, my God. 1990.

24 Q. And how long were you in that facility?

25 A. Thirty days.

1 Q. What was the name of that facility?

2 A. West Center.

3 Q. Who recommended that facility for you?

4 A. The job that I was at, Western Beef.

5 Q. Western Beef sent you there?

6 A. They didn't send me there. The social worker
7 sent me there. She recommended that I go there. I
8 wasn't forced.

9 Q. All right. Did you have any suicidal problems
10 or ideations?

11 A. I was depressed and upset at the time, yes.

12 Q. Did you attempt to commit suicide?

13 A. No, sir.

14 Q. When was your first divorce -- excuse me.
15 This was your first marriage, that you were divorced,
16 you ended up --

17 A. Yes.

18 Q. And when did that occur?

19 A. Right before that.

20 Q. That's what I'm trying to figure out.

21 A. I don't recollect the exact dates at this
22 moment in time.

23 Q. And how long were you married?

24 A. A year and a half.

25 Q. What was your wife's name?

1 **A. Christine.**
2 Q. What was Christine's last name?
3 **A. Avarelo.**
4 Q. How do you spell that?
5 **A. I have no idea.**
6 Q. She was your wife and you couldn't spell her
7 maiden name?
8 **A. No.**
9 Q. Start with an E?
10 **A. A.**
11 Q. Avarelo?
12 **A. I'm dyslectic so I don't spell well, okay?**
13 **Avarelo, with an A.**
14 Q. Where is she living now?
15 **A. That's a -- I would assume she lives in**
16 **Brooklyn, New York.**
17 Q. Did she get remarried?
18 **A. Yes, she did.**
19 Q. What's her married name now?
20 **A. I believe it's Schneider.**
21 Q. Did you all have any children together?
22 **A. Okay. No.**
23 Q. Have you received any other psychiatric or
24 psychological counseling?
25 **A. No, sir.**

1 Q. Other than being in this facility.

2 A. I've had a therapist once or twice in my life,
3 but, no. Other than that, no.

4 Q. When's the last time you saw a therapist?

5 A. Three years ago.

6 Q. And who was that?

7 A. Me and my wife went to couple's counseling. I
8 don't remember.

9 Q. Where was the therapist?

10 A. We went on Kings Highway. That, that I can
11 tell you.

12 Q. Kings Highway where?

13 A. On East 12th Street. That's where his office
14 was.

15 Q. In Brooklyn?

16 A. In Brooklyn, New York.

17 Q. How long did you go?

18 A. Four months.

19 Q. And why did you see a therapist before that?

20 What was the purpose of those visits?

21 A. A lack of communication on her part.

22 Q. Okay. When you went to the rehab facility in
23 Arizona, had you taken an overdose of medications?

24 A. No.

25 Q. Did part of the rehab have anything to do with

1 drug or alcohol use?

2 A. Yes.

3 Q. Tell me about that.

4 A. The rehab had a drug and alcohol center. It
5 treated depression, drugs and alcohol and overeating.
6 But I wasn't there for that. I attended some courses in
7 it, but I don't have a problem with drinking or drugs.
8 I don't use them.

9 Q. All right. At the time of the rehab, you did,
10 though, correct?

11 A. I was young. I had very minor use.

12 Q. Of which?

13 A. At the time, in the late '80s --

14 Q. Minor use of alcohol? Minor use of drugs?

15 A. I never really drank. I experimented, I
16 guess, with a little cocaine and that was it.

17 Q. Well, part of the rehab -- correct me if I'm
18 wrong -- in 1990 was over --

19 A. Actually, it was '89.

20 Q. '89 -- was over illegal drug use, was it not?

21 A. It was over illegal drug use?

22 Q. Yes.

23 A. No. That was a secondary reason they put for
24 me to go there, but I didn't have a problem with drugs.

25 Q. Okay. The secondary reason they put down for

1 you to go to the rehab center in Arizona was over the
2 use of cocaine. Am I correct?

3 A. That's correct. That's so the insurance
4 company would fund it.

5 Q. But you weren't, of course, taking any cocaine
6 at the time.

7 A. No. I didn't say that. I said I had minor
8 use with it. I experimented for a couple of months with
9 it, but I didn't -- I haven't touched drugs in 25 years.

10 Q. Okay. Okay.

11 Now, I may have asked you this question. I
12 don't recall your answer. Have you brought any other
13 claims or lawsuits other than this one and the Workers'
14 Compensation claim?

15 A. No. Just the present claim that I have.

16 Q. Okay. You don't have any relatives in
17 Florence County, South Carolina, do you, Mr. Fischetti?

18 A. Not that I'm aware of.

19 Q. You're wearing glasses today?

20 A. Yes, I am.

21 Q. Do you need glasses to -- you wear those
22 glasses all the time?

23 A. I need -- they're for -- I'm farsighted.

24 Q. So you need them to read?

25 A. No.

1 Q. You need them to see distance?

2 A. Yes.

3 Q. That's nearsightedness.

4 A. I'm sorry.

5 Q. That's okay. I'm just -- I wear -- 'cause I'm
6 nearsighted.

7 A. If I take these off, I could read that. But
8 for me to read across the street, that's the best way I
9 can explain it to you.

10 Q. That's all right. I understand it now. We're
11 on the same page. You need to wear them when you drive.

12 A. Correct.

13 Q. And that's a stipulation of your driver's
14 license, correct?

15 A. I believe so.

16 Q. Yeah. Now, who treats you for your vision in
17 Orlando?

18 A. I just went to a vision -- I just got these,
19 as a matter of fact. A month and a half ago I went and
20 got checked.

21 Q. Where?

22 A. Vision Center at The Loop, if that helps you,
23 in Kissimmee.

24 Q. You don't know the name of the doctor?

25 A. Vision -- no, I don't have the name of the

1 doctor with me.

2 Q. You've been wearing glasses for how many
3 years?

4 A. A long time.

5 Q. Twenty years?

6 A. Yeah. It started with astigmatisms and, you
7 know, it escalated from there.

8 Q. What do you do all day now that you're
9 disabled? Tell me your daily regimen.

10 A. I get up. I clean. I do a little light
11 gardening. I watch TV. I handle the bills. I go
12 shopping, run errands, you know.

13 Q. Sure. Sure.

14 What made you move to Florida?

15 A. The decision was made, when -- my boss
16 discussed with me because of my health issues that I
17 would be going out. So I decided that I didn't want to
18 live in New York no more. I figured it would be more
19 comfortable down here.

20 Q. Had you ever been to Florida prior to that?

21 A. Yes. We've come here once or twice a year for
22 18 years.

23 Q. Do you have any relatives down here?

24 A. Yes, I do.

25 Q. Where do your relatives live?

1 A. I have a cousin in Spring Hill. I have
2 another cousin in Tampa. I have a couple of cousins in
3 Fort Lauderdale and also -- well, the Fort Lauderdale
4 area.

5 Q. All right. So when did you and your wife
6 first start looking for a house in Orlando?

7 A. Well, we were looking over an eight-year
8 period. This was an eight-year decision. And we never
9 went because of my work. And we really started looking
10 for the house in July of 2012.

11 Q. Okay. And that was in the Orlando area or
12 were you looking in other places, as well?

13 A. We decided on the Orlando area.

14 Q. What drew you to Orlando?

15 A. It's my son -- my son and wife particularly
16 like this area.

17 Q. Do you have any other children other than
18 Salvatore?

19 A. No, sir.

20 Q. Does your wife have any other children other
21 than Salvatore?

22 A. No, sir.

23 Q. When were you married?

24 A. 9/17/95.

25 Q. And this is your wife's only child, correct?

1 **A. That's correct.**

2 Q. When you all moved down here, did your wife
3 already have a job? Had she obtained employment in
4 Orlando?

5 **A. No.**

6 Q. Where else has she worked in Orlando other
7 than Disney World?

8 **A. That's it.**

9 Q. Have you worked anywhere in Orlando?

10 **A. No, sir.**

11 Q. As I understand your testimony, Mr. Fischetti,
12 you left your employment in August of 2012 and went out
13 on disability; is that correct?

14 **A. That's correct.**

15 Q. After that, you were deemed totally disabled
16 by Social Security Administration, correct?

17 **A. That's correct.**

18 Q. All right. And you have not returned to
19 employment since then; is that correct?

20 **A. That's correct.**

21 Q. Nor do you plan on returning to employment,
22 given your total disability designation; is that right?

23 **A. That's correct.**

24 Q. How's your wife's health?

25 **A. How does my wife what?**

1 Q. How's her health?

2 A. Her health is good.

3 Q. And your son?

4 A. They both are perfect. They have nothing
5 wrong with them.

6 Q. Good. Do you have any relatives in South
7 Carolina?

8 A. No, sir. None that I'm aware of.

9 Q. Who is Angelo Fischetti?

10 A. Angelo Fischetti is a second or third -- he's
11 like a third cousin to me.

12 Q. And where does he live?

13 A. He lives in Brooklyn, New York.

14 Q. You've kind of known him all your life, then.

15 A. Not close. Yeah. Weddings and funerals, best
16 way to put it.

17 Q. What does he do in Brooklyn?

18 A. He used to work as a doorman. I believe he's
19 retired now.

20 Q. A doorman where?

21 A. He worked in Manhattan.

22 Q. How old is Angelo?

23 A. I think he's around 60.

24 Q. When's the last time you talked to him?

25 A. The last time I seen him was at the hospital

1 in South Carolina. I haven't seen him since.

2 Q. What was he doing at the hospital in South
3 Carolina?

4 A. He was with us on the trip.

5 Q. He was in the car with you.

6 A. That's correct.

7 Q. Who's Alan Polic [ph]?

8 A. That's a friend of his. I didn't meet
9 Mr. Polic.

10 Q. Never met him?

11 A. No, sir.

12 Q. Is he from Brooklyn, as well?

13 A. I have no idea. He came after I left.

14 Q. After you left where?

15 A. South Carolina.

16 Q. After you left the hospital?

17 A. I had to get my son back to school, so I only
18 stood a few days. My sister came down to take my place.

19 Q. Okay.

20 A. And that's when Mr. Polic arrived. I don't
21 know who Mr. Polic is.

22 Q. Okay. Did you ever talk to him?

23 A. I spoke to him once on the phone.

24 Q. When was that?

25 A. He called me and asked if I would release him

1 from the arrest, and I told him no.

2 Q. All right. And I understand Angelo was
3 arrested, as well?

4 A. That's correct.

5 Q. What were they charged with?

6 A. I believe they -- Angelo -- from what I
7 understand -- I wasn't there. The hospital called and
8 told me that Angelo physically assaulted -- sexually
9 assaulted my mother. And Mr. Polic was watching the
10 door.

11 Q. All right. And did you talk to Angelo about
12 that?

13 A. I haven't spoke to Angelo.

14 Q. So you never had a conversation with him about
15 the charge?

16 A. No, sir.

17 Q. Do you know how those charges were resolved?

18 A. They're still -- Mr. Polic, I believe they
19 have been resolved on. And Angelo is -- it's been
20 delayed or -- it's still pending.

21 Q. Still pending?

22 A. Correct.

23 Q. Okay. Now, you indicated that for
24 approximately eight years you-all were coming down to
25 Orlando from Brooklyn; is that right?

1 A. No. We have been coming down since my
2 honeymoon.

3 Q. What year? 1995?

4 A. Yeah. Me and my wife have been coming since
5 1995. We -- it was sort of her dream to come down here
6 and live. So for eight or nine years, we were looking
7 into it, where we would like to live, all the stuff.

8 Q. Okay. Now, you would -- you'd drive down,
9 wouldn't you?

10 A. Some of the times, yeah.

11 Q. Yeah. And you would take I-95 down through
12 South Carolina?

13 A. That's correct.

14 Q. Okay. So you're very familiar with that
15 stretch of roadway?

16 A. Yes.

17 Q. Okay. Good.

18 Tell me how the accident happened,
19 Mr. Fischetti.

20 A. We were both going down I-95. We were all the
21 way -- we were in the left lane. We were -- my wife was
22 driving. She was -- had the cruise control set at 65.
23 The truck was on the right-hand side of us, in the
24 middle lane. He was next to us for about -- I don't
25 know -- eight to 12 minutes. We started going around

1 the bend. And the back of the -- he was riding on the
2 line and we were a little bit over. The truck was very
3 big. And the second we went into a turn, going around
4 the turn, the back of the cab started coming into our
5 lane. And we moved over to avoid it the best we could.
6 It sort of put us onto the grass. I mean, the back of
7 the cab really came out far. And we bounced up and came
8 back up, and he was still in our lane. And that's when
9 we collided with the back of the cab, the trailer part.

10 I was -- I'll never forget, when we came up
11 and he was there, my window shattered. I got a piece of
12 glass on my arm. I watched the whole thing. And as he
13 went -- as we went fully around the turn, the back --
14 now, we hit him on the side like this. And the back hit
15 the back of our truck, the back of his cab, the tire or
16 whatever, hit the back of the -- our car. And that sent
17 us into the railing, which sent us into a spin to the
18 center of the highway.

19 Q. Okay. Where were you seated?

20 A. I was seated right next to the driver in the
21 passenger's seat.

22 Q. All right. And where did you all leave from?
23 Orlando?

24 A. We left from the Radisson, 2900 -- the
25 Radisson's at 2900 on 192. And that's in Kissimmee.

1 Q. The Radisson Hotel in Kissimmee.

2 A. Yeah.

3 Q. How long were you staying at the Radisson?

4 A. We were there for the whole trip.

5 Q. How long was the trip?

6 A. That trip was for seven or eight days.

7 Q. And what were you all doing in Orlando for
8 seven or eight days?

9 A. We were purchasing property, the home that I'm
10 living in now.

11 Q. You-all had looked at that house, then?

12 A. We were looking at a bunch of homes, but
13 that's the house that we chose and purchased it that
14 particular week.

15 Q. Okay. So when you say you purchased it that
16 week, did you close on it?

17 A. We didn't close. We put the down payment on
18 it and signed the papers.

19 Q. And how much did you purchase the house for?

20 A. The house was purchased for \$220,000.

21 Q. How many bedrooms?

22 A. Four.

23 Q. All right. Now, at the time, you were out on
24 disability, correct?

25 A. That's -- I was out -- yes. I actually

1 **resigned from my job.**

2 Q. August of 2012.

3 A. **No -- yes. August 28th.**

4 Q. Right. And you were receiving temporary
5 disability at that time?

6 A. **I wasn't receiving disability yet. I was**
7 **receiving Comp.**

8 Q. Workers' Comp.

9 A. **Workers' Comp.**

10 Q. And that was the \$2,600 a month payment that
11 you told me about?

12 A. **That's correct.**

13 Q. When did you first start receiving that
14 income?

15 A. **That came in September.**

16 Q. Okay. All right. So you got your Comp
17 payment September, October. You purchased your house in
18 Orlando and you were traveling back to Brooklyn; is that
19 right?

20 A. **That's right.**

21 Q. Who else was in the car?

22 A. **Me, my wife, my son, Angelo, my mother.**
23 **That's it.**

24 Q. Now, how many times had Angelo been to
25 Brooklyn -- I'm sorry -- to Orlando?

1 **A. I believe this was the first time he came.**

2 Q. All right. And how did you end up bringing
3 Angelo to Orlando?

4 **A. He was seeing my mother on and off for a**
5 **three-and-a-half-year period.**

6 Q. Now, he was your second or third cousin?

7 **A. He was my third cousin, yeah.**

8 Q. And he was dating your mother? Is that what
9 you mean by seeing?

10 **A. I believe they were dating, yes.**

11 Q. Are you sure?

12 **A. Yeah, I'm sure.**

13 Q. How long had he been dating your mother?

14 **A. They were on and off for three and a half**
15 **years. They have no relation.**

16 Q. They what?

17 **A. My mother and Angelo had no relation. They're**
18 **not related.**

19 Q. I see. Angelo was on your father's side of
20 the family, correct?

21 **A. That's correct. Yes.**

22 Q. When did your father -- is he still alive?

23 **A. My father passed away in 2001.**

24 Q. Was your mother ever married after that or
25 before that to anyone else?

1 A. No.

2 Q. So what year did your mother and Angelo start
3 dating?

4 A. Between 2008 and 2009.

5 Q. Okay. So I take it, because of that, you
6 would have at least seen him periodically, wouldn't you?

7 A. I seen him at the house, yes.

8 Q. And your mother lived in Brooklyn?

9 A. Yes, she did.

10 Q. Where was Angelo living during that time
11 period?

12 A. He lived with his brother.

13 Q. Who's his brother?

14 A. I'm not that familiar with that side of the
15 family. I don't know his brother's name offhand. I
16 know his last name is Fischetti. They all go by Italian
17 names, and it alludes me. They lived on -- East 29th
18 and Avenue R, I believe.

19 Q. In Brooklyn?

20 A. Yeah.

21 Q. And where does Angelo live now?

22 A. He still lives there.

23 Q. East 29th and R Street.

24 A. It's either Avenue R or Avenue S. I didn't
25 have much association with this side of the family.

1 Q. Okay.

2 A. Please ask my wife. She knows more about
3 these minor details than I do. My thing was I worked.

4 Q. Do you know who Angelo's lawyer is in South
5 Carolina?

6 A. No. I have no idea.

7 Q.. All right. So where was Angelo seated in the
8 car?

9 A. Angelo was seated behind my wife. His seat
10 was reclined, and he was facing the -- he was facing the
11 drivers -- he was laying on his side facing the window.

12 Q. All right.

13 A. The driver's side.

14 Q. Looking at the area where the guardrail and
15 the median was, correct?

16 A. That's correct.

17 Q. Not at the area where the truck was.

18 A. That's correct.

19 Q. Was he asleep?

20 A. He was at that time, yeah. He woke up
21 quickly.

22 Q. Where was your mother seated?

23 A. She was seated across from him, right behind
24 me.

25 Q. Was she awake?

1 A. She was awake.

2 Q. And where was Salvatore?

3 A. Salvatore was behind both of them.

4 Q. There was a third seat in his van?

5 A. Yes.

6 Q. What kind of van was it?

7 A. 2000 -- it was either a 2000 or a 2001 Toyota

8 minivan.

9 Q. How long had you owned it?

10 A. Actually, I'm sorry.

11 A. Please forgive me. It was a Mazda.

12 Q. Mazda?

13 A. It was a Mazda?

14 Q. Mazda minivan?

15 A. Yeah.

16 Q. How long had you owned it?

17 A. My mother owned it.

18 Q. How long had she owned it?

19 A. Her and my father bought it new.

20 Q. In 2000?

21 A. I believe 2001 or 2000, the end of 2000.

22 Q. How many miles did it have on it? Do you have

23 any idea?

24 A. It didn't have much. It had like -- I believe

25 it was 27 or 29,000.

1 Q. Had you taken that car to Orlando or Florida
2 previous?

3 A. That was the second time I've taken a trip in
4 that car.

5 Q. Any mechanical problems with the car?

6 A. No, sir.

7 Q. Any steering difficulties?

8 A. No, sir.

9 Q. Braking?

10 A. No. The car was serviced right before we
11 left.

12 Q. Where did you service it?

13 A. My mother brought it to her mechanic. She had
14 an oil change done, new wipers. The brakes were done
15 that year. Everything was -- that's why we took the
16 truck. Everything was good on it.

17 Q. Okay. Where was it serviced?

18 A. Well, she brought it to Mazda. I know that.
19 And she also -- she had a mechanic that she used.

20 Q. And it's just something you recall or how do
21 you know that?

22 A. Well, we discussed it before we left. I
23 insisted on her getting an oil change and new wiper
24 blades because, you know, I'm familiar with the road and
25 the rain, and I wanted to make sure that was all good.

1 Q. You wanted to make sure the van was safe for
2 you to drive down there?

3 A. Well, yeah. I didn't want to get caught in a
4 rainstorm without new wiper blades. You know, we always
5 get an oil change before we leave, things like that.

6 Q. Sure. Okay.

7 All right. Ever been in a wreck before?

8 A. Have I ever had a wreck?

9 Q. Has the Mazda ever been wrecked before prior
10 to the accident?

11 A. No.

12 Q. All right. What time did you-all leave
13 Orlando to head back to Brooklyn or Kissimmee?

14 A. I believe it was 10:45.

15 Q. In the morning?

16 A. That's correct. A.m.

17 Q. How long would it take you to drive back?

18 A. Seventeen, 18 hours.

19 Q. And were you going to stop, spend the night
20 somewhere?

21 A. At that point, we hadn't decided yet.

22 Normally, we don't stop until like 11:00 p.m.

23 Q. With that many people in the van, were you
24 anticipating driving all the way there?

25 A. No. We always stopped.

1 Q. And where do you usually stop?

2 A. Most of the time, we stop at the -- we pull
3 over and rest for three hours at one of the resting
4 points. Rarely we get a hotel. We've done it once or
5 twice, depending on the weather. When the weather's
6 nice, we just pull over and take a sleep.

7 Q. Who started out driving?

8 A. Me.

9 Q. How far did you drive?

10 A. I drove all the way up to South Carolina.

11 Q. And how long did it take you to get there?

12 A. I'm not really sure. I drove for -- from
13 11:00 till, I believe, 4:30, where we stopped at the TA
14 to get something to eat.

15 Q. Okay.

16 A. And that's when my wife took over.

17 Q. Now, when you were driving, where was your
18 wife seated?

19 A. She was seated next to me in the passenger's
20 seat.

21 Q. Okay.

22 A. We were both in the front the whole trip.

23 Q. Okay. How was the weather?

24 A. The weather was good.

25 Q. What time was it when this accident happened?

1 A. Around 6:00 p.m.

2 Q. Clear?

3 A. It was clear.

4 Q. Still sunny? You didn't need your headlights?

5 A. The sun was starting to go down, but it was
6 still light out.

7 Q. Light out. Did your wife have her headlamps
8 illuminated?

9 A. No. It was still daytime.

10 Q. What was traffic like on I-95 on that stretch
11 of the highway before the accident?

12 A. There was none.

13 Q. Just you and the truck?

14 A. It was a nice flow.

15 Q. You say a nice flow. What does that mean?

16 A. It means everybody was moving smoothly. It
17 wasn't backed up. There was nobody on the road. I
18 mean, you know, there were a few cars ahead of us, a few
19 cars behind us, but nothing you would consider --

20 Q. All right. When did you first notice the
21 tractor-trailer?

22 A. I noticed him -- he was next to us for a
23 while. I wasn't really paying too much into it. And I
24 noticed, you know, he was getting a little close, so I
25 did mention to my wife, Jen, you've got to move around.

1 This guy's right on us. And it just happened so quickly
2 after that. I mean, he was there the whole time. I
3 don't know how to answer this question.

4 Q. Okay. So when I asked you when you first
5 noticed him, how much time elapsed from when you first
6 noticed him and the accident?

7 A. Well, we noticed him ten minutes. We were
8 next to him. But it was a nice, straight path. So
9 there was no problems. It wasn't until -- the way the
10 road was shaped was like a half an S. It wasn't until
11 we went around that bend that he got very close to us
12 and he started moving into our lane.

13 Q. Okay. So you -- he was in the -- you said the
14 middle lane. You were in the left lane. I refer to
15 that as a passing lane. That's the far left lane --

16 A. We were -- yes.

17 Q. -- by the median, correct?

18 A. Uh-huh.

19 Q. And you would have been heading north on 95,
20 correct?

21 A. Uh-huh.

22 Q. You have to say "yes" or "no" for the court
23 reporter.

24 A. Yes. Yes. Sorry.

25 Q. That's all right. Thank you.

1 And you would have been traveling beside him
2 for approximately ten minutes when you noticed he
3 started getting close, in your words; is that right?

4 A. When we were on the straight path, it was
5 fine.

6 Q. Yes, sir.

7 A. It wasn't until we started going around the
8 bend that the trailer came into our lane. He was riding
9 on the line, okay, the whole time. But there was plenty
10 of room on the straight path. It wasn't until the
11 trailer went around the bend that it went into our lane
12 fully.

13 Q. What day of the week was it? Do you remember?

14 A. I think it was a Sunday or a Monday. It's
15 been a while.

16 Q. Describe the tractor-trailer for me. Did it
17 have any writing on it?

18 A. The front was red, the engine.

19 Q. The cab?

20 A. The cab.

21 Q. The cab?

22 A. The cab was red. And I believe the trailer
23 was white. And I don't remember if it had any writing
24 on the side of it. It might have.

25 Q. Had you seen tractor-trailers previous to this

1 accident that had SeaTruck or KC Freight written on them
2 in any way?

3 A. I've seen a lot of tractor-trailers, but I
4 have no recollection of that.

5 Q. When he was riding beside you, were you able
6 to see the driver? I mean, you could physically see him
7 if you looked to your right, couldn't you?

8 A. We were practically right next to the cab.
9 But I'll be honest. I was engaged in conversation with
10 my wife and my mother at the time. I wasn't paying
11 attention to the -- looking at the driver.

12 Q. Okay. All right.

13 A. Plus the truck was a lot higher than our
14 vehicle.

15 Q. Oh, yeah. Sure.

16 But you'll admit, as you drive down the
17 highway and a truck is beside you, if you're in the
18 passenger side of the car in the left lane and the
19 truck's beside you on the right, you can look up and see
20 the driver in the truck, can't you?

21 A. That's correct. But we were slightly behind
22 where the -- if his window was here, I was basically
23 here, so I could not see.

24 Q. How many feet were you behind his window from
25 your window? Two feet?

1 **A. No. About three or four.**

2 Q. Three or four. All right. And, as you
3 indicated,, he had ridden beside you for approximately
4 ten minutes when he started getting close; is that
5 right?

6 **A. No. He went into our lane. There's a**
7 **difference.**

8 Q. But you were beside him for ten minutes when
9 he came into your lane.

10 **A. Yes. Yeah.**

11 Q. But you never saw the truck driver. That's my
12 question.

13 **A. I never looked. I never looked for him.**

14 Q. All right. And how fast were you traveling?

15 **A. 65.**

16 Q. On the cruise control.

17 **A. That's correct.**

18 Q. So how fast was the truck driving?

19 **A. He had to be doing the same speed.**

20 Q. Right. All right.

21 Were there vehicles in front of you?

22 **A. Yeah. There were one or two.**

23 Q. And were they in your lane or his lane?

24 **A. I believe our lane.**

25 Q. How many lanes heading north on 95?

1 **A. Three.**

2 Q. There were three?

3 **A. Three.**

4 Q. And he was in the middle lane.

5 **A. That's correct.**

6 Q. Okay. So you said there were one or two

7 vehicles in -- I'm sorry -- whose lane?

8 **A. My lane.**

9 Q. Your lane.

10 And what did the car look like that was

11 directly in front of you?

12 **A. There were a couple of cars. There were white**

13 **cars. There were black cars. I wasn't paying too much**

14 **attention to them, either.**

15 Q. Sure. Do you remember the make or model?

16 **A. No.**

17 Q. Were there any vehicles in front of him in his

18 lane?

19 **A. No.**

20 Q. Were there any vehicles in the far right lane?

21 **A. No.**

22 Q. Okay.

23 **A. It was light traffic.**

24 Q. The far right lane was clear.

25 **A. Yeah.**

1 Q. He was in the middle lane, and you were in the
2 left lane. Do I have that correct?

3 A. That's correct.

4 Q. Okay. All right. Did he have his headlights
5 on?

6 A. I wouldn't -- like I said, it was daytime. I
7 wouldn't have been able to tell, and I wasn't in front
8 of the vehicle to even see.

9 Q. I see. Now, during the ten minutes that you
10 were riding beside him and before he came into your lane
11 that caused you to move to your left -- or your wife --
12 had he ever moved into your lane earlier than that time
13 during that time that --

14 A. No. Not before that, no.

15 Q. But you said he was riding the line.

16 A. He was -- his front tire -- I could see the
17 front of the cab. He was right on -- his tire was right
18 on that line.

19 Q. It was right on the line.

20 A. Yeah.

21 Q. For the entire period that you were riding
22 beside him.

23 A. Yeah. You have to understand, before we came
24 around that bend with that -- with the metal pole, there
25 was a lot of -- a little extra room. It wasn't a

1 concern. The straight -- you know, the straight path
2 was a little bit more open. That truck didn't come near
3 us until we went around the bend.

4 Q. Let me ask you this: As you were riding
5 beside him and you could see that his left front tire of
6 his cab was on the line, correct --

7 A. I could see that from my window, yeah.

8 Q. -- did you say anything to your wife like, be
9 careful. This guy's riding the line?

10 A. Yes.

11 Q. Tell me what you said to her.

12 A. I said, Jennifer, be careful. This guy's
13 riding the line. That's correct.

14 Q. And what did she do in response to that?

15 A. We didn't do -- she was a little bit over
16 already. And there was about that much room between us.
17 I-95 is a little tight.

18 Q. Now, let me just tell you, the court reporter
19 can't pick that up.

20 A. I understand that. We were about three or
21 four feet from him.

22 Q. Okay.

23 A. Okay? It wasn't a concern at that point.
24 There was no danger involved.

25 Q. All right. When you first told her, Jennifer,

1 be careful. He's riding the line, did Jennifer move
2 over to the left, or did she just stay exactly where she
3 was in the lane?

4 A. No. She moved over.

5 Q. Okay. And that was before he came into your
6 lane, correct?

7 A. We were over before we were -- yes. That's
8 correct.

9 Q. All right.

10 A. We were already over.

11 Q. Okay. And she just proceeded to maintain her
12 speed in the left lane, and he maintained his speed in
13 the middle lane, correct?

14 A. That's correct.

15 Q. All right. You go around the bend. Is that a
16 sharp bend, a gentle curve? How would you describe that
17 bend?

18 A. It's sort of like a half an S. Is goes
19 straight. You go like a C shape, and then it goes back
20 up straight again.

21 Q. So the bend, the turn would be from your left
22 to your right, correct? Or is it from your right to
23 your left?

24 A. I'm trying to figure that out for you
25 because -- actually, the turn -- you would have been

1 heading towards your right. It was -- it would be
2 towards the right.

3 Q. Right. So the curve or the bend was from your
4 left and it bent to your right.

5 A. That's correct.

6 Q. Is that right?

7 A. I believe so.

8 Q. Sure. Okay. And so when -- when you first
9 noticed him start to come in your lane, I guess you saw
10 his front left tire move over into your lane?

11 A. The cab, the front -- the cab never came into
12 our lane.

13 Q. Okay.

14 A. Okay? The back of the trailer came into our
15 lane. What happened was, as he came into our lane, we
16 moved all the way over. And two of our tires were on
17 the dirt, okay? And at that point -- this happened so
18 quickly now, within a matter of eight seconds, six to
19 eight seconds. I mean, we went over because he came in,
20 to give him sufficient room so we wouldn't hit him. And
21 before we went around that little turn, we -- the
22 accident happened.

23 Q. All right. Let's talk about that a little
24 bit, Mr. Fischetti.

25 Okay. So when he first starts moving into

1 your lane, are you watching him?

2 A. I'll tell you the truth. I was sitting like
3 this. I was sitting in the seat with a slight angle
4 towards my wife, so I could speak to my wife and my
5 mother. And I turned over and noticed the cab was right
6 next to us, okay? And that's when we started moving
7 over. And it wasn't enough. There just wasn't enough
8 room.

9 Q. When you -- did you have your seat reclined?

10 A. No, sir.

11 Q. Did you have your seat belt on?

12 A. Yes, I did.

13 Q. When you turned over and the cab was right
14 next to you, what part of the cab were you looking at?

15 A. At that point, I was -- right behind the red
16 cab, is the first set of tires that hold up the -- I
17 don't know how you -- how you word that. You have
18 the -- you know, the engine part, which is the cab, and
19 the trailer part, where the first set of tires is on the
20 trailer.

21 Q. The first set of tires on the trailer.

22 A. That's where I was.

23 Q. All right. So the front of your car would
24 have been toward the rear of the cab?

25 A. More towards the middle.

1 Q. The middle of the cab.

2 A. Yeah.

3 Q. All right. So the front of the Mazda would
4 have been at about the middle of the cab.

5 A. Yeah.

6 Q. Right? The middle of the cab is where --
7 approximately where the door is to get into the cab
8 where the driver would be seated. Would you agree with
9 that?

10 A. No, no, no. We were behind that.

11 Q. No, no, no. I'm talking about the front of
12 your car, not the --

13 A. Oh, yeah. Yes. That's correct.

14 Q. The front of the Mazda would have been about
15 the middle of the cab. I'm trying to get a mind --

16 A. Outside my window I could see the first set of
17 tires for the trailer.

18 Q. Okay.

19 A. Okay?

20 Q. And --

21 A. Which is a little bit ahead of the middle of
22 the trailer.

23 Q. Right. The first set of tires for the trailer
24 or the cab --

25 A. The trailer.

1 Q. The trailer. And those were right beside you,
2 I think.

3 A. That's correct.

4 Q. All right. And did you see the cab come into
5 your lane or the first set of tires of the trailer come
6 into your lane?

7 A. The trailer, not the tires.

8 Q. The trailer. Now, stay with me.

9 A. Uh-uh. I'm with you.

10 Q. I'm trying to visualize this, is why I'm going
11 into detail. I want to be able to visualize this.

12 A. I was even --

13 Q. Let me ask you the question, okay?

14 A. Go ahead.

15 Q. Okay. You're sitting in the front passenger's
16 seat. You look out your window to your right and you
17 see the front set of tires on the left side of the
18 trailer, correct?

19 A. Correct.

20 Q. And you saw those tires move over into your
21 lane, correct?

22 A. No. What I saw, okay -- I was pretty much
23 basically even with the trailer. And you could see the
24 whole trailer moving over. That's what caught my
25 attention. I wasn't paying attention to the tires

1 fully. I was watching -- every now and then I would
2 glimpse over and see the tires. But when you -- you saw
3 the whole thing move over. That's what I noticed.

4 Q. Well, you couldn't see the trailer behind
5 your -- out your window, could you?

6 A. What are you talking about? Of course I could
7 see the trailer out my window.

8 Q. Hang on. Stay with me.
9 You look to your right.

10 A. Yeah.

11 Q. You see the front -- first set of tires --
12 hang on -- at the front left of the trailer. You've
13 already said that, correct?

14 A. That's correct.

15 Q. Right. Now, the trailer goes back how many
16 feet?

17 A. Far back behind us.

18 Q. Let's assume it's a 53-foot trailer.

19 A. Okay.

20 Q. You're not looking back to see the 52 feet of
21 trailer behind you, are you?

22 A. No.

23 Q. You're only looking at that part of the
24 trailer which is right above the front tires on the left
25 side, correct?

1 A. As well as the tire. I could see the
2 bottom --

3 Q. Of the trailer?

4 A. -- of the trailer.

5 Q. I understand that.

6 It's that part of the trailer that you saw
7 coming into your lane.

8 A. That's what started moving inside, yes.

9 Q. All right. That's what I'm trying to get at.

10 All right. So when you saw it coming into
11 your lane, how far were you from the side of that
12 trailer?

13 A. Originally -- you have to understand from my
14 point of view. Originally, we had three or four feet of
15 room. All of a sudden, we didn't have three or four
16 feet of room no more. It went down to less than a foot.
17 And that's when I told her to move over. Do you
18 understand?

19 Q. No, no, no. Hang on.

20 When you're -- when you look out your window
21 and you see the right tires of the trailer right there,
22 how far were you -- what's the distance between your
23 vehicle and the trailer? Two feet? Three feet?

24 A. Okay. This question's not fair because you're
25 asking me at the time of the accident? When we were

1 **driving? When?**

2 Q. Sure. I appreciate that.

3 You're driving down the road.

4 **A. We had about three feet of room between us.**

5 Q. Three feet of room. That's what I'm trying to
6 get at.

7 All right. So it's three feet between your
8 vehicle and the trailer, and then you start to --

9 **A. Going into the turn.**

10 Q. You see the trailer start moving over.

11 **A. That's correct.**

12 Q. How far were you in the turn when you first
13 start to see the trailer moving over?

14 **A. We just entered the turn when the trailer went
15 from having three feet of distance to less than a foot.**

16 Q. All right. Stop right there.

17 Was the trailer still in its lane when you had
18 three feet between you to one foot between you?

19 **A. That's when he started coming into our lane.**

20 Q. All right. Let me ask you the question again.
21 Listen to the question.

22 **A. I'm trying to.**

23 Q. When you first entered the turn and you say
24 the width between your vehicle and the trailer had gone
25 from three feet to one foot -- one foot, my question is,

1 was -- at that point, was the trailer still in its lane?

2 A. No. He started -- he started exiting his lane
3 into mine even more.

4 Q. When you saw him go from three feet width to
5 one foot, he was in your lane; is that right?

6 A. That's correct.

7 Q. So how much was he in your lane? A foot? Two
8 feet? Three feet?

9 A. No. At that point, it was only a couple
10 inches over the line.

11 Q. And you could tell that.

12 A. Of course I could tell that.

13 Q. Did your wife blow the horn?

14 A. No. We moved over.

15 Q. Now, at the time you see his trailer in your
16 lane a couple of inches, the cab is in its lane,
17 correct? It didn't move over. I think you've already
18 testified to that.

19 A. No. He was right on the line. He probably
20 rode that line from beginning to end with the front of
21 the trailer. Not the trailer. The cab.

22 Q. Listen to my question.

23 A. All right.

24 Q. Listen to the question.

25 A. Go ahead.

1 Q. When the trailer enters your lane, I think
2 you've already told me that the cab was not in your
3 lane, correct?

4 A. The cab was -- his front tire was on that line
5 the whole time.

6 Q. Here's my question. I appreciate that. Was
7 the cab in your lane? Yes or no?

8 A. Yes. Yes. He was in my lane.

9 Q. The cab was in your lane.

10 A. Yeah.

11 Q. I thought you said the cab was on the line.

12 A. That's my lane.

13 Q. The line is your lane.

14 A. The second you ride that line, you're in my
15 lane.

16 Q. Well, let me ask you this, then: Did the cab
17 move left over the line into your lane?

18 A. Yes.

19 Q. When?

20 A. Going around that bend.

21 Q. You were watching that.

22 A. I saw that. I was behind it. I could see
23 where the cab was.

24 Q. How much of the cab actually went into your --

25 A. Only a couple of inches.

1 Q. Stop and let me ask my question. You
2 interrupted me.

3 A. Sorry.

4 Q. When you're traveling down the road, you see
5 the cab riding the line, and then you see the cab move
6 from riding the line into your lane. Is that your
7 testimony?

8 A. What I saw -- my testimony is he was right on
9 that line. As we started to go around the bend, the
10 back of the trailer started moving over towards us. We
11 tried to avoid it. We couldn't. That's my testimony.

12 Q. Okay. So you never saw the cab actually go
13 into your lane. That's your testimony. Isn't that
14 right?

15 A. No. That's not what I said. I said he was on
16 the line fully. He rode on that line. He wasn't on his
17 side. He was on the line.

18 Q. Okay.

19 A. I don't know what that means.

20 Q. Okay. Good enough. Fair enough.

21 So when the trailer moves into your lane and
22 you say there's one-foot distance between your vehicle
23 and the trailer, what does your wife do next?

24 A. My wife moved over. She moved the car over.

25 Q. To her left.

1 A. To her left. That's correct.

2 Q. Is she still in her lane when she moves the
3 car over to your left?

4 A. At this point, we were -- we're in -- we were
5 always in our lane until we went onto the dirt.

6 Q. I understand that, but you've got to listen to
7 my question for me.

8 When your wife moves over to the left, when
9 the cab moves one -- when there's one-foot distance
10 between you and the -- excuse me -- one-foot distance
11 between you and the trailer, you said your wife moves
12 over. My question is, is she still in the lane or is
13 she off the road?

14 A. Oh, no. We went off the road.

15 Q. All right. Here's my question.

16 A. He went so far -- let me say it my way. He
17 went so far into our lane, the back of that trailer,
18 that we had no choice but to go onto the grass.

19 Q. All right. How much of the trailer moved into
20 your lane?

21 A. Oh, my God. It had to be about three feet.
22 Between two and three feet into our lane.

23 Q. Do you know how wide your lane is?

24 A. I would assume it's at least five feet.

25 Q. Twelve feet?

1 A. No, it was not 12 feet.

2 Q. Your lane's not 12 feet?

3 A. No.

4 Q. All right. So he moves into your lane, and
5 your wife -- now, is she seeing this, or are you telling
6 her, move over?

7 A. No. My wife saw it at this point.

8 Q. All right. Did she move -- she turns the
9 steering wheel to the left, right?

10 A. Uh-huh.

11 Q. It's a yes or no.

12 A. Yes.

13 Q. Okay. And then you-all immediately leave the
14 roadway, correct?

15 A. Yes.

16 Q. Did she hit the brakes?

17 A. No. She took the foot off the gas.

18 Q. All right. She took the foot off the gas.
19 And did you decelerate?

20 A. A little bit.

21 Q. And then what happened?

22 A. We hit -- something happened. The truck
23 jumped up. It hit like an impression in the grass, a
24 bump or a hole.

25 Q. I'm sorry. You said the truck.

1 A. Our truck. Our vehicle.

2 Q. Okay.

3 A. The vehicle that we were in, we -- hit like --
4 I don't know if it was an impression or a bump, okay,
5 but the truck jumped up. The vehicle jumped up and
6 brought us back onto the blacktop, and that's when we
7 collided with the tractor-trailer, the middle of the
8 back.

9 Q. All right. When your wife moves to the left,
10 she immediately leaves the roadway, correct?

11 A. I don't know what you mean by "leave the
12 roadway."

13 Q. Car's off the road.

14 A. Half of it was, yeah.

15 Q. All right. Now, was it traveling down the
16 road for how far when it was half on and half off?

17 Let me ask that again.

18 How far was your vehicle traveling down the
19 road half on and half off the lane?

20 A. Maybe 12 feet.

21 Q. All right. So is her left --

22 A. This happened in a matter of seconds. So it
23 was only -- we were only off the road a couple of
24 seconds.

25 Q. Okay.

1 A. Okay?

2 Q. Okay.

3 A. Maybe five. From the beginning of this turn
4 to the end of this turn, that's how the whole thing
5 occurred. So it couldn't have took much time. Do you
6 understand?

7 Q. Sure.

8 A. Okay.

9 Q. So you said you traveled about 12 feet down
10 the road.

11 A. Twelve to 15 feet. I can't be precise with
12 you, you know.

13 Q. Sure. Now, how many tires did she have off
14 the roadway?

15 A. Two.

16 Q. Front and back left tire?

17 A. Of the driver's side, yes.

18 Q. Right. And when you leave the roadway,
19 there's a grass median?

20 A. There was grass there, yes.

21 Q. And then there's a guardrail besides the grass
22 median.

23 A. That's correct.

24 Q. What's the distance between the edge line of
25 the roadway and the guardrail?

1 A. Three or four feet.

2 Q. Three or four feet.

3 All right. And how would you describe that
4 area? Is it level or is it --

5 A. It looked level.

6 Q. Okay. And she travels about 12 to 15 feet,
7 and then you hit a bump?

8 A. We hit -- something happened where the vehicle
9 jumped up. I don't know what happened. I don't know
10 what he hit. Something on that grass couldn't have been
11 level. It made us bump up, yes.

12 Q. Now, when you're traveling that 12 to 15 feet,
13 half on and half off the roadway, where was the trailer?

14 A. The trailer was still next to us. Originally,
15 I was right behind the cab.

16 Q. Okay.

17 A. Now, we slowed down a little bit so we were
18 more towards the back of it now.

19 Q. Okay.

20 A. And the -- that's where we were.

21 Q. Could you see the rear of the trailer, or were
22 you not that far back?

23 A. I was between the two sets of tires now. I'm
24 in the middle -- practically in the middle of the
25 trailer.

1 Q. I see. All right.

2 And how far was that in your lane, if at all,
3 during that 12 to 15 feet?

4 A. That's the part of the trailer that was really
5 in the lane.

6 Q. How far in the lane was it?

7 A. It had to be a good foot and a half.

8 Q. A foot and a half in your lane. Okay.

9 A. A foot to a foot and a half.

10 Q. I understand.

11 A. I didn't have a ruler.

12 Q. Yeah. Yeah. I understood you. I appreciate
13 it.

14 Now, does your wife then move her steering
15 wheel to the right in order to bring her vehicle back
16 onto the roadway?

17 A. When we popped up, yes, she turned the wheel.

18 Q. She turned the wheel to the right.

19 A. Yeah.

20 Q. To get back onto the roadway, correct?

21 A. That's correct.

22 Q. And that's when her vehicle hits what part of
23 the tractor-trailer?

24 A. We hit directly, like this. The impact
25 happened between our two doors, my door and the door

1 behind me where my mother was. We actually collided
2 literally like this.

3 Q. Side by side.

4 A. Side by side. That's the word I was looking
5 for. Yes.

6 Q. And you say the impact point of your vehicle
7 was between the front and rear passenger door? Would
8 that be accurate?

9 A. Correct.

10 Q. And what part of the trailer?

11 A. The middle of the trailer.

12 Q. Okay. In between the two -- the front set of
13 tires and the rear set.

14 A. And the back. That's correct.

15 Q. And it broke out your passenger window..

16 A. Shattered all the windows on that side.

17 Q. On that side.

18 A. Yes.

19 Q. And what sort of damage did it do to the
20 trailer? Do you remember?

21 A. Honestly, no. I wasn't looking to see what it
22 did to the trailer.

23 Q. Afterwards, did you go look at the damage to
24 the trailer?

25 A. No.

1 Q. Have you seen any photographs of the damage to
2 the trailer?

3 A. A couple of months ago.

4 Q. Okay. What did you see a couple of months
5 ago?

6 A. I seen the little impression on the side.

7 Q. And looking at that photograph, seeing an
8 impression on the side, is that where you believe the
9 impact occurred on the truck?

10 A. That's correct. Yeah.

11 Q. Okay. All right. So your wife comes back on
12 and strikes the side of the trailer, as you've
13 indicated, between the front passenger and rear doors of
14 your vehicle with about the middle side of the trailer,
15 correct?

16 A. That's correct.

17 Q. And where did that impact occur, your lane,
18 the middle of the two lanes or in his lane?

19 A. No. It happened in my lane.

20 Q. How far was the trailer at the impact point in
21 your lane at that time?

22 A. He was a foot -- the back of the trailer was
23 about a foot in.

24 Q. All right. Here's my question. I appreciate
25 that. How far was the part of the trailer that you hit,

1 that part, how far was that part in your lane at the
2 time of impact?

3 A. Up to a foot in. It was in our -- in our
4 lane.

5 Q. Now, where was --

6 A. Go ahead.

7 Q. I'm sorry.

8 Where was the front of your vehicle? Was it
9 pointed straight down the road in the lane you were
10 traveling?

11 A. Yeah.

12 Q. Or was it pointed toward --

13 A. No. We were -- actually, we were -- both of
14 us were pointed this way at that time. It was still at
15 the end of the turn.

16 Q. "This way," what do you mean? Straight down
17 the road?

18 A. Towards the -- no. It wasn't a straight. It
19 wasn't straight. It was angled towards the right.

20 Q. Your vehicle was angled towards the right.

21 A. So was the truck. It had it to be.

22 Q. Why?

23 A. Because we were going around a turn.

24 Q. Did you see the cab?

25 A. When we hit, no. I was terrified. I was busy

1 looking at what I was going into.

2 Q. At the time of the impact, then, what you're
3 telling me is you were still in the bend, right?

4 A. Coming out of the bend at that point, the
5 farthest turn of it, yeah.

6 Q. Still in the bend, though.

7 A. Yeah. Yes.

8 Q. Is that right?

9 A. That's correct.

10 Q. All right. Okay.

11 A. But that wasn't the only impact.

12 Q. All right. Tell me about the next impact,
13 then.

14 A. After we hit side by side, all right, our
15 vehicle immediately reduced in speed. And somehow the
16 back of the trailer clipped the back of our vehicle and
17 that's what sent us into the railing.

18 Q. All right.

19 A. There were two impacts.

20 Q. Tell me when the second one was.

21 A. Immediately after the first.

22 Q. Tell me what happened for the second impact.
23 So you hit side by side.

24 A. We hit side by side. And within a second and
25 a half, I don't know if it was the tire, the bumper, the

1 cab -- I don't know what hit the back of us, but
2 something hit the back of our truck which sent us flying
3 forward.

4 Q. You don't know what hit the back of your
5 truck.

6 A. No, sir. I wasn't looking at that point,
7 behind me. I was holding on to the front of me. And I
8 actually grabbed over to hold onto my wife. But
9 something hit us again on that truck and sent us into
10 the railing.

11 Q. Okay. And you went in. What part of your
12 vehicle hit the railing?

13 A. My side, the front.

14 Q. So your vehicle actually turned around
15 counterclockwise?

16 A. We were sent forward and, yes, we went into
17 a --

18 Q. Rotated.

19 A. -- a half a rotation where the front, the very
20 corner of my vehicle, the passenger's side, hit the
21 railing.

22 Q. Okay. And then what happened?

23 A. When we hit the railing, we were sent into
24 another spin which sent us into the center of the
25 highway.

1 MR. BARROW: Let's take a little minute break.
2 My court reporter is stretching over there and I
3 think I'm wearing her fingers out. So why don't we
4 take about a five-minute break, okay?

5 (Break taken from 10:26 a.m. to 10:40 a.m.)

6 BY MR. BARROW:

7 Q. All right. Mr. Fischetti, when your wife came
8 back onto the roadway after traveling, I think you said,
9 12 to 15 feet part on and part off and you impacted with
10 the side, middle side of the trailer, I take it -- you
11 indicated your wife took her foot off the gas so she
12 would have been decelerating, as you testified. So what
13 do you estimate her speed was at the time of the first
14 impact?

15 A. Fifty-eight to 60.

16 Q. All right. And I think you told me she was
17 doing about 65 before that.

18 A. That's correct.

19 Q. So she would have decelled -- her speed would
20 have decelled --

21 A. She would have decelled about five miles. It
22 only happened within a couple of seconds. She took her
23 foot off the gas when she -- when she went -- turned the
24 wheel to the left and went onto the grass. That's when
25 she took her foot off the gas.

1 Q. Now, when she goes back onto the roadway, is
2 she applying her brakes?

3 A. No.

4 Q. Is she applying her brakes when she's in the
5 grass?

6 A. I think she hit the brake when we popped up.

7 Q. Were you on the grass then?

8 A. Well, yeah. We were on the -- her tire was on
9 the grass, the very left tire. When we -- when our
10 vehicle popped up, I believe that's when she hit the --
11 she hit the brake. I'm not a hundred percent sure, but
12 that's the way it appeared.

13 Q. Okay. So she first hits her brakes when she's
14 on the grass and you popped up, which you indicated to
15 me earlier, right when you popped up, you then went back
16 onto the roadway, correct?

17 A. Right.

18 Q. Now, when you're going back onto the roadway
19 after you pop up, she's applying the brakes.

20 A. Yes. I believe so.

21 Q. And she's laying down skid marks, right?

22 A. No.

23 Q. Have you seen photographs of the roadway where
24 the accident happened?

25 A. I was at the roadway, and I know that skid

1 marks were -- after we hit, there were skid marks.

2 Q. Okay.

3 A. That sent us into -- the tires all blew out
4 and we were sent into the center of the highway. I know
5 there were skid marks from that.

6 Q. So there were no skid marks from where you're
7 coming off the grass back onto the roadway back up to
8 the --

9 A. Not that I'm aware of, no.

10 Q. Have you seen any photographs -- let me
11 finish.

12 A. Go ahead.

13 Q. Have you seen any photographs of the accident
14 scene that shows skid marks coming from off the roadway
15 to a point of impact with the trailer?

16 A. No, I have not seen that.

17 Q. All right. Fair enough.

18 So the only -- you were there, of course. And
19 you got out afterwards and inspected the scene. And you
20 saw skid marks from what you indicated to me was the
21 second accident -- second impact, which would have --

22 A. I've seen skid --

23 Q. Let me finish.

24 -- which those skid marks would have been of
25 your vehicle as it left the roadway heading toward the

1 guardrail. Am I correct? I'm not trying to trick you.

2 A. I know you're not trying to trick me. And I
3 hear what you're saying. I believe there were skid
4 marks from when we were sent into the railing. I seen
5 the bent railing with my own eyes. And you have to
6 understand, the car had skid marks now that were sent
7 away from the railing, okay, because the car was in a
8 spin. The rubber was burning against the road. There
9 were no skid marks from where we had the initial
10 accident with the truck.

11 Q. I see.

12 A. I think after the second impact, there might
13 have been some skid marks because we were forced into
14 the railing.

15 Q. Yeah. Now, I get that. And if I can
16 summarize so that we're on the same page.

17 A. Go ahead.

18 Q. After the second impact, as you've testified,
19 it would have sent your vehicle from the left lane off
20 the roadway into the grass and then into the railing.

21 A. Correct.

22 Q. Correct?

23 A. Correct.

24 Q. And you're telling me there are skid marks
25 from the second impact which would have shown the travel

1 of your vehicle into the grass where you ultimately
2 struck the railing, correct?

3 A. Yes. Correct.

4 Q. Now, are those skid marks of -- are they a set
5 of skid marks to the rear tires, or are they just one
6 skid mark?

7 A. I have no idea.

8 Q. It was rear-wheel drive your vehicle?

9 A. Front wheel.

10 Q. Front-wheel drive.

11 Did it have ABS brakes?

12 A. Yes, it did.

13 Q. Now, the skid marks from the second impact
14 that you've just talked about, I take it -- I think
15 you'll agree with this -- in order for her to have laid
16 down skid marks, she had to have her feet on the brake
17 pedal.

18 A. At that point, she probably did. I'm not
19 aware. I was -- at this point, the car is spinning
20 around and I'm holding on.

21 Q. Okay. Now, when her car first leaves the
22 roadway, first leaves the roadway, were you saying
23 anything to her?

24 A. When we went onto the grass?

25 Q. Yes, sir.

1 A. Yeah.

2 Q. What are you saying?

3 A. Now I'm panicking a little.

4 Q. All right. What are you saying?

5 A. And I'm getting nervous. And I'm telling her
6 to stop the vehicle.

7 Q. What are you saying to her? Can you remember
8 the words you used?

9 A. Yeah. Get away from this guy.

10 Q. Okay. What else?

11 A. Get away from this guy.

12 I wanted her to accelerate and pass him, okay?
13 That's what I wanted her to do.

14 Q. After the impact.

15 A. No. This is before the impact happened.

16 Q. All right.

17 A. I wanted her to get away from him, accelerate
18 and go in front of him.

19 Q. When did you tell her that?

20 A. When we first started going on the grass.

21 Q. Oh, okay. Now, when you start leaving the
22 highway, you said you wanted her to stop.

23 A. Well, no. I wanted her to get ahead of him.
24 That's what I wanted.

25 Q. I understand. But when you left the roadway,

1 that's when you wanted her to stop.

2 A. No. At that point, I didn't want anything.

3 There was no more communication. It happened so
4 quickly.

5 When we first went onto the -- when we first
6 went onto the grass, it was like, get away from him.
7 Get ahead of him. And that's all I said. And then
8 within a couple of seconds, the accident happened.

9 Q. Let me ask you this: When you said that, did
10 she start accelerating again?

11 A. No. That's when I think -- she actually took
12 her foot off the gas. She was -- you know, she was
13 trying to control the steering.

14 Q. Okay. Did she say anything during this period
15 of time when you said get --

16 A. I don't remember. At this point, my mother
17 was --

18 Q. Okay.

19 A. She was -- my mother was talking. I was
20 trying to listen to my mother.

21 Q. What was your mother saying?

22 A. She was nervous, and she was -- she was -- she
23 was reclined in her seat, and she was -- she was like,
24 what's going on? What's going on, you know? Like that.

25 Q. And was your son saying anything? Was he

1 awake?

2 **A. He was awake playing video games.**

3 **Q. All right. Did he see all this?**

4 **A. I have no idea. He was all the way in the**
5 **back. The only thing my son told me was he threw the**
6 **blanket on top of him.**

7 **Q. So you don't know if your son saw any of this.**

8 **A. No. I really don't.**

9 **Q. Sure. And Angelo, did he see any of this?**

10 **A. Angelo was asleep. He really was.**

11 **Q. Your mother saw it.**

12 **A. My mother was -- I don't know if she saw it.**
13 **I'm sure she saw what I saw.**

14 **Q. Okay.**

15 **A. She was a little bit more reclined than I was.**

16 **Q. Okay.**

17 **A. You know, I have no idea what she saw, to be**
18 **honest with you.**

19 **Q. Did your wife see the trailer when it first**
20 **came into your lane, or was she relying on you to tell**
21 **her that?**

22 **A. I think she relied on me to tell her.**

23 **Q. So she didn't see it.**

24 **A. She was focused on what was in front of her.**

25 **Q. Right. And did she see the cab ever come into**

1 her lane?

2 A. You'd have to ask her.

3 Q. You don't know the answer to that.

4 A. I really don't. No.

5 Q. Okay. Your wife's out there, isn't she?

6 A. Huh?

7 Q. Your wife's out in the waiting room?

8 A. That's correct.

9 Q. You just saw her when you took the break?

10 A. That's correct.

11 Q. You-all went out and had a cigarette?

12 A. Uh-huh.

13 Q. Yes?

14 A. Yes.

15 Q. Does she smoke?

16 A. Yes.

17 Q. And you smoke.

18 A. Yes.

19 Q. You-all had a cigarette together.

20 A. Yes.

21 Q. Does your son smoke?

22 A. No.

23 Q. Okay. All right. So the first impact, what

24 happens to your car immediately after the first impact?

25 A. That's easy.

1 Q. Okay.

2 A. I remember the impact happened --

3 Q. Okay.

4 A. -- the side by side. The window shattered.

5 And it was like the car stopped. It really didn't, but
6 it felt like the car stopped. And then all of the
7 sudden, you felt us hurled forward, you know. In my
8 personal opinion, an estimated guess, it felt like his
9 back tire hit the back of our car, not the cab -- the --
10 one of the tires, and that's what sent us forward
11 because it was like the car just -- it had this major
12 impact side by side. The windows shattered. And within
13 a second, you felt like this bump in the back, and it
14 edged us forward.

15 Q. Let me see if I can recap that so I'm
16 following you.

17 A. Go ahead.

18 Q. After the first impact, you said the window
19 shattered.

20 A. Right. That's correct.

21 Q. And then it was like a second later, you felt
22 an impact to the rear?

23 A. Yeah.

24 Q. But you've already told me, you don't know
25 what hit the rear of your vehicle.

1 A. No. I really don't.

2 Q. And then when that occurred, does your wife
3 turn the steering wheel to the left to leave the
4 roadway?

5 A. The second we jumped up, my wife turned the
6 wheel to the left. That, I remember. And that's --

7 Q. Let me stop you there because I don't
8 understand.

9 A. I know. It's confusing.

10 Q. When you say the second you jumped up -- I'm
11 talking about what happened after the first impact.
12 Now, you've told me that --

13 A. I have no idea -- I remember we jumped up.
14 She turned the wheel this way to go back.

15 Q. Wait a minute. Which way is "this way"?

16 A. Towards the left.

17 Q. To the left.

18 A. I remember that. At this point, I turned my
19 head over towards the truck, and I physically watched us
20 hit. And I saw the glass shatter everything.

21 Q. Let me just recap. I'm trying to follow you.

22 A. I know.

23 Q. After the car jumps up when you're on the
24 grass, your wife turns the wheel to the left. You go
25 back onto the roadway, and you literally can see the

1 impact happening.

2 A. At that point, I'm not watching my wife no
3 more. After she goes like this, after she goes -- turns
4 the wheel to the left, I turned over to look at the
5 truck. Okay? And I wasn't watching my wife at that
6 point.

7 Q. Can you explain to me why the car goes to the
8 right when your wife turns the wheel to the left?

9 A. I have no idea.

10 Q. Did you have any mechanical problems with the
11 car?

12 A. No, sir.

13 Q. Okay. All right. So what happens after you
14 hit the guardrail? I think you told me you turned
15 counterclockwise.

16 A. We went into a spin.

17 Q. Okay.

18 A. I believe --

19 Q. Go ahead.

20 A. I'm trying to remember it. We bounced off the
21 railing. And the car spun to the right, leaving me
22 pointing towards the flow of traffic, okay?

23 Q. Okay.

24 A. And the car came to a dead stop --

25 Q. Okay.

1 A. -- in the center of the road. And the next
2 thing I heard was, where's Mommy? My wife says, where's
3 Mommy? And that's when we -- I couldn't get out of the
4 vehicle. My door was -- apparently, the impact had
5 sealed my door, so I couldn't get out. My mother's door
6 had flown open. And I had to get out through the
7 driver's side, and I went looking for my mother.

8 Q. You don't know when she exited the vehicle, do
9 you?

10 A. No, sir.

11 Q. And you don't know if it was before or after
12 the impact with the guardrail.

13 A. Oh, it was after the impact.

14 Q. How do you know that?

15 A. Because I saw her. And it wasn't until -- I
16 wasn't watching my mother when we -- after we hit the
17 rail, that's when I stopped -- I couldn't see no more.
18 I would have to assume that she flew out of the vehicle
19 after the first impact or during the second spin, at any
20 one of those points.

21 Q. Right. I'm with you.

22 All right. Now, as you've told me, when your
23 wife -- when you're on the grass halfway on/halfway off
24 and your wife -- your car bumps up, your wife turns the
25 wheel to the left, your car goes to the right, you go

1 back into your lane of travel, and I think you testified
2 you impacted with the side of the trailer about midways
3 down on your side, and the trailer, at that point, I
4 think you said, was a foot to a foot and a half in your
5 lane, correct?

6 **A. Yeah.**

7 Q. Okay. And then a second later, you feel an
8 impact to the rear. Don't know what it is. Your car
9 then moves left off the roadway, spins counterclockwise.
10 And the side of your car on the passenger's side strikes
11 the side of the guardrail, correct? You spin this way.
12 You go off the roadway and you strike the guardrail with
13 the side of your car.

14 **A. We hit the guardrail. We didn't go into a**
15 **spin. We were sent directly into the guardrail.**

16 Q. Okay. I misunderstood you, then. I thought
17 you said that when you went into the guardrail, the
18 impact was with your door, the side of your door and the
19 guardrail.

20 **A. We hit side by side.**

21 Q. Right. And then I told you it felt like
22 something hit the back of the car and we were sent
23 forward. And the very corner, my corner of the vehicle,
24 hit the guardrail.

25 Q. Well, you --

1 A. So we had to have a slight turn, yeah. But
2 not a full spin.

3 Q. Yeah. Yeah. But you did spin
4 counterclockwise in order for the front right to hit --

5 A. Okay. Yes. That's correct.

6 Q. Is that correct?

7 A. When you're saying a spin, I thought you meant
8 fully. Because the second one, we spinned actually
9 fully around.

10 Q. Okay. All right. And then afterwards you get
11 out and you look for your mother.

12 A. Yes.

13 Q. Where did you find your mother?

14 A. She was in the woods.

15 Q. Where in the woods?

16 A. Off the highway about ten feet down.

17 Q. In the median. In the median woods between
18 northbound and southbound lanes?

19 A. Yeah. Over the railing into the grass.

20 Q. In the grass.

21 And who found her?

22 A. I believe my wife did.

23 Q. And she was alive at that point?

24 A. I didn't find her. Yeah. She was alive.

25 Q. Was she speaking?

1 A. I was talking to her.

2 Q. What did she say?

3 A. I'm okay, Anthony. And she tried to get up
4 and she couldn't. She got herself halfway -- you know,
5 she lifted herself up with her arms and she just dropped
6 down.

7 Q. All right. Now, how far -- when your car came
8 to a stop, where was it?

9 A. In the middle of the highway.

10 Q. What lane?

11 A. Directly in the middle. There's three lanes,
12 and we were in the center lane of the highway.

13 Q. Where was the front of your car facing?

14 A. Well --

15 Q. North, south, east or west?

16 A. If we were heading north and my window is
17 south, it would have been this direction. My God, I
18 don't know which way that is, but we were -- you know,
19 what is that? East? I don't know how it works,
20 north, east --

21 Q. Now, if you're heading north on 95, which you
22 would have been --

23 A. Yeah.

24 Q. -- to your right is east. To your left is
25 west.

1 A. It's west, then. The very front of the
2 vehicle would have been pointing west.

3 Q. Okay. And when you found your mother in the
4 woods, you said she was --

5 A. She was on the east side.

6 Q. She was on the east side. Okay.

7 And how far --

8 Let me finish.

9 When your car came to a stop, was she to the
10 east in front or the east behind your car?

11 A. No. She was towards the -- she was towards
12 the back of the vehicle but down a little.

13 Q. Okay. How far down, is my question?

14 A. It's a hundred yards.

15 Q. All right. Now, from where you struck the
16 guardrail -- do you follow me?

17 A. Uh-huh.

18 Q. -- was she -- did you find her past the
19 guardrail in the direction you were traveling?

20 Is that yes?

21 A. She was past the guardrail.

22 Q. Okay. All right.

23 A. She did not -- it wasn't past where the
24 vehicle was behind the vehicle.

25 Q. I understand. In between where you struck the

1 guardrail and where the vehicle ended up.

2 A. Correct.

3 Q. That's what I'm trying to figure out. Okay.

4 Good.

5 All right. So someone calls an ambulance. Do
6 you know who called the ambulance?

7 A. Somebody on the road actually called. One of
8 the people that stopped behind us actually made the
9 phone call.

10 Q. Any accidents? I mean, any witnesses?

11 A. A lot of witnesses.

12 Q. Did you get any names?

13 A. No, I didn't get any names.

14 Q. Did anybody get any names?

15 A. Not that I'm aware of.

16 Q. How many witnesses were there?

17 A. Well, there had to be two or three cars behind
18 us. Only two cars actually passed, decided to -- I
19 remember a red and a white vehicle zoom past us after
20 the accident, and everybody else stopped.

21 Q. Now, as -- before the accident happened and
22 you're traveling beside the tractor-trailer, okay, you
23 indicated to me where the cars were in front of you.
24 Where were the cars behind you?

25 A. They weren't that close behind us. There

1 was -- you know, I'm not a hundred percent sure where
2 the cars were behind us. I know they were there because
3 they had to stop after the accident, but I don't
4 remember -- you know, I don't recall exactly who was
5 behind us at the time. There was nobody directly behind
6 my bumper, if that's what you mean. There was -- there
7 might have been cars a little bit behind us. Like, you
8 know, a minute, 30 seconds behind us.

9 Q. Yeah.

10 A. The flow was pretty spaced out.

11 Q. Okay. Did you talk to the truck driver?

12 A. No. The truck driver after the accident moved
13 his truck about 200 -- 150, 200 yards down the road and
14 pulled over to the right. And he didn't exit the
15 vehicle until the sheriff showed up.

16 Q. Okay.

17 A. Which was about -- I don't know -- 15 minutes,
18 17 minutes.

19 Q. Fifteen to 17 minutes.

20 A. Yeah. He stood in his cab.

21 Q. Did you see him?

22 A. I saw him after he got out.

23 Q. Okay. Do you know what he was doing in his
24 cab?

25 A. No. I have no idea.

1 Q. Do you know if he called the police and the
2 ambulance?

3 A. I have no idea.

4 Q. Did you want to go talk to him?

5 A. At that point, I was worried about my mother.

6 Q. I understand. Did anyone go talk to him?

7 A. He came over and talked to us and said, what,
8 did you fall asleep?

9 Q. Who did he ask that of?

10 A. We were talking to the sheriff at that time,
11 and that's when he came over and said it.

12 Q. And he said it -- who was talking to the
13 sheriff?

14 A. Me and my wife.

15 Q. And what did you-all say?

16 A. I looked at him like he was crazy.

17 Q. Sure. And did your wife say anything?

18 A. I think she said no.

19 Q. I mean, do you remember?

20 A. Yeah. I'm being honest with you.

21 Q. Sure. I appreciate that.

22 A. I think she said no.

23 Q. Okay. Did you-all ask him any questions?

24 A. No. I didn't want to evoke any confrontation.

25 The sheriff was there. I figured that the sheriff would

1 handle it. The sheriff asked us both for our licenses.
2 He separated us immediately. He brought him over to one
3 side. He brought us over to another side. He took our
4 information. He took his information. He asked us a
5 couple of minor questions, and that was it.

6 Q. So after that, neither you nor your wife or
7 anyone else with you had any conversations with the
8 truck driver.

9 A. We had no conversations.

10 Q. How would you describe the driver?

11 A. He -- the cop asked me -- the sheriff asked
12 me, actually. And he asked me, do you think he was
13 drunk? And I said no. He did look tired. His eyes
14 were a little red.

15 Q. Let's talk about that. When you say he looked
16 tired, is it your opinion he looked tired because his
17 eyes were red?

18 A. His eyes were bloodshot, but not like he was
19 drunk. It looked like he was rubbing his eyes. You
20 know what I'm saying? Like, you know when you rub your
21 eyes and they get really red? That's what it looked
22 like.

23 Q. Did he have glasses on?

24 A. No, sir.

25 Q. You didn't say anything to him --

1 A. No.

2 Q. -- about how long have you been driving or did
3 you fall asleep?

4 A. No. I didn't say a word to him.

5 Q. You didn't say anything.

6 All right. So you think he looked tired
7 because his eyes were red because, as you said, it
8 looked like he had been rubbing his eyes.

9 A. Yeah. They were like a little bloodshot.

10 Q. All right. Anything else?

11 A. No.

12 Q. Anything else about the appearance?

13 A. No. He just came over very, like, slouched
14 like, you know, like -- he looked very tired to me.
15 That's all.

16 Q. I'm trying to figure that out. You told me he
17 looked tired because his --

18 A. The way he walked over --

19 Q. Let me finish.

20 A. Sorry.

21 Q. You indicated he looked tired because his eyes
22 were bloodshot.

23 A. Yeah.

24 Q. Right?

25 A. Uh-huh.

1 Q. And do you know if the sheriff asked him any
2 questions about --

3 A. The sheriff immediately -- when he came over
4 and said that, the sheriff immediately pulled us aside.

5 Q. Sure. Now, what have you heard since then
6 about how long this guy had been driving?

7 A. I haven't heard anything.

8 Q. Okay. Do you know where he started from?

9 A. The only thing I knew was he had a Miami
10 license. And I didn't know where he started from. I
11 assumed he started from Miami.

12 Q. All right.

13 A. There was no communication with us then or
14 now.

15 Q. All right. Did you ever try to communicate
16 with he or his company after this?

17 A. No, sir.

18 Q. All right. And I've looked at the accident
19 report. I'm assuming you've looked at the accident
20 report, correct?

21 A. Actually, no, I didn't.

22 Q. You didn't. All right.

23 A. I seen it once briefly. I haven't looked at
24 anything, even the papers my own lawyers sent me. I get
25 envelopes. I just put them on the side. I'm not going

1 to lie to you.

2 Q. That's all right. I appreciate you not lying
3 to me.

4 A. I've really -- I've had so much going on in my
5 life. I just haven't had time to pay attention to this.

6 Q. That's okay.

7 A. All right? I've been dealing with my own
8 issues with my job and my own cases. And that's --
9 believe it or not, that's priority to me.

10 Q. When you exited the roadway, when your wife
11 first exited the roadway, there weren't any rumble
12 strips or anything on the side of the road where she
13 exited; is that right?

14 A. I don't know what a rumble strip is.

15 Q. You know on the side or roadways where they
16 have those -- you hit them with your tire when you go
17 off?

18 A. Oh, you mean the little reflectors?

19 Q. No, no, no. It's an edge line. They call
20 them rumble strips.

21 A. No, no, no, no, no, no, no.

22 Q. None of those?

23 A. I didn't see any at all.

24 Q. And didn't feel them.

25 A. No. Not at that point.

1 Q. All right. Do you remember the mile marker
2 where the accident happened?

3 A. No. I really don't.

4 (Defendants' Exhibit 1 was marked for
5 Identification.)

6 BY MR. BARROW:

7 Q. I'm going to show you what we've marked as
8 Exhibit No. 1, which is SeaTruck Bates Stamp No. 317.
9 It's a photograph of the accident scene. Do you
10 recognize that?

11 A. I don't know what direction this is going in,
12 and -- no, I don't recognize this.

13 Q. Okay. Fair enough.

14 (Defendants' Exhibit 2 was marked for
15 Identification.)

16 BY MR. BARROW:

17 Q. I'm going to show you what's been marked as
18 Exhibit No. 2, which is SeaTruck 339. Now, on this one,
19 I will relay to you, this is northbound on 95, okay?
20 And this is purportedly --

21 A. This looks like where it first begins.

22 Q. Right. You see it?

23 A. This looks like when you first start going
24 into the bend.

25 Q. Let me ask you a question. You're right.

1 Do you see the -- do you see the wheel marks
2 on the grass?

3 A. Uh-huh.

4 Q. That's a yes?

5 A. Yeah.

6 Q. This photograph, I'll tell you, is northbound
7 on 95. And is that the area where you first went off
8 the grass?

9 A. Possible.

10 Q. Does that look like --

11 A. It might have been where we started
12 noticing -- you know, we started moving over. It's
13 possible.

14 Q. Right. Right. I mean, does that look
15 familiar to you, as the area where --

16 A. This looks familiar to me, yeah, as the
17 beginning of it. Yeah.

18 Q. Okay. All right.

19 (Defendants' Exhibit 3 was marked for
20 Identification.)

21 BY MR. BARROW:

22 Q. And -- okay. And I'm going to show you
23 Exhibit No. 3, which is a little more close-up view,
24 SeaTruck 331. And do you see that?

25 A. Uh-huh.

1 Q. A closer view than what we showed you in
2 Exhibit No. 2.

3 Does that look like the area where you
4 returned to the roadway?

5 A. Possible. Possible. I mean, you know --

6 Q. Have you traveled -- you've traveled the
7 highway since then, haven't you?

8 A. Yes.

9 Q. Yeah. And both northbound and south, correct?

10 A. That's correct.

11 Q. Many times.

12 A. I had to go back and forth to the hospital.

13 Q. Right. I mean, you've gone back and forth on
14 this highway many times, right?

15 A. Yes.

16 Q. So you know where this accident happened,
17 correct?

18 A. Well, you drive on it. You don't exactly
19 notice every little detail.

20 Q. But you know the general area.

21 A. I know the area.

22 Q. And after looking at Exhibit No. 2 and now
23 looking at Exhibit No. 3, which is a closer up -- I've
24 got them here side by side so you can see them. Don't
25 you think Exhibit No. 3 is a closer view than Exhibit

1 No. 2? And it shows you an area where it looks like the
2 vehicle you were traveling in comes back onto the
3 roadway? Would you agree with that?

4 A. I said we went back onto the roadway.

5 Q. And 3 kind of shows us the area where you came
6 back on, correct?

7 A. I guess it does.

8 Q. Yeah. Okay.

9 (Defendants' Exhibit 4 was marked for
10 Identification.)

11 BY MR. BARROW:

12 Q. Now let's look at Exhibit No. 4. It's just a
13 further close-up than 3. And I'll put it here so you
14 can see it, not confused.

15 Now, Exhibit No. 4 is just a closer view than
16 Exhibit No. 3, showing where your car comes back onto
17 the roadway, correct?

18 A. I don't know if those are my tire tracks
19 because this obviously was taken afterwards. I don't
20 see my vehicle in this picture. And I don't -- you
21 know, I don't see the rail that we hit.

22 MR. McANGUS: What was the Bates number on 4?

23 MR. BARROW: Yeah. The Bates is 332. Sorry.

24 BY MR. BARROW:

25 Q. All right. So we're looking at Exhibit No. 4.

1 It shows tire tracks coming out of the grass back onto
2 the roadway; is that right?

3 A. That's what that picture shows, yes.

4 Q. And it's your testimony that you don't know if
5 those are your tire tracks or not.

6 A. I have no idea whose tire tracks that is.

7 Q. Right. It could be. You just don't know.

8 A. Could be.

9 Q. Right. And, now, looking at Exhibit No. 3 and
10 2, which we've talked about, you would agree that 4 is a
11 closer view and a little bit further down the road than
12 3. Would you agree with that?

13 A. Well, that -- 4 is a closer view.

14 Q. Yes, sir. Than 3.

15 A. Than 3. Correct.

16 Q. Right. Okay. But same area of the roadway, 4
17 and 3, right?

18 A. Oh, yeah. That's correct.

19 (Defendants' Exhibit 5 was marked for
20 Identification.)

21 BY MR. BARROW:

22 Q. Sure. All right. I'm going to show you
23 Exhibit No. 5, again, a photograph that shows -- it's a
24 little bit further up than 4. It actually shows the
25 roadway now. And it shows some tire tracks leading

1 toward the center of the roadway. Do you see that?

2 A. Uh-huh.

3 Q. That's a yes?

4 A. Yes.

5 Q. And does that look like the area where the
6 accident happened?

7 A. No.

8 Q. Why not?

9 A. Because it doesn't.

10 Q. What's different about it? Explain to me
11 what's different about it.

12 A. First of all, that can't be possible because
13 we hit side by side.

14 Q. Uh-huh.

15 A. And those tire marks are going directly across
16 the road.

17 Q. You see down here where there's a damaged
18 guardrail?

19 A. Yeah. I see that.

20 Q. And would you agree that's where your car
21 struck the guardrail?

22 A. That's possible, yeah.

23 Q. Okay. Now, the South Carolina Highway Patrol
24 MAIT Team investigated this accident. Do you know that?

25 A. No. They never got in touch with me.

1 Q. Do you know who the MAIT Team is with the
2 South Carolina Highway Patrol?

3 A. No.

4 Q. Do you understand the MAIT Team is the South
5 Carolina Highway Patrol's accident reconstruction team?

6 A. I have no idea.

7 Q. It's okay. And have you -- have you been back
8 to the scene since the accident?

9 A. No.

10 Q. You've driven through it.

11 A. I drove through it. I've never been back to
12 the scene.

13 Q. Did you see any orange paint marks on the
14 highway indicating where the accident happened?

15 A. Oh, I didn't go back to that scene until two
16 weeks later.

17 Q. But you never saw any orange paint marks? Yes
18 or no?

19 A. No.

20 (Defendants' Exhibit 6 was marked for
21 Identification.)

22 BY MR. BARROW:

23 Q. I'm going to show you Exhibit No. 6, which is,
24 again, a closer view. If you look at 5, do you see on
25 the left side there are two columns? And then further

1 up, there's one column?

2 A. If you move it a little closer, I could see.

3 Q. Yeah. I'm sorry.

4 Two columns and then one column.

5 A. Yeah. In between where the rail is damaged.

6 Q. All right. And then I'm going to show you
7 Exhibit No. 6, which is SeaTruck 334. Do you see this
8 one? And this one's just further up the road because
9 all you can see is the single cone on the left. Would
10 you agree with that?

11 A. Yeah.

12 Q. Do you recognize that area of the highway?

13 A. No. This doesn't look familiar to me. I'm
14 sorry.

15 Q. That's okay. That's all right.

16 A. I mean, it could be going the wrong -- it
17 could be taken from a different direction. It just
18 doesn't look familiar.

19 Q. Looking at Exhibit No. 6, it's your testimony
20 that this is not the vicinity where the accident
21 happened, and it's not northbound on 95 where the
22 accident happened. Is that your testimony?

23 A. I have no idea what that is. It's just a
24 blown-up picture of a road.

25 Q. Okay. It could be in the area where the

1 accident happened; it may not be. You just don't know.

2 A. I don't know.

3 Q. Okay. Fair enough.

4 (Defendants' Exhibit 7 was marked for
5 Identification.)

6 BY MR. BARROW:

7 Q. I'm going to show you Exhibit No. 7.

8 All right. Now, looking at Exhibit No. 7, do
9 you see the skid marks going off the road toward the
10 area of the one cone that has the indentation in the
11 guardrail. Do you see those?

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. I see the skid marks, yes.

15 Q. Heading toward the direction where the one
16 cone is on the left?

17 A. Yeah.

18 Q. Where the indentation of the guardrail is beyond
19 the cone, correct?

20 A. Correct.

21 Q. All right. Now, is that the direction in
22 which your car was traveling when it struck the
23 guardrail?

24 A. This doesn't make sense to me because we were
25 in the left lane, and these skid marks are made from the

1 right lane.

2 Q. So those couldn't be your skid marks.

3 A. Apparently, it doesn't look to be, no.

4 Q. I need to know, yes or no, are these your skid
5 marks or not?

6 A. No. Not that I'm aware of.

7 Q. Now, you were there and you told me you saw
8 the skid marks after the accident.

9 A. Yeah. But we -- you've got to understand
10 something. We were in the left lane the whole time. We
11 were never in the right lane.

12 Q. I just need to know if these are your skid
13 marks or not.

14 A. How could I tell you that? Where's the
15 pictures of the actual accident?

16 Listen, I seen pictures of the actual accident
17 where the car and everything was in it. This is
18 nothing. This is not my vehicle. This could be made --
19 I have no idea what this is.

20 (Defendants' Exhibit 8 was marked for
21 Identification.)

22 BY MR. BARROW:

23 Q. Now, I'm going to show you Exhibit No. 8,
24 which is a closer view than 7.

25 A. Yeah.

1 Q. And you'll notice skid marks again starting in
2 the right lane going straight into the left lane where
3 the single cone is on the left shoulder and the
4 indention is in the guardrail. Do you see that?

5 A. Yeah.

6 Q. All right. Now, there's also orange paint
7 marks that were put down here.

8 A. I see that.

9 Q. Correct?

10 And do you know if the South Carolina Highway
11 Patrol made those paint marks?

12 A. I have no idea.

13 Q. And do you know if the South Carolina Highway
14 Patrol made those paint marks as an indication of where
15 the impact occurred between your vehicle and the
16 tractor-trailer?

17 A. I have no idea.

18 Q. And you would agree with me if those paint
19 marks are an indication of where the impact occurred,
20 then the impact occurred in the right lane northbound
21 on 95.

22 MR. MCANGUS: Object to the form.

23 BY MR. BARROW:

24 Q. No, no, no. Just listen to my question.

25 A. According to those paint marks, yeah.

1 Q. Right. Right. Now, these skid marks lead
2 directly off the road to an area where there's an
3 indention in the guardrail, correct?

4 A. That's correct.

5 Q. And you've testified you left the roadway and
6 hit the guardrail, correct? Correct?

7 A. We left the roadway and hit -- yeah.

8 Q. Now, answer this question for me,
9 Mr. Fischetti. If these aren't your skid marks heading
10 off the roadway hitting the guardrail, is it your
11 testimony they must have been made by another vehicle
12 that had a very similar accident and left the roadway
13 and hit a guardrail?

14 MR. McANGUS: Object to form.

15 THE WITNESS: It's possible.

16 BY MR. BARROW:

17 Q. And it's also possible it's the skid marks of
18 your vehicle, isn't it?

19 A. No, sir.

20 Q. Why not?

21 A. Because I was there. And I'm telling you,
22 that's impossible.

23 MR. McANGUS: What's the Bates on 8?

24 MR. BARROW: Yeah. I'm sorry. 325.

25 THE WITNESS: And this was obviously taken

1 during the day, all right, not at the scene of the
2 accident.

3 BY MR. BARROW:

4 Q. Do you know if they were taken the next day?

5 A. I have no idea when they were taken.

6 Q. All right. Now, let me ask you this: When
7 you got out of your vehicle, you indicated to me it was
8 still daylight, correct?

9 A. When I got out of my vehicle, the sun was
10 going down, I said.

11 Q. Yes. But it was still daylight.

12 A. It was still light out. Right. It was -- the
13 accident happened, I think, between 6:00 and 6:30. The
14 sun was setting but it was still very visible out.

15 Q. Okay. Now -- and when you saw the skid marks,
16 of course, it was still visible enough for you to see
17 them, or else you wouldn't have been able to see them.

18 A. I wasn't really paying attention to all the
19 skid marks. All right? That wasn't my primary concern
20 at that moment.

21 Q. Okay. Did you see any other skid marks at the
22 accident scene other than those made by your vehicle?

23 A. The ones I mainly seen were after we hit the
24 guardrail where the vehicle ended up to the center of
25 the road.

1 Q. Right. Now, you testified earlier,
2 Mr. Fischetti, that you saw skid marks from the point of
3 impact leaving the roadway into the guardrail. And my
4 question to you is, did you see any other skid marks in
5 that area where the accident happened that were not from
6 your vehicle? If so, tell me about them.

7 A. I'm not aware. I wasn't -- I was focused on
8 my mother. I said, yeah, I seen skid marks. I didn't
9 examine them, okay?

10 Q. Okay.

11 A. I know the police were taking pictures.

12 Q. Have you seen the police pictures?

13 A. Yes.

14 Q. Okay.

15 A. And it's dark out. It's not visible like
16 that.

17 Q. Right.

18 A. The vehicles are in the pictures.

19 Q. Okay. All right. So you go to the hospital,
20 correct?

21 A. Correct.

22 Q. And who interviews you at the hospital?

23 A. Somebody from the trucker's insurance company
24 comes.

25 Q. And how long after you had been to the

1 hospital before this individual showed up?

2 A. I was only in the hospital maybe 20 minutes.

3 Q. And this person shows up.

4 A. That's correct.

5 Q. Introduces himself to you.

6 A. Yes.

7 Q. Told you who they were.

8 A. Uh-huh.

9 Q. That's a yes?

10 A. Yes.

11 Q. Okay. Then they took a recorded statement
12 from you.

13 A. That's correct.

14 Q. All right. And you have a copy of that
15 statement.

16 A. No, I do not.

17 Q. Has your lawyer shown you a copy of that
18 statement?

19 A. He probably sent it to me. I didn't read it.

20 Q. You just didn't read it.

21 A. Right.

22 Q. Why did you not read it?

23 A. What do you mean?

24 Q. Why did you not read the statement that you
25 gave to the --

1 A. I know what I did and what I didn't do.

2 Q. You didn't read the statement to determine if
3 his recording matched what you told him?

4 A. No.

5 Q. Okay.

6 A. First, that recording should have never took
7 place.

8 Q. Why not?

9 A. We were still in shock. I was upset. I was
10 worried about my mother. I was going back and forth
11 talking to the doctors. And this guy shows up and wants
12 a recording of what's going on.

13 (Defendants' Exhibit 9 was marked for
14 Identification.)

15 BY MR. BARROW:

16 Q. Sure. I'm going to show you Exhibit No. 9,
17 Bates stamped SeaTruck 175. And it says Recorded
18 Statement of Anthony Fischetti. This is Bill Howell, on
19 10/9/12 at 11:24 p.m., interviewing in person, a
20 Mr. Anthony Fischetti.

21 And then it's fairly short. It's four pages.
22 Just look at this and tell me if that looks like the
23 statement you gave.

24 A. It looks like it so far.

25 Q. Sure.

1 Q. Did you give any statements to anyone else
2 other than him?

3 A. No.

4 Q. Did the Highway Patrol officer interview you?
5 I'm not trying to trick you.

6 A. No, no. He asked me a couple of questions on
7 the highway. Somebody called me up after that.

8 Q. Right. I'm going to show you that in a
9 minute, too. But I wanted to --

10 A. Somebody called me up from the Highway Patrol.
11 I think I gave them a statement over the phone.

12 Q. Right.

13 A. I really don't know who he was or, you know --

14 Q. Okay. I've got that here, Mr. Fischetti. And
15 it looks like it says the date October 25th, 2012. And
16 it is the MAIT interview of Anthony Fischetti by Lance
17 Corporal Luther. And he called you on the phone. Do
18 you remember that?

19 A. I remember the phone call, yes.

20 Q. Okay. Did he provide you or have you seen a
21 copy of that statement?

22 A. No, I have not seen a copy of that statement.

23 Q. Did your lawyer send you a copy of that
24 statement, as well?

25 A. I have no idea.

1 Q. Okay. If he did, you didn't look at it.

2 A. That looks fine.

3 Q. I'm sorry. Exhibit No. 9 looks like your
4 statement.

5 A. Yeah.

6 Q. The statement from the Highway Patrolman, I
7 just need to know, have you reviewed that?

8 A. No, I haven't. I told you that. I haven't
9 reviewed anything.

10 Q. Did your lawyer -- because I just don't
11 remember your answer now. Did your lawyer send you a
12 copy of the statement from --

13 A. I said he probably did and he probably told me
14 to review it and I'm telling you I didn't.

15 Q. Very good.

16 But in any event, the statements that you
17 gave, both to the insurance guy and the Highway Patrol,
18 I mean, they would have been true. The statements you
19 gave to them would be true, right?

20 A. I believe so.

21 Q. Sure. Okay. And let me ask you this: Would
22 you agree with me that your wife lost control of her
23 vehicle and overreacted?

24 MR. McANGUS: Object to the form.

25 THE WITNESS: No.

1 BY MR. BARROW:

2 Q. You don't?

3 A. I believe there was a point where we lost
4 control of the vehicle.

5 Q. When was that?

6 A. I told you, the vehicle bounced on something
7 or hit something and it jumped up onto the road, okay?

8 Q. All right.

9 A. And, at that point, there was no controlling
10 the vehicle. All right? The only reason we lost
11 control of the vehicle, though, is because we were
12 forced off the road.

13 Q. There was never an impact between your vehicle
14 and the tractor-trailer when your wife first left the
15 roadway.

16 A. No, because we left the road. If we didn't
17 leave the road, there would have been an impact. It's
18 regrettable that we had to have the impact.

19 (Defendants' Exhibit 10 was marked for
20 Identification.)

21 BY MR. BARROW:

22 Q. I'm going to show you a photograph we've
23 marked as Exhibit 10, SeaTruck 340. Does that look --
24 you'll see cars in the distance heading towards you.
25 Does that look like the direction in which you-all were

1 traveling? Do you recognize that roadway?

2 A. No. It's just such -- you know, I don't know.

3 Q. Okay. The reason why I ask you that is you've
4 told me you've been down that road many times before and
5 after?

6 A. Just because you've been down a road 18 times
7 or 20 times, doesn't, you know -- this is a
8 thousand-mile trip. I don't remember each piece of
9 road.

10 Q. I appreciate that. So you don't know if
11 that's the direction.

12 A. I don't know.

13 Q. None of that looks familiar to you.

14 A. It's a piece of road. I don't know what that
15 is.

16 Q. My question is this: This Exhibit 10 does not
17 look familiar to you, that stretch of roadway.

18 A. No.

19 Q. Okay.

20 A. Not at this moment.

21 Q. Exhibit No. 10 shows what I would call a very
22 gentle bend in the roadway. Is that the bend you were
23 telling me about?

24 A. I honestly don't know from this point of view.

25 Q. That's okay.

1 **A. I mean, it was a bend. It could have been**
2 **something like this, but I don't know if this is it.**

3 **Q. Now, no one else was injured in your vehicle,**
4 **as I understand it, except for your mother, correct?**

5 **A. Yes.**

6 **Q. All right. Now, let's talk briefly about your**
7 **mom, okay? Sorry for her -- for your loss.**

8 How old was your mother?

9 **A. How old was she?**

10 **Q. Yes, sir.**

11 **A. Seventy and a half.**

12 **Q. All right. And she was living in Brooklyn at**
13 **the time.**

14 **A. That's correct.**

15 **Q. All right. And she had how many kids?**

16 **A. Two.**

17 **Q. Your other sibling was who?**

18 **A. My sister, Vivian.**

19 **Q. And where does Vivian live?**

20 **A. She lived upstairs from my mother.**

21 **Q. And how old is Vivian?**

22 **A. She's -- presently or at the time of the --**

23 **Q. Yeah. Presently. That's all right.**

24 **A. She should be 47.**

25 **Q. Is she married?**

1 A. Yes.

2 Q. And how many kids does Vivian have?

3 A. Vivian has no children.

4 Q. All right. What does Vivian do?

5 A. She works for the -- under the CEO of Citicorp
6 for the Foreign Treasury Department.

7 Q. Okay. And is that a management position or
8 what does she do for them?

9 A. She's one of the -- she's like the head
10 supervisor of all the secretaries.

11 Q. Okay. And what does her husband do?

12 A. He works for the Board of Education.

13 Q. What is Vivian's last name?

14 A. She goes by Vivian Fischetti Salvano.

15 Q. How do you spell Salvano? S-A-L --

16 A. I really have no idea. My wife could tell you
17 that.

18 Q. Salvano. Let me see if I've got it in here.

19 A. No, I don't have it in here. My wife could
20 tell you. She handles that stuff.

21 Q. All right. What does your wife's husband do?

22 A. He's janitorial for the school.

23 Q. What school?

24 A. What school does he work in?

25 Q. High school?

1 A. It's a high school on 7th Avenue.

2 Q. Okay.

3 A. He's a cleaner for the school. I don't know.

4 I don't know exactly where he works.

5 Q. Going back and asking again, Angelo did not
6 see the accident, correct?

7 A. No.

8 Q. Did he wake up at any time during the
9 accident?

10 A. Oh, he woke up when we hit, yeah.

11 Q. When he hit the guardrail?

12 A. Yeah. He jumped up screaming.

13 Q. What was he screaming?

14 A. Mamma.

15 Q. And your son, I think you said you don't know
16 what he saw. He put the blanket over his head.

17 A. My son informed me that he jumped down and
18 threw the blanket over his head. I didn't see it.

19 Q. All right. So Angelo is not a witness to the
20 accident because he was asleep.

21 A. Yeah.

22 Q. Okay.

23 A. That's correct.

24 Q. And your mother and your son and your wife and
25 you were in the car with Angelo; is that right?

1 A. Yes.

2 Q. And have I covered everyone in the car now?

3 A. Yes.

4 Q. Okay. Now, how was your mom's health?

5 A. She was -- she was in really good health. She
6 was mobile. She was conscious of what was going on
7 around her. She had Type 2 diabetes. She had some
8 high blood pressure. She was having some problems
9 with her -- she was having some pains in her legs but
10 nothing -- I mean, she was walking and everything. She
11 was in good health for a woman her age.

12 Q. Who was her doctor?

13 A. Dr. Franco [ph].

14 Q. Where was his office?

15 A. One ninety -- 98 Avenue U.

16 Q. 198?

17 A. No. It's 98 Avenue U. You've got to forgive
18 me. I'm sorry.

19 Q. Avenue U?

20 A. Avenue U. Yeah.

21 Q. They don't have that in the south.
22 Avenue U.

23 A. Yeah. I'm sorry about that.

24 Q. That's all right. Brooklyn?

25 A. Yes.

1 Q. Is he still practicing?

2 A. Yes.

3 Q. How long had she been going to see him?

4 A. She was seeing him for years.

5 Q. All right. What kind of medication was she

6 on, if you know?

7 A. I know she was on Metformin.

8 Q. For what?

9 A. Diabetes.

10 Q. Is that insulin?

11 A. No. It's a pill. She wasn't on insulin. She

12 just took a pill. And she took a pill for her high

13 blood pressure. And I think that was it.

14 Q. All right. And had she been hospitalized in

15 the last ten, 15 years?

16 A. My mother?

17 Q. Yes.

18 A. No. Not at all.

19 Q. Okay.

20 A. The only thing she was being treated for, she

21 was getting dentures for her teeth. Her teeth were

22 being fixed.

23 Q. Was she working anywhere? Employed?

24 A. She retired like two and a half years before

25 the accident.

1 Q. And where did she retire from?

2 A. Board of Education.

3 Q. What did she do for them?

4 A. She was a secretary in the office.

5 Q. For who? Who did she work for?

6 A. The Board of Education.

7 Q. Yeah. Who was the individual she was the
8 secretary for?

9 A. No, no, no, no. They -- the main office, they
10 don't have -- the principal runs the school.

11 Q. What school was that?

12 A. She worked in two. One was 226. And there
13 was another one I'm not familiar with.

14 Q. School 226, was that in Brooklyn?

15 A. Yes.

16 Q. Was that a high school?

17 A. It was a -- one of them was one to sixth
18 grade, and the other, I believe, was a junior high.

19 Q. So do you know if 226 was a junior high?

20 A. I believe 226 was one to sixth grade. They
21 call it -- the other one, I believe, might have been a
22 junior high.

23 Q. All right. What was your mother's -- she had
24 retired. And I take it she was living in Brooklyn with
25 your sister living above her.

1 A. Yeah.

2 Q. She was dating Angelo.

3 A. She was seeing Angelo, yeah.

4 Q. And was she dating anybody else?

5 A. No.

6 Q. She had been seeing him off and on for about
7 three and a half years.

8 A. Yeah.

9 Q. Any plans of marriage?

10 A. No.

11 Q. What did she want to do with the rest of her
12 retirement?

13 A. Well, that's part of the reason we bought the
14 house in Florida. She was going to spend four months
15 with me and the rest of the time in Brooklyn.

16 Q. When was she going to spend the four months
17 with you?

18 A. She wanted to spend the wintertime with me.

19 Q. Okay.

20 A. She would have came down once, twice a year.
21 Whatever -- she was retired.

22 Q. Gotcha. Gotcha. What was her educational
23 background?

24 A. High school.

25 Q. Okay. And how long had she worked for the

1 Board of Education?

2 A. Almost 17 years.

3 Q. Okay. And your father had passed away
4 earlier, right?

5 A. Yes.

6 Q. When did he pass away?

7 A. 2001.

8 Q. And she was married to him up until the time
9 he passed away.

10 A. That's correct.

11 Q. Okay. Now, she was in the hospital in
12 Florence for how long?

13 A. Two weeks.

14 Q. And then what happened?

15 A. I shut the machines off.

16 Q. Was she ever conversant with you when she was
17 in the hospital?

18 A. She was conversant with me all the way up
19 until the hospital when they induced her into a coma.

20 Q. And why did they induce her? Do you know?

21 A. The doctor told me it was because she had
22 broken ribs and she was having trouble breathing. She
23 also had a broken hip and a broken leg.

24 Q. She did not have a seat belt on.

25 A. No.

1 Q. Everyone else did.

2 A. Everyone -- yeah.

3 Q. Do you know why she wasn't wearing a seat
4 belt? Did you-all have a conversation about that on the
5 trip, like, you know, you need to put your seat belt on,
6 Mom, or --

7 A. I think because she felt because she was in
8 the back, it wasn't necessary.

9 Q. Did she have a door or was it a sliding door?

10 A. Sliding door.

11 Q. Do you know if that door was locked?

12 A. All the doors were locked.

13 Q. So that's a yes.

14 A. I believe so.

15 Q. What caused the door to come open?

16 A. I have no idea.

17 Q. Have you looked into any theory as to why that
18 door came open?

19 A. I honestly don't know.

20 Q. Had you had problems with that door shutting
21 or locking?

22 A. No.

23 Q. What happened to your vehicle after the
24 accident?

25 A. It was taken to a yard. Some -- it was

1 brought someplace, a yard, like a -- I don't know what
2 you call it. It was someplace in South Carolina, like
3 a mechanic's yard. And I went and cleaned it out. I
4 just seen it laying there.

5 Q. Okay. And was it totaled?

6 A. Yes.

7 Q. And did you receive any money for it from your
8 insurance company?

9 A. The insurance company sent us a check for the
10 vehicle.

11 Q. How much was the check?

12 A. Like \$5,000.

13 Q. Your insurance company, is it State Farm?

14 A. Her insurance company was State Farm.

15 Q. Her being your wife?

16 A. No. My mother.

17 Q. I'm sorry?

18 A. It was my mother's.

19 Q. That's right. You told me that. I forgot.

20 Yes.

21 Did State Farm call and take a statement from
22 you or your wife?

23 A. I believe they did. I'm not sure. It's been
24 a while.

25 Q. And have you seen that?

1 A. No.

2 Q. Okay.

3 A. A couple of people have called and asked me
4 where the vehicle is. I have no idea where the vehicle
5 is. We left it in South Carolina.

6 Q. Okay. Now, your lawyer provided me -- I think
7 it's a statement of the medical bills from your mother's
8 hospitalization. And, yeah, and it looks like 307,000.
9 Have you seen that?

10 A. No. I actually haven't.

11 Q. Who paid for the hospital? Your mother's
12 insurance?

13 A. Probably.

14 Q. You didn't pay for it.

15 A. No.

16 Q. The estate didn't pay for it.

17 A. No.

18 Q. Did you get any money from your mother's
19 estate, life insurance or anything like that?

20 A. We got money from the sale of the home.

21 Q. How much was that?

22 A. And there was about -- the sale of the home
23 sold for 900. We got -- after taxes and everything --

24 Q. No, no, no. Tell me the gross. I'm sorry.

25 A. 990.

1 Q. 990,000.

2 A. Yeah.

3 Q. And you and your sister would have split that
4 or did you get all that? Tell me how that worked.

5 A. I gave her more.

6 Q. Why?

7 A. I felt she needed it.

8 Q. I understand.

9 How much did you keep?

10 A. From the sale of the home, 420.

11 Q. 420,000.

12 It's 420,000, right?

13 A. That's correct.

14 Q. When you say 420, just for the court
15 reporter --

16 A. 420,000.

17 Q. Thank you very much.

18 All right. Any life insurance?

19 A. There was -- we didn't receive life insurance.

20 We got -- she had a couple of bank accounts. Everything
21 totaled, I believe, to 140,000.

22 Q. That would have been any death benefits?

23 A. Everything.

24 Q. Bank accounts?

25 A. Everything.

1 Q. 120?

2 A. About a hundred and -- about 140, total.

3 Q. And did you and your sister split that?

4 A. That's correct.

5 Q. You took 70 of that?

6 A. That's correct. We paid bills with it, also.

7 Q. Sure.

8 So all told, you would have gotten about
9 490,000 from your mother's estate, and your sister would
10 have gotten a little bit more, maybe about 60, 80,000
11 more.

12 A. I gave her 492 from the sale of the house.

13 Q. Okay.

14 A. And whatever -- half of that. And, of course,
15 the estate -- the funeral and the bills and whatever it
16 cost to keep the house going for the year.

17 Q. Yeah. Yeah. All right. How are you doing
18 today, Mr. --

19 A. I'm fine.

20 Q. Good. Good. Mr. Fischetti, you're doing
21 fine.

22 And how is your wife doing today?

23 A. I believe she's fine.

24 Q. Good. And your son?

25 A. He's getting tired.

1 Q. He's doing okay?

2 A. He's okay.

3 Q. Good. All right. Hang on. Let me just clean
4 up. I'm just about through, okay?

5 A. Okay.

6 Q. Was anyone talking on the cell phone at the
7 time of the accident?

8 A. My mother just hung up right before the
9 accident. When we left TA Restaurant. She spoke to her
10 friend Ida for about -- I think she was off the phone
11 ten minutes.

12 Q. What's Ida's last name?

13 A. Oh, God. Once again, you're going to have to
14 ask Jennifer. But she was -- Jennifer would have the
15 information on Ida and her phone number in her phone.

16 Q. Anybody else talking on the cell phone?

17 A. No.

18 Q. Did your son have a cell phone?

19 A. He has one but he wasn't talking on it.

20 Q. Now, you were telling me about your mom. She
21 hadn't been hospitalized for anything ten or 15 years
22 prior to the accident?

23 A. Listen, I mean --

24 Q. That you know of?

25 A. Not that I'm aware of.

1 Q. How would you describe her health?

2 A. She was in good health. She got around. She
3 went shopping. You know, she drove. For a woman her
4 age, she was in good health.

5 Q. Did she ever walk with a crutch or a cane or a
6 walker?

7 A. No.

8 Q. How was she mentally? I mean, if I get her
9 doctors' records, which I will, what are they going to
10 tell me?

11 A. They're going to tell you what I told you.
12 She had some high blood pressure. She had -- her
13 diabetes was in better shape than mine. She just lost a
14 bunch of weight. She was in good health for a woman her
15 age. I've got to be honest with you. She was really
16 good. Mentally, she was good. She took care of her
17 bills. She took care of everything on her own. You
18 know, she wasn't in financial difficulty. She handled
19 herself well.

20 Q. Okay.

21 A. She was starting to enjoy her life.

22 Q. And the medication, I think you told me she
23 had high blood pressure and diabetes. What else?

24 A. That's it.

25 Q. That's just it. Okay. All right.

1 A. The only other thing that she might have -- I
2 think she was on Crestor for a little while.

3 Q. For --

4 A. You know, for cholesterol.

5 Q. Cholesterol?

6 A. But I think the doctor had her off of it at
7 that time. You know, she was at a good level and they
8 took her -- she was good.

9 Q. Tell me what you know about this incident
10 involving Angelo and Alan Polic and your mother while
11 she was in the hospital? I mean, where were you when
12 the incident occurred?

13 A. I went back. My son had to get back for
14 school. So I drove -- my sister drove in and I drove
15 her truck back.

16 Q. Okay.

17 A. I wasn't at the hospital at this moment.

18 Q. Okay. Did you come back to the hospital?

19 A. Yes.

20 Q. And how long were you there when you came
21 back before your mother -- before you, as you said, took
22 the -- took her off the life support?

23 A. When I got back to the hospital, my sister
24 couldn't handle what was going on, and --

25 Q. With Angelo and Polic?

1 A. No. That's another story. I'll be honest. I
2 was very worried about my mother's condition. And when
3 I left, my mother was in stable condition. When I got
4 back, I had interviews with four doctors because,
5 apparently, she had a stroke while I was away, which
6 damaged her brain. So I had interviews with four
7 doctors to go over her medical condition, and they
8 showed me that she was 99 percent brain dead.

9 Q. Okay.

10 A. And that's when, you know, over a period of 24
11 hours, I sat down with these four doctors and made the
12 decision. I says -- the doctor told me if I
13 disconnected her from the machine she would die
14 immediately because her body wouldn't breathe. It
15 wouldn't do anything. So I told them -- you know, we
16 discussed what would be the proper course. And he told
17 me she'll never get out of that bed without the machine.
18 I didn't really believe them. And I told them, I says,
19 listen, let's disconnect the machine. If she lives for
20 five minutes, I want you to rehook her. She died within
21 a minute.

22 So that was the whole thing. That was my
23 whole trip.

24 Q. Did you have any conversations with Angelo
25 when you came back?

1 A. Angelo already had left.

2 Q. Did you ever have any conversations with him
3 about this incident?

4 A. No.

5 Q. Do you know when this incident occurred in
6 terms of how long your mother had been in the hospital
7 before this happened?

8 A. Excuse me?

9 Q. Yeah. How long had your mother been in the
10 hospital when the incident with Angelo and Alan Polic
11 occurred?

12 A. It was like a week and a half.

13 Q. Angelo -- was he there the entire time?

14 A. He refused to leave. I asked him to go home.
15 All right? I even informed the hospital that he
16 shouldn't be left alone with my mother. And I don't
17 know how he was. I don't know what really happened when
18 I left my sister in charge.

19 Q. Right.

20 A. No one was supposed to be -- she was in
21 intensive care. The only one that was supposed to be in
22 the room was supposed to be me and my sister. If Angelo
23 was allowed to be in with my mother, there was supposed
24 to be someone present. All right? I don't know how he
25 got in the room. I don't know how Alan Polic got in the

1 room, to be honest with you.

2 Q. Sure. Now, you told me earlier, from the time
3 they took your mother to the hospital, they induced a
4 coma for her, right?

5 A. That's correct.

6 Q. And she never came out of the coma.

7 A. They -- no.

8 Q. Okay. Did she -- how was her heart?

9 A. Her heart was good.

10 Q. Ever have cancer or anything like that?

11 A. No. My father did.

12 Q. Okay. Your mother had -- did she have any
13 previous strokes?

14 A. No.

15 Q. No previous heart conditions?

16 A. No.

17 Q. Okay.

18 A. We were never hospitalized for anything like
19 that. My grandmother was. My grandmother had a stroke.
20 My grandfather had a heart attack. My mother never had
21 any of that stuff. I don't even remember my mother
22 being in the hospital the last 15 years.

23 MR. BARROW: Mr. Fischetti, you've been very
24 patient with me. I appreciate it. I know it's a
25 very difficult subject for you to talk about, but I

1 appreciate you coming today and giving a
2 deposition. Thank you very much.

3 THE WITNESS: You're quite welcome.

4 MR. McANGUS: And I don't have any questions.

5 (The deposition was concluded at 11:48 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF ORANGE

I, NINETTE BUTLER, RPR, CRR, FPR, do hereby certify
that I was authorized to and did stenographically report
the foregoing deposition of ANTHONY JOSEPH FISCHETTI;
that a review of the transcript was not requested; and
that the foregoing transcript, Pages 5 through 141, is a
true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties'
attorneys or counsel connected with the action, nor am I
financially interested in the action.

DATED this 10th day of April, 2014, in Orlando,
Orange County, Florida.

Ninette Butler
NINETTE BUTLER, RPR, CRR, FPR

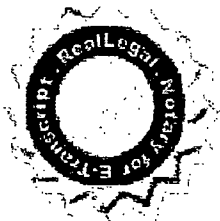
CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF ORANGE

I, NINETTE BUTLER, RPR, CRR, FPR and Notary Public,
State of Florida, certify that the witness, ANTHONY
JOSEPH FISCHETTI, personally appeared before me on the
31st day of March, 2014, and was duly sworn.

WITNESS my hand and official seal this 10th day of
April, 2014.

Personally Known: No
or Produced Identification: Yes
Type of Identification Produced: Driver License



Ninette Butler
NINETTE BUTLER, RPR, CRR, FPR
AND NOTARY PUBLIC
Commission No.: EE033998
My Commission Expires: 10/11/2014

COPY

Page 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) THE TWELFTH JUDICIAL CIRCUIT

Anthony Fischetti as) Civil Action No.:
Executor of the Estate) 2013-CP-21-2395
of Concetta Fischetti,)

Plaintiff,)

vs.)

SeaTruck, Inc.; KC)
Freight, LLC; and)
Carlos L. Ceballos,)

Defendants.)

DEPOSITION OF: JENNIFER DAWN FISCHETTI
TAKEN ON BEHALF OF: THE DEFENDANTS
DATE TAKEN: MONDAY, MARCH 31, 2014
TIME: 11:53 A.M. - 1:01 P.M.
PLACE: 121 SOUTH ORANGE AVENUE
SUITE 800
ORLANDO, FLORIDA 32801
TAKEN BEFORE: NINETTE BUTLER, RPR, CRR,
FPR AND NOTARY PUBLIC

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A P P E A R A N C E S

W. HUGH McANGUS, JR., ESQUIRE
Chappell, Smith & Arden, P.A.
1510 Calhoun Street
Columbia, South Carolina 29201
(803) 929-3600

APPEARING ON BEHALF OF THE PLAINTIFF

MARK S. BARROW, ESQUIRE
Sweeny, Wingate & Barrow, P.A.
1515 Lade Street
Columbia, South Carolina 29201
(803) 256-2233

APPEARING ON BEHALF OF THE DEFENDANTS

C O N T E N T S

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S T I P U L A T I O N S

It is hereby agreed and so stipulated by and
between the parties hereto, through their respective
counsel, that the reading and signing of the transcript
are expressly waived by the Deponent.

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1 P R O C E E D I N G S

2 JENNIFER DAWN FISCHETTI,

3 having been first duly sworn to tell the truth, was
4 examined and testified as follows:

5 THE WITNESS: Yes, I do.

6 DIRECT EXAMINATION

7 BY MR. BARROW:

8 Q. State your full name for me, please.

9 A. Jennifer Dawn Fischetti.

10 Q. Ms. Fischetti, we were just introduced but,
11 again, my name is Mark Barrow and I represent the
12 defendants in a lawsuit brought by your husband as
13 executor of the estate of Concetta Fischetti. And we're
14 here today to take your deposition, which is your
15 testimony under oath. Do you understand that?

16 A. Yes.

17 Q. Do you understand that you're obligated to
18 tell the truth today just the same as you would be if
19 you were in a court of law and sworn in to testify?

20 A. Yes.

21 Q. Have you ever given a deposition before?

22 A. No.

23 Q. Have you ever given sworn testimony before?

24 A. No.

25 Q. You've had a chance to meet with Mr. McAngus

1 and talk about what we're going to do today; is that
2 right?

3 A. Yes.

4 Q. All right. When did that meeting take place?

5 A. We went over everything yesterday.

6 Q. Yesterday. All right. What time yesterday?

7 A. Early evening.

8 Q. Do you remember what documents you reviewed?

9 A. Oh, I think we went over our -- what was that
10 called? Statement?

11 Q. You can't ask him.

12 A. We went over the statement.

13 I know I can't. I'm sorry.

14 Q. How many statements did you review? I
15 understand there were two of them. Did you review both
16 of them?

17 A. I reviewed mine.

18 Q. Yes. But you gave two -- well, one statement
19 to the Highway Patrol officer and one statement to the
20 insurance guy; is that correct?

21 A. Yes.

22 Q. You reviewed both of those.

23 A. I'm pretty sure I did.

24 Q. Okay. What else did you look at? Did you
25 look at any photographs?

1 **A. Yes.**

2 Q. What else did you look at? You're shaking
3 your head no.

4 **A. Nothing.**

5 Q. All right. Let me kind of explain some of the
6 ground rules. I'll be asking you various questions,
7 both some personal to get to know you a little bit and
8 then, of course, about this accident, okay? And if at
9 any time you don't understand my question but like for
10 me to stop, repeat it or rephrase it, just ask me and
11 I'll be glad to do so, okay? Is that fair?

12 **A. Yeah.**

13 Q. So, then, obviously, we'll have the
14 understanding that if you respond to one my questions,
15 you both heard it and understood it. Is that okay?

16 **A. Yes.**

17 Q. Now that we've started the deposition, you
18 cannot have any conversations with anyone about this
19 accident until the deposition is over. Do you
20 understand that?

21 **A. Yes.**

22 Q. If you have questions, you'll have to direct
23 those questions to me, okay?

24 **A. Okay.**

25 Q. This isn't a track meet. If you want to take

1 a break at any time, you ask me and we're glad to do
2 that, okay?

3 **A. Okay.**

4 Q. And then one final admonition is I see you're
5 nodding your head some.

6 **A. I know. She doesn't understand that.**

7 Q. We all -- yeah. We all communicate that way.
8 And just about every witness I've ever deposed at some
9 point does that. So if you do that, I'll ask for a
10 verbal response so that the court reporter can
11 transcribe.

12 **A. Not a problem.**

13 Q. Is that fair?

14 **A. Yes.**

15 Q. Very good.

16 What's your date of birth?

17 **A. 10/30/69.**

18 Q. Where were you born?

19 **A. Brooklyn, New York.**

20 Q. Where were you raised?

21 **A. In Brooklyn.**

22 Q. And where did you live in Brooklyn?

23 **A. When I was a child or when we were married --**
24 **when I was married?**

25 Q. Why don't you start when you were married?

1 A. We moved a lot. My parents divorced when I
2 was a very early young child.

3 Q. When you married Mr. Fischetti, where did you
4 live?

5 A. In Brooklyn.

6 Q. Is that your first marriage?

7 A. My only marriage.

8 Q. Okay. Any children?

9 A. One.

10 Q. Salvatore?

11 A. Yes.

12 Q. Okay. What's your educational background?

13 A. GED, trade school.

14 Q. How far did you go in school before you got
15 your GED?

16 A. I dropped out at the middle of the 10th grade.

17 Q. And what did you do when you dropped out of
18 school?

19 A. I went to beautician school for cosmetology
20 after getting my GED.

21 Q. Okay. And what did you do when you dropped
22 out? You went to trade school, you said?

23 A. Yes, I did.

24 Q. What was the name of that school?

25 A. Ultisa My Hairdresser Beauty School. I'm

1 **sorry.**

2 Q. And did you become employed as a beautician
3 sometime shortly afterwards?

4 A. **Yes.**

5 Q. And how long were you employed as a
6 beautician?

7 A. **Off and on since I've been 18 years old.**

8 Q. Okay. Good.

9 Were you employed anywhere else in Brooklyn
10 other than as a beautician?

11 A. **Here now that we live in Orlando.**

12 Q. All right. And you're employed where now?

13 A. **For Disney.**

14 Q. How long have you been employed at Disney?

15 A. **Two more weeks, I'll be there a year.**

16 Q. And what do you do?

17 A. **Merchandise.**

18 Q. And what does "merchandise" mean?

19 A. **Sales.**

20 Q. Sales?

21 A. **Yes.**

22 Q. Where do you sell?

23 A. **Merchan --**

24 Q. Where?

25 A. **Inside the Magic Kingdom, in one of the parks.**

1 Q. Which park do you work at?

2 A. The Magic Kingdom.

3 Q. What do you sell in the Magic Kingdom? Is it
4 a dress shop or --

5 A. No.

6 Q. What is it?

7 A. All souvenirs from Disney.

8 Q. So in one of the souvenir shops inside the
9 Magic Kingdom, that's where you work.

10 A. For now.

11 Q. Okay. What's your plans?

12 A. I'm in the middle of transferring my
13 hairdressing license down to here to Florida.

14 Q. And when you do, what are you going to do?

15 A. Hopefully get back into hairdressing.

16 Q. You're going to get out of the Disney sales.

17 A. Well, actually, Disney has quite a few salons
18 in their hotels. So, eventually, I'd like to end up
19 there.

20 Q. Do you work 40 hours a week?

21 A. Now I do, yes.

22 Q. Okay. And what's your pay?

23 A. Not much.

24 Q. How much is it?

25 A. A little over \$8 an hour.

1 Q. \$8 an hour?

2 A. Yeah.

3 Q. Okay. Monday through Friday?

4 A. No. Actually, it is Wednesday through Sunday.

5 Q. Okay. What are you-all's -- you and
6 Mr. Fischetti's sources of income other than your
7 paycheck?

8 A. His disability that he's on.

9 Q. All right. He was -- he's been deemed totally
10 disabled by Social Security?

11 A. Yes.

12 Q. How much is that paycheck?

13 A. I'm not really sure.

14 Q. He receives it every month?

15 A. Yes.

16 Q. Any other sources of income?

17 A. I think he still gets compensation.

18 Q. Do you know how much that is?

19 A. No. He runs --

20 Q. He handles all the bills.

21 A. He handles --

22 Q. What do you do with your paycheck?

23 A. We cash it and I use it for school for my son.
24 You know, he needs money for lunch and stuff. And I use
25 it for gas money and pocket money.

1 Q. I see.

2 How long has your husband been disabled?

3 A. I'm trying to remember when disability
4 officially -- not even a year.

5 Q. Now, he told me that he was injured in two
6 accidents at work.

7 A. Yes.

8 Q. 2010 --

9 A. That is correct.

10 Q. -- and 2011.

11 Let me finish my question, if you don't mind.
12 2010 and 2011, correct?

13 A. Correct.

14 Q. So that's when his injuries occurred, right?

15 A. Yes.

16 Q. And then he got deemed disabled because of
17 those injuries, correct?

18 A. Correct.

19 Q. Those injuries involved his back; is that
20 right?

21 A. Yes.

22 Q. All right. And he's not been able to work
23 because of the back injury, correct?

24 A. Correct.

25 Q. And that was lower back; is that right?

1 A. Yes.

2 Q. Who is the doctor in Orlando who's treating
3 him for his back problems?

4 A. We actually haven't found one for his back yet
5 because no one takes the coverage that covers his back
6 down here.

7 Q. Okay. So if he -- if he has a problem with
8 his back, who does he see about it?

9 A. Down here, he hasn't yet.

10 Q. Does he see any kind of doctor down here?

11 A. Yes, he does.

12 Q. Who does he see?

13 A. He does have a lung specialist down here.

14 Q. Who is that?

15 A. Her name is Dr. Metcalf.

16 Q. M-C-A-F-F-E or M-A -- or Metcalf?

17 A. Metcalf, M-E-T-C-A-L-F.

18 He has a urologist down here.

19 Q. Who is that?

20 A. Dr. Patel.

21 Q. P-A-T-E-L?

22 A. Yes.

23 Q. All right.

24 A. And his -- I don't know what type of doctor he
25 was. He just did the radiation for my husband recently

1 **for the tumor in his head. Pantini [sic] is his name.**

2 Q. I'm sorry. He did what? What did he do?

3 A. **He had gamma radiation over the summer.**

4 Q. Oh, he didn't tell me that.

5 A. **Because they found a tumor back here.**

6 Q. Was it benign?

7 A. **Yes.**

8 Q. Gamma knife radiation.

9 A. **It was affecting his hearing.**

10 Q. Right. Gamma knife radiation, correct?

11 A. **Yes.**

12 Q. Outpatient?

13 A. **Yes.**

14 Q. Right. All right. Who else does he see?

15 A. **Down here, that's it so far.**

16 Q. Okay. All right. Your husband suffered from
17 ill health from his back for the last three years.

18 A. **Correct.**

19 Q. All right. And he quit working when? Do you
20 remember?

21 A. **I'm pretty sure it was like the middle of**
22 **September of 2012.**

23 Q. Did he have a back brace or did he have to use
24 crutches or a cane or a walker or anything to help him
25 with his back?

1 A. Still -- I'm sorry. Still to this day, he
2 still uses a cane when he needs to.

3 Q. Did he ever have a back brace that he had to
4 wear?

5 A. Not that I remember.

6 Q. Could he drive a car for long hours?

7 A. Long hours not anymore, no.

8 Q. How is your health?

9 A. My health? I'm fine.

10 Q. What medications are you on today?

11 A. At this point right now?

12 Q. Yes, ma'am.

13 A. Just Singulair for my allergies.

14 Q. All right. Who is your physician in Orlando?

15 A. Orlando, I do not have one. I have an
16 appointment to see one next week.

17 Q. Who is that with?

18 A. Dr. Middleton.

19 Q. And what kind of physician is he?

20 A. General physician.

21 Q. Now, if your husband gets sick with the flu or
22 you do, who have you all been going to see since you've
23 been down in Orlando?

24 A. I actually went to -- I got bronchitis
25 recently and I went to the health care clinic because I

1 was in between coverage.

2 Q. Okay. You have coverage now?

3 A. Yes, I do through Disney.

4 Q. Okay. Good.

5 A. That's why now I have an appointment next week
6 with a physician.

7 Q. I figured that. Yeah.

8 A. The only doctor I saw down here was to get my
9 eyes checked as soon as we got down here.

10 Q. All right. Have you ever been in an accident?

11 A. Before that one?

12 Q. Yes.

13 A. A little one.

14 Q. Tell me about that.

15 A. I was on my way to work and someone speeded
16 through a red light and hit me.

17 Q. Were you in Brooklyn?

18 A. I was in Brooklyn.

19 Q. And were you injured?

20 A. Yes, I was.

21 Q. How were you injured?

22 A. My knees banged against the -- like underneath
23 the steering wheel and stuff.

24 Q. Okay. Did you bring a claim or a lawsuit in
25 that case?

1 **A. No, not at all.**

2 Q. Have you ever brought a claim or a lawsuit
3 before?

4 **A. No.**

5 Q. Have you ever hired a lawyer for any reason?

6 **A. No, I have not.**

7 Q. Okay. Do you have any restrictions on your
8 driver's license?

9 **A. No, I do not.**

10 Q. You're wearing glass today. Do you need
11 glasses when you drive?

12 **A. Yes.**

13 Q. So that's something that's noted on your
14 driver's license, isn't it? You have to wear glasses.

15 **A. Now it is, yes.**

16 Q. At the time of the accident, you had to have
17 glasses when you drove, didn't you?

18 **A. Not for reading -- I mean, not for driving.**
19 **It was only for reading.**

20 Q. When did you have to have them for driving?
21 When did that start?

22 **A. I think right afterwards.**

23 Q. Can I see a copy of your driver's license?

24 **A. Here you go.**

25 Q. All right.

1 **A. I think it was right after the accident.**

2 Q. That's a good photo. That's much better than
3 most people's photos.

4 **A. Thank you.**

5 Q. Those are difficult things.

6 All right. Driver's license, Class E,
7 F230-424-69-89-0.

8 Thank you.

9 **A. You're welcome.**

10 Q. All right. Who's your eye doctor down here?

11 **A. I don't remember his name. He works for**
12 **Vision Works. He's an ophthalmologist in there. I**
13 **forgot his name. I'm sorry.**

14 Q. That's all right.

15 On the day of this accident that we're here
16 about today, were you wearing your glasses?

17 **A. No.**

18 Q. But now when you drive, you wear glasses,
19 correct?

20 **A. Absolutely.**

21 Q. Because you can't see. You have trouble
22 seeing long distance.

23 **A. Distance.**

24 Q. Where were you-all headed on the day of the
25 accident?

1 **A. Back to New York.**

2 Q. How long had you been in Orlando?

3 **A. Five days, I think. Six days.**

4 Q. What were you doing in Orlando?

5 **A. House hunting.**

6 Q. Okay. Have you ever been charged with a
7 crime?

8 **A. No, I have not.**

9 Q. Has your husband ever been charged with a
10 crime?

11 **A. No.**

12 Q. How about your son?

13 **A. My son, no. My son's a good boy.**

14 Q. Good. Good.

15 All right. So, as I understand it, you were
16 driving your mother-in-law's car.

17 **A. Correct.**

18 Q. What kind of car was that?

19 **A. A minivan, Mazda.**

20 Q. What color was it?

21 **A. Like a creamy beige color.**

22 Q. All right. And what time did you-all leave
23 Orlando?

24 **A. I think it was somewhere between like 10:00
25 and 11:00 in the morning.**

1 Q. All right. And who was driving when you left
2 Orlando?

3 A. My husband.

4 Q. And how far did he drive?

5 A. Well, we did have some pit stops for bathrooms
6 and gas. I don't know how many hours it was, but he
7 drove to the TA in South Carolina that we stopped at.

8 Q. What time did you-all stop?

9 A. I don't remember. I'm sorry.

10 Q. Why did you stop?

11 A. To eat, to get gas, to go to the bathroom.

12 Q. So it had been around lunchtime or a little
13 after?

14 A. After.

15 Q. And then --

16 A. It was more like late afternoon, early
17 evening.

18 Q. Now, you-all had, I understand, been to
19 Orlando many times from Brooklyn.

20 A. Oh, absolutely.

21 Q. For a number of years.

22 A. Yes.

23 Q. So you would have been familiar with I-95
24 southbound and northbound --

25 A. Absolutely.

1 Q. -- because you usually drove, right?

2 A. Yes.

3 Q. And did you usually stop at that TA place in
4 South Carolina on the way back to eat?

5 A. Sometimes, yeah.

6 Q. And then you start driving, correct?

7 A. Yes.

8 Q. Tell me who was in the car with you and where
9 they were seated.

10 A. I was in the driver's seat. My husband was
11 next to me in the passenger's seat.

12 Q. Okay.

13 A. Behind my husband was my mother-in-law.

14 Behind me was Angelo. And my son was laying down in the
15 back.

16 Q. Okay. So your mother-in-law was behind you?

17 A. No. Behind my husband.

18 Q. Okay. And Angelo was behind you.

19 A. Yes.

20 Q. And Angelo is who? Who is he?

21 A. Then?

22 Q. Yeah.

23 A. He was dating my mother-in-law.

24 Q. And how is he related to your husband? They
25 both have the same last name, so I'm assuming they're

1 related.

2 A. They're like third or fourth cousins. But my
3 mother-in-law and Angelo weren't blood related.

4 Q. Right. But they were dating.

5 A. Yeah.

6 Q. How long had they been dating?

7 A. Off and on, I think, like four years, I think.

8 Q. All right. So he would -- Angelo would have
9 been someone that your husband knew growing up, correct?

10 A. Correct.

11 Q. Because he lived in Brooklyn, as well.

12 A. Correct.

13 Q. Did he live with your mother-in-law at the
14 time of the accident?

15 A. Unfortunately.

16 Q. Yeah. And how long had he lived with her?

17 A. I know they were living together for a while,
18 and then he moved out.

19 Q. Okay.

20 A. And then maybe six or seven months again
21 before we left for Florida.

22 Q. Okay.

23 A. Maybe a little less.

24 Q. All right. Okay. All right. So you start
25 driving. And tell me how the accident happened.

1 A. I was doing fine. And the truck was, like, in
2 the right lane. I was in the left lane doing 65.
3 Everything was fine. I'm looking straight. And I
4 noticed that his wheels were getting closer to the line.
5 They were, like, right on the line. And as we went
6 around the bend, I saw that it was coming closer over
7 the line. So since I had the dirt next to me, I kind of
8 swerved away so he wouldn't hit me.

9 And, I guess, as I tried getting back on the
10 highway, like, the back wheels hit, like, some dirt or
11 something. And it swerved. And next thing I know, we
12 hit the van and then we hit the railing. It's -- and
13 then after that, I just -- I remember swerving and it
14 happened very fast. But I do know that he was in my
15 lane in the back -- my husband's like, Jen, watch. The
16 back is swerving into our lane.

17 Q. The back of the what?

18 A. Like, his truck.

19 Q. Truck or trailer?

20 A. The trailer part. I'm sorry.

21 Q. Okay. All right. We're going to go through
22 that in a little more detail.

23 You're in the left lane.

24 A. Yes, I am.

25 Q. That's the passing lane, typically, correct,

1 on the interstate, right?

2 A. Yes.

3 Q. How fast are you going?

4 A. Sixty-five.

5 Q. How do you know you're going 65?

6 A. Because I -- every once in a while, I'll
7 glance at my speedometer to make sure I'm not speeding.

8 Q. What's the speed limit?

9 A. Seventy.

10 Q. And when did you first see the
11 tractor-trailer?

12 A. We were going, for about ten minutes, the
13 same -- going straight the same -- you know, like neck
14 and neck kind of.

15 Q. Okay. When you say "neck and neck," I mean --

16 A. I mean --

17 Q. Let me ask you the question.

18 Does that mean that kind of the front of your
19 vehicle was even with the front of his cab?

20 A. No.

21 Q. You-all were kind of going down the road
22 together?

23 A. I wouldn't say the front of my car was with
24 the front of his. I would say it was in between, like
25 where the -- that split is, where the trailer ends and

1 the --

2 Q. Cab?

3 A. Yeah.

4 Q. So the front of your vehicle was where in
5 proportion to his cab?

6 A. Maybe by his -- by where the door ends.

7 Q. Door ends? Okay.

8 A. Yeah. I'm trying to remember.

9 Q. That's all right. And I understand. But
10 you've thought about this because you had to prepare for
11 this deposition, right?

12 A. Yes.

13 Q. And you said you met with Mr. McAngus
14 yesterday, and your son and your husband were at that
15 meeting, right?

16 A. Yes.

17 Q. And you-all talked about this accident, right?
18 About how it happened, correct?

19 A. Correct.

20 Q. So you've been thinking about it, right?

21 A. Yeah.

22 Q. And you would have talked to your husband and
23 son about it, right?

24 You're shaking your head yes.

25 A. Yes. I'm sorry.

1 Q. That's okay.

2 So you're driving down the road, as you said,
3 neck and neck beside the tractor-trailer in the left
4 lane for about -- did you say ten miles or ten minutes?

5 A. I don't remember. I'm sorry.

6 Q. It was a while, correct?

7 A. I don't remember.

8 Q. Now, you just told me.

9 A. I don't remember how long we were neck -- next
10 to each other.

11 Q. More than a couple of seconds?

12 A. Yes.

13 Q. More than a couple of miles?

14 A. I'm trying to remember. I don't think it was
15 more than a couple of miles. Maybe a mile.

16 Q. You don't really remember?

17 A. How long he was next to me?

18 Q. Yes.

19 A. Before the accident happened?

20 Q. Yes.

21 A. I can definitely say at least a mile.

22 Q. Right. Now, if your husband testified that
23 you-all were traveling beside the tractor-trailer for
24 eight to 12 minutes, you wouldn't disagree with him,
25 would you?

1 **A. No.**

2 Q. Okay. Now, what other vehicles were on the
3 roadway?

4 **A. I don't know. I was looking straight ahead.**

5 Q. Were there vehicles in front of you in the
6 left lane?

7 **A. Not -- not -- if I'm here, they weren't, like,**
8 **here.**

9 Q. Do you remember seeing any in front of you in
10 the left lane?

11 **A. Far -- further up.**

12 Q. How far up?

13 **A. That, I don't remember.**

14 Q. What color?

15 **A. Oh, that I don't remember.**

16 Q. Were there vehicles in front of the
17 tractor-trailer in the right lane?

18 **A. Not that I'm aware of, no.**

19 Q. Were there vehicles behind you in the left
20 lane?

21 **A. Yes.**

22 Q. How many?

23 **A. Oh, I don't know.**

24 Q. How long were they behind you?

25 **A. Don't know.**

1 Q. Were the vehicles behind the tractor-trailer
2 in the right lane?

3 A. Not that I'm aware of. I assume there was
4 because when the accident happened, there were cars
5 behind us.

6 Q. All right. So as I understand your testimony,
7 along with your husband's, you're traveling beside the
8 tractor-trailer for about eight to 12 minutes. And, in
9 your words, you're about neck and neck, correct?

10 A. Right.

11 Q. All right. You're in the left lane. He's in
12 the right lane, right?

13 You're shaking your head yes.

14 A. Yes.

15 Q. But you're not passing him.

16 A. No.

17 Q. And he's not passing you.

18 A. No.

19 Q. Who came up on who first? Did you come up on
20 the tractor-trailer first, or did he come up on you
21 first?

22 A. He came up on us first.

23 Q. And you were in the left lane.

24 A. Yes.

25 Q. And so he gets beside you-all and you-all

1 travel like that for about eight to 12 minutes down 95
2 north heading back to Brooklyn, right?

3 A. Correct.

4 Q. And you're doing about 65 miles an hour,
5 right?

6 A. Yes.

7 Q. So he would have been going about the same
8 speed. Would you disagree with that?

9 A. Yes.

10 Q. Did he have his headlights on?

11 A. I think so.

12 Q. Did you have your headlights on?

13 A. Yes.

14 Q. And what time of day was it?

15 A. It was about -- the sun was setting. That's
16 why I turned the headlights on because there are no
17 lamps. There are no streetlights on that highway. It
18 gets very dark. But exact time, I don't remember
19 exactly.

20 Q. Well, do you have some idea, some range of
21 what time you think it was when the accident happened?

22 A. I lose so much track of time after everything
23 that happened. I know it was dark.

24 Q. You know it was dark.

25 A. 7:00.

1 Q. Okay. Seven o'clock.

2 A. Because it was right after -- it was right
3 after sunset.

4 Q. Right. Now, what color was the
5 tractor-trailer?

6 A. White.

7 Q. The cab, what color was the cab?

8 A. If I remember correctly, I'm pretty sure it
9 was white, also.

10 Q. All right. Did it have any writing on it?

11 A. I don't remember.

12 Q. All right. You understand that on the
13 trailer, there are little lights along the side of the
14 trailer, correct?

15 A. I think there are. I mean, I didn't --

16 Q. All right. Did you ever blow the horn at the
17 trailer, tractor-trailer?

18 A. I don't remember if I did.

19 Q. Okay. So tell me again. You're driving down
20 the road neck and neck, and what's the first thing you
21 notice?

22 A. That he was getting a little close to me.

23 Q. All right. And I think you stated that you
24 noticed his wheels were getting closer to the lane line.

25 A. Correct.

1 Q. Right? Which wheels?

2 A. The left wheels.

3 Q. On the cab or the trailer?

4 A. On the trailer.

5 Q. Now, where were the left wheels on the
6 trailer?

7 A. They were very, very close to -- on his side,
8 it would have been in the left. Yeah. The left. The
9 left lane. The left line.

10 Q. How many sets of tires are there on that
11 trailer?

12 A. I don't know how many sets. It's a
13 tractor-trailer.

14 Q. When you say the --

15 A. I assume it's 18 wheels.

16 Q. I'm sorry. Thank you.

17 When you say the left wheels on the trailer
18 were getting close, I need to know which wheels those
19 were.

20 A. I think it was the ones right after the cab.

21 Q. So it would be the first set of tires on the
22 left side of the trailer?

23 A. Those are the first ones I noticed, yes.

24 Q. Okay. Now, where were they located in
25 proportion to your vehicle? You've told me the front of

1 , your vehicle is at about the door of the cab. So where
2 are those tires on the trailer that you noticed getting
3 close to the lane line?

4 A. I would say by my -- the door.

5 Q. The door? And did you have your seat belt on?

6 A. Of course.

7 Q. Did your husband?

8 A. Of course he did.

9 Q. Did your mother-in-law?

10 A. I don't think she did.

11 Q. Why?

12 A. Because she just got done getting off the
13 phone and she reclined her seat back and she was going
14 to relax a little.

15 Q. Who was she talking to?

16 A. Her best friend in Brooklyn.

17 Q. And who is that?

18 A. Ida.

19 Q. Ida what?

20 A. Oh, I don't remember. Syria [ph] or something
21 like that.

22 Q. What's Ida's phone number?

23 A. Oh, I don't have it offhand.

24 Q. What's your mother-in-law's phone number?

25 A. Her cell phone number is disconnected. I

1 **don't remember it.**

2 Q. And you don't remember the number?

3 A. **No.**

4 Q. Or the provider?

5 A. **AT&T. No. I'm sorry. Sprint.**

6 Q. All right. So is your husband talking to you
7 as you-all were riding down the road beside the
8 tractor-trailer?

9 A. **We were all talking, except for Angelo.**

10 Q. And where was he looking?

11 A. **My husband?**

12 Q. Yeah.

13 A. **Straight ahead.**

14 Q. All right. And your mother's behind him.

15 Angelo's behind you. Is he asleep or awake?

16 A. **Yes. He's asleep.**

17 Q. And your son's laying down.

18 A. **Laying down with his --**

19 Q. Is he asleep or awake?

20 A. **He was watching a movie or playing a video
21 game. Something on his --**

22 Q. Where is his head? Is his head positioned
23 behind the driver's side or the passenger's side?

24 A. **Behind the passenger's side.**

25 Q. So his head would have been -- he would have

1 been looking towards the median, correct, if he looked
2 up, if he's laying down --

3 A. If he looked up, he would have been looking
4 out this way.

5 Q. Out the driver's side.

6 A. Right.

7 Q. Okay. Now, when you first noticed the trailer
8 'tires getting close to your lane line, what did you do?

9 A. I moved over a tiny bit away from the line.
10 And then my husband turned around and said, Jen, his
11 back tires are getting closer and closer. Move over
12 more. Get away from him. He's going to hit us.

13 Q. All right. How much time elapsed from when
14 you first saw the tires move toward the lane line and
15 your husband said that to you?

16 A. A minute maybe or two. Not much time.

17 Q. All right. And you're driving in the left
18 lane?

19 A. Yes.

20 Q. Correct? And did you ever see the left tires
21 on the trailer actually come onto the lane line?

22 A. When he met -- when he said something to me, I
23 looked in the mirror and I said, oh, shit. He really is
24 coming close.

25 Q. What mirror did you look in?

1 **A. The passenger side mirror.**

2 Q. And you said, oh, shit. They are coming
3 close.

4 **A. Yeah.**

5 Q. Now, which set of tires were these on the
6 trailer that you saw through the passenger side mirror?

7 **A. The back ones.**

8 Q. The back ones.

9 **A. On the driver's.**

10 Q. So we're not talking about the first set of
11 tires now. We're talking about the back tires on the
12 trailer?

13 **A. Yeah. It was like the front -- the front**
14 **wheels on the trailer were on the line. And then the**
15 **back ones were like swerving over the line, like.**

16 Q. Do you know, was that a 53-foot trailer? Do
17 you know?

18 **A. No, I don't know.**

19 Q. Okay. So when you saw the back tires of
20 the trailer come over into your lane, you thought the
21 back -- that the back of that trailer was going to hit
22 you.

23 **A. Yeah. Of course.**

24 Q. Right. And what did you do?

25 **A. I swerved into the dirt a little to avoid**

1 hitting him.

2 Q. So you swerved off the road, right?

3 A. A little bit.

4 Q. Into the dirt.

5 A. Uh-huh.

6 Q. How much of your vehicle -- or was all of your
7 vehicle off the road?

8 A. No. The whole -- just like the driver's side.

9 Q. How about your left rear tire? Was it in the
10 dirt?

11 A. Yes, because that's considered the left side
12 of the car.

13 Q. All right. So you had your entire left side
14 of the car off the road, correct?

15 A. Yes.

16 Q. And how far did the back tires of the trailer
17 come on to your lane?

18 A. I don't remember how far over.

19 Q. Now --

20 A. I was concentrating on --

21 Q. Right. You told me a minute ago that you saw
22 the back tires of the trailer getting close to coming
23 over the line. Did you ever see the back tires of the
24 trailer cross over the line?

25 A. Yes.

1 Q. And that's when you were looking out the
2 mirror, right?

3 A. Yes.

4 Q. But the cab was in its lane, correct?

5 A. It was on the line.

6 Q. Okay. But not in your lane.

7 A. Not until the back of it swerved in.

8 Q. All right. Stay with me.

9 When you see the back tires of the trailer
10 come over the line, the cab tires are not in your lane.

11 A. On the line, they weren't.

12 Q. On the line. And when you see the back tires
13 of the trailer enter your lane, how far into your lane
14 did they come before you swerved to the left?

15 A. I'm trying to remember. Hold on. Maybe an
16 inch or two.

17 Q. Now, the front tires of the trailer, of
18 course, weren't in your lane yet. The back tires of the
19 trailer came over, correct?

20 A. Correct.

21 Q. All right. And when you saw that, you swerved
22 left and got onto the dirt, correct?

23 A. Correct.

24 Q. How far did you travel down the roadway with
25 part of your car on the dirt?

1 **A. Not far.**

2 **Q. I'm sorry.**

3 **A. I don't know. I don't know how far.**

4 **Q. If your husband said ten to 12 feet, would you**
5 **agree with that?**

6 **A. Yeah.**

7 **Q. Okay. And I guess you -- you took your foot**
8 **off the gas and applied your brakes a little bit when**
9 **you left the roadway, didn't you?**

10 **A. I didn't touch my brake. I took my foot off**
11 **the gas to ease up.**

12 **Q. Why didn't you touch your brake?**

13 **A. Because I was afraid I'd swerve and make it**
14 **worse than -- than I was hoping it wouldn't turn into.**

15 **Q. So you would have decreased your speed when**
16 **you left the roadway because you took your foot off the**
17 **gas, correct?**

18 **A. Right.**

19 **Q. And do you know about how much you decreased**
20 **your speed, about how much you slowed down?**

21 **A. I don't remember, but I do know I decreased**
22 **and I did not hit the brake.**

23 **Q. Okay. So you're riding down the -- what was**
24 **that grass shoulder like? Was it level?**

25 **A. No.**

1 Q. It wasn't? What was it like? Tell me what --

2 A. It was lower than the -- it was a little bit
3 lower than the highway. There was like a little bit of
4 a ledge.

5 Q. About an inch?

6 A. I would say about an inch. Yeah. It could
7 have been more. I didn't measure.

8 Q. Yeah, but was the grass portion of the highway
9 leading to the guardrail fairly level?

10 A. No.

11 Q. All right. And why not?

12 A. It was, like, sloped down a little.

13 Q. Sloped down a little.

14 A. Yeah.

15 Q. How far was it sloped down?

16 A. I don't --

17 Q. So you traveled down the road at about ten to
18 12 feet with your left front and rear tire off the
19 roadway, correct?

20 A. Correct.

21 Q. Were there any rumble strips on the side of
22 the road?

23 A. What are rumble strips?

24 Q. You know the -- when you get past the lane
25 line but before you're off the roadway, those --

1 **A. No.**

2 Q. -- strips where you kind of hit --

3 **A. And you hear the bumps. Yeah.**

4 Q. You know when your wheel hits it, boom, boom,
5 boom?

6 **A. No. Not on that side, there wasn't.**

7 Q. They didn't have any on that side.

8 **A. No.**

9 Q. Okay. So you would have known if your tire
10 hit a rumble strip, right?

11 **A. Absolutely.**

12 Q. Yeah. That would let you know you're about to
13 leave the roadway, right?

14 **A. Yes.**

15 Q. But you intentionally left the roadway, didn't
16 you?

17 **A. I didn't want to get into an accident.**

18 Q. Yeah. My question is, you intentionally left
19 the roadway. Is that your testimony?

20 **A. I swerved out of the way, yes.**

21 Q. It was your intent to leave the roadway,
22 right?

23 **A. Yes.**

24 Q. Okay. All right.

25 **A. To avoid the accident.**

1 Q. Right. Now, your vehicle and the
2 tractor-trailer never impacted before you left the
3 roadway; isn't that right?

4 A. Yes.

5 Q. Okay. Now, you're on the roadway for about
6 ten to 12 feet, and then you come back onto the roadway,
7 correct?

8 A. Yes.

9 Q. And why did you come back onto the roadway
10 after leaving the roadway? Had the tractor-trailer
11 moved over enough so you could get back into your lane?

12 A. I thought he did.

13 Q. Okay. And then what happened after you moved
14 back on the roadway thinking that he had moved over
15 enough for you to get on?

16 A. I guess you would say the middle part of his
17 cab hit the end -- the end part of our car, making us
18 hit the guardrail.

19 Q. All right. Hang on. The middle part of his
20 cab hit the end part of your car that made you hit the
21 guardrail. Did I get that right?

22 A. Yes.

23 Q. Okay.

24 A. I think it was the middle part of his cab.

25 Q. Okay. Hit the end part of your car. And that

1 caused you to go into the guardrail?

2 A. Yes.

3 Q. Okay. Let's talk about that in a little more
4 detail.

5 When you got back on the highway, did you come
6 back on the highway at an angle? For example, you had
7 to turn your steering wheel to the right to get back
8 onto the highway, correct?

9 A. Correct.

10 Q. And did you come back on at an angle where you
11 were headed toward the right lane when you first moved
12 back onto the highway?

13 A. I don't think I was at an angle, no.

14 Q. So did your front right tire get on the
15 highway before your back right tire got on the highway?

16 A. My right tires on the passenger never left the
17 highway.

18 Q. Okay.

19 A. It was the left tires that --

20 Q. Did your front left tire come onto the highway
21 before your rear left tire?

22 A. If I remember correctly, yes.

23 Q. Okay. Were you braking?

24 A. No. I was still -- I didn't have my foot on
25 either one of the pedals. I was just --

1 Q. Is it your testimony, Mrs. Fischetti, that
2 when you left the roadway, when you drove on the side of
3 the road and when you came back onto the roadway, you
4 never applied your brakes?

5 A. No. I just eased up on the gas.

6 Q. Right. So you would have been decelerating..

7 A. Correct.

8 Q. Because you never had your foot on the gas,
9 right? You're shaking your head yes.

10 A. Yes. I'm sorry.

11 Q. I know you're nervous. This is for the court
12 reporter.

13 All right. So when you come back on the
14 roadway --

15 You need to take a break?

16 A. No. I'm okay.

17 Q. Okay. When you come back on the roadway, the
18 front of your car is about even or midway with the front
19 of cab of the trailer; is that right? Tractor-trailer.

20 A. I'm trying to remember.

21 Q. I know. Take your time.

22 MR. BARROW: Why don't we take about a
23 two-second break?

24 (Break taken from 12:31 p.m. to 12:33 p.m.)

25 (The previous question was read back by the

1 Court Reporter.)

2 THE WITNESS: I'm sorry. I really don't
3 remember.

4 BY MR. BARROW:

5 Q. Okay. When you come back on the roadway and,
6 as you said, the middle part of the cab hit the end part
7 of our car that caused us then to go and hit the
8 guardrail, right?

9 A. Yeah.

10 Q. Okay. So that would have occurred -- how long
11 were you back on the roadway before that impact
12 occurred?

13 A. Not long at all.

14 Q. I mean, did you go down the roadway, you know,
15 a couple hundred feet, or was this right when you came
16 back onto the roadway?

17 A. I'm trying to remember.

18 Q. Sure.

19 A. I don't think I was back on the roadway that
20 long.

21 Q. Okay. Was it -- let me ask you. I'm trying
22 to get a --

23 A. Maybe a minute or two.

24 Q. A minute? So you would have -- did you get
25 back on the roadway and travel beside the

1 tractor-trailer for any length, or did you come back on
2 the roadway and the impact then happened?

3 A. No. We got back on the highway and then the
4 impact happened.

5 Q. Okay. Don't believe you traveled beside him
6 for any period of time.

7 A. Once I got back on --

8 Q. Right.

9 A. -- to my recollection, no.

10 Q. The impact -- once you got on, the impact
11 happened, correct?

12 A. Correct.

13 Q. Was your entire vehicle back into the left
14 lane when the impact happened, or was any part of it
15 still off the road?

16 A. I'm sorry. I don't remember.

17 Q. That's okay.

18 A. It happened so fast.

19 Q. Right. Right.

20 A. And I was trying, you know, to keep calm and
21 keep the vehicle in control.

22 Q. Was your husband saying anything to you?

23 A. I don't remember. I'm sorry. He was just
24 trying to help me not [sic] avoid the accident.

25 Q. Right. Right.

1 A. So I don't remember.

2 Q. Okay. And then --

3 A. It just happened so fast. But I do remember
4 the middle of the -- the middle and the back of the
5 trailer making -- causing us to do the accident.

6 You have to understand. I was -- my son was
7 in the car. I was trying to avoid not [sic] having the
8 accident.

9 Q. Oh, I'm sure. Yeah. Absolutely.

10 A. So I was doing everything I could to avoid it.

11 Q. Uh-huh. I understand.

12 But you came back on the highway because, as
13 you've already testified, you thought the
14 tractor-trailer was back in its lane, correct?

15 A. I thought it was.

16 Q. It must have looked that way to you, right?

17 A. Yes.

18 Q. All right. So you moved back over and then
19 the accident happens, right?

20 A. Correct.

21 Q. It's real quick, isn't it?

22 A. Yes.

23 Q. You move over and, bam, the accident happened;
24 is that right?

25 A. Yes.

1 Q. And then you went into the guardrail to your
2 left; is that correct?

3 A. Correct.

4 Q. What part of your car struck the guardrail?

5 A. I'm trying to remember. It was the back of
6 the minivan.

7 Q. The back.

8 A. Yeah.

9 Q. Okay. So you spun around, right, in order --

10 A. Yeah.

11 Q. Okay. Did you spin clockwise or
12 counterclockwise? Think about it.

13 I mean, if you spun -- let me help you with
14 that. If you spun counterclockwise, then you would have
15 spun to your left. If you spun -- if you spun
16 clockwise, you would have spun to your right.

17 A. I know. The left side of the car spun to the
18 left.

19 Q. So you would have spun counterclockwise.

20 And the rear struck the guardrail, correct, of
21 your car?

22 A. I'm trying to remember. One second.

23 Q. Yeah, yeah. Take your time.

24 A. Yeah.

25 Q. Okay.

1 A. The left -- the left side and, like, the back.
2 Like, the left bumper and the rear bumper, all that.

3 Q. Okay. All right.

4 All right. And then what happens?

5 A. After the vehicle stopped and the accident
6 happened?

7 Q. Yes, ma'am.

8 A. I remember the -- when the car finally
9 stopped, I heard Angelo screaming, Mommy, Mommy, Mommy,
10 with his head in between his knees. And I turned around
11 to make sure everybody was okay.

12 Q. Who was screaming?

13 A. Angelo.

14 And I turned around to say, is everybody okay?
15 And I realized my mother-in-law wasn't in the car. And
16 the tractor-trailer was like a hundred feet ahead. He
17 didn't stop right there.

18 Q. Who saw the impact?

19 A. I assume the people -- the people that were
20 behind us.

21 Q. Who saw it in your car?

22 A. Me, my husband. Angelo was asleep. My son,
23 after he heard the bang, took his blanket and covered
24 himself.

25 Q. So he didn't see it, either.

1 A. No. And I don't know if my mother-in-law saw
2 because my eyes were on the road trying to avoid the
3 accident.

4 Q. I understand. Now, did the truck driver come
5 over and talk to you afterwards?

6 A. He came over yelling and screaming once the
7 sheriff got there.

8 Q. Tell me what he said.

9 A. What's wrong with you? What are you, stupid?
10 What, are you sleeping behind the wheel of the car?

11 Q. Why would he say you were sleeping behind the
12 wheel?

13 A. I have no idea why.

14 Q. Did any part of your car --

15 A. Swerve into his lane? No.

16 Q. Let me finish asking that question.

17 A. I'm sorry.

18 Q. Did any part of your car strike any part of
19 his tractor-trailer in the right lane?

20 A. I don't remember.

21 Q. That's okay.

22 A. It happened so fast. I don't remember.

23 Q. I appreciate that.

24 A. I'm sorry. I'm trying to be as honest, and
25 I'm trying to remember as much as I can.

1 Q. You're doing a very good job, okay? Be
2 patient. We have time. If you need a break, we will
3 take a break. I know this is emotional, okay?

4 A. Yeah, it is.

5 Q. I know that.

6 All right. What else did the truck driver
7 say? After he said that, did you respond to him?

8 A. I told him, no, I wasn't asleep. I just
9 started -- I was only driving maybe 20 minutes when this
10 happened. Half-hour, tops. I said, no, I wasn't half
11 asleep. I was wide awake. I said, you were the one
12 that was probably half asleep because your truck was
13 coming into my lane.

14 Q. And what did he say?

15 A. He didn't say -- I walked away from him after
16 that because I was so concerned where my mother-in-law
17 was. She was my main concern. We couldn't find her.

18 Q. I understand. So this conversation took place
19 before you-all found your mother-in-law.

20 A. Yes.

21 Q. So I take it right after the accident, he
22 would have gotten out, come back there to talk to you.

23 A. He didn't talk to us until the police and
24 everybody showed up.

25 Q. All right. How long after the accident was it

1 before the police showed up?

2 A. I don't remember.

3 Q. How long did it take you-all to find your
4 mother-in-law?

5 A. A good 20 minutes.

6 Q. Where was she?

7 A. In the grass behind the guardrails.

8 Q. Was it at the -- about the location where you
9 struck the guardrail or before or after that?

10 A. I --

11 Q. You don't remember?

12 A. I don't remember.

13 Q. Was she awake?

14 A. Yes.

15 Q. Was she talking?

16 A. Yes.

17 Q. Did you talk to her?

18 A. Yes.

19 Q. What did she say?

20 A. I said, Mommy, are you okay? What happened?
21 What happened?

22 I'm okay.. Where is Anthony?

23 She was calling for Anthony, my husband.

24 Q. All right. Now, did she have a sliding door?

25 A. Yes.

1 Q. Was there something wrong with that door?

2 A. No.

3 Q. Why did it come open?

4 A. From what -- because -- when I get into the
5 car, I put my seat belt on and I always make sure the
6 doors are locked. So from -- the only thing that I can
7 think of is when she pulled herself up to hold on, she
8 grabbed it and it just slid open because they weren't
9 child proof because my son's not a child anymore.

10 Q. I see. Yeah. I see what you're saying. She
11 didn't have a seat belt on so she reaches up to grab the
12 door --

13 A. Right.

14 Q. -- and that's where the --

15 A. Correct.

16 Q. -- button is to unlock the door and pull it
17 back.

18 A. That's the only thing I can think of.

19 Q. Right. Right. Okay. What did the sheriff
20 say? Did the Highway Patrol officers come to the scene?

21 A. Yes.

22 Q. And they interviewed you?

23 A. They -- if I remember correctly, they asked me
24 what happened.

25 Q. Okay.

1 **A. And they asked my husband what happened.**

2 Q. Right. And you-all told him what you've told
3 me, right?

4 **A. Yes.**

5 Q. Right. Now, have you seen the accident
6 report? Did you look at that yesterday?

7 **A. No, I didn't look at it.**

8 Q. Do you know that the accident report shows
9 that you contributed to the accident and the truck
10 driver did not?

11 **A. No.**

12 Q. Did you know that?

13 Did you know that the Highway Patrol sent
14 their accident reconstruction team out to reconstruct
15 the accident, MAIT? They call them MAIT, M-A-I-T. Did
16 you know that?

17 You're shaking your head no.

18 **A. No. I'm sorry.**

19 Q. And did you know that the Highway Patrol
20 accident reconstruction team determined that you caused
21 the accident and not the truck driver?

22 **A. No, I did not know that.**

23 Q. Have you seen any photographs of the accident
24 scene? I think you told me you have.

25 **A. I saw a few yesterday.**

1 Q. Now, at the time that the accident actually
2 happened -- I think you may have answered this already,
3 but you think the truck driver was going about 65?

4 A. Yes.

5 Q. And how fast would you have been going, then?
6 Because you had your foot off the accelerator. You told
7 me that. You drove for about ten to 12 feet. Then you
8 entered the roadway again and then the accident
9 happened, so were you going 50?

10 A. It had to be maybe 50, maybe 55, because I was
11 decreasing off the gas.

12 Q. You were decelerating.

13 A. Decelerating.

14 Q. Right. And what part of the truck did you
15 strike? Do you remember?

16 A. I don't know if I struck it or if they struck
17 it, but I'm pretty sure it was like somewhere in the
18 middle.

19 Q. Of the cab?

20 A. Yes. Not the cab. The trailer part.

21 Q. The trailer. Okay. Have you seen photographs
22 of the damage to the trailer?

23 A. No, I did not.

24 Q. Now, as I understand it, you went to the
25 hospital. And then after you went to the hospital, an

1 insurance man came to see you, correct?

2 A. A man came to see us, yes, at the hospital.

3 Q. Right. And you took a recorded statement,
4 right? And you told me -- you're shaking your head yes.

5 A. Yes. I'm sorry.

6 Q. That's okay.

7 And you told me you reviewed that recorded
8 statement yesterday, correct?

9 A. I think that was the statement I looked over.

10 Q. And then the Highway Patrol called you on the
11 phone and took a recorded statement of you and your
12 husband, oh, about a week or two later, right?

13 A. I think it was a week or two later.

14 Q. Right. And you told them the same thing in
15 the recorded statements, of course, that you're telling
16 me today, correct? I mean, you haven't changed your
17 story.

18 A. No.

19 Q. You told them -- whatever you told them --

20 A. Yeah.

21 Q. -- you're telling me, right?

22 A. Correct.

23 Q. All right. Good.

24 I want to show you some --

25 A. Unless I forgot one or two little tiny things,

1 **but I don't think I did.**

2 Q. Sure.

3 (Defendants' Exhibit 1 was marked for
4 Identification.)

5 BY MR. BARROW:

6 Q. I want to show you some photographs and just
7 want you to take a look at these for me.

8 Now, the first is what -- we've marked these
9 in your husband's deposition, so I'm going to refer to
10 them by the exhibit stickers we gave his depo, okay?
11 The first is Exhibit 1, which is SeaTruck 317. And I'll
12 tell you that is taken northbound on I-95. And that's
13 the direction you were traveling, northbound on I-95,
14 correct?

15 A. Correct.

16 Q. Does that look familiar to you, that stretch
17 of highway?

18 A. Yes.

19 (Defendants' Exhibit 2 was marked for
20 Identification.)

21 BY MR. BARROW:

22 Q. And I'll show you Exhibit No. 2. And what
23 we've done is taken these closer as we get. This is
24 SeaTruck 319. And that's northbound on 95. And you see
25 the two lanes, the right and the left lane there,

1 correct?

2 A. Correct.

3 Q. You were in the left lane, right?

4 A. Yes.

5 Q. Do you see these tire marks off the side of
6 the road in the grass?

7 A. Yes.

8 Q. That would have been the tire marks from your
9 vehicle, correct, as you leave the roadway and then up
10 here, can you see where it reenters the roadway?

11 A. Yes.

12 Q. And those would be your tire marks as you
13 leave and reenter the roadway, correct?

14 A. Correct./

15 (Defendants' Exhibit 3 was marked for
16 Identification.)

17 BY MR. BARROW:

18 Q. That's Exhibit No. 2.

19 Now, Exhibit No. 3 is just a little bit
20 closer, and that's how we've taken them, okay? If you
21 want to see the previous exhibit, I'll put it up here so
22 you can see it.

23 Exhibit No. 3 is a closer photograph of your
24 tire marks and where you entered the roadway. Do you
25 see that?

1 A. Yes.

2 Q. All right. And then it shows the right lane
3 and the left lane, correct?

4 A. Uh-huh.

5 Q. Is that a yes?

6 A. Yes.

7 (Defendants' Exhibit 4 was marked for
8 Identification.)

9 BY MR. BARROW:

10 Q. Okay. Exhibit No. 4, again, we get closer.
11 That shows the actual position where you enter the
12 roadway. You see the tire mark in the grass leading
13 onto the roadway. Do you see that?

14 A. Yes.

15 Q. Okay. So that's where you would have
16 reentered the roadway and then heading back into your
17 lane of travel, correct?

18 A. Correct.

19 (Defendants' Exhibit 5 was marked for
20 Identification.)

21 BY MR. BARROW:

22 Q. All right. Exhibit No. 5 is just a little bit
23 closer. You see there the tire marks where you come
24 back into your lane of travel?

25 A. Yes.

1 (Defendants' Exhibit 6 was marked for
2 Identification.)

3 BY MR. BARROW:

4 Q. All right. Exhibit No. 6, do you see Exhibit
5 No. 6? It's the right and left lane of travel. Do you
6 see that?

7 A. Yes.

8 Q. There's a single cone up here by the guardrail
9 in the left side. Do you see that?

10 A. Yes, I do.

11 Q. Now, looking at Exhibit No. 5, do you see that
12 single cone up at the left side?

13 A. Yes.

14 Q. Do you also see that there's an indentation in
15 the guardrail by that single cone?

16 A. Yes.

17 Q. That's where you struck the guardrail,
18 correct?

19 A. (Nods head.)

20 Q. You're shaking your head yes.

21 A. Yes.

22 (Defendants' Exhibit 7 was marked for
23 Identification.)

24 BY MR. BARROW:

25 Q. Exhibit No. 7, do you see the tire mark right

1 on the middle of the lane line?

2 **A. Yes, I do.**

3 Q. And do you see tire marks starting in the
4 right lane heading off into the left lane toward the
5 single cone?

6 **A. Yes, I see them.**

7 Q. That would have been the direction that your
8 vehicle took, correct, into the guardrail, correct?

9 **A. Yes.**

10 **(Defendants' Exhibit 8 was marked for**
11 **Identification.)**

12 BY MR. BARROW:

13 Q. All right. Now Exhibit No. 8, have you seen
14 this photograph before that has the orange paint marks
15 on it?

16 **A. No, I haven't.**

17 Q. I will represent to you that these paint marks
18 were made by the Highway Patrol accident reconstruction
19 team, okay? And this shows the skid marks or tire marks
20 leading from the right lane into the left lane where the
21 single cone is located by the indentation in the
22 guardrail. Do you see that?

23 **A. Yes.**

24 Q. That would have been the travel -- that would
25 have been where your vehicle traveled into the

1 guardrail, correct?

2 A. I didn't go over that line, though.

3 Q. Okay. So --

4 A. I was in my lane.

5 Q. Let's take a look at Exhibit No. 8. Do you
6 see the tire marks starting in the right lane leading
7 into the left lane into the guardrail?

8 A. I see the tire marks, yes.

9 Q. Okay. And it's your testimony those aren't
10 your tire marks?

11 A. I didn't -- I didn't go into his lane.

12 Q. Or is it you don't know that those are your
13 tire marks?

14 A. They can't be because I didn't swerve into his
15 lane.

16 Q. Well, were there other tire marks from another
17 car hitting the guardrail exactly where you hit it? You
18 see my question?

19 A. I see what your question is, yes.

20 Q. Sure. It couldn't be anybody else's tire
21 marks, could it?

22 A. No.

23 Q. Because that's where you hit the guardrail,
24 isn't it?

25 A. Yeah.

1 Q. Yeah.

2 A. But I didn't go into his lane.

3 (Defendants' Exhibit 10 was marked for
4 Identification.)

5 BY MR. BARROW:

6 Q. All right. Exhibit No. 10, I'll tell you, is
7 just a photograph looking back in the direction. Do you
8 see the cars traveling in your direction?

9 A. Yes.

10 Q. And that's the area where the accident
11 happened. That shows what I call the -- see the gentle
12 bend in the roadway?

13 A. Uh-huh.

14 Q. Is that right?

15 A. Yes.

16 Q. And that's -- that's where the roadway kind of
17 bent, as your husband said, I think.

18 A. Right.

19 Q. But that's where the bend is, and that's
20 where -- you were heading in that direction, right?

21 A. Correct.

22 Q. You see these little strips on the side of the
23 road on the left-hand side?

24 A. Yes.

25 Q. That's a rumble strip, isn't it?

1 A. I know. And I didn't feel them.

2 MR. McANGUS: Are you marking those for this
3 one or are you just referring to them?

4 MR. BARROW: I've referred them, but I'm happy
5 to do it either way. I've marked for his, but I'm
6 happy to mark them for hers.

7 I'll tell you what. Let's do this. Let the
8 court reporter make -- we leave the exhibit
9 stickers the same and let her put the same exhibits
10 in both depositions. That's perfect. Let's do it
11 that way. That way they're marked for both his
12 deposition and her deposition.

13 Okay. Now, Ms. Fischetti, let me see. I need
14 some exhibit stickers.

15 I'm going to mark this as -- in her
16 deposition, it will be -- now, 9 was in his, so
17 what I'm going to do, to keep it accurate, I'm
18 going to mark this as 9 for hers, okay? Because
19 we've got 1 through 8, which are photographs, and
20 then 10's a photograph, just so we're not confused.

21 (Defendants' Exhibit 9 was marked for
22 Identification.)

23 BY MR. BARROW:

24 Q. I've marked as Exhibit No. 9 to your
25 deposition, Ms. Fischetti, a recorded statement that you

1 gave. It says this is Bill Howell on 10/9/12 at 11:15,
2 interviewing in person a Mrs. Jennifer Fischetti. And
3 you state your name. I'm not going to ask you questions
4 about it, but I just want you to identify it. It's five
5 pages. And I think you've told me that was a statement
6 you gave in the hospital right after the accident.

7 **A. Am I allowed to look at that?**

8 MR. MCANGUS: Yeah. I just want to look at
9 it.

10 MR. BARROW: Absolutely. That's why I handed
11 it to you.

12 BY MR. BARROW:

13 Q. Does that look like it?

14 **A. Yes.**

15 Q. Okay. You can read it if you want. I'm not
16 going to ask you. I'm just going to mark it for the
17 deposition.

18 All right. And do you recall -- I think you
19 answered this already, but do you recall being
20 interviewed by Lance Corporal Luther on October the 25th
21 when he called and took a recorded statement? And it
22 looks like he called you, but your husband's on here a
23 lot. Did you read that one?

24 **A. I'm sorry?**

25 Q. Where Lance Corporal Luther called and

1 interviewed you on October 25th after the accident?

2 **A. Yes. I don't remember his name but, yes,**
3 **someone called.**

4 Q. Okay. And you reviewed that one as well, did
5 you not, that statement?

6 **A. I think I did. I mean, there were so many**
7 **statements and stuff.**

8 Q. Did you give any other statements other than
9 at the hospital to Mr. Howell and the one that we have
10 for the trooper? Did you give one to your insurance
11 carrier or your mother-in-law?

12 **A. I don't remember. I'm sorry.**

13 Q. Now, your mother-in-law, as I understand it,
14 they put her in -- induced a coma when she got in the
15 hospital; is that right?

16 **A. Yes.**

17 Q. So you never had any conversations with her
18 after that; is that correct?

19 **A. No.**

20 Q. Okay. Tell me about this incident involving
21 Angelo and the hospital with your mother-in-law. I'm
22 sure you're aware that he got charged with sexual
23 assault?

24 **A. Yes, he did.**

25 Q. And have you had any conversations with him?

1 A. No. Since then, no.

2 Q. Yeah. Did Anthony have any conversations
3 about that?

4 A. You mean, with me or --

5 Q. No. With Angelo.

6 A. With Angelo?

7 Q. Yeah.

8 A. No.

9 Q. Didn't talk to him?

10 A. Not since the incident, no.

11 Q. How about the guy who was with Angelo?

12 A. He tried calling us, asking me to drop the
13 charges.

14 Q. What did you say?

15 A. I said no. What you did was wrong.

16 Q. And did he talk to Anthony?

17 A. Anthony was there when he called. And Anthony
18 told him, don't ever call our house again, to stay away,
19 and Angelo and him are getting what they deserve for
20 doing what they did to my mother-in-law.

21 Anthony left strict orders that Angelo was not
22 allowed to be in the hospital room with my mother-in-law
23 alone.

24 Q. Okay.

25 A. And I think if the hospital would have obeyed

1 by Anthony's rules, what Angelo did to my mother-in-law
2 wouldn't have happened.

3 But we've had no contact with Angelo at all,
4 and I would like to keep it that way.

5 Q. I understand.

6 Have you had any contact with anyone employed
7 with the trucking company?

8 A. No.

9 Q. Did you try to contact them?

10 A. I received a letter about -- me and my husband
11 received a letter about subpoenaing my records. And we
12 didn't know what it was, so I called and asked what it
13 was involved. And they said to talk to my attorney
14 about -- to talk to his attorney about it. And that was
15 it.

16 (Defendants' Exhibit 11 was marked for
17 Identification.)

18 BY MR. BARROW:

19 Q. All right. I took a look at your Facebook and
20 marked it as Exhibit No. 11. Is that a Facebook picture
21 of you?

22 A. Yes, it is.

23 Q. How long ago was that taken, Ms. Fischetti?

24 A. The summer that just passed.

25 Q. Okay. So it would have been '13?

1 A. Yes.

2 Q. What kind of pistol is that that you have on
3 your hip? Is that a 9 millimeter?

4 A. I think so. It's my husband's.

5 Q. Okay.

6 A. Well, ours.

7 (Defendants' Exhibit 12 was marked for
8 Identification.)

9 BY MR. BARROW:

10 Q. I've marked as Exhibit No. 12 -- is that a
11 picture of your -- who is that? Your husband and -- is
12 that his mom?

13 A. No. That's our cousin Connie. She lives down
14 in Florida.

15 That's his mom.

16 Q. This is his mom right here.

17 A. Yeah.

18 Q. The white-haired lady.

19 A. Yes. Blonde.

20 Q. Right. Tell me about her health. How was her
21 health prior to the accident?

22 A. A little bit of high blood pressure and
23 diabetes. But as far as that I knew, she was fine.

24 Q. Okay. Had she been hospitalized for any
25 reason?

1 A. The twenty-some-odd years I'm with the family,
2 no.

3 Q. So other than diabetes and high blood
4 pressure, did she have any trouble walking or getting
5 around?

6 A. I don't think so.

7 Q. Well, did she -- you say you don't think so.
8 Do you ever remember that she couldn't get around,
9 couldn't walk for periods of time because of her
10 diabetes?

11 A. Because of her diabetes? No.

12 Q. All right. What was it because of?

13 A. If I remember correctly, she had -- I'm trying
14 to remember. I think it was just after I maybe got
15 married or right before. She had, I think, outpatient
16 with her knee. But not due to her diabetes, no, not
17 that I'm aware of.

18 Q. What were her hobbies?

19 A. Her hobbies?

20 Q. Yeah.

21 A. She liked to watch TV, go shopping.

22 Q. She was retired, right?

23 A. Yes, she was.

24 Q. And what were her plans? Tell me what her
25 plans were.

1 A. Once we bought the house, you mean?

2 Q. Yes.

3 A. She was going to come and be with us four
4 months out of the year and the rest of the time stay in
5 New York with her daughter.

6 Q. Now, when she was living with Angelo at the
7 time, was she going to come live with you-all for four
8 months out of the year, as well?

9 A. I didn't want him to.

10 Q. But that was the plan.

11 A. Not that I'm -- he wasn't invited to. It was
12 just her. So, no.

13 Q. How long had Angelo lived with her prior to
14 the accident?

15 A. It was off and on for a while because they
16 broke up for a while and then recently got back together
17 a few months -- not a few months. I would say about
18 five or six months before the accident. So when they
19 got back together, yes, he moved back in.

20 Q. Now, had you-all bought the house in Orlando
21 at the time of the accident?

22 A. We put a bid in, and we -- the day before we
23 left to come back to New York, they agreed to our offer.
24 So we were going to come back to New York and do the
25 paperwork for wiring the money and the contracts and

1 everything.

2 Q. Okay. Did you get the names of any of the
3 witnesses who --

4 A. Unfortunately, no.

5 Q. Did anyone?

6 A. Not that I know of.

7 Q. Did Anthony get their names?

8 A. No.

9 Q. How about Angelo?

10 A. No.

11 Q. How about Salvatore?

12 A. My son, no. My son was a wreck that night.

13 We were all worried about my mother-in-law. We weren't,
14 you know --

15 Q. Right. Sure.

16 A. She was our main concern.

17 Q. And it was my understanding, no one was
18 injured other than your mother-in-law.

19 A. Yeah.

20 Q. Is that right?

21 A. Correct.

22 Q. All right. One second. I'm about through,
23 okay?

24 A. Physically, we weren't injured. Mentally, the
25 whole thing kind of messed with us.

1 Q. Well, no one received any psychiatric
2 counseling because of it or psychological counseling,
3 correct?

4 A. No.

5 Q. Right. You know, you've been very patient and
6 I appreciate it. I hope it hasn't been too traumatic
7 for you, but --

8 A. It's just, you know, reliving the accident and
9 everything.

10 Q. I know. Well, I appreciate you coming.

11 A. It's hard.

12 Q. That's all the questions I have for you.

13 A. Thank you.

14 Q. You're welcome.

15 MR. McANGUS: No questions for me.

16 (The deposition was concluded at 1:01 p.m.)

17 ---o0o---

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CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF ORANGE

I, NINETTE BUTLER, RPR, CRR, FPR, do hereby certify
that I was authorized to and did stenographically report
the foregoing deposition of JENNIFER DAWN FISCHETTI;
that a review of the transcript was not requested; and
that the foregoing transcript, Pages 5 through 73, is a
true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties'
attorneys or counsel connected with the action, nor am I
financially interested in the action.

DATED this 10th day of April, 2014, in Orlando,
Orange County, Florida.

Ninette Butler
NINETTE BUTLER, RPR, CRR, FPR

CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF ORANGE

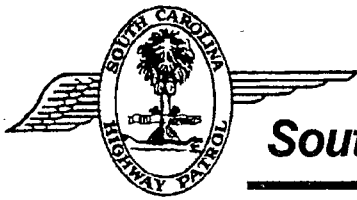
I, NINETTE BUTLER, RPR, CRR, FPR and Notary Public,
State of Florida, certify that the witness, JENNIFER
DAWN FISCHETTI, personally appeared before me on the
31st day of March, 2014, and was duly sworn.

WITNESS my hand and official seal this 10th day of
April, 2014.

Personally Known: No
or Produced Identification: Yes
Type of Identification Produced: Driver License



Ninette Butler
NINETTE BUTLER, RPR, CRR, FPR
AND NOTARY PUBLIC
Commission No.: EE033998
My Commission Expires: 10/11/2014



South Carolina Department of Public Safety

South Carolina Highway Patrol

DA-163-12

Florence

County

Pee Dee

M.A.I.T.

Team Members

Sgt. M.A. Dangerfield
Cpl. T.W. Dewitt
Cpl. J.R. Shull, Jr.
L/Cpl. K.L. Craig
L/Cpl. J.A. Alban
L/Cpl. J.T. Leach
L/Cpl. T.J. Luther
L/Cpl. M.A. Ligocki
S/Tpr. W.C. Epps

FOIA Officer

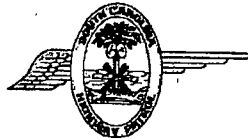
Leigh P. Watkins
SCDPS Office of General Counsel
Post Office Box 1993
Blythewood, SC 29016
PHONE: (803) 896-7759
FAX: (803) 896-7967
LeighWatkins@scdps.net

**Forward all Subpoenas for MAIT to
the FOIA Officer**

SOUTH CAROLINA HIGHWAY PATROL

MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

Leroy Smith
Director



M.R. Oliver
Colonel

INVESTIGATIVE REPORT

The South Carolina Highway Patrol Multi-Disciplinary Accident Investigation Team reserves the right to amend, correct, or detract any or all inferences, conclusions, or opinions presented in this report. This report is the intellectual property of the South Carolina Department of Public Safety and shall not be duplicated or copied for distribution, unless written permission is granted by the Office of General Counsel.

MAIT CASE NO:	DA-163-12	CAD/CASE NO:	12FL140580
REQUESTING AGENCY:	SCHP		
TROOP:	5		
COUNTY:	FLORENCE	COLLISION LOCATION:	INTERSTATE 95
INVESTIGATING OFFICER:	L/CPL. D.P. MCKENZIE		
DATE:	10/09/2012		
MAIT REGION:	PEE DEE	TEAM LEADER:	SGT. M.A. DANGERFIELD

1. CONCLUSION.

MAIT has completed its investigation of the above collision and concurs with the findings of the primary investigating officer.

2. MAPPING / CAD.

MAIT completed a forensic mapping of the collision scene.

3. AUDIO / INTERVIEWS.

MAIT conducted audio recordings during the course of this investigation.

4. PHOTOGRAPHS.

MAIT took digital photographs during the course of this investigation.

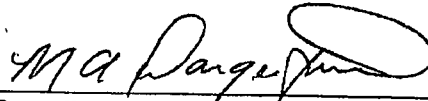
5. VIDEO.

MAIT took digital video footage during the course of this investigation.



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
Post Office Box 1993
Blythewood, SC 29016





Team Leader / Region Commander

ACTAR Number: 1661



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
Post Office Box 1993
Blythewood, SC 29016



ORIGINAL

FATAL

FINDING #1		Page # 1		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM		# Of Units 02		Amended - Initial Report		DA-103-12	
Date 10-09-2012		Time of Collision 1900		County 21		Collision Location (Rt. # / Name) E 95 /		Miles: 8		Dir. N E S W	
Lane # / Dir. 1 / 4 S W		Distance Offset 2.00 Miles		Direction N E		Base Intersection (Rt. # / Name) 327 / N. WILLISTON RD.		GPS COORDINATES 00 00' 00.00"		DEGREES MINUTES SECONDS	
R.R. Id. N E 1-Entrance S W 2-Exit		From Ramp Only To		1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- Other		Second Intersection (Rt. # / Name) 219 / ELBERRY RD.		Latitude 34 16 56.89		Longitude 79 40 46.88	
E-290390 Driver/Pedestrian's Full Name CEBALLOS CARLOS L						E-290391 Driver/Pedestrian's Full Name FISCHETTI JENNIFER D					
Unit # 01		Sex M		Race W		Street/R.F.D. 7850 W 8TH AVE		Unit # 02		Sex F	
# Occ 1		Birth Date 12-17-1968		City, State, & Zip HIALEAH FL 33014		Street/R.F.D. 2285 BRAGG ST APT 1C		# Occ 5		Birth Date 10-30-1969	
State FL		Driver's License # C142112684570		Class E		Insurance Company GREAT WEST		State NY		Driver's License # 438376216	
Year 2002		Body TR		Vehicle Make FRHT		VIN # 1FUJBBVA22LK04717		Year 2001		Body VN	
State FL		Year 2013		License Plate # Z0124T		Owner's D.L. # NONE		State NY		Year 2013	
Home Telephone (786) 2569599		Owner's Full Name KC FREIGHT		Street/R.F.D. 7850 W 8TH AVE		City, State, & Zip HIALEAH FL 33014		Home Telephone (718) 5136334		Owner's Full Name FISCHETTI CONNIE	
Bus. Telephone (305) 4564146		Contributed To Collision Yes		City, State, & Zip HIALEAH FL 33014		Contributed To Collision Yes		Bus. Telephone (718) 4907956		City, State, & Zip BROOKLYN NY 11230	
Estimated Speed 70		Speed Limit 70		C.D.L. Req. Yes No		T/B S Req. Yes No		Alc/Drg Info (see back): Yes No		Estimated Speed 70	
Summons #		Code		Summons #		Code		Summons #		Code	
Towed Yes		Towed Yes		Towed Yes		Towed Yes		Towed Yes		Towed Yes	
Driver/Pedestrian's Full Name						State Year License Plate # Owner's D.L. #					
Unit # 01		Sex M		Race W		Street/R.F.D.		Home Telephone		Owner's Full Name	
# Occ		Birth Date		City, State, & Zip		Bus. Telephone		Street/R.F.D.		Contributed To Collision	
State		Driver's License #		Class		Insurance Company		Yes No		City, State, & Zip	
Year		Body		Vehicle Make		VIN #		Estimated Speed		Speed Limit	
Dir. of Travel: Unit 1: (N) S E W Unit 2: (N) S E W Unit 3: N S E W		C.D.L. Req. Yes No		T/B S Req. Yes No		Alc/Drg Info (see back): Yes No		Summons #		Code	
Unit 1 Dam.		Unit 2 Dam.		Unit 3 Dam.		Prop. Dam. 1		Prop. Dam. 2		Guard Rail	
\$15000		\$1000		\$		\$1500		\$		\$	
Property Owner/Witness SCDOT						Property Owner/Witness					
Address 3018 E. PALMETTO ST. FLORENCE						Address City					
State Zip SC 29505						Phone 843 661 4715					
Photo: Describe What Happened (Refer to Units by Number)						Photo: Describe What Happened (Refer to Units by Number)					
UNIT #1 NORTH BOUND ON I-95 IN LANE #1. UNIT #2 NORTH BOUND ON I-95 IN LANE #2. UNIT #1, AFTER RUNNING INTO THE MEDIAN AND OVER-CORRECTING, UNIT #1 ENTERED LANE #2 AND STRUCK THE TRAILER PORTION OF UNIT #2. AFTER CONTACT WITH UNIT #2, UNIT #1 RAN OFF THE LEFT SIDE OF THE ROAD AND STRUCK THE GUARD RAIL. AFTER CONTACT WITH THE GUARD RAIL, UNIT #1 ENTERED THE ROAD WAY AND SPUN AROUND SEVERAL TIMES BEFORE COMING TO REST UP RIGHT. WHILE UNIT #1 WAS SPINNING AROUND, THE BACK PASSENGER WAS EJECTED FROM THE VEHICLE AND THROWN IN THE MEDIAN.						UNIT #1 NORTH BOUND ON I-95 IN LANE #1. UNIT #2 NORTH BOUND ON I-95 IN LANE #2. UNIT #1, AFTER RUNNING INTO THE MEDIAN AND OVER-CORRECTING, UNIT #1 ENTERED LANE #2 AND STRUCK THE TRAILER PORTION OF UNIT #2. AFTER CONTACT WITH UNIT #2, UNIT #1 RAN OFF THE LEFT SIDE OF THE ROAD AND STRUCK THE GUARD RAIL. AFTER CONTACT WITH THE GUARD RAIL, UNIT #1 ENTERED THE ROAD WAY AND SPUN AROUND SEVERAL TIMES BEFORE COMING TO REST UP RIGHT. WHILE UNIT #1 WAS SPINNING AROUND, THE BACK PASSENGER WAS EJECTED FROM THE VEHICLE AND THROWN IN THE MEDIAN.					
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.											
Investigating Officer's Name MCKENZIE - D P				Rank LCPL		Badge # T 3 1 0		Jurisdiction Code H P 0 5		Review Date 10-18-2012	
Reviewer's Name N A Tart				Rank Cpl		Internal Agency Code 12FL140580					

FINDING #1

FATAL
DA-163-12

Unit	Date of Birth	Sex	Race	INJ	Seat	R/S/D	A.B.D.	Eject	LAI	Tran	Name	Street Address	Zip Code
01	12-17-1968	M	W	0	01	13	4	1	1	2	CEBALLOS CARLOS L	7850 W 8TH AVE HIALEAH FL	33014
02	10-30-1969	F	W	0	01	13	4	1	1	2	FISCHETTI JENNIFER D	2285 BRAGG ST APT 1C BROOKLYN NY	11228
02	07-11-1964	M	W	0	03	13	4	1	1	2			
02	08-02-1955	M	W	1	04	13	7	3	1	1	FISCHETT CARLOS	305 AVE O BROOKLYN NY	11230
02	04-10-1944	F	W	4	06	00	7	3	3	1	FISCHETTI CONNIE T	305 AVE O BROOKLYN NY	11230
02	06-25-1997	M	W	0	07	00	7	3	1	2			

Race		A - Asian/Pacific Islander		W - Caucasian		a) Injury Status		2-Non-Incapacitating		Seating Loc.		20-Pedestrian		60-Sleeper of Cab		Restraint/Safety Device	
B - African American		H - Hispanic		O - Other		0-Not Injured		3-Incapacitating		01 02 03		30-Trailing Unit		70-Riding on Unit Exterior		00-None Used 21-Child	
I - Alaskan Native or American Indian		U - Unk.				1-Possible injury		4-Fatal		04 05 06		40-Bus or Van (4th row or Higher)		80-Lap		11-Shoulder belt Safety Seat	
Air Bag Deployment / Switch		Ejection		b) 2 or 3 Wheel Motorized Vehicle		Head Injury		1-Yes 2-No		07 08 09		50-Other Enclosed Area (nontrailing)		99-Unk./NA		12-Lap Belt Only 88-Other	
1-Deployed Front 4-Not Deployed		1-Not Ejected		3-Freed (non-mech.)		Location After Impact		3-Unknown		a) Transported to Medical Facility		51-Other Unenclosed Area (nontrailing)				13-Shoulder & Lap Belt 99-Unk.	
2-Deployed Side 7-Not Applicable		2-Part. Ejected		4-Not Applicable		1-Not Trapped		9-Unknown		b) By: 1-EMS 2-Police 8-Other 9-Unk.						Pedestrian, Motor/Pedalcycle Only	
3-Deployed Both 9-Deployment Unk.		3-Tot. Ejected				2-Extricated (Mechanical Means)										31-Helmet 51-Reflective Clothing	
1-Switch in On Position 3-No Switch		7-Not App.														41-Protective Pads 61-Lighting	
2-Switch in Off Position 9-Unknown		9-Unk.															

Non-Collision		04-Equipment Failure		Collision: Not Fixed		27-Pedestrian		Collision: Fixed Object		47-Embankment		55-Mail Box		68-Other	
01-Cargo/Equip Loss or Shift		05-Fire/Explosion		20-Animal (Deer Only)		28-Railway Veh.		40-Bridge Overhead Structure		48-Equipment		56-Median Barrier		69-Unk.	
02-Cross Median/Center		06-Immersion		21-Animal (All Other)		29-Work Zone Maint. Equip.		41-Bridge Pier/End		49-Fence		57-Overhead Sign Support			
03-Downhill Runaway		07-Jackknife		22-Motor Veh. (In Transport)		38-Other Movable Object		42-Bridge Pier or Abutment		50-Guardrail End		58-Other (Post, Pole, Support, Etc.)			
				23-Motor Veh. (Stopped)		39-Unk. Movable Object		43-Bridge Rail		51-Quarrel Face		59-Other (Wall, Building, Tunnel, Etc.)			
				24-Motor Veh. (Other Roadway)				44-Culvert		52-Highway Traffic Sign Post		60-Tree			
				25-Motor Veh. (Parkd)				45-Curb		53-Impact Attenuator/Crash Cushion		61-Utility Pole			
				26-Pedalcycle				46-Ditch		54-Light/Luminaire Support		62-Work Zone Maint. Equipment			

Event 1		Event 2		Event 3		Event 4		Event 5		Event 6		Event 7		Event 8		Event 9		Event 10	
122		109		151		1		1		22									
222		2		2		2		2		22									
3		3		3		3		3											

Manner of Collision (Struck Veh.)		30-Rear-to-Rear		50-Sideswipe Same Dir.		1st / Most Deformed Area		1st Deformed		1		240		3		Most Deformed		183		240		3	
143 00-Not Coll. w/ Motor Veh.		41-Angle		60-Sideswipe Opposite Dir.		1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100		21-Pedestrian		61-None		92-Rollover		93-Total		94-Under Carriage		98-Other		99-Unk.			
2 1st/2nd 10-Rear End		42-Angle		70-Backed Into																			
3 Collision 20-Head On		43-Angle		99-Unknown																			

Vehicle Type		15-Full Size Van		27-Pedalcycle		61-School Bus		Alcohol / Drug Test Given		3-Given - Pending		Special Use Only			
113 01-Automobile		16-Mini Van		38-Animal Drawn Veh		62-Passenger Bus		1-Given - Known Results		4-None		1		2	
215 12-Pickup Truck		17-Sport Utility		39-Animal (Ridden)		98-Other		2-Given - Unusable		5-Refused		3		4	
3 13-Truck Tractor		25-Motorcycle		41-Pedestrian		99-Unk. (Hit and Run Only)		A1 01 Test Type		3-Urine		1-Under-Compartment Intrusion		Underdrive/Override 1 6	
X 14-Other Truck		26-Other Motorbike		51-Train				A2 02 1-Breath (Alc Only)		4-Serum		2-Under-No Intrusion		4-Over-MV in transport 6-None 2 6	
								A3 03 2-Blood		8-Other		3-Under-Unknown		5-Over-Other Vehicle 9-Unk 3	

Vehicle Use Code		04-Ambulance		08-Farm Use		12-Fire Fighting		Drug Results		3-Marijuana		0-None/Minor		Extent of Deformity		1 4	
101 01-Personal		05-Military		09-Wrecker or Tow		13-Logging		01 1-Amphetamines		4-Opiates		2-Functional Damage		4-Severe/Totaled		9-Unk 2 0	
207 02-Driver Training		06-Transport Passengers		10-Police		18-Other		02 2-Cocaine		5-PCP 8-Other		3-Disabling Damage		5-Not Applicable		3	
3 03-Construction/Maint.		07-Transport Property		11-Government		41-Pedestrian		A1 01 1-Two-way, Not Divided		3-Two-way, Divided, Barrier		Trafficway		3			
								A2 02 2-Two-way, Divided, Unprotected Median		4-One-Way 8-Other							

Vehicle Attachment		4-Utility Trailer		8-Towed Motor Vehicle		C-Other Tanker		1st / Most Deformed Area		1st Deformed		1		240		3		Most Deformed		183		240		3	
11 1-None		5-Farm Trailer		9-Petroleum Tanker		D-Flat Bed		1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100		21-Pedestrian		61-None		92-Rollover		93-Total		94-Under Carriage		98-Other		99-Unk.			
2B 2-Mobile Home		6-Trailer w/Boat		A-Lowboy Trailer		E-Twin Trailers																			
3 3-Semi-Trailer		7-Camper Trailer		B-Autocarrier Trailer		F-Other																			

Action Prior to Impact (Vehicle)		(Non-motorist)		1st / Most Deformed Area		1st Deformed		1		240		3		Most Deformed		183		240		3	
106 01-Backing		08-Parked		21-Approaching/Leaving Vehicle		1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100		21-Pedestrian		61-None		92-Rollover		93-Total		94-Under Carriage		98-Other		99-Unk.	
206 02-Changing lanes		09-Slowing or		22-Entering/Crossing Location																	
3 03-Entering traffic lane		Stopped in traffic		23-Playing/Working on Vehicle																	
X 04-Leaving traffic lane		10-Turning left		24-Pushing Vehicle																	
05-Making U-turn		11-Turning right		25-Standing																	
06-Movements Essentially Straight Ahead		26-Walking, Playing, Cycling		27-Working																	
07-Overtaking/passing		88-Other		99-Unk.																	

Weather Condition		3-Cloudy		6-Fog, Smog, Smoke		02-Flashing Traffic Signal		21-Officer or Flagman		Traffic Control Type		98	
1 1-Clear (no adverse conditions)		4-Steel Hail		7-Blowing Sand, 8-Severe Crosswinds		11-RR (X-bucks, Lights & Gates)		31-Pavement Markings (only)		43-Yield Sign		51-Flashing Beacon	
2-Rain		5-Snow		Oil, Dirt or Snow 9-Unk.		12-RR (X-bucks & Lights)		41-Stop Sign		44-Work Zone		98-None	
						13-RR (X-bucks Only)		42-School zone Sign		45-Other Warning Signs		99-Unk.	

Light Condition		3-Dusk		6-Dark (Street Lamp Not Lit)		01-Stop and Go Light		21-Officer or Flagman		Traffic Control Type		98	
1 1-Daylight		4-Dark (Lighting Unspecified)		7-Dark (No lights)		1-Yes, Directly		2-Yes, Indirectly		3-No		9-Unk.	
6 2-Dawn		5-Dark (Street Lamp Lit)				1-Before 1st Sign		3-Transition Area		5-Termination		1-Yes 2-No Work Zone: 2	
						2-Advanced Warning Area		4-Activity Area		Area		Work Zone Location	
						1-Shoulder/Median Work		3-Intermittent/Moving Work				Work Zone Type	
						2-Lane Shift/Crossover		4-Lane Closure		8-Other 9-Unk.		1-Yes 2-No Workers Present:	

Junction Type		03-Five/More Points		07-Shared Use Paths or Trail		12-Y-Intersection		Roadway		Non-Motorist		Environmental		62-Obstruction	
01-Crossover		04-Four-way Intersection		08-T-Intersection		13-Nonjunction		30-Debris		48-Other		60-Animal in Road		63-Weather Cond.	
13 02-Driveway		05-Railway Grade Crossing		09-Traffic Circle		99-Unk.		31-Non-highway Work		49-Unk.		61-Glare		68-Other 69-Unk.	
								32-Obstruction in Roadway		50-Inattentive		62-Obstruction		63-Weather Cond.	
								33-Road Surface Condition (i.e., Wet)		51-Lying &/or Illegally in Roadway		64-Obstruction		65-Weather Cond.	
								34-Rut, Holes, Bumps		52-Failure to Yield R. of W.		66-Obstruction		67-Weather Cond.	
								35-Shoulders (None, Low, Soft, High)		53-Not Visible (Dark Clothing)		68-Obstruction		69-Weather Cond.	
								36-Traffic Control Device (i.e., Missing)		54-Disregard Signs, Signals, Etc.		69-Obstruction		70-Brakes	
								37-Work Zone (Const./Maint./Utility)		55-Improper Crossing		71-Steering		77-Restraint System	
								38-Worn, Travel-Polished Surface		56-Darting		72-Power Plant		78-Truck Coupling	
										57-Wrong Side of Road		73-Tires/Wheel		79-Cargo	
										58-Other		74-Lights		80-Fuel System	
										59-Unk.		75-Signals		88-Other 89-Unk.	
										66-Under the Influence					
										67-Other Person Under Influence					

Primary Contributing Factors		09-Made an Improper Turn		Roadway		Non-Motorist		Environmental		62-Obstruction	
03 Driver		10-Medical Related		30-Debris		48-Other		60-Animal in Road		63-Weather Cond.	
01-Disregarded Signs, Signals, Etc.		12-Aggressive Operation of Vehicle		31-Non-highway Work		49-Unk.		61-Glare		68-Other 69-Unk.	
02-Distracted/Inattention		13-Over-correcting/Over-steering		32-Obstruction in Roadway		50-Inattentive		62-Obstruction		63-Weather Cond.	
03-Driving Too Fast for Conditions		14-Swerving to Avoiding Object		33-Road Surface Condition (i.e., Wet)		51-Lying &/or Illegally in Roadway		64-Obstruction		65-Weather Cond.	
04-Exceeded Authorized Speed Limit		15-Wrong Side or Wrong Way		34-Rut, Holes, Bumps		52-Failure to Yield R. of W.		66-Obstruction		67-Weather Cond.	
05-Failed to Yield Right of Way		16-Under the Influence		35-Shoulders (None, Low, Soft, High)		53-Not Visible (Dark Clothing)		68-Obstruction		69-Weather Cond.	
06-Ran off Road		17-Vision Obscured (Within Unit)		36-Traffic Control Device (i.e., Missing)		54-Disregard Signs, Signals, Etc.		69-Obstruction		70-Brakes	
07-Fatigued/Asleep		18-Improper lane Usage/Change		37-Work Zone (Const./Maint./Utility)		55-Improper Crossing		71-Steering		77-Restraint System	
08-Followed Too Closely		19-Cell Phone		38-Worn, Travel-Polished Surface		56-Darting		72-Power Plant		78-Truck Coupling	
		20-Texting				57-Wrong Side of Road		73-Tires/Wheel		79-Cargo	
		28-Other Improper Action 29-Unk.				58-Other		74-Lights		80-Fuel System	
						59-Unk.		75-Signals		88-Other 89-Unk.	



CASE # **DA-163-12**

SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

MAIT Notes

- ☒ Field Case Notes
- ☒ TR310
- ☐ Case Opinions / Findings
- ☒ Field Sketch
- ☒ CAD Printout (if applicable)
- ☐ MAIT Investigating Officer Notes

**SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
SCENE CASE NOTES**



MAIT CASE #: DA-163-12		DATE OF COLLISION / INCIDENT: 10-09-2012		
TIME / DATE NOTIFIED: 0945 / 10-18-2012		PRIMARY INVESTIGATING OFFICER: D.P. McKenzie		
COLLISION / INCIDENT LOCATION: I95 NB north of SC327		AGENCY ASSISTED / NOTIFIED BY: SCHP 5B / FSgt. Castles		
TIME / DATE ARRIVED ON-SCENE: 0800 / 10-19-2012		ISSUES: Scene Documentation		
TEAM MEMBERS ON-SCENE: Dangerfield, Dewitt, Shull, Alban, Luther, Ligocki		CHARGES FILED / PENDING: None		
PHOTOGRAPHS TAKEN BY MAIT OF SCENE: ☒ Y ☐ N BY: Alban DATE: 10-19-2012				
PHOTOGRAPHS TAKEN BY MAIT OF VEHICLES: ☒ Y ☐ N BY: Ligocki DATE: 10-18-2012				
OTHER PHOTOGRAPHS: ☐ Y ☒ N BY: DATE:				
I/O PHOTOGRAPHS SECURED: ☒ Y ☐ N ☐ N/A BY: Shull DATE: 10-18-2012				
VIDEO: ☒ Y ☐ N ☒ MAIT ☐ I/O ☐ OTHER LEO ☐ OTHER MAIT VIDEOGRAPHER: Luther DATE: 10-19-2012				
MAPPING: ☒ Y ☐ N ☒ SCENE ☐ VEHICLE(S) ☐ OTHER Station: Alban, Shull Architect(s): Luther, Dewitt				
FIELD SKETCH: ☒ Y ☐ N By: Ligocki				
YAW: ☐ Y ☒ N If Yes: Chord M/O Rotation: CW / CCW Tire: F R L R				
AIRBORNE: ☐ Y ☒ N Takeoff ☐ L ☐ U ☐ D Landing + / -				
DRAG SLED PULLED: ☐ Y ☒ N Pulled by: Date:				
Read by: Weight:				
#1	#2	#3	#4	#5
#6	#7	#8	#9	#10
VEHICLE INSPECTION: ☒ Y ☐ N Date: 10-18-2012				
MECHANICAL EXAM: ☐ Y ☒ N Date:				
SDM DOWNLOAD: ☐ Y ☒ N Date:				
E-FRICTION READING: ☐ Y ☒ N Date: By:				
Readings: Equip:				
AUTOPSY: ☐ Y ☒ N Date:				
Attended by: @				
Notes: Passenger died of injuries 10/17/2012.				

* Indicates MAIT Scene Supervisor

ORIGINAL

FATAL

SOUTH CAROLINA DPS/OHS & DMV USE ONLY				Page # 1	SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 7/2010)				# Of Units 02	Amended or Original Report	File # SCA-163-12	Arrived 1904	1914				
Date 10-09-2012	Time of Collision 1900	County 21	☒ Interstate ☐ 2-US Primary ☐ 3-SC Primary ☐ 4-Secondary ☐ 5-County ☐ 6-PP		Collision Location (Rt. # / Name) E 95 /				☒ Main ☐ 2-Alternate ☐ 5-Spur ☐ 6-Connection ☐ 7-Business		Miles: 8	Dir. N E S W	In (Near) City or Town of: FLORENCE				
Lane # / Dir. 1 4 S W	Distance Offset 2.00	Direction N E	☒ 1-Interstate ☐ 2-US Primary ☐ 3-SC Primary ☐ 4-Secondary ☐ 5-County ☐ 6-Other		Base Intersection (Rt. # / Name) 327 / N. WILLISTON RD.				☒ Main ☐ 2-Alternate ☐ 5-Spur ☐ 6-Connection ☐ 7-Business ☐ 9-Other		GPS COORDINATES 00 00' 00.00"						
R.R. Id.	From N E 1 - Entrance S W 2 - Exit	Ramp Only N E S W	To N E S W	☒ 1-Interstate ☐ 2-US Primary ☐ 3-SC Primary ☐ 4-Secondary ☐ 5-County ☐ 6-Other		Second Intersection (Rt. # / Name) 219 / ELBERRY RD.				☒ Main ☐ 2-Alternate ☐ 5-Spur ☐ 6-Connection ☐ 7-Business ☐ 9-Other		DEGREES MINUTES SECONDS Latitude 34 16 56.89 Longitude 79 40 46.88					
E-290390				Driver/Pedestrian's Full Name CEBALLOS CARLOS L				E-290391				Driver/Pedestrian's Full Name FISCHETTI JENNIFER D					
Unit # 01	Sex M	Race W	Street/R.F.D. 7850 W 8TH AVE		State FL		Driver's License # C142112684570	Class E	Insurance Company GREAT WEST		Unit # 02	Sex F	Race W	Street/R.F.D. 2285 BRAGG ST APT 1C			
# Occ 1	Birth Date 12-17-1968		City, State, & Zip HIALEAH FL 33014		State FL		Year 2002	Body TR	Vehicle Make FRHT	VIN # 1FUJBBAY22LK04717	# Occ 5	Birth Date 10-30-1969		City, State, & Zip BROOKLYN NY 11229			
State FL	Year 2013	License Plate # Z0124T	Owner's D.L. # NONE		State FL		Year 2002	Body VN	Vehicle Make MAZD	VIN # JM3LW28Y110181281	State NY	Year 2013	License Plate # BEU7529	Owner's D.L. # NONE			
Home Telephone (786) 2569599		Owner's Full Name KC FREIGHT				Home Telephone (718) 5136334		Owner's Full Name FISCHETTI CONNIE				Bus. Telephone (305) 4564146					
Bus. Telephone (305) 4564146		Street/R.F.D. 7850 W 8TH AVE				Bus. Telephone (718) 4907956		Street/R.F.D. 305 AVE O				Contributed To Collision Yes (No) HIALEAH FL 33014					
Contributed To Collision Yes (No)		City, State, & Zip HIALEAH FL 33014				Contributed To Collision Yes (No)		City, State, & Zip BROOKLYN NY 11230				Estimated Speed 70					
Speed Limit 70		C.D.L. Req. (Yes) No		T/B S Req. (Yes) No		Alc/Drg Info (see back): Yes (No)		Summons #		Code		Summons #		Code			
Towed		Yes (No)		Towed		Yes (No)		Towed		Yes (No)		Towed		Yes (No)			
Driver/Pedestrian's Full Name																	
Unit # # Occ		Sex	Race	Street/R.F.D.		Home Telephone		Owner's Full Name		Bus. Telephone		Street/R.F.D.		Contributed To Collision			
Birth Date		City, State, & Zip		State		Driver's License #		Class	Insurance Company		Contributed To Collision Yes (No)		City, State, & Zip		Estimated Speed		
Year		Body	Vehicle Make	VIN #		Year		Body	Vehicle Make	VIN #		Year		Body	Vehicle Make	VIN #	
Dir. of Travel:		Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Unit 1 Dam.		Unit 2 Dam.		Unit 3 Dam.		Prop. Dam. 1		Prop. Dam. 2	
Unit 1 Dam.		Unit 2 Dam.		Unit 3 Dam.		Prop. Dam. 1		Prop. Dam. 2		Guard Rail		Guard Rail		Guard Rail		Guard Rail	
\$15000		\$1000		\$		\$1500		\$		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness	
SCDOT		City		Address		City		Address		City		Address		City		Address	
3018 E. PALMETTO ST.		FLORENCE		State		Zip	Phone	State		Zip	Phone	State		Zip	Phone	State	
SC		29505		8 4 3 6 6 1 4 7 1 5		Photo:		Describe What Happened (Refer to Units by Number)		UNIT #1 NORTH BOUND ON I-95 IN LANE #1. UNIT #2 NORTH BOUND ON I-95 IN LANE #2. UNIT #1, AFTER RUNNING INTO THE MEDIAN AND OVER-CORRECTING, UNIT #1 ENTERED LANE #2 AND STRUCK THE TRAILER PORTION OF UNIT #2. AFTER CONTACT WITH UNIT #2, UNIT #1 RAN OFF THE LEFT SIDE OF THE ROAD AND STRUCK THE GUARD RAIL. AFTER CONTACT WITH THE GUARD RAIL, UNIT #1 ENTERED THE ROAD WAY AND SPUN AROUND SEVERAL TIMES BEFORE COMING TO REST UP RIGHT. WHILE UNIT #1 WAS SPINNING AROUND, THE BACK PASSENGER WAS EJECTED FROM THE VEHICLE AND THROWN IN THE MEDIAN.		UNIT #1 NORTH BOUND ON I-95 IN LANE #1. UNIT #2 NORTH BOUND ON I-95 IN LANE #2. UNIT #1, AFTER RUNNING INTO THE MEDIAN AND OVER-CORRECTING, UNIT #1 ENTERED LANE #2 AND STRUCK THE TRAILER PORTION OF UNIT #2. AFTER CONTACT WITH UNIT #2, UNIT #1 RAN OFF THE LEFT SIDE OF THE ROAD AND STRUCK THE GUARD RAIL. AFTER CONTACT WITH THE GUARD RAIL, UNIT #1 ENTERED THE ROAD WAY AND SPUN AROUND SEVERAL TIMES BEFORE COMING TO REST UP RIGHT. WHILE UNIT #1 WAS SPINNING AROUND, THE BACK PASSENGER WAS EJECTED FROM THE VEHICLE AND THROWN IN THE MEDIAN.		UNIT #1 NORTH BOUND ON I-95 IN LANE #1. UNIT #2 NORTH BOUND ON I-95 IN LANE #2. UNIT #1, AFTER RUNNING INTO THE MEDIAN AND OVER-CORRECTING, UNIT #1 ENTERED LANE #2 AND STRUCK THE TRAILER PORTION OF UNIT #2. AFTER CONTACT WITH UNIT #2, UNIT #1 RAN OFF THE LEFT SIDE OF THE ROAD AND STRUCK THE GUARD RAIL. AFTER CONTACT WITH THE GUARD RAIL, UNIT #1 ENTERED THE ROAD WAY AND SPUN AROUND SEVERAL TIMES BEFORE COMING TO REST UP RIGHT. WHILE UNIT #1 WAS SPINNING AROUND, THE BACK PASSENGER WAS EJECTED FROM THE VEHICLE AND THROWN IN THE MEDIAN.		UNIT #1 NORTH BOUND ON I-95 IN LANE #1. UNIT #2 NORTH BOUND ON I-95 IN LANE #2. UNIT #1, AFTER RUNNING INTO THE MEDIAN AND OVER-CORRECTING, UNIT #1 ENTERED LANE #2 AND STRUCK THE TRAILER PORTION OF UNIT #2. AFTER CONTACT WITH UNIT #2, UNIT #1 RAN OFF THE LEFT SIDE OF THE ROAD AND STRUCK THE GUARD RAIL. AFTER CONTACT WITH THE GUARD RAIL, UNIT #1 ENTERED THE ROAD WAY AND SPUN AROUND SEVERAL TIMES BEFORE COMING TO REST UP RIGHT. WHILE UNIT #1 WAS SPINNING AROUND, THE BACK PASSENGER WAS EJECTED FROM THE VEHICLE AND THROWN IN THE MEDIAN.	
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.																	
Investigating Officer's Name MCKENZIE - DP				Rank LCPL	Badge # T 3 1 0	Jurisdiction Code H P O 5	Review Date 10-19-2012	Reviewer's Name NA Tart				Rank Cpl	Internal Agency Code 12FL140580				

Unit	Date of Birth	Sex	Race	INJ	Seat	RSD	A&D	Eject	LAI	Tran	Name	Street Address	Zip Code
01	12-17-1968	M	W	0	01	13	4	1	1	2	CEBALLOS CARLOS L	7850 W 8TH AVE HIALEAH FL 33014	14
02	10-30-1969	F	W	0	01	13	4	1	1	2	FISCHETTI JENNIFER D	2285 BRAGG ST APT 1C BROOKLYN NY 11229	11229
02	07-11-1964	M	W	0	03	13	4	1	1	2			
02	08-02-1955	M	W	1	04	13	7	3	1	1	FISCHETT CARLOS	305 AVE O BROOKLYN NY 11230	11230
02	04-10-1944	F	W	4	06	00	7	3	1	1	FISCHETTI CONNIE T	305 AVE O BROOKLYN NY 11230	11230
02	06-25-1997	M	W	0	07	00	7	3	1	2			

Race A - Asian/Pacific Islander B - African American I - Alaskan Native or American Indian W - Caucasian H - Hispanic O - Other U - Unk.		Injury Status 2-Non-incapacitating 3-Incapacitating 4-Fatal 1-Possible injury 2-Not Injured		Seating Loc. 20-Pedestrian 30-Trailing Unit 40-Bus or Van (4th row or Higher) 50-Other Enclosed Area (nontrailing) 60-Sleeper or Cab 70-Riding on Unit Exterior 80-Lap 99-Unk./NA 51-Other Unenclosed Area (nontrailing)		Restraint/Safety Device 00-None Used 11-Shoulder belt 12-Lap Belt Only 13-Shoulder & Lap Belt 31-Helmet 41-Protective Pads 21-Child 88-Other 99-Unk.	
Air Bag Deployment / Switch 1-Deployed Front 2-Deployed Side 3-Deployed Both 4-Not Deployed 7-Not Applicable 9-Unknown		Ejection 1-Not Ejected 2-Part. Ejected 3-Tot. Ejected 7-Not App. 9-Unk.		Head Injury 1-Yes 2-No 3-Freed (non-mech.) 4-Not Applicable 2-Extricated (Mechanical Means) 9-Unknown		Location After Impact 1-Not Trapped 2-Extricated (Mechanical Means) 9-Unknown	
Sequence of Events							

Non-Collision 01-Cargo/Equip Loss or Shift 02-Cross Median/Center 03-Downhill Runaway 04-Equipment Failure 05-Fire/Explosion 06-Immersion 07-Jackknife 08-Overturn/Rollover 09-Ran off Road Left 10-Ran off Road Right 11-Separation of Units 12-Spill (Two-Wheeled Veh.) 18-Other Non-collision 19-Unk. Non-collision		Collision: Not Fixed 20-Animal (Deer Only) 21-Animal (All Other) 22-Motor Veh. (In Transport) 23-Motor Veh. (Stopped) 24-Motor Veh. (Other Roadway) 25-Motor Veh. (Parkd) 26-Pedalcycle		Collision: Fixed Object 27-Pedestrian 28-Railway Veh. 29-Work Zone Maint. Equip. 30-Other Movable Object 31-Guardrail Face 32-Highway Traffic Sign Post 33-Impact Attenuator/Crash Cushion 34-Light/Luminaire Support 35-Embankment 36-Bridge Overhead Structure 37-Bridge Parapet End 38-Bridge Pier or Abutment 39-Bridge Rail 40-Culvert 41-Curb 42-Light/Luminaire Support 43-Embankment 44-Equipment 45-Fence 46-Guardrail End 47-Guardrail Face 48-Highway Traffic Sign Post 49-Impact Attenuator/Crash Cushion 50-Light/Luminaire Support 51-Mail Box 52-Median Barrier 53-Overhead Sign Support 54-Other (Post, Pole, Support, Etc.) 55-Other (Wall, Building, Tunnel, Etc.) 56-Tree 57-Utility Pole 58-Work Zone Maint. Equipment 59-Other	
Manner of Collision (Struck Veh.) 1-00-Not Coll. w/ Motor Veh. 2-10-Rear End 3-20-Head On 41-Angle 42-Angle 43-Angle 50-Sideswipe Same Dir. 60-Sideswipe Opposite Dir. 70-Backed Into 99-Unknown		1st / Most Deformed 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99		1st Deformed 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99	

Vehicle Type 11-Automobile 12-Pickup Truck 13-Truck Tractor 14-Other Truck 15-Full Size Van 16-Mini Van 17-Sport Utility 25-Motorcycle 26-Other Motorbike 27-Pedalcycle 38-Animal Drawn Veh 39-Animal (Ridden) 41-Pedestrian 51-Train 61-School Bus 62-Passenger Bus 98-Other 99-Unk. (Hit and Run Only)		Vehicle Use Code 04-Ambulance 05-Military 06-Transport Passengers 07-Transport Property 08-Farm Use 09-Wrecker or Tow 10-Police 11-Government 12-Fire Fighting 13-Logging 18-Other 41-Pedestrian		Vehicle Attachment 1-None 2-Mobile Home 3-Semi-Trailer 4-Utility Trailer 5-Farm Trailer 6-Trailer w/Boat 7-Camper Trailer 8-Towed Motor Vehicle 9-Petroleum Tanker A-Lowboy Trailer B-Autocarrier Trailer C-Other Tanker D-Flat Bed E-Twin Trailers F-Other	
Action Prior to Impact (Vehicle) 01-Backing 02-Changing lanes 03-Entering traffic lane 04-Leaving traffic lane 05-Making U-turn 06-Movements Essentially Straight Ahead 07-Overtaking/passing 08-Parked 09-Slowing or Stopped in traffic 10-Turning left 11-Turning right 88-Other 99-Unk.		Action Prior to Impact (Non-motorist) 21-Approaching/Leaving Vehicle 22-Entering/Crossing Location 23-Pushing/Working on Vehicle 24-Pushing Vehicle 25-Standing 26-Walking, Playing, Cycling 27-Working		Weather Condition 1-Clear (no adverse conditions) 2-Rain 3-Cloudy 4-Sleet, Hail 5-Snow 6-Fog, Smog, Smoke 7-Blowing Sand, Oil, Dirt or Snow 8-Severe Crosswinds 9-Unk.	
Light Condition 1-Daylight 2-Dawn 3-Dusk 4-Dark (Lighting Unspecified) 5-Dark (Street Lamp Lit)		Light Condition 3-Dusk 4-Dark (Lighting Unspecified) 5-Dark (Street Lamp Lit)		Light Condition 3-Dusk 4-Dark (Lighting Unspecified) 5-Dark (Street Lamp Lit)	
Junction Type 01-Crossover 02-Driveway 03-Five/More Points 04-Four-way Intersection 05-Railway Grade Crossing 07-Shared Use Paths or Trail 08-T-Intersection 09-Traffic Circle 12-Y-Intersection 13-Nonjunction 99-Unk.		Junction Type 01-Crossover 02-Driveway 03-Five/More Points 04-Four-way Intersection 05-Railway Grade Crossing 07-Shared Use Paths or Trail 08-T-Intersection 09-Traffic Circle 12-Y-Intersection 13-Nonjunction 99-Unk.		Junction Type 01-Crossover 02-Driveway 03-Five/More Points 04-Four-way Intersection 05-Railway Grade Crossing 07-Shared Use Paths or Trail 08-T-Intersection 09-Traffic Circle 12-Y-Intersection 13-Nonjunction 99-Unk.	
Primary Contributing Factors 01-Disregarded Signs, Signals, Etc. 02-Distracted/Inattention 03-Driving Too Fast for Conditions 04-Exceeded Authorized Speed Limit 05-Failed to Yield Right of Way 06-Ran off Road 07-Fatigued/Asleep 08-Followed Too Closely		Primary Contributing Factors 01-Disregarded Signs, Signals, Etc. 02-Distracted/Inattention 03-Driving Too Fast for Conditions 04-Exceeded Authorized Speed Limit 05-Failed to Yield Right of Way 06-Ran off Road 07-Fatigued/Asleep 08-Followed Too Closely		Primary Contributing Factors 01-Disregarded Signs, Signals, Etc. 02-Distracted/Inattention 03-Driving Too Fast for Conditions 04-Exceeded Authorized Speed Limit 05-Failed to Yield Right of Way 06-Ran off Road 07-Fatigued/Asleep 08-Followed Too Closely	
Roadway 30-Debris 31-Non-highway Work 32-Obstruction in Roadway 33-Road Surface Condition (i.e., Wet) 34-Rut, Holes, Bumps 35-Shoulders (None, Low, Soft, High) 36-Traffic Control Device (i.e., Missing) 37-Work Zone (Const./Maint./Utility) 38-Worn, Travel-Polished Surface		Roadway 30-Debris 31-Non-highway Work 32-Obstruction in Roadway 33-Road Surface Condition (i.e., Wet) 34-Rut, Holes, Bumps 35-Shoulders (None, Low, Soft, High) 36-Traffic Control Device (i.e., Missing) 37-Work Zone (Const./Maint./Utility) 38-Worn, Travel-Polished Surface		Roadway 30-Debris 31-Non-highway Work 32-Obstruction in Roadway 33-Road Surface Condition (i.e., Wet) 34-Rut, Holes, Bumps 35-Shoulders (None, Low, Soft, High) 36-Traffic Control Device (i.e., Missing) 37-Work Zone (Const./Maint./Utility) 38-Worn, Travel-Polished Surface	
Non-Motorist 50-Inattentive 51-Lying &/or Illegally in Roadway 52-Failure to Yield R. of W. 53-Not Visible (Dark Clothing) 54-Disregard Signs, Signals, Etc. 55-Improper Crossing 56-Darting 57-Wrong Side of Road 58-Other 59-Unk.		Non-Motorist 50-Inattentive 51-Lying &/or Illegally in Roadway 52-Failure to Yield R. of W. 53-Not Visible (Dark Clothing) 54-Disregard Signs, Signals, Etc. 55-Improper Crossing 56-Darting 57-Wrong Side of Road 58-Other 59-Unk.		Non-Motorist 50-Inattentive 51-Lying &/or Illegally in Roadway 52-Failure to Yield R. of W. 53-Not Visible (Dark Clothing) 54-Disregard Signs, Signals, Etc. 55-Improper Crossing 56-Darting 57-Wrong Side of Road 58-Other 59-Unk.	
Environmental 60-Animal in Road 61-Glare 70-Brakes 71-Sleeting 72-Power Plant 73-Tires/Wheel 74-Lights 75-Signals		Environmental 60-Animal in Road 61-Glare 70-Brakes 71-Sleeting 72-Power Plant 73-Tires/Wheel 74-Lights 75-Signals		Environmental 60-Animal in Road 61-Glare 70-Brakes 71-Sleeting 72-Power Plant 73-Tires/Wheel 74-Lights 75-Signals	
Obstruction 62-Obstruction 63-Weather Cond. 64-Other 65-Unk.		Obstruction 62-Obstruction 63-Weather Cond. 64-Other 65-Unk.		Obstruction 62-Obstruction 63-Weather Cond. 64-Other 65-Unk.	

**SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM**



MAIT FIELD SKETCH

Case # 0A-163-12	Drawn By L. LOCKY	North
Date Drawn 10-19-2012	Not To Scale	

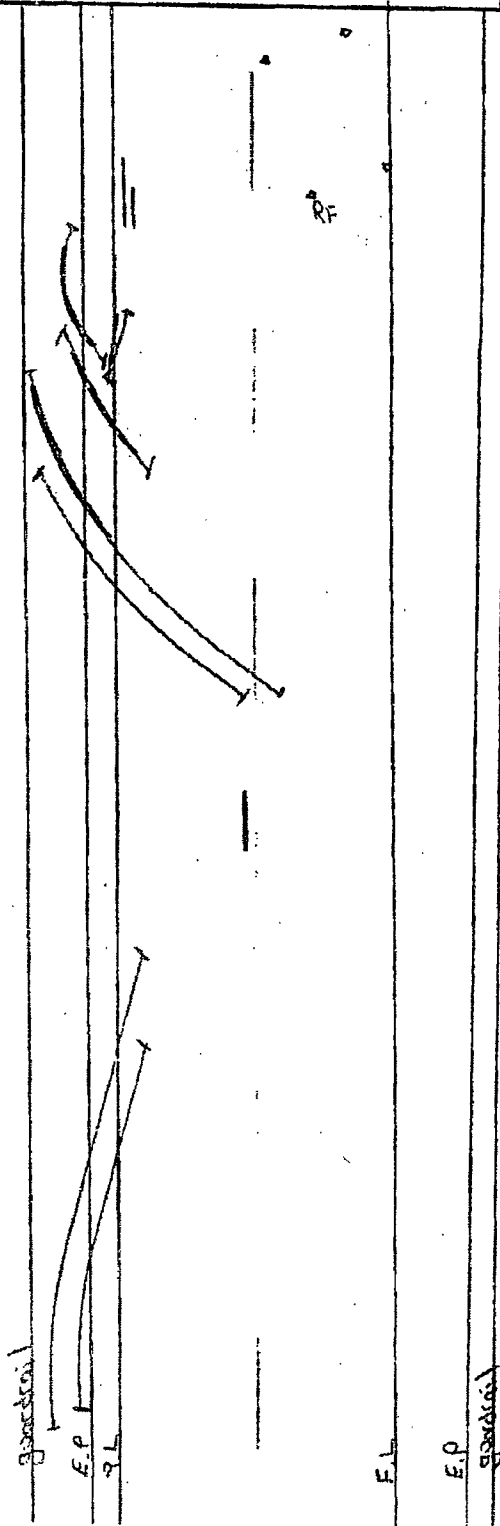
I-95

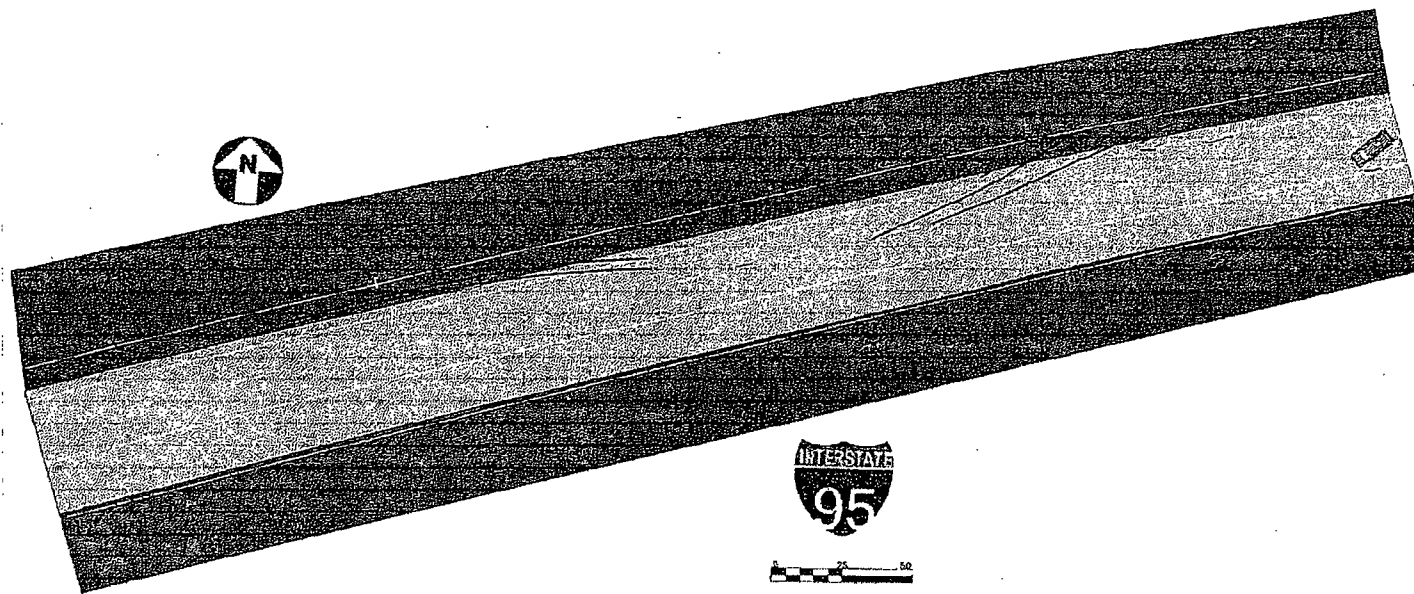
(Northbound Lanes)

Florence County

I = fire mark

| = gouge





**SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
MAIT Case Notes**



MAIT Case #	DA-163-12	Investigator:	Shull

Date:	Notes:
10-18-2012	No SCDMV information for either driver or vehicle (Unit #1 from Florida, Unit #2 from New York). Unit 1 not inspected (resumed out-of-state operations after collision 10-09-2012)
10-30-2012	No vehicle specs for Unit #2 due to age.



CASE # **DA-163-12**

SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

Vehicle Specifications

- ☐ N/A
- ☒ Vehicle Specifications
- ☒ VIN Information
- ☒ Recall
- ☐ None for Unit #

Version 5.2.0

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SOUTH CAROLINA MAIT
3415 EAST PALMETTO STREET
FLORENCE SC 29506-4011

10/19/2012

2001 MAZDA MPV LX 4 DOOR MINI VAN

Curb Weight:

3657 lbs.

1659 kg.

Curb Weight Distribution -

Front: 59 %

Rear: 41 %

Gross Vehicle Weight Rating:

5077 lbs.

2303 kg.

Number of Tires on Vehicle:

4

Drive Wheels:

FRONT

Horizontal Dimensions

	Inches	Feet	Meters
Total Length	187	15.58	4.75
Wheelbase:	112	9.33	2.84
Front Bumper to Front Axle:	36	3.00	0.91
Front Bumper to Front of Front Well:	20	1.67	0.51
Front Bumper to Front of Hood:	7	0.58	0.18
Front Bumper to Base of Windshield:	38	3.17	0.97
Front Bumper to Top of Windshield:	72	6.00	1.83
Rear Bumper to Rear Axle:	39	3.25	0.99
Rear Bumper to Rear of Rear Well:	24	2.00	0.61
Rear Bumper to Rear of Trunk:	4	0.33	0.10
Rear Bumper to Base of Rear Window:	6	0.50	0.15

Width Dimensions

Maximum Width:	72	6.00	1.83
Front Track:	61	5.08	1.55
Rear Track:	61	5.08	1.55

Vertical Dimensions

Height:	69	5.75	1.75
Ground to -			
Front Bumper (Top)	26	2.17	0.66
Headlight - center	31	2.58	0.79
Hood - top front:	34	2.83	0.86
Base of Windshield	44	3.67	1.12
Rear Bumper - top:	22	1.83	0.56
Trunk - top rear:	39	3.25	0.99
Base of Rear Window:	46	3.83	1.17

Registered Owner: SOUTH CAROLINA MAIT

Serial Number: 12R-020523AQ04201

2001 MAZDA MPV LX 4 DOOR MINI VAN

Interior Dimensions

	Inches	Feet	Meters
Front Seat Shoulder Width	60	5.00	1.52
Front Seat to Headliner	41	3.42	1.04
Front Leg Room - seatback to floor (max)	41	3.42	1.04
Rear Seat Shoulder Width	61	5.08	1.55
Rear Seat to Headliner	39	3.25	0.99
Front Leg Room - seatback to floor (min)	37	3.08	0.94

Seatbelts: 3pt - front and rear

Airbags: FRONT SEAT AIRBAGS + OPTIONAL SIDE AIRBAGS

Steering Data

Turning Circle (Diameter)	492	41.00	12.50
Steering Ratio:	:1		
Wheel Radius:	12	1.00	0.30
Tire Size (OEM):	P205/65R15		

Acceleration & Braking Information

Brake Type: ALL DISC

ABS System: ABS

Braking, 60 mph to 0 (Hard pedal, no skid, dry pavement):

d = 132.0 ft t = 3.0 sec a = -29.3 ft/sec² G-force = -0.91

Acceleration:

0 to 30mph t = 4.4 sec a = 10.0 ft/sec² G-force = 0.310 to 60mph t = 12.5 sec a = 7.0 ft/sec² G-force = 0.2245 to 65mph t = 7.4 sec a = 4.0 ft/sec² G-force = 0.12

Transmission Type: 4spd AUTOMATIC

Notes:

Federal Bumper Standard Requirements:

No Requirement

N.S.D.C = 2000 - 2003

2001 MAZDA MPV LX 4 DOOR MINI VAN

Other Information

Tip-Over Stability Ratio =

1.13

Reasonably Stable

NHTSA Star Rating (calculated)

**

Center of Gravity (No Load):

Inches behind front axle	=	45.92
Inches in front of rear axle	=	66.08
Inches from side of vehicle	=	36.00
Inches from ground	=	27.01
Inches from front corner	=	89.48
Inches from rear corner	=	111.08
Inches from front bumper	=	81.92
Inches from rear bumper	=	105.08

Moments of Inertia Approximations (No Load):

Yaw Moment of Inertia	=	2423.71	lb*ft*sec ²
Pitch Moment of Inertia	=	2438.84	lb*ft*sec ²
Roll Moment of Inertia	=	569.54	lb*ft*sec ²

Front Profile Information

Angle Front Bumper to Hood Front	=	48.8	deg
Angle Front of Hood to Windshield Base	=	17.9	deg
Angle Front of Hood to Windshield Top	=	26.9	deg
Angle of Windshield	=	34.1	deg
Angle of Steering Tires at Max Turn	=	26.1	deg

First Approximation Crush Factors:

Speed Equivalent (mph) of Kinetic Energy (KE) used in causing crush of indentation may be evaluated using the following formula, the appropriated Crush Factor (CF), and Maximum Indentation Depth (MID), in feet:

$$V(\text{mph}) = \sqrt{(30 * CF * MID)}$$

KE Equivalent Speed (Front/Rear/Side) = 21 CF

Bullet vehicle IMPACT SPEED estimation
based on TARGET VEHICLE damage ONLY = 27 CF
(Tested for Rear/Side Impact only)

These CF values are based upon analysis of NHTSA Barrier Crash data, and from over 1000 vehicle accidents where independant evaluation of speed was possible. (These are NOT 'A', 'B', 'C', or 'G' values)

The rear Impact data with more then 2-3 inches of crush damage should be looked at carefully, since some vehicles have very weak trunk & fender strength. Therefore, on some cars, especially GM, you estimate from the rear crush data may be high by as much as 4-5 mph (on a crush of 18 inches).

DA-163-12

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The current DOS version of VINassist. (Last updated 7/1/2009)

[Download](#)Enter or verify VIN, then click **SUBMIT**.

VIN: 1FUJBBAV22LK04717

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DIGIT	DESCRIPTION	MEANING
1	Country of Origin	UNITED STATES OF AMERICA
F	Manufacturer	FRHT FREIGHTLINER
U	Vehicle Type	TRUCK
J	Bed/Chassis Type	6X4 TRUCK-TRACTOR
BB	Model	CST120 CNV./EF FT ENG BUS CHAS(4UZ)
AV	Brake Horsepower	CAT. C15/DSL/14.6L I6/AIR BRAKES
2	Check Digit	Check Digit Matches
2	Year	2002
L	Plant	CLEVELAND, NC
K04717	Serial Number	Sequence in Range

VIN indicates a 2002 FREIGHTLINER CST120 CNV./EF FT ENG BUS CHAS(4UZ)

Shipping record not on file.

EDR Available?: NO

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DA-163-12

ISO ClaimSearch®**VIN Decoding**[Home](#) | [Claims Reporting](#) | [Claims Inquiry](#) | [VIN Decoding](#) | [NICB Submission](#) | [SIU Case Manager](#) | [Decision](#)
[Net](#) | [OFAC](#) | [Account Management](#) | [CargoNet](#)[Log Out](#)

VIN Decoding with NICB VINassist

The current DOS version of VINassist. (Last updated 7/1/2009)

[Download](#)Enter or verify VIN, then click **SUBMIT**.

VIN: JM3LW28Y110181281

[Submit](#)[Print](#) [?](#)

DIGIT	DESCRIPTION	MEANING
J	Country of Origin	JAPAN
M	Manufacturer	MAZDA MAZDA
3	Vehicle Type	MPV
LW28Y	Model	MPV, 4 DR WGN, 2.5L, D&P FRT+ SD ARBGS
1	Check Digit	Check Digit Matches
1	Year	2001
0	Plant	HIROSHIMA, JAPAN
181281	Serial Number	Sequence in Range

VIN Indicates a 2001 MAZDA MPV, 4 DR WGN, 2.5L, D&P FRT+ SD ARBGS

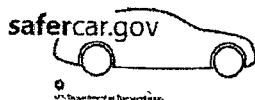
Shipping record on file.

EDR Available?: NO

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DA-163-12

**Recalls - Search Results**

1 Record(s) Displayed.

Report Date : October 18, 2012 at 11:11 AM
Search Type : VEHICLE
Make: FREIGHTLINER
Model or Model No.: CONVENTIONAL
Model Year: 2002

Make: FREIGHTLINER

Model: CONVENTIONAL

Model Year: 2002

Manufacturer: FREIGHTLINER CORPORATION

Report Receipt Date: DEC 17, 2002

NHTSA CAMPAIGN ID Number: 02V337000

NHTSA Action Number: N/A

Component: TRAILER HITCHES:FIFTH WHEEL ASSEMBLY

Summary:

ON CERTAIN TRUCK-TRACTOR MODEL VEHICLES EQUIPPED WITH CONMET SIMPLEX STATIONARY OR SLIDING FIFTH-WHEEL, THE CLINCH PINS THAT RETAIN THE FIFTH-WHEEL PIVOT PINS MAY NOT BE FULLY INSTALLED.

Consequence:

THE FIFTH WHEEL COULD SEPARATE FROM THE VEHICLE INCREASING THE RISK OF A CRASH.

Remedy:

DEALERS WILL INSPECT THE FIFTH WHEEL TO VERIFY THE CORRECT INSTALLATION OF THE CLINCH PIN AND PIVOT PIN. MISSING PINS WILL BE REPLACED. OWNER NOTIFICATION BEGAN NOVEMBER 15, 2002. OWNERS WHO TAKE THEIR VEHICLES TO AN AUTHORIZED DEALER ON AN AGREED UPON SERVICE DATE AND DO NOT RECEIVE THE FREE REMEDY WITHIN A REASONABLE TIME SHOULD CONTACT FREIGHTLINER AT 1-800-547-0712.

Notes:

FREIGHTLINER RECALL NO. FL-399. CUSTOMERS CAN ALSO CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S AUTO SAFETY HOTLINE AT 1-888-DASH-2-DOT (1-888-327-4236).

1200 New Jersey Avenue, SE, West Building Washington DC 20590 USA
1.888.327.4236 TTY 1.800.424.9153



DA-163-12



Recalls - Search Results

3 Record(s) Displayed.

Report Date : October 18, 2012 at 11:04 AM Search Type : VEHICLE Make: MAZDA Model or Model No.: MPV Model Year: 2001

Make: MAZDA

Model: MPV

Model Year: 2001

Manufacturer: MAZDA NORTH AMERICAN OPERATIONS

Report Receipt Date: MAY 19, 2004

NHTSA CAMPAIGN ID Number: 04V234000

NHTSA Action Number: N/A

Component: VEHICLE SPEED CONTROL:CABLES

Summary:

ON CERTAIN MINIVANS EQUIPPED WITH CRUISE CONTROL, THE CRUISE CONTROL ACTUATOR CABLE MAY BE BROKEN DUE TO INSUFFICIENT STRENGTH (GROUP 1). ALSO INCLUDED ARE CERTAIN 2000-2001 MINIVANS EQUIPPED WITH CRUISE CONTROL BUILT BETWEEN MARCH 31, 1999 AND MARCH 31, 2001, THAT HAVE HAD THE CRUISE CONTROL REPAIRED AND POSSIBLY HAD A DEFECTIVE CABLE INSTALLED DURING THAT REPAIR (GROUP 2).

Consequence:

IT IS POSSIBLE THAT THE BROKEN ACTUATOR CABLE MAY BE OUT OF POSITION AND COULD INTERFERE WITH THE OPERATION OF THE ACCELERATOR CABLE, PREVENTING A DECREASE IN ENGINE SPEED WHILE DRIVING, INCREASING THE RISK OF A CRASH.

Remedy:

DEALERS WILL REPLACE THE ACTUATOR CABLE. OWNER NOTIFICATION FOR VEHICLES INVOLVED IN GROUP 1 BEGAN ON JULY 7, 2004. OWNER NOTIFICATION FOR VEHICLES INVOLVED IN GROUP 2 BEGAN ON SEPTEMBER 10, 2004. OWNERS SHOULD CONTACT MAZDA AT 1-800-222-5500.

Notes:

MAZDA RECALL NO. 2004F. CUSTOMERS CAN ALSO CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S AUTO SAFETY HOTLINE AT 1-888-DASH-2-DOT (1-888-327-4236).

Make: MAZDA

Model: MPV

Model Year: 2001

Manufacturer: MAZDA NORTH AMERICAN OPERATIONS

Report Receipt Date: AUG 05, 2002

NHTSA CAMPAIGN ID Number: 02V196001

NHTSA Action Number: N/A

Component: AIR BAGS:FRONTAL

Potential Number of Units Affected: 25

Summary:

ON CERTAIN PASSENGER VEHICLES, SOME OF THE PASSENGER AIR BAG MODULES WERE NOT PROPERLY WELDED AND MAY NOT DEPLOY IN A COLLISION.

Consequence:

THE SEAT OCCUPANT MAY NOT BE PROPERLY PROTECTED IN THE EVENT OF A COLLISION, INCREASING THE RISK OF PERSONAL INJURY.

Remedy:

DEALERS WILL REPLACE THE PASSENGER AIR BAG MODULE. OWNER NOTIFICATION BEGAN OCTOBER 4, 2002. OWNERS WHO TAKE THEIR VEHICLES TO AN AUTHORIZED DEALER ON AN AGREED UPON SERVICE DATE AND DO NOT RECEIVE THE FREE REMEDY WITHIN A REASONABLE TIME SHOULD CONTACT MAZDA AT 1-800-222-5500.

Notes:

ALSO, CUSTOMERS CAN CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S AUTO SAFETY HOTLINE AT 1-888-DASH-2-DOT (1-888-327-4236).

Make: MAZDA

Model: MPV

Model Year: 2001

Manufacturer: MAZDA NORTH AMERICAN OPERATIONS

Report Receipt Date: DEC 17, 2001

NHTSA CAMPAIGN ID Number: 01V382000

NHTSA Action Number: N/A

Component: SERVICE BRAKES, HYDRAULIC:FOUNDATION COMPONENTS:HOSES, LINES/PIPING, AND FITTINGS

DA-163-12**Summary:**

VEHICLE DESCRIPTION: CERTAIN MINI VANS WITHOUT ANTI-LOCK BRAKING SYSTEMS (ABS) FAIL TO COMPLY WITH THE REQUIREMENTS OF FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 135, "PASSENGER CAR BRAKE SYSTEMS." DUE TO INAPPROPRIATE BRAKE PIPE LAYOUT, THESE VEHICLES DO NOT MEET THE BRAKE STOPPING DISTANCE WITH PARTIAL FAILURE REQUIREMENTS OF THE STANDARD.

Consequence:

IF PARTIAL FAILURE OCCURRED IN THE BRAKING SYSTEM, THE STOPPING DISTANCE OF THE VEHICLE COULD INCREASE, INCREASING THE RISK OF A CRASH.

Remedy:

DEALERS WILL MODIFY THE BRAKE SYSTEM. OWNER NOTIFICATION BEGAN JANUARY 15, 2002. OWNERS WHO TAKE THEIR VEHICLES TO AN AUTHORIZED DEALER ON AN AGREED UPON SERVICE DATE AND DO NOT RECEIVE THE FREE REMEDY WITHIN A REASONABLE TIME SHOULD CONTACT MAZDA AT 1-800-222-5500, OPTION #4.

Notes:

ALSO CONTACT THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S AUTO SAFETY HOTLINE AT 1-888-DASH-2-DOT (1-888-327-4236).

1200 New Jersey Avenue, SE, West Building Washington DC 20590 USA
1.888.327.4236 TTY 1.800.424.9153



DA-163-12

CASE # _____



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

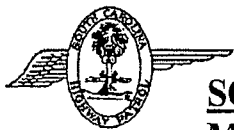
Calculations

☒ N/A

☐ Calculations

DA-163-12

CASE # _____

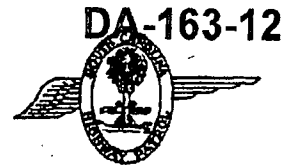


SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

Mechanical

- ☐ N/A
- ☐ Mechanical Notes
- ☒ General Vehicle Examination Notes
- ☐ Motorcycle Examination Notes
- ☐ CMV Examination Notes
- ☐ Lamp Analysis
- ☐ CDR Report
- ☐ Other _____
- ☐ Other _____
- ☐ Other _____

**SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
GENERAL VEHICLE EXAMINATION**



MAIT CASE #: <u>DA-163-12</u>		DATE OF EXAMINATION: <u>10-18-2012</u>	
YEAR / MAKE / MODEL / COLOR <u>2001 / Mazda / MPV Lx / light beige</u>		TAG # / STATE <u>BEU 7529 / NY (Not displayed)</u>	
EXAMINED BY: <u>L160CK1</u>		VIN: ☐ Dash ☒ Door ☐ Other <u>2M3LW289110181081</u>	
EXAMINED AT: ☐ SCENE ☒ TOW YARD <u>Millers</u>		☐ FINAL REST ☒ AFTER BEING MOVED	
VEHICLE PHOTOGRAPHED BY: <u>L160CK1</u>			
LEFT FRONT MAKE / MODEL / SIZE <u>Destiny2 / Ex600</u>		PRESSURE / TREAD DEPTH	
DOT #: <u>Not Visible</u> <u>P205/65R15</u>		<u>-0-</u> / <u>8mm</u>	
RIGHT FRONT MAKE / MODEL / SIZE <u>Destiny2 / Ex600</u>		PRESSURE / TREAD DEPTH	
DOT #: <u>Not Visible</u> <u>P205/65R15</u>		<u>-0-</u> / <u>8mm</u>	
LEFT REAR MAKE / MODEL / SIZE <u>Goodyears / Integrity</u>		PRESSURE / TREAD DEPTH	
DOT #: <u>M60R B31R 21610</u> <u>P205/65R15</u>		<u>-0-</u> / <u>8mm</u>	
RIGHT REAR MAKE / MODEL / SIZE <u>Destiny2 / Ex600</u>		PRESSURE / TREAD DEPTH	
DOT #: <u>Not Visible</u> <u>P205/65R15</u>		<u>-0-</u> / <u>8mm</u>	
ADDITIONAL TIRES / NOTES		PRESSURE / TREAD DEPTH	
DOT #:			
BRAKE PEDAL: ☒ TIGHT ☐ FREE TO FLOOR ☐ UNABLE TO CHECK			
STEERING WHEEL: ☒ TIGHT ☐ TURNS FREELY ☐ UNABLE TO CHECK ☐ IMPACT DAMAGE ☐ OCCUPANT DAMAGE			
MECHANICAL FAILURE SUSPECTED: ☐ YES ☒ NO IF YES: ☐ STEERING ☐ BRAKES ☐ TIRES ☐ SUSPENSION ☐ OTHER: _____			
MECHANIC NOTIFIED: ☐ YES ☐ NO DATE OF MECHANICAL EXAMINATION: _____			
ACM DOWNLOADABLE: ☐ YES ☒ NO DOWNLOADED: ☐ YES ☐ NO on: _____			
BULB ANALYSIS NEEDED: ☐ YES ☒ NO TIRE / WHEEL EXAMINATION NEEDED: ☐ YES ☒ NO			
AIRBAGS DEPLOYED: ☐ N/A ☒ NO ☐ DRIVER ☐ PASSENGER ☐ DRIVER SIDE CURTAIN ☐ PASSENGER SIDE CURTAIN ☐ OTHER _____			
SEATBELT USAGE REQUESTED: ☐ YES ☐ NO			
DRIVER: ☒ YES ☐ NO ☐ N/A	MIDDLE: ☐ YES ☐ NO ☒ N/A	RIGHT: ☒ YES ☐ NO ☐ N/A	
2nd ROW: ☒ YES ☐ NO ☐ N/A	2nd ROW: ☐ YES ☐ NO ☒ N/A	2nd ROW: ☐ YES ☒ NO ☐ N/A	
3rd ROW: ☐ YES ☒ NO ☐ N/A	3rd ROW: ☐ YES ☐ NO ☒ N/A	3rd ROW: ☐ YES ☐ NO ☒ N/A	
OTHER: ☐ YES ☐ NO ☒ N/A	OTHER: ☐ YES ☐ NO ☒ N/A	OTHER: ☐ YES ☐ NO ☒ N/A	
EJECTION ANALYSIS NEEDED: ☐ YES ☐ NO			

NOTES:

10/18/12



CASE # **DA-163-12**

SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

Miscellaneous

- ☒ N/A
- ☐ DMV Driving Record(s)
- ☐ DMV Vehicle Record (s)
- ☐ Warrants
- ☐ SLED Reports
- ☐ Coroner's Report
- ☐ Autopsy Report
- ☐ Other _____
- ☐ Other _____
- ☐ Other _____
- ☐ Other _____

DA-163-12

CASE # _____



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

Officer Notes

- ☐ N/A
- ☒ Bus / Truck Supplemental
- ☒ Case Fact Sheet
- ☒ Witness Sheet
- ☒ Supervisor Form
- ☐ Incident Report
- ☐ Other _____
- ☐ Other _____
- ☐ Other _____

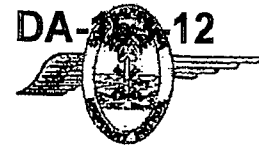
ORIGINAL

DA-163-12

SOUTH CAROLINA DPS AND DMV USE ONLY			South Carolina Uniform Traffic Collision Report (For Investigating Officers) Supplemental Bus & Truck Collision Report (Revised 04/2009)		Amended-Attach Copy of Original Report Corrected		
			Page <u>1</u> of <u>1</u> Pages				
Date	Time	County	Route Category		Accident Location	Auxiliary	
10-09-2012	1900	21	1-Interstate 2-US Primary 3-SC Primary 4-Secondary 5-County 6-PP		(Route Number and Name if Any) ON 95 /	0-Mainline 2-Alternate 5-Spur 6-Connection 7-Business 9-Other	
IF THIS CRASH INCLUDES:							
Any truck that has a gross vehicle weight rating (GVWR) of more than 10,000 pounds or a gross combination weight rating (GCWR) of more than 10,000 pounds and is used on public highways, OR Any motor vehicle with seating to transport nine (9) or more people, including the driver OR Any motor vehicle (regardless of weight) displaying a hazardous materials placard;			How Many?		Access Control		
			1		1- No Access Control 2- Full Access Control 3- Partial Access Control		2
			How Many?		Vehicle Information		
			03		Gross Vehicle Weight Rating/ Gross Combination Weight Rating 01- Less than or Equal to 10,000 Pounds 02- 10,001-26,000 Pounds 03- More than 26,000 Pounds 99- Unknown/ Hit and Run		
AND RESULTS IN:			How Many?		Vehicle Configuration		
			2		00- Passenger Car (only w/ HAZMAT placard) 01- Light Truck (only w/ HAZMAT placard) 02- Bus (seats for 9-15 people) 03- Bus (seats for 16 + people) 04- Single Unit Truck (2 axles/6+ tires) 05- Single Unit Truck (3 or more axles) 06- Truck w/ Trailer 07- Truck-Tractor Only (Bobtail) 08- Tractor w/ Semi-Trailer 09- Tractor w/ Double Trailers 10- Tractor w/ Triple Trailers 98- Other/Unable to Classify 99- Unknown/ Hit and Run		
			How Many?		Bus Use		
			01		01- Not used as a bus 02- School 03- Transit/Commute/Sch service 04- Intercity 05- Charter/Tour 06- Shuttle/Church 07- Unknown		
Complete This Form Only If: One or More Qualifying Vehicle(s) was Involved - AND One or More Qualifying Injuries/Fatalities was Sustained - OR One or More Disabled Vehicle(s) was Towed Away From the Scene			How Many?		Cargo Body Type		
			2		00- Bus (seats for 9-15 people) 01- Bus (seats for 16+ people) 02- Enclosed Box 03- Cargo Tank 04- Flat Bed 05- Dump 06- Concrete Mixer 07- Auto Transporter 08- Garbage/Refuse 09- Grain, Chips, Gravel 10- Pole 11- Intermodal Container 12- Log 13- Veh. Towing Vehicle 97- N/A 98- Other 99- Unknown/Hit & Run		
			How Many?		Trailer Length and Width		
			1		Length 00- No Trailer 01- Less than 480 in. (40 ft) 02- 481 in. - 576 in (48 ft) 03- 577 in. or more 99- Unknown/ Hit and Run Width 00- No Trailer 01- Less than 60 in. (5 ft) 02- 61 in. - 84 in. (7 ft) 03- 85 in. or more 99- Unknown/ Hit and Run		
Total Number of Supplemental Forms Required for this Collision :			1		Hazardous Material Involvement		
Unit Number <u>01</u> FR-10 Number <u>E-290390</u>			Was This Vehicle Carrying Hazardous Materials?				
Carrier Information			1- Yes 2- No 3- Unknown/Hit and Run				
Name: <u>KC FREIGHT</u>			2				
Address: <u>7850 W 8THAVE</u>			Did the Vehicle Have a Hazardous Material Placard?				
City: <u>HIALEAH</u> State: <u>FL</u> Zip: <u>33014</u>			1- Yes 2- No 3- Unknown/Hit and Run				
Business Phone Number: <u>305</u> <u>456</u> <u>414</u> <u>6</u>			2				
Identification Numbers			If "Yes", What Class of Hazardous Material (off placard/shipping papers)?				
U.S. DOT <u> </u> None = 0 <u> </u>			01- Class 1 (Explosives) 06- Class 6 (Poison/Infectious Substance) 02- Class 2 (Gases) 07- Class 7 (Radioactive) 03- Class 3 (Flammable Liquids) 08- Class 8 (Corrosives) 04- Class 4 (Flammable Solids) 09- Class 9 (Misc. Goods) 05- Class 5 (Oxidizing Substance) 10- No Placard 99- Other/Unknown/Hit and Run				
State Number <u> </u> S C <u> </u>			If "YES", enter 4 digit HAZMAT ID (Look on placard/shipping papers)				
Carrier Type: Is this vehicle a(n) (1) Interstate, (2) Intrastate Carrier?			(3) Not in Commerce - Other Truck/Bus (4) Not in Commerce - Government (5) Other Operation/Not Specified				
Was a Citation Issued to this Vehicle?			1- Yes 2- No 3- Pending				
Investigator's Name <u>MCKENZIE - D P</u> Rank <u> </u> Date <u> </u>			Did Hazardous Material Release from this Vehicle?				
			1- Yes 2- No 3- Unknown/Hit and Run				
			Name of Agency Notified (In Case of Release):				
			Investigator's Name <u> </u> Rank <u> </u>				



SOUTH CAROLINA HIGHWAY PATROL MAJOR CASE INVESTIGATION FACT SHEET



CAD Number 12FL140580

Date: 10/09/2012 Time: 1900 hours County: Florence

Primary Investigating Officer: D.P. McKenzie Scene Supervisor: Cpl. D.A. Dean

Incident Type Collision Number of Units Involved: 2

MAIT Associate / First Responder: None CRO Notified: L/Cpl E. W. Collins 10/17/2012

Assisting Troopers: Cpl Dean, L/Cpl B. T. Lee

Coroner On-Scene: No If yes, give name and contact number: Died 10/17/2012@1841 hrs

Were photographs taken? Yes If yes # taken: 32 Taken by: M.A. Dangerfield

Were vehicles towed? Yes If yes provide towing companies telephone number:

Unit # 1 , Unit # 2 B. Millers, Unit # 3 , Unit # 4

Notes:

Is MAIT Assisting? Yes # of Witnesses Located 0

Will Charges Be Filed? No If yes complete below:

Defendants Name: _____

Charges: _____

Summons / Warrant Numbers: _____

Was the Solicitors Office Contacted? Yes. If yes, complete below:

Contact Name: Emily Creighton Number: 665-3091

Other Agencies on the Scene and Names of Their Personnel (If Applicable):

Agency	Name
FCEMS	
Windy Hill VFD	

Beta - Fact Sheet



Witnesses

DA-163-12



CAD Number _____

Name: _____

Address: _____

City / State / Zip: _____

Home Phone: _____ Work Phone: _____

Notes:

Name: _____

Address: _____

City / State / Zip: _____

Home Phone: _____ Work Phone: _____

Notes:

Name: _____

Address: _____

City / State / Zip: _____

Home Phone: _____ Work Phone: _____

Notes:

Name: _____

Address: _____

City / State / Zip: _____

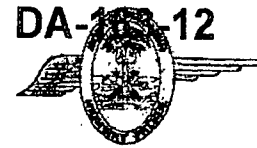
Home Phone: _____ Work Phone: _____

Notes:

Additional Witness? No



**SOUTH CAROLINA HIGHWAY PATROL
MAJOR CASE INVESTIGATION
SUPERVISOR CHECKLIST**



CAD Number 12FL140580

Deferred MAIT Response

☒ Yes	No	Scene Secured
☒ Yes	No	Determine Initial MAIT Need
☒ Yes	No	Evidence Photographed
☒ Yes	No	Evidence Marked
Yes	☒ No	Witnesses Identified / Interviewed
☒ Yes	No	Field Sketch Completed
☒ Yes	No	Scene Photographed
☒ Yes	No	Vehicles Photographed
☒ Yes	No	Primary Investigator Form(s) Completed
☒ Yes	No	South Carolina Traffic Collision Report (TR-310) Completed Neatly
☒ Yes	No	Media Downloaded to Proper Folder

Notes:

PASSENGER DIED 10/17/2012 @ 1844 HRS. WE WERE NOTIFIED BY DET. CONNOR
DON REYNOLDS.

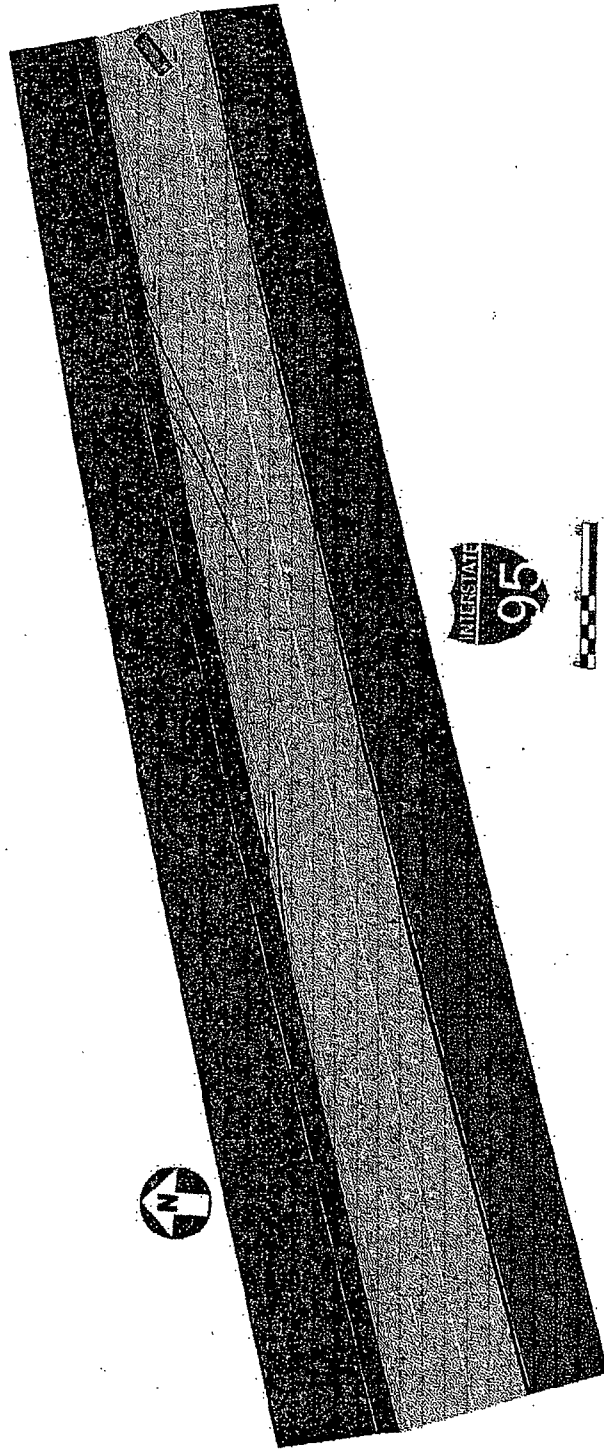
Immediate MAIT Response

Yes	No	Scene Secured
Yes	No	Determine Initial MAIT Need
Yes	No	Short Lived Evidence Marked
Yes	No	Short Lived Evidence Photographed
Yes	No	Witnesses Identified / Interviewed
Yes	No	Primary Investigator Form(s) Completed
Yes	No	South Carolina Traffic Collision Report (TR-310) Completed Neatly
Yes	No	Media Downloaded to Proper Folder

Notes:

[Signature]
Scene Supervisor or Designee Signature

10/18/2012
Date



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Case No. 2013-CP-21-2395

Appeal Tracking No. 2014-001626

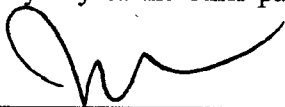
Anthony Fischetti as Executor of the Estate of Concetta Fischetti,.....Respondent,

v.

SeaTruck, Inc., KC Freight LLC and Carlos L.Ceballos,..... Appellants.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(c) of the South Carolina Rules of Appellate Procedure, I certify that the Record on Appeal only contains matter that was presented to the lower court or tribunal. Additionally, pursuant to Rule 209(c), I certify that the Record does not contain matter which is irrelevant to the appeal. Furthermore, and with the exception of certain documents designated by Appellant which were not considered by the lower court or tribunal, I also certify that the Record contains all material proposed to be included by any of the other parties and not any other material.



Mark. S. Barrow
J. Eric Cavanaugh
William R. Calhoun
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, South Carolina 29201
(803)256-2233
Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Case No. 2013-CP-21-2395

Appeal Tracking No. 2014-001626

Anthony Fischetti as Executor of the Estate of Concetta Fischetti,.....Respondent,

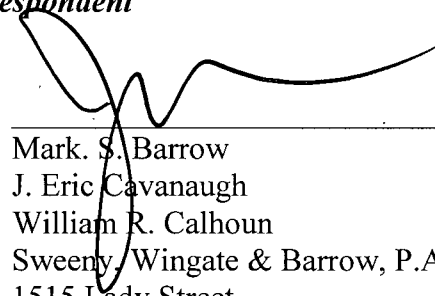
v.

SeaTruck, Inc., KC Freight LLC and Carlos L.Ceballos,..... Appellants.

PROOF OF SERVICE

Pursuant to Rule 211(a), SCRAP, I certify that I have served the Appellant's Final Briefs on Anthony Fischetti as Executor of the Estate of Concetta Fischetti by depositing a copy of them in the United States Mail, postage prepaid, on December 19, 2014, addressed to his attorneys of record, listed as follows:

W. Hugh McAngus, Jr., Esquire
Graham L. Newman, Esquire
Chappell, Smith & Arden, P.A.
Post Office Box 12330
Columbia, SC 29211
Attorneys for Respondent



Mark S. Barrow
J. Eric Cavanaugh
William R. Calhoun
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, South Carolina 29201
(803)256-2233
Attorneys for Appellants