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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No.: 2011-CP-07-0001

Arthur Washington, ... Appellant,

-v-

Resort Services, Inc. and John Doe, ... Respondents.

AMENDED RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT

2014 MAY -2 PM 2:55

IN THE COURT OF COMMON PLEAS

ARTHUR WASHINGTON,

BEAUFORT COUNTY, S.C.
CLERK OF COURT

Civil Action No 2011-CP-07-0001

Plaintiffs,

vs.

RESORT SERVICES, INC., AND
JOHN DOE,

Defendants.

**ORDER GRANTING DEFENDANT
JOHN DOE'S MOTION TO DISMISS
AND DENYING PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT**

THIS MATTER comes before this Court on Defendant, John Doe's Motion to Dismiss based on the Statute of Limitations and Plaintiff's Motion for Entry of Default against Defendant, John Doe. A hearing took place on these Motions at the Beaufort County Courthouse on April 8, 2014. Present at the hearing were William Barnes, Esquire, on behalf of the Plaintiff, Robert Sansbury, Esquire, on behalf of Defendant, John Doe, and Wesley Sawyer, Esquire, on behalf of Defendant, Resort Services, Inc.

Based on the arguments of counsel, South Carolina law, and the various Motions and memoranda filed by the parties, I hereby GRANT Defendant, John Doe's Motion to Dismiss based on the Statute of Limitations, DENY Plaintiff's Motion for Entry of Default against Defendant, John Doe, and make the following findings of law and fact.

Background

This is a personal injury case arising out of an automobile accident that occurred on February 26, 2009. (Plaintiff's Amended Complaint, p. 1). The Plaintiff claims personal injuries stemming from this automobile accident. (*See generally* Plaintiff's Amended Complaint). Therefore, Plaintiff had three years in which to file his lawsuit

against Defendant John Doe, with a deadline of February 26, 2012 S.C. Code Ann. § 15-3-530. Plaintiff filed the original Summons and Complaint on January 3, 2011, well within the Statute of Limitations, naming only Resort Services, Inc. as a Defendant. (*See generally* Plaintiff's Complaint). In addition to serving the Defendant, Resort Services, Inc., the Plaintiff also served the Underinsured Motorist Carrier ("UIM"), 21st Century Insurance, through the South Carolina Department of Insurance, and UIM served a Notice of Appearance and Conditional Answer on behalf of Defendant, Resort Services, Inc. on March 14, 2011, also well within the Statute of Limitations.

Then, after the Statute of Limitations had already run, Plaintiff filed a Motion to Amend the Complaint on March 12, 2012, to add Defendant, John Doe as a party to this lawsuit. The Amended Complaint naming Defendant, John Doe, was not filed until August 2, 2012. The Plaintiff did not seek to substitute Defendant, John Doe as a party after the Statute of Limitations; rather, the Plaintiff sought to add John Doe as a new party in addition to Defendant, Resort Services, Inc.

After filing the Amended Complaint on August, 2, 2012, the Plaintiff did not serve the Amended Complaint on the Uninsured Motorist Carrier ("UM"), 21st Century Insurance, via the South Carolina Department of Insurance until a year and a half later, on January 31, 2014. Mr. Sansbury then served an Answer on behalf of Defendant, John Doe on February 10, 2014, which was filed by the Clerk of Court on February 11, 2014. The Answer asserted the Statute of Limitations as one of John Doe's defenses. Shortly thereafter, Mr. Sansbury filed this Motion to Dismiss based on the Statute of Limitations, and Plaintiff filed his Motion for Entry of Default against Defendant, John Doe thereafter.

Applicable Law

“[S]tatutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (citing C.S.J. Limitations of Actions § 2 (1989)). “Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence; and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.” Id.

In an action for personal injury, the Plaintiff has three (3) years from the date of the accident in which to file a lawsuit against the Defendant. S.C. Code Ann. § 15-3-530; *See also* S.C. Code Ann. § 15-3-535. Although in some cases a Plaintiff may substitute a one party for another after the Statute of Limitations pursuant to Rule 15, SCRCP, a Plaintiff may not add an additional party. Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct.App.2000),

Discussion

(A) Defendant, John Doe’s Motion to Dismiss

In Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct.App.2000) the Court of Appeals addressed the precise issue which is before the Court in the instant case, and held that a Plaintiff may not *add* a party after the statute of limitations. Plaintiff nevertheless makes several arguments to avoid dismissal of John Doe. First, the Plaintiff argues that the *addition* of John Doe as a party after the Statute of Limitations should be permitted under Rule 15(c); however, Jackson makes clear that rule 15(c) does not apply to the

addition of a new party, only the *substitution* of one party for another (and even then in very narrow circumstances).

Second, Plaintiff argues that the appearance of 21st Century Insurance on behalf of the UIM carrier prior to the expiration of the Statute of Limitations should be viewed as the equivalent of an appearance on behalf of the UM carrier for Defendant, John Doe; however, this argument fails for several reasons. To begin, the Jackson case makes clear that you cannot add a party after the Statute of Limitations, so irrespective of when UIM was served vs. UM, the fact remains the same – John Doe was not added as a Defendant until after the Statute of Limitations, which is impermissible under South Carolina law. Next, the function of UIM and UM insurance occupies two entirely separate realms; on the one hand, UIM serves as additional coverage for a Defendant who is underinsured, whereas UM serves as coverage for a Defendant who is uninsured, such as an unknown “John Doe.” In the instant case, UIM was served prior to the Statute of Limitations to appear on behalf of Defendant, Resort Services, Inc. and represent its interests, not John Doe’s. UM, on the other hand, was served to represent Defendant, John Doe, an entirely different party to the lawsuit. Finally, service of process on UIM carriers and UM carriers are governed by two separate statutes - S.C. Code Ann. §§ 38-77-160 for UIM, and 38-77-150 for UM – and each statute provides the exclusive method of service for UIM and UM, respectively. Equilease Corp.v. Weathers, 275 S.C. 478, 484, 272 S.E.2d 789, 792 (1980) (service by any other method on an insurance company other than the method proscribed by law is invalid).

Third, Plaintiff’s argument that the law license suspension of Plaintiff’s previous attorney, Charles Houston, should equitably toll the Statute of Limitations is also without

merit. Mr. Houston's law license was not suspended until December 7, 2012, almost a full year after the Statute of Limitations expired. (See In the Matter of Charles E. Houston, Jr.; appellate case no. 2012-213047).

Here, we are faced with facts virtually identical to Jackson. In the instant case, Plaintiff sued only Defendant, Resort Services, Inc. in the original Complaint, which was filed January 3, 2011. Plaintiff's counsel however did not move to amend the Complaint to add John Doe as a Defendant until March 12, 2012 – after the Statute of Limitations had already run. Finally, an Amended Complaint first naming John Doe as a Defendant was not filed until August 2, 2012. So, whether the Court applies the date that Plaintiff moved to amend the Complaint, or the date Plaintiff filed his Amended Complaint, the result is the same: John Doe was added after the Statute of Limitations, and should therefore be dismissed as a party.

(B) Plaintiff's Motion for Entry of Default

Plaintiff's Motion for Entry of Default is based on the fact that the "John Doe" statute states, "service of process [on John Doe] may be made by delivery of a copy of the summons and complaint or other pleadings to the clerk of the court in which the action is brought." S.C. Code Ann. § 38-77-180. However, Plaintiff's argument is misplaced as he neglects to include the statute regarding service on the UM Carrier on behalf of John Doe which is as follows:

No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record.

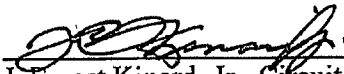
S.C. Code Ann. § 38-77-150. The above statute makes clear that **no action** can be brought binding a UM Carrier in a John Doe case unless the pleadings are served on the UM Carrier in a manner prescribed by law, which in South Carolina is through the Department of Insurance. S.C. Code Ann. § 38-5-70. In fact service upon the Department of Insurance as agent for insurance companies is the *exclusive* means of service, and service upon an insurer made in any other way is invalid Equilease Corp.v. Weathers, 275 S.C. 478, 484, 272 S.E.2d 789, 792 (1980). Additionally, the above statute further states that a UM carrier “has the right to appear and defend in the name of the uninsured motorist . . . and has thirty days to answer after service of process on it”, not after service on “John Doe.” S.C. Code Ann. § 38-77-150 (emphasis added)

Here, even though a lawsuit was filed against Defendant, John Doe on August 2, 2012, the UM Carrier was not served via the Department of Insurance until January 31, 2014. The UM Carrier filed a timely Answer to the Amended Complaint on behalf of Defendant, John Doe, only 12 days later, on February 11, 2014. Additionally, because John Doe was added as a party after the Statute of Limitations, which is impermissible under South Carolina law, any resulting default would be void as a matter of law. Rule 60(b)(4), SCRPC. Finally, Plaintiff’s contention that the UM carrier should be bound in default without any proper notice of this lawsuit naming John Doe violates the Due Process Clause under the United States Constitution, and the South Carolina Constitution. See Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950) (adequate notice of a pending lawsuit, hearing or trial is the hallmark of Constitutional Due Process in the civil arena).

Conclusion

For the foregoing separate and independent reasons, it is therefore ORDERED, ADJUDGED, and DECREED that Defendant, John Doe's Motion to Dismiss based on the Statute of Limitations is GRANTED, and Plaintiff's Motion for Entry of Default against Defendant, John Doe is DENIED.

IT IS SO ORDERED!



J. Ernest Kinard, Jr., Circuit Judge

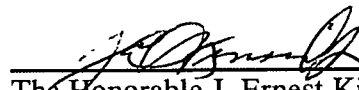
Dated: 4/23/14

STATE OF SOUTH CAROLINA 2014 JUN -1) AM 9:21
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
) BEAUFORT
) S.C.
) COURT
ARTHUR WASHINGTON,) Civil Action No. 2011-CP-07-0001
)
Plaintiffs,)
)
vs.)
) **ORDER DENYING PLAINTIFF'S**
) **MOTION TO ALTER OR AMEND**
) **ORDER**
RESORT SERVICES, INC., AND)
JOHN DOE,)
)
Defendants.)
)

Subsequent to the Order executed on April 23, 2014 and filed May 2, 2014 with the Beaufort County Clerk of Court, Plaintiff filed its Motion to Alter or Amend the Order. I have carefully reviewed all of the parties' submissions and believe the aforementioned Order correctly decided all issues. As mentioned in that Order, the case of Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000), seems to be totally controlling, even though I might have held otherwise had that case not existed.

Accordingly, Plaintiff's Motion to Alter or Amend the Order is DENIED.

IT IS SO ORDERED.


The Honorable J. Ernest Kinard, Jr.,
Circuit Court Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina
June 4, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
Arthur Washington,)
)
Plaintiff,)
)
vs.)
)
Resort Services, Inc.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 2011-CP-07-001

ORDER ALLOWING PLAINTIFF
TO FILE AMENDED COMPLAINT

12 APR 20 PM 2:59
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter comes before the Court on Notice of Motion and Motion of the Plaintiff, for an Order granting leave to Amend Plaintiff's Complaint in the above-captioned matter.

It appearing that this motion is proper and the Court being notified by counsel for the Defendant and counsel for the Underinsured Motorist Carrier that they waive being heard in opposition to the motion, it is therefore,

ORDERED, AJUDGED and DECREED that the Plaintiff's Amended Complaint annexed and filed with the motion is, with leave granted, admitted for filing in the action herein. The Motion is hereby granted.

AND IT IS SO ORDERED!

This the 28 day of March 2012,
Florence, South Carolina.


The Honorable D. Craig Brown
Presiding Judge,
Fourteenth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE # 2011-CP-07- 0001

ARTHUR WASHINGTON

Plaintiff

Vs.

SUMMONS

RESORT SERVICES, INC.

Defendant

A JURY TRIAL MATTER

2011 JAN -3 AM 8:29
JERRI A. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

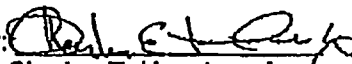
TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber at his office located at The Houston Law Firm, LLC, 31 Marshland Road, P.O. Box 5130, Hilton Head Island, SC 29938 within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

THE HOUSTON LAW FIRM, LLC

31 Marshland Road
P.O. Box 5130
Hilton Head Island, South Carolina, 29938
Telephone: (843) 681-9111
Facsimile: (843) 681-9119
E-mail: charles@houstonlawfirm.net

By:



Charles E. Houston, Jr.
SC Bar # 2663
Attorney for Plaintiff

January 3, 2011
Hilton Head Island, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE # 2011-CP-07- 0001

ARTHUR WASHINGTON

Plaintiff

Vs.

RESORT SERVICES, INC.

Defendant

COMPLAINT

A JURY TRIAL MATTER

2011 JAN -3 AM 8:29
JEROME A. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The Plaintiff, complaining of the Defendant, alleges:

1.

The Defendant is a domestic corporation with its principle place of business located in Beaufort County, South Carolina.

2.

As part of its business operations the Defendant maintains a fleet of trucks that are parked at its place of business in Bluffton, SC while not in service.

3.

On or about the 26th day of February, 2009 the Defendant's 1998 GMC truck with license plate #

P322206 was illegally parked on Browns Way with approximately ten feet of its rear section sticking out onto Buck Island road, blocking the roadway without any lights on.

4.

On or about the 26th day of February, 2009, Plaintiff was driving his automobile North on Buck Island Road within the town limits of Bluffton, South

The Houston Law Firm, LLC

Complaint

Page 1 of 3

Carolina; and collided into truck throwing Plaintiff violently about the inside of the vehicle which caused him to be seriously and permanently injured.

5.

The injuries and damages as hereinafter set forth were caused by the negligent and reckless conduct of the Defendant in the following particulars:

(a) In leaving the truck unattended without lights and illegally parked and protruding out into the thoroughfare.

(b) In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances.

6.

As a proximate result and in consequence of the aforesaid acts and/or omissions of the Defendant, Plaintiff suffered property damage to his automobile.

7.

As a proximate result and in consequence of the aforesaid acts and/or omissions of the Defendant injuries to his neck, back, and other parts of his body; that his injuries were of such nature as to require him to expend monies for hospitalization, doctors' care and other medical necessities; that he lost time from work, and will in the future have a loss of earning capacity; that at all times since the happening of the accident, Plaintiff has suffered and will continue to suffer great pain and mental anguish, all to his damage in an appropriate amount.

WHEREFORE, Plaintiff prays judgment against Defendant for actual damages and in an appropriate amount, and for the costs of this action.

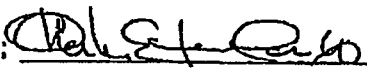
The Houston Law Firm, LLC
31 Marshland Road
P.O. Box 5130
Hilton Head Island, South Carolina, 29938
Telephone: (843) 681-9111
Facsimile: (843) 681-9119

The Houston Law Firm, LLC

Complaint

Page 2 of 3

E-mail: charles@houstonlawfirm.net

By: 
Charles E. Houston, Jr.
SC Bar # 2663
Attorney for Plaintiff

January 3, 2010
Hilton Head Island, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE # 2011-CP-07-0001

ARTHUR WASHINGTON

Plaintiff

Vs.

RESORT SERVICES, INC. AND
JOHN DOE

Defendants

AMENDED SUMMONS
(A JURY TRIAL MATTER)

12 AUG -2 PM 4:23
CLERK OF COURT
BEAUFORT COUNTY, S.C.

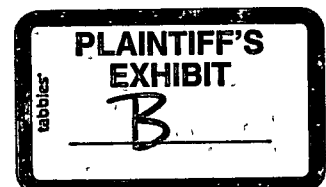
TO: ANTHONY W. LIVIOTTI, ESQ. & CHRISTOPHER NICKLES, ESQ. ATTORNEYS
FOR DEFENDANTS

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Complaint in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint upon the subscriber at his office located at The Houston Law Firm, LLC, 31 Marshland road, Hilton head Island, SC 29926 within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Amended Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Amended Complaint.

THE HOUSTON LAW FIRM, LLC
31 Marshland Road
P.O. Box 5130
Hilton Head Island, South Carolina, 29938
Telephone: (843) 681-9111
Facsimile: (843) 689-5762
E-mail: charles@houstonlawfirm.net

By: Charles E. Houston, Jr.
Charles E. Houston, Jr.
Attorney for Plaintiff

July 16, 2011
Hilton Head Island, SC



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE # 2011-CP-07-0001

ARTHUR WASHINGTON

Plaintiff

Vs.

RESORT SERVICES, INC.AND
JOHN DOE

Defendants

AMENDED COMPLAINT
(A JURY TRIAL MATTER)

12 AUG -2 PM 4:23
BEAUFORT COUNTY, SC
CLERK OF COURT

The Plaintiff, complaining of the Defendant, alleges:

1

The Defendant, Resort Services, Inc., is a domestic corporation with its principle place of business located in Beaufort County, South Carolina.

2

As part of its business operations the Defendant owns, maintains and controls the operation of a fleet of trucks that are parked on its open terminal in Bluffton, SC by its truck drivers while not in service.

3

On or about the 26th day of February, 2009 in Bluffton, Beaufort County, South Carolina a 1998 GMC truck with license plate# P322206 owned by the Defendant was being backed out of Browns Way by an unidentified driver with approximately ten feet of its rear section sticking out unto Buck Island Road, blocking the roadway without any lights on.

4

That simultaneous to this and on or about the 26th day of February, 2009, Plaintiff was driving his automobile North on Buck Island Road within the town limits of Bluffton,

South Carolina; and collided into truck throwing Plaintiff violently about the inside of the vehicle which caused him to be seriously and permanently injured.

5

That the aforesaid collision, personal injuries, and damages was directly and proximately caused by Defendant's by the negligent and reckless conduct of the Defendant's officers employees, agents or permittees negligence, gross negligence, careless, reckless, and wanton acts and omissions in the following particulars:

- (a) By backing the truck out into the thoroughfare without lights and protruding out into the thoroughfare.
- (b) Failing to maintain proper control over the truck;
- (c) Failing to timely apply the brakes of the vehicle to avoid the collision;
- (d) Failing to warn Plaintiff by the use of the horn, or otherwise, in order to inform the Plaintiff of the impending danger and collision;
- (e) Ignoring the right-of-way and rules of the road;
- (f) Driving the truck in a manner differently than a reasonable and prudent person would, thereby failing to exercise due care in operating the vehicle on the public roadways;
- (g) Driving the vehicle in a manner to indicate a reckless and wanton disregard for the safety of others using the public highways, especially the Plaintiff;
- (h) Operating the unknown vehicle on the public highways without any lights on
- (i) Failing to signal for a turn before turning left into a primary highway; and
- (j) Failing to take proper evasive action to avoid a collision with the Plaintiff's vehicle

6

That the impact caused by the Defendant's truck colliding into the Plaintiff's vehicle was of such a magnitude as to render his automobile irreparable.

7

As a proximate result and in consequence of the aforesaid acts and/or omissions of the Defendant, the Plaintiff suffered injuries to his neck, back, and other parts of his

body; that his injuries were of such nature as to require him to expend monies for hospitalization, doctors' care and other medical necessities; that he lost time from work, and will in the future have a loss of earning capacity; that at all times since the happening of the accident, Plaintiff has suffered and will continue to suffer great pain and mental anguish, all to his damage in an appropriate amount.

WHEREFORE, Plaintiff prays judgment against Defendant for actual damages and in an appropriate amount determined by the Court and for the costs of this action.

For A Second Cause of Action

John Doe, Defendant

8

That upon information and belief, the Defendant, John Doe, an unknown individual, is a resident and citizen of the County of Beaufort, State of South Carolina.

9

This action is brought pursuant to § 38-77-180 and 38-77-150 of the Code of Laws of South Carolina and jurisdiction and venue are properly laid before this Honorable Court.

10

On or about the 26th day of February, 2009 in Bluffton, South Carolina, a 1998 GMC truck with license plate# P322206 was being backed out of Browns Way with approximately ten feet of its rear section sticking out unto Buck Island Road, without any lights on. The identity of the driver of the truck has not been ascertained and remains unknown to the Plaintiff and is hereinafter referred to as John Doe.

11

That simultaneous to this and on or about the 26th day of February, 2009, Plaintiff was driving his automobile North on Buck Island Road within the town limits of Bluffton, South Carolina and collided into the truck; throwing Plaintiff violently about the inside of his vehicle causing him to be seriously and permanently injured.

12

The injuries and damages as hereinafter set forth were caused by the negligent and reckless conduct of the Defendant, John Doe, in the following particulars:

- (a) By backing the truck out into the thoroughfare without lights and protruding out into the thoroughfare.
- (b) Failing to maintain proper control over the truck;
- (c) Failing to timely apply the brakes of the vehicle to avoid the collision;
- (d) Failing to warn Plaintiff by the use of the horn or otherwise, in order to inform the Plaintiff of the impending danger and collision;
- (e) Ignoring the right-of-way and rules of the road;
- (f) Driving the vehicle in a manner differently than a reasonable and prudent person would, thereby failing to exercise due care in operating the unknown vehicle on the public roadways;
- (g) Driving the vehicle in a manner to indicate a reckless and wanton disregard for the safety of others using the public highways, especially the Plaintiff;
- (h) Operating the vehicle on the public highways without any lights on
- (i) Failing to signal for a turn before turning left into a primary highway;
- (j) Failing to take proper evasive action to avoid a collision with the Plaintiff's vehicle
- (k) In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances.

13

As a proximate result and in consequence of the aforesaid acts and/or omissions of the Defendant, Plaintiff's automobile was rendered irreparably and totally damaged.

As a proximate result and in consequence of the aforesaid acts and/or omissions of the Defendant injuries to his neck, back, and other parts of his body; that his injuries were of such nature as to require him to expend monies for hospitalization, doctors' care and other medical necessities; that he lost time from work, and will in the future have a loss of earning capacity; that at all times since the happening of the accident, Plaintiff has suffered and will continue to suffer great pain and mental anguish, all to his damage in an appropriate amount.

WHEREFORE, Plaintiff prays judgment against Defendant, John Doe for actual damages and in an appropriate amount found by the Court, and for the costs of this action.

Respectfully submitted,

The Houston Law Firm, LLC
31 Marshland Road
Hilton Head Island, SC 29926
Phone: 843-681-9111
Fax: 843-681-9119
E-mail: charles@houstonlawfirm.net

By 
Charles E. Houston, Jr.
Bar # 2663
Attorney for Plaintiff

July 12, 2012
Hilton Head Island, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2011-CP-07-0001

Arthur Washington,

Plaintiff,

v

Resort Services, Inc ,

Defendant.

**ANSWER
(Jury Trial Demanded)**

**TO: CHARLES E. HOUSTON, ESQUIRE, ATTORNEY FOR PLAINTIFF AND TO
THE PLAINTIFF ABOVE NAMED:**

Defendant answering the Plaintiffs' Complaint herein, would respectfully show unto this
Honorable Court the following:

FOR A FIRST DEFENSE

1. This Defendant denies each and every allegation of the Plaintiff's Complaint not
hereinafter specifically admitted.

2 As to Paragraph 1 of the Complaint, this Defendant admits same.

3 As to Paragraphs 2, 3, 4, 5, 6, and 7 of the Complaint, this Defendant denies the
same and demands strict proof thereof.

FOR A SECOND DEFENSE

4. The Defendant would show, upon information and belief, that the Complaint fails
to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6) of the South
Carolina Rules of Civil Procedure and, therefore, the Plaintiff's Complaint should be dismissed
with costs.

APA
#1

FOR A THIRD DEFENSE

5. The Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to his own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred; such negligent, careless, reckless and grossly negligent acts or omissions on the part of the Plaintiff being more particularly set forth as follows:

- a. in failing to watch where he was going;
- b. in failing to keep his vehicle under proper control,
- c. in failing to act as a reasonable and prudent person would have acted under the same or similar circumstances
- d. and in other ways and particulars that may be shown through discovery and at trial

all of which were the direct and proximate cause of any injuries or damages sustained by the Plaintiff and the Defendant pleads such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would ask that this court compare the negligence of the Plaintiff and the Defendant and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendant, then the amount of recovery available to the Plaintiff should be

APA
#2

reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence

FOR A FOURTH DEFENSE

6. This Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

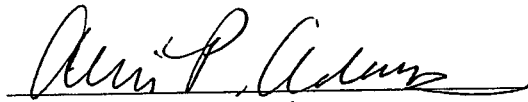
WHEREFORE, having fully answered, Defendant prays that the Plaintiff's Complaint be dismissed with costs.

This Defendant demands a jury trial.

Signature on following page:

APA
#3

MURPHY & GRANTLAND, P A.



Alice P. Adams, Esquire
4406-B Forest Drive
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100, ext. 1235
(803) 782-4140 (facsimile)

Attorneys for Defendant

Columbia, South Carolina
January 25, 2011

APA
#4

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

14 FEB 11 PM 3:13

IN THE COURT OF COMMON PLEAS

ARTHUR WASHINGTON,)

JULIA J. FURNEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Civil Action No. 2011-CP-07-0001

Plaintiff,)

vs.)

RESORT SERVICES, INC. AND JOHN
DOE,)

Defendants.)

**ANSWER TO AMENDED
COMPLAINT ON BEHALF OF
JOHN DOE
(Jury Trial Demanded)**

Defendant, John Doe, answers the Amended Complaint of the Plaintiff herein and asserts the following:

FOR A FIRST DEFENSE
(General Denial)

1. Defendant denies each and every allegation of the Plaintiff's Amended Complaint not otherwise admitted, modified, or explained herein and demands strict proof thereof.

2. The undersigned attorney is appearing in this matter to defend Defendant John Doe pursuant to the South Carolina "John Doe Motorist Statute," S.C. Code Ann. § 38-77-180, et seq., and reserves all rights, duties, and defenses, and other privileges of the statute in filing this Answer to the Plaintiff's Amended Complaint. Further, by filing this Answer, the undersigned attorney neither admits nor denies the Plaintiff's purported uninsured motorist carrier coverage applies to this action and the uninsured motorist carrier specifically reserves the right to investigate, defend, and prosecute possible defenses through coverage in this case.

3. Upon information and belief, Defendant admits the allegations contained in Paragraph 1 of the Plaintiff's Amended Complaint.



4. Defendant is without information and knowledge concerning the allegations contained in Paragraphs 2 through 4 of the Plaintiff's Amended Complaint, and therefore denies the same.

5. As to the allegations contained in Paragraphs 5 through 7 of the Plaintiff's Amended Complaint, Defendant admits only that the Plaintiff claims personal injuries resulting from an auto accident which is the subject of this lawsuit. The Defendant is without information regarding the remainder of the allegations contained in Paragraphs 5 through 7 of the Plaintiff's Amended Complaint and therefore denies the same.

6. Defendant denies the allegations contained in the "Wherefore" clause of the Plaintiff's Amended Complaint and demands strict proof thereof.

7. Defendant denies the allegations contained in Paragraphs 8 through 11 of the Plaintiff's Amended Complaint and demands strict proof thereof.

8. Defendant admits the allegations contained in Paragraphs 12 through 14 of the Plaintiff's Amended Complaint insofar as they allege that the Plaintiff claims personal injuries resulting from an auto accident which is the subject of this lawsuit. Defendant is without knowledge concerning the remaining allegations contained in Paragraphs 12 through 14 and therefore denies the same.

9. Defendant denies the "Wherefore" clause of the Plaintiff's Amended Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE
(Failure to State a Claim)

10. Pursuant to Rule 12(b)(6), SCRCP, Defendants would respectfully show each and every cause of action set forth in the Plaintiff's Amended Complaint fails to state a claim upon

which relief can be granted and, therefore, the Plaintiff's Amended Complaint should be dismissed.

FOR A THIRD DEFENSE
(Failure to Comply with John Doe Statute)

11. The Plaintiff has failed to comply with South Carolina Law regarding "John Doe Actions" in one or more particulars, including but not limited to S.C. Code § 38-77-180, § 38-77-170, and South Carolina Case Law. Therefore, the Plaintiff is not entitled to recover any sum whatsoever and this action should be dismissed with prejudice.

FOR A FOURTH DEFENSE
(Statute of Limitations)

12. Plaintiff's claims are barred by the applicable Statute of Limitations and therefore should be dismissed.

FOR A FIFTH DEFENSE
(Comparative Negligence Barring Recovery)

13. Defendant pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff were greater than the negligence, if any, which might be established against Defendant and, therefore, Plaintiff is barred from any recovery in this action. Defendant further alleges any injury and damage sustained by Plaintiff was due to and caused by the negligence and/or wilfulness of Plaintiff combining, concurring, and contributing with the negligence and/or wilfulness, if any, on the part of Defendant and, therefore, any amount of recovery awarded to Plaintiff for the injuries and damages alleged in the Complaint shall be reduced by the Court by the percentage of negligence and/or wilfulness attributed to Plaintiff.

FOR A SIXTH DEFENSE
(Intervening and Superseding Negligence)

14. Plaintiff's injuries, if any, were due to the intervening and/or superseding acts of negligence, carelessness or willfulness of another, and the intervening and/or superseding acts were a direct and proximate cause of any injuries or damages Plaintiff may have sustained.

FOR A SEVENTH DEFENSE
(Bifurcation Requested – S.C. CODE ANN. §15-32-520)

15. Pursuant to S.C. Code Ann. §15-32-520, the Defendant hereby requests trial bifurcation on the issues of actual damages and punitive damages. Further, Defendant pleads all defenses, limitations on damages, and other privileges contained in S.C. Code §15-32-520 and §15-32-530 as if fully stated herein verbatim.

FOR A SEVENTH DEFENSE
(Failure To Prosecute)

16. Plaintiff has failed to timely prosecute this action against Defendant John Doe, and therefore this action against Defendant John Doe should be dismissed with prejudice.

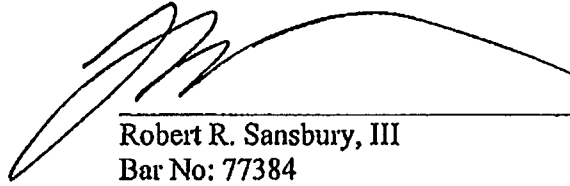
FOR A EIGHTH DEFENSE
(Reliance on Additional Defenses)

17. Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend its answer to assert any such defenses.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, Defendant prays that the Amended Complaint be dismissed with prejudice, for the costs of defending this action, for reasonable attorneys fees, and for any other relief the Court deems just, equitable, and proper.

(signature on following page)

MCANGUS GOUDELOCK & COURIE, L.L.C.



Robert R. Sansbury, III

Bar No: 77384

Post Office Box 650007

735 Johnnie Dodds Blvd, Suite 200 (29464)

Mt. Pleasant, South Carolina 29465

(843) 576-2900

ATTORNEYS FOR DEFENDANT, JOHN DOE

February 10, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Arthur Washington,

Plaintiff,

vs.

Resort Services, Inc.,

Defendant.

) IN THE COURT OF COMMON PLEAS

) CASE NO : 2011-CP-07-0001

) **NOTICE OF APPEARANCE**
) **AND CONDITIONAL ANSWER**
) **(JURY TRIAL DEMANDED)**

TO: **CHARLES E. HOUSTON, JR., ATTORNEY FOR THE PLAINTIFF:**

PLEASE TAKE NOTICE that the undersigned attorneys hereby appear on behalf of 21st Century Insurance Company, in the above-entitled action and, further, give notice that upon settlement of the automobile liability insurer for the putative at-fault defendant with the plaintiff herein, this underinsured motorist carrier may join with the automobile liability insurer for the defendant in providing a defense and, further, request that copies of all pleadings and discovery served in this action by all parties be served upon the undersigned at the address given below. The underinsured motorist carrier specifically demands a trial by jury pursuant to Rule 38 of the South Carolina Rules of Civil Procedure. The undersigned further states that he and his law firm at this time do not represent the defendant and are not at this time undertaking such representation but are specifically reserving the option to assume control of the defense in the name of the defendants pursuant to the underinsured motorist statute should the carrier choose to exercise that option.

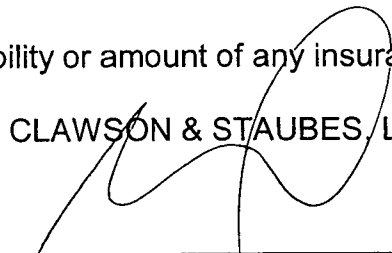
This appearance is made pursuant to S.C. Code §38-77-160 (1976, as amended). To the extent that a responsive pleading is required, the undersigned denies each and

every allegation of the Complaint, asserts those affirmative defenses set forth in Rule 8 of the South Carolina Rules of Civil Procedures, contests service and personal jurisdiction, and raises those defenses set forth in Rule 12, all to the extent they are applicable

The undersigned reserves the right to file a full Answer at such time it assumes the defense of this case or thereafter.

In filing this notice, 21st Century Insurance Company makes no representations or admissions as to the existence, applicability or amount of any insurance coverage.

CLAWSON & STAUBES, LLC



Ravi C. Sanyal
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

Attorney for 21st Century Insurance Company
appearing pursuant to S.C. Code
§38-77-160 on behalf of 21st Century Insurance
Company

Charleston, South Carolina

March 11, 2011

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Arthur Washington,

Plaintiff,

v.

Resort Services, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 2011-CP-07-0001

**AMENDED ANSWER
(Jury Trial Demanded)**

TO: THE PLAINTIFF, ABOVE NAMED, AND HIS ATTORNEY, CHARLES E. HOUSTON, ESQUIRE:

The Defendant, Resort Services, Inc , by and through its undersigned counsel,
submits the following Amended Answer to Plaintiffs' Complaint herein and would show as
follows:

FOR A FIRST DEFENSE

1. This Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted or qualified.
2. As to Paragraph 1 of the Complaint, this Defendant admits same.
3. As to Paragraphs 2, 3, 4, 5, 6, and 7 of the Complaint, this Defendant denies the same and demands strict proof thereof.

FOR A SECOND DEFENSE

4. The Defendant would show, upon information and belief, that the Complaint fails to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6) of the

South Carolina Rules of Civil Procedure and, therefore, the Plaintiff's Complaint should be dismissed with costs.

FOR A THIRD DEFENSE

5. The Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to his own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred; such negligent, careless, reckless and grossly negligent acts or omissions on the part of the Plaintiff being more particularly set forth as follows:

- a. in failing to watch where he was going;
- b. in failing to keep his vehicle under proper control;
- c. in failing to act as a reasonable and prudent person would have acted under the same or similar circumstances
- d. and in other ways and particulars that may be shown through discovery and at trial

all of which were the direct and proximate cause of any injuries or damages sustained by the Plaintiff and the Defendant pleads such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would ask that this court compare the negligence of the Plaintiff and the Defendant and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness,

recklessness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendant, then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A FOURTH DEFENSE

6. This Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection

clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

FOR A FIFTH DEFENSE

7. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff, which are specifically denied, were the result of the acts or omissions of others not in the employ or control of this Defendant and, therefore, the Plaintiff cannot recover from this Defendant in any sum whatsoever.

FOR A SIXTH DEFENSE

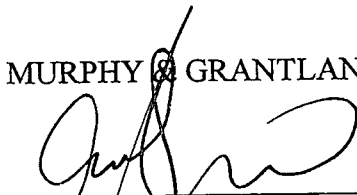
8. The Defendant would show that any alleged damages sustained by the Plaintiff, which are specifically denied, were the result of an intervening willful, malicious and criminal act of a third person beyond the control of this Defendant and that such intervening willful, malicious, and criminal act was not intended by this Defendant and could not be foreseen by this Defendant and any causal connection between any alleged negligence of this Defendant and the accident is broken by such willful, malicious and criminal act and this Defendant is not liable to the Plaintiff.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant prays that the Plaintiff's Complaint be dismissed, with prejudice, with costs and such other and further relief as the Court deems just and proper.

The Defendant demands a jury trial.

This the 14th day of April, 2011, in Columbia, South Carolina.

MURPHY & GRANTLAND, P.A.

A handwritten signature in black ink, appearing to read 'Anthony W. Livoti', is written over a horizontal line.

Anthony W. Livoti, Esquire

Alice P. Adams, Esquire

4406-B Forest Drive

Post Office Box 6648

Columbia, South Carolina 29260

Tel.: (803) 782-4100; Fax: (803) 782-4140

Attorneys for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2011-CP-07-0001
ARTHUR WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S MOTION TO ALTER OR
	)	AMEND PURSUANT TO
	)	RULES 52(B) AND 59(E), SCRPC
RESORT SERVICES, INC. AND JOHN	)	
DOE,	)	
Defendants.	)	

PLEASE TAKE NOTICE that the Plaintiff, Arthur Washington, moves for an order altering or amending pursuant to Rules 52(b) and 59(e), SCRPC, the Court's order dated April 23, 2014, that grants John Doe's motion to dismiss based on the statute of limitations and denies Washington's motion for entry of default against John Doe. The undersigned counsel for Washington received notice of the signed order by email attachment on April 29, 2014, and written notice of the order on May 1, 2014. As the proposed Order submitted by Doe that was signed by the Court will likely form the basis of an appeal, Washington moves for reconsideration, in addition to amending the following aspects of the Order:

1. The Order states that "21st Century Insurance . . . served a Notice of Appearance and Conditional Answer on behalf of Defendant, Resort Services, Inc. on March 14, 2011. . . ." (Order p. 2). This should be corrected because the first sentence of the Notice of Appearance and Conditional Answer filed by 21st Century Insurance specifically states otherwise: "the undersigned attorneys hereby appear on behalf of 21st Century Insurance, in the above-entitled action" (Ex. 1 – Not. of App. and Cond. Ans.). The attorney for 21st Century, Ravi C. Sanyal, signs the Notice of Appearance and Conditional Answer as "Attorney for 21st Century Insurance Company appearing pursuant to S.C. Code Ann. § 38-77-160 on behalf of 21st Century Insurance Company." (Ex. 1 – Not. of App. and Cond. Ans. p. 2). The language in the Order that 21st Century served a Notice of Appearance and Conditional Answer on behalf

of Resort Services, Inc. when it is contrary to the Notice of Appearance filed with the Court is incorrect and should be amended.

2. In denying Plaintiff's motion for entry of default, the order provides that "Plaintiff's contention that the UM carrier should be bound in default without any prior notice of this lawsuit naming John Doe violates the Due Process Clause under the United States Constitution, and South Carolina Constitution." (Order p. 6). This language should be deleted or amended because it is incorrect as 21st Century filed a notice of appearance (Ex. 1 – Not. of App.), engaged in discovery by filing a motion to compel, (Ex. 2 – Mot. to Compel), and attended and questioned Washington during his deposition. (Ex. 3 – Washington Depo.). To provide that 21st Century did not have prior notice of this lawsuit is incorrect and should be amended.

This motion is supported by the attached memorandum of law setting forth these positions in addition to requesting the Court to reconsider its April 23, 2014 Order on all the grounds previously set forth by Washington. In reconsidering its Order, Washington requests the Court amend its previous ruling, and sign the proposed Order submitted by Washington following the April 8, 2014 hearing. (Ex. 4).

[SIGNATURE PAGE TO FOLLOW]

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: Wil. Barnes

John E. Parker
William F. Barnes, III
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

May 7, 2014
Hampton, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
ARTHUR WASHINGTON,)
Plaintiff,)
v.)
RESORT SERVICES, INC. AND JOHN)
DOE,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-07-0001

**MOTION FOR ENTRY OF DEFAULT,
RULE 55, SCRPC**

2014 MAR 28 PM 2:18
CLERK OF COURT
BEAUFORT COUNTY, S.C.

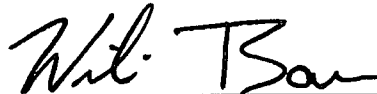
PLEASE TAKE NOTICE that the Plaintiff, Arthur Washington ("Washington"), by and through his undersigned counsel moves for an entry of default pursuant to Rule 55, SCRPC, on the basis that Defendant, John Doe, failed to file an answer or otherwise appear in this action within thirty (30) days of service of complaint as required by Rule 12, SCRPC. On March 12, 2012, Washington moved to amend his Complaint to add John Doe as a party Defendant pursuant to S.C. Code Ann. § 38-77-150 and § 38-77-180. The Amended Summons and Amended Complaint were filed on August 2, 2012 with the Beaufort County Clerk of Court. Section 38-77-180 of the South Carolina Code mandates that service of process may be made against "John Doe" by "delivery of a copy of the summons and complaint or other pleadings to the clerk of the court in which the action is brought." S.C. Code Ann. § 38-77-180. Service was perfected on John Doe once the Amended Summons and Amended Complaint were filed on August 2, 2012 with the Beaufort County Clerk of Court. John Doe did not file an answer or other appearance as required by Rule 12, SCRPC, within thirty (30) days, and as a result is in default. This motion is supported by the attached affidavit of the undersigned counsel.

[SIGNATURE PAGE TO FOLLOW]

Charles E. Houston, Esquire
THE HOUSTON LAW FIRM, LLC
P. O. Box 5130
Hilton Head Island, SC 29938

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

William F. Barnes, III
John E. Parker
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

March 24, 2014
Hampton, South Carolina

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.: 2011-CP-07-0001

...

;

...

AFFIDAVIT OF DEFAULT AND NON-MILITARY SERVICE

2014 MAR 28 PM 2:18
CLERK OF COURT
BERGEN COUNTY, N.J.
EDMUNDSON
DEFAULT
RETURN BY SERVICE

Personally appeared before me, William F. Barnes, III, having first been duly sworn,
depose and say that the following is true and correct:

1. I have personal knowledge of the facts set forth in this Affidavit. I am a citizen of the State of South Carolina and am competent to swear to the matters set forth below and do so of my own free will.
2. I am the attorney for the Plaintiff, Arthur Washington, in the above-captioned action.
3. The Civil Action Coversheet, Summons and Complaint in this action were filed in the Beaufort County Court of Common Pleas on January 3, 2011. Exhibit A.
4. An Amended Summons and Amended Complaint were filed with the Beaufort County Clerk of Court on August 2, 2012. Exhibit B.
5. Section 38-77-180 of the South Carolina Code provides that service of process may be made against "John Doe" by "delivery of a copy of the summons and complaint or other pleadings to the clerk of the court in which the action is brought." S.C. Code Ann. § 38-77-180.
6. Service was perfected on John Doe once the Amended Summons and Amended Complaint were filed on August 2, 2012 with the Beaufort County Clerk of Court.

7. No Answer, Demurrer or Notice of Appearance was filed with the Beaufort County Clerk of Court on behalf of Defendant, John Doe, within the time limits required Rule 12, SCRCF.

8. More than thirty-five (35) days elapsed since service of process on John Doe of the Civil Action Cover Sheet, Amended Summons and Amended Complaint, exclusive of the day of such service.

9. John Doe filed an Answer to the Amended Summons and Amended Complaint on February 11, 2014.

10. John Doe has since moved to dismiss this action on the basis that the statute of limitations expired prior to filing the amended summons and amended complaint on August 2, 2012.

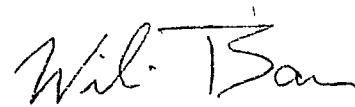
11. John Doe is in default by not filing an answer or other appearance with the Beaufort County Clerk of Court within the time required by Rule 12, SCRCF.

12. I am familiar with the provisions of 50 U.S.C.A App §520, Soldiers and Sailors Civil Relief Act of 1940 and represent to the Court that from the file in this matter, and upon information and belief, the Defendant, John Doe, is not in the military service of the United States and is not entitled to the protection of the Soldiers and Sailors Civil Relief Act of 1940, nor any amendments thereto.

13. I declare under penalty of perjury, under the laws of the United States of America and of the State of South Carolina, that the above is true and correct.

AS TO ANYTHING FURHTER, THE AFFIANT SAITH NOT.

[SIGNATURE PAGE TO FOLLOW]



William F. Barnes, III

Sworn to before me this

26th day of March, 2014



Notary Public for South Carolina

My Commission Expires: 8/2/2021

STATE OF SOUTH CAROLINA
PLEAS

IN THE COURT OF COMMON

FOURTEENTH JUDICIAL

CIRCUIT

COUNTY OF BEAUFORT

CASE # 2011-CP-07-0001

ARTHUR WASHINGTON

Plaintiff

Vs.

RESORT SERVICES, INC.

Defendant

MOTION TO AMEND
COMPLAINT

2012 MAR 12 AM 10:53
JIM ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

TO: Anthony W. Livoti, Esquire, Murphy & Grantland, P.A.; ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE that Plaintiff moves the Court, with leave, to permit it to file and serve an amended complaint in this case. A copy of the proposed Amended Complaint is appended to this document.

The Court will hear the motion ten (10) days after service or as soon thereafter as set by the Court.

The grounds for the Motion are to join "John Doe" as a party defendant pursuant to § 38-77-180 and 38-77- 150 of the Code of Laws of South Carolina as an additional Defendant for uninsured-motorist coverage.

In support of this motion, defendant Arthur Washington, shows

- A) John Doe is a "person to be joined if feasible," that is, a necessary party within the meaning of SCRPC, Rule 19(a) because
- B) in its absence, relief may not be accorded among those already parties and the Defendant, Arthur Washington, may be subject to a substantial risk of loss of remedies under § 38-77-180 and 38-77- 150 of the Code of Laws of South Carolina if joinder of John Doe as a party defendant were denied.
- C) John Doe has an interest in the subject matter of this action.
- D) Joinder of John Doe will not deprive this court of subject matter jurisdiction over this action.

- E) This court may exercise personal jurisdiction over John Doe and it may be served with process.
- F) Joinder of John Doe will not make this court an improper venue for the trial of this action.

This motion is based on the pleadings and papers on file in this action, this motion, and if appropriate, such memorandum of points and authorities and affidavits that may hereinafter be served and whatever evidence and argument is presented at the hearing of this motion.

Respectfully submitted,

The Houston Law Firm, LLC
31 Marshland Road
Hilton Head Island, SC 29926
Phone: 843-681-9111
Fax: 843-681-9119
Charles@houstonlawfirm.net

By: 
Charles E. Houston, Jr.
Bar # 2663
Attorney for Plaintiff

March 12, 2012
Hilton Head Island, SC

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

AURTHUR WASHINGTON,

Plaintiffs,

vs.

RESORT SERVICES, INC., AND
JOHN DOE,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-07-0001

**DEFENDANT JOHN DOE'S NOTICE
OF MOTION AND MOTION TO
DISMISS BASED ON THE STATUTE
OF LIMITATIONS**

14 FEB 12 PM 12:14
CLERK OF COURT
S.C.

PLEASE TAKE NOTICE Defendant, John Doe, moves within ten (10) days or as soon as counsel may be heard, for an order dismissing this case, with prejudice, pursuant to Rule 3 of the *South Carolina Rules of Civil Procedure* as this cause of action was not filed, or commenced during the applicable statute of limitations period against Defendant, John Doe.

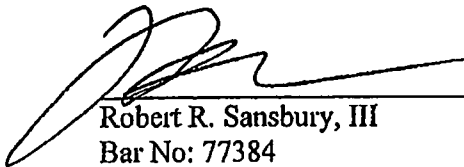
Specifically, this is a personal injury case arising out of an automobile accident that occurred on February 26, 2009. (Plaintiff's Amended Complaint, p. 1). The Plaintiff claims personal injuries stemming from this automobile accident. (*See generally* Plaintiff's Amended Complaint). Therefore, Plaintiff had three years in which to file his lawsuit *against Defendant John Doe*, with a deadline of February 26, 2012. S.C. Code Ann. § 15-3-530. Although an original Complaint was filed against co-Defendant Resort Services, Inc. prior to the statute of limitations running, the Amended Complaint – which first named Defendant, John Doe – was not filed until August 2, 2012, over three (3) years after the automobile accident occurred. (Plaintiff's Amended Complaint, p. 1). Therefore, under Rule 3, SCRCF, this action must be dismissed, with prejudice, against

Defendant, John Doe.

Conclusion

For the above reasons, Defendant, John Doe, requests that the Court GRANT Defendant's Motion to Dismiss, with prejudice. Defendant's motion is based on South Carolina law and any memorandum, affidavit, or other evidence presented to the Court by the Defendant.

McANGUS GOUDELOCK & COURIE, LLC



Robert R. Sansbury, III

Bar No: 77384

Post Office Box 650007

735 Johnnie Dodds Blvd, Suite 200 (29464)

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ATTORNEYS FOR DEFENDANT, JOHN DOE

February 10, 2014

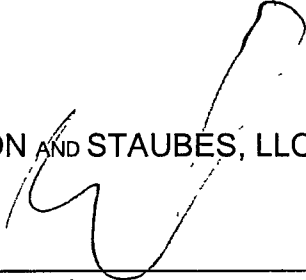
SOUTH CAROLINA RULES OF CIVIL PROCEDURE

RULE 11 CERTIFICATION

I certify that prior to filing this Motion, I communicated, orally or in writing, with opposing counsel and attempted in good faith to resolve the matter contained in this Motion.

PLEASE BE PRESENT TO OPPOSE SAID MOTION, IF SO MINDED.

CLAWSON AND STAUBES, LLC



Ravi C. Sanyal
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

Attorney for 21st Century Insurance Company
appearing pursuant to S.C. Code
§38-77-160 on behalf of 21st Century Insurance
Company

Charleston, South Carolina

August 23, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2011-CP-07-0001
ARTHUR WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
RESORT SERVICES, INC. AND JOHN DOE,	)	
Defendants.	)	

**MEMORANDUM OF LAW
IN SUPPORT OF PLAINTIFF'S
MOTION TO ALTER OR AMEND**

2014 MAY 13 PM 12:29
 CLERK OF COURT
 BEAUFORT COUNTY, SC

The Plaintiff, Arthur Washington ("Washington") submits this memorandum of law in support of his Motion to Alter or Amend pursuant to Rules 52(b) and 59(e), SCRCP, the Court's order dated April 23, 2014, that grants John Doe's motion to dismiss based on the statute of limitations and denies Washington's motion for entry of default against John Doe. The undersigned counsel for Washington received notice of the signed order by email attachment on April 29, 2014, and written notice of the order on May 1, 2014. For the reasons set forth below, the Court's order should be reconsidered and amended.

FACTS

This action arises out of a collision that occurred between Washington and a Resort Services delivery truck on February 26, 2009, in Bluffton, South Carolina. (Compl. ¶ 3). As a result of the injuries Washington sustained, he filed a summons and complaint against Resort Services on January 3, 2011. (Compl.). Resort Services served a copy of its Answer on January 25, 2011. (Answer). Thereafter, on April 14, 2011, Resort Services served an amended answer that added two new affirmative defenses – (1) acts or omissions causing Washington's damages were of others not employed by Resort Services and (2) Washington's damages were the result of a criminal act of a third person. (Amd. Ans. ¶¶ 7-8).

Between Resort Services' answer in January 2011 and the amended answer in April 2011, Washington's own insurance carrier, 21st Century Insurance Company, was served and filed a Notice of Appearance and Conditional Answer on March 15, 2011. (Ex. 1 – Not. of App. and Cond. Ans.). 21st Century's Notice of Appearance stated that "the undersigned attorneys hereby appear on behalf of 21st

Century Insurance, in the above-entitled action” (Ex. 1 – Not. of Appearance). During the pendency of the action, counsel that appeared for 21st Century engaged in discovery by filing a motion to compel, (Ex. 2 – Mot. to Compel), and attended and questioned Washington during his deposition. (Ex. 3 – Washington Depo.). Following his deposition, on March 12, 2012, Washington moved to amend his complaint to add John Doe as a party defendant for the purposes of uninsured motorist coverage. (Mot. to Amend). On August 2, 2012, Washington filed an amended summons and amended complaint naming John Doe. (Amend. Complaint).

On February 12, 2014, John Doe filed a motion to dismiss based on the statute of limitations. (Mot. to Dismiss). Doe contends that the action should be dismissed because the action was not commenced within three years of February 26, 2009. (Mot. to Dismiss). The Court heard arguments from counsel on April 8, 2014 at the Beaufort County Courthouse. At the conclusion of the hearing, the Court requested both parties submit proposed orders. The Court’s Order dated April 23, 2014 denied Plaintiff’s motion for entry of default and granted John Doe’s motion to dismiss based on the statute of limitations. The undersigned counsel for Washington received notice of the signed order by email attachment on April 29, 2014, and written notice of the order on May 1, 2014. In addition to all grounds set forth at the hearing, Washington moves the Court to reconsider its Order, or in the alternative amend the Order in several respects.

ARGUMENT

I. THE ORDER SHOULD BE AMENDED TO CORRECTLY STATE THAT THE NOTICE OF APPEARANCE AND CONDITIONAL ANSWER WERE FILED ON BEHALF OF WASHINGTON’S INSURANCE CARRIER, 21ST CENTURY, NOT RESORT SERVICES

The Order submitted by Doe that the Court signed states in several places that the Notice of Appearance and Conditional Answer 21st Century served on March 14, 2011 was done on behalf of

Resort Services, Inc. This is incorrect and should be amended to correctly state that the Notice of Appearance and Conditional Answer was filed on behalf of 21st Century.

Page two of the Order states that “21st Century Insurance . . . served a Notice of Appearance and Conditional Answer on behalf of Defendant, Resort Services, Inc. on March 14, 2011. . . .” (Order p. 2). The Order goes on to state: “In the instant case, UIM was served prior to the Statute of Limitations to appear on behalf of Defendant, Resort Services, Inc. and represent its interest, not John Doe’s.” (Order p. 4). Contrary to the language in the Order, the first sentence of the Notice of Appearance and Conditional Answer on behalf of 21st Century specifically states otherwise: “the undersigned attorneys hereby appear on behalf of 21st Century Insurance, in the above-entitled action” (Ex. 1 – Not. of App.). The Notice of Appearance goes on to provide that “[t]he undersigned further states that he and his law firm at this time do not represent the defendant and are not at this time undertaking such representation. . . .” (Ex. 1 – Not. of App.). The attorney for 21st Century, Ravi C. Sanyal, signs the Notice of Appearance and Conditional Answer as “Attorney for 21st Century Insurance Company appearing pursuant to S.C. Code Ann. § 38-77-160 on behalf of 21st Century Insurance Company.” (Ex. 1 – Not. of App. and Cond. Ans. p. 2).

The Order should not state that the Notice of Appearance was filed on behalf of Resort Services when the Notice of Appearance states that counsel for 21st Century, Ravi C. Sanyal, does not represent the Defendant, Resort Services, Inc. At the time the Notice of Appearance was served, Resort Services had its own counsel and was being represented by Alice P. Adams. If counsel for 21st Century was not representing Resort Services, it cannot serve a Notice of Appearance and Conditional Answer on Resort Services behalf. The language in the Order that 21st Century served a Notice of Appearance and Conditional Answer on behalf of Resort Services, when it is contrary to the Notice of Appearance filed with the Court, is incorrect and should be amended.

II. THE CASE OF JACKSON V. DOE, 342 S.C. 552, 537 S.E.2D 567 (CT. APP. 2000) IS DISTINGUISHABLE FROM THIS CASE BECAUSE 21ST CENTURY FILED A

NOTICE OF APPEARANCE AND ENGAGED IN DISCOVERY PRIOR TO ANY EXPIRATION OF THE STATUTE OF LIMITATIONS

In granting Doe's motion to dismiss based on the statute of limitations, the Court relies on the holding from the Court of Appeals in Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000). Jackson is distinguishable from this case because here 21st Century filed a notice of appearance, engaged in discovery, and questioned Washington during his deposition prior to any expiration of the statute of limitations. In Jackson, Laurie Jackson appealed the trial court's grant of summary judgment in favor of Costello Milligan on the basis that the statute of limitations expired. Id. at 553, 537 S.E.2d at 568. Jackson was injured on April 1, 1994, as she stood by the open door of a vehicle parked beside a gas pump when another vehicle struck the car and then drove away. Id. at 553-54. On March 17, 1997, Jackson filed a complaint against the unknown driver pursuant to the statutory scheme for uninsured motorist coverage. Id. at 554. On September 15, 1998, Jackson amended her complaint to add Milligan as a defendant. Id. Milligan answered and contended that the action was barred by the applicable statute of limitations. Id. The trial court ruled in favor of Milligan, concluding that the relation back provision of Rule 15(c) did not apply and the statute of limitations had expired.

In its opinion, the Court of Appeals highlights the four-part test of when Rule 15(c) applies:

- (1) the basic claim must have arisen out of the conduct set forth in the original pleading;
- (2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense;
- (3) that party must or should have known that, but for a mistake concerning the identity, the action would have been brought against it; and
- (4) the second and third requirements must have been fulfilled within the prescribed limitations period.

Id. at 558, 537 S.E.2d at 570 (quoting Hughes v. Water World Water Slide, Inc., 314 S.C. 211, 214, 442 S.E.2d 584 586 (1994)).

In Jackson, the plaintiff filed suit against Doe within the three year statute of limitation and added Milligan four- and-a-half years after the accident. During this time, Milligan had not made an appearance

in the case, engaged in discovery, or questioned any witnesses. Here, on the other hand, Washington filed suit against Resort Services then added John Doe only three-and-a-half years after February 26, 2009. Further, after filing of the initial complaint on January 3, 2011, Washington's insurance carrier, 21st Century, was served with the pleadings and appeared in this action on March 15, 2011, within the statute of limitations. (Ex. 1 – Not. of Appearance), engaged in discovery (Ex. 2), and questioned Washington during his deposition (Ex. 3).

Jackson also supports Washington's position that the filing date of the amended summons and complaint against John Doe should relate back to the date of the original filing date of the summons and complaint pursuant to Rule 15(c). "Rule 15(c) clearly speaks to a *change* in party, not the *addition* of a defendant to an already existing defendant." Id. at 558, 537 S.E.2d at 570. Washington's insurance carrier, 21st Century, is merely changed from a potential UIM carrier to that of UM.¹ Moreover, 21st Century cannot claim prejudice as a result because they filed a notice of appearance, engaged in discovery, and questioned Washington during his deposition before the expiration of any statute of limitation. As noted in the proposed order denying Doe's motion to dismiss submitted by Washington, the four factors under Rule 15(c), SCRCF are satisfied in this case against 21st Century. (Ex. 4 – Proposed Order Denying Doe's Motion to Dismiss).

III. THE SUSPENSION OF ATTORNEY CHARLES HOUSTON'S LAW LICENSE IS NOT A BASIS TO EQUITABLY TOLL THE STATUTE OF LIMITATIONS AND SHOULD BE DELETED AS A BASIS GRANTING DOE'S MOTION TO DISMISS

In the Order, the Court notes that "Plaintiff's argument that the law license suspension of Plaintiff's previous attorney, Charles Houston, should equitably toll the Statute of Limitations is also without merit." (Order pp. 4-5). In reciting the factual background to the Court at the hearing on April 8, 2014, the undersigned counsel for Washington noted the history of the case and how it ended up in its

¹ See footnote 4 below for additional discussion.

current form, included in this was Mr. Houston's suspension. The basis that Mr. Houston's law license suspension should equitably toll the statute of limitations was not asserted by Washington and should not be a basis in the order because Mr. Houston was not suspended until after the amended summons and complaint were filed. Washington requests this be corrected as this was not a basis put forth to deny Doe's motion to dismiss based on the statute of limitations, but was instead asserted by Doe in his motion to dismiss as a basis not to equitably toll the statute of limitations. (Doe's Memo in Supp. p. 3 ("To the extent Plaintiff argues equitable tolling should apply. . . .")). As additional supporting evidence, the proposed order submitted by counsel for Washington did not provide that the statute of limitations should be equitably tolled because of Mr. Houston's suspension. (Ex. 4 – Washington's Proposed Order Denying Mot. to Dismiss.).

IV. 21ST CENTURY HAD NOTICE OF THIS LAWSUIT AS IT WAS SERVED, FILED A NOTICE OF APPEARANCE, ENGAGED IN DISCOVERY, AND QUESTIONED WASHINGTON DURING HIS DEPOSITION

In denying Plaintiff's motion for entry of default, the order provides that "Plaintiff's contention that the UM carrier should be bound in default without any prior notice² of this lawsuit naming John Doe violates the Due Process Clause under the United States Constitution, and South Carolina Constitution." (Order p. 6). This language should be deleted or amended because it is incorrect. Washington's insurance carrier, 21st Century, filed a notice of appearance (Ex. 1 – Not. of App.), engaged in discovery by filing a motion to compel, (Ex. 2 – Mot. to Compel), and attended and questioned Washington during his deposition. (Ex. 3 – Washington Depo.). To state that 21st Century did not have prior notice of this lawsuit is incorrect, contrary to the evidence, and should be deleted or amended.

² This is additional evidence that supports the arguments put forth above under heading I. above that the notice of appearance and conditional answer were made on behalf of 21st Century and not Resort Services.

V. IF THE FILING DATE DOES NOT RELATE BACK JOHN DOE SHOULD BE IN DEFAULT BY VIRTUE OF NOT SERVING AN ANSWER WITHIN 30-DAYS OF FILING THE AMENDED SUMMONS AND COMPLAINT WITH THE CLERK OF COURT

As noted in the proposed order submitted by Washington the question in this case is who is John Doe. If it is Washington's own insurance company, then the amended complaint should relate back pursuant to Rule 15(c), SCRCRCP, as 21st Century filed a notice of appearance and conditional answer, engaged in discovery, and questioned Washington during his deposition prior to February 26, 2012. If instead it is John Doe and not 21st Century, then Washington contends he is in default³ pursuant to S.C. Code Ann. § 38-77-180, and 21st Century, on Doe's behalf, cannot challenge the statute of limitations as the allegations in the amended complaint are deemed admitted. Section 38-77-180 provides, in part, "[i]f the owner or operator of any vehicle causing injury or damages by physical contact is unknown, an action may be instituted against the unknown defendant as 'John Doe' and service of process may be made by delivery of a copy of the summons and complaint or other pleadings to the clerk of court in which the action is brought." S.C. Code Ann. § 38-77-180.

On August 2, 2012, Washington filed an amended summons and amended complaint naming John Doe. Pursuant to S.C. Code Ann. § 38-77-180, service was perfected against John Doe by delivery of the amended summons and complaint to the Beaufort County Clerk of Court. The Order notes that the UM carrier was not served through the Department of Insurance until January 31, 2014 and after that and answer was filed February 11, 2014. If service through the Department of Insurance on 21st Century starts the time to file an answer on behalf of John Doe, then 21st Century is ostensibly John Doe and the amended summons and complaint should relate back to the date of the original summons and complaint. On the other hand, if John Doe is a stand-alone defendant, then service pursuant to S.C. Code Ann. § 38-

³ Washington filed a motion for default on March 28, 2014.

77-180 is proper and John Doe was in default by not filing an answer or other responsive pleading pursuant to Rule 12, SCRCP within thirty days.

Under these scenarios, however, 21st Century cannot have it both ways.⁴ It cannot be necessary to serve the Department of Insurance to trigger the time to file an answer for John Doe all while 21st Century distances itself from the notice of appearance and discovery it engaged in prior to any purported expiration of the statute of limitations. The Order illustrates this distinction that it is necessary to serve the Department of Insurance: “[S]ervice of process on UIM carriers and UM carriers are governed by two separate statutes – S.C. Code Ann. § 38-77-160 for UIM, and 38-77-150 for UM” (Order p. 4). Section 38-77-160, regarding UIM coverage, provides that “[n]o action may be brought under the underinsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the underinsured motorist provision.” Section 38-77-150(B), regarding UM coverage, provides in part that “[n]o action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision.” Service on insurance companies is governed by S.C. Code Ann. § 15-9-270, which provides:

The summons and any other legal process in any action or proceeding against it must be served on an insurance company as defined in Section 38-1-20, including fraternal benefit associations, by delivering two copies of the summons or any other legal process to the Director of the Department of Insurance, as attorney of the company with a fee of ten dollars, of which five dollars must be retained by the director to offset the costs he incurs in service of process and of which five dollars must be deposited to the credit of the general fund of the State. A company shall appoint the director as its attorney pursuant to the provisions of Section 38-5-70. This service is considered sufficient service upon the

⁴ Regardless of whether it’s an appearance as the UM or UIM carrier, 21st Century is the real party in interest. Compare § 38-77-150 (“The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear.”), with § 33-77-160 (“The insurer has the right to appear and defend in the name of the underinsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear”).

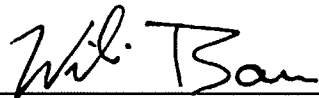
company. When legal process against any company with the fee provided in this section is served upon the director, he shall immediately forward by registered or certified mail one of the duplicate copies prepaid directed toward the company at its home office or, in the case of a fraternal benefit association, to its secretary or corresponding officer at the head of the association.

Under these statutory provisions, 21st Century – irrespective of whether it appears as the UIM or UM carrier – was properly served through the Department of Insurance and appeared in the action on March 15, 2011, well before the expiration of any statute of limitations. (Ex. 1 – Not. of App.).

CONCLUSION

For the reasons set forth above Washington requests the Court alter or amend its April 23, 2014 order pursuant to Rules 52(b) and 59(c), SCRPC. In the alternative, Washington requests the Court adopt one of the proposed orders – denying the motion to dismiss on the basis of the statute of limitations (Ex. 4) or granting motion for entry of default (Ex. 5) – submitted by Washington in response to the Court's request.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 
John E. Parker
William F. Barnes, III
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

May 7, 2014
Hampton, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

AURTHUR WASHINGTON,

Plaintiffs,

vs.

RESORT SERVICES, INC., AND
JOHN DOE,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-07-0001

**MEMORANDUM IN SUPPORT OF
DEFENDANT JOHN DOE'S MOTION
TO DISMISS BASED ON THE
STATUTE OF LIMITATIONS**

TO: PLAINTIFF, DEFENDANT RESORT SERVICES, OPPOSING COUNSEL, AND
PRESIDING JUDGE

Defendant John Doe submits the following Memorandum in Support of its Motion to Dismiss, with prejudice, based on the statute of limitations, as this lawsuit was not filed against Defendant John Doe until over three (3) years after the date of the auto accident which is the subject of the Complaint.

Background

This is a personal injury case arising out of an automobile accident that occurred on February 26, 2009. (Plaintiff's Amended Complaint, p. 1 – Exhibit "A"). The Plaintiff claims personal injuries stemming from this automobile accident. (*See generally* Plaintiff's Amended Complaint). Therefore, Plaintiff had three years in which to file his lawsuit *against Defendant John Doe*, with a deadline of February 26, 2012. S.C. Code Ann. § 15-3-530. Although an original Complaint was filed against co-Defendant Resort Services, Inc. prior to the statute of limitations running, the Amended Complaint – which first named and added Defendant, John Doe - was not filed until August 2, 2012, over

three (3) years after the automobile accident occurred. (Plaintiff's Amended Complaint, p. 1 – Exhibit "A"). The Plaintiff does not seek to **substitute** a party after the statute of limitations; rather, the Plaintiff seeks to **add** a party.

Discussion

I. BECAUSE SOUTH CAROLINA LAW IS CLEAR THAT YOU CANNOT ADD A PARTY AFTER THE STATUTE OF LIMITATIONS, DEFENDANT JOHN DOE SHOULD BE DISMISSED FROM THIS CASE, WITH PREJUDICE

In Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct.App.2000) the Court of Appeals addressed the precise issue which is before the Court in the instant case, and held that a Plaintiff may not *add* a party after the statute of limitations. The facts of Jackson are that the Plaintiff amended her complaint after the statute of limitations had expired in a John Doe hit and run action. Id. Jackson then added another party as a new defendant but did not dismiss John Doe as a defendant. Id. The Plaintiff tried to argue that Rule 15(c) which allows Plaintiff's to *substitute* a party in some cases, applied to the *addition* of a party in a John Doe case; however, the Jackson Court disagreed and held that the statute of limitations bars the *addition* of a new party, even in a John Doe Action.

Here, we are faced with facts virtually identical to Jackson. In the instant case, Plaintiff sued only Defendant, Resort Services, Inc. in the original Complaint, which was filed January 3, 2011 – over a full year before the statute of limitations was set to run. (Plaintiff's Complaint - Exhibit "B"). Plaintiff was made aware of a potential "John Doe" Defendant when the Defendant, Resort Services, Inc., filed their Amended Answer on April 18, 2011 – still almost a year before the statute of limitations was to run - where they asserted criminal acts of an unidentified, "John Doe" third-party as a defense. (Amended Answer of Resort Services - Exhibit "C"). However, inexplicably, Plaintiff's

counsel did not move to amend the Complaint until March 12, 2012 – **after** the Statute of Limitations had already run. (Motion to Amend Complaint - Exhibit “D”). Finally, an Amended Complaint first naming John Doe as a Defendant was not filed until August 2, 2012 – long after the Statute of Limitations had already run. (Exhibit “A”).

Applying Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct.App.2000) and clear South Carolina law, Plaintiff slept on his rights to sue Defendant, John Doe, and did not file a lawsuit or even move to amend the Complaint to name John Doe until after the Statute of Limitations had already run, despite knowing for a year or more that John Doe may be a potential Defendant. John Doe’s Motion to Dismiss should be granted, with prejudice.

II. BECAUSE THE ORIGINAL ATTORNEY REPRESENTING THE PLAINTIFF, CHARLES HOUSTON, WAS NOT SUSPENDED FROM THE PRACTICE OF LAW UNTIL AFTER THE STATUTE OF LIMITATIONS RAN, EQUITABLE TOLLING DOES NOT APPLY

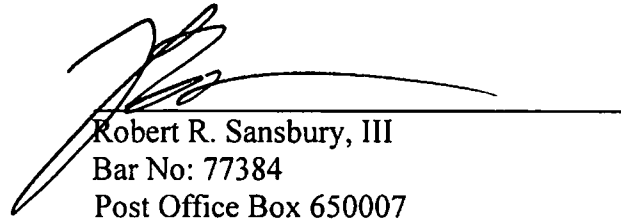
To the extent Plaintiff argues that equitable tolling should apply to the Statute of Limitations concerning Defendant, John Doe, Plaintiff’s argument fails as Charles Houston, Plaintiff’s original attorney, was not suspended from the practice of law until December 7, 2012 – almost a full year after the Statute of Limitations expired. (Order Regarding Interim Suspension – Exhibit “E”).

Conclusion

For the above reasons, Defendant, John Doe, requests that the Court GRANT Defendant’s Motion to Dismiss, with prejudice.

[SIGNATURE ON NEXT PAGE]

McANGUS GOUDELOCK & COURIE, LLC



Robert R. Sansbury, III
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(843) 576-2900

ATTORNEYS FOR DEFENDANT, JOHN DOE

Dated: 3/25, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
AURTHUR WASHINGTON,	)	Civil Action No. 2011-CP-07-0001
	)	
Plaintiffs,	)	
	)	
vs.	)	DEFENDANT JOHN DOE'S
	)	MEMORANDUM IN OPPOSITION TO
RESORT SERVICES, INC., AND	)	PLAINTIFF'S MOTION FOR
JOHN DOE,	)	DEFAULT JUDGMENT
	)	
Defendants	)	

TO: PLAINTIFF, DEFENDANT RESORT SERVICES, OPPOSING COUNSEL, AND
PRESIDING JUDGE

Defendant John Doe submits the following Memorandum in Opposition to Plaintiff's Motion for Default Judgment. Plaintiff's Motion for Default has no basis in law or fact, and should be dismissed for 3 separate and independent grounds: (1) the Uninsured Motorist Carrier's duty to Answer the Complaint was not triggered until it was served via the Department of Insurance on January 31, 2014, and an Answer was filed only 12 days later on February 11, 2014; (2) No lawsuit was ever commenced during the Statute of Limitations, so any resulting Default Judgment would be void as a matter of law; and (3) Plaintiff's assertion that a UM Carrier should be bound in default without notice violates the Due Process clauses of the United States Constitution and the South Carolina Constitution.

Background

This is a personal injury case arising out of an automobile accident that occurred on February 26, 2009. (Plaintiff's Amended Complaint, p. 1 – Exhibit "A"). The

Plaintiff claims personal injuries stemming from this automobile accident. (*See generally* Plaintiff's Amended Complaint). Therefore, Plaintiff had three years in which to file his lawsuit *against Defendant John Doe*, with a deadline of February 26, 2012. S.C. Code Ann. § 15-3-530. Although an original Complaint was filed against co-Defendant Resort Services, Inc. prior to the statute of limitations running, the Amended Complaint – which first named and added Defendant, John Doe - was not filed until August 2, 2012, over three (3) years after the automobile accident occurred. (Plaintiff's Amended Complaint, p. 1 – Exhibit "A"). The Plaintiff did not seek to **substitute** a party after the statute of limitations; rather, the Plaintiff sought to **add** a party, which is impermissible pursuant to Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct.App.2000), S.C. Code Ann. § 15-3-530, and Rule 15, SCRPC.

Even though a lawsuit was filed against Defendant, John Doe on August 2, 2012, the Uninsured Motorist Carrier (UM) was inexplicably not served via the department of insurance until January 31, 2014, a year and a half after filing. (Dept. of Ins. Proof of Service – Exhibit "B"). Regardless, Defendant, UM Carrier filed a timely Answer to the Amended Complaint on behalf of the fictional Defendant, John Doe, only 12 days later, on February 11, 2014. (Answer on behalf of John Doe – Exhibit "C"). Shortly thereafter, Defendant Doe moved to dismiss this case based on the statute of limitations. (Motion to Dismiss – Exhibit "D"). Judge Kinard is scheduled as the judge to hear Defendant Doe's Motion to Dismiss, and requested pre-hearing memoranda from all parties; Defendant Doe submitted his memorandum in support of his Motion to Dismiss via email to all parties on Wednesday, March 27, 2014 (Exhibit "E"). Then, Plaintiff's counsel moved for an Entry of Default and submitted a proposed Order of Default against Defendant Doe

via email. (Exhibit "F"). Plaintiff's motion for default was submitted by Plaintiff's counsel only 24 hours after Defendant, John Doe served his Memorandum in Support of Doe's Motion to Dismiss based on the Statute of Limitations, and over a year and a half after the alleged "default".

Discussion

I. PLAINTIFF'S ASSERTION THAT DEFENDANT, JOHN DOE'S DUTY TO ANSWER THE COMPLAINT IS TRIGGERED BY SIMPLY FILING THE LAWSUIT IS MISPLACED, AS PLAINTIFF SEEKS TO BIND THE UNINSURED MOTORIST CARRIER IN DEFAULT, NOT A FICTIONAL, "JOHN DOE" DEFENDANT

It is no secret that Plaintiff is seeking insurance proceeds from the UM Carrier in this case, not a meaningless, paper judgment against a fictional "John Doe" defendant. So it is important that we distinguish situations where a fictional, uninsured, "John Doe" defendant is served with process, and situations where the UM Carrier is served with process, on behalf of John Doe.

Plaintiff has correctly cited part of the statute regarding service on John Doe in his Motion for Entry of Default - "service of process [on John Doe] may be made by delivery of a copy of the summons and complaint or other pleadings to the clerk of the court in which the action is brought." S.C. Code Ann. § 38-77-180; however Plaintiff neglects to include the whole statute regarding service on the UM Carrier, which is as follows:

No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and **has thirty days after service of process on it in which to appear.** The evidence of service upon the insurer may not be made a part of the record.

S.C. Code Ann. § 38-77-150 (emphasis added)

The above statute makes clear that **no action** can be brought binding a UM Carrier in a John Doe case unless the pleadings are served on the UM Carrier in a manner prescribed by law, which in South Carolina is through the Department of Insurance. S.C. Code Ann. § 38-5-70. In fact service upon the Department of Insurance as agent for insurance companies is the *exclusive* means of service, and service upon an insurer made in any other way is invalid. Equilease Corp.v. Weathers, 275 S.C. 478, 484, 272 S.E.2d 789, 792 (1980). Further, the statute makes clear that a UM Carrier's duty to Answer is not triggered until service of process "on it", not on John Doe. S.C. Code Ann. § 38-77-150 ("The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process **on it** in which to appear.") (emphasis added).

Here, even though a lawsuit was filed against Defendant, John Doe on August 2, 2012, the UM Carrier was not served via the Department of Insurance until January 31, 2014. (Dept. of Ins. Proof of Service – Exhibit "B"). The UM Carrier filed a timely Answer to the Amended Complaint on behalf of the fictional Defendant, John Doe, only 12 days later, on February 11, 2014. (Answer on behalf of John Doe – Exhibit "C"), well within the 30 days prescribed by law

II. BECAUSE SOUTH CAROLINA LAW IS CLEAR THAT YOU CANNOT ADD A PARTY AFTER THE STATUTE OF LIMITATIONS, AND DEFENDANT DOE WAS FIRST ADDED AS A PARTY AFTER THE STATUTE, PLAINTIFF NEVER COMMENCED A LAWSUIT AGAINST DEFENDANT DOE; THEREFORE ANY RESULTING DEFAULT WOULD BE VOID AS A MATTER OF LAW.

In Jackson v. Doe, 342 S.C 552, 537 S.E.2d 567 (Ct.App.2000) the Court of Appeals addressed the precise issue which is before the Court in the instant case, and held that a Plaintiff may not *add* a party after the statute of limitations, even in a John Doe

case.

Here, Plaintiff sued only Defendant, Resort Services, Inc. in the original Complaint, which was filed January 3, 2011 – over a full year before the statute of limitations was set to run. (Plaintiff's Complaint - Exhibit "G"). South Carolina law is clear that the date of the accident triggers the 3 year statute of limitations. S.C. Code Ann. § 15-3-535. However, inexplicably, Plaintiff's counsel did not move to amend the Complaint until March 12, 2012 – **after** the Statute of Limitations had already run. (Motion to Amend Complaint - Exhibit "H"). Finally, an Amended Complaint first naming John Doe as a Defendant was not filed until August 2, 2012 – long after the Statute of Limitations had already run. (Exhibit "A").

Applying Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct.App.2000) and clear South Carolina law, Plaintiff slept on his rights to sue Defendant, John Doe, and did not file a lawsuit or even move to amend the Complaint to name John Doe until after the Statute of Limitations had already run. Therefore, no lawsuit was ever commenced against Defendant, John Doe, as John Doe was not named as a party to this lawsuit until *after* the Statute of Limitations ran on February 26, 2012; indeed, John Doe was not named until August 2, 2012. So, under Rule 60(B)(4), any resulting Default Judgment would be void as a matter of law.

II. PLAINTIFF'S CONTENTION THAT AN UNINSURED MOTORIST CARRIER SHOULD BE BOUND BY A LAWSUIT OF WHICH IT HAD NO NOTICE VIOLATES CONSTITUTIONAL DUE PROCESS

Adequate notice of a pending lawsuit, hearing or trial is the hallmark of Constitutional Due Process in the civil arena. In Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950), the United States Supreme Court held, "An elementary and

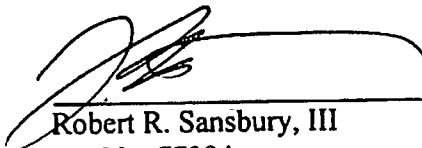
fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” A judgment rendered against a defendant without adequate notice offends due process, and amounts to an unlawful “taking” of life, liberty or property. Id.

In the instant case, Plaintiff asserts that the UM Carrier should be held in default, and forced to surrender property (i.e. money) to the Plaintiff without any adequate notice of this lawsuit. Given the facts of this case, this would offend procedural due process both under the United States Constitution and the South Carolina Constitution; therefore, Plaintiff’s Motion for Default Judgment should be denied.

Conclusion

For the above reasons, Defendant, John Doe, requests that the Court DENY Plaintiff’s Motion for Default Judgment, and award any other appropriate relief to the UM Carrier and its attorney under Rule 11, or otherwise, that the Court deems just, equitable, and proper.

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Dated: 3/28, 2014

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April 16, 2014

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The Honorable J. Ernest Kinard, Jr.
14th Judicial Circuit
Post Office Box 1707
Camden, South Carolina 29021-1707

Re: *Washington v. Resort Services, Inc., et al.*
Civil Action No.: 2011-CP-07-0001

Dear Judge Kinard:

As a follow-up to the hearing held on April 7, 2014 in Beaufort, please find enclosed a proposed order denying defendant, John Doe's motion to dismiss. As we also filed a motion for entry of default, enclosed is an order and entry of default, along with an accompanying affidavit. If either of these orders meet your approval, please sign and return to our office in the self-addressed stamped envelope that is enclosed.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd
Enclosures as stated

cc. Robert R. Sansbury, III, Esquire
Christopher W. Nickels, Esquire
Charles E. Houston, Esquire
Anthony W. Livoti, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2011-CP-07-0001
	)	
ARTHUR WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING
	)	JOHN DOE’S MOTION TO DISMISS
	)	
RESORT SERVICES, INC. AND JOHN	)	
DOE,	)	
Defendants.	)	

This matter came before the Court on Monday, April 7, 2014, for hearing on Defendant John Doe’s (“Doe”) motion to dismiss. Present before the Court were William F. Barnes, III, on behalf of the Plaintiff, Arthur Washington; Robert R. Sansbury, III, on behalf of Doe; and Wesley B. Sawyer on behalf of Resort Services, Inc. (“Resort Services”). After hearing argument from counsel and reviewing the parties’ submissions, the Court denies Doe’s motion to dismiss.

FACTS

This action arises out of a collision that occurred between Washington and a Resort Services delivery truck on February 26, 2009, in Bluffton, South Carolina. (Ex. 1 – Compl. ¶ 3). As a result of the injuries Washington sustained, he filed a summons and complaint against Resort Services on January 3, 2011. (Ex. 1 – Compl.). Resort Services served a copy of its Answer on January 25, 2011. (Ex. 2 – Answer). Thereafter, on April 14, 2011, Resort Services served an amended answer that added two new affirmative defenses – (1) acts or omissions causing Washington’s damages were of others not employed by Resort Services and (2) Washington’s damages were the result of a criminal act of a third person. (Ex. 3 – Amd. Ans. ¶¶ 7-8).

Between Resort Services’ answer in January 2011 and the amended answer in April 2011, Washington’s insurance carrier, 21st Century Insurance Company, was served with and filed a Notice of Appearance and Conditional Answer on March 15, 2011. (Ex. 4 – Not. of Appearance). 21st Century’s

Notice of Appearance stated that “the undersigned attorneys hereby appear on behalf of 21st Century Insurance, in the above-entitled action” (Ex. 4 – Not. of Appearance). During the pendency of the action, counsel that appeared for 21st Century engaged in discovery by filing a motion to compel, (Ex. 5 – Mot. to Compel), and attended and questioned Washington during his deposition. (Ex. 6 – Washington Depo.). Following his deposition, on March 12, 2012, Washington moved to amend his complaint to add John Doe as a party defendant for the purposes of uninsured motorist coverage. (Ex. 7 – Mot. to Amend). On August 2, 2012, Washington filed an amended summons and amended complaint naming John Doe. (Ex. 8 – Amend. Complaint).

On February 12, 2014, John Doe filed a motion to dismiss based on the statute of limitations. (Mot. to Dismiss). Doe contends that the action should be dismissed because the action was not commenced within three years of February 26, 2009. (Mot. to Dismiss).

In opposition to Doe’s motion, Washington provided the Court with several exhibits. Washington questions who is contending the action was not timely asserted against John Doe. If it is Washington’s own insurance company, then the amended complaint should relate back pursuant to Rule 15(c), SCRPC, as 21st Century filed a notice of appearance and conditional answer, engaged in discovery, and questioned Washington during his deposition prior to February 26, 2012. If instead it is John Doe and not 21st Century, then Washington contends he is in default¹ pursuant to S.C. Code Ann. § 33-77-180², and cannot challenge the statute of limitations as the allegations in the amended complaint are deemed admitted.

ANALYSIS

¹ Washington filed a motion for default on March 28, 2014.

² Section 38-77-180 provides, in part, “[i]f the owner or operator of any vehicle causing injury or damages by physical contact is unknown, an action may be instituted against the unknown defendant as ‘John Doe’ and service of process may be made by delivery of a copy of the summons and complaint or other pleadings to the clerk of court in which the action is brought.”

As uninsured coverage is mandatory under South Carolina law and John Doe is to be a defendant for uninsured coverage, the Court finds that Washington's insurance company, 21st Century, is challenging whether the action as asserted against John Doe was filed within the statute of limitations. In this action, 21st Century, filed a notice of appearance and conditional answer on March 15, 2011 (Ex. 4 – Not. of App.), engaged in discovery by filing a motion to compel (Ex. 5), and questioned Washington during his deposition that occurred on November 18, 2011. (Ex. 6 – Washington Depo.). As a result, the Court finds that the amended complaint relates back, pursuant to Rule 15(c), SCRCP, to the date of the original complaint that was filed on January 3, 2011.

Rule 15(c), SCRCP, provides that “[w]hensoever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.” In this case, the allegations against John Doe arose out of the same occurrence that took place on February 26, 2009 involving the Resort Services truck. The Court finds that the amendment adding Doe relates back to the date of the original filing. Doe and 21st Century are not prejudiced because 21st Century filed a notice of appearance, engaged in discovery, and attended and questioned Washington during his deposition.

In support of its motion to dismiss, Doe contends that Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000) is controlling in this case. In Jackson, Laurie Jackson appealed the trial court's grant of summary judgment in favor of Costello Milligan on the basis that the statute of limitations expired. Id. at 553, 537 S.E.2d at 568. Jackson was injured on April 1, 1994, as she stood by the open door of a vehicle parked beside a gas pump when another vehicle struck the car and then drove away. Id. at 553-54. On March 17, 1997, Jackson filed a complaint against the unknown driver pursuant to the statutory scheme for uninsured motorist coverage. Id. at 554. On September 15, 1998, Jackson amended her complaint to add Milligan as a defendant. Id. Milligan answered and contended that the action was barred

by the applicable statute of limitations. Id. The trial court ruled in favor of Milligan, concluding that the relation back provision of Rule 15(c) did not apply and the statute of limitations had expired.

In its opinion, the Court of Appeals highlights the four-part test of when Rule 15(c) applies:

- (1) the basic claim must have arisen out of the conduct set forth in the original pleading;
- (2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense;
- (3) that party must or should have known that, but for a mistake concerning the identity, the action would have been brought against it; and
- (4) the second and third requirements must have been fulfilled within the prescribed limitations period.

Id. at 558, 537 S.E.2d at 570 (quoting Hughes v. Water World Water Slide, Inc., 314 S.C. 211, 214, 442 S.E.2d 584 586 (1994)).

Then Chief Judge Hearn dissented because she “believe[d] Jackson’s amended complaint relates back to the original cause of action under Rule 15(c), SCRCP. . . .” Id. at 559, 537 S.E.2d at 571. “Allowing the amended pleading to relate back will work substantial justice to all parties and is consistent with the liberal construction of Rule 15(c) adopted by our Supreme Court in *Hughes*.” Id. at 561, 537 S.E.2d at 572.

The facts of Jackson are distinguishable from this case. In Jackson, the plaintiff filed suit against Doe within the three year statute of limitation and added Milligan four- and-a-half years after the accident. During this time, Milligan had not made an appearance in the case, engaged in discovery, or questioned any witnesses. Here, on the other hand, Washington filed suit against Resort Services then added John Doe only three-and-a-half years after February 26, 2009. Further, after filing of the initial complaint on January 3, 2011, Washington’s insurance carrier, 21st Century, was served with the pleadings and appeared in this action on March 15, 2011, within the statute of limitations. (Ex. 4 – Not. of Appearance), engaged in discovery (Ex. 5), and questioned Washington during his deposition (Ex. 6).

The Court finds that all four factors of Rule 15(c) analysis are satisfied and that the amended complaint filed on August 2, 2012 adding John Doe relates back to the date of the original complaint,

January 3, 2011. The allegations against John Doe arose out of the conduct set forth in the original complaint. Washington's uninsured carrier, 21st Century, received notice, appeared, and engaged in discovery prior to the statute of limitations. 21st Century should have known that the action would have been brought against it if a dispute arose as to whether the Resort Services truck was stolen. These factors occurred within the prescribed limitations period.

Denying Doe's motion to dismiss on the basis of the statute of limitations does not prejudice the parties when Washington's uninsured carrier, 21st Century, appeared in the action, engaged in discovery, and questioned Washington during his deposition.

CONCLUSION

For these reasons, Doe's motion to dismiss on the basis of the statute of limitations is denied.

J. Ernest Kinard, Jr.

_____, South Carolina

_____, 2014

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF COLLETON) CASE NO.: 2011-CP-07-0001

WASHINGTON,)
)
PLAINTIFF,)
)
v.) TRANSCRIPT OF RECORD
)
RESORT SERVICES, INC., ET AL.)
)
DEFENDANT.)
)

APRIL 8th, 2014
COMMENCING AT
BEAUFORT, SOUTH CAROLINA
BEFORE THE HONORABLE ERNEST KINARD, JUDGE.

APPEARANCES:

MR. WILLIAM F. BARNES, III, ESQUIRE
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A.
Attorney for the Plaintiff

MR. ROBERT R. SANBURY, III, ESQUIRE
Attorney for the Defendant

Rebecca H. Hill
Official Court Reporter

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EXHIBITS

NONE.

1 THE COURT: Who's moving?

2 MR. SANSBURY: Yes, Your Honor, Robert Sansbury on
3 behalf of the defendant, John Doe. This is defendant John
4 Doe's Motion to Dismiss based on the statute of limitations.
5 Your Honor, would you like for me to go into my argument?

6 THE COURT: Well, that's up to you. I haven't read it.
7 I understand your position. Apparently, you have a case
8 right on point.

9 MR. SANSBURY: Yes, Your Honor, I do. That's *Jackson*
10 *v. Doe*. I cited it in my Memorandum as well, as I believe I
11 provided the Court a copy. Your Honor, would you like me to
12 go into the factual background of this?

13 THE COURT: That's up to you. You're the lawyer; I'm
14 the judge. I know your position, but if you feel better to
15 argue, you know, do what you feel good about, man.

16 MR. SANSBURY: Judge, I'll try to be very brief. This
17 is a lawsuit arising out of an auto accident in February of
18 2009. Originally, one defendant was named to the complaint,
19 that's Resort Services, Inc., who is represented here by Mr.
20 Liddy's law firm. Your Honor, that complaint was filed
21 prior to the statute of limitations running. My client is
22 defendant John Doe who was added as a party after the
23 statute. The motion to add a party was not filed until
24 March of 2012, which would be a month after the statute, and
25 the party was not actually added until several months later

1 in August of 2012, which of course, is longer after the
2 statute.

3 So Your Honor, whether the Court looks at the date a
4 month after the statute or a date several months after, our
5 Court of appeals has held in *Jackson v. Doe* that you cannot
6 add a party after the statute, and Your Honor, that's our
7 motion.

8 THE COURT: Got it.

9 MR. BARNES: Good morning, Your Honor. William Barnes
10 here on behalf of the plaintiff. I've got something I'd
11 like to hand up, and basically, it's just some filings.
12 Your Honor, as you see from the summons that is there, this
13 case was originally with Charles Houston who is a lawyer in
14 Hilton Head. In late 2012, Mr. Houston was suspended for a
15 period of time, and during that time, Johnny Parker and
16 myself obtained most of the representation of Mr. Houston's
17 files; that's why I'm here today. I want to briefly run
18 through the background of how and what took place in this.
19 This is an accident that arose in February of '09. The
20 complaint was filed January 3rd of 2011. Exhibit 2 is the
21 defendant's, Resort Services, Answer to the complaint. It
22 asserts four affirmative defenses, and that Answer is dated
23 January 25, 2011.

24 In April of 2011, Resort Services files an amended
25 Answer. Now, it's two new affirmative defenses. The first

1 is a criminal act of a third person and the second is injury
2 from someone not employed of the defendant.

3 The important thing in this case is that in March of
4 2011 the plaintiffs own insurance company files a notice of
5 appearance in this action on behalf of the plaintiffs own
6 insurance company as the UIM carrier. That's Exhibit 4 in
7 the packet that I've handed up to the Court.

8 During this time, counsel for the plaintiffs own
9 insurance company engages in discovery; I've attached
10 Exhibit 5, which is a Motion to Compel that they filed.
11 They received discovery responses from the plaintiff. And
12 Exhibit 6 is Mr. Washington's deposition where counsel for
13 the insurance company questions Mr. Washington regarding
14 this incident, his damages, and what's alleged in this case.

15 We fast forward the motion to amend the complaint as
16 filed March 12th, 2012, and then August of 2012 the amended
17 complaint is filed. It's our belief that the filing should
18 relate back under Rule 15(c) and I've provided a copy of
19 Rule 15(c) as Exhibit 10 and what that provides. And it's
20 our position, and I guess the ultimate question in this case
21 is who is the party that is contending that the statute of
22 limitations and John Doe should be dismissed? If it's John
23 Doe and not the insurance company, then we have filed a
24 motion of default on the basis of 38-77-180 on the fact that
25 it provides that service may be made as to the Clerk of

1 Court in the county where the action is pending.

2 So it's our belief that on August 2nd, 2012, that with
3 filing of the amended summons and complaint, John Doe was
4 served in accordance with the statute. On the other hand,
5 if it's the insurance company who is really John Doe, then
6 they've appeared in this action and they've engaged in
7 discovery and I think the case law interpreting Rule 15(c)
8 says that -- provides for a change in party, and it's our
9 contention that really what you have here is a change from
10 the claim of an insurance company as the UIM counsel
11 compared to the uninsured or John Doe action.

12 So they've engaged and we would ask that their motion
13 be denied. Should the Court find that John Doe is the
14 actual defendant, we've gone ahead and filed our motion for
15 default on the basis that they were served in accordance
16 with the statute and an answer was not filed within 30 days,
17 and therefore, John Doe cannot assert the statute of
18 limitations as a defense. So with that, we feel that their
19 motion should be denied.

20 MR. SANSBURY: Thank you, Your Honor. Your Honor, I'd
21 still like to address a couple of Mr. Barnes' arguments.
22 The first is that Mr. Houston's suspension of his law
23 license has nothing to do with this case. That occurred in
24 December of 2012. The statute of limitations here ran
25 February of 2012, about eight months before. So again, that

1 has nothing to do with this.

2 As far as the UIM notice of appearance, Mr. Barnes is
3 correct, the UIM counsel did file a notice of appearance on
4 behalf of defendant Resort Services, not defendant John Doe.
5 They're relying on a separate party, Your Honor. Your
6 Honor, in fact, if you look at the South Carolina Code, and
7 I've cited this in my Memorandum, the UIM statute and the UM
8 statute are separate. And it actually says in the UM
9 statute that no case can be ruled on the UM statute unless
10 it's filed through the Department of Insurance and served
11 accordingly. They didn't do that until 2014. Your Honor,
12 that UM/UIM is two separate statutes, two separate issues,
13 and most importantly, two separate defendants.

14 Your Honor, as far as the relation back under Rule
15 15(c), Jackson v. Doe, the case on point that I handed up,
16 the duress of that issue is square. And they say that even
17 in the John Doe case, you cannot relate back to add a party,
18 and that's exactly what they are seeking here.

19 THE COURT: It can relate back to defenses and amend
20 things, but not to add a party.

21 MR. SANSBURY: Correct, Your Honor. And that's what
22 our Court of Appeals held and actually reversed the lower
23 Court on that. Your Honor, the default issue, that's a
24 whole separate realm, but again, they've added a party after
25 the statute. They did not serve the UM carrier until 2014.

1 We answered within 12 days of being served. The law is
2 clear; it is not triggered -- we don't have a duty to answer
3 until then. I can address that further if you would like me
4 to, but I think that speaks for itself, Judge.

5 THE COURT: Well, if you answered timely, which is what
6 you say, then you're not in default.

7 MR. SANBURY: That's correct, Your Honor.

8 THE COURT: Well, prepare an answer based on that case;
9 you prepare one and I'll look at it. Looks like you're
10 going to lose, but I'll give you a good shot at it.

11 MR. BARNES: Your Honor, can I address *Jackson v. Doe*,
12 briefly?

13 THE COURT: Well, you'll do that in your Order, won't
14 you? I mean, you know. I'm not keeping you from saying
15 that, but I'm not deciding it today, so you just address it
16 in your Orders why it shouldn't apply and anything else you
17 think you need to address, we'll read it.

18 MR. BARNES: Thank you, Your Honor.

19 MR. SANBURY: Thank you, Judge.

20 THE COURT: I'm not really interested in anything about
21 Houston in your Order, because he was not suspended at the
22 time the statute ran.

23 MR. SANBURY: That's correct, Your Honor. He wasn't
24 suspended until about eight months later.

25 THE COURT: Right. Maybe he should have taken care of

1 it, but that's another matter. That's between his client
2 and Mr. Houston. Send your Order to Camden with a self-
3 addressed, stamped envelope.

4 MR. BARNES: Yes, Your Honor.

5 MR. SANSBURY: Yes, Your Honor.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of Common Pleas Non-Jury for Beaufort County, South Carolina, on the 8th day of April 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 11, 2014

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

1	STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
		)	
2	COUNTY OF BEAUFORT	)	Case No. 2011-CP-07-0001
3	ARTHUR WASHINGTON,	)	
		)	
4	Plaintiff,	)	DEPOSITION OF
		)	ARTHUR WASHINGTON
5	VS	)	
		)	
6	RESORT SERVICES, INC.,	)	
	et. al,	)	
7		)	
	Defendants.	)	
8		)	

9

10 Deposition of ARTHUR WASHINGTON, the Plaintiff

11 herein, called by the Defendants for Examination

12 pursuant to the South Carolina Rules of Civil

13 Procedure, taken before me, the undersigned, Naomi E.

14 McCracken, a Computerized Stenotype Reporter and Notary

15 Public in and for the State of South Carolina, at the

16 First Federal Bank, 10 Exchange Street, Hilton Head,

17 South Carolina, on Friday, the 18th day of November,

18 2011, commencing at 10:08 o'clock a.m.

19

20

21

22

23

24

25

APPEARANCES:

On Behalf of the Plaintiff:

BY: THE HOUSTON LAW FIRM, LLC
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On Behalf of the Defendant, Resort Services, Inc.:

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On behalf of the Defendant, 21st Century:

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1 ARTHUR WASHINGTON

2 of lawful age, the Plaintiff herein, having been first
3 duly sworn as hereinafter certified, deposed and said
4 as follows:

5 EXAMINATION

6 BY MR. LIVOTI:

7 Q. State your name for me.

8 A. Arthur, t-h-u-r, Washington.

9 Q. Mr. Washington, my name is Anthony Livoti. We've
10 actually had a chance to formally meet when you walked
11 in. I represent Resort Services in this case.

12 A. Hm-hmm.

13 Q. And I'm here to take your deposition, which is my
14 chance to ask you some questions about your background,
15 questions about the accident, questions about your
16 injuries. And that's all we're going to do today.
17 It's just going to be a question and answer session.

18 The Court Reporter, though, has put you under oath
19 just as if you were in a court of law, so you have been
20 sworn to tell the truth.

21 I'm going to assume -- if you answer a question
22 that I've asked, I'm going to assume that you
23 understood that question and gave me a truthful
24 response to that question; is that fair?

25 A. Certainly. Yes.

1 Q. If at any time you don't understand a question
2 that I've asked, ask me to rephrase it and I'll do my
3 best to rephrase it so that you can understand it.

4 Okay?

5 A. Okay.

6 Q. You're doing an excellent job at this. Try to say
7 "yes" or "no" or give me a verbal response. I can
8 understand if you nod your head or shake the head or
9 say "uh-huh" or "huh-uh" because you and I are sitting
10 here together. But the Court Reporter takes down
11 everything that is said, and it make for a more
12 accurate record if you just give me a verbal response.

13 Okay?

14 A. Yes.

15 Q. If any time you need to take a break, let me know
16 and we can take a break. This deposition is not going
17 to take long today, probably not more than an hour, but
18 it's not an endurance contest. I want you to be
19 comfortable. So if you need a break or anything, let
20 me know and we can take a break. Okay?

21 But I will tell you that if at any time we do take
22 a break during the deposition, now that the deposition
23 has started, direct any questions about your deposition
24 testimony to me. You're not allowed to talk to
25 Mr. Houston about anything pertaining to your

1 **deposition. Okay?**

2 A. I'm a little confused about that.

3 **Q. Now that the deposition has started, anything that**
4 **you have -- questions about testimony or things that**
5 **have to do with this accident, you can't talk to your**
6 **attorney about that until the disposition is over.**

7 A. Well, we'll just go ahead and proceed. If I think
8 of something I'll let you know.

9 **Q. I don't think it will be a problem, but if it is,**
10 **we'll take it up at that time.**

11 **What's your current address?**

12 A. 36 Guerrard Avenue, Bluffton, South Carolina.
13 It's spelled with a "G"; G-u-e, double "r," a-r-d. It
14 used to be the only avenue in Bluffton. Now there's
15 several avenues.

16 **Q. How long have you lived there?**

17 A. I initially came down in 1993, so I've been living
18 there since '93.

19 **Q. In that house?**

20 A. That's correct.

21 **Q. And when you say "came down," where did you come**
22 **down from?**

23 A. New York City.

24 **Q. Is that where you are originally from?**

25 A. That's correct.

1 **Q. What part of New York City?**

2 A. The Bronx, New York.

3 **Q. Did you go to high school up there?**

4 A. Yes, I did. Dewitt Clinton, Dewitt, D-e-w-i-t-t
5 Clinton, C-l-i-n-t-o-n.

6 **Q. What year did you graduate high school?**

7 A. I think that is going back now. I believe I
8 graduated in 1964; '63, '64.

9 **Q. Did you have anything following school, college or**
10 **training?**

11 A. Yes.

12 **Q. Where did you go to college?**

13 A. I went Browns Community College, John Jay College
14 of Criminal Justice, New York Institute of Technology,
15 New York University, Columbia University, Savannah --
16 that was at Savannah.

17 **Q. Savannah State?**

18 A. Yeah, yeah.

19 **Q. We got your high school graduation. Do you have**
20 **any follow-on degrees from all these places that you've**
21 **gone; do you have like a bachelor's degree or an**
22 **associate's degree?**

23 A. No, no. I attended all of those colleges. I
24 never finish anything.

25 **Q. Okay. What kind of things were you studying? It**

1 **sounds like criminal justice or things like that with**
2 **John Jay School of Criminal Justice. What kind of**
3 **things did you study at those schools?**

4 A. Public administration and certainly criminal
5 justice, you know, things that deal with the police
6 sciences.

7 **Q. Okay. So no formal degrees after high school, but**
8 **lots of places you went to school?**

9 A. That's correct. Lots of certificates.

10 **Q. Okay. Tell me a little bit about what those**
11 **certificates might be.**

12 A. Well, certificates for criminal investigation.

13 **Q. Okay.**

14 A. Crime scene investigation.

15 **Q. Where did you get those certificates from?**

16 A. New York City.

17 **Q. New York --**

18 A. The various colleges.

19 **Q. The different colleges there?**

20 A. That is correct. I also attended the Technical
21 College of the Lowcountry.

22 **Q. Hm-hmm.**

23 A. I studied mariculture and agriculture.

24 **Q. Tell me what you did? What was your first**
25 **employment, full-time employment?**

1 A. My first full-time employment was a -- I worked in
2 the supermarket as a -- yeah.

3 **Q. There in the Bronx?**

4 A. In the Bronx.

5 **Q. Okay.**

6 A. The Old Lane Pig (phonetic).

7 **Q. After graduating high school, and then maybe**
8 **going -- did you go to some of these colleges**
9 **immediately after high school?**

10 A. Yes, I did.

11 **Q. Okay.**

12 A. I went to John Jay -- I mean Browns Community.

13 **Q. Browns Community College. Okay. And then after**
14 **either quitting college or just stopping that course of**
15 **study, what was the next job that you had?**

16 A. Well, move forward -- to understand your question
17 you said "after"?

18 **Q. I guess what I'm really trying to get to is: What**
19 **did you do up for a living before you moved back down**
20 **here the South Carolina?**

21 A. Well, I was in the military.

22 **Q. Okay. When did you go in the military?**

23 A. 1966.

24 **Q. And what branch?**

25 A. The Army.

1 Q. Did you get drafted?

2 A. Yes.

3 Q. How long did you serve active duty?

4 A. Until 1968.

5 Q. Did you get deployed overseas, Vietnam?

6 A. I did not.

7 Q. And after getting out of active duty in the Army
8 after those two years, what did you do?

9 A. I worked for the Post Office.

10 Q. And how long did you work for the Post Office?

11 A. I think approximately a year.

12 Q. Okay. That might get us to about '69; 1969, '70?

13 A. '70.

14 Q. Okay. And then after the work at the Post Office,
15 what did you do?

16 A. I went to the police department.

17 Q. Is that NYPD?

18 A. Yes.

19 Q. And how long did you do that?

20 A. Twenty-two years.

21 Q. And what borough did you work in, for what
22 precinct?

23 A. The entire city.

24 Q. The entire city?

25 A. Yes.

1 Q. What was the --

2 A. I was in Special --

3 Q. Special Units.

4 A. -- Units; I worked the entire city.

5 Q. And so you would have worked Special Units until
6 1992?

7 A. Until I retired in 1991.

8 Q. Okay. And did you live in the Bronx or what part
9 of the city did you live in?

10 A. I lived in the Bronx. I lived in Queens.

11 Q. And the Special Units, is that kind of like the
12 SWAT Team kind of organization up there, or is it
13 different?

14 A. Well, you could -- you could say that, yes.

15 Q. Okay.

16 A. You could say that.

17 MR. LIVOTI: Off the record.

18 (A discussion was held off the record.)

19 BY MR. LIVOTI:

20 Q. All right. So after you retired, then you moved
21 down here to South Carolina?

22 A. That is correct.

23 Q. Are you married?

24 A. Yes.

25 Q. How long have you been married?

1 A. Eighteen years.

2 **Q. Is that your first marriage?**

3 A. No.

4 **Q. What's your wife's name?**

5 A. Jurheutha.

6 **Q. Spell that.**

7 A. J-u-r --

8 **Q. J-u-r --**

9 A. -- h-e-u --

10 **Q. -- h-e-u --**

11 A. -- t-h-a.

12 **Q. Washington?**

13 A. Vonnie, V-o-n-n-i-e, Vance Washington.

14 **Q. Do you-all have any children together?**

15 A. We do not.

16 **Q. Do you have any children by your first marriage?**

17 A. Yes, I do.

18 **Q. How many children?**

19 A. Three.

20 **Q. Where do they live?**

21 A. New York City.

22 **Q. All grown and --**

23 A. All grown.

24 **Q. Do you have any grandkids?**

25 A. I do.

1 Q. How many?

2 A. Nine.

3 Q. Wow. Good for you. They all up there, too?

4 A. Yes.

5 Q. And is it -- you just have the one first marriage
6 and then your second marriage?

7 A. Correct.

8 Q. Your ex-wife still living in the New York City
9 area?

10 A. Yes.

11 Q. Do you have any other family related to you by
12 either blood or marriage that live in Beaufort with the
13 last name other than Washington?

14 A. Yes.

15 Q. Who is that? And the reason I ask that question
16 is, if this case ever goes to a jury, the people I
17 might see on the jury panel and walk in for Beaufort
18 County, I just want to know if they were related to you
19 if they got last names different than Washington.

20 A. Well, I'll do my best. You have Annette Bruwin.
21 (Phonetic.)

22 Q. Bruwin?

23 A. Yes. You have Buddy Bruwin.

24 Q. How are they-all related to you?

25 A. They are relatives. Second, first, second

1 cousins, things like that.

2 **Q. All right. Anybody else?**

3 A. Yeah. You have Chaplin: James Chaplin, Charles
4 Chaplin.

5 **Q. Is it Chaplin or Chapman?**

6 A. Chaplin, C-h-a-p-l-i-n.

7 **Q. How are they related to you?**

8 A. They're cousins.

9 **Q. Cousins. Is your wife -- am I saying it --**
10 **"Jurheutha," am I saying that right?**

11 A. Jurheutha.

12 **Q. Jurheutha. Is she from South Carolina?**

13 A. Yes.

14 **Q. Okay. Is she from the Beaufort area?**

15 A. No.

16 **Q. Does she have any family in Beaufort County?**

17 A. No.

18 **Q. All right. Any other cousins in Beaufort?**

19 A. Yeah.

20 **Q. Okay.**

21 A. Yeah. You have Washingtons.

22 **Q. Is your family originally from Beaufort County?**

23 A. My dad's side.

24 **Q. Your dad's side. Okay. Were you born in New York**
25 **City?**

1 A. Yes.

2 Q. Okay. What's your date of birth?

3 A. May 6th, 1947.

4 Q. Okay. Do you know your Social?

5 A. 084-38-0507.

6 Q. At the time this accident happened, were you
7 employed?

8 A. Yes.

9 Q. Where did you work?

10 A. I worked for Bell Fair.

11 Q. Okay.

12 A. Property Owners Association, POA.

13 Q. Doing what?

14 A. Started there in security.

15 Q. Hm-hmm.

16 A. And at the time of the accident, I was assigned to
17 the men's locker room.

18 Q. At the club house?

19 A. At the club house, correct.

20 Q. And what was your job in there?

21 A. My job there was to shine shoes, basically.

22 Q. Did you ever miss time from work because of this
23 accident?

24 A. Oh, yes.

25 Q. How much?

1 A. How much? Well, since the accident, I've gone
2 from a five-day week to a four-day week.

3 **Q. Okay.**

4 A. And initially I just missed a couple of
5 consecutive days or some days when I just couldn't make
6 it.

7 **Q. How many days -- I guess, what I'm trying to**
8 **figure out is what you're claiming for lost wages**
9 **related to that accident --**

10 A. Hm-hmm.

11 **Q. -- to put a dollar figure on it --**

12 A. Yes.

13 **Q. -- how much time you missed from work and what**
14 **kept you out of work? It sounds like you were working**
15 **five days but now you're only working four days a week**
16 **and you attribute that to the accident; is that**
17 **correct?**

18 A. Yes.

19 **Q. Do you have any statement of lost wages, tax**
20 **returns, W-2s, things like that, sick leave that you**
21 **put in at the Bell Fair that documents time that you**
22 **missed from work?**

23 A. I believe that Bell Fair would be able to document
24 the time I missed from work because I went from five to
25 four.

1 Q. Hm-hmm. At the time that this happened, you were
2 working in the club house?

3 A. Yes.

4 Q. And you were working five days a week?

5 A. Yes.

6 Q. Which days?

7 A. I worked Monday through Friday.

8 Q. Okay. And how many hours a day?

9 A. Eight and a half as a minimum, and other times
10 nine and a half.

11 Q. And how long had you been working in the club
12 house at the time this accident happened?

13 A. What year was that accident again?

14 Q. 2009. February of 2009?

15 MR. SANYAL: Yeah, February 25th, 2009.

16 THE WITNESS: 2009, so I was probably
17 working about two years, I would say.

18 BY MR. LIVOTI:

19 Q. You have been doing that for two years?

20 A. Yeah. I'm estimating. I'm not really good with
21 facts of time when I actually started there. Based on
22 the time now, I'm thinking that I'm just short of the
23 fifth year anniversary.

24 Q. Hm-hmm.

25 A. So --

1 Q. Okay. Yeah. So then you would have started there
2 about 2007; is that about right?

3 A. Yeah. I'm thinking about that.

4 Q. What was your rate of pay in the club house?

5 A. Well, I started out at \$12 and now I'm at, like,
6 \$12.97.

7 Q. Okay.

8 A. An hour.

9 Q. Right. You collect tips, too?

10 A. It's a non-tip location; no tips.

11 Q. All right. So as best you can tell, this accident
12 happened February 25th, 2009. How many days did you
13 miss from work directly because of this accident?

14 A. Well, at least every Monday since that accident.

15 Q. Hm-hmm.

16 A. At least that, and I'm guesstimating that I
17 probably lost another 30 to 60 days.

18 Q. Because of being out of work because of the
19 injuries?

20 A. Yes. Because I didn't feel well enough to make
21 it.

22 Q. When did you start going to a four-day week
23 schedule?

24 A. As best I can recall, I would think pretty close
25 to right after the accident.

1 Q. The accident happened February 25th of 2009; like
2 in March you went to a four-day schedule?

3 A. I would say maybe even February, but certainly
4 close to that time.

5 Q. Well, you're telling me that you went to a four-
6 day schedule because of your injuries; is that correct?

7 A. Yes.

8 Q. All right. Well, the accident happened on
9 February 25th; there were only three days left in
10 February. So when would you have gone to a four day
11 schedule because of this accident?

12 A. Probably around in March when I realized I
13 couldn't continue that five days.

14 Q. So going to a four-day schedule had nothing to do
15 with the Bell Fair's operation; it had nothing to do
16 with them cutting back on having shoeshine guys there
17 five days a week?

18 A. Absolutely not.

19 Q. Did they have somebody to replace you on the day
20 that you're not working?

21 A. They do now, but initially they did not.

22 Q. Okay. What is it about these injuries that
23 prevents you from working five days a week as opposed
24 to four days a week?

25 A. Well, basically fatigue.

1 Q. Hm-hmm.

2 A. My hand begins to swell.

3 Q. Hm-hmm.

4 A. My shoulder begins to hurt. The position that I'm
5 in, my is head down, neck gets stiff.

6 Q. Okay.

7 A. Back hurts.

8 Q. All right. You've got full retirement from the
9 NYPD?

10 A. Yes.

11 Q. What other sources of income did you have at the
12 time this accident happened other than your employment
13 at Bell Fair?

14 A. Just my pension -- not employment money, no.

15 Q. The term -- you had your pension, but then you
16 just -- the only other money you earned in terms of
17 work was at the Bell Fair?

18 A. Correct.

19 Q. Okay. Can you obtain those records from the Bell
20 Fair and get those to Mr. Houston so he can provide
21 those to us to document whatever you're claiming in
22 lost wages?

23 A. Break that down for me.

24 Q. Can you get W-2s, leave forms, anything that
25 documents your employment at the Bell Fair to support

1 your claim that you're no longer able to work-five day
2 weeks, where you got to take time off because of this
3 accident that documents your missed time for lost wages
4 that you're claiming?

5 A. I don't know if I can or not.

6 Q. Okay. Why? Because it doesn't exist?

7 A. Because what doesn't exist?

8 Q. Because the documentation doesn't exist?

9 A. I just don't know if it does or doesn't. I think
10 in terms, if I understand your question, me asking Bell
11 Fair to show documents that I went from five days to
12 four days?

13 Q. Hm-hmm.

14 A. When, well they can show that because of the
15 record in the pay scale will speak to that.

16 Q. Well, what about the time that you missed because
17 of this accident like leave slips or doctor's excuses
18 that kept you out of work? Did you keep any of that
19 stuff?

20 A. I'd have to research that.

21 Q. Here's what I'm getting at, Mr. Washington: I
22 asked you if you had any missed time from work.

23 A. Yeah.

24 Q. And you told me you did.

25 A. Yes.

1 Q. Myself and Mr. Sanyal, we're defending this case
2 and we're entitled to know what you're going to claim
3 in damages. I've got medical records and bills and
4 that's kind of easy. But if you're telling me that
5 you've missed time from work and you're putting a
6 dollar figure on that, I want to see if there is
7 anything to document it to see if you're able to
8 establish that you've had missed time from work.

9 Now, if you're not claiming any lost time or lost
10 wages because of this accident, we don't need to go
11 down that road. What I'm asking for is if you would
12 get that information to your attorney so he can get
13 that stuff to us.

14 A. Yeah, yeah.

15 Q. And any tax returns. I think we asked for tax
16 returns and stuff like that too. Can you get all those
17 things?

18 MR. LIVOTI: What I'd like to do,
19 Charles, if he can, is just keep the deposition
20 open for purpose of the --

21 MR. HOUSTON: No problem.

22 MR. LIVOTI: -- lost wage claim.

23 MR. SANYAL: Can we go off the record?

24 MR. LIVOTI: Sure.

25 (A discussion was held off the record.)

1 MR. LIVOTI: Let's just go back on the
2 record.

3 BY MR. LIVOTI:

4 Q. I'm probably not going to ask you too many
5 questions about that statement, Mr. Washington, but one
6 thing that just jumped out at me: The address that was
7 noted here was 623 Park Avenue SE, Aiken, South
8 Carolina. Were you ever living at that address?

9 A. Well, I live at both places.

10 Q. Okay. All right. So that address you gave me
11 this morning, the Bluffton address --

12 A. Is my most permanent address.

13 Q. Is that kind of like a vacation home or something
14 in Aiken, or do you-all just have two homes?

15 A. We have two homes.

16 Q. Okay. Let me just kind of finish up a little
17 background stuff. Are you-all a member of a church in
18 Beaufort?

19 A. Yes.

20 Q. What church?

21 A. First Lion Baptist Church.

22 Q. Are you a member of any clubs or social
23 organizations, JC Rotary or things like that?

24 A. American Legion Post 205.

25 Q. Are you active with that?

1 A. Yes. Well, no. I've got to pay my dues, but
2 basically I have to renew the dues this year and I
3 haven't done that.

4 **Q. I probably know the answer to this question.**
5 **Again, your background, but I ask it of everybody:**
6 **Have you ever been arrested or charged with a crime?**

7 A. No.

8 **Q. I didn't think so. Tell me a little bit about any**
9 **prior accidents that you might have been in, any prior**
10 **car accidents or workers' comp accidents where you**
11 **suffered any personal injury.**

12 A. I'm not certain. When I was in the police
13 department, I think 1972 or '73 --

14 **Q. Hm-hmm.**

15 A. -- I was -- I don't know if I was injured in the
16 scooter accident. I just can't get my hand on it. Or
17 I was injured by a person --

18 **Q. Hm-hmm.**

19 A. -- making an arrest. I was out of work for a
20 year.

21 **Q. And what part of your body got hurt?**

22 A. That was the neck.

23 **Q. The neck? Did you ever have to have any surgery?**

24 A. No surgery.

25 **Q. What was it that kept you out of work for a year?**

1 A. The neck problem. I had problems with my 7th and
2 8th vertebrae.

3 Q. Did you get diagnosed with a herniated disc or a
4 bulging disc or anything from that accident?

5 A. The best I recall -- I really can't recall. But
6 it was enough where I was out of work for over a year.

7 Q. Hm-hmm. What kind of symptoms did you have?

8 A. Pain in the neck.

9 Q. Did it radiate down into your arms?

10 A. In between my shoulder blades.

11 Q. But it didn't radiate down into your arms?

12 A. No, not that I recall.

13 Q. All right. Any other injuries?

14 A. Not that I can -- no.

15 Q. In answer to discovery, there was reference to
16 another prior accident in either 1999 or 2000 near
17 Willingston [sic], South Carolina?

18 A. Oh, yeah, yeah. Williamston.

19 Q. Yeah.

20 A. Yeah. Williamston.

21 Q. Williamston. It said -- I thought it was probably
22 Willingston. It said Williamston, but I was just
23 making sure.

24 A. Yeah.

25 Q. I was going to say, your response to discovery

1 **said it was a slight neck injury, went to the ER,**
2 **treated and released; anything more than that?**

3 A. No more than that, that I can recall.

4 **Q. All right. Since living in South Carolina in**
5 **1993, have you had a regular family doctor here?**

6 A. Yes.

7 **Q. Who's that?**

8 A. Gee. I forget his name.

9 **Q. It must not be very regular.**

10 A. No. He was good. He -- he -- he -- he left.
11 He -- he -- he went to California. I'm sorry. I can't
12 think of his name. He was really good. But the doc
13 who took over for him is John Burling.

14 **Q. Burling. So it's the same practice, you just have**
15 **a different doctor there?**

16 A. Yeah, a different doctor.

17 **Q. And it's John Burling?**

18 A. B-u-r-l-i-n-g.

19 **Q. And where does he practice?**

20 A. Right now he's in Okatie. He used to be in Sharon
21 Park.

22 **Q. What do you see him for?**

23 A. He's my general practitioner, so to speak, I
24 guess.

25 **Q. Other than this accident -- and I'm asking for**

1 **priors -- have you been hospitalized in the last five**
2 **years prior to this accident?**

3 A. Yes.

4 **Q. You have? For what?**

5 A. Yeah. I was treated for prostate cancer.

6 **Q. I mean, did you have actually have cancer,**
7 **prostate cancer?**

8 A. Yes.

9 **Q. Did that treatment go well for you?**

10 A. Yes.

11 **Q. Full recovery?**

12 A. Full recovery.

13 **Q. Good. Excellent. Anything else with the**
14 **hospitalization?**

15 A. Well, relative to that, just before the treatment
16 began, you know, you have to have a biopsy.

17 **Q. Hm-hmm.**

18 A. I got a staph infection, so I was in for 14 days
19 for that.

20 **Q. Okay.**

21 A. Other than that, no other hospitalizations that I
22 had.

23 **Q. Have you treated with a chiropractor before this**
24 **accident for anything related to your neck?**

25 A. Yeah.

1 Q. Who was that?

2 A. I had to see him recently. As a matter of fact.
3 Martin is his last name. He's in Bluffton.

4 Q. He's a chiro?

5 A. Yes.

6 Q. Is that the same chiropractor you went to see
7 because of this accident, or did you use a different
8 one?

9 A. Well, he's my chiropractor, so he's the guy I go
10 to.

11 Q. And would that have been for your neck?

12 A. My neck, yeah.

13 Q. That would have been -- when would have been the
14 last time you saw Dr. Martin before this accident; can
15 you remember?

16 A. I would say -- I'm guessing maybe a year.

17 Q. Okay. Any other doctors or medical providers that
18 you saw on a regular basis in the five years leading up
19 to this accident?

20 A. No.

21 Q. Have you had any accidents or injuries after this
22 accident?

23 A. No.

24 Q. Have you ever been a party to a lawsuit before?

25 A. No.

1 Q. Are there any restrictions on your driver's
2 license?

3 A. No.

4 Q. Is it still valid?

5 A. Yes.

6 Q. A South Carolina driver's license?

7 A. Yes.

8 Q. All right. Let's talk about the day of the
9 accident, which I had down as February 25th of 2009.
10 And I think it was in the very early morning hours of
11 that day; is that correct?

12 A. Yes.

13 Q. So it was actually on the 25th; is that right?

14 A. I'm not certain of the date, but it certainly was
15 early morning.

16 MR. SANYAL: The discovery says 25th at
17 21:00, so that would have actually been the late
18 hours of --

19 THE WITNESS: 21:00?

20 BY MR. LIVOTI:

21 Q. Yeah. Actually I think the day of the accident
22 may have been on the 26th of February, according to the
23 Bluffton Police Department report.

24 A. It says 06:00.

25 Q. Yeah. So the early morning hours?

1 A. On the 26th, yeah.

2 **Q. Tell me where you were headed that morning, what**
3 **you were intending to do.**

4 A. I was heading to work at the Bell Fair Property
5 Owner's Association.

6 **Q. Okay. And what time were you scheduled to be at**
7 **work?**

8 A. At 6:00 a.m.

9 **Q. And was that work in security or was that still**
10 **working in the club house?**

11 A. That was at the club house at that time.

12 **Q. Okay. Did you do anything else besides work at**
13 **the club house with the shoes, or did you do -- like,**
14 **work the carts, were you a starter for the golf or**
15 **anything like that?**

16 A. Oh, no, no, no, no. I do the shoes, the men's
17 locker room attendant.

18 **Q. Okay.**

19 A. Put their supplies in their lockers and things
20 like that.

21 **Q. All right.**

22 A. Made coffee, serve drinks.

23 **Q. So tell me what route you would take from your**
24 **home to get to Bell Fair.**

25 A. Well, I would come up Guerrard Avenue.

1 **Q. Hm-hmm.**

2 A. Make a -- I guess that would be going -- well,
3 come up Guerrard Avenue and turn onto 46, which is the
4 May River Road.

5 **Q. Hm-hmm.**

6 A. Then turn onto Buck Island Road.

7 **Q. Okay.**

8 A. And cross Buck Island Road, cross 278 straight
9 into Bell Fair.

10 **Q. So Bell Fair is right off of Buck Island Road?**

11 A. That is correct.

12 **Q. And I'm guessing that when you got up in the**
13 **morning, it was still dark out?**

14 A. Yes.

15 **Q. What kind of car were you driving?**

16 A. A 350Z 2005.

17 **Q. Okay. Nissan?**

18 A. Yes.

19 **Q. Tell me what you remember happening.**

20 A. I proceeded to work heading into a bend in the
21 road --

22 **Q. Hm-hmm.**

23 A. -- on Buck Island.

24 **Q. So you were actually already on Buck Island Road?**

25 A. Yes. Catching -- it's -- it's -- my vision of the

1 road kind of -- it just kind of disappeared.

2 **Q. Why is that?**

3 A. Because this object came across -- I didn't know
4 if it was going in or out. I couldn't actually
5 determine what it was at first.

6 **Q. Hm-hmm.**

7 A. I mean it happened so quick. And when I realized
8 that in the bend of the road that it was now on the
9 road --

10 **Q. Hm-hmm.**

11 A. -- because I thought maybe it was on the side at
12 first, but it was actually coming more into the road.

13 **Q. Hm-hmm.**

14 A. And my first thought was: "What's that?" And
15 bam. (Indicating.)

16 **Q. Okay. What happened next? Or what was it that**
17 **you -- when you said, "what was it and bam," what was**
18 **it that you hit?**

19 A. Well, subsequently I found out -- I recognized it
20 was a box truck, what they call a box truck.

21 **Q. Okay. Could you -- you said the road kind of**
22 **curves around?**

23 A. Yes, it does. It bends.

24 **Q. And is it bending to the right or to the left?**

25 A. It's bending to your left.

1 Q. Bending to your left?

2 A. It's bending to your left, yes, so you have to
3 kind of veer left.

4 Q. Did -- so you struck the rear of a box truck; is
5 that correct?

6 A. The side.

7 Q. The side of a box truck?

8 A. Yeah, the rear portion side of the box truck.

9 Q. Was the box truck in your lane of travel?

10 A. Yes.

11 Q. Was the entire truck in your lane of travel?

12 A. No.

13 Q. How much of the box truck was sticking in your
14 lane of travel?

15 A. As I recall at this point now, I can only say that
16 he was on the road.

17 Q. Hm-hmm.

18 A. And my vehicle went beyond the two rear tires of
19 the truck, sort of like where that tire lift is, is
20 what they call it --

21 Q. Hm-hmm.

22 A. -- caught up in there.

23 Q. Hm-hmm.

24 A. So I'd have to say at least a third of the truck
25 was in the road or had moved in the road, seeing it

1 was --

2 **Q. Hm-hmm. Did you see the truck -- was the truck**
3 **moving or --**

4 A. Well, yeah. I'm going to use the word apparently
5 it was moving, because at first I couldn't figure out
6 what was going on.

7 **Q. Hm-hmm.**

8 A. And you see something and you don't know what it
9 is.

10 **Q. Hm-hmm.**

11 A. And the road begins disappearing. So this thing
12 is there and I don't know if it's going back or
13 forward.

14 **Q. Hm-hmm.**

15 A. But my vision of the road is now gone.

16 **Q. Hm-hmm.**

17 A. You know, I'm trying to determine what's
18 happening. You don't have time because you can only
19 see. You want to react, but I didn't have a chance to
20 react. So I don't even know what it was. It was just
21 something that wasn't there, then it was there.

22 **Q. Hm-hmm.**

23 A. And it appeared to be coming into the road.

24 **Q. From where?**

25 A. From a driveway --

1 Q. Okay.

2 A. -- which was determined later on.

3 Q. Were there any lights on on the truck?

4 A. No, there were no lights.

5 Q. All right. I've got a piece of paper and a pen
6 here. If you could kind of sketch for me the road
7 where this happened and then where the truck was in
8 relation to your vehicle in the lane of travel and just
9 kind of explain to me, because I'm having a hard time
10 wrapping my head around what you're --

11 A. I don't draw very well, but I'll do my best.

12 First I'm going to try to make the bend.

13 Q. Okay.

14 A. (The Witness complies with the request.)

15 Q. Okay. Why don't you show me what you got here.

16 A. Okay. This is my vehicle. This is Buck Island
17 Road. (Indicating.)

18 Q. Okay. Two lanes, one lane each direction?

19 A. That is correct. This is my vehicle.

20 (Indicating.)

21 Q. All right.

22 A. This is the truck. (Indicating.)

23 Q. Okay.

24 A. That's the rear wheels. (Indicating.)

25 Q. Okay.

1 A. This is where I --

2 **Q. Pretty much hit the side of it between the rear**
3 **wheel and the --**

4 A. Well, this actually came into me (indicating) --

5 **Q. Okay.**

6 A. -- in that area. That's the collision point.

7 **Q. Okay.**

8 A. All right. I believe this is the driveway here.
9 (Indicating.)

10 **Q. Okay.**

11 A. I'm not certain if it's the same or -- well, I'm
12 not certain if it's the same driveway or even a
13 driveway or not, because there are houses here and some
14 houses here. (Indicating.)

15 **Q. Okay.**

16 A. And then there are houses over here. And this is
17 the bend in the road. (Indicating.)

18 **Q. Okay. The way you have drawn this indicates that**
19 **you're kind of coming up Buck Island Road and it's**
20 **still fairly straight. And as the road begins to curve**
21 **around, that's pretty much where the truck was; is that**
22 **correct? Or was this still a bend as you were coming**
23 **up there, too?**

24 A. Well, I think I was just getting into the bend.

25 **Q. Okay.**

1 A. I think I was just getting into the bend, so --

2 **Q. Okay. So how fast were you going?**

3 A. Well, the road up there, I would say I was going
4 anywhere between 30 -- 30, 40.

5 **Q. Do you know what the speed limit is on that road?**

6 A. It's 45.

7 **Q. All right. As you're -- as you're coming along**
8 **kind of a bend in the road, you think you see something**
9 **crossing the roadway or in the roadway? Explain that**
10 **to me again.**

11 A. It was hard for me to determine --

12 **Q. Right.**

13 A. -- because as I'm going up, you know, I'm picking
14 up something that is not normal.

15 **Q. Hm-hmm.**

16 A. Okay. It wasn't part of the, you know, like a
17 house or something. I'm just picking something up.

18 **Q. Hm-hmm.**

19 A. And before I can determine what this something was
20 and where it was going, as I'm starting into the bend,
21 I realize this something is not all the way over here
22 on my right, you see.

23 **Q. It's actually in the road?**

24 A. It's actually coming more into my vision even
25 though I'm sort of like turning away from it because of

1 the bend, it seems to be moving with me.

2 **Q. Okay. Was it actually moving or was it that you**
3 **just kind of think it was moving because your vehicle**
4 **was starting to make the left-hand turn in the bend?**

5 A. No, it was moving.

6 **Q. You thought it was actually moving?**

7 A. It was actually moving.

8 **Q. When you hit the truck, was it moving or had it**
9 **already stopped?**

10 A. It was moving.

11 **Q. The truck was moving?**

12 A. It was moving.

13 **Q. Okay. Where -- after you hit the truck, what**
14 **happened next?**

15 A. You know, could I do something here?

16 **Q. Yeah.**

17 A. If I may, if it's proper?

18 **Q. Okay.**

19 A. I'd like it to be understood that I didn't hit the
20 truck; the truck hit me.

21 **Q. Okay.**

22 A. It just feels much more comfortable.

23 **Q. All right. How did the truck hit you?**

24 A. The truck backed into the roadway.

25 **Q. Right. But your vehicle ran into the side of the**

1 truck.

2 A. I collided with the truck.

3 Q. Okay. Fair enough, but I mean the truck did not
4 -- the back of the truck didn't run into the side of
5 your car, correct? The truck was in the roadway and
6 you ran into the side of it?

7 A. Because they ran into the road.

8 Q. Okay.

9 A. Okay.

10 Q. So the collision -- after the collision occurred,
11 what happened?

12 A. After the collision occurred, the police were on
13 the scene.

14 Q. How long did it take them to get to the scene?

15 A. I have no idea.

16 Q. Did somebody call them?

17 A. I assume they did.

18 Q. Did you call them?

19 A. No, I did not.

20 Q. Did you get out of your car -- as soon as the
21 impact occurred, did you get out of your car?

22 A. No.

23 Q. Did you stay in your car?

24 A. I did get out of the car. The people assisted me
25 out of the car.

1 Q. Okay. Was that before the police arrived?

2 A. Yeah.

3 Q. Okay. When you -- who assisted you out of the
4 car?

5 A. I don't know.

6 Q. Was it somebody who lived on the road?

7 A. Yes.

8 Q. Did you see anybody driving the truck?

9 A. No.

10 Q. Okay. Did you see anybody leave the scene?

11 A. No.

12 Q. Okay. But your testimony is that the truck was
13 moving?

14 A. Yes.

15 Q. Were there any markings or anything identifying on
16 the truck, like any writing or anything like that that
17 you could see?

18 A. Not that I recall. I would only be making an
19 assumption.

20 Q. Okay. How long did it take the police to get
21 there?

22 A. I don't know.

23 Q. When the police got there, what did you tell them?

24 A. I don't recall what I -- what I --

25 Q. Do you remember him asking you anything or what he

1 **asked you?**

2 A. I don't recall what they asked me; I really don't.

3 **Q. Okay. What happened to your body inside the**
4 **vehicle after the impact?**

5 A. Well, I was smelling the airbags.

6 **Q. Did the airbag deploy?**

7 A. Yeah. The airbags deployed. And I'm smelling
8 this chemical or whatever is in the airbags.

9 **Q. Okay.**

10 A. And I started coughing. And that's when -- I
11 think it was a woman. I think it was a woman and a man
12 started to help me out of the car.

13 **Q. All right. So your airbags deployed and your face**
14 **would have hit the airbags?**

15 A. Yes. Yes.

16 **Q. And you had a seat belt on?**

17 A. Yes.

18 **Q. Anything else that you remember your body hitting**
19 **inside the car?**

20 A. Yeah, yeah. My hands. My right hand hit the --
21 the gear shift and the dashboard. My left hand hit the
22 dashboard, so both hands went forward.

23 **Q. Okay. What do you feel in terms of any injuries**
24 **immediately after the impact?**

25 A. My hands, right hand in particular.

1 Q. Hm-hmm.

2 A. My shoulder, chest. (Indicating.)

3 Q. You were just pointing to your right shoulder?

4 A. Yes.

5 Q. What else?

6 A. My neck, my back.

7 Q. Like your lower back?

8 A. Yes.

9 Q. Anything else?

10 A. As I recall, that was it.

11 Q. Okay. You said these people who were on the scene
12 helped you out of the car?

13 A. Yes.

14 Q. And you were just kind of walking around the
15 scene?

16 A. No. They kind of helped. They told me to come
17 down here and sit down.

18 Q. Okay. When the police got there, did he ask if
19 you needed an ambulance?

20 A. I don't recall him asking me that.

21 Q. Did you ask for one?

22 A. I don't -- no. I didn't ask, but one showed up.

23 Q. One did show up?

24 A. Yeah.

25 Q. And did you go to the hospital?

1 A. Yes.

2 Q. And what complaints did you have when you went to
3 the hospital?

4 A. Hands, neck, shoulder, back; I think that's about
5 it.

6 Q. Okay. Did they keep you overnight?

7 A. No.

8 Q. They discharged you that same day?

9 A. Yes.

10 Q. Did they do x-rays or any other tests or
11 diagnostic studies?

12 A. Yes, they did.

13 Q. What tests, do you remember?

14 A. They took x-rays.

15 Q. Of what part of your body?

16 A. My neck, my back, my hands, my shoulder.

17 Q. And what did you do after you got discharged?

18 A. I'm not certain, but I believe I went home.

19 Q. Okay. Who took you home?

20 A. I don't recall.

21 Q. Okay. Because your car was not drivable from the
22 scene, correct?

23 A. No, it was not.

24 Q. Do you remember what day of the week this was?

25 A. No.

1 Q. But it was a weekday --

2 A. Yes.

3 Q. -- because you were headed to work?

4 A. Yes.

5 Q. Do they not offer locker room attendants on the
6 weekends, or does somebody else do that?

7 A. No, they do all the week, seven days a week.

8 Q. Okay. But you just work five days a week?

9 A. That's correct.

10 Q. All right. Your testimony that you -- at the
11 time -- let me ask this question: At the time of the
12 impact between your vehicle and the truck, was the
13 truck moving or had it already stopped?

14 A. It was moving.

15 Q. It was still moving?

16 A. Yeah. The vehicle was moving.

17 Q. At the time you had the impact with it?

18 A. That's right.

19 Q. Okay. But you didn't see any driver?

20 A. No.

21 Q. You didn't see anybody leave the scene?

22 A. No.

23 Q. Do you know who was operating -- so you have no
24 idea who was operating the vehicle?

25 A. No, I don't.

1 **Q. Or how the vehicle got there?**

2 A. Personally, no. I just heard that vehicle was --
3 was taken.

4 **Q. Was stolen?**

5 A. Was stolen.

6 **Q. Okay.**

7 A. And that they didn't -- well, I understood that
8 the police found that the driver's side door was open
9 and they conducted a search.

10 **Q. When they got on the scene?**

11 A. When they got on the scene.

12 **Q. So did you have any follow-up conversations with**
13 **the police department, Bluffton Police Department or**
14 **any other police investigative agencies?**

15 A. Not with the police department that I recall.

16 **Q. Okay.**

17 A. I believe that I had a follow-up investigation
18 with the insurance company.

19 **Q. Okay. And learned that the vehicle had been**
20 **reported stolen?**

21 A. Well, initially, that it wasn't stolen; and then
22 later on in the next, I understand, interview, then it
23 was stolen. But initially my understanding is that the
24 vehicle was not stolen.

25 **Q. Okay. But you don't have any evidence of how the**

1 vehicle got there on the morning of the accident,
2 correct?

3 A. No, I do not.

4 Q. You don't know who was driving the vehicle at the
5 time the accident happened, correct?

6 A. No.

7 Q. You don't even know what company owned the
8 vehicle; is that right?

9 A. I do now, but not at the time, no.

10 Q. All right. But you know now it was Resort
11 Services Incorporated?

12 A. That's right.

13 Q. But you don't know anybody who was employed by
14 Resort Services Incorporated that was driving the car
15 at the time the accident happened, correct? But you
16 don't know who was driving the car?

17 A. Yeah. I don't know who was driving the vehicle.

18 Q. Okay.

19 A. I heard stories later.

20 Q. I only want to know what you know, and you don't
21 know, correct?

22 A. I don't know personally.

23 Q. What other follow-up medical treatment did you
24 have after getting discharged from the hospital?

25 A. I went down to see -- I went to see Dr. Tobin.

1 **Q. And who is he?**

2 A. I think he's a bone injury doctor. There were two
3 of them there. You'd go to one and then you'd go to
4 another and so forth to help treat you with your
5 injuries with your hands and different things like
6 that. And they did x-rays. And then I think what they
7 call a MIR or MRI for my head and neck --

8 **Q. Hm-hmm.**

9 A. -- and shoulder.

10 **Q. Did you ever go see Dr. Nivens?**

11 A. I think that's one of them, yeah.

12 **Q. What did they do for you?**

13 A. Well, actually what they did for me was really --
14 it's not funny. They examined me, number one.

15 **Q. Hm-hmm.**

16 A. They set up the appointment dates for me.

17 **Q. Okay. I'm listening.**

18 A. That's all they did for me.

19 **Q. All right.**

20 A. I wasn't there for them, but that's all they did
21 for me. They wanted me to do follow-up treatments.

22 **Q. Okay.**

23 A. Come for follow-up treatments. They wanted to
24 treat me.

25 **Q. Right.**

1 A. Okay.

2 Q. All right. Who else did you see besides Dr. Tobin
3 and Dr. Nivens?

4 A. The doctor with the MIR or MRI.

5 Q. MRI?

6 A. Yeah. They took some more in-depth scans, I guess
7 is what they called it.

8 Q. Hm-hmm.

9 A. That was it.

10 Q. Okay. When was the last time you had any medical
11 treatment for this accident?

12 A. Not since then.

13 Q. This accident happened on February 26th, 2009.

14 Can you say what the last day and month or year it was
15 that you had any medical treatment from this accident?

16 A. Probably just the last visit was with one of those
17 doctors.

18 Q. Who-all did you see related to this accident? You
19 went to the emergency room.

20 A. Hm-hmm.

21 Q. And then you went to see Dr. Tobin or Dr. Nevins.

22 A. Yes. And that's it.

23 Q. That's it? Okay.

24 A. Yeah.

25 Q. Have you gone to see -- you said you talked about

1 going to see your chiropractor; have you seen him for
2 anything related to this accident?

3 A. Yeah. Well, I didn't tell him it was related to
4 the accident, but my neck stiffens up, I go there.

5 Q. Okay.

6 A. And so I just do something with him.

7 Q. But you had problems with your neck before? I
8 mean you had seen a chiropractor before this accident,
9 right?

10 A. Yeah, I had.

11 Q. For problems with your neck?

12 A. Because, yeah, the neck would get tight.

13 Q. Is that all the way going back to your work injury
14 in the '70s?

15 A. No.

16 Q. It's just part of getting old?

17 A. Yes. A part of getting old.

18 Q. Mr. Washington, I've got medical records charges
19 of roughly \$10-11,000. There was a \$9,000 hospital
20 bill from Hilton Head Hospital; and then Dr. Tobin
21 looks like \$400; Dr. Nevins \$278; EMS \$819 and the MRI
22 at Bell Fair \$1,293. Does all that sound about right
23 to you in terms of the amount of medical treatment you
24 got from this accident?

25 A. Yeah, yeah.

1 Q. Are those bills still outstanding or have they
2 been paid by insurance?

3 A. They should be outstanding. I think I might have
4 paid -- I think I paid Nevins -- well, that's what they
5 sent me was the outstanding. I know I paid Tobin and
6 Nevins some monies, and they're quite expensive.

7 Q. Okay. Were you on health insurance at the time
8 this accident happened --

9 A. Yeah.

10 Q. -- through your retirement?

11 A. Yes.

12 Q. Okay.

13 A. Yes.

14 Q. And did you turn in any of those charges into that
15 health insurance company?

16 A. No.

17 Q. You did not?

18 A. No.

19 Q. Who was that health insurance company?

20 A. I'm with GHI Blue Shield Blue Cross New York.

21 Q. Okay. All right. So are there any other medical
22 providers or any other outstanding bills other than
23 those we just talked about?

24 A. Not that I can recall.

25 Q. Okay. Tell me what's wrong with you today that

1 **you attribute is still related to this accident.**

2 A. My shoulder and my hands.

3 **Q. Which shoulder? Your right shoulder?**

4 A. Right shoulder, right hand and my neck.

5 **Q. All right. What's wrong with your right shoulder**
6 **that you still contend is --**

7 A. I don't have the movement.

8 **Q. You have restricted range of motion?**

9 A. Yes.

10 **Q. What things can you or can't you do with your**
11 **right shoulder?**

12 A. I can't -- when you talk about the motion --

13 **Q. Hm-hmm.**

14 A. -- I can't raise it as high.

15 **Q. Hm-hmm.**

16 A. I can't flex it. I'm always trying to loosen it
17 up, that and the neck.

18 **Q. Do you have any restrictions on lifting?**

19 A. Oh, yeah, I can't. Well, I have to talk about the
20 hand, too.

21 **Q. Hm-hmm.**

22 A. So I can't lift what I used to lift.

23 **Q. Hm-hmm.**

24 A. I can't grip and hold things that way I used to
25 hold them. I can't throw a ball like I used to throw

1 the ball. I used to be an avid bowler. I can't grip
2 the ball and throw the ball the way I used to throw it.

3 **Q. Are you right-handed, I presume?**

4 A. I'm right-handed. I can't fish.

5 **Q. Okay.**

6 A. Everybody has to come and help me, you know
7 because I can't grip. The hands seem to pop.

8 **Q. Hm-hmm.**

9 A. They swell.

10 **Q. Hm-hmm. Now, are you still able to work as a**
11 **locker room attendant, but you are only doing that four**
12 **days a week?**

13 A. Yeah. It's a good place to work.

14 **Q. Sure. You can do these things, it's just they're**
15 **painful?**

16 A. That's right.

17 **Q. Okay. What other physical problems do you have**
18 **currently that you still attribute to the accident?**

19 A. Well, basically, you know, my neck, shoulder and
20 hand.

21 **Q. Hm-hmm.**

22 A. And it's on occasion my back. I just can't get
23 into those positions I used to get into for any long
24 period of time when I'm doing something, so --

25 **Q. Are you on any medication, prescription**

1 medication, for this accident?

2 A. No.

3 Q. Okay. Do you take anything over the counter?

4 A. What do they call -- I take cholesterol medicine,
5 Pravastatin or something like that.

6 Q. But nothing for this accident?

7 A. No.

8 Q. You're not taking regularly Aleve or Advil or
9 anything like that for this accident?

10 A. No.

11 Q. Okay.

12 A. No. Now do I take that? Yeah, I take it.

13 Q. Yeah.

14 A. Yeah.

15 Q. Do you take it pretty much every day?

16 A. Yeah.

17 Q. Okay. You told me about not being able to fish as
18 much, not being able to bowl as much, you lost one day
19 at work a week. What other activities do you like to
20 do before this accident that you can't do now because
21 of the accident?

22 A. Golfing.

23 Q. Did you golf?

24 A. Yeah. You know, I have special grips.

25 Q. They let you guys play out there at Bell Fair?

1 A. Yeah, they're pretty good. So I have to get large
2 grips because I can't close my hands the way I used to
3 and hold the club.

4 **Q. But you still play?**

5 A. See, I hadn't played in a little, but, no,
6 certainly not like I used to.

7 **Q. How often did you play?**

8 A. I used to play once a week, which I found out is
9 not a lot for a golfer.

10 **Q. Not a lot for retired golfers in Hilton Head.**

11 **That's probably a pretty light schedule.**

12 A. Yeah, yeah.

13 **Q. When was the last time you played?**

14 A. Well, it's been about a year. About -- let's see
15 this is '11 -- 2009.

16 **Q. Okay. After the accident?**

17 A. Yeah.

18 **Q. Okay.**

19 A. And the one for the American Legion functions for
20 the kids. Yeah.

21 **Q. I noted in the police report that was done that**
22 **you had a pistol in the car. Is that something you**
23 **just carried? You had your concealed weapons permit?**

24 A. Yes.

25 **Q. That was based on your --**

1 A. Yes.

2 Q. -- being a retired cop? That's something you
3 always carry around?

4 A. Hm-hmm.

5 Q. Okay. Anything else about this accident that you
6 want to tell me that we haven't talked about yet in
7 terms of how it's affected you?

8 A. Well, yeah. I never forget that feeling that I
9 have each time I go up that road.

10 Q. Hm-hmm.

11 A. It's -- it's there. And I just remember, being
12 thankful for how fortunate that I am.

13 Q. Hm-hmm.

14 A. Particularly when you look at the vehicle.

15 Q. Hm-hmm.

16 A. So I'm thankful to be here. You know, I travel
17 that road every day, but I'll never forget it.

18 Q. Hm-hmm.

19 A. It's just always on my mind and it just makes me
20 feel how blessed I am to still be here. And the other
21 thing is, is that -- I'm just so thankful I'm here.
22 And for what happened to me under those circumstances
23 is mind numbing. I was so lucky, so very lucky. I'm
24 thankful for that.

25 Q. Do you need to take a break?

1 A. I'm fine.

2 **Q. Okay. I'm about done.**

3 MR. LIVOTI: I think those are all the
4 questions with the exception of leaving the
5 deposition open for the lost wages, assuming
6 that's something you-all are pursuing. If you are
7 not pursuing it, then --

8 MR. HOUSTON: We'll -- we'll -- we'll
9 assist you in getting all the documents or
10 whatever. But I'll assist you in getting that
11 information.

12 MR. LIVOTI: Okay. All right.

13 MR. SANYAL: I have a few questions for
14 you, Mr. Washington.

15 EXAMINATION

16 BY MR. SANYAL:

17 **Q. Okay. Do you need to take a break?**

18 A. No, I'm fine.

19 **Q. This is not going to take very long.**

20 MR. HOUSTON: Let's take a two-minute
21 break.

22 (A short break was taken.)

23 MR. SANYAL: Back on the record.

24 BY MR. SANYAL:

25 **Q. Mr. Washington, I have a few questions for you as**

1 well. Do you have an eye doctor? Did you go to an eye
2 doctor?

3 A. No.

4 Q. Okay. What kind of glasses do you use?

5 A. Well, just some cheap \$4 reading glasses.

6 Q. Just reading glasses?

7 A. That's it.

8 Q. Do you have -- has your vision -- as you've gotten
9 older, has the vision gotten worse driving at night?

10 A. No.

11 Q. Okay. In other words, do you ever have trouble
12 driving at night seeing things in front of you?

13 A. No.

14 Q. Okay. When you -- do you remember talking to the
15 police that night, the night of the accident?

16 A. I do remember talking to the police the day of the
17 accident.

18 Q. Okay. Do you remember talking to them at that
19 time at the accident scene or at the hospital?

20 A. At the accident scene.

21 Q. Okay. And do you remember what you told them?

22 A. I told them that I had a firearm in the car.

23 Q. Okay. Did you tell them that the car was -- that
24 the truck was moving or did you tell them that the
25 truck was just in the roadway?

1 A. As I recall, I told them that truck was moving.

2 **Q. Okay. And if they put down something else, would**
3 **that be something they would be mistaken about?**

4 A. Absolutely.

5 **Q. Okay. Do you remember speaking to any of the**
6 **neighbors or the witnesses that came out to the scene?**

7 A. Not -- not exactly. I believe that I had some
8 conversation with the people who helped me out of the
9 car.

10 **Q. Okay. Did they tell you that they saw anything,**
11 **that they saw the car moving?**

12 A. Yeah.

13 **Q. What do you remember them telling you?**

14 A. I remember hearing in conversation; not that they
15 were telling me or perhaps when we were talking with
16 the police, but I remember a conversation about the
17 truck -- hearing the truck moving back and forth as if
18 it were stuck in the road with the wheels spinning,
19 that sort of talk. That the truck was seen during the
20 course of the night back and forth, that -- this part I
21 think I heard from the officer; I'm not certain, that
22 this truck was used or was carrying some metal or
23 something -- or something in it.

24 **Q. Okay. And these were just conversations --**

25 A. That I was hearing there.

1 Q. -- at the scene you heard people talking --

2 A. Yes.

3 Q. -- talking about it? Okay. But you testified
4 earlier you did not see anybody driving the truck.

5 A. No.

6 Q. And you didn't see anybody run away from the
7 scene?

8 A. No.

9 Q. Okay. Was the car still -- was the truck still
10 running when -- you know, when you got out of the car?

11 A. I don't recall.

12 Q. Okay. Did you go up to the driver's side of the
13 truck to see that the door was open?

14 A. I don't -- I don't believe I did, but I heard
15 that the door was open.

16 Q. Okay. And --

17 A. I think I heard that from the police.

18 Q. All right.

19 A. I don't think I did, but that's what I heard.

20 Q. Okay. And all the information about the car being
21 stolen, that is just something you heard about
22 afterwards?

23 A. Yes.

24 Q. Okay. And who did you hear about that from?

25 A. I believe it was the insurance adjustor.

1 **Q. Okay. And the truck was -- the front end of it**
2 **was in a driveway to a house?**

3 A. No. I'm not clear whether it was in a driveway or
4 not. See, I'm assuming because when you're coming into
5 a road that you're either coming out of a street into
6 the road or you're coming out of a driveway to the
7 road, so I'm making the assumption.

8 **Q. You're not sure about that?**

9 A. I'm not sure about that.

10 **Q. Okay. I think those are all the questions I have**
11 **for you.**

12 MR. SANYAL:. Anything else, Charles?

13 MR. HOUSTON: Yeah. I have a couple. I
14 just want to bring a couple of points out.

15 EXAMINATION

16 BY MR. HOUSTON:

17 **Q. Mr. Washington, relating back to the time that you**
18 **were injured when you were working at the New York**
19 **police department, you indicated during the deposition**
20 **that you incurred a neck injury at that time?**

21 A. Yes.

22 **Q. And that you were out of working for a period a**
23 **little over a year?**

24 A. Yes.

25 **Q. Did you file a workers' compensation claim at that**

1 **time?**

2 A. Let's put it like this. I don't think that I
3 filed it. I think because I was out of work, workers'
4 compensation automatically kicks in. You see, when you
5 are out of work and you get injured on the job, you get
6 your regular salary; and then however it works, you
7 also get paid workmen's compensation, which matches
8 your salary.

9 **Q. Hm-hmm.**

10 A. And I gave that money back.

11 **Q. Okay. Very well. I just wanted to know because**
12 **in one of the interrogatories it was asked had you ever**
13 **filed a prior claim. So that's why I asked you, you**
14 **know, was there a workers' compensation claim, did you**
15 **receive benefits, so that we would -- you would be**
16 **providing, you know, complete information.**

17 A. Yeah. Okay.

18 **Q. And about what year -- do you know about what year**
19 **that was?**

20 A. I think that was '75.

21 **Q. 1975. Do you recall --**

22 A. 1975, somewhere around there.

23 **Q. Do you recall that during the course of your**
24 **treatment for that injury if the doctor ever rendered**
25 **an opinion concerning your impairment rating or**

1 rendering a impairment rating for you?

2 A. Yeah. Yeah. Yeah, they did.

3 Q. Is there a particular office at NYPD where that
4 information can be obtained?

5 A. I don't -- I don't -- I'm sure there is, but I
6 just don't recall at this point. You'd have to notify
7 the medical unit to see what they have or you'd have to
8 go to the --

9 Q. With the personnel or --

10 A. -- whatever it is, the medical personnel.

11 Q. All right. The other thing I wanted to ask you so
12 we'll be complete in your responses, was the fact that
13 you said so far the doctors who have treated you,
14 you've had a cancer condition?

15 A. Yes.

16 Q. And was that cancer condition somewhat
17 contemporaneous to the time of the car accident?

18 A. No. Or you mean during that time period?

19 Q. Right.

20 A. Yeah. Yeah, it was.

21 Q. All right. And who treated you for this cancer
22 condition?

23 A. Dr. Perez.

24 Q. All right. And anyone else?

25 A. And I forget the other doctor's name. Dr. Perez

1 and Doctor -- it escapes me at this point because he's
2 out at Columbia, now. I think his name was Gelton
3 (phonetic).

4 **Q. Approximately how much was your medical**
5 **expenditures for that treatment?**

6 A. Over \$100,000.

7 **Q. And did your carrier, that is your carrier with**
8 **NYPD, that medical insurance, did they pay for those**
9 **expenses?**

10 A. I assume, yeah.

11 **Q. All right. Now, have you reached -- has any**
12 **doctor who had treated you told you whether you have**
13 **reached maximum medical improvement so far as to your**
14 **right hand?**

15 A. Oh, no.

16 **Q. And your right arm?**

17 A. No.

18 **Q. Have you been advised by your doctors that you**
19 **need further treatment?**

20 A. Oh, yeah.

21 **Q. Okay. Which doctor has so advised you?**

22 A. I believe both Nevins and Tobin.

23 **Q. All right. Given that they have advised you that**
24 **you need further medical treatment to reach maximum**
25 **healing, have you sought further treatment?**

1 A. No.

2 **Q. All right. Is there a reason why you haven't**
3 **sought further treatment?**

4 A. Well, number one, they're expensive. You know, my
5 plan -- these guys are, like, out of network. My plan
6 is not going to cover the expense. The charges, when
7 they see that you have health insurance, in my opinion,
8 become triple and quadruple of what the normal charge
9 would be, and I have to go in my pocket and pay. I
10 can't afford it. I can't afford it.

11 **Q. All right.**

12 A. And I have to leave work, all that other kind of
13 stuff, and then I can lose my job, so I just try to
14 work through it.

15 MR. HOUSTON: All right. I don't have
16 any further questions.

17 RE-EXAMINATION

18 BY MR. LIVOTI:

19 **Q. But you haven't been back to get any other**
20 **treatment?**

21 A. No.

22 **Q. What other treatment have these other doctors told**
23 **you you need?**

24 A. As I recall, they wanted to continue to examine
25 it. They wanted to help me get range of motion. They

1 wanted me to do a lot of things.

2 **Q. Hm-hmm.**

3 A. I haven't been there enough with them to get
4 really in detail about what it would take --

5 **Q. Hm-hmm.**

6 A. -- to make myself better.

7 **Q. Hm-hmm. Okay. Do you have any plans of going**
8 **back and getting additional treatment?**

9 A. I'm trying to work through it.

10 **Q. Trying to work through it, meaning you're trying**
11 **to work through the pain that you have and not go back**
12 **and get treatment?**

13 A. It all depends on how bad it gets.

14 MR. LIVOTI: Charles, what I would like
15 to do is adjourn the deposition not only for the
16 lost wage claim, but if he goes back and continues
17 to get additional treatment.

18 MR. HOUSTON: Sure.

19 MR. LIVOTI: We'll keep that open as well
20 in case it happens. If it does, we can ask any
21 questions about that.

22 And if you could sign this and date it
23 and we'll just make that Exhibit 1 of the
24 deposition.

25 (Defendant's Exhibit 1 (1 page),

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Hand drawn map
was marked for identification.)

(The Arthur Washington deposition
was concluded at 11:34 p.m.)

1 CERTIFICATE OF REPORTER

2
3 THE STATE OF SOUTH CAROLINA,)
4) SS:
5 DORCHESTER COUNTY,)

6 I, Naomi E. McCracken, a Computerized Stenotype
7 Reporter and Notary Public within and for the State of
8 South Carolina, duly commissioned and qualified, do
9 hereby certify that the within-named witness, ARTHUR
10 WASHINGTON, was by me first duly sworn to testify the
11 truth, the whole truth, and nothing but the truth in
the cause aforesaid; that the testimony then given by
him was by me reduced to Stenotype in the presence of
said witness, afterwards prepared and produced by means
of Computer-Aided Transcription to the best of my
ability and that the foregoing is a true and accurate
transcription of the testimony so given by him as
aforesaid.

12 I do further certify that this deposition was
13 taken at the time and place in the foregoing caption
14 specified, and was completed without adjournment.

15 I do further certify that I am not a relative,
16 employee of or attorney for any party or counsel, or
17 otherwise financially interested in this action.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 and affixed my seal of office at Summerville, South
20 Carolina on this 1st day of December, 2011.

21 -----
22 Naomi McCracken,
23 Computerized Stenotype Reporter
24 and Notary Public in and for
25 The State of South Carolina.

My Commission Expires October 4th, 2020

South Carolina
Department of Insurance

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

NIKKI R. HALEY
Governor

RAYMOND G. FARMER
Director

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

January 31, 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
21ST CENTURY INSURANCE COMPANY
ATTN General Counsel
21st Century Plaza, 3 Beaver Valley Road
Wilmington, DE 19803

14 FEB 10 PM 3:02
BEAUFORT COUNTY S.C.
CLERK OF COURT

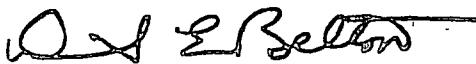
Dear Sir

On January 31, 2014, I accepted service of the attached Amended Summons and Amended Complaint on your behalf. I am, hereby, forwarding that accepted process on to you pursuant to the provisions of S.C. Code Ann. § 38-5-70. By forwarding accepted process on to you, I am meeting a ministerial duty imposed upon me by S.C. Code Ann. § 38-77-150. I am not a party to this case. The State of South Carolina Department of Insurance is not a party to this case. The claimant, within this service letter, provided the following additional information regarding this first party claim: POLICY/CLAIM NUMBER 668856. It is important for you to realize that service was effected upon your insurer on my date of acceptance for service.

You must promptly acknowledge in writing your receipt of this accepted process. When replying, please refer to File Number 154122, Arthur Washington v. Resort Services, Inc., et al., 2011-CP-07-0001.

By

Sincerely Yours,



David E. Belton
Senior Associate General Counsel
(803)737-6132

Raymond G. Farmer
Director
State of South Carolina
Department of Insurance

Attachment

CC. William F. Barnes III
Post Office Box 457
Hampton, SC 29924-0457

Megan Davis

From: Robert Sansbury <robert.sansbury@mgclaw.com>
Sent: Friday, May 09, 2014 10:09 AM
To: 'Kinard, J. Ernest Jr. Law Clerk (Kyle Tennis)', Megan Davis
Cc: 'cnickels@clawsonandstaubes.com', 'charles@houstonlawfirm.net', 'Anthony W. Livoti (awlivoti@murphygrantland.com)', Sharon Strubel, 'AGarvin@murphygrantland.com', William Barnes
Subject: RE: Washington v. Resort Services, et al

Judge.

I have read through Plaintiff's motion and memorandum, and I do not believe a reply memorandum is necessary at this time. Instead, I'd like to address a few points very briefly in this email. **At its core, our Motion to Dismiss is very straightforward – Plaintiff added a party after the Statute of Limitations, which is improper.** The arguments to the contrary are red herrings.

Plaintiff's 59(e) motion to reconsider

To the extent Plaintiff's Motion rehashes old arguments, I believe that my prior Motion, Memorandum, and the Court's Order adequately address all the points raised in Plaintiff's Motion to Reconsider, and I would ask that the Court deny the Motion. As for the new issues raised, those were not addressed at oral argument or in previous court filings, so I would argue they are not proper to now raise in a Rule 59 Motion. Regardless, I think the Court's Order addresses all of these points thoroughly.

Plaintiff's Motion to change certain language in the Order

- (1) The language regarding the fact that the Notice of Appearance was filed on behalf of **both** the UIM carrier and Defendant, Resort Services should be left as is – to omit the fact that Mr. Sanyal filed a conditional answer on behalf of Resort Services and reserved the right to defend Resort Services (as Plaintiff suggests) would be a misstatement of fact, and contrary to the UIM statute.
- (2) The language that 21st Century Insurance did not have proper notice of the lawsuit **naming John Doe** (not "the lawsuit as a whole") prior to the statute running should be left as is – to omit this is also a misstatement of fact.
- (3) The brief language regarding the suspension of Mr. Houston's law license should be left as is because Plaintiff addressed this in oral argument when he recited the facts of the case.

Thanks, and please let me know if you need anything more formal from my office, or a hard-copy of this email. We again request that the Court decide the issue on the briefs.

- Robert

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July 9, 2014

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Asst Email: mdavis@pmped.com

M. Rebecca Hill
522 Dowling Avenue
Walterboro, SC 29488

Re: *Washington v. Resort Services, Inc., et al.*
Civil Action No.: 2011-CP-07-0001

Becky
Dear Rebecca:

Plaintiff's Motion for Entry of Default and Defendant's Motion to Dismiss was heard April 8th, 2014 in Beaufort County before Judge Kinard. As the court reporter for this hearing, we would appreciate you furnishing us with a copy of the complete transcript as soon as conveniently possible. If you need any additional information, please let us know.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd
Enclosures as stated

cc: Robert R. Sansbury, III, Esquire
Alice P. Adams, Esquire
Christopher W. Nickels, Esquire

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Email: wbarnes@pmped.com
Asst. Email: dbordeaux@pmped.com

The Honorable Jeri Ann Roseneau
Beaufort County Clerk of Court
Post Office Drawer 1128
Beaufort, SC 29901

Re: Washington v. Resort Services, Inc., et al.
C/A No.: 2011-CP-07-0001

Dear Ms. Roseneau:

Enclosed please find two copies of Plaintiff Arthur Washington's Notice of Appeal with regard to the above referenced matter. Please file one copy and return a clocked copy to me in the self-addressed, stamped envelope also enclosed.

By copy of this letter, I am serving all counsel of record with a copy of this letter.

With kind regards, I am

Sincerely,


William F. Barnes, III

WFB/dmb
Enclosures
cc: Robert R. Sansbury, III, Esquire
Alice P. Adams, Esquire
Christoher W. Nickels, Esquire
Charles E. Houston, Jr., Esquire

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The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
Post Office Box 11629
Columbia, SC 29211-1629

Re: *Arthur Washington v. Resort Services, Inc. and John Doe*
Civil Action No.: 2011-CP-07-0001

Dear Ms. Kitchings:

Enclosed for filing in your office, please find the original and two copies of the Notice of Appeal in the above entitled matter. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondents;
2. A copy of the orders which are being challenged on appeal;
3. Our firm's check in the amount of \$100.00 for the filing fee; and
4. A copy of the letter filing the notice of appeal with the lower court.

Once this has been filed, please return a clocked copy in the enclosed self-addressed stamped envelope.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/dmb

cc (w/enclosures): Robert R. Sansbury, III, Esquire
Alice P. Adams, Esquire
Christopher W. Nickels, Esquire
Charles E. Houston, Jr., Esquire

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The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
Post Office Box 11629
Columbia, SC 29211-1629

Re: *Washington v. Resort Services, Inc., et al.*
Civil Action No.: 2011-CP-07-0001
Appellate Case No. 2014-001409

Dear Ms Kitchings:

Please be advised the transcript of hearing ordered from M. Rebecca "Becky" Hill, the court reporter who covered the motion hearing in the above-referenced matter, was received on July 11th, 2014

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd

cc: Robert R. Sansbury, III, Esquire
 Alice P. Adams, Esquire
 Christopher W. Nickels, Esquire
 SC Court Administration

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

J. Ernest Kinard, Jr., Circuit Court Judge

Case No.: 11-CP-07-0001

Arthur Washington,..... Appellant,

-v-

Resort Services, Inc. and John Doe,..... Respondents.

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the Appellant, Arthur Washington ("Washington"), appeals the trial court's order filed May 2, 2014 granting Defendant, John Doe's motion to dismiss and denying Washington's motion for entry of default. Washington also appeals the trial court's order denying the motion to alter or amend pursuant to Rule 59(e), SCRCR. Appellant received notice of the order denying the motion to alter or amend on June 5, 2014.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

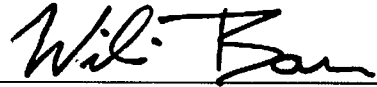
Charles E. Houston, Jr., Esquire
THE HOUSTON LAW FIRM, LLC
31 Marshland Road
Hilton Head Island, SC 29926

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

June 27, 2014
Hampton, SC

BY:



William F. Barnes, III
101 Mulberry Street, East
P.O. Box 457
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Phone: (803) 943-2111
Email: wbarnes@pmped.com

Other Counsel of Record:

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Christopher W. Nickels, Esquire
CLAWSON & STAUBES, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492

ATTORNEYS FOR RESPONDENTS

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No · 2011-CP-07-0001

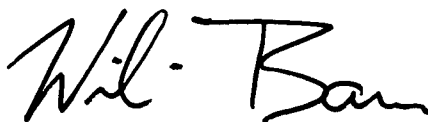
Arthur Washington, ... Appellant,

-v-

Resort Services, Inc. and John Doe, ... Respondents.

CERTIFICATE OF COUNSEL

The Undersigned 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



William F Barnes, III, Esquire
PETERS, MURDUAGH, PARKER, ELTZROTH,
& DETRICK, P.A
101 Mulberry Street East
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Phone· (803) 943-2111

-And-

RECEIVED

FEB 26 2015

SC Court of Appeals

Charles E. Houston, Jr., Esquire
31 Marshland Road
Hilton Head Island, SC 29926

ATTORNEYS FOR APPELLANT

February 18, 2015

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No.: 2011-CP-07-0001

RECEIVED

FEB 26 2015

SC Court of Appeals

Arthur Washington, ... Appellant,

-v-

Resort Services, Inc. and John Doe, ... Respondents.

CERTIFICATE OF SERVICE

This is to certify that I, **Megan C. Davis**, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P A., Attorneys for the Appellant, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within the ***Amended Record on Appeal with Certificate of Counsel*** to:

Robert Sansbury, III, Esquire
Helen Faith Hiser, Esquire
MCANGUS, GOUDELOCK & COURIE, LLC
735 Johnnie Dodds Blvd , Suite 200
Mount Pleasant, SC 29464

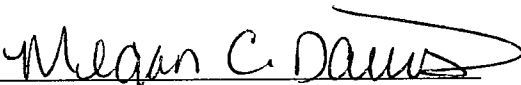
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Megan C. Davis

February 18th, 2015
Hampton, South Carolina