

**The State of South Carolina
In the SUPREME COURT**

Appeal from Aiken County
Court of Common Pleas
The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable Clifton Newman, Circuit Court Judge

Civil Action No.: 2011-CP-02-00868

Opinion No. 5315 (S.C. Ct App filed May 6, 2015)

**Paige Weeks Johnson, as Personal Representative
Of the Estate of Christie Lane Valenzuela,**

Respondent,

versus

Same English Grading, Inc.,

Petitioner.

**Motion for Explanation at the Request of Judge Doyet Early Circuit Court Regarding
Order dated October 8, 2015 Denying Certiorari**

Charles E. Carpenter, Jr.
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**Attorneys for Petitioner
Same English Grading, Inc.**

I, Charles Carpenter, Jr., attorney for Petitioner Sam English Grading, Inc., am writing this on the evening of October 12, 2015. The parties to these two cases agreed to a combined settlement of the case pending on a Petition for Writ of Certiorari (Lower Court Case No. 2011-CP-02-00868 and Appellate Case No. 2015-001531) and the related case of Michael Valenzuela (C/A No.: 12-CP-02-01225) which was being held in abeyance in the Circuit Court pending the resolution of the case on appeal.

The case pending on Petition for Writ of Certiorari was the wrongful death action by the personal representative of the estate of Christie Valenzuela. The case in abeyance was by her husband Michael Valenzuela for his injuries.

The wrongful death case needed to be back in the jurisdiction of the Circuit Court for approval of the settlement. The settlement of the personal case of Michael Valenzuela did not need court approval and was already in the Circuit Court.

I was primarily responsible for handling the appeal and Co-counsel, James C. Cox, III, who tried the case, was primarily responsible for handling the releases and trial court settlement approval. I wrote a letter dated September 23, 2015 to the Supreme Court reporting that the parties had settled this case and that I would be preparing the appropriate release documents and an order dismissing the appeal and cert petition.

On October 1, 2015 my wife and I traveled to the Charleston area with two other couples to help with and attend the wedding of Barnwell Grimball at the request of his Mother, Mary Weston, of Columbia. The wedding was to take place on October 3, 2015 in Charleston at St. Michaels Episcopal Church to be followed by a reception nearby.

The floods hit Columbia and Charleston on October 3, 2015 and the Charleston peninsula was blocked off by law enforcement so there was no access to Charleston. Of course caterers and

others could not do their jobs. We and other guests who were staying in rented houses on Folly helped the families put on the wedding and reception in a house on Folly.

Travel out of Folly had been cancelled and all Interstates into Columbia were closed. The next day, October 4, 2015, President Barack Obama declared a State of Emergency in South Carolina. I was not able to return to Columbia until Monday, October 5, 2015.

My house is at 4825 Portobello Rd. near Lake Katherine and was in the most damaged part of the city. That is what I returned to on October 5, 2015 when the highways from Charleston into Columbia were opened to public travel.

The Flood destroyed the entire ground floor of my 1 ½ story house. My car was destroyed. I have spent all of my time since then trying to deal with the effects of the destruction and to prevent further deterioration and mold contamination in my home and to arrange for alternative living provisions. I am still in the process of accomplishing this and the reclamation team is still spending extraordinary hours at my house.

After I wrote to this Court reporting that the case had been settled, this Court issued an Order dated October 8, 2015 denying the Petition for Writ of Certiorari. I think this was appropriate because the case needed to be back in the Circuit Court for approval of the settlement. To do that the Petition for a Writ of Certiorari to the Court of Appeals would need to be denied so the Court of Appeals could issue its mandate and return jurisdiction to the Circuit Court.

A hearing was scheduled for October 11, 2015 before Judge Doyet Early in Aiken to seek approval of the Wrongful Death action to settle it and the personal action of Michael Valenzuela which was part of the settlement agreement but did not need Court approval.

The parties on both sides are ready to go forward with the settlement. However, I received a phone call from co-counsel James C. Cox, III that Judge Early had postponed the hearing to approve the settlement and wanted to know why the Petition for Writ of Certiorari was denied. Was it denied because this Court was advised that case had been settled or was there some other reason. Judge Early wants to know before conducting a hearing to approve the settlement.

That is the reason for this motion. I have written this but am asking co-counsel to put it in appropriate form because I am in temporary housing in an apartment at Middleborough, my house is uninhabitable, and I do not yet have internet access from this apartment.

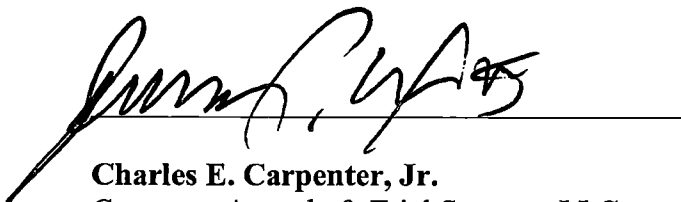
I am in the Barnes and Noble at Richland Mall to email this to co-counsel James C. Cox, III to serve and file this Motion. Because Judge Early wants to know if the Petition for a Writ was denied because this Court was told the case was settled so it would return to the lower courts to conclude the settlement or whether the Petition for Writ of Certiorari was denied for some other reason.

It should not matter why the Petition was denied because the settlement terms were negotiated and agreed to by all parties before the Petition for Writ of Certiorari was denied. Since both parties have no control over whether Certiorari would be granted or denied this is valid consideration on the settlement agreement for the parties, who all negotiated in good faith since they did not know the outcome of the Petition for Certiorari.

We do not ask for an explanation on our own behalf but ask only because Judge Early wants it answered before he will conduct a hearing to approve the settlement.

This the 15 th day of October, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles E. Carpenter, Jr.", is written over a horizontal line.

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&

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SC Court of Appeals

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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Grier, Cox & Cranshaw, LLC, attorneys for Petitioner, Sam English Grading, Inc., do hereby certify that I have this date the foregoing, Motion for Explanation at the Request of Judge Doyet Early Circuit Court Regarding Order dated October 8, 2015 Denying Certiorari, by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, address to the parties indicated below:

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Karen J. Miller, Paralegal to James C. (Trey) Cox, III

Columbia, South Carolina
October 5, 2015.