

**THE STATE OF SOUTH CAROLINA**  
**In The Supreme Court**

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2005-CP-26-2710

Brad R. Johnson

Petitioner,

v.

Lewis W. Hall, Lewis V. Hall,  
L.W. Hall Enterprises, LLC,  
Cold Air A/C Service, Inc.,

Respondents.

**PETITION FOR WRIT OF CERTIORARI**  
**APPENDIX**

Brad R. Johnson, Ph.D., J.D.  
111 SE 14<sup>th</sup> Street  
Oak Island, NC 28465  
(843) 661-1427  
Pro Se Petitioner

G. Michael Smith  
Thompson & Henry, P.A.  
(Attorneys for Lewis W. Hall)  
1318 Third Avenue  
Conway, S.C. 29528

Mr. Brent M. Boyd  
Murphy & Grantland, PA  
(Attorneys for Lewis V. Hall)  
4406-B Forest Drive  
Columbia, SC 29206

Mr. Truett F. Nettles  
(Attorney for Lewis W. Hall Enterprises LLC)  
67 Broad Street  
Charleston, SC 29401

Esquire Mr. Jay R. Lee  
Aiken, Bridges, Nunn, Elliott & Tyler, P.A.  
(Attorneys for Cold Air AC Service, Inc.)  
181 E. Evans Street, Suite 409  
P.O. Drawer 1931  
Florence, SC 29503

**RECEIVED**  
APR 9 2012  
S.C. Supreme Court

**PETITION FOR WRIT OF CERTIORARI**  
**APPENDIX**

**TABLE OF CONTENTS**

**PART I**

- A. AMENDED RECORD ON APPEAL
- B. SUPPLEMENTAL RECORD ON APPEAL

**PART II      BRIEFS**

- A. PETITIONER'S BRIEFS
- B. RESPONDENTS' BRIEFS

**PART III      UNPUBLISHED OPINION OF THE COURT OF APPEALS**

**PART IV      APPELLANT'S PETITION FOR REHEARING**

**PART V      THE COURT OF APPEALS' DECISION  
ON APPELLANT'S PETITION FOR REHEARING**

**PETITION FOR WRIT OF CERTIORARI**  
**APPENDIX**

**PART I**

**A.**  
**AMENDED RECORD ON APPEAL**

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

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

---

Case No. 2005-CP-26-2710

---

Dr. Brad R. Johnson,

Appellant,

v.

Lewis W. Hall, Lewis V. Hall,  
L. W. Hall Enterprises, LLC,  
Cold Air AC Service, Inc.,

Respondents.

---

AMENDED RECORD ON APPEAL

---

Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
Attorney for Appellant

G. Michael Smith  
Thompson & Henry, P.A.  
(Attorneys for Lewis W. Hall)  
1318 Third Avenue  
Conway, S.C. 29528

Mr. Brent M. Boyd  
Murphy & Grantland, PA  
(Attorneys for Lewis V. Hall)  
4406-B Forest Drive  
Columbia, SC 29206

Mr. Truett F. Nettles  
(Attorney for Lewis W. Hall Enterprises LLC)  
67 Broad Street  
Charleston, SC 29401

Esquire Mr. Jay R. Lee  
Aiken, Bridges, Nunn, Elliott & Tyler, P.A.  
(Attorneys for Cold Air AC Service, Inc.)  
181 E. Evans Street, Suite 409  
P.O. Drawer 1931  
Florence, SC 29503



**RECORD ON APPEAL (R)**

INDEX

| <b>Document</b>                                                                                                                                                                                                            | <b>Page</b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Index                                                                                                                                                                                                                      | I           |
| Original Complaint dated May 31, 2005                                                                                                                                                                                      | 1           |
| Motion for Leave to Amend, filed November 22, 2006                                                                                                                                                                         | 42          |
| ORDER granting Motion to Amend.                                                                                                                                                                                            | 49          |
| First Amended Complaint filed May 18, 2007                                                                                                                                                                                 | 50          |
| Affidavit of Service of Process -<br>Cold Air AC Service, Inc. - dated May 24, 2007                                                                                                                                        | 94          |
| Affidavit of Service of Process -<br>L.W. Hall Enterprises, LLC - dated May 24, 2007                                                                                                                                       | 95          |
| Answer of Lewis W. Hall, Lewis V. Hall and Cold<br>Air AC Service, Inc. to Plaintiff's First<br>Amended Complaint dated June 25, 2007                                                                                      | 96          |
| Amended Answer of Cold Air AC Service, Inc. to<br>Plaintiff's First Amended Complaint<br>dated September 5, 2007                                                                                                           | 104         |
| Cold Air Service's Motion for Summary Judgment<br>filed September 24, 2007                                                                                                                                                 | 112         |
| Plaintiffs Motion for Continuance Pursuant to<br>SCRCP 56(f) with attached Affidavit of<br>Stuart M. Axelrod filed September 28, 2007                                                                                      | 114         |
| Plaintiff's written Objection/Motion to Continue<br>based upon SCRCP 40(b)(2) dated October 3, 2007                                                                                                                        | 121         |
| Jury Verdict (Form 4) dated October 4, 2007                                                                                                                                                                                | 134         |
| Verdict Form dated October 4, 2007                                                                                                                                                                                         | 135         |
| Plaintiffs written Post-Trial Motion for a New<br>Trial pursuant to SCRCP 59 and based upon SCRCP<br>40(b)(2), the U.S. Constitution, Amendment<br>Fourteen, and the South Carolina Constitution<br>filed October 12, 2007 | 136         |

## RECORD ON APPEAL (R) Continued

### INDEX

| Document                                                                                                                                                                                                                                                        | Page |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Judge Baxley's Administrative Decision (Form 4) denying Plaintiff's Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b)(2), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution dated December 9, 2007 | 139  |
| Amended Notice of Appeal dated                                                                                                                                                                                                                                  | 140  |
| Portions of the Transcript Prepared by H. Eugene Buckner of Conway, SC, an Official Court Reporter, pp.:                                                                                                                                                        |      |
| • 1-22                    Motions in Limine on 10-1-07                                                                                                                                                                                                          | 142  |
| • 125-138                                                                                                                                                                                                                                                       | 164  |
| • 225-226                                                                                                                                                                                                                                                       | 178  |
| • 229                                                                                                                                                                                                                                                           | 180  |
| • 232-239                                                                                                                                                                                                                                                       | 181  |
| • 245                                                                                                                                                                                                                                                           | 189  |
| • 248                                                                                                                                                                                                                                                           | 190  |
| • 328-29                Verdict and Post-Trial Motions                                                                                                                                                                                                          | 191  |
| An undated Open Letter to Attorneys and Pro Se Parties with Cases Pending on the Horry County Jury Roster                                                                                                                                                       | 193  |
| Certification                                                                                                                                                                                                                                                   | 197  |
| Summons filed May 18, 2007                                                                                                                                                                                                                                      | 201  |

STATE OF SOUTH  
CAROLINA  
COUNTY OF HORRY

IN THE COURT OF  
COMMON PLEAS  
CIVIL ACTION NO.

DR. BRAD R. JOHNSON,

Plaintiff,

v.

LEWIS W. HALL, and

LEWIS V. HALL,

Defendants.

2005-CP-26-2710

ORIGINAL COMPLAINT

JURY TRIAL DEMAND

MELANIE HUGGINS  
CLERK OF COURT

05 MAY 31 AM 10:06

HORRY COUNTY

**ORIGINAL COMPLAINT AND**  
**DEMAND FOR JURY TRIAL**

1. PLAINTIFF, Dr. Brad R. Johnson (hereinafter referred to as **Plaintiff**), for its complaint against Defendant Mr. Lewis W. Hall (hereinafter referred to as **HALL-F**) and Defendant Mr. Lewis V. Hall (hereinafter referred to as **HALL-S**), alleges on knowledge with respect to himself and his own conduct, and upon the basis of information and belief as to all other matters, as follows.

**NATURE OF THE ACTION**

2. This action *arises* out of a **hideous and cowardly conspiracy** executed by the individual Defendants (**HALL-F** and **HALL-S**) to invite **Plaintiff** on defendants' property for the sole purpose of committing an assault and battery (with a deadly weapon, i.e., shotgun) on **Plaintiff**, resulting in severe physical, emotional, and economic injury to **Plaintiff**. Specifically, this action is brought under South Carolina common law, wherein **Plaintiff** alleges more specifically that:
  - a. [**First Claim for Relief – Civil Conspiracy**] in violation of South Carolina common law, individual Defendants (**HALL-F** and **HALL-S**), as **persons**, each conducted or participated in the conduct of a CIVIL CONSPIRACY, to wit: to

invite **Plaintiff** on defendants' property for the sole purpose of committing an assault and battery (with a deadly weapon, i.e., shotgun) on **Plaintiff**, resulting in severe physical, emotional, and economic injury to **Plaintiff**.

- b. [**Second Claim for Relief – Assault**] in violation of South Carolina common law, individual Defendant (**HALL-S**), as a **person**, committed ASSAULT on **Plaintiff**, resulting in severe emotional and economic injury to **Plaintiff**. That is, after being invited on defendants' property by **HALL-F**, as **Plaintiff** abruptly changed direction and headed for the street (because he sensed danger), **HALL-S**, standing directly in front of **Plaintiff** (about 3 feet away), first pointed a single barrel shotgun at Plaintiff's stomach and then raised the shotgun to Plaintiff's face, saying "Do you want some of this?"
- c. [**Third Claim for Relief – False Imprisonment**] in violation of South Carolina common law, individual Defendant (**HALL-S**), as a **person**, committed FALSE IMPRISONMENT on **Plaintiff**, resulting in severe emotional and economic injury to **Plaintiff**. That is, as **Plaintiff** abruptly changed direction and headed for the street (because he sensed danger, after being invited on defendants' property by **HALL-F**), **Plaintiff** was falsely imprisoned by **HALL-S**, wherein **HALL-S**, standing directly in front of Plaintiff (about 3 feet away), first pointed a single barrel shotgun at Plaintiff's stomach and then raised the shotgun to Plaintiff's face, saying "Do you want some of this?"
- d. [**Fourth Claim for Relief – Battery**] in violation of South Carolina common law, individual Defendant (**HALL-F**), as a **person**, committed BATTERY on **Plaintiff**, resulting in severe physical, emotional, and economic injury to

**Plaintiff.** That is, after being invited on defendants' property by **HALL-F**, as **HALL-S** stood directly in front of **Plaintiff** (about 3 feet away), holding **Plaintiff's** attention by pointing a single barrel shotgun at **Plaintiff's** face, **HALL-F** struck **Plaintiff**.

- e. **[Fifth Claim for Relief – Malicious Prosecution]** in violation of South Carolina common law, individual Defendants (**HALL-F** and **HALL-S**), as **persons**, committed MALICIOUS PROSECUTION on **Plaintiff**, resulting in severe emotional and economic injury to **Plaintiff**, to wit: the institution and continuation of a judicial proceeding for criminal trespass by each of the individual Defendants (**HALL-F** and **HALL-S**) with malice and without probable cause.
- f. **[Sixth Claim for Relief – Abuse of Process]** in violation of South Carolina common law, individual Defendants (**HALL-F** and **HALL-S**), as **persons**, committed ABUSE OF PROCESS on **Plaintiff**, resulting in severe emotional and economic injury to **Plaintiff**, to wit: **HALL-F** and **HALL-S** each (i) had an *ulterior purpose* for carrying out the legal process that was intended to be used for the protection of private property and (ii) willfully committed an act in the use of said process that was not proper in the regular conduct of such proceeding.
- g. **[Seventh Claim for Relief – Defamation (Slander) Per Se]** in violation of South Carolina common law, individual Defendants (**HALL-F** and **HALL-S**), as **persons**, committed DEFAMATION (SLANDER) PER SE against **Plaintiff**, resulting in severe emotional and economic injury to **Plaintiff**, that is, **HALL-F** and **HALL-S** each published statements to neighbors, by means of spoken words,

concerning **Plaintiff**, to wit: while **HALL-F** was on his property, **Plaintiff** attacked **HALL-F** with a knife, for which **HALL-S** had to physically strike **Plaintiff**.

- h. [**Eighth Claim for Relief – Premises Liability**] under South Carolina common law of PREMISES LIABILITY, individual Defendants [**HALL-F (as owner)** and **HALL-S (as occupier)**] are each liable to **Plaintiff** (an invitee) for injuries resulting from the breach of a duty, where the owner or occupier of property owes to an invitee the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of this duty.
- i. [**Ninth Claim for Relief – Temporary, Interlocutory, and Permanent Injunctive Relief**] under South Carolina common law, to protect the physical well-being of **Plaintiff** and his family, **Plaintiff** seeks temporary, interlocutory, and permanent injunctive relief to prohibit each of the individual Defendants (**HALL-F** and **HALL-S**) from coming within 50 feet of any of **Plaintiff's** family, including Elci Johnson (Spouse), Ruminingsih (Mother-In-Law), Sarah Johnson (Daughter), Holly Johnson (Daughter) and **Plaintiff**, Dr. Brad Johnson.

#### **PARTIES**

- 3. **Plaintiff. Plaintiff**, Brad R. Johnson, Ph.D., J.D., C.P.A., is (and was) at all times relevant to the allegations of this Complaint in the business of rendering services as an employee as an Associate Professor of Accounting and Law in the School of Business at Francis Marion University in Florence, SC. Also, at all times relevant to the allegations of this Complaint, **Plaintiff** is (and was) domiciled in and a resident of

the State of South Carolina, more particularly residing at 8669 Laurel Woods Drive, Myrtle Beach, SC 29588. **Plaintiff** is 55 years-old, 5'5" tall and weighs 140 pounds.

4. **HALL-F**. Defendant, Mr. Lewis W. Hall, is (and was) at all times mentioned herein domiciled in and a resident of the State of South Carolina, more particularly residing at 8664 Laurel Woods Drive, Myrtle Beach, SC 29588. **HALL-F** is 66 years-old, 5'8" tall and weighs 185 pounds.
5. **HALL-S**. Defendant, Mr. Lewis V. Hall, is (and was) at all times mentioned herein domiciled in and a resident of the State of South Carolina, more particularly residing at 8664 Laurel Woods Drive, Myrtle Beach, SC 29588. **HALL-S** is 38 years-old, 5'9" tall and weighs 160 pounds. **HALL-S** is employed by Cold Air AC Service, Inc. [(843) 602-6095 or (843) 215- 6088].

#### **FACTUAL BASIS FOR CLAIMS**

6. **Prior to March 26, 2005, HALL-F and HALL-S have objected to Plaintiff's** personal use of his property, as follows.
  - a. Plaintiff's operation in Horry County, SC of his 1994 Nissan Pickup with out-of-state (Oregon) tags. For more than 1 year, **HALL-F and HALL-S** have been reporting to the Horry County Auditor's Office that Plaintiff is driving his 1994 Nissan Pickup illegally [with out-of-state (Oregon) tags]. More recently, **HALL-F and HALL-S** have resorted to taking pictures of Dr. Johnson and his wife.
  - b. Plaintiff's parking of 2 trailers and 1 bus on Plaintiff's far driveway, previously constructed by Plaintiff's adjacent neighbor.
  - c. Plaintiff's placement of two storage buildings on Plaintiff's property.

**7. Events of March 26, 2005.**

- a. **Plaintiff** and his wife (Elci), Mother-in-Law and daughter Sarah (4) worked on fixing a fence. After they were done with fixing the fence, **Plaintiff** backed his trailer onto his driveway. In so doing, his truck blocked half the street.
- b. **HALL-F** (driver) and **HALL-S** (passenger) drove out of their driveway. Instead of turning right to go out of the subdivision, **HALL-F** intentionally turned left to confront **Plaintiff**.
- c. In his vehicle, **HALL-F** pulled up alongside **Plaintiff** who was standing in the street and **HALL-S** told **Plaintiff** not to block the street. After **Plaintiff** examined the street, **Plaintiff** told **HALL-S** that they had enough room to pass.
- d. In the vehicle, while **HALL-F** and **HALL-S** safely passed, **HALL-S** flipped **Plaintiff** the bird and **Plaintiff** responded by flipping it (the bird) right back.
- e. When **HALL-F** returned and drove into his driveway, **Plaintiff** yelled to **HALL-F** from across the street "Can we talk about this?"
- f. While inside the car, **HALL-F** motioned with his arm and hand for **Plaintiff** to come on over.
- g. **HALL-F** drove further into his driveway, got out of his car, and walked back toward the street.
- h. **Plaintiff** again said: "I'd like to talk about this." At that point, **HALL-F** again motioned with his arms and hands for **Plaintiff** to come on over and said: "Let's go into the backyard."
- i. **Plaintiff** then walked diagonally across the street toward **HALL-F**. **Plaintiff** exclaimed to **HALL-F**: "I think we can work this out."



- j. At that point, **HALL-F** again motioned with his arm and hands to come on over and again repeated: "Let's go into the backyard."
- k. **Plaintiff**, walking diagonally, had moved onto the grass just across the street and before the driveway when **Plaintiff** sensed that something was wrong. At that point, **Plaintiff** abruptly turned 100 degrees and headed back to the street.
- l. However, after **Plaintiff** had turned, **HALL-S** was standing directly in front of **Plaintiff**, about 3 feet with a shotgun pointed at Plaintiff's stomach. The shotgun was a single barrel shotgun (i) with a sleek black barrel (one inch in diameter) and (ii) with a brown pump, which had U-shaped grooves circumventing the pump.
- m. **HALL-S** then raised the shotgun to Plaintiff's face and said: "Do you want some of this?"
- n. At that point, while **Plaintiff** was fixated on the sleek black shotgun barrel (one inch in diameter) with the brown pump, **HALL-F** came from behind and struck **Plaintiff**, causing **Plaintiff** to blackout.
- o. Plaintiff's spouse (Elci) observed that **Plaintiff** came home, went inside, asked for the telephone, got the telephone and went outside again, but **Plaintiff** has no recollection of these events.
- p. Plaintiff's first remembrances after being struck by **HALL-F** are single snapshot-type images of being surrounded by police, forced to the ground, and handcuffed.
- q. **Plaintiff** then remembers that the police Mirandized **Plaintiff** and walked a handcuffed **Plaintiff** across the street to show **Plaintiff** a pair of dark glasses and a knife lying on the driveway. **Plaintiff** admitted that the glasses were his glasses, but **Plaintiff** said the knife was not his knife.

- r. The police again Mirandized **Plaintiff** and asked **Plaintiff** why he came over to the property of **HALL-F**. At that time, **Plaintiff** could not recall, but said “to talk.”
- s. **Plaintiff** was un-handcuffed and placed in an ambulance to receive medical attention for his head and neck injuries. As **Plaintiff** was receiving medical attention, **Plaintiff**’s pre-strike memory returned. **Plaintiff** immediately reported his recollections to the police, but to no avail. The police said that they had already determined what they were going to do with the current situation, that is: to issue **Plaintiff** a ticket for criminal trespass, wherein each party could tell his respective story to the judge on the trial date.
- t. **Plaintiff** argued that he was on the grassy area immediately adjacent to the street and not on the property of **HALL-F**. The police officer responded by saying that he considered the grassy area to be part of the property of **HALL-F** and that **Plaintiff** was trespassing if he was on the grassy area without permission.
- u. **Plaintiff** was taken to the ER at South Strand Hospital where he was treated for head and neck injuries. While at the hospital, **Plaintiff** called for the police for the purpose of pressing charges against his assailants (**HALL-F** and **HALL-S**). The same 4 police officers who were at the scene responded, but they denied **Plaintiff**’s request, saying that there was no evidence of a shotgun. In addition, these 4 police officers also refused to even ask **HALL-F** or **HALL-S** if either one of them owned or was in possession or control of a shotgun. One officer said ownership of shotguns was common in South Carolina. However, as noted,

shotguns have distinctive features [e.g., sleek black barrel (one inch in diameter) with a brown pump, which had U-shaped grooves circumventing the pump].

**8. Events Post-March 26, 2005.** After March 26, 2005:

- a. **HALL-F** and **HALL-S** each spoke with neighbors about the facts of the instant case and told said neighbors that while **HALL-F** was on his property, **Plaintiff** had attacked **HALL-F** with a knife, for which **HALL-S** had to physically subdue **Plaintiff**.
- b. **Plaintiff** has received (and continues to receive) medical attention for severe physical, emotional, and economic injuries resulting from the conduct of each of the individual Defendants (**HALL-F** or **HALL-S**).

**FIRST CLAIM FOR RELIEF – CIVIL CONSPIRACY**

9. Plaintiff's **First Claim for Relief** is a private (civil) cause of action against **HALL-F** and **HALL-S**, arising under South Carolina common law, where in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for individual Defendants' (**HALL-F** and **HALL-S**) violation of the South Carolina prohibition against *Civil Conspiracy* and where **Plaintiff** alleges more specifically that **HALL-F** and **HALL-S**, as persons, each conducted or participated in the conduct of a CIVIL CONSPIRACY, that is: to invite **Plaintiff** on Defendants' property for the sole purpose of committing an assault and battery (with a deadly weapon, i.e., shotgun) on **Plaintiff**, resulting in severe physical, emotional, and economic injuries to **Plaintiff**, all as more fully set forth below.

10. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.
11. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, each of the individual Defendants (**HALL-F** and **HALL-S**) is a citizen and resident of Horry County, South Carolina.
12. Under the facts in the instant case, each of the individual Defendants (**HALL-F** and **HALL-S**) violated South Carolina's prohibition against *Civil Conspiracy*, wherein:
- a. **HALL-F** and **HALL-S** combined in joint assent,
  - b. for the purpose of injuring **Plaintiff**,
  - c. which, in fact, caused damage to **Plaintiff**, directly, naturally, and proximately resulting from the overt acts in pursuance of the conspiracy and pursuant to the common design of the conspiracy.
13. **Joint assent.** Under the facts in the instant case, that **HALL-F** and **HALL-S** combined in joint assent is inferred from the nature of the acts and concert of the action.
14. **For the purpose of injuring Plaintiff.** Under the facts in the instant case, that **HALL-F** and **HALL-S** combined in joint assent for the purpose of injuring **Plaintiff** is inferred from the nature of the acts and concert of the action.
15. **Actual damage to Plaintiff.** Under the facts in the instant case, as a direct, natural, and proximate cause, resulting from the overt acts in pursuance of the conspiracy (that is, having **HALL-F** invite **Plaintiff** onto his property while **HALL-S** commits and an assault (with a deadly weapon, i.e., shotgun) on **Plaintiff**), and pursuant to the common design of the conspiracy [that is, to invite **Plaintiff** onto the property of

**HALL-F** for the sole purpose of committing an assault and battery (with a deadly weapon, i.e., shotgun) on **Plaintiff**], **Plaintiff** has suffered the following actual damages.

- a. Past and future medical expenses **in the amount of \$10,000**, including expenses for physicians, hospital, medicines, physical therapy expenses, rehabilitation expenses, and transportation expenses connected with medical treatment;
- b. future damages resulting from permanent injuries **in the amount of \$50,000**;
- c. loss of family services **in the amount of \$10,000**;
- d. alteration of lifestyle **in the amount of \$5,000**;
- e. psychological trauma **in the amount of \$10,000**;
- f. mental anguish **in the amount of \$10,000**;
- g. mental distress **in the amount of \$10,000**;
- h. apprehension **in the amount of \$10,000**;
- i. anxiety **in the amount of \$10,000**;
- j. emotional injury **in the amount of \$5,000**;
- k. psychological injury **in the amount of \$5,000**;
- l. depression **in the amount of \$5,000**;
- m. sexual dysfunction **in the amount of \$5,000**;
- n. pain and suffering **in the amount of \$30,000**, based on (i) the nature and extent of the injuries and the suffering occasioned by them and its duration or prospective duration; the age, health, habits, and condition of the **Plaintiff** before the injury as compared with his condition afterwards; the Plaintiff's use of sedatives and other drugs to relieve pain and their effect; and

o. loss of enjoyment of life **in the amount of \$5,000.**

16. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of each of the individual Defendants' (**HALL-F** and **HALL-S**) acts;
- b. Nature and extent of the harm to **Plaintiff** that each of the individual Defendants (**HALL-F** and **HALL-S**) caused or intended to cause;
- c. Degree of culpability of each of the individual Defendants (**HALL-F** and **HALL-S**);
- d. Punishment that should be imposed;
- e. awareness or concealment of each of the individual Defendants (**HALL-F** and **HALL-S**);
- f. Existence of similar past conduct;
- g. Likelihood the award will deter each of the individual Defendants (**HALL-F** and **HALL-S**) or others from like conduct;

the actions of each of the individual Defendants (**HALL-F** and **HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### **SECOND CLAIM FOR RELIEF – ASSAULT**

17. Plaintiff's **Second Claim for Relief** is a private (civil) cause of action against **HALL-S**, arising under South Carolina common law, where in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are

incurred by **Plaintiff**) for the violation by **HALL-S** of South Carolina prohibition against *Assault*, all as more fully set forth below.

18. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.
19. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, the individual Defendant (**HALL-S**) is a citizen and resident of Horry County, South Carolina.
20. More specifically, under the facts in the instant case, the individual Defendant (**HALL-S**) violated South Carolina's prohibition against *Assault*, to wit:
  - a. Conduct of **HALL-S**, which placed **Plaintiff**
  - b. in reasonable fear of bodily harm.
21. **Conduct of HALL-S.** After being invited on Defendants' property, as **Plaintiff** abruptly changed direction and headed for the street (because he sensed danger), **HALL-S** stood directly in front of **Plaintiff** (about 3 feet away) and first pointed a single barrel shotgun at Plaintiff's stomach and then raised the shotgun to Plaintiff's face, saying "Do you want some of this?"
22. **Reasonable fear of bodily harm.** The intentional pointing of a single barrel shotgun at Plaintiff's stomach and then face by **HALL-S** (combined with **HALL-S**' question "Do you want some of this?") elicited in **Plaintiff** a reasonable fear of severe bodily harm.
23. **Actual damage to Plaintiff.** Under the facts in the instant case, as a direct, natural, and proximate cause, resulting from the conduct of **HALL-S** [to wit: after being invited on Defendants' property by **HALL-F**, as **Plaintiff** abruptly changed direction

and headed for the street (because he sensed danger), **HALL-S** stood directly in front of **Plaintiff** (about 3 feet away) and first pointed a single barrel shotgun at Plaintiff's stomach and then raised the shotgun to Plaintiff's face, saying "Do you want some of this?" **Plaintiff** has suffered the following actual damages.

- a. Past and future medical expenses **in the amount of \$2,000**, including expenses for physicians, hospital, medicines, physical therapy expenses, rehabilitation expenses, and transportation expenses connected with medical treatment;
- b. alteration of lifestyle **in the amount of \$3,000**;
- c. psychological trauma **in the amount of \$5,000**;
- d. mental anguish **in the amount of \$8,000**;
- e. mental distress **in the amount of \$8,000**;
- f. apprehension **in the amount of \$8,000**;
- g. anxiety **in the amount of \$8,000**;
- h. emotional injury **in the amount of \$4,000**;
- i. psychological injury **in the amount of \$4,000**;
- j. depression **in the amount of \$4,000**; and
- k. loss of enjoyment of life **in the amount of \$4,000**.

24. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of the acts of the individual Defendant (**HALL-S**);
- b. Nature and extent of the harm to **Plaintiff** that individual Defendant (**HALL-S**) caused or intended to cause;
- c. Degree of culpability of individual Defendant (**HALL-S**);



- d. Punishment that should be imposed;
- e. awareness or concealment of individual Defendant (**HALL-S**);
- f. Existence of similar past conduct;
- g. Likelihood the award will deter the individual Defendant (**HALL-S**) or others from like conduct;

the actions of individual Defendant (**HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

### **THIRD CLAIM FOR RELIEF – FALSE IMPRISONMENT**

25. Plaintiff's **Third Claim for Relief** is a private (civil) cause of action against **HALL-S**, arising under South Carolina common law, where in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for the violation by **HALL-S** of the South Carolina prohibition against *False Imprisonment*, all as more fully set forth below.

26. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.

27. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, the individual Defendant (**HALL-S**) is a citizen and resident of Horry County, South Carolina.

28. More specifically, under the facts in the instant case, the individual Defendant (**HALL-S**) violated South Carolina's prohibition against *False Imprisonment* (that is,

deprivation of a person's liberty or freedom of locomotion without lawful justification), to wit:

- a. **HALL-S restrained Plaintiff.** In particular, as **Plaintiff** approach **HALL-F** (after being invited on the property of **HALL-F** by **HALL-F**, **Plaintiff** abruptly changed direction and headed for the street (because he sensed danger). At that point, **Plaintiff** was *falsely imprisoned* by **HALL-S**, wherein **HALL-S**, standing directly in front of Plaintiff (about 3 feet away), unlawfully first pointed a single barrel shotgun at Plaintiff's stomach and then raised the shotgun to Plaintiff's face, saying "Do you want some of this?"
- b. The restraint was intentional in that **HALL-S** intended to cause Plaintiff's confinement.
- c. The restraint was unlawful. That is, there was not sufficient legal cause for the confinement of **Plaintiff** by **HALL-S**.

29. **Actual damage to Plaintiff.** Under the facts in the instant case, as a direct, natural, and proximate cause, resulting from the deprivation of Plaintiff's liberty and freedom of locomotion by **HALL-S** without lawful justification, **Plaintiff** has suffered the following actual damages:

- a. medical expenses **in the amount of \$5,000;**
- b. loss of time **in the amount of \$3,000;**
- c. humiliation **in the amount of \$10,000;**
- d. embarrassment **in the amount of \$5,000;**
- e. mental suffering and mental distress **in the amount of \$25,000;**
- f. inconvenience **in the amount of \$7,000;** and

g. discomfort in the amount of \$15,000.

30. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of the acts of the individual Defendant (**HALL-S**);
- b. Nature and extent of the harm to **Plaintiff** that individual Defendant (**HALL-S**) caused or intended to cause;
- c. Degree of culpability of individual Defendant (**HALL-S**);
- d. Punishment that should be imposed;
- e. awareness or concealment of individual Defendant (**HALL-S**);
- f. Existence of similar past conduct;
- g. Likelihood the award will deter the individual Defendant (**HALL-S**) or others from like conduct;

the actions of individual Defendant (**HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### **FOURTH CLAIM FOR RELIEF – BATTERY**

31. Plaintiff's **Fourth Claim for Relief** is a private (civil) cause of action against **HALL-F**, arising under South Carolina common law, where in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for **HALL-F**'s violation of the South Carolina prohibition against *Battery*, all as more fully set forth below.

32. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.
33. **Jurisdiction.** The Plaintiff is a citizen and resident of Horry County, South Carolina. Further, the individual Defendant (**HALL-F**) is a citizen and resident of Horry County, South Carolina.
34. More specifically, under the facts in the instant case, the individual Defendant (**HALL-S**) violated South Carolina's prohibition against *Battery*, to wit: As **HALL-S**, stood directly in front of **Plaintiff** (about 3 feet away), holding Plaintiff's attention by pointing a single barrel shotgun at Plaintiff's face, **HALL-F** committed a battery upon **Plaintiff** (that is, an unlawful touching or striking of **Plaintiff** by **HALL-F**, done by **HALL-F** with the intention of bringing about a harmful or offensive contact, which was not legally consented to by **Plaintiff**, and not otherwise privileged), resulting in severe physical, emotional, and economic injury to **Plaintiff**.
35. **Actual damage to Plaintiff.** Under the facts in the instant case, as a direct, natural, and proximate cause, resulting from the conduct of **HALL-F** [that is, a battery upon **Plaintiff**, to wit: after being invited on Defendants' property by **HALL-F** and as **HALL-S** stood directly in front of **Plaintiff** (about 3 feet away), holding Plaintiff's attention by pointing a single barrel shotgun at Plaintiff's face, **HALL-F** struck **Plaintiff**], **Plaintiff** has suffered the following actual damages.
- a. Past and future medical expenses **in the amount of \$10,000**, including expenses for physicians, hospital, medicines, physical therapy expenses, rehabilitation expenses, and transportation expenses connected with medical treatment;
  - b. future damages resulting from permanent injuries **in the amount of \$50,000**;

- c. loss of family services **in the amount of \$10,000;**
- d. alteration of lifestyle **in the amount of \$5,000;**
- e. psychological trauma **in the amount of \$10,000;**
- f. mental anguish **in the amount of \$10,000;**
- g. mental distress **in the amount of \$10,000;**
- h. apprehension **in the amount of \$10,000;**
- i. anxiety **in the amount of \$10,000;**
- j. emotional injury **in the amount of \$5,000;**
- k. psychological injury **in the amount of \$5,000;**
- l. depression **in the amount of \$5,000;**
- m. sexual dysfunction **in the amount of \$5,000;**
- n. pain and suffering **in the amount of \$30,000**, based on (i) the nature and extent of the injuries and the suffering occasioned by them and its duration or prospective duration; the age, health, habits, and condition of the **Plaintiff** before the injury as compared with his condition afterwards; the Plaintiff's use of sedatives and other drugs to relieve pain and their effect; and
- o. loss of enjoyment of life **in the amount of \$5,000.**

36. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of the acts of the individual Defendant (**HALL-F**);
- b. Nature and extent of the harm to **Plaintiff** that individual Defendant (**HALL-F**) caused or intended to cause;
- c. Degree of culpability of individual Defendant (**HALL-F**);

- d. Punishment that should be imposed;
- e. awareness or concealment of individual Defendant (**HALL-F**);
- f. Existence of similar past conduct;
- g. Likelihood the award will deter the individual Defendant (**HALL-F**) or others from like conduct;

the actions of individual Defendant (**HALL-F**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### **FIFTH CLAIM FOR RELIEF – MALICIOUS PROSECUTION**

37. Plaintiff's **Fifth Claim for Relief** is a private (civil) cause of action against **HALL-F** and **HALL-S**, arising under South Carolina common law, where in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for individual Defendants' (**HALL-F** and **HALL-S**) violation of the South Carolina prohibition against *Malicious Prosecution*, all as more fully set forth below.

38. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.

39. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, the individual Defendants (**HALL-F** and **HALL-S**) are citizens and residents of Horry County, South Carolina.

40. More specifically, under the facts in the instant case, each of the individual Defendants (**HALL-F** and **HALL-S**) violated South Carolina's prohibition against

*Malicious Prosecution* (that is, the institution of a judicial proceeding for criminal trespass with malice and without probable cause), to wit:

- a. the institution and continuation of original criminal judicial proceedings;
- b. at the instance of each of the individual Defendants (**HALL-F** and **HALL-S**);
- c. the termination of such proceedings in Plaintiff's favor;
- d. malice of Defendants (**HALL-F** and **HALL-S**) in instituting the proceedings;
- e. lack of probable cause for the criminal judicial proceeding of criminal trespass;
- and
- f. resulting injury and damage.

41. **The institution and continuation of an original criminal judicial proceeding by HALL-F and HALL-S.** Under the facts in the instant case, **Plaintiff** was charged with criminal trespass, where liability is imputed to **HALL-F and HALL-S**, who falsely instigated and set such legal proceeding in motion.

42. **Want of probable cause.** Under the facts in the instant case, since, at the time he instituted the prosecution, each of the individual Defendants (**HALL-F** and **HALL-S**) knew that **HALL-F** had invited **Plaintiff** on his property, there was *want of probable cause* to believe that **Plaintiff** was an adult trespasser [that is, there was an absence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of each of the individual Defendants (**HALL-F** and **HALL-S**), that **Plaintiff** was guilty of trespassing].

43. **Malice on the part of each of the individual Defendants (HALL-F and HALL-S) in instituting the proceedings.** Under the facts in the instant case, malice is inferred from a lack of probable cause. But also, from a heart devoid of social duty and fatally

bent upon mischief; from a depraved spirit; and with wickedness, hatred, and a formed purpose and design to do a wrongful act without just cause or excuse or legal provocation; each of the individual Defendants (**HALL-F and HALL-S**) willfully, deliberately and intentionally falsely accused **Plaintiff** of criminal trespass, all the time knowing that **HALL-F** had invited **Plaintiff** on his property. Accordingly, said prosecution was instituted and continued by each of the individual Defendants (**HALL-F and HALL-S**) primarily because of a purpose other than that of bringing **Plaintiff** to justice.

**44. Resulting injury and damage.** Under the facts in the instant case, as a direct, natural, and proximate cause, resulting from the wrongful conduct of each of the individual Defendants (**HALL-F and HALL-S**) [that is, the institution of a judicial proceeding for criminal trespass by each of the individual Defendants (**HALL-F and HALL-S**) with malice and without probable cause], **Plaintiff** has suffered the following damages.

a. Actual Damages, which include:

- (1) loss of time **in the amount of \$10,000;**
- (2) deprivation of liberty **in the amount of \$15,000;**
- (3) bodily pain **in the amount of \$5,000;**
- (4) injury to fame and reputation **in the amount of \$20,000;** and
- (5) injury to health **in the amount of \$7,000;**
- (6) general impairment of social and mercantile standing **in the amount of \$5,000;**

b. Special damages, which include:

- (1) damages for discomfort **in the amount of \$7,000;**



- (2) deprivation of the society of his family **in the amount of \$10,000**; and
- (3) reasonable attorney fees and other expenses incurred in the prior criminal action **in the amount of \$2,000**;

45. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of each of the individual Defendants' (**HALL-F** and **HALL-S**) acts;
- b. Nature and extent of the harm to **Plaintiff** that each of the individual Defendants (**HALL-F** and **HALL-S**) caused or intended to cause;
- c. Degree of culpability of each of the individual Defendants (**HALL-F** and **HALL-S**);
- d. Punishment that should be imposed;
- e. awareness or concealment of each of the individual Defendants (**HALL-F** and **HALL-S**);
- f. Existence of similar past conduct;
- g. Likelihood the award will deter each of the individual Defendants (**HALL-F** and **HALL-S**) or others from like conduct;

the actions of each of the individual Defendants (**HALL-F** and **HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### **SIXTH CLAIM FOR RELIEF – ABUSE OF PROCESS**

46. Plaintiff's **Sixth Claim for Relief** is a private (civil) cause of action against **HALL-F** and **HALL-S**, arising under South Carolina common law, where, in bringing this

action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for individual Defendants' (**HALL-F** and **HALL-S**) violation of the South Carolina prohibition against *Abuse of Process*, all as more fully set forth below.

47. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.
48. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, each of the individual Defendants (**HALL-F** and **HALL-S**) is a citizen and resident of Horry County, South Carolina.
49. Under the facts in the instant case, each of the individual Defendants (**HALL-F** and **HALL-S**) violated South Carolina's prohibition against *Abuse of Process*, wherein:
- a. **HALL-F** and **HALL-S** each had an *ulterior purpose* for carrying out the legal process that was intended to be used for the protection of private property and
  - b. **HALL-F** and **HALL-S** each willfully committed an act in the use of said process that was not proper in the regular conduct of the proceeding.
50. **Ultrior Purpose.** **HALL-F** and **HALL-S** each participated in the execution of a legal process that was intended to be used for the protection of private property for the ulterior purpose of evading liability for their own criminal acts. Here, the objective to be gained was the evasion of criminal liability with respect to the defendants' **hideous and cowardly conspiracy** to invite **Plaintiff** onto defendants' property for the sole purpose of committing an assault and battery (with a deadly weapon, i.e., shotgun) on **Plaintiff**, resulting in severe physical, emotional, and

economic injuries to **Plaintiff**, where such objective is not legitimate in the use of the particular process.

**51. Improper act in the use of the process.** **HALL-F** and **HALL-S** each willfully

committed an act [the planting of the knife after the 911 call and defendants' continued allegation that **Plaintiff** attacked **HALL-F** with said knife] which was not proper in the regular conduct of a legal proceeding to protect private property.

**52. Resulting injury and damage.** Under the facts in the instant case, as a direct, natural, and proximate cause, resulting from the wrongful conduct of each of the individual Defendants (**HALL-F** and **HALL-S**) [that is, **HALL-F** and **HALL-S** each (i) had an *ulterior purpose* for carrying out the legal process that was intended to be used for the protection of private property and (ii) willfully committed an act in the use of said process that was not proper in the regular conduct of such proceeding], **Plaintiff** has suffered the following damages.

a. Actual Damages, which include:

- (1) loss of time **in the amount of \$10,000;**
- (2) deprivation of liberty **in the amount of \$15,000;**
- (3) bodily pain **in the amount of \$5,000;**
- (4) injury to fame and reputation **in the amount of \$20,000;** and
- (5) injury to health **in the amount of \$7,000;**
- (6) general impairment of social and mercantile standing **in the amount of \$5,000;**

b. Special damages, which include:

- (1) damages for discomfort **in the amount of \$7,000;**
- (2) deprivation of the society of his family **in the amount of \$10,000;** and

(3) reasonable attorney fees and other expenses incurred in the prior criminal action in the amount of \$2,000;

53. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of each of the individual Defendants' (**HALL-F** and **HALL-S**) acts;
- b. Nature and extent of the harm to **Plaintiff** that each of the individual Defendants (**HALL-F** and **HALL-S**) caused or intended to cause;
- c. Degree of culpability of each of the individual Defendants (**HALL-F** and **HALL-S**);
- d. Punishment that should be imposed;
- e. awareness or concealment of each of the individual Defendants (**HALL-F** and **HALL-S**);
- f. Existence of similar past conduct;
- g. Likelihood the award will deter each of the individual Defendants (**HALL-F** and **HALL-S**) or others from like conduct;

the actions of each of the individual Defendants (**HALL-F** and **HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### **SEVENTH CLAIM FOR RELIEF – DEFAMATION (SLANDER) PER SE**

54. Plaintiff's **Seventh Claim for Relief** is a private (civil) cause of action against **HALL-F** and **HALL-S**, arising under South Carolina common law, where in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive

damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for individual Defendants' (**HALL-F** and **HALL-S**) violation of the South Carolina prohibition against *Defamation (Slander Per Se)*, all as more fully set forth below.

55. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.

56. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, each of the individual Defendants (**HALL-F** and **HALL-S**) is a citizen and resident of Horry County, South Carolina.

57. Under the facts in the instant case, each of the individual Defendants (**HALL-F** and **HALL-S**) violated South Carolina's prohibition against *Defamation [Slander Per Se]*, wherein, there was:

- a. a false and defamatory statement by each of the individual Defendants (**HALL-F** and **HALL-S**) concerning **Plaintiff**;
- b. an unprivileged publication by each of the individual Defendants (**HALL-F** and **HALL-S**) to a neighbor third parties;
- c. fault on each of the individual Defendants' (**HALL-F** and **HALL-S**) part in publishing the statement; and
- d. actionability of the statement irrespective of special harm.

58. More specifically, after March 26, 2005, **HALL-F** and **HALL-S** each published statements to neighbors, by means of spoken words, concerning **Plaintiff**, to wit: while **HALL-F** was on his property, **Plaintiff** attacked **HALL-F** with a knife, for which **HALL-S** had to strike **Plaintiff**. *After considering* the social station of the

parties in the community, the current standards of moral and social conduct prevalent therein, and the business, profession or calling of the parties, each of the published statements referred to herein, by means of spoken words:

- a. is now, and was when spoken, false, and **HALL-F** and **HALL-S** knew each of such statements to be false at the time such statement was spoken.
- b. were untrue, false and defamatory in their nature, where the published words used were reasonably calculated, by taking into consideration all of the facts and circumstances, to produce (1) injury to Plaintiff's reputation and standing in the community; (2) embarrassment; (3) personal humiliation; (4) mental anguish and suffering; (5) wounded feelings caused by said injury to reputation.
- c. was falsely and maliciously spoken by **HALL-F** and **HALL-S**, without (i) reasonable or probable cause, (ii) privilege, or (iii) legal excuse and for purposes of (i) disparaging the reputation of **Plaintiff**, (ii) exposing **Plaintiff** to public hatred, contempt, ridicule and/or shame, and (iii) depriving **Plaintiff** of the benefits of public confidence, thereby deterring third persons from associating or dealing with him.
- d. contains defamatory matter per se (actionability of the statement irrespective of special harm), since each statement tends to prejudice **Plaintiff** by alleging Plaintiff's commission of a crime of moral turpitude and implicating Plaintiff's unfitness in his business or profession.

59. By reason of the transmission of the statements referred to herein, Plaintiff has suffered great injury and has been damaged as follows:

- a. injury to reputation and standing in the community **in the amount of \$50,000;**

- b. embarrassment **in the amount of \$15,000;**
- c. personal humiliation **in the amount of \$10,000;**
- d. mental anguish and suffering **in the amount of \$25,000;** and
- e. wounded feelings caused by injury to reputation **in the amount of \$5,000.**

60. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of each of the individual Defendants' (**HALL-F** and **HALL-S**) acts;
- b. Nature and extent of the harm to **Plaintiff** that each of the individual Defendants (**HALL-F** and **HALL-S**) caused or intended to cause;
- c. Degree of culpability of each of the individual Defendants (**HALL-F** and **HALL-S**);
- d. Punishment that should be imposed;
- e. awareness or concealment of each of the individual Defendants (**HALL-F** and **HALL-S**);
- f. Existence of similar past conduct;
- g. Likelihood the award will deter each of the individual Defendants (**HALL-F** and **HALL-S**) or others from like conduct;

the actions of each of the individual Defendants (**HALL-F** and **HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

## EIGHTH CLAIM FOR RELIEF – PREMISES LIABILITY

61. Plaintiff's **Eighth Claim for Relief** is a private (civil) cause of action against **HALL-F** and **HALL-S**, arising under South Carolina common law, where, in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for individual Defendants' (**HALL-F** and **HALL-S**) *Premises Liability*, all as more fully set forth below.
62. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.
63. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, each of the individual Defendants (**HALL-F** and **HALL-S**) is a citizen and resident of Horry County, South Carolina.
64. Under the facts in the instant case, each of the individual Defendants (**HALL-F** and **HALL-S**) has incurred *Premises Liability*, where the owner or occupier of property owes to an invitee the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of this duty. More specifically:
- a. there exists a legal duty of care owed by each of the individual Defendants [**HALL-F** (as owner) and **HALL-S** (as occupier)] to **Plaintiff**; and
  - b. a breach of said duty by a deliberate and intentional act (or omission) of by each of the individual Defendants (**HALL-F** and **HALL-S**); where
  - c. **Plaintiff** suffered an injury or damages and
  - d. such breach was the actual and proximate cause of Plaintiff's injury and damages.



65. A legal duty of care is owed by each of the individual Defendants [**HALL-F (as owner)** and **HALL-S (as occupier)**] to Plaintiff. Under the facts in the instant case:
- a. Plaintiff was a business invitee because Plaintiff entered the premises of each of the individual Defendants (**HALL-F** and **HALL-S**) at the express invitation of **HALL-F (as owner)**, and more specifically, because Plaintiff entered the premises upon a matter of mutual interest or advantage to each of the individual Defendants [**HALL-F (as owner)** and **HALL-S (as occupier)**].
  - b. Because Plaintiff is a business invitee, there exists an utmost duty of care - an implied representation, assurance, or understanding that each of the individual Defendants [**HALL-F (as owner)** and **HALL-S (as occupier)**] has taken reasonable care to prepare the premises and make them safe for Plaintiff's reception, where the degree of care required is commensurate with the particular circumstances involved, including the age, disability, impairment, or capacity of Plaintiff (invitee). Further, each of the individual Defendants (**HALL-F** and **HALL-S**) has a duty to warn Plaintiff (invitee) of any unsafe conditions of which said defendant knows and of which Plaintiff (invitee) is reasonably unaware. Each of said defendants also have a duty to warn Plaintiff (invitee) [or take other reasonable steps to protect him] if said defendant has reason to expect Plaintiff's attention may be distracted so that he will not discover what is obvious (or fail to protect himself against it). Finally, each of the individual Defendants (**HALL-F** and **HALL-S**) has an active or affirmative duty to refrain from any act which may make Plaintiff's use of the premises dangerous (or result in injury to him), including protection from criminal attacks.

- c. A breach of said duty exists when it is foreseeable that conduct of each of the individual Defendants (**HALL-F** and **HALL-S**) may likely injure **Plaintiff**, the person to whom such duty is owed. Here, Plaintiff's injury was caused by the specific conduct of each of the individual Defendants (**HALL-F** and **HALL-S**), who in concert created the condition. Specifically, **HALL-F** invited **Plaintiff** onto his property and while **HALL-S** distracted Plaintiff by committing an assault (with a deadly weapon, i.e., shotgun) on **Plaintiff**, **HALL-F** struck Plaintiff, resulting in severe physical, emotional, and economic injuries to **Plaintiff**.

66. **Said breach was the actual and proximate cause of Plaintiff's injury and damages.** Under the facts in the instant case, as a direct, natural, and proximate cause of the breach of a duty owed to **Plaintiff** by each of the individual Defendants [**HALL-F** (as owner) and **HALL-S** (as occupier)], **Plaintiff** has suffered the following actual damages.

- a. Past and future medical expenses **in the amount of \$10,000**, including expenses for physicians, hospital, & medicines, physical therapy expenses, rehabilitation expenses, and transportation expenses connected with medical treatment;
- b. future damages resulting from permanent injuries **in the amount of \$50,000**;
- c. loss of family services **in the amount of \$10,000**;
- d. alteration of lifestyle **in the amount of \$5,000**;
- e. psychological trauma **in the amount of \$10,000**;
- f. mental anguish **in the amount of \$10,000**;
- g. mental distress **in the amount of \$10,000**;
- h. apprehension **in the amount of \$10,000**;

- i. anxiety in the amount of \$10,000;
  - j. emotional injury in the amount of \$5,000;
  - k. psychological injury in the amount of \$5,000;
  - l. depression in the amount of \$5,000;
  - m. sexual dysfunction in the amount of \$5,000;
  - n. pain and suffering in the amount of \$30,000, based on (i) the nature and extent of the injuries and the suffering occasioned by them and its duration or prospective duration; the age, health, habits, and condition of the **Plaintiff** before the injury as compared with his condition afterwards; the Plaintiff's use of sedatives and other drugs to relieve pain and their effect; and
  - o. loss of enjoyment of life in the amount of \$5,000.
67. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:
- a. Character of each of the individual Defendants' (**HALL-F** and **HALL-S**) acts;
  - b. Nature and extent of the harm to **Plaintiff** that each of the individual Defendants (**HALL-F** and **HALL-S**) caused or intended to cause;
  - c. Degree of culpability of that each of the individual Defendants (**HALL-F** and **HALL-S**);
  - d. Punishment that should be imposed;
  - e. awareness or concealment of each of the individual Defendants (**HALL-F** and **HALL-S**);
  - f. Existence of similar past conduct;

g. Likelihood the award will deter each of the individual Defendants (**HALL-F** and **HALL-S**) or others from like conduct;

the actions of each of the individual Defendants (**HALL-F** and **HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### **NINTH CLAIM FOR RELIEF**

#### **TEMPORARY, INTERLOCUTORY, AND PERMANENT INJUNCTIVE RELIEF**

68. Plaintiff's **Ninth Claim for Relief** is a private (civil) cause of action in equity against **HALL-F** and **HALL-S**, wherein **Plaintiff** seeks *Temporary, Interlocutory, and Permanent Injunctive Relief*, all as more fully set forth below.

69. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.

70. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, each of the individual Defendants (**HALL-F** and **HALL-S**) is a citizen and resident of Horry County, South Carolina.

71. Under the facts in the instant case, to protect the physical well-being of **Plaintiff** and his family, **Plaintiff** seeks temporary, interlocutory, and permanent injunctive relief, to wit: a judgment in favor of **Plaintiff** and against each of the individual Defendants (**HALL-F** and **HALL-S**) for a temporary injunction (until Plaintiff's right to a permanent injunction is determined by a trial on the merits) prohibiting each of said defendants from coming within 50 feet of any of Plaintiff's family, including Elci Johnson (Spouse), Ruminingsih (Mother-In-Law), Sarah Johnson (Daughter), Holly

Johnson (Daughter) and Plaintiff, Dr. Brad Johnson, and on final trial, a permanent injunction prohibiting each of the individual Defendants (**HALL-F** and **HALL-S**) from coming within 50 feet of any of Plaintiff's family, including Elci Johnson (Spouse), Ruminingsih (Mother-In-Law), Sarah Johnson (Daughter), Holly Johnson (Daughter) and Plaintiff, Dr. Brad Johnson.

WHEREFORE, **Plaintiff** respectfully requests that the court award the following DAMAGES and EQUITABLE RELIEF:

1. With respect to the **First Claim for Relief**:

- a. Past and future medical expenses **in the amount of \$10,000;**
- b. future damages resulting from permanent injuries **in the amount of \$50,000;**
- c. loss of family services **in the amount of \$10,000;**
- d. alteration of lifestyle **in the amount of \$5,000;**
- e. psychological trauma **in the amount of \$10,000;**
- f. mental anguish **in the amount of \$10,000;**
- g. mental distress **in the amount of \$10,000;**
- h. apprehension **in the amount of \$10,000;**
- i. anxiety **in the amount of \$10,000;**
- j. emotional injury **in the amount of \$5,000;**
- k. psychological injury **in the amount of \$5,000;**
- l. depression **in the amount of \$5,000;**
- m. sexual dysfunction **in the amount of \$5,000;**
- n. pain and suffering **in the amount of \$30,000;** and
- o. loss of enjoyment of life **in the amount of \$5,000.**

p. **Punitive Damages.**

2. With respect to the **Second Claim for Relief:**

- a. Past and future medical expenses **in the amount of \$2,000;**
- b. alteration of lifestyle **in the amount of \$3,000;**
- c. psychological trauma **in the amount of \$5,000;**
- d. mental anguish **in the amount of \$8,000;**
- e. mental distress **in the amount of \$8,000;**
- f. apprehension **in the amount of \$8,000;**
- g. anxiety **in the amount of \$8,000;**
- h. emotional injury **in the amount of \$4,000;**
- i. psychological injury **in the amount of \$4,000;**
- j. depression **in the amount of \$4,000;** and
- k. loss of enjoyment of life **in the amount of \$4,000.**

l. **Punitive Damages.**

3. With respect to the **Third Claim for Relief:**

- a. Past and future medical expenses **in the amount of \$10,000;**
- b. future damages resulting from permanent injuries **in the amount of \$50,000;**
- c. Past and future medical expenses **in the amount of \$2,000;**
- d. medical expenses **in the amount of \$5,000;**
- e. loss of time **in the amount of \$3,000;**
- f. humiliation **in the amount of \$10,000;**
- g. embarrassment **in the amount of \$5,000;**
- h. mental suffering and mental distress **in the amount of \$25,000;**

i. inconvenience **in the amount of \$7,000;** and

j. discomfort **in the amount of \$15,000.**

k. **Punitive Damages.**

4. With respect to the **Fourth Claim for Relief:**

a. Past and future medical expenses **in the amount of \$10,000;**

b. future damages resulting from permanent injuries **in the amount of \$50,000;**

c. loss of family services **in the amount of \$10,000;**

d. alteration of lifestyle **in the amount of \$5,000;**

e. psychological trauma **in the amount of \$10,000;**

f. mental anguish **in the amount of \$10,000;**

g. mental distress **in the amount of \$10,000;**

h. apprehension **in the amount of \$10,000;**

i. anxiety **in the amount of \$10,000;**

j. emotional injury **in the amount of \$5,000;**

k. psychological injury **in the amount of \$5,000;**

l. depression **in the amount of \$5,000;**

m. sexual dysfunction **in the amount of \$5,000;**

n. pain and suffering **in the amount of \$30,000;** and

o. loss of enjoyment of life **in the amount of \$5,000.**

p. **Punitive Damages.**

5. With respect to the **Fifth Claim for Relief:**

a. Actual Damages, which include:

(1) loss of time **in the amount of \$10,000;**

- (2) deprivation of liberty **in the amount of \$15,000;**
- (3) bodily pain **in the amount of \$5,000;**
- (4) injury to fame and reputation **in the amount of \$20,000;** and
- (5) injury to health **in the amount of \$7,000;**
- (6) general impairment of social and mercantile standing **in the amount of \$5,000;**

b. Special damages, which include:

- (1) damages for discomfort **in the amount of \$7,000;**
- (2) deprivation of the society of his family **in the amount of \$10,000;** and
- (3) reasonable attorney fees and other expenses incurred in the prior criminal action **in the amount of \$2,000;**

c. **Punitive Damages.**

6. With respect to the **Sixth Claim for Relief:**

a. Actual Damages, which include:

- (1) loss of time **in the amount of \$10,000;**
- (2) deprivation of liberty **in the amount of \$15,000;**
- (3) bodily pain **in the amount of \$5,000;**
- (4) injury to fame and reputation **in the amount of \$20,000;** and
- (5) injury to health **in the amount of \$7,000;**
- (6) general impairment of social and mercantile standing **in the amount of \$5,000;**

b. Special damages, which include:

- (1) damages for discomfort **in the amount of \$7,000;**



- (2) deprivation of the society of his family **in the amount of \$10,000**; and
- (3) reasonable attorney fees and other expenses incurred in the prior criminal action **in the amount of \$2,000**;

**c. Punitive Damages.**

**7. With respect to the Seventh Claim for Relief:**

- a. injury to reputation and standing in the community **in the amount of \$50,000**;
- b. embarrassment **in the amount of \$15,000**;
- c. personal humiliation **in the amount of \$10,000**;
- d. mental anguish and suffering **in the amount of \$25,000**; and
- e. wounded feelings caused by injury to reputation **in the amount of \$5,000**.

**f. Punitive Damages.**

**8. With respect to the Eighth Claim for Relief:**

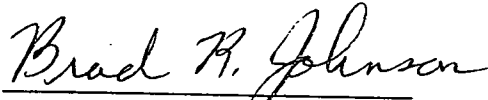
- a. Past and future medical expenses **in the amount of \$10,000**;
- b. future damages resulting from permanent injuries **in the amount of \$50,000**;
- c. loss of family services **in the amount of \$10,000**;
- d. alteration of lifestyle **in the amount of \$5,000**;
- e. psychological trauma **in the amount of \$10,000**;
- f. mental anguish **in the amount of \$10,000**;
- g. mental distress **in the amount of \$10,000**;
- h. apprehension **in the amount of \$10,000**;
- i. anxiety **in the amount of \$10,000**;
- j. emotional injury **in the amount of \$5,000**;
- k. psychological injury **in the amount of \$5,000**;

- l. depression **in the amount of \$5,000;**
  - m. sexual dysfunction **in the amount of \$5,000;**
  - n. pain and suffering **in the amount of \$30,000;** and
  - o. loss of enjoyment of life **in the amount of \$5,000.**
  - p. **Punitive Damages.**
9. With respect to the **Ninth Claim for Relief:**
- a. a judgment in favor of **Plaintiff** and against each of the individual Defendants (**HALL-F** and **HALL-S**) for a temporary injunction (until Plaintiff's right to a permanent injunction is determined by a trial on the merits) prohibiting each of said defendants from coming within 50 feet of any of Plaintiff's family, including Elci Johnson (Spouse), Ruminingsih (Mother-In-Law), Sarah Johnson (Daughter), Holly Johnson (Daughter) and Plaintiff, Dr. Brad Johnson, and on final trial, and
  - b. a permanent injunction prohibiting each of the individual Defendants (**HALL-F** and **HALL-S**) from coming within 50 feet of any of Plaintiff's family, including Elci Johnson (Spouse), Ruminingsih (Mother-In-Law), Sarah Johnson (Daughter), Holly Johnson (Daughter) and Plaintiff, Dr. Brad Johnson.
10. With respect to the **ALL Claims for Relief:**
- a. Grant a trial by jury on all issues so triable;
  - b. Enter a judgment in favor of **Plaintiff** and against the Defendants (**HALL-F** and **HALL-S**), jointly and severally, for reasonable attorneys' fees, costs, and expenses incurred in prosecuting this action.
  - c. Enter a judgment in favor of **Plaintiff** and against the Defendants (**HALL-F** and **HALL-S**), jointly and severally, for pre- and post-judgment interest.

- d. Enter a judgment in favor of **Plaintiff** and against the Defendants (**HALL-F** and **HALL-S**) for such other and further relief as the Court deems just and appropriate.

Respectively submitted this 31<sup>st</sup> day of May, 2005.

Brad R. Johnson, Ph.D., J.D., C.P.A.  
8669 Laurel Woods Drive  
Myrtle Beach, SC 29588  
(843) 661-1427

  
BRAD R. JOHNSON, Plaintiff  
Pro Se

STATE OF SOUTH  
CAROLINA  
COUNTY OF HORRY

DR. BRAD R. JOHNSON,

Plaintiff,

v.

LEWIS W. HALL, and

LEWIS V. HALL,

Defendants.

IN THE COURT OF  
COMMON PLEAS  
FIFTEENTH JUDICIAL  
CIRCUIT

Civil Action No.  
2005-CP-26-2710

MOTION FOR  
LEAVE TO AMEND

FILED  
HORRY COUNTY  
06 NOV 22 AM 11:17  
JELANIE HUGGINS  
CLERK OF COURT

**PLAINTIFF'S MOTION FOR LEAVE TO AMEND PLAINTIFF'S  
ORIGINAL COMPLAINT AND DEMAND FOR JURY TRIAL**

Now comes Plaintiff, BRAD R. JOHNSON, and through his attorney, Stuart M.

Axelrod, moves this honorable Court:

(1) to join **L. W. Hall Enterprises, LLC** and **Cold Air A/C Service, Inc.** as party

Defendants pursuant to SCRCP 19(a).

(2) to amend *Plaintiff's Original Complaint and Demand for Jury Trial*

[hereinafter referred to as "the Complaint"] pursuant to SCRCP 15(a) as follows:

\* *Delete* lines 5 and 6 of Page 5 of the Complaint [Paragraph 4] and

*Substitute* the following in its place.

"at 6984 Woodhaven Drive; Myrtle Beach, SC 29588. **HALL-F** owns 100% of **L. W. Hall Enterprises, LLC** and 80% of **Cold Air A/C Service, Inc.** **L. W. Hall Enterprises, LLC** is a limited liability company organized under the laws of the state of South Carolina with its principal place of business located at 8664 Laurel Woods Drive, Myrtle Beach, SC 29588. **Cold Air A/C Service, Inc.** is a corporation organized under the laws of the state of South Carolina with its principal place of business located at 8664 Laurel Woods Drive, Myrtle Beach, SC 29588. At all times mentioned in this complaint, **HALL-F** was acting in his capacity as agent/servant/employee of **L. W. Hall Enterprises, LLC** and **Cold Air A/C Service, Inc.** Therefore, **L. W. Hall Enterprises** and **Cold Air A/C Service, Inc.** are joint and severally liable for the acts and omissions of **HALL-F** under the theories of non-delegable duty and respondent superior."

*\* Insert the following at the end of Paragraph #5 of the Complaint, page 5.*

**“HALL-S owns 20% of Cold Air AC Service, Inc. At all times mentioned in this complaint, HALL-S was acting in his capacity as agent/servant/employee of L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc. Therefore, L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc. are liable for the acts and omissions of HALL-S under the theories of non-delegable duty and respondent superior.”**

*\* Insert the following at the end of line 20 of the Complaint, page 12*

*[paragraph 17].*

**“L. W. Hall Enterprises, LLC, Cold Air AC Service, Inc. and”**

*\* Delete line 11 of Page 15 of the Complaint [Paragraph 25] and*

*Substitute the following in its place.*

**“S, L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc. arising under South Carolina common law, where in bringing this action, Plaintiff”**

*\* Insert the following at the end of line 17 of the Complaint, page 17*

*[paragraph 31].*

**“L. W. Hall Enterprises, LLC, Cold Air AC Service, Inc. and”**

*\* Delete line 3 of Page 30 of the Complaint [Paragraph 25] and*

*Substitute the following in its place.*

**“F, HALL-S, L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc. arising under South Carolina common law, where in bringing this”**

\* *Delete* from Plaintiff's prayer DAMAGES and EQUITABLE RELIEF,  
beginning on line 8 of Page 35 of the Complaint and ending on line 5 of  
Page 40 of the Complaint, and *Substitute* the following in its place.

1. With respect to the **First Claim for Relief** against **HALL-F and HALL-S, jointly and severally**:
  - a. past and future medical expenses **in the amount of \$250,000**;
  - b. future damages resulting from permanent injuries **in the amount of \$150,000**;
  - c. loss of family services **in the amount of \$100,000**;
  - d. alteration of lifestyle **in the amount of \$500,000**;
  - e. psychological trauma **in the amount of \$100,000**;
  - f. mental anguish **in the amount of \$100,000**;
  - g. mental distress **in the amount of \$100,000**;
  - h. apprehension **in the amount of \$100,000**;
  - i. anxiety **in the amount of \$100,000**;
  - j. emotional injury **in the amount of \$50,000**;
  - k. psychological injury **in the amount of \$50,000**;
  - l. depression **in the amount of \$50,000**;
  - m. sexual dysfunction **in the amount of \$500,000**;
  - n. pain and suffering **in the amount of \$1,000,000**; and
  - o. loss of enjoyment of life **in the amount of \$200,000**.
  - p. **Punitive Damages.**
2. With respect to the **Second Claim for Relief** against **HALL-F, HALL-S, L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc. , jointly and severally**:
  - a. past and future medical expenses **in the amount of \$250,000**;
  - b. alteration of lifestyle **in the amount of \$500,000**;
  - c. psychological trauma **in the amount of \$100,000**;
  - d. mental anguish **in the amount of \$100,000**;
  - e. mental distress **in the amount of \$100,000**;
  - f. apprehension **in the amount of \$100,000**;
  - g. anxiety **in the amount of \$100,000**;
  - h. emotional injury **in the amount of \$50,000**;
  - i. psychological injury **in the amount of \$50,000**;
  - j. depression **in the amount of \$50,000**; and
  - k. loss of enjoyment of life **in the amount of \$200,000**.
  - l. **Punitive Damages.**
3. With respect to the **Third Claim for Relief** against **HALL-F, HALL-S, L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc. , jointly and severally**:
  - a. past and future medical expenses **in the amount of \$250,000**;
  - b. future damages resulting from permanent injuries **in the amount of \$150,000**;
  - c. loss of time **in the amount of \$300,000**;
  - d. humiliation **in the amount of \$50,000**;
  - e. embarrassment **in the amount of \$50,000**;
  - f. mental suffering and mental distress **in the amount of \$50,000**;

- g. inconvenience **in the amount of \$50,000;** and
- h. discomfort **in the amount of \$50,000.**
- i. **Punitive Damages.**
- 4. With respect to the **Fourth Claim for Relief** against **HALL-F, HALL-S, L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc. , jointly and severally:**
  - a. Past and future medical expenses **in the amount of \$250,000;**
  - b. future damages resulting from permanent injuries **in the amount of \$150,000;**
  - c. loss of family services **in the amount of \$100,000;**
  - d. alteration of lifestyle **in the amount of \$500,000;**
  - e. psychological trauma **in the amount of \$100,000;**
  - f. mental anguish **in the amount of \$100,000;**
  - g. mental distress **in the amount of \$100,000;**
  - h. apprehension **in the amount of \$100,000;**
  - i. anxiety **in the amount of \$100,000;**
  - j. emotional injury **in the amount of \$50,000;**
  - k. psychological injury **in the amount of \$50,000;**
  - l. depression **in the amount of \$50,000;**
  - m. sexual dysfunction **in the amount of \$500,000;**
  - n. pain and suffering **in the amount of \$1,000,000;** and
  - o. loss of enjoyment of life **in the amount of \$200,000.**
  - p. **Punitive Damages.**
- 5. With respect to the **Fifth Claim for Relief** against **HALL-F and HALL-S, jointly and severally:**
  - a. Actual Damages, which include:
    - (1) loss of time **in the amount of \$300,000;**
    - (2) deprivation of liberty **in the amount of \$50,000;**
    - (3) bodily pain **in the amount of \$1,000,000;**
    - (4) injury to fame and reputation **in the amount of \$20,000;** and
    - (5) injury to health **in the amount of \$2,000,000;**
    - (6) general impairment of social and mercantile standing **in the amount of \$50,000;**
  - b. Special damages, which include:
    - (1) damages for discomfort **in the amount of \$50,000;**
    - (2) deprivation of the society of his family **in the amount of \$10,000;** and
    - (3) reasonable attorney fees and other expenses incurred in the prior criminal action **in the amount of \$200,000;**
  - c. **Punitive Damages.**
- 6. With respect to the **Sixth Claim for Relief** against **HALL-F and HALL-S, jointly and severally:**
  - a. Actual Damages, which include:
    - (1) loss of time **in the amount of \$300,000;**
    - (2) deprivation of liberty **in the amount of \$50,000;**
    - (3) bodily pain **in the amount of \$1,000,000;**
    - (4) injury to fame and reputation **in the amount of \$20,000;** and
    - (5) injury to health **in the amount of \$2,000,000;**

- (6) general impairment of social and mercantile standing **in the amount of \$50,000;**
  - b. Special damages, which include:
    - (1) damages for discomfort **in the amount of \$50,000;**
    - (2) deprivation of the society of his family **in the amount of \$10,000;** and
    - (3) reasonable attorney fees and other expenses incurred in the prior criminal action **in the amount of \$200,000;**
  - c. **Punitive Damages.**
- 7. With respect to the **Seventh Claim for Relief** against **HALL-F** and **HALL-S**, **jointly and severally:**
  - a. injury to reputation and standing in the community **in the amount of \$50,000;**
  - b. embarrassment **in the amount of \$50,000;**
  - c. personal humiliation **in the amount of \$50,000;**
  - d. mental anguish and suffering **in the amount of \$100,000;** and
  - e. wounded feelings caused by injury to reputation **in the amount of \$50,000.**
  - f. **Punitive Damages.**
- 8. With respect to the **Eighth Claim for Relief** against **HALL-F, HALL-S, L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc. , jointly and severally:**
  - a. Past and future medical expenses **in the amount of \$250,000;**
  - b. future damages resulting from permanent injuries **in the amount of \$150,000;**
  - c. loss of family services **in the amount of \$100,000;**
  - d. alteration of lifestyle **in the amount of \$500,000;**
  - e. psychological trauma **in the amount of \$100,000;**
  - f. mental anguish **in the amount of \$100,000;**
  - g. mental distress **in the amount of \$100,000;**
  - h. apprehension **in the amount of \$100,000;**
  - i. anxiety **in the amount of \$100,000;**
  - j. emotional injury **in the amount of \$50,000;**
  - k. psychological injury **in the amount of \$50,000;**
  - l. depression **in the amount of \$50,000;**
  - m. sexual dysfunction **in the amount of \$500,000;**
  - n. pain and suffering **in the amount of \$1,000,000;** and
  - o. loss of enjoyment of life **in the amount of \$200,000.**
  - p. **Punitive Damages.**

Otherwise, in support of Plaintiff's Motion, Plaintiff states as follows.

- 1. The events that are complained of in the above captioned action occurred at 8664 Laurel Woods Drive, Myrtle Beach, SC 29588.
- 2. It was only recently discovered, through the depositions of Lewis W. Hall and Lewis V. Hall, that:



(a) the principal place of business for **L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.** *is the same as* the principal residence of Lewis V. Hall (i.e., 8664 Laurel Woods Drive, Myrtle Beach, SC 29588).

(b) contrary to Lewis W. Hall's statement to police officers, Lewis W. Hall resides at 6984 Woodhaven Drive; Myrtle Beach, SC 29588, not at 8664 Laurel Woods Drive, Myrtle Beach, SC 29588.

(c) **L. W. Hall Enterprises, LLC** owns the property located at 8664 Laurel Woods Drive, Myrtle Beach, SC 29588.

3. This motion is made without dilatory intent.
4. On information and belief, Defendants will not be prejudiced by the grant of this motion.
5. On Friday, November 17, 2006, this motion (in proposed form) was faxed to the attorney's office for each defendant. Defendants were asked if they had any objections to this motion. As yet, no response from either defendant has been received.

### ARGUMENT

**SCRCP 19(a) [Persons to Be Joined if Feasible]** provides:

"A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties . . ."

Accordingly, based upon the facts in the instant case, the joinder of **L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.** as party defendants (1) will not deprive the court of jurisdiction and (2) must be joined in this action in order to afford plaintiff complete relief.

SCRCP 15(a) [Amendments] provides:

" . . . a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party."

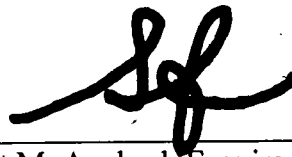
Accordingly, based upon the facts in the instant case, justice requires that plaintiff be allowed to amend his complaint, the amendment of which will not prejudice the defendants.

WHEREFORE, based on the foregoing, Plaintiff requests that this Court grant Plaintiff leave:

(1) to join **L. W. Hall Enterprises, LLC** and **Cold Air A/C Service, Inc.** as party defendants pursuant to SCRCP 19(a).

(2) to amend *Plaintiff's Original Complaint and Demand for Jury Trial* pursuant to SCRCP 15(a) as provided above.

Dated: November 22, 2006



---

Stuart M. Axelrod, Esquire ID#7072

Stuart M. Axelrod, Esquire ID#7072  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
(843) 916-9311 (Fax)  
Attorney for Plaintiff

State of South Carolina  
County of Horry

In the Court of Common Pleas  
Fifteenth Judicial Circuit

Brad R Johnson  
Plaintiff(s)

1/2005 CP-26- 2710

Vs

ORDER

Lewis W Hall  
Defendant(s)

IT IS ORDERED that the MOTION BE STRUCK FROM THE ACTIVE motion calendar for the following reason(s):

PLTFFS MOTIONS TO COMPEL — GRANTED WITH CONSENT OF  
Defendants. Both Defendants will verify interrog. w/  
10 days.

ATTY SMITH'S MOTION TO QUASH ALL HIS PENDING FILED IN THIS CASE  
IS GRANTED EFFECTIVE IMMEDIATELY. ATTY SMITH TO SUBMIT  
FORMAL ORDER ON THIS ISSUE ONLY WITHIN 10 DAYS.

PLAINTIFF'S MOTION TO AMEND <sup>TO ADD NEW PARTY(S)</sup> IS GRANTED BUT PLAINTIFF IS  
10 ADDITIONAL DAYS TO CONSIDER THE ISSUE AND WILL NOTIFY COURT

IT IS ORDERED that the within entitled MOTION(S) be: HIS INTENT.

1. Continued upon the request of the \_\_\_\_\_ until the \_\_\_\_\_

Reason: \_\_\_\_\_

2. Transferred to the Jury/Non-Jury Calendar.

3. Other: \_\_\_\_\_

Conway, South Carolina

02/16, 2007

Atty S Axelrod

Presiding Circuit Judge

Atty J F Nettles

Atty S Michael Smith

STATE OF SOUTH  
CAROLINA  
COUNTY OF HORRY

IN THE COURT OF  
COMMON PLEAS  
CIVIL ACTION NO.  
2005-CP-26-2710

DR. BRAD R. JOHNSON,

Plaintiff,

v.

LEWIS W. HALL, and

LEWIS V. HALL,

L. W. HALL ENTERPRISES, LLC, and

COLD AIR AC SERVICE, INC.,

Defendants.

FIRST AMENDED COMPLAINT  
JURY TRIAL DEMANDED

**FIRST AMENDED COMPLAINT AND**  
**DEMAND FOR JURY TRIAL**

1. PLAINTIFF, Dr. Brad R. Johnson (hereinafter referred to as **Plaintiff**), for its complaint against each of the individual Defendants [Defendant Mr. Lewis W. Hall (hereinafter referred to as **HALL-F**) and Defendant Mr. Lewis V. Hall (hereinafter referred to as **HALL-S**)] and each of the entity Defendants [**L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.**], alleges on knowledge with respect to himself and his own conduct, and upon the basis of information and belief as to all other matters, as follows.

**NATURE OF THE ACTION**

2. This action *arises* out of a **conspiracy** executed by the individual Defendants (**HALL-F** and **HALL-S**) to invite **Plaintiff** onto the premises of defendants for the sole purpose of committing an assault and battery (with a deadly weapon, i.e., shotgun) on **Plaintiff**, resulting in severe physical, emotional, and economic injury to

HORRY COUNTY  
07 MAY 18 AM 11:00  
MELANIE HUGGINS  
CLERK OF COURT

**Plaintiff**. Specifically, this action is brought under South Carolina common law, wherein **Plaintiff** alleges more specifically that:

- a. [**First Claim for Relief – Civil Conspiracy**] in violation of South Carolina common law, individual Defendants (**HALL-F** and **HALL-S**), as **persons**, each conducted or participated in the conduct of a **CIVIL CONSPIRACY**, to wit: to invite **Plaintiff** onto the premises of defendants for the sole purpose of committing an assault and battery (with a deadly weapon, i.e., shotgun) on **Plaintiff**, resulting in severe physical, emotional, and economic injury to **Plaintiff**.
- b. [**Second Claim for Relief – Assault**] in violation of South Carolina common law, individual Defendant (**HALL-S**), as a **person**, committed **ASSAULT** on **Plaintiff**, resulting in severe emotional and economic injury to **Plaintiff**. That is, after being invited onto the premises of defendants by **HALL-F**, as **Plaintiff** abruptly changed direction and headed for the street (because he sensed danger), **HALL-S**, standing directly in front of **Plaintiff** (about 3 feet away), first pointed a single barrel shotgun at **Plaintiff**'s stomach and then raised the shotgun to **Plaintiff**'s face, saying "Do you want some of this?"
- c. [**Third Claim for Relief – False Imprisonment**] in violation of South Carolina common law, individual Defendant (**HALL-S**), as a **person**, committed **FALSE IMPRISONMENT** on **Plaintiff**, resulting in severe emotional and economic injury to **Plaintiff**. That is, as **Plaintiff** abruptly changed direction and headed for the street (because he sensed danger, after being invited onto the premises of defendants by **HALL-F**), **Plaintiff** was falsely imprisoned by **HALL-S**, wherein

**HALL-S**, standing directly in front of Plaintiff (about 3 feet away), first pointed a single barrel shotgun at Plaintiff's stomach and then raised the shotgun to Plaintiff's face, saying "Do you want some of this?"

- d. [**Fourth Claim for Relief – Battery**] in violation of South Carolina common law, individual Defendant (**HALL-F**), as a **person**, committed BATTERY on **Plaintiff**, resulting in severe physical, emotional, and economic injury to **Plaintiff**. That is, after being invited onto the premises of defendants by **HALL-F**, as **HALL-S** stood directly in front of **Plaintiff** (about 3 feet away), holding Plaintiff's attention by pointing a single barrel shotgun at Plaintiff's face, **HALL-F** struck **Plaintiff**.
- e. [**Fifth Claim for Relief – Malicious Prosecution**] in violation of South Carolina common law, individual Defendants (**HALL-F** and **HALL-S**), as **persons**, committed MALICIOUS PROSECUTION on **Plaintiff**, resulting in severe emotional and economic injury to **Plaintiff**, to wit: the institution and continuation of a judicial proceeding for criminal trespass by each of the individual Defendants (**HALL-F** and **HALL-S**) with malice and without probable cause.
- f. [**Sixth Claim for Relief – Abuse of Process**] in violation of South Carolina common law, individual Defendants (**HALL-F** and **HALL-S**), as **persons**, committed ABUSE OF PROCESS on **Plaintiff**, resulting in severe emotional and economic injury to **Plaintiff**, to wit: **HALL-F** and **HALL-S** each (i) had an *ulterior purpose* for carrying out the legal process that was intended to be used for

the protection of private property and (ii) willfully committed an act in the use of said process that was not proper in the regular conduct of such proceeding.

- g. [**Seventh Claim for Relief – Defamation (Slander) Per Se**] in violation of South Carolina common law, individual Defendants (**HALL-F** and **HALL-S**), as **persons**, committed DEFAMATION (SLANDER) PER SE against **Plaintiff**, resulting in severe emotional and economic injury to **Plaintiff**, that is, **HALL-F** and **HALL-S** each published statements to neighbors, by means of spoken words, concerning **Plaintiff**, to wit: while **HALL-F** was on his property, **Plaintiff** attacked **HALL-F** with a knife, for which **HALL-S** had to physically strike **Plaintiff**.
- h. [**Eighth Claim for Relief – Premises Liability**] under South Carolina common law of PREMISES LIABILITY, individual Defendants [**HALL-F (as occupier)** and **HALL-S (as occupier)**] and entity Defendants [**L. W. Hall Enterprises, LLC (as owner)** and **Cold Air AC Service, Inc. (as occupier)**] are each liable to **Plaintiff** (an invitee) for injuries resulting from the breach of a duty, where the owner or occupier of property owes to an invitee the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of this duty.
- i. [**Ninth Claim for Relief – Temporary, Interlocutory, and Permanent Injunctive Relief**] under South Carolina common law, to protect the physical well-being of **Plaintiff** and his family, **Plaintiff** seeks temporary, interlocutory, and permanent injunctive relief to prohibit each of the individual Defendants (**HALL-F** and **HALL-S**) from coming within 50 feet of any of **Plaintiff's** family,

including Elci Johnson (Spouse), Ruminingsih (Mother-In-Law), Sarah Johnson (Daughter), Holly Johnson (Daughter) and Plaintiff, Dr. Brad Johnson.

### PARTIES

3. **Plaintiff. Plaintiff**, Brad R. Johnson, Ph.D., J.D., C.P.A., is (and was) at all times relevant to the allegations of this Complaint in the business of rendering services as an employee as an Associate Professor of Accounting and Law in the School of Business at Francis Marion University in Florence, SC. Also, at all times relevant to the allegations of this Complaint, **Plaintiff** is (and was) domiciled in and a resident of the State of South Carolina, more particularly residing at 8669 Laurel Woods Drive, Myrtle Beach, SC 29588. **Plaintiff** is 55 years-old, 5'5" tall and weighs 140 pounds.
4. **HALL-F**. Defendant, Mr. Lewis W. Hall, is (and was) at all times mentioned herein domiciled in and a resident of the State of South Carolina, more particularly residing at 6984 Woodhaven Drive; Myrtle Beach, SC 29588. **HALL-F** owns 100% of **L. W. Hall Enterprises, LLC** and 80% of **Cold Air AC Service, Inc.** **L. W. Hall Enterprises, LLC** is a limited liability company organized under the laws of the state of South Carolina with its principal place of business located at 8664 Laurel Woods Drive, Myrtle Beach, SC 29588. **Cold Air AC Service, Inc.** is a corporation organized under the laws of the state of South Carolina with its principal place of business located at 8664 Laurel Woods Drive, Myrtle Beach, SC 29588. At all times mentioned in this complaint, **HALL-F** was acting in his capacity as agent/servant/employee of **L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.** Therefore, **L. W. Hall Enterprises** and **Cold Air AC Service, Inc.** are joint and



severally liable for the acts and omissions of **HALL-F** under the theories of non-delegable duty and respondent superior.

5. **HALL-S**. Defendant, Mr. Lewis V. Hall, is (and was) at all times mentioned herein domiciled in and a resident of the State of South Carolina, more particularly residing at 8664 Laurel Woods Drive, Myrtle Beach, SC 29588, which is the principal place of business of **L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.** **HALL-S** is 38 years-old, 5'9" tall and weighs 160 pounds. **HALL-S** is employed by Cold Air AC Service, Inc. [(843) 602-6095 or (843) 215- 6088]. **HALL-S** owns 20% of **Cold Air AC Service, Inc.** At all times mentioned in this complaint, **HALL-S** was acting in his capacity as agent/servant/employee of **L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.** Therefore, **L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.** are liable for the acts and omissions of **HALL-S** under the theories of non-delegable duty and respondent superior.

#### FACTUAL BASIS FOR CLAIMS

6. Prior to March 26, 2005, **HALL-F** and **HALL-S** have objected to Plaintiff's personal use of his property, as follows.
- a. Plaintiff's operation in Horry County, SC of his 1994 Nissan Pickup with out-of-state (Oregon) tags. For more than 1 year, **HALL-F** and **HALL-S** have been reporting to the Horry County Auditor's Office that Plaintiff is driving his 1994 Nissan Pickup illegally [with out-of-state (Oregon) tags]. More recently, **HALL-F** and **HALL-S** have resorted to taking pictures of Dr. Johnson and his wife.
  - b. Plaintiff's parking of 2 trailers and 1 bus on Plaintiff's far driveway, previously constructed by Plaintiff's adjacent neighbor.

- c. Plaintiff's placement of two storage buildings on Plaintiff's property.
7. Events of March 26, 2005.
- a. Plaintiff and his wife (Elci), Mother-in-Law and daughter Sarah (4) worked on fixing a fence. After they were done with fixing the fence, Plaintiff backed his trailer onto his driveway. In so doing, his truck blocked half the street.
  - b. HALL-F (driver) and HALL-S (passenger) drove out of their driveway. Instead of turning right to go out of the subdivision, HALL-F intentionally turned left to confront Plaintiff.
  - c. In his vehicle, HALL-F pulled up alongside Plaintiff who was standing in the street and HALL-S told Plaintiff not to block the street. After Plaintiff examined the street, Plaintiff told HALL-S that they had enough room to pass.
  - d. In the vehicle, while HALL-F and HALL-S safely passed, HALL-S flipped Plaintiff the bird and Plaintiff responded by flipping it (the bird) right back.
  - e. When HALL-F returned and drove into his driveway, Plaintiff yelled to HALL-F from across the street "Can we talk about this?"
  - f. While inside the car, HALL-F motioned with his arm and hand for Plaintiff to come on over.
  - g. HALL-F drove further into his driveway, got out of his car, and walked back toward the street.
  - h. Plaintiff again said: "I'd like to talk about this." At that point, HALL-F again motioned with his arms and hands for Plaintiff to come on over and said: "Let's go into the backyard."

- i. **Plaintiff** then walked diagonally across the street toward **HALL-F**. **Plaintiff** exclaimed to **HALL-F**: "I think we can work this out."
- j. At that point, **HALL-F** again motioned with his arm and hands to come on over and again repeated: "Let's go into the backyard."
- k. **Plaintiff**, walking diagonally, had moved onto the grass just across the street and before the driveway when **Plaintiff** sensed that something was wrong. At that point, **Plaintiff** abruptly turned 100 degrees and headed back to the street.
- l. However, after **Plaintiff** had turned, **HALL-S** was standing directly in front of **Plaintiff**, about 3 feet with a shotgun pointed at **Plaintiff's** stomach. The shotgun was a single barrel shotgun (i) with a sleek black barrel (one inch in diameter) and (ii) with a brown pump, which had U-shaped grooves circumventing the pump.
- m. **HALL-S** then raised the shotgun to **Plaintiff's** face and said: "Do you want some of this?"
- n. At that point, while **Plaintiff** was fixated on the sleek black shotgun barrel (one inch in diameter) with the brown pump, **HALL-F** came from behind and struck **Plaintiff**, causing **Plaintiff** to blackout.
- o. **Plaintiff's** spouse (Elci) observed that **Plaintiff** came home, went inside, asked for the telephone, got the telephone and went outside again, but **Plaintiff** has no recollection of these events.
- p. **Plaintiff's** first remembrances after being struck by **HALL-F** are single snapshot-type images of being surrounded by police, forced to the ground, and handcuffed.
- q. **Plaintiff** then remembers that the police Mirandized **Plaintiff** and walked a handcuffed **Plaintiff** across the street to show **Plaintiff** a pair of dark glasses and

- a knife lying on the driveway. **Plaintiff** admitted that the glasses were his glasses, but **Plaintiff** said the knife was not his knife.
- r. The police again Mirandized **Plaintiff** and asked **Plaintiff** why he came over to the property of **HALL-F**. At that time, **Plaintiff** could not recall, but said “to talk.”
- s. **Plaintiff** was un-handcuffed and placed in an ambulance to receive medical attention for his head and neck injuries. As **Plaintiff** was receiving medical attention, **Plaintiff**’s pre-strike memory returned. **Plaintiff** immediately reported his recollections to the police, but to no avail. The police said that they had already determined what they were going to do with the current situation, that is: to issue **Plaintiff** a ticket for criminal trespass, wherein each party could tell his respective story to the judge on the trial date.
- t. **Plaintiff** argued that he was on the grassy area immediately adjacent to the street and not on the property of **HALL-F**. The police officer responded by saying that he considered the grassy area to be part of the property of **HALL-F** and that **Plaintiff** was trespassing if he was on the grassy area without permission.
- u. **Plaintiff** was taken to the ER at South Strand Hospital where he was treated for head and neck injuries. While at the hospital, **Plaintiff** called for the police for the purpose of pressing charges against his assailants (**HALL-F** and **HALL-S**). The same 4 police officers who were at the scene responded, but they denied **Plaintiff**’s request, saying that there was no evidence of a shotgun. In addition, these 4 police officers also refused to even ask **HALL-F** or **HALL-S** if either one of them owned or was in possession or control of a shotgun. One officer said

ownership of shotguns was common in South Carolina. However, as noted, shotguns have distinctive features [e.g., sleek black barrel (one inch in diameter) with a brown pump, which had U-shaped grooves circumventing the pump].

**8. Events Post-March 26, 2005. After March 26, 2005:**

- a. **HALL-F** and **HALL-S** each spoke with neighbors about the facts of the instant case and told said neighbors that while **HALL-F** was on his property, **Plaintiff** had attacked **HALL-F** with a knife, for which **HALL-S** had to physically subdue **Plaintiff**.
- b. **Plaintiff** has received (and continues to receive) medical attention for severe physical, emotional, and economic injuries resulting from the conduct of each of the individual Defendants (**HALL-F** or **HALL-S**).

**FIRST CLAIM FOR RELIEF – CIVIL CONSPIRACY**

9. **Plaintiff's First Claim for Relief** is a private (civil) cause of action against **HALL-F** and **HALL-S**, arising under South Carolina common law, where in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for individual Defendants' (**HALL-F** and **HALL-S**) violation of the South Carolina prohibition against *Civil Conspiracy* and where **Plaintiff** alleges more specifically that **HALL-F** and **HALL-S**, as **persons**, each conducted or participated in the conduct of a **CIVIL CONSPIRACY**, that is: to invite **Plaintiff** onto the premises of Defendants for the sole purpose of committing an assault and battery (with a deadly weapon, i.e., shotgun) on **Plaintiff**, resulting in

severe physical, emotional, and economic injuries to **Plaintiff**, all as more fully set forth below.

10. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.

11. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina.

Further, each of the individual Defendants (**HALL-F** and **HALL-S**) is a citizen and resident of Horry County, South Carolina.

12. Under the facts in the instant case, each of the individual Defendants (**HALL-F** and **HALL-S**) violated South Carolina's prohibition against *Civil Conspiracy*, wherein:

- a. **HALL-F** and **HALL-S** combined in joint assent,
- b. for the purpose of injuring **Plaintiff**,
- c. which, in fact, caused damage to **Plaintiff**, directly, naturally, and proximately resulting from the overt acts in pursuance of the conspiracy and pursuant to the common design of the conspiracy.

13. **Joint assent.** Under the facts in the instant case, that **HALL-F** and **HALL-S** combined in joint assent is inferred from the nature of the acts and concert of the action.

14. **For the purpose of injuring Plaintiff.** Under the facts in the instant case, that **HALL-F** and **HALL-S** combined in joint assent for the purpose of injuring **Plaintiff** is inferred from the nature of the acts and concert of the action.

15. **Actual damage to Plaintiff.** Under the facts in the instant case, as a direct, natural, and proximate cause, resulting from the overt acts in pursuance of the conspiracy (that is, having **HALL-F** invite **Plaintiff** onto the premises of Defendants while

**HALL-S** commits and an assault (with a deadly weapon, i.e., shotgun) on **Plaintiff**), and pursuant to the common design of the conspiracy [that is, to invite **Plaintiff** onto the premises of Defendants for the sole purpose of committing an assault and battery (with a deadly weapon, i.e., shotgun) on **Plaintiff**], **Plaintiff** has suffered the following actual damages.

- a. Past and future medical expenses **in the amount of \$250,000**, including expenses for physicians, hospital, medicines, physical therapy expenses, rehabilitation expenses, and transportation expenses connected with medical treatment;
- b. future damages resulting from permanent injuries **in the amount of \$150,000**;
- c. loss of family services **in the amount of \$100,000**;
- d. alteration of lifestyle **in the amount of \$500,000**;
- e. psychological trauma **in the amount of \$100,000**;
- f. mental anguish **in the amount of \$100,000**;
- g. mental distress **in the amount of \$100,000**;
- h. apprehension **in the amount of \$100,000**;
- i. anxiety **in the amount of \$100,000**;
- j. emotional injury **in the amount of \$50,000**;
- k. psychological injury **in the amount of \$50,000**;
- l. depression **in the amount of \$50,000**;
- m. sexual dysfunction **in the amount of \$500,000**;
- n. pain and suffering **in the amount of \$1,000,000**, based on (i) the nature and extent of the injuries and the suffering occasioned by them and its duration or prospective duration; the age, health, habits, and condition of the **Plaintiff** before

the injury as compared with his condition afterwards; the Plaintiff's use of sedatives and other drugs to relieve pain and their effect; and

o. loss of enjoyment of life **in the amount of \$200,000.**

16. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of each of the individual Defendants' (**HALL-F** and **HALL-S**) acts;
- b. Nature and extent of the harm to **Plaintiff** that each of the individual Defendants (**HALL-F** and **HALL-S**) caused or intended to cause;
- c. Degree of culpability of each of the individual Defendants (**HALL-F** and **HALL-S**);
- d. Punishment that should be imposed;
- e. awareness or concealment of each of the individual Defendants (**HALL-F** and **HALL-S**);
- f. Existence of similar past conduct;
- g. Likelihood the award will deter each of the individual Defendants (**HALL-F** and **HALL-S**) or others from like conduct;

the actions of each of the individual Defendants (**HALL-F** and **HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### **SECOND CLAIM FOR RELIEF – ASSAULT**

17. Plaintiff's **Second Claim for Relief** is a private (civil) cause of action against **L. W. Hall Enterprises, LLC, Cold Air AC Service, Inc.** and **HALL-S**, arising under



South Carolina common law, where in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for the violation by **HALL-S** of South Carolina prohibition against *Assault*, all as more fully set forth below.

18. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.

19. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, each of the individual Defendants (**HALL-F** and **HALL-S**) and each of the entity Defendants (**L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.**) are citizens and residents of Horry County, South Carolina.

20. More specifically, under the facts in the instant case, the individual Defendant (**HALL-S**) violated South Carolina's prohibition against *Assault*, to wit:

- a. Conduct of **HALL-S**, which placed **Plaintiff**
- b. in reasonable fear of bodily harm.

21. **Conduct of HALL-S.** After being invited on Defendants' property, as **Plaintiff** abruptly changed direction and headed for the street (because he sensed danger), **HALL-S** stood directly in front of **Plaintiff** (about 3 feet away) and first pointed a single barrel shotgun at Plaintiff's stomach and then raised the shotgun to Plaintiff's face, saying "Do you want some of this?"

22. **Reasonable fear of bodily harm.** The intentional pointing of a single barrel shotgun at Plaintiff's stomach and then face by **HALL-S** (combined with **HALL-S**' question

“Do you want some of this?”) elicited in **Plaintiff** a reasonable fear of severe bodily harm.

23. **Actual damage to Plaintiff.** Under the facts in the instant case, as a direct, natural, and proximate cause, resulting from the conduct of **HALL-S** [to wit: after being invited on Defendants’ property by **HALL-F**, as **Plaintiff** abruptly changed direction and headed for the street (because he sensed danger), **HALL-S** stood directly in front of **Plaintiff** (about 3 feet away) and first pointed a single barrel shotgun at Plaintiff’s stomach and then raised the shotgun to Plaintiff’s face, saying “Do you want some of this?”] **Plaintiff** has suffered the following actual damages.

- a. Past and future medical expenses **in the amount of \$250,000**, including expenses for physicians, hospital, medicines, physical therapy expenses, rehabilitation expenses, and transportation expenses connected with medical treatment;
- b. alteration of lifestyle **in the amount of \$500,000**;
- c. psychological trauma **in the amount of \$100,000**;
- d. mental anguish **in the amount of \$100,000**;
- e. mental distress **in the amount of \$100,000**;
- f. apprehension **in the amount of \$100,000**;
- g. anxiety **in the amount of \$100,000**;
- h. emotional injury **in the amount of \$50,000**;
- i. psychological injury **in the amount of \$50,000**;
- j. depression **in the amount of \$50,000**; and
- k. loss of enjoyment of life **in the amount of \$200,000**.

24. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of the acts of the individual Defendant (**HALL-S**);
- b. Nature and extent of the harm to **Plaintiff** that individual Defendant (**HALL-S**) caused or intended to cause;
- c. Degree of culpability of individual Defendant (**HALL-S**);
- d. Punishment that should be imposed;
- e. awareness or concealment of individual Defendant (**HALL-S**);
- f. Existence of similar past conduct;
- g. Likelihood the award will deter the individual Defendant (**HALL-S**) or others from like conduct;

the actions of individual Defendant (**HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### **THIRD CLAIM FOR RELIEF – FALSE IMPRISONMENT**

25. Plaintiff's **Third Claim for Relief** is a private (civil) cause of action against **HALL-S, L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc.** arising under South Carolina common law, where in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for the violation by **HALL-S** of the South Carolina prohibition against *False Imprisonment*, all as more fully set forth below.

26. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.
27. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, each of the individual Defendants (**HALL-F** and **HALL-S**) and each of the entity Defendants (**L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.**) are citizens and residents of Horry County, South Carolina.
28. More specifically, under the facts in the instant case, the individual Defendant (**HALL-S**) violated South Carolina's prohibition against *False Imprisonment* (that is, deprivation of a person's liberty or freedom of locomotion without lawful justification), to wit:
- a. **HALL-S restrained Plaintiff.** In particular, as **Plaintiff** approach **HALL-F** (after being invited onto the premises of Defendants by **HALL-F**, **Plaintiff** abruptly changed direction and headed for the street (because he sensed danger). At that point, **Plaintiff** was *falsely imprisoned* by **HALL-S**, wherein **HALL-S**, standing directly in front of **Plaintiff** (about 3 feet away), unlawfully first pointed a single barrel shotgun at **Plaintiff's** stomach and then raised the shotgun to **Plaintiff's** face, saying "Do you want some of this?"
  - b. The restraint was intentional in that **HALL-S** intended to cause **Plaintiff's** confinement.
  - c. The restraint was unlawful. That is, there was not sufficient legal cause for the confinement of **Plaintiff** by **HALL-S**.
29. **Actual damage to Plaintiff.** Under the facts in the instant case, as a direct, natural, and proximate cause, resulting from the deprivation of **Plaintiff's** liberty and freedom

of locomotion by **HALL-S** without lawful justification, **Plaintiff** has suffered the following actual damages:

- a. medical expenses **in the amount of \$250,000**;
- b. loss of time **in the amount of \$300,000**;
- c. humiliation **in the amount of \$50,000**;
- d. embarrassment **in the amount of \$50,000**;
- e. mental suffering and mental distress **in the amount of \$50,000**;
- f. inconvenience **in the amount of \$50,000**; and
- g. discomfort **in the amount of \$50,000**.

30. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of the acts of the individual Defendant (**HALL-S**);
- b. Nature and extent of the harm to **Plaintiff** that individual Defendant (**HALL-S**) caused or intended to cause;
- c. Degree of culpability of individual Defendant (**HALL-S**);
- d. Punishment that should be imposed;
- e. awareness or concealment of individual Defendant (**HALL-S**);
- f. Existence of similar past conduct;
- g. Likelihood the award will deter the individual Defendant (**HALL-S**) or others from like conduct;

the actions of individual Defendant (**HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### FOURTH CLAIM FOR RELIEF – BATTERY

31. Plaintiff's **Fourth Claim for Relief** is a private (civil) cause of action against **L. W. Hall Enterprises, LLC, Cold Air AC Service, Inc. and HALL-F**, arising under South Carolina common law, where in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for **HALL-F's** violation of the South Carolina prohibition against *Battery*, all as more fully set forth below.
32. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.
33. **Jurisdiction.** The Plaintiff is a citizen and resident of Horry County, South Carolina. Further, each of the individual Defendants (**HALL-F** and **HALL-S**) and each of the entity Defendants (**L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.**) are citizens and residents of Horry County, South Carolina.
34. More specifically, under the facts in the instant case, the individual Defendant (**HALL-S**) violated South Carolina's prohibition against *Battery*, to wit: As **HALL-S**, stood directly in front of **Plaintiff** (about 3 feet away), holding Plaintiff's attention by pointing a single barrel shotgun at Plaintiff's face, **HALL-F** committed a battery upon **Plaintiff** (that is, an unlawful touching or striking of **Plaintiff** by **HALL-F**, done by **HALL-F** with the intention of bringing about a harmful or offensive contact, which was not legally consented to by **Plaintiff**, and not otherwise privileged), resulting in severe physical, emotional, and economic injury to **Plaintiff**.

35. **Actual damage to Plaintiff.** Under the facts in the instant case, as a direct, natural, and proximate cause, resulting from the conduct of **HALL-F** [that is, a battery upon **Plaintiff**, to wit: after being invited onto the premises of Defendants by **HALL-F** and as **HALL-S** stood directly in front of **Plaintiff** (about 3 feet away), holding **Plaintiff's** attention by pointing a single barrel shotgun at **Plaintiff's** face, **HALL-F** struck **Plaintiff**], **Plaintiff** has suffered the following actual damages.

- a. Past and future medical expenses **in the amount of \$250,000**, including expenses for physicians, hospital, medicines, physical therapy expenses, rehabilitation expenses, and transportation expenses connected with medical treatment;
- b. future damages resulting from permanent injuries **in the amount of \$150,000**;
- c. loss of family services **in the amount of \$100,000**;
- d. alteration of lifestyle **in the amount of \$500,000**;
- e. psychological trauma **in the amount of \$100,000**;
- f. mental anguish **in the amount of \$100,000**;
- g. mental distress **in the amount of \$100,000**;
- h. apprehension **in the amount of \$100,000**;
- i. anxiety **in the amount of \$100,000**;
- j. emotional injury **in the amount of \$50,000**;
- k. psychological injury **in the amount of \$50,000**;
- l. depression **in the amount of \$50,000**;
- m. sexual dysfunction **in the amount of \$500,000**;
- n. pain and suffering **in the amount of \$1,000,000**, based on (i) the nature and extent of the injuries and the suffering occasioned by them and its duration or

- prospective duration; the age, health, habits, and condition of the **Plaintiff** before the injury as compared with his condition afterwards; the Plaintiff's use of sedatives and other drugs to relieve pain and their effect; and
- o. loss of enjoyment of life **in the amount of \$200,000.**

36. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of the acts of the individual Defendant (**HALL-F**);
- b. Nature and extent of the harm to **Plaintiff** that individual Defendant (**HALL-F**) caused or intended to cause;
- c. Degree of culpability of individual Defendant (**HALL-F**);
- d. Punishment that should be imposed;
- e. awareness or concealment of individual Defendant (**HALL-F**);
- f. Existence of similar past conduct;
- g. Likelihood the award will deter the individual Defendant (**HALL-F**) or others from like conduct;

the actions of individual Defendant (**HALL-F**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### **FIFTH CLAIM FOR RELIEF – MALICIOUS PROSECUTION**

37. Plaintiff's **Fifth Claim for Relief** is a private (civil) cause of action against **HALL-F** and **HALL-S**, arising under South Carolina common law, where in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees



are incurred by **Plaintiff**) for individual Defendants' (**HALL-F** and **HALL-S**) violation of the South Carolina prohibition against *Malicious Prosecution*, all as more fully set forth below.

38. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.

39. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, the individual Defendants (**HALL-F** and **HALL-S**) are citizens and residents of Horry County, South Carolina.

40. More specifically, under the facts in the instant case, each of the individual Defendants (**HALL-F** and **HALL-S**) violated South Carolina's prohibition against *Malicious Prosecution* (that is, the institution of a judicial proceeding for criminal trespass with malice and without probable cause), to wit:

- a. the institution and continuation of original criminal judicial proceedings;
- b. at the instance of each of the individual Defendants (**HALL-F** and **HALL-S**);
- c. the termination of such proceedings in Plaintiff's favor;
- d. malice of Defendants (**HALL-F** and **HALL-S**) in instituting the proceedings;
- e. lack of probable cause for the criminal judicial proceeding of criminal trespass;
- and
- f. resulting injury and damage.

41. **The institution and continuation of an original criminal judicial proceeding by HALL-F and HALL-S.** Under the facts in the instant case, **Plaintiff** was charged with criminal trespass, where liability is imputed to **HALL-F** and **HALL-S**, who falsely instigated and set such legal proceeding in motion.

42. **Want of probable cause.** Under the facts in the instant case, since, at the time he instituted the prosecution, each of the individual Defendants (**HALL-F** and **HALL-S**) knew that **HALL-F** had invited **Plaintiff** on his property, there was *want of probable cause* to believe that **Plaintiff** was an adult trespasser [that is, there was an absence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of each of the individual Defendants (**HALL-F** and **HALL-S**), that **Plaintiff** was guilty of trespassing].
43. **Malice on the part of each of the individual Defendants (**HALL-F** and **HALL-S**) in instituting the proceedings.** Under the facts in the instant case, malice is inferred from a lack of probable cause. But also, from a heart devoid of social duty and fatally bent upon mischief; from a depraved spirit; and with wickedness, hatred, and a formed purpose and design to do a wrongful act without just cause or excuse or legal provocation; each of the individual Defendants (**HALL-F** and **HALL-S**) willfully, deliberately and intentionally falsely accused **Plaintiff** of criminal trespass, all the time knowing that **HALL-F** had invited **Plaintiff** onto the premises of Defendants. Accordingly, said prosecution was instituted and continued by each of the individual Defendants (**HALL-F** and **HALL-S**) primarily because of a purpose other than that of bringing **Plaintiff** to justice.
44. **Resulting injury and damage.** Under the facts in the instant case, as a direct, natural, and proximate cause, resulting from the wrongful conduct of each of the individual Defendants (**HALL-F** and **HALL-S**) [that is, the institution of a judicial proceeding for criminal trespass by each of the individual Defendants (**HALL-F** and **HALL-S**)

with malice and without probable cause], **Plaintiff** has suffered the following damages.

a. Actual Damages, which include:

- (1) loss of time **in the amount of \$300,000;**
- (2) deprivation of liberty **in the amount of \$50,000;**
- (3) bodily pain **in the amount of \$1,000,000;**
- (4) injury to fame and reputation **in the amount of \$20,000;** and
- (5) injury to health **in the amount of \$2,000,000;**
- (6) general impairment of social and mercantile standing **in the amount of \$50,000;**

b. Special damages, which include:

- (1) damages for discomfort **in the amount of \$50,000;**
- (2) deprivation of the society of his family **in the amount of \$10,000;** and
- (3) reasonable attorney fees and other expenses incurred in the prior criminal action **in the amount of \$200,000;**

45. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of each of the individual Defendants' (**HALL-F** and **HALL-S**) acts;
- b. Nature and extent of the harm to **Plaintiff** that each of the individual Defendants (**HALL-F** and **HALL-S**) caused or intended to cause;
- c. Degree of culpability of each of the individual Defendants (**HALL-F** and **HALL-S**);
- d. Punishment that should be imposed;

- e. awareness or concealment of each of the individual Defendants (**HALL-F** and **HALL-S**);
- f. Existence of similar past conduct;
- g. Likelihood the award will deter each of the individual Defendants (**HALL-F** and **HALL-S**) or others from like conduct;

the actions of each of the individual Defendants (**HALL-F** and **HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### **SIXTH CLAIM FOR RELIEF – ABUSE OF PROCESS**

46. **Plaintiff's Sixth Claim for Relief** is a private (civil) cause of action against **HALL-F** and **HALL-S**, arising under South Carolina common law, where, in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for individual Defendants' (**HALL-F** and **HALL-S**) violation of the South Carolina prohibition against *Abuse of Process*, all as more fully set forth below.
47. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.
48. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, each of the individual Defendants (**HALL-F** and **HALL-S**) is a citizen and resident of Horry County, South Carolina.

49. Under the facts in the instant case, each of the individual Defendants (**HALL-F** and **HALL-S**) violated South Carolina's prohibition against *Abuse of Process*, wherein:
- a. **HALL-F** and **HALL-S** each had an *ulterior purpose* for carrying out the legal process that was intended to be used for the protection of private property and
  - b. **HALL-F** and **HALL-S** each willfully committed an act in the use of said process that was not proper in the regular conduct of the proceeding.
50. **Ulterior Purpose.** **HALL-F** and **HALL-S** each participated in the execution of a legal process that was intended to be used for the protection of private property for the ulterior purpose of evading liability for their own criminal acts. Here, the objective to be gained was the evasion of criminal liability with respect to the defendants' **hideous and cowardly conspiracy** to invite **Plaintiff** onto defendants' property for the sole purpose of committing an assault and battery (with a deadly weapon, i.e., shotgun) on **Plaintiff**, resulting in severe physical, emotional, and economic injuries to **Plaintiff**, where such objective is not legitimate in the use of the particular process.
51. **Improper act in the use of the process.** **HALL-F** and **HALL-S** each willfully committed an act [the planting of the knife after the 911 call and defendants' continued allegation that **Plaintiff** attacked **HALL-F** with said knife] which was not proper in the regular conduct of a legal proceeding to protect private property.
52. **Resulting injury and damage.** Under the facts in the instant case, as a direct, natural, and proximate cause, resulting from the wrongful conduct of each of the individual Defendants (**HALL-F** and **HALL-S**) [that is, **HALL-F** and **HALL-S** each (i) had an *ulterior purpose* for carrying out the legal process that was intended to be used for the

protection of private property and (ii) willfully committed an act in the use of said process that was not proper in the regular conduct of such proceeding], **Plaintiff** has suffered the following damages.

a. Actual Damages, which include:

- (1) loss of time **in the amount of \$300,000;**
- (2) deprivation of liberty **in the amount of \$50,000;**
- (3) bodily pain **in the amount of \$1,000,000;**
- (4) injury to fame and reputation **in the amount of \$20,000;** and
- (5) injury to health **in the amount of \$2,000,000;**
- (6) general impairment of social and mercantile standing **in the amount of \$50,000;**

b. Special damages, which include:

- (1) damages for discomfort **in the amount of \$50,000;**
- (2) deprivation of the society of his family **in the amount of \$10,000;** and
- (3) reasonable attorney fees and other expenses incurred in the prior criminal action **in the amount of \$200,000;**

53. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of each of the individual Defendants' (**HALL-F** and **HALL-S**) acts;
- b. Nature and extent of the harm to **Plaintiff** that each of the individual Defendants (**HALL-F** and **HALL-S**) caused or intended to cause;
- c. Degree of culpability of each of the individual Defendants (**HALL-F** and **HALL-S**);

- d. Punishment that should be imposed;
- e. awareness or concealment of each of the individual Defendants (**HALL-F** and **HALL-S**);
- f. Existence of similar past conduct;
- g. Likelihood the award will deter each of the individual Defendants (**HALL-F** and **HALL-S**) or others from like conduct;

the actions of each of the individual Defendants (**HALL-F** and **HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### **SEVENTH CLAIM FOR RELIEF – DEFAMATION (SLANDER) PER SE**

54. **Plaintiff's Seventh Claim for Relief** is a private (civil) cause of action against **HALL-F** and **HALL-S**, arising under South Carolina common law, where in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for individual Defendants' (**HALL-F** and **HALL-S**) violation of the South Carolina prohibition against *Defamation (Slander Per Se)*, all as more fully set forth below.
55. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.
56. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, each of the individual Defendants (**HALL-F** and **HALL-S**) is a citizen and resident of Horry County, South Carolina.

57. Under the facts in the instant case, each of the individual Defendants (**HALL-F** and **HALL-S**) violated South Carolina's prohibition against *Defamation* [Slander Per Se], wherein, there was:

- a. a false and defamatory statement by each of the individual Defendants (**HALL-F** and **HALL-S**) concerning **Plaintiff**;
- b. an unprivileged publication by each of the individual Defendants (**HALL-F** and **HALL-S**) to a neighbor third parties;
- c. fault on each of the individual Defendants' (**HALL-F** and **HALL-S**) part in publishing the statement; and
- d. actionability of the statement irrespective of special harm.

58. More specifically, after March 26, 2005, **HALL-F** and **HALL-S** each published statements to neighbors, by means of spoken words, concerning **Plaintiff**, to wit: while **HALL-F** was on the premises of Defendants, **Plaintiff** attacked **HALL-F** with a knife, for which **HALL-S** had to strike **Plaintiff**. *After considering* the social station of the parties in the community, the current standards of moral and social conduct prevalent therein, and the business, profession or calling of the parties, each of the published statements referred to herein, by means of spoken words:

- a. is now, and was when spoken, false, and **HALL-F** and **HALL-S** knew each of such statements to be false at the time such statement was spoken.
- b. were untrue, false and defamatory in their nature, where the published words used were reasonably calculated, by taking into consideration all of the facts and circumstances, to produce (1) injury to **Plaintiff**'s reputation and standing in the



community; (2) embarrassment; (3) personal humiliation; (4) mental anguish and suffering; (5) wounded feelings caused by said injury to reputation.

c. was falsely and maliciously spoken by **HALL-F** and **HALL-S**, without (i) reasonable or probable cause, (ii) privilege, or (iii) legal excuse and for purposes of (i) disparaging the reputation of **Plaintiff**, (ii) exposing **Plaintiff** to public hatred, contempt, ridicule and/or shame, and (iii) depriving **Plaintiff** of the benefits of public confidence, thereby deterring third persons from associating or dealing with him.

d. contains defamatory matter per se (actionability of the statement irrespective of special harm), since each statement tends to prejudice **Plaintiff** by alleging **Plaintiff's** commission of a crime of moral turpitude and implicating **Plaintiff's** unfitness in his business or profession.

59. By reason of the transmission of the statements referred to herein, **Plaintiff** has suffered great injury and has been damaged as follows:

- a. injury to reputation and standing in the community **in the amount of \$50,000;**
- b. embarrassment **in the amount of \$50,000;**
- c. personal humiliation **in the amount of \$50,000;**
- d. mental anguish and suffering **in the amount of \$100,000;** and
- e. wounded feelings caused by injury to reputation **in the amount of \$50,000.**

60. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of each of the individual Defendants' (**HALL-F** and **HALL-S**) acts;

- b. Nature and extent of the harm to **Plaintiff** that each of the individual Defendants (**HALL-F** and **HALL-S**) caused or intended to cause;
  - c. Degree of culpability of each of the individual Defendants (**HALL-F** and **HALL-S**);
  - d. Punishment that should be imposed;
  - e. awareness or concealment of each of the individual Defendants (**HALL-F** and **HALL-S**);
  - f. Existence of similar past conduct;
  - g. Likelihood the award will deter each of the individual Defendants (**HALL-F** and **HALL-S**) or others from like conduct;
- the actions of each of the individual Defendants (**HALL-F** and **HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### **EIGHTH CLAIM FOR RELIEF – PREMISES LIABILITY**

61. Plaintiff's **Eighth Claim for Relief** is a private (civil) cause of action against **HALL-F**, **HALL-S**, **L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.** arising under South Carolina common law, where in bringing this action, **Plaintiff** seeks to recover compensatory damages and punitive damages, along with the costs of this suit, interest and reasonable attorneys' fees (if attorneys' fees are incurred by **Plaintiff**) for individual Defendants' (**HALL-F** and **HALL-S**) and entity Defendants' (**L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.**) *Premises Liability*, all as more fully set forth below.

62. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.

63. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina.

Further, each of the individual Defendants (**HALL-F** and **HALL-S**) and each of the entity Defendants (**L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.**) are citizens and residents of Horry County, South Carolina.

64. Under the facts in the instant case, each of the individual Defendants (**HALL-F** and **HALL-S**) and each of the entity Defendants (**L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.**) have incurred *Premises Liability*, where the owner or occupier of property owes to an invitee the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of this duty.

More specifically:

- a. there exists a legal duty of care owed by each of the individual Defendants [**HALL-F (as occupier)** and **HALL-S (as occupier)**] and each of the entity Defendants [**L. W. Hall Enterprises, LLC (as owner)** and **Cold Air AC Service, Inc. (as occupier)**] to **Plaintiff**; and
- b. a breach of said duty by a deliberate and intentional act (or omission) of or by each of the individual Defendants (**HALL-F** and **HALL-S**); where
- c. **Plaintiff** suffered an injury or damages and
- d. such breach was the actual and proximate cause of **Plaintiff's** injury and damages.

65. A legal duty of care is owed by each of the individual Defendants [**HALL-F (as occupier)** and **HALL-S (as occupier)**] and by each of the entity Defendants [**L. W.**

**Hall Enterprises, LLC (as owner) and Cold Air AC Service, Inc. (as occupier)] to**

**Plaintiff.** Under the facts in the instant case:

- a. **Plaintiff** was a business invitee because **Plaintiff** entered the premises of each of the individual Defendants (**HALL-F** and **HALL-S**) each of the entity Defendants (**L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.**) at the express invitation of **HALL-F (as occupier)**, and more specifically, because **Plaintiff** entered the premises upon a matter of mutual interest or advantage to each of the individual Defendants [**HALL-F (as occupier)** and **HALL-S (as occupier)**] and to each of the entity Defendants [**L. W. Hall Enterprises, LLC (as owner)** and **Cold Air AC Service, Inc. (as occupier)**].
- b. Because **Plaintiff** is a business invitee, there exists an utmost duty of care - an implied representation, assurance, or understanding that each of the individual Defendants [**HALL-F (as occupier)** and **HALL-S (as occupier)**] and each of the entity Defendants [**L. W. Hall Enterprises, LLC (as owner)** and **Cold Air AC Service, Inc. (as occupier)**] have taken reasonable care to prepare the premises and make them safe for **Plaintiff's** reception, where the degree of care required is commensurate with the particular circumstances involved, including the age, disability, impairment, or capacity of **Plaintiff** (invitee). Further, each of the individual Defendants (**HALL-F** and **HALL-S**) has a duty to warn **Plaintiff** (invitee) of any unsafe conditions of which said defendant knows and of which **Plaintiff** (invitee) is reasonably unaware. Each of said defendants also has a duty to warn **Plaintiff** (invitee) [or take other reasonable steps to protect him] if said defendant has reason to expect **Plaintiff's** attention may be distracted so that he

will not discover what is obvious (or fail to protect himself against it). Finally, each of the individual Defendants (**HALL-F** and **HALL-S**) has an active or affirmative duty to refrain from any act which may make Plaintiff's use of the premises dangerous (or result in injury to him), including protection from criminal attacks.

- c. A breach of said duty exists when it is foreseeable that conduct of each of the individual Defendants (**HALL-F** and **HALL-S**) may likely injure **Plaintiff**, the person to whom such duty is owed. Here, Plaintiff's injury was caused by the specific conduct of each of the individual Defendants (**HALL-F** and **HALL-S**), who in concert created the condition. Specifically, **HALL-F** invited **Plaintiff** onto the premises of Defendants and while **HALL-S** distracted Plaintiff by committing an assault (with a deadly weapon, i.e., shotgun) on **Plaintiff**, **HALL-F** struck Plaintiff, resulting in severe physical, emotional, and economic injuries to **Plaintiff**.

**66. Said breach was the actual and proximate cause of Plaintiff's injury and damages.** Under the facts in the instant case, as a direct, natural, and proximate cause of the breach of a duty owed to **Plaintiff** by each of the individual Defendants [**HALL-F (as occupier)** and **HALL-S (as occupier)**] and by each of the entity Defendants [**L. W. Hall Enterprises, LLC (as owner)** and **Cold Air AC Service, Inc. (as occupier)**], **Plaintiff** has suffered the following actual damages.

- a. Past and future medical expenses **in the amount of \$250,000**, including expenses for physicians, hospital, & medicines, physical therapy expenses, rehabilitation expenses, and transportation expenses connected with medical treatment;

- b. future damages resulting from permanent injuries **in the amount of \$150,000;**
- c. loss of family services **in the amount of \$100,000;**
- d. alteration of lifestyle **in the amount of \$500,000;**
- e. psychological trauma **in the amount of \$100,000;**
- f. mental anguish **in the amount of \$100,000;**
- g. mental distress **in the amount of \$100,000;**
- h. apprehension **in the amount of \$100,000;**
- i. anxiety **in the amount of \$100,000;**
- j. emotional injury **in the amount of \$50,000;**
- k. psychological injury **in the amount of \$50,000;**
- l. depression **in the amount of \$50,000;**
- m. sexual dysfunction **in the amount of \$500,000;**
- n. pain and suffering **in the amount of \$1,000,000**, based on (i) the nature and extent of the injuries and the suffering occasioned by them and its duration or prospective duration; the age, health, habits, and condition of the **Plaintiff** before the injury as compared with his condition afterwards; the Plaintiff's use of sedatives and other drugs to relieve pain and their effect; and
- o. loss of enjoyment of life **in the amount of \$200,000.**

67. **Punitive Damages.** Based upon the facts of the instant case and more specifically, based upon the:

- a. Character of each of the individual Defendants' (**HALL-F** and **HALL-S**) acts;
- b. Nature and extent of the harm to **Plaintiff** that each of the individual Defendants (**HALL-F** and **HALL-S**) caused or intended to cause;

- c. Degree of culpability of that each of the individual Defendants (**HALL-F** and **HALL-S**);
  - d. Punishment that should be imposed;
  - e. awareness or concealment of each of the individual Defendants (**HALL-F** and **HALL-S**);
  - f. Existence of similar past conduct;
  - g. Likelihood the award will deter each of the individual Defendants (**HALL-F** and **HALL-S**) or others from like conduct;
- the actions of each of the individual Defendants (**HALL-F** and **HALL-S**) were committed with an actual and deliberate intention to cause harm to **Plaintiff**, thereby constituting willful or wanton conduct and accordingly justify the awarding of exemplary and punitive damages.

#### **NINTH CLAIM FOR RELIEF**

##### **TEMPORARY, INTERLOCUTORY, AND PERMANENT INJUNCTIVE RELIEF**

68. Plaintiff's **Ninth Claim for Relief** is a private (civil) cause of action in equity against **HALL-F** and **HALL-S**, wherein **Plaintiff** seeks *Temporary, Interlocutory, and Permanent Injunctive Relief*, all as more fully set forth below.
69. **Plaintiff** repeats and re-alleges each of the allegations contained in paragraphs 3 through 8 as if fully set forth herein.
70. **Jurisdiction.** The **Plaintiff** is a citizen and resident of Horry County, South Carolina. Further, each of the individual Defendants (**HALL-F** and **HALL-S**) is a citizen and resident of Horry County, South Carolina.

71. Under the facts in the instant case, to protect the physical well-being of **Plaintiff** and his family, **Plaintiff** seeks temporary, interlocutory, and permanent injunctive relief, to wit: a judgment in favor of **Plaintiff** and against each of the individual Defendants (**HALL-F** and **HALL-S**) for a temporary injunction (until Plaintiff's right to a permanent injunction is determined by a trial on the merits) prohibiting each of said defendants from coming within 50 feet of any of Plaintiff's family, including Elci Johnson (Spouse), Ruminingsih (Mother-In-Law), Sarah Johnson (Daughter), Holly Johnson (Daughter) and Plaintiff, Dr. Brad Johnson, and on final trial, a permanent injunction prohibiting each of the individual Defendants (**HALL-F** and **HALL-S**) from coming within 50 feet of any of Plaintiff's family, including Elci Johnson (Spouse), Ruminingsih (Mother-In-Law), Sarah Johnson (Daughter), Holly Johnson (Daughter) and Plaintiff, Dr. Brad Johnson.

WHEREFORE, **Plaintiff** respectfully requests that the court award the following DAMAGES and EQUITABLE RELIEF:

1. With respect to the **First Claim for Relief** against **HALL-F** and **HALL-S**, jointly and severally:
  - a. past and future medical expenses **in the amount of \$250,000;**
  - b. future damages resulting from permanent injuries **in the amount of \$150,000;**
  - c. loss of family services **in the amount of \$100,000;**
  - d. alteration of lifestyle **in the amount of \$500,000;**
  - e. psychological trauma **in the amount of \$100,000;**
  - f. mental anguish **in the amount of \$100,000;**
  - g. mental distress **in the amount of \$100,000;**



- h. apprehension **in the amount of \$100,000;**
  - i. anxiety **in the amount of \$100,000;**
  - j. emotional injury **in the amount of \$50,000;**
  - k. psychological injury **in the amount of \$50,000;**
  - l. depression **in the amount of \$50,000;**
  - m. sexual dysfunction **in the amount of \$500,000;**
  - n. pain and suffering **in the amount of \$1,000,000; and**
  - o. loss of enjoyment of life **in the amount of \$200,000.**
  - p. **Punitive Damages.**
2. With respect to the **Second Claim for Relief** against **HALL-F, HALL-S, L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc. , jointly and severally:**
- a. past and future medical expenses **in the amount of \$250,000;**
  - b. alteration of lifestyle **in the amount of \$500,000;**
  - c. psychological trauma **in the amount of \$100,000;**
  - d. mental anguish **in the amount of \$100,000;**
  - e. mental distress **in the amount of \$100,000;**
  - f. apprehension **in the amount of \$100,000;**
  - g. anxiety **in the amount of \$100,000;**
  - h. emotional injury **in the amount of \$50,000;**
  - i. psychological injury **in the amount of \$50,000;**
  - j. depression **in the amount of \$50,000; and**
  - k. loss of enjoyment of life **in the amount of \$200,000.**
  - l. **Punitive Damages.**

3. With respect to the **Third Claim for Relief** against **HALL-F, HALL-S, L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc. , jointly and severally:**
- a. past and future medical expenses in the amount of \$250,000;
  - b. future damages resulting from permanent injuries in the amount of \$150,000;
  - c. loss of time in the amount of \$300,000;
  - d. humiliation in the amount of \$50,000;
  - e. embarrassment in the amount of \$50,000;
  - f. mental suffering and mental distress in the amount of \$50,000;
  - g. inconvenience in the amount of \$50,000; and
  - h. discomfort in the amount of \$50,000.
  - i. **Punitive Damages.**
4. With respect to the **Fourth Claim for Relief** against **HALL-F, HALL-S, L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc. , jointly and severally:**
- a. Past and future medical expenses in the amount of \$250,000;
  - b. future damages resulting from permanent injuries in the amount of \$150,000;
  - c. loss of family services in the amount of \$100,000;
  - d. alteration of lifestyle in the amount of \$500,000;
  - e. psychological trauma in the amount of \$100,000;
  - f. mental anguish in the amount of \$100,000;
  - g. mental distress in the amount of \$100,000;
  - h. apprehension in the amount of \$100,000;
  - i. anxiety in the amount of \$100,000;
  - j. emotional injury in the amount of \$50,000;

- k. psychological injury in the amount of \$50,000;
  - l. depression in the amount of \$50,000;
  - m. sexual dysfunction in the amount of \$500,000;
  - n. pain and suffering in the amount of \$1,000,000; and
  - o. loss of enjoyment of life in the amount of \$200,000.
  - p. **Punitive Damages.**
5. With respect to the **Fifth Claim for Relief** against **HALL-F** and **HALL-S**, jointly and severally:
- a. Actual Damages, which include:
    - (1) loss of time in the amount of \$300,000;
    - (2) deprivation of liberty in the amount of \$50,000;
    - (3) bodily pain in the amount of \$1,000,000;
    - (4) injury to fame and reputation in the amount of \$20,000; and
    - (5) injury to health in the amount of \$2,000,000;
    - (6) general impairment of social and mercantile standing in the amount of \$50,000;
  - b. Special damages, which include:
    - (1) damages for discomfort in the amount of \$50,000;
    - (2) deprivation of the society of his family in the amount of \$10,000; and
    - (3) reasonable attorney fees and other expenses incurred in the prior criminal action in the amount of \$200,000;
  - c. **Punitive Damages.**

6. With respect to the **Sixth Claim for Relief** against **HALL-F** and **HALL-S**, jointly and severally:
- a. Actual Damages, which include:
    - (1) loss of time **in the amount of \$300,000**;
    - (2) deprivation of liberty **in the amount of \$50,000**;
    - (3) bodily pain **in the amount of \$1,000,000**;
    - (4) injury to fame and reputation **in the amount of \$20,000**; and
    - (5) injury to health **in the amount of \$2,000,000**;
    - (6) general impairment of social and mercantile standing **in the amount of \$50,000**;
  - b. Special damages, which include:
    - (1) damages for discomfort **in the amount of \$50,000**;
    - (2) deprivation of the society of his family **in the amount of \$10,000**; and
    - (3) reasonable attorney fees and other expenses incurred in the prior criminal action **in the amount of \$200,000**;
  - c. **Punitive Damages.**
7. With respect to the **Seventh Claim for Relief** against **HALL-F** and **HALL-S**, jointly and severally:
- a. injury to reputation and standing in the community **in the amount of \$50,000**;
  - b. embarrassment **in the amount of \$50,000**;
  - c. personal humiliation **in the amount of \$50,000**;
  - d. mental anguish and suffering **in the amount of \$100,000**; and
  - e. wounded feelings caused by injury to reputation **in the amount of \$50,000**.

f. **Punitive Damages.**

8. With respect to the **Eighth Claim for Relief** against **HALL-F, HALL-S, L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.** , jointly and severally:

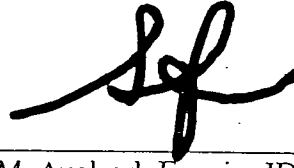
- a. Past and future medical expenses **in the amount of \$250,000;**
- b. future damages resulting from permanent injuries **in the amount of \$150,000;**
- c. loss of family services **in the amount of \$100,000;**
- d. alteration of lifestyle **in the amount of \$500,000;**
- e. psychological trauma **in the amount of \$100,000;**
- f. mental anguish **in the amount of \$100,000;**
- g. mental distress **in the amount of \$100,000;**
- h. apprehension **in the amount of \$100,000;**
- i. anxiety **in the amount of \$100,000;**
- j. emotional injury **in the amount of \$50,000;**
- k. psychological injury **in the amount of \$50,000;**
- l. depression **in the amount of \$50,000;**
- m. sexual dysfunction **in the amount of \$500,000;**
- n. pain and suffering **in the amount of \$1,000,000;** and
- o. loss of enjoyment of life **in the amount of \$200,000.**
- p. **Punitive Damages.**

9. With respect to the **Ninth Claim for Relief:**

- a. a judgment in favor of **Plaintiff** and against each of the individual Defendants (**HALL-F** and **HALL-S**) for a temporary injunction (until Plaintiff's right to a permanent injunction is determined by a trial on the merits) prohibiting each of

- said defendants from coming within 50 feet of any of Plaintiff's family, including Elci Johnson (Spouse), Ruminingsih (Mother-In-Law), Sarah Johnson (Daughter), Holly Johnson (Daughter) and Plaintiff, Dr. Brad Johnson, and on final trial, and
- b. a permanent injunction prohibiting each of the individual Defendants (**HALL-F** and **HALL-S**) from coming within 50 feet of any of Plaintiff's family, including Elci Johnson (Spouse), Ruminingsih (Mother-In-Law), Sarah Johnson (Daughter), Holly Johnson (Daughter) and Plaintiff, Dr. Brad Johnson.
10. With respect to the ALL Claims for Relief:
- a. Grant a trial by jury on all issues so triable;
- b. Enter a judgment in favor of **Plaintiff** and against each of the individual Defendants (**HALL-F** and **HALL-S**) and each of the entity Defendants (**L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.**), jointly and severally, for reasonable attorneys' fees, costs, and expenses incurred in prosecuting this action.
- c. Enter a judgment in favor of **Plaintiff** and against each of the individual Defendants (**HALL-F** and **HALL-S**) and each of the entity Defendants (**L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.**), jointly and severally, for pre- and post-judgment interest.
- d. Enter a judgment in favor of **Plaintiff** and against each of the individual Defendants (**HALL-F** and **HALL-S**) and each of the entity Defendants (**L. W. Hall Enterprises, LLC** and **Cold Air AC Service, Inc.**) for such other and further relief as the Court deems just and appropriate.

Respectively submitted this 18<sup>th</sup> day of May, 2007.

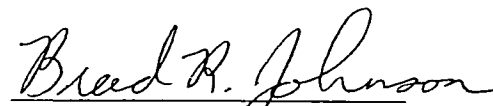


Stuart M. Axelrod, Esquire ID#7072

Stuart M. Axelrod, Esquire ID#7072  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
(843) 916-9311 (Fax)  
Attorney for Plaintiff

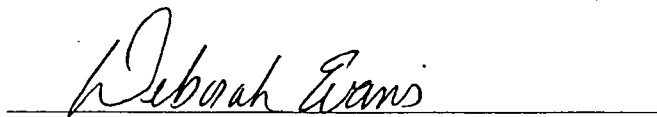
VERIFICATION

Dr. Brad R. Johnson, first being duly sworn, deposes and says that he has read the foregoing *First Amended Complaint and Demand for Jury Trial* and that the same is true to his own knowledge, except as to those matters alleged therein upon information and belief, and as to those matters, he believes them to be true.

  
BRAD R. JOHNSON, Plaintiff

Brad R. Johnson, Ph.D., J.D.  
8669 Laurel Woods Drive  
Myrtle Beach, SC 29588

Sworn to and subscribed before me this 18<sup>th</sup> day of May, 2007.



Notary Public *for South Carolina*

My Commission Expires: 9-14-2011

Horry County  
07 MAY 18 AM 11:00  
CLERK OF COURT  
JULIANE HUGGINS

STATE OF SOUTH CAROLINA,

COUNTY OF HORRY

IN THE COMMON PLEAS COURT

DR. BRAD R. JOHNSON

Plaintiff

vs.

LEWIS W. HALL AND LEWIS V. HALL  
L. W. HALL ENTERPRISES, LLC COLD  
AIR AC SERVICE, INC.

Defendant

AFFIDAVIT

OF SERVICE

TIME OF SERVICE: 9:03 AM

CASE # 2005CP262710

PERSONALLY APPEARED BEFORE ME, the undersigned  
deponent, who being duly sworn says that he/she served the  
SUMMONS, FIRST AMENDED COMPLAINT  
in the action on COLD AIR AC SERVICE, INC. , by delivery to

( ) personally;

( ) , the of the party served, and  
a person of discretion residing at the residence of the party served;

( X) LEWIS HALL , the REGISTERED AGENT

of COLD AIR AC SERVICE, INC. ;

and leaving with him/her a copy at PARKING LOT SOCASTEE POST  
OFFICE, HWY. 707  
MYRLE BEACH, SC

in Horry County, South Carolina on the 24th day of MAY 2007,  
at 9:03 o'clock A.M., that deponent knows the person so served , and  
that deponent is not a party of this action, is not less than  
eighteen (18) years of age and has no interest therein or connection  
therewith.

SWORN to and subscribed before me

this 12th day of JUNE , 2007

R-94

  
NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: 9-15-2016

  
JEFFERY BENTON  
DEPUTY SHERIFF



STATE OF SOUTH CAROLINA,

COUNTY OF HORRY

IN THE COMMON PLEAS COURT

DR. BRAD R. JOHNSON

Plaintiff

vs.

LEWIS W. HALL AND LEWIS V. HALL  
L. W. HALL ENTERPRISES, LLC COLD  
AIR AC SERVICE, INC.

Defendant

AFFIDAVIT

OF SERVICE

TIME OF SERVICE: 9 AM

CASE # 2005CP262710

JUN 15 2007  
HORRY COUNTY  
CLERK OF COURT  
07 SEP 28 AM 10:33  
HELMIE HUGGINS

PERSONALLY APPEARED BEFORE ME, the undersigned

deponent, who being duly sworn says that he/she served the

SUMMONS, FORST AMENDED COMPLAINT

in the action on L. W. HALL ENTERPRISES, LLC

, by delivery to

( ) personally;

( ) , the of the party served, and  
a person of discretion residing at the residence of the party served;

( X ) LEWIS HALL , the REGISTERED AGENT

of L. W. HALL ENTERPRISES, LLC ;

and leaving with him/her a copy at

PARKING LOT SOCASTEE POST  
OFFICE-HWY 707, MB, SC

in Horry County, South Carolina on the 24th day of MAY 2007,

at 9:03 o'clock A.M., that deponent knows the person so served , and

that deponent is not a party of this action, is not less than

eighteen (18) years of age and has no interest therein or connection

therewith.

SWORN to and subscribed before me

this 12th day of JUNE , 2007

NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: 9-15-2016

R-95

JEFFERY BENTON  
DEPUTY SHERIFF

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY )

C/A NO.: 2005-CP-26-2710

Dr. Brad R. Johnson, )

Plaintiff, )

vs. )

Lewis W. Hall, Lewis V. Hall, )

L.W. Hall Enterprises, LLC and )

Cold Air AC Service, Inc., )

Defendants. )

**ANSWER OF LEWIS W. HALL,  
LEWIS V. HALL AND  
COLD AIR AC SERVICE, INC.  
TO PLAINTIFF'S  
FIRST AMENDED COMPLAINT**

Defendants Lewis W. Hall, Lewis V. Hall, and Cold Air AC Service, Inc., by and through their undersigned attorneys, answering the First Amended Complaint of the Plaintiff herein, would respond as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in the Plaintiff's First Amended Complaint which is not hereinafter specifically admitted, qualified or explained is denied.

2. These Defendants deny the allegations contained in Paragraph 1 of the Plaintiff's First Amended Complaint.

3. These Defendants deny the allegations contained in Paragraph 2 of the Plaintiff's First Amended Complaint.

4. These Defendants deny the allegations contained in Paragraph 3 of the Plaintiff's First Amended Complaint.

5. These Defendants deny the allegations contained in Paragraph 4 of the Plaintiff's First Amended Complaint.

6. These Defendants deny the allegations contained in Paragraph 5 of the Plaintiff's First Amended Complaint.

7. These Defendants deny the allegations contained in Paragraph 6 of the Plaintiff's First Amended Complaint.

8. These Defendants deny the allegations contained in Paragraph 7 of the Plaintiff's First Amended Complaint.

9. These Defendants deny the allegations contained in Paragraph 8 of the Plaintiff's First Amended Complaint.

10. These Defendants deny the allegations contained in Paragraph 9 of the Plaintiff's First Amended Complaint.

11. These Defendants deny the allegations contained in Paragraph 10 of the Plaintiff's First Amended Complaint.

12. These Defendants deny the allegations contained in Paragraph 11 of the Plaintiff's First Amended Complaint.

13. These Defendants deny the allegations contained in Paragraph 12 of the Plaintiff's First Amended Complaint.

14. These Defendants deny the allegations contained in Paragraph 13 of the Plaintiff's First Amended Complaint.

15. These Defendants deny the allegations contained in Paragraph 14 of the Plaintiff's First Amended Complaint.

16. These Defendants deny the allegations contained in Paragraph 15 of the Plaintiff's First Amended Complaint.

17. These Defendants deny the allegations contained in Paragraph 16 of the Plaintiff's First Amended Complaint.
18. These Defendants deny the allegations contained in Paragraph 17 of the Plaintiff's First Amended Complaint.
19. These Defendants deny the allegations contained in Paragraph 18 of the Plaintiff's First Amended Complaint.
20. These Defendants deny the allegations contained in Paragraph 19 of the Plaintiff's First Amended Complaint.
21. These Defendants deny the allegations contained in Paragraph 20 of the Plaintiff's First Amended Complaint.
22. These Defendants deny the allegations contained in Paragraph 21 of the Plaintiff's First Amended Complaint.
23. These Defendants deny the allegations contained in Paragraph 22 of the Plaintiff's First Amended Complaint.
24. These Defendants deny the allegations contained in Paragraph 23 of the Plaintiff's First Amended Complaint.
25. These Defendants deny the allegations contained in Paragraph 24 of the Plaintiff's First Amended Complaint.
26. These Defendants deny the allegations contained in Paragraph 25 of the Plaintiff's First Amended Complaint.
27. These Defendants deny the allegations contained in Paragraph 26 of the Plaintiff's First Amended Complaint.

28. These Defendants deny the allegations contained in Paragraph 27 of the Plaintiff's First Amended Complaint.

29. These Defendants deny the allegations contained in Paragraph 28 of the Plaintiff's First Amended Complaint.

30. These Defendants deny the allegations contained in Paragraph 29 of the Plaintiff's First Amended Complaint.

31. These Defendants deny the allegations contained in Paragraph 30 of the Plaintiff's First Amended Complaint.

32. These Defendants deny the allegations contained in Paragraph 31 of the Plaintiff's First Amended Complaint.

33. These Defendants deny the allegations contained in Paragraph 32 of the Plaintiff's First Amended Complaint.

34. These Defendants deny the allegations contained in Paragraph 33 of the Plaintiff's First Amended Complaint.

35. These Defendants deny the allegations contained in Paragraph 34 of the Plaintiff's First Amended Complaint.

36. These Defendants deny the allegations contained in Paragraph 35 of the Plaintiff's First Amended Complaint.

37. These Defendants deny the allegations contained in Paragraph 36 of the Plaintiff's First Amended Complaint.

38. These Defendants deny the allegations contained in Paragraph 37 of the Plaintiff's First Amended Complaint.

39. These Defendants deny the allegations contained in Paragraph 38 of the Plaintiff's First Amended Complaint.

40. These Defendants deny the allegations contained in Paragraph 39 of the Plaintiff's First Amended Complaint.

41. These Defendants deny the allegations contained in Paragraph 40 of the Plaintiff's First Amended Complaint.

42. These Defendants deny the allegations contained in Paragraph 41 of the Plaintiff's First Amended Complaint.

43. These Defendants deny the allegations contained in Paragraph 42 of the Plaintiff's First Amended Complaint.

44. These Defendants deny the allegations contained in Paragraph 43 of the Plaintiff's First Amended Complaint.

45. These Defendants deny the allegations contained in Paragraph 44 of the Plaintiff's First Amended Complaint.

46. These Defendants deny the allegations contained in Paragraph 45 of the Plaintiff's First Amended Complaint.

47. These Defendants deny the allegations contained in Paragraph 46 of the Plaintiff's First Amended Complaint.

48. These Defendants deny the allegations contained in Paragraph 47 of the Plaintiff's First Amended Complaint.

49. These Defendants deny the allegations contained in Paragraph 48 of the Plaintiff's First Amended Complaint.

50. These Defendants deny the allegations contained in Paragraph 49 of the Plaintiff's First Amended Complaint.

51. These Defendants deny the allegations contained in Paragraph 50 of the Plaintiff's First Amended Complaint.

52. These Defendants deny the allegations contained in Paragraph 51 of the Plaintiff's First Amended Complaint.

53. These Defendants deny the allegations contained in Paragraph 52 of the Plaintiff's First Amended Complaint.

54. These Defendants deny the allegations contained in Paragraph 53 of the Plaintiff's First Amended Complaint.

55. These Defendants deny the allegations contained in Paragraph 54 of the Plaintiff's First Amended Complaint.

56. These Defendants deny the allegations contained in Paragraph 55 of the Plaintiff's First Amended Complaint.

57. These Defendants deny the allegations contained in Paragraph 56 of the Plaintiff's First Amended Complaint.

58. These Defendants deny the allegations contained in Paragraph 57 of the Plaintiff's First Amended Complaint.

59. These Defendants deny the allegations contained in Paragraph 58 of the Plaintiff's First Amended Complaint.

60. These Defendants deny the allegations contained in Paragraph 59 of the Plaintiff's First Amended Complaint.

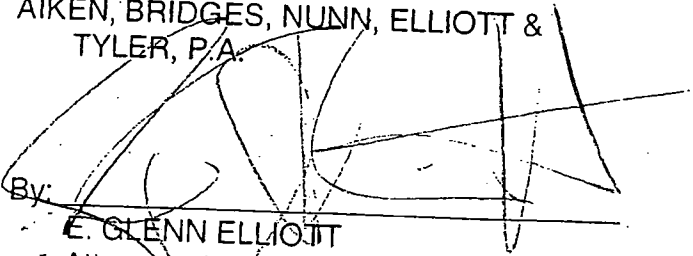
61. These Defendants deny the allegations contained in Paragraph 60 of the Plaintiff's First Amended Complaint.
62. These Defendants deny the allegations contained in Paragraph 61 of the Plaintiff's First Amended Complaint.
63. These Defendants deny the allegations contained in Paragraph 62 of the Plaintiff's First Amended Complaint.
64. These Defendants deny the allegations contained in Paragraph 63 of the Plaintiff's First Amended Complaint.
65. These Defendants deny the allegations contained in Paragraph 64 of the Plaintiff's First Amended Complaint.
66. These Defendants deny the allegations contained in Paragraph 65 of the Plaintiff's First Amended Complaint.
67. These Defendants deny the allegations contained in Paragraph 66 of the Plaintiff's First Amended Complaint.
68. These Defendants deny the allegations contained in Paragraph 67 of the Plaintiff's First Amended Complaint.
69. These Defendants deny the allegations contained in Paragraph 68 of the Plaintiff's First Amended Complaint.
70. These Defendants deny the allegations contained in Paragraph 69 of the Plaintiff's First Amended Complaint.
71. These Defendants deny the allegations contained in Paragraph 70 of the Plaintiff's First Amended Complaint.



72. These Defendants deny the allegations contained in Paragraph 71 of the Plaintiff's First Amended Complaint.

WHEREFORE, Defendants Lewis W. Hall, Lewis V. Hall and Cold Air AC Service, Inc., having fully answered the Plaintiff's First Amended Complaint, prays that said First Amended Complaint be dismissed with the costs and disbursements of this action.

AIKEN, BRIDGES, NUNN, ELLIOTT &  
TYLER, P.A.

By: 

E. GLENN ELLIOTT

Attorneys for Defendants

Lewis W. Hall, Lewis V. Hall and

Cold Air AC Service, Inc.

181 E. Evans Street

P. O. Drawer 1931

Florence, SC 29503

(843) 669-8787

Florence, South Carolina  
June 25, 2007

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS

C/A NO.: 2005-CP-26-2710

Dr. Brad R. Johnson, )  
Plaintiff, )

vs. )

Lewis W. Hall, Lewis V. Hall, )  
L.W. Hall Enterprises, LLC and )  
Cold Air AC Service, Inc., )  
Defendants. )

**AMENDED ANSWER OF  
COLD AIR AC SERVICE, INC.  
TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT**

Defendant Cold Air AC Service, Inc., by and through their undersigned attorneys,  
answering the First Amended Complaint of the Plaintiff herein, would respond as follows:

**FOR A FIRST DEFENSE**

1. Each and every allegation contained in the Plaintiff's First Amended Complaint which is not hereinafter specifically admitted, qualified or explained is denied.
2. These Defendants deny the allegations contained in Paragraph 1 of the Plaintiff's First Amended Complaint.
3. These Defendants deny the allegations contained in Paragraph 2 of the Plaintiff's First Amended Complaint.
4. These Defendants deny the allegations contained in Paragraph 3 of the Plaintiff's First Amended Complaint.
5. These Defendants deny the allegations contained in Paragraph 4 of the Plaintiff's First Amended Complaint.

6. These Defendants deny the allegations contained in Paragraph 5 of the Plaintiff's First Amended Complaint.

7. These Defendants deny the allegations contained in Paragraph 6 of the Plaintiff's First Amended Complaint.

8. These Defendants deny the allegations contained in Paragraph 7 of the Plaintiff's First Amended Complaint.

9. These Defendants deny the allegations contained in Paragraph 8 of the Plaintiff's First Amended Complaint.

10. These Defendants deny the allegations contained in Paragraph 9 of the Plaintiff's First Amended Complaint.

11. These Defendants deny the allegations contained in Paragraph 10 of the Plaintiff's First Amended Complaint.

12. These Defendants deny the allegations contained in Paragraph 11 of the Plaintiff's First Amended Complaint.

13. These Defendants deny the allegations contained in Paragraph 12 of the Plaintiff's First Amended Complaint.

14. These Defendants deny the allegations contained in Paragraph 13 of the Plaintiff's First Amended Complaint.

15. These Defendants deny the allegations contained in Paragraph 14 of the Plaintiff's First Amended Complaint.

16. These Defendants deny the allegations contained in Paragraph 15 of the Plaintiff's First Amended Complaint.

17. These Defendants deny the allegations contained in Paragraph 16 of the Plaintiff's First Amended Complaint.
18. These Defendants deny the allegations contained in Paragraph 17 of the Plaintiff's First Amended Complaint.
19. These Defendants deny the allegations contained in Paragraph 18 of the Plaintiff's First Amended Complaint.
20. These Defendants deny the allegations contained in Paragraph 19 of the Plaintiff's First Amended Complaint.
21. These Defendants deny the allegations contained in Paragraph 20 of the Plaintiff's First Amended Complaint.
22. These Defendants deny the allegations contained in Paragraph 21 of the Plaintiff's First Amended Complaint.
23. These Defendants deny the allegations contained in Paragraph 22 of the Plaintiff's First Amended Complaint.
24. These Defendants deny the allegations contained in Paragraph 23 of the Plaintiff's First Amended Complaint.
25. These Defendants deny the allegations contained in Paragraph 24 of the Plaintiff's First Amended Complaint.
26. These Defendants deny the allegations contained in Paragraph 25 of the Plaintiff's First Amended Complaint.
27. These Defendants deny the allegations contained in Paragraph 26 of the Plaintiff's First Amended Complaint.

28. These Defendants deny the allegations contained in Paragraph 27 of the Plaintiff's First Amended Complaint.

29. These Defendants deny the allegations contained in Paragraph 28 of the Plaintiff's First Amended Complaint.

30. These Defendants deny the allegations contained in Paragraph 29 of the Plaintiff's First Amended Complaint.

31. These Defendants deny the allegations contained in Paragraph 30 of the Plaintiff's First Amended Complaint.

32. These Defendants deny the allegations contained in Paragraph 31 of the Plaintiff's First Amended Complaint.

33. These Defendants deny the allegations contained in Paragraph 32 of the Plaintiff's First Amended Complaint.

34. These Defendants deny the allegations contained in Paragraph 33 of the Plaintiff's First Amended Complaint.

35. These Defendants deny the allegations contained in Paragraph 34 of the Plaintiff's First Amended Complaint.

36. These Defendants deny the allegations contained in Paragraph 35 of the Plaintiff's First Amended Complaint.

37. These Defendants deny the allegations contained in Paragraph 36 of the Plaintiff's First Amended Complaint.

38. These Defendants deny the allegations contained in Paragraph 37 of the Plaintiff's First Amended Complaint.

39. These Defendants deny the allegations contained in Paragraph 38 of the Plaintiff's First Amended Complaint.

40. These Defendants deny the allegations contained in Paragraph 39 of the Plaintiff's First Amended Complaint.

41. These Defendants deny the allegations contained in Paragraph 40 of the Plaintiff's First Amended Complaint.

42. These Defendants deny the allegations contained in Paragraph 41 of the Plaintiff's First Amended Complaint.

43. These Defendants deny the allegations contained in Paragraph 42 of the Plaintiff's First Amended Complaint.

44. These Defendants deny the allegations contained in Paragraph 43 of the Plaintiff's First Amended Complaint.

45. These Defendants deny the allegations contained in Paragraph 44 of the Plaintiff's First Amended Complaint.

46. These Defendants deny the allegations contained in Paragraph 45 of the Plaintiff's First Amended Complaint.

47. These Defendants deny the allegations contained in Paragraph 46 of the Plaintiff's First Amended Complaint.

48. These Defendants deny the allegations contained in Paragraph 47 of the Plaintiff's First Amended Complaint.

49. These Defendants deny the allegations contained in Paragraph 48 of the Plaintiff's First Amended Complaint.

50. These Defendants deny the allegations contained in Paragraph 49 of the Plaintiff's First Amended Complaint.

51. These Defendants deny the allegations contained in Paragraph 50 of the Plaintiff's First Amended Complaint.

52. These Defendants deny the allegations contained in Paragraph 51 of the Plaintiff's First Amended Complaint.

53. These Defendants deny the allegations contained in Paragraph 52 of the Plaintiff's First Amended Complaint.

54. These Defendants deny the allegations contained in Paragraph 53 of the Plaintiff's First Amended Complaint.

55. These Defendants deny the allegations contained in Paragraph 54 of the Plaintiff's First Amended Complaint.

56. These Defendants deny the allegations contained in Paragraph 55 of the Plaintiff's First Amended Complaint.

57. These Defendants deny the allegations contained in Paragraph 56 of the Plaintiff's First Amended Complaint.

58. These Defendants deny the allegations contained in Paragraph 57 of the Plaintiff's First Amended Complaint.

59. These Defendants deny the allegations contained in Paragraph 58 of the Plaintiff's First Amended Complaint.

60. These Defendants deny the allegations contained in Paragraph 59 of the Plaintiff's First Amended Complaint.

61. These Defendants deny the allegations contained in Paragraph 60 of the Plaintiff's First Amended Complaint.

62. These Defendants deny the allegations contained in Paragraph 61 of the Plaintiff's First Amended Complaint.

63. These Defendants deny the allegations contained in Paragraph 62 of the Plaintiff's First Amended Complaint.

64. These Defendants deny the allegations contained in Paragraph 63 of the Plaintiff's First Amended Complaint.

65. These Defendants deny the allegations contained in Paragraph 64 of the Plaintiff's First Amended Complaint.

66. These Defendants deny the allegations contained in Paragraph 65 of the Plaintiff's First Amended Complaint.

67. These Defendants deny the allegations contained in Paragraph 66 of the Plaintiff's First Amended Complaint.

68. These Defendants deny the allegations contained in Paragraph 67 of the Plaintiff's First Amended Complaint.

69. These Defendants deny the allegations contained in Paragraph 68 of the Plaintiff's First Amended Complaint.

70. These Defendants deny the allegations contained in Paragraph 69 of the Plaintiff's First Amended Complaint.

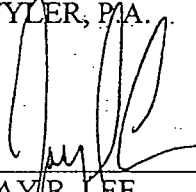
71. These Defendants deny the allegations contained in Paragraph 70 of the Plaintiff's First Amended Complaint.



72. These Defendants deny the allegations contained in Paragraph 71 of the Plaintiff's First Amended Complaint.

WHEREFORE, Defendants Lewis W. Hall, Lewis V. Hall and Cold Air AC Service, Inc., having fully answered the Plaintiff's First Amended Complaint, prays that said First Amended Complaint be dismissed with the costs and disbursements of this action.

AIKEN, BRIDGES, NUNN, ELLIOTT &  
TYLER, P.A.



JAY R. LEE  
181 E. EVANS STREET, SUITE 409  
P. O. DRAWER 1931  
FLORENCE, SC 29503  
TELEPHONE: (843) 669-8787  
FACSIMILE: (843) 664-0097  
ATTORNEYS FOR DEFENDANT  
COLD AIR AC SERVICE, INC.

Florence, South Carolina  
September 5, 2007

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Dr. Brad R. Johnson,

Plaintiff,

VS

Lewis W. Hall, Lewis V. Hall, L.W. Hall  
Enterprises, LLC and Cold Air AC Service,  
Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2005-CP-26-2710

**COLD AIR AC SERVICE, INC.'S  
MOTION FOR SUMMARY JUDGMENT**

FILED  
HARRIS COUNTY  
2001 SEP 24 PM 12:05  
JULIANNE HARRIS  
CLERK OF COURT

TO: STUART M. AXELROD, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF:

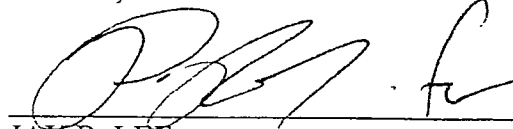
PLEASE TAKE NOTICE that the Defendant, Cold Air AC Service, Inc., through the undersigned attorneys, will move before the Resident or Presiding Judge of the Horry County Court of Common Pleas, at the Horry County Courthouse, Conway, South Carolina, on the tenth (10th) day after service hereof or as soon thereafter as counsel may be heard, for an Order entering Summary Judgment in favor of the Defendant and dismissing the Plaintiff's Complaint pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that there is no genuine issue as to any material fact and that the Defendant is entitled to a judgment as a matter of law.

Based on the pleadings and depositions it has been shown that the Defendant is in no way liable for the damages set forth in the Plaintiff's Complaint and, therefore, is entitled to a judgment in this case as a matter of law. This Motion may also be supported by Affidavits which may be filed and served subsequently and a Memorandum of law which may be filed and served prior to the hearing.

The basis for this Motion is as follows:

1. The Defendant, Cold Air AC Service, Inc. is not liable under a premises liability theory of recovery due to the fact that Cold Air AC Service, Inc. was not the owner of the subject property.
2. The Defendant, Cold Air AC Service, Inc. is not liable to the Plaintiff under a premises liability theory of recovery due to the fact that Defendant Cold Air AC Service, Inc. did not know or have reason to know that any third-party criminal conduct was going to occur.
3. The Defendant, Cold Air AC Service, Inc. is not liable to the Plaintiff under a premises liability theory of recovery due to the fact that spontaneous criminal conduct does not give rise to a duty to take reasonable care to protect the Plaintiff. Bullard v. Ehrhardt 324 S.E. 2<sup>nd</sup> 61 (S.C. 1984). See also Munn v. Hardee's Food Systems, Inc., 266 S.E. 2<sup>nd</sup> 414 (S.C. 1980).
4. The Defendant, Cold Air AC Service, Inc. is not liable under a *respondeat superior* or non-delegable duty theory of recovery for the actions of the individual Defendants in this case due to the fact that at no time on the date of the incident giving rise to the cause of action in this case were any individual Defendants acting as agent, employee, or any way advancing the interests of Defendant Cold Air AC Service, Inc.

AIKEN, BRIDGES, NUNN, ELLIOTT &  
TYLER, P.A.



JAY R. LEE  
181 E. EVANS STREET, SUITE 409  
P. O. DRAWER 1931  
FLORENCE, SC 29503  
TELEPHONE: (843) 669-8787  
FACSIMILE: (843) 664-0097  
ATTORNEYS FOR DEFENDANT  
COLD AIR AC SERVICE, INC.

Florence, South Carolina  
September 20, 2007

STATE OF SOUTH  
CAROLINA  
COUNTY OF HORRY

DR. BRAD R. JOHNSON,  
  
Plaintiff,

v.

LEWIS W. HALL, and  
  
LEWIS V. HALL,  
  
L. W. HALL ENTERPRISES, LLC, and  
  
COLD AIR AC SERVICE, INC.,  
  
Defendants.

IN THE COURT OF  
COMMON PLEAS  
FIFTEENTH JUDICIAL  
CIRCUIT

Civil Action No.  
2005-CP-26-2710

Plaintiff's Motion  
for Continuance  
Pursuant to SCRCP 56(f)

Affidavit of Stuart M. Axelrod

Verification

HORRY COUNTY  
07 SEP 28 AM 10:28  
MELANIE HUGGINS  
CLERK OF COURT

**PLAINTIFF'S MOTION FOR CONTINUANCE PURSUANT TO SCRCP 56(f)**

Now comes Plaintiff, DR. BRAD R. JOHNSON, and through his attorney, Stuart M. Axelrod, moves this honorable Court for a CONTINUANCE pursuant to SCRCP 56(f), with regard to the Motion for Summary Judgment in the above captioned case that Defendant Cold Air AC Service, Inc. has filed, until (1) Plaintiff has had the opportunity to depose Ms. Mary Cannon, C.P.A. located at 801 Highway 17 S., Myrtle Beach, S.C. 29877, who is the accountant for both L.W. Hall Enterprises, LLC and Cold Air AC Service, Inc. and (2) a hearing can be set for said Motion for Summary Judgment consistent with SCRCP 56(c), which requires that said motion be served "at least 10 days [15 days, pursuant to SCRCP 56 (c) and SCRCP 6(e), after considering that the motion was served by mail] before the time fixed for the hearing." SCRCP 56(c) In support of Plaintiff's Motion, Plaintiff's

attorney, Stuart M. Axelrod files an Affidavit and Verification, which is attached to this motion. As additional support for this motion, Plaintiff states as follows.

### PROCEDURAL FACTS

1. On September 5, 2007, Defendant Cold Air AC Service, Inc. filed an amended answer to Plaintiff's First Amended Complaint.
2. On September 24, 2007, Defendant Cold Air AC Service, Inc. filed a Motion for Summary Judgment [see Exhibit I, incorporated herein by reference, a true and correct copy], which was served upon Plaintiff by mail. *Affidavit of Stuart M. Axelrod.*

### LAW

3. SCRCP 56(f) (When Affidavits are Unavailable) states:

"Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a **continuance** to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just." Bold added.

This is the language of FRCP 56(f)

4. Summary Judgment is proper if the pleadings, discovery products on file (e.g., depositions, answers to interrogatories, and admissions), and affidavits (if any) show there are no genuine issues about any material fact and that the movant is entitled to judgment as a matter of law. . . **After adequate time for discovery has passed**, the district court may grant summary judgment against a party who cannot establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. FRCP 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Bold added. However, **courts are reluctant to grant fact-based**

summary judgment motions early in the case, before discovery is completed.

*Evans v. Tech. Applications & Serv. Co.*, 80 F.3d 954, 961 (4<sup>th</sup> Cir. 1996). Bold added. “[S]ummary Judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69, 74 (1999). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Middleborough v. Montedison*, 320 S.C. 470, 465 S.E.2d 765, 771 (Ct. App. 1995). Rule 56(f) does allow and permit an attorney to file an affidavit averring “that he cannot for reasons stated present by affidavit facts essential to justify his opposition.” *Schmidt v. Courtney*, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003).

5. **If the nonmovant** is not able to respond to the motion for summary judgment by affidavit and **needs additional time for discovery, it should request a continuance.** See FRCP 56(f); *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986); *Evans v. Tech. Applications & Serv. Co.*, 80 F.3d 954, 961 (4<sup>th</sup> Cir. 1996). Bold added. Most courts hold that the motion must be supported by an affidavit, which must be filed with the court and served on the nonmovant. *Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 244 (4<sup>th</sup> Cir. 2002).

#### ANALYSIS

6. On September 24, 2007, a **MOTION for Summary Judgment was filed by Defendant Cold Air AC Service, Inc.**
7. Because the instant action is an action involving the vicarious liability of Defendant Cold Air AC Service, Inc. as a result of the conduct of Lewis V. Hall and Lewis W. Hall, which is based upon disputed facts, *Affidavit of Stuart M. Axelrod*; the Plaintiff

must have the opportunity to depose Ms. Mary Cannon, C.P.A., who is the accountant for both L.W. Hall Enterprises, LLC and Cold Air AC Service, Inc. all for the purpose of obtaining discoverable materials that will raise a genuine issue of material fact in Plaintiff's response in opposition to Defendant's Motion for Summary Judgment. *Affidavit of Stuart M. Axelrod*. Accordingly, it is **imperative** (and **justice so demands**) that Plaintiff's instant Motion for a CONTINUANCE Pursuant to SCRCP 56(f), with regard to Defendant's Motion for Summary Judgment be granted. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Evans v. Tech. Applications & Serv. Co.*, 80 F.3d 954 (4<sup>th</sup> Cir. 1996). *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69, 74 (1999). *Schmidt v. Courtney*, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003).

**WHEREFORE**, based upon the foregoing analysis, Plaintiff moves this honorable Court for a CONTINUANCE pursuant to SCRCP 56(f), with regard to Defendant's Motion for Summary Judgment, until (1) Plaintiff has had the opportunity to depose Ms. Mary Cannon, C.P.A. located at 801 Highway 17 S., Myrtle Beach, S.C. 29877, who is the accountant for both L.W. Hall Enterprises, LLC and Cold Air AC Service, Inc. and (2) a hearing can be set for said Motion for Summary Judgment consistent with SCRCP 56(c), which requires that said motion be served "at least 10 days [15 days, pursuant to SCRCP 56 (c) and SCRCP 6(e), after considering that said motion was served by mail] before the time fixed for the hearing." SCRCP 56(c).

Dated: September 28, 2007



Stuart M. Axelrod, Esquire ID#7072

Stuart M. Axelrod, Esquire ID#7072  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
(843) 916-9311 (Fax)  
Attorney for Plaintiff

HORRY COUNTY  
07 SEP 28 AM 10:28  
MELANIE HUGGINS  
CLERK OF COURT

**AFFIDAVIT OF STUART M. AXELROD, ATTORNEY FOR PLAINTIFF**

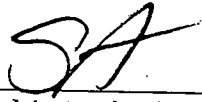
Based upon personal knowledge and competence to address the specifics of the matters discussed, I, Stuart M. Axelrod, state the following:

1. I am the Attorney for the Plaintiff in the above-captioned case.
2. The instant action is an action involving the vicarious liability of Defendant Cold Air AC Service, Inc. as a result of the conduct of Lewis V. Hall and Lewis W. Hall, which is based upon disputed facts.
3. On September 24, 2007, Defendant Cold Air AC Service, Inc. filed a Motion for Summary Judgment, which was served upon Plaintiff by mail.
4. In order to respond to Defendants' Motion for Summary Judgment, referred to above, Plaintiff must have the opportunity to depose Ms. Mary Cannon, C.P.A., who is the accountant for both L.W. Hall Enterprises, LLC and Cold Air AC Service, Inc., all for the purpose of obtaining deposition testimony that will raise a genuine issue of material fact in Plaintiff's response in opposition to Defendant's Motion for Summary Judgment.



5. Accordingly, it is **imperative** (and **justice so demands**) that the above captioned case be continued until Plaintiff is given an opportunity to conduct said deposition.

Dated: September 28, 2007



Stuart M. Axelrod, Esquire ID#7072

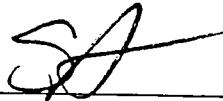
Stuart M. Axelrod, Esquire ID#7072  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
(843) 916-9311 (Fax)  
Attorney for Plaintiff

HORRY COUNTY  
07 SEP 28 AM 10:28  
MELANIE HUGGINS  
CLERK OF COURT

VERIFICATION

Under penalties of perjury, the undersigned certifies that the statements set forth in the above Affidavit are true and correct.

Dated: September 28, 2007



Stuart M. Axelrod, Esquire ID#7072

Stuart M. Axelrod, Esquire ID#7072  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
(843) 916-9311 (Fax)  
Attorney for Plaintiff



STATE OF SOUTH  
CAROLINA  
COUNTY OF HORRY

DR. BRAD R. JOHNSON,

Plaintiff,

v.

LEWIS W. HALL, and

LEWIS V. HALL,

L. W. HALL ENTERPRISES, LLC, and

COLD AIR AC SERVICE, INC.,

Defendants.

IN THE COURT OF  
COMMON PLEAS  
FIFTEENTH JUDICIAL  
CIRCUIT

Civil Action No.  
2005-CP-26-2710

Plaintiff's Objection to Trial  
pursuant to SCRCP 40(b)(2)  
and Resultant  
Motion for Continuance

FILED  
HORRY COUNTY  
2007 OCT -3 AM 9:12  
MELANIE HUGGINS  
CLERK OF COURT

**PLAINTIFF'S OBJECTION TO TRIAL PURSUANT TO SCRCP 40(b)(2)**  
**AND RESULTANT MOTION FOR A CONTINUANCE**

Now comes Plaintiff, DR. BRAD R. JOHNSON, in the above-captioned proceeding, and through his attorney, Stuart M. Axelrod, respectfully (1) OBJECTS to trial pursuant to SCRCP 40(b)(2) and (2) moves this honorable Court for a CONTINUANCE in the above-captioned proceeding until November 20, 2007 (that is, 180 days since "the newly joined part[ies] were served with process"). South Carolina Supreme Court Note to the 2007 Amendment of the SCRCP.

**PLAINTIFF'S OBJECTION TO TRIAL PURSUANT TO SCRCP 40(b)(2)**

On May 18, 2007, Plaintiff filed his First Amended Complaint, which added new parties, Defendant Cold Air AC Service, Inc. and Defendant L.W. Hall Enterprises, LLC. Defendant Cold Air AC Service, Inc. and Defendant L.W. Hall Enterprises, LLC. were served with Summons and Plaintiff's First Amended Complaint on May 24, 2007 [see Exhibit I, incorporated by reference herein, a true and correct copy].

As of September 28, 2007 in the above-captioned proceeding:

1. By letter to the Defendants, Plaintiff had asked for a Continuance, since Plaintiff's psychiatrist was scheduled to be deposed on November 28, 2007.
2. Defendant Lewis V. Hall had a Motion for a Continuance yet to be heard.
3. Defendant Cold Air AC Service, Inc. had served Plaintiff with Interrogatories and Requests for Production on September 7, 2007, all of which were due on October 8, 2007.
4. Defendant Cold Air AC Service, Inc. had filed (on May 24, 2007) a Motion for Summary Judgment, wherein Plaintiff responded with a Motion for a Continuance Pursuant to SCRPC 56(f).

On October 1, 2007, (a) Defendant Cold Air AC Service, Inc. offered to withdraw its Motion for Summary Judgment and (b) Defendant Lewis V. Hall offered to withdraw its Motion for a Continuance. Further, on October 1, 2007, this Court and all parties in the above-entitled proceeding discussed the newly-discovered fact that the South Carolina Supreme Court had amended SCRPC 40(b)(2) to mandate that no action be set for trial until **180 days** after any NEW party is served with process. Nevertheless, this Court decided to go forward with the trial of the instant case. As a result, Plaintiff respectfully objected, objects, and will continue to object to the trial of this case going forward, at least until the 180-day period has expired under SCRPC 40(b)(2) [see Exhibit II, incorporated by reference herein, a true and correct copy].

### **MOTION FOR A CONTINUANCE**

Plaintiff, DR. BRAD R. JOHNSON, in the above-captioned proceeding, and through his attorney, Stuart M. Axelrod, respectfully moves this honorable Court for a

CONTINUANCE in the above-captioned proceeding pursuant to SCRCP 40(b)(2) until November 20, 2007 (that is, 180 days since "the newly joined part[ies] were served with process." South Carolina Supreme Court Note to the 2007 Amendment of the SCRCP [see Exhibit III, incorporated by reference herein, a true and correct copy].

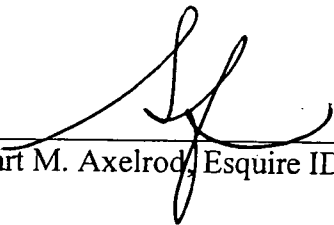
#### ARGUMENT

"The 120 [180] day period dictated by Rule 40(b)(2), SCRCP, is a procedural right which may be waived. *Paschal v. Causey*, 309 S.C. 206, 420 S.E. 2d 863 (Ct. App. 1992) [see Exhibit IV, incorporated by reference herein, a true and correct copy]." Donald S. Butler v. Beaufort County, 316 S.C. 465, 451 S.E.2d 386 (1994). "A party who fails to object to the trial of a case and affirmatively agrees to its trial at a designated time cannot later assert that the trial court erred in trying the case before the close of the statutory period. *Id.* See also *Windham v. Honeycutt*, 279 S.C. 109, 302 S.E. 2d 856 (1983)." *Id.*

Here, Plaintiff elects to exercise the procedural right that the South Carolina Supreme Court has seen fit to grant him under SCRCP 40(b)(2) so that the above-entitled action will not be set for trial until 180 days after any NEW party is served with process. South Carolina Supreme Court Note to the 2007 Amendment of the SCRCP.

WHEREFORE, based upon all of the above reasons, Plaintiff, DR. BRAD R. JOHNSON, through his attorney, Stuart M. Axelrod, respectfully moves this honorable Court for a CONTINUANCE in the above-captioned proceeding until November 20, 2007 (that is, 180 days since "the newly joined part[ies] were served with process."

Dated: October 3, 2007

  
Stuart M. Axelrod, Esquire ID#7072

Stuart M. Axelrod, Esquire ID#7072  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
(843) 916-9311 (Fax)  
Attorney for Plaintiff

STATE OF SOUTH CAROLINA,

COUNTY OF HORRY

IN THE COMMON PLEAS COURT

DR. BRAD R. JOHNSON

Plaintiff

vs.

LEWIS W. HALL AND LEWIS V. HALL  
L. W. HALL ENTERPRISES, LLC COLD  
AIR AC SERVICE, INC.

Defendant

AFFIDAVIT

OF SERVICE

TIME OF SERVICE: 9:03 AM

CASE # 2005CP262710

PERSONALLY APPEARED BEFORE ME, the undersigned  
deponent, who being duly sworn says that he/she served the  
SUMMONS, FIRST AMENDED COMPLAINT  
in the action on COLD AIR AC SERVICE, INC. , by delivery to

( ) personally;

( ) , the of the party served, and  
a person of discretion residing at the residence of the party served;

( X ) LEWIS HALL , the REGISTERED AGENT

of COLD AIR AC SERVICE, INC. ;

and leaving with him/her a copy at PARKING LOT SOCASTEE POST  
OFFICE, HWY. 707  
MYRLE BEACH, SC

in Horry County, South Carolina on the 24th day of MAY 2007,  
at 9:03 o'clock A.M., that deponent knows the person so served , and  
that deponent is not a party of this action, is not less than  
eighteen (18) years of age and has no interest therein or connection  
therewith.

SWORN to and subscribed before me

this 12th day of JUNE , 2007

  
NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: 9-15-2016

R-124

Exhibit I  
Page 1 of 2

  
JEFFERY BENTON  
DEPUTY SHERIFF

STATE OF SOUTH CAROLINA,

COUNTY OF HORRY

IN THE COMMON PLEAS COURT

DR. BRAD R. JOHNSON

Plaintiff

vs.

LEWIS W. HALL AND LEWIS V. HALL  
L. W. HALL ENTERPRISES, LLC COLD  
AIR AC SERVICE, INC.

Defendant

AFFIDAVIT

OF SERVICE

TIME OF SERVICE:

CASE # 2005CP262710

JUN 15 2007

HORRY COUNTY  
07 SEP 28 AM 10:33  
MELANIE HUGGINS  
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, the undersigned  
deponent, who being duly sworn says that he/she served the  
SUMMONS, FORST AMENDED COMPLAINT

in the action on L. W. HALL ENTERPRISES, LLC

, by delivery to

( ) personally;

( ) , the of the party served, and

a person of discretion residing at the residence of the party served;

( X ) LEWIS HALL

, the REGISTERED AGENT

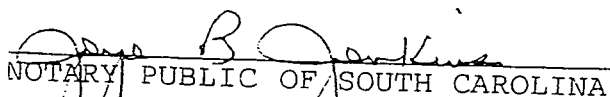
of L. W. HALL ENTERPRISES, LLC

and leaving with him/her a copy at

PARKING LOT SOCASTEE POST  
OFFICE-HWY 707, MB, SC

in Horry County, South Carolina on the 24th day of MAY 2007,  
at 9:03 o'clock A.M., that deponent knows the person so served , and  
that deponent is not a party of this action, is not less than  
eighteen (18) years of age and has no interest therein or connection  
therewith.

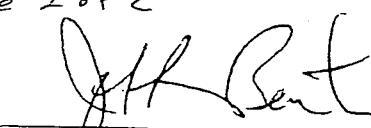
SWORN to and subscribed before me  
this 12th day of JUNE , 2007

  
NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: 0-15-2010

R-125

Exhibit I  
Page 2 of 2

  
JEFFERY BENTON  
DEPUTY SHERIFF

CODE OF LAWS OF SOUTH CAROLINA ANNOTATED  
Copyright (c) 2006, The State of South Carolina

\*\*\* THIS DOCUMENT IS CURRENT THROUGH OCTOBER 31, 2006 \*\*\*

SOUTH CAROLINA RULES OF CIVIL PROCEDURE  
VI. TRIALS

Rule 40, SCRPC (2006)

Review Court Orders which may amend this Rule.

RULE 40. GENERAL DOCKET, TRIAL ROSTERS, AND CALL OF CASES FOR TRIAL

(a) Dockets and Trial Rosters; Designation by Party.

(1) Clerk to Maintain Docket and Trial Rosters. The Clerk of Court shall maintain: (1) a General Docket of all cases filed in the Circuit Court; (2) a Jury Trial Roster of all cases transferred from the General Docket wherein the case is, by agreement of counsel, scheduling order, or expiration of time, deemed ready for jury trial; (3) a Nonjury Docket of all nonjury matters including all motions filed in the Circuit Court.

(2) Pleading or Motion to Designate Type of Matter. At the time of filing of a complaint or responsive pleading thereto, the party shall inform the clerk, or the pleadings shall state in the caption, subject to Rule 38(b), whether the matter is to be heard by a jury or to be heard by the court as a nonjury matter. In the absence of such statement the clerk shall file it as a nonjury matter, subject to a motion to transfer to the appropriate docket. All motions relating to discovery matters, scheduling orders or emergency matters shall state in the caption: Priority Matter.

(b) General Docket, Transfer of Cases to Jury Trial Roster; Call of Cases Only From Jury Trial Roster; Order of Call. The clerk initially shall place all cases in which a jury has been requested on the General Docket. A case may not be called for trial until it has been transferred to the Jury Trial Roster. Trial shall be had no earlier than 30 days from the date the case first appears on the Jury Trial Roster. Cases shall be called for trial in the order in which they are placed on the Jury Trial Roster, unless the court in a Scheduling Order has set a date certain for the trial, or, after the case has been set on the Jury Trial Roster, the court, upon motion, grants a continuance as provided in (i) below. The first 20 cases on the Jury Trial Roster at the opening of court on the first day of a term, excluding those previously dismissed, continued or otherwise resolved before the opening of that term of court, may be called for trial. For each additional judge sitting during that term of court an additional 20 cases are subject to call. All other cases may be called for trial in that term only upon no less than 24 hours notice. Notwithstanding the foregoing, no action may be called for trial until 120 days after the filing of the last pleading which adds a new party to the action, unless all parties consent in writing.

(c) Transfer to Jury Trial Roster by Agreement. A case may be moved from the General Docket to the Jury Trial Roster at any time by agreement of all counsel of record. If agreement is reached, counsel shall notify the clerk in writing who shall immediately transfer the case to the Jury Trial Roster.

(d) Transfer to Jury Roster Within Six to Nine Months of Filing.

(1) Agreement or Objection. No earlier than 180 days after the date the case was filed, any party may file and serve upon all other parties a Request to Transfer that case from the General Docket to the Jury Trial Roster. Within 10 days of the service of the Request to Transfer all other parties shall file and serve either an Agreement to Transfer, or, an Objection to the Request to Transfer. Absent a timely filing indicating a position, the same shall be waived. If all parties have agreed to the transfer, the requesting party shall notify the clerk in writing of the agreement and the clerk



1 of 151 DOCUMENTS

**RE: Amendments to the South Carolina Rules of Civil Procedure**

**[NO NUMBER IN ORIGINAL]**

**SUPREME COURT OF SOUTH CAROLINA**

**2007 S.C. LEXIS 207**

**May 3, 2007, Decided**

**NOTICE:**

THIS DECISION IS NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

**JUDGES:** [\*1] Jean H. Toal, C.J., James E. Moore, J., John H. Waller, Jr., J., E. C. Burnett, III, J., Costa M. Pleicones, J.

**OPINION**

**ORDER**

By order dated January 31, 2007 (copy attached), this Court adopted amendments to the South Carolina Rules of Civil Procedure and these amendments were submitted to the General Assembly pursuant to Art. V, § 4A, of the South Carolina Constitution. Since ninety days have passed since submission without rejection by the General Assembly, these amendments are effective immediately.

IT IS SO ORDERED.

s/ Jean H. Toal, C.J.

s/ James E. Moore, J.

s/ John H. Waller, Jr., J.

s/ E. C. Burnett, III, J.

s/ Costa M. Pleicones, J.

Columbia, South Carolina

May 3, 2007

**ATTACHMENT**

The Supreme Court of South Carolina

RE: Amendments to the South Carolina Rules of Civil Procedure

**ORDER**

Pursuant to Article V, § 4 of the South Carolina Constitution, the attached amendments are made to the South Carolina Rules of Civil Procedure. These rule amendments shall be submitted to the General Assembly as provided by Article V, § 4A of the South Carolina Constitution.

IT IS SO ORDERED.

s/ Jean H. Toal, C.J.

s/ James E. Moore, J.

s/ John H. Waller, Jr., J.

s/ E. C. Burnett, III, J.

s/ Costa M. Pleicones, J.

Columbia, South [\*2] Carolina

January 31, 2007

#### AMENDMENTS TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE

1. The last sentence of Rule 40(b), SCRCP, is amended to read: "Notwithstanding the foregoing, no action may be called for trial until 180 days after service of the last pleading which adds a new party to the action, unless all parties consent in writing."

2. The following note is added to Rule 40(b), SCRCP:

Note to 2007 Amendment:

The last sentence of Rule 40(b) establishes a minimum period of time following the joinder of a new party during which the action may not be called for trial without the consent of all parties. The 2007 amendment extends this period from 120 days to 180 days, and measures this period from the date the newly joined party is served with process, rather than the filing date of the pleading adding the new party. As before, the 180 day exclusion may be waived with the consent of all parties.

3. The last sentence of Rule 71.1(g), SCRCP, is amended to replace the phrase "Office of Appellate Defense" with the phrase "Division of Appellate Defense of the Office of Indigent Defense."

4. The following note is added to Rule 71.1, SCRCP:

Note to 2007 Amendment:

In 2005, the Office of Appellate [\*3] Defense became a division of the Office of Indigent Defense. This amendment reflects this organizational change.





7 of 13 DOCUMENTS

**Debra S. Paschal, Respondent, v. Sharon Michele Causey, Angel Crane and Connie M. Crane, Appellants.**

**Opinion No. 1862**

**COURT OF APPEALS OF SOUTH CAROLINA**

**309 S.C. 206; 420 S.E.2d 863; 1992 S.C. App. LEXIS 151**

**June 11, 1992, Heard  
August 10, 1992, Filed**

**SUBSEQUENT HISTORY:** [\*\*\*1] Rehearing Denied September 15, 1992.

**PRIOR HISTORY:** Appeal from Beaufort County. Luke N. Brown, Jr., Judge

**DISPOSITION:** AFFIRMED

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Appellants, a driver and an automobile owner, and appellant other driver sought review of an order from the trial court, Beaufort County (South Carolina), which entered judgment on a jury verdict and award damages to respondent passenger in a negligence action arising from an automobile accident.

**OVERVIEW:** The passenger's driver alleged that the cars collided when the other driver made an abrupt turn in front of her, but witnesses also testified that they had observed the passenger's driver speeding and passing vehicles in a no-passing zone. The court affirmed the trial court's judgment. Among other things, the court rejected an argument that the trial court lacked subject matter jurisdiction because the case was tried fewer than 120 days from the last filing date of an amended complaint. The court, noting that S.C. R. Civ. P. 40 was a procedural, not jurisdictional, rule, reasoned that no objection to the agreed trial setting was made and, therefore, the objection was waived. The court rejected the driver and owner's argument that the trial court erred in admitting at trial a deposition by the passenger's treating physician and noted that, under S.C. R. Civ. P. 32 (a), they had reasonable notice of the deposition even though it was taken before they were added as parties. Finally, in light of the contradictory testimony, the court found that issues of the drivers' negligence were proper jury questions and that the damage award was not excessive in light of the passenger's injuries.

**OUTCOME:** The court affirmed the trial court's judgment awarding damages to the passenger for injuries she sustained when the car she was riding in collided with the driver of another car.

**CORE TERMS:** deposition, matter jurisdiction, ankle, new trial, waived, surgery, doctor, actual damages, continuance, excessive, speeding, scene, trial counsel, treating physician, discovery, relieve, clerk, failed to object, reasonable inferences, abuse of discretion, affirmatively, submitting, grossly, passion, caprice, front, brakes, deposition testimony, excessiveness, pursued

**LexisNexis(R) Headnotes**

*Civil Procedure > Pretrial Matters > Continuances*

*Civil Procedure > Trials > Bench Trials*

*Governments > Courts > Clerks of Court*

R - 129

[HN1] S. C. R. Civ. P. 40(b)(2) provides that the clerk may place an action on the jury trial roster or the nonjury trial roster 120 days after the filing of the initial pleading in the action. Notwithstanding the foregoing, no action may be set for trial

Exhibit IV

Page 1 of 5

until 120 days after filing of the later of the original complaint or the last pleading which adds a new party to the action, unless counsel for all parties certify in writing to the clerk of court that all issues are joined and the action is ready for trial.

*Civil Procedure > Jurisdiction > Jurisdictional Sources > Constitutional Sources*

*Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview*

[HN2] Subject matter jurisdiction of a court depends upon the authority granted to the court by the constitution and laws of the state. Subject matter jurisdiction cannot be waived or conferred by consent.

*Civil Procedure > Jurisdiction > General Overview*

*Civil Procedure > Appeals > Reviewability > Preservation for Review*

*Governments > Courts > Rule Application & Interpretation*

[HN3] S.C. R. Civ. P. 40 does not involve subject matter jurisdiction. Rather, the rule deals with a procedural right. It provides parties a period of time to prepare the case. However, this right may be waived. A party who fails to object to the trial of a case and affirmatively agrees to its trial at a designated time cannot later assert that the trial court erred in trying the case before the close of the statutory period.

*Civil Procedure > Discovery > Methods > Oral Depositions*

[HN4] Under S.C. R. Civ. P. 30(a)(2), a witness's deposition may only be taken one time in any case except by agreement of the parties or by order of the court for good cause shown.

*Civil Procedure > Trials > Depositions*

[HN5] S.C. R. Civ. P. 32(a) provides in part that at the trial, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof.

*Civil Procedure > Judicial Officers > Judges > Discretion*

*Civil Procedure > Appeals > Standards of Review > Abuse of Discretion*

*Evidence > Procedural Considerations > Preliminary Questions > General Overview*

[HN6] Evidentiary issues require the trial judge to exercise his discretion and the exercise of that discretion will not be disturbed on appeal absent an abuse of discretion.

*Civil Procedure > Counsel > General Overview*

*Civil Procedure > Appeals > Reviewability > Preservation for Review*

[HN7] Appellate counsel is bound by the actions of trial counsel since the appellate court will not consider matters not presented to and ruled upon by the trial court.

*Civil Procedure > Trials > Judgment as Matter of Law > Directed Verdicts*

*Civil Procedure > Trials > Jury Trials > Province of Court & Jury*

*Civil Procedure > Appeals > Standards of Review > General Overview*

[HN8] In considering motions for directed verdict and judgment notwithstanding the verdict, both the trial court and the appellate court must view the evidence and all reasonable inferences which may be drawn from it in the light most favorable to the party opposing the motion. If more than one reasonable inference can be drawn from the evidence the case must be submitted to the jury.

*Civil Procedure > Trials > Jury Trials > Province of Court & Jury*

[HN9] Where a witness's testimony is contradicted, the believability of her version of becomes an issue for the jury.

*Civil Procedure > Judgments > Relief From Judgment > Additurs & Remittiturs > General Overview*

*Civil Procedure > Judgments > Relief From Judgment > Motions for New Trials*

*Civil Procedure > Appeals > Standards of Review > General Overview*

[HN10] If a verdict is excessive in the sense it may be considered unduly liberal, the trial judge alone has the power and responsibility to set aside the verdict absolutely or reduce it by granting a new trial nisi. The appellate court will not set aside a verdict for undue liberality. On the other hand if a verdict is so grossly excessive and shockingly disproportionate that it indicates the jury was motivated by passion, caprice, prejudice, or other consideration not founded on the evidence, then it is the duty of the appellate court to set aside the verdict absolutely.

**COUNSEL:** C. Mitchell Brown, of Nelson, Mullins, Riley & Scarborough, of Columbia; Michael L. Wetzel, of Wetzel & Carroll, of Stone Mountain, Georgia; and Stephen P. Hughes, of Beaufort, for appellants.

James H. Moss, of Beaufort, for respondent.

**JUDGES:** CURETON, GARDNER, BELL

Exhibit IV  
Page 2 of 5

R - 130

## OPINION BY: CURETON

## OPINION

[\*208] [\*864] CURETON, J.: This is a negligence case arising out of an automobile accident. Debra Paschal was a passenger in an automobile driven by Angel Crane. The automobile was owned by Angel Crane's mother, Connie Crane. An accident occurred when the Crane vehicle and a car driven by Sharon Causey collided. Debra Paschal suffered personal injuries. The jury returned a verdict against Sharon Causey and the Cranes in the amount of \$ 350,000 actual damages. [\*865] Causey and the Cranes appeal on several different grounds. We affirm.

## I.

Both Causey and the Cranes assert the circuit court lacked subject matter jurisdiction over the case because it was tried less than 120 days from the date of the filing of the amended complaint which added the Cranes as defendants. They rely [\*\*\*2] upon Rule 40(b)(2), SCRCRCP. We find no merit to this contention.

The accident occurred on March 23, 1987. Paschal sued Causey on June 16, 1988. After discovery was conducted, Paschal filed a motion to amend her complaint to add the Cranes as defendants. The motion was granted on February 1, 1990. The Cranes were subsequently served and the trial began on April 9, 1990. There is no indication in the record the Cranes pursued discovery during the time between their addition as parties and the trial. No objection or motion for continuance was made by either Causey or the Cranes. The issue of subject matter jurisdiction was first raised when the record was settled on appeal.<sup>1</sup>

<sup>1</sup> The Cranes also appealed the failure of the trial judge to include their motion to relieve them from judgment in the appellate record. This motion was filed after the trial and was based upon the contention of lack of subject matter jurisdiction. They included the material in an appendix. We do not find it necessary to address this procedural matter due to our disposition of the issue of subject matter jurisdiction.

[\*\*\*3] Rule 40(b)(2), SCRCRCP, provides as follows:

[HN1] The clerk may place an action on the jury trial roster or the nonjury trial roster 120 days after the filing of the initial pleading in the action. Notwithstanding the foregoing, *no action may be set for trial until 120 days after filing [\*209] of the later of the original complaint or the last pleading which adds a new party to the action, unless counsel for all parties certify in writing to the clerk of court that all issues are joined and the action is ready for trial.* (emphasis added)

No party gave written certification to the clerk of court. Additionally, no party made a motion for continuance or called the court's attention to the rule during the trial.

[HN2] Subject matter jurisdiction of a court depends upon the authority granted to the court by the constitution and laws of the state. Subject matter jurisdiction cannot be waived or conferred by consent. *Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897 (1989); *American Agricultural Chemical Co. v. Thomas*, 206 S.C. 355, 34 S.E.2d 592 (1945). [\*\*\*4]

Contrary to the assertion of the appellants, Rule 40 [HN3] does not involve subject matter jurisdiction. Rather, the rule deals with a procedural right. It provides parties a period of time to prepare the case. However, this right may be waived. The South Carolina Supreme Court addressed Circuit Court Rule 26, the predecessor to South Carolina Rule of Civil Procedure 40, in *Windham v. Honeycutt*, 279 S.C. 109, 302 S.E.2d 856 (1983). The court held a party waived the right to the application of the 90 day period under the prior rule when the party failed to object and affirmatively agreed to the hearing date. *Id.* The appellants in this case also waived the procedural protection of the present rule when they failed to object or seek a continuance. "[A] party who fails to object to the trial of a case and affirmatively agrees to its trial at a designated time cannot later assert that the trial court erred in trying the case before the close of the statutory period." *Faith Holiness Church v. Church of God*, 282 S.C. 487, 489, 319 S.E.2d 348, 349 (Ct. App. 1984) [\*\*\*5] (citing *Windham v. Honeycutt*).

## II.

The Cranes assert the trial court committed reversible error when it admitted the deposition of a treating physician of Miss Paschal as evidence at trial. The doctor [\*866] resided out of state and his deposition was taken during discovery. When the deposition was taken, the Cranes were not parties to the [\*210] case.<sup>2</sup> They assert Rule 32(a), SCRCRCP, prevents the use

of the deposition against them at trial. We find no error.

2 An attorney was monitoring the case on behalf of the Cranes' underinsured motorist carrier at the time the deposition was taken but the attorney did not participate in the deposition. It appears he did have access to the contents of the deposition. This same attorney undertook the liability defense of the Cranes when they were added as parties. The record does not indicate the Cranes ever noticed the doctor's deposition after they became parties. [HN4] Under Rule 30(a)(2), SCRCP, a witness's deposition may only be taken one time in any case "except by agreement of the parties . . . or by order of the court for good cause shown." The Cranes could have applied to the court to take the doctor's deposition if they felt it necessary to explore areas of inquiry not covered by the previous deposition.

[\*\*6] Rule 32(a), SCRCP, provides in part:

[HN5] At the trial. . . any part or all of a deposition. . . *may be used against any party* who was present or represented at the taking of the deposition or who had reasonable notice thereof. . . . (emphasis added)

Counsel for the Cranes generally objected at trial to the use of the deposition. The deposition concerned Miss Paschal's injuries, including the cost of treatment and the need for further surgery. Counsel for the co-defendant, Miss Causey, was present when the deposition was taken and cross-examined the doctor.

We are not inclined to adopt a per se rule of exclusion of a deposition in this type of situation. Rather, we view this as an [HN6] evidentiary issue which requires the trial judge to exercise his discretion. *See Lucas v. Sara Lee Corp.*, S.C., 415 S.E.2d 837 (Ct. App. 1992) (admission of evidence). As such, we will not disturb the exercise of the judge's discretion unless we find an abuse of discretion.

The treating physician was not a liability witness. His testimony related to the injuries suffered by Paschal and was relevant to the damages aspect of [\*\*7] the case. As to damages, the Cranes and Causey had a common interest. At trial, counsel for the Cranes did not specify any areas of inquiry he would have pursued which were not addressed by counsel for Causey.<sup>3</sup> Given the record, we find no abuse of discretion by the trial judge in the admission of the deposition testimony.

3 Appellate counsel for the Cranes was not trial counsel. However, [HN7] appellate counsel is bound by the actions of trial counsel since the appellate court will not consider matters not presented to and ruled upon by the trial court. *Price v. Pickens County*, Opinion No. 1797 (S.C.Ct.App. filed April 6, 1992) (Davis Adv. Sh.No. 10 at 9). In any event, we have examined the deposition testimony and the unexplored areas of inquiry raised by appellate counsel in the brief. We do not find sufficient grounds to reverse the decision of the trial court.

### [\*211] III.

Both Causey and the Cranes appeal the trial court's denial of their respective motions for directed verdict and judgment notwithstanding [\*\*8] the verdict. We find no error as to any appellant.

[HN8] In considering these trial motions, both the trial court and the appellate court must view the evidence and all reasonable inferences which may be drawn from it in the light most favorable to the party opposing the motion. If more than one reasonable inference can be drawn from the evidence the case must be submitted to the jury. *Tubbs v. Bowie*, Opinion No. 23616 (S.C. filed April 6, 1992) (Davis Adv. Sh. No. 10 at 6); *SubStation II of Tennessee v. Oliver*, S.C., 414 S.E.2d 141 (1992).

As to Miss Causey, the evidence created a jury issue. The accident occurred on a two lane road. The Crane vehicle and the Causey vehicle were approaching each other from opposite directions. Angel Crane testified Causey made an abrupt left turn directly in front of her. Neither Miss Causey nor Miss Paschal remembers the accident. No other witnesses saw the accident. Pictures of the scene and the damaged [\*\*867] cars were submitted to the jury. We find no error by the trial court in submitting the issue of Miss Causey's negligence to the jury.

As to Angel Crane, two witnesses [\*\*9] testified they saw her speeding and passing vehicles in a no passing zone a short distance from the accident scene. There was no relevance objection to this testimony. Miss Crane denied speeding or improperly passing before the accident. The investigating officer testified Miss Crane told him at the scene she applied her brakes before the accident. There were no skid marks. Miss Crane testified the Causey vehicle turned in front of her and she had no time to apply her brakes. Because Miss Crane's [HN9] testimony was contradicted, the believability of her version of what occurred became an issue for the jury. Therefore, the trial court did not err in submitting the issue of [\*212] the Cranes'

negligence to the jury. <sup>4</sup> See *Umhoefer v. Bollinger*, 298 S.C. 221, 379 S.E.2d 296 (Ct. App. 1989)(evidence of speeding and weaving in and out of traffic before accident).

4 Connie Crane was joined as a defendant under the family purpose doctrine. No separate issue is presented on appeal concerning her liability.

#### [\*\*\*10] IV.

Both Causey and the Cranes appeal from the trial court's denial of their motions for new trial based upon the excessiveness of the verdict. We find no error.

We note first the distinction to be made between new trial motions directed solely to the excessiveness of the verdict.

[HN10] If a verdict is excessive in the sense it may be considered unduly liberal, the trial judge alone has the power and responsibility to set aside the verdict absolutely or reduce it by granting a new trial nisi. The appellate court will not set aside a verdict for undue liberality. On the other hand if a verdict is so grossly excessive and shockingly disproportionate that it indicates the jury was motivated by passion, caprice, prejudice, or other consideration not founded on the evidence then it is the duty of the appellate court to set aside the verdict absolutely:

*Caldwell v. K-Mart Corp.*, S.C. , , 410 S.E.2d 21, 25 (Ct. App. 1991)(citations omitted).

Miss Paschal was a college student at the time of the accident. She suffered ligament and bone damage to her right ankle and cuts in several places. Her jaw was injured [\*\*\*11] but not broken. She spent two days in the hospital and returned to Alabama with her leg in a cast. She was treated by orthopaedic surgeons in Alabama and had surgery on her ankle to relieve nerve damage. Her treating physician testified she will need bone fusion surgery in the future to relieve continued pain and add stability to her ankle. He gave her an impairment rating of 30-40% of the lower extremity. She is limited in her physical activities by the ankle injury due to pain, swelling, and instability. Paschal estimated a 30% to 40% loss of motion in her ankle. Her medical expenses totaled approximately [\*213] \$ 8000 and future anticipated expenses of \$ 5000 for the fusion surgery. Photographs were submitted to the jury showing the condition of her ankle during her recovery.

There is an indication in the record the jury deliberations were contentious. The trial judge, with consent of counsel, called the jury back into the courtroom and gave them further instructions regarding their obligations. We know there are often disagreements between jurors as they weigh the issues of liability and damages. Upon this record, we cannot say the indication of disharmony within the jury provides [\*\*\*12] a sufficient basis to award a new trial based upon the size of the verdict rendered. Further, while the award may have been liberal we cannot say it is so grossly excessive to indicate passion, caprice, prejudice [\*\*868] or other considerations that would entitle the appellants to a new trial. Cf. *Caldwell*, S.C. , 410 S.E.2d 21 (\$ 75,000 actual damages verdict in false imprisonment case); *Broom v. Southeastern Highway Contracting Co. Inc.*, 291 S.C. 93, 352 S.E.2d 302 (Ct. App. 1986)(\$ 500,000 verdict with actual damages of \$ 7500); *Dunn v. Charleston Coca-Cola Bottling Co.*, S.C. , 415 S.E.2d 590 (Ct. App. 1992)(\$ 165,000 award in contaminated drink case).

AFFIRMED.

GARDNER and BELL, JJ., concur.

**CERTIFICATE OF SERVICE**

I, Dr. Brad R. Johnson, Plaintiff in the above-captioned action, hereby certify that

I did this date personally serve:

PLAINTIFF'S OBJECTION TO TRIAL PURSUANT TO SCRCP 40(b)(2)  
AND RESULTANT MOTION FOR A CONTINUANCE

By delivering same to:

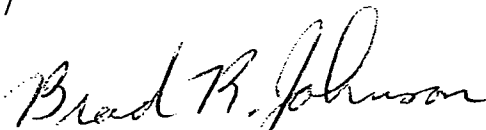
G. Michael Smith  
Thompson & Henry, P.A. (Attorneys for Lewis W. Hall)  
1318 Third Avenue  
Conway, S.C. 29528  
(843) 248-5112

Mr. Brent M. Boyd, Esquire  
Murphy & Grantland, PA  
(Attorneys for Lewis V. Hall)  
4406-B Forest Drive  
Columbia, SC 29206  
803-782-4100

Mr. Truett F. Nettles (Attorney for Lewis V. Hall)  
67 Broad Street  
Charleston, SC 29401  
(843) 577-6233

Mr. Jay R. Lee  
Aiken, Bridges, Nunn, Elliott & Tyler, P.A.  
(Attorneys for Cold Air AC Service, Inc.)  
181 E. Evans Street, Suite 409  
P.O. Drawer 1931  
Florence, SC 29503  
(843) 669-8787

This 3<sup>rd</sup> day of October, 2007.

  
**DR. BRAD R. JOHNSON**

Brad R. Johnson, Ph.D., J.D.  
School of Business  
Francis Marion University  
Box 100547  
Florence, SC 29501  
(843) 661-1427



FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2005-CP-26-2710

Brad R. Johnson

Lewis V. Wall

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

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

FILED  
HORRY COUNTY  
07 OCT 12 PM 3:40  
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

We the Jury find for the Defendant.

Dated at Conway, South Carolina, this 4<sup>th</sup> day of October, 2007.

[Signature]  
PRESIDING JUDGE

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

Howard A. [Signature], Atty

G. Michael Smith, Atty  
Scott F. Riddle II, Atty  
Joy Lee, Atty

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

Brad R. Johnson )

Plaintiff, )

v. )

Lewis V. Hall, )

Defendant. )

IN THE COURT OF COMMON PLEAS

Case No. 2005-CP-26-2710

VERDICT FORM

FILED  
HORRY COUNTY  
07 OCT 12 PM 3:50  
MELANIE MCGIBBS  
CLERK OF COURT

VERDICT

1. With regards to the Plaintiff's claim against the Defendant for actual damages, we the jury unanimously find:

☒ For the Defendant.

☐ For the Plaintiff, in the amount of \$ \_\_\_\_\_.

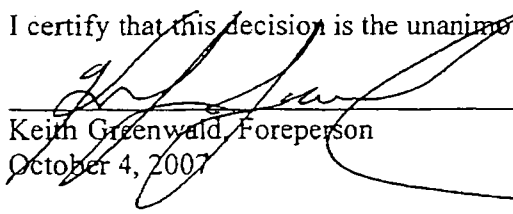
2. With regards to Plaintiff's claim that the Defendant's conduct was reckless, willful, and/or wanton, based on clear and convincing evidence, and that the Plaintiff is further entitled to punitive damages, we the jury unanimously find:

☒ For the Defendant.

☐ For the Plaintiff, and we award the additional amount of \$ \_\_\_\_\_

\_\_\_\_\_ in punitive damages.

I certify that this decision is the unanimous decision of the jury.

  
\_\_\_\_\_  
Keith Greenwald, Foreperson  
October 4, 2007

STATE OF SOUTH  
CAROLINA  
COUNTY OF HORRY

DR. BRAD R. JOHNSON,

Plaintiff,

v.

LEWIS W. HALL, and

LEWIS V. HALL,

L. W. HALL ENTERPRISES, LLC, and

COLD AIR AC SERVICE, INC.,

Defendants.

IN THE COURT OF  
COMMON PLEAS  
FIFTEENTH JUDICIAL  
CIRCUIT

Civil Action No.  
2005-CP-26-2710

After Jury Trial:  
Plaintiff's Continued Objection to  
Trial pursuant to SCRPC 40(b)(2)  
and Resultant Motion for a  
New Trial Pursuant to SCRPC 59

HORRY COUNTY  
07 OCT 12 PM 3:32  
MELANIE HUGGINS  
CLERK OF COURT

**AFTER JURY TRIAL:**  
**PLAINTIFF'S CONTINUED OBJECTION TO TRIAL**  
**PURSUANT TO SCRPC 40(b)(2) AND RESULTANT**  
**MOTION FOR A NEW TRIAL PURSUANT TO SCRPC 59**

Now comes Plaintiff, DR. BRAD R. JOHNSON, in the above-captioned proceeding, and through his attorney, Stuart M. Axelrod, after a jury trial ending on October 2, 2007, respectfully (1) OBJECTS to said trial pursuant to SCRPC 40(b)(2) and (2) moves this honorable Court for a NEW TRIAL pursuant to SCRPC 59.

**PLAINTIFF'S PRETRIAL OBJECTION TO TRIAL  
PURSUANT TO SCRPC 40(b)(2)**

On May 18, 2007, Plaintiff filed his First Amended Complaint, which added new parties, Defendant Cold Air AC Service, Inc. and Defendant L.W. Hall Enterprises, LLC. [However, this Court has deemed Plaintiff's First Amended Complaint to have been filed as of February 2007.] Defendant Cold Air AC Service, Inc. and Defendant L.W. Hall

Enterprises, LLC. were served with Summons and Plaintiff's First Amended Complaint on May 24, 2007.

As of September 28, 2007 in the above-captioned proceeding:

1. By letter to the Defendants, Plaintiff had asked for a Continuance, since Plaintiff's psychiatrist was scheduled to be deposed on November 28, 2007.
2. Defendant Lewis V. Hall had a Motion for a Continuance yet to be heard.
3. Defendant Cold Air AC Service, Inc. had served Plaintiff with Interrogatories and Requests for Production on September 7, 2007, all of which were due on October 8, 2007.
4. Defendant Cold Air AC Service, Inc. had filed (on September 24, 2007) a Motion for Summary Judgment, wherein Plaintiff responded with a Motion for a Continuance Pursuant to SCRPC 56(f), which was filed on September 28, 2007.

On October 1, 2007, (a) Defendant Cold Air AC Service, Inc. offered to withdraw its Motion for Summary Judgment and (b) Defendant Lewis V. Hall offered to withdraw its Motion for a Continuance. Further, on October 1, 2007, this Court and all parties in the above-entitled proceeding discussed the newly-discovered fact that the South Carolina Supreme Court had amended SCRPC 40(b)(2) to mandate that no action be set for trial until **180 days** after any NEW party is served with process. Nevertheless, this Court decided to go forward with a jury trial in the instant case, which ended October 2, 2007.

**PLAINTIFF'S POSTTRIAL OBJECTION TO TRIAL  
PURSUANT TO SCRPC 40(b)(2) AND  
MOTION FOR A NEW TRIAL PURSUANT TO SCRPC 59**

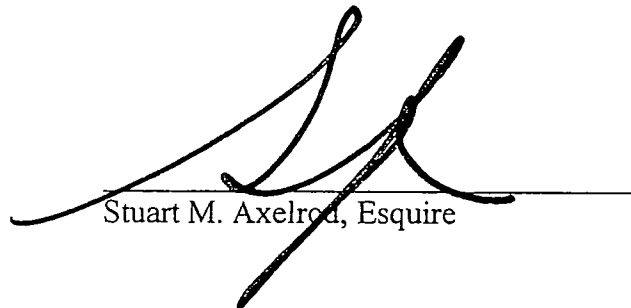
Based on the foregoing, Plaintiff respectfully objected, objects, and will continue to object to said trial pursuant to SCRPC 40(b)(2). Here, Plaintiff attempted to exercise an

important procedural right that the South Carolina Supreme Court has seen fit to grant him under SCRCP 40(b)(2) so that the above-entitled action will not be set for trial until 180 days after any NEW party is served with process. South Carolina Supreme Court Note to the 2007 Amendment of the SCRCP.

WHEREFORE, based upon the foregoing, Plaintiff, DR. BRAD R. JOHNSON, in the above-captioned proceeding, through his attorney, Stuart M. Axelrod, respectfully moves this honorable Court for a NEW TRIAL in the above-captioned proceeding pursuant to SCRCP 59.

Dated: October 12, 2007

Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
(843) 916-9311 (Fax)  
Attorney for Plaintiff



Stuart M. Axelrod, Esquire

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

JUDGMENT IN A CIVIL CASE  
CASE # 05-CP-26-2710

Dr. Brad R. Johnson

Lewis W. Hall, etal

Plaintiff(s)

Defendant(s)

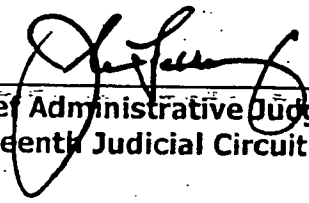
(XX ) ADMINISTRATIVE DECISION BY THE COURT.

*Plaintiff's* Motion for New Trial is hereby denied.

FILED  
HORRY COUNTY  
2007 DEC 17 AM 11:11  
MELANIE HUGGINS  
CLERK OF COURT

IT IS SO ORDERED.

Conway, South Carolina  
December 9 2007

  
Chief Administrative Judge  
Fifteenth Judicial Circuit

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

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

---

Case No. 2005-CP-26-2710

---

Dr. Brad R. Johnson,

Appellant,

v.

Lewis W. Hall, Lewis V. Hall,  
L. W. Hall Enterprises, LLC,  
Cold Air AC Service, Inc.,

Respondents.

---

**AMENDED NOTICE OF APPEAL**

---

Plaintiff-Appellant, Dr. Brad R. Johnson, appeals the Order of the Honorable J. Michael Baxley, Circuit Court Judge, dated December 9, 2007, denying Plaintiff-Appellant's Motion for a New Trial pursuant to SCRCP 59, after a jury trial ended on October 2, 2007. Appellant received notice of this order on February 4, 2008.

May 5, 2008



---

Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
Attorney for Appellant

Other Counsel of Record:

G. Michael Smith  
Thompson & Henry, P.A. (Attorneys for Lewis W. Hall)  
1318 Third Avenue  
Conway, S.C. 29528

Mr. Brent M. Boyd, Esquire  
Murphy & Grantland, PA  
(Attorneys for Lewis V. Hall)  
4406-B Forest Drive  
Columbia, SC 29206

Mr. Truett F. Nettles (Attorney for Lewis V. Hall)  
67 Broad Street  
Charleston, SC 29401

Mr. Jay R. Lee  
Aiken, Bridges, Nunn, Elliott & Tyler, P.A.  
(Attorneys for Cold Air AC Service, Inc.)  
181 E. Evans Street, Suite 409  
P.O. Drawer 1931  
Florence, SC 29503



STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS

DR. BRAD R. JOHNSON, )

PLAINTIFF, )

-vs- )

LEWIS W. HALL, ET AL., )

DEFENDANTS )

**COPY**

2005-CP-26-2710

JUDICIAL PROCEEDINGS HELD BEFORE

THE HONORABLE J. MICHAEL BAXLEY;

COMMENCING AT THE HOUR OF 3:16PM, ON THE 1ST DAY OF OCTOBER,  
2007, AT THE HORRY COUNTY COURTHOUSE, 15TH JUDICIAL  
DISTRICT, CIRCUIT COURT, CONWAY, SOUTH CAROLINA.

REPORTED BY: H. EUGENE BUCKNER, CVR

**COPY**

H. Eugene Buckner  
Official Court Reporter at Large  
15th Judicial Circuit  
PO Box 1462, Conway, SC 29528-1462

R-142

APPEARANCES:

Stuart M. Axelrod, Esquire  
Axelrod and Associates  
604 16th Avenue North  
Myrtle Beach, SC 29577 (843) 916-9300

.... On Behalf of the Plaintiff

G. Michael Smith, Esquire  
Thompson & Henry, P. A.  
P. O. Box 1533  
Conway, SC 29528 (843) 248-5741

F. Truett Nettles, II, Esquire  
The Nettles Law Office, LLC  
P. O. Box 699  
Charleston, SC 29402 (843) 577-6233

Brent M. Boyd, Esquire  
Murphy & Grantland, P.A.  
P. O. Box 6648  
Columbia, SC 29260 (803) 782-4100

Jay R. Lee, Esquire  
Aiken Bridges Attorneys at Law  
181 East Evans Street, Suite 409  
Florence, SC 29506 (843) 669-8787

.... On Behalf of the Defendants

## INDEX OF TESTIMONY

|                                                                                                                                | PAGE/LINE |
|--------------------------------------------------------------------------------------------------------------------------------|-----------|
| Motions in Limine made October 1st, 2007 before jury selection .....                                                           | 5         |
| Selection of the Jury on October 1st, 2007 .....                                                                               | 22        |
| Motions in Limine made after jury selection on October 1st, 2007 .....                                                         | 73        |
| Reconvening of the proceedings on October 3rd, 2007 .....                                                                      | 88        |
| Motions in Limine made just before start of trial on October 3rd, 2007 .....                                                   | 92        |
| Testimony of Dr. Brad R. Johnson .....                                                                                         | 125       |
| Interruption of Dr. Brad R. Johnson's testimony at the end of the day on October 3rd, 2007, for arguments as to exhibits ..... | 162       |
| Reconvening of the proceedings on October 4th, 2007 .....                                                                      | 176       |
| Continuing with the testimony of Dr. Brad R. Johnson on October 4th, 2007 .....                                                | 214       |
| Motions at the conclusion of Plaintiff's case ...                                                                              | 232       |
| Testimony of Officer Justin Phillip Wyatt .....                                                                                | 256       |
| Testimony of Officer Douglas W. Kondella, Jr. .                                                                                | 260       |
| Defense Rests -- Further Motions are Argued ...                                                                                | 266       |
| Closing Arguments and Judge's Charge on the Law .                                                                              | 271       |
| Verdict taken by Judge James Stanton Cross, Jr., Master-in-Equity (due to emergency) .....                                     | 327       |

## INDEX TO EXHIBITS

|                                                                                                             | PAGE |
|-------------------------------------------------------------------------------------------------------------|------|
| Plaintiff's Exhibit Number 1, Photograph of Scene, .....                                                    | 136  |
| Plaintiff's Exhibit Number 2, Doctor's Car Medical Bills covering the Plaintiff, Dr. Brad R. Johnson, ..... | 141  |
| Plaintiff's Exhibit Number 3, Long Bay Diagnostic Imaging Medicals, .....                                   | 150  |
| Plaintiff's Exhibit Number 4, Psychiatric care bills, .....                                                 | 216  |
| Plaintiff's Exhibit Number 5, EMS Ambulance Bill, .....                                                     | 221  |
| Plaintiff's Exhibit Number 6, Grand Strand Regional Center's Medical ER Bill, .....                         | 221  |
| Plaintiff's Exhibit Number 7, Carolina Radiology Associates Bill, .....                                     | 222  |
| Plaintiff's Exhibit Number 8, Strand Orthopedic Consultant's Bill, .....                                    | 223  |
| Plaintiff's Exhibit Number 9, Photograph, .....                                                             | 226  |
| Plaintiff's Exhibit Number 8(a), Redacted Strand Orthopedic Consultant's Bill, .....                        | 326  |
| Court's Exhibit Number 1, Deposition of Dr. Rosner .....                                                    | 205  |
| Court's Exhibit Number 2, Medical Bills for Rotator Cuff Surgery, .....                                     | 205  |
| Court's Exhibit Number 3, Note from the jury foreman, .....                                                 | 326  |

1 THE COURT:

2 All right; and now counsel in our  
3 second case, if you'll come forward and lets talk for a  
4 moment before we bring in our jury.

5 WHEREUPON: There was a brief conference  
6 at the bench at 12:46 PM, October 1st, 2007

7 Counsel, just so you can be thinking --  
8 uh -- the only issue I want to resolve before we bring the  
9 jury in is whether or not a continuance should be granted.

10 That's the sole issue necessary for a  
11 resolution prior to the jury draw.

12 All right. Uh -- Mr. Smith -- uh --  
13 welcome back to The Courtroom.

14 Let's let everyone -- just so our record  
15 will be clear -- introduce themselves and tell us who they  
16 represent and then we want to discuss the issue of  
17 continuance; and then either dismiss this jury or proceed  
18 with the jury draw.

19 Mr. Axelrod, you represent the  
20 Plaintiff. We'll begin with you.

21 MR. AXELROD:

22 Thank Your Honor; Stewart Axelrod for  
23 Dr. Brad Johnson, the Plaintiff.

24 DEFENSE COUNSEL:

25 Your Honor, Mike Smith for Lewis W.

1 Hall.

2 MR. NETTLES:

3 Truett Nettles for Lewis V. Hall and L.  
4 W. Hall Enterprises.

5 MR. Lee:

6 Your Honor, J. Lee for Cold Air AC  
7 Service Incorporated.

8 MR. BOYD:

9 Your Honor, Fred Boyd, additional  
10 counsel for Lewis V. Hall.

11 THE COURT:

12 All right; Counsel and Parties, welcome  
13 to The Courtroom.

14 There is -- There was a discussion this  
15 morning as to whether or not there should be a continuance  
16 granted in this case.

17 Mr. Axelrod has moved for a continuance.

18

19 The record should reflect that -- uh --  
20 after a review of the Civil Rules of Procedure, the amended  
21 version of Rule 40 (b) states that:

22 There should be no action called to  
23 trial until 180 days after service of the last pleading  
24 which adds a new party to the action unless all parties  
25 consent in writing to go forward.

1 This case has been before This Court  
2 before. And on February the 16th, 2007, I entered a Form 4  
3 order on other matters; but included in that Form 4, was  
4 this language:

5 Plaintiff's Motion to Amend to Add a New  
6 Party is granted. The Plaintiff is given 10 additional days  
7 to consider the issue. He will notify The Court of his  
8 intent.

9 I've an independent recollection of  
10 that.

11 And my independent recollection is that  
12 Mr. Axelrod was uncertain after talking with other attorneys  
13 here present that day of whether he wanted to amend, even  
14 though he had made his motion to amend, which The Court  
15 granted.

16 And if he had determined that he would  
17 not, then he would have 10 additional days The Court gave  
18 him to consider the matter, he would contact The Court and  
19 advise.

20 I was never contacted by Mr. Axelrod and  
21 advised his intentions.

22 And today, in reviewing the file, have  
23 learned that it wasn't until May 18th that the Amended  
24 Complaint which added the party represented by Mr. Lee; and  
25 that party is Cold Air AC Service Inc. -- uh -- was added.

1 Now that's the date that the proceeding  
2 was filed. I don't have the date -- well actually the  
3 certificate of service reveals that it was served on the  
4 18th of May, 2007, the following day after being filed --  
5 I'm sorry -- the same day it was filed.

6 Filed on May 18th; and served by being  
7 placed in the US Mail on May 18th.

8 Now, Mr. Axelrod now moves:

9 Because it's less than a hundred and  
10 eighty days -- or -- from the date that he filed that  
11 pleading and served it until today's date.

12 And by my calculations, that's somewhat  
13 -- somewhere -- it's somewhere over 130 days since that  
14 occurred.

15 Had Mr. Axelrod's response been timely  
16 made as ordered by The Court back in February, it would be  
17 well beyond 180 days.

18 Now, Mr. Lee, I'm going to ask you first  
19 -- and you are the party who was served -- I'm going to ask  
20 you:

21 Do you request a continuance in this  
22 matter?

23 MR. LEE:

24 I don't Your Honor.

25 THE COURT:



1                   What is your party's position as to  
2 whether you wish to go forward with this matter?

3 MR. LEE:

4                   Uh -- Your Honor, we are ready for trial  
5 in all right.

6 THE COURT:

7                   Uh -- Other than the Plaintiff, is there  
8 any party that wishes -- Well, let's ask it this way:

9                   What are the issues as far as with  
10 regards to going today?

11 MR. SMITH:

12                   Your Honor, one thing that -- that I  
13 need to make clear in my own mind.

14                   I know that Mr. Axelrod filed a motion  
15 for continuance on Friday, September the 28th.

16                   That motion for continuance was based  
17 solely on the motion for summary judgment that was filed by  
18 Cold Air.

19                   I'm not aware of any motion for  
20 continuance that was filed pursuant to the 180 day Rule --  
21 120 Day Rule.

22                   And I would object on technical grounds  
23 that I'ven't been properly served. I'ven't been given  
24 proper notice of the -- uh -- Rule 40 motion for  
25 continuance, if you will.

1 I -- I don't even know that there's one  
2 that's pending. I haven't heard one yet.

3 THE COURT:

4 I see. In other words, your position  
5 is:

6 The Rule 40 issue came up in discussion  
7 today and is not the substance of the motion for a  
8 continuance filed by Mr. Axelrod?

9 MR. SMITH:

10 That is correct. The -- The substance  
11 of the motion for a continuance by Mr. Axelrod had to do  
12 with the -- uh -- Defendant Cold Air's motion for summary  
13 judgment, which I believe was withdrawn in pretrial.

14 MR. LEE:

15 That's correct, Your Honor.

16 The -- The motion for continuance that I  
17 received was a motion continuing any hearing on my motion  
18 for summary judgment.

19 And Your Honor, it would be Cold Air's  
20 position that under the circumstances that this case is for  
21 trial this week -- uh -- rather than allow my summary  
22 judgment motion to hold the trial up, we would withdraw that  
23 motion.

24 THE COURT:

25 All right.

1 MR. LEE:

2 Under circumstances that this case does  
3 not get heard this week, we would -- we would not withdraw  
4 our motion and would keep it outstanding.

5 THE COURT:

6 All right; anyone else?

7 Mr. Nettles, do you have a position?

8 MR. NETTLES:

9 We are ready for trial.

10 MR. AXELROD:

11 Your Honor, as a --

12 THE COURT:

13 Yes sir. I'll be coming to you in just  
14 a moment.

15 All right; Mr. Axelrod, I'll be glad to  
16 hear from you.

17 MR. AXELROD:

18 Thank Your Honor.

19 Your Honor, a couple of issues.

20 I want to go back, if I may. I've The  
21 Court's order on February 21st -- clocked February 21st,  
22 2007, where The Court granted my motion to compel; and that  
23 the defense counsel would answer interrogatories and any  
24 motions to produce -- uh -- documents to produce.

25 Uh -- They have never done that.

1 I had a conversation with Mr. Nettles  
2 today and he was going to give that to me if -- if we went  
3 with that hundred and eighty day continuance, he was going  
4 to produce to me what I don't have at this point.

5 We have asked for it several times in --  
6 in -- uh -- interrogatories.

7 We had to eventually go to the motion to  
8 compel. That's why we have filed our motion for sanctions.

9  
10 I haven't been given it.

11 In talking with Mr. Nettles, he -- he  
12 saw what I was asking about; and he basically agreed with me  
13 there that there was some things he had to give me.

14 I still didn't get the tax returns yet.  
15 Judge, those are integral to one part of this case; whether  
16 or not Cold Air would be able to be kept in this case.

17 THE COURT:

18 Now, let me ask you, you're -- you  
19 are talking about the tax returns?

20 MR. AXELROD:

21 Not only the tax returns, but -- but the  
22 answers to interrogatories. A lot of things were objected  
23 to that I believe should have been answered just on the  
24 basic interrogatories.

25 The Court made the motion for them to

1 compel -- you granted that motion to compel; and -- and I  
2 still haven't had that. And --

3 THE COURT:

4 Well Counsel, how could I've granted  
5 that motion to compel when they weren't even in the case at  
6 that time?

7 MR. AXELROD:

8 No; I'm speaking about Mr. Nettles --  
9 I'm speaking about Lewis -- uh -- V. Hall -- Lewis V. Hall;  
10 he was in the case.

11 I'm sorry -- I --

12 THE COURT:

13 All right, sir.

14 MR. AXELROD:

15 Uh -- I've gone to one issue other than  
16 Cold Air right now; because there's an issue that -- that's  
17 still out there, that --

18 THE COURT:

19 All right. Mr. Nettles, I believe I'll  
20 just break this up and hear from you in response to that.

21 MR. NETTLES:

22 Judge, I -- We objected to two  
23 questions.

24 One was: They wanted Lewis V. Hall's  
25 driver's license number.

1 And I objected on grounds of privacy.

2 Uh -- The other question was: Has my  
3 client had any alcohol or any other prescription drugs in  
4 the last 10 years.

5 And I objected to do that.

6 Uh -- At your hearing where -- at that  
7 same hearing you -- you threw out the lis pendens -- I said  
8 that we would be glad to that under -- uh -- a -- a  
9 protective order of confidentiality.

10 And actually, I never drafted such an  
11 order.

12 I've not given him my man's driver's  
13 license number.

14 Uh -- The other -- I thought the real  
15 problem in his objection was that my original responses were  
16 not verified.

17 And I think -- And I -- I've -- We just  
18 discussed this during lunch; but I got the -- the same  
19 answers verified by Lewis V. Hall -- the younger person  
20 there -- and mailed them to his office.

21 So I thought I was in compliance with  
22 it.

23 Also -- uh -- I've not -- uh -- this  
24 wasn't part of that sanctions or that motion to compel.

25 Uh -- The tax returns, I don't -- I

1 thought that request came out later. But we've already  
2 stipulated today at lunchtime that I will let him have the  
3 tax returns of Lewis W. Hall; because that involves -- uh --  
4 L. W. Hall Enterprises, which is my client -- is -- is part  
5 of his Schedule C, so I told him I would give him that.

6 Uh -- I don't really understand -- uh --  
7 by the way -- you -- you granted his motion to compel and I  
8 agreed to do it; but it wasn't made prior -- uh -- I got  
9 this motion for sanctions this morning Your Honor at six  
10 o'clock.

11 It was left leaning against my office  
12 door sometime Friday afternoon; and I wasn't there..

13 Uh -- But, I don't want to deprive the  
14 Plaintiff of whatever opportunity to whatever evidence they  
15 want.

16 I personally don't think the driver's  
17 license number is going to lead to any discoverable or  
18 admissible evidence.

19 Uh -- The fact that he -- uh -- might  
20 have had -- uh -- a beer in the last 10 years, I just can't  
21 see -- but I'm willing to give it to him.

22 I just don't know that we need to have a  
23 continuance or anything?

24 MR. AXELROD:

25 Your Honor --

1 MR. NETTLES:

2 And I can give him copies of the tax  
3 return today.

4 THE COURT:

5 All right; very good.

6 MR. AXELROD:

7 Your Honor --

8 THE COURT:

9 Just hold that for just a minute, Mr.  
10 Axelrod.

11 Mr. Lee, you want to respond briefly?

12 MR. LEE:

13 Yes, Your Honor.

14 Since we are discussing -- uh -- tax  
15 returns of my clients Cold Air AC Service, I want to make  
16 sure that it's clear for the record:

17 I've been served with no  
18 interrogatories; no request for production that I would have  
19 then responded to; and I would object to the production of  
20 any of these tax returns that Mr. Axelrod has -- has asked  
21 for -- uh -- and certainly would -- would -- would want to  
22 make sure that that's -- that's heard at the -- heard at the  
23 appropriate time.

24 I just want to make sure that it's clear  
25 for the record that Cold Air does not consent to producing



1 any of these.

2 THE COURT:

3 Very good; I'm just trying to work  
4 through the continuance issue, while -- and I realize  
5 there's a tangential related -- but while our jury sits and  
6 waits -- Now, Mr. Axelrod, any response to any of those?

7 MR. AXELROD:

8 Yes sir, Your Honor.

9 Mr. Nettles -- When I sat with Mr.  
10 Nettles out in the hallway, I started -- I showed him the  
11 first two things.

12 There's many more things that the --  
13 that they have objected to -- I'm sorry -- to which I've  
14 objected to.

15 That's fine. We just never went through  
16 him.

17 You agreed with me you were going to  
18 provide it; and at that point I didn't go into it further  
19 with you on that issue. And there's more.

20 If The Court would like me to, I'll --  
21 I'll read through them.

22 Your Honor, I thought my secretary did  
23 send a letter to The Court. I may have to check that  
24 because I don't have recollection right here.

25 I do want to stress to The Court that I

1 did two murder trials in the spring from the time that --  
2 that we started this. And it's not something that I just  
3 put altogether. This was just as it came.

4 Dr. Johnson's psychiatrist is supposed  
5 to be deposed on, I think, November the 18th -- his  
6 psychiatrist is supposed to be deposed. They put in a  
7 motion for the continuance of that.

8 I thought we were still going -- I  
9 thought at least with the deposition of his doctor -- of his  
10 doctor -- and that's when we would then go to trial at that  
11 point.

12 That -- That's where I was.

13 And we had -- you know -- some of these  
14 discovery issues that I was working on.

15 And -- And I was going to call Mr.  
16 Nettles. I -- I was given a motion for continuance last  
17 Tuesday.

18 And then, I think, Thursday afternoon,  
19 my office notified me that they had withdrawn it.

20 I don't think I was aware of it until  
21 that point because we made a call to somebody and -- and  
22 they said that they got together and they withdrew that  
23 motion.

24 But I haven't got -- I haven't got the -  
25 I haven't submitted interrogatories to them, because I was

1 still trying to figure out what I was going to submit them  
2 for those interrogatories.

3 THE COURT:

4 All right; just -- just one moment.

5 Mr. Williams, would you kindly go inform  
6 the jury we'll be with them in just a moment?

7 BAILIFF:

8 Yes sir.

9 THE COURT:

10 They've been waiting now for us an hour  
11 and 15 minutes. Uh -- Anything further, Mr. Axelrod?

12 MR. AXELROD:

13 Sir? No sir.

14 THE COURT:

15 All right, just a minute.

16 All right -- uh -- Mr. Axelrod, I'm  
17 going to -- I'm going to deny your motion for a continuance  
18 for the following reasons:

19 First of all, after a review and  
20 listening to counsel, I can see that it is not based upon  
21 Rule 40 (b), but is based upon the summary judgment issue.

22 And This Court has an administrative  
23 order in place requiring a motion for continuance to be put  
24 in -- in the file no later than five o'clock Wednesday  
25 before the Monday for which the trial is set; and that of

1 course is today.

2 And in this trial, there is no such  
3 motion for a continuance.

4 And regardless of whether there's a  
5 motion, This Court doesn't want to be out there violating  
6 the various Rules and This Court does not find that 40 (b)  
7 prevents the trial of this case for several reasons.

8 First of all, the Defendants wouldn't be  
9 aggrieved by being -- by being put to trial before a hundred  
10 and eighty days which is -- uh -- the Defendant called Cold  
11 Air represented by Mr. Lee and he has no objection and is  
12 ready to go to trial.

13 Secondly, The Court ordered that this --  
14 the amendment be done back in February -- February 16th,  
15 which was well beyond the hundred and eighty days had it  
16 been done in a timely fashion; and it was not.

17 Now Mr. Axelrod, you attempt to rule  
18 that rule as a sword to force a continuance -- uh -- which  
19 is just simply not -- it is prohibitive of The Court  
20 administering this docket in a -- in an orderly fashion.

21 And finally, when the parties came  
22 before me during the master roster meeting -- uh -- which  
23 was conducted in August 2007, there was a discussion and an  
24 agreement at that time that this case -- just one moment --  
25 that this case would have been called for trial not before

1 10/01/07; and there was no objection at that time.

2 So therefore it was set for trial -- uh  
3 -- by The Court and now has been called for trial by The  
4 Court.

5 And The Court is going to -- uh -- deny  
6 the motion for a continuance.

7 Now what I would like to do gentlemen --  
8 and we'll -- we'll flesh out all of these discovery issues  
9 after we draw our jury; but let's do that; and dismiss the  
10 jury; and then -- uh -- we'll take up the other matters  
11 after we do that.

12 Anything further now that we have to  
13 resolve before the jury comes in from anyone?

14 All right; hearing none, then --  
15 Gentlemen in the back, are -- are you connected with this  
16 case?

17 UNIDENTIFIED SPEAKER:

18 Yes, we are.

19 THE COURT:

20 Then how about coming before the bar and  
21 sit on whichever side of The Courtroom you are connected to.

22 And let's bring in the jury, please.

23 Sir, are you here observing for a 403?

24 UNIDENTIFIED SPEAKER:

1 No, Your Honor.

2 UNIDENTIFIED SPEAKER:

3 Your Honor; we actually have a motion  
4 for a motion to hear an order -- a motion to reconsider an  
5 order.

6 THE COURT:

7 Thank you for your patience. We'll  
8 take that up next, all right?

9 UNIDENTIFIED SPEAKER:

10 Thank Your Honor.

11 THE COURT:

12 Thank you. Please bring in our jury  
13 panel.

14 WHEREUPON: At 3:35 p.m., October  
15 1st, 2007, the jury panel was ushered into The Courtroom.

16 THE COURT:

17 All right, ladies and gentlemen, good  
18 afternoon to you. I'm -- I am Judge Baxley.

19 As you can see, we have changed  
20 judges from this morning -- uh -- and I am -- it's my  
21 privilege to be presiding in -- on the civil side of The  
22 Court this week -- and you -- you've come into the civil  
23 courtroom.

24 Earlier, you were in the criminal  
25 court when a jury was drawn I believe; but this is a civil

1 MR. AXELROD:

2 Thank Your Honor.

3 Uh -- We call Brad Johnson.

4 THE COURT:

5 Please come forward and take the oath  
6 of a witness.

7 WHEREUPON: DR. BRAD R. JOHNSON WAS  
8 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

9 CLERK:

10 State your name for The Court, please.

11 WITNESS:

12 Uh -- Brad R. Johnson.

13 DIRECT EXAMINATION BY MR. AXELROD:

14 Q. Brad, tell the jury how old you are.

15 A. Uh -- 57.

16 Q. And currently, where do you reside?

17 A. Uh -- 417 Kazaiha (phonetic) Street in Oak Island -- uh  
18 -- North Carolina.

19 Q. And you no longer reside in Horry County?

20 A. Uh -- No I don't.

21 Q. And was there a reason why you moved from Horry County?

22 A. Uh -- Yes, my psychiatrist; my therapist; my class --  
23 uh -- suggested --

24 MR. NETTLES:

25 Your Honor, objection.

1 WITNESS:

2 I move from my --

3 MR. SMITH:

4 Objection; hearsay.

5 THE COURT:

6 All right, Counsel; let's get this  
7 straight here just one moment.

8 Uh -- Sir, when there is objection,  
9 please stop and let The Court rule on that objection; and --

10 WITNESS:

11 Okay.

12 THE COURT:

13 -- that is hearsay and it's not  
14 appropriate under our rules to testify about what some third  
15 person told you.

16 I'm going to sustain the objection.  
17 I'm going to ask the ladies and gentlemen of the jury to  
18 disregard that.

19 Now let's talk about this for a  
20 moment:

21 The reason for the hearsay rule is  
22 one of credibility and reliability. Anyone can come in and  
23 testify and say some third person said anything; but the  
24 best evidence is to bring that third person in here and let  
25 him testify about what they said so that he can be subject



1 to cross-examination.

2 That's violative of the hearsay rule.

3 The objection is sustained. The jury  
4 please disregard.

5 Mr. Axelrod, move forward.

6 MR. AXELROD:

7 Your Honor, I'm going to ask that  
8 question again, specifically why he moved; not why somebody  
9 else said something.

10 DIRECT EXAMINATION BY MR. AXELROD CONTINUED:

11 Q. Was there a reason why you moved from Horry County,  
12 sir?

13 A. Uh -- Yes, fear -- of the Halls.

14 Q. Now we -- we've heard that -- Professor, where do you  
15 teach at, sir?

16 A. Uh -- Francis Marion University. I'm head of the -- uh  
17 -- accounting -- uh -- program there.

18 Q. And what kind of classes do you teach?

19 A. Uh -- Accounting; financial and tax.

20 Q. At the time of this incident, back in March 26, 2005,  
21 how old were you?

22 A. 55.

23 Q. Okay; and at that time, how much did you weigh?

24 A. Uh -- A hundred and thirty-five.

25 Q. And how tall are you, sir?

1 A. Five, five.

2 Q. Now we are going to get right to this issue on that  
3 day. How could you -- How would you describe to the jury  
4 your relationship with both Mr. Lewis W. Hall and Mr. Lewis  
5 V. Hall?

6 A. Well, at -- as of 3-26 of '05, it was common knowledge  
7 that -- uh -- Mr. Lewis V. Hall -- uh -- operated a company  
8 -- uh -- out of 8664 Laurel Woods Drive, which is the house  
9 across from me.

10 Uh -- He operates a -- uh --  
11 associated with that company -- uh -- it's common knowledge  
12 that he -- he operates -- uh -- a van and a -- uh -- white  
13 pickup truck.

14 Uh -- The -- uh -- The land, however,  
15 is owned by -- uh -- Lewis -- uh -- W. Hall Enterprises LLC.

16 So -- and -- uh -- the LLC has its  
17 LLC headquarters at that property.

18 Q. What -- What was your relationship with the Halls  
19 themselves --

20 A. At that time?

21 Q. That time or prior to that time?

22 A. Uh -- I had -- I was aware of -- uh -- uh -- Mr. Lewis  
23 V. Hall making complaints about my -- uh -- '94 Nissan  
24 pickup having Oregon license plates.

25 Q. Who did he complain to?

1 A. Uh -- The -- uh -- auditor and various people at the  
2 auditor's office; Tim Christopher, Janet Brown -- uh -- Ms.  
3 Ergle.

4 Q. And do you know why he complained?

5 A. No sir; you would have to ask him.

6 Q. Any other -- Were you friends with the Halls?

7 A. Uh -- No sir.

8 Q. The day in question, March the 26th, was -- was there  
9 an altercation in the street prior to this event?

10 A. Uh -- Yes sir. Uh -- My wife and I were -- uh -- we  
11 had our vehicle -- uh -- which has a trailer attached to it'  
12 and we were -- uh -- going to fix a fence at another  
13 property in the Laurel Woods subdivision that -- that we own  
14 and rent.

15 And -- uh -- uh -- excuse me -- we  
16 finished about two o'clock. And I was -- uh -- parking my  
17 vehicle on the driveway. I backed in.

18 Uh -- My vehicle is a 1994 Nissan  
19 pickup. It's has a trailer in the back.

20 And -- uh -- I was backing the  
21 trailer into the driveway, which caused me to be  
22 perpendicular to the road and -- uh -- in the road about  
23 halfway.

24 Uh -- At that point, Mr. Lewis V.  
25 Hall and Mr. Lewis W. Hall -- uh -- were at their white

1 pickup on their cement driveway. Uh -- They were -- They  
2 were putting something in the back.

3 I could see them out of my -- the  
4 corner of my eye because the driveway was right -- pretty  
5 much right across the street from them -- uh -- a little bit  
6 to the left; but -- but right across the street.

7 Q. At -- At that point -- uh -- did -- did the Halls leave  
8 their residence?

9 A. Uh -- Yes, they did. Uh -- Uh -- Mr. Lewis W. Hall was  
10 driving. Uh -- Mr. Lewis V. Hall was in the passenger's --  
11 uh -- seat. And --

12 Q. Now inform the jury that -- if the Halls came out of  
13 their -- is -- is it your testimony to the jury that your  
14 truck was blocking the road while you were hitched to the  
15 trailer?

16 A. About halfway, yes.

17 Q. Okay. Now, did the Halls at that point leave their  
18 residence and -- and drive away?

19 A. Yes sir; they turned left and --

20 Q. Now my question to you is: Could the Halls have gone a  
21 different direction than the direction they went, if they  
22 chose to?

23 A. Yes sir; I would imagine.

24 Q. Okay. Now the Halls turned left; and did they have  
25 the opportunity to come toward you at that point?

1 A. Yes. I was unhitching my trailer.

2 Q. Now, at that point, did the Halls -- who was driving,  
3 if you remember?

4 A. Uh -- Mr. Lewis W. Hall.

5 Q. The father?

6 A. The father.

7 Q. And did the father stop when he got to your vehicle?

8 A. Yes; they -- uh -- he honked the horn.

9 Q. And what happened next?

10 A. I -- uh -- came out from behind the -- my truck and  
11 just came out from behind my truck and approached their car.

12 And Mr. Lewis V. Hall -- uh -- had  
13 his window open and said:

14 You shouldn't be blocking the road.

15 This was not in an angry -- my  
16 perception -- my memory -- this was not an angry -- uh -- he  
17 did not say this in an angry manner?

18 Q. Who did not?

19 A. Mr. Lewis V. Hall.

20 Q. Okay.

21 A. He just: Why are you blocking the road? And I said:  
22 I'm parking my -- uh -- trailer.

23 Q. Then what happened?

24 A. And then I looked --

25 Q. What happened at that point?

1 A. Uh -- Then I looked -- uh -- at the road to see if they  
2 had enough room to pass. And my -- uh -- my assessment  
3 suggested that they did. And I said that they could pass;  
4 they had enough room to pass my -- my vehicle.

5 Q. Then --

6 A. And that was it.

7 Q. -- at that point, did Mr. Lewis V. Hall say anything to  
8 you?

9 A. No.

10 Q. Was there any other conversation between the two of  
11 you?

12 A. Uh -- A -- uh -- A sign, you might say.

13 Q. Well --

14 A. At --

15 Q. What -- What type of sign?

16 A. I have the -- uh -- as Mr. Lewis V. -- uh -- W. Hall --  
17 uh -- drove away and passed me, the -- uh -- Mr. Lewis V.

18 Hall -- uh -- threw up his finger.

19 Q. He threw up his middle finger at you?

20 A. Correct.

21 Q. And did you do anything in response to Mr. Lewis V.  
22 Hall throwing up his finger?

23 A. Yes sir; I threw up my finger.

24 Q. Okay. Now, at that point, did you go back to your  
25 property?

1 A. Uh -- Yes sir. I -- uh -- uh -- took my -- I  
2 unhitched my trailer and drove back to the -- uh --  
3 property.

4 Q. Okay. Now this was all on March the 26th?

5 A. Correct; approximately 2:30 --

6 Q. Okay.

7 A. -- p.m.

8 Q. How long after the Halls left did the Halls come back,  
9 if you remember?

10 A. I would say about 10 minutes. Mr. -- Mr. Lewis W. Hall  
11 came back in his -- in the white owned by Cold Air.

12 Q. Okay. So Mr. Lewis W. Hall comes back to his property  
13 there?

14 A. Correct.

15 Q. Now, at that point did Mr. Lewis W. Hall wave you over?

16 A. He was -- He turned in -- He had his window open;  
17 turned into his -- uh -- gravel driveway; and -- uh -- I was  
18 yelling to him:

19 Uh -- Maybe we can talk about this.

20 And he motioned me over.

21 Uh -- I did not move at that point.

22 Uh -- He pulled up -- pull -- pulled  
23 the white truck up -- uh -- into his -- uh -- backyard; came  
24 back.

25 Uh -- I said:

1 I think we can work this out.

2 Uh -- He waved me over again.

3 And I started walking.

4 Q. All right. When you said to him that -- that you could  
5 work this out, were you feeling bad about flipping the  
6 finger and --

7 A. I --

8 Q. -- was there a concern with that issue?

9 A. Childish; you know, I'm just -- I just -- just --

10 Q. Okay.

11 A. There was no anger. Uh -- There was no anger from  
12 Lewis V. Hall and -- uh -- that I could perceive.

13 Q. Now --

14 A. But I was surprised about the -- the finger going up  
15 when -- and so I just reacted.

16 Q. Now when you went over to talk to Mr. Lewis W. Hall,  
17 did you have any weapons on you?

18 A. None.

19 Q. Did you have a knife on you?

20 A. No; I don't carry knives.

21 Q. All right.

22 A. I've been in academia for 25 years. And the last time  
23 I had an altercation like this, I was -- it was 1974; and I  
24 was in the -- uh -- Army basic training.

25 Q. Okay. You are walking over to Mr. Lewis W. Hall, the



1 father, to talk to him; is that correct?

2 A. Yes sir.

3 Q. Tell the jury what happened next to you?

4 A. Uh -- I don't remember it -- too much about it. I have  
5 been through -- uh -- an awful lot -- uh -- in the past two  
6 plus years. And I remember just walking over spinning  
7 around and blacking out.

8 And the next thing I remember is --  
9 are snapshot photos -- single -- single snapshot photos of  
10 four police officers -- uh -- throwing me to the ground and  
11 handcuffing me.

12 But I -- I don't -- I remember  
13 walking over. I -- I know I walked over to the property.

14 And I know I was approaching Mr.  
15 Lewis W. Hall.

16 And after that, things are just --  
17 things are just jumbled.

18 Q. Now -- So you --

19 A. I -- I remember --

20 Q. I'm sorry sir?

21 A. I remember seeing Lewis V. Hall at some point; but it  
22 -- that's -- uh -- like I was spending around.

23 Q. All right.

24 MR. AXELROD: .

25 Your Honor, I would like to mark this

1 for exhibit.

2 THE COURT:

3 Go ahead.

4 WHEREUPON: A photograph was marked  
5 by the court reporter as Plaintiff's Exhibit 1.

6 DIRECT EXAMINATION BY MR. AXELROD CONTINUED:

7 Q. Brad, I'm going to show you what has been marked as  
8 Plaintiff's Exhibit Number 1, and let you take a look at it;  
9 all right?

10 A. Yes sir.

11 Q. Mr. Nettles kindly -- uh -- informs us that you had  
12 been convicted of entry upon the lands that of another; is  
13 that correct?

14 A. Yes sir.

15 Q. And was your conviction based on the fact that there is  
16 a little no trespassing sign on these people's property?

17 A. Yes sir. I simply walked on to the property.

18 THE COURT:

19 All right Counsel, that's not in  
20 evidence.

21 MR. AXELROD:

22 I -- I -- I move it -- May I move it  
23 into evidence, Your Honor, at this time?

24 THE COURT:

25 What say Defendants?

1 MR. SMITH:

2 Without objection as -- as to the  
3 photograph, Your Honor.

4 THE COURT:

5 All right, very good; Plaintiff's 1  
6 in evidence without objection.

7 MR. AXELROD:

8 Your Honor, may I publish at this  
9 time?

10 THE COURT:

11 You may; yes sir.

12 Go ahead, Counsel.

13 MR. AXELROD:

14 Yes sir, Your Honor.

15 DIRECT EXAMINATION BY MR. AXELROD CONTINUED:

16 Q. Brad, were you knocked unconscious that day?

17 A. There is a -- I don't -- I blackout. The -- The only  
18 way I can describe it is -- is a blackout.

19 My wife tells me that I came across  
20 the street; went into the house; and asked for the  
21 telephone; and then went out.

22 Q. Did you -- Did you --

23 A. So I was -- I heard --

24 Q. My question to you is: Were you --

25 A. I have no memory --

1 Q. -- were you knocked unconscious at the Hall's house; if  
2 you know?

3 A. I was -- I was -- I have no memory. I black -- I  
4 blacked out.

5 Q. Okay; all right; fair deal?

6 A. I have no memory.

7 Q. Did you go -- Did you go to the doctors' after that?

8 A. Uh -- Yes sir.

9 Q. Now I'm going to hand you -- Did you go to Doctor's  
10 Care?

11 A. Uh -- Yes sir; that was -- uh -- uh -- two days later  
12 on May 28th -- I'm sorry -- uh -- March 28th.

13 Q. Okay.

14 A. It was -- uh -- 2005.

15 Q. All right. And how many times did you go there; do you  
16 know?

17 A. Three times.

18 Q. And --

19 A. I met -- uh -- The second doctor, I -- I saw the third  
20 time I went to Doctor's Cares; a doctor by the name of  
21 Richard Ellis (phonetic). And he and I kind of hit it off.

22 And when he moved to Lake City, I --  
23 I followed him, so to speak; and became his -- his patient.

24 And he has been -- he has been the --  
25 you might call him the primary care physician or the central

1 THE COURT:

2 Without objection, Plaintiff's 9 in  
3 evidence.

4 MR. AXELROD:

5 I'd like to publish, Your Honor.

6 THE COURT:

7 You may give it to the jury.

8 MR. AXELROD:

9 Thank you, sir.

10 DIRECT EXAMINATION BY MR. AXELROD CONTINUED:

11 Q. At this point, do you believe that you have any lasting  
12 scars from this incident?

13 A. Uh -- Yes. I have -- uh -- uh -- a neck injury which  
14 -- uh -- will -- will continue.

15 MR. AXELROD:

16 Brad, answer any questions for all  
17 these lawyers?

18 WITNESS:

19 Thank you.

20 THE COURT:

21 And Mr. Smith, first, for cross-  
22 examination.

23 CROSS-EXAMINATION BY MR. SMITH:

24 Q. It is my understanding, Dr. Johnson, from the  
25 statements of your attorney, that you feel as though Mr.

1 Lewis V. Hall, the son, struck you from behind; is that  
2 correct, sir?

3 A. I don't know. Uh -- As I -- I indicated yesterday, my  
4 recollection of the incident is:

5 I -- uh -- approached Mr. Hall -- uh  
6 -- and then I blacked out.

7 MR. SMITH:

8 Thank you, sir; that's all I've got.

9 THE COURT:

10 Okay; Mr. Nettles.

11 MR. NETTLES:

12 Thank you, Your Honor.

13 WITNESS:

14 And that was Mr. Lewis W. Hall.

15 CROSS-EXAMINATION BY MR. NETTLES:

16 Q. Uh -- You testified as -- uh -- uh -- my notes weren't  
17 correct; but you have several -- uh -- academic degrees;  
18 right?

19 A. Yes I do; six.

20 Q. And you are now an Associate Professor at -- uh --  
21 Francis Marian College in Florence?

22 A. No sir; Francis Marion University.

23 Q. Excuse me; I -- I don't blame you with all your score.

24 Uh -- How long have you been there?

25 A. Uh -- This will be my fourth year.

1 THE COURT:

2 Before you testify to me, could I  
3 just get you to come forward? Counsel, let's just have a  
4 conference at the bench

5 WHEREUPON: There was a brief  
6 conference with all counsel at the bench at 10:54 a.m.,  
7 October 4th, 2007.

8 THE COURT:

9 All right, just a moment, ladies and  
10 gentlemen.

11 MR. NETTLES:

12 Your Honor, I'm going to abandon that  
13 line of questioning; because I don't want to take up the  
14 time --

15 THE COURT:

16 All right; question withdrawn, go  
17 ahead.

18 CROSS-EXAMINATION BY MR. NETTLES CONTINUED:

19 Q. Did you -- uh -- just testify a few minutes ago that  
20 you don't know who hit you?

21 A. Correct.

22 MR. NETTLES:

23 No further questions.

24 THE COURT:

25 And Mr. Lee, cross-examination?

1 the case withdrew from the courtroom at 10:58 AM, October  
2 4th, 2007; and was no longer present during the following  
3 proceedings.)

4 THE COURT:

5 All right -- uh -- Counsel, do you  
6 wish to revisit the issue about the previous litigation?

7 My concern when it confronted was  
8 that:

9 The jury had just gotten in here  
10 after sitting for an hour back in the jury box -- jury room.  
11 Now they've been sent out at the end of the case; we can  
12 talk about it -- uh -- if you wish to.

13 MR. NETTLES:

14 No. I -- I just decided not to ask  
15 any more questions on that topic.

16 THE COURT:

17 All right, very good.

18 Uh -- Now, motions at the close of  
19 the Plaintiff's case?

20 MR. SMITH:

21 Your Honor, at this point --

22 THE COURT:

23 Just one moment.

24 MR. AXELROD:

25 Your Honor, I had talked to Mike



1 about:

2 I wanted to admit one more medical  
3 record; and that -- uh -- he said we could admit it on the  
4 break. It's a \$5,000 bill they objected to. I'd just like  
5 to make it a Court's exhibit.

6 MR. SMITH:

7 As a -- As a proffer, I think.

8 And -- And I did tell him at the  
9 close of testimony that I would not object to him  
10 introducing evidence as a proffer of testimony; but not as  
11 evidence before the jury.

12 THE COURT:

13 What -- What is that bill?

14 MR. AXELROD:

15 It's \$5,000. It was -- uh -- it goes  
16 towards the -- uh -- the rotator cuff.

17 THE COURT:

18 Let's mark it as a Court's exhibit  
19 then. Well, why don't we just attach it to what we already  
20 have there on the rotator cuff.

21 All right; thank you. We'll just  
22 make that part of that previously admitted exhibit.

23 And now, motions?

24 MR. SMITH:

25 Your Honor, at this time, as attorney

1 for the Lewis W. Hall, I would move for a directed verdict,  
2 in that there has been no evidence that my client did  
3 anything wrong in this case as a violation of law.

4 There is no evidence that he struck  
5 anybody.

6 In fact, the evidence is:

7 As I was approaching Mr. Lewis W.  
8 Hall; and then:

9 I don't know what happened after  
10 that.

11 But he was facing Mr. Hall as he was  
12 coming to him.

13 Uh -- I know that statements of  
14 counsel are not evidence; but the only statement in the case  
15 as to who may have struck him was:

16 Lewis V. Hall.

17 And as Your Honor has said on  
18 numerous occasions, statements of counsel are not evidence.

19 So I would move at this time, because  
20 there's absolutely no evidence of any negligence -- any  
21 intentional act -- any wrongdoing whatsoever against Lewis  
22 W. Hall, that he be dismissed -- uh -- by way of directed  
23 verdict motion.

24 THE COURT:

25 All right; let's go ahead and get all

1 the motions out while we're at it.

2 Go ahead, Mr. Nettles, if you have  
3 any.

4 MR. NETTLES:

5 I represent Lewis B. Hall; and I was  
6 the attorney in the opening statement who said that my  
7 client may have hit him on the neck.

8 But -- uh -- in the Plaintiff's case,  
9 the Plaintiff has the burden of proof. And the Plaintiff  
10 has testified three times -- uh -- yesterday and two times  
11 -- or once yesterday and two times today -- that he does not  
12 know who hit him.

13 He says:

14 I blacked out. I have a memory loss.  
15 I do not know who hit me.

16 And on the basis of that testimony --  
17 uh -- I would move to dismiss Lewis B. Hall, the son, and L.  
18 W. Hall Enterprises LLC as the defendant in this case.

19 Uh -- That's the owner of the  
20 property where the incident occurred; and I would move to  
21 dismiss those defendants.

22 THE COURT:

23 All right.

24 MR. LEE:

25 Your Honor, may it please The Court

1 -- uh -- additional counsel for Lewis V. Hall.

2 Uh -- I recall the testimony from  
3 Plaintiff being that, he doesn't know what happened. He  
4 walked across the street and then blacked out; that's the  
5 testimony.

6 Anything about anyone striking anyone  
7 was a statement that came from an attorney.

8 Uh -- Therefore, on the first claim  
9 for relief for civil conspiracy, there's no evidence in the  
10 record of a combination of two of more persons for the  
11 intent and purpose of injuring the Plaintiff in the case.

12 On the second claim for relief for  
13 assault, and the third -- I'm sorry -- the fourth claim  
14 combined for assault and battery:

15 The Plaintiff testified he blacked  
16 out. There has been no evidence other than from statements  
17 by counsel in opening or closing -- or openings -- that  
18 anyone hit the Plaintiff.

19 Therefore, the -- uh -- the second  
20 and fourth claims for assault and battery should be  
21 dismissed.

22 The third claim for relief is false  
23 imprisonment.

24 There has been absolutely no evidence  
25 in the record whatsoever of a false imprisonment -- uh --

1 the elements being that the Plaintiff was held against his  
2 will. Uh -- There has been no evidence in the record on  
3 that.

4 The fifth claim for relief of  
5 malicious pros -- prosecution and the sixth claim for relief  
6 for abuse of process:

7 There's been absolutely no testimony  
8 or evidence that these Defendants used the legal process or  
9 prosecuted any action whatsoever against the Plaintiff that  
10 came in through the Plaintiff's case in chief.

11 Therefore, the fifth and sixth claims  
12 for relief should be dismissed.

13 The seventh claim for relief is  
14 defamation or slander per se.

15 There has been absolutely no  
16 testimony from -- in the Plaintiff's case of any liable,  
17 defamation, slander, committed by these Defendants.

18 And therefore, those claims should be  
19 dismissed with prejudice.

20 The eighth claim for relief is  
21 premises liability:

22 Again, the only testimony from the  
23 Plaintiff from the witness stand is that he walked across  
24 the street and blacked out.

25 That is inadequate -- insufficient --

1 to establish a claim for premises liability.

2 And I believe -- uh -- that the ninth  
3 claim for relief was -- was an injunction, which is not  
4 before The Court today.

5 And therefore, we move for a directed  
6 verdict as to all claims against all Defendants for  
7 inadequate and insufficient evidence.

8 MR. SMITH:

9 We would join in those motions for  
10 Lewis W. Hall, as well.

11 MR. NETTLES:

12 For all claims.

13 THE COURT:

14 Go ahead.

15 MR. BOYD:

16 Briefly, Your Honor.

17 THE COURT:

18 Yes sir, Mr. Boyd.

19 MR. BOYD:

20 Your Honor, I represent Cold Air AC  
21 Service, Inc.

22 Uh -- Your Honor, the only claims in  
23 this lawsuit that are made against Cold Air AC Service,  
24 Inc., are: that we are vicariously liable for the actions of  
25 individual Defendants -- actions of which are questionable

1 at best as the arguments of my -- co-counsel -- have pointed  
2 out.

3 Having said that, Your Honor;  
4 assuming there is an injury caused by an individual  
5 defendant: the law in our State is under the doctrine of  
6 respondent superior.

7 And I've passed up -- uh -- my  
8 request for charge under respondent superior, a copy of  
9 which was provided Plaintiff's counsel before the beginning  
10 of this case.

11 And, Your Honor, the general rule is  
12 that:

13 Uh -- A server -- and this is  
14 definitely a master-server case Your Honor if liability is  
15 to be found against Cold Air.

16 A servant by virtue of his employment  
17 and in furtherance of the ends, and connected either  
18 directly or indirectly with the business of -- of the  
19 master, such as acts or conduct reasonably incidental to the  
20 duties he was hired to perform and intended to serve or  
21 benefit the master, at least in part, is deemed by law to be  
22 an act done within the scope of his employment.

23 And that's the analysis that's  
24 important. There has to be evidence that Lewis V. Hall or  
25 Lewis W. Hall were acting within the scope of their

1 MR. AXELROD:

2 He was on the job working for his  
3 father and he came back. On his way back, before he got  
4 finished with that job -- where he was -- started at -- the  
5 corporate headquarters -- he jumps out of his truck; goes up  
6 and hits Brad.

7 That would be my argument that Cold  
8 Air is in there on that -- on that issue.

9 THE COURT:

10 All right.

11 Counsel, there is no evidence that  
12 Cold Air AC Service, Inc -- uh -- whatsoever was involved in  
13 this. The fact that L. W. Hall Enterprises LLC owns the  
14 premises -- which you claim -- I've not seen the deed or any  
15 documentation as to that; but nevertheless, even giving you  
16 that point, that doesn't mean that the company somehow is  
17 involved in this matter.

18 It appears to me that:

19 You are alleging the actions of a  
20 particular individual. I don't see a corporate connection.  
21 There is no evidence of it.

22 And thus, the claims against L. W.  
23 Hall Enterprises LLC and Cold Air Service, Inc. are  
24 dismissed with prejudice.

25 Now what evidence do you have that



1 THE COURT:

2 All right, Mr. Axelrod; there again  
3 that -- that fails in several elements of proof on this  
4 assault and battery claim that Lewis W. Hall somehow was  
5 connected into it.

6 I'm going to dismiss the claim  
7 against Lewis W. Hall, the father.

8 That leaves, now, Lewis V. Hall. And  
9 -- uh --

10 MR. AXELROD:

11 And Your Honor, I -- I was making  
12 that argument under -- under premises liability -- that he  
13 has a duty to protect.

14 MR. SMITH:

15 You still have to prove he owned the  
16 premises.

17 THE COURT:

18 Well, I -- Counsel, I -- Again,  
19 you've asserted that certain people owned the premises or  
20 have control of it. I -- I don't know that.

21 MR. AXELROD:

22 Yes, sir, Your Honor.

23 THE COURT:

24 Uh -- Uh -- For that reason, I --  
25 that -- that claim is dismissed.

1 Mr. Foreman and ladies and gentlemen  
2 of the jury, you didn't expect to see me when you came back  
3 into the courtroom.

4 Uh -- I'm Stan Cross. And Judge  
5 Baxley had an emergency that he needed to return to his  
6 home. And -- uh -- so I am going to pinch-hit for him in so  
7 far as receiving your verdict, which I understand you have  
8 reach; is that correct Mr. Foreman?

9 JURY FOREMAN:

10 Yes, Your Honor.

11 JUDGE JAMES STANTON CROSS:

12 All right; would you deliver it to  
13 Madam clerk?

14 Will you would publish it -- the  
15 verdict?

16 CLERK:

17 Yes, Your Honor.

18 State of South Carolina, County of  
19 Horry, in the Court of Common Pleas, Case Number 2005-CP-26-  
20 2710, Brad R. Johnson, Plaintiff versus Lewis V. Hall,  
21 Defendant, verdict:

22 Number one: With regards to the  
23 Plaintiff's claim against the Defendant for actual damages,  
24 we the jury unanimously find for the Defendant.

25 Number two: With regard to the

1 Plaintiff's claimed that the Defendant's conduct was  
2 reckless, willful, and wanton, based on clear and convincing  
3 evidence, and that the Plaintiff is further entitled to  
4 punitive damages, we the jury unanimously find for the  
5 Defendant.

6 Keith Greenwald, Foreperson, October  
7 the 4th, 2007.

8 Mr. Foreman, and ladies and gentlemen  
9 of the jury, is this your verdict?

10 If so, please signify by raising your  
11 right hand.

12 (WHEREUPON: All jurors indicated  
13 their agreement with the verdict by raising their right hand  
14 as instructed by the Clerk.)

15 CLERK:

16 Thank you.

17 JUDGE JAMES STANTON CROSS:

18 Gentlemen, we talked about the post  
19 trial motions. You will handle that with Judge Baxley. Is  
20 there anything from the Plaintiff or the Defendant; anything  
21 further?

22 MR. AXELROD:

23 No sir, Your Honor.

24 MR. NETTLES:

25 Nothing, Your Honor.

## **AN OPEN LETTER TO ATTORNEYS AND PRO SE PARTIES WITH CASES PENDING ON THE HORRY COUNTY JURY ROSTER:**

Beginning July 1, 2007, in the wake of Judge Thomas' election to the Court of Appeals, it will be my privilege to serve as Chief Administrative Judge for civil court in the Fifteenth Judicial Circuit. I look forward to working with you in this capacity. In an effort to streamline operations of the Horry County Civil Courts, this letter sets the procedures and methods of operation for all JURY cases pending in Horry County. A separate letter will be posted on the NON-JURY roster outlining new NON-JURY procedures.

In posting these procedures, the Court is aware that change is often difficult. Please understand, however, that each of the following new procedures is a result of collaboration with judges, staff, and members of the Bar, and each procedure is targeted to alleviate a specific problem presently being experienced in administering the jury roster. This is a work in progress, and any suggestions you have concerning the jury roster will be welcomed and should be forwarded directly to my office or given to Horry Bar Association president Natasha Hanna who may wish to take a position on behalf of the Bar Association.

### **NEW RULES FOR JURY CASES**

1. **Master Roster Meetings** -- Master Jury Roster meetings will be held bi-annually. The first is scheduled for Monday, August 20, 2007, in Courtroom 3B, beginning at 10:00 a.m.. All attorneys with cases on the roster, as well as all pro se parties, are expected to attend and be prepared to advise the court when the case will be ready for trial, approximately how long the trial will take, and whether there are any unusual issues with regard to the case. Any requests for protection for the remainder of 2007 must be made at least five (5) business days prior to the master roster meeting.

**Master Roster Meeting Format** -- At the roster meeting, attorneys and parties should be prepared to advise the Court whether the case can be tried within 13 months of the filing date. Cases will be listed on the roster on a "not before a particular date" basis as opposed to allowing counsel to actually choose the week of trial for a case. Attorneys and pro se parties in cases that cannot be ready for trial within 13 months of filing will need to meet with the administrative judge, as will those anticipating a trial of longer than one week's duration. If the parties wish to discuss a request for a date certain trial at the master roster meeting, a motion for date certain must be filed at least five (5) business days prior to the meeting (see paragraph 9 below).

2. **Earlier Publication of Trial Rosters** -- In order to give counsel adequate time to notify clients and witnesses, and to be fully prepared for trial, trial rosters will be posted thirty (30) days in advance of the court term, beginning with the roster for the August 13, 2007 term. Trial rosters will consist of 25 cases per judge. Please note that a limited number of non-jury items will also be included on the roster as discussed in Item 3

below. Roster meetings will continue to be held on Monday morning at the start of the term.

3. **Back-up Non-Jury Cases on Trial Roster --** To relieve the backlog in non-jury appeals, the docket clerk will set ten (10) non-jury appeals cases at the end of the jury trial roster. These cases will be called for trial if all jury cases are resolved. An email advising counsel of the fact that a particular non-jury appeal has been set for trial in this fashion will be sent out at the time the roster is initially posted. Counsel and parties should be on standby in the event these cases are reached, and non-jury docket coordinator Teresa Phillips will telephone counsel and parties as soon as it is evident that the non-jury cases will be reached. Failure to appear will result in dismissal of the case. Counsel and parties for these non-jury appeals do not need to attend the jury roster meeting on Monday morning, but must be on standby for the call of the case. Further, if the case has resolved or the appeal is moot, please advise Teresa Phillips immediately upon the case being posted for back-up trial so that it may be deleted from the roster.

4. **Continuances --** Continuance requests must be in the form of a filed motion, and can no longer be considered based upon a phone call or letter. Attorneys/parties requesting a continuance should send the request by fax, together with a copy of the filed motion bearing the Clerk's stamp, **no later than 5:00 p.m. WEDNESDAY** prior to the scheduled trial term as follows:

Ms. Alma Jenkins  
Jury Docket Coordinator  
Horry County Clerk of Court's Office  
(843-915-5075 voice  
(843) 915-6075 fax

Continuance requests without proof of a motion being filed cannot be considered. Proof of filing includes either providing a copy of the filed motion with the clerk's stamp affixed thereon, or a copy of the motion filing letter, copy of the \$25.00 filing fee check, and a copy of an affidavit of service of the motion on all opposing parties-- All continuance requests should include the reason for the request, the name and contact information of all adverse attorneys or pro se parties, and a written statement from all adverse attorneys or pro se parties advising whether there is consent to the request. Failure to provide this information will result in denial of the continuance motion. Your letter will be faxed back to all attorneys and pro se parties with a grant or denial noted on the face of the letter. Motions for continuance made after the deadline must be addressed by the presiding judge of the term of Court, so your appearance at the Monday roster meeting will be required unless the presiding judge communicates otherwise.

5. **Effect of Continuances --** In the past, when a case was continued, based upon its case number, several weeks may pass before the case would be called for trial again. This is confusing for parties and others not familiar with the system. Effective July 1, a

continuance will only postpone the trial of the case for one term, and the continued case will be placed at the top of the trial docket for the following term. However, upon a showing of meritorious circumstances, the presiding judge will be authorized to grant a continuance of up to one month; however, anyone requesting a continuance for longer than one month must address this issue with the chief administrative judge.

6. **Conflicts with Other Courts --** The Court is aware that there are other courts operating simultaneously while jury terms are in progress. However, it will no longer be sufficient for counsel or a party to simply say "I have to be in general sessions" or "I have to be in federal court" and on that basis request a continuance. The Court will require written documentation of the court conflict and the name and contact information of the scheduling officer for that court; thereafter, jury docket coordinator Alma Jenkins will resolve the conflict with the other circuit or federal court so that the civil jury case will be held as scheduled. Counsel and parties are required to give jury docket coordinator Alma Jenkins a minimum five (5) business days notice prior to the jury term when such a conflict is occurring. Counsel is referred to Rule 601 of the SC Appellate Court Rules when such scheduling conflicts arise.

7. **Jury Trials by Special Referee --** Both S. C. Code Ann § 14-11-60 and Rule 39, SCRCF, allow jury (or non-jury) trials to be conducted by a special referee appointed by the Court. A standard Order allowing such disposition may be found on this website at the following link: <http://www.horrycounty.org/juryrosters/SumJuryTrial.doc>. Any parties wishing to resolve a case by this method should prepare a similar Order and submit it to the Court. By consent, parties are free to choose the special referee whom they wish to preside, who should be a member in good standing of the South Carolina Bar. Unless otherwise agreed by the parties, the costs of referring the case shall be borne equally between the parties. The Court strongly urges this alternative resolution method for cases, as it is quicker, less expensive for parties, less formal, may employ high/low agreements, and often operates under relaxed rules of evidence.

8. **Status conferences --** From time to time, the Court will make a day available for the purpose of conducting status conferences. The first date for status conferences has been scheduled for Friday, July 20, 2007, beginning at 10:00 a.m. Attorneys or pro se parties requesting a status conference on this day should contact Jury court coordinator Alma Jenkins at the address listed above. Due to their complex nature, the Court is going to require status conferences in certain types of cases in an effort to insure their progress toward trial, and all parties will be notified in advance of the date and time.

9. **Date certain trial requests --** Presently there are over 100 sizeable and expert-intensive condemnation, construction, and/or medical malpractice cases pending in Horry County, many of which are projected to take more than one week for trial. To assign date certain trials for only these cases would swallow the docket and prevent the orderly flow of business for the other 2000 plus cases that are pending. Thus, a date certain trial can only be assigned under compelling circumstances. These circumstances generally include difficulties such as having three (3) or more experts who will testify at trial, a projected trial length of a full week or more, having more than ten (10) parties in the

case, having at least five (5) lay witnesses from out of state, and/or other similarly challenging factors. Any request for a date certain trial must be made by separate motion, not as a part of a scheduling order, setting forth the specific reasons for which the request is made, stating the positions of the other parties, estimating the length of trial, and advising if any specific court terms are agreeable or problematic to all. Please understand in advance that the Court will be unable to accommodate many of these requests. Furthermore, it will not be possible for counsel to choose the particular date for a trial, and many date certain trials will be set on back-up status behind another such case.

10. **Scheduling Orders** -- Once a case is listed on the trial docket, a motion for a scheduling order, which at that point is actually a continuance request, cannot be granted. Scheduling Orders should be submitted early in the litigation and prior to the case appearing on a trial docket, or at the master roster meeting. All scheduling Orders presently in effect shall remain in effect.

11. **Effect of this Order on Condemnation Cases** -- The Honorable Edward B. Cottingham has been given special administrative authority over all pending SCDOT condemnation cases, and he continues in this role. Judges Baxley and Cottingham will work together in scheduling these cases for trial in accordance with the statutory preference they are given.

Thank you for your attention to these matters, and we hope that these policies will assist you by providing guidelines that will make the civil court operations most efficient for attorneys and parties who have cases on your roster.

With respect,

J. Michael Baxley  
Civil Chief Administrative Judge

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

---

Case No. 2005-CP-26-2710

---

Dr. Brad R. Johnson,

Appellant,

v.

Lewis W. Hall, Lewis V. Hall,  
L. W. Hall Enterprises, LLC,  
Cold Air AC Service, Inc.,

Respondents.

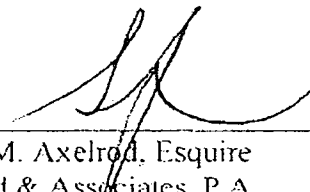
---

CERTIFICATION

---

The undersigned attorney hereby certifies that the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material (see Exhibit I, incorporated by reference herein, a true and correct copy).

Dated: April 22, 2009



---

Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
(843) 916-9311 (Fax)  
Attorney for Appellant



# AXELROD & ASSOCIATES, P.A.

Attorneys and Counselors at Law

Stuart Mark Axelrod  
W. Chris Castro \*  
Lisa M. Carver \*\*\*  
Joshua A. Bailey

\* Certified Public Accountant  
\*\* Certified Guardian Ad Litem  
+ Certified Family Mediator

Telephone  
(843) 916-9300

Toll Free  
(866) 916-6300

Telecopier  
(843) 916-9311

604 Sixteenth Avenue North  
Myrtle Beach, SC 29577

January 29, 2009

G. Michael Smith  
Thompson & Henry, P.A.  
(Attorneys for Lewis W. Hall)  
1318 Third Avenue  
Conway, S.C. 29528

Mr. Brent M. Boyd, Esquire  
Murphy & Grantland, PA  
(Attorneys for Lewis V. Hall)  
4406-B Forest Drive  
Columbia, SC 29206

Mr. Truett F. Nettles  
(Attorney for Lewis V. Hall)  
67 Broad Street  
Charleston, SC 29401

Mr. Jay R. Lee  
Aiken, Bridges, Nunn, Elliott & Tyler, P.A.  
(Attorneys for Cold Air AC Service, Inc.)  
181 E. Evans Street, Suite 409  
P.O. Drawer 1931  
Florence, SC 29503

Re: Johnson, Brad R v. Hall, Lewis W

Dear Gentlemen:

In the above referenced appeal, you have designated matters to be included in the Record on Appeal. For example:

1. Complaint
2. Amended Complaint
3. Answer and Counterclaim of Lewis W. Hall

1  
Exhibit I  
Page 1 of 3

R - 198

4. Answer to Amended Complaint
5. Administrative Order
6. Motion to Amend
7. Order Granting Motion
8. Motion for Continuance
9. Return to Motion for Continuance with Exhibit letter
10. - Order Denying New Trial"

However, I have not been able to identify several of these documents due to the lack of specificity.

In Toal, Vafai, and Muckenfuss (2002), Appellate Practice in South Carolina, 2d Edition, published by the South Carolina Bar in its Continuing Education Division, the authors discuss the South Carolina Appellate Court Rules dealing with the Designation of Matter and documents that were never presented to the trial court, as follows.

"At the same time a party serves his initial brief(s), including the reply brief, [said party] must also serve on all parties to the appeal a designation of matter to be included the record on appeal. Rule 209(a), SCACR; see Form 13, Appendix C, SCAC (designation of matter to be included in record on appeal). **This designation must forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which the party proposes to include in the record on appeal. One copy this designation with proof of service must be filed with the clerk of the appellate court. Rule 209(a), SCACR.**

**The designation must clearly identify what the party desires to have included in the record on appeal. The designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials that may be properly included in the record on appeal. Rule 209(b), SCACR.** The rule governing the record on appeal, Rule 210, SCACR, does not explicitly state what may be included in the record; however, Rules 209 and 210, SCACR, reveal two limitations.

**First, the record must not include matter not presented to the lower court or tribunal. Rule 210(c), SCACR; see *Cobb v. Benjamin*, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997) (insurance policy that was not part of the record could not be considered by the court on appeal); *Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (pursuant to SCACR, matter would not be given substantive consideration if it is not presented to the trial court).**

Second, a party must not include any matter in his designation irrelevant to the appeal. Rule 209(b), SCACR; *Forner v. Butler*, 319 S.C. 275, 460 S.E.2d 425 (Ct. App. 1995) (matters which should not appear in the record are those items a party believes to be not relevant to the appeal). Thus, material that was presented to the

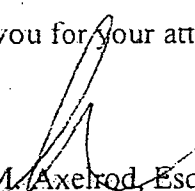
lower court and which is relevant to the appeal — including orders, judgments, decrees, pleadings, transcript, charges, exhibits and other materials or documents — may be included in the record. The designation must be accompanied by a certificate signed by the party's counsel of record that the designation contains no matter which is irrelevant to the appeal. Rule 209(c), SCACR.

Attorneys sometimes confront the questions of exclusion of designated matter or inclusion of matter never presented below. If the record compiled by opposing counsel does not contain some designated matter, this optimally should be resolved by Consulting Opposing counsel, so that the missing materials may be added to the record. If this fails, then a motion for correction of the record on appeal would be appropriate. Similarly, if opposing counsel designates matter not presented below, one should first attempt to resolve the problem by consulting opposing counsel; however, if this does not succeed, then the party compiling the record should not, and cannot, unilaterally refuse to include the matter in the record. Instead, the appropriate solution is to make a motion to strike." Bold added.

As to those documents that I have not been able to identify, I propose the following as a solution:

Since you have already received a copy of the proposed Record on Appeal, please send me any additional documents that may be appropriately included in the Record on Appeal and I will so include them.

Thank you for your attention in this matter.

  
Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
Attorney for Appellant

STATE OF SOUTH CAROLINA,

COUNTY OF HORRY

DR. BRAD R. JOHNSON

Plaintiff,

vs.

LEWIS W. HALL; LEWIS V. HALL; L. W.  
HALL ENTERPRISES, LLC; COLD AIR  
AC SERVICE, INC.

Defendant.

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO. 2005-0026-2710

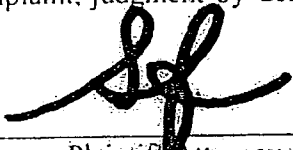
CLERK OF COURT  
JUGGINS  
MAY 18 AM 11:00  
HORRY COUNTY

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Conway, South Carolina

Dated: May 18, 2007

  
Plaintiff Attorney for Plaintiff

Address: Stuart M. Axelrod, Esquire ID#7072  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
(843) 916-9311 (Fax)

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

---

Case No. 2005-CP-26-2710

---

Dr. Brad R. Johnson,

Appellant,

v.

Lewis W. Hall, Lewis V. Hall,  
L. W. Hall Enterprises, LLC,  
Cold Air AC Service, Inc.,

Respondents.

---

CERTIFICATION

---

The undersigned attorney hereby certifies that the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material (see Exhibit I, incorporated by reference herein, a true and correct copy).

Dated: April 22, 2009

**RECEIVED**  
APR 24 2009  
SC Court of Appeals

  
\_\_\_\_\_  
Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
(843) 916-9311 (Fax)  
Attorney for Appellant

**PETITION FOR WRIT OF CERTIORARI**  
**APPENDIX**

**PART I**

**B.**  
**SUPPLEMENTAL RECORD ON APPEAL**

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

---

Case No. 2005-CP-26-2710

---

Dr. Brad R. Johnson .....Appellant;

v.

Lewis W. Hall, Lewis V. Hall, L.W. Hall Enterprises, LLC,  
and Cold Air AC Services, Inc. .... Respondents.

---

**SUPPLEMENTAL RECORD ON APPEAL**

---

Brent M. Boyd, Esquire  
Timothy J. Newton, Esquire  
Murphy & Grantland, P.A.  
P.O. Box 6648  
Columbia, SC 29260  
(803) 782-4100  
Attorneys for Respondent Lewis V. Hall

G. Michael Smith, Esquire  
Thompson & Henry, P.A.  
1318 Third Avenue  
Conway, S.C. 29528  
Attorney for Respondent Lewis W. Hall

Truett F. Nettles, Esquire  
67 Broad Street  
Charleston, S.C. 29401  
Attorney for Respondent L.W. Hall Enterprises,  
LLC

Jay R. Lee, Esquire  
Aiken, Bridges, Nunn, Elliott & Tyler, P.A.  
181 E. Evans Street, Suite 409  
P.O. Drawer 1931  
Florence, S.C. 29503  
Attorney for Respondent Cold Air AC Service, Inc.

Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, S.C. 29577  
Attorney for Appellant

#### INDEX

|                                                                                           |    |
|-------------------------------------------------------------------------------------------|----|
| Objection to Plaintiff's Post-Trial Motions filed Oct. 24, 2007 .....                     | 1  |
| Notice of Appearance dated September 17, 2007.....                                        | 7  |
| Motion for a Continuance dated September 17, 2007 .....                                   | 9  |
| Trial Transcript pp. 240-44 and 246-47 .....                                              | 13 |
| Order dated Feb. 16, 2007 (p. 49 inadvertently left out of Amended Record on Appeal) .... | 21 |

#### Certificate of Counsel

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties that was inadvertently left out of the Amended Record on Appeal and not any other material.

\_\_\_\_\_  
Brent M. Boyd, Esquire  
Timothy J. Newton, Esquire  
Murphy & Grantland, P.A.  
P.O. Box 6648  
Columbia, SC 29260  
(803) 782-4100  
Attorneys for Respondent  
Lewis V. Hall

May 13, 2009



STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. 05-CP-26-2710

DR. BRAD R. JOHNSON,  
Plaintiff,

v.

LEWIS W. HALL, LEWIS V. HALL, L.W.  
HALL ENTERPRISES, LLC, and COLD  
AIR AC SERVICE, INC.,  
Defendants.

OBJECTION TO PLAINTIFF'S POST-  
TRIAL MOTIONS

HORRY COUNTY  
CLERK OF COURT  
OCT 26 2007  
10:26 AM

The Defendants Lewis V. Hall and L.W. Hall Enterprises, LLC, by and through their undersigned legal counsel, hereby object to the Plaintiff's post-trial motion for a new trial pursuant to Rule 59 SCRPC. This Defendant will show unto this Honorable Court that the Plaintiff violated the South Carolina Rules of Civil Procedure in adding additional Defendants to this case; that the Plaintiff violated the New Rules for Jury Cases issued by the Chief Administrative Judge of this Court, and effective in the Horry County Court of Common Pleas on July 1, 2007, in making this motion for a continuance; that the trial court's denial of the Plaintiff's motion for a continuation was harmless error, because the Plaintiff was allowed to introduce psychiatric evidence which was the basis for the Plaintiff's motion for continuance; and, finally, the Plaintiff is not entitled to a new trial under Rule 59 SCRPC.

#### PROCEDURAL HISTORY

The Plaintiff commenced this lawsuit by filing a Summons and Complaint against the Defendants Lewis W. Hall and Lewis V. Hall on May 31, 2005. After almost eighteen (18) months of discovery, conducted by the Plaintiffs and Defendants, the Plaintiff moved to add the additional Defendants L.W. Hall Enterprises, LLC, and Cold Air A/C Service, Inc. That

motion was made on November 22, 2006. At a pre-trial hearing, before the Presiding Judge, the Honorable J. Michael Baxley, the Plaintiff's motion to add additional Defendants was granted with the provision that the Plaintiff was given ten (10) additional days to consider the issue (addition of parties) and that the Plaintiff would notify the Court of the Plaintiff's intent. Instead of complying with that Order, the Plaintiff waited until May 18, 2007, three (3) months later, to file the Amended Complaint adding these additional Defendants.

The Court of Common Pleas for Horry County, South Carolina, has issued NEW RULES FOR JURY CASES by Order of the Honorable J. Michael Baxley, Chief Administrative Judge. These Orders became effective July 1, 2007. Pursuant to these new rules, a Master Roster meeting was held on August 20, 2007. At that hearing, the Plaintiff did not ask for a continuance of this case.

This case was called for trial in the Horry County Court of Common Pleas on October 1, 2007. At that time, the Defendant L.W. Hall Enterprises, LLC, had filed a motion for continuance and the Defendant Cold Air A/C Services, Inc., had filed a Motion for Summary Judgment and a Motion for Continuance. On that day, those Defendants withdrew their motions. The Plaintiff then made a verbal motion for continuance. The stated basis for the Plaintiff's motion was his desire to take the deposition of the treating psychiatrist. The Plaintiff's motion was denied.

At the close of the Plaintiff's case, the Court issued a directed verdict for the Defendants Lewis W. Hall, L.W. Hall Enterprises, LLC, Cold Air A/C Services, Inc. The trial proceeded against the Defendant Lewis V. Hall only. The jury returned a verdict for the Defendant.

#### ARGUMENT

The Plaintiff failed to comply with Rule 6(d) SCRPC in filing his amended Complaint and adding new, additional Defendants in this lawsuit. As stated above, the Court authorized the Plaintiff to amend his Complaint and add new Defendant parties by Order dated February 16, 2007. That Order also allowed the Plaintiff ten (10) days to consider which Defendants would be added as parties. The Plaintiff did not file his Amended Complaint and add these additional parties until May 18, 2007, ninety (90) days after the Court's order. Rule 6(d) provides, in part:

"In all cases where a motion shall be granted on payment of costs or on the performance of any condition, or where an order shall require such payment or performance, the party whose duty it shall be to comply therewith shall have 20 days for that purpose, unless otherwise directed in the Order."

The Plaintiff's failure to comply with the Order of this Court and Rule 6(d) SCRPC should not constitute a basis for relief from an adverse trial verdict.

The Plaintiff made his verbal motion for continuance on October 1, 2007, the first day of this jury term in the Horry County Court of Common Pleas. The Plaintiff sought to invoke that provision of Rule 40(b) SCRPC which provides one hundred and eighty (180) days after the addition of a new party before trial is called. In fact, the Plaintiff had two hundred and twenty (220) days from the date of the Court's Order allowing the Plaintiff to add additional parties. The Plaintiff's negligence and delay in complying the Court's Order and his negligence and delay in adding new, additional Defendants should not be allowed to frustrate this Court's fair administration of justice and this Court's effort to manage and organize the jury trial roster.

The Plaintiff's verbal motion for continuance on October 1, 2007, violates the NEW RULES FOR JURY CASES for the Horry County Court of Common Pleas. Rule 4 of these local rules provides that any party requesting a continuance must file such motion and fax the

same to the Jury Docket Coordinator no later than 5:00 p.m. Wednesday prior to the scheduled trial term. The rule goes on to provide that "continuance requests without proof of a motion being filed cannot be considered." At the Master Jury Roster meeting conducted by this Court on Monday, August 20, 2007, the Plaintiff did not advise the Court or other parties that the Plaintiff was unprepared for trial. Furthermore, the Plaintiff failed to comply with Rule 4 of the new rules by making this verbal motion on the first day of the jury term, without previously filing a written motion. The Plaintiff waived any claim for relief under Rule 40(b) SCRPC due to his failure to properly raise such issue pursuant to the new local rules. Rule 40(b) is a procedural rule, not a rule of subject matter jurisdiction. This procedural right is waived if not properly asserted. *Paschal v. Causey*, 309 S.C. 206, 419 S.E.2d 863 (S.C. Ct. App. 1992), citing *Windham v. Honeycutt*, 279 S.C. 109, 302 S.E.2d 856 (S.C. 1983).

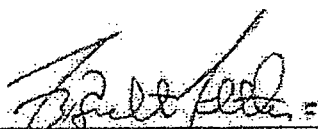
In making his motion for continuance on the first day of the trial term, the Plaintiff sought additional time in order to take the deposition of his treating psychiatrist. According to the psychiatrist's records, in evidence, the Plaintiff first visited the psychiatrist on October 26, 2005 (more than two (2) years prior to the trial). The records reflect that the Plaintiff visited this psychiatrist, or a clinical social worker in that office, on a monthly basis until July 2007. If the Plaintiff's psychiatric problems were the proximate result of the physical battery, which is the subject of this lawsuit, there is no reason why a deposition of the treating psychiatrist could not have been conducted in the two-year period prior to trial. Furthermore, the Plaintiff was allowed to put his psychiatric bills into evidence in the trial of this case, over the objection of the Defendants. The Plaintiff's psychiatric bills were available to be considered by the jury in determining the Plaintiff's damages. Therefore, the Court's denial of the Plaintiff's request for a continuance did not affect any substantial rights of the Plaintiff. Any error in denying the

motion for continuance was harmless and should be disregarded by this Court. Rule 61 SCRCP.

### CONCLUSION

The only basis for the Plaintiff's Motion for a New Trial under Rule 59 SCRCP stated by the Plaintiff is his allegation that he did not receive one hundred and eighty (180) days required under Rule 40(d) SCRCP. The record reflects, on the contrary, that the Plaintiff had more than two hundred and twenty (220) days to file and serve pleadings on the new Defendants and conduct any reasonable discovery. Furthermore, the Plaintiff's motion for a continuance was made in violation of the New Rules for Jury Cases in the Horry County Court of Common Pleas. Finally, the Court's denial of the Plaintiff's motion for a continuance was harmless error, if it was error at all, in that the Plaintiff was afforded a more than reasonable opportunity to add additional Defendants, conduct any discovery and take the deposition of his treating psychiatrist. Therefore, these Defendants respectfully request that the Plaintiff's Motion for a New Trial be denied and that this Court afford these Defendants such other and further relief as may be deemed just and proper by this Court.

Dated: Oct 23, 2007.  
Charleston, South Carolina

  
F. Truett Nettles, II, Esq.  
THE NETTLES LAW OFFICE, LLC  
Post Office Box 699  
67 Broad Street, Second Floor  
Charleston, South Carolina 29402  
(843) 577-6233

Attorney for the Defendant Lewis V. Hall  
and L.W. Hall Enterprises, LLC

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

DR. BRAD R. JOHNSON,

Plaintiff,

v.

LEWIS W. HALL, LEWIS V. HALL, L.W.  
HALL ENTERPRISES, LLC, and COLD  
AIR AC SERVICE, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT  
CASE NO. 2005-CP-26-2710

CERTIFICATE OF MAILING

HORRY COUNTY  
07 OCT 2007 PM 2:26  
JUGGINS  
CLERK OF COURT

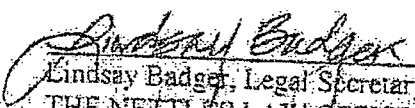
I do hereby certify that I have on this 23rd day of October 2007, caused the foregoing  
Defendants Lewis V. Hall and L.W. Hall Enterprises, LLC. Objection to Plaintiff's Post-Trial  
Motions and Certificate of Mailing to be served on the Plaintiff herein by mailing true and  
correct copies thereof to the following address:

Stuart M. Axelrod, Esq.  
Axelrod & Associates, P.A.  
604 16<sup>th</sup> Avenue North  
Myrtle Beach, SC 29577

G. Michael Smith, Esq.  
Thompson & Henry, P.A.  
P.O. Box 1533  
Conway, SC 29528

Brent M. Boyd, Esq.  
Murphy & Grantland, P.A.  
4406-B Forest Drive  
Columbia, SC 29206

Jay R. Lee, Esq.  
Aiken, Bridges, Nunn, Elliott & Tyler, P.A.  
P.O. Box 1931  
Florence, SC 29503

  
Lindsay Badger, Legal Secretary  
THE NETTLES LAW OFFICE, LLC  
67 Broad Street, 2<sup>nd</sup> Floor  
P.O. Box 699  
Charleston, SC 29402  
(843) 577-6235

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2005-CP-26-2710

Dr. Brad R. Johnson,

Plaintiff,

vs.

**NOTICE OF APPEARANCE**

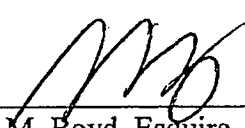
Lewis W. Hall, Lewis V. Hall, L. W. Hall  
Enterprises, LLC & Cold Air AC Service, Inc.,

Defendants.

**TO: THE HORRY COUNTY COURT OF COMMON PLEAS AND ALL COUNSEL  
OF RECORD.**

**YOU WILL PLEASE TAKE NOTICE** that Brent M. Boyd, Esquire, of the Law Firm  
of Murphy & Grantland, P.A. in Columbia, South Carolina, hereby files this Notice of  
Appearance on behalf of Defendant Lewis V. Hall in the above-referenced matter.

MURPHY & GRANTLAND, P.A.

  
\_\_\_\_\_  
Brent M. Boyd, Esquire  
4406 B Forest Drive (29206)  
Post Office Box 6648  
Columbia, South Carolina 29260  
**Attorneys for Lewis V. Hall**

Columbia, South Carolina  
September 7 2007

HORRY COUNTY  
CLERK OF COURT  
MELANIE HUGGINS  
07 SEP 17 PM 12:51

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Dr. Brad R. Johnson,

Plaintiff,

vs.

Lewis W. Hall, Lewis V. Hall, L. W. Hall  
Enterprises, LLC & Cold Air AC Service, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2005-CP-26-2710

**CERTIFICATE OF SERVICE**

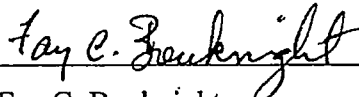
I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys  
for Lewis V. Hall, do hereby certify that I served a copy of the **Notice of Appearance** via US.

Mail to the below addresses:

Stuart M. Axelrod, Esquire  
Axelrod & Associates, PA  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577

G. Michael Smith, Esquire  
Thompson & Henry, P.A.  
1314 Professional Drive  
P.O. Box 1290  
Myrtle Beach, SC 29578

E. Glenn Elliott, Esquire  
Aiken, Bridges, Nunn, Elliott & Tyler, PA  
181 E. Evans Street  
P.O. Drawer 1931  
Florence, SC 29053

  
Fay C. Bouknight

Columbia, SC

September 17, 2007

HORRY COUNTY  
07 SEP 17 PM 12:51  
MELANIE HUGGINS  
CLERK OF COURT



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

☐ Plaintiff  
Dr. Brad R. Johnson

v.

Lewis W. Hall, et al.  
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.  
2005-CP-26-2710

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney:  
Stuart M. Axelrod, Esquire, Bar No.  
Address:  
Axelrod & Associates, PA  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577

phone: 843-916-9300 fax: 843-916-9311  
e-mail: other:

Defendant's Attorney:  
Brent M. Boyd, Esquire, Bar No.  
Address:  
Murphy & Grantland, P.A.  
PO Box 6648, Columbia, SC 29260  
phone: 803-782-4100 fax: 803-782-4140  
e-mail: bboyd@murphygrantland.com other:

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

**SECTION I: Hearing Information**

Nature of Motion: Motion for Continuance

Estimated Time Needed: 15 min. Court Reporter Needed: ☒ YES / ☐ NO

**SECTION II: Motion/Order Type**

- ☒ Written motion attached  
☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

9/12/07  
Date submitted

**SECTION III: Motion Fee**

- ☒ PAID - AMOUNT: 25.00  
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support  
(check reason) ☐ Domestic Abuse or Abuse and Neglect  
☐ Indigent Status ☐ State Agency v. Indigent Party  
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief  
☐ Motion for Stay in Bankruptcy  
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)  
☐ Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter:  
☐ Other:

**JUDGE'S SECTION**

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

JUDGE

CODE: Date:

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_

Date Filed: \_\_\_\_\_

|                                                  |          |
|--------------------------------------------------|----------|
| <input type="checkbox"/> MOTION FEE COLLEC       | D: _____ |
| <input type="checkbox"/> CONTESTED – AMOUNT DUE: | _____    |

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2005-CP-26-2710

Dr. Brad R. Johnson,

Plaintiff,

vs.

**MOTION FOR CONTINUANCE**

Lewis W. Hall, Lewis V. Hall, L. W. Hall  
Enterprises, LLC & Cold Air AC Service, Inc.,

Defendants.

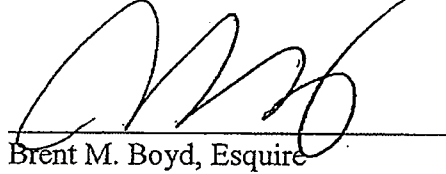
**TO: STUART M. AXELROD, ESQUIRE, ATTORNEY FOR PLAINTIFF AND TO  
PLAINTIFF ABOVE NAMED.**

**YOU WILL PLEASE TAKE NOTICE** that the undersigned, as attorneys for Defendant Lewis V. Hall, will move before the presiding judge of Horry County Court of Common Pleas on the tenth (10th) day after service hereof, or as soon thereafter as counsel may conveniently be heard, for an Order continuing the above-captioned case, which is scheduled to be heard October 1, 2007. The grounds for this Motion are that additional counsel for Lewis V. Hall is filing a Notice of Appearance in the case. Additional time is needed to obtain information on the case in order to prepare the case for trial.

HORRY COUNTY  
07 SEP 17 PM 12:52  
MELANIE HUGGINS  
CLERK OF COURT

Respectfully Submitted,

MURPHY & GRANTLAND, P.A.

A handwritten signature in black ink, appearing to read 'B. Boyd', is written over a horizontal line.

Brent M. Boyd, Esquire  
4406 B Forest Drive (29206)  
Post Office Box 6648  
Columbia, South Carolina 29260  
**Attorneys for Lewis V. Hall**

Columbia, South Carolina  
September 17, 2007

1 employment.

2 There is no evidence of that in this  
3 case, Your Honor.

4 Uh -- The -- The evidence -- uh --  
5 that has been presented in this case is wholly devoid of any  
6 evidence that would keep Cold Air AC Service, Inc. in this  
7 case.

8 The -- The seminal case on this  
9 issue, Your Honor, is a -- a Supreme Court case: Crittenden  
10 versus Thompson-Walker Company (phonetic).

11 In that case, Your Honor, it set  
12 forth a -- a circumstance under which intentional tort --  
13 which is what is alleged to have occurred in this case --  
14 can be impugned to an employer.

15 And in that case what happened, Your  
16 Honor, is that -- uh -- Thompson-Walker contracted to  
17 provide some remodeling for Crittenden. Crittenden -- uh --  
18 set it up on a draw system.

19 Uh -- About the next to the last  
20 draw, Crittenden called Thompson Walker in and said they had  
21 some problems.

22 They discussed those; were not able  
23 to come to an understanding to that effect, Your Honor.

24 Subsequent to that, the next day, Mr.  
25 Walker, who owned Thompson-Walker Company called Mr.

1 Crittenden to inquire as to when he would be paid.

2 Mr. Crittenden advised that to --  
3 referred him to his lawyer -- said he would not be paid.

4 Mr. Walker, then, on his way out of  
5 the door at his facility, informed his foreman, who had been  
6 working on this jobsite, that:

7 Mr. Crittenden is not going to pay  
8 us. I'm going over there to discuss the matter with him --  
9 uh -- but the job is over.

10 He goes -- He drives over to speak  
11 with Mr. Crittenden. And he had been in his office  
12 discussing the matter. The foreman shows up; walked into  
13 the back -- back room; and assaults and batters Mr.  
14 Crittenden in the presence of his employer; in the presence  
15 of several other people that witnessed him beat him -- uh --  
16 beat him in the back room, Your Honor.

17 In that circumstance, The Court said  
18 -- uh -- Thompson-Walker the Defendant in that case, said:

19 Your Honor, we're -- we're not liable  
20 here. That's an intentional tort. His job is not to be an  
21 enforcer, or go attack people to -- to -- to do those  
22 services. His job is to be a foreman at a job site.

23 ~~And The Court said that's not good~~  
24 enough; that:

25 If -- If it can be shown -- that:

1                   If it is proven by the Plaintiff that  
2 the assault -- that the intentional tort was made; but was  
3 taken in furtherance of the business of the master -- that  
4 it had something to do -- had to have at least some causal  
5 connection to the business relationship between the master  
6 and this third party.

7                   If that can be shown, then the master  
8 can be held liable.

9                   There's nothing --

10 THE COURT:

11                   All right.

12 MR. BOYD:

13                   -- in this record regarding that,  
14 Your Honor.

15                   And for those reasons, we would ask  
16 that Cold Air be dismissed.

17 THE COURT:

18                   All right -- uh -- Mr. Axelrod:

19                   What evidence is there in this record  
20 of civil conspiracy, false imprisonment, malicious --  
21 malicious prosecution, abuse of process, or defamation?

22 MR. AXELROD:

23 ~~----- Your Honor, with -- within the record -----~~  
24 -- what we have in the record is that:

25                   Brad was invited over. He was

1 invited over by Mr. Lewis W. Hall to the Hall property.

2 He crosses over to Mr. Hall's  
3 property and gets hit; thus injured on the property.

4 Mr. Lewis W. Hall under premises  
5 liability has a duty to protect an invitee onto that  
6 property. He had a duty to protect Brad at that point.

7 If Mr. Lewis W. Hall saw his son --  
8 did see his son coming up to hit Brad -- which we admitted  
9 into the record, at least the first day.

10 On the record, he was -- Brad was  
11 invited over. And he went over and got hit.

12 So -- So there was a duty there.

13 THE COURT:

14 All right.

15 There is no evidence of civil  
16 conspiracy; that claim is dismissed.

17 There is no evidence of false  
18 imprisonment; that claim is dismissed.

19 There is no evidence of malicious  
20 prosecution; that claim is dismissed.

21 There is no evidence whatsoever of  
22 abuse of process; that claim is dismissed.

23 ~~There is no evidence of Defamation;~~  
24 and that claim is dismissed.

25 Now, what evidence is there in this



1 record that L. W. Hall Enterprises LLC or Cold Air AC  
2 Service, Inc. had any connection to this, other than the  
3 actions of two individuals of which you complain; what  
4 corporate connection do you have?

5 MR. AXELROD:

6 Your Honor, the property is owned by  
7 the LLC. The place where this event occurred -- where Mr.  
8 Lewis W. Hall beckoned Brad over -- that is the corporate  
9 headquarters for his company.

10 THE COURT:

11 Well, let's first take Cold Air:  
12 What evidence do you have Cold Air is  
13 involved?

14 MR. AXELROD:

15 That --

16 THE COURT:

17 -- as a corporate entity?

18 MR. AXELROD:

19 Lewis V. Hall lives at this premises  
20 where this incident occurred; he lives for free.

21 He -- He does work for his father in  
22 return for the free rent. We've had prior testimony to  
23 that:

24 MR. BOYD:

25 Not in this case.

1 MR. AXELROD:

2 He was on the job working for his  
3 father and he came back. On his way back, before he got  
4 finished with that job -- where he was -- started at -- the  
5 corporate headquarters -- he jumps out of his truck; goes up  
6 and hits Brad.

7 That would be my argument that Cold  
8 Air is in there on that -- on that issue.

9 THE COURT:

10 All right.

11 Counsel, there is no evidence that  
12 Cold Air AC Service, Inc -- uh -- whatsoever was involved in  
13 this. The fact that L. W. Hall Enterprises LLC owns the  
14 premises -- which you claim -- I've not seen the deed or any  
15 documentation as to that; but nevertheless, even giving you  
16 that point, that doesn't mean that the company somehow is  
17 involved in this matter.

18 It appears to me that:

19 You are alleging the actions of a  
20 particular individual. I don't see a corporate connection.  
21 There is no evidence of it.

22 And thus, the claims against L. W.  
23 Hall Enterprises LLC and Cold Air Service, Inc. are  
24 dismissed with prejudice.

25 Now what evidence do you have that

1 Lewis W. Hall was how -- somehow -- involved in this matter?

2 Where -- Where is the evidence that  
3 he beckoned someone over, or invited someone over with the  
4 knowledge and intent that Lewis V. Hall would attack him?

5 MR. AXELROD:

6 Well, that would -- That argument  
7 would go to a conspiracy.

8 I'm -- I'm saying to The Court that:

9 Lewis W. Hall invited Brad over to  
10 his property. And at that point, Brad got hurt on his  
11 property. He was on his property as an invite and he  
12 sustained injuries. We have testimony to that effect.

13 THE COURT:

14 All right.

15 Let's go back now that we are focused  
16 on the individual Defendants; and let's hear what you have  
17 to say in response to Mr. Axelrod?

18 Go ahead.

19 MR. SMITH:

20 Well, first of all Your Honor, what  
21 he's talking about is the civil conspiracy Your Honor has  
22 dismissed with prejudice.

23 The second thing is:

24 The assault and battery charge, I  
25 believe, is all that's left.

1                   An assault occurs when a person has  
2       been placed in reasonable fear of bodily harm by the conduct  
3       of the Defendant.

4                   Well clearly, in this case, his own  
5       testimony was that he was being invited over. So there is  
6       no assault by Mr. Lewis W. Hall.

7                   A battery is when there is an actual  
8       infliction of unlaw -- unlawful or unauthorized violence on  
9       the person of another.

10                  The testimony is:

11                   I don't know who hit me.

12                   Now one thing we do know is that:

13                   Based on the testimony of Dr.  
14       Johnson, it wasn't Lewis W. Hall, because he was watching  
15       Lewis W. Hall.

16       THE COURT:

17                   All right; what -- what evidence do  
18       you have again -- talking about Lewis W. Hall?

19       MR. AXELROD:

20                   I'm sorry, Your Honor. I just have  
21       that:

22                   Lewis W. Hall invited him over and  
23       Brad sustained injuries on his property.

24                   And as an owner of the premises, he  
25       has a duty to protect an invitee from danger.

State of South Carolina  
County of Horry

In the Court of Common Pleas  
Fifteenth Judicial Circuit

Brad R Johnson  
Plaintiff(s)

1 2005 CP-26 2710

Vs.

ORDER

James W Hall  
Defendant(s)

IT IS ORDERED that the MOTION BE STRUCK FROM THE ACTIVE motion calendar for the following reason(s)

PLTFFS MOTIONS TO COMPEL - GRANTED WITH CONSENT OF  
Defendants. Both defense counsel will verify, INTERROG. WITH  
10 DAYS.

ATTY SMITH'S MOTION TO QUASH ALL HIS PENDING IN THIS CASE  
IS GRANTED EFFECTIVE IMMEDIATELY. ATTY SMITH TO SUBMIT  
FORMAL ORDER ON THIS ISSUE ONLY WITHIN 10 DAYS.

PLAINTIFF'S MOTION TO AMEND, <sup>TO ADD NEW PARTY(S)</sup> IS GRANTED BUT PLAINTIFF IS  
10 ADDITIONAL DAYS TO CONSIDER THE ISSUE AND WILL NOTIFY COURT  
IT IS ORDERED that the within entitled MOTION(S) be HIS INTENT.

1. Continued upon the request of the \_\_\_\_\_ until the \_\_\_\_\_

Reason: \_\_\_\_\_

2. Transferred to the Jury/Non-Jury Calendar.

3. Other: \_\_\_\_\_

Conway, South Carolina

02 / 16, 2004

Atty S Axelrod

Presiding Circuit Judge

Atty J J Nettles

Atty S Michael Smith

**PETITION FOR WRIT OF CERTIORARI**  
**APPENDIX**

**PART II**

A.  
PETITIONER'S BRIEFS

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

---

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

**J. Michael Baxley, Circuit Court Judge**

---

**Case No. 2005-CP-26-2710**

---

**Dr. Brad R. Johnson,**

**Appellant,**

**v.**

**Lewis W. Hall, Lewis V. Hall,  
L. W. Hall Enterprises, LLC,  
Cold Air AC Service, Inc.,**

**Respondents.**

---

**APPELLANT'S FINAL BRIEF**

---

**Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
Attorney for Appellant**

## TABLE OF CONTENTS – APPELLANT’S FINAL BRIEF

|                                     | Page |
|-------------------------------------|------|
| Table of Contents .....             | i    |
| Table of Cases .....                | ii   |
| Statement of Issues on Appeal ..... | 1    |
| Statement of the Case .....         | 1    |
| Statement of Facts .....            | 4    |
| Argument .....                      | 4    |
| Conclusion .....                    | 5    |
| Certification of Compliance .....   | 7    |



## TABLE OF CASES

### CONSTITUTIONAL PROVISIONS

Fourteenth Amendment – U.S. Constitution ..... 1-5

South Carolina Constitution ..... 1-5

### RULES

SCRCP 40(b)(2) ..... 1-5

SCRCP 59 ..... 1-5

## STATEMENT OF ISSUES ON APPEAL

Appellant, Brad R. Johnson, by and through his attorney, Stuart M. Axelrod, appeals the administrative denial of Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138], after a jury trial ended on October 4, 2007 [R-134,135,191,192], by raising the following single issue.

### ISSUE #1

Did the Trial Court err in denying Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138]?

## STATEMENT OF THE CASE

A concise history of the proceedings below follows.

- (1) The date of the commencement of the action.

Plaintiff's Original Complaint was filed on May 31, 2005 [R-1..41].

- (2) The nature of the action [R-50,51].

The action arose out of an alleged conspiracy executed by the individual Defendants to invite Plaintiff onto the premises of defendants for the sole purpose of committing an assault and battery (with a deadly weapon, i.e., shotgun) on Plaintiff, resulting in severe physical, emotional, and economic injury to Plaintiff. Specifically, this action was brought under South Carolina common law.

- (3) The nature of the defense or of the response.

Defense of others.

- (4) The action of the court or jury or the master.

A directed verdict was granted in favor of all defendants, except for Lewis V. Hall [R-181..190]. After a jury trial, a jury found in favor of Defendant, Lewis V. Hall [R-134,135,191,192].

- (5) The date of trial.

October 3-4, 2007.

- (6) The mode of trial.

Jury trial.

- (7) The amount involved on appeal.

\$3,000,000+

- (8) The date and nature of the order of judgment appealed from [R-134,135,191,192]. Judge Baxley's Administrative Order dated December 9, 2007 [R-139], denying Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCF 59 and based upon SCRCF 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138].

- (9) The date of the service of the notice of appeal.

Notice of appeal served on February 29, 2008. Superseding amended notice of appeal is dated May 5, 2008 [R-140].

- (10) The date of and description of such orders, judgments, and proceedings in the court below as may have affected the appeal, or may throw light upon the questions involved in the appeal.

\* Plaintiff's written Pre-Trial Motion to Continue based upon SCRCF 40(b)

filed October 3, 2007 [R-121..133].

\* Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138].

\* Judge Baxley's Administrative Order dated December 9, 2007 [R-139], denying Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138].

\* The Pre-Trial Hearing on October 1, 2007 by Judge Baxley of Plaintiff's oral Pre-Trial Motion to Continue based upon SCRCP 40(b) [R-146..163], which was memorialized in writing and filed October 3, 2007 [R-121..133], wherein Judge Baxley denied said motion [R-160..162].

(11) Any changes made in the parties by death, substitution, or otherwise.

None.

## STATEMENT OF FACTS

On October 3, 2007, Plaintiff filed a written Pre-Trial Motion to Continue based upon SCRCP 40(b) [R-121..133].

In a Pre-Trial Hearing on October 1, 2007 [R-146..163], Judge Baxley denied Plaintiff's oral Pre-Trial Motion to Continue based upon SCRCP 40(b) [R-160..162]. Plaintiff-Appellant objected [R-121..133].

After a jury trial [R-134,135,191,192], Plaintiff filed a written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138].

On December 9, 2007 in an Administrative Order [R-139], Judge Baxley denied Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138].

## ARGUMENT

### ISSUE #1

Did the Trial Court err in denying Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138]?

### Relevant Facts

Se Statement of Facts, above, incorporated by reference herein.

## Analysis

The Trial Court erred in denying [R-139] Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138].

In denying Plaintiff's oral Pre-Trial Motion to Continue based upon SCRCP 40(b) in a Pre-Trial Hearing on October 1, 2007 [R-146..163], Judge Baxley forced Plaintiff-Appellant to go forward with said trial before the expiration of the period provided by SCRCP 40(b), in violation of (1) SCRCP 40(b), (2) Plaintiff-Appellant's procedural due process rights under the U.S. Constitution, Amendment Fourteen, and (3) the South Carolina Constitution. [R-121..133; 136..138].

Accordingly, Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138] should have been granted. Instead, the Trial Court erred in administratively denying said motion [R-139].

## CONCLUSION

Appellant prays that the Appeal as filed be granted in that this Court reverse and remand this case back to the Horry County Court of Common Pleas for a new trial.

Dated: May 14, 2009



---

Stuart M. Axelrod, Esquire ID#7072  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
(843) 916-9311 (Fax)  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2005-CP-26-2710

Dr. Brad R. Johnson,

Appellant,

v.

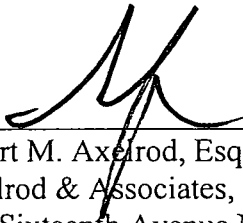
Lewis W. Hall, Lewis V. Hall,  
L. W. Hall Enterprises, LLC,  
Cold Air AC Service, Inc.,

Respondents.

CERTIFICATION OF COMPLIANCE

The undersigned attorney hereby certifies that Appellant's Final Brief is in compliance with Rule 211(b) and the ORDER of the Supreme Court of South Carolina dated August 13, 2007 relating to the inclusion of personal data identifiers.

Dated: May 13, 2009



Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
(843) 916-9311 (Fax)  
Attorney for Appellant



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

---

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

**J. Michael Baxley, Circuit Court Judge**

---

**Case No. 2005-CP-26-2710**

---

**Dr. Brad R. Johnson,**

**Appellant,**

**v.**

**Lewis W. Hall, Lewis V. Hall,  
L. W. Hall Enterprises, LLC,  
Cold Air AC Service, Inc.,**

**Respondents.**

---

**APPELLANT'S FINAL REPLY BRIEF**

---

**Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
Attorney for Appellant**

## TABLE OF CONTENTS – APPELLANT’S FINAL REPLY BRIEF

|                                                      | Page |
|------------------------------------------------------|------|
| Table of Contents .....                              | i    |
| Table of Cases .....                                 | ii   |
| Reply to Respondent Cold Air .....                   | 1    |
| Reply to Respondent Lewis V. Hall .....              | 6    |
| Reply to Respondent L.W. Hall Enterprises, LLC ..... | 12   |
| Reply to Respondent Lewis W. Hall .....              | 14   |
| Conclusion .....                                     | 15   |
| Certification of Compliance .....                    | 17   |

## TABLE OF CASES

### CONSTITUTIONAL PROVISIONS

|                                                |        |
|------------------------------------------------|--------|
| Fourteenth Amendment – U.S. Constitution ..... | 5,7,11 |
| South Carolina Constitution .....              | 5,7,11 |

### CASES

|                                                                                        |   |
|----------------------------------------------------------------------------------------|---|
| <i>Donald S. Butler v. Beaufort County</i> , 316 S.C. 465, 451 S.E.2d 386 (1994) ..... | 8 |
| <i>In re: Robert D.</i> , 340 S.C. 12, 530 S.E.2d 137 (Ct. App. 2000) .....            | 7 |
| <i>Paschal v. Causey</i> , 309 S.C. 206, 420 S.E. 2d 863 (Ct. App. 1992) .....         | 8 |
| <i>State v. Russell</i> , 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) .....           | 7 |
| <i>Windham v. Honeycutt</i> , 279 S.C. 109, 302 S.E. 2d 856 (1983) .....               | 8 |

### RULES

|                   |      |
|-------------------|------|
| SCRCP 40(b) ..... | 2-15 |
| SCRCP 59 .....    | 4    |

## APPELLANT'S FINAL REPLY BRIEF

Appellant replies to Respondents' Final Briefs (a) by replying to each of the Respondents' Final Briefs separately and (b) within each of said briefs, replies by replying to the matters presented in the order of presentation.

### APPELLANT'S FINAL REPLY BRIEF – TO RESPONDENT COLD AIR A/C SERVICE, INC

1. In the Final Brief of Respondent Cold Air A/C Service, Inc., hereinafter referred to as the Cold Air Brief, pp. 4-5, Respondent Cold Air A/C Service, Inc., hereinafter referred to as Cold Air, proffers its *Statement of the Case*, as follows:

“On May 31, 2005, the Appellant filed a Complaint against the Defendant, Lewis W. Hall and Lewis V. Hall [R-1..41] alleging assault, battery, malicious prosecution, defamation, premises liability and conspiracy. In November 2006, the Appellant moved to amend his Complaint [R-42..48] to add two additional Defendants: L.W. Hall Enterprises, LLC and Cold Air A/C Service, Inc. The Appellant's Motion to Amend Complaint was heard on February 16, 2007 by the Honorable J. Michael Baxley who granted authority to add the additional corporate Defendants [R-49]. While he received authority to name the additional corporate Defendants by Order dated February 16, 2007, the Appellant did not file and serve his Amended Complaint on L.W. Hall Enterprises, LLC and Cold Air A/C Service, Inc. until May 18, 2007 [R-94,95; R-124,125]. Cold Air A/C Service, Inc. timely filed its [Amended] Answer to the Amended Complaint on June 25, 2007 [R-104].

On Monday, August 20, 2007, J. Michael Baxley, Chief Administrative Judge for the Fifteenth Judicial Circuit, held a master roster meeting for Horry County. At that time, all counsel of record for the case appeared before Judge Baxley and advised at that time that there was no objection to the case being called for trial on or after October 1, 2007.

This action appeared on the trial roster for the term of court beginning October 1, 2007. . .

On October 1, 2007, the Appellant made a verbal motion for continuance at the beginning of the trial proceedings [R-147..149]. The verbal motion for continuance was based on South Carolina Rules of Civil

Procedure 40(b). . . [R-147,148] The Court denied the Appellant's verbal motion for continuance on October 1, 2007 [R-160..162].

The case was tried beginning October 3, 2007. At the close of the Appellant's case, the Court directed a verdict in favor of defendants Cold Air A/C Service, Inc., L.W. Hall Enterprises, LLC and Lewis W. Hall R-189-190]. At the close of the trial, the jury returned a verdict in favor of the only remaining defendant, Lewis V. Hall [R-134,135,191,192].

Following the trial, the Appellant made a motion for new trial, alleging error by the trial court in failing to grant his pre-trial continuance request [R-136..138]. The Appellant's motion for new trial was denied [R-139]."

#### REPLY – COLD AIR MISSTATES THE PROCEDURAL FACTS

- As noted above, although Cold Air states "the Appellant did not file and serve his Amended Complaint on L.W. Hall Enterprises, LLC and Cold Air A/C Service, Inc. until May 18, 2007," the Court deemed the Amended Complaint filed in February 2007 [R-161], rather than on May 18, 2007, and Cold Air was served on May 24, 2007, not on May 18, 2007 [R-95,125].
- As noted above, although Cold Air speaks of a *master roster meeting* and a *trial roster*, Cold Air produced no evidence of such meeting or of such roster [R-142-161]. Further, the trial court did not find the *master roster meeting* and a *trial roster* relevant to the pre-trial issue at hand [R-161,162]. Instead, the trial judge deemed the Amended Complaint filed in February, 2007 (instead of May 2007), where the trial court was under the mistaken impression that a February filing date would make the trial on October 3, 2007 fall outside of the statutory period required under Rule 40(b) [R-161].
- As noted above, although Cold Air states "the Appellant made a verbal motion for continuance at the beginning of the trial proceedings," this motion

was memorialized in writing and filed and served upon all parties on October 3, 2007. [R-121..133]. Said motion was heard, pre-trial, on October 1, 2007 [R-146..163].

2. In the Cold Air Brief, pp. 7-9, Cold Air argues:

“Appellant has waived Rule 40 (b) protection in two specific ways:

...

1. *The Appellant waived SCRPC 40(b) protection by failing to comply with Horry County Local Rules as to continuance procedure.*

...

2. *The Appellant waived SCRPC 40(b) protection by affirmatively agreeing to the trial date at an August 20, 2007 master roster meeting.”*

#### REPLY

- With regard to the first way in which “Appellant has waived Rule 40(b) protection,” as noted above, Rule 40(b) was amended by the South Carolina Supreme Court to read, in part:

*“Notwithstanding the foregoing [dealing with dockets and trial rosters], no action may be called for trial until 180 days after service of the last pleading which adds a new party to the action, unless all parties consent in writing.”* [R-126]. Italics added.

In addition, the following note was added to Rule 40(b), SCRPC:

Note to 2007 Amendment:

“The last sentence of Rule 40(b) establishes a minimum period of time following the joinder of a new party during which the action may not be called for trial without the consent of all parties. The 2007 amendment extends this period from 120 days to 180 days, and measures this period from the date the newly joined party is served with process, rather than the filing date of the pleading adding the new party. As before, the 180 day exclusion may be waived with the consent of all parties.” [r-128].

Under Cold Air’s interpretation of the law, *Horry County Local Rules*

supersede the mandate of the South Carolina Supreme Court. Cold Air’s

position is simply untenable, especially given the language of Rule 40(b):

*“Notwithstanding the foregoing. . .”*

- With regard to the second way in which “Appellant has waived Rule 40(b) protection,” as noted above, Cold Air has provided no evidence that Appellant “affirmatively [agreed] to the trial date at an August 20, 2007 master roster meeting.” Further, the South Carolina Supreme Court has mandated that any exception to the new 180-day rule must be by written consent of all parties. It cannot be denied that Plaintiff-Appellant has never given his written consent to going forward with the trial in the above captioned case.
- 3. In the Cold Air Brief, p. 10, Cold Air argues that Appellant has abandoned all issues in his appeal by failing to argue any issue in his brief, as follows:

“The Appellant has failed to show through his appeal that the Trial Court committed error in denying his motion for a new trial. The Appellant has presented so little in the way of argument and citation to authority so as to abandon this appeal. In the case before this Court, the Appellant’s argument section is only one page in length and cites no authority for the assertions and conclusions made.”

## REPLY

- As stated in Appellant’s Final Brief, p. 1, the sole issue for determination is:

“Did the Trial Court err in denying Plaintiff’s written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138]?”
- As stated in the Analysis section of Appellant’s Final Brief, p. 5, based upon the Record on Appeal:

“In denying Plaintiff’s oral Pre-Trial Motion to Continue based upon SCRPC 40(b) in a Pre-Trial Hearing on October 1, 2007 [R-146..163], Judge Baxley forced Plaintiff-Appellant to go forward with said trial before the expiration of the period provided by SCRPC 40(b), in violation of (1) SCRPC 40(b), (2) Plaintiff-Appellant’s procedural due process rights under the U.S. Constitution, Amendment Fourteen, and (3) the South Carolina Constitution. [R-121..133; 136..138].”

- Here, as stated in Appellant’s Final Brief, the issue is a simple one to resolve.

The law is clear and the procedural facts are not in dispute.

- Rule 40(b), in part, provides the law. Rule 40(b) was amended by the South Carolina Supreme Court to read, in part:

*“Notwithstanding the foregoing [dealing with dockets and trial rosters], no action may be called for trial until 180 days after service of the last pleading which adds a new party to the action, unless all parties consent in writing.”* [R-126]. Italics added.

In addition, the following note was added to Rule 40(b), SCRPC:

Note to 2007 Amendment:

“The last sentence of Rule 40(b) establishes a minimum period of time following the joinder of a new party during which the action may not be called for trial without the consent of all parties. The 2007 amendment extends this period from 120 days to 180 days, and measures this period from the date the newly joined party is served with process, rather than the filing date of the pleading adding the new party. As before, the 180 day exclusion may be waived with the consent of all parties.” [R-128].

- As to the procedural facts, there is no dispute:

New Defendant, Cold Air, was served with an Amended Complaint in the above captioned action on May 24, 2007. [R-95,125].

Over objection by Appellant, a trial of the above captioned action commenced on October 3, 2007. [R-121..133].

October 3, 2007 is less than 180 days after May 24, 2007.



There is no evidence that all parties consented in writing to going forward with the trial in the above-captioned action pursuant to Rule 40(b).

- Conclusion. Accordingly, it is clear that under Rule 40(b) [R-126], the trial judge should not have allowed the trial in the above captioned action to commence over the objection of Plaintiff-Appellant [R-121..133; 146..163]. Further, because the 180-day rule under Rule 40(b) is a procedural right of the Plaintiff, the trial judge violated the procedural due process guarantee of the Plaintiff-Appellant under the Fourteenth Amendment of the U.S. Constitution, as well as the South Carolina Constitution.
- Appeal Remedy. Plaintiff-Appellant must be granted his procedural right under Rule 40(b) [R-126] to adequately prepare for trial and not be forced prematurely by a state court to go forward with a trial in violation of said right [R-146-163]. Accordingly, this Court of Appeals must reverse the administrative holding of the trial court [R-139] and grant Plaintiff-Appellant a new trial.

APPELLANT'S FINAL REPLY BRIEF –  
TO RESPONDENT LEWIS V. HALL

4. In the Final Brief of Respondent Lewis V. Hall, hereinafter referred to as the V. Hall Brief, p. 5, Respondent Lewis V. Hall, hereinafter referred to as V. Hall, argues that “Appellant’s constitutional arguments have not been properly preserved for appeal,” as follows:

“Appellant appealed the trial court’s denial [R-139] of his motion for a new trial on the basis that he was entitled to 180 days as set forth in Rule 40(b) [R-136..138]. Appellant also asserts that he was entitled to a new trial based upon the Fourteenth Amendment to the United States Constitution and the South Carolina Constitution. Appellant did not raise any constitutional arguments to the trial court, and his motion for a new trial was based solely on Rule 40(b). [R-136..138]. Accordingly, Appellant’s constitutional arguments have not been properly preserved for appeal.”

## REPLY

A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground. *State v. Russell*, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (issue was preserved even though defendant did not use the exact words “corpus delicti” in his request for directed verdict); *In re: Robert D.*, 340 S.C. 12, 530 S.E.2d 137 (Ct. App. 2000) (although party did not specifically mention any constitutional provision to the trial court the record reflected that he complained the testimony would violate his right of confrontation).

In Plaintiff-Appellant’s Pre-Trial Objection and Motion for a Continuance [R-121..133] and in Plaintiff-Appellant’s Motion for a New Trial [R-136..138], Appellant sufficiently preserved the issue of the trial court’s deprivation of Plaintiff’s procedural guarantee under Rule 40(b) for appeal.

In particular, in Plaintiff-Appellant’s Pre-Trial Objection and Motion for a Continuance [R-122], “Plaintiff respectfully objected, objects, and will continue to object to the trial of this case going forward, at least until the 180-day period has expired under SCRCF 40(b).” Further, in Plaintiff-Appellant’s Pre-Trial Objection and Motion for a Continuance [R-123], Plaintiff-Appellant argued:

“The 120 [180] day period dictated by Rule 40(b)(2), SCRCF, is a procedural right which may be waived. *Paschal v. Causey*, 309 S.C. 206, 420 S.E. 2d 863 (Ct. App. 1992) [see Exhibit IV, incorporated by reference herein, a true and correct copy].’ *Donald S. Butler v. Beaufort County*, 316 S.C. 465, 451 S.E.2d 386 (1994). ‘A party who fails to object to the trial of a case and affirmatively agrees to its trial at a designated time cannot later assert that the trial court erred in trying the case before the close of the statutory period. *Id.* See also *Windham v. Honeycutt*, 279 S.C. 109, 302 S.E. 2d 856 (1983).’ *Id.*

Here, Plaintiff elects to exercise the procedural right that the South Carolina Supreme Court has seen fit to grant him under SCRCF [40(b)] so that the above-entitled action will not be set for trial until 180 days after any NEW party is served with process. South Carolina Supreme Court Note to the 2007 Amendment of the SCRCF.”

Moreover, in Plaintiff-Appellant’s Motion for a New Trial [R-136,137],

Plaintiff-Appellant complains as follows:

“Plaintiff respectfully objected, objects, and will continue to object to said trial pursuant to SCRCF [40(b)]. Here, Plaintiff attempted to exercise an important procedural right that the South Carolina Supreme Court has seen fit to grant him under SCRCF [40(b)] so that the above-entitled action will not be set for trial until 180 days after any NEW party is served with process. South Carolina Supreme Court Note to the 2007 Amendment of the SCRCF.”

For a party to raise an issue on appeal of a trial court’s constitutional deprivation of procedural due process, it is sufficient to establish the procedure as a matter of right in the trial court. If the trial court then deprives the party of said right, after the right has been established, the trial court has deprived the party of the procedural right without due process of law. For an issue to be preserved on appeal regarding the trial court’s deprivation of a party’s procedural right without due process of law, a condition precedent cannot be that which the trial court should already know, i.e., deprivation of a procedural right without due process may be a constitutional due process violation.

5. In the V. Hall Brief, p. 5, Respondent V. Hall argues that “the trial court’s denial of Appellant’s motion for a continuance was proper [because Appellant allegedly waived his right to assert the 180—day requirement in Rule 40(b)], as follows:

“The trial judge recalled the discussions at the master roster meeting, during which Appellant failed to object and affirmatively agreed to the trial date. [R-161, 162]. The trial judge’s ruling was based in part on Appellant’s failure to object when the case was set for trial. *Id.* Appellant has therefore waived his arguments based on Rule 40 and is estopped from pursuing the issue.”

#### REPLY

See REPLY to Paragraph #2, above.

In addition, the trial court’s ruling had nothing to do with “Appellant’s failure to object when the case was set for trial.” See R-146..163. Instead, the trial judge deemed the Amended Complaint filed in February, 2007 (instead of May 2007), where the trial court was under the mistaken impression that a February filing date would make the trial on October 3, 2007 fall outside of the statutory period required under Rule 40(b). [R-161].

6. In the V. Hall Brief, p. 7, Respondent V. Hall argues that the “trial court’s ruling was proper because non-compliance with the 180-day rule was caused by Appellant’s own failure to comply with the Order granting Appellant’s motion to amend the Complaint,” as follows:

“There can be no showing of manifest injustice in this case because Appellant had more than 180 days to prepare for trial. The time period from the day the trial court granted Appellant’s motion to amend until the date of trial was over 220 days, as counsel for Respondent Lewis V. Hall pointed out in the objection to Appellant’s motion for a new trial.

Moreover, the terms of the trial court’s order when the motion to amend was granted was that Appellant had 10 days to consider the matter

of whether he wished to amend and advise the court of his decision. [R-148]. Appellant failed to comply with this requirement at all.”

#### REPLY – V. HALL IS MISTAKEN

Here, Respondent V. Hall is simply mistaken saying that “Appellant had more than 180 days to prepare for trial.” The new defendants were served on May 24, 2007. Accordingly, Appellant had much less than 180 days to prepare for trial, at least as to the new defendants. Further, the trial court itself resolved the issue of the 10 days by deeming the Amended Complaint filed in February 2007. [R-161].

7. In the V. Hall Brief, p. 8, Respondent V. Hall argues that the “Appellant’s motion for a continuance was properly denied because the motion was not properly presented to the trial court,” in violation of the Horry County Court of Common Pleas NEW RULES FOR JURY CASES.

#### REPLY

See REPLY to Paragraph #2, above.

8. In the V. Hall Brief, p. 10, Respondent V. Hall argues that “even if the trial court abused its discretion in denying Appellant’s motion for a continuance, the error was harmless,” as follows:

Moreover, the corporate defendants, which were added by the First Amended Complaint, were dismissed from the action upon findings that no evidence supported Appellant’s theories of respondeat superior and premises liability. The deposition of Mary Cannon, CPA, the accountant for the corporate defendants, which was the only scheduled deposition remaining, would not have shed any light on these findings.”

## REPLY

- Most importantly, the South Carolina Supreme Court has granted the so-called 180-day rule pursuant to Rule 40(b) as a procedural right to all parties in an action to insure that each party has a fair trial, i.e., that each party has adequate time to either prepare a claim or defense. It follows that having adequate time to prepare either a claim or defense pursuant to rule 40(b) is a procedural right that is protected against state deprivation under the Fourteenth Amendment of the U.S. Constitution, as well as the South Carolina Constitution. Accordingly, when the trial court deprived Appellant of his procedural right under Rule 40(b), it deprived Appellant of his guarantee of procedural due process under the Fourteenth Amendment of the U.S. Constitution, as well as the South Carolina Constitution. Clearly, such a deprivation is not harmless.
- Defendants were dismissed from the action upon findings that no evidence supported Appellant's theories of respondeat superior and premises liability, precisely because the Plaintiff-Appellant had inadequate time to prepare for the case. [R-146..163]. Further Plaintiff-Appellant did not expect to be thrust into a trial at such an early date, at least with respect to the two new entity defendants [R-146..163], all in violation of Rule 40(b), a procedural right of Plaintiff-Appellant granted by the Supreme Court of South Carolina.

APPELLANT'S FINAL REPLY BRIEF –  
TO RESPONDENT L.W. HALL ENTERPRISES, LLC

9. In the *Statement of the Case* Section of the Final Brief of Respondent L.W.

Hall Enterprises, LLC, hereinafter referred to as the LLC Brief, p. 3,

Respondent L.W. Hall Enterprises, LLC, hereinafter referred to as LLC, states  
as follows:

“The Appellant made a verbal Motion for Continuance at the beginning of the trial proceedings.”

REPLY – LLC IS MISKAKEN

- Although LLC states “the Appellant made a verbal Motion for Continuance at the beginning of the trial proceedings,” this motion was memorialized in writing and filed and served upon all parties on October 3, 2007. [R-121..133]. Said motion was heard, pre-trial, on October 1, 2007. [R-146..163].

10. In the LLC Brief, p. 5, Respondent LLC argues that “Appellant waived any rights he might have had under Rule 40(b),” as follows:

“Under the South Carolina Rules of Civil Procedure, when a motion is granted on the performance of any condition, the party obligated to perform that condition is required to do so within twenty (20) days, Rule 6(d), SCRCPP. Judge Baxley stated, at the beginning of the trial, that he never heard from the Appellant/Plaintiff after the motion was granted. [R-148, Lines 11-21]. On May 18<sup>th</sup>, 2007, more than ninety (90) days after the Court allowed the amendment and the addition of parties, the Appellant filed its amended Complaint with the new Defendants. In addressing the Appellant’s pre-trial Motion for a Continuance, the trial judge said that if the Appellant had complied with the Order allowing additional Defendants in a timely fashion, there would have been no problem. [R-149, Lines 15-17].

## REPLY

- To resolve this issue, the trial judge deemed the Amended Complaint filed in February, 2007 (instead of May 2007), where the trial court was under the mistaken impression that a February filing date would make the trial on October 3, 2007 fall outside of the statutory period required under Rule 40(b). [R-161].

11. Also, in the LLC Brief, p. 6, Respondent LLC argues that Appellant waived any rights he might have had under Rule 40(b)” by not following Horry County Court of Common Pleas NEW RULES FOR JURY CASES, as follows:

“The local rules for Horry County also provide that a request for continuance of a trial must be in the form of a filed motion. Such motions are to be filed with the Clerk of Court no later than 5:00 p.m. Wednesday, prior to the scheduled trial term. Again, the record in this case is devoid of any such motion by the Appellant. The Appellant made his verbal Motion for Continuance, based on Rule 40(b), SCRCF, immediately prior to *voir dire* and empanelment of the jury. [R-147, Lines 12-17]. Where the Appellant failed to properly and timely move for a continuance, after affirmatively agreeing to the trial date, he ‘cannot later assert that the trial court erred in trying the case before the close of the statutory period.’”

## REPLY

- See REPLY to Paragraphs ## 2 & 9, above.
12. In the LLC Brief, p. 8, Respondent LLC argues that Appellant’s rights under Rule 40(b) should give way to “the trial court’s management of its trial roster.”

## REPLY

- See REPLY to Paragraph # 2, above.



13. Finally, in the LLC Brief, p. 8, Respondent LLC argues that Appellant's rights under Rule 40(b) should just give way, because "Appellant has suffered no harm."

REPLY

- See REPLY to Paragraph # 8, above.

APPELLANT'S FINAL REPLY BRIEF –  
TO RESPONDENT LEWIS W. HALL

14. In the Final Brief of Respondent Lewis W. Hall, hereinafter referred to as the W. Hall Brief, p. 4, Respondent Lewis W. Hall, hereinafter referred to as W. Hall, argues that "the trial court correctly required the Plaintiff to Proceed to Trial," as follows:

"In this case, the conduct of the parties on the record prior to the call of the case clearly reflects a consent to proceed forward. At the Master Roster call which occurred on August 20, 2007, the Plaintiff, by not objecting to the placement of the case on the October 1, 2007 roster, waived any objection to the 180 day rule set forth in Rule 40(b), SCR.P."

REPLY

- See REPLY to Paragraph # 2, above.

15. Also, in the W. Hall Brief, pp. 4-5, Respondent W. Hall, argues that "the trial court correctly required the Plaintiff to Proceed to Trial," as follows:

"[T]he plaintiff did not comply with the Administrative Order of the Honorable J. Michael Baxley which required, that any request for a continuance be made no 'later than 5:00 p.m. Wednesday prior to the scheduled trial term. In this case, the Administrative Order was not complied, with and the Motion for Continuance was not made until the day of trial."

REPLY

- See REPLY to Paragraph # 2, above.

16. Finally, in the W. Hall Brief, pp. 5-6, Respondent W. Hall, argues that “the trial court correctly required the Plaintiff to Proceed to Trial,” as follows:

“Finally, the plaintiff did not comply with Judge Baxley’s Order ‘allowing him to add a new party. There is no subsequent Order of the Court allowing the amendment to add the Defendant Cold Air AC Service, Inc. at the time it was finally added outside the time period prescribed by Judge Baxley. As a result, Cold Air AC Service, Inc. was arguably not even a proper party to the litigation and the Plaintiff should not be allowed to continue his case or seek a new trial of the case by virtue of adding a party outside the time, set forth in the trial Judge’s Order.”

#### REPLY

- To resolve this issue, the trial judge deemed the Amended Complaint filed in February, 2007 (instead of May 2007), where the trial court was under the mistaken impression that a February filing date would make the trial on October 3, 2007 fall outside of the statutory period required under Rule 40(b). [R-161].

#### CONCLUSION

As noted above, Appellant has sufficiently disposed of ALL of Respondents’ arguments. Accordingly, Appellant prays once again that the Appeal as filed be granted in that this Court reverse and remand this case back to the Horry County Court of Common Pleas for a new trial.

Dated: May 14, 2009



---

Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
Attorney for Appellant

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

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

---

Case No. 2005-CP-26-2710

---

Dr. Brad R. Johnson,

Appellant,

v.

Lewis W. Hall, Lewis V. Hall,  
L. W. Hall Enterprises, LLC,  
Cold Air AC Service, Inc.,

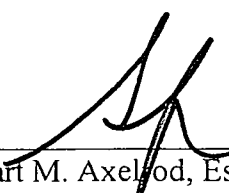
Respondents.

---

**CERTIFICATION OF COMPLIANCE**

The undersigned attorney hereby certifies that Appellant's Final Reply Brief is in compliance with Rule 211(b) and the ORDER of the Supreme Court of South Carolina dated August 13, 2007 relating to the inclusion of personal data identifiers.

Dated: May 13, 2009



---

Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
(843) 916-9300  
(843) 916-9311 (Fax)  
Attorney for Appellant

**PETITION FOR WRIT OF CERTIORARI**  
**APPENDIX**

**PART II**

**B.**  
**RESPONDENTS' BRIEFS**

RECEIVED

MAY 15 2009

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

SC Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2005-CP-26-2710

Dr. Brad R. Johnson .....Appellant;

v.

Lewis W. Hall, Lewis V. Hall, L.W. Hall Enterprises, LLC,  
and Cold Air AC Services, Inc. .... Respondents.

FINAL BRIEF OF RESPONDENT LEWIS V. HALL

Brent M. Boyd, Esquire  
Timothy J. Newton, Esquire  
Murphy & Grantland, P.A.  
Post Office Box 6640  
Columbia, South Carolina 29260

Attorneys for Respondent Lewis V. Hall

May 15, 2009

## TABLE OF CONTENTS

|                                                                                                                                                                                                                        |    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Table of Authorities .....                                                                                                                                                                                             | ii |
| Statement of the Case.....                                                                                                                                                                                             | 1  |
| Argument .....                                                                                                                                                                                                         | 4  |
| I.    Standard of Review.....                                                                                                                                                                                          | 4  |
| II.   Appellant's constitutional arguments have not been properly<br>preserved for appeal.....                                                                                                                         | 5  |
| III.  The trial court's denial of Appellant's motion for a<br>continuance was proper because Appellant waived his<br>right to assert the 180-day requirement in Rule 40(b). ....                                       | 5  |
| IV.   The trial court's ruling was proper because non-compliance<br>with the 180-day rule was caused by Appellant's own failure<br>to comply with the Order granting Appellant's motion to amend<br>the Complaint..... | 7  |
| V.    Appellant's motion for a continuance was properly denied<br>because the motion was not properly presented to the trial court.....                                                                                | 7  |
| VI.   Even if the trial court abused its discretion in denying Appellant's<br>motion for a continuance, the error was harmless. ....                                                                                   | 8  |
| Conclusion .....                                                                                                                                                                                                       | 9  |

## TABLE OF AUTHORITIES

| <u>Cases</u>                                                                                                      | Page Number         |
|-------------------------------------------------------------------------------------------------------------------|---------------------|
| <u>Faith Holiness Church v. Church of God</u> , 282 S.C. 487, 489,<br>319 S.E.2d 348, 349 (Ct. App. 1984). ....   | 6                   |
| <u>Owens v. Andrews Bank &amp; Trust Co.</u> , 265 S.C. 490, 499-500,<br>220 S.E.2d 116, 120 (1975). ....         | 9                   |
| <u>Paschal v. Causey</u> , 309 S.C. 206; 209, 420 S.E.2d 863, 865 (Ct. App. 1992). ....                           | 6                   |
| <u>Small v. Mungo</u> , 254 S.C. 438, 442-43, 175 S.E.2d 802, 804 (1970). ....                                    | 7                   |
| <u>State v. Galbreath</u> , 359 S.C. 398, 402, 597 S.E.2d 845, 846-47 (Ct. App. 2004). ....                       | 4                   |
| <u>Stevens v. Allen</u> , 336 S.C. 439, 446, 520 S.E.2d 625, 628-29 (Ct. App. 1999). ....                         | 5                   |
| <u>USAA Property and Casualty Insurance Co. v. Clegg</u> , 377 S.C. 643, 660,<br>661 S.E.2d 791, 800 (2008). .... | 5                   |
| <u>Windham v. Honeycutt</u> , 279 S.C. 109, 110, 302 S.E.2d 856, 856 (1983). ....                                 | 6, 7                |
| <br><u>Other Authorities</u>                                                                                      |                     |
| Rule 40(b), SCRCP .....                                                                                           | 1, 2, 3, 5, 6, 7, 9 |
| Rule 59, SCRCP .....                                                                                              | 1, 4                |
| Horry County Circuit Court Rules .....                                                                            | 2, 8                |



### STATEMENT OF THE ISSUES ON APPEAL

The issue in this appeal is whether the trial court erred in denying Appellant's motion for a continuance based on Rule 40(b), SCRCP. Appellant moved for a new trial after a defense verdict, asserting that the trial court improperly denied his verbal motion for a continuance on the day the case was called to trial because 180 days had not yet elapsed since service of process on the last parties added to the case.

### STATEMENT OF THE CASE

This is an appeal from the administrative denial of Appellant Dr. Brad R. Johnson's motion for a new trial pursuant to Rule 59, SCRCP. In the Complaint, which was originally filed May 31, 2005, Appellant alleged that the Respondents conspired to commit an assault and battery against him. Appellant asserted numerous common law claims against Respondents.

After almost 18 months of discovery conducted by all parties, Appellant moved to amend his Complaint to add two new parties, Respondents L.W. Hall Enterprises, LLC and Cold Air AC Services, Inc. Appellant's motion was made on November 22, 2006. The trial court granted Appellant's motion at a pre-trial hearing held February 16, 2007 with the provision that Appellant had 10 days to decide whether to add new parties and notify the Court of Appellant's intent. (See R. pp. 148; Supp. R., p. 2, 21.) Appellant failed to comply with that Order and filed an Amended Complaint adding Respondents L.W. Hall Enterprises and Cold Air AC Services on May 18, 2007, which was three months after the Order. (R. pp. 50, 148-49.) Service was accomplished the same day. (R. p. 149.)

On May 3, 2007, Rule 40(b) of the South Carolina Rules of Civil Procedure was amended to increase the time before which a case could not be called for trial from 120 days to 180 days after service of the last pleading which adds a new party to the action. The Court of Common Pleas for Horry County also issued an order entitled "NEW RULES FOR JURY CASES" which became effective on July 1, 2007. (R. p. 193.) Because of these rule changes, a master roster meeting was held on August 20, 2007. At the master roster meeting, there was a discussion and an agreement was reached that the trial would be called not before October 1, 2007. (R. p. 161-62.) Counsel for Appellant did not ask for a continuance or assert the 180-day rule based on Rule 40(b). (Id.; Supp. R., p. 2.) Accordingly, the case was set for the October 1, 2007 term of court.

On September 17, 2007, Brent M. Boyd, Esquire filed a Notice of Appearance as additional counsel for Respondent Lewis V. Hall.<sup>1</sup> (See Supp. R. p. 7.) Attorney Boyd also filed a Motion for a Continuance on the same date. (See Supp. R. p. 11.) The basis of the motion was that counsel was filing a Notice of Appearance and needed time to prepare for trial. (Id.)

On or about September 20, 2007, Respondent Cold Air AC Service, Inc. filed a motion for summary judgment. Respondent Cold Air AC Service was one of the defendants added by the First Amended Complaint. At that time, the only outstanding discovery was Cold Air's interrogatories and requests for production to the Appellant, which were due on October 8, 2007. (See R. p. 137.)

---

<sup>1</sup> Attorney Boyd was retained by Hartford Fire Insurance Company under Cold Air AC Service's policy as co-counsel to defend Lewis V. Hall to the extent of its coverage under the policy.

In response to Respondent Cold Air AC Service's motion for summary judgment, Appellant filed a motion for a continuance on September 28, 2007. (R. p. 114). On its face it was clear that the motion was made in response to the pending summary judgment motion, and the motion did not mention Rule 40(b). (R. pp. 114-19, 137, 150, 160.)

When the case was called for trial on October 1, 2007, Lewis V. Hall's motion for a continuance, Cold Air AC Service's motion for summary judgment, and Appellant's motion for a continuance in response were pending. On that date, Lewis V. Hall and Cold Air AC Service withdrew their motions. (See Supp. R. at 2; R. p. 137, 151, 159.) Before trial, the trial judge asked counsel for Cold Air AC Service whether he requested a continuance and counsel responded that Cold Air AC Service was ready for trial. (R. p. 150.) Counsel for appellant then made a verbal motion for a continuance based on Rule 40(b). (R. pp. 151, 160-61.) The trial judge denied this motion for the following reasons:

- (a) The only properly filed motion for a continuance made by Appellant was the motion for a continuance in response to Cold Air AC Service's motion for summary judgment, which was mooted when Cold Air AC Service withdrew its motion.
- (b) Cold Air AC Service was not prejudiced by proceeding with trial because its counsel waived any objection and stated in open court that Cold Air AC Service was ready for trial.
- (c) The trial court's ruling on Appellant's motion to amend was made on February 16, 2007, well outside the 180-day window, and Appellant simply failed to comply with the order and filed the Amended Complaint several months later.

(d) Appellant's attempt to use the 180-day requirement as a sword to force a continuance was prohibitive of the trial court's ability to administer the docket in an orderly fashion.

(e) Appellant did not object and agreed to set the case for trial not before October 1, 2007 at the master roster meeting.

(R. p. 160-62.)

A two-day trial was held on October 3 and 4, 2007. At the close of Appellant's case, the trial court directed a verdict for Respondents Lewis W. Hall, L.W. Hall Enterprises, and Cold Air AC Services and dismissed them from the case. (R. pp. 189-90.) The trial court dismissed all claims except the assault and battery claim against Lewis V. Hall with prejudice. (Supp. R. at 16, 19, R. p. 190.) The trial then proceeded against Lewis V. Hall only. The jury returned a verdict for Lewis V. Hall. (R. pp. 134-35.)

Appellant filed a motion for a new trial pursuant to Rule 59 on October 7, 2008. (R. pp. 136-38.) Respondent Lewis V. Hall filed a written objection on or about October 23, 2008. (Supp. R. p. 1-5.) Appellant's motion for a new trial was denied by Form 4 Order on December 9, 2007. (R. p. 139.) The Order was served on February 1, 2008. Appellant filed a Notice of Appeal on February 29, 2008. (R. p. 140.)

### ARGUMENT

#### **I. Standard of Review**

The denial of a motion for a new trial will be disturbed on appeal only upon a showing of an abuse of discretion. State v. Galbreath, 359 S.C. 398, 402, 597 S.E.2d 845, 846-47 (Ct. App. 2004). "The grant or denial of new trial motions rests within the

discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” Stevens v. Allen, 336 S.C. 439, 446, 520 S.E.2d 625, 628-29 (Ct. App. 1999).

**II. Appellant’s constitutional arguments have not been properly preserved for appeal.**

Appellant appealed the trial court’s denial of his motion for a new trial on the basis that he was entitled to 180 days as set forth in Rule 40(b). Appellant also asserts that he was entitled to a new trial based upon the Fourteenth Amendment to the United States Constitution and the South Carolina Constitution. Appellant did not raise any constitutional arguments to the trial court, and his motion for a new trial was based solely on Rule 40(b). (R. pp. 136-38.) Accordingly, Appellant’s constitutional arguments have not been properly preserved for appeal. USAA Prop. and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 660, 661 S.E.2d 791, 800 (2008) (holding that an issue is not preserved for appeal unless it has been raised to and ruled upon by the trial court).

**III. The trial court’s denial of Appellant’s motion for a continuance was proper because Appellant waived his right to assert the 180-day requirement in Rule 40(b).**

Appellant argues he is entitled to a new trial because the trial was held less than 180 days after the parties added by the First Amended Complaint were served. The First Amended Complaint was filed on May 18, 2007, and the corporate defendants were served on the same date. The case was called for trial on October 1, 2007, which was less than 180 days later. However, Appellant waived any objection based on Rule 40(b) by failing to object at the master roster meeting and agreeing to the trial date.

Rule 40 of the South Carolina Rules of Civil Procedure governs the general docket, trial rosters, and call of cases for trial. Rule 40(b) addresses various problems in the scheduling of cases once they are placed on the General Docket. Rule 40, Notes to 1994 Amendments. The final sentence of Rule 40(b) provides: "Notwithstanding the foregoing, no action may be called for trial until 180 days after service of the last pleading which adds an additional party to the action, unless all parties consent in writing." Rule 40(b), SCRCP.

Rule 40 does not involve a court's subject matter jurisdiction. Paschal v. Causey, 309 S.C. 206, 209, 420 S.E.2d 863, 865 (Ct. App. 1992). The Rule provides only a procedural right, which can be waived. Id. The purpose of the rule is to allow adequate time to prepare the case after new parties are added. Id.; see also Rule 40, SCRCP, Notes to 1986 Amendments. When a party fails to object and affirmatively agrees to a hearing date, any procedural rights under Rule 40 are waived and the party is estopped to pursue the issue. Windham v. Honeycutt, 279 S.C. 109, 110, 302 S.E.2d 856, 856 (1983); Paschal, 309 S.C. at 209, 420 S.E.2d at 865. "A party who fails to object to the trial of a case and affirmatively agrees to its trial at a designated time cannot later assert that the trial court erred in trying the case before the close of the statutory period." Id. (quoting Faith Holiness Church v. Church of God, 282 S.C. 487, 489, 319 S.E.2d 348, 349 (Ct. App. 1984)).

The trial judge recalled the discussions at the master roster meeting, during which Appellant failed to object and affirmatively agreed to the trial date. (R. pp. 161-62.) The trial judge's ruling was based in part on Appellant's failure to object when the case was set for trial. (Id.) Appellant has therefore waived his arguments based on Rule 40 and is

estopped from pursuing the issue. Windham, 279 S.C. at 110, 302 S.E.2d at 856. The trial court's ruling should be affirmed.

**IV. The trial court's ruling was proper because non-compliance with the 180-day rule was caused by Appellant's own failure to comply with the Order granting Appellant's motion to amend the Complaint.**

The trial judge has broad discretion in arranging and calling the cases for trial and will be reversed on appeal only in cases of manifest injustice. Small v. Mungo, 254 S.C. 438, 442-43, 175 S.E.2d 802, 804 (1970). There can be no showing of manifest injustice in this case because Appellant had more than 180 days to prepare for trial. The time period from the day the trial court granted Appellant's motion to amend until the date of trial was over 220 days, as counsel for Respondent Lewis V. Hall pointed out in the objection to Appellant's motion for a new trial. (Supp. R. p. 3.)

Moreover, the terms of the trial court's order when the motion to amend was granted was that Appellant had 10 days to consider the matter of whether he wished to amend and advise the court of his decision. (R. p. 148; Supp. R. p. 21.) Appellant failed to comply with this requirement at all. Appellant should not be heard to complain of a violation of Rule 40 in that he has unclean hands because his own violation of the trial court's order created the violation. Allowing parties to use Rule 40 to force continuances based on the parties' own failure to comply with court orders would wreak havoc on the court's ability to effectively administer its docket and foster disrespect for the court. Accordingly, the trial court's ruling should be upheld.

**V. Appellant's motion for a continuance was properly denied because the motion was not properly presented to the trial court.**

This Court should affirm the trial court's denial of Appellant's motion for a new trial because the motion for a continuance upon which the ruling was based was never

properly presented by motion to the trial court. The Horry County Court of Common Pleas issued its NEW RULES FOR JURY CASES by Order of the Honorable J. Michael Baxley, Chief Administrative Judge, which became effective on July 1, 2007. (R. pp. 193-96.) Rule 4 of these local rules provides that any party requesting a continuance must file a motion and fax a copy to the Jury Docket Coordinator no later than 5:00 p.m. the Wednesday prior to the scheduled trial term. (R. p. 194.) Pursuant to Rule 4, continuance motions without proof of a motion being filed cannot be considered. (*Id.*) As the trial court pointed out in denying Appellant's motion for the continuance, Appellant failed to comply with Rule 4. (R. pp. 160-61.) The trial court's ruling was therefore proper and Appellant has failed to show a manifest abuse of discretion.

**VI. Even if the trial court abused its discretion in denying Appellant's motion for a continuance, the error was harmless.**

Alternatively, even if this Court finds that the trial court abused its discretion by denying Appellant's motion for a continuance, the denial of the motion would not support granting a new trial because any error was harmless. The only outstanding written discovery noted by Appellant when trial was called was Cold Air AC Services' interrogatories and requests for production, which *Appellant* failed to answer. (R. p. 137.) Counsel for Cold Air AC Service waived any objection to failure of Appellant to answer its discovery by advising the court that it was prepared for trial. (R. p. 151.) Plaintiff had over two years to conduct discovery as to the individual defendants. (*See* Supp. R. pp. 4-5.)

Moreover, the corporate defendants, which were added by the First Amended Complaint, were dismissed from the action upon findings that no evidence supported Appellant's theories of respondent superior and premises liability. (R. pp. 187-88; Supp.



R. pp. 13-18.) The depositions of Mary Cannon, CPA, the accountant for the corporate defendants, and Plaintiff's treating psychiatrist, which were the only scheduled depositions remaining, would not have shed any light on these findings. (See R. p. 117-18.) Thus, there is no evidence in the record that the trial court's denial of the continuance prejudiced Appellant in any way, and any error was harmless. Appellant is not entitled to a new trial under these circumstances. Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 499-500, 220 S.E.2d 116, 120 (1975) (holding that a new trial will not be ordered where, from an examination of the record, the court has no doubt but that the verdict of any fair jury would be the same even if no error had been committed).

#### CONCLUSION

Respondent Lewis V. Hall respectfully submits that this Court should affirm the ruling of the trial court in this case. Appellant failed to properly preserve his constitutional arguments for appeal. Appellant waived his argument based on Rule 40(b) by failing to object at the master roster meeting and agreeing to the date for trial. Moreover, Appellant should not be heard to assert a violation of the 180-day rule since it was his own conduct that created the violation. Additionally, Appellant never made a motion for a continuance in accordance with the local rules of the court. Finally, even if the trial court erred in denying the motion for a continuance, it was harmless and Appellant is not entitled to a new trial. Appellant cannot show that the trial court abused its discretion in denying Appellant's motion for a new trial. Accordingly, the trial court's ruling must be affirmed.

*[Signature page follows]*

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



---

Brent M. Boyd, Esquire  
Timothy J. Newton, Esquire  
Murphy & Grantland, P.A.  
Post Office Box 6640  
Columbia, South Carolina 29260

Attorneys for Respondent Lewis V. Hall

Columbia, South Carolina  
May 15, 2009

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2005-CP-26-2710

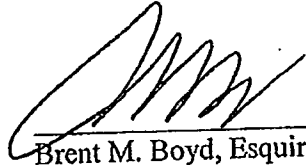
Dr. Brad R. Johnson .....Appellant;

v.

Lewis W. Hall, Lewis V. Hall, L.W. Hall Enterprises, LLC,  
and Cold Air AC Services, Inc. .... Respondents.

CERTIFICATE

I, J.R. Murphy, Esquire, attorney for Respondents, certify that the Final Brief of Respondent Lewis V. Hall complies with Rule 211(b) of the South Carolina Appellant Court Rules.



Brent M. Boyd, Esquire  
Timothy J. Newton, Esquire  
Murphy & Grantland, P.A.  
Post Office Box 6640  
Columbia, South Carolina 29260

Attorneys for Respondent Lewis V. Hall

RECEIVED  
MAY 15 2009  
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2005-CP-26-2710

Dr. Brad R. Johnson .....Appellant;

v.

Lewis W. Hall, Lewis V. Hall, L.W. Hall Enterprises, LLC,  
and Cold Air AC Services, Inc. .... Respondents.

**PROOF OF SERVICE**

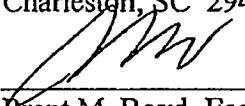
I certify that I have served the Final Brief of Respondent Lewis V. Hall, by depositing a copy of it in the United States Mail, postage prepaid, on May 15, 2009, addressed to:

Stuart M. Axelrod, Esquire  
Axelrod & Associates, PA  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577

Jay R. Lee, Esquire  
Aiken, Bridges, Nunn, Elliott & Tyler, PA  
181 E. Evans Street  
P.O. Drawer 1931  
Florence, SC 29053

G. Michael Smith, Esquire  
Thompson & Henry, P.A.  
1300 Second Avenue, Third Floor (29526)  
P.O. Box 1740  
Conway, SC 29528

F. Truett Nettles, II, Esquire  
The Nettles Law Office, LLC  
P.O. Box 699  
Charleston, SC 29402

  
Brent M. Boyd, Esquire  
Timothy J. Newton, Esquire  
Murphy & Grantland, P.A.  
Post Office Box 6640  
Columbia, South Carolina 29260  
Attorneys for Respondent Lewis V. Hall

Columbia, South Carolina  
May 15, 2009

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

---

APPEAL FROM HORRY COUNTY

The Honorable J. Michael Baxley, Circuit Court Judge

---

Case No.: 05-CP-26-2710

Dr. Brad R. Johnson.....Appellant

v.

Lewis W. Hall, Lewis V. Hall,  
L.W. Hall Enterprises, LLC, and  
Cold Air A/C Service, Inc. ....Respondent.

---

FINAL BRIEF OF RESPONDENT COLD AIR A/C SERVICE, INC.

---

Jay R. Lee, Esquire  
Aiken, Bridges, Elliott, Tyler, & Saleeby, P.A.  
P.O. Drawer 1931  
Florence, SC 29503  
(843) 669-8787

Attorney for Respondent Cold Air A/C Service, Inc.

## TABLE OF CONTENTS

|                                                                                                                     |    |
|---------------------------------------------------------------------------------------------------------------------|----|
| Table of Authorities.....                                                                                           | 2  |
| Statement of Issues on Appeal.....                                                                                  | 3  |
| Statement of the Case.....                                                                                          | 4  |
| Statement of the Facts.....                                                                                         | 6  |
| Argument:                                                                                                           |    |
| I.    The Appellant has waived any protection rights he may have had<br>under SCRCF 40(b).....                      | 7  |
| II.   The Appellant has abandoned all issues in his appeal by failing to<br>fully argue any issue in his brief..... | 10 |
| Conclusion.....                                                                                                     | 12 |

## **TABLE OF AUTHORITIES**

### **CASES**

|                                                                                                       |    |
|-------------------------------------------------------------------------------------------------------|----|
| <u>Ellie, Inc. v. Miccichi</u> , 358 S.C. 78, 594 S.E.2d 485 (Ct. App. 2004).....                     | 10 |
| <u>Paschal v. Causey</u> , 309 S.C. 206, 420 S.E.2d 863, (Ct. App. 1992).....                         | 7  |
| <u>Small v. Mungo</u> , 254 S.C. 438, 175 S.E.2d 802 (1970) .....                                     | 7  |
| <u>State v. Black</u> , 319 S.C. 515, 462 S.E.2d 311 (Ct. App. 1995), reh'g denied (9/20/1995).....   | 10 |
| <u>Sullivan Co., Inc. v. New Swirl, Inc.</u> , 313 S.C. 34, 437 S.E.2d 30 (1993). ....                | 10 |
| <u>Welch v. Epstein</u> , 342 S.C. 279, 536 S.E.2d 408 (Ct App. 2000), reh'g denied (11/4/2000) ..... | 12 |
| <u>Windham v. Honeycutt</u> , 279 S.C. 109, 302 S.E.2d 856 (1983).....                                | 7  |

### **OTHER AUTHORITIES**

|                                                       |   |
|-------------------------------------------------------|---|
| Rule 40, South Carolina Rules of Civil Procedure..... | 7 |
|-------------------------------------------------------|---|

### **STATEMENT OF ISSUES ON APPEAL**

1. Did the circuit court err in denying Appellant's pre-trial motion for continuance under SCRCP 40(b) based on Appellant's failure to comply with continuance procedure and by the Appellant's consent to the trial date at a previous master roster meeting?
2. Did the Appellant abandon all issues in his appeal by failing to fully argue any issue in his brief?



## STATEMENT OF THE CASE

On May 31, 2005, the Appellant filed a Complaint against the Defendant, Lewis W. Hall and Lewis V. Hall alleging assault, battery, malicious prosecution, defamation, premises liability and conspiracy. In November 2006, the Appellant moved to amend his Complaint to add two additional Defendants: L.W. Hall Enterprises, LLC and Cold Air A/C Service, Inc. The Appellant's Motion to Amend Complaint was heard on February 16, 2007 by the Honorable J. Michael Baxley who granted authority to add the additional corporate Defendants. While he received authority to name the additional corporate Defendants by Order dated February 16, 2007, the Appellant did not file and serve his Amended Complaint on L.W. Hall Enterprises, LLC and Cold Air A/C Service, Inc. until May 18, 2007. Cold Air A/C Service, Inc. timely filed its Answer to the Amended Complaint on June 25, 2007.

On Monday, August 20, 2007, J. Michael Baxley, Chief Administrative Judge for the Fifteenth Judicial Circuit, held a master roster meeting for Horry County. At that time, all counsel of record for the case appeared before Judge Baxley and advised at that time that there was no objection to the case being called for trial on or after October 1, 2007.

This action appeared on the trial roster for the term of court beginning October 1, 2007. On September 28, 2007, the Friday before the term of court, Appellant filed a Motion for Continuance on the basis that additional discovery was needed to adequately prepare to defend against a summary judgment motion previously filed by Cold Air A/C Service, Inc. There was no mention in the September 28, 2007 motion of a continuance request on the basis of South Carolina Rule of Civil Procedure 40(b).

On October 1, 2007, the Appellant made a verbal motion for continuance at the beginning of the trial proceedings. The verbal motion for continuance was based on South Carolina Rules of Civil Procedure 40(b). The Appellant's previous September 28, 2007 motion for continuance on the basis of Defendant Cold Air A/C Services, Inc.'s motion for summary judgment was disposed of due to the fact that Cold Air A/C Service, Inc. withdrew its motion for summary judgment. The Court denied the Appellant's verbal motion for continuance on October 1, 2007.

The case was tried beginning October 3, 2007. At the close of the Appellant's case, the Court directed a verdict in favor of defendants Cold Air A/C Service, Inc., L.W. Hall Enterprises, LLC and Lewis W. Hall. At the close of the trial, the jury returned a verdict in favor of the only remaining defendant, Lewis V. Hall.

Following the trial, the Appellant made a motion for new trial, alleging error by the trial court in failing to grant his pre-trial continuance request. The Appellant's motion for new trial was denied.

### **STATEMENT OF THE FACTS**

This action arises out of a neighbor dispute in Horry County, South Carolina. In March, 2005, the Appellant, Dr. Brad R. Johnson (hereinafter, "Johnson") owned property located at 8669 Laurel Woods Drive, Myrtle Beach, South Carolina. Respondent L.W. Hall Enterprises, LLC (hereinafter, "Enterprises") owned property located at 8664 Laurel Woods Drive, Myrtle Beach, SC, which is across the street from the Johnson residence. (R.p. 167, lines 2-9). Respondent Lewis W. Hall (hereinafter, "Father") is the principal of Enterprises and allowed his son, Respondent Lewis V. Hall (hereinafter, "Son") to live at the residence located at 8664 Laurel Woods Drive, Myrtle Beach, South Carolina (hereinafter, "Hall residence"). (R.p.167, lines 2-17). In addition to using the property as his residence, Son operated his business, Respondent Cold Air A/C Service, Inc., (hereinafter, "Cold Air"), out of the Hall residence. (R.p.167, lines 6-17).

On March 26, 2005, Johnson was blocking Laurel Woods Drive with his vehicle while doing some work on his property. (R.p.168, lines 8-25; R.p.169, lines 12-16). Father and Son were preparing to leave their residence in a vehicle owned by Cold Air. (R.p.169, lines 7-11). A verbal confrontation took place between Father, Son and Johnson when Son took exception to the fact that Johnson was blocking the street. (R.p.170, lines 7-22; R.p.171, lines 1-4). Johnson and Son made obscene gestures to each other as Son drove past Johnson. (R.p.171, lines 10-23).

Approximately ten minutes later, Father, without having Son in vehicle, drove back and parked in the driveway at the Hall residence. (R.p.172, lines 8-11). Johnson

then entered onto the Hall property after being motioned over by Father. (R.p.172, lines 15-25; R.p. 173, lines 1-3). Johnson was unable to testify what occurred in the driveway of the Hall property. (R.p.177, lines 1-6). Johnson testified at trial that he believes he was knocked unconscious but does not know how that occurred or who or what struck him. (R.p.177, lines 1-6) Johnson was subsequently arrested and convicted for “entering onto the property of another.” (R.p. 175, lines 7-17).

### **ARGUMENT**

I. THE APPELLANT HAS WAIVED ANY PROTECTION RIGHTS HE MAY HAVE HAD UNDER SCRPC 40(B).

Administration of the jury roster is the responsibility of the trial judge. *See Small v. Mungo*, 254 S.C. 438, 175 S.E.2d 802 (1970) (*Holding that arrangement of trial roster and time set by trial judge for trial of cases are binding on litigants and their counsel, and the trial judge has the authority to enforce compliance therewith. Therefore, the trial judge should be allowed broad discretion in arranging and calling cases for trial and only in cases of manifest injustice will the Supreme Court interfere.*)

Rule 40, *South Carolina Rules of Civil Procedure*, deals with a procedural right rather than subject matter jurisdiction. *Paschal v. Causey*, 309 S.C. 206, 209, 420 S.E.2d 863, 865 (Ct. App. 1992), *reh’g denied* (Sept. 15, 1992). As such, this procedural right can be waived if not properly asserted. *Id.* (*Court held that appellant waived the procedural protection of Rule 40 when they failed to object or seek a continuance*). Once the procedural right of Rule 40 is waived, a party will be estopped to pursue the issue. *See Windham v. Honeycutt*, 279 S.C. 109, 110, 302 S.E.2d 856 (1983) (“The record

reveals appellant not only failed to object, but affirmatively agreed to the hearing date; she has thus waived and is estopped to pursue this issue”).

Appellant has waived Rule 40 (b) protection in two specific ways: (1) by disregarding an administrative order establishing local rules for filing motions to continue; and (2) by affirmatively agreeing to a trial date as soon as October 1, 2007 at an August 20, 2007 master roster meeting.

1. *The Appellant waived SCRCP 40(b) protection by failing to comply with Horry County Local Rules as to continuance procedure.*

On July 1, 2007, The Honorable J. Michael Baxley became the Chief Administrative Judge for civil court in the Fifteenth Judicial Circuit. Judge Baxley implemented a list of new local rules for jury cases by way of an open letter which was served on all attorneys and pro se parties with cases pending on the Horry County Jury Roster. (R.p.193-196). The new local rules set forth by Judge Baxley were effective as of July 1, 2007. (R.p.193).

Rule 4 of Judge Baxley’s open letter dealt specifically with how continuance requests were to be made. (R.p.194). This Rule provided in part: “Continuance requests must be in the form of a filed motion, and can no longer be considered based upon a phone call or a letter. Attorneys / parties requesting a continuance should send the request by fax, together with a copy of the filed motion bearing the Clerk’s stamp, no later than 5:00 p.m. Wednesday prior to the scheduled trial term ...” (R.p.194).

Under the local rule for continuance procedure cited above, all motions for continuance for the October 1, 2007 term of Court in Horry County were due on or

before September 26, 2007 at 5:00 p.m. The Appellant failed to file a motion for continuance which complied with Horry County Local Rules as to continuances. The only motion for continuance filed by the Appellant prior to the case being called for trial was filed on September 28, 2007. This motion, however, was based on a motion for summary judgment that was filed by Respondent Cold Air A/C Service, Inc. There was no mention in the September 28, 2007 motion for continuance of any issue or protection based on SCRCP 40(b). In any event, the September 28, 2007 motion for continuance was not filed timely under the Horry County Local Rules.

On October 1, 2007, when the case was called for trial, the Appellant made a verbal pre-trial motion for continuance based on SCRCP 40(b). This motion was improper under the Horry County Local Rules which require a timely written motion for continuance. In order to attempt to comply with the written motion requirement of the Horry County Local Rules, the Appellant filed a written motion for continuance based on SCRCP 40(b) on October 2, 2007. This motion was not filed timely and was properly denied by the trial court.

2. *The Appellant waived SCRCP 40(b) protection by affirmatively agreeing to the trial date at an August 20, 2007 master roster meeting.*

A master roster meeting was held in Horry County on August 20, 2007 to set cases for trial for the remainder of the year. The master roster meeting was presided over by The Honorable J. Michael Baxley, as Chief Administrative Judge of the Fifteenth Circuit. On August 20, 2007, when the parties came before Judge Baxley at the master roster meeting, there was an agreement that this case could be called for trial not before

October 1, 2007 and there was no objections by any party. (R.p.161, lines 21-25; R.p.162, lines 1-4). On August 20, 2007, when he agreed to the case being called for trial on October 1, 2007, the Appellant knew that there were less than 180 days between the day the Amended Complaint was filed and the October 1, 2007 trial date. Therefore, the Appellant waived any SCRCP 40(b) protection afforded to him by entering no objection at the August 20, 2007 master roster meeting and should be estopped from arguing this issue on appeal.

II. THE APPELLANT HAS ABANDONED ALL ISSUES IN HIS APPEAL BY FAILING TO FULLY ARGUE ANY ISSUE IN HIS BRIEF.

The Appellant has failed to show through his appeal that the Trial Court committed error in denying his motion for a new trial. The Appellant has presented so little in the way of argument and citation to authority so as to abandon this appeal. In the case before this Court, the Appellant's argument section is only one page in length and cites no authority for the assertions and conclusions made.

Where an issue on appeal is not argued within the body of an appellate brief but is only a short conclusory statement, it is abandoned. Ellie, Inc. v. Miccichi, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004), *reh'g denied* (Apr. 22, 2004) (citations omitted); See also, Sullivan Co., Inc. v. New Swirl Inc., 313 S.C. 34, 36, 437 S.E.2d 30, 31 (1993) ("Broad general statements of issues made by appellant may be disregarded by this Court"). In State v. Black, 319 S.C. 515, 462 S.E.2d 311 (Ct. App. 1995), *reh'g denied* (Sept. 20, 1995), the Court held that where an appellant argued that part of the S.C. Code was violative of due process, but "failed to sufficiently brief or analyze the due process argument," the issue was abandoned on appeal. *Id. at 517*. There the appellant

“merely [stated], without argument, that the classification system [of the statute] is arbitrary and capricious and therefore violative of due process.” *Id.* This Court held that under SCACR 207, “an exception to the trial court’s ruling will be deemed abandoned where the appellant fails to specifically argue it in his brief.” *Id.* The Court also stated, “[m]oreover, a conclusory argument of an issue by the appellant amounts to an abandonment of an issue.” *Id.*

The Appellant, in his brief, fails to provide anything more than a conclusory statement that the trial court violated SCRCP 40(b), the Fourteenth Amendment to the United States Constitution, and the South Carolina Constitution. This effectively serves as an abandonment of the issues raised by Appellant.

In addition, Appellant references additional arguments made in his October 2, 2007 pre-trial motion to continue and his post trial motion for a new trial in his brief. (Appellants Initial Brief, pp. 2-3.) In the section entitled “Statement of the Case,” Appellant states as follows:

**(10) The date of and description of such orders, judgments, and proceedings in the court below as may have affected the appeal, or may throw light upon the questions involved in the appeal.**

\* Plaintiff’s written Pre-Trial Motion to Continue based upon SCRCP 40(b)(2) filed October 2, 2007.

\* Plaintiff’s written Post Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b)(2), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution.



\* Judge Baxley's Administrative Order denying Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b)(2), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution dated December 9, 2007.

\* The Pre-Trial Hearing on October 2, 2007 by Judge Baxley of Plaintiff's writted Pre-Trial Motion to Continue based upon SCRCP 40(b)(2) filed October 2, 2007, wherein Judge Baxley denied said motion. (Appellant's Initial Brief, p. 5)

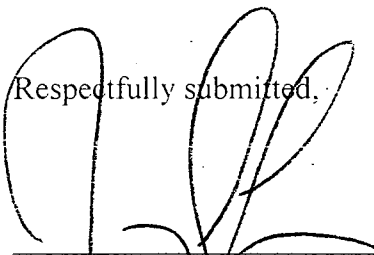
Appellant cannot incorporate by reference arguments made in other proceedings and filings with the trial court in the manner attempted above. An issue not specifically argued in the body of an appellate brief is deemed abandoned. Welch v. Epstein, 342 S.C. 279, 287, 536 S.E.2d 408, 412, n.1 (Ct. App.2000), *reh'g denied* (Nov. 4, 2000). As the issues raised in the documents referenced by the Appellant in the "Statement of the Case" section of his brief were not specifically argued in the "Analysis" section of his brief, those arguments and issues were abandoned.

### **CONCLUSION**

The trial court did not abuse its discretion by denying the Appellant's pre-trial motion for continuance or in denying the Appellant's post-trial motion for a new trial. As an initial matter, the Appellant abandoned all appellate arguments by failing to fully argue his position in his brief. Even if not abandoned, the Appellant waived any protection afforded to him under SCRCP 40(b) by failing to timely file his written pre-trial motion for continuance in accordance with local rules of procedure. In addition, the Appellant further waived any SCRCP protection by affirmatively agreeing to the trial

date at the August, 2007 master roster meeting. This Court should affirm the decision of the trial court to deny Appellant's pre-trial motion for continuance for the reasons stated herein, and uphold the decision of the trial court to direct a verdict in favor of Respondent Cold Air A/C Service, Inc.

Respectfully submitted,



April 30, 2009

---

Jay R. Lee, Esquire  
Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.  
P.O. Drawer 1931  
Florence, SC 29503  
(843) 669-8787

Attorney for Respondent Cold Air A/C Service, Inc.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

---

APPEAL FROM HORRY COUNTY

The Honorable J. Michael Baxley, Circuit Court Judge

---

Case No.: 05-CP-26-2710

Dr. Brad R. Johnson.....Appellant

v.

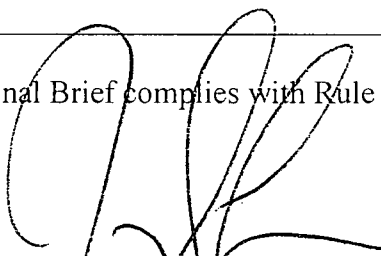
Lewis W. Hall, Lewis V. Hall,  
L.W. Hall Enterprises, LLC, and  
Cold Air A/C Service, Inc. ....Respondent.

---

CERTIFICATE OF COUNSEL

---

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



---

Jay R. Lee  
Aiken, Bridges, Elliott, Tyler, & Saleeby, P.A.  
P.O. Drawer 1931  
Florence, SC 29503  
(843) 669-8787

Apr. 30, 2009

Attorney for Respondent Cold Air A/C Service, Inc.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

---

APPEAL FROM HORRY COUNTY

The Honorable J. Michael Baxley, Circuit Court Judge

---

Case No.: 05-CP-26-2710

Dr. Brad R. Johnson.....Appellant

v.

Lewis W. Hall, Lewis V. Hall,  
L.W. Hall Enterprises, LLC, and  
Cold Air A/C Service, Inc. ....Respondent.

---

CERTIFICATE OF SERVICE

---

I, the undersigned employee of Aiken Bridges, do hereby certify that the foregoing **FINAL BRIEF OF RESPONDENT COLD AIR A/C SERVICE, INC.**, have this day been served by mailing copies thereof, postage prepaid, to the following person(s), this 30<sup>th</sup> day of April, 2009.

Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577

G. Michael Smith, Esquire  
Thompson & Henry, P.A.  
P.O. Box 1740  
Conway, SC 29528

Brent M. Boyd, Esquire  
Murphy & Grantland, P.A.  
P.O. Box 6648  
Columbia, SC 29260

F. Truett Nettles, II, Esquire  
The Nettles Law Office, LLC  
67 Broad Street, 2<sup>nd</sup> Floor  
Charleston, SC 29401

The South Carolina Court of Appeals  
The Honorable Kenneth A. Richstad, Clerk  
P.O. Box 11629  
Columbia, SC 29211

By: Bridgette Godbold  
Bridgette D. Godbold-  
Paralegal to Jay R. Lee, Esquire

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

---

APPEAL FROM HORRY COUNTY

The Honorable J. Michael Baxley, Circuit Court Judge

---

Case No. 05-CP-26-2710

Dr. Brad R. Johnson.....Appellant

v.

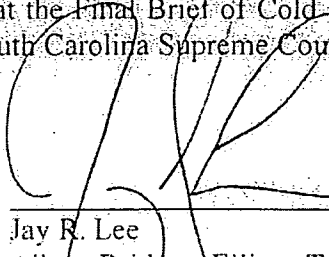
Lewis W. Hall, Lewis V. Hall,  
L.W. Hall Enterprises, LLC, and  
Cold Air A/C Service, Inc. ....Respondent.

---

CERTIFICATE OF COMPLIANCE

---

The undersigned hereby certifies that the Final Brief of Cold Air A/C Service, Inc. is in compliance with the Order of the South Carolina Supreme Court dated August 13, 2007.



---

Jay R. Lee  
Aiken, Bridges, Elliott, Tyler, & Saleeby, P.A.  
P.O. Drawer 1931  
Florence, SC 29503  
(843) 669-8787

May 13, 2009

Attorney for Respondent Cold Air A/C Service, Inc.

Final Brief of Respondent  
Lewis W. Hall

OTHER COUNSEL OF RECORD

Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577

Brent M. Boyd, Esquire  
Murphy & Grantland, P.A.  
Post Office Box 6648  
Columbia, SC 29260

Forrest Truett Nettles, II, Esquire  
The Nettles Law Office, LLC  
Post Office Box 699  
Charleston, SC 29402

Jay R. Lee, Esquire  
Aiken Bridges  
181 East Evans Street, Suite 409  
Florence, SC 29506

## TABLE OF CONTENTS

|                                                                                                                                                                                                                                             | <u>Page</u> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Statement of Issues on Appeal.....                                                                                                                                                                                                          | 1           |
| Statement of Case.....                                                                                                                                                                                                                      | 1           |
| Statement of Facts.....                                                                                                                                                                                                                     | 3           |
| Argument.....                                                                                                                                                                                                                               | 3           |
| I.    The Trial Court correctly required the Plaintiff to proceed<br>trial.....                                                                                                                                                             | 3           |
| II.   As an additional sustaining ground, the Plaintiff's Request<br>for a Continuance dealt with damages issues which were not<br>addressed in the directed verdict motion and not considered<br>by the jury in their defense verdict..... | 6           |
| Conclusion.....                                                                                                                                                                                                                             | 7           |



**TABLE OF AUTHORITIES**  
**CASES**

|                                                                                                    |   |
|----------------------------------------------------------------------------------------------------|---|
| <u>Brown vs. Pearson</u> , 326 S.C. 409, 483 S.E.2d 477 (Ct. App. 1997).....                       | 7 |
| <u>Faith Holiness Church vs. Church of God</u> , 282 S.C. 487, 319 S.E.2d 348 (Ct. App. 1984)..... | 4 |
| <u>Paschal vs. Causey</u> , 309 S.C. 206, 420 S.E.2d 863 (Ct. App. 1992).....                      | 4 |
| <u>Windham vs. Honeycutt</u> , 279 S.C. 109, 302 S.E.2d 856 (1983).....                            | 4 |

**RULES**

|                                  |       |
|----------------------------------|-------|
| Rule 40 (b) , <u>SCRCP</u> ..... | 2,3,4 |
| Rule 59, <u>SCRCP</u> .....      | 3     |

### STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial Court erred in requiring the Plaintiff to proceed to trial less than 180 days after service on the corporate Defendants.
- II. As an additional sustaining ground, since reasons given by the Plaintiff for requesting the continuance dealt with damages issues, whether the Plaintiff was prejudiced by proceeding to trial when three Defendants were dismissed by directed verdict and the fourth remaining Defendant received a defense verdict.

### STATEMENT OF THE CASE

This action was commenced by the filing of a Summons and Complaint on May 31, 2005. The Plaintiff alleged multiple causes of actions including civil conspiracy, assault, false imprisonment, battery, malicious prosecution, abuse of process, defamation and premises liability. The Defendant Lewis W. Hall answered the Complaint and asserted various affirmative defenses and counterclaims.

Subsequent to the filing of the initial pleadings, the Plaintiff moved to amend the Summons and Complaint to add additional parties. By Order filed February 26, 2007, the Honorable J. Michael Baxley, hearing judge, granted the Plaintiff's Motion to Amend. However, he provided the Plaintiff ten additional days to consider the issue and notify the Court of his intent to add the new parties. (See attached as Exhibit "A" the Form 4 Order filed February 26, 2007

referenced as being on page 49 of the record on Appeal, but omitted in this Respondent's copy of the Record on Appeal.)

On May 18, 2007, the Plaintiff filed an Amended Complaint naming as additional Defendants L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc. Lewis W. Hall filed his Answer to the Amended Complaint on May 31, 2007.

At a Master Roster meeting conducted by Judge Baxley as Chief Administrative Judge for Horry County on August 20, 2007, the case was without objection and with the consent of all parties scheduled for trial. The case was to be called not before the week of October 1, 2007. Pursuant to the terms set forth at the roster call, the case was called to trial on October 1, 2007.

By oral motion in open court on October 1, 2007 followed by written motion dated October 3, 2007, the Plaintiff moved for a continuance based upon Rule 40(b), SCRCP. By oral order on October 1, 2007, Judge Baxley denied the motion for continuance and ordered the case to proceed to trial.

After the presentation of the Plaintiff's case, Judge Baxley granted the directed verdict motions of Lewis W. Hall, L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc. The case continued against the Defendant Lewis V. Hall. On October

4, 2007, the jury returned its verdict in favor of the remaining Defendant Lewis V. Hall.

By written motion filed October 12, 2007, the Plaintiff made a motion for a new trial pursuant to Rule 59, SCRCP. The motion was based primarily on the Court's ruling under 40(b), SCRCP. Judge Baxley denied the Plaintiff's motion for new trial by administrative decision of the Court filed December 17, 2007. Thereafter, the Plaintiff filed his Notice of Appeal and served a copy of the Notice of Appeal on opposing counsel by mail on February 29, 2008.

#### **STATEMENT OF FACTS**

This case involves a dispute between neighbors that occurred on or about March 26, 2005. After a brief encounter and exchange of gestures between the plaintiff and the Halls, the plaintiff somehow lost consciousness on his neighbor's property. (R p. 166, line 20 through p. 177, line 6.) The plaintiff has no specific recollection of the facts surrounding the incident leading up to him blacking out. (R p. 178, line 23 through p. 179, line 14)

#### **ARGUMENTS**

##### **I. THE TRIAL COURT CORRECTLY REQUIRED THE PLAINTIFF TO PROCEED TO TRIAL.**

The Defendant Lewis W. Hall believes that the trial Court

was correct in requiring this case to go forward.

The Plaintiff claims that he is entitled to a broad shield of protection under Rule 40(b), SCRCP which states in part:

...Notwithstanding the foregoing, no action may be called for trial until 180 days after service of the last pleading which adds a new party to the action, unless all parties consent in writing.

In this case, the conduct of the parties on the record prior to the call of the case clearly reflects a consent to proceed forward. At the Master Roster call which occurred on August 20, 2007, the Plaintiff, by not objecting to the placement of the case on the October 1, 2007 roster, waived any objection to the 180 day rule set forth in Rule 40(b), SCRCP. The Plaintiff indicated to the Court that he would be ready for trial by the week of October 1, 2007. (R p. 161, line 21, through p. 162, line 1) Our Appellate Courts have consistently held that a party who fails to object to the trial of a case and affirmatively agrees to its trial at a designated time cannot later assert that the trial Court erred in trying the case before the close of the statutory period.

See Paschal vs. Causey, 309 S.C. 206, 420 S.E.2d 863 (Ct. App. 1992); Windham vs. Honeycutt, 279 S.C. 109, 302 S.E.2d 856 (1983); and Faith Holiness Church vs. Church of God, 282 S.C. 487, 319 S.E.2d 348 (Ct. App. 1984).

In addition, the Plaintiff did not comply with the Administrative Order of the Honorable J. Michael Baxley which required that any request for a continuance be made no later than 5:00 p.m. Wednesday prior to the scheduled trial term. In this case, the Administrative Order was not complied with and the Motion for Continuance was not made until the day of trial. A copy of the Administrative Order is attached hereto and made a part hereof as Exhibit "B". (R p. 160, line 22 through p. 161, line 3.

Third, two of the reasons listed in the Plaintiff's Motion for Continuance became moot at the trial of the case. Those reasons included a Motion for Continuance filed by the Co-Defendant Lewis V. Hall and a Motion for Summary Judgment filed by the Defendant Cold Air AC Service, Inc. Both of those Motions were withdrawn prior to the case being called as indicated in the Plaintiff's own Motion. (R p. 151, lines 10-23; p. 152, lines 7-9; p. 159, lines 15-23)

Finally, the Plaintiff did not comply with Judge Baxley's Order allowing him to add a new party. There is no subsequent Order of the Court allowing the amendment to add the Defendant Cold Air AC Service, Inc. at the time it was finally added outside the time period prescribed by Judge Baxley. As a

result, Cold Air AC Service, Inc. was arguably not even a proper party to the litigation and the Plaintiff should not be allowed to continue his case or seek a new trial of the case by virtue of adding a party outside the time set forth in the trial Judge's Order.

**II. AS AN ADDITIONAL SUSTAINING GROUND, THE PLAINTIFF'S REQUEST FOR A CONTINUANCE DEALT WITH DAMAGES ISSUES WHICH WERE NOT ADDRESSED IN THE DIRECTED VERDICT MOTION AND NOT CONSIDERED BY THE JURY IN THEIR DEFENSE VERDICT.**

Item No. 1 in the Plaintiff's Motion for Continuance was that he had a psychiatrist that was supposed to be deposed on November 28, 2007. However, the Plaintiff's psychiatrist deposition had been noticed and cancelled on several prior occasions by Plaintiff's counsel. The last time Dr. Weinbaum's deposition was scheduled was on September 12, 2007. However, the deposition was cancelled on September 10, 2007 by Karen from the Axelrod Law Firm, attorneys for the plaintiff. A copy of the letter from Dr. Weinbaum confirming the above was attached to the Return to the Plaintiff's motion and is attached hereto and made a part hereof by reference as Exhibit "C".

As shown in the record, the Co-Defendants except for Lewis V. Hall were successful in their directed verdict motions. R.

p. 182, line 23 through p. 190, line 7) Simply put, the Plaintiff did not meet his burden of proof on any of the causes of action against the Defendants Lewis W. Hall, L. W. Hall Enterprises, LLC or Cold Air AC Service, Inc. As a result, the reasons requested in the continuance had no bearing on the trial against those Defendants and any error committed by Judge Baxley amounted to harmless error. When the Plaintiff fails to prove an alleged error harmful, the error does not constitute grounds for dismissal. Brown v. Pearson, 326 S.C. 409, 483 S.E.2d 477 (Ct. App. 1997)

As to the Defendant Lewis V. Hall, after consideration of all the facts and circumstances of the case, including medical evidence on behalf of the Plaintiff, the jury returned its verdict in favor of the Defendant. (R p. 191, line 18 through p. 192, line 14) Accordingly, any reasons pertaining to a continuance based on establishing damages was moot because the jury did not consider damages in its verdict.

#### CONCLUSION

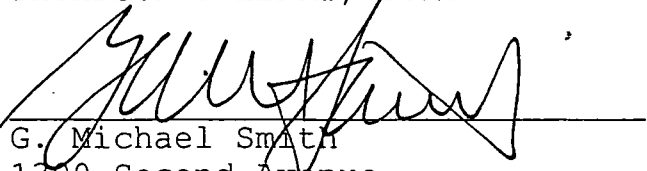
It is clear from the record in this case that Plaintiff's counsel either consented by his actions to proceed forward with this case when it was called for trial on October 1, 2007 or, in the alternative, failed to follow the trial Court's mandate regarding amending the complaint to add the new Defendant. As



a result, the Plaintiff cannot now attempt to utilize Rule 40(b), SCRCP, to excuse his conduct in this case. In addition, even if Judge Baxley erred in requiring the Plaintiff to proceed to trial, the error was harmless because the crux of the Plaintiff's request for a continuance was to support his position on damages. By virtue of the directed verdict motion on liability against the Defendants Lewis W. Hall, L. W. Hall Enterprises, LLC and Cold Air AC Service, Inc., any damages evidence was moot. In addition, the jury's verdict for the Defendant is indicative of the fact that the Plaintiff failed to meet his burden of proof on liability against the remaining Defendant Lewis V. Hall and any damages evidence would have been immaterial in that deliberation. Accordingly, since the Plaintiff failed to establish any harm by Judge Baxley's ruling, the Order of trial Court should be affirmed in this case.

Respectfully submitted,

THOMPSON & HENRY, P.A.



G. Michael Smith  
1300 Second Avenue  
Third Floor (29526)  
Post Office Box 1740  
Conway, SC 29528  
(843) 248-5741

ATTORNEYS FOR THE RESPONDENT  
LEWIS W. HALL

April 29, 2009

# **EXHIBIT “A”**

Brad R Johnson  
Plaintiff(s)

Vs

Lewis W Hall  
Defendant(s)

ORDER

IT IS ORDERED that the MOTION BE STRUCK FROM THE ACTIVE motion calendar for the following reason(s):

PLTFFS MOTIONS TO COMPEL — GRANTED WITH CONSENT of  
Defendants. Both Defense counsel will verify, INTERROG. will  
10 days.

ATTY SMITH'S MOTION TO QUASH ALL LIS PEDENS FILED IN THIS CA.  
IS GRANTED EFFECTIVE IMMEDIATELY. ATTY SMITH TO SUBMIT  
FORMAL ORDER ON THIS ISSUE ONLY WITHIN 10 DAYS.

PLAINTIFFS MOTION TO AMEND <sup>TO ADD NEW PARTY(S)</sup> IS GRANTED BUT PLAINTIFF IS  
10 ADDITIONAL DAYS TO CONSIDER THE ISSUE AND WILL NOTIFY COURT

IT IS ORDERED that the within entitled MOTION(S) be: HIS INTENT.

1. Continued upon the request of the \_\_\_\_\_ until the \_\_\_\_\_

Reason: \_\_\_\_\_

2. Transferred to the Jury/Non-Jury Calendar.

3. Other: \_\_\_\_\_

Conway, South Carolina

02 / 16, 2007

Atty S Axelrod

Presiding Circuit Judge

Atty J F Nettles

Atty S Michael Smith

# EXHIBIT "B"

## AN OPEN LETTER TO ATTORNEYS AND PRO SE PARTIES WITH CASES PENDING ON THE HORRY COUNTY JURY ROSTER:

Beginning July 1, 2007, in the wake of Judge Thomas' election to the Court of Appeals, it will be my privilege to serve as Chief Administrative Judge for civil court in the Fifteenth Judicial Circuit. I look forward to working with you in this capacity. In an effort to streamline operations of the Horry County Civil Courts, this letter sets the procedures and methods of operation for all JURY cases pending in Horry County. A separate letter will be posted on the NON-JURY roster outlining new NON-JURY procedures.

In posting these procedures, the Court is aware that change is often difficult. Please understand, however, that each of the following new procedures is a result of collaboration with judges, staff, and members of the Bar, and each procedure is targeted to alleviate a specific problem presently being experienced in administering the jury roster. This is a work in progress, and any suggestions you have concerning the jury roster will be welcomed and should be forwarded directly to my office or given to Horry Bar Association president Natasha Hanna who may wish to take a position on behalf of the Bar Association.

### NEW RULES FOR JURY CASES

1. **Master Roster Meetings** — Master Jury Roster meetings will be held bi-annually. The first is scheduled for Monday, August 20, 2007, in Courtroom 3B, beginning at 10:00 a.m. All attorneys with cases on the roster, as well as all pro se parties, are expected to attend and be prepared to advise the court when the case will be ready for trial, approximately how long the trial will take, and whether there are any unusual issues with regard to the case. Any requests for protection for the remainder of 2007 must be made at least five (5) business days prior to the master roster meeting.

**Master Roster Meeting Format** — At the roster meeting, attorneys and parties should be prepared to advise the Court whether the case can be tried within 13 months of the filing date. Cases will be listed on the roster on a "not before a particular date" basis as opposed to allowing counsel to actually choose the week of trial for a case. Attorneys and pro se parties in cases that cannot be ready for trial within 13 months of filing will need to meet with the administrative judge, as will those anticipating a trial of longer than one week's duration. If the parties wish to discuss a request for a date certain trial at the master roster meeting, a motion for date certain must be filed at least five (5) business days prior to the meeting (see paragraph 9 below).

2. **Earlier Publication of Trial Rosters** — In order to give counsel adequate time to notify clients and witnesses, and to be fully prepared for trial, trial rosters will be posted thirty (30) days in advance of the court term, beginning with the roster for the August 13, 2007 term. Trial rosters will consist of 25 cases per judge. Please note that a limited number of non-jury items will also be included on the roster as

discussed in Item 3 below. Roster meetings will continue to be held on Monday morning at the start of the term.

3. **Back-up Non-Jury Cases on Trial Roster** – To relieve the backlog in non-jury appeals, the docket clerk will set ten (10) non-jury appeals cases at the end of the jury trial roster. These cases will be called for trial if all jury cases are resolved. An email advising counsel of the fact that a particular non-jury appeal has been set for trial in this fashion will be sent out at the time the roster is initially posted. Counsel and parties should be on standby in the event these cases are reached, and non-jury docket coordinator Teresa Phillips will telephone counsel and parties as soon as it is evident that the non-jury cases will be reached. Failure to appear will result in dismissal of the case. Counsel and parties for these non-jury appeals do not need to attend the jury roster meeting on Monday morning, but must be on standby for the call of the case. Further, if the case has resolved or the appeal is moot, please advise Teresa Phillips immediately upon the case being posted for back-up trial so that it may be deleted from the roster.

4. **Continuances** – Continuance requests must be in the form of a filed motion, and can no longer be considered based upon a phone call or letter. Attorneys/parties requesting a continuance should send the request by fax, together with a copy of the filed motion bearing the Clerk's stamp, no later than 5:00 p.m. WEDNESDAY prior to the scheduled trial term as follows:

Ms. Alma Jenkins  
Jury Docket Coordinator  
Horry County Clerk of Court's Office  
(843-915-5075 voice  
(843) 915-6075 fax

Continuance requests without proof of a motion being filed cannot be considered. Proof of filing includes either providing a copy of the filed motion with the clerk's stamp affixed thereon, or a copy of the motion filing letter, copy of the \$25.00 filing fee check, and a copy of an affidavit of service of the motion on all opposing parties.

All continuance requests should include the reason for the request, the name and contact information of all adverse attorneys or pro se parties, and a written statement from all adverse attorneys or pro se parties advising whether there is consent to the request. Failure to provide this information will result in denial of the continuance motion. Your letter will be faxed back to all attorneys and pro se parties with a grant or denial noted on the face of the letter. Motions for continuance made after the deadline must be addressed by the presiding judge of the term of Court, so your appearance at the Monday roster meeting will be required unless the presiding judge communicates otherwise.

5. **Effect of Continuances** – In the past, when a case was continued, based upon its case number, several weeks may pass before the case would be called for

trial again. This is confusing for parties and others not familiar with the system. Effective July 1, a continuance will only postpone the trial of the case for one term, and the continued case will be placed at the top of the trial docket for the following term. However, upon a showing of meritorious circumstances, the presiding judge will be authorized to grant a continuance of up to one month; however, anyone requesting a continuance for longer than one month must address this issue with the chief administrative judge.

6. **Conflicts with Other Courts** – The Court is aware that there are other courts operating simultaneously while jury terms are in progress. However, it will no longer be sufficient for counsel or a party to simply say “I have to be in general sessions” or “I have to be in federal court” and on that basis request a continuance. The Court will require written documentation of the court conflict and the name and contact information of the scheduling officer for that court; thereafter, jury docket coordinator Alma Jenkins will resolve the conflict with the other circuit or federal court so that the civil jury case will be held as scheduled. Counsel and parties are required to give jury docket coordinator Alma Jenkins a minimum five (5) business days notice prior to the jury term when such a conflict is occurring. Counsel is referred to Rule 601 of the SC Appellate Court Rules when such scheduling conflicts arise.

7. **Jury Trials by Special Referee** – Both S. C. Code Ann § 14-11-60 and Rule 39, SCRPC, allow jury (or non-jury) trials to be conducted by a special referee appointed by the Court. A standard Order allowing such disposition may be found on this website at the following link: [\\_\\_\\_\\_\\_](#). Any parties wishing to resolve a case by this method should prepare a similar Order and submit it to the Court. By consent, parties are free to choose the special referee whom they wish to preside, who should be a member in good standing of the South Carolina Bar. Unless otherwise agreed by the parties, the costs of referring the case shall be borne equally between the parties. The Court strongly urges this alternative resolution method for cases, as it is quicker, less expensive for parties, less formal, may employ high/low agreements, and often operates under relaxed rules of evidence.

8. **Status conferences** – From time to time, the Court will make a day available for the purpose of conducting status conferences. The first date for status conferences has been scheduled for Friday, July 20, 2007, beginning at 10:00 a.m. Attorneys or pro se parties requesting a status conference on this day should contact Jury court coordinator Alma Jenkins at the address listed above. Due to their complex nature, the Court is going to require status conferences in certain types of cases in an effort to insure their progress toward trial, and all parties will be notified in advance of the date and time.

9. **Date certain trial requests** -- Presently there are over 100 sizeable and expert-intensive condemnation, construction, and/or medical malpractice cases pending in Horry County, many of which are projected to take more than one week for trial. To assign date certain trials for only these cases would swallow the docket

and prevent the orderly flow of business for the other 2000 plus cases that are pending. Thus, a date certain trial can only be assigned under compelling circumstances. These circumstances generally include difficulties such as having three (3) or more experts who will testify at trial, a projected trial length of a full week or more, having more than ten (10) parties in the case, having at least five (5) lay witnesses from out of state, and/or other similarly challenging factors. Any request for a date certain trial must be made by separate motion, not as a part of a scheduling order, setting forth the specific reasons for which the request is made, stating the positions of the other parties, estimating the length of trial, and advising if any specific court terms are agreeable or problematic to all. Please understand in advance that the Court will be unable to accommodate many of these requests. Furthermore, it will not be possible for counsel to choose the particular date for a trial, and many date certain trials will be set on back-up status behind another such case.

10. **Scheduling Orders** – Once a case is listed on the trial docket, a motion for a scheduling order, which at that point is actually a continuance request, cannot be granted. Scheduling Orders should be submitted early in the litigation and prior to the case appearing on a trial docket, or at the master roster meeting. All scheduling Orders presently in effect shall remain in effect.

11. **Effect of this Order on Condemnation Cases** – The Honorable Edward B. Cottingham has been given special administrative authority over all pending SCDOT condemnation cases, and he continues in this role. Judges Baxley and Cottingham will work together in scheduling these cases for trial in accordance with the statutory preference they are given.

Thank you for your attention to these matters, and we hope that these policies will assist you by providing guidelines that will make the civil court operations most efficient for attorneys and parties who have cases on your roster.

With respect,

J. Michael Baxley  
Civil Chief Administrative Judge



# EXHIBIT “C”

Weinbaum Psychiatric Services

Marc Weinbaum, MD

604 South Coit Street

Florence, SC 29501

Phone 843-629-0034

Fax: 843-629-9192

September 12, 2007

Thompson & Henry, P.A.

Michael Smith, Attorney at Law

PO Box 1533

Conway, SC 29528

Phone: 843-248-5741

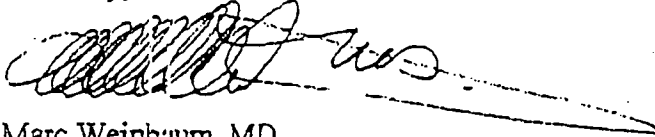
Fax: 843-248-5112

Re: Deposition for Brad Johnson

Dear Mr. Mike Smith,

The deposition that was scheduled today September 12, 2007 for Brad Johnson was cancelled on September 10, 2007 by Karen from the Axelrod Law Firm. The Axelrod Law Firm has not yet rescheduled this deposition.

Sincerely,



Marc Weinbaum, MD

Diplomate of the American Board  
of Psychiatry

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

---

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

**The Honorable J. Michael Baxley, Circuit Court Judge**

---

**CASE NO. 2005-CP-26-2710**

---

Dr. Brad R. Johnson.....Appellant

vs. "

Lewis W. Hall, Lewis V. Hall, L. W.  
Hall Enterprises, LLC and Cold Air  
Service, Inc. .... Respondents

---

**CERTIFICATE OF COUNSEL**

---

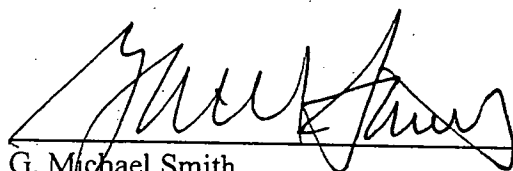
I hereby certify that the Final Brief of the Respondent Lewis W. Hall is in compliance with Rule 211(b) of the South Carolina Rules of Appellate Procedure.

Respectfully submitted,

Conway, South Carolina

THOMPSON & HENRY, P.A.

May 9, 2009

  
\_\_\_\_\_  
G. Michael Smith  
1300 Second Avenue, 3rd Floor  
Post Office Box 1740  
Conway, South Carolina 29528  
(843) 248-5741  
Attorneys for the Respondent Lewis W. Hall

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable J. Michael Baxley, Circuit Court Judge

---

Case No: 2005-CP-26-2710

---

Dr. Brad R. Johnson

Appellant,

vs.

Lewis W. Hall, Lewis V. Hall, L. W.  
Hall Enterprises, LLC and Cold Air  
AC Service, Inc.

Respondents.

---

**PROOF OF SERVICE**

---

I certify that I have served the Final Brief of the Respondent Lewis W. Hall by placing a copy of same in a United States Postal Service mail box, postage prepaid on May 11, 2009, to the attorneys of record, addressed to:

Stuart M. Axelrod, Esquire  
Axelrod & Associates, P.A.  
604 Sixteenth Avenue North  
Myrtle Beach, SC 29577  
ATTORNEY FOR APPELLANT

Brent M. Boyd, Esquire  
Murphy & Grantland, P.A.  
4406-B Forest Drive  
Columbia, SC 29206  
ATTORNEY FOR RESPONDENT, LEWIS  
V. HALL

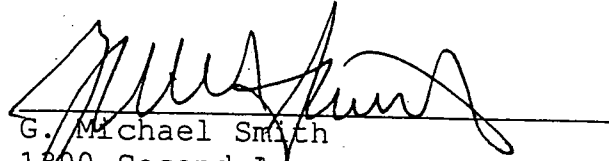
Truett F. Nettles, II, Esquire  
F. Truett Nettles, II, PA  
67 Broad Street, Second Floor  
Charleston, SC 29401-2902  
(843) 577-6233  
PERSONAL ATTORNEY FOR  
RESPONDENT, LEWIS V. HALL

Jay R. Lee, Esquire  
Aiken, Bridges, Nunn, Elliott &  
Tyler, P.A.  
Post Office Drawer 1931  
Florence, SC 29503  
ATTORNEY FOR RESPONDENT, LEWIS  
W. HALL AND COLD AIR AC  
SERVICE, INC.

Signature Block to Follow.

Respectfully submitted,

THOMPSON & HENRY, P.A.

A handwritten signature in black ink, appearing to read "G. Michael Smith", is written over a horizontal line.

G. Michael Smith  
1800 Second Avenue  
Third Floor (29526)  
Post Office Box 1740  
Conway, SC 29528  
(843) 248-5741

ATTORNEYS FOR THE RESPONDENT  
LEWIS W. HALL

Conway, South Carolina

May 11, 2009

## TABLE OF CONTENTS

|                                                                       |    |
|-----------------------------------------------------------------------|----|
| Table of Authorities.....                                             | ii |
| Statement of Issues on Appeal.....                                    | 1  |
| Statement of the Case.....                                            | 1  |
| Facts.....                                                            | 3  |
| Arguments                                                             |    |
| 1. THE APPELLANT WAIVED ANY RIGHTS HE HAD UNDER RULE 40(b) SCRCF..... | 4  |
| 2. THE TRIAL COURT ADMINISTERS ITS TRIAL ROSTER WITH DISCRETION.....  | 6  |
| 3. THE APPELLANT HAS SUFFERED NO HARM.....                            | 7  |
| Conclusion.....                                                       | 8  |

## TABLE OF AUTHORITIES

### CASES

|                                                                                               |   |
|-----------------------------------------------------------------------------------------------|---|
| <i>Beaufort County v. Butler</i> , 316 S.C. 465, 451 S.E.2d 386 (1994).....                   | 6 |
| <i>Paschal v. Causey</i> , 309 S.C. 206, 419 S.E.2d 863 (Ct. App. 1992).....                  | 6 |
| <i>S.C. Department of Social Services v. Broome</i> , 307 S.C. 48, 413 S.E.2d 835 (1992)..... | 7 |
| <i>Windham v. Honeycutt</i> , 279 S.C. 109, 302 S.E.2d 856 (1983).....                        | 6 |

### OTHER AUTHORITIES

|                                                          |     |
|----------------------------------------------------------|-----|
| Rule 1, South Carolina Rules of Civil Procedure.....     | 6,7 |
| Rule 6(d), South Carolina Rules of Civil Procedure.....  | 4,8 |
| Rule 40(b), South Carolina Rules of Civil Procedure..... | 4-7 |
| Rule 59, South Carolina Rules of Civil Procedure.....    | 7   |
| Rule 61, South Carolina Rules of Civil Procedure.....    | 8   |

## STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN DENYING THE APPELLANT'S MOTION FOR A NEW TRIAL?

## STATEMENT OF THE CASE

On May 31, 2005, the Plaintiff filed a Complaint *pro se* against the Defendants Lewis W. Hall (father) and Lewis V. Hall (son) for assault, battery, malicious prosecution, defamation, premises liability and conspiracy. (R. pp. 1-41). Several months after the case was commenced, Stuart M. Axelrod, Esq., of Myrtle Beach, South Carolina, began representing the Plaintiff. The original Defendants, Lewis W. Hall (father) and Lewis V. Hall (son) filed responsive pleadings containing a general denial and an averment that the Respondent Lewis V. Hall (son) struck the Appellant in defense or protection of his father, the Respondent Lewis W. Hall. The two original Defendants were initially represented by N. David Durant, Esq., of Surfside Beach, South Carolina. Later in the case and at trial, the Respondent Lewis V. Hall (son) was represented by F. Truett Nettles, II, Esq. of Charleston, South Carolina and the Respondent Lewis W. Hall (father) was represented by G. Michael Smith, Esq. of Conway, South Carolina.

In November 2006, after the case had been pending for almost eighteen (18) months, the Appellant moved to amend the Complaint and add two (2) additional Defendants: the Respondent L.W. Hall Enterprises, LLC, and the Respondent Cold Air A/C Service, Inc. (R. pp. 42-48). The Defendant L.W. Hall Enterprises, LLC, was joined because it was the legal owner of the residential property where the incident between the parties occurred and the Respondent Lewis W. Hall (father) was the sole member and owner of that company. The Defendant party Cold Air A/C Service, Inc., was joined because it had some business equipment located on the residential property, the



Defendant Lewis V. Hall (son) was an employee of that company and the Respondent Lewis W. Hall (father) was the majority owner and an officer of that Respondent. The Respondent Cold Air A/C Service, Inc. was represented by Jay R. Lee, Esq., of Florence, South Carolina. The Respondent L.W. Hall Enterprises, LLC, was represented by Brent M. Boyd, Esq., of Columbia, South Carolina.

On February 16, 2007, the Trial Judge, the Honorable J. Michael Baxley, granted the Plaintiff's Motion to Amend the Complaint and add additional Defendants. (R. p. 49) The Appellant was instructed to advise the Court within ten (10) days as to which Defendants would be added as parties. The Appellant did not advise the Trial Court of his intentions. (R. p. 148, lines 11-21). The Defendant filed and served its Amended Complaint, adding the Respondents L.W. Hall Enterprises, LLC, and Cold Air A/C Service, Inc., on May 18, 2007, more than ninety (90) days after the Trial Court had granted leave for such amendment and joinder of parties. (R. p. 201). The new Defendant parties timely filed responsive pleadings denying allegations of the Appellant.

This matter came before the Court for a jury trial on October 1, 2007, before the Honorable J. Michael Baxley. The Appellant made a verbal Motion for Continuance at the beginning of trial proceedings. That Motion was denied by the Trial Court. (R. p. 146, line 7 - p. 162, line 6). At the close of the Plaintiff's case, the Trial Court directed a verdict for the Respondents Lewis W. Hall (father), L.W. Hall Enterprises, LLC and Cold Air A/C Service, Inc. (R. p. 189, line 11 - p. 190, line 7). The jury then returned a verdict for the remaining Defendant Lewis V. Hall (son). (R. p. 191, line 14 - p. 192, line 14).

The Appellant made a post-trial Motion for a new trial, based essentially on the Trial Court's earlier denial of the Appellant's Motion for a Continuance. That Motion was denied and this Appeal followed.

There have been no changes in the parties to this case except as discussed above.

### **FACTS**

On March 26, 2005, the Appellant was living in a residential neighborhood in Horry County, South Carolina. The Appellant's residence was tangentially across the street from the residence of the Respondent Lewis V. Hall (son). The Appellant testified that there had been prior disputes between the Appellant and some of the Respondents regarding parking a truck perpendicular to his property and blocking some part of the road to the Respondent's property and others. On the day of the incident, there was an exchange between the Appellant and the Respondent Lewis V. Hall in which each party made obscene hand gestures to the other. (R. p. 168, line 18 - p. 171, line 23).

A short while after this exchange between the Appellant and the Respondents, Lewis W. Hall (father) and Lewis V. Hall (son) returned to the son's residence across the street from the Appellant. At that point, the Appellant came over to the Respondent's residential property to discuss the difference of opinion. (R. p. 172, line 8 - p. 173, line 3).

The Appellant testified at trial that he did not recall what happened in the driveway of the Respondent Lewis V. Hall (son). (R. p. 174, lines 3-22; p. 176, line 16 - p. 177, line 6; p. 178, line 24 - p. 179, line 6; p. 180, line 19-21). The next thing the Appellant recalls is being handcuffed by law enforcement officers. While the Appellant alleged in his Complaint, and again in the Appellant's Brief, that a firearm was pointed at

him, there was no testimony presented at trial, and none in the record hereof, of anyone pointing a gun at the Appellant.

The Appellant admitted that he was subsequently convicted after a jury trial of the misdemeanor of trespassing on the date of this incident. (R. p. 175, lines 11-17). The jury found for the Defendant. (R. p. 191, line 14 - p. 192, line 14).

### ARGUMENTS

I. THE APPELLANT WAIVED ANY RIGHTS HE HAD UNDER RULE 40(b) SCRPC.

(a) Rule 6(d), South Carolina Rules of Civil Procedure.

This case was commenced by the Appellant in May 2005. After eighteen (18) months of discovery conducted by the Plaintiff and the Defendants, the Plaintiff moved to add to the additional Defendants: L.W. Hall Enterprises, LLC, and Cold Air A/C Service, Inc. At a pre-trial hearing on February 18, 2007, before the Honorable J. Michael Baxley, the Appellant's motion to add these additional Defendants was granted with the provision that the Appellant was given ten (10) days to consider the issue (of which parties to add) and that the Appellant would notify the Court of his intentions. (R. p. 49).

Under the South Carolina Rules of Civil Procedure, when a motion is granted on the performance of any condition, the party obligated to perform that condition is required to do so within twenty (20) days, Rule 6(a), SCRPC. Judge Baxley stated, at the beginning of the trial, that he never heard from the Appellant/Plaintiff after the motion was granted. (R. p. 148, lines 11-21). On May 18<sup>th</sup>, 2007, more than ninety (90) days after the Court allowed the amendment and the addition of parties, the Appellant filed its amended Complaint with the new Defendants. In addressing the Appellant's pre-

trial Motion for a Continuance, the Trial Judge said that if the Appellant had complied with the Order allowing additional Defendants in a timely fashion, there would have been no problem. (R. p. 149, lines 15-17). The Appellant's unreasonable delay in complying with the Trial Court's Order should not operate as a basis to continue the trial. The Appellant had approximately two hundred twenty (220) days between the Court's allowance to add additional parties and the ultimate trial date.

(b) Horry County Local Rule.

The Horry County Court of Common Pleas adopted new rules for jury cases effective July 1, 2007. (R. pp. 193-196). Pursuant to these rules, a Master Jury roster meeting was held on August 20, 2007, in the Horry County Court of Common Pleas. This case was on the trial roster. After some discussion with Judge Baxley, the parties agreed that this case would be ready for trial not before October 1, 2007. The record in this case is devoid of any motion by the Appellant to modify the schedule or amend the trial date in this matter.

The local rules for Horry County also provide that a request for continuance of a trial must be in the form of a filed motion. Such motions are to be filed with the Clerk of Court no later than 5:00 p.m. Wednesday, prior to the scheduled trial term. Again, the record in this case is devoid of any such motion by the Appellant. The Appellant made his verbal Motion for Continuance, based on Rule 40(b), SCRCP, immediately prior to *voir dire* and empanelment of the jury. (R. p. 147, lines 12-17). Where the Appellant failed to properly and timely move for a continuance, after affirmatively agreeing to the trial date, he "cannot later assert that the Trial Court erred in trying the case before the

close of the statutory period.” Beaufort County v. Butler, 316 S.C. 465, 451 S.E.2d 386 (1994).

The Appellant did move for continuance of the Motion for Summary Judgment filed by the Respondent Cold Air A/C Service, Inc. When the Trial Court offered to hear that motion prior to commencement of the trial on October 1, 2007, the Respondent Cold Air A/C Service, Inc., withdrew its Motion for Summary Judgment. (R. p. 151, lines 3-23). The Appellant’s Motion to continue a hearing on that Motion for Summary Judgment became moot. It was only then that the Appellant made his verbal Motion for Continuance of the trial. The Appellant’s failure to comply with the local rule regarding continuances should constitute a waiver of any right thereto.

(c) Waiver of Procedural Rights

Rule 40 of SCRCP provides certain procedural rights. The Rule does not involve subject matter jurisdiction of a Trial Court. It merely provides the parties a period of time within which to prepare for the trial of a case. Paschal v. Causey, 309 S.C. 206, 419 S.E.2d 863 (Ct. App 1992). When an Appellant not only fails to timely and properly seek a continuance, but affirmatively agrees to a specific trial date, that party has waived its rights under this procedural rule and is estopped to pursue the issue. Windham v. Honeycutt, 279 S.C. 109, 302 S.E.2d 856 (1983); Beaufort, supra, at 467. While subject matter jurisdiction cannot be waived or conferred by consent, procedural rights may be waived by a party. Paschal, supra, at 209.

II. THE TRIAL COURT ADMINISTERS ITS TRIAL ROSTER WITH DISCRETION.

The South Carolina Rules of Civil Procedure are to be construed to secure the “just, speedy and inexpensive” administration of justice in our civil courts. Rule 1

SCRCP. These rules are enforced and applied by the Trial Court with discretion. The Trial Court's management of its trial roster should not be disturbed, absent a clear showing of abuse of discretion by the Trial Court. S.C. Dept. of Social Services v. Broome, 307 S.C. 48, 413 S.E.2d 835 (1992). The Appellant moved to continue the trial on November 23, 2006, in order to add new Defendants. That request for a continuance was made after the case has been pending for eighteen (18) months. The Court, in its discretion, granted the Appellant's motion to continue and add more Defendants. Then, at the August 2007 Master Jury roster sounding, the Court again, in its discretion, agreed not to call the case for trial before October 1, 2007. The Trial Court was quite permissive in allowing the Appellant time to develop his numerous and far-reaching claims and bring in additional parties. There has been no abuse of discretion in this case.

### III. THE APPELLANT HAS SUFFERED NO HARM.

The Appellant's Brief in this matter is based upon the Trial Court's denial of a post-trial motion, pursuant to Rule 59, SCRCP. That post-trial motion is based on the assertion that the Court erred in denying the Appellant's verbal, pre-trial motion for a continuance, pursuant to Rule 40(b), SCRCP. The Appellant's Brief, however, does not set forth what harm might have resulted to the Appellant from denial of these motions. The Appellant filed its Complaint in May 2005 and this case came to trial on October 1, 2007 – two (2) years, and four (4) months later. If the Appellant had any material, admissible evidence to support his extravagant claims, such evidence surely could have been developed through discovery in the two and a half (2.5) years this case was pending. Under our Rules of Civil Procedure, no error or defect in any Court Order should be set aside or vacated except to preserve substantial justice. "The Court at any stage of the

proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties. " Rule 61, SCRCP.

In the trial of this case, the Presiding Judge allowed into evidence the Appellant's psychiatric bills, even without deposition or testimony from the psychiatrist, proximately linking those psychiatric services to the Appellant's alleged assault and battery. The Trial Court's denial of the Appellant's Motion for Continuance, pre-trial and post-trial, did not interfere or deprive the Appellant of any rights that he did not already have, and could have exercised, in the preceding several months. If the Trial Court's denial of the continuance and denial of the post-trial motion for a new trial was a technical error, it was harmless.

The verdict of the jury was for the Respondent Lewis V. Hall. The other Respondents obtained directed verdicts at the close of the Appellant/Plaintiff's case. (These directed verdicts are not appealed). According to the Appellant's motion for a new trial, the request to continue the trial was in order to obtain a deposition from a treating psychiatrist. Such evidence, if admissible, would go to damages. Since the jury found no liability, such evidence of damages is moot. Denial of the Motion for Continuance was harmless.

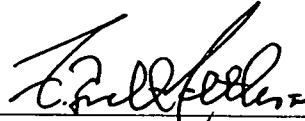
### CONCLUSION

The Appellant has waived any rights he may have had to continue the trial date by his conduct, his affirmative agreement to the trial date and his failure to properly or timely move for a continuance. The Trial Court did not abuse its discretion in denying the Appellant's verbal, pre-trial motion for a continuance or in denying the Appellant's

motion for a new trial. No harm has resulted to the Appellant in this appeal. Therefore, this appeal should be dismissed.

Respectfully submitted,

Dated: April 28, 2009.



---

F. Truett Nettles, II, Esq.  
THE NETTLES LAW OFFICE, LLC  
67 Broad Street, 2<sup>nd</sup> Floor (29401)  
P.O. Box 699  
Charleston, SC 29402  
(843) 577-6233 (p)  
(843) 722-0886 (f)

Attorney for the Respondent L.W. Hall  
Enterprises, LLC



**PETITION FOR WRIT OF CERTIORARI**  
**APPENDIX**

**PART III**

UNPUBLISHED OPINION OF THE COURT OF APPEALS

**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**

Dr. Brad R. Johnson,                      Appellant,

v.

Lewis W. Hall, Lewis V. Hall,  
L.W. Hall Enterprises, LLC,  
and Cold Air A/C Service, Inc.,      Respondents.

---

Appeal From Horry County  
J. Michael Baxley, Circuit Court Judge

---

Unpublished Opinion No. 2011-UP-447  
Submitted October 1, 2011 – Filed October 11, 2011

---

**AFFIRMED**

---

Stuart M. Axelrod, of Myrtle Beach, for Appellant.

---

Brent M. Boyd, of Columbia; F. Truett Nettles, II, of  
Charleston; G. Michael Smith, of Conway; and Jay  
R. Lee, of Florence; for Respondents.

**PER CURIAM:** Dr. Brad R. Johnson appeals the trial court's denial of his motion for a continuance and his motion for a new trial in his civil suit against Lewis W. Hall, Lewis V. Hall, L.W. Hall Enterprises, LLC, and Cold Air A/C Service, Inc. On appeal, Johnson argues the trial court's denial of his written, post-trial motion for a continuance and his motion for a new trial violated his rights pursuant to Rule 40(b), SCRCF, the United States Constitution, and the South Carolina Constitution.<sup>1</sup> We affirm<sup>2</sup> pursuant to Rule 220(b)(1), SCACR, and the following authorities: Wayne Smith Constr. Co., Inc. v. Wolman, Duberstein, & Thompson, 294 S.C. 140, 143, 363 S.E.2d 115, 117 (Ct. App. 1987) (finding the decision to grant or deny a motion for a continuance is within the sound discretion of the trial court and its decision will not be disturbed on appeal absent a showing of an abuse of discretion); Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 49, 691 S.E.2d 135, 149 (2010) ("Whether to grant a new trial is a matter within the discretion of the trial [court], and this decision will not be disturbed on appeal unless it is unsupported by the evidence or is controlled by an error of law."); Rule 40(b), SCRCF (providing "no action may be called for trial until 180 days after service of the last pleading which adds a new party to the action, unless all parties consent in writing"); Paschal v. Causey, 309 S.C. 206, 209, 420 S.E.2d 863, 865 (Ct. App. 1992) (finding the 180-day period is "a procedural right" that "provides parties a period of time to prepare the case" and noting the right may be waived); Faith Holiness Church v. Church of God at Scranton, 282 S.C. 487, 489, 319 S.E.2d 348, 349 (Ct. App. 1984) ("[A] party who fails to object to the trial of a case and affirmatively agrees to its trial at a designated time cannot later assert that the trial court erred in trying the case before the close of the statutory period.").

---

<sup>1</sup> We decline to address Johnson's arguments concerning the constitutional violations. These issues are not preserved for our review because Johnson did not raise these issues to the trial court. See S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (finding an issue must be raised to and ruled upon by the trial court in order to be preserved for appellate review).

<sup>2</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

**AFFIRMED.**

**HUFF, PIEPER, and LOCKEMY, JJ., concur.**

---

**PETITION FOR WRIT OF CERTIORARI**  
**APPENDIX**

**PART IV**

APPELLANT'S PETITION FOR REHEARING

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

---

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

**J. Michael Baxley, Circuit Court Judge**

---

**Case No. 2005-CP-26-2710**

---

**Dr. Brad R. Johnson,**

**Appellant,**

**v.**

**Lewis W. Hall, Lewis V. Hall,  
L. W. Hall Enterprises, LLC,  
Cold Air AC Service, Inc.,**

**Respondents.**

---

**PETITION FOR REHEARING**

---

Now Comes Plaintiff-Appellant, Dr. Brad R. Johnson, for the purpose of petitioning this honorable Court for a rehearing in the above captioned appeal. In support of the instant petition, Appellant, Dr. Brad R. Johnson, states as follows.

**Sole Issue on Appeal**

“Did the Trial Court err in denying Plaintiff’s written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138]?” Final Brief.

## Procedural Facts

In Unpublished Opinion No. 2011-UP-447, submitted October 1, 2011 and filed October 11, 2011, this Court rendered an “opinion” (but without any legal reasoning) which has no precedential value, affirming a Circuit Court’s denial of Plaintiff’s motions (1) for a continuance and (2) for a new trial. Plaintiff’s motions were grounded in Plaintiff’s guaranteed procedural rights pursuant to recently enacted Rule 40(b), SCRCF (which had just become effective in May); the United States Constitution; and the South Carolina Constitution. This Court affirmed (in the absence of any legal reasoning):

“pursuant to Rule 220(b)(1), SCACR, and the following authorities:

- *Wayne Smith Constr. Co., Inc. v. Wolman, Duberstein, & Thompson*, 294 S.C. 140, 143, 363 S.E.2d 115, 117 (Ct. App. 1987) (finding the decision to grant or deny a motion for a continuance is within the sound discretion of the trial court and its decision will not be disturbed on appeal absent a showing of an abuse of discretion);
- *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 49, 691 S.E.2d 135, 149 (2010) (‘Whether to grant a new trial is a matter within the discretion of the trial [court], and this decision will not be disturbed on appeal unless it is unsupported by the evidence or is controlled by an error of law.’);
- Rule 40(b), SCRCF (providing ‘no action may be called for trial until 180 days after service of the last pleading which adds a new party to the action, unless all parties consent in writing’);
- *Paschal v. Causey*, 309 S.C. 206, 209, 420 S.E.2d 863, 865 (Ct. App. 1992) (finding the 180-day period is ‘a procedural right’ that ‘provides parties a period of time to prepare the case’ and noting the right may be waived);
- *Faith Holiness Church v. Church of God at Scranton*, 282 S.C. 487, 489, 319 S.E.2d 348, 349 (Ct. App. 1984) (‘[A] party who fails to object to the trial of a case and affirmatively agrees to its trial at a designated time cannot later assert that the trial court erred in trying the case before the close of the statutory period.’).”

## Argument

This Court Erred in (1) Not Providing its Reasoning Pursuant to Rule 220(b)(1), SCRCP and (2) not addressing Plaintiff's Constitutional Arguments Pursuant to *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*

This Court has violated Plaintiff's civil rights under the procedural Due Process Clause of the Fourteenth Amendment to the Constitution of the United States by (1) not providing its reasoning for its holding in the above captioned appeal pursuant to Rule 220(b)(1), SCRCP and (2) by not addressing Plaintiff's constitutional arguments under the South Carolina Constitution and the U.S. Constitution pursuant to *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*

This Court Erred in Somehow Applying  
*Paschal v. Causey* and *Faith Holiness Church v. Church of God at Scranton*

This is a case of first impression for recently modified Rule 40(b), SCRCP (which had just become effective in May). As such (i.e., a case of first impression), due process demands that this Court provide its reasoning in applying Rule 40(b), SCRCP to the facts in the instant case. Further, due process demands that this Court be accountable for its decision by not declaring that this case is an unpublished opinion. It is in this manner that this Court has violated the procedural Due Process Clause of the Fourteenth Amendment to the Constitution of the United States when it issued an unpublished opinion in this case.

For example, this Court cites to case law (*Paschal v. Causey* and *Faith Holiness Church v. Church of God at Scranton*) that cannot apply to Rule 40(b), SCRCP, since these cases preceded the current enactment of Rule 40(b), SCRCP. Further, Rule 40(b), SCRCP internally provides its own process for waiver. Accordingly, on this basis alone, *Paschal v. Causey* and *Faith Holiness Church v. Church of God at Scranton* cannot apply to the facts in the instant case, especially since the trial court did not find waiver in this case and no evidence was presented to support Plaintiff's waiver. In fact, the trial judge found that the trial date complied with the current enactment of Rule 40(b), SCRCP by counting 180 days from when Plaintiff's amended complaint was expected to be filed.



This Court Erred in Not Addressing Plaintiff's Constitutional Arguments  
Under the South Carolina Constitution and the U.S. Constitution

With respect to Plaintiff's constitutional arguments under the South Carolina Constitution and the U.S. Constitution, this Court improperly held as follows.

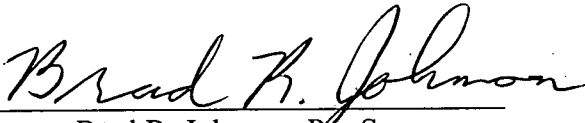
---

"We decline to address Johnson's arguments concerning the constitutional violations. These issues are not preserved for our review because Johnson did not raise these issues to the trial court. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (finding an issue must be raised to and ruled upon by the trial court in order to be preserved for appellate review)."

Notwithstanding the foregoing, it is proper to raise, at the appellate level, constitutional arguments under the South Carolina Constitution and the U.S. Constitution for violations of due process by a trial court, as long as the particular infirmity was objected to at trial by the appellant. Otherwise, as a condition of appealing the constitutional issue, the trial court would be expected to render a constitutional opinion upon its own alleged infraction – an absurd result.

WHEREFORE, based upon the above reasoning, Plaintiff-Appellant, Dr. Brad R. Johnson, petitions this honorable Court for a rehearing on the sole issue, as presented above, and a published Opinion rendering a decision thereto, taking into account this Court's errors as referenced above.

Dated: December 27, 2011

  
Brad R. Johnson, Pro Se

Brad R. Johnson, Ph.D., J.D.  
111 SE 14<sup>th</sup> Street  
Oak Island, NC 28465  
(843) 661-1427

**CERTIFICATE OF SERVICE**

I, Dr. Brad R. Johnson, Plaintiff-Appellant in the above-captioned action,  
hereby certify that I did this date serve:

**PETITION FOR REHEARING**

by placing a copy of the same in a United States Postal Service mail box, postage  
paid, and addressed as follows:

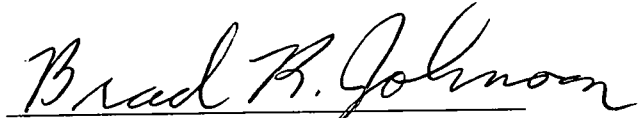
G. Michael Smith  
Thompson & Henry, P.A. (Attorneys for Lewis W. Hall)  
1318 Third Avenue  
Conway, S.C. 29528

Mr. Brent M. Boyd, Esquire  
Murphy & Grantland, PA  
(Attorneys for Lewis V. Hall)  
4406-B Forest Drive  
Columbia, SC 29206

Mr. Truett F. Nettles (Attorney for Lewis V. Hall)  
67 Broad Street  
Charleston, SC 29401

Mr. Jay R. Lee  
Aiken, Bridges, Nunn, Elliott & Tyler, P.A.  
(Attorneys for Cold Air AC Service, Inc.)  
181 E. Evans Street, Suite 409  
P.O. Drawer 1931  
Florence, SC 29503

This 27<sup>th</sup> day of December, 2011.

  
Brad R. Johnson, Pro Se

Brad R. Johnson, Ph.D., J.D.  
111 SE 14<sup>th</sup> Street  
Oak Island, NC 28465  
(843) 661-1427

**PETITION FOR WRIT OF CERTIORARI**  
**APPENDIX**

**PART V**

THE COURT OF APPEALS' DECISION  
ON APPELLANT'S PETITION FOR REHEARING

# The South Carolina Court of Appeals

Dr. Brad R Johnson,

Appellant,

v.

Lewis W. Hall, Lewis V. Hall, L.W.  
Hall Enterprises, LLC, Cold Air A/C  
Service, Inc.,

Respondents.

The Honorable J. Michael Baxley  
Horry County  
Trial Court Case No. 2005-CP-26-02710

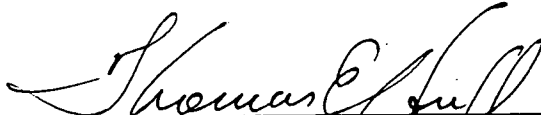
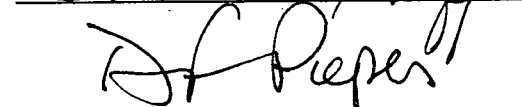
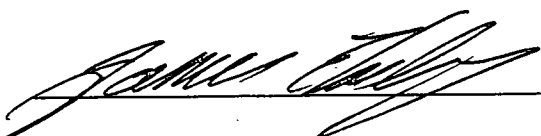
---

## ORDER

---

After a 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. It is, therefore, ordered that the Petition for Rehearing be denied.

IT IS SO ORDERED.

 J.  
 J.  
 J.

Columbia, South Carolina

**FILED**

*January 30, 2012*