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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

RECEIVED
AUG 11 2015
SC Court of Appeals

Case No. 2012-CP-06-00326

Henry Lee Carroll, II Appellant,
Henry Lee Carroll, II v. Appellant.
Alex Webb Causey and Stacey Jenkins, Defendants.
Of Whom Stacey Jenkins is the Respondent.

RECORD ON APPEAL

July 21, 2015

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

Henry Lee Carroll, II,)
)
Plaintiff,)
)
vs.)
)
Alex Webb Causey and John Doe,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-06-326

FRANCIS D. McELREEN
CLERK OF COURT
BARNWELL COUNTY, S.C.


2014 JUL -2 PM 3:55

FILED FOR RECORD


ORDER

Plaintiff moves for the substitution of Stacey Jenkins for Defendant John Doe. The motion is granted.

After due deliberation and review of the case law and arguments of counsel, the Court finds Rule 15, SCRCP allows a party to amend his pleadings to change a party against whom a claim is asserted when the amended pleading refers to the same transaction or occurrence and the party to be brought in "(1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him." The Court finds that justice requires the Plaintiff be allowed to substitute parties in this case, and that the new defendant will not be prejudiced. Therefore, the motion is granted and Stacey Jenkins is substituted as a Defendant for John Doe.



The Honorable Edgar W. Dickson
Circuit Court Judge

, South Carolina

June 26, 2014

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CERTIFICATE OF SERVICE BY MAIL

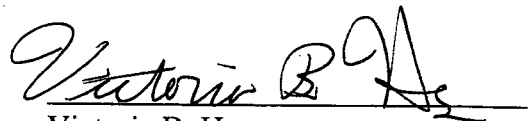
I, the undersigned employee of E. T. Moore, Jr., attorney for the Plaintiff in the foregoing action, (Henry Lee Carroll, II vs. Alex Webb Causey and John Doe, Case No.: 2012-CP-06-326), certify I served an Order dated June 26, 2014 on the date shown below by mailing a copy of the same via first class, U.S. mail, postage prepaid, to the person listed below:

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319 Washington Street
Post Office Box 160
Barnwell, South Carolina 29812
(803) 259-2021

Barnwell, South Carolina
July 2, 2014

000003

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF BARNWELL)

SECOND JUDICIAL CIRCUIT)

CASE NO.: 2012-CP-06-326)

Henry Lee Carroll, II)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

Alex Webb Causey and John Doe)

Defendant.)

FILED FOR RECORD
2014 JUL -2 PM 3:55
RHONDA D. McELTEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Plaintiff's Attorney: <u>E. T. Moore, Jr., Bar No. _____</u> Address: <u>PO Box 160, Barnwell, SC 29812</u> Phone: <u>803-259-2021</u> Fax <u>803-259-0208</u> E-mail: <u>MORLAW@AOL.COM</u> Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
--	---

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: YES/ NO

SECTION II: Motion/Order Type

Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant Date submitted _____

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____

EXEMPT:

(check reason)

Rule to Show Cause in Child or Spousal Support

Domestic Abuse or Abuse and Neglect

Indigent Status State Agency v. Indigent Party

Sexually Violent Predator Act Post-Conviction Relief

Motion for Stay in Bankruptcy

Motion for Publication Motion for Execution (Rule 69, SCRCP)

Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

Henry Lee Carroll, II,

Plaintiff,

v.

Alex Webb Causey and Stacey Jenkins,

Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-06-00326

ORDER

2014 SEP 18 PM 3:41
RICHARD B. CLAYTON
CLERK OF COURT
BARNWELL COUNTY, S.C.

This matter came before the Court on September 8, 2014 at a hearing on Defendant Stacey Jenkins' Motion to Dismiss. Present at the hearing were Tim Moore, Esquire, counsel for the Plaintiff; Andy Yoho, Esquire, counsel for Defendant Stacey Jenkins; and Anthony Livoti, Esquire, counsel for Defendant Alex Webb Causey. Also present but not participating were Julian Allen, Esquire, for Titan Insurance; and Ray Turner, Esquire, for Progressive Insurance. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, the Motion to Dismiss is **GRANTED**.

FACTS

This matter arises from a motor vehicle accident where Plaintiff was a passenger in a car allegedly driven by Defendant Causey on September 28, 2009. Plaintiff claims that Causey and another car collided while participating in a drag race. The driver of the other car was unknown at the time the suit was commenced. Therefore, on September 28, 2012, Plaintiff filed a Summons and Complaint and named Alex Webb Causey and John Doe as defendants. Defendant Jenkins was deposed on October 8, 2013. Subsequently, on March 19, 2014, Plaintiff filed a Motion for an Order Substituting Jenkins for Doe. The basis of the motion was "the discovery conducted thus far in this case to include the deposition of Stacy Jenkins." An Order was signed on June 26, 2014 and filed July 2, 2014 granting this motion and allowing Jenkins to be substituted for Doe. An Amended Summons and Complaint were filed July 9, 2014 with Jenkins substituted for Doe as a defendant. Jenkins filed an Answer on August 12, 2014, reserving a right to file a motion to dismiss pursuant to Rule 12, SCRPC, which is proper under the South Carolina Rules of Civil Procedure. Jenkins filed this Motion to Dismiss on August 19,

and #1

2014 claiming that Jenkins should be dismissed pursuant to Rule 12(b)(6), SCRCPP, for failure to state a cause of action and because the statute of limitations expired before he was made a party.

STANDARD OF REVIEW

When deciding a motion to dismiss, the question to be considered is whether, in a light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007); *Overcash v. South Carolina Elec. & Gas Co.*, 364 S.C. 569, 614 S.E.2d 619 (2005). "A motion to dismiss should not be granted if facts alleged and inferences reasonably deductible therefrom would entitle the plaintiff to any relief on any theory of the case." *Slack v. James*, 356 S.C. 479, 483 S.E.2d 772, 773-774 (Ct. App. 2003). Where allegations of the complaint give rise to competing inferences on a question of material fact, dismissal under Rule 12(b)(6) is not appropriate. *Camp v. Springs Mortgage Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 306 (1993).

DISCUSSION

As a preliminary matter, Plaintiff objected at the hearing to the Court considering an affidavit Jenkins filed on September 8, 2014 because the only the allegations set forth in the Plaintiff's Complaint may be considered when ruling on a motion to dismiss pursuant to Rule 12(b)(6), SCRCPP and because they were not timely served. This Court agrees that the affidavit is not proper for consideration on a motion to dismiss, and it did not consider the affidavit in making this ruling.

Additionally, Jenkins did not argue at the hearing or in its memorandum to the Court regarding dismissal for failure to state a cause of action. Based upon a review of the pleadings, Plaintiff's Amended Complaint clearly contains the required elements for recovery. Therefore, the motion to dismiss on these grounds is denied.

The primary point of contention regarding the Motion to Dismiss is whether the claims against Jenkins should be dismissed because the statute of limitations expired before he was made a party and whether the Amended Complaint relates back to the original Complaint such that Jenkins was appropriately substituted as a party. Plaintiff argues that the July 2 Order properly substituted Jenkins for Doe.

The statute of limitations for a personal injury cause of action is three years. See S.C. Code Ann. § 15-3-530(5). Under S.C. Code Ann. § 38-77-180, an injured party may file suit against an unknown owner or driver of a vehicle so that the injured party may collect uninsured

motorist's insurance. However, the bringing of an action against the unknown owner or operator as John Doe or the conclusion of that action does not constitute a bar to the insured from bringing an action against the owner or operator previously proceeded against as John Doe if the identity of the owner or operator who caused the injury or damages complained of becomes known. S.C. Code Ann. § 38-77-180. In the present case, Plaintiff believes the identity of the John Doe to be Jenkins and replaced Doe with Jenkins in an Amended Complaint. However, Jenkins claims that Plaintiff's filing the case originally against John Doe does not toll the statute of limitations for filing an action against Jenkins, and since the substitution was made nearly five years after the date of the accident, the action against Jenkins is barred pursuant to the statute of limitations.

The Court of Appeals dealt with a similar issue in *Jackson v. Doe*, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000). In that case, Jackson, an automobile accident victim, brought suit against John Doe as the unknown driver. *Jackson*, 342 S.C. at 554, 537 S.E.2d at 568. Almost four and a half years later, the court allowed Jackson to add an alleged driver, Milligan, as a second defendant while retaining John Doe as a named party. *Id.* In analyzing whether serving John Doe tolled the applicable statute of limitations for Milligan, the Court of Appeals stated that "there is no provision specifically allowing John Doe and a later added or *substituted party* to be considered the same entity for purposes of tolling the statute of limitations. That fact, coupled with the fact that there is no mention of the statute of limitations and its relationship to any subsequent action against a later identified tortfeasor, leads to the inescapable conclusion that each statute must be separately construed and enforced according to its plain language." *Id.* at 555, 537 S.E.2d at 569 (emphasis added). Therefore, pursuant to *Jackson*, the statute of limitations is not tolled.

The Court of Appeals then addressed the question as to whether the amendment related back to the original complaint pursuant to Rule 15(c), SCRPC. Under Rule 15(c), SCRPC, "[a]n amendment changing the party against whom a claim is asserted relates back if ... within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him." The *Jackson* Court applied a four-part test set forth in *Hughes v. Water World*

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Water Slide, Inc. to analyze this issue. The four-part test allows the substitution of a party to relate back to the original complaint as follows:

- (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 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.

Hughes v. Water World Water Slide, Inc., 314 S.C. 211, 214, 442 S.E.2d 584, 586 (1994). The Court of Appeals held that because Milligan was not technically substituted for Doe, but was rather the added as a party, the four-part test was inapplicable to the facts. *Jackson*, 342 S.C. at 558, 537 S.E.2d at 570. However, the Court clearly stated “[h]ad Jackson *substituted* Milligan for John Doe..., then the amendment should have been analyzed in light of the requirements of Rule 15(c) as set forth in *Hughes* for a determination of whether the amended complaint properly related back to Jackson’s original action.” *Id.* at 558-59, 537 S.E.2d at 570 (emphasis added).

Pursuant to the *Jackson* case, the filing of a John Doe action does not toll the statute of limitations as to the alleged “real tortfeasor;” rather, that person must be sued within the confines of the applicable statute of limitations. Accordingly, Stacey Jenkins was not substituted as a party to this action until nearly five years after the accident occurred. Under the discovery rule, “the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct.” *Graham v. Welch, Roberts & Amburn, LLP*, 404 S.C. 235, 239, 743 S.E.2d 860, 862 (Ct. App. 2013) (internal citation omitted). In the case at hand, Plaintiff was aware of the cause of action against Jenkins on the date of the accident, and the statute of limitations therefore expired on September 28, 2012. Additionally, other states have specifically addressed the issue of whether the statute of limitation is tolled when a John Doe served in their statutes. *See, e.g.*, Va. Code Ann. § 38.2-2206(G) (providing that bringing an action against an unknown owner or operator as John Doe tolls the statute of limitations). If the South Carolina legislature had intended what Plaintiff argues, it could have clearly provided such in our statutes. It did not; therefore, the Court of Appeals reasoning in *Jackson* is affirmed.

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Furthermore, under Rule 15(c), SCRPC, Plaintiff's substitution of Jenkins as a defendant does not relate back to the original complaint. Because Jenkins was substituted for Doe, pursuant to *Jackson*, the four-part *Hughes* test should be applied. The fourth requirement of the test is that Jenkins is required to have had notice of the claims within the applicable statute of limitations. The statute of limitations expired September 28, 2012. Jenkins was not made aware of the action until his deposition on October 8, 2013, well after the running of the original statute of limitations. Accordingly, by not having notice of the action prior to the running of the statute of limitations, the substitution of Jenkins as a defendant does not relate back to the original complaint. The claims against Jenkins must be dismissed.

Plaintiff argues that the July 2 Order allowed for the substitution of Jenkins for Doe, and no party filed a motion for reconsideration of this order, making it the law of the case. However, until service of the Amended Summons and Complaint, Jenkins was not a party to the case, and therefore could not have asked for a reconsideration of the July 2 Order. Substitution of a party defendant does not prevent that party from raising any applicable defenses to the claims brought against him. It would not be just to allow the July 2 Order to foreclose the rights of Jenkins to assert his defense. Additionally, under Rule 12, SCRPC, it is proper to raise the defense of statute of limitations in an answer.

ORDER

For the reasons stated above, it is therefore **ORDERED** that Defendant Stacey Jenkins' Motion to Dismiss is **GRANTED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
September 11, 2014

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STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

IN THE COURT OF COMMON PLEAS)
SECOND JUDICIAL CIRCUIT)

Henry Lee Carroll, II,)

Civil Action No.: 2012-CP-06-00326)

Plaintiff,)

v.)

ORDER)


Alex Webb Causey and Stacey Jenkins,)

Defendants.)

FILED FOR RECORD
2014 OCT 29 PM 3:50
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

This matter comes before the Court on Plaintiff's Motion for Reconsideration and to Alter or Amend Judgment. A hearing on Defendant Stacey Jenkins' Motion to Dismiss was held on September 8, 2014. Thereafter, an Order was filed on September 18, 2014 granting the motion. Plaintiff filed this Motion for Reconsideration and to Alter or Amend Judgment pursuant to Rule 59(e), SCRPC, on September 29, 2014. After careful consideration of the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Plaintiff's Motion for Reconsideration and to Alter or Amend Judgment. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

October 23, 2014
Columbia, South Carolina

Rec. 11-3-14

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF BARNWELL

CASE NO: 2012CP0600326

IN THE COURT OF COMMON PLEAS

Henry II Carroll vs. Alex Webb et al Causey

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a),
 - SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy:
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

Order Denying Motion for Reconsideration

Dated at Barnwell, South Carolina, this 29th day of October, 2014.

Court Reporter:

S/ Alison R. Lee

PRESIDING JUDGE - Alison Renee Lee

This judgment was entered on the 23rd day of October, 2014, and a copy mailed first class this 31st day of October, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

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29812

Anthony W. Livoti PO Box 6648 Columbia, SC
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Michael T. Coulter PO Box 6728 Greenville, SC
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James Martin Harvey Jr. 110 Main St. PO Box 705
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Robert W. Achurch III PO Box 40 Beaufort, SC
29901

Clarissa Warren Joyner 1259 Amelia St., Ste., A
PO Box 1724 Orangeburg, SC 29115

(1C in
Coulter
box)

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Constance B. Mansfield

~~Rhonda Dale McElveen~~ - Clerk of Court

Constance B. Deputy
Mansfield

COUNTY OF BARNWELL

Henry Lee Carroll, II,

Plaintiff(s)

vs.

Alex Webb Causey and John Doe

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 06-326

Submitted By: E. T. Moore, Jr.
Address: Post Office Box 160, Barnwell, SC 29812

SC Bar #: 12500
Telephone #: 803-259-2021
Fax #: 803-259-0208
Other:
E-mail: MORLAW@AOL.COM

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20-CP-, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

FILED FOR RECORD
2012 SEP 28 PM 3:08
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Submitting Party Signature:

[Handwritten Signature]

Date: 9-28-12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRP Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that this document constitutes a true and correct copy of the original documents which have been filed in my office.

Rhonda D. McElveen
Clerk of Court, Barnwell County, SC
By: [Signature] Date: 9-28-12

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO.: 2012-CP-06-326

Henry Lee Carroll, II,)
)
Plaintiff,)

vs.)

Alex Webb Causey and John Doe,)
)
Defendants.)

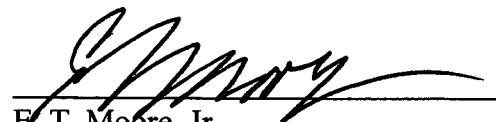
SUMMONS

FILED FOR RECORD
2012 SEP 28 PM 3:08
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action. A copy of the Complaint is attached to this Summons and is herewith served upon you. Your Answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your Answer must be filed with the Court and served upon the undersigned attorney for the Plaintiff within thirty (30) days after the service hereof, exclusive of the day of service, at 319 Washington Street, Post Office Box 160, Barnwell, South Carolina 29812

YOU ARE HEREBY GIVEN NOTICE FURTHER THAT, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.


E. T. Moore, Jr.
Attorney for the Plaintiff
319 Washington Street
Post Office Box 160
Barnwell, South Carolina 29812
(803) 259-2021

Barnwell, South Carolina
September 28, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO.: 2012-CP-06-326

Henry Lee Carroll, II,)
)
Plaintiff,)

vs.)

Alex Webb Causey and John Doe,)
)
Defendants.)

COMPLAINT
(Jury Trial Demanded)

FILED FOR RECORD
2012 SEP 28 PM 3:08
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Plaintiff would respectfully show unto this Court as follows:

1. Plaintiff is a citizen and resident of Barnwell County, South Carolina.
2. Defendant Alex Webb Causey is a citizen and resident of Barnwell County, South Carolina.
3. Upon information and belief, Defendant John Doe is a citizen and resident of Barnwell County, South Carolina and an unknown operator of a vehicle involved in an automobile accident with the Plaintiff on September 28, 2009
4. On September 28, 2009 Plaintiff was severely injured in an automobile wreck while a passenger in a vehicle driven by Defendant Alex Webb Causey. Upon information and belief, Defendant Alex Webb Causey and Defendant John Doe were engaged in an automobile race on South Carolina Highway 37 in Barnwell County, South Carolina. The reckless behavior by Defendant Alex Webb Causey and Defendant John Doe caused Defendant Causey to loss control of his vehicle, to leave the roadway, and to overturn several times. Plaintiff was severely injured as a result of the negligent and reckless acts of Defendant Alex Webb Causey and Defendant John Doe.

5. As a result of this incident, Plaintiff suffered grievous and serious bodily injuries, was given treatment and will continue to receive treatment.

6. The wreck and resulting injuries to the Plaintiff occurred as a direct and proximate result of the negligent, careless, reckless, willful and wanton acts and delicts of the Defendant Alex Webb Causey in the following particulars to wit:

a. In operating his vehicle at a rate of speed which was excessive for the circumstances then and there prevailing.

b. In failing to maintain a proper lookout.

c. In failing to maintain proper control of his vehicle.

d. In driving too fast for conditions.

e. In failing to properly observe the road and traffic conditions.

f. In operating his vehicle in an unlawful and reckless manner.

g. In operating his vehicle without due regard for the rights of others, especially the Plaintiff herein.

h. In failing to exercise due care under the circumstances then and there prevailing to avoid injury and damage to others, especially the Plaintiff herein.

i. In operating a vehicle, or allowing a vehicle to be operated that was in a dangerous or unsafe condition.

All of the above are in violation of the common and statutory laws of the state of South Carolina and the Rules and Regulations promulgating by the South Carolina Department of Transportation.

7. The wreck and resulting injuries to the Plaintiff occurred as a direct and proximate result of the negligent, careless, reckless, willful and wanton acts and delicts of the Defendant

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John Doe in the following particulars to wit:

a. In operating his vehicle at a rate of speed which was excessive for the circumstances then and there prevailing.

b. In failing to maintain a proper lookout.

c. In failing to maintain proper control of his vehicle.

d. In driving too fast for conditions.

e. In failing to properly observe the road and traffic conditions.

f. In operating his vehicle in an unlawful and reckless manner.

g. In operating his vehicle without due regard for the rights of others, especially the Plaintiff herein.

h. In failing to exercise due care under the circumstances then and there prevailing to avoid injury and damage to others, especially the Plaintiff herein.

i. In operating a vehicle, or allowing a vehicle to be operated that was in a dangerous or unsafe condition.

All of the above are in violation of the common and statutory laws of the state of South Carolina Department of Transportation.

8. As a direct and proximate result of the aforesaid negligence, carelessness, recklessness, willfulness and wantonness of the Defendants, Plaintiff was thrown in and about the interior of the vehicle in which he was traveling, causing him to sustain severe and traumatic injuries, including great pain and suffering, past, present, and future; causing him to incur medical expenses and he will continue to incur medical expenses, causing him shock, embarrassment, mental distress, past, present, and future; all to Plaintiff's actual damages in an amount to be determined by the triers of the facts.

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WHEREFORE, Plaintiff prays for actual and punitive damages against the Defendants Alex Webb Causey and John Doe in an amount to be determined by the triers of the facts, the costs and disbursements of this action, and for such other and further relief as the Court deems just and proper.



E. T. Moore, Jr.
Attorney for the Plaintiff
319 Washington Street
Post Office Box 160
Barnwell, South Carolina 29812
(803) 259-2021

Barnwell, South Carolina

September 28 2012

000019

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

Henry L. Carroll, II,)
)
Plaintiff,)
)
vs.)
)
Alex W. Causey and Stacey Jenkins,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
THE SECOND JUDICIAL CIRCUIT
CASE NO.: 2012-CP-06-326

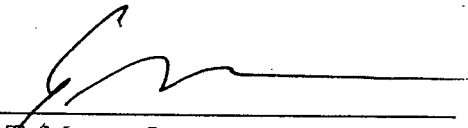
PROOF OF SERVICE BY MAILING

I hereby certify I represent the Plaintiff in this matter. Two copies of the Summons and Complaint was mailed to Gwen Fuler-McGriff, Acting Director, South Carolina Department of Insurance by placing it certified in the U. S. Mail in Barnwell, South Carolina, postage prepaid on July 24, 2014 to the address as follows:

Gwen Fuler-McGriff
Acting Director
South Carolina Department of Insurance
Legal Division (Service of Process)
Post Office Box 1005105
Columbia, South Carolina 29202-3105

FILED FOR RECORD
2014 AUG -6 PM 4:47
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

This mailing was accepted on July 28, 2014 as indicated by the attached letter.



E. T. Moore, Jr.
Attorney for the Plaintiff
319 Washington Street
Post Office Box 160
Barnwell, South Carolina 29812
(803) 259-2021

Barnwell, South Carolina
August 6, 2014

000020



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

July 28, 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
PROGRESSIVE DIRECT INSURANCE COMPANY
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

Dear Sir:

On July 28, 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. § 38-77-160. I am not a party to this case. The State of South Carolina Department of Insurance is not a party to this case. 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 155701, Henry L. Carroll II v. Alex W. Causey, et al., 2012-CP-06-326.

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: E. T. Moore Jr.
Post Office Box 160
Barnwell, SC 29812

000021

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)
Henry Lee Carroll, II,)
)
Plaintiff,)
)
vs.)
)
Alex Webb Causey and John Doe,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2012-CP-06-00326
CO-DEFENDANT JOHN DOE'S ANSWER
(Jury Trial Demanded)

This co-defendant, John Doe, hereby answering the Complaint of the plaintiff herein, would respectfully allege and show unto this Court as follows:

1. This co-defendant admits, upon information and belief, the allegations contained in paragraph 1 of the plaintiff's Complaint.
2. This co-defendant admits, upon information and belief, the allegations contained in paragraph 2 of the plaintiff's Complaint.
3. This co-defendant denies the allegations contained in paragraph 3 of the plaintiff's Complaint.
4. This co-defendant denies the allegations contained in paragraph 4 of the plaintiff's Complaint.
5. This co-defendant denies the allegations contained in paragraph 5 of the plaintiff's Complaint.
6. This co-defendant denies the allegations contained in paragraph 6 of the plaintiff's Complaint, including all subparts therein.
7. This co-defendant denies the allegations contained in paragraph 7 of the plaintiff's Complaint, including all subparts therein.

8. This co-defendant denies the allegations contained in paragraph 8 of the plaintiff's Complaint.

9. This co-defendant denies each and every allegation of the plaintiff's Complaint not specifically admitted, modified, or explained herein above.

FOR A SECOND DEFENSE

10. This co-defendant realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

11. The co-defendant alleges that the Complaint of the plaintiff fails to state facts sufficient to constitute a cause of action against him and, therefore, the plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

12. This co-defendant realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

13. This co-defendant alleges that even assuming that he was negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on his part operated as a proximate cause of the accident and the plaintiff's resulting injuries and damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that the plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed more than 50% to the cause of the accident and the plaintiff's resulting injuries and damages, if any. For that reason, this co-defendant is not liable to the plaintiff in any sum whatsoever.

FOR A FOURTH DEFENSE

14. This co-defendant realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

15. This co-defendant alleges that even if he was negligent, careless, grossly negligent, reckless, willful or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and if any such conduct on his part operated as a greater than 50% cause of the accident and the plaintiff's resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, he is entitled to a determination as to the percentage which the plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed to the accident and to a reduction of any amount awarded to the plaintiff in an amount equal to that percentage of the plaintiff's own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A FIFTH DEFENSE

16. This co-defendant realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

17. This co-defendant alleges that the plaintiff has failed to mitigate his damages and, therefore, the plaintiff's Complaint should be dismissed.

FOR A SIXTH DEFENSE

18. This co-defendant realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

19. This co-defendant specifically reserves any additional and/or affirmative defenses as may become available to him or revealed to him during the course of the investigation and/or discovery in this case.

FOR A SEVENTH DEFENSE

20. This co-defendant realleges and reiterates each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

21. This co-defendant would allege that an award of punitive damages would constitute an impermissible and excessive fine under the Eighth Amendment of the Constitution of the United States, and such damages would further be a violation of the due process and equal protection causes of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding section of the Constitution of the State of South Carolina, Article 1, Section 3.

Plaintiff's claim for punitive damages violates this co-defendant's right to access to the Courts guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of unlimited punitive damages chills this co-defendant's exercise of that right.

Plaintiff's claim for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons;

- (a) The standard or test for determining the requisite mental state of the co-defendant for imposition of punitive damages is void for vagueness; and
- (b) Insofar as punitive damages are not measured against actual injury to the plaintiff and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damages that may be awarded is indeterminate at the time of the co-defendant's alleged conduct.

WHEREFORE, having fully answered the Complaint of the plaintiff, this co-defendant prays that the Complaint of the plaintiff be dismissed, for the costs and disbursements of this action, and for any such other and further relief as this Court shall deem just and proper.

By: 

Michael T. Coulter (SC Bar# 15177)
Clarkson, Walsh, Terrell & Coulter, P.A.
P.O. Box 6728

Greenville, SC 29606
(864) 232-4400
(864) 235-4399 (fax)
Attorneys for the Co-Defendant, John Doe

JURY TRIAL DEMANDED

By: _____


Michael T. Coulter (15177)

Greenville, South Carolina
November 5, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF BARNWELL)

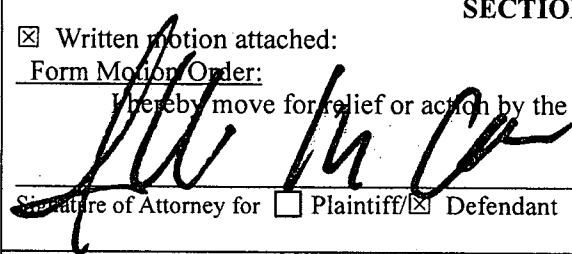
DOCKET NO. 2012-CP-06-0326)

HENRY LEE CARROLL, II,)
Plaintiff(s))

v.)

MOTION AND ORDER INFORMATION)
FORM AND COVER SHEET)

ALEX WEBB CAUSEY AND JOHN DOE,)
Defendant(s).)

Plaintiff's Attorney: E. T. Moore, Jr. Bar No. _____ Address: P. O. Box 160 Barnwell, SC 29812 phone: 803-259-2021 fax: 803-259-0208 e-mail: morlaw@aol.com other: 843-_____		Defendant's Attorney: Julian K. Allen Bar No. 76076 Address: Turner Padget P. O. Box 22129, Charleston, SC 29413 phone: 843-579-8305 fax: 843-577-1661 e-mail: jallen@turnerpadget.com other: _____	
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 20 minutes Court Reporter Needed: X YES / NO			
SECTION II: Motion/Order Type			
<input checked="" type="checkbox"/> Written motion attached: <input type="checkbox"/> Form Motion/Order: _____ I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant 		December 23, 2013 Date Submitted	
SECTION III: Motion Fee			
<input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: (check reason)			
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input checked="" type="checkbox"/> Other: Motion for Summary Judgment			
JUDGE'S SECTION			
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)
Henry Lee Carroll, II,)
)
Plaintiff,)
)
v.)
)
Alex Webb Causey and John Doe,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-06-0326

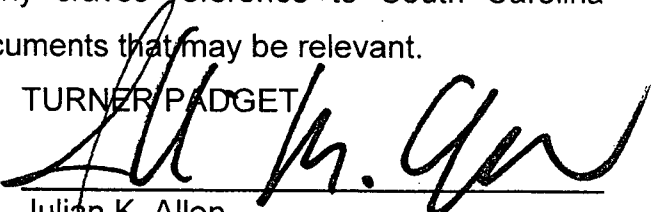
MOTION FOR SUMMARY JUDGMENT

YOU WILL PLEASE TAKE NOTICE that Titan (Nationwide) Indemnity Company will move through its undersigned counsel after ten (10) days of this Motion for an Order granting Summary Judgment as to the John Doe Defendant only pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

This lawsuit arises from a motor vehicle accident on September 28, 2009, where Plaintiff alleges he was a passenger in Defendant Alex Causey's vehicle. Further, Plaintiff believes the evidence set forth so far in this case indicates that Stacey Jenkins was the John Doe Defendant that drove the car, which struck Defendant Causey's vehicle. Plaintiff's Answer to Defendants' Request to Admit #3. As Plaintiff believes he has now identified the John Doe Defendant, Titan (Nationwide) Indemnity Company moves for summary judgment as to that Defendant only.

Titan (Nationwide) Indemnity Company craves reference to South Carolina applicable law, depositions, and any other documents that may be relevant.

TURNER PADGET



Julian K. Allen
Post Office Box 22129
Charleston, South Carolina 29413-2129
Direct: (843) 579-8305
Fax: (843) 577-1661
JAllen@TurnerPadget.com
ATTORNEYS FOR TITAN INDEMNITY

December 23, 2013

000028

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

Henry Lee Carroll, II,)
)
Plaintiff,)
)
v.)
)
Alex Webb Causey and John Doe,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
Docket No.: 2012-CP-06-0326

CERTIFICATE OF SERVICE

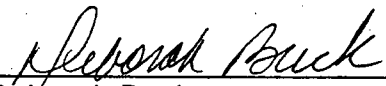
I hereby certify that on this 23rd day of November, 2013 a copy of the above and foregoing **Notice of Motion and Motion for Summary Judgment** has been mailed to all counsel of record, postage prepaid and properly addressed as follows:

E. T. Moore, Jr.
P. O. Box 160
Barnwell, SC 29812
Attorneys for Plaintiff

Anthony W. Livoti
P. O. Box 6648
Columbia, SC 29260
Attorney for Alex Webb Causey

Michael T. Coulter
P. O. Box 6728
Greenville, SC 29606
Attorney for John Doe

James Martin Harvey, Jr.
110 Main Street
P. O. Box 705
Barnwell, SC 29812
Attorney for Alex Webb Causey



Deborah Buck

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)
)
 Henry Lee Carroll, II,)
 Plaintiff,)
 vs.)
 Alex Webb Causey and John Doe)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT
 CASE NO.: 2012-CP-06-326

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

FILED FOR RECORD
 2014 MAR 19 PM 2:01
 RHONDA R. McELYEN
 CLERK OF COURT
 BARNWELL COUNTY, S.C.

Plaintiff's Attorney: E. T. MOORE, JR, Bar No. 12500 Address: P. O. Box 160, Barnwell, SC 29812 Phone: 803-259-2021 Fax 803-259-0208 E-mail: morlaw@aol.com Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
---	--

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Substitution of Party
 Estimated Time Needed: 30 minutes Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant Date submitted _____

SECTION III: Motion Fee

PAID - AMOUNT: \$ 25.00
 EXEMPT: (check reason)

<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support
<input type="checkbox"/> Domestic Abuse or Abuse and Neglect
<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party
<input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief
<input type="checkbox"/> Motion for Stay in Bankruptcy
<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)
<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
<input type="checkbox"/> Other: _____

JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
--	---------------------------------

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)
Henry Lee Carroll, II,)
)
)
Plaintiff,)
)
)
v.)
)
Alex Webb Causey and John Doe,)
)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

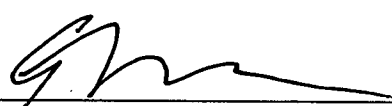
Docket Number: 2012-CP-06-0326

NOTICE OF MOTION AND ~~NOTION~~

FILED FOR RECORD
2014 MAR 19 PM 2:01
RHONDA B. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

TO THE DEFENDANTS AND THEIR ATTORNEYS

YOU WILL PLEASE TAKE NOTICE Plaintiff will move before the presiding Judge of the Second Judicial Circuit at such time as the Court may direct for an Order substituting Stacy Jenkins for Defendant for John Doe. This motion is based upon the discovery conducted thus far in this case to include the deposition of Stacy Jenkins.



E. T. Moore, Jr.
Attorney for the Plaintiff
THE MOORE FIRM, LLC
Post Office Box 160
Barnwell, South Carolina 29812
Office: 803-259-2021
Fax: 803-259-0208

Barnwell, South Carolina

March 19, 2014

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CERTIFICATE OF SERVICE BY MAIL

I, the undersigned legal assistance of E. T. Moore, Jr., attorney for the Plaintiff in the foregoing action, (Henry Lee Carroll, II, vs. Alex Webb Causey and John Doe, Case Number: 2012-CP-06-326) certify I served a Notice of Motion and Motion on the date shown below by mailing a copy of the same via first class, U. S. mail, postage prepaid, to the persons listed below.

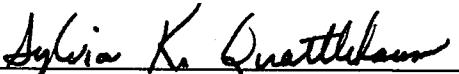
Anthony W. Livoti, Esquire
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, South Carolina 29260

J. Martin Harvey, Esquire
Harvey & Kulmala, LLC
Post Office Box 705
Barnwell, South Carolina 29812

Michael T. Coulter, Esquire
Clarkson, Walsh, Terrell & Coulter, P.A.
Post Office Box 6728
Greenville, South Carolina 29606

Julian K. Allen, Esquire
Turner, Padgett, Graham & Laney, P.A.
Post Office Box 22129
Charleston, South Carolina 29413

Robin A. Braithwaite
Braithwaite, Farmer, Boni & Timmerman
Post Office Box 324
Aiken, South Carolina 29802



Sylvia K. Quattlebaum
THE MOORE FIRM, LLC
319 Washington Street
Post Office Box 160
Barnwell, South Carolina 29812
(803) 259-2021

FILED FOR RECORD
2014 MAR 19 PM 2:01
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Barnwell, South Carolina
March 19, 2014

000032

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

Henry Lee Carroll, II,)
)
Plaintiff,)
)
vs.)
)
Alex Webb Causey and Stacey Jenkins,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO.: 2012-CP-06-326

**AMENDED
SUMMONS**

FILED FOR RECORD
2014 JUL -9 AM 11:43
RANDY A.D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

TO THE ABOVE-NAMED DEFENDANTS:


YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action. A copy of the Complaint is attached to this Summons and is herewith served upon you. Your Answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your Answer must be filed with the Court and served upon the undersigned attorney for the Plaintiff within thirty (30) days after the service hereof, exclusive of the day of service, at 319 Washington Street, Post Office Box 160, Barnwell, South Carolina 29812

YOU ARE HEREBY GIVEN NOTICE FURTHER THAT, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
I, Rhonda D. McElveen, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.

By: Rhonda D. McElveen
Clerk of Court, Barnwell County, SC
Date: 7/9/14

XL2-PS13679 RED
Barnwell, South Carolina
July 2, 2014


E. T. Moore, Jr.
Attorney for the Plaintiff
319 Washington Street
Post Office Box 160
Barnwell, South Carolina 29812
(803) 259-2021

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)
)
 Henry Lee Carroll, II,)
)
 Plaintiff,)
)
 vs.)
)
 Alex Webb Causey and Stacey Jenkins,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT
 CASE NO.: 2012-CP-06-326

**AMENDED
 COMPLAINT**
 (Jury Trial Demanded)

FILED FOR RECORD
 2014 JUL -9 AM 11:48
 RICHARD McELREATH
 CLERK OF COURT
 BARNWELL COUNTY, S.C.

Plaintiff would respectfully show unto this Court as follows:

1. Plaintiff is a citizen and resident of Barnwell County, South Carolina.
2. Defendant Alex Webb Causey is a citizen and resident of Barnwell County, South Carolina.
3. Defendant Stacey Jenkins is a citizen and resident of Barnwell County, South Carolina.
4. On September 28, 2009 Plaintiff was severely injured in an automobile wreck while a passenger in a vehicle driven by Defendant Alex Webb Causey. Upon information and belief, Defendant Alex Webb Causey and Defendant Stacey Jenkins were engaged or about to be engaged in an automobile race on South Carolina Highway 37 in Barnwell County, South Carolina. The reckless behavior by Defendant Alex Webb Causey and Defendant Stacey Jenkins caused Defendant Causey to loss control of his vehicle, to leave the roadway, and to overturn several times. Plaintiff was severely injured as a result of the negligent and reckless acts of Defendant Alex Webb Causey and Defendant Stacey Jenkins.
5. As a result of this incident, Plaintiff suffered grievous and serious bodily injuries, was

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CBM
 13.2

given treatment and will continue to receive treatment.

6. The wreck and resulting injuries to the Plaintiff occurred as a direct and proximate result of the negligent, careless, reckless, willful and wanton acts and delicts of the Defendant Alex Webb Causey in the following particulars to wit:

a. In operating his vehicle at a rate of speed which was excessive for the circumstances then and there prevailing.

b. In failing to maintain a proper lookout.

c. In failing to maintain proper control of his vehicle.

d. In driving too fast for conditions.

e. In failing to properly observe the road and traffic conditions.

f. In operating his vehicle in an unlawful and reckless manner.

g. In operating his vehicle without due regard for the rights of others, especially the Plaintiff herein.

h. In failing to exercise due care under the circumstances then and there prevailing to avoid injury and damage to others, especially the Plaintiff herein.

i. In operating a vehicle, or allowing a vehicle to be operated that was in a dangerous or unsafe condition.

All of the above are in violation of the common and statutory laws of the state of South Carolina and the Rules and Regulations promulgating by the South Carolina Department of Transportation.

7. The wreck and resulting injuries to the Plaintiff occurred as a direct and proximate result of the negligent, careless, reckless, willful and wanton acts and delicts of the Defendant Stacey Jenkins in the following particulars to wit:

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CSM
29-3

a. In operating his vehicle at a rate of speed which was excessive for the circumstances then and there prevailing.

b. In failing to maintain a proper lookout.

c. In failing to maintain proper control of his vehicle.

d. In driving too fast for conditions.

e. In failing to properly observe the road and traffic conditions.

f. In operating his vehicle in an unlawful and reckless manner.

g. In operating his vehicle without due regard for the rights of others, especially the Plaintiff herein.

h. In failing to exercise due care under the circumstances then and there prevailing to avoid injury and damage to others, especially the Plaintiff herein.

i. In operating a vehicle, or allowing a vehicle to be operated that was in a dangerous or unsafe condition.

All of the above are in violation of the common and statutory laws of the state of South Carolina Department of Transportation.


8. As a direct and proximate result of the aforesaid negligence, carelessness, recklessness, willfulness and wantonness of the Defendants, Plaintiff was thrown in and about the interior of the vehicle in which he was traveling, causing him to sustain severe and traumatic injuries, including great pain and suffering, past, present, and future; causing him to incur medical expenses and he will continue to incur medical expenses, causing him shock, embarrassment, mental distress, past, present, and future; all to Plaintiff's actual damages in an amount to be determined by the triers of the facts.

WHEREFORE, Plaintiff prays for actual and punitive damages against the Defendants

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Alex Webb Causey and Stacey Jenkins in an amount to be determined by the triers of the facts,
the costs and disbursements of this action, and for such other and further relief as the Court
deems just and proper.



E. T. Moore, Jr.
Attorney for the Plaintiff
319 Washington Street
Post Office Box 160
Barnwell, South Carolina 29812
(803) 259-2021

Barnwell, South Carolina

July 2, 2014

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CBM
Pg. 5

Plaintiff(s)

vs.

Defendant(s)

CIVIL ACTION COVERSHEET

2012-CP - 06- 326

Submitted By: E. T. Moore, Jr.
Address: PO Box 160, Barnwell, SC 29812

SC Bar #:
Telephone #: 803-259-2021
Fax #: 803-259-0208
Other:
E-mail: morlaw@aol.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings and other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20-CP-..., Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstatement License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement, Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (670)

Submitting Party Signature:

Date:

7-2-14

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

BARNWELL COUNTY SHERIFF'S OFFICE
Ed Carroll, Sheriff
Post Office Box 384
Barnwell, SC 29812
(803) 541-1052

State of South Carolina
County of BARNWELL

HENRY LEE CARROLL II

Plaintiff(s)

VS.

AFFIDAVIT OF SERVICE

Case No.: 2012-CP-06-326

FILED
JUL 23 2014
CLERK OF COURT
BARNWELL COUNTY, S.C.

2014 JUL 23 PM 2:53

ALEX WEBB CAUSEY AND STACY JENKINS

Defendant(s)

To: Stacy Jenkins

PERSONALLY APPEARED BEFORE ME Jd Grubbs being duly sworn, says that (s)he served the Amended Summons And Complaint, in this action by delivering same to:

personally;

Alise Jenkins, Wife(Name and Relationship to Defendant) a person of suitable age and discretion residing at Defendant's place of residence;

_____, a person of discretion at Defendant's place of employment;

and leaving with him/her copy(ies) of the same at 894 Willis Pond Road, Blackville (place served) on the 14TH day of JULY, 2014 at 15:28 and that (s)he knows the person so served to be the Defendant mentioned and described in the action.

SWORN TO BEFORE ME this 14TH

Day of JULY, 2014.

Cynthia C Ray
Notary Public of South Carolina
My Commission Expires: 04/28/2016

Jd Grubbs

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
I, Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.

Rhonda D. McElveen
S clerk of Court, Barnwell County, SC
By com Date: 7/23/14

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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

July 28, 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
VICTORIA FIRE & CASUALTY COMPANY
c/o Corporation Service Company
1703 Laurel Street
Columbia, SC 29201

Dear Sir:

On July 28, 2014, I accepted service of the attached Summons and 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. § 38-77-160. I am not a party to this case. The State of South Carolina Department of Insurance is not a party to this case. 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 155702, Henry L. Carroll II v. Alex W. Causey, et al., 2012-CP-06-326.

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: E. T. Moore Jr.
Post Office Box 160
Barnwell, SC 29812

000041

SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BARNWELL	)	CIVIL ACTION NO: 2012-CP-06-326
)	
HENRY LEE CARROLL, II,)	
	)	ANSWER OF
	)	DEFENDANT STACEY JENKINS
Plaintiff	)	TO AMENDED COMPLAINT
vs.)	
)	
ALEX WEBB CAUSEY and)	
STACEY JENKINS,)	
Defendant)	
_____)	

**TO: E. T. MOORE, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFF
AND TO THE PLAINTIFF ABOVE NAMED:**

The Defendant, Stacey Jenkins, reserving the right to file a motion under Rule 12 of the South Carolina Rules of Civil Procedure or any other dispositive motion, responds to the Plaintiff's Complaint by denying each and every allegation not hereinafter specifically admitted, demanding strict proof thereof, and further responds as follows:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Each and every allegation of the Plaintiff's Complaint not hereinafter admitted is expressly denied and strict proof thereof demanded.
2. The Defendant lacks sufficient knowledge or information in which to form a belief as to the allegations of Paragraphs one (1) and two (2) and therefore denies the same and demands strict proof thereof.
3. Defendant admits the allegation of Paragraph three (3) of the

Complaint.

4. Defendant denies the allegations of Paragraph four (4) and demands strict proof thereof.

5. The Defendant lacks sufficient knowledge or information in which to form a belief as to the allegations of Paragraph five (5) and therefore denies the same and demands strict proof thereof.

6. Defendant lacks sufficient knowledge or information in which to form a belief as to the allegations of Paragraph six (6)(a) through six (6)(i) and therefore denies the same and demands strict proof thereof.

7. Defendant denies the allegations of Paragraph seven (7)(a) through seven (7)(i) and demands strict proof thereof.

8. Defendant denies the allegations of Paragraph eight (8) and demands strict proof thereof, and 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 SECOND DEFENSE (Comparative Negligence)

9. 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 Defendants, which negligence of Defendant Stacey Jenkins is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred. 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 Defendants 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, Stacey Jenkins, 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, Stacey Jenkins, 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 THIRD DEFENSE

10. The Defendant would show, upon information and belief, that the Complaint fails to set forth sufficient facts to constitute a cause of action against Stacey Jenkins, and therefore, should be dismissed as to him pursuant to Rule 12(b)(6), SCRPC.

FOR A FOURTH DEFENSE

11. Plaintiff's claims may be barred by the doctrine of waiver, estoppel, and/or laches.

FOR A FIFTH DEFENSE (Statute of Limitations)

12. Plaintiff's claims are barred by the applicable statute of limitations.

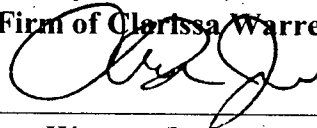
FOR A SIXTH DEFENSE (Punitive Damages Unconstitutional)

13. 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 the Plaintiff's Complaint, the Defendant, Stacey Jenkins, would pray that the same be dismissed with costs being granted to him. The Defendant also prays for such other and further relief as the Court deems just and proper.

Respectfully submitted,
Law Firm of Clarissa Warren Joyner



Clarissa Warren Joyner
Post Office Box 1724
Orangeburg, SC 29116
Tel: 803-534-8393
Fax: 803-534-7885
Attorney for Defendant, Stacey Jenkins

August 8, 2014

Orangburg, South Carolina

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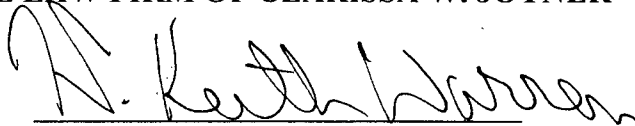
SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BARNWELL)	CIVIL ACTION NO: 2012-CP-06-326
)	
HENRY LEE CARROLL, II,)	
)	
Plaintiff)	
vs.)	
)	
ALEX WEBB CAUSEY and)	
STACEY JENKINS,)	
Defendant)	
_____)	

CERTIFICATE OF SERVICE

I, H. Keith Warren, paralegal to Clarissa Warren Joyner, attorney for Defendant, Stacey Jenkins, do hereby certify that on August 8, 2014, I served **the ANSWER TO AMENDED COMPLAINT** on E.T. Moore, Jr., attorney for Plaintiff, Henry Lee Carroll, II, at the address referenced below by depositing a copy of same in the U.S. Mail with a return address clearly indicated and addressed as follows:

E.T. Moore, Jr.
 Post Office Box 160
 Barnwell, South Carolina 29812

THE LAW FIRM OF CLARISSA W. JOYNER

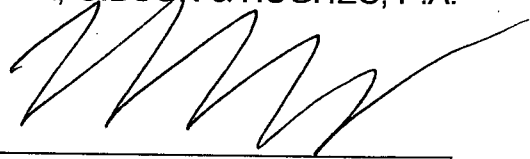


H. Keith Warren

Orangeburg, South Carolina
 August 8, 2014

This motion shall be based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings, affidavits and discovery documents exchanged herein.

HOWELL, GIBSON & HUGHES, P.A.



By: _____
Robert W. Achurch, III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendant,
Stacey Jenkins

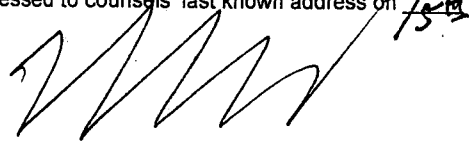
Beaufort, South Carolina

August 14, 2014

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CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion to Dismiss upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on ~~15~~¹⁵ day of August, 2014.



By: _____
Robert W. Achurch, III

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BARNWELL) CIVIL ACTION NO: 2012-CP-06-326

HENRY LEE CARROLL, II,)
)
Plaintiff,)
)
vs.)
)
ALEX WEBB CAUSEY AND STACEY)
JENKINS,)
)
Defendants.)

MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS

Defendant Stacey Jenkins respectfully submits this Memorandum in Support of his Motion to Dismiss. For the reasons set forth herein, it is respectfully submitted that this matter be dismissed.

BACKGROUND

According to the Plaintiff's Complaint an automobile accident occurred involving Plaintiff on September 28, 2009. The Plaintiff alleges the accident was the result of an automobile race between two cars. Defendant Alex Webb Causey was the driver of the car carrying Plaintiff which wrecked allegedly as a result of racing another car. At the time Plaintiff's Complaint was filed, John Doe was named as a Defendant. Plaintiff alleges it was unaware of the identity of the second car involved in the accident when he filed his complaint on September 28, 2012. On October 8, 2013 Plaintiff deposed Stacey Jenkins. Subsequently, nine months after the deposition and nearly five years after the accident, Plaintiff filed an amended complaint, on July 9, 2014, substituting Stacey Jenkins as

Defendant in place of John Doe. This motion follows the filing of that amended complaint.

STANDARD

Under Rule 12(b)(6), a defendant may move to dismiss a complaint due to its "failure to state facts sufficient to constitute a cause of action."

ARGUMENT

The claims against Defendant Stacey Jenkins should be dismissed because the statute of limitations expired before he was made a party. Under S.C. Code Ann. § 38-77-180, an injured party may file suit against an unknown owner or driver of a vehicle so that the injured party may collect uninsured motorist's coverage. However, the bringing of an action against the unknown owner or operator as John Doe or the conclusion of that action does not constitute a bar to the insured, if the identity of the owner or operator who caused the injury or damages complained of becomes known, from bringing an action against the owner or operator previously proceeded against as John Doe. S.C. Code Ann. § 38-77-180.

In the case at hand, Plaintiff originally brought suit against John Doe and nearly five years after the accident substituted Stacey Jenkins as the Defendant. However, filing of a John Doe action does not toll the statute of limitations for filing an action against the alleged "real tortfeasor." The Court of Appeals dealt with a similar issue in Jackson v. Doe, and stated:

However, there is no provision specifically allowing John Doe and a later added or substituted party to be considered the same entity for purposes of tolling the statute of limitations. That fact, coupled with the fact that there is no mention of the statute of limitations and its

relationship to any subsequent action against a later identified tortfeasor, leads to the inescapable conclusion that each statute must be separately construed and enforced according to its plain language.

Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct.App. 2000).

Pursuant to the Jackson case, the filing of a John Doe action does not toll the statute of limitations as to the alleged "real tortfeasor;" rather, that person must be sued within the confines of the applicable statute of limitations. Accordingly, Stacey Jenkins was not added as a party to this action until nearly five years after the accident occurred. Under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." Graham v. Welch, Roberts and Amburn, LLP, 404 S.C. 235, 743 S.E.2d 860 (Ct.App. 2013). In the case at hand, Plaintiff was aware of the cause of action against Jenkins on the date of the accident and the statute of limitations expired long before he was added as a party.

Furthermore, even under Rule 15(c), SCRCP, Plaintiff's substitution of Jenkins as a Defendant was improper.

Under Rule 15(c), SCRCP, an amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the **institution of the action** that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought

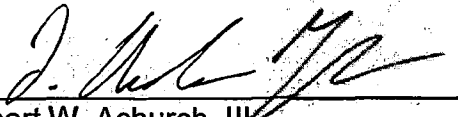
against him. In construing that rule, our Supreme Court has adopted a four-part test to aid in interpreting the requirements of Rule 15(c). The four-part test allowing the substitution of a party is as follows:

- (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 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.**

Hughes v. Water World Water Slide, Inc., 314 S.C. 211, 442 S.E.2d 584 (1994).

Under Rule 15(c), in order for Defendant Jenkins to have been substituted as a Defendant, Jenkins is required to have had notice of the institution of the action before the running of the applicable statute of limitations. The complaint was filed on the day the statute of limitations expired. Defendant Jenkins was not made aware of the action until he was subpoenaed for his deposition on August 9, 2013, well after the running of the original statute of limitations. Accordingly, by not having notice of the action prior to the running of the statute of limitations, Defendant Jenkins was not properly substituted as a Defendant in the action. Therefore, the claims against Defendant Stacey Jenkins should be dismissed.

HOWELL, GIBSON & HUGHES, P.A.

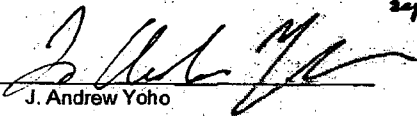
By: 
Robert W. Achurch, III
J. Andrew Yoho
Post Office Box 40
Beaufort, SC 29901
(843) 522-2408
Attorneys for Defendant Stacey Jenkins

Beaufort, South Carolina

September 4, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing yes upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 4 day of ^{September} August, 2014.

By: 
J. Andrew Yoho

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action No: 2012-CP-06-326
COUNTY OF BARNWELL)	
)	
HENRY LEE CARROLL, II,)	
)	
Plaintiff,)	
)	
v.	)	PLAINTIFF'S MEMORANDUM
	)	IN OPPOSITION TO DEFENDANT
ALEX WEBB CAUSEY AND	)	STACEY JENKINS' MOTION TO
STACEY JENKINS,	)	DISMISS
)	
Defendants.)	
_____)	

PROCEDURAL HISTORY

The Plaintiff was injured in an automobile accident which occurred on September 28, 2009, when he was a passenger in a vehicle driven by Defendant Alex Causey when Causey's vehicle collided with the vehicle of an unknown driver. At the time of the wreck, Plaintiff suffered severe head injuries and the identity of the driver of the other vehicle was unknown.

Plaintiff filed the Summons and Complaint in this action on September 29, 2012, naming as Defendants Alex Webb Causey and John Doe. Answers were filed on behalf of both Defendants, and discovery proceeded. As depositions were taken and eyewitnesses were interviewed, Plaintiff discovered that Stacey Jenkins was the driver of the other vehicle. Plaintiff moved the Court for permission to amend his Complaint to substitute Stacey Jenkins for Defendant John Doe under Rule 15(c). A hearing was held on Plaintiff's motion, and attorneys for John Doe and Defendant Causey were present. The Honorable Edgar W. Dickson signed an Order dated June 26, 2014, finding that the substitution of Stacey Jenkins for John Doe was permissible under South Carolina Rule of Civil Procedure 15, that justice required allowing the substitution of parties in this case, and that Stacey Jenkins would not be prejudiced by the

amendment. Judge Dickson ordered that Stacey Jenkins be substituted for the Defendant John Doe.

Plaintiff filed an Amended Summons and Complaint on July 9, 2014, substituting Stacey Jenkins for John Doe. Mr. Jenkins was served with the Amended Summons and Complaint on July 14, 2014. Stacey Jenkins served an Answer to the Amended Complaint on August 8, 2014 by and through his attorney, Clarissa Warren Joyner. On or about August 14, 2014, attorney Robert Achurch III served a Motion to Dismiss on the Plaintiff alleging that the Amended Complaint failed to state a cause of action upon which relief could be granted and that Plaintiff failed to bring the action within the applicable statute of limitations, among other defenses. Both the Answer and motion were served outside the time period prescribed for responsive pleadings in Rule 15(a), which provides that "A party shall plead in response to an amended pleading . . . within fifteen days after service of the named amended pleading . . . unless the court otherwise orders." Rule 15(a), SCRCP.

ARGUMENT

- I. The Defendant Jenkins' Motion to Dismiss for Failure to State a Cause of Action Upon Which Relief Can Be Granted Should be Denied.

The attorney for Jenkins sent a Memorandum in Support of Motion to Dismiss to the attorney for the Plaintiff via email on Friday, September 5, 2014. At the hearing, Plaintiff's attorney objected to the consideration of the Memorandum and the Affidavit because the law

requires the Court to consider only the allegations set forth in the plaintiff's complaint when determining whether to dismiss an action under Rule 12(b)(6) for failure to state a cause of action upon which relief can be granted. See Gentry v. Yonce, 331 S.C. 1, 522 S.E.2d 137,139 (1999); Spence v. Spence, 368 S.C. 106,116, 628 S.E.2d 869, 874 (2006):

In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. Spence v. Spence, 368 S.C. 106,116, 628 S.E.2d 869, 874 (2006).

Plaintiff's Amended Complaint clearly contains the required elements for recovery in this automobile accident case. Taken in the light most favorable to the Plaintiff, the facts alleged could entitle the plaintiff to relief. Therefore, the Defendant's motion to dismiss the Complaint under SCRCP 12(b)(6) should be denied.

Plaintiff also objected to the consideration of the Defendant Jenkins' memorandum and affidavit based upon failure to properly serve the documents on the Plaintiff. SCRCP 6(d) clearly states that affidavits shall be served with the motion, not later than ten days before the hearing. The rule goes on to state that additional affidavits shall be served not later than two days before the hearing. Plaintiff contends that no affidavit was filed with the original motion and that sending the Memorandum and Affidavit of Stacey Jenkins to Plaintiff's attorney via email does not comply with the requirements of SCRCP Rule 5(b)(1), which requires delivery to

the attorney (handing it to the attorney; leaving it at the attorney's office with his clerk or other person in charge thereof; or by leaving a copy at his dwelling place with a person of suitable age and discretion residing therein).

Plaintiff properly objected to the consideration of the Defendant Jenkins' affidavit, and since there was no other evidence before the Court other than the pleadings, the Defendant Jenkins' motion to dismiss under SCRCF 12(b)(6) should be denied.

II. Defendant Jenkins' Motion to Dismiss Based Upon the Expiration of the Statute of Limitations Should be Denied.

The Court should deny Jenkins' motion to dismiss based upon the statute of limitations because Jenkins was properly substituted for Defendant John Doe under SCRCF 15(c) by prior order of this Court so that the amended complaint relates back to the date of the original summons and complaint, which was filed within the statute of limitations period. No party has filed a motion for reconsideration of the prior order allowing the substitution, and as such, the order finding that substitution is proper is the law of the case.

Rule 15(c) of the South Carolina Rules of Civil Procedure provides that an amendment changing a party shall relate back to the original date of filing if the amendment asserts a claim that arose out of the same occurrence set forth in the original pleadings and the party to be brought in had notice such that he will not be prejudiced and if the party knew or should have known that the action would have been brought against him but for a mistake concerning the identity of the party. Judge Dickson's Order dated June 26, 2014 clearly finds that the substitution of Stacey Jenkins for the Defendant John Doe meets these requirements. The Court

found that justice requires the Plaintiff be allowed to substitute parties, and that Jenkins would not be prejudiced by the substitution.

By his own admission, Jenkins was present at the time of the accident in which the Plaintiff was severely injured. Jenkins had notice at the time of the wreck that Plaintiff was injured and that if a suit was filed, that he would likely be named as a Defendant. Jenkins has produced absolutely no evidence of any prejudice to him by the delay in serving him as a Defendant.

Jenkins cites Jackson v. Doe as support for his proposition that the filing of a John Doe action does not toll the statute of limitations for filing an action against a "real tortfeasor." However, in that case, Jackson added a party as a Defendant rather than substituting a new party for John Doe. The Court clearly stated that "[h]ad Jackson substituted Milligan for John Doe or simply corrected the name of the defendant, then the amendment should have been analyzed in light of the requirements of Rule 15(c) as set forth in Hughes for a determination of whether the amended complaint properly related back to Jackson's original action." Jackson v. Doe, 342 S.C. 552, 558, 537 S.E.2d 567. Judge Dickson clearly considered the requirements of Rule 15(c), including the four-part test set forth in Hughes v. Water World Slide, Inc., 314 S.C. 211, 442 S.E.2d 584 prior to issuing his order allowing the substitution. No party has filed a motion for reconsideration of Judge Dickson's Order, and as such, that order is the law of the case. Defendant Jenkins' motion to dismiss based upon the statute of limitations should be denied because the substitution of Jenkins as a party relates back to the filing date of the original summons and complaint, which was timely filed.

Respectfully submitted,

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THE MOORE FIRM, LLC

E. T. Moore, Jr.

Attorney for the Plaintiff

Post Office Box 160

Barnwell, South Carolina 29812

Telephone: 803-259-2021

September 10, 2014

Barnwell, South Carolina

000062

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)
)
 HENRY LEE CARROLL, II,)
)
 Plaintiff,)
)
 v.)
)
 ALEX WEBB CAUSEY AND)
 STACEY JENKINS,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 Civil Action No: 2012-CP-06-326

PLAINTIFF'S NOTICE OF MOTION
 AND MOTION FOR RECONSIDERATION
 AND TO ALTER OR AMEND JUDGMENT
 PURSUANT TO SCRPC 59 (e)

FILED FOR RECORD
 2014 SEP 29 PM 3:56
 RHONDA D. McELVEEN
 CLERK OF COURT
 BARNWELL COUNTY, S.C.

Plaintiff asserts the court erred in dismissing his claim against Stacey Jenkins pursuant to the statute of limitations.

Plaintiff suffered a severe brain injury when two vehicles collided on September 28, 2009. He filed this action naming Alex Causey, the driver of the vehicle in which he was a passenger, and John Doe, representing the unknown driver of the other vehicle, pursuant to South Carolina Code Ann. Section 38-77-180. The action was timely filed and served.

During the course of discovery, Plaintiff learned Stacey Jenkins was likely the driver of the car which left the scene. Jenkins was deposed and, based upon his admissions, Plaintiff moved to substitute Jenkins for John Doe.

After a hearing, the Honorable Edgar W. Dickson found, pursuant to Rule 15, SCRPC that "justice requires the Plaintiff be allowed to substitute parties in this case and that the new defendant will not be prejudiced." Judge Dickson granted Plaintiff's motion to substitute Jenkins for John Doe. Plaintiff filed an amended summons and complaint substituting Jenkins for John Doe. Jenkins has not pled or alleged that he was not properly substituted. Jenkins moved to

dismiss based solely on the fact that the statute of limitations had expired. It is undisputed that John Doe and Stacey Jenkins are one and the same, and that Jenkins would have been named as a Defendant in the original complaint had his identity been known at that time.

The court's order correctly states that "under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." Plaintiff has not failed to meet this test as he timely filed this action pursuant to S.C. Code Ann. Section 38-77-180. There is, however, no evidentiary basis for the court's finding that "Plaintiff was aware of the cause of action *against Jenkins* on the date of the accident, and the statute of limitations therefore expired on September 28, 2012." Although Plaintiff knew he had a cause of action on the date of the wreck, Plaintiff did not know the identity of the Defendant Jenkins. Plaintiff acted properly in filing a complaint naming John Doe as a Defendant and immediately moving to amend his pleadings upon discovery of John Doe's true identity.

The sole remaining issue is whether the amended complaint relates back to the original filing pursuant to Rule 15(c) SCRPC. As stated by Chief Judge Hearn in her dissent in Jackson v. Doe, "[t]he purpose of Rule 15(c) is to salvage causes of action otherwise barred by the statute of limitations." Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 at 571 (Ct.App. 2000), citing Thomas v. Grayson, 318 S.C. 82, 88, 456 S.E.2d 377, 380 (S.C. 1995). Hearn noted that the South Carolina Supreme Court had adopted "a more liberal construction of Rule 15(c) than the United States Supreme Court" because the United States Supreme Court's interpretation would have been "inconsistent with Rule 8(f) SCRPC, which requires that 'all pleadings shall be construed as to do substantial justice to all parties.'" Jackson v. Doe, 342 S.C. 552, citing Hughes, 314 S.C. at 214, 442 S.E.2d 584 at 586 (1994).


Our appellate courts have considered this issue in several recent opinions. In Knuckles v. Fryatt, 2011-UP-025, the Court of Appeals affirmed the lower court's ruling that the amended complaint did not relate back under Rule 15(c) SCRPC because a new defendant was added instead of substituted. The court found relation back to the original pleading applies only when an existing party is changed, not when a new party is added. In its analysis, the Court cited to Jackson v. Doe, which addressed the distinction between correcting or substituting a party and adding a party. Jackson v. Doe stated "The language of Rule 15(c) clearly speaks to a change in party, not the addition of a defendant to an already existing defendant. In our view, the addition of a party is not the same as the substitution or change of a party." Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567(Ct.App. 2000), emphasis in original.

Jackson v. Doe held that the substitution of a party requires an analysis of the four-part test set forth in Hughes v. Water World Water Slide, Inc., 314 S.C. 211, 442 S.E.2d 584 (1994). Applying that test to the substitution of Jenkins in this case, the court here determined that because Jenkins did not have notice of this case within the statute of limitations period he should be dismissed as a party. However, here as in Hughes, Jenkins was present when the event giving rise to the cause of action occurred. He knew at the time of the wreck that if an action was filed, he would likely be named as a Defendant, and he fled the scene of the wreck. To allow Jenkins to avoid being substituted in this case would reward his bad acts in leaving the scene and would fail to do substantial justice to all parties. It is undisputed the amended complaint sets forth the same conduct contained in the original pleading, and Judge Dickson's order of June 26, 2014 specifically found Jenkins would not be prejudiced by substituting him as a defendant for John Doe. Accordingly, Plaintiff has met the requirements set forth in Hughes v. Water World Water

Slide, Inc., 314 S.C. 211, 442 S.E.2d 584 (1994), and the court should deny Jenkins' motion to dismiss.

Unfortunately, the court's ruling that Plaintiff's claim against Jenkins is barred sets a standard that is impossible to meet. When, as here, the Plaintiff brings an action pursuant to South Carolina Code Ann. Section 38-77-180 near or at the end of the limitations period, he would never be able to file an amended complaint substituting the real tortfeasor for John Doe which would successfully relate back to the original pleading, nor would he be able to reinstate John Doe as a defendant, if notice to the unknown defendant was required prior to the expiration of the original limitation period. Such an interpretation would nullify the purpose of South Carolina Code section 38-77-180 and Rule 15(c), and that cannot be the intent of the legislature.

Accordingly, justice requires the court amend or alter its previous order and deny Jenkins' motion to be dismissed.


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September 29, 2014
Barnwell, South Carolina

000066

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF BARNWELL) CIVIL ACTION NO: 2012-CP-06-326

HENRY LEE CARROLL, II,)
)
Plaintiff,)
)
vs.) RESPONSE TO PLAINTIFF'S
) MOTION FOR
ALEX WEBB CAUSEY AND STACEY) RECONSIDERATION
JENKINS,)
)
Defendants.)

Defendant Stacey Jenkins respectfully submits this response to Plaintiff's Motion for Reconsideration and to Alter or Amend Judgment. Plaintiff raises various arguments in favor of his position but has failed to present any new or compelling reason to justify alteration or amendment of the Court's order. Therefore, Plaintiff's motion should be denied.

As this Court correctly found, Stacey Jenkins was substituted as a party long after the statute of limitations expired. Accordingly, his dismissal was proper. Plaintiff contends that John Doe and Stacey Jenkins are one and the same and by filing his original action within the statute of limitations Jenkins could be properly substituted. However, the Court of Appeals in Jackson v. Doe, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000), clearly stated that "... there is no provision specifically allowing John Doe and a later added or substituted party to be considered the same entity for purposes of tolling the statute of limitations."


Plaintiff further asserts that the statute of limitations did not expire as to Stacey Jenkins until it was discovered that he was the alleged unknown driver. However, Plaintiff fails to take into consideration that the statute of limitations "begins to run from the date the injured party either *knows or should know*, by the exercise of reasonable diligence, that a *cause of action exists* for the wrongful conduct." Graham v. Welch, Roberts & Amburn, LLP, 404 S.C. 235, 743 S.E.2d 860 (Ct. App. 2013) (emphasis added). Clearly Plaintiff knew he had a cause of action on the day the accident occurred, therefore, the statute of limitations began running on that date. Accordingly, Judge Lee correctly held that filing a John Doe action does not toll the statute of limitations as to the alleged real tortfeasor and that Stacey Jenkins was not substituted as a Defendant within the applicable statute of limitations.

Finally, Plaintiff cites the dissent in Jackson v. Doe, and argues that because Stacey Jenkins was at the scene of the accident that he knew he would be named if an action was filed. However, according to the four part test in Hughes v. Water World Slide, Inc., 314 S.C. 211, 442 S.E.2d 584 (1994) relied on by the Jackson majority and the Court, Stacey Jenkins must have had knowledge of *the institution of proceedings* before the statute of limitations expired. As stated hereinabove, the statute of limitations expired on September 28, 2012 and as correctly found by this Court, Jenkins was not aware of the action until he was deposed. Plaintiff also asserts that under the Court's ruling, a Plaintiff filing at the end of the statute of limitations would never be able to substitute a real tortfeasor for John Doe. That is simply not the case. Rule 15(c)

and the four-part Hughes test provide clear parameters in which a Plaintiff can substitute a party and use the relation back doctrine. Despite our State's liberal construction of the rules, Plaintiff simply cannot meet the requirements under Rule 15(c).

Accordingly, for the reasons stated, this Court properly dismissed Stacey Jenkins as a Defendant and Plaintiff's Motion should be denied.

HOWELL, GIBSON & HUGHES, P.A.

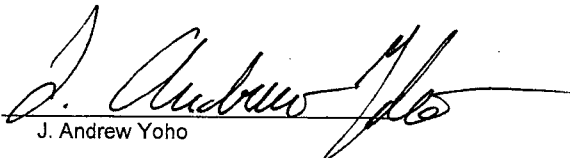
By: 
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(843) 522-2408
Attorney for Stacey Jenkins
Bar No: 100803

Beaufort, South Carolina

October 6, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing yes upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 6 day of October, 2014.

By: 
J. Andrew Yoho

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-06-00326

RECEIVED

DEC 01 2014

SC Court of Appeals

Henry Lee Carroll, II,Appellant,


v.

Alex Webb Causey and Stacey Jenkins,Respondents.

NOTICE OF APPEAL

Henry Lee Carroll appeals the order of the Honorable Alison Renee Lee dated September 11, 2014. Appellant timely filed a Motion for Reconsideration which was denied by Order dated October 23, 2014. Appellant received written notice of the order denying his motion for Reconsideration on November 3, 2014.

November 25, 2014



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Attorney for Plaintiff

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-06-00326

RECEIVED

DEC 01 2014

SC Court of Appeals

Henry Lee Carroll, II,Appellant,

v.

Alex Webb Causey and Stacey Jenkins,Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by depositing a copy of it in the United States mail, postage prepaid on November 26, 2014 addressed to the following attorneys of record. Henry Lee Carroll appeals the order of the Honorable Alison Renee Lee dated September 11, 2014. Appellant timely filed a Motion for Reconsideration which was denied by Order dated October 23, 2014. Appellant received written notice of the order denying his motion for Reconsideration on November 3, 2014.

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000071

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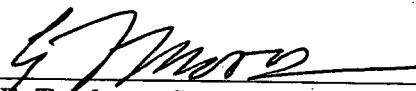
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November 26, 2014


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State of South Carolina)
County of Barnwell)

In the Court
Of Common Pleas

Docket No: 2012-CP-06-00326

Henry Lee Carroll, II,)
Plaintiff,)
vs.)
Alex Webb Causey and)
Stacey Jenkins,)
Defendants.)

Transcript of Record

September 8, 2014
Barnwell, South Carolina

B E F O R E:

The Honorable Alison Renee Lee, Judge.

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

E. Timothy Moore, Jr., Esquire
Attorney for the Plaintiff

Andrew Yoho, Esquire
Attorney for Defendant Jenkins

Anthony W. Livoti, Esquire
Attorney for Defendant Causey

Ray Turner, Esquire
Attorney for Defendant UIM Carrier

Julian Allen, Esquire
Attorney for Titan Insurance

Brenda J. Sigwald, Circuit Court Reporter
To the Honorable R. Knox McMahon
P.O. Box 206, Jackson, South Carolina 29831

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I N D E X

Page

Motion Hearing..... 3

Certificate of Reporter

Keyword Index

E X H I B I T S

NO.

DESCRIPTION

PAGE

(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 **THE COURT:** Okay. The next matter that we have is
2 Docket No. 2012-CP-06-0326, Henry Carroll, II versus Alex
3 Causey and Stacey Jenkins.

4 On behalf of the plaintiff is Tim Moore and on
5 behalf of the defendants -- I'll let you identify
6 yourselves, please.

7 **MR. YOHO:** My name is Andy Yoho. I'm here on
8 behalf of Stacey Jenkins.

9 **MR. LIVOTI:** Anthony Livoti, here through the UM
10 carrier, providing a defense to Alex Causey.

11 **MR. TURNER:** Ray Turner, here on behalf of the UIM
12 Carrier at risk.

13 **THE COURT:** And on -- for which of -- okay.

14 **MR. ALLEN:** Julian Allen, A-l-l-e-n, on behalf of
15 Titan Insurance.

16 **THE COURT:** And Titan is UIMU as well or --

17 **MR. ALLEN:** I'm appearing on behalf of the UMAUIM.

18 **THE COURT:** Okay. Thank you.

19 Briefly, this morning, I went through the file. I
20 see there's another amended complaint in which Stacey
21 Jenkins was formerly added in the place of the John Doe as
22 originally pled in the original summons and complaint.

23 I believe we're here -- the motion -- one was a
24 motion of continuance of the trial. This case has been on
25 the trial roster for this week and I believe that motion

1 for continuance has been granted.

2 And then we're here on the motion of Stacey Jenkins
3 to dismiss the action, based on the statute of limitations.

4 I did receive by e-mail a brief memorandum in
5 support of your motion to dismiss. I received it last week
6 and I've had a chance to kind of go through, so at least I
7 know what the issues are and so Mr. Yoho, I'll be glad to
8 hear from you.

9 **MR. YOHO:** Thank you, Your Honor. As I'm sure
10 you're aware based on reviewing the files and such, the
11 case file is from an auto accident that occurred on
12 September 28th, 2009. The plaintiff was riding in a car
13 that was -- according to the facts in the complaint -- in a
14 drag race, driven by Mr. Alex Causey, alledgedly. The John
15 Doe driver and also the lady in the drag race collided with
16 Mr. Causey's car, causing the car accident to the
17 plaintiff.

18 My client, Stacey Jenkins was deposed, October 8th,
19 2013, and was added as a party on July 14th of this year.
20 Mr. Jenkins denied that he was involved in the drag race
21 and Stacey did not have notice in this action until he was
22 subpoenaed for his deposition, which was on August 9, 2013.
23 We have submitted what is well --

24 **THE COURT:** I'm sorry, did you say he denied being
25 the driver or he denied being involved.

1 **MR. YOHO:** He denied being involved in the drag
2 race. He was not in the drag race and did not drive a car
3 in a drag race, according to Mr. Jenkins.

4 Along with the memo in support, I believe you
5 received an affidavit of Mr. Jenkins pursuant to Rule 12(B)
6 we would like if you would consider that affidavit and
7 trans -- convert this into a summary judgment motion if you
8 so choose. If not, we can move forward with the motion to
9 dismiss.

10 **THE COURT:** And it was filed this morning?

11 **MR. YOHO:** It was filed this morning, yes, ma'am.
12 We -- the secretary mailed it in and it was going to
13 Beaufort instead of Barnwell, so I had a copy this morning
14 and --

15 **MR. MOORE:** Your Honor, I haven't been served with
16 any of this. I think it's improper to serve on a 12(b)6
17 motion, when the Rule 12(b)6 states: That only the matters
18 contained in the pleadings can be addressed on a 12(b)6
19 motion. We would object to it's admission.

20 **THE COURT:** Okay. So you're objecting to the
21 affidavit?

22 **MR. MOORE:** Yes, ma'am.

23 **THE COURT:** All right.

24 **MR. MOORE:** And to the memorandum.

25 **THE COURT:** The memorandum was not sent to you or

1 was not sent to you, or was it -- Moorelaw@aol.com?

2 MR. MOORE: I received it by e-mail Friday morning,
3 but I don't think that's proper service. And at any rate
4 on a 12(b)6 motion, only the matters contained in the
5 pleadings can be considered. Outside matters cannot be
6 considered.

7 THE COURT: Well, the memorandum certainly -- it's
8 just -- you had already filed the motion and sent it to the
9 Court. It was also -- it was in my e-mail.

10 MR. MOORE: I've not received it by mail.

11 THE COURT: Okay.

12 MR. MOORE: Or any other method.

13 THE COURT: I'll give you -- if you feel it
14 necessary, I'll give you an opportunity to respond to the
15 memorandum in writing if you wish.

16 MR. MOORE: Yes, ma'am.

17 THE COURT: I know that the affidavit was attached
18 to the -- appears to be attached to the e-mail that was
19 sent.

20 MR. YOHO: Would you like for me to move forward as
21 a motion to dismiss or the summary judgment?

22 THE COURT: You can -- you can argue the motion --
23 the motion to dismiss at this time.

24 MR. YOHO: Okay. Thank you.

25 Your Honor, the statute of limitations expired

1 before my client, Mr. Jenkins, was added. It was
2 substituted, excuse me. As I said, the accident occurred
3 September 28th, 2009, and we believe the statute of
4 limitations began running on that date. Under the
5 discovery rule, the statute of limitations begins to run on
6 the date the injured party knows or should know by exercise
7 of reasonable diligence that a cause of action exists. We
8 believe the defendant knew -- or the plaintiff knew at that
9 time based on being in the car or seeing the other car --
10 he even alleges in the complaint that the cause of action
11 accrued at that time and the statute of limitations began
12 running.

13 Furthermore, in exercising out reasonable
14 diligence, our client, based on my understanding, was
15 brought in by eyewitnesses, and in order to exercise
16 reasonable diligence, plaintiff should have spoke to those
17 eyewitnesses long before we were added, long before the
18 statute of limitations expired. So we argue that under
19 that reason we were -- we're not a proper party.

20 Furthermore, as we noted, this case was originally
21 brought as a John Doe. In the case of Jackson versus Doe,
22 decided by Court of Appeals, the filing of a John Doe
23 action does not toll the statute of limitations as to a
24 tortfeasor. So by filing against John Doe, the plaintiff
25 did not follow the statute of limitations as against

1 Mr. Jenkins. They are independent and must be regarded as
2 such when reviewing the statute of limitations.

3 Furthermore, Your Honor, under 15(c), in relation
4 back does not apply here. In order for the relation back
5 statute to apply the original complaint to be the date that
6 controls. The basic claim must have arisen out of the
7 conduct in the original pleading. Number two, The party
8 brought in must have received notice that would not be
9 prejudice. Number three, The party must or should have
10 known that but for the mistake of identity the action would
11 have been brought against him. And four, Sections two and
12 three must be fulfilled within the statute of limitations.

13 As we know the statute of limitations expired on
14 August 28th, 2012. My client did not have notice of this
15 action or commencement of this action until he was
16 subpoenaed for his deposition. By not having notice that a
17 claim was pending, there was certainly no way for him to
18 know that he was mistakenly -- there was a mistaken
19 identity. Furthermore, there's no -- he just did not
20 receive notice that the action, so he could not be brought
21 in via 15(c).

22 In order for him to have been brought in, he would
23 have had to have been aware of this commencement of the
24 action of the complaint within the statute of limitations,
25 period. That did not occur. I have a case that speaks to

1 such that says, Party must be -- it goes through that four
2 point test, essentially. By not having notice of the
3 action during the statute of limitations period doesn't
4 apply to him. He could not be added as a party.

5 Furthermore, we allege prejudice in substituting
6 Mr. Jenkins as a party. Here we are almost five years
7 later from the date of the accident. We've been brought in
8 in July and scrambling to get the discovery, get the
9 pleadings and get the -- everything from the parties so
10 that we can assert a defense for this case. Furthermore,
11 it's been very difficult to get witness statements where --
12 as I say, we're almost five years out from the accident.
13 Additionally, my client's been deposed without the benefit
14 of an attorney, and I believe that would also constitute
15 prejudice.

16 So for those reasons, we'd move for Mr. Jenkins to
17 be dismissed, or in the alternative that summary judgment
18 be granted in his favor. Thank you.

19 **THE COURT:** Yes, Mr. Moore -- Mr. Livoti, I assume,
20 you don't have anything you want to say.

21 **MR. LIVOTI:** Not at this time, no, Your Honor.

22 **THE COURT:** Mr. Moore?

23 **MR. MOORE:** Your Honor, first of all, plain
24 language of Rule 12 states that a motion to dismiss shall
25 be brought prior to entering a responsive pleading. I

1 think this is required. And an action was filed on behalf
2 of Mr. Jenkins on August 8, 2015. This motion --

3 THE COURT: 2014?

4 MR. MOORE: Yes, sir (sic). This motion was not
5 served until August 15, 2014, so one week or so later that
6 action had been filed. Reading Rule 12, it plainly states
7 that a 12(b) motion shall be filed prior to any further
8 pleadings; and therefore, I think this motion is improper
9 at the time.

10 Noting that, we would then move onto Judge
11 Dickson's order of June 26 of 2014, where Judge Dickson
12 ordered that Mr. Jenkins be substituted for Defendant John
13 Doe. The Jackson v. Doe case that the plaintiff -- the
14 defendant cites has some language in dictum of regarding
15 and substituting and he cites that in his memorandum. But
16 in the actual findings of the case it does not say that a
17 person cannot be added. It draws a distinction between
18 adding and substituting a party. And in that case, the
19 claim was dismissed because the plaintiff had added a party
20 and there's a vast difference in adding and substitution.
21 John Doe was properly served and his attorney appeared at
22 the deposition. We did not learn of John Doe's true
23 identity until eyewitnesss came forward and identified him
24 as a person who was involved. Jenkins admitted being
25 there, admitted being in close proximity, although he

1 denied any further actions. But he did admit that he was
2 there and admitted he pulled up beside the other vehicle.
3 And as John Doe was properly served within the statutory
4 time and Stacey Jenkins was substituted for John Doe, then
5 Stacey Jenkins and John Doe are the same person and,
6 therefore, the complaint could relate back to the original
7 service of John Doe; and therefore, John Doe -- Stacey
8 Jenkins would not be entitled to be excluded.

9 Now, had it been a different situation where
10 Jenkins was added as a third party, they may have a good
11 argument, but that's not what the Court did and Judge
12 Dickson carefully considered Rule 15(c) in his order and
13 points out that, The Court finds that justice requires that
14 the plaintiff be allowed and that the defendant will not be
15 prejudiced. It recites the predicate findings that must be
16 made such as receive notice and he should have known and so
17 forth. He recites the findings in Rule 15(c). So he
18 clearly considered Rule 15(c) in his order and his order
19 concludes that required he be substituted and that the
20 defendant would not be prejudiced. And Stacey Jenkins was
21 substituted. And that was on June 26, 2014.

22 This order has not been appealed. There's been no
23 motion for reconsideration. There's been no other action
24 taken to ask Judge Dickson to change his mind or ask the
25 appellate court to change it's mind. And therefore, the

1 substitution of Stacey Jenkins is the law of the case. He
2 is in the case. And the sole issue then is, does the
3 service on John Doe relate back to the original cause of
4 action, in which that Stacey Jenkins indicates as a
5 substitute for John Doe and he's the same person as John
6 Doe, then he was served timely and the case should move on.

7 **THE COURT:** And this order was before the amended
8 complaint?

9 **MR. MOORE:** Yes, ma'am, we had to get Jenkins
10 substituted before we could serve him.

11 **THE COURT:** Yes, sir. And you served him in July;
12 is that correct?

13 **MR. MOORE:** Yes, ma'am, just shortly after we got
14 an order back from Judge Dickson.

15 **THE COURT:** Anything further, Mr. Moore?

16 **MR. MOORE:** Nothing at this time, Your Honor.

17 **THE COURT:** Any response?

18 **MR. YOHO:** Yes, Your Honor, it's my understanding
19 that the -- as Mr. Jenkins' private attorney, personal
20 attorney, Ms. Joiner filed an answer. She reserved the
21 right to file a 12(b)6 motion, which we have done. We
22 believe that's proper under the rules. Furthermore, as we
23 discussed with the summary judgment alternative, that's
24 available. Regarding the 15(c) order by Judge Dickson, we
25 were not party to it. We were not there. We did not

1 believe it's appealable because we were not a party to the
2 motion, we were not a party to the hearing. And I do not
3 believe that allowing plaintiff to substitute a party then
4 forecloses on our ability to raise the statute of
5 limitations either in a responsive pleading motion, answer,
6 what have you.

7 In regard to adding or substituting party in the
8 Jackson v. Doe case -- beg the Court's indulgence -- I'll
9 quote, There's no provision specifically allowing John Doe
10 and a later added or substituted party can be considered
11 the same entity per -- to toll the statute of limitations.
12 So that rule I cited earlier, applies both to adding and
13 substituting parties and I think it's clear that filing the
14 action against John Doe did not toll the statute of
15 limitations against Stacey Jenkins and because the statute
16 of limitations expired before he was substituted as a
17 party, he is entitled to dismissal.

18 **THE COURT:** Anything else from anyone else?

19 **MR. MOORE:** I would just state again, Your Honor,
20 that the section that Mr. Yoho was referring to was not in
21 the order itself. It's in the body of this opinion, but if
22 you read the complete opinion, it makes a distinction
23 between ordering -- between adding and substituting.

24 **THE COURT:** And I'll read -- I'll read it in
25 detail.

1 **MR. MOORE:** Thank you, Your Honor.

2 **MR. YOHO:** Your Honor, if I may, with regard to the
3 continuance, we don't have your signature. We have
4 everybody else's, so if I can hand that up to you.

5 **THE COURT:** Okay. That's fine.

6 And you indicated that -- that there's more than
7 one answer on behalf of Jenkins?

8 **MR. MOORE:** There's an answer of Stacey Jenkins
9 that was served on me by Clarissa Warren Joiner on August
10 the 8th, 2014. I have a copy if the Court doesn't have it
11 in the file.

12 **MR. YOHO:** Your Honor, I believe we filed our
13 motion to dismiss subsequent to that and I believe we filed
14 an answer as Jenkins' attorneys thereafter.

15 **THE COURT:** I have it, thank you. It was actually
16 clocked in the clerk's office on August 12th. I'll look at
17 those pleadings and -- as well as review the memorandum.

18 Mr. Moore, if you'd like to do any type of
19 memorandum in reply to what's been provided, I'll give you
20 until Wednesday this week in order to do so.

21 **MR. MOORE:** Thank you, Your Honor. I didn't get
22 their e-mail until Friday midday and I didn't have any
23 secretarial help at that time and I'm not that good at
24 technology.

25 **THE COURT:** No problem. You can just send it to

1 the e-mail. I think both my law clerk and secretary's
2 e-mails are reflected in the e-mail that was sent and you
3 can just forward it to that e-mail and I'll be happy to
4 take a look at it in response.

5 MR. MOORE: Thank you, Your Honor.

6 THE COURT: Thank you. Thank you, Counsel, I'll
7 take a look at all that.

8 MR. YOHO: Thank you, Your Honor.

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* * * * * END OF TRANSCRIPT * * * * *

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

RECEIVED

AUG 11 2015

SC Court of Appeals

Case No. 2012-CP-06-00326

Henry Lee Carroll, IIAppellant,

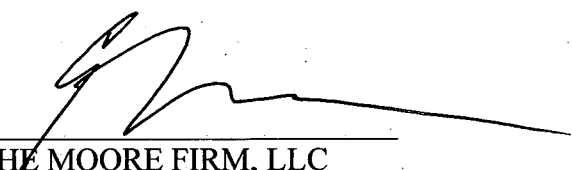
v.

Alex Webb Causey and Stacey Jenkins,.....Respondents.

CERTIFICATE OF COUNSEL

I certify this designation contains the matter agreed upon by the parties to be included in the record on appeal and contains no matter which is irrelevant to this appeal.

July 16, 2015



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