

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
2012207208

APPEAL FROM BEAUFORT COUNTY
In The Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

RECEIVED

MAY 01 2012

SC Court of Appeals

Case No. 2011-CP-07-2303

Jessica Caldwell..... Respondent

v.

Amy Wiquist.....Appellant

Case No. 2011-CP-07-2304

Brian Caldwell Respondent

v.

Amy Wiquist.....Appellant

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 11-CP-07-02303

JESSICA CALDWELL,
Plaintiff,

vs.

AMY WIQUIST,
Defendant.

ORDER OF PUBLICATION

11 JUN 30 AM 9:09
CLERK OF COURT
BEAUFORT COUNTY, SC
JESSICA A. ROSENEAU

It appearing to my satisfaction from the Affidavit of Colden R. Battey, Jr. of the law firm of Harvey & Battey, P.A., attorneys for the Plaintiff, and from the Complaint in this matter that:

1. A cause of action exists in favor of the Plaintiff and against the Defendant named herein.

2. The parties named are necessary or proper parties to this action, which relates to an automobile accident which occurred on September 11, 2010.

3. It appears the Defendant has moved from her last known residence listed on the Traffic Collision Report, 215 White Oak Circle, Bluffton, SC 29910, and has left no forwarding address.

4. The Plaintiff has attempted without success to serve the Defendant, Amy Wiquist, with a copy of the Summons and Complaint filed with the Court on May 26, 2011.

5. The Affidavit of Non-Service has been filed with the Clerk of Court for Beaufort County, a copy of which is attached hereto and made a part hereof.

NOW, THEREFORE, upon motion of Harvey & Battey, P.A., attorneys for the Plaintiff, it is

ORDERED:

A. Service of the Summons in this action upon the non-resident Defendant shall be made by publication thereof in The Beaufort Gazette, a newspaper

published in the County of Beaufort, the State of South Carolina, which newspaper is hereby designated as most likely to give notice to the Defendant; and

- B. The publication of the Summons shall be once a week for three (3) consecutive weeks, with the first publication to be made within ten (10) days from the date of this Order; and
- C. Should the Plaintiff or his attorney be able to ascertain the address of the Defendant in this cause, a copy of the Summons and Complaint shall be mailed by certified mail to the Defendant at such address, if he is non-resident; and that personal service be made upon any resident defendant if he can be located within the State of South Carolina.



Jerri Ann Roseneau
Clerk of Court for Beaufort County

Beaufort, South Carolina

6-30

, 2011

Beaufort County Sheriff's Office
P.J. Tanner, Sheriff
PO Box 1758
Beaufort, S.C. 29901

State of South Carolina
County Of Beaufort

Attorney: COLDEN R. BATTEY JR

Case Number: 11CP072303

Plaintiff: JESSICA CALDWELL
- VS -
Defendant: AMY WIQUIST

Service Of: AMY WIQUIST

Address: 215 WHITE OAK CIR
BLUFFTON

2011 JUN 27 PM 2:09
CLERK OF COURT
BEAUFORT COUNTY, S.C.

AFFIDAVIT OF NON-SERVICE

PERSONALLY comes the undersigned, who says on oath that as of the 16th day of June, 2011, after several attempts to serve the above
VIL COVERSHEET, SUMMONS AND COMPLAINT on AMY WIQUIST, he/she was unable to complete service in accordance
th applicable statutes and the Rules of Civil Procedures in effect. Service could not be completed for the following reasons: ADDRESS
VACANT

Notary Statement

WORN to before me on this the 17th day of June, 2011.

otary Public For The State of South Carolina

ly Commission Expires

BROWN

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 11-CP-07-02304

BRIAN CALDWELL,
Plaintiff,

vs.

AMY WIQUIST,
Defendant.

ORDER OF PUBLICATION

11 JUN 30 AM 9:09
JENNIFER ROSENEAR
BEAUFORT COUNTY, S.C.
CLERK OF COURT

It appearing to my satisfaction from the Affidavit of Colden R. Battey, Jr. of the law firm of Harvey & Battey, P.A., attorneys for the Plaintiff, and from the Complaint in this matter that:

1. A cause of action exists in favor of the Plaintiff and against the Defendant named herein.
2. The parties named are necessary or proper parties to this action, which relates to an automobile accident which occurred on September 11, 2010.
3. It appears the Defendant has moved from her last known residence listed on the Traffic Collision Report, 215 White Oak Circle, Bluffton, SC 29910, and has left no forwarding address.
4. The Plaintiff has attempted without success to serve the Defendant, Amy Wiquist, with a copy of the Summons and Complaint filed with the Court on May 26, 2011.
5. The Affidavit of Non-Service has been filed with the Clerk of Court for Beaufort County, a copy of which is attached hereto and made a part hereof.

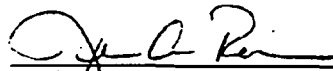
NOW, THEREFORE, upon motion of Harvey & Battey, P.A., attorneys for the Plaintiff, it is

ORDERED:

- A. Service of the Summons in this action upon the non-resident Defendant shall be made by publication thereof in The Beaufort Gazette, a newspaper

published in the County of Beaufort, the State of South Carolina, which newspaper is hereby designated as most likely to give notice to the Defendant; and

- B. The publication of the Summons shall be once a week for three (3) consecutive weeks, with the first publication to be made within ten (10) days from the date of this Order; and
- C. Should the Plaintiff or his attorney be able to ascertain the address of the Defendant in this cause, a copy of the Summons and Complaint shall be mailed by certified mail to the Defendant at such address, if he is non-resident; and that personal service be made upon any resident defendant if he can be located within the State of South Carolina.



Jerri Ann Roseneau
Clerk of Court for Beaufort County

Beaufort, South Carolina

6-30, 2011

Beaufort County Sheriff's Office
P.J. Tanner, Sheriff
PO Box 1758
Beaufort, S.C. 29901

State of South Carolina
County Of Beaufort

Attorney: COLDEN R. BATTEY JR

Case Number: 11CP072304

Plaintiff: BRIAN CALDWELL

- VS -

Defendant: AMY WQUIST

Service Of: AMY WQUIST

Address: 215 WHITE OAK CIR
BLUFFTON

2011 JUN 27 PM 2:09
JERRI A. ROSENBAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

AFFIDAVIT OF NON-SERVICE

PERSONALLY comes the undersigned, who says on oath that as of the 16th day of June, 2011, after several attempts to serve the CIVIL COVERSHEET, SUMMONS AND COMPLAINT on AMY WQUIST, he/she was unable to complete service in accordance with applicable statutes and the Rules of Civil Procedures in effect. Service could not be completed for the following reasons: ADDRESS IS VACANT

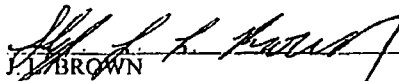
Notary Statement

SWORN to before me on this the 17th day of June, 2011.

Notary Public For The State of South Carolina

My Commission Expires

10/1/12


J. L. BROWN

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-07-02303

JESSICA CALDWELL,)
Plaintiff,)
vs.)
AMY WIQUIST,)
Defendant.)

ORDER OF DEFAULT JUDGMENT

2011 OCT -4 PM 4:38

The above-captioned matter is a default judgment that came before me as Special Circuit Judge.

The Plaintiff called to attention and introduced the Summons, Complaint, Affidavit of Non-Service, Order of Publication, Affidavit of Publication and Notice of Default hearing. The Defendant was served by publication and an Affidavit of publication was filed with the Court. The Affidavit of Default was filed on August 22, 2011, and the Notice of Hearing was served on September 22, 2011.

The Plaintiff, Jessica Caldwell, is married to Brian Caldwell and lives with him near Coeburn, Virginia. She is employed as a guidance counselor by the local school system.

On Saturday, September 11, 2010, the Plaintiff, Jessica Caldwell, was a passenger in a 2008 Chevrolet automobile and which was being driven by her husband, Brian Caldwell in an easterly direction on U. S. Highway 278 in Beaufort County when at a point approximately 0.07 of a mile west of the intersection of U. S. Highway 278 with the Simmonsville Road Mr.

Caldwell brought his automobile to a stop because traffic in front of him had stopped for a red light. He had been stopped for approximately 10 seconds when the Defendant, Amy Wiquist, who was operating and driving her 2008 Toyota automobile in a negligent and reckless manner crashed violently into the rear of the Chevrolet automobile causing the Plaintiff to suffer serious and painful personal injuries that are hereinafter described.

That the Defendant, Amy Wiquist, made no attempt to avoid the collision but crashed into the rear of the Plaintiff's automobile while traveling at a speed of between 35 and 45 mph. That the Plaintiff's husband, Brian Caldwell, saw the Defendant's automobile prior to impact and braced himself and hollered to the Plaintiff, Jessica Caldwell. The Caldwell automobile was knocked forward but Brian Caldwell, by maneuvering, was able to avoid colliding with the driver in front of him. That the Defendant's automobile came to a stop on the right side of the Caldwell automobile and at that time she had a cell phone in her hand which she apparently had been using prior to the collision. The Plaintiff, Jessica Caldwell, spoke to the Defendant who admitted responsibility for the collision. The accident was investigated by the South Carolina Highway Patrol who cited the Defendant, Amy Wiquist, for following too closely.

The Plaintiff and her husband, Brian Caldwell, and other family members had rented a house on Hilton Head Island for a family vacation. The night of the accident Mrs. Caldwell was sore and had a cut on her scalp with a large hematoma. Because of her injuries and the injuries to her husband, Brian Caldwell, they were unable to take part in most of the activities that had been planned and the vacation was ruined.

Medical Treatment and Condition

Mrs. Caldwell was extremely sore and painful and had suffered a large hematoma on her

scalp but did not seek medical attention until she returned home to Coeburn, Virginia. She was seen on September 20, 2010 by Dr. Stacey Gipe who found that she had a cervical and thoracic sprain and a hematoma to the left side of her head from the motor vehicle accident. Dr. Gipe prescribed Flexeril and Ibuprofen and told her to return as needed.

Mrs. Caldwell was seen again by Dr. Gipe on October 20, 2010 for follow up of her injuries and a possible strain of her back. She was treated with Naxopren and Flexeril and told to return as needed.

Mrs. Caldwell was last seen by Dr. Gipe on November 2, 2010, when she was released.

Mrs. Caldwell then introduced a bill from Dr. Stacey Gipe of Appalachian Health Care in the amount of \$306.00.

Mrs. Caldwell testified that she had been extremely sore following the wreck and as a result her vacation on Hilton Head Island was ruined. She continued to suffer soreness and pain from the hematoma for several weeks following the wreck. She testified that since the wreck her husband, Brian Caldwell, has been unable to perform many of the activities of daily living. He is unable to perform yard work such as mowing and using the weed eater. He is unable to drive for long distances and she is required to do these items. That the pain has affected their marriage due to his physical limitations.

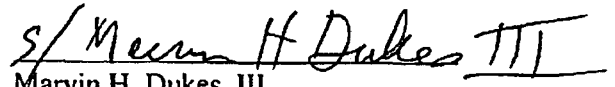
I have read the allegations of the Complaint, which have gone unanswered with the Defendant being held in default and therefore the allegations are deemed to be admitted and to be true. Based on the foregoing, the Plaintiff is hereby awarded \$15,000.00 in compensatory damages.

In further consideration, the Complaint demands punitive damages because of the

Defendant's grossly negligent, willful, reckless and wanton acts, specifically in operating her automobile while using a cell phone on a heavy traveled highway and crashing into the rear of the Plaintiff's stopped automobile. I therefore award punitive damages in the amount of \$5,000.00.

Therefore, it is ORDERED, ADJUDGED AND DECREED that the Plaintiff, Jessica Caldwell, be granted judgment in the amount of \$20,000.00 against the Defendant, Amy Wiquist.

AND IT IS SO ORDERED.


Marvin H. Dukes, III
Beaufort County Master in Equity
and Special Circuit Judge

Beaufort, South Carolina

10/4, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2011-CP-07-02304
BRIAN CALDWELL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER OF DEFAULT JUDGMENT
	)	
AMY WQUIST,	)	
	)	
Defendant.	)	
_____	)	

The above-captioned matter is a default judgment that came before me as Special Circuit Judge.

The Plaintiff called to attention and introduced the Summons, Complaint, Affidavit of Non-Service, Order of Publication, Affidavit of Publication and Notice of Default hearing. The Defendant was served by publication and an Affidavit of publication was filed with the Court. The Affidavit of Default was filed on August 22, 2011, and the Notice of Hearing was served on September 22, 2011.

The following testimony and evidence was presented during the hearing.

The Plaintiff, Brian Caldwell, is a 31 year old man and is employed as a corrections officer at a facility near Coeburn, Virginia. His job as a corrections officer involves supervising inmates, breaking up fights between inmates and transporting inmates from one facility to another. His job is extremely physically demanding and requires sound physical health in order to perform his duties.

On Saturday, September 11, 2010, the Plaintiff, Brian Caldwell, was operating and driving his 2008 Chevrolet automobile which he had purchased on September 9, 2010, and was proceeding in an easterly direction on U. S. Highway 278 in Beaufort County when at a point approximately 0.07 of a mile west of the intersection of U. S. Highway 278 with the Simmonsville Road he brought his automobile to a stop because traffic in front of him had stopped for a red light. He had been stopped for approximately 10 seconds when the Defendant, Amy Wiquist, who was operating and driving her 2008 Toyota automobile in a negligent and reckless manner crashed violently into the rear of the Plaintiff's Chevrolet automobile causing the Plaintiff to suffer serious and permanent personal injuries that are hereinafter described.

That the Defendant, Amy Wiquist, made no attempt to avoid the collision but crashed into the rear of the Plaintiff's automobile while traveling at a speed of between 35 and 45 mph. That the Plaintiff, Brian Caldwell, saw the Defendant's automobile prior to impact and braced himself and hollered to his wife. That the Caldwell automobile was knocked forward and the Plaintiff, Brian Caldwell, by maneuvering, was able to avoid colliding with the driver in front of him. That the Defendant's automobile came to a stop on the right side of the Caldwell automobile and at that time she had a cell phone in her hand which she apparently had been using prior to the collision. Jessica Caldwell, the Plaintiff's wife, spoke to the Defendant who admitted responsibility for the collision. The accident was investigated by the South Carolina Highway Patrol who cited the Defendant, Amy Wiquist, for following too closely.

The Plaintiff and his wife, Jessica Caldwell, and other family members had rented a house on Hilton Head Island for a family vacation. The night of the accident Mr. Caldwell was unable to sleep due to increasing pain and stiffness in his neck and shoulder. He and his wife

were unable to take part in most of the activities that had been planned and the vacation was ruined.

Medical Treatment and Condition

Mr. Caldwell was extremely sore and painful but did not seek medical attention until he returned home to Coeburn, Virginia. He was seen on September 20, 2010 by Dr. Stacey Gipe who found that he had a cervical and lumbar sprain from the motor vehicle accident. She prescribed *Flexeril* and *Ibuprofen*.

Mr. Caldwell was seen again by Dr. Gipe on September 24, 2010. At that time the pain was getting worse. He continued to have pain on the left side of his neck with a stabbing pain that radiated down the arm and into the hand.

Dr. Gipe found that the Plaintiff had a left sided cervical strain with left upper extremity radiculopathy. She advised him to continue the *Flexeril*.

The Plaintiff continued to suffer left shoulder pain with the pain at times radiating up into his neck and also had sharp shooting pain with tingling and numbness running down his left arm and into his hand.

He saw Dr. Gipe on February 4, 2011, who found that he had left biceps tendinitis and left shoulder sprain. He was given a trigger point injection of Celestone and Marcaine at the origin of the left biceps tendon. He was prescribed *Mobic* and *Flexeril* and was referred to physical therapy.

He was referred to physical therapy and was treated with electric shock treatment and a variety of strengthening exercise and stretches. He was seen on a number of occasions between February 4, 2010 and February 25, 2011. On February 25, 2011, his pain and discomfort had

increased and his condition had gotten worse and he was instructed to return to his regular physician.

Mr. Caldwell saw Dr. Gipe on February 28, 2011, who found that he had left shoulder pain with left biceps tendinitis and bursitis. X-rays were ordered and he was referred to an Orthopedist.

Mr. Caldwell was seen by an Orthopedist, Dr. Robert J. De Troye on March 7, 2011 who diagnosed a cervical strain, a left labral tear and left shoulder and neck pain and ordered an MRI.

The MRI was performed on March 17, 2011, and showed tendinosis around the supraspinatus and infraspinatus tendon. No tear was seen. The impression was left shoulder strain with some mild tendinosis and left shoulder sprain.

Mr. Caldwell had had 2 cortisone injections in the past with no apparent relief so no new injection was ordered. He was to continue to use Motrin as needed.

He was next seen by Dr. Gipe on September 19, 2011. Dr. Gipe found that Mr. Caldwell had chronic left shoulder pain with bursitis. She recommended that he continue Flexeril and to return as needed.

Mr. Caldwell was seen on October 3, 2011, by Dr. D. Vincent Rhodes of Lowcountry Medical Group in Beaufort. After taking a history from Mr. Caldwell, Dr. Rhodes examined him and found that he had limited range of motion of the cervical spine to approximately 30 - 40 degrees past midline to the right and approximately 30 degrees past midline to the left. Lateral motion was markedly reduced as well. He had positive impingement sign of the left shoulder. He had 4/5 grip strength on the left, as opposed to 5/5 on the right. He has weakness with testing of all four rotator cuff muscles. He has marked pain with abduction against resistance. There is

pain with palpation over the subacromial bursa, as well as the biceps tendon.

Dr. Rhodes found that his left shoulder pain was chronic, that it was unimproved and had in fact worsened with conservative therapy of anti-inflammatories, steroid injections, muscle relaxants and physical therapy. He went on to say that his condition was chronic, since it has been present for over one year, and that it would likely continue in the future. He stated that Mr. Caldwell may require surgical intervention, as he is no better with conservative therapy.

Plaintiff then introduced the following bills:

Appalachian Health Care Associates	782.00
Appalachian Rehabilitation	1740.00
Watauga Orthopaedics	2181.00

He then testified to the following expenses:

Appalachian Health Care - September 19, 2011 visit	102.00
Medication - \$30.00 a month for 13 months	330.00
Lost Wages - 5 days $\$14.64 \times 12 = 17.68 \times 5 = 878.40$	878.40
Dr. Vincent Rhodes	<u>500.00</u>
Total	\$6,513.40

Mr. Caldwell testified that he was unable to carry out the activities of daily living. He cannot drive for extended periods of time, as his neck and shoulder become too painful after approximately two hours. He was formerly a bow hunter and a golfer but has had to give up these hobbies as a result of his painful shoulder. He has difficulty with yard work such as moving the grass and using the weed eater. He occasionally experiences severe pain in his left arm which will cause him to drop objects that he is holding. He has twin daughters who are now seven years old. Before the wreck he would play with his daughters and pick them up and hold them in his arms. he is no longer able to do this because of shoulder pain and the fear that he

would drop them. His work as a corrections officer is quite physical and he is finding it increasingly difficult. There is no light duty available. His job often requires heavy lifting and restraining of inmates/detainees.

The Plaintiff continues to suffer from left shoulder pain. His prognosis is for chronic shoulder pain which will affect him for the rest of his life. Mr. Caldwell is currently 31 years of age and based upon the mortality tables has a life expectancy of 46.85 years.

He testified that he has continuing physical limitations and difficulties with his occupation as a corrections officer and with the general activities of daily life.

I have read the allegations of the Complaint, which have gone unanswered with the Defendant being held in default and therefore the allegations are deemed to be admitted and to be true. Based on the foregoing, the Plaintiff is hereby awarded \$85,000.00 in compensatory damages.

In further consideration, the Complaint demands punitive damages because of the Defendant's grossly negligent, willful, reckless and wanton acts, specifically in operating her automobile while using a cell phone on a heavily traveled highway and crashing into the rear of the Plaintiff's stopped automobile. I therefore award punitive damages in the amount of \$15,000.00.

Therefore, it is ORDERED, ADJUDGED AND DECREED that the Plaintiff, Brian Caldwell, be granted judgment in the amount of \$100,000.00 against the Defendant, Amy Wiquist.

AND IT IS SO ORDERED.

S/ Marvin H. Dukes III
Marvin H. Dukes, III
Beaufort County Master in Equity
and Special Circuit Judge

Beaufort, South Carolina

10/14, 2011

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

) CASE NO.: 2011-CP-2303

Jessica Caldwell,

Plaintiff,

Vs.

Amy Wiquist,

Defendant.

Order Denying Motion to Set
Aside Default

Hearing Date:

December 13, 2011

Presiding Judge:

The Honorable Marvin H. Dukes, III

Attorney for the Plaintiff:

Colden R. Battey, Jr., Esq.

Attorney for the Defendant:

W. Toland Sams, Esq.

Background

This matter came before the Court on Defendant's Motion to Set Aside a Default Judgment.

Plaintiff filed a Summons and Complaint against Defendant on May 26, 2011 alleging, in short, that defendant caused an accident which caused Plaintiff personal injuries. After trying unsuccessfully to personally serve the Defendant, Plaintiff filed an Affidavit of Non-service, an Affidavit for Publication, and moved for an order allowing Defendant to be served via publication of the Summons in

the newspaper. The Honorable Jerri Ann Roseneau, Beaufort County Clerk of Court, ordered that Defendant be served via publication and pursuant to said order, the Beaufort Gazette published the Summons for three (3) consecutive weeks in July 2011. Receiving no answer from the Defendant after thirty (30) days elapsed from the last date of publication, Plaintiff filed an Affidavit of Default and moved for a hearing to determine Plaintiff's damages. All of the foregoing is of record in the above-captioned case.

The Court scheduled a hearing for October 3, 2011 to determine Plaintiff's damages. Plaintiff served Defendant with notice of the damages hearing on September 22, 2011 by mailing said notice to her at her last known address. Plaintiff traveled to Beaufort from Virginia to attend the hearing. Defendant did not appear at the hearing. The trial Court entered judgment against Defendant in the amount of \$20,000.00 in favor of Plaintiff. Judgment was entered October 4, 2011 and Defendant filed the present motion October 21, 2011.

Defendant's Motion

Defendant argues three grounds (more particularly set forth in her motion) for setting aside the default judgment:

1. Pursuant to Rule 60(b)(4), SCRPC, the default judgment is void for lack of personal jurisdiction over the Defendant because:

a. Service by publication upon the Defendant was ineffective in that the affidavits submitted in support of the Plaintiff's application for an order allowing service by publication were insufficient because they failed to show that the Plaintiff actually exercised due diligence in attempting to locate the Defendant as required by § 15-9-710, S.C. Code Ann. (2005);

b. Service by publication upon the Defendant was ineffective in that the Order of Publication refers to and relies upon facts unsupported by the affidavits submitted by the Plaintiff and, further, that the Order of Publication fails to comply with the provisions of § 15-9-740, S.C. Code Ann. (2005);

2. The Judgment should be set aside due to surprise, misrepresentation, and/or misconduct pursuant to Rules 60(b)(1) and 60(b)(3), SCRCPP; and

3. The Plaintiff gave Defendant insufficient notice of the hearing on unliquidated damages.

Defendant made no argument regarding misrepresentation or misconduct at the hearing in support of the 60(b)(3) motion and this argument is therefore deemed withdrawn by this Court.

This Court considered all matters of record in the case file, the parties' affidavits, and the arguments of counsel in deciding this motion. Based upon the following findings of fact and conclusions of law, Defendant's motion is denied on all grounds.

Findings of Fact

- 1. Prior to filing suit, Plaintiff's counsel engaged in settlement negotiations with Defendant's insurance carrier, GEICO.**
- 2. Plaintiff's counsel provided GEICO with a copy of the lawsuit on May 25, 2011, the same date it was filed.**
- 3. Plaintiff made no representations to GEICO that she would notify them if unable to personally serve Defendant and GEICO had no reasonable expectation that Plaintiff would notify them of such.**
- 4. Plaintiff delivered the filed Civil Action Coversheet, Summons, and Complaint to the Beaufort County Sheriff's Department for service upon the Defendant.**
- 5. The Beaufort County Sheriff's Department executed an Affidavit of Non-service on June 17, 2011 stating that after several attempts to serve the Defendant the department was unable to complete service in accordance with the applicable statutes and Rules of Civil Procedure in effect.**

6. Plaintiff did not attempt to serve the Defendant with the Summons and Complaint by mail directed to the Defendant's last known address.

7. The Beaufort County Clerk of Court ordered that Defendant be served via publication and Defendant was in fact served via publication.

8. Defendant makes no allegation of either fraud or collusion as grounds for invalidating the order of publication. Furthermore, the Court finds as a matter of fact that there was no fraud or collusion in obtaining the order of publication.

9. Plaintiff duly served Defendant with the Summons and Complaint via publication and Defendant failed to timely answer.

10. A hearing to determine Plaintiff's damages was scheduled for October 3, 2011 and Plaintiff served Defendant with notice of the hearing on September 22, 2011 by mailing it to Defendant's last known address via first class mail.

11. The Defendant actually received notice of the default damages hearing on October 4, 2011 when the mailed notice was forwarded to her current address by the U.S. Post Office.

12. The facts of the accident are undisputed with regard to liability: Defendant rear-ended Plaintiff's vehicle while it was stopped at an intersection.

13. Plaintiff suffered cervical and thoracic sprain and a head injury as a result of the accident. Her last offer to GEICO to settle before filing suit was for \$10,000.00.

14. Plaintiff traveled from Coeburn, Virginia to Beaufort, South Carolina to testify at the default hearing - 411 miles one way, had to pay to spend the night in a hotel, and missed a day's work.

15. In addition to her own personal injuries, Plaintiff presented evidence at the hearing showing that her husband was also injured in the accident, and that his injuries had greatly affected the marital relationship.

16. The trial court, which heard the case non-jury, awarded Plaintiff \$15,000.00 in actual damages. The trial court awarded an additional \$5,000.00 in punitive damages based on evidence that Defendant was on her cell phone at the time of the accident.

Conclusions of Law

17. The well settled rule in South Carolina regarding the finality of an order of publication is that "in the absence of fraud or collusion, the decision of the officer ordering service by publication is final." *Montgomery v. Mullins*, 325 S.C. 500, 506, 480 S.E.2d 467, 470 (Ct.App. 1997); *Yates v. Gridley*, 16 S.C. 496 (1882). The

Defendant here does not allege either fraud or collusion. As such, relief on this ground must be denied.

18. In considering a motion brought pursuant to Rule 60(b)(1) of the SCRCP, the court must consider “(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party.” *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct.App. 2010) In the present case, Defendant has no meritorious defense. Liability is clearly with Defendant and there is not a substantial discrepancy between the damages awarded by the trial court and the last settlement demand made by Plaintiff’s counsel. This Court finds the judgment awarded in this case unaffected by Defendant’s default. Thus, because Defendant has no meritorious defense and granting her motion would cause substantial prejudice to Plaintiff, the motion on this ground is denied.

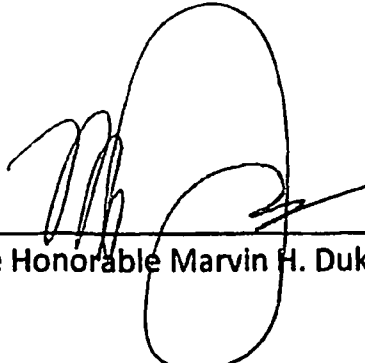
19. Rule 55(b)(2) of the South Carolina Rules of Civil Procedure states “If the party against whom judgment by default is sought has appeared in the action, the party . . . shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application.” Additionally, “Pursuant to Rule 5(a) notice of any trial or hearing on un-liquidated damages shall also be given to parties in default by first class mail to the last known address of

such party *whether or not such party has appeared in the action.*" (emphasis added) Nowhere in Rule 55 is the three (3) day requirement enlarged for parties who have not appeared. Likewise, Rule 5(a) does not enlarge the time for notice of the hearing. Rule 5(a) states "notice of any trial or hearing on un-liquidated damages shall also be given to parties in default." As noted above, Plaintiffs sent Defendant notice of the default hearing twelve (12) days before the date of the hearing. No more was required of Plaintiff. Defendant's motion, therefore, is denied on this ground as well.

Therefore, Defendant's Motion to Set Aside the Default in this case is denied.

It is so ordered.

Dated: 12/18/11



The Honorable Marvin H. Dukes, III

IN THE COURT OF COMMON PLEAS

1) CASE NO.: 2011-CP-2304

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December 13, 2011

The Honorable Marvin H. Dukes, III

Colden R. Battey, Jr., Esq.

W. Toland Sams, Esq.

201 OCT 25 1994

Page 1 of 8

the newspaper. The Honorable Jerri Ann Roseneau, Beaufort County Clerk of Court, ordered that Defendant be served via publication and pursuant to said order, the Beaufort Gazette published the Summons for three (3) consecutive weeks in July 2011. Receiving no answer from the Defendant after thirty (30) days elapsed from the last date of publication, Plaintiff filed an Affidavit of Default and moved for a hearing to determine Plaintiff's damages. All of the foregoing is of record in the above-captioned case.

The Court scheduled a hearing for October 3, 2011 to determine Plaintiff's damages. Plaintiff served Defendant with notice of the damages hearing on September 22, 2011 by mailing said notice to her at her last known address. Plaintiff traveled to Beaufort from Virginia to attend the hearing. Defendant did not appear at the hearing. The trial Court entered judgment against Defendant in the amount of \$100,000.00 in favor of Plaintiff. Judgment was entered October 4, 2011 and Defendant filed the present motion October 21, 2011.

Defendant's Motion

Defendant argues three grounds (more particularly set forth in her motion) for setting aside the default judgment:

1. Pursuant to Rule 60(b)(4), SCRPC, the default judgment is void for lack of personal jurisdiction over the Defendant because:

a. Service by publication upon the Defendant was ineffective in that the affidavits submitted in support of the Plaintiff's application for an order allowing service by publication were insufficient because they failed to show that the Plaintiff actually exercised due diligence in attempting to locate the Defendant as required by § 15-9-710, S.C. Code Ann. (2005);

b. Service by publication upon the Defendant was ineffective in that the Order of Publication refers to and relies upon facts unsupported by the affidavits submitted by the Plaintiff and, further, that the Order of Publication fails to comply with the provisions of § 15-9-740, S.C. Code Ann. (2005);

2. The Judgment should be set aside due to surprise, misrepresentation, and/or misconduct pursuant to Rules 60(b)(1) and 60(b)(3), SCRPC; and

3. The Plaintiff gave Defendant insufficient notice of the hearing on unliquidated damages.

Defendant made no argument regarding misrepresentation or misconduct at the hearing in support of the 60(b)(3) motion and this argument is therefore deemed withdrawn by this Court.

This Court considered all matters of record in the case file, the parties' affidavits, and the arguments of counsel in deciding this motion. Based upon the following findings of fact and conclusions of law, Defendant's motion is denied on all grounds.

Findings of Fact

- 1. Prior to filing suit, Plaintiff's counsel engaged in settlement negotiations with Defendant's insurance carrier, GEICO.**
- 2. Plaintiff's counsel provided GEICO with a copy of the lawsuit on May 25, 2011, the same date it was filed.**
- 3. Plaintiff made no representations to GEICO that he would notify them if unable to personally serve Defendant and GEICO had no reasonable expectation that Plaintiff would notify them of such.**
- 4. Plaintiff delivered the filed Civil Action Coversheet, Summons, and Complaint to the Beaufort County Sheriff's Department for service upon the Defendant.**
- 5. The Beaufort County Sheriff's Department executed an Affidavit of Non-service on June 17, 2011 stating that after several attempts to serve the Defendant the department was unable to complete service in accordance with the applicable statutes and Rules of Civil Procedure in effect.**

6. Plaintiff did not attempt to serve the Defendant with the Summons and Complaint by mail directed to the Defendant's last known address.

7. The Beaufort County Clerk of Court ordered that Defendant be served via publication and Defendant was in fact served via publication.

8. Defendant makes no allegation of either fraud or collusion as grounds for invalidating the order of publication. Furthermore, the Court finds as a matter of fact that there was no fraud or collusion in obtaining the order of publication.

9. Plaintiff duly served Defendant with the Summons and Complaint via publication and Defendant failed to timely answer.

10. A hearing to determine Plaintiff's damages was scheduled for October 3, 2011 and Plaintiff served Defendant with notice of the hearing on September 22, 2011 by mailing it to Defendant's last known address via first class mail.

11. The Defendant actually received notice of the default damages hearing on October 4, 2011 when the mailed notice was forwarded to her current address by the U.S. Post Office.

12. The facts of the accident are undisputed with regard to liability: Defendant rear-ended Plaintiff's vehicle while it was stopped at an intersection.

13. As a result of the accident, Plaintiff suffered cervical and lumbar sprain, tendinitis, left shoulder sprain, and bursitis. His shoulder injury and

corresponding pain were determined to be chronic and therefore permanent. His last offer to GEICO to settle before filing suit was for \$35,000.00.

14. During the period of time intervening Plaintiff's last settlement demand to GEICO and the damages hearing, Plaintiff saw two (2) different doctors. It was one of these doctors, Dr. Vincent Rhodes of Beaufort, S.C., who determined Plaintiff's condition was chronic and therefore permanent. The trial court found Defendant was 31 years old at the time of the damages hearing, and based upon the mortality tables, had a life expectancy of 46.85 years.

15. To the extent there is a discrepancy between the damages awarded by the trial court and Plaintiff's last settlement demand, it is attributable to additional medical treatment and Dr. Rhodes' conclusions, not to Defendant's default.

16. Plaintiff traveled from Coeburn, Virginia to Beaufort, South Carolina to testify at the default hearing - 411 miles one way, had to pay to spend the night in a hotel, and missed a day's work.

17. The trial court, which heard the case non-jury, awarded Plaintiff \$85,000.00 in actual damages. The trial court awarded an additional \$15,000.00 in punitive damages based on evidence that Defendant was on her cell phone at the time of the accident.

Conclusions of Law

18. The well settled rule in South Carolina regarding the finality of an order of publication is that "in the absence of fraud or collusion, the decision of the officer ordering service by publication is final." *Montgomery v. Mullins*, 325 S.C. 500, 506, 480 S.E.2d 467, 470 (Ct.App. 1997); *Yates v. Gridley*, 16 S.C. 496 (1882). The Defendant here does not allege either fraud or collusion. As such, relief on this ground must be denied.

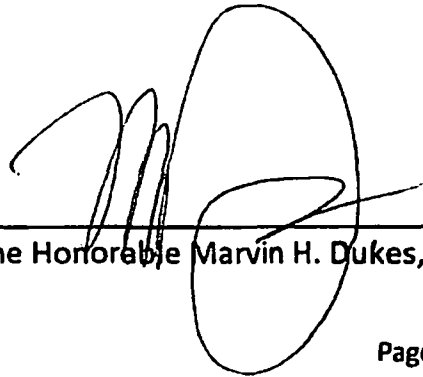
19. In considering a motion brought pursuant to Rule 60(b)(1) of the SCRCP, the court must consider "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct.App. 2010) In the present case, Defendant has no meritorious defense. Liability is clearly with Defendant and there is not a substantial discrepancy between the damages awarded by the trial court and the last settlement demand made by Plaintiff's counsel. This Court finds the judgment awarded in this case unaffected by Defendant's default. Thus, because Defendant has no meritorious defense and granting her motion would cause substantial prejudice to Plaintiff, the motion on this ground is denied.

20. Rule 55(b)(2) of the South Carolina Rules of Civil Procedure states "If the party against whom judgment by default is sought has appeared in the action, the party . . . shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application." Additionally, "Pursuant to Rule 5(a) notice of any trial or hearing on un-liquidated damages shall also be given to parties in default by first class mail to the last known address of such party *whether or not such party has appeared in the action.*" (emphasis added) Nowhere in Rule 55 is the three (3) day requirement enlarged for parties who have not appeared. Likewise, Rule 5(a) does not enlarge the time for notice of the hearing. Rule 5(a) states "notice of any trial or hearing on un-liquidated damages shall also be given to parties in default." As noted above, Plaintiffs sent Defendant notice of the default hearing twelve (12) days before the date of the hearing. No more was required of Plaintiff. Defendant's motion, therefore, is denied on this ground as well.

Therefore, Defendant's Motion to Set Aside the Default in this case is denied.

It is so ordered.

Dated: 12/28/11


The Honorable Marvin H. Dukes, III

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Jessica Caldwell,

Plaintiff(s)

vs.

Amy Wiquist

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP-07- 0 2303

(Please Print)

Submitted By: Colden R. Battey, Jr.

Address: 1001 Craven Street,
P.O. Box 1107
Beaufort, SC 29901

SC Bar #: 000583

Telephone #: 843-524-3109

Fax #: 843-524-6973

Other:

E-mail: battey@islc.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 (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & 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/ File 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) |
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|--|--|---|--|
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Other (799) | ☐ Other (899) | ☐ Worker's Comp (960) |
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|---|---|
| Special/Complex /Other | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) |
| ☐ Automobile Arb (610) | ☐ Unfair Trade Practices (640) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) |
| ☐ Other (699) | ☐ Sexual Predator (510) |

Submitting Party Signature:

Colden R. Battey

Date: May 26, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SORCP, 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 BEAUFORT)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 11-CP-07-

JESSICA CALDWELL,
Plaintiff,

vs.

AMY WIQUIST,
Defendant.

SUMMONS
(Jury Trial)

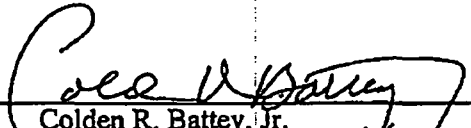
2011 MAY 26 PM 3:51
CLERK OF COURT
SOUTH CAROLINA

TO THE DEFENDANT ABOVE-NAMED:

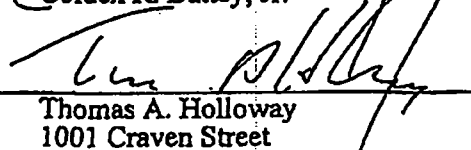
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or his attorneys, Colden R. Battey, Jr. and Thomas A. Holloway, at 1001 Craven Street, Beaufort, South Carolina, 29902, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

HARVEY & BATTEY, P.A.

By:


Colden R. Battey, Jr.

By:


Thomas A. Holloway
1001 Craven Street
P.O. Box 1107
Beaufort, SC 29901-1107
843-524-3109 (telephone)
843-524-6973 (facsimile)
Attorneys for the Plaintiff

Beaufort, South Carolina

May 26, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CIVIL ACTION NO. 11-CP-07-

JESSICA CALDWELL,)

Plaintiff,)

vs.)

COMPLAINT

AMY WQUIST,)

Defendant.)

2011 MAY 26 PM 3:57
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Plaintiff complaining of the Defendant alleges:

1. The parties hereto, the subject matter hereof and all matters and things hereinafter alleged are within the jurisdiction of this Honorable Court.

2. That U. S. Highway 278 at a point approximately 0.07 of a mile west of its point of intersection with the Simmonsville Road in Beaufort County is a straight and level six (6) lane highway running in a generally easterly and westerly direction with 3 lanes for traffic proceeding in either direction.

3. On September 11, 2010, the Plaintiff, Jessica Caldwell, was a passenger in a 2008 Chevrolet automobile that was being driven by her husband, Brian Caldwell. That Brian Caldwell was operating his 2008 Chevrolet automobile, having 2011 Virginia license number JJR2081, and was traveling in heavy traffic on U. S. Highway 278 in Beaufort County and was proceeding in an easterly direction in the center lane of U. S. Highway 278 when at a point approximately 0.07 of a mile west of the intersection of Highway 278 with the Simmonsville Road in Beaufort County he brought his automobile to a complete stop because traffic in front of

him had stopped for a red light. He had been stopped for some time when the Defendant, Amy Wiquist, who was operating her 2008 Toyota automobile, having 2011 South Carolina license number DXI 634, in a negligent and careless manner and was also proceeding in an easterly direction, crashed into the rear of the Brian Caldwell's automobile causing the Plaintiff, Jessica Caldwell, to sustain serious and painful personal injuries.

4. That the injuries and damages sustained by the Plaintiff were caused by and were the direct and proximate result of the negligence, recklessness and willfulness of the Defendant, Amy Wiquist, in one or more of the following particulars, to wit:

- a) In failing to pay proper attention in operating her automobile and crashing into the rear of the Plaintiff's stopped automobile;
- b) In failing to keep her automobile under proper control;
- c) In driving her automobile too fast for the conditions existing just prior to the collision;
- d) In failing to keep a proper lookout;
- e) In operating and driving her automobile with defective and improper brakes, or if it had proper brakes, in failing to properly use them;

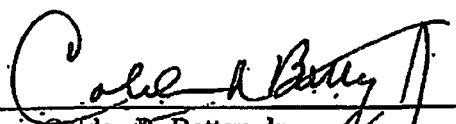
5. That the Plaintiff and her husband, Brian Caldwell, had been planning and had looked forward to a family vacation for several years and with other family members had rented a vacation house on Hilton Head for a week's vacation. That as a result of the negligence, recklessness and willfulness of the Defendant and the resulting injuries sustained by the Plaintiff, she was unable to participate in most of the activities that she and her husband had planned and their long awaited vacation was ruined. Further, the Plaintiff sustained serious and painful

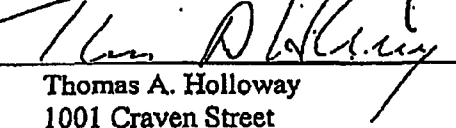
personal injuries as are hereinafter more particularly set forth. She was thrown violently about in the automobile striking her head on the ceiling of the automobile. She sustained injuries to her neck that radiated to her right shoulder. She was forced to seek medical treatment for her injuries. She has suffered pain and numbness in her neck and shoulder. She has been diagnosed as suffering a hematoma to the left side of her head and a cervical and thoracic sprain. She has expended or become obligated for large sums of money for medical treatment, medication and other items. That she continues to suffer pain and difficulty in performing her normal activities. That in addition, she has suffered severe emotional distress as a result of these injuries.

All to her serious detriment and damage both actual and punitive in an amount to be determined by this Court and jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendant both actual and punitive in an amount to be determined by this Court and jury and for the costs of this action.

HARVEY & BATTEY, P.A.

By: 
Colleen R. Battey, Jr.

By: 
Thomas A. Holloway
1001 Craven Street
P.O. Box 1107
Beaufort, SC 29901
(843)524-3109 (telephone)
(843)524-6973 (fax)
Attorneys for the Plaintiff

Beaufort, South Carolina
May 25, 2011

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Brian Caldwell,

Plaintiff(s)

vs.

Amy Wiquist

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP-07-02304

RECEIVED
CLERK OF COURT
JULY 26 2011
PM 3:58

(Please Print)

Submitted By: Colden R. Battey, Jr.
Address: 1001 Craven Street,
P.O. Box 1107
Beaufort, SC 29901

SC Bar #: 000583
Telephone #: 843-524-3109
Fax #: 843-524-6973
Other:
E-mail: battey@islc.net

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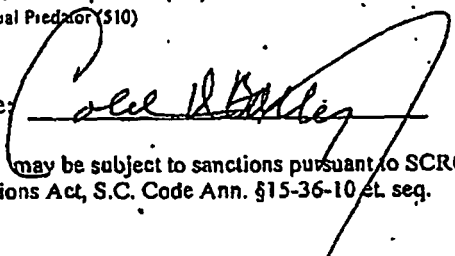
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|--|--|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
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☐ Medical Malpractice (220)
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☐ Assault/Slander/Label (300)
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☐ Premises Liability (330)
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☐ Partition (440)
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☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
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☐ Habeas Corpus (530)
☐ Other (599) | ☐ Judgments/Settlements
☐ Death Settlement (700)
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☐ Magistrate's Judgment (720)
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☐ Transcript Judgment (740)
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☐ Other (799) | ☐ Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Sexual Predator (610) | | |

Submitting Party Signature: 

Date: May 26, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, 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 BEAUFORT

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 11-CP-07-

BRIAN CALDWELL,
Plaintiff,

vs.

AMY WIQUIST,
Defendant.

SUMMONS
(Jury Trial)

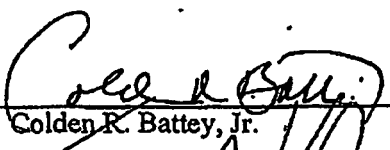
2011 MAY 26 PM 3:58
CLERK OF COURT
BEAUFORT COUNTY, SC

TO THE DEFENDANT ABOVE-NAMED:

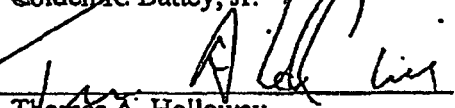
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or his attorneys, Colden R. Battey, Jr. and Thomas A. Holloway, at 1001 Craven Street, Beaufort, South Carolina, 29902, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

HARVEY & BATTEY, P.A.

By:


Colden R. Battey, Jr.

By:


Thomas A. Holloway
1001 Craven Street
P.O. Box 1107
Beaufort, SC 29901-1107
843-524-3109 (telephone)
843-524-6973 (facsimile)
Attorneys for the Plaintiff

Beaufort, South Carolina

May 26, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
BRIAN CALDWELL,)
)
Plaintiff,)
)
vs.)
)
AMY WQUIST,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 11-CP-07-

COMPLAINT

2011 MAY 26 PM 3:58
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Plaintiff complaining of the Defendant alleges:

1. The parties hereto, the subject matter hereof and all matters and things hereinafter alleged are within the jurisdiction of this Honorable Court.
2. That U. S. Highway 278 at a point approximately 0.07 of a mile west of its point of intersection with the Simmonsville Road in Beaufort County is a straight and level six (6) lane highway running in a generally easterly and westerly direction with 3 lanes for traffic proceeding in either direction.
3. On September 11, 2010, the Plaintiff, Brian Caldwell, was operating his 2008 Chevrolet automobile, having 2011 Virginia license number JJR2081, and was traveling in heavy traffic on U. S. Highway 278 in Beaufort County and was proceeding in an easterly direction in the center lane of U. S. Highway 278 when at a point approximately 0.07 of a mile west of the intersection of Highway 278 with the Simmonsville Road in Beaufort County he brought his automobile to a complete stop because traffic in front of him had stopped for a red light. He had been stopped for some time when the Defendant, Amy Wiquist, who was operating her 2008

Toyota automobile, having 2011 South Carolina license number DXI 634, in a negligent and careless manner and was also proceeding in an easterly direction, crashed into the rear of the Plaintiff's automobile causing the Plaintiff to sustain serious and painful personal injuries.

4. That the injuries and damages sustained by the Plaintiff were caused by and were the direct and proximate result of the negligence, recklessness and willfulness of the Defendant, Amy Wiquist, in one or more of the following particulars, to wit:

- a) In failing to pay proper attention in operating her automobile and crashing into the rear of the Plaintiff's stopped automobile;
- b) In failing to keep her automobile under proper control;
- c) In driving her automobile too fast for the conditions existing just prior to the collision;
- d) In failing to keep a proper lookout;
- e) In operating and driving her automobile with defective and improper brakes, or if it had proper brakes, in failing to properly use them;

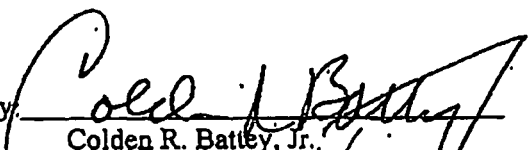
5. That the Plaintiff and his wife, Jessica Caldwell, had been planning and had looked forward to a family vacation for several years and with other family members had rented a vacation house on Hilton Head for a weeks vacation. That as a result to the negligence, recklessness and willfulness of the Defendant and the resulting injuries sustained by the Plaintiff, he was unable to participate in most of the activities that he and his wife had planned and their long awaited vacation was ruined. Further, the Plaintiff sustained serious painful and permanent personal injuries as are hereinafter more particularly set forth. He was thrown violently about in the automobile and sustained injuries to his neck, shoulder and back. He was forced to seek

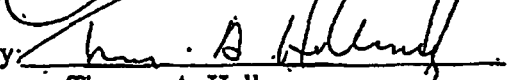
extensive medical treatment. He has suffered pain and numbness in his neck and shoulder that radiates down his arm with numbness in his hand. He underwent physical therapy that caused increased pain and discomfort. He has been diagnosed with supraspinatus and infraspinatus tendinosis. He has expended or become obligated for large sums of money for medical treatment, diagnostic tests, physical therapy, medication and other items. That he was disabled and has lost time from his work as a result of his injuries. That he continues to suffer partial disability and difficulty in performing the required activities that his employment entails. That in addition he has suffered severe emotional distress as a result of these injuries.

All to his serious detriment and damage both actual and punitive in an amount to be determined by this Court and jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendant both actual and punitive in an amount to be determined by this Court and jury and for the costs of this action

HARVEY & BATTEY, P.A.

By: 
Colden R. Battley, Jr.

By: 
Thomas A. Holloway
1001 Craven Street
P.O. Box 1107
Beaufort, SC 29901
(843)524-3109 (telephone)
(843)524-6973 (fax)
Attorneys for the Plaintiff

Beaufort, South Carolina
May 25, 2011

Beaufort County Sheriff's Office
P.J. Tanner, Sheriff
PO Box 1758
Beaufort, S.C. 29901

State of South Carolina
County Of Beaufort

Attorney: COLDEN R. BATTEY JR

Case Number: 11CP072303

Plaintiff: JESSICA CALDWELL

- VS -

Defendant: AMY WIQUIST

Service Of: AMY WIQUIST

Address: 215 WHITE OAK CIR
BLUFFTON

2011 JUN 27 PM 2:09
JERRI A. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

AFFIDAVIT OF NON-SERVICE

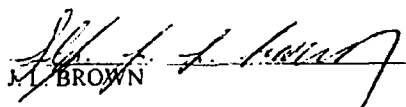
PERSONALLY comes the undersigned, who says on oath that as of the 16th day of June, 2011, after several attempts to serve the CIVIL COVERSHEET, SUMMONS AND COMPLAINT on AMY WIQUIST, he/she was unable to complete service in accordance with applicable statutes and the Rules of Civil Procedures in effect. Service could not be completed for the following reasons: ADDRESS IS VACANT

Notary Statement

SWORN to before me on this the 17th day of June, 2011.

Notary Public For The State of South Carolina

My Commission Expires


M. BROWN

Beaufort County Sheriff's Office
P.J. Tanner, Sheriff
PO Box 1758
Beaufort, S.C. 29901

State of South Carolina
County Of Beaufort

Attorney: COLDEN R. BATTEY JR

Case Number: 11CP072304

Plaintiff: BRIAN CALDWELL

- VS -

Defendant: AMY WIQUIST

Service Of: AMY WIQUIST

Address: 215 WHITE OAK CIR
BLUFFTON

2011 JUN 27 PM 2:09
CLERK OF COURT
BEAUFORT COUNTY, S.C.

AFFIDAVIT OF NON-SERVICE

PERSONALLY comes the undersigned, who says on oath that as of the 16th day of June, 2011, after several attempts to serve the above
CIVIL COVERSHEET, SUMMONS AND COMPLAINT on AMY WIQUIST, he/she was unable to complete service in accordance
with applicable statutes and the Rules of Civil Procedures in effect. Service could not be completed for the following reasons: ADDRESS
; VACANT

Notary Statement

WORN to before me on this the 17th day of June, 2011

Notary Public For The State of South Carolina

My Commission Expires 10/15/12

BROWN

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 11-CP-07-02303

JESSICA CALDWELL,
Plaintiff,

vs.

AMY WIQUIST,
Defendant.

AFFIDAVIT OF PUBLICATION

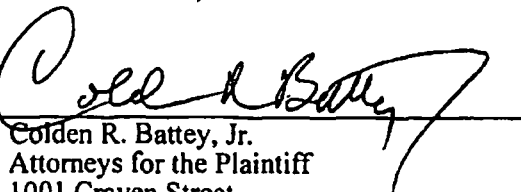
11 JUN 30 AM 9:09
JENNIFER ROSENBAUM
CLERK OF COURT
BEAUFORT COUNTY, S.C.

PERSONALLY appeared before me Colden R. Battey, Jr., who, being duly sworn,
deposes and states as follows:

1. He is a member of the law firm of Harvey & Battey, P.A., with offices at 1001 Craven Street, Beaufort, South Carolina 29902, and makes this Affidavit on behalf of the Plaintiff in this cause seeking an Order of Publication against the non-resident Defendant.
2. This action has been commenced and is now pending in the Court of Common Pleas for Beaufort County, South Carolina, for injuries arising out of an automobile collision that occurred in Beaufort County on September 11, 2010.
3. The Defendant who is a non-resident of Beaufort County, South Carolina, cannot be served a copy of the Summons in Beaufort County, and it is necessary and proper to serve her by publication.

HARVEY & BATTEY, P.A.

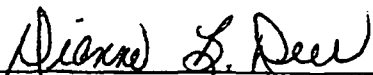
By: _____



Golden R. Battey, Jr.
Attorneys for the Plaintiff
1001 Craven Street
Beaufort, SC 29901
(843) 524-3109 (telephone)
(843) 524-6973 (fax)

SWORN to before me this

27th day of June, 2011.



Notary Public for South Carolina
My Commission Expires: 2-15-17

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 11-CP-07-02304

AFFIDAVIT OF PUBLICATION

vs.

AMY WIQUIST,
Defendant.

11 JUN 30 AM 9:09
JAMES A. ROSENBAU
BEFORE THE COURT
CLERK OF COURT

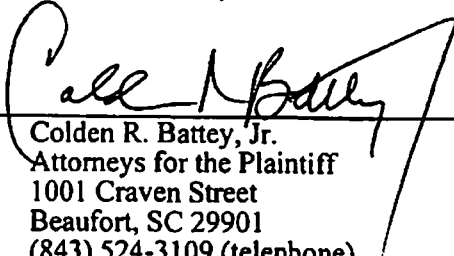
1. He is a member of the law firm of Harvey & Battey, P.A., with offices at 1001 Craven Street, Beaufort, South Carolina 29902, and makes this Affidavit on behalf of the Plaintiff in this cause seeking an Order of Publication against the non-resident Defendant.

2. This action has been commenced and is now pending in the Court of Common Pleas for Beaufort County, South Carolina, for injuries arising out of an automobile collision that occurred in Beaufort County on September 11, 2010.

3. The Defendant who is a non-resident of Beaufort County, South Carolina, cannot be served a copy of the Summons in Beaufort County, and it is necessary and proper to serve her by publication.

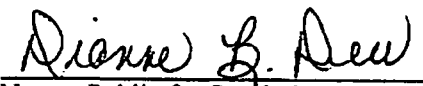
HARVEY & BATTEY, P.A.

By: _____


Colden R. Battey, Jr.
Attorneys for the Plaintiff
1001 Craven Street
Beaufort, SC 29901
(843) 524-3109 (telephone)
(843) 524-6973 (fax)

SWORN to before me this

27th day of June, 2011.


Notary Public for South Carolina
My Commission Expires: 2-15-17

THE ISLAND PACKET

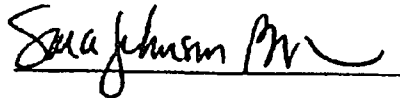
The Beaufort Gazette

2011 AUG -3 PM 3: 03

STATE OF
SOUTH CAROLINA
COUNTY OF BEAUFORT)

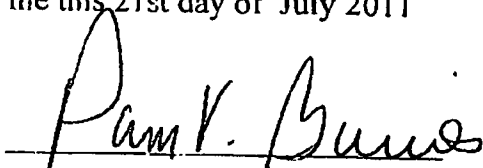
JENNIFER ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT
AFFIDAVIT

Personally appeared before me a Notary Public,
in and for State and County, aforesaid, Sara
Johnson Borton who being duly sworn according
to law, deposes and says that she is the Publisher
and President of *The Island Packet* and *The
Beaufort Gazette*, newspapers published Sunday
through Saturday every week in Beaufort
County, Harvey & Battey, P. A., Summons,
Jessica Caldwell vs. Amy Wiquist,
Civil Action No. 11-CP-07-02303, was
published in the issue(s) of The Island
Packet/The Beaufort Gazette on July 7, 14 and
21, 2011.



Sara Johnson Borton,
Publisher and President
The Island Packet/The Beaufort Gazette

Subscribed and sworn to before
me this 21st day of July 2011



Notary Public for South Carolina

My Commission Expires October 25, 2020

THE ISLAND PACKET
The Beaufort Gazette

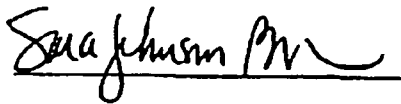
2011 AUG -3 PM 3:03

STATE OF
SOUTH CAROLINA
COUNTY OF BEAUFORT)

JERMAN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

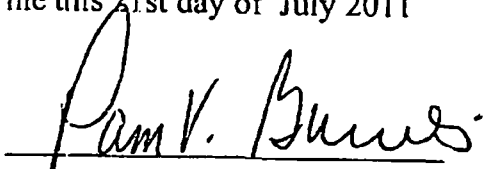
AFFIDAVIT

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to law, deposes and says that she is the Publisher
and President of *The Island Packet and The
Beaufort Gazette*, newspapers published Sunday
through Saturday every week in Beaufort
County, **Harvey & Battey, P. A., Summons,
Brian Caldwell vs. Amy Wiquist, Civil Action
No. 11-CP-07-02304**, was published in the
issue(s) of *The Island Packet/The Beaufort
Gazette* on July 7, 14 and 21, 2011.



Sara Johnson Borton,
Publisher and President
The Island Packet/The Beaufort Gazette

Subscribed and sworn to before
me this 21st day of July 2011



Notary Public for South Carolina
My Commission Expires October 25, 2020

P1016

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
JESSICA CALDWELL,)
Plaintiff,)
vs.)
AMY WQUIST,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 11-CP-07-02303

AFFIDAVIT OF DEFAULT

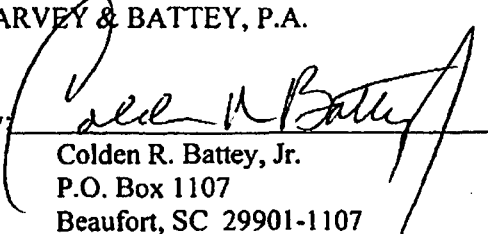
2011 AUG 22 AM 11:25
CLERK OF COURT
BEAUFORT COUNTY, S.C.

PERSONALLY appeared before me Colden R. Battey, Jr., of the law firm of Harvey & Battey, P.A., who being duly sworn, deposes and states as follows:

1. Harvey & Battey, P.A. are the attorneys for the Plaintiff in the foregoing action.
2. That service was attempted on the Defendant, Amy Wiquist, as evidenced by the previously filed Affidavit of Non-Service from the Beaufort County Sheriff's Department. Thereafter, the Defendant was served by publication in The Island Packet/The Beaufort Gazette, a newspaper published in Beaufort County, South Carolina, said publication occurring on July 7, 2011, July 14, 2011 and July 21, 2011.
3. More than thirty days have elapsed since service by publication upon said Defendant, Amy Wiquist. There has been no answer or other responsive pleading served upon Plaintiff, and said Defendant, Amy Wiquist, is now in default.

HARVEY & BATTEY, P.A.

By:


Colden R. Battey, Jr.
P.O. Box 1107
Beaufort, SC 29901-1107
843-524-3109
Attorneys for the Plaintiff

SWORN to before me this
3rd day of August, 2011


Notary Public for South Carolina
My commission expires: 01.04.20

THE ISLAND PACKET
The Beaufort Gazette

2011 AUG -3 PM 3: 03

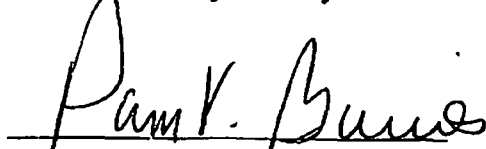
STATE OF ^{JEROME ROSENEAU}
SOUTH CAROLINA ^{BEAUFORT COUNTY, S.C.}) AFFIDAVIT
COUNTY OF BEAUFORT)

Personally appeared before me a Notary Public, in and for State and County, aforesaid, Sara Johnson Borton who being duly sworn according to law, deposes and says that she is the Publisher and President of *The Island Packet and The Beaufort Gazette*, newspapers published Sunday through Saturday every week in Beaufort County, Harvey & Battey, P. A., Summons, Jessica Caldwell vs. Amy Wiquist, Civil Action No. 11-CP-07-02303, was published in the issue(s) of The Island Packet/The Beaufort Gazette on July 7, 14 and 21, 2011.



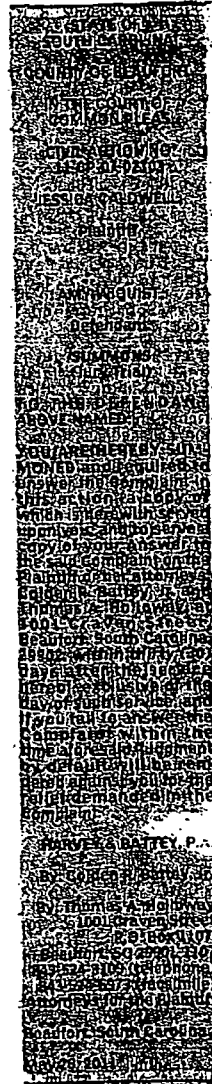
Sara Johnson Borton,
Publisher and President
The Island Packet/The Beaufort Gazette

Subscribed and sworn to before
me this 21st day of July 2011



Notary Public for South Carolina

My Commission Expires October 25, 2020



Beaufort County Sheriff's Office
P.J. Tanner, Sheriff
PO Box 1758
Beaufort, S.C. 29901

State of South Carolina
County Of Beaufort

Attorney: COLDEN R. BATTEY JR

Case Number: 11CP072303

Plaintiff: JESSICA CALDWELL

- VS -

Defendant: AMY WQUIST

Service Of: AMY WQUIST

Address: 215 WHITE OAK CIR
BLUFFTON

2011 JUN 27 PM 2:09
CLERK OF COURT
BEAUFORT COUNTY, S.C.

AFFIDAVIT OF NON-SERVICE

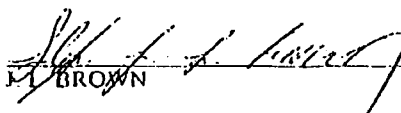
PERSONALLY comes the undersigned, who says on oath that as of the 16th day of June, 2011, after several attempts to serve the above
VIL COVERSHEET, SUMMONS AND COMPLAINT on AMY WQUIST, he/she was unable to complete service in accordance
th applicable statutes and the Rules of Civil Procedures in effect. Service could not be completed for the following reasons: ADDRESS
VACANT

Notary Statement

WORN to before me on this the 17th day of June, 2011.

otary Public For The State of South Carolina

ly Commission Expires


BROWN

plab

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
BRIAN CALDWELL,)
Plaintiff,)
vs.)
AMY WIQUIST,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 11-CP-07-02304

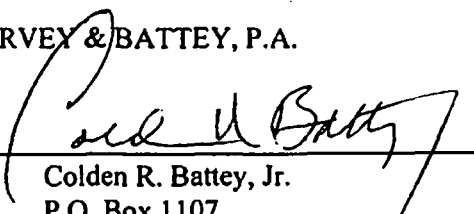
AFFIDAVIT OF DEFAULT

2011 AUG 22 AM 11:25
CLERK OF COURT

PERSONALLY appeared before me Colden R. Battey, Jr., of the law firm of Harvey & Battey, P.A., who being duly sworn, deposes and states as follows:

1. Harvey & Battey, P.A. are the attorneys for the Plaintiff in the foregoing action.
2. That service was attempted on the Defendant, Amy Wiquist, as evidenced by the previously filed Affidavit of Non-Service from the Beaufort County Sheriff's Department. Thereafter, the Defendant was served by publication in The Island Packet/The Beaufort Gazette, a newspaper published in Beaufort County, South Carolina, said publication occurring on July 7, 2011, July 14, 2011 and July 21, 2011.
3. More than thirty days have elapsed since service by publication upon said Defendant, Amy Wiquist. There has been no answer or other responsive pleading served on Plaintiff, and said Defendant, Amy Wiquist, is now in default.

HARVEY & BATTEY, P.A.

By: 
Colden R. Battey, Jr.
P.O. Box 1107
Beaufort, SC 29901-1107
843-524-3109
Attorneys for the Plaintiff

SWORN to before me this
22nd day of August, 2011

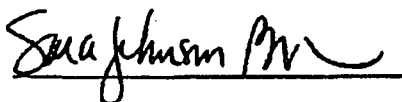
Notary Public for South Carolina
My commission expires: 01.04.20

THE ISLAND PACKET
The Beaufort Gazette

2011 AUG -3 PM 3: 03

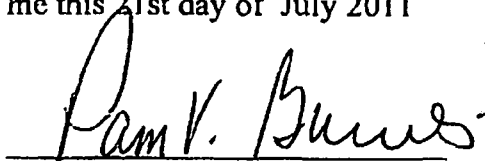
STATE OF
SOUTH CAROLINA) **AFFIDAVIT**
COUNTY OF BEAUFORT)

Personally appeared before me a Notary Public, in and for State and County, aforesaid, Sara Johnson Borton who being duly sworn according to law, deposes and says that she is the Publisher and President of *The Island Packet and The Beaufort Gazette*, newspapers published Sunday through Saturday every week in Beaufort County, **Harvey & Battey, P. A., Summons, Brian Caldwell vs. Amy Wiquist, Civil Action No. 11-CP-07-02304**, was published in the issue(s) of *The Island Packet/The Beaufort Gazette* on July 7, 14 and 21, 2011.

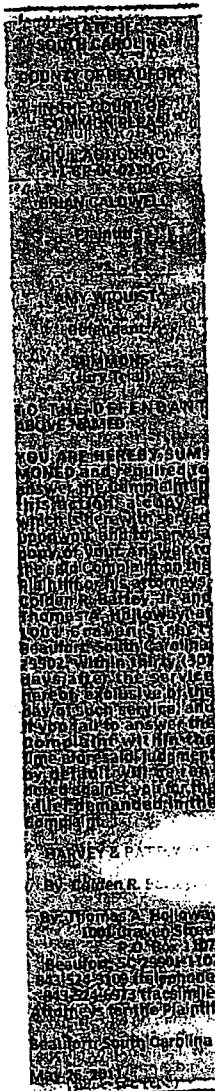


Sara Johnson Borton,
Publisher and President
The Island Packet/The Beaufort Gazette

Subscribed and sworn to before
me this 21st day of July 2011



Notary Public for South Carolina
My Commission Expires October 25, 2020



Beaufort County Sheriff's Office
P.J. Tanner, Sheriff
PO Box 1758
Beaufort, S.C. 29901

State of South Carolina
County Of Beaufort

Attorney: COLDEN R. BATTEY JR

Case Number: 11CP072304

Plaintiff: BRIAN CALDWELL

- VS -

Defendant: AMY WIQUIST

Service Of: AMY WIQUIST

Address: 215 WHITE OAK CIR
BLUFFTON

2011 JUN 27 PM 2:09
JAMES A. JOSEPH
BEAUFORT COUNTY, S.C.
CLERK OF COURT

AFFIDAVIT OF NON-SERVICE

PERSONALLY comes the undersigned, who says on oath that as of the 16th day of June, 2011, after several attempts to serve the above
CIVIL COVERSHEET, SUMMONS AND COMPLAINT on AMY WIQUIST, he/she was unable to complete service in accordance
with applicable statutes and the Rules of Civil Procedures in effect. Service could not be completed for the following reasons: ADDRESS
; VACANT

Notary Statement

WORN to before me on this the 17th day of June, 2011

Notary Public For The State of South Carolina

My Commission Expires 10/1/12

[Signature]
BROWN

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Jessica Caldwell,

☒ Plaintiff

v.

Amy Wiquist,

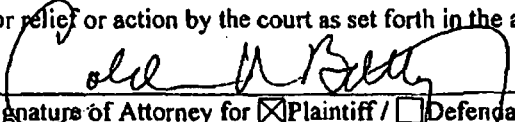
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

11-CP-07-02303

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney: Colden R. Batley, Jr., Bar No. 583 Address: Post Office Box 1107 Beaufort, SC 29901-1107 phone: 843-524-3109 fax: 843-524-6973 e-mail: batley@islc.net other:	Defendant's Attorney: , Bar No. Address: phone: fax: e-mail: other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: For an order of default judgment and damage hearing Estimated Time Needed: 15 minutes Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion Type ☒ Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant September 22, 2011 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

JESSICA CALDWELL,)

Plaintiff,)

vs.)

AMY WQUIST,)

Defendant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 11-CP-07-02303

**NOTICE OF MOTION
AND
MOTION**

2011 SEP 22 PM 3:22
CLERK OF COURT

PLEASE TAKE NOTICE that the Plaintiff Jessica Caldwell, on Monday, October 24, 2011, at 1:30 p.m., will move the Court for an Order of Default Judgment and at that time will present testimony and evidence regarding the facts in this case and her injuries and damages resulting from the injuries sustained in the automobile collision as set forth in the Summons and Complaint.

This motion is made on the pleadings and documents which have been filed.

HARVEY & BATTEY, P.A.

By:

Colden R. Battey, Jr.

P.O. Box 1107

Beaufort, SC 29901-1107

843-524-3109 (telephone)

Attorneys for the Plaintiff

Beaufort, South Carolina

September 22, 2011

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
11-CP-07-02303

JESSICA CALDWELL,

Plaintiff

vs.

AMY WQUIST,

Defendant.

CERTIFICATE OF SERVICE

2011 SEP 22 PM 3:22
CLERK OF COURT
S.C.

The undersigned hereby certifies that she is a legal assistant in the law firm of Harvey & Battey, P.A., and that she has served a copy of the attached **Notice of Motion and Motion on the Defendant** by depositing said copy in the United States Mail, mailing it **First Class Mail** with sufficient postage thereon on **September 22, 2011**, addressed to the person(s) hereinafter named at the place and address stated below.

Amy Wiquist
215 White Oak Circle
Bluffton, SC 29910

HARVEY & BATTEY, PA

By:

Dianne B. Deer

Dianne B. Deer

Beaufort, South Carolina
September 22, 2011

Assistant to Colden R. Battey, Jr.
Post Office Drawer 1107
Beaufort, SC 29901-1107
(843) 524-3109 - phone
(843) 524-6973 - fax

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Brian Caldwell,

☒ Plaintiff

v.

Amy Wiquist,

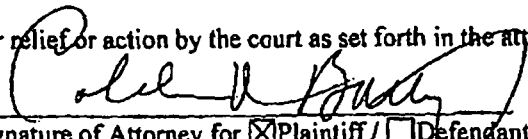
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

11-CP-07-02304

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney: Colden R. Battey, Jr., Bar No. 583 Address: Post Office Box 1107 Beaufort, SC 29901-1107 phone: 843-524-3109 fax: 843-524-6973 e-mail: battey@islc.net other:	Defendant's Attorney: , Bar No. Address: phone: fax: e-mail: other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: For an order of default judgment and damage hearing Estimated Time Needed: 15 minutes Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion Type ☒ Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant September 22, 2011 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
BRIAN CALDWELL,)
Plaintiff,)
vs.)
AMY WIQUIST,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 11-CP-07-02304

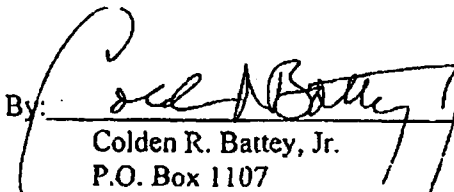
**NOTICE OF MOTION
AND
MOTION**

2011 SEP 22 PM 3:22
CLERK OF COURT
S.C.

PLEASE TAKE NOTICE that the Plaintiff Brian Caldwell, on Monday, October 3, 2011, at 1:30 p.m., will move the Court for an Order of Default Judgment and at that time will present testimony and evidence regarding the facts in this case and his injuries and damages resulting from the injuries sustained in the automobile collision as set forth in the Summons and Complaint.

This motion is made on the pleadings and documents which have been filed.

HARVEY & BATTEY, P.A.

By: 
Colden R. Battey, Jr.
P.O. Box 1107
Beaufort, SC 29901-1107
843-524-3109 (telephone)
Attorneys for the Plaintiff

Beaufort, South Carolina

September 21, 2011

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
11-CP-07-02304

BRIAN CALDWELL,
Plaintiff
vs.
AMY WIQUIST,
Defendant.

CERTIFICATE OF SERVICE

2011 SEP 22 PM 3:22
CLERK OF COURT
SOUTH CAROLINA

The undersigned hereby certifies that she is a legal assistant in the law firm of Harvey & Battey, P.A., and that she has served a copy of the attached Notice of Motion and Motion on the Defendant by depositing said copy in the United States Mail, mailing it First Class Mail with sufficient postage thereon on September 22, 2011, addressed to the person(s) hereinafter named at the place and address stated below.

Amy Wiquist
215 White Oak Circle
Bluffton, SC 29910

HARVEY & BATTEY, PA

By: *Diarme B. Deer*
Diarme B. Deer

Beaufort, South Carolina
September 22, 2011

Assistant to Colden R. Battey, Jr.
Post Office Drawer 1107
Beaufort, SC 29901-1107
(843) 524-3109 - phone
(843) 524-6973 - fax

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	2011 OCT 25 PM 4:35 CIVIL ACTION NO 11-CP-07-2303
JESSICA CALDWELL,	)	CLERK OF COURT
Plaintiff,	)	
vs.	)	MOTION TO SET ASIDE DEFAULT
AMY WIQUIST,	)	
Defendant.	)	

TO: COLDEN R. BATTEY, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFF

PLEASE TAKE NOTICE that the Defendant will make application to the Court on the tenth (10th) day after service hereof, or as soon thereafter as this matter may be heard, for an Order setting aside the Order of Default Judgment entered in this case and filed with the court on October 4, 2011. This motion is made upon the following grounds:

- 1) Pursuant to Rule 60(b)(4), SCRPC, the default judgment is void for lack of personal jurisdiction over the Defendant.
 - a) Service by publication upon the Defendant was ineffective in that the affidavits submitted in support of the Plaintiff's application for an order allowing service by publication were insufficient because they failed to show that the Plaintiff actually exercised due diligence in attempting to locate the Defendant as required by § 15-9-710, S.C. Code Ann. (2005).

The affidavit of Deputy Sheriff, J.L. Brown, states only that he was unable after several attempts to serve the Defendant at 215 White Oak Circle, Bluffton because the address was vacant. The Brown affidavit does not indicate that he took any other action in an effort to locate the Defendant. Visiting a vacant address several times does not establish a diligent search for the Defendant. The affidavit of Plaintiff's counsel, Colden R. Battey, Jr., states only that the Defendant is a non-resident of Beaufort County, South Carolina and cannot be served in Beaufort County. The

Batthey affidavit does not indicate what action was taken to locate the Defendant and does not make even a conclusory statement that the Plaintiff made a diligent search for the Defendant. Neither affidavit establishes that a diligent search was made for the Defendant nor do they provide sufficient facts to establish any of the grounds for allowing service by publication as set forth in subsections 1 through 8 of §15-9-710, S.C. Code Ann. (2005). On the other hand, the affidavit of the Defendant establishes that she is now, and has been since the accident giving rise to this action, a resident of Beaufort County, South Carolina. The affidavit of the Defendant further establishes that she received late notice of the default damages hearing when a mailing sent to her last known address was forwarded to her by the Post Office. It is clear that the Defendant was located, and could have been located at any time since the accident, by mail directed to her last known address. In auto tort cases, the accident report usually provides a mailing address and a telephone number for the Defendant. In order to establish a diligent search when that information is available, the Plaintiff, at a minimum, should be required to show not only that personal service was attempted, but that an effort was made to write to and/or call the Defendant. If the Plaintiff had attempted to contact the Defendant by mail directed to her last known address, the Defendant would have received notice of the suit and would have had an opportunity appear and protect her interests. The issuance of an Order of Publication based upon the affidavits submitted in this case was unsupported by the facts, constituted an error of law, and has deprived the Defendant of her constitutional right to due process under the law.

- b) Service by publication upon the Defendant was ineffective in that the Order of Publication refers to and relies upon facts unsupported by the affidavits submitted by the Plaintiff and, further, that the Order of Publication fails to comply with the provisions of §15-9-740, S.C. Code Ann. (2005).**

The Order for Publication states that the Defendant has moved from her last known

residence, 215 White Oak Circle, Bluffton, SC 29910, and has "left no forwarding address." The affidavits submitted by the Plaintiff do not state nor do they confirm in any way that the Defendant "left no forwarding address." The affidavits submitted by the Plaintiff fail to state or show that any attempt was made to contact the Defendant by mail or to determine whether she left a forwarding address. In fact, based upon the affidavit of the Defendant, she did leave a forwarding address and any mail sent to her last known address would have been forwarded to and received by her.

Contrary to the provisions of §15-9-740, S.C. Code Ann. (2005), the Order of Publication provides that should the Plaintiff be able to ascertain the address of the Defendant, a copy of the Summons and Complaint shall be mailed to the Defendant at such address if he is a non-resident and that personal service should be made upon any resident Defendant if he can be located within the State of South Carolina. Section 15-9-740 actually provides that a copy of the summons shall be forthwith deposited in the post office directed to the person to be served at his place of residence, unless it appears that such residence is neither known to the party making the application nor can, with reasonable diligence, be ascertained by him. In this case, where the Plaintiff has failed to show reasonable diligence in attempting to determine the Defendant's residence, the Order of Publication should have provided that a copy of the summons be deposited in the post office directed to the Defendant at her last known address. Based upon the affidavit of the Defendant, if that had that been done, she would have received the mailing and notice of the suit. The issuance of an Order of Publication based upon the affidavits submitted in this case was unsupported by the facts, constituted an error of law, and has deprived the Defendant of her constitutional right to due process under the law.

Service by publication is in derogation of the common law and the statute allowing service in that manner must be strictly construed. Tenney v. American Pipe Mfg. Co., 96 F. 919 (1899).

The Court should not be permitted to confer jurisdiction upon itself by improvidently allowing service by publication when the statutory requirements for such service have not been satisfied. Pursuant to §15-9-710, the Plaintiff, by affidavit, must show as a matter of fact that the Defendant, after due diligence, could not be found.

The great weight of authority requires not the statement of the mere ultimate fact of diligence, but evidentiary facts which go to prove that due diligence was exercised. Facts as to what the affiant did to find the defendant must be stated so that the court may determine whether the requisite degree of diligence was exercised. Otherwise the affiant himself would be the judge of whether his conduct constituted due diligence. P.H. Vartanian, *Sufficiency of Affidavit as to Due Diligence in Attempting to Learn Whereabouts of Party to Litigation for the Purpose of Obtaining Service by Publication*, 21 A.L.R. 2d 929, (1952).

Our Supreme Court has stated that absent fraud or collusion, if the affidavit satisfies the officer issuing the order of publication, then his order is final. Yarbrough v. Collins, 293 S.C. 290, 360 S.E.2d 300 (S.C.1987). The present case demonstrates exactly why such a rule is unfair. The effect of that rule is that a party can never contest whether the weight of the evidence was sufficient to meet the due diligence requirement of the statute. A standard that depends on whether one is "satisfied" that a requirement has been met is basically a discretionary standard. Of course, discretion can be abused. An abuse of discretion arises when a judge issuing an order was controlled by an error of law or when the order is based on factual conclusions that are without evidentiary support. BB&T v. Taylor, 369 S.C. 548, 633 S.E.2d 501, (2006). In most instances, the law provides that an abuse of discretion can be corrected. However, under the rule reiterated in the Yarbrough case, a party is at the mercy of the officer issuing the order of publication if he is "satisfied" that the requirements of the statute have been met. Whether it was reasonable for him

to be satisfied is of no consequence. Such a rule will almost surely lead to inconsistent results and the uneven application of the law. There is no good reason why the standard for challenging the issuance of an order of publication should be any higher than the standard for challenging any discretionary ruling by a judge. There should be no need to show fraud or collusion, which the language of the statute itself does not require. A showing that the judge abused his discretion in that his decision was unsupported by the facts and thus amounted to an error of law should be sufficient. The Defendant in this case was located in Beaufort County at all times following the accident and she had provided the Post Office with a forwarding address when she moved. She was there to be found and a diligent effort by the Plaintiff, including the simple act of mailing notice to her last known address, would have found her.

An elementary and fundamental requirement of due process is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action. And notice by publication is not reasonably calculated to inform interested parties who can be notified by more effective means such as personal service or mailed notice. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). If the name and address of a party are reasonably ascertainable, then notice by mail or other means as certain to insure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party. Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed. 2d 180 (1983). Any other rule that allows the Defendant to be deprived of notice an action and an opportunity to be heard is manifestly unfair and violates the Defendant's constitutional right to due process.

- 2) **The Order of Default Judgment should be set aside due to surprise, misrepresentation and/or misconduct pursuant to Rule 60(b)(1), SCRPC and Rule 60(b)(3), SCRPC.**

Plaintiff's counsel first contacted GEICO on September 30, 2010 (see Exhibit 1) regarding his representation. Thereafter Plaintiff's counsel and GEICO engaged in ongoing settlement negotiations. Although the parties differed in their valuation of the claim, they continued an ongoing dialogue regarding settlement possibilities and dealt with each other cooperatively and with respect. On May 25, 2011, Plaintiff's counsel wrote to GEICO (see Exhibit 2) rejecting their last offer and forwarding a copy of the suit papers which had been filed that day. Plaintiff's counsel indicated that he would be in touch if Mr. Caldwell's condition continued to deteriorate. The prior course of conduct between Plaintiff's counsel and GEICO had led GEICO to believe that they would be kept informed of significant developments in the case. However, Plaintiff's counsel never informed GEICO that its insured had been served by publication; never informed GEICO of its insured's default; and never informed GEICO of the scheduling of a default damages hearing. While Plaintiff's counsel technically had no duty to keep GEICO informed of those events, there can be no dispute that GEICO was taken completely by surprise when it learned what had happened. Given their past dealings, the silence of Plaintiff's counsel when he knew that GEICO cared about the claim yet obviously was in the dark regarding service on its insured and her subsequent default constitutes sufficient grounds to set aside the default based upon misrepresentation and/or misconduct. The substantial discrepancy between the damages awarded and the medical expenses incurred and the last settlement demand made by Plaintiff's counsel (see Exhibit 3) is sufficient evidence of a meritorious defense. McClurg vs. Deaton, et al, Op. No. 27038 (S.C.Sup.Ct. filed September 6, 2011).

- 3) **The Plaintiff failed to give the Defendant sufficient notice of the trial or hearing on unliquidated damages as required by Rule 55, SCRPC and Rule 6, SCRPC.**

Rule 55, SCRPC provides that if a party against whom a default is sought has appeared in

the action, the party or the party's representative shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing. Rule 55 further provides that pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action. As far as notice of a default damages hearing is concerned, the language of Rule 55 indicates that parties who have appeared are treated differently than parties who have not appeared. Because Rule 55 does not state otherwise, the general rules regarding time should apply to the notice required to be given to parties who have not appeared in the action. Pursuant to Rule 6(d), SCRCP, a written motion and notice of the hearing thereof requires at least 10 days advance notice. Further, Rule 6(e) provides that when a notice is served by mail, 5 additional days shall be added to the prescribed period. Based upon Rule 6, the Defendant, as a party who had not appeared in the action and who was served by mail directed to her last known address, was entitled to 15 days notice of the default damages hearing. The Plaintiff's Notice of Motion and Motion regarding the scheduling of the default damages hearing was dated September 22, 2011. In accordance with Rule 6, the default damages hearing could not be held until 15 days thereafter or no earlier than October 6, 2011. The default damages hearing was held on October 3, 2011, or three days too early, and for that reason the judgment must be set aside.

Relief from a default judgment is a matter solely within the sound discretion of the trial judge. Graybar Elec. Co. Inc. v. Rice, 287 S.C. 518, 339 S.E.2d 883 (1986). Public policy favors the disposition of cases on their merits rather than on technicalities. Micronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct.App.2001). The Defendant contends that she has set forth good and sufficient grounds for the court to set aside the default judgment and allow her to appear in defense of this action on the merits.

In support of this motion, the Defendant will rely upon the attached Affidavit of Amy Wiquist, Exhibits 1-3, applicable law, and such other evidence as may be presented at the hearing of this matter. In accordance with Rule 11, SCRPC, the undersigned hereby certifies that under the circumstances it was felt that consultation with opposing counsel would serve no useful purpose.

SAMS & SAMS, P.A.

BY: W. Toland Sams

W. Toland Sams

P.O. Box 849

Beaufort, SC 29901

(843) 524-4189

Attorneys for the Defendant

Beaufort, South Carolina

October 21, 2011

Certificate of Mailing

The undersigned hereby certifies that a true copy of the foregoing document has been served upon all counsel of record by mailing a copy thereof properly addressed and with sufficient postage affixed thereto this 21st day of August, 2011.

W. Toland Sams
W. Toland Sams

2011 OCT 25 PM 4:35
CLERK OF COURT
JUDICIAL DISTRICT
S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
JESSICA CALDWELL,)
)
Plaintiff,)
)
vs.)
)
AMY WIQUIST,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

2011 OCT 25 PM 4:05
CIVIL ACTION NO. 11-CC-007-2303

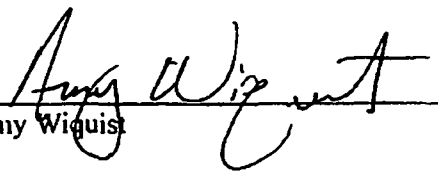
BEAUFORT COUNTY, S.C.
CLERK OF COURT

AFFIDAVIT OF AMY WIQUIST

PERSONALLY APPEARED before me, Amy Wiquist, who being duly sworn, deposes and says:

- 1) I am the Defendant in this action and I have personal knowledge of the facts set forth in this Affidavit or I state them as truthful based upon information and belief.
- 2) On September 11, 2010, the date of the accident giving rise to this action, I lived with my parents at 215 White Oak Circle, Bluffton, SC 29910. That address was listed as my address on the S.C. Traffic Collision Report relating to the September 11, 2010 accident.
- 3) My father died earlier this year and in early June 2011, my mother and I moved from our old address at 215 White Oak Circle, Bluffton, SC 29910 to our new address at 1 Plumgrass Street, Bluffton, SC 29910 which is where we currently reside. When we moved, the U.S. Post Office was given forwarding instructions for any mail sent to our old address.
- 4) I never received a copy of the Summons and Complaint in this action by mail or by personal service.
- 5) On October 4, 2011, I received by mail a Notice of Motion and Motion dated September 22, 2011 informing me that a default damages hearing was to be held on October 3, 2011. The Notice of Motion and Motion was mailed to my old address, 215 White Oak Circle, Bluffton, SC 29910, and subsequently forwarded to me by the U.S. Post Office.

- 6) I never received any other mail from the Plaintiff, her attorney, or anyone else on their behalf and any mail sent to my old address would have been received by me.
- 7) Since September 11, 2010, the date of the accident giving rise to this action, I have never attempted to conceal my whereabouts or my new home address from anyone and I could have been easily contacted and located by mail or inquiry at the local U.S. Post Office.


Amy Wigquist

SWORN TO and subscribed before
me this 14th day of October, 2011.

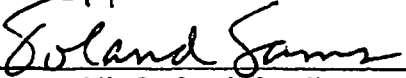

Notary Public for South Carolina
My Commission Expires: 4-19-20

EXHIBIT 1



HARVEY & BATTEY, PA
 — ATTORNEYS AT LAW —
 SINCE 1922

P.O. DRAWER 1107 • 1001 CRAVEN STREET • BEAUFORT, SC 29901-1107
 (843) 524-3109 • (843) 524-6973 FAX
 www.harveyandbattey.com

W. BRANTLEY HARVEY, SR.
 (1893-1984)
 W. BRANTLEY HARVEY, JR.
 GOLDEN R. BATTEY, JR.
 WILLIAM B. HARVEY, III
 (SC Circuit Court Mediator)
 JOHN M. TATUM, III

THOMAS C. DAVIS
 THOMAS A. HOLLOWAY
 (also admitted to PA and NJ)
 EUGENE PARRS
 (also admitted in NY, NC, FL and GA)
 SHAWN L. REEVES
 JOSEPH L. O'BRIEN

September 30, 2010

Mr. Ron Schoenbeck
 GEICO Claim Center
 One Geico Center
 Macon, GA 31296

Re: Claim No. 033396149-0101-038
 Brian and Jessica Caldwell

Dear Mr. Schoenbeck:

In accordance with our telephone conversation of this afternoon, this is to advise you that I represent Mr. and Mrs. Caldwell in connection with an automobile accident that occurred in Beaufort County on September 11, 2010. I will get together the medical and the other specials and will be back in touch with you.

I look forward to working with you on this matter.

With kindest personal regards, I remain

Yours truly,

HARVEY & BATTEY, P. A.

Golden R. Battey, Jr.
 Golden R. Battey, Jr.

CRBjr:dd

CORPORATE AND BUSINESS LAW • CRIMINAL LAW • DIVORCE AND FAMILY LAW • EMPLOYMENT LAW • ENVIRONMENTAL LAW
 ESTATE TAX PLANNING • PERSONAL INJURY • REAL ESTATE • SOCIAL SECURITY/DISABILITY • WORKERS' COMPENSATION

EXHIBIT 2



HARVEY & BATTEY, PA
— ATTORNEYS AT LAW —
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(SC Circuit Court Mediator)

JOHN M. TATUM, III
THOMAS C. DAVIS
THOMAS A. HOLLOWAY
(also admitted in PA and NJ)
EUGENE PARRS
(also admitted in NY, NC, FL and

0333961490101038

May 25, 2011

Mr. Ron Schoenbeck
GEICO Claim Center
One Geico Center
Macon, GA 31296

Re: Brian Caldwell vs. Amy Wiquist
Jessica Caldwell vs. Amy Wiquist

Dear Mr. Schoenbeck:

Mr. and Mrs. Caldwell have rejected your offer of \$5,661.50 for Mr. Caldwell's case and \$1,500.00 for Mrs. Caldwell's case.

While I would like to resolve these cases, it appears that we are too far apart to negotiate a settlement at this time. Accordingly, I am enclosing a copy of the Summons and Complaint in each of these cases which I have today filed with the Clerk of Court in Beaufort County.

I will let you know if Mr. Caldwell's condition continues to deteriorate.

Yours very truly,

HARVEY & BATTEY, P. A.

Colden R. Battey, Jr.

CRBjr:dd

enclosures

2011 JUN -2 AM 01:47

EXHIBIT 3



HARVEY & BATTEY, PA
 —ATTORNEYS AT LAW—
 SINCE 1922

P.O. DRAWER 1107 • 1001 CRAVEN STREET • BEAUFORT, SC 29901-1107
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JOHN M. TATUM, III
 THOMAS C. DAVIS
 THOMAS A. HOLLOWAY
 (also admitted in PA and NJ)
 EUGENE PARRS
 (also admitted in NY, NC, FL and GA)

April 20, 2011

Mr. Ron Schoenbeck
 GEICO Claim Center
 One Geico Center
 Macon, GA 31296

Re: Claim No. 033396149-0101-038
 Brian and Jessica Caldwell

Dear Mr. Schoenbeck:

Enclosed you will find all of the medical reports and bills that I have for Mr. and Mrs. Caldwell.

Mr. Caldwell's physical condition has continued to deteriorate. He was seen on February 4, 2011. At that time he was diagnosed with left biceps tendinitis and left shoulder pain and was given a trigger point injection of Celestone and Marcaine. He was also referred to physical therapy and was seen by the physical therapist on the same day. He received physical therapy until February 25, 2011 and was seen by the referring physician on February 28, 2011. At that time Mr. Caldwell stated that he had been having severe pain ever since he started physical therapy. The doctor again diagnosed left shoulder pain with left biceps tendinitis and bursitis. An x-ray was taken and he was referred to an orthopaedist. He was seen by Dr. Robert J. DeTroye on March 7, 2011. Dr. DeTroye's impression was that Mr. Caldwell had a cervical strain, a left labral tear and a left shoulder and neck pain. Dr. DeTroye recommended an MRI.

An MRI was performed on March 17, 2011 and Mr. Caldwell was seen by Dr. DeTroye whose diagnosis was left shoulder strain with some mild tendinosis and left shoulder pain. He was to be followed in 4 to 6 weeks.

As you know, Mr. Caldwell is a corrections officer. In addition to lifting items weighing from 15 to 200 pounds, he is required to deal with intoxicated or unruly inmates, all of which require him to be in excellent physical condition. He has had to take time off because of his shoulder pain. He was put on light duty and was sent home from his job on several occasions because there was no light duty available. The jail requires that an employee work full time or not work at all.

If Mr. Caldwell's injuries get worse and he is only able to perform light duty, he will be out of a job. Similarly, if he re-injures his shoulder and is unable to work, it is unlikely that workers' compensation would cover an injury to a pre-existing condition. Mr. Caldwell has worked as a corrections officer all his adult life and has no other skills.

CORPORATE AND BUSINESS LAW • CRIMINAL LAW • DIVORCE AND FAMILY LAW • EMPLOYMENT LAW • ENVIRONMENTAL LAW
 ESTATE TAX PLANNING • PERSONAL INJURY • REAL ESTATE • SOCIAL SECURITY/DISABILITY • WORKERS' COMPENSATION

**HARVEY & BATTEY, PA**

— ATTORNEYS AT LAW —

SINCE 1922

Mr. Ron Schoenbeck
April 20, 2011
Page 2

Enclosed are copies of Mr. Caldwell's medical reports and bills. The bills are as follows:

Brian Caldwell

Appalachian Healthcare Associates	\$ 782.00
Appalachian Rehabilitation	1740.00
Wataugo Orthopaedics (Dr. Robert DeTroye)	2181.00
Prescriptions	<u>30.00</u>
	\$4,733.00

Despite the uncertainty of Mr. Caldwell's condition, he has advised me that he would be willing to accept \$35,000.00 in settlement of his claim.

With regard to Jessica Caldwell, I am enclosing the medical and the bills that I have sent previously. They are as follows:

Jessica Caldwell

Appalachian Healthcare Associates	\$ 306.00
Prescriptions	<u>15.00</u>
	\$ 321.00

Mrs. Caldwell has advised me that she would be willing to accept \$10,000.00 in full settlement of her case.

I would point out that settlement of Mr. and Mrs. Caldwell's claim would also settle any claim for the loss associated with their Hilton Head vacation which was totally ruined as a result of the defendant's actions.

After you have had an opportunity to review the material that I have sent you, please give me a call so that we can discuss the matter. I look forward to hearing from you.

With kindest personal regards, I remain

Yours truly,

HARVEY & BATTEY, P.A.

Colden R. Battey, Jr.

CRBjr:dd

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO. 11-CP-2304
BRIAN CALDWELL,)
Plaintiff,)
vs.) MOTION TO SET ASIDE DEFAULT
AMY WQUIST,)
Defendant.)

TO: COLDEN R. BATTEY, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFF

PLEASE TAKE NOTICE that the Defendant will make application to the Court on the tenth (10th) day after service hereof, or as soon thereafter as this matter may be heard, for an Order setting aside the Order of Default Judgment entered in this case and filed with the court on October 4, 2011. This motion is made upon the following grounds:

- 1) Pursuant to Rule 60(b)(4), SCRPC, the default judgment is void for lack of personal jurisdiction over the Defendant.
 - a) Service by publication upon the Defendant was ineffective in that the affidavits submitted in support of the Plaintiff's application for an order allowing service by publication were insufficient because they failed to show that the Plaintiff actually exercised due diligence in attempting to locate the Defendant as required by § 15-9-710, S.C. Code Ann. (2005).

The affidavit of Deputy Sheriff, J.L. Brown, states only that he was unable after several attempts to serve the Defendant at 215 White Oak Circle, Bluffton because the address was vacant. The Brown affidavit does not indicate that he took any other action in an effort to locate the Defendant. Visiting a vacant address several times does not establish a diligent search for the Defendant. The affidavit of Plaintiff's counsel, Colden R. Battey, Jr., states only that the Defendant is a non-resident of Beaufort County, South Carolina and cannot be served in Beaufort County. The

Bathey affidavit does not indicate what action was taken to locate the Defendant and does not make even a conclusory statement that the Plaintiff made a diligent search for the Defendant. Neither affidavit establishes that a diligent search was made for the Defendant nor do they provide sufficient facts to establish any of the grounds for allowing service by publication as set forth in subsections 1 through 8 of §15-9-710, S.C. Code Ann. (2005). On the other hand, the affidavit of the Defendant establishes that she is now, and has been since the accident giving rise to this action, a resident of Beaufort County, South Carolina. The affidavit of the Defendant further establishes that she received late notice of the default damages hearing when a mailing sent to her last known address was forwarded to her by the Post Office. It is clear that the Defendant was located, and could have been located at any time since the accident, by mail directed to her last known address. In auto tort cases, the accident report usually provides a mailing address and a telephone number for the Defendant. In order to establish a diligent search when that information is available, the Plaintiff, at a minimum, should be required to show not only that personal service was attempted, but that an effort was made to write to and/or call the Defendant. If the Plaintiff had attempted to contact the Defendant by mail directed to her last known address, the Defendant would have received notice of the suit and would have had an opportunity appear and protect her interests. The issuance of an Order of Publication based upon the affidavits submitted in this case was unsupported by the facts, constituted an error of law, and has deprived the Defendant of her constitutional right to due process under the law.

- b) Service by publication upon the Defendant was ineffective in that the Order of Publication refers to and relies upon facts unsupported by the affidavits submitted by the Plaintiff and, further, that the Order of Publication fails to comply with the provisions of §15-9-740, S.C. Code Ann. (2005).**

The Order for Publication states that the Defendant has moved from her last known

residence, 215 White Oak Circle, Bluffton, SC 29910, and has "left no forwarding address." The affidavits submitted by the Plaintiff do not state nor do they confirm in any way that the Defendant "left no forwarding address." The affidavits submitted by the Plaintiff fail to state or show that any attempt was made to contact the Defendant by mail or to determine whether she left a forwarding address. In fact, based upon the affidavit of the Defendant, she did leave a forwarding address and any mail sent to her last known address would have been forwarded to and received by her.

Contrary to the provisions of §15-9-740, S.C. Code Ann. (2005), the Order of Publication provides that should the Plaintiff be able to ascertain the address of the Defendant, a copy of the Summons and Complaint shall be mailed to the Defendant at such address if he is a non-resident and that personal service should be made upon any resident Defendant if he can be located within the State of South Carolina. Section 15-9-740 actually provides that a copy of the summons shall be forthwith deposited in the post office directed to the person to be served at his place of residence, unless it appears that such residence is neither known to the party making the application nor can, with reasonable diligence, be ascertained by him. In this case, where the Plaintiff has failed to show reasonable diligence in attempting to determine the Defendant's residence, the Order of Publication should have provided that a copy of the summons be deposited in the post office directed to the Defendant at her last known address. Based upon the affidavit of the Defendant, if that had that been done, she would have received the mailing and notice of the suit. The issuance of an Order of Publication based upon the affidavits submitted in this case was unsupported by the facts, constituted an error of law, and has deprived the Defendant of her constitutional right to due process under the law.

Service by publication is in derogation of the common law and the statute allowing service in that manner must be strictly construed. Tenney v. American Pipe Mfg. Co., 96 F. 919 (1899).

The Court should not be permitted to confer jurisdiction upon itself by improvidently allowing service by publication when the statutory requirements for such service have not been satisfied. Pursuant to §15-9-710, the Plaintiff, by affidavit, must show as a matter of fact that the Defendant, after due diligence, could not be found.

The great weight of authority requires not the statement of the mere ultimate fact of diligence, but evidentiary facts which go to prove that due diligence was exercised. Facts as to what the affiant did to find the defendant must be stated so that the court may determine whether the requisite degree of diligence was exercised. Otherwise the affiant himself would be the judge of whether his conduct constituted due diligence. P.H. Vartanian, *Sufficiency of Affidavit as to Due Diligence in Attempting to Learn Whereabouts of Party to Litigation for the Purpose of Obtaining Service by Publication*, 21 A.L.R. 2d 929, (1952).

Our Supreme Court has stated that absent fraud or collusion, if the affidavit satisfies the officer issuing the order of publication, then his order is final. Yarbrough v. Collins, 293 S.C. 290, 360 S.E.2d 300 (S.C.1987). The present case demonstrates exactly why such a rule is unfair. The effect of that rule is that a party can never contest whether the weight of the evidence was sufficient to meet the due diligence requirement of the statute. A standard that depends on whether one is "satisfied" that a requirement has been met is basically a discretionary standard. Of course, discretion can be abused. An abuse of discretion arises when a judge issuing an order was controlled by an error of law or when the order is based on factual conclusions that are without evidentiary support. BB&T v. Taylor, 369 S.C. 548, 633 S.E.2d 501, (2006). In most instances, the law provides that an abuse of discretion can be corrected. However, under the rule reiterated in the Yarbrough case, a party is at the mercy of the officer issuing the order of publication if he is "satisfied" that the requirements of the statute have been met. Whether it was reasonable for him

to be satisfied is of no consequence. Such a rule will almost surely lead to inconsistent results and the uneven application of the law. There is no good reason why the standard for challenging the issuance of an order of publication should be any higher than the standard for challenging any discretionary ruling by a judge. There should be no need to show fraud or collusion, which the language of the statute itself does not require. A showing that the judge abused his discretion in that his decision was unsupported by the facts and thus amounted to an error of law should be sufficient. The Defendant in this case was located in Beaufort County at all times following the accident and she had provided the Post Office with a forwarding address when she moved. She was there to be found and a diligent effort by the Plaintiff, including the simple act of mailing notice to her last known address, would have found her.

An elementary and fundamental requirement of due process is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action. And notice by publication is not reasonably calculated to inform interested parties who can be notified by more effective means such as personal service or mailed notice. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). If the name and address of a party are reasonably ascertainable, then notice by mail or other means as certain to insure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party. Menonite Bd. of Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed. 2d 180 (1983). Any other rule that allows the Defendant to be deprived of notice an action and an opportunity to be heard is manifestly unfair and violates the Defendant's constitutional right to due process.

- 2) **The Order of Default Judgment should be set aside due to surprise, misrepresentation and/or misconduct pursuant to Rule 60(b)(1), SCRPC and Rule 60(b)(3), SCRPC.**

Plaintiff's counsel first contacted GEICO on September 30, 2010 (see Exhibit 1) regarding his representation. Thereafter Plaintiff's counsel and GEICO engaged in ongoing settlement negotiations. Although the parties differed in their valuation of the claim, they continued an ongoing dialogue regarding settlement possibilities and dealt with each other cooperatively and with respect. On May 25, 2011, Plaintiff's counsel wrote to GEICO (see Exhibit 2) rejecting their last offer and forwarding a copy of the suit papers which had been filed that day. Plaintiff's counsel indicated that he would be in touch if Mr. Caldwell's condition continued to deteriorate. The prior course of conduct between Plaintiff's counsel and GEICO had led GEICO to believe that they would be kept informed of significant developments in the case. However, Plaintiff's counsel never informed GEICO that its insured had been served by publication; never informed GEICO of its insured's default; and never informed GEICO of the scheduling of a default damages hearing. While Plaintiff's counsel technically had no duty to keep GEICO informed of those events, there can be no dispute that GEICO was taken completely by surprise when it learned what had happened. Given their past dealings, the silence of Plaintiff's counsel when he knew that GEICO cared about the claim yet obviously was in the dark regarding service on its insured and her subsequent default constitutes sufficient grounds to set aside the default based upon misrepresentation and/or misconduct. The substantial discrepancy between the damages awarded and the medical expenses incurred and the last settlement demand made by Plaintiff's counsel (see Exhibit 3) is sufficient evidence of a meritorious defense. McClurg vs. Deaton, et al, Op. No. 27038 (S.C.Sup.Ct. filed September 6, 2011).

- 3) **The Plaintiff failed to give the Defendant sufficient notice of the trial or hearing on unliquidated damages as required by Rule 55, SCRPC and Rule 6, SCRPC.**

Rule 55, SCRPC provides that if a party against whom a default is sought has appeared in

the action, the party or the party's representative shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing. Rule 55 further provides that pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action. As far as notice of a default damages hearing is concerned, the language of Rule 55 indicates that parties who have appeared are treated differently than parties who have not appeared. Because Rule 55 does not state otherwise, the general rules regarding time should apply to the notice required to be given to parties who have not appeared in the action. Pursuant to Rule 6(d), SCRCP, a written motion and notice of the hearing thereof requires at least 10 days advance notice. Further, Rule 6(e) provides that when a notice is served by mail, 5 additional days shall be added to the prescribed period. Based upon Rule 6, the Defendant, as a party who had not appeared in the action and who was served by mail directed to her last known address, was entitled to 15 days notice of the default damages hearing. The Plaintiff's Notice of Motion and Motion regarding the scheduling of the default damages hearing was dated September 22, 2011. In accordance with Rule 6, the default damages hearing could not be held until 15 days thereafter or no earlier than October 6, 2011. The default damages hearing was held on October 3, 2011, or three days too early, and for that reason the judgment must be set aside.

Relief from a default judgment is a matter solely within the sound discretion of the trial judge. Graybar Elec. Co., Inc. v. Rice, 287 S.C. 518, 339 S.E.2d 883 (1986). Public policy favors the disposition of cases on their merits rather than on technicalities. Micronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct.App.2001). The Defendant contends that she has set forth good and sufficient grounds for the court to set aside the default judgment and allow her to appear in defense of this action on the merits.

In support of this motion, the Defendant will rely upon the attached Affidavit of Amy Wiquist, Exhibits 1-3, applicable law, and such other evidence as may be presented at the hearing of this matter. In accordance with Rule 11, SCRCP, the undersigned hereby certifies that under the circumstances it was felt that consultation with opposing counsel would serve no useful purpose.

SAMS & SAMS, P.A.

BY: W. Toland Sams
W. Toland Sams
P.O. Box 849
Beaufort, SC 29901
(843) 524-4189
Attorneys for the Defendant

Beaufort, South Carolina

October 21, 2011

Certificate of Mailing

The undersigned hereby certifies that a true copy of the foregoing document has been served upon all counsel of record by mailing a copy thereof properly addressed and with sufficient postage affixed thereto this 21st day of August, 2011.

W. Toland Sams
W. Toland Sams

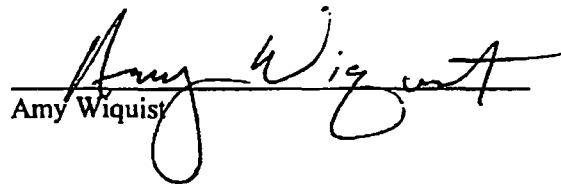
2011 OCT 25 PM 4:36
CLERK OF COURT
BEAUFORT COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	2011 OCT 25 PM 4:26
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 11-CP-07-2304
BRIAN CALDWELL,	)	BEAUFORT COUNTY, S.C.
	)	CLERK OF COURT
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF AMY WQUIST
	)	
AMY WQUIST,	)	
	)	
Defendant.	)	

PERSONALLY APPEARED before me, Amy Wiquist, who being duly sworn, deposes and says:

- 1) I am the Defendant in this action and I have personal knowledge of the facts set forth in this Affidavit or I state them as truthful based upon information and belief.
- 2) On September 11, 2010, the date of the accident giving rise to this action, I lived with my parents at 215 White Oak Circle, Bluffton, SC 29910. That address was listed as my address on the S.C. Traffic Collision Report relating to the September 11, 2010 accident.
- 3) My father died earlier this year and in early June 2011, my mother and I moved from our old address at 215 White Oak Circle, Bluffton, SC 29910 to our new address at 1 Plumgrass Street, Bluffton, SC 29910 which is where we currently reside. When we moved, the U.S. Post Office was given forwarding instructions for any mail sent to our old address.
- 4) I never received a copy of the Summons and Complaint in this action by mail or by personal service.
- 5) On October 4, 2011, I received by mail a Notice of Motion and Motion dated September 22, 2011 informing me that a default damages hearing was to be held on October 3, 2011. The Notice of Motion and Motion was mailed to my old address, 215 White Oak Circle, Bluffton, SC 29910, and subsequently forwarded to me by the U.S. Post Office.

- 6) I never received any other mail from the Plaintiff, his attorney, or anyone else on their behalf and any mail sent to my old address would have been received by me.
- 7) Since September 11, 2010, the date of the accident giving rise to this action, I have never attempted to conceal my whereabouts or my new home address from anyone and I could have been easily contacted and located by mail or inquiry at the local U.S. Post Office.


Amy Wiquist

SWORN TO and subscribed before
me this 14th day of October, 2011.

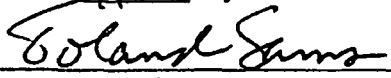

Notary Public for South Carolina
My Commission Expires: 4-19-20

EXHIBIT 1



HARVEY & BATTEY, PA

— ATTORNEYS AT LAW —
SINCE 1922

P.O. DRAWER 1107 • 1001 CRAVEN STREET • BEAUFORT, SC 29901-1107
(843) 524-3109 • (843) 524-6973 FAX
www.harveyandbattey.com

W. BRANTLEY HARVEY, SR.
(1893-1981)
W. BRANTLEY HARVEY, JR.
GOLDEN R. BATTEY, JR.
WILLIAM R. HARVEY, III
(SC Circuit Court Mediator)
JOHN M. TATUM, III

THOMAS C. DAVIS
THOMAS A. HOLLOWAY
(also admitted in PA and NJ)
EUGENE PARRS
(also admitted in NY, NC, FL and GA)
SHAWN L. REEVES
JOSEPH L. O'BRIEN

September 30, 2010

Mr. Ron Schoenbeck
GEICO Claim Center
One Geico Center
Macon, GA 31296

Re: Claim No. 033396149-0101-038
Brian and Jessica Caldwell

Dear Mr. Schoenbeck:

In accordance with our telephone conversation of this afternoon, this is to advise you that I represent Mr. and Mrs. Caldwell in connection with an automobile accident that occurred in Beaufort County on September 11, 2010. I will get together the medical and the other specials and will be back in touch with you.

I look forward to working with you on this matter.

With kindest personal regards, I remain

Yours truly,

HARVEY & BATTEY, P. A.

Golden R. Battey
Golden R. Battey, Jr.

CRBjr:dd

EXHIBIT 2



HARVEY & BATTEY, PA
— ATTORNEYS AT LAW —
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JOHN M. TATUM, III
THOMAS C. DAVIS
THOMAS A. HOLLOWAY
(also admitted in PA and NJ)
EUGENE PARES
(also admitted in NY, NC, FL and G)

0333961490101038 Ht
May 25, 2011

Mr. Ron Schoenbeck
GEICO Claim Center
One Geico Center
Macon, GA 31296

Re: Brian Caldwell vs. Amy Wiquist
Jessica Caldwell vs. Amy Wiquist

Dear Mr. Schoenbeck:

Mr. and Mrs. Caldwell have rejected your offer of \$5,661.50 for Mr. Caldwell's case and \$1,500.00 for Mrs. Caldwell's case.

While I would like to resolve these cases, it appears that we are too far apart to negotiate a settlement at this time. Accordingly, I am enclosing a copy of the Summons and Complaint in each of these cases which I have today filed with the Clerk of Court in Beaufort County.

I will let you know if Mr. Caldwell's condition continues to deteriorate.

Yours very truly,

HARVEY & BATTEY, P. A.

Col R Battey
Colden R. Battey, Jr.

CRBjr:dd

enclosures

2011 JUN -2 AM 6:47

EXHIBIT 3



HARVEY & BATTEY, PA
— ATTORNEYS AT LAW —
SINCE 1922

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(SC Circuit Court Mediator)

JOHN M. TATUM, III
THOMAS C. DAVIS
THOMAS A. HOLLOWAY
(also admitted in PA and NJ)
EUGENE PARRIS
(also admitted in NY, NC, FL and GA)

April 20, 2011

Mr. Ron Schoenbeck
GEICO Claim Center
One Geico Center
Macon, GA 31296

Re: Claim No. 033396149-0101-038
Brian and Jessica Caldwell

Dear Mr. Schoenbeck:

Enclosed you will find all of the medical reports and bills that I have for Mr. and Mrs. Caldwell.

Mr. Caldwell's physical condition has continued to deteriorate. He was seen on February 4, 2011. At that time he was diagnosed with left biceps tendinitis and left shoulder pain and was given a trigger point injection of Celestone and Marcaine. He was also referred to physical therapy and was seen by the physical therapist on the same day. He received physical therapy until February 25, 2011 and was seen by the referring physician on February 28, 2011. At that time Mr. Caldwell stated that he had been having severe pain ever since he started physical therapy. The doctor again diagnosed left shoulder pain with left biceps tendinitis and bursitis. An x-ray was taken and he was referred to an orthopaedist. He was seen by Dr. Robert J. DeTroye on March 7, 2011. Dr. DeTroye's impression was that Mr. Caldwell had a cervical strain, a left labral tear and a left shoulder and neck pain. Dr. DeTroye recommended an MRI.

An MRI was performed on March 17, 2011 and Mr. Caldwell was seen by Dr. DeTroye whose diagnosis was left shoulder strain with some mild tendinosis and left shoulder pain. He was to be followed in 4 to 6 weeks.

As you know, Mr. Caldwell is a corrections officer. In addition to lifting items weighing from 15 to 200 pounds, he is required to deal with intoxicated or unruly inmates, all of which require him to be in excellent physical condition. He has had to take time off because of his shoulder pain. He was put on light duty and was sent home from his job on several occasions because there was no light duty available. The jail requires that an employee work full time or not work at all.

If Mr. Caldwell's injuries get worse and he is only able to perform light duty, he will be out of a job. Similarly, if he re-injures his shoulder and is unable to work, it is unlikely that workers' compensation would cover an injury to a pre-existing condition. Mr. Caldwell has worked as a corrections officer all his adult life and has no other skills.

CORPORATE AND BUSINESS LAW • CRIMINAL LAW • DIVORCE AND FAMILY LAW • EMPLOYMENT LAW • ENVIRONMENTAL LAW
ESTATE TAX PLANNING • PERSONAL INJURY • REAL ESTATE • SOCIAL SECURITY/DISABILITY • WORKERS' COMPENSATION

**HARVEY & BATTEY, PA**

—ATTORNEYS AT LAW—

SINCE 1922

Mr. Ron Schoenbeck
April 20, 2011
Page 2

Enclosed are copies of Mr. Caldwell's medical reports and bills. The bills are as follows:

Brian Caldwell

Appalachian Healthcare Associates	\$ 782.00
Appalachian Rehabilitation	1740.00
Wataugo Orthopaedics (Dr. Robert DeTroye)	2181.00
Prescriptions	<u>30.00</u>
	\$4,733.00

Despite the uncertainty of Mr. Caldwell's condition, he has advised me that he would be willing to accept \$35,000.00 in settlement of his claim.

With regard to Jessica Caldwell, I am enclosing the medical and the bills that I have sent previously. They are as follows:

Jessica Caldwell

Appalachian Healthcare Associates	\$ 306.00
Prescriptions	<u>15.00</u>
	\$ 321.00

Mrs. Caldwell has advised me that she would be willing to accept \$10,000.00 in full settlement of her case.

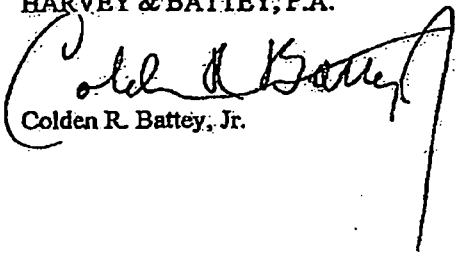
I would point out that settlement of Mr. and Mrs. Caldwell's claim would also settle any claim for the loss associated with their Hilton Head vacation which was totally ruined as a result of the defendant's actions.

After you have had an opportunity to review the material that I have sent you, please give me a call so that we can discuss the matter. I look forward to hearing from you.

With kindest personal regards, I remain

Yours truly,

HARVEY & BATTEY, P.A.


Colden R. Battey, Jr.

CRBjr:dd

weeks in July 2011. Receiving no answer from the Defendant after thirty (30) days elapsed from the last date of publication, Plaintiffs filed an Affidavit of Default and moved for a hearing to determine Plaintiff's damages. All of the foregoing is of record in the above-captioned case.

The Court scheduled a hearing for October 3, 2011 to determine Plaintiffs' damages. Plaintiffs served Defendant with notice of the damages hearing on September 22, 2011 by mailing said notice to her at her last known address. Plaintiffs traveled to Beaufort from Virginia to attend the hearing. Defendant did not appear at the hearing. Upon hearing the evidence, the Court entered judgment against Defendant in the amount of \$20,000.00 in favor of Jessica Caldwell and \$100,000.00 in favor of Brian Caldwell. Those judgments were entered October 4, 2011 and Defendant filed the present motion October 21, 2011.

Argument

"Relief from a default judgment . . . destroys the finality of the judgment and is contrary to the strong policy that litigation should be concluded and the parties able to rely on judgments that have been obtained." Flanagan, *South Carolina Civil Procedure*, 2nd Ed., p. 440 Plaintiffs complied with all rules regarding service of process on the defendant. Personal jurisdiction was obtained over the defendant upon the final publication of the Summons. Plaintiffs complied with all

rules regarding notice of the hearing on the default judgment in this matter.

Plaintiffs are entitled to rely upon a judgment so obtained as final.

1. The Order of Publication is final because there was no fraud or collusion.

Defendants first attempt to attack the judgments by arguing that the serving Defendant by publication in these cases was ineffective because the affidavits used to secure the order of publication "failed to show that the Plaintiff actually exercised due diligence" and that the Order of Publication did not comply with § 15-9-740 S.C. Code Ann. (2005). This argument is contrary to the well settled rule in South Carolina that "in the absence of fraud or collusion, the decision of the officer ordering service by publication is final." *Montgomery v. Mullins*, 325 S.C. 500, 506, 480 S.E.2d 467, 470 (Ct.App. 1997); *Wachovia Bank of S.C., N.A. v. Player* 341 S.C. 424, 429, 535 S.E.2d 128, 130 (2000)("When the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion."); *Yarbrough v. Collins*, 293 S.C. 290, 360 S.E.2d 300 (1987); *Ingle v. Whitlock*, 282 S.C. 391, 318 S.E.2d 367 (1984); *Gibson v. Everett*, 41 S.C. 22, 19 S.E. 286 (1894); *Yates v. Gridley*, 16 S.C. 496 (1882).

In the *Wachovia* case, the defendant, much like the Defendant in the present cases, argued that "the process server did not exercise 'actual' due diligence because if she had, she would have easily found him." 341 S.C. 424, 428, 535 S.E.2d 128, 130 He argued that the court thus lacked personal jurisdiction over

him. *Id.* The trial court denied the motion to set aside the default judgment finding the defendant "failed to present any evidence of fraud or collusion in obtaining the order for service by publication." *Id.* The S.C. Supreme Court affirmed. *Id.*

In the *Montgomery* case, the defendants convinced the trial court to dismiss the plaintiffs' suit on the grounds that they obtained an order of publication without giving due diligence to serving the defendants personally and that service was not completed within a reasonable time. 325 S.C. at 502, 480 S.E.2d at 468 The S.C. Court of Appeals, citing the *Yarborough* and *Yates* cases, held that "trial court was without authority to overrule the finding of the clerk of court that the [defendants] could not, 'after due diligence, be found in the County and State of their last known residence.'" *Id.* "Therefore, to the extent the trial court concluded the publication was invalid, we reverse." *Id.*

The Defendant here does not allege either fraud or collusion. The inquiry, therefore, ends.

2. The Court should deny Defendant's 60(b)(1) and 60(b)(3) motions because Defendant can show no meritorious defense and there was no misconduct by Plaintiffs.

Defendant next urges the Court to set aside the default judgment on the grounds surprise, misrepresentation, and/or misconduct pursuant to Rules 60(b)(1)

and 60(b)(3) of the SCRPC. Defendant, however, can show no meritorious defense, no misconduct of Plaintiffs, and granting this motion would cause Plaintiffs substantial prejudice.

In considering a motion brought pursuant to Rule 60(b)(1) of the SCRPC, the court must consider “(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party.” *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct.App. 2010)

Defendant fails to present any evidence of a meritorious defense. She does not challenge liability in this case, nor could she reasonably do so. As noted in the Orders of Default Judgment, Defendant collided into the rear of Plaintiffs’ vehicle while talking on her cell phone. B. Caldwell Order at 2 and J. Caldwell Order at 2. Rather, she argues that she has a meritorious defense because she claims a substantial discrepancy exists between the damages awarded and the last settlement demand made by Plaintiff’s counsel to Defendant’s insurance company. South Carolina has not recognized that this would constitute a meritorious defense, and even if it had, such a rule would be inapplicable to the present case.

In support of her argument, Defendant cites *McClurg v. Deaton* 2011 WL 3890625, 8 (S.C.,2011) for the proposition that a “substantial discrepancy between the damages awarded and the medical expenses incurred and the last settlement

demand made by Plaintiff's counsel is sufficient evidence of a meritorious defense." It appears from that case that Defendant intended to cite to the dissenting opinion, as the majority opinion did not make this holding and explicitly declined to rule on this issue.

Furthermore, in both of the present cases, the Orders of Default Judgment go into great detail regarding not just Plaintiffs' medical expenses, but detail Plaintiffs' pain and suffering, and how the accident ruined their vacation as well. The Court found that plaintiff Brian Caldwell saw two (2) different doctors after May 25, 2011, the date of Plaintiffs' last correspondence to GEICO. B. Caldwell Order at 4 The Court also found that one of those Doctors, Dr. D. Vincent Rhodes of Beaufort, S.C., found among other things, that he "had a limited range of motion of the cervical spine to approximately 30-40 degrees past midline to the right and approximately 30 degrees . . . to the left." *Id.* "He has weakness with testing all four rotator cuff muscles." *Id.* According to the Order, Dr. Rhodes "went on to say that his condition was chronic . . . and that it would likely continue in the future. *Id.* at 5 He stated that Mr. Caldwell may require surgical intervention, as he is no better with conservative therapy." *Id.* Therefore, to the extent there is a discrepancy between the damages awarded by the Court and Plaintiffs' last settlement demand, it is attributable to additional medical treatment and Dr. Rhodes' conclusions, not to Defendant's default.

Secondly, granting Defendant's motion would cause Plaintiffs substantial prejudice. They drove from Coeburn, Virginia to Beaufort, South Carolina to testify at the default hearing. That trip is 411 miles one way. They had to pay to spend the night in a hotel and each missed a days work. Setting aside the judgment in this case will force Plaintiffs to repeat this for a rehearing on the matter.

Finally, Defendant's argument that the judgment should be set aside on the grounds of misconduct pursuant to Rule 60(b)(3) should be given short shrift by this Court. The crux of Defendant's argument is that Plaintiffs' counsel led GEICO, Defendant's insurer, to believe that he would notify them when he served Defendant because "he knew that GEICO cared about the claim." Plaintiffs' counsel did not represent to GEICO that he would notify them when he served Defendant, nor did GEICO ask him to, assuming this would even be proper. The last communication between Plaintiffs' attorney and GEICO was, as stated in Defendant's Motion, when Plaintiffs' attorney wrote GEICO to reject their offer and sent them a copy of the filed lawsuit. Plaintiffs' counsel, as pointed out by Defendant in her motion, owed GEICO no duty at that point.

3. Plaintiffs gave Defendant proper notice of the default hearing pursuant to Rules 55 and 5 of the SCRCP.

Defendant argues the Plaintiff failed to give the Defendant sufficient notice of the trial or hearing on un-liquidated damages as required by the South Carolina Rules of Civil Procedure.

As noted above, Plaintiffs sent Defendant notice of the default hearing twelve (12) days before the date of the hearing. The Defendant is correct in stating that Rule 55 SCRCP provides that if a party against whom a default is sought has appeared in the action the party or the party's representative shall be served with written notice of the motion or application for judgment at least three (3) days prior to the hearing. This was done as required by Rule 55 (b)(2).

Rule 55(b)(2) discusses parties that have appeared and goes on to say "Pursuant to Rule 5(a) notice of any trial or hearing on un-liquidated damages shall also be given to parties in default by first class mail to the last known address of such party *whether or not such party has appeared in the action.*" (emphasis added) Nowhere in Rule 55 is the three (3) day requirement enlarged for parties who have not appeared.

Likewise, Rule 5(a) does not enlarge the time for notice of the hearing. Rule 5(a) states "notice of any trial or hearing on un-liquidated damages shall also be given to parties in default."

The Defendant argues that Rule 55 indicates that parties that have appeared in the action are treated differently than those in default. This is not the case. The rules require notice be sent to parties in default by first class mail to their last known address, at least three (3) days prior to the hearing, whether they made an appearance or not. If it was intended to enlarge the time beyond three (3) days for parties who had not appeared, this would be provided for in the rule.

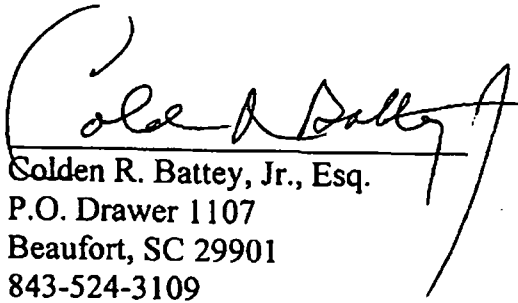
There is no basis to enlarge the time requirements of 55(b)(2) and the Defendant provides no authority, from South Carolina or elsewhere, to support her argument to the contrary. Plaintiffs complied with Rules 55(b)(2) and 5(a) SCRCF and that law requires nothing more.

Conclusion

The decision of the Clerk of Court to allow service by publication is final as there was no fraud or collusion. Defendant can show no meritorious defense, no misconduct on the part of Plaintiffs, and setting aside the default in this case would cause significant prejudice to Plaintiffs who traveled across two states to attend the default hearing. Finally, Defendant's final argument, that she was entitled to more than three (3) days notice for the default hearing is an argument made from whole cloth and with no supporting authority. The judgments in this case were properly obtained and are now final. The Court should, therefore, deny Defendant's motions.

Dated: November 8, 2011

Harvey & Battey, P.A.
Attorneys for Plaintiff


Golden R. Battey, Jr., Esq.
P.O. Drawer 1107
Beaufort, SC 29901
843-524-3109


J. Sam Scoville, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
11-CP-07-02303

JESSICA CALDWELL,

Plaintiff

vs.

AMY WIQUIST,

Defendant.

CERTIFICATE OF SERVICE

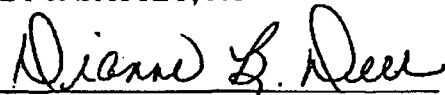
The undersigned hereby certifies that she is a legal assistant in the law firm of Harvey & Battey, P.A., and that she has served a copy of the attached **Return to Motion to Set Aside Default** on the **Defendant** by depositing said copy in the United States Mail, mailing it **First Class Mail** with sufficient postage thereon on **November 9, 2011**, addressed to the person(s) hereinafter named at the place and address stated below.

W. Toland Sams, Esquire
Sams & Sams
P.O. Box 849
Beaufort, SC 29901-0849

Attorney for Defendant

HARVEY & BATTEY, PA

By:



Dianne B. Deer

Beaufort, South Carolina
November 9, 2011

Assistant to Colden R. Battey, Jr.
Post Office Drawer 1107
Beaufort, SC 29901-1107
(843) 524-3109 – phone
(843) 524-6973 – fax

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CASE NO.: 2011-CP-2303

Jessica Caldwell,
Plaintiff,

Vs.

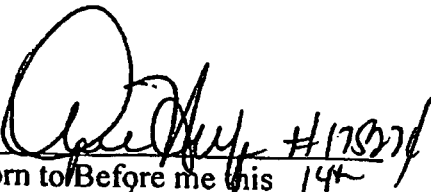
Amy Wiquist,
Defendant.

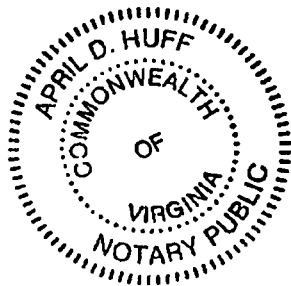
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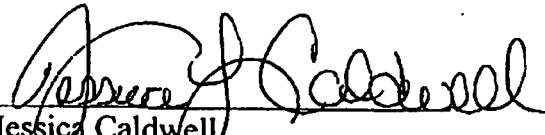
AFFIDAVIT OF JESSICA
CALDWELL

Comes now Jessica Caldwell, plaintiff above-named, who being duly sworn,
states as follows:

1. I make this affidavit in support of my Return in opposition to Defendant's Motion to Set Aside the Default Judgment in this matter.
2. My husband and I traveled 411 miles from our home in Coeburn, Virginia to Beaufort, South Carolina to attend the hearing in this matter.
3. My husband and I both missed a full day's work to attend the hearing.
4. We paid approximately \$100.00 to stay at the Holiday Inn in Beaufort, South Carolina the night before the hearing.
5. If the Court sets aside the judgment, as requested by the Defendant in this matter, all of the above will be for naught.


Sworn to Before me this 14th
Day of Nov, 2011
Notary Public for the State of V.A.
My Commission Expires: 3/31/2013




Jessica Caldwell

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CASE NO.: 2011-CP-2304

Brian Caldwell,)
) Return to Motion to Set
) Aside Default
)
Plaintiff,)
)
Vs.)
)
Amy Wiquist,)
)
)
)
)
Defendant.)
_____)

TO: W. Toland Sams, Esq., Attorney for Defendant

Plaintiff submits this Return in opposition to Defendant's Motion to Set
Aside the Default Judgment.

Background

Plaintiffs filed Summonses and Complaints against Defendant on May 26, 2011 alleging, in short, that defendant caused an accident which caused Plaintiffs personal injuries. After trying unsuccessfully to personally serve the Defendant, Plaintiffs filed an Affidavit of Non-service, an Affidavit for Publication, and moved for an order allowing Defendant to be served via publication of the Summons in the newspaper. The Honorable Jerri Ann Roseneau, Beaufort County Clerk of Court, ordered that Defendant be served via publication and pursuant to said order, the Beaufort Gazette published the Summons for three (3) consecutive

weeks in July 2011. Receiving no answer from the Defendant after thirty (30) days elapsed from the last date of publication, Plaintiffs filed an Affidavit of Default and moved for a hearing to determine Plaintiff's damages. All of the foregoing is of record in the above-captioned case.

The Court scheduled a hearing for October 3, 2011 to determine Plaintiffs' damages. Plaintiffs served Defendant with notice of the damages hearing on September 22, 2011 by mailing said notice to her at her last known address. Plaintiffs traveled to Beaufort from Virginia to attend the hearing. Defendant did not appear at the hearing. Upon hearing the evidence, the Court entered judgment against Defendant in the amount of \$20,000.00 in favor of Jessica Caldwell and \$100,000.00 in favor of Brian Caldwell. Those judgments were entered October 4, 2011 and Defendant filed the present motion October 21, 2011.

Argument

"Relief from a default judgment . . . destroys the finality of the judgment and is contrary to the strong policy that litigation should be concluded and the parties able to rely on judgments that have been obtained." Flanagan, *South Carolina Civil Procedure*, 2nd Ed., p. 440 Plaintiffs complied with all rules regarding service of process on the defendant. Personal jurisdiction was obtained over the defendant upon the final publication of the Summons. Plaintiffs complied with all

rules regarding notice of the hearing on the default judgment in this matter.

Plaintiffs are entitled to rely upon a judgment so obtained as final.

1. The Order of Publication is final because there was no fraud or collusion.

Defendants first attempt to attack the judgments by arguing that the serving Defendant by publication in these cases was ineffective because the affidavits used to secure the order of publication “failed to show that the Plaintiff actually exercised due diligence” and that the Order of Publication did not comply with § 15-9-740 S.C. Code Ann. (2005). This argument is contrary to the well settled rule in South Carolina that “in the absence of fraud or collusion, the decision of the officer ordering service by publication is final.” *Montgomery v. Mullins*, 325 S.C. 500, 506, 480 S.E.2d 467, 470 (Ct.App. 1997); *Wachovia Bank of S.C., N.A. v. Player* 341 S.C. 424, 429, 535 S.E.2d 128, 130 (2000)(“When the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion.”); *Yarbrough v. Collins*, 293 S.C. 290, 360 S.E.2d 300 (1987); *Ingle v. Whitlock*, 282 S.C. 391, 318 S.E.2d 367 (1984); *Gibson v. Everett*, 41 S.C. 22, 19 S.E. 286 (1894); *Yates v. Gridley*, 16 S.C. 496 (1882).

In the *Wachovia* case, the defendant, much like the Defendant in the present cases, argued that “the process server did not exercise ‘actual’ due diligence because if she had, she would have easily found him.” 341 S.C. 424, 428, 535 S.E.2d 128, 130 He argued that the court thus lacked personal jurisdiction over

him. *Id.* The trial court denied the motion to set aside the default judgment finding the defendant “failed to present any evidence of fraud or collusion in obtaining the order for service by publication.” *Id.* The S.C. Supreme Court affirmed. *Id.*

In the *Montgomery* case, the defendants convinced the trial court to dismiss the plaintiffs’ suit on the grounds that they obtained an order of publication without giving due diligence to serving the defendants personally and that service was not completed within a reasonable time. 325 S.C. at 502, 480 S.E.2d at 468 The S.C. Court of Appeals, citing the *Yarborough* and *Yates* cases, held that “trial court was without authority to overrule the finding of the clerk of court that the [defendants] could not, ‘after due diligence, be found in the County and State of their last known residence.’” *Id.* “Therefore, to the extent the trial court concluded the publication was invalid, we reverse.” *Id.*

The Defendant here does not allege either fraud or collusion. The inquiry, therefore, ends.

2. The Court should deny Defendant’s 60(b)(1) and 60(b)(3) motions because Defendant can show no meritorious defense and there was no misconduct by Plaintiffs.

Defendant next urges the Court to set aside the default judgment on the grounds surprise, misrepresentation, and/or misconduct pursuant to Rules 60(b)(1)

and 60(b)(3) of the SCRPC. Defendant, however, can show no meritorious defense, no misconduct of Plaintiffs, and granting this motion would cause Plaintiffs substantial prejudice.

In considering a motion brought pursuant to Rule 60(b)(1) of the SCRPC, the court must consider “(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party.” *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct.App. 2010)

Defendant fails to present any evidence of a meritorious defense. She does not challenge liability in this case, nor could she reasonably do so. As noted in the Orders of Default Judgment, Defendant collided into the rear of Plaintiffs’ vehicle while talking on her cell phone. B. Caldwell Order at 2 and J. Caldwell Order at 2. Rather, she argues that she has a meritorious defense because she claims a substantial discrepancy exists between the damages awarded and the last settlement demand made by Plaintiff’s counsel to Defendant’s insurance company. South Carolina has not recognized that this would constitute a meritorious defense, and even if it had, such a rule would be inapplicable to the present case.

In support of her argument, Defendant cites *McClurg v. Deaton* 2011 WL 3890625, 8 (S.C.,2011) for the proposition that a “substantial discrepancy between the damages awarded and the medical expenses incurred and the last settlement

demand made by Plaintiff's counsel is sufficient evidence of a meritorious defense." It appears from that case that Defendant intended to cite to the dissenting opinion, as the majority opinion did not make this holding and explicitly declined to rule on this issue.

Furthermore, in both of the present cases, the Orders of Default Judgment go into great detail regarding not just Plaintiffs' medical expenses, but detail Plaintiffs' pain and suffering, and how the accident ruined their vacation as well. The Court found that plaintiff Brian Caldwell saw two (2) different doctors after May 25, 2011, the date of Plaintiffs' last correspondence to GEICO. B. Caldwell Order at 4 The Court also found that one of those Doctors, Dr. D. Vincent Rhodes of Beaufort, S.C., found among other things, that he "had a limited range of motion of the cervical spine to approximately 30-40 degrees past midline to the right and approximately 30 degrees . . . to the left." *Id.* "He has weakness with testing all four rotator cuff muscles." *Id.* According to the Order, Dr. Rhodes "went on to say that his condition was chronic . . . and that it would likely continue in the future. *Id.* at 5 He stated that Mr. Caldwell may require surgical intervention, as he is no better with conservative therapy." *Id.* Therefore, to the extent there is a discrepancy between the damages awarded by the Court and Plaintiffs' last settlement demand, it is attributable to additional medical treatment and Dr. Rhodes' conclusions, not to Defendant's default.

Secondly, granting Defendant's motion would cause Plaintiffs substantial prejudice. They drove from Coeburn, Virginia to Beaufort, South Carolina to testify at the default hearing. That trip is 411 miles one way. They had to pay to spend the night in a hotel and each missed a days work. Setting aside the judgment in this case will force Plaintiffs to repeat this for a rehearing on the matter.

Finally, Defendant's argument that the judgment should be set aside on the grounds of misconduct pursuant to Rule 60(b)(3) should be given short shrift by this Court. The crux of Defendant's argument is that Plaintiffs' counsel led GEICO, Defendant's insurer, to believe that he would notify them when he served Defendant because "he knew that GEICO cared about the claim." Plaintiffs' counsel did not represent to GEICO that he would notify them when he served Defendant, nor did GEICO ask him to, assuming this would even be proper. The last communication between Plaintiffs' attorney and GEICO was, as stated in Defendant's Motion, when Plaintiffs' attorney wrote GEICO to reject their offer and sent them a copy of the filed lawsuit. Plaintiffs' counsel, as pointed out by Defendant in her motion, owed GEICO no duty at that point.

3. Plaintiffs gave Defendant proper notice of the default hearing pursuant to Rules 55 and 5 of the SCRCP.

Defendant argues the Plaintiff failed to give the Defendant sufficient notice of the trial or hearing on un-liquidated damages as required by the South Carolina Rules of Civil Procedure.

As noted above, Plaintiffs sent Defendant notice of the default hearing twelve (12) days before the date of the hearing. The Defendant is correct in stating that Rule 55 SCRCP provides that if a party against whom a default is sought has appeared in the action the party or the party's representative shall be served with written notice of the motion or application for judgment at least three (3) days prior to the hearing. This was done as required by Rule 55 (b)(2).

Rule 55(b)(2) discusses parties that have appeared and goes on to say "Pursuant to Rule 5(a) notice of any trial or hearing on un-liquidated damages shall also be given to parties in default by first class mail to the last known address of such party *whether or not such party has appeared in the action.*" (emphasis added) Nowhere in Rule 55 is the three (3) day requirement enlarged for parties who have not appeared.

Likewise, Rule 5(a) does not enlarge the time for notice of the hearing. Rule 5(a) states "notice of any trial or hearing on un-liquidated damages shall also be given to parties in default."

The Defendant argues that Rule 55 indicates that parties that have appeared in the action are treated differently than those in default. This is not the case. The rules require notice be sent to parties in default by first class mail to their last known address, at least three (3) days prior to the hearing, whether they made an appearance or not. If it was intended to enlarge the time beyond three (3) days for parties who had not appeared, this would be provided for in the rule.

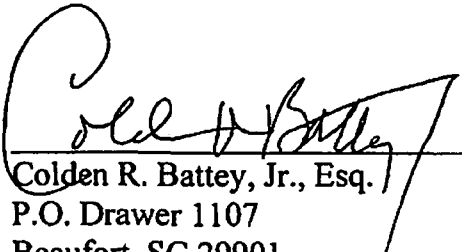
There is no basis to enlarge the time requirements of 55(b)(2) and the Defendant provides no authority, from South Carolina or elsewhere, to support her argument to the contrary. Plaintiffs complied with Rules 55(b)(2) and 5(a) SCRPC and that law requires nothing more.

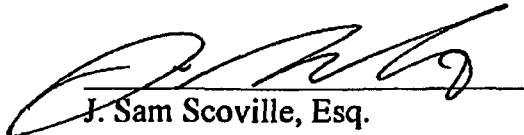
Conclusion

The decision of the Clerk of Court to allow service by publication is final as there was no fraud or collusion. Defendant can show no meritorious defense, no misconduct on the part of Plaintiffs, and setting aside the default in this case would cause significant prejudice to Plaintiffs who traveled across two states to attend the default hearing. Finally, Defendant's final argument, that she was entitled to more than three (3) days notice for the default hearing is an argument made from whole cloth and with no supporting authority. The judgments in this case were properly obtained and are now final. The Court should, therefore, deny Defendant's motions.

Dated: November 8, 2011

Harvey & Battey, P.A.
Attorneys for Plaintiff


Colden R. Battey, Jr., Esq.
P.O. Drawer 1107
Beaufort, SC 29901
843-524-3109


J. Sam Scoville, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
11-CP-07-02304

BRIAN CALDWELL,

Plaintiff

vs.

AMY WQUIST,

Defendant.

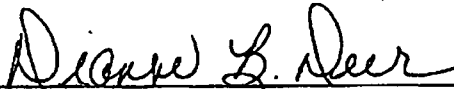
CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a legal assistant in the law firm of Harvey & Battey, P.A., and that she has served a copy of the attached **Return to Motion to Set Aside Default** on the **Defendant** by depositing said copy in the United States Mail, mailing it **First Class Mail** with sufficient postage thereon on **November 9, 2011**, addressed to the person(s) hereinafter named at the place and address stated below.

W. Toland Sams, Esquire
Sams & Sams
P.O. Box 849
Beaufort, SC 29901-0849

Attorney for Defendant

HARVEY & BATTEY, PA

By: 
Dianne B. Deer

Beaufort, South Carolina
November 9, 2011

Assistant to Colden R. Battey, Jr.
Post Office Drawer 1107
Beaufort, SC 29901-1107
(843) 524-3109 – phone
(843) 524-6973 – fax

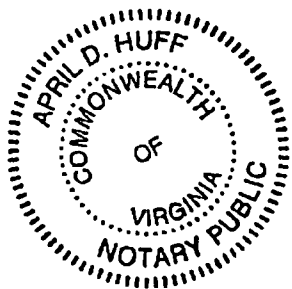
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CASE NO.: 2011-CP-2304

Brian Caldwell,)
) AFFIDAVIT OF BRIAN
 Plaintiff,) CALDWELL
)
Vs.)
)
Amy Wiquist,)
)
 Defendant.)
_____)

Comes now Brian Caldwell, plaintiff above-named, who being duly sworn,
states as follows:

1. I make this affidavit in support of my Return in opposition to Defendant's Motion to Set Aside the Default Judgment in this matter.
2. My wife and I traveled 411 miles from our home in Coeburn, Virginia to Beaufort, South Carolina to attend the hearing in this matter.
3. My wife and I both missed a full day's work to attend the hearing.
4. We paid approximately \$100.00 to stay at the Holiday Inn in Beaufort, South Carolina the night before the hearing.
5. If the Court sets aside the judgment, as requested by the Defendant in this matter, all of the above will be for naught.

April D. Huff #175374
Sworn to Before me this 14th
Day of NOV, 2011
Notary Public for the State of V.A.
My Commission Expires: 3/31/2013



Brian Caldwell
Brian Caldwell

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master In Equity/Special Circuit Court Judge

Case No. 2011-CP-07-2303

Jessica Caldwell, ... Respondent,

v.

Amy Wiquist, ... Appellant.

NOTICE OF APPEAL

Amy Wiquist appeals the order of the Honorable Marvin H. Dukes, III dated December 28, 2011. Appellant received written notice of entry of this order on December 28, 2011.

January 26, 2012



W. Toland Sams
Sams & Sams, P.A.
Post Office Box 849
Beaufort, South Carolina 29901
(843) 524-4189
Attorney for Appellant

Other Counsel of Record:
Colden R. Battey, Jr.
Harvey & Battey, P.A.
Post Office Box 1107
Beaufort, South Carolina 29901
Attorney for Respondent
(843) 524-3109

RECEIVED

JAN 30 2012

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master In Equity/Special Circuit Court Judge

Case No. 2011-CP-07-2303

Jessica Caldwell, ... Respondent,

v.

Amy Wiquist, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Jessica Caldwell by depositing a copy of it in the United States Mail, postage prepaid, on January 26, 2012, addressed to her attorney of record, Colden R. Battey, Jr., Harvey & Battey, P.A., Post Office Drawer 1107, Beaufort, South Carolina 29901-1107.

January 26, 2012

W. Toland Sams

W. Toland Sams
Sams & Sams, P.A.
Post Office Box 849
Beaufort, South Carolina 29901
(843) 524-4189
Attorney for Appellant

RECEIVED

JAN 30 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master In Equity/Special Circuit Court Judge

Case No. 2011-CP-07-2304

Brian Caldwell, ... Respondent,

v.

Amy Wiquist, ... Appellant.

NOTICE OF APPEAL

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January 26, 2012

W. Toland Sams

W. Toland Sams
Sams & Sams, P.A.
Post Office Box 849
Beaufort, South Carolina 29901
(843) 524-4189
Attorney for Appellant

Other Counsel of Record:
Colden R. Battey, Jr.
Harvey & Battey, P.A.
Post Office Box 1107
Beaufort, South Carolina 29901
(843) 524-3109
Attorney for Respondent

RECEIVED

JAN 30 2011

SC Court of Appeals

RECEIVED

JAN 30 2012

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master In Equity/Special Circuit Court Judge

Case No. 2011-CP-07-2304

Brian Caldwell, ... Respondent,

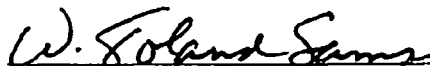
v.

Amy Wiquist, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Jessica Caldwell by depositing a copy of it in the United States Mail, postage prepaid, on January 26, 2012, addressed to his attorney of record, Colden R. Battey, Jr., Harvey & Battey, P.A., Post Office Drawer 1107, Beaufort, South Carolina 29901-1107.

January 26, 2012



W. Toland Sams
Sams & Sams, P.A.
Post Office Box 849
Beaufort, South Carolina 29901
(843) 524-4189
Attorney for Appellant

RECEIVED

JAN 30 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
2012207208

APPEAL FROM BEAUFORT COUNTY
In The Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2011-CP-07-2303

Jessica Caldwell..... Respondent

v.

Amy Wiquist.....Appellant

Case No. 2011-CP-07-2304

Brian Caldwell Respondent

v.

Amy Wiquist.....Appellant

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Record on Appeal complies with Rule 210(g), SCACR.



W. Toland Sams, Esq.

S.C. ID No. 4919

SAMS & SAMS, P.A.

P.O. Box 849

Beaufort, South Carolina 29901

(843) 524-4189

Attorneys for Appellant Amy Wiquist

April 30, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
2012207208

APPEAL FROM BEAUFORT COUNTY
In The Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2011-CP-07-2303

Jessica Caldwell Respondent

v.

Amy Wiquist Appellant

Case No. 2011-CP-07-2304

Brian Caldwell.....Respondent

v.

Amy Wiquist Appellant

PROOF OF SERVICE

I certify that on the 30th day of April, 2012, I served three (3) bound copies of the Record on Appeal on counsel of record by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

Colden R. Battey, Jr.
HARVEY & BATTEY, P.A.
P.O. Drawer 1107
1001 Craven Street
Beaufort, South Carolina 29901-1107
Counsel for Respondents

RECEIVED

MAY 01 2012

SC Court of Appeals

SAMS & SAMS, P.A.

By: W. Toland Sams

W. Toland Sams, Esq.

S.C. ID No. 4919

P.O. Box 849

Beaufort, South Carolina 29901

(843) 524-4189

Attorneys for Appellant Amy Wiquist