

2015-001218

**The State of South Carolina
In the Supreme Court**

Appeal from S.C. Worker's Compensation Commission
Appellate Panel

Susan S. Barden, Commissioner
Avery B. Wilkerson, Commissioner
Gene McCaskill, Commissioner

RECEIVED

JUN - 8 2015

S.C. Supreme Court

W.C.C. File No. 1203664
Ct. App. Appellate No. 2013-001778
S.C. Ct. App. Op. No. 2015-UP-041, filed January 21, 2015

Nathalie I. Davaut,

Petitioner

v.

University of South Carolina,
and State Accident Fund,

Respondents.

APPENDIX
For Petition for a Writ of Certiorari

Paul L. Reeves, S.C. Bar #4671
Reeves Law Firm, LLC
1527 Blanding Street
P.O. Box 11126
Columbia, South Carolina 29211
(803)929-0001
Paul@PLRLawFirm.com

Attorney for Petitioner

Paul L. Hendrix, S.C. Bar #64217
Jones & Hendrix, P.A.
50 Applewood Lane
Spartanburg, SC 29307-2225
(864) 583-5577
Paul@sccompdefense.com

Attorney for Respondents

APPENDIX
On Petition for Writ of Certiorari

Decision of the Court of Appeals.....	1
Petition for Rehearing	4
Return to Petition for Rehearing	14
Order on Petition for Rehearing.....	24
Documents from Court of Appeals	Separately submitted
Record on Appeal	
Final Brief of Appellant	
Final Brief of Respondent	

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Nathalie I. Davaut, Employee, Claimant, Appellant,

v.

University of South Carolina and State Accident Fund,
Respondents.

Appellate Case No. 2013-001778

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2015-UP-041
Heard November 5, 2014 – Filed January 21, 2015

AFFIRMED

Paul L. Reeves, Reeves Law Firm, LLC, of Columbia,
for Appellant.

Paul Linwood Hendrix, Jones & Hendrix, PA, of
Spartanburg, for Respondents.

PER CURIAM: Nathalie I. Davaut appeals the order of the Appellate Panel of the South Carolina Workers' Compensation Commission denying her benefits. On appeal, Davaut argues the Appellate Panel erred in finding she did not suffer an injury arising out of and in the course of her employment.

Davaut urges this court to consider *Williams v. South Carolina State Hospital*, 245 S.C. 377, 140 S.E.2d 601 (1965), and contends that case "answers the question" of the compensability of her injury. However, the claimant in *Williams* was injured while walking over the employer's premises, 245 S.C. at 379, 140 S.E.2d at 602; in contrast, Davaut was injured on a public street that was not owned or maintained by her employer. Therefore, we reject her assertion that the facts of this case align with *Williams*. See *Howell v. Pac. Columbia Mills*, 291 S.C. 469, 474, 354 S.E.2d 384, 386 (1987) ("[A]ppellant contends that this case is on all fours with [*Williams*]. This contention is without merit. In *Williams*, the claimant was injured on the employer's premises. In the present case, appellant was injured on a public street." (citation omitted)).

"The claimant has the burden of proving facts that will bring the injury within the workers' compensation law." *Houston v. Deloach & Deloach*, 378 S.C. 543, 553, 663 S.E.2d 85, 90 (Ct. App. 2008). "The general rule in South Carolina is that an injury sustained by an employee away from the employer's premises while on his way to or from work does not arise out of and in the course of employment." *Howell*, 291 S.C. at 471, 354 S.E.2d at 385. Davaut maintains she was injured on a public street in close proximity and so close in relation as to be in practical effect a part of her employer's premises, and her injury was subsequently compensable. See *Medlin v. Upstate Plaster Serv.*, 329 S.C. 92, 96, 495 S.E.2d 447, 449 (1998) ("[I]njury incurred by a workman in the course of his travel to his place of work and not on the premises of his employer but in close proximity thereto is not compensable *unless* the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and coming from his work." (emphasis added)); *Williams*, 245 S.C. at 381, 140 S.E.2d at 603 ("If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer's premises, *or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises*, the injury is one arising out of and in the course of the employment" (emphasis added) (citation omitted)).

Davaut was injured while walking across Hubbard Drive towards the parking lot at the Carole Ray Dowling Center. She admitted that faculty members parked in the Dowling Center lot "sometimes, probably not very often," and assistant librarian David Helwer testified the Dowling Center lot "meant nothing to [him]" before Davaut's accident. Moreover, while the Dowling Center lot was located on the north side of Hubbard Drive, all faculty parking was located on the south side. Hence, there is substantial evidence supporting the Appellate Panel's decision that

Davaut's injury on Hubbard Drive did not arise out of and in the course of her employment. *See Gadson v. Mikasa Corp.*, 368 S.C. 214, 221, 628 S.E.2d 262, 266 (Ct. App. 2006) ("Pursuant to the APA, this Court's review is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law."). Accordingly, we affirm the Appellate Panel.

AFFIRMED.

FEW, C.J., LOCKEMY, J., and CURETON, A.J., concur.

The State of South Carolina
In the Court of Appeals

Appeal from S.C. Worker's Compensation Commission
Appellate Panel

Susan S. Barden, Commissioner
Avery B. Wilkerson, Commissioner
Gene McCaskill, Commissioner

W.C.C. File No. 1203664
Appellate No. 2013-001778
S.C. Ct. App. Op. No. 2015-UP-041, filed January 21, 2015

Nathalie I. Davaut,

Employee, Claimant, Appellant,

v.

University of South Carolina,
and State Accident Fund,

Respondents.

PETITION FOR REHEARING

This workers' compensation case arises from a work-related accident that occurred when the Claimant, an employee of the University of South Carolina at the USC- Lancaster campus, was struck by a truck as she was walking from her employer's building across a public street to her car which was parked on the Employer's property. The Workers' Compensation Appellate Panel denied benefits based on a finding that the Claimant did not suffer an injury arising out of and in the course of her employment because she was injured on a public street not controlled by the Employer and she made the choice to park in a lot that required her to cross the street. In affirming the denial of benefits, this Court has overlooked

74938

RECEIVED

FEB 04 2015

SC Court of Appeals

and misapprehended the undisputed facts and relevant case law precedent in the following particulars:

1. The Court misapprehends the undisputed, relevant facts regarding the Claimant's actions in parking in the Carole Ray Dowling Center lot on the north side of Hubbard Street.

a. The Court misapprehended or overlooked the testimony of the Dean of USC-Lancaster that faculty members are allowed to park in the parking lot across the street and that they regularly do so on busy days, such as Tuesdays, and in any event, how often faculty park in that lot is wholly irrelevant to the issue presented.

b. The fact that the assistant librarian testified that the parking lot at the Carole Ray Dowling Center "meant nothing to [him] before the accident" is wholly irrelevant to the issue presented.

c. The Court's statement that "all faculty parking was located on the south side" is not supported by the undisputed evidence in this Record, and such fact, if true, would be wholly irrelevant to the issue presented.

2. The Court misapprehends or overlooks the rulings in the Supreme Court's opinion Williams v. South Carolina State Hospital, which apart from any factual distinctions, fully support the proposition that at the time of the accident, she had not left the Employer's premises yet, and she still was in the course of her employment while walking to her car in the University lot, because she had yet to access the ability to exit the employer's property.

a. The Court overlooked the ruling in Williams that a claimant is the course of her employment if she is in a reasonable margin or time *and space* necessary to be used in passing to and from the place where she has been conducting her work;

b. The Court overlooked the ruling in Williams that an injury arises out or and in the course of her employment where she is be injured while passing from her work *over the premises of another* in such proximity and relation as to be in practical effect a part of the employer's premises.

3. The Court misapprehends or overlooks the underlying facts and legal premise of the decision in Howell v. Pac. Columbia Mills, 291 S.C. 469, 474, 354 S.E.2d 384, 386 (1987), wherein the Court specifically declined to consider the issue presented in this case.

A. *The Undisputed Fact is that the Claimant was properly parked in a lot authorized for faculty parking.*

First, the Court's statement that "all faculty parking is located on the south side of Hubbard Drive" is not supported by the undisputed evidence and, in fact, conflicts with the finding of the Commission. The Commission found: "The Employer did not assign parking to staff/faculty or dictate what parking lots could be used by staff or faculty and the selection of parking was left to the discretion of employees." [ROA 4.]

The Claimant does not have an assigned, reserved faculty parking spot designated for her personal, exclusive use. [ROA 110.] While there are designated faculty parking spaces in the University faculty/student lot on the south-side of Hubbard Drive nearest to the Claimant's office in the Medford Building, there are only a limited number of spaces specifically designated for faculty. [ROA 110.] Further, the Court overlooked the testimony of the Dean of USC Lancaster that the parking lot on the north side at the Carole Ray Dowling Center, owned and maintained by the University, does not have any designated faculty spaces, but it is provided for *faculty*, as well as staff, students and the general public having business on the campus. [ROA 194, 202.] Thus, no inference should be drawn that the Claimant did not park in a lot where she was not authorized to park.

Second, the Court's reliance on the Claimant's testimony about the frequency of parking in the Carole Ray Downing Center lot on the north side of Hubbard Drive is taken out of context. The Claimant testified:

Q: BASED ON YOUR -- ON WHAT YOU'VE SEEN, DO OTHER FACULTY MEMBERS USE THAT LOT WHERE YOU PARKED THAT DAY?

A: SOMETIMES, PROBABLY NOT VERY OFTEN. [ROA 39:6-9]

The Court overlooked the testimony of the Dean of the school that they do not have enough faculty parking on the south-side of Hubbard Drive, during certain times of day and days of the week, particularly on Tuesdays and Thursdays. He testified that on those busy days, faculty and staff members regularly use the parking lots on the north-side of Hubbard Drive, where Claimant parked her vehicle on that Tuesday, the day the accident: "Not unusual at all for faculty members or a staff member to park in this parking lot on the west side of Carol Ray Dowling. I have seen faculty members and staff members park there on Tuesdays and Thursdays especially." [ROA 193:4-10.]

While the assistant librarian testified that the lot across the street "never meant anything to him," his statement must be considered in context of his entire testimony, including the fact that he was not familiar with the parking situation during the time of day that the Claimant arrived on campus (10:45 am). Namely, he worked a 5-9 shift and did not arrive at work until approximately 4:45 pm, and he most always finds an empty parking space in the lot closest to the Medford building. [ROA 261, 263.] He further testified that while he had never parked in the lot across the street, he knew that it was available to staff. [ROA 249:17-23; 256:19.] On this point, the assistant librarian's testimony as to his personal parking habits, as cited by the Court, simply cannot support the Commission's conclusion that the Claimant did not suffer an injury arising out of and in the course of her employment. However, of note is the fact that this same library assistant testified that the lot closest to the

Medford building is often full – testimony fully consistent with that of the Dean as discussed above. [ROA 248:19-22.]

Third, Court has overlooked the undisputed facts that on the morning of the accident, a Tuesday, the Claimant looked for but was unable to find any available spaces in that on the south side closer to her building. Only then did she drive to the next closest University parking lot across the street where she was able to find a space and parked. [ROA 108.]

Thus, to clarify any inference that the Claimant's made an inappropriate or unauthorized choice in parking in that lot, the undisputed testimony from the Dean was that there is not sufficient faculty parking in the south-side lots and that faculty and staff are allowed to use the parking lot on the north-side – which they regularly do particularly on busy Tuesdays, such as the Tuesday of this accident. While the north-side parking lot did not have any faculty designated spots, faculty was permitted to park in any available space in that lot. So the Claimant did not violate any Employer directive, and her right to choose was authorized under the Employer's parking policy and practices.

B. The fact that the Claimant made a discretionary choice as to which available University lot she parked her car in when she arrived at work on the day of the accident does not sustain the denial of benefits.

The Commission based its denial, in part on the facts that there were other University parking lots on the south-side of Hubbard Drive and the Claimant made the choice to park in the north-side lot without first driving through all the south-side lots to try to find an available faculty designated space. However, an employee's exercise of discretion as to where to park from multiple authorized options is not a disqualifying fact. The U.S. Supreme Court – as relied upon by the S.C. Supreme Court in Williams – has stated that the relative safety of a worker's choice of route arriving at work (and logically, also leaving work) is not relevant. Bountiful Brick Co. v. Giles, 276 U.S. 154, 157-58 (1928); *see also Knight Rider Newspaper*

Sale, Inc. v. Desselle, 176 Ga. App. 174, 175, 335 S.E.2d 459 (Ct. App. 1985)(“the parking lot was provided by the employer for the convenience of the employer and of the employees, who were encouraged to use the lot. It is immaterial that the appellee was not required to park in the lot. He did so on this occasion.”).

Allowing such a “choice” factor to disqualify a worker from benefits would be impracticable and unreasonable. In this case, would the Commission require the Claimant have to prove which parking lots she drove through or how many times she circled the parking lots looking for a space south of Hubbard Drive? Would the Commission be allowed to deny coverage on the reasoning that the Claimant could have arrived earlier to find a parking spot in the lot adjacent to her office building? These are not relevant or practical considerations. The undisputed facts are that the Claimant was injured while walking in the crosswalk from her worksite to her Employer’s parking lot – where she was authorized to park -- at the end of her work day, and she is entitled to workers’ compensation benefits.

C. The Claimant was still in the course of her employment while walking across the public street from her Employer’s building to where her car was parked in her Employer’s lot because she had yet to access the ability to exit her Employer’s property.

The Claimant maintains that she had not left the Employer’s premises yet, and she still was in the course of her employment while walking to her car in the University lot, because she had yet to access the ability to exit the employer’s property. In support of her argument, the Claimant relies upon the analysis that can be found in Williams v. South Carolina State Hospital, 254 S.C. 377, 140 S.E.2d 601 (1965). This Court has summarily rejected the Claimant’s reliance upon Williams as being without merit because the claimant there was

injured on the employer's premises while walking to her car.¹ While the facts are different, the analysis is comparable and supports this Claimant's contentions.

In Williams, the employee was injured when she slipped and fell while walking from the building where she worked to an automobile parking area located on the hospital premises, and the employer contended that the going and coming rule applied. The Court was addressing a question of whether the claimant worker had already "left work" and was "going" on her way to her car, and found the injury compensable, stating: "The act of claimant in walking from the building where she worked to the parking area was just as much a reasonable incident to her leaving the place of her work as walking from the ward where she worked along a hallway to the door of the building." 140 S.E.2d at 603.

While the claimant was walking on her employer's property to her car, that specific distinguishing fact does not negate the applicability of the Williams' decision in this case. In addressing the specific question presented to in that appeal, the Court articulated several propositions that are relevant and applicable to the facts of this case:

- '[E]mployment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done.'
- 'If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer's premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance.'

¹ This Court relies upon Medlin v. Upstate Plaster Serv., 329 S.C. 92, 96, 495 S.E.2d 447, 450 (1998). However, that case is inapposite because the Court was addressing the first "transportation" exception to going and coming rule where the facts were that the employer had provided transportation to the employee that was directly related to the work of employer.

140 S.E.2d at 603 (quoting from Bountiful Brick Co. v. Giles, 276 U.S. 154 (1928)). This Claimant was within a reasonable margin of both time and space necessary to be used in leaving her work that night. While Hubbard Drive was not her employer's premises, the evidence establishes – as discussed above – that she had the express consent of her employer to park in the Carole Ray Dowling Center lot and thus the implied consent to cross the public street to get to/from her car. Thus, under the analysis set forth in Williams, Hubbard Drive was the “premises of another” but in such proximity and relation as to be in the practical affect a part of USC's premises.

The Commission and this Court rely upon the Court's decision in Howell v. Pac. Columbia Mills, 291 S.C. 469, 474, 354 S.E.2d 384, 386 (1987), wherein the Court sustained the denial of benefits to an employee injured in a public road when her husband dropped her off for work across the street from the employer's premises. However, the Court's decision in that case does not dictate the denial of benefits in this case. Notably, although the claimant asked the Court to adopt a “divided premises rule” as it relates to an employee going between an employer-maintained parking area and the employer's place of business, the Court distinguished the facts and declined to consider the issue: “We need not consider this under the facts of the present case because appellant had never even entered the parking area that was maintained by the employer. Appellant was hit after she got out of her husband's car on a public street while on her way to work.”

Whether it would be considered adopting a new rule or simply application of the general principles enunciated in Williams, the Claimant urges the Court to reconsider and find the injury compensable because she still was in the course of her employment while walking to her car in the University lot, because the public road was, as a practical matter, still a part of her Employer's premises as she had yet to access her car in order to exit the

Employer's property. Claimant would urge this Court to reconsider such examples of the long line of cases which reflect the guiding principle that undergirds the entire workers' compensation system – namely, that workers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Act.”

As discussed in the Claimant's Brief, in Baldwin v. Pepsi-Cola Bottling Co., 234 S.C. 320, 323-24, 108 S.E.2d 409, 410 (1959), the employer argued that benefits should be denied to an employee struck while crossing a street on his way to work under the going and coming rule. In finding compensability, the Court followed the precept that “doubts are to be resolved in favor of compensability,” *id.* at 412, and found that the rule did not apply, stating:

The crossing of the street thereby became incidental to the employment and injury there incurred was in the course of his employment and arose out of it. The street became, for the time being, a part of respondent's work environment; he was not a mere member of the public, traveling upon it.

Id. at 410-11. This Claimant was not a mere member of the public crossing Hubbard Drive, rather, in crossing the street to a parking lot provided by her Employer, she was in the course of her employment. To further follow the reasoning of the Court, when the University placed parking lots on the north-side of Hubbard Drive which requires the Claimant to across a public road to reach his/her car from their worksite, it was the implied direction of the employer to him to cross the street.

CONCLUSION

As recently as last month, the Supreme Court restated the fundamental premise that underlies all of workers' compensation law: “Workers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Workers' Compensation Act; only exceptions and restrictions on coverage are to be strictly construed.

Nicholson v. S.C. Dep't of Soc. Servs., No. 2014-000329, 2015 WL 161719, at *1 (S.C. Jan. 14, 2015). The Commission's decision, as affirmed by this Court, to deny benefits because she was crossing a public street and she choose to park on the north-side of Hubbard Drive does not serve the beneficent purpose of the Act.

The undisputed facts are that there was no assigned parking, the Claimant only "chose" to park in that lot because the lot next to her building was full, she was authorized to park in that lot, and she used the designated crosswalk to across the public road to get back to her car immediately at the end of her workday. Under the principles in Williams, she was in a reasonable margin or time and space necessary to leave work, and she was passing from her work over the premises of another in such proximity and relation as to be in practical effect a part of her Employer's premises.

WHEREFORE, based on the foregoing and all the arguments made in the Appellant's Brief, the Claimant respectfully requests that the Court reconsider its decision, and reverse the Commission's decision and remand this matter for the award of benefits to which she is entitled under the Workers' Compensation Act.

Respectfully Submitted,

REEVES LAW FIRM, LLC



Paul L. Reeves
Post Office Box 11126
Columbia, South Carolina 29211
803.929.0001
803.929.0927 Facsimile
Paul@PLRLawFirm.com
Attorney for Employee, Claimant, Appellant
Nathalie I. Davaut

February 4, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

FEB 19 2015

SC Court of Appeals

Appeal from South Carolina
Workers Compensation Commission

Case No. 2013-001778

Nathalie I. Davaut, Employee, Claimant, ... Appellant,

v.

University of South Carolina
and State Accident Fund, Defendants, ... Respondents.

RESPONDENTS' RETURN TO
PETITION FOR REHEARING

Paul L. Hendrix, Esquire
S.C. Bar No.: 64217
Jones & Hendrix, P.A.
50 Applewood Lane
Spartanburg, South Carolina 29307-2225
(864) 583-5577
Paul@sccompdefense.com

STATEMENT OF THE CASE

This matter comes before the Court upon a Petition For Rehearing filed by the Appellant, Nathalie I. Davaut. This case arose as a result of a motor vehicle versus pedestrian accident that took place on the late evening of February 16, 2012 when the Appellant was struck while crossing a public street by a third party that was charged as being at fault in the accident. At the time of the accident, the Claimant was in a public crosswalk that was not owned, constructed, or maintained by the University of South Carolina, the Respondent named herein.

Following a Hearing on the merits of the claim, the Single Commissioner found that the Appellant had failed to prove an injury by accident arising out of and in the course and scope of her employment and denied the claim in an Order dated November 6, 2012. The Appellate Panel unanimously found that the Claimant had not sustained an injury by accident within the meaning of the Workers Compensation Act and denied the claim by Order dated July 22, 2013.

Following oral arguments in the case, this Court affirmed the Decision and Order of the South Carolina Workers' Compensation Commission by Order dated January 21, 2015. The Respondents maintain that the Order of this Court properly applied the law to the facts of this claim and correctly affirmed the Order of the South Carolina Workers' Compensation Commission which found that the Claimant did not suffer an injury arising out of and in the course of her employment.

ARGUMENTS

I. THE COURT DID NOT MISAPPREHEND THE FACTS REGARDING THE CLAIMANT'S ACTIONS IN PARKING IN THE CAROLE RAY DOWLING CENTER LOT ON THE NORTH SIDE OF HUBBARD DRIVE.

In support of her Petition, the Appellant asserts that this Court misapprehended the undisputed, relevant facts regarding the Claimant's actions in parking in the Carole Ray Dowling Center lot on the north side of Hubbard Drive. The Appellant then asserts that the Court's statement that "all faculty parking is located on the south side of Hubbard Drive" is not supported by the undisputed evidence. This assertion is completely without merit. It is undisputed that the only faculty designated parking was located on the south side of Hubbard Drive which would not have required the Claimant to cross Hubbard Drive at all. As found by the South Carolina Workers' Compensation Commission, the Claimant's accident resulted because of the Claimant's discretionary choice to park in the parking lot located on the north side of Hubbard Drive that did not contain any faculty designated parking spaces. (R. p. 4, Appellate Panel Order - Finding of Fact No. 14). . To quote the Claimant, "I decided to just park the car, **even though it wasn't faculty parking**, to park the car there instead of trying to go all the way across campus to see if there were any other faculty spots available." (R. p. 108, lines 7-17).

The Claimant also argues in her Petition that the Employer somehow dictated that she use the parking lot that she elected to use on the date of her accident because Tuesday was a busier day of the week than normal implying that there was nowhere else to park. This assertion by the Claimant is speculative at best. By the Claimant's own admission, she never checked any of the other parking lots on the south side of Hubbard Drive which also contain faculty designated

parking. When asked at the Hearing if other faculty ever parked in the parking lot she elected to utilize on the day of her accident on the north side of Hubbard Drive the Claimant testified “sometimes, probably not very often”. (R. p. 39, line 9).

The Claimant also asserts that the Court misapprehended the testimony of the assistant librarian. Mr. Helwer, the Assistant Librarian, testified that prior to this accident the parking lot used by the Claimant meant nothing to him because there were always available spots in the other parking lots located on the south side of Hubbard Drive. (R. p. 261, lines 1-4). Mr. Helwer also testified that he always parked in the lots on the south side of Hubbard Drive designated for faculty because it was his understanding that that was what he was supposed to use since he was staff at the University. (R. p. 259, lines 10-12).

The Claimant also asserts that the Court overlooked the undisputed facts that on the morning of the accident, a Tuesday, the Claimant looked for but was unable to find any available spaces on the south side of Hubbard Drive. This assertion ignores the Claimant’s very testimony on this issue. When questioned about this very issue the Claimant admitted, “I decided to just park the car, even though it wasn’t faculty parking, to park the car there **instead of trying to go all the way across campus to see if there were any other faculty spots available.**” (R. p. 108, lines 7-17).

The Claimant’s Petition further alleges that the Claimant was using a “designated crosswalk” at the time of her accident. The undisputed facts in this case reflect that there are three crosswalks on Hubbard Drive which were owned, constructed and maintained by the City of Lancaster. The University of South Carolina does not exercise any control over the crosswalks on Hubbard Drive. (R. p. 166). All traffic control, ticketing, and accident investigations relating to Hubbard Drive is conducted by the City of Lancaster exclusively. (R. p. 179).

In short, the Court properly ascertained the testimony offered and the admissions made in this case in reaching its decision that the findings of the South Carolina Workers' Compensation Commission were supported by substantial evidence. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an Administrative Agency's finding from being supported by substantial evidence. Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E. 2d 407 (1991). Where there is conflicting evidence, the findings of the Commission are conclusive, Miller v. State Roofing Company, 441 S.E. 2d 323 (1994), and when factual findings are supported by substantial evidence, analogous to a jury's findings of fact on disputed issues, the Commission's conclusions must be affirmed. Hunter v. Patrick Construction Company, 289 S.C. 46, 344 S.E. 2d 613 (1986). Final determination of witness credibility and the weight to be accorded evidence is reserved to the Commission. Ford v. Allied Chemical Corp., 252 S.C. 561, 167 S.E. 2d 564 (1969).

II. THE CHOICE MADE BY THE CLAIMANT ON THE MORNING OF HER ACCIDENT IS RELEVANT.

The Claimant argues in her Petition that the fact that she made a discretionary choice as to where she decided to park on the morning of her accident has no bearing on whether her accident is compensable. This assertion is squarely refuted by the Court's decision in Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987). In Howell, the Claimant was dropped off by her husband in a crosswalk which connected the parking lot to one of the entrances to the plant where she worked. The Claimant was struck while in the crosswalk and injured. The Court found that the Claimant did not sustain an injury arising out of and in the scope and course of her employment. In rejecting the Claimant's argument that crossing the street in the crosswalk where she was injured was an implied requirement in her employment the court noted the following:

Appellant contends that the circuit court erred in affirming the full commission's determination that her case does not fall within the exception stated above. We disagree. The Commission found that the appellant failed to establish an implied requirement in her contract of employment that she cross the street in the crosswalk where the accident occurred. The employer exercised no control over which route appellant chose to use in coming and going to work. On the night that the accident took place, her husband just as readily could have let appellant out on the mill side of Heyward Street. Appellant contends that, since "no parking" signs were located on the mill side of Heyward Street, the only place for a person being driven to work to legally exit a car would be on the parking area side of the street. Evidence in the record shows that employees were regularly picked up and dropped off on the mill side of the crosswalk. In fact, it is lawful for passengers to be picked up or discharged at a crosswalk or in front of "no parking" signs. S.C. Code Ann. Section 56-5-2530. Appellant was plainly free to cross Heyward at many points or not to cross it at all.

Howell, 291 S.C. at 472, 354 S.E.2d at 385.

The Courts discussion in Howell, makes it clear that an employee's discretion or choice is not only a relevant factor, but a critical one, in applying the going and coming rule and the exceptions to same. In the case currently before the Court, the Claimant was free to cross Hubbard Drive at any of three crosswalks constructed and maintained by the City of Lancaster or not to cross it at all. To quote the Claimant "I decided to just park the car, **even though it wasn't faculty parking**, to park the car there instead of trying to go all the way across campus to see if there were any other faculty spots available." (R. p. 108, lines 7-17). As found by the South Carolina Workers' Compensation Commission, the Claimant's accident resulted because of the Claimant's discretionary choice to park in the parking lot located on the north side of Hubbard Drive that did not contain any faculty designated parking spaces. (R. p. 4, Appellate Panel Order - Finding of Fact No. 14). The Claimant could have decided to take the time to locate a faculty designated parking spot, all of which are located on the south side of Hubbard Drive, and her accident would have

never occurred.

**III. THE CLAIMANT'S CONTINUED RELIANCE ON THE CASE OF
WILLIAMS V. SOUTH CAROLINA STATE HOSPITAL IS MISPLACED.**

The Claimant continues to argue that the case of Williams v. South Carolina State Hospital, 254 S.C. 377, 140 S.E.2d 601 (1965) is controlling under the facts of this case. In Howell, the Court specifically rejected the argument advanced by the claimant that the case was on all fours with Williams v. South Carolina State Hospital, stating "This contention is without merit. In Williams, the claimant was injured on the employer's premises. In the present case, appellant was injured on a public street." Howell, 291 S.C., at 474, 354 S.E.2d at 386. This is the very argument advanced by the Appellant herein.

In Williams, the Employer owned the street where the Claimant's injury occurred, the Employer owned the sidewalk used by the Claimant when walking to and from her car and specifically designated the parking area used by the Claimant as parking for nurses. In the case currently before the Court it is undisputed that the City of Lancaster owns and maintains Hubbard Drive where the Claimant's accident occurred and the City of Lancaster constructed and maintained the cross walk where the Claimant's accident occurred. It is also undisputed that **all** faculty designated parking is located on the south side of Hubbard Drive and does not require crossing Hubbard Drive at all. The parking lot used by the Claimant on the day of her accident was open to the general public and did not contain any faculty parking.

The Claimant also argues that the Supreme Court's decision in Howell v. Pacific Columbia Mills does not support a denial of this case. In Howell, the Supreme Court rejected a Claimant's attempt to argue one of the five exceptions to the going and coming rule after being injured in a

crosswalk located on a public street between an Employer owned parking lot and the plant. In that case, the only Employer owned parking lot was on the other side of a public street that ran in front of the plant. In rejecting the Claimant's arguments that her claim was compensable, the Court noted that the Claimant was plainly free to cross Heyward Street at any point or not to cross it at all. The same is true in the case at hand. The Claimant was free to cross Hubbard Drive in any of the three

The Claimant argues that the Court's decision in Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987) does not apply to the facts of the case currently before this court because the Claimant in Howell was never on the premises of the Employer before she entered the crosswalk on the public street where she was injured. A review of the Howell decision reflects that it is analogous to the case currently before this Court. While the Court in Howell noted that the Claimant had not entered the parking lot across from the plant it did so in a discussion wherein the Court was summarily dismissing the "divided premises rule" argument advanced by the Claimant in that case.

In rejecting the claimant's argument that crossing the street in a crosswalk where her injury occurred was an implied requirement in her contract of employment, the Court in Howell stated as follows:

The Employer exercised no control over which route the Appellant chose to use in coming and going from work...Appellant was plainly free to cross Heyward at many points or not to cross it at all. The logic behind Appellant's argument appears to be that since she had to cross Heyward Street to get to the mill and since there was a crosswalk in front of one entrance, it was an implied requirement of her employment that she cross the street on the crosswalk. Any injury occurring in that crosswalk, therefore, is compensable. There would be nothing to prevent this line of reasoning from being extended to mean that all Employees must leave home in order to come to work, coming to work is an implied requirement of their employment. All accidents occurring on the way to work are compensable. This kind of reasoning would

permit the exceptions to swallow the rule.

Howell, 291 S.C. at 472, 354 S.E.2d at 385.

In her Petition, the Claimant continues to assert that she was “in the course of her employment” because her path from her Employer’s office building to her Employer’s parking lot necessarily included traversing a public street. This assertion by the Claimant is simply not supported by the evidence of record and was rejected by the South Carolina Workers’ Compensation Commission in this claim. As with the claimant in the Howell case, the Claimant herein was free to cross Hubbard Drive at any of three crosswalks constructed and maintained by the City of Lancaster or not to cross it at all. To quote the Claimant “I decided to just park the car, **even though it wasn’t faculty parking**, to park the car there instead of trying to go all the way across campus to see if there were any other faculty spots available.” (R. p. 108, lines 7-17). It is undisputed that the only faculty designated parking was located on the south side of Hubbard Drive and does not require a faculty member to cross Hubbard Drive at all. As found by the South Carolina Workers’ Compensation Commission, the Claimant’s accident resulted because of the Claimant’s discretionary choice to park in the parking lot located on the north side of Hubbard Drive that did not contain any faculty designated parking spaces. (R. p. 4, Appellate Panel Order - Finding of Fact No. 14).

CONCLUSION

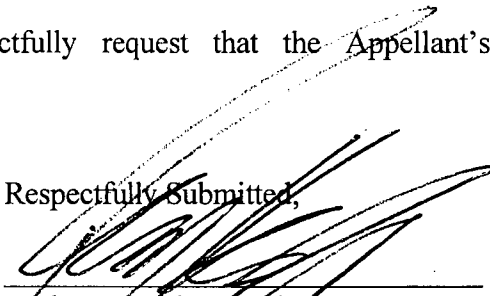
In South Carolina, to be entitled to an award under the South Carolina Workers’ Compensation Act, an Employee bears the burden of proving facts that establish an injury by accident that both “arose out of” and “in the course of” the employment. S.C. Code Ann. §42-1-160. After reviewing all of the evidence submitted in this case, the South Carolina Workers’

Compensation Commission concluded that the Claimant had failed to carry her burden of proving an injury by accident arising out of and in the course and scope of her employment.

It is submitted that the Supreme Court's Decision in Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987) is directly on point with the facts of this case and dictates the very result reached by the Commission and affirmed by this Court. In Howell, the Court reiterated the general rule in South Carolina which states that an injury sustained by an employee away from the employer's premises while on his way to or from work does not arise out of and in the course of employment. The Decision and Order of the Commission properly applied this rule. The Decision of the South Carolina Workers' Compensation Commission is supported by the substantial evidence of record and was properly affirmed by this Court.

WHEREFORE, Respondents respectfully request that the Appellant's Petition for Rehearing be denied.

Respectfully Submitted,



Paul L. Hendrix, Esquire
S.C. Bar No.: 64217
Jones & Hendrix, P.A.
50 Applewood Lane
Spartanburg, South Carolina 29307
(864) 583-5577
Attorney for Respondents

February 17, 2015

The South Carolina Court of Appeals

Nathalie I. Davaut, Employee, Claimant, Appellant,

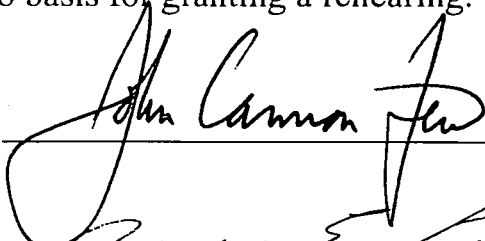
v.

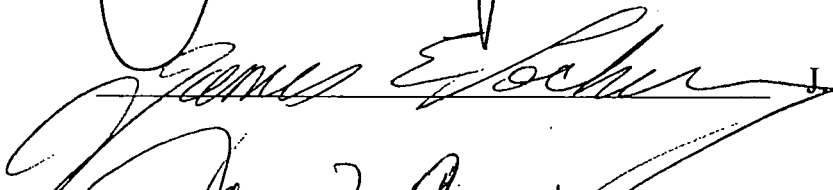
University of South Carolina, and State Accident Fund,
Defendants, Respondents.

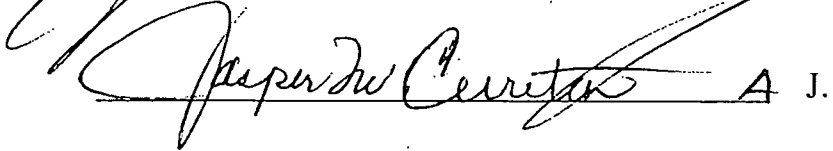
Appellate Case No. 2013-001778

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____. C.J.


_____. J.


_____. A. J.

Columbia, South Carolina

cc:

Paul L. Reeves, Esquire

Paul Linwood Hendrix, Esquire

FILED

May 8, 2015

**The State of South Carolina
In the Court of Appeals**

Appeal from S.C. Worker's Compensation Commission
Appellate Panel

Susan S. Barden, Commissioner
Avery B. Wilkerson, Commissioner
Gene McCaskill, Commissioner

RECEIVED

JUN - 8 2015

S.C. Supreme Court

W.C.C. File No. 1203664

Appellate No. 2013-001778

Nathalie I. Davaut,

Employee, Claimant, Appellant,

v.

University of South Carolina,
and State Accident Fund,

Defendants, Respondents.

RECORD ON APPEAL

Paul L. Reeves
Reeves Law Firm, LLC
1527 Blanding Street
P.O. Box 11126
Columbia, South Carolina 29211
(803)929-0001
Paul@PLRLawFirm.com

**Attorney for Employee,
Claimant, Appellant**

Paul L. Hendrix
Jones & Hendrix, P.A.
50 Applewood Lane
Spartanburg, SC 29307-2225
(864) 583-5577
Paul@sccompdefense.com

Attorney for Defendants, Respondents

Record on Appeal

Orders and Decisions

Order of the Appellate Panel, dated July 22, 2013.....	1
Order of Single Commissioner, dated November 6, 2012.....	8

Pleadings

Form 50 Notice of Claim	20
Form 50 Requesting Hearing	22
Form 51 Denial of Claim	25
Form 30 Request for Commission Review	26
Notice of Appeal	28

Transcript

Transcript of hearing before Single Commissioner, September 25, 2012.....	31
Direct Examination of Claimant by Mr. Reeves	37
Cross Examination of Claimant by Mr. Hendrix	46
Re-direct Examination by Mr. Reeves	54
Re-cross Examination by Mr. Hendrix	57
Transcript of Argument before the Appellate Panel, dated March 18, 2013.....	60

Exhibits

Deposition of Nathalie Davaut, Ph.D.	82
Exhibit 1 to Deposition of Nathalie Davaut, Ph.D.	152
Deposition of John Rutledge, Ph.D.	153
Exhibit 1 to Deposition of John Rutledge, Ph.D.	183

Deposition of John Catalano, Ph.D.	184
Deposition of Bruce Nims, Ph.D.	205
Exhibit 1 to Deposition of Bruce Nims, Ph.D.	229
Deposition of David Helwer	234
Exhibit 1 to Deposition of David Helwer	266
 Other Materials	
Form 58 Claimant's Pre-Hearing Brief	267
Form 58 Employer's Pre-Hearing Brief	270
Brief of Claimant to the Full Commission, dated February 1, 2013	274
Certificate of Counsel	286

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSTION COMMISSION
W.C.C. FILE NO. 1203664**

Nathalie I. Davaut,

**EMPLOYEE,
CLAIMANT/APPELLANT.**

-V-

UNIVERSITY OF SOUTH CAROLINA,

and

STATE ACCIDENT FUND,

DEFENDANTS/RESPONDENTS.

Appellate Panel Review held in Columbia,
South Carolina on March 18, 2013 per notices
timely and properly served on all parties of interest.

Appellate Panel Decision and Order filed
7/22, 2013.

APPEARANCES:

Claimant/Appellant represented by Paul L.
Reeves, Esquire of Columbia, South
Carolina.

Defendant/Respondent represented by Paul L.
Hendrix, Esquire, of Spartanburg, South
Carolina.

STATEMENT OF CASE

The parties were heard by Commissioner Derrick L. Williams on September 25, 2012 in Columbia, South Carolina. On November 6, 2012, he issued the following Order:

IT IS, THEREFORE, ORDERED; 1) The Claimant failed to prove an injury by accident arising out of and in the course and scope of her employment on February 16, 2012. 2) That all benefits under the S.C. Workers' Compensation Act are hereby denied. Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E. 2d 384 (S.C. 1987). 3) That the Claimant's spouse, Angela M. Bourne, is the deceased Employee's next of kin that was dependent upon him for support at the time of his death.

IT IS SO ORDERED.

Within the statutory period, counsel for the Claimant filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on March 18, 2013. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, the Claimant respectfully submits the following:

1. Whether the Single Commissioner erred as a matter of law in holding the mere act of crossing a public street within the boundaries of the Employer's property removed the Employee from the course and scope of her employment even though: (A) the Employee had not yet left her place of employment; and (B) the employee was still engaged in a duty, task or special errand for the benefit of the employer.

2. Whether the Single Commissioner erred as a matter of law in holding the factual situation was controlled by Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384

(1987).

3. Whether the Single Commissioner erred as a matter of law in failing to award benefits for medical treatment and temporary total disability compensation.

4. Whether the Single Commissioner erred as a matter of law in failing to make specific and detailed findings of fact sufficient for appellate review.

FINDINGS OF FACT

Based upon the witness testimony, the documentary evidence submitted by the respective parties pursuant to the South Carolina Administrative Procedures Act, and the file of the Workers' Compensation Commission relative to this claim, we make the following Findings of Fact:

1. The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an accident that occurred on February 16, 2012, while employed by the Employer/Defendant and therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

2. Venue, set in Columbia, South Carolina, is proper.

3. Notice of the Hearing was timely and properly served upon all parties of interest.

4. Claimant has a compensation rate of \$725.47.

5. The Claimant is 45 years of age and has multiple degrees including three Master's Degrees and a Ph.D.

6. The Claimant is a credible witness, and we have no reason to disbelieve her. However, the Claimant's own testimony supports the findings set forth herein.

7. The Claimant's work history includes work in the educational field at the collegiate level where the Claimant has taught multiple courses in foreign languages. The Claimant was employed as a professor of French and Spanish at the time of the accident which gave rise to this

claim.

8. The medical evidence submitted by the parties confirms that the Claimant sustained physical injuries as a result of a pedestrian/motor vehicle accident on February 16, 2012.

9. The Claimant's accident occurred in a crosswalk located on Hubbard Drive, a street that ran through campus at the University of South Carolina – Lancaster. The Employer did not own or maintain Hubbard Drive or the crosswalk on Hubbard Drive where the accident occurred.

10. The Claimant was leaving the Medford Library located on the south side of Hubbard Drive and was walking to her personal vehicle that she had parked in one of the parking lots maintained by the Employer on the north side of Hubbard Drive.

11. The Claimant had been reviewing resumes that were placed on reserve at the Medford Library just prior to her accident.

12. The Employer did not assign parking to staff/faculty or dictate what parking lots could be used by staff or faculty and the selection of parking was left to the discretion of employees.

13. The parking lot selected by the Claimant was adjacent to the Carole Ray Dowling Building on the north side of Hubbard Drive. The evidence establishes that other parking lots were located on the north side of Hubbard Drive as well as the south side of Hubbard Drive. By the Claimant's own admission, she did not check all of the parking lots located on the south side of Hubbard Drive or a second parking lot located on the north side of Hubbard Drive before making her decision to park her car in the parking lot she selected.

14. The necessity to cross Hubbard Drive arose as a result of the Claimant's discretionary choice to park in a parking lot located on the north side of Hubbard Drive that did not contain any faculty designated parking spaces.

15. All parking spaces designated as faculty parking by the Employer are located on the

south side of Hubbard Drive and would not require crossing Hubbard Drive to reach the Medford Library, classrooms or teacher offices.

16. The burden is on the Claimant to establish that an accident arose out of and in the course and scope of her employment.

17. The Claimant has failed to carry her burden of proof that the accident which gave rise to this claim arose out of and in the course and scope of her employment. The Claimant's injuries occurred in a public street that was not owned or maintained by the Employer.

18. The Claimant is not entitled to any benefits under the Workers' Compensation Act as a result of the accident alleged herein.

19. The Claimant was not engaged in a duty, task or special errand for the benefit of the Employer when the accident which gave rise to this claim occurred.

CONCLUSIONS OF LAW

Under the foregoing Findings of Fact, and accordingly, as provided in the South Carolina Code, as amended, the following Conclusions of Law are made:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. The Claimant failed to carry her burden of proving an injury by accident within the course and scope of her employment on February 16, 2012. S.C. Code Ann. §42-1-160 (1976).

3. After careful review of the case law cited by both Parties, we find there is no case precisely on point. However, as in Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E. 2d 384 (S.C. 1987), the Claimant was on a public street when she was injured. We decline to extend the current law to premises not controlled by the Employer, particularly when other parking areas are available to the Employee. Deseth does not apply. The injury in that case occurred in a parking

lot which was not under control of the Employer.

4. All benefits under the S.C. Workers' Compensation Act are hereby denied. Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E. 2d 384 (S.C. 1987).

ORDER

IT IS, THEREFORE, ORDERED;

1. The Order of the Single Commissioner filed in the above-captioned matter on November 6, 2012 is hereby affirmed as amended by the Panel and the same shall constitute the Decision and Order of the Appellate Panel.

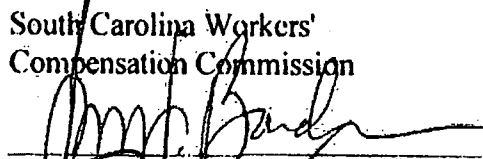
2. The Claimant failed to prove an injury by accident arising out of and in the course and scope of her employment on February 16, 2012. Furthermore, the Claimant was not engaged in a duty, task or special errand for the benefit of the Employer when the accident occurred.

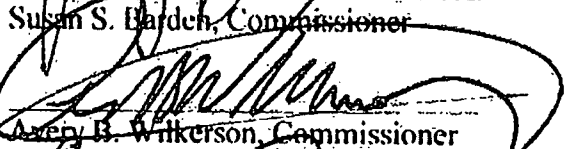
3. That all benefits under the S.C. Workers' Compensation Act are hereby denied. Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E. 2d 384 (S.C. 1987).

4. No hearing costs are assessed in this matter.

AND IT IS SO ORDERED.

South Carolina Workers'
Compensation Commission


Susan S. Barden, Commissioner


Avery B. Wilkerson, Commissioner


Gene McCaskill, Commissioner

AFFIRMED AS AMENDED

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

By Valerie Deller on July 22, 2013

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1203664

Nathalie I. Davaut,
Employee/Claimant,

vs.

University of South
Carolina,
Employer,

and

State Accident Fund,
Carrier.

DECISION AND ORDER

HEARING:

Held in Columbia, South Carolina on
September 25, 2012.

APPEARANCES:

Claimant represented by Paul L. Reeves,
Esq. of Blackwell, Trimmal, Reeves &
Myers, Columbia, S.C.

Defendants represented by Paul L.
Hendrix, Esq. of JONES & HENDRIX, P.A. in
Spartanburg, S.C.

PURPOSE OF HEARING:

To determine issues as set forth on Forms
50 and 51.

DECISION AND ORDER BY:

Derrick L. Williams, Commissioner

FILED:

November 6, 2012

I. STIPULATIONS

The parties stipulated at the Hearing to the following:

1. That the purpose of the Hearing is to address issues as
set forth on the Forms 50 and 51;

2. That notice of the Hearing was timely and properly served upon all parties of interest;

3. That Claimant has an average weekly wage of \$1,199.90 and a compensation rate of \$725.47;

4. That the date of the alleged accident is February 16, 2012;

5. That venue, set in Columbia, South Carolina, is proper;

6. That the Claimant's injury occurred in a crosswalk on a street that ran through the campus of the University of South Carolina - Lancaster. The parties further stipulate that the Defendants did not own or maintain the crosswalk or street where the accident occurred; and,

7. The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon the accident of February 16, 2012, while employed by the Employer/Defendant and therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

II. APA SUBMISSIONS

Under the South Carolina Administrative Procedures Act, the following records were submitted into evidence without objection:

APA #1 and Claimant's Exhibit #1 - Medical records of Lancaster County EMS dated 02/16/12 - pages 01 - 09;

APA #2 and Claimant's Exhibit #2 - Medical records of Springs Memorial Hospital dated 02/16/12 - pages 10 - 16;

APA #3 and Claimant's Exhibit #3 - Medical records of Carolinas Medical Center dated 02/16/12 - 03/15/12 - pages 17 - 60;

APA #4 and Claimant's Exhibit #4 - Medical records of Carolinas Medical Center Orthopaedics dated 02/16/12 - present - pages 88 - 112;

APA #5 and Claimant's Exhibit #5 - Medical records of Liberty Nursing & Rehab dated 03/15/12 - 04/11/12 - pages 68 - 93;

APA #6 and Defendants' Exhibit #1 - Medical records of Carolinas Healthcare System dated 07/08/10 - pages 94 - 96;

APA #7 and Defendants' Exhibit #2 - Medical records of Carolina Neurosurgery & Spine Associates dated 08/12/10 - 09/14/11 - pages 97 - 101;

APA #8 and Defendants' Exhibit #3 - Medical records of Michael J. Bosse, M.D. dated 08/09/12 - pages 102 - 104;

APA #9 and Defendants' Exhibit #4 - Deposition transcript of David Helwer dated 08/09/12;

APA #10 and Defendants' Exhibit #5 - Deposition transcript of Bruce Nimms, Ph.D. dated 08/09/12;

APA #11 and Defendants' Exhibit #6 - Deposition transcript of John Rutledge, Ph.D. dated 08/09/12;

APA #12 and Defendants' Exhibit #7 - Deposition transcript of John Catalano, Ph.D. dated 08/14/12;

APA #13 and Defendants' Exhibit #8 - Deposition transcript of Nathalie Davaut, Ph.D. dated 08/14/12.

III. STATEMENT OF THE CASE

The Hearing took place in Columbia, South Carolina on September 25, 2012 by agreement of the parties. This claim relates to an alleged claim stemming from an accident that occurred on February 16, 2012. The claim arose by virtue of a pedestrian/motor vehicle accident. The Claimant alleges multiple injuries including injury to the hip, pelvis, right femur, spleen, liver, urinary tract, renal failure and psychological overlay. The Claimant seeks payment of causally related medical care to date and continuing. The Claimant also seeks temporary total disability benefits for the brief period of March 23, 2012 through May 15, 2012. The Claimant has returned to work and continues in her employment at this time. The Claimant maintains that the issue of permanency is premature.

The Defendants deny that the Claimant's injury arose out of and in the course and scope of her employment with the Employer. The Defendants maintain that the Claimant's injury occurred in a crosswalk on a public street that was not owned or maintained by the Employer. The Defendants rely upon the Supreme Court's 1987 Decision in the case of Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E. 2d 384 (S.C. 1987). The Defendants deny that the Claimant is entitled to any benefits under the Workers' Compensation Act as a result of the February 16, 2012 accident.

IV. EVIDENCE OF THE CASE

The evidence in this case included testimony from the Claimant, Nathalie Davaut, the deposition testimony of Bruce Nimms,

David Helwer, John Rutledge, John Catalano and Nathalie Davaut as well as the medical records submitted by the parties pursuant to the S.C. Administrative Procedures Act. The Claimant also submitted various written documents including emails from the Employer, accident reports, a map of campus and photographs of the accident scene without objection. In addition, the file of the S.C. Workers' Compensation Commission relative to this claim as well as the notes of this Commissioner were made part of the record.

The Claimant testified that she is employed as a professor at the University of South Carolina - Lancaster where she teaches Spanish and French. The Claimant is fluent in multiple languages. The Claimant testified concerning her multiple degrees including a Master's Degree in English Linguistics, a Master's Degree in French Literature and a Master's Degree in Spanish. The Claimant also holds a Ph.D. in French Literature and Civilization. The Claimant is originally from France but has lived in the United States since 1990.

The Claimant testified briefly concerning the injuries sustained in the accident herein. She testified that she remains under medical care at this time and has not been placed at maximum medical improvement. The Claimant admitted that she taught an online class during the June semester. The physicians released the Claimant to return to work with restrictions at the beginning of the Fall 2012 semester and the Claimant remains employed in her

normal position with the University.

With respect to the accident that gave rise to this claim, the Claimant testified that she was struck by a motor vehicle in a crosswalk on Hubbard Drive at approximately 9:05 p.m. on February 16, 2012. The Claimant testified that she had just left the Medford Library where she had been reviewing resumes that were on reserve in the Medford Library for members of a search committee for a Spanish professor. According to the Claimant, she had been reviewing the resumes since 5:00 p.m. that day. The Claimant testified that she was walking from the Medford Library to her car that she had parked on the north side of Hubbard Drive earlier in the day. The Claimant's car was located in a parking lot maintained by the University adjacent to the Carole Ray Dowling Building. With regard to the search committee that the Claimant was serving on, the Claimant admitted that it was voluntary. However, the Claimant testified that participation on search committees was an expected part of her job and failing to do so would have been adversely reflected on performance evaluations conducted by her superiors. The Claimant admitted that she set her own schedule for reviewing the resumes in the Medford Library.

As stated previously, the parties stipulated that the Claimant's injury occurred in a crosswalk located on Hubbard Drive, a public street that ran through the middle of campus. The parties further stipulated that the University did not maintain or own Hubbard Drive or the crosswalks that were located on Hubbard Drive.

In addition, the witness testimony establish that the Lancaster Police Department had jurisdiction for traffic enforcement and accident investigations with respect to Hubbard Drive. In fact, the investigation of the accident that gave rise to this claim was conducted by the Lancaster Police Department.

The Claimant admitted, and the witness testimony confirmed, that there was no assigned parking on campus. In other words, the Claimant as well as other faculty were permitted to park in any of the parking lots located on campus at their discretion. There were designated faculty parking spaces in some of the parking lots located on the south side of Hubbard Drive. With respect to the parking lot where the Claimant elected to park her vehicle on the date of her accident, there were no designated faculty parking spaces. The parking lot where the Claimant parked her vehicle on the date of her accident was open to students, staff, faculty and the general public.

The Claimant admitted that when she arrived on campus on the morning of February 16, 2012 she drove through the parking lot adjacent to Hubbard Hall, located on the south side of Hubbard Drive. According to the Claimant's testimony, she did not see any available parking spaces in the parking lot adjacent to Hubbard Hall but had noticed available parking spaces in the parking lot adjacent to the Carole Ray Dowling Building located on the north side of Hubbard Drive as she drove to work. The Claimant testified that she made the decision to park in the parking lot on the north

side of Hubbard Drive adjacent to the Carole Ray Dowling Building.

The Claimant admitted that she did not check the other parking lots on the south side or north side of Hubbard Drive before parking her car. The map of the campus that was placed into evidence demonstrates other parking lots on the south side of Hubbard Drive as well as the north side of Hubbard Drive. A review of the map reveals a second parking lot on the north side of Hubbard Drive that appears closer to the Medford Library than the parking lot selected by the Claimant.

The Claimant further admitted that the Employer did not dictate the means of transportation used by faculty to arrive on campus and the Claimant was free to choose her own transportation including use of her own personal vehicle or public transportation.

V. FINDINGS OF FACT

Based upon the testimony of the witnesses, to the extent that it is credited, the documentary evidence submitted by the parties pursuant to the South Carolina Administrative Procedures Act and the file of the Workers' Compensation Commission relative to this claim, the following Findings of Fact are made:

1. The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an accident that occurred on February 16, 2012, while employed by the Employer/Defendant and therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

2. Venue, set in Columbia, South Carolina, is proper.

3. Notice of the Hearing was timely and properly served upon all parties of interest.

4. Claimant has a compensation rate of \$725.47.

5. The Claimant is 45 years of age and has multiple degrees including three Master's Degrees and a Ph.D.

6. The Claimant was a very pleasant and credible witness and I have no reason to disbelieve her. However, the Claimant's own testimony supports the findings set forth herein.

7. The Claimant's work history includes work in the educational field at the collegiate level where the Claimant has taught multiple courses in foreign languages. The Claimant was employed as a professor of French and Spanish at the time of the accident which gave rise to this claim.

8. The medical evidence submitted by the parties confirms that the Claimant sustained physical injuries as a result of a pedestrian/motor vehicle accident on February 16, 2012.

9. The Claimant's accident occurred in a crosswalk located on Hubbard Drive, a street that ran through campus at the University of South Carolina - Lancaster. The Employer did not own or maintain Hubbard Drive or the crosswalk on Hubbard Drive where the accident occurred.

10. The Claimant was leaving the Medford Library located on the south side of Hubbard Drive and was walking to her personal vehicle that she had parked in one of the parking lots maintained by the Employer on the north side of Hubbard Drive.

11. The Claimant had been reviewing resumes that were placed on reserve at the Medford Library just prior to her accident.

12. The Employer did not assign parking to staff/faculty or dictate what parking lots could be used by staff or faculty and the selection of parking was left to the discretion of employees.

13. The parking lot selected by the Claimant was adjacent to the Carole Ray Dowling Building. The evidence establishes that other parking lots were located on the north side of Hubbard Drive as well as the south side of Hubbard Drive. By the Claimant's own admission, she did not check all of the parking lots located on the south side of Hubbard Drive or a second parking lot located on the north side of Hubbard Drive before making her decision to park her car in the parking lot she selected.

14. The burden is on the Claimant to establish that an accident arose out of and in the course and scope of her employment.

15. The Claimant had failed to carry her burden of proof that the accident which gave rise to this claim arose out of and in the course and scope of her employment. The Claimant's injuries occurred in a public street that was not owned or maintained by the Employer.

16. The Claimant is not entitled to any benefits under the Workers' Compensation Act as a result of the accident alleged herein.

VI. CONCLUSIONS OF LAW

Under the foregoing findings of fact, and accordingly, as provided in the South Carolina Code, as amended, the following Conclusions of Law are made:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. The Claimant failed to carry her burden of proving an injury by accident within the course and scope of her employment on February 16, 2012. S.C. Code Ann. §42-1-160 (1976).

3. After a careful review of the case law cited by the Claimant as well as the case law cited by the Defendants, I find the case of Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E. 2d 384 (S.C. 1987) to be directly on point with this case. In this case, as in Howell, the Claimant was injured on a public street that was not owned or maintained by the Employer and her claim was denied.

4. All benefits under the S.C. Workers' Compensation Act are hereby denied. Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E. 2d 384 (S.C. 1987).

ORDER

IT IS, THEREFORE, ORDERED;

1. The Claimant failed to prove an injury by accident arising out of and in the course and scope of her employment on February 16, 2012.

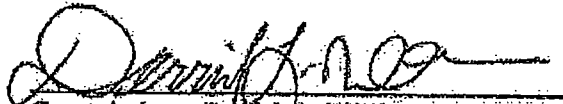
2. That all benefits under the S.C. Workers' Compensation Act are hereby denied. Howell v. Pacific Columbia Mills, 291 S.C.

469, 354 S.E. 2d 384 (S.C. 1987).

3. No hearing costs are assessed in this matter.

IT IS SO ORDERED.

South Carolina Workers'
Compensation Commission


Commissioner Derrick L. Williams

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

November 9, 2012

By: Renee Smith, Administrative Assistant to Commissioner Williams

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



WCC File #:

Carrier File #:

Carrier Code #:

Employer FEIN #:

Claimant's Name: Nathalia Davaut SSN: 491.04.0544 Employer's Name: University of South Carolina - Lancaster
Address: 313 Cape Breton Trail
City: Gastonia State: NC Zip: 28056 City: _____ State: _____ Zip: _____
Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: State Accident Fund
Preparer's Name: Paul Reeves Law Firm: Blackwell Trialman Reeves & Myers Preparer's Phone #: (803) 929-0001

Complete each information blank. To request a hearing, check Box 13b. Indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma Date of Injury or Illness: February 18, 2012

1a. The claimant sustained an injury to back, neck, arm, hand, wrist, fingers, thumb, and shoulder (Part(s) of body injured) on 02/16/12 (Month/Day/Year) in Lancaster county, state of SC

Body part(s) affected are: pelvis, both lower extremities, internal organs.

1b. Briefly describe how the accident occurred. Claimant, while at employment, struck by vehicle.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on February 18, 2012 (Month/Day/Year) in the following manner: Accident reported to Claimant's supervisor by another employee.

6. Due to injury, the claimant is in need of (check one):

☒ (a) medical examination and treatment for: all injuries listed above

☒ (b) additional medical examination and treatment for: all injuries listed above

7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 2/16/2012 to present

8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☒ (1) General Disability: ☐ Total ☒ (2) Specific Disability: ☐ Total ☒ Partial

☒ (3) Wage Loss ☐ Partial

9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: Scarring

10a. At the time of the injury, the Claimant was paid weekly wages of \$ 988.46, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:

None

11a. Further grounds or unusual aspects of claim:

None known at this time.

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:

Spring Memorial Hospital, 500 West Meeting Street, Lancaster, SC 29720, Caruthers Medical Center, 1000 Boyda Blvd, Charlotte, NC 28203, Liberty Nursing and Rehab, 3700 Shennick Dr, Charlotte, NC 28215

11c. To the best of your knowledge, did you have any prior permanent disability? no
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper:

☒ 13a. I am filing a claim. I am not requesting a hearing at this time.

☐ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: _____

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: Paul Reeves Title: Claimant's Attorney

Email: Paul@PLRLawfirm.com

Date: 4-17-12

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50

Revised 9/07

Employee's Notice of Claim and/or
Request for Hearing

50

ROA 20

3

South Carolina Workers Compensation Commission

WCC File Number:

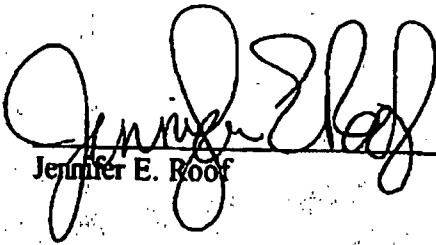
Emp Code No.:

Nathalie Davaut v. University of South Carolina - Lancaster

I, Jennifer E. Roof, Paralegal for the attorney for the Claimant, do hereby certify that I served the Form 50 in the above-captioned matter via U.S. Mail, with proper postage affixed hereto, on the 17th day of April, 2012, addressed to the attorney(s) listed below:

State Accident Fund
ATTN: Norma Johnson
PO Box 102100
Columbia, SC 29221-5000

Tracey A. Mobley
Director of Human Resources
University of South Carolina Lancaster
Post Office Box 889
Lancaster, SC 29721


Jennifer E. Roof

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



WCC File #: 1203664
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Nathalie Davaut SSN: 491.04.0544 Employer's Name: University of South Carolina - Lancaster
Address: 313 Cape Breton Trail Address: _____
City: Gastonia State: NC Zip: 28056 City: _____ State: _____ Zip: _____
Home Phone: () - Work Phone: () - Insurance Carrier: State Accident Fund
Preparer's Name: Paul Reeves Law Firm: Blackwell Trimnal Reeves & Myers Preparer's Phone #: (803) 929 - 0001

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: February 16, 2012

☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury to see attached (Part(s) of Body Injured) on 02/16/12 (Month/Day/Year) in Lancaster county, state of SC.

1b. Body part(s) affected are: Hip, Pelvis, rt lower extremity, spleen, liver, urinary tract, renal system, blood, psychological overlay

Briefly describe how the accident occurred. Claimant, while at employment, struck by vehicle.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on February 16, 2012 (Month/Day/Year) in the following manner:

Accident reported to Claimant's supervisor by another employee.

☐ 6. Due to injury, the claimant is in need of (check one):

☒ (a) medical examination and treatment for: all injuries listed above

☒ (b) additional medical examination and treatment for: all injuries listed above

☐ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 2/16/2012 to present

☐ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☒ (1) General Disability:

☒ Total

☒ (2) Specific Disability:

☒ Total

☒ (3) Wage Loss

☐ Partial

☐ Partial

☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: Scarring

10a. At the time of the injury, the Claimant was paid weekly wages of \$ 988.46, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: None

11a. Further grounds or unusual aspects of claim: None known at this time.

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:

Spring Memorial Hospital, 800 West Meeting Street, Lancaster, SC 29720, Carolinas Medical Center, 1000 Blythe Blvd, Charlotte, NC 28232, Liberty Nursing and Rehab, 3700 Shamrock Dr, Charlotte, NC 28215

11c. To the best of your knowledge, did you have any prior permanent disability? no
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper:

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

☐ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 1.5 Hours

I verify the contents of this form are accurate and true to the best of my knowledge.

Paul Reeves
Preparer's Signature

Claimant's Attorney

Title

Paul@PLRLawfirm.com

Email

5.18.2012
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50
Revised 9/07

50

Employee's Notice of Claim and/or
Request for Hearing

ROA 22

1a.

Hip, Pelvis, Right femur, spleen, liver, urinary tract, renal failure, anemia, and psychological overlay

11b.

Michael J. Bosse, MD
Carolinas Medical Center Orthopaedic Surgery
1025 Morehead Medical Drive
Suite 300
Charlotte, NC 28204

Springs Memorial Hospital
800 West Meeting Street
Lancaster, SC 29720

Carolinas Medical Center
1000 Blythe Blvd
Charlotte, NC 28232

Liberty Nursing and Rehab
3700 Shamrock Dr
Charlotte, NC 28215

South Carolina Workers Compensation Commission

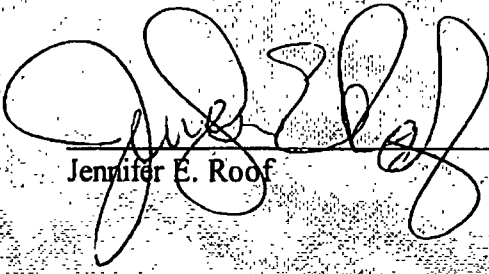
WCC File Number: 1203664

Nathalie Davaut v. University of South Carolina - Lancaster

I, Jennifer E. Roof, Paralegal for the attorney for the Claimant, do hereby certify that I served the Amended Form 50 in the above-captioned matter via U.S. Mail, with proper postage affixed hereto, on the 18th day of May, 2012, addressed to the attorney(s) listed below:

State Accident Fund
ATTN: Norma Johnson
PO Box 102100
Columbia, SC 29221-5000

Tracey A. Mobley
Director of Human Resources
University of South Carolina Lancaster
Post Office Box 889
Lancaster, SC 29721


Jennifer E. Roof

South Carolina Workers' Compensation Commission

1612 Marion Street • Post Office Box 1715

Columbia, South Carolina 29202-1715

(803) 737-5739

www.wcc.sc.gov



WCC File #: 1203664

Carrier File #: 2012-1165

Carrier Code #:

Employer F IN #:

Claimant's Name: Nathalie Davaut SSN: 491-04-0544

Employer's Name: University of South Carolina

Address: 313 Cape Breton Trail

Address: 1600 Hampton Street

City: Gastonia State: NC Zip: 28056

City: Columbia State: SC Zip: 29208

Home Phone: () Work Phone: ()

Date of Injury: 02/16/12

Insurance Carrier: State Accident Fund

Preparer's Name: Ellen Goodwin, Esq.

Law Firm: State Accident Fund

Preparer's Phone #: (803) 896-5891

Date of Injury or Illness: 02/16/12

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
No injury by accident nor occupational disease.
2. It is Admitted both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is Admitted the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
Injury did not arise out of and in the course of employment.
5. It is Denied notice of injury was given the employer. The reasons for denial are:
To be determined.
6. It is Denied the employee Needs / Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
See #1 and #4.
7. It is Denied the employee is entitled to temporary total disability for the period(s) of :
See #1 and #4.
8. It is Denied the employee is permanently disabled. The reasons for denial are:
See #1 and #4.
9. It is Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ 1,199.90 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
12. Estimated time needed for hearing: 30 minutes

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: Paul L. Reeves, Esquire

Judicial Director, SCWCC

Address: P.O. Box 11126, Columbia, SC 29211

P.O. Box 1715, Columbia, SC 29202-1715

on the 7th day of June, 2012 by ☒ first class mail ☐ personal service ☐ certified mail

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Asst. Chief Counsel

Title

Egoodwin@saf.sc.gov

Email

June 7, 2012

Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51

Revised 9/07

51

Employer's Answer to Request for Hearing

ROA 25

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 1203664
Carrier File #: 2012001165
Carrier Code #: 500 - SF
Employer FEIN #: 570000H27

Claimant's Name: Nathalie Davaut SSN: 491-04-0544 Employer's Name: University of South Carolina
Address: 313 Cape Breton Trail Address: 1600 Hampton St., Suite 705
City: Gastonia State: NC Zip: 28056 City: Columbia State: SC Zip: 29208
Home Phone: 704 865 7581 Work Phone: _____ Insurance Carrier: State Accident Fund
Preparer's Name: Paul L. Reeves Law Firm: Blackwell Trimnial LLC Preparer's Phone #: 803 929 0001

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 2/16/2012

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Please see attached Grounds for Review

SCWCC
NOV 26 2012
JUDICIAL

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Paul Hendrix, Esquire

Name

50 Applewood Lane, Spartanburg, S.C. 29307

on the 21st day of November, 2012 by ☒ first class mail ☐ personal service ☐ certified mail.

Paul L. Reeves
Preparer's Signature

Attorney for Claimant
Title

11-21-2012
Date

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

GROUND'S FOR REVIEW

1. Whether the Single Commissioner erred as a matter of law in holding the mere act of crossing a public street within the boundaries of the Employer's property removed the Employee from the course and scope of her employment even though: (A) the Employee had not yet left her place of employment; and (B) the employee was still engaged in a duty, task or special errand for the benefit of the employer.
2. Whether the Single Commissioner erred as a matter of law in holding the factual situation was controlled by Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987).
3. Whether the Single Commissioner erred as a matter of law in failing to award benefits for medical treatment and temporary total disability compensation.
4. Whether the Single Commissioner erred as a matter of law in failing to make specific and detailed findings of fact sufficient for appellate review.

**The State of South Carolina
In the Court of Appeals**

Appeal from S.C. Worker's Compensation Commission

Appellate Panel

Susan S. Barden, Commissioner

Avery B. Wilkerson, Commissioner

Gene McCaskill, Commissioner

W.C.C. File No. 1203664

Nathalie I. Davaut,

Appellant,

v.

**University of South Carolina,
and State Accident Fund,**

Respondents.

NOTICE OF APPEAL

Nathalie I. Davaut appeals from the decision and order of the Appellate Panel of the S.C. Worker's Compensation Commission, filed July 22, 2013. The undersigned Counsel for the Appellant received the decision and order on July 22, 2013.

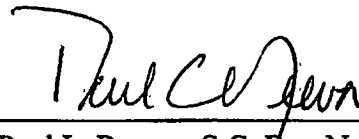
Pursuant to S.C. Code Ann. §42-17-60, Appellant states the following grounds for appeal, while reserving the right to restate the issues in her brief in accordance with Rule 208(B), SCACR:

1. The Commission erred in concluding that the Employee/Claimant failed to carry her burden of proving an injury by accident arising out of and in the course and scope of her employment on February 16, 2012, because she had been in the University Library on work-related duties and she was walking to her car that was parked in a University owned lot when she was struck by a motorist in a crosswalk on a public street that ran through the Employer/University;
2. The Commission erred in denying benefits to the Employee based on the fact that she was injured when she was crossing a public street because she was crossing that

street after leaving a University library to go to her car which was parked in a parking lot owned and maintained by the Employer University;

3. The Commission erred in denying benefits to the Employee/Claimant based on the fact that there were other University parking areas that might have been available to the Employee because the Employer did not have assigned staff/faculty parking lots/spaces and she was within her rights to choose to park in that particular University lot;
4. The Commission erred in concluding that the Employee/Claimant was not engaged in a duty, task or special errand for the benefit of the Employer when the accident occurred because she had gone to the library to review resumes as part of her work-related duties as a University professor;
5. The Commission erred in concluding that benefits should be denied under the Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987), because in that case the employee was injured before ever setting foot on the employer's property, while in this case the Employee/Claimant had been at work and she had yet to access the ability to egress the University Employer's premises.

Respectfully submitted,



Paul L. Reeves, S.C. Bar. No. 4671

BLACKWELL, TRIMNAL, REEVES & MYERS, LLC

1527 Blanding Street // P.O. Box 11126

Columbia, South Carolina 29211

803.929.0001 // 803.929.0927 Facsimile

Paul@PReevesLaw.com

August 20, 2013

OTHER COUNSEL OF RECORD:

Paul L. Hendrix

Jones & Hendrix, P.A.

50 Applewood Lane

Spartanburg, SC 29307-2225

(864) 583-5577

paulhendrix@jonesandhendrix.com

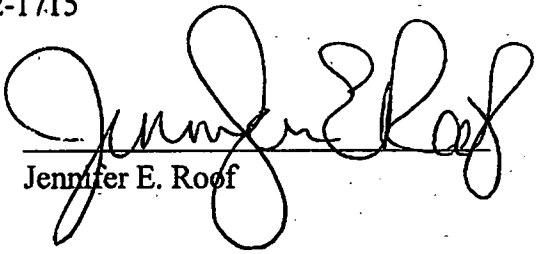
Certificate of Service

I certify that I have served the Notice of Appeal upon the Respondents by depositing a copy of it in the United States Mail, postage prepaid, on August 20, 2013, to the Counsel of Record, as listed below:

Paul L. Hendrix
Jones & Hendrix, P.A.
50 Applewood Lane
Spartanburg, SC 29307-2225

And, I certify that I have served the Notice of Appeal upon the South Carolina Worker's Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on August 20, 2013, as listed below:

Virginia Crocker, Judicial Director
S.C. Worker's Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715



Jennifer E. Roof

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1203664

EMPLOYEE/CLAIMANT: NATALIE DAVAUT

EMPLOYER: UNIVERSITY OF SOUTH CAROLINA

INSURER: STATE ACCIDENT FUND

 COPY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION HEARING, THE
WITHIN HEARING WAS TAKEN ON THE 25TH DAY OF SEPTEMBER, 2012,
COMMENCING AT THE HOUR OF 10:08 A.M., IN COLUMBIA, SOUTH CAROLINA,
BEFORE THE HONORABLE DERRICK L. WILLIAMS, ATTENDED BY COUNSEL AS
FOLLOWS:

SHEILA ROBISON
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

APPEARANCES

PAUL L. REEVES, ESQUIRE, OF THE FIRM
DAVID REESE BLACKWELL, ESQUIRE, OF THE FIRM
BLACKWELL, TRIMNAL, REEVES & MYERS, L.L.C.
P.O. BOX 11126
COLUMBIA, SOUTH CAROLINA 29211

ATTORNEY FOR THE EMPLOYEE,

PAUL L. HENDRIX, ESQUIRE
50 APPLEWOOD LANE
SPARTANBURG, SOUTH CAROLINA 29307

ATTORNEY FOR THE EMPLOYER/INSURER.

I N D E X

PAGE

NATALIE DAVAUT:

DIRECT EXAMINATION BY MR. REEVES.....	7
CROSS-EXAMINATION BY MR. HENDRIX.....	16
RE-DIRECT EXAMINATION BY MR. REEVES.....	24
RE-CROSS EXAMINATION BY MR. HENDRIX.....	27
CERTIFICATE OF NOTARY PUBLIC.....	29

1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * * *

6 BY COMMISSIONER WILLIAMS:

7 TODAY'S DATE IS SEPTEMBER 25TH, 2012. THIS IS
8 A WORKERS' COMPENSATION CASE OF MS. NATALIE DAVAUT
9 VERSUS U.S.C. STATE ACCIDENT FUND IS THE CARRIER.
10 ATTORNEY PAUL REEVES AND DAVID BLACKWELL FOR THE
11 CLAIMANT. ATTORNEY PAUL HENDRIX FOR THE EMPLOYER
12 AND CARRIER. WCC FILE NUMBER 1203664. DATE OF
13 ACCIDENT ALLEGED AS FEBRUARY 16TH OF 2012. AVERAGE
14 WEEKLY WAGE OF \$1,199.90 YIELDS A CORRESPONDING COMP
15 RATE OF \$725.47. HEARING IS SET ON THE FORMS 50 AND
16 51. I DO HAVE APA SUBMISSIONS FROM THE PARTIES AND
17 A SLEW OF DEPOSITIONS: A DEPOSITION OF DAVID HELWER,
18 H-E-L-W-E-R; OF DR. JOHN RUTLEDGE, R-U-T-L-E-D-G-E;
19 DR. BRUCE NIMS, N-I-M-S; AND DR. JOHN CATALANO,
20 C-A-T-A-L-A-N-O.

21 ANY OBJECTIONS TO JURISDICTION, VENUE OR THE
22 APA SUBMISSIONS, MR. REEVES?

23 BY MR. REEVES:

24 NONE FROM THE CLAIMANT.

25 BY COMMISSIONER WILLIAMS:

1 ALL RIGHT.. MR. HENDRIX?

2 BY MR. HENDRIX:

3 NONE FROM THOSE LISTED, BUT WE HAD ALSO HANDED
4 UP THE CLAIMANT'S DEPOSITION, I BELIEVE.

5 BY COMMISSIONER WILLIAMS:

6 HANG ON, LET ME MAKE SURE I'VE GOT IT. YES,
7 AND THE CLAIMANT'S DEPOSITION HAS ALSO BEEN HANDED -
8 - AND IT'S DR. DEVAUT?

9 BY THE WITNESS:

10 YES.

11 BY COMMISSIONER WILLIAMS:

12 THE COMMISSION FILE IS PART OF THE RECORD WITH
13 THE EXCEPTION OF ANY SELF-SERVING DECLARATIONS OR
14 ANY UNSTIPULATED MEDICAL REPORTS.

15 DENIED CLAIM. DR. DEVAUT ALLEGES AN INJURY TO
16 HER RIGHT LEG, RIGHT LOWER EXTREMITY, HER LEFT HIP,
17 SPLEEN, PELVIS, AND HER PSYCHE FROM THIS ACCIDENT.
18 SHE WOULD SEEK FURTHER MEDICAL TREATMENT IN THIS
19 CASE FOR A COMPENSABLE INJURY BY ACCIDENT, TEMPORARY
20 TOTAL FROM MARCH 23RD, 2012, THROUGH MAY 15TH, 2012,
21 AND REIMBURSEMENT FOR ALL CAUSALLY RELATED MEDICALS
22 TO DATE. SHE WOULD ARGUE THAT UNDER THE CASE LAW,
23 WILLIAM'S CASE AND SOME OTHER CASES, THAT SHE WAS IN
24 THE COURSE AND SCOPE OF HER JOB DUTIES WHEN SHE WAS
25 INJURED.

1 THE EMPLOYER AND CARRIER DENIES THIS CLAIM IN
2 FULL. THEY DO NOT BELIEVE DR. DAVAUT CAN PROVE HER
3 -- CAN MEET HER BURDEN OF PROVING A COMPENSABLE
4 INJURY BY ACCIDENT. THEY WOULD CITE THE HOWELL
5 CASE, H-O-W-E-L-L. THEY WILL RELY ON THAT IN THAT
6 SHE WAS NOT ON PREMISES MAINTAINED OR CONTROLLED BY
7 THE EMPLOYER IN THIS CASE WHEN THE ACCIDENT
8 HAPPENED, AND THAT ALL BENEFITS SHOULD BE DENIED IN
9 THIS CASE.

10 THAT BEING STATED, DO THE PARTIES WISH TO STATE
11 ANYTHING ELSE, MR. REEVES?

12 BY MR. REEVES:

13 NOT AT THIS TIME, YOUR HONOR.

14 BY COMMISSIONER WILLIAMS:

15 ALL RIGHT. MR. HENDRIX?

16 BY MR. HENDRIX:

17 YOUR HONOR, I THINK WE CAN, JUST FOR SAKE OF
18 BREVITY, STIPULATE THAT THE UNIVERSITY DID NOT OWN
19 HUBBARD DRIVE OR THE CROSSWALK ON HUBBARD DRIVE
20 WHERE THE ACCIDENT OCCURRED IN THAT TIME OF THE
21 ACCIDENT. MS. DAVAUT WAS IN THE CROSSWALK ON
22 HUBBARD DRIVE.

23 BY MR. REEVES:

24 NO OBJECTION.

25 BY COMMISSIONER WILLIAMS:

1 OKAY. ALL RIGHT. LET'S SWEAR DR. DAVAUT IN
2 PLEASE.

3 * * * * * * * * * * * * * * * *

4 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH
5 THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH
6 CONCERNING THE MATTER HEREIN:

7 * * * * * * * * * * * * * * * *

8 NATALIE DAVAUT

9 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS FOLLOWS:

10 DIRECT EXAMINATION BY MR. REEVES:

11 Q. MS. DAVAUT, I HAVE A FEW QUESTIONS, OKAY. FIRST OF
12 ALL, WHAT IS YOUR POSITION AT THE UNIVERSITY TODAY?

13 A. I'M AN INSTRUCTOR.

14 Q. IN WHAT COURSE?

15 A. IN FOREIGN LANGUAGES; I TEACH BOTH FRENCH AND
16 SPANISH.

17 Q. AT THE TIME OF THIS INCIDENT, WERE YOU AN INSTRUCTOR
18 IN THAT SAME POSITION?

19 A. YES.

20 Q. MS. DAVAUT, ON THE DATE OF THE ACCIDENT, YOU PARKED
21 YOUR VEHICLE NORTH OF HUBBARD DRIVE. WHOSE PROPERTY
22 DID YOU PARK ON?

23 A. THIS IS THE UNIVERSITY'S PROPERTY.

24 Q. OKAY. AND HOW DID YOU GO TO YOUR OFFICE THAT DAY?

25 A. WELL, AFTER I PARKED THE CAR, I HAD TO CROSS HUBBARD

1 DRIVE SO I USED THE CROSSWALK, AND THEN I GOT TO THE
2 SIDE PART OF THE CAMPUS AT THAT POINT, WHICH IS
3 WHERE MY MAIN BUILDING, MY OFFICE BUILDING, IS
4 LOCATED.

5 Q. ALL RIGHT. WHERE IS YOUR -- WHICH BUILDING IS YOUR
6 OFFICE LOCATED IN?

7 A. IT'S IN THE MEDFORD BUILDING.

8 Q. DOES THAT BUILDING ALSO HOUSE THE LIBRARY?

9 A. CORRECT.

10 Q. ALL RIGHT. WHAT ARE YOUR NORMAL WORK HOURS?

11 A. IT VARIES EVERY SEMESTER DEPENDING ON WHEN I TEACH
12 MY CLASSES. IT JUST SO HAPPENED THAT THIS LAST
13 SEMESTER I HAD A CLASS AT ELEVEN, SO I NEEDED TO BE
14 ON CAMPUS BY ELEVEN AT THE LATEST. SOMETIMES I HAD
15 MEETINGS EARLIER SO I WOULD HAVE BEEN ON CAMPUS
16 EARLIER. AND THEN I WORK UNTIL LATE AFTERNOON ONCE
17 I'M DONE WITH TEACHING CLASSES AND BEING IN THE
18 OFFICE TO HELP STUDENTS OUT.

19 Q. OKAY. WHAT TIME DID YOU NORMALLY LEAVE YOUR OFFICE
20 IN THE AFTERNOONS?

21 A. ONCE AGAIN, IT CAN BE ANYWHERE BETWEEN FOUR AND SIX.

22 Q. ON THIS PARTICULAR DAY, WHICH I BELIEVE WAS A
23 THURSDAY, WHY DID YOU PARK IN THE NORTH -- THE
24 PARKING LOT NORTH OF HUBBARD DRIVE?

25 A. BECAUSE WHEN I PULLED UP TO CAMPUS, I REALIZED THAT

1 THE PARKING LOTS THAT WERE CLOSER TO MY BUILDING,
2 THERE WERE NO FACULTY SLOTS AVAILABLE, AND THE
3 PARKING LOT SEEMED TO BE TOTALLY FULL. SO I DECIDED
4 TO PARK ON THE OTHER SIDE OF THE STREET, BECAUSE I
5 DID SEE A FEW SPOTS AVAILABLE RIGHT THEN AND THERE.

6 Q. BASED ON YOUR -- ON WHAT YOU'VE SEEN, DO OTHER
7 FACULTY MEMBERS USE THAT LOT WHERE YOU PARKED THAT
8 DAY?

9 A. SOMETIMES, PROBABLY NOT VERY OFTEN.

10 Q. IN THIS PARTICULAR EVENT, ON THE AFTERNOON, DID YOU
11 LEAVE AT YOUR NORMAL TIME THAT DAY?

12 A. NO, DEFINITELY NOT .

13 Q. WOULD YOU TELL THE COMMISSIONER WHY YOU DID NOT
14 LEAVE ON THE NORMAL TIME THAT DAY?

15 A. BECAUSE I WAS ON THE COMMITTEE THAT WAS WORKING
16 TOWARDS HIRING SOMEBODY FOR THE NEXT SCHOOL YEAR.
17 AND ALL OF THE MATERIAL THAT WE HAD TO REVIEW WAS IN
18 RESERVE ON THE -- AT THE LIBRARY. AND I RECEIVED AN
19 EMAIL THAT SAME AFTERNOON AROUND TWO OR THREE
20 STATING THAT WE WERE GOING TO MEET WITHIN THE NEXT
21 FEW DAYS AND WE HAD TO ALL GO TO THE LIBRARY AND
22 REVIEW THE MATERIALS. SO I DECIDED TO STAY LATE ON
23 CAMPUS TO DO THAT.

24 Q. WAS THE TASK OF REVIEWING THESE RESUMES SOMETHING
25 YOU NORMALLY DID IN YOUR EVERYDAY WORK?

1 A. NO.

2 Q. HOW DID YOU COME TO BE INVOLVED IN THAT COMMITTEE,
3 WHO ASKED YOU TO DO THAT?

4 A. MY IMMEDIATE SUPERVISOR SENT ME AN EMAIL REQUESTING
5 ME TO BE ON THE COMMITTEE ABOUT A FEW WEEKS BEFORE
6 THE ACCIDENT.

7 Q. ALL RIGHT. AND YOU AND OTHER PEOPLE WERE ON THE
8 COMMITTEE?

9 A. YES.

10 Q. AND YOU AND THE OTHER COMMITTEE MEMBERS WERE TO
11 REVIEW THE RESUMES AND THEN MAKE RECOMMENDATIONS?

12 A. CORRECT.

13 Q. WHO IS YOUR SUPERVISOR?

14 A. DR. NIMS.

15 Q. AND IS THAT WHO YOU RECEIVED THE EMAIL FROM?

16 A. YES.

17 Q. DID YOU AGREE TO DO THAT?

18 A. OF COURSE.

19 Q. WHY DID YOU AGREE TO DO THAT?

20 A. BECAUSE MY CONTRACT STIPULATES THAT I NEED TO TEACH
21 CLASSES, HAVE OFFICE HOURS WHEN I'M AVAILABLE FOR
22 STUDENTS, AND THEN DO SOME SERVICE FOR THE
23 UNIVERSITY. AND PART OF THE SERVICE THAT WE CAN DO
24 IS TO SERVE ON COMMITTEES.

25 Q. OKAY. SO, YOU TOOK ON THIS TASK TO REVIEW. ON THAT

1 PARTICULAR DAY, WHAT TIME ROUGHLY DID YOU START YOUR
2 REVIEW OF THE MATERIAL THAT WAS ON RESERVE AT THE
3 LIBRARY?

4 A. I DO NOT RECALL THE EXACT TIME WHEN I WENT TO THE
5 LIBRARY, BUT IT WOULD HAVE BEEN SOMEWHERE AROUND
6 FIVE-THIRTY OR SIX. AND I WAS THINKING THAT I WAS
7 GOING TO TRY TO MAKE AS MUCH HEADWAY AS POSSIBLE.
8 AND BY THE TIME IT GOT TO BE NINE O'CLOCK THAT THE
9 LIBRARY WAS CLOSING, I WAS ABOUT HALFWAY THROUGH.

10 Q. DO YOU, ON A NORMAL WORKDAY, STAY 'TIL NINE O'CLOCK
11 AT THE UNIVERSITY?

12 A. NO.

13 Q. YOU STAYED THIS TIME TO COMPLETE OR ATTEMPT TO
14 COMPLETE SOME OF THE TASK?

15 A. CORRECT.

16 Q. WHAT TIME DID YOU LEAVE THE LIBRARY?

17 A. I WOULD SAY ABOUT TWO MINUTES AFTER NINE, ONE OR TWO
18 MINUTES AFTER NINE.

19 Q. WAS THERE AN EMPLOYEE AT THE LIBRARY THAT WAS
20 CLOSING UP?

21 A. YES.

22 Q. DO YOU KNOW HIS NAME?

23 A. DAVID HELWER.

24 Q. DID MR. HELWER LEAVE AFTER YOU DID?

25 A. AFTER ME, DEFINITELY, BECAUSE HE STILL HAD TO TURN

1 OFF SOME OF THE LIGHTS AND I GUESS LOCK THE DOOR AND
2 SOMETHING LIKE THAT. MAYBE GET HIS PERSONAL ITEMS.

3 Q. ALL RIGHT. WHEN YOU LEFT THE LIBRARY, WHERE DID YOU
4 GO?

5 A. I WALKED STRAIGHT TO MY CAR. WELL, ALMOST AS
6 STRAIGHT AS I COULD.

7 Q. OKAY. SO, YOU -- DID YOU STOP ANYWHERE OR GO
8 ANYWHERE ELSE BETWEEN THE TIME YOU LEFT THE LIBRARY
9 AND THE TIME YOU GOT TO THE CROSSWALK?

10 A. ABSOLUTELY NOT.

11 Q. WHAT HAPPENED WHEN YOU GOT TO THE CROSSWALK?

12 A. WHAT HAPPENED WHEN I GOT TO THE CROSSWALK, I CHECKED
13 THAT NO ONCOMING VEHICLE WERE, YOU KNOW, IN THE
14 ROAD, AND THEN I STARTED CROSSING THE ROAD THINKING
15 ABOUT WHAT I WAS GOING TO DO. I WAS DEBATING AT
16 THAT POINT WHETHER GOING HOME FIRST, I HADN'T HAD
17 DINNER YET, OR GOING SOMEWHERE IN TOWN TO GRAB SOME
18 DINNER AND REVIEW MY NOTES AT THE SAME TIME. AND
19 THAT'S WHEN THE VEHICLE CAME OUT OF NOWHERE IT
20 SEEMED LIKE AND HIT ME. I WAS ALMOST DONE CROSSING
21 THE ROAD WHEN THAT HAPPENED THOUGH.

22 Q. THE LOCATION WHERE THE ACCIDENT TOOK PLACE, IS THAT
23 THE SAME OR DIFFERENT LOCATION WHERE YOU CAME ONTO
24 THE PROPERTY OF THE UNIVERSITY?

25 A. NO, IT'S THE EXACT SAME ONE.

1 Q. YOU MENTIONED YOU WERE GOING TO REVIEW SOME NOTES.
2 DID YOU TAKE NOTES WHILE YOU WERE REVIEWING THE
3 RESUMES?

4 A. YES.

5 Q. DID YOU REMOVE THOSE NOTES WITH YOU TO TAKE HOME?

6 A. OF COURSE, I HAD THEM WITH ME IN MY BAG.

7 Q. WHAT WAS YOUR INTENT TO DO WITH THE NOTES?

8 A. TO REVIEW THEM.

9 Q. OKAY. AND HAD THERE BEEN A SCHEDULED MEETING YET
10 FOR YOU AND THE OTHER FOLKS TO COME TOGETHER TO MAKE
11 YOUR RECOMMENDATIONS?

12 A. THERE WAS NOT A SPECIFIC DATE YET. MY SUPERVISOR
13 WAS TRYING TO GET EVERYBODY'S SCHEDULE SO THAT HE
14 COULD ACTUALLY COME UP WITH A SPECIFIC DAY AND TIME.
15 BUT HE DID SAY THAT IT WAS GOING TO BE WITHIN THE
16 NEXT WEEK.

17 Q. Okay. WAS THERE ANYWAY TO ACCESS THE PARKING LOT
18 WHERE YOU PARKED YOUR CAR WITHOUT CROSSING HUBBARD
19 DRIVE?

20 A. NOT FROM WHERE MY OFFICE IS LOCATED OR THE LIBRARY.

21 Q. GOING BACK TO THE TASK THAT MR. NIMS ASKED YOU TO
22 DO, HAD YOU RECEIVED EMAILS GIVING YOU INSTRUCTIONS
23 AS TO WHAT YOU WERE TO DO?

24 A. YES.

25 Q. AND WHO DID THOSE COME FROM?

1 A. WELL, IT WAS PROFESSOR NIMS AND MS. MOBLEY.

2 Q. OKAY. AND MS. MOBLEY, WHAT IS HER POSITION, IF YOU
3 KNOW?

4 A. SHE IS THE HUMAN RESOURCES DIRECTOR.

5 Q. AS FAR AS THE MATERIAL THAT YOU REVIEWED, WERE YOU
6 ABLE -- WOULD YOU HAVE BEEN ABLE TO, IF YOU KNOW,
7 REMOVE THAT MATERIAL AND TAKE IT WITH YOU?

8 A. AS FAR AS I KNOW, NO. THIS IS THE THIRD TIME -- OR
9 THIS WAS RATHER THE THIRD TIME I WAS SERVING ON A
10 HIRING COMMITTEE, AND MY UNDERSTANDING IS THAT THE
11 MATERIAL IS TO -- IS NOT TO BE TAKEN OUT OF THE
12 LIBRARY. I EVEN ASKED THAT QUESTION, THAT SAME WEEK
13 THAT I HAD THE ACCIDENT, IF I COULD TAKE SOME OF IT
14 TO MY OFFICE. THAT WAY I COULD BE THERE FOR
15 STUDENTS AND YET, YOU KNOW, DO THAT JOB AT THE SAME
16 TIME. AND I WAS TOLD, "NO," THAT IT HAD TO REMAIN
17 ON RESERVE.

18 Q. SO, AGAIN, THE TASK THAT YOU UNDERTOOK TO REVIEW TO
19 THE RESUMES HAD TO BE PERFORMED IN THE LIBRARY?

20 A. IN THE LIBRARY.

21 Q. AND AT THE DIRECTION OF YOUR SUPERVISOR?

22 A. YES.

23 Q. WHICH IS NOT SOMETHING YOU NORMALLY DID?

24 A. NO.

25 Q. NOW, ONE OF THE QUESTIONS ABOUT THE ISSUES WITH THE

1 PREMISES, IS THERE A SIDEWALK ON THE NORTH SIDE OF
2 HUBBARD DRIVE?

3 A. NO, THERE IS NOT.

4 Q. OKAY. IS THERE A SIDEWALK ON THE SOUTH SIDE OF
5 HUBBARD DRIVE?

6 A. IN SOME AREAS, YES, BUT NOT ALL THROUGH OUT.

7 Q. AND YOU WERE -- WHEN YOU PARKED YOUR CAR TO COME IN
8 THAT MORNING, YOU WENT FROM, IN ESSENCE, NORTH TO
9 SOUTH?

10 A. CORRECT.

11 Q. ALL RIGHT. NOW, DOES HUBBARD DRIVE DISSECT THE
12 ENTIRE CAMPUS?

13 A. PRETTY MUCH, YES.

14 Q. OKAY.

15 A. WELL, PART OF HUBBARD DRIVE, UH-HUH.

16 Q. OKAY. AND IT MOVES -- IT'S SPACED EAST TO WEST; IS
17 THAT CORRECT?

18 A. YES, MORE OR LESS. IT'S NORTH EAST TO SOUTH WEST,
19 BUT MOSTLY EAST WEST.

20 Q. ONE FINAL QUESTION. AS TO THE PARKING THAT YOU --
21 EXCUSE ME, THE LOCATION OF THE PARKING ON THAT
22 PARTICULAR DAY, WHAT WAS YOUR UNDERSTANDING ABOUT
23 THE USE OF THAT PARKING LOT FOR YOU AS A FACULTY
24 MEMBER?

25 A. THE PARKING LOT WHERE I PARKED?

1 Q. YES, MA'AM.

2 A. THIS IS A PARKING LOT THAT IS AVAILABLE TO FACULTY,
3 STUDENTS, STAFF, AND THEN PEOPLE IN THE COMMUNITY
4 BECAUSE IT'S LOCATED CLOSE TO A BUILDING WHERE WE
5 HAVE SEVERAL HEALTH PROGRAMS THAT ARE OPEN TO THE
6 WHOLE COMMUNITY.

7 BY MR. REEVES:

8 MS. DAVAUT, THAT'S ALL I HAVE. PLEASE ANSWER
9 ANY QUESTIONS COUNSEL MAY HAVE.

10 BY COMMISSIONER WILLIAMS:

11 OKAY. MR. HENDRIX.

12 CROSS EXAMINATION BY MR. HENDRIX:

13 Q. MS. DAVAUT, GOOD TO SEE YOU AGAIN. A COUPLE OF
14 QUESTIONS.

15 A. YES.

16 Q. AS TO THE QUESTIONS THAT YOUR LAWYER ASKED ABOUT THE
17 SEARCH COMMITTEE, IT WAS A COMPLETELY VOLUNTARY
18 COMMITTEE THAT YOU SERVED ON, CORRECT?

19 A. YES.

20 Q. YOU WEREN'T COMPENSATED BY THE UNIVERSITY FOR ---

21 A. NO.

22 Q. --- SERVING ON THE COMMITTEE? AND WE GO IN DETAIL
23 IN YOUR DEPOSITION, WHICH THE COMMISSIONER HAS TO
24 REVIEW, BUT AS FAR AS ANY REVIEW OF RESUMES, WHEN
25 YOU CHOSE TO DO THAT AND IN TERMS OF GOING TO THE

1 LIBRARY TO REVIEW THOSE, THAT WAS COMPLETELY UP TO
2 YOUR DISCRETION, WAS IT NOT?

3 A. YES, EXCEPT THAT -- LIKE I SAID, THAT SAME AFTERNOON
4 I RECEIVED AN EMAIL SAYING THAT WE WERE GOING TO
5 MEET PRETTY SOON, AND SO I HAD TO GET THE JOB DONE
6 BEFORE THE MEETING.

7 Q. RIGHT, AND THE COMMISSIONER HAS THOSE EMAILS, BUT
8 THERE WAS NO DEADLINE SET IN THE EMAILS THAT HE'LL
9 REVIEW. AND IN FACT, THERE WAS, AT THE TIME OF YOUR
10 ACCIDENT, NOT EVEN A DATE SET FOR THE MEETING,
11 RIGHT?

12 A. NOT A SPECIFIC DATE. IT JUST SAID, "WITHIN THE NEXT
13 WEEK."

14 Q. AND YOUR TEACHING SCHEDULE, DURING THE SPRING
15 SEMESTER OF 2012, IS SUCH THAT YOU TAUGHT CLASSES
16 MONDAY TO THURSDAY, BUT NOT ON FRIDAYS, RIGHT?

17 A. CORRECT.

18 Q. AND IN YOUR DEPOSITION, YOU ADMITTED THAT YOU COULD
19 HAVE COME ON CAMPUS ON FRIDAY TO REVIEW THESE
20 RESUMES HAD YOU CHOSE TO DO THAT?

21 A. YES.

22 Q. IT WAS YOUR DECISION TO REMAIN ON THURSDAY NIGHT TO
23 START REVIEWING THEM?

24 A. YES, TO ME IT WOULD HAVE BEEN THE SAME THING OR EVEN
25 I WOULD HAVE HAD TO, YOU KNOW, DRIVE DOWN TO WORK

1 JUST TO REVIEW THE RESUMES, WHICH I MIGHT HAVE ENDED
2 UP DOING IF I HAD NOT ENDED UP IN THE HOSPITAL
3 BECAUSE, LIKE I SAID, THURSDAY NIGHT I WAS ONLY
4 HALFWAY THROUGH. SO I NEEDED TO COME BACK TO THE
5 LIBRARY TO FINISH THE WORK ANYWAY.

6 Q. THE PARKING LOT, AND I BELIEVE THE COMMISSIONER HAS
7 ---

8 BY MR. HENDRIX:

9 WHAT PAGE IS THAT?

10 BY MR. REEVES:

11 IT'S NUMBER FIVE.

12 BY COMMISSIONER WILLIAMS:

13 IT'S FIVE, YES.

14 CROSS EXAMINATION RESUMED BY MR. HENDRIX:

15 Q. --- EXHIBIT FIVE. THE DIAGRAM IN THE ONE THAT THE
16 COMMISSIONER HAS ACTUALLY IS BLUE -- IS COLORED
17 BLUE.

18 BY COMMISSIONER WILLIAMS:

19 HERE YOU GO.

20 BY MR. HENDRIX:

21 YES, SIR, THANK YOU.

22 CROSS EXAMINATION RESUMED BY MR. HENDRIX:

23 Q. ON EXHIBIT FIVE, EVERYTHING COLORED IN BLUE DEPICTS
24 PARKING SPACES AVAILABLE TO ANYONE VISITING CAMPUS;
25 IS THAT CORRECT?

1 A. CORRECT, STAFF, FACULTY, STUDENTS, AND VISITORS.

2 Q. ALL RIGHT. AND IF YOU'RE LOOKING AT DIAGRAM -- OR
3 EXHIBIT FIVE, YOU ENTERED CAMPUS ON HUBBARD DRIVE
4 FROM THE RIGHT-HAND SIDE OF THE PAGE TO THE LEFT-
5 HAND SIDE ---

6 A. CORRECT.

7 Q. --- WHERE I'M POINTING?

8 A. UH-HUH.

9 Q. THE PARKING LOT THAT YOU PARKED IN IS ON THE NORTH
10 SIDE OR THE RIGHT-HAND SIDE OF HUBBARD DRIVE AS YOU
11 ENTERED CAMPUS, CORRECT?

12 A. YES.

13 Q. YOU TESTIFIED IN YOUR DEPOSITION THAT YOU CHECKED
14 THIS FIRST PARKING LOT ON THE SOUTH SIDE OF HUBBARD
15 DRIVE FOR AVAILABLE FACULTY PARKING, CORRECT?

16 A. AND I COULD NOT SEE ANY, CORRECT.

17 Q. BUT AS YOU HAD DRIVEN ON CAMPUS, YOU NOTICED EMPTY
18 SPACES ACROSS THE STREET ---

19 A. I DID.

20 Q. --- AND THAT'S WHY YOU CHOSE TO PARK IN THAT PARKING
21 SPACE?

22 A. THAT IS IT.

23 Q. AND YOU ALSO ADMITTED THAT YOU DID NOT GO FURTHER
24 DOWN HUBBARD DRIVE TO CHECK ANY OF THESE OTHER
25 AVAILABLE PARKING LOTS FOR FACULTY SPACES OR THE

1. OTHER PARKING LOT ON THE NORTH SIDE ---

2. A. NO.

3. Q. --- OF HUBBARD DRIVE, DID YOU?

4. A. I DID NOT BECAUSE THE OTHER PARKING LOTS ACTUALLY
5. TEND TO FILL UP EVEN FASTER.

6. Q. ALL RIGHT. BUT MY POINT IS YOU DIDN'T CHECK TO SEE
7. IF THERE WERE ANY VACANT FACULTY PARKING IN ANY OF
8. THE OTHER AVAILABLE PARKING SPACES ON THE SOUTH SIDE
9. OF HUBBARD DRIVE?

10. A. NO, I DID NOT, BECAUSE IT MEANT THAT I WAS GOING TO
11. WASTE MORE TIME GOING ALL THE WAY DOWN CAMPUS AND
12. CHECKING THE WHOLE PARKING LOT AREA TO POSSIBLY HAVE
13. TO GO BACK TO WHERE I ENDED UP PARKING ANYWAY.

14. Q. WELL, BUT HAD YOU GONE JUST A LITTLE BIT FURTHER,
15. THERE'S ACTUALLY SPACES THAT HAVE THERE BEEN SPACES
16. AVAILABLE WOULD HAVE BEEN CLOSER TO YOU THAN
17. MEDFORD?

18. A. NO.

19. Q. WELL, THE COMMISSIONER CAN VIEW THAT FOR HIMSELF.
20. BUT IF YOU MEASURE THE DISTANCE BETWEEN THE PARKING
21. LOT THAT YOU PARKED IN AND THE PARKING LOTS THAT YOU
22. ADMIT THAT YOU DIDN'T LOOK TO SEE IF THERE WERE
23. VACANT SPACES IN, I BELIEVE THAT HE'LL SEE THAT
24. THOSE ACTUALLY WOULD HAVE BEEN CLOSER. DO YOU
25. DISAGREE WITH THAT?

1 A. NO, INDEED, LOOKING AT THE DIAGRAM, IT LOOKS A
2 LITTLE BIT CLOSER, BUT I DON'T KNOW. I MEAN, I
3 WOULD ASSUME IT'S TO SCALE. BUT IT -- IT SEEMS LIKE
4 IT'S ABOUT THE SAME DISTANCE, BECAUSE I'VE WALKED IT
5 SO MANY TIMES.

6 Q. BUT IF WE ASSUME IT'S TO SCALE, LOOKING AT IT IT
7 WOULD APPEAR THAT THE OTHER PARKING LOTS THAT YOU
8 DID NOT CHECK FOR SPACES IN COULD HAVE BEEN CLOSER
9 ACTUALLY TO THE MEDFORD LIBRARY THAT YOU WERE GOING
10 TO?

11 BY MR. REEVES:

12 OBJECT, THAT CALLS FOR SPECULATION.

13 BY COMMISSIONER WILLIAMS:

14 OKAY.

15 CROSS EXAMINATION RESUMED BY MR. HENDRIX:

16 Q. YOU CAN GO AHEAD AND ANSWER.

17 BY COMMISSIONER WILLIAMS:

18 I'LL LET HER ANSWER THAT. YOU CAN ANSWER IF
19 YOU CAN.

20 BY THE WITNESS:

21 POSSIBLY.

22 CROSS EXAMINATION RESUMED BY MR. HENDRIX:

23 Q. OKAY. THE UNIVERSITY -- WELL, LET ME BACKUP. THE
24 PARKING LOT THAT YOU ACTUALLY PARKED IN DOESN'T EVEN
25 HAVE DESIGNATED FACULTY PARKING SPACES IN IT, DOES

1 IT?

2 A. CORRECT.

3 Q. ALL RIGHT. AND THE ONLY STRUCTURES ON THAT SIDE OF
4 THE STREET IS WHAT'S LABELED TWO-STORY CHURCH, AND I
5 THINK WE ALL AGREE THAT THAT'S THE CAROLE DOWLING
6 BUILDING?

7 A. YES, IT'S NOW KNOWN THE CAROLE RAY DOWLING CENTER.

8 Q. AND THAT'S ACTUALLY A FACILITY THAT THE UNIVERSITY
9 OPERATES. IT PROVIDES PHYSICAL THERAPY SERVICES,
10 DIABETIC TRAINING SERVICES, THINGS LIKE THAT TO THE
11 PUBLIC. SO THE PARKING LOT THAT YOU WERE USING IS
12 ALSO OPEN TO THE GENERAL PUBLIC THAT ACCESSES THOSE
13 SERVICES THAT ARE PROVIDED BY THE UNIVERSITY?

14 A. ALL -- ALL PARKING LOTS TECHNICALLY HAVE VISITOR
15 SPOTS THAT ARE OPEN TO THE COMMUNITY ANYWAY.

16 Q. ALL RIGHT. AND THE DESIGNATED FACULTY PARKING
17 SPACES THAT THE UNIVERSITY PROVIDES ARE LOCATED ON
18 THE SOUTH SIDE OF HUBBARD DRIVE, CORRECT?

19 A. YES.

20 Q. AND ACCORDING TO YOUR TESTIMONY IN YOUR DEPOSITION,
21 IF ALL FACULTY PARKING IS TAKEN, YOU HAVE THE OPTION
22 OF PARKING ANYWHERE YOU WANT TO?

23 A. ANY OTHER SLOT AVAILABLE AS LONG AS IT'S NOT
24 HANDICAPPED OR, YOU KNOW, FIRE HYDRANT OR SOMETHING.

25 Q. ALL RIGHT. AND THE UNIVERSITY IN NO WAY DICTATES

1 WHERE YOU PARK YOUR VEHICLE ---

2 A. NO.

3 Q. --- WHEN YOU COME ON CAMPUS? IN FACT, IF THERE WERE
4 EMPTY FACULTY SPACES, YOU COULD CHOOSE TO PARK IN A
5 STUDENT PARKING SPACE IF THERE WAS A SHADE TREE THAT
6 MIGHT SHADE YOUR CAR IF THAT WAS WHAT YOU PREFER TO
7 DO, CORRECT?

8 A. YES.

9 Q. ALL RIGHT. AND OTHER THAN DESIGNATED CLASS TIME AND
10 HOURS WHERE YOU ARE IN THE OFFICE FOR STUDENTS TO
11 COME AND VISIT, WHICH IN YOUR DEPOSITION YOU
12 TESTIFIED WAS GENERALLY AN HOUR BEFORE CLASS AND AN
13 HOUR AFTER YOUR CLASS SCHEDULE?

14 A. IT'S MORE TWO HOURS EASILY, SOMETIMES THREE AFTER
15 CLASS.

16 Q. BUT OUTSIDE OF THOSE SEGMENTS, THE REST OF YOUR DAY
17 WAS COMPLETELY DISCRETIONARY TO YOU AS TO WHETHER
18 YOU REMAINED ON CAMPUS, LEFT AND CAME BACK TO
19 CAMPUS, OR WHATEVER?

20 A. CORRECT.

21 Q. THE UNIVERSITY DOESN'T REQUIRE THAT YOU DRIVE YOUR
22 PERSONAL VEHICLE TO WORK, DO THEY?

23 A. NO.

24 Q. YOU CAN CHOOSE TO BRING A TAXI, RIDE A BUS, WHATEVER
25 YOU CHOSE TO DO, CORRECT?

1 A. I COULD.

2 Q. AND ON HUBBARD DRIVE, THERE'S ACTUALLY MORE THAN ONE
3 CROSSWALK THAT CONNECTS THE UNIVERSITY TO THE SOUTH
4 SIDE ---

5 A. CORRECT, THERE ARE THREE.

6 Q. --- OF HUBBARD DRIVE? OKAY. AND JUST TO BE CLEAR,
7 THERE ARE NO ASSIGNED PARKING SPACES FOR ANYBODY AT
8 U.S.C. LANCASTER, NOT EVEN THE PRESIDENT OF THE
9 UNIVERSITY?

10 A. NO, NOT SPECIFIC NAMES, JUST THE CATEGORY OF FACULTY
11 OR VISITOR AND HANDICAP, AND THEN EVERYTHING ELSE IS
12 OPEN.

13 Q. AND FACULTY PARKING -- DESIGNATED FACULTY PARKING IS
14 ON THE SOUTH SIDE OF HUBBARD DRIVE WHERE THE
15 BUILDINGS ARE LOCATED?

16 A. YES, I THINK.

17 BY MR. HENDRIX:

18 THAT'S ALL I HAVE, YOUR HONOR. THANK YOU, SIR.

19 BY COMMISSIONER WILLIAMS:

20 OKAY. ANY RE-DIRECT?

21 RE-DIRECT EXAMINATION BY MR. REEVES:

22 Q. MS. DAVAUT, ---

23 A. YES.

24 Q. --- MR. HENDRIX ASKED YOU ABOUT YOUR PARTICIPATION
25 IN THE SELECTION COMMITTEE AS BEING VOLUNTARILY, AND

1. YOU INDICATED THAT YOU'RE REQUIRED TO DO CERTAIN
2. EXTRACURRICULAR THINGS BECAUSE OF YOUR TENURE.
3. WOULD YOU EXPLAIN TO THE COMMISSION WHY YOU FELT IT
4. IMPORTANT TO BE ON THIS PARTICULAR TASK TO REVIEW
5. THE RECOMMENDATION -- REVIEW THE RESUMES TO MAKE
6. RECOMMENDATIONS?

7. A. YES. WELL, LIKE I SAID, MY CONTRACT STIPULATES THAT
8. I TEACH, BE PRESENT IN THE OFFICE TO HELP STUDENTS
9. OUT, AND THEN DO SOME SERVICE TO THE CAMPUS. AND
10. PART OF THE SERVICE IS TO BE ON COMMITTEE AND WORK
11. ON CERTAIN ASSIGNMENTS. ANOTHER THING TOO IS THAT
12. WE GET EVALUATED EACH YEAR BY THE ADMINISTRATION.
13. AND THE ADMINISTRATION BASES THEIR EVALUATION SCORE,
14. OR GRADE IF YOU WILL, ON HOW MUCH SERVICE WE'VE DONE
15. THROUGH THE UNIVERSITY. SO THE MORE WE DO AND --
16. THE BETTER OUR EVALUATION AND THEN THE BETTER THE
17. EVALUATION, THEN THE MORE RAISE I CAN GET AFTER
18. THAT, OKAY. MY CONTRACT IS A YEARLY CONTRACT, WHICH
19. MEANS THAT AT THE END OF THE YEAR IT CAN BE
20. TERMINATED UNLESS I DEMONSTRATE TO THE UNIVERSITY
21. THAT I'M REALLY WILLING TO DO MY JOB CORRECTLY AND,
22. YOU KNOW, DO A LOT OF SERVICE ON CAMPUS. THE OTHER
23. THING TOO IS THAT THIS PARTICULAR HIRING COMMITTEE
24. WAS TO HIRE SOMEBODY IN FOREIGN LANGUAGES, AND I AM
25. A FOREIGN LANGUAGE PROFESSOR. THEREFORE, MY

1 SUPERVISOR REQUESTED THAT ALL OF US FOREIGN LANGUAGE
2 INSTRUCTORS BE ON THE COMMITTEE TO HELP OUT BECAUSE
3 I GUESS WE WOULD BE IN A WAY, WHAT'S THE WORDS I'M
4 LOOKING FOR... I APOLOGIZE, I'M BLANKING OUT.

5 BY MR. HENDRIX:

6 COLLEAGUES?

7 BY THE WITNESS:

8 I'M SORRY?

9 BY MR. HENDRIX:

10 THAT YOU WOULD BE COLLEAGUES?

11 BY THE WITNESS:

12 YES. WELL, OF COURSE WE'RE GOING TO HIRE, YOU
13 KNOW, SOMEBODY WHO IS GOING TO BE A COLLEAGUE, BUT
14 WHAT I'M TRYING TO SAY IS THAT NOT THAT WE'RE
15 NECESSARILY THE BEST QUALIFIED, BUT WE WERE LOOKING
16 FOR THE SAME KIND OF SKILLS THAT WE HAVE.

17 RE-DIRECT EXAMINATION RESUMED BY MR. REEVES:

18 Q. IN THE INFORMATION WE SUBMITTED TO THE COMMISSIONER,
19 YOUR NOTES THAT YOU TOOK DURING THOSE RESUME
20 REVIEWS, YOU TOOK NOTES. WE'VE SUBMITTED THOSE TO
21 THE COMMISSION AS WELL AS PHOTOS OF THE SCENE WHERE
22 THE ACCIDENT TOOK PLACE. DO YOU REMEMBER REVIEWING
23 THOSE?

24 A. I'M SORRY, CAN YOU REPEAT THAT?

25 Q. I'M SORRY. WE HAVE SUBMITTED YOUR NOTES THAT YOU

1 TOOK WHEN YOU REVIEWED THE RESUMES.

2 A. YES.

3 Q. OKAY. AND ALSO THE PHOTO THAT ARE INCLUDED ARE OF
4 WHERE THE ACCIDENT TOOK PLACE; IS THAT RIGHT?

5 A. I GUESS.

6 Q. OKAY.

7 BY MR. REEVES:

8 THAT'S ALL I HAVE, COMMISSIONER.

9 BY COMMISSIONER WILLIAMS:

10 ALL RIGHT. MR. HENDRIX, ANYTHING?

11 RE-CROSS EXAMINATION BY MR. HENDRIX:

12 Q. IN THE NOTES THAT YOU MADE OF THE REVIEWS THAT YOU
13 HAD PERFORMED PRIOR TO YOUR ACCIDENT, YOU NEVER EVEN
14 -- THOSE WERE NEVER EVEN USED WHEN -- YOU DIDN'T
15 TURN THEM INTO ANYBODY OR ANYTHING ELSE, CORRECT?

16 A. NO.

17 Q. AND IN YOUR DEPOSITION, YOU TESTIFIED THAT YOU MADE
18 THOSE NOTES SO THAT LATER ON WHEN THE MEETING WAS
19 SCHEDULED YOU'D HAVE THOSE TO GO BACK AND REFRESH
20 YOUR MEMORY FROM?

21 A. YES.

22 Q. ALL RIGHT. AND YOUR OFFICE IS ALSO LOCATED IN THE
23 MEDFORD LIBRARY BUILDING UPSTAIRS, CORRECT?

24 A. CORRECT.

25 Q. AND YOU COULD HAVE LEFT THOSE NOTES IN YOUR OFFICE

1 AS OPPOSED TO CARRYING THEM WITH YOU ---

2 A. I COULD HAVE, BUT IT WAS MY INTENTION TO LOOK AT
3 THEM LATER ON, WHICH IS WHY I TOOK THEM HOME WITH
4 ME.

5 BY MR. HENDRIX:

6 ALL RIGHT. THAT'S ALL I HAVE, THANK YOU.

7 BY COMMISSIONER WILLIAMS:

8 ANYTHING ELSE FROM THE CLAIMANT?

9 BY MR. REEVES:

10 NO, SIR.

11 BY COMMISSIONER WILLIAMS:

12 ALL RIGHT. ANYTHING FROM THE EMPLOYER AND
13 CARRIER?

14 BY MR. HENDRIX:

15 NO, YOUR HONOR.

16 BY COMMISSIONER WILLIAMS:

17 ALL RIGHT. THAT BEING THE CASE, THAT'LL
18 CONCLUDE THIS HEARING.

19 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
CONCLUDED AT THE HOUR OF 10:34 A.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1203664

EMPLOYEE/CLAIMANT: NATALIE DAVAUT

EMPLOYER: UNIVERSITY OF SOUTH CAROLINA

INSURER: STATE ACCIDENT FUND

I, SHEILA ROBISON, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 28 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF NATALIE DAVAUT WAS TAKEN THE 25TH OF SEPTEMBER, 2012.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 8TH DAY OF JANUARY, 2013.

SHEILA ROBISON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 4-20-2019

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION FULL COMMISSION
WCC FILE NO. 1203664

Nathalie Davaut,)
)
 Claimant,)
)
 vs.)
)
 University of South Carolina)
 Lancaster, Employer,)
)
 and)
)
 State Accident Fund, Carrier,)
)
 Defendants.)
)
 _____)

TRANSCRIPT OF PROCEEDINGS

March 18, 2012

This hearing was held before the Full Commission, reported by Kimberly T. Power, Court Reporter and Notary Public in and for the State of South Carolina; said proceedings were held at the South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, Hearing Room B, Columbia, South Carolina, on Monday, March 18, 2013, commencing at the hour of 2:00 p.m.

APPEARANCES

ATTORNEYS FOR THE CLAIMANT

LAW OFFICES OF PAUL REEVES
BY: PAUL REEVES, ESQUIRE
1527 Blanding Street
Columbia, South Carolina 29201

ATTORNEYS FOR THE DEFENDANTS

JONES & HENDRIX
BY: PAUL HENDRIX, ESQUIRE
50 Applewood Lane
Spartanburg, South Carolina 29307-2225

1 THE COURT REPORTER: Today is Monday, March
2 18, 2013. This is the South Carolina Workers'
3 Compensation Case Number 1203664. This is the case of
4 Nathalie Davaut, Claimant, vs. University of South
5 Carolina Lancaster, Employer, and State Accident Fund,
6 Carrier.

7 The appellant is the claimant represented by
8 Paul L. Reeves. The respondent is represented by Paul
9 Hendrix.

10 Each side is allowed ten minutes for oral
11 arguments and the appellant three minutes in reply. You
12 are requested to argue the grounds of exception and stay
13 within the record.

14 COMMISSIONER MCCASKILL: All right.
15 Mr. Reeves.

16 MR. REEVES: May it please the Commission. My
17 name is Paul Reeves. I'm here on behalf of Dr. Nathalie
18 Davaut who is a professor of foreign languages at the
19 University of the South Carolina Lancaster campus.

20 On February 16th, Ms. Davaut was -- had left
21 the building where she was performing a task and was
22 walking across the campus to where she had parked her car
23 which was across a public street. USCL, much like the
24 university here in Columbia, but on a much smaller scale,
25 is dissected through several public streets that run

1 through the campus. She had entered the street and was
2 struck by an automobile in the crosswalk.

3 She filed a claim. The Commissioner below --
4 the Single Commissioner denied the coverage indicating
5 that she was not within the course and scope of her
6 employment and relied on Howell vs. Pacific Mills for
7 that finding. Today I would like to share with you that
8 the majority rule regarding this particular fact scenario
9 is that an injury in a public street or other
10 off-premises place between the plant or the plant where
11 the work is to be performed and the parking lot is in the
12 course of employment being on a necessary route between
13 the two portions of the premises with the critical issue
14 being who owns the parking lot.

15 In the case you have here, the university
16 owned the property on either side of Hubbard Drive. The
17 south side is where most of the campus is, office
18 buildings, library, classrooms. On the north side is
19 parking, a student center, a help center, and some other
20 things there.

21 Also we don't dispute that she could have
22 parked anywhere, but we will show that the facts
23 indicated that there was insufficient parking at certain
24 times on the south side. And according to the Dean and
25 director of public safety, faculty often used the north

1 side of Hubbard Drive for parking which is where on this
2 particular day Ms. Davaut parked.

3 COMMISSIONER MCCASKILL: Let me stop you for
4 just a second. She could have parked on either side of
5 the street?

6 MR. REEVES: She could have.

7 COMMISSIONER MCCASKILL: So is the fact that
8 she chose to park on the north side --

9 MR. REEVES: That's correct.

10 COMMISSIONER MCCASKILL: -- is it a necessary
11 route to go to where she had to be or could she have
12 parked on the south side? As I remember -- and refresh
13 my memory again. I'm may be telling my age. But as I
14 remember in the reading, she checked a parking lot on the
15 south side, but there was other parking areas on the
16 south side that she didn't check. Is that a fair
17 statement?

18 MR. REEVES: That's a fair statement.

19 COMMISSIONER MCCASKILL: Okay. Just speak to
20 that.

21 MR. REEVES: The case law in every case that
22 discusses the parking lot rule exception of the premises
23 or the divided premises exception indicate that the
24 factor to be considered is not who was designated or what
25 name was on the lot as long as the employer owned,

1 operated, controlled, or maintained the parking lot.

2 COMMISSIONER MCCASKILL: And it was available
3 to her?

4 MR. REEVES: It was available to her. And in
5 fact, she said she arrived that morning and in order to
6 get to her class on time, she took the first available
7 parking space that would allow her time to get to her
8 class.

9 Her schedule was generally 9:00 to 5:00. On
10 the 16th, though, she worked later because her supervisor
11 had asked her and some other folks to participate in the
12 selection or in the review of applications for a new
13 foreign language instructor to be hired. She had agreed
14 to do this. The resumes for those individuals were
15 housed in the library which is called the Medford
16 Building or the Medford Library.

17 After she left her normal working hours around
18 5:00 or 6:00, she went to the library where the resumes
19 were on reserve. They could not be removed. And she
20 began to review those. She didn't complete that task.
21 What happened is nine o'clock rolled around and she had
22 to leave. She then walked out of the library.

23 It's undisputed that the person responsible
24 for the library, Mr. Helmer, indicated that he -- she
25 walked out right before he did. He walked out, locked

1 the door, and was walking to his car when he heard a
2 commotion on Hubbard Drive. He went there and found
3 Ms. Davaut in the roadway in the crosswalk where she had
4 been rolled over by a pickup truck. I think it's
5 critical that he said the accident had to have occurred
6 within six or seven minutes of her exiting the library
7 building.

8 There's no case on point in South Carolina
9 that discusses the parking lot rule exception of the
10 premises or the divided premises rule. However, we have
11 two cases that I think provide the basis for this panel
12 reversing the Single Commissioner. In Williams vs. South
13 Carolina State Hospital, the Supreme Court wrote the
14 following which I believe falls squarely on these facts:
15 "Employment includes not only the actual doing of the
16 work, but a reasonable margin of time and space necessary
17 to be used in passing to or passing from the place where
18 the work is to be done. If the employee be injured while
19 passing with the expressed replied consent of the
20 employer to or from his work by way over the premises of
21 the employer or" -- and I think this is critical -- "over
22 those of another if such proximity in relation is to be
23 in practical effect a part of the employer's premises,
24 the injury is arising out of and in the course of
25 employment as much as though had the injury happened at

1 the place where the work was performed. In other words,
2 the employment may be again in a point in time before the
3 work is entered upon an employment space before the place
4 where the work is to be done is reached."

5 In Camp vs. Spartan Mills, the Court of
6 Appeals adopted -- didn't adopt, it was a Supreme Court
7 decision. They quoted that language with authority and
8 then they added this line or this sentence: "The act of
9 leaving the employer's premises is in the course and
10 scope of one's employment if the employee leaves the
11 premises as contemplated at the close of the workday."

12 Now, in the Camp case I think it's important
13 to note that coverage was denied in that case because the
14 employer was injured four and a half hours after she had
15 been relieved of her work. In this case we have
16 Ms. Davaut who performs the tasks in the building where
17 she's working. She takes a direct route, she didn't
18 lollygag, no circuitous route, to the place where she has
19 to cross from one side of USCL's property to the other.
20 The fact that a public street is there, according to
21 majority rule, is irrelevant.

22 But I would ask the Court -- the panel to
23 consider this: Under Camp and Williams, the language is
24 clear that the employee has an opportunity to leave where
25 they performed the work and exit the employer's premises

1 so long as that exit is reasonable. Here Ms. Davaut
2 never reached her vehicle. She never got across the
3 street to the other side where the university maintained
4 the parking lot.

5 I would submit to you this: If she had
6 reached her automobile, because we know under the Holston
7 case vs. Allied Corporation, parking lot injuries that
8 are maintained by the -- excuse me, parking lots that are
9 maintained by the employer and an injury occurs, they're
10 covered and it's in the course and scope of your
11 employment. We also know that in the Evans vs. Coats and
12 Clark case where the employee was injured in a common
13 area of a building partially occupied by the employer,
14 that the courts have found that was within the course and
15 scope of employment because that was the only way the
16 employer could get there, was to go through that lobby or
17 common area.

18 So we have case law and if we adopt our --
19 excuse me, adapt our case law to the majority rule, I'm
20 not asking this panel to take any leap of faith because
21 Williams and Camp contemplate that opportunity. I would
22 also suggest this: If Ms. Davaut had reached her
23 vehicle, had pulled out of the parking lot and then
24 pulled onto Hubbard Drive and then was struck by a pickup
25 truck, I don't think she's covered because she's left the

1 premises. Here she never had an opportunity to leave the
2 premises.

3 I think it's also important for you to
4 consider this: The Commissioner relied upon Howell vs.
5 Pacific Mills as the basis for his ruling. Howell
6 doesn't apply here and here's why. In that case the
7 claimant was taken to work by her husband who drove on a
8 public street to near where she had to enter the premises
9 of the employer. He stops his car on a public street.
10 She exited the vehicle on a public street. She goes
11 around the car and is struck by another car on a public
12 street. She never accesses that space or that sphere or
13 that bubble that Williams and Camp talk about where she
14 would have the opportunity to gain coverage because she's
15 trying to get to where her work is to be performed. She
16 never got to that point. Howell doesn't apply to this
17 case.

18 In looking at -- if you combine the facts of
19 this case before you of Ms. Davaut, the university,
20 according to the testimony, offered this space to park.
21 The case law does not distinguish between whether that
22 has to be your parking place. It just says is the
23 property owned, maintained and offered for parking, which
24 in this case it's undisputed that it was. The fact that
25 she may have had an option to park somewhere else, I

1 could find no case law that makes that a distinction in
2 any discussion about the going or coming -- excuse me,
3 the divided premises rule or the parking lot exception.

4 Again, I would emphasize that the majority of
5 cases follow this rule. Larson cites this rule with a
6 positive note and indicates that injury sustained while
7 the employee travels along or across a public road
8 between two parts of his employer's premises are
9 compensable.

10 I would ask the panel to reserve the Single
11 Commissioner and award benefits. And for those things I
12 did not discuss that are a part of the brief, I recommend
13 your review of the brief as it's written. Thank you.

14 COMMISSIONER BARDEN: Is there any university
15 provided parking or was there available to the professor
16 that did not require a -- her requirement to cross the
17 street or her necessity of her crossing the street, do
18 all the parking lots require a cross -- the university's
19 sponsored parking lots or provided parking lots require
20 her to cross a street?

21 MR. REEVES: No, ma'am. If she had parked on
22 the south side, she would have been on the main part of
23 campus and would not --

24 COMMISSIONER BARDEN: Still on the campus
25 without a street between them?

1 MR. REEVES: Yes, ma'am.

2 COMMISSIONER BARDEN: I just wanted to clarify
3 that. Thank you.

4 COMMISSIONER MCCASKILL: Thank you.

5 Mr. Hendrix.

6 MR. HENDRIX: May it please the Commission.
7 Not only is there parking on the south side of Hubbard
8 Drive, there should be an exhibit in the record -- and
9 I'll hand these up just quickly, which is a diagram of
10 the campus. And it's not in color, so bear with me just
11 a moment. If you hold it where Defendant's Exhibit is at
12 the bottom, everything on this -- Hubbard Drive dissects
13 pretty much right across the center of the sheet from
14 lower left corner to upper right corner.

15 There is a notation that says two story
16 church. That's actually the building of the parking lot
17 where Ms. Davaut parked her car. It's a part of campus,
18 but it's a part of campus only because a foundation
19 purchased that and the university has some public health
20 facilities in there. There's a parking lot adjacent to
21 it that's designed for use by the general public
22 accessing that building, students that accessed that
23 building or otherwise. All of the faculty offices,
24 including Ms. Davaut's and the Medford Library where she
25 was reviewing resumes, are all on the south side of

1 Hubbard Drive.

2 She checked this first parking lot that she
3 thought was the closest because she entered from the west
4 end of campus as she drove Hubbard Drive. And rather
5 than going on further to check all of these other parking
6 lots on the south side of Hubbard Drive which would not
7 have required that she cross the street, she says that
8 she saw an empty spot on the right as she drove onto
9 campus, so she went across the street and parked the car
10 there.

11 COMMISSIONER MCCASKILL: But that is
12 university -- I understand it's primarily used by people
13 that use the two-story church building, but it is
14 university parking, is it not?

15 MR. HENDRIX: It's owned by a foundation, but
16 it's operated by the university.

17 COMMISSIONER MCCASKILL: Is it the
18 university's foundation or a private foundation of
19 another sort?

20 MR. POWELL: Yes, yes.

21 MR. HENDRIX: I'll defer to his partner. He
22 actually teaches at the university, so I'll defer to his
23 nodding of the head in the affirmative.

24 Ms. Davaut admits she wasn't even aware if
25 there was a sign that designated that parking lot as

1 university parking. The librarian who worked in the very
2 building this lady was leaving and comes and goes every
3 day just like every other faculty member said this
4 parking lot meant absolutely nothing to him before this
5 accident. He had never even parked there.

6 When I asked Ms. Davaut in her deposition,
7 which was made part of the record, "Have you seen other
8 faculty use that?" Her testimony was -- when you review
9 her deposition testimony was, "Sometimes, perhaps.
10 Probably not that often."

11 There are no faculty-designated spots on the
12 north side of Hubbard Drive in either of these two
13 parking lots that are over here. One designed for this
14 health services building. There's some sport fields on
15 the other side which the other parking lot on the north
16 side is designed for. All of these south side parking
17 lots do contain faculty-designated parking spaces, but
18 she didn't take the time to go check and see if a faculty
19 parking space was available.

20 COMMISSIONER MCCASKILL: But generally
21 speaking, she is not prohibited from parking in a
22 non-faculty-designated parking space, is she?

23 MR. HENDRIX: No, sir. I mean, she could --
24 not only could she access the other faculty spots on the
25 south side, she could have parked in any student spot on

1 the south side of Hubbard Drive as well. And I think
2 that's critical because when the court talks about in
3 Howell vs. Pacific Mills, it specifically talks about the
4 decision being the claimant's to decide where to cross
5 that street or whether to cross it at all.

6 Exactly the circumstances here. This lady,
7 not only had she bothered to take the time to find a spot
8 on the south side, then she would have never been on
9 Hubbard Drive, but there's three other crosswalks on
10 Hubbard Drive that she could have accessed. She chose
11 which one. No requirement that she even cross at a
12 crosswalk for that matter.

13 But the university didn't construct the
14 crosswalks. The university has no control over traffic
15 on that street. Lancaster Police Department controls
16 that. They investigated this accident as they do every
17 accident. They are the only folks that can write a
18 citation for someone involved in an accident on Hubbard
19 Drive, which they did fault the driver which Ms. Davaut
20 is pursuing a case against.

21 Claimant's counsel suggested that you take
22 language from the Williams decision and he wrote a nice
23 brief, but there are no holdings in his brief from
24 controlling jurisdictions. He's pulled language from
25 cases that sounds nice and sounds like, well, maybe

1 that's what the court intended and suggested that perhaps
2 Howell wouldn't apply to those circumstances. Well,
3 guess what? The Williams case was already on the books
4 before the Howell case took place. And what did the
5 court in Howell say, Williams doesn't apply here because
6 in Williams, the employee was on the employer's premises
7 at the time of the accident.

8 Had they wanted to entertain this language
9 that Mr. Reeves implied that a court should in terms of,
10 well, is two minutes too much, is ten feet too much,
11 where is this magic bubble sphere that I think he called
12 it, if the court intended to do that, the Howell court
13 could have done that. But they didn't. They said
14 Williams doesn't apply.

15 This lady who got hurt in Williams was on the
16 employer's premises. In Howell they were in a crosswalk
17 on a public street, on a public street that dissected the
18 employer's premises much like what we have here. The
19 plant was on this side of the street, the parking lot
20 for -- in that case was only directly across the street
21 with a crosswalk that connected it. Her husband pulled
22 up, parked on that side of the street, she stepped onto
23 the sidewalk on the parking lot side of the street and
24 was struck crossing the street in the crosswalk. The
25 exact situation that we have here.

1 Certainly we wouldn't reverse the Howell case
2 if the husband instead of stopping on the sidewalk to let
3 his wife stop there had curled through the parking lot
4 and dropped her off there and she had crossed over the
5 same crosswalk. I mean, the problem with creating
6 exceptions to the going and coming rule, and the courts
7 all caution about it, is where do you draw the line?
8 Where does this magic bubble sphere stop? Is it two
9 minutes, five minutes, 10 feet or 50 feet?

10 If the university owned a parking lot two
11 miles down the road and she decided they don't say I
12 can't park there and she had parked there and got hit
13 jogging three miles back, would that be compensable? If
14 we're going to start making these exceptions, where do we
15 stop? Do we say three miles, 30 miles? If it's 30 feet,
16 that's okay, but not 35. It's just not manageable for
17 the courts, and that's why we have a very definite rule
18 in the going and coming scenario.

19 Now, one of the exceptions that opposing
20 counsel asked you to adopt was the special errand rule
21 under the Bickely case where the fellow that was going
22 down to Charleston -- I apologize. I asked my assistant
23 to make copies for everybody. But very quickly in that
24 case, it was a manager -- this is a North Carolina case.
25 And as you know, when South Carolina doesn't have a case

1 on point, we look to North Carolina because their
2 statutes are very similar.

3 In this case the manager arrived -- he ran a
4 Lenscrafter eyeglass store. When he arrived he was in
5 the parking lot walking to the building, was struck by
6 another vehicle in the parking lot while walking to the
7 front of the store. The North Carolina court said it
8 wasn't compensable. It was a going and coming rule
9 application. And I say that because in that case it also
10 discusses another North Carolina case where someone was
11 injured in the street much like the Howell case where
12 they were let off in the street, were struck before they
13 got to the gate entering the premises, and the court said
14 that wasn't compensable.

15 But the primary reason for handing up the
16 Deseth vs. Lenscrafters case is as a fallback position
17 much like what's argued in claimant's brief. The
18 claimant's attorney there argued, well, he actually had
19 some paperwork with him and he had the keys to the store
20 that he had to unlock the store with in his briefcase,
21 and so that makes it a special errand. He was on a
22 special errand for the employer. The same argument that
23 opposing counsel makes in his brief that this lady had a
24 one-page note that she was carrying home with her because
25 the library closed and she was going to read those notes

1 when she got home that night.

2 The problem with that argument is when you
3 read her deposition testimony and the hearing transcript,
4 that's not what she testified to. In her deposition on
5 questions from her very own attorney when he asked her
6 that question, "When did you intend to review those
7 notes," she admitted that she didn't have a specific time
8 that she intended to review those notes.

9 On Page 56 of her deposition, she said she
10 made notes so she could rank the applicants once she had
11 finished reading all the applicants. She had only been
12 through half of the applicants at the time of her
13 accident, so the supposed purpose of the notes hadn't
14 even come into existence at that point. So there clearly
15 is no special errand exception to the going and coming
16 rule in this case.

17 THE COURT: Thank you, sir.

18 MR. HENDRIX: Thank you, Commissioners.

19 COMMISSIONER MCCASKILL: Mr. Reeves.

20 MR. REEVES: May it please the Commission.

21 First, my brief is replete with holdings from Georgia,
22 Delaware, California, the Williams and the Camp case, as
23 well as the other cases in citing Larson that point to
24 the holding that I think is probably succinctly found
25 that in the Georgia case, it's not significant that the

1 appellant in the instant case was injured in a public
2 street. He could not have reached the parking lot
3 without crossing the street. What is critical is that he
4 was taking a direct route from the employer's premises to
5 the other part of the employer's premises.

6 My esteemed counsel here has pointed to the
7 Howell case, and I want to read to you the next to last
8 paragraph in that case that certainly confirms, I
9 believe, reasonably that the Howell case does not apply.
10 The Supreme Court wrote this: "Appellant asked us to
11 adopt the divided premises rule as it relates to an
12 employee going between an employer-maintained parking
13 area and the employer's place of business. We need not
14 consider that fact in this case because appellant had
15 never entered the parking area that was maintained by the
16 employer. Appellant was hit after she got out of her
17 husband's car in a public street while on her way to
18 work."

19 Now my opposing counsel refers to this magic
20 bubble. I didn't make that up. Read Camp. Read
21 Williams. They talk about the fact that once you access
22 the employer's premises going to where you're going to
23 perform your work and coming from, then you're covered.
24 It even talks about if you walk across the lands of
25 another.

1 Imagine this: If I'm a professor at Gambrel
2 Hall and I park at the coliseum, by my count there's 14
3 streets I've got to cross. You're covered, you're not
4 covered. It's absurd. In our Supreme Court, the
5 majority rule does work. It doesn't leave exceptions
6 that can't be anticipated. Howell even says it doesn't
7 apply to this case based on that last paragraph.

8 I would ask this Commission to look at
9 Howell -- Williams, Camp and even refer to Howell and
10 apply this as the parking lot exception. It's not a
11 going and coming issue. It's a premises issue.

12 I'd ask you to reverse the Single Commissioner
13 and award benefits to Ms. Davaut and find that she was
14 within the course and scope of her employment and, again,
15 rely on the brief for any additional arguments.

16 Thank you for your time.

17 COMMISSIONER MCCASKILL: Thank y'all very
18 much. That concludes this proceeding.

19 (The hearing concluded at 2:24 p.m.)
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
2

3 I, Kimberly T. Power, Court Reporter and Notary
4 Public for the State of South Carolina at Large, do
hereby certify:

5 That the foregoing transcript of proceedings was
6 taken before me on the date and at the time and location
7 stated on page 1 of this transcript; that the witness was
8 duly sworn to testify to the truth, the whole truth, and
9 nothing but the truth; that the testimony of the witness
10 and all objections made at the time of the proceeding
were recorded stenographically by me and were thereafter
transcribed; that the foregoing transcript of proceedings
as typed is a true, accurate and complete record of the
testimony and of all objections made at the time to the
best of my ability.

11 I further certify that I am neither related to nor
12 counsel for any party to the cause pending or interested
in the events thereof.

13 Witness my hand, I have hereunto affixed my
14 official seal this 14th day of April, 2013, at Richland
County, South Carolina.

15
16
17
18
19 _____
Kimberly T. Power, Court Reporter
20 Notary Public, State of South Carolina
My Commission Expires: 07/22/2015
21
22
23
24
25



Southern Reporting, Inc.

Transcript of the
Deposition of

Nathalie Davaut, Ph.D.

8/14/2012

Davaut vs. University of South Carolina, et al.
1203664

COPY

Southern Reporting, Inc.

Phone: 803.749.8100

Fax: 803.749.9991

Email: Depos@southernreporting.net

1 BEFORE THE SOUTH CAROLINA
2 WORKERS' COMPENSATION COMMISSION
3 WCC FILE NO. 1203664

4 NATHALIE DAVAUT,
5 Employee, Claimant,

6 vs. DEPOSITION OF:
NATHALIE DAVAUT, Ph.D.

8 UNIVERSITY of SOUTH CAROLINA,
9 Employer,
10 STATE ACCIDENT FUND,
11 Insurer.

13 T R A N S C R I P T of the deposition in the
14 above-entitled matter by and before KAREN
15 GAGLIARDOTTO KOCSIS, a Certified Court Reporter and
16 Notary Public of the State of South Carolina, held
17 at the offices of BLACKWELL TRIMNAL REEVES & MEYERS,
18 LLC, 201 W. Dunlap Street, South Carolina on
19 Tuesday, August 14, 2012 commencing at 11:07 a.m.

A P P E A R A N C E S:

ATTORNEYS FOR NATHALIE DAVAUT

BLACKWELL, TRIMNAL, REEVES & MYERS, LLC
BY: PAUL L. REEVES, ESQ.
201 W. Dunlap Street
Lancaster, South Carolina 29720
paul@plrlawfirm.com
803.285.8050

ATTORNEYS FOR UNIVERSITY of SOUTH CAROLINA

JONES and HENDRIX, P.A.
BY: PAUL L. HENDRIX, ESQ.
50 Applewood Lane
Spartanburg, South Carolina 29307
paul@sccompdefense.com
864.583.5577

ALSO PRESENT: Tracey Mobley

1 I N D E X

2

3 EXAMINATION PAGE

4 BY MR. HENDRIX 4, 66

5 BY MR. REEVES 55

6 Witness to read and sign 4

7

8

9

10 E X H I B I T S

11 Deft's Exh 1 Diagram of USC Complex 40

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 THE WITNESS: I'll read and sign.

2 N A T H A L I E D A V A U T, Ph.D.

3 having been duly sworn, testifies as follows:

4 EXAMINATION

5 BY MR. HENDRIX:

6 Q Miss Davaut, I'm Paul Hendrix. I'm an
7 attorney from Spartanburg and I represent USC and
8 the State Accident Fund with respect to the accident
9 that you were involved in back in February of this
10 year, which is what I'm doing here today, is to ask
11 you some questions about your accident, your prior
12 medical history, your current medical recovery, work
13 history, things of that nature.

14 Any information that your lawyer and
15 I need to get your case resolved and if not, get it
16 ready for trial, but I'm not here to trick you so
17 just make sure you understand what I'm asking you
18 before you answer it.

19 If you need for me to explain a
20 question or repeat it or slow down, I'll do any of
21 those things as often as you need me to, just
22 interrupt me and ask me to do that.

23 A That's fine.

24 Q Have you ever given a deposition in any
25 type of case before?

1 A No.

2 Q Do you understand what a deposition is?

3 A I guess, yes.

4 Q Okay. Are you under the influence of
5 drugs, alcohol or medication that would affect your
6 memory or your ability to testify this morning?

7 A I would say no.

8 Q What is your date of birth?

9 A October 16, 1967.

10 Q And what is your current address?

11 A 313 Cape Breton Trail. Cape, C-a-p-e.

12 Q Cape?

13 A Yes.

14 Q Okay.

15 A Breton, B-r-e-t-o-n Trail. And that's up
16 in Gastonia, North Carolina 28056.

17 Q And how long have you lived at that
18 address?

19 A Since May of 2007, so five years.

20 Q Does anyone live there with you?

21 A No, I live by myself.

22 Q What, if any prescription medications do
23 you currently take as a result of your accident back
24 in February of this year?

25 A Nothing, at this point.

1 Q Do you take any prescriptions for any
2 unrelated health issues?

3 A No.

4 Q Who is your family doctor? When I say
5 "family doctor," just a general practitioner that
6 you go to?

7 A Dr. Trescazes.

8 Q Where does he practice?

9 A In France, which is where I'm from.

10 Q Do you have a local family physician?

11 A Not at this point. I have seen two or
12 three different general practitioners when I really
13 needed to see someone, but I do not have any one
14 specific that I would go see, the way I would in
15 France.

16 Q Who would be the last general practitioner
17 that you would have seen here in the United States?

18 A Belmont, which is where I used to live
19 before Gastonia. It's the South Point Family
20 Practice.

21 Q Okay. Tell me about your education, how
22 much schooling you completed, any degrees you've
23 gotten after high school, things of that nature.

24 A It's kind of hard to count. I have a
25 bachelor's degree, three masters and a Ph.D.

1 Does that help?

2 Q What is your bachelor's degree in?

3 A English studies.

4 Q From what university?

5 A Paris 3, the University of the New
6 Sorbonne, but it's referred to as Paris 3. We have
7 12 or 13 universities for Paris.

8 Q What about your master's degrees, what are
9 those in?

10 A Okay. The first one is in English
11 linguistics from the same university.

12 Q Okay.

13 A And the second one is in French literature
14 from the University of Missouri in Columbia and the
15 third one is from the UNCC, the University of North
16 Carolina in Charlotte and that is in Spanish.

17 Q And then your Ph.D is in?

18 A French literature and civilization from
19 the University of Missouri, Columbia.

20 Q And when did you come to the U.S.
21 originally?

22 A It was in 1990, August something.

23 Q Have you lived here consistently since
24 that point or do you go back and forth?

25 A I go home on vacation, but other than that

1 I have been living in the U.S. for 22 years, yes --
2 or coming up.

3 Q When you say "on vacation," do you
4 typically go home during the summers?

5 A Right. Summers or Christmastime, whenever
6 we have a long enough break to justify going home.

7 Q Do you go home during the summer and at
8 Christmas, or one or the other?

9 A Either or, or both.

10 Q Other than the accident that we're talking
11 about today, have you ever filed a Worker's
12 Compensation claim or had an on-the-job-injury with
13 any other employer or with the university?

14 A Yes, last year.

15 Q And what did that involve?

16 A I fell on campus, tripped and fell.

17 Q And what did you injure then?

18 A I hurt my back so I went to see a doctor
19 and they did some x-rays.

20 Q Your low back, upper back?

21 A Lower back, yes.

22 Q Did you miss any time from work because of
23 that?

24 A No, it was summer break actually.

25 Q Were you working during the summer when

1 you slipped and fell?

2 A It was the end of the spring semester and
3 I came to campus to turn in grades, grade finals and
4 that's when it happened.

5 Q What doctor treated you for that problem?

6 A He gave me some --

7 Q No. The name of the doctor.

8 A I'm so sorry. Dr. van der Veer from CMC.

9 Q And what location of Carolina Medical
10 Center, is that in Pineville?

11 A No. It's close to uptown. I'm trying to
12 think of the address. Sorry, I'm blanking out.

13 Baldwin Avenue, that's where they
14 have their office. It's Carolina Neurosurgery.

15 Q Did you have to have any surgery for that
16 back injury?

17 A Not at that point.

18 Q Did you ultimately have to have surgery at
19 some point because of your slip and fall at the
20 university?

21 A No.

22 Q Did you receive any kind of settlement
23 from that case or claim?

24 A I want to say yes, but at this point, I'm
25 not sure, because things were still being resolved

1 or taken care of when I had the new accident in
2 February.

3 Q Okay. But you don't recall receiving a
4 check because of that claim?

5 A No. I never did receive anything that I
6 know.

7 Q Okay. Any on-the-job injuries or Worker's
8 Compensation claims?

9 A No.

10 Q What about car wrecks, have you ever been
11 in any car accidents?

12 A One.

13 Q When was that?

14 A Two years ago.

15 Q 2010?

16 A Yes.

17 Q Where did that accident occur?

18 A Highway 21, is that it?

19 Q And were you at fault in that accident?

20 A Yes.

21 Q And what injury did you sustain?

22 A I broke a vertebrae in my back.

23 Q Low back?

24 A Yes, once again, the lower back area.

25 Q Did that require surgery?

1 A Yes.

2 Q And who performed that?

3 A Dr. van der Veer, yes.

4 Q And how long were you out of work from
5 that accident?

6 A Roughly, I would say about a month and a
7 half.

8 Q Did Dr. van der Veer do surgery
9 immediately or --

10 A Yes.

11 Q What was the nature of the surgery, did
12 they fuse your lumbar spine?

13 A Yes, they fused several vertebrae
14 together.

15 Q Did anybody treat you other than
16 Dr. van der Veer and his practice?

17 A Yes, he has assistants.

18 Q But other than folks in his office, did
19 you treat with any other --

20 A No.

21 Q And no settlement from that accident?

22 A No.

23 Q How much damage was done to your vehicle
24 in that accident?

25 A It was declared totaled. They didn't want

1 to repair it, because -- I can't remember the word
2 now.

3 Q All right. What type of vehicle were you
4 driving?

5 A Chrysler Sebring.

6 Q And what type of vehicle did you purchase
7 or replace with that one?

8 A A Honda Civic.

9 Q Any other accidents?

10 A No.

11 Q Have you ever treated with a chiropractor
12 at any point in your life?

13 A No.

14 Q And other than your slip and fall at the
15 university last year and the car accident you just
16 described, have you ever had any problem with your
17 low back or your back in general other than those
18 two occasions?

19 A No.

20 Q Tell me about your work history, and I
21 guess start from -- I'm not sure exactly when some
22 of the degrees, you may not have gone straight
23 through school for all these degrees.

24 A Some.

25 Q But when you entered the work force, from

1 there work forward and tell me as best you can, tell
2 me where you worked, describe your duties and
3 approximately how long you were at each job.

4 A Well, I came here in 1990 and I was a
5 teaching assistance at a university in St. Louis,
6 Missouri for a year, at which point I went to the
7 University of Missouri, Columbia where I was a
8 graduate instructor for seven years.

9 Once I obtained my Ph.D, I became an
10 assistant professor and I've had only two employers
11 full time since then, USC being the second one.

12 Q And Missouri was your first?

13 A No, North Carolina.

14 Q UNC, Charlotte?

15 A Gardner Webb University.

16 Q What did you teach there?

17 A I taught French.

18 Q And how long were you at Gardner Webb?

19 A Nine years. Sorry. I had to do the math.

20 Q And left there to come to USC Lancaster?

21 A Correct.

22 Q And what year did you first come to USC?

23 A 2008.

24 Q And there as a professor of French and
25 Spanish the whole time or have you done other

1 things?

2 A I was hired to teach primarily Spanish,
3 but since I'm a French native speaker and I have a
4 French degree, I started teaching French my second
5 year, so now I'm currently doing both.

6 Q But you were full time as of 2008, when
7 you came on board?

8 A Correct.

9 Q And when you first came to the university,
10 who did you report to, who would have been your
11 supervisor, for lack of a better way of putting it?

12 A Professor Nims, he's the head of the
13 humanities division.

14 Q And he's still your supervisor at this
15 point?

16 A Yes.

17 Q And where is your office located on
18 campus, what building?

19 A Medford.

20 Q And has that always been where your office
21 is located?

22 A Yes.

23 Q And as far classes that you teach, where
24 or what building are those taught, what classrooms
25 do you use?

1 A Sometimes Medford but I also taught in
2 Starr and Bradley.

3 Q And as far as semesters go, when is the
4 spring semester in terms of when does it begin and
5 when does it end, specifically, I guess, for 2012?

6 A Right. Usually it's the second week of
7 January, when it begins and it ends by late April or
8 early May. Early May is my final exam.

9 Q And then do you teach -- are there other
10 summer mini-semesters or summer classes that you
11 teach as well?

12 A I usually volunteer to teach in the
13 summer; correct, yes.

14 Q And when do those classes run?

15 A We have a mini-semester, which is roughly
16 two-and-a-half weeks long, and then we have a Summer
17 1 session, roughly the month of June and a Summer 2
18 session, roughly the month of July.

19 Q And I assume you are compensated extra to
20 the extent you work one or more of those
21 mini-semesters?

22 A Yes. Summer compensation is separate from
23 the yearly wages.

24 Q Okay. And when you do not teach -- well,
25 how many of the mini-semesters do you normally

1 volunteer to teach?

2 A The mini-semester in May, I never have. I
3 have always volunteered to teach Summer 1.

4 Q Okay. And what do you normally do in May
5 or July when you're not working? I mean do you
6 return to France for vacation?

7 A In July, I tend to go home on vacation;
8 correct. May, I do things around the house.

9 Q Okay.

10 A Or possibly take a few days off to go to
11 the beach or something.

12 Q Got you. And did you teach Summer 1 this
13 year?

14 A I did.

15 Q From France on-line?

16 A No, from my home.

17 Q But that was an on-line course?

18 A It was an on-line class.

19 Q Is that usually what you do or would you
20 normally teach on campus?

21 A I always teach on campus. I offered to
22 teach the class in an on-line format, because at
23 that point, I could not make it to campus, but I was
24 slated to teach in the summer.

25 Q Okay. So you received the same

1 compensation that you would have received had you
2 been on campus?

3 A Yes.

4 Q And when did the fall semester begin?

5 A For this fall?

6 Q Yes, this year.

7 A August 23rd is when classes start.

8 Q And are you on the schedule to return to
9 campus?

10 A I am.

11 Q Do you believe you're going to be able to
12 do that?

13 A I hope so.

14 Q Do you understand that you had an
15 appointment back on August 9th, I believe?

16 A Correct.

17 Q Did the physicians give you any indication
18 when they were going to release you?

19 A He did give me a return to work
20 authorization, but with restrictions.

21 Q And what restrictions?

22 A He wants me to teach sitting down and do
23 as little walking as possible.

24 Q And any indication as to how long those
25 restrictions are going to remain on you?

1 A Probably for the semester. He's requested
2 to see me again in three months.

3 Q And who is the physician who gave you
4 those restrictions?

5 A Dr. Bosse.

6 Q And what practice is he in?

7 A CMC, the Morehead Medical Plaza.

8 Q All right. Let's talk about the accident
9 which gave rise to the claim that we're here on
10 today.

11 I understand that it relates to a
12 search committee that you had volunteered to be a
13 part of and you were on campus reviewing resumes,
14 shortly before your accident.

15 So I guess the first question is, the
16 search committee, how did you come to be a
17 participant on that?

18 A I received an e-mail from my supervisor
19 asking if I wanted to be part of the committee,
20 which I replied, yes.

21 Q Had you served on search committees in the
22 past?

23 A Yes.

24 Q Have you ever declined to serve on a
25 search committee in the past?

1 A No.

2 Q Is it mandatory that you serve or is it
3 voluntary?

4 A It's not mandatory, but it's understood
5 that our participation is expected and we are
6 evaluated and noted every year on how much
7 volunteering we do on campus.

8 Q When you say "it's understood," how is it
9 "understood?" What do you mean by that?

10 A Like I said, we're evaluated every year,
11 and we're evaluated on our teaching but also on how
12 many committees we served on, et cetera.

13 Q Do you get extra pay for volunteering?

14 A Yes. If the evaluation is good enough
15 then our raise is based on how good the evaluation
16 is.

17 Q And who makes that determination?

18 A The administration.

19 Q Do you know of any faculty that has ever
20 been asked to serve on a search committee that
21 declined to serve?

22 A I don't think so, but I couldn't tell you.
23 I would say no.

24 Q Okay. If you had declined, you wouldn't
25 have been demoted or terminated or had any

1 disciplinary action taken against you, would you?

2 A Probably not.

3 Q And to your knowledge, is there some set
4 number of folks that have to participate in a search
5 committee to make it a valid committee?

6 A Yes.

7 Q What is the minimum number that can serve?

8 A I wouldn't know exactly, but I know for a
9 fact that every single division on campus has to be
10 represented.

11 Q But in this instance, we assume that there
12 are extra folks involved because it went forward
13 without your presence; is that right?

14 A Yes. There's also the fact that the
15 committee was to hire somebody in Spanish.
16 Therefore, all three Spanish faculty were requested
17 to be on the committee and I'm part of that faculty.

18 Q So actually only one of you had to
19 participate out of three in order to meet the
20 minimum requirement?

21 A Possibly.

22 Q All right. And do you remember exactly
23 when you were first asked to volunteer on the search
24 committee?

25 A I want to say around the third week of

1 January. I would have to double check my e-mail to
2 remember the correct date.

3 Q And what is the normal procedure once one
4 volunteers to serve on a search committee, what
5 would you normally do to prepare for that?

6 A The first step is that when we're told
7 that the application files have been placed in the
8 library, then we need to go to the library to study
9 said files, and then after that, once everybody has
10 done that, we all meet and discuss who we consider
11 the best candidates and then after that, we have
12 several candidates that come on campus for
13 interviews and such.

14 Q And who coordinates the meeting?

15 A The chair of the committee.

16 Q And is that Dr. Nims?

17 A That was Dr. Nims this time around, yes.

18 Q In this instance, when you were advised
19 that there would be resumes available for review?

20 A Once again, I do not recall exactly. I
21 want to say a few days before the accident occurred.

22 Q And where are those resumes housed, how
23 would you have access?

24 A They are held in the reserved area of the
25 library.

1 Q Meaning you have to have library personnel
2 provide you with them and check them out like a
3 book?

4 A Correct. Well, not "check them out." We
5 are not allowed to take them out of the library, so
6 they have to be studied inside the library.

7 Q And if there are 25 resumes for a
8 particular applicant or spot we're trying to fill at
9 the university, would all those be kept together or
10 you would check out 25 separate resumes?

11 A No, they are all kept together in a big
12 folder.

13 Q And what happens if you want to review
14 resumes but somebody has already checked them out of
15 the library?

16 A Then I'd have to come back another time.

17 Q You wouldn't just go find that faculty
18 member in the library?

19 A I could and possibly check some of the
20 files while my colleague is checking others, for
21 example.

22 Q Okay. And as far as when you review those
23 resumes, there is no time slot dictated by the
24 university for whoever is chairing the committee to
25 say that you need to go between eight and nine on a

1 particular day to review these resumes?

2 A No.

3 Q You are free to determine when, in your
4 leisure, you'll go to the library or wherever they
5 are housed to review them?

6 MR. REEVES: Object to form of the
7 question; using the term "leisure."

8 BY MR. HENDRIX:

9 Q What I mean by "leisure," is at your
10 discretion you could decide when you wanted to go by
11 the library to review those resumes.

12 A Correct, but it has to be done outside of
13 my other duties, such as teaching, et cetera.

14 Q And in the spring of this year, what was
15 your teaching schedule? Actually, let's talk about
16 your schedule in general, because I know you have
17 some in office time and class time.

18 A Right. I was going to say, good question.
19 I don't recall exactly, but I usually teach -- I
20 always teach a minimum of four classes a semester.

21 For this particular spring semester,
22 I did have four classes and I was teaching morning
23 and afternoon each day.

24 Q And what time would your classes have
25 been?

1 A If I recall correctly, it was 11 the first
2 class.

3 Q And generally last an hour?

4 A An hour and 15 minutes over two days.

5 Q And that would have been a Tuesday,
6 Thursday or Monday, Wednesday, Friday?

7 A Right, both. Mondays, Wednesdays and
8 Tuesdays, Thursdays, and the other class was at one
9 o'clock.

10 Q And what days would that have been on,
11 same thing?

12 A Same thing.

13 Q And when would your in office time be? Do
14 you designate a particular time when students could
15 come to you --

16 A Yes. Usually, I do a dozen of hours of
17 presence time in the office. So a little bit before
18 I start teaching, in between the two classes
19 definitely, and then pretty much the rest of the
20 afternoon after that.

21 Q What time do you normally leave the
22 university?

23 A It can vary, but I would say roughly
24 around five.

25 Q And what time do you normally arrive in

1 the mornings?

2 A Mid-morning, it depends on whether I also
3 have a meeting before I teach or not, et cetera, so
4 any where between nine, ten.

5 Q And you said that your in office time is
6 about 12 hours a week?

7 A Roughly. I have an official amount of
8 eight to ten hours, but I tend to have another two
9 to three hours of leeway, in case the hours that I
10 decide are not beneficial to the student, like they
11 cannot come at that time, for example.

12 Q Okay. All right. Take me back to
13 February the 16th and as best you can, tell me
14 everything that transpired that day, beginning with
15 the first thing in the morning.

16 A Which day did you say?

17 Q February the 16th?

18 A I thought you said 15th, so I wasn't sure.

19 I apologize, can you repeat the
20 question now?

21 Q Just beginning on the morning of February
22 16th, what time you would have arrived on campus and
23 then carry me from that point until nine p.m. that
24 evening.

25 A Okay. I did not have a meeting that

1 morning, so I would have arrived shortly before I
2 was due to teach my class.

3 Q And that would have been around 11?

4 A A little bit before that because I still
5 need to park the car and walk over, but it was
6 probably about a quarter to.

7 And when I arrived on campus, I
8 realized I couldn't see any available parking spots
9 for faculty close to where I teach and have my
10 office. However, on the other side of the road
11 there were several empty spots, so I decided to just
12 park the car, even though it wasn't faculty parking,
13 to park the car there instead of trying to go all
14 across campus to see if there were any more faculty
15 spots available, and then I went into teach both of
16 my classes. I helped students, I tutored students
17 that afternoon, I remember.

18 And in the afternoon, I received an
19 e-mail from my supervisor stating that he wanted us
20 to meet the following week to start deciding on
21 which candidates we wanted to bring to campus, and
22 at that point, I had barely started reviewing the
23 application files, I did only about two or three, I
24 think.

25 So I decided when I saw that e-mail

1 that I needed to go back to the library and make
2 some head way with all that extra work, which is
3 why, instead of leaving at the end of the afternoon,
4 when I usually do, I went to the library to work on
5 studying all those application files and took notes
6 and everything.

7 The library closes at nine during the
8 week, so at closing time, I had to leave and as I
9 was walking to my car, I got hit by a truck.

10 Q Let me back you up. First off, you said
11 you arrived around 10:45 and you didn't see a
12 faculty parking spot in the lot that you normally
13 would park in.

14 A Correct.

15 Q But you noticed some across the street and
16 decided to park there.

17 A Yes.

18 Q But you did not drive through all of the
19 parking spaces on the south side of Hubbard Drive or
20 the other parking lots to see if there was other
21 faculty parking at other locations.

22 A Correct, because I would have wasted time
23 doing that and I would have ended up further away
24 from campus then where I could see some closer
25 parking spots, so...

1 Q So that brings up the point that you have
2 discretion -- or it's your choice to park where you
3 want to park in the various parking lots that are
4 available.

5 A To a certain extent. We do have faculty
6 spots that are reserved for faculty, but when they
7 are all taken up, we're all allowed to park in a
8 student's spot.

9 Q And it's your discretion as to which
10 student parking lot you utilize?

11 A Mm-hmm.

12 Q You have to say yes or no.

13 A Yes. Sorry.

14 Q There are no assigned parking spaces for
15 anybody?

16 A No, not for anyone.

17 Q Okay. Did you leave campus at any point
18 on February the 16th after you first arrived that
19 morning?

20 A No.

21 Q And what time do classes normally start?
22 What time is the earliest class if you want to teach
23 an early class?

24 A Eight o'clock.

25 Q Okay. And the university doesn't care

1 what mode of transportation you choose to get to
2 campus, do they? You could take a bus or taxi or --

3 A I would think not, but who knows.

4 Q As we sit here now, you've never been made
5 aware that it's a requirement that you drive a
6 personal vehicle?

7 A No. What I do know is that if we have a
8 car, we have to register it with the university. In
9 other words, you get a faculty parking tag, which
10 I've done.

11 Q Got you.. Now, you indicated that you
12 tutored a student on the afternoon of February the
13 16th, who schedules that, or are you compensated
14 extra for tutoring?

15 A No. It's part of what we call office
16 hours.

17 Q Okay.

18 A Being present in the office in order to
19 help students, being available in the office so that
20 students can stop by, if they need any extra help or
21 if they any need any kind of information.

22 Q Okay. And do you remember exactly how
23 long or what your tutoring schedule was on the
24 afternoon of February 16th?

25 A I would want to say no, not exactly. I

1 know I saw several students. I was tutoring one
2 student almost every day at one point in time, but I
3 can't tell you on that specific day that that
4 student came, I want to say yes, but I'm not a
5 hundred percent sure at this point.

6 Q But do you remember how early the resumes
7 had been on file in the library? You mentioned you
8 reviewed several of them before.

9 A Right. I want to say just a few days
10 before, because I'm the kind of person that as soon
11 as I know it's available, I start working on it.
12 And I barely started the day before the accident, so
13 I want to say earlier that week.

14 Once again, I would have to check my
15 e-mails to give you a definite date.

16 Q Okay. And you mentioned that you prepared
17 notes from reviewing the resumes?

18 A Yes; correct.

19 Q What did you do with those?

20 A I still have them.

21 Q You never turned those in to the search
22 committee or anything?

23 A No, no. I was not in any state to do so
24 at that point, I think.

25 Q Did anyone ever ask you for your notes

1 from review of these resumes?

2 A No, I don't think so.

3 Q All right. And how long does it typically
4 take to review a resume in terms of the initial
5 weeding out process?

6 A It depends on how much information is in
7 each application file, but it can be 15, 20 minutes
8 per file, easily.

9 Q How large would a typical file be in terms
10 of pages?

11 A Once again it depends whether they sent
12 everything or not. I want to say, 20, 30.

13 Q And when you say if "they sent everything
14 or not," what would be expected to be in the
15 applicant's file for it to be considered to be
16 complete?

17 A The on-line application form -- sorry, the
18 words are escaping me, an application letter. A
19 resume, three letters of recommendation and possibly
20 a philosophy of teaching and/or research.

21 Q What's the last thing?

22 A Research, scholarly research, especially
23 when you figure it entails a Ph.D and being on
24 track.

25 Q Is this the position that you-all were

1 trying to fill that was within that description?

2 A Yes, it was. I'm sorry?

3 Q Is that the position you-all were trying
4 to fill was for a Ph.D?

5 A Yeah, correct.

6 Q All right. And do you remember what time
7 you went to the library on February 16th to review
8 the resumes?

9 A No, I do not recall a specific time.

10 Q Was it before or after five p.m.?

11 A I want to say shortly after.

12 Q And how do you remember who you spoke with
13 or how you came to get the resumes that evening?

14 A I know I talked to someone to get the big
15 binder with all the files. I want to say, it was
16 David, but I'm not 100 percent positive.

17 Q And how would you know David by name?

18 A Because he's a colleague.

19 Q How long has he worked at the university?

20 A I couldn't tell you. I want to say
21 several years, and also for me, his last name is
22 hard to pronounce so his first name is easier.

23 Q He only worked there for less than a year,
24 according to his testimony.

25 A Possibly.

1 Q Did you know him before February the 16th?

2 A Yes, I've seen him at the library several
3 times but...

4 Q Other than checking out these resumes, why
5 would you have had an occasion to speak with him and
6 know him by first name or any name before February
7 the 16th?

8 A Beyond seeing him at the library and
9 perhaps chit-chatting a few times, no, there is no
10 other occasion.

11 My bad. I did have a conversation
12 with him previously about some research I was doing
13 personally.

14 Q According to his testimony, he would
15 typically arrive at campus at five o'clock and you
16 would normally, according to your testimony, you
17 would be leaving campus at five o'clock, so it would
18 be unusual for you to have an opportunity to see him
19 very often in the six or seven months before your
20 accident; correct?

21 A Correct.

22 Q Once you checked out the resumes, it was a
23 little after five o'clock, what did you do then?

24 A I asked if the conference room was
25 available so I could go study the resumes. He said

1 that it looked empty and according to him, if it was
2 him, I cannot remember who gave me the files, I
3 remember talking to him when he was the one that was
4 closing the library, so I gave the files back to
5 him, that I remember.

6 I could not tell you specifically who
7 gave me the files, but at that point, I went to the
8 conference room, which was right by the counter
9 where the reserved stuff is placed.

10 Q And during the time that you were in the
11 conference room, did any other faculty come in to
12 ask if they could have any of the resumes or to
13 inquire as to who had the resumes?

14 A On that day, no.

15 Q So based on that, is it safe to assume
16 that no other member of the search committee felt
17 any urgency to review these resumes on February the
18 16th?

19 MR. REEVES: Object to the form of the
20 question. It calls for speculation.

21 You can answer, if you can.

22 THE WITNESS: Can you -- Sorry.

23 MR. REEVES: I didn't mean to interrupt.

24 THE WITNESS: No, that's okay. I'm sorry,
25 you just distracted me.

1 Would you mind repeating at this point?

2 BY MR. HENDRIX:

3 Q Based upon the fact that between five and
4 nine p.m. when you had the resumes in the conference
5 room, no other faculty member stuck their head in
6 the door, of the search committee, and asked for
7 those resumes or to share some of them?

8 A Not on that day.

9 Q So it appears that the only person that
10 felt the sense of the urgency to review the resumes
11 on February the 16th was you?

12 MR. REEVES: I object. Go ahead.

13 BY MR. HENDRIX:

14 Q Was there anybody else?

15 A I talked to a colleague that afternoon who
16 stated that they were going to go to the library,
17 they just did not happen to go at the same time I
18 did.

19 Q Did they say what time they were going or
20 what day they were going to go?

21 A No, not specifically, I don't think.

22 Q And at the time that you went to the
23 library on February the 16th, according to the
24 testimony of Dr. Nims and the e-mail that he sent
25 out, there had not even been a date selected for the

1 initial meeting other than some general time frame
2 of suggesting between February the 23th and February
3 the 29th, is that your understanding?

4 A Between the 20th, he wanted us to meet, as
5 soon as possible, starting February 20th, which was
6 I a Monday; right?

7 Q As for days that everyone could be
8 available between the 20th and the 29th of February?

9 A Right.

10 Q Did you reply when you were available?

11 A I did.

12 Q What day did you tell him you were
13 available?

14 A Every day, either before my teaching or
15 after my teaching.

16 Q Did you ever come to campus on the
17 weekends to catch up on office work, do personal
18 research or anything like that?

19 A What do you mean by "weekends?"

20 Q Just Saturday or Sunday.

21 A Yes. I have occasionally come on campus,
22 but if it's Saturday or Sunday, it's very rare.

23 Q I assume from that that Friday is sort of
24 a part of your weekend, now that I recall your
25 schedule, your Mondays through Thursdays.

1 A That specific semester -- I usually teach
2 on Fridays, but it just so happened that this past
3 spring semester, I did not have any classes on
4 Fridays.

5 Q Okay. So would you typically come on
6 campus on Fridays anyway?

7 A Yes, if I have some work to do or there's
8 meetings to attend and everything.

9 Q And as far as reviewing these resumes, you
10 could have done that on the Friday after your
11 accident?

12 A I could have.

13 Q I mean you were free to do that if you
14 would have liked to.

15 A Yes.

16 Q Now, do you recall, did you leave the
17 library right at nine o'clock, a little before or
18 little after?

19 A It was probably a minute or two after,
20 because when I handed the files back to the
21 librarian, I chit-chatted with him for a minute or
22 two.

23 Q And what did you-all talk about?

24 A I made some joke about the fact that I
25 wish I could stay longer, because I wasn't even

1 halfway through studying all of the files, but I, of
2 course, understood that he wanted go to home and he
3 was not going to stay on campus just for me.

4 Q Did you inquire about perhaps making a
5 copy of the files, or at least the one that you
6 didn't review to finish those at home?

7 A I don't think we're allowed to do that.

8 Q Did you ever inquire as to whether you
9 could make a copy of any of the resumes?

10 A No. I did request if I could take the
11 file up to my office so I could review them earlier
12 in the afternoon and that request was denied.

13 Q And who did you ask?

14 A I want to say it was the same colleague,
15 but it might have been a different colleague in the
16 library.

17 Q When you say "the same colleague," you
18 mean David?

19 A Yes.

20 Q You think you asked him that earlier on
21 the 16th?

22 A It was either the previous day or that
23 same day.

24 Q Now you mentioned speaking with a
25 colleague about reviewing the resumes and them

1 indicating that they intended to review the resumes
2 on the 16th at a different time, who was that?

3 A Who was that?

4 Q Yes.

5 A My colleague Darris Hassell.

6 Q Who?

7 A Darris Hassell. D-a-r-r-i-s.

8 Q Last name?

9 A H-a-s-s-e-l-l.

10 Q He is a professor of Spanish or French?

11 A Yes. The other professor of Spanish, I
12 know we talked about it, but at this point I cannot
13 recall if it was right before or after the accident
14 so...

15 Q What's his or her name?

16 A Tania.

17 Q Spell it?

18 A No, the last name is going to be tough.

19 T-a-n-i-a, and the last name is Wolowchianski, which
20 I can say better than I can spell. It's W-o --

21 Do you mind if I write it down?

22 Q That's fine.

23 A I have no idea.

24 W-o-l-o-w-c-h-i-a-n-s-k-i.

25 Q W-o-l-o-w-c-h-w-i-a-n-s-k-i.

1 A Yes, I think there is another W in the
2 middle; right?

3 Q Yes.

4 A Okay.

5 Q And I'm reading it off on my e-mail. I'm
6 not able to spell those names either.

7 A I know we talked about it before the
8 accident, because since we're all three teaching
9 Spanish, we are primarily concerned with that work
10 to be done, but I don't recall if I actually saw her
11 on the day of the accident, however, I did see my
12 other colleague and we did talk about it.

13 Q Okay.

14 (Campus diagram marked as Defendant's
15 Exhibit 1 for identification.)

16 BY MR. HENDRIX:

17 Q Miss Davaut, let me ask you to look at
18 Defendant's Exhibit 1, which is a diagram of the
19 campus. It was provided by Mr. Rutledge a few days
20 ago during his deposition.

21 You indicated that the parking lot
22 where you normally park, if you'll just make a mark
23 in that parking hot and then draw a line and put the
24 number one there just by way of reference.

25 A So you're asking me to point out where I

1 usually park?

2 Q Correct?

3 A Is that it?

4 For that specific semester?

5 Q Yes.

6 A Okay. Because like I said, it does depend
7 on where I teach. So that specific semester, all of
8 my classes were in Medford, I'm almost positive. So
9 I would have tried to park in the parking lot which
10 would be considered between Hubbard and Starr, which
11 is right across from the Medford building, that is
12 the Rose Garden, or I would have tried to park by
13 Herbert Hall over here (indicating.)

14 Q Okay.

15 A Yes. So actually, faculty spots are right
16 here. All those are students. And then there's
17 faculty spots over here and over here. So that
18 would have been my number two (indicating.)

19 Q So number one and number two are the two
20 lots that you normally would park in.

21 A On that specific semester, yes.

22 Q Spring semester of 2012?

23 A Yes.

24 Q Now you said you didn't notice any faculty
25 parking spots available and you looked across the

1 street and noticed an empty space.

2 A Yes, because I came from here and I
3 noticed an open spot here so I went ahead and parked
4 here (indicating.)

5 Q So three identifies the parking lot where
6 you actually parked your car.

7 A Correct.

8 Q The remaining parking lots that are marked
9 in blue on the diagram, you didn't drive through
10 those looking for available spots before making a
11 decision to park across the street from Herbert
12 Hall; correct?

13 A Correct.

14 Q You mentioned the Starr building, is that
15 also called Starr Hall?

16 A Yes.

17 Q But you believe, at least for spring of
18 2012, that all of your classes were actually in
19 Medford Hall?

20 A Yes. I'm almost a hundred percent
21 positive. Previous semesters I've taught in Starr
22 Hall and Bradford at the same time as Medford, but
23 spring semester, I think all my classes were in
24 Medford.

25 Q The building that is between what we've

1 marked on diagram number three, the parking lot that
2 you parked in on the morning of February 16th, and
3 it says a two-story church.

4 My understanding is it's a renovated
5 church that's part of the campus.

6 A It is part of the campus.

7 Q What is in that building?

8 A I don't know all the rooms in there, but I
9 know there is a big room where we often have events
10 that they place there and I know there is a kitchen
11 off of it. And then that would be the big room here
12 (indicating.)

13 And then the back of it is where we
14 have several programs that are within the university
15 such as physical therapy and diabetes clinic and
16 possibly more, I may not know all of it.

17 Q And they are services that are offered to
18 the general public as well?

19 A Correct.

20 Q And what is that building referred to as,
21 what is it called?

22 A The Carole Ray Dowling Center.

23 Q And have you ever attended any physical
24 therapy in that facility as part of your treatment
25 from your earlier injuries?

1 A I didn't do physical therapy in that
2 specific building, no. I have gone there a couple
3 of times though to talk to people.

4 Q Do they offer physical therapy anywhere
5 else on campus?

6 A Yes, the pool.

7 Q Where is that located?

8 A In the Wellness Center.

9 Q On the south side of Hubbard Drive?

10 A Yes, that is south; correct.

11 Q Now, when you left the library, did anyone
12 exit the library with you on the evening of February
13 16th?

14 A No, I was the last one to leave and my
15 colleague still had to turn off the lights behind
16 me, so I was the only one leaving at that point.

17 Q And is there more than one exit from the
18 library or is there only one?

19 A No, only one, the main door, for us, I
20 think. I think the staff may have a different exit,
21 but I wouldn't use that.

22 Q Did you notice anyone else leaving campus?

23 A Leaving campus, no. I did see some people
24 in the Hubbard parking lot.

25 Q Do you know who those people were?

1 A No, I have no idea. I assume students, we
2 have night classes on campus.

3 Q But there is no housing on campus, it's
4 typically a commuter school for the most part?

5 A Yes.

6 Q As far as the accident itself, do you have
7 any recollection about whether the gentleman blew
8 his horn?

9 A You said "the accident itself?"

10 Q Yes, ma'am.

11 A No, he never blew his horn.

12 Q Did you lose consciousness or were you
13 coherent for the most part?

14 A I must have lost consciousness when I got
15 hit, because when I -- sorry. I was going to
16 explain something, but I don't know that it --

17 Q Go ahead.

18 A When I woke up, for lack a of better term,
19 I was flat on my back in the middle of the street,
20 but at that point, I did wonder whether I was in bed
21 or not, and that's when I realized that the sky and
22 the stars were above me and, therefore, that's when
23 I started recalling what had happened.

24 Q And based on photographs that were offered
25 by witnesses in earlier depositions, it appeared

1 that you were on struck pretty close to the middle
2 of the street in the crosswalk on Hubbard Drive.

3 A Yes. It must have been right before the
4 two yellow lines that represent the divider in the
5 street.

6 Q Was it raining or anything that evening
7 that you recall?

8 A No, sir.

9 Q Unusually foggy or anything?

10 A It might have been a little bit foggy and
11 it was a little bit chilly, but that's all I recall.

12 Q Do you recall speaking with anyone before
13 you were taken by the EMS workers to the hospital?

14 A Yes.

15 Q Who did you speak with?

16 A David, and I'm not sure what the word is,
17 but the medical person who attended me that came
18 with the ambulance.

19 Q Okay. All right. And your car was
20 obviously still in the parking lot?

21 A Yes.

22 Q And the parking lot labeled three on the
23 diagram is a parking lot opened to pretty much to
24 anybody who wants to park there, including the
25 general public if they were attending physical

1 therapy or the diabetes clinic; correct?

2 A Correct.

3 Q What did you do about your car, as far as
4 the security of your car?

5 A You mean when I arrived that day on
6 campus?

7 Q No, no, after the accident in terms of
8 knowing that your car was still there.

9 A Nothing.

10 Q Did you have a conversation with anybody
11 about moving your car some place?

12 A No.

13 Q Did you direct anybody that you wanted to
14 move your car?

15 A No.

16 Q When did you first learn that your car had
17 been moved and where had it been moved to?

18 A I'm not sure. I want to say a few days
19 after the accident. You have to understand that the
20 first few days I was in the ICU and I was heavily
21 sedated. So I must have been told at some point,
22 but I couldn't tell you exactly when.

23 Q Now, as far as returning to teaching, the
24 Summer 1 on-line course would have been the first
25 time you returned to any sort of teaching after the

1 accident?

2 A Correct.

3 Q Did you receive your salary for the
4 balance of the semester?

5 A What do you mean "for the balance of the
6 semester?"

7 Q I guess, when would you normally be paid,
8 do they pay you 12 months out of the year?

9 A No. We're on a nine-month contract so we
10 get 18 paychecks over the school year.

11 Q When did they stop your salary?

12 A March.

13 Q Any particular day in March?

14 A I want to say that it was March 31st, but
15 it was not a complete paycheck.

16 Q What did it pay you through?

17 A I'm not sure. What do you mean by
18 "through" though?

19 Q In other words, did they only paid you
20 through the day of the accident or did they continue
21 to pay your salary?

22 A They continued to pay me my full salary, I
23 would say to at least through the end of February,
24 then after that, I'm not exactly sure what came into
25 play as to why I received so many in March, but I

1 would assume that it might have been for sick leave
2 or something like that.

3 Q Okay.

4 A However, like I said, the last pay check
5 was not complete and then after that, it totally
6 stopped. Once my status changed to leave without
7 pay, once all the paperwork got done, I guess.

8 Q Okay. Now, when did you return, I think
9 you were in the hospital about a month give or take?

10 A Yes.

11 Q And when you were released from the
12 hospital, did you return to France immediately at
13 that point?

14 A No, absolutely not. The hospital released
15 me to a rehab center.

16 Q And what rehab center was that?

17 A Liberty Nursing Home and Rehab Center or
18 something like that.

19 Q And how long were in the rehab center?

20 A A month.

21 Q And when you were released from the rehab
22 center, when was that?

23 A The only reason why they released me was
24 that somebody was going to be home to help take care
25 of me, which was my mother, so I went home, but I

1 was still in a wheelchair.

2 Q And how long did your mom stay?

3 A She stayed another -- close to six weeks,
4 I think.

5 Q So when did you actually go back to
6 France?

7 A At the end of June, once the class was
8 over.

9 Q Okay.

10 A I had to wait until the surgeon gave me
11 the green light to start putting my feet on the
12 ground again.

13 Q And what did you do while you were in
14 France from June until you returned the end of this
15 month?

16 A Physical therapy mostly.

17 Q Water aerobics or --

18 A A little bit of that. Some stationary
19 biking and I also had 11 sessions with two different
20 physical therapists.

21 Q And while in the US, what doctors treated
22 you?

23 A Dr. Bosse was the main surgeon and he's
24 the main doctor that I've seen for follow-up.

25 Q Okay. And then, of course, have you had

1 physical therapy other than the therapy at Liberty
2 Nursing Home?

3 A I've had some at home, too.

4 Q At what facility?

5 A Interim Healthcare out of Gastonia where I
6 live.

7 Q Okay. And you're not scheduled to go back
8 to Dr. Bosse for three months?

9 A November 8th now.

10 Q And what, if any, additional medical care
11 has he indicated that you are going to require, does
12 he believe that you'll need any further medical
13 care?

14 A He wants me to do more physical therapy,
15 because, according to him, I shouldn't need the
16 crutches to walk anymore, but I still do.

17 Q Okay.

18 A Which is why he wants to see me again in
19 three months hoping that at that point I would be
20 walking without them.

21 Q At that point you're going to be doing
22 more physical therapy for Dr. Bosse?

23 A Yes.

24 Q Have you set that up?

25 A Not yet, we're in the process of doing

1 that.

2 Q And as far as physical injury, where do
3 you have your main problem now?

4 A My left hip was dislocated. I had a
5 multiple pelvis fractures and my right femur was
6 also broken.

7 Q Do you have any problem with your right
8 femur in that area?

9 A Yes, it's still not healed up. Neither
10 are the pelvis fractures.

11 Q Did Dr. Bosse say that's to be expected or
12 does he expect the fractures to have been healed by
13 now?

14 A He's a man of very few words. So I want
15 to say that he thinks this is the normal process in
16 terms of healing, but at the same time he did state
17 that I should be able to walk without the help of
18 crutches, so who knows.

19 Q So how far can you walk with the use of
20 crutches now?

21 A With the use of crutches, I haven't tried
22 to do a marathon or anything, but I can easily walk
23 100 feet, 200 feet, if I have the crutches, but I
24 get tired very easily.

25 Q Okay. Have you been back on campus yet?

1 A Not yet.

2 Q As far as --

3 A Well, I'm sorry. I didn't let you finish
4 your sentence. You want to finish.

5 Q I just wondered if you explored whether
6 you'll be able to get to Medford Library, to the
7 classrooms even with using your crutches?

8 A No, I have not done that yet. I'm hoping
9 go to this afternoon or tomorrow.

10 Q Any reason to think that you wouldn't be
11 able to ambulate through the building to teach
12 classes?

13 A I hope not. I think if I have the
14 crutches and I have the handicapped parking tag that
15 I can park close enough to my office that I won't
16 have to walk around too much.

17 Q Okay. But you mentioned Dr. Bosse
18 instructed you to limit walking at this point.

19 A Yes.

20 Q Does sitting bother you?

21 A Sometimes, if it's a hard chair. I need
22 something a little bit cushioned.

23 Q Got you. I do, too. And to your
24 knowledge, the search committee went on with its
25 duties even in your absence; correct?

1 A Yes.

2 Q And do you still treat with any physicians
3 for your back problems associated with your earlier
4 accident at USC or the earlier automobile accident?

5 A Can you state that again?

6 Q Do you still see any physicians for the
7 treatment on your low back from the accident you
8 said you had at USC when you said you slipped and
9 fell in 2011 or the car accident you indicated you
10 had in 2010?

11 A I was still seeing someone. I did see
12 someone last Christmas break who indicated that I
13 would probably need another surgery to redo what had
14 been done, but then the accident occurred in
15 February, so since then I haven't even looked into
16 that.

17 Q What physician indicated you would need to
18 redo that in December of last year?

19 A His name is Dr. Missenard. He's in
20 France. M-i-s-s-e-n-a-r-d.

21 Q And he's in France?

22 A Yes.

23 Q Did you see him when you were home in July
24 of this year?

25 A No, I saw him now.

1 MR. HENDRIX: That's all have. Thank you,
2 ma'am.

3 MR. REEVES: I have a few.

4 EXAMINATION

5 BY MR. REEVES:

6 Q Miss Davaut --

7 A Yes.

8 Q Mr. Hendrix asked you a couple questions
9 concerning your parking and where you parked. What
10 are the busiest days at the university as far as
11 attendance is concerned?

12 A Definitely Tuesdays and Thursdays.

13 Q All right. Was it unusual or usual that
14 if you arrived mid-morning, you might find a parking
15 place?

16 A What do you mean?

17 Q You mentioned that you usually would try
18 to park nearest your office, which most people
19 would, would that always be the occasion that you
20 could do that if you arrived mid-morning say ten or
21 10:30?

22 A No, the earlier you arrived, the easier it
23 would be to find a parking spot.

24 Q The location that you parked on the day of
25 the accident, is a location -- who owns the parking

1 lot, or who maintains the parking lot?

2 A As far as I know, the university.

3 Q Okay. And generally, if you know who
4 parks in that parking lot?

5 A Students, faculty and anyone from the
6 community who comes in for a special event or one of
7 the physical therapy programs in that building.

8 Q Okay. Is the parking lot designated as a
9 University of South Carolina parking lot?

10 A Yes, on the map, however, I don't think
11 there is a sign that says, University Parking Lot.

12 Q Okay. On the day of the event when you
13 reviewed the resumes, you indicated you made some
14 notes; is that correct?

15 A Correct.

16 Q What was reason for making the notes?

17 A Because I wanted go to back over the notes
18 later on in order to establish some kind of order as
19 to which candidates were better than others.

20 Q Did you have the notes with you when you
21 left the library?

22 A Yes.

23 Q And what was your intent? Did you have a
24 deadline -- that is not the right way.

25 Did you have a date or time on which

1 you planned to review the notes?

2 A Probably, not specifically, but possibly
3 that same evening or definitely by the next day, or
4 so. At that point, I was only about halfway through
5 reviewing all the files, so I still needed to finish
6 studying all the others anyway.

7 Q Okay. Did you bring the notes with you
8 today?

9 A I did.

10 Q Okay. Can we see those?

11 A Mm-hmm. Here they are. It's based on the
12 file that was sent by the HR person.

13 Q Okay.

14 MR. REEVES: Let's go off the record for a
15 minute.

16 (Discussion off the record.)

17 BY MR. REEVES:

18 Q Miss Davaut, the document that you have in
19 front of you, on the top of the page, how is it
20 defined or how it is described?

21 A "Assistant Professor of Spanish Surge
22 Application List 2012 yellow folders."

23 Q Who provided that particular document to
24 you?

25 A Sorry.

1 Q Did someone provide that to you?

2 A Like I said, the HR person provided the
3 document.

4 Q And are those the notes you had with you
5 when the accident occurred?

6 A Yes. I have not touched them since then.

7 Q I know the second page doesn't have any
8 notes on it?

9 A No. Like I said, I was about halfway
10 through.

11 Q And did you plan to review those notes
12 later?

13 A Yes. Definitely.

14 Q When you left the library that evening,
15 when you left out of the building where was it you
16 were intending to go?

17 A I was debating whether going straight home
18 or going somewhere in town for dinner because I
19 didn't have dinner yet.

20 Q Okay. When you left the library, as far
21 your car was concerned, was it your intent to go to
22 your car?

23 A Definitely, yes. I needed to go to my car
24 whether I was going to go to dinner or home.

25 Q Did you go to any other location on the

1 campus before you got to the crosswalk?

2 A No.

3 Q How far would you estimate the location of
4 the accident or the sidewalk was from where the
5 Medford Library is?

6 A Roughly 100 to 150 yards.

7 Q All right. Generally describe what route
8 you took to get from the library to get to the
9 crosswalk.

10 A I would cross the Rose Garden, which is
11 right in front of the library building and then
12 after that I would walk in front of Herbert Hall,
13 take the out driveway and then there is a sidewalk
14 on the south side that would have led me to
15 crosswalk.

16 Q The crosswalk that you referred to, how
17 close is it to where you had parked your car?

18 A About three feet, four.

19 Q Was that the closest crosswalk to where
20 you had parked your car?

21 A Definitely.

22 Q And what, if any, sidewalk on the north
23 side of Hubbard Drive?

24 A I can't think of any, there maybe be some,
25 but I can't think of any. Definitely where I parked

1 there is no sidewalk there, just a little bit of
2 grass and then the road.

3 Q All right. Mr. Hendrix asked you some
4 questions about the timing of the meeting that was
5 to take place after you and others had reviewed the
6 documents that were on file.

7 A Yes.

8 Q When you received the e-mail from Dr. Nims
9 setting up a timetable upon which to meet, when did
10 you receive that e-mail, based on your best
11 recollection?

12 A Sometime in the afternoon. I couldn't
13 tell you the exact time, but I know it was the
14 afternoon of the accident.

15 Q And as a result of that e-mail, what did
16 you do?

17 A I decided to stay on campus late in order
18 to get a heads up in terms of getting all the
19 information to get ready for the meeting.

20 Q Mr. Hendrix asked you a series of
21 questions concerning whether or not the task of
22 reviewing the resumes was mandatory or whether you
23 could have opted out or not been involved.

24 Would you explain why or the reason
25 behind your involvement in this task to review the

1 resumes?

2 A Yes. As I explained, every year we are
3 evaluated as to the work that we do on campus. In
4 my case, as an instructor, I'm mostly evaluated on
5 teaching and serving, what we call service, which is
6 helping out on different committees and things like
7 that. So my being on the committee, of course, gets
8 my brownie points, if I can call it that way.

9 The other aspect of it was that I
10 teach Spanish on campus and we were looking for a
11 Spanish teaching candidate, therefore, I would have
12 been -- I don't want to say the best qualified, but
13 obviously teaching in the same area, my input would
14 have been valuable.

15 Q Okay. Upon your review of the resumes,
16 was it your intent to offer recommendations about
17 the best qualified persons once the committee did
18 meet?

19 A Of course.

20 Q Was there a deadline in which the person,
21 if you know, was to be hired for this position?

22 A An official deadline, I'm not aware of,
23 but I would assume by the end of the spring
24 semester.

25 Q Okay. Do you know if anyone was selected

1 for this position as of the end of the semester the
2 end of May 2012?

3 A I'm not positive.

4 Q Okay. Going back to the parking issue.

5 Based on where you parked your car,
6 it was necessary for you to cross Hubbard Drive at
7 some point?

8 A Indeed.

9 Q And was the location you choose, the most
10 proximate location to the parking lot?

11 A Yes. Hold on. What do you mean, the
12 location where I parked the car?

13 Q Yes, ma'am.

14 A Yes, because I parked in the first spot
15 right out of the parking lot.

16 MR. HENDRIX: Repeat the question.

17 THE WITNESS: Yes. I'm sorry, I got kind
18 of --

19 BY MR. REEVES:

20 Q Was the crosswalk that you choose before
21 the accident took place, the closest crosswalk to
22 where your vehicle was parked?

23 A That definitely, yes.

24 Q I'm sorry if I misstated something.

25 Has your physician Dr. Bosse released

1 you as of today's date?

2 A Yes, with restrictions.

3 Q But he's not released you from care, he's
4 released you to go back to work.

5 A I'm sorry, yes. Released me from care,
6 no, he has not.

7 Q And he hasn't assigned any impairment
8 ratings as of yet?

9 A Not as of yet.

10 Q You mentioned awhile ago that you felt
11 like you would have some difficulty without the
12 crutches or the walking assistance.

13 A Definitely.

14 Q Why do you use the crutches?

15 A To walk a little bit more easily, a little
16 bit better and then because it affords me stability.

17 Q Okay.

18 A If I don't have them, I feel like I'm not
19 quite as solid on my legs and my feet and I may
20 fall.

21 Q You mentioned you taught Summer 1 or the
22 course from home.

23 A Yes, I was slated to teach two classes but
24 I could teach only one.

25 Q And did you seek permission from Dr. Bosse

1 to teach that course?

2 A Yes, I did.

3 Q Why did you do that?

4 A Because, as I just said, I was slated to
5 teach two summer courses and I felt bad not to be
6 able to do my job. So even though I couldn't do all
7 of it, I asked the surgeon if he could give me
8 permission to at least teach one class in the
9 on-line format, because since I was in the
10 wheelchair at that point, I couldn't have made it to
11 campus, because I didn't want to leave my employer
12 in the lurch.

13 Q From the time that you started Summer 1,
14 going back in time to the date of the accident, were
15 you ever able to -- let me rephrase the question.

16 From the date of the accident, until
17 you were released to go home in a wheelchair, had
18 you had any opportunity to walk, at that time, or
19 had walking been anything you could do before you
20 went home?

21 A No. The surgeon prohibited me from
22 walking for three months after the last surgery.

23 Q Had you ever taught an on-line course at
24 USCL prior to this?

25 A Not at USCL.

1 Q This semester, it's your intent to teach
2 in a normal classroom but with the restrictions that
3 Dr. Bosse has given you.

4 A Yes.

5 Q You have not tried that yet but you intend
6 to try that?

7 A Indeed.

8 Q Your vehicle was a registered vehicle with
9 the university?

10 A Yes.

11 Q And when you say "registered," what does
12 that mean, what did you do?

13 A I fill out a form where I describe the
14 car, give the license plate and then in exchange, I
15 get a parking tag for faculty.

16 Q Okay. All right. You referred to some
17 e-mail that gave you some direction about the
18 resumes or when things might have happened, who
19 would those e-mails have been from?

20 A Dr. Nims mostly but I also did get a list
21 of applicants from Miss Mobley -- I'm sorry, and
22 Dean Cox.

23 Q Did Miss Mobley or Dean Cox give you any
24 instructions of any time frames or timetables?

25 A No, just Dr. Nims.

1 Q Okay. And you were carrying on what you
2 believed to be a task of the university that evening
3 when you were doing the resumes?

4 A Definitely.

5 Q And between the time that you ended that
6 task and you got to the crosswalk, you made no other
7 divergents or engaged in any other task, did you?

8 A No. Absolutely not.

9 MR. REEVES: That's all I have,
10 Mr. Hendrix.

11 Thank you.

12 EXAMINATION

13 MR. HENDRIX: A couple follow-up.

14 BY MR. HENDRIX:

15 Q You indicated this was the first on-line
16 course that you taught at USC.

17 A Yes; correct.

18 Q Implying that you have taught on-line
19 courses at other universities in the past.

20 A Yes.

21 Q At what other universities had you taught
22 on-line courses at?

23 A Gardner Webb where I was employed before
24 and also a school down in Florida, that was several
25 years ago though.

1 Q And the school in Florida, the only
2 relationship you had with them was to teach an
3 on-line course?

4 A Right. Teach one on-line course and that
5 was it.

6 Q How did you come to find that type of work
7 or that opportunity?

8 A I want to say on the regular teaching ad
9 channel, I couldn't tell you specifically which one
10 at this point.

11 Q Has on-line courses become more and more
12 popular in the last several years based on your
13 observation?

14 A I would say yes.

15 Q Do you think there are another
16 opportunities out there to teach on-line courses in
17 Spanish or French at other facilities?

18 A Not in a foreign language. There are only
19 about two schools or three that I know of that
20 really do that.

21 Q And that would be --

22 A Foreign language is really concerned more
23 something that you can do in a face-to-face setting
24 than over a computer.

25 Q At the Gardner Webb on-line course, was

1 that in French or Spanish?

2 A Yes, but in culture, not the actual
3 language itself.

4 Q Would those opportunities exist, on-line
5 programs offered by the universities, the culture
6 aspect where the one-on-one, or in person piece
7 would not necessarily be essential?

8 A Can you say that again please?

9 Q Would there be other on-line courses
10 within your field of expertise other than actually
11 teaching the language of French or Spanish itself,
12 focusing more on culture and history and things of
13 that nature?

14 A Possibly, yes.

15 Q And on the morning of the 16th, just so I
16 understand your testimony correctly, the only
17 parking lots that you observed for available parking
18 would be the parking lot listed as one and two and
19 three?

20 A Yes.

21 Q Because of the way you entered Hubbard
22 Drive?

23 A Yes, from the northeast.

24 Q So the parking lots that would have
25 continued on past that point, you're not sure if

1 there was faculty or other parking available?

2 A I do not, no. I didn't go all the way out
3 there, because I didn't want to waste time searching
4 around.

5 Q You could have done that?

6 A I could have.

7 MR. HENDRIX: That's all I have.

8 Thank you, ma'am.

9 MR. REEVES: Mail the transcript directly
10 to her, she gave you her e-mail address.

11 THE REPORTER: Yes.

12 (Deposition concluded at 12:38 p.m.)

13 (** This transcript may contain quoted
14 material. Such material is reproduced as read
15 or quoted in the speaker.)

16 (**Certificate accompanied sealed original
17 only.)

18

19

20

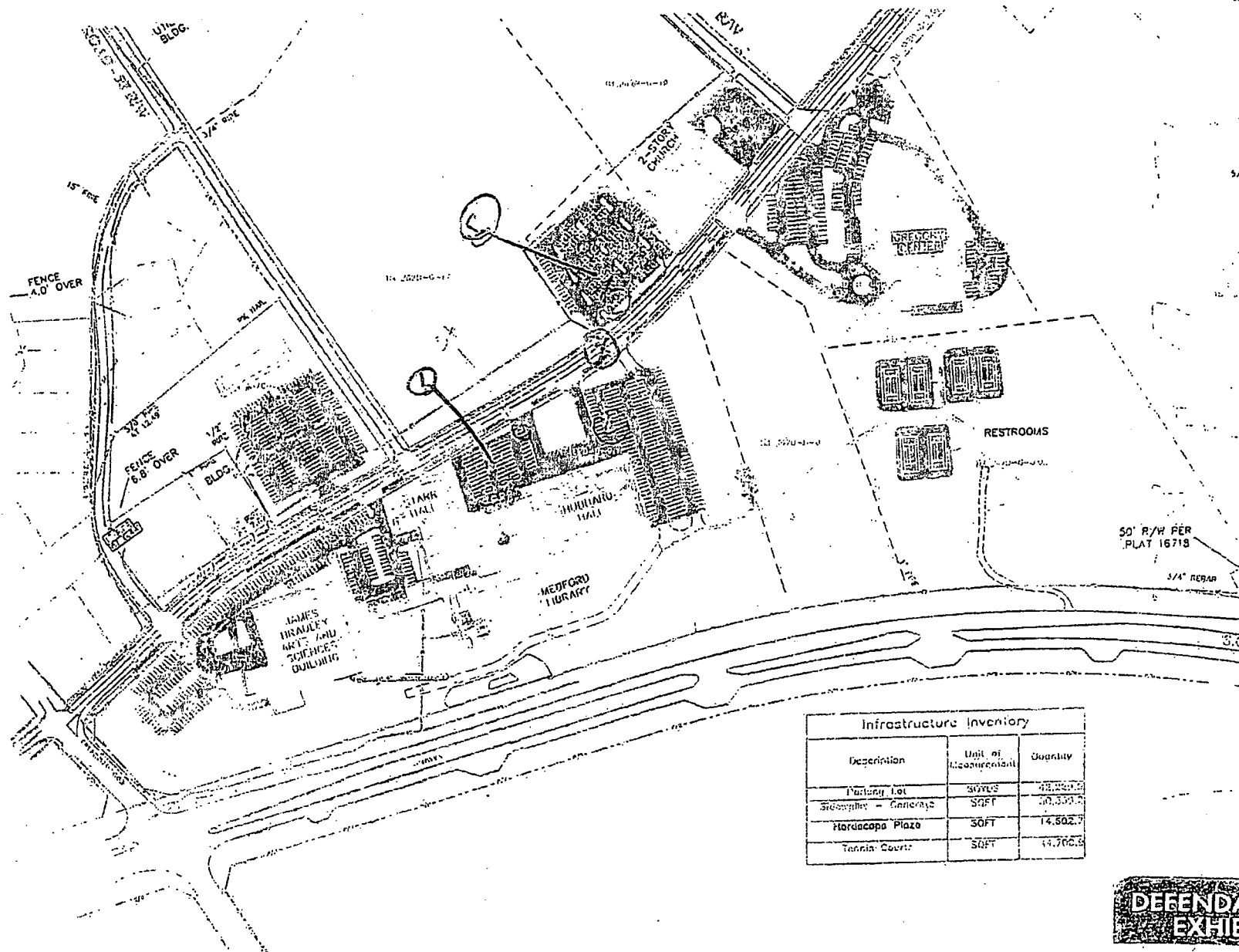
21

22

23

24

25



**DEFENDANT'S
EXHIBIT**



Southern Reporting, Inc.

Transcript of the
Deposition of

John Rutledge, Ph.D.

8/9/2012

Davaut vs. University of South Carolina, et al.
1203664

COPY

Southern Reporting, Inc.

Phone: 803.749.8100

Fax: 803.749.9991

Email: Depos@southernreporting.net

1 Before the South Carolina
2 Workers' Compensation Commission

3 Nathalie Davaut,
4 Employee,

5 Claimant,

6 Vs.

WCC File # 1203664

7 University of South Carolina,
8 Employer,

9 and
10 State Accident Fund,
11 Carrier,

12 Defendants..

13 Deposition of: John Rutledge, Ph.D.

14 Location: 201 West Dunlap Street
15 Lancaster, South Carolina

16 Date: Thursday, August 9, 2012

17 Time: 10:03 a.m. - 10:43 a.m.

18 Court Reporter: Kathleen M. Hagood

19 The deposition is taken pursuant to notice and/or
20 agreement, in the above-entitled cause pending in
21 the above-named court and pursuant to the South
22 Carolina Rules of Civil Procedure.
23
24
25

A P P E A R A N C E S

For the Claimant:
Blackwell, Trimmal, Reeves & Myers, LLC
1527 Blanding Street
PO Box 11126
Columbia, SC 29211
by: Paul L. Reeves, Esq.

For the Defendant:
Jones & Hendrix, PA
50 Applewood Lane
Spartanburg, SC 29307
by: Paul L. Hendrix, Esq.

Also present: Tracey Mobley

I N D E X

Examination by Mr. Reeves	3
Examination by Mr. Hendrix	22
Further Examination by Mr. Reeves	27
Further Examination by Mr. Hendrix	28

E X H I B I T S

Plaintiff's:

Pg/Ln	Ex.	Description
05/22	1	Diagram
17/18	2-4	Photographs
20/15	5	Photograph

** uh-huh = affirmative
huh-uh = negative

1 S T I P U L A T I O N S

2 It is stipulated between counsel that
3 this deposition is being taken pursuant to the
4 South Carolina Rules of Civil Procedure; and that
5 all objections, except as to the form of the
6 question, are reserved until the time of trial.

7 It is also stipulated between counsel
8 for the respective parties and the deponent that
9 the deponent will exercise the right to read and
10 sign this transcript.

11 Thereupon,

12 John Rutledge, Ph.D.,
13 being first duly sworn by the court reporter, as
14 hereinafter certified, testified as follows:

15 E X A M I N A T I O N

16 BY MR. REEVES:

17 Q Mr. Rutledge, good morning. We're here
18 in the matter of Nathalie Davaut and her worker's
19 comp claim to determine what you know about the
20 facts of this case. I'm familiar with what you do
21 and I'm familiar with maybe some of the things you
22 know. But I'm going to ask you some questions to
23 get some information about some geographical
24 issues and also some issues as to how you dealt
25 with this accident. If I ask you something that

1 you don't know, just please tell me and we'll move
2 forward. If I am confusing or if I ask you
3 something that doesn't make any sense, please stop
4 me and I'll try to clarify it. I don't think your
5 deposition is going to take very long. But if you
6 need to take a break, just let me know that and we
7 will; okay? You understand those things?

8 A I do.

9 Q All right. Would you state your name
10 and your position, please?

11 A My name is John Rutledge, and I am the
12 Director of Law Enforcement Security at the
13 University of South Carolina Lancaster.

14 Q Could you briefly describe what your
15 duties are?

16 A More of a coordinating role than
17 anything else. In addition to coordinating with
18 the City of Lancaster and Lancaster County
19 Sheriff's Department, I also am responsible for
20 the planning aspect of -- of disasters -- anything
21 that would put at risk the students, faculty and
22 staff of the University. And in that regard, I --
23 I am privy to the -- a lot of the plans that are
24 going on from the engineering side of the house,
25 where the geographical locations of buildings and

1 things of that nature are located at.

2 Q All right. How long have you been in
3 that position?

4 A I'm in my fourth year now.

5 Q All right. And are you -- are you
6 familiar with the campus and its grounds, such
7 that you know what the university maintains,
8 controls and -- and has jurisdiction over?

9 A Yes, sir.

10 Q All right. Did -- before this incident
11 did you know Ms. Davaut?

12 A Yes, sir.

13 Q Okay. How did you know her?

14 A I'm also a faculty member and she is a
15 faculty member. We're in different disciplines,
16 but -- but being a small campus, pretty much the
17 faculty knows each other.

18 Q Okay. The campus -- you have --

19 MR. REEVES: Let's go off the record
20 for just a minute.

21 (Off-the-record discussion.)

22 (Plaintiff's Exhibit Number 1
23 marked for identification.)

24 BY MR. REEVES:

25 Q Mr. Rutledge, would you describe how

1 Hubbard Drive is located within the University.

2 A Hubbard Drive basically runs from west
3 to east. It separates the main part of our campus
4 from some of our parking facilities and our Carole
5 Ray Dowling facility and our soccer field.
6 They're on the other side of Hubbard Drive.

7 Q Okay.

8 A In fact our property is almost -- when
9 you look at total property, it's almost two-thirds
10 on the south side of Hubbard and one-third on the
11 north side of Hubbard Drive.

12 Q Okay.

13 A And that's approximate.

14 Q All right. Did you -- how did you find
15 out about the accident involving Ms. Davaut?

16 A I was actually in Charleston at a
17 conference and received the call that night from
18 the Lancaster Police Department that there had
19 been an accident. And they were trying to
20 identify, at that time, the individual that was
21 involved in the accident. So it was a call that
22 night from the City of Lancaster.

23 Q Okay. And the City of Lancaster Police
24 Department headed up the investigation into the
25 accident?

1 A Yes, sir.

2 Q Did you later receive a copy of the
3 file that was created by the City of Lancaster
4 Police Department in its investigation?

5 A Yes, sir.

6 Q And generally speaking, what did that
7 file involve?

8 A It involved the Uniform Traffic Report
9 of Collision, an incident report along with
10 several supplemental reports and some photographs.

11 Q Okay. And I think you brought some of
12 the photographs with you today; is that correct?

13 A Yes, sir.

14 Q Okay. We'll come back to those. Did
15 you do any additional or separate investigation?

16 A Since the primary investigating agency
17 was the City of Lancaster, there was -- we did not
18 do a -- an additional investigation.

19 Q Okay. Did you interview Ms. Davaut at
20 any time after the accident?

21 A No, sir, I did not.

22 Q All right. Did you interview or talk
23 with any of the investigators directly who
24 investigated the accident from the City of
25 Lancaster Police Department?

1 A Y--- no, sir.

2 Q Okay. All right. Did you come to move
3 or to get involved in the security of Ms. Davaut's
4 vehicle?

5 A Yes, sir.

6 Q How did that come about?

7 A Her car was parked in the parking lot
8 on the north side across Hubbard Drive in a very
9 open location. I received a request through her,
10 and -- and through several other people that were
11 visiting her, to secure the car to make sure
12 nothing happened to it, so -- since she was gonna
13 be in the hospital for a long period of time.

14 Q Okay.

15 A She actually sent her keys so that we
16 could -- and -- and she asked that I be the one to
17 move the vehicle. And -- and what I did was took
18 the car and relocated it across, and put it in a
19 building that we own on campus.

20 Q Okay. Would you -- on Defendant's
21 Exhibit 1, would you just tell -- for the record,
22 just tell what Defendant's Exhibit Number 1 is?

23 A Defendant's Exhibit Number 1 is a
24 rendering of critical infrastructure on campus
25 which indicates crosswalks, parking lots and

1 buildings on the University of South Carolina
2 Lancaster.

3 Q Does the information on Exhibit 1 truly
4 and -- truthfully and accurately reflect the
5 geographical location of buildings, highways and
6 crosswalks as it would have appeared on the date
7 of Ms. Davaut's accident?

8 A Yes, sir, it does. This is an
9 engineered/architectural rendering with -- with
10 measurements and all, so it is a -- an accurate
11 portrayal.

12 Q All right., I'm going to give you a
13 blue pen -- actually a black pen, since that's
14 blue. Would you just mark where you found
15 Ms. Davaut's car when you were given the keys to
16 secure it?

17 A (Deponent complies.)

18 Q Would you put an X in that circle?

19 A (Deponent complies.)

20 Q Okay. And would you describe the
21 location?

22 A The parking lot is on the north side of
23 Hubbard Drive beside the Carole Ray Dowling
24 Building, which would be to the east -- excuse me,
25 to the west side of the Carole Ray Dowling

1 Building.

2 Q Is the Carole Ray Dowling Building --
3 what -- what function does it serve?

4 A It houses a conference center that we
5 use on campus and miscellaneous healthcare
6 functions.

7 Q Is the parking lot adjacent to the
8 Carole Ray Dowling Center a parking lot that is
9 maintained and controlled by the University?

10 A Yes, sir, it is.

11 Q Okay. Who's allowed to park in that
12 parking lot?

13 A Faculty, students and staff.

14 Q All right. Are there other parking
15 lots and staff -- excuse me, spaces available --

16 A We have --

17 Q -- in -- in other areas?

18 A Yes, sir. We have several locations
19 scattered throughout the campus where -- where --
20 where -- where faculty, staff and students can
21 park.

22 Q Okay. Can you tell me, based on your
23 experience and direct knowledge, as to how the
24 parking lots generally fill up when they're used?
25 And what I mean by that is which parking lots are

1 used more than others.

2 A The ones that are -- that are on the
3 south side of Hubbard, which are where the main
4 classroom buildings are at -- Hubbard Hall, the
5 James Bradley Arts and Sciences Building and Starr
6 Hall, the Med--- Medford Library -- generally fill
7 up fairly fast. And -- and then the overflow ends
8 up going across to the -- the other side of the
9 street.

10 Q Okay. And what are the busiest days at
11 USC-L during the course of a school year?

12 A That's a two-part answer on this.
13 Mondays and Wednesdays and Tuesdays and Thursdays,
14 because of the classes that are Monday, Wednesday,
15 Tuesday, Thursday.

16 Q Okay. All right. And --

17 MR. HENDRIX: So basically every day of
18 the week except Friday? If I understand the --

19 MR. REEVES: That's correct.

20 THE DEPONENT: Yes, sir.

21 MR. HENDRIX: -- response?

22 BY MR. REEVES:

23 Q All right. The -- when did you move
24 Ms. Davaut's car from the area that you marked on
25 Exhibit Number 1?

1 A Friday afternoon.

2 Q Was that the day after the accident?

3 A It would have been -- I believe it was
4 the day after the accident.

5 Q Okay. And is there a crosswalk between
6 the south side of the campus -- using Hubbard
7 Drive as a geographical mark -- and the north side
8 of the campus, close in proximity to where her car
9 was parked?

10 A Yes, sir.

11 Q Is that the crosswalk where the
12 accident happened?

13 A Yes, sir.

14 Q All right. Would that have been the
15 crosswalk most proximate for her to cross to get
16 to her vehicle?

17 A Yes, sir.

18 Q All right. Would you place another X,
19 using that black pen, where the crosswalk is?
20 Just put an X in that circle, please.

21 A (Deponent complies.)

22 Q Okay. Are there other crosswalks?

23 A There are two other marked crosswalks.
24 Yes, sir.

25 Q Okay. Does the University exercise any

1 control over Hubbard Drive?

2 A The street itself is not controlled by
3 us in any way.

4 Q All right. But the property on each
5 side of Hubbard Drive is controlled by the
6 University?

7 A Yes, sir.

8 Q All right. Do you have any information
9 about where -- well, first of all, is the Medford
10 Library noted on Exhibit Number 1?

11 A Yes, sir.

12 Q Is it noted by name?

13 A Yes, sir.

14 Q All right. Do you know where
15 Ms. Davaut would usually teach or give instruction
16 during her language classes?

17 A I don't know that information --

18 Q Okay.

19 A -- at this time. I would have to go
20 back to another reference to --

21 Q That's fine. That's fine. As far as
22 the Medford Library is concerned, is that -- do
23 you know the hours of operation for the library on
24 a normal school day?

25 A Basically from 8- 'til 9:00.

1 Q Okay. And were you made aware during
2 the investigation as to what necessitated
3 Ms. Davaut being on campus on the evening of the
4 accident? Do you know that? And if you don't,
5 that's okay. I'm just asking if you know.

6 A I received an email statement from a
7 library employee that was departing the building
8 right behind her, that -- that had indicated in
9 his statement what she was -- had been doing.

10 Q All right. What time did he indicate
11 he left the building?

12 A May I refer to that --

13 Q Yes.

14 A -- statement?

15 Q Yeah, if it's here.

16 A Here we go. His statement February the
17 16th, Ms. Davaut was the last patron to leave the
18 library.

19 MR. HENDRIX: I'm going to just make an
20 objection -- a hearsay objection. He can go
21 ahead --

22 MR. REEVES: Okay. All right.

23 MR. HENDRIX: -- and read that.

24 BY MR. REEVES:

25 Q You can go ahead and answer the

1 question.

2 A His statement: "She had been working
3 most of the evening in the conference room
4 reviewing the material related to the search for a
5 new Spanish teacher. After she returned the
6 material to me, she left the building." And,
7 let's see, she left at approximately 9:05 p.m.

8 Q All right. Based on the incident
9 report or your information regarding the accident,
10 do you have a time of the accident?

11 A Only from what was listed as far as the
12 accident report itself.

13 Q Okay. What does it indicate?

14 A It -- it -- it shows an arrival on
15 their clock at the police department at 2105,
16 which would have been 9:05. Notified and arriving
17 at 2111.

18 Q Okay. All right. So that's 9:11?

19 A Yes, sir.

20 Q And -- okay. Mr. Rutledge, having
21 knowledge of where the Medford Library was and
22 having knowledge of where you moved Ms. Davaut's
23 car, how would you describe the route from the
24 Medford Library to where the crosswalk was?

25 A Departing the front of the library by

1 the most direct route, she would have probably
2 stayed on the sidewalk because there's bushes and
3 shrubs and things of that nature which would have
4 prohibited her from really cutting -- making
5 shortcuts across it. She would have went either
6 to the side to the -- to the west side of Hubbard
7 Hall on that sidewalk, un--- unless she went
8 through the middle of it, which a lot of faculty
9 members would do.

10 MR. HENDRIX: Object to --

11 MR. REEVES: Okay.

12 MR. HENDRIX: The testimony is
13 speculative. He's speculating --

14 MR. REEVES: Okay.

15 MR. HENDRIX: -- about what routes she
16 may have taken or should have taken in the...

17 BY MR. REEVES:

18 Q Let me rephrase the question, then. Is
19 the crosswalk where this accident occurred the
20 crosswalk most proximate to the parking lot where
21 her car was parked?

22 A Yes, sir.

23 Q All right. Is -- on the -- again,
24 referring to the parking lot that you made the X,
25 if you follow Hubbard Drive from that parking lot

1 on the north side, is there a sidewalk there?

2 A On the north side, no, sir.

3 Q Okay. Is there a sidewalk in that same
4 area on the south side?

5 A Not directly in front of Hubbard Hall.
6 There -- there is no sidewalk.

7 Q Okay.

8 A It's intermittent on that side of the
9 street.

10 Q Okay. Do you have any photographs of
11 the crosswalk itself that you brought with you
12 today?

13 A Yes, sir.

14 Q Okay. Do you want to look through here
15 and see which ones those are? Okay. Let me --
16 let me get her to mark these, Mr. Rutledge, and
17 we'll go through them.

18 (Plaintiff's Exhibit Numbers 2, 3 and 4 marked for
19 identification.)

20 BY MR. REEVES:

21 Q Let me show you what's been marked as
22 Defendant's Exhibit Number 2. Could you just
23 describe what that shows, please?

24 A Defendant's Exhibit Number 2 is -- the
25 picture is taken facing towards the west and it

1 shows the crosswalk that crosses Hubbard Drive
2 where the accident occurred.

3 Q Do you know where the impact took place
4 in regards to whether it was closer to the south
5 side of the campus or the north side of the
6 campus?

7 A Only from the accident reports. But it
8 indicated the accident took place closest to the
9 south side of the campus.

10 Q All right. Could you describe what
11 Exhibit Number 3 shows, please?

12 A Exhibit Number 3 is taken from the --
13 the west side of this same crosswalk. Just a
14 dif--- a different -- different angle.

15 Q Okay. And does Exhibit Number 4 show
16 anything relevant to the accident scene?

17 A Again, just another perspective, a
18 little further back. Still the -- the camera
19 angle was from the -- facing towards the west.

20 Q Okay. The location of this crosswalk
21 here, would you describe -- based on your
22 experience and what you know about the area, is
23 that crosswalk a dangerous location?

24 A Yes, sir.

25 Q Why do you say that?

1 A A lot of traffic uses Hubbard Drive,
2 primarily because of several businesses that are
3 located to the west of the campus. Even more
4 dangerous in the nighttime hours, because of the
5 -- the street lighting that's there. It's a black
6 asphalt surface. It goes down into a little dip
7 as you're approaching that crosswalk. If
8 you're -- especially coming from the west moving
9 towards the east, you're going down into the dip.
10 So anybody that's in that -- or anything that's in
11 that crosswalk is gonna be actually behind it, the
12 -- the asphalt surface and, depending on the angle
13 you're looking at it at, maybe the trees
14 themselves.

15 Q Okay. Is there a -- when using the
16 crosswalk -- I see in the photographs it's clearly
17 marked, but there are no barriers, though, there's
18 no traffic lights. It is just marked by a sign
19 that indicates crosswalk. Is that correct?

20 A That is correct.

21 Q All right. Mr. Rutledge, you gave to
22 me a photograph -- or a showed me a photo this
23 morning that was of the accident scene. Where did
24 you receive that photograph from?

25 A As part of the investigative file,

1 Lancaster Police Department.

2 Q All right. What does that photograph
3 show?

4 A It shows emergency medical workers
5 working on Ms. Davaut that night of the accident.

6 Q Okay. And does -- where does it show
7 her to be, as far as geographically on the
8 roadway?

9 A She is actually laying closer to the
10 northern side of campus, within the crosswalk on
11 the -- on the eastern edge of the crosswalk.

12 Q Okay.

13 MR. REEVES: Mark this exhibit
14 number...

15 (Plaintiff's Exhibit Number 5
16 marked for identification.)

17 BY MR. REEVES:

18 Q Based on the information that you
19 received, does this photograph show -- again,
20 compared with the accident report -- a true and
21 accurate depiction of where Ms. Davaut -- or at
22 least proximate to where she was struck by the
23 vehicle?

24 A All I could be able to say is that's
25 what the accident file had in it. I -- I -- I was

1 not there that night.

2 Q Okay. All right. She was struck by an
3 automo--- or a truck; is that correct?

4 A Yes, sir.

5 Q All right. And that individual was
6 interviewed by the City of Lancaster Police
7 Department; is that correct?

8 A Yes, sir.

9 Q All right. Okay. You did not take
10 part in that at all?

11 A No, sir.

12 Q Okay. A couple of final questions,
13 then, Mr. Rutledge. The -- the parking lot where
14 Ms. Davaut's car was parked is property owned and
15 controlled by the University; is that correct?

16 A Yes, sir.

17 Q All right. The Medford Library on the
18 other side of the road, along with the buildings
19 adjacent to it, is all property under the custody
20 and control of the University?

21 A Yes, sir.

22 MR. REEVES: Okay. That's all I have.
23 Please answer any questions that Mr. Hendrix may
24 have.

25 MR. HENDRIX: If you'll give me a

1 minute, I want to speak to her --

2 MR. REEVES: Sure.

3 MR. HENDRIX: -- please.

4 MR. REEVES: Sure.

5 (Whereupon, a break was taken
6 from the proceedings.)

7 E X A M I N A T I O N

8 BY MR. HENDRIX:

9 Q Mr. Rutledge, I'm Paul Hendrix and I'm
10 an attorney that represents the University in this
11 action that's been brought by Ms. Davaut. And I'm
12 going to ask you a few questions. First off, I'd
13 like to know how many times you've spoken with the
14 attorney for Ms. Davaut about this case before
15 your deposition today.

16 A A couple of times, basically
17 coordinating the deposition itself.

18 Q I'm not talking about his staff for the
19 coordination purpose, I'm talking about direct
20 conversations with the attorney for Ms. Davaut
21 that's seated here with us today -- Mr. Reeves.

22 A I don't really remember if it was staff
23 I was talking to or him, but I believe it was
24 staff.

25 Q So you've never spoken to Mr. Reeves

1 before today about this case?

2 A I think the first direct communication,
3 he asked me this morning to bring the -- if I had
4 a diagram of the accident location, to bring that.
5 And I think that was the -- if -- if my memory
6 serves correctly, the first direct communication.

7 Q Well, who would you have spoken with
8 that would enable him to have known what you were
9 going to testify today about, if you've not spoken
10 to him? Or someone in his office that was
11 gathering that information for him?

12 A Again, it could have been him, but
13 various people in the office just asking what my
14 job was, things of that nature. I can't remember
15 exactly who it was in the office that was calling,
16 but...

17 Q Well, what time did you arrive here
18 today?

19 A At approximately 10 minutes 'til 10.

20 Q Did you meet with the lawyer before
21 your deposition? Mr. Reeves?

22 A No, sir.

23 Q So your testimony is, no one from
24 Mr. Reeves' office or Mr. Reeves himself has ever
25 had any discussion with you in terms of what their

1 theory of liability would be, in terms of
2 establishing a liability against the University in
3 this case?

4 A No, sir.

5 Q Had no idea what he might ask you about
6 when you got here today?

7 A He had -- or somebody in his office had
8 asked me about was I the one that moved the car,
9 in one of those telephone conversations, from
10 where it was parked at back on campus. But again,
11 I can't remember whether it was somebody in the
12 office as a secretary or -- or him personally.
13 But they had asked me was I the one that moved the
14 car.

15 Q Okay. The Defendant's (sic) Exhibit 1,
16 which is the diagram of the University, all of the
17 areas marked in blue are considered parking areas
18 open to faculty, staff and/or students. Is that
19 correct?

20 A Yes, sir.

21 Q And there are actually designated
22 parking areas for faculty-only as well on campus,
23 are there not?

24 A Yes, sir.

25 Q In the parking lot where Ms. Davaut's

1 car was located, that you've marked on the Exhibit
2 1, is not a fac--- a designated faculty parking --

3 A No, sir.

4 Q -- area? Where we've got this mark on
5 here, two-story church, that's actually a
6 renovated structure that's now the Carole Ray
7 Dowling Health Sciences Building; is that correct?

8 A Yes, sir.

9 Q And the public accesses the services
10 offered at that facility, do they not?

11 A Yes, sir.

12 Q And the public is allowed to park in
13 the parking lot where Ms. Davaut's car was located
14 at the time of this accident; is that correct?

15 A Yes, sir.

16 Q No prohibition against the general
17 public using that?

18 A The only prohibition that's shown on
19 that side of the street is on the other side of
20 Carole Ray Dowling, which -- in -- in fact, the
21 signage went up after this accident, was unrelated
22 to the accident, restricting it to patients and
23 faculty and sta--- staff.

24 Q Now, when you say the --

25 A But it was open --

1 Q -- other side --

2 A -- and up -- when the accident
3 occurred, it was open.

4 Q Okay. And as far as traffic control on
5 Hubbard Drive, patrolling was -- that's carried
6 out by the Lancaster Police Department?

7 A Yes, sir.

8 Q In terms of issuing tickets for
9 speeding or investigating accidents or anything of
10 that nature?

11 A Yes, sir.

12 Q Any idea of -- you mentioned that
13 Ms. Davaut asked that you personally move her car.
14 How would she -- I mean, what would be the
15 relationship that you would have with her where
16 she would make that request that you be the person
17 that would actually move the car?

18 A Very cautious individual. She didn't
19 want just anybody -- and she -- she had -- there
20 was a little bit of confusion, at first after the
21 accident, where her purse was at. And it had been
22 secured with her keys and all in it. And so I
23 think related to all that was part of what -- she
24 was trying to figure out where all that was at.
25 Because she didn't really have a good memory of

1 what had occurred that night. It was the next day
2 that -- that this information was coming in from
3 various folks.

4 Q Okay. And you don't know -- other than
5 based on statements that you've been provided and
6 the accident report in terms of what time she left
7 the library, you don't know what time she arrived
8 on campus on the day of this accident or whether
9 she may have left and come back to campus on more
10 than one occasion on the date of this accident, do
11 you?

12 A No, sir.

13 MR. HENDRIX: All right. I don't think
14 I have anything else at this point. Thank you,
15 sir.

16 F U R T H E R E X A M I N A T I O N
17 BY MR. REEVES:

18 Q Just one last question. Mr. Hendrix
19 asked you about the parking lot and what it -- is
20 it -- was it customary, though, for staff to use
21 that parking lot --

22 A Our --

23 Q -- where Ms. Davaut's car --

24 A Our staff parking fills up quite often,
25 and there isn't -- there is no parking close

1 around the building. And they have to go to other
2 locations and end up parking where the students
3 and other folks would normally park at. So that's
4 very common to happen.

5 MR. REEVES: Okay. Nothing further.

6 FURTHER EXAMINATION

7 BY MR. HENDRIX:

8 Q There -- one follow-up. There's no
9 report generated where you have done a study or
10 monitored where any individual parks, is there?

11 A Other than just looking at the -- which
12 parking lots are full, that sort of thing. Have
13 noted informally that faculty was having to park
14 in, and we -- we've created some additional
15 parking spaces. But still, during certain
16 periods, we do not have enough for faculty and
17 staff in those designated places. They still have
18 to find a -- a -- other places to park.

19 Q And again, the University doesn't
20 control which parking lot they elect to park in --

21 A No, sir.

22 Q -- if -- if there's more than one
23 option available?

24 A No, sir. We don't control that.

25 That's completely left up to the students, faculty

1 and staff.

2 Q Okay. And the University of course
3 doesn't require that they come to campus in their
4 own transportation. They're free to take a bus,
5 if they chose to do that, or a taxi or have a
6 friend drop them off?

7 A No, sir. There's no requirement of any
8 type like that.

9 MR. HENDRIX: All right. That's all I
10 have. Thank you, sir.

11 MR. REEVES: Thank you, Mr. Rutledge.

12 (Deponent excused.)

13 (Whereupon, at 10:43 a.m., the
14 taking of the foregoing
15 deposition was concluded.)

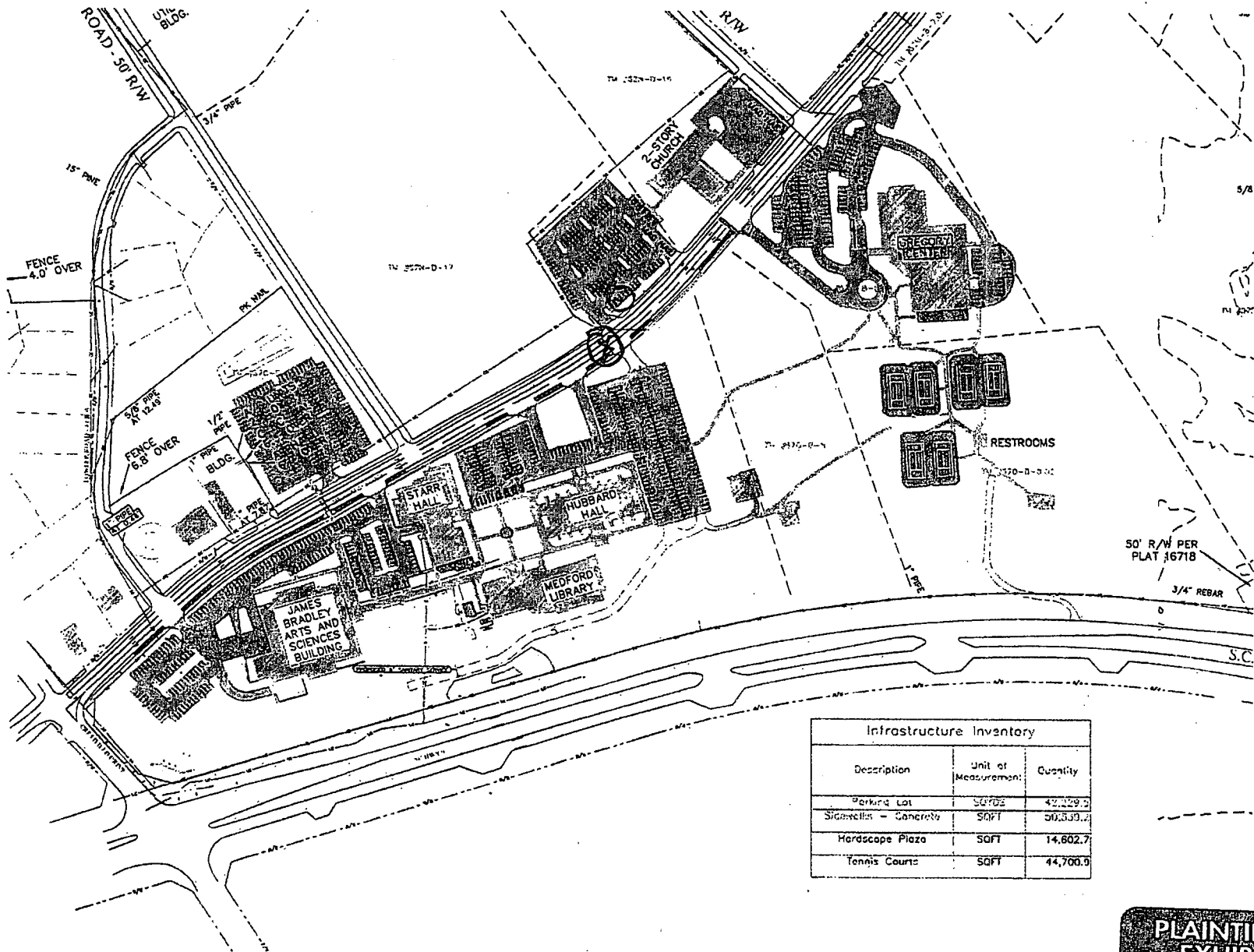
16
17
18
19 (*This transcript may contain quoted material.
20 Such material is reproduced as read or quoted by
21 the speaker.)

22 (**Certificate accompanies sealed original only.)

23

24

25



**PLAINTIFF'S
EXHIBIT**

8-9-12

Rutledge 1

1 BEFORE THE SOUTH CAROLINA
2 WORKERS' COMPENSATION COMMISSION
3 WCC FILE NO. 1203664
4 NATHALIE DAVAUT,
5 Employee, Claimant,
6 DEPOSITION OF:
7 vs. JOHN CATALANO, Ph.D.
8 UNIVERSITY of SOUTH CAROLINA,
9 Employer,
10 STATE ACCIDENT FUND,
11 Insurer.

T R A N S C R I P T of the deposition in the
above-entitled matter by and before KAREN
GAGLIARDOTTO KOCSIS, a Certified Court Reporter and
Notary Public of the State of South Carolina, held
at the offices of BLACKWELL TRIMNAL REEVES & MEYERS,
LLC, 201 W. Dunlap Street, South Carolina on
Tuesday, August 14, 2012 commencing at 12:47 p.m.

1 A P P E A R A N C E S:

2 ATTORNEYS FOR NATHALIE DAVAUT

3 BLACKWELL, TRIMNAL, REEVES & MYERS, LLC
4 BY: PAUL L. REEVES, ESQ.
201 W. Dunlap Street
5 Lancaster, South Carolina 29720
paul@plrlawfirm.com
6 803.285.8050

7 ATTORNEYS FOR UNIVERSITY of SOUTH CAROLINA

8 JONES and HENDRIX, P.A.
9 BY: PAUL L. HENDRIX, ESQ.
50 Applewood Lane
10 Spartanburg, South Carolina 29307
paul@sccompdefense.com
864.583.5577

11

12 ALSO PRESENT: Tracey Mobley

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I N D E X

2		
3	EXAMINATION	PAGE
4	BY MR. REEVES	4
5	BY MR. HENDRIX	17

6

7

8 E X H I B I T S

9 (No exhibits marked.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 J O H N C A T A L A N O, Ph.D.,
2 having been duly sworn, testifies as follows:

3 EXAMINATION

4 BY MR. REEVES:

5 Q My name is Paul Reeves and we met
6 face-to-face a few minutes ago, but we talked about
7 about this case, have we not?

8 A We have.

9 Q Just to kind of get some background, did
10 you refer Miss Davaut to this firm?

11 A I'll tell you, not exactly.

12 Q Okay.

13 A Miss Davaut came to me and she was
14 convinced that she needed some legal assistance. I
15 told her I really don't know which lawyers in
16 town --

17 Q Okay.

18 A -- would be able to handle something that
19 would clearly involve Workmen's Comp and personal
20 injury, but that because David Blackwell is on
21 campus frequently, he teaches business law for us, I
22 asked David. And he said, "Actually I have a
23 partner Paul Reeves who handles these kinds of
24 things frequently and I will give Miss Davaut a call
25 and see if we can help her," so...

1 Q Okay.

2 A Just to clear that up. Yeah, that's
3 exactly how that happened.

4 Q At the time in February of 2012, when this
5 accident occurred, there is a building called the
6 Carole Ray Dowling Center and I believe that's
7 located on the north side of Hubbard Drive; correct?

8 A Correct.

9 Q What happened at that building -- first of
10 all, who owns and maintains the building?

11 A The building is owned the Educational
12 Foundation of USC Lancaster, but it is maintained by
13 the university.

14 Q Okay.

15 A Okay. As part of the university's
16 agreement with the foundation, in fact, the
17 foundation owns most of the property on that campus.

18 Q All right. And is there a parking lot,
19 adjacent to that building?

20 A There are two parking lots adjacent to
21 that building, one on either side.

22 Q And who are those parking lots intended
23 for?

24 A Those parking lots are intended for
25 faculty, staff, students and patients of the health

1 clinics in Carole Ray Dowling. So all four groups
2 frequently use those parking lots.

3 Q And what are the busiest days as far as
4 attendance of people on campus?

5 A There's no doubt that's Tuesday and
6 Thursday.

7 Q All right. And is there a reason for
8 that?

9 A Yes, there is. Faculty tend not to like
10 to teach on Friday, but Tuesday and Thursday, there
11 are two different kinds of class sessions. One
12 class session is an hour and 15-minute class session
13 and that meets on Tuesday and Thursday, and then
14 there is 50-minute session that would meet Monday,
15 Wednesday and Friday, they meet the same number of
16 minutes per week, but in one arrangement you only
17 teach twice a week, a little longer time so that's
18 why they prefer Tuesday and Thursday.

19 Q Okay. There is information and evidence
20 that indicates that Miss Davaut parked her vehicle
21 in the parking lot on the west side of the Carole
22 Ray Dowling Center, which would you have been off
23 Hubbard Drive.

24 Are you familiar with that?

25 A Yes.

1 Q Is that area maintained and under the
2 control of the University of South Carolina campus.

3 MR. HENDRIX: When you say "area," what
4 area?

5 MR. REEVES: The parking lot area.

6 MR. HENDRIX: The parking lot or the --
7 specifically when you say the parking lot
8 area --

9 THE WITNESS: Actually both are maintained
10 and controlled by the University of South
11 Carolina.

12 MR. MORANO: "Both" what?

13 THE WITNESS: Both the parking lot and the
14 area.

15 MR. HENDRIX: I don't understand.

16 MR. REEVES: Hold on. I'll fix it. I'll
17 fix it.

18 BY MR. REEVES:

19 Q The location of the parking lot at the
20 Carole Ray Dowling Center, you described it as a
21 parking lot on each side of the building; correct?

22 A Yes.

23 Q That area including the building and the
24 parking lots, are maintained under the custody and
25 control of who?

1 A The University of South Carolina
2 Lancaster.

3 Q Does the university own, maintain or
4 control any other property on the north side of
5 Hubbard Drive?

6 A Yes.

7 Q Where is that property located in
8 reference to the Carole Ray Dowling Center and its
9 two parking lots on either side?

10 A There is a soccer field directly behind
11 the Carole Ray Dowling Center.

12 Q Okay.

13 A That butts up to Wilson Drive and goes on
14 behind where, what you call the west parking lot is.
15 There is also, behind the woods, next to the parking
16 lot, the Swelt Dowstra House, which is the house of
17 the dean.

18 There is also another parking lot,
19 although it across the street from Brook. There is
20 also additional property down Brook Road, but
21 altogether there are about 50 acres on the north
22 side of Hubbard Drive that the university controls
23 and maintains.

24 Q This has been marked as Defendant's
25 Exhibit 1 and it's a site map, for lack of a better

1 word. What's been marked here is the church, is
2 that the Carole Ray Dowling Center?

3 A Yes. It is the Carole Ray Dowling Center,
4 yes.

5 Q Let me ask you to focus on the properties
6 that are to the west of the parking lot, which
7 Miss Davaut says she parked her car, marked with a
8 circle, up to the street called -- I'm not sure
9 where that street dead ends.

10 A That's Brook.

11 Q Is the property between those two
12 locations, that is the parking lot in Brook owned by
13 the university?

14 A Yes, it is.

15 Q Okay. Miss Davaut had indicated that on
16 the morning of the 16th and when she arrived around
17 ten to 10:30, she did not see any available faculty
18 spots and chose the Carole Ray Dowling parking lot.

19 Based on your knowledge and
20 experience of the university, is that usual or
21 unusual?

22 MR. HENDRIX: Correction. What she
23 testified to is she didn't notice any faculty
24 parking in the lot labeled one and two directly
25 adjacent to Hubbard Hall.

1 MR. REEVES: He did it so much more
2 eloquently than I did.

3 You can answer the question.

4 THE WITNESS: Not unusual at all for
5 faculty member or a staff member to park in
6 this parking lot on the west side of Carole Ray
7 Dowling.

8 I have seen faculty members and staff
9 members park there on Tuesdays and Thursdays
10 especially.

11 BY MR. REEVES:

12 Q Which leaves us, I assume there is
13 insufficient faculty parking on the south side of
14 Hubbard to satisfy your needs?

15 A Depends on what time of day and what day.

16 Q Especially in the morning, would that be
17 true that there would be insufficient parking on the
18 south side of Hubbard Drive?

19 MR. HENDRIX: Object to the form the
20 question that calls for speculation. There's
21 no foundation that he would have the basis for
22 knowing the parking statistics for the
23 university.

24 MR. REEVES: Let me rephrase the question,
25 how about that?

1 BY MR. REEVES:

2 Q There are parking lots on the south side
3 of Hubbard Drive; is that correct?

4 A That's correct.

5 Q Do those parking lots have designated
6 parking spots?

7 A They do.

8 Q Are you familiar with the attendance,
9 first of all, people who attend the university, do
10 so mostly by vehicle?

11 A I would think so, yes.

12 Q Is there housing on campus?

13 A No, there isn't.

14 Q So you if attend USCL, you come from
15 somewhere else, you don't live on campus.

16 A That is true.

17 Q In the morning time, are parking space
18 more available or less available due to the
19 attendance of students and faculty?

20 A Less available.

21 Q All right. And do you know how many
22 faculty spaces are available in all the parking
23 lots?

24 A I do not.

25 Q Okay. All right. Miss Davaut indicated

1 that she was involved in assisting the selection of
2 a new faculty member for the foreign language
3 department. Were you familiar at all with that
4 particular search?

5 A I was.

6 Q In what way?

7 A The search work at the university is that
8 the academic dean and I together will constitute a
9 search committee, Miss Davaut was on that search
10 committee, as was Miss Mobley.

11 Miss Mobley -- frequently this is the
12 way it works: she will put files on reserve in the
13 library so that we don't have to copy every
14 individual file for each and every member. They
15 will go to the library. They will be on reserve and
16 they will read those files in the library.

17 They are not supposed to take those
18 files home with them, because the faculty members on
19 the search committee might need access to those
20 files as well. So it's not unusual to be in the
21 library going through the files, the employment
22 files of potential candidates.

23 Q If a faculty member were on the committee
24 and was reviewing those resumes within Medford, the
25 Medford Library, would that task be in furtherance

1 of the university's business?

2 A Certainly.

3 Q Was the task or the time frame -- excuse
4 me.

5 Were you familiar with time frame
6 within which this person was to be hired?

7 A I was. I don't think I can give you the
8 dates right now.

9 Q Okay.

10 A But I know that it was within the search
11 time. The files would have already been pulled if
12 it was not.

13 Q What was a faculty member to do upon
14 reviewing the resumes?

15 A Typically, and I wasn't on that committee,
16 Tracey would have been there, but typically what
17 they do is, they review all the resumes, they then
18 will rank those resumes and then meet back with the
19 committee so together they can decide which faculty
20 members would be appropriate to interview.

21 Q Mr. Hendrix asked Miss Davaut about
22 whether or not her participation in the committee
23 was mandatory or not, and she testified that it was
24 not mandatory, but that she saw it as a way to serve
25 in addition to teaching.

1 Can you explain, if there is an
2 expectation on behalf of the university, as to what
3 a professor should do above and beyond teaching?

4 A Miss Davaut is not on a tenured tract so,
5 therefore, not required to do research. She is
6 certainly required, and is evaluated on a yearly
7 basis upon her teaching and upon her service. Now
8 that service is to the campus, to the community and
9 to the profession.

10 So this would fall right in line with
11 what we would expect of an instructor to do on our
12 campus. Although she wasn't required to be on this
13 particular search committee, she was asked by the
14 administration to do that, and it certainly would be
15 part of her yearly evaluation as an employee.

16 Q I know you were not present at the
17 accident, but you are familiar or have you been told
18 where the accident took place.

19 A I was told about probably about 9:15 that
20 evening. The reason I was called is because I live
21 right here (indicating).

22 Q Okay.

23 A My son called me, he's an investigator --
24 he was an investigator for the sheriff's department
25 of Chester County, and he called me and said, "I

1 just got something on the radio that said a
2 blond-headed woman walking on Hubbard Drive was just
3 struck by a truck."

4 He said, "Mom wasn't out walking, was
5 she?" Because my wife walks in that area all the
6 time. She's also about the same age and general
7 description of Dr. Davaut.

8 Q I see.

9 A Fortunately at the time, she was in bed
10 and I knew it wasn't her but they said, It's someone
11 involved with the university. So I immediately got
12 dressed and went to the scene. By then the
13 ambulance had taken away Miss Davaut but the truck
14 was still where the truck was, the police officers
15 were there. Mr. Knight was sitting on the curb over
16 on the side.

17 Q Mr. Knight was the driver of the truck?

18 A Yes, Hazel Knight. I then went to the
19 hospital after that.

20 Q Okay.

21 A But I was not there nor am I very familiar
22 with the particulars of the accident.

23 Q Was there a crosswalk approximate to where
24 you saw the other folks sitting and standing?

25 A Yes.

1 Q Did you participate in any way in the
2 movement of Miss Davaut's car on the day after -- at
3 some point after the accident?

4 A When you say "participate in any way," the
5 chief police of the campus, Dr. John Rutledge came
6 to me and said, "I'm planning to move Dr. Davaut's
7 car from the parking lot over behind the maintenance
8 building so that it's not bothered and we'll have it
9 down there until we figure out where to put it."

10 I did not have any part in the actual
11 movement of the vehicle.

12 Q Did you know where he moved the car from?

13 A From the parking lot across the street, is
14 what he told me, but again, that is just what he
15 told me, I didn't see the car itself.

16 Q Right. In order to get to the parking lot
17 where her vehicle was parked, you'd have to cross
18 over traffic to get on the south side of the campus.

19 A No other way.

20 Q Are there any alternate routes such as
21 stairs or anything under Hubbard Drive?

22 A No.

23 Q Do you have an estimate, if you know, as
24 to the distance from where the accident took place
25 to where the Medford Library is?

1 A Less than 200 yards, I would guess. You
2 can look at the map, again, not far.

3 Here is the Medford Library. There's
4 the crosswalk. If you're talking about the way a
5 crow flies, it might be 100 yards, but if you're
6 talking about the way one would typically go, this
7 way, this way and back down and over, it might be
8 close to 200 yards.

9 Q Okay. Are there sidewalks and marked
10 pathways to get from Medford Library to Hubbard
11 Drive, i.e., sidewalks and that kind of thing?

12 A There are, except when you leave this
13 corner right here, you're going to have to
14 walk-through this parking lot a little bit to get
15 over this way. There is not a marked sidewalk
16 through that parking lot.

17 Q Okay. As far as the south side of the
18 Hubbard Drive, I assume the university owns that
19 particular piece of property on the south side?

20 A Yes. The Educational Foundation of USCL.

21 MR. REEVES: Okay. That's all I have.

22 EXAMINATION

23 BY MR. HENDRIX:

24 Q At the beginning of the deposition, you
25 indicated you had had several conversations with

1 attorney Reeves here.

2 A No, I didn't.

3 Q Okay. What did you say?

4 A I didn't say "several."

5 Q How many did you say you had?

6 A I think we may have talked by phone twice,
7 but certainly not many times and not several.

8 Q So at least two?

9 A I think at least two.

10 Q And what did you discuss with the attorney
11 that's now bringing legal action against the
12 university?

13 A His questions to me were specifically
14 about the parking lot and the kinds of questions he
15 asked today, which is, did I believe that that
16 parking -- he wanted to know if it was controlled by
17 the university. He wanted to know if I believed
18 that that parking lot was a place that faculty or
19 staff would frequently park. He wanted to know
20 whether you could get there any other way. The same
21 sort of questions.

22 We didn't talk long, but those were
23 the kinds of things he wanted to know.

24 Q Did he suggest to you what he needed to
25 try to prove in terms of trying to win his case

1 against the university?

2 A No.

3 Q You had mentioned that you had seen
4 faculty park in what is marked three on the diagram
5 there that you reviewed.

6 A Faculty and staff.

7 Q How do you know what vehicles staff or
8 faculty drive?

9 A I've been there over 30 years. There only
10 75 faculty members. I hired most of them. I think
11 I could name the cars almost every single one of
12 them drive, and when I say I've seen them, I've seen
13 them get out of their car and walk across the
14 street. Dr. Davaut is a good example, so, you know,
15 I'm pretty familiar with them.

16 Q Are you aware that the parking lot labeled
17 three doesn't even have any designated faculty
18 spaces in it?

19 A Yes, I am. It doesn't have any designated
20 spaces other than handicapped.

21 Q And faculty are, of course, free to park
22 in any of the parking spaces that are depicted by
23 blue in the colored photo.

24 A They can park anywhere that doesn't say
25 handicapped.

1 Q Unless they are handicapped.

2 A Unless they are handicapped.

3 Q As far the search committee and reviewing
4 of resumes, there is no set schedule or directive as
5 to an assigned time for someone to go to Medford?

6 A Faculty members are unclassified. Some
7 come to work at noon and leave in the middle of
8 night. Some come in early in the morning. I have
9 one that comes in at five in the morning and leaves
10 in mid-afternoon.

11 Q Okay.

12 A They are unclassified employees of the
13 university.

14 Q With the exception of attending scheduled
15 classes, the university doesn't exercise any control
16 over the scheduling over the remainder of their day?

17 A There are what are called office hours for
18 faculty members. So they have to be there during
19 their class and they have to be there during their
20 office hours or they have to let the academic dean
21 know that they won't be there.

22 Q But short of that --

23 A Short of that, no.

24 Q It's under discretion.

25 A Right.

1 Q And to your knowledge, has any employee of
2 the university ever been disciplined or demoted
3 because they declined to serve in any voluntary
4 capacity not just on the search committee?

5 A Not since I've been dean.

6 MR. HENDRIX: That's all I have.

7 Thank you, sir.

8 MR. REEVES: You have the right to read
9 and sign, which means after she types it up,
10 she can send it you and you can make any
11 corrections or whatnot, but it's completely up
12 to you. You need to deal with that with her.

13 Give her the address you need to send it
14 to.

15 THE WITNESS: Okay. Here.

16 THE REPORTER: Thank you.

17 (Deposition is concluded at 1:08 p.m.)

18 (**This transcript may contain quoted
19 material. Such matter is reproduced as read or
20 quoted by the speaker.)

21 (**Certificate accompanies sealed original
22 only.)

23

24

25

1 Before the South Carolina
2 Workers' Compensation Commission

3 Nathalie Davaut,
4 Employee,

5 Claimant,

6 Vs.

WCC File # 1203664

7 University of South Carolina,
8 Employer,

9 and
10 State Accident Fund,
11 Insurer,

12 Defendants.

13 Deposition of: Bruce Nims, Ph.D.

14 Location: 201 West Dunlap Street
15 Lancaster, South Carolina

16 Date: Thursday, August 9, 2012

17 Time: 10:45 a.m. - 11:07 a.m.

18 Court Reporter: Kathleen M. Hagood

19 The deposition is taken pursuant to notice and/or
20 agreement, in the above-entitled cause pending in
21 the above-named court and pursuant to the South
22 Carolina Rules of Civil Procedure.

1 A P P E A R A N C E S

2 For the Claimant:
3 Blackwell, Trimnal, Reeves & Myers, LLC
4 1527 Blanding Street
5 PO Box 11126
6 Columbia, SC 29211
7 by: Paul L. Reeves, Esq.

8 For the Defendant:
9 Jones & Hendrix, PA
10 50 Applewood Lane
11 Spartanburg, SC 29307
12 by: Paul L. Hendrix, Esq.

13 Also present: Tracey Mobley

14 I N D E X

15 Examination by Mr. Reeves	3
16 Examination by Mr. Hendrix	14
17 Further Examination by Mr. Reeves	22

18 E X H I B I T S

19 Plaintiff's:

20 Pg/Ln	21 Ex.	22 Description
23 08/24	24 1	25 E-mail documents

** uh-huh = affirmative
huh-uh = negative

S T I P U L A T I O N S

It is stipulated between counsel that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure; and that all objections, except as to the form of the question, are reserved until the time of trial.

It is also stipulated between counsel for the respective parties and the deponent that the deponent will exercise the right to read and sign this transcript.

Thereupon,

Bruce Nims, Ph.D.,
being first duly sworn by the court reporter, as hereinafter certified, testified as follows:

E X A M I N A T I O N

BY MR. REEVES:

Q Mr. Nims, could you state your full name for the record, please?

A Bruce Gladden Nims.

Q And where do you work?

A At USC Lancaster.

Q What do you do?

A Professor of English and Chair of the Humanities Divisions.

Q How long have you been -- first of all,

1 how long have you been a professor?

2 A I have -- well, I've been a professor
3 since I started at Winthrop in 1980. I came to
4 USC Lancaster in 1985 as Assistant Professor of
5 English.

6 Q Okay. And how long have you been the
7 Director of the Humanities Department?

8 A I'm in my -- I've been -- five years
9 of -- Chair of the Humanities Division.

10 Q Okay. Could you briefly describe your
11 duties as Chair of the Humanities Division?

12 A I oversee the scheduling for the -- for
13 the division -- division members send me there,
14 the -- the schedules they propose, and I do my
15 best to make sure they get their -- the -- the
16 schedules they want. And I'm also in charge of
17 helping with the administrative evaluations every
18 year with the associate dean. And the dean and I
19 also chair search committees in the division, as
20 well, when we're hiring new people.

21 Q Okay. What does Ms. Davaut -- what did
22 she do in the school year -- the previous school
23 year at the University?

24 A Instructor of French and Spanish.

25 Q All right. And do you know how long

1 she had been doing that?

2 A She's in, I think, her third or fourth
3 year.

4 Q Okay. And would there be a location,
5 Dr. Nims, where she would normally be an
6 instructor? In other words, where her classes
7 would be held?

8 A Her classes are generally held in
9 Medford Library. That's where her office is. She
10 also will teach in the Bradley Building, and I
11 think she may have taught some classes in Hubbard
12 as well.

13 Q Okay. Her -- you mentioned her office
14 is located in the Medford Library?

15 A Yes.

16 Q All right. At some point prior to her
17 accident, could you -- there was an effort to
18 secure either one or more --

19 A Yes.

20 Q -- new instructors. Is that right?

21 A Yes. That is correct.

22 Q What -- what were you looking for?

23 A We were looking for a new prof--- new
24 assistant professor of Spanish. However, we were
25 also hoping that we could attract someone who

1 could teach perhaps a second language as well.

2 Q All right. And was that position
3 advertised?

4 A Yes, it was advertised.

5 Q All right. I know at some point --
6 well, did Ms. Davaut become involved in that
7 search process at some point?

8 A Yes, she did. In fact, I -- we invited
9 all of the foreign language faculty to be a part
10 of the search process.

11 Q Okay. And what role or part would
12 those faculty play?

13 A They would evaluate the application
14 materials that were put together by the Human
15 Resources Office and stored in the library. And
16 they could come and take those files and then go
17 through them and then rank the candidates to
18 determine the ones they thought were most -- most
19 promising.

20 Q Once that process had been completed,
21 what was to happen next?

22 A Well, once we -- well, we went through
23 a -- a systematic vetting process. First we tried
24 to get down to our top ten, and then we tried to
25 get down to about the top six -- or five or six

1 for inter--- Skype interviews, and then we wanted
2 to bring three people to campus for on-campus
3 interviews.

4 Q Okay. The process of the other
5 instructors assisting you by viewing the -- or
6 vetting the resumes that were on file at the
7 Medford Library --

8 A Uh-huh.

9 Q -- were they to then -- what, were they
10 then to make recom--- recommendations to you as
11 to --

12 A Yes.

13 Q -- as to who they thought might be
14 appropriate?

15 A Yes.

16 Q Were they required, as part of this
17 process, to review all the resumes?

18 A Yes.

19 Q Where would the resumes have been --

20 A In the Medford Library.

21 Q All right. Was -- was that at your
22 direction?

23 A Yes.

24 Q Okay.

25 A I -- I sent out an e-mail indicating

1 that the files were -- were there and that people
2 should start reviewing them as soon as possible.

3 Q Do you recall the date of the meeting
4 that was to be held whereby --

5 A I'm -- I -- I should have gone back and
6 -- and looked, but I don't remember the specific
7 day.

8 Q Okay. Let me ask you this. Was the
9 meeting where everyone was to come together and
10 give their input, was it to be held after the date
11 of the accident?

12 A Yes.

13 Q All right. So you had not met before
14 the date of the accident?

15 A No, we had not.

16 Q All right. Ms. Davaut forwarded to me
17 some emails that you had sent to her --

18 A Yes.

19 Q -- around this time.

20 MR. REEVES: And I'm going to mark them
21 as one exhibit. And it consists of pages 97, 98,
22 99, 100 and 101 of the -- an attachment to the
23 exhibits to the APA -- to the 58.

24 (Plaintiff's Exhibit Number 1
25 marked for identification.)

1 BY MR. REEVES:

2 Q Could you just take a quick look at
3 those, Dr. Nims --

4 A Okay.

5 Q -- and just see if those are the emails
6 that you...

7 A Uh-huh. These are correct, to the best
8 of my knowledge.

9 Q Okay. Was there any additional
10 remuneration for Ms. Davaut doing this particular
11 task?

12 A No.

13 Q Okay.

14 A There is no renum--- remuneration for
15 serving on a search committee. It's part of
16 university service.

17 Q Okay. And the -- how did you come to
18 find about -- I mean, how did you come to find out
19 about the accident?

20 A It happen--- the next morning.

21 Q Okay.

22 A The next morning.

23 Q Were -- were you aware of -- based on
24 any firsthand knowledge, of what Ms. Davaut was
25 doing on the night of the accident, as far as any

1 relation to --

2 A I had no firsthand knowledge of what
3 she was doing.

4 Q Okay. All right. Well, then let me, I
5 guess, clarify a few questions and I think we'll
6 be through. First of all, in order to review the
7 resumes that were on file, a faculty person
8 involved in this process would've had to go to the
9 Medford Library?

10 A Yes.

11 Q And were they allowed to remove the
12 resumes?

13 A They needed -- the resumes were on
14 library reserve. They were not to leave the
15 library.

16 Q Okay. All right. And did -- or would
17 you anticipate that the folks who were going to
18 meet with you later to determine who might be the
19 better candidate, were they to take notes or take
20 information so they could then share that when the
21 meeting occurred?

22 A Yes.

23 Q All right. And so in order to -- to do
24 the search, Ms. Davaut would've had to go to the
25 Medford Library?

1 A Yes.

2 Q All right.

3 MR. HENDRIX: To do a search?

4 THE DEPONENT: Well --

5 BY MR. REEVES:

6 Q I'm sorry. To do a review of the
7 resumes, she would've had to go to the Medford
8 Library?

9 A Yes.

10 Q Okay. All right. And did -- did you
11 give instructions to each of the parties involved
12 as to what they were to do with the resumes?

13 A General instructions and -- sent to the
14 entire committee.

15 Q Okay. How many folks were on the
16 committee --

17 A Let's --

18 Q -- if you know?

19 A -- okay -- see. The foreign language
20 members were Darris Hassell, Tania Wolochwianski
21 and Nathalie Davaut. Tracey Mobley, our Human
22 Resources Director, was on the committee. Our
23 biology professor -- when you get over 60, names
24 start slipping. Anyway, our young biol---
25 chemistry professor was on the committee. Dana

1 Lawrence, who is the Director of our Academic
2 Success Center was on the committee. Let's see,
3 who is the person from -- I can't remember the
4 last person.

5 Q Okay. That's fine.

6 A If you let me review my notes there, I
7 can tell you exactly who I was sending it to.

8 Q Certainly.

9 A You know, that way I can --

10 Q Certainly. Thank you.

11 A That way I can give it to you
12 accurately. Okay. Yes, Ferna--- Fernanda Burke
13 is the chemistry professor. Let's see, Ms. Horton
14 from -- she was the staff representative. And
15 Philip Parker was the representative from the --
16 the business and professional -- professional
17 division.

18 Q Okay. Did the committee ultimately
19 choose a candidate for the position?

20 A Well, we -- we chose three promising
21 candidates. All visited the campus -- all visited
22 the campus and none accepted our offer.

23 Q Okay. Is that position still open?

24 A No, I don't think it's open --

25 Q Okay.

1 A -- anymore.

2 Q Okay. All right.

3 A We -- we -- we chose -- we had to
4 choose another route to get the people we needed.
5 No.

6 Q All right. Mr. Nims, are you familiar
7 with -- did Ms. Davaut, if you know, have any
8 place that was designated for her to park her
9 vehicle when she was on campus?

10 A This, I do not know.

11 Q Okay.

12 A There is faculty parking set aside, but
13 sometimes, you know, when the campus is very full,
14 all faculty spaces may be taken.

15 Q Okay. The parking area -- are you
16 familiar to the parking area next to the Carole
17 Ray Dowling --

18 A Yes.

19 Q -- Center? Is that parking lot for
20 faculty, staff and students?

21 A It's for all, yes.

22 Q Okay. All right. And to your
23 knowledge, is that under the custody and control
24 of the University?

25 A To the best of my knowledge.

1 Q Okay. And has Ms. Davaut returned to
2 work at the University?

3 A No, she has not.

4 Q All right. Do you know if she plans to
5 return to work?

6 A I know that she plans to return.

7 Q Okay. All right. Were you aware of
8 any details of the accident from firsthand
9 knowledge?

10 A No -- no firsthand knowledge
11 whatsoever.

12 MR. REEVES: Okay. I think that's all
13 I have, Mr. Nims.

14 THE DEPONENT: Okay.

15 MR. REEVES: Mr. Hendrix is the
16 attorney for the University. He may have some
17 questions for you.

18 E X A M I N A T I O N

19 BY MR. HENDRIX:

20 Q Dr. Nims, you mentioned that Ms. Davaut
21 has not returned to work since the accident. But
22 she has taught a class since her accident, has she
23 not?

24 A Well --

25 Q Or would you be in a position to know

1 whether she has or hasn't?

2 A She was -- she was scheduled to teach a
3 class, yes. Now, again, I have been off campus
4 since the end of the first summer session.

5 Q So Ms. Mobley would be in a better
6 position --

7 A Yeah, she would be in a better
8 position --

9 Q -- to know if she's taught a class
10 since --

11 A Right.

12 Q -- this accident?

13 A Yeah.

14 Q I got you. Have you spoken with
15 Mr. Reeves or anyone from his office about this
16 case before your deposition today?

17 A I -- not -- I have -- we did a written
18 statement that I made and signed and sent to the
19 office in Columbia.

20 Q To what office in Columbia?

21 A To Mr. Reeves.

22 Q You've got a written document that you
23 sent to Mr. Reeves?

24 A They sent it to me and -- with -- well,
25 the -- with the account, and I signed it and sent

1 it back.

2 Q The lawyer prepared a statement for you
3 to sign, and you signed and sent it back to him?

4 A Yes, sir.

5 Q When did you do that?

6 A It was in -- I believe it was in June.

7 Q Okay. You --

8 A And that's why I was -- I was wondering
9 a little bit about this, because I had already
10 signed a sta--- with the -- all of the particulars
11 were in writing on it.

12 Q Well, if you didn't speak with him
13 before --

14 A I spoke with him, and then the -- they
15 took the account of what he had -- of what I had
16 said, summarized it in a document which they sent
17 to me, and I signed it and sent it back.

18 Q Doctor, as the Director of the
19 Humanities Division -- or Chairman of the
20 Humanities Division, are you in a position to make
21 statements that could be binding on the
22 University?

23 A Not really. Not really. My -- I mean,
24 as an University employee, I would assume. But
25 the position of -- of Chair is not truly an

1 administrative position. I'm elected by the
2 members of the faculty for a three-year term. And
3 I'm allowed to have two three-year terms. And I'm
4 just about to fini--- next year will be my last
5 year. But I do receive an -- a -- a supplement in
6 my salary for the work that I do. But I'm not
7 officially an administrator.

8 Q Do you feel it's appropriate, as
9 Chairman of the Humanities Division, to have
10 conversations with an attorney representing
11 someone bringing a legal action against the
12 University where you work or are a Chairman of?

13 A I -- what I did I did in good faith, in
14 the -- in the interest of Ms. Davaut.

15 Q Didn't make any changes to whatever
16 this --

17 A As -- everything --

18 Q -- statement --

19 A -- that I said at that time was the --
20 the same as I've said today.

21 Q What did you say in the statement?

22 A I don't have it before me. But it was
23 the -- I simply stated that the -- you know, we
24 organized a search committee, I asked to be on it,
25 she agreed to be on it, and that -- you know,

1 that -- you know, essentially that.

2 Q Okay. The resumes that were in the
3 Medford Library that she was asked to review,
4 certainly you didn't dictate what day she should
5 go and do that or what time of the day she should
6 go --

7 A Well, in --

8 Q -- and do that, did you?

9 A -- in my -- in my statement I said that
10 the -- in my e-mail I indicated that the resumes
11 were there and we should start looking at them as
12 soon as possible. And we were planning a meeting
13 very soon, so... And I -- I know Ms. Davaut's a
14 very conscientious person, so I was not surprised
15 that she was looking at the resumes within a day
16 or two of my sending the --

17 Q But you certainly didn't direct her to
18 review them within a day or two, did you?

19 A No, I did not.

20 Q Okay. Or a week or two, for that
21 matter?

22 A Before the -- before the -- before the
23 me--- before the meeting we were going to
24 schedule, they needed to re--- see the resumes.

25 Q Well, the meeting hadn't even been set

1 at that point?

2 A Had not been a specific meeting date
3 set at that time.

4 Q Okay.

5 A But --

6 Q Certainly it was not scheduled for the
7 morning of February the 17th, which would have
8 been the morning after she left the library at
9 9:00 on the 16th?

10 A No, it was not scheduled that early.

11 Q All right. So still had plenty of time
12 to go by there at her leisure to review these
13 resumes?

14 A Yes.

15 Q The -- you mentioned that the resumes
16 were on reserve. Was there any prohibition
17 against her making a copy, or for that matter any
18 other member of your committee making a copy, of
19 the resumes to take home or back at their office
20 to review?

21 A No specific prohibition, but generally
22 can't -- the -- the materials are complete within
23 the files, there's no need to -- to make any
24 copies.

25 Q But she could have, if she chose to do

1 that, in lieu of sitting at the library to do it?
2 To review the resumes?

3 A It would have been somewhat -- it would
4 have been a -- a tedious task. There would have
5 been 25 -- we already had 25 or 30 resumes at that
6 time.

7 Q But again, no prohibition against her
8 doing that?

9 A There was no prohibition, no.

10 Q All right. Do you know if any other
11 members of the committee made copies of any of the
12 resumes that were on --

13 A I don't think --

14 Q -- reserve at the library?

15 A I have no idea. Not to my knowledge.

16 Q Any reason you wouldn't have just
17 scanned all the resumes and emailed them to
18 everybody on your committee?

19 A That's not our procedure on our campus.

20 Q All right. And other than knowing that
21 y'all are trying to fill a position within the
22 division that you're the chairman of and asking
23 Ms. Davaut to serve on that committee and
24 informing her that there were resumes on file at
25 Medford for her to review, you don't have any

1 other firsthand knowledge about this case, do you?

2 A No, I don't.

3 Q And if Ms. Davaut, or for that matter
4 anyone else that you invited to serve on your
5 committee, had simply said I really don't care to
6 do that, would you have held that against them or
7 been any disciplinary action against them if they
8 declined your offer to serve on the search
9 committee?

10 A No disciplinary action.

11 Q Okay. I mean, it was voluntary?

12 A It -- it -- it's -- it is -- it is
13 volun--- it is voluntary, but again serving on
14 such committees is part of our university service
15 commitment. And so -- and -- and service is a --
16 an area in which our faculty members are
17 evaluated, so serving on the committee is -- is
18 professionally beneficial.

19 Q Okay. If she'd have declined to serve
20 on it, would you have given her an adverse
21 employee evaluation as a result?

22 A Not on -- not strictly on that basis,
23 no.

24 MR. HENDRIX: I don't think I have
25 anything else. Thank you, sir.

1 FURTHER EXAMINATION

2 BY MR. REEVES:

3 Q Just ask a follow-up question --

4 A Okay.

5 Q -- please. In looking at page 98 of
6 Exhibit Number 1 to your deposition, look at --
7 first of all, what was the date that you sent that
8 particular email?

9 A It says February 16th, 2012.

10 Q All right. In the paragraph -- I think
11 it's the first or second full paragraph -- is
12 there a timeframe within which you planned to hold
13 the meeting?

14 A Yes.

15 Q Would you state for the record what
16 that timeframe is?

17 A Between February the 20th and February
18 the 29th.

19 Q Okay. I know you said you did not
20 recall -- or maybe you said that no meeting had
21 been scheduled. Would -- would you have retained
22 a calendar which might have indicated when that
23 meeting was ultimately held or when it was
24 scheduled to be held?

25 A Oh, yes.

1 Q Okay.

2 A Yes, I can -- I could go back and find
3 that out.

4 Q Okay.

5 A Okay -- when we actually had our first
6 meeting. I think it -- yes, I -- I can find that
7 out, if you'd like to know.

8 Q All right. Would you let us know when
9 you find that out, please? You can --

10 A Sure.

11 Q We'll get -- fine. But in any event,
12 the earliest the meeting could have been held
13 would be February 20th and the latest it -- at
14 least according to this e-mail, would have been
15 February 29th?

16 A Yes.

17 Q Now, February 20th would have been the
18 Monday following this accident; is that correct?

19 A Uh-huh.

20 Q Is that right?

21 A Yes.

22 Q Okay. What would you look at to
23 determine when the meet--- would you ha--- do you
24 have a calendar you maintain that information?

25 A Well, I -- I can go back through my --

1 through my e-mail records and -- and take a look.

2 Q Okay.

3 A And --

4 Q Would you just forward those to
5 Mr. Hendrix and I? We'll give you some contact
6 information, if that's okay.

7 A Okay. That'll be fine.

8 MR. REEVES: I don't have anything
9 further. I think you're --

10 THE DEPONENT: Okay.

11 MR. REEVES: Mr. Hendrix, do you have
12 anything else?

13 MR. HENDRIX: Bear with me just --

14 MR. REEVES: Hold on just one second.

15 MR. HENDRIX: I don't have anything
16 else. Thank you.

17 (Deponent excused.)

18 (Whereupon, at 11:07 a.m., the
19 taking of the foregoing
20 deposition was concluded.)

21
22 (*This transcript may contain quoted material.

23 Such material is reproduced as read or quoted by
24 the speaker.)

25 (**Certificate accompanies sealed original only.)

Paul Reeves

From: DAVAUT, NATHALIE [NDAVAUT@mailbox.sc.edu]
Sent: Thursday, March 22, 2012 6:17 PM
To: Paul Reeves
Subject: FW: SPAN Search Committee

Nathalie Davaut
French & Spanish Instructor
University of South Carolina-Lancaster
803-313-7467

From: NIMS, BRUCE
Sent: Wednesday, January 25, 2012 5:43 AM
To: DAVAUT, NATHALIE
Subject: RE: SPAN Search Committee

Nathalie,

Thank you for agreeing to serve. We'll get organized and start to work when the files start arriving next month.

Bruce

From: DAVAUT, NATHALIE
Sent: Tuesday, January 24, 2012 12:35 PM
To: NIMS, BRUCE
Subject: RE: SPAN Search Committee

Professor Nims,
You can definitely count on me.
Thanks,
Nathalie

From: NIMS, BRUCE
Sent: Tuesday, January 24, 2012 12:34 PM
To: DAVAUT, NATHALIE; HASSELL, DARRIS; WOLOCHWIAWSKI, TANIA
Subject: SPAN Search Committee

Colleagues,

The ad for the new Assistant Professor of Spanish position will be officially published within the next few weeks. Dean Cox has asked me to chair the search committee, and, in that capacity, I would like to invite all three of our present full-time SPAN faculty members to join the committee.

Please let me know whether or not you want to serve by next Monday.

Bruce

Bruce G. Nims
Professor, English
Chair, Humanities Division
USC Lancaster

**PLAINTIFF'S
EXHIBIT**

Nims

8-9-12

1

ROA 229

97

Paul Reeves

From: DAVAUT, NATHALIE [NDAVAUT@mailbox.sc.edu]
Sent: Thursday, March 22, 2012 6:22 PM
To: Paul Reeves
Subject: FW: Our First Meeting

Nathalie Davaut
 French & Spanish Instructor
 University of South Carolina-Lancaster
 803-313-7467

From: NIMS, BRUCE
Sent: Thursday, February 16, 2012 2:46 PM
To: MOBLEY, TRACEY; BURKE, FERNANDA; DAVAUT, NATHALIE; HASSELL, DARRIS; HORTON, MIRIAM; LAWRENCE, DANA; PARKER, PHILLIP; WOLOCHWIANSKI, TANIA
Cc: CLYBURN, AVIS
Subject: Our First Meeting

Search Committee Colleagues,

Thank you for agreeing to be part of this most important process.

Tracey has done her usual efficient job at getting the Assistant Professor of Spanish applicant files ready for our review. Let's plan on getting together sometime in the next two weeks to start the process. By Monday, please send me a list of times when you cannot be available for a meeting between Feb. 20 and Feb. 29. I will sift through the responses to come up with a meeting time. The sooner we get started the better, of course. Once we are all together, planning subsequent meetings will be easier.

At the first meeting, I will present the charge from the administration if Ron or John cannot attend to do so, Tracey will give us the ground rules (and regulations) governing the search procedures, and we will discuss how we want to conduct the vetting process.

In the meantime, please go by Medford Library and begin looking through the applicant files to familiarize yourselves with the now 35 candidates. Just remember to return the file materials to the individual folders in the original order in which Tracey and her staff have placed them; then, return the file to the file box in alphabetical order.

Once again, please send me your unavailable times by Monday. Few projects on our campus are as significant as finding the right person for a tenure-track position. I look forward to working with you all.

Bruce

From: MOBLEY, TRACEY
Sent: Wednesday, February 15, 2012 1:26 PM
To: NIMS, BRUCE; BURKE, FERNANDA; DAVAUT, NATHALIE; HASSELL, DARRIS; HORTON, MIRIAM; LAWRENCE, DANA; PARKER, PHILLIP; WOLOCHWIANSKI, TANIA; MOBLEY, TRACEY
Cc: CLYBURN, AVIS

Subject: Updated Applicant List

Hello Assistant Professor of Spanish Search Committee,

There are 4 new applicants for you all to review. We now have a total of 35 applicants. Attached is an updated list.

Thanks,
Tracey A.M.

Tracey A. Mobley
Director of Human Resources
University of South Carolina Lancaster

Paul Reeves

From: DAVAUT, NATHALIE [NDAVAUT@mailbox.sc.edu]
Sent: Thursday, March 22, 2012 6:24 PM
To: Paul Reeves
Subject: FW: Our First Meeting

Nathalie Davaut
 French & Spanish Instructor
 University of South Carolina-Lancaster
 803-313-7467

From: DAVAUT, NATHALIE
Sent: Thursday, February 16, 2012 3:24 PM
To: NIMS, BRUCE
Subject: RE: Our First Meeting

Professor Nims,

M through Th I am not available between 11 am and 2:15 pm (those are my teaching times). Any other time and/or F works.

I've started studying the dossiers, so I should be ready to meet within the next few days.

Thank you,

Nathalie

From: NIMS, BRUCE
Sent: Thursday, February 16, 2012 2:46 PM
To: MOBLEY, TRACEY; BURKE, FERNANDA; DAVAUT, NATHALIE; HASSELL, DARRIS; HORTON, MIRIAM; LAWRENCE, DANA; PARKER, PHILLIP; WOLOCHWIANSKI, TANIA
Cc: CLYBURN, AVIS
Subject: Our First Meeting

Search Committee Colleagues,

Thank you for agreeing to be part of this most important process.

Tracey has done her usual efficient job at getting the Assistant Professor of Spanish applicant files ready for our review. Let's plan on getting together sometime in the next two weeks to start the process. By Monday, please send me a list of times when you cannot be available for a meeting between Feb. 20 and Feb. 29. I will sift through the responses to come up with a meeting time. The sooner we get started the better, of course. Once we are all together, planning subsequent meetings will be easier.

At the first meeting, I will present the charge from the administration if Ron or John cannot attend to do so, Tracey will give us the ground rules (and regulations) governing the search procedures, and we will discuss how we want to conduct the vetting process.

In the meantime, please go by Medford Library and begin looking through the applicant files to familiarize yourselves with the now 35 candidates. Just remember to return the file materials to the individual folders in the original order in which Tracey and her staff have placed them; then, return the file to the file box in alphabetical order.

Once again, please send me your unavailable times by Monday. Few projects on our campus are as significant as finding the right person for a tenure-track position. I look forward to working with you all.

Bruce

From: MOBLEY, TRACEY

Sent: Wednesday, February 15, 2012 1:26 PM

To: NIMS, BRUCE; BURKE, FERNANDA; DAVAUT, NATHALIE; HASSELL, DARRIS; HORTON, MIRIAM; LAWRENCE, DANA; PARKER, PHILLIP; WOLOCHWIAWSKI, TANIA; MOBLEY, TRACEY

Cc: CLYBURN, AVIS

Subject: Updated Applicant List

Hello Assistant Professor of Spanish Search Committee,

There are 4 new applicants for you all to review. We now have a total of 35 applicants. Attached is an updated list.

Thanks,
Tracey A.M.

Tracey A. Mobley

Director of Human Resources

University of South Carolina Lancaster



Southern Reporting, Inc.

Transcript of the
Deposition of

David Helwer

8/9/2012

Davaut vs. University of South Carolina, et al.
1203664

COPY

Southern Reporting, Inc.

Phone: 803.749.8100

Fax: 803.749.9991

Email: Depos@southernreporting.net

1 Before the South Carolina
2 Workers' Compensation Commission

3 Nathalie Davaut,
4 Employee,

5 Claimant,

6 Vs.

WCC File # 1203664

7 University of South Carolina,
8 Employer,

9 and
10 State Accident Fund,
11 Insurer,

12 Defendants.

13 Deposition of: David Helwer

14 Location: 201 West Dunlap Street
15 Lancaster, South Carolina

16 Date: Thursday, August 9, 2012

17 Time: 11:11 a.m. - 11:39 a.m.

18 Court Reporter: Kathleen M. Hagood

19 The deposition is taken pursuant to notice and/or
20 agreement, in the above-entitled cause pending in
21 the above-named court and pursuant to the South
22 Carolina Rules of Civil Procedure.

1 A P P E A R A N C E S

2 For the Claimant:
3 Blackwell, Trimmal, Reeves & Myers, LLC
4 1527 Blanding Street
5 PO Box 11126
6 Columbia, SC 29211
7 by: Paul L. Reeves, Esq.

8 For the Defendant:
9 Jones & Hendrix, PA
10 50 Applewood Lane
11 Spartanburg, SC 29307
12 by: Paul L. Hendrix, Esq.

13 Also present: Tracey Mobley

14 I N D E X

15 Examination by Mr. Reeves	3
16 Examination by Mr. Hendrix	18
17 Further Examination by Mr. Reeves	28
18 Further Examination by Mr. Hendrix	30

19 E X H I B I T S

20 Defendant's:

21 Pg/Ln	22 Ex.	23 Description
24 23/11	25 1	Diagram

** uh-huh = affirmative
huh-uh = negative

S T I P U L A T I O N S

It is stipulated between counsel that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure; and that all objections, except as to the form of the question, are reserved until the time of trial.

It is also stipulated between counsel for the respective parties and the deponent that the deponent will exercise the right to read and sign this transcript.

Thereupon,

David Helwer,
being first duly sworn by the court reporter, as hereinafter certified, testified as follows:

E X A M I N A T I O N

BY MR. REEVES:

Q Mr. Helwer, my name is Paul Reeves. I represent Ms. Davaut in a worker's comp claim. Mr. Hendrix is here, he represents the University. I think you know Ms. Mobley who's here. I'm here to ask you some questions. You gave a statement, and I understand that. But a statement is not necessarily admissible, so that's why we're having your deposition taken today so both parties can interview --

1 A Okay.

2 Q -- you with any questions. First of
3 all -- and I'll try to brief -- could you state
4 your name for the record, please?

5 A My name is David Helwer -- H-E-L-W-E-R.

6 Q All right. And what do you do today?

7 A My --

8 Q Vocation.

9 A I'm an a--- library, as assistant at
10 the University of South Carolina Lancaster.

11 Q How long have you been doing that?

12 A I started, I think August 8th, 2011.

13 Q Okay. And do you have any other duties
14 beside assistant librarian?

15 A Not at the moment, I don't.

16 Q Okay. Do you live in this area?

17 A I live in Van Wyck.

18 Q Okay. And what is your educational
19 background?

20 A I have a bachelor's degree in fine
21 arts. I received it from the University of Kansas
22 in 1978.

23 Q Okay. Do you know Ms. Davaut
24 personally?

25 A No, I don't.

1 Q All right. Did -- how did you come to
2 be involved in this particular circumstance?

3 A I was working that evening, I was
4 scheduled to work those hours. And I was closing
5 the library at 9:00, when she came out of the
6 conference room. She had been there most of the
7 evening working on a collection of materials that
8 they were using to screen an applicant for a -- a
9 Spanish teaching position.

10 Q Okay. And why was she doing that at
11 the library?

12 A Because that's where the material is
13 held.

14 Q Okay. And how many times, if you know,
15 had you seen her there working on that particular
16 task?

17 A I don't know.

18 Q Okay. The night of the incident, was
19 that the first time you had seen her working on
20 that task?

21 A I don't know. I've seen her before in
22 the library, but whether or not she was working on
23 that particular task, I don't know.

24 Q All right. Who would she have -- let
25 me rephrase that. Who did she obtain -- the

1 material to review, who did she obtain that from?

2 A Me.

3 Q Okay. And it was on reserve --

4 A Yes.

5 Q -- I guess, for lack of a better word?

6 A Yes.

7 Q Is that the right word?

8 A Right.

9 Q Okay. Do you know who placed it on
10 reserve?

11 A No.

12 Q Okay.

13 A I can assume that it was Human
14 Resources.

15 Q Okay. Were there other people
16 reviewing the resumes?

17 A Yeah.

18 Q Were there other people reviewing the
19 resumes simultaneously?

20 A Not that evening.

21 Q Okay.

22 A Not that evening, that I remember. I
23 remember her being by herself. But there could
24 have been people simultaneously looking at it
25 earlier in the evening.

1 Q Okay.

2 A But I remember her being alone.

3 Q All right. Do you know -- do you know
4 where her office is located?

5 A No, I don't.

6 Q All right. Before this evening, do you
7 recall seeing her at any other time in the
8 library?

9 A Yeah, I had helped her -- I've answered
10 questions for her and stuff previous to that
11 evening.

12 Q Okay. In reference to things in the
13 library?

14 A Yeah, just how the library functioned,
15 how to get materials through the da--- databases,
16 that kind of thing.

17 Q Okay. All right. On that particular
18 night, do you know how long she was there before
19 the library closed?

20 A No, I don't know that exactly. I can
21 say she was there -- like I said, I -- I work a
22 four-hour shift, and I would describe it as she
23 was there most of the evening. Say she was there
24 for more than an hour, you know. Maybe two or
25 three hours.

1 Q Okay. When folks would come up to
2 review the resumes that were on reserve, did they
3 have to sign them out, or you just would give them
4 to them?

5 A They're supposed to sign them out just
6 like a book.

7 Q Okay.

8 A You know, we're supposed to scan them
9 -- scan the bar code and sign it out for that
10 person. Whether or not I did that for her that
11 evening, I can't tell you that for sure. I'd have
12 to look it up on the computer.

13 Q Okay. If that was a record of that
14 particular event, it would be on the computer?

15 A If I did my job correctly.

16 Q Well, I don't think anybody is here to
17 fuss about that. I just was curious to determine
18 if you could tell what time she might have gotten
19 there versus what time she left.

20 A That -- that could be done. And I
21 meant to actually to do that before I came here
22 today, so I could provide you with --

23 Q Okay.

24 A -- some documents.

25 Q That's fine.

1 A But -- but that is possible to -- to
2 check that.

3 Q Not a problem. Did she -- what time
4 did she leave?

5 A She left at -- probably right at 9:00.
6 I close the library at nine, and I had -- usually
7 five or ten minutes before nine, I go around and I
8 do some procedures to lock the place up. And I
9 had all of that completed when she came up to the
10 desk to return the materials. So I took the
11 materials, checked them back in the way I was
12 supposed to, she walked out the door, I picked up
13 my coat, closed down the computers -- all that
14 took about five minutes.

15 Q All right.

16 A I walked out the door behind her.

17 Q Where was your destination?

18 A To my car.

19 Q Where was your car parked?

20 A My car was parked in the parking lot in
21 front of the library, the very first row, the very
22 last space towards the -- closest towards the
23 street.

24 Q And the street that you're referring
25 to, is that Hubbard Drive?

1 A Yeah.

2 Q Hubbard Drive sort of dissects the
3 campus; is that right?

4 A Yeah.

5 Q All right.

6 A There is property on the other side of
7 Hubbard.

8 Q Okay. Did Ms. Davaut tell you where
9 she was going when she left?

10 A No.

11 Q All right. Do you know -- after she
12 went out of the door of the library, do you know
13 which way she went?

14 A No.

15 Q Okay. How -- did you come to see her
16 again that evening?

17 A Yes.

18 Q How did you come to see her again?

19 A I went out to my car, and as I was
20 approaching my car I could see activity taking
21 place in front of Hubbard -- on -- on the
22 street -- Hubbard Drive. I thought it was just a
23 bunch of kids socializing, and as I got closer I
24 realized that there was a person laying in the
25 street crying for help.

1 Q Okay. What -- where was the location
2 of the person in the street?

3 A She was in the -- the crosswalk
4 directly in front of Hubbard Hall. There's a
5 parking lot to the east of Hubbard Hall. And she
6 was in front of that parking lot.

7 Q All right. Is there a parking lot
8 across the street from where she was injured?

9 A Yes.

10 Q And what is that parking lot adjacent
11 to, or how would you describe that parking lot?

12 A I would describe it as being directly
13 across the street from the parking lot that's east
14 of Hubbard Hall.

15 Q Okay. Is there a building adjacent to
16 that parking lot?

17 A Yes, there is.

18 Q Do you know the name of the building?

19 A No, I don't. I think it's the Health
20 Center or something --

21 Q Okay.

22 A -- like that.

23 Q Did you see how Ms. Davaut had come to
24 be injured?

25 A No, I didn't wit--- witness the

1 accident. I just saw a person laying on the
2 street, and determined it was her after I
3 approached her.

4 Q So you went to her?

5 A Yes, I did.

6 Q All right. Was she conscious?

7 A Yes.

8 Q What did she say, if anything, to you?

9 A She was --

10 MR. HENDRIX: Objection, hearsay.

11 THE DEPONENT: She was laying in the
12 street crying for help. When I got to her, she
13 appeared to be disoriented and confused. She
14 didn't know what had happened. She asked me what
15 had happened. And somebody else had told me that
16 she had just been struck by a car, so I told her
17 that.

18 BY MR. REEVES:

19 Q Okay. Did she have anything with her,
20 such as bag, purse, book-bag, anything like that?

21 A Her purse and all the contents of her
22 purse were on the street.

23 Q Okay. Did she have anything else with
24 her, that you recall?

25 A No, I don't remember there being

1 anything in -- in addition to the purse.

2 Q Okay. Did you, or to your knowledge
3 did someone else, call 9-1-1?

4 A Well, I called 9-1-1 as I was
5 approaching her. When I heard cries for help, I
6 immediately pulled out my phone and dialed 9-1-1.
7 So I had 9-1-1 on the line before I even reached
8 her and told her what was going -- told 9-1-1 what
9 was going on. And they said that the accident had
10 already been reported and that EMS was on their
11 way.

12 Q Okay. Do you know about what time it
13 was that you saw her lying in the roadway?

14 A 9:07, 9:08? You know, it...

15 Q Okay.

16 A Within ten minutes of 9:00, you know, I
17 mean, because I left shortly after 9-.

18 Q Okay. And that was also shortly after
19 she left?

20 A Right. She -- I'm saying that she left
21 at 9- and I left around 9:05. And I walked across
22 the parking lot, which takes a minute, maybe less,
23 and saw her.

24 Q All right. How would you describe the
25 population of the campus at that timeframe?

1 A It was -- you know, it was empty.
2 Basically empty. I mean, there might have been
3 some people in some offices and stuff, but there
4 wasn't a -- a student activity going on or
5 anything, that I can remember.

6 Q The parking lot where you described
7 your vehicle as having been parked that night, is
8 that parking lot for faculty and staff only?

9 A No.

10 Q Is there a designation within that
11 parking lot for faculty and staff and students?

12 A Yes.

13 Q How is that designated?

14 A The parking spaces are labeled faculty
15 or staff. But I think it says faculty.

16 Q Is there sufficient parking, based on
17 your knowledge, for all faculty to park in that
18 lot if they chose to?

19 A I would say that there's sufficient
20 parking in the University as a whole. I mean,
21 that parking lot is -- is often full, but there's
22 other places where you can --

23 Q Okay.

24 A -- park.

25 Q I asked my question poorly. In that

1 particular parking area where you parked, is that
2 sufficient faculty parking for all the faculty, if
3 that was just the only parking lot on campus?

4 A If that was the only --

5 Q Yes, sir.

6 A -- parking lot on campus?

7 Q Yes, sir.

8 A No, it's not.

9 Q Okay. Are you familiar with the
10 parking -- at any time did you come to know where
11 Ms. Davaut's car was parked?

12 A No.

13 Q Okay. The other -- the -- the parking
14 lot across the campus near the health center that
15 we talked about a moment ago, are you familiar
16 with that parking lot at all?

17 A No, I've never parked there. I've
18 never used it, so no, I'm not.

19 Q Okay. Do you know who it's available
20 to, if you -- if any?

21 A I understand that it's available to
22 staff. I don't know if it's available to
23 students, but --

24 Q You've never had to use it?

25 A I've never used it.

1 Q All right. Okay.

2 MR. HENDRIX: You're referring to the
3 parking lot where her car was parked?

4 MR. REEVES: Yes.

5 MR. HENDRIX: Ms. Davaut's car was
6 parked?

7 MR. REEVES: Yes.

8 MR. HENDRIX: Okay.

9 BY MR. REEVES:

10 Q Did -- you said Ms. Davaut appeared to
11 be confused and you had some conversation with
12 her. Did she say anything about how the accident
13 occurred or did she seem to know how the accident
14 occurred?

15 A She didn't -- she didn't know what had
16 happened.

17 Q Okay.

18 A She --

19 Q Go ahead, I'm sorry.

20 A She didn't know who I was.

21 Q Okay. Did she say anything else to you
22 while you were there with her?

23 A No -- no, she was in pain. She was
24 complaining about her back hurting and that she
25 couldn't feel her legs, and asking what had

1 happened. That's what I remember her...

2 Q Okay. Is the location where you saw
3 Ms. Davaut in the roadway proximate to the parking
4 lot next to the health center?

5 A She was laying in the crosswalk near
6 the curb.

7 Q Okay. Is that crosswalk close in
8 proximity to the parking lot?

9 A It leads directly to that parking lot.

10 Q Okay. For the health center?

11 A Yes.

12 Q All right. What is on the other side
13 of the street, on the south side of Hubbard Drive?
14 Is that where Hubbard -- the Hubbard building is?

15 A Yes.

16 Q Okay. Do you know where Ms. Davaut
17 taught any of her classes?

18 A No, I don't.

19 Q Was there anyone else in the library
20 that night that was reviewing the resumes other
21 than Ms. Davaut, based on your recollection?

22 A I can't remember.

23 Q All right. Did anyone else leave close
24 in time to you or to Ms. Davaut?

25 A Yes. There is a tutor upstairs by the

1 name of David -- I think his last name is
2 Donnigan. (Ph.) He left -- he was at the desk
3 when she came out of the conference room and
4 turned in the material.

5 Q Okay. Do you know whether or not he
6 saw or knew anything about accident as you did,
7 i.e. seeing her in the roadway?

8 A No. I don't think he was aware of the
9 accident, because I talked to him about it a
10 couple of days later and he -- he didn't seem
11 to --

12 Q Okay.

13 A -- know.

14 MR. REEVES: All right. Mr. Helwer,
15 that's all the questions I have. Mr. Hendrix may
16 have some questions for you.

17 THE DEPONENT: Okay.

18 E X A M I N A T I O N

19 BY MR. HENDRIX:

20 Q What is your normal work schedule in
21 terms of days of the week and hours of the day?

22 A Well, it fluctuates a lot. I was hired
23 originally to work from 5:00 in the evening 'til
24 9-, and I held that schedule pretty consistently
25 for several months. And then during that time

1 period where I had that schedule, I would -- I
2 would sometimes come in early to cover a staff
3 meeting or something. Whenever a librarian has to
4 be away from the library, I always used to fill
5 in. But basically those were my hours during that
6 period of time.

7 Q All right. So in February of 2012,
8 generally you were working 5 to 9 p.m.?

9 A That's correct.

10 Q Do you work another job?

11 A No.

12 Q All right. And you indicated that you
13 were the person that gave these resumes or checked
14 out -- maybe scanned in, maybe not, but you do
15 remember physically giving the box of resumes in
16 question to Ms. Davaut on February 16th when she
17 came to the library?

18 A Yes, I do.

19 Q And do you recall her entering the
20 library and what the -- what statement she may
21 have made to you about why she was there or if she
22 had other purposes for being there?

23 A I can remember her walking in and --
24 and approaching the counter and requesting the
25 material.

1 Q Okay.

2 A And I was familiar with what she wanted
3 and why she wanted it, because it had been a -- it
4 was a process that had been going on for several
5 days, maybe even -- maybe even weeks.

6 Q Okay. And had you been in the library
7 very long or on the clock, so to speak, very long
8 before she arrived on the date of her accident?

9 A I can't remember when she arrived. I
10 just have this vague memory that she was there
11 most of the evening, you know.

12 Q Okay. You indicated earlier you recall
13 her being in the conference room alone. Why would
14 -- why does that stick out in your mind?

15 A Because I -- I -- you know, I check the
16 -- the library periodically during my shift. I
17 walk around and I look around and -- and see
18 what's going on, and I remember her being in
19 there.

20 Q Okay. Now, do you recall -- these
21 resumes, were they maintained in a file folder or
22 a box? I understand there was about 25 at the
23 time that she would have checked them out. Was
24 she checking out an individual resume or the
25 whole --

1 A The whole container.

2 Q -- container that --

3 A A -- a file folder similar to what you
4 have right there, except it was larger.

5 Q All right. And you don't recall anyone
6 else coming in to check out the resumes that
7 evening and you having to tell them sorry, it's --

8 A Not clearly.

9 Q -- already been checked out?

10 A Not clearly. There could have been
11 somebody else that came in there that evening and
12 checked those out, but I don't remember that
13 clearly. I remember her clearly.

14 Q Well, there wouldn't be any way anyone
15 else could have checked them out if she had them?

16 A No. No, there's only one copy of them.

17 Q Okay. Any prohibition --

18 A But --

19 Q -- against her making a copy of the
20 resumes and taking them with her back to her
21 office or anything like that?

22 A No, we're supposed -- no. We're
23 supposed to treat it like reserve material. It's
24 not supposed to leave the library. It's not
25 supposed to be copied. And I'm unaware of her

1 doing that.

2 Q Okay. Well, if Dr. Nims testified that
3 there wouldn't have been any prohibition against
4 her making a copy and taking it with her and he's
5 the one that put it on reserve, that seems to be
6 inconsistent with what your understanding would
7 be. But --

8 MR. REEVES: Object to the form.

9 THE DEPONENT: My understanding was
10 that it couldn't be copied and it couldn't be
11 taken out of the library. I may have
12 misunderstood it incorrectly, but that's my
13 understanding.

14 BY MR. HENDRIX:

15 Q Got you. Now, you mentioned that you
16 had never parked in the parking lot on the north
17 side of Hubbard Drive where Ms. Davaut was parked
18 on the evening of her accident. Is that correct?

19 A I've never used that parking lot.

20 Q All right. And on the Defendant's
21 Exhibit -- or Plaintiff's Exhibit 1 to
22 Mr. Rutledge's deposition, there is a --

23 MR. HENDRIX: Let me -- if I could, I'd
24 like to get him to mark where he was parked.

25 MR. REEVES: You want to just use that

1 one? Let's just put a new sticker on it. You
2 want to?

3 MR. HENDRIX: Yeah, let's do that.

4 MR. REEVES: This would be the
5 Defendant's Exhibit. Is that correct,
6 Mr. Hendrix?

7 MR. HENDRIX: Yeah, that's fine. Or we
8 could call it deposition exhibit. I've never won
9 or lost a case based on whether it was called
10 Plaintiff's or Defendant's.

11 (Defendant's Exhibit Number 1
12 marked for identification.)

13 BY MR. HENDRIX:

14 Q This is Defendant's Exhibit Number 1,
15 which we'll make part of your deposition. But if
16 you would, just make a mark in the parking lot
17 where your car was located and put your initials
18 by it. You don't have to be precise to the exact
19 parking lot, unless you just...

20 A (Deponent complies.)

21 Q Perfect. All right. And when you
22 arrived at on or about 5:00, I assume -- maybe a
23 little before 5- on the 16th of February, did you
24 have any difficulty finding a parking space?

25 A Normally not. Usually there's like,

1 you know, one or two spots that are empty.

2 Q Okay. At that time of day has
3 generally faculty left for the day? Has that
4 been --

5 A I wouldn't --

6 Q -- your experience?

7 A -- say that, because there's several
8 places in that parking lot for faculty, and
9 there's usually only one or two that are empty.
10 So there's still a lot of faculty parked there.

11 Q Okay. By 6- or 7:00, do you ever leave
12 the library on a break to notice what the
13 population count would be on campus --

14 A No.

15 Q -- after 6 p.m. on an average day?

16 A No, it's not -- it's rare that I go
17 outside, so I don't really observe that.

18 Q All right. But in the roughly six,
19 seven months that you were employed by the
20 University with a schedule of coming to work at
21 five, getting off at nine, you've never had
22 occasion to where you needed to use the parking
23 lot where Ms. Davaut was parked, due to there not
24 being sufficient parking closer to the building?

25 A Never had to do that.

1 Q Got you. To your knowledge, there's no
2 directive from the University as to where you
3 should park? As far as Defendant's Exhibit 1, all
4 these blue areas depicting parking spaces, there
5 is no prohibition -- or directive that you not use
6 or use a specific parking lot, is there?

7 A Well, there are specific parking lots
8 that are marked faculty.

9 Q Right.

10 A And it was my understanding that that's
11 what I was to use since I was staff at the
12 University.

13 Q Okay. But if the faculty spots were
14 taken, you could use student or public spots,
15 could you not?

16 A I was told by someone that I could park
17 anywhere where I wanted, but I never did that. I
18 always parked in the faculty spot.

19 Q Who would have told you that you could
20 park wherever you wanted?

21 A Somebody in -- somebody out in the
22 parking lot one day told me that. And I don't
23 know who he was.

24 Q Okay. Well, would the designation of
25 faculty parking be more designed to protect those

1 spots from students taking the faculty spots as
2 opposed to a faculty taking a student spot? Or
3 would you know?

4 A Well, that makes sense, but I don't
5 know if that's the logic behind it.

6 Q Okay. But it would be pretty good
7 logic, wouldn't it?

8 MR. REEVES: Object to the form.

9 THE DEPONENT: I think the students
10 would be reluctant to -- to park their car in a
11 faculty spot guaranteeing that spot for a faculty
12 member when he arrived for his shift.

13 BY MR. HENDRIX:

14 Q Got you. The -- you mentioned that the
15 parking lot where there's a circle and an X, which
16 is the parking space or approximate parking space
17 where Ms. Davaut's car was parked, that that was
18 available, your understanding was, for faculty
19 only?

20 A No.

21 Q Or what was your understanding?

22 A Well, I honestly didn't know anything
23 about that parking lot. Never even took it into
24 consideration, until after this accident I became
25 curious. And after the accident, I was under the

1 assumption that staff could park there, because
2 she's staff and her car was there. But prior to
3 the accident, that parking lot meant nothing to
4 me. I never even inquired -- inquired about it.
5 Because I always had a spot there, and if I
6 couldn't find a spot there, there were spots
7 along -- directly to the east of Hubbard Hall and
8 over here by the security building --

9 Q On the --

10 A -- where I could park.

11 Q On the south side of Hubbard Drive?

12 A Correct.

13 Q All right.

14 A I -- I used that -- those spots a
15 couple of times, you know, so...

16 Q Do you remember on February the 16th of
17 this year if the library was crowded on that
18 evening or...

19 A I don't remember it being exceptionally
20 busy. I know that when she checked out, the place
21 was empty and it was quiet.

22 Q Okay. When she brought the box or the
23 file folder of resumes back to you, what would
24 have been the procedure? Would you have --

25 A I would have scanned the barcode and

1 checked them in just like it was a book.

2 Q Okay. All right. And other than
3 students being on campus to utilize the library,
4 would there be any reason for folks to have been
5 on campus for any other event on February the 16th
6 of this year --

7 A I was unaware of --

8 Q -- that you know of?

9 A No, I was unaware of anything else --

10 Q Okay.

11 A -- taking place that evening.

12 MR. HENDRIX: I think that's all I
13 have. Thank you, sir.

14 THE DEPONENT: Okay.

15 MR. HENDRIX: Nice to meet you.

16 FURTHER EXAMINATION

17 BY MR. REEVES:

18 Q Mr. Helwer, I have a follow-up
19 question. Using the Exhibit Number 1, there is an
20 X here on Hubbard Drive. Is that -- does that X
21 accurately reflect where Ms. Davaut was when you
22 saw her lying in the street? If you know.

23 A Yeah, that's it, if that's -- those
24 little red lines indicate the crosswalk; right?

25 Q I'm not sure.

1 A Well --

2 MR. HENDRIX: I believe they do.

3 THE DEPONENT: Yeah, that's -- that's a
4 -- that's where I remember her being, in that
5 vicinity. If that's the crosswalk, that's exactly
6 where she was.

7 BY MR. REEVES:

8 Q Okay. Mr. Hendrix asked you some
9 questions and you responded by saying that if you
10 couldn't find a parking place in front of the
11 library or near the library, you would park over
12 in another parking lot you described as near the
13 security building.

14 A Uh-huh.

15 Q Did your arrival during your course --
16 or during your employment, usually happen in the
17 afternoons?

18 A Yeah, I usually arrived at work around
19 4:45.

20 Q Were you familiar with at all the
21 availability of parking, let's say, at nine or ten
22 or eleven in the morning?

23 A At that point in time, no, because I --
24 I -- I didn't...

25 Q Okay. All right.

1 A My shifts have changed since then, and
2 I am aware of that, but -- and I park in a
3 different place now because of that. But at that
4 time, no. I just --

5 Q What are you aware of now? You said
6 you're -- you had changed?

7 A Yeah, I -- I arrive often during the
8 day before -- say like 2:00 in the afternoon,
9 sometimes I come in. This week I'm coming in at
10 10:30. So I park right over here, because it's
11 the only shade on campus and it keeps my car from
12 cooking --

13 Q Okay.

14 A -- in the afternoon.

15 MR. REEVES: Okay. Great. Thank you
16 very much, Mr. Helwer.

17 THE DEPONENT: Okay.

18 F U R T H E R E X A M I N A T I O N

19 BY MR. HENDRIX:

20 Q But again, you just pointed to a
21 parking lot on the south side of Hubbard adjacent
22 to Hubbard Hall?

23 A South side of Hubbard Drive.

24 Q Hubbard Drive, I'm sorry.

25 A Yes.

1 MR. HENDRIX: All right. That's all I
2 have.

3 THE DEPONENT: Yes.

4 (Deponent excused.)

5 (Whereupon, at 11:39 a.m., the
6 taking of the foregoing
7 deposition was concluded.)

8

9

10

11

12

13

14

15

16

17

18

19

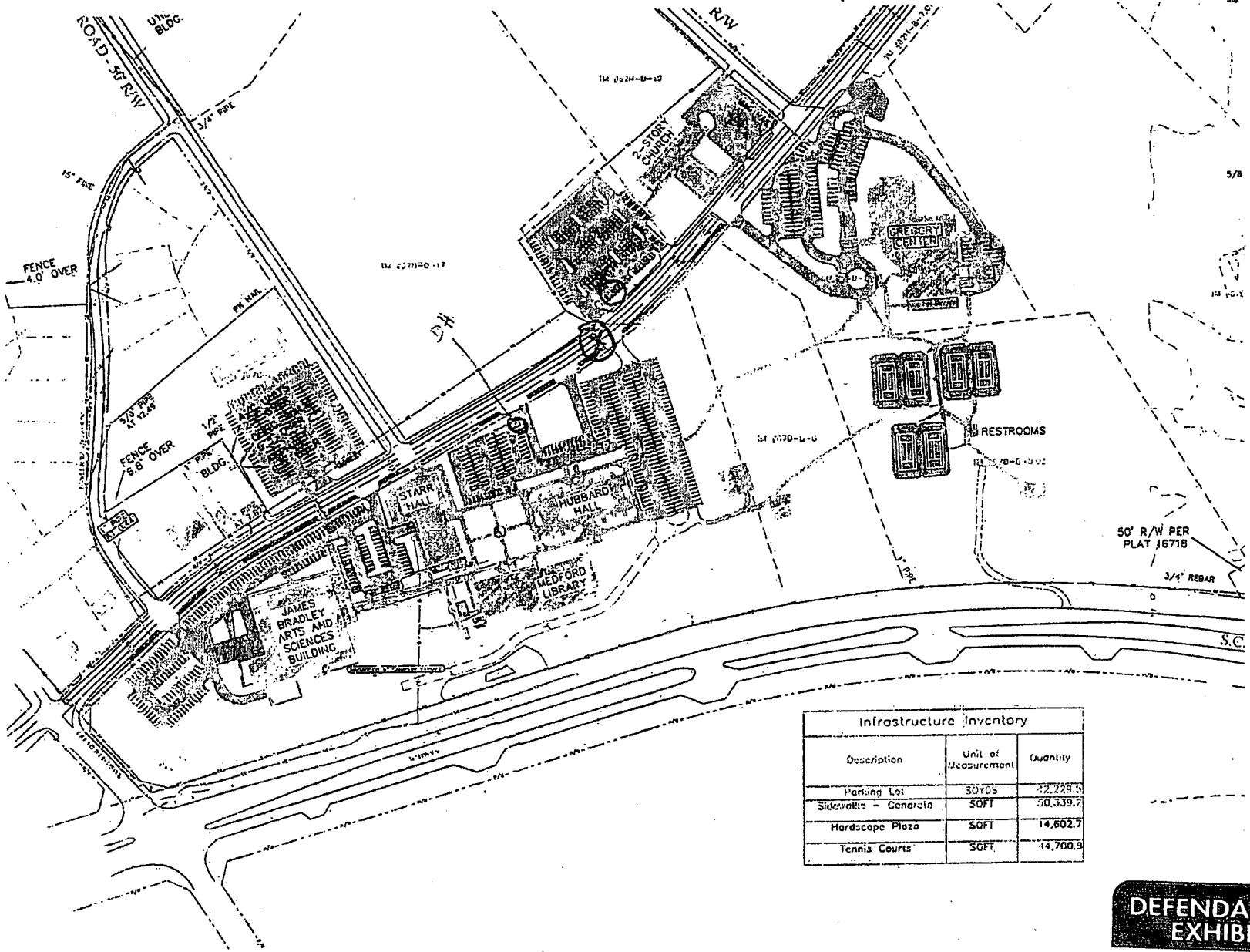
20

21

22 (*This transcript may contain quoted material.

23 Such material is reproduced as read or quoted by
24 the speaker.)

25 (**Certificate accompanies sealed original only.)



Infrastructure Inventory		
Description	Unit of Measurement	Quantity
Parking Lot	SQYDS	42,229.5
Sidewalks - Concrete	SQFT	50,339.2
Hardscape Plaza	SQFT	14,602.7
Tennis Courts	SQFT	44,700.9

DEFENDANT'S EXHIBIT
 8-9-12
 Helwer



Claimant's Name: Nathalie Davaut
Address: 313 Cape Breton Trail
City: Gastonia State: NC Zip: 28056
Home Phone: (704) 865.7581 Work Phone: () -
Preparer's Name: Paul L. Reeves

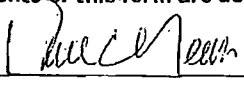
Employer's Name: University of South Carolina
Address: 1600 Hampton Street, Ste 705
City: Columbia State: SC Zip: 29208
Carrier: State Accident Fund
Preparer's Phone #: (803) 929-0001

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$725.47 2. AWW: \$1,199.90 Date of Injury: 02/16/2012
3. Type of injury and body part(s): Right lower extremity fracture, Open reduction and internal fixation of the left Acetabular fracture, closed reduction of left hip, grade I liver laceration and grade III spleen laceration, left side L2-L5 transverse process fracture, left sacral fracture, inferior superior pubic rami fracture on left side, left acetabular roof fracture and femoral head protrusion into the pelvis, bil L1 transverse process fracture, Acute renal failure, psychological overlay.
4. Facts in controversy: Whether Claimant's accident is subject to the Workers' Compensation Act, Whether the Claimant is entitled to causally related medical care and expenses, MMI, entitled to lost wages past and future (TTD), scarring, psychological overlay.
5. Legal issues involved: Whether Claimant's accident occurred during the course and scope of employment, Whether Claimant is Entitled to benefits under the Workers' Compensation Act.
6. Unusual aspects: Claimant has received medical care outside of the United States; Claimant reserves the right to submit the deposition testimony of Dr. Rutledge, Dr. Nims, Dr. Catalano and Mr. Helwer that could not be obtained prior to this production.
7. Witnesses (designate if expert):* See attached Notice.
8. Exhibits: Maps and diagrams of place of employment, emails from employer directing Claimant to further employers business, Photographs of the scene, witness statement, accident report, claimants notes of perspective hires, map of place of employment marked by Mr. Helwer and Nathalie Davaut, map and place of employment marked by Dr. Rutledge.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See notice of witnesses and written medical reports to be introduced as direct evidence on behalf of the claimant.
10. Name, address, and specialty, if any, of the treating physician: Michael Bosse, MD and Stephen Sims, MD, Carolinas Medical Center Orthopaedics, Moorehead Medical Drive, Suite 300, Charlotte, NC 28204
11. Impairment rating(s); body part(s); physician and date of opinion: No impairment rating.
12. I am amending my Form 50/51 in the following manner: None

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: 

Email: Paul@PLRLawFirm.com

Date of hearing: September 25, 2012

Time needed for hearing: 75 minutes

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

NATHALIE DAVAUT,

Employee/Claimant,

Vs.

UNIVERSITY OF SOUTH CAROLINA,

Employer.

STATE ACCIDENT FUND,

Insurer.

WCC No.: 1203664

DOA: 02/16/2012

**Amended Notices of Witnesses
and Written Report(s) of
Physician or other evidence to
be Introduced on behalf of the
Employer.**

**TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION,
PAUL HENDRIX, ESQUIRE.**

YOU ARE HEREBY NOTIFIED that the Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976), as amended) herewith submits the following reports/physician:

	<u>Name of Reports/Physician Or Other Evidence</u>	<u>Date of Report</u>	<u>Page Numbers</u>
1:	Lancaster County EMS	02/16/2012	1 – 9
2.	Springs Memorial Hospital	02/16/12	10 – 16
3.	Carolinas Medical Center	02/16/12 - 03/15/12	17 – 60
4.	Carolinas Medical Center Orthopaedics	02/16/12 to present	61 – 67
5.	Liberty Nursing & Rehab	03/15/12 - 04/11/12	68 – 93

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination and should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein,

or photocopies received from said physicians/others, will be submitted to the South Carolina Workers' Compensation Commission at the time of the hearing on this claim for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Employee:

1. Nathalie Davaut;
2. Bruce Nims, PhD;
3. John E. Rutledge, PhD;
4. John Catalano, PhD;
5. David Helwer.

WHEREFORE, NATHALIE DAVAUT, by and through her undersigned counsel, respectfully submit this Notice of Witnesses and Written Report(s) of Physicians or other evidence to be introduced on behalf of the employer in this matter.

Respectfully Submitted:

BLACKWELL, TRIMNAL, REEVES & MYERS, LLC



Paul L. Reeves
1527 Blanding Street
Post Office Box 11126
Columbia, South Carolina 29211
803.929.0001
803.929.0927 Facsimile
Paul@PReevesLaw.com
Attorney for the Plaintiff

September 10, 2012



Claimant's Name: Nathalie I. Davaut
Address: 313 Cape Breton Trail
City: Gastonia State: NC Zip: 28056
Home Phone: (704) 865-7581 Work Phone: () -
Preparer's Name: Paul L. Hendrix

Employer's Name: University of South Carolina
Address: 1600 Hampton St., Ste. 705
City: Columbia State: SC Zip: 29208
Carrier: State Accident Fund
Preparer's Phone #: (864) 583-5577

A claim for workers' compensation benefits is made based on the following grounds:

X Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$725.47 2. AWW: \$1,199.90 Date of Injury: 02/16/12
3. Type of injury and body part(s): Hip, pelvis, right femur, spleen, liver, urinary tract, renal failure, anemia, psychological overlay - alleged.
4. Facts in controversy: The Defendants admit that the Claimant sustained an injury on the date alleged but specifically deny that the Claimant's accident occurred within the course and scope of her employment within the meaning of the Act. The Claimant's injury occurred when she was struck by an automobile while crossing a public street.
5. Legal issues involved: S.C. Code Ann. §42-1-160.
6. Unusual aspects: None known at this time.
7. Witnesses (designate if expert):* See attached Notice.
8. Exhibits: Personnel, tax and payroll records and company documents of the Claimant to be introduced through lay witnesses. The Defendants reserve the right to submit the Claimant's deposition transcript as well as the deposition transcripts of all witnesses conducted in the claim.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See Notice of Witnesses and Written Medical Reports to be Introduced as Direct Evidence on Behalf of the Employer/Carrier.
10. Name, address, and specialty, if any, of the treating physician: There are no authorized treating physicians in this case as the claim is denied. However, Dr. Michael J. Bosse has been the Claimant's primary treating physician.
11. Impairment rating(s); body part(s); physician and date of opinion: None indicated at this time.
12. I am amending my Form 50/51 in the following manner: _____

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: _____

Email: paul@sccompdefense.com

Date of hearing: September 25, 2012 at 09:30 a.m.

Time needed for hearing: 1.5 hours

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Nathalie I. Davaut,
Employee/Claimant,

vs.

University of South
Carolina,
Employer,

and

State Accident Fund,
Carrier.

WCC FILE NO.: 1203664

NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS DIRECT
EVIDENCE ON BEHALF OF THE
EMPLOYER/CARRIER

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PAUL L.
REEVES, ESQUIRE, ATTORNEY FOR CLAIMANT:

YOU ARE HEREBY NOTIFIED THAT THE Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submit the following medical reports as direct evidence on behalf of the Defendants, to wit:

<u>NAME OF PHYSICIAN/OTHER</u>	<u>DATE OF REPORT</u>	<u>PAGE NUMBERS</u>
6. Carolinas Healthcare System	07/08/10	94 - 96
7. Carolina Neurosurgery & Spine Associates	08/12/10 - 09/14/11	97 - 101
8. Michael J. Bosse, M.D.	08/09/12	102 - 104

YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of

cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/ others will be submitted to the South Carolina Workers' Compensation Commission at the Hearing scheduled herein, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants:

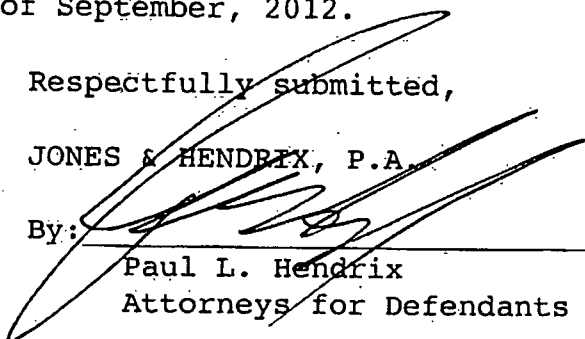
1. Tracey A. Mobley.
2. Bruce Nims, PhD.
3. John E. Rutledge, PhD.
4. John Catalano, PhD.
5. David Helwer.
6. Co-workers of Claimant.
7. Claimant's supervisor.
8. Representative of Employer.

9. Defendants reserve the right to call any persons referenced in Claimant's deposition.

Dated this the 17th day of September, 2012.

Respectfully submitted,

JONES & HENDRIX, P.A.

By: 

Paul L. Hendrix
Attorneys for Defendants

50 Applewood Lane
Spartanburg, SC 29307
(864) 583-5577

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Nathalie I. Davaut,
Employee/Claimant,

vs.

University of South
Carolina,
Employer,

and

State Accident Fund,
Carrier.

WCC FILE NO.: 1203664

CERTIFICATE OF SERVICE

I, Paul L. Hendrix, do hereby certify that I have this day served a copy of the Form 58 Employer's Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports to be Introduced as Direct Evidence on Behalf of the Employer/Carrier and APA Submission, upon the following person by placing a copy of same in the United States Mail, First Class Mail, properly addressed and with the correct amount of postage affixed thereto:

Paul L. Reeves, Esq.
Blackwell, Trimnal, Reeves & Myers
P.O. Box 11126
Columbia, S.C. 29211

Dated this 17th day of September, 2012.

JONES & HENDRIX, P.A.

BY

Paul L. Hendrix

50 Applewood Lane
Spartanburg, SC 29307
(864) 583-5577

SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

NATHALIE DAVAUT,

Claimant/Appellant

Vs.

UNIVERSITY OF SOUTH CAROLINA,

Employer.

STATE ACCIDENT FUND,

Carrier.

Defendants/Respondents.

WCC No.: 1203664

DOA: 02/16/2012

**BRIEF OF
CLAIMANT/APPELLANT**

The Claimant, by and through her undersigned attorney, hereby submits her Appellant's Brief to the Full Commission.

ISSUES ON APPEAL

1. Whether the Single Commissioner erred as a matter of law in holding the mere act of crossing a public street within the boundaries of the Employer's property removed the Employee from the course and scope of her employment even though: (A) the Employee had not yet left her place of employment; and (B) the employee was still engaged in a duty, task or special errand for the benefit of the employer.
2. Whether the Single Commissioner erred as a matter of law in holding the factual situation was controlled by Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987).
3. Whether the Single Commissioner erred as a matter of law in failing to award benefits for medical treatment and temporary total disability compensation.
4. Whether the Single Commissioner erred as a matter of law in failing to make specific and detailed findings of fact sufficient for appellate review.

Statement Of The Case

This matter comes before the Appellate Panel on appeal from an order of Commissioner Williams following a hearing on the issues raised in the Forms 50 and 51. This is a denied case. Claimant, Natalie Davaut, suffered severe injuries to her hip, pelvis, right femur, spleen, liver, urinary tract with additional internal injuries resulting in renal failure and an onset of infection after treatment as well as psychological overlay, as a result of being struck by an automobile while attempting to cross a public street that dissected the employer's premises. The

incident occurred on February 16, 2012. After hospitalization, in-patient rehabilitation at a nursing facility and recuperation at home, Davaut returned to work on or about June 1, 2012 when she taught an online summer school session for her employer.

The Single Commissioner denied the claimant's claim for the sole reason that claimant, while exiting her office on one part of the employer's property and walking to access her vehicle on another part of the employer's campus was injured on a public street that divided the employer's property. This appeal concerns the following findings of the Single Commissioner: (1) that the mere act of crossing a public street within the boundaries of the employer's property removed the employee from the course and scope of her employment even though: (a) the employee had not yet left her place of employment; and (b) the employee was still engaged in a duty, task or special errand for the benefit of the employer; (2) that *Howell v. Pacific Mills*, 291 S.C. 469, 354 S.E.2d 384 (1987) control the facts presented by claimant; (3) that he failed to award benefits for medical treatment and temporary total disability compensation; and, (4) that he erred when he failed to make specific, detailed findings of fact sufficient for appellate review.

Factual Background

Natalie Davaut is 45-years-old. She is a foreign language instructor at the University of South Carolina-Lancaster Campus. She has multiple post-graduate degrees including three Masters degrees and a Ph.D. She teaches courses at the university during the fall and spring sessions as well as summer school courses.

Davaut's normal work hours were from 9:00 a.m. until 5:00 p.m. while school was in session. On February 16, 2012 Davaut had worked past her normal hours in order to review the resumes of potential new foreign language instructors who were seeking to fill a vacancy on the university's faculty. She had been asked to review the resumes by her supervisor, Dr. Nims. The resumes were placed on reserve at the university's Medford library. Davaut's office is housed in the same building as the Medford library.

On the date of her accident, Davaut left her office at the normal time of around 5:00 p.m. After leaving her office, she entered the library and obtained the resumes from the library employee, David Hellwer. The resumes could not be removed from the library and therefore Davaut was

required to review the resumes without removing them from the library. Davaut testified that she reviewed the resumes that evening because she wanted to be prepared for a meeting that was to be scheduled by her supervisor for Davaut and other faculty members to meet and discuss the most suitable candidates for the new position. She reviewed a number of resumes until approximately 9:00 p.m., when the library closed. Davaut had made notes about the resumes she had reviewed and took the notes with her to review later at home. She exited the building just before Hellwer, the library employee closed and locked the building. Hellwer confirmed that Davaut left at closing time and that he followed her out of the building.

Upon leaving the library, Davaut walked directly to the intersection of the employer's property with Hubbard Drive a public street that dissected the employer's property. Davaut had planned to cross the street at a marked crosswalk to access her vehicle which was parked on the other side of the street in a parking lot owned, maintained and controlled by the employer.

The parking area where Davaut's car was parked was designated for faculty, staff and students. The parking area did not contain any designated parking spaces; however, faculty often used the parking lot due to the lack of parking spaces on the south side of Hubbard Drive.

Davaut had crossed some of the public highway when she was struck by a vehicle. She was in the crosswalk when she was struck by the vehicle. Davaut never had an opportunity to reach her vehicle so as to exit the employer's premises. Davaut testified that she walked the most direct route from the library to the parking area after she exited the library building. Helwer confirmed that she was injured within minutes of her leaving the library.

Argument

1. The Single Commissioner erred as a matter of law in holding the mere act of crossing a public street within the boundaries of the employer's property removed the employee from the course and scope of her employment even though the employee had not yet left her place of employment.

The phrase "in the course of employment" refers to the time, place, and circumstances under with the accident occurred. *Owings v. Anderson County Sheriff's Department*, 315 S.C. 297, 433 S.E.2d 869 (1993); *Loges v. Mack Trucks Inc.*, 308 S.C. 134, 417 S.E.2d 538 (1992). An injury occurs "in the course of" employment within the meaning of the Workers' Compensation Act when

it occurs within the period of employment and at a place within employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto. *Baggott v. Southern Music Inc.*, 330 S.C. 1, 496 S.E.2d 852 (1998); *Fowler v. Abbott Motor Company*, 236 S.C. 226, 113 S.E.2d 737 (1960); *Broughton v. South of the Boarder*, 336 S.C. 488, 498, 520 S.E.2d 634, 639 (Ct.App. 1999). At the time of the injury, Davaut was in the "course and scope of her employment" as she had yet to access the ability to egress the employer's premises. She was injured before she had the opportunity to leave the premises.

This factual scenario was contemplated and considered in *Williams v. South Carolina State Hospital*, 254 S.C. 377, 140 S.E.2d 601 (1965) when the Supreme Court held as follows:

And employment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by way over the employer's premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance. In other words, the employment may begin in point of time before the work is entered upon and in point of space before the place where the work is to be done is reached.

254 S.C. at 381, 140 S.E.2d at 603 (emphasis added).

In *Williams*, the Supreme Court recognized that the period of employment includes a reasonable period of time necessary for the employee to travel to a point where the employee can access the place of work and by the same token included a reasonable period of time necessary for the employee to travel to and from the location of where the work was to be performed. It is also critical to note that the Supreme Court recognized that the movement of the employee from the place where the work was to be performed to a place where the employee could egress and ingress the employer's premises or "over those of another" where such premises were so close in proximity and so close in relation so as to be in practical effect a part of employer's premises. Davaut's case falls squarely within that description. While Hubbard Drive is a publically maintained highway it obviously dissects the premises thereby requiring those persons who wish to access the north and south part of the campus to travel over Hubbard Drive.

It should be of no consequence that Davaut had entered for a brief moment the public street. Hubbard Drive splits the university's property and must be crossed in order to access the parking facilities owned, maintained and offered by the employer. What is important is that when Davaut was injured she was headed directly from her place where her work was performed to a portion of the employer's premises where she could access her vehicle to exit the employer's premises. Egress and ingress from Davaut's workplace (her office and the library within the Medford Building) across at the public street to the university owned, maintained and controlled parking lot clearly are incident to Davaut's employment with the university thereby placing her squarely "in the course of" her employment when she was injured.

In *Camp v. Spark Mills*, 302 S.C. 348, 396 S.E.2d 121 (Ct.App. 1990), the Court of Appeals discussed the "passing to and from" scenario as compared to the "going and coming" rule:

The course of employment includes not only the actual doing of the work but also a reasonable margin of time and space to use in passing to and from the place where the work is done, (citing *Williams*). The act of leaving the employer's premises is "in the course of" one's employment if the employee leaves the premises as contemplated at the close of the work day.

302 S.C. at 350, 396 S.E.2d at 122.

Clearly Davaut was within the margin of time and space announced in *Camp*.

Georgia courts have considered the same issue. In *Knight-Ridder Newspaper Sales, Inc. Et Al. v. Desselle*, 176 Ga. App. 174, 335 S.E.2d 458 (1985), the Court recognized that "[t]he period of employment generally includes a reasonable time for ingress to and egress from the place of work, while on the employer's premises." *Knight* at 174, 458, citing *Federal Ins. Co. v. Coram*, 95 Ga. App. 622 (98 SE2d 214) (1957); *United States Casualty Co. v. Russell*, 98 Ga. App. 181 (105 SE2d 378) (1958). The court held:

[i]t is not significant that appellee in the instant case was injured on a public street. He could not have reached the parking lot without crossing the street. What is important is that he was taking a direct route from one part of the employer's premises to another.

In *West-Point Pepperell v. McEntire*, 150 Ga. App. 728 (258 SE2d 530) (1979), an employee was held to have been in the course of her employment when struck by a car on a public street while going from her place of work to a company-controlled parking lot. This case as well as the *Knight*-

Rider case, are indistinguishable from the instant case. Another case on point is *Dept. of Human Resources v. Jankowski*, 147 Ga. App. 441 (249 SE2d 124) (1978). In the *West-Point* and *Jankowski*, the parking lot was provided by the employer for the convenience of the employer and of the employees, who were encouraged to use the lot. The holdings in these cases found that the employee's discretion to use the lot was immaterial. What is important is that the employee used the lot to park and was using a direct route to access the lot when the injury occurred in a public street. See *Federal Ins. Co. v. Coram, supra*; *Dept. of Human Resources v. Jankowski, supra*.

Other jurisdictions have considered the issue of injury while crossing a public street. In *Quality Car Wash v. Cox*, 438 A.2d 1243, 1246 (Del. Super. 1981) rev'd at 449 A.2d 231 (Del. 1982)¹, the Delaware Supreme Court considered a factual scenario similar to the case at bar. The claimant was struck by a car while crossing a public highway. He was walking toward his car, which was parked in the parking lot of a shopping center across the road from the employer's car wash. The *Quality* case held that as to employees having a fixed place of work, the generally accepted rule is that injuries occurring while they are going to and from work are compensable if they occur on the employer's premises, but are not compensable if they occur off the premises. *Id.* at 1245, quoting 1 *Larson's Workmen's Compensation Law* §15.10. The Court found that the premises rule is subject to several exceptions and discussed two exceptions:

- (1) injuries sustained while the employee travels along or across a public road between two parts of his employer's premises are compensable, and
- (2) injuries sustained as a result of a special hazard encountered while traveling the normal route to and from work are compensable....

Id. at 1245.

The Court referred to exception number one as the "parking lot" exception as the issue most frequently arose where an employee passes from one part of the employer's premises over a public highway to a parking area owned or maintained by the employer. *Id.* The Court held that:

[s]ince, as shown later, a parking lot owned or maintained by the employer is treated by most courts as part of the premises, the majority rule is that an injury in a public street or other off-premises place between the plant and the parking lot is in the course of employment, being on a necessary route between the two portions of the premises. But if the parking lot is a

¹ On appeal, the Delaware Supreme Court reversed on the sufficiency of the evidence with no challenge to the "employer premises" rule and its two exceptions.

purely private one, the principle of passage between two parts of the premises is not available, and an employee crossing a public street to get to the parking lot is not protected.

Id. at 1245-1246, quoting 1 Larson §15.14, 4-36.

The case of *Lewis v. Workers' Comp. Appeals Bd.*, 15 Cal. 3d 559, 542 P.2d 225, (1975)(citing Larson §15.14) held that the dissection or fragmentation of the employer's premises by a public highway does not interrupt the employer-employee relationship that gives rise to an "in the course of employment" finding. The Court held:

The fragmentation of the physical premises of the employer into the parking lot on the one hand and the place of work on the other does not fracture the employer-employee relationship; it is the commencement of that relationship by the employee's entrance into the employer's parking premises that is determinative.

15 Cal.3d at 565, 542 P.2d at 229.

2. The Single Commissioner erred as a matter of law when holding the mere act of crossing a public street within the boundaries of the employer's property removed the employee from the course and scope of her employment even though (b) the employee was still engaged in a duty, task or special errand for the benefit of the employer.

Davaut should prevail in this claim because she was "within the course" of her employment because she was engaged in a duty, task or special errand for the benefit of her employer. *Bickley v. South Carolina Electric and Gas Company*, 259 S.C. 463, 192 S.E.2d 866 (1972) Davaut had reviewed the resumes until she was forced to leave the library because of its closing. She wanted to be prepared for the upcoming meeting with her supervisor and other faculty members therefore she took notes about the resumes she had reviewed and anticipated reviewing the remainder of the resumes later that weekend. The resumes could not be removed from the library. Her supervisor had told her that the committee members must be familiar with the resumes and be prepared to offer insight into which candidate would best be suited for the position offered. Davaut took notes about her observations regarding the resumes and took those notes with her when she exited the library. She planned to review those notes later at home. The notes were obviously with her at the time of the accident.

Davaut would not have ordinarily been at the employer's premises at 9:00 p.m. in the evening except for her obligation to review the resumes as requested by her supervisor. The fact that the participation of the committee was voluntarily is misleading. Davaut said that her evaluations

included whether or not she had participated in such activities outside her teaching duties and that her failure to do so would negatively reflect in her evaluation thereby effecting her position.

Davaut recognizes that as a general rule, an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment, and, therefore, an injury sustained by accident at such time does not arise out of and in the course of his employment. *Medlin v. Upstate Plaster Services*, 329 S.C. 92, 495 S.E.2d 447 (1998). However *Medlin* recognized a number of exceptions to this rule:

(1) where, in going to and returning from work, the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages; (2) where the employer on his way to or from his work, is still charged with some duty or task in connection with his employment; (3) the way used is inherently dangerous and is either: (a) the exclusive way of ingress and egress to and from his work; or (b) constructed and maintained by the employer; or (4) that such injury incurred by a workman in the course of his travel to his place of work and not on the premises of his employer but in close proximity thereto is not compensable unless in place of injury was brought within the scope of employment by an expressed or implied requirement in the contract of employment of its use by the servant in going to and coming from his work.

329 S.C. at 95-96, 495 S.E.2d at 449.

While Davaut does not concede that the facts of her case are controlled by the going and coming rule and the exceptions thereto, in the event the Commission believes that the going and coming rule is relevant, Davaut would still prevail under the theory that she was still charged with a duty or task in connection with her employment in that she was to review the resumes after hours and be prepared to discuss those reviews at a meeting to be held later. This would have necessitated Davaut's use of her notes taken during the actual review of the resumes at home so as to prepare herself for the meeting. Moreover, exception number four should apply because she was injured in such close proximity to her work and that the reason for the injury was came about because her employer had insufficient parking on the south side of Hubbard Drive thereby necessitating Davaut and other faculty members' use of the parking lot on the north side of Hubbard Drive.

3. The Single Commissioner erred in finding that *Howell v. Pacific Mills*, 291 S.C. 469, 354 S.E.2d 384 (1987) controlled the facts presented by claimant.

The Single Commissioner found that the *Howell* case “controlled” the facts as presented in the claimant’s case. The *Howell* case is not factually analogous to the case at bar. In *Howell*, the claimant was struck by a car in a crosswalk, on a public street in front of the place of employment. *Howell* 291 at 471, 354 at 385. The claimant had exited her husband’s vehicle while the vehicle was parked in a public street at or near the crosswalk. *Id.* Howell was struck by a vehicle **before** she could reach the employer’s property. *Id.* The critical difference in the facts of *Howell* and the instant case is that the claimant in the *Howell* case **never** accessed the employer’s premises so as to fall under the “reasonable margin of time and space to use in passing to and from the place where the work is done.” *Camp* at 350, 122. She was not on the premises of the employer before she stepped onto the public street and she never accessed the employer’s property prior to the accident.

The *Williams* and *Camp* holdings are based upon the employee having been on the premises of the employer. The claimant in *Howell* never entered the “passing to and from” scenario. Davaut had accessed the employer’s premises, she had accomplished part of her task, and was attempting to leave the employer’s premises without the ability to do so because she never accessed her vehicle. The Single Commissioner erred when he determined that the *Howell* holding controlled the case at bar. The cases are distinctly factually different.

4. The Single Commissioner erred when he failed to award benefits for medical treatment and temporary total disability compensation.

The Single Commissioner found, without contradiction from the employer, that Davaut was credible. She claimed casually related medical bills, the need of additional medical care and sought temporary total benefits from March 23, 2102 through May 15, 2012. He also found that as a result of the accident, she sustained medical bills, had lost wages as a result thereof.

For the reasons set forth in Argument One, the Single Commissioner erred when he failed at award to Davaut casually related medical care to date and continuing until Davaut reaches maximum medical improvement and temporary total wages. For the reasons outlined above, the Single Commissioner erred when he determined that the claimant was not “in the course of” her employment. The Full Commission should reverse the decision, award casually related medical care

to date and continuing until Davaut reaches maximum medical improvement and temporary total wages.

5. The Single Commissioner erred when he failed to make specific detailed findings of fact sufficient for appellate review.

The Single Commissioner erroneously found, against the greater weight of the evidence, that the parking lot where claimant parked her car was only maintained by the university when the overwhelming evidence clearly indicated that university owned and controlled the property. The ownership and control of the parking lot is critical to the application of the appropriate law. The majority of states recognize that where a public highway dissects the employer's premises, and the employee is attempting to access one side of the employer's property on the other and is using the public street, the employee is still within the course and scope of his employment. The Single Commissioner erred when he determined that claimant set her own schedule for viewing resumes at the Medford Library. Davaut testified that she was under a deadline to review the resumes, as there was going to be a meeting scheduled within the next week whereby she and others were to report their findings concerning the resumes.

The Single Commissioner erred in finding that the parking lot where Davaut parked her car had "no designated faculty parking spaces". It is irrelevant as to whether or not the parking spaces were designated. The only relevant issue is whether the employer owned, controlled and maintained the parking lot.

The Single Commissioner's findings are insufficient as to which parking lot Davaut selected. The Commissioner erroneously relied upon the fact that there were other parking lots that "might" have been available to Davaut. Testimony from Dean Catalano clearly shows that faculty members often used this parking lot in question, as there was insufficient parking elsewhere on campus. Again, which parking lot Davaut used is irrelevant. The fact still remains that Davaut was injured walking between the employer's different properties over a public highway prior to her having the ability to egress the employer's premise.

The Commissioner failed to cite any evidence to contradict the fact that Davaut had carried her burden of proof that the accident which gave rise to the claim "arose out of and in the course and

scope of her employment.” Davaut clearly had no opportunity to exit the employer's premises prior to her being injured. *Williams* and *Camp* recognize a sphere of time, place and distance around the employer's workplace where the employee is still “within the course and scope” of her employment, yet still away from the place where the work is to be performed.

Conclusion

The Single Commissioner erroneously determined the mere act of crossing a public street within the boundaries of the employer's property removed the employee from the course and scope of her employment even though the employee had not yet left her place of employment and the employee was still engaged in a duty, task or special errand for the benefit of the employer. His reliance upon *Howell* is in error because the *Howell* claimant never accessed her employer's premises from the public street where she was injured. *Williams* and *Camp* dictate that Davaut was within the course and scope of employment when she was tragically injured. The Single Commissioner's decision should be reversed and Davaut should be awarded causally related medical care to date and continuing and temporary total benefits.

Respectfully Submitted:

BLACKWELL, TRIMNAL, REEVES & MYERS, LLC



Paul L. Reeves
1527 Blanding Street
Post Office Box 11126
Columbia, South Carolina 29211
803.929.0001
803.929.0927 Facsimile
Paul@PReevesLaw.com

February 1, 2013

SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

NATHALIE DAVAUT,

Employee/Claimant,

Vs.

UNIVERSITY OF SOUTH CAROLINA,

Employer.

STATE ACCIDENT FUND,

Insurer.

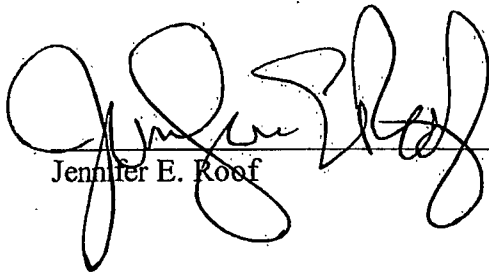
WCC No.: 1203664

DOA: 02/16/2012

Certificate of Service

I, Jennifer E. Roof, an employee for Blackwell, Trimnal, Reeves & Myers, LLC, the claimant's attorney, do hereby certify that I served the **Brief of Claimant/Appellant** in the above-captioned matter via US Mail, on the 1st day of February, 2013, addressed to the attorney(s) listed below:

Paul L. Hendrix, Esquire
Jones and Hendrix, PA
50 Applewood Lane
Spartanburg, SC 29307


Jennifer E. Roof

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

The undersigned further certifies that the Record on Appeal complies with the Order of the South Carolina Supreme Court, dated August 13, 2007, RE: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.



Paul L. Reeves, S.C. Bar. No. 4671
Reeves Law Firm, LLC
1527 Blanding Street
P.O. Box 11126
Columbia, South Carolina 29211
803.929.0001
803.929.0927 Facsimile
Paul@PLRLawFirm.com

March 19th, 2014

**The State of South Carolina
In the Court of Appeals**

Appeal from S.C. Worker's Compensation Commission
Appellate Panel

W.C.C. File No. 1203664
Appellate No. 2013-001778

Nathalie I. Davaut,

Employee, Claimant, Appellant,

v.

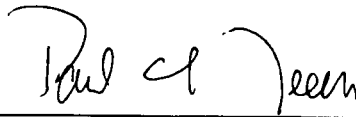
University of South Carolina,
and State Accident Fund,

Defendants, Respondents.

Corrected Certificate of Service

I certify that I have served the Record on Appeal the Respondents by depositing a copy of it in the United States Mail, postage prepaid, on March 20, 2014, to the Counsel of Record, as listed below:

Paul L. Hendrix
Jones & Hendrix, P.A.
50 Applewood Lane
Spartanburg, SC 29307-2225



Paul L. Reeves, S.C. Bar. No. 4671
Reeves Law Firm, LLC
1527 Blanding Street ~ P.O. Box 11126
Columbia, South Carolina 29211
803.929.0001 ~ 803.929.0927 Facsimile
Paul@PLRLawFirm.com

Attorney for Employee, Claimant, Appellant
Nathalie I. Davaut

RECEIVED

MAR 26 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUN - 8 2015

APPEAL FROM THE SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

S.C. Supreme Court

Appellate Case No.: 2013-001778
Trial Court Case No. 1203664

Nathalie I. Davaut,

Employee, Claimant, Appellant,

v.

University of South Carolina, and
State Accident Fund,

Defendants, Respondents.

FINAL BRIEF OF APPELLANT

Paul L. Reeves
Reeves Law Firm, LLC
1527 Blanding Street
Post Office Box 11126
Columbia, SC 29211
(803) 929-0001
Paul@PLRLawFirm.com

Attorney for Employee,
Claimant, Appellant

RECEIVED

APR 08 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

Appellate Case No.: 2013-001778
Trial Court Case No. 1203664

Nathalie I. Davaut,

Employee, Claimant, Appellant,

v.

University of South Carolina, and
State Accident Fund,

Defendants, Respondents.

FINAL BRIEF OF APPELLANT

Paul L. Reeves
Reeves Law Firm, LLC
1527 Blanding Street
Post Office Box 11126
Columbia, SC 29211
(803) 929-0001
Paul@PLRLawFirm.com

**Attorney for Employee,
Claimant, Appellant**

TABLE OF CONTENTS

	Page
STATEMENT OF THE ISSUES ON APPEAL.....	1
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS.....	2
SUMMARY OF ARGUMENT	6
<i>The Applicable Law and Standard of Review</i>	6
ARGUMENT	10
The Claimant is entitled to benefits for the work-related injury she sustained when she was struck by a vehicle while walking across a public street from her Employer's office building to her car which was parked in a University employee/staff parking lot at the end of her work day.	10
I. The Claimant was "in the course of employment" when she walked from her Employer's office building, over a public highway to her Employer's parking lot, so as to allow her to access to car and exit the Employer's premises at the end of her work day.	10
II. The decision in <u>Howell v. Pacific Mills</u> , 291 S.C., 469, 354 S.E.2d 384 (1987), does not support denying the Claimant benefits because she had not yet had the opportunity to get to her car in the Employer's parking lot to leave work.	14
III. The fact that the Claimant made a discretionary choice as to which available University lot she parked her car in when she arrived at work on the day of the accident does not sustain the denial of benefits.	19
CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases	Page
<u>Baggott v. Southern Music, Inc.</u> , 330 S.C. 1, 496 S.E.2d 852 (1998).....	7
<u>Baldwin v. Pepsi-Cola Bottling Co.</u> , 234 S.C. 320, 108 S.E.2d 409 (1959).....	17, 18
<u>Bentley v. Spartanburg Cnty.</u> , 398 S.C. 418, 730 S.E.2d 296 (2012).....	6
<u>Camp v. Spartan Mills</u> , 302 S.C. 348, 396 S.E.2d 121 (Ct.App.1990).....	passim
<u>Department of Human Resources v. Jankowski</u> , 147 Ga. App. 441, 249 S.E.2d 124 (1978).....	15
<u>Evans v. Coats & Clark</u> , 338 S.C. 467, 492 S.E.2d 807 (1997).....	12
<u>Gregg v. Dorchester Cnty. Sch. Sys.</u> , 270 S.C. 189, 241 S.E.2d 554 (1978).....	20
<u>Holston v. Allied Corp.</u> , 300 S.C. 174, 386 S.E.2d 793 (Ct. App. 1989).....	13
<u>Howell v. Pacific Mills</u> , 291 S.C., 469, 354 S.E.2d 384 (1987).....	passim
<u>Hutson v. S. Carolina State Ports Auth.</u> , 399 S.C. 381, 732 S.E.2d 500 (2012).....	9
<u>James v. Anne's Inc.</u> , 390 S.C. 188, 701 S.E.2d 730 (2010).....	9, 17
<u>Knight Rider Newspaper Sale, Inc. v. Desselle</u> , 335 S.E.2d 458 (Ga. 1985).....	15, 20
<u>Lark v. Bi-Lo, Inc.</u> , 276 S.C. 130, 276 S.E.2d 304 (1981).....	8
<u>Lewis v. Workers' Comp Appeals Bd.</u> , 15 Cal. 3d 559, 542 P.2d 223 (1975).....	16, 17

<u>Lizee v. S.C. Dep't of Mental Health,</u> 367 S.C. 122, 623 S.E.2d 860 (Ct. App. 2005).....	8
<u>Quality Car Wash v. Cox,</u> 438 A.2d 1243(Del. Super. 1981),.....	15, 16
<u>West Point Pepperell v. McIntire,</u> 150 Ga. App. 728, 258 S.E.2d 530 (1979).....	15
<u>Williams v. South Carolina State Hospital,</u> 245 S.C. 377, 140 S.E.2d 601 (1965).....	passim

Statutes

S.C. Code Ann. §1-23-380	8
S.C. Code Ann. § 42-1-160(A).....	7

STATEMENT OF THE ISSUES ON APPEAL

Whether the Worker's Compensation Commission erred as a matter of law in denying benefits for medical treatment and temporary total disability compensation in connection with a work-related injury sustained by the Claimant when she was struck by a vehicle while walking across a public street from her Employer's office building to her car in a University employee/staff parking lot?

I. Whether the Commission erred as a matter of law in holding the mere act of crossing a public street within the boundaries of the Employer's property removed the Claimant from the course and scope of her employment even though she had not yet left her employer's premises?

II. Whether the Commission erred as a matter of law in holding that the factual situation was controlled by Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987), because this Claimant had not yet had the opportunity to get to her car to leave work?

III. Whether the Commission erred as a matter of law in relying upon the fact that the Claimant made a discretionary choice as to which available University lot she parked her car when she arrived at work on the day of the accident?

STATEMENT OF THE CASE

This workers' compensation case arises from a work-related accident that occurred when the Claimant, an employee of the University of South Carolina, was struck by a truck as she was walking to her car which was parked on the Employer's property after exiting the building where she had been working late on the evening of February 16, 2012. Claimant filed the Employee's Notice of Claim on April 18, 2012. [ROA 20.] Claimant filed her Request for Hearing on May 22, 2012. [ROA 22.] Employer timely filed an Employer's Answer denying the claim. [ROA 25.] The matter was heard by the Single Commissioner on September 25, 2012. [ROA 31.] The Single Commissioner found that Claimant had failed "to prove an injury by accident arising out of and in the course and scope of her employment" in an Order of November 6, 2012. [ROA 8.]

Claimant timely filed a Request for Commission Review on November 26, 2012. [ROA 26.] The Appellate Panel heard the Claimant's appeal on March 18, 2013. The Panel issued an Order on July 22, 2013 affirming the decision of the Single Commissioner. [ROA 1.] Claimant filed this appeal on August 20, 2013. [ROA 28.]

STATEMENT OF THE FACTS

The Employer, The University of South Carolina-Lancaster, is a branch of the University of South Carolina located in Lancaster, South Carolina. The campus is dissected by a public highway, Hubbard Drive, which runs west to east. [ROA 159, John Rutledge, Ph.D. deposition at p.6] The University owns property on the north and south side of Hubbard Drive, but most of the campus classrooms are located on the south-side of Hubbard Drive. [ROA 159, John Rutledge, Ph.D. Dep. at p.6.]

Claimant is a professor of foreign languages at the University, where she teaches Spanish and French. [ROA 96, Claimant's Dep. at p.14.] She has achieved multiple degrees, including a Bachelor's in English Studies, and Masters' in English Linguistics, French Literature, and Spanish, and she also has a Ph.D. in French Literature and Civilization. [ROA 89, Claimant's Dep. at p.7.] She has been a full-time professor with the Employer at the Lancaster campus since 2008. [ROA 95, Claimant's Dep. p. 13.] Her office is located in the Medford Building which is located on the south-side of Hubbard Drive. [ROA 96, Claimant's Dep. p.14; ROA 159, John Rutledge, Ph.D. Dep. at p.6., ROA 183, Exhibit Number 1 to John Rutledge, Ph. D Dep.] The Medford Library is housed in the same building. [ROA 152, Exhibit Number 1 to Claimant's Dep.; ROA 209, Bruce Nims, Ph.D. Dep. at p.5.]

The Claimant does not have an assigned, reserved faculty parking spot designated for her personal, exclusive use. [ROA 110, Claimant's Dep. at 28.] On the morning of the accident, Tuesday, February 16, 2012, the Claimant looked for a parking space in the University faculty/student lot on the south-side of Hubbard Drive nearest her office, which has only a limited number of spaces specifically designated for faculty. [ROA 110, Claimant's Dep. at p.28.] The Claimant was unable to find any available spaces in that lot. [ROA 108, Claimant's Dep. at p.26.] She then drove to the next closest University parking lot which is adjacent to the University's Carole Ray Dowling Center located on the north-side of Hubbard, where she was able to find a space and parked.¹ [ROA 108, Claimant's Dep. at p.26.] The parking lot, owned and maintained by the

¹ There are two parking lots on either side of the Carole Ray Dowling building, both of which were on the north-side of Hubbard Drive. [ROA 159, John Rutledge, Ph.D. Dep. p.6; ROA 183, Exhibit Number 1 to John Rutledge, Ph.D. Dep.] Claimant parked in the lot closest to the Medford Building. [ROA 152, Exhibit Number 1 to Claimant's Dep.]

University, is provided for faculty/staff/students and the general public having business on the campus. [ROA 194, John Catalano, Ph.D., Dep. at p. 11.]

According to John Catalano, Ph.D., Dean of the School, there is insufficient faculty parking on the south-side of Hubbard Drive during certain times of day and days of the week, particularly on Tuesdays and Thursdays. He further testified that on those busy Tuesdays and Thursdays, faculty and staff members regularly use the parking lots on the north-side of Hubbard Drive, where Claimant parked her vehicle on that Tuesday, the day the accident. "Not unusual at all for faculty members or a staff member to park in this parking lot on the west side of Carol Ray Dowling. I have seen faculty members and staff members park there on Tuesdays and Thursdays especially." [ROA 193, John Catalano, Ph.D., Dep. at p. 10, Lines 4-10.]

After parking, the Claimant walked across Hubbard Drive to the Medford Building where her office was located and she went about her duties throughout the day. [ROA 108, Claimant's Dep. p. 26.] She normally worked from 9-5pm, but on that day, she did not leave her work at the usual time. Instead, she walked downstairs to the Library to work on a special project. [ROA 106-107, 114, Claimant's Dep. p. 24-25, 32]

The special project consisted of serving on a University faculty search committee and involved reviewing resumes of applicants for a foreign languages instructor's position. Those resumes were on reserve in the Library.² [ROA100, Claimant's Dep. at p.18 and ROA 214, Bruce Nims, Ph.D. Dep. at p.10] While this committee was not part of the Claimant's assigned teaching duties, her participation in the project had been requested specifically by her supervisor, Bruce Nims, Ph.D.[ROA 210, Bruce Nims,

² The resumes could not be removed from the Library. [ROA 103-104, Claimant's Dep. at p. 21-22 and ROA 255, Deposition of David Helwer p. 21 and ROA 214, Deposition of Bruce Nims, Ph.D. p.10.]

Ph.D. Dep. at p.6 and ROA 100, Claimant's Dep. p. 18.] He had requested that the Claimant, as well as other faulty members, review the resumes to assist in the selection of the appropriate foreign language instructor to fill the vacancy that then existed at the University. [ROA 210, Bruce Nims, Ph.D. Dep. p. 6 and ROA 102, Claimant's Dep. at p. 20] Both the Dean (Dr. Catalano) and Dr. Nims testified that while her participation in the selection process was not mandatory, it is expected that all faculty members provide service to the University and it would have reflected negatively upon her on her annual evaluation if she did not participate as requested. "...it is voluntary, but again serving on such committees is part of our university service commitment. And so...an area in which our faculty members are evaluated, so serving on the committee is...professionally beneficial." [ROA 225, Bruce Nims, Ph.D. Dep. at p. 21, Lines 3-18.; ROA 197, John Catalano, Ph.D. Dep. at p. 14; ROA 143, Claimant's Dep. at p. 61.]

A meeting was to be scheduled the next week to discuss the faculty's review of the resumes, so the Claimant decided to make the effort that evening to review applications so as to be prepared for that meeting. [ROA 108-109, Claimant's Dep. at p.26-27 and ROA 212, Bruce Nims, Ph.D. Dep. at p. 8.] Claimant testified that while she had discretion as to when to review the resumes, "it has to be done outside of my other duties, such as teaching, etc." [ROA 105, Claimant Dep. p. 23 Lines 9-13.] So she left her office at the end of her normal work-day around 5:00 p.m. and proceeded downstairs to the Library. [ROA 108-109, 114, Claimant's Dep. at p.26-27, 32.] As confirmed by a Library staffer, Claimant reviewed the resumes from approximately 5:00 p.m. until the Library closed at 9:00 p.m. [ROA 239, David Helwer Dep. at p. 5 and ROA 109, Claimant's Dep. p. 27.] Immediately before 9:00 p.m., the Claimant returned the resumes to the Library staffer on duty. [ROA 109, Claimant's Dep. at p.27 and ROA

239, 243, David Helwer Dep. at p. 5,9] She then left the building to walk to her vehicle which was still parked in the University lot on the north-side of Hubbard. [ROA 110, 126, 140-141, Claimant's Dep. at p. 28, 44, 58-59 and ROA 243, David Helwer Dep. at p. 9.] The Claimant was using the designated crosswalk that connected the south-side of the Employer's premises to the north-side across Hubbard Drive. [ROA 141, 144, Claimant's Dep. at p. 59,62 and ROA 245, David Helwer Dep. at p.11.] Before she reached the University parking lot, she was struck by a truck. [ROA 245, Deposition of David Helwer at p. 11 and ROA 127-128, Claimant's Dep. at p. 45-46 and Exhibit Number One to Claimant's Deposition.] The Claimant testified that she walked the most-direct route from the Library to the place where the accident occurred. [ROA 140-141, Claimant's Dep. at p. 58-59.]

The Library staffer, David Helwer, testified that he closed the building immediately after the Claimant exited the building. [ROA 243, David Helwer Dep. at p. 9] As he was walking to his car, Helwer heard a commotion on or near Hubbard Drive, just minutes after the Claimant had left the building, and he found the Claimant, lying, injured in the crosswalk. [ROA 244, 247, David Helwer Dep. at p. 10, 13]

SUMMARY OF ARGUMENT

The Applicable Law and Standard of Review

The fundamental precepts applicable to this case are well established as recited in the Supreme Court's recent decision of Bentley v. Spartanburg Cnty., 398 S.C. 418, 422, 730 S.E.2d 296, 298 (2012):

Workers' compensation pays an employee benefits for damages resulting from personal injury or death by accident arising out of and in the course of the employment. S.C. Code Ann. § 42-1-310 (Supp.2011). In determining whether a work-related injury is compensable, the Workers' Compensation

Act (Act), S.C. Code Ann. §§ 42-1-10 to -19-10 (1976 & Supp.2011), is liberally construed toward the end of providing coverage rather than denying coverage in order to further the beneficial purposes for which it was designed. *Shealy v. Aiken Cnty.*, 341 S.C. 448, 535 S.E.2d 438 (2000) (citation omitted). Any reasonable doubt as to the construction of the Act will be resolved in favor of coverage. *Mauldin v. Dyna-Color/Jack Rabbit*, 308 S.C. 18, 22, 416 S.E.2d 639, 641 (1992).

As noted, the Worker's Compensation Act establishes benefits for workers injured "by accident[s] arising out of and in the course of employment." S.C. Code Ann. § 42-1-160(A); Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E.2d 601, (1965); Howell v. Pac. Columbia Mills, 291 S.C. 469, 471-72, 354 S.E.2d 384, 385 (1987). This case presents a question of whether the Claimant was injured "in the course of her employment."

"[T]he term 'in the course of' refers to the time, place, and circumstances under which the accident occurred." Howell, *id.* at 385. "An injury occurs in the course of employment 'when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto.' " Baggott v. Southern Music, Inc., 330 S.C. 1, 5, 496 S.E.2d 852, 854 (1998).

One component of the "in the course of employment" analysis includes the "going and coming rule" which is a general rule "that an injury sustained by an employee away from the employer's premises while on his way to or from work does not arise out of and in the course of employment" Howell, *id.* at 385. However, the Appellate Courts have recognized five exceptions to the general "going and coming rule": 1) if the employer provides the means of transportation or pays travel time; 2) if the employee performs duties during his commute; 3) if the way used is inherently dangerous; 4) if the place where the injury occurs is in such close proximity to the workplace that it is brought

within the scope of employment; and 5) if the injury occurs while the employee is on a special errand for the employer. *Id.*

The Commission's findings of fact are subject to review under the substantial evidence standard. S.C. Code Ann. §1-23-380; Lark v. Bi-Lo, Inc., 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981); Howell v. Pac. Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987). However, questions of law are viewed de novo. See Lizee v. S.C. Dep't of Mental Health, 367 S.C. 122, 126, 623 S.E.2d 860, 863 (Ct. App. 2005) ("[W]here the Commission's decision is controlled by an error of law, this court's review is plenary."). "The South Carolina Court of Appeals exercises freedom and independence in deciding an issue of law in a workers' compensation case." Thompson ex rel. Harvey v. Cisson Const. Co., 377 S.C. 137, 154, 659 S.E.2d 171 at 179(Ct. App. 2008).

In this case, the Commission denied benefits on the reasoning that the Claimant was injured on a public street not controlled by the Employer and she made the choice to park in a lot that required her to cross Hubbard Drive. The Claimant does not challenge the factual findings, but respectfully submits the Commission erred as a matter of law.

This case presents a novel question to the extent that the Appellate Courts have not yet addressed the issue of whether an injury on premises not controlled by the employer (such as a public street) is "in the course of employment" if the employee is going between an employer-maintained parking area and the employer's place of business. See Howell, 354 S.E.2d at 386. The Claimant submits that under the analysis that can be found in Williams v. South Carolina State Hospital, 254 S.C. 377, 140 S.E.2d 601 (1965) and Camp v. Spartan Mills, 302 S.C. 348, 396 S.E.2d 121 (Ct.App.1990), she had not left the Employer's premises yet, and she still was in the course of her

employment while walking to her car in the University lot, because she had yet to access the ability to exit the employer's property.

As discussed more fully below, the Commission has misapplied the Court's decision in Howell v. Pacific Columbia Mills, supra, because in that case, the employee, who had been struck by a vehicle in a public street on her way into the mill, had never entered the employer's parking lot; rather, she was hit after she was dropped off across the street by her husband. In addition, the Commission had no reasonable basis for denying benefits because the Claimant had a choice of which University parking lot to use.

Ultimately, in relying upon these two facts, the Commission has ignored the guiding principle that undergirds the entire workers' compensation system – namely, that workers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Act.” James v. Anne's Inc., 390 S.C. 188, 198, 701 S.E.2d 730, 735 (2010); Hutson v. S. Carolina State Ports Auth., 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012). The Commission's reasoning creates an impracticable and absurd rule where an employee may walk in and out of coverage in the path of his/her travel to/from their car in an employer lot. Under Williams and Camp, “the course of employment includes not only the actual doing of the work, but also a reasonable margin of time and space to use in passing to and from the place where the work is done,” and “[t]he act of leaving the employer's premises is “in the course of” one's employment if the employee leaves the premises as contemplated at the close of the work day. Camp v. Spartan Mills, 396 S.E.2d at 122. The Court should adopt the divided premises rule to provide coverage for an injury on a public street that the employee travels across in route

to/from their car; rather, than the Commission's hopscotch rule where an employee jumps in and out of coverage traveling to his/her car in the employer's lot.

ARGUMENT

THE CLAIMANT IS ENTITLED TO BENEFITS FOR THE WORK-RELATED INJURY SHE SUSTAINED WHEN SHE WAS STRUCK BY A VEHICLE WHILE WALKING ACROSS A PUBLIC STREET FROM HER EMPLOYER'S OFFICE BUILDING TO HER CAR WHICH WAS PARKED IN A UNIVERSITY EMPLOYEE/STAFF PARKING LOT AT THE END OF HER WORK DAY.

- I. The claimant was "in the course of employment" when she walked from her Employer's office building, over a public highway to her Employer's parking lot, so as to allow her access her car and exit the Employer's premises at the end of her work day.**

As noted above, the phrase "in the course of employment" refers to the time, place, and circumstances under which the accident occurred. An injury occurs "in the course of" employment within the meaning of the Workers' Compensation Act when it occurs within the period of employment and at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto. Notwithstanding that the Claimant was crossing a public street at the end of her work day, the Claimant still was in the "course and scope of her employment" as she had yet to access the University parking lot and she was injured before she ever had an opportunity to leave the Employer's premises.

The factual and legal difference between "going and coming" to and from work and traversing to and from an Employer parking lot was contemplated and considered in

Williams v. South Carolina State Hospital, when the Supreme Court stated as follows:

...Employment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the expressed or implied consent of the employer, to or from his work by way over the employer's premises, or over those of another in such proximity and relation as to be in practical affect a part of the employer's

premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance. In other words, the employment may begin in point of time before the work is entered upon and in point of space before the place where the work is to be done is reached.

254 S.C. at 381, 140 S.E.2d at 603. In Williams, the Supreme Court clearly and expressly recognized that the period of employment includes a reasonable period of time necessary for the employee to travel to a point where the employee can access the place of work and travel to the point where the employee can egress the place of work. The Court of Appeals considered the Williams decision in Camp v. Spartan Mills, 302 S.C. 348, 396 S.E.2d 121 (Ct.App.1990), in discussion of a “passing to and from” scenario as compared to the “going and coming” rule:

The course of employment includes not only the actual doing of the work but also in a reasonable margin of time and space to use in passing to and from the place where the work is done, [citing Williams]. The act of leaving the employer’s premises is “in course of” one’s employment if the employee leaves the premises as contemplated at close of the work day.

396 S.E.2d at 122.³

It is crucial to note that in Williams, the Supreme Court recognized in plain language that the movement of the employee from the place where the work was to be performed to a place where the employee can egress and ingress the employer’s premises including travel “over those [property] of another” where such premises were so close in proximity and so close in relation so as to be in practical affect a part of the employer’s premises. The Claimant’s case falls squarely within the Williams description in that she traveled over a public street in close proximity and so close in relation as to be in practical affect a part of the University’s premises. As related above in the Statement of the Facts and seen on the campus map [ROA 152, Exhibit Number 1 to Claimant’s Dep.] Hubbard Drive dissects the

³ In Camp, the Court held that a four hour delay between clocking out and walking to the parking lot was outside the reasonable time scope. Here, it is undisputed, that there were mere minutes between the time the Claimant left the Library and was struck in the crosswalk.

University campus between the Medford Building and the University parking lot (next to the Carole Ray Dowling Center) where the Claimant parked her car. The designated crosswalk where she was struck is located mid-block providing the closest access from the Medford Building area to that parking lot.

The Commission's denial rests on the single fact that Hubbard Drive is a public street. However, it is of no consequence that Claimant was traversing across the public street in a direct path to reach the University parking lot. Under Williams and Camp, an employee has a reasonable period of time to travel between the employer's parking lot and the employee's worksite. The pivotal fact, which is undisputed, is that the Claimant was injured as she walked directly from the place where work was performed to a parking lot, controlled and maintained by her Employer, where she could access her vehicle to exit the Employer's premises. Egress and ingress from Claimant's workplace (her office and the Library within the Medford building) across the public street to the University owned, maintained and controlled parking lot were clearly in the course of her employment with the University. Likewise, clearly the Claimant was within the margin of time and space contemplated in Camp. While it is undisputed that she was on a public highway when she was struck by the vehicle, she had not had the opportunity to access her vehicle to exit the Employer's premises. She was attempting to access her car that was parked on property maintained, owned and controlled by the employer.

As referenced in the Court's opinion in Williams, the Supreme Court extended the definition of "place and time" to an area not owned by the employer in Evans v. Coats & Clark, 338 S.C. 467, 492 S.E.2d 806 (1997). The employee had sustained an injury when she slipped on the floor while leaving work through the lobby of a building in which the employer leased office space on the third floor. While the lobby was not an area owned, leased, controlled or maintained by the employer, it was one of several routes the employees regularly took going to and from the employer's office and the

Court held that it was “for purposes of workers’ compensation the premises of the employer.” *Id.* at 808. This Claimant’s case again falls squarely within the same parameters contemplated by the Evans decision. She used the most direct route from where her work was performed to access her vehicle on the employer’s premises across Hubbard Drive, and according to the Dean, it was a path regularly and routinely used on busy Tuesday’s such as the day of this accident.

Williams draws no distinction between exiting the employer's premises by way of car and by way of foot. The act of exiting the employer's premises by way of her automobile was a reasonable incident to her leaving the place of her work and the injury therefore resulted from a risk reasonably incident to her employment and “arose out of” the employment.

In Holston v. Allied Corp., 300 S.C. 174, 177, 386 S.E.2d 793, 795 (Ct. App. 1989), the Court affirmed coverage to an employee who was injured even after she had reached her car because she had not yet left the employer parking lot. As described by the Court, after completing her normal work responsibilities, the employee “left the plant, walked through her employer's parking lot, got into her vehicle, backed out of the parking space, began her movements forward to exit the parking lot on her way home and was struck in the rear by a vehicle owned and operated by a fellow employee who, likewise, was leaving work. *Id.* at 794. The Court held that “the act of exiting the employer’s premises by way of her automobile was a reasonable incident to her leaving the place of her work and the injury therefore resulted from risk reasonably incident to her employment and “arose out of” the employment. *Id.*

So, under established precedent reviewed above, the rules appear to be that:

- An employee is covered if injured while walking through a work office building lobby even when the lobby is not owned, controlled or maintained by the employer. Evans.
- An employer is covered if injured while traveling across the employer’s premises to reach his/her car in the employer’s parking lot. Williams.

- And, the employee still is covered if injured while driving out of the employer's parking lot, and the employee is also covered if injured while walking through the employer's landlord's lobby. Holston.

Claimant submits that under a proper application of these rules and the reasoning of those decisions, she was "in the course of her employment," because her path from her Employer's office building to her Employer's parking lot necessarily included traversing a public street.

II. The decision in Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987), does not support denying the Claimant benefits because she not yet had the opportunity to get to her car in the Employer's parking lot to leave work.

The Commission found that the Court's decision in Howell v. Pacific Mills controlled the facts presented by claimant; however, the Howell case is not factually analogous to the case at bar. In Howell, the claimant was struck by a car in a crosswalk, on a public street in front of the place of her employment. The claimant had exited her husband's vehicle while the vehicle was parked in a public street at or near a crosswalk, and she was struck by a vehicle **before** she could reach the employer's property. The critical difference in the Howell case from the one at bar is the claimant in the Howell case **never** accessed the employer's premises so as to fall under the "reasonable margin of time and space to use in passing to and from the place where the work is done." Camp at 350, 122. The claimant in Howell was never on the premises of the employer before she stepped on the public street and she never accessed the employer's premises prior to the accident.

The Williams and Camp holdings are based upon the employee having first accessed the employer's premises, while the claimant in Howell never entered the "passing to and from" sphere. In the instant case, the Claimant had accessed the

Employer's premises where she had accomplished most of her task and was then attempting to leave the Employer's premises. She was unable to exit the Employer's premises because she never accessed her vehicle which was situated on an Employer controlled, maintained and owned property.

While the Commission denies coverage to the Claimant because she was injured in a public street, other jurisdictions follow the divided premises rule and recognize that when an employee is attempting to access one side of the employer's property from another that is separated by a public street, the employee is still within the course and scope for employment. For example, in our sister State of Georgia, in the case of Knight Rider Newspaper Sale, Inc. v. Desselle, 335 S.E.2d 458, ____ (Ga. 1985), the court recognized that "[t]he period of employment generally includes a reasonable time for ingress to and egress from the place of work, while on the employer's premises," and stated: "[i]t is not significant that appellee in the instant case was injured on a public street. He could not have reached the parking lot without crossing the street. What is important is that he was taking a direct route from part of the employer's premises to another." See also West Point Pepperell v. McIntire, 150 Ga. App. 728, 258 S.E.2d 530 (1979) (an employee was held to have been in the course of her employment when struck by a car on a public street while going from her place of work to a company controlled parking lot); Department of Human Resources v. Jankowski, 147 Ga. App. 441, 249 S.E.2d 124 (1978).

In Quality Car Wash v. Cox, 438 A.2d 1243, 1246 (Del. Super. 1981), *rev'd* 449 A.2d 231 (Del. 1982).⁴ The claimant was struck by a car while crossing a public

⁴ The Delaware Supreme Court reversed on the sufficiency of the evidence with no challenge to the "employer's premises" rule and its two exceptions.

highway walking to his car which was parked in the parking lot of a shopping center across the road from the employer's carwash. The Court held that while the general rule is that injuries occurring while employees are going to and from work are compensable if they occur on the employer's premises, they are not compensable if they occur off the premises. *Id.* at 1245. However, the Court further found that the general rule is subject to two exceptions:

- (1) Injuries sustained while the employee travels along or across a public road between two parts of his employer's premises are compensable, and
- (2) an injury sustained as a result of a special hazard encountered while traveling a normal route to and from work are compensable

Id. The Delaware Superior Court referred to Exception No. 1 as the "parking lot exception," and held:

[s]ince, ..., a parking lot owned or maintained by the employer is treated by most courts as part of the premises, the majority rule is that an injury in a public street or other off premises place between the plant and the parking lot is in the course of employment, being on a necessary route between the two portions of the premises. But if the parking lot is a purely private one, the principle passages between two parts of the premises is not available. An employee crossing a public street to get to the parking lot is not protected.

Id. at 1245-1246, quoting *1 Larson Workers' Compensation Law* § 15.14, p. 4-36.

Likewise, in the case of Lewis v. Workers' Comp Appeals Bd., 15 Cal. 3d 559, 542 P.2d 225 (1975) (citing *1 Larson Workers' Compensation Law* § 15.14), the Court held that the dissection or fragmentation of the employer's premises by public highway does not interrupt the employer/employee relationship that gives rise to an "in the course of employment" finding. The court stated as follows:

The fragmentation of the physical premise of the employer into the parking lot on the one hand and the place of work on the other does not fracture the employer/employee relationship; it is the commencement of that relationship by the employee's entrance into the employer's parking premises that is determinative.

542 P.2d at 229.

In Howell, the Court of Appeals declined to adopt the divided premises rule. Finally, here and now, the Claimant would urge the Court to adopt the rule – whether denominated as the divided premises rule or the parking lot rule – that an employee is covered while traveling a direct path to and from an employer's lot within a reasonable time (without unnecessary, unreasonable, personal detours) without regard to whether the path includes premises of another.

In urging the Court to adopt such rule, the Claimant would ask the Court to consider that the “going and coming rule” is not a statutory rule limiting coverage. Rather it is a “rule” of judicial creation evolving over the years from various opinions under the rubric of determining the application of the basic “in the course of employment” element. Thus, as a “rule” of coverage is it subject to the fundamental precept that “workers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Act; only exceptions and restrictions on coverage are to be strictly construed.” James v. Anne's Inc., 701 S.E.2d at 735.

An illustrative example of our Appellate Court's application of the concept of liberal construction is seen in Baldwin v. Pepsi-Cola Bottling Co., 234 S.C. 320, 323-24, 108 S.E.2d 409, 410 (1959), which involved an employee struck while crossing a street on his way to work. The employee, whose job was to load trucks, was late for work and being driven to work by his brother, and on the way they met the loaded truck that stopped for him. His brother stopped on the opposite side of the road, and as the employee was crossing the street, he was struck by another vehicle. While the employer argued that benefits should be denied under the going and coming rule, the Court

followed the precept that “doubts are to be resolved in favor of compensability,” *id.* at 412, and found that the rule did not apply:

Respondent was simply going to work, and within the exclusionary rule, until his car was stopped opposite the truck of the employer, upon which respondent worked. When the truck, driven by his superior, was stopped for him to board it, it was an implied direction of the employer to him to cross the street and do so; he was no longer the master of his movements. The crossing of the street thereby became incidental to the employment and injury there incurred was in the course of his employment and arose out of it. The street became, for the time being, a part of respondent's work environment; he was not a mere member of the public, traveling upon it.

Id. at 410-11. This Claimant was not a mere member of the public crossing Hubbard Drive, rather, in crossing the street to a parking lot provided by her Employer, she was in the course of her employment. To further follow the reasoning of the Court, when the University placed parking lots on the north-side of Hubbard Drive which requires the Claimant to across a public road to reach his/her car from their worksite, it was the implied direction of the employer to him to cross the street.

The divided premises/parking lot rule is a fair and reasonable construction of “in the course of employment” that serves the beneficent purpose of providing coverage to injured workers. In contrast, the Commission’s rationale creates an absurdity where an employee virtually can play legal hopscotch – jumping in and out of coverage -- on the way to/from his/her vehicle in an Employer parking lot at the end or beginning of the work day. To illustrate the absurdity, consider an example using the main campus of the University in Columbia, where a member of the faculty at the USC Law School has been asked by the Dean to attend an evening reception at the National Advocacy Center. Under the Commission’s reasoning, the Professor might pass in and out of worker’s compensation coverage at least four times when crossing public streets (South Main, Sumter, Greene, and Pickens Streets) to return to his/her car parked in Lot D-2 adjacent

to the Law School at the end of the evening. Or, more generally, one could contemplate that with the size and configuration of the main Columbia campus, any University employee might cross one or more public streets to reach a staff parking lot. The employee should be covered if injured anywhere on a reasonably direct path from his worksite to the Employer's parking lot.

III. The fact that the Claimant made a discretionary choice as to which available University lot she parked her car in when she arrived at work on the day of the accident does not sustain the denial of benefits.

The Commission based its denial, in part on the facts that there were other University parking lots on the south-side of Hubbard Drive and the Claimant made the choice to park in the north-side lot without first driving through all the south-side lots to try to find an available faculty designated space. The Commission's decision is not well founded in fact or law.

First, to clarify the reasonableness of the Claimant's "choice," the undisputed testimony from the Dean was that there is not sufficient faculty parking in the south-side lots and that faculty and staff regularly, as a routine, use the parking lot on the north-side particularly on busy Tuesdays, such as the day of the Tuesday of this accident. While the north-side parking lot did not have any faculty designated spots, faculty was permitted to park in any available space in that lot. So the Claimant did not violate any Employer directive, and her right to choose was authorized under the Employer's parking policy and practices.

Further, and foremost, the workers compensation jurisprudence does not support the denial of benefits because the employee has a choice of where to park. In a review of relevant case law that addresses the "parking lot" exception and the divided premises rule, it does not appear that the employee's discretion as to where to park has been

identified as a disqualifying fact. See Knight-Ridder Newspaper Sales, Inc. v. Desselle, 335 S.E.2d at 459 (“the parking lot was provided by the employer for the convenience of the employer and of the employees, who were encouraged to use the lot. It is immaterial that the appellee was not required to park in the lot. He did so on this occasion.”)

As discussed above, the Commission’s rationale for considering the Claimant’s discretion in choosing between different available parking lots also creates another impracticable absurdity. As in the earlier example of the USC Law Professor walking back to his car in the Law School faculty lot from the National Advocacy Center, the Professor has the option of several routes, one of which might include crossing College Street – if the Professor made that choice and was struck crossing that street, would coverage be denied because he/she could have taken a different path avoiding College Street? Or, in a variation of the same example, what if the Professor chose to cross Pickens Street and was struck – would coverage be denied because he/she could have used the University overpass and avoided crossing the street?

In this case, would the Commission require the Claimant have to prove which parking lots she drove through or how many times she circled the parking lots looking for a space south of Hubbard Drive? Would the Commission be allowed to deny coverage on the reasoning that the Claimant could have arrived earlier to find a parking spot in the lot adjacent to her office building? These are not relevant or practical considerations. The undisputed facts are that the Claimant was injured while traversing a reasonable, permissible path from her worksite to her Employer’s parking lot at the end of her work day, and she is entitled to workers’ compensation benefits.

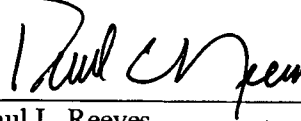
CONCLUSION

The Claimant was injured in the course of her employment when she was struck by a vehicle while crossing the street from her office building to the University parking lot where she had parked her car. And, the Commission erred, as a matter of law, is denying the Claimant workers' compensation benefits based on the facts that she was crossing a public street and she made a choice to park on the north-side of Hubbard Drive without first searching harder for a vacant space on the south-side.

WHEREFORE, based on the foregoing, the Claimant respectfully requests that the Court reverse the Commission's decision and remand this matter for the award of benefits to which she is entitled under the Workers' Compensation Act.

Respectfully Submitted,

REEVES LAW FIRM, LLC



Paul L. Reeves
Post Office Box 11126
Columbia, South Carolina 29211
803.929.0001
803.929.0927 Facsimile
Paul@PLRLawFirm.com
Attorney for Employee, Claimant, Appellant
Nathalie I. Davaut

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.


Paul L. Reeves

RECEIVED
APR 08 2014

SC Court of Appeals

**The State of South Carolina
In the Court of Appeals**

Appeal from S.C. Worker's Compensation Commission

Appellate Panel

Susan S. Barden, Commissioner
Avery B. Wilkerson, Commissioner
Gene McCaskill, Commissioner

W.C.C. File No. 1203664
Appellate No. 2013-001778

RECEIVED

APR 08 2014

SC Court of Appeals

Nathalie I. Davaut,

Appellant,

v.

University of South Carolina,
and State Accident Fund,

Respondents.

Certificate of Service

I certify that I have served the Final Brief of Appellant on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on April 8, 2014, to the Counsel of Record, as listed below:

Paul L. Hendrix
Jones & Hendrix, P.A.
50 Applewood Lane
Spartanburg, SC 29307-2225



Paul L. Reeves, S.C. Bar. No. 4671
BLACKWELL, TRIMNALL, REEVES & MYERS, LLC
1527 Blanding Street // P.O. Box 11126
Columbia, South Carolina 29211
803.929.0001 // 803.929.0927 Facsimile
Paul@PReevesLaw.com

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from South Carolina
Workers Compensation Commission

Case No. 2013-001778

Nathalie I. Davaut, Employee, Claimant, ... Appellant,

v.

University of South Carolina
and State Accident Fund, Defendants, ... Respondents.

FINAL BRIEF OF RESPONDENTS

RECEIVED

APR 09 2014

SC Court of Appeals

Paul L. Hendrix, Esquire
S.C. Bar No.: 64217
Jones & Hendrix, P.A.
50 Applewood Lane
Spartanburg, South Carolina 29307-2225
(864) 583-5577
Paul@sccompdefense.com
Attorney for Respondents

TABLE OF CONTENTS

<u>TABLE OF AUTHORITIES</u>	iii
<u>STATEMENT OF ISSUES ON APPEAL</u>	1
<u>STATEMENT OF THE CASE</u>	2
<u>STATEMENT OF THE FACTS</u>	3
<u>ARGUMENTS</u>	
I. STANDARD OF REVIEW	6
II. THE FINDINGS OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION THAT THE CLAIMANT DID NOT SUSTAIN AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.	7
III. DID THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION PROPERLY RELY UPON THE COURTS DECISION IN <u>HOWELL V. PACIFIC MILLS</u>, 291 S.C. 469, 354 S.E. 2D 384 (1987) IN HOLDING THAT THE CLAIMANT FAILED TO PROVE AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT WHERE HER INJURY OCCURRED ON A PUBLIC STREET?	15
<u>CONCLUSION</u>	19

TABLE OF AUTHORITIES

Cases

<u>Aughtry v. Abbeville County School District #60</u> 332 S.C. 453, 504 S.E.2d 830 (1998).....	7
<u>Bickley v. South Carolina Gas and Electric Company</u> 259 S.C. 463, 192 S.E.2d 866 (1972).....	8,16,17,19
<u>Ford v. Allied Chemical Corp.</u> 252 S.C. 561, 167 S.E. 2d 564 (1969).....	7
<u>Gallman v. Springs Mills</u> 201 S.C. 257, 22 S.E.2d 715.....	8
<u>Gibson v. Florence Country Club</u> 282 S.C. 283, 318 S.E. 2d 365 (1984).....	6
<u>Grayson v. Carter Road Furniture</u> 317 S.C. 306, 454 S.E. 2d 320 (1995).....	6
<u>Howell v. Pacific Mills</u> 291 S.C., 469, 354 S.E.2d 384 (1987).....	11, 12, 13, 14, 15, 20
<u>Hoxit v. Michelin Tire Corp.</u> 304 S.C. 461, 405 S.E. 2d 407 (1991).....	6
<u>Hunter v. Patrick Construction Company</u> 289 S.C. 46, 344 S.E. 2d 613 (1986).....	6
<u>Lark v. Bi-Lo, Inc.</u> 276 S.C. 130, 276 S.E. 2d 304 (1981).....	6, 20
<u>Massey v. W.R. Grace & Company</u> 286 S.C. 434, 334 S.E. 2d 122 (1985).....	7
<u>McDonald v. Kenneth Cotton Mills</u> 250 S.C. 51, 156 S.E.2d, 324 (1967).	20
<u>Miller v. State Roofing Company</u> 441 S.E. 2d 323 (1994)	6
<u>Sola v. Sunny Slope Farms</u> 244 S.C. 6, 135 S.E.2d 321 (1964).....	8, 12

<u>Whitworth v. Window World, Inc.</u> 377 S.C. 637, 661 S.E.2d 333 (2008).....	16
<u>Williams v. South Carolina State Hospital</u> 245 S.C. 377, 140 S.E.2d 601 (1965).....	13, 19

Statutes and Regulations

South Carolina Code of Laws Annotated §42-1-160.....	7, 19

STATEMENT OF ISSUES ON APPEAL

ISSUE I.

IS THE DECISION AND ORDER OF THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION WHICH FOUND THAT THE CLAIMANT DID NOT SUSTAIN AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT SUPPORTED BY SUBSTANTIAL EVIDENCE?

ISSUE II.

DID THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION PROPERLY RELY UPON THE COURTS DECISION IN HOWELL V. PACIFIC MILLS, 291 S.C. 469, 354 S.E. 2D 384 (1987) IN HOLDING THAT THE CLAIMANT FAILED TO PROVE AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURE AND SCOPE OF HER EMPLOYMENT WHERE HER INJURY OCCURRED ON A PUBLIC STREET?

STATEMENT OF THE CASE

This matter comes before the Court upon an appeal by the Appellant, Nathalie I. Davaut, pursuant to the South Carolina Administrative Procedures Act from the Decision and Order of the South Carolina Workers' Compensation Commission. This case arose as a result of a motor vehicle versus pedestrian accident that took place on the late evening of February 16, 2012. Specifically, the Appellant was struck while crossing a public street by a third party that was charged as being at fault in the accident. At the time of the accident, the Claimant was in a public crosswalk that was not owned, constructed, or maintained by the University of South Carolina, the Respondent named herein. Shortly after the accident of February 16, 2012, the Appellant filed an SCWCC Form 50 on May 22, 2012 seeking benefits under the South Carolina Workers' Compensation Act as a result of the February 16 accident. The Respondents timely filed an SCWCC Form 51 and denied the claim maintaining that the Claimant had not sustained an injury by accident arising out of and in the course and scope of her employment within the meaning of the South Carolina Workers' Compensation Act. After discovery was completed in the claim, a Hearing was held before the Single Commissioner of the South Carolina Workers' Compensation Commission on September 25, 2012. Thereafter, the Single Commissioner found that the Appellant had failed to prove an injury by accident arising out of and in the course and scope of her employment and denied the claim in an Order dated November 6, 2012. (R. pp. 8-19, Single Commissioner Order).

The Appellant timely filed a Request for Commission Review, SCWCC Form 30, setting forth exceptions to the Decision and Order filed by the Single Commissioner. Oral arguments were held before the Appellate Panel of the South Carolina Workers' Compensation Commission on March 18, 2013. Following oral arguments in the claim, the Appellate Panel unanimously found

that the Claimant had not sustained an injury by accident within the meaning of the Workers Compensation Act and denied the claim by Order dated July 22, 2013. (R. pp. 1-7, Appellate Panel Order). On August 20, 2013, the Appellant filed Notice of Appeal with this Court. The Respondents maintain that the Decision and Order of the South Carolina Workers' Compensation Commission is supported by substantial evidence in the record and must be upheld by this Court.

STATEMENT OF THE FACTS

This claim arose by virtue of a pedestrian/motor vehicle accident that took place on Hubbard Drive in Lancaster, South Carolina on February 16, 2012 as the Claimant was in route home for the day. Hubbard Drive is a public highway and is not owned, maintained, or controlled in any fashion by the University of South Carolina. (R. p. 166, line 2). Hubbard Drive can more fairly be stated as running adjacent to the University of South Carolina/Lancaster Campus as opposed to dissecting it as suggested by the Appellant. A review of the campus map that was submitted into evidence shows that all of the classrooms, professor offices, and the Medford Library are located on the north side of Hubbard Drive. (R. p. 183). More importantly, all faculty designated parking is located on the south side of Hubbard Drive. (R. pp. 52, 177-178, and 183).

On the north side of Hubbard Drive there is a soccer field and an old renovated church building now known as the Carole Ray Dowling Center wherein the University offers therapy and other public health services to the general public. There is a parking lot adjacent to the Carole Ray Dowling building that is open to the general public. However, there are no faculty designated parking spaces whatsoever on the north side of Hubbard Drive. (R. p. 52, lines 16-19).

The Appellant was employed as a foreign language instructor at the University of South Carolina – Lancaster at the time of this accident and has held this position since 2008. With the

exception of attending classes the Appellant was scheduled to teach, the Claimant's work schedule was set at her discretion. (R. p. 53). Prior to the accident which gave rise to this claim, the Respondent was in the process of filling a vacant foreign language professor position. The Appellant had been asked to serve on the Search Committee along with her counterparts in the foreign language department. Service on the Committee was completely voluntary and no one was compensated for serving on the Committee. (R. p. 46). The resumes of the applicants for the vacant position were placed on reserve in the Medford Library which is located in the Medford Building on the south side of Hubbard Drive. The Appellant's office is located in the same building.

When the Claimant arrived at work on February 16, 2012, she testified that she did not immediately notice an empty faculty parking space available in the parking lot adjacent to Hubbard Hall which is located on the south side of Hubbard Drive. The Claimant admits that rather than check the remaining parking lots which contained faculty designated parking on the south side of Hubbard Drive she elected not to take the time to do so but instead decided to park in a parking lot on the north side of Hubbard Drive adjacent to the Carole Ray Dowling building where she noticed an empty space. (R. p. 108, lines 7-15). She testified that she made this decision even though it was not faculty parking. After parking her car, she taught her scheduled classes and at the end of the day decided to stay and review the resumes that had been placed on reserve at the Medford Library. When the library closed at 9:00 p.m. on February 16, 2012, the Claimant exited the library to go home for the evening. While in one of three crosswalks located on Hubbard Drive that were erected and maintained by the City of Lancaster and not the University of South Carolina, the Claimant was struck by a vehicle and sustained injuries. (R. pp. 36, 165 & 183).

The necessity to cross Hubbard Drive arose as a result of the Claimant's discretionary choice to park in a parking lot located on the north side of Hubbard Drive that did not contain any faculty designated parking spaces. (R. p. 4, Appellate Panel Order). It is undisputed that the University does not assign specific parking spaces to any faculty member. However, the University does designate faculty parking spaces and it is undisputed that all designated faculty parking spaces are located on the south side of Hubbard Drive where all of the classrooms, the library, and teacher offices are located. By the Claimant's own admission, she elected to park in a parking lot on the north side of Hubbard Drive rather than checking for available faculty parking in other parking lots located on the south side of Hubbard Drive which would not have required her to cross Hubbard Drive at all. (R. p. 108, lines 7-17).

The Appellant's version of the facts which implies that the Appellant was using a "designated crosswalk" at the time of her accident is inaccurate. As stated previously, there are three crosswalks on Hubbard Drive which were owned, constructed and maintained by the City of Lancaster. The University of South Carolina does not exercise any control over the crosswalks or Hubbard Drive. (R. p. 166). All traffic control, ticketing, and accident investigations relating to Hubbard Drive is conducted by the City of Lancaster exclusively. (R. p. 179).

The Appellant's statement of the facts also implies that she had some sort of deadline to meet with respect to reviewing resumes on reserve at the Medford Library and this is not accurate. The Appellant's supervisor testified that he did not direct the Appellant or any other members of the Search Committee to review the resumes by a certain deadline. (R. p. 222). A date for the first Search Committee meeting had not even been scheduled at the time of the accident herein. (R. p. 43). The Appellant even admitted that she could have reviewed the resumes on Friday, February 17

or at some other time at her discretion. (R. p. 47). It is undisputed that the Claimant was not on the Employer's premises at the time of her accident.

ARGUMENTS

I. STANDARD OF REVIEW.

A reviewing Court is prohibited from disturbing the findings of the Workers' Compensation Commission when its findings are supported by substantial evidence on the record as a whole. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E. 2d 304 (1981). A reviewing Court may not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agency's findings are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Grayson v. Carter Road Furniture, 317 S.C. 306, 454 S.E. 2d 320 (1995). Substantial evidence has been defined as evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the Administrative Agency reached. Gibson v. Florence Country Club, 282 S.C. 283, 318 S.E. 2d 365 (1984). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an Administrative Agency's finding from being supported by substantial evidence. Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E. 2d 407 (1991).

Where there is conflicting evidence, the findings of the Commission are conclusive, Miller v. State Roofing Company, 441 S.E. 2d 323 (1994), and when factual findings are supported by substantial evidence, analogous to a jury's findings of fact on disputed issues, the Commission's conclusions must be affirmed. Hunter v. Patrick Construction Company, 289 S.C. 46, 344 S.E. 2d 613 (1986). Final determination of witness credibility and the weight to be accorded evidence is

reserved to the Commission. Ford v. Allied Chemical Corp., 252 S.C. 561, 167 S.E. 2d 564 (1969).

II. THE FINDINGS OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION THAT THE CLAIMANT DID NOT SUSTAIN AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A decision of the Workers' Compensation Commission cannot be overturned by a reviewing court unless it is clearly unsupported by substantial evidence in the record. Massey v. W.R. Grace & Company, 286 S.C. 434, 334 S.E. 2d 122 (1985). The Appellant attempts to avoid application of the substantial evidence rule by arguing that the Commission erred as a matter of law in denying her claim. The Decision and Order of the Commission is based on specific factual findings made by the Commission that support the Commission's ultimate ruling that the Claimant did not sustain a compensable accident. It is well settled in South Carolina that for an injury to be compensable under the Workers' Compensation Act, it must be caused by an accident, and arise out of and in the course of employment. S.C. Code Ann. §42-1-160 (2007). The going and coming rule states that "an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of or incidental to his employment, and therefore, an injury suffered by accident at such time does not arise out of and in the course of his employment." Aughtry v. Abbeville County School District #60, 332 S.C. 453, 504 S.E.2d 830 (Ct. App. 1998). There are five recognized exceptions to the going and coming rule and those consist of:

1. Where, in going to and returning from work, the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages;
2. Where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment;
3. Where the way used is inherently dangerous and is either (a) the exclusive way of ingress and egress to and from his work; or (b) constructed and maintained by the employer;
4. That such injury incurred by a workman in the course of his travel to his place of work and not on the premises of his employer but in close proximity thereto is not compensable unless the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and coming from his work; or
5. Where the employee sustains an injury while performing a task, service, mission, or special errand for his employer, even before or after customary working hours or on a day of which he does not ordinarily work.

Bickley v. South Carolina Gas and Electric Company, 259 S.C. 463, 192 S.E.2d 866 (1972); Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964).

The Respondents submit that the Commission properly applied the going and coming rule to the facts of this case. The general rule in South Carolina is that an injury sustained by the Employee while on his way to or from work does not arise out of and in the course of employment. Gallman v. Springs Mills, 201 S.C. 257, 22 S.E.2d 715. The undisputed facts in this case clearly show that the Claimant's injuries did not occur on the Employer's premises. In fact, the record reflects that the parties stipulated that the Claimant's accident occurred in a crosswalk located on Hubbard Drive that was not owned, erected or maintained by the Employer. (R. p. 36).

The evidence shows that Hubbard Drive is a public street that is owned and maintained by the town of Lancaster, South Carolina. In fact, the Director of Law Enforcement Security at the University of South Carolina – Lancaster, Mr. John Rutledge, testified that the Employer exercises no control over Hubbard Drive. (R. pp. 165-166). He further testified that traffic control on Hubbard Drive as well as all accident investigations are handled by the Lancaster Police Department. This included the investigation of the accident which resulted in the injuries sustained by the Claimant as well as the citation issued to the at fault driver that caused the Claimant's injuries. (R. p. 179).

A significant factor that cannot be disputed by the Claimant is that the Employer designated faculty parking spaces in the parking lots located on the south side of Hubbard Drive only. (R. p. 52). Furthermore, all of the witness testimony, including the Claimant's, established that the Claimant had full discretion to park in any parking space on campus other than handicapped parking.

The Claimant admitted that when she arrived on campus on the morning of February 16, 2012, she drove through the parking lot adjacent to Hubbard Hall located on the south side of Hubbard Drive. The Claimant testified that she did not see any available faculty parking spaces in that particular parking lot. Without checking the remaining parking lots located on the south side of Hubbard Drive for a vacant space which would have eliminated her need to physically cross Hubbard Drive, the Claimant instead elected to park across the street in a parking lot adjacent to the Carole Ray Dowling building located on the north side of Hubbard Drive. (R. p. 108, lines 7-17). The Claimant then crossed Hubbard Drive to teach her classes and engage in her normal work activities. Her accident occurred when she was returning to her automobile later that evening and

was struck in one of the three crosswalks located on Hubbard Drive.

The Claimant argues in her Brief that the Employer somehow dictated that she use the parking lot that she elected to use on the date of her accident because Thursday was a busier day of the week than normal implying that there was nowhere else to park. This assertion by the Claimant is speculative at best. By the Claimant's own admission, she never checked any of the other parking lots on the south side of Hubbard Drive which also contain faculty designated parking. When asked at the Hearing if other faculty ever parked in the parking lot she elected to utilize on the day of her accident on the north side of Hubbard Drive the Claimant testified "sometimes, probably not very often". (R. p. 39, line 9). Mr. Helwer, the Assistant Librarian, testified that prior to this accident the parking lot used by the Claimant meant nothing to him because there were always available spots in the other parking lots located on the south side of Hubbard Drive. (R. p. 261, lines 1-4). Mr. Helwer also testified that he always parked in the lots designated for faculty because it was his understanding that that was what he was supposed to use since he was staff at the University. (R. p. 259, lines 10-12).

The Claimant also attempts to argue that she selected the parking lot on the north side of Hubbard Drive because it was the closest parking lot to the building where her office and classes were located. A review of the campus map demonstrates that this simply is not accurate. (R. p. 152). Not only is there another parking lot on the north side of Hubbard Drive that would have been closer to the Medford Building there are several additional parking lots on the south side of Hubbard Drive that contain faculty designated parking that would have been closer to the building the Claimant was attempting to access. The Claimant admitted that it was possible that there were other parking lots that were closer. (R. p. 51).

The Claimant goes to great length to argue that the Supreme Court's decision in Howell v. Pacific Columbia Mills does not apply to the facts of this case. In Howell, the Supreme Court rejected a Claimant's attempt to argue one of the five exceptions to the going and coming rule after being injured in a crosswalk located on a public street between an Employer owned parking lot and the plant. In that case, the only Employer owned parking lot was on the other side of a public street that ran in front of the plant. In rejecting the Claimant's arguments that her claim was compensable, the Court noted that the Claimant was plainly free to cross Heyward Street at any point or not to cross it at all. The same is true in the case at hand. The Claimant was free to cross Hubbard Drive in any of the three crosswalks located on Hubbard Drive or not to cross it at all. The uncontroverted testimony establishes that all faculty designated parking spaces are located on the south side of Hubbard Drive as are all of the classrooms and the Medford Library as well as the Claimant's office. Because the Claimant did not want to take the time to locate an available parking space on the south side of Hubbard Drive she elected to park on the north side of Hubbard Drive which did not contain any faculty designated parking. In fact, by the Claimant's own admission, the parking lot that she used was open to the general public that visited the Carole Ray Dowling building to access the physical therapy and health services offered therein to the general public by the University. The Claimant's argument that her egress and ingress to and from her office and the library located in the Medford building across a public street to the parking lot that was maintained by the University are incident to her employment such that her injury occurred in the course of her employment is simply without merit. Had the University intended faculty to park in the parking lot the Claimant elected to use at her own discretion, it would have designated faculty parking in said parking lot. In fact, the Claimant even admitted that she was not aware of even a sign that

designated the parking lot she used as University parking. (R. p. 138, lines 10-11).

The Claimant's attempt to argue application of one of the five exceptions to the going and coming rule is not supported by the evidence in this case. She appears to argue that the place where her accident took place was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and coming from his work. See Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964). All of the evidence presented refutes the Claimant's assertion. Every witness, including the Claimant, acknowledged that the University did not dictate where the Claimant parked her personal vehicle. All faculty designated parking was located on the south side of Hubbard Drive. There was no faculty designated parking on the north side of Hubbard Drive. The Claimant's unilateral decision to park on the north side of Hubbard Drive rather than take the time to check the remaining parking lots on the south side of Hubbard Drive cannot convert her discretionary choice into an express or implied requirement in her contract of employment.

The Appellant argues that the Court's decision in Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987) does not apply to the facts of the case currently before this court because the Claimant in Howell was never on the premises of the Employer before she entered the crosswalk on the public street where she was injured. A review of the Howell decision reflects that it is analogous to the case currently before this Court. While the Court in Howell noted that the Claimant had not entered the parking lot across from the plant it did so in a discussion wherein the Court was summarily dismissing the "divided premises rule" argument advanced by the Claimant in that case.

In rejecting the claimant's argument that crossing the street in a crosswalk where her injury

occurred was an implied requirement in her contract of employment, the Court in Howell stated as follows:

The Employer exercised no control over which route the Appellant chose to use in coming and going from work...Appellant was plainly free to cross Heyward at many points or not to cross it at all. The logic behind Appellant's argument appears to be that since she had to cross Heyward Street to get to the mill and since there was a crosswalk in front of one entrance, it was an implied requirement of her employment that she cross the street on the crosswalk. Any injury occurring in that crosswalk, therefore, is compensable. There would be nothing to prevent this line of reasoning from being extended to mean that all Employees must leave home in order to come to work, coming to work is an implied requirement of their employment. All accidents occurring on the way to work are compensable. This kind of reasoning would permit the exceptions to swallow the rule.

Howell, 291 S.C. at 472, 354 S.E.2d at 385.

The Court went on to warn against extending the area of coverage in order to accommodate Claimants in cases with sympathetic facts or situations such as has been argued by the Appellant herein. The Court quoted Professor Larson who reminds us that "the real reason for the premises rule is and always has been, the impracticality of drawing another line at such a point that the administrative and judicial burden of interpreting and applying the rule would not be unmanageable." Larson, *The Law of Workers' Compensation* 15.12.

The Court in Howell also specifically rejected the argument advanced by the claimant that the case was on all fours with Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E. 2d 601 (1965), stating "This contention is without merit. In Williams, the claimant was injured on the employer's premises. In the present case, appellant was injured on a public street." Howell, 291 S.C., at 474, 354 S.E.2d at 386. This is the very argument advanced by the Appellant herein.

In her Brief, the Appellant continuously asserts that she was "in the course of her

employment” because her path from her Employer’s office building to her Employer’s parking lot necessarily included traversing a public street. This assertion by the Appellant is simply not supported by the evidence of record and was rejected by the South Carolina Workers’ Compensation Commission in this claim. As with the claimant in the Howell case, the Appellant herein was free to cross Hubbard Drive at any of three crosswalks constructed and maintained by the City of Lancaster or not to cross it at all. To quote the Claimant “I decided to just park the car, **even though it wasn’t faculty parking**, to park the car there instead of trying to go all the way across campus to see if there were any other faculty spots available.” (R. p. 108, lines 7-17). It is undisputed that the only faculty designated parking was located on the south side of Hubbard Drive which would not have required the Claimant to cross Hubbard Drive at all. As found by the South Carolina Workers’ Compensation Commission, the Claimant’s accident resulted because of the Claimant’s discretionary choice to park in the parking lot located on the north side of Hubbard Drive that did not contain any faculty designated parking spaces. (R. p. 4, Appellate Panel Order - Finding of Fact No. 14).

The Appellant offers a hypothetical situation involving the USC Columbia campus as support for adopting a new exception to the going and coming rule. The Respondents submit that the hypothetical presented by the Appellant demonstrates the very reason such a rule should not be adopted. Under the Appellant’s own example, the Employee assigned to work at the National Advocacy Center could decide to park in the parking lot of the Colonial Life Arena and cross as many as five or more public streets before actually arriving at the place where their work is to be performed and if injured crossing any of those public streets their claim would be compensable. Under the same line of reasoning, an employee working for an employer that has warehouse

facilities within walking distance of a manufacturing facility could elect to park in the parking lot of the warehouse and walk down a public street to enter the manufacturing facility even though parking is provided at the manufacturing facility and the claim would be compensable if the Employee was injured on the public highway while doing so. The South Carolina Workers' Compensation Commission properly rejected the Appellant's argument and applied the reasoning of the Court in Howell in reaching its decision in this case. The Decision and Order of the South Carolina Workers' Compensation Commission is supported by substantial evidence and must be affirmed.

III. THE COMMISSION CORRECTLY REJECTED THE APPELLANT'S ATTEMPT TO APPLY THE "SPECIAL ERRAND" DOCTRINE TO THE FACTS OF THIS CLAIM AND THE RULING OF THE COMMISSION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The Appellant correctly states that our Courts have recognized the "special errand" doctrine as one of the five exceptions to the going and coming rule. The argument advanced by the Appellant on this issue is quite confusing. First, the Appellant sites confusion as to what the Commission intended in Finding of Fact No. 19 in the Order appealed from wherein the Commission specifically found the Claimant "was not engaged in a duty, task, or special errand for benefit of the Employer when the accident which gave rise to this claim occurred." (R. p. 5, Finding of Fact No. 19). The Appellant goes on to state that it is undisputed that she had finished her work for the day and was simply heading home when the accident occurred. The

Appellant then concedes that it would be correct to hold that she was not on a special errand at the time of the injury. However, the Appellant then states that if the Commission's language could be construed as finding that she was not engaged in a work related duty, task, or special errand while she was reviewing the resumes in the library after her normal work hours, such a finding would not be supported by the evidence of record. The Appellant then concludes her argument by submitting that the "special errand" exception to the going and coming rule is irrelevant.

There is no confusion as to what the Commission intended with respect to its Finding of Fact regarding the "special errand" argument advanced by the Appellant before the Commission. In the Appellant's Brief to the Commission, she specifically argued that she was within the course of her employment when her accident occurred because she was engaged in a duty, task, or special errand for the benefit of her Employer. (R. p. 280). In support of this argument, the Appellant asserted that she had made notes while reviewing the resumes that were on reserve at the Medford library earlier in the evening on February 16, 2012. She then stated in her Brief that the notes were "obviously" with her at the time of the accident. She then speculated that because there would have been a meeting scheduled at a later date she would have had to use her notes at home in order to prepare herself for a meeting that had not even been scheduled. The Commission correctly rejected this argument. See, Whitworth v. Window World, Inc., Inc. 377 S.C. 637, 661 S.E. 2d. 333 (2008)(Court held that claim was barred by going and coming rule where accident occurred on public street even though claimant was carrying a tool needed for the job with him at time of accident).

The Appellant's argument that the case of Bickley v. South Carolina Gas and Electric

Company, 259 S.C. 463, 192 S.E.2d 866 (1972) and the special errand doctrine discussed in that case have application to this claim is without merit and was properly rejected by the Workers Compensation Commission. In Bickley, the Supreme Court discussed the narrow exception known as the special errand rule in detail. The very definition of the special errand rule set forth in that case demonstrates the lack of application to the facts of this claim. In Bickley, the Court stated that “where an Employee is obligated to make emergency calls or to perform service at times other than during his regular working hours and goes on a special errand or mission for the Employer, he is entitled to the protection of the Compensation law from the time he leaves home until his return thereto.” In Bickley, the Employee who normally worked in Columbia, South Carolina was required to travel to Charleston, South Carolina as a result of an unexpected power outage that resulted from a storm. The injury occurred at 3:30 a.m. while the Claimant was in route to his home once his emergency services ended.

In the case currently before this Court, the Appellant was certainly not obligated to make any emergency calls or perform services outside of her normal working schedule. As stated earlier, the Claimant admitted that her service on the Search Committee was voluntary and she was not paid for serving on the Committee. Furthermore, the Claimant admitted that there was no time directive with respect to when she was to review the resumes in question. In fact, she admits that she could have reviewed the resumes on Friday, February 17, 2012, the day following her accident, or at other times when she did not have regularly scheduled class or office hours. (R. p. 119, lines 9-12). The Claimant’s testimony in her deposition and at the Hearing demonstrates her complete discretion with respect to her hours of work and the review of the resumes in question. (R. pp. 104-105). She admitted that Dr. Nims was the only person that offered any directives with respect to the Search

Committee that she voluntarily served on. Dr. Bruce Nims testified that he did not direct the Claimant or any other Committee member to review the resumes by any certain deadline other than asking them to review them before the meeting to discuss applicants which had not even been scheduled at the time of the Claimant's accident on February 16, 2012. (R. pp. 222-223).

Claimant's counsel attempts to make significance of the fact that the Claimant is alleged to have carried a handwritten note home with her on the evening of February 16, 2012. There is absolutely no evidence in the record to suggest that the Claimant was asked by the Employer to take any notes home with her or engage in any activities away from campus with respect to the Search Committee. In fact, the Claimant admitted that the resumes she was reviewing were specifically placed on reserve in the Medford Library and she could not remove them from the library let alone remove them from campus. (R. p. 44). She also admitted that she could have left her notes in her office that was located in the Medford Building where the library was located. (R. pp. 57-58). Her attorney asserts that the Claimant intended to review her handwritten notes later that evening to be ready for the "upcoming meeting" with her supervisor and fellow committee members but the evidence contradicts this assertion. First of all the Claimant admitted in her deposition that she did not have a specific time that she intended to review her notes. In fact, she testified that she had made the notes so that she could use them to rank applicants prior to the meeting to discuss applicants by the Search Committee. The Claimant's testimony and the note in question demonstrate that the Claimant had not even finished reviewing half of the resumes at the time of her accident so the stated purpose for making her notes was yet to even become possible. More importantly, the meeting to discuss the applicants hadn't even been scheduled. The Claimant's supervisor had simply asked what dates the committee members would be available to meet between February 20

and February 29, 2012. Surely the act of an employee sticking a note made regarding work activity in their pocket does not trigger application of the special errand rule discussed in the Bickley decision. If so, an employee that sticks a work related note in their pocket, or takes a briefcase or smartphone home with them that contains reference to work would be entitled to workers compensation benefits if involved in an accident on the way home or perhaps even while at home under the Claimant's reasoning.

If the Claimant is arguing application of the Bickley decision because she was leaving campus at 9:00 p.m., the same absurd result would be possible. Under such an argument, an Employee asked to work overtime because of an unexpected order or machine malfunction could argue application of the Bickley decision if involved in a wreck while on their route home. Certainly this was not intended by our Supreme Court. The Workers Compensation Commission made a specific finding of fact that the Claimant was not engaged in a duty, task or special errand when the accident occurred and this finding is supported by substantial evidence.

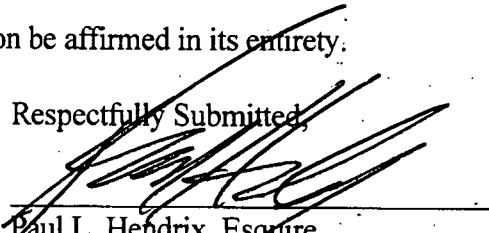
CONCLUSION

To be entitled to an award under the South Carolina Workers' Compensation Act, an Employee must sustain an injury by accident that both "arose out of" and "in the course of" the employment. S.C. Code Ann. §42-1-160 ; Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E.2d 601 (1965). The term "arising out of" has been held to refer to the origin or cause of the accident and the term "in the course of" has been held to refer to the time, place, and circumstances under which the accident occurred. In this case, the question of whether there is an injury by accident arising out of and in the course and scope of the Claimant's employment was a

question of fact to be decided by the South Carolina Workers' Compensation Commission as the fact finders. McDonald v. Kenneth Cotton Mills, 250 S.C. 51, 156 S.E.2d, 324 (1967). A review of the factual findings made by the South Carolina Workers' Compensation Commission is limited to determining whether those findings are supported by substantial evidence. Lark v. Bi-Lo, Inc., 376 S.C. 130, 276 S.E.2d 304 (1981). After reviewing all of the evidence submitted in this case, the South Carolina Workers' Compensation Commission concluded that the Claimant had failed to carry her burden of proving an injury by accident arising out of and in the course and scope of her employment. The Decision of the South Carolina Workers' Compensation Commission is supported by the substantial evidence of record and must be affirmed. It is submitted that the Supreme Court's Decision in Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987) is directly on point with the facts of this case and dictates the very result reached by the Commission.

WHEREFORE, Respondents respectfully request that the Decision and Order of the South Carolina Workers' Compensation Commission be affirmed in its entirety.

Respectfully Submitted,



Paul L. Hendrix, Esquire

S.C. Bar No.: 64217

Jones & Hendrix, P.A.

50 Applewood Lane

Spartanburg, South Carolina 29307

(864) 583-5577

Attorney for Respondents

April 7, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM South Carolina
Workers Compensation Commission

Case No. 2013-001778

NATHALIE I. DAVAUT, Employee, Claimant, ...Appellant,

v.

UNIVERSITY OF SOUTH CAROLINA
and State Accident Fund, Defendants, ...Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondents complies with Rule
211(b), SCACR.

Dated this the 7th day of April, 2014.

JONES & HENDRIX, P.A.

BY: _____

Paul L. Hendrix

50 Applewood Lane
Spartanburg, SC 29307
(864) 583-5577

RECEIVED

APR 09 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from South Carolina
Workers Compensation Commission

Case No. 2013-001778

RECEIVED

APR 09 2014

SC Court of Appeals

Nathalie I. Davaut, Employee, Claimant, ... Appellant,

v.

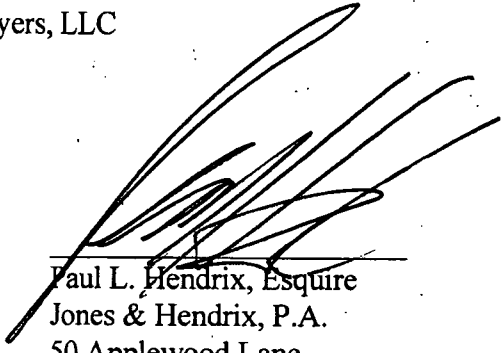
University of South Carolina
and State Accident Fund, Defendants, ... Respondents.

CERTIFICATE OF SERVICE

I, Paul L. Hendrix, do hereby certify that I have this day served a copy of the Final Brief of Respondents and Certificate of Counsel upon the following person by placing a copy of same in the United States Mail, First Class Mail, properly addressed and with the correct amount of postage affixed thereto:

Paul L. Reeves, Esq.
Blackwell, Trimmal, Reeves, & Myers, LLC
P.O. Box 11126
Columbia, S.C. 29211

Dated this the 7th day of April, 2014.



Paul L. Hendrix, Esquire
Jones & Hendrix, P.A.
50 Applewood Lane
Spartanburg, South Carolina 29307-2225
(864) 583-5577
Attorney for Respondents