

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

RECEIVED

JAN 27 2015

S.C. Supreme Court

Opinion No. 5268 (S.C. Ct. App. filed August 27, 2014)

Julie Tuten Respondent,

v.

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates; and Heather Glover Defendants,

of whom

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates, are Petitioners.

APPENDIX VOLUME II

Desa Ballard
Harvey M. Watson III
BALLARD & WATSON
P.O. Box 6338
West Columbia, South Carolina 29171
Telephone: 803-796-9299
Facsimile: 803-796-1066
Attorneys for Petitioners

Other Counsel of Record
Tom G. Woodruff, Jr., Esquire
P.O. Box 2783
Aiken, South Carolina 29802
Attorney for Respondent

1 says the court may determine that two or more persons are
2 to be treated as a single party and then you don't have --
3 that's where you have vicarious responsibility, acting in
4 concert or whether by reason of agency, employment, or
5 other legal relationship one is responsible for the
6 conduct of another defendant.

7 Mrs. Ballard, this is -- just sitting up here
8 listening it is just absolutely -- I am trying to use the
9 right word for the record. This relationship or this
10 business or this organizational scheme where we allow
11 someone who is not a South Carolina licensed lawyer to
12 come over here and run ads and that's the only way they're
13 getting cases is through the ads which is legal and they
14 hire an associate in South Carolina to man the South
15 Carolina office that he gets \$100,000 a year salary out of
16 it as well does she. He pays all of the expenses and that
17 at the end of the year after all is said and done if there
18 is a profit then they divide it equally -- one year up to
19 a million dollars -- and for him to be able to say I'm
20 closing the office and, Young Lady, you're my associate,
21 it's all yours and I don't have anything else to do with
22 it, I just don't think he can do that.

23 MRS. BALLARD: Your Honor, that's not the testimony.
24 The testimony is she voluntarily undertook those cases.
25 She wrote letters to those clients and said she was taking

Appendix 184

1 on their cases on her own and Mr. Joel would no longer be
2 involved. The testimony is that she offered to pay a
3 portion of the fee that she recovered in those cases.
4 There is no testimony that he maintained any obligation to
5 supervise. There is no testimony that he exercised any
6 supervision.

7 THE COURT: That's not correct. He just testified
8 that he was still -- I wrote it down.

9 MRS. BALLARD: He testified that he monitored---

10 THE COURT: I monitor the South Carolina cases.

11 MRS. BALLARD: While the South Carolina office was
12 open. The question was what did you do to earn the
13 \$100,000 that you were paid while the South Carolina
14 office was open. He monitored the South Carolina
15 operations -- not after he closed the office.

16 THE COURT: He can't just close an office and walk
17 away from clients who he had signed up and gaining the
18 benefit from.

19 MRS. BALLARD: If another lawyer assumes sole
20 responsibility for it he can.

21 THE COURT: Well...

22 MRS. BALLARD: That's what Rule 1.16 says. You make
23 appropriate arrangements to ensure the continued
24 representation of your clients and he did that. He had a
25 lawyer who had never messed anything up. He totally

Appendix 185

1 relied on her. She was a good lawyer. She had obviously
2 made a significant amount of money in this law firm
3 running the South Carolina office. He had no reason to
4 believe that she would drop the ball on any of these
5 cases. She assumed sole responsibility for them. The
6 jury clearly can allocate negligence between Joel and
7 Associates and Heather Glover acting on her own after June
8 of 2006.

9 THE COURT: I think I am going to respectfully
10 disagree with you. I think they were so interwoven that
11 he can't walk away from it. He was the partner. She was
12 the associate and he was under a responsibility if he's
13 going to close down South Carolina that he's got to assure
14 that those clients have signed up under his ad and his
15 auspices he's got to ensure that they continued to receive
16 proper legal advice services.

17 MRS. BALLARD: May I ask a question about the verdict
18 form then? Is there not going to be an option for the
19 jury to award damages only against Heather Glover?

20 THE COURT: No, ma'am.

21 MRS. BALLARD: Your Honor, we would respectfully
22 object to that on the grounds I stated.

23 THE COURT: You may. I think it is a matter of law
24 that she was his agent. She was working under him. She
25 was an associate in his office and I just don't see how

Appendix 186

1 that I decide not to run that office anymore and I am
2 going to walk away from it and just turn it all over to
3 that associate without any responsibility whatsoever.
4 He's the captain of the ship and I think it's a clear case
5 of a law firm -- if they sued my office they'd be suing me
6 for what my associate did.

7 MRS. BALLARD: Just preserve my objection, Your
8 Honor.

9 THE COURT: You're protected on the record. If you
10 need to put anything else I'll allow it.

11 Now are you going to elect now or afterwards?

12 MR. WOODRUFF: May I elect after the break?

13 MRS. BALLARD: I do have one other issue, Your Honor.

14 THE COURT: Hold on.

15 MR. WOODRUFF: I've got three remaining contract---

16 THE COURT: Well, if I direct a verdict in favor of
17 you on an issue of negligence why in the world do you want
18 to confuse everything and go to the jury on---

19 MR. WOODRUFF: That was my question. I'll be happy
20 to withdraw -- We'll withdraw the contract if you're
21 directing the verdict in our favor on negligence but my
22 question is will the Unfair Trade Practices Act remain?

23 THE COURT: I can't direct a verdict on that. It can
24 go to the jury and if they come back with a verdict on
25 both of them you're going to have to elect then.

Appendix 187

1 MR. WOODRUFF: Yes, sir.

2 THE COURT: I think you are on much stronger ground
3 on negligence than you are on unfair trade practices.

4 MR. WOODRUFF: Yes, sir. At this point I would like
5 to give you an answer after this break. I will give you
6 an answer after the break.

7 THE COURT: Okay. Mrs. Ballard, I don't want you --
8 I mean, you obviously don't agree with me and I disagreed
9 with judges for 30 years and I respect your position
10 immensely. You know how much I respect your ability --

11 MRS. BALLARD: I do, Your Honor.

12 THE COURT: -- and the way you handle your cases and
13 the way you handle your clients.

14 MRS. BALLARD: I appreciate that, Your Honor.

15 THE COURT: But the whole scenario of events is
16 almost despicable; so I want you to be able to protect
17 yourself on the record as much as possible; so if you need
18 to put anything else on the record please feel free to do
19 so or if you want to take a few minutes when we take a
20 break and when we come back I'll give you an opportunity
21 to---

22 MRS. BALLARD: Your Honor, I think I've protected
23 myself on the issues that we've discussed regarding
24 allocating responsibility between Heather Glover and Joel
25 and Associates. I think I protected myself on the UTPA

Appendix 188

1 individually, and doing business as Joel and Associates,
2 PA and Joel and Associates and Heather Glover, in the
3 legal malpractice matter of Julie Tuten versus David
4 Charles Joel, individually, and doing business as Joel and
5 Associates; and Joel and Associates and Heather Glover, we
6 the jury find in favor of Julie Tuten in the amount of
7 \$275,000. Signed by Marcus Taylor, Foreperson of the
8 unanimous jury.

9 If this be your final verdict, please indicate by
10 raising your right hand.

11 (Whereupon, all jurors raise their hand.)

12 THE CLERK: Please note that all hands were raised.

13 THE COURT: Anything for the jury before I dismiss
14 them?

15 MRS. BALLARD: Not for the jury, Your Honor.

16 MR. WOODRUFF: Nothing for the plaintiff, Your Honor.

17 THE COURT: All right. Y'all sit tight one second.
18 I am going to give y'all 10 days to file any post-trial
19 motions.

20 MRS. BALLARD: All right, sir. That's fine.

21 THE COURT: We will stand at ease. Y'all go back in
22 your jury room please for one second.

23 (Whereupon, the jury exited the courtroom at 3:43.)

24 THE COURT: All right. As stated on the record I am
25 going to give Mrs. Ballard 10 days to file any post-trial

Appendix 189

1 motions.

2 I assume, Mr. Woodruff, that you have nothing to add?

3 MR. WOODRUFF: Nothing, Your Honor.

4 THE COURT: Thank you. Thank y'all both very much.

5 (End of Transcript of Record.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Appendix 190

Joel &
Associates

LAW OFFICES



CONTRACT OF EMPLOYMENT AND FEE ARRANGEMENT
PERSONAL INJURY CLAIM

The undersigned, (hereinafter called "Client"), hires Joel & Associates, P.A., (hereinafter called "Law Office"), to represent us as legal counsel for all purposes in connection with claims for damage arising out of an incident which occurred on or about _____, 19____, resulting in injury to _____.

I/We initially agree as follows:

- *1. ATTORNEY FEES & LIEN: Client will pay the Law Offices an attorney fee of;
(a) 37% of the total money recovered, whether by settlement, or after a lawsuit is filed.
33 1/3%
- *2. It is agreed that the case will be handled on a contingent fee basis. That is, if no recovery is made, no attorney fees are owed.
- *3. Medical Expenses: The Law Office is authorized to pay from any settlement or judgment, Client's unpaid medical expenses which were incurred as a result of this claim.
- *4. COSTS ADVANCED: Client shall pay \$00.00 in advance of recovery in this case. Client authorizes the Law Office to incur such costs as necessary for the processing of this claim agrees that all such expenses and costs shall be reimbursed by Client. Client agrees to a minimum administrative cost of \$175.00 to include all investigation, photocopies, postage, long distance telephone calls, courier, accident reports, overnight shipping settlement binders, medical benefits and/or property damage and all other miscellaneous office expenses.

In the event Client dismisses the Law Office after Client receives an offer of settlement on the claim, Client agrees to pay the Law Office one-third of the last offer made within thirty (30) days from the date of dismissal. If Law Office is dismissed prior to an offer of settlement, then it may assert an attorney lien for quantum meruit recovery of \$175 per hour worked, plus costs.

Additionally, in the event of a mistrial, appeal or retrial of my case of action, the amount of contingent legal fees will be subject to negotiation.

You also authorize the Law Office to associate itself, for the purpose of handling your case, with lawyers concentrating in the personal injury field; if we do so, you will not be responsible for any legal fees other than those specified in the Agreement, because we will share our fees with the other lawyers.

WE HAVE READ THE ABOVE, UNDERSTAND THE AGREEMENT AND HEREBY AGREE TO THE TERMS.

CLIENT

JOEL & ASSOCIATES, P.A.

Appendix 191

Date

ROA - 000191

BELLSOUTH



Community
Information

Attorneys

Automobile

Insurance

Physicians &
Surgeons

The DINING GUIDE

PLAINTIFF'S
EXHIBIT
1234 2C 1D

Yellow

CLERK OF COURT of Common Pleas and General Sessions for the County of South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the said documents which have been filed in my office this

JAN 28 2013

Liz Godard
S.C.C.P. & G.A. Allen County, S.C.
Anita Knepper
Deputy Clerk

Augusta Common

Augusta



DOC SAVAGE
HEATING & AIR CONDITIONING, INC.
"Serving the CSRA
for over 25 years"

★ ★ ★ ★ ★ ★ ★ ★
**Save This
TREMENDOUS
Discount Coupon**
Good through June 30, 2004

★ ★ ★ ★ ★ ★ ★ ★
793-4131

Show This Attached Coupon for BIG SAVINGS

**Get \$400 Cash with
Purchase of Home
Air Conditioning &
Heating System...**

Plus, our 25% Energy
Reduction Guarantee,
and 5 to 10 year warranty

— 100% Financing Available —

(Only 1 coupon & discount applied
per purchase)

**\$20 OFF Any
Repair Bill**

You'll get a FREE
2 YEAR WARRANTY
covering both parts
and labor on the
repair that was made.

(Only 1 coupon & discount applied
per purchase)

**Residential & Commercial
24 Hour - 7 Day Service**

GOD BLESS AMERICA

GA License # CN 3748

SC # M1139

013210

Includes customer listings for all
local telecommunications companies.

Appendix 192



Printed on Recycled Paper

ROA - 000192

Community Information

Attorneys

Automobile

Insurance

Physicians & Surgeons

DINING GUIDE

ugusta

**Hines, Evans; Grovetown,
he, Hephzibah, Bath, Beech
nd, SC, Harlem-Apling &
ynesboro, GA**

Includes customer listings for all local telecommunications companies.

Appendix 193

Printed on Recycled Paper

ROA - 000193

BELLSOUTH



GET AN IDEA.

© 1998 YPPA

The Real Yellow Pages®

PLAINTIFF'S
EXHIBIT
1-23-12 B 10



STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

JAN 28 2013

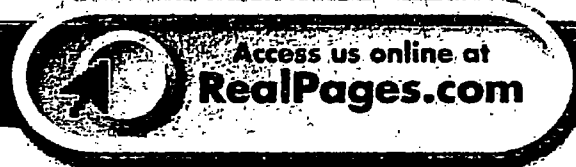
Liz Godard
C.C.C.P. & G.A., Aiken County, S.C.

Anita Knapp
Deputy Clerk

North Augusta, SC
Augusta, GA

including Aiken, Bath, Beech
land, Graniteville, SC, Harlem
planning, GA & Hephzibah, GA

Also Jackson, SC



Includes customer listings for all local
telecommunications companies.

Appendix 194

se until July 2002

ROA - 000194

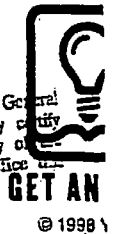
100% Recyclable
Printed on Recycled Paper

©2001 BAPCO



BELLSOUTH

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.



PLAINTIFF'S
EXHIBIT
1-23-12
2 A LD

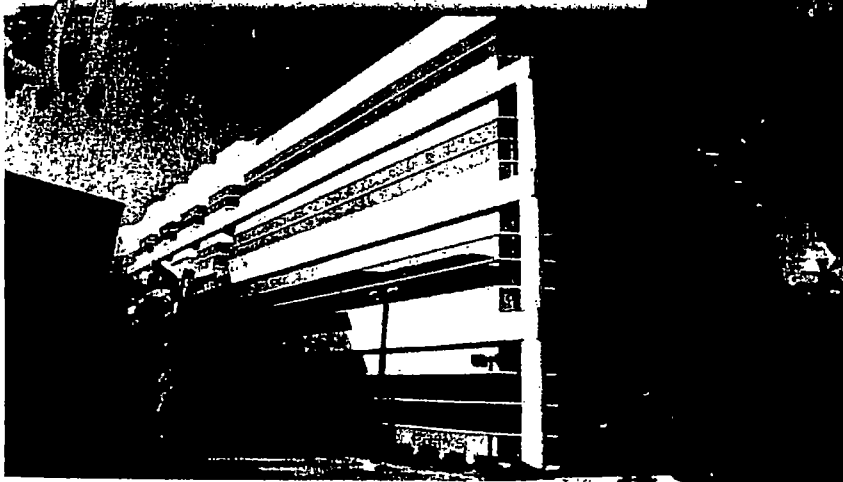
JAN 28 2013

Liz Godard
C.C.P. & G. A., Aiken County, S.C.

Anita Knepper
Deputy Clerk

1-24 '13

*The Real
Yellow Pages*



**North Augusta, SC
Augusta, GA**



Access us online at
realpages.com

Including Aiken, Bath, Beech
Island, Graniteville, SC, Harlem-
Appling, GA & Hephzibah, GA

Also Jackson, SC

Includes customer listings for all loc
telecommunications companies.

Use until July 2001

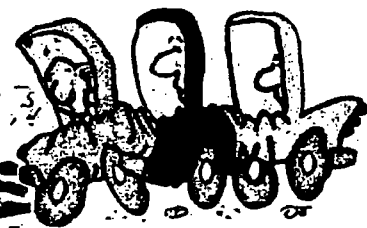
Appendix 195

100% Recyclable
Printed on Recycled Paper

© 2000 BAF

ROA - 000195

PERSONAL INJURY



**"All The Help
The Law Allows" SM**
SINCE 1982

If you've been in an accident call us today.

SETTLEMENTS & TRIALS

AUTOMOBILE ACCIDENTS

WORKERS' COMPENSATION

MEDICAL MALPRACTICE

- | | | |
|------------------------------|----------------------|--------------------------|
| ■ Back & Neck Injuries | ■ Nursing Home Abuse | ■ Whistle Blower Actions |
| ■ Motorcycle Accidents | ■ Pain & Suffering | ■ Defective Products |
| ■ DUI Accidents | ■ Burn Injuries | ■ Head & Brain Injuries |
| ■ Slip & Fall | ■ Wrongful Death | ■ Broken Bones/Scars |
| ■ Herniated & Ruptured Disks | ■ Birth Defects | ■ False Arrest |
| ■ Foster Care | ■ Dog Bites | ■ Libel |

Is Your Company Overbilling The Government? Call Us!

Joel & Associates

www.joelandassociates.com

**IF YOU CAN'T VISIT US
WE'LL VISIT YOU.**

706-722-4113

1753 Peachtree Rd
Atlanta GA 30309

803-401-8881

220 Stoneridge Dr • Suite 410
Columbia SC 29210

Statewide Service - 24 hour Availability
ROA - 000196



David Joel
Member
Georgia Trial Lawyers &
American Trial Lawyers Assoc.

STATE OF SOUTH CAROLINA
COUNTY OF Aiken
I, Liz Godard, Clerk
Sessions for Aiken
that the foregoing
original document

Court of Common Pleas and General
Sessions, South Carolina do hereby certify
this as a true and correct copy of the
which have been filed in my office this

JAN 28 2013

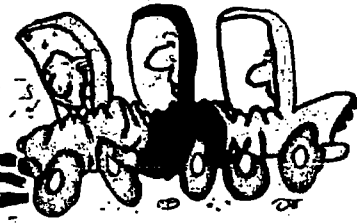
Liz Godard
Clerk of Court, S.C.

with Knepper

CCCF & S.
Deputy Clerk

Appendix 196

PERSONAL INJURY



"All The Help
The Law Allows" SM

SINCE 1982

If you've been in an accident call us today.

SETTLEMENTS & TRIALS

AUTOMOBILE ACCIDENTS

WORKERS' COMPENSATION

MEDICAL MALPRACTICE

- | | | |
|------------------------------|----------------------|--------------------------|
| ■ Back & Neck Injuries | ■ Nursing Home Abuse | ■ Whistle Blower Actions |
| ■ Motorcycle Accidents | ■ Pain & Suffering | ■ Defective Products |
| ■ DUI Accidents | ■ Burn Injuries | ■ Head & Brain Injuries |
| ■ Slip & Fall | ■ Wrongful Death | ■ Broken Bones/Scars |
| ■ Herniated & Ruptured Disks | ■ Birth Defects | ■ False Arrest |
| ■ Foster Care | ■ Dog Bites | ■ Libel |

Is Your Company Overbilling The Government? **Call us!**

Joel & Associates

www.joelandassociates.com

IF YOU CAN'T VISIT US
WE'LL VISIT YOU.

706-722-4113

1753 Peachtree St
Atlanta GA 30309

803-401-8881

220 Stoneridge Dr • Suite 410
Columbia SC 29210

Statewide Service - 24 hour Availability



David Joel
Member:
Georgia Trial Lawyers &
American Trial Lawyers Assoc.

STATE OF SOUTH CAROLINA
COUNTY OF Aiken
I, Clerk of Court of
Sessions for the County, South
Carolina, do hereby certify that the foregoing
original documents which have been
filed in my

JAN 7 2013
CCCC & G.A. Aiken County
Aiken

Appendix 197

Joel & Associates

REPRESENTING INJURY VICTIMS SINCE 1982

ACCIDENTS & INJURIES

ACCIDENTS ON THE ROAD

- Auto, Tractor-Trailer, Motorcycle, Pedestrian
- Brain Injuries, Scars, Burns, Broken Bones
- Death Claims
- Accidents Caused By DUI Drivers
- Back and Neck Injuries and Herniated Disks

Pain and Suffering, Medical Expense and Lost Wage Claims

INJURIES ON THE JOB PREMISES LIABILITY

- Workers' Compensation
- Sexual Harassment & Employment Discrimination
- Whistle Blower Actions
- Wages/Overtime Claims
- Slip and Fall
- False Arrest
- Dog Bites
- Inadequate Security

MEDICAL, NURSING HOME AND PHARMACY MALPRACTICE

Failure to Diagnose Cancer, Birth Defects, Negligent Surgery, Abuse, Neglect, Wrong Prescriptions, Wrongful Death

HOSPITAL AND HOMEBOUND APPOINTMENTS

706-722-4113

1753 Peachtree St. Atlanta, Georgia 30309

803-401-8881

220 Stoneridge Dr. Suite 410 Columbia, SC 29210

"All The Help The Law Allows"

www.joelandassociates.com

1753 PEACHTREE ST. ATLANTA, GA 30309



Member
Georgia Trial Lawyers &
American Trial Lawyers Assoc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
JAN 23 2013
for Allen County, South Carolina, to Henry County
for foregoing, execute a true and correct copy of the
documents which have been filed in my office this

© BELL SOUTH The Road Yellow Pages

Se Habla Español
No Importando Su Situación Migratoria
Statewide Service
24-Hour Availability

PERSONAL INJURY

"All The Help
The Law Allows" SM

SINCE 1982

If you've been in an accident call us today.

ACCIDENTS & INJURIES

ACCIDENTS ON THE ROAD

- Auto, Tractor Trailer, Motorcycle, Pedestrian
- Brain Injuries, Scars, Burns, Broken Bones
- Death Claims
- Accidents Caused By DUI Drivers
- Back and Neck Injuries and Herniated Disks

Pain and Suffering, Medical Expense and Lost Wage Claims

INJURIES ON THE JOB

- Workers' Compensation
- Sexual Harassment & Employment Discrimination
- Whistle Blower Actions • Wages/Overtime Claims • Dog Bites

MEDICAL, NURSING HOME AND PHARMACY MALPRACTICE

Failure to Diagnose Cancer, Birth Defects, Negligent Surgery, Abuse, Neglect, Wrong Prescriptions, Wrongful Death

PREMISES LIABILITY

- Slip & Fall • False Arrest

Joel & Associates

www.joelandassociates.com

IF YOU CAN'T VISIT US
WE'LL VISIT YOU.

706-722-4113

1753 Peachtree St. Atlanta, Georgia 30309

803-401-8881

220 Stoneridge Dr. Suite 410 Columbia, SC 29210

Se Habla Español • No Importando Su Situación Migratoria
Statewide Service - 24 hour Availability



David Joel

Member:

Georgia Trial Lawyers &

Appendix 199

STATE OF SOUTH CAROLINA
JOHN ALLEN

Clerk of Court of Common Pleas and General Sessions
in Allen County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the documents which have been filed in my office.

JAN 28 2013

Lin Hodard

CLERK & C.A. Allen County, S.C.

Anita Knepper

Joel & Associates

REPRESENTING INJURY VICTIMS SINCE 1982

ACCIDENTS & INJURIES SETTLEMENTS & TRIALS AUTOMOBILE ACCIDENTS WORKERS' COMPENSATION MEDICAL MALPRACTICE

- | | | |
|------------------------------|----------------------|--------------------------------------|
| ■ Back & Neck Injuries | ■ Dog Bites | ■ DUI Accidents |
| ■ Pain & Suffering | ■ Burn Injuries | ■ Motorcycle Accidents |
| ■ Slip & Fall | ■ False Arrest | ■ Tractor Trailer Accidents |
| ■ Herniated & Ruptured Disks | ■ Wrongful Death | ■ Premises Liability |
| ■ Head & Brain Injuries | ■ Defective Products | ■ Inadequate Security |
| ■ Broken Bones/Scars | ■ Birth Injuries | ■ Foster Care/Nursing Home Abuse |
| ■ Failure To Diagnose Cancer | ■ Libel & Slander | ■ Pharmacy Negligence/Recalled Drugs |
| ■ Employment Discrimination | | ■ Sexual Harassment |

HOSPITAL AND HOMEBOUND APPOINTMENTS

706-722-4113

1753 Peachtree St.
Atlanta, GA 30309

803-401-8881

220 Stoneridge Dr. • Suite 410
Columbia, SC 29210

Se Habla
Español
No Importando Su
Situación Migratoria

**24-HOUR
AVAILABILITY**

**TATEWIDE
SERVICE**

**"All The Help
The Law Allows"**

www.joelandassociates.com



David Joel
Attorney
Georgia Trial Lawyers &
American Trial Lawyers Assoc.

PERSONAL INJURY

**"All The Help
The Law Allows"**

SINCE 1982

If you've been in an accident call us today.

SETTLEMENTS & TRIALS

AUTOMOBILE ACCIDENTS

WORKERS' COMPENSATION

MEDICAL MALPRACTICE

- | | | |
|------------------------------|----------------------|--------------------------------------|
| ■ Back & Neck Injuries | ■ Dog Bites | ■ DUI Accidents |
| ■ Pain & Suffering | ■ Burn Injuries | ■ Motorcycle Accidents |
| ■ Slip & Fall | ■ False Arrest | ■ Tractor-Trailer Accidents |
| ■ Herniated & Ruptured Disks | ■ Wrongful Death | ■ Premises Liability |
| ■ Head & Brain Injuries | ■ Defective Products | ■ Inadequate Security |
| ■ Broken Bones/Scars | ■ Birth Injuries | ■ Foster Care/Nursing Home Abuse |
| ■ Failure To Diagnose Cancer | ■ Libel & Slander | ■ Pharmacy Negligence/Recalled Drugs |
| ■ Employment Discrimination | | ■ Sexual Harassment |

Joel & Associates

www.joelandassociates.com

**IF YOU CAN'T VISIT US
WE'LL VISIT YOU.**

706-722-4113

1753 Peachtree St.
Atlanta, GA 30309

803-401-8881

220 Stoneridge Dr. • Suite 410
Columbia, SC 29210

**Se Habla Español • No Importando Su Situación Migratoria
Statewide Service - 24 hour Availability**



David Joel
Member:

Georgia Trial Lawyers &
American Trial Lawyers Assoc.

Appendix 201

Turner Lynette B 1672 Gossett Rd 30906 796-6866
 Turner Lynette 2025 Buckhannon Way Aug 30909 667-0301
 Turner M 724 Greene St Aug 30901 828-7030
 Turner M 2220 Louisville Rd Aug 30906 560-0534
 Turner M 2550 Richmond Hill Rd Aug 30906 793-4974
 Turner M 1850 Walker St Aug 30904 729-9611
 Turner M B 812 Springdale Rd 29841 279-4370
 Turner M F 250 Maywood Dr Mtx 30907 860-9357
 Turner M F 3151 Lake Forest Dr 481-0869
 Turner Margaret 1304-1/2 Perry Av 30901 828-6446
 Turner Margaret 2352 Shaw St Aug 30905 771-0712
 Turner Margaret 1750 Sunset Dr 30904 733-9807
 Turner Marion 1842 Darby Dr Augusta 30904 736-3052
 Turner Marion 1312 Perry Av 30901 722-3651
 Turner Marion A 1605 Pine Ridge Dr Hephzibah 798-4211
 Turner Mark 1436 Knob Hill Cr Evans 855-0024
 Turner Mark 315 Bradynia Pl 30909 364-9014
 Turner Mark & Dottie 629 Calhoun Way HA 29860 819-1422
 Turner Marshall Jr 255 Wickliffe Rd 278-2920
 Turner Mary 316 Kirby Av NA 613-1613
 Turner Mary F 610 E Cedar St 30901 722-5491
 Turner Mary F 610 E Cedar St 30901 722-5491
 Turner MD Jr 1124 Brookwood Dr 30909 738-4101
 Turner Mattie Mae 720 Fernview Av 279-5907

TURNER MECHANICAL-

1347 ATOMIC RD-

Far Line 442-4474
 Turner Melissa 910 Hunting Horn Way Evans 10509 442-2140
 Turner Melissa 5304 Cemetery Rd 30813 651-0373
 Turner Melissa 304 W Clinton Av NA 819-9547

TURNER MICHAEL

Turner Michael David 2302 Maple Dr NA 278-0623
 Turner Mike 445 Shadowwood Dr Mtx 30907 863-7146
 Turner Milton 1541 Roswell 30901 736-0595
 Turner Morgan 4205 Anderson Cr Evans 30909 860-2846
 Turner Morris 3408 Lusk St 30906 790-6579
 Turner Moses 253 Chalmers Av Bldg 279-3074
 Turner Mozell 2645 Midwayville Rd 30907 724-5020
 Turner Nathan 5139 Sargent Dr Martinez 30907 868-6645
 Turner Nellie 1125 8th Av 30901 724-5763
 Turner O H Mrs 121 Langston Dr Gwynn 30813 541-9883
 Turner Ola Mae 1492 Chestnut 30901 724-6146
 Turner Ozell 724 Greene St Aug 30901 822-1166
 Turner P H 1436 Wagonway Dr Aug 29841 279-7033
 Turner Painting 1020 Spur Chase Liberty 30991
 Toll Free-Dial '1' & Then 888 805-8087
 Turner Pat 2013 Cason Dr Aug 854-8286
 Turner Patricia 531 March Rd 29840 482-3869
 Turner Patrick 4210 McCombs Rd Hephzibah 30815 798-3520
 Turner Patricia 88 Boy Scout Cr Aug 30909 736-3606
 Turner Paul Webster 2009 Calen Dr Aug 854-0008
 Turner Phillip J 3317 Oakley Springs Rd 30907 863-3083
 Turner R H 3485 Cedars Cr 30905 793-5002
 Turner R L 2609 Woodlawn Cr 30909 737-4368
 Turner Randy 263 Riverbend Dr Beach 1st 29842 803 827-1047
 Turner Ray 6 Avalon Ln North Augusta SC 2942 803 593-8273
 Turner Reginald II 3568 Woodcock Dr Hephzibah 30815 796-7157
 Turner Renee 1131 Jackson Way Gwynn 30813 863-7617
 Turner Richard 4729 Old Post Rd Evans 30909 868-5694
 Turner Richard & Regina 4123 Fair Oaks Rd 30907 869-0610
 Turner Richard W 128 Langston Dr Gwynn 30813 541-4277
 Turner Rob & Lori 3730 Westford Dr Mtx 30907 869-0239
 Turner Robbette 1905 2nd Av Aug 30901 774-6950
 Turner Robert 216 W. Brook Rd 651-8835
 Turner Robert 226 W. Brook Rd Mtx 30907 651-0195
 Turner Robert 1836 Morris Ave Dr HA 29841 279-9159
 Turner Robert D Renta Creek Dr 860-2860
 Turner Robert W Jr Rev 3575 Stevens Way Mtx 30907 863-4778
 Turner Roger & Renee 6039 Silver Birch Pl Aug 30909 738-7484
 Turner Ronald 201 Colonial Rd Martinez 30907 869-0391
 Turner Ronald 126 Langston Dr Gwynn 30813 541-9236
 Turner Rosalyn 2421 6th Dr Aug 30906 796-8201
 Turner Roy H 1706 Woodcock Rd 30906 798-2882
 Turner S 1536 Oak Rd 30906 738-1548
 Turner S A 2325 Mason Rd Aug 30906 560-0328
 Turner S L 4369 Waverford Dr Evans 30909 868-6143
 Turner S N 700 Audubon Cr Bldg 29841 278-2503
 Turner Samantha G 1020 Watson St NA 442-2175

TURNER SAMMY C

1231 Augusta West Pkwy Aug 30909 863-3637
 Turner Sammy C 3714 Marion Dr Martinez 30907 863-7843
 Turner Sanders 2928 Persimmon Dr Mtn 30815 792-1721
 Turner Sandy 1802 Greene St Aug 30901 828-6998
 Turner Shannon & Michael 4614 Rutland Rd Aug 30906 796-1941
 Turner Sharon 2536 Pecan Grove Dr Hephzibah 793-2712
 Turner Sheila M 3404 Pine Hill Rd Hephzibah 796-0276
 Turner Stephen E 419 Aurora Dr 30909 737-6949
 Turner T 2157 Jay Rd Aug 30907 738-4643
 Turner T K 1036 Elm Pkge Rd NA 441-8284
 Turner Taddeus 271 Raccoon Station Rd NA 442-3968
 Turner Teresa 1628 Farthington Dr Hephzibah 30815 793-5729
 Turner Terrell Jr 215 H. Miller Way Martinez 30907 854-1028
 Turner Thomas 2655 Dent 30906 798-0679
 Turner Thomas 3121 Robin Rd 863-2750
 Turner Thomas E 2628 Telser St 30904 736-5774
 Turner Thomas J 125 Lacey Hill Rd NA 279-3839
 Turner Timothy 4104 Sweetwater Dr Martinez 30907 228-4193
 Turner Todd 2551 Yorkstone Dr Aug 30906 667-9068
 Turner Tom O 796-1351
 Turner Tonya N 2560 Spirit Creek Rd Hephzibah 30815 771-1126
 Turner Tracy 2610 Bridgeway Av Aug 30906 771-9361
 Turner Trina 3031 Fox Spring Rd Aug 30906 738-4501
 Turner V F 4275 Owens Rd Evans 30909 228-2559
 Turner V J 633 Edgemoor Rd 29841 442-9902
 Turner Veronica 733-1613
 Turner Virginia T & Michael 2540 Spirit Creek Rd Hephzibah 30815 790-9895
 Turner Vivian 229 Circle View St NA 29841 279-5517
 Turner W Clyde 1628 Maroon Av NA 279-0528
 Turner W L 733-4869
 Turner Walter N 2211 Lerks Cr 30906 854-9679
 Turner Walton I 4629 Hickory Dr Evans 30802 863-7846
 Turner Wayne 667-0414
 Turner Will T 149 Petersburg Cr Martinez 30907 854-8854
 Turner William 177 Breckinridge Dr NA 29841 819-1549
 Turner William 619 Verdery Cr NA 819-0492
 Turner William A 1265 Marks Church Rd 30939 738-7482
 Turner William C 329 Copeland Cr 29840 279-8108
 Turner William C 114 Indian Ridge Dr 278-0748
 Turner William E 2919 Fernwood Dr 30906 798-7536
 Turner William T 3514 1st Rd 30906 798-1375
 Turner Willie 150 Delaney Ct North Augusta 29842 803 594-9327
 Turner Willie Mae 150 Golden Av Aug 30905 790-5597
 Turner Collier Daisy 2607 Saddle Cr Hephzibah 30815 771-1124
 Turner-Mims Brenda 2916 Inwood Dr Hephzibah 30815 792-0693
 Turner's Auto Parts 4558 Wighamsboro Rd 30813 863-1729
 TURNER'S AUTOMOTIVE 4558 Wighamsboro Rd 30813 863-1729
 Turner Herbert P 764 Fairchild Cr Evans Ga 650-2895
 Turning Point Restoration Ministry Church 2321 Peach Orchard Rd Aug 798-2434
 Turnipseed Bridgette 917 Fyche Dr Augusta 30904 736-1202
 TURNIPSEED & BEN ENGINEERS 4210-3a Columbia Rd Martinez 30907 863-8800
 Turns John R 3145 Crane Ferry Rd 30907 860-1581
 Turnipack William 844 S Wigham Wick Dr Gwynn 30813 860-8457
 Turpin Dolan 843 Kismet Dr Augusta 30909 738-5148
 Turpin Rhett & Leslie 1118 Hampstead Pl Martinez 30907 651-9038
 Turpin Wayne 4731 Brookgreen Road 30907 860-3911
 Turquette Suzanne 431 Forest Hills Dr 30909 737-0972
 Turrell Natasha 3190 Skinner Mill Rd 30909 738-7348
 Tursley Katina 1946 Sargent St Aug 30904 738-7088
 Turlon Gloria 4129 Pinchase Pines Cr Hephzibah 30815 793-5641
 Tuschen Bryan 4570 Dewey Dr Martinez 30907 650-0953
 Tushant Arnold 612 Centerville Dr Aug 30909 738-8585
 Tushant Arnold & Gwendolyn 612 Centerville Dr 30909 733-2699
 Tossy James H 3614 Old Ironsides Blvd Aug 798-8520
 Tossy James H 3614 Old Ironsides Blvd Aug 798-8520
 Tossy Amanda & Ashley 934 Deerecrest Cr Evans 30909 868-8133
 Touse Beth 2626 National Woods Dr 30904 738-9875
 Tuten C L & T T 519 Ridgewood Dr 30909 868-8489
 Tuten Cliff 2438 Forest Park Rd 30904 733-9864
 Tuten Connie 24 Curry St 30904 736-2721
 Tuten Ezelle Lee Mrs 2011 Canada Dr 30906 798-1846
 Tuten G Ray 936 Deerecrest Cr Evans 30909 868-7049
 Tuten George E 4205 Smithfield Cr 30909 868-9781
 Tuten J R 24 Curry St Aug 30904 667-0493
 Tuten Julie Elaine 400 McHale St NA 819-9497
 Tuten Lee 104 Fairview St NA 279-8722
 Tuten Nell Mrs 745 Marcell St Aug 30904 737-3279
 Tuten R C 817 Ann 30904 733-8585
 Tuthill B J 2525 Wolf Ct Aug 30907 860-9367
 Tuthill Catherine 72 Boy Scout Cr 30909 481-8871
 Tuthill Chet 1153 Alden Dr 30906 796-2911
 Tutton Tyrone 1655 Fox Den Rd Hephzibah 30815 798-6650
 Tutt Alberta 3111 Harcom Ln Aug 30906 796-9213
 Tutt Annita 3408 Princess Cr 30906 481-0237
 Tutt Beatrice 107 Kings Chapel Rd Mtx 30907 868-7205
 Tutt Brenda B 2182 Ramothwood Dr 30906 790-9892
 Tutt Brittany 281 E Tellair St Aug 30901 828-7650
 Tutt Charlie Mrs 1972 Ellis St 30904 736-0447
 TUTT CHERYL 792-0731
 Tutt Christopher 1252 Hadden Dr Aug 30904 733-5354
 Tutt Derald 3722 Walton Way Ext Augusta 30907 651-9169
 Tutt F 4563 Glenwood Dr Evans 30909 500-5936
 Tutt Freda 1620 Covington Pl 30906 792-0767
 Tutt George 4109 Michael Pl Hephzibah 30815 790-1877
 Tutt J B 3239 Summerchase Cr 30907 733-5442
 Tutt Janie 2725 Spirit Creek Rd Hephzibah 30815 793-3436
 Tutt Johnnie E Sr 1853 Gossett Way 30904 736-6817
 Tutt Joseph 2472 Fyler Ln 30906 853-4564
 Tutt Joseph Jr 4779 Brookgreen Rd Martinez 30907 855-6219
 Tutt Julian 1453 Elwood Pl 30901 722-0162
 Tutt Keith & Stephanie 3315 Coleridge Ct Aug 30904 793-3815
 Tutt L 3511 Jonathan Cr Aug 30906 796-2991
 Tutt L A 2342 Sargent Cr Cr 30906 796-2073
 Tutt Lavette 2594 Larchmont Cr Aug 30909 650-1004
 Tutt M Aug 724-5912
 Tutt M 2633 Chester Av Aug 30906 771-1256
 Tutt Maria 25 McQuay Pl Evans 30907 655-9310
 Tutt Reginald 2754 Wheeler Rd Aug 30909 279-1679
 Tutt Sonya & Ruby 397 Acacia St Aug 30904 722-3985
 Tutt Thomas Jr 2757 Royal St 30906 738-1653
 Tutt Timothy T 1631 15th St 29901 724-2029
 Tutt Upson 2532 Parkway Dr Aug 30904 737-4897
 Tutt Verdery 1397 15th St 30901 737-4897
 Tutt Vernon 2652 Oceanic Rd 868-9478

Tutt Willie & Christine 1002 Hammond Dr NA 29841 278-5934
 Tuttle B W 812 Rutherford Cr 30901 722-4497
 Tuttle Dave 3510 Prestwick Dr Mtx 30907 854-8801
 Tuttle Gates 4128 Marrose Dr Martinez 30907 210-9987
 Tuttle Michael D 215 Flaming Wells Rd Martinez 30907 868-5558
 Tuttle Newton Home 2195 Central Av Aug 30904 738-1472
 Tuttle Richard 4536 H. Side Rd 30809 863-8945
 Tuttle Z L 146 Elmwood Dr Mtx 30907 650-9652
 Tuure John E 2913 Pointwest Dr 30909 733-7296
 Tuxedos By Gings 3319 Washington Rd 30907 868-6779
 Tuxford James 3888 Abner Dr Mtx 30907 650-2639
 Twined Sam B 2316 Woodbine Rd 30904 733-2940
 Tweety J 1002 Greene St Aug 30901 823-1888
 12th & Broad Furniture 1204 Broad St 30901 722-4315
 Twelfth & Broad Furniture 1204 Broad St 30901 722-4315
 Twelve 85 Antique Mart 1245 Broad St 30901 821-3118
 Twelve 85 Antique Mart 1245 Broad St 30901 821-3118
 1210 LAND CO 1210 Edgemoor Rd NA 278-5263
 24 Hour Locksmith 798-9749
 Twice As Nice 1609 Georgia Av NA 279-0132
 Twiford Doug & Linda 263 Maywood Dr Martinez 30907 855-2193
 Twigg John 2514 Crosscreek Rd Hephzibah 30815 790-5105
 Twiggs Fred 664 Ridge Rd 29860 279-6170
 Twiggs Freddie Jr 3322 Sylvester Rd 30906 793-1166
 Twiggs Ida Mae 931 Perks Av 30901 724-4285
 Twiggs Opticians 1402 Walton Way 30901 722-3763
 Twiggs Patricia 2527 Brookshire Rd 30906 793-0701
 Twiggs S W 2923 Stratford Dr 30909 736-8557
 Twiggs S Williams 909 W Washington Rd NA 29841 279-7823
 Twiggs Street Upholstery Shop 2092 Olive Rd 30906 790-5338
 Twilley Robert & Bonnie B 1326 Winghamfield St 30904 733-1303
 Twin States Home Improvement 521 Sharron Dr Aug 30907 869-8010
 Twiss Todd 1009 Maple St Aug 30904 867-9971
 Twitty Tommy J 1157 Alden Dr 30906 796-3080
 2x Customs 1025 Tellair St Aug 30801 724-8216
 2KM Architects Inc. 2275 Wighamsboro Rd Augusta 30904 736-3333
 2KM Architects Inc. 2275 Wighamsboro Rd Augusta 30904 736-7100
 Two Men And A Truck 3520 Wighamsboro Rd Aug 30909 364-1754
 TWO STATE CONSTRUCTION CO Washington Rd Tson 724-1605
 Two State Design Group Washington Rd Tson 724-1605
 Twork Mark E 621 Thomas Dr Martinez 30907 863-3062
 Children's Telephone 621 Thomas Dr Martinez 30907 869-9791
 Ty Lena 2520 Meadowbrook Dr Aug 30906 560-2332
 Tyer Shyam S MD 604 South Hiram Memorial Dr Martinez 30907 650-0705
 Tyler A 432 Evans Hill Dr Evans 30909 868-9666
 Tyler B 2102 Belgrave Cr NA 29841 278-4889
 Tyler B S 1312 Winder St 30904 738-0738
 Tyler Betty Elizabeth Mrs 2704 Hazel 30909 733-7580
 Tyler Buck twindmrt 2181 Townsend Rd & Garrett Rd North Augusta SC 279-5629
 Res W Washington Rd 279-1147
 Tyler C Wyman III 4317 Russell Dr Martinez 30907 650-2270
 Tyler Carl S 1877 Cooney Cr Aug 30906 736-6629
 Tyler Christine 111 Dr L Dr North Augusta 29841 803 594-9112
 Tyler Clinton W Jr Garrett Rd Clark Hill 278-6184
 Tyler Derrive 451 Winghamfield Way 29860 279-8085
 Tyler J H 2206 Monticello Dr Aug 30904 736-6221
 Tyler James D 3 Oakleaf Dr 279-8637
 Tyler James R 3478 Pennade Cr Evans 30909 863-9777
 Tyler Michael 128 Conley Dr 279-2134
 Tyler Hillman 2704 Hazel 30909 733-7580
 Tyler Mitchell H 110 E Hale 30901 722-4015
 Tyler Paul D 406 Ridge Rd Clark Hill 29221 202-0094
 Tyler Reta M 825 Service St 30901 722-9088
 TYLER ROBERT 792-9447
 Tyler Roosevelt 2549 Thomas Ln Aug 30906 793-1124
 Tyler Ryan 601 Broad St Evans 30901 364-2454
 Tyler S 4613 Black Rd Aug 30906 772-9541
 Tyler Simon P 111 Tellur St 30901 724-1589
 Tyler Stephanie 1365 Florence St Aug 30901 826-4841
 Tyler Stephanie & Pete 2369 Slown Branch Rd 29842 803 867-4198
 Tyler V 2105 Vail Dr 30906 773-9159
 Tyler William Briggs 437 Waverly Dr 30909 738-0914
 Tyler Stanley 724 Erene St 30901 724-6453
 Tynan Thomas & Carolyn 3506 Seaton Rd Mtx 30907 860-0443
 Tyndall Jacqueline 950 Stevens Creek Rd Augusta 30907 855-6957
 Tyner Dean & Lynn 5148 Laurel Falls Gwynn 30813 863-6801
 Tyner Derrick 796-2402
 Tyner Garrick 245 W Winghamfield Dr Martinez 30907 210-2580
 Tyner Leonard C & Ulla J 645 Kimberly Pl Evans 30809 869-1052
 Tyner Leach D 3039 Wills Foreman Rd Hephzibah 30815 793-7258
 Typing Pool The 334 Wedgewood Dr 30909 736-7483
 Tyra Kenny 2556 Bridgeway Av Aug 30906 790-9340
 Tyra Larry 383 Timmeridge Dr Martinez 30907 722-6537
 Tyre D Carter 1020 Greens St 30801 722-6537
 Tyre Don Fox Crear Dr 278-4544
 Tyre H E 863-2429
 Tyre H E & Kim 106 Carmel St NA 819-0986
 Tyre H E & Kim 106 Carmel St NA 819-0986
 Tyre Kenya K 1547 Fernside St Aug 30904 722-1901

Tyree McKenzie 2922 Audubon Pl 30906 798-8048
 Tyree McKenzie 3375 Winghamfield Rd Aug 210-8492
 Tyson Monroe 3411 Eden St 30815 796-6363
 Tyrell S A 3725 Millstone Run 30906 793-8184
 Tyrell-Smith Jamie 4513 Kay Cr Evans 30909 651-6568
 Tyron Eric 3150 Skinner M Rd Aug 30909 364-3721
 Tyrell Mark & Miren 1095 Thornwood Dr H Aug 29860 279-9443
 Tyson A C & Elizabeth 2539 Rhodes Dr Aug 30906 796-1999
 Tyson Dan G 1311 Colony Place Dr Augusta 30907 210-4304
 Tyson Earle & Mickey Amway Distributor 734 Riverfront Dr 30901 724-6090
 Tyson Ellis & Shari 1017 Stevens Creek Rd Aug 30907 228-5445
 Tyson Gerard 1705 W Valley Pl Aug 733-8816
 Tyson Karen 473 Old Evans Rd Martinez 30907 651-8311
 Tyson Larellia 1608 Creek Run Rd Hephzibah 30815 278-1869
 Tyson Luther 312 Hest Dr 29841 279-0882
 Tyson Marcell S 400 Fortlane Cr Mtx 30907 860-5297
 Tyson Mary K 3706 Ridgewood Dr Aug 30907 868-6191
 Tyson N H 51 Wabery Cr Gwynn 30813 863-0359
 Tyson R 2318 Maple Dr 29860 278-1869
 Tyson Samuel E Jr 2403 Williams St 30904 738-9766
 Tyson Troy L Rev 209 Heritage Cr 29841 279-4855

U

U Finish It Furniture 3109 Washington Rd Mtx 30907 860-8946
 U-Mail Co Moving Centers-Augusta-1589 Broad St 30904 722-4396
 1802 Gordon Hwy 30904 738-0122
 3363 Wighamsboro Rd 30909 738-6465
 Independent Dealers-Augusta-1689 Atomic Rd 29842 603 302-9031
 2264 Gordon Hwy 30909 738-1113
 3186 Skimpers Rd 30909 733-4444
 1902 Walton Way 30904 738-7976
 Evans-455 Columbia Industrial 855-9006
 4759 Washington Rd 30809 210-4449
 Grovetown-603 E Robinson Av 30811 869-8100
 Hephzibah-3510 Deans Bridge Rd 30815 793-0826
 Martinez-499 C Flaming Wells Rd 650-3016
 3829 Mariner Blvd 30907 651-8846
 North Augusta SC-616 Atomic Rd 278-6537
 4438 Jeff Davis Pkwy 803 593-4846
 U-Washington 1442 Jackson Rd 30909 738-4396
 U-Washington 1442 Jackson Rd 30909 738-4396

U.B. & German Cuisine

The U.B. & German Cuisine
 In a Delightful Comfortable Atmosphere
 Home Made German Dishes & Fabulous German Beer
 Located in Walton Way Plaza
 667-8181

UPS
 UPS/UNITED PARCEL SERVICE
 Toll Free-Dial '1' & Then 800 742-5858
 UPS AIRWAYS EXPRESS
 Passenger Reservations & Information
 Toll Free-Dial '1' & Then 800 478-4343
 Flight Arrivals & Departures
 Toll Free-Dial '1' & Then 800 943-5434
 U S Alterations 4015 Washington Rd Mtx 30907 860-5297

Appendix 202
 800 742-5858
 800 478-4343
 800 943-5434
 860-5297

TURNER-UMPHREY

AREA CODES GA 706-SC 803

AUGUSTA-NORTH AUGUSTA

Turner William 177 Breckenridge Dr NA 29841 819-1549
 Turner William A 1266 Marks Church Rd 30909 738-7482
 Turner William C 329 Copeland Cir 29860 279-8108
 Turner William C 114 Indian Ridge Dr 278-0748
 Turner William E 2919 Fernwood Dr 30906 798-7536
 Turner William T 3514 Ira Rd 30906 798-1375
 Turner Willie 156 Delahanty Ct North Augusta 29842 803 594-9327
 Turner Willie Mae 150 Golden Ave Aug 30906 790-5597
 Turner-Collins Daisy 2607 Sade Ct Heph 30815 771-1124
 Turner-Mims Brenda 2916 Inwood Dr Hephahbah 30815 792-0693
 Turner's Auto Parts 4558 Wrightsboro Rd 30813 863-1729
 Turner's Automotive 4558 Wrightsboro Rd 30813 863-1729
 Turney Herbert P 764 Fairchild Ct Evans Ga 650-2805
 Turning Point Restoration Ministry Church 798-2434
 2321 Peach Orchard Rd Aug 736-1202
 Turnipseed Bridgette 917 Flythe DR Augusta 30904

TURNIPSEED & BEN ENGINEERS

4210-36 Columbia Rd Martinez 30907 863-8800

Turns John R 3145 Crane Ferry Rd 30907 860-1581
 Turpak William 844 S Willow Wick Dr Gwtnw 30813 860-8457
 Turpin Dolan 843 Kamel Dr Augusta 30909 738-5148
 Turpin Rhett & Leslie 1118 Hampstead Pl Martinez 30907 651-9038
 Turpin Wayne 4731 Brookgreen Road 30907 860-3911
 Turquette Suzanne 431 Forest Hills Dr 30909 737-0972
 Turrell Natasha 5073 Sanctuary Dr Aug 30909 210-1354
 Turrell Natasha 3190 Skinner Mill Rd 30909 738-7348
 Turton Gloria 4129 Pinnacle Pines Ct Heph 30815 793-5641
 Tuschen Bryan 4570 Dewey Dr Martinez 30907 650-0953
 Tushant Arnold & Gwendolyn 1349 Wendell Ln Grovetown 30813 228-1999
 Tussey Adriann 798-0247
 Tussey James H 3614 Old Ironsides Blvd Aug 30906 798-8520
 Tuten Amanda & Ashley 936 Deercreek Cir Evans 30809 868-8133
 Tuten Beth 2626 National Woods Dr 30904 738-9875
 Tuten Cliff 2438 Forest Park Rd 30904 733-9864
 Tuten Connie 24 Curry St 30904 736-2721
 Tuten Elizabeth 3719-A Byrd Rd Aug 30906 772-6576
 Tuten Ezzie Lee Mrs 2011 Canada Dr 30906 798-1846
 Tuten G Ray 936 Deercreek Cir Evans 30809 868-7049
 Tuten George E 4205 Smithfield Ct 30809 868-9781
 Tuten Jerry 738-4270
 TUTEN JOSEPH 745 METCALF ST Aug 30904 737-3738
 Tuten Julie Elaine 403 McNeil St NA 819-9497
 Tuten Maggie A 123 Palmetto Av NA 29841 613-9465
 Tuten Phillip 855-5652
 Tuten R C 817 Am 30904 733-8585
 Tutill B J 2925 Wolf Ct Aug 30907 860-9367
 Tutill Chet 1153 Alden Dr 30906 796-2911
 Tutill Kathy 332 Audubon CIR North Augusta SC 29841 441-0046
 Tutt Albert 1730 Sibley Rd Aug 30909 733-5866
 Tutt Annita 3313 Greening Ln Aug 30906 771-9019
 Tutt Beatrice 107 Kings Chapel Rd Mz 30907 868-7205
 Tutt Brenda B 2182 Randlewood Dr 30906 790-9692
 Tutt Brenda B 2182 Randlewood Dr 30906 792-9279
 Tutt Charlie Mrs 1932 Ellis St 30904 736-0447
 Tutt Cheryl 792-0731
 Tutt F 4563 Glenwood Dr Evans 30809 650-5936
 Tutt Freda 1820 Covington Pl 30906 792-0767
 Tutt George 4109 Michael Pl Heph 30815 790-1877
 Tutt Ingrid 2604 Royal ST Aug 30909 736-5328
 Tutt J B 3239 Summerchase Cir 30909 733-5442
 Tutt Janie 2725 Spirit Creek Rd Hephahbah 30815 793-3436
 Tutt Johnny E Sr 1853 Gordon Hwy Aug 30904 736-8817
 Tutt Joseph 2422 Friar Ln 30906 793-4564
 Tutt Joseph Jr 4777 Brookgreen Rd Martinez 30907 855-6219
 Tutt Julian 1643 Blount 30901 722-0162
 Tutt Keith & Stephanie 3315 Cobblestone Ct Aug 30906 793-3815
 Tutt L A 2242 Sewardwood Ct 30906 796-2073
 Tutt Lavette 2504 Larchmont Ct Aug 30909 650-1004
 Tutt M Aug 724-5912
 Tutt Marva 25 Macaulay Pl Augusta 30907 855-9310
 Tutt Sandra 2375 Barton Chapel Rd Aug 30906 792-9031
 Tutt Sonya & Ruby 507 Azalea St Aug 30901 722-3985
 Tutt Thomas Jr 2757 Royal St 30909 738-1653
 Tutt Timothy T 1031 11th St 30901 724-2029
 Tutt Upson 2532 Parkway Dr Aug 30904 737-4897
 Tutt Verdery 1307 13th St 30901 724-2457
 Tutt Vernon 2653 Clanton Rd 868-9478
 Tutt Willie & Christine 1002 Hammond Dr NA 29841 278-5934
 Tuttle B W 812 Riverfront Dr 30901 722-4497
 Tuttle Dave 3510 Prestwick Dr Mz 30907 854-8801
 Tuttle Gates 4128 Melrose Dr Martinez 30907 210-9987
 Tuttle Michael D 215 Flowing Wells Rd Martinez 30907 868-5558
 Tuttle Newton Home 2196 Central Av Aug 30904 738-1472
 Tuttle Richard 4536 Hillside Dr 863-8945
 Tuttle Z L 146 Griswood Dr Mz 30907 650-9652
 Tuure John E 2913 Pointview Dr 30909 733-7296
 Tuxedos By Gingiss 3319 Washington Rd 30907 868-6779
 Tuxedos By Gingiss 3319 Washington Rd Aug 30907 868-6779
 Tuxford James 3888 Almon Dr Mz 30907 650-2639
 Twardowski Stephen 2206 Ridgecrest Dr Aug 30907 210-0982
 Tweety J 1002 Greene St Aug 30901 823-1888
 12th & Broad Furniture 1204 Broad St 30901 722-4315
 12th & Broad Furniture 1204 Broad St 30901 722-4315
 Twelve 85 Antique Mart 1245 Broad St 30901 821-3118
 Twelve 85 Antique Mart 1283 Broad Street 30901 821-3118
1210 LAND CO 1210 Edgfield Rd NA 29860 278-5263
 24 Hour Locksmith 790-9749
 Twiss As Nico 1609 Georgia Av North Augusta SC 29841 279-0132
 Twiford Doug & Linda 288 Maywood Dr Martinez 30907 855-2193
 Twigg John 2914 Crosscreek Rd Heph 30815 790-5105
 Twigg Beanie 26 Gregg St Aug 30901 364-2143
 Twigg Freddie Jr 3322 Sylvester Rd 30906 793-1166
 Twigg Ida Mae 931 Perka Av 30901 724-4285
 Twigg Officers 1402 Walton Way 30901 722-3763
 Twigg Patricia 2527 Brookshire Rd Aug 30906 793-0701
 Twigg S W 2923 Safford Dr 30909 736-8557
 Twigg's Williams 909 W Martintown Rd NA 29841 279-7823
 Twigg Street Upholstery Shop 2002 Olive Rd 30906 790-5338
 Twigg David 1406 Johns Rd Augusta 30904 733-1144
 Twigg Robert & Bonnie B 1325 Vinfield St 30904 733-1303
 Twigg Thomas 1105 15th St Aug 30901 722-0035
 Twiss Todd 1009 Meigs St Aug 30904 867-9971
 Twitty Tommy J 1157 Alden Dr 30906 796-3080

Two Men And A Truck 3520 Wrightsboro Rd Aug 30909 364-1754

TWO STATE CONSTRUCTION CO

937 Greene St Aug 30901 AUGUSTA TEL NO 724-1605

Two State Design Group 937 Greene St Aug 30901 724-1605
 2K Customs 1025 Telfair St Aug 30901 724-8216
 2K Work Mark E 621 Thomas Dr Martinez 30907 869-9791
 2K Work Sarah 621 Thomas Dr Martinez 30907 863-3062
 Ty Lena 2520 Meadowbrook Dr Aug 30906 560-2332
 Tyer Shyam S MD 650-0705
 804 Scott Nixon Memorial Dr Martinez 30907 650-0705
 Tyler A 432 Evans Mill Dr Evans 30809 868-9666
 Tyler B S 1312 Willet St 30904 738-0738
 Tyler Betty E 2704 Hazel St 30909 733-7580
 Tyler Betty Elizabeth Mrs 2704 Hazel 30909 733-7580
 Tyler Buck taxidmstr Martintown Rd & Garrett Rd 29824 279-5629
 Res W Martintown Rd 29841 279-1147
 Tyler C Wyman III 4317 Roswell Dr Martinez 30907 650-2270
 Tyler Carl Sr 1877 Cooney Cir Aug 30904 736-6629
 Tyler Christine LLL D L Dr North Augusta 29841 803 594-9112
 Tyler Christopher 1016 Woods Edge Dr Aug 30904 736-5455
 Tyler Clinton W Jr Garrett Rd Clark Hill 278-6184
 Tyler Derve 651 Whitewood Way 29860 279-8085
 Tyler J 793-6617
 Tyler J H 2208 Morningside Dr Aug 30904 736-6221
 Tyler James D 3 Oakleaf Dr 279-8637
 Tyler James R 3478 Pinnacle Ct Evans 30809 863-9777
 Tyler Judy 815 RUSSELL ST 30904 364-0803
 Tyler Melissa P 12 North Pines Dr NA 29841 613-0737
 Tyler Michael 128 Conifer Dr 279-2134
 Tyler Milledge 2313 Stephanie Ln Aug 30906 790-9457
 Tyler Mitchell H 110 E Hale 30501 722-4015
 Tyler Paul D 60 Ridge Rd Clarks Hill 29821 202-0094
 Tyler Reta M 825 Spruce St 30901 722-9088
 Tyler Robert 3099 Lane Rd Hephahbah 30815 796-7326
 Tyler Roosevelt 2549 Thomas Ln Aug 30906 793-1124
 Tyler Ryan 801 Broad St Evans 30901 364-2454
 Tyler S 4613 Back Rd Aug 30906 772-9541
 Tyler S 1365 FLORENCE ST Aug 30901 364-5159
 Tyler Shirley 2510 Dublin Dr 30906 772-9668
 Tyler Simon P 111 Telfair St 279-1589
 Tyler Stephanie & Pete 2289 Storm Branch Rd 29842 803 867-3360
 Tyler William Briggs 437 Waverly Dr 30909 738-0914
 Tyler Stanley 724 Greene St 30901 724-6453
 Tynan Thomas & Carolyn 3506 Saxton Rd Mz 30907 860-0443
 Tynar Darnelle 3039 Willis Foreman Rd Heph 30815 793-7258
 Tynar Dean & Lynn 5348 Laurel Grovetown 30813 863-6801
 Tynar Derrick 796-2402
 Tynar Gwinnette & Lynn C Jr 3041 Willis Foreman Rd Hephahbah 30815 796-7868
 Tynar Jack D & Lila J 645 Kimberly Pl Evans 30809 869-1052
 Tynar Johnnie L Zachary Pl Augusta 30907 860-4398
 Tynar Lynn C & Gwinnette Jr 3041 Willis Foreman Rd Hephahbah 30815 796-7868
 Tynar Tony 401 Belgrade Rd 30813 860-4129
 Typing Pool The 3344 Wedgewood Dr 30909 736-7483
 Tyra Kenny 2656 Bridgeover Av Aug 30906 790-9340
 Tyra Larry 303 Timberidge Dr Martinez 30907 868-1275
 Tyre D Carter 1002 Greene St 30901 722-6537
 Tyre Don Fox Creek Dr 278-4544
 Tyre H E 863-2429
 Tyre Elsie 2922 Audubon Pl 30906 798-8048
 Tyre Kenya K 1547 Fenwick St Aug 30904 722-1901
 Tyre Lotoya 2037 3rd Av Aug 30901 722-8870
 Tyre Monroe 3911 Ellen St 30815 796-8563
 Tyre Stephanie 2512 W Blackstone St Aug 798-2037
 Tyrell S A 3725 Millstone Run 30906 793-8184
 Tyrell-Smith Janis 1057 Walton's Ct 651-8568
 Tyron Eric 3190 Skinner Mill Rd Aug 30909 364-3724
 Tyron Mark & Miran 1095 Thornwood Dr N Aug 29860 279-9443
 Tyson A C & Elizabeth 2539 Rhodes Dr Aug 30906 796-1999
 Tyson Carol Logan 2613 Berkshire RD Aug 30904 737-3555
Tyson Earle & Mickey
Amway Distributor
794 Riverfront Dr 30901 724-6090
 Tyson Ellis & Shari 4226 Deervood Ln Evans 30809 228-5445
 Tyson Karen 33 Dominion Way Augusta 30907 651-8431
 Tyson Louella 1608 Creek Run Rd Hephahbah 30815 790-0759
 Tyson Luther 512 Hill Dr 29841 279-0882
 Tyson Marcell S 400 Folkstone Ct Mz 30907 860-5297
 Tyson Mary K 3706 Ridgecrest Dr Aug 30907 868-6391
 Tyson R H 51 Wildberry Ct Gwtnw 30813 863-0359
 Tyson R 2318 Maple Dr 29860 278-1869
 Tyson Rodney & Angie 4439 Sapelo Dr Evans 30809 210-1714
 Tyson Samuel E Jr 2403 Williams St 30904 738-9766
 Tyson Taryn 317 Brandywine Pl 30909 364-9059
 Tyson Troy L Rev 209 Heritage Ct 29841 279-4865
 Tyson William 2599 Bridgeport Dr 30909 860-7318
 Tzolis Anna 617 Thomas Dr 30907 364-8798

U

U Finish It Furniture 3109 Washington Rd Martinez 30907 860-8968

U-Haul Co.

Moving Centers-
 Augusta
 1589 Broad St 30904 722-4396
 1802 Gordon Hwy 30904 738-0121
 3363 Wrightsboro Rd 30909 738-6463

Independent Dealers-

Augusta
 1989 Atomic Rd 29842 803 302-9033
 3186 Skinner Mill Rd 30909 738-4648
 2827 Gordon Hwy 30813 210-2985
 214 Tobacco Rd 798-2852
 Evans
 455 Columbia Int'l 30813 855-9065
 4759 Washington Rd Hephahbah 210-4400
 3510 Deans Bridge Rd 30815 793-0820
 Martinez
 3829 Martinez Blvd 30907 651-8840

Continued On Next Column

ROA - 000203

Continued From Last Column

U-Haul Co.

Independent Dealers-
 North Augusta SC
 616-A Atomic Rd 29841 278-4648
 4638 Jeff Davis Pkwy 803 571-2766

U-Wash-Um Carwash 1462 Jackson Rd 30909 738-7326
 U-Wash-Um Carwash 1462 Jackson Rd Aug 30909 738-7326
 U-B's German Cuisine 1944 Walton Way 30904 663-9999
 U-Haulman Wear 2014 Cedar Bridge Rd Aug 30906 796-3080

UPS STORE THE

2115 Columbia Rd Martinez 30907 863-8800

Sessions for Africa
 that the foregoing
 original documents



UPS UNITED-PARCEL SERVICE

Toll Free-Dial '1' A Then 800 742-5636

US AIRWAYS EXPRESS

Passenger Reservations & Information 800 428-8282

Toll Free-Dial '1' & Then 800 943-9433

Flight Arrivals & Departures 800 943-9433

Toll Free-Dial '1' & Then 800 943-9433

U S Alterations 4015 Washington Rd Mz 30907 860-9433

U S Army Recruiting Station Southgate Shopping Center 796-3080

US Battery Mfg Co 3923 Washington Rd Martinez 30907 803 868-8888

U S Discount Insurance Centers 153 Davis Rd Aug 30907 833-9433

U S Discount Tax Centers 153 Davis Rd Aug 30907 833-9433

U S Equipment 4318 Wheeler Rd Martinez 30907 868-8888

U S FOODSERVICE

4268 BELAIR FRONTAGE RD SUITE F Aug 30909 854-7777

U S Golf 217 Bobby Jones EXPW Martinez 30907 869-9433

U S Liquids Of Georgia 3920 Goshen Industrial Blvd 30906 771-9433

U S National Guard 17th St 30901 849-9433

US Sprint Communications Co 1225 Novell Rd 30901 Aug Tel No 722-0000

USA Datanet-Sales 877 499-7272

Toll Free-Dial '1' & Then 877 512-5122

Toll Free-Dial '1' & Then 877 512-5122

USA Grocers 2700 Peach Orchard Rd Aug 793-7326

U S A Medical 3316 Perkins Rd Aug 30906 798-7326

USASC & FG Provost Av Fl Gardn 849-9433

USF Glen Moore 1745 Doug Barnard Pkwy Aug 30906 736-5080

Ubben Steven 736-5080

UBS PAINWEBBER 633 Berckman Rd 30909 737-9433

Ucb Chemicals Corp Langley Plant 403 Carlls Rd Langley SC 803 593-9433

Uchenudo Rose 4417 Sapelo Dr Evans 30809 651-8431

Uchman B J 446 N Bolary Rd Evans 30809 650-1052

Uchman Carol & Larry 258 Fairfax St Martinez 30907 868-8888

Udell Ronald 1416 Ranch Dr 30909 738-1111

Udell Shannon M 419 Evans Mill Cir Evans 30809 869-1111

Udendi Barbara 613-1052

Udeshi Dhruv 3211 Heritage Cir Aug 30909 736-0000

Udom Varesia I 1424 Sycamore Dr Aug 30909 736-0000

Uffmann Susan 344 Cantwell Way 30907 863-1111

Ufret Jose 4029 S Whispering Pines Rd 30906 798-2727

Ufret-Quinones M 379 Wasmant Dr 30907 863-9433

ugusta Richmond County 328 Riverfront DR Augusta 30901 842-0000

Uhl Linda 3003 Creekview Ct 30907 860-1111

Uhl Steven & Joanne 312 Timberidge Dr Martinez 30907 774-7777

Ujlin Rui MD 1303 D'Antignac St 30901 442-3888

Ulate E 819-1888

Uldrick Gene 7 Curry Ct 29860 868-7326

Ullah Sana 3730 Westlake Dr Martinez 736-1888

Ulm J E 407 Sheffield Cir 30909 798-6500

Ulm Lee 1906 Fairway Dr 30906 650-1052

Ulm Thomas Clinton 5134 Fairington Dr Evans 30809 279-0000

Ulmer Thomas 821 Woodlawn Av NA 279-0000

Ulmer Thomas 731-0777

Ulrich Geoff 2604 Coventry Rd Aug 30909 772-7777

Ulrich Kathie 2027 Dunham Ct Aug 30906 651-9433

Ulrich Lane MD 2824 Hillcreek Dr 30909 651-9433

Ulrich Lane MD 2824 Hillcreek Dr Aug 30909 210-1052

Ulrich Lane & Debra 206 Avondale Dr Aug 30907 651-9433

Ulrich Lane MD 2824 Hillcreek Dr Aug 30909 210-1052

Ultimate Credit Services Inc 792-9433

Ultimate Exposure Hair Studio 3039 Meadowbrook Dr Aug 30906 278-4648

Ultimate Hobbies 401 W Martintown Rd 613-1111

Ultimate Outdoors-Fishing 522 Edgfield Rd NA 29841 613-1111

Ultimate Outdoors-Paintball 522 Edgfield Rd NA 29841 613-1111

Ultimate Outdoors-Paintball 2115 Kings Way Aug 30904 Tel No 210-1052

Ultimate Travel Planners 330 Barnsley Dr Evans 30809 823-1000

Umans Idolipse 1300 Warren Hires Dr Aug 30901 772-6677

Umans Jane 652 Bennocks Mill Rd Aug 30906 772-6677

Umans Jane 652 Bennocks Mill Rd Aug 30906 772-6677

Joel & Associates

LAW OFFICES

December 15, 2003

Ms Judy Tuten
403 McNair Drive
North Augusta, SC 29841

Re: Your Personal Injury Claim

Dear Ms Tuten:

I would like to take this opportunity to introduce myself. I am the case manager assigned to assist you in your claim. Please call me every few weeks with an update on your medical condition and/or treatment.

It is very important to let me know of any and all medical facilities, doctors, chiropractors, specialists, ect. that provide you with treatment as well as any x-rays, Cat Scans or MRI's taken due to injuries you sustained in this accident. If you are seen at the hospital more than once for these injuries, please provide me with each date of service. I will also need to know the name and phone number of your treating physician. Please forward all bills you receive to me, as well as itemized prescription receipts. We would prefer to have the bills before any insurance payments are reflected.

Once you have been released from all medical care, please notify me immediately. At that time we will put together a settlement package and begin the negotiation process in an attempt to settle your case. It is very important that you contact us if your address or phone number changes at any time during the course of this claim. If we can not contact you, we can not let you know how your case is progressing.

Please feel free to contact me anytime with any questions or concerns.

Sincerely,

Anne Weaver

Anne Weaver
Case Manager
1-800-651-8881



Joel & Associates

LAW OFFICES

December 15, 2003

Ms Judy Tuten
403 McNair Drive
North Augusta, SC 29841

Re: Your Personal Injury Claim

Dear Ms Tuten:

Thank you for retaining Joel and Associates to pursue a recovery in your claim for personal injury. At Joel and Associates, we are concerned with preserving your rights, making sure you get any necessary medical treatment and settling your claim with the utmost speed and effectiveness.

If at any time during your case an insurance representative contacts you, please refer him or her to our office. DO NOT discuss your case with him or her. In addition, if you should receive any medical bills or have any receipts regarding your case, please provide us with a copy of the original.

We welcome any questions you may have throughout your case and will be more than happy to meet with you in our office to discuss these matters with you personally. And remember, it is very important for you to keep your address and telephone numbers current with our office.

Again, thank you for retaining Joel and Associates. Should you have any questions, please do not hesitate to call on us.

Sincerely,



Heather A. Glover, Esq.

Ann Weaver

Dear Mrs. Heather Blower,

Due to the fact that I have been
unable to contact you neither through
phone, fax or mail, I wish to terminate
you or my attorney unless you
contact me within ten day of this
letter I hope to hear from you

Thank you,
Julie Guten

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Joel & Associates
1753 Peach Tree St.
Atlanta Ga
30309

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

T.E. MITCHELL

C. Date of Delivery

6/5/07

- D. Is delivery address different from item 1?** ☐ Yes ☒ No
- If YES, enter delivery address below:

3. Service Type

- ☐ Certified Mail
- ☐ Registered
- ☐ Express Mail
- ☐ Return Receipt for Merchandise
- ☐ C.O.D.

4. Insurance? (Extra Fee)

- ☐ Yes
- ☒ No

24

102595-02-M-1540

U.S. Postal Service™

CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$	
Certified Fee	
ATLANTA GA 30309	
Return Receipt Fee (Endorsement Required)	\$0.41
Restricted Delivery Fee (Endorsement Required)	\$2.65
Total Postage & Fees \$	\$2.15

Postmark
Here

0658

02

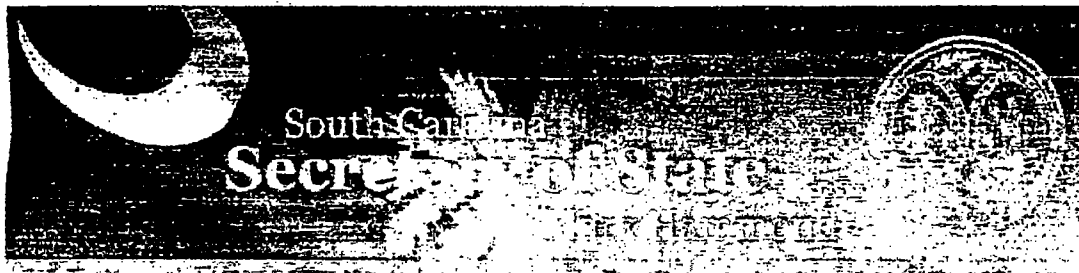
Sent To

Joel & Associates
Street, Apt. No.,
or PO Box No. 1753 Peach Tree St.
City, State, ZIP+4 Atlanta Ga. 30309

\$5.21

06/01/2007

ROA - 000206

**JOEL & ASSOCIATES, PA**

*Note: This online database was last updated on 9/29/2009 6:03:16 PM.
See our Disclaimer.*

DOMESTIC / FOREIGN:

Domestic

STATUS:

Forfeiture

STATE OF INCORPORATION

SOUTH CAROLINA

/ ORGANIZATION:

Profit

REGISTERED AGENT INFORMATION**REGISTERED AGENT NAME:**

JAMES W BRADFORD JR

ADDRESS:

220 STONERIDGE DR, STE 410

CITY:

COLUMBIA

STATE:

SC

ZIP:

29210

SECOND ADDRESS:**FILE DATE:**

01/29/1996

EFFECTIVE DATE:

01/29/1996

DISSOLVED DATE:

09/24/1997

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Forfeiture	09/24/1997	FORFEITURE #2	Image
Incorporation	01/29/1996	INCORPORATION	Image

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

BellSouth Yellow Pages

Joel & Associates

Georgia 2005

This agreement shall serve to set forth the terms of the advertising program for Attorney David C. Joel and Associates for BellSouth directories publishing in Georgia.

- * The directories included appear on the attached directory schedule.
- * The program will include the display ad indicated at the heading of Attorneys.
- * The program will also include the outside back cover space for the following directories: Atlanta Business White Pages, Clayton, Columbus, Eatonton, Fairburn, Grantville, Greenville, Hogansville, Rockmart, Rome, and Sparta.
- * The program will include the tabs for Augusta and Gainesville.
- * The monthly rate for this program will average \$40,000 which will be billed on a prorated basis as directories publish.
- * Additional advertising and/or cover space may be purchased and will be in addition to the agreed upon monthly rate.
- * Color upgrades are available in most markets at additional rates.
- * This plan is a one (1) year plan only and remains in effect for 1 year contingent upon the directory advertising charges remaining current. Any fees or charges incurred due to late payment of monthly bills will be the sole responsibility of Joel & Associates.

Signature: _____

Joel & Associates

Date: _____

9/7/05

Signature: _____

Mary K. Bell

Date: _____

9/7/05

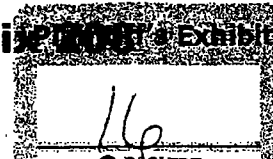
Signature: _____

Richard J. Gomez

Date: _____

10/10/05

Appendix 2005 Exhibit



Reminder: AOL will never ask you to send us your password or credit card number in an

This message has been scanned for known viruses.

From: GloverAttorney

To: DCJDEL

Subject: pat mcwhitter

Date: Sun, 14 May 2006 1:48:55 PM Eastern Daylight Time

I don't know if Pat has gotten hold of you yet or not but he called me saturday at home and told me that it wasn't going to work out and since he couldn't hire me, he didn't want any of the cases.

What Pat said about having to have the client's consent before another attorney looks at a file is true under the SC rules. There was a specific ruling on it where an attorney - Michael Hart - was sanctioned for not getting the client's permission in writing before allowing another attorney to review it. I talked to two other attorneys that we work with about taking the cases and neither one of them is willing to take all the cases. If we get the client's permission in advance in writing, they will happily review the cases and take the ones they want. No one is willing to take a chance on being sanctioned by just relying on the language in our contract - espically not since Pat contacted the ethics person and sought an opinion. Now we are on the radar with the ethics board.

The only way I see this office closing on the 24th like you want is if I keep the cases and work them on my own. It is not my first choice and I would not be permanently opening an office on my own. But what I am willing to do is take all the current cases and work them to conclusion, giving you 1/3 of the generated fees. Because my bar license is on the line I will also take care of the cases that still have funds in the escrow account. There is no firm money in the account - only client's money. When I opened the account, I did not put any buffer money in there.

I believe that since I am currently the so licensed attorney handling the cases that I can continue to handle them without having to get permission from the clients. I should be able to send them a letter letting them know that the firm is closing but I will continue to handle their cases to the conclusion and giving them new contact information. Given the fact that I have already called a vast majority of them and told them about Pat, I think at this point, the less change for them, the better chance we won't loose them all together.

If you are unable to get out of paying the phone bill and want to piggy back the 1-800 number onto my new phone line, I would take any new cases generated on the same arrangement of giving you 1/3 of any fees generated.

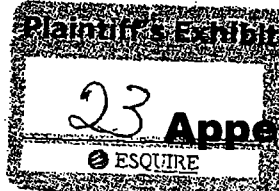
If this is the way we agree we are going to shut things down by next week, I will send you a list of all clients currently in the office so you can keep up with the fees along with a formal letter for us to both sign agreeing on the fee split. You could also generate the same client list off of needles but I don't know how. I will need to get a working phone line to give to the clients as a new contact as well as open an escrow account, get a business license ect asap.

When I told Anne that the office was closing she basically stopped working and insists that she will be using her vacation days so I am basically on my own right now. I have a court date on Wednesday for one of the pro-bono cases as well.

I will be waiting to hear from you on how you want to proceed.

Thanks

heather



COPY

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

CLERK'S OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA

2008 AUG 18 PM 12:58

DAVID C. JOEL,
ATTORNEY AT LAW, P.C.
d/b/a JOEL & ASSOCIATES,

Plaintiff,

v.

WACHOVIA BANK,

Defendant.

Civil Action File No

10M LAWLER, CLERK

08A-07530-1

VERIFIED COMPLAINT

COMES NOW Plaintiff David C. Joel, Attorney at Law, P.C. d/b/a Joel & Associates ("Joel & Associates") and files this Complaint against Defendant Wachovia Bank ("Wachovia" or the "Bank") showing the Court as follows:

PARTIES

1. Plaintiff Joel & Associates is a Georgia professional corporation with its principal place of business located in Fulton County, Georgia.
2. Defendant Wachovia is a North Carolina based banking entity which operates numerous locations throughout Georgia, including in Fulton and Gwinnett Counties. Wachovia is registered to do business in this State and maintains its registered agent, through which service may be completed, as Corporation Service Company, 40 Technology Parkway South, #300, Norcross, Gwinnett County, Georgia 30092.

JURISDICTION AND VENUE

3. Jurisdiction and venue are proper in this Court as Defendant is registered to do business in the State of Georgia and maintains its registered office within Gwinnett County, Georgia.

STATEMENT OF FACTS

4. At the time of the events complained of Joel & Associates maintained a law office in Columbia, South Carolina. Joel & Associates employed an attorney named Heather Glover in this office.
5. In or about May 2006, Joel & Associates closed its Columbia office and entered into an agreement with Ms. Glover under which she would continue handling representation of Joel & Associates' remaining South Carolina cases with an agreement to split fees with Joel & Associates. Because Ms. Glover was handling all of the open matters, the forwarding address for the office was set up to forward all mail directly to Ms. Glover's new address. Following her separation from Joel & Associates, Ms. Glover did not retain Joel & Associates' authorization or permission to endorse, negotiate, deposit, or otherwise take any action with respect to checks made payable to Joel & Associates or the firm's clients except to act as Joel & Associates' agent in forwarding the checks to Joel & Associates' Atlanta office for processing.
6. In or about July 2007, Joel & Associates first learned of problems with Ms. Glover's handling of the South Carolina cases for Joel & Associates. After learning of certain problems, Joel & Associates undertook to locate Ms. Glover.
7. As part of its efforts to locate Ms. Glover, Joel & Associates contacted one of its associated South Carolina litigation firms, McWhirther, Bellinger & Associates, P.A., and asked about Ms. Glover's whereabouts. During the call, Pat McWhirther informed Joel & Associates that McWhirther had sent at least six (6) checks payable to Joel & Associates (the "McWhirther Checks") to the firm's Columbia, South Carolina office after that office was closed and the mail forwarded to Ms. Glover.

8. Joel & Associates obtained copies of the McWhirther Checks, totaling in excess of \$180,000, and contacted Branch Banking and Trust Company (the issuer bank) and Wachovia (the depository bank) to initiate investigations to determine who endorsed the checks and whether the proceeds had been allocated to any accounts belonging to Joel & Associates.
9. On or about February 6, 2008, Joel & Associates received an update on Wachovia's investigation from Mr. Bob Black. Wachovia confirmed that the six McWhirther Checks were deposited, along with twenty-two (22) other checks payable to Joel & Associates into a Wachovia account for which Joel & Associates was not the owner. According to Wachovia's update, two other checks purportedly made payable to clients, then to Joel & Associates, and then to Ms. Glover were also deposited into this account. Wachovia would not confirm whether the account belonged to Ms. Glover or provide further information.
10. Although Ms. Glover had no authority or permission to endorse, negotiate, deposit, or cash checks made payable to Joel & Associates or the firm's clients, upon information and belief, Ms. Glover fraudulently endorsed the McWhirther Checks in the name of Joel & Associates and retained the proceeds for her own personal benefit. The total damage to Joel & Associates resulting from Wachovia's payment on the McWhirther Checks totals in excess of \$180,000.
11. Wachovia's February 6, 2008 update disclosed that a total of thirty (30) checks payable to Joel & Associates (including the McWhirther Checks) were deposited into the same Wachovia account. The total for these deposits was in excess of \$350,000. Joel & Associates' damages may exceed this figure once discovery is conducted.
12. As the Bank accepted these checks for payment, they were funds which stood to the credit of Joel & Associates.

13. Although each of these checks was honored and paid by Wachovia, Joel & Associates never received the proceeds of these checks through deposit to its accounts or otherwise.
14. The established practice for the negotiation of checks payable to Joel & Associates' accounts was for Joel & Associates to use a deposit stamp containing a restrictive endorsement. Neither Ms. Glover nor anyone else had authority to endorse checks made payable to Joel & Associates by a handwritten endorsement.
15. The acceptance of an endorsement other than Joel & Associates' restrictive endorsement stamp was not authorized by Joel & Associates and does not comply commercial banking standards.
16. Upon being presented with an endorsement which is irregular on its face, as are each of the endorsements on the McWhirther Checks under the circumstances, Wachovia was under a duty to inquire about the endorsement and determine whether it was, in fact, made by an authorized endorser and in keeping with reasonable commercial standards of fair dealing.
17. The lack of a proper endorsement on the checks should have prevented the Bank from making any payment whatsoever on these checks.
18. Despite the irregularity of the endorsements on the checks, Wachovia made payment on these checks and in so doing caused damage to Joel & Associates.

COUNT I

CONVERSION

19. Plaintiff incorporates by reference, as if fully restated herein, the averments contained in paragraphs 1 through 18 of this Complaint.
20. Joel & Associates came into possession of the checks described above through delivery of the instruments to Joel & Associates' agents and employees.

21. Upon receipt by these agents and employees, the checks were fraudulently endorsed and presented to Wachovia for payment or deposit by a person or persons not entitled to enforce the instruments or receive payment.

22. Wachovia converted the checks under O.C.G.A. § 11-3-420 when it made payment on these checks to a person or persons not entitled to enforce the instruments or receive payment.

23. Wachovia is liable for its actions in converting the checks in an amount to be proven at trial.

COUNT II

NEGLIGENCE

24. Plaintiff incorporates by reference, as if fully restated herein, the averments contained in paragraphs 1 through 18 of this Complaint.

25. Wachovia had a duty to Joel & Associates to conduct its operations in a commercially reasonable manner and in keeping with reasonable commercial standards of fair dealing and known commercial banking practices.

26. Wachovia breached these duties in making payment on or depositing the checks as described above.

27. Wachovia's negligence is the proximate cause and cause in fact of damages to Joel & Associates.

28. As a result of Wachovia's actions, Joel & Associates has suffered damages in an amount to be proven at trial.

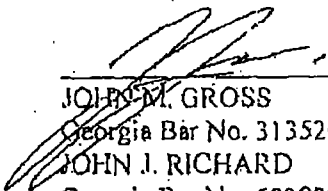
WHEREFORE, Plaintiff prays:

a. That the Plaintiff have a trial by jury on all issues so triable;

Appendix 214

- b. That the Court enter judgment against the Defendant on each count of this Complaint;
- c. That the Court award compensatory and actual damages as a result of the Defendant's conduct; and
- d. That the Court award Plaintiff such other and further relief as is just and proper.

Respectfully submitted this 15th day of August, 2008.


JOHN M. GROSS
Georgia Bar No. 313520
JOHN J. RICHARD
Georgia Bar No. 603989

Taylor, Busch, Slipakoff & Duma LLP
1600 Parkwood Circle, Suite 200
Atlanta, GA 30339
Telephone: 770-434-6868
Facsimile: 770-434-7376

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

DAVID C. JOEL,
ATTORNEY AT LAW, P.C.
d/b/a JOEL & ASSOCIATES,

Plaintiff,

v.

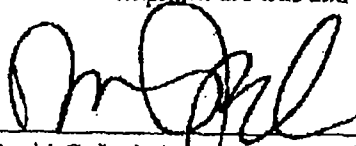
WACHOVIA BANK,

Defendant.

Civil Action File No. _____

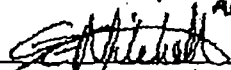
VERIFICATION

Personally appeared, David C. Joel, an authorized affiant of David C. Joel, Attorney at Law, P.C., who, after being duly sworn, states that the facts alleged in the foregoing Plaintiff's Verified Complaint are true and correct based on my personal knowledge.



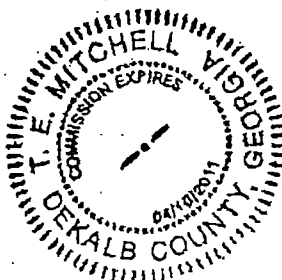
David C. Joel, Attorney at Law, P.C.
By: David C. Joel

Sworn and subscribed before me
This 5th day of July, 2008.



NOTARY PUBLIC
My Commission expires on 4/10/2011

[SEAL]



Appendix 216

**Joel & Associates
South Carolina Schedule
2002-2003**

BOLT CODE	DIRECTORY NAME	# COL	DISTRIBUTION	CLOSE DATE	PUBLISH DATE	AD SIZE	TYPE	PHONE #	MONTHLY RATE
100273	AIKEN	4	63,872	4/23/03	7/31/03	FP		(803) 648-5002	
66034	ALLEDALE	3	5,401	3/6/03	5/31/03	FP		(803) 584-0081	
66352	GR. ANDERSON	4	105,477	12/23/02	3/31/03	FP		(864) 225-0558	
66058G	BARNWELL	3	20,724	3/6/03	5/31/03	FP		(803) 259-0020	
66070	BATESBURG	3	10,293	9/3/02	10/31/02	FP		(803) 532-5111	
66142	CAMDEN	3	34,463	10/8/02	12/31/02	FP		(803) 424-0505	
66190	CLINTON	3	14,167	11/19/02	2/28/03	FP		(864) 833-3001	
66214H	COLUMBIA	4	458,768	11/11/02	2/28/03	DHC		(803) 401-8881	
66268	EASLEY	4	54,429	3/12/03	5/31/02	FP		(864) 306-0200	
66274H	EDGEFIELD	3	9,530	9/3/02	10/31/02	FP		(803) 637-2300	
66322	GAFFNEY	3	36,041	2/14/03	4/30/03	FP		(864) 488-8004	
66358	GREENVILLE	4	358,595	7/21/03	10/31/03	FP4P		(864) 232-1605	
66634H	NEWBERRY	3	21,250	11/19/02	2/28/03	FP		(803) 276-0043	
66682	ORANGEBURG	4	45,447	3/6/03	5/31/03	FP		(803) 534-0083	
66761	SENECA	4	78,554	12/23/02	2/28/03	FP		(864) 882-5008	
66793	SPARTANBURG	4	183,911	10/14/02	12/31/02	FP4P		(864) 585-1005	
66796	SPRINGFIELD-SALLEY	3	1,585	9/3/02	10/31/02	FP		(803) 258-1111	
66718	ST. GEORGE	3	7,896	5/9/03	7/31/03	FP		(843) 563-6005	
66862H	UNION	3	18,912	10/22/02	12/31/02	FP		(864) 429-0105	
66910	WHITMIRE	3	2,793	11/19/02	1/31/03	FP		(803) 694-4455	
66958F	YORK	3	29,198	10/9/02	12/31/02	FP		(803) 684-0042	

Redacted by Desa Ballard

• OBC

ROA - 000217

Appendix 217
PREPARED BY MARY BELL

Case Listing By Statute Of Limitations Date



Case	First Party Name	Code	Description	Lim Date	Staff Assigned	Staff #1	Case Type	Filed	Suit
218322	Moody, Mr. Alfonzo		LIM. STATUTE OF LIMITATION	2/19/2008	ANNE GLOVER	SC MVA	00/00/0000		
218324	Toby, Jr., Mr. Bobby		LIM. STATUTE OF LIMITATION	6/2/2008	ANNE ANNE	SC MVA	00/00/0000		
218349	Turner, Ms. Deborah		LIM. STATUTE OF LIMITATION	8/24/2008	ANNE GLOVER	SC MVA	00/00/0000		
218363	Turner, Mrs. Bobbie		LIM. STATUTE OF LIMITATION	8/24/2008	ANNE GLOVER	SC MVA	00/00/0000		
218384	Turner, Ms. Krystal		LIM. STATUTE OF LIMITATION	8/24/2008	ANNE GLOVER	SC MVA	00/00/0000		
218385	Phillips, Ms. Rachel		LIM. STATUTE OF LIMITATION	8/24/2008	ANNE GLOVER	SC MVA	00/00/0000		
218399	Taylor, Ms. Patricia		LIM. STATUTE OF LIMITATION	8/28/2008	ANNE ANNE	SC MVA	00/00/0000		
218165	Caathers, Mr. Lloyd (Deceased)		LIM. STATUTE OF LIMITATION	8/28/2008	ANNE ANNE	SC MVA	00/00/0000		
218402	Glee, Ms. Dian		LIM. STATUTE OF LIMITATION	4/7/2008	ANNE GLOVER	SC MVA	00/00/0000		
218403	Glee, Mr. Capal		LIM. STATUTE OF LIMITATION	4/7/2008	ANNE GLOVER	SC MVA	00/00/0000		
218404	Glee, Mr. Tavarus (Minor)		LIM. STATUTE OF LIMITATION	4/7/2008	ANNE GLOVER	SC MVA	00/00/0000		
218441	Glee, Mr. Capal (Minor)		LIM. STATUTE OF LIMITATION	4/7/2008	ANNE GLOVER	SC MVA	00/00/0000		
218442	Williams, Ms. Tava		LIM. STATUTE OF LIMITATION	4/7/2008	ANNE GLOVER	SC MVA	00/00/0000		
218446	Jenkins, Ms. Bertha		LIM. STATUTE OF LIMITATION	4/11/2008	ANNE GLOVER	SC MVA	00/00/0000		
218444	Brooks, Mr. Mala Kiy (Minor)		LIM. STATUTE OF LIMITATION	4/11/2008	ANNE ANNE	SC MVA	00/00/0000		
218445	Brooks, Mr. Raheem (Minor)		LIM. STATUTE OF LIMITATION	4/11/2008	ANNE ANNE	SC MVA	00/00/0000		
218446	Jenkins, Mr. DeMarquize (Minor)		LIM. STATUTE OF LIMITATION	4/11/2008	ANNE GLOVER	SC MVA	00/00/0000		
218447	Johnson, Mr. Jayod		LIM. STATUTE OF LIMITATION	4/11/2008	ANNE GLOVER	SC MVA	00/00/0000		
218448	Johnson, Mr. Malcolm		LIM. STATUTE OF LIMITATION	4/11/2008	ANNE GLOVER	SC MVA	00/00/0000		
218655	Cromer, Mr. Christopher		LIM. STATUTE OF LIMITATION	4/16/2008	ANNE GLOVER	SC MVA	00/00/0000		
218525	Brogan, Ms. Maggie		LIM. STATUTE OF LIMITATION	4/24/2008	ANNE GLOVER	SC MVA	00/00/0000		
218661	Ramey, Ms. Ashley		LIM. STATUTE OF LIMITATION	4/25/2008	ANNE ANNE	SC MVA	00/00/0000		
218662	Stallings, Mr. Wade		LIM. STATUTE OF LIMITATION	5/6/2008	ANNE ANNE	SC MVA	00/00/0000		
218656	Walker, Miss Brenda		LIM. STATUTE OF LIMITATION	6/6/2008	ANNE GLOVER	SC MVA	00/00/0000		
218679	Whitt, Miss Catina		LIM. STATUTE OF LIMITATION	6/9/2008	ANNE ANNE	SC MVA	00/00/0000		
218680	Whitt, Miss Latesha		LIM. STATUTE OF LIMITATION	6/9/2008	ANNE ANNE	SC MVA	00/00/0000		
218891	Greenwood, Ms. Trina		LIM. STATUTE OF LIMITATION	7/4/2008	ANNE GLOVER	SC MVA	00/00/0000		
218448	Clashshaw, Mr. Richard		LIM. STATUTE OF LIMITATION	7/5/2008	ANNE GLOVER	SC MVA	00/00/0000		
218871	Carver, Ms. Greta (Minor)		LIM. STATUTE OF LIMITATION	7/15/2008	ANNE GLOVER	SC MVA	00/00/0000		
218872	Carver, Ms. Kathy		LIM. STATUTE OF LIMITATION	7/15/2008	ANNE GLOVER	SC MVA	00/00/0000		
218878	Carver, Mr. Augustus (Minor)		LIM. STATUTE OF LIMITATION	7/15/2008	ANNE GLOVER	SC MVA	00/00/0000		
218890	Young, Mr. Gerome		LIM. STATUTE OF LIMITATION	7/28/2008	ANNE GLOVER	SC MVA	00/00/0000		
218940	Sparks, Ms. Paula		LIM. STATUTE OF LIMITATION	8/9/2008	ANNE GLOVER	SC MVA	00/00/0000		
218941	Sparks, Mr. Kurt		LIM. STATUTE OF LIMITATION	8/9/2008	ANNE ANNE	SC MVA	00/00/0000		
218942	Wiley, Mr. Robert		LIM. STATUTE OF LIMITATION	8/12/2008	ANNE ANNE	SC MVA	00/00/0000		
218997	Grate, Mr. Travis		LIM. STATUTE OF LIMITATION	8/12/2008	ANNE GLOVER	SC MVA	00/00/0000		
218978	Fox, Mr. David		LIM. STATUTE OF LIMITATION	8/14/2008	ANNE ANNE	SC MVA	00/00/0000		
219066	Williams, Ms. Shannon		LIM. STATUTE OF LIMITATION	8/28/2008	ANNE GLOVER	SC MVA	00/00/0000		
219040	Earl, Ms. Quastacious		LIM. STATUTE OF LIMITATION	8/28/2008	ANNE GLOVER	SC MVA	00/00/0000		
219041	Williams, Mr. Randy		LIM. STATUTE OF LIMITATION	8/28/2008	ANNE GLOVER	SC MVA	00/00/0000		
219042	Williams, Ms. Randonesia (Minor)		LIM. STATUTE OF LIMITATION	8/28/2008	ANNE GLOVER	SC MVA	00/00/0000		
219077	Chavis, Ms. Theresa		LIM. STATUTE OF LIMITATION	8/29/2008	ANNE ANNE	SC MVA	00/00/0000		
219048	Pugliese, Ms. Christi		LIM. STATUTE OF LIMITATION	8/29/2008	ANNE ANNE	SC MVA	00/00/0000		
219120	Odum, Mr. Nicholas		LIM. STATUTE OF LIMITATION	8/29/2008	ANNE ANNE	SC MVA	00/00/0000		
219167	Steelman, Mr. David		LIM. STATUTE OF LIMITATION	8/2/2008	ANNE GLOVER	SC MVA	00/00/0000		
219049	Edwards, Ms. Tracey		LIM. STATUTE OF LIMITATION	9/4/2008	ANNE GLOVER	SC MVA	00/00/0000		
219068	McGray, Ms. Shameka		LIM. STATUTE OF LIMITATION	9/6/2008	ANNE GLOVER	SC MVA	00/00/0000		
219069	McGray, Ms. Christine		LIM. STATUTE OF LIMITATION	9/7/2008	ANNE ANNE	SC MVA	00/00/0000		
219070	Auger, Mr. Bob		LIM. STATUTE OF LIMITATION	9/13/2008	ANNE ANNE	SC MVA	00/00/0000		
219099	Sweeney, Mr. Roy		LIM. STATUTE OF LIMITATION	9/15/2008	ANNE ANNE	SC MVA	00/00/0000		

Appendix 218

Case Listing By Statute Of Limitations Date

Case	First Party Name	Code	Description	Lim Date	Staff Assigned	Staff #1	Case Type	Filed Suit
101012	Ms. Jessica		LIM. STATUTE OF LIMITATION	9/17/2008	ANNE	GLOVER	SC MVA	00/00/0000
101065	Harold, Mrs. Donald		LIM. STATUTE OF LIMITATION	9/20/2008	ANNE	GLOVER	SC MVA	00/00/0000
101230	Staley, Mrs. Christina		LIM. STATUTE OF LIMITATION	9/30/2008	ANNE	ANNE	SC MVA	00/00/0000
101427	Little, Mrs. Lakisha		LIM. STATUTE OF LIMITATION	10/2/2008	ANNE	ANNE	SC MVA	00/00/0000
219138	Little, Mr. Lashavio		LIM. STATUTE OF LIMITATION	10/2/2008	ANNE	ANNE	SC MVA	00/00/0000
101411	Little, Mrs. Deshonne		LIM. STATUTE OF LIMITATION	10/2/2008	ANNE	ANNE	SC MVA	00/00/0000
101422	Little, Mrs. Deshonne		LIM. STATUTE OF LIMITATION	10/2/2008	ANNE	ANNE	SC MVA	00/00/0000
101446	Wright, Ms. Johanna		LIM. STATUTE OF LIMITATION	10/2/2008	ANNE	GLOVER	SC MVA	00/00/0000
101480	Wright, Mr. Charles (Minor)		LIM. STATUTE OF LIMITATION	10/2/2008	ANNE	GLOVER	SC MVA	00/00/0000
219810	Shaw, Mr. Dejuan (Minor)		LIM. STATUTE OF LIMITATION	10/20/2008	ANNE	GLOVER	SC MVA	00/00/0000
101285	Mathis, Mr. Byron		LIM. STATUTE OF LIMITATION	11/9/2008	ANNE	GLOVER	SC MVA	00/00/0000
101410	Simpson, Mr. Tyler (Minor)		LIM. STATUTE OF LIMITATION	11/24/2008	ANNE	ANNE	SC DOG	00/00/0000
101822	Wynn, Ms. Tracy		LIM. STATUTE OF LIMITATION	12/1/2008	ANNE	GLOVER	SC MVA	00/00/0000
219155	McDonald, Mrs. Joyce		LIM. STATUTE OF LIMITATION	12/6/2008	ANNE	ANNE	SC MVA	00/00/0000
219876	Traynor, Mrs. Geraldine		LIM. STATUTE OF LIMITATION	12/11/2008	ANNE	ANNE	SC MVA	00/00/0000
219883	Porter, Mr. DuWay		LIM. STATUTE OF LIMITATION	12/11/2008	ANNE	ANNE	SC MVA	00/00/0000
101435	Harris, Miss Octavia		LIM. STATUTE OF LIMITATION	12/19/2008	ANNE	ANNE	SC MVA	00/00/0000
1019409	Boulware, Ms. Cindy		LIM. STATUTE OF LIMITATION	12/22/2008	ANNE	GLOVER	SC MVA	00/00/0000
101943	Robb, Ms. Misty		LIM. STATUTE OF LIMITATION	12/27/2008	ANNE	ANNE	SC MVA	00/00/0000

Total number of cases in this report = 69

Report Criteria:

- Case Staff
All Staff Assigned
LIM Status = Open
Case Type = SDG, SMV, SSF, SWC
All classes
Open cases only
Statute of Limitations is between 2/12/2008 and 12/31/2008
Case Date 3 is used for the Filed Suit date.

February 12, 2008

Mr. Richard Crenshaw
540 Mile Creek Road
Pickens, SC 29671

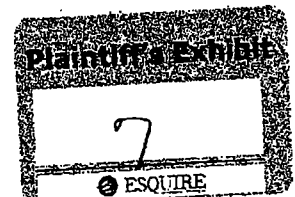
Dear Mr. Crenshaw,

This law firm closed in South Carolina in June 2006. The managing attorney then, Heather Glover, took over the remaining cases in the office on her own. According to our records, your case was one to these. Based on the records we have, the date on or before which your case must be filed in Court is **July 5, 2008**. If your case has not been concluded, Please be aware of this date and its importance. If the Statute of Limitations runs without a lawsuit being filed your right to pursue a claim will be lost forever. We are sending this notice so that you will be aware of the Statute of Limitations date and may take steps to protect your case. You should immediately do so if you are not aware of your case status when you receive this letter.

Thank you very much.

Sincerely yours

David C. Joel
Attorney at Law



Appendix 220

List of names, addresses and date sent:

Mr. Richard Crenshaw 2/12/08
540 Mile Creek Road
Pickens, SC 29671

Mr. Javed Johnson 2/12/08
2326 Greenhil Road
Lugoff, SC 29078

Mr. Alfonzo Moody 2/12/08
466 Ridge Ave NW
Aiken, SC 29801

Ms. Kathy Carver 2/12/08
212 Biggerstaff Road
Seneca, SC 29672

Mr. Bobby Toby Jr. 2/12/08
1706 Watson St
Whitmire, SC 29178

Ms. Deborah Turner 2/12/08
151 Cadle Crossing Road
Windsor, SC 29856

Mr. Bobbie Turner 2/12/08
151 Cadle Crossing Road
Windsor, SC 29856

Mr. Quastacious Earl 2/27/08
105 Cavalier Drive
Apt # 48
Greenville, SC 29607

Ms. Patricia Taylor 2/12/08
1564 A Robinson Town Road
Cassatt, SC 29032

Mr. Capal Glee 2/12/08
12002 Hwy 64 Lot 55
Barnwell, SC 29812

Ms. Diane Glee 2/12/08
12002 Hwy 64 Lot 55
Barnwell, SC 29812

Mr. Wade Stallings 2/25/08
P.O Box 95
New Ellenton, SC 29809

Mr. Malcolm Johnston 2/12/08
1361 James West Lane
Cassatt, SC 29032

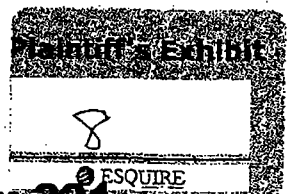
Ms. Shannon L. Williams 2/27/08
105 Cavalier Drive
Apt # 48
Greenville, SC 29607

Ms. Tracey Edwards 2/27/08
919 Alford St. NE
Aiken, SC 29801

Mr. Randy Williams 2/27/08
105 Cavalier Dr.
Apt # 48
Greenville, SC 29507

Ms. Paula Sparks 2/27/08
111 Carey Ave
Greer, SC 29651

Mr. Gerome Young 2/25/08
P.O Box 188
Blythwood, SC 29016



Appendix 221

Mr. Lashavio Little 2/27/08
3022 Emory St.
Columbus, GA 31903

Mr. Dudley Epps 2/27/08
307 Park St.
Whitmire, SC 29178

Ms. Octavia Harris 2/27/08
1030 Pearl Harbor Way
Anderson, SC 29626

Ms. Joyce McDonald 2/27/08
1330 Hagood Ave
Columbia, SC 29205

Mr. Byron Mathis 2/27/08
47 Hardy Place Road
Johnston SC 29832

Ms. Geraldine Taylor 2/27/08
740 Zola Road
Lake City SC 29560

Ms. Misty Yopp 2/27/08
P.O Box 103
Lockhart, SC 29364

Mr. Donald Tamaro 2/27/08
121 Birdsey Ave
Middletown CT 06457

Ms. Christian Staley 2/27/08
P.O Box 244
Springfield SC 29146

Mr. David Steelman 2/27/08
P.O Box 206
Gloverville, SC 29828

Ms. Lakisha Little 2/27/08
3022 Emory St.
Columbus, GA 31903

Mr. Roy Sweeney 2/27/08
P.O Box 348
Ehrhardt, SC 29801

Ms. Christi Pugliese 2/27/08
195 Gavin Lake Rd
Gaffney SC 29340

Ms. Brenda Walker 2/27/08
301 Simpson St.
Westminster, SC 29693

Mr. Nickolaus Odom 2/27/08
2825 Jones Chapel Road
Honea Path, SC 29654

Mr. Robert Wiley 2/27/08
3502 Catawba Rd.
Anderson, SC 29626

Ms. Cindy Boulware 2/12/08
716 Zimacrest Road
Apt # 3913
Columbia, SC 29210

Ms. Jessica Ortiz 2/27/08
637 Picket Post Road
Walhalla, SC 29691

Ms. Maggie Brogan 2/25/08
1514 Fernwood Glendale Road
Apt # 502
Spartanburg, SC 29307

Mr. David Fox 2/27/08
540 Mile Creek Road
Pickens, SC 29671

Ms. Theresa Chavis 2/27/08
292 Old Barnwell Road
Aiken, SC 29803

Appendix 222

Ms. Trina Greenwood 2/25/08
513 Partridge Bend Road
Aiken, SC 29803

Mr. Christopher Cromer 2/25/08
1507 Caldwell Street
Newberry, SC 29108

Ms. Benita Jenkins 2/12/08
1728 Lovett Road
Camden SC 29020

Ms. Johanna Wright 2/27/08
147 Hope Road
Apt A
Central, SC 29630

Ms. Christina Thomas 2/27/08
225 Guffin Ave
Aiken SC 29803

Ms. Shameka McCray 2/27/08
825 Tomlinson St
Apt B7
Kingstree SC 29556

Mr. Kim Sparks 2/27/08
3 Center Ave
Spartanburg, LA 70663

Ms. Laresha Whitt 2/25/08
106 Wellington Road
Wellford SC 29385

Ms. Calina Whitt 2/25/08
106 Wellington Road
Wellford, SC 29385

Ms. Ashley Ramey 2/25/08
110 Wellborn Circle
Easley, SC 29642

Mr. Travis Gate 2/12/08
142 Lewisville Lane
Seneca, SC 29678

Ms. Rachel Phillips 2/12/08
151 Cadle Crossing Road
Windsor, SC 29856

Ms. Tracy Hyman 2/27/08
10930 Two Notch Road
Lot # 7
Elgin, SC 29045

Ms. Merlethia Geathers 2/25/08
376 Hanover St
3rd Floor
Bridgeport, CT 06605

Mr. Donald Price 2/4/08 sent via FedEx
413 Grant Street
Whitmire, SC 29178

Mr. Teddie Mull 2/4/08 sent via FedEx
107 Mitchell Street
Whitmire, SC 29178

Joel & Associates

LAW OFFICES

May 24, 2006

RE: {Your Accident Case}

Dear Ms. :

I am sending this letter to let you know that David Joel is retiring from his South Carolina office. Since I have been the attorney handling your case and will continue to handle your case to conclusion, this change should not affect you in any way. The Stat Bar does require that I send you this letter advising you of the situation and also advising you that Mr. Joel will receive 1/3 of all attorney's fees generated on your case even though he will no longer be open in South Carolina. The split in attorney's fees does not in any way affect the amount of money you will receive.

I am enclosing some new business cards with this letter that have my direct phone number listed on them so that you can call me should you have any questions. I will look forward to working with you to the conclusion of your case as quickly as possible.

Sincerely,


Heather A. Glover, Esq.

Tuten
#3

TEL (803) 401-8881 • FAX (803) 256-0901
Suite 201, 220 Stoneridge Drive • Columbia, South Carolina 29210

Appendix 224

ROA - 000224

Joel & Associates

LAW OFFICES

7160
803 799-~~9080~~

May 24, 2006

803 401-8881

Alice Shifferly
Box 1785
Old Milton Rd
Clinton, SC 29325

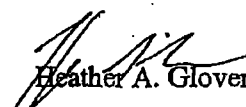
RE: Your Accident Case

Dear Ms. Shifferly:

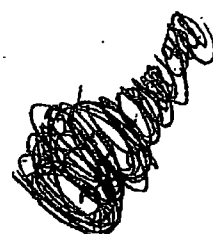
I am sending this letter to let you know that David Joel is retiring from his South Carolina office. Since I have been the attorney handling your case and will continue to handle your case to conclusion, this change should not affect you in any way. The Stat Bar does require that I send you this letter advising you of the situation and also advising you that Mr. Joel will receive 1/3 of all attorney's fees generated on your case even though he will no longer be open in South Carolina. The split in attorney's fees does not in any way affect the amount of money you will receive.

I am enclosing some new business cards with this letter that have my direct phone number listed on them so that you can call me should you have any questions. I will look forward to working with you to the conclusion of your case as quickly as possible.

Sincerely,


Heather A. Glover, Esq.

1803
252-6500



Appendix 225

Heather A. Glover, Esq.
Attorney at Law

PO Box 37

Horatio SC 29062

1-888-295-4421

Fax 1-866-853-9158

Gloverattorney@aol.com

Appendix 226

ROA - 000226

STATE OF SOUTH CAROLINA \$150.00 PAID
 COUNTY OF Aiken Recept. # 10687 IN THE COURT OF COMMON PLEAS

Julia Tuten Check # 3123 CIVIL ACTION COVERSHEET

Plaintiff(s)

06 - CP - 02 - 1466

VS.

Clifton Still

Defendant(s)

(Please Print)

Submitted By: Heather Glover

SC Bar #:

Telephone #:

803-499-5514

Address:

PO Box 97

Fax #:

1-800-853-9158

Hopkins SC 29062

Other:

E-mail:

glvcratt@att.net

NOTE: The cover sheet 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 cover sheet 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 (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|--|
| ☐ Contracts | ☐ Torts - Professional Malpractice | ☐ Torts - Personal Injury | ☐ Real Property |
| ☐ Construction (100) | ☐ Dental Malpractice (200) | ☐ Assault/Battery/Libel (300) | ☐ Claims & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☒ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | ☐ Notice/Pile Med Mal (230) | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | ☐ Other (299) | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | | ☐ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
-
- | | | | |
|--|--|---|--|
| ☐ Inmate Petitions | ☐ Judgments/Settlements | ☐ Administrative Law/Relief | ☐ Appeals |
| ☐ PCR (300) | ☐ Death Settlement (700) | ☐ Reinstatement Driver's License (800) | ☐ Arbitration (900) |
| ☐ Sexual Predator (510) | ☐ Foreign Judgments (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Mandamus (520) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Habeas Corpus (530) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| ☐ Other (599) | ☐ Transcript Judgment (740) | ☐ Probate (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Other (899) | ☐ SCBOT (950) |
| | ☐ Other (799) | | ☐ Worker's Comp (960) |
| | | | ☐ Zoning Board (970) |
| | | | ☐ Administrative Law Judge (980) |
| | | | ☐ Public Service Commission (990) |
| | | | ☐ Employment Security Comm (991) |
| | | | ☐ Other (999) |
-
- | | |
|---|---|
| ☐ Special/Complex /Other | ☐ Pharmaceuticals (630) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) |
| ☐ Automobile Arb. (610) | ☐ Out-of-State Depositions (650) |
| ☐ Medical (620) | |
| ☐ Other (699) | |

Submitting Party Signature: Heather Glover

Date: 10/16/06

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.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

)
) IN THE COURT OF COMMON PLEAS

Julie Tuten

Plaintiff,

vs.

Clifton Still

Defendant.

06-CP-02-1466
SUMMONS

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at the Attorney's office, PO Box 37, Horatio, South Carolina, within thirty-five days after the service hereof, exclusive of the date of such service and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


Heather A. Glover
Post Office Box 37
Horatio, South Carolina 29062
(803) 499-5514

Sumter, SC
October 16, 2006

10-17-2006
RECEIVED
10:50 AM
CLERK OF COURT

Appendix 228

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

)
) IN THE COURT OF COMMON PLEAS

Julie Tuten

Plaintiff,

vs.

Clifton Still

Defendant.

06-CP-02-1466

COMPLAINT
(Jury Trial Demanded)

10-17-06
J. H. H. H.
CLERK
10:50 AM
Deputy Clerk

YOUR PLAINTIFF would show unto the Court as follows:

1. That the Plaintiff is a resident of the County of Aiken, State of South Carolina, and upon information and belief the Defendant is a resident of the County of Aiken, State of South Carolina.
2. That on or about October 18, 2003, in the county of Aiken, the Plaintiff was a passenger in a vehicle being driven by the Defendant Northbound on County Road 51.
3. That the Defendant, while traveling at an excessive rate of speed lost control of his vehicle and ran off the right side of the road, striking several trees.
4. That as a result of the above collision, the Plaintiff suffered injuries, including injuries to her ribs, lung, back, and neck, which have caused Plaintiff to endure medical treatment and to spend money for medical services.
5. That as a result of the above collision, the Plaintiff lost wages due to her inability to work while injured.
6. That the Defendant was willful, wanton, grossly negligent, negligent and careless in the

following particulars:

- a. In failing to maintain a proper look-out;
- b. In failing to keep Defendant's vehicle under proper control;
- c. In driving too fast for conditions;
- d. In failing to properly maintain and/or apply Defendant's brakes;
- e. In failing to use the degree of care which a reasonable and prudent person would have exercised under similar circumstances.

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

7. That the Plaintiff is informed and believes that the Plaintiff is entitled to judgment against the Defendant in the sum equivalent to the Plaintiff's actual damages, plus costs.

WHEREFORE, the Plaintiff prays for judgment against the Defendant for the amount of the Plaintiff's actual damages, plus costs of this action, and such further relief as the Court may deem appropriate.


Heather A. Glover, Esq.
Post Office Box 37
Horatio, South Carolina 29062
(803) 499-5514

Sumter, SC
October 16, 2006

cases Heak 2-2002

Kathy Carver	Randy Williams	Ashley Pamey
Geetha Carver	Randonesia Williams	Ray Sweeney
Augustus Carver	Quastacious Earl	Wade Stallings
Maggie Brogan	Jessica Ortiz	Christiana Staley
Quintina Harris	David Stedman	Geraldine Taylor
Sharonda Harris	Susan Hendricks	Margaret Todd
Tyler Simpson	Donna Deast	Ashley Hunter
Joyce McDonald	Brenda Lyons	Ty Anna Bowley
Malcolm Johnson	Tammy Lalonde	Sharon Wallace
Benita Jenkins	Alice Shiffuhy	Robert Wiley
Malaky Brooks	Melvyn Burke	Misty Yopp
Jacques Johnson	Jennifer Davis	
Desmond Jenkins	Hanna Davis	
Rakeem Brooks	Frances Hinds	
Gerome Young	Amanda Moss	
Johanna Wright	Julie Tuten	
Charles Wright	Betty Webb	
Franklin Brandon	Michael Webb	Ray Boyd
Wajima Clay	Barbara Cannon	
Lloyd Geathis	Roger Chestnut	
Rodrigo Guerrero	Doris Johnson	
Tracy Hyman	Dudley Epps	
Rosemary Ellis	Ashley Gillespie	
David Fox	Octavia Harris	
Travis Geater	Kenneth Gillespie	
Kausiwa Aeshad	Lekisha Little	
Franklin Barrera	Deshawnese Little	
Bregina Barrera	Deashune Little	
Niasia Beatz	Leshaun Little	
Cindy Boulware	April Kelley	
Richard Cernshaw	Byron Matthews	
Carolyn Wesch	Kathleen Pandy	
Shannon Williams	Tanya Pierce	

77
cases

Appendix 231

HEATHER A. GLOVER
ATTORNEY AT LAW

August 25, 2006

Barbara W. Hinson
Office of the Disciplinary Counsel
PO Box 12159
Columbia SC 29211

RE: Complainant: Niasia S. Beaty
Case Number: 06-DE-L-865

OFFICE OF
DISCIPLINARY COUNSEL

Dear Ms. Hinson:

Per your request, I am submitting the following information in regard to the above complaint.

~~Ms. Beaty~~ was involved in a three car automobile accident on June 22, 2004. The first at fault party is insured by Allstate. Allstate made a partial liability offer last year of \$3,300.00. ~~Ms. Beaty~~ is aware of this offer. The other at fault car was listed as being owned by ~~Kyrene Adams~~. We tracked her insurance information to State Farm and opened a claim. Alan Agnew was the adjustor assigned to that claim. Subsequent to doing so, we were informed by state farm that ~~Ms. Adams~~ had sold her car to a ~~Tim Clader~~ in 1993. We then began looking for insurance with ~~Ms. Clader~~ or with the driver, ~~Clarence Holloway~~. We believe we located a state farm policy for ~~Ms. Holloway~~ and have sent a demand to State Farm under that policy.

~~Ms. Beaty's~~ medical bills are \$3,344.74. ~~Ms. Beaty's~~ mother would like cash now. I have spoken with Ms. Beaty on multiple occasions about the Allstate offer. We have discussed the fact that should she accept it, she would be releasing Allstate from the case and risking her chances of a full recovery. We have also discussed the fact that the offer from Allstate, should she accept it, would go entirely to satisfy her medical bills and she would not see any cash out of it. We have discussed the situation with the potential other policy for the second at-fault car. I have offered to file suit on her behalf, naming both drivers but ~~Ms. Beaty~~ does not want to file suit.

On August 8, 2005, ~~Ms. Beaty~~ faxed us a letter giving us permission to discuss her case with her mother, which I have done on multiple occasions in great detail. In fact, ~~Ms. Beaty~~ herself rarely calls me. On most occasions, it is ~~Ms. Beaty's~~ mother calling me. I am enclosing a copy of the fax for your reference.

On June 1st Joel and Associates closed its office in South Carolina. I contacted all of the current clients after discussing with both Professor Freedman and Jill Rothensbury how to go about handling the situation and notified them that the firm was closing and that I could continue to

PO BOX 37 • HORATIO • SOUTH CAROLINA • 29062
(803)499-5514 PHONE • 1-888-295-4421 FAX

Appendix 232

ROA - 000232

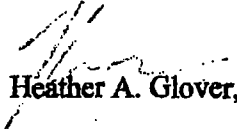
handle their case or they could get their file back and go with another attorney. I also sent confirmation letters to all the clients which included new business cards and a magnet with my new contact information on it. ~~Ms. Bonty's~~ mother has called me numerous times since June 1st. I have spoken with both ~~Ms. Bonty~~ and her mother. In ~~Ms. Bonty's~~ letter she notes that I "sound like the same lady she used to talk to at Joel & Associates" so by her own admission, she has spoken with me since June 1st.

On July 13th ~~Ms. Bonty's~~ mother sent me a fax firing me and asking me to call and let her know how she could get a copy of her file. I am enclosing a copy for your reference. Please note the fax is signed by ~~Ms. Bonty's~~ mother even though the letter is written in the first person. After receiving the fax, I contacted ~~Ms. Bonty~~ to find out where she wanted her file sent and she told me that she did not want to fire me. I told her that she would need to send me something in writing to that effect since her mother had already faxed a letter firing me. I have been waiting for that letter or an address to send the file to since then.

I believe that ~~Ms. Bonty's~~ mother has written the letter to you as it matches her handwriting rather than ~~Ms. Bonty's~~. However, to specifically address the complaints, I have spoken with both ~~Ms. Bonty~~ and her mother on numerous occasions both prior to Joel and Associates closing and subsequently. They are both aware of the fact that this is a two-car liability case, that Allstate has made an offer to settle the case that would not cover the medical bills, that there are questions concerning whether or not there is insurance covering the second at-fault car, and that I have recommended filing suit against both drivers. Without ~~Ms. Bonty's~~ consent to file suit, however, I am unable to do so and can only continue in pursuit of the possible second insurance policy. Since receiving the fax firing me from ~~Ms. Bonty's~~ mother I have not done any additional work on the case. I intended to give ~~Ms. Bonty~~ until the end of August to forward a letter to me stating her intentions before withdrawing from the case on my own.

If I can provide any additional information, please let me know.

Sincerely,


Heather A. Glover, Esq

▷

Court of Appeals of Georgia.
DAVID C. JOEL, ATTORNEY AT LAW, P.C.
v.
CHASTAIN.

No. A01A2501.
March 12, 2002.

Reconsideration Denied March 29, 2002.

Client, whose personal injury claim was settled by non-attorney at professional corporation (P.C.) without attorney supervision and without client's consent, sued P.C. for breach of fiduciary duty, fraud, and violation of Fair Business Practices Act. The Fulton Superior Court, Carnes, J., pro hac vice, entered judgment upon jury verdict in favor of client on her breach of fiduciary duty claim and awarded compensatory damages and attorney fees. P.C. appealed. The Court of Appeals, Andrews, P.J., held that: (1) P.C. had a fiduciary relationship with client; (2) evidence was sufficient to show P.C.'s breach of fiduciary duty to client; (3) evidence was sufficient to support mental distress damages to client; (4) client did not waive her cause of action for breach of fiduciary duty; (5) evidence warranted jury instruction on professional conduct standard; and (6) evidence was sufficient to support award of attorney fees on bad faith grounds.

Affirmed in part, reversed in part, and remanded with directions.

West Headnotes

[1] Attorney and Client 45 ⚡63

45 Attorney and Client

45II Retainer and Authority

45k63 k. The Relation in General. Most Cited Cases

Attorney and Client 45 ⚡113

45 Attorney and Client

45III Duties and Liabilities of Attorney to Client

45k113 k. Acting for Party Adversely Interested. Most Cited Cases

As a client's legal representative, a professional corporation (P.C.) formed for the practice of law had a fiduciary relationship with its client; thus, P.C. had a fiduciary duty to show client the utmost good faith and loyalty and to act solely for client's benefit.

[2] Attorney and Client 45 ⚡113

45 Attorney and Client

45III Duties and Liabilities of Attorney to Client

45k113 k. Acting for Party Adversely Interested. Most Cited Cases

In performing its fiduciary duty to a client, professional corporation (P.C.) formed for the practice of law was obligated not to pursue any interest or take any act adverse to client's interests or incompatible with applying its best skill, zeal, and diligence in representing client.

[3] Attorney and Client 45 ⚡129(2)

45 Attorney and Client

45III Duties and Liabilities of Attorney to Client

45k129 Actions for Negligence or Wrongful Acts

45k129(2) k. Pleading and Evidence. Most Cited Cases

Evidence was sufficient to show professional corporation's (P.C.'s) breach of fiduciary duty to client in representing her on personal injury claim; P.C. was organized to function without adequate attorney supervision, client's case was assigned to non-attorney staffer, and there was no evidence of attorney involvement in case prior to it being settled by non-attorney without client's consent and against client's instructions.

[4] Damages 115 ⚡57.25(1)

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

Appendix 234

115III(A)2 Mental Suffering and Emotional Distress

115k57.19 Intentional or Reckless Infliction of Emotional Distress; Outrage

115k57.25 Particular Cases

115k57.25(1) k. In General.

Most Cited Cases

(Formerly 115k49.10)

Sufficient evidence established that the conduct resulting in professional corporation's (P.C.'s) breach of fiduciary duty to client was intentional or showed reckless indifference to consequences, so as to support award of mental distress damages to client; non-attorney at P.C. settled client's personal injury claim without her consent, client was not able to contact attorney at P.C. for months, and P.C.'s sole shareholder intentionally instituted system of practice which provided inadequate supervision of the non-attorney at issue.

[5] Damages 115 ↪ 57.16(2)

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)2 Mental Suffering and Emotional Distress

115k57.13 Negligent Infliction of Emotional Distress

115k57.16 Nature of Injury or Threat

115k57.16(2) k. Physical Illness, Impact, or Injury; Zone of Danger. Most Cited Cases

(Formerly 115k50)

Damages 115 ↪ 57.23(2)

115 Damages

115III Grounds and Subjects of Compensatory Damages

115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses

115III(A)2 Mental Suffering and Emotional Distress

115k57.19 Intentional or Reckless Infliction of Emotional Distress; Outrage

115k57.23 Nature of Injury or Threat

115k57.23(2) k. Physical Illness, Impact, or Injury; Zone of Danger. Most Cited Cases

(Formerly 115k50.10)

As a general rule, mental distress damages are not recoverable in the absence of physical injury where the claim is premised on ordinary negligence; however, mental distress damages may be recovered without proof of physical injury where the claim is based on intentional misconduct.

[6] Attorney and Client 45 ↪ 112

45 Attorney and Client

45III Duties and Liabilities of Attorney to Client

45k112 k. Conduct of Litigation. Most Cited Cases

Client's decision to allow professional corporation (P.C.) to continue representing her by filing lawsuit and settling her personal injury lawsuit after P.C. previously breached its fiduciary duty to client by allowing non-attorney to settle case without attorney supervision and without client's consent, was not waiver of client's cause of action for breach of fiduciary duty against P.C.; breach of fiduciary duty and resulting harm was unrelated to fact that, after P.C. discovered the misconduct of its employee, it took steps to properly handle case.

[7] Attorney and Client 45 ↪ 129(3)

45 Attorney and Client

45III Duties and Liabilities of Attorney to Client

45k129 Actions for Negligence or Wrongful Acts

45k129(3) k. Trial and Judgment. Most Cited Cases

Evidence warranted jury instruction, which stated that lawyer should not aid non-lawyer in unauthorized practice of law, including giving legal advice or taking action for others in matters connected to law, in lawsuit by client against professional corporation (P.C.) for breach of fiduciary

Appendix 235

duty in connection with P.C.'s representation of her on personal injury claim; non-attorney employed by P.C., who was not adequately supervised by an attorney, misrepresented himself as an attorney, advised client on the case, and settled the case without her consent.

[8] Costs 102 ⤵ 194.44

102 Costs

102VIII Attorney Fees

102k194.44 k. Bad Faith or Meritless Litigation. Most Cited Cases

Sufficient evidence established that professional corporation (P.C.) acted in bad faith in conjunction with its breach of fiduciary duty to client whom it represented on personal injury claim, so as to justify award of attorney fees to client; non-attorney employed by P.C., who was not adequately supervised by an attorney, misrepresented himself as an attorney, advised client on the case, and settled case without her consent. O.C.G.A. § 13-6-11.

[9] Costs 102 ⤵ 194.44

102 Costs

102VIII Attorney Fees

102k194.44 k. Bad Faith or Meritless Litigation. Most Cited Cases

Attorney fees may be awarded pursuant to statute on recovery of litigation expenses despite the existence of a bona fide controversy, where bad faith is shown. O.C.G.A. § 13-6-11.

[10] Appeal and Error 30 ⤵ 1178(6)

30 Appeal and Error

30XVII Determination and Disposition of Cause

30XVII(D) Reversal

30k1178 Ordering New Trial, and Directing Further Proceedings in Lower Court

30k1178(6) k. Ordering New Trial of Certain Issues Only. Most Cited Cases

Costs 102 ⤵ 194.44

102 Costs

102VIII Attorney Fees

102k194.44 k. Bad Faith or Meritless Litigation. Most Cited Cases

Client, who sued professional corporation (P.C.) formed for the practice of law for fraud, breach of fiduciary duty, and violation of Fair Business Practices Act, was entitled only to award of attorney fees attributable to her breach of fiduciary duty claim on which she prevailed; thus reversal of client's attorney fees award and remand to trial court for evidentiary hearing were required, given that award was in lump sum, and client did not prove amount of attorney fees attributable to her successful claim. O.C.G.A. § 13-6-11.

****747*598 Martin H. Rubin, Atlanta, for appellant.**

David C. Joel, pro se.

Warren R. Hinds, Roswell, for appellee.

***592 ANDREWS, Presiding Judge.**

A jury found David C. Joel, Attorney at Law, P.C. (the P.C.) breached its fiduciary duty to its client, Brenda Chastain, and awarded Chastain \$4,000 in compensatory damages and \$20,000 in attorney fees pursuant to OCGA § 13-6-11. The jury found in favor of the P.C. on Chastain's claims under the Fair Business Practices Act and for fraud. The P.C. claims the evidence did not support the verdict and that the trial court ****748** erroneously instructed the jury. Because we find no error in the instructions, and find evidence supporting the jury's conclusion that the P.C. breached its fiduciary duty and harmed Chastain, we affirm as to the breach of fiduciary duty and compensatory damages. Although we conclude there was sufficient evidence of bad faith to support the award of attorney fees pursuant to OCGA § 13-6-11, we vacate the award and remand the case to the trial court for a hearing to determine what portion of the \$20,000 awarded was attributable to Chastain's successful claim.

1. The evidence viewed in favor of the verdict was sufficient to show a breach of fiduciary duty and damages flowing from the breach.

Appendix 236

*593 After Chastain was injured in an automobile accident in March 1996, she retained Joel's P.C. in May 1996 to represent her on a personal injury claim. Joel, who at the time was the sole shareholder of the P.C., testified that he developed the P.C. into a "volume practice" using television and other advertising. Joel was not in the P.C.'s office on a regular basis, took no part in handling the cases, and was notified by weekly faxes of case dispositions after they had settled. According to Joel, "generally the case management decisions for the Georgia clients would have been left primarily to those persons who staffed the Atlanta office." Evidence showed that, during some periods when important settlement decisions were being made on Chastain's case, the P.C. employed one attorney other than Joel at the Atlanta office and eleven nonattorney support staffers to handle up to 500 pending cases. To manage the high volume, the P.C. employed nonattorney "case negotiators" who were authorized under the P.C.'s guidelines to relay settlement offers from insurance companies to clients, respond for the client to the offers, and, under supervision and instructions from the attorney, advise the client on accepting or rejecting the offers.

Under this system, Joel testified that Chastain's case was assigned to a nonattorney employee of the P.C., Terry Lee, who acted as Chastain's "case negotiator."

Q: As a case negotiator for [the P.C.], it would not be possible for Terry Lee to have given Ms. Chastain legal advice on whether she should accept or reject a particular offer, would it?

A: I'm not sure that he would have, but it is possible.

Q: He was authorized to do that, correct?

A: He was authorized to transmit the offers from the insurance company and relay the client's wishes back to the insurance company. Now, what the parameters of that authorization was in his mind, I don't know.

Q: And he could also advise your clients on accepting or rejecting the offers, isn't that what you

told us at your deposition?

A: Within the guidelines that were set, he could do that.

Q: Mr. Joel, is your contention that in addition to Mr. Lee and any other lay person that might have worked on Ms. Chastain's file that an actual attorney was assigned to the case from the time she initially retained [the P.C.]?

A: That's not how we operate it, but she would have been able to speak to a lawyer at any time during that two-year period.

Q: Which attorneys had reviewed Ms. Chastain's case file before July of 1997?

*594 A: I don't know.

Q: There's no way for you to determine if any attorney was involved with that case, is there?

A: No. But it would have been [the attorney] who was there.... I wasn't there, so I don't know.

Upon review of the P.C.'s file on Chastain, Joel was unable to find any reference to an attorney's involvement in the case prior to January 1998. He stated that there may be evidence of attorney involvement in the P.C.'s computerized case management system, but no such evidence was produced. Joel testified that there was no procedure in place for client files to be reviewed by an attorney on a periodic basis, and he acknowledged that the system he created for operation of the P.C. was fraught with potential trouble.

Q: So you had 11 administrative employees, with one attorney who wasn't there all **749 the time. Isn't that ratio just asking for trouble?

A: Could be.^{FN1}

FN1. Joel testified he later phased out the case negotiator system because of "the confusion it may or may not have created...."

After seeing the P.C.'s television advertisements, Chastain contacted the P.C., met with

Appendix 237

nonattorney employees, and signed a fee contract with the P.C. in May 1996. Thereafter, the P.C. assisted her through non-attorney employees in seeing physicians for treatment of her injuries through November 1996. In July 1997, Lee, a nonattorney case negotiator for the P.C., contacted Chastain. Lee introduced himself to Chastain as the P.C.'s attorney who had been assigned to handle negotiations with the insurance company in her case. Lee subsequently conveyed several offers to Chastain from the insurance company (all of which Chastain rejected), advised Chastain not to pay pending medical bills, and recommended that she take the insurance company's final offer of \$10,000. Despite her directions to Lee to reject the \$10,000 offer, a few days later Chastain received correspondence from the P.C. dated September 5, 1997, containing settlement and release documents indicating her case had been settled with the insurance company for \$10,000. When Chastain contacted Lee about the documents, he told her they were sent by mistake and to throw them away. Evidence showed, however, that Lee had in fact accepted the insurance company's \$10,000 offer on behalf of Chastain without her consent, although Chastain was not informed of this fact.

***595** Unhappy with Lee, Chastain called the P.C. asking to speak to Joel, but he never returned her calls. Joel testified that he was never told by the P.C. that she called. In November 1997, Chastain called the P.C. to determine the status of her case and was informed that Lee was no longer employed by the P.C. At that time, she asked again to speak with Joel but was told he was unavailable. Over a period of several weeks, Chastain called the P.C. on numerous occasions asking to speak to Joel or another attorney about her case. She was told no one was available, and her calls were not returned. Chastain persisted, and during yet another call to the P.C. in January 1998, she finally spoke to an attorney employed by the P.C. The attorney, George French, told Chastain that Lee no longer worked for the P.C. and that he had been arrested for falsely representing himself to be an attorney. During her conversation with French, Chastain learned for the first time that Lee was not an attorney and that he had settled her case for \$10,000 without her consent. Evidence showed Lee was arrested at the P.C. in September 1997 on charges

that he had practiced law without a license prior to being employed by the P.C. Joel testified that Lee was not authorized to represent himself as an attorney or settle cases without consent and that Lee was fired after he was arrested.

Chastain filed a grievance with the State Bar over the representation provided by the P.C. The P.C. offered to forfeit its legal fees and give Chastain the entire \$10,000 settlement check if she would drop the grievance. After Chastain rejected this offer, the P.C. took the position on behalf of Chastain that the settlement was a nullity and timely filed a suit for Chastain. Chastain eventually agreed to a \$25,000 settlement of her case obtained by the P.C. Chastain testified that she experienced severe emotional distress and depression as a result of the manner in which the P.C. handled her case, especially the misrepresentations by Lee.

Chastain's subsequent suit against the P.C. was not for legal malpractice, but asserted claims for breach of fiduciary duty, violation of the Fair Business Practices Act, and for fraud. In addition to compensatory damages, the suit sought recovery of punitive damages and attorney fees pursuant to OCGA § 13-6-11. The jury returned a verdict in favor of Chastain on the breach of fiduciary duty claim and awarded \$4,000 in compensatory damages and \$20,000 for attorney fees. The jury returned a verdict in favor of the P.C. on the remaining claims and refused to award punitive damages.

****750 [1][2]** As Chastain's legal representative, Joel's P.C. had a fiduciary relationship with its client. Tante v. Herring, 211 Ga.App. 322, 327, 439 S.E.2d 5 (1993), rev'd on other grounds, 264 Ga. 694, 453 S.E.2d 686 (1994); see Henderson v. HSI Financial Svcs., 266 Ga. 844, 845, 471 S.E.2d 885 (1996) (attorney practicing in a professional corporation ***596** owes same duty to clients, and the professional corporation is liable for actions of its members). Thus, the P.C. had a fiduciary duty to show Chastain the utmost good faith and loyalty and to act solely for her benefit. Tante, 211 Ga.App. at 327, 439 S.E.2d 5. In performing this duty, the P.C. was obligated not to pursue any interest or take any act adverse to Chastain's interests or incompatible with applying its best skill,

Appendix 238

zeal, and diligence in representing Chastain. *Id.*; *Nelson & Hill, P.A. v. Wood*, 245 Ga.App. 60, 67, 537 S.E.2d 670 (2000); *Tunsil v. Jackson*, 248 Ga.App. 496, 499, 546 S.E.2d 875 (2001).

[3] There was evidence from which the jury could have concluded that the P.C. violated this fiduciary duty to Chastain. Joel organized his P.C. to handle a high volume of cases using nonattorney "case negotiators" like Lee and other support staff, at times under the supervision of a single attorney. Although attorneys generally employ nonattorneys such as secretaries, investigators, and other paraprofessionals to assist them in providing legal services to clients, they act for the attorney and must be adequately trained and supervised to ensure that the attorney's legal and ethical duties to clients are not compromised. See *Georgia Rules of Professional Conduct, Rule 5.3*. Joel's testimony shows that he was unsure of the amount of attorney supervision, if any, that Chastain's case received. Despite no evidence that Joel or the P.C. sanctioned the misrepresentations that Lee made to Chastain while acting as her "case negotiator," the jury was authorized by the evidence to conclude that Joel deliberately organized his P.C. in a manner which allowed Lee, without adequate supervision by an attorney, to mishandle Chastain's case and that this breached the P.C.'s fiduciary duty to apply its best skill, zeal, and diligence in representing Chastain.^{FN2}

FN2. We render no opinion on whether there was any conduct which could constitute a violation of State Bar Rules in effect at the time.

[4][5] As to damages flowing from this breach, there was evidence that Chastain suffered severe mental distress caused by Lee's misrepresentations and mishandling of her case. As a general rule, mental distress damages are not recoverable in the absence of physical injury where the claim is premised on ordinary negligence. *Hamilton v. Powell, Goldstein, Frazer &c.*, 252 Ga. 149, 150, 311 S.E.2d 818 (1984). However, mental distress damages may be recovered without proof of physical injury where the claim is based on intentional misconduct. *Id.* There was evidence that Chastain was damaged by intentional acts of an

employee of the P.C. acting within the scope of his employment. Moreover, there was evidence that Joel intentionally instituted the system of practice at his P.C. which provided inadequate supervision of the employee at issue. This was sufficient to *597 allow the jury to conclude that the conduct resulting in the breach of fiduciary duty was intentional or showed a reckless indifference to consequences equivalent to intent. *Id.* Accordingly, there was evidence supporting the jury's award of \$4,000 in mental distress damages caused by the breach of fiduciary duty.

[6] 2. We find no merit in the P.C.'s contention that, as a matter of law, Chastain waived her cause of action for breach of fiduciary duty because, after the breach, she allowed the P.C. to continue representing her by filing suit and settling the case.

The breach of fiduciary duty and resulting harm in this case were unrelated to the fact that, after the P.C. discovered the misconduct of its employee, it took steps to properly handle the case. Under the circumstances, there was no waiver. *Paul v. Destito*, 250 Ga.App. 631, 637-638, 550 S.E.2d 739 (2001); compare *Mauldin v. Weinstock*, 201 Ga.App. 514, 519-520, 411 S.E.2d 370 (1991).

[7] 3. The trial court did not err by instructing the jury on the State Bar Rules **751 standard of conduct in effect at the time, which stated that a lawyer shall not aid a nonlawyer in the unauthorized practice of law, including giving legal advice or taking action for others in matters connected to the law.

An instruction on this standard was proper under the facts of this case. Central to Chastain's claim was evidence that a nonattorney employed by the P.C., who was not adequately supervised by an attorney, misrepresented himself as an attorney, advised Chastain on the case, and settled the case without her consent. The standard at issue was intended to protect a client in Chastain's position from the type of harm she suffered and was relevant to the jury's consideration of whether these actions constituted a violation of the P.C.'s fiduciary duty to Chastain. *Allen v. Lefkoff, Duncan, Grimes &c.*, 265 Ga. 374, 453 S.E.2d 719 (1995).

Appendix 239

[8] 4. The evidence was sufficient to support the jury's award of attorney fees to Chastain pursuant to OCGA § 13-6-11.

[9] Attorney fees may be awarded pursuant to OCGA § 13-6-11 despite the existence of a bona fide controversy where bad faith is shown. Dimambro Northend Assoc. v. Williams, 169 Ga.App. 219, 224-225, 312 S.E.2d 386 (1983). Contrary to the P.C.'s contention, we find there was sufficient evidence of bad faith to create a jury issue as to the award of attorney fees. Evidence showed that the P.C.'s employee, Lee, misrepresented himself as an attorney and settled Chastain's case without her consent in September 1997. Unknown to Chastain, Lee was subsequently arrested at the P.C. in September 1997 for previously practicing law without a license. Although Chastain made numerous calls to the P.C. after September attempting to speak to an attorney to ascertain the status of her case, she was continually rebuffed, told no one was available, and was given no information about Lee's arrest or the fact that her case had been settled by Lee without her consent. Finally, after over three months of attempting to get information, Chastain was informed by an attorney for the P.C. in January 1998 that her case had been mishandled. There was sufficient evidence for the jury to conclude that the P.C. acted in

bad faith in conjunction with its breach of fiduciary duty. Williamson v. Harvey Smith, Inc., 246 Ga.App. 745, 750, 542 S.E.2d 151 (2000).

[10] Nevertheless, Chastain was entitled only to attorney fees attributable to the breach of fiduciary duty claim on which she prevailed. Southern Cellular Telecom v. Banks, 209 Ga.App. 401, 402, 433 S.E.2d 606 (1993). On Chastain's other claims under the Fair Business Practices Act and for fraud, the jury rendered verdicts for the P.C. Because the attorney fee award was in a lump sum and Chastain did not prove the amount of attorney fees attributable to her successful claim, we reverse the attorney fee's award and remand the case to the trial court for an evidentiary hearing to allow Chastain to establish the amount of her attorney fees that were attributable to the claim on which she prevailed. United Cos. Lending Corp. v. Peacock, 267 Ga. 145, 147, 475 S.E.2d 601 (1996).

Judgment affirmed in part, reversed in part and case remanded with directions.

ELDRIDGE and MILLER, JJ., concur.

Ga.App., 2002.

David C. Joel, Attorney at Law, P.C. v. Chastain
254 Ga.App. 592, 562 S.E.2d 746, 02 FCDR 835

Date of Printing: Mar 20, 2011

KEYCITE

Citing References

Negative Cases (U.S.A.)

Distinguished by

- ▷ 1 Amstead v. McFarland, 650 S.E.2d 737, 742+, 287 Ga.App. 135, 140+, 7 FCDR 2452, 2452+ (Ga.App. Jul 17, 2007) (NO. A07A1357, A07A1369) ★★ HN: 4 (S.E.2d)

Positive Cases (U.S.A.)

★★★ Discussed

- H 2 Baker v. Eichholz, 2009 WL 62266, *2+ (S.D.Ga. Jan 09, 2009) (NO. CV406-021) " HN: 10 (S.E.2d)

★★ Cited

- C 3 Hoeflick v. Bradley, 637 S.E.2d 832, 835, 282 Ga.App. 123, 126, 6 FCDR 3422, 3422 (Ga.App. Oct

Appendix 240

- 30, 2006) (NO. A06A0898) **HN: 4,5 (S.E.2d)**
- P** 4 Douglas v. Bigley, 628 S.E.2d 199, 205+, 278 Ga.App. 117, 121+, Blue Sky L. Rep. P 74,561, 74561+, 6 FCDR 868, 868+ (Ga.App. Mar 08, 2006) (NO. A05A1970) **HN: 7 (S.E.2d)**
- H** 5 Joyner v. Raymond James Financial Services, Inc., 602 S.E.2d 871, 876, 268 Ga.App. 835, 840, 4 FCDR 2580, 2580 (Ga.App. Jul 30, 2004) (NO. A04A0133)
- H** 6 R.W. Holdco, Inc. v. Johnson, 601 S.E.2d 177, 183, 267 Ga.App. 859, 864, 4 FCDR 2033, 2033 (Ga.App. Jun 15, 2004) (NO. A04A0478, A04A0479, A04A0480, A04A0481) **HN: 1 (S.E.2d)**
- P** 7 Security Life Ins. Co. v. St. Paul Marine & Fire Ins. Co., 588 S.E.2d 319, 325+, 263 Ga.App. 525, 533+, 3 FCDR 3071, 3071+ (Ga.App. Oct 03, 2003) (NO. A03A0843) (*in dissent*) **HN: 10 (S.E.2d)**
- H** 8 St. Paul Fire & Marine Ins. Co. v. Clark, 566 S.E.2d 2, 11+, 255 Ga.App. 14, 24+, 2 FCDR 1233, 1233+ (Ga.App. Apr 12, 2002) (NO. A01A2450, A01A2451) **HN: 9,10 (S.E.2d)**

★ **Mentioned**

- P** 9 Premier Cabinets, Inc. v. Bulat, 583 S.E.2d 235, 239, 261 Ga.App. 578, 583, 3 FCDR 1828, 1828 (Ga.App. Jun 09, 2003) (NO. A03A1014, A03A1015)

Secondary Sources (U.S.A.)

- 10 BNA Corporate Practice Series No. 87-1 s XXI, XXI. FLATTENING THE WORLD OF LEGAL SERVICES? THE ETHICAL AND LIABILITY MINEFIELDS OF OFFSHORING LEGAL AND LAW-RELATED SERVICES (2008)
- 11 10 Causes of Action 87, Cause of Action Against Attorney for Malpractice in Handling Personal Injury Claim (2010)
- 12 Georgia Procedure Verdict and Judgments s 7:113, Effect of bona fide controversy (2011) **HN: 9 (S.E.2d)**
- 13 Legal Malpractice APP C, Appendix C. Table of Decisions and Articles by Jurisdiction (2011)
- 14 Legal Malpractice s 20:7, Ethical standards (2011)
- 15 Legal Malpractice s 21:11, Consequential damages-Emotional distress and related personal injuries (2011) **HN: 7 (S.E.2d)**
- 16 Legal Malpractice s 21:14, Consequential damages-Expenses of the malpractice action (2011)
- 17 Legal Malpractice s 32:9, General principles-Vicarious liability (2011) **HN: 4 (S.E.2d)**
- 18 Legal Malpractice s 5:8, Employees (2011) **HN: 4 (S.E.2d)**
- .. 4 Legal Malpractice s 31:9, General principles-Vicarious liability (2010) **HN: 4 (S.E.2d)** (Text not available on WESTLAW)
- 20 FLATTENING THE WORLD OF LEGAL SERVICES? THE ETHICAL AND LIABILITY MINEFIELDS OF OFFSHORING LEGAL AND LAW-RELATED SERVICES, 38 Geo. J. Int'l L. 401, 447+ (2007) **HN: 7 (S.E.2d)**
- C** 21 BUSINESS ASSOCIATIONS, 54 Mercer L. Rev. 151, 165+ (2002) **HN: 1,2,7 (S.E.2d)**
- C** 22 LEGAL ETHICS, 54 Mercer L. Rev. 401, 416+ (2002) **HN: 6,7,8 (S.E.2d)**
- 23 FLATTENING THE WORLD OF LEGAL SERVICES? THE ETHICAL AND LIABILITY MINEFIELDS OF OFFSHORING LEGAL AND LAW-RELATED SERVICES, 946 Practising Law Institute Patents, Copyrights, Trademarks, & Literary Property 147+ (2008) **HN: 7 (S.E.2d)**

Trying to reach,

Deborah Blower

I have tried to get in
touch with you for a
while now and can not
reach you with the
phone number I have.
Could you please call
me and let me know
what's going on. I
really appreciate it.

Thanks so

much, Julie Tuter

803-819-9497

Cell 803-646-6988

Please leave message

with phone number if you

can't reach me. Thanks

faxed 3-30-07
1:50 PM

Tuter #5
4-15-2011

Dear Mrs. Heather Blosser,

Due to the fact that I have been
unable to contact you neither through
phone, fax or mail I wish to terminate
you as my attorney unless you
contact me within ten days of this
letter I hope to hear from you.

Thank you,
Julie Tuten

Δ # 6

Tuten

4-15-2011

1 Q Are you on Social Security Disability?

2 A Uh-huh, yes.

3 THE COURT: Ma'am, please say yes or no. The court
4 reporter has a hard time with uh-huh and huh-uh.

5 THE WITNESS: Okay. Sorry.

6 Q How long have you been on Social Security Disability?

7 A About maybe going on four years now; three to four
8 years.

9 Q Why are you on Social Security Disability?

10 A Because after the accident I was in I was -- My back
11 is totally messed up. I can't work. I can't do the
12 things I used to. I can't -- I'm not supposed to lift
13 over 10 pounds. I can't stand in one place for a long
14 amount of time. I can't sit for a long amount of time. I
15 can walk but not eight hours.

16 Q All right. You said because of the accident that you
17 were in. Is that the accident that occurred on October 18
18 of 2003?

19 A Yes.

20 Q Okay. Tell me about that accident. What happened?

21 A Okay. We were going out. A friend of mine was in
22 town and we and some friends were going out and a friend
23 of mine -- There was another guy that I knew had opened a
24 new place. It was called The Wagon Wheel. I wanted to go
25 by and see it; so she drove me by and dropped me off and

Appendix 244

1 went on out. We were going to an all-night club. We had
2 been at my house partying a little bit; so she went on
3 over there and Cliff was in the bar and I asked him---

4 Q All right. Who was Cliff?

5 A Cliff was the guy driving the car.

6 Q All right. What is his full name?

7 A Clifford Still.

8 Q Okay. Go ahead.

9 A Okay. I asked him would he give me a ride back over
10 to the bar with my friends and he said he would, to let
11 him finish his beer; so I waited on him to finish his
12 beer. He gave me a ride back and we were -- He took a
13 short cut. It's Power House Road.

14 Q Is that in the North Augusta area?

15 A In North Augusta, yea, and you could get from Power
16 House Road back over to -- it was called Jerricho's then,
17 but it's something else now. Anyway, he was giving me a
18 ride back and the road is real curvy and he was driving a
19 little bit fast and I think just before we wrecked I said,
20 You better slow down because this road has got some bad
21 curves on it, and the next curve we went around and they
22 say it was about a 6-foot drop off. I don't know, but a
23 friend of mine and my nephew went down to look where we
24 were at.

25 MRS. BALLARD: Objection, Your Honor.

Appendix 245

1 THE COURT: Hold on. What is your objection?

2 MRS. BALLARD: She is testifying -- she's about to
3 testify to what other people said.

4 THE COURT: Well, that's hearsay. Obviously, you
5 can't do that.

6 MRS. BALLARD: Thank you.

7 THE COURT: Ma'am, you can only testify about what
8 you know, not what somebody told you.

9 THE WITNESS: Oh, okay. Okay. We were going around
10 the next curve that we went around -- I don't know. He
11 lost control of the car. I don't know if something
12 happened to the car or he doesn't see good at night or
13 what happened, but we left the road and went off about
14 they say a 6-foot drop-off.

15 Q You can't say what---

16 A Yea.

17 Q You can say what you know, but you can't say what
18 somebody else told you, okay?

19 A Okay. Well, I didn't measure it, but it's a long
20 ways down, maybe 6-foot drop-off into some trees.

21 Q Then what happened?

22 A Well, I hit the windshield and I fell over -- When I
23 woke up I was laying in the seat of the car, but I
24 couldn't move. I couldn't get up. I couldn't push myself
25 up and I thought I was paralyzed or something. I couldn't

Appendix 246

1 get out of the car and I moved my toes. I could do that.

2 Ambulance got there and I was taken to the trauma
3 unit and the only thing at the time I thought was wrong
4 they found that I had broken a vertebrae in the bottom of
5 my back; so that's the only thing at the time. That and I
6 had a collapsed lung, three broken ribs, a concussion, and
7 I was in the trauma unit about a week, six days, something
8 like that in the trauma unit and I didn't really know
9 anything and until I woke up and I don't know -- When I
10 woke up I was going home and I had to wear a back brace.
11 Actually, I wore a back brace a year and a half and then
12 -- Did you want to hear the rest of the story about later
13 on when they found out about the other problems?

14 Q Well---

15 A Or just that?

16 Q Let's take things one step at the time.

17 A Okay.

18 Q That night you acknowledge you had been drinking?

19 A Yes.

20 Q Were you drunk?

21 A I was -- I was buzzing I would say, yes.

22 Q Okay. When you got into the car with Clifford Still
23 was he -- did he appear to be drunk?

24 A He says he wasn't. I---

25 MRS. BALLARD: Objection, Your Honor.

Appendix 247

1 THE COURT: All right, ma'am. Please. The rule is
2 this. You can only testify about what you know. You
3 can't testify --

4 THE WITNESS: Okay.

5 THE COURT: -- about what somebody else says.

6 THE WITNESS: He didn't seem drunk. He didn't seem
7 like he was drunk.

8 Q But he had been drinking?

9 A But he had been drinking, Uh-huh.

10 Q If you thought that he was too intoxicated to drive
11 would you have ever gotten in the car with him?

12 A No.

13 Q And it was a one-car accident; is that correct?

14 A That's right.

15 Q And you were the passenger?

16 A Yes.

17 Q Did you contribute to the accident in any way
18 whatsoever?

19 A No.

20 Q All right. So you spent approximately six days in
21 the trauma unit at the Medical College of Georgia; is that
22 correct?

23 A Yes.

24 Q You've got one collapsed lung, three broken ribs,
25 smashed vertebra, and a concussion; correct?

Appendix 248

1 A Yes.

2 Q And when did you regain your memory?

3 A When I woke up from the accident -- when I woke up I
4 was still -- I don't really know, I mean, because I was
5 just -- they put me on some medicine that was a little
6 strong and when it was time to take my medicine I was just
7 right back asleep and so I don't know. I mean, after that
8 -- I mean, I don't know. I didn't lose my memory totally,
9 but I only remember bits and pieces.

10 Q Bit and pieces of being at the trauma unit?

11 A Well, I don't remember much of that at all, but the
12 accident, I mean, that was a tragedy. I remember when I
13 would wake up I would know what was going on and when I
14 said I couldn't get out of the car they had to go in the
15 driver's side and pull me out of the driver's side.

16 MRS. BALLARD: Objection, Your Honor. I think she's
17 repeating something she's been told.

18 THE COURT: Well, she didn't say that. She said they
19 had to pull her out of the driver's side. I assume you
20 know what side they pulled you out of, didn't you?

21 THE WITNESS: Driver's side.

22 MRS. BALLARD: Well, I object to the lack of
23 foundation, Your Honor.

24 THE COURT: Overruled.

25 Q You had to be pulled out of the driver's side of the

Appendix 249

1 vehicle because the passenger side was so smashed?

2 MRS. BALLARD: Objection, Your Honor, to the leading.

3 THE WITNESS: Yes.

4 THE COURT: Hold on. Mr. Woodruff, you cannot ask
5 leading questions on direct.

6 MR. WOODRUFF: Very good.

7 THE COURT: Sustained. Rephrase your question.

8 Q What was the condition of the car after the accident?

9 A I didn't see it. I never seen it, but it was---

10 MRS. BALLARD: Objection, Your Honor.

11 THE COURT: Ma'am, if you didn't see it, you can't
12 tell us what it was.

13 THE WITNESS: No, I can't tell you what it looked
14 like.

15 Q That's fine. The accident happens. You go to the
16 trauma unit. After you get out of the trauma unit what
17 did you do?

18 A I went home.

19 Q All right.

20 A My mother went home with me.

21 Q I'm sorry?

22 A My mother went with me.

23 Q Okay. And at some point did you start looking for a
24 lawyer?

25 A I did.

Appendix 250

1 Q Tell me what you did to look for a lawyer.

2 A Well, I looked in the phone book and at first I
3 didn't look for a lawyer for a while for a couple of
4 months. I mean, I was hurt pretty bad and but when I did
5 I looked in the phone book and that's when I seen Joel's
6 ad and what got my attention is, We come to you if you
7 can't come to us, and that's when I -- Mr. Joel -- that's
8 when I called him.

9 Q All right. I am going to show you four older
10 Bellsouth telephone books. The first one that I am going
11 to show you is for North Augusta and Augusta for the time
12 period of July of 2000 to July of 2001. Do you recognize
13 that phone book?

14 A Well, these are the ones we get. We get Augusta,
15 North Augusta every year in Belvedere. I mean, we get the
16 same books.

17 Q Okay. Is this a book similar to what you would have
18 used?

19 A Yea, maybe a different color. I don't know.

20 MRS. BALLARD: May I get the exhibit number?

21 THE COURT: Yes, please.

22 MR. WOODRUFF: Exhibit 2A.

23 THE COURT: Thank you. Please refer to them as
24 exhibit numbers for the record.

25 MR. WOODRUFF: Very good. Thank you.

Appendix 251

1 Then I am going to show you Exhibit No. 2B and I am
2 going to ask you if you recognize that phone book.

3 THE WITNESS: Well, see, when you say if I recognize
4 them, I recognize them, but I don't know -- I mean,
5 they're different colors. That's all.

6 Q Okay.

7 A I mean, we get these these phone books every year.

8 Q All right.

9 A They might not be the same color.

10 Q Is this the North Augusta -- North Augusta/Augusta,
11 Georgia phone book?

12 A Uh-huh.

13 Q And that is for the time period of July 2001 to July
14 of 2002; is that correct?

15 A Uh-huh.

16 THE COURT: Yes or no, please.

17 THE WITNESS: Yes. Sorry.

18 Q And that's been marked as Plaintiff's Exhibit 2B; is
19 that correct?

20 A Yes.

21 Q I am going to show you what has been marked as
22 Plaintiff's Exhibit 2C and this is the Augusta/North
23 Augusta phone book; is that correct?

24 A Yes.

25 Q And that is for the time period July 2003 to July of

Appendix 252

1 2004; is that correct?

2 A Yes.

3 Q And I am going to show you what's been marked as
4 Plaintiff's Exhibit 2D and this is the Augusta,
5 Georgia/North Augusta phone book for the time period
6 July 2002 to July of 2003; is that correct?

7 A Yes.

8 Q All right. I am going to ask you -- I am going to
9 hand you---

10 A I will have to sit a little closer.

11 Q -- plaintiff's Exhibit 2D and I am going to ask you
12 if you can find your name and your telephone number in
13 that phone book.

14 A I can. I just need my reading glasses.

15 Q May I bring your reading glasses up to you?

16 MRS. BALLARD: Your Honor, we'll stipulate her name
17 is in the book.

18 MR. WOODRUFF: That's fine.

19 THE COURT: Very well. A stipulation means they
20 don't dispute that fact. Her name is in that phone book
21 and phone number and address.

22 Q And is this either the ad or similar ad that you saw
23 to find a lawyer?

24 MRS. BALLARD: Objection, Your Honor.

25 THE COURT: The objection is?

Appendix 253

1 MRS. BALLARD: Leading.

2 THE COURT: Rephrase the question.

3 Q Ms. Tuten, is that phone book either the phone book
4 or a similar phone book that you used to find a lawyer?

5 MRS. BALLARD: Objection, Your Honor.

6 THE COURT: Mr. Woodruff, the rules do not allow you
7 to lead.

8 MR. WOODRUFF: Yes, sir.

9 THE COURT: Rephrase the question.

10 Q How did you find a lawyer?

11 A In the book; in the yellow pages in the book.

12 Q And who did you ultimately decide to hire as a
13 lawyer?

14 A Joel. Mr. Joel. I'm sorry.

15 Q And why did you decide to hire Mr. Joel?

16 A Well, like I said what stood out the most to me at
17 the time -- I still wasn't walking that great and if you
18 can't visit us, we'll visit you, and it was a big ad and
19 personal injuries -- a big ad and it just -- I thought it
20 would probably a good attorney to hire. I mean, that's a
21 whole-page ad. He's got a nice picture there and then
22 he's got -- tells you everything.

23 THE COURT: Got what?

24 THE WITNESS: He's got the picture on there, on the
25 phone book.

Appendix 254

1 THE COURT: Yes, ma'am.

2 THE WITNESS: And then it tells you everything, you
3 know, that they take care of and it says -- but the
4 biggest thing that does stand out when you're not doing
5 too good is they will come to you.

6 Q And there are similar ads in the phone book that's
7 been marked as Plaintiff's Exhibit 2C; is that correct?

8 MRS. BALLARD: Object to the leading again, Your
9 Honor. I'm sorry.

10 THE COURT: I'll allow it. Go ahead and answer it.
11 Are the ads similar?

12 THE WITNESS: Yes, sir, they're similar. That one is
13 a little bit different. Picture is a little bigger in the
14 other one and it's a little bit different, but they're
15 similar.

16 Q Okay. And what has been -- Well, what has been
17 marked as Plaintiff's Exhibit 2B there is also a full-page
18 ad with -- is there not?

19 A Now this is -- yes, there is, and this is the only
20 thing that I'm not sure of. I mean, well, it's the same
21 thing, but one is in black and white and one is in color.
22 I don't know which one that I seen -- the black and white
23 or the color.

24 Q And what's been marked as Plaintiff's Exhibit 2A
25 there is also an ad; is that correct?

Appendix 255

1 A Yes. Yes, sir.

2 MR. WOODRUFF: I'd like to move to introduce
3 Plaintiff's Exhibit 2A through 2D into evidence.

4 MRS. BALLARD: Your Honor, I've stated my objection
5 to those earlier and that was overruled. I just reaffirm
6 my objection.

7 THE COURT: Very well. I'll allow them in.

8 (Whereupon, Plaintiff's Exhibit Nos. 2A - 2D were
9 admitted into evidence.)

10 Q All right. When you contacted Joel and Associates
11 what happened?

12 A Someone came out and signed me up.

13 Q And when you say they came out and they signed you
14 up. They gave me a form to sign and they talked to me
15 about the accident a little bit and he gave me a form to
16 sign.

17 Q And he give you a form to sign?

18 A He did and I asked him for Joel -- I wanted Joel as
19 my lawyer -- Mr. Joel. I'm sorry. I wanted Mr. Joel as
20 my lawyer and I asked him about that and he said that was
21 fine.

22 Q Well you can't say what he said?

23 A I'm sorry.

24 Q But?

25 A Okay. But it was -- that was fine.

Appendix 256

1 A Can I say that?

2 Q Did you enter into a contract? Did you sign a
3 contract with Joel and Associates?

4 A I did. Yes.

5 Q Did it provide for the payment of 33 1/3 percent
6 attorney's fees?

7 A Yes.

8 Q And is this a copy of to the contract that was left
9 with you?

10 A I need my glasses. Yes, it is. I remember that
11 where he drew the line through that and put the 33 1/2
12 percent, Uh-huh.

13 Q It originally said 37 percent; is that correct?

14 A Yes.

15 Q And it was drawn through 33 1/3?

16 A Yes.

17 Q And the investigator did that; is that correct?

18 A Yes.

19 Q The person that signed you up?

20 A The person that signed me up.

21 Q Was that a lawyer?

22 A I don't think. No, he just worked for the company, I
23 guess. I don't know.

24 Q Okay.

25 A He was -- just to came out and said he came out to

Appendix 257

1 Q Has your hospital bills been reconstructed?

2 A Yes. I don't have all of my bills. A lot is
3 missing.

4 Q I am going to hand you what's been binded or clipped
5 together as Julie Tuten medical bills.

6 A Uh-huh.

7 Q I am going to ask if you would examine those.

8 A Okay.

9 Q Do those look like your medical bills relating to the
10 2003 accident?

11 A I -- No, because the 2003 accident -- I mean, I think
12 the hospital was more than this.

13 Q All right.

14 A I might be wrong, but...

15 Q Well, I am going to ask that you look at it a little
16 bit closer and tell me if those appear to relate to the
17 2003---

18 MRS. BALLARD: Your Honor, I object.

19 THE WITNESS: Well, they do---

20 THE COURT: Hold on. Hold on.

21 THE WITNESS: They are from the 2003 accident. I do
22 see the ambulance here is 502.82 and MCG is 17,000. Maybe
23 that was for that and physician group was 7069; so maybe
24 that was for the hospital, but I don't know if you have
25 any after that where I went to the hospital to the

Appendix 258

1 surgeons or not.

2 Q You don't believe this is a complete record?

3 MRS. BALLARD: Objection, Your Honor.

4 THE COURT: Mr. Woodruff, please.

5 MR. WOODRUFF: I'm sorry, Your Honor.

6 THE COURT: Don't ask leading questions.

7 Ma'am, is that a complete record of all your hospital
8 bills and medical expenses?

9 THE WITNESS: No, sir. I have been going for eight
10 years -- seven years, a little over seven years. That's
11 not a complete record.

12 MR. WOODRUFF: Your Honor, we would move to introduce
13 this as Plaintiff's Exhibit No. 27.

14 MRS. BALLARD: Your Honor, we object. Mrs. Tuten has
15 been unable to authenticate these records. She said they
16 don't appear to be complete.

17 THE COURT: Well, I am going to allow them in. You
18 can certainly cross examine them. The jury can give it
19 whatever weight, if any, they decide to give it.

20 MRS. BALLARD: Twenty-seven?

21 THE WITNESS: What I mean when I say that---

22 THE COURT: Hold on, ma'am, just a second.

23 THE WITNESS: I'm sorry.

24 THE COURT: You got it marked?

25 MR. WOODRUFF: No, sir.

Appendix 259

1 THE COURT: And?

2 MRS. BALLARD: The witness has not been qualified as
3 an expert.

4 MR. WOODRUFF: I'll withdraw the question, Your
5 Honor.

6 Q Are you familiar how legal malpractice is defined in
7 South Carolina?

8 A Yes, I am.

9 Q How is it defined?

10 A It's -- Legal malpractice is defined as a failure to
11 use that measure of care, skill, diligence, and loyalty
12 which lawyers of ordinary skill and capacity commonly
13 possess and exercise.

14 Q Are you familiar with the ethical standards
15 applicable to lawyers handling litigation matters in South
16 Carolina?

17 A I am.

18 MR. WOODRUFF: Your Honor, at this point I would
19 submit Professor John Freeman as an expert in the field of
20 lawyers' ethics and professional duties in handling
21 litigation for clients, handling referral fees and
22 referral arrangements, handling client communications.
23 Four is duties owed by lawyers who advertise for clients.
24 Five is duties owed by lawyers when withdrawing from
25 representation. Six is duties owed by lawyers who act or

Appendix 260

1 purport to act as employees of law firms established as
2 business entities.

3 THE COURT: Mrs. Ballard, do you wish to cross
4 examine Mr. Freeman on his qualifications?

5 MRS. BALLARD: No, Your Honor. We stipulate to his
6 qualificationses.

7 THE COURT: All right. Professor Freeman will be
8 allowed to testify as an expert in these areas.

9 Ladies and gentlemen of the jury, I'll tell you about
10 expert testimony when I charge you at the conclusion of
11 the case.

12 MR. WOODRUFF: Thank you, Your Honor.

13 Q Professor Freeman, what was your assignment in this
14 case?

15 A I was asked to review materials and conduct an
16 investigation as an expert in the field and evaluate the
17 extent to which Heather Glover and Mr. Joel have breached
18 their professional obligations, committed breaches of
19 fiduciary duty, possibly engaged in fraudulent activity,
20 and the accountability of each both in terms of the
21 standard of care in South Carolina and I've also conducted
22 research as to violation of ethical rules.

23 Q Have you prepared yourself to testify as a witness
24 here today?

25 A That was what I was asked to do, yes.

Appendix 261

1 Q All right.

2 A To prepare myself I conducted an investigation.

3 Q What is the standard of care for lawyers such as
4 Ms. Glover in handling litigations in South Carolina?

5 A The standard of care is to use reasonable care which
6 means competence -- not being careless, but actually
7 taking care of business. Skill. That means focus and if
8 you're hired in a case of trying a case to use reasonable
9 care in prosecuting that case. Care, skill, diligence --
10 which means nose to the grindstone in following through
11 and getting the job done and not walking away from it and
12 loyalty which means you look at things with the interest
13 of the client in mind.

14 So, you have an obligation to exercise that measure
15 of care, skill, diligence, and loyalty which reasonable
16 lawyers commonly possess and exercise in South Carolina.
17 That's the standard.

18 Q Professor Freeman, did in your opinion Ms. Glover
19 live up to her obligation as a lawyer?

20 A No.

21 Q Why?

22 A She -- First of all, she's been disbarred. As part
23 of my preparation I read various testimony from Mr. Joel.
24 Mr. Joel says she got disbarred because she abandoned
25 clients among other things. Seated over there at that

Appendix 262

1 table is one of the clients that Ms. Glover abandoned,
2 just walked away from -- filed a lawsuit which is sort of
3 hitting the ball over the net, but you got to keep -- you
4 got to stay out on the court and you got to keep after it
5 and she never served -- As far as I am aware there is no
6 evidence she ever served that lawsuit. There is no
7 evidence that the man who ran his car off the road and
8 hurt Ms. Tuten ever was in court.

9 So, what Ms. Glover did is she got involved in the
10 case as an assistant or underling to Mr. Joel, had
11 responsibility for handling the case, failed miserably by
12 letting the case go to the point where it's thrown out of
13 court causing the client to lose her day in court and
14 losing her opportunity to obtain compensation for the
15 serious injuries that she suffered. So, that was -- that
16 was absolutely terrible.

17 It's called client abandonment. It's just about as
18 bad as it gets simply because people go to lawyers because
19 they need help and if you're there making a living trying
20 to help people and when they need it the most you turn
21 your back on them and walk away to Colorado, that's pretty
22 sickening and you deserve to lose your license and you
23 deserve to get hammered and that is a terrible breach of
24 duty on her part.

25 She was not loyal. She was not a proper fiduciary

Appendix 263

1 meaning a person who takes care of other people's interest
2 and it's cut and dried and that's probably one reason why
3 she's not here showing her face in this courtroom today.

4 Q Professor Freeman, do you have an opinion on whether
5 her failings caused injury to Ms. Tuten?

6 A I do.

7 Q And did it?

8 A Obviously and let me explain why I say that. You've
9 heard from Ms. Tuten about her injuries. She goes through
10 the windshield. She's in the hospital for six days.
11 She's got her mother looking after her for an extended
12 period of time. She is still suffering from that
13 accident. She goes on permanent disability.

14 Her medical bills which are in evidence I think
15 are -- total up to somewhere around 25,000 and her
16 testimony was that that's there but there is more than
17 that. Well, you see 25,000 in front of you.

18 Had she had a day in court where she is not at fault
19 with the accident and this is caused by somebody else -- I
20 think everybody who's gotten behind the wheel knows that
21 you're supposed to keep the car on the road and not go
22 down embankments and hurt people and so forth. Cut and
23 dried. That case was worth money and she lost her
24 opportunity to find out how much money and to get fair
25 compensation and that leaves us here trying to make a

Appendix 264

1 calculation of how much money that case is worth and I
2 have done an investigation as to that.

3 Q All right. So, basically, what you're saying is
4 Julie Tuten lost her day in court; is that correct?

5 A Absolutely.

6 Q And how do you put a price tag on her right to have
7 that day in court?

8 A Try to figure out how much reasonably she would have
9 gotten; what is a reasonably fair number assuming that she
10 had actually proceeded to trial against a man who pretty
11 clearly was responsible for the accident. He was the
12 driver. He drove it off the road and then in order to
13 make that calculation you take various things into
14 account.

15 Q Have you attempted to put a valuation on that?

16 A Yes.

17 Q And what have you done and what have you concluded?

18 A What I've done is taken a look at her medicals which
19 are in the round number of 25,000. Oftentimes cases are
20 negotiated in terms of multiples of medicals. Five times.
21 You try to get, say, five times two and then somebody on
22 the other side is trying to beat you down from that and so
23 forth, but if you just take -- if you just take two times
24 the medicals what she actually unquestionably has paid
25 cash that's there, that gets you to 50,000, but that

Appendix 265

1 doesn't take into account the fact that she's had a
2 devastating life-changing result -- not just that she's
3 been in the hospital and had medical care, but she's now
4 disabled, unable to work, and actually on disability, and
5 you take that into account. I think it's reasonable to
6 treble that number. Multiply it by three.

7 If you take -- The actual medical themselves I would
8 double. That gets you to 50. Three times that would get
9 you to 150. I think that is a very fair number and in
10 analyzing that I have looked at that various ways and I
11 think that that is very reasonable.

12 Q And so it is your opinion that the underlying case --
13 the case that Ms. Tuten had against Clifford Still ---

14 MRS. BALLARD: Objection, Your Honor.

15 THE COURT: What is the objection?

16 MRS. BALLARD: He is leading the witness.

17 THE COURT: Rephrase the question.

18 Q What do you feel was the value again of the
19 underlying case?

20 A One-fifty.. Two times the actual times three. I
21 think that's very fair and I think a reasonable lawyer
22 would have gotten it.

23 Q What else have you done related to this case?

24 A Well, I've looked at the pleadings in the case. I
25 have looked at the discovery responses that came from

Appendix 266

1 Mr. Joel. I have looked at Mr. Joel's testimony under
2 oath in this case. I have looked at Ms. Tuten's testimony
3 under oath in this case. I have looked at Mr. Joel's
4 testimony in other cases and reviewed other documents
5 trying to help me understand what happened -- Secretary of
6 State documents -- trying to understand what happened and
7 what the ultimate impact of all of this has been on Julie
8 Tuten.

9 Q Is it your professional opinion that ---

10 MRS. BALLARD: Objection, Your Honor. He, again, is
11 leading the witness.

12 THE COURT: What is your professional opinion?

13 MRS. BALLARD: Thank you, Your Honor.

14 MR. WOODRUFF: Thank you.

15 THE COURT: Ask it in a non-leading manner.

16 Q Was there a relationship between Heather Glover and
17 Julie Tuten?

18 A Was there a relationship? Yea, at one time there
19 was.

20 Q And what happened to that relationship?

21 A Heather Glover was working for the Joel Law Firm.
22 Heather Glover decided -- or Mr. Joel decided to close
23 down his Columbia office and the records reflect tell me
24 that he had 77 clients -- 76 other people and Julie Tuten
25 in that Columbia office when he decides for his own

Appendix 267

1 reasons having signed these people up as their lawyer that
2 he's closing down that office and he then leaves a person
3 -- the lawyer who was running that office, Heather
4 Glover -- in charge of everything with the understanding
5 that Heather Glover is going to handle these cases and
6 share fees with him on a referral fee basis and the key
7 thing to remember about that is where there is a referral
8 fee basis between lawyers who are not in the same firm --
9 when Heather splits, she's not in the Joel firm and
10 Mr. Joel is getting that fee -- he has joint
11 responsibility for those cases. It's not 100 percent
12 Heather Glover. It's fifty-fifty in terms of
13 responsibility because it's joint, and he's taking money
14 or lines himself up to take money out of those cases.

15 So, Heather is -- after the split comes in May or
16 June of '06 on one hand is working for Heather but on the
17 other hand she's still working for Mr. Joel and Mr. Joel
18 is still in it because he stands to get one-third of the
19 fee and you know the phrase, you know, take the bitter
20 with the sweet? If you want the sweet which is a share of
21 the fee, then you become accountable, too, for something
22 if it goes south -- if it goes wrong, which this went
23 horribly wrong.

24 Q And were you quoting from a rule of professional
25 responsibility?

Appendix 268

1 A Yes, I was.

2 Q Do you know what rule of professional responsibility
3 you were quoting from?

4 A 1.5(e.)

5 Q Do you know exactly what that says?

6 A Yes. I can get it. Here is what it says: A
7 division of fee between lawyers who are not -- who are not
8 in the same firm may be made only if -- only -- and here
9 you've got Mr. Joel and Heather Glover. When she splits
10 she's not in the same firm but they are going to split
11 fees. One, the division is in proportion to the services
12 performed by each lawyer or each lawyer assumes joint
13 responsibility for the representation.

14 That's the key language in the rule, and, see, they
15 were not sharing in proportion to work done because
16 Mr. Joel wasn't doing any work, but he was wanting the
17 fee. That made him responsible for -- he had to, quote,
18 assume joint responsibility for the representation. So,
19 if Heather hurts Ms. Tuten, Heather Glover hurts Mr. Joel
20 because he may end up having accountability for that.

21 Q Professor Freeman, you have in front of you three
22 phonebooks with various legal ads in them?

23 A Correct.

24 Q I would ask you to look at that advertisement -- that
25 yellow page advertisement.

Appendix 269

1 A Yes.

2 Q Does that yellow page advertisement impose any
3 responsibility on David Joel?

4 A Yes. I believe it does.

5 Q And what is the responsibility it imposes on David
6 Joel?

7 A The responsibility is to me if you encourage somebody
8 to rely upon you, then follow through. Okay? You want to
9 get their money, you want to get the phonecall, you want
10 to get the contract, you want to get the business, that's
11 fine. You're allowed to do that. Okay? But tell the
12 truth and then when they come to you and they're in need,
13 look after them. Care for them. Don't let them down and
14 don't blame somebody else and when you cut and run.

15 Q And Professor Freeman, have you studied the practices
16 of Joel and Associates enough to know whether or not that
17 advertising is, in fact, truthful?

18 MRS. BALLARD: Objection, Your Honor. That's beyond
19 the scope of his expertise.

20 THE COURT: Well, the jury is the ultimate fact
21 finder as to the credibility of the witnesses. Ask the
22 question -- I'll sustain your objection.

23 MRS. BALLARD: Thank you, Your Honor.

24 Q What is your -- Have you formed a basis or an opinion
25 as to the accuracy of the advertising?

Appendix 270

1 A Yes, I have.

2 Q What is that opinion?

3 MRS. BALLARD: Objection, Your Honor.

4 THE COURT: Same. Sustained.

5 MRS. BALLARD: Thank you, Your Honor.

6 THE COURT: You can ask him what the thing says and
7 if he has investigated and if what it says represents what
8 he does.

9 Q What does advertising say, Professor Freeman?

10 A For example, there is a slogan here, All the help the
11 law allows, and Mr. Joel's name and his face, his picture
12 is on here. The jury will have this. You can see this is
13 what is used to bring people to -- to bring people in.

14 Q To the best of your knowledge is Mr. Joel licensed in
15 the State of South Carolina?

16 A No. He's not. He flunked the bar exam and never
17 came back.

18 Q Does that advertising indicate that there are trials
19 and settlements?

20 A Settlements and trials it says which I have -- in my
21 investigation I have gathered information about the trials
22 aspect of this.

23 Q Does Mr. Joel's firm actually conduct trials?

24 A The firm itself as far as I can tell doesn't try
25 cases. If the firm has to have a case that goes to trial

Appendix 271

1 it will send it to another firm and then work the same
2 Heather-Glover type referral arrangement whereby a portion
3 of the fee that the other firm gets for actually being the
4 lawyer is given back to the Joel firm. Essentially, the
5 Joel firm brings cases in, settles them if it can, and
6 then if it can't, somebody else -- not Joel, somebody
7 else, some other law firm -- is going to handle it for
8 you. That's not disclosed in these ads and I have a
9 problem with that.

10 Q Is a lawyer under an ethical obligation to be
11 truthful in the advertising?

12 A Yes.

13 Q Does that advertising meet the ethical standard in
14 the State of South Carolina?

15 A I believe it's deceptive.

16 Q Who do you believe controlled the South Carolina
17 office of Joel and Associates?

18 A Mr. -- As long as there was a South Carolina office
19 for Joel and Associates I believe it was controlled by
20 Mr. Joel. That's what my investigation shows.

21 Q You mentioned that Ms. Glover committed legal
22 malpractice in handling Ms. Tuten's case?

23 A Yes.

24 Q Do you have an opinion as to whether Mr. Joel is
25 accountable for that malpractice?

Appendix 272

1 A Yes, I do.

2 Q Can you explain it?

3 A Yes. My opinion is that he is accountable and I'll
4 explain it this way. It goes back to taking the bitter
5 with the sweet. When you sign up with another lawyer and
6 you both have got this case and that other lawyer is going
7 to be doing the heavy lifting and doing the work in the
8 case but you're going to take a fee, you don't have a free
9 ride. You don't have a free lunch. You don't get that
10 fee in exchange for nothing. At a minimum you have to
11 assume responsibility for what happens in that case. You
12 want the money? Fine. If something goes bad or there is
13 malpractice, guess what? You've got a problem because you
14 become accountable under our rules and that is -- that is
15 absolutely key.

16 Q Professor Freeman, have you taken into account
17 Mr. Joel's argument that since he is not licensed in South
18 Carolina he has no accountability for what happened?

19 A I have taken that into account, but that's a
20 ridiculous argument.

21 MRS. BALLARD: Your Honor, I object. Mr. Joel has
22 not made that argument.

23 MR. WOODRUFF: Your Honor, I believe that ---

24 THE COURT: Overruled.

25 MRS. BALLARD: Thank you, Your Honor.

Appendix 273

1 MR. WOODRUFF: Thank you.

2 Professor Freeman, have you taken into account
3 Mr. Joel's arguments that Mr. Joel has no accountability
4 personally for what happens since he was practicing law in
5 the form of some other entity?

6 A I have evaluated such defense, yea.

7 Q What is your opinion as to Mr. Joel's personal
8 accountability for Ms. Glover's failings as a lawyer?

9 A He is in it up to his ears and...

10 Q Why do you hold that opinion?

11 A Well, how about the fact Heather Glover's picture
12 isn't in the yellow pages? It is Mr. Joel's picture and
13 he encourages you to come to him and he encourages you to
14 rely upon him and the letter that's sent out by Heather
15 Glover -- May I see the one that went out in May just so I
16 can refer to it directly?

17 Q And I'm going to show you -- and that's Defendant's
18 exhibit A?

19 A It says, The state bar does require I send you this
20 letter advising you of the situation and also advising you
21 that Mr. Joel will receive one-third of all attorney's
22 fees generated on your case even though he will no longer
23 be open. It doesn't say Mr. Joel, PA; Mr. Joel, LLC; Mr.
24 Joel and Associates; Mr. Joel, Attorney at Law, PC. It
25 said Mr. Joel and a reasonable person who is led to

Appendix 274

1 believe that Mr. Joel actually cares about you and
2 Mr. Joel has got your case seeing that Mr. Joel is going
3 to get a fee would tend to believe that Mr. Joel is in
4 there with you and is there with Heather and staying in
5 even though he may be closing the office. And it's
6 Mr. Joel, not any corporate gimmick.

7 Q Professor Freeman, are you familiar with the concept
8 of breach of fiduciary duty perpetrated by lawyers on
9 their clients?

10 A Yes.

11 Q What does that mean?

12 A That means that you are faithless; that you -- people
13 are trusting you. People are counting on you. People are
14 looking to you to protect them and you turn your back on
15 them.

16 Q Do you think there's been a breach of fiduciary duty
17 in this case?

18 A Clearly.

19 Q By who?

20 A Mr. Joel and Heather Glover. Mr. Joel in his
21 testimony says he didn't owe Julie Tuten anything and yet
22 when she gets a letter he wants one-third of the fee.

23 Q Professor Freeman, are you familiar with the concept
24 of fraud perpetrated by lawyers on their clients?

25 A Yes.

Appendix 275

1 Q In your evaluation of this case have you found any
2 evidence suggesting fraud on the part of either Mr. Joel
3 or Ms. Tuten?

4 A Yes.

5 Q I'm sorry; Ms. Glover?

6 A Ms. Glover.

7 Q What evidence of fraud have you found?

8 A This: First of all, I don't like these ads at all
9 because I think that you're tricked into thinking that
10 you're actually going to a bonafide law firm where people
11 are going to care about you and actually handle your case,
12 but that's not so. So, that's a big problem I got, but,
13 secondly, when you get the case you have a duty to
14 disclose facts accurately and honestly to the client and
15 if the client calls you for information you have an
16 obligation to give it to them and if you cease
17 representation you have an obligations to look after their
18 interest. You just can't walk away.

19 Mrs. Tuten doesn't have her files because they walked
20 away, but not giving information when there is a duty to
21 give information -- accurate information -- is fraudulent.
22 If the truth is that Mr. Joel isn't in the case anymore,
23 then it's fraudulent to say he is, and if Mr. Joel is
24 correct that I wasn't in the case, then it's fraudulent to
25 say that Mr. Joel is in the case, and if Mr. Joel is going

Appendix 276

1 to get out of the case, you ought to tell people the truth
2 because he's the guy who started this in the first place.
3 So, there's lot of deception here. This woman has been
4 left in the lurch without any documentation and it's a
5 disaster.

6 Q In your evaluation of this case have you found any
7 evidence suggesting that either Mr. Joel or Ms. Glover
8 engaged in unfair or deceptive practices or acts involving
9 the injury to Ms. Tuten?

10 A Yes.

11 Q Would you please explain your findings?

12 A I think the advertising is bogus. I think that the
13 business plan is bogus bringing in people when you do not
14 ever -- advertising that we do trials and settlements when
15 you don't do trials and then to just shut down a law
16 office and to be so uncaring towards the people -- the 77
17 clients that you've got -- is a mass disaster and it is
18 unfair. There is deception here and I just think it's a
19 tragedy.

20 Q Professor, you expressed various opinions here today
21 as an expert witness. Do you hold those opinions to a
22 degree of reasonable professional certainty as an expert
23 in the field?

24 A Yes, I do.

25 Q Thank you for your time, Professor Freeman. Please

Appendix 277

1 (Whereupon, the last question was read back.)

2 THE COURT: Mrs. Ballard, have you seen Exhibit 16?

3 MRS. BALLARD: Yes, sir. I produced it to them in
4 discovery.

5 THE COURT: So, do you have any objection to it?

6 MRS. BALLARD: Yes, sir, I object to its relevance.

7 THE COURT: What is the relevance?

8 MR. WOODRUFF: The relevance is to show the
9 advertising that Joel and Associates was doing throughout
10 the State of South Carolina by advertising in what is in
11 excess of 1.5 million telephone books.

12 THE COURT: I'll allow it.

13 MRS. BALLARD: May I ask what number it is?

14 MR. WOODRUFF: Sixteen.

15 MRS. BALLARD: Thank you.

16 THE COURT: And my ruling was based on one of the
17 elements of unfair trade practice showing potential for
18 repetition of an alleged unfair trade practice.

19 (Whereupon, Plaintiff's Exhibit No. 16 was admitted
20 into evidence.)

21 THE COURT: Move along. You can go into that. You
22 can ask the question.

23 Q Did somebody prepare a listing of the cases that
24 Heather Glover took with her when she left?

25 A I don't recall.

Appendix 278

1 Q You don't recall? I am going to show you what's been
2 marked as Plaintiff's Exhibit 17 which is a listing of 77
3 names; is that correct?

4 A I'll take your word for it. Seventy-seven.

5 Q Well, somebody has totaled it up to 77, haven't they?

6 A Okay.

7 Q Do you recognize the handwriting on that?

8 A That's Heather's.

9 Q That's Heather's handwriting?

10 A Yes.

11 Q Okay. And would those be the cases she took with
12 her?

13 A All these cases were in the office. I've seen this
14 list before.

15 Q You've seen that list before?

16 A Briefly Desa showed it to me. Mrs. Ballard showed it
17 to me.

18 Q And when did she show it to you?

19 A Yesterday.

20 Q Okay. And do you believe that's an accurate list of
21 the cases that were open in the office that have not been
22 settled when the office closed?

23 A Correct.

24 Q Okay.

25 A Most of these were still open but most of them had

Appendix 279

1 Freeman valued in case at is exactly \$150,000.

2 Quite frankly I wish -- Of course, every lawyer
3 wishes that he could get up here and argue, oh, you need
4 to come back with a verdict of more than \$150,000. I'll
5 be honest with you. I can't do that. I can't tell you to
6 come back with a verdict of more than \$150,000 as much as
7 I would like to, but what Mrs. Ballard is going to do is
8 she's got to get up here and argue that the case should
9 not be worth \$150,000. She's only got one thing that she
10 can hang her hat on as to why this case would be worth
11 less than \$150,000 and the only one thing that she can
12 hang her hat on is the fact that Julie Tuten acknowledged
13 that, yes, she saw Clifford still drinking the night of
14 the accident and that she was also drinking.

15 David Joel got up here this morning and on this
16 witness stand right here he argued to you, oh, the case
17 isn't worth anything. If it had been my case -- which
18 actually it was his case -- I wouldn't have taken it. It
19 would be barred under assumption of the risk. Assumption
20 of the risk may exist in Georgia. I don't know if it
21 exists in Georgia or not because I'm not going to go take
22 the Georgia bar exam. I know what the law is in the State
23 of South Carolina. Assumption of the risk is not the law
24 in the State of South Carolina. Judge Early, I believe,
25 is going to charge you in his charge that assumption of

Appendix 280

1 the risk is not the law in the State of South Carolina.

2 The only -- your only task is to come back with a
3 verdict. There's only been one person who has testified
4 as to the value of the case and that was the expert
5 witness that testified that the case is worth exactly
6 \$150,000. When I say the case I'm talking about the
7 underlying case. It's not worth more. It's not worth
8 less.

9 You know, Mr. Joel and Mrs. Ballard -- they had the
10 opportunity to get an expert to come to court with them
11 and I guess we can take 15 seconds and we can listen for
12 that expert. Do you hear it? There's not an expert.
13 Mr. Joel didn't get an expert and I submit to you the
14 reason he didn't get an expert is because there is not a
15 lawyer in South Carolina and probably not a lawyer in
16 Georgia that's going to come up here and sit in this
17 witness stand and say that malpractice and negligence
18 didn't occur. There is no dispute over what the value of
19 the case is. The value of the case is \$150,000.

20 Again, I wish I could say it's worth more, but it's
21 not. Desa Ballard is going to try to convince you that
22 it's worth less. I submit to you it's not. There's been
23 one expert that's testified as to the value of the case.
24 That is the value of the case. That's what I am asking
25 you to do go back to your jury room write down that your

Appendix 281

1 verdict is \$150,000. Please don't be swayed by any
2 arguments that Mrs. Ballard wants to make and I know that
3 Mrs. Ballard is an outstanding lawyer and I like Desa
4 Ballard. I have referred clients to Desa Ballard. She's
5 a great lawyer and she's good, but the bottom line is it
6 doesn't matter how good she is. There's only been one
7 expert that's testified as to the value of the case.

8 I probably will have an opportunity to speak to you
9 again after Mrs. Ballard talks very, very briefly. I am
10 going to ask you before I sit down and you go back to your
11 jury room please write down that the verdict is \$150,000
12 and probably I will ask you that again in a few minutes,
13 but I appreciate your patience. I appreciate you being
14 elected foreman or volunteering and I appreciate y'all
15 spending the last day and a half with us. Thank you.

16 THE COURT: Mrs. Ballard?

17 CLOSING STATEMENT

18 MRS. BALLARD: I told you all yesterday that I would
19 get an opportunity to address you again. I also told you
20 that it was our position that Heather Glover had taken
21 over that case and finished that case and relieved
22 Mr. Joel of responsibility for it, but the Judge has ruled
23 that I can't make that argument to you. The Judge has
24 ruled that you have to treat Ms. Glover and Mr. Joel as
25 one; so I can't ask you to allocate damages between the

Appendix 282

1 two of them.

2 However, Mr. Woodruff is wrong when he tells you that
3 only one expert has been in this courtroom to testify as
4 to the value of the underlying case. Here is what you've
5 got. You have Professor Freeman who spent -- I timed
6 it -- 45 minutes telling you what an excellent lawyer he
7 is and he is in the field of securities, in the field of
8 contracts, in the field of agency and partnership. He
9 never once told you that he had tried or even handled one
10 personal injury case. He never mentioned that because he
11 hasn't; so you have two people who have testified about
12 the value of this case -- Mr. John Freeman who has no
13 experience whatsoever and Mr. Joel who has made his living
14 for 30 years doing personal injury cases on a contingency
15 basis and he knows because he makes his living determining
16 what's a good case and what's a bad case and he told you
17 that he thought Julie Tuten's case wasn't worth anything;
18 so Mr. Woodruff is wrong when he tells you that you've
19 only got one expert.

20 You've got one who makes his living determining
21 whether cases have any value. That's Mr. Joel. He's done
22 it for 30 years. You have an expert who has never tried a
23 personal injury case, didn't even tell you he had tried
24 any personal injury cases, didn't even try to fool you
25 about that, and he just picked a figure out of the air

Appendix 283

1 based on the medical records; so what you've got is you
2 got one credible expert who knows what he's doing in a
3 personal injury case telling you that the case had no
4 value and the other one saying when, well, it's probably
5 three times the medical; so it's \$150,000.

6 I submit that's fairly simple to determine and the
7 Judge is going to instruct you that in determining the
8 underlying value of the case you have to look at the
9 original case. That would have been Ms. Tuten's case
10 against Mr. Still; so you're going to be looking at her
11 negligence and Mr. Still's negligence and the Judge is
12 going to instruct you that if you determine that she was
13 50 percent negligent or more in causing her own injuries
14 that she could not have recovered anything against
15 Mr. Still; so if you determine that her negligence
16 contributed 50 percent or more to her injuries, she gets
17 nada. If she gets nada, you don't award a verdict against
18 Ms. Glover or against Mr. Joel.

19 Now if you disagree with Mr. Joel and you agree with
20 Professor Freeman keep in mind that Ms. Tuten would not
21 have gotten the full \$150,000. She agreed to pay
22 one-third of that money to her lawyers; so the most under
23 all the testimony that you've heard today that you could
24 possibly award would be \$100,000, but we would submit that
25 the lawyer who knows what he's doing in personal injury

Appendix 284

1 cases -- he makes his living doing that -- tells you that
2 based on the fact she was drunk when she got in the car
3 she wasn't going to recover anything.

4 That's a decision that you have to make and the Judge
5 will instruct you on what the law is. It's called
6 comparative negligence. It compares Ms. Tuten's
7 negligence to Mr. Still's negligence and they would have
8 had to determine that.

9 Now, we acknowledge Heather Glover made a mistake and
10 we're sorry that Heather Glover made a mistake and the
11 Judge has ruled that Mr. Joel is as responsible for that
12 as Ms. Glover. We disagreed with that, but that's what
13 the Judge has ruled; so your job as Mr. Woodruff said as
14 the Judge will tell you is to determine whether she
15 suffered any damages as a result of what happened by
16 Ms. Glover. We submit that she couldn't have recovered
17 anything to start with. Mr. Joel who makes his living
18 doing this testified to that. Mr. Freeman who's never sat
19 foot in the courtroom to try a personal injury case just
20 tripled the medical and made up a number.

21 I wish I could argue to you that you could return a
22 verdict only against Heather Glover, but the Judge has
23 taken that opportunity away and ruled that they are kind
24 of together and that's his job is to rule what the law is.
25 Your job is to rule what the facts are and so your

Appendix 285

1 determination is whether Ms. Tuten had a case worth
2 anything when she got in the car drunk that night with
3 someone who was already drinking. We would request that
4 you return a verdict for zero damages because she couldn't
5 have won the case to begin with. Thank you very much.

6 I think we've moved as quickly as we could to get you
7 out of here fairly quickly. At least I try to and I
8 really do appreciate your attention. I know nobody wants
9 to be here; so I hope that you all can deliberate and get
10 out of here and get home. Thank you so much.

11 CLOSING STATEMENT

12 MR. WOODRUFF: The argument that Julie Tuten is
13 somehow at fault in this accident is in my opinion
14 ludicrous. You have a one-car accident and she's the
15 passenger. How was she at fault? That just doesn't
16 happen. That's ludicrous.

17 Two, Mrs. Ballard is arguing, oh, well, yea, the
18 figure may be 150,000, but even if it is 150,000 you need
19 to take away 50,000 because that's what Joel -- Mr. Joel
20 and Heather Glover would have received. That needs to
21 fall on deaf ears, and Desa Ballard stood up here and
22 acknowledged to you the Judge has already ruled that
23 Mr. Joel is as responsible as Ms. Glover. She said that.
24 She said that and the Judge has said that and then
25 Mrs. Ballard said we are sorry Ms. Glover did this. Did

Appendix 286

1 this. Did this to Julie.

2 You know, what didn't you hear? What you didn't hear
3 is you didn't hear from an expert for Mr. Joel or from
4 Ms. Heather Glover. There's only been one valuation --
5 \$150,000 -- so you haven't heard any expert. I submit to
6 you they couldn't get an expert. You know, the amazing
7 thing -- the amazing thing that was just said to you is by
8 Mrs. Ballard. Mrs. Ballard said we're sorry that Heather
9 Glover did this to Julie. Where is the apology from
10 Mr. Joel? Did you hear that?

11 Anyway, I am going to ask that when you retire to go
12 back to your jury room and you come back with a verdict of
13 \$150,000. Thank you for your patience.

14 JURY CHARGE

15 THE COURT: Mr. Foreman, ladies and gentlemen, the
16 charge, obviously, has been reduced substantially because
17 of the rulings, but there are a few things that we charge
18 in every civil case. Let me just go back -- Can you hear?

19 THE JUROR: Yes, sir.

20 THE COURT: We'll go back over those and then we'll
21 go straight to where we are in this particular case. Let
22 me remind you once again during the trial of this case
23 that you and I have had various functions to perform. As
24 I told you when we started the law makes me -- not me, but
25 my position -- the judge of the law in the case. So when

Appendix 287

1 defendant was negligent -- I have ruled as a matter of law
2 that he was -- and that his negligence proximately caused
3 injuries -- and I have ruled that that is the case -- and
4 the third thing they have to prove by the preponderance or
5 greater weight of the evidence is damages. In other
6 words, the plaintiff must show that he or she most
7 probably would have been successful in the underlying suit
8 if the attorney had not committed alleged malpractice.

9 The way that works is this. I found as a matter of
10 law that the suit -- the underlying suit in the wreck case
11 was not filed within proper time period -- what we call
12 the statute of limitations. It was filed outside of the
13 statute or not served -- filed and served which precluded
14 Ms. Tuten from trying that case in a courtroom or trying
15 to get it settled; so your job is to determine whether the
16 plaintiff has proven by the greater weight or
17 preponderance of the evidence that she would have been
18 successful and had she been so what she would have
19 received. Okay?

20 That underlying case is a wreck case. We try them
21 day-in and day-out. It's a form of a negligence case and
22 in a wreck case the plaintiff must prove that the
23 defendant violated some statutory rule or was not
24 exercising ordinary due care in the operation of a
25 vehicle, that she sustained injuries, and the injuries

Appendix 288



Ballard & Watson

Attorneys at Law

PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171

226 State Street | West Columbia, SC 29169

ph 803.796.9299 | fx 803.796.1066 | desaballard.com

July 29, 2014

Via U.S. Mail

Honorable Jenny Abbott Kitchings

South Carolina Court of Appeals

Post Office Box 11629

Columbia, South Carolina 29211

Re: *Appeal of Tuten v. Joel*
Case No: 2012-211915

Dear Ms. Kitchings:

I am writing in response to the Court's letter dated July 24, 2014 in which certain transcript pages were requested to supplement materials previously included in the Record on Appeal in the above-referenced matter. Please find enclosed pages 271, 273, 274, 175, and 276 as requested in your correspondence.

With warmest personal regards, I am

Sincerely yours,

Harvey M. Watson III

harvey@desaballard.com

cc: Tom Woodruff, Esq. (via email)
David Joel, Esq. (via email)

1 Q And you swore in front of a notary that it was the
2 truth?

3 A Yes, yea.

4 Q And in this sworn document in August of 2008 you
5 stated that there was a fee sharing agreement, didn't you?

6 A Yep.

7 Q All right.

8 A I think that's what it says.

9 Q All right. Mr. Joel, attached to that complaint your
10 attorney on your behalf attached six checks; is that
11 correct?

12 A Yes.

13 Q And the first check which is for little bit over
14 \$14,000 is dated July 31, 2006; is that correct?

15 A Yea.

16 Q That was after the closing of the Columbia office?

17 A I assume your question was did I receive any fees
18 from Heather Glover. You didn't ask me if I received any
19 reimbursement from a bank from which Heather Glover
20 embezzled money. Your question was totally not clear.

21 Q All right. Let me ask you a question.

22 A The jury doesn't even know about all of this
23 embezzlement.

24 THE COURT: Whoa, whoa, whoa. He asks the questions,
25 not you.

1 was the litigator. He was sending checks to the Columbia
2 office because he wasn't informed that Heather was gone
3 and he should send them to the Atlanta office. That's
4 what happened. Then they went to -- they were forwarded
5 to Heather's house and she wrote Joel and Associates on
6 the back and deposited them into her own account.

7 At first she was being investigated by the Secret
8 Service over this. Your question was did I receive any
9 fees from Heather. No, I didn't.

10 Q All right. Let's talk about what you did get, okay?

11 A Sure.

12 Q The checks that are attached to that complaint,
13 they're dated July 31, 2006. That's the first check; is
14 that correct?

15 A Yes, sir.

16 Q July 31, 2006 is after the Columbia office closed;
17 isn't that correct?

18 A That's right.

19 Q And those are from fees generated in the Columbia
20 office; is that correct?

21 A Technically, I guess they're from cases from the
22 Columbia office. They're generated by McWhirter who is
23 the litigator that we referred to.

24 Q And then the second check is dated October 4, 2006;
25 is that correct?

1 A Yes.

2 Q And that's after the Columbia office closed is; is
3 that correct?

4 A Yes.

5 Q And that also is for fees generated out of the
6 Columbia office; is that correct?

7 A Yes, okay.

8 Q But the third check is dated February 12 of 2007; is
9 that correct?

10 A Yes.

11 Q That's after the Columbia office closed; is that
12 correct?

13 A Yes.

14 Q And is that for fees generated out of the Columbia
15 office?

16 A Yes.

17 Q The third -- I'm sorry. The next check -- the fourth
18 check is dated March 7, 2007; is that correct?

19 A That's correct.

20 Q And that's after the Columbia office closed; is that
21 correct?

22 A Yes.

23 Q And is that for fees generated in the Columbia
24 office?

25 A Yea.

1 Q The fifth check which is for \$145,850, that is for
2 fees generated by the Columbia office, isn't it?

3 A Yep.

4 Q And that is after the Columbia office closed; isn't
5 that correct?

6 A Yes.

7 Q And the last check is dated June 16 of 2006; is that
8 correct?

9 A Yes.

10 Q And that was for \$12,800 and that would have been,
11 what, maybe 16 days after the Columbia office closed?

12 A Yes.

13 Q And your statement on this lawsuit against Wachovia
14 is that you had a fee sharing agreement with Heather
15 Glover; is that correct?

16 A Yes. I think that's what I read.

17 Q All right. Now, Mr. Joel, just out of curiosity, for
18 some reason you have a lot of lawyers who you say steal
19 your money, don't you?

20 MRS. BALLARD: Objection, Your Honor.

21 THE COURT: What's the objection?

22 MRS. BALLARD: The objection is relevance.

23 THE COURT: Sustained.

24 MRS. BALLARD: Thank you, Your Honor.

25 Q Mr. Joel, who is Wayne Williams?

1 A He was the attorney who worked in the Atlanta office.
2 Q Where is Wayne Williams today as we speak?
3 A In jail.
4 Q Mr. -- What is he in jail for?
5 MRS. BALLARD: Objection, Your Honor.
6 MR. WOODRUFF: I'll withdraw the question.
7 MRS. BALLARD: Thank you, Your Honor.
8 Q Mr. Joel, who is Alex Simanovsky?
9 A He was an attorney that worked for me as well.
10 Q Is he still practicing law?
11 A I think so.
12 Q Did you blackmail him?
13 A What?
14 MRS. BALLARD: Objection, Your Honor.
15 THE COURT: Hold on. Mr. Woodruff, sustained.
16 Disregard that question, ladies and gentlemen.
17 MRS. BALLARD: Thank you, Your Honor.
18 Q Are you forcing -- How do you pronounce his last
19 name?
20 A Simanovsky.
21 Q Are you forcing Mr. Simanovsky to repay you money?
22 A No.
23 Q No?
24 A No.
25 Q Are you alleging that he stold [sic] money from you?

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Doyet A. Early, III, Circuit Court Judge

Case No.: 2009-CP-02-2460
Appellate Case No. 2012-211915

Julie Tuten,

Respondent,

v.

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates; and Heather Glover

Defendants,

of whom

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates, are

Appellants.

RECEIVED

JUL 29 2012

SC Court of Appeals

INITIAL BRIEF OF APPELLANT

Desa Ballard
Stephanie Weissenstein
Ballard Watson Weissenstein
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066

Email: stephanie@desaballard.com

ATTORNEYS FOR APPELLANT

Tom G. Woodruff, Jr.
Woodruff Law Offices, LLC
Post Office Box 2783
Aiken, South Carolina 29802
Telephone: 803.649.1910
Facsimile: 803.642.5622
Email: tw@aikenlaw.com
ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

Table of Authorities	2
Statement of Issues on Appeal	3
Statement of the Case	4
Statement of the Facts.....	5
Argument	9
I. THE TRIAL JUDGE ERRED IN DIRECTING VERDICT AGAINST THE JOEL DEFENDANTS ON THE ISSUE OF LIABILITY BECAUSE THERE WERE FACTUAL ISSUES IN DISPUTE WHICH SHOULD HAVE BEEN DECIDED BY THE JURY AND IN FAILING TO GRANT JUDGMENT NOTWITHSTANDING THE VERDICT ON THE SAME GROUNDS	9
II. THE TRIAL JUDGE ERRED IN FAILING TO GRANT A DIRECTED VERDICT IN FAVOR OF DEFENDANTS ON THE PROFESSIONAL NEGLIGENCE CLAIM AGAINST THESE DEFENDANTS BASED ON THE PLAINTIFF'S FAILURE TO INTRODUCE ANY EVIDENCE THAT A JUDGMENT IN THE UNDERLYING CASE WAS COLLECTIBLE.....	17
III. THE TRIAL JUDGE ERRED IN DENYING APPELLANT'S MOTION FOR A NEW TRIAL <i>NISI</i> WHEN THE VERDICT WAS UNSUPPORTED BY EVIDENCE	22
Conclusion	24



TABLE OF AUTHORITIES

CASES

<u>Austin v. Stokes-Craven Holding Corp.,</u> 387 S.C. 22, 43, 691 S.E.2d 135, 146 (2010)	22
<u>Becker v. Wal-Mart Stores, Inc.,</u> 339 S.C. 629, 635, 529 S.E.2d 758, 761 (Ct. App. 2000)	22
<u>Doe v. Howe,</u> 626 S.E.2d 25, 367 S.C. 432, 446 (S.C.App. 2005)	20, 21
<u>Floyd v. Kosko,</u> 329 S.E.2d 459, 285 S.C. 390 (S.C.App. 1985)	18, 19
<u>In the Matter of David C. Joel, Attorney at Law, P.C.,</u> Case No. 11-083090-pwb (Bankruptcy M.D.Ga.)	4
<u>In re: Glover,</u> 390 S.C. 643, 704 S.E.2d 347 (2011)	8
<u>Kimmer v. Wright,</u> 719 S.E.2d 265, 396 S.C. 53 (S.C.App. 2011)	18
<u>Matter of Glover,</u> 380 S.C. 22, 667 S.E.2d 728 (2008)	7
<u>O'Neal v. Bowles,</u> 314 S.C. 525, 526, 431 S.E.2d 555, 556 (1993)	22
<u>Smith v. Haynsworth, Marion, McKay & Geurard,</u> 322 S.C. 433, 435 n. 2, 472 S.E.2d 612, 613 n. 2 (1996)	17
<u>Summer v. Carpenter,</u> 492 S.E.2d 55, 328 S.C. 36 (S.C. 1997)	18, 19

OTHER AUTHORITIES

Rule 1.5(e), RPC, Rule 407, SCACR	14
<i>Legal Malpractice in Massachusetts: Recent Developments</i> , 78 Mass. (1993)	20
Restatement of the Law (Third), Vol. 1, Chpt 4, §53, pg 391	21
Mallen and Smith, <i>Legal Malpractice</i> , 5 th Edition.	21



STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL JUDGE ERRED IN DIRECTING VERDICT AGAINST THE JOEL DEFENDANTS ON THE ISSUE OF LIABILITY BECAUSE THERE WERE FACTUAL ISSUES IN DISPUTE WHICH SHOULD HAVE BEEN DECIDED BY THE JURY AND IN FAILING TO GRANT JUDGMENT NOTWITHSTANDING THE VERDICT ON THE SAME GROUNDS.
- II. THE TRIAL JUDGE ERRED IN FAILING TO GRANT A DIRECTED VERDICT IN FAVOR OF DEFENDANTS ON THE PROFESSIONAL NEGLIGENCE CLAIM AGAINST THESE DEFENDANTS BASED ON THE PLAINTIFF'S FAILURE TO INTRODUCE ANY EVIDENCE THAT A JUDGMENT IN THE UNDERLYING CASE WAS COLLECTIBLE
- III. THE TRIAL JUDGE ERRED IN DENYING APPELLANT'S MOTION FOR A NEW TRIAL *NISI* WHEN THE VERDICT WAS UNSUPPORTED BY EVIDENCE

STATEMENT OF THE CASE

This is an action for legal malpractice. The complaint was filed on or about October 16, 2009. Defendants David Charles Joel, individually, and doing business as Joel & Associates P.A. and/or Joel & Associates, David C. Joel, Attorney at Law, P.C., doing business as Joel & Associates (hereafter "the Joel defendants") filed an Amended Answer and Cross-Claim (against co-defendant Heather Glover) on November 15, 2010. Defendant Heather Glover defaulted on the cross-claim.

In November, 2011, the corporate defendant David C. Joel, Attorney at Law, PC (hereafter "the bankrupt defendant"), was placed into involuntary bankruptcy in the bankruptcy court for the Northern District of Georgia. In the Matter of David C. Joel, Attorney at Law, P.C., Case No. 11-083090-pwb (Bankruptcy M.D.Ga).

Trial in this matter was held before Judge Doyet A. "Jack" Early and a jury beginning on January 23, 2012. Because the bankruptcy proceedings continued at the time this case was called for trial, trial did not proceed against the bankrupt defendant. (ROA 00099, lines 8 – 25). The jury returned a verdict in favor of the plaintiff Julie Tuten in the amount of \$250,000.00 against David Charles Joel, individually and doing business as Joel & Associates P.A. and/or Joel & Associates and Heather Glover. (ROA 000002). Timely post-trial motions were filed and were denied by order dated April 10, 2012. (ROA 000001; ROA 000005). This appeal followed.

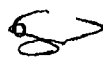
452

Carolina office was in operation, Ms. Tuten dealt exclusively with either Heather Glover or the firm's paralegal in South Carolina, Anne Weaver. (ROA 000012 at paragraph 13-14; ROA 000204). Mr. Joel never personally represented Ms. Tuten, and never knew anything about her case. (ROA 000140, lines 3-13; ROA 000145, lines 3-14; ROA 000120 lines 20-24).

When the South Carolina office closed, Heather Glover was the sole attorney operating the office. Ms. Glover agreed that she would undertake responsibility for all cases that remained in South Carolina. (ROA 000063 line 25 – 000064, line 6; ROA 000118; ROA 000142) She offered to pay the Joel firm some percentage of the fees that may eventually be recovered in the cases. (ROA 000143, line 10 – 000144, line 8). The Joel firm did not require Ms. Glover to promise to pay any future fees to the firm and it never received any fees from Ms. Glover on any cases. (Id.). *There was never an agreement regarding fee sharing with Ms. Glover.* (Id.; ROA 000176, lines 3-9). The firm never received any fees from Ms. Glover for any case that transferred to her. (ROA 000176, lines 10-13; ROA 000150, lines 12-17).

The Joel firm's experience was that Heather was a good attorney; they never had any complaints, and she generated considerable income for herself and the firm. (ROA 000140, line 15 – 000141, line 2). Mr. Joel believed Ms. Glover to be "totally capable" of assuming the cases on her own and completing them. (ROA 000141; lines 20-22).

Ms. Glover provided the Joel firm with a list of the files for which she assumed sole responsibility. (ROA 000124 line 2-14; ROA 000231). Ms. Glover wrote letters to all of the clients of the South Carolina office, including Ms. Tuten, and advised that the Joel firm was closing its South Carolina office but she would continue to handle the



clients' cases. (ROA 000224-000226). Ms. Glover's letter provided her new contact information as well as a business card with her new contact information. (Id.) Ms. Tuten acknowledged receiving the letter and the business card. (ROA 00063, line 7- 00064, line 6). Ms. Glover did state that fees would be shared when the case was concluded. (ROA 00064, lines 10-12).

Approximately a year after Ms. Glover assumed sole representation for Ms. Tuten's (and other) case(s), Ms. Tuten wrote a letter to Ms. Glover inquiring about the status of her case. (ROA 000242; ROA 121, lines 1-10). After receiving no response, Ms. Tuten discharged Ms. Glover as her attorney; the undated letter was delivered to the Joel firm's Atlanta office on June 5, 2007. (ROA 206). There is no evidence whether Ms. Tuten also mailed a letter to Ms. Glover at the address at which they had been corresponding since Ms. Glover assumed sole responsibility for the case.

Unbeknownst to anyone, Ms. Glover had, in fact, filed suit on Ms. Tuten's behalf on or about October 16, 2006. (ROA 000227). The summons and complaint listed Ms. Glover's address as the same address she had provided to Ms. Tuten in her letter to Ms. Tuten in which she advised Ms. Tuten that she was taking over her file. (ROA 0000224; ROA 000228-230).

Also unbeknownst to anyone, Ms. Glover had apparently abandoned the case after filing it. (ROA 000012). Ms. Tuten's suit against the at-fault defendant was dismissed for failure to prosecute by order dated November 20, 2007. (Id.).

Heather Glover was placed on interim suspension from the practice of law by the South Carolina Supreme Court on October 1, 2008. Matter of Glover, 380 S.C. 22, 667 S.E.2d 728 (2008).

78

Ms. Tuten brought this action against David Joel, individually and d/b/a several company names, and against Ms. Glover. (ROA 000009). Mr. Joel and his firm cross-claimed against Ms. Glover. (ROA 000030). Ms. Glover defaulted in the instant action, both as to the primary claim as well as on the cross claims.

Ms. Glover was disbarred by order of the Supreme Court in 2011. In re: Glover, 390 S.C. 643, 704 S.E.2d 347 (2011). Among the matters for which she was disciplined was her failure to diligently pursue cases after taking them over from her former employer.

ISSUE ONE

I. THE TRIAL JUDGE ERRED IN DIRECTING VERDICT AGAINST THE JOEL DEFENDANTS ON THE ISSUE OF LIABILITY BECAUSE THERE WERE FACTUAL ISSUES IN DISPUTE WHICH SHOULD HAVE BEEN DECIDED BY THE JURY AND IN FAILING TO GRANT JUDGMENT NOTWITHSTANDING THE VERDICT ON THE SAME GROUNDS.

Ms. Tuten was injured in an automobile accident on October 18, 2003. (ROA 000042, lines 17-19). She, and a friend, had been "at my house partying a little bit" and then they went to a club. (ROA 000042 line 20 – ROA 00043, line 3). Ms. Tuten's friend dropped Ms. Tuten off at a club and proceeded to a different club. (ROA 00042, line 24 – 000043, line 3).

Ms. Tuten wanted to leave that bar and go to another, so she asked "Cliff" if she could ride with him. (ROA 000043, lines 9-10). Cliff wanted to finish his beer, so Ms. Tuten waited for him to finish his beer and then got into his car as a passenger. (ROA 000043, lines 9-13). Cliff elected to take a short cut on Power House Road. (ROA 000043, lines 12-13). Ms. Tuten described the road as "curvy" and, said that Cliff was driving real fast and she asked him to slow down. (ROA 00043, lines 15-22). Cliff lost control of the car and went over a "drop-off" of approximately six (6) feet into some trees. (ROA 000044, lines 9-20). Ms. Tuten was injured.

In response to her lawyer's question about whether she had been "drunk" at the time she entered Cliff's car, Ms. Tuten acknowledged that she had ingested sufficient alcohol that evening to be "buzzing I would say, yes." (ROA 000045, lines 18-21). She didn't know whether Cliff was drunk, but she acknowledged he had been drinking before she elected to get in his car. (ROA 000043 lines 9-13; ROA 00045 lines 22-24; S.ROA 000004 line 18- 000005, line 9).



Ms. Tuten located the Joel Law Firm using the yellow pages. (ROA 000050, lines 10-11). Ms. Tuten hired Joel & Associates on a contingency basis. (ROA 000053, lines 2-7). Ms. Tuten's dealings were with Heather Glover and Anne Weaver. (ROA 000054, lines 8-16). She dealt primarily with Anne Weaver. (ROA 000055, lines 6-12; ROA 000071, lines 1-4).

Anne Weaver, n/k/a Clark, worked as a paralegal for the Joel firm's South Carolina office for about three (3) years, until it closed. (ROA 000114, line 8 -000115, line 3). Heather Glover was the attorney who operated the South Carolina office while Ms. Clark was there. (ROA 000115, lines 14-25). Mr. Joel did not exercise any supervisory control over the cases that were handled in South Carolina; however, his Atlanta office paid the expenses of the South Carolina office. (ROA 000116, lines 1-13). No calls were ever received for Mr. Joel at the South Carolina office during Ms. Clark's employment. (ROA 000117, lines 1-8).

Ms. Clark regularly spoke with Ms. Tuten and described Ms. Tuten as being "really good" about communicating with the office and providing information about her case. (ROA, 000126 line 12 -000127, line 15). Ms. Clark remembered speaking with Ms. Tuten about her case, and those conversations would have occurred before Ms. Glover assumed sole responsibility for the files because Ms. Clark did not continue employment after the South Carolina office closed. (ROA 000119, line 17 - 000121, line 23). Ms. Tuten never requested to speak with Mr. Joel when she called the South Carolina office. (ROA 000119, lines 22-24).

According to Ms. Glover, in August 2006, she had consulted with John Freeman and Jill Rothenbury to find out how to properly notify the clients that she was assuming

10

ROA 000143, lines 16 – 000144, line 8). In fact, Ms. Glover offered to prepare an agreement to be executed by herself and Mr. Joel (Plaintiff's Exhibit 14), but that never occurred. (ROA 209; ROA 000143, line 10 – 000144 line 8; ROA 000150, lines 12-17).

Since Mr. Freeman's testimony was based on the assumption that an agreement existed, which is refuted by the evidence, there was clearly a question of fact as to whether there was, in fact, an agreement, to share fees. Mr. Freeman's testimony does not implicate the Joel defendants at all unless there was a fee splitting arrangement.

At the conclusion of Ms. Tuten's case, the Joel defendants moved for directed verdict on the issue of whether the superseding and intervening negligence of Ms. Glover interrupted any causation link between any negligence that might have existed on the part of the Joel defendants. (ROA 000100, lines 6-24). Ms. Tuten's counsel acknowledged there was negligence by Ms. Glover, but he claimed that the Joel defendants were "the conductor of the train." (ROA 000103, lines 5- 17). The trial judge ruled that "the question of whether or not Glover's negligence was the intervening – intervened and cut off any negligence of [the Joel defendants] is a factual issue for the jury to determine." (ROA 000109, lines 18-22).

The trial judge actually recognized the evidence of disputed facts as to when the Joel defendants ceased any obligations to Ms. Tuten when dismissing the claim for punitive damages against the Joel defendants. "He turned the case over. Whether or not he turned it over properly and whether or not he contends he could get fees out of that's all one thing, but she's the one who after it was turned over to her . . . [Ms. Glover] is the one who just up and left and left your client hanging high and dry." (ROA 000104, lines 4-21).

At the conclusion of the testimony, the trial judge volunteered that he was going to direct a verdict against the Joel defendants on the issue of liability under the negligence cause of action, but he allowed the Joel defendants to oppose the motion. He ruled, as a matter of law that Ms. Glover had been and remained the agent of the Joel defendants at all times Ms. Glover represented Ms. Tuten, and therefore when the ball was dropped, Joel was still responsible. (ROA 000183, lines 1-4; ROA 000186, lines 23-24). Outside the presence of the jury, the trial judge said "the whole scenario of events is almost despicable. . ." (ROA 000188, lines 15-17).

Following a verdict against the Joel defendants, the trial judge permitted written post-trial motions. (ROA 000003). The motions were denied. (ROA 000001).

The trial judge erred in directing a verdict of liability against the Joel defendants, both as to negligence and as to the agency status of Ms. Glover. Clearly, there were factual issues in dispute which required the jury to decide them:

- A. Whether or not the Joel defendants continued to owe any obligation to Ms. Tuten after the South Carolina office was closed in 2006 and Ms. Glover accepted full responsibility for Ms. Tuten's file, with knowledge to Ms. Tuten that she was doing so.
- B. Whether Ms. Glover remained an agent of the Joel defendants after the South Carolina office closed and she assumed sole responsibility for the cases.
- C. Was there was a fee-sharing arrangement between Ms. Glover and the Joel defendants, which was the entire premise of Mr. Freeman's testimony regarding the negligence of the Joel defendants?

ISSUE TWO

- II. THE TRIAL JUDGE ERRED IN FAILING TO GRANT A DIRECTED VERDICT IN FAVOR OF DEFENDANTS ON THE PROFESSIONAL NEGLIGENCE CLAIM AGAINST THESE DEFENDANTS AND IN GRANTING A DIRECTED VERDICT AGAINST THESE DEFENDANTS, BASED ON THE PLAINTIFF'S FAILURE TO INTRODUCE ANY EVIDENCE THAT A JUDGMENT IN THE UNDERLYING CASE WAS COLLECTIBLE.

In order to recover in a legal malpractice action, the claimant must prove four elements: (1) the existence of an attorney-client relationship; (2) breach of a duty by the attorney; (3) damage to the client; and (4) proximate causation of the client's damages by the breach. Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 435 n. 2, 472 S.E.2d 612, 613 n. 2 (1996). In presenting her case, Ms. Tuten introduced evidence of the crash, medical bills, and she described her injuries (S.ROA 000001, line 11- 000002 line 24; S.ROA 000003, line 9 – 000004, line 21). She did not present any evidence that she would have collected a settlement or judgment, other than Mr. Freeman's testimony about the "value" of the case. *See infra*.

In making the motion for directed verdict, counsel for Mr. Joel² argued that in order for Ms. Tuten to establish that the Joel defendants proximately caused her damages, she must necessarily offer proof or at least some evidence that she could have recovered something; by virtue of Ms. Tuten's failure to put up any evidence that there was insurance coverage, that there were recoverable assets, or that there was any ability to recover whatsoever, she failed to prove that were damages caused to her as a proximate result of anything that the Joel defendants, or even Ms. Glover, did or did not do. (ROA 000107, line 11- 000108, line 7- 000109, line 2.).

² The transcript inaccurately refers to Ms. Ballard as "Mr. Buchanan" in at least one place.

Ms. Tuten introduced the expert testimony John Freeman, who said Joel was negligent and the value of the case was \$150K. (S.ROA 000006-000007). All Mr. Freeman testified to was the purported value of Ms. Tuten's case; he didn't testify that he had done any investigation as to whether there was insurance coverage or as to whether the underlying defendant Mr. Still had any assets that could be recovered. (S.ROA 000022, line 8- 000023, line 11; ROA 000101). Under the case-in-a-case theory, it was incumbent upon Ms. Tuten to prove that that money could have been recovered in the underlying action, and thus she lost something by Ms. Glover's failure to file the lawsuit timely.

In *Kimmer v. Wright*, the Court ruled that the question of the success of the underlying claim, if suit had been brought, is a question of law. Kimmer v. Wright, 719 S.E.2d 265, 269, 396 S.C. 53 (S.C.App. 2011). Thus, as a matter of law, since Ms. Tuten provided no evidence that a verdict could have been won or that settlement was possible, the trial should have denied its own motion against the Joel defendants and should have instead granted the Joel defendant's motion for directed verdict based on Ms. Tuten's failure to prove all the elements of her case.

Furthermore, the trial court erred in denying Mr. Joel's motion for directed verdict, ruling that whether Ms. Tuten would have had success in the lower court is a question of the jury and that "success" is something that has not been defined by our courts. (ROA 000181, lines 8-18). The trial court in denying Joel's directed verdict cited Summer v Carpenter, 492 S.E.2d 55, 328 S.C. 36 (S.C. 1997), and Floyd v. Kosko, 329 S.E.2d 459, 285 S.C. 390 (S.C. App. 1985) for the proposition that a plaintiff in a malpractice case must establish that she would have been successful in the underlying

matter, but that nowhere do either cases define what is "success". (ROA 000181). Appellant Joel would show that these cases are inapposite to his point about Ms. Tuten's burden of proof as to damages and recovery.

In *Floyd*, the court determined that "in order for Floyd to recover he must show that an appeal of Judge Cobb's order refusing to vacate the default judgment most probably would have been successful. In determining whether the appeal would have been successful, the trial court examined the merits of the appeal and found that there was no evidence to establish "a question of fact as to the alleged negligent failure to appeal." Floyd v. Kosko, 329 S.E.2d 459, 285 S.C. 390 (S.C.App. 1985).

In determining whether Appellant had a valid claim for legal malpractice against Carpenter for failing to bring litigation against the Highway Department, the Supreme Court considered Appellant's claim, via her attorney's affidavit, that "[t]he presence of the [Highway Department] would have most likely resulted in a much higher settlement or verdict for [appellant]." Summer v Carpenter, 492 S.E.2d 55, 328 S.C. 36 (S.C. 1997). But, the court determined that, "based on the evidence presented, if suit had been filed against both Lineberger and the Highway Department. . . the Highway Department would have been immune from suit under the design immunity provision of the [Tort Claims] Act." *Id.* at 48. Thus, the Court ruled "even if [appellant] had preserved the issue of negligent maintenance for the Court's consideration, appellant would not have had a successful action for negligent maintenance and, therefore, she has failed to establish any prejudice by respondent's failure to file suit against the Highway Department." *Id.* at 48.

Rather, the point is that a party may establish he could have won a verdict for a million dollars, but if it's not recoverable, the party has not suffered any damages by his

attorney's negligence. (ROA 000101, line 1 – 000102, line 5). This issue of collectability, on information and belief, has not been directly discussed in detail by South Carolina's courts. (Id.)

Our courts have, however, hinted at the theory, using the case-within-a-case application to malpractice issues. For example, in *Doe v. Howe*, it was determined that the former client's burden of establishing proximate cause in a legal malpractice action "requires that he prove that he would have obtained a better result in the underlying matter if the attorney had exercised reasonable care. *Doe v. Howe*, 626 S.E.2d 25, 367 S.C. 432, 446 (S.C.App. 2005). The burden does not necessarily compel the client to demonstrate that he would have won the underlying case. Rather, it is enough for the legal malpractice plaintiff to show that he has lost a valuable right; e.g., the settlement value of the underlying case." *Id.* Stated otherwise, the client has to establish that he has lost a probability of success as a result of the attorney's negligence." *Id.* (citing, David A. Barry, *Legal Malpractice in Massachusetts: Recent Developments*, 78 MASS. L.REV. 74, 79 (1993)(internal citations omitted).

More to the point, the *Doe v. Howe* Court held that "as far as we can tell, the record contains only a "Gross Distribution" list showing that various claimants represented by other counsel each received approximately \$2 million dollars following the initial verdict against the school. But this list does nothing more than set forth factual information. Most certainly, the list does not constitute an opinion that *Doe* should have made a recovery similar to the other claimants. At best, it could serve, if at all, only as evidence that could have supported an opinion regarding the settlement value of *Doe's* claim." *Doe v. Howe*, 367 S.C. at 446. In other words, *Doe* could not recover in his

malpractice claim damages when he failed to establish such damages would have been recovered in the underlying case.

Other jurisdictions have discussed the issue of collectability at length. The Restatement³ says that "the lawyer's misconduct will not be the legal cause of loss to the extent that the defendant lawyer can show that the judgment or settlement would have been uncollectible" even if a plaintiff can show she "would have recovered through trial or settlement" in the underlying action. *Id.*

Similarly, the purpose of the "trial within a trial" practice in legal malpractice cases is because the plaintiff must prove what the result in the underlying case should have been, but for the attorney's negligence. But while the "should have been" result might be objective, there are always subjective issues to consider too. For example, "issues of collectability of a judgment or the adequacy of settlement concern the characteristics of the actual defendant in the underlying case, not a hypothetical reasonable defendant". Mallen and Smith, *Legal Malpractice*, 5th Edition, §33.8 at page 70: West Group, 2000.

In this case, Ms. Tuten offered no evidence that her case would have likely actually recovered her any money; she offered no evidence of whether settlement was possible, and offered no evidence as to what verdict could have been achieved and collected, but for negligence against the named defendants. Therefore, the Joel defendants assert that the trial court erred, as a matter of law, in denying their motion for directed verdict against the plaintiff the legal malpractice claim (and in granting a directed verdict against them on the same issue).

³ RESTATEMENT OF THE LAW (THIRD) Vol. 1, Chpt 4, §53, p 391.

ISSUE THREE

THE TRIAL JUDGE ERRED IN DENYING APPELLANT'S MOTION FOR A NEW TRIAL *NISI* WHEN THE VERDICT WAS UNSUPPORTED BY EVIDENCE.

"The trial judge alone has the power to grant a new trial *nisi* when he finds the amount of the verdict to be merely inadequate or excessive. The denial of a motion for a new trial *nisi* is within the trial judge's discretion and will not be reversed on appeal absent an abuse of discretion." O'Neal v. Bowles, 314 S.C. 525, 526, 431 S.E.2d 555, 556 (1993). When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice. Becker v. Wal-Mart Stores, Inc., 339 S.C. 629, 635, 529 S.E.2d 758, 761 (Ct. App. 2000). When the award is the product of such factors, yet there was a failure of the trial judge to grant a new trial, it amounts to an abuse of discretion that will be reversed and requires the granting of a new trial absolute." O'Neal at 527, 431 S.E.2d at 556.

There was no evidence to support the grossly excessive award of damages, so Mr. Joel's post-trial motions included a request for a new trial *nisi* remittitur. (ROA 000003). For damages to be recoverable, the evidence "should enable the jury to determine the amount thereof with reasonable certainty or accuracy." Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 43, 691 S.E.2d 135, 146 (2010). The existence, causation, nor the amount of damages can be left to conjecture, guess, or speculation, even though proof with mathematical certainty is not required. *Id.* Here, there was evidence regarding a certainty of one aspect of damages, their upper limit. Ms. Tuten's *own legal expert*

established the cap in value of her claims when he testified the claims were worth \$150,000. (S.ROA 000023, lines 18-22).

Mr. Joel did not object to that evidence, since it fortunately, and rightly, constitutes a cap on damages proffered by Ms. Tuten, herself. (Id.; S.ROA 000038, line 19.)

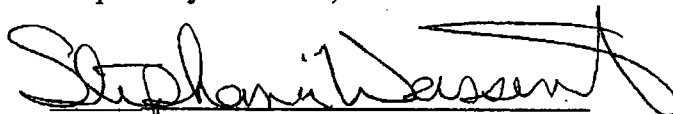
The eventual jury award far in excess of that amount, nearly doubling the max calculation submitted by Ms. Tuten's own expert as part of her case, clearly indicates passion, caprice, or prejudice given the absence of any evidence that could have sustained such an award. Failure to acknowledge and rectify that award's excessiveness by the trial court amounted to an abuse of discretion, and warrants a reversal and grant of a new trial.

CONCLUSION

For the reasons set forth herein, the Joel defendants seek an order vacating the verdict against them in this case. Should the Court agree that the trial judge should have granted the motion for directed verdict made by the Joel defendants, a reversal would end the case. Should the Court agree that the trial judge erred in granting a directed verdict of liability against the Joel defendants, the case would be remanded for a new trial.

In the alternative, should the Court disagree on the issues related to directed verdict, it is respectfully submitted that this Court should find error in the trial judge's failure to grant a new trial *nisi remittitur*, and should remand this matter to the trial court for entry of judgment of \$150,000.00.

Respectfully submitted,



Desa Ballard
Stephanie Weissenstein
Ballard Watson Weissenstein
P.O. Box 6338
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
Emails: desab@desaballard.com
stephanie@desaballard.com

ATTORNEYS FOR APPELLANTS

July 29, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Aiken County

Doyel A. Early, III, Circuit Court Judge
Case No. 2009-CP-02-2460
Appellate Case No.: 2012-211915

Julie Tuten Respondent

David Charles Joel, individually
and doing business as
Joel & Associates P.A., and/or
Joel & Associates,
and Heather A. Glover, ... Defendants

of whom

David Charles Joel, individually
and doing business as
Joel & Associates P.A., and/or
Joel & Associates, ... Appellants

BRIEF OF RESPONDENT

Tom G. Woodruff, Jr.
220 Richland Avenue, West
Post Office Box 2783
Aiken, South Carolina 29802-2783
Phone: 803-649-1910
Email: tw@aitkenlaw.com
ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

Table of Authorities	2
Statement of Issues on Appeal	3
Statement of the Case	4
Argument	12
I. THE TRIAL JUDGE DID NOT ERR IN DIRECTING A VERDICT AGAINST THE JOEL DEFENDANTS ON THE ISSUE OF LIABILITY	12
II. THE TRIAL JUDGE DID NOT ERR IN FAILING TO GRANT A DIRECTED VERDICT IN FAVOR OF THE JOEL DEFENDANTS, ON THE PROFESSIONAL NEGLIGENCE CLAIM	14
III. THE TRIAL JUDGE DID NOT ERR IN DENYING APPELLANTS' MOTION FOR A NEW TRIAL <i>NISI</i>	15
Conclusion	16

TABLE OF AUTHORITIES

CASES

<u>Doe v. Howe,</u> 367 S.C. 432, 626 S.E.2d 25 (Ct.App. 2005)	15
<u>Floyd v. Kosko,</u> 285 S.C. 390, 329 S.E.2d 459 (Ct.App. 1985)	14
<u>Holy Loch Distributors, Inc. v. Hitchcock,</u> 340 S.C. 20, 531 S.E.2d 282 (2000)	14
<u>In the Matter of Heather Anne Glover,</u> 390 S.C. 643, 704 S.E.2d 347 (2011)	8
<u>O'Neal v. Bowles,</u> 314 S.C. 525, 431 S.E.2d 555 (1993)	15
<u>Smith v. Haynesworth, Marion, McKay & Geurard,</u> 322 S.C. 433, 472 S.E.2d 612 (1996)	15

OTHER AUTHORITIES

Rule 1.5, SCACR Rule 407	14
--------------------------------	----

STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL JUDGE DID NOT ERR IN DIRECTING A VERDICT AGAINST THE JOEL DEFENDANTS ON THE ISSUE OF LIABILITY.
- II. THE TRIAL JUDGE DID NOT ERR IN FAILING TO GRANT A DIRECTED VERDICT IN FAVOR OF THE JOEL DEFENDANTS, ON THE PROFESSIONAL NEGLIGENCE CLAIM.
- III. THE TRIAL JUDGE DID NOT ERR IN DENYING APPELLANTS' MOTION FOR A NEW TRIAL *NISI*.

STATEMENT OF THE CASE

This matter involves a legal malpractice action against:

- i) attorney David Charles Joel, individually and d/b/a "Joel & Associates,"
and d/b/a "Joel & Associates, P.A.;"
- ii) David Charles Joel, Attorney at Law, P.C. (a Georgia professional
corporation); and
- iii) attorney Heather A. Glover.

The Georgia professional corporation "David Charles Joel, Attorney at Law, P.C.," was placed into involuntary bankruptcy, by its creditors in November of 2011. This Chapter Seven bankruptcy was subsequently converted into a Chapter Eleven business re-organization by its sole shareholder, David Charles Joel. Because of the bankruptcy of the corporate defendant, trial went forward against the Joel defendants, specifically excluding the Georgia corporate defendant "David Charles Joel, Attorney at Law, P.C." (R.p. 99, Tr. p. 165, lines 8-25.)

The defendant Heather A. Glover, although properly served with the Summons and Complaint in this action, never filed any responsive pleadings or motions. She was properly notified of the trial date, time and place, and did not appear, nor did any counsel appear on her behalf.

A jury trial was held in this matter, before the Honorable Doyet A. Early, III, Resident Judge of the Second Judicial Circuit. The trial began on January 23, 2012. At the close of the case, on January 24, 2012, counsel for plaintiff renewed the motion for directive verdict on the issue of legal malpractice. This renewed motion was granted by

the trial court.¹ The sole issue for the jury, was the amount of actual damages to which the plaintiff was entitled. The jury returned with a verdict for the plaintiff in the amount of Two Hundred and Seventy Five Thousand (\$275,000.00) Dollars. (R.p. 2)

¹ Respondent had the following causes of actions in her Complaint:

- a) Attorney Negligence; b) Breach of Fiduciary Duty; c) Breach of Contract;
- d) Fraud; e) Unfair Trade Practices; and, f) Partnership and *Respondeat Superior*.

Because the granting of the renewed motion for directed verdict on the issue of legal malpractice, the remaining causes of actions were rendered moot.

STATEMENT OF FACTS

This is a legal malpractice action. The underlying action, involved an automobile accident, which occurred on October 18, 2003, in Aiken County, South Carolina. Joel & Associates, was contracted to represent the plaintiff in this accident. The day before the expiration of the statute of limitations, on October 17, 2006, an action was filed against Mr. Still, by attorney Heather A. Glover. This lawsuit was filed with the Court of Common Pleas for Aiken County, at civil action number 2006-CP-02-1466; thereafter, on November 20, 2007, the case was administratively dismissed (pursuant to SCCA Form 4) for "failure to prosecute;" apparently, this action was never served. During this time, Heather Glover absconded from South Carolina, and allegedly stole money from the Joel defendants. (R.pp. 227-230, Plaintiff's Exhibit 15, Defendants' Exhibit C.)

As to the underlying automobile accident, the plaintiff was a passenger in a vehicle driven by Clifford Still, and Mr. Still drove off the roadway and down a steep embankment. As a result of the wreck, respondent suffered a broken vertebrae, a collapsed lung, three broken ribs and a concussion. Additionally, respondent spent six days in the trauma unit at the Medical College of Georgia. (R.p. 44-45, Tr. p. 63, lines 9-25, p. 64, lines 1-11.) As a direct result of this accident, respondent is now totally disabled, and draws Social Security disability. (R.p. 42, Tr. p.61, lines 9-15.)

Upon respondent's release from the hospital following the accident, she went to her residence in North Augusta, South Carolina, and her mother came to stay with her. (R.p. 46, Tr. p. 67, lines 15-22.). She looked in her local BellSouth telephone book for an attorney, and the largest ad was for Joel & Associates. The ad had a local phone number,

and photographs of David Charles Joel. No other attorney was listed, and there was no indication "Joel & Associates" was any type of corporate entity. Respondent was impressed with the ad, and believed to have recalled seeing his advertisements on television. The ad also stated, "Settlements and Trials." She was also pleased, the ad stating they would come to her is she was unable to come to them. She contacted Joel & Associates. (R.pp. 47-52, Tr. pp. 68-73). Thereafter, Joel & Associates sent a 'runner' to 'sign her up.'² (R.pp. 52-53, Tr. p.73, lines 10-25, Tr. p.74, lines 1-24).

At the time the respondent retained the appellants, Joel & Associates were advertising in the BellSouth yellow pages in South Carolina, and had approximately one and one-half million yellow page ads in South Carolina, for the BellSouth advertising year 2002-2003. (R.p. 217, Plaintiff's Exhibit 16.) They also had at local phone number for most locations, so the potential client would not have long distance charges. (R.p. 123, Tr. p. 208, lines 5-18.)

The appellant David Charles Joel, is not licensed to practice law in the state of South Carolina.³ The appellants however, did practice law under the name "Joel & Associates," and at one time was incorporated in the state of South Carolina. The South Carolina corporation, incorporated as Joel & Associates, P.A., was administratively dissolved by the South Carolina Secretary of State, on September 24, 1997. (R.p. 207, Plaintiff's Exhibit 11.) The appellants also practiced law in Georgia, also under the name

² The runner who 'signed up' the plaintiff, was not a lawyer.

³ According to the testimony of the appellant David C. Joel, he did take the South Carolina Bar exam on one occasion; however, he did not pass this exam, and never attempted to take the exam again. (R.p. 133, Tr. p. 231, lines 1-25.)

of "Joel & Associates," and was incorporated under the name "David C. Joel, Attorney at Law, P.C."

Heather A. Glover, was a lawyer licensed to practice in South Carolina.⁴ She was hired by David Charles Joel, for his South Carolina office, which was based in Columbia. This office originally opened in 1996, and was ultimately closed in the spring of 2006. At the time the office was closed, the Joel defendants and Heather A. Glover entered into an agreement where Glover, "would continue handling representation of Joel & Associates remaining South Carolina cases with an agreement to split fees with Joel & Associates." This language is taken directly from page two, paragraph five, of the Verified Complaint, sworn to by David Charles Joel on August 5, 2008, in Joel v. Wachovia Bank. (R.pp. 210-216, Plaintiff's Exhibit 15).

Also, it is noted, the Joel defendants maintained computer software, specifically a 'Needles software program,' which provided him with a listing of cases, and could also be sorted by the dates of the statute of limitations.

When respondent would attempt to contact Joel & Associates, she would usually end up talking to Ann Weaver, who was an employee of Joel & Associates. Respondent indicated she only spoke with Heather Glover on one occasion, and when she asked about her case, she was told by Ann Weaver, that David Charles Joel was getting all of her paperwork and everything was fine. Respondent testified there was never any doubt in

⁴ The defendant Heather A. Glover, was disbarred by Order of the South Carolina Supreme Court, dated January 7, 2011, in The Matter of Heather Anne Glover, 390 S.C. 643, 704 S.E.2d 347 (2011).

her mind, her attorney was David Charles Joel. (R.pp. 55-56, Tr., p. 78, lines 6-25, p. 79, lines 1-22.)

Respondent did acknowledge receiving a letter similar to Defendant's Exhibit A, which indicated that Mr. Joel "was retiring from his South Carolina practice,"⁵ but would still be receiving one-third of the attorney's fees generated. (R.p. 57, Tr., p. 80, lines 20-25.) Thereafter, Respondent attempted to contact both Mr. Joel and Heather A. Glover, but was never allowed to speak to either of them. (R.p. 59, Tr. p. 82, lines 14-25.) At that time, Respondent was under the belief David Charles Joel was still her attorney. (R.p. 59, p.82, lines 9-13.) In June of 2007, after not being able to contact either Heather A. Glover or David Charles Joel, Respondent sent a certified letter to the Atlanta office. Copies of this letter, and the certified mail receipt and United States Postal Service return post card, are attached as Plaintiff's Exhibit No. 9. (R.pp. 60-61, Tr. p.84, line 25, Tr. p. 85, lines 1-19.) (Also, R.p. 206.) Respondent never received any response from that letter. At this point the statute of limitations had expired, and this fact would have been know to David Charles Joel, as he had a listing of the statute of limitations dates in his software program, as well as a listing of cases his South Carolina office had. (R.pp. 218-223. The only logical conclusion, would be Mr. Joel abandoned his client, at this point.

John Patrick Freeman was called as respondent's expert witness on the issue of legal malpractice. Mr. Freeman is a former professor at the University of South Carolina School of Law, and specialized in the area of legal ethics. (R.pp. 73-76, Tr. p. 105, lines 8-25, p. 106, lines 1-25, p. 107, lines 1-25, p. 108, lines 1-15.) Professor Freeman also

⁵ It is noted again, Mr. Joel was never licensed to practice law in South Carolina.

testified as to the law of agency, joint venture and partnership, in the state of South Carolina. (R.pp. 76-77, p. 108, lines 16-25, p. 109, lines 1-5.)

Professor Freeman was qualified as an expert by the trial court, on the areas of legal ethics, including the areas where lawyers advertise for clients, where lawyers are withdrawing from representation, and where lawyers act or purport to act as employees of law firms. This expert qualification was without objection by counsel for the Joel defendants. (R.pp. 79-80, Tr. p. 118, lines 18-25, p. 119, lines 1-8.) Professor Freeman, then testified as to the 'client abandonment' by both Heather A. Glover and David Charles Joel. (R.pp. 80-83, Tr. p. 119, lines 13-25, p. 120, lines 1-25, p. 121, lines 1-25, p. 122, lines 1-24.) Professor Freeman also discussed the South Carolina Rules of Professional Conduct, and in commenting on Rule 1.5 (dealing with the division of fees), and noted,

"...if you are going to share a fee with a lawyer you allocated that fee either based on the work that is done ..., but, each lawyer who is sharing in the fee has to have joint responsibility for the work that's being done. In other words, no free lunch. You don't take a fee and have no responsibility for what happens...".

(R.p. 78, Tr. p. 115, lines 18-25.)

When questioned about the Joel defendants' apparent theory they were not accountable for what happened in South Carolina, because David Charles Joel was not ever licensed in South Carolina, Professor Freeman indicated he had taken that into account, and, "that is a ridiculous argument." (R.p. 86, Tr. p. 131, lines 3-25.)

When Professor Freeman was asked about the fraudulent activity of the Joel defendants, he responded he believed there was fraud. (R.pp. 87-88, Tr. p. 134, lines 1-25, p. 135, lines 1-25.) The Joel defendants did not offer any expert testimony at trial.

Anne Weaver was the only employee, other than Heather A. Glover, at the Columbia office. She was hired at an interview where David Charles Joel was present, and she testified he had the right to fire her. (R.p. 125, Tr. p. 220, lines 5-10.) She testified at trial, that the Columbia office would bring in about one hundred and eighty (180) cases each year. (R.pp. 128-129, Tr. p. 225, lines 12-25, p. 226, lines 1-21.) Anne Weaver also testified, that during the time she worked at the Columbia office, there were approximately four hundred to five hundred cases, and no case was ever tried. (R.pp. 129-130, Tr. p. 226, lines 20-25, p. 227, line 1.)

At trial, David Charles Joel testified. He acknowledged he opened the South Carolina office of Joel & Associates in 1996. (R.p. 133, Tr. p.231, lines 1-8.) Mr. Joel also testified that paid Heather A. Glover a salary of \$100,000.00 per year, and then he and Heather A. Glover would equally divide all the remaining fees, after first deducting the office expenses for the South Carolina office. (R.pp. 135-137, p. 233, lines 15-25, p. 234, lines 1-4.)

Mr. Joel also testified as to having the Needle software system in his office, so that he could monitor all cases. He also testified he selectively sent letter to the South Carolina clients in about February of 2008, but only sent letters to the clients who had cases that were not barred by the statute of limitations. (R. 153-160, Tr. p. 260, lines 11-25, p. 261, lines 1-25, p. 262, lines 1-25, p. 263, lines 1-25, p. 264, lines 1-25, p. 265, lines 1-25, p. 266, lines 1-25, p. 267 lines 1-24.)

Appendix 326

David Charles Joel also testified as to his lawsuit against Wachovia Bank, and he acknowledged in his lawsuit, he had an agreement with Heather Glover to split fees for the Joel & Associates' South Carolina cases (after the closing of the South Carolina office). (R.pp. 161-162, Tr., p. 269, lines 16-25, p.270, lines 1-25.) Mr. Joel further admitted he settled his lawsuit against Wachovia Bank for, he believed, One Hundred and Ten Thousand (\$110,000.00) Dollars. (R.p. 163, Tr. p. 272, lines 12-20.)

Mr. Joel also testified Heather A. Glover never tried any cases while she was an attorney for Joel & Associates in South Carolina. (R. pp. 164-165, Tr. p.277, lines 20-25, p. 278, lines 1-5.) Mr. Joel further testified he had probably not tried a case in the last twenty years. (R.p. 166, Tr. p. 282, lines 8-15.)

Mr. Joel also testified his office had been sued in Georgia for unfair business practices and for fraud, relating to an employee who was arrested for the unauthorized practice of law. (R. pp. 167-170, Tr. p. 284, lines 18-25, p. 285, lines 1-25, p. 286, lines 1-25, p. 287, lines 1-17.) Mr. Joel acknowledged the Georgia Court of Appeals had upheld the ruling against him. (R.pp. 234-241.)

Mr. Joel acknowledged he advertised in more than twenty-one (21) individual BellSouth phone books, in the state of South Carolina, for the advertising year 2002 to 2003. (R.pp. 171-172, Tr. p. 290, lines 2-25, p. 291, lines 1-18.) He also admitted in his advertising, his name and picture was the only one present. (R.p. 173, Tr. p.292, lines 15-25) (Also, R.pp. 196-201.)

Mr. Joel further testified he, like Heather Glover, also drew a salary of One Hundred Thousand (\$100,000.00) Dollars, each year, from the South Carolina office. (R.p. 174, Tr., p. 295, lines 1-12.) Mr. Joel additionally testified, at least one year, the

Appendix 327

South Carolina office paid both Mr. Joel and Heather Glover, over Five Hundred Thousand (\$500,000.00) Dollars, in addition to their salary of One Hundred Thousand (\$100,000.00) each. Mr. Joel also testified, the South Carolina office always made enough money to pay both his and Heather A. Glover's salary, and to pay all office expenses, and a bonus. (R.p. 174, Tr. p. 295, lines 13-25.)

ISSUE ONE

I. THE TRIAL JUDGE DID NOT ERR IN DIRECTING A VERDICT AGAINST THE JOEL DEFENDANTS ON THE ISSUE OF LIABILITY.

The Joel defendants attempt to argue the trial court erred, when it directed a verdict on the matter of legal malpractice against the Joel. Apparently, the Joel defendants are attempting to claim he (they) had no liability for the South Carolina office, and the only duty was to collect money from the office.

Joel's business model appeared to be one of massive advertising in the BellSouth yellow pages, and having large numbers of local phone numbers. In the BellSouth yellow pages for the year 2002-2003, the Joel defendants had advertising in South Carolina phone book in excess of one and one-half million phone books this one year period. The name of no attorney, other than David Charles Joel, ever appeared in any of this advertising.

In the appellants agreements, counsel for the Joel defendants lists three issues she claims remained for a jury to decide, as follows:

- A. Whether or not the Joel defendants continued to owe any obligation to Respondent after the South Carolina office closed in 2006;

- B. Whether Glover remained an agent of the Joel defendants after the South Carolina office closed; and
- C. Was there a fee-sharing arrangement between Glover and the Joel defendants.

The exclusive answer to all of the above questions, is answered by simply referring to the lawsuit of the Joel defendants filed against Wachovia, originally filed with the Superior Court of Gwinnett County, State of Georgia, at civil action number 08A-07530-1, and removed to the United States District Court for the Middle District of Georgia, at case number 1:08-cv-02992-TCB. In the verified Complaint, signed by David Charles Joel, he swore under oath the contents of the Complaint were true. In paragraph five (5) of that Complaint, it is stated,

“In or about May 2006, Joel & Associates closed its Columbia office and entered into an agreement with Ms. Glover under which she would continue handling representation of Joel & Associates’ remaining South Carolina cases with an agreement to split fees with Joel & Associates.”

Mr. Joel testified he settled this case with Wachovia for in excess of One Hundred Thousand (\$100,000.00) Dollars.

Rule 1.5(e), SCACR Rule 407, provides,

“A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the

arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing, and (3) the total fee is reasonable.”

To quoted Professor Freeman, “You don’t take a fee and have no responsibility for what happens...”. (R.p. 78, Tr. p. 115, lines 18-25.)

ISSUE TWO

II. THE TRIAL JUDGE DID NOT ERR IN FAILING TO GRANT A DIRECTED VERDICT IN FAVOR OF THE JOEL DEFENDANTS, ON THE PROFESSIONAL NEGLIGENCE CLAIM.

Legal malpractice is ordinarily considered a negligence action. Floyd v. Kosko, 285 S.C. 390, 391, 329 S.E.2d 459, 460, n.1 (Ct.App. 1985). The prevailing view is also that it embraces and any professional misconduct whether breach of the standard of (negligence) or of fiduciary obligations. See, Holy Loch Distributors, Inc. v. Hitchcock, 340 S.C. 20, 26, 531 S.E.2d 282, 285 (2000) (mentioning malpractice based on fiduciary duty).

The elements required to prove a claim of legal malpractice, are: 1) the existence of an attorney-client relationship; 2) breach of duty by the attorney; 3) proximate causation; and 4) damage to the client, Holy Loch, supra, at 340 S.C. 20, 531 S.E.2d 282. Smith v. Haynesworth, Marion, McKay & Geurard, 322 S.C. 433, 472 S.E.2d 612 (1996).

In the present case, the appellant is attempting to make an argument, it was necessary to prove, “she would have collected a settlement or judgment.” Collectability of the underlying judgment is not an element of a legal malpractice case in this state. In Doe v. Howe, 367 S.C. 432, 626 S.E.2d 25 (Ct.App. 2005), this Court held that the

failure to show likelihood of success in an underlying action may be considered and inability to meet the element of proximate cause, as to the damages element, "respondent must show he or she 'most probably would have been successful in the underlying suit if the attorney had not committed the alleged malpractice.'" "The question of success of the underlying claim if suit had been brought, is a question of law." See: Doe, 367 S.C. 432, 442, 626 S.E.2d 25, 30. In the present case, the lawsuit was filed, it appears it was never served.

In this case, the appellant is attempting to add to South Carolina law, a fifth element to a legal malpractice case, that being 'collectability.'

ISSUE THREE

III. THE TRIAL JUDGE DID NOT ERR IN DENYING APPELLANTS' MOTION FOR A NEW TRIAL *NISI*.

In O'Neal v. Bowles, 314 S.C. 525, 526, 431 S.E.2d 555, 556 (1993), the South Carolina Supreme Court held, "The trial judge alone has the power to grant a new trial *nisi* when he finds the amount of the verdict to merely inadequate or excessive. The denial of a motion of a new trial *nisi* is within the trial judge's discretion and will not be reversed on appeal absent an abuse of discretion."

In the present case, respondent received injuries rendering her totally disabled. As such, it is certainly reasonable for a jury to have awarded her the amount of Two Hundred and Seventy Five Thousand (\$275,000.00) Dollars, particularly in light of the extensive injuries sustained by Respondent, and her hospitalization after the accident.

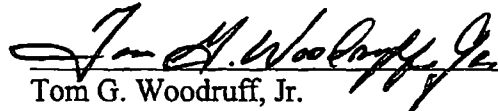
CONCLUSION

For the reasons set forth herein, this appeal should be dismissed, with costs assessed to the Appellants.

Respectfully submitted,

WOODRUFF LAW OFFICES, LLC

May 24, 2013



Tom G. Woodruff, Jr.

220 Richland Avenue, West

Post Office Box 2783

Aiken, South Carolina 29802-2783

Phone: 803-649-1910

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Doyet A. Early, III, Circuit Court Judge

Case No.: 2009-CP-02-2460
Appellate Case No. 2012-211915

Julie Tuten,

Respondent,

v.

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates; and Heather Glover

Defendants,

of whom

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates, are

Appellants.

REPLY OF APPELLANT

Desa Ballard
Stephanie Weissenstein
Ballard Watson Weissenstein
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: stephanie@desaballard.com
ATTORNEYS FOR APPELLANT

Tom G. Woodruff, Jr.
Woodruff Law Offices, LLC
Post Office Box 2783
Aiken, South Carolina 29802
Telephone: 803.649.1910
Facsimile: 803.642.5622
Email: tw@aikenlaw.com
ATTORNEY FOR RESPONDENT

RECEIVED

JUL 28 2012

SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Court of Appeals from the Court of Commons Pleas pursuant to the appeal and designations of matter filed by Appellants David Charles Joel, individually, and doing business as Joel & Associates, P.A. and/or Joel & Associates, ("Joel") on December 11, 2012. Respondent Julie Tuten filed her initial response brief and designations on January 7, 2013.

Joel thereafter filed a Motion to Strike certain arguments contained in Respondent Tuten's brief, as well as certain of her designations of matter, because Joel believes Respondent addressed matters not pertinent to this appeal. This Court denied Appellants' motion in its one sentence order, filed March 22, 2013.

Therefore, Joel offers his reply to respondent's brief, and hereby incorporates herein the Statement of Issues on Appeal, Statement of the Case, and Statement of Facts contained within Appellants' initial brief. Further, Joel denies any such statement by Respondent that contradicts Joel's allegations.

ARGUMENT

Appellants raised three issues on appeal: (1) whether the trial court erred by directing verdict on the issue of liability when factual issues remained that should have been decided by the jury, (2) whether it was an error to deny Joel's motion for directed verdict after Tuten had failed to introduce necessary evidence showing that she could have won and collected money in her accident case, and (3) whether a new trial should have been awarded following the unwarranted damages verdict in favor of Tuten returned by the jury.



I. RESPONDENT OBSCURES THE RELEVANT ISSUES ON APPEAL BY REFERENCE TO MATTERS AND EVIDENCE NOT PROPERLY CONSIDERED AS PART OF THIS APPEAL.

In the response brief, Tuten alleged facts and presented argument regarding Joel's use of phone directory advertisements in South Carolina. (Resp. Br. p 7; 12). Tuten's counsel also designated for inclusion in the record some examples of Joel's advertisements, claiming that because they were exhibits in the trial court, they should therefore be included in the record on appeal. Respondent included information about Joel's advertising methods in her brief and designations, in violation of Rule 209(c), SCACR, as Joel's use of advertisements is not germane to the issues presented as part of this appeal.

In the trial court, Respondent Tuten introduced the advertisements as on the basis that "[t]he relevance is to show the advertising that Joel and Associates was doing throughout the State of South Carolina by advertising in what is in excess of 1.5 million telephone books." (SROA 000035, lines 8-11). The only reason the court allowed Tuten to introduce these exhibits into evidence was so she could attempt to establish an element of her unfair trade practices claim (i.e. evidence of the potential for repetition of an alleged unfair trade practice). (Id, lines 16-18). The ads were not admitted for purposes of the negligence cause of action.

The unfair trade practices issue was not given to the jury; at the conclusion of the evidence, the jury was tasked only with finding the amount of damages to be paid to Ms. Tuten as a result of the judge's directed verdict on the issue of negligence.

The advertisement documentation attached to Tuten's response brief was not presented to the jury for its consideration, and therefore Appellant sought those to be stricken from this record. The Court has denied Joel's motion to strike the portions of the brief

30

containing reference to this issue, but Joel nevertheless respectfully submits that this irrelevant side issue should not detract from consideration and analysis of relevant issues before this Court.

II. THE PLEADING FROM THE *WACHOVIA* CASE DOES NOT NEGATE THE QUESTION RAISED BY THIS APPEAL: WHETHER LIABILITY SHOULD LIE WITH THE APPELLANTS WAS A QUESTION OF FACT FOR THE JURY.

Respondent argues that directed verdict on the issue of negligence was proper because there was no question that Joel was liable to Tuten. (Resp. Br. p. 14). In her effort to prove liability at trial, Tuten argued that if Joel received, or was supposed to receive, a division of attorney fees earned as a result of Tuten's personal injury litigation after the South Carolina office closed in 2006, then Joel must have also shared joint responsibility for her case. That assertion is faulty in two respects:

A. There was a genuine dispute as to whether an agreement to divide fees existed.

Joel disputes the existence of an agreement for division of fees. There was actually a great deal of testimony produced at trial tending to establish that there had been no actual agreement between Glover and Joel as to division of fees after the Columbia office closed down. (ROA p. 000143, line 10- p. 000144, line 8; ROA p. 000176, lines 3-1). The evidence suggesting there was a possibility of such an arrangement was an email to Joel from his former associate, Glover, in which Glover states she might take some cases with her and would be willing to share the fees. (ROA p. 000209). That document itself merely references a proposed division of fees.

In support of her factual contention, Tuten introduced into evidence a pleading filed by Joel in a lawsuit completely separate and distinct from the underlying litigation that forms

the basis for this appeal. That pleading against Wachovia states that the South Carolina office closed in 2006, and that Joel and Glover had a fee sharing arrangement.

The Wachovia case pleading is not dispositive of the issue here, however, as the paragraph contained within the pleading referenced by Tuten is merely evidence of in-artful pleading. As the whole of Wachovia complaint makes clear, Joel had filed the lawsuit in Georgia against Wachovia to seek reimbursement of funds embezzled by Glover. During the operation of the South Carolina office, fees were split, a process which took time to wind down, even after the office closed. Accordingly, checks earned prior to the closing of the office continued to arrive to the vacated business resulting in the checks being forwarded to Ms. Glover's new address. Upon receipt, the checks were fraudulently endorsed by Ms. Glover. The \$100,000+ in fees disputed in the Wachovia litigation were fees generated, and thus subject to division, while Ms. Glover was still under Joel's employ via an open office. Clearly that pleading and the assertions made by Joel therein were regarding a separate and distinct period of time wholly inapplicable to fees earned after the office closed, such as those that would have been earned on Tuten's matter.

The trial court, when dismissing Tuten's claim for punitive damages, actually recognized the evidence of disputed facts as to when the Joel defendants ceased any obligations to Ms. Tuten. (Initial brief).

B. Joint responsibility may be a required element to share fees between lawyers to avoid committing misconduct, but the sharing of fees does not establish joint responsibility for purposes of this matter.

Lawyers may decide to divide fees between themselves. However, Rule 1.5(e) sets forth certain additional requirements for the manner in which they may do so if they wish to comply with the Rules of Professional Conduct. Rule 1.5(e), RPC, Rule 407, SCACR. One

5

means by which lawyers may share fees without misconduct is by having both lawyers maintain joint responsibility for the client matter. Id. The rule, however, does not state that sharing of fees creates joint responsibility, as Tuten and her expert argue.

By analogy, consider that a person can operate a motor vehicle legally if they have a valid driver's license. But if they drive a car without a license, no one would logically argue that they have created a driver's license. Accordingly, even if it was shown that Joel had an agreement to share legal fees with Glover after the South Carolina office closed, (which he denies as stated above), he could have done so in a manner to avoid creating joint responsibility over files such as Ms. Tuten's.

III. ISSUE TWO OF APPELLANTS' BRIEF DOES NOT ARGUE THAT "COLLECTABILITY" IS A "FIFTH ELEMENT TO A LEGAL MALPRACTICE CASE".

Appellants Joel appealed the directed verdict against them for professional negligence in part because Tuten failed to prove at trial that she suffered damages as a proximate result of Joels' action, or inaction; in other words, Joel would show that Tuten did not establish, as a matter of law, the fourth element of a legal malpractice claim. (See, Holy Loch Distributors v. Hitchcock, 340 S.C. 20, 531 SE 2d 282 (2000)). Appellant asserts that in order to satisfy the burden of establishing the elements of a negligence claim, Respondent would have had to prove that "she would have collected a settlement or judgment" (Rep. Br. P. 15). In her own brief, Respondent cites to case law that agrees with that position when she states "[R]espondent must show he or she 'most probably would have been successful in the underlying suit if the attorney had not committed the alleged malpractice'". (Rep. Br. Pg.16, quoting Doe v. Howe, 367 S.C. 432, 626 S.E.2d 25 (Ct.App. 2005).



In South Carolina, in order to win on legal malpractice and professional negligence, the injured party has to prove the "case within the case"; they have to prove they would have either won at trial or received compensation from the purported at-fault defendant in the underlying matter. (*See, generally*, Appellant's Initial Brief). In this case, Tuten, who was drunk, got in the car with a person who was also drunk, and they were in a wreck. If Tuten's accident case had gone to trial, she would have to overcome the law of comparative negligence.

The court erred in ruling as a matter of law, and charging, that the Appellants Joel were negligent because Tuten "most probably would have been successful in the underlying suit." (SROA. 000045). Tuten failed to put up any evidence showing that there was insurance coverage or that the driver had assets she could have taken had she won a verdict. The point Appellants Joel are trying to make, which is somewhat novel in South Carolina, is that if you have not lost something, you have not been damaged. If a person has a lottery ticket for a drawing that has not taken place, it cannot be fairly argued the person has been damaged by millions of dollars because the damages are speculative and no vested interest other than the token value of the paper ticket was lost. Had Tuten established both there was an insurance policy or that the driver had assets, and that she would have most likely prevailed against the driver, then she might have been able to establish damages.

CONCLUSION

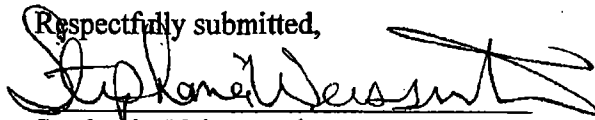
For the reasons set forth herein, in the initial brief, and the Record, the Joel Appellants seek an order vacating the verdict against them. If this court determines that directed verdict should have been made in favor of the appellants, then a reversal would end

EW

the case. Similarly, should the Court agree that the trial judge erred in granting a directed verdict of liability against the Joel defendants, the case would be remanded for a new trial.

In the alternative, should the Court uphold the trial judge's decisions on the motions for directed verdict, it is respectfully submitted that this Court should find error in the trial judge's failure to grant a new trial *nisi remittitur*, and should remand this matter to the trial court for entry of judgment of \$150,000.00.

Respectfully submitted,



Stephanie Weissenstein

Desa Ballard

Harvey Watson

Ballard Watson Weissenstein

P.O. Box 6338

West Columbia, South Carolina 29169

Telephone 803.796.9299

Facsimile 803.796.1066

Emails: stephanie@desaballard.com

July 29, 2013

ATTORNEYS FOR APPELLANTS

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

Julie Tuten, Respondent,

v.

David Charles Joel, individually and d/b/a Joel &
Associates, P.A. and/or Joel & Associates; David C. Joel,
Attorney at Law, P.C.; and Heather A. Glover,
Defendants,

Of whom David Charles Joel is the Appellant.

Appellate Case No. 2012-211915

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Opinion No. 5268
Heard April 8, 2014 – Filed August 27, 2014

AFFIRMED

Harvey MacLure Watson, III and Desa Allen Ballard,
Ballard & Watson, both of West Columbia; and
Stephanie Nichole Weissenstein, of Gilbert, for
Appellant.

Tom Griffin Woodruff, Jr., of Aiken, for Respondent.

FEW, C.J.: David Charles Joel appeals from a \$275,000 jury verdict against him for legal malpractice in connection with his representation of Julie Tuten. Joel argues the trial court erred in: (1) granting a partial directed verdict for Tuten; (2)

denying his directed verdict motion; and (3) denying his motion for a new trial nisi remittitur. We affirm.

I. Facts and Procedural History

Joel is an attorney licensed in Georgia. Starting at least in 1993, he maintained a personal injury law practice in Atlanta. In 1996, he opened an office in Columbia, South Carolina. He advertised extensively in the yellow pages of phonebooks all over South Carolina under the name Joel & Associates. The ads purported to offer prospective clients "All the Help the Law Allows." Joel was never licensed in South Carolina.

On October 18, 2003, Tuten sustained severe injuries in a motor vehicle accident in Aiken County while riding as a passenger in a car driven by Clifton Still. After she recovered, she saw Joel's ad in the Aiken phone book. Joel was the only attorney named and pictured in the ad. Tuten called the telephone number listed in the ad, and a non-lawyer investigator came to Tuten's home. The investigator interviewed her and provided her a contingency fee agreement, which she signed. The agreement provided, "Client . . . hires Joel & Associates, P.A. . . . to represent us as legal counsel for all purposes in connection with claims for damage arising out of" her accident, and stated, "Client will pay [Joel & Associates] an attorney fee of 33 1/3 % of the total money recovered" When asked at trial whom she "ultimately decide[d] to hire as a lawyer," Tuten testified, "Joel. Mr. Joel."

On December 15, 2003, Joel's firm sent Tuten two letters on Joel & Associates letterhead, one of which thanked her "for retaining Joel and Associates to pursue a recovery in your claim for personal injury." That letter was signed by Heather Glover, an attorney then licensed in South Carolina whom Joel employed in his Columbia office.¹ There is no evidence Tuten was aware of Glover's involvement in her case until she received this letter.

In May 2006, Joel decided to close his Columbia office. Joel tried to get another attorney to take all his South Carolina cases, but no attorneys were interested.

¹ Glover is no longer licensed to practice law. The supreme court placed her on interim suspension on October 1, 2008, *In re Glover*, 380 S.C. 22, 667 S.E.2d 728 (2008), and disbarred her on January 7, 2011. *In re Glover*, 390 S.C. 643, 704 S.E.2d 347 (2011).

Glover sent Joel an email dated May 14, 2006 stating, "I talked to two other attorneys . . . about taking the cases and neither one of them is willing to take all the cases." She wrote:

The only way I see this office closing on the 24th like you want is if I keep the cases and work on them on my own. It is not my first choice and I would not be permanently opening an office on my own. But what I am willing to do is take all the current cases and work them to conclusion, giving you 1/3 of the generated fees.

She wrote that unlike the attorneys who declined to take the cases, she could "handle them without having to get permission from the clients." This approach gave them, she explained, "the better chance *we* won't loose [sic] them all together [sic]." (emphasis added). Finally, she offered that if Joel could not "get out of paying the phone bill" for the "1-800" number, "I would take any new cases generated on the same arrangement of giving you 1/3 of any fees generated."

Glover sent Tuten a letter dated May 24, 2006 on Joel & Associates letterhead stating:

I am sending this letter to let you know that David Joel is retiring from his South Carolina office. Since I have been the attorney handling your case and will continue to handle your case to conclusion, this change should not affect you in any way. The Stat [sic] Bar does require that I send you this letter advising you of the situation and also advising you that Mr. Joel will receive 1/3 of all attorney's fees generated on your case even though he will no longer be open in South Carolina. The split in attorney's fees does not in any way affect the amount of money you will receive.

On October 17, 2006—the final day for filing a claim before the statute of limitations expired²—Glover filed a summons and complaint on Tuten's behalf

² See S.C. Code Ann. § 15-3-535 (2005) (providing a three-year statute of limitations).

against Still in the Aiken County Court of Common Pleas. There is no evidence Joel or Glover served the summons and complaint or took any other action to pursue Tuten's lawsuit. In November 2007, the circuit court dismissed Tuten's case for failure to prosecute.

In October 2009, Tuten sued Joel, his law firm, and Glover for malpractice. Glover, who by that time had left South Carolina, defaulted. Joel's law firm declared bankruptcy before trial and did not participate. At trial, both Tuten and Joel made directed verdict motions. The trial court granted a partial directed verdict in favor of Tuten, and denied Joel's motion. The jury returned a verdict for Tuten in the amount of \$275,000. Joel filed post-trial motions for judgment notwithstanding the verdict, new trial nisi remittitur, and new trial absolute, all of which the trial court denied.

II. Tuten's Partial Directed Verdict Motion

To succeed on her legal malpractice claim against Joel, Tuten was required to prove: (1) she and Joel had an attorney-client relationship; (2) Joel breached his duty to her; (3) Joel's breach of duty proximately caused her some damages; and (4) the amount of her damages. *RFT Mgmt. Co. v. Tinsley & Adams LLP*, 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012). The trial court granted a directed verdict for Tuten on the first three elements. We review the trial court's decision—separately as to each element—by applying the same standard as the trial court. 399 S.C. at 331-32, 732 S.E.2d at 171. We view the evidence and all reasonable inferences in the light most favorable to Joel. *Id.* As to each element, we "must determine whether a verdict for [Joel] would be reasonably possible under the facts as liberally construed in his favor." *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006). "[I]f the evidence yields more than one reasonable inference or its inference is in doubt" as to any one of the first three elements, then the trial court should have submitted the issue to the jury and we must reverse. *RFT*, 399 S.C. at 332, 732 S.E.2d at 171; *see also Erickson*, 368 S.C. at 463, 629 S.E.2d at 663.

We hold the trial court correctly granted a partial directed verdict for Tuten. Specifically, we find the evidence yields only one reasonable inference as to each of the first three elements—(1) Joel and Tuten had an attorney-client relationship at the time her lawsuit against Still was filed and when it was dismissed; (2) Joel breached his duty to Tuten; and (3) Joel proximately caused at least some of her damages—and it was not reasonably possible the jury would return a verdict for Joel.

A. Attorney-Client Relationship

The first element Tuten was required to prove was the existence of an attorney-client relationship. *RFT*, 399 S.C. at 331, 732 S.E.2d at 170; *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). We readily conclude the trial court correctly directed a verdict for Tuten on this element.

Joel conceded at oral argument that once Tuten signed the fee agreement with Joel's firm, she entered into an attorney-client relationship with Joel, and therefore he was Tuten's attorney at that time. Joel argues, however, he ended the relationship when he closed the Columbia office and allowed Glover to take Tuten's case. We disagree. An attorney may not end an attorney-client relationship, and thus relieve himself of the duties arising under it, by unilaterally deciding to allow another attorney to take responsibility for fulfilling those duties. Rather, at a minimum, an attorney must communicate to his client his desire to withdraw from their attorney-client relationship in such a manner that the client understands her attorney will no longer represent her.³ If the attorney does not take such action, the attorney-client relationship continues.

We find no evidence Joel took any action to end his attorney-client relationship with Tuten. To the contrary, the only communication Tuten received came from Glover. Glover's letter informed Tuten "this change should not affect you in any way." Significantly, Glover's letter stated, "Mr. Joel will receive 1/3 of all attorney's fees generated on your case." Glover's letter contains no explanation of how Joel could receive an attorney's fee for *not* being Tuten's lawyer.⁴

³ The criteria for withdrawal are stricter after an attorney becomes counsel of record in a lawsuit. *See, e.g.*, Rule 11(b), SCRCP ("An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of the Court, and not otherwise.").

⁴ We address below the legal significance of fee-sharing agreements between attorneys. Here, the significance is practical—the effect Glover's letter had on Tuten. Joel argues Tuten necessarily understood from the letter that Joel would no longer be her attorney. However, lay clients like Tuten correctly believe lawyers get paid for fulfilling—not withdrawing from—their responsibilities to their clients. Therefore, apart from the legal significance of a fee-sharing agreement, the practical significance of Glover's statement that Tuten must pay Joel is the opposite

Joel argues Glover's letter informed Tuten that Joel was no longer representing her because it stated, "David Joel is retiring from his South Carolina office." This statement did nothing more than inform Tuten that her attorney—Joel—would be working only out of his Atlanta office. Joel also argues Glover's sentence, "I have been the attorney handling your case and will continue to handle your case to conclusion," indicated Joel was no longer her attorney. We disagree because the sentence relates only to Glover. At most, the sentence indicated Glover was *also* Tuten's attorney. Viewing Glover's entire letter in the light most favorable to Joel, we find the letter did not convey to Tuten that Joel would no longer be her lawyer.

Tuten called retired law professor John P. Freeman as an expert witness. Joel stipulated Professor Freeman was qualified as an expert in numerous specific subjects, including "professional duties in handling litigation for clients" and "duties owed by lawyers when withdrawing from representation." Professor Freeman explained that under basic concepts of professional responsibility, Joel remained Tuten's lawyer. First, he explained that because Joel had an agreement with Glover to receive a portion of the fee generated on Tuten's case, he retained a duty to represent her. He testified:

My opinion is that he is accountable and I'll explain it this way. . . . You don't get that fee in exchange for nothing. At a minimum you have to assume responsibility for what happens in that case. You want the money? Fine. If something goes bad or there is malpractice, guess what. You've got a problem because you become accountable under our rules and that is—that is absolutely key.

Second, Professor Freeman explained Joel never withdrew from his attorney-client relationship with Tuten. He testified an attorney "can't just walk away" when he wants to cease representation, and Joel "never disavowed that he was her lawyer."

Joel counters Professor Freeman's expert testimony with two arguments, both of which we find disingenuous. First, Joel attempts to deny he had an agreement with Glover to share fees on Tuten's and other cases. Joel testified Glover "mentioned

of what Joel argues—it is that Tuten necessarily understood Joel would remain her lawyer.

she would pay a third of the fees that she received to us." Following up on this statement, Joel testified on direct:

Q: Now, you mentioned that [Glover] offered to share her fees with you on the cases that she took over and continued to handle. Would you require her to pay some portion of the fees to you as a condition of her taking those files?

A: No.

Q: Did you, in fact, receive any fees as a result of any of the files that [Glover] took with her?

A: No.

Q: So when a reference is made to a fee-sharing arrangement on the files that transferred out, there wasn't one, was there?

A: No. She suggested that in an e-mail to me. There was never a written agreement about it.

Q: So did you or did you not have a fee-sharing arrangement with Heather Glover - -

A: Nothing - -

Q: On the files that left?

A: Nothing that was enforceable in any way.

A careful examination of the record reveals Joel's testimony—that he had no agreement to share fees with Glover—is not correct. The truth is his law firm, David C. Joel, Attorney at Law, P.C., filed a lawsuit against Wachovia Bank for money Joel claimed Glover misappropriated. The lawsuit was premised on the existence of the very agreement that Joel attempted to deny at trial and continues to deny on appeal. In the "Verified Complaint" Joel filed to initiate the lawsuit, he alleged:

In . . . May 2006 Joel & Associates . . . entered into an agreement with Glover under which she would continue handling representation of Joel & Associates' remaining South Carolina cases with an agreement to split fees with Joel & Associates.

The verification attached to and filed with the complaint states:

Personally appeared, David C. Joel, an authorized affiant of David C. Joel, Attorney at Law, P.C., who after being duly sworn, states that the facts alleged in the foregoing Plaintiff's Verified Complaint are true and correct based on my personal knowledge.

On cross-examination, Joel was asked, "And your statement on this lawsuit against Wachovia is that you had a fee sharing agreement with Heather Glover; is that correct?" He answered, "Yes."

Joel's testimony that he did not "receive any fees as a result of any of the files that [Glover] took with her" is likewise false. The truth is Joel received over \$100,000 of those fees from the proceeds of his lawsuit against Wachovia. While Joel did not technically receive those funds directly from Glover, he received the funds only because they represented fees Glover owed him pursuant to their fee sharing agreement.⁵

⁵ Joel testified his Columbia office did not try cases, and referred cases they could not settle on their own to one particular trial attorney, Pat McWhirter. Six of the checks Joel alleged Glover misappropriated were written on McWhirter's firm account. One of those six checks was written only three weeks after Joel closed the office. This check conceivably could represent a settlement reached before May 2006, and thus represent fees not covered by the alleged fee-sharing agreement. However, five of the six checks were dated at least two months after Joel closed his Columbia office, and two of the checks were dated in February and March of 2007. Moreover, Joel alleged in his complaint against Wachovia that twenty-four additional checks Glover misappropriated did not come from McWhirter's firm. Those checks were necessarily issued by firms Glover associated, which under Joel's testimony could have occurred only after Joel closed the Columbia office, or were issued directly to the firm by defendants or insurance companies, in which case Joel would have known of the settlement if it occurred

We find that the only reasonable inference to be drawn from the evidence in this case—viewed in the light most favorable to Joel—is he had an agreement with Glover to share fees on Tuten's and other South Carolina cases.

The second argument Joel makes to counter Professor Freeman's testimony is that Joel did not lead Tuten to believe he was still her attorney after he closed his South Carolina office, and if Tuten had such a belief, there was an issue of fact as to whether her belief was reasonable. This argument incorrectly frames the issue.⁶ The correctly framed issue is whether Joel took action to end the attorney-client relationship that he concedes existed when Tuten signed the Joel & Associates fee agreement in 2003. On review of the directed verdict ruling that Joel did not end the relationship, the issue is whether there is any evidence in the record upon which a jury could reasonably conclude Joel withdrew from his representation. As we explained, there is no such evidence in this record.

The principle that an attorney may not unilaterally withdraw from an attorney-client relationship without notice to the client is fundamental to the fiduciary nature of legal representation. *See generally Ex parte Strom*, 343 S.C. 257, 263, 539 S.E.2d 699, 702 (2000) ("Strong policy considerations dictate that a client . . . must be unequivocally informed when an attorney intends to withdraw from representing a party, for whatever reason."); *Graham v. Town of Loris*, 272 S.C. 442, 452, 248 S.E.2d 594, 599 (1978) ("An attorney who undertakes the conduct of

before May 2006. It is indisputable, therefore, that almost all the checks Joel sued to recover came from settlements that occurred after he left South Carolina, and Joel's entitlement to the fees represented by those checks depended upon a valid fee-sharing agreement with Glover. We find nothing to the contrary in the May 14, 2006 email.

⁶ Even if this were the correct way to frame the issue, Professor Freeman explained that Joel reasonably indicated to Tuten that he was still representing her by participating in an arrangement with Glover through which Tuten received "false and misleading communications that tricked [Tuten] into believing that David Joel was still her lawyer."

an action impliedly stipulates to carry it to its termination and is not at liberty to abandon it without . . . reasonable notice.").⁷

The contrary position—taken by Joel—that an attorney's uncommunicated choice to withdraw from representation is effective unless the attorney "leads the client to believe he is still the lawyer" is indefensible and fails as a matter of law. The position is so rarely taken that courts have hardly ever been called upon to write about it. In each instance we have been able to find where courts addressed Joel's position, the court held an attorney may not unilaterally withdraw from representation, but at a minimum, must take some action to communicate to the client his intent to withdraw. *See, e.g., Krutzfeldt Ranch, LLC v. Pinnacle Bank*, 272 P.3d 635, 642 (Mont. 2012) (stating an attorney may not unilaterally withdraw from representation, but "remain[s] in an attorney-client relationship"—even after joining another law firm—in the "absence of any affirmative steps" by the attorney to withdraw); *Garrett (formerly Matisa) v. Matisa*, 927 A.2d 177, 178-79, 182 (N.J. Super. Ct. Ch. Div. 2007) (holding "[i]t is well settled that an attorney who wants to withdraw from representing a client must notify the client in advance" and "notify the client of the grounds for withdrawal," even in a situation where a client "effectively disappeared" and her attorney was unable to contact her); *Mobberly v. Hendricks*, 649 N.E.2d 1247, 1249 (Ohio Ct. App. 1994) (stating "an attorney is not free to withdraw from the relationship absent notice to his client" and "[i]n determining when the attorney-client relationship is terminated, the court must point to an affirmative act by either the attorney or the client that signals the end of the relationship"); *Cardot v. Luff*, 262 S.E.2d 889, 892 (W. Va. 1980) (recognizing "[m]ost courts require that before an attorney can unilaterally sever the attorney-client relationship, he must give reasonable notice to his client of his intention to withdraw," and noting "further requirement[s]" are necessary "[i]f the withdrawal involves a matter pending in court"). Joel cites no cases to support his position.

In conclusion, there is no evidence Joel took any action to end his attorney-client relationship with Tuten, and thus no jury could reasonably conclude Joel withdrew from the representation. Rather, the evidence yields only one reasonable inference—Joel remained Tuten's attorney at the time the circuit court dismissed

⁷ In *Strom* and *Graham*, the attorney in question was counsel of record in a pending lawsuit. *Strom*, 343 S.C. at 260, 539 S.E.2d at 700; *Graham*, 272 S.C. at 450, 248 S.E.2d at 598. For purposes of the attorney's duty to communicate his intent to withdraw to his client, that difference from these facts makes no difference.

her lawsuit, and as her attorney, he owed her the duties attendant to that relationship. The trial court correctly granted a directed verdict for Tuten on this element.

B. Breach of Duty

An attorney owes his client fiduciary duties, *Spence v. Wingate*, 395 S.C. 148, 160, 716 S.E.2d 920, 927 (2011), and he must "render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession." *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010) (citation omitted). When an attorney agrees to represent a client for the purpose of filing a lawsuit on the client's behalf, the attorney's fiduciary duty requires him to take action to prosecute the lawsuit.⁸ The failure to take any action under the circumstances of this case is a breach of the attorney's duty to the client. There is no evidence Joel took any action to prosecute Tuten's lawsuit. Therefore, the trial court correctly granted a directed verdict in favor of Tuten on this element.

Joel contends it was unnecessary for him to personally take action to prosecute Tuten's case because Glover was handling the case. In his brief, Joel states, "Glover was the attorney who operated the South Carolina office," and while that office was open, "Tuten understood that Ms. Glover worked for Mr. Joel." The legal consequence of Joel's argument is Glover was his agent. *See* 1 Ronald E. Mallen & Jeffrey M. Smith, *Legal Malpractice* § 5:8, at 528 (2014 ed.) ("A principal attorney, typically an owner or managing attorney, is responsible for the . . . conduct of employed attorneys . . ."). As we explained, Joel remained Tuten's attorney even after he closed his South Carolina office. To the extent Joel claims he continued to rely on Glover to handle Tuten's case, Glover necessarily remained his agent, and Joel remained responsible for her conduct. Joel asserted at trial Glover was negligent as a matter of law, and argues the same position on appeal. Under Joel's agency theory, therefore, he is liable for Glover's breach of duty.

⁸ There are circumstances—not present in this case—under which an attorney may choose not to pursue a lawsuit without breaching his duty to his client, including: (1) the attorney determines there is not good legal and factual ground to support the claim; *see* Rule 11(a), SCRPC (requiring a certificate by an attorney that any pleading has "good ground to support it"); (2) the attorney effectively withdraws in a timely manner; and (3) the client makes an informed decision not to pursue the lawsuit.

C. Proximate Cause

Although proximate cause is ordinarily a jury question, the court may decide proximate cause as a matter of law "when the evidence is susceptible to only one inference." *Pope v. Heritage Cmtys., Inc.*, 395 S.C. 404, 416, 717 S.E.2d 765, 771 (Ct. App. 2011). Here, Joel's failure to take any action to prosecute Tuten's lawsuit against Still indisputably resulted in the dismissal of the lawsuit. Because Joel's failure to fulfill his fiduciary duty to prosecute Tuten's lawsuit was as a matter of law the proximate cause for the lawsuit being dismissed, the trial court correctly granted a directed verdict in favor of Tuten on this element.

Joel argues, however, Tuten was not entitled to a directed verdict on proximate cause because there was disputed evidence regarding whether she could collect a judgment against Still. We find this argument unpersuasive for two reasons. First, our courts have never required a legal malpractice plaintiff to prove collectibility when the malpractice caused the dismissal of an underlying lawsuit. Joel has not cited a single case applying such a requirement.⁹

Second, Tuten conclusively proved she could collect at least some portion of a judgment against Still. Joel conceded at oral argument that Tuten had an automobile insurance policy with uninsured and underinsured coverage. He further conceded the insurance policy would have been available to Tuten had she won a judgment against Still. Thus, had Joel taken some action to prosecute Tuten's claims against Still, Tuten could have recovered some money through her insurance policy.

⁹ Joel cites only a comment from the Restatement (Third) of the Law Governing Lawyers, which provides that in a legal malpractice action, "the lawyer's misconduct will not be the legal cause of loss to the extent that the defendant lawyer can show that the judgment or settlement would have been uncollectible" Restatement (Third) of The Law Governing Lawyers § 53 cmt. b (2010). The comment continues, "*The defendant lawyer bears the burden of coming forward with evidence that this was so.*" *Id.* (emphasis added). Even if South Carolina courts were to recognize a collectibility requirement—which we find is not necessary to decide in this case—the only authority Joel cites to support his position required him to prove a judgment against Still was uncollectible, which he did not do.

Joel also argues Glover was negligent as a matter of law, and her negligence was a "superseding and intervening" event that "interrupted any causation link between any negligence that might have existed on" his part. While it is true Glover was negligent because she failed to take any action to prosecute Tuten's lawsuit against Still, Joel was negligent for the same reason. Thus, Joel's arguments addressing Glover's liability prove Joel is liable to Tuten as a matter of law.

The trial court correctly granted a directed verdict in favor of Tuten on the element of proximate cause because the evidence was susceptible to only one inference—that Joel's negligence proximately caused at least some of Tuten's damages.

III. Joel's Directed Verdict Motion

Joel also made a directed verdict motion on Tuten's legal malpractice claim. For the reasons explained above, we find the trial court correctly denied Joel's directed verdict motion.

IV. New Trial Nisi Remittitur

Finally, Joel argues he was entitled to a new trial nisi remittitur because the evidence presented at trial did not support the jury's award of \$275,000 in damages. We disagree and affirm the trial court's denial of remittitur. *See James v. Horace Mann Ins. Co.*, 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006) (stating the trial court has discretionary power to deny a motion for a new trial nisi, and an appellate court will not reverse the trial court's decision absent an abuse of that discretion).

Tuten testified that as a result of the wreck, she suffered a broken vertebra, a collapsed lung, three broken ribs, and a concussion; stayed in the hospital trauma unit for a week; and had to wear a back brace for more than a year. Her medical bills totaled at least \$24,571.82, and she was on social security disability due to her injuries. This evidence provided a factual basis for the jury's verdict, and therefore, the trial court acted within its discretion in denying remittitur. *See V.E. Amick & Assocs. v. Palmetto Envtl. Grp.*, 394 S.C. 538, 551, 716 S.E.2d 295, 302 (Ct. App. 2011) (stating the trial court does not abuse its discretion in denying a motion for new trial nisi remittitur when "the record contains adequate evidence to support the jury's verdict"); *Burke v. AnMed Health*, 393 S.C. 48, 57, 710 S.E.2d 84, 89 (Ct. App. 2011) (stating "we employ a highly deferential standard of review when considering the trial judge's [denial of] a new trial [nisi remittitur]" and "as

an appellate court, we sit neither to determine whether we agree with the verdict nor to decide whether we agree with the trial judge's decision not to disturb it").

V. Conclusion

We find the trial court correctly granted Tuten's motion for a partial directed verdict, correctly denied Joel's motion for a directed verdict, and acted within its discretion in denying Joel's motion for a new trial nisi remittitur. We **AFFIRM**.

SHORT, J., concurs.

GEATHERS, J., concurring in a separate opinion: I concur in the majority's conclusion that Joel failed to take the necessary action to withdraw from his representation of Tuten. I further concur in the majority's observation that Joel admitted he had an agreement with Glover to share fees generated from those cases considered "open matters" when Joel closed his Columbia office in May 2006. But I would end the analysis of this matter there and refrain from drawing the conclusion the majority draws regarding Joel's lawsuit against Wachovia, i.e., the lawsuit was premised on the existence of Joel's May 2006 fee agreement with Glover.

Joel's Complaint asserted that Wachovia converted certain checks made payable to Joel & Associates by making payment on them to Heather Glover, who was "not entitled to enforce the instruments or receive payment." While the Complaint undoubtedly references the May 2006 fee-sharing agreement, the record does not substantiate the conclusion that this agreement served as the basis for Joel's asserted right to recover converted funds. It is conceivable that, as Joel indicated in his testimony and Reply Brief: (1) the converted funds were fees generated from cases referred to other firms for litigation before Joel closed his Columbia office; and (2) the Complaint's reference to the disputed fee-sharing agreement served merely as background material explaining how Glover obtained possession of the disputed funds. For this same reason, I also depart from the conclusion that the proceeds of Joel's lawsuit against Wachovia represented fees Glover owed him pursuant to the May 2006 fee-sharing agreement.

Joel testified on redirect examination that the alleged converted funds, which included funds sent by the McWhirter firm, had nothing to do with the approximately seventy-seven open matters Glover took with her when the Columbia office closed. The dates on the McWhirter checks are not, by themselves, inconsistent with this testimony. Further, no other evidence in the record contradicts Joel's testimony. In fact, Glover's May 14, 2006 e-mail to Joel

corroborates Joel's testimony as it indicates that neither McWhirter nor the other two attorneys that Joel and Glover had previously worked with were willing to take any of the seventy-seven open matters without obtaining advance written permission from the clients.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Doyet A. Early, III, Circuit Court Judge

Case No.: 2009-CP-02-2460
Appellate Case No. 2012-211915

RECEIVED

SEP 25 2014

SC Court of Appeals

Julie Tuten,

Respondent,

v.

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates; and Heather Glover

Defendants,

of whom

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates, are

Appellants.

PETITION FOR REHEARING

Appellants (hereinafter "Appellants" or "Joel") respectfully petition the Court for rehearing pursuant to Rule 221(a), SCACR. This petition is submitted on the grounds that this Court may have overlooked or misapprehended important law and evidence applicable in this matter, and based its ruling in part on evidence outside the factual record forming the record on appeal. Based on the reasons set forth below, Appellants respectfully ask this Court to grant this Petition for Rehearing, reverse the directed verdict granted by the trial court below against Appellants, and remand the matter for further proceedings.

Amv

PROCEDURAL AND FACTUAL BACKGROUND

The underlying matter was an action for legal malpractice filed on or about October 16, 2009. In November, 2011, the corporate defendant David C. Joel, Attorney at Law, PC (hereafter "the bankrupt defendant"), was placed into involuntary bankruptcy in the bankruptcy court for the Northern District of Georgia. In the Matter of David C. Joel, Attorney at Law, P.C., Case No. 11-083090-pwb (Bankruptcy M.D.Ga).

Trial proceeded against the remaining defendants on January 23, 2012. Because the bankruptcy proceedings, trial did not proceed against the bankrupt defendant. (ROA 00099, lines 8 – 25). The jury returned a verdict in favor of the plaintiff Julie Tuten (hereinafter "Tuten") in the amount of \$250,000.00 against David Charles Joel, individually and doing business as Joel & Associates P.A. and/or Joel & Associates and Heather Glover. (ROA 000002). Timely post-trial motions were filed and were denied by order dated April 10, 2012. (ROA 000001; ROA 000005). This appeal followed.

By order of this Court issued August 27, 2014, this Court affirmed the trial court's directed verdict and upheld the jury verdict. Appellants timely filed a motion to extend the deadline for filing of a petition for rehearing on September 11, 2014. Even though no order has been received as to that motion, Appellants are filing this petition in a good faith effort to expedite consideration of this petition, and avoid further delay even if that motion for an extension is granted. Appellants thus now submit this petition for rehearing from that August 27, 2014 Court decision.

OVERLOOKED OR MISAPPREHENDED MATTERS

A petition for rehearing shall "state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221, SCACR. Accordingly, Appellant

respectfully submits that in affirming the trial court's directed verdict and denial of Appellants' post-trial motions, this Court overlooked or misapprehended certain material matters as follows:

I. SUFFICIENT EVIDENCE EXISTED TO PRECLUDE DIRECTED VERDICT ON ISSUE OF WHETHER THE ATTORNEY-CLIENT RELATIONSHIP HAD TERMINATED.¹

- A. Joel's evidence, with reasonable inferences related thereto drawn in his favor, were sufficient to justify a potential jury determination that the attorney-client relationship had ended.

The Court's opinion states "An attorney may not end an attorney-client relationship, and thus relieve himself of the duties arising under it, by unilaterally deciding to allow another attorney to take responsibility for fulfilling those duties. Rather, at a minimum, an attorney must communicate to his client his desire to withdraw from their attorney-client relationship in such a manner that the client understands her attorney will no longer represent her." (emphasis added). Appellant submits, however, that characterizing the withdrawal from representation by Joel as "unilateral" is premised upon an improper disregard for the evidence available in the record and the inferences to be drawn in Joel's favor for purposes of the directed verdict motion.

The opinion states "We find no evidence Joel took any action to end his attorney-client relationship with Tuten. To the contrary, the only communication Tuten received came from Glover." Nevertheless, in Section II.B of the Court's opinion, the Court makes the clear determination that Glover was Joel's agent. Although that determination is disputed by Joel, if she was his agent for purposes of imposing liability, Glover should also be deemed his agent for purposes of communicating Joel's desire to terminate the attorney-client relationship. Joel should receive the benefit of all inferences to be drawn from the content of that letter, which includes

¹ These matters were addressed in Appellant's Brief in Argument as to Issue I.

notice that Joel is "retiring" and reference to "this change" in the relationship with Tuten. (ROA. 224).

Further, a full, and proper, consideration of all the evidence yields more than the "unilateral" action in the writing of the letter by Glover. The Court has overlooked or dismissed all inferences to be drawn from Tuten's absence of contact or interaction with Joel, or any further action that would indicate anything other than knowledge and acceptance of the termination of Joel's relationship with her. Even when Tuten became fed up with the manner in which her case was proceeding, it was Glover that was sent letters telling her she had been fired, without reference or address to Joel. (ROA. p. 242-43). A lawyer may not simply abandon a client without notice, but a client always retains the authority to terminate the relationship, and such termination may take different forms.

B. Court misapprehended evidence presented by Tuten's expert regarding the purported fee sharing agreement and its relevance as to whether the attorney-client relationship between Joel and Glover persisted.²

Joel disputes the existence of an agreement for division of fees. There was actually a great deal of testimony produced at trial tending to establish that there had been no actual agreement between Glover and Joel as to division of fees after the Columbia office closed down. (ROA p. 000143, line 10- p. 000144, line 8; ROA p. 000176, lines 3-1). Nevertheless, Tuten's expert testimony from Mr. Freeman is quoted in part in the Court's opinion, in particular the portion during which Mr. Freeman alleged that sharing fees in an action was linked with maintained responsibility for an action.

² This issue is addressed in Appellant's Reply Brief, Argument Section II.

However, the Court appears to have overlooked Mr. Freeman's other relevant testimony, including his refusal to recognize the alternative basis for fee division set forth in Rule 1.5(e) of the Rules of Professional Conduct, Rule 407, SCACR, which states that a lawyer can receive a portion of a fee for work already done in a case before it is concluded by someone else. (ROA 000090, lines 5-17). As was also pointed out during cross-examination, Comment 8 to Rule 1.5 makes the fee division rules inapplicable where lawyers were previously associated in a law firm, as was the case with Joel and Glover. (ROA 000089, lines 7 – 25.). Mr. Freeman did concede that the Joel firm's representation of Ms. Tuten may have ended in June, 2006. (ROA 000095, lines 4 – ROA 000095, line 15). He opined that it did not, but he acknowledged that it could have. Mr. Freeman's own testimony, then, created an issue of fact which precluded directed verdict against the Joel defendants as to the existence of the attorney-client relationship. (ROA 000096, line 2 - ROA 000098, line 7).

Further, Joel respectfully submits that the majority of the Court misapprehended the nature and effect of Joel's collateral litigation against Wachovia bank for monies misappropriated by Glover. The concurring opinion by Judge Geathers discusses the basis and extent of that misapprehension leading to the conclusion drawn by the majority, that this collateral litigation was premised on the existence of Joel's agreement with Glover. The concurring opinion's explanation of that misapprehension is incorporated herein by reference to avoid unnecessary duplication.

Finally, as stated in the Reply Brief, joint responsibility may be a required element to share fees between lawyers to avoid committing misconduct under Rule 1.5(e) of the Rules of Professional Conduct, Rule 407, SCACR, but the sharing of fees does not establish joint responsibility for purposes of this matter. Joel repeats his analogy provided in that reply brief. Consider that a person can operate a motor vehicle legally if they have a valid driver's license. But

if they drive a car without a license, no one would logically argue that they have created a driver's license. Accordingly, even if it was shown that Joel had an agreement to share legal fees with Glover after the South Carolina office closed, (which he denies as stated above), he could have done so in a manner to avoid creating joint responsibility over files such as Tuten's.

II. APPELLANT'S ARGUMENT AS TO THE REASON THE DAMAGES AWARDED WERE GROSSLY EXCESSIVE WAS NOT ADDRESSED IN THE COURT'S OPINION.³

For damages to be recoverable, the evidence "should enable the jury to determine the amount thereof with reasonable certainty or accuracy." Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 43, 691 S.E.2d 135, 146 (2010). The existence, causation, nor the amount of damages can be left to conjecture, guess, or speculation, even though proof with mathematical certainty is not required. Id. The Court's opinion addresses the argument that the award was excessive by reference to Tuten's alleged injuries sustained in her wreck, but fails to address the basis for Joel's argument that there was no evidence to support the grossly excessive award of damages.

Appellant's basis for his post-trial motion to request a new trial nisi remittitur was not premised on the lack of sufficient injury sustained by Tuten. (ROA 3; Appellant's Brief p. 22). Instead, it focuses on evidence regarding a certainty of one aspect of Tuten's damages, their upper limit. Tuten's *own legal expert* established the cap in value of her claims when he testified the claims were worth \$150,000. (S.ROA 23, lines 18-22). Tuten's counsel referenced that cap during closing argument. (S.ROA 37, lines 3-8, 18-19, 22-24).⁴ Mr. Joel did not object to that evidence or its repeated reference since it rightly constitutes a cap on damages proffered by Tuten. (Id.)

³ This issue is addressed in Appellant's Brief as to Issues II and III.

⁴ "There's only been one person who has testified as to the value of the case and that was the expert witness that testified that the case is worth exactly \$150,000. When I say the case I'm talking about the underlying case. It's not worth more. It's not worth less."; "There is no dispute over what the value of the case is. The value of the case is \$150,000."; "There's been one expert that's testified as to the value of the case. That is the value of the case."

The eventual jury award far in excess of that amount, nearly doubling the max calculation submitted by Ms. Tuten's own expert as part of her case, clearly indicates passion, caprice, or prejudice given the absence of any evidence that could have sustained such an award. Failure to acknowledge and rectify that award's excessiveness by the trial court amounted to an abuse of discretion, and warrants a reversal and grant of a new trial. This argument was not addressed as part of the Court's opinion regarding the excessive award argument in favor of reversal.

III. COLLECTIBILITY BURDEN REMAINED ON PLAINTIFF, AND NOT MET WITH EVIDENCE APPROPRIATELY CONTAINED WITHIN THE RECORD ON APPEAL AND THUS AVAILABLE FOR CONSIDERATION.⁵

The Court's opinion accurately states that the distilled, direct question of whether collectibility has not been directly addressed in South Carolina. First, that is why Appellant used general authority from the Restatement, specifically RESTATEMENT OF THE LAW (THIRD) Vol. 1, Chpt 4, §53, p 391. Appellants would concede that that portion of the restatement references some authority that requires a defendant provide evidence of uncollectibility. However, that section also states "the burden of persuading the jury as to collectibility remains upon the plaintiff." *Id.* That make sense, as otherwise the defendant would have to prove the negative, i.e. the absence of collectibility. Rather, if the ultimate burden is on the plaintiff, then there must be some initial showing or evidence of collectibility to shift a burden to the defendant to produce any evidence to the contrary and refute that evidence.

Secondly, Joel did provide substantial argument for his position that collectibility was a natural component of South Carolina jurisprudence regarding the "case within a case" structure for legal malpractice claims. See App. Br. pp. 17-21, App. R. Br. pp. 6-7.

⁵ This issue is addressed extensively in Appellant's Brief, Argument as to Issue II, and Reply Brief, Argument Section III.

Tuten produced no evidence of collectibility. At oral argument, there was reference to automobile insurance policies that Tuten alleges were in place and could have provided coverage. The Court's opinion asserts that "Joel conceded at oral argument that Tuten had an automobile insurance policy with uninsured and underinsured coverage." Respectfully, that assertion regarding a concession⁶ is disputed by Joel. As was pointed out during oral argument, there is zero reference or evidence to any such policy contained within the Record on Appeal because there was zero evidence submitted at the trial below⁷ regarding any such policy. Review by this court is confined to the Record on Appeal. Rule 210(h), SCACR ("the appellate court will not consider any fact which does not appear in the Record on Appeal").

Secondly, because of the absence of any policy as part of the trial record and resulting Record on Appeal, Appellant was not allowed to explore the content of those policies or make a showing as to their irrelevance in the inquiry into collectibility. Insurance policies are carefully worded, and full of exclusions and qualifications, even beyond the most basic limitation that all policies have, a monetary cap on liability for the insurer. Without any policy in evidence, Tuten failed to show any evidence of potential recovery via an insurer that would have shifted the responsibility to Joel to provide evidence to the contrary. Likewise, Tuten failed to produce Mr. Still for trial, so he could not be examined directly regarding any insurance or assets.

⁶ The undersigned does not have a copy of the transcript of the oral argument. However, the only "concession" that the undersigned recalls having made upon questioning by the Court at oral argument is that counsel vaguely recollected some reference, years prior during the discovery process in which he was only partially involved, to the alleged existence of insurance policies for the driver of the vehicle in which Tuten was a passenger. No such policies were ever produced in discovery by Tuten, nor later at trial. Thus any concession by counsel at oral argument was, upon information and belief, expressed with full reservation of Joel's argument that as such information was not part of the trial record below, or resulting record on appeal, and thus was not an appropriate matter for consideration during any appellate proceeding pursuant to Rule 210, SCACR.

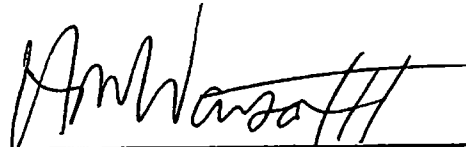
⁷ This deficiency was pointed out to the trial court below during argument at trial. (ROA 101, lines 22-25).

Thus Joel respectfully submits that the determination that "Tuten conclusively proved she could collect at least some portion of a judgment against Still" was based on a misapprehension of the relevant record available for the Court's review and to be used as a basis for the Court's decision.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Appellants respectfully ask this Court to grant this Petition for Rehearing, reverse the directed verdict granted by the trial court below against Appellants, and remand the matter for further proceedings.

Respectfully submitted,



Desa Ballard
Harvey M. Watson III

Ballard & Watson
P.O. Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

September 25, 2014

ATTORNEYS FOR APPELLANTS



The South Carolina Court of Appeals

Julie Tuten, Respondent,

v.

David Charles Joel, individually and d/b/a Joel &
Associates, P.A. and/or Joel & Associates; David C. Joel,
Attorney at Law, P.C.; and Heather A. Glover,
Defendants,

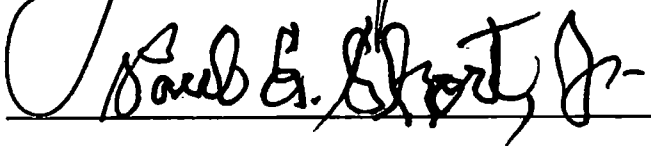
Of whom David Charles Joel is the Appellant.

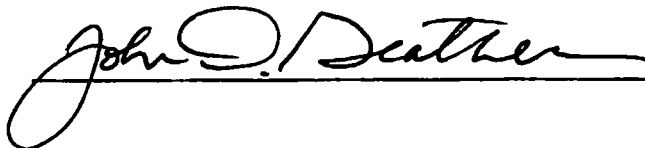
Appellate Case No. 2012-211915

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


C.J.


J.


J.

Columbia, South Carolina

FILED

December 17, 2014

Appendix 365

cc: Desa Allen Ballard, Esquire
Harvey MacLure Watson, III, Esquire
Tom Griffin Woodruff, Jr., Esquire
Stephanie Nichole Weissenstein, Esquire